

**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."

"[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. 12th 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 12th Street SE, appearing to argue that the Application must be denied because 12th Street cannot be safely improved.

The Council rejects this argument. 12th 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 12th 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 12th Street is approximately 17 percent. The Dickson's 2nd Addition subdivision that platted the existing western half-width street of 12th 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 12th 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) 12th 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 Pringle Road SE. When the extension of Hilfiker Lane is complete, there will likely be a reduction of the ‘cut through’ traffic on Suntime 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,¹ 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

¹ 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.