

# NOTICE OF DECISION

PLANNING DIVISION  
555 LIBERTY ST. SE, RM 305  
SALEM, OREGON 97301  
PHONE: 503-588-6173  
FAX: 503-588-6005



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

## DECISION OF THE HEARINGS OFFICER

### CONDITIONAL USE / SUBDIVISION TENTATIVE PLAN / CLASS 2 ADJUSTMENT / CLASS 2 DRIVEWAY APPROACH PERMIT CASE NO.: CU- SUB-ADJ-DAP22-05

APPLICATION NO.: 22-111298-ZO, 22-111309-LD, 22-111312-ZO, 22-111315-ZO

NOTICE OF DECISION DATE: January 12, 2023

**SUMMARY:** Proposed four-lot subdivision with associated site improvements.

**REQUEST:** A consolidated application for a proposed four-lot subdivision with associated site improvements. The application includes:

- 1) A Subdivision Tentative Plan to divide the approximate 1.71-acre property into four lots ranging in size from approximately 5,311 square feet to 47,701 square feet;
- 2) A Conditional Use Permit to allow two of the lots in the subdivision (Lots 2 and 3) which are partially zoned IC (Industrial Commercial) to be developed with single family dwellings;
- 3) A Class 2 Adjustment to:
  - a) Increase the number of flag lots allowed within the subdivision from a maximum of one to two (SRC 800.025(e));
  - b) Designate the south property line of Lot 1 abutting the flag lot accessway as the front lot line rather than the property line abutting Mildred Lane SE (SRC 800.020(a)(1));
  - c) Allow single family dwellings constructed as part of a subdivision to take access onto a minor arterial street (SRC 804.035(c)(4)); and
  - d) Reduce the minimum required 370-foot driveway spacing between Marstone Court SE and the proposed flag lot accessway serving Lots 1, 2, & 3 (SRC 804.035(d)); and
- 4) A Class 2 Driveway Approach permit for the proposed flag lot accessway onto Mildred Lane SE.

The subject property is zoned RA (Residential Agriculture) and IC (Industrial Commercial), approximately 1.71 acres in size, and located in the 1300 Block of Mildred Lane SE (Marion County Assessor Map and Tax Lot Number: 083W14CB02401).

**APPLICANT:** Brandie Dalton on behalf of JCT Construction Group LLC (James Cain, James Tokarski)

**LOCATION:** 1300 Block of Mildred Ln SE, Salem OR 97306

**CRITERIA:** Salem Revised Code (SRC) Chapters 240.005(d) – Conditional Use; 205.010(d) – Subdivision Tentative Plan; 250.005(d)(2) – Class 2 Adjustment; 804.025(d) – Class 2 Driveway Approach Permit

**FINDINGS:** The findings are in the attached Decision dated January 11, 2023.

**DECISION:** The **Hearings Officer APPROVED** Conditional Use / Subdivision Tentative Plan / Class 2 Adjustment / Class 2 Driveway Approach Permit Case No. CU-SUB-ADJ-DAP22-05 subject to the following conditions of approval:

- Condition 1:** Prior to final plat approval, provide evidence demonstrating the proposed lots will be served with adequate fire department access and water supply in compliance with the Oregon Fire Code.
- Condition 2:** The front lot line designation for Lot 2 shall be the south property line and the front lot line designation for Lot 3 shall be the west property line abutting the terminus of the proposed flag lot accessway.
- Condition 3:** Provide an engineered stormwater design pursuant to SRC 71 and PWDS to accommodate new impervious surfaces in rights-of-way and future impervious surfaces on all proposed lots.
- Condition 4:** Construct stormwater facilities pursuant to SRC 71 and PWDS to accommodate new impervious surfaces in rights-of-way and future impervious surfaces on all proposed lots.
- Condition 5:** Along Waln Creek on the subject property, dedicate an Open Channel Drainage Easement. In accordance with PWDS, the easement width shall be either 15 feet from the channel centerline, or 10 feet from the top of the recognized bank, whichever is greater.
- Condition 6:** All necessary (existing and proposed) access and utility easements shall be shown and recorded on the final plat.
- Condition 7:** Dedicate a minimum 20-foot-wide public access easement for a Parks Master Plan Trail in an alignment approved by the Director.
- Condition 8:** The flag lot accessway serving Lots 1-3 shall be developed as shown on the tentative subdivision plan to include a 25-foot-wide paved width together with a 5-foot-wide sidewalk. "NO PARKING—FIRE LANE" signs shall be posted on both sides of that portion 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 9:** The front lot line designation for Lot 1 shall be the south property line abutting the proposed flag lot accessway.
- Condition 10:** Dedicate a vision clearance easement area as shown on the Site Access Analysis submitted with the application and dated October 20, 2022. No structures, fences, or vegetation over 30-inches tall shall be allowed within the vision clearance area.

**Condition 11:** The flag lot accessway serving Lots 1-3 shall include a turnaround as shown on the tentative subdivision plan to ensure forward-in/forward-out movement onto Mildred Lane SE.

The rights granted by the attached decision must be exercised, or an extension granted, by the dates below, or this approval shall be null and void.

Class 2 Driveway Approach Permit:	<u>January 28, 2027</u>
All other case types:	<u>January 28, 2025</u>
Application Deemed Complete:	<u>November 4, 2022</u>
Public Hearing Date:	<u>December 14, 2022</u>
Notice of Decision Mailing Date:	<u>January 12, 2023</u>
Decision Effective Date:	<u>January 28, 2023</u>
State Mandate Date:	<u>March 4, 2023</u>

Case Manager: Bryce Bishop, [bbishop@cityofsalem.net](mailto:bbishop@cityofsalem.net), 503-540-2399

This decision is final unless written appeal and associated fee (if applicable) from an aggrieved party is filed with the City of Salem Planning Division, Room 320, 555 Liberty Street SE, Salem OR 97301, or by email at [planning@cityofsalem.net](mailto:planning@cityofsalem.net), no later than 5:00 p.m. Friday, January 27, 2023. The notice of appeal must contain the information required by SRC 300.1020 and must state where the decision failed to conform to the provisions of the applicable code section, SRC Chapter(s) 240, 205, 250, 804. The appeal fee must be paid at the time of filing. If the appeal is untimely and/or lacks the proper fee, the appeal will be rejected. The Planning Commission will review the appeal at a public hearing. After the hearing, the Planning Commission may amend, rescind, or affirm the action, or refer the matter to staff for additional information.

The complete case file, including findings, conclusions and conditions of approval, if any, is available for review by contacting the case manager, or at the Planning Desk in the Permit Application Center, Room 305, City Hall, 555 Liberty Street SE, during regular business hours.

<http://www.cityofsalem.net/planning>

# Vicinity Map

## 1300 Block of Mildred Lane SE



### Legend

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

Parks

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

This product is provided as is, without warranty. In no event is the City of Salem liable for damages from the use of this product. This product is subject to license and copyright limitations and further distribution or resale is prohibited.

0 100 200 400 Feet



**JCT HOLDINGS LLC**

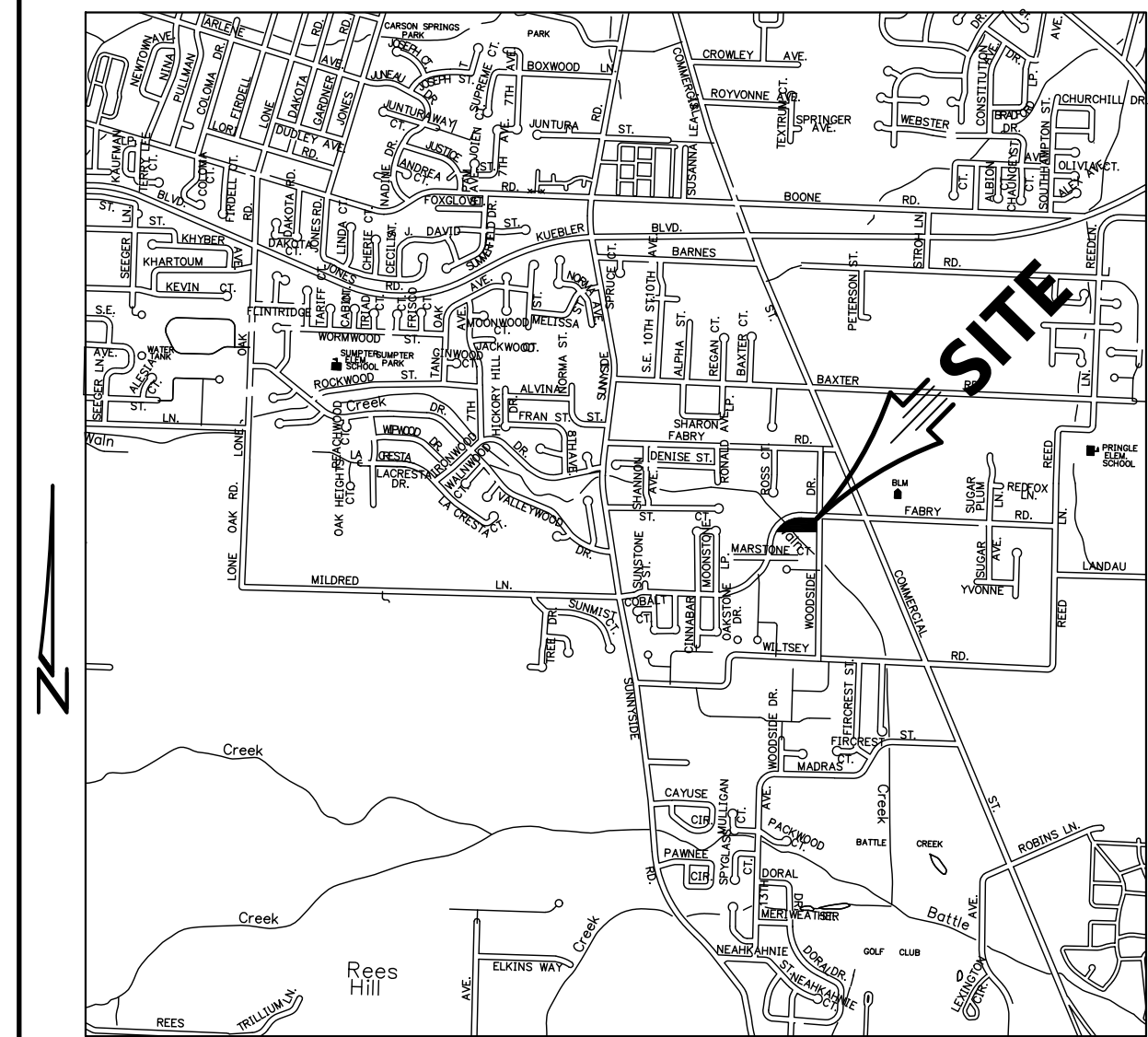
*Engineer:*

***MULTI/TECH ENG.***

**1155 13TH ST SE  
SALEM, OREGON 97302  
503-363-9227**

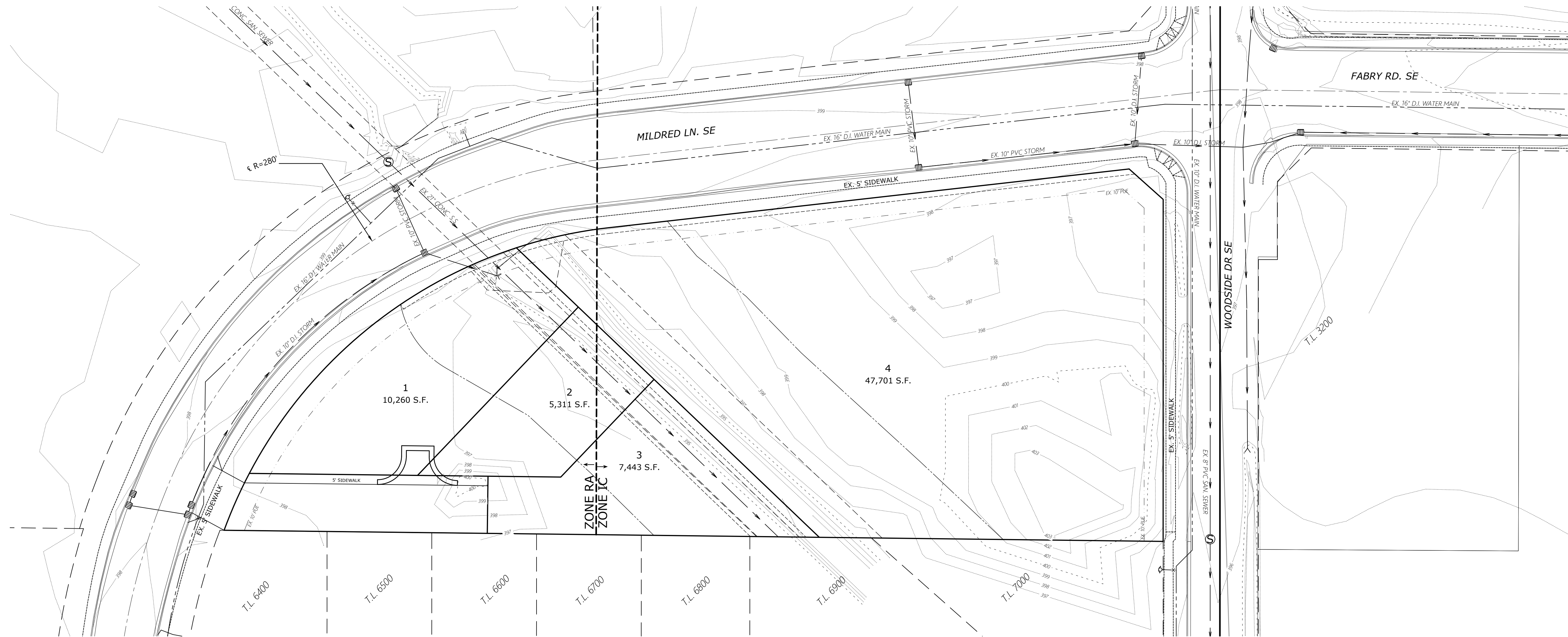
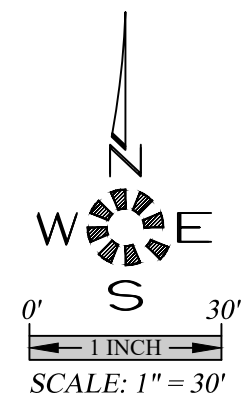
## WALN CREEK CROSSING

**SEC. 14, T. 8 S., R. 3 W., W.M.  
CITY OF SALEM  
MARION COUNTY, OREGON  
74,679 SQ. FT. (7.71 ACRES)**

VICINITY MAP

B.M. 8300

A 2" ALUMINUM DISK LOCATED IN THE  
BEGINNING OF RADIUS OF THE CURB, N.E.  
CORNER OF BAXTER CT. & BAXTER RD.  
ELEVATION: 406.76 (NGVD 29)





## SYMBOLS

EXIST.	PROP.	
		BLOW OFF ASSY.
		CATCH BASIN
		CATCH BASIN INLET
		CATCH BASIN CLEANOUT
		CATV PED. / BOX
		CLEANOUT
		ELEC. PED. / BOX
		FIRE HYDRANT
		GAS LOCATION MARKER
		GAS VALVE
		MAIL BOX

— — — — CABLE TELEVISION  
 — — — — CENTERLINE  
 — — — — DITCH C.L.  
 — — — — ELECTRICAL LINE  
 — — — — GAS MAIN  
 — — — — TELEPHONE LINE

EXIST. PROP.

		MANHOLE SAN. SEWER
		2' DIA. C.O. / M.H.
		MANHOLE TELEPHONE
		MANHOLE WATER
		REDUCER / INCREASER
		TEL. PED. / BOX
		TRAFFIC PED. / BOX
		UTILITY / POWER POLE
		WATER METER
		WATER VALVE

 SANITARY SEWER EXIST.  
 SANITARY SEWER PROP.  
 STORM DRAIN EXIST.  
 STORM DRAIN PROP.  
 WATER MAIN EXIST.  
 WATER MAIN PROP.

## ABBREVIATIONS

A.C.	ASPHALTIC CONCRETE	L.P.	LIGHT POLE
A.C.H.	ALUMINIZED CMP	M	METER, MAIN
ASSY.	ASSEMBLY	M.H.	MANHOLE
B.O.	BLOW OFF	MTL.	METAL
B.F.V.	BUTTERFLY VALVE	O.H.	OVERHEAD
C.B.	CURB & GUTTER	PC	POINT OF CURVE
C.B.T.	CABLE TELEVISION	PC	POINT OF CONTINUING CURVE
C.B.	CATCH BASIN	PED.	PEDESTAL
C.B.C.O.	CATCH BASIN CLEANOUT	PRC	POINT OF REVERSE CURVE
C.B.I.	CATCH BASIN INLET	PROP.	PROPOSED
C.E.	CENTERLINE	PT.	POINT OF TANGENCY
C.M.P.	CORRUGATED METAL PIPE	PUB.	PUBLIC
C.O.	CLEANOUT	PUE	PUBLIC UTILITY EASMT.
CONC.	CONCRETE	P.V.	POLYVINYL CHLORIDE
CONST.	CONSTRUCTION	PVT.	PRIVATE
D.I.	DUCTILE IRON	P.P.C.	POWER POLE
D.I.A.	DIAMETER	P.L.	PROPERTY LINE
DWG.	DRAWING	R.	RADIUS
EASMT.	EASEMENT	R.	RIM
E.G.	EXIST, GRADE / GROUND	RD	ROAD DRAIN
E.O.P.	EDGE OF PAVEMENT	R.O.W.	RIGHT-OF-WAY
ELEC.	ELECTRIC	SAN. S. or S.S.	SANITARY SEWER
ELEV. or EX.	ELEVATION, EXISTING	SLOPE	SLOPE
EX.	EXISTING	STA.	STATION
FT.	FEET	STD.	STANDARD
F.F.	FINISH FLOOR	STEL	STEEL
F.G.	FINISH GRADE	STD.DRN. or S.D.	STORM DRAIN
F.H.	FIRE HYDRANT	SWC	SERVICE
F.M.	FORCE MAIN	SVL	SIDEWALK
GUT. or GTR.	GUTTER	T.C.	TOP OF CURB
G.V.	GATE VALVE	TEL.	TELEPHONE
IMP.	IMPROVEMENT	TYP.	TYPICAL
INST.	INSERT	U.G.	UNDERGROUND
INV. or I-	INVERT	VAULT	VAULT
L	LENGTH, LINE	W.M.	WATER MAIN

**TENTATIVE SUBDIVISION PLAN  
COVER SHEET**

# WALN CREEK CROSSING

NO CHANGES, MODIFICATIONS  
OR REPRODUCTIONS TO BE  
MADE TO THESE DRAWINGS  
WITHOUT WRITTEN  
AUTHORIZATION FROM THE  
DESIGN ENGINEER.

DIMENSIONS & NOTES TAKE  
PRECEDENCE OVER  
GRAPHICAL REPRESENTATION.

Design: M.D.G.  
 Drawn: T.N.S.  
 Checked: J.J.G.  
 Date: MAY 2021  
 Scale: AS SHOWN

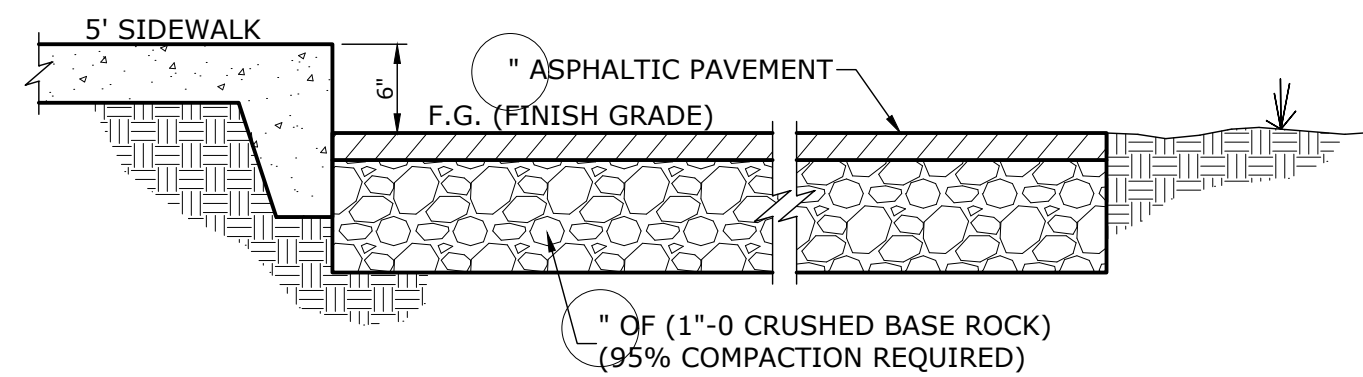
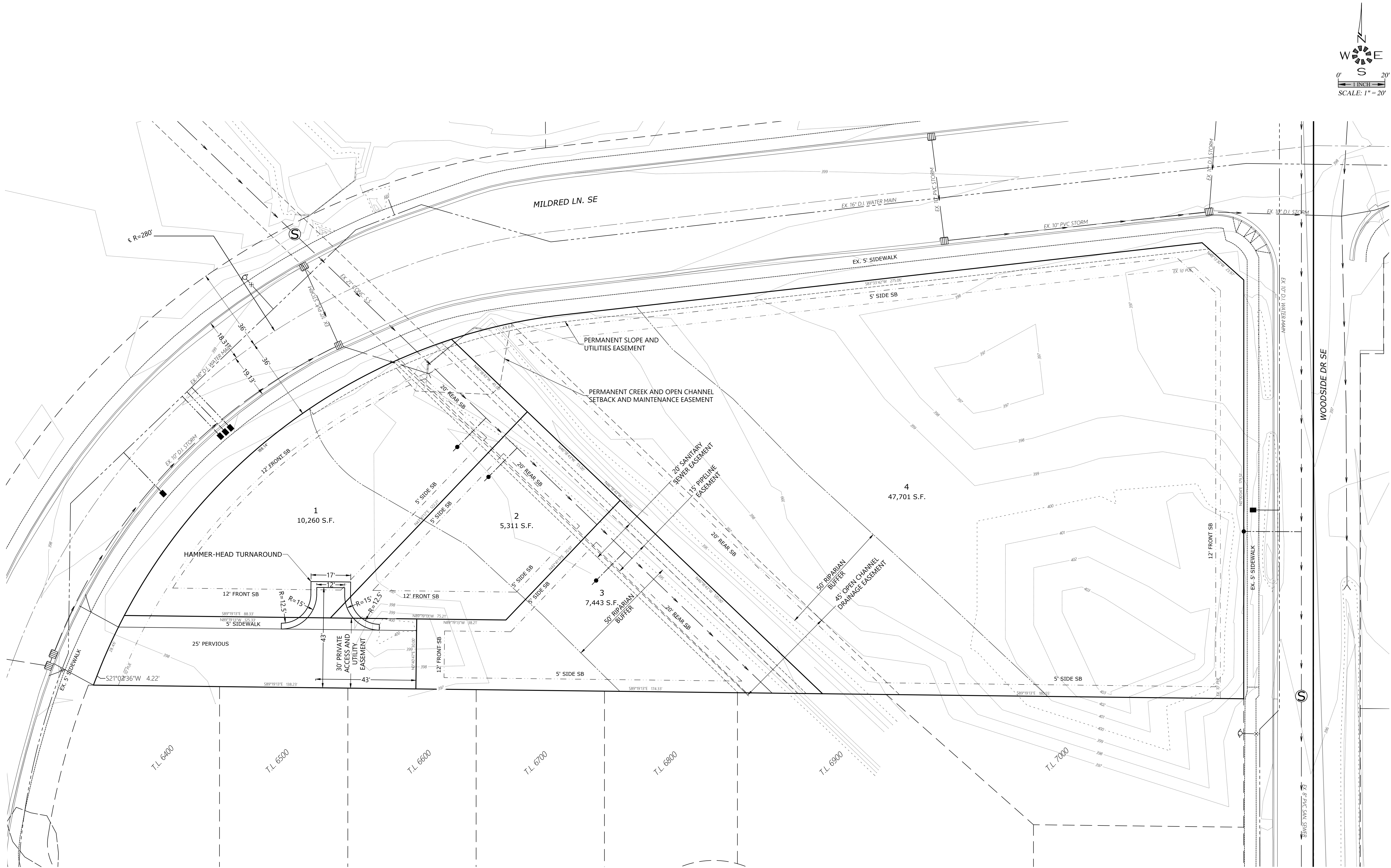
REGISTERED PROFESSIONAL  
ENGINEER  
# 6884  
OREGON  
JUL 14, 1978  
MARK D. GRENT  
EXPIRES: 06-30-2021

JOB # 7025

**1 OF 4**



J:\7025\7025-16-Edmnd.Dwg 2/27/2021 11:26:19 AM C:\



TENTATIVE SUBDIVISION PLAN  
DETAIL PLAN

WALN CREEK CROSSING

NO CHANGES, MODIFICATIONS  
OR REPRODUCTIONS TO BE  
MADE TO THESE DRAWINGS  
WITHOUT THE WRITTEN  
AUTHORIZATION FROM THE  
DESIGN ENGINEER.  
DIMENSIONS & NOTES TAKE  
PRECEDENCE OVER  
GRAPHICAL REPRESENTATION.

Design: M.D.G.  
Drawn: T.N.S.  
Checked: J.J.G.  
Date: MAY 2021  
Scale: AS SHOWN

REGISTERED PROFESSIONAL  
ENGINEER  
No. 1654  
JULY 14, 1998  
OREGON  
HARVEY GREN  
EXPIRES: 06-30-2021

JOB # 7025

**CITY OF SALEM  
BEFORE THE HEARINGS OFFICER**

A PROPOSED FOUR-LOT SUBDIVISION  
WITH ASSOCIATED SITE IMPROVEMENTS  
FOR THE PROPERTY LOCATED AT THE  
1300 BLOCK OF MILDRED LN SE, SALEM  
OR 97306

**CASE NO. CU-SUB-ADJ-DAP22-05**

FINDINGS OF FACT, CONCLUSIONS, AND  
DECISION

**DATE AND PLACE OF HEARING:**

A properly noticed public hearing before the City of Salem Hearings Officer was held remotely December 14, 2022, due to social distancing measures put in place to slow the spread of the COVID-19 virus.

**APPEARANCES:**

Staff:

Bryce Bishop, Planner III

Neighborhood Association:

None

Proponents:

Brandie Dalton, on behalf of JCT Construction Group  
LLC (James Cain, James Tokarski)

Opponents:

None

**SUMMARY OF THE APPLICATION AND HEARING**

**BACKGROUND**

On May 31, 2022, Brandie Dalton, of Multi-Tech Engineering, on behalf of the applicant, JCT Construction Group, LLC, and property owner, JCT Holdings, LLC, filed an application for a

Conditional Use Permit, Tentative Subdivision Plan, Class 2 Adjustment, and Class 2 Driveway Approach Permit for the development of a four-lot subdivision.

Because the proposal includes a Conditional Use Permit, Tentative Subdivision Plan, Class 2 Adjustment, and Class 2 Driveway Approach permit, the applicant, pursuant to SRC 300.120(c), chose to consolidate the applications and process them together as one. When multiple applications are consolidated, the review process for the consolidated application is required to follow the highest numbered procedure type required for the land use applications involved, and the Review Authority for the application shall be the highest applicable Review Authority under the highest numbered procedure type.

Based on these requirements, the proposed consolidated application is required to be reviewed by the Hearings Officer and processed as a Type III procedure.

After additional requested information was provided by the applicant, the application was deemed complete for processing on November 4, 2022, and notice of the public hearing on the proposal was subsequently sent, pursuant to SRC requirements, on November 23, 2022. Notice was also posted on the subject property by the applicant's representative pursuant to SRC requirements on November 30, 2022.

The public hearing on the Conditional Use Permit, Tentative Subdivision Plan, Class 2 Adjustment, and Class 2 Driveway Approach Permit was scheduled for December 14, 2022. The state-mandated 120-day local decision deadline for the application is March 4, 2023.

### **PROPOSAL**

The application under review by the Hearings Officer is a consolidated Conditional Use, Tentative Subdivision Plan, Class 2 Adjustment, and Class 2 Driveway Approach Permit for property located in the 1300 Block of Mildred Lane SE.

The Tentative Subdivision Plan proposes the creation of four lots ranging in size from approximately 5,311 square feet to 47,701 square feet. Three of the lots within the subdivision (Lots 1-3) are proposed to be developed with single family dwellings and the fourth and largest lot (Lot 4) will be developed as a 24-unit multiple family development which was approved on October 22, 2020, through Conditional Use, Class 3 Site Plan Review, Class 2 Driveway Approach Permit, and Class 1 Design Review Case No. CU-SPR-DAP-DR20-06.

In addition to the proposed subdivision, the proposal also includes a Conditional Use Permit in order to allow two of the proposed lots within the subdivision (Lots 2 and 3) that are partially zoned IC (Industrial Commercial) to be developed with single-family dwellings; a Class 2 Adjustment to increase the number of flag lots allowed within the subdivision, designate the south property line of Lot 1 abutting the flag lot accessway as the front lot line, allow the proposed single family dwellings to be constructed in the subdivision to take access onto Mildred Lane SE (*a minor arterial street*), and reduce the

CASE NO. CU-SUB-ADJ-DAP22-05

January 11, 2023

Page 2



minimum required 370-foot driveway spacing between Marstone Court SE and the proposed flag lot accessway serving Lots 1, 2, & 3; and a Class 2 Driveway Approach permit for the proposed flag lot accessway onto Mildred Lane SE.

**FINDINGS OF FACT AND CONCLUSIONS**

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

The subject is located within the Urban Growth Boundary and the City’s Urban Service Area.

The subject property falls within two Salem Comprehensive Plan (SACP) map designations. The majority of the eastern property of the subject property located east of Waln Creek is designated “Industrial Commercial” on the SACP map and the majority of the western portion of the property located west of Waln Creek is designated “Single Family Residential” on the SACP map.

**2. Zoning**

The subject property is split-zoned with the majority of the eastern portion of the property located east of Waln Creek being zoned IC (Industrial Commercial) and the majority of the western portion of the property located west of Waln Creek being zoned RA (Residential Agriculture). The zoning of surrounding properties is as follows:

Zoning of Surrounding Properties	
North	Across Mildred Lane SE, IC (Industrial Commercial) and RA (Residential Agriculture)
South	RS (Single Family Residential)
East	Across Woodside Drive SE, MU-III (Mixed-Use-III)
West	Across Mildred Lane SE, RA (Residential Agriculture) and RS (Single Family Residential)

**3. Site Analysis**

The subject property is located in the 1300 block of Mildred Lane SE, is approximately 1.71 acres in size, and has frontage on both Mildred Lane SE and Woodside Drive SE. Mildred Lane is designated as a minor arterial street under the City’s Transportation System Plan (TSP) and Woodside Drive is designated as a local street. Waln Creek also passes through the subject property, bisecting it from the northwest to the southeast.

**4. Public and Private Agency Review.**

Notice of the proposal was provided to City Departments, public agencies, and to public & private service providers. The following comments were received:

- A. The City of Salem Building and Safety Division reviewed the proposal and indicated no objections.
- B. The City of Salem Fire Department reviewed the proposal and provided comments indicating that the applicant is required to verify that the distance to fire hydrant to the furthest dwelling lot is less than 600 feet to meet support requirements for Fire Apparatus.

**Response:** In order to ensure conformance with the applicable requirements of the Fire Code, the following condition of approval applies:

- Condition 1:** Prior to final plat approval, provide evidence demonstrating the proposed lots will be served with adequate fire department access and water supply in compliance with the Oregon Fire Code.
- C. The City of Salem Public Works Department reviewed the proposal and provided comments pertaining to City infrastructure required to serve the proposed development. Comments from the Public Works Department are included as.
  - D. The City's Historic Preservation Officer/City Archaeologist reviewed the proposal and provided comments indicating that the subject property is located within the City's Historic and Cultural Resources Protection Zone due to the potential for archaeological resources being present on the site. In order to ensure compliance with SRC Chapter 230 and applicable requirements of State and Federal law, the proposed development is required to have an approved Inadvertent Discovery Plan (IDP) in place prior to any ground disturbing activity being conducted on the site.

## **5. Neighborhood Association and Public Comments**

The subject property is located within the boundaries of the South Gateway Neighborhood Association.

Neighborhood Association Contact. SRC 300.310 requires an applicant to contact the neighborhood association(s) whose boundaries include, and are adjacent to, property subject to specific land use application requests. Pursuant to SRC 300.310(b)(1), Conditional Use Permit applications and Tentative Subdivisions require neighborhood association contact. On July 11, 2022, the applicant contacted the South Gateway Neighborhood Association to provide details about the proposal; thereby satisfying the requirements of SRC 300.310.

### Neighborhood Association Comments

Notice of the application was provided to the neighborhood association pursuant to SRC 300.620(b)(2)(B)(vii), which requires notice to be sent to any City-recognized

neighborhood association whose boundaries include, or are adjacent to, the subject property. No comments were received from the neighborhood association.

#### Public Comments

In addition to providing notice to the neighborhood association, notice was also provided, pursuant to SRC 300.620(b)(2)(B)(ii), (iii), (viii), & (ix), to property owners and tenants within 250 feet of the subject property. No public comments were received.

#### Homeowners Association

The subject property is not located within a Homeowners Association.

### **6. ANALYSIS OF CONDITIONAL USE PERMIT APPROVAL CRITERIA**

SRC Chapter 240.005(a)(1) provides that no building, structure, or land shall be used or developed for any use which is designated as a conditional use in the UDC unless a conditional use permit has been granted pursuant to this Chapter.

Salem Revised Code (SRC) 240.005(d) sets forth the following criteria that must be met before approval can be granted to an application for a Conditional Use Permit. The following subsections are organized with approval criteria shown in ***bold italic***, followed by findings evaluating the proposal's conformance with the criteria. Lack of compliance with the following criteria is grounds for denial of the Conditional Use Permit application, or for the issuance of certain conditions to ensure the criteria are met.

***SRC 240.005(d)(1): The proposed use is allowed as a conditional use in the zone.***

**Finding:** The proposed development includes the subdivision of the property into four lots. Proposed Lots 1-3 of the subdivision are intended to be developed with single family dwellings and Lot 4 will accommodate a 24-unit multiple family development that was previously approved through Conditional Use, Class 3 Site Plan Review, Class 2 Driveway Approach Permit, and Class 1 Design Review Case No. CU-SPR-DAP-DR20-06.

Because the western portion of the subject property located west of Waln Creek is split zoned RA (Residential Agriculture) and IC (Industrial Commercial), a Conditional Use Permit has been requested by the applicant to allow two of the lots in the subdivision (Lots 2 and 3) to be developed with single family dwellings because the eastern portions of these two lots are zoned IC.

Within the IC zone, single family detached dwellings are allowed as a Conditional Use pursuant to SRC 551.005(a), Table 551-1. Because single-family dwellings are specifically identified as being allowed as a Conditional Use in the IC zone, this criterion is met.

***SRC 240.005(d)(2): The reasonably likely adverse impacts of the use on the immediate neighborhood can be minimized through the imposition of conditions.***

**Finding:** The written statement provided by the applicant indicates, in summary, that the proposed single-family lots will have little to no impact on the neighborhood and that Lot 4 has been approved for development of apartments, and adjacent properties to the south of the site are developed as single-family dwellings. The applicant explains that the proposed residential development will be consistent with the neighborhood while providing needed housing within the City and that any impacts of the development on the neighborhood can be mitigated through conditions of approval.

The Hearings Officer concurs with the findings included in the applicant's written statement. The Conditional Use Permit application required for the proposed development is only necessary due to the small area of the western portion of the property that is zoned IC. This IC zoned area applies to portions of Lots 2 and 3 and because these lots are intended to be developed as single-family dwellings, a Conditional Use Permit is required. Because proposed Lot 1 is zoned entirely RA (Residential Agriculture), a Conditional Use Permit is not required for construction of a single-family dwelling on that lot.

The development of single-family dwellings on proposed Lots 2 and 3 will represent a land use that is consistent with the land use pattern of the surrounding area which includes single family dwellings to the south; the potential for single family and middle housing to the north and west across Mildred Lane, due to its RA zoning; and multiple family development to the east across Waln Creek.

Although conditions of approval are being recommended in connection with the proposed development, the conditions are being recommended in order to ensure the proposed development conforms to other standards and approval criteria of the Salem Revised Code that are applicable to the development. Because the proposed single-family dwellings on Lots 2 and 3 will be compatible with the land use pattern of the surrounding area and have minimal, if any, adverse impacts on the immediate neighborhood, no conditions of approval are recommended as being necessary to satisfy this approval criterion and it is therefore met.

***SRC 240.005(d)(3): The proposed use will be reasonably compatible with and have minimal impact on the livability or appropriate development of surrounding property.***

**Finding:** The written statement provided by the applicant indicates that the proposed residential development will be consistent with the neighborhood while providing needed housing in the area. In addition, the applicant explains that the proposed single-family dwellings will have less of an impact on the surrounding area than industrial uses that are allowed within the IC zone, and that because the single-family lots are required to go through the subdivision process, which requires minimum and maximum lot dimensions, conditions of approval placed on the subdivision will help to reduce any impacts on the neighborhood.

The Hearings Officer concurs with the findings included in the applicant's written statement. The proposed development of Lots 2 and 3 with single family dwellings will represent a development pattern that is consistent and compatible with that of surrounding properties which include single-family dwellings to the south; the potential for single-family and middle housing to the north and west across Mildred Lane, due to its RA zoning; and multiple family development to the east across Waln Creek. Due to the compatibility of the proposed single-family dwellings with the land uses in the surrounding area, they will similarly not result in impacts to surrounding properties. This approval criterion is met.

## **7. ANALYSIS OF TENTATIVE SUBDIVISION PLAN APPROVAL CRITERIA**

SRC Chapter 205.010(d) sets forth the following criteria that must be met before approval can be granted to a tentative subdivision plan. The following subsections are organized with approval criteria shown in ***bold italic***, followed by findings of fact evaluating the proposal for conformance with the criteria. Lack of compliance with the following approval criteria is grounds for denial of the tentative plan or for the issuance of conditions of approval to satisfy the criteria.

***SRC 205.010(d)(1): The tentative subdivision plan complies with the standards of this chapter and with all applicable provisions of the UDC, including, but not limited to, the following:***

- (A) Lot standards, including, but not limited to, standards for lot area, lot width and depth, lot frontage and designation of front and rear lot lines.***
- (B) City infrastructure standards.***
- (C) Any special development standards, including, but not limited to, floodplain development, special setbacks, geological or geotechnical analysis, and vision clearance.***

**Finding:** 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 subject property is zoned RA (Residential Agriculture) and IC (Industrial Commercial).

Pursuant to SRC 265.015, any land that is zoned RA (Residential Agriculture) that is subject to a subdivision approval shall automatically be rezoned to RS (Single Family Residential) on the date the subdivision plat is recorded. Because the western portion of the subject property included within the subdivision is currently zoned RA, the provisions of SRC 265.015(a)(2) are applicable to the proposal and the RA zoned portion of the site will be automatically rezoned to RS upon the future recoding of the final subdivision plat.

Because the zoning of the western portion of the property will be changed to RS with the

recording of the final subdivision plat, the following analysis of the subdivision for conformance with the requirements of the UDC is based upon the property's current IC zoning and future RS zoning.

The proposed tentative subdivision plan, as recommended to be conditioned, complies with the applicable standards of the RS and IC zones, and all other applicable provisions of the UDC, as required by this approval criterion, as follows:

**SRC Chapter 205 (Land Division and Reconfiguration)**

The intent of SRC Chapter 205 is to provide for orderly land development through the application of appropriate standards and regulations. The subdivision process reviews development for compliance with City standards and requirements contained in the UDC, Salem Transportation System Plan (TSP), and the Water, Sewer, and Storm Drain System Master Plans. The applicant has met all application submittal requirements necessary for adequate review of the proposed subdivision.

**SRC Chapter 511 (RS Zone) and SRC 551 (IC Zone)**

The subject property is currently zoned RA (Residential Agriculture) and IC (Industrial Commercial). As indicated above, RA zoned properties subject to a subdivision approval are automatically rezoned to RS (Single Family Residential) upon the recording of the final subdivision plat. As such, the RA zoned portion of the site will be rezoned to RS and the proposed subdivision is being reviewed for conformance with the applicable provisions of the RS and IC zones.

The standards of the RS and IC zones that are applicable to the proposed subdivision are as follows:

▪ ***Lot Standards:***

Lot size and dimension standards within the RS zone are established under SRC 511.010(b), Table 511-2; and lot size and dimension standards within the IC zone are established under SRC 551.010(a), Table 551-2.

Within the IC zone there are no minimum lot size and dimension requirements other than a minimum street frontage requirement of 40 feet for single family uses and 16 feet for all other uses.

///

///

///



A summary of the lot size and dimension standards applicable to single family dwellings within the RS zones is provided in the following table:

<b>RS Zone Lot Standards for Single Family Dwellings</b>		
<b>Lot Area</b>	Min. 4,000 sq. ft.	
<b>Lot Width</b>	Min. 40 ft.	
<b>Lot Depth</b>	Min. 70 ft.	
	Min. 120 ft.	Applicable to double frontage lots ( <i>lots with front and rear lots lines abutting a street</i> ).
	Max. 300% of average lot width	
<b>Street Frontage</b>	Min. 40 ft.	
	Min. 30 ft.	Applicable to lots fronting on the turnaround of a cul-de-sac street or the outside curve of a curved street having a radius of 200 feet or less and a direction change of 60 degrees or more. In no case shall the lot width be less than 40 ft. at the front building setback line.

Lots 1-3 of the proposed subdivision will be developed with single family dwellings and Lot 4 will be developed with a previously approved. 24-unit multiple family development.

As shown on the tentative subdivision plan, Lot 1 has frontage on Mildred Lane SE; Lot 4 has frontage on both Mildred Lane SE and Woodside Drive SE; and Lots 2 and 3 are flag lots without frontage on a street that take access from Mildred Lane SE via a proposed flag lot accessway.

As identified on the tentative subdivision plan, the lot sizes of the proposed four lots within the subdivision range from approximately 5,311 square feet to 47,701 square feet. However, because Lots 1-3 are served by a flag lot accessway, the minimum lot area and dimension requirements for these lots must be met exclusive of the flag lot accessway. The resulting net lot areas of Lots 1-3, exclusive of the flag lot accessway, range from approximately 5,261 square feet to 9,980 square feet. Each of the proposed lots within the subdivision exceed the minimum lot size requirements of the RS and IC zones.

All of the proposed lots within the subdivision similarly exceed the lot dimension and street frontage standards of both the RS and IC zones and are of sufficient size and dimension to permit development of uses allowed within the zone.

- ***Setbacks:***

Setbacks for buildings and accessory structures within the RS zone are established under SRC 511.010(d), Table 511-3, and setbacks for buildings and accessory structures in the IC zone are established under SRC 551.010(b), Tables 551-3 and 551-4.

Garage Setback: In addition to the setbacks identified above, SRC 806.025(b) requires garages facing a street or flag lot accessway to be setback a minimum of 20 feet in order to accommodate a driveway and enough space for vehicles to park on the driveway without projecting into the street right-of-way or flag lot accessway.

As indicated, Lot 4 will be developed with 24-unit multiple family development that received previous approval through Conditional Use, Class 3 Site Plan Review, Class 2 Driveway Approach Permit, and Class 1 Design Review Case No. CU-SPR-DAP-DR20-06. The configuration of proposed Lot 4 matches the configuration of the property approved through the previous land use approval. As such, the proposed multiple development of that lot will conform to the applicable setback requirements of the IC zone.

Future development of proposed Lots 1-3 will be reviewed for conformance with the applicable setback requirements of the RS and IC zones when building permit applications are submitted for development of those lots

**SRC Chapter 800 (General Development Standards)**

- ***Designation of Lot Lines.***

SRC 800.020 establishes standards for the designation of front, side, and rear lot lines for interior lots, corner lots, double frontage lots, flag lots, and all other lots.

Two of the proposed lots within the subdivision are flag lots (Lots 2 and 3). In order to ensure that these two proposed lots meet the minimum lot dimension requirements of the RS and IC zones, the following condition of approval applies:

**Condition 2:** The front lot line designation for Lot 2 shall be the south property line and the front lot line designation for Lot 3 shall be the west property line abutting the terminus of the proposed flag lot accessway.

Proposed Lot 1 is not a flag lot and has frontage on a street; but it is proposed to take access from the flag lot accessway. Because Lot 1 has frontage on a street, it is considered an interior lot. Pursuant to SRC 800.020(a)(1), the designated front lot line of an interior lot is required to be the property line abutting the street.

However, as shown on the tentative subdivision plan, the applicant has identified the south property line of Lot 1 abutting the flag lot accessway as the front, rather the west property line abutting Mildred Lane. The subdivision designates the south property line of Lot 1 as the front in order to provide a more developable building envelope on the lot in relation to required setbacks and to be consistent with the front lot line designation of abutting Lot 2 to the south.

Because SRC 800.020(a)(1) requires the west property line of Lot 1 abutting Mildred Lane to be designated as the front, the applicant has requested a Class 2 Adjustment to this standard. Analysis of the Class 2 Adjustment request and findings demonstrating conformance with the Class 2 Adjustment approval criteria are included in Section 9 of this report.

- **Flag Lots.**

SRC 800.025 establishes standards for flag lots and the flag lot accessways that serve them. As shown on the tentative subdivision plan, three lots are proposed to be served by a flag lot accessway, but only two of the lots (Lots 2 and 3) are flag lots.

SRC 800.025(c) establishes the following standards for the development of flag lots accessways:

<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>	
<b>Maximum Number of Lots Served</b>	A maximum of four lots may be served by a flag lot accessway.	

As shown on the tentative subdivision plan, the proposed flag lot accessway serving Lots 1-3 conforms to the requirements of SRC 800.025(c). The accessway does not serve more than four lots, it doesn't exceed 150 feet in length, it includes a turnaround

meeting the Public Works Design Standards (PWDS) and is proposed to be paved to a width of 25 feet, together with a five-foot-wide sidewalk along one side, within a 30-foot-wide private access and utility easement.

SRC 800.025(e) limits the maximum number of flag lots allowed within a subdivision to 15 percent. Based on the four lots proposed, the maximum number of flag lots allowed within the subdivision is one. However, as shown on the tentative subdivision plan, the proposal includes two flag lots (Lots 2 and 3). Because the number of proposed flag lots within the subdivision exceeds the maximum allowed 15 percent, the applicant has requested a Class 2 Adjustment to this standard to increase the maximum number of flag lots allowed from one to two. Analysis of the Class 2 Adjustment request and findings demonstrating conformance with the Class 2 Adjustment approval criteria are included in Section 9 of this report.

### **SRC Chapter 601 (Floodplain Overlay Zone)**

Public Works staff has reviewed the Flood Insurance Study and Flood Insurance Rate Maps and has determined that Waln Creek was not analyzed in conjunction with the adopted Flood Insurance Study for the Battle Creek Basin. However, the City has prepared Interim Flood Hazard Area maps and base flood elevations which are proposed to be adopted in 2023. Future development permits will require new structures to be constructed to a minimum of one foot above the proposed base flood elevations to limit flood damage pursuant to SRC 601.110(a)(2).

### **City Infrastructure Standards (SRC Chapters 71, 802, and 803)**

The Public Works Department reviewed the proposal for compliance with the City's public facility plans pertaining to provision of streets, water, sewer, and storm drainage facilities and determined that the proposed subdivision, with recommended necessary conditions of approval, conforms to the requirements of SRC Chapter 71 (Stormwater), SRC Chapter 802 (Public Improvements), SRC Chapter 803 (Streets and Right-of-Way Improvements), and the Public Works Design Standards (PWDS). While SRC Chapter 205 does not require submission of public construction plans for City infrastructure prior to tentative subdivision plan approval, it is the responsibility of the applicant to design and construct required City infrastructure to serve the proposed development prior to final plat approval without impeding service to the surrounding area.

A summary of the existing and required City infrastructure improvements are as follows:

**SRC Chapter 71 (Stormwater)**: The proposed development is subject to SRC Chapter 71 and the revised PWDS as adopted in Administrative Rule 109, Division 004.

The Public Works Department indicates that existing stormwater facilities in the area include a 10-inch storm main located in Mildred Lane SE and a 24-inch storm main located in Woodside Drive SE.

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.

In order to ensure the proposed development can be served by storm water facilities in compliance with SRC Chapter 71 and the PWDS, the following conditions of approval apply:

- Condition 3:** Provide an engineered stormwater design pursuant to SRC 71 and PWDS to accommodate new impervious surfaces in rights-of-way and future impervious surfaces on all proposed lots.
- Condition 4:** Construct stormwater facilities pursuant to SRC 71 and PWDS to accommodate new impervious surfaces in rights-of-way and future impervious surfaces on all proposed lots.

A portion of the Waln Creek runs through the subject property. Pursuant to PWDS 1.8(d), the application is subject to open channel drainage easements to be dedicated along the creek, allowing for access and maintenance. The easement width shall be either 15-feet from the channel centerline, or 10-feet from the top of the recognized bank, whichever is greatest. In order to ensure compliance with this standard, the following condition of approval is recommended:

- Condition 5:** Along Waln Creek on the subject property, dedicate an Open Channel Drainage Easement. In accordance with PWDS, the easement width shall be either 15 feet from the channel centerline, or 10 feet from the top of the recognized bank, whichever is greater.

SRC Chapter 802 (Public Improvements): 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 (PWDS). Specifications for required public improvements are summarized in the comments provided by the Public Works Department.

In summary, the Public Works Department indicates that the subject property is located inside the City's Urban Service Area and adequate facilities are available. 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 tentative plan.

The Public Works Department indicates that the subject property is currently served by the following existing water and sewer facilities:

**Water:** The subject property is located within the S-2 water service level. A 16-inch water main is located in Mildred Lane SE and a 10-inch water main is located in Woodside Drive SE.

**Sewer:** An 8-inch sewer main is located in Woodside Drive SE and a 21-inch sewer main is located on the subject property within an easement.

In order to ensure that required City infrastructure is provided to serve the proposed subdivision in conformance with the requirements of SRC Chapter 802, the following conditions of approval shall apply:

**Condition 6:** All necessary (existing and proposed) access and utility easements shall be shown and recorded on the final plat.

As conditioned, the proposed subdivision conforms to the public improvement standards of SRC Chapter 802.

**SRC Chapter 803 (Street and Right-of-Way Improvements):** The subject property has frontage on Mildred Lane SE to the north and west and Woodside Drive SE to the east.

Mildred Lane is designed as a minor arterial street under the City's Transportation System Plan (TSP). The standard for this classification of street is a 46-foot-wide improvement within a 72-foot-wide right-of-way. The Public Works Department indicates that Mildred Lane currently has an approximate 34-foot to 46-foot-wide improvement within a 72-foot-wide right-of-way abutting the subject property. The Public Works Department explains that Mildred Lane was constructed by the City to its current standard and is considered a complete street; therefore, no additional improvements are required.

Woodside Drive SE is designated as a local street under the City's TSP. The standard for this classification of street is a 30-foot-wide improvement within a 60-foot-wide right-of-way. The Public Works Department indicates that Woodside Drive currently has an approximate 30-foot-wide improvement within a 50-foot-wide right-of-way abutting the subject property. The Public Works Department indicates that right-of-way dedication and improvements to Woodside Drive SE were required as a condition of approval for Partition Case No. PAR19-11 and there is an adequate half-street right-of-way and improvement width for Woodside Drive abutting the subject property.

The proposed subdivision meets the requirements of SRC Chapter 803.

**SRC Chapter 808 (Preservation of Trees and Vegetation)**

SRC Chapter 808 (Preservation of Trees and Vegetation) requires tree conservation plans in conjunction with development proposals involving the creation of lots or parcels to be used for single family uses, two family uses, three family uses, four family uses, or cottage clusters. The tree preservation ordinance defines "tree" as, "any living woody plant that



grows to 15 feet or more in height, typically with one main stem called a trunk, which is 10 inches or more dbh, and possesses an upright arrangement of branches and leaves."

Under the City's tree preservation ordinance, tree conservation plans are required to preserve all heritage trees, significant trees, trees and native vegetation within riparian corridors, and a minimum of 30 percent of all of the trees on the property. If less than 30 percent of the existing trees on the property are proposed for preservation, the applicant must demonstrate that there are no reasonable design alternatives that would enable preservation of such trees and that for each tree removed in excess of 70 percent, the mitigation measures required under SRC 808.035(e) are satisfied.

Similarly, if significant trees and trees within a riparian corridor are proposed for removal, the applicant must show that there are no reasonable design alternatives to enable preservation of those trees.

There are existing trees located on the subject property and the riparian corridor of Waln Creek bisects the site. Pursuant to SRC 808.035, the applicant submitted a tree conservation plan for the western portion of the property located west of Waln Creek that's proposed to be subdivided for the development of single-family lots. The tree conservation plan doesn't include the existing trees or the portion of the riparian corridor of Waln Creek on Lot 4 because this lot will be developed with a 24-unit multiple family development previously approved through Conditional Use, Class 3 Site Plan Review, Class 2 Driveway Approach Permit, and Class 1 Design Review Case No. CU-SPR-DAP-DR20-06. As such, tree preservation requirements for the development of Lot 4 were addressed in that previous land use approval.

The tree conservation plan submitted by the applicant identifies a total of 13 trees on the western portion of the site. None of the trees are designated as significant trees based on their size and species, but they are located within the riparian corridor of the Waln Creek. Of the total 13 trees existing on the site, the proposed tree conservation plan identifies 13 trees (*100 percent*) for preservation and none for removal. The applicant also indicates that there is no native vegetation present within the riparian corridor. The proposed tree conservation plan therefore exceeds the minimum preservation requirements of SRC Chapter 808.

The tree conservation plan is being reviewed by staff and, if approved, will be binding on the lots until final occupancy. Any proposed future changes to the approved tree conservation plan will require approval of a separate tree conservation plan adjustment.

### **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.

Waln Creek bisects the subject property. The Salem-Keizer Local Wetlands Inventory (LWI) shows that there are wetland channels and/or hydric soils mapped on the property. The applicant should contact the Oregon Department of State Lands to verify if any permits are required for development or construction in the vicinity of the mapped wetland area(s). Wetland notice was sent to the Oregon Department of State Lands pursuant to SRC 809.025.

**SRC Chapter 810 (Landslide Hazards)**

The 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, the subject property includes areas of two mapped landslide hazard susceptibility points within the Waln Creek Basin. Because no development can occur within this area, a geologic assessment is therefore not required for development of the subject property.

***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 proposed subdivision divides the entire 1.71-acre property into four lots with no remainder and the proposed lots within the subdivision are of sufficient size and dimension to permit development of uses allowed within the zone without impeding the future use or development of the property.

The proposed subdivision similarly does not impede the use or development of adjacent land. As shown on the tentative subdivision plan, adjacent property to the south is fully developed. This approval criterion is met.

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

**Finding:** The Public Works Department reviewed the proposal and determined that water, sewer, and storm infrastructure are available and appear to be adequate to serve the lots within the proposed subdivision subject to the conditions of approval established in this decision. This approval criterion is met.

///

///

///

***SRC 205.020(d)(4): The street system in and adjacent to the tentative subdivision plan conforms to the Salem Transportation System Plan.***

**Finding:** The subject property is located adjacent to Mildred Lane SE and Woodside Drive SE. Mildred Lane is designed as a minor arterial street under the City's Transportation System Plan (TSP) and Woodside Drive is designated as a local street.

The Public Works Department indicates that Mildred Lane was constructed by the City to its current standard and is considered a complete street; therefore, no additional improvements are required. In regard to Woodside Drive, right-of-way dedication and improvements to Woodside Drive were required as a condition of approval for Partition Case No. PAR19-11. There is an adequate half-street right-of-way and improvement width for Woodside Drive abutting the subject property. This approval criterion is met.

***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:** Access to the proposed subdivision will be provided by the network of existing public streets that surround the property. Due to size of the property, its location in a developed area surrounded by existing streets, and the presence of a creek which bisects it, the ability to extend new streets through the property is not possible. Instead, the lots within the subdivision will be served by the existing streets on the perimeter of the site and the proposed flag lot accessway serving Lots 1-3.

As indicated in the comments from the Public Works Department, Mildred Lane was constructed by the City to its current standard and is considered a complete street requiring no additional improvements, and Woodside Drive has an adequate half-street right-of-way and improvement width abutting the subject property.

These existing improvements ensure that the street system adjacent to the subdivision will provide for the safe, orderly, and efficient circulation of traffic to and from the subdivision. This approval criterion is met.

***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 located within one-half mile of Sunnyside Garden Neighborhood Park, Wiltsey Road Park, and shopping areas on Commercial Street SE to the east. The nearest transit service available to the site is provided by Cherriots Route 6 (Fairview Industrial) along the Mildred Lane frontage of the property with a stop located

CASE NO. CU-SUB-ADJ-DAP22-05

January 11, 2023

Page 17

approximately 30 feet to the south of the property adjacent to the intersection of Mildred Lane and Marstone Court SE. Transit service is also available along Commercial Street via Route 21 (South Commercial).

Principle access to the subdivision will be provided by Mildred Lane SE, a minor arterial street. As indicated in the comments from the Public Works Department Mildred Lane is considered a complete street and is improved with sidewalks and bike lanes providing for safe and convenient bicycle and pedestrian access from the subdivision to adjacent transit stops and activity centers within one-half-mile of the development.

In order to promote bicycle and pedestrian access and connectivity between parks, the Salem Comprehensive Park System Master Plan identifies a proposed trail that runs through the subject property along Waln Creek. In order to accommodate the proposed trail, a minimum 20-foot-wide public access easement is required in an alignment approved by the Public Works Director. The Public Works Department indicates that the alignment may be over existing easements for public utilities on the site, along the creek. In order to ensure that the proposed subdivision provides for safe and convenient bicycle and pedestrian access from within the subdivision to adjacent activity centers, including parks, the following condition of approval shall apply:

**Condition 7:** Dedicate a minimum 20-foot-wide public access easement for a Parks Master Plan Trail in an alignment approved by the Director.

The proposed subdivision, as recommended to be conditioned, will provide safe and convenient bicycle and pedestrian access from the subdivision to adjacent residential areas, transit stops, and activity centers within one-half mile of the development. This criterion is met.

***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 Public Works Department reviewed the proposal and determined the proposed four-lot subdivision will generate less than 1,000 average daily vehicle trips onto the minor arterial street system. Because the number of trips estimated to be generated by the proposed subdivision fall below the minimum threshold to require a transportation impact analysis (TIA), a TIA is not required in conjunction with the proposed subdivision and this approval criterion is therefore not applicable.

***SRC 205.010(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.

As described in findings above, the lot and street configuration established by the proposed subdivision meet applicable development standards; and the configuration of the proposed lots makes logical use of the developable land. No existing conditions of topography or vegetation have been identified on the site which would necessitate further adjustments during future development of the property. The proposed layout allows for reasonable development of all lots within the subdivision without any anticipated variances from the UDC. This approval criterion is met.

***SRC 205.010(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:** As explained in the findings establishing conformance with SRC 205.010(d)(8) above, the tentative subdivision plan configures lots and streets to allow residential development of the site while minimizing disruptions to topography and vegetation. The proposed lots are also of sufficient size and dimension to permit future development of uses allowed within the zone. This approval criterion is met.

***SRC 205.010(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 lies within the City's Urban Service Area. Pursuant to the urban growth management requirements contained under SRC Chapter 200 (Urban Growth Management), properties located inside the Urban Service Area are not required to obtain an Urban Growth Preliminary Declaration. This approval criterion is therefore not applicable to the proposed development.

## **8. ANALYSIS OF CLASS 2 ADJUSTMENT APPROVAL CRITERIA**

Salem Revised Code (SRC) 250.005(d)(2) sets forth the following criteria that must be met before approval can be granted to an application for a Class 2 Adjustment. The following subsections are organized with approval criteria shown in ***bold italic***, followed by findings evaluating the proposed development's conformance with the criteria. Lack of compliance with the following criteria is grounds for denial of the Class 2 Adjustment application, or for the issuance of certain conditions to ensure the criteria are met.

***SRC 250.005(d)(2)(A): The purpose underlying the specific development standard proposed for adjustment is:***

- (i) Clearly inapplicable to the proposed development; or***
- (ii) Equally or better met by the proposed development.***

**Finding:** The applicant has requested four Class 2 Adjustments in conjunction with the proposed subdivision. They include:

- a) Increasing the number of flag lots allowed within the subdivision from a maximum of one, as allowed under SRC 800.025(e), to two;
- b) Designating the south property line of Lot 1 abutting the flag lot accessway as the front lot line rather than the property line abutting Mildred Lane SE as required under SRC 800.020(a)(1);
- c) Allowing single family dwellings constructed as part of a subdivision to take access onto a minor arterial street (SRC 804.035(c)(4)); and
- d) Reducing the minimum 370-foot driveway spacing between Marstone Court SE and the proposed flag lot accessway serving Lots 1, 2, & 3, required under SRC 804.035(d).

**Maximum Number of Flag Lots (SRC 800.025(e)):**

The applicant has requested a Class 2 Adjustment to SRC 800.025(e), which limits the maximum number of flag lots allowed within a subdivision to 15 percent. The underlying purpose of this standard is to limit the overall number of lots within a subdivision that can be developed as flag lots without frontage on a street. This same limitation does not, however, apply to partitions (*land divisions creating three or fewer lots*).

As compared to flag lots, lots with frontage on a street provide superior vehicular access and promote a safer and more pedestrian-oriented development pattern with sidewalks along the street.

As shown on the tentative subdivision plan, two of the lots within the subdivision are proposed flag lots (Lots 2 and 3) and a total of three lots (Lots 1, 2, and 3) are proposed to be served by a flag lot accessway improved to a minimum width of 25 feet together with a 5-foot-wide sidewalk along one side and a turnaround meeting the Public Works Design Standards (PWDS).

Because the proposed flag lot accessway has been designed to exceed the minimum flag lot accessway standards of SRC 800.025(c) by providing a wider paved width and a sidewalk along one side, the accessway is instead being designed to function more like a reduced width private street than a narrower flag lot accessway. The wider improved accessway width allows for improved circulation between passing vehicles, provides a greater width to accommodate emergency vehicle access, and the sidewalk provides for safer and more convenient pedestrian access to the street. Because of this, the proposed development equally meets the underlying purpose of this standard by creating lots that are more



similar to traditional lots served by a private street than flag lots served by a narrower flag lot accessway.

In addition, the physical characteristics of the property also help the proposed development to equally meet the underlying purpose of this standard because, although proposal includes a subdivision of four lots, the proposed lots on the western portion of the property are more similar to three lots that could have been created through a partition due to the fact that Waln Creek bisects the property and provides a physical barrier between the eastern and western portions of the property. If only the western portion of the property had been proposed to be divided without needing to include the remaining portion of the property across Waln Creek to the west, the proposal would have been a three-parcel partition where there is no limit on the maximum number of flag lots and the proposed lot configuration would be able to be approved without an adjustment to this standard.

In order to ensure that the proposed flag lot accessway within the subdivision is developed as shown on the tentative subdivision plan, thereby ensuring the proposed development equally meets the underlying purpose of this standard, the following condition of approval applies:

**Condition 8:** The flag lot accessway serving Lots 1-3 shall be developed as shown on the tentative subdivision plan to include a 25-foot-wide paved width together with a 5-foot-wide sidewalk. "NO PARKING-FIRE LANE" signs shall be posted on both sides of that portion 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.

The proposed development, as recommended to be conditioned, satisfies this approval criterion.

**Front Lot Line Designation of Lot 1 (SRC 800.020(a)(1)):**

The applicant has requested a Class 2 Adjustment to SRC 800.020(a)(1), which requires the front lot line of an interior lot to be the property line abutting the street. The underlying purpose of this standard is to ensure that lots that have only one street frontage designate their front lot line as the property line abutting the street.

As shown on the tentative subdivision plan, Lot 1 is a lot that has frontage on Mildred Lane but the applicant has requested that the front lot line for this lot be the southern property line abutting the proposed flag lot accessway, rather than the property line abutting Mildred Lane, in order to provide a more developable building envelope on the lot in relation to required setbacks and to be consistent with the front lot line designation of abutting Lot 2 to the south.

The underlying intent of this standard is equally met by the proposed development because although the applicant is requesting the front lot line of Lot 1 to be the southern lot line abutting the proposed flag lot accessway, the increased width of the accessway, together with the proposed 5-foot sidewalk, makes the accessway more like a reduced width private street than a flag lot accessway. As such, Lot 1 could be compared to being a corner lot with frontage on a public street and a reduced width private street. For corner lots, SRC 800.020(a)(2) allows the front lot line to be designated on the street that the building permit applicant chooses, provided that minimum lot dimension standards are met.

In this case, because the flag lot accessway is designed to be more like a private street, the applicant's request to designate the southern property line as the front is consistent with what would be allowed if the lot were a corner lot. With the designation of the southern property line as the front, the lot dimensions of the lot are still met, it provides a more developable building envelope for the lot when required setbacks are taken into consideration, and it will be consistent with the front lot line designation of Lot 2 to the south. The proposed development therefore equally meets the underlying purpose of this standard and this approval criterion is met. Based on the applicant's requested adjustment to designate the south property line as the front property line, the following condition of approval applies:

**Condition 9:** The front lot line designation for Lot 1 shall be the south property line abutting the proposed flag lot accessway.

**Single Family Dwelling Access to Minor Arterial Street (SRC 804.035(c)(4)):**

The applicant has requested a Class 2 Adjustment to SRC 804.035(c)(4), which precludes access onto a major or minor arterial street from a single family, two family, three family, or four family use constructed as part of a subdivision or partition. The underlying purpose of this standard is to restrict multiple new driveways onto arterial streets for lots created through a subdivision or partition. Arterial streets are intended to accommodate high volumes of traffic and restricting individual access points limits conflicts with vehicles entering the roadway.

The underlying purpose of this standard is equally met by the proposed development because only one point of access onto the arterial street is provided for the three lots. Additionally, with the conditions recommended in conjunction with the approval of the requested Class 2 Driveway Approach included in Section 10 of this report concerning sight distance and forward in/forward out movements, any conflicts with vehicular traffic on the arterial street are minimized. This criterion is met.

///

///

### **Driveway Spacing (SRC 804.035(d)):**

The applicant has requested a Class 2 Adjustment to SRC 804.035(d), which requires driveway approaches onto major or minor arterials to be located no less than 370 feet from the nearest driveway or street intersection. The underlying purpose of this standard is to promote safe vehicular access onto arterial streets.

The development is proposing one new driveway onto Mildred Lane SE. The proposed driveway is on the inside of the curve of the street, which limits sight distance in both directions. As part of the application package, the applicant submitted a Sight Access Analysis that demonstrates the proposed location of the driveway provides the most optimal sight distance along the frontage of the property. The proposed driveway configuration therefore meets the adjustment criteria by allowing for movements and traffic safety equal to what would be accomplished by meeting the development standard. This criterion is met.

***SRC 250.005(d)(2)(B): If located within a residential zone, the proposed development will not detract from the livability or appearance of the residential area.***

**Finding:** The subject property is split zoned residential and non-residential. Neither the proposed development nor the adjustments requested by the applicant will detract from the livability or appearance of the residential area. Proposed Lot 4 will be developed with a multiple family development, as previously approved through Conditional Use, Class 3 Site Plan Review, Class 2 Driveway Approach Permit, and Class 1 Design Review Case No. CU-SPR-DAP-DR20-06, and proposed Lots 1-3 will be developed with single family dwellings consistent with surrounding development to the south and west of the subject property. This criterion is met.

***SRC 250.005(d)(2)(C): If more than one adjustment has been requested, the cumulative effect of all the adjustments result in a project which is still consistent with the overall purpose of the zone.***

**Finding:** A total of four adjustments have been requested in conjunction with the proposed development and, although more than one adjustment has been requested, each adjustment is the minimum necessary to allow the reasonable development of the property in conformance with the purposes of the RS and IC zones. This approval criterion is met.

## **9. ANALYSIS OF CLASS 2 DRIVEWAY APPROACH PERMIT APPROVAL CRITERIA**

Salem Revised Code (SRC) 804.025(d) provides that an application for a Class 2 Driveway Approach Permit shall be granted if the following criteria are met. The following subsections are organized with approval criteria in **bold**, followed by findings of fact upon which the decision is based. Lack of compliance with the following criteria is grounds for denial or for the issuance of conditions of approval to satisfy the criteria.

***SRC 804.025(d)(1): The proposed driveway approach meets the standards of this Chapter and the Public Works Design Standards.***

**Finding:** The applicant has requested two adjustments to the applicable driveway approach standards included under SRC Chapter 804. They include an adjustment to allow single family dwellings constructed as part of a subdivision to take access onto a minor arterial street and an adjustment to reduce the minimum required 370-foot driveway spacing between Marstone Court SE and the proposed flag lot accessway serving Lots 1, 2, & 3. Analysis of the Class 2 Adjustment requests and findings demonstrating conformance with the Class 2 Adjustment approval criteria are included in Section 9 of this report. The proposed driveway, as approved with the requested Class 2 Adjustments, meets the applicable standards of SRC 804 and the PWDS. This criterion is met.

***SRC 804.025(d)(2): No site conditions prevent placing the driveway approach in the required location.***

**Finding:** The Public Works Department reviewed the proposal and determined that no site conditions exist prohibiting the location of the proposed driveway approach. This approval criterion is met.

***SRC 804.025(d)(3): The number of driveway approaches onto an arterial are minimized.***

**Finding:** The proposed subdivision includes one driveway approach onto Mildred Lane serving three lots. Based on the size and location of the subject property and the fact that it is bisected by Waln Creek, the only feasible means of providing access to the western portion of the site is by a new driveway approach. Rather than seeking approval for three driveway approaches onto Mildred Lane, one driveway approach is proposed. This criterion is met.

***SRC 804.025(d)(4): The proposed driveway approach, where possible:***

***(A) Is shared with an adjacent property; or***

***(B) Takes access from the lowest classification of street abutting the property***

**Finding:** The proposed driveway approach accesses an arterial street and is shared between three lots. The subject property is split by Waln Creek. A shared driveway approach between all four lots created by the proposed subdivision is not feasible due to the creek. This criterion is met.

***SRC 804.025(d)(5): The proposed driveway approach meets vision clearance standards.***

**Finding:** The proposed driveway approaches meet the PWDS vision clearance standards set forth in SRC chapter 805.

***SRC 804.025(d)(6): The proposed driveway approach does not create traffic hazards and provides for safe turning movements and access.***

**Finding:** The Public Works Department reviewed the proposed driveway approach for conformance with the requirements of SRC Chapter 804 and indicated that no evidence has been submitted to indicate that the proposed driveway will create traffic hazards or unsafe turning movements. Additionally, staff analysis of the proposed driveway indicates that with recommended conditions, it will not create a traffic hazard and will provide for safe turning movements for access to the subject property.

As part of the application package, the applicant submitted a Sight Distance Analysis to ensure safe access is provided onto the arterial street. The Assistant City Traffic Engineer has reviewed the proposed Sight Distance Analysis and agrees with the findings and recommends vegetation and structures be restricted within the required site lines, as shown on the applicants Site Access Analysis dated October 20, 2022.

Pursuant to SRC 804.035(c)(5), only forward in/forward out access shall be allowed onto an arterial street. The applicants tentative plan shows a hammerhead turnaround to accommodate forward in/forward out movements from the proposed accessway to Mildred Lane SE. In order to ensure the proposed driveway approach does not create traffic hazards and provides for safe turning movements and access, the following condition of approval applies:

**Condition 10:** Dedicate a vision clearance easement area as shown on the Site Access Analysis submitted with the application and dated October 20, 2022. No structures, fences, or vegetation over 30-inches tall shall be allowed within the vision clearance area.

**Condition 11:** The flag lot accessway serving Lots 1-3 shall include a turnaround as shown on the tentative subdivision plan to ensure forward-in/forward-out movement onto Mildred Lane SE.

The proposed driveway approach, as recommended to be conditioned, meets this approval criterion.

***SRC 804.025(d)(7): The proposed driveway approach does not result in significant adverse impacts to the vicinity.***

**Finding:** The Public Works Department reviewed the proposed driveway approach and indicated that staff analysis of the driveway approach, and the evidence that has been submitted, indicate that the location of the approach will not have any adverse impact to the adjacent properties or streets. This approval criterion is met.

***SRC 804.025(d)(8): The proposed driveway approach minimizes impact to the functionality of adjacent streets and intersections.***

**Finding:** The Public Works Department reviewed the proposed driveway approach and provided comments indicating the driveway approach is located on a minor arterial street and minimizes the impact to adjacent streets and intersections by providing adequate sight distance and being shared by multiple parcels. This approval criterion is met.

***SRC 804.025(d)(9): The proposed driveway approach balances the adverse impacts to residentially zoned property and the functionality of adjacent streets.***

**Finding:** The proposed development is surrounded by residentially zoned property. The proposed driveway approach balances the adverse impacts to residentially zoned property and will not have an adverse effect on the functionality of the adjacent streets. This criterion is met.

### **CONCLUSION**

Based on the facts and findings presented herein, the Hearings Officer concludes that the proposed Conditional Use Permit, Subdivision Tentative Plan, Class 2 Adjustment, and Class 2 Driveway Approach Permit, as recommended to be conditioned, satisfy the applicable criteria contained under SRC 240.005(d), SRC 205.010(d), SRC 250.005(d)(2), and SRC 804.025(d) for approval.

### **DECISION**

Based on the facts and findings contained in this Final Decision, the Hearings Officer **APPROVES** the requested Conditional Use Permit, Subdivision Tentative Plan, Class 2 Adjustment, and Class 2 Driveway Approach Permit for the proposed four-lot subdivision of property located in the 1300 Block of Mildred Lane SE, subject to the following conditions of approval, which must be completed prior to final plat approval, unless otherwise indicated:


Conditions 4, 8, and 11 shall be completed prior to final plat approval or may be delayed pursuant to an improvement agreement per SRC 205.035(c)(7)(B).

- Condition 1:** Prior to final plat approval, provide evidence demonstrating the proposed lots will be served with adequate fire department access and water supply in compliance with the Oregon Fire Code.
- Condition 2:** The front lot line designation for Lot 2 shall be the south property line and the front lot line designation for Lot 3 shall be the west property line abutting the terminus of the proposed flag lot accessway.
- Condition 3:** Provide an engineered stormwater design pursuant to SRC 71 and PWDS to accommodate new impervious surfaces in rights-of-way and future impervious surfaces on all proposed lots.



- Condition 4:** Construct stormwater facilities pursuant to SRC 71 and PWDS to accommodate new impervious surfaces in rights-of-way and future impervious surfaces on all proposed lots.
- Condition 5:** Along Waln Creek on the subject property, dedicate an Open Channel Drainage Easement. In accordance with PWDS, the easement width shall be either 15 feet from the channel centerline, or 10 feet from the top of the recognized bank, whichever is greater.
- Condition 6:** All necessary (existing and proposed) access and utility easements shall be shown and recorded on the final plat.
- Condition 7:** Dedicate a minimum 20-foot-wide public access easement for a Parks Master Plan Trail in an alignment approved by the Director.
- Condition 8:** The flag lot accessway serving Lots 1-3 shall be developed as shown on the tentative subdivision plan to include a 25-foot-wide paved width together with a 5-foot-wide sidewalk. "NO PARKING-FIRE LANE" signs shall be posted on both sides of that portion 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 9:** The front lot line designation for Lot 1 shall be the south property line abutting the proposed flag lot accessway.
- Condition 10:** Dedicate a vision clearance easement area as shown on the Site Access Analysis submitted with the application and dated October 20, 2022. No structures, fences, or vegetation over 30-inches tall shall be allowed within the vision clearance area.
- Condition 11:** The flag lot accessway serving Lots 1-3 shall include a turnaround as shown on the tentative subdivision plan to ensure forward-in/forward-out movement onto Mildred Lane SE.

DATED: January 11, 2023



James K. Brewer, Hearings Officer