

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

Regarding an Application for a 62-lot Single)	Case File Nos.
Family Flexible Lot Major Subdivision.)	Z0051-16-SL &
)	Z0052-16-HDB
)	(Jennings Lodge)

A. SUMMARY

1. The applicant and owner is Lennar Northwest, Inc. The application proposes to develop a 62-lot single family flexible lot size major subdivision. In conjunction with the major subdivision application, the application proposes to construct an off-site storm water conveyance line and associated outfall.

2. The subject property is located at 18121 Southeast River Road, Milwaukie, OR 97267. The legal description is T2S, R2E, Section 13DD, Tax Lots 2100, 2200, 2300, 2400, 2500, 2600, 2700, 2800 2890, & 2900 and T2S, R2E, Section 18CC, Tax Lots 3300 & 3500 W.M. The subject property is approximately 16.77 acres and is zoned R-10 Urban Low Density Residential.

3. On March 17, 2016, the Hearings Officer conducted a public hearing to receive testimony and evidence about the application. At the conclusion of the hearing the record was left open for two additional weeks for the submission of new evidence, one additional week for responses to the new evidence, and one additional week for the applicant's final legal argument.

B. HEARING AND RECORD HIGHLIGHTS

1. The Hearings Officer received testimony at the public hearing about this application on March 17, 2016. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias, or conflicts of interest. The Hearings Officer stated that the only relevant criteria were those identified in the staff report, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.

2. At the hearing, county planner Rick McIntire discussed the staff report and recommended approval of the major subdivision and approval of the permits associated with the off-site stormwater conveyance line and outfall.

3. The applicant's representatives testified in support of the application.

4. Approximately twenty opponents testified in opposition to the application.

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

C. DISCUSSION

1. Facts

The subject property is located at 18121 SE River Road, Milwaukie, OR in what is known as the Jennings Lodge area. The property is bounded on the east by Southeast River Road (River Road) and on the south by Southeast Jennings Avenue (Jennings Avenue). The Willamette River is very close to the western boundary of the property, with only one lot separating the property from the river in many spots. The property is 16.77 acres and is zoned R-10. The property is currently developed with a number of structures including dwellings, an auditorium, and other structures that have been historically used as a retreat and meeting facility for the Pacific Conference of the Evangelical Church of North America. The property is generally level except for the western edge where it slopes sharply down towards the river. The property has been used as a retreat or meeting center for many years, and has accumulated numerous mature trees. The property is in the middle of a large area of R-10 zoned land east of McLoughlin Boulevard. McLoughlin Boulevard is a commercial area.

The applicant previously submitted an application to rezone the property from R-10 to R-8.5. In conjunction with the zone change application, the applicant also sought approval for a 72-lot flexible lot subdivision and associated storm water outfall. Z0282-15-ZAP, Z0283-15-SL et al. The zone change application was denied because the approval criteria for a zone change were not satisfied. The subdivision and storm water aspects of the application were also denied because they were based on R-8.5 zoning of the property. The merits of the subdivision and storm water aspect of the application were

not considered because the zone change was denied. That decision is currently on appeal to the Land Use Board of Appeals (LUBA).

The current application proposes to subdivide the property into 62 lots. The proposed lot sizes range in size from 8041 square feet to 19,436 square feet. The proposal includes a restricted development area along the western edge on the property where it slopes down towards the Willamette River. Due to objections regarding opposite street frontage regarding some of these lots, an open space tract has been proposed for some of the western lots. The application also proposes a series of swales along the internal streets and rain gardens on individual lots to provide infiltration and treatment of storm water. The proposed out fall to the Willamette River would only be used for overflow events. The property contains hundreds of trees, including many large Douglas firs. The proposed subdivision would preserve most of the trees along the western boundary of the property, but almost all of the trees in the middle of the property where the roads, utilities, and building footprints are proposed would be removed.

2. Whether the Application May be Filed

A threshold issue in this case is whether the application may even be considered. Clackamas County Zoning and Development Ordinance (ZDO) 1307.07(16)(K) prohibits filing certain applications that are the same or substantially similar to applications that were previously denied unless two years have passed or certain conditions are met.

“Re-filing an Application: If a Type II or III land use permit application is denied, or a Type II or III land use permit is revoked pursuant to Subsection 1307.16(L), an applicant may re-file for consideration of the same or substantially similar application only if:

- “1. At least two years have passed after either final denial of an application by the County or revocation of a permit; or
- “2. The review authority finds that one or more of the following circumstances render inapplicable all of the specific reasons for the denial:
 - “a. A change, which is material to the application, has occurred in this Ordinance, the Comprehensive Plan, or other applicable law; for the purposes of this provision, “change” includes amendment to the applicable provisions or a modification in accepted meaning or application caused by an

interpretation filed pursuant to Section 1308;

- “b. A mistake in facts, which was material to the application, was considered by the review authority;
- “c. There have been changes in circumstances resulting in new facts material to the application;
- “d. A change has occurred in the zoning of the subject property, or adjacent property, that substantially affects the merits of the application; or
- “e. There have been substantial changes in the surrounding area, or on the subject property, such as availability of services or improvements to public facilities, that affect the merits of the application.”

There is no dispute that two years have not passed since the proposed zone change, subdivision, and storm water outfall application was denied and that none of the exceptions in ZDO 1307.16(K)(2)(a-e) apply. Therefore, if the present application is “substantially similar” to the application that was denied then the application cannot be considered.

As discussed earlier, the prior application was denied because the zone change approval criteria were not satisfied. The zone change approval criteria under ZDO 1202.03 require, among other things, a balancing test regarding Sub-Policies 4.R.2.1 through 4.R.2.7 of the Residential section of the comprehensive plan which describe the factors used to guide the determination of the most appropriate zoning classification for a specific site. Sub-Policy 4.R.2.6 provides for “neighborhood preservation and variety” and further provides that “areas that historically developed on large lots where little vacant land exists should remained zoned consistent with the existing development pattern.”¹ The opponents in the previous case, including the current opponents, argued

¹ Sub-Policy 4.R.2.6 provides: “Need for neighborhood preservation and variety: Areas that have historically developed on large lots where little vacant land exists should remain zoned consistent with the existing development pattern. Otherwise, unless physical or service problems indicate to the contrary, areas of vacant land shall be zoned for lots of 8,500 square feet or smaller.”

that allowing a zone change would destroy the character of the neighborhood. I ultimately agreed with the opponents and denied the zone change primarily on this basis:

“While the applicant argues that ten additional lots on such a large property would similarly not stand out, I believe that rezoning this property would have a very noticeable effect on the existing neighborhood. Furthermore, creating such a large island of R-8.5 zoning in a sea of R-10 would fragment the neighborhood. As opponents state, ‘it is difficult to imagine a more intact, historically developed, large lot area than Jennings Lodge.’ In my opinion, the need to protect such an existing intact R-10 neighborhood that has historically developed on large lots and has little vacant land outweighs the fact that the property could accommodate R-8.5 zoning and has a bus stop nearby. Therefore, the proposed zone change is not consistent with the applicable goals and policies of the comprehensive plan.”
Jennings Lodge Decision Z0282-15-SL et al 15-16.

As discussed, the earlier subdivision application was not denied on the merits of the proposed subdivision, which included many of the same issues as the present case. The earlier subdivision was denied because it was an application for a subdivision on property zoned R-8.5 not R-10. Because the zone change was denied, even if the proposed R-8.5 subdivision was unassailable it could still not be approved. The applicant first argues that the two applications are not “substantially similar” because the earlier subdivision was summarily denied because the zone change was denied. Opponents argue that it does not matter why the earlier subdivision application was denied, just that it was. According to opponents, the current subdivision application is substantially similar to the earlier subdivision application that was denied.

A similar situation occurred in *Wal-Mart Stores, Inc. v. City of Oregon City*, 50 Or LUBA 87 (2005), *rev’s and remanded* 204 Or App 359, 129 P3d 702 (2006). The City of Oregon City had an ordinance similar to ZDO 1307.16(K) that precluded refiling the “same or substantially similar proposal” within a year of a previous proposal being denied. Wal-Mart originally filed an application for site plan design review to develop a store with a parking lot on an adjacent parcel. In order to build the parking lot on the adjacent parcel, Wal-Mart needed to obtain a comprehensive plan and zone change for that parcel. The city denied the comprehensive plan and zone change and therefore also denied the site plan and design application without reaching the merits. Wal-Mart subsequently filed an application for site plan and design review with underground

parking on the original parcel and removed the plan for parking on the adjacent parcel and the accompanying comprehensive plan and zone change. The city denied the application on the grounds that it was substantially similar to the earlier application that had been denied. Wal-Mart appealed to LUBA, and LUBA agreed with Wal-Mart that the applications were not substantially similar:

“The city, however, ignores the most important difference between the two proposals – that the new application eliminates the request for a plan and zone change for adjacent parcels that were the *basis for denial* of the 2003 application. The reason for denial is a critical part of the proposal. * * * The new proposal eliminates the reason the 2003 application was denied and seeks to proceed with a site plan that has never been independently reviewed. Not only is that a difference, it is a substantial difference.” *Wal-Mart Stores, Inc.*, 50 Or LUBA at 95.

The city appealed to the court of appeals, and the court of appeals reversed LUBA’s opinion:

“[T]he fact that the [previous] application differed from the current application [in that it included a plan and zone change] was irrelevant as to whether Wal-Mart had attempted to place more than one application before the city for the same proposal within one year of denial of its initial application.” *Wal-Mart Stores, Inc.*, 240 Or App at 365.

Opponents argue that the present case is almost identical to the Wal-Mart case. While the circumstances are similar, there is one very important difference. In *Wal-Mart Stores, Inc.*, the city commission (the highest city body) found that the applications were substantially similar by interpreting its local ordinance. Under ORS 197.829(1), the city’s interpretation was entitled to significant deference. In other words, the court of appeals did not necessarily determine that the city’s interpretation was the proper interpretation, merely that it was not inconsistent with the provision’s express language, purpose, and policy – or “clearly wrong.” If this were an appeal of a governing body’s interpretation finding that the applications at issue were substantially similar, I would likely agree with opponents that under *Wal-Mart Stores, Inc.* the interpretation should be affirmed. Because there is no interpretation to deference involved in the present case, I must determine the proper interpretation of ZDO 1307.16(K).

Opponents argue that there is nothing in ZDO 1307.16(K) that requires that an earlier application have been denied on the merits in order for a subsequent application to be considered substantially similar. While that is true, I do not see that that resolves the issue. The ZDO allows applicants to consolidate multiple proposals into one application. While there are multiple file numbers for different aspects of the application, the combined aspects are essentially one application. The applicant's first application requested a zone change to R-8.5 and a 72-lot R-8.5 subdivision. The present application does not involve a zone change and seeks a 62-lot R-10 subdivision. Even if the 62-lot subdivision is similar to the 72-lot subdivision, as LUBA determined in *Walmart-Stores, Inc.*, the present application eliminates the sole basis for the denial in the previous application and seeks to proceed with an application that conforms to the existing zoning. A zone change and subdivision application is not substantially similar to a subdivision application for a different zoning classification.

If the removal of the zone change aspect of the application is not a proper consideration then I must consider whether, viewed alone, the proposed 62-lot R-10 subdivision is substantially similar to the earlier proposed 72-lot subdivision. In *Henkel v. Clackamas County*, 56 Or LUBA 495 (2008), LUBA reviewed a decision by a previous hearings officer regarding the prior version of ZDO 1307.16(K).² The previous hearings officer denied a home occupation application on the grounds that it was substantially similar to a previous home occupation application that had been denied. LUBA reviewed the ordinance and the meaning of "substantially similar" and remanded the case finding that the applications were not substantially similar. LUBA explained:

"By preventing the refiling of applications that are substantially similar' the ZDO requires a greater degree of similarity than would be required if the standard were merely 'similar' applications. In other words, applications must not only be similar, they must be very similar. We agree with the petitioner that the plain meaning of 'substantially similar' is that * * * a second application is barred within two years of the first application's denial only when there is a high degree of similarity." *Henkel*, 56 Or LUBA at 501.

² The prior provision was ZDO 1305.02(H) and was essentially the same, including the "substantially similar" language.

There are certainly similarities between the R-8.5 subdivision and the R-10 subdivision. Both applications are for single family subdivision applications for the same property. Both applications have the same internal road configurations. Both applications preserve trees along the western portion of the property. Both applications use similar traffic studies and tree surveys. There are also differences between the applications. The numbers of lots is decreased from 72 to 62. The lot sizes are increased from an average of 7828 square feet to 9669 square feet. There will be less vehicle impacts because average vehicle trips would be reduced by approximately 100 trips per day. Additional on-street parking is proposed in the present application. The storm water detention system is significantly different in that storm water is retained on site with an outfall for overflow situations rather than just the outfall.

Opponents argue that the reduction in ten lots is not enough of a difference as in *Henkel* where the impacts of the home occupation were reduced by 40 percent. I agree with the applicant, however, that *Henkel* did not establish a percentage threshold for when applications are substantially similar. All applications must be analyzed on a case by case basis. In the present case, I agree with the applicant that even looking at the subdivision aspects of the applications in a vacuum that they are not “very similar.” Reducing the number of lots from 72 to 62 is different. Increasing lot sizes by approximately 2000 square feet is different. Reducing impacts from traffic and storm water runoff is also different. While these are not earth shattering differences they are significant.

Furthermore, retaining R-10 zoning and the accompanying larger required lot sizes is a very significant difference between the two applications. Perhaps the best argument for this position is the voluminous evidence submitted by the same opponents in the earlier case arguing that allowing the smaller lot sizes of R-8.5 zoning would destroy the neighborhood. The applicant ably cites multiple arguments from opponents’ submissions to this effect. Importantly, I agreed with the opponents in the previous case that allowing the smaller lot sizes of R-8.5 zoning would have a very noticeable effect and fragment the neighborhood. The primary basis for denying the earlier zone change was precisely because it would allow a subdivision very different from what would be allowed under the current zoning. If an R-8.5 subdivision made such a significant

difference from an R-10 subdivision in the previous case then it makes a significant difference in the present case as well.

Opponents argue that the applicant's position is compromised by arguments from its LUBA brief that the differences between the proposed subdivisions would be "imperceptible to passersby" and "it is unlikely that anyone could drive through * * * and tell the difference." Well of course the applicant argues that to LUBA. That was the applicant's position in the earlier case – it argued that an R-8.5 subdivision would not be very different from an R-10 subdivision and therefore the zone change did not need to be denied to preserve the character of the neighborhood. I did not agree with the applicant in the previous case, however, I agreed with the opponents who argued that an R-8.5 subdivision would destroy the character of the neighborhood – the same opponents who are now arguing that there is really no difference between the two proposed subdivisions. If the applicant in the previous case and the opponents in the current case are correct that there is not much difference between an R-8.5 and an R-10 subdivision then I probably should have granted the zone change. One can hardly blame the applicant for arguing that if it lost before because the proposed subdivisions would have such dramatic differences then it should be able to rely on those dramatic differences now to argue the applications are not substantially similar. I view opponents' arguments that an R-8.5 subdivision would have been a catastrophe compared to an R-10 subdivision before but now the two subdivisions are basically the same thing much less charitably. The current application is not substantially similar to the previous application. Therefore, the applicant does not run afoul of ZDO 1307.16(K) and the application may be reviewed on the merits.

3. Subdivision Approval Criteria

The March 10, 2016 staff report lists the applicable approval criteria and does a thorough job of explaining why the approval criteria are satisfied.³ Opponents do not challenge most of the findings in the staff report. Therefore, it would be a waste of the County's money and resources to review all of the undisputed findings in the staff report.

³ The applicant states in its narrative that the proposed subdivision is "needed housing" pursuant to ORS 197.303 and therefore it does not have to comply with a majority of the approval criteria because those criteria are not clear and objective standards. Staff and opponents respond that the applicant has not established that the proposed development is needed housing. I agree with staff and opponents that the applicant has not established that the proposed development is needed housing pursuant to ORS 197.303. Therefore, the applicant must satisfy the relevant subdivision approval criteria.

I have reviewed the staff report and agree that the undisputed approval criteria are satisfied. I therefore adopt and incorporate the findings in the staff report in this decision, except as further discussed.

a. ZDO 1002 - Protection of Natural Features

ZDO 1002 contains provisions regarding the protection of natural features. ZDO 1002.02 concerns development on hillsides. ZDO 1002.02(A) provides that development on slopes greater than 20 percent must comply with certain standards. While most of the subject property is relatively flat, the far western section of the property slopes steeply – more than 20 percent - towards the Willamette River. Opponents argue that the steep slopes result in a violation of ZDO 1002.02. As the staff report states, the area of steep slopes is on the western boundary of the property and will be placed within a restricted development area. The only disturbance will be for utilities and additional tree plantings. All of the proposed building envelopes are in areas of less than 20 percent slopes. Furthermore, opponents do not point to any requirements of ZDO 1002.02(1)(a) that the proposal would violate. ZDO 1002.02 is satisfied.

One of the opponents' primary arguments is that the proposed subdivision would cut down too many of the existing trees. ZDO 1002.04 provides:

- “A. Existing wooded areas, significant clumps or groves of trees and vegetation, consisting of conifers, oaks and large deciduous trees, shall be incorporated in the development plan wherever feasible. The preservation of these natural features shall be balanced with the needs of the development, but shall not preclude development of the subject property, or require a reduction in the number of lots or dwelling units that would otherwise be permitted. Site planning and design techniques which address incorporation of trees and wooded areas in the development plan include, but are not limited to, the following:
- “1. Siting of roadways and utility easements to avoid substantial disturbance of significant clumps or groves of trees;
 - “2. Preservation of existing trees within rights-of-way and easements when such trees are suitably located, healthy, and when approved grading allows;
 - “3. Use of flexible road standards as provided in Subsection 1007.04(B)(3), including one-way roads or split-level

roads, to preserve significant trees and avoid unnecessary disturbance of terrain;

- “4. Retention of specimen trees or clumps of trees in parking area islands or future landscape areas of the site as provided for in Section 1009.
 - “5. Use of wooded areas of the site for recreation, or other low-intensity uses, or structures, not requiring extensive clearing of large trees, grading, or filling activity which substantially alters the stability or character of the wooded area;
 - “6. Retention of trees which are necessary to ensure the stability of clumps or groves of trees considering the type of trees, soil and terrain conditions, exposure to prevailing winds, and other site-specific considerations;
 - “7. Use of trees and wooded areas to buffer, screen, or provide transitions between different or conflicting uses on and off the site;
 - “8. Use of flexible-lot-size and planned unit development designs to minimize disturbance of wooded areas;
 - “9. Siting of uses and structures to utilize the natural microclimates created by wooded areas and trees to reduce extremes in temperature, provide wind protection, filter pollutants, and replenish oxygen and moisture to the air; and
 - “10. Use of other development techniques described in Subsection 1011.03(C).
- “B. Trees and wooded areas to be retained shall be protected during site preparation and construction according to County design and specifications by:
- “1. Avoiding disturbance of the roots by grading and filling activity;
 - “2. Providing for water and air filtration to the roots of trees which will be covered with impermeable surfaces;
 - “3. 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

- “4. Requiring, if necessary, the advisory expertise of a qualified consulting arborist or horticulturist both during and after site preparation, and a special maintenance/management program to provide protection of specified wooded areas or specimen trees, as recommended by the arborist or horticulturist.”

Opponents argue that the applicant completely failed to preserve “existing wooded areas” and “significant clumps or groves of trees.” The applicant retained a certified arborist to evaluate and inspect all of the trees on the property and evaluate the feasibility of retaining trees as part of the project. The property contains numerous large trees, mainly Douglas firs. The applicant’s arborist submitted a tree preservation and removal plan with a detailed inventory of each tree including the name, size, condition, and other attributes. The property contains approximately 423 trees. Approximately 90 trees are proposed to be saved, mainly along the western portion of the property, with some more preserved along other perimeter areas. The total number of on-site trees proposed to be removed is 326.

The proposed subdivision certainly does not preserve all or even most of the existing wooded area, significant clumps or groves of trees and vegetation (for brevity’s sake – trees). ZDO 1002.04(A) does not, however, require such preservation. ZDO 1002.04(A) provides that such trees “be incorporated in the development plan wherever feasible.” Furthermore, the “preservation of these natural features shall be balanced with the needs of the development, but shall not preclude the development of the subject property, or require a reduction in the number of lots or dwelling units that would otherwise be permitted.” Thus, the existing trees should be preserved where feasible but that preservation must be balanced against the needs of the development. Furthermore, tree preservation cannot require a reduction in the number of lots that would be permitted.

The applicant’s narrative explains that many different alternative subdivision plans were considered. The narrative explains that the proposed subdivision was dictated by road and utility requirements. The narrative further explains that the factors of ZDO 1002.04(A)(1-10) were considered in trying to preserve trees. Under ZDO 1002.04(A)(1), the siting of roadways and utilities were designed to position lots as far to the east as possible to allow a large restricted development area along the western boundary that

preserves a large number of trees. While opponents are likely correct that this also was done for financial reasons because development along the western boundary would be more difficult and expensive, it nonetheless results in the preservation of a large number of trees on the western boundary. Under ZDO 1002.04(A)(3), alternative road layouts were considered such as culs-de-sac and dead ends, but such roads would violate County connectivity standards. Under ZDO 1002.04(A)(7), existing trees on the perimeter were preserved to create a natural buffer and screen adjoining properties. Under ZDO 1002.07(A)(8), flexible lot sizes were utilized to create larger lots with restricted development areas to protect large groups of trees on the western boundary of the property.

The applicant's narrative clearly considered the factors of ZDO 1002.04(A)(1) and made an attempt to preserve existing trees. The application gives an adequate explanation for attempting to preserve existing trees balanced against the need for designing a 62-lot subdivision. Absent any challenge, the applicant's narrative would be sufficient to satisfy ZDO 1002.04(A). When an applicant has provided a reasonable explanation of how it attempted to preserve natural features while balancing the need for development and not requiring a reduction in the number of lots permitted, an opponent must do more than merely argue that more trees should have been saved. An applicant need not generate multiple alternatives just to shoot them down to comply with ZDO 1002.04(A). Opponents, however, do more than just argue that more trees could have been saved with alternative designs – they provide alternative designs that they argue would preserve more existing trees. Once opponents have suggested alternative designs, an applicant is obligated to respond to those proposed alternatives to demonstrate that it is not feasible to preserve such natural features while still balancing the needs of the development and not requiring a reduction in the number of lots permitted. The applicant has responded to the proposed alternatives.

One alternative proposed by opponents is for the applicant to develop a planned unit development (PUD) that would allow for clustering of smaller lots which would allow for larger areas to preserve trees. First of all, there is nothing in the ZDO that would require an applicant to file a PUD application rather than a subdivision application in order to preserve natural features. While flexible lot sizes are design techniques listed

under ZDO 1002.04(A)(8) – and are incorporated in the proposed design – PUDs are not listed under ZDO 1002.04(A). While that alone is enough to rebut proposed PUD alternatives, when preliminary plans considered a park or PUD opponents complained that lot sizes would be too small. The potential for filing a PUD application does not demonstrate that ZDO 1002.04(A) is violated.

Opponents also submitted proposed alternatives that purport to preserve more existing trees while allowing development. There are a number of problems with opponents’ alternatives. The primary problem with most of the proposed alternatives is that they contain less than 62 lots. For instance, Jane Morrison’s alternatives contain 42, 49, and 51 lots. Patricia Reinert’s (Reinert) alternative contains 57 lots. ZDO 1002.04(A) provides that preservation of natural features shall not “require a reduction in the number of lots * * * that would otherwise be permitted.” Opponents argue that this part of ZDO 1002.04(A) only means that an applicant can develop the minimum number of lots allowed under the zoning provisions. According to opponents, the 62-lots proposed in the present application is the maximum allowed for the property under R-10 zoning, so an alternative that preserves more trees with less lots demonstrates that ZDO 1002.04(A) is not satisfied. I do not agree with opponents’ interpretation of ZDO 1002.04(A). The provision does not say anything about only allowing only the minimum amount of density or requiring a reduction in density. I think it is clear that ZDO 1002.04(A) does not require any reduction in lots for the purpose of preserving of natural features. Absent any natural features protection, the applicant would be permitted 62 lots. Therefore, the natural features protections of ZDO 1002.04(A) do not require a reduction from the 62 lots “that would otherwise be permitted.” The alternatives suggested by opponents require reduction from 62 lots. Therefore, they are not feasible alternatives.⁴ In addition, even alternatives that purport to preserve 62 lots (as well as many of the alternatives with less lots) run afoul of many roadway and lot standards so they are not feasible alternatives.⁵

⁴ The minimum number of lots that would be allowed for the property would be 50 lots. Some of the proposed alternatives would be under the minimum number of lots.

⁵ Some of the alternatives are confusing as to exactly how many lots are in the proposed subdivision. I do not see that there are any alternatives with 62 lots that comply with all the lot and roadway standards.

The applicant has adequately explained that it tried to save as many trees as was feasible. Opponents' have not provided any alternative designs that show it is feasible to preserve more existing trees while balancing the need for development and not requiring a reduction from the 62 lots otherwise permitted. Therefore, ZDO 1002.04(A) is satisfied.

b. ZDO 1007 - Traffic and Safety Standards

Another primary argument of opponents is that the proposed subdivision will cause too much additional traffic and safety problems. ZDO 1007 concerns roads and connectivity. ZDO 1007.01 provides the purpose statement for ZDO 1007. Opponents argue the application violates ZDO 1007.01, but ZDO 1007.01 does not contain any approval criteria – it merely provides the purpose that the following standards and criteria are designed to achieve.

The staff report devotes seven pages to explaining how the roads and connectivity standards are satisfied. Those findings are based in large part on evidence presented by the County engineering department. I agree with the findings in the staff report regarding ZDO 1007 and adopt and incorporate those findings in this decision, as further augmented.

Opponents argue that the traffic impact study (TIS) is outdated. According to opponents, the addition of a traffic signal at the intersection of Highway 99E and SE Vineyard Road have resulted in an “outdated and inaccurate study.” The TIS is based on traffic counts from April 2015. As the applicant explains, the date of the TIS traffic counts is within one year of filing the application, which is a commonly accepted guideline and consistent with Clackamas County Roadway Standards. The applicant also explains that the volumes in the TIS were increased using a background growth rate to estimate traffic volumes at the projected time of completion. Finally, the applicant explains that the Highway 99E and SE Vineyard Road intersection is more than a mile from the property and unlikely to have much impact on the operation of roads near the property and that the Oregon Department of Transportation is careful to preserve mobility along highways when installing new signals. I agree with the applicant that the TIS is not outdated.

River Road runs along the east of the property, and a new road, SE Faith Avenue, would take access to the subdivision from River Road. SE Jennings Avenue runs the

south of the property, and a new road SE Morse Street, would take access to the subdivision from SE Jennings Avenue. SE Willamette Drive runs along the southwestern corner of the property and then jogs west to run along the river and eventually loop back to SE River Road north of the property. Opponents argue that traffic would be increased on SE Wilmot Street and SE Hull Avenue to the south of the property as drivers divert to these streets due to increased traffic on SE Jennings Avenue. As the applicant explains:

“The TIS shows that the eastbound leg of Jennings Avenue approaching River Road will operate at level of service A during both peak periods analyzed. This indicates very little delay and represents the highest letter grade of operation. To address the concerns raised about excessive delays, the analysis was revised for this exercise to show operation, even if the proposed street connection directly to River Road north of Jennings Avenue was removed. Even if all trips were forced to use Jennings Avenue, the level of service for the westbound approach to River Road would still be level of service A.

“The fact is that traffic volumes at the intersection of River Road and Jennings Avenue are not excessive. This is demonstrated repeatedly in the TIS. There is no evidence in the record that indicates drivers would be inclined to divert to other routes to avoid congestion.” March 31, 2016 Memorandum 3.

The TIS and the applicant’s explanation adequate demonstrate that there will not be traffic problems created on SE Wilmot Street and SE Hull Avenue.

Opponents argue that the increased traffic from the proposed subdivision will make an already dangerous situation on SE Willamette Drive even worse. SE Willamette is a public road that is not maintained by the County. SE Willamette Drive runs along a steep slope between the property and properties that are on the river. SE Willamette Drive is 15 feet wide at SE Jennings Avenue, narrows to 10 feet wide through the middle section, and widens to 19 feet north of the property before intersecting SE River Road. Generally, half-street improvements are required for all frontages of a proposed subdivision. In the present case, County engineering exercised its discretion under ZDO 1007.03(B) to not require half-street improvements to SE Willamette Drive.⁶ County engineering explained that improvements were not required because the proposed subdivision would generate very little increased traffic on SE Willamette Drive because it

⁶ ZDO 1007.03(B) provides that: “[r]ight of way dedications and improvements shall be required of all new developments * * * as deemed necessary by the Department of Transportation and Development * * *.”

does not lead anywhere other than the properties on that street that and the main roads can be accessed much more easily on SE River Road or SE Jennings Avenue. Furthermore, County Engineering did not want to encourage more traffic on SE Willamette Drive by making it more appealing. Additionally, none of the lots in the proposed subdivision would have access to SE Willamette Drive, as the area that adjoins SE Willamette Drive is very steep and not proposed for any development. Finally, installing half-street improvements would require significant construction in a steep area and require the removal of more large trees. I agree with staff and the applicant that half-street improvements to SE Willamette Drive are not necessary.

The application does propose to widen the middle portion of SE Willamette Drive so that it is at least 15 feet wide in all areas and to install a turnout at the midpoint of the loop to allow two vehicles to comfortably pass. Although some opponents do not like the widening of the road and the location of the proposed turnout, I agree with staff and the applicant that it is an improvement over the existing situation and likely more than would be required merely due to the very limited impact the proposed subdivision would have on SE Willamette Drive.

Jennings Lodge School is on SE River Road just south of SE Jennings Avenue. Opponents argue that that SE River Road becomes very congested in front of the school before and after school. According to opponents, that situation makes SE River Road too congested and leads to drivers taking detours around the area through side streets which is dangerous. The TIS, however, addressed impacts due to the school. School was in session at the time of the traffic counts, and all school traffic was captured in the traffic count data. Furthermore, only five percent of the traffic from the proposed subdivision is expected to go south on SE River Road in the direction of the school. I agree with staff and the applicant that the impacts due to Jennings Lodge School do not violate any ZDO provisions.

Opponents argue that the proposed internal streets will not be able to accommodate two-way traffic and on-street parking as proposed. The internal streets would be 32-feet wide with parking on both sides of the street. This would leave approximately 22 feet for vehicles to pass each other. The 32-foot width is consistent with County roadway standards and would accommodate parking and two-way traffic. I

agree with staff and the applicant that the internal roads meet all ZDO standards.

Opponents argue that the surrounding transportation system is unsafe due to lack of sidewalks and bike lanes. ZDO 1007.06 provides the requirements for pedestrian and bicycle facilities. ZDO 1007.06 provides detailed requirements for pedestrian and bicycle facilities for new subdivisions. The applicant is proposing to install such facilities along all street frontages according to the requirements of ZDO 1007.06 (except for SE Willamette Drive for the reasons explained earlier). Opponents are not challenging the proposed improvements along the subdivision's frontages, but rather the lack of sidewalks and bicycle lanes near but not adjoining the property. As the County engineer and staff report state: "The County does not have a standard that addresses the adequacy of off-site pedestrian facilities, so it is not an approval criteri[on]." I agree with staff and the applicant that the applicant is not responsible for bike lines and sidewalks off-site. Even though the applicant is not required to address such situations, it has offered to contribute funds to extend sidewalks along SE River Road to SE Jennings Avenue even though that section of SE River Road is not part of the proposed subdivision. The application more than complies with ZDO 1007.06.

Section 220.3 of the Clackamas County Roadway Standards generally prohibits the intersection of local roads with minor arterials. SE River Road is a minor arterial, and SE Faith Avenue which provides access to the subdivision from SE River Road is a local road. Opponents argue that the subdivision is therefore not in compliance with an applicable approval criterion. Section 220.3, however, provides such intersections may be allowed through a modification to the Roadway standards. The staff report explains that based on the scale of the proposed subdivision, two points of access will be required to provide adequate emergency access. In addition, providing a local road connection between SE River Road and SE Jennings Avenue would disperse traffic from the subdivision and provide additional pedestrian connections. I agree with the staff report that such a modification is warranted.

The application satisfies ZDO 1007.

c. ZDO 1008 – Storm Drainage

ZDO 1008 concerns storm drainage plans. Because the proposed subdivision is considered a significant residential development a storm drainage and erosion control

plan is required. The application includes a storm drainage and erosion control plan that relies on swales between the curb and sidewalks and rain gardens on individual lots for infiltration, treatment, and detention. The proposed plan would reduce post-development flows to below pre-development levels. During major overflow events overflow storm water from the proposed development will be collected by the proposed conveyance pipe system in the local streets and released into the Willamette River by a storm water outfall on SE Willamette Drive. The storm water outfall will include an energy dissipater that absorbs the energy generated by the overflow and releases the water in low velocities. Because the outfall travels to the Willamette River additional permits are needed which are addressed in a separate staff report for file number Z0052-16-HDB. The staff report thoroughly addresses the applicable approval criteria and explains why they are satisfied. Most of the findings in the staff report are not challenged, so it would be a waste of the County's money and resources to review the unchallenged findings. Therefore, I adopt and incorporate the findings from the staff report in this decision, except as discussed further.

Opponents raise a number of objections to the proposed storm drainage system. As the staff report and applicant state, the Oak Lodge Sanitary District (OLSD) is the body responsible for approval of the storm drainage plan. ZDO 1006.08(A)(1) requires that any storm drainage plan comply with the regulations of any applicable special district – in this case OLSD. As the staff report explains, the storm drainage plan has been reviewed by OLSD and found to be feasible. Additional detailed plans will be required prior to final subdivision plat approval to ensure compliance with all OLSD rules and regulations and ZDO 1008. The proposed conditions of approval are consistent with those recommended in OLSD's memorandum to ensure compliance with OLSD rules and regulations and ZDO 1008.03 and 1008.04. I further agree with the applicant's expert responses to the issues raised by opponents in his March 31, 2016 memorandum. In any event, I agree with OLSD, staff, and the applicant that it is feasible that the storm drainage plan would comply with OLSD and ZDO 1008 standards and criteria.

ZDO 1008 is satisfied.

d. Additional Issues

ZDO 1004 concerns historic protection. Some opponents argue that the existing retreat on the property is a historic resource that should not be allowed to be removed. The property, however, is not designated as a County historic resource. ZDO 1004 is satisfied.

Steven Cade (Cade) argues that the proposed subdivision does not meet the average lot size requirements. I agree with staff and the applicant that 62 lots are permitted on the 730,302 square foot property. Cade cites comprehensive plan policy 4.R.16. First, such comprehensive plan provisions are not approval criteria. Further, the policy does not prescribe a particular lot size average. Instead it prescribes a minimum lot size of 80% of the flexible lots standards, which the application does.

Cade also argued that the proposed subdivision would create five lots with opposite street frontages. Lots 15-19 would have frontage on the proposed new internal street SE Faith Avenue and on SE Willamette Drive. Cade pointed out that this would run afoul of ZDO 1014.03(C) which provides that “[R]esidential lots that have street frontages along two opposite boundaries shall be prohibited” except in certain circumstance. In response to this argument, the applicant submitted an amendment to the proposed subdivision that would create a 10-foot wide open space tract along the western boundary of Lots 15-19 that would eliminate the opposite street frontage. Staff was amenable to the amendment and proposed conditions of approval to ensure maintenance of the open space tract through the homeowners association. Cade argues that the amendment would cause other approval criteria to no longer be satisfied. In particular, Cade argues that the open space tract would be an additional lot and that there would then be 63 lots instead of the permissible 62. Open space tracts, however, do not count towards the permissible number of lots in a flexible lot subdivision. I agree with staff that the amendment to include an open space tract is permissible and satisfies ZDO 1014.03(C). The proposed conditions of approval are included in the decision.

Opponents argue that the proposed subdivision does not comply with ZDO 1005 regarding sustainable site and building design. The provisions of ZDO 1005, however, do not apply to single family dwellings. ZDO 1005.02 provides that: “[S]ection 1005 shall apply to institutional, commercial, and industrial development; multifamily dwellings; and developments of more than one two-or three-family dwelling * * *.” ZDO 1005 is

not applicable. Opponents also argue that the proposed subdivision does not comply with ZDO 1011 regarding open space and parks. ZDO 1011 does not apply to the property. ZDO 1011.02.

Opponents argue that the proposed subdivision does not meet the solar access requirements of ZDO 1017. ZDO 1017.04 provides that at least 80 percent of lots in a development shall comply with certain design standards for solar access – for instance, having a north-south dimension of at least 90 feet or having a front lot line that is oriented 30 degrees of a true east-west axis.⁷ The proposed subdivision does not comply with this requirement as only 47 percent of the lots comply with the design standards. ZDO 1017.06 allows an adjustment to the design standards if certain site characteristics apply. The applicant sought an adjustment based on ZDO 1017.06(A)(2) and (3) which provide for an adjustment when:

- “2. There is a significant natural feature on the site, identified as such in the Comprehensive Plan or development ordinance, that prevents given streets or lots from being oriented for solar access, and it will exist after the site is developed.
- “3. Existing road patterns must be continued through the site or must terminate on-site to comply with applicable road standards or public road plans in a way that prevents given streets or lots in the development from being oriented for solar access.”

The applicant explained that there is a significant natural feature in the form of the steep slopes on the western edge of the property. In order to protect the trees in this area and avoid building on steep slopes the applicant had to design north-south oriented streets with east-west oriented lots. This generally precluded east-west oriented streets with lots that would meet the solar standards. The staff report proposed granting the adjustment:

“The applicant identifies several issues that affect the layout of streets and lots and constrain the applicant’s ability to meet the standard in full. These include the necessity of laying out north-south aligned street sections which preclude orienting lots with a 90-foot north-south dimension. The steep slope along the Willamette Dr. frontage on the west side precludes an east-west street alignment that would allow a

⁷ The applicant argues that Reinert only raised this argument during the rebuttal period and was not responding to new evidence submitted during the initial open record period. While I tend to agree with the applicant that Reinert is precluded from raising such arguments, Cade raised solar access arguments in his March 13, 2016 letter – before the public hearing.

greater number of lots meeting the standard. The site dimensions, with a longer north-south dimension than the east-west dimension also limits a street and lot layout that would facilitate meeting the standard. Use of the options other than the Basic Requirement would effectively render other lots unbuildable, thereby reducing the number of lots.” Staff Report 21.

Opponents argue that the applicant has not made the required effort to demonstrate that it cannot meet the solar access standards without requiring an adjustment. While it is a reasonably close question, I agree with staff that the applicant’s narrative demonstrates that due to the constraints of the steep slopes on the western edge of the property and the necessity for north-south internal streets that an adjustment is warranted.

Many opponents made arguments regarding various comprehensive plan policies and provisions. Under the approval criteria for a subdivision, however, the comprehensive plan does not provide applicable approval criteria absent some subdivision approval criterion that makes comprehensive plan provisions applicable. Opponents have not identified any subdivision provisions that make any comprehensive plan or other neighborhood plan provisions applicable approval criteria that are not satisfied. These arguments provide no basis to deny the application.

The applicant has satisfied all the applicable approval criteria for the proposed subdivision.

D. DECISION

Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the Hearings Officer hereby **APPROVES** application Z0051-16-SL and Z0052-16-HDB, with the following conditions of approval.

E. CONDITIONS OF APPROVAL

Subdivision Conditions of Approval

I. General and Advisory Conditions:

- A. Approval is based the preliminary subdivision plan submitted with the application; approval of and subject to the conditions of the concurrent application for the off-site storm water outfall, Planning file no. Z0052-16-HDB; the Findings herein and as modified by these conditions of approval. Any change in design, including lot layout

and access to lots, must be approved by the Planning Division prior to final plat approval. Changes in approved access locations may also require additional public notice.

- B. **NOTE: The applicant is advised to take part in a Post Land Use Transition meeting.** County staff would like to offer you an opportunity to meet and discuss this decision and the conditions of approval necessary to finalize the project. The purpose of the meeting is to ensure you understand all the conditions and to identify other permits necessary to complete the project. If you like to take advantage of this meeting please contact Deana Mulder, County Engineering Division office at (503) 742-4710 or by e-mail at deanam@co.clackamas.or.us.
- C. All conditions of approval shall be financially guaranteed or completed prior to final plat approval, unless otherwise noted herein.
- D. The services of a registered professional land surveyor and a civil engineer will be required to satisfy these conditions of approval.
- E. **Platting:** Pursuant to ORS 92, five (5) paper copies of the draft plat survey of the development shall be submitted to the Engineering Division for internal routing and review.
1. All subdivision plats are required to have a plat out boundary survey submitted, reviewed and accepted for filing by the County Survey department a minimum of 30 days prior to submittal of the draft plat for review.
 2. An additional copy of the final plat survey and review deposit shall also be submitted separately to the County Surveyor's office for review.
 3. The draft and final plats shall be prepared by a registered professional land surveyor in a form and with information consistent with the provisions of ORS 92, relevant portions of ORS 209.250, the County ZDO, Chapters 11.01 and 11.02 of the County Code and these conditions of approval.
 4. Plat submittals will require signed originals of any maintenance agreements, related easements outside the plat, Codes, Covenants and Restrictions to be recorded with the plat, and proof of incorporation of a Homeowner's Association (if applicable). Drafts shall be provided for review at the time of draft plat submittal.

5. The final plat shall identify the County Surveyor-approved subdivision plat name, “Jennings Lodge Estates”, or alternative approved by the County Surveyor.
 6. After the draft plat is approved by the Planning & Zoning Division staff and reviewed by the Survey Department, one (1) mylar copy and four (4) paper copies of the final plat shall be submitted to the County Engineering Division for final review.
 7. When final approval is given by the Planning and Zoning Division and the final plat is approved by the County Surveyor, the plat must then be filed and recorded with the County Clerk. All property taxes shall be paid in full for the current year in order for the plat to be recorded.
- F. **Approval Period:** Pursuant to subsection 1106.05(A) of the ZDO, this preliminary partition approval is valid for **four years** from the date of this final written decision. **Failure to record the final plat with the County Clerk within four years of the date of this decision will void this approval unless a time extension is approved (see following).**
- G. **Time Extensions:** Prior to expiration of this approval, the applicant may request a single two-year extension of the preliminary approval subject to the criteria set forth in Section 1305 of the ZDO.
- H. None of the individual lots shall be sold, transferred or assigned until the final subdivision plat has been approved by the County Surveyor and recorded with the County Clerk.
- I. No Building or Manufactured Home Placement permits will be issued until the final subdivision plat is recorded and sanitary sewer and storm water management facilities are approved, installed and operational unless approved for existing separate Lots of Record by the Planning Division.
- J. **Easements:** All existing, required and proposed easements shall be shown and properly documented upon the final plat pursuant to ORS 92. Pursuant to subsec. 1006.02H of the ZDO, easements shall be provided along property lines as deemed necessary by the County DTD, Engineering Div., the OLSD, the OLWD, other special districts, and utility companies. Easements for special purposes shall be of a width deemed appropriate by the responsible agency. Any required easements shall be shown upon the final plat of the subdivision. The need for, and location of, such

easements shall be determined during the street and street frontage, sanitary sewer and storm sewer plans review processes.

- K. **Future Construction:** Future construction on the individual parcels shall be consistent with the relevant requirements of the Oregon Plumbing Specialty Code, Oregon Residential Specialty Code, Oregon Structural Specialty Code and/or Oregon Manufactured Home Standard requirements, as administered by the DTD, Building Codes Division. Foundations and drainage improvements shall be designed to ensure structural stability and proper roof, foundation and footing/crawl space drainage in consideration of the soils and topographical characteristics of the site.
- L. **Utilities:** Electricity, gas, and communications services shall be installed consistent with the requirements of the district or company serving the development. Except where otherwise prohibited by the utility district or company, any new or relocated utility improvements shall be installed underground and in accordance with the requirements of the service providers.
- M. **Prior to final plat approval,** the applicant shall submit certification in writing from the OLWD that the plans for extension of the public water system needed to serve the development have been reviewed and approved by the OLWD.
- N. **Grading:** All grading, filling, and excavation done in connection with any development shall be in accordance with the County Excavation and Grading Ordinance administered by the County DTD, Building Codes Division. **Prior to final plat approval and the commencement of site clearing and construction,** the applicant shall obtain an NPDES 1200-C permit from the County WES/CCSD#1 **if one (1) acre or more of land will be disturbed** or as deemed necessary by the Building Codes Division.
1. All lots shall be graded to provide for gravity flow from homes for sanitary and storm water disposal.
 2. Re-vegetation of all graded and/or filled areas shall be the responsibility of the developer and shall occur as soon as feasible following final grading.
 3. Any proposed fill in individual lots that is more than one (1) foot in depth and where foundations and footings will not be bedded on native soil shall be placed

as engineered fill (Grading Permit required) to support the new homes to be built on such lots.

4. All grading and fill work shall be completed, inspected and approved **prior to final plat approval**, or any remaining incomplete or uninspected work shall be financially guaranteed.

O. **Fire District:** Pursuant to Subsection 1001.03, **prior to final subdivision plat approval**, the applicant shall submit written verification or stamped approved access plans from the CCFD#1 Fire Marshal verifying that the Fire District's standards, including emergency services access, turnarounds and turnouts, fire flows, grades, horizontal and vertical clearances, etc. are, or will be, acceptable to the district. Copies of the approval shall be submitted to the County Engineering Division in conjunction with plans review and permitting for the proposed subdivision. (contact Clackamas County Fire District No. ; Matt Amos, 503-742-2660, matt.amos@clackamasfire.com).

P. **Street Lighting:** Streetlights are a requirement for the subdivision and shall be installed pursuant to the standards of the CCSD #5. The developer shall make arrangements for the installation and maintenance of streetlights with the CCSD#5 and pre-wire for acceptance of these streetlights. **Prior to final plat approval**, the developer shall submit an application to the CCSD#5 for the installation of the streetlights, annexation into the street lighting district and formation of an assessment area to pay for the operation of the lighting (Contact Wendi Coryell, 503-742-4657).

Q. 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.

II. Planning and Zoning Division Conditions: Rick McIntire, (503) 742-4516, or rickm@co.clackamas.or.us

- A. All development and uses within the plat shall conform to the requirements of Section 315 of the ZDO. Nothing in this approval shall be construed to allow any use or structure that is not otherwise permitted in the R-10 zoning district subject to Section 315 of the ZDO.
- B. Each of the proposed lots shall be a minimum of 8000 s.f. in size consistent with the flexible lot size development provisions of Section 1014.04(B) of the ZDO for the R-10 zoning district.
- C. **Prior to final plat approval**, the proposed street names for the new public roads through the site shall be reviewed and approved by the County Planning Division (Contact Linda May at 503-742-4515). The final plat shall depict the County-approved street names.
- D. **Prior to final plat approval**, the applicant shall submit a proposed final tree protection and removal plan for review and approval to the Planning and Zoning Division. Once a plan is approved, the final plan shall be recorded with and referenced upon the final subdivision plat or incorporated into the plat codes, covenants and restrictions.
- E. This subdivision will contain one or more non-residential tracts, Tracts A and B, for the benefit of and to be owned in common by the individual lot owners. Therefore, the following requirements shall be satisfied consistent with Section 1013 of the ZDO:
 - a. Prior to final plat approval, the applicant shall incorporate a non-profit Homeowners Association, or County-approved alternative, meeting the requirements set forth in Sec. 1013 of the ZDO to own and manage the common open space tracts and any common facilities: e.g. storm water improvements and to enforce maintenance of storm water management facilities; e.g. rain gardens, in addition to the enforcement of the OLSD Rules and Regulations pertaining to such facilities by the OLSD itself.

- b. A copy of the filing of the Articles of Incorporation with the Oregon Secretary of State shall be submitted to the Planning and Zoning Division prior to final plat approval.
 - c. The By-Laws and Codes, Covenants, and Restrictions shall contain language stating that no change in open space use or dissolution of the Homeowners Association shall occur without a public hearing before the Hearings Officer and approval of Clackamas County.
 - d. The non-residential tract(s) shall be labeled as to the purpose of the tract(s) upon the final plat. The Homeowners Association By-Laws and Codes, Covenants, and Restrictions shall incorporate language stating that any non-residential tracts shall be preserved as common open space for the benefit of the owners of all the lots in the plat in perpetuity.
 - e. The Codes, Covenants, and Restrictions of the HOA shall be recorded in conjunction with the final plat of the subdivision and the plat shall reference the recorded documents.
- F. Within the proposed Restricted Development Area and open space tract(s), development, including structures, grading, fill, residential yard improvements, tree and other significant vegetation removal is generally prohibited except for enhancement and mitigation measures, including removal of non-native invasive vegetation and subject to approval of the County Planning Director. The CC&Rs of development shall reflect these limitations.

III. County Survey Dept. Conditions: County Survey Office, (503) 742-4475, or Ray Griffin, cgriffin2@co.clackamas.or.us.

- A. All subdivision plats shall have a plat out boundary survey performed and submitted to the County Survey Dept. for review and filing a minimum of 30 days prior to submittal of the first plat draft per County Code Chapter 11.01.
- B. All subdivision plats shall be prepared pursuant to ORS Chapter 92 and County Code Chapters 11.01 and 11.02.

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

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

- A. The following conditions are intended to ensure that the proposed development complies with requirements of Sections 1007 and 1014 of the ZDO, the relevant provisions of the County Roadway Standards and Chapter 5 of the Comprehensive Plan pertaining to right of way dedications, street frontage improvements and access to, and within, the proposed development.
- B. The following items are project requirements from the Department of Transportation and Development's Development Engineering Division. These conditions of approval are not intended to include every engineering requirement necessary for the successful completion of this project, but are provided to illustrate to the applicant specific details regarding the required improvements that may prove helpful in determining the cost and scope of the project. These

- conditions are based upon the requirements detailed in the County's Comprehensive Plan (Comp Plan), the County's Zoning and Development Ordinance (ZDO) and the County's Roadway Standards. Additional requirements beyond those stated in the conditions of approval may be required upon further review of the specific plans for the required access road improvements. The applicant may discuss the requirements of the project with staff at any time.
- C. The requirements specifically required by the Comp Plan and the ZDO cannot be modified by the Development Engineering Division. However, the requirements detailed in these conditions of approval, derived from the Roadway Standards, are based upon nationally accepted standards and engineering judgment and may be modified pursuant to Section 170 of the Roadway Standards. The applicant is required to provide sufficient justification to staff in the request. Staff shall determine if a modification is warranted. Modifications of these conditions may be permitted upon review and approval of the Engineering Div. and the Planning and Zoning Div. staff provided any changes comply with the relevant requirements of the ZDO, Comprehensive Plan and Roadway Standards.
- D. **Prior to final plat approval:** a Development Permit is required from the Engineering Division for review and approval of the required public roadway, frontage and access improvements. The Permit shall be obtained prior to commencement of site work and recording of the final subdivision plat. To obtain the permit, the applicant shall submit construction plans prepared and stamped by an Engineer registered in the State of Oregon, or plans acceptable to the Engineering Division, provide a performance guarantee equal to 125% of the estimated cost of the construction, and pay a plan review and inspection fee. The fee will be calculated as a percentage of the construction costs if it exceeds the minimum permit fee. The minimum fee and the percentage will be determined by the current fee structure at the time of the Development Permit application.
- E. **Prior to final plat approval:** all required improvements shall be constructed and inspected, or financially guaranteed pursuant to Section 1311 of the ZDO.
- F. All required road and street frontage 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.

- G. The applicant shall verify the public right-of-way width and location along the entire site frontage of SE River Road and SE Jennings Avenue. The right-of-way centerline and width shall be verified by a professional survey to the satisfaction of DTD Engineering and Survey Departments. The right-of-way shall accommodate the required frontage improvements. If necessary, additional right-of-way shall be granted.
- H. The applicant shall dedicate right-of-way at the SE Jennings Avenue and SE Willamette Drive intersection to provide the minimum curb radius for a local road with sidewalk and landscape strip.
- I. The applicant shall grant a minimum 8-foot wide public easement for sign, slope, sidewalk and public utilities along the SE River Road frontage, the SE Jennings Avenue frontage, the SE Willamette Avenue frontage, and on each side of the new public streets.
- J. The applicant shall contribute funds to the county for sidewalk improvements in the amount of \$10,225 to be applied to County CIP project 1068 on SE Jennings Avenue. These funds are intended to improve long-term pedestrian safety in the vicinity of the applicant's project site.
- K. Individual vehicular/driveway access to SE River Road is not permitted from any lot unless approved in writing by Clackamas County. The final plat shall bear a note/restriction to this effect.
- L. The applicant shall design and construct improvements along the entire site frontage of SE River Road to minor arterial roadway standards, consistent with Standard Drawing C140. These improvements shall consist of the following:
 - 1. A minimum paved half-width, approximately 22 feet wide, as measured from the existing centerline striping, that aligns with the existing curb line that has been established to the south on SE River Road. The structural section shall comply with Standard Drawing C100 for an arterial roadway.
 - 2. Standard curb, or curb and gutter if curblines slope is less than one percent.

3. A five-foot wide unobstructed sidewalk. Where mailboxes, fire hydrants, utility poles, etc, must be located within the limits of the sidewalk, an eyebrow shall be constructed so that the full unobstructed width of the sidewalk is provided around the obstruction. Mailboxes shall be relocated or replaced in accordance with standards established by the local Post Office. Additional easement, as necessary, shall be granted to provide for any sidewalk eyebrows.
 4. Where the sidewalk does not connect to sidewalk on adjacent property, the end of the sidewalk shall require the construction of a temporary asphalt ramp, adjacent to the end of the sidewalk, providing a transition from the new sidewalk to the edge of pavement. The ramp shall meet ADA guidelines and shall be a minimum of two (2) inches in thickness.
 5. A 5-foot wide landscape strip with street trees shall be provided between the curb and sidewalk.
 6. Appropriate off-site pavement tapers shall be provided from the north and south extent of the site frontage, in accordance with *Roadway Standards* Section 250.6.4.
 7. Drainage facilities in conformance with Oak Lodge Sanitary District requirements, *ZDO* section 1008 and *Clackamas County Roadway Standards* Chapter 4.
 8. An eight-foot wide sidewalk shall be provided adjacent to the transit stop on the SE River Road frontage, consistent with *ZDO* 1007.06.H.2. The landscape strip may be eliminated adjacent to this section of sidewalk. Construction plans for SE River Road frontage improvements adjacent to the transit stop shall be reviewed and approved by Tri-Met.
- M. The applicant shall design and construct improvements along the entire site frontage of SE Jennings Avenue. These improvements shall consist of:
1. A minimum paved half-width of 16 feet from the centerline of the right-of-way to the curb, with a structural section per Standard Drawing C100 for a local roadway.

2. Standard curb, or curb and gutter if curblin slope is less than one percent. A curb return shall be constructed at the SE Jennings Avenue and SE Willamette Drive intersection.
 3. A five-foot wide unobstructed sidewalk. Where mailboxes, fire hydrants, utility poles, etc, must be located within the limits of the sidewalk, an eyebrow shall be constructed so that the full unobstructed width of the sidewalk is provided around the obstruction. Mailboxes shall be relocated or replaced in accordance with standards established by the local Post Office. Additional easement, as necessary, shall be granted to provide for any sidewalk eyebrows.
 4. Where the sidewalk does not connect to sidewalk on adjacent property, the end of the sidewalk shall require the construction of a temporary asphalt ramp, adjacent to the end of the sidewalk, providing a transition from the new sidewalk to the edge of pavement. The ramp shall meet ADA guidelines and shall be a minimum of two (2) inches in thickness.
 5. A 5-foot wide landscape strip with street trees shall be provided between the curb and sidewalk.
 6. Appropriate off-site pavement tapers shall be provided from the east and west extend of the site frontage, in accordance with *Roadway Standards* Section 250.6.4.
 7. Drainage facilities in conformance with Oak Lodge Sanitary District requirements, *ZDO* section 1008 and *Clackamas County Roadway Standards* Chapter 4.
 8. Parking may be restricted along the SE Jennings Avenue frontage where the paved surface is less than 26 feet, as determined by the fire marshal.
- N. The applicant shall design and construct improvements along the frontage of SE Willamette Drive. These improvements shall consist of:
1. A turnout shall be constructed at approximately the midpoint of the site frontage. The turnout shall be constructed consistent with Standard Drawing C350. The travel width shall be a minimum 20 feet.

2. The roadway shall be widened to no less than 15 feet, with 2-foot wide gravel shoulder constructed on the east side adjacent to widened portion of the roadway.
- O. 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:
1. A minimum 50 foot wide public right-of-way shall be dedicated.
 2. A minimum paved width of 32 feet, curb to curb, with a structural section per Standard Drawing C100 for a local roadway.
 3. Standard curb, or curb and gutter if curblin slope is less than one percent.
 4. A 5-foot wide unobstructed sidewalk on both sides of the roadway.
 5. A minimum five-foot wide landscape strip with street trees shall be provided between the curb and sidewalk.
 6. Twenty foot radius curbs at all local road intersections, per Clackamas County Roadway Standards Table 2-15. Minimum 25-foot radius curbs shall be provide at the intersection with SE River Road.
 7. Curb ramps shall be provided at all intersections, per Clackamas County Roadway Standards Drawing S900.
 8. Individual lots taking access from the public roadway shall include a concrete driveway approach, per Standard Drawing D650.
 9. Drainage facilities in conformance with Oak Lodge Sanitary District requirements, *ZDO* section 1008 and *Clackamas County Roadway Standards* Chapter 4.
 10. Provide a street name sign and stop sign at the intersection of the public road with SE River Road. The stop sign shall be 30 inches in diameter and be placed 7 feet from the ground line. A street name sign shall be provided at the intersection with SE Jennings Avenue.
 11. Intersection sight distance for the new intersection with SE River Road shall be 445 feet based on a 40 mile per hour design speed. Sight distance for the intersection with SE Jennings Avenue shall be 335 feet based on a 30 mile per hour design speed. Sight distance is measured from a location that is 14.5 feet

back from the travel lane from an eye height of 3.5 feet to an object height of 3.5 feet. Plan and profile survey data, demonstrating sight lines and compliance with minimum intersection sight distance as part of the Development Permit for the project.

- P. A Utility Placement Permit shall be required for any utility work required within the right-of-way of SE River Road, SE Jennings Avenue and SE Willamette Drive.
- Q. 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.
- R. 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.
- S. Written verification must be received from the Fire District that adequate emergency access is or will be provide to the proposed subdivision, and that the roadway will support a 75,000 lb. fire apparatus, that a sufficient turnaround exists or will be constructed, that corner radii are acceptable, and that vertical and horizontal clearances are acceptable.
- T. 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. For this proposal, the pdf as-built plan sheets shall be

transmitted to mike.boumann@clackamasfire.com (Deputy Fire Marshal Mike Boumann)

- U. Positive drainage shall be provided for all lots to an acceptable surface water management system having the capacity to accommodate the anticipated contribution per Oak Lodge Sanitary District requirements and the Clackamas County Zoning and Development Ordinance Section 1008. Storm water detention facilities cannot be located within public rights-of-way. Provisions shall be made for roof and foundation drains from the new homes.
- V. A Utility Placement Permit shall be required for any utility work required within the public rights-of-way fronting or connecting to the plat.
- W. The applicant's attorney and/or surveyor or engineer shall provide written verification that all proposed lots have legal access and utility easements as required prior to recording of the plat.
- X. The applicant shall 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. In addition, provide one set of AutoCAD as-built files on a floppy disk or in DXF format to be translated into AutoCAD format.
- Y. The applicant's surveyor/engineer shall certify that the proposed road construction corresponds to the approved plans.
- V. **Oak Lodge Sanitary District Conditions:** Markus Mead, (503) 353-4205, Permits@OLSD.net
 - A. The proposed development is subject to the Rules & Regulations of the Oak Lodge Sanitary District (OLWD) for sanitary and storm systems and surface water management. For storm drainage, Section 1008 of the Zoning Ordinance also applies.
 - B. The developer is required to submit plans for review and approval through the OLSD consistent with the following.
 - C. For sanitary sewer service, the following shall apply:
 - 1. The sanitary sewer plans and specifications are subject to the applicable state and federal laws for the construction of sanitary sewerage systems.

2. The subdivision shall be served by a new public sanitary line extension with plans and profiles prepared by a professional engineer using scales of 1"=50' horizontal and 1"=10' vertical. All elevations to be field verified prior to plan submittal. The plans shall be submitted separately to the OLSD and the Oregon Department of Environmental Quality (DEQ) for review and approval.
3. The applicant shall provide an engineered plan showing all new building locations (approximate) and their respective sanitary sewer service laterals and their connections to the new OLSD mains. Clean-Outs are required at the property line on all proposed side sewer laterals. Designs submitted for approval shall be stamped by a Registered Professional Engineer licensed to practice in the State of Oregon.
4. The applicant shall submit a downstream analysis that demonstrates adequate conveyance capacity of the existing sanitary sewer network to accommodate the additional flows of the new development. It is the responsibility of the owner to demonstrate to the satisfaction of OLSD that the sewer system has adequate capacity for the proposed development as well as for the existing flow. If capacity is inadequate, the owner must design and construct necessary improvements to the system that are acceptable to OLSD.
5. A 20-foot wide sewer easement shall be recorded and granted to the OLSD for replacement and perpetual maintenance of the line extension. The sewer main extension, upon acceptance by OLSD, will be owned and operated by OLSD
6. Costs of the sanitary sewer system improvements necessary to serve this development shall be borne entirely by the applicant/developer.
7. Permit Application Procedures and Fees: Prior to sanitary sewer utility installation, the owner must submit to the OLSD a completed "Application for Sewer Main Extension" and pay Sanitary Sewer System inspection deposit. This application form and additional information can be found at <http://www.oaklodge-sanitary.com/permits/>
8. An inspection deposit minimum of 20% of the engineer's sanitary sewer infrastructure estimate is required. The deposit covers the cost of inspection

and associated internal engineering reviews prior to and during construction and a TV inspection eleven (11) months following completion. If the OLSD inspection and review charges are less than the deposit amount, the difference will be refunded at the conclusion of the project. If they are more than the deposit amount, the owner is obligated to pay the difference.

9. After completion, the owner shall provide the OLSD a bill of sale for the line extension and post with the OLSD a bond or cash equivalent equal to 20% of the cost of construction. The bond serves to insure correction of any deficiencies discovered during the 12-mo. Warranty period. All deficiencies shall be corrected prior to the final acceptance of the line extension by the OLSD.
10. The contractor shall submit a certificate of insurance naming the OLSD as “additionally insured”. The insurance minimums and additional information can be found at <http://www.oaklodgesanitary.com/permits/3>
11. Inspection Procedures and Notification: The contractor and engineer are required to notify and coordinate with the OLSD for inspections as well as construction shall be inspected and certified in writing by the project engineer, per Oregon DEQ conditions of approval. Testing requirements shall conform to the DEQ conditions of approval, and the OLSD/CC-DTD construction standards, and all test results are to be submitted to the OLSD.
12. The contractor shall meet with OLSD inspector on site at least 48-hrs. prior to beginning construction to review schedule and agree on inspection requirements and communication protocol. Contact Markus Mead at Permits@OLSD.net or 503-353-4205.
13. The developer is required to install sanitary sewer and storm drain facilities to the limits of the property in order to allow for continuity in the conveyance systems. Easements shall be provided as deemed necessary by the OLSD for gravity connections to the adjoining properties.
14. Building permits shall not be approved by the OLSD until the sanitary system improvements are complete in all respects and accepted by the OLSD.

15. The OLSD shall review and approve the final plat for the sanitary and storm sewer systems **prior to final plat approval.**

D. For Surface Water Management the following shall apply:

1. The development is subject to the Rules & Regulations of the OLSD for storm drainage and erosion control. Section 1008 of the ZDO also applies.
2. Costs of the storm drainage facilities shall be borne entirely by the developer.
3. Design and construction of drainage improvements within the public ROW are to be coordinated with the Clackamas County Dept. of Transportation and Development (DTD).
4. Water quantity (detention), water quality and infiltration facilities shall be designed and constructed consistent with OLSD standards and specifications.
5. Water quantity (detention) is required, and the applicant shall provide a downstream analysis to determine the capacity of all receiving lines. The downstream analysis shall demonstrate adequate conveyance capacity to the distance where the project site contributes less than 15 percent of the upstream drainage area or 1,500 feet downstream of the project, whichever is greater. It is the responsibility of the owner to demonstrate to the satisfaction of the OLSD that this storm sewer system has adequate capacity for the proposed development as well as for the existing flow. If capacity is inadequate, the owner must design and construct necessary improvements to the system that are acceptable to the OLSD.
6. Stormwater quantity detention facilities shall be designed to capture and detain runoff of the 2-year, 24-hour post-developed runoff rate to ½ of the 2-year, 24-hour pre-developed discharge rate. The procedure for determining the detention quantities is set forth in *Chapter 2, Facility Design, Portland, Oregon, Portland Stormwater Management Manual, 2008.*
7. Water quality facilities are required and shall be designed to capture and treat runoff for all events up to ½ of a 2-year, 24-hour post developed storm. The water quality system shall use vegetated treatment facilities including vegetated swales, filter strips, or wet ponds. Alternative systems may be used

with approval by the OLSD. All catch basins shall be sumped and trapped to remove sediment, oil, and grease.

8. A stormwater drywell was constructed on-site in 2003. The location is approx. 40-ft. from the SE corner of the Miller Auditorium, located in the parking lot there. It is registered with the Oregon DEQ as UIC# 11680-1. Options for re-using the drywell or inquiring about the decommissioning process can be explored with Oregon DEQ.
9. **Prior to final plat approval**, the applicant shall submit to OLSD for review, a storm water drainage plan and report for calculations and sizing. A stormwater drainage plan and report for calculations and sizing shall be prepared by a registered professional engineer and provided to OLSD for review and approval.
10. Prior to final plans and plat approval, the owner of the development shall sign an *Agreement to Maintain Stormwater Facilities*, prepared by the OLSD. The stormwater conveyance, detention, and water quality facilities will be equally owned and maintained by all lots, unless excluded under separate agreement with Clackamas County DTD or OLSD. The maintenance agreement shall be incorporated into the Covenants, Conditions, and Restrictions of the plat and/or recorded against the parcels. It is also an option that the development is structured under an HOA, at such time the ownership and maintenance responsibility would transfer to the HOA. Contact Markus Mead at Permits@OLSD.net / 503-353-4205.
11. Construction resulting in disturbance of soil less than 1-acre shall require that an Erosion Control Prevention/Sedimentation Control Application be prepared and a Permit be obtained from the OLSD, current fee is \$325. For all project sites greater than 1-acre of soil disturbance a DEQ 1200-C Erosion Control permit is issued through Clackamas County WES. Contact Markus Mead at Permits@OLSD.net / 503-353-4205.
12. Approved engineered site plan, approved storm drainage report and plan, and erosion control permit shall be required prior to the start of any excavation work. Plan review fee is \$400. As-built drawings will be required prior to

final project approval. Contact Markus Mead at Permits@OLSD.net / 503-353-4205.

13. Provisions shall be made for roof and foundation drains from all homes in the development. These shall be emptied into a storm sewer system. Plans for roof drains shall be submitted to and reviewed by the CCSD#1.
14. The OLSD shall review and approve the final plat for the sanitary and storm sewer systems **prior to final plat approval.**

FLOODPLAIN MANAGEMENT DISTRICT CONDITIONS OF APPROVAL

1. General Conditions:
 - A) Approval of this land use permit is based on the submitted written narrative and plan(s) dated January 22, 2016. No work shall occur under this permit other than which is 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.
 - B) The proposed development is also subject to the Findings and Conditions of File No. Z0051-16-SL.
 - C) Approval Period: The approval of this Floodplain Development Permit is valid for four 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" means at least one major development permit shall be obtained and maintained, or if a major development permit is not required to complete the development contemplated by the approved FDP, "implemented" means all other necessary County development permits (e.g. grading permit, building permit for an accessory structure) shall be obtained and maintained.
 - D) Time Extension: If the approval of this Floodplain Development Permit is not implemented within the initial approval period established by

Subsection 703.09(F), a two-year time extension may be approved pursuant to Section 1310.

- E) 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.

2. County Permitting Requirements:

- A) The applicant shall obtain all other necessary permits from those federal, state, or local governmental agencies from which prior approval is required.
- B) The applicant shall obtain all necessary permits that are required from County agencies to install the stormwater infrastructure.

3. General Construction Standards for Components, Materials & Systems:

- A) Anchoring: The proposed stormwater infrastructure shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
- B) Flood-Resistant Materials: The proposed stormwater infrastructure shall be constructed with materials and utility equipment resistant to flood damage, and using methods and practices that minimize flood damage.
- C) Utilities, Equipment & Machinery: The proposed stormwater infrastructure shall be flood-proofed so as to prevent water from entering or accumulating within the components during conditions of flooding.

4. Standards for Fill:

- A) Balanced Cut & Fill Standards:
 - i. Installation of the stormwater infrastructure shall be designed as a balanced cut-and-fill project, such that any new fill in the floodplain will

- be balanced with at least an equal amount of material removal on-site, or in such a manner that zero new fill is introduced on the site.
- ii. All fill shall be protected against erosion by riprap, vegetative cover, or bulkheading.
 - iii. New fill shall be balanced with at least an equal amount of material removal either on-site, or from a nearby area at or below the BFE and in the same drainage basin.
 - iv. Excavation below the level of the seasonal groundwater table shall not be used in balancing fill volumes against excavation volumes.
 - v. The mean annual groundwater level shall be determined by soil morphology, or other available data on groundwater conditions.
 - vi. Balancing of new fill shall occur at the same time as the fill is placed on the development site.
 - vii. A professional engineer or licensed architect shall certify that the amount of material removed balances the amount of new fill material.
 - viii. Removal and / or fill necessary to plant new trees or vegetation is not subject to the balanced cut & fill standards of Subsection 703.10(A)(4).
5. Standards for Development in Regulatory Floodway:
- A) The siting, construction, installation and resulting encroachments of the portions of the stormwater infrastructure that are located in the Regulatory Floodway shall be of a type and magnitude that cause no effects on water surface elevations, no effects on the level of insurable damages, and no adverse impacts to upstream or downstream properties, per ZDO Subsection 703.05(H).

WILLAMETTE GREENWAY CONDITIONS OF APPROVAL

1. General Conditions:
 - A) Approval of this land use permit is based on the submitted written narrative and plan(s) dated January 22, 2016. No work shall occur under this permit other than 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.

- B) The proposed development is also subject to the Findings and Conditions of File No. Z0051-16-SL.
 - C) The approval of this Willamette River Greenway (WRG) permit is 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" means all major development permits shall be obtained and maintained, or if no major development permits are required to complete the development contemplated by the approved WRG permit, "implemented" means all other necessary County development permits (e.g. grading permit, building permit for an accessory structure) shall be obtained and maintained.
 - ii. If this approved WRG permit is not implemented within the initial approval period established by Subsection 705.07(B), a two-year time extension may be approved, pursuant to Section 1310.
 - D) 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.
2. Standards for Landscaped Area, Open Space, Vegetation and Preservation of Buffer / Filter Strip
- A) Pursuant to Subsection 705.04(C & D), the applicant shall provide the maximum possible landscaped area, open space, or vegetation between the

proposed development and the river, resulting in the preservation of a buffer or filter strip of natural vegetation along the river bank. The depth of the landscaped area, open space, vegetation and preservation of buffer / filter strip need not exceed 150 feet, and the depth of the vegetative buffer / filter strip shall be determined by consideration of the factors outlined in Subsection 705.04(D)(1-5).

- i. The applicant shall restore with native vegetation all areas of the Vegetated Buffer / Filter Strip of the WRG that are disturbed by the installation of the stormwater infrastructure, pursuant to the standards and specifications outlined in the submitted Natural Resource Assessment and HCAD / WQRAD Mitigation Planting Specification Table (Exhibit A-8).
- ii. The required restoration / 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.

HABITAT CONSERVATION AREA DISTRICT CONDITIONS OF APPROVAL

1. General Conditions:
 - A) Approval of this land use permit is based on the submitted written narrative and plan(s) dated January 22, 2016. No work shall occur under this permit beyond that specified in this decision. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of approval described herein.
 - B) The proposed development is also subject to the Findings and Conditions of File No. Z0051-16-SL.
 - C) 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.

2. Construction Management Plan Conditions:
 - A) Pursuant to Subsection 706.08, the proposed Construction Management Plan (CMP) shall meet the following standards:
 - i. Erosion prevention and sediment control (EPSC) measures shall be required and shall comply with the standards of the Oak Lodge Sanitary District (OLSD).
 - ii. Orange construction fencing (i.e. safety fencing, snow fencing, or a comparable product) shall be installed in such a manner as to protect the area of the HCA not authorized for disturbance.
 - iii. Trees in the HCA shall not be used as anchors for stabilizing construction equipment.
 - iv. Native soils disturbed during development shall be conserved on the subject property.
 - v. Development shall not commence until the EPSC measures and fencing required pursuant to Subsections 706.08(A) and (B) are in place.
 - vi. Compliance with the Construction Management Plan shall be maintained until the development is complete.
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), except that under Subsection 706.06(D)(2), if the approval did not contemplate a specific development proposal, "implemented" means at least one County development permit shall be obtained and maintained.

- 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.
- B) Pursuant to Subsection 706.09(A)(1), the HCA Boundary is established as it is inventoried and mapped on the Metro Nature in Neighborhoods Title 13 Map for T2S R1E Section 13 (Exhibit A-4).
- 4. Development Permit 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, because the HCA Development Permit is directly related to an application for a subdivision (File No. Z0051-16-SL), "implemented" means that the final plat of the subdivision (File No. Z0051-16-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 Utility Facilities: The proposed installation of utility facilities in the HCA that are subject to Subsection 706.10(A)(2) shall meet the following disturbance area limitations:
 - i. The disturbance area for the new underground stormwater overflow line and associated outfall in the HCA shall be no greater than 25 feet wide, and shall disturb no more than the roughly 30 linear feet of WQRA outlined on Exhibit 7.
 - ii. Mitigation for the installation of utilities is required.

- D) Standards for Mitigation: The mitigation standards for the development within the HCA are subject to the standards and specifications that are outlined in the submitted Natural Resource Assessment and HCAD / WQRAD Mitigation Planting Specification Table (Exhibit A-8).
 - i. All vegetation shall be planted within the mitigation area outlined on the HCA / WQRA / WRG Site Plan (Exhibit A-7).
 - ii. The required restoration / 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.

**WATER QUALITY RESOURCE AREA DISTRICT CONDITIONS OF
APPROVAL**

- 1. General Conditions:
 - A) Approval of this land use permit is based on the submitted written narrative and plan(s) dated January 22, 2016. No work shall occur under this permit other than which is 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.
 - B) The proposed development is also subject to the Findings and Conditions of File No. Z0051-16-SL
 - C) 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.
- 2. Construction Management Plan Conditions:

- A) Pursuant to Subsection 709.08, the proposed Construction Management Plan (CMP) shall meet the following standards:
 - i. Erosion prevention and sediment control (EPSC) Permit: Erosion prevention and sediment control (EPSC) measures shall be required and shall comply with the standards of OLSD.
 - ii. Orange construction fencing (i.e. safety fencing, snow fencing, or a comparable product) shall be installed in such a manner as to protect the area of the WQRA not authorized for disturbance.
 - iii. Trees in the WQRA shall not be used as anchors for stabilizing construction equipment.
 - iv. Native soils disturbed during development shall be conserved on the subject property.
 - v. Development shall not commence until the EPSC measures and fencing required pursuant to Subsections 709.08(A) and (B) are in place.
 - vi. Compliance with the Construction Management Plan shall be maintained until the development is complete.
- 3. Boundary Verification Conditions:
 - A) Approval Period: The approval of this WQRA Boundary 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 709.06(E)(1) and (2), except that under Subsection 709.06(E)(2), if the approval did not contemplate a specific development proposal, "implemented" means at least one County development permit shall be obtained and maintained.
 - ii. If this approved WQRA Boundary Verification is not implemented within the initial approval period established by Subsection 709.06(E), a two-year time extension may be approved pursuant to Section 1310.

- B) Pursuant to Subsection 709.09, the WQRA Boundary is established as the Willamette River, along with a Vegetated Buffer that extends 50 feet upland from the Top of Bank that is identified on Exhibit A-7.
- 4. Development Permit Conditions:
 - A) Approval Period: The approval of this WQRA 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, because the WQRA Development Permit is directly related to an application for a subdivision (File No. Z0051-16-SL), "implemented" means that the final plat of the subdivision shall be recorded with the County Clerk.
 - ii. If this approved WQRA Development Permit is not implemented within the initial approval period established by Subsection 709.06(E), a two-year time extension may be approved by the Planning Director, pursuant to Subsection 1305.02, and subject to Subsection 1305.05.
 - B) Standards for Design & Mitigation: Pursuant to Subsection 709.10(B)(C) and (D), the proposed development within, and disturbance of, the WQRA shall meet the following standards:
 - i. The design and methods of the proposed development shall:
 - a) Be devised to result in the minimum disturbance and impact on the WQRA that is necessary to achieve the proposed development; and
 - b) Ensure that impacts to the functions and values of the WQRA will be mitigated, or impacted areas will be restored to the extent practicable.
 - ii. The WQRA shall be restored and maintained pursuant to the standards and specifications that are outlined in the submitted Natural Resource Assessment and HCAD / WQRAD Mitigation Planting Specification Table (Exhibit A-8).

- iii. The required restoration / 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.
- iv. To the greatest extent practicable, existing native vegetation shall be retained and protected.

DATED this 5th day of May, 2016.



Fred Wilson
Clackamas County Hearings Officer

ENDANGERED SPECIES ACT NOTICE

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

APPEAL RIGHTS

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