

BEFORE THE LAND USE HEARINGS OFFICER  
CLACKAMAS COUNTY, OREGON

Regarding an Application for a Zone Change From Rural Residential Farm Forest 5-Acre (RRFF-5) to Rural Area Residential 2-Acre (RA-2) and a 28-Lot Subdivision for Future Development of Single-Family Dwellings.

Case File Nos:  
Z0346-23-ZAP & Z0347-23-SP  
  
(Mann Construction LLC)

**A. SUMMARY**

1. The applicant is Mann Construction LLC, represented by Andrew Stamp, attorney at law. The owners of the subject properties are Enoch & Danielle L. Man and Cornel D. & Victoria Man. The subject property is located at 20750 S Beaver creek Rd., on the northeast corner of S Beaver creek Rd. and S Wilson Rd., approximately 0.8 miles northwest of the unincorporated community of Beaver creek, within the Hamlet of Beaver creek.
2. The legal description is T3S, R2E, Section 15D, Tax Lot 02200, W.M. The subject property is an approximately 56.2 acre site zoned Rural Residential Farm Forest 5-Acre (RRFF-5) with a Comprehensive Plan designation of Rural (together referred to as the “Property”). The applicant’s proposal contains two distinct applications which are being processed concurrently: First, the applicant seeks a zone change from the current RRFF-5 zoning to Rural Area Residential 2-acre (RA-2). If approved, the proposed RA-2 zone increases the development potential of the Property from the current 11 single-family dwellings to 28 single-family dwellings on 2 acre lots. Secondly, and predicated upon approval of the first application, the applicant proposes for a subdivision with 28 two-acre lots for future development of single-family dwellings.
3. The County received numerous written comments and petitions from interested neighbors, the local Hamlet of Beaver creek CPO, public agencies, including several written comments in opposition to this proposal from the Department of Land Conservation and Development (“DLCD”), and other interested parties in advance of the hearing. Martha Fritzie, Principal Planner for Clackamas County, and Ben Blessing, Senior Planner for Clackamas County, submitted a staff report on behalf of the County. The applicant’s attorney, Andrew Stamp, also submitted a written statement in advance of the hearing.
4. On February 15, 2024, the Hearings Officer conducted a public hearing to receive testimony and evidence about the applicant’s proposal. County staff recommended approval of the zone change application and approval of the proposed 28-lot subdivision, subject to certain Conditions of Approval. The Hearings Officer approved the applications consistent with the County’s recommendation.

**B. HEARING AND RECORD HIGHLIGHTS**

1. The Hearings Officer received testimony and evidence at the February 15, 2024 public hearing about this application. All exhibits and records of testimony are filed with the

Planning Division, Clackamas County Department of Transportation and Development. The public hearing was conducted virtually over the Zoom platform. At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias, or conflicts of interest. The Hearings Officer stated that the only relevant criteria were those identified in the County’s staff report, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.

**Agency Comments:**

2. County Planners of Record, Martha Fritzie and Ben Blessing, submitted several additions as Exhibits in this matter, including: (a) several maps, including County Tax Assessor’s map, Oregon City School District boundary, and Clackamas River Water District boundary; (b) Board Order 2000-57, consisting of an interpretation of County Comprehensive Plan, Chapter 4, Rural Policy 13; (c) OAR 660-004-0040; (d) LUBA 2006-218 & 2006-219 (Ocean Shores v. Curry County); (e) Clackamas County HO Decision Z0277-22-Z (Cereghino); and (e) DOGAMI Map.
3. Gordon Howard of the Department of Land Conservation and Development (DLCD) submitted a February 1, 2024 letter requesting the County delay its decision on the zoning proposal. In his letter, Mr. Howard provides discussion and expresses concerns about Statewide Planning Goal 14 and Statewide Planning Goal 11, asserting that exceptions to Goal 14 and Goal 11 are required for this proposal. Mr. Howard also provides discussion concerning the applicant’s assertion that the proposal provides for “needed housing,” pointing out that the term “needed housing” is a term of art applying only to housing in urban areas and asserting that “residential development outside of Urban Growth Boundaries is not, as a matter of law, “needed housing.” In his letter Mr. Howard also disputes application of the 2007 Ocean Shores LUBA decision to this proposal, contending that a zone change from one rural minimum lot size to another effectively amends the County’s requirements for minimum lot or parcel sizes, requiring a Goal 14 exception. Mr. Howard further discusses the meaning of “urban uses” and “rural uses” and contends that the applicant has not adequately demonstrated that the proposed use is rural, pointing to public water service, the site’s location within the service area of an urban school district, needed center turn lane to provide access, and stormwater management within the right-of-way.
4. Andrew Stamp, Attorney for application, submitted written comments responsive to the comments submitted by Mr. Howard of DLCD, explaining why a Goal 11 exception is not needed and why Goal 11 does not preclude approval of the proposal, with several attachments. Mr. Stamp points out that the applicant proposes a zone change and does not propose to change the comprehensive plan designation, which will remain “rural.” Mr. Stamp contends that the statewide planning goals generally do not apply to a zoning map amendment in situations where (as in this case) the acknowledged Comprehensive Plan provides criteria for the zone change. Mr. Stamp provides discussion of relevant case law, the relevant terms in ORS 197 and ORS 213, and the County’s comprehensive plan and land use regulations, contending that the proposed zone change is not an amendment to the County’s comprehensive plan and the statewide planning goals do not apply. Mr. Stamp also provided

discussion of the application of relevant portions of OAR 660-011-0065 and the availability of a public water system.

5. Christian Snuffin, County Transportation Engineering, submitted comments related to the proposed zone change and mitigation needed to meet adequacy standard for the transportation system. Specifically, Mr. Snuffin recommended conditions of approval requiring applicant to (a) construct a southbound left-turn lane on S Beaver creek road; and (b) realign the intersection of S Beaver creek Rd. and S. Wilson Rd. In his comments, Mr. Snuffin noted he reviewed the Traffic Impact Study (“TIS”) for this proposal prepared by Lancaster Mobley dated October 9, 2023. This TIS evaluated the traffic impacts of the predicted vehicle trips generated by the proposed rezone and subdivision on the Beaver creek Rd/Henrici Rd, Beaver creek Rd/Wilson Rd and Wilson Rd/site access intersections, consistent with consultation with County Engineering staff and Section 295 of the County Roadway Standards. Mr. Snuffin noted the TIS determination that all study intersections are expected to remain below County operational thresholds, and staff concurs with the trip generation, trip distribution, analysis methods and results. Mr. Snuffin noted that rear end crashes can be significantly reduced by the presence of a left turn lane as the TIS shows will be warranted, with County staff concurring with this recommendation finding that a left turn lane would separate left-turning traffic from through traffic, reducing the risk of rear-end crashes and substantially improving safety. Mr. Snuffin also pointed to the Wilson Rd intersection of Beaver creek Rd describing it as skewed at approximately 60 degrees, with staff recommending that land use approval be conditioned on realignment of Wilson Rd in conformance to County standards.
6. Aquilla Hurd-Ravich and John M. Lewis of the City of Oregon City submitted comments asserting that the applicant’s traffic study should evaluate additional intersections, estimating that approximately 85% of additional traffic associated with the proposal will affect the Beaver creek Road and Highway 213 intersection, affecting intersections within the City of Oregon City, and contending these impacts should also be assessed. Further, they request a condition of approval requiring the applicant to contribute a proportionate share of city intersection improvements. Mr. Snuffin provided additional comments in response to this letter explaining why County staff did not require the applicant’s TIS to evaluate traffic operations beyond those included in the study.
7. Kenneth Kent, County Development Transportation Engineering, submitted written comments and recommended conditions of approval related to the proposed subdivision. Among other things, these comments proposed both the southbound left turn lane on S Beaver creek Rd at the S Wilson Rd intersection and the realignment of S Wilson Rd at S Beaver creek Rd referenced by Mr. Snuffin.

**Public Comments:**

8. Prior to the hearing the County received numerous written comments (letters and emails), mostly from members of the public and nearly all opposed to the applicant’s proposed zone change and subdivision, including comments submitted by the Hamlet of Beaver creek (the Community Planning Organization or “CPO” for the site) and the nearby Redland-Viola-Fischers Mill CPO (each representing numerous citizens). These public comments in

opposition point to traffic concerns and impacts to existing roadway infrastructure, particularly pointing to experiences with wildfire evacuation issues, and asserting a lack of safety at the intersection of S Beaver Creek Rd. and S Wilson Rd., lack of plans or funding to improve existing local roads, impacts to schools and other infrastructure (such as water supply) and community expenses, impacts to the local rural community and the need to protect agriculture on rural lands, and environmental concerns including impacts to wildlife. Numerous individuals submitted written comments opposing the proposal for these and similar reasons, many with anecdotes describing safety concerns with traffic and conditions on S Beaver Creek Rd.

### ***Discussion of County Staff Report and Applicant Comments***

9. At the hearing County Principal Planner Martha Fritzie shared a PowerPoint presentation and discussed the County's February 8, 2024 staff report reviewing application Z0346-23-ZAP proposing a zone change from RRFF-5 to RA-2, sharing a number of slides and discussing a number of exhibits as well as the County's recommended approval of the application subject to Conditions of Approval.
10. Ms. Fritzie noted that the County received over 50 public and agency comments, discussing comments in opposition received from the Hamlet of Beaver Creek, the CPO for the site (Exhibit 23). Ms. Fritzie also discussed certain new exhibits the County received subsequent to the County's February 8, 2024 staff report, including from the Oregon Department of State Lands (DSL)(Exhibit 60); comments from the Redland-Viola-Fischers Mill CPO (Exhibit 61); and from Andrew Stamp, attorney for applicant (Exhibit 62). Mr. Stamp's comments relate to interpretations of case law concerning Statewide Planning Goals and related administrative regulations discussed in the County's staff report and in the written comments received from DLCD (Exhibit 15), explaining why exceptions to Statewide Planning Goals are not needed and why Goal 11 does not preclude approval of the proposal, providing several related attachments.
11. Ms. Fritzie noted that approval of the zone change would increase the development potential of the subject property from 11 lots to up to 28 lots for detached, single-family homes, and that an application for a 28-lot subdivision was filed concurrently (Z0347-23-SL). Ms. Fritzie reported that the Property is not currently in farm use and is improved with one single-family dwelling. Ms. Fritzie discussed the location of the approximately 56.2 acre site along the east side of S Beaver Creek Rd., approximately 0.5 miles south of the City of Oregon City (showing the City's Metro Urban Growth Boundary-UGB) and approximately 0.8 miles north of the unincorporated community of Beaver Creek. The site is relatively flat with no wetlands, streams, habitat or hazard areas, with surrounding development that includes residences, a farm, and a church. The property is zoned RRFF-5, with surrounding properties zoned RRFF-5 and RA-2, with the Portland Metro urban reserve abutting the northern boundary of the subject property.
12. Ms. Fritzie provided review and discussion of relevant Statewide Planning (SWP) Goals, relevant County Zoning & Development Ordinance (ZDO) provisions, and County Comprehensive Plan Goals & Policies, as well as relevant OARs and case law addressing whether an exception to Goal 14 is needed to approve this zone change proposal, including

discussion of DLCD's interpretation, discussion of "urban" vs. "rural" uses and relevant factors to consider in determining whether development on rural residential lands may be considered "urban" or "rural" use. Ms. Fritzie discussed DLCD's assertion that the proposal should be considered an urban use due to availability of public water service, inclusion in the Oregon City school district boundary, and proximity to the urban reserve. Ms. Fritzie discussed the staff findings that the proposed use is "rural" and no Goal 14 exception is required.

13. Ms. Fritzie also provided review and discussion of SWP Goal 11 and OAR 660-011-0065(2) and DLCD's related comments, and staff findings that the proposal is consistent with Goal 11 and no exception is required because the use is not urban. Ms. Fritzie discussed procedural and coordination policies and requirements under ZDO Section 1202.03(A), and related staff findings. Ms. Fritzie discussed requirements under Chapter 5 that the zone change must comply with the Transportation Planning Rule (TPR), SWP Goal 12, including the applicant's traffic impact study (TIS) (Exhibit 2), City of Oregon City comments (Exhibit 29), and the review by County Transportation Engineering (TE) staff of the TIS and City's comments confirming the study area and methodology and findings that, with mitigation, the proposal would comply with the TPR (Exhibit 18). Ms. Fritzie pointed to findings that within ¼ mile of the subject site 78% of all parcels are less than 2 acres and 94% of those parcels are developed, also pointing to other development in the area that includes subdivisions with lots of ½ acre, a church, and the nearby city and unincorporated community. Ms. Fritzie pointed to staff findings with respect to Chapter 4 policies for the application of an RA-2 zoning district, finding the proposal consistent. Ms. Fritzie also pointed to findings that the proposal is consistent with other relevant Comprehensive Plan policies, including staff findings for ZDO 1202.03(B), (C), and (D), and discussion of the staff recommendation of approval subject to recommended conditions.
14. County Senior Planner Ben Blessing shared a PowerPoint presentation and discussed the County's February 8, 2024 staff report reviewing application Z0347-23-SL proposing a 28-Lot Subdivision (dependent upon approval of the proposed zone change from RRFF-5 to RA-2) sharing a number of slides and discussing a number of exhibits as well as the County's recommended approval of the application subject to Conditions of Approval. Mr. Blessing shared slides showing a vicinity map, showing the subject property and area development, an aerial view of the subject property showing adjacent development and a Preliminary Subdivision Plan showing the proposed 28-acre lots with internal roads taking access from S Wilson Rd. Mr. Blessing noted that each new lot will be at least two acres with an individual septic system, and a private road within a 30-foot wide easement will serve the new lots. Mr. Blessing also noted that drinking water provided by Clackamas River Water (CRW) will serve each new lot on separate meters.
15. Mr. Blessing provided public roadway highlights and discussion noting that S Beaver Creek Road will receive full half street improvements to rural "arterial" road standards and S Wilson Road will receive full half street improvements to rural "local" road standards, including right of way dedication. Mr. Blessing discussed staff recommendations for a southbound left-hand turn lane on Beaver Creek Road, and initial staff findings and recommendations concerning requiring that Wilson Road be realigned at the Beaver Creek intersection to meet safety and capacity standards. Mr. Blessing also noted that Emergency Fire Access may be required on

to S Beavercreek Road. Mr. Blessing discussed the recommendation by County staff that application Z0347-23-SL be approved subject to conditions of approval, contingent upon approval of Zone Change proposal Z0346-23-ZAP.

16. Andrew Stamp, attorney for applicant, stated that the applicant disagrees with the County's proposed condition of approval requiring realignment of S Wilson Rd. at the Beavercreek Rd. intersection, asserting that the requirement fails to pass the *Nollan / Dolan* rough proportionality test and violates the Constitution's Takings Clause. Mr. Stamp points to traffic impacts of an approximately 66% increase on S Wilson Rd. and 3% increase on S Beavercreek Rd., with applicant's agreement to build the left-turn lane adequate mitigation for these impacts. Mr. Stamp points out that the applicant did not create the skewed alignment of S Wilson Road and asserts it is not the applicant's problem to fix it. Mr. Stamp argues there is not need for a goal analysis to approve the zone change proposal as the site is designated rural residential on the County's comprehensive plan map, and the proposal is a lot size difference. Mr. Stamp provides discussion of history and analysis for relevant LCDC goals, regulations and case law.
17. Christian Snuffin, County Transportation Engineering, provided additional discussion concerning the proposed condition requiring realignment of S Wilson Rd, describing the skew of the intersection and safety issues associated with such larger intersection skews. Ken Kent, County Transportation Engineering, also provided discussion of the intersection skew and the proposed condition requiring realignment. Ben Blessing pointed to the provisions of ZDO Section 1007.

### ***Public Comments***

18. Aquilla Hurd-Ravich, Community Development Director of the City of Oregon City, provided comments and discussion of the applicant's TIS and related analysis by County staff, expressing concern with respect to increasing congestion along S Beavercreek Road and impacts to the Hwy 213 / Beavercreek Road and Hwy 213 / Redland Road, and impacts to traffic within Oregon City.
19. Elizabeth Graser-Lindsey provided comments in opposition to the proposal, consistent with the written comments she submitted, particularly concerning S. Beavercreek Rd. requiring re-grading, sight-distances improved, and shoulders and bike lane improvements. Ms. Graser-Lindsey asserts the proposal does not comply with County safety standards or the Transportation Planning Rule and the applicant's TIS is inadequate, pointing to ODOT and other accident report and contending there are traffic impacts from the proposal extending beyond the site frontage that require evaluation. Ms. Graser-Lindsey also disputes other portions of the application and related staff findings, including absence of flood hazards.
20. Kelly Reid of DLCD provided comments asserting a Goal 14 Exception is required, contending that the County's Comprehensive Plan is silent on requirements for a Goal 14 exception. Ms. Reid provided discussion of applicable State law, requirements for Goal 14 and Goal 11 exceptions, as well as factors to consider in making determinations regarding urban vs. rural uses. Ms. Reid pointed out that the application does not in fact provide for

“needed housing” and reiterated DLCD’s request that the County delay a decision in this matter until an appeal of a similar approved zone change is completed.

21. Tammy Stevens, Chair of the Hamlet of Beavercreek CPO, provided comments referencing the letter she submitted on behalf of the CPO in opposition to the proposal. Ms. Stevens stated she read the traffic report, but has personal experience with bottlenecks and delays on S Beavercreek Rd. with traffic practically stopped. Ms. Stevens reports she has lived in rural Beavercreek for 62 years and asserts that the proposed 2 acre lots are not “rural” but are “rural urbanization.” Norman Andreen is a local resident and former planning commission member who also provided comments stating he does not mind the proposed 2-acre lots, agreeing also that a left-turn lane is needed to service S Wilson Rd. Mr. Andreen describes this portion of Beavercreek Rd. as dangerous with a slight hill as drivers approach S Wilson Rd. Mr. Andreen notes also the road has no shoulder for bicyclists, describing it as crazy to ride a horse there with the traffic on S Beavercreek Rd. getting heavier all the time.
22. Ms. Fritzie provided responses and/or rebuttal to comments opposed to the proposal, asserting that the proposed zone change meets the required criteria as described in the staff report. Ms. Fritzie explained that staff findings concerning the adequacy of the transportation system do not mean there are not larger systemic issues, or that the County does not need to work with the City of Oregon City. Ms. Fritzie points to the proposal meeting the specific requirements for approval, focusing on the specific relevant criteria. Ms. Fritzie agrees with DLCD that the proposal does not provide for “needed housing” but asserts this is not relevant. Mr. Blessing also provided a response to comments about drainage concerns, noting the issue was addressed in Section 1006 and a condition of approval. Mr. Kent expressed reservations about applicant’s argument with respect to the proportionality of requiring the realignment of S Wilson Rd., noting evidence of safety issues associated with such skewed intersections. Mr. Kent also expressed reservations concerning whether staff could still recommend approval of the proposal without this condition, citing County roadway standards and sight distances.
23. John Raugust, PE, with AKS Engineering, also provided responses to comments received about the proposal, noting that the applicant is providing perimeter half-street improvements that include a 12 foot travel lane and 8 foot bike lane. Andrew Stamp, applicant’s attorney, also provided responses and rebuttal to a number of comments, particularly addressing the proportionality of imposing a condition requiring realignment of S Wilson Rd., assertions regarding drainage, and DLCD’s interpretation of the requirements for approving this zoning proposal. Mr. Stamp contends that the proposal meets the criteria for changing the zoning from RRFF-5 to RA-2 and should be approved.
24. Prior to ending the public hearing the Hearings Officer asked whether any of the parties wanted an opportunity to request that the record remain open to submit additional evidence, arguments, or testimony. Mr. Stamp made a request on behalf of the applicant that the record stay open for submission of new evidence and argument. The Hearings Officer discussed the request with the parties, and determined that it was appropriate to hold the record for all parties and members of the public as follows: for three weeks until 4:00 pm on Thursday, March 7, 2024 to submit additional written evidence, argument, or testimony, an additional week until 4:00 pm on Thursday, March 14, 2024 for any participant or member of the public to respond to new evidence submitted during the prior open record period, and an additional

week until 4:00 pm on Thursday, March 21, 2024 for the applicant to provide a final written “last word” response or rebuttal, not to include new evidence. This seven-day period for applicant’s final written arguments is not subject to the limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179 and thereby extended the 150-day time period for a final decision on this matter by 7 days to April 22, 2024. On March 19, 2024, Mr. Stamp submitted a request to extend this “last word” response period by an additional 7 days and extend the 150-day time period for a final decision in this matter by an additional 7 days, and the Hearings Officer agreed, leaving the record open until 4:00 pm on Thursday, March 26, 2024 and receiving this last written statement. The deadline for a final decision in this matter is April 29, 2024.

### ***Post-Hearing Submissions and Comments Submitted During Open-Record Period***

25. During the initial open-record period (until 4:00 pm on Thursday, March 7, 2024) the County received sixteen written comments (letters and emails) from the County, interested agencies, the applicant, and members of the public. During the second open-record period (until 4:00 pm on Thursday, March 14, 2024) the County received two written comments: rebuttal testimony by Ms. Graser-Lindsey and rebuttal testimony by the applicant. On March 19, 2024, the County received a request from applicant’s attorney, Mr. Stamp, to extend the deadline for final argument by 7 days, and the Hearings Officer agreed. The applicant submitted a final written argument on March 28, 2024.<sup>1</sup>
26. Public comment was received from Elizabeth Graser-Lindsey, who submitted a February 14, 2024 written comment amended by a corrected letter submitted February 15, 2024 letter. In her letter, Ms. Graser-Lindsey asserts that the proposal fails to comply with County Road Safety Standards and Criteria, providing review and argument and referring to ODOT accident reports near the proposal site (including a fatality) and side streets from S Beaver creek Rd. (particularly Henrici Rd. and its vicinity). Ms. Graser-Lindsey also asserts the impacted roads do not meet County Roadway Standards, and that these substandard road conditions put bicyclists and pedestrians (and equestrians) in danger, providing information concerning bicycle and equestrian use and accidents and anecdotal reports of the dangers they face on these roads that do not provide for shoulder areas. Ms. Graser-Lindsey also disagrees with County staff report conclusions concerning the issues experienced during the wildfire evacuations, with respect to wetlands and streams, and with respect to findings that the proposal is for a “rural” use of the site. (Exhibits 65 and 66)
27. Several other members of the public submitted written comments opposed to approval of the proposal, most citing traffic and safety issues and adequacy of the area transportation system. Public comment was received from Tammy Stevens, who submitted a February 14, 2024 written comment reporting an accident occurring that same involving a “T-bone” crash at the intersection of S Beaver creek Rd and S Wilson Rd. (Exhibit 71)

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<sup>1</sup> Ms. Graser-Lindsey submitted an objection to this extension, and to a reference in the applicant’s March 28, 2024 final written argument stating: “Since the issues raised in her third submittal relate to traffic safety, we asked Lancaster Mobley to respond to those issues with argument only, not evidence. This letter, dated March 26, 2024, is submitted in this same package.” Ms. Graser-Lindsey asserts in her objection that such a letter would be new evidence. In reviewing the applicant’s final written argument I considered only argument and did not consider new evidence.



28. On February 29, 2024, County Engineering staff (including Joseph F. Marek, PE, PTOE, Transportation Safety Program Manager, Christian Snuffin, PE, PTOE, Senior Traffic Engineer, and Kenneth Kent, Senior Planner Development Engineering) submitted initial open record comments in response to the applicant's objection to proposed condition of approval 4(G)(v) requiring realignment of the S Wilson Road/S Beaver Creek Road intersection, and applicant's argument that this condition of approval is not proportional to the impacts of the proposed zone change and subdivision. In this response County engineering staff reviewed County ZDO and related requirements, conducted a detailed safety analysis of relevant research and information concerning skewed intersections and the subject intersection, and the expected improvement of the performance of that intersection with the proposed left-turn lane addition. County engineering staff recommended that condition of approval 4(G)(v) requiring the realignment is removed, and condition of approval 7(B) is modified to delete reference to condition 4(G)(v). (Exhibit 76)
29. On March 5, 2024, County Senior Planner Ben Blessing and County Principal Planner Martha Fritzie submitted written comments that support the amended recommendation by County engineering staff that condition of approval 4(G)(v) is removed, and condition of approval 7(B) is modified to delete reference to condition 4(G)(v), also noting that several staff report findings may need to be modified to reflect the updated recommendations. (Exhibit 77)
30. On March 5, 2024, Aquilla Hurd-Ravich, Community Development Director of the City of Oregon City, submitted additional written comments disputing the County's evaluation of the traffic-related impacts to Highway 213 intersections within the City of Oregon City, particularly Highway 213 / Beaver Creek Road and Highway 213 / Redland Road. These comments reiterate the City's position that the applicant should be required to mitigate traffic-related impacts to Highway 213 intersections within the City of Oregon City related to its proposal, providing discussion in support of the City's position. (Exhibit 78)
31. Gordon Howard of DLCD submitted a February 27, 2024 additional written comment noting locating a staff report that accompanied the draft proposed rule language for OAR 660-004-0040 in June of 2000, providing a copy of a related June 2000 public hearing agenda as an attachment. Mr. Howard asserts that the draft rule included standards for upzoning of rural residential areas, while the final proposed rule instead points to a Goal 14 exception process. Mr. Howard contends that the Commission's intent was to allow 2-acre lot sizes only where already designated and not just wherever Counties decided to apply them in rural residential exception areas. (Exhibit 75)
32. Gordon Howard of DLCD also submitted a March 7, 2024 additional written comment referencing DLCD's pre-hearing request that the decision on this proposal be delayed until the *Cereghino* case at LUBA is decided (an approved zone change involving substantially identical issues). Noting that the decision in that case will not be issued prior to the County's decision deadline in this matter, Mr. Howard urged that the County deny this zone change proposal. Mr. Howard provided additional background concerning the June 2000 LCDC hearing he referenced in his February 27, 2024 letter, stating they accessed the audio recording from that hearing. Mr. Howard states that LCDC wrote the rule (OAR 660-004-0040) intending it to require a Goal 14 exception for upzoning of any existing rural residential areas, not prohibiting such upzoning but setting a high bar. (Exhibit 80)

33. Mr. Howard further contends in his March 7, 2024 written comment that the applicant's proposal here is for an urban use on rural lands, asserting that even if a Goal 14 exception is not required based on OAR 660-004-0040(7), a Goal 14 exception is still required to approve the proposed zone change under the factors articulated in *1000 Friends of Oregon v. DLCD (Curry County)*, 301 Or 447 (1985). Mr. Howard also references *Wetherell v. Douglas County*, 57 Or LUBA 240 (2008) pointing to analysis of density, availability of public services, and proximity to urban growth boundaries, contending its finding that the underlying proposed rezoned to 2-acre lots resulted in an urban use of rural land is based on substantially identical factors as found here.
34. Ms. Graser-Lindsey submitted additional written comments on March 7, 2024 contending that the proposal should be denied, reiterating several previous points and arguments. Ms. Graser-Lindsey argues that the application does not qualify for a zone change, contending that the application does not meet the standards and criteria of ZDO 1202.03, providing discussion of these standards and criteria and focusing on discussion of County ZDOs for Land Use (Chapter 4), Transportation System Plan (Chapter 5), and the Planning Process (Chapter 12). Ms. Graser-Lindsey asserts the application is not compatible with agricultural uses, nor policies related to RA-2 zoning limiting application to areas in which virtually all existing lots are two acres or less, also asserting the proposal is actually an urban and not rural use in contravention of Urbanization Goals and the Urban Growth Boundary. (Exhibit 79)
35. In her March 7, 2024 written comments, Ms. Graser-Lindsey asserts the proposal is not consistent with Transportation System Plan goals and policies and related zone change standards and criteria, citing policies and goals seeking to improve safety for all users and enhance active transportation, particularly to include pedestrian, bicycle, and equestrian use. Ms. Graser-Lindsey points to related County plans and policies, noting that shoulders needed for bike safety have rarely been added and build out (such as this proposal) has made the roads less safe, but also pointing to the inclusion of paved shoulders on Beaver Creek Rd. in the County's 20-Year Capital Projects. Ms. Graser-Lindsey rebuts applicant's assertions that she is raising safety standards they are not required to meet, pointing to the language of the County Roadway Standards and related tables specifying necessary sight distances. Ms. Graser-Lindsey asserts that the applicant is in error claiming there are bike lanes on both sides of Beaver Creek Rd., reporting there are none. Ms. Graser-Lindsey also submitted a Road Safety Audit showing serious safety issues exist on Beaver Creek Rd. Ms. Graser-Lindsey questioned the data collection and methodology of applicant's TIS in addition to disputing the adequacy of its scope. (Exhibit 79)
36. Applicant submitted additional materials on March 7, 2024 that included several aerial photographs of S Beaver Creek Road intersections, including with S Wilson Rd and showing the full extent of S Wilson Rd [approximately one mile long and terminating at S Beaver Creek Rd], Clackamas Fire District #1 information, a Conceptual Well Location Exhibit showing that the proposed residential lots can be served by on-site wells rather than connect to public water service from Clackamas River Water, articles about a DUI conviction related to a fatality on S Beaver Creek Rd in the vicinity of the proposal site, a Most Popular Cars Exhibit, letter from applicant's attorney, Andrew Stamp, *Revised February 29, 2024*, Transportation Engineering Response Memorandum [Lancaster Mobley – dated March 6, 2024], a Wildfire

Risk/Clackamas Fire District #1 Service Area Exhibit. Mr. Stamp's letter argues, among other things, that Goal 14 does not apply to this decision at all, also arguing in the alternative that the proposal is for a rural use. (Exhibit 81)

37. Lancaster Mobley's March 6, 2024 written comments (submitted by applicant March 7, 2024) address County staff report and Engineering comments and recommendations concerning the existing alignment of S Wilson Road at S Beaver Creek Road and how such skewed intersections present a safety issue, and also address public comments concerning traffic safety issues. Lancaster Mobley provides additional research concerning the impacts of such skewed angles, discussion and review of the crash history for this intersection (four rear-end collisions and one turning movement collision in the five-year study period). Lancaster Mobley concludes that a southeast-bound left-turn lane at the intersection of S Beaver Creek Road at S Wilson Road will reduce the number of recurring rear-end collisions at the intersection. Lancaster Mobley notes that no high severity collisions were reported at the intersection, the crash rate is well below 1.00 CMEV, and the potential reduction of crashes given removal of the intersection skew is 0.14 crashes per year. Lancaster Mobley finds based on its analysis that the transportation system is adequate to accommodate the additional trips generated by the proposed subdivision pending construction of a south-east bound left-turn lane at the intersection of S Wilson Road at S Beaver Creek road and no additional mitigation is necessary or recommended. (Exhibit 81)
38. Applicant's attorney, Andrew Stamp submitted additional written comments dated March 7, 2024 (First Open Record Period Submittal). In this submittal, Mr. Stamp objects to the imposition of the proposed condition of approval requiring the realignment of the intersection of S Wilson Road with S Beaver Creek Road, providing an argument based on *Nollan / Dolan* issues concerning nexus and rough proportionality analysis. (Exhibit 82)
39. In his March 7, 2024 written comments, Mr. Stamp also provides a response to Elizabeth Graser-Lindsey's letter (Exhibits 65 and 66), pointing to the Lancaster Mobley study's required LOS capacity analysis and their conclusion that "all study intersections are projected to operate acceptably per Clackamas County standards through the 2025 buildout year of the proposed development and the 2043 Planning Horizon, with or without the zone change implemented." Mr. Stamp contends that Ms. Graser-Lindsey's arguments provide no reason why it should be the applicant's responsibility to study (or mitigate/improve) the ODOT facility at HWY 213/Beaver Creek or other ODOT intersections. Mr. Stamp further points to the evaluation of the transportation system adequacy that was conducted pursuant to the Transportation Planning Rule and OAR 660-012-0060. Mr. Stamp points to Ms. Graser-Lindsey's arguments that OAR 660-012-0000 requires the County to plan for all modes of travel, pointing out whether true or not this is not an approval standard for a zone change. Mr. Stamp does not dispute the evidence Ms. Graser-Lindsey submitted concerning vehicle crashes and related incidents, and the existence of road segments and intersections that "don't have proper sight distance," but rather points to engineering evidence and findings that the crash rates in the immediate vicinity of the site do not create an actual safety issue, citing Lancaster Mobley's reports. Mr. Stamp also addresses other points raised by Ms. Graser-Lindsey challenging findings in the County's staff report. (Exhibit 82)

40. Ms. Graser-Lindsey submitted additional written comments as rebuttal on March 14, 2024. In these comments, Ms. Graser-Lindsey disputes the findings by staff and the supporting documents submitted by the applicant, particularly with respect to the adequacy and safety of the transportation system. Ms. Graser-Lindsey contends that the crash rate is dangerously high along the 2-mile segment of S Beaver Creek Rd. that includes the subject property, providing analysis of data from the Federal Highway Administration. Ms. Graser-Lindsey also rebuts applicant and County analysis and findings of adequacy under County Roadway Standards, asserting these are minimum criteria for the design, construction, and safety of roadways. Ms. Graser-Lindsey contends that the scope of the applicant's TIS is inadequate and fails to evaluate the full impact zone, particularly on bicycle and pedestrian safety as well as traffic safety. Ms. Graser-Lindsey asserts that safety issues related to sight distance are reason enough for denying the zone change proposal. (Exhibit 83)
41. In her March 14, Ms. Graser-Lindsey also disputes the findings by applicant and County staff that the skew intersection (Wilson Rd. / S. Beaver Creek Rd.) does not require correction as a condition of approving the proposals. Ms. Graser-Lindsey also points out that, contrary to applicant's statement, a heavy truck was counted on Wilson Rd. during applicant's data collection during a morning rush hour, also suggesting several reasons heavy vehicles might use S Wilson Rd. and emphasizing the additional safety concerns associated with the skewed intersection with less than 500 feet sight distance and lack of a shoulder on the road. Ms. Graser-Lindsey disputes applicant's assertions that Ferguson and Henrici Rd. are alternative routes to S Wilson Rd., describing both roads as inferior and not meeting County Roadway Standards and also describing several road incidents. Ms. Graser-Lindsey contends that S Wilson Rd. requires re-alignment, Beaver Creek Rd. itself needs to be properly graded to provide required sight distance (even given the proposed left-turn lane), that County road maintenance is not consistent citing vegetation removal, and gravel shoulders and bicycle lanes are necessary. Ms. Graser-Lindsey provides an appendix with crash rate data for Beaver Creek Rd. (Exhibit 83)
42. The applicant submitted additional written comments as rebuttal on March 14, 2024 consisting of several attachments, including a March 14, 2014 Response Memorandum 2 by Daniel Stumpf, PE, of Lancaster Mobley addressing public comments from the hearing (primarily those by Ms. Graser-Lindsey) and providing an addendum to the applicant's TIS). The memorandum clarifies that Ms. Graser-Lindsey is correct that bicycle lanes are only partially provided along both sides of S Beaver Creek Road and that S Beaver Creek road shoulders approximately 600 feet southeast of S Henrici Rd. narrow and bicyclists share the vehicular travel lane, correcting this error in the TIS. The memorandum also responds to comments made by Ms. Graser-Lindsey concerning the scoping materials used to determine the scope of work for the TIS, and the TIS trip generation used to review transportation impacts of the proposed project, asserting each are appropriate. (Exhibit 84)
43. The applicant's rebuttal included March 14, 2024 written comments by their attorney, Andrew Stamp, responding to the City of Oregon City's submittals, specifically addressing assertions that the applicant must mitigate additional impacts from its proposal. Firstly, Mr. Stamp addresses the "no further degradation" standard set forth in the Oregon Highway Plan pointing to exceptions for zone changes that only result in small increases in traffic, defined as less than 400 additional daily trips. Secondly, Mr. Stamp points to 2012 amendments to the

Transportation Planning Rule which allows local governments to rezone land without analyzing traffic if the rezoning is consistent with the comprehensive plan designation and the transportation system plan. Mr. Stamp also rebuts a concurrency argument, pointing out (as did County staff) that this is essentially a policy argument.

44. In his March 14, 2024 rebuttal argument, Mr. Stamp also addresses and rebuts arguments submitted by Ms. Graser-Lindsey, contending her arguments do not provide a basis for denial, or are not relevant at all, points to facts supporting finding that the proposal is for a rural use and not an urban use. Mr. Stamp provides additional discussion of “temporarily flooded” land included in the application addressing Ms. Graser-Lindsey’s arguments in Exhibit 68. Mr. Stamp provides an analysis of the meaning of the word “adjacent” in support of applicant’s “Parcelization Study” (Exhibit 2) and concurring County staff findings, and addresses several other arguments. The applicant submitted several DLCDC Orders, a number of excerpts from the Curry County Comprehensive Plan, and an April 16, 2023 Safe Communities Traffic Safety Update that includes a road safety audit for S Beavercreek Road.
45. The applicant submitted additional written comments as a final written argument (not to include new evidence) on March 28, 2024. These materials included Transportation Engineering Response Memorandum 3 by Lancaster Mobley, dated March 26, 2024, and a letter from applicant’s attorney, Andrew Stamp, dated March 28, 2024. In these materials, Daniel Stumpf, PE of Lancaster Mobley provides a response to public comments submitted by Ms. Graser-Lindsey related to the application and associated TIS. Mr. Stumpf notes that Ms. Graser-Lindsey is asserting that both Clackamas County and the applicant’s professional transportation engineers are incorrect about their assessments and conclusions regarding transportation safety, operation, and adequacy of these transportation facilities. Mr. Stumpf points to Ms. Graser-Lindsey making engineering judgment assessments and calculations and draws attention to the fact that Ms. Graser-Lindsey is not licensed as a professional engineer in the State of Oregon and are opinions are not supported by professional transportation engineering expertise, pointing to the TIS and related data, findings, and recommendations, and contending that Ms. Graser-Lindsey’s assertions are not supported. (Exhibit 87)
46. With the applicant’s March 28, 2024, Andrew Stamp provides an additional response to issues raised by DLCDC regarding whether Goal 14 applies to the proposed zone change and, if so, the application of the *Curry County* factors to determine if the use proposed is an urban use on rural land. Mr. Stamp also responds to issues raised by DLCDC with respect to the applicability of OAR 660-004-0040 and, if it applies, whether it requires an exception to Goal 14, and also discussion of the application of Goal 11 and OAR 660-011-0065. Mr. Stamp also discusses the Clackamas County Hearings Officer’s decision in the *Cereghino* decision, disagreeing with that decision’s finding that Goal 14 *did* apply to a zoning map amendment involving rural residential lands, providing additional discussion in support of applicant’s contention that Goal 14 does not apply at all.

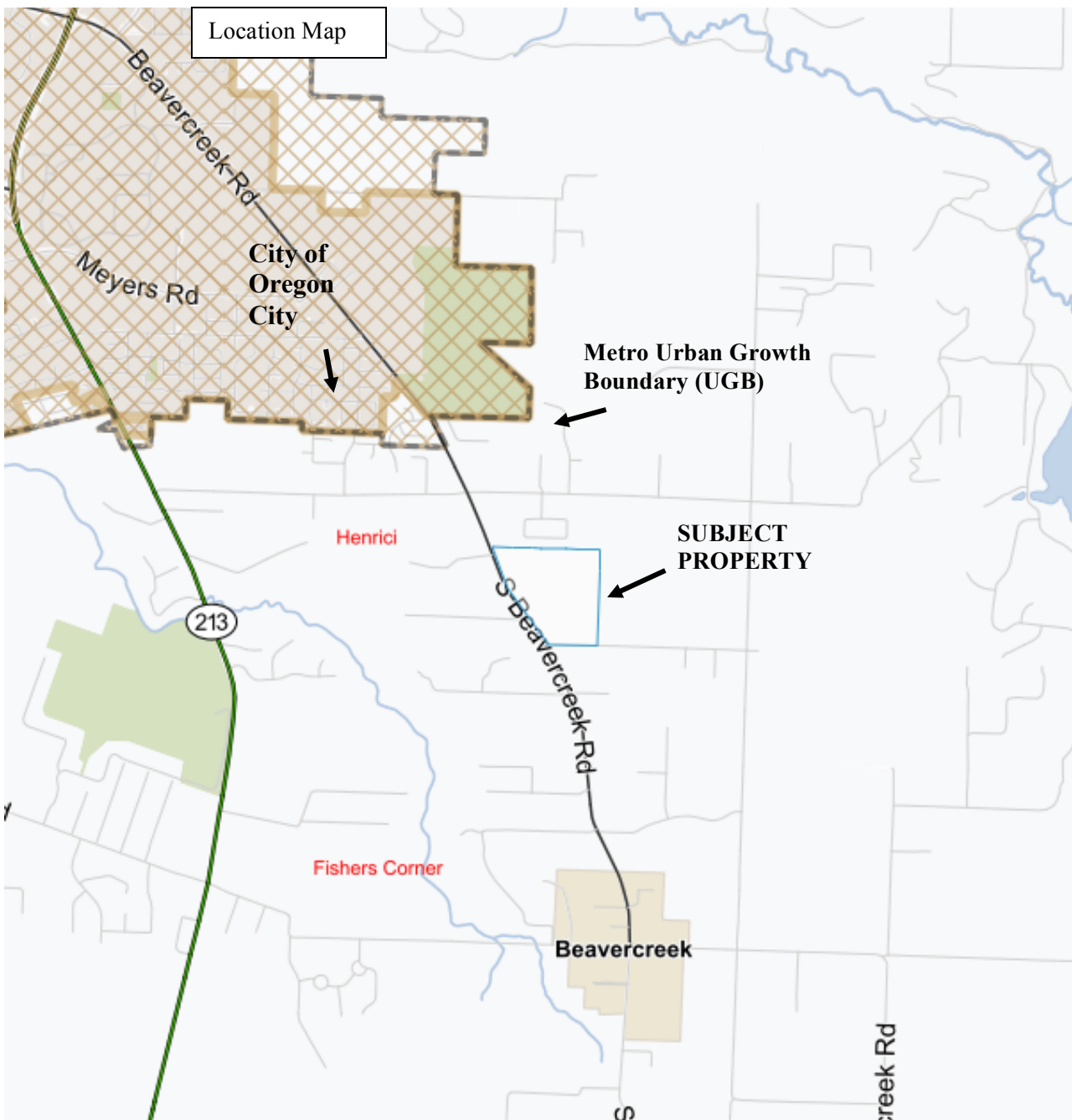
## C. BACKGROUND FACTS

### I. County Staff Report:

*The Hearings Officer reviewed, adopted and/or modified these staff findings as denoted by boldface type in italics.*

**II. Background:**

The subject property is tax lot 2200 of Assessor’s Map 32E15D, located at 20750 S Beaver creek Road. It is located on the northeast corner of the intersection of S Beaver creek Rd and S Wilson Rd, approximately 0.5 miles southeast of the City of Oregon City and 0.8 miles north of the unincorporated community of Beaver creek.



Source: County GIS, PlanMap

**Subject property:** The subject site is approximately 56.2 acres, with a current Clackamas County Comprehensive Plan (Plan) land use designation of Rural (R) and located in the Rural Residential Farm Forest, 5-acre (RRFF-5) zoning district. As currently zoned, development potential on the subject site could include up to 11 lots for single-family dwellings; under the proposed Rural Area Residential, 2-acre (RA-2) zoning district, up to 17 additional lots could be created, for a total of 28 lots.

A single-family home and several outbuildings are located in the northwest portion of the site. Several of these structures are reportedly in significant disrepair but, based on the applicant narrative, the existing home and accessory buildings would be retained (on Lot 27 of the subdivision). The remainder of the site is vacant and, based on descriptions in the application, “currently contains some trees and overgrown vegetation.”

There is currently a single access to the site, via S Beaver Creek Rd, which traverses the western boundary of the site. Two road access points are proposed for the subdivision, one on S Beaver Creek Rd and one on S Wilson Rd; however, the access onto S Beaver Creek Rd would be limited to secondary emergency vehicle access, if required by Clackamas Fire District #1. In addition, five individual lots in the subdivision would have direct access to S Wilson Rd.

Streams, wetlands, and other habitat areas: There are no known wetlands, streams or other protected resource or habitat areas on the properties. A shallow draw, running in a northeast/southwest direction, was evaluated by the applicant for any regulated waters. The applicant’s submittal package (Exhibit 2) contains a wetland delineation approved by Oregon Dept. of State Lands (DSL) and dated October 12, 2021. DSL confirmed there are no regulated waters within the study area.

The subject property has gently sloping topography, with the highest elevations in the northeastern portions of the property. There are no known hazard areas (steep slopes, floodplain, mass movement areas, etc.) on the property.

Soils: Two soil types are present on the subject site:

- Type 24B (Cottrell silty clay loam, 2 to 8 percent slopes), rated as a Class III agricultural soil. According to the Oregon Department of Agriculture’s *Soil Survey of Clackamas County Area, Oregon*, these soils are “*deep moderately well drained soil*” used mainly for agricultural crops, but also for “*timber production and as homesites and wildlife habitat.*”
- Type 45B (Jory silty clay loam, 2 to 8 percent slopes), rated as a Class II agricultural soil. According to the Oregon Department of Agriculture’s *Soil Survey of Clackamas County Area, Oregon*, these soils are “*deep well drained soil*” used mainly for timber production and agricultural crops, but also for “*homesites and wildlife habitat and for recreational development.*”

**Surrounding area:** The subject property is located in a predominantly rural area, with an established rural residential character and pattern of development. The areas to the east, south and west of the subject is zoned RRFF-5, while the area immediately north of the subject is zoned RA-2. The general area of the subject property is developed with homes, including many in platted

subdivisions that have lot sizes well under 2 acres. Those subdivisions were all created in the late 1960s and early 1970s when the zoning of the area was R-20.

Surrounding zoning and general uses are described in the table below.

Area	Jurisdiction	Zoning	Land Uses
North	Clackamas County	RA-2	Rural Residential; Wilshire Meadows, including lots averaging ±0.5 acres
South	Clackamas County	RRFF-5	Rural Residential; Bridal Acres, including lots averaging ±0.46 acres
East	Clackamas County	RRFF-5	Agricultural; Albeke Farms
West	Clackamas County	RRFF-5	Rural Residential; Ooten Addition No. 1, including lots averaging ±0.5 acres

Source: Exhibit 2 (Application), page 55

Other uses in the vicinity of the subject site include a church on a property adjacent to the northeast corner of the site; residential and commercial uses in the unincorporated community of Beaver Creek, approximately 1 mile to the south; and urban residential uses in the Metro Urban Growth Boundary (UGB) and the City of Oregon City, approximately ½-mile to the north.

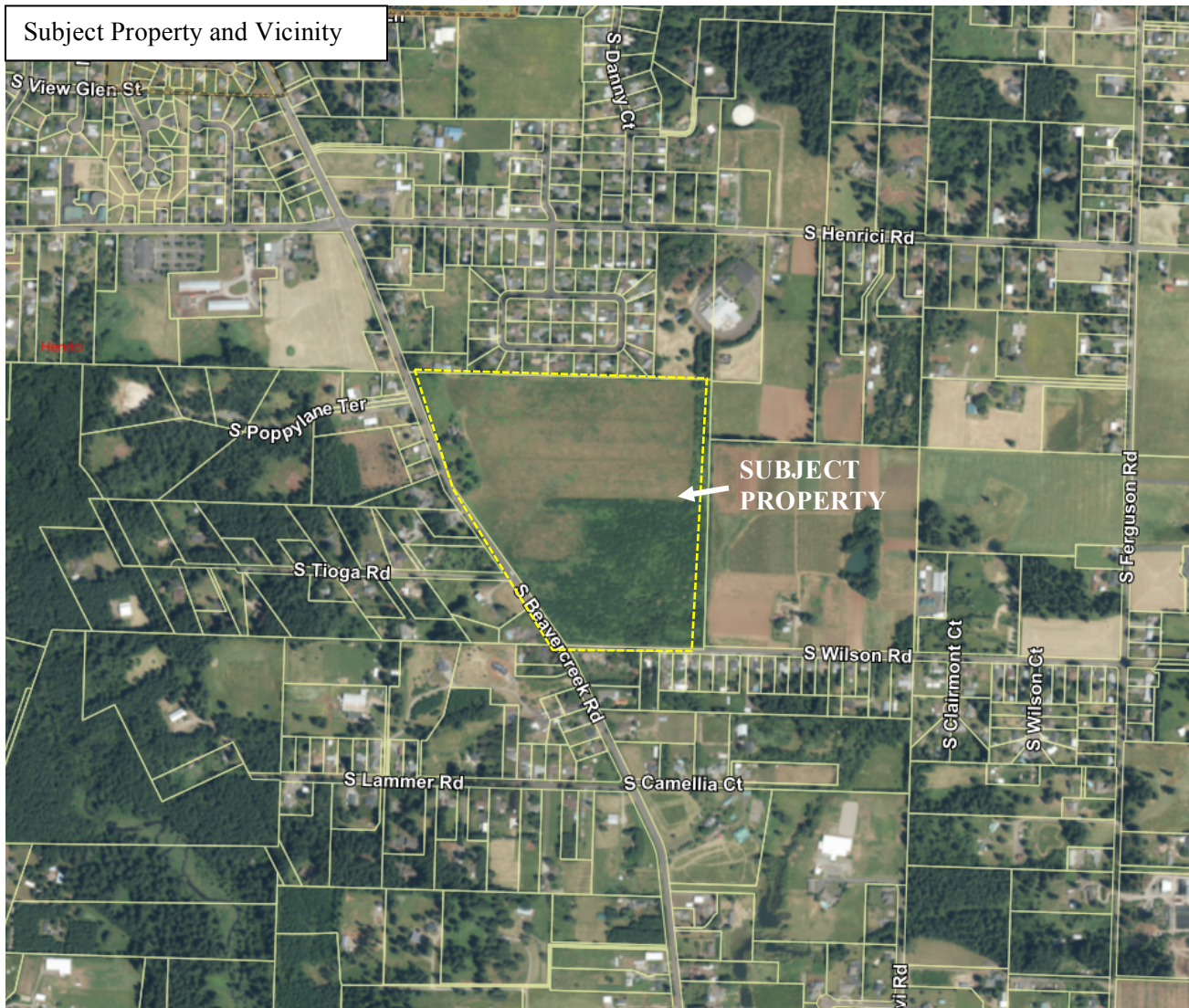
The entire area between the UGB and the northern boundary of the subject site is designated as urban reserve; the site itself is not located within the urban reserve. Metro defines urban reserves as “lands suitable for accommodating urban development over the 50 years after their designation.” Urban reserves are lands that are outside of the UGB, but that may be brought into the urban growth boundary in the future. At this time there is no know timeline for the inclusion of the urban reserve area north of the subject site into the UGB. Ultimately, it would be the responsibility of the city of Oregon City to complete preliminary planning for the area and make a request to Metro to include it; Metro would then need to find a need for the land to be included and approve the request. Until that time, the land will remain outside the UGB and zoned RA-2 (or another rural county zone).

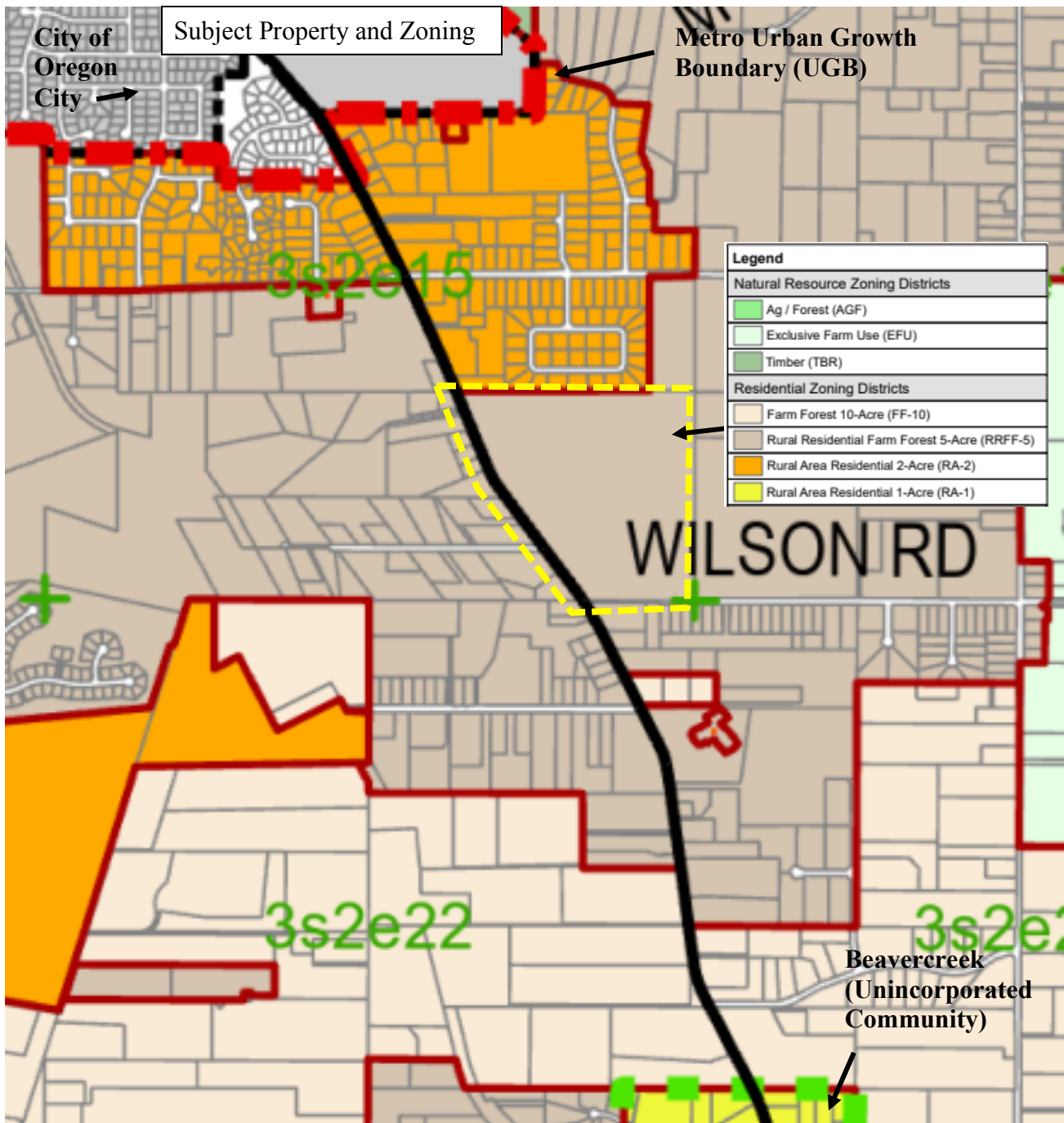
**Zoning and land use history:** The subject site’s current RRFF-5 zoning took effect in 1980 after being adopted through the Rural Plan Amendment or RUPA process, which included a number of different Comprehensive Plan amendment packages for different rural areas of the County. The subject properties are part of Rural Plan Amendment Area R-14 of the Rural Plan Amendment (RUPA) II legislative zoning rural exception areas. The rural residential RRFF-5 zoning in the RUPA II area R-14 has remained predominately the same since Comprehensive Plan acknowledgement. Prior to that, the zoning was R-20.

In the early 1990s, the county designated the subject property as an historic landmark and established the Historic Landmark overlay (HL) on the entire property. The property was known within the Clackamas County’s inventory of designated sites as the Christian Muralt Farm. Specifically identified in the site survey and historic nomination was the vernacular style farmhouse and water tower. By 2021, however, both the farmhouse and water tower had fallen into significant disrepair and other agricultural accessory buildings had collapsed or been removed from the site. Subsequently, the Board of County Commissioners found that the site no longer qualified as an



historic landmark and removed the HL overlay on the property on March 17, 2022 (planning file no. Z0439-21-Z).





Source: Clackamas County, *Non-Urban Area Zoning* map (April 20, 2023)

**Subdivision Proposal:** The subdivision proposal includes 28 lots, each being at least two acres in area. The subdivision entrance shall be from Wilson Road, with lots being accessed by three new 30-foot wide private roads. Each lot shall be served by individual onsite wastewater treatment systems (e.g. septic systems), while storm water runoff from roads will be collected in filtration vegetated swales and discharged to existing drainage paths. Drinking water is provided by Clackamas River Water (CRW), with each lot requiring an individual service connection. Improvements to Beavercreek Road include one half-street improvements typical of rural arterial roads, as well as a new southbound left-hand turn lane. Improvements to Wilson Road includes one half-street

improvements typical of rural local roads. Additionally, Wilson Road will need to be realigned with Beaver Creek Road, to make the intersection as close to 90 degrees as possible.

**Service providers:**

1. Sewer: The subject properties are not located within a public or private sewer district. Septic systems would be required for any future development, subject to Clackamas County's Septic and Onsite Wastewater Program's rules and regulations.
2. Water: The subject properties are located within Clackamas River Water service district.
3. Fire Protection: Clackamas RFPD #1

**Noticing:** This application has been processed consistent with the legal noticing requirements in Section 1307 of the County's Zoning and Development Ordinance (ZDO) and with state noticing requirements. Specifically, the County has provided notice to interested agencies, local governments and property owners within 1/2-mile of the subject property consistent with State law and Section 1307 of the ZDO. The notification to property owners, public notices and hearings ensures an opportunity for citizens to participate in the land use process.

**Responses received:** To date, Staff have received 56 comment letters or emails about the proposal (see Exhibits 4 through 59).

**Agency comments:**

- Exhibit 7. Clackamas River Water comments and recommended conditions of approval detailing the requirements for drinking water.
- Exhibit 15. The Department of Land Conservation and Development (DLCD) submitted comments requesting that the decision on this matter be delayed, noting that that DLCD has filed an appeal on the county's most recent rural residential zone change decision. The letter explains the reasons why DLCD staff disagrees with the applicant and county staff about whether an exception to Statewide Planning Goal 14, *Urbanization* would be required to change the zoning designation of the subject property (the same issue under appeal in the cited decision). DLCD also includes additional comments related to:
  - The applicant's assertions that the proposal is providing "needed housing" and that it is not subject to the standards of a Post Acknowledgment Plan Amendment (PAPA);
  - Whether the proposed use is urban rather than rural; and
  - Whether the proposal also needs an exception to Statewide Planning Goal 11.
- Exhibits 18, 57, & 59. County Engineering staff submitted comments related to transportation system requirements for the proposed zone change and for the 28-lot subdivision.
  - Regarding the zone change, Engineering staff noted that the applicant's traffic analysis found that, with mitigation, the proposal would be consistent with the Transportation Planning Rule (TPR) and transportation safety standards required for the zone change and recommends those mitigation items be conditions of approval.
  - Regarding the subdivision, Engineering staff provided comments and recommended conditions of approval detailing the requirements for a 28-lot rural subdivision.
- Exhibit 23. The Hamlet of Beaver Creek (Community Planning Organization) submitted comments in opposition to the proposal, noting:

- At a Hamlet meeting, the Board voted 7-0 and the attendees voted 30-0-1 to recommend denial of the proposal.
- Concerns raised included losing the quiet rural environment; losing the ability to farm or grow timber on lots that are smaller than the current 5-acre minimum; traffic congestion and bottlenecks in intersections, including those in Oregon City; gridlock during fire evacuations; and other transportation-system related issues.
- The Hamlet agrees with DLCD that an exception to Goal 14 is required for this proposal.
- Exhibit 29. The City of Oregon City submitted comments related to traffic impacts within the city, and specifically to the intersections of Beaver Creek/Hwy 213 and Hwy 213/Redland Rd. The city specifically requested that:
  - These two intersections be included in the traffic impact analysis for the proposal, asserting that the existing scope of the traffic study was too narrow; and
  - A condition of approval be imposed that would require the applicant/developer to contribute a “proportional share of congestion-relieving improvements” to the city.
- Exhibit 58. Clackamas Rural Fire District #1 (CFD#1) provided general comments detailing CFD#1 requirements.

Public comments: The remaining 48 comments were from the public and either expressed opposition to the proposal or outlined concerns with the proposal – with one exception that just included questions and no contact information for a response. The two main issues raised by opponents or those voicing concern were:

- Roads and traffic – including concerns about the safety of Beaver Creek Rd and Wilson Rd, safety of the intersection of those roads, traffic congestion in the area, and the gridlock that occurred in 2020 during the wildfire evacuations.
- School capacity – including assertions that the Oregon City schools are already overcrowded and do not have capacity for more students.

Other issues raised included concerns for maintaining the rural community/character of the area, increased housing density, safety of the community, and potential impacts to wildlife habitat.

## **D. DISCUSSION**

This application is subject to the standards and criteria of Clackamas County Zoning and Development Ordinance (ZDO) Section 1202, Zone Changes, and the Comprehensive Plan. Oregon Administrative Rules and Statewide planning Goals 11, 12, and 14 are also applicable when determining whether a Goal Exception is required for the zone change. This application is being processed as a Type III Permit, pursuant to Section 1307. A Type III Permit is quasi-judicial in nature, and involves land use actions governed by standards and approval criteria that require the use of discretion and judgment. The issues associated with the land use action may be complex and the impacts significant, and conditions of approval may be imposed to mitigate the impacts and ensure compliance with this Ordinance and the Comprehensive Plan. The Type III procedure is a quasi-judicial review process where the review authority receives testimony, reviews the application for conformance with the applicable standards and approval criteria, and issues a decision.

The Hearings Officer has jurisdiction to hear and decide applications for zoning changes pursuant to Section 1307 as shown by Table 1307-1. The Hearings Officer has reviewed the entire record of this proceeding, finding the evidence presented is reliable, probative and substantial evidence upon which to base a determination in these matters. A number of comments were submitted and assertions made that are outside the approval criteria for this application, such as assertions that approval of this application will result in an increase in crime. The discussion here addresses relevant approval criteria.

### **PART 1. SUBMITTAL REQUIREMENTS**

Subsection 1202.02 of the County ZDO lists the information that must be included in a complete application for a Zone Change. This application includes a completed land use application form and application fee, additional narrative and supplemental application statements addressing the criteria in Section 1202 of the ZDO, a vicinity map showing the relationship of the subject property to the surrounding area, a site plan of the subject property with required information, required Service Feasibility Determinations, a Transportation Impact Study, and additional supporting information. All the submittal requirements under Subsection 1202.02 are included in the application. The application was submitted on August 30, 2023, and was deemed complete for the purposes of Oregon Revised Statutes (ORS) 215.427 on November 17, 2023. Notice was issued on January 11, 2024 for the February 15, 2024 hearing. The subject property is not located inside an urban growth boundary. The 150-day deadline established by state law for processing this application (including the 7-day extension requested by the applicant) is April 22, 2024.

### **PART 2. Z0346-23-ZAP: ZONE CHANGE FINDINGS**

This application is subject to Clackamas County Zoning and Development Ordinance (ZDO) Section 1202, *Zone Changes* and the Clackamas County Comprehensive Plan. Because the subject properties are rural exception lands with a “Rural” Comprehensive Plan designation, they are also subject to the rules in OAR 660-004-0040 that require, in some cases, a new exception Statewide Planning Goal 14, *Urbanization*, when changing the zoning designation. Compliance with the applicable regulations is discussed below. ***The Hearings Officer reviewed, adopted and/or modified these staff findings as denoted by boldface type in italics.***

#### **A. Statewide Planning Goals 11 and 14 and Rural Residential Areas**

##### **Goal 14: Section OAR 660-004-0040 -- Application of Statewide Planning Goal 14 to Rural Residential Areas**

*Because the subject properties are rural exception lands with a “Rural” Comprehensive Plan designation, they are also subject to the rules in OAR 660-004-0040 that require, in some cases, a new exception Statewide Planning Goal 14, Urbanization, when changing the zoning designation. Compliance with the applicable regulations is discussed below.*

*OAR 660-004-0040 implements Statewide Planning Goal 14 and sets standards for lot sizes in rural residential zones. It partially codifies a court ruling that determined development on lots smaller than two acres was “urban development” and not allowed outside urban growth boundaries or*



acknowledged unincorporated communities without taking an exception to Goal 14. OAR 660-004-0040 (see Exhibit 3c) also identifies considerations and requirements for zone changes within rural residential areas (Rural Exception Lands). In some cases, a zone change in Rural Exceptions Lands will require a new exception to Statewide Planning Goal 14. The determination about whether a Goals 14 Exception is needed for the subject application is discussed in the findings below.

**Background:** Comprehensive planning following adoption of the Statewide Planning Goals and the creation of the Department of Land Conservation and Development (DLCD) involved determining which rural lands could accommodate residential development and be acknowledged as Rural Exception Lands, pursuant to an exception to statewide Planning Goals 3 and 4. However, when the state's Land Conservation and Development Commission (LCDC) became concerned that certain counties were allowing urban uses on rural land, the application of Goal 14, Urbanization, became an integral part of the comprehensive planning process.<sup>2</sup> Specifically, for Clackamas County, the adoption of Rural Exception Lands was authorized through the Rural Plan Amendment or RUPA process, which included a number of different Comprehensive Plan amendment packages for different rural areas of the County. As part of the RUPA process, LCDC and Metro required the County to make Goal 14 compliance findings for the rural exception lands to allow for a rural land use designation with 10-acre, 5-acre, and 2-acre minimum lot sizes; the County's rural Comprehensive Plan land use designation and minimum parcel sizes (10-acre, 5-acre, and 2-acre) were determined by the State to comply with Goal 14.

Subsequently, as part of the 1986 DLCD Periodic Review process the County was required to "submit information on existing potential development patterns, Goal 14 exceptions for certain areas, analyses of rural areas and revised plan policies and ordinances consistent with Goal 14/Curry County decision" (Reference DLCD Order No. 00073). DLCD Order 00631 (7/2/96) modified this work task and created new Task 13, 14 and 15 to address Curry County issues. The new Task 13 description was "Resolve the Goal 14 issues raised in the Curry County Supreme Court decision for the areas zoned RRFF5, RA-2, RR, RC, HL, and RI located outside of unincorporated communities". From what County staff can determine in our records, the original component of Task 13 that included "inventory information on exception areas, Goal 14 exceptions for certain areas, analysis of rural areas, and revised plan policies and ordinances, as necessary to be consistent with Goal 14 and the Curry County decision" (No. 5 of original Periodic Review Task 8, periodic review work program approval DLCD Order No. 00073), was completed and acknowledged by DLCD prior to the second Task 13 modification in 1997 (DLCD No. 00804). Regardless of what components of Task #13 were satisfied during what time period, DLCD approved the full Periodic Review Task #13 in 2002 (Order No. 001365), without requiring the County to take Goal 14 exceptions for existing rural residential zoning. Staff assumes the documentation and Goal 14 consistency findings submitted as part of the Periodic Review Task 13 (previously task #8) was sufficient for DLCD to determine that the County's existing exception areas were consistent with Goal 14 and did not need a post-Curry County Goal 14 exception. As such, Staff finds that the County acknowledged post-1986 Curry County, Goal 14 consistency findings for rural minimum lot sizes of 2 acres, 5 acres, and 10 acres. Since Comprehensive Plan adoption, zone changes on rural residential lands have been subject to the same set of Zoning and Development Ordinance approval criteria in Section 1202 and Rural Land Use policies in the Comprehensive Plan.

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<sup>2</sup> 1000 Friends of Oregon v. LCDC (1986 Curry County), 301 Or 447.  
Hearings Officer Final Order  
Z0346-23-ZAP & Z0347-23-SL  
Mann Construction LLC

*In 2000, LCDC adopted administrative rules in OAR 660-004-0040 to respond to the Oregon Supreme Court's Curry County 1986 Decision. For rural residential areas designated after the effective date of OAR 660-004-0040, it requires a minimum lot or parcel size of two acres and any lot sizes between 10 acres and 2 acres must be justified by an exception to Goal 14. LCDC recognized that some local government like Curry County, had already adopted comprehensive plan and land use regulation amendments incorporating Goal 14 consistency findings as addressed in the Supreme Court's 1986 Curry County decision, and that those amendments had already been acknowledged by LCDC.*

*However, there were varying interpretations of OAR 660-004-0040(6)<sup>3</sup> following adoption and how it applied to zone changes on individual properties within rural residential zoning districts.*

***Application of OAR 660-004-0040(6) and Goal 14 Exceptions:*** *In 2007, LUBA dealt directly with the question of how OAR 660-004-0040 applies to changes in minimum lots sizes in rural residential areas (see Oregon Shores Coalition v. Curry County, 53 Or LUBA 503(2007), Exhibit 3d). While there were two main issues raised by this case, and discussed in a 2/1/24 letter from DLCD Staff (see Exhibit 15), the issue relevant to this particular proposal is whether a zone change that does not change the Plan designation but simply allows for a five-acre lot size for land divisions, rather than a 10-acre lot size, would require an exception to Goal 14. Regarding this particular issue, LUBA concluded the following:*

*“We set out the text of OAR 660-004-0040(6) again below: “After the effective date of this rule, a local government’s requirements for minimum lot or parcel sizes in rural residential areas shall not be amended to allow a smaller minimum for any individual lot or parcel without taking an exception to Goal 14 pursuant to OAR 660, Division 014.” (Emphasis added.)*

*While the text of OAR 660-004-0040(6) could be clearer, we believe it refers to the amendment to allow a smaller minimum lot size and does not refer to an existing acknowledged zoning ordinance that already allowed a reduction from a ten-acre minimum lot size to a five-acre minimum lot size in the RR zone without an exception. Relevant context supports the more narrow reading as well. As we noted earlier, when LCDC adopted OAR 660-004-0040 in 2000, it expressly provided that local governments like Curry County with Comprehensive Plans and land use regulations that had been acknowledged for compliance with Goal 14 after the supreme Court's Curry County decision were not required to amend their comprehensive plans and land use regulations to comply with OAR 660-004-0040.”*

*Per County Planning staff's and County Counsel's reading of Oregon Shores Coalition v. Curry County, OAR 660-004-0040 would not explicitly require a Goal 14 exception for a proposed zone change from RRF5-5 to RA-2 due to the following:*

- (1) Rural exception lands in Clackamas County were already acknowledged as such on 10/4/00 (the effective date of the afore-mentioned Rule amendments) and the County has not amended the provisions of the Comprehensive Plan to allow a smaller minimum lot size in its Rural Exception Lands than was previously allowed. Nor has the County changed the*

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<sup>3</sup> This section of the Rule is currently numbered 660-004-0040(7).

*process or criteria of approval for such a zone change, as regulated by ZDO Section 1202 and the Comprehensive Plan.*

- (2) The County's Comprehensive Plan was reviewed and acknowledged by LCDC for compliance with Statewide Planning Goal 14 during initial acknowledgement and during Periodic Review from 1986-2002. The rural land exception documents (RUPA I, II, III, and IV) included Statewide Goal 14 findings for rural residential exception lands. LCDC determined that the County did not allow any 'urban uses' on rural lands and, as such, the County was determined to be compliant with Goal 14.*
- (3) Furthermore, as discussed above, the County has acknowledged, post-1986 Curry County Goal 14 consistency findings for minimum lot sizes of 2 acres, 5 acres, and 10 acres. The County has one Rural land use designation identified in the Comprehensive Plan, which includes three minimum lot sizes (2 acre, 5 acre and 10 acre) with thresholds for changing from one minimum lot size to another. This is very similar to how Curry County's Rural plan designation is set up, except that they did not have a 2-acre minimum lot size acknowledged for consistency with post-1986 Curry County Goal 14 requirements. As such, County staff asserts the "carve out" situation LUBA created in LUBA 503, 2007 is applicable to Clackamas County and that, in this particular case, a Goal 14 exception is not explicitly required to rezone from RRFF-5 to RA-2.*

*In their testimony dated 2/1/24 (Exhibit 15), DLCDC Staff notes that they disagree with the county's assessment of the applicability of Goal 14 to the proposed (and other similar) rural residential zone changes. DLCDC notes that they have filed an appeal<sup>4</sup> of the most recent approval the county made for a rural residential zone change without a Goal 14 exception (Z0277-23-Z) and requests a delay of this decision. Testimony received from the Hamlet of Beavercreek (Exhibit 23) states that they agree with DLCDC's assertion that an exception to Goal 14 is needed.*

*In their testimony regarding Goal 14, DLCDC Staff seems to be distinguishing Clackamas County's situation from the 2007 Curry County case because Curry County had a single rural zone with two minimum lot sizes so, in effect, there was no zone change, even though they were applying Comprehensive Plan criteria to decide whether to apply the 10-acre or the 5-acre minimum lot size standard. Clackamas County, on the other hand has one Comprehensive Plan designation (Rural), under which there may be several options for specific designations with 10, 5, or 2-acre minimum lot sizes that are determined based on applying certain Comprehensive Plan criteria. County staff feels there is no functional or substantive difference in the structure of the Curry and Clackamas County's processes in this instance: both are applying Comprehensive Plan criteria to choose between different, acknowledged minimum lot sizes, through a process that was previously acknowledged to comply with Goal 14. And in both scenarios, the outcome is the same – rural residential development may happen at a higher density (with a smaller minimum lot size) than would have been allowed prior to the change.*

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<sup>4</sup> Planning file no.Z0277-23-Z was appealed by DLCDC and, to staff's knowledge, the Hamlet of Beavercreek has filed as an Intervenor in this matter. This appeal is currently before the Land Use Board of Appeals (LUBA) for consideration. No briefs have yet been filed.



*Further, in its 2007 decision, LUBA does not explicitly refer to “zone changes”; rather it explicitly states that the cited OAR does not apply to an “ordinance that already allowed a reduction from a ten-acre minimum lot size to a five-acre minimum lot size.” In the case of this proposal, the proposed reduction is from a five-acre to a two-acre minimum lot size and under the same set of circumstance as in Curry County (i.e. an ordinance that already allowed for such a reduction).*

*The county’s Hearing’s Officer has concurred four times with county Staff’s assessment of the applicability of Goal 14 to the rural residential zone change proposed, most recently under file Z0277-23-Z, finding that no Goal 14 exception was required (see Exhibit 3e). Although none of the prior proposals were identical to the current proposal, Staff finds no real distinction in the subject proposal and the other four proposals as they relate specifically to the applicability of Goal 14 under OAR 660-004-0040(6).*

*The Applicant submitted a memorandum with their application materials in which the Goal 14 exception is addressed (Exhibit 2, pages 32-49). In this memorandum, the applicant asserts first that Goal 14 does not apply to this application – an assertion that DLCD counters in their testimony (Exhibit 15). The applicant then provides additional analysis and findings as to why (if Goal 14 does apply to the application) a Goal 14 exception is not required, citing agreement with the county’s assessment in the “Curry” case as well providing detailed response to a number of the comments made by DLCD.*

*Although staff does not necessarily concur with the entirety of the applicant’s arguments related to this issue, staff does concur with the applicant’s conclusion that a Goal 14 exception is not needed in this case. DLCD has not provided any additional information that compels Staff to reassess the county’s position at this time. As such, Staff has determined that a Goal 14 exception under OAR 660-004-0040(7) is not required for the proposed zone change.*

***Rural versus Urban Uses:*** *When making a determination that a Goal 14 exception is not required, case law makes it clear that findings also need to be included in a local government’s action to explain why the proposed use on rural exception lands is “rural” and not “urban”. If the use is determined to be “urban”, an exception would be required. As such, the applicant and Planning staff have also included findings to address whether the proposed zone change would still be a “rural” use and would not require a Goal 14 exception.*

*What is “urban” and what is “rural” is not explicitly clear in the context of Goal 14 since Statewide Planning Goals contain no definition of urban or rural uses. Additionally, while it is clear that OAR 660-004-040 applies to urban development on rural land, “urban development” is not defined in the OARs. That said, the Statewide Planning Goals do contain the following definitions of rural and urban land:*

*“RURAL LAND. Rural lands are those which are outside the urban growth boundary and are:*

- (a) Non-urban agricultural, forest or open space lands or,*
- (b) Other lands suitable for sparse settlement, small farms or acreage homesites with no or hardly any public services, and which are not suitable, necessary or intended for urban use,*

*URBAN LAND. Land inside an urban growth boundary.”*

*The meaning of these terms in the context of individual applications has been contemplated in many different case law discussions over the years. See, Jackson County Citizens League v. Jackson County, 38 Or LUBA 37, 48 (2000). The key case, 1000 Friends v. LCDC (Curry Co.), 301 Or. at 505, and those cases since Curry Co. make it clear that residential parcel sizes at either extreme are either clearly urban (one acre lots are urban) or clearly rural (10 acre lots are rural) but contain no bright line for anything in between. Based on Staff's reading of case law, these decisions must be made on a case-by-case basis since state law does not draw a line between urban and rural use based on parcel size alone. Additional considerations in an analysis of what constitutes urban development on rural land include the necessity for the extension of public services such as sewer and water. In general, relevant case law suggests that three main areas of consideration must be addressed to make a determination that a use is rural:*

1. That public facilities and services providing for water and sewage disposal will be limited to the types and levels of service available and appropriate for rural lands. Or in other words, that the proposed uses on rural lands will not require urban levels of service.

*The applicant provides findings related to the provision of services and asserts that based on this factor, the proposed use would remain rural. In its 2/1/24 letter, DLCD questions whether the proposal is an urban, rather than a rural use based on the provision of public service, including using public water, being served by the Oregon City School District, and the need to provide a center turn lane on S Beavercreek Rd.*

*Staff finds that the proposed services are not urban and the proposed uses on rural lands would not require urban levels of service for the following reasons:*

- *The proposed zone change, and the potential 28 lots the RA-2 zone would allow for, would connect to public water service from Clackamas River Water, but would rely on septic systems for sewage disposal, just like most of the properties within immediate area of the subject site, in both RRFF-5 and RA-2 zones. In fact, public sewer service is explicitly prohibited outside of a UGB (except in specific circumstances), making it a better proxy for “urban levels of service” than water service, which is allowed in rural areas.*
- *As noted by the applicant: “Development of two-acre lots does not require urban levels of infrastructure; the lots would have the carrying capacity to use rural level of services such as on-site wells and septic. The proposed zone change, which increases the development potential by up to 17 single-family residential lots, involves the potential, but not the necessity, for the acquisition of public water service from Clackamas River Water. Clackamas River Water serves a very large area outside the Portland Metro UGB, including properties immediately north of the subject property that are zoned TBR (a “natural resource zoning district”). Properties as far as three miles east of the subject property and farther away from the UGB are also serviced by CRW. In fact, the property could be served by public water even if is developed under the Current RRFF-5 zoning.” (Exhibit 2, page 47)*

*As illustrated in the Clackamas River Water district boundary map (Exhibit 3a), CRW does indeed provide public water service to a very large area outside the UGB, an area that includes*

*properties in farm and forest zones, as well as rural residential zones, none of which allow for “urban” development.*

- *Similarly, the Oregon City School District serves a very large geographic area that includes both urban and rural area; it is not simply an “urban” school district. In fact, based on the school district’s boundary map (Exhibit 3a), children in households that would locate on the subject site would attend Beaver Creek Elementary School, a school that is located outside the UGB.*
- *All required transportation improvements to support development on the subject property will be required to meet the rural cross section standards in the county’s Comprehensive Plan and Roadway standards and are typical improvements found on rural roadways.*

***The Hearings Officer concurs with this analysis and in these staff findings.***

2. The potential impact on a nearby Urban Growth Boundary. Specifically, consideration of whether the density and number of residential units allowed under the proposed zoning would impermissibly affect the ability of nearby UGBs to perform their urbanization function.

*The addition of up to 17 lots the proposed zone change would authorize is not expected to impact the ability of nearby UGBs to perform their urbanization function. The subject property is located approximately 0.5 miles from the Oregon City Urban Growth Boundary, so it is not directly adjacent to City limits or located adjacent to any urban uses. The subject site is adjacent to the urban reserve, which, in this area, contains primarily land zoned RA-2 that is developed with homes. If land zoned RA-2 in this area were expected to inhibit the UGB’s function, it is not likely it would have been included in the urban reserve, an area identified for future urbanization in the UGB.*

*Again, testimony provided by DLCD argues that by the proposed zone change may constitute “urban” development because would impact the UGB’s ability to function, as follows:*

- *“By upzoning the rural areas, Clackamas County increases the impacts on the transportation system and affects the ability of Metro and Oregon City to urbanize within the UGB”. In this argument DLCD makes reference to the approximately 1,100 housing units that are planned for the city’s Thimble Creek area inside the UGB.*
- *“The subject property is also part of an undesignated area – neither urban nor rural reserve. Because it is adjacent to an urban reserve, it is possible that future UGB expansions (after 2060) could extend to this property.”*

*Staff understands that, in theory, both of these factors could affect the ability of the UGB to function property, but finds that in this case, neither is particularly compelling because:*

*(1) The proposal would result in up to 17 additional housing units, which, based on the submitted traffic analysis would not generate enough additional traffic (> 20 peak hour trips) in the UGB to warrant any additional analysis of the transportation system inside the UGB. In addition, Staff is uncertain how 17 additional dwelling units a half-mile away could have such a great impact that it would prevent 1,100 units from being built inside the UGB.*

(2) As noted, the subject site is not within an urban reserve, but is in an undesignated area. There is no way to know what kind of impact development in this area would have on a theoretical UGB expansion that could occur in 36 years (after 2060). If that were the case, then the Rules related to the reserves would have include a prohibition of this type of zone change in the undesignated area, like the one that exists for property inside the urban reserve.

Staff finds that the proposed zone change would not impermissibly affect the ability of the nearby UGB to perform its urbanization function. **The Hearings Officer concurs with this analysis and in these staff findings.**

3. Whether the size of the proposed lots in a partition or subdivision that will accompany the zone change can be considered a rural use.

Case law has made the determination of a rural vs. urban use on parcel size alone on a case by case basis. However, as long as the minimum lot size of the proposed new zoning district does not allow for the creation of parcels under 2 acres, the proposed zone change would stay consistent with the County's Goal 14 consistency findings for Rural Exception Lands. This is because the proposed RA-2 zoning would still be considered a rural use, as determined by LCDC during the original Comprehensive Plan acknowledgement RUPA process and during the subsequent post 1986 Periodic Review acknowledgement that included Goal 14 findings for the RA-2 zone.

In addition, one only needs to look to the surrounding rural area to understand that the only thing that might make the 2-acre lots on the subject site dissimilar to many neighboring rural residential lots is that they would actually be significantly larger.

As such, Planning Staff finds that the proposed zone change to RA-2 would constitute a rural, not an urban, use. **A Goal 14 exception is not required for this proposal. The Hearings Officer concurs with this analysis and in these staff findings.**

***Applicant's Analysis That Goal 14 Does Not Apply: The applicant provides extensive legal analysis asserting that Statewide Planning Goal 14 does not apply in situations where the local approved Comprehensive Plan provides criteria for a zone change from one rural residential zone to another. The applicant asserts that a zone map change not involving a post acknowledgment plan amendment ("PAPA") does not implicate the Statewide Planning Goals where the plan sets forth specific policies or other provisions which provide the basis for the change in land use regulations.<sup>5</sup> The applicant contends that the Clackamas County Comprehensive Plan does***

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<sup>5</sup> Applicant cites ORS 197.175(2)(d); Byrd v. Stringer, 295 Or 311, 316-17, 666 P2d 1332 (1983); Sole v. Lane County, 1 Or LUBA 186 (1980) (Statewide planning goals which would otherwise be relevant to a particular land use decision, such as a zone change, need not be applied by a city or county once its plan becomes acknowledged by LCDC as in compliance with the goals.); DLCD v. Fargo Interchange Service District, 27 Or LUBA 150 (1994) (If a county's comprehensive plan and land use regulations have been acknowledged by the Land Conservation and Development Commission pursuant to ORS 197.251, the statewide planning goals are directly applicable to a challenged land use decision only if the decision amends the county plan.); Squier v. Multnomah County, 71 Or LUBA 98 (2015) (Where a county's regulations governing floating homes were adopted and acknowledged to comply with Goal 14 in 1982, and have not

*contain specific policies which provide the basis for the proposed rezone from RRFF-5 to RA-2, referring to the County's adoption of its "Rural Exception Lands via the Rural Plan Amendment or "RUPA" process. Specifically, applicant points out that, as part of the RUPA process, LCDC and Metro required the County to make Goal 14 compliance findings for the rural exceptions lands to allow for a rural land use designation with 10-acre, 5-acre, and 2-acre minimum lot sizes. Further, applicant points out that the County's rural Comprehensive Plan land use designation and minimum parcel sizes (10-acre, 5-acre, and 2-acre) were determined by the State to comply with Goal 14. Applicant points out that, subsequent to that acknowledgment, the Oregon Supreme Court issued its landmark decision in 1000 Friends of Oregon v. LCDC (Curry County), 301 Or 447, 477, 724 P2d 268 (1986). As part of the County's 1986 DLCD Periodic Review process, DLCD required the County to "submit information on existing potential development patterns, Goal 14 exceptions for certain areas, analyses of rural areas and revised plan policies and ordinances consistent with Goal 14/Curry County decision" (Reference DLCD Order No. 00073). DLCD Order 00631 (7/2/96) modified this work task and created new Tasks 13, 14 and 15 to address Curry County issues. The new Task 13 description was "Resolve the Goal 14 issues raised in the Curry County Supreme Court decision for the areas Zoned RRFF5, RA-2, RR, RC, HL, and RI located outside of unincorporated communities."*

*The applicant cites a recent decision of this Clackamas County hearings officer in Case File Z0277-23-Z (Cereghino), quoting a discussion from the staff report addressing Periodic Review Work Task 13, as follows:*

**From what County staff can determine in our records, the original component of Task 13 that included "inventory information on exception areas, Goal 14 exceptions for certain areas, analysis of rural areas, and revised plan policies and ordinances, as necessary to be consistent with Goal 14 and the Curry County decision" (No. 5 of original Periodic Review Task 8, periodic review work program approval DLCD Order No. 00073), was completed and acknowledged by DLCD prior to the second Task 13 modification in 1997 (DLCD No. 00804). Regardless of what components of Task #13 were satisfied during what time period, DLCD approved the full Periodic Review Task #13 in 2002 (Order No. 001365), without requiring the County to take Goal 14 exceptions for existing rural residential zoning. Staff assumes the documentation and Goal 14 consistency findings submitted as part of the Periodic Review Task 13 (previously task #8) was sufficient for DLCD to determine that the County's existing exception areas were consistent with Goal 14 and did not need a post-Curry County Goal 14 exception. As such, Staff finds that the County acknowledged post-1986 Curry County, Goal 14 consistency findings for rural minimum lot sizes of 2 acres, 5 acres, and 10 acres. Since Comprehensive Plan adoption, zone changes on rural residential lands have been subject to the same set of Zoning and Development Ordinance approval criteria in Section 1202 and Rural Land Use policies in the Comprehensive Plan.**

*Thus, applicant points out that the County has already addressed the Curry County decision during periodic review. Further, the criteria contained in the "Rural" Section of Chapter 4 of the County's Comprehensive Plan set forth specific policies (1.0 through 12.0) for designating*

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been amended since, those regulations remain acknowledged to comply with Goal 14, and thus Goal 14 would not apply directly to a decision to approve floating homes under that acknowledged ordinance.)<sup>5</sup> As a general principle, goal compliance issues raised by a plan amendment must be addressed and resolved at the time the plan amendment is adopted. 1000 Friends of Oregon v. Washington County, 17 Or LUBA 671, 683 (1989).

*of additional rural lands and assigning minimum lot sizes. In fact, both the “Goal” for Rural Land, as well as Policy 1.0, incorporate LCDC’s definition of “Rural Land”:*

***RURAL LAND. Land outside urban growth boundaries that is: a) Non-urban agricultural, forest or open space, b) Suitable for sparse settlement, small farms or acreage homesites with no or minimal public services, and not suitable, necessary or intended for urban use, or c) In an unincorporated community.***

*Therefore, the applicant asserts that ORS 197.175(2)(d) governs this zone change, and Goal 14 does not apply. The Hearings Officer concurs with this analysis and agrees that Goal 14 does not apply. However, in the alternative that Goal 14 applies the Hearings Officer also adopted the above staff findings concerning why a Goal 14 exception is not required. The applicant submitted the following proposed findings consistent with the findings by staff:*

*Goal 14 limits urban development outside urban growth boundaries. 1000 Friends of Oregon v. LCDC (Curry County), 301 Or 447, 477, 724 P2d 268 (1986). In the absence of an exception to Goal 14, land outside UGBs may only be used for rural purposes. Goal 14 is not applicable, and an exception is not required, if the decision will not convert rural land to urban uses. 1000 Friends of Oregon v. LCDC (Curry Co.), 301 Or 447, 477, 724 P2d 268 (1986); Doob v. Josephine County, 32 Or LUBA 376 (1997). Friends of Yamhill County v. Yamhill County (Fowler), 41 Or LUBA 247 (2002). In Curry County, the Supreme Court indicated that certain factors could be considered in determining whether a use is urban or rural: (a) the size of the area in relationship to the developed use (density); (b) its proximity to an acknowledged UGB and whether the proposed use is likely to become a magnet attracting people from outside the rural area; and (c) the types and levels of services which must be provided to it. Id. at 505, 507.*

*Each of these three factors is discussed below.*

### *1. Density & Provision of Urban Services*

*The Applicant’s proposal is to change the zoning designation of the property from Rural Residential Farm Forest, 5-acre (RRFF-5) to Rural Area Residential, 2-acre (RA-2), in order to divide the property into 28 lots for single-family home development. The Applicant is effectively seeking to change the number of lots and dwellings potentially allowable on the property from 11 (under the current RRFF-5 zoning) to 28 (under the RA-2 zoning); a net increase of up to 17 rural residential lots.*

*Before analyzing the specific facts of this case, it is important to understand the goalposts as to what is an urban residential use and a rural residential use. One the one hand, the courts have clarified that lot sizes of one acre or less are clearly urban, and lot sizes greater than 10 acres are clearly rural. 1000 Friends of Oregon v. LCDC (Curry County), 301 Or at 506-507. Development that falls in between those goalposts must be analyzed on a case-by-case basis. Example cases where LUBA and the courts found the residential use to be “urban” include:*

- ❖ Kaye/DLCD v. Marion County, 23 Or LUBA 452 (1992) (approval of an 85-unit PUD on 72.5 acres of a 468-acre parcel is urban when the proposed lot size is 20,000*

*square feet approximately one-half acre) and the lots will be served by community sewer and water);*

- ❖ *Churchill v. Tillamook County, 29 Or LUBA 68 (1995) (Plan and zone designations that allow residential development on lots smaller than one-half acre, with community water and sewer services, is considered allowing urban uses);*
- ❖ *Donnelly v. Curry County, 33 Or LUBA 624 (1997) (1.5-acre RV camp at a density of 34 units per acre is an urban use);*
- ❖ *DLCD v. Curry County, 19 Or LUBA 249 (1990) (residential development at a density of 3 units per acre, served by a community water system); and*
- ❖ *Oregon Shores Conservation Coalition v. Coos County, 55 Or LUBA 545 (2008), aff'd w/o op., 219 Or App 429 (2008)(196-space RV Park intended for permanent residential use with water and sewer hookups is an urban use).*

*Conversely, 2-acre or larger lots served by individual septic systems and individual water wells are clear indications of rural uses. Friends of Yamhill County v. Yamhill County (West), 39 Or LUBA 478 (2001) (Seven lot of record dwellings on lots that range in size from as small as two acres to as large as eight acres are properly viewed as rural land uses.). For example, in DLCD v. Klamath County (Paradise Hills LLC), 42 Or LUBA 368 (2002), LUBA held that a residential subdivision that includes 136 lots on 680 acres does not undermine the integrity of a UGB, in violation of Goal 14, where:*

- ❖ *the subdivision is located two and one-half miles from the UGB,*
- ❖ *the lots in the subdivision will not be served by public water or sewer systems, and*
- ❖ *there is evidence that the potential buyers of the proposed lots have different characteristics than potential buyers of lots within the UGB.*

*DLCD v. Klamath County (Paradise Hills LLC), 42 Or LUBA 368 (2002). In Paradise Hills LLC, LUBA found that the use of a state highway by commuters from a 136-lot subdivision, and the enrollment of children from that subdivision in city schools, did not impermissibly undermine the effectiveness of a UGB in contravention of Goal 14. LUBA pointed to the fact that there was evidence in the record that the highway and the school system will not be substantially impacted by the additional trips or by the number of students generated by the subdivision.*

*LUBA has clarified that although OAR 660-004-0040 applies only to lands subject to exceptions to Statewide Planning Goals 3 (Agricultural Land) and 4 (Forest Lands), the rule is pertinent guidance when determining when proposed residential development is urban or rural under Goal 14. Friends of Yamhill County v. Yamhill County, 43 Or LUBA 97, 102-03 (2002). Pursuant to OAR 660-004-0040(6), a rural residential zone such as the County's RA-2 shall be deemed to comply with Goal 14 because it requires each parcel to have an area of at least two acres. Thus, OAR 660-004-0040 supports the conclusion that the proposed use is not urban.*

*As mentioned above, Clackamas County's RA-2 zoning district allows for a minimum lot size of two acres. Two-acre lots are many times larger than an average urban-density lot in this part of the Portland Metro region. The most low-density residential zoning in the vicinity of the subject property is within the City of Oregon City, where the R-10 zone allows a minimum*

*net density of 3.5 dwelling units per acre. Such minimum density will result in 12,445 s.f. (0.29 acre) lots, or approximately 7 lots for every two acres.*

*Development of two-acre lots does not require urban levels of infrastructure; the lots would have the carrying capacity to use rural level of services such as on-site wells and septic. The proposed zone change, which increases the development potential by up to 17 single-family residential lots, involves the potential, but not the necessity, for the acquisition of public water service from Clackamas River Water. Clackamas River Water serves a very large area outside the Portland Metro UGB, including properties immediately north of the subject property that are zoned TBR (a “natural resource zoning district”). Properties as far as three miles east of the subject property and farther away from the UGB are also serviced by CRW. In fact, the property could be served by public water even if is developed under the Current RRF-5 zoning. For this reason, the potential for serving the lots with public water does not change anything relative to Goal 14. Moreover, the potential that the lots will have access to public water service does not in and of itself constitute an “urban” level of service. State law, in fact, allows for public water service outside of UGBs. See OAR 660-011-0065. Furthermore, according to Comprehensive Plan Rural Policy 4.11.1.d, public water service is a factor that is favored when rezoning to RA-2. The need for extension of water lines is the same for both urban and rural development, regardless of zoning.*

*Unlike water service, however, public sewer service is explicitly prohibited outside of a UGB (except in specific circumstances), and as such is a better proxy for “urban levels of service” See OAR 660-011-0060. Development on the subject site will be served with on-site septic systems and does not need to connect to public sewers. In light of the fact that public water would be provided to the property under the existing RRF-5 zoning, the proposed provision of water services to new parcels in this area would still be a rural level of service.*

*The property will be served by existing roads and the existing electrical grid. No additional roads or electrical transformers / substations would be needed to facilitate the additional development contemplated by the zone change. The lots will obtain rural levels of police protection from the Clackamas County Sheriff, and will receive fire protection from the Clackamas Rural Fire Protection District #1. No changes to these services are required to service the additional development contemplated by the zone change.*

## ***2. Proximity to an acknowledged UGB and Whether the Proposed Use is Likely to Become a Magnet Attracting People from Outside the Rural Area.***

*Goal 14 requires that local governments consider the impact that allowing significant residential development on rural lands may have on nearby urban growth boundaries (UGBs). Holland v. Lane County, 16 Or LUBA 583, 594-95 (1988); 1000 Friends of Oregon v. Clackamas County, 3 Or LUBA 326-27 (1981). Stated another way, development outside UGBs must not have the effect of undermining those UGBs. Medford v. Jackson County, 2 Or LUBA 387, 391 (1981). In 1000 Friends of Oregon v. Clackamas County, supra, LUBA held that Goal 14 required a county to consider the impact of its action on a nearby UGB when it designated and zoned large areas of rural land for one-, two-and five-acre residential development.*



*The Curry County factors were developed in 1986, long before the enactment of Urban Reserves. In 2007, the Oregon legislature authorized Metro and metro-area counties to designate urban land that might be developed in the future. Urban reserves are those lands currently outside the urban growth boundary that are suitable for accommodating urban development over the next 50 years. Special rules for urban reserves in the Portland metropolitan area are intended to assist in the long-term planning for urban development. Metro designated approximately 28,000 acres as urban reserves. Lands with such designation must be considered first for UGB expansions through the year 2060. By designating urban reserves, the agriculture and forest industries, private landowners, and public and private service providers, are aware of future long-term (for the next 50 years) expansion locations of the Metro UGB.*

*The same legislation that creates urban reserves also allowed for the creation of rural land to be preserved for farming, forestry, and other rural uses. Additionally, rural reserves are intended to provide long-term protection for large blocks of agricultural land, forest land, and other important natural landscape features that will limit urban development. As a result of the creation of Metro's urban reserves, there is less ability for rural residential development to undermine a UGB. Metro designated 271,000 acres as rural reserves, and that land is off limits to all urban development until at least 2060, and probably beyond.*

*As a result of the creation of urban reserves and rural reserves, there is less concern about rural residential development "undermining" the UGB because the land where future urban growth boundary will occur is pre-determined.*

*The subject property is located approximately .4 to .8 miles from the Portland Metro Urban Growth Boundary, which is far enough not to amount to urbanization of this rural area. Importantly, it is not directly adjacent to City limits. The addition of no more than 17 new lots from the proposed zone change would not impact the ability of the nearby UGB to perform its urbanization function. This is due to the fact that there are more than one hundred one-half-acre to 1-acre properties that sit between the site and the UGB. These unquestionably urban lands were developed pre-statewide planning goals, and have been designated as urban reserves. Since that level of development has not impacted the ability of the nearby UGB to function, then it is certainly the case that there is no measurable difference between the impact of additional 2-acre properties and compared to the development currently allowed (5-acre properties). Both would provide the same buffering function as set forth at the primary Goal for these "rural" lands. Furthermore, the proposed RA-2 zoning is an acknowledged rural zoning district which is found immediately adjacent to the subject site on the east and south and, if approved, the subject property would be developed consistent with the pattern of development in these areas.*

*In summary, approval of the proposed zone will result in the subject property being developed consistently with the pattern of development in the local area: primarily sparse settlement on acreage lots, the majority of which are residential lots that are no larger than those proposed here. Thus, the subject property's proposed RA-2 zone remains a rural residential use in an existing rural residential area and no Goal 14 exception is required.*

***The Hearings Officer reviewed the proposed alternative findings by applicant, finds them consistent with the adopted staff findings, and adopts the discussion as findings in addition to and supplemental to that set forth in the adopted staff findings pertaining to the Curry County factors.***

**Goal 11: OAR 660-011-0065(2), Water Service to Rural Lands**

*OAR 660-011-0065(2) provides:* Consistent with Goal 11, local land use regulations applicable to lands that are outside urban growth boundaries and unincorporated community boundaries shall not:

- "(a) Allow an increase in a base density in a residential zone due to the availability of service from a water system;
- (b) Allow a higher density for residential development served by a water system than would be authorized without such service; or
- (c) Allow an increase in the allowable density of residential development due to the presence, establishment, or extension of a water system.

*The language in this Rule is confusing, at best. It is hard to distinguish between the terms “increase in base density”, “higher density for residential development” and “increase in allowable density”. In addition, it appears to staff that (a) pertains to increasing density within a specific zone, while (b) and (c) could possibly pertain either to a proposed development within a zone or to a zone change.*

*In both (b) and (c) the rule could be interpreted mean that a reduction in lot sizes in rural residential areas is not allowed if it couldn't occur without the use of public water. This interpretation may be consistent with LUBA's finding in Holloway v. Clatsop County, 52 Or LUBA 644 (2006):*

*“Under their second assignment of error, petitioners argue the challenged decision is inconsistent with Goal 11 (Public Facilities and Services) and LCDC's Goal 11 administrative rule.....*

*Petitioners argue “[t]herefore, the increase in density is ‘due,’ at least in part, to the presence or extension of a water system, in violation of Goal 11 and OAR 660- 011-0065(2)(c).” Petition for Review 8.*

*Intervenors respond that although the City of Warrenton community water system apparently can provide service to any lots that may result from a subdivision of Tax Lot 300 in the future, the number of lots that Tax Lot 300 can be divided into has nothing to do with whether those lots are served by community water or by individual wells. The same number of lots is possible in either case. Intervenors appear to be correct.”*

*It appears from DLCD's testimony, that they also agree with this interpretation:*

*“This area of rural Clackamas County is served by an existing water system operated by Clackamas River Water. The County is relying on the existence and availability of this water system to justify increases in residential density outside of the urban growth boundary – the record provides no evidence that the proposed intensification of rural residential development would be feasible without public water service.”*

*Assuming this interpretation, staff finds the proposal is consistent with the applicable provisions in Goal 11 because the public water service is not necessary for the proposal for smaller lot size; the same number of lots could be developed without the public water service as with it, for several reasons:*

- *Two acre lots in the county routinely develop with a dwelling, on-site wastewater treatment system and a well for potable water. Based on information provided by county's Septic and Onsite Wastewater Program (see [www.clackamas.us/septic](http://www.clackamas.us/septic)), "[y]ou should plan on an area of approximately 100 ft. by 100 ft. (10,000 square feet) for an average 450-foot standard drainfield and drainfield repair area for a one-to-four-bedroom house. This can be reduced with some alternative systems to about 3,500 square feet." With roughly ¼-acre dedicated to the typical septic system, at least 1 ¾ acres would remain on each of the proposed lots for a dwelling and well. Information from the Septic Program further notes, "[t]hrough minimum lot sizes are in part determined by the type of soil on a property, we consider a one-acre lot with public water, or a two-acre lot with a well, as the minimum lot size required for a septic system that can meet applicable setbacks...".*
- *The applicant agrees, noting that "[d]evelopment of two-acre lots does not require urban levels of infrastructure; the lots would have the carrying capacity to use rural level of services such as on-site wells and septic. The proposed zone change, which increases the development potential by up to 17 single-family residential lots, involves the potential, but not the necessity, for the acquisition of public water service from Clackamas River Water."*
- *In addition, there would be an option for the development to include shared wells among 2-3 lots rather than individual wells for each lot.*
- *The subject property is not within a limited or otherwise restricted groundwater area that would limit or prohibit the establishment of wells on the site.*

*Although DLCD states that no evidence has been provided to demonstrate this, staff find the above information compelling enough to be able to reasonably conclude that the proposal is not in conflict with Goal 11.*

*In addition, since it has been determined that the proposed use is "rural" and the services proposed to the use are "rural and not "urban," an exception to Goal 11 is not required.*

***This proposal is consistent with Goal 11. The Hearings Officer concurs with this analysis and in these staff findings, noting further that the applicant's March 7, 2024 open record materials included a Conceptual Well Location Exhibit showing that the proposed residential lots can be served by on-site wells rather than connect to public water service from Clackamas River Water. (Exhibit 81)***

#### Zoning and Development Ordinance (ZDO) Findings

The Clackamas County Planning and Zoning Staff have reviewed the relevant Sections of the ZDO and Comprehension Plan in conjunction with this proposal and make the following findings and conclusions:

### **1. Submittal Requirements**

Subsection 1202.02 of the ZDO lists the information that must be included in a complete application for a Zone Change.

*The application was submitted on August 30, 2023, with additional information submitted on September 21, 2023. The application was deemed incomplete and a notice sent to the applicant on September 28, 2023. The applicant provided additional information to address the incomplete notice and the application was deemed complete on November 17, 2023. As such, the 150-day deadline established by state law for processing this application is April 15, 2024. **The Hearings Officer concurs, noting that the referenced 150-day deadline is extended to April 29, 2024.***

**2. Zone change approval criteria of Zoning and Development Ordinance Section 1202.03**

*The zone change criteria are listed in Section 1202.03 of the ZDO. Section 1202.03 states that a zone change may be approved after a hearing conducted pursuant to Section 1307, if the Applicant(s) provide evidence substantiating the following criteria:*

**A. Section 1202.03(A)**

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

*The County's Comprehensive Plan includes goals and policies that must be considered when evaluating a proposed zoning district change. The applicant provided findings addressing ZDO Section 1202.03(A) approval criteria and Staff did an independent review of which Comprehensive Plan policies are applicable. All Comprehensive Plan chapters were reviewed, but the findings below are limited to only those goals and policies that Staff found applicable to this specific proposal.*

- i. Chapter 2; Citizen Involvement:** *The purpose of this Chapter is to promote citizen involvement in the governmental process and in all phases of the planning process.*

*There is one policy in this Chapter applicable to this application:*

Policy 2.A.1 Require provisions for opportunities for citizen participation in preparing and revising local land use plans and ordinances. Insure opportunities for broad representation, not only of property owners and County wide special interests, but also of those within the neighborhood or areas in question.

*The Clackamas County Comprehensive Plan and ZDO have adopted and acknowledged procedures for citizen involvement. This application has been processed consistent with those procedures. Specifically, the County has provided notice to interested agencies, local governments and property owners within ½ mile of the subject property consistent with State law and Section 1307 of the ZDO. The notification to property owners, public notices and hearings ensures an opportunity for the public to participate in the land use process.*

***This application is consistent with Chapter 2. The Hearings Officer concurs.***

- ii. **Chapter 3 Natural Resources and Energy:** *The purpose of this Chapter is to provide for the planning, protection and appropriate use of the County's natural resources and energy.*

*This Chapter contains eight (8) Sections addressing; 1) Water Resources; 2) Agriculture; 3) Forests; 4) Mineral and Aggregate Resources; 5) Wildlife Habitats and Distinctive Resource Areas; 6) Natural Hazards; 7) Energy Sources and Conservation and; 8) Noise and Air Quality.*

Policy 3.F.1 For areas that are outside both the Metropolitan Service District Boundary and the Portland Metropolitan Urban Growth Boundary, prevent disturbance of natural wetlands (marshes, swamps, bogs) associated with river and stream corridors. Adjacent development shall not substantially alter normal levels or rates of runoff into and from wetlands. Site analysis and review procedures specified in the Open Space and Floodplains section of the Land Use chapter shall apply.

*Policy 3.F.1 was specifically included in the acknowledged Comprehensive Plan in order to comply with Statewide Planning Goal 5, for wetland resources. Outside of the Urban Growth Boundary (except in parts of the Mt. Hood area) the federal wetland inventory is so general (just based on aerial fly overs) that it has not been possible to determine the exact location, quality, or quantity of wetlands. The County has not had the resources in order to develop more in depth or County specific wetland mapping. As such, policy 3.F.1 was adopted so that the County would review significant developments- including zone changes- to assure consistency with Goal 5 for wetland resources. The use of the phrase "prevent disturbance" was intentional and until the county has an inventory of rural wetland compliant with Goal 5, the only county-level protection afforded many of the wetlands in the rural areas is this "prevent disturbance" standard.*

*Although a shallow draw exists on the subject property, running in a northeast/southwest direction, it was evaluated by the applicant for any regulated waters. The applicant's submittal package (Exhibit 2) contains a wetland delineation approved by Oregon Dept. of State Lands (DSL) and dated October 12, 2021. DSL confirmed there are no regulated waters within the study area.*

*DSL was notified and provided no additional comments.*

*The proposed zone change is consistent with the Policy 3.F.1 of the Comprehensive Plan.*

***This application is consistent with Chapter 3. The Hearings Officer concurs with the above discussion and in these staff findings. Public comments were received disputing these findings by staff, including describing existing culverts and drainage impacting the site, including the site being temporarily flooded, and the presence of wildlife on the site. However, no regulated waters were found, and I do not find that the mere presence of water or wildlife on the site violates these standards.***

**iii. Chapter 4 Land Use:** *This Section of the Comprehensive Plan includes the definitions for urban and rural land use categories, and outlines policies for determining the appropriate Comprehensive Plan land use designation for all lands within the County.*

*This Chapter contains three Sections addressing; 1) Urbanization; 2) Urban Growth Concepts; and 3) Land Use Policies for the each Land Use Plan designation. Only the Land Use Policies for the each Land Use Plan designation would be applicable to the proposed zone change and those are addressed below:*

*The subject property is designated Rural on the Comprehensive Plan Map. The proposed change is to a rural residential zoning designation with a different minimum lot size. There is no change proposed to the existing Rural designation on the Comprehensive Plan Map.*

*Each of the applicable Policies in the Rural Section of Ch. 4 (Land Use) Chapter of the Comprehensive Plan are addressed as follows:*

Policy 4.MM.5 Existing large lots should be reduced to meet future rural housing needs prior to expanding the areas designated as Rural.

*This proposal involves a large, approximately 56-acre lot that would be reduced to accommodate more rural residential housing.*

*In addressing this policy, both the applicant and DLCD provided information about justifying the “need” for the proposed housing, including citing the county’s September 2019 Regional Housing Needs Analysis (RHNA) and including discussions about “needed housing,” as defined by state law.*

*However, nothing in the county’s standards for the proposed zone change to RA-2 require an analysis and finding of need for the specific use. And this policy, in particular, is directing the county to consider using large lots that are already in the Rural designation for the development of housing before considering adding new areas to the Rural designation. In this case the subject site is already designated Rural, is a large lot (56+ acres) and is proposed for subdividing (i.e. “reducing the size”) to accommodate future housing development.*

***This policy is met. The Hearings Officer concurs with the above discussion and in these staff findings.***

Policy 4.MM.8 Increased water service to an area shall not be used in and of itself to justify reduced lot sizes.

*As noted in Section III(A), the county may not approve a reduction in allowed minimum lot sizes solely due to the availability of water. In other words, the proposal must not rely on public water to be feasible, but must also be feasible if water is provided by some other source, like private wells. This proposal would include an “extension of a water system” (as defined by state law), which presumably would also constitute “increased water*

service” under this policy. However, the proposal was found to be consistent with the applicable provisions in Goal 11 and for the same reasons detailed in Section III(A), the proposal is consistent with this policy.

**This policy is met. The Hearings Officer concurs with the above analysis and in these staff findings, noting (as earlier referenced by County staff) that the proposal is not dependent on the availability of public water service.**

Policy 4.MM.11.1 The RA-2 zoning district shall be applied when all the following criteria are met:

a. Parcels are generally two acres or smaller.

*In 2000, the Board of County Commissioners (Board) provided an interpretation of this criteria through Board Order (BO) 2000-57 (Exhibit 3b). Although in 2000, these policies were numbered differently, the text of the policies has remained the same and this interpretation is still used to assess whether a zone change proposal to the RA-2 zoning district will comply with this standard.*

*Under BO 2000-57, the Board interpreted the use of “generally two acres or smaller” to mean parcels that are “no more than 2 acres”. The term “generally” is interpreted to mean a “simple majority of the parcels within the area under consideration”. Additionally, the BCC has interpreted “area” as meaning a majority of the parcels within a Rural land use designation that are at least partially located within ¼ mile of the boundaries of the property being considered for a zone change, including the parcels being considered for the zone change.*

*The application materials included a map and analysis of all properties that are wholly or partially within ¼ mile (1,320 feet) of the boundaries of the subject property. Specifically, the applicant’s submitted analysis concluded that there were 204 total properties wholly, or partially, within ¼ mile of the subject property. Of those 158 properties, 77.5% were no more than 2 acres in size, well over 50%, or a majority. Findings from the applicant’s analysis are summarized in the table below (and found in Exhibit 2, pages 308-314).*

<b>Total properties within 1/4-mile: 204</b>
<b>Developed properties: 191</b>
<b>Undeveloped properties: 13</b>

<b>Total properties less than 2 acres: 158</b>
<b>Percentage of total properties less than 2 acres: ±78%</b>

<b>Developed properties less than 2 acres: 154</b>
<b>Percentage of developed properties less than 2 acres: ±76%</b>

*Staff has reviewed this analysis and concurs with its findings. The proposed zone change meets the “generally two acres” standard.*

***Policy 4.MM.11.1(a) has been met. The Hearings Officer also concurs. Ms. Graser-Lindsey submitted a number of comments and arguments, including disputing the above findings concerning the meaning of the term “generally.” County staff correctly interpreted the meaning of the term as applied here.***

b. The area is significantly affected by development

*“Significantly affected” is not internally defined by the ZDO. Its meaning can be extrapolated by the hierarchical structure of the policies of 4.MM.11 of the Plan. Based on the approval criteria in Chapter 4 of the Land Use policies for FF10, RRF5 and RA2 “Significantly affected” is the term used to describe properties that are which are generally 2 acres or smaller. “Affected” is the term used to describe properties that are generally 5 acres or 10 acres.*

*The surrounding area (1/4 mile radius) and subject properties are significantly affected by development. As noted in the table above, of the 204 properties partially, or wholly, within ¼ mile of the subject property, 191, or 93.6%, are developed. In addition, nearly all (97.4%) of the parcels that are less than 2 acres are developed.*

*The subject property is also adjacent to a church and less than a mile from more dense residential, commercial, and industrial development in the unincorporated community of Beaver Creek and the City of Oregon City.*

***Staff considers this area to be significantly affected by development. Policy 4.MM.11.1.b is met. The Hearings Officer concurs with these findings. While Ms. Graser-Lindsey disputes these findings, I find that staff correctly interpreted and applied the standard “significantly affected by development.”***

c. There are no natural hazards, and the topography and soils are suitable for the location of homes.

*As the Applicant notes, “...the property is relatively flat with gently sloping terrain and currently contains some trees and overgrown vegetation. There are no mapped hazards identified on the site. Additionally, the Wetland Delineation (Exhibit G) demonstrates the property is absent of natural wetlands, rivers, and stream corridors. Therefore, the site topography is well suited for residential homes.” (Exhibit 2, page 62)*

*Both of the mapped soils types on the property (24B, Cottrell silty clay loam, 2 to 8 percent slopes and 45B, Jory silty clay loam, 2 to 8 percent slopes), are moderate to well-drained soils and are identified as suitable for homesites in the Oregon Department of Agriculture’s ‘Soil Survey of Clackamas County Area, Oregon’. In addition, the soils have been found suitable for an on-site sewage disposal system for each lot, as evidenced by the wastewater treatment system evaluations found in the submitted application (Exhibit 2)*

*Staff concurs that there are no mapped hazard areas on the site and finds that the topography and soils on the site are suitable for the location of houses.*



**Policy 4.MM.11.2.c is met. The Hearings Officer concurs in these staff findings.**

d. A public or private community water system is available.

*The applicant has submitted a signed Preliminary Statement of Feasibility for the proposal, showing that Clackamas River Water has have capacity to serve the up to 28 lots allowable in the RA-2 zoning district. As such, **Policy 4.MM.11.2.d is met. The Hearings Officer concurs, noting again the findings that the proposal is not dependent upon the availability of a public water system.***

e. Areas are in proximity or adjacent to an Unincorporated Community or incorporated city.

*The subject property is approximately 0.50 miles from the incorporated City of Oregon City and less than a mile from the unincorporated community of Beavercreek. Many easily accessible main roads, such as Beavercreek Rd., Highway 213, and S. Leland Rd. link together the subject property with Beavercreek and Oregon City. As such, this is considered an area that has easy access to an incorporated City and unincorporated community. **Policy 4.MM.11.1.e is met. The Hearings Officer concurs.***

f. In areas adjacent to urban growth boundaries, RA-2 zoning shall be limited to those areas in which virtually all existing lots are two acres or less.

*This policy is not applicable because the subject property is not adjacent to the Urban Growth Boundary. **This application is consistent with 4.MM.11.1.f. The Hearings Officer concurs. While Ms. Graser-Lindsey also disputes these findings and the meaning of the phrase “virtually all,” I find that staff correctly interpreted and applied the standard.***

*Based on the above analyses and findings, **this application is consistent with Chapter 4. The Hearings Officer concurs with the above discussion and in these staff findings.***

iv. **Chapter 5 Transportation:** *This Chapter outlines policies addressing all modes of transportation.*

*This Chapter contains eight Sections including 1) Foundation and Framework; 2) Land Use and Transportation; 3) Active Transportation; 4) Roadways; 5) Transit; 6) Freight, Rail, Air, Pipelines and Water Transportation; 7) Finance and Funding; and 8) Transportation Projects and Plans.*

*The only policy found in this chapter that is relevant to this application is found in the Roadways section.*

Policy 5.F.6 Require changes in land use plan designation and zoning designation to comply with the Transportation Planning Rule [Oregon Administrative Rules (OAR) 660-012-0060]

*The applicant was required to submit a traffic study or similar evidence to demonstrate compliance with requirements of the Transportation Planning Rule (TPR), found in Oregon Administrative Rules 660-012-0060, as well as the requirements of ZDO Section 1202.03 and Chapter 5 of the Comprehensive Plan.*

*The Applicant provided a Traffic Impact Study (TIS) with the application materials (Exhibit 2, page 198). This study, dated October 9, 2023 was completed by a licensed traffic engineer (Lancaster Mobley) and found that:*

- “Under the existing RRFF-5 zone, the subject site could reasonably generate up to 8 morning peak hour trip, 10 evening peak hour trips, and 104 average weekday trips. Under the proposed RA-2 zone, the site could reasonably generate up to 20 morning peak hour trips, 26 evening peak hour trips, and 264 average weekday trips. Accordingly, the net change in the trip generation potential of the site after the proposed rezone is projected to increase by 12 morning peak hour trips, increase by 16 evening peak hour trips, and increase by 160 average weekday trips.*
- Left-turn lane warrants are projected to be met at the intersection of S Beavercreek Road at S Wilson Road under existing conditions during the evening peak hour. Based on a queuing analysis and according to the Clackamas County Roadway Standards, a minimum of 50 feet of vehicular storage shall be striped for the turn lane. Left-turn lane warrants are not projected to be met at any other study intersection under any analysis scenario, whereby no additional turn lanes are necessary as part of the development application.*
- All study intersections are projected to operate acceptably per Clackamas County standards through the 2025 buildout year of the proposed development and the 2043 Planning Horizon, with or without the zone change implemented. Accordingly, no capacity related mitigation is necessary or recommended at the study intersections.*
- The planned zone change will not impact or alter the functional classification of any existing or planned facility and the proposal does not include a change to any functional classification standards. In addition, all study intersections are expected to have sufficient capacity to accommodate the planned zone change. Accordingly, the Transportation Planning Rule is satisfied.”*

*County TE staff reviewed the TIS and provided the following comments (see Exhibit 18):*

- “The TIS determined that all study intersections are expected to remain below County operational thresholds, as expressed through volume to capacity ratio, with the addition of site traffic through the 2043 plan horizon year. Staff concurs with the trip generation, trip distribution, analysis methods and results.*
- The TIS provided crash data from the most recent five-year period for which data was available (2017-2021). Although the TIS asserts that the crash history did not indicate any trends or crash patterns, four of the five crashes at the intersection of*

*Beavercreek and Wilson Rd were rear-end crashes. Staff contends that this does constitute a crash pattern.*

- *Rear end crashes can be significantly reduced by the presence of a left turn lane, which the TIS shows will be warranted with the addition of traffic generated by this land use. Staff concurs with the recommendation to install a southbound left turn lane on Beavercreek Rd at the Wilson Rd intersection. A left turn lane would separate left-turning traffic from through traffic, which would reduce the risk of rear-end crashes and substantively improve safety.*
- *Additionally, Wilson Rd intersects Beavercreek Rd at approximately 60 degrees, which is a significant skew. Skewed intersections are associated with higher turning speeds and increased crashes. Section 250.8.2 of the Clackamas County Roadway Standards requires intersections to be as close to 90 degrees as possible, but no less than 85 degrees. Due to the number of expected site trips associated with the zone change, and the existing intersection deficiencies, staff recommends that land use approval be conditioned on the realignment of Wilson Rd so that the intersection angle conforms to County Standards.”*

*County TE staff concludes that, with conditions requiring (1) a southbound left turn lane on S Beavercreek Rd at S Wilson Rd and (2) realignment of the S Beavercreek Rd/S Wilson Rd intersection, the proposal would meet the adequacy standards in 1203.03(C); Chapter 5 of the Comprehensive Plan; and the Transportation Planning Rule (Statewide Planning Goal 12). **The Hearings Officer notes that County Development Engineering submitted additional comments (Exhibit 76) further analyzing this intersection, finding that with the addition of a southbound left turn lane on S Beavercreek Rd at S Wilson Rd the proposal will meet the adequacy standards in 1203(C); Chapter 5 of the Comprehensive Plan; and the Transportation Planning Rule (Statewide Planning Goal 12), and the realignment of the S Beavercreek Rd/S Wilson Rd intersection is not required. The Hearings Officer concurs in this analysis as supplemented and amended by Exhibit 76, , adopting the proposed condition of approval related to a southbound left turn lane on S Beavercreek Rd at S Wilson Rd. and deleting the proposed condition of approval pertaining to the realignment of the S Beavercreek Rd/S Wilson Rd intersection.***

*The City of Oregon City provided comments about this proposal (Exhibit 29); these comments were all related to traffic and the transportation system. In these comments, the city contends that (1) the traffic study should have included two intersections located within the city – S Beavercreek Rd/Hwy 213 and Hwy 213/Redland Rd and (2) the proposed development should be required to pay the city a “proportional share” of the cost identified by the city and ODOT to improve these intersections. The city specifically notes the following:*

- (1) *“The applicant has not conducted any analysis of how the proposed development will impact the identified Highway 213 intersections. This must be done in order to satisfy the Transportation Planning Rule.”*

- (2) *“The applicant has not engaged in any form of assessment as to what additional impact this zone change will have on Beavercreek / Hwy 213 and Hwy 213 / Redland Road intersections. Assuming that some increase will be identified, the applicant should be required to contribute its proportional share of the cost of City / ODOT identified improvements necessary to serve the proposed development. See Oregon City Municipal Code 16.12.033.”*

*Regarding the city’s first request, County TE staff reviewing the TIS have confirmed that the study area for the TIS was determined based on consultation with County Engineering staff, and it is consistent with Section 295 of the County Roadway Standards. The TIS evaluated the traffic impacts of the predicted vehicle trips generated by the proposed rezone and subdivision at three area intersections: Beavercreek Rd/Henrici Rd, Beavercreek Rd/Wilson Rd, and Wilson Rd/site access.*

*The scoping of the study area is explained by TE staff as follows (see Exhibit 59):*

*“ County Engineering staff refers to Chapter 295.3 of the Clackamas County Roadway Standards to determine the intersections to be evaluated in traffic impact studies. The Roadway Standards indicate the need for a TIS when trips exceed 20 in any peak hour. This is the same trip threshold that staff uses to determine which offsite intersections should be analyzed. That is, intersections where trips are expected to increase by 20 in any peak hour typically require operations analysis.*

*Net new trips generated by the subject development is expected to generate 19 new AM peak hour trips, and 25 PM peak hour trips. When the projected vehicle trips are distributed on the system, the only intersections where added trips exceed 20 are the site access to Wilson Rd (25 PM peak hour trips), and the intersection of Beavercreek Rd and Wilson Rd (21 PM peak hour trips). The intersection of Beavercreek Rd and Henrici was evaluated because it is the major intersection that is nearest to the development, although total added trips are less than 20. It follows that site trips would be further dispersed as one moves away from the site.”*

*Regarding the city’s second request, even if there were enough of a traffic impact from the proposal to warrant study of these intersections, the county simply has no basis to require a developer pay into a city program. The county and city would need to develop an agreement or create a program, such as a joint system development charge, before the county could require the type of financial contribution referenced by the city. The city’s Municipal Code does not apply to lands outside the city’s jurisdiction (the city limits).*

*With that said, the county is committed to continuing coordination with the city regarding the transportation system and how to support the development and maintenance of roads that serve both city and county populations, but this conversation is more appropriate at a higher, system-wide planning level. County staff has already been in contact city staff about participating in the upcoming update of the county’s Transportation System Plan.*

*As such, Staff finds that the TIS provided for this proposal was adequately scoped and no additional conditions to those previously noted are warranted.*

*It should be noted that concerns about traffic congestion, safety of the roadways and at the intersection of S Beavercreek Rd and S Wilson Rd, were among the most commonly-mentioned concerns in the public testimony, including that of the Hamlet of Beavercreek (Exhibit 23). Both the need to fix the Beavercreek Rd/Wilson Rd intersection and to add a turn lane to S Beavercreek Rd were specifically mentioned numerous times. The community is correct that these improvements are needed; they will be conditions of approval of this proposal. **The Hearings Officer modifies the above discussion to note County Development Engineering submitted additional comments (Exhibit 76) further analyzing this intersection, finding that with the addition of a southbound left turn lane on S Beavercreek Rd at S Wilson Rd the proposal will meet the adequacy standards in 1203(C); Chapter 5 of the Comprehensive Plan; and the Transportation Planning Rule (Statewide Planning Goal 12), and the realignment of the S Beavercreek Rd/S Wilson Rd intersection is not required.***

*Also of note was the number of times that the gridlock that occurred during the 2020 wildfire evacuation was mentioned. Although that situation is understandably very concerning, planning the transportation system for a mass evacuation event is not a criteria for a zone change application; none of the applicable criteria directly or indirectly address the potential impact of residential growth on congestion during an evacuation event.*

*The traffic analysis provided by the applicant's licensed engineer was scoped and completed in compliance with the applicable criteria in the county's zone change standards and the state's Transportation Planning Rule.*

***The Hearings Officer adds the following additional discussion:***

***Policy 5.K.8 Rural requires consideration of support for the safe movement of equestrians in rural areas.***

***Policy 5.N.3 Rural requires consideration of multi-use paths where travel lanes or wide paved shoulders along roadways may not provide adequate safety for pedestrians or bicyclists.***

***Policy 5.N.4 Rural requires consideration of equestrian uses when constructing multi-use paths, and working with local communities and interest groups to plan, develop and maintain multiuse paths that also provide equestrian features. The policy points to planning for parking areas at multiuse paths that support parking needs of equestrians, as well as needs of other path users.***

***A number of public comments were received concerning the safety of pedestrians, cyclists, and equestrians, describing issues with sight distances and lack of bike lanes or shoulders. In considering the above policies I note that County staff recommended several conditions of approval requiring frontage improvements, including providing an 8-foot wide bike lane and adding a left-hand turn lane to S Beavercreek Road at S***

*Wilson Road. Providing for the frontage improvements and bike lane area separates pedestrians and bicyclists from the vehicle travel lane and shows consideration and support for their safety. The applicant points out that it was not required to also construct a multi-use pathway – only the bike lane – and the County’s Comprehensive Plan does not yet contain implementing standards for such a multi-use trail. I agree with comments submitted concerning the need to improve the overall safety of S Beavercreek Road, but find that the frontage improvements required of the applicant are proportional to the impacts from the proposal. With conditions, this application is consistent with Chapter 5.*

*The Hearings Officer concurs with the above discussion and in the above staff findings as supplemented by the additional discussion, adopting proposed conditions of approval.*

- v. **Chapter 11 The Planning Process:** *The purpose of this Chapter is to establish a framework for land use decisions that will meet the needs of Clackamas County residents, recognize the County's interrelationships with its cities, surrounding counties, the region, and the state, and insure that changing priorities and circumstances can be met.*

*In the City, Special District and Agency Coordination Section of this Chapter, one policy is applicable:*

Policy 11.A.1 Participate in interagency coordination efforts with federal, state, Metro, special purpose districts and cities. The County will maintain an updated list of federal, state and regional agencies, cities and special districts and will invite their participation in plan revisions, ordinance adoptions, and land use actions which affect their jurisdiction or policies.

*Notice of this application has been provided to all appropriate agencies and parties, DLCD and the Hamlet of Beavercreek CPO, and an advertised public hearing before the Hearing’s Officer provides an adequate opportunity for interagency coordination of this proposed zone change and demonstrates compliance with this policy.*

***This policy is met; this application is consistent with Chapter 11.***

***Based on the above findings and those provided by the applicant, staff finds that the proposed zone change can be found compliant with ZDO Subsection 1202.03(A). The Hearings Officer concurs with the above discussion and in these staff findings.***

**B. Section 1202.03(B)**

If development under the proposed 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.

*Development that could occur under the proposed RA-2 zoning district would not have access to or need public sewer. The subject property is not located in a public sanitary sewer district*

*and onsite septic systems would be required for each lot allowed under the RA-2 zoning district.*

*The development would have access to public water, provided through Clackamas River Water (CRW) district. The applicant has submitted a signed Preliminary Statement of Feasibility dated June 16, 2023 indicating that water service, including fire flows, is available in levels appropriate for the development and that adequate water system capacity is available in source, supply, treatment, transmission, storage and distribution.*

*The applicant has also submitted a signed Preliminary Statement of Feasibility dated August 29, 2023, indicating that surface water could be adequately managed on the subject site.*

***The proposed zone change is consistent with 1202.03(B). The Hearings Officer concurs with these staff findings.***

***C. Section 1202.03(C)***

The transportation system is adequate and will remain adequate with approval of the proposed zone change. For the purpose of this criterion:

1. Adequate means a maximum volume-to-capacity ratio (v/c), or a minimum level of service (LOS), as established by Comprehensive Plan Tables 5-2a, Motor Vehicle Capacity Evaluation Standards for the Urban Area, and 5-2b, Motor Vehicle Capacity Evaluation Standards for the Rural Area.
2. The evaluation of transportation system adequacy shall be conducted pursuant to the Transportation Planning Rule (Oregon Administrative Rules 660-012- 0060).
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. The methods of calculating v/c and LOS are established by the Clackamas County Roadway Standards.
5. The adequacy standards shall apply to all roadways and intersections within the impact area of the proposed zone change. The impact area shall be identified pursuant to the Clackamas County Roadway Standards.
6. 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.
7. Notwithstanding Subsections 1202.03(C)(4) through (6), motor vehicle capacity calculation methodology, impact area identification, and transportation impact study requirements are established by the ODOT Transportation Analysis Procedures Manual for roadways and intersections under the jurisdiction of the State of Oregon.

*ZDO Subsections 1202.03(C)(1)-(7) define what is meant by an “adequate” transportation system. The applicant’s submitted evidence, as verified the county’s Transportation Engineering (TE) Division, indicate that, with the proposed mitigation, the existing and planned transportation system is adequate to serve the proposed zone change and meet the TPR requirements.*

*As noted previously, County TE staff reviewed the TIS and provided the following comments (see Exhibit 18):*

- *“The TIS determined that all study intersections are expected to remain below County operational thresholds, as expressed through volume to capacity ratio, with the addition of site traffic through the 2043 plan horizon year. Staff concurs with the trip generation, trip distribution, analysis methods and results.*
- *The TIS provided crash data from the most recent five-year period for which data was available (2017-2021). Although the TIS asserts that the crash history did not indicate any trends or crash patterns, four of the five crashes at the intersection of Beavercreek and Wilson Rd were rear-end crashes. Staff contends that this does constitute a crash pattern.*
- *Rear end crashes can be significantly reduced by the presence of a left turn lane, which the TIS shows will be warranted with the addition of traffic generated by this land use. Staff concurs with the recommendation to install a southbound left turn lane on Beavercreek Rd at the Wilson Rd intersection. A left turn lane would separate left-turning traffic from through traffic, which would reduce the risk of rear-end crashes and substantively improve safety.*
- *Additionally, Wilson Rd intersects Beavercreek Rd at approximately 60 degrees, which is a significant skew. Skewed intersections are associated with higher turning speeds and increased crashes. Section 250.8.2 of the Clackamas County Roadway Standards requires intersections to be as close to 90 degrees as possible, but no less than 85 degrees. Due to the number of expected site trips associated with the zone change, and the existing intersection deficiencies, staff recommends that land use approval be conditioned on the realignment of Wilson Rd so that the intersection angle conforms to County Standards.”*

*County TE staff concludes that, with conditions requiring (1) a southbound left turn lane on S Beavercreek Rd at W Wilson Rd and (2) realignment of the S Beavercreek Rd/S Wilson Rd intersection, the proposal would meet the adequacy standard in 1203.03(C).*

***With conditions, this application can be consistent with 1202.03(C). The Hearings Officer concurs with the above discussion and in these staff findings. The Hearings Officer notes that County Development Engineering submitted additional comments (Exhibit 76) further analyzing the S Beavercreek Rd intersection with S Wilson Rd, finding that with the addition of a southbound left turn lane on S Beavercreek Rd at S Wilson Rd the proposal will meet the adequacy standards in 1203(C); Chapter 5 of the Comprehensive Plan; and the Transportation Planning Rule (Statewide Planning Goal 12), and the realignment of the S Beavercreek Rd/S Wilson Rd intersection is not required. The Hearings Officer concurs in this analysis as supplemented and amended by Exhibit 76, adopting the proposed condition of approval related to a southbound left turn lane on S Beavercreek Rd at S Wilson Rd.***

***Ms. Graser-Lindsey submitted a number of written comments analyzing and disputing the applicant’s TIS and the related findings. However, I found the materials submitted by applicant’s traffic engineers, including by Daniel Stumpf, a licensed professional engineer with Lancaster Mobley, reviewed and concurred with by County staff who are also licensed professional engineers, persuasive.***



**D. Section 1202.03(D)**

Safety of the transportation system is adequate to serve the level of development anticipated by the proposed zone change.

*As noted above, the applicant's TIS identified a need for the installations of a left turn lane on the southbound S Beavercreek Rd approach to S Wilson Rd. County TE staff concurred with that recommendation and also found that the realignment of the S Beavercreek Rd/S Wilson Rd intersection is necessary for the transportation system to be adequate to serve the proposed zone change.*

*No additional conditions related to the safety of the transportation system were recommended.*

***With conditions, this application can be consistent with 1202.03(D). The Hearings Officer notes that County Development Engineering submitted additional comments (Exhibit 76) further analyzing the S Beavercreek Rd intersection with S Wilson Rd, finding that with the addition of a southbound left turn lane on S Beavercreek Rd at S Wilson Rd the proposal will meet the adequacy standards in 1203(C); Chapter 5 of the Comprehensive Plan; and the Transportation Planning Rule (Statewide Planning Goal 12), and the realignment of the S Beavercreek Rd/S Wilson Rd intersection is not required. The Hearings Officer concurs in this analysis as supplemented and amended by Exhibit 76, adopting the proposed condition of approval related to a southbound left turn lane on S Beavercreek Rd at S Wilson Rd.***

***Ms. Graser-Lindsey submitted a number of written comments analyzing and disputing the applicant's TIS and the related findings concerning the safety of the transportation system. Ms. Graser-Lindsey is correct that S Beavercreek road can and should be made safer, with re-grading to improve sight distances, and the addition of shoulders, bike lanes, and multi-use paths. However, the standards here only require that the safety of the transportation system be "adequate." I found the materials submitted by applicant's traffic engineers, including by Daniel Stumpf, a licensed professional engineer with Lancaster Mobley, reviewed and concurred with by County staff who are also licensed professional engineers, persuasive that the transportation system meets the relevant standard.***

**PART 3. Z0347-23-ZAP: SUBDIVISION FINDINGS**

**316 RURAL AREA RESIDENTIAL-2ACRES (RA-2)**

*Pursuant to Table 316-2, the minimum lot size permitted is 2 acres. At 56.18 acres, the subject property is large enough to accommodate 28 lots, and the applicant's dimensional plan confirms each lot is 2 acres or larger. Single family dwellings are allowed outright in the RA-2 Zone, and shall be reviewed at the time of building permit approval. Staff notes that the applicant's overall dimensional plan lists acreages as 2 acres "more or less" (+/-). If additional dedications are required along Beavercreek and Wilson Road, reducing total area of any new lots below 2 acres, said dedications cannot be included in the final area of new lots. Footnote 4 of Table 316-2 does not apply to the RA-2 Zone. A condition of approval is recommended to confirm the final plat show each lot with an area of 2 acres or greater. This*

*criteria can be met. The Hearings Officer concurs with the above discussion and in these staff findings, adopting the proposed condition of approval.*

## **1001 GENERAL PROVISIONS**

### **1001.01 PURPOSE**

Section 1000, *Development Standards*, is adopted to implement policies in the Comprehensive Plan that are applicable to new development and thereby ensure that land is:

- i. Used efficiently to support broad-based economic development and the adequacy of housing and public services;
- ii. Developed in an environmentally sustainable and aesthetically appealing manner;
- iii. Supplied with public facilities sufficient to meet demand; and
- iv. Served by a safe, convenient, multimodal, and interconnected transportation system.

*The proposed subdivision is new development and, therefore, subject to the Purpose of this Section.*

### **1001.02 APPLICABILITY**

- i. Except where a different applicability standard is set forth elsewhere in Section 1000, Section 1000 applies to partitions; subdivisions; replats; institutional, commercial, and industrial developments; manufactured dwelling parks; condominiums; multifamily dwellings; two- and three-family dwellings; and attached single-family dwellings where three or more dwelling units are attached to one another. Notwithstanding this provision, level one through three mobile vending units are not subject to Section 1000, except as set forth in Section 837, *Mobile Vending Units*. In addition, Section 1009, *Landscaping*, does not apply to partitions, subdivisions, and replats.

*The proposed development is a subdivision. Therefore Section 1000 applies to this proposal. The applicable standards pertaining to Section 1000 are outlined above under Conditions of Approval, while the applicable criteria are addressed in findings below.*

## **1002 PROTECTION OF NATURAL FEATURES**

### **1002.01 HILLSIDES**

- A. Development on slopes greater than or equal to 20 percent and less than or equal to 35 percent—except that for residential development in the RR, MRR, and HR Districts, the upper limit is 25 percent—shall require review of a Type I application pursuant to Section 1307, *Procedures*, and shall be subject to the following standards:

*The subject property does not contains slopes exceeding 20 percent. This criteria is not applicable. **The Hearings Officer concurs.***

#### 1002.03 TREES AND WOODED AREAS

- A. Existing wooded areas, significant clumps or groves of trees and vegetation, consisting of conifers, oaks and large deciduous trees, shall be incorporated in the development plan wherever feasible. The preservation of these natural features shall be balanced with the needs of the development, but shall not preclude development of the subject property, or require a reduction in the number of lots or dwelling units that would otherwise be permitted. Site planning and design techniques which address incorporation of trees and wooded areas in the development plan include, but are not limited to, the following:

*Aerial photographs and Google Street View shows clumps of conifer and deciduous trees in the south sector of the subject property. Applicant notes that by having gravel roads and “thoughtful” road alignment, many trees can be preserved. Staff finds that mature conifer and deciduous trees shall be preserved where development is not proposed. “Mature” means conifer or deciduous trees with a diameter at breast height (d.b.h.) of more than six inches. A tree preservation and removal plan shall be submitted to and approved by the Planning and Zoning Division prior to final plat approval. Individual tree preservation and removal plans may submitted for new home site construction, prior to building permit approval. This criteria can be met, and is detailed above in the Conditions of Approval section. **The Hearings Officer concurs, adopting the related proposed condition of approval.***

#### 1002.04 RIVER AND STREAM CORRIDORS

The following standards shall apply to land that is outside both the Metropolitan Service District Boundary (MSDB) and the Portland Metropolitan Urban Growth Boundary (UGB).

*A shallow draw, running in a northeast/southwest direction, was evaluated by the applicant for any regulated waters. Exhibit G of the applicant’s submittal package contains a wetland delineation approved by Oregon Dept. of State Lands (DSL) and dated October 12, 2021 (Ex. 2). DSL confirmed there are no regulated waters within the study area. With no perennial streams flowing through the draw, this criteria is not applicable. **The Hearings Officer concurs.***

#### 1002.05 DEER AND ELK WINTER RANGE

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

*The subject property is located outside of the Deer and Elk Winter Range. **The Hearings Officer concurs.***

## 1002.07 SIGNIFICANT NATURAL AREAS

- A. Five significant natural areas are identified as unique/natural features on Comprehensive Plan Map III-2, *Scenic & Distinctive Resource Areas*. These areas are more specifically referred to as Williams Lake Bog, the land at Marmot, Multorpor Bog, Delphridge, and Wilhoit Springs. In these significant natural areas, the following shall be restricted, to the extent necessary to protect the unique or fragile character or features that are the basis for the unique/natural feature designation: building and road construction, filling and excavation, paving, and tree removal. Restrictions may be modified pursuant to Subsection 1011.03.

*The subject property does not contain a significant natural area. The Hearings Officer concurs.*

## 1003 HAZARDS TO SAFETY

### 1003.01 PURPOSE

- A. To protect lives and property from natural or man-induced geologic or hydrologic hazards and disasters.
- B. To protect property from damage due to soil hazards.
- C. To protect lives and property from forest and brush fires.
- D. To avoid financial loss resulting from development in hazard areas.

### 1003.02 STANDARDS FOR MASS MOVEMENT HAZARD AREAS

- A. No development or grading shall be allowed in areas of land movement, slump or earth flow, or mud or debris flow, unless approved in a Type II application pursuant to Section 1307, Procedures. Unless the criteria for such development as listed in Subsection 1003.02(B) are satisfied in the review of another approved Type II application pursuant to Section 1307, a mass movement hazard area development permit is required for development in areas of land movement, slump or earth flow, or mud or debris flow.

*Mass Movement Hazard Areas are not present on the subject property. This criteria is not applicable. The Hearings Officer concurs.*

- E. The principal source of information for determining mass movement hazards is the State Department of Geology and Mineral Industries (DOGAMI) Bulletin 99 and accompanying maps. Approved site specific engineering geologic studies shall be used to identify the extent and severity of the hazardous conditions on the site, and to update the mass movement hazards data base.

*The DOGAMI map for the Canby and Oregon City Quadrangle shows no mass movement areas on the subject property (Exhibit 3f).*

### 1003.03 STANDARDS FOR FLOOD HAZARD AREAS

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

*The DOGAMI map for the Canby and Oregon City Quadrangle shows no flood hazard areas on the subject property (Exhibit 3f). Additionally, Flood Insurance Rate Maps (FIRMs) for this part of Clackamas County show no Special Flood Hazard Areas. **The Hearings Officer concurs in these staff findings.***

1003.04 STANDARDS FOR SOIL HAZARD AREAS

- A. Development proposed in flood hazard areas, in addition to provisions of Section 703, shall be limited to the extent that:
- ii. Appropriate siting and design safeguards shall insure structural stability and proper drainage of foundation and crawl space areas for development on land with any of the following soil conditions: Wet/high water table; high shrink-swell capability; compressible/organic; and shallow depth-to-bedrock.

*Soil Hazard Areas have not been identified. This criteria is not applicable. **The Hearings Officer concurs.***

- iii. 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.

*As discussed above, the DOGAMI map does not indicate the presence of wet/high water table. This criteria is not applicable. **The Hearings Officer concurs.***

1003.05 STANDARDS FOR FIRE HAZARD AREAS

*The proposed subdivision is not located in a Fire Hazard Area. This criteria is not applicable. **The Hearings Officer concurs.***

**1006 UTILITIES, STREET LIGHTS, WATER SUPPLY, SEWAGE DISPOSAL, SURFACE WATER MANAGEMENT, AND EROSION CONTROL**

1006.01 GENERAL STANDARDS

*The proposed subdivision will be served by a variety of utility and infrastructure services that are subject to this Subsection, the applicable standards of which are outlined above under Conditions of Approval, and addressed in more detail below.*

1006.03 WATER SUPPLY

- A. All development which has a need for, or will be provided with, public or community water service shall install water service facilities and grant necessary easements pursuant to the requirements of the district or company serving the development.

*Water supply for the proposed subdivision will be provided by Clackamas River Water (CRW) District. CRW has provided detailed comments and recommended conditions of approval in a letter dated January 29, 2024, referenced as Exhibit 7. Where CRW has*

*made specific district requirements, staff recommends they be added to the Conditions of Approval section. **The Hearings Officer concurs, adopting the proposed related conditions of approval.***

- B. Approval of a development that requires public or community water service shall be granted only if the applicant provides a preliminary statement of feasibility from the water system service provider.
1. The statement shall verify that water service, including fire flows, is available in levels appropriate for the development and that adequate water system capacity is available in source, supply, treatment, transmission, storage and distribution. Alternatively, the statement shall verify that such levels and capacity can be made available through improvements completed by the developer or the system owner.

*The applicant submitted a preliminary statement of feasibility dated June 16, 2023 indicating that water service, including fire flows, is available in levels appropriate for the development and that adequate water system capacity is available in source, supply, treatment, transmission, storage and distribution. This criteria is met. **The Hearings Officer concurs.***

2. If the statement indicates that water service is adequate with the exception of fire flows, the applicant shall provide a statement from the fire district serving the subject property that states that an alternate method of fire protection, such as an on-site water source or a sprinkler system, is acceptable.

*Fire flows are adequate as noted above. This criteria is not applicable. **The Hearings Officer concurs.***

3. The statement shall be dated no more than one year prior to the date a complete land use application is filed and need not reserve water system capacity for the development.

*The statement is dated June 16, 2023, and water system capacity is not needed to be reserved for the proposed subdivision (Ex. 2). This criteria is met. **The Hearings Officer concurs.***

- C. Prior to final approval of any partition or subdivision, the applicant shall provide evidence that any wells in the tract subject to temporary or permanent abandonment under Oregon Revised Statutes (ORS) 537.665 have been properly abandoned.

*An applicable Condition of Approval is outlined above. **The Hearings Officer concurs, adopting the proposed related condition of approval.***

#### 1006.05 ONSITE WASTEWATER

- A. Any development that requires onsite wastewater treatment shall receive approval for the system from the County prior to submittal of a land use application for development. Onsite wastewater treatment systems shall be installed pursuant to: Oregon Revised Statutes 454.605 through 454.745; Oregon Administrative Rules chapter 340, divisions

71 and 73; and the policies of the County

*The applicant submitted 28 septic site evaluations, all approved by the County's Septic and Onsite Wastewater Program (Onsite Program). A condition of approval is recommended, requiring a registered surveyor or registered engineer prepare a detailed site plan showing all required setbacks can be met with regard to the final plat alignment. This criteria can be met. **The Hearings Officer concurs, adopting the proposed related condition of approval.***

1006.06 SURFACE WATER MANAGEMENT AND EROSION CONTROL

The following surface water management and erosion control standards apply:

- A. Positive drainage and adequate conveyance of surface water shall be provided from roofs, footings, foundations, and other impervious or near-impervious surfaces to an appropriate discharge point.

*An applicable Condition of Approval is outlined above under Conditions of Approval. **The Hearings Officer adopts the proposed related conditions of approval.***

- B. The requirements of the surface water management regulatory authority apply. If the County is the surface water management regulatory authority, the surface water management requirements of the *Clackamas County Roadway Standards* apply.

*The surface water management regulatory authority for the proposed subdivision is Clackamas Development Engineering (County Engineering).*

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

*The applicant has submitted a preliminary statement of feasibility from County Engineering, indicating adequate surface water management, treatment and conveyance is available as outlined above.*

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.

*County Engineering had sufficient information to provide a signed 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.

*The statement is dated August 29, 2023, and surface water treatment and conveyance system capacity need not to be reserved for the proposed subdivision.*

- D. Development shall be planned, designed, constructed, and maintained to:

1. Protect and preserve existing natural drainage channels to the maximum practicable extent;

*No regulated waters were found to be located therein in the shallow draw. This criteria is not applicable. **The Hearings Officer concurs.***

2. Protect development from flood hazards;

*No flood hazards are present on the subject property. This criteria is not applicable. **The Hearings Officer concurs.***

3. Provide a system by which water within the development will be controlled without causing damage or harm to the natural environment, or to property or persons within the drainage basin;

*The applicant's storm water plan adequately addresses surface water flow. This criteria is met. **The Hearings Officer concurs.***

4. Ensure that waters drained from the development are substantially free of pollutants, including sedimentary materials, through such construction and drainage techniques as sedimentation ponds, reseeded, and phasing of grading; and

*Compliance with County Engineering's surface water management regulations will ensure these standards are met. Surface water management conditions are listed above, in the conditions of approval. **The Hearings Officer concurs, adopting the proposed related condition of approval.***

5. Ensure that waters are drained from the development in such a manner that will not cause erosion to any greater extent than would occur in the absence of development.

*Erosion Control measures required by County Engineering will ensure this standard can be met. **The Hearings Officer concurs, adopting the proposed related conditions of approval.***

- E. Where culverts cannot provide sufficient capacity without significant environmental degradation, the County may require the watercourse to be bridged or spanned. No watercourses need to be bridged or spanned. The applicant mentions that new driveway approaches to Wilson Road (Lots 1-5) must have culverts to drain the roadside ditch on Wilson Road and other impervious surfaces. This criteria is not applicable. **The Hearings Officer concurs.**

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

*This criteria is not applicable. **The Hearings Officer concurs.***

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



gates may be utilized.

*Channel obstructions are not proposed. This criteria is not applicable. **The Hearings Officer concurs.***

- H. The natural drainage pattern shall not be substantially altered at the periphery of the subject property. Greatly accelerated release of stored water is prohibited. Flow shall not be diverted to lands that have not previously encountered overland flow from the same upland source unless adjacent downstream owners agree.

*The natural drainage pattern is addressed in the applicant's storm water report (Exhibit 2). Substantial alteration of the natural drainage pattern is not proposed. This criteria is not applicable. **The Hearings Officer concurs.***

- I. A surface water management and erosion control plan is required for significant residential, commercial, industrial, and institutional development. The plan shall include:

1. The methods to be used to minimize the amount of runoff siltation and pollution created from the development both during and after construction; and
2. Other elements required by the surface water management authority.

*County Engineering shall ensure surface water and erosion control measures are in place. This requirement is detailed above in the conditions of approval. **The Hearings Officer concurs, adopting the proposed related conditions of approval.***

#### 1006.07 PRELIMINARY STATEMENTS OF FEASIBILITY EXCEPTIONS

- A. A land use application shall be deemed complete and may be approved without the submittal of one or more of the preliminary statements of feasibility required by Subsections 1006.03, 1006.04, and 1006.06 if the applicant demonstrates that a good faith attempt has been made to obtain the statement(s). At a minimum, demonstration of a good faith attempt shall require the applicant to submit the following:

1. A statement signed by the applicant indicating that the service provider or surface water management authority has not responded to a request for a preliminary statement of feasibility or has refused to issue one. When the refusal to issue a preliminary statement of feasibility is based upon a finding that adequate service cannot be provided, such refusal shall not qualify for an exception under this subsection; and
2. A copy of a letter delivered to the service provider or surface water management authority clearly requesting a preliminary statement of feasibility. The letter shall be dated no less than 30 days prior to the submittal of the land use application.

*An exception is not required. This criteria is not applicable. **The Hearings Officer concurs.***

#### 1007 ROADS AND CONNECTIVITY

## 1007.01 GENERAL PROVISIONS

- A. The location, alignment, design, grade, width, and capacity of all roads shall be planned, coordinated, and controlled by the Department of Transportation and Development and shall conform to Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards. Where conflicts occur between Section 1007, the Comprehensive Plan, and the Clackamas County Roadway Standards, the Comprehensive Plan shall control.

*Clackamas County Development Engineering (County Engineering) prepared detailed comments dated February 1, 2024 addressing portions of ZDO Sec. 1007, Clackamas County Roadway Standards (Roadway Standards), and the Comprehensive Plan (Exhibit 57). Findings below shall address all applicable criteria in ZDO Sec. 1007. Where specific ZDO criteria has not been addressed by County Engineering, staff will provide appropriate findings and associated conditions of approval, if any.*

- B. Right-of-way dedications and improvements shall be required of all new developments, including partitions, subdivisions, multifamily dwellings, two- and three-family dwellings, condominiums, single-family dwellings, and commercial, industrial, and institutional uses, as deemed necessary by the Department of Transportation and Development and consistent with Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards.

*Beavercreek Road is classified as a major arterial roadway on Map 5-4a of the Comprehensive Plan. Clackamas County has adopted roadway standards that pertain to the structural section, construction characteristics, minimum required right-of-way widths and access standards for arterial roads. Subdivision applications are required to improve new roadways and any existing road frontage to current county standards. The County's standard requirement for a rural arterial roadway, consistent with ZDO Section 1007 include, but not necessarily limited to, a 60-foot wide right-of-way and a 40-foot paved road width.*

***The Hearings Officer notes significant disagreement with respect to the meaning and requirements of this section and adds the following: Section 1007(B)'s requirement that approval shall be granted only if the capacity of the transportation facilities is adequate or will be made adequate in a timely manner states the requirement for traffic studies and mitigation of impacts from proposed development. Section 1007.07(C) defines "adequate" to mean: "As used in Subsection 1007.07(B), adequate means a maximum volume-to-capacity ratio (v/c), or a minimum level of service (LOS), as established by Comprehensive Plan Tables 5-2a, Motor Vehicle Capacity Evaluations Standards for the Urban Area, and 5-2b, Motor Vehicle Capacity Evaluation Standards for the Rural Area." In other words, Section 1007.07 only requires the evaluation of adequacy of transportation facilities for motor vehicles. Likewise, the remaining sections of ZDO 1007.07 are implementing provisions applying to evaluating the adequacy of transportation systems for motor vehicles. Section 1007.07(D) provides standards for calculating capacity and impact area. Section 1007.07(E) defines the meaning of "timely" as used in Subsection 1007.07(B). Relevant here, Section 1007.07(F) defines the meaning of "necessary improvements" as: "Improvements identified in a transportation impact study as being required in order to comply with***

*the adequacy standard identified in Subsection 1007.07(C)” which as noted only applies to motor vehicles. Section 1007.07(G) is the provision requiring that motor vehicle capacity methodology, impact area identification, and transportation impact study requirements are established by the ODOT Transportation Analysis Procedures Manual for roadways and intersections under the jurisdiction of the State of Oregon.*

- C. New developments shall have access points connecting with existing private, public, county, or state roads.
1. Intersection spacing and access control shall be based on Subsection 3.08.110(E) of the Metro Code (*Regional Transportation Functional Plan*); Chapters 5 and 10 of the Comprehensive Plan; and the Clackamas County Roadway Standards.
  2. *For development on any portion of a contiguous site identified on Comprehensive Plan Map 5-6, Potentially Buildable Residential Sites > 5 Acres in UGB, the applicant shall provide a conceptual map of new streets for the entire site. The map shall identify street connections to adjacent areas to promote a logical, direct, and connected system of streets; demonstrate opportunities to extend and connect new streets to existing streets, and provide direct public right-of-way routes. Closed-end street designs shall be limited to circumstances in which barriers prevent full street extensions. Closed-end streets shall not exceed 200 feet in length and shall serve no more than 25 dwelling units. Subsequent development on the site shall conform to the conceptual street map, unless a new map is approved pursuant to Subsection 1007.01(C)(2).*
  3. Access control shall be implemented pursuant to Chapter 5 of the Comprehensive Plan and the Clackamas County Roadway Standards considering best spacing for pedestrian access, traffic safety, and similar factors as deemed appropriate by the Department of Transportation and Development.
  4. Approaches to public and county roads shall be designed to accommodate safe and efficient flow of traffic and turn control where necessary to minimize hazards for other vehicles, pedestrians, and bicyclists.

*Where access is proposed for a subdivision, roadway intersections are required to provide minimum intersection sight distance, per Section 240 of the Clackamas County Roadway Standards. The existing access on to S Beavercreek Road has limited intersection sight distance to the south due to a vertical curve in S Beavercreek Road. Based on the posted speed of 45 MPH, the standard requires 500 feet of intersection sight distance. These standards can be met and are detailed in the conditions of approval section. **The Hearings Officer concurs, adopting the proposed related conditions of approval.***

5. Joint access and circulation drives utilizing reciprocal easements shall be utilized as deemed necessary by the Department of Transportation and Development. In the NC District, joint street access for adjacent commercial developments shall be required.

*A shared private road will serve the subdivision, and is discussed in Subsection 1007.03.*

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

*The existing alignment of S Wilson Road at S Beaver Creek Road is skewed and does not meet current intersection angle standards. Roadway Standards Section 250.8.2 requires that roadways intersect at as near to 90 degrees as possible, with a range of 85-90 degree and 90-100 degrees, without approval of a Design Modification. S Wilson Road currently intersects S Beaver Creek Road at an approximately 60 degree angle. Skewed intersections present a safety issue, and are associated with higher turning speeds and increased crashes.*

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

With the required intersection angle, a tangent section is required for a length of 50 feet, per Roadways Standards Section 250.8.4 (Table 2-16). With the additional traffic added to the S Wilson Road intersection, development of a turn lane on S Beaver Creek Road, and improvement of the frontages of S Beaver Creek Road and S Wilson Road, realignment of the intersection to meet current standards will be required. ***The Hearings Officer notes that County Development Engineering submitted additional comments (Exhibit 76) further analyzing this intersection, finding that with the addition of a southbound left turn lane on S Beaver Creek Rd at S Wilson Rd the proposal will meet the adequacy standards in 1203(C); Chapter 5 of the Comprehensive Plan; and the Transportation Planning Rule (Statewide Planning Goal 12), and the realignment of the S Beaver Creek Rd/S Wilson Rd intersection is not required. The Hearings Officer concurs in this analysis as supplemented and amended by Exhibit 76, , adopting the proposed condition of approval related to a southbound left turn lane on S Beaver Creek Rd at S Wilson Rd. and deleting the proposed condition of approval pertaining to the realignment of the S Beaver Creek Rd/S Wilson Rd intersection.***

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

Transit service is not existing or planned on either public street. This criteria is not applicable. ***The Hearings Officer concurs.***

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

*Pedestrian facilities are not required in this part of Clackamas County. This criteria is not applicable.*

*The Hearings Officer concurs with staff findings that, as conditioned, the requirements of ZDO 1007 can be met. I disagree with the assertions that these policies support conditioning the project with off-site improvements, such as improving the grading of S Beavercreek Rd, or providing bike lanes or other improvements for pedestrian or equestrian use beyond site frontage improvement, or (as noted by staff) contributions of proportionate costs of off-site intersection improvements. The provisions here require frontage improvements to the site, including upgrading roads adjacent to the development with half-street improvements meeting current County standards (including pedestrian sidewalks, bike lanes, crosswalks, etc.), and require necessary improvements to ensure the adequacy of the transportation facilities for motor vehicles as evaluated by a transportation impact study.*

*The specific implementing provisions for Sections 1007.02(A, B, C, D, E, and F) and ZDO Section 1007.04's criteria for pedestrian and bicycle facilities are contained in Section 1007.07 Transportation Facilities Concurrency, which applies to development applications for design review per Section 1007.07(A).*

#### 1007.02 PUBLIC AND PRIVATE ROADWAYS

- A. All roadways shall be developed according to the classifications, guidelines, tables, figures, and maps in Chapters 5 and 10 of the Comprehensive Plan and the provisions of the Clackamas County Roadway Standards.

*Specific design plans are not applicable on Beavercreek and Wilson Rd. This criteria is not applicable. **The Hearings Officer concurs.***

- B. The layout of new public and county roads shall provide for the continuation of roads within and between the development and adjoining developments when deemed necessary and feasible by the Department of Transportation and Development.
1. When public access to adjoining property is required, this access shall be improved and dedicated to the County.
  2. Street stubs shall be provided to allow for future access to adjacent undeveloped property as deemed necessary by the Department of Transportation and Development.
  3. These standards may be deviated from when the County finds that safe and efficient alternate designs would better accommodate:

*New public and county roads are not proposed. County Engineering has not indicated the need for new public and county roads given that much of the vicinity is already developed, not able to be readily redeveloped, or is currently developed with larger rural developments. County Engineering does not recommend street stubs with this development. This criteria is not applicable. **The Hearings Officer concurs.***

- C. New county and public roads terminating in cul-de-sacs or other dead-end turnarounds are prohibited except where natural features (such as topography, streams, or wetlands), parks, dedicated open space, or existing development preclude road connections to adjacent properties, existing street stubs, or existing roads.

*New county and public roads are not proposed. This criteria is not applicable. **The Hearings Officer concurs.***

- D. Developments shall comply with the intersection sight distance and roadside clear zone standards of the Clackamas County Roadway Standards. In addition:
1. No planting, signing, or fencing shall be permitted which restricts motorists' vision; and
  2. Curbside parking may be restricted along streets with visibility problems for motorists, pedestrians, and/or bicyclists as deemed appropriate by the Department of Transportation and Development.

*The existing alignment of S Wilson Road at S Beavercreek Road is skewed and does not meet current intersection angle standards. Roadway Standards Section 250.8.2 requires that roadways intersect at as near to 90 degrees as possible, with a range of 85-90 degree and 90-100 degrees, without approval of a Design Modification. S Wilson Road currently intersects S Beavercreek Road at an approximately 60 degree angle. Skewed intersections present a safety issue, and are associated with higher turning speeds and increased crashes.*

*With the required intersection angle, a tangent section is required for a length of 50 feet, per Roadways Standards Section 250.8.4 (Table 2-16). With the additional traffic added to the S Wilson Road intersection, development of a turn lane on S Beavercreek Road, and improvement of the frontages of S Beavercreek Road and S Wilson Road, realignment of the intersection to meet current standards will be required. **The Hearings Officer notes that County Development Engineering submitted additional comments (Exhibit 76) further analyzing this intersection, finding that with the addition of a southbound left turn lane on S Beavercreek Rd at S Wilson Rd the proposal will meet the adequacy standards in 1203(C); Chapter 5 of the Comprehensive Plan; and the Transportation Planning Rule (Statewide Planning Goal 12), and the realignment of the S Beavercreek Rd/S Wilson Rd intersection is not required.***

*The Hearings Officer concurs in this analysis as supplemented and amended by Exhibit 76 and referring to earlier added discussion on this topic, adopting the proposed condition of approval related to a southbound left turn lane on S Beavercreek Rd at S Wilson Rd, deleting the proposed condition of approval requiring realignment of the S Beavercreek Rd/S Wilson Rd intersection.*

- E. New developments, subdivisions, and partitions may be required to dedicate land for right-of-way purposes and/or make road frontage improvements to existing rights-of-way as deemed necessary by the Department of Transportation and Development and consistent with Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards.

*The minimum improvements on the S Beavercreek Road frontage consistent with ZDO Section 1007 include, but are not necessarily limited to, up to a one half-street improvement, pavement widening as necessary to provide a minimum 20-foot one-half paved width, a 6-foot wide gravel shoulder, roadside ditch and related storm drainage facilities.*

*The minimum improvements on the S Wilson Road frontage consistent with ZDO Section 1007 include, but are not necessarily limited to, up to a one half-street improvement, pavement widening as necessary to provide a minimum 11-foot one-half paved width, a 3-foot wide gravel shoulder, roadside ditch and related storm drainage facilities.*

*These standards can be met, and applicable conditions of approval are recommended above. **The Hearings Officer concurs, adopting the proposed related conditions of approval.***

### 1007.03 PRIVATE ROADS AND ACCESS DRIVES

- A. Private roads and access drives shall be developed according to classifications and guidelines listed in Section 1007, Comprehensive Plan Figures 5-1 through 5-3, *Typical Roadway Cross Sections*, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards, except:
1. When easements or “flag-pole” strips are used to provide vehicular access to lots or parcels, the minimum width shall be 20 feet, unless a narrower width is approved by the Department of Transportation and Development and the applicable fire district’s Fire Marshal;
  2. Where the number of lots served exceeds three, a wider width may be required as deemed appropriate or necessary by the Department of Transportation and Development consistent with other provisions of Section 1007, the Comprehensive Plan, and the Clackamas County Roadway Standards;
  3. Access easements or “flag-pole” strips may be used for utility purposes in addition to vehicular access;
  4. The standards listed above may be deviated from when deemed appropriate by the Department of Transportation and Development to accommodate one-half streets or private common access drives and roads within developed urban areas providing access to not more than seven lots; and
  5. The intersection of private roads or access drives with a public or county road and intersections of two private roads or access drives shall comply with the sight distance and clear zone standards pursuant to Subsection 1007.02(D).

*Access for the proposed subdivision includes a shared private access road and individual driveway access to S Wilson Road. Per Roadway Standards Drawing R100, a private access road serving 4 or more lots is required to provide a minimum travel surface of 20 feet, with 2-foot wide compacted earthen shoulder on each side, located within a minimum 24-foot wide common access and utility*

*easement. The applicant's preliminary plan proposes a 30-foot wide access easement and a 20-foot wide access road, meeting the minimum access standards. The applicant is proposing to pave the main portion of the access road (Road A) where it serves 11 or more lots, per Roadway Standard R100 (Note 5). The remaining roadways will be improved with a gravel surface. Where a shared access is proposed, construction of the access road is required prior to recording of the final plat. With appropriate conditions of approval, these standards can be met.*

*Clackamas County's Roadway Standards include requirements for emergency vehicle access to residential subdivisions. Fire access standards require two points of access for subdivisions of more than 30 lots. The applicant has proposed installation of a gated emergency access road onto S Beavercreek Road. If the emergency access is a requirement of the fire marshal to adequately serve the site and meet fire district standards, a gated emergency access will be permitted. However, if an emergency access onto S Beavercreek Road is not required, based on access standards on a major arterial, the access will not be permitted. With appropriate conditions of approval, these standards can be met.*

*Roads longer than 150 feet are required to provide a turnaround that can accommodate emergency services vehicles, as well as garbage and recycling trucks and other service and delivery vehicles. The preliminary plans include turnaround that appear to meet the minimum standards. Written verification from the Fire District indicating that emergency service access is or will be adequate for the proposed subdivision will be required.*

***The Hearings Officer concurs with the above staff findings and discussion, adopting the proposed related conditions of approval.***

#### 1007.04 PEDESTRIAN AND BICYCLE FACILITIES

- A. General Standards: Pedestrian and bicycle facilities shall be developed according to the classifications and guidelines listed in Section 1007, Comprehensive Plan Figures 5-1 through 5-3, *Typical Roadway Cross Sections*, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards.

*The subject property is not located inside the Urban Growth Boundary or an Unincorporated Urban Community. This criteria is not applicable. **The Hearings Officer concurs.***

#### 1007.05 TRANSIT AMENITIES

All residential, commercial, institutional, and industrial developments on existing and planned transit routes shall be reviewed by Tri-Met or other appropriate transit provider to ensure appropriate design and integration of transit amenities into the development. The design shall not be limited to streets, but shall ensure that pedestrian/bikeway facilities and other transit-supportive features such as shelters, bus pullouts, park-and-ride spaces, and signing will be provided. The designs shall comply with Tri-Met standards and specifications.



*As discussed above, Transit Amenities are not required because transit service is not available or planned. This criteria is not applicable. **The Hearings Officer concurs.***

#### 1007.06 STREET TREES

- A. Within the Portland Metropolitan Urban Growth Boundary, street trees are required on all road frontage—except frontage on private roads or access drives—for subdivisions, partitions, multifamily dwellings, three-family dwellings, attached single-family dwellings where three or more dwelling units are attached to one another, and commercial, industrial, or institutional developments, except that for structural additions to existing commercial, industrial, or institutional buildings, street trees are required only if the addition exceeds 10 percent of the assessed value of the existing structure, or 999 square feet. Street trees shall comply with the following standards:

*Street trees are not required. This criteria is not applicable. **The Hearings Officer concurs.***

#### 1007.07 TRANSPORTATION FACILITIES CONCURRENCY

- A. Subsection 1007.07 shall apply to the following development applications: design review, subdivisions, partitions, and conditional uses.

*Since a subdivision is proposed, this section applies. **The Hearings Officer concurs.***

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

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

4. Mass transit facilities, such as light rail transit stations and park-and-ride lots;
5. Home occupations to host events, which are approved pursuant to Section 806; and
6. Development in Government Camp that is otherwise consistent with the Comprehensive Plan land use plan designations and zoning for Government Camp.

*Subsection 1007.07 requires that roadways and intersections serving subdivisions have adequate capacity to handle the additional traffic generated by the development, and will continue to operate during the mid-day one hour peak and first and second hours of the PM peaks at acceptable volume to capacity (v/c) ratios.*

*The applicant has provided a Traffic Impact Study (TIS) by Lancaster Mobley, dated October 9, 2023. The proposed subdivision is projected to generate approximately 254 average daily vehicle trips, with approximately 19 trips in the AM peak hour, and approximately 25 trips in the PM peak hour. The TIS finds that the intersections in the influence area will meet mobility standards with development of the proposed subdivision.*

*The TIS indicates that left turn warrants will be met on S Beavercreek Road for a southbound left turn lane at the S Wilson Road intersection. The applicant will be required to construct a left turn lane per the project TIS.*

- C. As used in Subsection 1007.07(B), adequate means a maximum volume-to-capacity ratio (v/c), or a minimum level of service (LOS), as established by Comprehensive Plan Tables 5-2a, *Motor Vehicle Capacity Evaluation Standards for the Urban Area*, and 5-2b, *Motor Vehicle Capacity Evaluation Standards for the Rural Area*.

*As discussed in the TIS, all intersections are adequate or can be made adequate in a timely manner. This criteria can be met. **The Hearings Officer concurs, referring to earlier added discussion on this topic and adopting related conditions of approval.***

- D. For the purpose of calculating capacity as required by Subsections 1007.07(B) and (C), the following standards shall apply:
  1. The methods of calculating v/c and LOS are established by the Clackamas County Roadway Standards.
  2. The adequacy standards shall apply to all roadways and intersections within the impact area of the proposed development. The impact area shall be identified pursuant to the Clackamas County Roadway Standards.

*The impact area was identified by County Engineering and adequately evaluated within the TIS. This criteria is met. **The Hearings Officer concurs.***

- E. As used in Subsection 1007.07(B), timely means:

4. Alternatively, timely means that necessary improvements will be constructed by the applicant or through another mechanism, such as a local improvement district. Under this alternative:

a. Prior to issuance of a certificate of occupancy for a conditional use or a development subject to design review and prior to recording of the final plat for a subdivision or partition, the applicant shall do one of the following:

*Southbound left hand turn lane shall be constructed prior to final plat approval. This criteria can be met. **The Hearings Officer concurs.***

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

1. Improvements identified in a transportation impact study as being required in order to comply with the adequacy standard identified in Subsection 1007.07(C).

*Improvements identified in the TIS shall be constructed pursuant to Section 1007.07. **The Hearings Officer concurs, adopting the proposed conditions of approval related to the improvements identified in the TIS and as discussed in this section.***

## **1012 LOT SIZE AND DENSITY**

### **1012.02 MINIMUM LOT SIZE EXCEPTIONS**

In subdivisions, partitions, and replats, lots and parcels shall comply with the minimum lot size standards, if any, of the applicable zoning district, except as established by Subsections 1012.02(A) through (I):

*Staff did not identify any applicable minimum lot size exceptions in Subsections 1012.02(A) through (I). Therefore, pursuant to Table 316-2 (ZDO Sec. 316), the minimum lot size of the subdivision lots shall be 2 acres or greater. As stated above, a condition of approval is recommended to ensure the final plat shows each lot 2 acres or greater. **The Hearings Officer concurs, adopting the proposed related condition of approval.***

## **1105 SUBDIVISIONS, PARTITIONS, REPLATS, CONDOMINIUM PLATS & VACATIONS OF RECORDED PLATS**

### **1105.01 PURPOSE AND APPLICABILITY**

Section 1105 is adopted to provide standards, criteria, and procedures under which a subdivision, partition, replat, condominium plat, or vacation of a recorded plat may be approved, except:

*The proposed development is a subdivision. Therefore, Section 1105 and its associated Purpose applies to this proposal. **The Hearings Officer concurs.***

### **1105.02 GENERAL SUBMITTAL REQUIREMENTS FOR SUBDIVISIONS**

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

1105.03 ADDITIONAL SUBMITTAL REQUIREMENTS FOR SUBDIVISIONS

An application for a subdivision, partition, or replat shall include the following additional information:

- A. Calculations demonstrating that the proposed density complies with the minimum and maximum density standards of Section 1012, Lot Size and Density, or for zoning districts not subject to Section 1012, demonstrating compliance with the minimum lot size in the applicable zoning district

*As discussed in Section 316, compliance with the minimum lot size in the RA-2 zoning district is met. Staff notes, the final plat must show each new lot at 2 acres or greater, excluding any roadway dedications required by the Zone Change and Section 1007. Subsections B through C are not applicable. **The Hearings Officer concurs.***

1105.05 APPROVAL CRITERIA FOR SUBDIVISIONS

A major subdivision requires review as a Type III application pursuant to Section 1307, Procedures. A minor subdivision or a partition requires review as a Type II application pursuant to Section 1307. A replat of property partially or wholly in the AG/F, EFU, or TBR District, or that proposes to increase the number of lots or parcels in the recorded subdivision or partition plat, requires review as a Type II application pursuant to Section 1307. Otherwise, a replat requires review as a Type I application pursuant to Section 1307. A subdivision, partition, or replat shall be subject to the following standards and criteria:

- A. The proposed subdivision, partition, or replat shall comply with the applicable provisions of the section of this Ordinance that regulates the subject zoning district and Section 1000, *Development Standards*.

*The applicable standards pertaining to Section 1000 are outlined above under Conditions of Approval, while the applicable criteria are addressed in findings above. **The Hearings Officer reviewed each of these sections, adopting or as stated modifying the proposed related conditions of approval.***

- B. In an Urban Low Density Residential District, the applicant may designate the proposed subdivision, partition, or replat as a zero-lot-line development. In a zero-lot-line development, there are no minimum rear and side setbacks for single-family dwellings, manufactured homes, and structures accessory to single-family dwellings and manufactured homes, except from rear and side lot lines on the perimeter of the final plat.

*The subject property is not located in the Urban Low Density Residential District. This criteria is not applicable. **The Hearings Officer concurs.***

- C. As part of preliminary plat approval for a subdivision, approval of a phasing plan and schedule to allow final plat review to occur in two or more phases, each of which includes a portion of the subject property, may be granted in consideration of such factors as the size of the proposed subdivision, complexity of development issues, required improvements, and other factors deemed relevant. If a phasing plan and schedule is approved, such approval shall be subject to the following:

*A phasing plan is not requested with this proposal. This criteria is not applicable. **The Hearings Officer concurs.***

- D. A nonprofit, incorporated homeowners association (HOA), or an acceptable alternative, shall be required for ownership of, improving, operating, and maintaining common areas and facilities, including, but not limited to, open space, private roads, access drives, parking areas, and recreational uses, and for snow removal and storage in Government Camp.
1. The homeowners association shall continue in perpetuity unless the requirement is modified pursuant to either Section 1309, Modification, or the approval of a new land use permit application provided for by this Ordinance.
  2. Membership in the homeowners association shall be mandatory for each lot or parcel owner.
  3. The homeowners association shall be incorporated prior to recording of the final plat.
  4. Acceptable alternatives to a homeowners association may include, but are not limited to, ownership of common areas or facilities by the government or a nonprofit conservation organization.

*The applicant states an HOA or similar entity may be established to maintain common areas such as the private road. If an HOA is proposed, it shall be established to the standards set forth in Subsections 1 through 4. A condition of approval is recommended to comply with these standards. **The Hearings Officer concurs, adopting the proposed related condition of approval.***

#### 1105.09 APPROVAL PERIOD AND TIME EXTENSION

*The applicable standards of this Subsection are outlined above under Conditions of Approval.*

#### 1105.10 FINAL PLAT REVIEW

If a preliminary plat is approved, finalizing the approval requires the completion of a final plat, except that a final plat is not required for a partition or partition replat in which all parcels are larger than 80 acres. The applicant shall comply with the following:

- A. The form and content of the final plat shall comply with the County's final decision approving the preliminary plat and applicable provisions of Chapters 11.01 and 11.02 of the Clackamas County Code and Oregon Revised Statutes Chapters 92, 94, 100, and 209.
- B. The final plat shall be submitted to the County for review. If a homeowners association is required, the declaration for a planned community, articles of incorporation, and bylaws shall be submitted to the County with the final plat. If the final plat and, if a homeowners association is required, the declaration for a planned community, articles of incorporation, and bylaws are consistent with the approved preliminary plat and the conditions of approval included in the County's final decision on the application have either been satisfied or guaranteed pursuant to Section 1311, Completion of

Improvements, Sureties, and Maintenance, the Planning Director shall sign the plat.

*Through this land use permit decision, a preliminary plat is being approved, the standards for finalization of which through a final plat are outlined above under Conditions of Approval. The parcels involved with the proposed subdivision are not all larger than 80 acres.*

#### **E. DECISION**

Based on the findings, discussion, conclusions, and record in this matter, the Hearings Officer APPROVES the zone change from the Rural Residential Farm Forest, 5-acre (RRFF-5) zone to the Rural Area Residential, 2-acre (RA-2) zone (File No. Z0346-23-ZAP) and APPROVES the proposed 28-lot subdivision (File No. Z0347-23-SL), subject to the following conditions:

#### **CONDITIONS OF APPROVAL**

Staff recommends **APPROVAL** of the zone change from the Rural Residential Farm Forest, 5-acre (RRFF-5) zone to the Rural Area Residential, 2-acre (RA-2) zone (File No. Z0346-23-ZAP) and the proposed 28-lot subdivision (File No. Z0347-23-SL), subject to the following **CONDITIONS OF APPROVAL**:<sup>6</sup>

1. General Development Conditions:
  - A) The location, design, installation, and maintenance of all utility lines and facilities shall be carried consistent with the rules and regulations of the surface water management regulatory authority, which is Clackamas County Development Engineering (County Engineering).
  - B) Utilities for electricity, natural gas, and communications services shall be installed pursuant to the requirements of the utility district(s) or company(ies) serving the proposed subdivision. Except where otherwise prohibited by the utility district or company, all such facilities shall be installed underground.
  - C) Coordinated installation of necessary water, sanitary sewer, and surface water management and conveyance facilities is required.
  - D) Easements shall be provided along lot lines as deemed necessary by the County, special districts, and utility companies. Easements for special purpose uses shall be of a width deemed appropriate by the responsible agency.
2. Septic and Onsite Wastewater Program: [Soilsconcern@clackamas.us](mailto:Soilsconcern@clackamas.us)
  - A) **Prior to final plat approval**, applicant shall submit to the Clackamas County Septic Onsite Wastewater Program (Onsite Program) a site plan that complies with the following standards, unless otherwise noted by the Onsite Program:
    - i. Site plan shall be prepared and stamped by an Oregon registered professional engineer or Oregon registered professional land surveyor.

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<sup>6</sup> If the zone change to the RA-2 District (file no. Z0346-23-ZAP) is denied, the file no. Z0347-23-SL, to allow the 28-lot subdivision, **MUST BE DENIED** because the density (number of lots) proposed in Z0347-23-SL is prohibited under the current RRFF-5 zone.

- ii. Site plan shall delineate the approved area for installation of the primary and/or replacement absorption systems (approval area) as approved under site evaluations submitted in Z0346-23-ZAP/Z0347-23-SL and the location of any existing systems that are proposed to remain in use.
  - iii. Site plan shall demonstrate that the approval area, or any existing system if it is proposed to remain in use, is located entirely on the proposed lot or parcel (lot) that the onsite wastewater treatment system will serve or within an easement on one of the other proposed lots, provided that such easement complies with the requirements of the Onsite Program. Such easement shall be properly documented on the final plat.
  - iv. Site plan shall label proposed setback distances from the approval area to structures, wells, surface waters and proposed lot lines. The proposed setback distances shall comply with the regulations administered by the Onsite Program.
- B) Prior to approval of the certificate of occupancy for each new dwelling, a construction permit for an onsite wastewater treatment system to serve that dwelling, and an approved final inspection of the system, shall be obtained from the Onsite Program. This condition is not applicable to any dwelling served by an existing system that complies with the requirements of the Onsite Program

3. Clackamas River Water (CRW): Anthony Steele: [ASteele@crwater.com](mailto:ASteele@crwater.com)

- A) The proposed development lies within the service boundaries of Clackamas River Water (CRW) and shall be subject to the following CRW requirements:
- i. Clackamas River Water Rules and Regulations, April 1996, Resolution No. 2-99
  - ii. Clackamas River Water, Standard Specifications for Development, May 2021
  - iii. Clackamas River Water, SDC, Miscellaneous Fees and Charges for Services, latest edition.
- B) All water improvements designed and constructed by the Applicant to serve the proposed development must meet all CRW standards, must be reviewed and approved by CRW prior to issuance of a Clackamas County Development Permit, and must consider the following:
- i. The available water system capacity to the site is limited to the size, pressure, and volume within an existing or future water main serving the property. Where the requested demand exceeds the water main capacity, the Applicant is responsible for the total costs of a water main enlargement or extension required to meet the demand.
  - ii. The application must provide how the single-family residential development will be served with public facilities.
  - iii. This development will be required to loop two 8-inch minimum waterlines from S Beavercreek Rd to S Wilson Rd within either the development's proposed public right-of-way or a public waterline easement to provide adequate Domestic and fire-flow protection.

- iv. **Advisory:** Hydraulic modeling has confirmed adequate domestic and fire protection is available to serve the proposed development without the need of offsite improvements.
  - v. Development must coordinate with CRW on the requirements necessary to protect the existing air-relief valve located on S Beaver Creek Rd.
  - vi. **Advisory:** The Applicant is responsible for all costs associated with design, construction and testing to provide adequate domestic water and fire service to the development.
  - vii. All public water system improvements required for this development, including side branch waterlines, fire hydrants, meters, fire services, and other appurtenances, shall become the ownership of CRW.
  - viii. Additional fire hydrants proposed for the development on existing or new waterlines shall be reviewed and approved by CRW. CRW shall have the sole authority for determining the existing water system capacity to serve the development.
  - ix. Water service solely for private fire protection to a customer-owned fire sprinkler system is classified as a fire service connection (restricted water use).
  - x. Fire services, including those serving private fire sprinkler systems, shall be installed where required and shall be provided, owned, maintained, and tested by the customer. All fire services shall be metered and protected from backflow.
- C) CRW reserves the right to require a water main replacement if a development or redevelopment does not meet current water system standards or would demand more capacity for consumption or fire suppression than existing water mains could adequately supply. The cost of any mainline replacement required to serve the development or redevelopment shall be borne entirely by the Applicant.
- D) Service Connections:
- i. A Water Service Application will only be issued after all required informational forms, site plans, proof of active building or plumbing permits, and any other required information have been submitted.
  - ii. **Advisory:** Required deposits, fees, and charges will be collected in full only after an approved Water Service Application has been submitted.
  - iii. Per Section 8 of CRW's Rules and Regulations, the following will be required when the County Development Permit is issued for the parcel or per ZDO1006.05.F:
    - a. Domestic service will require review and approval by Clackamas River Water to ensure adequate sizing based on site demand.
    - b. *“Water service will be provided only from pipes or mains located within public streets, alleys or rights-of-way, or within easements furnished CRW, and to property or premises with frontage to such mains...”*



- 1) Lot lines shall be configured in such a way as to provide every property to be served by public water supply to have frontage on a water main.
- c. *“Each dwelling or building will be provided with its own water service connection and meter ...”*
- 1) The development will require separate services to each lot. Location of meter to be coordinated at the time of construction plan review.
- iv. When a lot or parcel of land is provided with a service connection and the parcel is subdivided, the service connection shall be considered as belonging to the lot or parcel of land which it directly enters.
  - v. All domestic and private mains must be installed entirely on the lot for which it serves. Services and private mains will not be allowed to cross property lines or to be placed in a private utility easement unless an exemption has been granted by the Clackamas River Water Board of Commissioners.
  - vi. The average system pressure range at the intersection of Beaver Creek Rd and Wilson Rd is approximately 68-87 psi. Where static water pressure is in excess of eighty (80) pounds per square inch, or other pressure as may be stipulated by the Oregon Uniform Plumbing Code, an approved pressure regulator shall be provided, installed, and maintained by the Customer and the pressure reduced below eighty (80) pounds per square inch.
  - vii. Premise isolation (backflow protection at the property line) may be required for water service to this lot, at a level of protection as determined by CRW, and in accordance with OAR 333-061-0070/0071 and all applicable plumbing codes.
  - viii. The Customer shall pay for the abandonment of the existing water service connection(s) if they are deemed no longer necessary to serve the property
- E) District Approvals:
- i. Water improvement drawings shall be prepared by an Oregon Professional Engineer and submitted to CRW for approval.
  - ii. **Advisory:** The Developer will be required to pay a time-and-materials deposit to the District for Plan Check and Inspection prior to review of any construction plans. The developer will be reimbursed for any unused deposit amount or billed for any additional expenses due.
  - iii. Upon completion of construction plan review, additional requirements may be set forth by the District.
- F) Clackamas County Development Permit:
- i. It will be the developer's responsibility to acquire any necessary easements for water facilities that shall be provided and designated on the final plat, as deemed necessary by the District. These easements must have functional access to public right of way and be properly recorded.
  - ii. Fire and domestic water services, as approved with this land use application, are intended specifically for the lot(s) being developed and are not intended to serve

additional parcels or structures which may be created in the future. In the event that the parcels and/or lots are further divided to create additional parcels or lots, the owner is required to provide separate fire and domestic water services per CRW Rules and Regulations.

- iii. Any fire suppression related improvements will require review and approval of Clackamas County Fire District #1 to ensure proper fire coverage and fire service connection installation in accordance with applicable regulations along with the appropriate backflow prevention assembly and flow detector.

4. Conditions for Roads & Connectivity: [Engineering@clackamas.us](mailto:Engineering@clackamas.us)

- A) **Prior to final plat approval:** a Development Permit is required from the Engineering Division for review and approval of frontage improvements and access. The Permit shall be obtained prior to commencement of site work and recording of the partition plat. To obtain the permit, the applicant shall submit construction plans prepared and stamped by an Engineer registered in the State of Oregon, or plans acceptable to the Engineering Division, provide a performance guarantee equal to 125% of the estimated cost of the construction, and pay a plan review and inspection fee. The fee will be calculated as a percentage of the construction costs if it exceeds the minimum permit fee. The minimum fee and the percentage will be determined by the current fee structure at the time of the Development Permit application.
- B) **Prior to final plat approval:** all required improvements shall be constructed and inspected, or financially guaranteed in the form of a performance bond. Performance bonds shall be in the amount of 125% of the approved engineer's cost estimate of the required improvements, and access has met minimum Substantial Completion requirements, per Roadway Standards Section 190.
- C) The applicant shall verify that there is a minimum 30-foot one half right-of-way width along the entire S Beaver Creek Road frontage. The right-of-way centerline and width shall be verified by a professional survey to the satisfaction of DTD Engineering and Survey Departments.
- D) The applicant shall dedicate approximately 4 feet of right-of-way along the entire S Wilson Road frontage, and shall verify that there is a minimum 24-foot one half right-of-way width. Additional right-of-way shall be dedicated to accommodate the intersection re-alignment with S Wilson Road. The right-of-way centerline and width shall be verified by a professional survey to the satisfaction of DTD Engineering and Survey Departments.
- E) The applicant shall grant a minimum 8-foot wide public easement for sign, slope, and public utilities adjacent to the right-of-way along the entire frontage of S Beaver Creek Road and S Wilson Road.
- F) **Prior to final plat approval,** the applicant shall design and construct improvements along the entire site frontage of S Beaver Creek Road to arterial roadway standards, consistent with Standard Drawing C140. These improvements shall consist of the following:

- i. Up to a minimum 20-foot wide one half street improvement shall be constructed along the entire site frontage of S Beavercreek Road. The structural section shall comply with Standard Drawing C100 for an arterial roadway.
  - ii. The half street improvement design shall include cross sections every 25 feet per Roadway Standards Section 250.7.5. The design shall demonstrate that the new curb line and cross slope to the existing centerline allow for construction of a curb on the opposite side of the road with cross slopes that meet minimum standards.
  - iii. A 6-foot gravel shoulder shall be constructed, per AASHTO Table 5-5.
  - iv. A roadside ditch shall be constructed, per Standard Drawing C140
  - v. Construct a southbound left turn lane at the S Wilson Road intersection. The left turn lane design shall comply with Roadway Standards Section 250.8.8. The left turn queue length shall be designed per the recommendations of the project TIS.
  - vi. Tapers shall be provided beyond the site frontage, per Section 250.6.4 of the Clackamas County Roadway Standards.
  - vii. A striping plan shall be provided for S Beavercreek Road.
  - viii. The two existing driveways on the S Beavercreek Road shall be closed.
  - ix. A gated emergency access is only permitted onto S Beavercreek Road if it is required by the fire district to meet minimum emergency access standards.
- G) **Prior to final plat approval**, the applicant shall design and construct improvements along the entire site frontage of S Wilson Road to rural local roadway standards, consistent with Standard Drawing C110. These improvements shall consist of the following:
- i. Up to a minimum 11-foot wide one half street improvement shall be constructed along the entire site frontage of S Wilson Road. The structural section shall comply with Standard Drawing C100 for a local roadway.
  - ii. The half street improvement design shall include cross sections every 25 feet per Roadway Standards Section 250.7.5. The design shall demonstrate that the new curb line and cross slope to the existing centerline allow for construction of a curb on the opposite side of the road with cross slopes that meet minimum standards.
  - iii. Gravel shoulder, per AASHTO Table 5-5.
  - iv. Roadside ditch, per Standard Drawing C110.
  - v. **[The Hearings Officer deleted proposed condition of approval 4(G)(v) as inconsistent with the updated detailed traffic safety analysis in Exhibit 76 and the changes to the related Discussion.]**
  - vi. Tapers shall be provided beyond the site frontage, per Section 250.6.4 of the Clackamas County Roadway Standards.
- H) The applicant shall design and construct improvements for the shared access, providing access onto S Wilson Road, which will consist of:
- i. A minimum 24-foot wide shared access easement shall be provided.

- ii. The private road shall be referenced on the final plat as a reciprocal and perpetual, common access and utility easement, and shall specify the lots served by the easement. The easement shall encompass the required improvements.
  - iii. The intersection with S Wilson Road shall be constructed at a 90 degree angle, per Section 250.8.2 and 250.8.4 of the Roadway Standards. A minimum 20-foot long landing shall be constructed with an average grade of no more than 5 percent, per Roadway Standards Section 257.3.
  - iv. A minimum 20-foot wide driveway approach, consistent with Standard Drawing D500 shall be provided at the intersection of the shared access road with S Wilson Road.
  - v. A minimum 20-foot wide, paved driving surface with 2-foot wide gravel shoulders on both sides of the roadway shall be constructed where 11 or more lots are severed. The portion of the roadway serving fewer than 11 lots may be improved with a gravel surfaces. The applicant's plans shall identify the number of lots served by gravel and paving, verifying consistency with Drawing R100, Note 5. The minimum structural section for the new private road improvements shall comply with Clackamas County Roadway Standards Drawing R100.
  - vi. Written verification must be received from the Fire District that adequate emergency service access is provided.
  - vii. Roadways with a driving surface less than 26 feet width shall be signed and/or striped "FIRE LANE NO PARKING." Installation of signs and/or striping shall be completed before recording the plat. The developer is responsible for replacing all signs damaged or removed during home and street construction.
  - viii. A road maintenance agreement for the shared private road implementing ORS 105.170 - 105.185 shall be recorded with the plat.
- I) A subdivision plat note shall indicate that no access is permitted on the frontage of lots along S Beaver Creek Road.
  - J) Individual driveway access is permitted on S Wilson Road. An Entrance Permit from Development Engineering will be required at the time of a Building Permit for a Dwelling.
  - K) Drainage facilities for public frontage improvement within the right-of-way, and on-site roadway improvements shall be in conformance with *Clackamas County Roadway Standards* Chapter 4. Maintenance provisions for water quality facilities, such as planters or swales within and serving the public right-of-way, shall be addressed through a maintenance agreement.
  - L) Primary Inspector:
    - i. The applicant shall enter into a Developer/Engineer Agreement for primary inspection services per Section 180 of the Roadway Standards. This form will be provided to the applicant and shall be signed and returned to County Plans Reviewer.

- ii. Prior to final plat, the applicant shall provide a Certificate of Compliance signed by the Engineer of Record stating all materials and improvements have been installed per approved plans and manufacture’s specifications.
  - M) The applicant shall submit, at time of initial paving, reproducible as-built plans for all improvements showing all construction changes, added and deleted items, location of utilities, etc. A professional engineer shall stamp as-built plans.
  - N) All existing and proposed easements shall be shown on the final plat.
  - O) The applicant’s surveyor/engineer must certify that the proposed road construction corresponds to the approved plan
5. Conditions for Minimum Lot Size:
- A) A maximum of 28 lots is authorized.
  - B) All new lots shall be no less than 2 acres, excluding any public roadway dedications.
    - i. **Prior to final plat approval**, final plat must show each lot at 2 acres or greater.
6. Conditions for Land Divisions
- A) General Conditions:
    - i. Approval of this land use permit is based on the submitted written narrative and plan(s) submitted August 30, 2023 and September 21, 2023 and resubmitted with additional materials on November 17, 2023. No work shall occur under this permit beyond that specified within these documents. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of approval described herein.
    - ii. **Advisory Condition:** Applicant shall comply with Chapter 7.05 of the County Code for road naming and addressing requirements. Applicant can contact Roman Sierra in the Planning Division for obtaining street addresses: [RSIERRA@clackamas.us](mailto:RSIERRA@clackamas.us)
    - iii. **Prior to Final Plat Approval:** provide evidence that any wells in the tract subject to temporary or permanent abandonment under Oregon Revised Statutes (ORS) 537.665 have been abandoned.
  - B) Development Standards and Subdivision Criteria:
    - i. The proposed subdivision — including all, parcels, lots, tracts, easements, future structures, etc., potentially contained therein — shall comply with all applicable provisions of the RA-2 Zoning District, as outlined in Section 316 of this Ordinance.
    - ii. The proposed subdivision shall comply with the applicable provisions of Section 1000 of this Ordinance, *Development Standards*, as outlined above.
    - iii. Mature conifer and deciduous trees shall be preserved where development is not proposed. “Mature” means conifer or deciduous trees with a diameter at breast height (d.b.h.) of more than six inches.

- a. For initial site development (Grading, roads, other infrastructure), a tree preservation and removal plan shall be submitted to and approved by the Planning and Zoning Division **prior to final plat approval**.
  - b. For individual home sites, a separate tree preservation and removal plan may be submitted for prior to building permit approval for new home sites, if not already accounted for in Condition 5(B)(iii)(a.)
- iv. If used, a nonprofit, incorporated homeowners association, or an acceptable alternative, is required for ownership of, improving, operating, and maintaining common areas and facilities, including, but not limited to, open space, private roads, access drives, parking areas, and recreational uses, and for snow removal and storage in Government Camp, as follows:
- a. The homeowners association shall continue in perpetuity unless the requirement is modified pursuant to either Section 1309, *Modification*, or the approval of a new land use permit application provided for by this Ordinance.
  - b. Membership in the homeowners association shall be mandatory for each lot or parcel owner.
  - c. The homeowners association shall be incorporated prior to recording of the final plat.
  - d. Acceptable alternatives to a homeowners association may include, but are not limited to, ownership of common areas or facilities by the government or a nonprofit conservation organization.
  - e. **Prior to plat approval**, applicant shall submit a draft copy of the Covenants, Conditions and Restrictions (CC&Rs) to the Planning and Zoning Division to confirm that the above requirements are set forth in said CC&Rs.
- v. Approval Period and Time Extension:
- a. Approval of a preliminary plat is valid for four years from the date of the final decision. If the County's final decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four-year period, the final plat shall be recorded with the County Clerk, or the approval will become void.
  - b. If a final plat is not recorded within the initial approval period established by Subsection 1105.06(A), a two-year time extension may be approved pursuant to Section 1310, *Time Extension*.
- vi. Final Plat Review:
- a. The form and content of the final plat shall comply with the County's final decision approving the preliminary plat and applicable provisions of Chapters 11.01 and 11.02 of the Clackamas County Code and Oregon Revised Statutes Chapters 92, 94, 100, and 209.

- b. The final plat shall be submitted to the County for review. If a homeowners association is required, the declaration for a planned community, articles of incorporation, and bylaws shall be submitted to the County with the final plat. If the final plat and, if a homeowners association is required, the declaration for a planned community, articles of incorporation, and bylaws are consistent with the approved preliminary plat and the conditions of approval included in the County's final decision on the application have either been satisfied or guaranteed pursuant to Section 1311, *Completion of Improvements, Sureties, and Maintenance*, the Planning Director shall sign the plat.
- c. Any private access easements shall also contain provisions for public utility services such as water, electricity, communications, natural gas, storm drainage, sanitary sewer, emergency services, etc.
- d. New easements shall include a statement that the easements are for the lots or parcels shown and any future divisions thereof.
- e. Easements created for access to parcels that can be redeveloped or further divided shall contain language that would allow the access and utilities easement(s) used by any additional development or parcels created in future. Any private easements should also contain provisions for public utility services such as water, electricity, communications, gas, storm drainage, sanitary sewer, etc.

7. Conditions for Zone Change

- A) The Clackamas County *Non-Urban Area Zoning Map* shall be amended to identify the subject property as being in the Rural Area Residential, 2-Acre (RA-2) zoning district.
- B) If the subdivision in file Z0347-23-SL is denied, withdrawn, or not implemented after approval, improvements required in **Condition 4(F)(v)** shall be constructed in conjunction with any future subdivision of the subject property. **[The Hearings Officer amended proposed condition of approval 7(B) to make it consistent with the deletion of proposed condition 4(G)(v).]**

Dated: April 15, 2024



Carl D. Cox  
Clackamas County Hearings Officer

## APPEAL RIGHTS

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