



# NOTICE OF DECISION

**TAX LOT:** 3S1060000102  
3S1060000107

**ADDRESS:** 16871 and 17033 SW Brookman Rd.

**CASE NO:** LU 2021-023 SUB Cedar Creek  
Gardens

**DATE OF  
NOTICE:** August 31, 2022

**Applicant**

Westwood Homes, LLC  
12700 NW Cornell Rd.  
Portland, OR 97140

**Owner (TL 102)**

Bissett, Louise Marie Rev Liv Trust  
16871 SW Brookman Rd.  
Sherwood, OR 97140

**Owner (TL 107)**

Wayne and Linda Chronister  
PO Box 1474  
Sherwood, OR 97140

## NOTICE

Because you are the applicant or because you testified on the subject application, you are receiving notice that on August 31, 2022, Hearings Officer Joe Turner approved land use application 2021-023 SUB Cedar Creek Gardens. The approval is for a new 41-lot subdivision in the Brookman Addition Concept Plan area.

**INFORMATION:** The full Hearings Officer findings, conditions of approval, and land use exhibits can be viewed at: <https://www.sherwoodoregon.gov/planning/project/lu-2021-023-sub-cedar-creek-gardens> or can be obtained by contacting Eric Rutledge, Associate Planner, at 503-625-4242 or [rutledgee@sherwoodoregon.gov](mailto:rutledgee@sherwoodoregon.gov)

## APPEAL

Pursuant to Sherwood Zoning and Community Development Code Section 16.72.010.B.3.c, the Sherwood Planning Commission is the Appeal Authority for Type III land use decisions. Any person who testified before the Hearings Officer at the public hearing or who submitted written comments prior to the close of the record may appeal the Hearings Officer decision, no later than 14 days from the date of this notice. Details on appeal procedures are located in SZCDC § 16.76. **An appeal of this decision must be filed no later than 5:00 PM on September 14, 2022.**

I, Eric Rutledge, for the Planning Department, City of Sherwood, State of Oregon, in Washington County, declare that the Notice of Decision LU 2021-023 SUB was placed in a U.S. Postal receptacle, or transmitted via electronic mail, on August 31, 2022 before 5pm.

Eric Rutledge, Associate Planner – City of Sherwood

**BEFORE THE LAND USE HEARINGS OFFICER  
OF CITY OF SHERWOOD, OREGON**

Regarding an application by Westwood Homes, )  
LLC, for approval of a preliminary plat to divide )  
19.99-acres into 41 lots at 17033 and 16871 )  
SW Brookman Road, in the City of Sherwood ) (**Cedar Creek Gardens Subdivision**)

**FINAL ORDER**

**LU 2021-023 SUB**

**A. SUMMARY**

1. The applicant requests approval to divide the 19.99-acre site into 41 lots and tracts for open space, stormwater, and private streets. The proposed development is located at 17033 and 16871 SW Brookman Road; also known as tax lots 3S1060000102 and 3S1060000107 (the “site”).

a. Tax Lot 107 is an irregularly shaped lot with two “flagpole” strips of land connecting to SW Brookman Road in different locations. The northeastern flagpole connects to SW Brookman Road as it curves to the east to connect to SW Ladd Hill Road. The southwestern flagpole connects to SW Brookman Road, just east of Cedar Creek. Tax Lot 102 is a rectangular shaped lot with approximately 600 feet of frontage on SW Brookman Road.

b. The site is within the regional Urban Growth Boundary and was annexed into the City of Sherwood in 2017 (Ord. 2017-002). The site and abutting properties to the west are zoned MDRL (Medium Density Residential Low) and are within the Brookman Addition Concept Plan area. Properties to the north are zoned Medium Density Residential High to the northwest and Low Density Residential PUD to the northeast. The property to the east has not been annexed into the City and is zoned Washington County FD-20 (Future Development, 20-acre minimum lot size). SW Brookman Road abuts the south boundary of the site. The property to the west of the site is under construction as the Reserve at Cedar Creek Subdivision, a 59-lot single family development.

c. The site is mostly forested, with the exception of two existing homes and various outbuildings. Cedar Creek runs through the site, entering from the west and flowing north. Wetlands are located within the riparian corridors that transect the site. The applicant will remove all existing structures on the site and construct a new single-family detached dwelling on each of the proposed lots. The applicant will retain the creek, wetlands, and associated buffers in proposed open space Tracts B, D, H, and I.

i. The applicant proposed to develop eight lots in the northwest corner of the site, which will be accessed from the west via public streets within the Reserve at Cedar Creek Subdivision; the applicant will construct the eastern half-width of proposed SW Yamel Terrace to serve these lots.

ii. The applicant will develop two lots at the northeast corner of the site, within the flagpole portion of Tax Lot 107. These lots will take access from SW Brookman Road via a new shared driveway. The shared driveway is proposed to intersect

SW Brookman Road on a curve where the existing street curves from north-south to east-west.

iii. The remaining 31 lots will access SW Brookman Road to the south via a new interior public street system. The applicant will extend a new north-south public street, proposed "Street A" into the site from SW Brookman Road near the center of the site's SW Brookman Road frontage. "Street A" will intersect an east-west street, proposed "Street B," in a "T" intersection. The applicant will extend "Street B" east between "Street A" and the east boundary of the site to allow for further extension when the abutting property redevelops. The applicant will also extend "Street B" west, before curving the street to the northeast to provide access to proposed lots in the southern portion of the site. The applicant will stub the west leg of "Street B" to the east boundary of the site to allow for further extension when the abutting property redevelops.

d. The applicant proposed to construct community trails within the proposed open space tracts on the site, including extensions of the community trails approved as part of the Reserve at Cedar Creek subdivision west of the site.

i. The applicant will provide a trail on the north side of Cedar Creek, connecting to the existing trail within the Reserve at Cedar Creek south of proposed Tract A and continuing north along the east boundaries of proposed lots 3-8 before stubbing to the north boundary of the site.

ii. The applicant will provide a second trail south of Cedar Creek, connecting to the existing trail within the Reserve at Cedar Creek and extending northeast along the northwest boundaries of proposed Lots 9-15 and the south boundary of proposed Lot 39. The applicant will stub this trail to the east boundary of the site. The applicant will also extend two connections to this trail from proposed "Street B."

iii. The applicant will extend a third trail along the west boundary of proposed Lot 40, between SW Redfern Drive and the south boundary of the northern flagpole portion of Tax Lot 107.

e. The applicant will dedicate right-of-way for a future five-lane arterial along the site's SW Brookman Road frontage and pay a fee-in-lieu for half-street improvements. The applicant will also retain a visual corridor between the proposed lots and SW Brookman Road, proposed Tract E and F.

f. Additional basic facts about the site and surrounding land and applicable approval standards are provided in the Staff Report to the Hearings Officer dated July 27, 2022 (the "Staff Report").

2. City of Sherwood Hearings Officer Joe Turner (the "hearings officer") conducted a public hearing to receive testimony and evidence about the application. City staff recommended that the hearings officer approve the preliminary plat subject to conditions in the Staff Report. The applicant accepted those findings and conditions without exceptions. Representatives of the property owners also testified in support of the application. Nine persons testified orally with questions and concerns about the

application. Other person testified in writing. Contested issues in the case include the following:

a. Whether the City provided adequate notice of the application and public hearing;

b. Whether the applicant sustained its burden of proof that the proposed tree removal is allowed by the Code;

c. Whether the proposed development will have prohibited impacts on wildlife and wildlife habitat;

d. Whether potential impacts to alleged “culturally modified trees” are relevant to the applicable approval criteria.

e. Whether the applicant can remove trees for the extension of the Redfern community trail;

f. Whether and to what extent access to the site is allowed from SW Redfern Drive;

g. Whether the proposed development will preclude bicycle, pedestrian, and emergency access to SW Redfern Drive;

h. Whether private streets on the site must be developed to City standards for public streets;

i. Whether the applicant sustained its burden of proof that the private street serving proposed Lots 40 and 41 complies with the requirements of the Code;

j. Whether SZCDC 16.106.030.D requires additional setbacks for lots abutting SW Brookman Road;

k. Whether the driveway standards for “two-family” dwellings apply to this development;

l. Whether the purpose statements of the Code are applicable approval criteria;

m. Whether the hearings officer has jurisdiction to review Washington County’s design exception decision;

n. Whether proposed Lot 41 meets the minimum 25-foot street frontage requirement of SZCDC 16.12.030.C;

o. Whether proposed Lot 40 is a “through lot;”

- p. Whether the applicant’s survey accurately reflects the width of the flagpole area in the northeast portion of the site;
- q. Whether it is feasible for the applicant to comply with the approval criteria for lot size reduction in SZCDC 16.144.030.B.1;
- r. Whether the proposed development maintains a minimum five-percent of the net developable area as protected open space;
- s. Whether the lot averaging standards of SZCDC 16.120.020.E apply to this development;
- t. Whether assertions that proposed Lots 39, 40 and 41 are “wildly out of proportion to all the rest of the lots in the subdivision” are relevant to the applicable approval criteria;
- u. Whether the applicant correctly identified the boundaries of the wetland in Tract H;
- v. Whether the proposed development will cause or exacerbate flooding and other stormwater issues on adjacent properties;
- w. Whether the applicant modified the floodplain or vegetated corridor boundaries on the site;
- x. Whether the applicant can provide additional pedestrian access to the north of the site;
- y. Whether the proposed development makes adequate provisions for parking;
- z. Whether construction activity on the site will cause prohibited impacts on abutting properties and residents;
- aa. Whether the application can be denied to protect existing residents’ quality of life; and
- ab. Whether assertions that the proposed development is “too big for Sherwood” are not relevant to the applicable approval criteria.

3. Based on the findings provided or incorporated herein, the hearings officer approves the preliminary plat subject to the conditions at the end of this final order.

**B. HEARING AND RECORD HIGHLIGHTS**

1. The hearings officer received testimony at the duly noticed public hearing about this application on August 3, 2022. Prior to the hearing, the hearings officer received into the record and physically inspected the file maintained by the City

regarding the application. All exhibits and records of testimony are filed at the City of Sherwood. The hearings officer made the declarations required by ORS 197.763. The following is a summary by the hearings officer of selected testimony and evidence offered at the public hearing.

2. City planner Eric Rutledge summarized the Staff Report and his PowerPoint presentation, Exhibit D11.

a. He corrected the following typographical errors in the Staff Report.

i. Page 3 notes that the property to the east is under construction as the Reserve at Cedar Creek Subdivision. This should refer to the property to the *west*.

ii. Proposed Lot 23 has 25.22 feet of frontage, p. 7; and

iii. The city engineer approved two of the three design modifications requested by the applicant. The City denied the applicant's request to modify the public utility easement along "Street B," pp. 71 and 93.

b. He noted that, as of the hearing, the City had received ten public comments. Those comments raised concerns with:

i. Tree removal and preservation;

ii. Access to proposed Lots 40 and 41; and

iii. The impact of construction activity on the site.

c. The site is largely forested. Cedar Creek and associated tributary streams flow through the site from south to north. The site and abutting properties to the east and west are part of the City's Brookman Addition Concept Plan (the "Concept Plan") as shown on p. 9 of Exhibit D11. All of the lands within the Concept Plan area are expected to redevelop with urban uses within the next 20 years.

d. The site and abutting properties to the west are zoned MDRL (Medium Density Residential), which allows densities of 5.6 to 8 dwelling units per acre. The applicant proposed to develop the site at a density of 6.13 dwelling units per acre. The applicant is requesting a ten-percent reduction in the minimum lot area and minimum lot width in exchange for preservation of habitat areas on the site pursuant to SZCDC 16.144.030.B(1).

e. SW Redfern Drive is stubbed to the north boundary of the site. However, the Concept Plan prohibits the extension of this street for vehicular access. The applicant will extend the existing trail between the southern terminus of SW Redfern Drive and the south boundary of the northern flagpole portion of tax lot 107.

f. The applicant proposed to preserve Cedar Creek and its associated tributaries and wetlands within open space tracts on the site. Development within the

open space tracts is limited to the extension of utilities and trails. The trails and utility alignments were designed to minimize impacts to the water resources on the site.

i. The proposed trails will be privately owned and maintained by a homeowners association, but available for public use. Because they are private trails, they are not subject to City standards for public trails. The applicant must demonstrate that the trails will not impact protected trees. The City often requires 12-foot wide trails in order to accommodate the installation and maintenance of underground utilities beneath the trails.

g. SZCDC 16.142.070.D(1) allows the removal of trees as necessary “[t]o accommodate the development including buildings, parking, walkways, grading etc....,” subject to the criteria in SZCDC 16.142.070.D(2), which requires that the applicant provide a minimum total tree canopy of 40 percent.

i. SZCDC 16.142.070.D(4) authorizes the city to require the preservation of additional trees or woodlands, provided “[r]etention of said trees or woodlands furthers the purposes and goals of this Section, is feasible and practical both within the context of the proposed land use plan ...” and the preservation of such trees or woodlands is consistent with the criteria in SZCDC 16.142.070.D(4)(a)-(e). Therefore, review of proposed tree removal must consider the proposed development.

ii. The state legislature recently amended Oregon Revised Statute (“ORS”) 197.307(4) to require that local governments “[a]dopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing.” The provisions of SZCDC 16.142.070.D(4)(a)-(e) are not “clear and objective,” because these sections include subjective terms that are not defined by the Code. The Code defines the term “large stature tree,” but it does not use that term in the approval criteria. The approval criteria use the terms “unusual size” and “size of the tree stand,” but the Code does not define these terms. ORS 197.307(4) prohibits the City is from applying these subjective criteria to this application for residential development.

iii. The applicant volunteered to preserve seven additional Douglas fir trees that are in good/fair condition.

iv. The applicant has no authority to remove trees on adjacent properties.

h. Washington County must approve all proposed accesses to SW Brookman Road. In addition, the applicant must obtain County approval of a design exception for the northbound left turn from SW Brookman Road to the proposed shared driveway in the northeast corner of the site, due to limited sight distance at this location.

i. The Code does not provide a maximum lot size in the MDRL zone.

j. The Code defines driveways as “private streets” that must comply with the same standards as a public street, “Unless otherwise specifically authorized...”

SZCDC 16.106.040.N and 16.118.050. However, it is the City's practice to not require sidewalks or compliance with full public street standards on private streets serving one or two lots.

k. Based on the applicant's survey and the legal descriptions in the deeds for the site, the flagpole area in the northeast portion of Lot 107 is 60 feet wide.

l. The applicant is required to design a conceptual development plan for the Gregory's property, demonstrating that it is feasible to develop their property in the future. The Gregory's property is located within the Urban Growth Boundary ("UGB") and planned for residential development as shown in the Concept Plan. Therefore, the City must ensure that approval of this development will not preclude future development of the Gregory's property. That plan is not binding on the Gregory's or future owners of their property.

3. Planner Wayne Hayson, professional arborist Todd Prager testified on behalf of the applicant, Westwood Homes, LLC.

a. Mr. Hayson summarized his PowerPoint presentation, Exhibit A36.

i. He noted that the site is located near the east end of the Brookman Addition Concept Plan. The site consists of two tax lots and includes 19.99-acres of land. As shown in the Concept Plan, the site is planned for residential development and open space. The applicant proposed to preserve the majority of the site as open space associated with Cedar Creek and associated tributaries and wetlands.

(A) The City, with the involvement of affected property owners and the general public, developed the Concept Plan to guide development within the Brookman Addition area. One early version of the Concept Plan designated the entire site, including the northern flagpole, as open space. However, the final Concept Plan adopted by the City designates most of the site, including the northern flagpole, as MDRL that is intended to be developed.

(B) The Concept Plan prohibits vehicular access to SW Redfern Drive. Therefore, the only way to access the developable areas in the northern flagpole portion of the site is from SW Brookman Road abutting the northeast corner of the site. Development in this area of the site is consistent with the design of the Concept Plan.

ii. The applicant proposed two accesses to the site from SW Brookman Road; a shared driveway serving proposed Lot 40 and 41 at the northeast corner of the site and a public street near the center of the site's south boundary. The Concept Plan and the City and County Transportation System Plans include both of these intersections. SW Brookman Road is a County road. Therefore, Washington County must approve these proposed accesses. The City has jurisdiction to review the proposed development, but the County has jurisdiction to approve access to SW Brookman Road. The Washington County Community Development Code prohibits denial of developments that cannot meet access spacing requirements.



iii. The City denied the applicant's request to modify the public utility easement along "Street B." However the city engineer can approve this modification through the engineering review process, as it will have less impact on the resource areas compared to compliance with the City's standards.

iv. The proposed development will preserve far more open space than is generally required. The applicant proposed to preserve 12.65-acres, 63-percent of the 19.99-acre site, as open space, including 11.34-acres of Vegetated Corridor associated with Cedar Creek and associated tributaries and wetlands and 1.31-acres of open space outside of the Vegetated Corridor area. The applicant will dedicate 1.96-acres of right-of-way, leaving 5.38-acres, 27-percent of the site area, for residential development with 41 proposed lots. Most subdivisions develop lots on 80-percent of the land area within a development site.

v. The applicant will construct 0.33-miles (more than 12,000 lineal feet) of community trails on the site, not including sidewalks along the proposed public streets within the site. The applicant will provide trails on both sides of Cedar Creek with connections to approved trails within the Reserve at Cedar Creek Development.

(A) The applicant proposed to construct the trails within a 20-foot easement, the minimum right-of-way width allowed by the Code. The applicant proposed 12-foot wide trails to be consistent with the designs of trails constructed by prior developments within the Concept Plan area. These are intended to be shared use trails, which require wider trail widths to allow opposing traffic to easily pass. However, the applicant is willing to consider narrow trail widths.

(B) The applicant will construct a small portion of the trail within the floodplain. The applicant will balance cut and fill within the floodplain to ensure no net rise in the flood elevation.

(C) The Concept Plan shows a park in the area of proposed Tract I, southwest of Redfern Drive, with a community trail through the east side of the park. The applicant will retain trees 6602 and 6603 and remove one dead tree west of the trail. However, the applicant must remove other trees within Tract I east of the trail in order to accommodate excavation for the extension of existing sewer lines and to construct the trail.

vi. The applicant proposed to preserve as many trees on the site as possible. The applicant considered neighbors' concerns and revised the site and grading plans to preserve additional trees. The applicant now proposes to preserve 881 (55.8 percent) of the 1,579 trees on the site, including 87 trees that are located outside of environmentally constrained areas. In addition, the applicant will plant 33 street trees adjacent to the proposed streets and 195 trees and 2,100 shrubs within the VC enhancement and mitigation areas. The applicant will plant additional trees within the proposed water quality facilities. This development will provide a tree canopy cover of 56.8-percent, far more than the minimum 40-percent tree canopy cover required by the

Code. The applicant shifted the east end of the driveway serving Lots 40 and 41 five feet to the south in order to retain tree 8339.

(A) He agreed with Mr. Rutledge and Mr. Prager that the standards of SZCDC 16.142.080.C.(3)(b)(5) are not clear and objective and may not be applied to this application for residential development.

vii. He agreed to extend the 120 day clock until November 8, 2022, to accommodate the open record period.

b. Mr. Prager summarized his Memorandum, exhibit A33.

i. The applicant originally proposed to preserve 833 (52.8-percent) of the trees on the site. The revised site plan dated May 17, 2022, allows the preservation of 44 additional trees and the applicant subsequently identified four additional trees that can be preserved, for a total of 881 trees preserved on the site. The applicant reviewed all of the trees cited by the City and neighboring residents.

(A) The applicant can adjust the alignment of the trail south of SW Redfern Drive to preserve trees 6602 and 6603.

(B) Trees 8202 and 8211 are both located within the building envelope on proposed Lot 41. Tree 8212 is located within four feet of the building envelope and tree 8271 is within the grading envelope on Lot 41. Excavation for a residence on this lot will impact the roots of these trees, requiring their removal.

(C) Trees 8284, 8252, and 8320 are located within two feet of the shared driveway serving Lots 40 and 41. Grading for construction of the driveway will impact the roots of these trees, requiring their removal.

(D) Trees 6560 and 6565 are located within the building envelope of Lot 40 and tree 6571 will be impacted by grading for the Community Trail west of Lot 40. Therefore, these trees must be removed.

(E) Tree 6616 will be preserved. This tree was marked for removal in error.

(F) The applicant can adjust grading for the shared driveway to preserve tree 8339.

(G) Trees 9221, 9223, and 9224 are in or near the SW Brookman Road right of way and must be removed to accommodate grading within the right of way.

ii. SZCDC 16.142.070.C(3)(c) defines “large stature tree” but the Code does not regulate or require the preservation of such trees. SZCDC 16.142.080.C.(3)(b)(5) authorizes the City to require retention of “unusual size” trees. But this standard is subjective, because it does not define the term “unusual size” or

provide any standard for when such trees must be preserved. He opined that big leaf maple, Douglas fir, and western hemlock trees over 36-inches diameter at breast height (“dbh”) are large, but fairly common. Trees over 48-inches dbh are rarer and could be considered unusual. Most arborists would consider trees of these species in the 50- to 60-inch dbh range rare and unusual for this region. However, these are merely his opinion. These definitions of “unusual size” are not included in the Code.

4. Realtor Angie Bissett appeared on behalf of the owners of tax lot 102. She noted that the site is located within the incorporated city limits and planned for residential development pursuant to the Brookman Addition Concept Plan. The owners have been waiting to sell their property.

5. Dave Sweeney testified that the trails within the adjacent Reserve at Cedar Creek development are nine feet wide. He noted that many of the trees on the site are 80 to 85 years old and more than 100 feet tall. The applicant is proposing to remove 80 to 85 trees within the northeastern flagpole portion of the site to accommodate two lots.

6. Emily Teters appeared on behalf of her grandparents, Ruth and Byron Gregory, who own the property abutting the east boundary of the site, within the Brookman Addition Concept Plan area. She objected to the conceptual development plan for their property. She argued that there is value in leaving some areas rural to protect the quality of life for existing residents.

7. Neil Shannon summarized his written testimony, Exhibit C11. He opposed the development of Lots 40 and 41, arguing that development of these lots and shared driveway will damage habitat areas on the site and impact the existing neighborhood north of the site. The intersection of the proposed driveway and SW Brookman Road will create a hazard due to limited sight distance and the location of existing driveways. Section 220.020.1.b of the Washington County Roadway Standards allows for design exceptions “when an equivalent alternative is available.” Adding a driveway to a major arterial street is not an “equivalent alternative.” Therefore, the proposed design exception should be denied. If the application is approved, the applicant should be required to obtain County approval of an access management plan. He requested the hearings officer hold the record open to allow an opportunity to submit additional testimony and evidence.

8. Ruth Gregory testified that she and her husband purchased the property east of the site 45 years ago. When they purchased their property the owner of the site retained a 50-foot wide flagpole strip along their north boundary to allow access to SW Brookman Road, the northeastern flagpole portion of the site. Proposed development within this flagpole area will require the removal of many large trees for only two lots. Removal of those trees will impact air quality, wildlife habitat, and wetlands, reduce shade, and impact the aesthetics of the area.

9. Byron Gregory testified that they purchased a ten acre parcel and then sold what they believed was a 50-foot wide flagpole along strip along their north boundary. They were surprised that the flagpole strip is now 60 feet wide. There is a floodplain on their property and the area where the applicant proposed to construct a driveway within

the flagpole portion of the site frequently floods in the winter. He questioned how the applicant will deal with water that collects in that area. He objected to the impacts of the proposed development on their property.

10. Madeline Robinette summarized her written testimony, Exhibit C8. She argued that some of the trees on the site may be “culturally modified” trees used by native Americans to mark trails. The applicant should be required to preserve such trees. She objected to the applicant’s proposal to remove 80 trees to construct two homes within the flagpole area in the northeast corner of the site.

11. Cynthia Randall objected to the proposal to remove trees within the flagpole area in the northeast corner of the site to accommodate two homes that are completely separated from the rest of the development. Residents of the abutting neighborhood were unaware that this area would be developed. Clearing in this area will impact the livability and beauty of the City. The rear yards of the homes north of the site are often wet in the winter. These lots currently drain south, onto the flagpole portion of the site. She questioned where this water will go when this area is developed. She expressed concerns that clearing on this site will expose trees on neighboring properties to increased wind impacts, increasing the risk that those trees will fall. The lack of adequate sight distance at the intersection of SW Brookman Road and the proposed flagpole driveway will create a hazard. The site provides habitat for coyotes and other wildlife.

12. Kyle Grant appeared on behalf of the Amber Lane Homeowners Association. He requested the hearings officer hold the record open to allow the public the opportunity to submit additional testimony and evidence. He questioned why the applicant is proposing to remove trees within open space Tract I south of Redfern Drive. He questioned how removal of those trees is necessary to accommodate the proposed development. The neighborhood supports narrow width community trails if necessary to preserve trees within Tract I.

13. Donnie Mangus objected to the lack of sight distance at the proposed driveway intersection with SW Brookman Road at the northeast corner of the site.

14. Real estate consultant Don Marthaller appeared on behalf of Wayne and Linda Chronister, the owners of tax lot 107. The Chronisters purchased their property in 1980 when it was outside of the city limits. They had no plans to develop their property. However, the City adopted the Brookman Addition Concept Plan which includes development of their property. Prior developments have been encroaching from the west, changing the former rural nature of their property. Construction of the Brookman Addition sewer trunk line removed many trees and further altered the nature of the area. He argued that the proposed development will enhance the City as the applicant will preserve much of the site as open space with public trails throughout the area.

15. At the end of the hearing the hearings officer held open the public record for one week, until August 10, 2022, to all parties an opportunity to submit additional testimony and evidence. The hearings officer held the record open for a second week, until August 17, 2022, to allow all parties an opportunity to respond to whatever was submitted during the first week. The hearings officer held the record open for a third

week, until August 24, 2022, to allow the applicant to submit a final argument, without any new evidence.

### **C. DISCUSSION**

1. City staff recommended approval of the preliminary subdivision plat, based on the affirmative findings and subject to conditions of approval in the Staff Report. The applicant accepted those findings and conditions without exceptions.

2. The hearings officer concludes that the affirmative findings in the Staff Report show that the proposed preliminary plat does or can comply with the applicable standards of the Sherwood Zoning and Community Development Code, provided that the applicant complies with recommended conditions of approval as modified herein. The hearings officer adopts the affirmative findings in the Staff Report as his own, except to the extent they are inconsistent with the following findings.

3. The hearings officer finds that the public was provided with adequate notice of the hearing. Notice of the hearing was published in the newspaper, posted on the site, and mailed to the owners of properties within 1,000 feet of the site and other listed entities as required by SZCDC 16.72.020.A, B, and C. Multiple forms of notice are required, in part, to provide a measure of overlap, so that if notice in one form is not effective (e.g., when a mailed notice is not received), another form of notice will be effective (e.g., published or posted notice). Failure to received mailed notice “[s]hall not invalidate the applicable public hearing or land use action.” SZCDC 16.72.020.D. The applicant is not required to provide notice beyond the 1,000 foot radius required by the Code. The neighborhood was well represented at the hearing and in the written record. Residents of the neighborhood testified clearly and succinctly regarding issues of concern to them. The hearings officer held the record open for two weeks after the hearing to allow the public the opportunity to submit additional testimony and evidence regarding the application.

4. The hearings officer finds that the applicant sustained its burden of proof that the proposed tree removal is allowed by the Code.

a. SZCDC 16.142.070.B requires that trees or woodlands be preserved “to the maximum extent feasible *within the context of the proposed land use plan* and relative to other codes, policies, and standards of the City Comprehensive Plan.”<sup>1</sup> (Emphasis added). SZCDC 16.142.070.D(1) allows for removal of trees as necessary “[t]o accommodate the development...,” subject to the canopy requirement of 16.142.070.D(2). SZCDC 16.10.020 defines “development” as:

Any man-made change to improved or unimproved real property or structures, including but not limited to construction, installation, or alteration of a building or other structure; change in use of a building or structure; land

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<sup>1</sup> LUBA held that a requirement to maximize the retention of trees is sufficiently clear and objective. *Rogue Valley Assoc. of Realtors*, 5 Or LUBA 139, 158 (1998), *aff'd*, 158 Or App 1, 970 P2d 685, *rev den*, 328 Or 594 (1999).

division; establishment or termination of rights of access; storage on the land; tree cutting; drilling; and any site alteration such as land surface mining, filling, dredging, grading, construction of earthen berms, paving, parking improvements, excavation or clearing.

b. The above standards require maximum preservation of trees, within the context of the proposed land use plan and as necessary “[t]o accommodate the development...” The Code allows the removal of large and mature trees when such removal is necessary to accommodate the proposed development. In this case the applicant proposed to subdivide the site into 41 lots for single-family residential dwellings. Substantial clearing is necessary within the developable area of the site to accommodate that development. The City required that the applicant shift the alignment of the utilities and community trail within proposed Tract I to the east, which increased the number of trees that must be removed. (See Attachment 6 of Exhibit A34). Neighbors objected to the applicant’s proposal to remove 80 trees within the northeast flagpole portion of the site to serve just two lots. However, the hearings officer is unable to find anything in the Code that prohibits such clearing, because this clearing is necessary to accommodate the development and additional tree retention if not feasible within the context of the proposed land use plan.

c. The applicant modified the preliminary plat to maximize the preservation of trees on the site. As modified, the applicant proposed to preserve 881 of the 1,579 trees inventoried on the site (55.8 percent). (See Attachments 5 and 6 of Exhibit A34). The remaining trees must be removed to accommodate the proposed development as discussed in detail in Exhibits 15 and 33 and Mr. Prager’s testimony. The applicant must remove trees to accommodate grading and excavation for proposed streets, trails, utilities, stormwater facilities, and building foundations, all of which constitutes “development” as defined by the Code. The City required the applicant to extend sewer lines between SW Redfern Road and the south boundary of the site to allow for further extension and connection when the adjacent property redevelops. (See Condition C.9)<sup>2</sup> Trenching for installation of this sewer line will impact the roots of trees within the sewer alignment, requiring their removal. The presence of sensitive lands and associated vegetated corridors on the property to the south of Tract I will not preclude future trail and utility extensions. City and CWS regulations allow the extension of utilities and trails across vegetated corridors. The hearings officer finds that all of the proposed tree removal is necessary to accommodate the proposed development. Therefore, removal of these trees is allowed by SZCDC 16.142.070.B and SZCDC 16.142.070.D(1). There is no substantial evidence to the contrary.

i. The neighbor’s arborist argued that the applicant can preserve additional trees by installing underground utilities using boring techniques rather than trench excavations and by constructing the proposed trails “on the ground” rather than “in the ground.” (Exhibit C14). However, sanitary sewer lines proposed on the site, including within the proposed trail alignments, require the installation of surface manholes and

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<sup>2</sup> All citations to the condition numbers in this Final Order refer to the numbering in the Staff Report. Changes to the conditions required by this Final Order may alter the numbering as shown in the conditions included at the end of the Final Order.

construction of a minimum 12-foot wide maintenance roadway over the top of these sewer lines. (See Attachment 7 of Exhibit A34). Retaining trees within the sewer alignments would limit the location of required manholes and preclude maintenance vehicle access. The maintenance road/trail cannot be constructed “on the ground” as suggested by the neighbor’s arborist. City standards for maintenance access roads require an excavated and compacted subgrade, eight-inches of compacted rock, and three-inches of asphalt. (See Attachment 7 of Exhibit A34 and Exhibit D10). Trenching for utilities and grading and construction of trails will impact the roots of trees, requiring their removal.

d. SZCDC 16.142.070.A is a purpose statement, not an approval criterion, with which the applicant is required to demonstrate compliance. The goals set out in the purpose statements are achieved through compliance with the implementing regulations and approval criteria. Purpose statements themselves are not relevant unless they include specific approval criteria or the implementing regulations that follow are ambiguous, and resort to the purpose statements is necessary to determine the context and meaning of ambiguous terms. *See, e.g., Beck v. City of Tillamook*, 18 Or LUBA 587 (1990) (Purpose statement stating only general objectives is not an approval criterion) and *Freeland v. City of Bend*, LUBA No. 2003-059 (2003) at p. 6 (generally worded expressions of the motivation for adopting the regulation, or the goals or objectives that the local government hopes to achieve by adopting the regulation do not play a direct role in reviewing applications for permits under the land use regulations).

e. The City adopted ZCDC 16.142.070.D(4) in an attempt to provide additional opportunities for preserving large or unusual trees or stands of trees. As discussed at the hearing, the legislature recently amended ORS 197.307(4) to prohibit local governments from apply standards and criteria that are not “clear and objective” when reviewing applications for housing.<sup>3</sup> Approval standards are not clear and objective if they impose “subjective, value-laden analyses that are designed to balance or mitigate impacts of the development on (1) the property to be developed or (2) the adjoining properties or community.” *Rogue Valley Assoc. of Realtors* at 35 Or LUBA 158. The hearings officer finds that the many provisions of SZCDC 16.142.070.D(4) are not “clear and objective,” because these sections include subjective terms that are not defined by the Code. SZCDC 16.142.070.D(4)(e) authorizes the preservation of trees of based on “unusual size,” “size of the tree stand,” and “historic association or species type.” However, these terms are subjective and require the exercise of significant discretion. The Code does not include clear and objective definitions of these terms. SZCDC 16.142.070.C(3)(c) defines the term “large stature tree.” However, the Code does not require preservation of such trees or use the term “large stature tree” elsewhere in the Code.

f. The hearings officer finds that SZCDC 16.142.080 is inapplicable. This section regulates “Trees on Private Property [that are] not subject to a land use action. SZCDC 16.142.070.B provides that the standards of SZCDC 16.142.070 apply to “All applications including a Type II - IV land use review...”. In this case the applicant is

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<sup>3</sup> Prior to the recent amendments, the clear and objective requirement of ORS 197.307(4) only applied to “needed housing.” The legislature amended this statute to apply to all applications for housing.

proposing a Type III subdivision. Therefore, tree removal associated with that development is subject to SZCDC 16.142.070.

g. The hearings officer finds that it is feasible to comply with the canopy cover requirement of SZCDC 16.142.070.D(2). This section requires that the applicant provide tree canopy cover equal to a minimum 40-percent of the net developable site. SZCDC 16.10.020 defines “Net Developable Site” as the “Remaining area of a parent parcel after excluding present and future rights-of-way, environmentally constrained areas, public parks and other public uses but not including preserved areas for tree stands which are not associated with wetlands, streams or vegetated corridors.” The applicant argues that this development will provide a tree canopy cover of 56.8-percent, exceeding the minimum 40-percent required by the Code. However, as noted in the Staff Report and public testimony, the applicant’s analysis may include trees located within environmentally constrained lands, required visual corridors, and other areas that are not included in the “Net Developable Site” and therefore may not count towards the minimum canopy requirement. However, the hearings officer finds that it is feasible to comply with this requirement by recalculating the total tree preservation on portions of the site outside of these areas. If the resulting analysis results in less than 40 percent tree cover, the applicant can reduce the size of proposed lots to preserve additional trees on the site or plant new trees on the site as necessary to meet this standard. The applicant should be required to demonstrate actual compliance with the canopy cover requirement of SZCDC 16.142.070.D(2) prior to final plat approval. A condition of approval is warranted to that effect.

h. The hearings officer acknowledges that the existing trees on this site may serve to buffer adjacent properties from strong winds. Clearing on this site will eliminate that buffer effect, potentially exposing trees on adjacent properties to greater wind impacts and increasing the possibility that trees will be blown down during storms. However the applicant has no duty to retain trees on site in order to protect offsite trees from wind impacts and the Code does not require consideration of such potential impacts. ZCDC 16.142.070.D(4)(b) provides that the City “may” require the retention of trees that “are necessary to keep other identified trees or woodlands on or near the site from being damaged or destroyed due to windfall, erosion, disease or other natural processes.” However, the Code does not define the term “identified trees or woodlands” or specify a particular level of risk. In addition, use of the term “may” gives the decision maker broad subjective authority to determine whether and when to require such preservation. As discussed above, ORS 197.307(4) prohibits the City from applying such subjective criteria. The hearings officer finds that, although clearing on this site may increase the potential for blowdown, the risk is not relevant to the applicable approval criteria that the City may apply.

i. The applicant has no authority to remove trees that are not located on the site or trees located on the common boundary between the site and abutting properties, including trees within Tract A of the Arbor Lane development, without the express permission of the owners of the adjacent property. The applicant revised the preliminary plat and tree removal plan to preserve such trees. (See Attachments 5 and 6 of Exhibit A34).



5. Neighbors strongly opposed the applicant's proposal to remove trees within the northeastern flagpole portion of the site for the construction of two residential lots and an access road. However, this portion of the site is planned for residential development based on the Brookman Concept Plan. The Brookman Concept Plan prohibits access to SW Redfern Drive. The applicant must extend a shared driveway/private street east to SW Brookman Road to provide access to development in this area of the site. Therefore, clearing in this area of the site is allowed, because it is "[w]ithin the context of the proposed land use plan" (SZCDC 16.142.070.B) and necessary "[t]o accommodate the development..." (SZCDC 16.142.070.D(1)).

6. Ms. Robinette argued that the site may contain "culturally modified trees," trees that were altered by native Americans to mark trails or for other purposes. (Robinette testimony and Exhibits C8 and C12). Mr. Prager argued that "[t]his growth habit is naturally occurring and results from leader failures or defects as a result of storm events, wounding, or other factors." (p. 2 of Attachment 5 of Exhibit A34). However, the hearings officer finds that it is unnecessary to determine whether or not the noted trees are "culturally modified trees." For one, the Code does not regulate "culturally modified trees." SZCDC 16.142.070.D.4(e) authorizes the City to require retention of trees "[b]ecause of ... historic association..." However, the term historic association is subjective and cannot be applied to this application for residential development, as discussed above. These trees may be protected by state law if the state regulates such trees and the cited trees meet state definitions for such trees. However, there is no definitive evidence to that effect in the record. An archaeologist with the Oregon State Historic Preservation Office noted that the cited trees "look like they could potentially be octopus trees." But the archaeologist failed to provide a definitive determination or cite to any state standard requiring the preservation of such trees. In addition, as noted in Exhibit C16, the noted trees are not proposed for removal as part of this development. Therefore, this issue is moot.

7. Clearing and development on the upland portion of this site will eliminate habitat for wildlife, including owls and other birds, deer, coyotes, and other animals. But the Code does not prohibit such an effect. To the contrary, it is an inevitable consequence of concentrating new development in the urban area. None of the animals observed on this site are listed as endangered or threatened. They are commonly observed in the area. Their presence is less likely after the site is developed, but that is to be expected. The applicant proposed to preserve a significant portion of the site as undeveloped open space - including the majority of the existing streams, wetlands, and associated vegetated corridors - as protected open space and these areas will continue to provide habitat for wildlife as well as a corridor for wildlife to travel through the site and access other habitat in the area.

a. Mr. Sweeny submitted a photo of an owl on the site, which he asserted may be a spotted owl. (Exhibit C5). However, as noted in the email from the Audubon Society of Portland, "It is very unlikely" that the owls in the photos are spotted owls. Spotted owls are protected by the federal Endangered Species Act (the "ESA"). However, the ESA is not an approval criteria for this application and the hearings officer cannot condition or deny this application based on speculative evidence that, although "very unlikely" the site *may* provide habitat for a protected species. The hearings officer finds

that federal law provides adequate protection of this species if it is found to exist on the site.

8. Opponents argued that the applicant should be required to dedicate easements or right-of-way for a trail within Tract I, but not clear trees or construct improvements for the trail. However, the Brookman Addition Concept Plan requires a trail in this location. If the City does not require construction of the on-site section of this trail as a condition of this development the City will be required to fund such construction in the future. In addition, as discussed above, the applicant is required to install underground utilities and construct a maintenance access road over the top of the utilities, which will require removal of trees.

9. No vehicular access is proposed or permitted from SW Redfern Drive. The Brookman Addition Concept Plan prohibits such access, identifying a local connection to Redfern Drive as an area of special concern and limiting this street to “[b]icycle, pedestrian, and emergency access only due to the constraint of the existing street design.” (p. 22 of Exhibit D8).

a. The city engineer will approve construction access points for the proposed development. Such accesses are usually located where streets will be provided to serve the proposed development. But the determination of such accesses is within the exclusive jurisdiction of the city engineer. In addition, the applicant may need to perform some construction activities within the existing SW Redfern Drive right-of-way in order to extend existing utilities located within the right-of-way and to construct an extension of the existing trail.

a. Neighbors argued that proposed Lot 40 will preclude bicycle, pedestrian, and emergency access to SW Redfern Drive, because the western boundary of this lot extends partially across the SW Redfern Drive right-of-way. (Exhibit 41). However, the applicant is required to construct an extension of the existing trail adjacent to SW Redfern Drive as a 12-foot wide paved maintenance access road within a 20-foot easement that will provide bicycle, pedestrian, and emergency access south of existing SW Redfern Drive.

10. There is a dispute regarding the design standards for shared driveways/private streets on the site. Unfortunately the Code provisions addressing this issue are vague and conflicting and need to be clarified to clearly identify and distinguish between design standards for driveways, shared driveways, and private streets. However, unless and until the City amends the Code to provide such clarification, the hearings officer must construe the existing Code language based on the text and context of the Code.

a. SZCDC 16.118.050 “Private Streets,” provides “The construction of new private streets, serving single-family residential developments shall be prohibited unless it provides principal access to two or fewer residential lots or parcels i.e. flag lots.” However, the Code does not define the term “private street.”

i. SZCDC 16.10.020 defines “street” as “A public or private street, easement or right-of-way that is created to provide access to one (1) or more lots, parcels, areas or tracts of land.”

ii. SZCDC 16.10.020 defines “Right-of-Way” as “An interest in real property typically acquired by reservation, dedication, prescription, or condemnation and intended for the placement of transportation and utility facilities and infrastructure or similar public use.” Based on the plain language of the Code, the hearings officer finds that an easement or tract for a shared driveway is a “right-of-way” as defined by the Code, as these are all interests in land created by reservation or dedication in a final land division plat.

iii. Therefore, the Code appears to define “private street” as a private vehicular accessway<sup>4</sup> located in an easement, tract, or right-of-way. Based on this definition, the shared accesses serving proposed Lots 2, 3, 19, 20 and the portion of the shared accessway located on Lot 41 and providing access to Lots 40 and 41 are private streets. The applicant proposed to locate the accessway for Lots 2, 3, 19 and 20 in separate tracts. The applicant proposed to locate the accessway serving Lots 40 and 41 in an easement over Lot 41.

(A) The portion of the accessway located entirely on Lot 40 is not a private street, because it is not located in an easement, tract, or right-of-way. It is a driveway serving a single dwelling located entirely on the lot where on the same lot as the dwelling.

iv. The hearings officer finds that the accessway serving Lot 39 is also a private street. Lot 39 is a flag lot with a narrow flagpole connection to proposed “Street B.” The accessway serving this lot will be located in the flagpole portion of the lot. However, the accessway for this lot will also provide access to the stormwater facilities, public trail, and utilities within the trail right-of-way. Therefore, the hearings officer finds that this accessway is a private street, because it is located in an easement created to provide access to more than one lot tract of land.

b. SZCDC 16.118.050 and 16.106.040.N require that “Unless otherwise specifically authorized, a private street shall comply with the same standards as a public street identified in the Community Development Code and the Transportation System Plan.” SZCDC 16.106.010.A sets out the standards for public streets. This section requires that “local” streets be improved with a minimum 28-foot paved width within a 52-foot right-of-way and six-foot sidewalks. “Alleys” require ten to 12 feet of paved width within a 16 to 25-foot right-of-way and no sidewalks are required. Therefore, the Code appears to require that the private streets serving proposed 2, 3, 19, 20, 39, 40, and 41 be constructed with to the standards for local streets or alleys, “Unless otherwise specifically authorized...” The Code does not specify which street type is required in any particular case.

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<sup>4</sup> The hearings officer uses the term “accessway” to refer to any improvement that provides vehicular access to one or more lots that is not a public street, i.e., a driveway, shared driveway, or private street.

c. Mr. Rutledge testified that it is the City's practice to not require sidewalks and full street improvements for private streets. This appears to conflict with SZCDC 16.118.050 and 16.106.040.N, which require that "Unless otherwise specifically authorized..." private streets must comply with the same standards as public streets. A blanket waiver for all private streets is not a specific authorization. Unfortunately, the Code does not provide any standards or guidelines as to when private streets may be "otherwise specifically authorized" for development to lesser standards than public streets. SZCDC 12.02.025 authorizes the city engineer or designee to revise permit conditions, construction, and other standards and SZCDC 12.08.050 authorizes the city engineer to approve deviations from sidewalk standards. Therefore, the hearings officer finds that the applicant should be required to construct the shared driveways/private streets serving Lots 2, 3, 19, 20, 39, 40, and 41 to City standards determined by the city engineer, unless the city engineer approves an alternative design. The hearings officer finds that the city engineer is in the best position to determine which street type may be required and whether and to what extent an alternative design may be warranted for particular private streets within this development based on accepted engineering and safety considerations.

11. The hearings officer finds that the private street serving proposed Lots 40 and 41 is not a "cul-de-sac" subject to the 200-foot length limitation of SZCDC 16.106.040.E.1.<sup>5</sup> SZCDC 16.10.020 defines "Cul-de-Sac" as "A short street that terminates in a vehicular turnaround. See Section 16.108.060."<sup>6</sup> The applicant did not propose a turnaround at the end of this street and the hearings officer is unable to find any provision in the Code that requires a turnaround on this street. The Fire District expressly determined that a turnaround is not required on this street. (Exhibit B7). SZCDC 16.106.040.E.2 requires that cul-de-sac streets "[t]erminate with a turnaround in accordance with the specifications in the Engineering Design Manual." However, the Design Manual does not specify when a turnaround is required or provide a definition of the term "cul-de-sac." The Design Manual merely provides dimensional standards for the design of such turnarounds. Therefore, the hearings officer finds that this private street is not a cul-de-sac street subject to the 200-foot length limit, because it does not include a turnaround.

12. The private street provisions of the Code contains additional inconsistencies that, although not relevant to this application, should be addressed in any ensuing update.

a. As noted, SZCDC 16.118.050 "Private Streets," provides "The construction of new private streets, serving single-family residential developments shall be prohibited unless it provides principal access to two or fewer residential lots or parcels i.e. flag lots." SZCDC 16.10.020 defines "street" as "A public or private street, easement or right-of-way that is created to provide access to one (1) or more lots, parcels, areas or tracts of land." However, SZCDC 16.10.020 defines "Flag Lot" as "A building lot which is provided access to a public street by means of a narrow strip of land with minimal

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<sup>5</sup> Section 210.7.C of the City's Engineering Design and Standard Details Manual allows cul-de-sac streets up to 800 feet in length. However, the hearings officer finds that the provisions of the Code prevail over the Engineering Design and Standard Details Manual.

<sup>6</sup> There is no "Section 16.108.060" in the current Code. Therefore, this definition is out of date and needs to be amended.

frontage.” Therefore, an accessway serving a single dwelling where the accessway is located on the same lot as the dwelling, including an accessway within the flagpole portion of a flag lot, is not a “private street,” because the accessway is not located in an easement or right-of-way. However, SZCDC 16.118.050 expressly refers to “flag lots” as an example of a private street.

b. SZCDC 16.118.050 and 16.106.040.N require that private streets comply with the standards for public streets, without specifying the type of public street. Local streets require a minimum 28-foot paved width and sidewalks within a 52-foot right-of-way. However, the Code authorizes the creation of lots with private streets that cannot comply with the requirements for local streets.

i. SZCDC 16.68.020.A(4) authorizes the approval authority to “[r]equire shared driveways (i.e., for two dwellings)<sup>7</sup> for paired lots that individually have less than 40 feet of street frontage...” Such shared driveways would constitute “private streets” that may require a minimum 28-foot paved width within a 52-foot right-of-way. But SZCDC 16.12.030.C authorizes lots with as little as 25 feet of street frontage. Two “paired lots” each with 25 feet of frontage could not comply with the 52-foot right-of-way required for such shared driveways.

13. The hearings officer finds the private street serving proposed for Lots 40 and 41 complies with the maximum block length standard of SZCDC 16.106.030.B(3).

a. This section provides “Block Length. For new streets except arterials, block length shall not exceed 530 feet.”<sup>8</sup> However, SZCDC 16.106.030.B(7) provides an exception to the maximum block length requirement when existing development or physical or topographic conditions, including wetlands or other bodies of water, precludes a street extension.

b. The hearings officer finds that existing development on abutting lands preclude a street connection to the north and physical or topographic conditions (streams and wetlands) on the site preclude street connections to the to the south and west. Therefore, SZCDC 16.106.030.B(7)(b) allows an exception to the block length standard. The proposed private street will provide a connection to the east, connecting to SW Brookman Road.

c. The hearings officer questions the safety of a the proposed 12-foot wide by 354-foot long private street on Lot 41. The 12-foot width of this private street does not allow room for opposing traffic to pass and, given the length of the private street, drivers may be unable to see and wait for oncoming vehicles. The applicant did not propose to provide turnouts for that purpose. As discussed above, the applicant is required to construct this street to the standards for public streets set out in SZCDC 16.106.010.A. As noted, the city engineer is in the best position to determine whether, and to what extent,

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<sup>7</sup> The hearings officer finds that the reference to “two dwellings” in SZCDC 16.68.020.A(4) is not the same as the “two-family” dwellings referenced in SZCDC 16.96.020.A(2). As discussed below, “two-family” dwellings refers to duplex dwellings on a single lot with a single street frontage. SZCDC 16.68.020.A(4) refers to “two dwellings” on “paired lots” with separate street frontages.

<sup>8</sup> SZCDC 16.128.010.A(2) reiterates this requirement.

this street must comply with those standards and ensure safe operation of this private street.

14. The hearings officer finds that SZCDC 16.106.030.D, which requires additional setbacks for lots abutting arterial roads, is inapplicable. The applicant will dedicate additional right-of-way along the site's SW Brookman Road frontage, bringing the right-of-way into compliance with the standard width under the functional classifications in Section VI of the Community Development Plan. In addition, only the flagpole portion of proposed Lot 41 and proposed Tract H abut SW Brookman Road and no structures subject to the setback requirements are proposed or allowed in these areas.

15. The hearings officer finds that the driveway standards of SZCDC 16.96.020.A(2) and (3) are inapplicable to this application.

a. SZCDC 16.96.020.A(2) applies to driveways serving "two-family" dwellings. The hearings officer finds, based on the text and context of the Code, that the term "two-family" dwellings is intended to refer to duplex developments, with two dwelling units located on a single lot. This section does not define the term "two-family dwelling." However, Section 8.16.1130 of the Sherwood Code defines "two-family dwelling" as "a building containing two dwelling units..." i.e., a duplex. This is consistent with other sections of the Code, which distinguish between "Single Family Attached," "Single Family Detached" and "Two-Family" residential developments, *see e.g.*, SZCDC 16.12.010.D which notes that the MDRH zoning district provides for "[s]ingle-family, two-family housing, manufactured housing multi-family housing, and other related uses..." SZCDC 16.142.070.D(2) which specifies tree canopy requirements for "Residential Developments (Single Family Attached, Single Family Detached and Two-Family)," among many others.

b. SZCDC 16.96.020.A(3) applies to driveways serving multi-family developments. This application for a single-family detached residential subdivision is subject to the standards of SZCDC 16.96.020.A(1).

16. The purpose statement in SZCDC 16.02.020 is not an applicable approval criterion based on the discussion above in section C.4.e of this Final Order.

17. The hearings officer has no jurisdiction to review Washington County's approval of a design exception for the proposed driveway access onto SW Brookman Road. SW Brookman Road is a County street subject to Washington County jurisdiction. Therefore, the arterial intersection spacing requirements of SZCDC 16.106.040.M(2)(d) are inapplicable. Pursuant to section 220.020.2 of the "Washington County Road Design and Construction Standards" (the "Road Standards"), the county engineer has exclusive jurisdiction to review the design exception request. Section 220.020.4 authorizes the applicant to appeal the engineer's denial of a design exception to the director. The Road Standards do not provide an opportunity for appeal of the county engineer's approval of a design exception. However, as noted in Exhibit B10, approval of an exception may not compromise public safety and may only be approved if it meets the criteria in 220.020.1.

a. Condition D.4 requires that the applicant obtain final approval of the design exception from Washington County prior to issuance of a grading permit, which is necessary to remove trees or undertake other development activity on the site.

18. Mr. Sweeny argued that proposed Lot 41 does not meet the minimum 25-foot street frontage requirement of SZCDC 16.12.030.C. (Exhibit C15). However, Mr. Sweeny's analysis incorrectly deducts the three-foot strip north of the driveway, the 12-foot driveway, and the side yard and street side yard setbacks from the lot width. The three-foot strip, driveway, and setback areas are all part of the "lot" and the "lot width at front property line."

19. Proposed Lot 40 is not a "through lot" as alleged in Exhibit C17. per 16.10.020 defines "through lot" as "A lot having frontage on two parallel or approximately parallel streets." Lot 30 has frontage on SW Redfern Drive and the private street/shared driveway on Lot 41. These streets are not parallel; SW Redfern Drive is aligned north south and the private street/shared driveway on Lot 41 is aligned east-west, perpendicular to SW Redfern Drive. In addition, even if Lot 40 were considered to have frontage on SW Brookman Road via the private street/shared driveway on Lot 41, SW Brookman Road is not parallel to SW Redfern Drive; SW Brookman Road turns east, perpendicular to the alignment of SW Redfern Drive at the northeast corner of the site.

20. There is a dispute regarding the width of the flagpole area in the northeast portion of the site. Opponents argued that the flagpole is only 50 feet wide where it abuts SW Brookman Road, based on the 2013 survey by AKS Engineering and Forestry, LLC (the "annexation survey," attached to Exhibit C18) and the Gregory's recollection of their sale of this area. The applicant argues that the flagpole area is 59.87 feet wide where it abuts SW Brookman Road, based on records of survey recorded with the Washington County Surveyor. (Attachments 1-3 of Exhibit A34). The hearings officer finds that the recorded surveys noted by the applicant are more persuasive than the unrecorded survey noted by the opponents. The recorded surveys noted by the applicant were specifically intended to identify the boundaries of tax lot 107 and were reviewed and approved by the County surveyor prior to recording. The purpose of the annexation survey was to establish the boundaries of the proposed annexation area, not to determine the boundaries of tax lot 107. The applicant will be required to survey the site again prior to final plat approval and can confirm the width of the flagpole at that time.

21. The hearings officer finds that it is feasible for the applicant to comply with the approval criteria for lot size reduction in SZCDC 16.144.030.B.1, which authorizes the applicant to reduce the minimum lot size by up to ten-percent in exchange for preserving "[a]n equal amount of inventoried resource above and beyond that already required to be protected...in a public or private open space tract or otherwise protected from further development."

a. As discussed in the Staff Report, the applicant proposed to reduce the lot size of 13 lots below the minimum 5,000 square feet minimum lot size required by the

MDRL zone.<sup>9</sup> The hearings officer calculates that the applicant proposed a total reduction of 2,485 square feet, based on the table below. Therefore, SZCDC 16.144.030.B.1 requires that the applicant preserve 2,485 square feet net developable area as protected open space.

Lot #	Proposed Lot Size	Standard Lot Size	Difference
1	4,964	5,000	36
7	4,808	5,000	192
8	4,500	5,000	500
23	4,945	5,000	55
24	4,945	5,000	55
25	4,500	5,000	500
26	4,917	5,000	83
27	4,577	5,000	423
28	4,969	5,000	31
29	4,950	5,000	50
30	4,950	5,000	50
36	4,656	5,000	344
38	4,834	5,000	166
		Total Difference	2,485

b. SZCDC 16.142.030.A requires that the applicant maintain a minimum five-percent of the net developable area as protected open space, which equates to 14,563 square feet (0.33 acres) in addition to the open space required to meet SZCDC 16.144.030.B.1.

c. The applicant asserts that the site contains 291,266 square feet (6.69-acres) of net developable area and they propose to preserve 56,938 square feet (1.3-acres) of the net developable area as protected open space. (p. 98 of Exhibit A6). Subtracting 14,563 square feet (0.33 acres) of net developable area retained as protected open space required to meet SZCDC 16.142.030.A leaves 42,375 square feet (0.97 acres) of net developable area retained as protected open space, which is more than sufficient to meet the 2,485 square feet of net developable area retained as protected open space required to meet SZCDC 16.144.030.B.1.

d. However, as noted in the Staff Report, the applicant’s analysis appears to include open space within proposed Tracts H, E, and F, which cannot be counted towards the open space requirements of SZCDC 16.142.030.A and SZCDC 16.144.030.B.1. Nevertheless, the hearings officer finds that it is feasible to comply with the open space protection requirements of SZCDC 16.142.030.A and SZCDC 16.144.030.B.1. The applicant proposed to preserve significantly more net developable area than required. After deducting the areas of Tracts H, E, and F it appears sufficient

<sup>9</sup> The applicant’s narrative (p. 98 of Exhibit A6) and Staff Report (p. 69 of the Staff Report) incorrectly state that the applicant is proposing to reduce the size of 11 lots below 5,000 square feet. However, the calculations of the total lot area reduction included in those documents is correct.



protected open space is provided to meet the requirements of SZCDC 16.142.030.A and SZCDC 16.144.030.B.1. If necessary, the applicant can modify the plat, reducing the lot sizes or eliminating lots, as needed to meet all open space requirements.

e. Condition of approval B.5 requires that the applicant revise the open space plan and provide a final usable open space percentage after removing Tracts H, E, and F from the calculations and show that the open space requirement of SZCDC 16.142.030.A is met. The conditions should be modified to also require revised calculations demonstrating that the open space requirement of SZCDC 16.144.030.B.1 is also met.

f. The first paragraph of SZCDC 16.144.030 is a purpose statement, not an applicable approval criterion. This purpose is implemented through compliance with the approval criteria in the following subsections.

22. The applicant is not proposing to utilize the lot averaging standards of SZCDC 16.120.020.E. Therefore, this standard, and the maximum lot size standard of SZCDC 16.120.020.E(3) are inapplicable.

23. Mr. Sweeny's assertion that proposed Lots 39, 40 and 41 are "wildly out of proportion to all the rest of the lots in the subdivision" is without merit as there is no maximum lot size in the MDRL zone. All of the proposed lots comply with the minimum lot size requirements of the MDRL zone as modified by SZCDC 16.144.030.B(1).

24. Neighbors argued that the wetland within proposed Tract H is larger than indicated on the applicant's plans, based on observations of wetland plants and saturated soils outside of the identified wetland boundary. (Exhibit C15). Wetlands are defined by the Corps' wetland manual based on the presence of three indicators: hydric soils, wetland hydrology during specified times of the year, and hydrophytic vegetation. No wetland exists if any one of these three is not present. In this case, the applicant's professional wetland consultant Environmental Science & Assessment, LLC investigated the site and identified the boundaries of the wetland, based on the presence or absence of these indicators. (Exhibit A13). Staff with Clean Water Services ("CWS") and the Oregon Department of State Lands ("ODSL") also visited the site and concurred with the applicant's analysis. (Exhibits 12 and 14). Neighbor's observations of saturated soils and wetland plants is not sufficient to overcome the expert testimony of the applicant's consultant and CWS and DSL staff. Neighbor's did not provide any evidence of the presence of hydric soils in areas of the site located outside of the identified wetland boundaries or that their observations of saturated soils occurred during relevant times of the year necessary to meet the Corps' definition of wetlands.

25. The proposed development will not cause or exacerbate flooding and other stormwater issues on adjacent properties.

a. The proposed development will replace areas of existing field and forest with new impervious surfaces, which will reduce opportunities for stormwater to infiltrate and increase the volume of stormwater runoff on the site. The applicant will collect this increased runoff from all new impervious surfaces on the site and convey it to

one of several stormwater facilities on the site for treatment and detention. The applicant will release treated stormwater into the vegetated corridor associated with the on-site streams or into existing storm sewers at less than predevelopment rates, reducing the rate of runoff from the site.

c. Based on the existing topography in the area stormwater runoff currently flows onto the site from the north and west (and possibly from the east). (See pp. 2 and 3 of Exhibit A30). However, the applicant is prohibited from increasing or concentrating stormwater runoff onto adjacent properties or from blocking surface flows that currently flow onto the site. The applicant will be required to grade the site and or install catch basins, pipes, or other systems to accommodate runoff that currently flows onto the site and convey it through the site or into the stormwater facilities. The City will review the applicant's final stormwater engineering and design to confirm compliance with applicable requirements.

d. The applicant is not required to remedy existing high groundwater and surface water ponding on adjacent properties. The applicant is only prohibited from increasing the depth or extent of such water issues.

26. The applicant did not modify the floodplain or vegetated corridor boundaries on the site. As Mr. Hayson explained at the hearing, the applicant modified the plans, changing the boundaries of lots near the floodplain and VC boundaries on the western portion of the site, which gave the appearance of changes to the floodplain and VC boundaries. But the floodplain and VC boundaries did not change. There is no evidence to the contrary. CWS and the City will confirm the location of the floodplain and VC boundaries through their final review processes.

27. The Sherwood School District requested that the applicant provide "multiple walking paths" connecting portions of this development east of Cedar Creek to the existing neighborhood to the north. (Exhibit C1). The hearings officer finds that the application complies with this request to the extent feasible.

a. The applicant will extend the existing trail within the Redfern Drive right-of-way through the site, stubbing the trail to the south boundary of the flagpole portion of the site. This trail can be further extended and potentially connected to trails in the southern portion of the site when the abutting property redevelops. Existing development to the north of the site precludes the extension of additional on-site trails in this direction.

c. The alignment of Cedar Creek within the site precludes the applicant from providing a trail connection between the proposed development area in the southern portion of the site and existing trails to the north. As noted in the Staff Report, a trail crossing of Cedar Creek is not proposed for the northern portion of the site due to the length of the crossing and high cost of construction relative to the size of the overall project. However, the applicant has provided a 20 foot trail easement for a future crossing at this location. In addition, the applicant will connect trails on the site to existing trails to the west, which may provide connections to the north.

28. The proposed development will make adequate provisions for parking. SZCDC 16.94.020.A requires a minimum of one parking space per lot for the majority of lots on the site. Footnote 3 of this section requires two parking spaces per lot when on-street parking is not permitted on the street to which the house has direct access. As noted above, proposed Lots 2, 3, 19, 20, 39, 40, and 41 will have direct access to private streets, which may or may not allow for on-street parking, depending on the determination of the city engineer. The applicant must provide two parking spaces for each of these lots if on-street parking is prohibited on these private streets. Condition of approval E.4 should be modified to that effect. The City will ensure compliance with this standard through the building permit review. The City has no authority to demand more parking than the Code requires.

29. Construction on this site will temporarily cause increased noise, dust, traffic, and other impacts on adjacent roads and properties. The Code and state law regulate construction activities, including requirements for dust and erosion control, construction vehicle access, road closures etc., which will limit impacts on surrounding residents. Noise is regulated by Chapter 9.52 of the Code and OAR 340-35. City staff will inspect the site during construction to ensure ongoing compliance with applicable requirements. Compliance with these regulations will not eliminate all potential impacts. However, the hearings officer finds that, while such impacts may occur, they are not significant enough to require specific limitations on construction other than those imposed by State law and the Code. The hearings officer encourages residents to contact the City if excessive impacts occur.

30. Opponents argued that this application should be denied to protect existing residents' quality of life. However, quality of life is protected through compliance with the adopted zoning and approval criteria, which the City Council adopted after considering and balancing a number of potentially conflicting goals and needs. Extensive community opposition to the proposed use is not relevant. The only issue that the hearings officer may consider is whether the application does or does not comply with the applicable approval criteria.

31. Assertions that the proposed development is "too big for Sherwood" (Exhibit C3) are not relevant. The Code does not limit the size of developments or number of lots. In addition, the proposed development is consistent with the City's adopted Brookman Addition Concept Plan and the MDRL zoning.

#### **D. CONCLUSION**

Based on the above findings and discussion, the hearings officer concludes that LU 2021-023 SUB (Cedar Creek Gardens Subdivision Subdivision) should be approved, because it does or can comply with the applicable standards of the Sherwood Zoning and Community Development Code, subject to conditions of approval necessary to ensure the final plat and resulting development will comply with the Code.

#### **E. DECISION**

Based on the findings, discussion, and conclusions provided or incorporated herein and the public record in this case, the hearings officer hereby approves LU 2021-023 SUB (Cedar Creek Gardens Subdivision Subdivision), subject to the following conditions of approval:

**A. General Conditions**

1. Compliance with the Conditions of Approval is the responsibility of the developer or its successor in interest.
2. The development shall substantially comply with the submitted preliminary plans and narrative except as indicated in these conditions. Additional development or change of use may require a new development application and approval.
3. The developer/owner/applicant is responsible for all costs associated with private/public facility improvements.
4. The continual operation of the property shall comply with the applicable requirements of the Sherwood Zoning and Community Development Code and Municipal Code.
5. This approval does not negate the need to obtain permits, as appropriate from other local, state, or federal agencies even if not specifically required by this decision.
6. All new utilities to be installed for the development of the subject property shall be underground.
7. Retaining walls within public easements or the public right-of-way shall require engineering approval.
8. The applicant must submit a sign permit to install future signage on the site.
9. The preliminary plat approval is valid for two years from the date of the Notice of Decision. The final plat shall be approved by the City within two years of the Notice of Decision, unless an extension is granted by the City prior to the two-year deadline.
10. The construction time period of public improvements for each phase shall be no greater than two years without reapplying for a preliminary plat. The construction time period begins when an engineering compliance agreement is issued from the City's Engineering Department.
11. Tracts A, B, C, D, and H shall be dedicated to the City of Sherwood for permanent ownership and maintenance. Tracts B and D shall be dedicated after removing land not defined as environmentally constrained in SZCDC § 16.10.
12. Tracts E, F, G, I, and the non-constrained land within Tracts B and D shall be permanently owned and maintained by the HOA.

13. Washington County Transportation Development Tax (TDT) credit eligible offsets will be based on requirements and limitations established by Washington County Ordinance Mo. 691A, as modified by Ordinances 729, 741, 746-A, 751 and 793-A, and as described in Washington County's *Countywide Transportation Development Tax Procedures Manual*, dated July 2019. City Transportation SDC credit eligible off-sets will be based on requirements and limitations established by City of Sherwood Municipal Code Chapter 15.16 – System Development Charges and Chapter 15.20 – Park and Recreation System Development Charges on New Development.
14. The applicant shall comply with the TVF&R Service Provider Letter and all applicable fire code regulations, as determined by service provider.
15. Per City Municipal Code Chapter 16.118, all new utilities shall be placed underground unless covered by exceptions noted under Section 16.118.040, and as approved by the city engineer.

**B. Prior to Final Plat Approval**

1. Prior to Final Plat approval, Lot 3 shall be modified to provide a minimum width at the front property line of 25 feet, while remaining in compliance with all of the remaining Development Standards.
2. Prior to Final Plat approval, revise the plat to include clear vision areas pursuant to SZCDC § 16.58.010.
3. Prior to Final Plat approval, revise the landscape plans to include clear vision areas pursuant to SZCDC § 16.58.010.
4. Prior to final plat approval, provide a Covenants, Conditions, & Restrictions (CC&R) document that describes the reservations, restrictions, and maintenance responsibilities for the shared private streets including Tract G and the easements serving Lots 2, 3, 19, 20, 39, 40, and 41.
5. Prior to Final Plat approval, revise the open space plan and provide a minimum five-percent of the net buildable as usable open space after removing Tracts H, E, and F from the calculations.
6. Prior to Final Plat approval, revise the open space plan and provide a minimum 2,485 square feet of net developable area retained as protected open space required to meet the standard of SZCDC 16.144.030.B.1 after removing Tracts H, E, and F from the calculations.
7. Prior to Final Plat approval, provide a final open space improvement plan that provides seating opportunities for the pocket parks adjacent to the pedestrian trail, including Tract I.

8. Prior to final plat approval, the plat shall be revised to remove non-environmentally constrained land from Tracts B and D. The area removed shall be provided in separate tracts to be owned and maintained by the HOA. Environmentally constrained land is defined by SZCDC § 16.10
9. Prior to final plat approval, provide draft CC&Rs that describe ownership and maintenance responsibilities for Tracts E, F, G, I, and the non-constrained land within Tracts B and D. Maintenance responsibilities shall include the community trail.
10. Prior to final plat approval, a detailed street tree plan that complies with the size and spacing standards of SZCDC § 16.142.060 shall be submitted to the City. The proposed tulip trees shall be replaced with a tree on the City's Street Tree List.
11. Prior to final plat approval, the name of all new public and private streets shall be provided on the plat. Public street names shall conform to the naming standards in SZCDC § 16.106.010.
12. Prior to Final Approval of Plat, applicant shall show a 33-foot wide right-of-way dedication to Washington County along the site's SW Brookman Road frontage, meeting Washington County's standards for half of a five-lane arterial right-of-way section width of 53-feet as measured from the existing right-of-way centerline.
13. Prior to Final Approval of Plat, applicant shall show right-of-way dedication to establish a 26-foot wide right-of-way along the SW Brookman Road street frontage for Lot 41 and Tract H meeting the approval of the City of Sherwood Engineering Department.
14. Prior to Final Approval of Plat, show clear vision easements on all corner lots fronting public streets. The clear vision easement shall be to the City of Sherwood and conform with MC Section 16.58.010.
15. Prior to Final Approval of Plat, applicant shall show a minimum eight-foot wide public utility easement (PUE) on private property along all public street frontages unless otherwise approved by the city engineer.
16. Prior to Final Approval of Plat, all proposed private street tracts shall comply with all the standards stated in SZCDC 16.118.050 (Private Streets) unless otherwise approved by the city engineer.
17. Prior to final plat approval, the applicant shall dedicate right-of-way for Brookman Road and meet all other requirements of Condition II of the Washington County comments dated June 30, 2022.
18. Prior to Final Plat Approval, the stormwater treatment facilities shall be shown as being located in individual tracts of land dedicated to the City of Sherwood.

19. Prior to Final Plat Approval, an easement over the vegetated corridors tracts of land granting access to CWS shall be recorded with the plat.

**C. Prior to Engineering Approval of the Public Improvement Plans**

1. Prior to Issuance of the Engineering Compliance Agreement, the following payments shall be made to the City, and distributed into the appropriate fund accounts (either Washington County TDT or City transportation SDC) as determined by the applicant.

Brookman Road frontage right-of-way land dedication.

- a. Washington County is requiring a 33-foot wide right-of-way dedication along the frontage of SW Brookman Road.
- b. Right-of-Way land valuation shall be credit eligible against either Washington County TDT fees (100 percent), or the City transportation SDC fees (100 percent), or a combination of the two for right-of-way dedication in excess of a city half street local street section (26 feet).

SW Sunset Boulevard/SW Woodhaven Drive TIA mitigation item A

- a. A proportionate share cost of \$19,480.52 for a signalized intersection improvements.
- b. Mitigation item A is credit eligible at 100 percent for Washington County TDT fees, or 100 percent for City transportation SDC fees, or a combination of the two fees not to exceed \$19,480.52.

SW Sunset Boulevard/SW Timbrel Lane TIA mitigation item B

- a. A proportionate share cost of \$14,516.13 for a mini-roundabout intersection improvement.
- b. Mitigation item B is credit eligible at 100 percent for Washington County TDT fees, or 100 percent for City transportation SDC fees, or a combination of the two fees not to exceed \$14,516.13.

SW Ladd Hill Road/SW Main Street/SW Sunset Boulevard mitigation item C

- a. A proportionate share cost of \$8,650.52 for a signalized intersection improvement.
- b. Mitigation item C is credit eligible at 100 percent for Washington County TDT fees, or 100 percent for City transportation SDC fees, or a combination of the two fees not to exceed \$8,650.52.

SW Baker Road/SW Murdock Road/SW Sunset Boulevard mitigation item D

- a. A proportionate share cost of \$26,627.22 for addition of turn lane intersection improvements.
- b. Mitigation item D is credit eligible at 100 percent for Washington County TDT fees, or 100 percent for City transportation SDC fees, or a combination of the two fees not to exceed \$26,627.22

SW Brookman Road/SW Highway 99

- a. A proportionate share cost of \$30,941.88 (41 lots at \$754.68/lot) for signalized intersection improvements.

- b. This mitigation item is credit eligible at 100 percent for Washington County TDT fees.
2. Prior to Issuance of the Engineering Compliance Agreement, SW Brookman Road Frontage Improvements shall be installed to meet a five-lane arterial class street meeting Washington County and City of Sherwood standards unless a Fee In-Lieu-Of Construction Payment is made. Fee-in-lieu will consist of the following: 14-feet of street widening at local street thickness, curb and gutter, six-foot width of sidewalk, two catch basins, street lighting, street trees and storm water quality and hydromodification facilities (\$1.50/square foot) – since none of this is above the local street section, it is not credit eligible. Any payment in-lieu required by Washington County in excess of the payment above will be at 100 percent for Washington County TDT fees, or 100 percent for City transportation SDC fees, or a combination of the two fees.
3. Prior to Final Approval of Engineering Plans, applicant shall submit a separate design modification request for each non-conforming public infrastructure design element, to the city engineer for review and approval.
4. Prior to Final Approval of Engineering Plans, the interior street system providing access to the subject development shall be designed to meet the approval of the City of Sherwood Engineering Department.
5. Prior to Final Approval of Engineering Plans, street widening improvements along SW Brookman Road along the frontage of Lot 41 and Tract 'H' shall be designed to meet a standard residential street section with streetlight (mast arm and luminaire on power pole acceptable) meeting the approval of the City of Sherwood Engineering Department. A Washington County permit is also required for the driveway connection to SW Brookman Road.
6. Prior to Final Approval of Engineering Plans, the street lighting design shall include a photometric analysis report for review and approval by city engineering. City lighting standards require Westbrooke fixtures on all internal streets to the subdivision. Street lighting for SW Brookman Road frontage shall conform to Washington County standards.
7. Prior to Issuance of an Engineering Compliance Agreement, final engineering plan approval by the Engineering Department is required, performance and payment bonds and insurance riders must be submitted to the City.
8. Prior to Final Approval of Engineering Plans, the subject development shall design to provide public sanitary sewer service to all proposed lots as required through new public streets/public easements meeting the approval of the Sherwood Engineering Department.
9. Prior to Final Approval of Engineering Plans, the subject development shall design for the extension of the sanitary sewer north of the subject property and



west of SW Redfern Drive to be extended to the southern property line of the subject property meeting the approval of the Sherwood Engineering Department.

10. Prior to Final Approval of Engineering Plans, the subject development shall design to provide public water service to all proposed lots as required through new public streets/public easements meeting the approval of the Sherwood Engineering Department. All public water pipe shall have joint restraints.
11. Prior to Final Approval of Engineering Plans, the applicant shall obtain any necessary Right-of-Way Permits and/or Utility Facilities Permits from Washington County for constructing public improvements within the SW Brookman Road right-of-way.
12. Prior to Final Approval of Engineering Plans, applicant shall obtain and provide letter from Sherwood Public Works Department, that existing public water system has the capacity and pressure to provide appropriate public water and fire service to the proposed development.
13. Prior to Final Approval of Engineering Plans, the subject development shall design for the installation of a 12-inch waterline running down SW Brookman Road, shall extend the entire length of the property frontage right-of-way line. The oversizing cost of construction (greater than eight inches) shall be eligible for water system SDC credits. A payment-in-lieu may be accepted by the city in place of construction of a 12-inch waterline along the frontage of Lot 41 and Tract H.
14. Prior to Final Engineering Plan Approval, applicant shall obtain an NPDES 1200C permit.
15. Prior to Final Engineering Plan Approval, submitted site development plans shall provide for compliance with all 23 requirements and conditions stated in the CWS issued Service Provider Letter (File No. 21-002919).
16. Prior to Final Engineering Plan Approval, submitted site development stormwater improvement plans shall provide for City access to stormwater outfall/outlet structures for maintenance purposes.
17. Prior to Final Engineering Plan Approval, a Final Stormwater Drainage Report shall be provided to City of Sherwood Engineering Department for review and approval.
18. Prior to Final Engineering Plan Approval, a Stormwater Connection Permit shall be obtained from CWS.
19. Prior to Final Engineering Plan Approval, obtain and submit to Engineer a concurrence letter from DSL for the wetlands on the site or submit documentation from DSL that concurrence is not required.

20. Prior to Final Engineering Plan Approval, the subject development shall design to provide stormwater improvements as needed to serve new street improvements and to serve each lot meeting the approval of the City of Sherwood Engineering Department.
21. Prior to Final Approval of Engineering Plans, the subject development shall show the private streets serving Lots 2, 3, 19, 20, 39, 40, and 41 improved to City standards for public streets as determined by the city engineer, unless the city engineer approves design modification request allowing construction of these streets to alternative standards.

**D. Prior to Issuance of a Grading Permit**

1. Prior to Issuance of Grading Permit, the subject lots shall be annexed to the Clean Water Services and Metro Service District.
2. Prior to Issuance of a Grading Permit, the applicant shall submit a final Tree Report and Final Tree Preservation and Removal Plan reflecting any required changes in the land use approval. All on-site trees shall be protected through site development in accordance with the Tree Plan and Final Tree Preservation and Removal Plan. The applicant shall obtain approval from adjacent property owners prior to any off-site tree removal, including trees located on the boundary between the site and abutting properties.
3. Prior to tree removal and issuance of a grading permit, the proposed development shall obtain a US Army Corps of Engineers/Oregon Department of State Lands joint permit for the filling of the wetlands and provide evidence of a wetland mitigation bank credit equal to the amount of wetland permanently filled on the site.
4. Prior to issuance of a grading permit, the applicant shall obtain final design exceptions from Washington County for the new local street intersection with SW Brookman Rd., the private driveway intersection with SW Brookman Rd., and the sight distance for the left-turn movement into the private driveway from SW Brookman Rd.
5. Prior to Issuance of a Grading Permit for Phase II (phased portion requiring direct access to an arterial) the applicant shall obtain a Washington County Facility permit as required by the Condition I of the Washington County comments dated June 30, 2022.

**E. Prior to Issuance of Building Permits**

1. Prior to issuance of building permits for each lot, the applicant shall provide a plot plan that demonstrates compliance with the setback and height requirements of the MDRL zone. Lots 40 and 41 shall be oriented in an east to west direction with the front of the homes facing east. The space between SW Redfern Dr. and the new residence on Lot 40 shall be deemed the corner lot street side and provide a

15 foot setback, while remaining in compliance with all of the remaining Development Standards.

2. Prior to Issuance of Building Permits, the applicant will need to receive substantial completion of the public improvements from the Sherwood Engineering Department for the phase which contains the lot. Phase improvements are divided by Cedar Creek with improvements west of Cedar Creek being part of Phase 1 and improvements east of Cedar Creek part of Phase 2.
3. Prior to the issuance of building permits, each lot shall provide for a hard surface driveway with a minimum width of ten feet and grade not to exceed 14 percent.
4. Prior to issuance of building permits, one off-street parking space per dwelling unit shall be provided. Garages cannot be counted as parking stalls. Lots 2, 3, 19, 20, 39, 40 and 41 shall each have two (2) off-street stalls at the minimum required width and depth, unless on-street parking is allowed on the private streets providing access to these lots. Each stall shall be a minimum of 20 feet deep x 9 feet wide.

**F. Prior to Acceptance of Public Improvements**

1. Prior to Final Acceptance of Public Improvements, all public improvements shown within the approved engineering plans shall be in place and approved by the City of Sherwood Engineering Department for the phase being accepted. Phase improvements are divided by Cedar Creek with improvements west of Cedar Creek being part of Phase 1 and improvements east of Cedar Creek part of Phase 2.
2. Prior to Acceptance of Constructed Public Improvements, applicant will comply with all the requirements and conditions of the Washington County letter dated June 30, 2022.
3. Prior to Final Acceptance of Constructed Public Improvements, connection of the development area to the public transportation improvements being constructed by the adjacent Reserve at Cedar Creek Subdivision, will not be permitted until such time as the public transportation improvements being constructed by the Reserve at Cedar Creek Subdivision have been constructed, have received final inspection approval, and have been accepted as public infrastructure by the City or as otherwise approved by the Sherwood Engineering Department. Until that time, a minimum ten-foot physical separation between the Cedar Creek Gardens site development public transportation infrastructure improvements and the adjacent Reserve at Cedar Creek Subdivision public transportation infrastructure improvements shall be maintained, unless otherwise approved by the city engineer.
4. Prior to Final Acceptance of Constructed Public Improvements, all private streets shall comply with all the standards stated in the City MC Section 16.118.050 (Private Streets).

5. Prior to Final Acceptance of Constructed Public Improvements, all conditions and requirements listing in a letter submitted by Washington County, dated June 30, 2022, shall be complied with.
6. Prior to Final Acceptance of Constructed Public Improvements, connection to that portion of the adjacent Reserve at Cedar Creek Subdivision system, will not be permitted until such time as that sanitary sewer main line has been constructed, received final inspection approval, and accepted as public infrastructure by the City. Until that time, a minimum ten-foot physical separation between the Cedar Creek Gardens site development public sanitary infrastructure improvements and the adjacent Reserve at Cedar Creek Subdivision public sanitary infrastructure improvements shall be maintained.
7. Prior to Final Acceptance of Constructed Public Improvements, any public sanitary sewer to be located on private property shall have a recorded public sanitary sewer easement encompassing the related public sanitary sewer improvement meeting the approval of the City of Sherwood Engineering Department.
8. Prior to Final Acceptance of Public Improvements, connection to that portion of the public water system being constructed by the adjacent Reserve at Cedar Creek Subdivision, will not be permitted until such time as that portion of the public water system is constructed, has received final inspection approval, and is accepted as public infrastructure by the City. Until that time, a minimum 10-foot physical separation between the proposed site development public water system and the Reserve at Cedar Creek Subdivision public water systems, shall be maintained.
9. Prior to Final Acceptance of Constructed Public Improvements, any public stormwater system that is located on private property shall have a recorded public stormwater easement encompassing the related public stormwater sewer improvement meeting the approval of the City of Sherwood Engineering Department.
10. Prior to Final Acceptance of Constructed Public Improvements, all private stormwater laterals shall be installed in compliance with the current Oregon Plumbing Specialty Code.
11. Prior to Final Acceptance of Constructed Public Improvements, Sherwood Broadband utilities (vaults and conduit) shall be installed along all subject properties street frontages per requirements set forth in City Ordinance 2005-017 and City Resolution 2005-074 unless a fee-in-lieu is accepted.

**G. Prior to Receiving Occupancy**

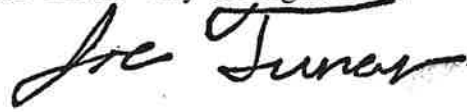
1. Prior to Grant of Occupancy, final acceptance of the constructed public improvements shall be obtained from the Engineering Department for the phase which contains the lot. Phase improvements are divided by Cedar Creek with

improvements west of Cedar Creek being part of Phase 1 and improvements east of Cedar Creek part of Phase 2.

2. Prior to Issuance of occupancy, all open space landscaping not subject to CWS standards shall be installed in accordance with SZCDC § 16.92.020 and have an irrigation system.
3. Prior to occupancy of each residence, one off-street parking space per dwelling unit shall be provided. Lots 2, 3, 19, 20, 39, 40 and 41 shall each have two (2) off-street stalls at the minimum required width and depth, unless on-street parking is allowed on the private streets providing access to these lots. Each stall shall be a minimum of 20 feet deep x 9 feet wide.
4. Prior to Grant of Occupancy, for each residential structure constructed within the subdivision and abutting the Flood Plain corridor (Lots 1-18), a completed FEMA Elevation Certificate Form shall be submitted to the City for its records.
5. Prior to occupancy, a continuous visual buffer between Brookman Road and the proposed subdivision shall be established through preserving existing native trees in good condition or planting new trees and landscaping in accordance with SZCDC § 16.142.040.
6. Prior to occupancy, the applicant shall pay a fee-in-lieu of construction for SW Brookman Road as required by Condition III of the Washington County comments dated June 30, 2022. Prior to occupancy, the community trail and open space plantings and improvements shall be installed by the developer in accordance with the final landscaping and open space improvement plans.
7. Prior to occupancy private streets shall be signed differently from public streets and include the words "Private Street."
8. Prior to Grant of Occupancy, all private sanitary laterals shall be installed in compliance with the current Oregon Plumbing Specialty Code.
9. Prior to Issuance of Occupancy of any residential lot structures, all service laterals shall be installed in compliance with the current Oregon Plumbing Specialty Code.
10. Prior to Grant of Occupancy, Lots 40 and 41 shall have constructed individual LIDA facilities meeting the approval of the City of Sherwood Engineering Department.
11. Prior to Grant of Occupancy, Lots 40 and 41 shall have Private Stormwater Facility Access and Maintenance Covenant recorded with Washington County. A O&M plan is also required to be submitted to the City of Sherwood Engineering Department

12. Prior to occupancy, the community trail and open space plantings and improvements shall be installed by the developer in accordance with the final landscaping and open space improvement plans.

DATED this 31<sup>st</sup> day of August 2022.

A handwritten signature in black ink that reads "Joe Turner". The signature is written in a cursive style with a horizontal line underlining the name.

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Joe Turner, AICP  
City of Sherwood Land Use Hearings Officer