



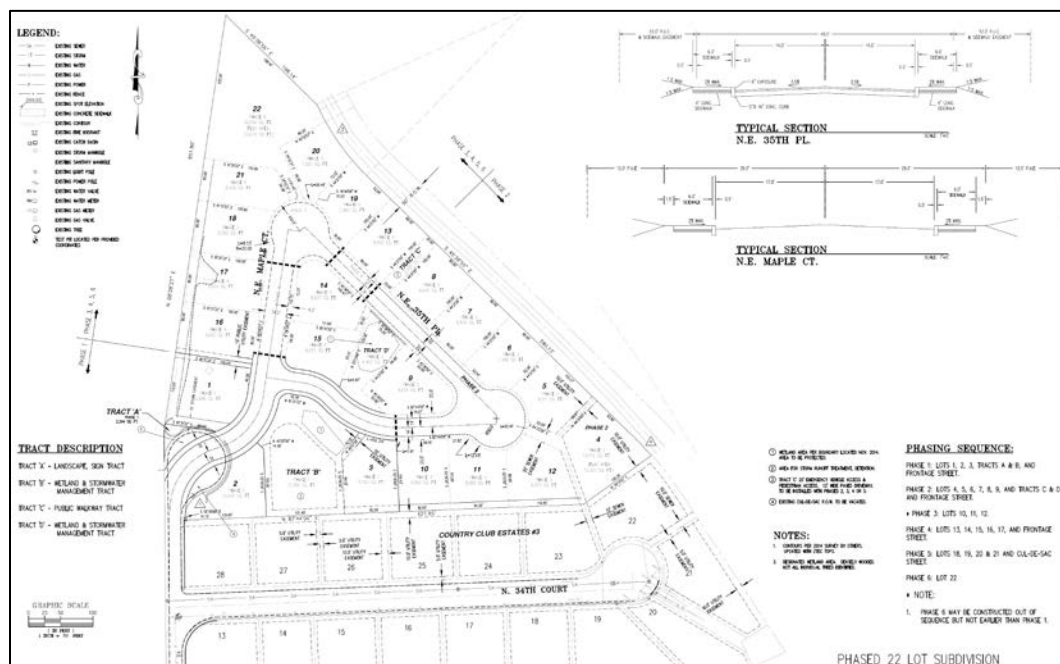
BEFORE THE CITY COUNCIL
OF THE
CITY OF CANBY

In re:
**APPEAL OF SUB 17-05
AT 3500 N MAPLE STREET**

**FINDINGS, CONCLUSION & FINAL ORDER
APP 17-02
APPEAL OF THE SEVEN ACRES SUBDIVISION
CANBY DEVELOPMENT, LLC**

I. NATURE OF THE APPLICATION

Canby Development, LLC (the “Applicant”) seeks approval for a Subdivision (SUB 17-05) (the “Application”) dividing a 6.84 acre property into a 22-lot subdivision for single-family detached homes (the “Project”) located at 3500 N. Maple Street described as Tax Map/Lot 31E2102602, Clackamas County, Oregon (the “Property”). The Project is proposed to be developed in six phases. The Property is zoned Low Density Residential (R-1) as represented on the official zoning map reference by the Land Development & Planning Ordinance (LDPO), Chapter 16 of the Canby Municipal Code (CMC). The Applicant also proposes a voluntary, variable-width improvement of N. Maple Street between Willamette Country Club and the Property with a new pedestrian pathway. The approved tentative plat is shown below:



II. PROCEDURAL HISTORY

A Pre-Application Conference was held on August 27, 2015. The required neighborhood meeting was held on December 15, 2016. Additionally, due to inclement weather on the date of the first meeting, the Applicant held a voluntary second neighborhood meeting on January 25, 2017 to discuss the concerns raised at the first neighborhood meeting. The Application was submitted on July 27, 2017 and deemed complete on August 25, 2017. The Planning Commission held a public hearing on October 23, 2017, during which the Planning Commission by a 7–0 vote approved the Application. On November 13, 2017, the Planning Commission adopted its written decision and staff sent the decision to those with standing on November 14, 2017. This appeal (File No. APP 17-02) (the “Appeal”) of Planning Commission’s Decision was timely submitted by Michael McNichols, Tony Polito, and the Friends of NE Maple Street on November 27, 2017. After holding the appeal hearing on January 17, 2018 and considering the Appellants’ presentations and other written and oral testimony, the City Council closed the public hearing, deliberated, and unanimously voted to **DENY the Appeal (APP 17-02) and thereby APPROVE the Application (SUB 17-05), the “Seven Acres Subdivision”,** with one additional condition of approval.

III. FINDINGS AND CONCLUSIONS

In support of its decision made on January 17, 2018, the Council adopts the findings set forth in this document and incorporates the findings of the Planning Commission **(Exhibit 1)**, the findings within the Staff Report **(Exhibit 2)**, and staff’s supplementary memoranda **(Exhibits 3 and 4)** to the extent that those findings do not conflict with the following specific findings contained within this document. The Council’s reasoning is fully explained below. In preparing these findings, the Council finds that it is only obligated to consider arguments raised during the appeal and not arguments raised during the Planning Commission hearing that were not also raised during this appeal. *Miles v. City of Florence*, 190 Or App 500, 504–507 (2003).

IV. APPLICABLE CRITERIA AND STANDARDS

In judging whether or not a Subdivision application shall be approved, the City Council determines whether applicable criteria from LDPO are met, or can be met by observance of conditions of approval. Applicable criteria and standards pertaining to the Appeal were identified in a staff memorandum dated December 22, 2017 and prepared for the January 17, 2018 City Council meeting. A supplemental staff memorandum dated January 17, 2018 was posted to the webpage and emailed ahead to the Council and presented for the record at the public hearing, along with the following:

- the duly noticed and published appeal application materials and appeal statement from the appellant;
- a written response from the Applicant;
- the original Staff Report and Applicant's original application submittals presented at the October 23, 2017 Planning Commission meeting; and
- and all public written input received for both the subdivision hearing and for the Council Appeal hearing.

Appellants also offered a document that was not included in the Council packet during the hearing, which was made a part of the record. The Council's findings with regard to applicable standards and criteria are set forth below.

16.62.020 Standards and criteria. Applications for a subdivision shall be evaluated based upon the following standards and criteria:

A. Conformance with other applicable requirements of the Land Development and Planning Ordinance;

FINDING: The Applicant has argued that the phrase "other applicable" is subjective and the City may not apply this criterion pursuant to the needed housing statute, set forth in ORS 197.307(4). However, Council finds that it need not determine whether the needed housing statute prohibits application of the above criterion because it finds that the application meets all applicable requirements of the LDPO. The applicable requirements used in evaluating the Application are listed in the following sections of the LDPO:

- 16.08 General Provisions
- 16.10 Off-street Parking and Loading
- 16.16 R-1 Low Density Residential Zone
- 16.43 Outdoor Lighting Standards
- 16.46 Access Limitations on Project Density
- 16.62 Subdivisions-Applications
- 16.64 Subdivisions-Design Standards
- 16.86 Street Alignments
- 16.88 General Standards & Procedures
- 16.89 Application and Review Procedures
- 16.120 Parks, Open Space, and Recreation Land General Provisions

LDPO sections not discussed below have been determined by the Council to be inapplicable. In summary and as explained in detail, substantial evidence in the whole record demonstrates that the Application satisfies all applicable LDPO requirements.

B. The overall design and arrangement of lots shall be functional and shall adequately provide building sites, utility easements, and access facilities deemed necessary for the development of the subject property without unduly hindering the use or development of adjacent properties;

FINDING: The Applicant has argued that this section does not apply because it is not clear and objective and therefore is not applicable under the needed housing statute set forth at ORS 197.307(4). In the alternative, the Applicant offered substantial evidence demonstrating that this criterion is satisfied. The Council finds that it need not resolve the question of whether this standard applies because the subdivision design and arrangement of lots is functional and adequately provides building sites, utility easements and access facilities without unduly hindering the use or development of adjacent properties. In making this determination, the Council relies on the following substantial evidence that the Project can be adequately served by public utilities:

- The tentative plan(s) of the Project, which demonstrates that all lot dimensional standards are satisfied except where relief from such standards is allowable under the LDPO, that proposed lot sizes are permissible under the LDPO, that proposed internal local streets can meet all applicable street standards as proposed and with conditions of approval, and that adequate public utilities can be extended into the Property.
- A letter from the Canby Public Works Department, dated September 11, 2017, which states that the Project can be served by the City sanitary and stormwater systems;
- The proposal, shown in the tentative plan(s), to utilize the Molalla Forest Logging Road via proposed "Tract C" for emergency access only;
- The letter from James D. Imbrie, G.E., dated January 5, 2018, which concludes that the Logging Road is adequate for emergency access purposes;
- The provision in the conservation easement benefitting the Oregon Department of Fish and Wildlife ("ODFW") allowing access for emergency vehicles;
- An email from Todd Gary, Division Chief – Community Risk Reduction, Canby Fire District, dated January 2, 2018, responding to an email from the Applicant regarding what the Canby Fire District requires for access on N. Maple Lane. Mr. Gary's letter is substantial evidence demonstrating that the fire district is satisfied that the Applicant's proposed improvements to N. Maple Street;
- A traffic impact study from the City's contract transportation engineering firm, DKS Associates ("DKS"), dated April 8, 2015, which evaluated the original proposal and recommends improvements.
- A memorandum from DKS, dated November 17, 2016, which evaluates an updated proposal by the Applicant and recommends that the Project include an asphalt shoulder/path on the west side of N. Maple Street, providing a minimum 25 feet in paved width, as well as a pedestrian pathway along the west side.
- A memorandum from the City's contract engineering firm, Curran-McLeod, Inc., dated

September 7, 2017, which explains that all proposed internal streets will meet local street standards and recommends other conditions of approval;

- Testimony by City staff during the October 23 Planning Commission meeting indicating that the Fire District does not oppose use of the Logging Road for emergency access.
- A September 18, 2016 memorandum from Todd E. Mobley, P.E. of Lancaster Engineering, which discusses the proportional share reasonable for improvements to N. Maple Street;
- A January 5, 2018 letter from Mr. Mobley, which convincingly responds to arguments that the existing traffic analyses were flawed; and
- The January 17, 2018 memorandum from the Planning Director indicating that the Molalla Forest Logging Road can provide a legally binding alternative vehicle access with a condition of approval requiring the Applicant to abide by the terms of the ODFW conservation easement.

The Appellants and a number of Project opponents submitted comments arguing that the Project will cause adverse impacts on their properties and quality of life, and in particular, that N. Maple Street is insufficient to safely provide adequate transportation connectivity to the Project. The issues raised in these comments are identified and addressed in **Sections V and VI** of these findings, below. In summary, the Council finds that public comments generally do not identify an applicable criterion nor are they supported by substantial evidence that the Project will “unduly hinder” the use and development of adjacent properties.

C. Subdivision design and layout shall incorporate Low Impact Development techniques where possible to achieve the following:

1. Manage stormwater through a land development strategy that emphasizes conservation and use of onsite natural features integrated with engineered stormwater controls to more closely mimic predevelopment hydrologic conditions.

FINDING: Predevelopment conditions involve a substantial amount of water infiltration, which serves both a water quality and water quantity function. As shown on the approved tentative plan(s), stormwater on the Property will be partially managed through the preservation of two wetland tracts, Tracts B & D. The Council finds that preservation of these two tracts satisfies the above requirement. Additionally, the Council shall apply the following condition of approval to ensure that all City stormwater design standards will be met:

Stormwater systems shall be designed in compliance with the Canby Public Works Design Standards as determined by the City Engineer, and in accordance with the agreement for the relocation of the Montecucco’s drainage easement and line if an agreement is reached.

For these reasons, the Council finds that this standard is met.

2. Encourage creative and coordinated site planning, the conservation of natural conditions and features, the use of appropriate new technologies and techniques, and the efficient layout of open space, streets, utility networks and other public improvements.

FINDING: The Project provides open spaces, a street pattern that serves the site with minimal hard surfaces, all necessary and required public facilities and services, and other desirable public improvements. It does so in several ways:

- The Project minimizes the residential density from a maximum in excess of 30 units to the proposed 22 units, thereby preserving more land than required for yards and open space.
- The Project includes an efficient circular street system that not only reduces the amount of land dedicated to street use but also serves as a turnaround from those using N. Maple Street.
- The Project takes advantage of the existing Molalla Forest Logging Road as an emergency access, which eliminates the need for a new emergency access.
- As shown on the proposed utility plan, the Project provides a complete and adequate system of public utilities, including internal streets, stormwater infrastructure, water, and sewer service.
- Oral testimony at the January 17 hearing indicates that the Montecucco family will dedicate additional right-of-way to establish a 34-foot wide street section along its property frontage. Through its agreement with Montecucco Rentals, LLC, the Project will include two voluntary, but important, public improvements. The first is the expansion and improvement of N. Maple Street where the street abuts Montecucco's property. The second is an up-sized drainage mainline that will increase the reserve capacity of the public storm drainage main in the area, add flood discharge capacity, and provide for future additional urban growth in North Canby if and when that growth occurs.
- The Applicant has voluntarily agreed to improve N. Maple Street with a new pedestrian pathway and additional shoulder area along its western side south of Montecucco's property to near the Willamette Country Club entrance.

For the above reasons, the Council finds that this standard is met.

3. Minimize impervious surfaces.

FINDING: The application minimizes impervious surfaces through a plan to minimize, to the greatest extent possible, the amount of paved surfaces within the site. While streets and

sidewalks are required, there will be few other areas of impervious surfaces outside of development on each lot. When these lots are built-out with single family dwellings, the amount of impervious surfaces will increase but the larger lot sizes will mitigate for the on-site impervious surfaces. The Council finds that this standard is met.

4. Encourage the creation or preservation of native vegetation and permanent open space.

FINDING: The creation of two tracts for wetland and stormwater management and two other tracts for public walkways, and monument signs, will contribute to open space within the Site, and the preservation of natural vegetation and wetland areas. Because the four tracts are part of the subdivision, they will be permanent.

The Council finds that this standard is met.

5. Clustering of residential dwellings where appropriate to achieve (1-4) above. The arrangement of clustered dwellings shall be designed to avoid linear development patterns.

FINDING: Lots within the Project have been clustered to the extent that this can be accomplished given the Property size, shape, and locational considerations. The Council finds that this standard is met.

D. It must be demonstrated that all required public facilities and services are available, or will become available through the development, to adequately meet the needs of the proposed land division.

FINDING: This criterion is met because the Applicant has demonstrated on its tentative plan(s) and through the evidence identified in the finding for subsection B, above, that all required public facilities and service are available or otherwise can be provided.

E. The layout of subdivision streets, sidewalks, and pedestrian ways supports the objectives of the Safe Routes to Schools Program by providing safe and efficient walking and bicycling routes within the subdivision and between the subdivision and all schools within a one-mile radius. During review of a subdivision application, city staff will coordinate with the appropriate school district representative to ensure safe routes to schools are incorporated into the subdivision design to the greatest extent possible.

FINDING: The streets within the subdivision will have sidewalks on both sides of NE Maple

Court and NE 35th Place, which will provide safe and efficient walking and bicycling routes within the subdivision. Tract C is a public walkway that will connect the Project site with the Molalla Logging Road Trail. This will provide ready access for residents and visitors alike to the Property. Bicycles may also use these sidewalks and Tract C for access and circulation. These facilities, when combined with the proposed pedestrian pathway that will be constructed along N. Maple Street, will ensure safe public access and circulation that will be usable and functional. In making this determination, the Council relies on the November 17, 2016 Memorandum from DKS and the January 5, 2018 letter from Lancaster Engineering. No opponent offered substantial evidence sufficient to rebut the evidence demonstrating that this system will be adequate to safely convey future residents to public schools. By meeting this standard and providing routes for pedestrian and bicycle circulation, the Project satisfies this standard.

F. A Traffic Impact Study (TIS) may be required in accordance with Section 16.08.150.

FINDING: An initial TIS and supplemental memoranda were prepared. These include the following:

- A traffic impact study from DKS, dated April 8, 2015;
- A memorandum from DKS, dated November 17, 2016;
- A January 5, 2018 letter from Todd E. Mobley of Lancaster Engineering, which responds to concerns raised by Appellants regarding the TIS and its supplements.

The Council finds that this standard is met.

16.08 General Provisions

LDPO section 16.08 sets forth the general regulations applicable to all uses and development in all zones. In particular, LDPO 16.08.010 requires that all buildings, structures, and land be occupied and used according to the provisions of the LDPO. The Council finds that by complying with LDPO requirements applicable to a subdivision, the Application satisfies this requirement.

16.10 Off-street Parking and Loading

LDPO section 16.10 sets forth the number and dimensions of parking spaces required for single family dwellings. Table 16.10.050 requires that each single-family dwelling have space for a minimum of 2.00 parking spaces. The Council finds that the proposed lots all have sufficient space to accommodate at least two parking spaces. Final compliance with this requirement will be determined when building plans for individual homes are reviewed.

LDPO 16.16 R-1 Low Density Residential Zone.

LDPO 16.16.010 Uses Permitted Outright.

FINDING: The R-1 zone allows a single-family dwelling on each single-family lot. The proposed residential use of the Property is permitted outright.

LDPO 16.16.030 R-1 Development Standards.

FINDING: LDPO 16.16.030 provides that lots in the R-1 zone may be no less than 7,000 square feet and no more than 10,000 square feet. However, the 10,000 square foot lot size maximum may be exceeded pursuant to LDPO 16.16.030.B, "Lot Area Exceptions." The Council finds that the proposed subdivision contains lots no smaller than 7,000 square feet and for those lots greater than 10,000 square feet, LDPO 16.16.030.B applies.

LDPO 16.16.030.B, "Lot Area Exceptions".

1. The Planning Commission may approve an exception to the minimum and maximum lot area standards in subsection 16.16.030.A as part of a subdivision or partition application when all of the following standards are met:

- **LDPO 16.16.030.B.i.a.** (average lot size must be no less than 7,000 square feet and no greater than 10,000 square feet).

FINDING: As demonstrated on the approved tentative plat, the average size of all lots created shall be no less than 7,000 square feet and no greater than 10,000 square feet.

- **LDPO 16.16.030.B.i.b.** (no lot shall be created that is less than 6,000 square feet).

FINDING: As demonstrated on the approved tentative plat, no lot contains less than 6,000 square feet.

- **LDPO 16.16.030.B. i.c.** (lot area standards for two-family dwellings must be satisfied).

FINDING: This standard does not apply because the Applicant does not propose to construct two-family dwellings.

- **LDPO 16.16.030.B.i.d.** (the city will require the owner to record a deed restriction with the final plat that prevents the re-division of oversized lots).

FINDING: The Applicant proposes to record a restrictive covenant that prevents the re-division of any lot greater than 10,000 square feet. The Council finds that this standard is met.

LDPO 16.16.030.B.2. A public benefit must be demonstrated in order to allow more than ten percent of the lots to be outside of the minimum and maximum lot areas in subsection 16.16.030.A.

FINDING: The Application includes four lots larger than 10,000 square feet. This section requires that a "public benefit" be demonstrated in order to allow more than two lots (10% of the subdivision) greater than 10,000 square feet. The Council adopts the Applicant's explanation of how the Project will provide the required public benefit, as stated in the Applicant's October 20, 2017 Memorandum:

"Due to the triangular shape of the site, the fact that the Property is limited to one point of connection to a public street that enters the Property at a curve (due partially to site topography on the west side of the site) and wetland preservation on the Property this exception is requested. The triangular shape of the Property makes it unfeasible to create traditional rectangular lots and grid street patterns. The parent parcel shape results in non-rectangular lots with inefficient use of space on the irregularly shaped lots. The four lots that we request exception to the maximum lot area for are located at the corners of the Property where the parent parcel's irregular shape creates the greatest challenge. To allow these irregular shaped lots enough space for access and usable yards, we request the planning commission allow these four lots to be larger than 10,000 square feet as proposed. The public benefits of allowing these lots to exceed the maximum lot area include:

- existing wetland areas will be preserved
- lots will be more functional and desirable and therefore add more value to the neighborhood
- larger lots help to accomplish the City Council Goal of implementing the Community Vision Plan priority to resist pressure for high density and smaller lots. Although the current zoning would allow the applicant to squeeze additional lots into the proposed subdivision, the applicant believes that the proposed larger lots are a better fit for this neighborhood and would better complement the existing larger lots abutting the proposed development and rural feel of the neighborhood.
- The surrounding neighbors have expressed their desire for fewer and larger lots in the proposed subdivision and fewer trips added to N. Maple Street. By allowing larger lots, fewer lots will be created in the subdivision

allowing the proposed subdivision to more closely align with the neighbors' desires."

The Council incorporates the findings of the Planning Commission on this issue, which stated in part that the increased lot sizes "helped reduce the total number of lots proposed which was reported to increase the compatibility with the existing lot size and reduced the amount of traffic that would otherwise be generated at buildout on N. Maple Street." **Exhibit 1**. Finally, the Council relies on the oral testimony of the Planning Director at the January 17 hearing, who explained that the Applicant has done everything it possibly can to make the lots as large as they can possibly be. For the above reasons, the Council finds that the Applicant has demonstrated that there will be a public benefit that justifies the requested lot area exception.

LDPO 16.16.030.C. Minimum width and frontage: sixty feet, except that the Planning Commission may approve lots having less frontage subject to special conditions to assure adequate access.

FINDING: The Applicant proposes 6 lots with less than 60 feet of frontage: Lots 3, 4, 12, 20, 21 and 22. As demonstrated on the approved tentative plat, each of these lots has street access sufficient to accommodate a typical driveway width. Lots 4 and 22 are flag lots that necessarily require a narrower width. Due to the irregular shape of the Property, the standard lot frontage was difficult to obtain. In light of this geographical constraint, the Council finds that these 6 lots should be permitted to have less than 60 feet of frontage width because each has adequate access.

LDPO 16.16.030.D. Minimum yard requirements.

FINDING: As demonstrated on the approved tentative plan, each lot is of sufficient size to satisfy minimum yard requirements. Final compliance with yard requirements will be determined for each lot during building permit review.

LPDO 16.43 Outdoor Lighting Standards.

FINDING: LPDO Chapter 16.43 sets forth standards that all outdoor lighting must meet. Street lighting will be reviewed prior to issuance of a public works permit for street improvements within the Project. House lighting will be reviewed during building permit review. The Council finds that the project can comply with applicable all provisions of this chapter.

LDPO 16.46.010 Access Limitations.

LDPO 16.46.010.A applies to single-family residential access. LDPO 16.46.010.A.1 requires that roads be a minimum of 28 feet wide with parking restricted on one side only, or a minimum of 36 feet wide with no on-street parking restriction. N. Maple Street, north of NE Territorial Road, is between 20 feet and 40 feet in width.

However, **LDPO 16.46.010.F** provides:

"N. Maple Street, north of NE 23rd Avenue, and S. Elm Street, south of SW 13th Avenue, shall be exempt from the residential unit restrictions for single access roads, provided that legally binding alternative emergency vehicle access is available. Road width requirements for these roads shall remain in effect."

The Council finds that that LDPO 16.46.010.F supersedes LDPO 16.46.010 because it expressly exempts N. Maple Street from the residential unit restrictions of LDPO 16.46.010. Although LDPO 16.46.010.F provides that minimum width requirements for these roads shall remain in effect, the Council finds that N. Maple Street is an existing road and the Applicant has no ability to unilaterally widen the road where it is improved to a substandard width.

N. Maple Street is designated as a local street in the City's Transportation System Plan. City of Canby Public Works Standards require a minimum street width of 34 feet for local streets; however, N. Maple Street does not meet this standard along a majority of its extent. Although the Applicant has a right to reasonable access and the City cannot require improvement of N. Maple Street to meet current standards as part of this Application, the Applicant has voluntarily obtained additional right-of-way where possible to increase the width of N. Maple Street to 34 feet along its Montecucco Farms frontage and to 28 feet with a separate pedestrian pathway south of the Montecucco frontage. This includes an agreement by Montecucco Rentals, LLC, to dedicate additional frontage along its properties to facilitate this road improvement.

Emergency access is proposed to be provided by a connection, Tract C, to the Molalla Forest Logging Road. A January 5, 2018 letter from GeoPacific explains as follows:

"The Molalla Forest Road has been used for decades for heavy hauling consisting of log trucks, some of which were reportedly in excess of 75,000 lb GVW. More recently, in the last decade, the road was overlain with 2 inches of AC for its use as a pathway. We understand that two recent subdivisions, Willamette Green and Manor on the Green, as well as the wastewater treatment plant currently already use the road for emergency access. Based on our past observations of

fully loaded trucks on the road, we conclude that it is more than acceptable for use as an emergency vehicle access to a maximum of 75,000 lb GVW.”

Thus, the Council finds the Logging Road is sufficiently to safely allow emergency access.

The Council understands that the Logging Road is subject to a conservation easement, but finds that the Logging Road is legally available for use as emergency access because the Applicant’s legal counsel, the Planning Director, and City Attorney, offered oral testimony at the January 17 hearing indicating that in their view the terms of the easement allow emergency vehicles on the Logging Road. The Council’s reasoning on this issue is described in additional detail in **Section V**, below. To ensure that the terms of the conservation easement are honored, the Council shall apply the following condition of approval:

The Applicant shall comply with the terms of the Canby Landing Conservation Easement between the City of Canby and ODFW, dated May 28, 2002.

For the above reasons, the Council finds that the access limitations of LDPO 16.46.010 do not apply.

LDPO 16.46.010.G. Public roads accessing any development shall be a minimum of two travel lanes (twenty-four (24) feet of paved width) to the nearest improved collector or arterial street, provided that any required improvement to provide additional pavement width to access a development meets both of the following conditions:

- "1. An essential central nexus is proven, whereby the required improvement is directly related to the proposed development; and**
- 2. Rough proportionality is proven, whereby the cost of the required improvement is roughly proportional to the impact the development will have on the infrastructure. Specific findings are required for each of the conditions listed above. If either of the two conditions are not met, the infrastructure is considered to be inadequate, and conditioning approval of the development on the widening of the access to the development is considered to be inappropriate."**

FINDING: The Applicant argued that this section is inapplicable because the “essential nexus” and “rough proportionality” tests are subjective, and therefore inapplicable under the needed housing statute set forth in ORS 197.307(4). Without resolving that question, the Council finds

that the Application meets LDPO 16.46.010.G. To this end, the Council adopts the following statement by the Planning Director, set forth in the Staff Report for the Planning Commission hearing:

“[I]t is clear that the City cannot require the Applicant to widen and build sidewalks the full distance of N. Maple Street leading to this development where that deficiency has existed since the original development in the area 40+ years ago. A developer cannot be expected to pay more than the demonstrated rough proportional impact that there development is expected to contribute to an existing deficiency. Staff did not spend time preparing our own proportional cost analysis because the developer has voluntarily proposed off-site improvements that we believe are far in excess of their subdivisions’ actual additional impact.”

Exhibit 2 at 7. A number of Project opponents objected to the lack of a full sidewalk improvement along both sides of N. Maple Street, while others objected to the Project out of a concern that sidewalks would become necessary along the east side of the street and that construction of such sidewalks would require a taking of their private property. On the contrary, the Council finds that the plain language of the above section, which requires two travel lanes, does not require new sidewalks. As explained previously, the Applicant will construct a new pedestrian connection along the west side of N. Maple Street. This is a voluntary improvement that the City accepts, but does not find that it is necessary to satisfy the above section. And, because this section does not require a sidewalk, the Council finds unwarranted concerns that private property will be taken from unwilling sellers.

LDPO 16.46.020 Ingress and Egress. Ingress and egress to any lot or parcel, the creation of which has been approved by the Planning Commission, shall be taken along that portion fronting on a public street unless otherwise approved by the Planning Commission.

FINDING: As demonstrated on the approved tentative plat, all ingress and egress to the lots will be taken along the portion of each lot fronting on the public street. This standard is met.

LDPO 16.46.030 Access Connection.

A. Spacing of accesses on City streets. The number and spacing of accesses on City streets shall be as specified in Table 16.46.030. Proposed developments or land use actions that do not comply with these standards will be required to obtain an access spacing exception and address the joint and cross access requirements of this Chapter.

FINDING: As noted on Table 16.46.030, "minimum spacing of roadway to driveway" does not apply to single-family residential driveways. The only new intersections subject to these spacing standards will be the spacing between NE 34th Place and the southern extent of NE 35th Place, and the two connections of NE 35th Place with NE Maple Court. Pursuant to Table 16.46.030, the spacing between these street accesses must be a minimum of 150 feet and a maximum of 600 feet. As demonstrated on the approved tentative plan(s), these standards are met.

16.46.050 Nonconforming Access Features.

FINDING: The accesses subject to City spacing standards are new and therefore, this section does not apply.

16.46.060 Amount of access points. In the interest of promoting unified access and circulation systems, the number of access points permitted shall be the minimum number necessary to provide reasonable access to these properties, not the maximum available for that frontage. All necessary easements, agreements, and stipulations shall be met. This shall also apply to phased development plans. The owner and all lessees within the affected area are responsible for compliance with the requirements of this ordinance and both shall be cited for any violation.

FINDING: The proposed access plan satisfies this standard for two reasons. First, the new access from N. Maple Street must be established to allow reasonable access to the Property. Second, the circular roadway within the Property is necessary to allow each proposed lot access to a public street.

LDPO Division IV Land Division Regulations

LDPO 16.56.030. Conformance

A. Comprehensive Plan.

B. Land Development and Planning Ordinance.

FINDING: As it is set forth in the General Provisions for land divisions, these sections constitute the general requirements that land divisions, like all other land uses, must conform to the Comprehensive Plan and LDPO. The Plan does not apply directly to this Application because the criteria for a subdivision, set forth in LDPO 16.62, does not expressly incorporate any provisions of the Plan. ORS 197.195(1). Therefore, LDPO 16.56.030.A does not apply to the Application.

The criteria for a tentative plat require conformance with applicable sections of the LDPO, which are addressed throughout these findings. For this reason, the Council finds that LDPO 16.56.030.B is met.

LDPO 16.56.030.C. Health, Safety and Sanitation.

FINDING: The Applicant has demonstrated that it is feasible for the Project to comply with all applicable state, county and city regulations regarding health, safety and sanitation, thereby meeting this standard. No person submitted testimony supported by substantial evidence that the Project will not be able to comply with any health, safety, or sanitation regulations. There are no septic systems proposed for the project. The Project will be served by City sanitary sewer and stormwater systems, as explained by the City Public Works Department in its September 11, 2017 letter.

LDPO 16.56.030.D. Building.

FINDING: This section is inapplicable because the Application does not include a proposal for construction of structures or buildings, which will be subject to later building permit review.

LDPO 16.56.030.E. Streets and Roads.

FINDING: This section requires that the Project conform to all applicable City ordinances or policies pertaining to streets, roads, or access. The Council finds that all applicable LDPO provisions pertaining to streets, roads, or access are addressed herein and satisfied or can be satisfied. The Council also relies on the testimony of staff and in particular, the September 7, 2017 memorandum from the City's contract engineering staff (which indicates that the proposed streets meet local street standards) in finding that the Project meets all applicable City ordinances or policies pertaining to streets, roads, or access.

LDPO 16.64.010. Streets.

A. Generally. The location, width and grade of streets shall be considered in relation to existing and planned streets, to topographical conditions, to public convenience and safety, and to the proposed use of land to be served by the streets. The street system shall assure an adequate traffic circulation pattern with intersection angles, grades, tangents, and curves appropriate for the traffic to be carried.

FINDING: All proposed public streets within the Project site are shown on the tentative plan(s); therefore, the four standards set forth at LDPO 16.64.010.A (1-4) do not apply. The proposed

internal street system and have been designed to city standards, as evident in the tentative plan(s) and as determined by the September 7, 2017 memorandum from Curran-McLeod, Inc. The street pattern is a continuation of N. Maple Street and blends with the street pattern of existing residential neighborhoods directly adjacent to the south. The Council finds that the proposed street pattern is practical and fulfills the requirement for City standard streets in a residential subdivision, and finds that this standard is met.

A. 12. LDPO 16.64.010.B-O

FINDING: The Council's findings for LDPO 16.64.010, subsections B through O, are set forth below:

B. Permeable Surfaces – While permeable street surfaces are encouraged, the Council finds that they are not required. The Application explains that all street surfaces will be impervious because permeable road surfaces are not an option for the Project.

C. Reserve Strips – There are no reserve strips planned because no streets are dead-end streets or streets to be extended in the future.

D. Alignment – The extension of N. Maple Street from its current cul-de-sac end to include the streets within the Property uses the existing alignment of N. Maple Street and continues this street to a completed layout pattern, and also provides a viable turnaround to replace the existing cul de sac, which will require a separate street vacation proceeding. The Applicant will make separate request to City Council for this right-of-way vacation, as provided in the following condition of approval:

The unused portion of the existing cul-de-sac for N. Maple Street which will no longer be necessary shall be vacated and then physically removed.

No other streets are impacted in terms of extension and alignment by the proposed development. The Council finds that with the above condition of approval, this standard is met.

E. Future Extension of Streets – None of the streets in the vicinity of the Property are proposed to be extended. The city's TSP does not identify future street extensions for either N. Maple Street, or any other local neighborhood street in the area. The only abutting properties are the Montecucco Rental property to the west, which is outside of the Canby UGB, and the Willamette Wayside Natural Area (also called the "Willamette Landing") to the north and east. None of these are currently permitted for future development and therefore do not require reserve strips, street plugs, or temporary turnaround areas.

F. Intersection Angles – All intersection angles for streets within the Project site are necessary given the geographical and topographical conditions of the Property. The triangular shape of the Property dictates a layout and street pattern that reflects that characteristic, with intersection angles at the level where the intersections are negotiable and usable. Use of

"bulbs" at two points in the street system will facilitate traffic movement, as well as provide additional lot frontage and individual access. The tentative plan(s) demonstrate that these bulbs have a corner radius of 50 feet. While the angles of the intersections may not be a true 90 degrees, the Council finds that they are sufficient for low-speed and low-volume residential traffic.

G. Existing Streets – The only existing street that is impacted by the proposed subdivision is N. Maple Street, which will be the primary route of service and access to the site. As the Property does not abut this street along a significant portion of its length, the Council finds that it is impossible for the Applicant to dedicate additional right-of-way. For this reason, the Council finds that this standard does not apply.

H. Half Streets – There are no half-streets proposed as part of the subdivision; therefore, this standard does not apply.

I. Cul-de-sacs – The Project contains two intersection bulbs as part of the street pattern. No streets are true dead-end cul-de-sacs; therefore, the Council finds that this standard does not apply.

J. Marginal Access Streets – Because this standard applies only to City Arterial streets and there are no City Arterial streets within the Project or in the adjacent neighborhood area, the Council finds that this standard does not apply.

K. Alleys – There are no alleys within the Project site, nor are there any alleys in the immediate neighborhood vicinity; therefore, the Council finds that this standard does not apply.

L. Street Names – The Council finds that the street names proposed for this project, Northeast Maple Court and Northeast 35th Place, have not been previously utilized with the City and will be acceptable names.

M. Planting Easements – The Council acknowledges the recommendation of the City's contract engineers, Curran McLeod, in their September 7, 2017 memorandum, in which they recommend that "the sidewalks be separated from the curbs with 4.5' planter strips in conformance with Chapter 2 of the City of Canby Public Works Design Standards, dated June 2012." The Council will require planting strips except where a full planting strips are not feasible due to the need to protect resources or other difficult restrictions or circumstances. For that reason, the Council shall apply the following condition of approval:

The final construction design plans shall reflect the use of a 4.5' wide planter strip separating the sidewalk from the street curb along both sides of N. Maple Court beginning within the subdivision and up to the beginning of the eyebrow (partial cul-se-sac bulb) where it may taper

into a curb tight sidewalk. To comply with the City standard practice for new subdivisions since adopting the new 0 to 8' wide standard that was intended to require planter strips but allow flexibility where it was deemed to be suitable to match existing same street standards or protect resources or avoid difficult restrictions or circumstances. The planter strip is waived – allowing a curb tight sidewalk along both sides of NE 35th Place along with an exception to reduce the sidewalk width to 5' adjacent to the Tract D wetlands to assist in its protection. A dual 12' wide PUE & Sidewalk Easement shall be designated on the final plat to allow public use of any sidewalk placed outside of the public rights-of-way.

The Council finds that this section is met with the above condition of approval.

N. Grades and Curbs – The Council finds that all streets, curbs, sidewalks and other public improvements have been designed to standard city requirements. Because the Property is basically flat and level, there are no grades on the streets that exceed about one percent or so, as demonstrated on the tentative plan(s). The Council finds that this standard is met.

O. Streets Adjacent to Highway 99-E or Railroad Right-of-way – The Council finds that this standard does not apply because the Property is not adjacent to Highway 99-E or any railroad right-of-way.

LDPO 16.64.015 Access.

A. Any application that involves access to the State Highway System shall be reviewed by the Oregon Department of Transportation for conformance with state access management standards (See appendix G of the Transportation System Plan).

B. All proposed roads shall follow the natural topography and preserve natural features of the Property as much as possible. Alignments shall be planned to minimize grading.

C. Access shall be properly placed in relation to sight distance, driveway spacing, and other related considerations, including opportunities for joint and cross access.

D. The road system shall provide adequate access to buildings for residents, visitors, deliveries, emergency vehicles, and garbage collection.

E. Streets shall have sidewalks on both sides. Pedestrian linkages should also be provided to the peripheral street system.

F. Access shall be consistent with the access management standards adopted in the Transportation System Plan

FINDING: The only possible vehicular access to the Property is via N. Maple Street. No state highway or railroad right-of-way is involved with this project. There is no second access possible to the Site except for the emergency access provided by the Molalla Forest Logging Road. Because the Property is flat and level, grading will be minimized, and sight distances, driveway locations and access will be protected. Sidewalks are proposed to be on both sides of the streets within the subdivision. In addition, there will be pedestrian connections to N. Maple street south of the site, and to the Logging Trail. The local street network planned for the Property will allow residents, visitors, service and emergency vehicles to fully access individual homes. These features will fulfill the access management standards from the Transportation System Plan.

Therefore, the Council finds that the above standards are satisfied.

LDPO 16.64.020, Blocks.

FINDING: The Council notes that the term “block” is not defined in the LDPO and finds that in this context, a “block” is comprised of a contiguous series of lots bounded by at least four streets. Based on the Property and shape of the subject site, the lotting pattern cannot support a traditional grid system, therefore, the Project does not include a “block” in the traditional sense. For this reason, the Council finds that this standard does not apply.

LDPO 16.64.030, Easements.

A. Utility Lines. Easements for electric lines or other public utilities are required, subject to the recommendations of the utility providing agency. Utility easements twelve feet in width shall be required along all street lot lines unless specifically waived. [...]

FINDING: The Council finds that the proposed lots are of sufficient area and configuration to demonstrate that this standard can be met. To that end, the Council shall apply the following condition of approval, as recommended by staff and the Planning Commission:

A 12 foot utility, and if any portion of a public sidewalk is located on a newly created private lot it shall also include a dual 12 foot pedestrian easement, along all of the lot street frontages and shall be noted on the final plat. This easement may be combined with other easements and shall be measured from the property boundary.

B. Watercourses. Where a subdivision is traversed by a watercourse, drainage way, channel or stream, there shall be provided a storm water easement or drainage right of-way conforming substantially with the lines of such watercourse, and such further width as will be adequate for the purpose of assuring adequate flood control. [...]

FINDING: There are no watercourses or open drainages traversing the Property. The Council finds that this standard does not apply.

C. Pedestrian Ways. In any block over six hundred feet in length, a pedestrian way or combination pedestrian way and utility easement shall be provided through the middle of the block. [...]

FINDING: The tentative plan(s) demonstrate that there are no blocks in excess of 600 feet in length. Therefore, the Council finds that this standard does not apply.

LDPO 16.64.040 Lots.

A. Size and Shape. The lot size, width, shape and orientation shall be appropriate for the location of the subdivision and for the type of development and use contemplated. To provide for proper site design and prevent the creation of irregularly shaped parcels, the depth of any lot or parcel shall not exceed three times its width (or four times its width in rural areas) unless there is a topographical or environmental constraint or an existing man-made feature such as a railroad line.

FINDING: The size and shape of the 22 lots within the Project are based on the triangular shape of the Property, which requires a non-standard lot and street pattern. For this reason, the Council finds that the lot sizes, widths, shapes, and orientations are appropriate for the project's location and proposed single-family uses. Furthermore, the tentative plan(s) demonstrate that no proposed lot has a depth that exceeds more than three times its width. For these reasons, the Council finds that this standard is met.

B. Minimum Lot Sizes.

1. Lot sizes shall conform with requirements of Division III unless the Applicant chooses to use an alternative lot layout per subsection (3) below to accommodate interconnected and continuous open space and or other natural resources. In this case, the average minimum lot size may be reduced by 5,000 square feet after

subtracting access tracts. Overall development densities shall comply with the underlying maximum density allowed by the zone.

FINDING: The proposed lots meet the minimum lot size of 7,000 square feet as required by the R-1 zone. Further, the average lot size of approximately 10,000 square feet is also within the allowable limits of lot size for the R-1 zone, and the lots thereby comply with the underlying maximum density allowed in that zone. This standard is met.

2. In areas that cannot be connected to sewer trunk lines, minimum lot sizes shall be greater than the minimum herein specified if necessary because of adverse soil structure for sewage disposal by septic systems. [...]

FINDING: No septic systems are proposed; therefore, this standard does not apply.

3. Alternative lot layout. Applicants may deviate from standard lot setbacks and dimensions to accommodate dedicated interconnected open space or other natural areas. Clustered housing, lot-size averaging, and a mixture of approaches where building lots can be grouped into a smaller portion of the total development, reserving the remainder for open space or other natural areas. Alternative development layouts shall not exceed the underlying maximum density allowed by the zone.

FINDING: The Project includes a request for a lot area exception (which is addressed pursuant to LDPO 16.16.030(B), above), as well as a request to reduce the 60-foot minimum frontage requirement (which is also addressed pursuant to LDPO 16.16.030(C), above). The council finds that this section does not address lot area but provides an additional basis upon which to allow proposed lots with frontages less than the minimum 60-foot street frontage. Because this section provides an additional basis for approval for the reduced lot frontages, the Council finds that it is not necessary for the Application to satisfy this section. However, the Council finds that lots proposed with less than 60 feet of frontage are acceptable as an “alternative development layout” because the Project satisfies the following criteria:

a. The arrangement of the alternative lot layout shall be designed to avoid development forms commonly known as linear, straight-line or highway strip patterns.

FINDING: The Project is a triangular residential subdivision, not a linear development. This criterion is met.

b. To the maximum extent possible, open space and natural areas, where used, shall be continuous, interconnected, and concentrated in large usable areas.

FINDING: The Project includes two open space tracts for preservation of existing wetlands and stormwater detention and water quality purposes. Because of the need to provide adequate street access, the Council finds that it is not possible for these two natural areas to be continuous and interconnected. The Council also notes, however, that the Project also includes a direct access to the Willamette Wayside Natural Area (Willamette Landing), which takes advantage of that nearby amenity. The Council finds that this criterion is met.

c. Where possible, open space shall be connected to adjacent off-site open space areas.

FINDING: As noted above, the need to provide adequate local street connectivity makes direct connections between Tracts B and D with the Willamette Wayside (Willamette Landing) impossible. The Council finds that this criterion is met.

d. Open space and natural areas shall be maintained permanently by the property owner or the property owner's association.

FINDING: The Application indicated that a homeowners association will be created to maintain the open space tracts. This criterion is met.

C. Lot Frontage. All lots shall meet the requirements specified in Division III for frontage on a public street, except that the Planning Commission may allow the creation of flag lots, cul-de-sac lots and other such unique designs upon findings that access and building areas are adequate. Lots that front on more than one major street shall be required to locate motor vehicle accesses on the street with the lower functional classification.

FINDING: This subdivision contains several flag lots and lots with substandard frontage. The frontage requirement in the R-1 zone is 60 feet. Lots 3, 4, 12, 20, and 21 have direct frontage of less than 60 feet on a public street. Lots 4 and 22 are flag lots with at least 20 feet of frontage on a public street. The lots identified above with less than required frontage have been designed this way to maximize use of the Property and reduce the amount of street development within the Project site. The Council finds that the lots with less than 60 feet of frontage have adequate access because each will be served with a driveway and because each lot can accommodate a dwelling that meets the R-1 standards.

D. Double Frontage. Double frontage or through lots should be avoided except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography and orientation.

FINDING: The subdivision includes three lots that are double frontage lots: Lots 9, 14, and 15. The Council finds that these must be double frontage lots because of the size and shape of the Property and the need to provide adequate transportation access to each lot and conform to the existing shape of the Property. The double frontage lots are therefore essential to overcome “specific disadvantages of topography and orientation.” The Council also observes that these double-frontage lots are not proposed simply to maximize the number of lots on the Property because the Project includes fewer than the maximum number of lots allowable in the R1 zone. This standard is met.

E. Side Lot Lines. The side lines of lots shall run at right angles to the street upon which the lots face, or on curved streets they shall be radial to the curve, unless there is some recognizable advantage to a different design.

FINDING: The Council finds that the side lot lines run at right angles to the street wherever possible, and where they are angled, the Council finds that there is a recognizable advantage due to the need to reduce the amount of property dedicated to street use, to allow lot sizes to be larger to conform to the character of the surrounding neighborhood, and to allow development of the Property, which is unusually shaped.

F. Resubdivision. In subdividing tracts into large lots which at some future time are likely to be resubdivided, the location of lot lines and other details of the layout shall be such that resubdivision may readily take place without violating the requirements of these regulations and without interfering with the orderly development of streets. Restriction of building locations in relationship to future street rights-of-way shall be made a matter of record if the commission considers it necessary.

FINDING: Only Lot 22 is large enough for a practical re-division of the lot. Three other lots (Lots 1, 2 and 4) are slightly over the 10,000 square foot allowable maximum lot size, but are less likely to be capable of future division. The Applicant has proposed to record a covenant prohibiting further re-division of Lots 1, 2, 4 and 22. This standard is met.

G. Building Lines. If special building setback lines are to be established in the subdivision plat, they shall be shown on the subdivision plat or included in the deed restrictions. This includes

lots where common wall construction is to be permitted between two single-family dwellings.

FINDING: The Applicant has not proposed special building lines and neither staff nor the Planning Commission has recommended any. The Council similarly finds that special building lines will not be required and therefore, this standard is inapplicable.

H. Potentially Hazardous Lots or Parcels. The commission shall utilize its prerogative to modify or deny a tentative plat or partition map where it is found that a proposed lot or parcel is potentially hazardous due to flooding or soil instability.

FINDING: The Council finds that no part of the Property constitutes or will constitute a “potentially hazardous lot or parcel” because there is no substantial evidence in the record which indicates that there are any hazards on the Property. As evident in the tentative grading plan, the Property is essentially flat and therefore is unlikely to have soil instability problems. The Applicant submitted a FEMA Flood Insurance Rate Map that demonstrates the Property is outside of the 100-year floodplain. The Council received public testimony at the January 17, 2018 hearing which indicating that the Property flooded during the 1964 flood. However, the Council finds based on testimony by the Planning Director at that same hearing that substantial modification of the river has occurred since 1964 and that fill was placed on the property to remove it from the 100-year floodplain. For these reasons, the Council declines to modify or deny the Application on the basis of potential for flooding or soil instability.

I. Flag Lots or Panhandle-shaped Lots. The commission may allow the creation of flag lots provided that the following standards are met:

1. Not more than one flag lot shall be created to the rear of any conventional lot and having frontage on the same street unless it is found that access will be adequate and that multiple flag lots are the only reasonable method to allow for development of the site. Every flag lot shall have access to a public street.

FINDING: Only two proposed lots, Lots 4 and 22 are flag lots. These are non-contiguous and therefore, no more than one flag lot is proposed to the rear of any conventional lot that has frontage on the same street. This standard is met.

2. The access strip is to be a minimum of twenty feet in width and shall be paved for its full width from its connection with the public street to the main body of the lot. [...]

FINDING: As demonstrated on the tentative plan(s), the accessways for Lots 4 and 22 both have a minimum width of at least 20 feet. This standard is met.

3. For residential flag lots, a minimum building setback of five feet from the access strip shall be maintained where such buildings exist prior to the creation of the flag lot.

FINDING: There are no existing buildings on the site. This standard does not apply.

4. Design and locations of buildings on flag lots shall be such that normal traffic will have sufficient area to turn around, rather than necessitating backing motions down the access strip. The commission may establish special setback requirements at the time of approving the creation of flag lots.

FINDING: As demonstrated by the tentative plan(s), Lots 4 and 22 are both larger than 10,000 square feet, providing ample area for houses to be sited to ensure that backing motions up and down the access strip will not be required. As such, the Council finds that there is no need to impose a special setback requirement for these lots. Final compliance with this requirement will be determined at the time of building permit review. This standard can be met.

5. Flag lots shall not be permitted when the result would be to increase the number of properties requiring direct and individual access connections to the State Highway System or other arterials.

FINDING: The Project does not include any direct access to the State Highway System or other arterials. This standard does not apply.

16.64.050, Parks and Recreation. Subdivisions shall meet the requirements for park, open space and recreation as specified in Division VI.

FINDING: Compliance with park, open space and recreation requirements is explained in the findings for Division VI, below. This standard is met.

16.64.060, Grading of building sites. The commission may impose bonding requirements, similar to those described in section 16.64.070, for the purpose of ensuring that grading work will create no public hazard nor endanger public facilities where either steep slopes or unstable soil conditions are known to exist.

FINDING: As explained above, there are no steep slopes or unstable soil conditions on the Property. For this reason, the Council will not impose binding requirements and finds that this requirement does not apply.

LDPO 16.64.070 Improvements.

A. Improvement Procedures. In addition to other requirements, improvements installed by a land divider either as a requirement of these regulations, or at his own option, shall conform to the requirements of these regulations and improvement standards and specifications followed by the city, and shall be installed in accordance with the following procedure:

FINDING: The Council finds that the requirements of this section are procedural and pertain to development of the Project after approval of this tentative plat, and therefore do not apply. Furthermore, there is no evidence in the record which demonstrates that the Applicant will be unable to comply with improvement procedures.

B. The following improvements shall be installed at the expense of the subdivider unless specifically exempted by the Planning Commission: [...]

FINDING: The Applicant has demonstrated that it will construct all public utilities listed under subsection B. The Applicant shall either construct all required public improvements or post a bond or other security with the City equal to 110% of the cost of the public improvements. Compliance with this requirement shall be ensured by the following conditions of approval:

- *All public improvements are normally installed prior to the recordation of the final plat. If the Applicant wishes to forgo construction of any portion of the public improvements until after the recordation of the final plat, then the Applicant shall provide the City with appropriate performance security (subdivision performance bond or cash escrow) in the amount of 110% of the cost of the remaining public improvements to be installed.*
- *If the Applicant chooses to provide a subdivision performance bond for some or all of the required public improvements, the Applicant shall obtain a certificate from the city engineer that states:*
 - a. *The Applicant has complied with the requirements for bonding or otherwise assured completion of required public improvements.*
 - b. *The total cost or estimate of the total cost for the development of the subdivision shall be accompanied by a final bid estimate of the subdivider's contractor if there is a contractor engaged to perform the work, and the total cost estimate must be approved by the city engineer.*

C. Streets.

1. All streets, including alleys, within the subdivision and streets adjoining, but only partially within the subdivision shall be improved.

2. All public and private streets shall be constructed to city standards for permanent street and alley construction. LID alternatives, such as permeable surfacing and integrated stormwater management facilities, are required where site and soil conditions make it a feasible alternative. [...]

FINDING: As demonstrated by the tentative plan(s), the Applicant has demonstrated that the Project can meet all applicable city street standards. The Council accepts the explanation in the Application narrative that permeable paving is not appropriate for the Property and finds that such paving is not feasible in this instance.

The Council finds that the proposed voluntary offsite improvement of N. Maple Street is not a required public street internal to the Project and therefore, this section does not apply to that improvement. However, the Council finds that the proposed improvement of N. Maple Street will provide an increased street improvement and pedestrian facilities along its west side, thereby satisfying applicable City street standards, as explained in the September 7, 2017 Curran-McLeod Memorandum and the Staff Report.

3. Street Trees. Street trees shall be provided consistent with the provisions of Chapter 12.32.

FINDING: The proposed internal street network along with the required 12-foot wide public utility easements is sufficient to provide space for street trees. The following condition of approval is applied to ensure compliance with this standard:

A Street Tree Plan shall be submitted with the final plat, and street tree fees paid to the City for their installation prior to release of the final plat for recording. The plat will allow the city to establish street trees per the Tree Regulation standards in Chapter 12.32 of the Canby Municipal Code. The total per tree fee amount is calculated at one tree per 30 linear feet of total street frontage on both sides of all internal streets and the adjacent side of external streets or as determined by an approved Street Tree Plan on a per tree basis. A temporary 12' wide street tree easement in conjunction with the dual 12-foot utility and pedestrian easement along all of the lot street frontages shall be noted on the final plat to provide the City to plant and maintain the establishment of the trees before they become the responsibility of the property owner.

With the above condition, the Council finds that this standard can be met.

4. Prior to city approval of the final subdivision plat, all perimeter and back lot line monumentation shall be installed and the installation of the front lot monumentation (along and within street rights-of-way) shall be guaranteed. Any monuments destroyed during improvement installation shall be replaced at the developer's expense.

FINDING: The Council finds that the Applicant can comply with this requirement.

5. If any lot abuts a street right-of-way that does not conform to the design specifications of this ordinance, the owner may be required to dedicate up to one half of the total right-of-way width required by this ordinance.

FINDING: The Property does not abut a right-of-way in an alignment that would allow the Applicant to dedicate additional right-of-way. This standard does not apply.

6. The proposed use shall not impose an undue burden on the transportation system. The City may require the Applicant to provide adequate information, such as a traffic impact study, to demonstrate the level of impact to the surrounding street system. The developer shall be required to mitigate impacts attributable to the project.

FINDING: The potential impact of the Project on N. Maple Street has been the most contentious issue in this appeal. The Council recognizes that this existing street does not meet current City standards, which has presented challenges for residents. However, the Planning Director observed in the Staff Report that the City does not have a specific ordinance provision requiring the Applicant to construct sidewalks on N. Maple:

“[I]t is clear that the City cannot require the applicant to widen and build sidewalks the full distance of N. Maple Street leading to this development where that deficiency has existed since the original development in the area 40+ years ago. A developer cannot be expected to pay more than the demonstrated rough proportional impact that there development is expected to contribute to an existing deficiency. Staff did not spend time preparing our own proportional cost analysis because the developer has voluntarily proposed off-site improvements that we believe are far in excess of their subdivisions actual additional impact on an existing deficiency related to the street width and lack of a sidewalk on N. Maple Street leading to this subdivision.”

Exhibit 2 at 7-8. The Council finds that indeed, it is unable to *require* the Applicant to substantially resolve the existing deficiency on N. Maple Street.

On the other hand, the Applicant has proposed a voluntary improvement to N. Maple, which the Staff Report describes as follows:

“The applicant’s proposal is to widen the existing street pavement from approximately the intersection with NE 23rd Avenue where the existing concrete sidewalk ends on the west side of N. Maple Street north to where the 50’ of existing ROW ends to the current City local street standard of 34 feet in width. From this point north to the end of the street where only 30’ of ROW exists today, the applicant will widen the road approximately 5’ to a total pavement width of approximately 25’.

The applicant is proposing to designate a 4 to 6 foot wide temporary pedestrian pathway along the entire west side of the widened street from NE 23rd Avenue to the subdivision.”

Exhibit 2 at 8-9. This proposal was later modified to preserve parking along the east side of N. Maple Street, to include a 34 foot-wide improvement along the frontage of tax lot 31E21 00300 with a striped at-grade pedestrian walkway, and a 28-foot wide improvement with 5-foot wide pedestrian path between the north property boundary of Tax Lot 31E 28A 00900 and NE 23rd Avenue. To ensure that the Applicant constructs this voluntary improvement, the following conditions of approval shall apply:

The Applicant must enter in to an Improvement Agreement with the City prior to Final Plat recording. The following improvements and requirements shall be included in the agreement:

A. On N. Maple Street from approximately NE 23rd Avenue (at the southern termination of the existing sidewalk on the west side) north to the north property boundary of Tax Lot 31E 28A 00900, the Applicant voluntarily agrees to the following regarding the off-site N. Maple Street improvements:

1. The Applicant proposes to widen N. Maple Street to 28’ in width with a separated 5’ wide asphalt path as shown on the power-point handout presented at the hearing and called out as Typical Section A-A.

B. On N. Maple Street along the frontage of Tax Lot 31E21 00300 north to the proposed subdivision, the Applicant voluntarily agrees to the following regarding the off-site N. Maple Street improvements:

1. The Applicant proposes to widen N. Maple Street to 34' in width along the frontage of Tax Lot 31E21 00300, as shown on the power-point handout presented at the hearing and called out as Typical Section B-B and per Exhibit 13 – Maple Street ROW Option 2 – Cross Section A-A in the meeting packet material.

The PowerPoint handout describing this improvement is enclosed as **Exhibit 5**. The Council finds that by providing this improvement, the Project will result in a better condition on N. Maple Street than exists currently, and also finds that future development along the west side of the street, if any, would likely result in the street being improved to current standards.

Both the City and the Applicant provided traffic impact analyses which demonstrate that, with this voluntary improvement, the affected transportation system will have capacity to safely accommodate the Project and it will not “impose an undue burden on the transportation system.” These analyses include the following:

- A traffic impact study from DKS dated April 8, 2015, which evaluated the original proposal and recommends improvements. The conclusions of this TIS were later revised.
- A memorandum from DKS dated November 17, 2016, which evaluates an updated proposal and recommends that the Project include an asphalt shoulder/path on the west side of N. Maple Street, providing a minimum 25 feet in paved width, as well as a pedestrian pathway along the west side. With respect to the functional classification of N. Maple Street, it explains as follows:

“The functional classification and ultimate cross-section of N. Maple Street is recommended to be a Standard Local Street since the expected ADT will exceed 500 ADT. While the interim solution will essentially function as a Low-Volume Local Street, no change is proposed to the ultimate classification and design of the street. When the properties on the west side of N. Maple Street develop, they should be required by the City to construct the complete Standard Local Street cross-section (half-street), including parking on the west side of the street as well as a planter strip and sidewalks.”

The memorandum goes on to explain that the proposed pedestrian pathway will help accommodate bicycles and pedestrians and will facilitate “the passage of vehicles in opposite directions on N. Maple Street when pedestrians and bicycles are not present.”

- A memorandum from the City’s contract engineering firm, Curran-McLeod, Inc., dated

September 7, 2017, which explains that all proposed internal streets will meet local street standards and recommends other conditions of approval..”

- A September 18, 2016 memorandum from Todd E. Mobley, P.E. of Lancaster Engineering, which discusses the proportional share reasonable for improvements to N. Maple Street.
- A January 5, 2018 letter from Lancaster Engineering, which responds to arguments that the existing traffic analyses were flawed. This letter demonstrates that the assumptions regarding peak automobile traffic and pedestrian and bicycle traffic in DKS’s analysis are supportable. This letter concludes as follows:

“The transportation analyses in the record all agree that the proposed street section will safely accommodate all users of N. Maple Street with the proposed subdivision in place. This is supported and agreed upon by professional engineers with both DKS Associates and Lancaster Engineering, as well as City of Canby staff.”

- A January 15, 2018 email from Hassan Ibrahim of Curran-McLeod responding to the Applicant’s updated improvement to N. Maple Street, which explains: “N Maple Street shall be improved to 34’ wide paved local street as part of the future development of the farmed property to the west and not as part of this development. This development should provide a minimum 20’ paved surface and parking on one side for a minimum of 28’ wide street.”
- The January 17, 2018 memorandum from the Planning Director indicating that the Molalla Forest Logging Road can provide a legally binding alternative vehicle access, as well as the January 5, 2018 letter from GeoPacific indicating that the Logging Road can safely accommodate emergency vehicles.
- Oral testimony at the January 17 hearing by Mr. Todd Mobley of Lancaster Engineering who explained that even if volumes were higher than those stated in the traffic analyses during the summer, they would not change the recommended functional classification of Maple as a local street.

Based on the substantial evidence identified above, the Council finds that this standard is met.

7. The determination of impact or effect and the scope of the impact study should be coordinated with the provider of the affected transportation facility.

FINDING: The City and County jointly have jurisdiction over N. Maple Street as it will exist after it is improved. As demonstrated by the traffic studies performed by DKS, and as explained by

the Applicant and the Planning Director at the January 17, 2018 public hearing, the Applicant coordinated with the City staff with regard to the TIS and its supplements. This standard is met.

8. Dedication of land for streets, transit facilities, sidewalks, bikeways, paths, or access ways shall be required where the existing transportation system will be impacted by or is inadequate to handle the additional burden caused by the proposed use.

FINDING: As explained above, the Council finds that the Property does not have sufficient frontage on N. Maple Street to allow the Applicant to dedicate additional right-of-way on that street. And, the detailed transportation impact studies demonstrate that the affected transportation system, including N. Maple Street, are sufficient to serve the project. For these reasons, this standard does not apply.

9. Improvements such as paving, curbing, installation or contribution to traffic signals, construction of sidewalks, bikeways, access ways, paths, or streets that serve the proposed use where the existing transportation system may be burdened by the proposed use.

FINDING: The Applicant has proposed to install new local streets within the Project that meet current standards and improve both automobile and non-automobile transportation facilities in N. Maple Street, as explained above. The Council finds that this standard is met.

D. Surface Drainage and Storm Sewer System.

1. Drainage facilities shall be provided within the subdivision and to connect the subdivision to drainage ways or storm sewers outside the subdivision, if necessary, as determined by the City.

FINDING: The Applicant submitted a preliminary storm drainage report by ZTec Engineers, dated December 29, 2017, which explains that “the main components of the storm water collection system will be the new 24” storm line that will cross the subdivision from west to east collecting the runoff from [the] Montecucco property and the proposed subdivision.” The Council also relies on a September 11, 2017 letter from City Public Works staff which indicates that the Project can be served by public sanitary sewer and stormwater systems. Furthermore, the Council relies on a January 17, 2018 email from the Applicant’s engineering firm, ZTEC Engineers, to Hassan Ibrahim of Curran-McLeod, which explains that an alternative route for this drainage line exists through 34th Place and the existing stormwater easement running

beneath the Molalla Forest Logging Road. For these reasons, the Council finds that this standard is met.

3. All new subdivisions in Canby are required to treat stormwater on site. Stormwater management using LID practices is required where feasible, pursuant to requirements of this chapter and other applicable sections of this code. LID facilities shall be constructed in accordance with Canby Public Works Design Standards.

FINDING: The Council shall apply the following condition of approval to ensure that all City stormwater design standards will be met:

Stormwater systems shall be designed in compliance with the Canby Public Works Design Standards as determined by the City Engineer, and in accordance with the agreement for the relocation of the Montecucco's drainage easement and line if an agreement is reached.

With this condition of approval, this standard is met.

4. A conceptual stormwater management report must be submitted with the subdivision application.

FINDING: The Applicant submitted a preliminary storm drainage report by ZTec Engineers, dated December 29, 2017, which explains in relevant part the onsite storm collection and treatment system will be designed to meet all City of Canby requirements. This standard is met.

E. Sanitary Sewers. Sanitary sewers shall be installed to serve the subdivision and to connect the subdivision to existing mains. In the event it is impractical to connect the subdivision to the city sewer system, the commission may authorize the use of septic tanks if lot areas are adequate, considering the physical characteristics of the area. The commission may require the subdivider to install and seal sewer lines to allow for future connection to the city system.

FINDING: As explained above, substantial evidence in the record demonstrates that sanitary sewers will be available to serve the Project. This standard is met.

F. Water System. Water lines and fire hydrants serving the subdivision and connecting the subdivision to city mains shall be installed to the satisfaction of the supervisor of the water department and the Fire Marshal.

FINDING: The Application includes a complete utility plan that demonstrates that the proposed lots can be served with public water via an existing eight-inch water main located within N. Maple Street. The Council therefore finds that the Project can meet this standard.

G. Sidewalks. Sidewalks shall be required on both sides of a public street and in any special pedestrian way within the subdivision, except that in the case of identified arterials, or industrial districts, the commission may approve a subdivision without sidewalks if alternative pedestrian routes are available. Sidewalk construction may be postponed until the actual construction of buildings on the lots, provided that adequate assurance is given that such sidewalks will be installed.

FINDING: The Council finds that this standard applies to streets created as part of the project, not off-site streets, the latter of which are subject to an essential nexus/rough proportionality analysis. The tentative plan(s) demonstrate that sidewalks will be constructed on both sides of all proposed internal streets. This standard is met.

I. Street Name Signs. Street name signs shall be installed at all intersections according to city standards or deposit made with the city of an amount equal to the cost of installation.

FINDING: The Council finds that the Applicant can comply with this requirement.

J. Street Lighting System. Streetlights shall be required to the satisfaction of the manager of the Canby Utility Board.

FINDING: The Council finds that the Applicant can comply with this requirement.

K. Other Improvements.

FINDING: This subsection sets forth a number of miscellaneous provisions pertaining to driveways, curb cuts, street tree planting (which is addressed in other sections, above), electrical utilities, and developments on rail lines. The Council finds that subsections K.1 and K.4 are not applicable because curb cuts and driveways need not be shown on the tentative plan(s) and the Property is not located along an existing rail line. Subsection K.2 and K.3 do not require a particular showing in a tentative subdivision application, and in any case, the Council finds that the tentative plans(s) demonstrate that those standards can be met.

L. Improvements in Areas of Flood or Slope Hazard.

FINDING: The Council finds that this requirement does not apply because the Property is not in a flood hazard area, nor is it in any area of slope hazard, based on information from the Applicant's surveyor and the geotechnical engineer.

M. Survey Accuracy and Requirements.

FINDING: These standards apply to survey practices that will eventually be implemented during the creation of the final plat. They are not applicable to a tentative plat application and in any case, there is no evidence in the record demonstrating that they cannot be met. To ensure that these standards are met, the Council shall apply the following condition of approval:

The county surveyor and/or city engineer shall verify that the lot, street, and perimeter monumentation shall meet the requirements set forth in Oregon Revised Statutes and conform with the additional survey and monumentation standards of 16.64.070(M)(1-3) prior to recordation of the final plat.

N. Agreement for Improvements.

O. Bond.

P. Guarantee.

FINDING: Subsections N–P must be satisfied prior to final plat and are therefore not applicable to a tentative plat application. To ensure that they are satisfied, the Council shall apply the following conditions of approval:

- *The Applicant must enter in to an Improvement Agreement with the City prior to Final Plat recording. The following improvements and requirements shall be included in the agreement:*

A. On N. Maple Street from approximately NE 23rd Avenue (at the southern termination of the existing sidewalk on the west side) north to the north property boundary of Tax Lot 31E 28A 00900, the Applicant voluntarily agrees to the following regarding the off-site N. Maple Street improvements:

- 1. The Applicant proposes to widen N. Maple Street to 28' in width with a separated 5' wide asphalt path as shown on the power-point handout presented at the hearing and called out as Typical Section A-A.*

B. *On N. Maple Street along the frontage of Tax Lot 31E21 00300 north to the proposed subdivision, the Applicant voluntarily agrees to the following regarding the off-site N. Maple Street improvements:*

- 1.** *The Applicant proposes to widen N. Maple Street to 34' in width along the frontage of Tax Lot 31E21 00300, as shown on the power-point handout presented at the hearing and called out as Typical Section B-B and per Exhibit 13 – Maple Street ROW Option 2 – Cross Section A-A in the meeting packet material.*

C. *Prior to final plat recording and in conjunction with approval of the civil construction plans for the subdivision an agreement shall be executed between the City, the owner of Tax Lot 31E21 00300 (Montecucco Rentals, LLC), and the owner of the subject development to specify the reconfiguration of the existing drainage line that currently drains storm water from Tax Lot 31E21 00300 (Montecucco) through the subject development to the existing City storm system. The location and specifications of the proposed system shall be included in this agreement. In the event the parties cannot reach an agreement, the owner of the subject development will leave the Montecucco line in its current condition and location, and will not tie into the private Montecucco line or build lots or tracts over said line, and will implement a satisfactory drainage solution for the proposed subdivision in accordance with the City of Canby Public Works Design Standards, June 2012.*

- *All public improvements are normally installed prior to the recordation of the final plat. If the Applicant wishes to forgo construction of any portion of the public improvements until after the recordation of the final plat, then the Applicant shall provide the City with appropriate performance security (subdivision performance bond or cash escrow) in the amount of 110% of the cost of the remaining public improvements to be installed.*
- *If the Applicant chooses to provide a subdivision performance bond for some or all of the required public improvements, the Applicant shall obtain a certificate from the city engineer that states:*
 - a.** *The Applicant has complied with the requirements for bonding or otherwise assured completion of required public improvements.*
 - b.** *The total cost or estimate of the total cost for the development of the subdivision shall be accompanied by a final bid estimate of the subdivider's contractor if there is a contractor engaged to perform the work, and the total cost estimate must be approved by the city engineer.*
- *The Applicant must guarantee or warranty all public improvement work with a 1 year*

subdivision maintenance bond or other acceptable means of security in accordance with CMC 16.64.070(P).

- *The Applicant must pay the city Master Fee authorized engineering plan review fee equal to 0.4% of public improvement costs prior to the construction of public improvements (approval of construction plans) as each phase of development occurs.*

With the above conditions of approval, the Council finds that these requirements can be met.

Q. Large Scale or Solar Efficient Development.

FINDING: This neighborhood scale Project contains some large lots that will permit the placement and orientation of homes built on individual lots to take advantage of solar orientation. The Applicant has not made site specific plans for solar orientation because the flexibility of lot and home placement on the subject site is limited based on the size and shape of the parcel. The Council finds that solar access is not a particular basis of a request for relief from the standards of this division and therefore, the above section does not apply.

R. Fences/ Walls.

FINDING: The Applicant specifically requested permission to construct a fence on the west boundary of the Property to protect the Montecucco farm lands as well as permission to construct fences adjacent to the Willamette Wayside Natural Area (Willamette Landing) to prevent users of the trail system from seeing or trespassing into future residents' yards. The Council finds that these fences are necessary to provide privacy and some degree of security for the home owners, define the Logging Road Trail route, and to protect Montecucco's farmland. The Council therefore finds that they are approved and may be constructed notwithstanding the City's standard limitation on fences and walls surrounding housing developments.

LDPO 16.64.080, Low Impact Development Incentives.

FINDING: The Applicant has not requested bonuses for Low Impact Development Incentives. This section does not apply.

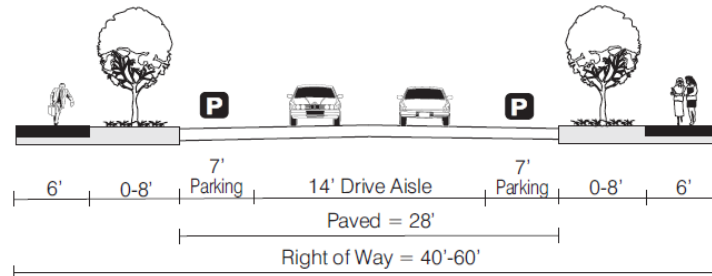
Division VII – Street Alignments.

LDPO 16.86 Regulations.

FINDING: Division VII sets forth general provisions applicable to new and improved streets proposed in Canby. It broadly requires that new streets be constructed according the

requirements of the Transportation System Plan and Canby Public Works Design Standards. As explained above, the proposed internal street system of the Project has been designed to meet City Local Street Standards applicable to a “Low-Volume Local Street” because the TIS prepared by DKS demonstrates that the Project will generate less than 500 average daily trips per day.

LOW-VOLUME LOCAL STREET (<500 Vehicles Per Day)



Local street standards provide the City and private developers flexibility to design road improvements to accommodate the variable conditions in different locations and other site constraints, as evidenced by the following excerpt from the Canby Transportation System Plan: “Because the actual design of a roadway can vary from segment to segment due to adjacent land uses and other factors (e.g., truck routes, bike routes, pedestrian corridors, etc.), flexibility has been built in to the standards; this is why ranges of required components are provided for each functional class.” Canby Transportation System Plan 7-14 (2010). In this case, flexibility in the standard is provided by allowing a range of furnishing zones between zero and eight feet.

The City’s consulting engineers, Curran-McLeod, issued a memorandum dated September 7, 2017 which recommends the following:

“The proposed interior streets width, sidewalks and right-of-way dedications for NE 35th Place and NE Maple Ct meet City local street standards. However, we recommend the sidewalks be separated from the curbs with 4.5' planter strips in conformance with Chapter 2 of the City of Canby Public Works Design Standards, dated June 2012. Street lights and utilities shall also be extended to serve this development.”

The Council finds that planter strips are desirable and feasible in the proposed internal street network, except in areas constrained by the need to preserve protected wetlands in Tracts B and D. To that end, the following condition of approval shall apply:

The final construction design plans shall reflect the use of a 4.5' wide planter strip separating the sidewalk from the street curb along both sides of N. Maple Court beginning within the

subdivision and up to the beginning of the eyebrow (partial cul-se-sac bulb) where it may taper into a curb tight sidewalk. To comply with the City standard practice for new subdivisions since adopting the new 0 to 8' wide standard that was intended to require planter strips but allow flexibility where it was deemed to be suitable to match existing same street standards or protect resources or avoid difficult restrictions or circumstances. The planter strip is waived – allowing a curb tight sidewalk along both sides of NE 35th Place along with an exception to reduce the sidewalk width to 5' adjacent to the Tract D wetlands to assist in its protection. A dual 12' wide PUE & Sidewalk Easement shall be designated on the final plat to allow public use of any sidewalk placed outside of the public rights-of-way.

The Council finds that LDPO 16.86 does not apply to existing offsite streets proposed for voluntary improvement in conjunction with a development project, such as N. Maple Street is in this Application. It does so because the plain language of the majority of the standards specify applicability to “new streets”. See, e.g., LDPO 16.86.020 A, B, and D. However, the Council also finds that the proposed improvement of N. Maple Street is consistent with City local street standards, as explained by staff in the Staff Report for the October 23, 2017 Planning Commission meeting and the following excerpt from the September 7 Curran-Mcleod memorandum: “N. Maple Street, the proposed width of 34-foot except where there are right-of way restrictions (25-foot wide along the frontage of tax lots 900 and 1000, tax map3S1E28A) meets Local Street standards in conformance with Chapter 2 of the City of Canby Public Works Design Standards, dated June 2012.” This was reinforced by a January 15, 2018 email from Hassan Ibrahim of Curran-McLeod responding to the Applicant’s updated improvement to N. Maple Street, which explains: “N Maple Street shall be improved to 34’ wide paved local street as part of the future development of the farmed property to the west and not as part of this development. This development should provide a minimum 20’ paved surface and parking on one side for a minimum of 28’ wide street.”

In summary, the Council finds that the proposed street improvements can meet all applicable street standards set forth in the City’s TSP and Public Works Design Standards, thereby satisfying Division VII.

Division VIII. General Standards and Procedures

16.88 General Standards & Procedures

FINDING: Section 16.88 sets forth the general standards and procedures implementation of the LDPO. The Council finds that these are not criteria applicable to the Application, but also finds that the Application was processed according to the applicable requirements of this section.

16.89 Application and Review Procedures

FINDING: The Council finds that the Application was properly processed according to the Type III Quasi-Judicial procedures and that all relevant notices and opportunities for public involvement were provided. The Council also notes that neither the Appellant nor any other interested party raised procedural issues during the appeal.

16.120 Parks, Open Space, and Recreation Land General Provisions

FINDING: City staff has requested that the Applicant pay a Park System Development Charge ("SDC") fee in lieu of park land dedication for this subdivision; the Council concurs with staff's recommendation. The builder of each lot's dwelling will be responsible to pay this Park SDC fee prior to issuance of a building permit.

V. ARGUMENTS ON APPEAL

The Planning Commission's Decision was appealed by Mr. Michael McNichols, Mr. Tony Polito and Friends of N. Maple Street, and were represented by legal counsels Mr. E. Tyler Howell and Mr. Richard Mario. In order to grant an appeal, Appellants must make the showing required for appeals required by the LDPO below:

LDPO 16.89.050.I.3. The City Council shall overturn the decision of the Planning Commission only when one or more of the following findings are made:

- a. That the Commission did not correctly interpret the requirements of this title, the Comprehensive Plan, or other requirements of law;**
- b. That the Commission did not observe the precepts of good planning as interpreted by the Council; or**
- c. That the Commission did not adequately consider all of the information which was pertinent to the case.**

Appellants' primary arguments were set forth in the letter from their legal counsel, Mr. E. Tyler Howell, dated November 27, 2017. The Council notes that Appellants made no attempt to explain how or why conditions **a – c** above were present in this case and justified reversal or remand of the decision. The Council is not responsible for connecting Appellants' arguments

with the allowable bases for appeal and the Council finds that Appellants failed to identify a basis upon which the Planning Commission's decision should or must be reversed or remanded. This alone requires denial of the Appeal.

However, recognizing that the Applicant bears the burden of proof throughout the land use permitting process, the Council considered Appellants' evidence and arguments, which are identified in quotation marks and the Council's response is explained, below. In summary, the Council finds (1) that Appellants' arguments do not justify reversal or remand and (2) that evidence offered by Appellants does not outweigh the substantial evidence in the whole record which demonstrates that all applicable criteria are met.

Appellants' November 27, 2018 Letter submitted by Mr. E. Tyler Howell

- **"SUB 17-05 Presents Safety Concerns for Pedestrians and Bicyclist that were not studied."**

Appellants argued that the City's traffic engineers, DKS Associates, failed to support with adequate data the conclusion in its November 17, 2016 memorandum, which observed that pedestrian and bicycle traffic on N. Maple Street is anticipated to be "relatively low." Citing observations of frequent bicycle and pedestrian traffic on N. Maple Street, Appellants recommended that the "that the Applicant be required to conduct a traffic analysis that: (1) includes pedestrian and bicycle counts; (2) is conducted during the seasonal high traffic times of late spring through fall; and (3) draws conclusions based on empirical data." The Council rejects this argument for three reasons.

First, Appellants cite no criterion which they claim the Application fails to meet and the Council can reject this argument on that basis alone. In particular, the Council finds that there is no applicable standard that would require the Applicant or the City to conduct a count of pedestrian or bicycle traffic. Moreover, Mr. Todd Mobley of Lancaster Engineering explained at the January 17 hearing that under standard traffic engineering practices, impacts and mitigation requirements are determined on vehicle traffic, not pedestrian activity.

Second, Appellants do not support their argument with evidence that outweighs the substantial evidence offered by DKS Associates and Lancaster Engineering that N. Maple Street is sufficient to safely serve the Project, and that the Project will not have detrimental impacts on that street. The Council notes that no qualified transportation engineer contradicts the findings of both DKS Associates and Lancaster Engineering. Even if the anecdotal reports by residents of high bicycle and pedestrian traffic during summer months are true, the Appellants' have not

explained why the Project will cause substantially more danger to pedestrians than exists presently. The Council relies on the January 5, 2018 written testimony of Mr. Mobley. Mr. Mobley rebuts Mr. Howell's assertion, who is not a traffic engineer nor has he obtained a traffic engineer, that the traffic counts are incorrect. Mr. Mobley states "The assertion is made in the Howell letter that volumes are highest during the summer months, but there is no empirical evidence to suggest that this is true. Vehicle traffic is far less dependent on weather than pedestrian and bicycle traffic and vehicle traffic on local city streets is not subject to wide seasonal fluctuations." Also, Mr. Mobley explained at the January 17 hearing that even if volumes were higher than those reflected in the traffic analyses during the summer, they would not change the recommended functional classification of Maple as a local street, and therefore would not require a different improvement.

Finally, the Council finds that, even if there were a pedestrian safety problem on N. Maple Street, the Project will only serve to alleviate that problem with the inclusion of the proposed new pedestrian pathway along that street. The Council also concurs with staff that the City does not have the power to either deny the Application on the basis of an alleged preexisting off-site pedestrian connectivity problem or require the Applicant to resolve such a problem without demonstrating the rough proportionality between the impacts of the Project and the upgrades required to resolve them. The Appellants failed to explain what upgrades would satisfy the required nexus and proportionality tests, and the Council adopts the analysis in the Staff Report that the Applicant's voluntary off-site improvements "are far in excess of their subdivisions actual additional impact on an existing deficiency related to the street width and lack of a sidewalk on N. Maple Street leading to this subdivision." Staff Report at 7, **Exhibit 2**.

- **"The Fire Marshal's review and affirmative acceptance of the emergency access plan is required."**

Appellants argue that the Fire Marshall's failure to "affirmatively state" its acceptance of the subdivision's emergency access undermines the substantial evidence that using the Molalla Forest Logging Road as an emergency access is allowable under the Oregon Fire Code. The Council rejects this argument for two reasons.

First, Appellants fail to identify a criterion that Application fails to meet if its argument is correct.

Second, Appellants make this argument without offering any substantial evidence that the proposed emergency access would not meet the Fire Code. Its linguistic analysis of the Canby Fire District discussions with staff, discussions which were explained by staff during the

Planning Commission meeting, is unavailing. Evidence in the record—including Todd Gary’s January 2, 2018 email to the Applicant—indicates that the Canby Fire District is well aware of the Project and how the Applicant proposes to ensure fire safety, and does not object to the use of the Molalla Forest Logging Road as an emergency access. And, when asked at the January 17 hearing whether the Fire District would accept use of the Logging Road as an emergency access, the Planning Director answered in the affirmative. The Council finds that this substantial evidence demonstrates approval by the Fire District of the Applicant’s emergency access plan and that the lack of objection to use of the logging road as an emergency access is substantial evidence that it will be acceptable to the Fire District.

▪ **“The Final Order fails to adequately address wetlands and site drainage issues.”**

Appellants argue that the Project “will substantially increase the amount of impervious surface on the property, and therefore an adequate stormwater management plan needs to be implemented.” In so doing, Appellants rely on a twenty-year old land use decision, SUB 94-02, as a basis to suggest that the Applicants have allocated too little land to wetland preservation. The Council rejects this arguments for several reasons.

First, this argument identifies no criterion that the Application fails to satisfy, which alone justifies rejection of the argument.

Second, the Council finds that Appellants’ inferences regarding the reasons for denial of SUB 94-02 are irrelevant because they are not credible evidence of current wetland or drainage issues on the Property.

Finally, the Council finds that this argument is not supported by evidence sufficient to outweigh the letter from John Middleton of ZTec Engineers, dated December 29, 2017, the concurrence from the Oregon Department of State Lands (“DSL”) dated May 18, 2015, and the letter from Mr. Martin Schott of Schott & Associates, dated December 27, 2017, all of which indicate that the proposed storm drainage system will be adequate and that existing wetlands on the Property were properly identified. In so finding, the Council notes that Appellants offered no evidence from a similarly qualified engineer or wetland scientist to support its arguments.

January 15, 2018 “Supplemental Brief” submitted by Mr. Michael D. McNichols

Mr. McNichols submitted a letter attaching the letter from Mr. Cameron Smith, Deputy Director for Administration of ODFW. Mr. McNichols’ letter argues that the Applicant may not rely on the Molalla Forest Logging Road as the emergency vehicle access required pursuant to LDPO

16.46.010.F. because the Logging Road is encumbered by a 2002 Conservation Easement benefitting ODFW. Mr. McNichols' argument is excerpted below:

"The operative language that would permit for the development of the property on North Maple is *"legally binding alternative vehicle access."* Apparently both the developer and Mr. Brown maintain that the paved walking road on the property encumbered by the Canby Landing Conservation Easement constitutes a legally binding alternative vehicle access to the proposed development site. They mistakenly rely on Section 4 of the easement, entitled *Prohibited Actions* which contains a list of activities proscribed by the conservation easement.

Prohibited Actions - h) Off-Road Vehicles

Section 4, subsection h of the Canby Landing Conservation Easement states:

Off-Road Vehicles. *Except for emergency vehicles* and vehicles needed to facilitate implementing an approved management plan, motorized off-road vehicles such as snowmobiles, dune buggies, all-terrain vehicles and motorcycles may not be operated on the Property, except on roads open to the public.

Mr. Brown and the developer evidently rely the verbiage *"except for emergency vehicles"* to argue that the conservation easement allows for the detrimental access and use of the paved walkway by emergency vehicles going to the proposed subdivision, for the sole benefit of that subdivision.

They are mistaken in their interpretation of this section of the easement. While this language may appear to allow for the use of emergency vehicles on the paved walking trail for the benefit of the proposed development, the simple fact of the matter is that this easement was drafted in 2002, long before the current subdivision was proposed. The intent at that time was to allow emergency vehicles on the protected property to address emergencies *on the property itself*. Any other interpretation would pervert the purpose of the easement as well as the intent of the parties to that easement."

Mr. McNichols argued that before making its final decision on the Application, the Council must consult with ODFW as to the true scope of the easement.

The letter from ODFW staff, dated January 10, 2018, alleged that a violation of the terms of the easement had occurred with the construction of the connection between NE 34th Place and the

Logging Road and that ODFW should be notified prior to any future development within the conservation easement area:

“ODFW does not take a position on the merits of private real estate development, nor does it wish to interfere or become involved in any way with the rights of the City of Canby to approve (or deny) such developments. However, ODFW does take very seriously its obligations to preserve and protect conservation easements which have been obtained to provide scenic, educational, and recreational benefits to the citizens of the State of Oregon. To that end, the Grantee requests that the City of Canby, prior to undertaking or allowing any further development in the easement area, provide ODFW with all pertinent information (including maps) clearly identifying any existing or proposed encroachments (of any type whatsoever) into the easement area and explaining in detail how these encroachments are in accordance with the terms of the conservation easement. This request specifically applies to the 34th Place development and the Seven Acres proposal, but would also include any other currently proposed or future activities in the easement area. Corrective action to cure the said existing violation and to ensure that there are no further violations of the easement is hereby requested.”

The Applicant’s legal counsel, the Planning Director, and City Attorney, offered oral testimony at the January 17 hearing indicating that in their view the terms of the conservation easement allow emergency vehicles on the Logging Road which could serve the project. An ODFW representative, Mr. Richard Duncan, attended the hearing and offered neutral oral testimony. Mr. Duncan indicated that ODFW was willing to discuss the scope of emergency access and ODFW’s primary concern was the new connection between the Project and the existing Logging Road, not the use of the Logging Road for emergency access.

The Council finds that substantial evidence in the record indicates that the Logging Road can be used for an emergency access that can serve the project. In so finding, the Council relies on the testimony of the Planning Director and City Attorney, as well as Section 4.h. of the 2002 Conservation Easement, which provides as follows:

“Off-Road Vehicles. Except for emergency vehicles and vehicles needed to facilitate implementing an approved management plan, motorized off-road vehicles such as snowmobiles, dune buggies, all-terrain vehicles and motorcycles may not be operated on the Property, except on roads open to the public.” (Emphasis added.)

The Council received testimony indicating that the Canby Landing Management Plan specifically contemplates the Logging Road being used for emergency access. The Council also observes that the Logging Road is physically adequate for emergency access based on the letter from James D. Imbrie, G.E., of GeoPacific, dated January 5, 2018. The Council also finds that to any extent that the 2002 Conservation Easement could be read to prohibit the proposed access, Section 15 of the easement allows it to be modified with the express written consent of ODFW and the City, and Mr. Duncan's testimony indicated that the ODFW would work with the Applicant to see if a solution under the terms of the conservation easement could be reached. The Council expressly adopts the January 17, 2018 memorandum from the Planning Director as part of these findings.

To conclude, the Council finds that the 2002 Conservation Easement and Management Plan allow use of the Logging Road for emergency access and that substantial evidence in the whole record demonstrates that the Applicant can obtain legal access to the Logging Road. To ensure that this is done, the Council shall apply the following condition of approval:

The Applicant shall comply with the terms of the Canby Landing Conservation Easement between the City of Canby and ODFW, dated May 28, 2002.

For the above reasons, the Council rejects Mr. McNichols' argument and finds that the Applicant can secure a "legally binding alternative emergency vehicle access" consistent with LDPO 16.46.010.F.

October 20, 2017 Letter Submitted by Mr. Michael D. McNichols

Mr. McNichols submitted a letter on October 20, 2017 to the record of the Planning Commission's consideration of the Application. At the January 17 hearing, Mr. McNichols again offered the letter into the record because it was not included in the Council packet. The Council asked the Applicant if it would further extend the 120-day deadline mandated by ORS 227.178, which originally concluded on December 23, 2017. The Applicant declined to grant a further extension and requested that the Council make a decision on the Appeal at the January 17 hearing. However, in order to allow the Council time to consider Mr. McNichols' October 20 letter, the Council took a 30 minute recess during which it reviewed the materials.

As an initial matter, the Council notes that these arguments make general claims as to the insufficiency of N. Maple Street and question the validity of the numerous traffic studies done in support of the Application. With the exception of one argument concerning LDPO 16.46.010, the letter does not identify a criterion that the Application fails to meet. Nonetheless, the

Council has considered these arguments, which are listed in bullet points. In summary, the Council rejects these arguments for the reasons below.

- **“Timing Issues”**

Mr. McNichols raises concerns regarding an alleged lack of time for citizens to review the Application and offer their comments, as well as concerns about the lack of a completion date stated in the Application and a failure to explain the plans for having homeowners pay for new sidewalks. The Council rejects these for a number of reasons.

First, there is no evidence that Mr. McNichols was unable to fairly participate in the Appeal. In fact, he was a listed Appellant, had nearly three months between the Planning Commission Hearing to review the record, and participated in the appeal both orally and in writing.

Second, the Council rejects Mr. McNichols’ assumption that homeowners will have to pay for sidewalks because that proposition is completely unsupported by the record.

Finally, the Council rejects Mr. McNichols’ concern about a completion date because he fails to identify a requirement for one in a tentative subdivision application. Even if there were a requirement for a completion date, Mr. McNichols fails to explain how that would justify remand or reversal of the Planning Commission’s decision.

- **“Elimination of Parking on the East Side of North Maple”**

Mr. McNichols challenges DKS’s finding in its April 8, 2015 TIS that no-parking signs should be installed along the east side of N. Maple Street. The Council rejects this argument because Mr. Steven Boice of DKS later determined that the proposed inclusion of a shoulder and pedestrian path along the west side of Maple eliminates the need for parking along the east side of Maple, as stated in his email sent to the Planning Director on January 22, 2017, and the proposed improvement of N. Maple no longer includes removal of parking along its east side.

- **“Side walk cost issue.”** (DKS recommended that sidewalks be installed along the east side of N. Maple Street in its April 8, 2015 memorandum and construction of those sidewalks would require a taking of private property, thereby requiring the public to subsidize the project).

The Council rejects this argument because, after additional information was provided by the Applicant, DKS later determined that sidewalks along the east side of N. Maple need not be required, as evidenced in its November 17, 2016 supplemental memorandum.

- **“The unimpeded mile.”**

Mr. McNichols questioned the conclusions of the TIS, arguing that “the traffic study...does not adequately address...psychological impact for the new residents of the proposed subdivision and they have...an unimpeded 1 mile straight road between the subdivision and the first traffic control device [...]” The Council rejects this argument because it does not constitute evidence sufficient to rebut the substantial evidence in the record from both DKS and Lancaster Engineering demonstrating that N. Maple Street is sufficient to accommodate the additional trips caused by the project, especially with the proposed new shoulder and pedestrian path. The Council also rejects this argument because Mr. McNichols is not a transportation engineer nor did he offer testimony by a transportation engineer supporting his position, undermining the relative weight of his argument.

- **“Pedestrian walkway” and “Pedestrian activity.”**

Mr. McNichols challenges DKS’s findings in its November 17, 2016 memorandum that “pedestrian volumes will be relatively low” and observes that pedestrian traffic has only increased over the last 27 years. The Council rejects this argument for the same reasons discussed in the preceding section and also because Mr. McNichols does not explain why this argument, even if true, would require the Council to reverse or remand the decision.

- **“Current agricultural nature of property.”**

Mr. McNichols highlights “problems created by agricultural use” and argues that “until the infrastructure is in place to deal with these problems, allowing for anything that would increase the flow of traffic on North Maple would not be in the best interests of those who live on it or use it on a regular basis. The Council rejects this argument for several reasons.

First, Mr. McNichols does not explain why this argument, even if true, would require the Council to reverse or remand the decision and does not identify a code criterion that the Application fails to meet. Second, the Council accords more weight to the testimony of Ed Montecucco offered at the Planning Commission hearing, which explained that most of the agricultural traffic on the road consists of pickup trucks. Third, the Council observes that agricultural practices were conducted on the Montecucco property and other farmland before

the housing development around the Willamette Country Club was built and as such, any conflicts between residential and agricultural practices are preexisting and unlikely to increase as a result of this project. Finally, the Council places more weight on the traffic studies submitted by DKS and Lancaster Engineering, which determined that Maple Street will be adequate to serve the project. The Council also finds that the proposed widening of N. Maple Street through Montecucco's right-of-way dedication and other improvements will provide additional room for farm equipment that would not exist without the project.

- **“Critique of Revised Staff Report Interpretation of § 16.46.010(B)(1) [...]”**

Mr. McNichols argues that the access limitations of the quoted section apply to the project. As explained above in the findings regarding LDPO 16.46.010, subsection F of that section explains that N. Maple Street is exempt from the residential unit restrictions. Mr. McNichols goes on to question the validity of subsection F, but the Council finds that he has not demonstrated that subsection F should not apply.

- **“Emergency vehicle access to development.”**

Mr. McNichols argues that while the Molalla Forest Logging Road is a “feasible alternative”, he questions whether it can be seriously considered a safe one. The Council rejects this argument because it does not clearly argue that the Logging Road cannot provide emergency access nor is it supported by substantial evidence. The Council places more weight on the determination of James D. Imbrie, G.E., dated January 5, 2018, which concludes that the Molalla Forest Road is adequate for emergency access purposes.

- **“Wetlands issue.”**

The Council finds that SUB 94-20 is irrelevant to the issue of whether the Applicant properly identified existing wetlands and even if it were relevant, it is not sufficient to contradict the Oregon Department of State Land's concurrence of the Applicant's wetland delineation as well as the December 27, 2017 letter from Martin Schott responding to Appellants' arguments regarding wetlands and site drainage.

VI. PUBLIC TESTIMONY

A substantial number of public comments were received, the vast majority of which did not identify an applicable criterion with sufficient specificity to allow the Applicant an opportunity to respond. These arguments and the Council's responses are summarized below.

- **Concerns regarding the capacity of N. Maple Street.** A large number of public comments expressed concern regarding the safety and capacity of N. Maple Street. Specific concerns included the following:
 - There is too much existing traffic on N. Maple Street.
 - N. Maple Street is too narrow to accommodate the additional traffic created by the Project.
 - The street does not meet LDPO 16.46.010.G, which requires that “public roads accessing any development shall be a minimum of two travel lines (at least 24 feet of paved width) to the nearest improved collector or arterial street.”
 - The proposed pedestrian pathway is inadequate because it does not use a curb.
 - A new traffic monitoring plan should be implemented along N. Maple Street.
 - The Transportation Impact Study is flawed because it underestimates pedestrian and bicycle trips and does not account for summertime peak traffic.
 - A prior development proposal for the Property was denied because of the insufficiency of N. Maple Street.
 - New fitness center at the Willamette Country Club will increase traffic flow on N. Maple Street.
 - The City should require a traffic control device at the intersection of N. Maple Street and NE Territorial Road.

FINDING: The Council observes that none of the above comments, with the exception of the comment regarding LDPO 16.46.010.G, identify a criterion that the Project fails to meet. The Council accepts the following documents as substantial evidence that N. Maple Street will be adequate to safely serve the project, especially in light of the Applicant’s proposal to widen that street and provide a new pedestrian pathway:

- The April 8, 2015 DKS Traffic Impact Study.
- The November 17, 2016 DKS Supplemental Memorandum which concludes that the proposed improvement of N. Maple Street meets the standards for a Low-Volume Local Street and that Maple is likely to be fully improved when adjacent farmland develops.
- The September 18, 2016 Lancaster Engineering Technical Memorandum.
- The DKS email dated January 22, 2017, which indicates that parking need not be provided on the east side of N. Maple Street.
- The Staff Report, which indicates that the City cannot require new sidewalks on N. Maple Street and that the proposed improvements are in excess of what would be roughly proportional to the project’s impacts.

- The January 5, 2018 letter from Mr. Todd Mobley of Lancaster Engineering, which specifically rebuts Appellants’ arguments on the same issue.

Opponents offer no evidence of equal weight to the substantial evidence identified above, which proves to the Council’s satisfaction that N. Maple Street can accommodate the Project and that the Applicant proposes more improvements to that street than would be “roughly proportional” to the Project’s impacts. In making this finding, the Council observes that there is no analysis in the record by a qualified engineer which contradicts the evidence offered by DKS and Lancaster Engineering.

- **Concerns regarding the pedestrian and bicycle safety of N. Maple Street.**
 - Inadequate bicycle and pedestrian infrastructure.
 - Lack of sidewalks.
 - The new pedestrian path will not sufficiently address pedestrian safety.
 - Proposal does not include any curbs or standards sidewalks along N. Maple Street.
 - Potential need to condemn owners’ land for a new sidewalk along the east side of N. Maple Street or force owners into a local improvement district to pay for those improvements.
 - The Project will create a safety hazard to an existing preschool/kindergarten in the neighborhood.
 - A pedestrian usage study should be conducted.

FINDING: The Council rejects these arguments for the same reasons explained in the previous section. Also, the Council finds that the proposed improvement of N. Maple Street will result in better pedestrian and bicycle infrastructure than exists currently.

- **The Canby Comprehensive Plan “states that before any new development can be considered, the infrastructure needed to support said development must be in place.”**

FINDING: The Council rejects this argument because that provision of the Comprehensive Plan, if true, is not expressly incorporated as an approval criterion. Even if it were, the Council finds that adequate infrastructure is proposed to support the project.

- **Project would decrease quality of life.**
- **Project would decrease property values.**

FINDING: The Council finds that neither quality of life nor property values are expressly regulated by the LDPO as it applies to a subdivision application.

- **The existing turnaround at the end of N. Maple Street is used for parking and the Applicant should not be allowed to remove it.**

FINDING: The Council finds that, per the conditions of approval stated below, the Applicant will be required to file for and obtain a street vacation of sections of the existing turnaround, which will involve a hearing open to the public. However, this argument does not identify an approval criterion which the Application fails to meet, and the Council finds that vehicles will still be able to use the proposed street system to turn around.

- **Only residents within 500 feet of the Property were provided notice of the Project.**

FINDING: The public notices were provided consistent with the LDPO and ORS 197.763.

- **The Property flooded in 1964 and is susceptible to flooding now.**
- **The Property suffers from drainage problems which will impact surrounding properties.**

FINDING: The Council finds that these comments are not supported with substantial evidence sufficient to contradict FEMA's Flood Insurance Rate Map, which shows that the Property is not located within a 100-year floodplain, and the conclusion of City Staff that the proposed drainage system will be adequate to serve the project.

VII. CONCLUSION

The City Council finds that that substantial evidence in the whole record demonstrates that the Application satisfies or can satisfy all applicable criteria, either as proposed or with the conditions of approval indicated herein. The City Council also finds that the Appellants have not established a basis upon which the Council must remand or reverse the Planning Commission's decision on this Application.

VIII. ORDER

The City Council by motion made, denied the Appellants' appeal by upholding the Planning Commission's decision, and approved the Applicant's request for approval.

Therefore, **IT IS ORDERED BY THE CITY COUNCIL** of the City of Canby that **SUB 17-02 THE SEVEN**

ACRES SUBDIVISION is approved, subject to the following conditions:

CONDITIONS OF APPROVAL

Unique To This Proposal:

1. **The Applicant shall comply with the terms of the Canby Landing Conservation Easement between the City of Canby and ODFW dated May 28, 2002.**

2. Unique to General Improvement & Design Conditions:

3. Prior to the start of any public improvement work, the Applicant must schedule a pre-construction conference with the city and obtain construction plan sign-off from applicable agencies. City Engineer comments provided in his memorandum dated September 7, 2017, shall be reflected on those plans, except those comments in the September 7, 2017 memorandum related to “planter strips” and removal of parking and construction of a sidewalk on the east side of N. Maple Street shall not be required.
4. On street parking shall be restricted on the inside edge of NE 35th Place which has a pavement design width of only 28’ to comply with minimum fire code accessibility standards.
5. The final construction design plans shall reflect the use of a 4.5’ wide planter strip separating the sidewalk from the street curb along both sides of N. Maple Court beginning within the subdivision and up to the beginning of the eyebrow (partial cul-de-sac bulb) where it may taper into a curb tight sidewalk. To comply with the City standard practice for new subdivisions since adopting the new 0 to 8’ wide standard that was intended to require planter strips but allow flexibility where it was deemed to be suitable to match existing same street standards or protect resources or avoid difficult restrictions or circumstances. The planter strip is waived – allowing a curb tight sidewalk along both sides of NE 35th Place along with an exception to reduce the sidewalk width to 5’ adjacent to the Tract D wetlands to assist in its protection. A dual 12’ wide PUE & Sidewalk Easement shall be designated on the final plat to allow public use of any sidewalk placed outside of the public rights-of-way.
6. The off-site street widening public improvements volunteered by the Applicant and approved by the City for N. Maple Street shall be part of the improvements associated with Phase I of the Seven Acres Subdivision. This is intended to provide improved vehicular and safety improvements before any additional residential traffic from the subdivision is added to this street.
7. Temporary suitable turnarounds may be required at the end of all interior streets that exceed 150’ in length as directed by the Canby Fire Department.
8. The Applicant shall process an annexation application and a lot line adjustment if deemed necessary based on how the dedication occurs along Tax Lot 31E21 00300 for the 10’ of right-of-way easement to be added to the west side of N. Maple Street.
9. The Applicant must enter in to an Improvement Agreement with the City prior to Final Plat recording. The following improvements and requirements shall be included in the agreement:

A. On N. Maple Street from approximately NE 23rd Avenue (at the southern termination of the existing sidewalk on the west side) north to the north property boundary of Tax Lot 31E 28A 00900, the Applicant voluntarily agrees to the following regarding the off-site N. Maple Street improvements:

1. The Applicant proposes to widen N. Maple Street to 28' in width with a separated 5' wide asphalt path as shown on the power-point handout presented at the hearing and called out as Typical Section A-A.

B. On N. Maple Street along the frontage of Tax Lot 31E21 00300 north to the proposed subdivision, the Applicant voluntarily agrees to the following regarding the off-site N. Maple Street improvements:

1. The Applicant proposes to widen N. Maple Street to 34' in width along the frontage of Tax Lot 31E21 00300, as shown on the power-point handout presented at the hearing and called out as Typical Section B-B and per Exhibit 13 – Maple Street ROW Option 2 – Cross Section A-A in the meeting packet material.

C. Prior to final plat recording and in conjunction with approval of the civil construction plans for the subdivision an agreement shall be executed between the City, the owner of Tax Lot 31E21 00300 (Montecucco Rentals, LLC), and the owner of the subject development to specify the reconfiguration of the existing drainage line that currently drains storm water from Tax Lot 31E21 00300 (Montecucco) through the subject development to the existing City storm system. The location and specifications of the proposed system shall be included in this agreement. In the event the parties cannot reach an agreement, the owner of the subject development will leave the Montecucco line in its current condition and location, and will not tie into the private Montecucco line or build lots or tracts over said line, and will implement a satisfactory drainage solution for the proposed subdivision in accordance with the City of Canby Public Works Design Standards, June 2012.

Fees/Assurances:

9. All public improvements are normally installed prior to the recordation of the final plat. If the Applicant wishes to forgo construction of any portion of the public improvements until after the recordation of the final plat, then the Applicant shall provide the City with appropriate performance security (subdivision performance bond or cash escrow) in the amount of 110% of the cost of the remaining public improvements to be installed.

10. If the Applicant chooses to provide a subdivision performance bond for some or all of the required public improvements, the Applicant shall obtain a certificate

from the city engineer that states:

- c. The Applicant has complied with the requirements for bonding or otherwise assured completion of required public improvements.
 - d. The total cost or estimate of the total cost for the development of the subdivision shall be accompanied by a final bid estimate of the subdivider's contractor if there is a contractor engaged to perform the work, and the total cost estimate must be approved by the city engineer.
11. The Applicant must guarantee or warranty all public improvement work with a 1 year subdivision maintenance bond or other acceptable means of security in accordance with CMC 16.64.070(P).
12. The Applicant must pay the city Master Fee authorized engineering plan review fee equal to 0.4% of public improvement costs prior to the construction of public improvements (approval of construction plans) as each phase of development occurs.

Streets, Signage & Striping:

13. The unused portion of the existing cul-de-sac for N. Maple Street which will no longer be necessary shall be vacated and then physically removed.
14. The street improvement plans for N. Maple Street widening and the interior division streets shall conform to the TSP and Public Works standards as indicated by the city engineer.
15. The sidewalk (pedestrian pathway) along N. Maple Street shall be built at Applicant's expense and there shall be no decrease in existing on-street parking.
16. The Applicant shall comply with the three recommended conditions of approval provided by Clackamas County Development Services in their memorandum to the City in review of SUB 17-05 dated October 5, 2017 which include:
- a. **Prior to final plat approval:** The Applicant shall obtain a Development Permit from the Engineering Division for review and approval of Maple Street improvements where Maple Street is under County jurisdiction. The Permit shall be obtained prior to commencement of site work and recording of the subdivision plat. To obtain the permit, the Applicant shall submit construction plans prepared and stamped by an Engineer registered in the State of Oregon, or plans acceptable to the Engineering Division, provide a performance guarantee equal to 125% of the estimated cost of the construction, and pay a plan review and inspection fee. The fee will be calculated as a percentage of the construction costs if it exceeds the minimum permit fee. The minimum fee and the percentage will be determined by the current fee structure at the time of the Development Permit application.

- b. All require Maple Street improvements, where the street is under County jurisdiction, shall comply with the Clackamas County *Roadway Standards* unless otherwise noted herein.
 - c. The Applicant shall design and construct Maple Street widening improvements, along the section of Maple Street under County jurisdiction, in compliance with the structural section requirements of Roadway Standards Drawing C100 for a connector.
17. Drainage along the west side of the N. Maple Street widening will be addressed within the construction plans in a manner that minimizes impact on the adjacent farm land while following standards deemed to be acceptable to the City and County engineering staff.
18. The construction plans shall be shared with the adjacent farm property owners for their review and they shall be provided notice by the developer of the scheduled pre-construction approval meeting with the City.
19. A roadway striping plan shall be submitted by the Applicant and shall be approved by city engineer and by the Public Works street department prior to the construction of public improvements.
20. A roadway signage plan shall be submitted by the Applicant and shall be approved by the city engineer and by the Public Works street department prior to the construction of public improvements.
21. The Applicant shall be responsible for installing all required street signage and striping at the time of construction of public improvements, unless other arrangements are agreed to by the City.

Sewer:

22. The Applicant shall submit documentation of DEQ approval of the sewer plans to the City Engineer prior to the construction of this public improvement with each phase of development.

Stormwater:

23. Stormwater systems shall be designed in compliance with the Canby Public Works Design Standards as determined by the City Engineer, and in accordance with the agreement for the relocation of the Montecucco's drainage easement and line if an agreement is reached.
24. Drywells proposed within the subdivision shall be approved by DEQ.

Grading/Erosion Control:

25. The Applicant shall submit grading and erosion control plans for approval by Canby Public Works in conjunction with construction plan approval prior to the installation of public improvements and start of grading with each phase of development.

26. The Applicant shall grade all areas of the site, including the proposed lots, to minimize the amount of soil to be removed or brought in to each lot during home construction.

Final plat conditions:

General Final Plat Conditions:

27. The Applicant shall apply for final plat approval at the city and pay any applicable city fees to gain approval of the final subdivision plat. Prior to the recordation of the final plat at Clackamas County, it must be approved by the city and all other applicable agencies. The city will distribute the final plat to applicable service agencies for comment prior to signing off of the final plat if deemed necessary.
28. All public improvements or submittal of necessary performance security assurance shall be made prior to the signing and release of the final plat for filing of record.
29. The final plat shall conform to the necessary information requirements of CMC 16.68.030, 16.68.040(B), and 16.68.050. The county surveyor shall verify that these standards are met prior to the recordation of the subdivision plat.
30. All “as-builts” of City public improvements installed shall be filed with Canby Public Works within sixty days of the completion of improvements.
31. Clackamas County Surveying reviews **pending subdivision plat documents for Oregon Statutes and county requirements. A subdivision final plat for Phase 1 prepared in substantial conformance with the approved tentative plat must be submitted to the City for approval** within one year of approval of the tentative plat or formally request an extension of up to 6-months with a finding of good cause.
32. The Applicant shall record the final plat at Clackamas County within 6 months of the date of the signature of the Planning Director.
33. The Applicant shall assure that the city is provided with a copy of the final plat in a timely manner after it is recorded at Clackamas County, including any CC&Rs recorded in conjunction with the final plat.
34. The City shall assign addresses for each newly created subdivision lot and distribute that to the developer, and other agencies that have an interest.

Dedications

35. The Applicant shall dedicate by separate instrument any acquired additional ROW secured for the widening of N. Maple Street with or prior to the Phase 1 Final Plat.

Easements

36. A 12 foot utility, and if any portion of a public sidewalk is located on a newly created private lot it shall also include a dual 12 foot pedestrian easement, along

all of the lot street frontages and shall be noted on the final plat. This easement may be combined with other easements and shall be measured from the property boundary.

37. Sidewalk easements are required along the frontage of the newly created private lots for any portion of the public sidewalk that will lie on private property.

Street Trees

38. A Street Tree Plan shall be submitted with the final plat, and street tree fees paid to the City for their installation prior to release of the final plat for recording. The plat will allow the city to establish street trees per the Tree Regulation standards in Chapter 12.32 of the Canby Municipal Code. The total per tree fee amount is calculated at one tree per 30 linear feet of total street frontage on both sides of all internal streets and the adjacent side of external streets or as determined by an approved Street Tree Plan on a per tree basis. A temporary 12' wide street tree easement in conjunction with the dual 12-foot utility and pedestrian easement (pedestrian easement only where required, as described above) along all of the lot street frontages shall be noted on the final plat to provide the City to the right to plant and maintain the establishment of the trees before they become the responsibility of the property owner for 2 years from occupancy of each home.

Monumentation/Survey Accuracy Conditions

39. The county surveyor and/or city engineer shall verify that the lot, street, and perimeter monumentation shall meet the requirements set forth in Oregon Revised Statutes and conform with the additional survey and monumentation standards of 16.64.070(M)(1-3) prior to recordation of the final plat.

Residential Building Permits Conditions:

40. Construction of all required public improvements and recordation of the final subdivision plat must be completed prior to the construction of any homes.
41. The homebuilder shall apply for a City of Canby Site Plan Permit and County Building Permit for each home and satisfy the residential design standards of CMC 16.21.
42. The homebuilder shall apply for a City of Canby Erosion Control Permit.
43. All residential construction shall be in accordance with applicable Public Works Design Standards.
44. Individual lot on-site stormwater management shall be designed in compliance with the Canby Public Works Design Standards.
45. Clackamas County Building Codes Division will provide structural, electrical, plumbing, and mechanical plan review and inspection services for home

construction per contract with the City. The applicable county building permits are required prior to construction of each home.

- 46.** Per the Canby Public Works Design Standards, minimum residential driveway widths at the inside edge of the sidewalk shall be 12 feet and the maximum residential driveways widths shall be 24 feet with an allowed exception for 28 feet for a home with 3 or more garages and a required separation of 10 feet between driveways on local streets when possible.
- 47.** Sidewalks and planter strips shall be constructed by the homebuilder as shown on the approved tentative plat.
- 48.** All usual system development fees shall be collected with each home within this development except as otherwise indicated within the Park Land Dedication and Improvement Agreement associated with this subdivision.

I CERTIFY THAT THIS ORDER APPROVING SUB 17-05 THE SEVEN ACRES was presented to and APPROVED by the City Council of the City of Canby.

DATED THIS 7th day of February 2018.

Brian Hodson
Mayor

Bryan C. Brown
Planning Director

ORAL DECISION – January 17, 2018

AYES: Smith, Parker, Hensley, Dale, Heidt & Spoon

NOES: None

ABSTAIN: None.

ABSENT: None.

WRITTEN FINDINGS – February 7, 2018

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

Kimberly Scheafer, MMC
City Recorder



BEFORE THE PLANNING COMMISSION
OF THE CITY OF CANBY

A REQUEST FOR A SUBDIVISION
AT 3500 N MAPLE STREET

)
)

FINDINGS, CONCLUSION & FINAL ORDER
SUB 17-05
THE SEVEN ACRES SUBDIVISION

NATURE OF THE APPLICATION

The Applicant has sought approval for a Subdivision (SUB 17-05) dividing A 6.84 acre property into a 22 lot subdivision for single-family detached homes located at 3500 N Maple Street described as Tax Map/Lot 31E2102602, Clackamas County, Oregon. The property is zoned Low Density Residential (R-1) as represented on the official zoning map reference by the Land Development & Planning Ordinance, Chapter 16 of the Canby Municipal Code (CMC).

HEARINGS

The Planning Commission considered application SUB 17-05 at a duly noticed initial evidentiary public hearing held on October 23, 2017 during which the Planning Commission by a 7/0 vote approved **SUB 17-05 Seven Acre Subdivision submitted by Canby Development LLC**. These findings are entered to document the specifics of approval.

CRITERIA AND STANDARDS

In judging whether or not a Subdivision application shall be approved, the Planning Commission determines whether criteria from the *City of Canby Land Development and Planning Ordinance* are met, or can be met by observance of conditions. Applicable code criteria and standards were reviewed in the Staff Report dated and titled Revised for the October 23, 2017 Planning Commission Meeting and presented along with the applicant's submitted application materials at the October 23, 2017 meeting of the Canby Planning Commission.

FINDINGS AND REASONS

The Staff Report was presented, and written and oral testimony was received at the public hearing. Staff recommended approval of the Subdivision application and applied Conditions of Approval in order to ensure that the proposed development will meet all required *City of Canby Land Development and Planning Ordinance* approval criteria.

After accepting public testimony, the Planning Commission closed the public hearing and in deliberation and by vote made the following additional findings beyond those contained in the staff report to arrive at their decision and support their recommended Conditions of Approval and the exact wording thereof:

- The Commission acknowledged the following items that were submitted to the record at the meeting: A letter from neighborhood resident Mr. Michael D. McNichols with numerous attachments that was emailed to Commissions for review the day of the meeting; an email with written comments from neighborhood resident Mike Brown; a signed letter from neighborhood residents Arthur & Virginia Hall; a copy of the recorded plat for Country Club Estates Annex No. 3 that indicates that the temporary N Maple Street cul-se-sac was to be vacated in the event of future street extension; an email from applicant including statements from City public works lead Jerry Nelzen indicating that no sewer backups in the area served by the pump station have occurred since the installation of the new pump station and that it is designed to handle everything in the current Urban Growth Boundary, including the proposed subdivision; a memorandum dated 10.23.17 from Todd Mobley, PE commissioned by the applicant indicating new updated traffic volume counts at two locations on N Maple Street to demonstrate the streets level of traffic and ability to accommodate the traffic expected and how the proposed pedestrian pathway will provide a safe an appropriate improvement for this area; a power-point presentation handout from the applicant proposing a new preferred voluntary option to amending the proposed N Maple Street widening and pedestrian safety improvements indicated in Condition #9 of the staff report to include widening the street to 28' with a separated 5' wide asphalt pathway for pedestrians from approximately 23rd Avenue north to the north property boundary of Tax Lot 31E 28A 00900 and 34' in width with a designated 4' wide pedestrian pathway on the west edge along the frontage of Tax Lot 31E21 00300.

- The Commission acknowledged and accepted that staff's recommendation for approval included 3 additional conditions of approval that were inadvertently left off of the published staff report and were made a part of the record shortly thereafter and added as an addendum to the posting on the City website and forwarded to the Commission and applicant (they are included in this Final Order).
- The Commission supported requiring rear yard fencing along the farm property by the developer to help alleviate disturbance of the crop production.
- The Commission responded and voiced support for off-site N Maple Street improvements that would not result in additional expense to existing home owner's and that would not eliminate their existing parking along the east side of the street.
- The Commission favored the applicant's preferred N Maple Street improvement option presented at the meeting which was precipitated by assurance that that agreement for 10' of additional roadway easement adjacent to Tax Lot 300 would be forthcoming, and that the applicant's suggestion for providing a separated pedestrian pathway was the best option to encourage pedestrian use and provide the greatest degree of safety and maintain an appropriate look for the area.
- It was understood that with the off-site N Maple Street improvements volunteered and approved, that individual fire sprinkler systems within each home of the subdivision would not be required. Staff explained to the Planning Commission that the fire marshal did not indicate any opposition to the use of the logging road as an alternative backup emergency route as long as 20' free and clear primary emergency access on N Maple Street is provided.
- The Planning Commission accepted the applicants findings as an adequate basis for granting an exception to allow two lots to exceed the 10,000 sf lot averaging maximum size as supportive of demonstration of a "public benefit" in this instance as it helped reduced the total number of lots proposed which was reported to increase the compatibility with the existing lot size and reduced the amount of traffic that would otherwise be generated at buildout on N Maple Street.
- The Commission was satisfied with staff's response that lot frontages of less than the standard 60' in width are standard practice around all cul-de-sacs and eyebrows and that adequate access is maintained to each of the lots as proposed on the eyebrows.

Additionally, the Planning Commission hereby incorporates the applicant's narrative addressing the applicable approval criteria. Where there is a conflict between these findings and the applicable narrative, these findings shall control.

Additionally, the Planning Commission finds that argument and evidence not relevant to the approval criteria although not rejected by the Planning Commission was not required to be considered in the Planning Commission's decision.

Further, the Planning Commission relies on the evidence produced by the City's Traffic Consultant, DKS, and the applicant's Traffic Engineer, Lancaster Engineering, defined that would be conditioned improvements, North Maple Street will function as intended by the relevant approval criteria. Further, the Planning Commission finds that testimony regarding occasional use by farm equipment is not so substantial. The evidence produced by DKS and Lancaster Engineering with the required improvements, North Maple Street will function as required by relevant approval criteria.

Further, the Planning Commission notes that the Canby Fire Marshall did not submit a negative comment about the application. The Planning Commission finds based on substantial evidence in the whole record that there will be sufficient clear access for emergency vehicles on North Maple Street.

Additionally, the Planning Commission finds that the only exception requested in the application is for two lots to be larger than the maximum lot size. The lot width for cul-de-sac lots is not an exception but is allowed subject to approval criteria in the Canby Land Development Ordinance. Finally, the Planning Commission notes that the striping for the pedestrian lane on the proposed 34' wide cross section of North Maple Street is recommended by the City's Traffic Consultant DKS. The Planning Commission has found elsewhere that the proposed cross section of North Maple Street will comply with applicable Canby Land Development Ordinance requirements.

CONCLUSION

In summary, the Planning Commission adopted the findings contained in the Staff Report which referred to findings contained within the applicant's narrative along with the additional findings concluded at the public hearing and noted herein.; concluding that the residential subdivision application meets, or will meet all applicable approval criteria when combined with the Conditions of Approval reflected in the written Order below.

ORDER

The Planning Commission approved SUB 17-05 pursuant to the conditions of approval presented in Section VII of the staff report (which includes the 3 conditions made part of the record in an addendum) and the following conditions: 1) change condition #9 of the staff report to require the applicant's preferred N Maple Street improvement option consisting of a 28' wide street and a separated 5' asphalt path, the sidewalk (pathway) be built entirely at applicant's expense, no decrease in the existing on-street parking provided, and a fence be required along the farm (Montecucco) property on the west side of the subdivision and a fence be required along the logging road property (east side of the subdivision) and 2) a change to condition #1 to remove the requirement to comply with the City Engineer's recommendations to a) construct a sidewalk on the east side of N. Maple St and b) remove parking. Based on the above approved motion, the Planning Commission concludes that, with the following conditions, the application meets the requirements for Subdivision approval.

Therefore, **IT IS ORDERED BY THE PLANNING COMMISSION** of the City of Canby that **SUB 17-02** THE SEVEN ACRE SUBDIVISION is approved, subject to the following conditions:

CONDITIONS OF APPROVAL

General Improvement & Design Conditions:

1. Prior to the start of any public improvement work, the applicant must schedule a pre-construction conference with the city and obtain construction plan sign-off from applicable agencies. City Engineer comments provided in his memorandum dated September 7, 2017, shall be reflected on those plans, except those comments in the September 7, 2017 memorandum related to "planter strips" and removal of parking and construction of a sidewalk on the east side of N. Maple Street shall not be required.
2. The Planning Commission shall make a finding for that a "public benefit" is afforded in allowing an additional two lots to exceed the 10,000 sf maximum lots size when utilizing lot averaging.
3. The Planning Commission shall make a finding that adequate access and building area is provided to approve the six proposed lots (two of which are flag lots by definition) all located on eyebrows (partial cul-de-sac bulb

streets) that may be allowed to not meet the required minimum 60 feet of frontage on a public street.

4. On street parking shall be restricted on the inside edge of NE 35th Place which has a pavement design width of only 28' to comply with minimum fire code accessibility standards.
5. The final construction design plans shall reflect the use of a 4.5' wide planter strip separating the sidewalk from the street curb along both sides of N Maple Court beginning within the subdivision and up to the beginning of the eyebrow (partial cul-se-sac bulb) where it may taper into a curb tight sidewalk. to comply with the City standard practice for new subdivisions since adopting the new 0 to 8' wide standard that was intended to require planter strips but allow flexibility where it was deemed to be suitable to match existing same street standards or protect resources or avoid difficult restrictions or circumstances. The planter strip is waived – allowing a curb tight sidewalk along both sides of NE 35th Place along with an exception to reduce the sidewalk width to 5' adjacent to the Tract D wetlands to assist in its protection. A dual 12' wide PUE & Sidewalk Easement shall be designated on the final plat to allow public use of any sidewalk placed outside of the public rights-of-way.
6. The off-site street widening public improvements volunteered by the applicant and approved by the City for N. Maple Street shall be part of the improvements associated with Phase I of the Seven Acres Subdivision. This is intended to provide improved vehicular and safety improvements before any additional residential traffic from the subdivision is added to this street.
7. Temporary suitable turnarounds may be required at the end of all interior streets that exceed 150' in length as directed by the Canby Fire Department.
8. The applicant shall process an annexation application and a lot line adjustment if deemed necessary based on how the dedication occurs along Tax Lot 31E21 00300 for the 10' of right-of-way easement to be added to the west side of N Maple Street.

9. The applicant must enter in to an Improvement Agreement with the City prior to Final Plat recording. The following improvements and requirements shall be included in the agreement:

A. On N Maple Street from approximately NE 23rd Avenue (at the southern termination of the existing sidewalk on the west side) north to the north property boundary of Tax Lot 31E 28A 00900, the applicant voluntarily agrees to the following regarding the off-site N Maple Street improvements:

1. The applicant proposes to widen N Maple Street to 28' in width with a separated 5' wide asphalt path as shown on the power-point handout presented at the hearing and called out as Typical Section A-A.

B. On N Maple Street along the frontage of Tax Lot 31E21 00300 north to the proposed subdivision, the applicant voluntarily agrees to the following regarding the off-site N Maple Street improvements:

1. The applicant proposes to widen N Maple Street to 34' in width along the frontage of Tax Lot 31E21 00300, as shown on the power-point handout presented at the hearing and called out as Typical Section B-B and per Exhibit 13 – Maple Street ROW Option 2 – Cross Section A-A in the meeting packet material.

C. Prior to final plat recording and in conjunction with approval of the civil construction plans for the subdivision an agreement shall be executed between the City, the owner of Tax Lot 31E21 00300 (Montecucco Rentals, LLC), and the owner of the subject development to specify the reconfiguration of the existing drainage line that currently drains storm water from Tax Lot 31E21 00300 (Montecucco) through the subject development to the existing City storm system. The location and specifications of the proposed system shall be included in this agreement. In the event the parties cannot reach an agreement, the owner of the subject development will leave the Montecucco line in its current condition and location, and will not tie into the private Montecucco line or build lots or tracts over said line, and will implement a satisfactory drainage solution

for the proposed subdivision in accordance with the City of Canby Public Works Design Standards, June 2012.

Fees/Assurances:

10. All public improvements are normally installed prior to the recordation of the final plat. If the applicant wishes to forgo construction of any portion of the public improvements until after the recordation of the final plat, then the applicant shall provide the City with appropriate performance security (subdivision performance bond or cash escrow) in the amount of 110% of the cost of the remaining public improvements to be installed.
11. If the applicant chooses to provide a subdivision performance bond for some or all of the required public improvements, the applicant shall obtain a certificate from the city engineer that states:
 - a. The applicant has complied with the requirements for bonding or otherwise assured completion of required public improvements.
 - b. The total cost or estimate of the total cost for the development of the subdivision shall be accompanied by a final bid estimate of the subdivider's contractor if there is a contractor engaged to perform the work, and the total cost estimate must be approved by the city engineer.
12. The applicant must guarantee or warranty all public improvement work with a 1 year subdivision maintenance bond or other acceptable means of security in accordance with CMC 16.64.070(P).
13. The applicant must pay the city Master Fee authorized engineering plan review fee equal to 0.4% of public improvement costs prior to the construction of public improvements (approval of construction plans) as each phase of development occurs.

Streets, Signage & Striping:

14. The unused portion of the existing cul-de-sac for N. Maple Street which will no longer be necessary shall be vacated and then physically removed.
15. The street improvement plans for N. Maple Street widening and the interior division streets shall conform to the TSP and Public Works standards as indicated by the city engineer.

16. The sidewalk (pedestrian pathway) along N Maple Street shall be built at applicant's expense and there shall be no decrease in existing on-street parking.
17. The applicant shall comply with the three recommended conditions of approval provided by Clackamas County Development Services in their memorandum to the City in review of SUB 17-05 dated October 5, 2017 which include:
 - a. **Prior to final plat approval:** The applicant shall obtain a Development Permit from the Engineering Division for review and approval of Maple Street improvements where Maple Street is under County jurisdiction. The Permit shall be obtained prior to commencement of site work and recording of the subdivision plat. To obtain the permit, the applicant shall submit construction plans prepared and stamped by an Engineer registered in the State of Oregon, or plans acceptable to the Engineering Division, provide a performance guarantee equal to 125% of the estimated cost of the construction, and pay a plan review and inspection fee. The fee will be calculated as a percentage of the construction costs if it exceeds the minimum permit fee. The minimum fee and the percentage will be determined by the current fee structure at the time of the Development Permit application.
 - b. All require Maple Street improvements, where the street is under County jurisdiction, shall comply with the Clackamas County *Roadway Standards* unless otherwise noted herein.
 - c. The applicant shall design and construct Maple Street widening improvements, along the section of Maple Street under County jurisdiction, in compliance with the structural section requirements of Roadway Standards Drawing C100 for a connector.
18. Drainage along the west side of the N Maple Street widening will be addressed within the construction plans in a manner that minimizes impact on the adjacent farm land while following standards deemed to be acceptable to the City and County engineering staff.
19. The construction plans shall be shared with the adjacent farm property owners for their review and they shall be provided notice by the developer of the scheduled pre-construction approval meeting with the City.

20. A roadway striping plan shall be submitted by the applicant and shall be approved by city engineer and by the Public Works street department prior to the construction of public improvements.
21. A roadway signage plan shall be submitted by the applicant and shall be approved by the city engineer and by the Public Works street department prior to the construction of public improvements.
22. The applicant shall be responsible for installing all required street signage and striping at the time of construction of public improvements, unless other arrangements are agreed to by the City.

Sewer:

23. The applicant shall submit documentation of DEQ approval of the sewer plans to the City Engineer prior to the construction of this public improvement with each phase of development.

Stormwater:

24. Stormwater systems shall be designed in compliance with the Canby Public Works Design Standards as determined by the City Engineer, and in accordance with the agreement for the relocation of the Montecucco's drainage easement and line if an agreement is reached.
25. Drywells proposed within the subdivision shall be approved by DEQ.

Grading/Erosion Control:

26. The applicant shall submit grading and erosion control plans for approval by Canby Public Works in conjunction with construction plan approval prior to the installation of public improvements and start of grading with each phase of development.
27. The applicant shall grade all areas of the site, including the proposed lots, to minimize the amount of soil to be removed or brought in to each lot during home construction.

Final plat conditions:

General Final Plat Conditions:

28. The applicant shall apply for final plat approval at the city and pay any applicable city fees to gain approval of the final subdivision plat. Prior to the recordation of

the final plat at Clackamas County, it must be approved by the city and all other applicable agencies. The city will distribute the final plat to applicable service agencies for comment prior to signing off of the final plat if deemed necessary.

29. All public improvements or submittal of necessary performance security assurance shall be made prior to the signing and release of the final plat for filing of record.
30. The final plat shall conform to the necessary information requirements of CMC 16.68.030, 16.68.040(B), and 16.68.050. The county surveyor shall verify that these standards are met prior to the recordation of the subdivision plat.
31. All "as-builts" of City public improvements installed shall be filed with Canby Public Works within sixty days of the completion of improvements.
32. Clackamas County Surveying reviews **pending subdivision plat documents for Oregon Statutes and county requirements. A subdivision final plat for Phase 1 prepared in substantial conformance with the approved tentative plat must be submitted to the City for approval** within one year of approval of the tentative plat or formally request an extension of up to 6-months with a finding of good cause.
33. The applicant shall record the final plat at Clackamas County within 6 months of the date of the signature of the Planning Director.
34. The applicant shall assure that the city is provided with a copy of the final plat in a timely manner after it is recorded at Clackamas County, including any CC&Rs recorded in conjunction with the final plat.
35. The City shall assign addresses for each newly created subdivision lot and distribute that to the developer, and other agencies that have an interest.

Dedications

36. The applicant shall dedicate by separate instrument any acquired additional ROW secured for the widening of N. Maple Street with or prior to the Phase 1 Final Plat.

Easements

37. A 12 foot utility, and if any portion of a public sidewalk is located on a newly created private lot it shall also include a dual 12' pedestrian easement, along all of the lot street frontages shall be noted on the final plat. This easement may be combined with other easements and shall be measured from the property

boundary.

38. Sidewalk easements are required along the frontage of the newly created private lots for any portion of the public sidewalk that will lie on private property.

Street Trees

39. A Street Tree Plan shall be submitted with the final plat, and street tree fees paid to the City for their installation prior to release of the final plat for recording. The plat will allow the city to establish street trees per the Tree Regulation standards in Chapter 12.32 of the Canby Municipal Code. The total per tree fee amount is calculated at one tree per 30 linear feet of total street frontage on both sides of all internal streets and the adjacent side of external streets or as determined by an approved Street Tree Plan on a per tree basis. A temporary 12' wide street tree easement in conjunction with the dual 12-foot utility and pedestrian easement (pedestrian easement only where required, as described above) along all of the lot street frontages shall be noted on the final plat to provide the City to the right to plant and maintain the establishment of the trees before they become the responsibility of the property owner for 2 years from occupancy of each home.

Monumentation/Survey Accuracy Conditions

40. The county surveyor and/or city engineer shall verify that the lot, street, and perimeter monumentation shall meet the requirements set forth in Oregon Revised Statutes and conform with the additional survey and monumentation standards of 16.64.070(M)(1-3) prior to recordation of the final plat.

Residential Building Permits Conditions:


41. Construction of all required public improvements and recordation of the final subdivision plat must be completed prior to the construction of any homes.
42. The homebuilder shall apply for a City of Canby Site Plan Permit and County Building Permit for each home and satisfy the residential design standards of CMC 16.21.
43. The homebuilder shall apply for a City of Canby Erosion Control Permit.
44. All residential construction shall be in accordance with applicable Public Works Design Standards.

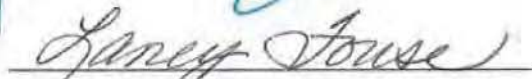
45. Individual lot on-site stormwater management shall be designed in compliance with the Canby Public Works Design Standards.
46. Clackamas County Building Codes Division will provide structural, electrical, plumbing, and mechanical plan review and inspection services for home construction per contract with the City. The applicable county building permits are required prior to construction of each home.
47. Per the Canby Public Works Design Standards, minimum residential driveway widths at the inside edge of the sidewalk shall be 12 feet and the maximum residential driveways widths shall be 24 feet with an allowed exception for 28 feet for a home with 3 or more garages and a required separation of 10 feet between driveways on local streets when possible.
48. Sidewalks and planter strips shall be constructed by the homebuilder as shown on the approved tentative plat.
49. All usual system development fees shall be collected with each home within this development except as otherwise indicated within the Park Land Dedication and Improvement Agreement associated with this subdivision.

123356-0001/137564616.2

I CERTIFY THAT THIS ORDER APPROVING SUB 17-05 THE SEVEN ACRES SUBDIVISION which was presented to and APPROVED by the Planning Commission of the City of Canby.
DATED this 23rd day of October, 2017


John Savory
Planning Commission Chair


Bryan Brown
Planning Director


Laney Fouse, Attest
Recording Secretary

ORAL DECISION: October 23, 2017

Name	Aye	No	Abstain	Absent
John Savory	X			
John Serlet	X			
Larry Boatright	X			
Derrick Mottern	X			
Tyler Hall	X			
Shawn Varwig	X			
Andrey Chernishov	X			

WRITTEN DECISION: NOVEMBER 13, 2017

Name	Aye	No	Abstain	Absent
John Savory	✓			
John Serlet	✓			
Larry Boatright				✓
Derrick Mottern	✓			
Tyler Hall				✓
Shawn Varwig	✓			
Andrey Chernishov	✓			

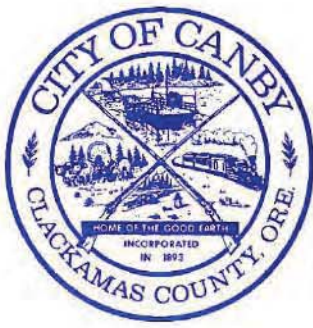


Exhibit 2

City of Canby

STAFF REPORT

FILE #: SUB 17-05 – SEVEN ACRES SUBDIVISION

Prepared for the September 25, 2017 Planning Commission Meeting

LOCATION: 3500 N Maple St, at the northern terminus of N Maple Street

ZONING: R-1 Low Density Residential

TAX LOT: 31E2102602



LOT SIZE: 6.84 acres

OWNERS: Canby Development LLC

APPLICANT: Doug and Lori Sprague, and Kati Gault

APPLICATION TYPE: Subdivision (Type III)

CITY FILE NUMBER: SUB 17-05 – Seven Acres Subdivision

I. PROJECT OVERVIEW & EXISTING CONDITIONS

The applicant proposes to divide a 6.84 acre parcel into a 22-lot subdivision for single-family residential development. The property is currently vacant land located within the R-1, Low Density Residential Zone, and is designated Low Density Residential in the Canby Comprehensive Plan. The zone allows a single family dwelling on each lot. The applicant intends to develop the subdivision in 6 phases over an undetermined period of time. According to the applicant, the proposed subdivision will create lots ranging in size 7,627 sq. ft. to 26,056 sq. ft. (including the flag) with the average lot size around 10,000 sq. ft. in size. The applicant will plat 4 "tracts" within the subdivision, totaling about 32,400 sq. ft., set aside for a monument sign, wetlands, storm water management, and a public walkway. Access to the new subdivision will be from N. Maple Street that terminates at the south boundary of the property.

II. ATTACHMENTS

- A. Application narrative
- B. Vicinity Map
- C. Assessor Map
- D. Exhibit 1 – Site Location
- E. Exhibit 2 – Preliminary Plat
- F. Exhibit 3 – DKS Traffic Impact Study
- G. Exhibit 4 – Lancaster Engineering Technical Memo
- H. Exhibit 5 – DKS Supplemental Traffic Memo and Email
- I. Exhibit 6 – Pre-Application Meeting Minutes
- J. Exhibit 7 – Neighborhood Meeting Notes
- K. Exhibit 8 – Land Use Application
- L. Exhibit 9 - Deed of Lot Creation, 1975
- M. Agency Comments
- N. Citizen Comments

III. APPLICABLE CRITERIA & FINDINGS

Applicable criteria used in evaluating this application are listed in the following sections of the *City of Canby's Land Development and Planning Ordinance*:

- 16.08 General Provisions
- 16.10 Off-street Parking and Loading
- 16.16 R-1 Low Density Residential Zone
- 16.43 Outdoor Lighting Standards
- 16.46 Access Limitations on Project Density
- 16.62 Subdivisions-Applications
- 16.64 Subdivisions-Design Standards
- 16.86 Street Alignments
- 16.88 General Standards & Procedures
- 16.89 Application and Review Procedures
- 16.120 Parks, Open Space, and Recreation Land General Provisions

Findings:

Section 16.08 General Provisions:

Based on available information, it appears that the subject property is a remnant parcel resulting from the subdivision and development of the Country Club Estates Subdivision. Subsequently, the parcel can be considered a legal parcel for land use purposes.

The Canby Urban Growth Boundary borders the property on the west and northeast sides and extends south approximately 150 feet west of N. Maple Street before going west along 22nd Avenue. The strip of land, approximately 150 feet wide, that extends along the west side of N. Maple Street is not within the Canby City limits but remains in Clackamas County. In this area, N. Maple Street was created as a 30 foot right-of-way with Canby approval of the Country Club Estates Annex NO. 3 Subdivision. The applicant is actively seeking the dedication of 10' of additional right-of-way adjacent to Tax Lot 31E21 00300 to add to N Maple Street. It would be best for the applicant to execute a lot line adjustment and annexation application into the City should agreement be reached with the owner of this tax lot and the dedication occurs allowing expansion of N Maple Street so no question about appropriate use of the property arises.

A Traffic Impact Study (TIS) for development resulting from the proposed subdivision was first performed by DKS and dated April 8, 2015. An additional Technical Memorandum prepared for the record at the applicant's request from Lancaster Engineering dated September 18, 2016 addresses possible N Maple Street sidewalk proportional share participation related to a permanent sidewalk along the east side of the street. Another supplemental follow-up memorandum from DKS dated November 17, 2016 was requested to clarify the suitability of providing a temporary provisions for a pedestrian pathway along the west side of Maple Street when it was determined by further analysis after their first traffic study report that a regulation width sidewalk would not satisfactorily fit within the eastern most available non-paved portion of the existing 30-foot of street right-of-way without moving the existing street curb westward to accommodate areas needing a retaining wall in addition to a minimum 5-foot wide sidewalk. The original traffic report recommended constructing a sidewalk in the east 5-foot of the existing right-of-way while the supplemental follow-up DKS Memorandum recommended that it would be suitable to construct a four foot asphalt shoulder on the west side of N. Maple Street from the existing sidewalk terminus (between NE 23rd Avenue and Country Club Place) to the northern terminus of N. Maple Street in consideration of working within the constraint presented by the half-street of right-of-way. It was recommended that the shoulder be striped for use by bicycles and pedestrians with "No Parking" signs on the west side of N. Maple Street. The street should be constructed to City standards for a local streets when properties on the west side of N. Maple are annexed and development occurs. At the time of development,

the no parking signs could be removed from the west side of the street as a permanent sidewalk would be provided at that time raised and separated from the roadway.

DKS Findings:

- *The proposed project of up to 26 single-family units (now proposed at only 22 lots) would add approximately 28 vehicle trips along N Maple Street during the a.m. peak hour, 31 vehicle trips during the p.m. peak hour, and 304 daily vehicle trips.*
- *The segment of N Maple Street between NE Territorial Road and NE 21st Avenue does not meet the standard local street for paved width (20-foot drive aisle with 7-foot parking on both sides). Although parking is not prohibited, there is adequate shoulder for vehicles to park along the side of the street. Therefore, a 20-foot drive aisle is currently provided. To prevent parking within the paved street and maintain a 20-foot drive aisle, centerline striping could be provided. Additionally, the two parallel routes of N Locust Street to NE 22nd Avenue and N Country Club Drive to NE 22nd Avenue provide alternate access to the project site. No roadway widening is recommended along N Maple Street in this segment.*
- *The segment of N Maple Street between Willamette Valley Golf Club and the project site does not meet the minimum standard local street paved width (20-foot drive aisle with 7-foot parking on both sides). Measured traffic volumes indicate that with the proposed project, daily traffic volumes along this segment would exceed 500 vehicles; therefore, the low-volume local street designation would not be applicable. In order to meet the minimum 20-foot drive aisle as required by the local standard street classification and emergency vehicles, it is recommended that parking be prohibited along the east side of N Maple Street north of Willamette Valley Golf Club. Currently, this segment provides access to approximately 19 homes, all of which have driveways and garages that can accommodate at least two vehicles.*
- *To provide a safe pedestrian space and eliminate the need for pedestrians to walk in the roadway, it is recommended that a sidewalk be provided along the east side of N Maple Street, north of the Willamette Valley Golf Club within the existing right-of-way. The resulting cross-section of N Maple Street in this segment would consist of a 20-foot drive aisle and a 6-foot sidewalk on the east side of the street. Sidewalk and on-street parking improvements should be made on the west side of N Maple Street between the Willamette Valley Country Club and the project site as conditions of approval under future development, consistent with the City's standard cross-section for local standard streets. Because this deficiency is an existing condition, it is recommended that the applicant provide a proportionate share of the costs towards providing the sidewalk on the east side of N Maple Street. Additionally, a Local Improvement District could be established in which the neighborhood, along with the applicant, participate in a cost share program.*
- *It is recommended that the project site plan provide a public pedestrian connection to the Logging Road Trail that connects with the recommended sidewalk along the east side of N Maple Street north of the Willamette Valley Golf Club.*

The applicant intends to subdivide the property in six phases. Public utilities are currently located at N. Maple Street to the south of the proposed subdivision and can be extended as development occurs, and storm drainage is intended with newly installed drywells. A minimum lot size of 7000 square feet and a maximum of 10,000 square feet is allowed under provisions in Section 16.16.030(A) of the R-1 zone. The subdivision is zoned R-1, and only single-family homes are proposed, and lot sizes range from 7,627 square feet to 26,056 square feet with all proposed lots exceeding the 7,000 square feet minimum and several lots over the 10,000 square foot maximum. However, under Section 16.16.030(B) the Planning Commission can approve lots above the maximum size if the overall average is less than 6500 square feet.

Section 16.16.030(B)

B. Lot area exceptions:

1. The Planning Commission may approve an exception to the minimum and maximum lot area standards in subsection 16.16.030.A as part of a subdivision or partition application when all of the following standards are met:

a. The average area of all lots created through the subject land division, excluding required public park land dedications, surface water management facilities and similar public use areas, shall be no less than seven thousand square feet and no greater than ten thousand square feet. Non-required significant natural resource areas shall be included in the average lot size calculation to enable a transfer of density onto buildable portions of the site. Required areas include identified parks, wetland areas, riparian corridors, and other areas in which building is not permitted under local, state, or federal laws or regulations;

b. No lot shall be created that contains less than six thousand square feet;

c. The lot area standards for two-family dwellings, as provided in Sections 16.16.010 and 16.16.020, shall be met; and

d. As a condition of granting the exception, the city will require the owner to record a deed restriction with the final plat that prevents the re-division of over-sized lots (e.g., ten thousand square feet and larger), when such re-division would violate the average lot area provision in subsection 16.16.030.B.1.a. All lots approved for use by more than one dwelling shall be so designated on the final plat.

2. A public benefit must be demonstrated in order to allow more than ten percent of the lots to be outside of the minimum and maximum lot areas in subsection 16.16.030.A.

3. The Planning Commission may modify the maximum lot area requirements in 16.16.030.A if these cannot be met due to existing lot dimensions, road patterns, or other site characteristics.

The applicant stated that the subdivision met these provisions, but did not demonstrate how that conclusion was reached in the application material as to average lot size or public benefit. Staff recommends that the applicant prove at the hearing how the required lot size criteria listed above are met and that the Planning Commission make a finding that the slight variation above the maximum average size is suitable. Staff review indicates there are 3 lots proposed larger than the 10,000 sf maximum which is slightly more than the 10% variation typically allowed without demonstrating a public benefit. The overall average appears to be extremely close to the maximum 10,000 sf if allowing the largest end lot to exclude its access arm from the area calculations.

Sidewalks are required along the frontage of the newly created private lots. Sidewalk construction and location are addressed in the Technical Memorandum from Lancaster Engineering dated September 18, 2016. The memo's summary and conclusion recommended 28 percent cost contribution from the applicant from the north end of the Willamette Golf Club property to the Logging Road Trail connection. Additionally, it recommended sidewalk construction on the west side of N. Maple Street. However, the memo provided options on both the east side and west side of N. Maple Street for sidewalk construction.

Proposed N. Maple Street Offsite Improvements:

Ordinance Standards:

The standards contained in CMC 16.46.010 Access Limitations on Project Density are informative in what City standard should apply when determining the minimum acceptable street width **for accessing a new proposed subdivision**. It is stated in Section 16.46.010 (B)(1) that two lane access roads shall be a minimum width of 20 feet with no parking permitted. That is possible today, as generally the 20 feet of pavement exists the full distance on N Maple Street north of NE 23rd Avenue to the dead end at the property of the proposed subdivision. However, on-street parking on the east side of the street would clearly be required to be eliminated to comply with this 20' minimal access standard.

The National Fire Code has been reported by the Canby Fire Marshall to require a 20' minimum free and clear paved pathway to provide for emergency access. He has offered in previous circumstances, including this one, to utilize discretion with regard to the standard if all new proposed homes are required to have fire sprinkler systems. **He has offered to accept 18' minimum free and clear emergency access on this road with the additional fire prevention systems within the new homes. This could exception could provide for the**

option to maintain the existing parking along the east side of N Maple Street if the applicant is unable to widen the street beyond 25' in width. However, this option does nothing to address the existing lack of pedestrian safety provisions and could contribute adding more pedestrians with no proposed improvements unless a permanent sidewalk is constructed along the east side of the street. An appropriate mechanism is necessary to make this happen though, as to date the applicant has not agreed to more than his calculated 28% proportionate contribution to this existing deficiency. Staff would note that for the past 40 years there has only been 13' of pavement free and clear since on-street parking has been allowed and not restricted on the existing 20' wide paved surface. The Fire Marshalls decision makes a 25' wide street pavement the minimum acceptable street width for emergency access if on-street parking along the east side (7' minimum) were to continue to be allowed ($25-7=18'$).

However, Section 16.46.010 (B)(1) indicates a minimum two lane access road width of 28' is necessary when parking is allowed on just one side. **So in affect, the minimum street access width to serve a subdivision by this standard becomes 28' on N Maple Street if parking is to remain on the east side of the street.**

CMC 16.46.010 normally would require 2 means of access for over 30 housing units but Section (F) recognized that N Maple Street and S Elm Street were developed with only one access road so are exempt from the residential unit restrictions for single access roads. However, there must be a legally binding alternative emergency vehicle access available. The proposed subdivision has an alternative emergency access route through the Logging Road Trail. This section goes on to require that the road width standards remain in effect for these two roads. Staff has interpreted this statement to apply to the ultimate design width intended for these two roadways. The minimal roadway width requirements indicated above would apply for providing necessary access to this subdivision.

Section 16.46.010 (G) states "Public roads accessing any development shall be a minimum of two travel lanes (twenty-four) feet of pave width to the nearest improved collector or arterial street. This requirement is couched in two conditions that have been reported to be discretionary in nature by the applicant's attorney and not suitable by State Statute for use with a Limited Land Use Decision which is applicable to this application. **Regardless, it is clear that the City cannot require the applicant to widen and build sidewalks the full distance of N Maple Street leading to this development where that deficiency has existed since the original development in the area 40+ years ago.** A developer cannot be expected to pay more than the demonstrated rough proportional impact that there development is expected to contribute to an existing deficiency. Staff did not spend time preparing our own proportional cost analysis because the developer has voluntarily proposed off-site improvements that we believe are far in excess of their subdivisions actual additional impact

on an existing deficiency related to the street width and lack of a sidewalk on N Maple Street leading to this subdivision.

It is relevant to know that when existing lots were platted along N Maple Street, the City Land Development Ordinance did not have a requirement for sidewalks. No one is to blame for the fact there are no existing sidewalks and people bought homes and moved to this location fully knowing they did not exist. Reading some passed land use action reports reveals that not long after when the Willamette Country Club proposed some significant golf related facilities sidewalks were considered important then and the section of sidewalk you see in front of the Club House on N Maple Street was installed and the Country Club executed a non-remonstrance agreement to not protest the formation and participation in a possible future sidewalk Local Improvement District on adjacent platted lot frontages and the rest of the golf course frontage along N Maple Street. The City Development Ordinance has always indicated a requirement for improving one-half of the adjacent street to City standard with the expectation that the other half would be provided by future development on the opposite side. The Planning Commission has authority to decide if half-street should be allowed or not at the time they are proposed.

Applicant's Voluntary Improvements to N Maple Street

The actual voluntary street improvements proposed by the applicant have changed since the application was submitted. There was some uncertainty about the extent of the width of existing ROW in front of two tax lots on the west side of N Maple Street. It has now been confirmed to the City's satisfaction, that a full 50 foot of existing ROW is in place on N Maple Street from approximately NE 23rd Avenue north to the north property boundary of Tax Lot 3 31E 28A 00900. At this point northward adjacent to Tax Lot 31E21 00300, there is only 30' of ROW to the end of the street.

The applicant's proposal is to widen the existing street pavement from approximately the intersection with NE 23rd Avenue where the existing concrete sidewalk ends on the west side of N Maple Street north to where the 50' of existing ROW ends to the current City local street standard of 34 feet in width. From this point north to the end of the street where only 30' of ROW exists today, the applicant will widen the road approximately 5' to a total pavement width of approximately 25'. The applicant is actively engaged in negotiations to secure an additional 10 feet of property from the owner of Tax Lot 31E21 00300, to dedicate as ROW which if achieved will enable him to complete his desire to widen this 25' proposed pavement segment 14' rather than 5' to bring it and the entire street from NE 23rd Avenue to a standard 34 feet in width.

Pedestrian Safety & Provisions: Staff has not been able to locate any specific ordinance provision requiring that sidewalks be in place leading up to a proposed subdivision.

Sidewalks are clearly required and provided in the design of all proposed subdivisions and for

streets adjacent to that subdivision when they do not exist. The proposed subdivision meets the clear requirements. **The applicant is proposing to designate a 4 to 6 foot wide temporary pedestrian pathway along the entire west side of the widened street from NE 23rd Avenue to the subdivision.** However, to fit this in, on-street parking currently allowed on the east side of the street would need to be eliminated where the existing ROW is only 30 feet in width if negotiations to obtain 10' of additional ROW is not successful. This will result in a narrowing of the pedestrian pathway from potentially 6' wide to 4' wide where the ROW available is only 30'. When and if the adjacent farmland on the west side of the street ever develops additional street ROW will be obtained and a permanent raised sidewalk installed separated from the street with a planter strip and the temporary sidewalk pathway in the street paving will be turned into on-street parking.

The most desirable option for pedestrian safety would be to erect a permanent raised concrete sidewalk 5 feet wide on the east side of the street the full distance to connect with the sidewalk in front of the Willamette Country Club with the inside edge proposed beginning at the existing street curb built west within the space currently used for on-street parking. Where 50' of ROW exists, on-street parking would be allowed adjacent to the sidewalk and the 34' of pavement width would provide for two standard lanes for vehicular travel. Under this sidewalk option, on-street parking would have to be eliminated where only 30' of ROW exists unless negotiations by the applicant to secure an additional 10' of ROW is successful.

The applicant has indicated to date that they support the idea of installing a permanent sidewalk on the east side of N Maple Street but believe it should be done at some point in the future through existing property owner participation through a local sidewalk improvement district as recommended in the DKS Traffic Study. The applicant has indicated to staff when asked that "voluntarily constructing a deficient full length permanent sidewalk and widening the entire deficient street width is not appropriate" to ask of him. Staff would agree, and the use of a Local Improvement District is a common tool to address existing infrastructure deficiencies but does require some support from participating owners within the district for one to be formed and the ability of the City to front the initial costs up front until paid back by assessments to owners within the benefiting district.

As stated by the applicant, at least six of the proposed lots do not meet the required 60 feet of lot width and frontage. Under Section 16.16.030(C), the Planning Commission may approve lots having less frontage subject to special conditions if necessary to assure adequate access. The applicant should demonstrate at the hearing what special conditions are present to justify less frontage and that adequate access is provided.

The applicant shall construct DEQ approved drywells where required within the subdivision.

As a condition of approval, a Street Tree Plan shall be submitted with the final plat, and street tree fees must be paid prior to release of the final plat.

In lieu of park dedication, the City prefers Park SDC payments rather than park space.

The applicant's shall pay 0.4% of the contract cost of all public improvements at the time of construction plan approval before site improvements begin.

Staff has reviewed the applicant's narrative and submitted material and finds that this subdivision application conforms to the applicable review criteria and standards, subject to the conditions of approval noted in *Section V* of the staff report and the supplemental findings previously indicated in this report.

IV. PUBLIC TESTIMONY/AGENCY COMMENTS

Notice of this application and opportunity to provide comment was mailed to owners and residents of lots within 500 feet of the subject properties and to all applicable public agencies. All citizen and agency comments that were received to date are available in the file and provided in the Planning Commission packet.

V. CONCLUSION AND CONDITIONS OF APPROVAL

Staff concludes that the application conforms to the applicable standards and criteria subject to the following conditions of approval:

General Public Improvement Conditions:

1. Prior to the start of any public improvement work, the applicant must schedule a pre-construction conference with the city and obtain construction plan sign-off from applicable agencies.
2. The Planning Commission must make a finding to approve the proposed lots above the maximum lot size.
3. The Planning Commission must make a finding for the record to approve the proposed lots that do not meet the required 60 feet of lot frontage.
4. The development shall comply with all applicable City of Canby Public Works Design Standards.
5. The final construction design plans shall conform to the comments provided by the City Engineer in his memorandum dated September 7, 2017, including that the internal sidewalks be separated from the curb with a 4.5' planter strip except where necessary to avoid disturbing protected wetlands and with an exception to the placement of a sidewalk or pedestrian pathway as otherwise indicated in these conditions and determined to be acceptable by the Planning Commission.
6. Public improvements such as sidewalk and street improvements on N. Maple Street are required during development.
7. Turnarounds may be required at the end of all interior streets as directed by the Canby Fire Department.

8. The applicant must process a lot line adjustment and annexation application of property into the City of Canby should agreement be reached with the owner of Tax Lot 31E21 00300 for the purpose of adding 10' of right-of-way to N Maple Street.
9. The applicant must enter in to an Improvement Agreement with the City prior to Final Plat recording. The following improvements and requirements shall be included in the agreement:
 - A. The applicant voluntarily agrees to the following regarding N Maple Street improvements along the frontage of Tax Lot 31E21 00300. The applicant may satisfy this condition by selecting one of the following two choices (a or b) at their election:
 - a. Applicant may build the full street of 34' width if the required easements or right of way are secured. The street shall include a 7' parking lane, 22' for travel lanes and a 4' pedestrian lane located on the west side of N. Maple Street or a 7' parking lane, 20' for travel lanes and a 6' shared bicycle and pedestrian lane.
 - b. Since the narrow width of N. Maple Street is a pre-existing condition the applicant may request that the City Administrator or City Council approve removal of parking in this location. If removal of parking is approved, the applicant may widen the street to 25', including a 20' travel lane and 4' striped asphalt pedestrian way on the west side of N. Maple per the supplemental memorandum recommendation of DKS and Associates.
 - B. The applicant volunteers the following condition: For the proposed N Maple Street improvements along the frontage of Tax Lot 31E28A 00900 to the southern existing sidewalk termination that is located on the west side of N. Maple St. (shown on the exhibits provided with this application and located along the frontage of Tax Lot 31E28A 00401), the applicant shall construct the full street, 34' wide, along its frontage. The street shall include a 7' parking lane, 22' for travel lanes and a 4' pedestrian lane located on the west side of N. Maple Street or a 7' parking lane, 20' for travel lanes and a 6' shared bicycle and pedestrian lane on the west side of N Maple St.
 - C. Prior to final plat recording and in conjunction with approval of the civil construction plans for the subdivision an agreement shall be executed between the City, the owner of Tax Lot 31E21 00300 (Montecucco Rentals, LLC), and the owner of the subject development to specify the reconfiguration of the existing drainage line that currently drains storm water from Tax Lot 31E21 00300 (Montecucco) through the subject development to the existing City storm system. The location and specifications of the proposed system shall be included in this agreement. In the event the parties cannot reach an agreement, the owner of the subject development will leave the Montecucco line in its current condition and location, and will not tie into the private Montecucco line or build lots or tracts over said line, and will implement a

satisfactory drainage solution for the proposed subdivision in accordance with the City of Canby Public Works Design Standards, June 2012.

Fees/Assurances:

10. All public improvements are normally installed prior to the recordation of the final plat. If the applicant wishes to forgo construction of any portion of the public improvements until after the recordation of the final plat, then the applicant shall provide the City with appropriate performance security (subdivision performance bond or cash escrow) in the amount of 110% of the cost of the remaining public improvements to be installed.
11. If the applicant chooses to provide a subdivision performance bond for some or all of the required public improvements, the applicant shall obtain a certificate from the city engineer that states:
 - a. The applicant has complied with the requirements for bonding or otherwise assured completion of required public improvements.
 - b. The total cost or estimate of the total cost for the development of the subdivision shall be accompanied by a final bid estimate of the subdivider's contractor if there is a contractor engaged to perform the work, and the total cost estimate must be approved by the city engineer.
12. The applicant must guarantee or warranty all public improvement work with a 1 year subdivision maintenance bond or other acceptable means of security in accordance with CMC 16.64.070(P).
13. The applicant must pay the city Master Fee authorized engineering plan review fee equal to 0.4% of public improvement costs prior to the construction of public improvements (approval of construction plans) as each phase of development occurs.

Streets, Signage & Striping:

14. The unused portion of the existing cul-de-sac for N. Maple Street which will no longer be necessary shall be vacated and then physically removed.
15. The street improvement plans for N. Maple Street widening and the interior division streets shall conform to the TSP and Public Works standards as indicated by the city engineer.
16. A roadway striping plan shall be submitted by the applicant and shall be approved by city engineer and by the Public Works street department prior to the construction of public improvements.
17. A roadway signage plan shall be submitted by the applicant and shall be approved by the city engineer and by the Public Works street department prior to the construction of public improvements.
18. The applicant shall be responsible for installing all required street signage and striping at the time of construction of public improvements, unless other arrangements are

agreed to by the City.

Sewer:

19. The applicant shall submit documentation of DEQ approval of the sewer plans to the City Engineer prior to the construction of this public improvement with each phase of development.

Stormwater:

20. Stormwater systems shall be designed in compliance with the Canby Public Works Design Standards as determined by the City Engineer.
21. Drywells proposed within the subdivision shall be approved by DEQ.

Grading/Erosion Control:

22. The applicant shall submit grading and erosion control plans for approval by Canby Public Works in conjunction with construction plan approval prior to the installation of public improvements and start of grading with each phase of development.
23. The applicant shall grade all areas of the site, including the proposed lots, to minimize the amount of soil to be removed or brought in to each lot during home construction.

Final plat conditions:

General Final Plat Conditions:

24. The applicant shall apply for final plat approval at the city and pay any applicable city fees to gain approval of the final subdivision plat. Prior to the recordation of the final plat at Clackamas County, it must be approved by the city and all other applicable agencies. The city will distribute the final plat to applicable service agencies for comment prior to signing off of the final plat if deemed necessary.
25. All public improvements or submittal of necessary performance security assurance shall be made prior to the signing and release of the final plat for filing of record.
26. The final plat shall conform to the necessary information requirements of CMC 16.68.030, 16.68.040(B), and 16.68.050. The county surveyor shall verify that these standards are met prior to the recordation of the subdivision plat.
27. All "as-builts" of City public improvements installed shall be filed with Canby Public Works within sixty days of the completion of improvements.
28. Clackamas County Surveying reviews pending subdivision plat documents for Oregon Statutes and county requirements. A subdivision final plat for Phase 1 prepared in substantial conformance with the approved tentative plat must be submitted to the City for approval within one year of approval of the tentative plat or formally request an extension of up to 6-months with a finding of good cause.
29. The applicant shall record the final plat at Clackamas County within 6 months of the date of the signature of the Planning Director.
30. The applicant shall assure that the city is provided with a copy of the final plat in a timely manner after it is recorded at Clackamas County, including any CC&Rs recorded in conjunction with the final plat.
31. The City shall assign addresses for each newly created subdivision lot and distribute that to the developer, and other agencies that have an interest.

Dedications

32. The applicant shall dedicate by separate instrument any acquired additional ROW

secured for the widening of N. Maple Street with or prior to the Phase 1 Final Plat.

Easements

33. A dual 12 foot utility and pedestrian easement along all of the lot street frontages shall be noted on the final plat. This easement may be combined with other easements and shall be measured from the property boundary.
34. Sidewalk easements are required along the frontage of the newly created private lots for any portion of the 6' public sidewalk that will lie on private property.

Street Trees

35. A Street Tree Plan shall be submitted with the final plat, and street tree fees paid to the City for their installation prior to release of the final plat for recording. The plat will allow the city to establish street trees per the Tree Regulation standards in Chapter 12.32 of the Canby Municipal Code. The total per tree fee amount is calculated at one tree per 30 linear feet of total street frontage on both sides of all internal streets and the adjacent side of external streets or as determined by an approved Street Tree Plan on a per tree basis. A temporary 12' wide street tree easement in conjunction with the dual 12-foot utility and pedestrian easement along all of the lot street frontages shall be noted on the final plat to provide the City to plant and maintain the establishment of the trees before they become the responsibility of the property owner.

Monumentation/Survey Accuracy Conditions

31. The county surveyor and/or city engineer shall verify that the lot, street, and perimeter monumentation shall meet the requirements set forth in Oregon Revised Statutes and conform with the additional survey and monumentation standards of 16.64.070(M)(1-3) prior to recordation of the final plat.

Residential Building Permits Conditions:

34. Construction of all required public improvements and recordation of the final subdivision plat must be completed prior to the construction of any homes.
35. The homebuilder shall apply for a City of Canby Site Plan Permit and County Building Permit for each home and satisfy the residential design standards of CMC 16.21.
36. The homebuilder shall apply for a City of Canby Erosion Control Permit.
37. All residential construction shall be in accordance with applicable Public Works Design Standards.
38. Individual lot on-site stormwater management shall be designed in compliance with the Canby Public Works Design Standards.
39. Clackamas County Building Codes Division will provide structural, electrical, plumbing, and mechanical plan review and inspection services for home construction per contract with the City. The applicable county building permits are required prior to construction of each home.
40. Per the Canby Public Works Design Standards, minimum residential driveway widths at the inside edge of the sidewalk shall be 12 feet and the maximum residential driveways widths shall be 24 feet with an allowed exception for 28 feet for a home with 3 or more garages and a required separation of 10 feet between driveways on local streets when possible.

41. Sidewalks and planter strips shall be constructed by the homebuilder as shown on the approved tentative plat.
42. All usual system development fees shall be collected with each home within this development except as otherwise indicated within the Park Land Dedication and Improvement Agreement associated with this subdivision.

VI. Decision

Based on the application submitted and the facts, findings, and conclusions of this report, staff recommends that the Planning Commission **approve** Subdivision SUB 17-05 pursuant to the Conditions of Approval presented in Section V.



MEMORANDUM

DATE: *Prepared: December 22, 2017 for January 17, 2018 Council Hearing*

TO: *Mayor and City Council*

FROM: *Bryan Brown, Canby Planning Director*

RE: *Appeal (File No. APP 17-02) of Planning Commission Decision for application (SUB 17-05) –Seven Acres Subdivision by Canby Development LLC at 3500 N Maple Street.*

Background: At their October 23, 2017 meeting the Planning Commission, after holding a public hearing, voted 7 - 0 to approve the above referenced subdivision application and approved written findings of their decision at the next regularly scheduled Planning Commission meeting on November 13, 2017. A decision notice was sent out the next day to all those having legal standing by either requesting to be kept informed or having provided written or oral testimony on this proposed development.

Appeal (File No. APP 17-02) was submitted by Michael McNichols, Tony Polito and the Friends of NE Maple Street on the appeal deadline of November 27, 2017. Staff requested an extension of the 120-day rule from the existing January 18 deadline to February 23, 2018 for which Council action and a written decision must otherwise be adopted by law to permit staff and the Council additional flexibility to conclude City action regarding this subdivision proposal. The applicant has provided staff the additional requested review time extension.

Appeal & Council Action: The appellant has provided a required statement or narrative that explains the basis of the appeal made of the Planning Commission's approval of the proposed subdivision application. The original subdivision applicant continues to bear the burden of proof that their development proposal complies with the applicable review criteria and city standards. City Code indicates that an appeal hearing shall be conducted using the same procedure as used at the Planning Commission hearing, with the subdivision applicant to present their case for approval, followed by the Appellant and any others who may be against, with the applicant wrapping up with the final rebuttal.

Staff has reviewed the Appellant's statement that explains the specific issues as to why they are appealing or aggrieved. The appellant's statement of appeal is attached to this memorandum and indicates three primary issues to their premise that the Planning Commission's decision should be reversed or at least delayed for further necessary study to be conducted. The Appellant states (1) safety concerns to pedestrians and bicyclists as proposed, (2) failure to obtain affirmative acceptance of the plan from the Fire Marshal, and (3) failure to adequately address wetland mitigation and storm water runoff. Staff indicated in our original report to the Planning Commission that we believe all of these issues have been shown to have been satisfactorily addressed. Again, ultimately it is the applicant's burden to demonstrate compliance with these issues that have been raised with this appeal.

The Land Development & Planning Ordinance provides in (Section 16.89.050 (I) (3) "The City Council shall overturn the decision of the Planning Commission only when one or more of the following findings are made:

- a. That the Commission did not correctly interpret the requirements of this title, the Comprehensive Plan, or other requirements of law,
- b. That the Commission did not observe the precepts of good planning as interpreted by the Council; or
- c. That the Commission did not adequately consider all of the information which was pertinent to the case".

The Council's action on an appeal shall be governed by the same general regulations, standards, and criteria as apply to the Commission in the original consideration of the application. To this end, staff has attached the original staff report to the Planning Commission with our recommendation, the applicant's submittal and supporting narrative and drawings, and the written input received to date in the application review process including the Appellant's Statement of Appeal and additional written citizen input received as a result of notice provided of the Appeal.

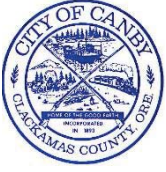
As previously mentioned, the written findings of the Planning Commission are attached as well as the minutes of the Planning Commission meeting of October 23, 2017 at which the subdivision application was approved. It is staff's practice to support the decision of the Planning Commission, and we continue to support approval of the subdivision application.

Possible Alternative Council Motion(s):

"I move to (uphold and approve) or (reverse and deny) File No. SUB 17-05 Seven Acres Subdivision located at 3500 N Maple Street".

Attachments:

- Attorney Michael Robinson's Letter on Behalf of Canby Development with Exhibits
- Kati Gault's Email on Behalf of Canby Development with attachments
- Appellant's (File No. APP 17-02) Statement or Reasons for Appeal
- Planning Commission Written Decision and Findings
- Planning Commission Minutes of October 23, 2017
- Planning Commission Staff Report
- Applicant Subdivision submittal: narrative and drawings
- All written input received since notice of Appeal
- All written input received before and at the Planning Commission Hearing



M E M O R A N D U M

DATE: *Prepared: January 17, 2018 for January 17, 2018 Council Appeal Hearing*

TO: *Mayor and City Council*

FROM: *Bryan Brown, Canby Planning Director*

THROUGH: *Rick Robinson & Joseph Lindsay*

RE: *Appeal (File No. APP 17-02) of Planning Commission Decision for application (SUB 17-05) –Seven Acres Subdivision by Canby Development LLC at 3500 N Maple Street.*

Background: On January 12, 2018, the City received a letter from the Oregon Department of Fish and Wildlife (ODFW) indicating their concern that the city may have undertaken or approved activities in the past and that more such activities are being considered for approval which will not comply with provisions of the Canby Landing Conservation Easement which was accepted on the land purchased by the City for park use in 2002. (See attached ODFW January 10, 2018 letter and attached Canby Landing Conservation Easement).

Discussion: City staff will work with ODFW to correct non-compliance issues should they exist with the provisions of the Canby Landing Conservation Easement provisions on City owned land along the Mollala Forest Logging Trail. The issue pointed out in the letter is existing and need not be related to the proposed Seven Acre Subdivision with appropriate steps taken to assure that compliance is met with approval of the new subdivision.

Appeal & Council Action: Should a motion be made to deny the appeal and uphold approval of the Seven Acre Subdivision, staff recommends the City Council include an additional condition of approval requiring the applicant of the subdivision to comply with the provisions of the Canby Landing Conservation Easement, unless a use or activity is expressly permitted and approved in writing by the Grantee (ODFW) to occur within the easement area.

With this assurance, staff believes concerns on moving forward with the subdivision at this time satisfactorily respects the concerns raised in ODFW's letter. Staff also believes the development can satisfactorily move forward with no development, construction, or unauthorized use within the conservation easement area except for: specifically allowed use of the Mollala Forest Recreational Trail as an alternative emergency only means of access within the adjacent proximity of the subdivision if ever necessary, and in the planned allowable use of previous existing storm easement that crosses the Mollala Forest Logging Trail to the existing outfall at the Willamette River to primarily provide protection during times of severe flooding on and adjacent to the proposed Seven Acre Subdivision.

Attachments:

- ODFW January 10, 2010 Letter and Canby Landing Conservation Easement
- Exhibit 1 & 2 Pages missing from ODWF's Recorded Easement
- Map Illustrating the Location of the Conservation Easement Plotted out from the Conservation Easement legal description provided in the recorded document

Exhibit 5

