

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

Regarding an application by Rian Park Development, Inc.) **FINAL ORDER**
for a zone change from FU-10 to R-8.5 and R-15 and a) **Z0125-22-ZC**
tentative plan for a 40-lot subdivision and PUD at 14917) **and Z0126-22-SL¹**
SE 142nd Avenue in unincorporated Clackamas County) **(Iseli Estates)²**

A. SUMMARY

1. The applicant, Rian Park Development, Inc., requests approval of a zone change from FU-10 (Future Urban, ten-acre minimum lot size) to R-8.5 (Urban Low Density Residential, 8,500-square foot minimum lot size) and R-15 (Urban Low Density Residential, 15,00-square foot minimum lot size) and a 40-lot subdivision as a Planned Unit Development (PUD) on a 21.12-acre parcel located at 14917 SE 142nd Avenue, also known as tax lots 00600 and 00800, Section 11A, Township 2 South, Range 2 East, WM, Clackamas County, Oregon (the “site”).

a. Tax lot 600 is currently zoned FU-10 (Future Urban, ten-acre minimum lot size). Tax lot 800 is zoned R-15 (Urban Low Density Residential, 15,00-square foot minimum lot size). The south and west portions of the site are subject to the Habitat Conservation Area (“HCA”) overlay.

b. Sieben Creek flows from north to south through a canyon in the western portion of the site. A wetland and tributary streams are located west of Sieben Creek. Steep slopes are present throughout much of the site. The site is currently developed with two single-family detached dwellings and several accessory structures.

2. In File No. Z0125-22-ZC, the applicant requests approval to change the zoning of tax lot 600 from FU-10 (Future Urban, ten-acre minimum lot size) to R-8.5 (Urban Low Density Residential, 8,500-square foot minimum lot size) and R-15 (Urban Low Density Residential, 15,00-square foot minimum lot size). The R-8.5 zoning will apply to the flatter areas in the east portion of tax lot 600, The R-15 zoning will apply to the steeper slopes in the western portion of tax lot 600. Tax lot 800 will remain zoned R-15. (See p. 14 of Exhibit 6).

3. In File No. Z0126-22-SL (Iseli Estates), assuming that the zone change is approved, the applicant requests approval of a tentative plan to divide the site into 40 lots for single-family detached dwellings, a 0.5-acre stormwater tract, a 9.6-acre open space tract, and a 3.1-acre remainder parcel as a Planned Unit Development (“PUD”). The proposed lots range in size from 4,800 square feet over 16,000 square feet,

¹ This Final Order also addresses Z0127-22-HDA, Z0128-22-HMV, and Z0129-22-CMP.

² This Final Order also addresses Z0127-22-HAD (Habitat Area Conservation (HCA) Development Permit), Z0128-22-HMV (HCA Map Verification), and Z0129-22-CMP (HCA Construction Management Plan).

a. The applicant proposed to remove all of the existing structures on the site in order to accommodate the proposed development. The applicant will retain the majority of the steep slopes, the creek, wetland, and tributaries in proposed 9.6-acre open space Tract B.

b. The applicant will dedicate right-of-way and construct half-width frontage improvements (additional pavement, curb, sidewalk, etc.) along the section of SE 142nd Avenue abutting the site. The applicant will extend a new public street, proposed SE Iseli Lane, into the site from SE 142nd Avenue. The proposed SE Iseli Lane/SE 142nd Avenue intersection will align with the existing SE Wenzel Drive on the east side of SE 142nd Avenue, creating a four-way intersection. The applicant will terminate SE Iseli Lane in a cul-de-sac turnaround in the western portion of the site, east of Sieben Creek. The applicant will also provide a new north-south aligned street, proposed SE Andre Way, through the site between the north and south boundaries to allow for further extension when the abutting properties redevelop. SE Andre Way will intersect SE Iseli Lane within the site. In addition, the applicant proposed to provide a public easement over the existing asphalt trail system on the site and provide an easement for an additional north-south public trail within proposed Tract B, consistent with Map 5-2a of the county comprehensive plan, the North Clackamas Parks and Recreation District (“NCPRD”) Park and Recreation Master Plan, and Metro’s Regional Trails and Greenway Map.

c. Sunrise Water Authority (SWA) and Clackamas Water Environmental Services (WES) will provide domestic water and sanitary sewer services, respectively. The applicant proposes to collect storm water from impervious surfaces within the site and direct it to a facility in proposed Tract A for treatment and detention consistent with WES regulations. The applicant will release treated runoff to Sieben Creek at less than predevelopment rates. The applicant will collect, treat, and detain runoff from SE 142nd Avenue within the public right-of-way prior to releasing it to the existing downstream ditch at less than predevelopment rates.

4. In File Nos. Z0127-22-HDA, Z0128-22-HMV, and Z0129-22-CMP, the applicant requests approval of a stormwater outfall within the HCA overlay.

5. Hearings Officer Joe Turner (the "hearings officer") held a public hearing about the application. County staff recommended that the hearings officer approve the proposed zone change and subdivision. See the Staff Report and Recommendation to the Hearings Officer for Z0125-22-ZC and Z0126-22-SL dated June 16, 2022, (Exhibit 1) and the Staff Report and Recommendation to the Hearings Officer for Z0127-22-HDA, Z0128-22-HMV, Z0129-22-CMP (collectively the “Staff Reports”). The applicant accepted the findings and conditions of approval as recommended by County staff. Two area residents and a representative of the North Clackamas Parks and Recreation District (“NCPRD”) testified orally with questions and concerns about the application. One person testified in writing (Exhibit 29). The principal contested issues in the case include the following:

a. Whether the Code, comprehensive plan, NCPRD Master Plan, and Metro Regional Trails and Greenway Map plan include clear and objective criteria for the alignment and construction of a north-south trail through the western portion of the site;

b. Whether it is feasible to construct sidewalks on SE 142nd Avenue and whether the transit stop on Highway 212/224 is “within walking distance” if there are no sidewalks between the site and the Highway;

c. Whether the proposed development density complies with applicable zoning and conflicts with the “livability of the area;”

d. Whether traffic generated by this development will exceed the capacity of area streets or create a hazard;

6. Based on the findings provided or incorporated herein, the hearings officer concludes that the applicant sustained the burden of proof that the proposed zone change to R-8.5 and R-15 is consistent with the relevant Comprehensive Plan policies and that development on the site at an R-8.5 and R-15 density can be served by adequate public facilities and services and will not have prohibited impacts on the transportation system. The hearings officer further concludes that the proposed 40-lot PUD subdivision does or can comply with applicable ZDO standards, subject to conditions of approval recommended by staff and development within the HCAD complies with applicable criteria. Therefore the hearings officer approves the applications subject to conditions at the end of this final order.

B. HEARING AND RECORD HIGHLIGHTS

1. The hearings officer received testimony at the duly noticed public hearing about this application on June 23, 2022. All exhibits and records of testimony have been filed with the Planning Division, Clackamas County Department of Transportation and Development. At the beginning of the hearing, the hearings officer made the declaration required by ORS 197.763. The hearings officer disclaimed any *ex parte* contacts, bias, or conflicts of interest. The following is a summary by the hearings officer of selected relevant testimony.

2. County planner Ben Blessing summarized the Staff Report and his PowerPoint presentation (Exhibit 27).

a. He noted that the northern portion of the site, tax lot 600, is currently zoned FU-10 (Future Urban, ten-acre minimum lot size). The applicant is requesting approval to change the zoning to R-8.5 for the eastern portion of that tax lot and R-15 for the western portion (Z0125-22-ZC). Tax lot 800 is currently zoned R-15 and no change is proposed to the zoning of that parcel.

i. The site is located in close proximity to transit and employment. TriMet bus lines #30 and 156 operate on Highway 212/224, roughly ¼ mile south of the site and there are a number of industrial and limited retail uses on Highway 212/224.

b. The applicant also requests approval of a planned unit development to divide the site into 40 lots for single-family detached dwellings and tracts for stormwater facilities and open space (Z0126-22-SL).

i. There are steep slopes in the south, southeast, and west portions of the site and Sieben Creek is located in a canyon in the western portion of the site. These areas are designated Habitat Conservation Area (“HCA”). The applicant proposed to locate the development in the flatter areas in the northeastern portion of the site. The applicant will preserve the majority of the HCA, roughly 21,000 square feet (roughly ½ acre), including the steep slopes and stream, in proposed Tract B. The proposed development will disturb 700 square feet (roughly three percent) of the HCA. Therefore, the applicant is also requesting approval of a Habitat Conservation Area (HCA) Development Permit (ZO127-22-HAD), an HCA Map Verification (Z0128-22-HMV), and an HCA Construction Management Plan (Z0129-22-CMP).

ii. The applicant will extend a new east-west street, proposed Iseli Lane, into the site from SE 142nd Avenue and a new north-south street, proposed Andre Way, between the north and south boundaries of the site.

c. The County, NCPRD, and Metro plans show a conceptual north-south trail alignment through the western portion of the site. ZDO 1007.04(C) requires construction and dedication of such trails. However, the Code does not provide any clear and objective criteria for the location or design of such trails. Therefore, the County cannot require the applicant to build the trail as a condition of this approval. NCPRD argued that the Code, comprehensive plan, and NCPRD plans provide clear and objective criteria for the trail, but staff disagree. As Ms. Koch noted, these plans show a conceptual trail alignment that is intended to allow flexibility to account for topography, natural features, and to limit impacts on development. However, that flexibility makes the alignment subjective and therefore, inapplicable pursuant to ORS 197.307.

d. County transportation staff and Oregon Department of Transportation (“ODOT”) determined that the applicant’s initial traffic analysis did not adequately address the Transportation Planning Rule (TPR). However, the applicant submitted an Addendum dated June 13, 2022 (Exhibit 11) that satisfied staff.

e. The applicant will construct sidewalks along the site’s frontage on SE 142nd Avenue. The applicant cannot be required to construct off-site sidewalks as they do not own the needed right-of-way and the cost of such improvements would exceed the impact of the proposed development on the need for such sidewalks. Additional sidewalks will be constructed and interconnected in the future as abutting properties redevelop.

3. County transportation engineering division senior planner Kenneth Kent testified that the Oregon Highway Plan (“OHP”) establishes a threshold of 400 average daily trips to be considered a small increase. The proposed development is estimated to generate 378 Average Daily Trips (“ADT”). Therefore, traffic from the proposed development does not

constitute a “small increase,” the development will not have a significant impact on the transportation system, and the TPR is satisfied.

a. The County’s 20-year plan shows continuous sidewalks and bike lanes on SE 142nd Avenue between Sunnyside Road and Highway 212/224. The County will construct these improvements in the future or require construction as a condition of approval as additional developments occur along this roadway.

b. Construction of sidewalks along the site’s SE 142nd Avenue frontage will require grading and construction of retaining walls due to the steep slopes on the site’s frontage on this street. The applicant will be required to dedicate right-of-way and slope easements for these improvements.

4. Planner Chris Goodell testified on behalf of the applicant, Rian Park Development, Inc., and summarized his PowerPoint presentation and his June 23, 2022, memorandum (Exhibit 28).

a. Roughly 45-percent (9.6 acres) of the site is subject to the natural resource protection overlays. The applicant will retain the majority of these areas as protected open space within proposed Tract B. The applicant is requesting approval of HCA permits to allow construction of a stormwater outfall within Tract B and the HCA overlay.

b. He agreed with Mr. Blessing that the Code does not include clear and objective criteria for the alignment and design of a trail through the site. Therefore, the County cannot require dedication or construction of such a trail as a condition of approval for this application for housing development. The applicant will work with NCPRD regarding the alignment, design, and construction of the planned trail within Tract B. But the County cannot require construction of the trail as a condition of approval because the standards for alignment and design are not clear and objective. ZDO 1007.04(B) contains several subjective standards including a requirement to “Minimize conflicts...” and “Provide safe, convenient, and an appropriate level of access...” The trail alignments shown in Map 9-1 of the County comprehensive plan, NCPRD Figure 4.3, and the Metro greenway map are not consistent with each other. Map 9-1 shows an east-west alignment and the other two show a north-south alignment. This conflict makes the alignment subjective.

c. The site has less than 500 feet of frontage on SE 142nd Avenue. They will dedicate right-of-way and construct a sidewalk, bike lane, and other improvements along this frontage.

d. The availability of transit is only one factor for consideration in reviewing the proposed zone change. That factor only relates to the availability of transit. It does not require a sidewalk connection between the site and the transit stop.

e. This development will pay roughly \$250,000 in parks Systems Development Charges (“SDCs”) that NCPRD can use to fund park improvements, including planned trails.

f. He agreed with the findings and conditions in the Staff Report, including the advisory conditions 4.B.ii.c and d.

5. Gary Sinnen questioned how the applicant will construct sidewalks along the site's SE 142nd Avenue frontage, given the steep grades on the east boundary of the site. There are no existing sidewalks between the site and Highway 212/224 and residents of the site cannot safely walk to the highway to catch a bus. Therefore, public transit operating on the highway should not be considered to be within walking distance of the site until additional sidewalks are constructed and provide a continuous pedestrian between the site and the highway.

6. NCPRD planning and development manager Heather Koch summarized her memorandum dated June 22, 2022 (Exhibit 26). She argued that the applicant is required to build a north-south trail through the site as shown in county, THPRD, and Metro plans. The on-site section of the trail is a small part of the larger trail system planned for this area. The trail will extend to the north and south in the future when abutting properties redevelop. She argued that there are clear and objective standards for the alignment and design of the trail. ZDO 1007 refers to the County's comprehensive plan and states that the comprehensive plan controls. Map 5-2a of the comprehensive plan shows the alignment of the trail and Figure 5-3 of the comprehensive plan sets out the typical cross-section for a multi-use path. The Code and comprehensive plan use the terms trail, path, and multi-use trail or path interchangeably. The alignment must be flexible to allow construction of the path without imposing undue burdens on development. She requested the hearings officer hold the record open for one week to allow an opportunity to provide further testimony regarding this issue.

7. Mathew Mattson objected to the density of the proposed development, arguing that adding 40 new homes will impact the livability of the area. There is significant traffic congestion on SE 142nd Avenue and long vehicle queues at the Highway 212/224 intersection during the morning peak hours under existing conditions. Additional traffic from this development will exacerbate those issues. Schools and other infrastructure are already at capacity.

8. At the end of the public portion of the hearing, the hearings officer ordered the public record held open for one week, until June 20, 2022, to allow all parties an opportunity to submit new evidence and testimony. The hearings officer held open the record for a second week, until July 7, 2022, to allow all parties an opportunity to respond to whatever was submitted during the first week, and for a third week, until July 14, 2022, to allow the applicant to submit a final argument. The record in this case closed at 5:00 p.m. July 14, 2022. The following exhibits were submitted during the open record period:

a. A June 23, 2022, email from Gail Meyer reiterating Mr. Sinnen's concerns regarding the lack of sidewalks on SE 142nd Avenue impacting the availability of transit (Exhibit 29);

b. A June 27, 2022, email from the applicant's representatives requesting changes to proposed condition 1.C.ii (Exhibit 30);

- c. A June 30, 2022, memorandum from Ms. Koch (Exhibit 31);
- d. A July 7, 2022, memorandum from Mr. Blessing (Exhibit 32); and
- e. The applicant’s final argument dated July 11, 2022 (Exhibit 33).

C. DISCUSSION

The Zone Change Application.

1. The first application considered in this Final Order is the requested zone change from FU-10 to R-15 and R-8.5. Section 1202 of the Clackamas County Zoning and Development Ordinance lists four general criteria that must be addressed in order to allow this zone change. The hearings officer adopts the following findings with respect to these criteria.

a. ZDO 1202.03(A) requires a finding that the proposed zone change is consistent with the applicable goals and policies of the Comprehensive Plan.

i. Finding: The site is presently zoned FU-10 and is designated Urban Low Density Residential on the North Urban Land Use Plan of the County Comprehensive Plan (Exhibit 24). The Urban Low Density Residential Plan designation and the development and use of land in each zone is governed by Section 315 of the ZDO, with single family dwellings as the most prominent use noted therein. The proposed zone change is consistent with the Comprehensive Plan designation for the site.

ii. Chapter 4, Land Use, of the Comprehensive Plan, and specifically the Residential section of Chapter 4, Sub-Policy 4.R.2 provides for Immediate Urban Low Density Residential Areas to include zoning districts of 2,500 to 30,000 square feet lot sizes (R-2.5 to R-30 zones). Sub-Policies 4.R.2.1 through 4.R.2.7 describe the factors used to guide the determination of the most appropriate zoning classification for a specific site. It is important to note that these sub-policies are not individual approval criteria, but are issues to consider in a balancing test to determine the appropriate zoning designation to apply. Since two different zoning districts are proposed, some findings below will require separate analysis on each policy. However, when both proposed zoning district boundaries can meet the Plan polices, a single finding is provided, indicating the configuration proposed on Sheet P-14 (Exhibit 6) is acceptable. The applicable Comprehensive Plan policies of Chapter 4 are addressed below:

(A) Sub-Policy 4.R.2.1(a) states that land with soils subject to slippage, compaction or high shrink-swell characteristics shall be zoned for larger lots (“larger lots” include the R-10 to R-30 Urban Low Density Residential designations and “smaller lots” include the R-2.5 to R-8.5 designations).

(1) According to the Oregon Department of Geology and Mineral Industries (DOGAMI) Bulletin No, 99 Geologic Hazards Map, Lake Oswego and

Gladstone Quadrangle (Exhibit 15), there are no hazardous soils on the site. Both proposed zoning districts can meet this policy. The hearings officer finds that the R-8.5 zoning designation is acceptable. Although there are no indications of these hazards in the portion of the site with existing or proposed R-15 zoning, the topography therein is still not suitable for development. Therefore, the configuration proposed on Sheet P-14 is appropriate.

(2) NCPRD cites to this standard as support for relocating the proposed trail in the western portion of the site. (Exhibit 31). However, this standard relates to the zone change, not the proposed development or location of the trail. In addition, as discussed below, the County has no authority to require dedication of right-of-way for or construction of a trail through this site, because the applicable criteria are not clear and objective. ORS 197.307 requires that the county only apply clear and objective standards, conditions and procedures regulating the development of housing.

(B) Sub-Policy 4.R.2.1(b), states that land with slopes less than 20 percent shall be considered for the R-2.5 through R-8.5 zoning districts, and land with slopes of 20 percent and over shall be considered for the R-10 through R-30 zoning districts.

(1) The applicant's plan set, as well as the aforementioned DOGAMI map, show that much of the site contains steep slopes. However, the applicant has designed the zoning district boundaries to generally follow where the steeper hillside breaks and begins to flatten out. The R-15 portion contains the majority of the steep slopes, which is the appropriate zoning designation. In terms of the R-8.5 zoning boundary, some fringes of the proposed lots, particularly west of Iseli Lane, show steep slopes. However, the majority of the area to be zoned R-8.5 is moderately sloped or flat. Furthermore, any encroachment into steep slopes will need to meet standards set forth in ZDO 1002. The hearings officer finds that the proposed Zoning Plan on Sheet P-14 (Exhibit 6) is appropriate for the site and consistent with this factor given the topographical characteristics of the site.

(2) NCPRD's arguments regarding the trail are not relevant to this criterion for the reasons discussed above.

(C) Sub-Policy 4.R.2.1(c), states that land with hydrological conditions, such as flooding, high water table or poor drainage shall be zoned for larger lots.

(1) Upon review of the Wetlands Inventory Maps (Exhibit 20), and the DOGAMI maps, there are no known hydrological conditions such as flooding, high water table or poor drainage within the proposed R-8.5 areas. However, the applicant's plan set and natural resource assessment indicate the presence of some natural seeps and/or springs emanating from the hillside, primarily within proposed Tract B. Therefore, development in the proposed R-15 zone may be susceptible to hazardous hydrological conditions. The hearings officer finds that the proposed Zoning Plan on Sheet P-14 (Exhibit 6) is appropriate for the site and consistent with this factor given the hydrological characteristics of the site.

(D) Sub-Policy 4.R.2.2 requires consideration of the capacity of facilities such as streets, sewers, water, and storm drainage systems.

(1) With respect to the capacity of the local transportation system, County Engineering Division staff have submitted comments and recommendations dated June 14, 2022 (Exhibit 12), indicating that the local transportation system capacity is adequate to serve the existing development.

(I) The County's Transportation System Plan (TSP) calls for build out conditions to 2033, but the initial Transportation Impact Study (TIS) prepared by Lancaster Mobley only addressed conditions to the 2025 horizon. The applicant ultimately supplied an additional memo called "Addendum #1" prepared by Lancaster Mobley, dated June 9, 2022 (Exhibit 10). Addendum #1 did not adequately address the Transportation Planning Rule (TPR) to the satisfaction of County Development Engineering and Traffic Engineering, so the applicant submitted Addendum #2 dated June 13, 2022 (Exhibit 11). Altogether, the documents satisfied County Engineering and ODOT. The adequacy of the transportation system is evaluated in detailed under section 1202.03(C) below.

(2) Clackamas Water Environmental Services (WES) is the domestic sanitary sewer service and storm water (surface management agency) provider for this area. The applicant has submitted a Preliminary Statement of Feasibility signed by Erik Bertram of WES on March 3, 2022, indicating that WES has adequate capacity in the sanitary sewerage collection and treatment system, as well as surface water treatment (Exhibit 4).

(3) Sunrise Water Authority (SWA) is the public water purveyor for this parcel and has also signed a preliminary statement of feasibility dated November 11, 2021, indicating that water service is available to serve the proposed development (Exhibit 3).

(4) While capacity for these systems are adequate for the flat R-8.5 zoning section, the portion of the site proposed for R-15 zoning has such a high degree of steep slopes that public roads, storm water, and potentially sewer may not be adequate to serve development in that portion of the site. Roads over 12-15 percent are generally not acceptable by the County. Sewer mains in SE 142nd Ave may not be low enough to allow access for development in the western portion of the site, and storm water flowing over steep slopes may have high erosive conditions. If tract "B" where to be developed, larger lot sizes would be far more compatible than smaller lots

(5) In conclusion, the hearings officer finds that the transportation, sewer, water, and storm drainage facilities are adequate, or can be made adequate through improvements made by the developer of the subdivision, to support the proposed development of the property under the proposed R-8.5 and R-15 zoning designations.

(6) NCPRD's arguments regarding the trail are not relevant to this criterion for the reasons discussed above.

(E) Sub-Policy 4.R.2.3 refers to availability of transit and states that land within walking distance (approximately ¼ mile) of a transit stop should be zoned for smaller lots implemented by the R-2.5 through R-8.5 zoning districts.

(1) This factor encourages lands within a short walking distance of a transit stop to be zoned for smaller lots. Per Clackamas County's Comprehensive Plan map 5-8a and the County GIS mapping system, the site is less than 1600 linear feet from Highway 212/224, and a transit stop serving bus routes 30 and 156 (Exhibit 21). This factor does not require the existence of sidewalks or other pedestrian facilities between the site and the transit stop. The lack of sidewalks does not preclude residents from walking between the site and the bus stop. Pedestrians may legally walk on the shoulder of the roadway or on the roadway if an adequate shoulder is not available. The portion of the site proposed for R-8.5 zoning shown on Sheet P-14 is roughly ¼ mile from the nearest transit stop to the south. In addition, the R-15 zoned portion of the site is slightly beyond the approximate ¼ mile proximity. Therefore, the hearings officer finds that the proposed zone change is consistent with this factor.

(F) Sub-Policy 4.R.2.4 refers to proximity to jobs, shopping and cultural activities and states that areas in close proximity to such trip generators shall be considered for smaller lots implemented by the R-2.5 through R-8.5 zoning districts.

(1) The site is located approximately ¼ mile north of Highway 212/244, which contains several industrial businesses and some commercial and retail uses. Furthermore, Comprehensive Plan Map 4-8 shows that portions of the Highway 212/224 corridor are within ½ mile of a Regionally Significant Industrial Area (Exhibit 17). In addition, there are several parks, grocery stores, and a library less than one mile north of the site. Therefore the hearings officer finds that the site is within close proximity to jobs, shopping, and cultural activities and a "smaller lot" designation such as the proposed R-8.5 district, is appropriate as depicted on Sheet 14.

(2) NCPRD's arguments regarding the trail are not relevant to this criterion for the reasons discussed above.

(G) Sub-Policy 4.R.2.5 refers to the locational factors for 2,500 and 5,000 square foot lots. The location of R-2.5 and R-5 zoning designations may be permitted in Corridor design type areas and where permitted by Community and Design Plans subject to Chapter 10 of the Plan. The site is not within a Corridor area. Therefore, this criteria is not applicable.

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

(1) The site is not located in an area that is developed with large lots and little vacant land. To the contrary, the majority of the residential lands between SE Sunnyside Road and Highway 212/224 are either large acreage lots that are capable of being redeveloped or they are developed with smaller residential lots. (See Exhibit 22). Therefore, the proposed R-8.5 zoning is consistent with this factor. As discussed above, the areas proposed for R-15 zoning have physical or service problems indicating to the contrary. Therefore, the hearings officer finds that the proposed zoning configuration depicted on Sheet P-14 (Exhibit 6) is consistent with this factor.

(2) NCPRD's arguments regarding the trail are not relevant to this criterion for the reasons discussed above.

(I) Sub-Policy 4.R.2.7 refers to achieving a density average of 7,500 square feet or less per lot in low density Future Urban areas when conversion to immediate urban low density residential occurs, the R-10 zoning designation shall be limited to areas with slopes of 20 percent or greater. Flexible-lot-size land divisions and other buffering techniques shall be encouraged in those areas immediately adjacent to developed subdivisions with lots of 20,000 square foot or more to protect neighborhood character, while taking full advantage of allowed densities.

(1) Tax lot 600 is presently zoned Future Urban (FU-10). As noted above, much of the site has slopes of 20 percent or greater. The applicant has designated the steep sloped areas in Tract "B" as R-15, which is an appropriate zoning designation given the many constraints in that area of the site. In addition, the applicant proposed to develop the site as a Planned Unit Development taking full advantage of allowed densities by transferring much of the R-15 zoned density that would otherwise be developed, to the flat area of the site which has a proposed zoning designation of R-8.5 as depicted on Sheet P-14. Finally, there are no immediately adjacent developed subdivisions with lots of 20,000 square feet or more, so buffering techniques are not specifically needed to protect neighborhood character. Given the constraints on the site, the applicant cannot achieve a density of average of 7,500 square foot per lot without disturbing sensitive areas and steep slopes, or creating very small lots, which are also out of character with surrounding subdivisions and the overall residential character of the area. The hearings officer finds that an average density of 7,500 square feet or less is not feasible with this development given the steep slopes that make up the majority of the site. The proposed development and zoning configuration allow the highest density possible for the site.

(2) NCPRD's arguments regarding the trail are not relevant to this criterion for the reasons discussed above.

(J) On balance, consideration of Policies 4.R.2.1 to 4.R.2.7 leads to the conclusion that the R-8.5 and R-15 zoning configurations depicted on Sheet P-14 (Exhibit 6) are the most appropriate zoning designations for the site.

b. ZDO 1202.03(B) states that if a development has a need for public sanitary sewer, surface water management, and/or water service, a zone change may be approved

if development under the new zoning designation can be accommodated with the implementation of the service provider's existing capital improvement plans. The cumulative impact of the proposed zone change and development of other properties under existing zoning designations shall be considered.

i. Sanitary Sewer and Storm Water Management: As discussed previously, the site is located within the boundaries of Clackamas Water Environmental Services (WES) and Sunrise Water Authority (SWA). According to WES and SWA, sanitary sewer, water and stormwater capacity is adequate, or can be made adequate, to serve the proposed development and service is subject to their Rules and Regulations. There is no substantial evidence to the contrary. Therefore, the hearings officer finds that sanitary sewer, storm water, and water supply is available or can be made available subject to conditions of approval at the end of this Final Order.

c. ZDO 1202.03(C) requires a finding that the transportation system is adequate, as defined in subsection 1007.07(B) and will remain adequate with approval of the zone change. Transportation facilities that are under the jurisdiction of the State of Oregon are exempt from subsection 1202.03(C).

i. For purposes of this criterion, the following factors are applicable:

(A) 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.

(B) The evaluation of transportation system adequacy shall be conducted pursuant to the Transportation Planning Rule (Oregon Administrative Rules 660-012-0060). It shall be assumed that the site is developed with the primary use, allowed in the proposed zoning district, with the highest motor vehicle trip generation rate; and

(C) Transportation facility capacity shall be calculated pursuant to Subsection 1007.07(E).

(D) The methods of calculating v/c and LOS are established by the Clackamas County Roadway Standards.

(E) 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.

(F) It shall be assumed that the site is developed with the primary use, allowed in the proposed zoning district, with the highest motor vehicle trip generation rate.

ii. The applicant provided a Traffic Impact Study (TIS) prepared by Lancaster Mobley, dated February 18, 2022 (Attachment G of the application, Exhibit 2), TIS Addendum #1 dated June 9, 2022 (Exhibit 10), and TIS Addendum #2 dated June 13, 2022 (Exhibit 11). The TIS evaluated the intersections within the influence area of the proposed development, including the site entrance on SE 142nd Avenue, the SE 142nd Avenue/Highway 224 intersection, and the SE 142nd Avenue/SE Sunnyside Road intersection.

iii. The proposed subdivision is projected to generate approximately 378 average daily vehicle trips (ADT), with approximately 27 trips in the AM peak hour, approximately 21 trips in the mid-day peak hour, and approximately 36 trips in the PM peak hour. The study concludes that all intersections serving the project site are operating acceptably and will continue to operate within the adopted volume to capacity ratios through the 2024 buildout year. There are no mitigation measures recommended for traffic impacts. Therefore, the applicant's proposal meets the county's concurrency requirements under ZDO Section 1007.07 as they relate to the transportation system.

iv. The applicant provided TIS addendums to address the Transportation Planning Rule (TPR) findings for the proposed zone change, as required under ZDO Section 1202.03(C). The TIS asserts that TPR Section 9 applies because the proposed zoning is consistent with the Comprehensive Plan and the proposed zoning is consistent with the TSP. Although the proposed zoning is consistent with the underlying Comprehensive Plan designation, there is no evidence in the record indicating that the TSP analysis of transportation impacts/needs accounted for higher density development on sites zoned FU10. Therefore, a finding cannot be made that the zone change is consistent with the TSP as required under TPR Section 9.

v. TIS Addendum #2 includes analysis of the proposed zone change for TPR compliance through the Oregon Highway Plan (OHP), Policy 1F. Under the OHP the proposed plan is deemed to not have a significant impact on the transportation system where there is a small increase between the adopted plan and an amendment. The OHP defines "a small increase" as less than 400 ADT. The proposed subdivision is estimated to generate 378 ADT. Therefore, because the proposed zone change will not result in "a small increase" in traffic, it will not have a significant impact on the transportation system and the TPR is satisfied. ODOT concurred with this analysis and the conclusion that there will not be a significant effect on State highway facilities per section 1F5 of the Oregon Highway Plan. (Exhibit 13).

vi. Based upon the comments provided by the County Engineering Division staff and the County Roadway standards, the hearings officer finds that these criteria have been satisfied.

vii. NCPRD's assertions that the trail will mitigate traffic capacity issues are irrelevant to this criteria. Based on the above analysis, this standard is met without the trail. Therefore, any further mitigation provided by the trail is irrelevant to whether the application complies with ZDO 1202.03(C).

d. ZDO 1202.03(D) of the ZDO requires a finding that the safety of the transportation system is adequate to serve the level of development anticipated by the zone change.

i. The original TIS (Attachment G of Exhibit 2) provides a detailed “Safety Analysis” which analyzed crash data and found a low level of crashes at all major intersections impacted by traffic from this development. Thus, no warrants for safety improvements were listed. Sight distance was also analyzed and found to meet or exceed the sight distance requirements of the Roadway standards. Staff received no objections regarding transportation safety from either County Transportation Engineering or ODOT. Neighboring residents testified about congestion and traffic queues at the SE 142nd Avenue/Highway 212/224 intersection south of the site. Those observations are consistent with the findings in the applicant’s TIA. However, that congestion and queue length is consistent with the operational standards adopted by the County and ODOT. The proposed zone change will increase the volume of traffic on streets in the area. That increased traffic will be perceptible to area residents. However, it will not exceed the capacity of streets nor create a hazard, based on the expert testimony of the engineers for the applicant, the County, and ODOT. Neighbor’s unsupported concerns about increased traffic are not substantial evidence sufficient to overcome the expert testimony of the traffic engineers for the County, ODOT, and the applicant. Based upon this discussion, the hearings officer finds that this criterion will be satisfied.

2. On balance, the hearings officer finds that the proposed zone change from FU-10 to R-8.5 and R-15 as depicted on Sheet P-14 is appropriate for the site and should be approved, subject to a condition of approval that the applicant change the subject zoning to R-8.5 and R-15 as depicted on Sheet P-14 (Exhibit 6). This is included in the conditions of approval provided at the end of this Final Order.

The Subdivision Application.

1. This application is subject to Sections 202, 315, 1001, 1002, 1003, 1006, 1007, 1011 1012, 1013, 1017, 1105 and 1307 of the Clackamas County Zoning and Development Ordinance (ZDO). The Planning Division has reviewed these sections of the ZDO in conjunction with this proposal and makes the following findings:

SECTION 315 URBAN LOW DENSITY RESIDENTIAL

3. ZDO 315 Urban Low density residential sets forth allowable uses in Tables 315-1 as well as dimensional standards specifically listed in Table 315-2. Detached single family dwellings, the primary use proposed with this subdivision and PUD, are permitted in the R-8.5 and R-15 zones. Since this proposal also includes a PUD, lot sizes can be varied, and setback standards and lot coverage standards can be reduced. The proposed lots comply with the minimum dimensional standards of ZDO Table 315-2, as modified through the PUD approval. The County building department will ensure compliance with the setback, height, and other standards in Table 315-2 through the building permit review process. A condition of approval is warranted to ensure that the subdivision approval complies with applicable criteria set forth in ZDO 315

SECTION 1000: DEVELOPMENT STANDARDS

1001 General Provisions

1001.01 Purpose

4. ZDO 1001.01 sets out the purpose statements for the Development Standards of Section 1000. However, purpose statements are not applicable approval standards with which the applicant is required to demonstrate compliance. The goals set out in the purpose statements are achieved through compliance with the implementing regulations and approval criteria. The purpose statements themselves are not relevant unless they include specific approval criteria or the implementing regulations that follow are ambiguous, and resort to the purpose statements is necessary to determine the context and meaning of ambiguous terms. *See, e.g., Beck v. City of Tillamook*, 18 Or LUBA 587 (1990) (Purpose statement stating only general objectives is not an approval criterion).

1001.02 General Standards

3. ZDO 1001.02 provides that Section 1000 applies to subdivisions, with the exception of Section 1009 *Landscaping*. The proposed development is a subdivision. Therefore Section 1000 applies to this proposal. The applicable criteria are addressed in findings below and compliance is assured through the Conditions of Approval at the end of this Final Order.

1002 Protection of Natural Features

1002.01 Hillside

4. ZDO 1002.01(A) regulates development on slopes greater than or equal to 20 percent and less than or equal to 35 percent. The applicant proposed to preserve most of the steep slopes on the site within Tract B. However, some development is proposed on slopes in this range, specifically Lots 5 through 18, 27 through 31, 33, 34, and 40. Therefore, this application is subject to this section.

a. As discussed below, the County has no authority to require dedication of right-of-way for or construction of a trail through this site, because the applicable standards and criteria relating to the alignment and construction of the trail are not clear and objective. Therefore, NCPRD's arguments for relocating the trail alignment based on this criteria are not relevant.

5. ZDO 1002.01(A)(1) prohibits the creation of lots that cannot be developed under the provisions of Subsection 1002.01. The applicant's submitted plan set demonstrates that this criteria is met.

6. ZDO 1002.01(A)(2) limits grading, stripping of vegetation, and lot coverage by structures and impervious surfaces to no more than 30 percent of slopes 20 percent or greater. The applicant's narrative notes that less than 30 percent of the slopes greater than 20 percent will be disturbed. Staff also compared Tract "B" which primarily contains steep slopes, and the applicant's grading and erosion control plan (Exhibit 2) and found

that grading of steep slopes will not exceed 30 percent of the total amount of steep slopes on the entire subject property. Thus, this standard is met.

7. ZDO 1002.01(A)(3) requires that buildings be clustered to reduce alteration of terrain and provide for preservation of natural features. The applicant is proposing a Planned Unit Development (PUD), which will preserve the majority of steep slopes and cluster the lots and associated buildings on the flatter portions of the site. This criteria is met.

8. ZDO 1002.01(A)(4) requires that the creation of building sites through mass pad grading and successive padding or terracing of building sites be avoided. The applicant's grading and erosion control plan demonstrates compliance with this standard. Home sites will be placed on level slopes. No mass pad grading, successive padding, or terracing is proposed.

9. ZDO 1002.01(A)(5) requires that roads comply with the minimum width and grade requirements of the Code. All proposed roads comply with applicable width and grade requirements. This criteria is met.

10. ZDO 1002.01(A)(6) requires that the applicant re-vegetate all graded areas "[a]s soon as feasible following the final grading." However, ORS 197.307 requires that the county may only apply clear and objective standards, conditions, and procedures regulating the development of housing. *Warren v. Washington Cnty.*, 296 Or App 595, 439 P.3d 581 (2019). The Court of Appeals held that an approval standard is not clear and objective if it imposes on an applicant "subjective, value-laden analyses that are designed to balance or mitigate impacts of the development" (*Rogue Valley Association of Realtors v. City of Ashland*, 35 Or LUBA 139, 158 [1998] aff'd, 158 Or App 1 [1999]). The phrase "as soon as feasible" is not clear and objective and therefore cannot be applied to this application for housing (a residential subdivision).

11. ZDO 1002.01(B) regulates development on slopes greater than 35 percent. It appears that a very small portion of lots 9 and 10, less than 500 square feet, contains slopes exceeding 35 percent (Sheet P-14, Exhibit 6). Also a small rip rap outfall pad may encroach on slopes exceeding 35 percent. Therefore, this application is subject to this section. The application complies with the standards of this section based on the following findings.

a. The application complies with Subsections 1002.01(A)(1) through (6) based on the findings above. ZDO 1002.01(B)(1).

b. The application submitted a geotechnical report prepared by GeoPacific (Attachment H of Exhibit 2) which demonstrates that the site is stable for the proposed development. The conditions of approval require compliance with the conditions and recommendations of the geotechnical report and will be incorporated into the plans and construction of the development. Therefore, the application complies with ZDO 1002.01(B)(2).

c. The County and the fire district approved the proposed access. No roadways are proposed in areas with slopes exceeding 35 percent. Therefore, the application complies with ZDO 1002.01(B)(3).

d. No structures are proposed with this application. In addition, the areas of slopes in excess of 35-percent are located in the rear yard setbacks where no structures are allowed or in the proposed open space tracts. The applicant should be conditioned to replant any disturbed areas in excess of 35-percent slope that are not covered with impervious surfaces. As conditioned the application complies with ZDO 1002.01(B)(4).

e. The applicant submitted plans for surface water management and erosion control which comply with the requirements of ZDO 1006.06 based on the findings below. Therefore, the application complies with ZDO 1002.01(B)(5).

f. As noted above, no buildings are proposed or allowed in areas of slopes in excess of 35-percent. Therefore, ZDO 1002.01(B)(6) is inapplicable.

1002.02 Development Restriction Following Excessive Tree Removal

12. There is no evidence of “excessive tree removal” on the site. Therefore, ZDO 1002.02 is inapplicable.

1002.03 Trees And Wooded Areas

13. ZDO 1002.03 requires that “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 hearings officer finds that the language of this provision, specifically the terms “wooded areas,” “significant clumps or groves,” and “feasible” are not clear and objective. Therefore, as noted above, ORS 197.307 prohibits the County from applying this standard. This criteria is inapplicable.

1002.04 River and Stream Corridors

14. ZDO 1002.04 regulates river and stream corridors outside both the Metropolitan Service District Boundary (MSDB) and the Portland Metropolitan Urban Growth Boundary (UGB). The site is located inside of both the MSDB and Portland Metropolitan UGB. Therefore, these standards do not apply.

1002.05 Deer and Elk Winter Range

15. The site is located outside of the Deer and Elk Winter Range. Therefore, ZDO 1002.05 is inapplicable.

1002.06 Mount Hood Resource Protection Open Space

16. The site is located outside of the Mt. Hood Resource Protection Open Space. Therefore, ZDO 1002.06 is inapplicable.

1002.07 Significant Natural Areas

17. The subject property does not contain a significant natural area. Therefore, ZDO 1002.07 is inapplicable.

1003: Hazards to Safety

1003.01 Purpose

18. As noted above, purpose statements are not applicable approval criteria. Therefore, ZDO 1003.01 is inapplicable.

a. As discussed below, the County has no authority to require dedication of right-of-way for or construction of a trail through this site, because the applicable standards and criteria relating to the alignment and construction of the trail are not clear and objective. Therefore, NCPRD's arguments for relocating the trail alignment based on this criteria are not relevant.

1003.02 Standards and Criteria for Mass Movement Hazard Area Development

19. The site is not located in mass movement hazard area and the DOGAMI map for the Lake Oswego and Gladstone Quadrangle shows that there are no landslide hazards in this area (Exhibit 15). Therefore, ZDO 1003.02 is inapplicable.

a. As discussed below, the County has no authority to require dedication of right-of-way for or construction of a trail through this site, because the applicable standards and criteria relating to the alignment and construction of the trail are not clear and objective. Therefore, NCPRD's arguments for relocating the trail alignment based on this criteria are not relevant.

1003.03 Standards For Flood Hazard Areas

20. The DOGAMI map for the Lake Oswego and Gladstone Quadrangle shows that there are no flood hazards in this area, except those contained in Tract "B" and this area is not located within the Special Flood Hazard Area (SFHA), and not subject to ZDO 703. ZDO 1003.03 is met.

1003.04 Standards for Soil Hazard Areas

21. The DOGAMI map for the Lake Oswego and Gladstone Quadrangle shows that site is not located in a "soil hazard area." Therefore, ZDO 1003.04 is inapplicable.

a. As discussed below, the County has no authority to require dedication of right-of-way for or construction of a trail through this site, because the applicable standards and criteria relating to the alignment and construction of the trail are not clear and objective.

1003.05 Standards for Fire Hazard Areas

22. The site is not located in a Fire Hazard Area. Therefore, ZDO 1003.05 is inapplicable.

1004: Historic Protection

23. There are no designated historic or cultural resource on or near the site. Therefore, ZDO 1004 is inapplicable.

1005: Site and Building Design

24. As discussed above under ZDO 1001.02, Section 1005 does not apply to subdivision applications.

1006: Utilities, Street Lights, Water Supply, Sewage Disposal, Surface Water Management, and Erosion Control

1006.01 General Standards

25. 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 set out in the Conditions of Approval and addressed in more detail below. As conditioned, the application complies with ZDO 1006.01.

1006.02 Street Lights

26. The site is located inside the Portland Metropolitan UGB. Therefore, this development is subject to the street light standards of ZDO 1006.02. As conditioned, this criteria is met.

1006.03 Water Supply

27. Sunrise Water Authority (SWA) will supply public water service to the proposed subdivision. Therefore, the applicant is required to install water service facilities and grant necessary easements pursuant to the requirements of the district. As conditioned, ZDO 1006.03(A) is met.

28. SWA provided a signed preliminary statement of feasibility dated November 11, 2021, indicating that with the exception of fire flows water service is available or can be made available and water system capacity is not needed to be reserved for the proposed subdivision (Exhibit 4). SWA also notes that hydraulic modeling will be required once fire flows have “been determined.” (*Id*). The applicant provided a Fire Flow plan dated May 26, 2022, indicating that “Fire sprinklers will be provided...” (Exhibit 9). Deputy Fire Marshal Valere Liljefelt with Clackamas Fire District No. 1 (CFD#1) approved the fire flow plan. As conditioned, ZDO 1006.03(B) is met.

29. Conditions of approval require the applicant provide evidence that any wells on the site have been properly abandoned. As conditioned, ZDO 1006.03(C) is met.

30. The proposed development will be served by a public water system in compliance with drinking water standards as determined by the Oregon Health Authority, through connection to SWA’s water system. Therefore, ZDO 1006.03(D) is met.

31. The site is not located outside the Portland Metropolitan Urban Growth Boundary, Government Camp, Rhododendron, Wemme/Welches, Wildwood/Timberline, and Zigzag Village. Therefore, ZDO 1006.03(E) is inapplicable.

1006.04 Sanitary Sewer Service

32. The applicant will install sanitary sewer facilities pursuant to the requirements of Clackamas Water Environmental Services (WES). ZDO 1006.04(A) is met.

33. The applicant has submitted a preliminary statement of feasibility from WES dated May 2, 2022, indicating that sanitary sewer capacity is available and WES has adequate sanitary sewer collection and treatment capacity to serve the proposed development, subject to certain conditions. (Exhibit 4). As conditioned, the application complies with ZDO 1006.04(B).

1006.05 Onsite Wastewater Treatment

34. Onsite wastewater treatment is not proposed with this development. All homes will be connected to public sewer service. Therefore, ZDO 1006.05 is inapplicable.

1006.06 SURFACE WATER MANAGEMENT AND EROSION CONTROL

35. The applicant proposed to collect stormwater runoff from all roofs, footings, foundations, and other impervious or near-impervious surfaces and convey it to a treatment and detention facilities in proposed Tract A and within the SE 142nd Avenue right-of-way prior to discharge into Sieben Creek or the existing ditch on SE 142nd Avenue. Clackamas Water Environmental Services (WES), the surface water management regulatory authority for the proposed subdivision, provided a preliminary statement of feasibility dated March 2, 2022, conditionally approving the proposed stormwater facilities. As conditioned ZDO 1006.06(A), (B), and (C) are met.

36. As noted in the Staff Report, ZDO 1006.06(D)(1) includes subjective criteria prohibited by ORS 197.307(4). Therefore, ZDO 1006.06(D)(1) is inapplicable. However, the hearings officer finds that the proposed development complies with ZDO 1006.06(D)(1) as the proposed stormwater system will largely replicate existing drainage conditions and preserve existing natural drainage channels on the site, Sieben Creek and the tributary streams in the western portion of the site.

37. As discussed above, the site is not mapped as being within the Special Flood Hazard Area (SFHA) nor have there been any identified historical flooding events on the subject property. Therefore, ZDO 1006.06(D)(2) is inapplicable.

38. As noted in the Staff Report, ZDO 1006.06(D)(3) includes subjective criteria prohibited by ORS 197.307(4). Therefore, ZDO 1006.06(D)(3) is inapplicable. However, the hearings officer finds that the proposed development complies with ZDO 1006.06(D)(3) as the proposed stormwater facility, as conditioned by WES, will collect and control stormwater runoff from all developed areas of the site, convey it to an onsite detention facility and then discharge it to Sieben Creek and the SE 142nd Avenue ditch at less than predevelopment rates, thereby avoiding damage or harm to the natural environment, or to property or persons within the drainage basin.

39. As noted in the Staff Report, ZDO 1006.06(D)(4) includes subjective criteria prohibited by ORS 197.307(4). Therefore, ZDO 1006.06(D)(4) is inapplicable. However, the hearings officer finds that the proposed development complies with ZDO 1006.06(D)(4) as the proposed stormwater facility, as conditioned by WES, will collect and treat all stormwater runoff from all developed areas of the site, removing pollutants

and sediment. In addition, the applicant will install erosion control measures during construction and replant all exposed soils on the site in order to minimize erosion.

40. As noted in the Staff Report, ZDO 1006.06(D)(3) includes subjective criteria prohibited by ORS 197.307(4). Therefore, ZDO 1006.06(D)(3) is inapplicable. However, the hearings officer finds that the proposed development complies with ZDO 1006.06(D)(3) as the proposed stormwater facility, as conditioned by WES, will 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. The applicant will collect and detain stormwater runoff from all developed areas of the site, releasing it into Sieben Creek and the SE 142nd Avenue ditch at less than predevelopment rates. The applicant will construct the discharge facility to slow and disperse runoff in order to minimize potential erosion. In addition, as noted above, the applicant will install erosion control measures during construction and replant all exposed soils on the site in order to minimize erosion.

41. No culverts or other watercourse crossings are proposed or required with this development. Therefore, ZDO 1006.06(E) is inapplicable.

42. As noted in the Staff Report, ZDO 1006.06(F) includes subjective criteria prohibited by ORS 197.307(4). Therefore, ZDO 1006.06(F) is inapplicable.

43. No channel obstructions are proposed. Therefore, ZDO 1006.06(G) is inapplicable.

44. As noted in the Staff Report, ZDO 1006.06(H) includes subjective criteria prohibited by ORS 197.307(4). Therefore, ZDO 1006.06(H) is inapplicable. However, the hearings officer finds that the proposed development complies with ZDO 1006.06(H) as the proposed stormwater facility, as conditioned by WES, will largely replicate the existing natural drainage pattern on the site. Based on the topographic maps in the record (Sheet P-02 of Exhibit 2), stormwater falling on this site drains west towards Sieben Creek or east towards the ditch on SE 142nd Avenue. The proposed stormwater facilities will replicate those existing conditions, collecting runoff from developed areas of the site and discharging it to the creek and ditch at less than predevelopment rates. The proposed development will not discharge runoff onto lands that have not previously encountered overland flow from the site.

45. The applicant submitted surface water management and erosion control plans required for the proposed subdivision as discussed above. WES will regulate erosion control measures. As conditioned, the application complies with ZDO 1006.04(I).

1006.07 Preliminary Statements of Feasibility Exceptions

46. The applicant submitted all required Preliminary statements of Feasibility. Therefore, an exception is not required and ZDO 1006.07 is inapplicable.

1007 Roads And Connectivity

1007.01 General Provisions

47. The applicant is proposing a 40-lot subdivision with two new 54-foot wide public roads, as well as new access drives. The following findings demonstrate compliance with ZDO 1007, the County Roadway Standards, and the Comprehensive Plan. As conditioned, the application complies with ZDO 1007.01(A)

a. The provisions of ZDO 1007.01(A) are limited to roads. The trail cited by NCPRD is not a “road” as defined by ZDO 202.

48. The applicant will dedicate right-of-way and construct half-width frontage improvements on the section of SE 142nd Avenue abutting the site. SE 142nd Avenue is classified as a minor arterial roadway (Comprehensive Plan map 5-4a), which requires 70 feet of right-of-way to accommodate two travel lanes, an eight-foot wide bike lane, a five-foot wide landscape strip with street trees, a five-foot wide unobstructed sidewalk, and storm drainage facilities. The applicant is required to dedicate approximately five feet of additional right-of-way to provide a 35-foot half right-of-way width on the section of SE 142nd Avenue abutting the site. Furthermore, the southeast corner of Tax Lot 22E11A 00600 extends across the SE 142nd Avenue right-of-way and includes a small triangular portion adjacent to the east side of the right-of-way. The applicant will be required to dedicate the portion of the site located on the east side of SE 142nd Avenue as public right-of-way. In addition, the applicant will dedicate 54 feet of right-of-way and construct full-width road improvements including, but not necessarily limited to, a 32-foot wide paved roadway, six-inch curbs, a five-foot wide landscape strips with street trees, five-foot wide unobstructed sidewalks, and storm drainage facilities for proposed SE Iseli Lane and SE Andre Way as local roadways. As conditioned, the application complies with ZDO 1007.01(B).

a. The hearings officer finds that it is feasible to modify the existing slopes on the east boundary of the site to accommodate the required frontage improvements, based on the applicant’s Preliminary Grading and Erosion and Sediment Control Plan, plan sheet P-08. No retaining walls are proposed.

b. As discussed below, the County has no authority to require dedication of right-of-way for or construction of a trail through this site, because the applicable standards and criteria relating to the alignment and construction of the trail are not clear and objective.

49. The applicant will provide access to the site from existing SE 142nd Avenue via proposed SE Iseli Lane. The proposed intersection of SE Iseli Lane with SE 142nd Avenue is consistent with access spacing standards, per ZDO Section 1007.01(C)(1) and (2), and Roadway Standards Section 220. As conditioned, the application complies with ZDO 1007.01(C)(1).

50. The site is included on Comprehensive Plan Map 5-6 as part of potentially buildable sites greater than five acres. The proposed development provides new streets for the entire developable portion of the site and street connections to adjacent areas to the north and south as required by ZDO 1007.01(C)(2) and 1007.02(B). Steep slopes and the Habitat Conservation Area preclude the extension of street connections to the west. The

section of SE Iseli Lane west of SE Andre Way is a “closed-end street” as it terminates in a cul-de-sac. This section of road serves fewer than 25 dwelling units. However, it appears to exceed 200 feet in length, which ZDO 1007.01(C)(2) prohibits. The applicant should be required to reduce the length of this dead-end street or obtain county approval of a variance to this standard. As conditioned, the application complies with ZDO 1007.01(C)(2).

a. The provisions of ZDO 1007.01(C)(2) are limited to streets. The trail cited by NCPRD is not a “street” as defined by ZDO 202.

51. As noted in the Staff Report, ZDO 1007.01(C)(3), (4), and (5) include subjective criteria prohibited by ORS 197.307(4). Therefore, ZDO 1007.01(C)(3), (4), and (5) are inapplicable. Notwithstanding this finding, the applicant must still provide easements for any shared roadways or utilities as discussed below, and in Section 1105, below.

52. The site is not located in the SCMU, VA, VCS, or VO Districts. Therefore, ZDO 1007.01(C)(6)-(9) are inapplicable.

53. SE 142nd Avenue abutting the site is classified as a minor arterial street. No driveway access is proposed to this street. Proposed lots 1, 29, 30, 33, 34, and 40 have frontage on SE 142nd Avenue and SE Iseli Lane or SE Andre Way, classified as local roadways. Conditions of approval prohibit driveway access from these lots to SE 142nd Avenue. All of these lots will take access from the lower classification street, SE Iseli Lane or SE Andre Way. Access for Lots 29, 30, 33, and 34 is proposed from shared access easements from SE Andre Way. Private roads serving one to three lots are required to a minimum legal access width of 20 feet and design and construct a minimum 12-foot wide paved road, with two-foot wide gravel shoulder. As conditioned, the application complies with ZDO 1007.01(C)(10)(a)-(c).

54. ZDO 1007.01(C)(10)(d) includes subjective criteria prohibited by ORS 197.307(4), requiring that “Driveways shall be located so as to maximize the number of allowed on-street parking spaces, the number of street trees, and optimum street tree spacing.” Therefore, this criterion is inapplicable.

55. Access for the project site is proposed from a new public street, SE Iseli Lane, intersecting SE 142nd Avenue opposite SE Wenzel Drive. SE Iseli Lane will intersect SE Andre Way within the site. Planning and Engineering staff have not identified any issues with the roadway alignments as proposed. As conditioned the project complies with ZDO 1007.01(D).

56. As noted in the Staff Report, ZDO 1007.01(E)-(G) include subjective criteria prohibited by ORS 197.307(4). Therefore, ZDO 1007.01(E)-(G) are inapplicable.

1007.02 Public and Private Roadways

57. The site is not located in an area with a specified design plan set forth in Chapter 10 of the Comprehensive Plan. Therefore, ZDO 1007.02(A)(1) is not applicable.

58. SE 142nd Ave is identified as a Regional Street on Comprehensive Plan Map 5-5, and the applicant is proposing to construct frontage improvements that include a bikeway, pedestrian sidewalk, street trees, lights, etc. With the full construction of the Minor Arterial cross section 5-1b (Exhibit 14), the application complies with ZDO 1007.02(A)(2).

59. SE 142nd Avenue is not identified as a Scenic Road. Therefore, ZDO 1007.02(A)(3) is not applicable.

60. The site is not located in a center, corridor, or station community identified on Comprehensive Plan Map 4-8.³ Comprehensive Plan Map 4-8 designates the site and surrounding properties as “neighborhood.” Therefore, ZDO 1007.02(A)(4) and (5) are not applicable.

61. As discussed above, the applicant proposed to extend SE Andre Way to the north and south boundaries of the site to allow for further extension when the abutting properties redevelop. Steep slopes and the Habitat Conservation Area preclude the extension of SE Iseli Lane to the west. The application complies with ZDO 1007.02(B)(1)

a. The provisions of ZDO 1007.02 relates to roadways. Although roadways may include pedestrian facilities, the trail cited by NCPRD is not a “roadway.”

62. As noted in the Staff Report, ZDO 1007.02(B)(2) and (3) include subjective criteria prohibited by ORS 197.307(4). Therefore, ZDO 1007.02(B)(2) and (3) are inapplicable. However, the hearings officer finds that the proposed development complies with ZDO 1007.02(B)(2) as the proposed development will provide street stubs to the adjacent undeveloped properties to the north and south of the site. Steep slopes and the Habitat Conservation Area preclude the extension of SE Iseli Lane to the west and warrant a deviation from this standard pursuant to ZDO 1007.02(B)(3). In addition, as noted in the Staff Report, since the project is already proposed as a Planned Unit Development (PUD), preserving the forested hillsides, water quality features, etc., many of the listed items are already employed by the proposed development.

63. As noted above, natural features - steep slopes, Sieben Creek, wetlands, and the Habitat Conservation Area preclude the extension of SE Iseli Lane to the west. Therefore, this street may terminate in a cul-de-sac. SE Andre Way is not subject to this standard, as it is a temporary dead-end street that is planned for extension to the north and south when the abutting properties redevelop. The application complies with ZDO 1007.02(C).

a. As noted in the Staff Report, roads longer than 150 feet are required to provide a turnaround that can accommodate emergency services vehicles, as well as garbage and recycling trucks and other service and delivery vehicles. A cul-de-sac is proposed at the end of SE Iseli Lane, meeting this standard. A turnaround is not proposed at the south end

³ ZDO 1007.02(A)(4) and (5) refer to Comprehensive Plan Map IV-8. However, the map in the Comprehensive Plan is labeled “Map 4-8.”

of SE Andre Way. or streets that are stubbed and will be extended in the future, a temporary turnaround is required when the roadway exceeds 150 feet in length. The portion of SE Andre Way extending to the south boundary of the site is approximately 325 feet in length. The applicant will be required to provide a temporary turnaround near the south end of SE Andre Way. Written verification from the Fire District indicating that emergency service access is or will be adequate for the proposed subdivision will be required.

64. The applicant's engineer determined that more than 450 feet of intersection sight distance can be provided to the north and south at the proposed intersection of SE 142nd Avenue and SE Iseli Way, exceeding the minimum requirements of 445 feet to the south (for left-turn site egress vehicles) and 385 feet to the north (for right-turn site egress vehicles). (Page 17 of Attachment G of Exhibit 2). Condition of approval 2.B.vii.d requires that the applicant demonstrate that minimum sight distance is met. As conditioned the application complies with ZDO 1007.02(D).

65. As noted in the Staff Report, ZDO 1007.02(D)(1) and (2) include subjective criteria prohibited by ORS 197.307(4). Therefore, ZDO 1007.02(D)(1) and (2) are inapplicable.

66. As discussed above, the applicant is required to dedicate five feet of additional right-of-way and construct half-width street improvements along the site's SE 142nd frontage. In addition, the applicant will dedicate right-of-way and construct two new local roadways, SE Iseli Lane and SE Andre Way, within the site. The applicant's preliminary plans appear to be consistent with these standards. As conditioned the application complies with ZDO 1007.02(E).

a. As discussed below, the County has no authority to require dedication of right-of-way for or construction of a trail through this site, because the applicable standards and criteria relating to the alignment and construction of the trail are not clear and objective.

67. The applicant proposed to construct the frontage improvements and on-site roads consistent with the requirements of ZDO 1007 including surfacing, curbing, or concrete gutters as specified in ZDO 1007, pedestrian and bikeway facilities as specified in ZDO 1007.04, and street trees as specified in Section 1007.06. SE 142nd Avenue is not designated a transit street on Comprehensive Plan Map 5-8a. Therefore, ZDO 1007.02(F)(3) is inapplicable. Trails are discussed in Section 1007.04, below. The application complies with ZDO 1007.02(F).

1007.03 Private Roads and Access Drives

66. As noted in the Staff Report, ZDO 1007.03(A)(1)-(4) include subjective criteria prohibited by ORS 197.307(4). Therefore, ZDO 1007.03(A)(1)-(4) are inapplicable.

67. Access for Lots 29, 30, 33 and 34 is proposed from shared access easements from SE Andre Way. A condition of approval is warranted requiring compliance with the sight distance and clear zone standards of ZDO 1007.02(D) at the intersection of the proposed accesses and SE Andre Way. As conditioned ZDO 1007.03(A)(5) is met.

1007.04 Pedestrian and Bicycle Facilities

68. ZDO 1007.04 requires that “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...*”

a. As discussed above, Figure 5-1b sets forth the requirements for Minor Arterials which includes an eight-foot bikeway and a six to eight wide sidewalk. Figure 5-1d sets forth the requirements for Urban Connector/Local Streets, which includes five to seven foot wide sidewalks on both sides. The proposed development is consistent with these street classifications and guidelines and this portion of ZDO 1007.04.

b. Comprehensive plan map 5-2a identifies a planned multi-use path aligned north-south in the western portion of the site. Figure 5-3 sets forth standards for a “Typical Multi-Use Path,” requiring an eight to 16-foot wide paved width, two to three foot shoulders, and three to four foot “optional soft shoulder,” within a 12 to 26-foot wide right-of-way. The hearings officer finds that this range of widths, with no standards defining when a particular width of pavement, shoulder, or right-of-way is required, are not clear and objective. Therefore, ORS 197.307 prohibits the County from applying these standards and this portion of ZDO 1007.04.

c. The application complies with the applicable portions of ZDO 1007.04.

69. The hearings officer finds that the standards of ZDO 1007.04(A) are not clear and objective. Specifically those standards requiring that “Pedestrian and bicycle facilities shall be designed to... Minimize conflicts... Provide safe, convenient, and an appropriate level of access to various parts of the development...” Therefore, the County is prohibited from applying these standards and ZDO 1007.04(A) is inapplicable.

a. NCPRD argues that the prohibition on non-clear and objective standards does not apply in this case because the applicant is proposing to develop the site as a PUD, which allows higher density development. ORS 197.307(6) allows the County to provide an alternative approval process for residential development provided the County maintains a non-discretionary process and the alternative process allows a density at or above the density level authorized in the zone. However, the PUD process is not an alternative in this case. As discussed below, ZDO 1013.01B requires that the applicant develop the site as PUD, because the applicant is proposing a subdivision on a site larger than one acre with at least ten percent of the site designated Open Space on Comprehensive Plan Map IV-6, *North Urban Area Land Use Plan Map*. The PUD process is the only process available in this case.

70. The applicant will construct sidewalks in compliance with ZDO 1007.04(F) on all public roads on and abutting the site. Pedestrian pathways are not required, as the

applicant is proposing sidewalks.⁴ Accessways are discussed below. The application complies ZDO 1007.04(C) and (D).

71. The site is not located in an unincorporated community. Therefore, ZDO 1007.04(E) is not applicable.

72. The applicant proposed to construct sidewalks on both sides of the on-site public roads and the frontage of SE 142nd Avenue. The application complies ZDO 1007.04(F).

73. Pedestrian pathways are not proposed or warranted. Therefore, ZDO 1007.04(G) is not applicable.

74. ZDO 1007.04(H) sets out standards for construction of sidewalks and pedestrian pathways. The applicant's design appears to comply with these standards and standards set forth in Figure 5-1 of the Comprehensive Plan. As conditioned, this criterion is met.

75. The hearings officer finds that the accessway requirements of ZDO 1007.04(I) are not clear and objective. Specifically, the phrase "substantial pedestrian or bicycle trips." Therefore, ORS 197.307 precludes the County from applying this standard to this application for residential development.

76. The site is not located in Sunnyside Village. Therefore, ZDO 1007.04(J) is inapplicable.

77. As discussed above, the applicant proposed to construct an eight-foot shoulder bikeway on the section of SE 142nd Avenue abutting the site as required by Comprehensive Plan Figure 5-1b.

a. Comprehensive Plan Map 5-2a shows a north-south aligned "planned multi-use trail" through the site (Exhibit 19). NCPRD's Park and Recreation Master Plan shows a north-south aligned "proposed linear park segment" on the west side of Sieben Creek on the site (Exhibit 16). Metro's Regional Trails and Greenways Map shows a north-south aligned "planned regional trail" on the east side of Sieben Creek on the site (Exhibit 18). However, these facilities do not constitute "Shoulder bikeways, bike lanes, bike paths, or cycle tracks" as defined by ZDO 202 and subject to this provision. ZDO 202 provides the following definitions of these terms:

Shoulder Bikeway: A bikeway which accommodates cyclists on paved roadway shoulder.

Bike Lane: A section of roadway designated for exclusive bicycle use, at the same grade as the adjacent roadway.

⁴ ZDO 202 defines "Pedestrian Pathway" as "A hard-surfaced or permeable hard-surfaced pedestrian facility adjacent to a public roadway where there is no curb, but is protected from vehicular traffic or set back behind a planting strip."

Bike Path: A bike lane constructed entirely separate from the roadway.

Cycle Track: An exclusive “grade-separated” bike facility elevated above the street level using a low-profile curb and a distinctive pavement material.

As defined, all of these facilities are associated with roadways. In this case, the planned linear park and regional trail are entirely separate from the roadway. This is consistent with the text of ZDO 1007.04(K)(1), which requires that bike facilities be “[i]ncluded in the reconstruction or new construction of any street...” Therefore, this provision is not relevant to the trail shown in the applicable plans.

b. As noted above, Comprehensive Plan Figure 5-1b indicates a bike lane on SE 142nd Avenue. There are no “other arterial or collector” roads on or abutting this site. Therefore, ZDO 1007.04(K)(2) is inapplicable.

c. The applicant is not proposing a school. Therefore, ZDO 1007.04(K)(3) is inapplicable.

78. ZDO 1007.04(L) provides “Trail dedications or easements shall be provided and developed as shown on Comprehensive Plan Map IX-1, *Open Space Network & Recreation Needs*; the Facilities Plan (Figure 4.3) in NCPRD’s Park and Recreation Master Plan; and Metro’s Regional Trails and Greenways Map.”

a. As noted above, NCPRD’s Park and Recreation Master Plan shows a north-south aligned “proposed linear park segment” on the west side of Sieben Creek on the site (Exhibit 16). Metro’s Regional Trails and Greenways Map shows a north-south aligned “planned regional trail” on the east side of Sieben Creek on the site (Exhibit 18). Comprehensive Plan Map 9-1⁵ shows an east-west aligned “proposed recreation trail” on or near the southern portion of the site (Exhibit 23). Map 9-1 does not include a north-south aligned trail in this area.

i. Comprehensive Plan Map 5-2a shows a “planned multi-use trail” through the site (Exhibit 19). However, this map is not relevant, because ZDO 1007.04(L) does not cite to that map.

b. However, the cited maps do not provide any clear and objective criteria for determining the alignment, design, and construction of these trails. The NCPRD plan includes a note stating “Asterisks indicating proposed parks and dots indicating proposed trails are intended to show a general location only. The actual location will be based on land availability, acquisition cost, and the owner’s willingness to sell.” As discussed above, the standards for a “Typical Multi-Use Path” in Comprehensive Plan Figure 5-3

⁵ Comprehensive Plan Map IX-1 cited in ZDO 1007.04(L) is actually labeled “Map 9-1” in the comprehensive plan.

are not clear and objective.⁶ This provision sets forth a broad range of standards, requiring an eight to 16-foot wide paved width, two to three foot shoulders, and three to four foot “optional soft shoulder,” within a 12 to 26-foot wide right-of-way. Given the lack of clear and objective standards for trails and the lack of a specific trail alignment, ORS 197.307 prohibits the County from requiring the applicant to dedicate right-of-way and construct a trail through this site.

c. However, the applicant agreed to an advisory condition that it work with NCPRD to find a suitable route for the future trail and dedicate said route on the final plat.

79. The site is not located in Sunnyside Village. Therefore, ZDO 1007.04(M) is inapplicable.

80. The site is not located in the Clackamas Regional Center. Therefore, ZDO 1007.04(N) is inapplicable.

1007.05 Transit Amenities

81. Transit Amenities are not warranted for this development as SE 142nd is not an existing or planned transit line. This criteria is not applicable.

1007.06 Street Trees

82. Street trees are required on all road frontages in a subdivision, except frontage on private roads or access drives. However, ZDO Sections 1007.06(A)(1)(3), and (5) are not applicable, because they include subjective standards prohibited by ORS 197.307(4). The applicant’s plan shows adequate landscape strips on all new public roads as well as SE 142nd Ave. These standards can be met and are detailed in the conditions of approval. Private Access drives serving Lots 29, 30, 33, and 34 do not require street trees.

83. The site is not located in the Clackamas Regional Center Area, the Business Park District, or Sunnyside Village. Therefore, the standards of ZDO 1007.06(B), (C), and (D) are inapplicable.

1007.07 Transportation Facilities Concurrency

84. The applicant is proposing a subdivision subject to these provisions pursuant to ZDO 1007.07(A).

85. The site is not located in any of the areas listed in ZDO 1007.07(B). Therefore, the exemptions provided by this provision are inapplicable.

86. ZDO Section 1007.07(B)-(G) require that roadways and intersections serving subdivisions have adequate capacity to handle the additional traffic generated by the development; that such facilities will continue to operate at acceptable volume to capacity

⁶ In addition, it could be argued that these standards are not relevant to this provision, because ZDO 1007.04(L) does not include any reference to Comprehensive Plan Figure 5-3.

(v/c) ratios during the mid-day one hour peak and first and second hours of the PM peak hours.

a. The applicant provided a Traffic Impact Study (TIS) by Lancaster Mobley, dated February 18, 2022 (See Exhibit 2), TIS Addendum #1, dated June 9, 2022 (Exhibit 10), and TIS Addendum #2, dated June 13, 2022 (Exhibit 11). These studies evaluated the intersections within the influence area of the proposed development, including the site entrance on SE 142nd Avenue, the SE 142nd/Highway 224 intersection, and the SE 142nd/SE Sunnyside Road intersection.

b. Based on the applicant's analyses, the proposed subdivision is projected to generate approximately 378 average daily vehicle trips (ADT), with approximately 27 trips in the AM peak hour, approximately 21 trips in the mid-day peak hour, and approximately 36 trips in the PM peak hour. The study concludes that all intersections serving the project site are operating acceptably and will continue to operate within the county volume to capacity ratios through the 2024 buildout year. There are no mitigation measures recommended for traffic impacts. Therefore, the county's concurrency requirements under ZDO Section 1007.07 as they relate to the transportation system are met by the applicant's proposal.

c. County transportation engineering staff and ODOT concurred with the County's analysis of submitted traffic impact study (Exhibits 12 and 13). This criteria is met.

1011 Open Space And Parks

1011.01 Area of Application

87. The southern and eastern portions of the site are identified as Open Space on Comprehensive Plan Map 4-6, *North Urban Area Land Use Plan Map*, "Resource Protection Open Space," and these areas include hillsides of more than 20 percent slope. Therefore, this development is subject to the provisions of this section pursuant to ZDO

88. The southern and eastern portions of the site include areas of "high priority open space," defined as "Land over 35 percent slope" (ZDO 1011.01(C)(1)(b)), "Bodies of water such as rivers, lakes, or lagoons" (ZDO 1011.01(C)(1)(2)), and "Wetlands" (ZDO 1011.01(C)(1)(f)). The southern and eastern portions of the site also include areas of "second-priority open space, Land greater than 20 percent slope and less than 35 percent slope" (ZDO 1011.01(C)(2)(a)). The remaining criteria in ZDO 1011.01(C) are inapplicable, as the listed features are not present or contain subjective criteria that are not applicable pursuant to ORS 197.307(4).

1011.02 Development Standards and Limitations

89. The hearings officer finds that the standards of 1011.02(A) are not clear and objective. Therefore, ZDO 197.307(4) prohibits the County from applying this provision.

90. Development within high priority open space is limited to a very small portion of lots 9 and 10, less than 500 square feet, and a small rip rap outfall pad. This development

complies with ZDO 1002.01(B) based on the findings above. Therefore, the development complies with ZDO 1011.02(B).

91. The standards of ZDO 1011.02(C) are not clear and objective. Therefore, ORS 197.307(4) prohibits the County from applying these provisions to this application for residential development.

92. The site is not located in a commercial or industrial zoning district. Therefore, ZDO 1011.02(D) is inapplicable.

93. The applicant proposed to convey ownership of Tract B, which includes all of the protected “open space” on the site, to a homeowners association. Therefore, the application complies with ZDO 1011.02(E)

1011.03 Conflict Resolution for Wetlands and Significant Natural Areas

91. The proposed development will not disturb any high-priority open space wetlands or significant natural areas. Therefore, this section is inapplicable.

1011.04 Park and Easement Dedications

92. If the applicant is able to reach an agreement with NCPRD regarding dedication of right-of-way for the planned trail the dedication and development of the trail shall comply with ZDO 1011.04. As conditioned, the application complies with ZDO 1011.04.

1011.05 Sunnyside Village Park Design Standard

93. The site is not located in Sunnyside Village. Therefore, this section is inapplicable.

1012 Lot Size And Density

1012.01 Applicability

94. The applicant is proposing a subdivision that is not located in the AG/F, EFU or TBR zoning district. Therefore, this application is subject to Section 1012.

1012.02 Minimum Lot Size Exceptions

95. The applicant did not request an exception to the minimum lot size requirements. Therefore, this section is inapplicable.

1012.03 Maximum Lot Size

96. The site is not located in the VR-5/7, VR-4/5, or VTH Districts. Therefore, this provision is inapplicable.

1012.04 General Density Provisions

97. Based on the zone change approval discussed above, the site is subject to the R-15 and R-8.5 zoning districts. The applicant proposed to develop the site as a PUD, which allows the applicant to vary from the minimum lot sizes in ZDO 315. The application complies with ZDO 1012.04(A) and (B).

98. The applicant proposed to remove all of the existing residences on the site. Therefore, ZDO 1012.04(C) is inapplicable.

99. The site is not currently developed with duplexes, triplexes, quadplexes, or multifamily dwellings. Therefore, ZDO 1012.04(D) is inapplicable.

100. The R-15 and R-8.5 zoning districts allow for new detached single-family dwellings. Therefore, ZDO 1012.04(E) is inapplicable.

1012.05 Maximum Density

101. The applicant prepared a detailed density calculation plan (Exhibit 6). Since the applicant proposes two zoning districts, R-8.5 and R-15, the following findings address density calculations for each separately, with the final maximum densities for each being added together for the total maximum density. The District Land Area (DLA) for the R-8.5 zone is 8,500 square feet and the DLA for the R-15 zone is 15,000 square feet.

- a. Gross Site Area (GSA) for the R-8.5 zone equals 379,500 square feet. GSA for the R-15 zone is 540,408 square feet. ZDO 1012.05(A)
- b. The proposed development includes 69,048 square feet of public road area, which exceeds 15 percent of the GSA. Therefore, pursuant to ZDO 1012.05(B)(1)(a), NR, deduction for new county, public, or private roads, is limited to 15 percent of the GSA, or 56,925 square feet. No deduction is allowed or proposed for the SE 142nd Avenue right-of-way. ZDO 1012.05(B)(1)(b).
- c. The site is not located in the HR or MRR zoning districts. Therefore, ZDO 1012.05(B)(2) applies. The R-8.5 portion of the site contains roughly 453 square feet of Highly Restricted Areas (HRA). The R-15 portion of the site contains roughly 240 square feet of HRA. These areas are subtracted from the GSA. ZDO 1012.05(B)(2).
- d. The site is not located in the HR or MRR zoning districts. Therefore, ZDO 1012.05(B)(3) applies. The R-8.5 portion of the site contains roughly 80,254 square feet of Moderately Restricted Areas (MRA). The R-15 portion of the site contains roughly 8,979 square feet of MRA. Fifty percent of these areas are deducted from the GSA. ZDO 1012.05(B)(3).
- e. The site is not located in the HR or MRR zoning districts. Therefore, ZDO 1012.05(B)(4)-(6) are inapplicable.
- f. Subtracting New Roads (NR), Highly Restricted Areas (HRA), and ½ the Moderately Restricted Areas (MRA) from the Gross Site Area (GSA) results in a Net Site Area (NSA) of 281,995 square feet for the R-8.5 zoned area of the site and 535,678.5 square feet for the R-15 zoned area of the site. ZDO 1012.05(B).
- g. Base Density (BD) is determined by dividing the NSA by the DLA (District Land Area). The BD for the R-8.5 zoned area of the site is $281,995/8,500 = 33.18$ lots,

the BD for the R-15 zoned area of the site is $535,678.5/15000 = 35.7$ lots, and the BD for the entire site is 68.88 lots. ZDO 1012.05(C).

h. The site is not located in the MRR District. Therefore, ZDO 1012.05(D) is inapplicable.

i. The applicant is not requesting bonus density pursuant to ZDO 1012.05(E) and this standard is inapplicable.

j. As required by ZDO 1012.05(F), 68.88 lots rounds up to 69 lots, which is the maximum density for the site, pursuant to ZDO 1012.05(G).

i. As discussed in the Staff Report, the applicant calculated density using the entire gross of the site (tax lots 600 and 800). The applicant's site plan notes that a tax lot 800 will have a "remainder" area. However, since the applicant used the entirety of tax lot 800 to calculate density, that "remainder" portion must remain undeveloped, and shall be designated an open space tract or be merged with Tract "B". This requirement is detailed in the conditions of approval.

102. The site is not zoned VA, VR-4/5, VR-5/7, VTH, or RA-1. Therefore, ZDO 1012.06 and .07 are inapplicable.

1012.08 Minimum Density

103. The site is located in the in the Urban Low Density Residential (R-8.5 and R-15) Zoning District, where a minimum density standard applies. Based on the applicant's calculations in Table 3 of Exhibit 2, the minimum density for the site is 23 lots.

Neighbor's objections to density

104. The proposed lot sizes and density are consistent the zoning of the site, as amended by the above zone change. The hearings officer understands residents' displeasure with the proposed development, but this development was foreseeable and is in the broader public's interest. The site and abutting properties are located within the city's Urban Growth Area ("UGA") boundary and are designated and zoned for urban development. As large lots are sold, presumably they will be developed to the maximum extent allowed in order to meet the County's density goals. "Livability" is protected through compliance with the adopted zoning and development approval criteria.

1013 Planned Unit Developments

1013.01 Applicability

105. ZDO 1013.01(A) allows subdivisions in the PUDs in residential zones, except FU-10. The site is zoned R-8.5 and R-15. Therefore, a PUD is allowed.

106. The applicant is proposing a subdivision in an Urban Low Density Residential zone on a parcel that is larger than one acre where at least ten percent of the parcel is designated Open Space on Comprehensive Plan Map IV-6, *North Urban Area Land Use*

Plan Map. Therefore, ZDO 1013.01(B) requires the applicant to develop the site as a PUD.

1013.02 Accessory Uses

107. There is an existing trail on the site, within proposed Tract “B” and the applicant may construct additional trails on the site. Trails are allowed as an accessory recreational use pursuant to ZDO 1013.02(A). No other uses or structures are proposed, other than future single-family development on the proposed lots. This criteria can be met.

1013.03 Dimensional and Development Standards

108. ZDO 1013.03(A) requires that “natural or unique features of the land and environment” be preserved “to the maximum extent feasible.” The County cannot require compliance with this subjective standard. However, the proposed development has proposed to protect the majority of the steep slopes, the streams, wetland, and other natural and unique features within proposed Tract B.

109. The site is not located in the RA-2, RR, RRFF-5, or FF-10 Districts. Therefore, ZDO 1013.03(B) is inapplicable.

110. The applicant proposed to preserve 417,114 square feet, or 45 percent of the gross site area, within proposed open space Tract B. The application complies with ZDO 1013.03(C)(1).

111. As noted above, the applicant proposed to retain the existing trail and potentially construct additional trails within Tract B. This is allowed, but not required, by ZDO 1013.03(C)(2).

112. No parking areas, driveways, or roads are proposed within the open space tracts. Therefore, the application complies with ZDO 1013.03(C)(3).

113. All proposed lots are located within 1,000 feet of Tract “B”. Therefore, the application complies with ZDO 1013.03(C)(4).

114. ZDO 1013.03(C)(5), which requires that “All lots or parcels within the PUD shall have reasonable access to at least one open space tract,” is not clear and objective, as the phrase “reasonable access” is not defined and subject to discretionary interpretation. Therefore, ORS 197.307(4) prohibits the County from applying this standard.

a. As noted in the Staff Report, the preliminary plat does not include pedestrian access to the open space tract. Therefore, an advisory condition is included that the applicant provide a minimum eight to ten-foot wide soft or hard surfaced trail, within a minimum 15-foot wide easement or flagpole, connecting the Open Space tract, and particularly, the existing trail in Tract “B”, to SE Iseli Lane.

115. This criterion is not clear and objective. However, the Open Space is large enough to protect natural features the limited recreational uses therein. The application complies with ZDO 1013.03(C)(6).

116. Conditions of approval will ensure that the open space restrictions shall continue in perpetuity unless the restrictions are modified as provided by the Code. As conditioned, the application complies with ZDO 1013.03(C)(7).

117. The hearings officer finds that ZDO 1013.03(D), which authorizes the County require parking for guests and residents' recreational vehicles is not clear and objective. Therefore, ORS 197.307(4) precludes the County from applying this provision.

118. The applicant proposed to create a homeowners association. As conditioned, the application complies with ZDO 1013.03(E).

1017 Solar Access For Land Divisions And Replats

1017.01 Applicability

119. The applicant is proposing a subdivision in the R-8.5 and R-15 zoning districts. This criteria applies.

1017.02 Definitions

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

1017.03 Design Standard

121. As proposed, 17 of the 40 lots have a minimum north-south dimension of at least 90 feet. 16 out of 40 lots have a front lot line that is oriented within 30 degrees of a true east-west axis (Lots 1 through 8, 16 through 18, 22, 23, and 36 through 40). Therefore, the application does not comply with ZDO 1017.03.

1017.04 Exceptions to the Design Standard

122. The hearings officer finds that the site has highly restricted areas, moderately restricted areas, designated open space identified in the Comprehensive Plan, and a protected water resource and associated vegetated corridor regulated by the surface water management authority. Therefore, an exception is allowed pursuant to ZDO 1017.04(A)(2) and the application complies with ZDO 1017.

ZDO SECTION 1100: DEVELOPMENT REVIEW PROCESS

1105 Subdivisions, Partitions, Replats, Condominium Plats & Vacations Of Recorded Plats

1105.01 Purpose and Applicability

123. The applicant is proposing a subdivision. Therefore, the application is subject to ZDO 1105.

1105.02 Submittal Requirements For Subdivisions, Partitions, And Replats

124. The applicant has provided the required submittal materials. This criterion is met.

1105.03 Approval Criteria for Subdivisions, Partitions, and Replats

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

126. The applicable standards pertaining to Section 1000 are outlined in the Conditions of Approval, while the applicable criteria are addressed in findings above. As conditioned the application complies with ZDO 1105.05(A).

127. The applicant did not propose a zero-lot-line development. ZDO 1105.05(B) is inapplicable.

128. The applicant did not propose a phased development. ZDO 1105.05(C) is inapplicable.

129. The applicant is required to create a homeowners association that will be responsible for ownership and maintenance of the common areas (Tracts A and B) on the site. As noted in the Staff Report, while the applicant calculated the subdivision's density using tax lot 600 and 800, the applicant's plan set show a remainder tract on tax lot 800. This area must be included on the final plat, and shall be dedicated open space, as it was included with the density calculation. A condition of approval is warranted requiring the entirety of tax lot 800 to remain in an Open Space tract, included in Tract "B". As conditioned the application complies with ZDO 1105.05(D).

130. This approval rezoned tax lot 600 site from FU-10 to R-8.5 and R/15. Therefore, the site is no longer a future urban area and ZDO 1105.05(E) is inapplicable.

1105.04 Additional Standards and Approval Criteria for Replats

131. The applicant is not proposing a replat. Therefore, this section is inapplicable.

1105.05 Condominium Plats

132. The applicant is not proposing a condominium plat. Therefore, this section is inapplicable.

1105.06 Approval Period And Time Extension

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

1105.07 Final Plat Review

134. The proposed lots are less than 80-acres. Therefore, a final plat is required. Through this land use permit decision, a preliminary plat is being approved, the standards for finalization of which through a final plat are outlined in the Conditions of Approval.

The HCAD Application.

ZDO 706 Habitat Conservation Area District (HCAD)

706.02 Area of Application

135. The site contains HCA and is located within Metropolitan Service District Boundary (MSDB) and the Portland Metropolitan Urban Growth Boundary (UGB). Therefore, this application is subject to the regulations for HCAD. ZDO 706.02(A).

136. The applicant is not disputing the location of the HCA. Therefore, ZDO 706.02(B) is inapplicable.

706.03 Definitions

137. The criteria, requirements, standards, and text of ZDO Section 706 are subject to the definitions outlined in Subsection 706.03.

706.04 Exempt Uses

138. As discussed in the subdivision findings above, the applicant may construct additional trails within the HCA. If those trails can meet the requirements of this section, an exemption is allowed. If they cannot, additional HCA Development Permits may be required. As conditioned the application complies with ZDO 706.04.

706.05 Prohibited Uses

139. The applicant has not proposed any prohibited uses. The application complies with ZDO 706.05.

706.06 Development Review Requirements

140. Development is proposed in both the HCA and HCAD. Therefore an HCA CMP is required. As conditioned the application complies with ZDO 706.06(A).

141. The CMP application is consolidated with the zone change and subdivision applications and subject to Type III review. The application complies with ZDO 706.06(A)(1).

142. The CMP application is being filed concurrently with applications referenced above and consolidated and reviewed with the other applications pursuant to the process outlined above. The application complies with ZDO 706.06(A)(2).

143. Development is proposed in an HCA on a parcel that is the subject of a land use application for a subdivision that would authorize new development. Therefore HCA Map Verification is required. ZDO 706.06(B)(1).

144. HCA Map Verification is required. Therefore, ZDO 706.06(B)(2) is inapplicable.

145. The HCA Map Verification application was submitted concurrently with the Zone Change and Subdivision applications, File No. Z0125-22 and Z0126-22. There is no

valid, previously approved HCA Map Verification for the subject property. The application complies with ZDO 706.06(B)(3).

146. The application for HCA Map Verification was filed with a Subdivision application that requires review as a Type III application and therefore, is being consolidated and reviewed with the other applications as a Type III application pursuant to Section 1307. The application complies with ZDO 706.06(B)(4).

147. Development is proposed in an HCA on a parcel that is the subject of a land use application for a subdivision. Therefore, an HCA Development Permit is required. ZDO 706.06(C)(1).

148. The HCA Development Permit application was filed concurrently with the application for a subdivision. The application complies with ZDO 706.06(C)(2).

149. The application for an HCA Development Permit is being filed with a Subdivision application (File No. Z0126-22-SL) that requires review as a Type III application and, therefore, is being consolidated and reviewed with the other applications as a Type III application pursuant to Section 1307. The application complies with ZDO 706.06(C)(3).

150. The HCA Development Permit is valid for four years from the date of this Final Order. If this Final Order is appealed, the approval period shall commence on the date of the final appellate decision. ZDO 706.06(D).

151. If necessary, a two-year time extension may be approved pursuant to Section 1310. ZDO 706.06(E).

152. The HCA Map Verification will remain valid for subsequent development on the lots or parcels created by the subdivision, provided a final subdivision plat is recorded with the County Clerk prior to the expiration of this approval. ZDO 06.06(F).

706.07 Submittal Requirements

153. The applicant has provided the necessary submittal materials for the proposed Construction Management Plan. ZDO 706.07(A) is met.

154. The applicant has provided the necessary submittal materials for the proposed HCA Map Verification, filed pursuant to Subsection 706.09(A)(1). ZDO 706.07(B) is met.

155. The applicant has provided the necessary submittal materials for the proposed HCA Development Permit, filed pursuant to Subsection 706.10(A)(4). ZDO 706.07(C) is met.

156. The applicant has provided the necessary submittal materials for the proposed HCA Development Permit, filed pursuant to Subsection 706.10(A)(4). ZDO 706.07(D) is met.

706.08 Construction Management Plans

157. The applicable standards of this Subsection are outlined in the Conditions of Approval. As conditioned ZDO 706.08 is met.

706.09 HCA Map Verification

158. The applicant concurs with the accuracy of the HCA Map of the site. A condition of approval is included, detailing the Specific Title 13 map that is being accepted as the HCA boundary. As conditioned ZDO 706.09(A)(1) is met.

159. The location of the HCA on the site was determined by considering information in ZDO 706.09(B). This standard is met.

160. The HCA Map is deemed to be accurate. ZDO 706.09(B).

706.10 Habitat Conservation Area Development Permits

161. The proposed stormwater outfall will require a disturbance area no greater than 10 feet wide. The application complies with ZDO 706.10(A)(2)(a).

162. There are no existing utility lines, this is a new development. ZDO 706.10(A)(2)(b) is inapplicable.

163. WES Buffers apply in this section of the County, not Water Quality Resource Areas set forth in Section 709. ZDO 706.10(A)(2)(c) is inapplicable.

164. The applicant is not proposing a partition. Therefore, ZDO 706.10(A)(3) is inapplicable.

165. Roughly 700 square feet of permanent and temporary disturbance is proposed in the HCA to accommodate the storm water outfall and associated piping. This constitutes roughly three percent of the total HCA. The proposed development will preserve more than 97 percent of the HCA in an open space tract. The application complies with ZDO 706.10(A)(4).

166. The site is not publicly owned. Therefore, ZDO 706.10(A)(5) is inapplicable.

167. The applicant has proposed development within the HCA, pursuant to Subsection 706.10(A). There are two options for mitigation: 706.10(A)(6)(a)(i) which requires tree replacement as shown on table 706-6, or, 706.10(A)(a)(ii) which sets forth a ratio of five trees and 25 shrubs for every 500 square feet of disturbance. The applicant notes that Option 1 will result in more plantings. As conditioned ZDO 706.10(A)(6) is met.

170. The applicant has indicated that all mitigation plantings will occur in the HCA. As conditioned ZDO 706.10(A)(7) is met.

E. DECISIONS

1. Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the hearings officer hereby approves File No. Z0125-22-ZC changing the zoning of the site from FU-10 to R-8.5 and R-15 as depicted on Sheet 14 (Exhibit 6) and orders the planning director to amend the zoning map accordingly.

2. Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, and on the above decision approving the zone change, the hearings officer hereby approves File No. Z0126-22-SL (Iseli Estates) for a 40-lot flexible lot size subdivision, subject to the following conditions of approval:

SUBDIVISION CONDITIONS OF APPROVAL

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

A) General Standards:

- i. The location, design, installation, and maintenance of all utility lines and facilities shall be carried consistent with the rules and regulations of the surface water management regulatory authority, which is Clackamas Water Environmental Services (WES)
- ii. Utilities for electricity, natural gas, and communications services shall be installed pursuant to the requirements of the utility district(s) or company(ies) serving the proposed subdivision. Except where otherwise prohibited by the utility district or company, all such facilities shall be installed underground.
- iii. Coordinated installation of necessary water, sanitary sewer, and surface water management and conveyance facilities is required.
- iv. Easements shall be provided along lot lines as deemed necessary by the County, special districts, and utility companies. Easements for special purpose uses shall be of a width deemed appropriate by the responsible agency.
- v. This approval is subject to and inextricably linked with planning File Numbers: Z0125-22-ZC, Z01267-22-HDA, Z0128-22-HMV, Z0129-22-CMP

B) Street Lights:

- i. Street lighting shall be installed pursuant to the requirements of Clackamas County Service District No. 5 and the electric company serving the development. A street light shall be installed where a

new road intersects a County road right-of-way and, in the case of subdivisions, at every intersection within the subdivision.

- ii. Areas outside Clackamas County Service District No. 5 shall annex to the district through petition to the district.
- iii. **Advisory:** The applicant shall contact Wendi Coryell of the County Engineering Division (503-742-4657) to make arrangements for any required street lighting. The applicant shall also arrange for the formation of an assessment area to pay for operation and maintenance of existing and/or new lighting.

C) Clackamas Water Environmental Services (WES): Surface Water and Sewer:

- i. The proposed development is located within the service area of Water Environment Services (WES) and shall be subject to WES Rules and Regulations, and Standards (“WES RR&S”), in accordance with the following adopted ordinances:
 - a) Water Environment Services Rules and Regulations, July 2018, Ordinance No. 03-2018
 - b) Sanitary Sewer Standards, Clackamas County Service District No. 1, July 1, 2013.
 - c) Stormwater Standards, Clackamas County Service District No. 1, July 1, 2013.
- ii. Upon land use approval, the applicant shall procure the necessary plan approvals and permits in accordance with WES RR&S for sanitary sewer services and surface water management, including erosion control requirements. Civil engineering plans shall be designed in conformance with WES RR&S, submitted land use conditions of approval. The Plan for any project shall be revised or supplemented at any time it is determined that the full requirements of the District Regulations have not been met. A civil engineer licensed by the State of Oregon must stamp and sign the sanitary sewer and stormwater management plans and reports.
- iii. All plans and reports submitted to WES for review and approval shall be stamped and signed by a civil engineer licensed by the State of Oregon. The project construction, specifications, and testing must be completed under the direction of the project engineer.
- iv. The applicant shall include the following materials with their final plan review submittal to WES:
 - a) Two (2) sets of complete civil construction plans for all sanitary and stormwater improvements.
 - b) Two (2) copies of the final storm report, including infiltration testing and downstream analysis.

- c) One (1) geotechnical report
 - d) One (1) Natural Resource Assessment
 - e) \$800 minimum sanitary and stormwater management plan review fees
 - f) Erosion control site plans, permit application, and applicable permit fees
- v. Prior to WES sign-off of the final plat, the following shall apply:
- a) The sanitary and storm systems shall be substantially complete, as determined by WES, including but not limited to WES review of asbuilts and system inspections, or the developer shall provide a performance surety for the incomplete portion of the infrastructure.
 - b) WES shall review the final plat for consistency with the approved sanitary and stormwater plans.
 - c) Plat shall contain dedications for all public sanitary and storm drainage easements.
 - d) Offsite easements shall be obtained and recorded by the applicant
 - e) WES shall review HOA covenants, CC&Rs, private easements, and agreements pertaining to sanitary and stormwater improvements.
 - f) Applicable fees and charges shall be paid to WES.
 - g) Maintenance agreements shall be reference in the plat notes.
- vi. Any requests to modify current WES Design Standards shall be made in accordance with Sanitary Standards, Section 1.7 or Stormwater Standards, Section 1.6.
- vii. A Surface Water, Storm Drainage and Sanitary Sewer Easement located on the property and granted to Clackamas County Service District No. 1 is permanent and not extinguishable. No development shall encumber use or access to this easement by WES. *(Section 5.3.2)*
- viii. The proposed development shall be subject to applicable fees and charges, in accordance with WES RR&S. All fees and charges shall be paid before plat approval/prior to issuance of building permits, and are subject to change without notice to the applicant. All costs associated with the design, construction and testing of the sanitary sewer and storm system shall be provided by and at the sole expense of the applicant.

SANITARY SEWER CONDITIONS:

- ix. In accordance with Sanitary Standards, Section 3.2, all residential dwelling units with sewer drains within the boundaries of the proposed development shall be connected to the Public Sanitary Sewer System as part of an approved public sanitary sewer extension plan.
- x. Prior to the commencement of construction of any Public Sanitary Sewer System, a Public Sanitary Sewer Extension Permit shall be issued by the District in accordance with these Standards. An Extension Permit is required to construct or reconstruct any Public Sanitary Sewer appurtenances which are owned by, or intended to be conveyed to, the District. All other sanitary sewer piping not intended to be conveyed to the District shall be permitted by the Local Plumbing Authority.
 - a) Section 4 of the WES RR&S establish minimum requirements for designing the District's Sanitary Sewer System. Any requests to modify current WES Design Standards shall be made in accordance with Sanitary Standards, Section 1.7.
 - b) The developer shall submit construction plans and specifications prepared by a professional Engineer to WES for review and approval, in accordance with Sanitary Standards, Section 4.3.
 - c) The developer shall be directly responsible for all administrative requirements including application for service, submittal of all required Plans, bonds and insurance, and payment of fees.
 - d) Upon completion of the construction of the public sanitary sewer main extension, in accordance with WES Sanitary Design Standards, WES will accept title thereto and thereafter shall be owned, operated, and maintained by WES. WES shall issue an acceptance letter specifying the date the
- xi. The public sanitary sewer system shall extend to the northern property line and be placed in an acceptable location and depth in order to provide continuity of service to upstream and adjacent properties, as determined by WES. Dead end lines shall terminate at a manhole.
- xii. An acceptable layout of sanitary sewer and stormwater mainlines, as determined by WES, shall be within the public right-of-way or a public easement granted to WES. Minimum easement width is 15-foot for a single line, or 20-foot for combined sanitary and storm lines. A slope of one horizontal to one vertical from the sanitary sewer invert to ground surface will be used to determine easement width set in five foot (5') increments, as determined by WES.

- xiii. The extension shall provide a minimum design slope of 2 percent for a dead-end section of mainline in order to meet self-cleaning standards, and 1 percent slope on downstream segments of the mainline. Minimum cover shall be 8-feet in roadways.
 - a) On May 26, 2022, WES approved the applicant's Design Modification Requests for minimum mainline slopes and cover, and service connection depths. As noted in the approval letter, the modification requests shall only be approved in areas that have topographical site constraints. All other areas of the subdivision shall be designed in accordance with the Standards.
- xiv. A separate and independent sanitary sewer service connection shall be provided for each lot or parcel of property being served. Service connections shall terminate with a clean out at the front edge of the Public Utility Easement (PUE) or the property line. Any service connection that crosses an adjacent lot shall require a private sanitary sewer easement to be shown on the plat (i.e. Lot 5).
- xv. If a building is below the available gravity sanitary sewer mainline, the owner or user shall install private pumping facilities in accordance with the local Plumbing Code. Flows from private pumped facilities shall enter the Public Sanitary Sewer Mainline by means of a gravity Service Connection with a clean out at the property line. District shall review and approve all pumped connections on a case-by-case basis at the District's sole discretion.

SURFACE WATER:

- xvi. In accordance with Section 5 of the WES Stormwater Standards, WES shall review, approve, and permit stormwater management plans for any development that creates or modifies 5,000 square feet or more of impervious surface area. The applicant shall submit a Surface Water Management Plan (SWM Plan) to WES for review and approval. The SWM Plan shall include drainage plans, drainage reports, and design flow calculations stamped and signed by a licensed civil engineer in accordance with WES RRS, submitted conditions of approval, and as directed by WES staff during the plan review process.
- xvii. The applicant's final SWM Plan shall include the following elements and supporting documentation:
 - a) Civil site plans for all required stormwater management improvements.
 - b) Design calculations that demonstrate conformance to WES performance standards:
 - 1) **Water Quality Standard:** Capture and treat the first 1-inch of storm runoff from a 24-hour storm

event using either vegetation (Appendix H) or a Basic Treatment proprietary device (Appendix F).

- 2) **Infiltration Standard:** Capture and retain the first ½ inch of runoff in a 24-hour period through an approved infiltration system.
 - 3) **Detention/Flow Control Standard:** Reduce the 2-year post-developed runoff rate to ½ of the 2-year pre-developed discharge rate.
- c) A drainage analysis of predevelopment and post-development conditions for all onsite permeable and impervious surface areas, all water entering the property from off-site, and all road frontage improvements.
 - d) BMP Sizing Tool Report
 - e) A conveyance system sized for a minimum 25-year design storm.
 - f) An infiltration testing report to verify the feasibility of proposed infiltration systems. Infiltration test results must correspond to the infiltration facility location and depth (see: Appendix E).
 - g) Identify an acceptable downstream point of discharge to convey stormwater runoff from the entire development boundary. The point of discharge shall follow the natural direction of flow to the local drainage and minimize the amount of new public storm infrastructure.
 - h) A Downstream Conveyance Analysis that extends a minimum of 1500' downstream or to the point where the development contributes less than 15 percent of the upstream drainage area, whichever is greater. The analysis shall be based on the entire drainage basin, including all future upstream development, and calculate the 25-year storm event for conveyance capacity requirements. Provide representative cross sections of the conveyance drainage, including the smallest area that represents the limiting factor.
 - i) Grading plans shall clearly identify an overflow pathway system and 100-year conveyance for all storm structures, by which the storm/surface water within the development will be controlled without causing damage or harm to the natural environment, or to property or persons in the event of any stormwater facility failure or bypass.
 - j) An Erosion Prevention and Sediment Control plan (see: WES SW Standards, Section 6).

- k) Water quality resource protection and vegetated buffers (see: WES SW Standards, Section 4).
 - l) An operations and maintenance plan for the approved stormwater management system.
- xviii. On May 26, 2022, WES approved the applicant's Design Modification Request to use the BMP Tool as an equivalent alternative to the required infiltration/retention standard. The following shall apply with the BMP Tool design submittal:
- a) All stormwater management facilities shall be designed with the continuous flow model of the Tool.
 - b) Conveyance structures shall be designed per WES stormwater standard criteria. Submit detailed onsite conveyance analysis and sizing calculations for all storm pipes meeting the minimum 25-year SBUH storm design method or 10-year Rational Method.
 - c) Provide a site plan that identifies the location of each stormwater facility and the boundaries of each Drainage Management Area (sub-basin). Each planter must be sized for its specific drainage basin and have its own flow control device. The engineer shall verify each Drainage Management Area aligns with the final grading plans.
 - d) The BMP Tool requires input of site specific soil types therefore provide an overlay of the soil classification map.
 - e) Provide individual plan view and cross section details for each proposed facility, including topo, spot elevations, detailed perf pipe, soil, rock, overflow, and flow control elevations.
- xix. The applicant's SWM Plan shall provide a design to mitigate the stormwater runoff from all onsite impervious surface areas, all permeable disturbed areas, all water entering the property from off-site, and all road improvements required by the local road authority.
- a) Existing stormwater runoff from off-site upstream basin areas shall be collected and routed as a separate bypass system or shall be mitigated onsite. No bypass flows shall pass through the stormwater facility and the unmitigated runoff shall rejoin the downstream drainage course. The stormwater bypass lines shall be sized based on peak flows for the 25-year, 24-hour storm event.
 - b) On a case by case basis and at the sole discretion of the District, the District may allow the applicant to manage and treat an equal off site area to compensate for runoff that

cannot be routed to the new stormwater facility due to topographic constraints.

- c) All runoff intercepted by the pond (both impervious and pervious areas) shall be included in the estimated runoff calculations.
- xx. Emergency overflow pathways shall be provided for the catch basins at south end of cul-de-sac, and north and south ends of SE Andre Way. Any offsite easements shall be obtained by the applicant prior to WES plan approval.
- xxi. The discharge pipe for the stormwater pond shall not be routed within 30 feet of the existing landslide, in accordance with the geotech report recommendation. The stormwater outfall shall be located as close to the bottom of the slope as possible, as determined by WES.
- xxii. Prior to WES plan approval, the geotech engineer shall sign off on the pond retaining wall design. The geotech's comments should specifically address the portion of the wall located outside the geotech's established setback line for the placement of structures on the site.
- xxiii. Storm service connection laterals shall be provided to convey the stormwater runoff and foundation drains for every proposed lot within the development.
- xxiv. The property owners shall be responsible to perpetually inspect and maintain all stormwater management systems, in accordance with WES Rules, Section 12.10. A plan to perpetually inspect and maintain all stormwater management systems shall be submitted to WES prior to SWM Plan approval. Any operations and maintenance plan shall be referenced in the Plat notes.
 - a) Private runoff only: The project engineer shall submit a Private Operations and Maintenance Plan that identifies the annual maintenance obligations and procedures of all stormwater facilities. The plan shall be submitted to WES prior to final plan approval.
 - b) Mix of public and private runoff managed on private property: Any facility that receives both public and private runoff shall be the maintenance responsibility of the adjacent property owners unless a public maintenance agreement is arranged between the property owners and WES. Facilities must be designed to public standards and meet public maintenance access standards.
 - c) It is recommended that the Developer/Owner sign a WES 'Declaration and Maintenance Agreement for On-Site Stormwater Facilities', by which WES shall maintain the

subdivision's stormwater system in exchange for a monthly fee of \$3 per lot. If the developer chooses not to use the maintenance agreement, then the homeowners will be responsible for storm system maintenance, and this responsibility must be documented and recorded as a deed restriction.

- xxv. For publicly maintained stormwater facilities, the following shall apply:
- a) A 'Declaration and Maintenance Agreement for On Site Stormwater Facilities', which describes the perpetual maintenance of the stormwater facilities, shall be submitted to WES prior to final plan approval. The agreement shall be recorded with the plat.
 - b) All publicly maintained stormwater systems must be designed and constructed to public standards.
 - c) All stormwater facilities shall comply with maintenance access standards for publicly maintained facilities, in accordance with Appendix I.
 - d) Centralized stormwater facilities shall be located within a Tract to the homeowners association. All other facilities shall be located within a public right-of-way, a tract, or a storm drainage easement (SDE) granted to WES, as determined by WES.
 - e) The HOA shall be solely responsible for maintenance and associated costs for the surrounding vegetation, fencing, and landscaping. These responsibilities shall be documented in the HOA CC&R's.
 - f) The developer shall maintain the stormwater facilities for a one-year warranty period; thereafter WES will be responsible for perpetual maintenance of the public stormwater facilities.

SURFACE WATER QUALITY

- xxvi. Per Stormwater Standards, Section 6.1, the owner or their agent, contractor, or employee shall properly install, operate, and maintain both temporary and permanent Erosion Protection and Sediment Control (EPSC) practices to protect the environment during the useful life of the project. No visible or measurable erosion shall leave the property during development, construction, grading, filling, excavating, clearing, or other activity that accelerates erosion, as required by water quality standards set forth in OAR 340-41-445 thru 470.

- xxvii. An EPSC Permit shall be required for development activities that result in land disturbance of 800 sq ft or greater. Before the start of any grading or construction activities, the applicant shall submit a Permit application and erosion control site plans to WES for review and approval and pay applicable permit fees (\$460 + \$80/acre over 1 acre).
- xxviii. EPSC site plans shall delineate the total area of disturbance and note the square footage. Site plans shall identify adequate EPSC techniques and methods as prescribed in the current WES Erosion Prevention Planning and Design Manual.
- xxix. A DEQ 1200-CN Construction Stormwater (Erosion Control) Permit shall be required for development activities that result in land disturbance of 1 acre to less than 5 acres. The applicant shall submit a WES EPSC Permit application and DEQ 1200-CN template style erosion control plans to WES for review and approval and pay applicable permit fees (\$460 + \$80/acre over 1 acre). Plans shall be consistent with the substantive requirements of DEQ's 1200-C permit site erosion prevention and sediment control plans.
- xxx. New development or land divisions adjacent to water quality sensitive areas shall preserve and maintain an undisturbed vegetated Buffer wide enough to protect the water quality functions of the sensitive area. The width of the undisturbed Buffer shall be as specified in Section 4, Table 4.1.
- xxxi. The applicant shall submit plans to WES that clearly show all water quality resource areas, as identified by a qualified wetland professional. All required buffers, any proposed encroachments into the buffer, and proposed mitigation areas shall be shown on the plans.
- xxxii. All encroachments into the water quality buffer require an approved Buffer Variance from WES, in accordance with *Section 4.4*. Any buffer variance requests and mitigation/restoration plans shall be submitted to Clackamas County Planning. WES shall require a review of final plans prior to any buffer variance approvals to verify that the variance will not conflict with the proposed storm and sanitary layout.

PLAT REVIEW

- xxxiii. The following statement shall be added to the Restrictions on the plat: "WATER ENVIRONMENT SERVICES (WES), ITS SUCCESSORS OR ASSIGNS IS HEREBY GRANTED THE RIGHT TO LAY DOWN, CONSTRUCT, RECONSTRUCT, REPLACE, OPERATE, INSPECT AND PERPETUALLY MAINTAIN SEWERS, WASTEWATER, STORM DRAINAGE OR SURFACE WATER PIPELINES, AND ALL RELATED

FACILITIES. NO PERMANENT STRUCTURE SHALL BE ERECTED UPON SAID EASEMENT WITHOUT THE WRITTEN CONSENT OF WES. GRANTORS AGREE TO UNDERTAKE NO ACTIVITY THAT WOULD HARM OR IMPAIR THE PROPER FUNCTIONING OF THE SANITARY AND STORM SEWER SYSTEM.”

xxxiv. The following statement shall be added to the Restrictions:

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

xxxv. The following easement designations and labels shall be used on the plat:

- a) WES – CLACKAMAS WATER ENVIRONMENT SERVICES
- b) SDE - STORM DRAINAGE EASEMENT GRANTED TO WES
- c) SSE - SANITARY SEWER EASEMENT GRANTED TO WES
- d) PSDE - PRIVATE STORM DRAINAGE EASEMENT
- e) PSSE - PRIVATE SANITARY SEWER EASEMENT

D) Sunrise Water Authority (SWA)

- i. Applicant shall comply with all public standards set forth by SWA.

E) Erosion Control

- i. Any disturbed areas in excess of 35-percent slope that are not covered with impervious surfaces shall be replanted.

2. Conditions for Roads & Connectivity:

A) Overview:

- i. The following items are project requirements from the Department of Transportation and Development’s Development Engineering Division. These conditions of approval are not intended to include every engineering requirement necessary for the successful completion of this project but are provided to illustrate to the applicant specific details regarding the required improvements that may prove helpful in determining the cost and scope of the project. These conditions are based upon the requirements detailed in the County’s Comprehensive Plan (Comp Plan), the County’s Zoning and Development Ordinance (ZDO) and the County’s Roadway

Standards. Additional requirements beyond those stated in the conditions of approval may be required once plans have been submitted and reviewed. The applicant may discuss the requirements of the project with staff at any time.

- ii. The requirements specifically required by the Comprehensive Plan and the ZDO cannot be modified by the Development Engineering Division. However, the requirements detailed in these conditions of approval, derived from the County Roadway Standards, are based upon nationally accepted standards and engineering judgment, and may be modified pursuant to Section 170 of the Roadway Standards. The applicant is required to provide sufficient justification to staff in the request. Staff shall determine if a modification is warranted.

B) Development Engineering Conditions:

- i. **Prior to final plat approval:** a Development Permit is required from the Engineering Division for review and approval of frontage improvements, access, and utilities. The Permit shall be obtained prior to commencement of site work and recording of the partition plat. To obtain the permit, the applicant shall submit construction plans prepared and stamped by an Engineer registered in the State of Oregon, or plans acceptable to the Engineering Division, provide a performance guarantee equal to 125 percent of the estimated cost of the construction, and pay a plan review and inspection fee. The fee will be calculated as a percentage of the construction costs if it exceeds the minimum permit fee. The minimum fee and the percentage will be determined by the current fee structure at the time of the Development Permit application.
- ii. **Prior to final plat approval:** all required improvements shall be constructed and inspected, or financially guaranteed in the form of a performance bond. Performance bonds shall be in the amount of 125 percent of the approved engineer's cost estimate of the required improvements and shall be accepted only when access has met minimum Substantial Completion requirements, per Roadway Standards Section 190.
- iii. All required street, street frontage and related improvements shall comply with the standards and requirements of the Clackamas County Zoning and Development Ordinance and the Clackamas County Roadway Standards unless otherwise noted herein.
- iv. The applicant shall dedicate 5 feet of additional right-of-way and verify that there is a minimum 35-foot wide one half right-of-way width along the entire site frontage on the west side of SE 142nd Avenue. The portion of Tax Lot 22E11A 00600 that extend to the east side of SE 142nd Avenue shall be dedicated as public right-of-way. The right-of-way centerline and half-width shall be verified

by a professional survey to the satisfaction of DTD Engineering and Survey Departments.

- v. The applicant shall grant an 8-foot wide public easement for signs, slope, and public utilities along the entire SE 142nd Avenue right-of-way frontage and on both sides of the new public streets within the plat.
- vi. A note shall be placed on the plat indicating an access restriction along the SE 142nd Avenue frontage of Lots 1, 29, 30, 33, 34 and 40.
- vii. Prior to final plat approval, the applicant shall design and construct improvements along the entire site frontage of SE 142nd Avenue to arterial roadway standards, consistent with Standard Drawing C140. The full half street improvement shall extend to the north and south project boundary. These improvements shall consist of the following:
 - a) Up to a minimum 20-foot wide one half street improvement shall be constructed along the entire site frontage of SE 142nd Avenue. The structural section shall comply with Standard Drawing C100 for an arterial roadway.
 - b) The half street improvement design shall include cross sections every 25 feet per Roadway Standards Section 250.7.5. The design shall demonstrate that the new curb line and cross slope to the existing centerline allow for construction of a curb on the opposite side of the road with cross slopes that meet minimum standards.
 - c) The intersection of SE Iseli Lane with SE 142nd Avenue shall be constructed opposite SE Wenzel Drive. The intersection shall be constructed at a 90 degree angle, per Section 250.8.2 and 250.8.4 of the Roadway Standards. A minimum 50-foot long landing shall be constructed with an average grade of no more than 5 percent, per Roadway Standards Section 257.3.
 - d) Minimum intersection sight distance of 400 feet shall be provided and verified based on a design speed of 40 MPH
 - e) Tapers shall be provided beyond the site frontage to the north and south on SE 142nd Avenue, per Section 250.6.4 of the Clackamas County Roadway Standards.
 - f) Standard curb, or curb and gutter if curblin slope is less than one percent. A minimum 20-foot curb radius shall be provided at the intersection of SE Iseli Lane and SE 142nd Avenue, per Roadway Standards Section 250.8.1

- g) A 5-foot wide unobstructed sidewalk, constructed per Standard Drawing S960.
 - h) A minimum 5-foot wide landscape strip shall be provided between the sidewalk and curb. Street trees and groundcover shall be provided within the landscape strip along the entire site frontage.
 - i) Dual concrete curb ramps shall be constructed at the SE Iseli Lane and SE 142nd Avenue intersection, per Oregon Standard Drawings, Series RD900.
 - j) A concrete curb ramps shall be constructed at the north and south ends of the sidewalk on SE 142nd Avenue, constructed per Oregon Standard Drawings, Series RD900.
 - k) Provide a street name sign and stop sign at the intersection of the SE Iseli Lane with SE 142nd Avenue. The stop sign shall be 30 inches in diameter and be placed 7 feet from the ground line.
 - l) Drainage facilities in conformance with Water Environment Services requirements and *Clackamas County Roadway Standards* Chapter 4.
 - m) The applicant shall reduce the length SE Iseli Lane west of SE Andre Way or obtain county approval of a variance to the 200-foot length standard for “closed-end streets” in ZDO 1007.01(C)(2).
- viii. **Prior to final plat approval**, the applicant shall design and construct improvements for the proposed internal public streets to local roadway standards, consistent with Standard Drawing C110. These improvements shall consist of the following:
- a) A minimum 54 foot wide public right-of-way shall be dedicated. The right-of-way centerline and half-width shall be verified by a professional survey to the satisfaction of DTD Engineering and Survey Departments. Centerline monuments shall be provided per Roadway Standards Section 150.3.
 - b) A minimum paved width of 32 feet, curb to curb, with a structural section per Standard Drawing C100 for a local roadway.
 - c) Standard curb, or curb and gutter if curblin slope is less than one percent, constructed per Standard Drawing S100/S150
 - d) A 5-foot wide unobstructed sidewalk, constructed per Standard Drawing S960.

- e) A minimum 5-foot wide landscape strip shall be provided between the sidewalk and curb. Street trees shall be provided within the landscape strip along the entire site frontage at 25-40-foot spacing, based on tree species.
 - f) Concrete driveway approaches shall be constructed for each lot, per Standard Drawing D650.
 - g) Dual concrete curb ramps shall be constructed at all quadrants of the SE Iseli Lane and SE Andre Way intersection, per Oregon Standard Drawings, Series RD900.
 - h) The cul-de-sac on SE Iseli Lane shall be constructed per Standard Drawing C300.
 - i) Concrete curb ramps shall be constructed at the north and south ends of the sidewalk on SE Andre Way, constructed per Oregon Standard Drawings, Series RD900.
 - j) The north and south street stubs on SE Andre Way shall be constructed up to the project boundary, but no less than 2 feet from the project boundary without a construction easement.
 - k) A temporary turnaround shall be constructed at or near the southern terminus of SE Andre Way, Per Standard Drawing C200. The turnaround may be abandoned and easement automatically vacated upon extension of the street.
 - l) A street name sign shall be provided at the intersection of SE Iseli Lane and SE Andre Way.
 - m) Drainage facilities in conformance with Water Environment Services requirements and *Clackamas County Roadway Standards* Chapter 4.
- ix. The applicant shall design and construct improvements for the shared access drives serving Lots 29, 30, 33 and 34, which will consist of:
- a) 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. A minimum 20-foot wide reciprocal and perpetual common access and utility easement shall be provided from SE Andre Way.
 - b) Where serving 1-3 lots, a minimum 12-foot wide, paved driving surface with 2-foot wide gravel shoulders on both sides of the roadway shall be constructed. V The minimum structural section for the new private road improvements

shall comply with Clackamas County Roadway Standards Drawing R100.

- c) A minimum 20-foot wide concrete driveway approach, consistent with Standard Drawing D650 shall be provided at the intersection of the private road with the SE Andre Way.
 - d) Drainage facilities in compliance with Water Environment Services Rules and Clackamas County Roadway Standards Chapter 4.
 - e) Written verification must be received from the Fire District that adequate emergency service access is provided.
 - f) Roadways with a paved width less than 26 feet shall be signed and/or striped "FIRE LANE NO PARKING." Installation of signs and/or striping shall be completed before recording the plat. The developer is responsible for replacing all signs damaged or removed during home and street construction.
 - g) A road maintenance agreement for the shared private road implementing ORS 105.170 - 105.185 shall be recorded with the plat.
 - h) Prior to final plat, the applicant shall demonstrate compliance with the sight distance and clear zone standards of ZDO 1007.02(D) at the intersection of the proposed accesses and SE Andre Way.
- x. The access to Tract A shall be constructed per Standard Drawing R100 to a minimum width of 12 feet.
 - xi. Primary Inspector:
 - a) The applicant shall enter into a Developer/Engineer Agreement for primary inspection services per Section 180 of the Roadway Standards. This form will be provided to the applicant and shall be signed and returned to County Plans Reviewer.
 - b) **Prior to final plat approval**, 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 manufacturer's specifications.
 - xii. A Fire Access and water supply plan shall be provided for subdivisions, commercial buildings over 1000 square feet in size or when required by Clackamas Fire District #1. The plan shall show fire apparatus access, fire lanes, fire hydrants, fire lines, available fire flow, fdc location if applicable, building square footage and type of construction. The applicant shall provide fire flow tests per

NFPA 291 and shall be no older than 12 months. Work to be completed by experienced and responsible persons and coordinated with the local water authority.

- xiii. Following completion of site construction activities of subdivisions, buildings over 1000 square feet or when required by Clackamas Fire District #1, the applicant shall provide as-built Fire Access and Water Supply pdf plans to the local Fire District and the County. The pdf plans shall show fire apparatus access, fire lanes, fire hydrants, fire lines, available fire flow, fdc location if applicable, building square footage and type of construction. The plans shall include any supporting details of the access, circulation, water vaults, fire lines, valves, fdc, backflow devices, etc.
- xiv. The applicant's attorney and/or surveyor or engineer shall provide written verification that all proposed lots have legal access and utility easements as required prior to recording of the plat.
- xv. 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.
- xvi. All existing and proposed easements shall be shown on the final plat.

3. Conditions for Density

- A) Density Summary
 - i. Maximum density for the proposed subdivision equals 69
 - ii. Minimum density for the proposed subdivision equals 23

4. Conditions for Land Divisions

- A) General Conditions:
 - i. Approval of this land use permit is based on the submitted written narrative and plan(s) submitted March 16, 2022, and Resubmitted April 11, 2022. No work shall occur under this permit beyond that specified within these documents. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of approval described herein.
 - ii. **Advisory Condition:** Applicant shall comply with Chapter 7.05 of the County Code for road naming and addressing requirements. Applicant can contact Roman Sierra in the Planning Division for obtaining street addresses: RSIERRA@clackamas.us
 - iii. The service of a certified surveyor and/or engineer is required to satisfy these conditions. The County recommends you obtain a project manager to assist in obtaining the necessary permits to implement this project.

- iv. **Advisory Condition:** The applicant is advised to take part in a Post Land Use Transition meeting. County staff would like to offer you an opportunity to meet and discuss this decision and the conditions of approval necessary to finalize the project. The purpose of the meeting is to ensure you understand all the conditions and to identify other permits necessary to complete the project.
 - v. **Prior to Final Plat Approval:** provide evidence that any wells in the tract subject to temporary or permanent abandonment under Oregon Revised Statutes (ORS) 537.665 have been properly abandoned
- B) **General Approval Criteria:**
- vi. The proposed subdivision — including all, parcels, lots, tracts, easements, future structures, etc., potentially contained therein — shall comply with all applicable provisions of the R-8.5 Zoning District, as outlined in Section 315 of this Ordinance.
 - a) **Advisory:** Planned Unit Developments may be subject to modified dimensional and development standards where indicated in ZDO Sec. 315.
 - vii. This subdivision will be developed and platted as a Planned Unit Development (PUD) pursuant to Section 1013 of the ZDO. Therefore; the following requirements shall be satisfied consistent with Section 1013 of the ZDO:
 - a) Existing recreational trails are permitted.
 - b) **Advisory:** Any additional accessory uses set forth in 1013.02 may require further land use action and environmental review depending on the amount of disturbance to Tract “B”.
 - c) **Advisory:** The applicant may dedicate trail easements to North Clackamas Parks and Recreation District. Dedication and development of the trail shall comply with ZDO 1011.04.
 - d) **Advisory:** Recommend constructing a minimum 8’-10’-wide soft or hard surfaced trail, within a minimum 15’ wide easement or flagpole, connecting the SE Iseli Lane with Tract “B”.
 - viii. The proposed subdivision shall comply with the applicable provisions of Section 1000 of this Ordinance, *Development Standards*, as outlined above.
 - ix. Any development on steep slopes shall follow recommendations of the geotechnical report prepared by GeoPacific and dated March 9, 2022.

- x. 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.
 - f) The “remainder of tax lot 800” as shown on the applicant’s site shall be platted as an Open Space Tract or added to Tract “B”.
- xi. 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*.
- xii. 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.

HCAD CONDITIONS OF APPROVAL

1. General Conditions:

- A) Approval of these land use permits is based on the submitted written narrative and plans submitted up through March 16, 2022. No work shall occur under these permits beyond that specified in this decision. It shall be the responsibility of the property owner(s) to comply with this document and the limitation of approval described herein.
- B) Advisory: The applicant shall obtain all necessary permits from the Oregon Department of State Lands (DSL), if necessary.
- C) ADVISORY: Water Environment Services (WES) Buffer Variance is required for encroachment into the WES Title 3 Water Quality Buffers.
 - i. The WES Buffer Variance shall be submitted separately to, and processed by, the Planning & Zoning Division.
 - ii. Preliminary construction plan review by WES shall be required prior to approval of the Buffer Variance.

- D) The proposed development is also subject to the Findings and Conditions of File No. Z0125-22-ZC, and Z0126-22-SL.

2. Construction Management Plan Conditions:

- A) Pursuant to Subsection 706.08, the proposed Construction Management Plan (CMP) shall meet the following standards:
 - i. The CMP shall be implemented as outlined on the Construction Management Plan, Grading and Erosion Control Plan, of the submitted HCA Development / Construction Management Permit Plans, prepared by AKS Engineering (Exhibit HCA-6)
 - ii. Erosion prevention and sediment control (EPSC) measures shall be required and shall comply with the standards of WES.
 - iii. Orange construction fencing (i.e. safety fencing, snow fencing, or a comparable product) shall be installed in such a manner as to protect the area of the HCA and other sensitive areas that are not authorized for disturbance.
 - iv. Trees in the HCA shall not be used as anchors for stabilizing construction equipment.
 - v. Native soils disturbed during development shall be conserved on the subject property.
 - vi. Development shall not commence until the EPSC measures and fencing required pursuant to Subsections 706.08(A) and (B) are in place.
 - vii. Compliance with the Construction Management Plan shall be maintained until the development, including home construction on the individual lots, is complete.

3. Map Verification Conditions:

- A) Approval Period: The approval of this HCA Map Verification shall be valid for four (4) years from the date of the final written decision. If the County's final written decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four-year period, the approval shall be implemented, or the approval will become void.
 - i. "Implemented" has the meaning set forth in Subsection 706.06(D)(1) and (2).
 - ii. If this approved HCA Map Verification is not implemented within the initial approval period established by Subsection 706.06(D), a

two-year time extension may be approved pursuant to Section 1310.

iii. This HCA Map Verification, if valid on the date when the final plat for the subdivision (File No. Z0126-22-SL) records with the County Clerk, shall remain valid for subsequent development on the lots created by the subdivision (Z0126-22-SL).

B) Pursuant to Subsection 706.09(A), the HCA Boundary is established as mapped on the Metro Nature in Neighborhoods Title 13 Map for T2S R2E Section 11 (Exhibit HCA-3).

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

A) Development that is approved within the HCA through this decision shall not result in the removal of the developed areas from the HCA and shall not change the applicable HCA categories.

B) Approval Period: The approval of this HCA Development Permit shall be valid for four (4) years from the date of the final written decision. If the County's final written decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four-year period, the approval shall be implemented, or the approval will become void.

i. In this case, "implemented" means that the final plat of the subdivision (File No. Z0126-22-SL) shall be recorded with the County Clerk.

ii. If this approved HCA Development Permit is not implemented within the initial approval period established by Subsection 706.06(D), a two-year time extension may be approved pursuant to Section 1310.

C) Standards for Partitions & Subdivisions:

i. Pursuant to Subsection 706.10(A)(4), 97 percent of the HCA shall be placed within a tract and shall be protected from development by a restrictive covenant, conservation easement, or public dedication.

a) The tract may be subject to an easement conveying storm and surface water management rights to WES, the applicable surface water management authority.

b) The tract shall be designated on the final plat as either:

1. A private natural area owned by a homeowners association or a private non-profit with the mission of land conservation; or

2. A public natural area where the tract has been dedicated to a public entity.
 - ii. Mitigation for the remaining area of the HCA that is located outside of the tract shall be required as outlined below.
- D) Mitigation Standards: Mitigation for the development within the HCA shall be as outlined on the Mitigation Plan, as noted in the applicant's submittal package for this HCA Development Permit (Exhibit HCA-6).
- i. Mitigation outside the wetland is subject to the following standards:
 - a) **Required Plants and Plant Densities:** All trees, shrubs and ground cover shall be native vegetation. An applicant shall comply with Subsection 706.10(A)(6)(a)(i) or (ii), whichever results in more tree plantings, except that where the disturbance area is one acre or more, the applicant shall comply with Subsection 706.10(A)(6)(a)(ii).
 1. The mitigation requirement shall be calculated based on the number and size of trees that are removed from the site. Trees that are removed from the site shall be replaced as shown in Table 706-6. Conifers shall be replaced with conifers. Bare ground shall be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs; or
 2. The mitigation requirement shall be calculated based on the size of the disturbance area within the HCA. Native trees and shrubs shall be planted at a rate of five trees and 25 shrubs per every 500 square feet of disturbance area (calculated by dividing the number of square feet of disturbance area by 500, and then multiplying that result times five trees and 25 shrubs, and rounding all fractions to the nearest whole number of trees and shrubs; for example, if there will be 330 square feet of disturbance area, then 330 divided by 500 equals 0.66, and 0.66 times five equals 3.3, so three trees shall be planted, and 0.66 times 25 equals 16.5, so 17 shrubs shall be planted). Bare ground shall be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.
 - b) **Plant Size:** Replacement trees shall be at least one-half inch in caliper, measured at six inches above the ground

level for field grown trees or above the soil line for container grown trees (the one-half inch minimum size may be an average caliper measure, recognizing that trees are not uniformly round), unless they are oak or madrone which may be one-gallon size. Shrubs shall be in at least a one-gallon container or the equivalent in ball and burlap and shall be at least 12 inches in height.

- c) **Plant Spacing:** Trees shall be planted between eight and 12 feet on center, and shrubs shall be planted between four and five feet on center, or clustered in single species groups of no more than four plants, with each cluster planted between eight and 10 feet on center. When planting near existing trees, the drip line of the existing tree shall be the starting point for plant spacing measurements.
- d) **Plant Diversity:** Shrubs shall consist of at least two different species. If 10 trees or more are planted, then no more than 50 percent of the trees may be of the same genus.
- e) **Invasive Vegetation.** Invasive non-native or noxious vegetation shall be removed within the mitigation area prior to planting and shall be removed or controlled for five years following the date that the mitigation planting is completed.
- f) **Mulching:** Mulch shall be applied around new plantings at a minimum of three inches in depth and 18 inches in diameter.
- g) **Tree and Shrub Survival:** Trees and shrubs that die shall be replaced in kind to the extent necessary to ensure that a minimum of 80 percent of the trees initially required and 80 percent of the shrubs initially required shall remain alive on the fifth anniversary of the date that the mitigation planting is completed.
- h) **Monitoring and Reporting:** Monitoring of the mitigation site shall be the ongoing responsibility of the property owner. For a period of five years following the date that the mitigation planting is completed, the property owner shall submit an annual report to the Planning Director documenting the survival of the trees and shrubs on the mitigation site. In lieu of complying with the monitoring and reporting requirement, the property owner may post with the County a performance bond, or other surety acceptable to the County, in an amount sufficient to cover costs of plant material and labor associated with site preparation, planting, and maintenance. An applicant who elects to post a surety shall be subject to Subsections 1104.03 through 1104.05.

- ii. All vegetation shall be planted on the subject property, either within the HCA or in an area contiguous to the HCA, provided, however, that if the vegetation is planted in an area contiguous to the HCA, such area shall be protected from development by a restrictive covenant, conservation easement, or public dedication; or

DATED this 3rd day of August 2022.

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

ENDANGERED SPECIES ACT NOTICE

The approval of the application granted by this final order concerns only the applicable criteria for this decision under the Clackamas County Zoning and Development Ordinance. This final order does not address whether the activities allowed herein will or will not conflict or comply with the provisions of the federal Endangered Species Act (the “ESA”). This final order should not be construed to or represented to authorize any activity that will conflict with or violate the ESA. It is the responsibility of the applicant, in coordination with federal agencies responsible for the administration and enforcement of the ESA, to ensure that the activities approved herein also are designed, constructed, operated, and maintained in a manner that complies with the ESA.

APPEAL RIGHTS

ZDO 1304.01 provides that the Land Use Hearings Officer’s decision is the County’s final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules adopted by LUBA describe when and how an appeal must be filed. Presently, ORS 197.830(8) 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.” ZDO 1304.02 provides that this decision will be “final” for purposes of a LUBA appeal as of the date of mailing (which date appears on the last page herein).