

Meyer Farm Phased Subdivision

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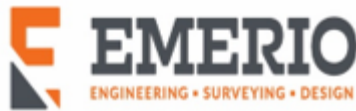
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CITY OF SALEM UNIFIED DEVELOPMENT CODE TITLE X

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I. PROJECT DESCRIPTION

APPLICANT: Kehoe Northwest Properties
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Portland, OR 97219

**CIVIL ENGINEER,
PLANNING &**

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SITE

LOCATION: The approximate 29-acre subject property is located at 4540 Pringle Road SE on the north side of Hilfiker Lane SE and on the west side of Pringle Road SE.

TAX LOTS: 083W11BC: Tax Lots 3000 and 3200

SITE SIZE: The subject site totals approximately 30 acres in size.

ZONING: Residential Agriculture (RA) & Single-Family Residential (RS), City of Salem, Oregon

REQUEST: The applicant is seeking approval to subdivide the 25.63-acre property into 138 single-family lots.

II. SITE DESCRIPTION/EXISTING CONDITIONS

The subject property is approximately 25.63 acres, located at 4540 Pringle Road SE, and split zoned between Residential Agriculture (RA) and Single Family Residential (RS). The subject property is surrounded by single-family development and has a small creek located in the northwest corner. Of the total 817 identified trees, 217 trees (including 5 significant Oak trees) are proposed to be preserved. The property is best described as having rolling hills with low areas at 133 feet near the creek and high areas in the southwest corner at 395 feet. An existing conditions map, grading plan, and road profile sheets are included with this submittal.

III. NEEDED HOUSING APPLICATION

As a subdivision application for a housing development, this Application is subject to Oregon's "Needed Housing" statutes – ORS 197.303(1), 197.307(4) and (6), 197.522, 227.173(2) and 227.175(4). Oregon law defines "needed housing" as:

all housing on land zoned for residential use or mixed residential and commercial use that is determined to meet the need shown for housing within an urban growth boundary at price ranges and rent levels that are affordable to households within the county with a variety of incomes, including but not limited to households with low incomes, very low incomes and extremely low incomes, as those terms are defined by the United States Department of Housing and Urban Development under 42 U.S.C. 1437a. "Needed housing" includes the following housing types:

- (a) Attached and detached single-family housing and multiple family housing for both owner and renter occupancy;
- (b) Government assisted housing;
- (c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 (Policy) to 197.490 (Restriction on establishment of park);
- (d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions; and
- (e) Housing for farmworkers.

ORS 197.303(1). This Application falls under the definition of "needed housing" because (a) it is on land zoned for residential use that is within an urban growth boundary; and (b) will consist of attached and/or detached single-family housing for owner and/or renter occupancy. *Id.*

The Needed Housing statutes require, among other things, that approval criteria for such developments be analyzed using only "clear and objective" standards, conditions of approval, and procedures. ORS 197.307(4). "Generally, approval standards [as well as procedures and conditions of approval] are clear and objective if they do not impose 'subjective, value-laden analyses that are designed to balance or mitigate impacts.'" *Warren v. Washington County*, (Or LUBA 2018) (citing *Rogue Valley Assoc. of*

Realtors v. City of Ashland, 35 Or LUBA 139, 158 (1998), *aff'd* 158 Or App 1, 970 P.2d 685, *rev den* 328 Or 549 (1999)). Moreover, all standards for needed housing must be “clear and objective on the face of the ordinance.” ORS 227.173(2).

However, the local government is allowed to “adopt and apply an alternative approval process for applications and permits for residential development based on approval criteria regulating, in whole or in part, appearance or aesthetics that are not clear and objective if:

- (a) The applicant retains the option of proceeding under the approval process that meets the requirements of subsection (4) of this section;
- (b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and
- (c) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in subsection (4) of this section.”

ORS 197.307(6).

Further, Oregon requires local governments to approve “an application for a permit, authorization or other approval necessary for the subdivision or partitioning of, or construction on, any land for needed housing that is consistent with the comprehensive plan and applicable land use regulations.” ORS 197.522(2). If a subdivision application is not consistent with the comprehensive plan and applicable land use regulations, the local government must, prior to making a final decision, “allow the applicant to offer an amendment or to propose conditions of approval that would make the application consistent with the plan and applicable regulations.” ORS 197.522(3).

Finally, a city “may not deny an application for a housing development located within the urban growth boundary if the development complies with clear and objective standards, including clear and objective design standards contained in the city comprehensive plan or land use regulations.” ORS 227.175(4)(b)(A).

The City of Salem has not adopted an alternate approval process as allowed by ORS 197.307(6). As such, the City may only apply clear and objective approval criteria, standards, and processes to this Application, and must impose only clear and objective conditions of approval on the Application. Any approval criteria, standards, procedures, or conditions that are subjective (i.e. not clear and objective) cannot be applied to this Application. And, the City must approve this Application if it meets the applicable clear and objective approval criteria.

Applicant has identified the approval criteria, standards, and procedures below that are not clear and objective.

IV. LIMITED LAND USE APPLICATION

The subdivision application is also considered a “limited land use application” as defined by ORS 197.015(12) and is thus subject to ORS 197.195(1), which allows only those Comprehensive Plan and

Transportation System Plan (“TSP”) policies that have been properly incorporated into land use regulations to apply as approval criteria.

Specifically, a city whose code incorporates its comprehensive plan or TSP policies must do more than provide a “broad injunction to comply with unspecified portions” of the plan and/or TSP. *Paterson v. City of Bend*, 49 Or LUBA 160, 167 (2005), *aff’d in part, rev’d and rem’d on other grounds*, 201 OR App 344, 118 P.3d 842 (2005); *see also Oster v. City of Silverton*, Slip Op. at 9 (Or. LUBA 2019). “In order to ‘incorporate’ a comprehensive plan standard into a local government’s land use regulations within the meaning of ORS 197.195(1), the local government must at least amend its land use regulations to make clear what specific policies or other provisions of the comprehensive plan apply to a limited land use decision as approval criteria.” *Paterson*, 49 Or LUBA at 167; *see also Oster*, Slip Op. at 9. In other words, a city’s code provisions must “make clear what specific policies, action items, or performance standards contained in the [comprehensive plan or] TSP apply as approval criteria for a limited land use decision.” *Oster*, Slip. Op. at p. 12. “Incorporation by reference of the entirety of each of the city’s public facilities plan falls far short.” *Id.*

The City of Salem has not properly incorporated many of its Comprehensive Plan and TSP policies into the approval criteria relevant to this Application. As such, they cannot be applied.

Applicant has identified the approval criteria below that do not properly incorporate the Comprehensive Plan and TSP policies.

V. RESPONSE TO APPLICABLE CODE STANDARDS & APPROVAL CRITERIA

SECTION 205.010. – SUBDIVISION TENTATIVE PLAN

- (a) *Applicability.* No land shall be divided into four or more lots within a calendar without receiving tentative subdivision plan approval as set forth in this section.
- (b) *Procedure type.* A tentative subdivision plan is processed as a Type II procedure under SRC chapter 300.
- (c) *Submittal requirements.* In addition to the submittal requirements for a Type II application under SRC chapter 300, an application for tentative subdivision plan shall include the information required in SRC 205.030.
- (d) *Criteria.* A tentative subdivision plan shall be approved if all of the following criteria are met:
 - (1) The tentative subdivision plan complies with the standards of this chapter and with all applicable provisions of the UDC, including, but not limited to, the following:
 - (A) Lot standards, including, but not limited to, standards for lot area, lot width and depth, lot frontage and designation of front and rear lot lines.
 - (B) City infrastructure standards.

- (C) Any special development standards, including, but not limited to, floodplain development, special setbacks, geological or geotechnical analysis, and vision clearance.

Applicant Response: The provisions of the UDC for lot standards (area, width, depth, frontage), and designation of front and rear lot lines are addressed below in this narrative. The city infrastructure standards and vision clearance standards are addressed below in this narrative. This application submittal also includes a geotechnical analysis. The criteria are met.

However, criterion 1 (subsection (d)(1)) is not clear and objective. Simply citing “applicable provisions of the UDC,” without specifying which provisions are applicable, does provide the Applicant sufficient information. Further, the phrase “including, but not limited to” is subjective and allows for discretion. Further, “City infrastructure standards” does not provide any information as to what those standards are that must be complied with. As such, this criterion cannot be applied to the Application.

- (2) The tentative subdivision plan does not impede the future use or development of the property or adjacent land.
- (3) Development within the tentative subdivision plan can be adequately served by city infrastructure.

Applicant Response: This proposed subdivision plan does not impede the future use or development of the property or adjacent land. A future development plan is shown over the existing farmhouse tract to comply with UDC standards. A composite utility plan and a right-of-way improvement plan have been included with this application to demonstrate that the tentative subdivision can be adequately served by city infrastructure. The criteria are met.

However, criterion 2 (subsection (d)(2)) is not clear and objective because it does not define how such tentative subdivision plan could “impede the future use or development of the property or adjacent land” – rather, it allows for discretion by the review authority. As such, this criterion cannot be applied to this Application.

Criterion 3 (subsection (d)(3)) is similarly not clear and objective because it does not define “adequately served” – this phrase is subjective and allows for discretion by the review authority. As such, it cannot be applied to this Application.

- (4) The street system in and adjacent to the tentative subdivision plan conforms to the Salem Transportation System Plan.
- (5) The street system in and adjacent to the tentative subdivision plan is designed so as to provide for the safe, orderly, and efficient circulation of traffic into, through, and out of the subdivision.

- (6) The tentative subdivision plan provides safe and convenient bicycle and pedestrian access from within the subdivision to adjacent residential areas and transit stops, and to neighborhood activity centers within one-half mile of the development. For purposes of this criterion, neighborhood activity centers include, but are not limited to, existing or planned schools, parks, shopping areas, transit stops, or employment centers.
- (7) The tentative subdivision plan mitigates impacts to the transportation system consistent with the approved traffic impact analysis, where applicable.

Applicant Response: The existing and proposed street systems in and adjacent to the subject site conform to the Salem Transportation System Plan (see sheet P5.0 Tentative Site Plan). The proposed street system and associated improvements provide safe, orderly, and efficient circulation into, through and out of the subdivision. The applicant proposes to install a pedestrian trail from Hillrose Street from the east side of the subject site to the sidewalks on the west side of Hilfiker Lane. Sidewalks are proposed throughout the subdivision where practical. There are no transit stops or employment centers in or adjacent to the subject property. A traffic impact analysis has been included with this submittal and proposes to follow the recommendations made by Kittelson and Associates. The criteria are met.

However, criterion 4 (subsection (d)(4)) is not clear and objective because it includes the phrase “conforms to,” which is subjective and allows for discretion. Moreover, the Transportation System Plan (TSP) is not properly incorporated into this criterion because it includes merely a general reference to the plan and does not specify which provisions of the TSP are applicable. As such, criterion 4 cannot be applied to this Application.

Criterion 5 (subsection (d)(5)) is not clear and objective for “provid[ing] for the safe, orderly, and efficient circulation of traffic.” This phrase includes subjective terms and allows for discretion by the review authority. As such, it cannot be applied to this Application.

Criterion 6 (subsection (d)(6)) is not clear and objective because “safe and convenient” are subjective, undefined terms that allow for discretion. Moreover, this criterion leaves open the definition of “neighborhood activity centers” by including “but are not limited to” in its definition, making the requirement subjective. As such, this criterion cannot be applied to this Application.

Criterion 7 (subsection (d)(7)) is not clear and objective because it requires the plan to “mitigate impacts to the transportation system,” which is subjective. It also only applies “where applicable,” which allows for discretion. As such, this criterion cannot be applied to this Application.

- (8) The tentative subdivision plan takes into account the topography and vegetation of the site so the need for variances is minimized to the greatest extent practicable.
- (9) The tentative subdivision plan takes into account the topography and vegetation of the site, such that the least disruption of the site, topography, and vegetation will result from the reasonable development of the lots.
- (10) When the tentative subdivision plan requires an Urban Growth Preliminary Declaration under SRC chapter 200, the tentative subdivision plan is designed in a manner that ensures that the conditions requiring the construction of on-site infrastructure in the Urban Growth Preliminary Declaration will occur, and, if off-site improvements are required in the Urban Growth Preliminary Declaration, construction of any off-site improvements is assured.

Applicant Response: An existing conditions map has been included with this submittal and the tentative subdivision plan accounts for the topography and vegetation without a need for a variance. The applicant has taken these factors into account and only proposes the disruption of the site due to reasonable development of the lots. This proposal does not require an Urban Growth Preliminary Declaration under SRC 200. The criteria are met.

However, criterion 8 (subsection (d)(8)) requires the tentative subdivision plan to “take into account” certain features, and does not adequately define what must be considered. Further, “minimized” and “to the greatest extent practicable” are subjective terms with no numerically or otherwise defined bounds. As such, this criterion is not clear and objective and cannot be applied to this Application.

Criterion 9 (subsection (d)(9)) similarly requires the tentative subdivision plan to “take into account” certain features, and does not adequately define what must be considered. Further, “the least disruption” is a subjective term with no numerically or otherwise defined bounds. As such, this criterion is not clear and objective and cannot be applied to this Application.

Criterion 10 (subsection (d)(10)) is not clear and objective because it does not define the manner in which the plan can “ensure[] that the conditions requiring the construction of on-site infrastructure . . . will occur.” As such, it cannot be applied to this Application.

- (e) *Expiration.* Tentative subdivision plan approval shall expire as provided in SRC 300.850, unless an application for final plat is submitted within the time limits set forth in SRC 300.850, or an extension is granted pursuant to SRC 300.850(b).

Applicant Response: The applicant understands the expiration criteria of SRC 300.850. The criterion is met.

SECTION 205.015. – PHASED SUBDIVISION TENTATIVE PLAN

- (a) *Applicability.* The subdivision of land may be phased. No land shall be divided as a phased subdivision without receiving tentative phased subdivision plan approval as set forth in this section. When the subdivision of land is phased, one tentative plan is approved for the entire phased subdivision, and each individual phase receives separate final plat approval.
- (b) *Procedure type.* A tentative phased subdivision plan is processed as a Type II procedure under SRC chapter 300.
- (c) *Submittal requirements.* In addition to the submittal requirements for a Type II application under SRC chapter 300, an application for tentative phased subdivision plan shall include:
 - (1) The information required in SRC 205.030; and
 - (2) A phasing plan that indicates the tentative boundaries of each phase, the sequencing of the phases, the tentative configuration of lots in each phase, and a plan for the construction of all required city infrastructure in each phase.
- (d) *Approval criteria.* A tentative phased subdivision plan shall be approved if all of the following criteria are met:
 - (1) The tentative phased subdivision plan meets all of the criteria for tentative subdivision plan approval set forth in SRC 205.010(d).
 - (2) Connectivity for streets and City utilities between each phase ensures the orderly and efficient construction of required public improvements among all phases.
 - (3) Each phase is substantially and functionally self-contained and self-sustaining with regard to required public improvements.
 - (4) Each phase is designed in such a manner that all phases support the infrastructure requirements for the phased subdivision as a whole.

Applicant Response: This application includes a phasing plan which includes phasing boundaries, tentative configuration, and plan for construction of required infrastructure. Per the submitted plans included with this application, and as shown above, the requirements of SRC 205.010(d) are met. Public improvements are noted on each subdivision phase. Each phase is self-contained and supports the infrastructure requirements for the subdivision as a whole. The criteria are met.

However, criterion 1 (subsection (d)(1)) is not clear and objective because the criteria set forth in SRC 205.010(d) are not clear and objective, as explained above. Thus, to the extent the criteria set forth in SRC 205.010(d) cannot be applied, this criterion also cannot be applied to this Application.

Criterion 2 (subsection (d)(2)) is not clear and objective because “orderly and efficient construction” is not defined, is subjective, and allows for discretion. As such, this criterion cannot be applied to the Application.

Criterion 3 (subsection (d)(3)) is not clear and objective because “substantially and functionally self-contained and self-containing” is not defined, is subjective, and allows for discretion. As such, this criterion cannot be applied to the Application.

Criterion 4 (subsection (d)(4)) is not clear and objective because it does not define the manner in which each phase can be “defined in such a manner that all phases support the infrastructure requirements.” As such, it cannot be applied to this Application.

- (e) *Modification pursuant to final plat approval.* If the approval of a final plat for a phase of a phased subdivision requires the change of a boundary of a subsequent phase, or a change to the conditions of approval, the tentative phased subdivision plan shall be modified prior to approval of the final plat.
- (f) *Expiration.* Tentative phased subdivision plan approval shall expire as provided in SRC 300.850, unless an application for final plat is submitted for each phase within the time limits set forth in SRC 300.850, or an extension is granted pursuant to SRC 300.850(b).

Applicant Response: No modifications pursuant to final plat approval are included with this application. The applicant understands the expiration requirements of SRC 300.850. The criteria are met.

SECTION 510.010. – DEVELOPMENT STANDARDS: Residential Agriculture Zone

Development within the RA zone must comply with the development standards set forth in this section.

- (a) *Lot standards.* Lots within the RA zone shall conform to the standards set forth in Table 510-2.

Table 510-2 Lot Standards		
Requirement	Standard	Limitations & Qualifications
Lot Area		
Single Family	Min. 4,000 sq. ft.	
Lot Width		
Single Family and Two Family	Min. 40 ft.	
Lot Depth		
Single Family	Min. 70 ft. Min. 120 ft. Max. 300% of average lot width	Applicable to double frontage lots.
Street Frontage		
Single Family and Two Family	Min. 40 ft. Min. 30 ft.	Applicable to lots fronting on the turnaround of a cul-de-sac street or the outside curve of a curved street having a radius of

		<p>200 feet or less and a direction change of 60 degrees or more.</p> <p>In no case shall the lot width be less than 40 ft. at the front building setback line.</p>
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Applicant Response: As shown on the tentative plat, the lot dimension standards (width, depth, frontage & area) of Table 510-2 are met.

- (b) *Setbacks.* Setbacks within the RA zone shall be provided as set forth in Table 510-3.

Applicant Response: Setback lines are shown on the tentative site plan and comply with the standards of Table 510-3. The criteria are met.

- (c) *Lot coverage; height.* Buildings and accessory structures within the RA zone shall conform to the lot coverage and height standards set forth in Table 510-4.

Applicant Response: Lot coverage and building height standards are to be evaluated for compliance with the standards prior to issuance of a building permit. The criterion is met.

- (d) Garages required.
- (1) Except as otherwise provided in SRC 700.025 for manufactured homes on individual lots, each dwelling constructed after February 8, 2006, within the RA zone shall have, at the time of original construction, a garage that is constructed of like materials and color as the dwelling. The garage may be attached to, or detached from, the dwelling. Nothing in this subsection shall prevent subsequent removal or conversion of the garage, so long as the minimum number of required off-street parking spaces is maintained.
 - (2) Exception to this standard may be made if, at the time of building permit review, the applicant can show that the construction of the dwelling is being provided by a not-for-profit organization to families at or below the City's 60 percent median income level, as defined by the U.S. Department of Housing and Urban Development; and provision is made for a minimum of 480 cubic feet of on-site storage within a portion of the dwelling unit, or within a detached accessory structure. Such exemption shall only be made for those dwellings built on lots created through a subdivision.

Applicant Response: Garages are proposed with the single-family home development and compliance with these standards is to be evaluated prior to issuance of a building permit. The criteria are met.

However, the requirement in subsection (d)(1) for a garage to be constructed of “like materials and color as the dwelling” is subjective and allows for discretion. As such, it is not clear and objective and cannot be applied to this Application.

- (e) *Development standards for continued uses.* Buildings or structures housing a continued use may be structurally altered or enlarged, or rebuilt following damage or destruction, provided such alteration, enlargement, or rebuilding complies with the following standards:
 - (1) The altered, enlarged, or rebuilt building or structure shall conform to development standards set forth in this chapter, and to all other applicable provisions of the UDC.
 - (2) Any building or structure altered or enlarged shall not exceed the square footage and height of the original building or structure by more than 20 percent.
 - (3) Any building or structure rebuilt shall be located on the same location on the lot as the original building or structure, or in compliance with the setbacks set forth in Table 510-3. The square footage and height of the rebuilt building or structure shall not exceed the square footage and height of the original building or structure by more than 20 percent.

Applicant Response: The existing farmhouse and associated accessory structures are proposed to be preserved on a 3.64 ac parcel. A future development plan has been shown over this area indicated how this parcel could be developed consistent to the adjacent area. No other existing uses are proposed to remain or be altered with this application. The criteria are met.

However, subsection (e)(1) includes a requirement to “conform to development standards set forth in this chapter, and to other applicable provisions of the UDC.” Without specific inclusion of which standards and provisions are applicable, this requirement is subjective and allows for discretion. As such, it cannot be applied to this Application.

SECTION 511.010: DEVELOPMENT STANDARDS – Single Family Residential

Development within the RS zone must comply with the development standards set forth in this section.

- (a) *Lot standards.* Lots within the RS zone shall conform to the standards set forth in Table 511-2.

Table 511-2 Lot Standards		
Requirement	Standard	Limitations & Qualifications

Lot Area		
Single Family	Min. 4,000 sq. ft.	
Lot Width		
All Uses	Min. 40 ft.	
Lot Depth		
Single Family and Two Family	Min. 70 ft. Min. 120 ft. Max. 300% of average lot width	Applicable to double frontage lots.
Street Frontage		
Single Family and Two Family	Min. 40 ft. Min. 30 ft.	Applicable to lots fronting on the turnaround of a cul-de-sac street or the outside curve of a curved street having a radius of 200 feet or less and a direction change of 60 degrees or more. In no case shall the lot width be less than 40 ft. at the front building setback line.

Applicant Response: As shown on the tentative plat, the lot dimension standards (width, depth, frontage & area) of Table 511-2 are met.

- (b) *Setbacks.* Setbacks within the RS zone shall be provided as set forth in Table 511-3.

Applicant Response: Setback lines are shown on the tentative site plan and comply with the standards of Table 511-3. The criteria are met.

- (c) *Lot coverage; height.* Buildings and accessory structures within the RS zone shall conform to the lot coverage and height standards set forth in Table 511-4.

Applicant Response: Lot coverage and building height standards are to be evaluated for compliance with the standards prior to issuance of a building permit. The criterion is met.

- (d) *Maximum square footage for all accessory structures.* In addition to the maximum coverage requirements established in Table 511-4, accessory structures to single family and two family uses shall be limited to the maximum aggregate total square footage set forth in Table 511-5.

Applicant Response: No accessory structures are proposed with this application. The criterion does not apply.

- (e) Garages required.
 - (1) Except as otherwise provided in SRC 700.025 for manufactured homes on individual lots, each dwelling constructed after February 8, 2006, within the RS zone shall have, at the time of original construction, a garage that is constructed of like materials and color as the dwelling. The garage may be attached to, or detached from, the dwelling. Nothing in this subsection shall prevent subsequent removal or conversion of the garage, so long as the minimum number of required off-street parking spaces is maintained.
 - (2) Exception to this standard may be made if, at the time of building permit review, the applicant can show that the construction of the dwelling is being provided by a not-for-profit organization to families at or below the City's 60 percent median income level, as defined by the U.S. Department of Housing and Urban Development; and provision is made for a minimum of 480 cubic feet of on-site storage within a portion of the dwelling unit, or within a detached accessory structure. Such exemption shall only be made for those dwellings built on lots created through a subdivision.

Applicant Response: Garages are proposed with the single-family home development and compliance with these standards is to be evaluated prior to issuance of a building permit. The criteria are met.

However, the requirement in subsection (e)(1) for a garage to be constructed of “like materials and color as the dwelling” is subjective and allows for discretion. As such, it is not clear and objective and cannot be applied to this Application.

- (f) *Development standards for continued uses.* Buildings or structures housing a continued use may be structurally altered or enlarged, or rebuilt following damage or destruction, provided such alteration, enlargement, or rebuilding complies with the following standards:
 - (1) The altered, enlarged, or rebuilt building or structure shall conform to development standards set forth in this chapter, and to all other applicable provisions of the UDC.
 - (2) Any building or structure altered or enlarged shall not exceed the square footage and height of the original building or structure by more than 20 percent.
 - (3) Any building or structure rebuilt shall be located on the same location on the lot as the original building or structure, or in compliance with the setbacks set forth in Table 511-3. The square footage and height of the rebuilt building or structure shall not exceed the square footage and height of the original building or structure by more than 20 percent.

Applicant Response: The existing farmhouse and associated accessory structures are proposed to be preserved on a 3.64 ac parcel. A future development plan has been shown over this area indicated how this parcel could be developed consistent to the adjacent area. No other existing uses are proposed to remain or be altered with this application. The criteria are met.

However, subsection (f)(1) includes a requirement to “conform to development standards set forth in this chapter, and to other applicable provisions of the UDC.” Without specific inclusion of which standards and provisions are applicable, this requirement is subjective and allows for discretion. As such, it cannot be applied to this Application.

SECTION 800. - GENERAL DEVELOPMENT STANDARDS

Sec. 800.001. - Purpose.

The purpose of this chapter is to establish certain standards that apply generally to development throughout the City, regardless of zone.

Sec. 800.005. - Applicability.

The standards set forth in this chapter apply to all development in every zone unless otherwise exempted by the UDC. In the event of a conflict between the standards set forth in this chapter and any other provision of the UDC, the more restrictive provision shall apply.

Sec. 800.010. - Definitions.

Unless the context otherwise specifically requires, as used in this chapter, the terms identified in this section shall have the following meanings. Where a term used under SRC 800.055 (Solid Waste Service Areas) is not defined in this section, the definitions under SRC chapters 47 (Solid Waste Management) and 50 (Property Maintenance) shall apply.

Compactor means any self-contained, power-driven, mechanical equipment designed for the containment and compaction of solid waste or recyclable materials.

Drop box means a single container designed for the storage and collection of large volumes of solid waste or recyclable materials, which is usually ten cubic yards or larger in size, and requires a special vehicle for pick up.

Enclosure means a structure built consistent with the State of Oregon Structural Specialty Code designed to provide screening for permanent compactors, receptacles, drop boxes, or any other solid waste, recycling, and compostable containment facilities.

Receptacle means any vessel approved by the Director and used for the storage of solid waste, recycling, and compostable material, excluding drop boxes and compactors.

Solid waste service area means an area designed and established for the purpose of satisfying the local collection franchise service requirements for servicing receptacles, drop boxes, and compactors singularly or collectively.

Sec. 800.015. - Lot standards, generally.

- (a) Buildings to be on a lot. Every building or structure shall be entirely located on a lot. Where two or more lots are under single ownership to accommodate a single development, the entire combined area shall be considered as a single lot for purposes of the UDC. Buildings that are attached at a common property line, but which otherwise meet all requirements of SRC chapter 56 as separate buildings shall be considered as separate buildings for purposes of this subsection.
- (b) Side lot lines. As far as is practicable, side lot lines shall run at right angles to the street upon which the lot faces, except that on curved streets they shall be radial to the curve.

Sec. 800.020. - Designation of lot lines.

- (a) Front lot line. The front lot line shall be designated as set forth in this subsection (see Figure 800-1).
 - (1) *Interior lot.* For an interior lot, the front lot line shall be the property line abutting the street.
 - (2) *Corner lot.* For a corner lot, the front lot line shall be the property line abutting a street designated by the building permit applicant; provided, however, that lot dimension standards are met.
 - (3) *Double frontage lot.* For a double frontage lot, the front lot line shall be the property line abutting a street designated by the building permit applicant; provided, however, that lot dimension requirements are met.
 - (4) *Flag lot.* For a flag lot, the front lot line shall be the outside property line that is an extension of the flag lot accessway or the property line separating the flag portion of the lot from the lot between it and the street from which access is provided to the flag lot, unless the Planning Administrator otherwise directs, in which case the front lot line shall be set forth in the conditions of approval for the tentative plan of the plat, which shall be recorded on deeds conveying lots.
 - (5) *Other lots.* In the case of any lot not covered by subsections (a)(1) through (4) of this section, the front lot line shall be the property line that the architecturally designed front of the building faces.
- (b) *Rear lot line.* The rear lot line shall be designated as set forth in this subsection (see Figure 800-2).
 - (1) *Generally.* For all lots, except those identified in subsection (b)(2) of this section, the rear lot line shall be the property line that is opposite and most parallel to, and located the greatest distance from, the front lot line.
 - (2) *Trapezoidal, triangular, diamond, or other shaped lots.* For trapezoidal, triangular, diamond, or other shaped lots with a distance between the side lot lines at the rear of the lot of less than ten feet, the rear lot line for purposes of determining required setbacks shall be a line ten feet

in width drawn between the side lot lines and located parallel to and at the maximum distance from the front lot line (see Figure 800-3).

- (c) *Side lot line.* A side lot line is any lot line which is not a front or rear lot line.

Applicant Response: The applicant understands the definitions as they pertain to this application. However, with respect to Sec. 800.010, the definitions and procedure for applying the definitions are not clear and objective to the extent a decision maker is allowed to determine that “context otherwise specifically requires” a different definition. This procedure cannot be applied to this Application. Moreover, the definition of “drop box” includes subjective terms such as “large volumes” and “usually” and “special vehicle”; and the definition of “enclosure” includes subjective terms such as “consistent with” – these are not clear and objective.

Sec. 800.025. – Flag Lots.

- (a) *Lot area.* The lot area of a flag lot shall conform to the lot area standards of the UDC. Lot area shall be calculated exclusive of the flag lot accessway.
- (b) *Lot dimensions.* The lot dimensions of a flag lot shall conform to the lot dimension standards of the UDC. Lot dimensions shall be calculated exclusive of the flag lot accessway.
- (c) *Flag lot accessways.* Flag lot accessways shall be developed and maintained in conformance with the standards set forth in Table 800-1 and this subsection.

TABLE 800-1 FLAG LOT ACCESSWAY STANDARDS			
Number of Lots Served by Accessway	Maximum Length	Total Width	Paved Width
1-2 lots (Residential zoned property)	150 ft. ⁽¹⁾	Min. 20 ft.	Min. 15 ft.
<u>Limitations and Qualifications</u> ⁽¹⁾ Maximum flag lot accessway length shall not apply where geographic features make it impractical, and when approved by the Planning Administrator following review and recommendation by the Fire Marshal.			

Applicant Response: This application includes one flag lot (proposed lot 66). The area of lot 66 (excluding the flag accessway) is approx. ±5,100 sq ft. The proposed grade of the flag accessway is approx. 3% and intersects 12th Street SE at a 90-degree angle. The flag accessway is also proposed to be paved, only serve one lot and is shown to comply with the standards of Table 800-1. The criteria are met.

With respect to Sec. 800.025(a) – (c), the requirement that a lot “conform to” or “be in conformance with” certain standards is not clear and objective. Further, Table 800-1 includes in the “limitations and qualifications” the subjective term “impractical” and

allow for discretion by the Planning Administrator and the Fire Marshal. Sections 800.025(c)(3)(A) – (B) also include the subjective term “impractical” and allow for discretion by the Planning Administrator and the Fire Marshal. As such, those limitations and qualifications are not clear and objective and cannot be applied.

- (1) *Maximum number of lots served by flag lot accessway.* A maximum of four lots may be served by a flag lot accessway.
- (2) *Flag lot accessway grade.* Flag lot accessway grade shall conform to the Salem Fire Prevention Code.
- (3) *Fire Department access and flag lot accessway turnarounds.*
 - (A) Unobstructed fire apparatus access shall be provided to within 150 feet of any facility, building, or portion of a building, unless the building is equipped with an approved automatic fire sprinkler system or where geographic features make it impractical and an alternative means of fire protection is provided and approved by the Fire Marshal.
 - (B) Flag lot accessways greater than 150 feet in length shall include a turnaround meeting Salem Fire Prevention Code standards, unless the buildings served by the flag lot accessway are equipped with approved automatic fire sprinkler systems or where geographic features make it impractical and an alternative means of fire protection is provided and approved by the Fire Marshal.

Applicant Response: This application only proposes one flag lot and the flag accessway provides access to one lot. The proposed grade for the flag accessway is approx. 3% and the length of the accessway is less than 150 feet in length. The criteria are met.

However, subsections (3)(A) and (3)(B) include the subjective term “impractical,” which allows for discretion by the Fire Marshal. As such, these standards are not clear and objective and cannot be applied to the Application.

- (d) *Parking prohibited on flag lot accessways.* Parking shall be prohibited on flag lot accessways. No parking signs shall be posted and maintained on both sides of the accessway. The signs shall read "NO PARKING"; provided, however, where parking is prohibited because of a fire lane, the signs shall read "NO PARKING - FIRE LANE" and shall be installed in accordance with Salem Fire Prevention Code standards.
- (e) *Maximum percentage of flags lots within a subdivision.* Within a subdivision, up to 15 percent of the lots may be flag lots.

Applicant Response: This application includes a subdivision proposal of 138 lots with only one proposed to be a flag lot, which is below the 15 percent threshold. No parking is proposed within the flag accessway. The criteria are met.

However, the phrase “in accordance with,” in subsection (d) above, is not clear and objective, and cannot be applied to this Application.

Sec. 800.035. - Setbacks.

- (a) *Setbacks to be unobstructed.* Except as otherwise provided under subsection (b) of this section, required setbacks shall be unobstructed.
- (b) *Permitted projections into required setbacks.* Permitted projections into required setbacks are set forth in Table 800-2.

TABLE 800-2. PERMITTED PROJECTIONS INTO REQUIRED SETBACKS

Type of Projection	Maximum Projection		
	Front Abutting Street; Side Abutting Street; Interior Front	Interior Side	Rear Abutting Street; Interior Rear ⁽¹⁾
Planter boxes; window bays; greenhouse windows; chimneys; flues; belt courses; leaders; sills; pilasters; lintels; solar collectors; and ornamental features	24 in.	24 in.	24 in.
Cornices; eaves; and gutters	24 in.	One-third the width of the interior side setback or 3 ft., whichever is less.	24 in.
Fire Escapes	Not Allowed	One-third the width of the interior side setback or 3 ft., whichever is less.	24 in.
Steps	Not Limited	One-third the width of the interior side setback or 3 ft., whichever is less.	24 in.
Wheelchair Ramps	Not limited, provided: (1) The floor area does not exceed 4 ft. above grade; and (2) In no case shall the wheelchair ramp come closer than 10 ft. to the property line.	Not limited, provided the floor area does not exceed 3 ft. above grade	Not limited, provided the floor area does not exceed 4 ft. above grade.
Porches and decks- covered, but unenclosed	Not limited, provided: (1) The structure covering the porch or deck does not exceed 15 ft. above grade; (2) The floor area of the porch or deck does not exceed 4 ft. above grade; and (3) In no case shall the covered porch or deck come closer than 10 ft. to the property line.	Not allowed	Not limited, provided: (1) The structure covering the porch or deck does not exceed 15 ft. above grade; (2) The floor area of the porch or deck does not exceed 4 ft. above grade; and (3) In no case shall the covered porch or deck come closer than 8 ft.

			to the rear property line.
Patios – Covered, but enclosed	Not limited, provided: (1) The structure covering the patio does not exceed 15 ft. above grade; (2) The floor area of the patio does not exceed 4 ft. above grade; and (3) In no case shall the covered patio come closer than 10 ft. to the property line.	Not allowed	Not limited, provided: (1) The structure covering the patio does not exceed 15 ft. above grade; (2) The floor area of the patio does not exceed 4 ft. above grade; and (3) In no case shall the covered patio come closer than 8 ft. to the rear property line.
Patios – Uncovered	Not limited, provided: (1) The floor area of the patio does not exceed 3 ft. above grade; and (2) A landscaped area 4 ft. in depth is maintained between the property line and the patio.	Not limited, provided the floor area of the patio does not exceed 3 ft. above grade.	Not limited, provided the floor area of the patio does not exceed 4 ft. above grade.
Balconies; outside stairways; and other unenclosed, unroofed projections	Not allowed	Not allowed	5 ft., provided in no case shall such projection come closer than 6 ft. to any property line.
Limitations and Qualifications ⁽¹⁾ No permitted projection into a rear setback shall extend to within 10 ft. of the centerline of an alley, or to within 6 ft. of an accessory structure.			

Applicant Response: Setback lines have been indicated on the preliminary plan and all homes will be evaluated for compliance with the standards of Table 800-2 prior to issuance of any building permits.

- (c) Zone-to-zone setbacks abutting property outside City limits or urban growth boundary.
 - (1) *Property located outside city limits.* Where a zone-to-zone setback is required abutting a property located outside the City limits, the abutting zone for purposes of determining the required zone-to-zone setback shall be the equivalent City zone identified under SRC Chapter 260, Table 260-1, based on the comprehensive plan designation for the property and its zoning in the county.
 - (2) *Property located outside UGB.* Where a zone-to-zone setback is required abutting a property located outside the urban growth boundary (UGB), the abutting zone for purposes of determining the required zone-to-zone setback shall be considered a residential zone.

- (d) Setbacks abutting an interstate freeway, railroad right-of-way, or alley.
 - (1) The required setback abutting an interstate freeway, railroad right-of-way, or alley shall be considered either an interior front setback, an interior side setback, or an interior rear setback depending upon the dimensions and configuration of the lot.
 - (2) Where the required interior front, interior side, or interior rear setback abutting an interstate freeway or railroad right-of-way is a zone-to-zone setback, the minimum required in interior front, interior side, or interior rear setback shall be five feet in-lieu of the zone-to-zone setback.

Applicant Response: The subject property is within the city limits and is not abutting property with a county zoning designation. The subject property is also not directly adjacent to an interstate freeway, railroad right-of-way or alley. The above criteria do not apply.

Sec. 800.040. - Special setbacks.

- (a) *Generally.* To afford better light, air, and vision on public streets and to permit the eventual widening of streets without creating nonconforming structures, special setbacks are hereby established. No structures or paving, other than those identified under subsection (d) of this section, shall be placed within a special setback.
- (b) *Setback distance required; how measured.* The special setback shall equal one-half of the right-of-way width specified in the Salem Transportation System Plan for the street's applicable classification. Special setbacks shall be measured at right angles to the centerline of the street, or, where there is no street, from the centerline of the right-of-way. Where the centerline is not designated, the Director shall designate the location of the centerline.
- (c) *Relationship to other required setbacks.* The special setback shall apply in addition to other setbacks required under the UDC. Setbacks required elsewhere under the UDC shall be measured from the special setback line.
- (d) *Permitted structures and paving within special setbacks.* The following structures and paving are permitted within a special setback with a removal agreement as set forth in subsection (e) of this section:
 - (1) Transit stop shelters.
 - (2) Signs and their supporting members.
 - (3) Fences.
 - (4) Off-street parking, other than minimum required off-street parking, provided such parking is developed in conformance with the setback and landscaping requirements set forth in SRC chapter 806.

Applicant Response: No special setbacks are requested with this application. All setback requirements of the underlying zoning designation are shown on the tentative site plan. This application does not include the placement of a transit stop shelter, signs, or

additional off-street parking above the minimum requirement for each single-family home. Fencing is proposed to be installed during the time of construction of the homes. The above criteria are met.

However, Sec. 800.040(a) includes the subjective term “better”; as such, this standard is not clear and objective and cannot be applied.

Moreover, Sec. 800.040(b) improperly incorporates the TSP because it does not identify specific sections applicable to the standard. As such, it cannot be applied to the Application. Sec. 800.040(b) is also not clear and objective because it allows the Director to use discretion to designate location of centerline in certain situations. For this additional reason it cannot be applied to the Application.

Sec. 800.040(c) is not clear and objective due to the vague, general reference to “other setbacks required under the UDC.”

- (e) *Removal agreement.* Where structures or paving, as permitted under subsection (d) of this section, are proposed to be placed within a special setback, a removal agreement shall be required as provided in this subsection.
 - (1) The removal agreement shall be entered into by:
 - (A) The owner of the property and the local transit operator, for transit stop shelters located within a special setback. The local transit operator shall have the obligation to remove the shelter when required.
 - (B) The owner of the property and/or owner of the sign, for signs and their supporting members located within a special setback.
 - (C) The owner of the property, for fences and off-street parking, other than minimum required off-street parking, located within a special setback.
 - (2) The removal agreement shall be in a form approved by the City Attorney and shall provide that:
 - (A) Within six months after notice by the City, any structure, paving, or portion thereof that extends into the special setback shall be completely removed at no expense to the City;
 - (B) Where off-street parking set forth in subsection (d) of this section is removed, any remaining portion of the parking area located outside of the special setback shall be brought into conformance with the setback and landscaping requirements set forth in SRC chapter 806 at no expense to the City;
 - (C) If the owner or transit operator fails or refuses to make the removal, or fails or refuses to make required improvements to any remaining portion of the parking area located outside of the special setback, the City may cause the removal, or the

required parking area improvement, to be made, and the costs incurred shall:

- (i) Be a lien against the property if the removal agreement was entered into by the owner of the property, which may be foreclosed in the manner provided by law;
 - (ii) Be the obligation of the transit operator if the removal agreement was entered by the owner and the local transit operator, and that, in the event an action must be brought to enforce the obligation, that the City shall be entitled to its attorney's fees and costs incurred in enforcing the obligation.
- (D) The property owner, sign owner, or transit operator shall not be entitled to damages or compensation as the result of City's exercise of its rights under the removal agreement; provided, however, the property owner shall retain his or her right to just compensation for the unimproved value of any land taken for the widening of the street.
- (3) The removal agreement shall be recorded with the county in which the property is located. Notice to remove any structure, paving, or portion thereof shall not be given until the City or the State proceeds with a project to widen the street in front of the property.

Applicant Response: This application does not include the placement of any structures within identified special setbacks, and therefore no removal agreement is included with this application. The above criteria do not apply.

Sec. 800.045. - Height

- (a) *Generally.* Unless otherwise provided under the UDC, standards relating to height shall apply to all buildings and structures. Height shall be measured as set forth in SRC chapter 112.
- (b) *Height exceptions.* Except as otherwise provided in this subsection, the following height exceptions are permitted under the UDC:
 - (1) Towers, steeples, chimneys, wind-driven electrical generating equipment, flag poles, and monuments may project above the maximum height limits set forth in the UDC, provided:
 - (A) They do not exceed 185 feet in height;
 - (B) They do not contain any habitable space;
 - (C) The horizontal section of the structure does not exceed 625 square feet at the top of the main building or structure; and
 - (D) The sum of the horizontal section of all such projections measured at the maximum height limit applicable to the building or structure on which they are located does not

exceed 20 percent of the horizontal area of the roof of the building or structure on which they are located.

Applicant Response: This application is for residential land division (subdivision). Single-family structures will be reviewed for compliance with height standards at the time a building permit is submitted. Sec. 800.045(b)(1)(B), however, cannot be applied to the Application because it includes the subjective term “habitable space,” which is undefined.

- (2) Radio, television, and microwave antennas, and structures used exclusively for their support, are exempt from all height limitations.
- (3) Mechanical equipment necessary for the operation or maintenance of a building or structure, including, but not limited to, ventilators, plumbing and vent stacks, cooling towers, water tanks, panels or collectors for solar energy, and window washing equipment, together with enclosures for any such equipment, may project above the maximum height limits set forth in the UDC, provided:
 - (A) They do not project more than 15 feet above the roof;
 - (B) They do not contain any habitable space;
 - (C) The sum of the horizontal section of all such projections measured at the maximum height limit applicable to the building or structure on which they are located does not exceed 60 percent of the horizontal area of the roof of the building or structure on which they are located;
- (4) Relationship to FAA Part 77 Surfaces. Notwithstanding subsections (b)(1) through (3) of this section, nothing in this subsection shall authorize the projection of a building or structure into an FAA Part 77 surface established under SRC chapter 602.
- (c) *Height of structures within 165 feet of capitol mall district.* Except as provided under subsection (b) of this section, no portion of a building or structure located outside of, but within 165 feet of, the external boundary of the Capitol Mall (PM) Zone shall exceed a height of 70 feet.

Applicant Response: No exempt equipment described in the above criteria are included with this application. No mechanical equipment (water tanks, cooling towers, vent stacks, ventilators) as described above are included with his application. The subject property is not within 165 feet of the capitol mall district. The above criteria do not apply.

Sec. 800.050. - Fences, walls, hedges, gates, and retaining walls.

Unless otherwise provided under the UDC, the standards set forth in this section shall apply to fences, walls, hedges, gates, and retaining walls in all zones. Where screening is required under the UDC in the form of a fence, wall, or hedge, it shall meet the standards set forth in SRC chapter 807, in addition to the standards set forth in this section. For purposes of this section, the term "front yard" means that portion of a lot located between the front property line and a line parallel to the front property line extended from the wall of the main building lying at the greatest distance from the front property line.

- (a) *Location, height, and density.* Fences, walls, hedges, gates, and retaining walls shall comply with the location, height, and density standards set forth in this subsection.
 - (1) Fences and walls.
 - (A) Residential zones and property used for uses falling under household living in other zones. Fences and walls within residential zones, or on property used for uses falling under household living in other zones, shall not exceed a maximum height of eight feet; provided, however:
 - (i) *Front yard abutting street.* Fences and walls within a front yard abutting a street shall not exceed a maximum height of four feet when located within 20 feet of the property line abutting the street; provided, however, within ten feet of the property line abutting the street any portion of the fence or wall above 30 inches in height shall be less than 25 percent opaque when viewed at any angle at a point 25 feet away from the fence or wall.
 - (ii) *Side and rear yards abutting street.* Fences and walls within a side or rear yard abutting a street shall not exceed a maximum height of six feet when located within ten feet of a property line abutting a street.

Applicant Response: Fences are proposed to be installed during the time of the home construction and will be evaluated for compliance with height standards at that time. Retaining walls are proposed in the rear of steeply graded lots, but not to exceed the maximum height requirements. An additional retaining wall is proposed along the east side of 12th Street due to the steep slope and required $\frac{3}{4}$ right-of-way improvements. The 12th Street retaining wall is proposed to be within the right-of-way and not in the required front yard of the proposed lots. Within the northwest open space tract, there are additional retaining walls proposed to be constructed as part of the required stormwater facilities, per City of Salem Public Works Design Standards. In order to meet the treatment, flow control, and detention requirements for stormwater, as outlined in the Public Works Design Standards, retaining walls ranging from two to eight feet in height are required. The criteria are met.

- (B) Nonresidential zones. Except for fences and walls on property used for uses falling under household living, fences and walls within nonresidential zones shall not exceed a maximum height of 12 feet; provided, however:
 - (i) Front, side, and rear yards abutting street. Fences and walls within a front, side, or rear yard abutting a street shall not exceed a maximum height of eight feet when located within ten feet of a property line abutting a

street; provided, however, any portion of the fence or wall above 30 inches in height shall be less than 25 percent opaque when viewed at any angle at a point 25 feet away from the fence or wall.

Applicant Response: The subject site is located within split residential zoning designations. The western edge of the subject site is zoned Single-Family Residential (RS), and most of the subject site is zoned Residential Agriculture (RA). The standards for nonresidential zones do not apply to this application.

- (2) Hedges. There is no maximum height limitation for hedges; provided, however, where a hedge is located within ten feet of a property line abutting a street, any portion of the hedge more than 30 inches in height shall be less than 25 percent opaque when viewed at any angle at a point 25 feet away from the hedge.
 - (3) *Gates*. Where a gate is part of a fence, wall, or hedge it shall conform to the height limitations applicable to fences and walls set forth under SRC 800.050(a)(1). Gates shall not swing open onto a public right-of-way or vehicle or pedestrian easement.
 - (4) *Retaining walls*. Retaining walls shall not exceed a maximum height of four feet when located at the property line abutting a street. Retaining walls not located at the property line abutting a street may exceed four feet in height.
- (b) *Vision clearance*. Notwithstanding any other provision of this section, fence, walls, hedges, gates, and retaining walls shall conform to the vision clearance requirements of SRC chapter 805.

Applicant Response: This application is for land division for a single-family home subdivision. The landscaping associated with this application are limited to tree planting for street trees and tree mitigation. Additional landscaping such as the planting of hedges is proposed to occur at the time of construction of the single-family homes. No gates are proposed with this subdivision. Fencing is proposed to be installed at the time of construction of each single-family home and will be evaluated for compliance with height standards at that time. A retaining wall is proposed along the east side of 12th Street due to the steep slope and required $\frac{3}{4}$ right-of-way improvements. Vision clearance provisions are met because no walls, fences, or hedges are proposed in clear vision areas. The criteria are met.

However, sections 800.050(a)(3) and 800.050(b) include a subjective requirement to “conform to” certain requirements; these standards are thus not clear and objective and cannot be applied to the Application.

- (c) Material.

- (1) *Fences.* Fences shall be constructed of materials specifically designed and manufactured for fencing purposes, including, but not limited to, wooden pickets, vinyl, wrought iron, and chain link fencing, with or without plastic or wood slats. Materials not specifically designed as fencing material, including, but not limited to, corrugated cardboard, corrugated metal, plywood, wooden pallets, garage doors, concrete rubble, and other junked material, are prohibited. Chicken wire may be used within the Residential Agriculture (RA) Zone if used to raise livestock. Fencing for raising livestock in other zones may be replaced if the use was an allowed use on the property prior to December 31, 2002. Fencing used for the establishment and protection of vegetation is permitted for a period not to exceed six months.
- (2) *Walls.* Walls shall be constructed of materials specifically designed and manufactured for use as walls, including, but not limited to, masonry, rock, concrete, concrete block, or other similar material.

Applicant Response: This application is for land division for a residential subdivision. Fencing is proposed to be installed at the time of construction of each single-family home and will be evaluated for compliance with height standards at that time. A retaining wall is proposed along the east side of 12th Street due to the steep slope and required $\frac{3}{4}$ right-of-way improvements. Additional retaining walls are proposed in the northwest open space tract for the purposes of constructing the stormwater management facility and the Mandy Avenue SE extension. Retaining walls less than four feet in height are proposed to be keystone block walls and any retaining walls exceeding four feet in height are proposed to be concrete or UltraBlock (larger modular block walls) The criteria are met.

However, Section 800.050(c) is not clear and objective because the requirements for both fences and walls include the subjective phrase “including, but not limited to,” which allows for discretion. They cannot be applied to this Application.

(d) *Hazardous materials.* Fences and walls shall not be constructed of or contain any material which will do bodily harm, such as electric or barbed wire, upturned barbed selvage, broken glass, spikes, or any other hazardous or dangerous material, except as follows:

- (1) *Concertina wire.* Concertina wire is permitted around state and county correctional facilities and secure mental health facilities.
- (2) *Barbed wire and upturned barbed selvage.*
 - (A) Location. Barbed wire and upturned barbed selvage is permitted within the following locations:
 - (i) Any zone where the fence will be used to enclose livestock; and
 - (ii) The Retail Commercial (CR) and General Commercial (CG) Zones, and any industrial or public zone.

- (B) *Standards.* Where allowed as set forth this subsection, barbed wire or upturned barbed selvage shall comply with the following additional standards:
- (i) *Enclosure of livestock.* Fences with barbed wire or upturned barbed selvage enclosing livestock shall be clearly posted with warning signs notifying persons of a dangerous fence. The signs shall be posted at an interval of not less than 15 feet.
 - (ii) *CR and CG zones; industrial and public zones.* Fences with barbed wire or upturned barbed selvage located within a Retail Commercial (CR) or General Commercial (CG) Zone, or within an industrial or public zone, shall comply with the following:
 - (aa) The barbed wire or upturned barbed selvage shall be located more than six feet above grade;
 - (bb) The barbed wire or upturned barbed selvage shall be setback a minimum of one foot from the public right-of-way, when designed to slant towards the public right-of-way;
 - (cc) The barbed wire or upturned barbed selvage shall not extend over a street or alley; and
 - (dd) The fence shall be clearly posted with warning signs notifying persons of a dangerous fence. The signs shall be posted at an interval of not less than 15 feet.

Applicant Response: This application includes a proposal for a single-family home subdivision. No concertina wire or barbed wire or otherwise hazardous fencing and/or wall materials are proposed with this application. Residential privacy fencing is proposed to be installed at the time of the home construction on each lot. The above criteria, to the extent they apply, are met.

- (3) Electric fencing.
- (A) *Location.* Electric fencing is permitted within the following locations:
- (i) Any zone where the fence will be used to enclose livestock; and
 - (ii) Around outdoor storage areas, including vehicle storage areas, for any nonresidential use within the General Commercial (CG) zone or any industrial zone.
- (B) *Standards.* Where allowed as set forth in this subsection, electric fencing shall comply with the following additional standards:

- (i) *Enclosure of livestock.* Electric fencing enclosing livestock shall be clearly posted with warning signs notifying persons of a dangerous fence. The signs shall be posted at an interval of not less than 15 feet.
- (ii) *Outdoor storage areas for nonresidential uses within the CG Zone and industrial zones.* Electric fencing around outdoor storage areas, including vehicle storage areas, for any nonresidential use within the General Commercial (CG) zone or any industrial zone shall comply with the following:
 - (aa) The fence shall not exceed ten feet in height and shall be completely surrounded by a non-electric fence or wall a minimum of six feet in height.
 - (bb) A minimum one-foot separation shall be maintained between the electric fence and the surrounding non-electric fence or wall.
 - (cc) An electrical permit and inspection shall be obtained prior to installation.
 - (dd) The electric fence shall be listed by a testing laboratory approved by the State, and shall be installed and used in accordance with the testing laboratory listing.
 - (ee) The fence shall be clearly posted with warning signs in English and Spanish notifying persons of a dangerous fence. The signs shall include the statement, "DANGER - ELECTRIC FENCE," or an equivalent, together with a pictorial warning. The signs shall be posted at an interval of not more than 60 feet.
 - (ff) Emergency access. Fire department access shall be provided in accordance with the Salem Fire Prevention Code. An approved method to manually disconnect electrical power to all portions of the fence and gates shall be provided at an exterior location. The method and location of the electrical disconnect shall be approved by the Salem Fire Code Official.

Applicant Response: No electric fencing is included with this application. The criteria do not apply.

- (e) *Maintenance.* Fences and walls shall be structurally maintained in safe condition. Wooden materials shall be protected from rot, decay, and insect infestation, and replaced as necessary. Failure to maintain an electric fence in

conformance with the standards set forth in this section shall result in the fence being declared a public nuisance subject to abatement under SRC chapter 50.

Applicant Response: All fencing and retaining wall maintenance associated with this single-family residential subdivision will be the responsibility of the property owner or established Homeowners Association (HOA). Only wood or metal fencing will be installed, and no electric fencing is included. Retaining wall materials are proposed to be low maintenance block walls or cast in place concrete walls. The criterion is met.

However, the terms “safe condition,” “protected from,” and “in conformance with” are subjective and allow for discretion. This standard or any condition of approval requiring compliance cannot be applied to the Application.

Sec. 800.055. - Solid waste service areas.

Solid waste service areas shall provide for the safe and convenient collection of solid waste and recyclable and compostable materials by the local solid waste collection franchisee.

- (a) Applicability. Solid waste service area design standards shall apply to:
 - (1) All new solid waste, recycling, and compostable service areas, where use of a solid waste, recycling, and compostable receptacle of one cubic yard or larger is proposed; and
 - (2) Any change to an existing solid waste service area for receptacles of one cubic yard or larger that requires a building permit.
- (b) *Solid waste receptacle placement standards.* All solid waste receptacles shall be placed at grade on a concrete pad that is a minimum of four inches thick, or on an asphalt pad that is a minimum of six inches thick. The pad shall have a slope of no more than a three percent and shall be designed to discharge stormwater runoff consistent with the overall stormwater management plan for the site approved by the Director.
 - (1) *Pad area.* In determining the total concrete pad area for any solid waste service area:
 - (A) The pad area shall extend a minimum of one foot beyond the sides and rear of the receptacle; and
 - (B) The pad area shall extend a minimum three feet beyond the front of the receptacle.
 - (C) In situations where receptacles face each other, a minimum four feet of pad area shall be required between the fronts of the facing receptacles.
 - (2) *Minimum separation.*
 - (A) A minimum separation of 1.5 feet shall be provided between the receptacle and the side wall of the enclosure.
 - (B) A minimum separation of five feet shall be provided between the receptacle and any combustible walls, combustible roof eave lines, or building or structure openings.

- (3) Vertical clearance.
 - (A) *Receptacles two cubic yards or less.* Receptacles two cubic yards or less in size shall be provided with a minimum of eight feet of unobstructed overhead or vertical clearance for servicing.
 - (B) *Receptacles greater than two cubic yards.* Receptacles greater than two cubic yards in size shall be provided with a minimum of 14 feet of unobstructed overhead or vertical clearance for servicing; provided, however, overhead or vertical clearance may be reduced to eight feet:
 - (i) For enclosures covered by partial roofs, where the partial roof over the enclosure does not cover more than the rear eight feet of the enclosure, as measured from the inside of the rear wall of the enclosure (see Figure 800-6); or
 - (ii) Where a physical barrier is installed within, and a maximum of eight feet from the front opening of, the enclosure preventing the backward movement of the receptacle (see Figure 800-7).

Applicant Response: Each single-family home will have individual solid waste receptacles rather than one general location for the entire subdivision community. Each dwelling unit's waste receptacles will be appropriately sized for the need of each home. No solid waste pad or enclosure are proposed with this application. The above criteria do not apply.

- (f) Solid waste service area vehicle access.
 - (1) Vehicle operation area.
 - (A) A vehicle operation area shall be provided for solid waste collection service vehicles that is free of obstructions and no less than 45 feet in length and 15 feet in width; provided, however, where the front opening of an enclosure is wider than 15 feet, the width of the vehicle operation area shall be increased to equal the width of the front opening of the enclosure. Vehicle operation areas shall be made available perpendicular to the front of every receptacle, or, in the case of multiple receptacles within an enclosure, perpendicular to every enclosure opening.
 - (B) For solid waste service areas having receptacles of two cubic yards or less, the vehicle operation area may be located:
 - (i) Perpendicular to the permanent location of the receptacle or the enclosure opening (see Figure 800-8);
 - (ii) Parallel to the permanent location of the receptacle or the enclosure opening (see Figure 800-9); or

- (iii) In a location where the receptacle can be safely maneuvered manually not more than 45 feet into a position at one end of the vehicle operation area for receptacle servicing.
- (C) The vehicle operation area may be coincident with a parking lot drive aisle, driveway, or alley provided that such area is kept free of parked vehicles and other obstructions at all times except for the normal ingress and egress of vehicles.
- (D) Vertical clearance. Vehicle operation areas shall have a minimum vertical clearance of 14 feet.
- (E) In the event that access to the vehicle operation area is not a direct approach into position for operation of the service vehicle, a turnaround, in conformance with the minimum dimension and turning radius requirements shown in Figure 800-10, shall be required to allow safe and convenient access for collection service.

Applicant Response: Each home within this proposed subdivision is proposed to have roll-away carts for individual solid waste disposal. No central solid waste area is proposed with this application and as such these criteria do not apply.

However, to the extent they are deemed applicable to this application, subsection (f)(1)(B)(iii) includes the phrase “safely maneuvered”; subsection (f)(1)(C) includes the term “normal”; and subsection (f)(1)(E) includes the phrase “safe and convenient access”; all of which are subjective. These standards thus cannot be applied to the Application.

- (g) *Notice to solid waste collection franchisee.* Upon receipt of an application to vary or adjust the standards set forth in this section, notification and opportunity to comment shall be provided to the applicable solid waste collection franchisee. Notice required under this subsection shall be in addition to the notification required for a variance or adjustment under SRC chapter 300.

Applicant Response: The applicant understands that notice will be provided to the local solid waste collection franchisee if an application to vary or adjust the standards in this section is submitted. The applicant does not propose any variance or adjustments to the standards set forth in this section.

Sec. 800.060. - Exterior lighting.

- (a) Exterior lighting shall not shine or reflect onto adjacent properties, or cast glare onto the public right-of-way.
- (b) Exterior light fixtures shall be located and designed so that the light source, when viewed at a height of five feet above the ground at a distance of five feet outside the boundary of the lot, shall be either:
 - (1) Completely shielded from direct view; or

- (2) No greater than five foot-candles in illumination.

Applicant Response: Exterior lighting on each single-family home shall be evaluated at the time of construction and not as part of this application. The criteria do not apply.

Sec. 800.065. - Pedestrian access.

Except where pedestrian access standards are provided elsewhere under the UDC, all developments, other than single family, two family, three family, four family, and multiple family developments, shall include an on-site pedestrian circulation system developed in conformance with the standards in this section.

- (a) *Pedestrian connections required.* The on-site pedestrian circulation system shall provide pedestrian connectivity throughout the development site as follows:
- (1) Connection between building entrances and streets.
- (A) A pedestrian connection shall be provided between the primary building entrance of each building on the development site and each adjacent street. Where a building has more than one primary building entrance, a single pedestrian connection from one of the building's primary entrances to each adjacent street is allowed; provided each of the building's primary entrances are connected, via a pedestrian connection, to the required connection to the street (see Figure 800-11).
- (B) Where an adjacent street is a transit route and there is an existing or planned transit stop along street frontage of the development site, at least one of the required pedestrian connections shall connect to the street within 20 feet of the transit stop (see Figure 800-12).
- (2) *Connection between buildings on the same development site.* Where there is more than one building on a development site, a pedestrian connection, or pedestrian connections, shall be provided to connect the primary building entrances of all of the buildings.

Applicant Response: Sidewalks are shown on both sides of all dedicated public right-of-way associated with this subdivision. Each proposed residential lot has direct access onto the public right-of-way and the associated sidewalk. A pedestrian trail is indicated on the tentative plat extending from Hillrose Street SE to 12th Street SE. There are no transit stops within the proposed subdivision or adjacent to the subject site. The criteria are met.

However, the requirement of Sec. 800.065 that the pedestrian circulation system be developed “in conformance with the standards in this section” is subjective because it allows for discretion. As such, this is not clear and objective, and this section cannot be applied to the Application.

- (3) *Connection through off-street parking areas.*

- (A) Surface parking areas. Except as provided under subsection (a)(3)(A)(iii) of this section, off-street surface parking areas greater than 25,000 square feet in size or including four or more consecutive parallel drive aisles shall include pedestrian connections through the parking area to the primary building entrance or where there is no building, through the parking area as provided in this subsection.
 - (i) The pedestrian connections shall be:
 - (aa) Provided in a minimum amount of either one connection for every four drive aisles or one connection for every 250 feet (See Figure 800-13); provided, however, in no case shall less than one pedestrian connection be provided. Where the pedestrian connection requirements of this subsection result in a fractional number, any fractional number greater than 0.5 shall be round up to require an additional pedestrian connection;
 - (bb) Spaced a minimum of two drive aisles apart; and
 - (cc) Connected to a pedestrian connection, or pedestrian connections, that lead to the primary building entrance. Where there is no building, the pedestrian connections shall connect to the street either at the sidewalk or at the public street right-of-way when there is no sidewalk.

Applicant Response: Each residential lot proposed in this application is large enough to accommodate a driveway and garage for the purposes of off-street parking. No surface parking greater than 25,000 square feet or associated drive aisles are proposed with this application. The criteria do not apply.

- (ii) Where the off-street surface parking area is adjacent to a street that is a transit route and there is an existing or planned transit stop along the street frontage of the development site, at least one of the required pedestrian connections shall connect to the street within 20 feet of the transit stop.
- (iii) A pedestrian connection provided between a primary building entrance and a street may be counted as a

- required connection through an off-street surface parking area.
 - (iv) Regardless of the size of the off-street parking area, pedestrian connections are not required through off-street surface parking areas that have a depth, in all locations, of not more than 124 feet. For purposes of this subsection, parking area depth is measured through the parking area from its outside edge towards the building.
 - (v) For purposes of this subsection, off-street surface parking area means:
 - (aa) An off-street surface parking area that is separated from other off-street surface parking areas on the development site by either a driveway, which begins at the street and extends into the site, or other physical separation; or
 - (bb) An off-street surface parking area located in a separate location on the development site from other off-street surface parking areas.
- (B) Parking structures and parking garages. Where an individual floor of a parking structure or parking garage exceeds 25,000 square feet in size, a pedestrian connection shall be provided through the parking area on that floor to an entrance/exit.

Applicant Response: Each residential lot proposed in this application is large enough to accommodate a driveway and garage for the purposes of off-street parking. No parking structures/garages or surface parking for transit stops are proposed with this application. The streets, both internal and external, associated with this application are not proposed to be transit routes, and therefore the residential off-street parking on each lot does not require formal pedestrian connections to a transit stop. Pedestrian paths are shown on the submitted site plan but are for the purposes of general circulation and not associated with a transit route or surface parking. All proposed off-street parking is to be within a residential driveway or garage and the average lot depth is 100 feet. No surface parking greater than 25,000 square feet or associated drive aisles are proposed with this application. To the extent these criteria apply, the criteria are met.

- (4) *Connection to existing or planned paths and trails.* Where an existing or planned path or trail identified in the Salem Transportation System Plan (TSP) or the Salem Comprehensive Parks System Master Plan passes through a development site, the path or trail shall:
- (A) Be constructed, and a public access easement or dedication provided; or
 - (B) When no abutting section of the trail or path has been constructed on adjacent property, a public access easement or dedication shall be provided for future construction of the path or trail.

Applicant Response: Newer residential developments adjacent to the subject site have sidewalks that are shown to be extended through this proposed subdivision. No additional paths or trails are identified in the Salem Transportation System Plan (TSP) for this site. This application includes a proposed trail east to west from Hillrose Street between lots 12 and 13, through an open space tract near the center of the property and connects with the sidewalk on McCollum Street. Ownership and maintenance of the trail and open space tract is proposed to be the responsibility of the HOA. The criteria are met.

However, this standard cannot be applied because it does not comply with the limited land use application requirements of properly incorporating the TSP or Parks System Master Plan – the references to those Plans are general and do not specify which sections apply.

- (5) *Connection to abutting properties.* Whenever a vehicular connection is provided from a development site to an abutting property, a pedestrian connection shall also be provided. A pedestrian connection is not required, however:
- (A) To abutting properties used for activities falling within the following use classifications, use categories, and uses under SRC Chapter 400:
 - Single family;
 - (ii) Two family;
 - (iii) Group living;
 - (iv) Industrial;
 - (v) Infrastructure and utilities; and
 - (vi) Natural resources.
 - (B) Where the use of an abutting property has specific security needs that make providing a connection impractical or undesirable;
 - (C) Where on-site activities on abutting properties, such as the operation of trucks, forklifts, and other equipment and machinery would present safety conflicts with pedestrians;
 - (D) Where buildings or other improvements on abutting properties physically preclude a connection now or in the future; or

- (E) Where physical conditions of the land, such as topography or existing natural resource areas, including, but not limited to, wetlands, ponds, lakes, streams, or rivers, make providing a connection impractical.

Applicant Response: This application includes land division for a single-family residential development. Hilfiker Lane SE is proposed to be extended diagonally through the subject site to intersect with Hillrose Street SE. In addition to the internal circulation, two additional proposed roads intersect external streets near adjacent residential developments. Mandy Avenue SE is stubbed to the northern property line of the subject property and proposed to be extended into this proposed subdivision. A pedestrian trail is also shown on the tentative plan to traverse through the subject site in an area where topography and other factors limit the construction of a public street. The criteria are met.

However, subsection (5)(B) above includes the terms “specific security needs,” “impractical,” and “undesirable”; subsection (5)(C) includes the term “safety conflicts”; and subsection (5)(D) requires knowledge of when a building or improvement may preclude a connection in the future, which cannot be determined now; all of which are subjective and allow for discretion. As such, these subsections cannot be applied to the Application.

- (b) *Design and materials.* Required pedestrian connections shall be in the form of a walkway, or may be in the form of a plaza.
 - (1) Walkways shall conform to the following:
 - (A) Material and width. Walkways shall be paved with a hard-surface material meeting the Public Works Design Standards, and shall be a minimum of five feet in width.
 - (B) Where a walkway crosses driveways, parking areas, parking lot drive aisles, and loading areas, the walkway shall be visually differentiated from such areas through the use of elevation changes, a physical separation, speed bumps, a different paving material, or other similar method. Striping does not meet this requirement, except when used in a parking structure or parking garage.
 - (C) Where a walkway is located adjacent to an auto travel lane, the walkway shall be raised above the auto travel lane or separated from it by a raised curb, bollards, landscaping or other physical separation. If the walkway is raised above the auto travel lane it must be raised a minimum of four inches in height and the ends of the raised portions must be equipped with curb ramps. If the walkway is separated from the auto travel lane with bollards, bollard spacing must be no further than five feet on center.

- (2) Wheel stops or extended curbs shall be provided along required pedestrian connections to prevent the encroachment of vehicles onto pedestrian connections.
- (c) *Lighting.* The on-site pedestrian circulation system shall be lighted to a level where the system can be used at night by employees, customers, and residents.

Applicant Response: Sidewalks are shown on the preliminary plat along all new public streets and along the frontage on existing streets. Also shown on the preliminary plat is a pedestrian trail connection from the far east side of the subdivision along Hillrose Street, through an open space tract, intersects with Hilfiker Lane and then extends over to 12th Street. All sidewalks proposed with this application are shown to be paved with a hard surface and differentiated from the street using elevation changes above the travel lane. This differentiation also complies with the wheel stop standard as the sidewalk is a minimum of four inches in height. A lighting plan has been included with this application to demonstrate compliance with the above criteria. The criteria are met.

However, subsection (b)(1) includes the requirement to “conform to the following” criteria listed below it; and subsection (b)(1)(A) does not specify which Public Works Design Standards apply. These are subjective standards and thus not clear and objective. They cannot be applied to the Application.

Moreover, subsection (c) includes the subjective phrase “to a level where the system can be used at night” is subjective; this is not clear and objective. This standard also cannot be applied to the Application.

Sec. 802.001 – Purpose.

The purpose of this chapter is to establish the means and standards whereby public improvements are provided for development within the City.

Sec. 802.005 – Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City utilities means public improvements providing water, wastewater, and stormwater facilities.

Public improvements means infrastructure necessary to provide city utilities to customers.

Public utilities means privately owned improvements providing the following services: natural gas; electricity; telephone, internet, and other electronic data or communication services; and cable television.

Public Works Design Standards means the design standards and specifications adopted pursuant to SRC 802.010.

Utility or utilities means water; wastewater; stormwater facilities; natural gas; electricity; telephone, internet, and other electronic data or communication services; and cable television.

Watercourse means the route, up to and including the top of bank, formed by natural processes or constructed by humans, generally consisting of a channel with a bed, banks, or sides, in which water flows. By way of illustration, but not of limitation, as used in this chapter, watercourse includes perennial and intermittent streams and creeks, swales, drainage ditches, and culverts. As used in this chapter, watercourse does not include the Willamette River.

Applicant Response: The applicant understands the definitions as they pertain to this application.

However, to the extent a decision maker determines that “context clearly indicates a different meaning,” “clearly indicates” is subjective, and thus, the definitions are not clear and objective.

Sec. 802.010. - Design standards and specifications.

The Director shall prepare and adopt by administrative rule design standards and specifications consistent with sound engineering principles for the construction, reconstruction, or repair of public improvements within areas under the City's jurisdiction. The design standards and specifications shall be kept on file in the office of the Director. All public improvements shall conform to the adopted design standards and specifications, and with any other adopted plans and policies adopted by the City.

Sec. 802.015. - Development to be served by city utilities.

Except as provided under SRC 802.035 and 802.040, all development shall be served by city utilities designed and constructed according to all applicable provisions of the Salem Revised Code and the Public Works Design Standards.

Applicant Response: A utility plan was included with this application and will be reviewed for compliance with the Public Works Design Standards prior to a City issued Decision on this application.

However, in Sec. 802.010, the phrase “sound engineering principles” is subjective, and the phrase “conform to” is vague and subjective. This section is not clear and objective and cannot be applied to this Application.

Further, in Sec. 802.015, the phrase “all applicable provisions” is not clear and objective; and the reference to the “Salem Revised Code” and “Public Works Design Standards” is vague without reference to specific sections. This is not clear and objective and thus cannot be applied to the Application.

Sec. 802.020. - Easements.

Subject to any constitutional limitations, the conveyance or dedication of easements for city utilities may be required as conditions of development approval. Easements may be required that are necessary for the development of adjacent properties. Easements shall, where possible, be centered on, or abut

property lines, and shall be not less than ten feet in width. No building, structure, tree, or other obstruction other than landscaping shall be located within an easement required by this section.

Applicant Response: Public utilities have been located within the public right-of-way proposed within and adjacent to the subject property. No additional easements are proposed with this application. The criterion is met.

However, the phrases “may be required” and “where possible” leave room for discretion; and the word “necessary” is subjective. This criterion is not clear and objective and cannot be applied to the Application.

Sec. 802.025. - Utilities to be placed underground.

- (a) Except as otherwise provided in this section, all utility service shall be provided by underground facilities.
- (b) In industrial and employment and commercial zones, electrical service may be provided by overhead wires where underground utility service is unavailable.
- (c) Stormwater management shall be provided by above ground and below ground facilities.

Applicant Response: All new public utilities proposed with this application are to be located underground. There are no existing overhead powerlines on the subject property and no new overhead powerlines are proposed with this application. Stormwater management lines are below ground but the water quality facility is located above ground. The criteria are met.

However, subsection (a) above is not clear and objective on its face because it does not explain “as otherwise provided” or refer to specific sections where this requirement is different. As such, it cannot be applied to the Application.

Sec. 802.030. - Watercourses.

- (a) Any modification to a watercourse shall conform to SRC chapter 601 and the Public Works Design Standards.
- (b) Public improvement and maintenance easements for watercourses may be required. The easements shall, at a minimum, extend 15 feet in each direction from the waterway centerline, ten feet from the top of a recognizable bank, or a sufficient width to pass ten-year flood flows or to accommodate the 100-year floodway on a FEMA regulated stream, whichever is greater. Such easements shall be of a width sufficient to allow both initial improvements and future maintenance and operations. Larger widths may be required.

Applicant Response: The subject site is identified within Zone X on the FEMA Flood Insurance Rate Map which is not a regulated floodplain. The subject site has a small creek in the northwest corner which is identified in a large open space tract. No modification to the watercourse is proposed with this application. The above criteria are met.

However, in subsection (a) the phrase “conform to” is not clear and objective; nor is the reference to “Public Works Design Standards” without more information. And in subsection (b), the phrases “may be required” and “a sufficient width,” and the word “accommodate” leave room for discretion and/or are subjective. These standards are not clear and objective and thus cannot be applied to the Application.

Sec. 802.035. - Partitions in areas unserved by city wastewater system.

A partition located more than 300 feet from an available sewer may be approved if the applicable requirements for partitions located more than 300 feet from an available sewer contained within SRC chapter 205 are met.

Applicant Response: This application includes an application for a single-family subdivision and City wastewater lines are available to serve the property. This criterion does not apply.

Sec. 802.040. - Private stormwater, wastewater, and water systems.

A private stormwater, wastewater, or water system may be approved by the Director if each of the following conditions are met:

- (a) City utilities necessary to serve adjacent properties and to provide needed links in the overall collection and distribution system are provided.
- (b) If the system is a water system:
 - (1) The water system conforms to the water distribution standards of the City;
 - (2) Except as authorized by state law, water from the system is not sub-metered or resold to other parties;
 - (3) Each building under separate ownership has a separate water meter; and
 - (4) The properties served are located within a commercial or an industrial and employment zone.
- (c) If the system serves multiple properties under separate ownership:
 - (1) If the system is a wastewater system, the properties served are located within a commercial or an industrial and employment zone, and each building under separate ownership must have a separate wastewater monitoring manhole. Exceptions to the requirement for monitoring manholes may be granted by the Director if the owner of the system shows that no proposed use has any likelihood of discharging hazardous or illegal materials into the City's wastewater system.
 - (2) An agreement is executed by the utility owner and the owner of the property served by the system. The agreement shall be recorded in the deed records of the applicable county and provide that:
 - (A) The system serving the property is private;
 - (B) The City has no responsibility to maintain the system;

- (C) The system will not be accepted by the City unless the system was constructed in a manner that conforms to the Public Works Design Standards;
- (D) A perpetual right of access to read and maintain the meters and inspect the system is granted to the City; and
- (E) Persons served by the system assume responsibility for any repairs required for the City.

Applicant Response: All utilities proposed with this application are public. The above criteria do not apply.

Sec. 803.010. - Streets, generally.

Except as otherwise provided in this chapter, all streets shall be improved to include the following: adequate right-of-way, paving, curbing, bike lanes (where required), sidewalks, street lighting, stormwater facilities; utility easements, turnarounds, construction strips, landscape strips, parking lanes, adequate right-of-way geometry, paving width, grade, structural sections and monumentation, that conforms to the Public Works Design Standards.

Applicant Response: All roads proposed with this application include adequate right-of-way widths, geometry, pavement, curbing, and sidewalks where possible. A street plan is included with this application to address the criterion above. No turnarounds are included with this application as adequate circulation is proposed. The criterion is met.

However, the word “adequate” is not clear and objective because it allows for discretion by the review authority. The phrase “conforms to” is not clear and objective and requiring conformance to the “Public Works Design Standards” is subjective and does not provide information on which standards are applicable. As such, this standard cannot be applied to the Application.

Sec. 803.015. - Traffic impact analysis.

- (a) *Purpose.* The purpose of a traffic impact analysis is to ensure that development generating a significant amount of traffic provides the facilities necessary to accommodate the traffic impacts of the proposed development.
- (b) *Applicability.* An applicant shall provide a traffic impact analysis if one of the following conditions exists:
 - (1) The development will generate 200 or more daily vehicle trips onto a local street or alley, or 1,000 daily vehicle trips onto a collector, minor arterial, major arterial, or parkway. Trips shall be calculated using the adopted Institute of Transportation Engineer's Trip Generation Manual. In developments involving a land division, the trips shall be calculated based on the proposed development that will occur on all lots that will be created by the land division.
 - (2) The increased traffic resulting from the development will contribute to documented traffic problems, based on current accident rates, traffic

volumes or speeds, and identified locations where pedestrian and/or bicyclist safety is a concern.

- (3) The City has performed or reviewed traffic engineering analyses that indicate approval of the development will result in levels of service of the street system that do not meet adopted level of service standards.
- (c) *Improvements may be required.* On-site and off-site public or private improvements necessary to address the impacts identified in the traffic impact analysis may be required as conditions of development approval. Improvements include, but are not limited to, street and intersection improvements, sidewalks, bike lanes, traffic control signs and signals, parking regulation, access controls, driveway approach location and design, and street lighting.
- (d) *Exception.* An exception to the requirement for a traffic impact analysis may be granted for development that generates more than the trips specified in subsection (b)(1) of this section if the Director determines the traffic impact analysis is not necessary to satisfy the purposes set forth in subsection (a) of this section.

Applicant Response: A traffic impact analysis prepared by Kittelson and Associates has been included with this application to satisfy the above criteria. Right-of-way improvements are proposed in conformance with the recommendations included in the traffic impact analysis and otherwise required by the City of Salem Public Works Design Standards. The criteria are met.

However, subsection (a) includes the phrase “significant amount of traffic,” which is undefined and allows for discretion. As such, it is not clear and objective, and cannot be applied to this Application.

Subsection (b)(2) is not clear and objective because it does not define what “increased” means; it also does not explain how “pedestrian and/or bicyclist safety” is measured or at what point it becomes a “concern.” As such, this standard cannot be applied to the Application.

Subsection (c) is not clear and objective because it does not provide an applicant a way of knowing how the review authority will decide whether conditions of development approval will be required. As such, this standard cannot be applied to the Application.

Subsection (d) is discretionary (“if the Director determines . . .”) and as such is not clear and objective and cannot be applied to the Application.

Sec. 803.020. - Public and private streets.

- (a) *Public streets.* Except as provided in subsection (b) of this section, all streets shall be public streets.
- (b) *Private streets.*

- (1) Internal streets in subdivisions, partitions, and planned unit developments may be either public or privately owned; provided that the internal streets may be required to be public, given the connectivity, size, configuration, location, and number of lots or dwelling units, and the nature and location of public and common facilities and proposed uses.
- (2) Private streets shall conform to this chapter and the Public Works Design Standards, unless otherwise required by state law.
- (3) Any subdivision, partition, or planned unit development that includes private streets shall have recorded covenants, conditions, and restrictions which provide that all common property owners shall be members of a property owners' association. The covenants, conditions, and restrictions shall, at a minimum, require that the association be responsible for the perpetual maintenance and operation of all private streets and related facilities in the development, including, but not limited to, parking areas, private streets, privately owned pedestrian/bikeways, and landscape strips. Such association shall have the power to levy and assess against privately owned property in the development all necessary costs for maintenance and operation of the private streets and related facilities.

Applicant Response: All streets shown on the tentative plan are to be dedicated public right-of-way and no private streets are included with this subdivision application. The criteria are met.

To the extent any private streets are created, subsection (b)(1) is not clear and objective because it does not provide information on how the listed features (connectivity, size, configuration, etc.) are analyzed or measured in making the decision to require public streets; as such, it cannot be applied to this Application.

Sec. 803.025. - Right-of-way and pavement widths.

- (a) Except as otherwise provided in this chapter, right-of-way width for streets and alleys shall conform to the standards set forth in Table 803-1.

TABLE 803-1. RIGHT-OF-WAY WIDTH		
Right-of-Way	Width	Limitations & Qualifications
Parkway	Min. 120 ft	Applicable for up to 4 motor vehicle travel lanes
	Min. 144 ft.	Applicable for greater than 4 motor vehicle travel lanes
Major Arterial	Min. 96 ft.	
Minor Arterial	Min. 72 ft.	
Collector	Min. 60 ft.	
Local Street	Min. 50 ft.	

Cul-de-sac	Min. 50 ft.	Applicable to the stem of the cul-de-sac
	Min. 45 ft. radius	Applicable to the turnaround of the cul-de-sac
Alley	Min. 10 ft.	
	Max. 20 ft.	

- (b) Except as otherwise provided in this chapter, streets shall have an improved curb-to-curb pavement width as set forth in Table 803-2.

TABLE 803-2. PAVEMENT WIDTH		
Street Type	Width	Limitations & Qualifications
Parkway	Min. 80 ft	
Major Arterial	Min. 68 ft.	
Minor Arterial	Min. 46 ft.	
Collector	Min. 34 ft.	Applicable to Type A Collector
	Min. 40 ft.	Applicable to Type B Collector
	Min. 34 ft.	Applicable to Type C Collector
Local Street	Min. 30 ft.	
Cul-de-sac	Min. 30 ft.	Applicable to the stem of the cul-de-sac
	Min. 38 ft. radius	Applicable to the turnaround of the cul-de-sac

Applicant Response: The typical right-of-way cross section proposed with this application is 60 feet and includes a sidewalk, planter strip, two travel lanes, and potential for on-street parking (on one side) or a bike lane. Hilfiker Lane is proposed to be extended through the subject site, classified as a Type B Collector, and shown to have a proposed pavement width 40 feet. All other streets proposed with this application are classified as local streets and shown to be a 60-foot right-of-way width (30-foot pavement width). The criteria are met.

- (c) Additional right-of-way, easements, and improvements may be required to accommodate the design and construction of street improvement projects due to steep slopes, soils, water features, wetlands, transit bus bays, and other physical constraints.
- (d) Additional right-of-way and roadway improvements at the intersections of parkways, major arterial, minor arterial, and collector streets, and at intersections and access points for high traffic generators, including, but not limited to, shopping centers, schools, major recreational sites, and office complexes, may be required. The design of all intersections shall conform to the Public Works Design Standards.
- (e) When an area within a subdivision is set aside for commercial or industrial uses, or where probable future conditions warrant, dedication and

improvement of streets to greater widths than those provided in subsection (a) of this section may be required.

Applicant Response: All right-of-way improvements included with this application are proposed to meet the standards of the Public Works Design Standards. No area within this proposed subdivision is zoned or proposed to be used as commercial or industrial. The criteria are met.

However, subsection (c) is not clear and objective because it does not define or explain how the listed features (steep slopes, soils, water features, etc.) are analyzed or measured in making the determination to require additional ROW, easements, and improvements. As such, it cannot be applied to this Application.

Further, subsection (d) is not clear and objective because it simply states that certain improvements “may be required” without explaining how that determination is made. As such, it cannot be applied to this Application.

Subsection (e) is not clear and objective because it simply states that certain improvements “may be required” without explaining how that determination is made. As such, it cannot be applied to this Application.

Sec. 803.030. - Street spacing

- (a) Streets shall have a maximum spacing of 600 feet from right-of-way line to right-of-way line along one axis, and not less than 120 feet and not more than 400 feet from right-of-way line to right-of-way line along the other axis.
- (b) Street spacing may be increased where one or more of the following exist:
 - (1) Physical conditions preclude streets meeting the spacing requirements. Physical conditions include, but are not limited to, topography or the existence of natural resource areas such as wetlands, ponds, streams, channels, rivers, lakes, or a resource protected by state or federal law.
 - (2) Buildings or other existing development on adjacent lands, including previously subdivided but vacant lots or parcels, physically preclude streets meeting the spacing requirements, considering the potential for redevelopment.
 - (3) An existing public street or streets terminating at the boundary of the development site exceed the spacing requirements, or are situated such that the extension of the street or streets into the development site would create a block length exceeding the spacing requirements. In such cases, the block length shall be as close to the spacing requirements as practicable.
 - (4) Strict application of the spacing requirements would result in a street network that is no more beneficial to vehicular, pedestrian, or bicycle traffic than the proposed street network, and the proposed street network will accommodate necessary emergency access.

Applicant Response: Due to the physical conditions of the area with topography, existing streets, and the preservation of the existing farm requires extending the maximum street spacing to ± 746.17 feet, however the applicant proposes a walking path to bisect this distance. The street spacing and pedestrian path are shown on the submitted tentative plat. The proposed block along Hillrose Street SE is approximately 650 feet and bisected with a walking path. The block length from the intersection of Hillrose/Aldridge Ave to the walking path is approx. 280 feet, and from the walking path up to Hillrose/Hilfiker intersection is approx. 470 feet. The longest proposed block length is 470 feet. Natural features preclude the development of the proposed trail to become right-of-way, due to the amount of significant tree removal to accommodate the required grading for a street. The significant trees are proposed to be preserved and an open space tract including the trees has been proposed as a community asset. The criteria are met.

However, subsection (b) includes the word “may,” which allows for discretion, even if one of the conditions listed in (1)-(4) exist. Thus, it is not clear and objective and cannot be applied to this Application.

Subsection (b)(1) does not explain how it is determined that physical conditions preclude meeting the spacing requirements. Thus, it is not clear and objective and cannot be applied to this Application.

Subsection (b)(2) does not explain how it is determined that development physically precludes meeting the spacing requirements. Thus, it is not clear and objective and cannot be applied to this Application.

Subsection (b)(3) includes the phrase “as close to the spacing requirements as practicable,” which allows for discretion; this is not clear and objective. This standard cannot be applied to the Application.

Subsection (b)(4) does not explain how the review authority would determine how beneficial a given proposal is. It is thus not clear and objective and cannot be applied to the Application.

Sec. 803.035. - Street standards.

All public and private streets shall be improved as follows:

- (a) Connectivity. Local streets shall be oriented or connected to existing or planned streets, existing or planned schools, parks, shopping areas, transit stops, and employment centers located within one-half-mile of the development. Local streets shall be extended to adjoining undeveloped properties for eventual connection with the existing street system. Connections to existing or planned streets and adjoining undeveloped properties for eventual connection with the existing street system shall be

provided at no greater than 600-foot intervals unless one or more of the following conditions exist:

- (1) Physical conditions or the topography, including, but not limited to, freeways, railroads, steep slopes, wetlands, or other bodies of water, make a street or public accessway connection impracticable.
- (2) Existing development on adjacent property precludes a current or future connection, considering the potential and likelihood for redevelopment of the adjacent property; or
- (3) The streets or public accessways would violate provisions of leases, easements, covenants, restrictions or other agreements existing as of May 1, 1995, that by their terms would preclude a current or future connection.

Applicant Response: All roads stubbed to the subject site are proposed to be extended through the property. Hilfiker Lane SE is classified as a Collector B and extended through the site. Mandy Avenue is a local street and proposed to be extended through the subject site to intersect with proposed McCollim Street. All other roads proposed with this application are classified as local streets. No block lengths exceed 600-foot intervals without additional street or pedestrian connections. The criteria are met.

However, subsections (a)(1)-(3) are not clear and objective and thus they cannot be applied to the Application. Subsection (a)(1) does not explain how such features would make a street or public accessway connection impracticable, or what impracticable means. Subsection (a)(2) does not explain how the review authority determines whether existing development would preclude a current or future connection. Subsection (a)(3) is not clear and objective on its face because it cannot show what any lease/easement/covenant/restriction/or “other agreement” shows.

- (b) Improvements. All street improvements, including sub-base, base, pavement, curbs, sidewalks, and surface drainage shall conform to all provisions of the Salem Revised Code and the Public Works Design Standards.
- (c) Alignment and grade. All streets shall be designed with a vertical alignment that conforms to the Public Works Design Standards. No grade of parkway, major arterial, or minor arterial shall exceed six percent. No grade of a collector street shall exceed eight percent. No grade of a local street shall exceed 12 percent.
- (d) Dead-end streets. When it appears necessary to provide connectivity into or through an abutting undeveloped area, a dead-end street shall be provided to the boundary of the undeveloped area. The street may be constructed and right-of-way may be dedicated without a turnaround unless the Planning Administrator finds that a turnaround is necessary.

Applicant Response: This application does not include any dead-end streets. Hilfiker Lane is proposed to be a Type B Collector and as shown on the submitted plan sheet 7.1, the

maximum grade is proposed to be 9.30% and a minimum of 1%. All other street grades are proposed to meet the local street standards and not exceed 12 percent (see submitted street profile sheets beginning on sheet 7.1). All streets within this proposed subdivision were designed using the Salem Revised Code and Public Works Design Standards and meet the requirements set forth therein. The proposal is consistent with the codes and standards for public right-of-way. The criteria are met.

However, subsection (b) is not clear and objective because it requires that the proposal “conform to” “all provisions” of the SRC and Public Works Design Standards and does not distinguish between those that are applicable or not applicable to the subject Application. As such, it cannot be applied.

Subsection (c) is not clear and objective because the phrase “conforms to” is subjective and allows for discretion. Further, the “Public Works Design Standards,” without more information on which portions apply, is not clear and objective. As such, it cannot be applied.

Subsection (d) is not clear and objective because it does not explain how the required apparent necessity is determined. It also gives the Planning Administrator discretion to decide whether a turnaround is necessary.

- (e) Reserve blocks. Reserve blocks controlling access to a street or alley may be required to be dedicated to address one or more of the following:
 - (1) To prevent access to abutting land at the end of a street in order to assure the proper extension of the street pattern and the orderly development of land lying beyond the street.
 - (2) To prevent access to the side of a street on the side where additional width is required to meet the right-of-way standards provided in SRC 803.025.
 - (3) To prevent access to land abutting a street of the development, but not within the development itself.
 - (4) To prevent access to land unsuitable for development.
 - (5) To prevent access prior to payment of street improvement assessments or connection charges.
 - (6) To prevent access to an arterial or collector street.
- (f) Cul-de-sacs.
 - (1) Cul-de-sacs shall not exceed 800 feet in length.
 - (2) No portion of a cul-de-sac shall be more than 400 feet from an intersecting street or cul-de-sac unless physical constraints make it impractical.
 - (3) Cul-de-sacs shall have a turnaround with a property line radius of not less than that specified in SRC 803.025(a) from the center of the turnaround to the property lines.
- (g) Intersections; property line radius.

- (1) Intersections shall conform to the Public Works Design Standards; provided, however, additional right-of-way and roadway improvements at or adjacent to the intersections of parkways, major arterials, minor arterials, and collector streets may be required for intersections and access points for high traffic generators, including, but not limited to, shopping centers, schools, major recreational sites, and office complexes.
- (2) The property line radius at intersections shall be not less than the curb line radius as set forth in the Public Works Standards.

Applicant Response: No reserve blocks or cul-de-sacs are proposed with this application. Intersections and property line radii are proposed to meet the Public Works Design Standards as shown on the Tentative Site Plan sheet 5.0. The criteria are met.

However, subsection (e), to the extent it is deemed applicable, includes the word “may,” which allows for discretion, even if one or more of the listed conditions are met. To the extent a reserve block is part of this Application, this standard cannot apply. Further, subsection (e)(1) includes the terms “proper extension” and “orderly development of land,” which are undefined subjective terms. Subsection (e)(4) includes the phrase “unsuitable for development,” which is undefined and subjective. As such, these standards cannot be applied to the Application.

Subsection (f)(2), to the extent it is deemed applicable, is not clear and objective because “physical constraints” and “impractical” are not defined and/or are subjective terms. As such, it cannot be applied to the application.

Subsection (g)(1) includes the word “may” and the phrase “including, but not limited to,” which allow for discretion. This is not clear and objective and cannot be applied to the Application.

Subsection (g)(2) includes only a general reference to the Public Works Standards rather than specifying which apply, which is vague and as such cannot be clear and objective. As such, this standard cannot be applied.

- (h) Cut and fill slopes. Fill slopes shall begin no closer than two feet from the rear edge of the sidewalk, or if there is no sidewalk, from to the rear edge of the curb. Cut and fill slopes shall not exceed two horizontal to one vertical, provided that slopes not exceeding one to one may be approved upon certification by a qualified engineer or geologist that the slope will remain stable under foreseeable conditions.

Applicant Response: The cut and fill slopes for the majority of the subject site begin beyond the 10-foot Public Utility Easement (PUE) and are not proposed to exceed 2:1. In

areas without a PUE, there will be a minimum of a 2-foot bench before the cut and fill slopes and not proposed to exceed 2:1. The criterion is met.

- (i) Slope easements. Slope easements shall be provided on both sides of the right-of-way where required by Public Works Design Standards.

Applicant Response: No slope easements are currently proposed and therefore this criterion does not apply.

However, to the extent it is deemed applicable, subsection (i) includes only a general reference to the Public Works Standards rather than specifying which apply, which is vague and as such cannot be clear and objective. As such, this standard cannot be applied to this Application.

- (j) Street alignment. Consistent with good engineering practice, street alignment shall, so far as possible, avoid natural and constructed obstacles, including, but not limited to, mature trees.

Applicant Response: The street alignment is consistent with good engineering practices and avoids natural/constructed obstacles as shown on the submitted tentative site plan.

However, subsection (j) is not clear and objective because “so far as possible” and “including, but not limited to” leave room for discretion. This standard cannot be applied to the application.

- (k) Street trees. Development adjacent to public streets shall provide street trees that meet the standards and specifications set forth in SRC chapter 86.

Applicant Response: The applicant proposes the planting of street trees along all the proposed public right-of-way throughout the site. The street planning area details are shown on the submitted typical street sections sheet. The criterion is met.

- (l) Sidewalks.
 - (1) Sidewalk construction required. Sidewalks conforming to this chapter, the Public Works Design Standards, the Americans with Disabilities Act, the Salem Transportation System Plan, and SRC chapter 78 shall be constructed as a part of street improvement projects.
 - (2) Sidewalk location; width.
 - (A) Sidewalks shall be located parallel to and one foot from the adjacent right-of-way; provided, however, on streets having a right-of-way of 50 feet or less, sidewalks shall be located parallel to and abutting the curb.

- (B) If topography or other conditions make the construction of a sidewalk impossible or undesirable in a location required by this subsection, a different location may be allowed.
- (C) Except as otherwise provided in this subsection, all sidewalks shall be a minimum of five feet in width.
- (D) Sidewalks connecting with the direct access to the primary entrance of a school shall be a minimum of eight feet in width along the right-of-way for a distance of 600 feet from the point of connection.
- (E) Sidewalks shall have an unobstructed four-foot wide clearance around street lights, signs, mailboxes, and other streetscape facilities.

Applicant Response: As shown on the tentative site plan, sidewalks are located parallel to the proposed streets. Sidewalks are shown to meet the minimum 5 foot in width standard of sidewalks. No sidewalks within this proposed subdivision connect with school property and no streetlights are proposed within or adjacent to the subject site. As shown on the submitted plan sheets (see sheets 5.1 and 7.1-18) the sidewalks conform to the standards of this chapter, Public Works Design Standards, ADA, SRC Ch. 78, and therefore the criteria are met.

However, subsection (l)(1) is not clear and objective because it requires “conform[ance] to” various undefined and unspecified standards. Moreover, the TSP is generally referenced and is therefore improperly incorporated into this standard. As such, it cannot be applied to this Application.

Subsection (l)(2)(B) includes the phrase “undesirable,” which is subjective. As such, it is not clear and objective and cannot be applied to this Application.

- (m) *Bicycle facility standards.* Streets identified in the Salem Transportation System Plan Bicycle System Map as requiring a bicycle facility must conform to the designation of the Salem Transportation System Plan and the Public Works Design Standards.

Applicant Response: Per the Salem Transportation System Plan Bicycle System Map, Hilfiker Lane is recommended to be a family-friendly bikeway from 12th Street to Pringle Road. The proposed right-of-way improvements within this area include bicycle lanes. The criterion is met.

However, subsection (m) is not clear and objective because of the phrase “conform to”; it also includes reference to unspecified standards in the Public Works Standards. As such, it cannot be applied to this Application.

- (n) Utility easements. Public utility easements may be required for all streets. Unless otherwise specified by the Director, public utility easements shall be a minimum of ten feet in width on each side of the right-of-way.

Applicant Response: Utility easements have been shown on the face of the tentative plan and included with this application. The criterion is met.

However, subsection (n) is not clear and objective because it allows for the Director to have discretion in specifying the size of the public utility easements. It also uses the word “may,” without explaining in what situations such easements may or may not be required. As such, it cannot be applied to this Application.

- (o) Streetlights. All subdivisions and partitions, and all development on units of land for which site plan review is required, shall include underground electric service, light standards, wiring, and lamps for streetlights that conform to the Public Works Design Standards. The developer shall install such facilities. Upon the City's acceptance of improvements, the street lighting system shall become the property of the City.

Applicant Response: Street lights are proposed to be installed within the public right-of-way and installed by the developer to conform with the Public Works Design Standards. The criterion is met.

However, subsection (o)’s requirement to “conform to” unspecified Public Works Design Standards is not clear and objective. As such, this standard cannot be applied to the Application.

- (p) Landscape strips. Landscape strips for signs, streetlights, and shade trees shall be provided that conform to the Public Works Design Standards.
- (q) Landscaping. Property owners shall cover at least 75 percent of the unimproved surface area within the right-of-way abutting the property with perennial living plant material which conforms to all other requirements of the UDC, and which is kept free of noxious vegetation.

Applicant Response: Landscape strips are shown on the face of the preliminary site plan. Landscaping will be provided on each individual residential lot and will meet the requirement that 75% of the unimproved surface area within the right-of-way abutting the property with the required perennial living plant material. The criteria are met.

However, subsections (p) and (q) require “conform[ance] to” unspecified Public Works Design Standards or the UDC, respectively. This is not clear and objective, and thus, these standards cannot be applied to the Application.

- (r) Urban growth area street improvements. Where a subdivision or partition is located in the Urban Growth Area or the Urban Service Area, and the

construction of street improvements by the City has not yet occurred, the street improvements and dedications shall meet the requirements of SRC chapter 200.

Applicant Response: All street improvements included with this application are shown to meet the requirements of SRC Chapter 200 (See submitted road profile sheets and tentative site plan). The criterion is met.

Sec. 803.040. - Boundary streets

- (a) *General.* Except as otherwise provided in this section, dedication of right-of-way for, and construction or improvement of, boundary streets of up to one-half of the right-of-way and improvement width specified in SRC 803.025 shall be required as a condition of approval for the following:
 - (1) Subdivisions;
 - (2) Partitions;
 - (3) Planned unit developments;
 - (4) Manufactured dwelling parks; and
 - (5) The construction or enlargement of any building or structure located on property abutting a boundary street and that requires a building permit under SRC chapter 56.
- (b) *Three-quarter street improvement.* If construction of a half-street improvement is insufficient to provide for a minimum of one 12-foot-wide travel lane in each direction or proper street grade, dedication of right-of-way for, and construction or improvement of, a three-quarter street improvement may be required.
- (c) *Additional right-of-way and improvements.* Dedication and improvement of streets to greater widths than those provided in SRC 803.025 may be required when:
 - (1) An area within a subdivision is set aside for commercial or industrial uses, or where probable future conditions warrant.
 - (2) Topographical requirements necessitate either cuts or fills for the proper grading of the streets, additional right-of-way width or slope easements may be required to allow for all cut and fill slopes.
 - (3) Additional area is required for stormwater facilities located within the right-of-way.

Applicant Response: All new and extended existing streets are proposed to be dedicated to the City of Salem as public right-of-way. Sidewalk improvements are proposed along the subject site's frontage on 12th Street and Hillrose Street. Full street and sidewalk improvements are proposed for all new roadways within the proposed subdivision. The criteria are met.

However, subsections (b) and (c) include the word “may,” which allows for discretion. As such, those standards are not clear and objective and cannot be applied to the Application.

Further, subsection (c)(1) includes the phrase “probable future conditions warrant,” which is undefined and is subjective in nature, leaving room for discretion. This is not clear and objective, and cannot be applied to this Application.

Subsection (c)(2) is not clear and objective because it does not provide information about what “topographical requirements” might “necessitate” cuts or fills, etc. As such, it cannot be applied to the Application.

- (d) *Exceptions.* Notwithstanding subsections (a) and (b) of this section, the dedication of right-of-way for, and construction or improvement of, boundary streets is not required in the following circumstances:
 - (1) Improvement of the boundary street abutting the property is a funded project in the Five Year Capital Improvement Program;
 - (2) The erection or construction of a new building or structure in a complex, if the new building or structure is less than 2,000 square feet. This exception shall be based on the extent of development existing on December 31, 1995;
 - (3) The enlargement of any building or structure, if the enlargement results in less than a 50 percent increase in gross building area. This exception shall be based on the extent of development existing on December 31, 1995;
 - (4) The erection, construction, or enlargement of any building or structure to be used entirely for agriculture, the keeping of livestock and other animals, or animal services, as defined in SRC chapter 400, and which involve no retail sales; or
 - (5) The erection, construction, or enlargement of any building or structure that will generate less than 20 new vehicle trips per day according to the Institute of Transportation Engineers' Trip Generation Manual.

Applicant Response: No exceptions to the required improvements are included with this application. Required right-of-way improvements are proposed to be made as shown on the face of the tentative plat. The criteria are met.

- (e) *Improvement.*
 - (1) All boundary street improvements shall conform to this chapter and the Public Works Design Standards.
 - (2) The maximum amount of street widening shall not exceed 17 feet on the development side, plus curb, gutters, sidewalks, bike lanes, stormwater facilities, street lights, and signing where appropriate. The minimum requirement for the opposite side of the centerline is a 12-foot-wide paved travel lane. The boundary street improvement shall be provided along the full length of the boundary.
 - (3) If development is proposed for only a portion of a development site or complex, the boundary street improvement shall be provided as follows:

- (A) Where the area of development exceeds 25 percent of the total development site or complex area, the street improvements shall be the greater of either the actual street frontage of the phase being developed, or the percentage of street frontage equal to the percentage of area being developed.
- (B) Where the area of development is equal to or less than 25 percent of the total development site or complex area, the street improvement shall be provided in accordance with the following formula:
 - (i)
$$\text{Frontage of Required Street Improvement} = \frac{\text{Proposed Area of Development}}{\text{Area of Undeveloped Site}} \times \text{Total Street Frontage of Entire Development Site or Complex.}$$
- (C) As used in this subsection, the term "area of development" means that area required for structures, setbacks, off-street parking, landscaping, and any special setbacks.

Applicant Response: All proposed improvements for boundary streets adjacent to the subject property are proposed to conform to Public Works Design Standards and details are shown on the submitted typical street sections and street profile sheets. Right-of-way dedication of 30-feet on 12th Street to accommodate a 60-foot right-of-way as required by the Local Street Classification (per 3-8 Street System Element of the Salem TSP) is shown on the tentative plat. This required dedication and associated 25-feet of new pavement for the required $\frac{3}{4}$ Street improvements exceeds the maximum amount of street widening stated above due to the underimproved section of 12th Street along the subject property's frontage. A phasing plan has been included with the submitted plan sheets and all streets within the proposed phases are to be constructed during the completion of each phase. The entire subject property is proposed to be subdivided for single-family residential development. The above criteria are met.

However, the requirement in subsection (e)(1) to "conform to" unspecified Public Works Design Standards is not clear and objective. As such, it cannot be applied to this Application.

Further, the phrase in subsection (e)(2), "where appropriate," leaves room for discretion. This is not clear and objective, and thus cannot be applied to the Application.

Sec. 803.045. - Monuments.

Proper monuments that conform to the Public Works Design Standards shall be constructed with street improvements.

Applicant Response: Monuments are proposed to be reviewed for compliance with the Public Works Design Standards prior to final plat approval.

However, the requirement to “conform to” unspecified Public Works Design Standards is not clear and objective. As such, it cannot be applied to this Application.

Sec. 803.050. - Public accessways.

- (a) When necessary for public convenience or safety, public accessways may be required to connect to cul-de-sac streets, to pass through oddly shaped or unusually long blocks, to provide for networks of public paths creating access to schools, parks, shopping centers, mass transportation stops, or other community services, or where it appears necessary to continue the public walkway into a future subdivision or abutting property or streets.
- (b) Public accessways shall conform to the Public Works Design Standards, and have width and location as reasonably required to facilitate public use and, where possible, accommodate utility easements and facilities. Public accessways shall be dedicated on the plat.

Applicant Response: A public trail is proposed from Hillrose Street over to the west side of Hikfiker Lane. This public trail allows for efficient pedestrian access through the proposed subdivision, crossing through an open space tract. The path tract is proposed to be 15 feet wide through all tract sections. 15 feet is sufficient to construct a walking path to reasonably accommodate public use. Public utility easements are provided adjacent to the public right-of-way to accommodate the installation and undergrounding of public utilities. The criteria are met.

However, subsection (a) does not explain how it is decided that something is necessary for “public convenience or safety” or when something “appears necessary”; also “oddly shaped” and “unusually long” are subjective and leave room for discretion. This standard is not clear and objective and cannot be applied to the Application.

Also, subsection (b) is not clear and objective because “as reasonably required” and “where possible” are subjective phrases and leave room for discretion. As such, this standard cannot be applied to the Application.

Sec. 803.055. - Traffic control, parking regulation, and street signs and pavement markings.

The developer shall install all required traffic control, parking regulation, street signs, and pavement markings for all paved blocks of streets within a subdivision or partition prior to final acceptance of the public streets by the City, or prior to the issuance of any building permit for construction within the subdivision or partition for private streets. All traffic control, parking regulation, and street signs and pavement markings shall conform to the Public Works Design Standards and shall be installed at the developer's expense.

Applicant Response: The applicant proposes to install traffic control and parking regulation measures as conditioned by the approval of this application. Street signs and pavement markings are proposed with the construction of the improvements. A traffic

impact analysis was included with this application and did not identify a need for additional traffic control devices such as a traffic light. The criterion is met.

However, the requirement to “conform to” unspecified Public Works Design Standards is not clear and objective. As such, this standard cannot be applied to the Application.

Sec. 803.060. - Conveyance by dedication.

All streets within subdivisions or partitions, other than private streets allowed under SRC 803.020, shall be dedicated to the City on the plat.

Applicant Response: All streets shown on the tentative plan are to be shown as dedicated to the City of Salem on the plat. The criterion is met.

Sec. 803.065. - Alternative street standards.

- (a) The Director may authorize the use of one or more alternative street standards:
 - (1) Where existing development or physical constraints make compliance with the standards set forth in this chapter impracticable;
 - (2) Where the development site is served by fully developed streets that met the standards in effect at the time the streets were originally constructed; or
 - (3) Where topography or other conditions make the construction that conforms to the standards impossible or undesirable.
- (b) Authorization of an alternative street standard may require additional or alternative right-of-way width, easements, and improvements to accommodate the design and construction using the alternative standard.

Applicant Response: No alternative street standards are proposed with this application. The criteria are not applicable.

Sec. 803.070. - Deferral of construction of certain improvements.

- (a) Applicant initiated deferral. An applicant may apply to defer the construction of the following improvements, upon filing an application and paying the application fee:
 - (1) Boundary streets.
 - (A) Construction of boundary streets may be deferred if:
 - (i) The development site abuts a boundary street section, and the existing vertical or horizontal alignment for the street section neither meets nor can be constructed within the limits of the development site frontage in a manner that conforms to the Public Works Design Standards for future final street grades and alignment;
 - (ii) The development site abuts a local street, the development site has less than 150 feet of frontage,

- and the use will generate 20 or less new vehicle trips per day;
- (iii) The development site abuts a local street and there is no improved street section or street improvement deferral for the boundary street within 150 feet of the property corners of the development site; or
- (iv) Unusual or special conditions exist that, in the opinion of the Director, would warrant a deferral of all or a part of the improvement.

Applicant Response: This application does not include a proposal to defer construction or any improvements. The criteria do not apply.

- (2) Sidewalks.
 - (A) Construction of sidewalks may be deferred if:
 - (i) For property within all zones other than industrial and employment zones:
 - (aa) The sidewalk is not on a collector street or arterial street; and
 - (bb) Less than one-half of the required sidewalks on the side of the block where the sidewalk is to be constructed have already been constructed.
 - (ii) For property within industrial and employment zones:
 - (aa) The sidewalk would not be part of a pedestrian route to a school, shopping center, park, church, or other pedestrian traffic generator, or identified in a local safe routes to school plan as a facility in need of improvement; and
 - (bb) The deferral would not pose a threat to public safety and welfare, based upon review of pedestrian/vehicular traffic on the street, the width and condition of the street, and on-street parking.
 - (B) Unless otherwise provided in the deferral agreement, when sidewalk construction has been deferred, the property owner shall:
 - (i) Grade and slope the area to the future sidewalk grade;
 - (ii) Avoid planting trees in the sidewalk area, or building fences, retaining walls, steps, or other impediments to the future sidewalk; and
 - (iii) Note on the plans for the development that a deferment has been granted but that sidewalk construction may be ordered by the City at any time.

Applicant Response: Sidewalks are proposed to be constructed and no deferred improvements are included with this application. The criteria do not apply.

- (b) *City required deferral.* The Director may require deferral of the construction of part or all of one or more of the improvements identified in subsection (a) of this section at any time. Deferral pursuant to this subsection shall be at no cost to the applicant.
- (c) *Deferral agreement.* When a deferral is allowed or required pursuant to this section, the applicant shall enter into a deferral agreement. The deferral agreement shall be in a form approved by the City Attorney, shall be filed in the deed records of the appropriate county, and shall provide that the required improvements will be constructed at such time as the Director determines or at such other time as may be specified by resolution of the Council.
- (d) *Notation on plat.* The deferral of any improvements shall be noted on the final plat.

Applicant Response: The above criteria do not apply as no improvement deferrals are included with this application.

CHAPTER 804. - DRIVEWAY APPROACHES

Sec. 804.001. - Purpose.

The purpose of this chapter is to establish development standards for safe and efficient access to public streets.

Sec. 804.005. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned means a driveway approach that is no longer used for vehicle access.

Driveway approach means any access providing direct vehicle ingress and egress over public right-of-way to property.

One-way driveway means a driveway that provides only ingress or only egress.

Shared access means a driveway that jointly serves two or more lots or parcels.

Two-way driveway means a driveway that provides both ingress and egress.

Sec. 804.010. - Applicability.

This chapter applies to the design, construction, relocation, reconstruction, enlargement, or alteration of any driveway approach.

Applicant Response: The applicant understands the definitions and applicability of the requirements as they pertain to this application.

However, the phrase “safe and efficient” in Sec. 804.001 is subjective and allows for discretion; thus, it is not clear and objective and cannot be applied to this Application.

Further, as to Sec. 804.005, to the extent a decision maker determines that “context clearly indicates a different meaning,” “clearly indicates” is subjective and thus the definitions are not clear and objective and cannot be applied to this application.

Sec. 804.015. - Driveway approach permit required.

- (a) Except as otherwise provided in this chapter, a driveway approach permit shall be obtained prior to constructing, relocating, reconstructing, enlarging, or altering any driveway approach.
- (b) Exceptions. A driveway approach permit is not required for:
 - (1) The construction, relocation, reconstruction, enlargement, or alteration of any driveway approach that requires a state highway access permit; or
 - (2) The construction, relocation, reconstruction, enlargement or alteration of any driveway approach that is part of the construction of a publicly or privately engineered public improvement project.

Applicant Response: All driveways to single-family homes within this development shall be evaluated for compliance with standards prior to issuance of a building permit. The criteria are met.

However, the phrase “except as otherwise provided in this chapter” in subsection (a) is vague and as such, this standard is not clear and objective on its face; it cannot be applied to this Application.

Sec. 804.020. - Class 1. Driveway approach permit.

- (a) *Required.* A Class 1 driveway approach permit is required for:
 - (1) A driveway approach onto a local or collector street providing access to a single family, two family, three family, or four family use.
 - (2) A driveway approach for any land-locked lot or parcel providing access onto a local or collector street, unless the driveway is part of an existing shared access.
 - (3) A driveway approach providing access to a corner lot that abuts only local or collector streets, where the driveway approach will provide access onto the street with the lower street classification.
 - (4) Maintenance, repair, or replacement of an existing permitted driveway approach, other than maintenance, repair, or replacement that is part of, or needed for, redevelopment of commercial or industrially zoned property.

Applicant Response: All driveways to single-family homes within this development shall be evaluated for compliance with standards prior to issuance of a building permit. Separate

driveway approach permits are proposed to be filed prior to construction of any driveway. The criteria are met.

However, subsection (a)(4) includes the phrase “needed for.” Whether something is “needed for” redevelopment is discretionary as such this standard is not clear and objective and cannot be applied to this Application.

- (b) *Procedure type.* A Class 1 driveway approach permit is processed as a Type I procedure under SRC chapter 300.
- (c) *Submittal requirements.* In lieu of the application submittal requirements under SRC chapter 300, an application for a Class 1 driveway approach permit shall include the following:
 - (1) A completed application form.
 - (2) A site plan, of a size and form and in the number of copies meeting the standards established by the Director, containing the following information:
 - (A) The location and dimensions of the proposed driveway approach;
 - (B) The relationship to nearest street intersection and adjacent driveway approaches;
 - (C) The location of all utilities;
 - (D) The location of any existing or proposed buildings, structures, or vehicular use areas;
 - (E) The location of any trees and vegetation adjacent to the location of the proposed driveway approach that are required to be protected pursuant to SRC chapter 808; and
 - (F) The location of any street trees adjacent to the location of the proposed driveway approach.
 - (3) Identification of the uses or activities served, or proposed to be served, by the driveway approach.
 - (4) Any other information, as determined by the Director, which may be required to adequately review and analyze the proposed driveway approach for conformance with the applicable criteria.
- (d) *Criteria.* A Class 1 driveway approach permit shall be granted if the proposed driveway approach meets the standards of this chapter and the Public Works Design Standards.

Applicant Response: All driveways to single-family homes within this development shall be evaluated for compliance with standards prior to issuance of a building permit. Separate driveway approach permits are proposed to be filed prior to construction of any driveway. The criteria are met.

However, subsection (c)(4) includes the phrases “as determined by the Director” and “which may be required to adequately review and analyze,” which necessarily allow for

discretion; further, “conformance with” is vague and allows for discretion. Submittal requirement (4) is not clear and objective and cannot be applied to this Application.

Further, subsection (d) is not clear and objective because it does not set forth which Public Works Design Standards apply. As such, it cannot be applied to this Application.

Sec. 804.025. - Class 2 driveway approach permit.

- (a) *Required.* A Class 2 driveway approach permit is required for:
 - (1) A driveway approach onto a parkway, major arterial, or minor arterial;
 - (2) A driveway approach onto a local or collector street providing access to a use other than single family, two family, three family, or four family;
 - (3) A driveway approach providing access to a corner lot that abuts only local or collector streets, where the driveway approach will provide access onto the street with the higher street classification; or
 - (4) Maintenance, repair, or replacement of an existing permitted driveway approach, which is part of, or needed for, redevelopment of commercial or industrially zoned property.
- (b) *Procedure type.* A Class 2 driveway approach permit is processed as a Type II procedure under SRC chapter 300.
- (c) *Submittal requirements.* In lieu of the application submittal requirements under SRC chapter 300, an application for a Class 2 driveway approach permit shall include the following:
 - (1) A completed application form.
 - (2) A site plan, of a size and form and in the number of copies meeting the standards established by the Director, containing the following information:
 - (A) The location and dimensions of the proposed driveway approach;
 - (B) The relationship to nearest street intersection and adjacent driveway approaches;
 - (C) Topographic conditions;
 - (D) The location of all utilities;
 - (E) The location of any existing or proposed buildings, structures, or vehicular use areas;
 - (F) The location of any trees and vegetation adjacent to the location of the proposed driveway approach that are required to be protected pursuant to SRC chapter 808; and
 - (G) The location of any street trees adjacent to the location of the proposed driveway approach.
 - (3) Identification of the uses or activities served, or proposed to be served, by the driveway approach.
 - (4) Any other information, as determined by the Director, which may be required to adequately review and analyze the proposed driveway approach for conformance with the applicable criteria.

- (d) *Criteria.* A Class 2 driveway approach permit shall be granted if:
 - (1) The proposed driveway approach meets the standards of this chapter and the Public Works Design Standards;
 - (2) No site conditions prevent placing the driveway approach in the required location;
 - (3) The number of driveway approaches onto an arterial are minimized;
 - (4) The proposed driveway approach, where possible:
 - (A) Is shared with an adjacent property; or
 - (B) Takes access from the lowest classification of street abutting the property;
 - (5) The proposed driveway approach meets vision clearance standards;
 - (6) The proposed driveway approach does not create traffic hazards and provides for safe turning movements and access;
 - (7) The proposed driveway approach does not result in significant adverse impacts to the vicinity;
 - (8) The proposed driveway approach minimizes impact to the functionality of adjacent streets and intersections; and
 - (9) The proposed driveway approach balances the adverse impacts to residentially zoned property and the functionality of adjacent streets.

Applicant Response: All driveways to single-family homes within this development shall be evaluated for compliance with standards prior to issuance of a building permit. This application does not include a Class 2 driveway approach permit. The criteria do not apply.

Sec. 804.030. - Access onto local and collector streets.

- (a) *Number of driveway approaches.* Except as otherwise provided in this chapter, a lot or parcel is entitled to one driveway approach onto a local or collector street. Additional driveway approaches from a single family, two family, three family, or four family use onto a local or collector street may be allowed through Class 1 driveway permit approval.
- (b) *Permitted access.*
 - (1) Driveway approaches onto local and collector streets shall only provide access to a permitted parking or vehicular use area, except where the driveway approach will provide access to a site controlled by a franchised utility service provider or a governmental entity.
 - (2) For a corner lot that abuts only local or collector streets, the driveway approach shall provide access to the street with the lower street classification.
- (c) *Spacing.* Driveway approaches providing direct access to a collector street shall be located no less than 200 feet from intersections with major arterials or minor arterials, measured from centerline to centerline.
- (d) *Vision clearance.* Driveway approaches onto local and collector streets shall comply with the vision clearance requirements set forth in SRC chapter 805.

Applicant Response: The driveway approaches for each residential lot are proposed to be installed and evaluated for compliance to these standards for approach, location for corner lots, and spacing at the time a building permit application is submitted. Hilfiker Lane is classified as a Collector B Street and all other streets within this subject site are classified as local streets, therefore all driveway approaches are onto local or collector streets. The applicant proposes compliance with the clear vision requirements for driveways and proposes to be reviewed with the building permit application. The criteria are met.

Sec. 804.035. - Access onto major and minor arterials.

- (a) Number of driveway approaches.
 - (1) Except as otherwise provided in this chapter, a complex shall be entitled to one driveway approach onto a major or minor arterial. Additional driveway approaches for a complex may be allowed where:
 - (A) A complex has more than 370 feet of frontage abutting a major or minor arterial;
 - (B) There is a shared access agreement between two or more complexes; or
 - (C) It is impracticable to serve the complex with only one driveway approach.
 - (2) No driveway approach is allowed onto a major or minor arterial for development that is not a complex, unless:
 - (A) The driveway approach provides shared access;
 - (B) The development does not abut a local or collector street; or
 - (C) The development cannot be feasibly served by access onto a local or collector street.

Applicant Response: This application does not include any major or minor arterial classified roadways. The criteria do not apply.

- (b) *Traffic volume threshold.* No driveway approach onto a major or minor arterial shall be allowed unless the development generates 30 or more vehicle trips per day or the driveway approach provides access to a city park.
- (c) *Permitted access.*
 - (1) Driveway approaches onto major and minor arterials shall only provide access to a permitted parking or vehicular use area, except where the driveway approach will provide access to a site controlled by a franchised utility service provider or a governmental entity.
 - (2) For a corner lot that abuts a local or collector street, the driveway approach shall provide access to the street with the lower street classification.
 - (3) No access shall be provided onto a major or minor arterial from a single family or two family use constructed as part of a subdivision or partition.
 - (4) Only forward in/forward out access shall be allowed onto a major or minor arterial.

Applicant Response: A traffic study was submitted with this application to address traffic volumes associated with this application. This application does not include any major or minor arterial classified roadways. Proposed lots 21 - 25, 51 - 65, 70 - 75, 127 - 132, and 110 - 112 all take access directly onto Hilfiker Lane which is classified as a Collector B. All corner lots with frontage on Hilfiker Lane (Collector B) is proposed to take access via the lesser street classification. The criteria are met.

- (d) *Spacing.* Driveway approaches providing direct access to a major or minor arterial shall be no less than 370 feet from the nearest driveway or street intersection, measured from centerline to centerline.
- (e) *Vision clearance.* Driveway approaches onto major and minor arterials shall comply with the vision clearance requirements set forth in SRC chapter 805.

Applicant Response: Vision clearance provisions are addressed below in this narrative. No proposed driveways provide direct access onto a major or minor arterial. The criteria are met.

Sec. 804.040. - Access onto parkways.

- (a) *Number of driveway approaches.* No driveway approach shall be allowed onto a parkway unless the driveway approach is for a complex that generates 10,000 or more vehicle trips per day, or the driveway approach is a service driveway approach that provides access to a site controlled by a franchised utility service provider or a governmental entity.
- (b) *Permitted access.* Driveway approaches onto a parkway shall only provide access to a permitted parking or vehicular use area, except where the driveway approach will provide access to a site controlled by a franchised utility service provider or a governmental entity.
- (c) *Spacing.* Driveway approaches onto a parkway shall be no less than one mile from the nearest driveway approach or street intersection, measured from centerline to centerline.
- (d) *Vision clearance.* Driveway approaches onto a parkway shall comply with the vision clearance requirements set forth in SRC chapter 805.
- (e) *Temporary access.* Temporary direct access from a parkway to a development site may be granted until permanent access that conforms to this chapter can be established.
- (f) *No variance or adjustment.* The standards set forth in this section cannot be varied or adjusted.

Applicant Response: No proposed access onto a parkway is included with this application. The criteria do not apply.

Sec. 804.045. - Shared access.

- (a) Shared access may be required to serve two or more abutting lots or parcels, when necessary to mitigate or eliminate traffic impacts or safety concerns.

- Shared access may be provided at the request of an applicant; provided, however, that once the applicant's request has been approved, shared access shall not be eliminated without first obtaining a Class 2 driveway permit.
- (b) Shared access shall conform to this chapter and the Public Works Design Standards, and shall be provided by permanent irrevocable easements that are recorded in the appropriate county.
 - (c) Lots and parcels shall be permitted to use temporary direct access onto a street until permanent shared access has been established.

Applicant Response: All lots created in this subdivision have direct, individual access onto the public right-of-way and no shared access is proposed with this application. The criteria do not apply.

Sec. 804.050. - Driveway approach development standards.

Driveway approaches shall conform to the following development standards:

- (a) *Design and construction.* Driveway approaches shall be designed and constructed in conformance with this chapter and the Public Works Design Standards.
- (b) *Width.*
 - (1) *Driveway approach width for single family, two family, three family, and four family uses.* Driveway approaches serving single family, two family, three family, and four family uses shall conform to the minimum and maximum widths set forth in Table 804-1.

TABLE 804-1. DRIVEWAY APPROACH WIDTH FOR SINGLE FAMILY, TWO FAMILY, THREE FAMILY, AND FOUR FAMILY USES

Number of Parking Spaces Served	Width	
	Minimum	Maximum
1 Space	10 ft.	15 ft.
2 Spaces	15 ft.	24 ft.
3 or more spaces	18 ft.	36 ft.

- (2) *Driveway approach width for uses other than single family, two family, three family, and four family.* Driveway approaches serving uses other than single family, two family, three family, and four family shall conform to the minimum and maximum widths set forth in Table 804-2.

TABLE 804-2. DRIVEWAY APPROACH WIDTH FOR USES OTHER THAN SINGLE FAMILY, TWO FAMILY, THREE FAMILY OR FOUR FAMILY

Type of Driveway	Width	
	Minimum	Maximum
One-way driveway approach	12 ft.	20 ft.

Two-way driveway approach	22 ft.	40 ft.
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- (3) *Measurement.* For purposes of this subsection, driveway approach width shall be determined by measurement of the paved surface of the driveway at the property line.
- (c) *Marking and signage.* Where required by the Public Works Design Standards, driveway approaches shall be clearly marked or signed and maintained in conformance with the Public Works Design Standards.

Applicant Response: Driveway design, construction material, and widths are to be evaluated prior to issuance of a building permit. All driveways are proposed to access a single-family home and no marking or signage are proposed with this application. The criteria are met.

However, subsection (a) is not clear and objective because the applicable Public Works Design Standards are not identified and because it includes the phrase “in conformance with,” which is subjective. As such, this standard cannot be applied to the Application.

Further, while the standards in Tables 804-1 and 804-2 are clear and objective, the requirement in subsections (b)(1)-(2) to “conform to” those standards is subjective. As such, subsections (b)(1)-(2) are not clear and objective and cannot be applied to the Application.

Subsection (c) includes the phrase “Clearly marked or signed,” which leaves room for discretion. Further, its requirement to be maintained “in conformance with” unspecified standards in the Public Works Design Standards is not clear and objective. As such, this standard cannot be applied to the Application.

Sec. 804.055. - Driveway approach relocation, reconstruction, and maintenance.

- (a) *General.* The Director may require the relocation, reconstruction, or maintenance of a driveway approach where:
 - (1) The driveway approach has become hazardous due to traffic congestion. The determination that a driveway approach is hazardous to the public's use of the right-of-way shall be based on traffic engineering principles and traffic investigations;
 - (2) The driveway approach is not constructed in conformance with this chapter and the Public Works Design Standards;
 - (3) The driveway approach is not maintained in a safe manner; or
 - (4) A public street improvement project is being constructed, and relocation of the driveway approach will more closely conform to the current driveway approach standards.
- (b) *Notice.* Notice of driveway approach relocation, reconstruction, or maintenance shall be given, in writing, to the property owner and any affected tenants stating the grounds for the relocation, reconstruction, or

maintenance, the date upon which the requirement becomes effective, and the right to appeal.

- (c) *Appeals.* Any person entitled to notice under subsection (b) of this section may appeal the decision to the Hearings Officer by following the process set forth in SRC 20J.220. The hearing on the appeal shall follow the contested case procedures set forth in SRC 20J.240 through 20J.430.
- (d) *Effect.* If no appeal is filed within the time specified, the affected owner shall have 90 days from the date of the notice to relocate, reconstruct, or maintain the driveway approach in a manner that conforms to this chapter and the Public Works Design Standards.
- (e) *Failure to relocate, reconstruct, or maintain driveway approach.* If the owner fails to relocate, reconstruct, or maintain the driveway approach within 90 days, the Director may cause the relocation, reconstruction, or maintenance to be completed and all expenses will be assessed against the property owner.

Applicant Response: Driveways accessing the proposed lots included with this application are to be evaluated prior to issuance of a building permit. No driveway relocation has been required for this application. The criteria are met.

However, subsection (a) includes the phrase “may require,” which leaves room for discretion. As such, it is not clear and objective and cannot be applied to the Application.

Subsection (a)(1) includes the phrase “has become hazardous”; whether something “has become hazardous” is subjective; further, this does not explain how “traffic engineering principles and traffic investigations” specifically will form the basis of such determination. This is not clear and objective, and cannot be applied to the Application.

Subsection (a)(2) requires the driveway approach to be constructed “in conformance” with the stated standards, which is subjective; this standard also does not list which Public Works Design Standards apply. Thus, the standard is not clear and objective and cannot be applied to the Application.

Subsection (a)(3) includes the phrase “maintained in a safe manner,” which is subjective. Thus, the standard is not clear and objective and cannot be applied to the Application.

Subsection (a)(4) includes the phrase “more closely conform to,” which is subjective. Thus, the standard is not clear and objective and cannot be applied to the Application.

Subsection (d) includes the phrase “conforms to,” which is not clear and objective; nor is the “Public Works Design Standards” without detail as to which portions apply. Thus, the standard is not clear and objective and cannot be applied to the Application.

Subsection (e) includes the phrase “may cause,” which allows for discretion. Thus, the standard is not clear and objective and cannot be applied to the Application.

Sec. 804.060. - Driveway approach closure.

- (a) *General.* The Director may require the closure of a driveway approach where:
 - (1) The driveway approach is not constructed in conformance with this chapter and the Public Works Design Standards;
 - (2) The driveway approach is not maintained in a safe manner;
 - (3) A public street improvement project is being constructed, and closure of the driveway approach will more closely conform to the current driveway approach standards;
 - (4) A new building or driveway is constructed on the property;
 - (5) A comprehensive plan change or zone change is proposed for the property served by the driveway;
 - (6) A change of use or activity in an existing building increases the amount of required parking;
 - (7) The driveway approach has been abandoned; or
 - (8) There is a demonstrated safety issue.
- (b) *Notice.* Notice of driveway approach closure shall be given, in writing, to the property owner and any affected tenants stating the grounds for closure, the date upon which the closure becomes effective, and the right to appeal.
- (c) *Appeals.* Any person entitled to notice under subsection (b) of this section may appeal the decision to the Hearings Officer by following the process set forth in SRC 20J.220. The hearing on the appeal shall follow the contested case procedures set forth in SRC 20J.240 through 20J.430.
- (d) *Effect.* Closure shall be effective immediately upon the mailing of notice. Unless otherwise provided in the notice, closure terminates all rights to continue the use of the driveway approach for which the notice of closure has been issued.
- (e) *Failure to close driveway.* If the owner fails to close the driveway approach to conform to the notice within 90 days, the Director may cause the closure to be completed and all expenses will be assessed against the property owner.

Applicant Response: All driveways associated with this application are for single-family development access and no existing driveway is required or proposed to be closed. The criteria do not apply.

CHAPTER 805. - VISION CLEARANCE

Sec. 805.001. - Purpose.

The purpose of this chapter is to ensure visibility for vehicular, bicycle, and pedestrian traffic at the intersections of streets, alleys, flag lot accessways, and driveways.

Sec. 805.005. - Vision clearance areas.

Vision clearance areas that comply with this section shall be provided at the corners of all intersections; provided, however, vision clearance areas are not required in the Central Business (CB) Zone.

- (a) *Street intersections.* Vision clearance areas at street intersections shall comply with the following:

- (1) *Uncontrolled intersections.* At uncontrolled intersections, the vision clearance area shall have 30-foot legs along each street (see Figure 805-1).
- (2) *Controlled intersections.* At controlled intersections, the vision clearance area shall have a ten-foot leg along the controlled street and a 50-foot leg along the uncontrolled street (see Figure 805-2).
- (3) *One-way streets.* Notwithstanding subsections (a)(1) and (2) of this section, at an uncontrolled or controlled intersection of a one-way street, no vision clearance area is required on the corners of the intersection located downstream from the flow of traffic (see Figure 805-3).

Applicant Response: This application does not include any one-way streets. The clear vision clearance lines of site legs are met for all intersections within this proposed subdivision and addressed in the submitted Traffic Impact Analysis (TIA). The applicant proposes stop controlled intersections within the subdivision, and to follow the recommendations for intersections outside of the subdivision described in the submitted TIA. The criteria are met.

- (b) *Intersections with driveways, flag lot accessways, and alleys.* Vision clearance areas at intersections of streets and driveways, streets and flag lot accessways, streets and alleys, and alleys and driveways shall comply with the following:
 - (1) Driveways.
 - (A) Driveways serving single family and two family uses. Driveways serving single family and two family uses shall have a vision clearance area on each side of the driveway. The vision clearance area shall have ten-foot legs along each side of the driveway, and ten-foot legs along the intersecting street or alley (see Figure 805-4).
 - (B) Driveways serving uses other than single family and two family. Driveways serving uses other than single family and two family shall have a vision clearance area on each side of the driveway. The vision clearance area shall have ten-foot legs along the driveway and 50-foot legs along the intersecting street or alley (see Figure 805-5).

Applicant Response: All driveways included with this application are to access single-family homes. All intersections of driveways and public streets are shown on the tentative site plan as meeting the clear vision requirements. No proposed obstructions are proposed in clear vision areas. The criteria are met.

- (2) Flag lot accessways.
 - (A) Flag lot accessways serving single family and two family uses.
Flag lot accessways serving single family and two family uses

shall have a vision clearance area on each side of the flag lot accessway. The vision clearance area shall have ten-foot legs along each side of the flag lot accessway, and ten-foot legs along the intersecting street (see Figure 805-6).

- (B) Flag lot accessways serving uses other than single family and two family. Flag lot accessways serving uses other than single family and two family shall have a vision clearance area on each side of the flag lot accessway. The vision clearance area shall have ten-foot legs along the flag lot accessway and 50-foot legs along the intersecting street (see Figure 805-7).

Applicant Response: Proposed lot 66 is the only flag lot proposed with this application. Lot 66 is proposed for single-family residential use. The pole of the proposed flag lot intersects with 12th Street SE at a 90-degree angle with clear line of site in both directions on 12th Street SE. The criteria are met.

- (3) Alleys. Alleys shall have a vision clearance area on each side of the alley. The vision clearance area shall have ten-foot legs along the alley and ten-foot legs along the intersecting street (see Figure 805-8).

Applicant Response: No alleys are proposed with this application and therefore this criterion does not apply.

- (4) *Measurement.* The legs of a vision clearance area shall be measured along the right-of-way line and along the intersecting driveway, flag lot accessway, or alley.

Applicant Response: All driveway and right-of-way intersections shall comply with the clear vision measurements standards and are measured along the right-of-way line and along the intersecting driveway/flag lot accessway, as shown on the submitted plat sheet. No alleys are included with this application. The criterion is met.

Sec. 805.010. - Obstructions to vision prohibited.

Except as otherwise provided in this section, vision clearance areas shall be kept free of temporary or permanent obstructions to vision from 30 inches above curb level to 8.5 feet above curb level; provided, however, where there is no curb, the height shall be measured from the street shoulder. As used in this section, temporary or permanent obstruction includes any obstruction located in the right-of-way adjacent to the vision clearance area.

- (a) The following obstructions may be placed in a vision clearance area, unless the cumulative impact of the placement results in an obstruction to vision:
- (1) A column or post, so long as the column or post does not create a visual obstruction greater than 12 inches side-to-side.
 - (2) Utility poles and posts, poles, or supporting members of street signs, street lights, and traffic control signs or devices installed by, or at the

direction of, the Public Works Department or any other public agency having jurisdiction over the installation.

- (3) On-street parking.
- (b) Trees. Trees may be planted within a vision clearance area provided they are a species listed on the parks approved street tree list, and they comply with the following:
 - (1) The planting area is sufficient to support the tree when mature.
 - (2) The tree will not interfere with overhead utilities.
 - (3) The tree is a species that can be trimmed/pruned to provide necessary visibility.
- (c) Nothing in this chapter shall be deemed to waive or alter any requirements relating to setbacks or landscaping in the UDC. In the event of a conflict between the standards of this chapter and another chapter of the UDC, the standards in this chapter shall control.

Applicant Response: The submitted tentative site plan does not show any obstructions such as trees, columns, or posts to be place within the clear vision area per the submitted tentative site plan. Compliance with the clear vision areas is demonstrated in the submitted TIA. The criteria are met.

Sec. 805.015. - Alternative standards.

Alternative vision clearance standards that satisfy the purpose of this chapter, and that are consistent with recognized traffic engineering standards, may be approved where a vision clearance area conforming to the standards of this chapter cannot be provided because of the physical characteristics of the property or street, including, but not limited to, grade embankments, walls, buildings, structures, or irregular lot shape, or where the property has historic neighborhood characteristics, including, but not limited to, established plantings or mature trees, or buildings or structures constructed before 1950. Alternative vision clearance standards shall be approved through a Class 2 Adjustment under SRC chapter 250.

Applicant Response: This application does not include an alternative vision clearance standard as the provisions for vision clearance are satisfied. The criterion does not apply.

CHAPTER 806. - OFF-STREET PARKING, LOADING AND DRIVEWAYS

Sec. 806.001. - Purpose.

The purpose of this chapter is to establish standards for off-street parking and vehicle use areas, bicycle parking, loading areas, and driveways.

Sec. 806.005. - Off-street parking; when required.

- (a) *General applicability.* Off-street parking shall be provided and maintained as required under this chapter for:
 - (1) Each proposed new use or activity.

- (2) Any change of use or activity, when such change of use or activity results in a parking ratio requiring a greater number of spaces than the previous use or activity.
 - (3) Any intensification, expansion, or enlargement of a use or activity.
- (b) *Applicability to Downtown Parking District.* Within the Downtown Parking District, off-street parking shall only be required and maintained for uses or activities falling under household living.
- (c) *Applicability to nonconforming off-street parking areas.*
 - (1) When off-street parking is required to be added to an existing off-street parking area that has a nonconforming number of spaces, the number of spaces required under this chapter for any new use or activity, any change of use or activity, or any intensification, expansion, or enlargement of a use or activity shall be provided, in addition to the number of spaces required to remedy the existing deficiency.
 - (2) Notwithstanding subsection (1) of this section, when a property is changed in use to any of the following uses or activities, or any of the following uses or activities are added to a property, any existing deficiency in the number of off-street parking spaces shall not be required to be remedied and only those additional spaces required for the change of use or addition of the new use shall be required:
 - (A) Accessory dwelling unit.

Applicant Response: Each proposed residential lot will have a driveway large enough to park two standard vehicles. Each home is also designed to have a garage with capacity to house at a minimum one additional vehicle. The subject property is not within the Downtown Parking District and this application does not include any nonconforming off-street parking areas. The criteria are met.

Sec. 806.010. - Proximity of off-street parking to use or activity served.

Required off-street parking shall be located on the same development site as the use or activity it serves or in the following locations:

- (a) *Residential zones.* Within residential zones, required off-street parking may be located within 200 feet of the development site containing the use or activity it serves.
- (b) *Nonresidential zones.* Within commercial, mixed-use, public, and industrial and employment zones, other than the CB, WSCB, and SWMU zones, required off-street parking may be located within 500 feet of the development site containing the use or activity it serves.
- (c) *Central business district zone.* Within the Central Business (CB) Zone:
 - (1) Off-street parking for customers may be located within 800 feet of the development site containing the use or activity it serves; and

- (2) Off-street parking for employees or residents may be located within 2,000 feet of the development site containing the use or activity it serves.

Applicant Response: All proposed residential lots included with this application are to have driveways to satisfy off-street parking standards. Driveway parking and front door entry are to be within 200 feet of each other. The subject property is entirely within residential zoning designations and not considered commercial, mixed-use, public, or industrial/employment zone. The subject site is also not within the Central Business District Zone. The criteria are met.

- (d) *South waterfront mixed-use zone.* Within the South Waterfront Mixed Use (SWMU) Zone, required off-street parking may be located anywhere within the South Waterfront Mixed Use (SWMU) Zone. Required off-street parking shall not be located in a different zone.
- (e) *Broadway/High Street Retail Overlay Zone, Broadway/High Street Housing Overlay Zone and Broadway/High Street Transition Overlay Zone.* Within the Broadway/High Street Retail Overlay Zone, Broadway/High Street Housing Overlay Zone and Broadway/High Street Transition Zone, required off-street parking may be located within 800 feet of the development site containing the use or activity it serves.
- (f) *West Salem Central Business District Zone.* Within the West Salem Central Business (WSCB) Zone, required off-street parking may be located within 800 feet of the development site containing the use or activity it serves.
- (g) *Mixed Use-I (MU-I) and Mixed Use-II (MU-II).* Within the Mixed Use-I (MU-I) and Mixed Use-II (MU-II) zones, required off-street parking may be located within 800 feet of the development site containing the use or activity it serves.
- (h) *Exception.* Notwithstanding subsections (a) through (g) of this section, where required off-street parking is to be located off-site from the use or activity it serves, it shall only be located in a zone where the use or activity it serves is allowed, or where commercial parking is allowed.

Applicant Response: The subject property is not identified as being within the South Waterfront Mixed-Use Zone, Broadway/High Street Retail Overlay Zone (or any overlay included with 806.010.e), West Salem Central Business District Zone, Mixed-Use-I/Mixed-Use-II and does not include an exception. The above criteria do not apply.

Sec. 806.015. - Amount off-street parking.

- (a) *Minimum required off-street parking.* Unless otherwise provided under the UDC, off-street parking shall be provided in amounts not less than those set forth in Table 806-1.
- (b) *Compact parking.* Up to 75 percent of the minimum off-street parking spaces required under this chapter may be compact parking spaces.

- (c) *Carpool and vanpool parking.* New developments with 60 or more required off-street parking spaces, and falling within the public services and industrial use classifications, and the business and professional services use category, shall designate a minimum of five percent of their total off-street parking spaces for carpool or vanpool parking.

Applicant Response: Table 806-1 requires 2 off-street parking spaces for each single-family home. Each residential lot includes a driveway large enough to accommodate compliance with this standard. Due to the residential nature of this development, no specific compact or carpool/vanpool parking spaces are proposed with this application. The criteria are met.

- (d) *Maximum off-street parking.*
 - (1) Maximum off-street parking is based upon the minimum number of required off-street parking spaces. Except as otherwise provided in this section, and otherwise provided under the UDC, off-street parking shall not exceed the amounts set forth in Table 806-2A.
 - (2) *Maximum off-street parking where no minimum off-street parking is required.* Where an activity does not require a minimum number of off-street parking spaces based on the requirements of Table 806-1, or because it is located in an area where no minimum off-street parking is required for the activity, maximum off-street parking shall be determined based on the assumed minimum off-street parking set forth in Table 806-2B. Parks and open space are exempt from maximum off-street parking standards.

Applicant Response: Off-street parking spaces are provided for each residential lot included with this application. Each lot is designed to include a building footprint large enough for a driveway and garage. The driveway and garage are to provide each single-family with up to four off-street parking spaces. Each lot provides for more than the minimum number of required off-street parking spaces but does not exceed the maximum number of spaces. The criteria are met.

- (e) Reductions to required off-street parking through alternative modes of transportation.
 - (1) Construction of transit related improvements. When adjacent to transit service, minimum required off-street parking may be reduced by up to ten percent for redevelopment of an existing off-street parking area for transit-related improvements, including transit stops, pullouts and shelters, park and ride lots, transit-oriented developments, and similar facilities.
 - (2) Satisfaction of off-street parking through implementation of a plan for alternative modes of transportation. Minimum required off-street parking for uses or activities other than household living may be reduced through implementation of a plan providing for the use of alternative modes of transportation to decrease the need for off-

street parking. The plan shall be reviewed as a Class 2 Adjustment under SRC chapter 250.

Applicant Response: No proposed reduction in the required off-street parking standards is included with this application, and therefore the above criteria do not apply.

- (f) Reductions to required off-street parking for multiple family developments.
 - (1) For multiple family developments, the minimum number of required off-street parking spaces may be reduced through one or more of the following options, provided that the total number of off-street parking spaces reduced shall not exceed 25 percent:
 - (A) *Transit access.* The minimum number of required off-street parking spaces may be reduced by:
 - (i) 10 percent where developments are located within one-quarter mile of a transit stop as measured along a route utilizing public or private streets that are existing or will be constructed with the development; or
 - (ii) 20 percent where developments are located within one-quarter mile of a transit stop that has 15-minute transit service as measured along a route utilizing public or private streets that are existing or will be constructed with the development.
 - (B) *Covered bicycle parking.* The minimum number of required off-street parking spaces may be reduced by one space for every four covered bicycle parking spaces provided in addition to the minimum number of bicycle parking spaces required as set forth in SRC 806.055. The additional covered bicycle parking spaces must meet the standards of SRC 806.060 and must be located on site either outdoors or in a bike storage room that is accessible to all residents of the multiple family development.
 - (C) *Shared car or van.* The minimum number of required off-street parking spaces may be reduced by four spaces for every shared car or shuttle van that is provided on site and available for use by all residents.

Applicant Response: This application does not include any multiple family development or reductions to the parking requirements. This application also does not include any shared car or van spaces due to the single-family residential nature of this development. The above criteria do not apply.

Sec. 806.020. - Method of providing off-street parking.

- (a) *General.* Off-street parking shall be provided through one or more of the following methods:

- (1) *Ownership.* Ownership in fee by the owner of the property served by the parking;
 - (2) *Easement.* A permanent and irrevocable easement appurtenant to the property served by the parking;
 - (3) *Lease Agreement.* A lease agreement with a minimum term of five years; such agreement may be utilized for:
 - (A) Uses or activities other than single family and two family in all zones other than the Central Business (CB) Zone; and
 - (B) All uses in the Central Business (CB) Zone;
 - (4) *Lease or rental agreement in parking structure.* A lease or rental agreement in an off-street parking facility established pursuant to ORS 223.805 to 223.845; such agreement may be utilized for:
 - (A) Uses or activities other than single family and two family in all zones other than the Central Business (CB) Zone; and
 - (B) All uses in the Central Business (CB) Zone;
 - (5) *Joint parking agreement.* A joint parking agreement between the owners of two or more uses or activities, buildings or structures, or lots may be approved by the City. Joint use of required off-street parking spaces through a joint parking agreement may occur where two or more uses or activities on the same or separate development sites are able to share the same parking spaces because their parking demands occur at different times. Joint parking shall meet the following standards:
 - (A) Proximity of joint parking to uses or activities served. Joint parking areas shall be located as set forth in SRC 806.010.
 - (B) Compatible hours of operation. The hours of operation for the uses or activities subject to a joint parking agreement shall not substantially overlap and there shall be no substantial conflict in the principal operating hours.
- (b) *Review and filing of agreement.* Prior to execution of any lease, rental, or joint parking agreement set forth in this section, the form of such agreement shall be reviewed by the City Attorney. An executed copy of the approved agreement shall be filed with the Planning Administrator.
- (c) *Effect of expiration or termination of agreement.* Upon expiration or termination of any lease, rental, or joint parking agreement set forth in this section, the parking requirements set forth in this chapter shall be fully met within 60 days of the date of such expiration or termination or the use or activity discontinued until the parking requirements are met.

Applicant Response: Each proposed residential lot included with this application is to be within private ownership and off-street parking will be provided in that manner. No easements or lease agreements for residents of the lot to use the provided off-street parking will be required. No parking structures are included with this application or joint parking agreements. The criteria are met.

Sec. 806.025. - Off-street parking and vehicle storage area development standards for single family, two family, three family, and four family uses or activities.

Unless otherwise provided under the UDC, off-street parking and vehicle storage areas for single family, two family, three family, and four family uses or activities shall be developed and maintained as provided in this section.

- (a) Location within yards.
 - (1) *Front yard abutting street.* Within a front yard abutting a street, off-street parking and vehicle storage shall be allowed only:
 - (A) Within a garage or carport; or
 - (B) On a driveway leading to:
 - (i) A garage or carport;
 - (ii) A garage that has been legally converted to another use subsequent to its construction as a garage;
 - (iii) A screened off-street parking area; or
 - (iv) A screened vehicle storage area.

Applicant Response: Off-street vehicle parking/storage included with this application is proposed to be within a driveway abutting the street which leads to a garage/carport and/or within the garage/carport. The criteria are met.

However, this standard includes general reference to “the UDC,” without specifying which sections are applicable; as such it is not clear and objective. As such, it cannot be applied to the Application.

- (2) *Side and rear yards abutting street.* Within side and rear yards abutting a street, off-street parking and vehicle storage shall be allowed only:
 - (A) Within a garage or carport;
 - (B) Within an off-street parking area or vehicle storage area that is screened as set forth in SRC 806.025(f); or
 - (C) On a driveway leading to:
 - (i) A garage or carport;
 - (ii) A garage that has been legally converted to another use subsequent to its construction as a garage;
 - (iii) A screened off-street parking area; or
 - (iv) A screened vehicle storage area.

Applicant Response: No side or rear yard areas are proposed to accommodate off-street parking or storage associated with this application. The criteria do not apply.

- (3) *Interior front, side, and rear yards.* Within interior front, side, and rear yards, off-street parking and vehicle storage shall be allowed only:
 - (A) Within a garage or carport;

- (B) Within an off-street parking area or vehicle storage area that is screened as set forth in SRC 806.025(f); or
- (C) On a driveway leading to:
 - (i) A garage or carport;
 - (ii) A garage that has been legally converted to another use subsequent to its construction as a garage;
 - (iii) A screened off-street parking area; or
 - (iv) A screened vehicle storage area.

Applicant Response: Off-street vehicle parking/storage included with this application is proposed to be within a driveway abutting the street which leads to a garage/carport and/or within the garage/carport. The criteria are met.

- (b) *Garage or carport vehicle entrance setback abutting street or flag lot accessway.* The vehicle entrance of a garage or carport facing a street or flag lot accessway shall be setback a minimum of 20 feet.
- (c) *Dimensions.* Off-street parking spaces shall conform to the minimum dimensions set forth in Table 806-3.
- (d) *Maneuvering.* Where access to off-street parking is taken from an alley, a minimum maneuvering depth of 24 feet shall be provided between the back of the parking space and the opposite side of the alley.
- (e) *Surfacing.* Any area that is used for off-street parking shall be paved with a hard surface material meeting the Public Works Design Standards. Vehicle storage areas are not required to be paved.

Applicant Response: This application does not include the construction of each single-family home. Setback areas have been indicated on the submitted site plan and setbacks for each home will be reviewed for compliance prior to issuing a building permit. No reduction in required setbacks is included with this application. No alleys are included with this application. All driveways are proposed to be paved with a hard surface material to be evaluated for compliance with the Public Works Design Standards prior to issuance of a building permit. The criteria are met.

However, subsection (e) includes only a general reference to the Public Works Design Standards, without inclusion of the specific standards applicable. As such, this standard is not clear and objective and cannot be applied.

- (f) *Screening.* Off-street parking areas and vehicle storage areas shall be screened as follows:
 - (1) Off-street parking areas located within a garage or carport or on a driveway are not required to be screened. All other off-street parking areas shall be screened from all public areas, public streets, and abutting residential uses by a minimum six-foot-tall sight-obscuring fence, wall, or hedge.

- (2) Vehicle storage areas within an enclosed structure or on a driveway are not required to be screened. All other vehicle storage areas shall be screened from all public areas, public streets, and abutting residential uses by a minimum six-foot-tall sight-obscuring fence, wall, or hedge.

Applicant Response: No screening is required due to all off-street parking spaces being proposed within garage, carport, or driveway. No vehicle storage areas are proposed on these residential lots. The criteria are met.

Sec. 806.030. - Driveway development standards for single family, two family, three family, and four family uses or activities.

Unless otherwise provided under the UDC, driveways for single family, two family, three family, and four family uses or activities shall be developed and maintained as provided in this section.

- (a) *Location.* Driveways crossing from the lot line to a permitted off-street parking area by the shortest direct route shall be permitted within yards abutting streets.
- (b) *Dimensions.* Driveways shall conform to the minimum dimensions set forth in Table 806-4. The minimum width of a driveway serving more than one parking space must meet the standard set forth in Table 806-4 for only the first 20 feet of depth behind the parking spaces served; beyond 20 feet, the minimum width may be reduced to ten feet.
- (c) *Surfacing.*
 - (1) All driveways, except those serving developments on parcels within approved partitions located more than 300 feet from an available sewer, shall be paved with a hard surface material meeting the Public Works Design Standards. Driveways serving developments on parcels within approved partitions located more than 300 feet from an available sewer are not required to be paved.
 - (2) Access to vehicle storage areas shall be paved with a hard surface material meeting the Public Works Design Standards when such access is being utilized for parking.

Applicant Response: Driveways are proposed to be installed and reviewed for compliance with the standards of Table 806-4 at the time of home construction but are proposed to accommodate two off-street parking spaces. All driveways are proposed to be paved with a hard surface and reviewed for compliance with the Public Works Design Standards prior to issuance of a building permit. No vehicle storage areas are proposed with this application. The criteria are met.

However, this Section includes only a general reference to the UDC, without inclusion of the specific standards applicable. As such, this standard is not clear and objective and cannot be applied.

Subsections (c)(1) and (c)(2) include the phrase “hard surface material,” which is undefined and allows for discretion; and the general reference to the Public Works Design Standards without specific section is unclear. This standard is not clear and objective, and thus cannot be applied to the Application.

Sec. 806.035. - Off-street parking and vehicle use area development standards for uses or activities other than single family, two family, three family, and four family.

Applicant Response: This application only includes single-family residential development and all off-street parking spaces associated with this application are only proposed to for single-family development. This subchapter does not apply.

Sec. 806.040. - Driveway development standards for uses or activities other than single family, two family, three family, or four family.

Applicant Response: This application only includes single-family residential development and all driveways associated with this application are proposed to for single-family development. This subchapter does not apply.

Sec. 806.045. - Bicycle parking; when required.

- (a) General applicability. Bicycle parking shall be provided as required under this chapter for:
 - (1) Each proposed new use or activity.
 - (2) Any change of use or activity, when such change of use or activity results in a bicycle parking ratio requiring a greater number of spaces than the previous use or activity.
 - (3) Any intensification, expansion, or enlargement of a use or activity.
- (b) *Applicability to nonconforming bicycle parking area.* When bicycle parking is required to be added to an existing bicycle parking area that has a nonconforming number of spaces, the number of spaces required under this chapter for any new use or activity, any change of use or activity, or any intensification, expansion, or enlargement of a use or activity shall be provided, in addition to the number of spaces required to remedy the existing deficiency.

Applicant Response: Each single-family home proposed with this application is to have a garage to accommodate parking for bicycles. This application is for a proposed land division and no change in use is proposed. The subject site does not contain or propose any nonconforming bicycle parking areas. The criteria are met.

Sec. 806.050. - Proximity of bicycle parking to use or activity served.

Bicycle parking shall be located on the same development site as the use or activity it serves.

Sec. 806.055. - Amount of bicycle parking.

Unless otherwise provided under the UDC, bicycle parking shall be provided in amounts not less than those set forth in Table 806-8.

Applicant Response: Each single-family home proposed with this application is to have a garage to accommodate parking for bicycles. The criteria are met.

However, this standard is not clear and objective based on the reference to the UDC without reference to specific sections that are applicable. As such, it cannot be applied to the Application.

Sec. 806.060. - Bicycle parking development standards.

Unless otherwise provided under the UDC, bicycle parking shall be provided in racks or lockers developed and maintained as set forth in this section. The standards set forth in this section shall not apply to City approved bike share stations which utilize bike docking stations.

- (a) *Location.* Except as otherwise provided in this section, bicycle parking shall be located outside a building.
 - (1) Bicycle parking located outside a building shall be located within a convenient distance of, and be clearly visible from, the primary building entrance. In no event shall bicycle parking be located more than 50 feet from the primary building entrance, as measured along a direct pedestrian access route.
 - (2) Where bicycle parking cannot be located outside a building, it may be located inside a building within a convenient distance of, and accessible from, the primary building entrance.
- (b) *Access.* Bicycle parking areas shall have direct and accessible access to the public right-of-way and the primary building entrance that is free of obstructions and any barriers, such as curbs or stairs, which would require users to lift their bikes in order to access the bicycle parking area.
- (c) *Dimensions.* Except as provided in subsection (f) of this section, bicycle parking areas shall meet the following dimension requirements:
 - (1) *Bicycle parking spaces.* Bicycle parking spaces shall be a minimum of six feet in length and two feet in width with the bicycle rack centered along the long edge of the bicycle parking space. Bicycle parking space width may be reduced, however, to a minimum of three feet between racks where the racks are located side-by-side.
 - (2) *Access aisles.* Bicycle parking spaces shall be served by a minimum four-foot-wide access aisle. Access aisles serving bicycle parking spaces may be located within the public right-of-way.

Applicant Response: Bicycle parking is proposed to be within the garage that will be constructed in conjunction with the single-family home. All driveways lead to the garage from the public right-of way. No specific dimensions are proposed for bike parking as they may vary based on the needs of the property owner. The criteria are met.

However, this Section is not clear and objective based on the reference to the UDC without reference to specific sections that are applicable. As such, it cannot be applied to the Application.

Further, subsection (a)(1) includes the phrases “convenient distance” and “clearly visible,” which are subjective terms. This standard is not clear and objective and cannot be applied to the Application.

Subsection (a)(2) similarly includes the phrases “convenient distance” and “accessible from,” which are subjective terms. This standard is not clear and objective and cannot be applied to the Application.

Subsection (b) includes the phrase “direct and accessible,” which is a subjective phrase and leaves room for discretion. Thus, it is not clear and objective and cannot be applied to the Application.

- (d) *Surfacing.* Where bicycle parking is located outside a building, the bicycle parking area shall consist of a hard surface material, such as concrete, asphalt pavement, pavers, or similar material, meeting the Public Works Design Standards.
- (e) *Bicycle racks.* Where bicycle parking is provided in racks, the racks may be floor, wall, or ceiling racks. Bicycle racks shall meet the following standards.
 - (1) Racks must support the bicycle frame in a stable position, in two or more places a minimum of six inches horizontally apart, without damage to wheels, frame, or components.
 - (2) Racks must allow the bicycle frame and at least one wheel to be locked to the rack with a high security, U-shaped shackle lock;
 - (3) Racks shall be of a material that resists cutting, rusting, and bending or deformation; and
 - (4) Racks shall be securely anchored.
 - (5) Examples of types of bicycle racks that do, and do not, meet these standards are shown in Figure 806-10.

Applicant Response: No bicycle parking located outside of a building is proposed, nor are any bicycle racks. The criteria do not apply.

- (f) *Bicycle lockers.* Where bicycle parking is provided in lockers, the lockers shall meet the following standards:
 - (1) Lockers, except for pie-shaped lockers, shall be a minimum of six feet in length, two feet in width, and four feet in height;
 - (2) Pie-shaped lockers shall be a minimum of six feet in length, 30 inches in width at the widest end, and four feet in height;
 - (3) Lockers shall be served by a minimum four-foot-wide access aisle in front of each locker opening. Access aisles may be located within the public right-of-way; and

- (4) Lockers shall be securely anchored.

Applicant Response: No bicycle lockers are proposed with this single-family residential subdivision application. The criteria do not apply.

CHAPTER 807. - LANDSCAPING AND SCREENING

Sec. 807.001. - Purpose.

The purpose of this chapter is to establish standards for required landscaping and screening under the UDC to improve the appearance and visual character of the community, promote compatibility between land uses, encourage the retention and utilization of existing vegetation, and preserve and enhance the livability of the City.

Sec. 807.005. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Caliper means the diameter of a tree trunk measured one foot above ground level. If a tree is of a multi-trunk variety, the caliper of the tree is the average caliper of all of its trunks.

Ground cover means living plant species which normally reach a height of less than three feet at maturity, planted in such a manner so as to form a continuous cover over the ground.

Landscaped area means the area of a development site that is required to be landscaped as provided under this chapter.

Landscaping means a combination of living plants, such as trees, shrubs, vines, ground covers, flowers, and grass; natural features such as streams, wetlands, rocks, stone, bark chips and shavings; and structural features, including, but not limited to, fountains, reflecting pools, outdoor art work, screen walls, fences, arbors, and benches.

Mature tree means:

- (a) A healthy tree of ten inches dbh or greater;
- (b) A significant tree, as defined under SRC chapter 808;
- (c) A heritage tree, as defined under SRC chapter 808; or
- (d) A grouping of three or more four-inch dbh or greater evergreen or hardwood trees.

Ornamental tree means a relatively low growing deciduous or evergreen tree typically reaching a height of 15 to 20 feet which usually provides color due to its flowers, leaves, or fruit (berries).

Shade tree means a deciduous tree, or, in rare occasions, an evergreen tree, planted primarily for its high crown of foliage or overhead canopy.

Shrub means a deciduous or evergreen woody plant, smaller than a tree, which consists of a number of small stems from the ground or small branches near the ground.

Sec. 807.010. - Applicability.

The provisions of this chapter apply to all required landscaping and screening under the UDC.

Applicant Response: The applicant understands the definitions as they pertain to this application.

However, in Sec. 807.001, the phrase ““improve the appearance and visual character” is subjective, as is the phrase “compatibility between land uses,” as is the term “livability.” This standard is not clear and objective.

Further, as to Sec. 807.005, to the extent a decision maker determines that “context clearly indicates a different meaning,” “clearly indicates” is subjective and thus the definitions are not clear and objective.

And, as to Sec. 807.010, without reference to the specific portions of the UDC applicable here, this standard is also not clear and objective.

Sec. 807.015. - Landscaping and screening.

Unless otherwise provided under the UDC, required landscaping and screening shall conform to the standards set forth in this section.

- (a) *Landscaping types.* Required landscaping shall be provided according to one of the landscaping types set forth in Table 807-1. Where landscaping is required under the UDC without a reference to a specific landscaping type, the required landscaping shall meet the Type A standard.

TABLE 807.1. LANDSCAPING TYPES		
Landscaping Type	Required Plant Units (PU)	Required Screening
A	Min. 1 PU per 20 sq. ft. of landscaped area	None
B	Min. 1 PU per 20 sq. ft. of landscaped area	Min. 6-foot-tall fence, wall, or hedge
C	Min. 1 PU 20 sq. ft. of landscaped area	Min. 6-foot-tall fence or wall
D	Min. 1 PU per 16 sq. ft. of landscaped area	Min. 6-foot-tall sight-obstructing landscaping or wall
E	Min. 1 PU per 16 sq. ft. of landscaped area	Min. 6-foot-tall wall

Applicant Response: Each proposed single-family lot will have general landscaping to be installed/planted prior to issuance of a certificate of occupancy for the home. The applicant proposes to comply with Landscaping Type A standards of Table 807.1. Street trees are proposed to be planted within the planter strip adjacent to the sidewalk. The applicant will comply with reasonable, clear and objective conditions of approval relating to landscaping standards.

However, without reference to the specific portion of the UDC applicable to this Section, the standard is not clear and objective and cannot be applied.

- (b) *Plant materials and corresponding plant unit values.* Plant materials, their corresponding minimum plant unit values, and minimum plant material size at time of planting for landscaping within required landscaped areas are set forth in Table 807-2. A minimum of 40 percent of the required number of plant units shall be a combination of mature trees, shade trees, evergreen/conifer trees, or ornamental trees. Plant materials shall provide for a minimum 75 percent coverage of required landscaped areas within five years.

TABLE 807.2. PLANT MATERIALS AND MINIMUM PLANT UNIT VALUES		
Plant Material	Plant Unit (PU) Value	Size at Planting
1 mature tree	15 PU	
1 shade tree	10 PU	1.5 in. to 2 in. caliper
1 evergreen/conifer tree	5 PU	6 ft. to 8ft. height
1 ornamental tree	2 PU	1 in. to 1.5 in caliper
1 large deciduous or evergreen shrub (at maturity: over 4 ft. wide; 4 ft. high)	2 PU	Min. 3 gallon or balled and burlapped
1 small to medium shrub (at maturity: Maximum 4 ft. wide; 4 ft. high)	1 PU	Min. 1 gallon
Lawn or other ground cover	1 PU per 50 sq. ft.	

Applicant Response: Each proposed single-family lot will have general landscaping to be installed/planted prior to issuance of a certificate of occupancy for the home. Street trees are proposed to be planted within the planter strip adjacent to the sidewalk. The applicant will comply with reasonable, clear and objective conditions of approval relating to landscaping standards. The criteria are met.

- (c) *Preservation of existing trees and vegetation.* The preservation of existing trees and vegetation is encouraged. If preserved, existing trees as defined under SRC chapter 808, existing trees less than ten inches dbh, and existing vegetation may be utilized to satisfy required landscaping if they conform to the minimum plant unit requirements specified in this chapter.
- (d) *Tree replanting requirements.* In addition to the landscaping required under this chapter, when existing trees, as defined under SRC chapter 808, are proposed for removal from within required setbacks or from a development site, replanting shall be required as provided in this subsection.
 - (1) *Removal of trees within required setbacks.* When an existing tree or trees, as defined under SRC chapter 808, within a required setback are proposed for removal, two new trees shall be planted for each tree removed. Replanted trees shall be of either a shade or evergreen variety with a minimum 1.5 inch caliper.
 - (2) *Removal of trees from development site.* When more than 75 percent of the existing trees, as defined under SRC chapter 808, on a development site are proposed for removal, two new trees shall be planted for each tree removed in excess of 75 percent. Replanted trees shall be of either a shade or evergreen variety with a minimum 1.5 inch caliper. For purposes of this section, existing trees within vision clearance areas, or within areas to be cleared for required roads, utilities, sidewalks, trails, or stormwater facilities, shall not be counted in the total percentage of trees removed from the development site.

Applicant Response: An arborist report prepared by Teragan & Associates has been included with this application. Also included is a tree removal and protection plan beginning on sheet 3 of the submitted Tentative Subdivision Improvement Plans. This application proposes to preserve 26.56% of the existing trees on the subject property. In areas of significant grading within required setbacks where trees could not be preserved, the applicant proposes a minimum of two trees be replanted. The replanting is proposed to occur prior to issuance of the certificate of occupancy of each single-family home, as to avoid root disturbance during construction. The above criteria are met.

However, the phrase “conform to” in subsection (c) is subjective. As such, it is not clear and objective and cannot be applied.

- (e) *Screening standards.* Unless otherwise provided under the UDC, where screening is required in the form of a fence, wall, or landscaping, it shall conform to the following standards:
 - (1) *Height.* Fences and walls shall be a minimum of six feet in height. Landscaping shall be of a species that will attain a height of at least six feet within three years after planting.
 - (2) *Opacity.* Screening shall be sight-obscuring. Fences, walls, and landscaping shall be at least 75 percent opaque when viewed from any

angle at a point 25 feet away from the fence, wall, or landscaping. Landscaping shall be of an evergreen species that will attain required opacity within three years after planting.

- (3) *Maintenance.* Fences and walls shall be maintained in safe condition, and shall be maintained as opaque. Landscaping shall be replaced within six months after dying or becoming diseased to the point that required opacity can no longer be maintained.

Applicant Response: No proposed fencing or landscaping screening is proposed with this application. Fencing could be installed at the time of home construction, but fencing will not be installed prior to home construction. Fencing and screening materials will be reviewed for compliance with these standards at the time a building permit is reviewed. All maintenance of private landscaped areas is to be the responsibility of the individual property owners. Maintenance to public open space areas under the ownership of the neighborhood Homeowners Association (HOA) is the responsibility of the HOA. The criteria are met.

However, without reference to the specific portion of the UDC applicable to subsection (e), this standard is not clear and objective. Further, “conform to” is subjective. As such, this standard cannot be applied to the Application.

- (f) *Berm.* Unless otherwise provided under the UDC, where screening is required in the form a berm, the berm shall be an earthen mound no less than three feet in height above the existing grade, and shall be constructed with a slope no steeper than 3:1 on all sides. The berm shall be planted with plant materials to prevent erosion. The berm shall not alter natural drainage flows from abutting properties.
- (g) *Street trees.* Development adjacent to public streets shall provide street trees that meet the standards and specifications set forth in SRC chapter 86.

Applicant Response: No screening berms are proposed with this application. Street trees are shown to be provided in the planter strip adjacent to the sidewalk within the right-of-way. The criteria are met.

However, without reference to the specific portion of the UDC applicable to subsection (f), this standard is not clear and objective. As such, subsection (f) cannot be applied to the Application.

Sec. 807.020. - Landscaping plan.

- (a) All building permit applications for development subject to the landscaping requirements of this chapter shall include a landscaping plan.
- (b) Landscaping plans shall be of a size and form established by the Planning Administrator, and shall include the following:
- (1) Scale and north arrow.

- (2) Lot dimensions and footprint of structure(s).
- (3) A legend indicating the linear footage of perimeter setbacks abutting a street or right-of-way; the linear footage of perimeter setbacks not abutting a street or right-of-way; total building square footage; total square footage of the interior area of the off-street parking area, calculated per SRC 806.035(d)(2); and total number of parking spaces.
- (4) The location and size of plant materials, identified by common and botanical names, and their expected coverage within five years.
- (5) The type and location of landscaping features other than plant materials, including, but not limited to, wetlands, creeks, ponds, sculpture, and benches.
- (6) Fence or wall materials, when screening is required under the UDC.
- (7) Abutting land uses.
- (8) The type, size, and location of:
 - (A) Existing trees, as defined under SRC chapter 808, existing trees less than ten inches dbh, and vegetation that will be retained to satisfy landscaping requirements of this chapter.
 - (B) Existing trees, as defined under SRC chapter 808, proposed for removal.
- (9) Notwithstanding subsection (b)(8) of this section, where the development site is heavily wooded, only those trees that will be affected by the proposed development need to be sited accurately. The remaining trees may be shown on the plan in the general area of their distribution.
- (10) An irrigation plan identifying the materials, size, and location of all components of the irrigation system.
- (11) A two-year plant establishment schedule for:
 - (A) Landscaped areas where a permanent underground or drip irrigation system is not required because of the use of drought resistant vegetation; or
 - (B) New vegetation located within stormwater facilities.

Applicant Response: The applicant understands and accepts the requirements to submit a landscape plan with the building permit for each single-family home. The criteria are met.

However, the requirement in subsection (b) that plans are to be in a “size and form established by the Planning Administrator” allows for discretion by the Planning Administrator and is thus not clear and objective.

Further, because subsection (b)(6) does not include a reference to the specific portions of the UDC that are applicable, this requirement is not clear and objective and cannot be applied to the Application.

Subsection (b)(9) includes the phrases “heavily wooded” and “trees that will be affected by the proposed development,” which are subjective; this requirement is not clear and objective. As such, it cannot be applied to the Application.

Sec. 807.025. - Plant material standards.

All plant materials shall be, upon installation, vigorous and well-branched, with healthy and well-furnished root systems free of disease, insects, pests, and injuries.

Sec. 807.030. - Tree protection measures during construction.

Trees used to meet the landscaping requirements set forth in this chapter shall be protected during construction as provided under SRC chapter 808.

Sec. 807.035. - Installation.

- (a) Landscaping shall be installed at the time of construction, unless seasonal conditions or temporary site conditions make installation impractical; in which case, an acceptable performance guarantee to ensure installation of the landscaping shall be provided as set forth in SRC 807.050.
- (b) Landscaping shall be installed in a manner that conforms to the standards of the American Association of Nurserymen, Inc.

Applicant Response: The applicant understands and accepts that landscaping shall be installed at the time of construction and installed in a manner that conforms to the standards of this subchapter. The criteria are met.

However, Section 807.025 includes the terms “vigorous,” “well-branched,” “healthy,” “well-furnished,” and “free of,” which are all subjective terms. This standard is not clear and objective. As such, it cannot be applied to the Application.

Further Section 807.035(a) includes the phrases “seasonal conditions” and “temporary site conditions,” which are not defined or described; and “impractical” and “acceptable,” which are subjective terms. This standard is not clear and objective and thus cannot be applied to the Application.

Section 807.035(b) includes the phrase “conforms to” which is not clear and objective. In addition, the “standards of the American Association of Nurserymen, Inc.” is not a phrase that is clear and objective on its face because the standards are not listed. As such, this standard cannot be applied to the Application.

Sec. 807.040. - Irrigation.

- (a) A permanent underground or drip irrigation system with an approved backflow prevention device shall be provided for all landscaped areas required under the UDC; provided, however, a permanent underground or drip irrigation system is not required for:

- (1) Existing healthy vegetation that has been established for at least two years and that is being preserved to meet the landscaping requirements under this chapter;
 - (2) New vegetation that is drought resistant, in which case a two-year plant establishment schedule shall be provided with the landscaping plan describing the amount of water to be applied over a two-year time period and how that water will be distributed to the plant material; and
 - (3) New vegetation located within stormwater facilities as required by the Public Works Design Standards, in which case a two-year plant establishment schedule shall be provided with the landscaping plan describing the amount of water to be applied over a two-year time period and how that water will be distributed to the plant material.
- (b) Wherever feasible, sprinkler heads irrigating lawns or other high-water-demand landscape areas shall be circuited so that they are on a separate zone or zones from those irrigating trees, shrubbery, or other reduced-water-requirement areas.

Applicant Response: Irrigation for vegetation will be provided as needed and required depending on the vegetation type and location. Irrigation is proposed to be installed on an as needed basis within the stormwater facility based on the requirements established in the two-year plant establishment schedule. The two-year plant establishment schedule is proposed to be evaluated at the time of construction. The applicant will comply with reasonable, clear and objective conditions of approval relating to irrigation standards. The criteria are met.

Irrigation will be installed on individual residential lots at the time of home construction. The criteria are met.

However, subsection (a) references the UDC without mention of the specific portions that are applicable. As such, it is subjective rather than clear and objective, and cannot be applied to this Application.

Further subsection (a)(1) includes the term “healthy,” which is subjective. This standard is also not clear and objective and cannot be applied to this Application.

Subsection (a)(3) includes only a general reference to the Public Works Design Standards. Without more specific reference, this standard is not clear and objective, and cannot be applied to the Application.

Subsection (b) includes the phrase “wherever feasible,” which allows for discretion. Thus, this standard is not clear and objective, and cannot be applied to the Application.

Sec. 807.045. - Maintenance.

- (a) The owner and tenant shall be jointly and severally responsible for maintaining all landscaping material in good condition so as to present a healthy, neat, and orderly appearance.
- (b) Unhealthy or dead plant materials shall be replaced in conformance with the approved landscape plan.

Applicant Response: The applicant understands and accepts that the maintenance of all landscaping material is of the responsibility of the individual property owners. Any dead or unhealthy plants are to be replaced in conformance with the landscape plan submitted with the building permit. Private property is to be maintained by the property owners and shared open space tracts are to be maintained by the established HOA. The criteria are met.

However, the phrase “healthy, neat, and orderly appearance” in subsection (a) is subjective; this standard is not clear and objective. Thus, it cannot be applied to the Application.

Further, the “unhealthy” and the phrase “in conformance with” in subsection (b) are subjective; this standard is not clear and objective. Thus, it cannot be applied to the Application.

Sec. 807.050. - Compliance/performance assurance.

- (a) Planting and installation of all required landscaping shall be inspected and approved prior to the issuance of a certificate of occupancy; provided, however, a certificate of occupancy may be issued prior to the complete installation of all required landscaping if a performance guarantee equal to 100 percent of the cost of plant materials and labor, as determined by the Planning Administrator, is filed with the City assuring such installation within 12 months after the certificate of occupancy is issued.
- (b) A performance guarantee shall consist of a surety bond, cash, certified check, time certificate of deposit, an irrevocable letter of credit, or assignment of savings account in a form approved by the City Attorney and recorded in the deed records of the appropriate county.
- (c) If the installation of the required landscaping is not completed within the specified period, the performance guarantee may be used by the City to complete the installation. Upon completion of the installation, any portion of the remaining security deposited with the City shall be returned. The final landscape inspection shall be made prior to any security being returned. Any portions of the plan not installed, not properly installed, or not properly maintained shall cause the inspection to be postponed until the project is completed or cause the security to be used by the City to complete the project.

Applicant Response: Landscaping is proposed to be installed during the time of home construction and completed prior to the issuance of the certificate of occupancy. The applicant understands the performance guarantee requirements if landscaping could not be completed during this specified period. The criteria are met.

However, the inclusion of the phrase “as determined by the Planning Administrator” in subsection (a) allows for discretion; this standard is not clear and objective and cannot be applied to the Application.

In subsection (c), whether landscaping is “properly installed” or “properly maintained” is a subjective determination. This standard is not clear and objective and thus cannot be applied to the Application.

Sec. 807.055. - Administrative relief.

Unless otherwise provided under the UDC, when special circumstances or exceptional site characteristics are applicable to a property, the landscaping requirements of this chapter may be modified through a Class 3 site plan review, pursuant to SRC chapter 220, upon finding that one of the following criteria is met:

- (a) The proposed landscaping meets the intent of providing a buffer between adjacent uses of differing character;
- (b) The proposed landscaping incorporates the increased retention of mature tree(s);
- (c) The proposed landscaping provides protection for wildlife habitat and existing native vegetation and plant materials maintained in a natural state; or
- (d) The proposed landscaping incorporates elements to maintain solar access or provides for wind protection.

Applicant Response: This application does not include any special circumstances modifications pursuant to SRC Chapter 220. The criteria do not apply.

CHAPTER 808. - PRESERVATION OF TREES AND VEGETATION

Sec. 808.001. - Purpose.

The purpose of this chapter is to provide for the protection of heritage trees, significant trees, and trees and native vegetation in riparian corridors, as natural resources for the City, and to increase tree canopy over time by requiring tree preservation and planting of trees in all areas of the City.

Sec. 808.005. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Arborist means a person who has met the criteria for certification from the International Society of Arboriculture, the American Society of Consulting Arborists, or similar professional organization, and maintains accreditation.

Caliper means the diameter of a tree trunk measured at six inches above ground level for trunks up to and including four-inch caliper size and at 12 inches above ground level for larger sizes, when measuring nursery stock.

Development means to construct or structurally alter a structure or to make alterations or improvements to land for the purpose of enhancing its economic value or productivity.

Development proposal means any land division, mobile home park permit, conditional use, variance, greenway permit, planned unit development, or site plan review.

Grove means a group of trees providing at least one-half acre of canopy.

Hazardous tree means a tree that is cracked, split, leaning, has a dead top or a large dead limb high in the crown, or is otherwise physically damaged, to the degree that it is likely to fall and injure persons or property. Hazardous trees include diseased trees, meaning those trees with a disease of a nature that, without reasonable treatment or pruning, is likely to spread to adjacent trees and cause such adjacent trees to become diseased or hazardous trees.

Heritage tree means a tree designated as a heritage tree pursuant to SRC 808.010(a).

Invasive non-native vegetation means plant species that are not indigenous to Oregon and which, due to aggressive growth patterns and lack of natural enemies spread rapidly into native plant communities, and which are designated as invasive, non-native vegetation in the tree and vegetation technical manual.

Preserved means the tree appears to be healthy and shows no signs of significant damage due to construction.

Restoration means the return of a stream, wetland, or riparian corridor to a state consistent with habitat that is needed to support a healthy ecosystem.

Significant tree means rare, threatened, or endangered trees of any size, as defined or designated under state or federal law and included in the tree and vegetation technical manual, and Oregon white oaks (*Quercus garryana*) with a dbh of 24 inches or greater.

Suitable for preservation means the health of the tree is such that it is likely to survive the process of development and construction in good condition and health.

Top of bank means the elevation at which water overflows the natural banks and begins to inundate the upland.

Tree means any living, woody plant, that grows to 15 feet or more in height, typically with one main stem called a trunk, which is ten inches or more dbh, and possesses an upright arrangement of branches and leaves. The term "tree" also means any tree planted under SRC 808.035, regardless of dbh. For the purposes of this chapter, in a riparian corridor, the term "tree" includes a dead or dying tree that does not qualify as a hazardous tree.

Tree and Vegetation Technical Manual means that document adopted by the Council which contains administrative regulations to implement the provisions of this chapter, including, but not limited to, lists of invasive non-native vegetation and nuisance vegetation, native vegetation which may be planted to fulfill the requirements of this chapter, identification of waterways, and planting techniques.

Tree removal means to cut down a tree or remove 30 percent or more of the crown, trunk, or root system of a tree; or to damage a tree so as to cause the tree to decline or die. The term "removal" includes, but is not limited to, topping, damage inflicted upon a root system by application of toxic substances, operation of equipment and vehicles, storage of materials, change of natural grade due to unapproved excavation or filling, or unapproved alteration of natural physical conditions. The term "removal" does not include normal trimming or pruning of trees.

Waterway means any river, perennial stream, or creek within the City as designated by the Director.

Water-dependent activity means an activity which can be carried out only on, in, or adjacent to a waterway because the activity requires access to the waterway for water-borne transportation, recreation, energy production, or source of water.

Applicant Response: The applicant understands the definitions as they pertain to this application.

However, to the extent a decision maker determines that “context clearly indicates a different meaning,” “clearly indicates” is subjective and thus the definitions are not clear and objective. Any definition that includes the phrase “includes but is not limited to” is not clear and objective. These cannot be applied to the Application.

Further, the definition of “hazardous” includes subjective phrases such as “likely to,” “otherwise physically damaged,” and “reasonable”; this is not clear and objective.

Further, the definition of “preserved” includes subjective phrases such as “appears to be” and “healthy” and “significant damage”; this is not clear and objective.

Further, the definition of “restoration” includes the subjective phrase “consistent with habitat that is needed to support a healthy ecosystem”; this is not clear and objective.

Further, the definition of “suitable for preservation” is wholly subjective in that it includes the following phrase: “likely to survive the process of development and construction in good condition and health.

Sec. 808.010. - Heritage trees.

- (a) *Designation of heritage trees.* The Council may, by resolution, designate a heritage tree upon nomination by the property owner, in recognition of the tree's location, size, or age; botanical interest; or historic or cultural significance.

- (b) *Protection of heritage trees.* No person shall remove a heritage tree unless the tree has been determined to be a hazardous tree by a certified arborist, and such determination is verified by the Planning Administrator.
- (c) *Rescinding heritage tree designation.* The Council shall rescind a heritage tree designation if the tree has been removed pursuant to subsection (b) of this section.

Applicant Response: The subject property does not have any identified heritage trees. An arborist report has been included with this application. The criteria do not apply.

Sec. 808.015. - Significant trees.

No person shall remove a significant tree, unless the removal is undertaken pursuant to a tree and vegetation removal permit issued under SRC 808.030, undertaken pursuant to a tree conservation plan approved under SRC 808.035, or undertaken pursuant to a tree variance granted under SRC 808.045.

Applicant Response: A tree removal permit for removal of public trees has been submitted concurrently with this application. All other trees proposed for removal are included in a tree removal permit pursuant to SRC 808.030. An arborist report was also included with this application. The criteria are met.

Sec. 808.020. - Trees and native vegetation in riparian corridors.

No person shall remove a tree in a riparian corridor or native vegetation in a riparian corridor, unless the removal is undertaken pursuant to a tree and vegetation removal permit issued under SRC 808.030, undertaken pursuant to a tree conservation plan approved under SRC 808.035, or undertaken pursuant to a tree variance granted under SRC 808.045. Roots, trunks, and branches of trees removed in riparian corridors shall remain within the riparian corridor, unless determined to be a potential hazard or impediment to stream flow by the Director.

Applicant Response: The northeast corner of the subject property has an identified creek and riparian area. No tree removal is proposed within the riparian corridor. Adjacent to and outside of the riparian area is the proposed water quality facility. Proposed tree removal within the northeast corner open space tract is limited to the location and grading for the water quality facility. The criteria are met.

However, this standard allows the Director to use discretion in determining whether something is a “potential hazard or impediment to stream flow.” It is not clear and objective. As such, it cannot be applied to this Application.

Sec. 808.025. - Trees on lots or parcels 20,000 square feet or greater.

No person shall, prior to site plan review or building permit approval, remove a tree on a lot or parcel that is 20,000 square feet or greater, or on contiguous lots or parcels under the same ownership that total 20,000 square feet or greater, unless the removal is undertaken pursuant to a tree and vegetation removal permit issued under SRC 808.030, undertaken pursuant to a tree conservation plan approved under SRC 808.035, or undertaken pursuant to a tree variance granted under SRC 808.045. Nothing in

this section shall be construed to require the retention of trees, other than heritage trees, significant trees, and trees and vegetation in riparian corridors, beyond the date of site plan review or building permit approval, if the proposed development is other than single family residential or two family residential.

Applicant Response: This application does not propose creation of lots greater than 20,000 square feet. Required tree removal permits have been included with this application. The area directly around the existing farmhouse is to remain a large parcel, but a proposed future development plan has been shown on the tentative plat for this area. The existing trees around the farmhouse are to be preserved and outside of grading areas. The criterion is met.

Sec. 808.030. - Tree and vegetation removal permits.

- (a) Applicability.
 - (1) Except as provided in subsection (a)(2) of this section, no trees or native vegetation protected under SRC 808.015, SRC 808.020, or SRC 808.025 shall be removed unless a tree and vegetation removal permit has been issued pursuant to this section.
 - (2) Exceptions. A tree and vegetation removal permit is not required for the removal of trees or native vegetation protected under SRC 808.015, SRC 808.020, or SRC 808.025 when the removal is:
 - (A) Necessary for maintenance of a vision clearance area, as required in SRC chapter 805;
 - (B) Required by the City or a public utility for the installation, maintenance, or repair of roads or utilities, including water lines, sewer lines, gas lines, electric lines, and telecommunications lines. This exception does not apply to new development or construction in a riparian corridor;
 - (C) Necessary for continued maintenance of existing landscaping. For the purposes of this exception, the term "existing landscaping" means an area within a riparian corridor which was adorned or improved through the planting of flowers and trees, contouring the land, or other similar activity prior to June 21, 2000;
 - (D) Necessary for the installation, maintenance, or repair of public irrigation systems, stormwater detention areas, pumping stations, erosion control and soil stabilization features, and pollution reduction facilities. Maintenance includes the cleaning of existing drainage facilities and trash removal;
 - (E) Removal of invasive non-native or nuisance vegetation in riparian corridors;
 - (F) Necessary for public trail or public park development and maintenance;
 - (G) Necessary to conduct flood mitigation;

- (H) Necessary to effect emergency actions which must be undertaken immediately, or for which there is insufficient time for full compliance with this chapter, when it is necessary to prevent an imminent threat to public health or safety, prevent imminent danger to public or private property, or prevent an imminent threat of serious environmental degradation. Trees subject to emergency removal must present an immediate danger of collapse. For purposes of this subsection, the term "immediate danger of collapse" means that the tree is already leaning, with the surrounding soil heaving, and there is a significant likelihood that the tree will topple or otherwise fall and cause damage. The person undertaking emergency action shall notify the Planning Administrator within one working day following the commencement of the emergency activity. If the Planning Administrator determines that the action or part of the action taken is beyond the scope of allowed emergency action, enforcement action may be taken;
- (I) A commercial timber harvest conducted in accordance with the Oregon Forest Practices Act, ORS 527.610—527.992, on property enrolled in a forest property tax assessment program, and which is not being converted to a non-forestland use. Properties from which trees have been harvested under the Oregon Forest Practices Act may not be partitioned, subdivided, developed as a planned unit development, or developed for commercial uses or activities for a period of five years following the completion of the timber harvest;

Applicant Response: A tree and vegetation removal permit was submitted for the private tree/vegetation removal and an additional permit application was submitted for the public tree removal. The applicant understands which activities are exempt from the requirements of a tree removal permit.

However, subsection (a)(2)(A), (C), (D), (F), (G), and (H) do not explain how “necessary” is determined. As such, they are not clear and objective and cannot be applied to the Application.

Further, Subsection (a)(2)(H) allows for discretion by the Planning Administrator, and as such is not clear and objective.

- (J) Associated with mining operations conducted in accordance with an existing operating permit approved by the Oregon Department of Geology and Mineral Industries under Oregon Mining Claim law, ORS 517.750—517.955;
- (K) Removal of Oregon white oaks (*Quercus garryana*) on undeveloped lots or parcels of record as of August 9, 2005,

- that are less than 20,000 square feet. For the purposes of this section, the term "undeveloped" means that no single family dwelling unit or duplex dwelling unit has been constructed on the lot or parcel as of August 9, 2005;
- (L) Removal of Oregon white oaks (*Quercus garryana*) where the removal is necessary in connection with construction of a commercial or industrial facility;
 - (M) Necessary as part of a restoration activity within a riparian corridor undertaken pursuant to an equivalent permit issued by the Oregon Division of State Lands and/or the United States Corps of Engineers; provided, however, that the permittee must provide, prior to the removal, a copy of the permit and all required monitoring reports to the Planning Administrator;
 - (N) Removal of trees on a lot or parcel 20,000 square feet or greater, or on contiguous lots or parcels under the same ownership that total 20,000 square feet or greater, and the removal does not result in:
 - (i) Removal of more than five trees or 15 percent of the trees, whichever is greater, within a single calendar year;
 - (ii) Removal of more than 50 percent of the trees within any five consecutive calendar years; and
 - (iii) Removal of heritage trees, significant trees, and trees in riparian corridors;
 - (O) Undertaken pursuant to a tree conservation plan, required in conjunction with any development proposal for the creation of lots or parcels to be used for single family or two family uses or activities, approved under SRC 808.035;
 - (P) Undertaken pursuant to a tree conservation plan adjustment granted under SRC 808.040; or
 - (Q) Undertaken pursuant to a tree variance granted under SRC 808.045.

Applicant Response: A tree and vegetation removal permit was submitted for the private tree/vegetation removal and an additional permit application was submitted for the public tree removal. The applicant understands which activities are exempt from the requirements of a tree removal permit.

However, subsection (a)(2)(L) and (M) do not explain how “necessary” is determined. As such, they are not clear and objective and cannot be applied to the Application.

- (b) *Procedure type.* A tree and vegetation removal permit is processed as a Type I procedure under SRC chapter 300.

- (c) *Submittal requirements.* In addition to the submittal requirements for a Type I application under SRC chapter 300, an application for a tree and vegetation removal permit shall include the following:
- (1) A site plan, of a size and form and in the number of copies meeting the standards established by the Planning Administrator, containing the following information:
 - (A) The total site area, dimensions, and orientation relative to north;
 - (B) Site topography shown at two-foot contour intervals;
 - (C) The location of any existing structures on the site;
 - (D) The type, size, and location of trees and native vegetation to be preserved or removed;
 - (E) The locations and descriptions of staking or other protective devices to be installed for trees and native vegetation to be preserved; and
 - (F) The site plan may contain a grid or clear delineation of phases that depict separate areas where the work is to be performed.
 - (2) In addition to the information required by subsection (c)(1) of this section, an application for tree or native vegetation removal connected with restoration activity in a riparian corridor shall include:
 - (A) A delineation of the boundaries of the riparian corridor on the site plan;
 - (B) A conceptual tree and vegetation planting or replanting plan;
 - (C) A completed wetland delineation or determination, if applicable;
 - (D) A grading plan, if grading is planned or anticipated;
 - (E) A verification from the Department of Public Works that erosion control measures will be initiated, if required; and
 - (F) A monitoring and maintenance plan, if required by Oregon Division of State Lands or the United States Corps of Engineers.
 - (3) Waiver of submittal requirements for certain restoration activities in riparian corridors. The Planning Administrator may waive the requirement to submit all or part of the information required by subsections (c)(1) and (2) of this section for a restoration activity in a riparian corridor that affects less than one-quarter acre and does not require a permit from the Oregon Division of State Lands or United States Corps of Engineers.

Applicant Response: This application does not include a waiver to any submittal requirements for certain restoration activities. Supplemental required tree removal permits have been submitted and included with this application. The above criteria are met.

- (d) *Approval criteria.* An application for a tree and vegetation removal permit shall be granted if one or more of the following criteria are met:
- (1) *Hazardous tree.* The condition or location of the tree presents a hazard or danger to persons or property; and the hazard or danger cannot reasonably be alleviated by treatment or pruning, or the tree has a disease of a nature that even with reasonable treatment or pruning is likely to spread to adjacent trees and cause such trees to become hazardous trees.
 - (2) *Repair, alteration, or replacement of existing structures.* The tree or native vegetation removal is reasonably necessary to effect the otherwise lawful repair, alteration, or replacement of structures existing as of June 21, 2000, the footprint of the repaired, altered, or replacement structure is not enlarged, and no additional riparian corridor area is disturbed beyond that essential to the repair, alteration, or replacement of the existing structure.
 - (3) *Water-dependent activities.* The tree or native vegetation removal is necessary for the development of a water-dependent activity, and no additional riparian corridor area will be disturbed beyond that essential to the development of the water-dependent activity.
 - (4) *Restoration activity within riparian corridor.* The tree or native vegetation removal is required for a restoration activity within a riparian corridor designed to improve the habitat, hydrology, or water quality function of the riparian corridor, and:
 - (A) The short-term impacts of the restoration activity will be minimized;
 - (B) Effective erosion control measures will be implemented;
 - (C) All necessary permits have been applied for or obtained; and
 - (D) No trees or native vegetation will be removed unless the removal is justified for the long term benefit of the environment and is in keeping with acceptable riparian restoration guidance.

Applicant Response: An arborist report has been included with this application which identifies tree type and tree condition. The applicant has submitted a tree preservation and removal plan (see plan sheets 3-3.4) which identifies the tree conditions, type, and size of all trees on the site in addition to those identified for removal. The proposed tree removal is due to the extensive grading required to develop the subject property combined with the condition of the tree. The trees identified for removal are or will become hazardous and therefore, the standards described above under Sec. 808.030.d.(1) are met. The proposed tree removal near the riparian corridor is associated with the required $\frac{3}{4}$ street improvements on the east side of 12th Street but outside of the riparian buffer area. Required supplemental tree removal permits have been included with this submittal. The criteria are met.

However, subsection (d)(1) allows for discretion based on the “condition or location of the tree” and determining whether it creates a “hazard or danger.” This criterion is not clear and objective. As such, it cannot be applied to the Application.

Subsection (d)(2) includes the phrase “reasonably necessary,” which is subjective and allows for discretion. This criterion is not clear and objective. As such, it cannot be applied to the Application.

Subsection (d)(3) includes the terms “necessary” and “essential,” which determination allows for discretion. This criterion is not clear and objective. As such, it cannot be applied to the Application.

Subsection (d)(4) includes the terms “necessary,” “minimized,” “effective,” “justified,” “benefit,” and “acceptable,” which are all subjective; this criterion is not clear and objective. As such, it cannot be applied to the Application.

- (e) Conditions of approval.
 - (1) Conditions may be imposed on the approval of a tree and vegetation removal permit to ensure compliance with the approval criteria.
 - (2) In addition to the conditions imposed under subsection (e)(1) of this section, tree and vegetation removal permits for the removal of trees or native vegetation in connection with a restoration activity within a riparian corridor shall include the following condition:
 - (A) Trees and native vegetation removed shall be replaced in compliance with the tree and native vegetation replacement standards set forth in SRC 808.055.

Applicant Response: The applicant understands the conditions of approval that could be imposed onto a tree removal permit, and will comply with reasonable, clear and objective conditions of approval.

Sec. 808.035. - Tree conservation plans.

- (a) *Applicability.* A tree conservation plan is required in conjunction with any development proposal for the creation of lots or parcels to be used for single family or two family uses, if the development proposal will result in the removal of trees.
- (b) *Procedure type.* A tree conservation plan is processed as a Type I procedure under SRC chapter 300.
- (c) *Submittal requirements.* In addition to the submittal requirements for a Type I application under SRC chapter 300, an application for a tree conservation plan shall include the following:
 - (1) A site plan, of a size and form and in the number of copies meeting the standards established by the Planning Administrator, containing the following information:

- (A) The total site area, dimensions, and orientation relative to north;
- (B) Proposed lot or parcel lines;
- (C) Site topography shown at two-foot contour intervals;
- (D) Identification of slopes greater than 25 percent;
- (E) The location of any existing structures on the site;
- (F) Identification of the type, size, and location of all existing trees on the property;
- (G) Identification of those trees proposed for preservation and those designated for removal;
- (H) The location of all utilities and other improvements;
- (I) Required setbacks for the proposed lots or parcels;
- (J) The locations and descriptions of staking or other protective devices to be used during construction; and
- (K) The site plan may contain a grid or clear delineation of phases that depict separate areas in which work is to be performed and identification of those trees proposed for preservation and those designated for removal with each phase.

Applicant Response: A tree conservation plan has been included with this application. Sheets 3 through 3.4 submitted with this application indicate the tree locations and health. All site plan submittal requirements are shown on sheets P2, 3, 3.1-3.4, and 19. The criteria are met.

- (2) In addition to the information required by subsection (c)(1) of this section, when a riparian corridor is located on the property, the tree conservation plan shall include:
 - (A) A delineation of the boundaries of the riparian corridor on the site plan;
 - (B) A description of the vegetation within the riparian corridor;
 - (C) A tree and native vegetation replanting plan, in compliance with the standards set forth in SRC 808.055, if trees and native vegetation within the riparian corridor are proposed for removal.

Applicant Response: On submitted sheet 3.1 all trees are identified, including those within the riparian corridor. No trees within the riparian corridor are proposed to be removed. The riparian corridor is identified on the submitted existing conditions map and on Sheet 3.1. The criteria are met.

- (d) *Approval criteria.* An application for a tree conservation plan shall be granted if the following criteria are met:
 - (1) No heritage trees are designated for removal;

- (2) No significant trees are designated for removal, unless there are no reasonable design alternatives that would enable preservation of such trees;
 - (3) No trees or native vegetation in a riparian corridor are designated for removal, unless there are no reasonable design alternatives that would enable preservation of such trees or native vegetation;
 - (4) Not less than 25 percent of all trees located on the property are designated for preservation; provided, however, if less than 25 percent of all trees located on the property are designated for preservation, only those trees reasonably necessary to accommodate the proposed development shall be designated for removal.
- (e) Conditions of approval.
- (1) Conditions may be imposed on the approval of a tree conservation plan to ensure compliance with the approval criteria.
 - (2) In addition to any conditions imposed under subsection (e)(1) of this section, every tree conservation plan shall include the following conditions:
 - (A) All trees and native vegetation designated for preservation under the tree conservation plan shall be marked and protected during construction. Any heritage tree or significant tree shall require that at least 70 percent of a circular area beneath the tree measuring one foot in radius for every one inch of dbh be protected by an above ground silt fence, or its equivalent. Protection measures shall continue until the issuance of a notice of final completion for the single family dwelling or two family dwelling.
 - (B) Each lot or parcel within the development proposal shall comply with the tree planting requirements set forth in SRC 808.050.
- (f) *Expiration.* A tree conservation plan shall remain valid as long as the development proposal the tree conservation plan is issued in connection with remains valid.

Applicant Response: The subject property does not contain any identified heritage trees. All trees proposed to be removed are due to the health of the tree or because no reasonable alternative exists. No trees within the riparian corridor are proposed to be removed. The submitted tree protection and removal overview indicates the preservation of more than 25% of the existing trees. The applicant understands the conditions that could be imposed on this application and the expiration requirements. The criteria are met.

However, criteria (d)(2) and (d)(3), which include the phrase “reasonable design alternatives,” allow for discretion; these criteria are not clear and objective, and cannot be applied to this Application.

Similarly, criterion (d)(4) includes the phrase “reasonably necessary to accommodate,” allows for discretion; this criterion is not clear and objective, and cannot be applied to this Application.

Sec. 808.040. - Tree conservation plan adjustments.

- (a) Applicability.
 - (1) Except as provided under subsection (a)(2) of this section, no tree or native vegetation designated for preservation in a tree conservation plan shall be removed unless a tree conservation plan adjustment has been approved pursuant to this section.
 - (2) Exceptions. A tree conservation plan adjustment is not required for:
 - (A) A tree that has been removed due to natural causes; provided, however, that evidence must be provided to the Planning Administrator demonstrating the removal was due to natural causes.
 - (B) Removal of a hazardous tree, subject to a tree and vegetation removal permit issued under SRC 808.030.
 - (C) Removal necessary to effect emergency actions excepted under SRC 808.030(a)(2)(H).
- (b) *Procedure type.* A tree conservation plan adjustment is processed as a Type I procedure under SRC chapter 300.

Applicant Response: The applicant understands that trees approved for preservation cannot be removed without an adjustment to the tree conservation plan. No tree removal exceptions are included with this application.

- (c) *Submittal requirements.* In addition to the submittal requirements for a Type I application under SRC chapter 300, an application for a tree conservation plan adjustment shall include the following:
 - (1) A site plan, of a size and form and in the number of copies meeting the standards established by the Planning Administrator, containing the following information:
 - (A) The total site area, dimensions, and orientation relative to north; and
 - (B) Identification of the type, size, and location of those trees proposed for removal under the tree conservation plan adjustment.
 - (2) In addition to the information required by subsection (c)(1) of this section, when a riparian corridor is located on the property, an application for a tree conservation plan adjustment shall include:
 - (A) A delineation of the boundaries of the riparian corridor on the site plan; and
 - (B) Identification of the type and location of any native vegetation within the riparian corridor proposed for removal under the tree conservation plan adjustment.

Applicant Response: No tree conservation plan adjustments are included with this application. The submittal criteria listed above do not apply.

- (d) *Approval criteria.* A tree conservation plan adjustment shall be approved if the following criteria are met:
 - (1) There are special conditions that could not have been anticipated at the time the tree conservation plan was submitted that create unreasonable hardships or practical difficulties which can be most effectively relieved by an adjustment to the tree conservation plan.
 - (2) When the tree conservation plan adjustment proposes the removal of a significant tree, there are no reasonable design alternatives that would enable preservation of the tree.
 - (3) When the tree conservation plan adjustment proposes the removal of a tree or native vegetation within a riparian corridor, there are no reasonable design alternatives that would enable preservation of the tree or native vegetation.
 - (4) When the tree conservation plan adjustment proposes to reduce the number of trees preserved in the original tree conservation plan below 25 percent, only those trees reasonably necessary to accommodate the proposed development are designated for removal.
- (e) *Conditions of approval.* Conditions may be imposed on the approval of a tree conservation plan adjustment to ensure compliance with the approval criteria and to fulfill the intent of the original tree conservation plan, including requiring additional plantings on or off site.

Applicant Response: No tree conservation plan adjustments are included with this application. The above criteria above do not apply.

Sec. 808.045. - Tree variances.

- (a) *Applicability.* Tree variances may be granted to allow deviation from the requirements of this chapter where the deviation is reasonably necessary to permit the otherwise lawful development of a property.
- (b) *Procedure type.* A tree variance is processed as a Type II procedure under SRC chapter 300.
- (c) *Submittal requirements.* In addition to the submittal requirements for a Type II application under SRC chapter 300, an application for a tree variance shall include the following:
 - (1) A site plan, of a size and form and in the number of copies meeting the standards established by the Planning Administrator, containing the following information:
 - (A) The total site area, dimensions, and orientation relative to north;
 - (B) The location of any existing structures on the site;

- (C) Identification of the type, size, and location of all existing trees on the property;
- (D) Identification of those trees proposed for preservation and those designated for removal; and
- (E) The location of roads, bridges, utilities, and other improvements;
- (2) In addition to the information required by subsection (c)(1) of this section, when a riparian corridor is located on the property, an application for a tree variance shall include:
 - (A) A delineation of the boundaries of the riparian corridor on the site plan;
 - (B) Identification of the type and location of any native vegetation within the riparian corridor proposed for removal.

Applicant Response: No tree variances are included with this application. The criteria do not apply.

- (d) *Approval criteria.* A tree variance shall be granted if either of the following criteria is met:
 - (1) Hardship.
 - (A) There are special conditions that apply to the property which create unreasonable hardships or practical difficulties which can be most effectively relieved by a variance; and
 - (B) The proposed variance is the minimum necessary to allow the otherwise lawful proposed development or activity; or
 - (2) Economical use.
 - (A) Without the variance, the applicant would suffer a reduction in the fair market value of the applicant's property, or otherwise suffer an unconstitutional taking of the applicant's property;
 - (B) The proposed variance is the minimum necessary to prevent a reduction in the fair market value of the applicant's property or otherwise avoid a taking of property; and
 - (C) The proposed variance is consistent with all other applicable local, state, and federal laws.

Applicant Response: No tree variances are included with this application. The above approval criteria do not apply.

- (e) Conditions of approval.
 - (1) Conditions may be imposed on the approval of a tree variance to ensure compliance with the approval criteria and to limit any adverse impacts that may result from granting the tree variance.
 - (2) In addition to any condition imposed under subsection (e)(1) of this section, where a variance is proposed to the requirements for the

preservation of trees and native vegetation in riparian corridors, the approval shall include the following conditions:

- (A) Altered riparian corridor areas that can be reasonably restored, shall be restored; and
- (B) In no case shall alterations to the riparian corridor:
 - (i) Occupy more than 50 percent of the width of the riparian corridor measured from the upland edge of the corridor; or
 - (ii) Result in less than 15 feet of vegetated corridor on each side of the waterway.

Applicant Response: No tree variances are included with this application. The above criteria do not apply.

Sec. 808.050. - Tree planting requirements.

- (a) Within development proposals for the creation of lots or parcels to be used for single family or two family uses, each lot or parcel shall contain, at a minimum, the number of trees set forth in Table 808-1.
- (b) If there are insufficient existing trees on a lot or parcel to satisfy the number of trees required under Table 808-1, additional trees sufficient to meet the requirement shall be planted. The additional trees shall be a minimum 1.5-inch caliper.

TABLE 808-1. TREE PLANTING REQUIREMENTS	
Lot or Parcel Size	Minimum Trees Required
6,000 ft. ² or less	2
6,001 ft. ² to 7,000 ft. ²	3
7,001 ft. ² to 8,000 ft. ²	4
8,001 ft. ² to 9,000 ft. ²	5
Greater than 9,000 ft. ²	6

Applicant Response: The average lot size ranges from ±4,000 square feet to ±5,500 square feet and therefore will comply with the standard of planting a minimum of two required trees in accordance with this subchapter. For larger lots shown on the tentative plat, the requirements of Table 808-1 are proposed to be followed. All landscaping and tree planting are proposed to occur at the time of construction, as to not disturb newly planted vegetation with heavy equipment. The applicant will comply with reasonable, clear and objective conditions of approval regarding tree planting.

Sec. 808.055. - Tree and native vegetation replacement standards within riparian corridors.

Where replacement of trees and native vegetation within a riparian corridor is required by this chapter, the replacement shall comply with the following:

- (a) Trees and native vegetation removed shall be replaced at an area replacement ratio of one-to-one. If there is inadequate space for replanting at or near the location where the tree or native vegetation was removed, replanting may occur elsewhere within the riparian corridor on the property.
- (b) Replacement trees shall have a minimum 1.5-inch caliper and shall be of species authorized in the Tree and Vegetation Technical Manual.
- (c) Replacement vegetation shall be of sizes and species authorized in the Tree and Vegetation Technical Manual.

Applicant Response: Only invasive, nonnative vegetation is proposed to be removed from the riparian area in the northwest corner of the property. See submitted plan sheet 3.1. The criteria are met.

However, subsection (a) includes the phrase “inadequate space,” which is subjective. This standard is not clear and objective and thus cannot be applied to this Application.

Sec. 808.060. - Tree canopy preservation fund.

- (a) Funds collected from any grants and donations for the planting, maintenance, and preservation of trees shall go into a tree canopy preservation fund, 95 percent of which funds shall be designated for the acquisition, maintenance, and preservation of groves of trees within the City or the Salem-Keizer Urban Growth boundary. The remaining five percent shall be used to promote the planting of new trees as follows, at the discretion of the Director:
 - (1) In a public or private park, school yard, riparian corridor, or nature area;
 - (2) In public rights-of-way, except in storm or sewer easements; or
 - (3) In the form of a donation to nonprofit organizations for the purposes of planting trees within the City or the Salem-Keizer Urban Growth boundary.
- (b) The City shall conduct a tree canopy study every census year, using the most economically feasible method, for the purposes of measuring the effectiveness of this chapter and other development-related ordinances in preserving and improving the amount of tree canopy area within the City or the Salem-Keizer Urban Growth boundary.

Applicant Response: No tree canopy preservation funds, grants, or donations are proposed with this application. The above criteria do not apply.

Sec. 808.065. - Enforcement.

In any action brought under SRC 110.110 to enforce this chapter, the following shall apply:

- (a) *Stop work order.* If the applicant's site plan contains a grid or phases that designate areas in which work is to be performed, only that grid area or phase in which any violation occurred shall be affected by any stop work order.

- (b) *Permit revocation.* In addition to the grounds set forth under SRC 110.110, a permit may be revoked if the work is a hazard to property or public safety; is adversely affecting or about to adversely affect adjacent property or rights-of-way, a drainage way, waterway, riparian corridors, significant wetlands or storm water facility; or is otherwise adversely affecting the public health, safety, or welfare.
- (c) *Restoration.* Persons violating this chapter, or any permit issued hereunder, shall be responsible for restoring damaged areas in conformance with a plan approved by the Planning Administrator which provides for repair of any environmental or property damage and restoration of the site. The plan shall result in conditions upon the site which, to the greatest extent practical, equal the conditions that would have existed had the violation not occurred, as verified by a qualified professional. Costs of restoration shall be not less than those determined equal to the monetary value of the regulated trees and/or native vegetation removed in violation of this chapter, or permit issued hereunder, as set forth in an appraisal acceptable to the Planning Administrator, based upon the latest edition of "Guide for Plant Appraisals" (International Society of Arboriculture, Council of Tree and Landscape Appraisers).
- (d) *Prohibition of further approvals.* The City shall not issue a notice of final completion for property on which a violation of this chapter has occurred or is occurring, until the violation has been cured by restoration or other means acceptable to the Planning Administrator and any penalty imposed for the violation is paid.
- (e) *Injunctive relief.* The City may seek injunctive relief against any person who has willfully engaged in a violation of SRC 808.035 or SRC 808.040, such relief to be in effect for a period not to exceed five years.

Applicant Response: No proposed action associated with this application require enforcement. The applicant understands the above listed actions could result in an enforcement action.

However, it should be noted that as to subsection (b), whether “a hazard,” or “adversely affecting” is subjective; this standard is not clear and objective. As such, it cannot be applied to this Application.

Subsection (c) includes the subjective phrase “to the greatest extent practicable,” which is not clear and objective. As such, it cannot be applied to this Application.

Subsection (d) allows the Planning Administrator to approve “other means acceptable” allows for discretion; this is not clear and objective. As such, it cannot be applied to this Application.

CHAPTER 810. - LANDSLIDE HAZARDS

Sec. 810.015. - Map adoption.

Areas subject to this chapter shall be shown on landslide hazard susceptibility maps, which shall be adopted by administrative rule by the Director pursuant to SRC chapter 20J. The landslide hazard susceptibility maps shall indicate the general location of areas of low, moderate, and high susceptibility to landslides, areas of known slide hazards, and slope contours. These maps shall be based on the best available information.

Applicant Response: The subject property is not identified on a landslide hazard map adopted by the Director. The criterion does not apply.

Sec. 810.020. - Landslide hazard construction permit.

- (a) Applicability.
 - (1) Except as provided in subsection (a)(2) of this section, no person shall engage in any of the following activities in areas designated as moderate or high total landslide hazard risk without first obtaining a landslide hazard construction permit.
 - (A) Excavation or fill, as independent activity, exceeding two feet in depth or 25 cubic yards of volume;
 - (B) Installation or construction of any structure greater than 500 square feet in area;
 - (C) Alteration, enlargement, reconstruction, or relocation of a structure greater than 500 square feet in area that requires any modification to the foundation;
 - (D) Land division, planned unit development, or manufactured dwelling park; or
 - (E) Tree removal, as an independent activity, on regulated slopes greater than 60 percent.
 - (2) Exemptions. A landslide hazard construction permit is not required for the following:
 - (A) Excavation and fill exceeding two feet in depth or 25 cubic yards of volume within a public right-of-way or public utility easement.
 - (B) Activities otherwise identified in subsection (a)(1) of this section which must be undertaken immediately to prevent an imminent threat to public health or safety, or prevent imminent danger to public or private property; provided, however:
 - (i) The person undertaking such emergency activity shall notify the Director within one working day following the commencement of the activity.
 - (ii) If the Director determines that the activity, or any part thereof, is beyond the scope of allowed emergency activity, enforcement action may be taken.

- (b) Procedure type. A landslide hazard construction permit is processed as a Type I procedure under SRC chapter 300.
- (c) Submittal requirements. In lieu of the application submittal requirements under SRC chapter 300, an application for a landslide hazard construction permit shall include the following:
 - (1) A completed application form.
 - (2) A geological assessment, geotechnical report, or both, as applicable.
- (d) Criteria. A landslide hazard construction permit shall be granted if:
 - (1) The geological assessment, geotechnical report, or both, as applicable, meets the standards of this chapter; and
 - (2) The geological assessment, geotechnical report, or both, as applicable:
 - (A) Indicates the development can proceed without a risk of landslide hazard; or
 - (B) Sets forth mitigation measures that will reduce or eliminate the risk of landslide hazard.
- (e) Director may have report re reviewed. The Director may, at the City's expense, elect to have an independent certified engineering geologist or geotechnical engineer, selected from a list of prequalified consultants, review the report or its conclusions.
- (f) Conclusions and recommendations. Conclusions and recommendations set forth in an approved geological assessment or geotechnical report shall be incorporated as conditions of approval of the landslide hazard construction permit. The landslide hazard construction permit shall be incorporated into any land use approval connected with the regulated activity.

Applicant Response: No landslide hazard construction permits are included with this application. The criteria do not apply.

Sec. 810.025. - Landslide hazard risk assessment.

- (a) Graduated Response Tables. The Graduated Response Tables set forth in this subsection are used to determine the total landslide hazard risk and required level of site investigation for regulated activities under this chapter. To determine the total landslide hazard risk, follow the steps set forth in this subsection. Where any portion of a proposed activity is identified under multiple landslide susceptibility ratings, the highest rating shall apply.
 - (1) Step One: Earthquake Induced Landslide Susceptibility. Select one assigned point value from Table 810-1A and proceed to step two.

TABLE 810.1A. EARTHQUAKE-INDUCED LANDSLIDE SUSCEPTIBILITY RATINGS	
Physiographic and Geologic Categories	Assigned Point Value
Property identified under very low or low categories on IMS-17 or IMS-18	0 Points
Property identified under a moderate category on IMS-17 or IMS-18	2 Points
Property identified under high category on IMS-17 or IMS-18	3 Points
References:	

Interpretive Map Series (IMS-17), Interpretive Map Series (IMS-18)

- (2) Step Two: Water-Induced Landslide Susceptibility. Select one assigned point value from Table 810-1B and proceed to step 3.

TABLE 810-1B. WATER-INDUCED LANDSLIDE SUSCEPTIBILITY RATINGS	
Physiographic and Geologic Categories	Assigned Point Value
Property Identified under Category 1 on IMS-5 and IMS-6 Reports	0 Points
Property Identified under Categories 2 or 3 or IMS-5 or IMS-6 Reports	2 Points
Property identified under Categories 2 or 3 on IMS-5 or IMS-6 Reports	2 Points
Property identified under Categories 4, 5a, 5b or 6 on IMS-5 or IMS-6 Reports	3 Points
Property identified in IMS-22 Report	3 Points
Property outside the boundaries of IMS-5, IMS-17, IMS-18, and IMS-22 and over 25% slopes	3 Points
Reference: Interpretive Map Series (IMS-5), Interpretive Map Series (IMS-6), Interpretive Map Series (IMS-17), Interpretive Map Series (IMS-18), Interpretive Map Series (IMS-22) and Slope Contour Map	

- (3) Step Three: Activity Susceptibility Ratings. Select one assigned point value from Table 810-1C and proceed to step four.

TABLE 810.1C. ACTIVITY SUSCEPTIBILITY RATINGS		
Type of Activity		Assigned Point Value
Excavation or fill, as an independent activity, exceeding 2 feet in depth or 25 cubic yards of volume		3 Points
Installation or construction of any structure greater than 500 square feet in area	Single family, duplex, or manufactured dwelling building permit	1 Point
	Multiple family building permit	2 Points
	Schools, hospitals, or public building permit	3 Points
	Commercial or industrial building permit	3 Points
Alteration, enlargement, reconstruction, or relocation of a structure greater than 500 square feet in area that requires	Single family, duplex, or manufactured dwelling building permit	1 Point
	Multiple family building permit	2 Points
	School, hospitals, or public building permit	3 Points
	Commercial or industrial building permit	3 Points

any modification to the foundation		
Installation or construction of any structure greater than 500 square feet, not otherwise identified in table.		1 Point
Land division, planned unit development, or manufactured dwelling park	Partition	2 Points
	Subdivision, planned unit development, manufactured dwelling park	3 Points
Tree removal, as an independent activity, on regulated slopes greater than 60%		3 Points

- (4) *Step Four: Cumulative Score.* Add the sub-totals from Tables 810-1A, 810-1B, and 810-1C. Proceed to step five.

TABLE 810-1D. CUMULATIVE SCORE			
Step 1. Earthquake-Induced Landslide Susceptibility Rating Points: ____	Step 2. Water-Induced Landslide Susceptibility Rating Points: ____	Step 3. Activity Susceptibility Rating Points: ____	Step 4. Cumulative Score Total Points: ____

- (5) *Step Five: Total Landslide Risk.* Determine the total landslide hazard risk from Table 810-1E. If the total landslide hazard risk meets or exceeds the thresholds for moderate or high landslide hazard risk set forth in Table 810-1E, a geological assessment, geotechnical report, or both, as applicable, shall be provided by the applicant, and the action specified therein undertaken or insured before any regulated activity may be permitted or approved.

TABLE 810-1E. TOTAL LANDSLIDE HAZARD RISK		
Cumulative Score (From Table 810-1D)	Landslide Hazard Risk	Requirement
4 or fewer points	Category A – Low	No Requirements
5 – 8 points	Category B – Moderate	Geologic Assessment/ Geotechnical Report
9 or more points	Category C – High	Geotechnical Report

- (b) After determining the total landslide hazard risk under subsection (a) of this section, the following shall be required:
- (1) Low landslide hazard risk. If application of Table 810-1E indicates a low landslide hazard risk, all regulated activities may proceed without further investigation, permitting, or approval required by this chapter.

- (2) Moderate landslide hazard risk. If application of Table 810-1E indicates a moderate landslide hazard risk, a geological assessment shall be submitted for all regulated activities. If the geological assessment indicates that mitigation measures are necessary to safely undertake the regulated activity, a geotechnical report prepared by a certified engineering geologist and geotechnical engineer shall be submitted.
- (3) High landslide hazard risk. If application of Table 810-1E indicates a high landslide hazard risk, a geotechnical report prepared by a certified engineering geologist and geotechnical engineer shall be submitted for all regulated activities.

Applicant Response: Per the City of Salem Natural Hazard Mitigation Plan the subject property is not identified as an area susceptible to landslides. The criteria do not apply.

Sec. 810.030. - Standards for geological assessments and geotechnical reports.

Geological assessments and geotechnical reports required under this chapter shall include the information required by this section.

- (a) *Geological assessment.* A geological assessment shall include information and data regarding the nature, distribution of underlying geology, and the physical and chemical properties of existing soils; an opinion as to stability of the site; and conclusions regarding the effect of geologic conditions on the proposed development. The geological assessment shall bear the stamp of a certified engineering geologist.
- (b) *Geotechnical report.* A geotechnical report shall include a comprehensive description of the site topography and geology; an opinion as to the adequacy of the proposed development from an engineering standpoint; an opinion as to the extent that instability on adjacent properties may adversely affect the project; a description of the field investigation and findings; conclusions regarding the effect of geologic conditions on the proposed development; and specific requirements for plan modification, corrective grading, and special techniques and systems to facilitate a safe and stable development. The report shall provide other recommendations, as necessary, commensurate with the project grading and development. The geotechnical report shall bear the stamp of a certified engineering geologist and geotechnical engineer.

Sec. 810.035. - Certification of compliance.

No regulated activity requiring a geotechnical report shall receive final approval or be permitted for properties located in areas of high landslide hazard risk until the Director receives a written statement by a geotechnical engineer that all measures contained in the geotechnical report are completed, in place, and operable.

Applicant Response: A geotechnical report by GEO Consultants Northwest has been submitted with this application and serves as compliance with this subchapter. The criteria are met.

VI. CONCLUSION

Based upon the application materials submitted herein, the Applicant respectfully requests approval from the City's Planning Department of this application for a 138-lot residential subdivision.