



COMMUNITY DEVELOPMENT DEPARTMENT

555 Liberty St. SE / Room 305 • Salem, OR 97301-3503 • (503) 588-6173 • (503) TTY 588-6353 • (503) Fax 588-6005

May 11, 2022

***Si necesita ayuda para comprender esta información, por favor llame 503-588-6173.***

**NOTICE OF FINAL LAND USE DECISION     *Phased Subdivision Case No. SUB21-09 for 4540 Pringle Road SE***

YOU ARE HEREBY NOTIFIED that the **City Council** has made a final written land use decision at their May 9, 2022 session for Phased Subdivision Case No. SUB21-09 **AFFIRMING and MODIFYING** the Planning Administrators Decision to APPROVE Case No. SUB21-09. A copy of the Order is attached.

Any person with standing may appeal the City Council's decision by filing a "Notice of Intent to Appeal" with the Land Use Board of Appeals, 775 Summer St NE, Suite 330, Salem OR 97301-1283, **not later than 21 days** after **May 11, 2022**. Anyone with questions regarding filing an appeal with the Oregon Land Use Board of Appeals should contact an attorney.

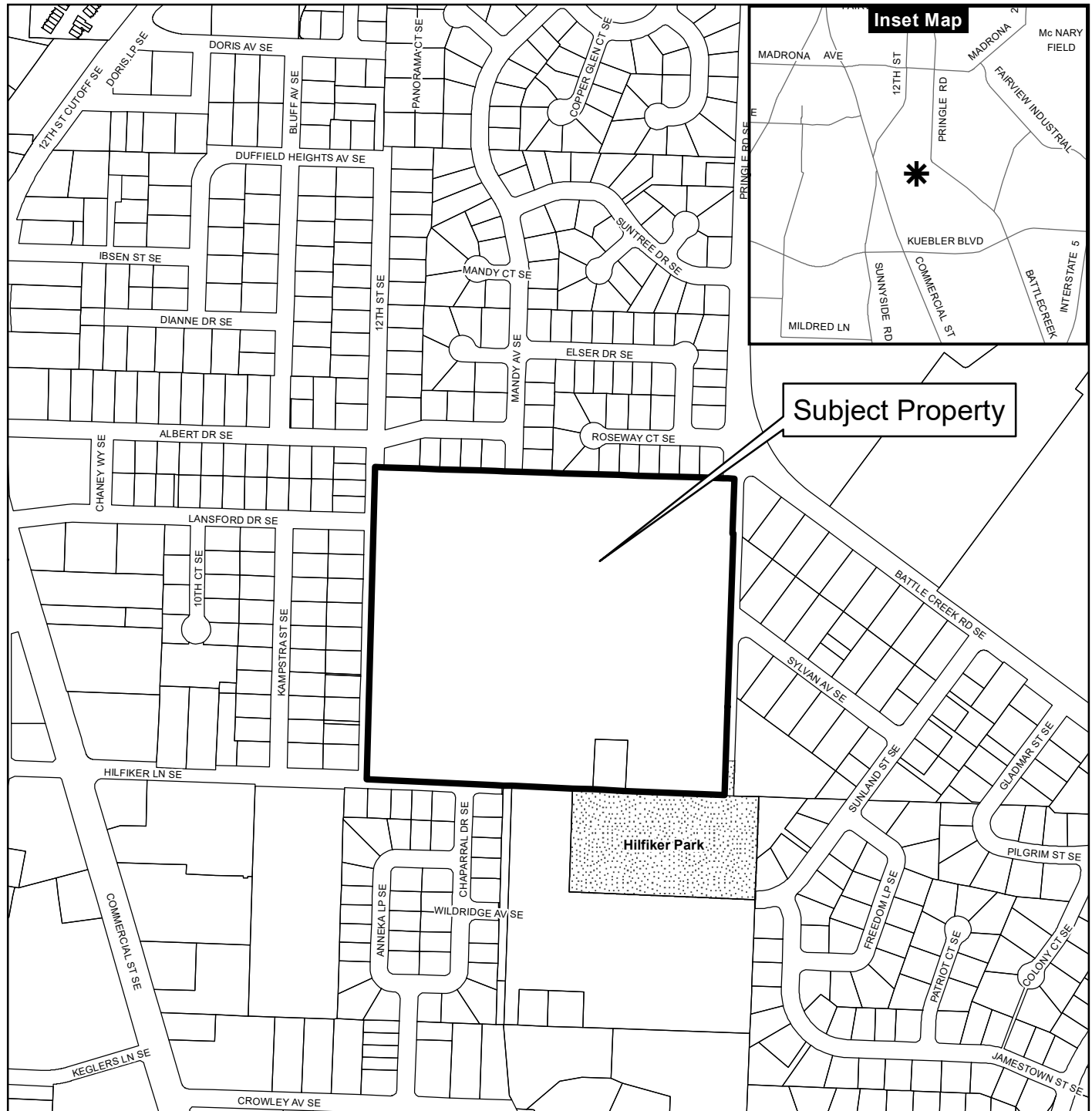
The following items are submitted to the record and are available: 1) all materials and testimony submitted by the applicant, including any applicable professional studies such as traffic impact analysis, geologic assessments, stormwater reports, and; 2) materials, testimony, and comments from public agencies, City Departments, neighborhood associations, and the public. All application materials are available on the City's online Permit Application Center at <https://permits.cityofsalem.net>. You may use the search function without registering and enter the permit number listed here: 21 113071.

If you have any other questions or concerns, please contact the Case Manager: Aaron Panko, 503-540-2356, [APanko@cityofsalem.net](mailto:APanko@cityofsalem.net).

Lisa Anderson-Ogilvie, AICP  
Deputy Community Development Director & Planning Administrator

Attachments: 1. Vicinity Map  
2. Order No. 2022-6

# Vicinity Map 4540 Pringle Road SE



## Legend

- Taxlots
- Urban Growth Boundary
- City Limits
- Outside Salem City Limits
- Historic District
- Schools
- Parks

0 100 200 400 Feet



**CITY OF Salem**  
AT YOUR SERVICE  
Community Development Dept.

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## BEFORE THE CITY COUNCIL OF THE CITY OF SALEM

IN THE MATTER OF APPROVAL OF  
 PHASED SUBDIVISION TENTATIVE  
 PLAN CASE NO. SUB21-09

4540 PRINGLE ROAD SE

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ORDER NO. 2022-6-SUB21-09  
 PHASED SUBDIVISION  
 TENTATIVE PLAN  
 CASE NO. SUB 21-09

This matter coming regularly for hearing before the City Council, at its January 10, 2022 meeting, and the City Council, having received evidence and heard testimony, makes the following findings, and adopts the following order modifying the decision of the Planning Administrator in Phased Subdivision Tentative Plan Case No. SUB21-09, and approving the application.

**PROCEDURAL FINDINGS:**

- (a) On July 14, 2021, an application for a Phased Subdivision Tentative Plan was filed for a proposal to divide property approximately 29.68 acres in size into 138 single family lots in two phases of development, for property located at 4540 Pringle Road SE - 97302.
- (b) On September 13, 2021, the applicant provided a response to staff's notification letter that the application was incomplete, including revised plans and written findings. The applicant indicated per ORS 227.178(2)(a) that all missing information had been provided and that the City is required to start the 120-day period for issuance of a final decision under ORS 227.178(1).
- (c) The application was deemed complete for processing on September 13, 2021. Notice to surrounding property owners was mailed pursuant to Salem Revised Code on September 17, 2021, and public notice was posted on the subject property on September 17, 2021, pursuant to SRC 300.520(b)(2).
- (d) On October 25, 2021, the applicant provided updated application materials that include an adjustment to the phasing plan, inclusion of the existing homestead as a separate lot in the subdivision which increased the number of lots proposed from 138 to 139, an updated tree inventory, and additional written findings.
- (e) On November 3, 2021, the Planning Administrator issued a decision approving the 139-lot phased subdivision tentative plan.
- (f) On November 8, 2021, at a regularly scheduled meeting, the City Council voted to initiate the review of the Planning Administrator's decision. A public hearing before the City Council was scheduled for January 10, 2022.
- (g) On January 10, 2022, City Council held a public hearing and received public testimony. A motion was passed to close the public hearing but leave the record open for additional public comment. The City Council directed City staff to conduct a site visit of the subject property to verify the accuracy of the tree data provided by the applicant.

- (h) On February 2, 2022, the applicant provided an updated tree assessment correcting the number of significant trees located on the subject property and adjacent right-of-way.
- (i) On February 28, 2022, the City Council conducted deliberations and voted to reverse the Planning Administrator's decision and deny the phased subdivision tentative plan.
- (j) Following City Council's vote to deny the application, the applicant citing ORS 197.522, requested an opportunity to offer an amendment to the phased subdivision tentative plan and additional conditions of approval. On March 14, 2022, the City Council voted to reconsider the decision and to reopen the record in the proceeding to allow for additional public comment on the applicant's revised plan and proposed conditions.
- (k) On March 28, 2022, the City Council conducted deliberations to reconsider the application and voted to affirm the Planning Administrator's decision with the applicant's proposed modifications dated March 9, 2022 and proposed additional conditions of approval. The City Council hereby adopts the findings of fact and conclusions of law in the Decision in their entirety and the supplemental findings of fact found in Exhibit 1.
- (l) The 120-day State mandated deadline for final decision has been extended by the applicant to May 9, 2022.

**SUBSTANTIVE FINDINGS:**

The City Council adopts the following as findings for this decision:

- (a) The Phased Subdivision Tentative Plan application to develop approximately 29.68 acres into 146 lots, as proposed and conditioned, meets the approval criteria set forth in SRC 205.015(d).
- (b) The findings, attached hereto as exhibit 1, are incorporated to this decision as set forth herein. Additional findings provided by the applicant are incorporated herein as included as exhibit 2.
- (c) The City Council therefore APPROVES the application subject to the applicant's revised tentative plan dated March 9, 2022 and additional conditions of approval.

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE CITY COUNCIL OF THE CITY OF SALEM, OREGON:

Section 1. The Planning Administrator's decision for Phased Subdivision Tentative Plan Case No. SUB21-09 is hereby modified to include the findings and facts in exhibit 1 and exhibit 2, and the following conditions of approval:

- Condition 1:** An Inadvertent Discovery Plan shall be filed with the City prior to any ground disturbing activity associated with development.
- Condition 2:** Lots accessing 12<sup>th</sup> Street SE shall comply with all applicable Fire Department access and fire prevention standards. Dwellings constructed on proposed lots 82-87 shall require installation of fire sprinklers.



**Condition 3:** The front property lines for corner lots shall be designated as follows:

Lot Number	Front Lot Designation
5	North line abutting Aldridge Ave
6	East line abutting Hillrose St
21	North line abutting Hilfiker Ln
25	North line abutting Hilfiker Ln
39	West line abutting Ramsay Rd
50	North line abutting Hilfiker Ln
69	South line abutting Hilfiker Ln
76	East line abutting Hilfiker Ln
81	North line abutting Drexler Dr
88	South line abutting Drexler Dr
90	South line abutting Drexler Dr
97	South line abutting Walton Wy
108	West line abutting Walton Wy
109	East line abutting Hilfiker Ln
119	North line abutting Walton Wy
121	South line abutting McCollum St
122	North line abutting McCollum St
126	East line abutting Hilfiker Ln
133	East line abutting Hilfiker Ln
134	West line abutting Porter Pl

**Condition 4:** The flag lot accessway shall be paved in accordance with the requirements of SRC 800.025(c), Table 800-1. "NO PARKING—FIRE LANE" signs shall be posted on both sides of that segment of the flag lot accessway that is a fire apparatus roadway and "NO PARKING" signs shall be posted on both sides of any remaining portion of the accessway.

**Condition 5:** Recorded covenants, conditions, and restrictions for the development shall be provided prior to final plat approval that shall include a provision that such facilities and common property be perpetually operated and maintained by a property owners' association consistent with the requirements of SRC 205.035(f).

**Condition 6:** Provide a 10-foot public utility easement along the street frontage of all internal streets.

**Condition 7:** Coordinate with the City to eliminate the reserve blocks located along the existing rights-of-way abutting the subject property.

**Condition 8:** Trees proposed for removal that are located within the right-of-way of abutting streets shall follow the procedures of SRC Chapter 86.

**Condition 9:** Construction of facilities in the right-of-way is required prior to final plat except as authorized in an improvement agreement per SRC 205.035(c)(7)(B).

- Condition 10:** Water meters serving the S-1 water service level shall be connected to the S-1 water system, and water meters serving the S-2 water service level shall be connected to the S-2 water system except as authorized by PWDS.
- Condition 11:** Provide an engineered stormwater design pursuant to SRC 71 and PWDS to accommodate future impervious surface on all proposed lots.
- Condition 12:** All necessary (existing and proposed) access and utility easements must be shown on the final plat.
- Condition 13:** Construct Hilfiker Lane SE from the intersection with 12<sup>th</sup> Street SE to the intersection of Pringle Road SE and Battle Creek Road SE to Collector B Street standards and in compliance with PWDS. Hilfiker Lane SE at the intersection of Pringle Road SE and Battle Creek Road SE shall include an eastbound to northbound left turn lane and an eastbound to southbound right turn lane. The maximum street grade for Hilfiker Lane shall be 10 percent.
- Condition 14:** Construct a left turn lane from northbound Battle Creek Road SE to westbound Hilfiker Lane SE as described in the applicant's TIA.
- Condition 15:** Construct internal streets to Local street standards, with the following exceptions: proposed Hilfiker Lane SE, Ramsay Road SE, and Hillrose Street SE may exceed the 600-foot block length and 600-foot street connectivity standards in SRC Chapter 803 as shown on the application materials.
- Condition 16:** Convey land for dedication to equal a half-width right-of-way of 30 feet on the development side of Hillrose Street SE. Construct a three-quarter-street improvement along the frontage of Hillrose Street SE to Local street standards.
- Condition 17:** From Chaparral to the west line of tax lot 083W11BC03200, provide a 30-foot-wide public access easement along the south line of the subject property. The easement may be revoked if permanent transportation facilities are provided in a different alignment upon full build-out of the future phase on the subject property.
- Condition 18:** Provide a minimum 15-foot-wide pedestrian access easement and construct a minimum 10-foot-wide pedestrian walkway pursuant to PWDS between Hilfiker Lane and Ramsay Road and through the proposed open space.
- Condition 19:** Construct internal streets to Local street standards.
- Condition 20:** Convey land for dedication to equal a half-width right-of-way of 30 feet on the development side of 12<sup>th</sup> Street SE, including sufficient right-of-way to accommodate public infrastructure at the property corners. Construct a half-street improvement along the frontage of 12<sup>th</sup> Street SE to local street standards except as follows:
- a. The street grade may exceed the standard of 12 percent by matching the



existing grade of 12<sup>th</sup> Street SE.

- b. The sidewalk may be located along the curb line abutting the open space area.

**Condition 21:** As proposed by the applicant, as a condition of Phase 1, the applicant shall construct speed humps on Albert Street SE to City standards in locations approved by the Public Works Department.

**Condition 22:** As a condition of Phase 2, the applicant shall install an all way stop at the intersection of 12<sup>th</sup> Street SE and Lansford Drive SE.

**Condition 23:** Final subdivision plats for the phased subdivision shall be in substantial conformance with the applicant's revised tentative plan dated March 9, 2022, and shall not include proposed lots 58-65 and 40-44 as development lots.

Section 2. This order constitutes the final land use decision and any appeal must be filed with the Oregon Land Use Board of Appeals within 21 days of the date that notice of this decision is mailed to persons with standing to appeal.

Exhibit 1: Findings for SUB21-09

Exhibit 2: Applicant's supplemental findings for SUB21-09

ADOPTED by the City Council this 9<sup>th</sup> day of May, 2022.

ATTEST:

  
Deputy City Recorder

Checked by: Aaron Panko

**FACTS & FINDINGS****PHASED SUBDIVISION TENTATIVE PLAN  
CASE NO. SUB21-09****APRIL 18, 2022****PROCEDURAL FINDINGS**

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- (h) On February 2, 2022, the applicant provided an updated tree assessment correcting the number of significant trees located on the subject property and adjacent right-of-way.
- (i) On February 28, 2022, the City Council conducted deliberations and voted to reverse the Planning Administrator's decision and deny the phased subdivision tentative plan.



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- (k) On March 28, 2022, the City Council conducted deliberations to reconsider the application and voted to affirm the Planning Administrator's decision with the applicant's proposed modifications dated March 9, 2022 and proposed additional conditions of approval. The City Council hereby adopts the findings of fact and conclusions of law in the Decision in their entirety and the supplemental findings of fact found in Exhibit 1.
- (l) The 120-day State mandated deadline for final decision has been extended by the applicant to April 25, 2022.

## **SUBSTANTIVE FINDINGS**

### **1. Salem Area Comprehensive Plan (SACP)**

*Urban Growth Policies:* The subject property is located inside of the Salem Urban Growth Boundary and inside the corporate city limits.

*Comprehensive Plan Map:* The subject property is designated "Single Family Residential" on the Salem Area Comprehensive Plan (SACP) Map. The surrounding properties are designated as follows:

North: Single Family Residential

South: West side, across Hilfiker Lane SE, Single Family Residential  
East side, Single Family Residential

East: Across Hillrose Street SE, Single Family Residential

West: Across 12<sup>th</sup> Street SE, Single Family Residential

#### Relationship to Urban Service Area

The subject property is within the City's Urban Service Area.

#### Infrastructure

*Water:* The subject property is within the S-1 and S-2 water service levels.

A 12-inch water mains are located in Hilfiker Lane SE and Hillrose Street SE.

An 8-inch water main is located in Mandy Avenue SE.

A 6-inch and 80inch water main is located in 12<sup>th</sup> Street SE.

*Sewer:* An 8-inch sanitary sewer main is located in Hilfiker Lane SE.

An 8-inch sewer main is located in Hillrose Street SE.

A 6-inch sewer main is located in Mandy Avenue SE.

An 8-inch sewer main is located in 12<sup>th</sup> Street SE. The 8-inch main extends across the northwestern corner of the subject parcel, connecting to Albert Road SE to the north.

*Storm Drainage:* A 10-inch storm main is located in Hilfiker Lane SE.

A 10-inch storm main is located in Hillrose Street SE at the northeast corner of the subject parcel.

A 10-inch storm main is located in Mandy Avenue SE.

A 24-inch storm main is located in 12<sup>th</sup> Street SE.

*Streets:* Hilfiker Lane SE abuts the subject property along the southwest and is designated as a collector street in the Salem Transportation System Plan (TSP).

- o The standard for this street classification is a 40-foot-wide improvement within a 60-foot-wide right-of-way.
- o This street currently has an approximate 15-foot improvement within a 30-foot-wide right-of-way abutting a portion of the subject property.

Hillrose Street SE abuts the subject property along the eastern boundary and is designated as a local street in the Salem Transportation System Plan (TSP).

- o The standard for this street classification is a 30-foot-wide improvement within a 60-foot-wide right-of-way.
- o This street has an approximate 10-foot turnpike improvement within a 30-foot-wode right-of-way abutting the subject property.

Mandy Avenue SE abuts the subject property to the north and is designated as a local street in the Salem Transportation System Plan (TSP).

- o The standard for this street classification is a 30-foot improvement within a 60-foot-wide right-of-way.
- o This street has an approximate 30-foot improvement within a 60-foot right-of-way abutting the subject property.

12<sup>th</sup> Street SE abuts the subject property to the west and is designated as a local street in the Salem Transportation System Plan (TSP).

- o The standard for this street classification is a 30-foot improvement within a 60-foot-wide right-of-way.
- o This street has an approximate 20-foot improvement within a 30-foot right-of-way along the frontage abutting the subject property.

*Parks:* The proposed development is served by an undeveloped park (Hilfiker Park) abutting the southern boundary of the subject property.

## 2. Existing Conditions, Zoning, and Surrounding Land Use

*Site and Vicinity:* The subject property (Attachment A) contains two separate lots with a combined size of approximately 29.68 acres, approximately 1,200 feet in width east to west, and which extends approximately 1,050 feet in depth north to south. The subject property abuts existing single-family residential subdivisions to the north, east, and west. Hilfiker Park abuts the property to the southeast and a residential subdivision abuts the property to the southwest.

The subject property is sloped with the highest elevation approximately 395 feet near the southwest corner of the subject property then falling to approximately 330 feet near the unnamed mapped waterway at the northwest corner and approximately 320 feet near the northeast corner of the property.

The subject property does not contain any known archaeological sites; however, as the area is within a high probability archaeological zone, an Inadvertent Discovery Plan is required prior to any ground disturbing activity associated with development.

**Condition 1:** An Inadvertent Discovery Plan shall be filed with the City prior to any ground disturbing activity associated with development.

*Zoning:* The subject property is zoned RA (Residential Agriculture) and RS (Single Family Residential) and currently contains a single-family dwelling and several outbuildings associated with the Meyer Farm Homestead. The surrounding properties are zoned and used as follows:

North: RS (Single Family Residential); single family dwellings



- South: West side, across Hilfiker Lane SE, RS (Single Family Residential); single family dwellings  
East side, RA (Residential Agriculture); Hilfiker Park and single-family dwelling
- East: Across Hillrose Street SE, RS (Single Family Residential); single family dwellings
- West: Across 12<sup>th</sup> Street SE, RS (Single Family Residential); single family dwellings

### 3. Public and Private Agency Review

**Fire Department** - The Salem Fire Department has reviewed the proposal and indicated that the street grade on 12<sup>th</sup> Street SE is existing. Due to the difficulty for emergency vehicles to access 12<sup>th</sup> Street SE because of existing/proposed street grade, development of homes accessing the portion of 12<sup>th</sup> Street SE exceeding 12 percent grade will require fire sprinklers in the structures and the installation of a new fire hydrant along 12<sup>th</sup> Street near the subject property to fully comply with Fire Department access and fire prevention standards. The remaining development will require two separate and approved means of fire department access and fire hydrants will be required to be located within 600 feet of all structures as measured along an approved route. Any fire department access roads over 150 feet in length will require an approved turn around if the road is a dead end.

**Condition 2:** Dwellings constructed on proposed lots 82-87, which access portions of 12<sup>th</sup> Street SE that exceed 12 percent street grade, shall require installation of fire sprinklers in compliance with applicable Fire Department access and fire prevention standards.

**Public Works Department.** The City of Salem Public Works Department, Development Services Section, reviewed the proposal and provided comments and recommendations for plat approval.

**Building and Safety Division** – The Salem Community Development Department, Building and Safety Division, submitted comments indicating no concerns with the proposal at this time.

### 4. Public Agency and Private Service Provider Comments

**Salem-Keizer Public Schools** – Planning and Property Services staff for the Salem-Keizer School District reviewed the proposal and submitted comments included in the Planning Administrator's decision.

### 5. Neighborhood Association Comments and Public Comments

The subject property is within the Morningside Neighborhood Association. Notice of the initial application was provided to the neighborhood association, pursuant to SRC 300.520(b)(1)(B)(v), which requires notice to be sent to any City-recognized

neighborhood association whose boundaries include, or are adjacent to, the subject property. Notice was provided, pursuant to SRC 300.520(b)(1)(B)(iii), (vi), & (vii), to all property owners and tenants within 250 feet of the subject property, posted notice was also provided on each street frontage during the initial comment period pursuant to SRC 300.520(b)(2).

**A summary of comments received during the initial review is included below.**

- A. Tree Removal.** Several comments received express concern regarding the removal of trees, including significant Oregon White Oaks, which will be required to accommodate the proposed subdivision.

**Staff Response:** Tree preservation and removal in conjunction with proposed subdivisions is regulated under the City's tree preservation ordinance (SRC Chapter 808). As required under SRC Chapter 808, the applicant submitted a tree conservation plan in conjunction with the proposed subdivision that identifies a total of 808 trees on the property, 28 of which are significant trees (Oregon white oaks with a diameter at breast height of 24 inches or greater).

The tree conservation plan approval criteria require in part that no significant trees are designated for removal, no trees or native vegetation in a riparian corridor are designated for removal, and not less than 25 percent of all trees located on the property are designated for preservation. Of the 808 total existing trees on the property, the proposed tree conservation plan identifies 355 trees (43.9%) for preservation and 453 trees (56.1%) for removal. The proposal protects all trees and native vegetation in the riparian corridor located at the northwest corner of the subject property.

Of the 453 trees proposed for removal, four are significant oaks which the applicant has identified for removal based on their location within either the future building envelopes of lots or adjacent to required street and/or sidewalk improvements. Tree 2823 is proposed for removal due to grading for Lot 40, Tree 3213 is proposed for removal due to grading for Lot 60, Tree 3228 is proposed for removal due to grading for Lot 62, and Tree 3194 is proposed for removal due to grading for Hilfiker Lane SE. Their removal is necessary because of no reasonable design alternatives that would enable their preservation. The tree conservation plan is being reviewed by staff and, if approved, will be binding on the lots until final occupancy is granted for the construction of dwelling units on the lots.

In addition to the trees located on the subject property, there are also several trees located within the existing right-of-way for 12<sup>th</sup> Street SE and Hillrose Street SE, including one significant tree. Pursuant to the tree preservation ordinance (SRC Chapter 808), tree conservation plans are required to identify and preserve the minimum required number of trees on private property. Trees located within the existing right-of-way of 12<sup>th</sup> Street SE and Hillrose Street SE are not located on the property; they are not subject to the provisions of SRC Chapter 808 and are not counted toward the total number of trees on the site. These trees are instead considered trees on City owned property and subject to the provisions of SRC Chapter 86. Based on the current under-improved width of 12<sup>th</sup> Street SE and Hillrose Street SE, the existing trees within the right-of-way, including one significant tree (tree



2579), will likely need to be removed to accommodate the required widening, sidewalk installation, and grading associated with required street improvements. Removal of street trees requires a permit pursuant to SRC 86.090.

- B. Traffic Impact and Safety.** Comments received expressed concern with traffic impacts related to the subdivision. Concerns were also expressed regarding the intersection of Hilfiker Street SE and Commercial Street SE, and the proposed intersection of Battle Creek Road SE and Hilfiker Street SE.

**Staff Response:** Addressing traffic safety, the applicant submitted a traffic impact analysis that demonstrated what improvements needed to be made to mitigate the traffic impacts from the proposed subdivision. All interior and abutting streets are being constructed to meet Public Works Design Standards, except where alternative street standards have been authorized.

The City of Salem has recognized the lack of east-west connectivity in this area. The Salem Transportation System Plan has long identified this extension of Hilfiker Lane as necessary to provide the missing east-west connectivity. The nearest east-west connections are Madrona Avenue SE and Kuebler Boulevard SE. The street was originally classified as a “minor arterial” street. The design of a “minor arterial” street has one travel lane in each direction with a center two-way-left-turn-lane, bike lanes, no on-street parking, and single-family residential driveways are not allowed. About 10 to 15 years ago, the neighborhood association requested that the City downgrade the street to a “collector” street. The design of a “collector” street is one lane in each direction, bike lanes, with provisions for on-street parking (collector B), and single-family residential driveways are allowed.

Per the City of Salem Street Design Standards, the design speed for a “minor arterial” is 45 MPH, meaning the curves would be very flat and would encourage faster traffic along this extension of Hilfiker Lane. The design speed for a “collector” street is 35 MPH, but the developer has requested a “design exception” to allow for a design speed of 25 MPH. At a design speed of 25 MPH the curves are considerably sharper than for a “minor arterial” and will encourage slower travel speeds. The addition of on-street parking and driveways along the roadway will also naturally slow traffic along this route.

The City of Salem will be rebuilding the intersection of Hilfiker Lane SE and Commercial Street SE. The intersection will have a new traffic signal with eastbound and westbound left turn lanes on Hilfiker Lane. This project is expected to be constructed in 2023-2024. The Traffic Impact Analysis accurately reflects the operational conditions of the improved intersection including the traffic generated from this site.

There will be additional traffic using this new connection between Commercial Street and Battle Creek Road but estimating that number of vehicles is impossible to predict. Those additional vehicles that will be traveling along the new extension of Hilfiker Lane, are existing traffic that is being diverted. These vehicles will alleviate congestion on Madrona Avenue SE, Kuebler Boulevard SE and will certainly reduce the number



of vehicles that currently cut-through the residential neighborhood using Suntime Drive SE, Mandy Avenue SE, and Albert Drive SE.

This development is not responsible to mitigate existing traffic issues; they are required to mitigate the impacts from their development. The traffic counts used in the analysis is the best information available. Given the on-going COVID-19 Pandemic, traffic volumes have decreased. Kittelson & Associates used the best methodology to adjust traffic volumes upwards to account for Pandemic traffic. The traffic volumes were adjusted upwards on Battle Creek Road by 41% and by 24% on Commercial Street. They were additionally grown by 1.5% per year to reflect general background growth of traffic in Salem.

The improvements at the intersection with Battle Creek Road and Hilfiker Lane will be constructed to ensure there is adequate sight distance for the vehicles turning left from Battle Creek Road, as well as vehicle turning onto Battle Creek Road from Hilfiker Lane.

- C. Loss of Wildlife Habitat and Open Space.** Several comments received express concern regarding the loss of wildlife habitat and open space that will result from tree removal, grading, and development of the subject property.

**Staff Response:** The subject property is located within the Urban Growth Boundary and within Salem City Limits and has been designated on the City of Salem Comprehensive Plan Map as "Single Family Residential", which anticipates existing or future residential development similar to the subdivision proposed with this application. Loss of wildlife habitat is not a criterion for granting or denying a phased subdivision tentative plan.

In regard to impacts on open space, the Salem Area Comprehensive Plan has adopted goals, policies, and plan map designations to protect identified open space areas. The subject property has not been identified as a natural open space area. Instead, the Comprehensive Plan Map designates the subject property as "Single Family Residential", and the site has been zoned RS (Single Family Residential). While the subject property is mostly undeveloped with one home on approximately 29.68 acres, the subject property is surrounded by an already developed residential area within the corporate limits of the City of Salem and as the City continues to grow, development is expected to occur in areas designated for residential development.

- D. Parks.** Several comments received suggested that the property should remain as dedicated open space with walking trails, bike paths, and could be used as an extension of abutting Hilfiker Park.

**Staff Response:** The subject property is served by Hilfiker Park, which is an undeveloped park site located southeast of and abutting the subject property. Though many neighborhood comments express a desire for the subject property to be used as park land, there is no regulatory authority to require that the applicant dedicate all or a portion of the subject property to the City for use as park land. Recent park acquisitions in the area include a community park in the Fairview Development District to the north and a neighborhood park near the intersection of Reed Road and Battle

Creek Road.

- E. Impact on Neighborhood Character and Livability.** Several comments received expressed concern about the impact the proposed subdivision will have on adjacent properties and the character of the existing neighborhood due to loss of open space and development of a higher density development with smaller lots sizes than those in the surrounding area.

**Staff Response:** The single-family dwelling parcels proposed within the subdivision range from approximately 4,000 square feet to approximately 3.64 acres in size, which is consistent with the minimum lot size requirement of 4,000 square feet. Their size and layout are consistent with the expected development pattern of properties in the "Single Family Residential" Comprehensive Plan Map designation and RS (Single Family Residential) zone. There is no approval criterion or development standard which requires single family residential lots to resemble adjacent existing developments.

- F. Climate Action Plan.** Comments received express concern that the 139-lot subdivision, which proposes removal of significant trees and will create additional traffic in the area, is contrary to the City's goals for reducing greenhouse gas emissions.

**Staff Response:** While the Salem Area Climate Action Plan will be used to guide policies aimed at achieving community-wide reductions in greenhouse gas emissions, and adoption of the plan may lead to future changes to the City's Unified Development Code, this subdivision application has to be reviewed based on the development standards and tree protection standards that are currently adopted. The proposed single-family subdivision is an allowed use under the current zoning for the subject property, the proposed lots meet minimum lot size and dimensional standards, and the proposed tree removal is consistent with tree removal standards in SRC Chapter 808.

- G. Historic Significance of the Site.** Comments received express concern for development of the property given the historic significance of the site.

**Staff Response:** The subject property does not contain any known archaeological sites; however, the area is within a high probability archaeological zone, so an Inadvertent Discovery Plan would be required for any ground disturbing activity associated with development. The existing house is not designated as a Salem Historic Resource; therefore, SRC Chapter 230 does not apply to the proposed development. However, the house was built in 1915 and could be eligible for designation as a local historic resource.

- H. Support for Increased Residential Density.** Comments received indicate that the proposed subdivision does not go far enough to address housing affordability an accessibility and that multi-family residential development should be required for this property.



**Staff Response:** The subject property is currently zoned RA (Residential Agriculture) and will change to RS (Single Family Residential) upon recording of a final subdivision plat. The RA and RS zones do not permit multi-family residential uses. While the community needs more diverse housing options, including multi-family residential development, the City has to evaluate development requests as designed by the applicant for conformance with approval criteria and development standards. The City cannot require an applicant to develop a use that is not permitted under current zoning regulations. The City is required to allow middle housing (duplex, triplex, quadplex, townhouse and cottage cluster developments) in the RS zone with the passage of House Bill 2001. The City is expected to adopt regulations that comply with House Bill 2001 by the end of the year. The proposed lots are of sufficient size to each allow a duplex, at a minimum. The developer or future building has the option of building middle housing if they so choose.

- I. **Impact of Stormwater Runoff.** Comments received express concern regarding potential stormwater, drainage and flooding impacts on adjacent properties.

**Staff Response:** As described in further detail in findings included under Section 9 of this decision regarding compliance with the standards set forth in SRC Chapter 71 (Stormwater), the proposed subdivision is required to meet flow control requirements which limit runoff to levels not exceeding pre-existing conditions. The applicant's engineer is required to demonstrate that there is no increase in stormwater runoff from the subject property based on a variety of storm frequencies up to a 100-year storm. All stormwater infrastructure, including flow control and treatment facilities, will be constructed pursuant to Public Works Design Standards.

- J. **School Capacity.** Comments received express concern regarding the impact the proposal will have on school capacity.

**Staff Response:** Salem-Keizer Public Schools has reviewed the proposal and provided a memo dated September 29, 2021, included in the attachments, which outlines the anticipated impact of the proposed development on the school district. The City and the School District work closely together on development potential and impacts on school capacity. However, school capacity is not an approval criterion for a tentative subdivision and cannot be applied as such to this application.

**A summary of comments received during the City Council public review period prior to the January 10, 2022 hearing is included below.**

- A. **Tree Removal.** Several comments received express concern regarding the removal of trees, including significant Oregon White Oaks, which will be required to accommodate the proposed subdivision.

**Staff Response:** Tree preservation and removal in conjunction with proposed subdivisions is regulated under the City's tree preservation ordinance (SRC Chapter 808). As required under SRC Chapter 808, the applicant submitted a tree conservation plan in conjunction with the proposed subdivision that identifies a total of 808 trees on the property, 28 of which are significant trees (Oregon white oaks with a diameter at breast height (dbh) of 24 inches or greater).



The tree conservation plan approval criteria require in part that no significant trees are designated for removal, no trees or native vegetation in a riparian corridor are designated for removal, and not less than 25 percent of all trees located on the property are designated for preservation. Of the 808 existing trees on the property, the tree conservation plan identifies 355 trees (43.9%) for preservation and 453 trees (56.1%) for removal. The proposal protects all trees and native vegetation in the riparian corridor located at the northwest corner of the subject property.

Of the 453 trees proposed for removal, four are significant oaks which the applicant has identified for removal based on their location within either the future building envelopes of lots or adjacent to required street and/or sidewalk improvements. Tree 2823 is proposed for removal due to grading for Lot 40, Tree 3213 is proposed for removal due to grading for Lot 60, Tree 3228 is proposed for removal due to grading for Lot 62, and Tree 3194 is proposed for removal due to grading for Hilfiker Lane SE. Their removal is necessary because of no reasonable design alternatives that would enable their preservation. The tree conservation plan is being reviewed concurrently and, if approved, will be binding on the lots until final occupancy is granted for the construction of dwelling units on the lots.

In addition to the trees located on the subject property, there are also several trees located within the existing right-of-way for 12<sup>th</sup> Street SE and Hillrose Street SE, including one significant tree. Pursuant to the tree preservation ordinance (SRC Chapter 808), tree conservation plans are required to identify and preserve the minimum required number of trees on private property. Trees located within the existing right-of-way of 12<sup>th</sup> Street SE and Hillrose Street SE are not located on the property; they are not subject to the tree conservation provisions of SRC Chapter 808 and are not counted toward the total number of trees on the site. These trees are instead considered trees on City owned property and subject to the provisions of SRC Chapter 86. Based on the current under-improved width of 12<sup>th</sup> Street SE and Hillrose Street SE, the existing trees located within these right-of-way's, including one significant tree (tree 2579), will likely need to be removed to accommodate the required widening, sidewalk installation, and grading associated with required street improvements. Removal of street trees requires a permit pursuant to SRC 86.090.

The City Council is currently considering updates to the Unified Development Code (UDC), including proposed revisions to SRC Chapter 808. The proposed revisions will broaden the definition of significant tree so that any tree with a dbh of 30 inches or greater will be considered significant and will reduce the dbh requirement for Oregon white oaks to be considered significant from 24 inches to 20 inches. Under the proposed ordinance, the number of significant trees located on the subject property would increase from 28 to 88, and the number of significant trees proposed for removal would increase from four to 13, the overall preservation rate for significant trees would reduce slightly from 85.7% to 85.2%.

Oregon law requires the City to apply the standards and criteria that are in effect at the time of the application (the "goal post rule"). Therefore, regardless of potential upcoming changes to the City's land use regulations, the City's currently adopted land use regulations must be applied to this application.



	Significant Trees under Current Ordinance (Oregon white oak greater than 24" dbh)	Significant Trees under Proposed Ordinance (Oregon white oak greater than 20" dbh and any tree with dbh 30" or greater)
Total Trees on Property	28	88
To be Removed	4	13
To be Preserved	24	75
Preservation Rate	85.7%	85.2%

In addition, revisions are proposed to the tree conservation plan approval criteria. Currently the approval criteria for a tree conservation plan require a minimum 25 percent of all trees located on the property to be preserved. Under the proposed ordinance, the preservation requirement will increase from a minimum of 25 percent to a minimum of 30 percent of the total trees located on the property. As previously indicated, of the 808 existing trees on the property, the tree conservation plan identifies 355 trees (43.9%) for preservation and 453 trees (56.1%) for removal, the proposal complies with both the current and proposed tree conservation plan preservation requirements. The goal post rule applies in this instance as well.

- B. Traffic Impact and Safety.** Comments received expressed concern with traffic impacts related to the subdivision. Concerns were also expressed regarding the intersection of Hilfiker Street SE and Commercial Street SE, and the proposed intersection of Battle Creek Road SE and Hilfiker Street SE.

**Staff Response:** Addressing traffic safety, the applicant submitted a traffic impact analysis that demonstrated what improvements needed to be made to mitigate the traffic impacts from the proposed subdivision. All interior and abutting streets are being constructed to meet Public Works Design Standards, except where alternative street standards have been authorized.

The City of Salem has recognized the lack of east-west connectivity in this area. The Salem Transportation System Plan has long identified this extension of Hilfiker Lane as necessary to provide the missing east-west connectivity. The nearest east-west connections are Madrona Avenue SE and Kuebler Boulevard SE. The street was originally classified as a "minor arterial" street. The design of a "minor arterial" street has one travel lane in each direction with a center two-way-left-turn-lane, bike lanes, no on-street parking, and single-family residential driveways are not allowed. About 10 to 15 years ago, the neighborhood association requested that the City downgrade the street to a "collector" street. The design of a "collector" street is one lane in each direction, bike lanes, with provisions for on-street parking (collector B), and single-family residential driveways are allowed.

Per the City of Salem Street Design Standards, the design speed for a "minor arterial" is 45 MPH, meaning the curves would be very flat and would encourage faster traffic along this extension of Hilfiker Lane. The design speed for a "collector" street is 35 MPH, but the developer has requested a "design exception" to allow for a design speed of 25 MPH. At a design speed of 25 MPH the curves are considerably sharper



than for a “minor arterial” and will encourage slower travel speeds. The addition of on-street parking and driveways along the roadway will also naturally slow traffic along this route.

The City of Salem will be rebuilding the intersection of Hilfiker Lane SE and Commercial Street SE. The intersection will have a new traffic signal with eastbound and westbound left turn lanes on Hilfiker Lane. This project is expected to be constructed in 2023-2024. The Traffic Impact Analysis accurately reflects the operational conditions of the improved intersection including the traffic generated from this site.

There will be additional traffic using this new connection between Commercial Street and Battle Creek Road but estimating that number of vehicles is impossible to predict. Those additional vehicles that will be traveling along the new extension of Hilfiker Lane, are existing traffic that is being diverted. These vehicles will alleviate congestion on Madrona Avenue SE, Kuebler Boulevard SE and will certainly reduce the number of vehicles that currently cut-through the residential neighborhood using Suntree Drive SE, Mandy Avenue SE, and Albert Drive SE.

This development is not responsible to mitigate existing traffic issues; they are required to mitigate the impacts from their development. The traffic counts used in the analysis is the best information available. Given the on-going COVID-19 Pandemic, traffic volumes have decreased. Kittelson & Associates used the best methodology to adjust traffic volumes upwards to account for Pandemic traffic. The traffic volumes were adjusted upwards on Battle Creek Road by 41% and by 24% on Commercial Street. They were additionally grown by 1.5% per year to reflect general background growth of traffic in Salem.

The improvements at the intersection with Battle Creek Road and Hilfiker Lane will be constructed to ensure there is adequate sight distance for the vehicles turning left from Battle Creek Road, as well as vehicle turning onto Battle Creek Road from Hilfiker Lane.

- C. Loss of Wildlife Habitat and Open Space.** Several comments received express concern regarding the loss of wildlife habitat and open space that will result from tree removal, grading, and development of the subject property.

**Staff Response:** The subject property is located within the Urban Growth Boundary and within Salem City Limits and has been designated on the City of Salem Comprehensive Plan Map as “Single Family Residential”, which anticipates existing or future residential development similar to the subdivision proposed with this application. Loss of wildlife habitat is not a criterion for granting or denying a phased subdivision tentative plan.

In regard to impacts on open space, the Salem Area Comprehensive Plan has adopted goals, policies, and plan map designations to protect identified open space areas. The subject property has not been identified as a natural open space area. Instead, the Comprehensive Plan Map designates the subject property as “Single Family Residential”, and the site has been zoned RS (Single Family Residential).



While the subject property is mostly undeveloped with one home on approximately 29.68 acres, the subject property is surrounded by an already developed residential area within the corporate limits of the City of Salem and as the City continues to grow, development is expected to occur in areas designated for residential development.

- D. Parks.** Several comments received suggested that the property should remain as dedicated open space with walking trails, bike paths, and could be used as an extension of abutting Hilfiker Park.

**Staff Response:** The subject property is served by Hilfiker Park, which is an undeveloped park site located southeast of and abutting the subject property. Though many neighborhood comments express a desire for the subject property to be used as park land, there is no regulatory authority to require that the applicant dedicate all or a portion of the subject property to the City for use as park land. Recent park acquisitions in the area include a community park in the Fairview Development District to the north and a neighborhood park near the intersection of Reed Road and Battle Creek Road.

- E. Impact on Neighborhood Character and Livability.** Several comments received expressed concern about the impact the proposed subdivision will have on adjacent properties and the character of the existing neighborhood due to loss of open space and development of a higher density development with smaller lots sizes than those in the surrounding area.

**Staff Response:** The single-family dwelling parcels proposed within the subdivision range from approximately 4,000 square feet to approximately 3.64 acres in size, which is consistent with the minimum lot size requirement of 4,000 square feet. Their size and layout are consistent with the expected development pattern of properties in the "Single Family Residential" Comprehensive Plan Map designation and RS (Single Family Residential) zone. There is no approval criterion or development standard which requires single family residential lots to resemble adjacent existing developments.

- F. Climate Action Plan.** Comments received express concern that the 139-lot subdivision, which proposes removal of significant trees and will create additional traffic in the area, is contrary to the City's goals for reducing greenhouse gas emissions.

**Staff Response:** While the Salem Area Climate Action Plan will be used to guide policies aimed at achieving community-wide reductions in greenhouse gas emissions, and adoption of the plan may lead to future changes to the City's Unified Development Code, this subdivision application has to be reviewed based on the development standards and tree protection standards that are currently adopted. The proposed single-family subdivision is an allowed use under the current zoning for the subject property, the proposed lots meet minimum lot size and dimensional standards, and the proposed tree removal is consistent with tree removal standards in SRC Chapter 808.

- G. Historic Significance of the Site.** Comments received express concern for development of the property given the historic significance of the site.

**Staff Response:** The subject property does not contain any known archaeological sites; however, the area is within a high probability archaeological zone, so an Inadvertent Discovery Plan would be required for any ground disturbing activity associated with development. The existing house is not designated as a Salem Historic Resource; therefore, SRC Chapter 230 does not apply to the proposed development. However, the house was built in 1915 and could be eligible for designation as a local historic resource.

- H. Support for Increased Residential Density.** Comments received indicate that the proposed subdivision does not go far enough to address housing affordability an accessibility and that multi-family residential development should be required for this property.

**Staff Response:** The subject property is currently zoned RA (Residential Agriculture) and will change to RS (Single Family Residential) upon recording of a final subdivision plat. The RA and RS zones do not permit multi-family residential uses. While the community needs more diverse housing options, including multi-family residential development, the City must evaluate development requests as designed by the applicant for conformance with approval criteria and development standards. The City cannot require an applicant to develop a use that is not permitted under current zoning regulations. The City is required to allow middle housing (duplex, triplex, quadplex, townhouse and cottage cluster developments) in the RS zone with the passage of House Bill 2001. The City is expected to adopt regulations that comply with House Bill 2001 by the end of the year. The proposed lots are of sufficient size to each allow a duplex, at a minimum. The developer or future building has the option of building middle housing if they choose.

- I. Impact of Stormwater Runoff.** Comments received express concern regarding potential stormwater, drainage and flooding impacts on adjacent properties.

**Staff Response:** As described in further detail in findings included under Section 9 of this decision regarding compliance with the standards set forth in SRC Chapter 71 (Stormwater), the proposed subdivision is required to meet flow control requirements which limit runoff to levels not exceeding pre-existing conditions. The applicant's engineer is required to demonstrate that there is no increase in stormwater runoff from the subject property based on a variety of storm frequencies up to a 100-year storm. All stormwater infrastructure, including flow control and treatment facilities, will be constructed pursuant to Public Works Design Standards.

- J. School Capacity.** Comments received express concern regarding the impact the proposal will have on school capacity.

**Staff Response:** Salem-Keizer Public Schools has reviewed the proposal and provided a memo dated September 29, 2021, included in the attachments, which outlines the anticipated impact of the proposed development on the school district. The City and the School District work closely together on development potential and



impacts on school capacity. However, school capacity is not an approval criterion for a tentative subdivision and cannot be applied as such to this application.

- K. Meyer Family Trust.** Questions and concerns were received regarding the applicant's authority to submit the subdivision application.

**Staff Response:** Land use applications are required to be submitted on an application form containing the signature of the applicant(s), owner(s) of the subject property, and/or duly authorized representative(s) thereof authorizing the filing of the application. In addition, recorded deed or land sales contract with a legal description, and a current title report for the property are required for submittal of a tentative subdivision application.

The land use application form for this subdivision request was signed by Michelle M. Morrow. Documentation provided by the applicant indicates that title to the fee simple estate is vested in Michelle M. Morrow, Successor Trustee of the Henry A. Meyer Revocable Living Trust. The applicant has satisfactorily demonstrated they have authority to act on this request.

**The following is a summary and response to issues following the close of the January 10, 2022 public hearing regarding significant trees on the subject property, the impact of shifting the alignment of Hilfiker to the north and west to avoid a grove of significant trees, and a response to other transportation related concerns.**

- A. Significant Tree Update.** On January 27, 2022, City staff visited the site to verify the accuracy of the applicant's tree plan.

A total of 64 significant trees were observed on the subject property and the abutting right-of-way for 12<sup>th</sup> Street SE.

Using the latest tree plan provided by the applicant, staff found that 48 of the significant trees were correctly identified (37 to be preserved and 11 to be removed). Staff found 16 additional significant trees not identified as significant on the tree plan (10 to be preserved and 6 to be removed). Staff also noted that 10 of the trees identified as significant trees on the tree plan were not found to be significant, four of the trees have a dbh less than 24 inches, two significant trees were windthrown (dead on the ground), three significant trees were located off-site on adjacent property, and one tree was misidentified as an Oregon white oak but was actually a Douglas Fir.

Based on feedback provided by the staff visit, the applicant has provided an updated final tree inventory dated February 2, 2022 (Attachment 4).

Of the 64 trees observed on the subject property and abutting right-of-way for 12<sup>th</sup> Street SE, a total of 47 significant trees are proposed to be preserved and 17 significant trees are proposed for removal for a preservation rate of 73.4 percent.



The table below identifies the significant trees proposed for removal, the corresponding page number identifying the location of the significant tree on site, the dbh, and the reason for removal.

Tree and Page Number	DBH	Reason for Removal
2578, P3.3	25	12 <sup>th</sup> Street widening
2579, P3.3	38	12 <sup>th</sup> Street widening
2823, P3.4	32	Grading and development of Lot 40
2825, P3.4	24	Grading and development of Lot 41
2827, P3.4	37	Grading and development of Lot 41
2834, P3.4	28	Grading and development of Lot 43
3141, P3.4	27	Grading and development of Lot 58
3143, P3.4	26	Grading and development of Pedestrian pathway between lots 57 and 58
3146, P3.3	24+	Construction of Hilfiker Lane
3162, P3.3	32	Grading and development of Lot 59
3194, P3.3	27	Construction of Hilfiker Lane
3213, P3.3	42	Grading and development of Lot 60
3228, P3.3	34	Grading and development of Lot 62
3242, P3.3	25	Grading and development of Lot 64
3243, P3.3	24	Grading and development of Lot 63
4932, P3.1	32	Grading and development of Lot 96
5546, P3.1	24	12 <sup>th</sup> Street widening

**B. Realignment of Hilfiker Lane SE.** Comments submitted into the record suggest that the alignment for Hilfiker could be shifted to the north-west to avoid the grove of significant trees.

Staff has reviewed the design alternative provided in the public comments. There is not enough detail provided for the street alignment, grade, and curvature to provide a meaningful response. There are a few things that could be affected.

1. It appears the curves on Hilfiker Lane would get sharper. Hilfiker Lane is designated as a collector street in the Salem Transportation System Plan (TSP). The design speed for a collector street is 35 MPH and the minimum centerline radius for a collector street is 510 feet. The alignment for Hilfiker Lane currently put forth by the applicant requires a design exception to reduce the speed to 25 MPH and minimum centerline radius to 200 feet. Because of the residential nature of this street, with driveways along both sides and on-street parking, staff is supportive of a design speed of 25 MPH.

If the curves along Hilfiker Lane are relocated to the north-west and become sharper, the street may not be able to meet even the 25 MPH design speed. Staff would not likely support a design speed of less than 25 MPH for a collector street.

2. If Hilfiker Lane were to be realigned, it would require the tentative subdivision plan to be redesigned. The number of lots would likely be reduced, and other internal local streets serving the subdivision would need to be realigned as well. Changes



in grade to Hilfiker Lane may affect other connecting streets.

3. The applicant has provided a memo title, "Meyer Farm: Shifting Hilfiker Lane alignment in order to preserve significant trees" dated February 1, 2022.

**C. Additional Transportation Related Items.**

City staff response to four major transportation questions raised during the review of this application are included below.

1. Intersection Site Distance at Battle Creek Road SE/Pringle Road SE. Staff does not believe there is a sight distance issue at this intersection. Requirements for intersection site distance are based upon the American Association of State Highway and Transportation Officials (AASHTO) "A Policy of Geometric Design of Highways and Streets." The sight distance evaluation criteria in AASHTO uses the "design speed" rather than "posted speed." The intersection of Battle Creek Road SE and Pringle Road SE is classified as a minor arterial. The City of Salem Design Standards require that arterial streets are designed for 45 MPH. The posted speed along this segment of roadway is 40 MPH.

There are three difference movements that need to be evaluated at this new intersection of Hilfiker Lane SE and Battle Creek Road SE/Pringle Road SE, assuming a design speed of 45 MPH, the following cases have been evaluated and shown to provide adequate sight distance at this new intersection:

- a. The left turn from the minor roadway (driver on Hilfiker Lane). Minimum Intersection Site Distance (ISD) required = 500 feet. Sight distance available is greater than 500 feet looking to the right.
- b. The right turn from the minor roadway (driver on Hilfiker Lane). Minimum ISD required = 430 feet. Sight distance available is greater than 500 feet looking to the left.
- c. The left turn from the major roadway (driver on Battle Creek Road). Minimum ISD = 365 feet. Sight distance available is greater than 400 feet looking straight ahead.

When Battle Creek Road/Pringle Road is widened, the improvements will shift the northbound left turn to the west into the current southbound lane and will dramatically improve the sight distance for this movement. Even though there is a downhill grade on Battle Creek Road approaching this new intersection, the grade of the road is not a factor in evaluating ISD per AASHTO.

2. Impact of Background Growth on Traffic Volume. Development of the Kuebler Gateway Shopping Center (Costco) has been approved and construction is underway, with planned openings scheduled early this year. The transportation improvements required to be constructed with this development adequately mitigate their traffic. The traffic generated by Costco that will be traveling along the Battle Creek Road corridor is considered background traffic. The proposed subdivision cannot be responsible for mitigating background traffic growth and to account for every potential development that may be contemplated in the vicinity. The background growth and the COVID adjustments used in the applicant's Traffic



Impact Analysis more than accommodate general traffic growth in this area.

3. Extension of Hilfiker Lane SE. The Hilfiker Lane SE extension has been identified in the Salem Transportation System Plan since at least 1992. Previously, Hilfiker Lane was classified as a minor arterial, but was downgraded to a collector street to better accommodate a neighborhood street. As discussed, there may currently be a considerable amount of “cut through” traffic that uses the neighborhood to the north that connects Commercial Street SE and Pringle Road SE. When the extension of Hilfiker Lane is complete, there will likely be a reduction of the “cut through” traffic on Suntree Drive SE, Mandy Avenue SE and Albert Drive SE.
4. Grade for 12<sup>th</sup> Street SE. As a condition of approval, the proposed development must make improvements to the streets along their boundary. 12<sup>th</sup> Street SE is a boundary street along the western boundary of the subject property. The City will require the street to be widened 15 feet from centerline along the developer's portion of the 12<sup>th</sup> Street frontage and will require construction of curb and sidewalk and installation of streetlights with this improvement. The resulting improvement will include one standard width travel lane in each direction.

The current City standard for the grade on a local street is 12 percent with a design exception to allow for 15 percent for short distances. The current grade of 12<sup>th</sup> Street is approximately 17 percent. The Dickson's 2<sup>nd</sup> Addition subdivision that platted the existing western half-width street of 12<sup>th</sup> Street was platted in 1954 in Marion County and ultimately was annexed into the City in 1964. The street appears to have been improved in the mid-1960's. In 1964, the standards for street improvements were likely much different than they are now. To require this development to bring this existing non-conforming street to current standards would be a significant improvement. The entire length of 12<sup>th</sup> Street between Lansford Drive SE and Hilfiker Lane SE would need to be regraded. Because the west side of the street is fully developed with homes and driveways, and improvement of this magnitude could have a significant impact to all the driveways and front yards of the existing homes.

## **6. Criteria for Granting a Subdivision Tentative Plan**

The Salem Revised Code (SRC), which includes the Unified Development Code (UDC), implements the Salem Area Comprehensive Plan land use goals, and governs development of property within the city limits. The subdivision process reviews development for compliance with City standards and requirements contained in the UDC, the Salem Transportation System Plan (TSP), and the Water, Sewer, and Storm Drain System Master Plans. A second review occurs for the created lots at the time of site plan review/building permit review to assure compliance with the UDC. Compliance with conditions of approval to satisfy the UDC is checked prior to approval of the final subdivision plat.

SRC 205.010(d) and 205.015(d) sets forth the criteria that must be met before approval can be granted for a phased subdivision tentative plan request. The following subsections are organized with approval criteria shown in bold, followed by findings of fact upon which the City Council's decision is based. The



requirements of SRC 205.010(d) and 205.015(d) are addressed within the specific findings which evaluate the proposal's conformance with the applicable criteria. Lack of compliance with the following criteria is grounds for denial of tentative plan or for the issuance of conditions of approval to more fully satisfy the criteria.

**SRC 205.010(d)(1): The tentative subdivision complies with all 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.**

SRC Chapter 510 (Residential Agriculture) and 511 (Single Family Residential):  
The proposed subdivision would divide the 29.68-acre property in two phases with a total of 126 lots and three open space areas. The subject property is currently split zoned RA (Residential Agriculture) and RS (Single Family Residential). SRC Chapter 265.015 provides that any land within an RA zone district that is subject to a subdivision approval shall automatically be re-classified to an RS zone district on the date the subdivision plat is recorded. This provision applies to the RA zoned portion of the subject property. Because the zoning of the subject property will be changed to RS with the recording of the final plat for each respective phase, the following analysis of the subdivision for conformance with the requirements of the UDC is based upon the property being rezoned to RS (Single Family Residential). The development standards of the RS zone are established under SRC 511.010 and are addressed as follows:

**Lot Standards for RS zone (SRC Chapter 511, Table 511-2)**

Requirement	Standard
Lot Area (Single Family)	4,000 square feet
Lot Width	40 feet
Lot Depth (Single family and two family)	Min. 70 feet, max. 300% of av. lot width
Lot Depth (Double frontage lots)	Min. 120 feet, max. 300% of av. lot width
Street Frontage	40 feet, or 30 feet applicable to lots fronting a cul-de-sac or curved street. Not applicable to flag lots.

Proposed lots in the subdivision range from approximately 4,000 square feet to 3.64 acres in size and are in compliance with applicable minimum lot area, dimension, and frontage standards. The proposed lots within the subdivision are also of sufficient size and dimension to permit future development of uses allowed within the RS zone.

**Setback Requirements:** SRC Chapter 511 establishes the following setback standards for development within an RS (Single Family Residential) zone:

Front Yards and Yards Adjacent to Streets:

- Minimum 12 feet (minimum 20 feet when adjacent to a street designated 'Collector', 'Arterial', or 'Parkway')
- Minimum 20 feet for garages

Rear Yards:

- Minimum 14 feet (for any portion of a main building not more than one story in height); or
- Minimum 20 feet (for any portion of a main building greater than one story in height)

Interior Side Yards:

- Minimum 5 feet

Setback requirements for future development will be reviewed at the time of application for building permits on individual lots.

SRC Chapter 800 (General Development Standards):

SRC 800.020 (Designation of Lot Lines): SRC 800.020 establishes front lot line designation requirements for corner lots, double frontage lots, flag lots, and all other lots. Corner lots are lots located at the intersection of two or more streets, typically with street frontage on two sides. Provided that lot dimension standards are met, the front lot line for a corner lot shall be the property line abutting a street designated by the building permit applicant. The following proposed lots are corner lots; due to the proposed lot configuration and dimensions, the front lot lines shall be designated as conditioned below. Corner lots not identified in the table may be designated at the time of building permit by the applicant. The lot numbers indicated in the condition are based on the applicant's tentative plan, actual lot numbers may vary at the time of final plat.

**Condition 3:** The front property lines for corner lots shall be designated as follows:

Lot Number	Front Lot Designation
5	North line abutting Aldridge Ave
6	East line abutting Hillrose St
21	North line abutting Hilfiker Ln
25	North line abutting Hilfiker Ln
39	West line abutting Ramsay Rd
50	North line abutting Hilfiker Ln
69	South line abutting Hilfiker Ln



76	East line abutting Hilfiker Ln
81	North line abutting Drexler Dr
88	South line abutting Drexler Dr
90	South line abutting Drexler Dr
97	South line abutting Walton Wy
108	West line abutting Walton Wy
109	East line abutting Hilfiker Ln
119	North line abutting Walton Wy
121	South line abutting McCollum St
122	North line abutting McCollum St
126	East line abutting Hilfiker Ln
133	East line abutting Hilfiker Ln
134	West line abutting Porter Pl

Proposed lot 66 is a flag lot that takes access from a flag lot accessway. 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. The front lot line for Lot 66 may be designated by the building permit applicant.

The proposed 4.87 acre lot containing the existing homestead (labeled as Area to Remain on the applicant's March 9, 2022 revised tentative plan), is a double frontage lot. The front lot line for this proposed lot shall be the lot line abutting Hilfiker Lane SE.

The proposal conforms to the requirements of SRC Chapter 800.

#### Flag Lots:

SRC 800.025 establishes the following development standards for flag lot accessways serving residentially zoned lots:

<b>Flag Lot Accessway Standards (Residential Zones)</b>		
	<b>1 to 2 Lots Served by Accessway</b>	<b>3 to 4 Lots Served by Accessway</b>
<b>Length</b>	150 ft. Max.	400 ft. Max.
<b>Width</b>	Min. 20 ft.	25 ft. Min.
<b>Paved Width</b>	Min. 15 ft.	20 ft. Min.
<b>Parking</b>	Not Allowed	Not Allowed
<b>Turnaround</b>	Required for flag lot accessways greater than 150 feet in length. <i>(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)</i>	



Proposed lot 66 is a flag lot. As shown on the applicant's tentative subdivision plan, the flag lot accessway is approximately 115 feet in length and located within a 20-foot wide flagpole/easement, in conformance with the standards for flag lot accessways serving 1-2 lots.

In order to ensure the proposed flag lot accessway conforms to the requirements of SRC 800.025(d), the following condition of approval shall apply:

**Condition 4:** The flag lot accessway shall be paved in accordance with the requirements of SRC 800.025(c), Table 800-1. "NO PARKING—FIRE LANE" signs shall be posted on both sides of that segment of the flag lot accessway that is a fire apparatus roadway and "NO PARKING" signs shall be posted on both sides of any remaining portion of the accessway.

SRC 800.025(e) provides that within a subdivision, up to 15 percent of the lots may be flag lots. The proposed phased subdivision tentative plan includes 126-lots with one lot (0.8 percent) proposed to be a flag lot, less than the 15 percent maximum.

#### **(B) City Infrastructure Standards.**

The Public Works Department reviewed the proposal for compliance with the City's public facility plans pertaining to provision of water, sewer, and storm drainage facilities. While SRC Chapter 205 does not require submission of utility construction plans prior to tentative subdivision plan approval, it is the responsibility of the applicant to design and construct adequate City water, sewer, and storm drainage facilities to serve the proposed development prior to final plat approval without impeding service to the surrounding area.

SRC Chapter 71 (Stormwater): The proposed subdivision is subject to the stormwater requirements of SRC Chapter 71 and the revised Public Works Design Standards as adopted in Administrative Rule 109, Division 004. To demonstrate that the proposed parcels can meet the PWDS, the applicant shall submit a tentative stormwater design prior to final plat approval. For a tentative stormwater design, the applicant shall submit infiltration test results, the Simplified Method Form or Engineering Method Report as applicable, and a preliminary site plan showing the building envelope and tentative located of stormwater facilities.

As conditioned below, the proposal meets the requirements of SRC Chapter 71.

SRC Chapter 200 (Urban Growth Management): The Urban Growth Management Program requires that an Urban Growth Area (UGA) Development Permit must be obtained prior to development of property outside the Salem Urban Service Area. The subject property is located inside of the Urban Service Area and is served by adequate City utilities.

SRC Chapter 205 (Land Division and Reconfiguration): SRC 205.035(f) provides that where facilities and common property, including but not limited to, private

streets, parking areas, privately owned pedestrian walkways and bikeways, and landscape strips, are included within the development, the recorded covenants, conditions, and restrictions for the development shall include a provision that such facilities and common property be perpetually operated and maintained by a property owners' association.

The proposed subdivision includes three open space areas: 1) a 0.53 acre open space and stormwater detention area in Phase 1 north of the intersection of Hilfiker Lane and Hillrose Street; 2) a 0.34 acre open space area in Phase 1 accessible by a pedestrian walkway connecting between Hilker Lane SE and Ramsay Road SE; and 3) a 3.14 acre open space area in Phase 2 containing a mapped waterway, natural area, and stormwater detention area located at the northwest corner of the subject property. A private walkway will be provided from Hilfiker Lane SE to Hillrose Street SE. Where these common facilities will be privately owned, the applicant shall include provisions for operation and maintenance of these facilities in compliance with SRC 205.035(f).

**Condition 5:** Recorded covenants, conditions, and restrictions for the development shall be provided prior to final plat approval that shall include a provision that such facilities and common property be perpetually operated and maintained by a property owners' association consistent with the requirements of SRC 205.035(f).

SRC Chapter 802 (Public Improvements): Comments from the Public Works Department indicate that water and sewer infrastructure is available along the perimeter of the site and appears to be adequate to serve the proposed subdivision. Specifications for required public improvements are summarized in the Public Works Department memo (Attachment D).

SRC 802.015 requires development to be served by City utilities designed and constructed according to all applicable provisions of the Salem Revised Code and Public Works Design Standards. The Schematic Utility Plan included in the proposal as application shows that each lot can be served by City utilities designed and constructed according to the applicable provisions of the SRC and PWDS.

SRC Chapter 803 (Streets and Right-of-Way Improvements):

*SRC 803.015 (Traffic Impact Analysis):* The proposed 139-lot subdivision generates more than 1,000 average daily vehicle trips to the Collector street system. Therefore, a TIA was required as part of the proposed subdivision submittal. The applicant provided a TIA prepared by Kittelson and Associates dated July 9, 2021.

*SRC 803.020 (Public and Private Streets):* The applicant proposes for all internal streets within the subdivision to be public streets.



*SRC 803.025 (Right-of-Way and Pavement Widths):* Right-of-way width for streets shall conform to the standards set forth in Table 803-1.

Hillrose Street SE and 12<sup>th</sup> Street SE abut the subject property; both streets do not meet the current right-of-way or improvement width standards for a Local street. In implementing boundary street requirements pursuant to SRC 803.040, conditions of approval require the applicant to dedicate additional right-of-way for 12<sup>th</sup> Street SE and Hillrose Street SE. Hilfiker Lane SE abuts the property to the south. Additional right-of-way will be dedicated along the southern boundary and through the development site for Hilfiker Lane SE in compliance with applicable right-of-way and improvement width standards for a Collector street.

Proposed internal local streets, Drexler Drive SE, Porter Place SE, McCollum Street SE, Mandy Avenue SE, Walton Way SE, Ramsay Road SE, and Aldridge Avenue SE comply with applicable standards for local street right-of-way and pavement width as specified in SRC 803.025.

*SRC 803.030 (Street Spacing):* The street spacing requirements specifies maximum block lengths of 600 feet along one axis, and between 120 feet minimum and 400 feet maximum along the other axis. Street spacing may be increased based on one or more of the conditions set forth in subsection (b).

The applicant is requesting alternative street standards for street spacing and connectivity as follows:

- 1) Along north boundary, approximately 730' between Mandy Avenue SE and Hilfiker Lane SE, exceeds 600 feet.

Existing homes along Roseway Court SE physically preclude streets meeting the spacing requirements meeting the street spacing and connectivity standards, with no physical location for an additional street connection to be made along the northern boundary, this alternative street standard request is consistent with 803.030(b)(2) and 803.035(a)(2).

- 2) Along Hilfiker Lane SE, approximately 980' between Chaparral Drive SE and Ramsay Road SE.

Topography and existing trees in this area make a street connection difficult, consistent with 803.030(b)(1) and 803.035(a)(1). Further, a street connection here would not provide much benefit to vehicles, however the applicant is proposing a mid-block bicycle and pedestrian pathway which provides an equal or better transportation alternative consistent with 803.030(b)(4).

- 3) Along Ramsay Road SE, approximately 680' between Hilfiker Lane SE and Aldridge Avenue SE.

Topography in this area make a street connection difficult, consistent with 803.030(b)(1) and 803.035(a)(1). Further, a street connection here would not provide much benefit to vehicles, however the applicant is proposing a mid-block

bicycle and pedestrian pathway which provides an equal or better transportation alternative consistent with 803.030(b)(4).

- 4) Along Hillrose Street SE, approximately 810' between Hilfiker Lane SE and Aldridge Avenue SE.

Topography in this area make a street connection difficult, consistent with 803.030(b)(1) and 803.035(a)(1). Further, a street connection here would not provide much benefit to vehicles, however the applicant is proposing a mid-block bicycle and pedestrian pathway which provides an equal or better transportation alternative consistent with 803.030(b)(4).

- 5) Along 12<sup>th</sup> Street SE, approximately 675' between northwest boundary and Drexler Drive SE.

The applicant is proposing to leave an open space area approximately 3.14 acres in size in the northwest corner along 12<sup>th</sup> Street SE. Due to topography, wetlands, and mapped waterway in this open space area, a street connection would be impractical, consistent with 803.030(b)(1) and 803.035(a)(1).

*SRC 803.035 (Street Standards):* All public and private streets are subject to the street standards in this section.

**Finding:** Subsection (a) requires streets within the subdivision to provide connectivity to existing streets and undeveloped properties within the vicinity of the subject property. With the exception of alternative street standards granted for connectivity identified above, the proposed subdivision provides for adequate street connectivity in compliance with 803.035(a).

The tentative subdivision plat shows property line sidewalks for all proposed internal local streets, except for two cul-de-sac bulb areas where the sidewalk shifts to curbline, which is consistent with SRC 803.035(l). Generally, sidewalks along the frontage of lots platted for single family residential development are installed at the time of home construction. This allows eventual building permit applicants for single family dwellings to select driveway alignment and apron placement along the lot frontage prior to installing sidewalks.

The applicant is requesting an alternative street standard for the sidewalk along 12<sup>th</sup> Street SE to allow a portion of the sidewalk to be constructed at the curbline instead of the property line. The Public Works Department memorandum indicates that the change in sidewalk location is warranted along the portion of 12<sup>th</sup> Street SE abutting the natural area due to topographic constraints to limit the need for steep side slopes or retaining walls and to limit the impact to existing trees and the riparian area consistent with SRC 803.035(l)(2)(B).

The applicant is proposing an alternative street standard to increase the street grade for 12<sup>th</sup> Street SE from a maximum of 12% for a Local street to 17.9%, and for Hilfiker Street SE from a maximum of 8% for a Collector street to 9.3%. Pursuant to SRC 803.065(a)(3), the Director may authorize the use of one or more



alternate street standards where topography or other conditions make the construction that conforms to the standards impossible or undesirable. The alternative street standards requested are due to existing topography, trees, improvements, and other constraints on the subject property that would make compliance with the standard impossible or undesirable, meeting the criteria for approval of an alternative street standard.

A 10-foot-wide public utility easement is required along street frontages pursuant to SRC 803.035(n). As shown on the Wildridge subdivision plat, a one-foot-wide reserve strip is located along the north line of Hilfiker Lane SE. As shown on the Georgetown subdivision plat, a one-foot-wide reserve strip is located along the southerly terminus of Mandy Avenue SE. As shown on the Dickson's Addition subdivision plat, a one-foot-wide reserve strip is located along the east line of 12<sup>th</sup> Avenue SE. As shown on the R.M. Tone Subdivision plat, a one-foot-reserve strip is located along the west line of Hillrose Avenue. The applicant shall coordinate with the City to eliminate the reserve blocks located along the existing rights-of-way abutting the subject property.

**Condition 6:** Provide a 10-foot public utility easement along the street frontage of all internal streets.

**Condition 7:** Coordinate with the City to eliminate the reserve blocks located along the existing rights-of-way abutting the subject property.

*SRC 803.040 (Boundary Streets):* Hilfiker Lane SE, 12<sup>th</sup> Street SE, and Hillrose Street SE are boundary streets, running along the southern, western, and eastern frontage of the subject property.

Hilfiker Lane SE does not meet the current standard for a Collector street, and 12<sup>th</sup> Street SE and Hillrose Street SE do not meet the current right-of-way or improvement standard for a Local street. In implementing boundary street requirements pursuant to SRC 803.040, the applicant is required to dedicate additional right-of-way, provide sidewalk, and other street improvements along all boundary streets.

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

SRC Chapter 601 (Floodplain Overlay Zone): The Public Works Department has reviewed the Flood Insurance Study and Flood Insurance Rate Maps and has determined that no floodplain or floodway areas exist on the subject property.

SRC Chapter 808 (Preservation of Trees and Vegetation): The City's tree preservation ordinance (SRC Chapter 808) protects Heritage Trees, Significant Trees (*including Oregon White Oaks with diameter-at-breast-height of 24 inches or greater*), trees and native vegetation in riparian corridors, and trees on lots and parcels greater than 20,000 square feet.



Under the City's tree preservation ordinance, pursuant to SRC 808.035(a), tree conservation plans are required in conjunction with development proposals involving the creation of lots or parcels to be used for the construction of single family or duplex dwelling units, if the development proposal will result in the removal of trees.

In addition, SRC 808.035(a) requires a Tree Conservation Plan for a development proposal involving the creation of lots or parcels to be used for single-family or two-family uses where trees are proposed for removal. The applicant provided an updated tree inventory for the property on February 2, 2022. The inventory identifies a total of 808 trees on the subject property. The proposal protects all trees and native vegetation in the riparian corridor located at the northwest corner of the subject property.

There are a total of 64 significant trees (Oregon white oaks greater than 24 inches in diameter at breast height) on the subject property and adjacent right-of-way. Of the 64 significant trees, six are identified for removal due to the required street improvements and grading and trenching for a required public utility easement. The table below identifies the significant trees proposed for removal, the diameter at breast height (DBH), and the reason for removal.

Tree Number	DBH	Reason for Removal
2578	25	12 <sup>th</sup> Street widening
2579	38	12 <sup>th</sup> Street widening
3143	26	In path of required public utility easement (PUE).
3146	24+	Construction of Hilfiker Lane
3194	27	Construction of Hilfiker Lane
5546	24	12 <sup>th</sup> Street widening

Trees 2578, 2579, and 5546 are located within the right-of-way for 12<sup>th</sup> Street SE. 12<sup>th</sup> Street SE is an underimproved street that does not comply with City standards for overall right-of-way width, width of the paved improvement, and does not contain sidewalks. As a condition of development, the applicant is required to improve boundary streets that do not comply with City standards. The location of these trees conflict with required improvements on 12<sup>th</sup> Street and must be removed.

Similarly, removal of Trees 3146 and 3196 is necessary for development of the Hilfiker Lane SE extension through the subject property. The extension of Hilfiker Lane is identified as a high priority connection in the Salem Transportation System Plan that is needed to connect between Commercial Street SE and Pringle Road SE. Due to design requirements for this collector street, and physical and topographic constraints on the subject property, it is not possible to relocate or realign this street. The location of these trees conflict with required improvements related to Hilfiker Lane and must be removed.

Finally, the revised tentative plan includes the removal of Tree 3143 located on proposed Lot 57, which is proposed to remain as a developable lot. Removal of



this tree is necessary due to the location of a required 10' wide public utility easement (PUE) and the trenching and grading required to take place in this area for placement of utilities. Removal of Lot 57 would not result in preservation of Tree 3143, as the PUE along Hilfiker Lane cannot be relocated and must be provided along the frontage whether or not Lot 57 is developed.

In addition to the trees located on the subject property, there are also trees located within the existing right-of-way along 12<sup>th</sup> Street SE and Hillrose Street SE. Pursuant to the tree preservation ordinance (SRC Chapter 808), tree conservation plans are required to identify and preserve the minimum required number of trees on the property. Because there are trees located within the existing right-of-way's which are not located on the property, they are not subject to the provisions of SRC Chapter 808 and are not counted toward the total number of trees on the site. These trees are instead considered trees on City owned property and subject to the provisions of SRC Chapter 86. To ensure that the street trees are reviewed under SRC 86, the following condition applies:

**Condition 8:** Trees proposed for removal that are located within the right-of-way of abutting streets shall follow the procedures of SRC Chapter 86.

Final review for conformance with SRC Chapter 808 requirements will occur with the Tree Conservation Plan submitted in conjunction with this subdivision.

SRC Chapter 809 (Wetlands): Grading and construction activities within wetlands are regulated by the Oregon Department of State Lands (DSL) and US Army Corps of Engineers. State and Federal wetlands laws are also administered by the DSL and Army Corps, and potential impacts to jurisdictional wetlands are addressed through application and enforcement of appropriate mitigation measures. SRC Chapter 809 establishes requirements for notification of DSL when an application for development is received in an area designated as a wetland on the official wetlands map.

The Salem-Keizer Local Wetland Inventory (LWI) shows that there are wetland channels and/or hydric soils mapped on the property. Wetland notice was sent to the Oregon Department of State Lands (DSL) pursuant to SRC 809.025. The response from DSL indicates that they are currently reviewing a wetland delineation (WD2021-0342) for the project site. The applicant should contact DSL to verify if any permits are required for development or construction in the vicinity of the mapped wetland area(s).

SRC Chapter 810 (Landslide Hazards): City's landslide hazard ordinance (SRC Chapter 810) establishes standards and requirements for the development of land within areas of identified landslide hazard susceptibility. According to the City's adopted landslide hazard susceptibility maps and SRC Chapter 810 (Landslide Hazards), there are 2 and 3-point mapped landslide hazard areas on the subject property. The proposed single-family residential subdivision adds 3 activity points to the proposal, which results in a total of 5 to 6 points. Therefore, the proposed



development is classified as a moderate landslide risk and requires a geological assessment and/or geotechnical report.

A preliminary geotechnical report, prepared by Geo Consultants Northwest and dated April 13, 2021, was submitted with the subdivision application. This report demonstrates the subject property could be developed without increasing the potential for slope hazard on the site or adjacent properties if constructed based on recommendations included in the report. The engineer shall provide a technical report prior to construction pursuant to SRC Chapter 82 (Clearing and Grading).

Final Plat:

The applicant shall provide the required field survey and subdivision plat per Statute and Code requirements outlined in the *Oregon Revised Statutes* (ORS) and SRC. The applicant is advised that the subject property appears to have several easements that shall be either shown on the final plat or the interest released prior to final plat. If said documents do not comply with the requirements outlined in ORS and SRC, and as per SRC Chapter 205, the approval of the subdivision plat by the City Surveyor may be delayed or denied based on the non-compliant violation. It is recommended the applicant request a pre-plat review meeting between the City Surveyor and the applicant's project surveyor to ensure compliance with ORS 672.005(2)(g)&(h), 672.007(2)(b), 672.045(2), 672.060(4), and *Oregon Administrative Rules* 850-020-0015(4)&(10), 820-020-0020(2), and 820-020-0045(5).

**SRC 205.010(d)(2): The tentative subdivision plan does not impede the future use or development of the property or adjacent land.**

**Finding:** The lots within the proposed subdivision, as proposed and conditioned, are of sufficient size and dimensions to permit future development of permitted, special, or conditional uses in the RS (Single Family Residential) zone SRC Chapter 511. There is no evidence that the subdivision and subsequent development of the lots will adversely affect public services to any surrounding properties. Approval of the subdivision does not impede future use of the subject property or access to abutting properties.

As conditioned, the proposal meets this criterion.

**SRC 205.010(d)(3): Development within the tentative subdivision plan can be adequately served by City infrastructure.**

**Finding:** Water, sewer, and stormwater infrastructure are available along the perimeter of the site and appear to be adequate to serve the property as shown on the applicant's preliminary partition plan. As specified in the conditions of approval, private water, sewer, and storm services shall be constructed to serve each lot as a condition of plat approval. Construction of facilities in the right-of-way is required prior to final plat except as authorized in an improvement agreement per SRC 205.035(c)(7)(B).



**Condition 9:** Construction of facilities in the right-of-way is required prior to final plat except as authorized in an improvement agreement per SRC 205.035(c)(7)(B).

The subject property is located within the S-1 and S-2 water service levels. Water meters serving the S-1 water service level shall be connected to the S-1 water system, and water meters serving the S-2 water service level shall be connected to the S-2 water system except as authorized by Public Works Design Standards (PWDS).

**Condition 10:** Water meters serving the S-1 water service level shall be connected to the S-1 water system, and water meters serving the S-2 water service level shall be connected to the S-2 water system except as authorized by PWDS.

The proposed development is subject to SRC Chapter 71 and the revised PWDS as adopted in Administrative Rule 109, Division 004. To demonstrate the proposed parcels can meet the PWDS, the applicant shall submit a tentative stormwater design prior to final plat approval. For a tentative stormwater design, the applicant shall submit infiltration test results, the Simplified Method Form or Engineering Method Report as applicable, and a preliminary site plan showing the building envelope and tentative location of stormwater facilities.

**Condition 11:** Provide an engineered stormwater design pursuant to SRC 71 and PWDS to accommodate future impervious surface on all proposed lots.

All public and private City infrastructure proposed to be located in the public right-of-way shall be constructed or secured per SRC 205.035(c)(7)(B) prior to final plat approval. Any easements needed to serve the proposed parcels with City infrastructure shall be shown on the final plat.

**Condition 12:** All necessary (existing and proposed) access and utility easements must be shown on the final plat.

As conditioned above, the proposal meets this criterion.

**SRC 205.010(d)(4): The street system in and adjacent to the tentative subdivision plan conforms to the Salem Transportation System Plan.**

**Finding:** Hilfiker Lane SE is a future collector street designated in the Salem Transportation System Plan to be extended through the subject property. Based on topographic constraints, the maximum street grade for Hilfiker Lane shall be 10 percent. Pursuant to the applicant's Traffic Impact Analysis, Hilfiker Lane SE at the intersection of Pringle Road and Battle Creek Road SE shall include an eastbound to northbound left turn lane and an eastbound to southbound right turn lane, and the applicant shall construct a left turn lane from northbound Battle Creek Road SE to westbound Hilfiker Lane SE as described in the applicant's TIA.

Proposed Hilfiker Lane SE, Ramsay Road SE, and Hillrose Street SE may exceed the 600-foot block length and 600-foot street connectivity standards in SRC Chapter 803 based on topographic constraints. A pedestrian access easement as shown on the application materials shall be provided between Hilfiker Lane SE and Ramsay Road SE to mitigate the long block lengths, to be constructed at the time of Phase 1.

The subject property abuts 12<sup>th</sup> Street SE, Hillrose Avenue SE, and Hilfiker Lane SE. Pursuant to SRC 803.040, the applicant is required to convey land for dedication of a 30-foot half-width right-of-way and to construct a half-street improvement along the entire frontage of all abutting streets. The street grade along 12<sup>th</sup> Street SE may exceed the standard of 12 percent because the existing grade of 12<sup>th</sup> Street SE exceeds 12 percent. The sidewalk along 12<sup>th</sup> Street may be located on the curb line because of topographic constraints to limit the need for steep side slopes or retaining walls. The applicant shall construct a three-quarter-street improvement along the frontage of Hillrose Street SE to Local street standards.

To accommodate future access to abutting properties along Hilfiker Lane SE, the applicant shall provide a 30-foot-wide public access easement along the south line of the subject property from Chaparral to the west line of tax lot 083W11BC03200. In order to preserve existing trees, no pedestrian improvements are appropriate at this time to serve future development. The easement may be revoked if permanent transportation facilities are provided in a different alignment upon full build-out of the future phase on the subject property.

The following conditions apply to Phase 1 of the subdivision.

- Condition 13:** Construct Hilfiker Lane SE from the intersection with 12<sup>th</sup> Street SE to the intersection of Pringle Road SE and Battle Creek Road SE to Collector B Street standards and in compliance with PWDS. Hilfiker Lane SE at the intersection of Pringle Road SE and Battle Creek Road SE shall include an eastbound to northbound left turn lane and an eastbound to southbound right turn lane. The maximum street grade for Hilfiker Lane shall be 10 percent.
- Condition 14:** Construct a left turn lane from northbound Battle Creek Road SE to westbound Hilfiker Lane SE as described in the applicant's TIA.
- Condition 15:** Construct internal streets to Local street standards, with the following exceptions: proposed Hilfiker Lane SE, Ramsay Road SE, and Hillrose Street SE may exceed the 600-foot block length and 600-foot street connectivity standards in SRC Chapter 803 as shown on the application materials.
- Condition 16:** Convey land for dedication to equal a half-width right-of-way of 30 feet on the development side of Hillrose Street SE. Construct a



three-quarter-street improvement along the frontage of Hillrose Street SE to Local street standards.

**Condition 17:** From Chaparral to the west line of tax lot 083W11BC03200, provide a 30-foot-wide public access easement along the south line of the subject property. The easement may be revoked if permanent transportation facilities are provided in a different alignment upon full build-out of the future phase on the subject property.

**Condition 18:** Provide a minimum 15-foot-wide pedestrian access easement and construct a minimum 10-foot-wide pedestrian walkway pursuant to PWDS between Hilfiker Lane and Ramsay Road and through the proposed open space.

The following conditions apply to Phase 2 of the subdivision.

**Condition 19:** Construct internal streets to Local street standards.

**Condition 20:** Convey land for dedication to equal a half-width right-of-way of 30 feet on the development side of 12<sup>th</sup> Street SE, including sufficient right-of-way to accommodate public infrastructure at the property corners. Construct a half-street improvement along the frontage of 12<sup>th</sup> Street SE to local street standards except as follows:

- a. The street grade may exceed the standard of 12 percent by matching the existing grade of 12<sup>th</sup> Street SE.
- b. The sidewalk may be located along the curb line abutting the open space area.

The March 9, 2022 revised tentative plan and proposal received from the applicant include additional off-site transportation related conditions of approval that the applicant is requesting the City Council incorporated into this decision to help mitigate traffic impacts on the surrounding neighborhood.

**Condition 21:** As proposed by the applicant, as a condition of Phase 1, the applicant shall construct speed humps on Albert Street SE to City standards in locations approved by the Public Works Department.

**Condition 22:** As a condition of Phase 2, the applicant shall install an all way stop at the intersection of 12<sup>th</sup> Street SE and Lansford Drive SE.

As proposed and conditioned, the subdivision conforms to the TSP. The proposal meets this criterion.

**SRC 205.010(d)(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.**

**Finding:** Conditions above implement required improvements to the street system in and adjacent to the subject property. The proposed network of boundary and internal streets serving the subdivision provides for direct access to all lots within the subdivision. The subdivision, as proposed and conditioned, is served with adequate transportation infrastructure. The street system adjacent to the subject property will conform to the Salem Transportation System Plan, and provide for safe, orderly, and efficient circulation of traffic into, through and out of the subdivision.

The proposal meets this criterion.

**SRC 205.010(d)(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.**

**Finding:** The subject property is served by Hilfiker Park, which is an undeveloped park site located southeast of and abutting the subject property. To provide additional access to the park from Hilfiker Street SE, the applicant shall provide a 30-foot-wide public access easement along the south line of the subject property from Chaparral to the west line of tax lot 083W11BC03200. This easement may be used in the future for access to Hilfiker Park unless the future phase of the subject property is developed prior to the park development.

Construction of Hilfiker Lane through the subject property provides a needed east-west connection in the area, connecting the neighborhoods abutting Battle Creek Road and Pringle Road to Commercial Street SE. Bicycle and pedestrian access will be provided from within the subdivision to shopping areas and transit stops along Commercial Street SE and along Battle Creek Road and Pringle Road.

The proposal meets this criterion.

**SRC 205.010(d)(7): The tentative subdivision plan mitigates impacts to the transportation system consistent with the approved Traffic Impact Analysis, where applicable.**

**Finding:** The proposed 126-lot subdivision generates more than 1,000 average daily vehicle trips to a Collector street system. Therefore, a Traffic Impact Analysis was required as part of the proposed subdivision submittal. The applicant provided a TIA dated July 9, 2021 and prepared by Kittelson and Associates that included the following traffic recommendations to mitigate impact to the transportation system:



- Construct a left-turn lane on Battle Creek Road SE with at least 50 feet of storage at the intersection of Pringle/Hilfiker/Hillrose. The left-turn lane shall include tapers and meet PWDS and sight-distance.
- Hilfiker Lane SE at the intersection of Pringle Road and Battle Creek Road SE shall include an eastbound to northbound left turn lane and an eastbound to southbound right turn lane

The proposal meets this criterion.

**SRC 200.010(d)(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.**

**Finding:** The proposed subdivision has been reviewed to ensure that adequate measures have been planned to alleviate natural or fabricated hazards and limitations to development, including topography and vegetation of the site. The configuration of lots on the subject property makes logical use of developable land. As described in findings, the lot configuration proposed by the applicant meet applicable development standards minimizing the need for any variances. No existing conditions of topography or vegetation have been identified on the site which would necessitate variances during future development of the property. The layout allows for reasonable development of all lots within the subdivision without variances from the UDC.

The proposed homestead lot (4.87-acre lot labelled as “Area to Remain”) is large enough that it could be further divided or developed in the future. The applicant has provided a shadow plan demonstrating that future further division of the lot may readily be made without violating the development standards of the UDC. A complete review for conformance with applicable standards of the UDC will occur at the time a future land use application is submitted.

The proposal meets this criterion.

**SRC 200.010(d)(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.**

**Finding:** The tentative subdivision plan configures lots and streets to allow for residential development of the site while minimizing disruptions to topography and vegetation. The City’s tree preservation standards require that a minimum of 25 percent of existing trees with a diameter at breast height (dbh) of 10 inches or more, the applicant is proposing to retain approximately 430 of the 808 existing trees on site, approximately 53 percent of the total trees. No riparian trees or vegetation are proposed for removal on the subject property.

There are a total of 64 significant trees (Oregon white oaks greater than 24 inches in diameter at breast height) on the subject property and adjacent right-of-way. Of the 64 significant trees, six are identified for removal due to the required street improvements and grading and trenching for a required public utility easement. All other significant trees will be preserved. The proposal meets this criterion.

**SRC 200.010(d)(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.**

**Finding:** The subject property is located inside of the Urban Service Area. Compliance with the City's growth management plan and availability of infrastructure is addressed in this report, an Urban Growth Preliminary Declaration under SRC Chapter 200 is not required. This criterion has been met.

**SRC 205.015(d)(1): The tentative phased subdivision plan meets all of the criteria for tentative subdivision plan approval set forth in SRC 205.010(d).**

**Finding:** The tentative subdivision plan approval criteria set forth in SRC 205.010(d) has been addressed above.

**SRC 205.015(d)(2): Connectivity for streets and City utilities between each phase ensures the orderly and efficient construction of required public improvements among all phases.**

**Finding:** Phase 1 includes dedication and construction of Hilfiker Lane, Ramsay Road, Aldridge Avenue, and boundary improvements to Hillrose Avenue. This phasing plan allows for connection to Battle Creek Road with the first phase and provides access for heavy construction equipment from Battle Creek during construction of Phase 1. Phase 2 includes boundary improvements to 12<sup>th</sup> Street, and dedication and construction of Drexler Drive, Porter Place, McCollum Street, and Mandy Avenue, and Walton Way. Public improvements can be constructed efficiently among all phases.

**SRC 205.015(d)(3): Each phase is substantially and functionally self-contained and self-sustaining with regard to required public improvements.**

**Finding:** Public improvements serving each phase area substantially and functionally self-contained within each phase.

**SRC 205.015(d)(4): Each phase is designed in such a matter that all phases support the infrastructure requirements for the phased subdivision as a whole.**



**Finding:** The subject property is located within the S-1 and S-2 water service levels. Water meters serving the S-1 water service level shall be connected to the S-1 water system, and water meters serving the S-2 water service level shall be connected to the S-2 water system except as authorized by PWDS. The phasing plan allows for S-1 and S-2 water service to be taken from the appropriate service levels. All other infrastructure supports the phased subdivision as a whole.

## **CONCLUSION**

Finally, the City Council makes its final decision based in part on the amended phased subdivision tentative plan submitted by the applicant dated March 9, 2022. As a condition of approval, and to ensure the final plats for the subdivision are in substantial conformance with the plan approved by City Council, the following condition of approval shall apply.

**Condition 23:** Final subdivision plats for the phased subdivision shall be in substantial conformance with the applicant's revised tentative plan dated March 9, 2022, and shall not include proposed lots 58-65 and 40-44 as development lots.

Based upon review of SRC 205.015(d) and the findings presented herein the phased subdivision tentative plan, as proposed and conditioned, complies with the requirements for an affirmative decision.

That Phased Subdivision Tentative Plan Case No. 21-09, which includes the following request:

A phased subdivision tentative plan to divide approximately 29.68 acres into ~~139~~ 126 single family lots ranging in size from 4,000 square feet to ~~3.64~~ 4.87 acres in two phases of development. The applicant is requesting alternative street standards to:

- 1) Increase the maximum grade for Hilfiker Lane SE (Type B Collector Street) from 8 percent to 9.3 percent;
- 2) Increase the maximum grade for 12th Street SE (Local Street) from 12 percent to 17.9 percent; and
- 3) Increase the street spacing and connectivity standards in SRC Chapter 803 to allow proposed Hilfiker Lane SE, Ramsay Road SE and Hillrose Street SE to exceed the 600-foot block length and 600-foot street connectivity standards in SRC Chapter 803.
- 4) Increase the street spacing and connectivity standards in SRC Chapter 803 to allow the frontage along 12th Street SE between the northwest boundary and Drexler Drive SE, and the north boundary of the subject property between Mandy Avenue SE and Hilfiker Land SE to exceed the 600-foot block length and 600-foot street connectivity standards.
- 5) Allow a section of sidewalk along 12th Street SE adjacent to the natural area to be constructed along the curblin instead of the property line.

The subject property is approximately 29.68 acres in size, zoned RA (Residential Agriculture) and RS (Single Family Residential), and located at 4540 Pringle

Road SE - 97302 (Marion County Assessor Map and Tax Lot numbers:  
083W11BC / 03000 and 03200)

Shall be GRANTED as follows:

The phased subdivision tentative plan is **APPROVED** subject to the applicable standards of the Salem Revised Code, the findings contained herein, and the conditions of approval listed below, which must be completed prior to final plat approval, unless otherwise indicated:

- Condition 1:** An Inadvertent Discovery Plan shall be filed with the City prior to any ground disturbing activity associated with development.
- Condition 2:** Lots accessing 12<sup>th</sup> Street SE shall comply with all applicable Fire Department access and fire prevention standards. Dwellings constructed on proposed lots 82-87 shall require installation of fire sprinklers.
- Condition 3:** The front property lines for corner lots shall be designated as follows:

Lot Number	Front Lot Designation
5	North line abutting Aldridge Ave
6	East line abutting Hillrose St
21	North line abutting Hilfiker Ln
25	North line abutting Hilfiker Ln
39	West line abutting Ramsay Rd
50	North line abutting Hilfiker Ln
69	South line abutting Hilfiker Ln
76	East line abutting Hilfiker Ln
81	North line abutting Drexler Dr
88	South line abutting Drexler Dr
90	South line abutting Drexler Dr
97	South line abutting Walton Wy
108	West line abutting Walton Wy
109	East line abutting Hilfiker Ln
119	North line abutting Walton Wy
121	South line abutting McCollum St
122	North line abutting McCollum St
126	East line abutting Hilfiker Ln
133	East line abutting Hilfiker Ln
134	West line abutting Porter Pl

- Condition 4:** The flag lot accessway shall be paved in accordance with the requirements of SRC 800.025(c), Table 800-1. "NO PARKING—FIRE LANE" signs shall be posted on both sides of that segment of the flag lot accessway that is a fire apparatus roadway and "NO PARKING" signs shall be posted on both sides of any remaining portion of the accessway.



- Condition 5:** Recorded covenants, conditions, and restrictions for the development shall be provided prior to final plat approval that shall include a provision that such facilities and common property be perpetually operated and maintained by a property owners' association consistent with the requirements of SRC 205.035(f).
- Condition 6:** Provide a 10-foot public utility easement along the street frontage of all internal streets.
- Condition 7:** Coordinate with the City to eliminate the reserve blocks located along the existing rights-of-way abutting the subject property.
- Condition 8:** Trees proposed for removal that are located within the right-of-way of abutting streets shall follow the procedures of SRC Chapter 86.
- Condition 9:** Construction of facilities in the right-of-way is required prior to final plat except as authorized in an improvement agreement per SRC 205.035(c)(7)(B).
- Condition 10:** Water meters serving the S-1 water service level shall be connected to the S-1 water system, and water meters serving the S-2 water service level shall be connected to the S-2 water system except as authorized by PWDS.
- Condition 11:** Provide an engineered stormwater design pursuant to SRC 71 and PWDS to accommodate future impervious surface on all proposed lots.
- Condition 12:** All necessary (existing and proposed) access and utility easements must be shown on the final plat.
- Condition 13:** Construct Hilfiker Lane SE from the intersection with 12<sup>th</sup> Street SE to the intersection of Pringle Road SE and Battle Creek Road SE to Collector B Street standards and in compliance with PWDS. Hilfiker Lane SE at the intersection of Pringle Road SE and Battle Creek Road SE shall include an eastbound to northbound left turn lane and an eastbound to southbound right turn lane. The maximum street grade for Hilfiker Lane shall be 10 percent.
- Condition 14:** Construct a left turn lane from northbound Battle Creek Road SE to westbound Hilfiker Lane SE as described in the applicant's TIA.
- Condition 15:** Construct internal streets to Local street standards, with the following exceptions: proposed Hilfiker Lane SE, Ramsay Road SE, and Hillrose Street SE may exceed the 600-foot block length and 600-foot street connectivity standards in SRC Chapter 803 as shown on the application materials.
- Condition 16:** Convey land for dedication to equal a half-width right-of-way of 30 feet

on the development side of Hillrose Street SE. Construct a three-quarter-street improvement along the frontage of Hillrose Street SE to Local street standards.

**Condition 17:** From Chaparral to the west line of tax lot 083W11BC03200, provide a 30-foot-wide public access easement along the south line of the subject property. The easement may be revoked if permanent transportation facilities are provided in a different alignment upon full build-out of the future phase on the subject property.

**Condition 18:** Provide a minimum 15-foot-wide pedestrian access easement and construct a minimum 10-foot-wide pedestrian walkway pursuant to PWDS between Hilfiker Lane and Ramsay Road and through the proposed open space.

**Condition 19:** Construct internal streets to Local street standards.

**Condition 20:** Convey land for dedication to equal a half-width right-of-way of 30 feet on the development side of 12<sup>th</sup> Street SE, including sufficient right-of-way to accommodate public infrastructure at the property corners. Construct a half-street improvement along the frontage of 12<sup>th</sup> Street SE to local street standards except as follows:

- a. The street grade may exceed the standard of 12 percent by matching the existing grade of 12<sup>th</sup> Street SE.
- b. The sidewalk may be located along the curb line abutting the open space area.

**Condition 21:** As proposed by the applicant, as a condition of Phase 1, the applicant shall construct speed humps on Albert Street SE to City standards in locations approved by the Public Works Department.

**Condition 22:** As a condition of Phase 2, the applicant shall install an all way stop at the intersection of 12<sup>th</sup> Street SE and Lansford Drive SE.

**Condition 23:** Final subdivision plats for the phased subdivision shall be in substantial conformance with the applicant's revised tentative plan dated March 9, 2022, and shall not include proposed lots 58-65 and 40-44 as development lots.



**BEFORE THE SALEM CITY COUNCIL  
FOR SALEM, OREGON**

**In the Matter of Application by Kehoe  
Northwest Properties LLC for a  
Subdivision Tentative Plan in the RS Zone  
(SUB 21-09).**

**SUPPLEMENTAL FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

**I. INTRODUCTION**

Kehoe Northwest Properties, LLC (the “Applicant”) proposes to develop approximately 29.68 acres into 125 single-family lots ranging in size from 4,000 square feet to 4.87 acres in two phases of development for property located at 4540 Pringle Road SE, commonly known as Meyer Farm (the “Property”). The Project preserves the existing farmhouse and accessory buildings on the Property.

In conjunction with the Project, the Applicant submitted a tentative subdivision application (the “Application”). The Application was reviewed and recommended for approval by the City of Salem (the “City”) Planning Administrator on November 3, 2021 (the “Staff Report”). The Salem City Council (the “Council”) called up the Planning Administrator’s decision and tentatively voted to deny the Application on February 28, 2022, primarily due to the proposed removal of significant trees.

In response to the Council’s tentative denial of the Application the Applicant proposed additional conditions of approval, per Oregon Revised Statute (“ORS”) ORS 197.522(3). The Application with proposed conditions would divide the Property in 125 lots, reduced from 138. The Application with proposed additional conditions also reduced the removal of significant trees from 17 under the original plan to 6 under the revised plan. The Application with the Applicant’s proposed additional conditions of approval are further summarized in the Applicant’s February 21, 2022 final written argument and March 28, 2022 final written argument.

On March 28, the Council conducted deliberations to consider the revised Application and voted to affirm the Planning Administrator’s decision with the Applicant’s proposed additional conditions of approval.

The following supplemental findings of fact and conclusions of law address issues raised during the City Council hearings and incorporate the Staff Reports to the Council, the Applicant’s First Open Record Period Submittal, First Final Written Argument, and Second Final Written Argument.

## **II. PROCEDURAL HISTORY**

On September 13, 2021, City Staff deemed the Applicant's Application complete pursuant to ORS 227.178. On September 17, public notice was posted on the Property pursuant to SRC 300.520(b)(2). On November 3, the City Planning Administrator recommended the Application for approval.

Following the decision of the Planning Administrator, the Council called up the decision for review. On January 10, 2022, the Council held a public hearing and received public testimony regarding the Application. A motion was passed to close the public hearing but leave the record open for additional public comment. The record was left open specifically so that the City and Applicant could verify the tree count on the Property.

On February 28, the Council conducted deliberations and tentatively voted to reverse the Planning Administrator's decision and deny the subdivision tentative plan. Deliberations centered on removal of significant trees per SRC 808.035(d)(1)(B). Following the Council's vote to tentatively deny the Application, the Applicant, citing ORS 197.522, requested an opportunity to revise the subdivision tentative plan and to propose additional conditions of approval. On March 14, the Council voted to reconsider the decision and to reopen the record in the proceeding to allow for additional public comment on the Applicant's revised plan and proposed conditions.

On March 28, the Council conducted deliberations to reconsider the Application and voted to affirm the Planning Administrator's decision with the Applicant's proposed revisions dated March 9, 2022 and proposed additional conditions of approval. The Council hereby adopts the findings of fact and conclusions of law in the Decision in their entirety and these Supplemental Findings.

The 120-day State mandated deadline for final decision has been extended by the Applicant to April 25, 2022.

## **III. DECISION**

The Council APPROVES the Application subject to the conditions of approval in the Final Staff Report and the Applicant's proposed conditions of approval.

## **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

In support of its Decision, the Council adopts the following Supplemental Findings of Fact and Conclusions of Law. The Council hereby adopts and incorporates as part of these Supplemental Findings the Final Findings and Conclusions of law prepared by Staff, the November 3 Staff Report and recommended conditions, the February 28, 2022 Appeal Hearing Staff Report, the Application Narrative, the Applicant's first open record period submittal (**Exhibit 1**) with the enclosed supplemental traffic engineering memoranda, and Applicant's final written



arguments with their respective attachments (**Exhibits 2 and 3**). These exhibits are made a part of these Supplemental Findings except to the extent such exhibits conflict with the legal conclusions in the foregoing Supplemental Findings.

**A. The Subdivision Tentative Plan Meets All Approval Criteria**

This Decision is a limited land use decision under ORS 197.015(12)(a)(A), and as such the Council must only apply the applicable approval criteria and reject arguments that do not address the approval criteria. Therefore, SRC 205.010(d) and SRC 205.015(d) provide the relevant criteria to a subdivision tentative plan. The Council finds the materials referenced above sufficiently explain how the Application satisfies all applicable criteria, and no opponent has provided substantial evidence demonstrating that the criteria are not met.

SRC Chapter 808 codifies the City's tree preservation ordinance. Specifically, SRC 808.035 applies to tree conservation plans and mandates "[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." Such tree conservation plans are to be approved if, among other requirements "[n]o significant trees are designated for removal, unless there [are] *no reasonable design alternatives* that would enable preservation of such trees." SRC 808.035(d)(1)(B) (emphasis added). The Council understands SRC 808.035(d)(1)(B) to mandate either: 1) no significant trees be removed, or 2) if significant trees are proposed to be removed there must be no reasonable design alternative that would allow preservation of such trees.

The Applicant argued that SRC 808.035(d)(1)(B) is not applicable to the Application for two reasons. First, it is not a subdivision tentative plan approval criterion nor embraced in the approval criteria. The Applicant argued that its tree conservation plan was not called up for review, but rather the subdivision tentative plan was, and therefore the only applicable criteria are those that relate to subdivision tentative plans. Second, the Applicant argued SRC 808.035(d)(1)(B) is not "clear and objective" as required by ORS 197.307(4) (the "needed housing statute"). The Applicant argued that it is not clear and objective because the term "reasonable design alternatives" is not defined in the SRC. Further, even if it were, application of such a standard necessarily requires discretion and it is not "clear and objective" on its face as required by the needed housing statute. ORS 227.173(2). Project opponents did not explain how SRC 808.035(d)(1)(B) applies to a subdivision tentative plan, but maintain that it is both clear and objective and that there are reasonable design alternatives that would allow for preservation of significant trees that are proposed to be removed.

The Council does not resolve the issue of whether SRC 808.035(d)(1)(B) is applicable to the Application. Regardless of whether SRC 808.035(d)(1)(B) applies to a subdivision tentative plan, the Council finds that the Application, with the Applicant's proposed conditions, meets the standard for the following reasons.

The Council finds that, at least in this case, the phrase “reasonable design alternatives” means that a significant tree may be removed under this exception only if there is no alternative design for the proposed development that would not otherwise require adjustments or exceptions to the applicable standards or required public or private infrastructure improvements required to serve the development, such as those concerning streets and public utilities. The Council finds that design alternatives are not reasonable if they would create a street system or public utility design that would not meet City standards without exceptions to those standards. The Council also finds that “reasonable design alternatives” must be practically feasible; that is, they would not require excessive grading or topographical alternations to prevent removal of a significant tree. In this instance, the first sentence of the above interpretation is relevant, as explained below.

With the conditions proposed by the Applicant, the six significant trees proposed for removal are in three areas: three within the street section of 12th Street, two within the proposed alignment of Hilfiker Road, and one within the public utility easement fronting Lot 57. There are no reasonable design alternatives that would enable preservation of all six significant trees for three reasons. First, it would be impossible for the Applicant to develop the required boundary street improvements, as required by SRC 803.040, without removal of the significant trees on 12th Street. Second, the Applicant has shown, and City Staff agree, that there are no reasonable design alternatives to the proposed alignment of Hilfiker Lane because such a realignment, as proposed by project opponents, would not meet City engineering design standards. *See* February 28, 2022 Appeal Hearing Staff Report. In so findings, the Council also relies on oral testimony to this effect by City Staff during the Council’s March 28 deliberations. Third, the other trees proposed to be removed are within the required location of the public utility easement along proposed Hilfiker Lane. The Applicant proposed additional conditions of approval, and reduced the number of developed lots in order to preserve all the significant trees it reasonably could, while still meeting street and utility design requirements. **Exhibit 3.** Therefore, Council finds that there are no reasonable design alternatives that could preserve the six significant trees proposed for removal and finds that the Application satisfies SRC 808.035(d)(1)(B).

## **B. Responses to Specific Public Comments**

In addition to the responses to public comments in the Staff Report and Final Findings, these Supplemental Findings provide the following additional responses to arguments raised by project opponents.

### **1. The Application is complete and accurate.**

Opponents raised concerns that the Application is incomplete and inaccurate as evidenced by revisions to the tree conservation plan. There is no prohibition on amending an application in response to public testimony after submittal, even during a public hearing period. In fact, the Council finds that the public notice and hearing procedures in the UDC are intended to facilitate changes to a proposed development in response to public comments and Council concerns. The City Planning Administrator deemed the Application complete on September 13, 2021. No person has argued that the Application is not fundamentally the same application that was deemed



complete, and the Council finds that the roughly 10 percent reduction in lots in the final Application do not make it a different application from what was originally proposed.

The Significant Tree have been verified and confirmed by City Staff. The non-significant trees are not required to be preserved, beyond the requirement to retain an overall 25% minimum, for which the application complies. The Council finds that the inventory of Significant Trees is accurate, and was verified by City Staff and documented in the February 3, 2022 memorandum. There is no evidence of equal weight in the record that trees proposed for removal in the Applicant's tree conservation plan as non-significant trees are, in fact, significant. Therefore, the Council rejects arguments that the application can or should be denied because opponents disagree with the inventory conducted by the Applicant's arborist or the City Forester.

The Oregon Land Use Board of Appeals ("LUBA") has firmly established that submittal requirements, such as tree inventories, are not criteria and any technical deficiency in the measurement of the trees, if not otherwise resolved by the two follow-up visits by the Applicant and City Staff, are not bases for denial. *See Knapp v. City of Jacksonville*, 70 Or LUBA 259 (2014); *see also Broken Top Community Assoc. v. Deschutes County*, 54 Or LUBA 84 (2007). All that is required is evidence in the record sufficient to support a finding of compliance with the approval criteria. *See Broderson v. City of Ashland*, 55 Or LUBA 350 (2007); *see also McNern v. City of Corvallis*, 39 Or LUBA 591 (2001).

## **2. Improvements to Battle Creek Road SE/Pringle Road will not create sight distance issues.**

Opponents raised concerns that there will be sight distance issues once improvements to Battle Creek Road SE/Pringle Road are made.

The Council adopts the findings of the City traffic engineer and the Applicant's traffic engineer that the proposed street improvements will meet City standards including sight distance requirements. **Exhibit 1.** According the Assistant City Traffic Engineer:

"The intersection of Battle Creek Road SE and Pringle Road SE is classified as a minor arterial, and the City's Design Standards require that arterial streets are designed for 45 MPH. The posted speed along this segment of roadway is 40 MPH."

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"[W]hen Battle Creek Road SE/Pringle Road is widened, the improvements will shift the northbound left turn to the west into the current southbound lane and will dramatically improve the sight distance for this movement. Even though there is a downhill grade on Battle Creek Road approaching this new intersection, the grade

of the road is not a factor in evaluating Sight Distance . . . Staff does not believe there is a sight distance issue at this intersection.” *Id.*

The Council concurs with Staff’s findings on this issue and finds that the proposed development can meet all site distance requirements.

**3. Surrounding developments have been approved by the City and improvements constructed in conjunction with those developments adequately mitigate their traffic impact.**

Opponents raised concerns regarding surrounding developments, and the cumulative impact on traffic. The Council finds, based on City engineering staff testimony in an email to the Applicant dated Feb. 10, 2022 (**Exhibit 1**), that the Applicant has adequately analyzed the potential traffic impacts of the proposed development:

“The Costco development was approved by City Council and the improvements that have been constructed adequately mitigate their traffic. The traffic generated by Costco that will be traveling along this corridor is considered background traffic. This development cannot responsible to mitigate background growth and to account for every potential development that may be contemplated in the vicinity. The background growth and the COVID adjustments used in the Traffic Impact Analysis more than accommodate general traffic growth in the area.”

Opponents did not identify any other criterion or standard that would require the Applicant to further study or mitigate traffic impacts caused by background traffic growth or other uses in the city generally. As explained above, City standards require the Applicant mitigate traffic impact from the contemplated Project, but not mitigate the general growth of traffic from other sources in the area. SRC 205.010(d)(7). As explained in the Staff Report(s), the Council finds that this criterion is satisfied.

**4. 12<sup>th</sup> Street SE is an existing non-conforming street.**

As a condition of approval, the proposed development must make improvements to the streets along its boundary. Opponents raised concerns regarding the grade of 12<sup>th</sup> Street SE, appearing to argue that the Application must be denied because 12<sup>th</sup> Street cannot be safely improved.

The Council rejects this argument. 12<sup>th</sup> Street is an existing substandard street and is required to be improved to a local street width and profile pursuant to SRC 803.040, with street surface, curb, gutters, planter strip, and sidewalk. SRC 803.040 is specifically intended to provide for the improvement of existing nonconforming streets that abut developments sites and the fact that 12<sup>th</sup> Street is such a nonconforming street weighs in favor of its improvement, not against it. Moreover,



there is no basis in the UDC for the City to deny an application simply because one of its public boundary streets does not meet current standards.

The UDC and the City's engineering standards do not prohibit improvement of a street that already exceeds current grade maximums, which would apply to construction of a new street. As stated by City engineering staff testimony in an email to the Applicant dated Feb. 10, 2022 (which was included in the record):

"The current City standard for the grade on a local street is 12 percent with a design exception to allow for 15 percent for short distances. The current grade of 12<sup>th</sup> Street is approximately 17 percent. The Dickson's 2<sup>nd</sup> Addition subdivision that platted the existing western half-width street of 12<sup>th</sup> Street was platted in 1954 in Marion County and ultimately was annexed into the City in 1964. The street appears to have been improved in the mid-1960's, and in 1964, the standards for street improvements were likely much different than they are now. To require this development to bring this existing non-conforming street to current standards would be a significant improvement. The entire length of 12<sup>th</sup> Street between Lansford Drive SE and Hilfiker Lane SE would need to be regraded. Because the west side of the street is fully developed with homes and driveways, an improvement of this magnitude could have a significant impact to all the driveways and front yards of the existing homes."

The Council finds that grade standards apply to new streets and that existing streets can be improved to better meet City standards even if their existing grade does not meet current standards. Moreover, in this instance the Council concurs with City engineering staff that it would be infeasible and impractical to require regrading of 12th Street to reduce it to no more than a 12 percent grade, given the existing homes and driveways which currently access the west side of 12th Street.

For the above reasons, the Council finds that (1) 12<sup>th</sup> Street is required to be improved pursuant to SRC 803.040 and (2) that allowance for such improvements at the existing grade are consistent with applicable engineering standards, as explained in the Staff Report. The Council also finds that no opponent has demonstrated with evidence how meeting the required improvement standards for existing boundary streets would prevent the Application from satisfying the applicable criteria. The Council also finds no evidence or argument in the record that it can deny a subdivision application simply because it is bounded by a substandard City local street.

##### **5. The Application meets the criterion to provide safe and convenient bicycle and pedestrian access.**

Opponents raised concerns about bike and pedestrian safety. The City Planning

Administrator determined the Application meets the criterion to provide safe and convenient bicycle and pedestrian access, and the Council adopts that finding. This is accomplished by the extension of Hilfiker Lane, and the provision of a public access easement along the south line of the Property. *Id.* Thus, the Council finds that this criterion is met.

**6. The Traffic Impact Analysis satisfies City intersection performance criteria.**

Opponents raise concerns regarding surrounding intersections and ability to handle increased traffic. Opponents do not cite a specific approval criterion, but rather suggest that surrounding intersections will not be able to handle increased traffic from the Project as well as other surrounding developments.

City Staff found the traffic impact analysis satisfies the City intersection performance criteria. The City will also be rebuilding the intersection of Hilfiker Lane SE and Commercial Street SE in 2023-2024. *Id.* The intersection will have a new traffic signal with eastbound and westbound left turn lanes on Hilfiker Lane. *Id.* Staff found the traffic impact analysis accurately reflects the operational conditions of the improved intersection including the traffic generated from this site. *Id.* Additionally, as explained above, City standards require the Applicant mitigate traffic impact from the contemplated Project, but not mitigate the general growth of traffic from other sources in the area. SRC 205.010(d)(7).

**7. The Hilfiker Lane extension will reduce cut-through traffic on surrounding streets.**

Opponents raised concerns regarding traffic impacts of the Hilfiker Lane extension. Specifically, opponents state that the extension will either attract more traffic to the area in general, or will increase “cut-through” traffic on surrounding streets.

The Council rejects this argument because there is substantial evidence in the record to the contrary. As stated in the Staff Report:

“The Hilfiker Lane SE extension has been identified in the Salem Transportation System Plan since at least 1992. Previously, Hilfiker Lane was classified as a minor arterial, but was downgraded to a collector street to better accommodate a neighborhood street. As discussed, there may currently be a considerable amount of ‘cut through’ traffic that uses the neighborhood to the north that connects Commercial Street SE and Fringle Road SE. When the extension of Hilfiker Lane is complete, there will likely be a reduction of the ‘cut through’ traffic on Suntree Drive SE, Mandy Avenue SE and Albert Drive SE.”

Further, one of the Applicant’s proposed conditions of approval is constructing speed bumps on Albert Drive which helps to alleviate traffic and speed concerns on Albert Drive specifically.



**8. Battle Creek Road SE onto Hillrose will be reconfigured to allow a left-turn.**

Opponents expressed concern that, currently, there is no left turn from Battle Creek Road SE onto Hillrose, and allowing one creates sight distance concerns.

The Council rejects this argument for the following reasons. As explained in the supplemental traffic memo from Kittelson & Associates (included as **Exhibit 1**),

“the intersection of Battle Creek SE and Hillrose Street SE will be reconfigured to accommodate a northbound left-turn movement from Battle Creek Road SE onto Hillrose Street SE. Provision of the northbound left-turn movement is required by the City and is consistent with the adopted *Salem Transportation System Plan, Amended January 13, 2020*. A new dedicated left-turn lane will be constructed on Battle Creek Road SE to facilitate the new turn movement and the Hillrose Street SE approach will be reconfigured in conjunction with the Meyer Farm subdivision as required by the Planning Administrator’s conditions of approval.”

“Provision of a separate left-turn lane on Battle Creek Road SE at the intersection as required by the Project conditions of approval should reduce the potential for rear-end crashes northbound (relative to a condition allowing left-turns but with no turn lane) and improve sight distance for northbound left-turn drivers relative to current conditions.”

“[V]ehicles northbound on Battle Creek Road SE approaching Hillrose Street SE currently have limited available sight distance facing to the north due to the horizontal curve along Battle Creek Road SE.” *Id.*

Based on the above evidence, the Council finds that site distance conditions on Battle Creek are likely to improve with the proposed development. However, even if this is not the case, there is no evidence in the record that the proposed development cannot satisfy any applicable site distance standard.

**9. A “speed and usage” survey on Sylvan Avenue is not required by the approval criteria.**

Opponents raised concerns about improvement of Sylvan Avenue; specifically they argued that no speed and usage survey was done on the street. The Applicant provided a complete transportation impact analysis that identified trip generation on affected intersections and roadways, and City engineering staff have concurred with that analysis. No opponent provided substantial evidence which demonstrates that the proposed transportation improvements will not

provide adequate levels of service in the area.

**10. The Salem Area Climate Action Plan does not relate to the City's approval criteria.**

Opponents expressed concern that the Project is contrary to the Salem Area Climate Action Plan which includes goals for reducing greenhouse gas emissions.

This Decision is a limited land use decision under ORS 197.015(12)(a)(A), and as such the Council must only apply the approval criteria and reject arguments concerning issues that are outside the scope of the approval criteria. Therefore, SRC 205.010(d) and SRC 205.015(d) provide the relevant criteria to the Application. The Salem Area Climate Action Plan is not a criterion for granting or denying a subdivision tentative plan, and therefore does not relate to the City's approval criteria.

**11. Loss of wildlife habitat does not relate to the City's approval criteria.**

Opponents expressed concern regarding the loss of wildlife habitat and open space that will result from tree removal, grading, and development of the subject property.

The Property is located within the Urban Growth Boundary and within Salem City Limits and has been designated on the City of Salem Comprehensive Plan Map as "Single Family Residential," which anticipates existing or future residential development similar to the subdivision proposed with the Application. Further, the Salem Area Comprehensive Plan has adopted goals, policies, and plan map designations to protect identified open space areas. The Property has not been identified as a natural open space area. Instead, the Comprehensive Plan Map designates the subject property as "Single Family Residential," and the site has been zoned Single Family Residential. While the Property is mostly undeveloped with one home on approximately 29.68 acres, it is also surrounded by an already developed residential area within the corporate limits of the City of Salem and as the City continues to grow, development is expected to occur in areas designated for residential development. Project opponents did not identify any particular protections for habitat areas in the UDC that are violated by the Application.

Regardless, this Decision is a limited land use decision under ORS 197.015(12)(a)(A), and as such the Council must only apply the approval criteria and reject arguments concerning issues that are outside the scope of the approval criteria. Therefore, SRC 205.010(d) and SRC 205.015(d) provide the relevant criteria to the Application. Loss of wildlife habitat does not relate to the City's approval criteria.

**12. The proposed condition of approval that would allow the Applicant to preserve all but six significant trees has not "already been denied" by the Council.**



At least one opponent argued that the Application with proposed conditions has already been denied by the Council. This is not correct given the fact that Council had only tentatively voted to deny the Application and no final decision had been made, and the revised Application with proposed conditions was not offered until March 9th, after the Council's tentative denial vote. Under ORS 197.522(3), the Applicant is entitled to offer an amendment or propose conditions of approval to address the concerns of the Council, specifically removal of significant trees in this case. Therefore, the Application with proposed conditions has not already been denied and regardless, project opponents have not identified any restriction on the Council's authority to change its prior tentative vote.

### **13. The Application meets the criteria set forth in SRC 205.010(d).**

At least one opponent argued that SRC 205.010(d) "provides more than a broad injunction to comply with the Comprehensive Plan and UDC."

The Applicant argued that the criteria set forth in SRC 205.010(d) do not provide a basis for denial because the Application satisfied the criteria and they are not clear and objective and therefore inapplicable. The Council does not resolve this argument because it adopts the findings of the City Planning Administrator that all criteria set forth in SRC 205.010(d) are met. Further, this Decision is a limited land use decision under ORS 197.015(12)(a)(A), and as such the Council must only apply the approval criteria and reject arguments concerning issues that are outside the scope of the approval criteria. Therefore, SRC 205.010(d) and SRC 205.015(d) provide the relevant criteria to the Application. No Comprehensive Plan provisions have been specifically incorporated into the approval criteria; therefore, the Comprehensive Plan does not provide a basis for denial.

### **14. There is no applicable criterion or standard that requires final engineering of a storm water conveyance system at the tentative plat stage.**

Opponents express concern regarding potential stormwater, drainage, and flooding impacts on adjacent properties.

This Decision is a limited land use decision under ORS 197.015(12)(a)(A), and as such the Council must only apply the approval criteria and reject arguments concerning issues that are outside the scope of the approval criteria. Therefore, SRC 205.010(d) and SRC 205.015(d) provide the relevant criteria to the Application. There is no applicable criterion or standard that requires final engineering of a storm water conveyance system at the tentative plat stage.

Additionally, the Public Works Department reviewed the proposal for compliance with the City's public facility plans pertaining to provision of water, sewer, and storm drainage facilities. While SRC Chapter 205 does not require submission of utility construction plans prior to tentative subdivision plan approval, it is the responsibility of the applicant to design and construct adequate

City water, sewer, and storm drainage facilities to serve the proposed development prior to final plat approval without impeding service to the surrounding area. SRC Chapter 71 requires the subdivision to meet flow control requirements and also requires all stormwater infrastructure be constructed pursuant to Public Works Design Standards.

Regardless, the Council finds that there is no substantial evidence in the record that the Project will lead to flooding or water drainage issues.

**15. Concerns about the Applicant's and City's compliance with Goal 5 do not relate to the City's approval criteria.**

Opponents raised concerns that the Application and the SRC are out of compliance with Statewide Planning Goal 5 "Natural Resources, Scenic and Historic Areas, and Open Spaces."

The Council rejects this argument because the City's Comprehensive Plan and land use regulations have been acknowledged by the Oregon Land Conservation and Development Commission. This Decision is a limited land use decision under ORS 197.015(12)(a)(A), and as such the Council must only apply the approval criteria and reject arguments concerning issues that are outside the scope of the approval criteria. Therefore, SRC 205.010(d) and SRC 205.015(d) provide the relevant criteria to the Application. There are no significant Goal 5 resources identified on the subject property,<sup>1</sup> but even if there were, compliance with Goal 5 as a general matter does not relate to the City's approval criteria because Goal 5 is implemented through the UDC for limited land use decisions. The Council finds that Goal 5 is not directly applicable to the Application.

**16. Suggestions for alternative uses of the Property do not relate to the City's approval criteria.**

Opponents suggest that the Property should remain as dedicated open space, and could be used as a park or urban farm among other alternative suggestions for use of the land.

This Decision is a limited land use decision under ORS 197.015(12)(a)(A), and as such the Council must only apply the approval criteria and reject arguments concerning issues that are outside the scope of the approval criteria. Therefore, SRC 205.010(d) and SRC 205.015(d) provide

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<sup>1</sup> Although wetlands have been identified on the Property, the City's Goal 5 program defers to removal/fill permits issued by the Oregon Department of State Lands and U.S. Corps of Engineers, as explained in Comprehensive Plan Section N.11: "Salem urban area wetlands shall be identified, inventoried, and documented as to their significance as a resource. Such activities shall be coordinated among the jurisdictions. Appropriate comprehensive plan policies and development regulations shall be adopted by the next periodic review. In the interim development in areas identified as wetlands shall be permitted only to the extent granted by State and Federal regulatory agencies."



the relevant criteria to the Application. Suggestions for alternative uses of the Property, such as a park, do not relate to the City's approval criteria.

**17. Concerns about the historical significance of the Property do not relate to the City's approval criteria.**

Opponents argued that the subject property has particular historical significance and should not be redeveloped.

While the Council recognizes and appreciates the long and rich history of the Meyer Farm property, the Council observes that the Meyer Farm property itself is not protected by any local, state, or federal historical resource designation that would preclude its redevelopment. The Council also observes that most of the existing farm buildings, including the farmhouse, will be preserved under the Application. Therefore, concerns about the historic significance of the site do not relate to the City's approval criteria.

**18. Concerns about cultural resources do not relate to the City's approval criteria.**

Opponents raised concerns regarding the potential that cultural resources may be buried on the property.

This Decision is a limited land use decision under ORS 197.015(12)(a)(A), and as such the Council must only apply the approval criteria and reject arguments concerning issues that are outside the scope of the approval criteria. Therefore, SRC 205.010(d) and SRC 205.015(d) provide the relevant criteria to the Application. However, since the Property is within a high probability archaeological zone, an Inadvertent Discovery Plan is required prior to breaking ground. An Inadvertent Discovery Plan ensures all appropriate Native American tribes will be contacted if there is an inadvertent discovery of human remains or an archaeological artifact during construction pursuant to ORS 97.754(4). There is nothing in the City's approval criteria that require more. Therefore, concerns about cultural resources do not relate to the City's approval criteria.

**19. The Project can be adequately served by City infrastructure.**

Opponents raised concerns regarding the effect of increased density on City infrastructure such as water, sewage, and trash.

This Decision is a limited land use decision under ORS 197.015(12)(a)(A), and as such the Council must only apply the approval criteria and reject arguments concerning issues that are outside the scope of the approval criteria. Therefore, SRC 205.010(d) and SRC 205.015(d) provide the relevant criteria to the Application. SRC 205 does not require submission of utility construction plans prior to subdivision tentative approval. The City Planning Administrator found that the

Property is located inside the City's Urban Service Area and is served by adequate City utilities. Additionally, the Public Works Department reviewed the Application proposal and found that development within the subdivision tentative plan can be adequately served by City infrastructure per SRC 205.010(d)(3). Opponents identify no standards or criteria related to utilities which are not met, and thus the Council finds that the Project can be adequately served by City infrastructure.

**20. The need for middle housing and increased density do not relate to the City's approval criteria.**

Opponents argued that there is a need for middle housing in the City and HB 2001 and 2003 require increased density.

The Council finds that there is no applicable standard requiring the Application to be for "middle housing" or "affordable housing," but finds that the Application is subject to the "Needed Housing Statutes" set forth in ORS 197.307(4). The Property is currently zoned Residential Agriculture and will be zoned Single Family Residential upon the recordation of the final subdivision plat. Both zones allow multi-family residential uses, but neither compel such uses.

Regardless, the standards to be applied to the Application are those were applicable at the time the Application was first submitted. ORS 227.178(3)(a). The City Council passed Engrossed Ordinance Bill No. 13-21, adopting regulations complying with HB 2001 on February 14, 2022, which will allow, but not require, middle housing in the Single Family Residential Zone. These regulations were not applicable to the Application, however, even if the City's implementing regulations were in effect at the time the Application was first submitted, the regulations would not mandate middle housing on the Property.

Finally, this Decision is a limited land use decision under ORS 197.015(12)(a)(A), and as such the Council must only apply the approval criteria and reject arguments concerning issues that are outside the scope of the approval criteria. Therefore, SRC 205.010(d) and SRC 205.015(d) provide the relevant criteria to the Application. The need for middle housing and increased density do not relate to the City's approval criteria.

**21. School capacity does not relate to the City's approval criteria.**

Opponents raise concerns regarding school capacity and ability to handle the increased number of children from the subdivision once developed.

The Council finds that the existing school capacity is not a criterion or development standard. This Decision is a limited land use decision under ORS 197.015(12)(a)(A), and as such the Council must only apply the approval criteria and reject arguments concerning issues that are outside the scope of the approval criteria. Therefore, SRC 205.010(d) and SRC 205.015(d) provide the relevant criteria to the Application. School capacity does not relate to the City's approval



criteria. Regardless, Salem-Keizer Public Schools reviewed the Application and addressed the anticipated impact on the school district.

**22. Aesthetic concerns including the existing character of the neighborhood and loss of views do not relate to the City's approval criteria.**

Opponents raise concerns regarding whether the subdivision will fit in with the existing character of the neighborhood as well as the impact on views.

The Council finds that the existing character of the neighborhood is not a criterion. This Decision is a limited land use decision under ORS 197.015(12)(a)(A), and as such the Council must only apply the approval criteria and reject arguments concerning issues that are outside the scope of the approval criteria. Therefore, SRC 205.010(d) and SRC 205.015(d) provide the relevant criteria to the Application. There is no approval criterion or development standard which requires single family residential lots to resemble adjacent existing development. There is also no approval criterion which requires adjacent existing development maintain views. Thus, such aesthetic concerns do not relate to the City's approval criteria.

**23. Concerns about increased open space attracting crime do not relate to the City's approval criteria.**

At least one opponent suggested that increased open space will attract more crime to the area.

The Council rejects this argument. There is no evidence in the record supporting this claim. This Decision is a limited land use decision under ORS 197.015(12)(a)(A), and as such the Council must only apply the approval criteria and reject arguments concerning issues that are outside the scope of the approval criteria. Therefore, SRC 205.010(d) and SRC 205.015(d) provide the relevant criteria to the Application. Concerns about open space attracting crime do not relate to the City's approval criteria.

**24. Concerns about ongoing Meyer family litigation do not relate to the City's approval criteria.**

Opponents expressed concerns regarding ongoing litigation within the Meyer family, and how it will impact ownership of the property.

The Council rejects these arguments. Land use applications are required to be submitted on an application form containing the signature of the applicant(s), owner(s) of the subject property, and/or duly authorized representative(s) thereof authorizing the filing of the application. In addition, recorded deed or land sales contract with a legal description, and a current title report for the property are required for submittal of a tentative subdivision application. The land use application form for this subdivision request was signed by Michelle M. Morrow. Documentation

provided by the Applicant indicates that title to the fee simple estate is vested in Michelle M. Morrow, Successor Trustee of the Henry A. Meyer Revocable Living Trust. The Applicant has satisfactorily demonstrated they have authority to act on this request.

Additionally, this Decision is a limited land use decision under ORS 197.015(12)(a)(A), and as such the Council must only apply the approval criteria and reject arguments concerning issues that are outside the scope of the approval criteria. Therefore, SRC 205.010(d) and SRC 205.015(d) provide the relevant criteria to the Application. Concerns about ongoing Meyer family litigation do not relate to the City's approval criteria.

**25. Concerns about prior development attempts on the Property do not relate to the City's approval criteria.**

Opponents submitted pre-application materials for prior development attempts on the Property, apparently arguing that other development proposals for this project were rejected in this past.

The Council rejects this argument. This Decision is a limited land use decision under ORS 197.015(12)(a)(A), and as such the Council must only apply the approval criteria and reject arguments concerning issues that are outside the scope of the approval criteria. Therefore, SRC 205.010(d) and SRC 205.015(d) provide the relevant criteria to the Application. Record of prior development attempts and any submittals unconnected with the Application are not in the record and do not relate to the approval criteria.

**26. Concerns about the shadow plat do not relate to the City's approval criteria.**

Opponents raised concerns about the shadow plat not meeting development standards.

The Council rejects this argument. This Decision is a limited land use decision under ORS 197.015(12)(a)(A), and as such the Council must only apply the approval criteria and reject arguments concerning issues that are outside the scope of the approval criteria. Therefore, SRC 205.010(d) and SRC 205.015(d) provide the relevant criteria to the Application. Nothing requires a shadow plat meet the standards of the UDC, only the tentative plat. Therefore, concerns about the shadow plat do not relate to the City's approval criteria.

**V. CONCLUSION**

Based upon the evidence in the whole record and the documents incorporated herein, the Council finds that the Applicant's Application with proposed conditions meets all applicable criteria and is APPROVED on that basis subject to the conditions in the Final Staff Report.