

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

Regarding an Application for a 15-Lot	)	<b>Case File Nos.</b>
Planned Unit Development Subdivision in	)	<b>Z0001-20-SL, Z0523-19-HAD,</b>
A Habitat Conservation Area.	)	<b>Z0524-19-CMP &amp;</b>
	)	<b>Z0525-19-HMV</b>
	)	<b>(Ruscliff Estates)</b>

**A. SUMMARY**

1. The applicant and owner is Paragon Development LLC.
2. The subject property is located on the east side of Southeast Ruscliff Road, immediately north of Alder Creek Middle School. The legal description is T2S, R2E, Section 05CB, Tax Lot 600, W.M. The subject property is approximately 5.05 acres and is zoned Urban Low Density Residential – R-10.
3. On July 30, 2020 the Hearings Officer conducted a public hearing to receive testimony and evidence about the application.

**B. HEARING AND RECORD HIGHLIGHTS**

1. The Hearings Officer received testimony at the public hearing about this application on July 30, 2020. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. The public hearing was conducted virtually on the Zoom platform due to the corona virus. At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias, or conflicts of interest. The Hearings Officer stated that the only relevant criteria were those identified in the staff report, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.
2. At the hearing, county planners Ben Blessing and Steve Hanschka discussed the staff report and recommended approval of the application.
3. The applicant’s agent, Kellie Grover, argued in favor of the application.
4. Ray Clifford asked questions about the application.

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

### **C. FACTS**

The subject property is an approximately 5.05-acre parcel zoned R-10 located on the east side of Southeast Ruscliff Road, immediately north of Alder Creek Middle School. The property is located just north of Alder Creek Middle School and is the previous site of the North Clackamas School District bus parking lot. The property is a long narrow strip running east to west. The northeast corner of the lot borders State Highway 224. The site is mostly flat, with a small intermittent creek, Alder Creek, that daylight in the western half of the property before flowing off the property north and west before dumping in Kellogg Creek. The applicant proposes a 15-lot planned unit development (PUD) subdivision. There would be two lots along the western edge of the property where a private road would provide access. There would be 13 lots on the eastern portion of the property, and open space tracts would provide for existing wetlands and a stormwater detention facility. Due to the presence of Alder Creek on the property, the applicant is also required to satisfy Habitat Conservation Area requirements.

### **D. DISCUSSION**

The two staff reports thoroughly analyze the applicable approval criteria and explain why the approval criteria are satisfied. The findings in the staff reports were not challenged. Therefore, it would be a waste of the County's money and resources to review and repeat all of the findings in the staff reports. I have reviewed the findings in the staff reports, and I agree with those findings. I therefore adopt and incorporate the findings in the staff reports in this decision, except as discussed further.

Ray Clifford, who lives downstream on Alder Creek had questions about the potential impact of increased impervious surfaces on downstream flows of Alder Creek. The applicant's representative explained that because downstream areas have limited capacity, the applicant is required not only to make sure stormwater impacts are not increased, but must make improvements that will actually improve the current situation. The appropriate agency submitted a letter of feasibility stating that the proposal can meet

all of the required stormwater requirements. I agree with the applicant and the staff report that the stormwater requirements can be satisfied with the proposed conditions of approval. I understand Mr. Clifford to be satisfied with the explanations given by the applicant and staff. The stormwater requirements are satisfied.

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

#### **E. DECISION**

Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the Hearings Officer hereby **APPROVES** applications Z0001-20-SL, Z0523-19-HAD, Z0524-19-CMP & Z0525-19-HMV, with the following conditions of approval.

#### **F. CONDITIONS OF APPROVAL**

##### **SUBDIVISION CONDITIONS OF APPROVAL**

1. Conditions for Protection of Natural Features
  - A) Trees & Wooded Areas:
    - i. Site planning and design techniques which address incorporation of trees and wooded areas in the development plan shall be implemented. Where mature trees do not need to be removed for the development, mature trees shall be preserved.
    - ii. Trees and wooded areas to be retained shall be protected during site preparation and construction as follows:
      - a) Avoiding disturbance of the roots by grading and filling activity;
      - b) Providing for water and air filtration to the roots of trees which will be covered with impermeable surfaces;
      - c) Pruning or topping of trees which will be in parking areas or near buildings, as necessary, to maintain proper balance between top growth and roots, reduce windfall potential, and provide adequate vision clearances for safe vehicular circulation; and
      - d) Requiring, if necessary, the advisory expertise of a qualified consulting arborist or horticulturist both during and after site preparation, and a special maintenance/management program to provide protection of specified wooded areas or specimen trees, as recommended by the arborist or horticulturist.

2. Conditions for Utilities, Street Lights, Water Supply, Sewage Disposal, Surface Water Management & Erosion Control
  - A) General Standards:
    - i. The location, design, installation, and maintenance of all utility lines and facilities shall be carried consistent with the rules and regulations of the surface water management regulatory authority, which is 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 and PUD. Except where otherwise prohibited by the utility district or company, all such facilities shall be installed underground.
    - iii. Coordinated installation of necessary water, sanitary sewer, and surface water management and conveyance facilities is required.
    - iv. Easements shall be provided along lot lines as deemed necessary by the County, special districts, and utility companies. Easements for special purpose uses shall be of a width deemed appropriate by the responsible agency.
  - B) Street Lights:
    - i. Street lighting shall be installed pursuant to the requirements of Clackamas County Service District No. 5 and the electric company serving the development. A street light shall be installed where a new road intersects a County road right-of-way and, in the case of subdivisions, at every intersection within the subdivision.
    - ii. Areas outside Clackamas County Service District No. 5 shall annex to the district through petition to the district.
    - iii. The applicant shall contact Wendi Coryell of the County Engineering Division (503-742-4657) to make arrangements for any required street lighting. The applicant shall also arrange for the formation of an assessment area to pay for operation and maintenance of existing and/or new lighting.
  - C) Water Supply:
    - i. Standards for Provision of Water Supply by Public or Community Water Service:
      - a) Water service facilities shall be installed, and easements shall be granted pursuant to the requirements of Clackamas River Water District (CRWD), as follows:

- 1) All conditions required by the district and set forth in the letter dated June 9, 2020 and identified as Exhibit 4
- ii. The applicant shall submit stamped and approved plans or written verification from the Clackamas Fire District No. 1 Fire Marshal indicating that the Fire District's access and fire flow standards have been, or will be met.
- iii. Prior to final approval of the proposed Subdivision and PUD, the applicant shall provide evidence that any wells in the tract subject to temporary or permanent abandonment under Oregon Revised Statutes (ORS) 537.665 have been properly abandoned.
- iv. Standards inside the Portland Metropolitan Urban Growth Boundary (UGB), Government Camp, Rhododendron, Wemme/Welches, Wildwood/Timberline, and Zigzag Village:
  - a) The proposed Subdivision and PUD shall be served by a public water system in compliance with drinking water standards as determined by the Oregon Health Authority.
  - b) The proposed Subdivision and PUD located within the boundaries of the CRWD water service system shall receive service from this system.
  - c) The proposed new public water system shall be formed pursuant to ORS Chapters 264, 450, or 451.
- D) WATER ENVIRONMENTAL SERVICES (WES) – Sanitary Sewer, Storm Water, Erosion Control, and Sensitive Area Conditions-From comments date July 22, 2020:
  - i. The proposed development is located within the service area of Water Environment Services (WES) and shall be subject to WES Rules and Regulations, and Standards ("WES RR&S"), in accordance with the following adopted ordinances:
    - a) Water Environment Services Rules and Regulations, July 2018, Ordinance No. 03-2018
    - b) Sanitary Sewer Standards, Clackamas County Service District No. 1, July 1, 2013.
    - c) Stormwater Standards, Clackamas County Service District No. 1, July 1, 2013.

- ii. The applicant shall procure the necessary plan approvals and permits in accordance with WES RR&S for sanitary sewer services and surface water management, including vegetated buffer and erosion control requirements.
- iii. Any requests to modify current WES sanitary or stormwater design standards shall be made in accordance with Sanitary Standards, Section 1.7 or Stormwater Standards, Section 1.6.
- iv. Prior to plan approval, all sanitary and stormwater submittals shall be reviewed for compliance with WES RR&S and Conditions of Approval. All plans and reports submitted to WES for review and approval shall be stamped and signed by a civil engineer licensed by the State of Oregon. The project construction, specifications, and testing must be completed under the direction of the project engineer.
- v. Upon land use approval by the County, the applicant shall submit the following materials 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) A Natural Resource Assessment, including identification of water quality resources, buffers, encroachments, and mitigation.
  - d) Erosion control plans, permit application (available on WES website) and applicable permit fee
  - e) \$800 minimum sanitary and stormwater management plan review fees
- vi. Prior to final plat approval by WES, the following shall apply:
  - a) WES shall review the final plat in conjunction with the approved sanitary and stormwater plans.
  - b) The sanitary and storm systems shall be complete in all respects, in accordance with the approved plans, or a performance bond shall be provided by the applicant to guarantee the construction of the infrastructure.
  - c) All public and private sanitary and storm drainage easements shall be shown on the plat.
  - d) Applicable fees and charges shall be paid to WES.

- e) Maintenance agreements shall be approved by WES and referenced in the plat notes.
- vii. A Surface Water, Storm Drainage and Sanitary Sewer Easement located within the development 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.
- viii. The proposed development shall be subject to applicable fees and charges, in accordance with WES RR&S. All fees and charges shall be paid before plat approval, and are subject to change without notice to the applicant. All costs associated with the design, construction and testing of the sanitary sewer and storm system shall be provided by and at the sole expense of the applicant.

For Sanitary Sewer, the following conditions shall apply:

- ix. Prior to plat approval, a separate and independent sanitary sewer service connection shall be provided to each lot, including any necessary easements. Each connection shall be constructed with a clean out at the front edge of the public sanitary sewer easement.
- x. An extension of WES' sanitary sewer system shall be required to serve this development and shall be conveyed to WES for ownership. The plat shall not be approved until the sanitary sewer system improvements are complete in all respects and accepted by WES.
- xi. The sanitary sewer system shall be designed, constructed and tested in accordance with WES RR&S, including but not limited to the design standards noted below. As proposed, the applicant's proposal does not meet WES public sanitary sewer extension requirements. The applicant shall revise the design to meet current WES design standards or submit a design modification request to WES with an acceptable alternative design, as determined by WES.
  - a) The minimum design slope of a dead-end public mainline shall be 2%.
  - b) Sanitary sewer mainlines located within a public sanitary sewer easement shall be placed with a minimum cover of 6-feet.
  - c) A dead-end mainline shall terminate in a manhole.

- xii. Public sanitary sewer mainlines shall be located either in the public right-of-way or within a minimum 15-foot wide sanitary sewer easement granted to WES. Easements for storm and sanitary in a combined area shall be a minimum of 20-foot wide.
- xiii. WES shall own and maintain service laterals to the edge of the public sanitary sewer easement. Language shall be included on the plat that assigns ownership and maintenance responsibilities of laterals once they've extended beyond the WES easement into common space or a tract.
- xiv. The applicant shall contact WES 48-hours in advance to schedule a tap of the public sanitary mainline. A \$125 tap-in fee shall apply for each 4-inch connection.
- xv. A Collection Sewer Charge shall apply for any direct connection to the existing sanitary sewer mainline.

For Surface Water, the following conditions shall apply:

- xvi. All development that creates or modifies 5,000 square feet or more of impervious surface area shall submit a Surface Water Management Plan and Storm Report (SWM Plan) to WES for review and approval. The SWM Plan shall demonstrate how the development will conform to WES RR&S and shall be prepared by a civil engineer licensed by the State of Oregon.
- xvii. The SWM Plan shall provide a design to mitigate the stormwater runoff from all proposed onsite permeable and impervious surface areas, all water entering the property from off-site, and any road improvements.
- xviii. The SWM Plan shall conform to the following general stormwater standards, as well as all other applicable stormwater requirements in accordance with WES RR&S:
  - a) Water Quality Standard - Water quality facilities shall be designed to capture and treat the first 1-inch of stormwater runoff from a 24-hour storm event using either vegetation (Appendix H) or a Basic Treatment proprietary device (Appendix F).
  - b) Infiltration Standard - The first ½ inch of runoff in a 24-hour period must be captured and retained onsite through an approved infiltration system.
  - c) Detention/Flow Control Standard in Areas with Limited Downstream Capacity (Section 5.4.4.3) – Additional flow control requirements are necessary in areas with

limited downstream capacity that cannot be upgraded, and are in addition to all other water quality and infiltration requirements. Within these designated basins (see maps in Appendix G), onsite detention facilities shall be designed to reduce the 25-year post-developed runoff rate to a 2-year pre-developed discharge rate, AND, from the 2-year post-developed runoff rate to ½ of the 2-year pre-developed discharge rate.

- d) The conveyance system shall be sized for a minimum 25-year design storm.
- xix. If infiltration is not feasible the design engineer shall submit a modification request in accordance with Stormwater Standards Section 1.6 with an equivalent alternative design which can accomplish the same design intent as provided in these standards. A geotech report shall be included with the request. Retention options in lieu of the infiltration standard include:
- a) BMP Tool: WES, in cooperation with other local jurisdictions, has developed a BMP Sizing Tool. The tool sizes facilities so that post-development peak flow durations will match the pre-development peak flow durations ranging from 42% of the 2-year to the 10-year flows, as determined by HSPF continuous rainfall model simulation.
  - b) Engineer's Model: The project engineer can develop and submit a continuous rainfall runoff model simulation, so that post-development peak flow durations will match the pre-development peak flow durations ranging from 42% of the 2-year to the 10-year flows as determined by the continuous model simulation.
  - c) Flow Control and Retention Standard: Meet the Detention/Flow Control Standard and retain the first ½" of runoff in a 24-hour period onsite within an approved facility, as determined by WES. The storage of the infiltration/retention volume within a vegetative facility shall not exceed 6-inches in height above the vegetation.
- xx. A design modification request for the Infiltration Standard was approved on October 3, 2019 with the condition to design the stormwater facility to retain the volume of the infiltration storm event. The applicant has instead proposed an alternative design using the BMP Tool. The BMP Tool is not currently in the WES Stormwater Standards, therefore the applicant shall submit a new design

modification request to WES with a proposal to use the BMP Tool, in accordance with Stormwater Standards, Section 1.6.

- xxi. The following shall apply for any proposal that receives approval to use the BMP Tool:
- a) All stormwater management facilities shall be designed with the continuous flow model of the Tool. Conveyance structures shall be designed per WES stormwater standard criteria.
  - b) Underground detention facilities shall be designed with the custom pond sizing feature of the BMP Tool. The designer shall use HydroCAD or another design tool to size the detention system along with Brown and Caldwell's Tool input procedures for asymmetrical detention storage design. The engineer shall provide stage/storage/discharge results with the SWM Plan.
  - c) Engineer shall provide elevations for all proposed facilities.
  - d) The pond shall include a minimum 18" engineered media for water quality treatment.
  - e) Roadside planters shall be designed in accordance with the WES draft planter detail.
  - f) Proprietary stormwater treatment devices must be approved by the Washington Department of Ecology with General Use Level Designation and classified as a Basic Treatment technology.
  - g) The BMP Tool requires input of site specific soil types, therefore the SWM Plan shall include a site plan that identifies the location of each stormwater facility, the boundaries of each Drainage Management Area (sub-basin), and an overlay of the soil classification map.
  - h) The engineer shall verify each Drainage Management Area aligns with the final grading plans.
  - i) Storm plans shall include a typical landscape plan for the planters. Develop a table showing the square footage of the plant zone, number of each type of plant required, and individual plant species proposed for each planter. Include engineered media specifications from Appendix A of the Stormwater Standards to the landscape plans.

- j) Proposed landscape areas shall be input as ‘Landscape’ (not grass) in the post-developed condition.
- xxii. The SWM Plan shall identify an acceptable point of discharge to safely convey stormwater runoff from the entire boundary of the development.
- xxiii. A Downstream Conveyance Analysis shall be included in the SWM Plan. The analysis must extend a minimum of 1500’ or to the point where the development contributes less than 15% of the upstream drainage area, whichever is greater. 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.
  - a) Provide a map showing the downstream pipe layout to the extent of your analysis. Indicate pipe sizes and slopes on the map. If available, provide as-built plans used for the downstream system analysis.
- xxiv. Grading plans shall clearly identify an overflow pathway system by which the storm/surface water within the development will be controlled without causing damage or harm to the natural environment, or to property or persons in the event of any stormwater facility failure or bypass.
- xxv. A geotechnical report prepared by a qualified professional shall be included with the SWM Plan. The report shall provide infiltration test results that correspond to the location and depth of the infiltration facilities and verify the feasibility of all proposed infiltration systems, in accordance with Appendix E.
- xxvi. Infiltration facilities shall provide a 3-foot minimum vertical separation from the maximum seasonal groundwater elevation to the bottom elevation of the infiltration facility. (Appendix H)
- xxvii. Groundwater and springs that are encountered during development shall be the responsibility of the developer to address. Plans for drainage of these waters shall be submitted to WES for review and approval prior to construction.
- xxviii. Roadside planters shall be designed to meet current WES stormwater standards, including infiltration, water quality, and detention/flow control requirements. The following shall also apply:

- a) The planter shall provide over-detention because of the limited downstream capacity. Infiltration facilities shall retain the 25-year storm in the planter and use the SBUH method to demonstrate the higher storm retention.
  - b) The project engineer may be required to perform infiltration testing of the facilities, as requested by WES, to provide assurance that the system will perform as designed. If applicable, testing shall be documented in a report stamped and signed by the project engineer and submitted to WES.
  - c) Stormwater facilities should be designed for the limiting infiltration rate in the vegetated facilities, namely the facility engineered media that is generally assumed to be no greater than 2" per hour (assuming the onsite native infiltration rates are greater).
  - d) Any storm facilities located within County public ROW will be maintained by WES. These facilities shall be designed to only receive runoff from the ROW and shall provide adequate maintenance access and functionality, as determined by WES. A maintenance agreement with WES shall not be required for these facilities.
- xxix. The property owners shall be responsible to perpetually inspect and maintain all stormwater management systems, in accordance with WES Rules, Section 12.10.
- a) Adequate maintenance access shall be provided to the storm facilities, as determined by WES.
  - b) WES will typically maintain surface facilities pending a public maintenance agreement with the developer by which WES will maintain the subdivision's stormwater system in exchange for a monthly fee of \$3 per lot. If the developer chooses not to utilize a public maintenance agreement, the homeowners will be responsible for storm system maintenance and this responsibility must be documented and recorded with the plat.
  - c) Underground storm facilities shall require further evaluation by WES before entering into a public maintenance agreement with the developer. Storm systems that include underground detention may require private maintenance by the HOA.
  - d) Any stormwater maintenance agreement and plan shall be referenced in the Plat Restrictions. Upon plat approval, the signed agreement will be delivered to the County Surveyor's office by WES staff.

- xxx. 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 and shall be located within a public right-of-way, a tract to the homeowners association, or a storm drainage easement (SDE) granted to WES. (Section 5.5.11)
  - c) Centralized stormwater facilities shall be located within a Tract to the homeowners association. 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 CC&R’s.
  - d) All stormwater facilities shall comply with maintenance access standards for publicly maintained facilities, in accordance with Appendix I.
  - e) 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.

For Erosion Control, the following shall apply:

- xxxi. No visible or measurable erosion shall leave the property during construction or during any activity described in Stormwater Standards, Section 6.2.1.
- xxxii. Site Plans for erosion control shall be required for all development, construction, grading, and any other activity which accelerates erosion as required by water quality standards set forth in OAR 340-41-445 through 340-41-470. Site plans shall delineate the total area of disturbance. The plans shall use the techniques and methods prescribed in the current WES Erosion Prevention Planning and Design Manual.
- xxxiii. Any development activity that results in over 800 sq ft of soil disturbance shall obtain a WES Erosion Prevention and Sediment Control Permit before the start of any grading or construction activities. The applicant shall submit a Permit

application and erosion control site plans, and pay applicable permit fees (\$460 + \$80/acre over 1 acre).

- xxxiv. For those sites that are 1 acre to less than 5 acres of disturbance, a Department of Environmental Quality (DEQ) 1200-CN Construction Stormwater (Erosion Control) Permit will be issued by WES along with the WES EPSC permit. To obtain a 1200-CN permit, the applicant must submit the required WES EPSC Permit application and 1200-CN template style erosion control plans to WES for review and approval.

For Water Quality Vegetated Buffers, the following shall apply:

- xxxv. All new development shall meet WES Rules to preserve and maintain an undisturbed vegetated buffer to protect all water quality resource areas, in accordance with Stormwater Standards, Section 4. County Planning Division serves as WES' agent to administer these requirements (in consultation with WES), therefore the applicant shall coordinate with Planning for all buffer-related requirements.

xxxvi. Per Section 4.4, activities prohibited in the Buffer Area shall include:

- xxxvii. Construction of structures (buildings of any kind).
- xxxviii. Grading of any kind (including swales, ponds, etc.).
- xxxix. Impervious Surface (parking lots, gravel, etc.).
- xl. Tree Removal (dead or alive) unless approved by the District.
- xli. Herbicide/Pesticide use in and around sensitive areas and Buffers must be approved by the District.
- xl.ii. Ornamental Vegetation (lawns, non-native shrubs, bark dust, etc.).
- xl.iii. Permittable uses in the Buffer Area include road crossings, and utility construction and storm outfalls accompanied by an acceptable restoration plan.
- xl. iv. With the applicant's first plan submittal, the applicant shall submit plans to WES that clearly show all water quality resource areas, all required buffers, any proposed encroachments into the buffer, and proposed mitigation areas.
- xl. v. 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.

- xlvi. The developer shall submit proof of wetland mitigation approval from DSL/COE. If mitigation approval is not granted, all WES rules and regulations shall apply.
- xlvii. Approval of the land use application does not include any conclusions by WES regarding acceptability of regulated water quality sensitive areas by DSL or COE. This decision should not be construed or represented to authorize any activity that will conflict with or violate DSL/COE requirements. The applicant shall coordinate with DSL/COE and, if necessary, other responsible agencies to ensure that development activities are designed, constructed, operated and maintained in a manner that complies with DSL/COE approval.

For Plat review, the following shall apply:

- xlviii. Prior to final plat approval, WES shall review the plat in conjunction with the approved sanitary sewer and stormwater plans. The sanitary and storm systems shall be complete in all respects, in accordance with the approved plans, prior to WES approving the plat for recording, or a performance bond shall be provided by the applicant to guarantee the construction of the infrastructure. All sanitary and storm drainage easements shall be shown on the plat.
- xlix. 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.”
  - 1. The following statement shall be added to the Restrictions: “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.”

- li. 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

WES Advisory Conditions:

- lii. Sanitary Sewer Plan Review fees shall apply. The fee is equal to 4% of the installed cost of the public sewer extension. A \$400.00 minimum shall be due with the first plan submittal.
- liii. Surface Water Plan Review fees shall apply. The total fee is equal to 4% of the construction cost for all stormwater management related facilities. A \$400.00 minimum shall be due with the first plan submittal.
- liv. An Erosion Prevention and Sediment Control (EPSC) permit shall apply. A \$780.00 permit fee shall be due with the first plan submittal.
- lv. A Collection Sewer Charge for the proportionate cost of constructing the public mainline sewer shall apply for any new direct connection to the existing sanitary sewer mainline. The amount due shall be determined upon review of the final plans and shall be paid prior to the plat being recorded.
- lvi. System Development Charges (SDC’s) shall be assessed with the future building permits, in accordance with the prevailing rates in effect on the date when the building permit application is submitted. Rates are typically adjusted annually on July 1st.
- lvii. The current Surface Water SDC rate is \$215 per single family building permit application.
- lviii. The current Sanitary Sewer SDC rate is \$8,005.00 per single family building permit application.

3. Conditions for Roads & Connectivity:
  - A) Overview:
    - i. The following items are project requirements from the Department of Transportation and Development's Development Engineering Division. These conditions of approval are not intended to include every engineering requirement necessary for the successful completion of this project, but are provided to illustrate to the applicant specific details regarding the required improvements that may prove helpful in determining the cost and scope of the project. These conditions are based upon the requirements detailed in the County's Comprehensive Plan (Comp Plan), the County's Zoning and Development Ordinance (ZDO) and the County's Roadway Standards. Additional requirements beyond those stated in the conditions of approval may be required once plans have been submitted and reviewed. The applicant may discuss the requirements of the project with staff at any time.
    - ii. The requirements specifically required by the Comprehensive Plan and the ZDO cannot be modified by the Development Engineering Division. However, the requirements detailed in these conditions of approval, derived from the County Roadway Standards, are based upon nationally accepted standards and engineering judgment and may be modified pursuant to Section 170 of the Roadway Standards. The applicant is required to provide sufficient justification to staff in the request. Staff shall determine if a modification is warranted.
  - B) Conditions of Approval: Ken Kent (503) 742-4673;
    - 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% of the estimated cost of the construction, and pay a plan review and inspection fee. The fee will be calculated as a percentage of the construction costs if it exceeds the minimum permit fee. The minimum fee and the percentage will be

- determined by the current fee structure at the time of the Development Permit application.
- ii. Prior to final plat approval: all required improvements shall be constructed and inspected, or financially guaranteed in the form of a performance bond. Performance bonds shall be in the amount of 125% of the approved engineer's cost estimate of the required improvements, and access has met minimum Substantial Completion requirements, per Roadway Standards Section 190.
  - iii. All required street, street frontage and related improvements shall comply with the standards and requirements of the Clackamas County Zoning and Development Ordinance and the Clackamas County Roadway Standards unless otherwise noted herein.
  - iv. The applicant shall dedicate a 35-foot wide right-of-way along the western frontage of the project site on the SE Ruscliff Road right-of-way, as well as extending the 35-foot wide dedication to the south property. 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 and public utilities along the entire SE Ruscliff Road right-of-way.
  - vi. Prior to final plat approval, the applicant shall design and construct improvements along the entire site frontage of SE Ruscliff Road to local roadway standards, consistent with Standard Drawing C110. These improvements shall consist of the following:
    - f) Up to a minimum 22-foot wide one half street improvement, to match the existing curb off-set. The structural section shall comply with Standard Drawing C100 for a local roadway.
    - g) 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.
    - h) Standard curb, or curb and gutter if curblines slope is less than one percent.
    - i) A 5-foot wide unobstructed sidewalk.

- j) 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.
- k) Dual curb ramps at the corner of the private road where it intersects SE Ruscliff Road, constructed per ODOT Standard Drawings.
- l) At the terminus of SE Ruscliff Road, adequate turnaround area for passenger vehicles shall be provided. Maneuvering for passenger vehicles shall be demonstrated. If necessary, either additional right-of-way shall be dedicated, or a temporary easement shall be provided over the portion of the private road to accommodate the turning area.
- m) Drainage facilities in conformance with Water Environment Services requirements and Clackamas County Roadway Standards Chapter 4. Maintenance provisions for water quality facilities, such as planters or swales within and serving the public right-of-way, shall be addressed through a maintenance agreement.
- n) An end of road type III barricade or approved alternative shall be provided at the terminus of newly widened southerly portion SE Ruscliff Road.
- vii. The applicant shall design and construct improvements for the new private roadway, serving Lots 1 through 15, 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. The easement shall encompass the required improvements.
  - b) A minimum 20-foot wide, paved driving surface with curbs on both sides of the roadway and a 5-foot wide curb-tight sidewalk on the south side of the roadway.
  - c) The minimum structural section for the new private road improvements shall comply with Clackamas County Roadway Standards Drawing R100.
  - d) A 5-foot wide concrete band, consistent with Standard Drawing D675 shall be provided at the intersection of the private road with the right-of-way of SE Ruscliff Road, to identify the public and private roadway boundary. The concrete band shall be located at a point to allow for passenger vehicles to turnaround on SE Ruscliff road.

- e) Twenty-five foot radius curb at the intersection of the private road and SE Ruscliff Road, per Clackamas County Roadway Standards Table 2-7.
- f) A curb ramp shall be provided at the east end of the sidewalk, constructed per ODOT Standard Drawings.
- g) Drainage facilities in compliance with Water Environment Services Rules and Clackamas County Roadway Standards Chapter 4.
- h) Written verification must be received from the Fire District that adequate emergency service access is provided. An emergency vehicle turnaround shall be constructed at the end of the private access road, per County Roadway Standards Drawing C350.
- i) Roadways with a paved width less than 28 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.
- j) Adequate intersection sight distance at the new private road intersection with SE Ruscliff Road shall be provided. No plantings at maturity, retaining walls, embankments, fences or any other objects shall be allowed to obstruct vehicular sight distance. Minimum intersection sight distance shall be 280 feet to the north
- k) A road maintenance agreement for the shared private road implementing ORS 105.170 - 105.185 shall be recorded with the plat.
- viii. 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.
- ix. 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.
- x. All existing and proposed easements shall be shown on the final plat.
- xi. Unless a different location is approved by the Engineering Division, access to all new lots shall be from the new private road.
- xii. Any deviation to the required roadway standards set forth herein may only occur with written approval by the DTD Engineering Division.

- C)
- 4. Conditions for Density
- D) Density Summary
  - i. Maximum density for the proposed Subdivision and PUD equals 18.
  - ii. Minimum density for the proposed Subdivision and PUD equals 0.
- 5. Conditions for Planned Unit Development
- A) Uses and Dimensional Standards for Planned Unit Development (PUD) in R-10 District:
  - i. Attached Single-Family Dwellings: Attached single-family dwellings are permitted on every lot or parcel of the proposed PUD.
  - ii. Maximum Lot Coverage: Maximum lot coverage is 65 percent. / There is no maximum lot coverage.
  - iii. Rear & Side Yard Setbacks: The minimum rear and side yard setbacks from rear and side lot lines for interior lots or parcels is zero.
  - iv. Lots 1-13 must meet the regular rear district setback standards in the R-10 Zoning District which is 20 feet,
- B) Maximum Number of Lots
  - i. The maximum number of lots shall not exceed 15.
- C) Open Space:
  - i. A minimum of 20 percent of the gross site area shall be platted as one or more open space tracts.
  - ii. The open space restrictions shall continue in perpetuity, unless the restrictions are modified pursuant to either Section 1309, Modification, or the approval of a new land use permit application provided for by this Ordinance.
- D) Homeowners Association:
  - i. A homeowners association, or acceptable alternative, is required pursuant to Subsection 1105.03(D), as outlined below.
- 6. Conditions for Land Divisions
- A) General Conditions:
  - i. Approval of this land use permit is based on the submitted written narrative and plan(s) dated January 2, 2020, January 23, 2020, and April 30, 2020. No work shall

occur under this permit beyond that specified within these documents. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of approval described herein.

- ii. The proposed Subdivision and PUD is also subject to the Findings and Conditions of File No(s). Z0523-19-HDA, Z0524-19-CMP, and Z0525-19-HMV.
- iii. The service of a certified surveyor and/or engineer is required to satisfy these conditions. The County recommends you obtain a project manager to assist in obtaining the necessary permits to implement this project.
- iv. The applicant is advised to take part in a Post Land Use Transition meeting. County staff would like to offer you an opportunity to meet and discuss this decision and the conditions of approval necessary to finalize the project. The purpose of the meeting is to ensure you understand all the conditions and to identify other permits necessary to complete the project.
- v. The approval of the application granted by this decision concerns only the applicable criteria for this decision. The decision does not include any conclusions by the county concerning whether the activities allowed will or will not come in conflict with the provisions of the federal Endangered Species Act (ESA). This decision should not be construed to or represented to authorize any activity that will conflict with or violate the ESA. It is the applicant, in coordination if necessary with the federal agencies responsibility for the administration and enforcement of the ESA, who must ensure that the approved activities are designed, constructed, operated and maintained in a manner that complies with the ESA.

B) General Approval Criteria:

- i. The proposed Subdivision and PUD — including all, parcels, lots, tracts, easements, future structures, etc., potentially contained therein — shall comply with all applicable provisions of the R-10 Zoning District(s), as outlined in Section 315 of this Ordinance.
- ii. The proposed Subdivision and PUD shall comply with the applicable provisions of Section 1000 of this Ordinance, Development Standards, as outlined above.
- iii. A nonprofit, incorporated homeowners association, or an acceptable alternative, is be required for ownership of, improving, operating, and maintaining common areas

and facilities, including, but not limited to, open space, private roads, access drives, parking areas, and recreational uses, and for snow removal and storage in Government Camp, 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.
- iv. Approval Period and Time Extension:
- a) Approval of a preliminary plat is valid for four years from the date of the final decision. If the County's final decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four-year period, the final plat shall be recorded with the County Clerk, or the approval will become void.
  - b) If a final plat is not recorded within the initial approval period established by Subsection 1105.06(A), a two-year time extension may be approved pursuant to Section 1310, Time Extension.
  - c) If a phasing plan and schedule are approved pursuant to Subsection 1105.03(C), the following shall apply in lieu of Subsections 1105.06(A) and (B):
    - 1) The phasing schedule may provide a preliminary plat approval period for the first phase not to exceed four years from the date of the final written decision. If the County's final decision is appealed, the approval period shall commence on the date of the final appellate decision.
    - 2) The phasing schedule may provide a preliminary plat approval period for each subsequent phase not to exceed two years from the end of the prior phase approval period.

- 3) Each phase shall be recorded with the County Clerk within the applicable approval period, or the approval of that phase and all subsequent phases will become void.
  - 4) If a final plat for any phase is not recorded within the initial approval period for that phase, a two-year time extension for that phase and all subsequent phases may be approved pursuant to Section 1310.
  - 5) In no case shall a phasing schedule or any time extensions permit the recording of any phase more than 10 years after the date of preliminary plat approval.
- v. Final Plat Review:
- a) The form and content of the final plat shall comply with the County's final decision approving the preliminary plat and applicable provisions of Chapters 11.01 and 11.02 of the Clackamas County Code and Oregon Revised Statutes Chapters 92, 94, 100, and 209.
  - b) The final plat shall be submitted to the County for review. If a homeowners association is required, the declaration for a planned community, articles of incorporation, and bylaws shall be submitted to the County with the final plat. If the final plat and, if a homeowners association is required, the declaration for a planned community, articles of incorporation, and bylaws are consistent with the approved preliminary plat and the conditions of approval included in the County's final decision on the application have either been satisfied or guaranteed pursuant to Section 1311, Completion of Improvements, Sureties, and Maintenance, the Planning Director shall sign the plat.
  - c) Any private access easements should also contain provisions for public utility services such as water, electricity, communications, natural gas, storm drainage, sanitary sewer, emergency services, etc.
  - d) New easements should include a statement that the easements are for the lots or parcels shown and any future divisions thereof.
  - e) Easements created for access to parcels that can be redeveloped or further divided shall contain language that would allow the access and utilities easement(s) used by any additional development or parcels created in future. Any private easements should also contain provisions for public utility services such as water, electricity, communications, gas, storm drainage, sanitary sewer, etc.

## HABITAT CONSERVATION AREA 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 April 3, 2020. 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) The applicant shall obtain all necessary permits from the Oregon Department of State Lands (DSL), along with providing any additional analysis as may be required by DSL, regarding the road crossing, culverting or other disturbance in the area of the jurisdictional wetland in the westerly sector of the site as outlined on Exhibit HCA-7.
- C) A Water Environment Services (WES) Buffer Variance is required for encroachment into the WES Title 3 Water Quality Buffers.  
  
The WES Buffer Variance shall be submitted separately to, and processed by, the Planning & Zoning Division.  
  
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. Z0001-20-SL.

### 1. **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, Sheets 10 and 11, of the submitted HCA Development / Construction Management Permit Plans, prepared by Firwood Design Group, LLC and dated March 2020. See Pages 10 and 11 of Exhibit HCA-6.

- ii. Erosion prevention and sediment control (EPSC) measures shall be required and shall comply with the standards of WES.

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.

Trees in the HCA shall not be used as anchors for stabilizing construction equipment.

Native soils disturbed during development shall be conserved on the subject property.

Development shall not commence until the EPSC measures and fencing required pursuant to Subsections 706.08(A) and (B) are in place.

Compliance with the Construction Management Plan shall be maintained until the development, including home construction on the individual lots, is complete.

2. **Map Verification Conditions:**

- B) 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.

- iii. "Implemented" has the meaning set forth in Subsection 706.06(D)(1) and (2).

- iv. 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.

- v. This HCA Map Verification, if valid on the date when the final plat for the subdivision (File No. Z0001-20-SL) records with the County

Clerk, shall remain valid for subsequent development on the lots created by the subdivision (Z0001-20-SL).

- C) 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 5 (Exhibit HCA-3).

3. **Development Permit (Subsection 706.10[B]) Conditions:**

- D) 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.

- E) 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.

- vi. In this case, "implemented" means that the final plat of the subdivision (File No. Z0001-20-SL) shall be recorded with the County Clerk.

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.

- F) Mitigation Standards: Mitigation for the development within the HCA shall be as outlined on the Mitigation Plan, Sheets 12 through 14, and on the Planting Notes & Details, Sheet 15, of the submitted HCA Development / Construction Management Permit Plans, prepared by Firwood Design Group, LLC and dated March 2020, with plantings themselves consisting of 375 native trees and 680 native shrubs. See Pages 12 through 15 of Exhibit HCA-6.

- vii. **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.

**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.

**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.

**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.

**Mulching:** Mulch shall be applied around new plantings at a minimum of three inches in depth and 18 inches in diameter.

**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.

**Planting Timeframe:** The required mitigation shall be planted as soon as it is reasonably feasible within the parameters of on-site construction activities and seasonal requirements for the plantings.

**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.

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 within an open space tract.

4. **Lot Line Setback Conditions:**

A) For only the resulting platted lots that will contain HCA: In cases where a reduction in the underlying setback standards of the R-10 zone, as permitted within a PUD, would move development further from the HCA, or prevent encroachment nearer to or into the HCA, the minimum front, rear, and side yard setbacks shall be zero, except:

viii. Garages and carports shall comply with the minimum front yard setback of the underlying zoning district; and

A greater setback may be required to comply with applicable fire or life safety requirements.

DATED this 8<sup>th</sup> day of September, 2020.

  
Fred Wilson  
Clackamas County Hearings Officer

**APPEAL RIGHTS**

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