<u>DATE</u> COUNCIL CHAMBERS, CITY HALL, CITY OF WOODBURN, COUNTY OF MARION, STATE OF OREGON, JULY 25, 2022

CONVENED The meeting convened at 7:04 p.m. with Mayor Swenson presiding.

ROLL CALL

Mayor Swenson Present
Councilor Carney Present
Councilor Cornwell Present
Councilor Schaub Present
Councilor Swanson Absent

Councilor Puente Present – via video conferencing

Councilor Cabrales Absent

Staff Present: City Administrator Derickson, Assistant City Attorney Granum, Assistant City Administrator Row, Police Chief Pilcher, Public Works Director Stultz, Community Services Director Cuomo, Community Development Director Kerr, Community Relations Manager Guerrero, Economic Development Director Johnk, Special Projects Director Wakely, Senior Planner Cortes, Public Affairs and Communications Coordinator Moore, City Recorder Pierson

CONSENT AGENDA

- A. Woodburn City Council Special Meeting minutes of July 11, 2022,
- B. Woodburn City Council Executive Session minutes of July 11, 2022,
- C. Woodburn City Council minutes of July 12, 2022.

Carney/Schaub... adopt the Consent Agenda. The motion passed unanimously.

PUBLIC HEARINGS

Mayor Swenson declared the hearing open at 7:05 p.m. for the purpose of hearing public input on annexation of approximately 39.68 acres of territory known as the Oregon Golf Association Property with no street address along the east side of Boones Ferry Rd NE north of Hazelnut Dr (ANX 22-02) and approval of related land use applications for development into the Marion Pointe Planned Unit Development (PUD). Mayor Swenson asked if there were any declarations from the Council and there were none. City Recorder Pierson read the public hearing statement. Senior Planner Cortes provided a staff report. Joey Shearer, a planner with AKS Engineering and Forestry, 12965 SW Herman Rd. Suite 100, Tualatin, provided testimony on behalf of the applicant. Mayor Swenson asked if any member of the public wished to speak in support of the annexation of approximately 39.68 acres of territory known as the Oregon Golf Association Property with no street address along the east side of Boones Ferry Rd NE north of Hazelnut Dr (ANX 22-02) and approval of related land use applications for development into the Marion Pointe Planned Unit Development (PUD). No members of the public wished to speak in support. Mayor Swenson asked if any member of the public wished to speak in opposition of the annexation of approximately 39.68 acres of territory known as the Oregon Golf Association Property with no street address along the east side of Boones Ferry Rd NE north of Hazelnut Dr (ANX 22-02) and approval of related land use applications for development into the Marion Pointe Planned Unit Development (PUD). No members of the public wished to speak in opposition. Mayor Swenson closed the hearing at 7:36 p.m. Councilor Cornwell stated that she thinks this looks like a good plan. Councilor Carney expressed his appreciation for them honoring the City Council's request for changes. Councilors Schaub and Puente concurred. Carney/Schaub... conduct a public

hearing and make a motion to tentatively approve the land use applications, directing staff to prepare and submit an ordinance and final land use decision for consideration at the next City Council meeting. The motion passed unanimously.

Mayor Swenson declared the hearing open at 7:38 p.m. for the purpose of hearing public input on an appeal of the Planning Commission approval with conditions of the US Market Gas Station Development at 2540 & 2600 Newberg Hwy at the southwest corner of Newberg Hwy & Oregon Way (CU 21-02). Mayor Swenson asked if there were any declarations from the Council and there were none. City Recorder Pierson read the public hearing statement. Senior Planner Cortes provided a staff report and began his slide presentation by stating that the issue before the city council is an action on an appeal of a consolidated package of land use applications. He entered the staff report, its attachments, and written testimony received in to the record. Senior Planner Cortes provided a summary of the project.

Mayor Swenson called for a five minute break.

Councilor Puente stated that another gas station in this area doesn't make sense and he has concerns about the traffic on Oregon Way. Councilor Cornwell and Councilor Schaub concurred with Councilor Puente.

Ron Ped, Architect, 1220 20th St. SE, Salem, provided testimony on behalf of the applicant. Mr. Ped provided the Council with two exhibits in regards to a sound impact assessment. Joe Bessman, Transight Consulting, provided information on the traffic study for the proposed area.

Mayor Swenson asked for testimony from the appellant.

David Peterson, Attorney with Tonkon Torp, 888 SW Fifth Ave. Suite 1600, Portland, stated that he represents Woodburn Fast Serv Inc. and LB Group, LLC, and that his clients have two fundamental concerns with the Planning Commission's decision. The first that the decision is not procedurally or legally sound and the second the traffic impacts of this proposal have not been thoroughly mitigated. He provided copies of written testimony to the Council.

Wayne Kittleson, Kittleson and Associates, 851 SW 6th Ave. Suite 600, Portland. He stated that his concern with this project is that there is not a sufficient analysis yet available to be able to make informed decisions on the magnitude of this sights contribution to traffic safety issues or the need for mitigation measures.

Mayor Swenson asked if anyone wished to speak in favor of the application. No members of the public wished to speak in favor of the application.

Mayor Swenson stated that he would now take testimony from those who wish to speak in opposition of the application.

Nancy Ferguson, 950 Evergreen Rd., #323, stated that she has concerns with accidents already happening at Evergreen and Oregon Way and that the traffic on Evergreen will become too heavy and dangerous.

Bobbi Reisner, 950 Evergreen Rd., #221, stated that there are a lot of school buses that go by there. She added that we already have enough gas stations and does not want to smell the gas coming

from this one that will be closer to her home.

Doris Ehlen-Kruse, 950 Evergreen Rd., #128, stated that there is a McDonalds down the street, and multiple convenience stores and gas stations nearby. She stated that the real estate property will deteroriate.

Carolyn Shindlebower, 950 Evergreen Rd. #206, stated that her main concern is with Evergreen Rd. becoming too congested and dangerous with more traffic. She added that another gas station & convenience store is not needed.

Rebecca Hayes, 950 Evergreen Rd., #505, stated that she is a proponent for age friendly cities and that there are a lot of seniors that live in this area. She added that a better area for the gas stations would be over towards the racetrack and that there are already backups on Evergreen and this will increase traffic.

Janie Torabi, 925 Oregon Way, stated that there are trucks going down her street daily. She has concerns about people being hit coming out of the convenience store and it adding more traffic to an already congested area.

Anne Reslock, 1375 Quinn Rd., stated that she has concerns about the traffic impacts of this gas station. She recommends that the development is not approved.

Jan Duncum, 980 Oregon Way, stated that she is opposed to this gas station being placed here specifically and she has concerns about the increase in traffic.

Mayor Swenson asked for rebuttal from the applicant.

Joe Bessman, Transight Consulting, stated that the site is zoned for commercial general uses. He added that this would actually result in a traffic reduction during the peak hours in comparison to when it was a bank. He stated that looking at safety, they are proposing to connect the different sites that are between Evergreen and Oregon Way. He further added that the traffic counts they have prepared is a true assessment and conforms with all applicable criteria.

Wally Lein, Attorney, 1004 Crescent Drive NW, Salem, stated the Councils job is to apply the criteria, not to decide whether it should be a gas station or a bank. He added that the Council needs to analyze the project and decide if the applicant has complied with the criteria. He noted that ODOT stated that for City Council discussion tonight ODOT would support the City approving the proposal with the condition that the applicant obtain all ODOT approvals prior to occupancy.

Del Huntington, Hunting Traffic Solutions, 1235 Panorama Court SE, Salem, stated that he used to work for ODOT and that in his opinion they would approve option one as they almost always want to see interconnectivity.

Mayor Swenson closed the hearing at 9:50 p.m.

Councilors provided comments and discussion on the application.

Mayor Swenson called for a five minute break.

Carney/Schaub... overturn the Planning Commission decision and deny the consolidated applications, CU 21-02, DR 21-10, EXCP 21-05, and PP 21-01 for US Market Gas Station on the

basis that it fails to meet the conditional use criteria section B.3. on the basis of evidence in the Record that demonstrates that the proposed development will not be compatible with surrounding properties and direct staff to return with a final decision at the next Council meeting. The motion passed unanimously.

<u>LEGION PARK IMPROVEMENT PROJECT ADDITION EXPENDITURE</u> <u>AUTHORIZATION</u>

Community Services Director Cuomo provided a staff report. **Carney/Schaub**... authorize staff to expend up to an additional \$200,000 on the Legion Park Improvement Project, which was awarded to Hellas Construction on October 25, 2021 in the amount of \$4,004,694. With the \$300,000 additional expenditure authority approved by the City Council on May 23, 2022, the new authorized expenditure amount totals \$4,504,694, which is necessary to cover required change orders and unanticipated contingencies that might arise during the construction process. The motion passed unanimously.

OREGON PSILOCYBIN SERVICE ACT (MEASURE 109)

City Administrator Derickson and Assistant City Attorney Granum provided a staff report. **Carney/Cornwell...** prepare appropriate documentation to put the question of whether to ban Psilocybin service centers, the manufacturing of Psilocybin products, and related activities to the voters of the City of Woodburn. The motion passed unanimously.

CITY ADMINISTRATOR'S REPORT

The City Administrator reported that he was at the OCCMA conference in Redmond last week and that he chaired the Professional Development Committee. He added that the focus was on mental health and self-care.

MAYOR AND COUNCIL REPORTS

Nothing to report.

ADJOURNMENT

Carney/Schaub...move to adjourn. The motion passed unanimously. Mayor Swenson adjourned the meeting at 10:57 p.m.

		APPROVED	
		_	ERIC SWENSON, MAYOR
ATTEST			
	Heather Pierson, City Recorder		
	City of Woodburn, Oregon		

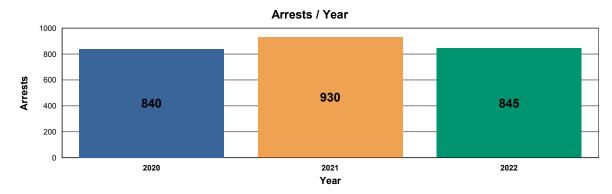
MONTHLY ARRESTS BY OFFENSES 2022 Year to Date

		Feb N	/lar		May .	Jun	Total
AGGRAVATED ASSAULT	5	0	0	10	2	6	
ANIMAL ORDINANCES	2	9	2	7	4	3	
ASSAULT SIMPLE	8	7	8	11	12	13	59
ATTEMPTED MURDER	0	0	0	0	2	0	2
BURGLARY - BUSINESS	2	2	0	0	0	0	4
BURGLARY - RESIDENCE	2	1	0	0	0	2	
CHILD NEGLECT	0	0	1	0	0	0	1
CRIME DAMAGE-NO VANDALISM OR ARSON	3	6	1	1	2	4	17
CURFEW	0	1	0	0	0	0	1
CUSTODY - MENTAL	2	4	3	2	1	2	14
DISORDERLY CONDUCT	5	2	1	3	4	6	
			7				
DRIVING UNDER INFLUENCE	6	8	7	11	9	6	
DRUG LAW VIOLATIONS	2	0	3	3	1	5	
DWS/REVOKED - FELONY	0	0	0	0	0	2	2
DWS/REVOKED-MISDEMEANOR	4	2	2	1	1	2	
ELUDE	1	2	0	2	0	0	5
ESCAPE FROM YOUR CUSTODY	0	0	1	0	0	1	2
FAIL TO DISPLAY OPERATORS LICENSE	0	0	0	1	0	0	
FORCIBLE RAPE	0	0	0	2	0	0	2
FORGERY/COUNTERFEITING	1	0	0	0	0	0	1
FRAUD - BY DECEPTION/FALSE PRETENSES	0	1	5	0	0	1	7
FRAUD - CREDIT CARD/AUTOMATIC TELLER MACHINE	0	0	0	3	1	1	5
FRAUD - OF SERVICES/FALSE PRETENSES	0	2	0	0	0	0	
FUGITIVE ARREST FOR ANOTHER AGENCY	43	38	37	29	30	22	
HIT AND RUN-MISDEMEANOR	40	3	5	29	2	4	17
	1			0		4	17
IDENTITY THEFT	- 1	0	0		0	7	2
INTIMIDATION /OTHER CRIMINAL THREAT	8	7	6	3	2	7	33
INVASION OF PERSONAL PRIVACY	0	0	0	0	0	1	1
KIDNAP - FOR ADDITIONAL CRIMINAL PURPOSE	0	2	0	0	0	2	
MINOR IN POSSESSION	1	1	0	0	1	0	3
MISCELLANEOUS	0	0	4	0	0	0	_
MOTOR VEHICLE THEFT	3	2	3	1	6	0	15
OTHER	2	0	1	6	2	4	15
PROPERTY RECOVER FOR OTHER AGENCY	2	0	0	0	0	0	2
PROVIDE FALSE INFORMATION TO LAW ENFORCEMENT	1	0	0	2	0	1	4
RECKLESS DRIVING	2	3	5	4	3	2	
RECKLESSLY ENDANDERING	2	0	1	0			
RESTRAINING ORDER VIOLATION	2	1	1	2	2	1	9
ROBBERY - BUSINESS	1	1	0	0	0	0	
ROBBERY - CAR JACKING	0	1	0	0	0	0	
ROBBERY - OTHER	1	0	0	0	0	0	
	1	-		0			_
ROBBERY - RESIDENCE	1	0	0	- 1	0	0	_
RUNAWAY	•	0	0	0	1	1	3
SEX CRIME - CONTRIBUTE TO SEX DELINQUENCY	1	0	0	0	0	0	_
SEX CRIME - MOLEST (PHYSICAL)	0	0	2	1	0	1	4
SEX CRIME - NON-FORCE RAPE	1	0	0	1	0	0	_
SEX CRIME - OTHER	0	1	0	0	0	0	-
SEX CRIME - SEXUAL ASSAULT WITH AN OBJECT	0	0	1	0	0	0	-
STOLEN PROPERTY - RECEIVING, BUYING, POSSESSING	1	0	4	0	0	0	5
THEFT - BUILDING	2	1	1	0	2	0	5 6
THEFT - FROM MOTOR VEHICLE	1	0	0	0	0	0	
THEFT - OTHER	4	0	3	2	0	1	10
THEFT - PICKPOCKET	0	0	0	0	1	1	2
THEFT - SHOPLIFT	13	2	3	- 1	9	6	
I TET I - STUPLIF I	13		3	5	Э	О	38

MONTHLY ARRESTS BY OFFENSES 2022 Year to Date

	Jan	Feb	Mar	Apr	May	Jun	Total
TRAFFIC VIOLATIONS	1	2	. 0) C	0	0	3
TRESPASS	3	45	3	3 2	4	4	61
UNAUTHORIZED ENTRY INTO MOTOR VEHICLE	2	2 0	1	C) C	1	4
VANDALISM	2	38	4	1	2	3	50
WEAPON - CARRY CONCEALED	1	0	0) C) C	3	4
WEAPON - EX FELON IN POSSESSION	2	2	1	1	C	1	7
WEAPON - OTHER	C	0	1	C) C	0	1
WEAPON - POSSESS ILLEGAL	7	3	3	5	6	2	26
WEAPON - SHOOTING IN PROHIBITED AREA	2	2 0	C) C) C	0	2

	Jan	Feb	Mar	Apr	May	Jun	Total
2022 Total	158	200	124	124	115	124	845
2021 Total	173	97	81	272	134	173	930
2020 Total	161	139	105	133	149	153	840

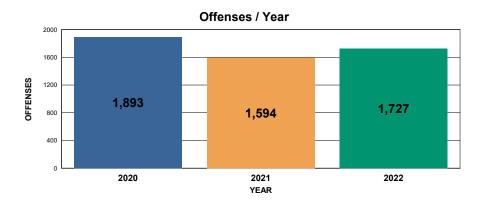


MONTHLY CRIMINAL OFFENSES 2022 Year to Date

OUADOS DECODIDATION							
CHARGE DESCRIPTION				Apr	_		Total
AGGRAVATED ASSAULT	5	_	_	_			27
ANIMAL CRUELTY	0	_	_				1
ANIMAL ORDINANCES	2					-	23
ARSON	0		_		0	- 1	1
ASSAULT SIMPLE	17					_	95
ATTEMPTED MURDER	0	_	_			0	1
BURGLARY - BUSINESS	4		0	_	1	2	9
BURGLARY - OTHER STRUCTURE	1				0		3
BURGLARY - RESIDENCE	3						8
CHILD NEGLECT	0	_		_			1
CRIME DAMAGE-NO VANDALISM OR ARSON	18	9		15	4	8	60
CRIMINAL MISTREATMENT	0	0	1	0	0	0	1
CURFEW	0		0	_	_	_	1
CUSTODY - MENTAL	2	4	_			2	14
DISORDERLY CONDUCT	4	. 3	2	3	7	8	27
DRIVING UNDER INFLUENCE	6	8	7	11	9	6	47
DRUG LAW VIOLATIONS	2	. 0	2	3	1	2	10
DWS/REVOKED - FELONY	0	0	0	1	0	2	3
DWS/REVOKED-MISDEMEANOR	4	2	2	2	1	2	13
ELUDE	6	1		4		1	15
ESCAPE FROM YOUR CUSTODY	0	0	1	0			2
FAIL TO DISPLAY OPERATORS LICENSE	0	_					1
FORCIBLE RAPE	2	_	_	_	_		13
FORGERY/COUNTERFEITING	2						16
FRAUD - BY DECEPTION/FALSE PRETENSES	2						33
FRAUD - CREDIT CARD/AUTOMATIC TELLER MACHINE	3						14
FRAUD - IMPERSONATION			2				6
FRAUD - OF SERVICES/FALSE PRETENSES	1					0	3
FRAUD - WIRE	0			_	_	_	1
FRAUD-OTHER		_	_	_	0	_	
FUGITIVE ARREST FOR ANOTHER AGENCY	25	1 -			_	1	127
GARBAGE LITTERING	20						121
HIT AND RUN FELONY	1	_		1	2		i
HIT AND RUN-MISDEMEANOR	23	1 -		15	1		120
IDENTITY THEFT						-	
	5			4			16
INTIMIDATION /OTHER CRIMINAL THREAT			_		_	-	36
INVASION OF PERSONAL PRIVACY	0						1
KIDNAP - FOR ADDITIONAL CRIMINAL PURPOSE	0					2	6
MINOR IN POSSESSION	1						2
MISCELLANEOUS	13						
MOTOR VEHICLE THEFT	22						108
NON CRIMINAL DOMESTIC DISTURBANCE	0						2
OTHER	3		3		4		20
PROPERTY - FOUND LOST MISLAID	3						9
PROPERTY RECOVER FOR OTHER AGENCY	1						3
PROSTITUTION - ENGAGE IN	C		_				1
PROSTITUTION - PROMOTE	0	1	_				1
RECKLESS DRIVING	3						25
RESTRAINING ORDER VIOLATION	3				3		13
ROBBERY - BUSINESS	3						7
ROBBERY - CAR JACKING	C		0				1
ROBBERY - OTHER	2						4
ROBBERY - RESIDENCE	1	0	0	0			1
RUNAWAY	3	0	1	1	2	6	13
SEX CRIME - CONTRIBUTE TO SEX DELINQUENCY	C		0	0	0	1	1
SEX CRIME - MOLEST (PHYSICAL)	C	0			2	3	12
SEX CRIME - NON-FORCE RAPE	4		0				5
Page 1 of 2		7				<u>. </u>	
raye I UI Z		•					

MONTHLY CRIMINAL OFFENSES 2022 Year to Date

	Jan	Feb	Mar	Apr	Мау	Jun	Total
SEX CRIME - OTHER	0	1	0	0	0	1	2
SEX CRIME - SEXUAL ASSAULT WITH AN OBJECT	0	0	0	0		0	1
STALKER	0	0	0	1	2	1	4
STOLEN PROPERTY - RECEIVING, BUYING, POSSESSING			1	0	1 1	1	3
THEFT - BICYCLE	2	0		1	2	2	7
THEFT - BUILDING	2	1	2	1	4	4	14
THEFT - FROM MOTOR VEHICLE	31	15	17			13	102
THEFT - MOTOR VEHICLE PARTS/ACCESSORIES	0	2	1	3		6	14
THEFT - OTHER	10	12	8	8	7	12	57
THEFT - PICKPOCKET	0	1	0	0	1	0	2
THEFT - PURSE SNATCH	3	_	0	0	-	1	5
THEFT - SHOPLIFT	35	26	54	28		33	204
TRAFFIC VIOLATIONS	2	2		0	_	0	10
TRESPASS	5	15				5	34
UNAUTHORIZED ENTRY INTO MOTOR VEHICLE	7	1	0		_	0	11
VANDALISM	12	23	17			11	111
VEHICLE RECOVERD FOR OTHER AGENCY	4	3	0	2	1	1	11
WEAPON - CARRY CONCEALED	1	0	0	0	1	2	4
WEAPON - EX FELON IN POSSESSION	2	2	1	1	1	2	9
WEAPON - OTHER	0	0	1	0		0	1
WEAPON - POSSESS ILLEGAL	8	3	4	4		4	30
WEAPON - SHOOTING IN PROHIBITED AREA	6	2	2	1	2	1	14
	Jan	Feb	Mar	Apr	May	Jun	Total
2022 Total	333						1,727
2021 Total	259	213	257	262	273	330	1,594
2020 Total	307	322	249	278	361	376	1,893
	1						,

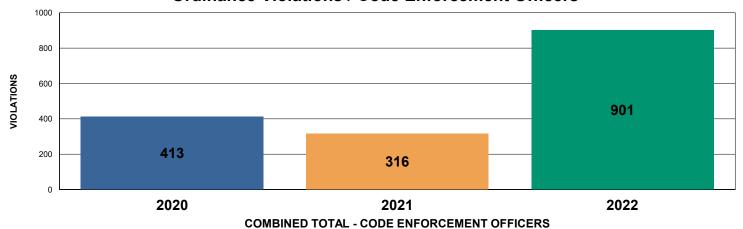


ORDINANCE VIOLATIONS 2022 Year to Date

7/21/2022

Ordinance Discription		Feb	Mar	Apr	Мау	Jun	Total
Animal Complaint	39	53	53	67	48	66	326
Ordiinance - Abate/Nuisances	2	5	11	6	3	0	27
Ordinance - Abandoned Vehicles	38	34	59	36	31	25	223
Ordinance - Abate Graffiti		48	18	38	14	15	146
Ordinance - Land Use Violations		0	0	0	0	0	1
Ordinance - Oth Violation		58	110	58	45	31	437
Ordinance - Tall Grass		0	0	1	241	83	326
2022 Total	229	198	251	206	382	220	1,486
2021 Total	51	66	83	96	115	101	512
2020 Total	109	121	97	80	156	123	686

Ordinance Violations / Code Enforcement Officers



Ordinance Violations / Year





Azenda Item

May 4, 2022

TO: Honorable Mayor and City Council through City Administrator

FROM: Curtis Stultz, Public Works Director

SUBJECT: Acceptance of a Public Utility Easement on 2515 County Club Rd.

Woodburn OR, 97071 (Tax Lot 052W12AD18600)

RECOMMENDATION:

Accept the dedication of a public utility easements by Lucinda A. Wurdinger-Kelly, owners of the property located at 2515 Country Club Rd, Woodburn, OR 97071 (Tax Lot 052W12AD18600).

BACKGROUND:

The City needs this permanent easement to have future improvements for the public and franchised utilities.

DISCUSSION:

This 5-foot wide public utility easement dedication is located along the eastern property boundary, adjacent to West Hayes Street. The 5-foot wide public utility easements provide a permanent easement and right-of-way to construct, reconstruct, and operate public and franchised utilities.

FINANCIAL IMPACT:

There is no cost to the City for this Public Easements as it was a condition of approval for a property line adjustment.

<u>ATTACHMENTS</u>

A Copy of the Public Utility Easement document is included as Exhibit "A" and Exhibit "B" for the dedication.

Agenda Item Review: City Administrator __x__ City Attorney __x_ Finance __x_

AFTER RECORDING RETUREN TO:

Woodburn City Recorder City of Woodburn 270 Montgomery Street Woodburn OR 97071

CITY OF WOODBURN, OREGON PUBLIC UTILITY EASEMENTS

(Temporary and Permanent)

Woodburn Flower Farm LLC *GRANTOR*, grants to the CITY OF WOODBURN, OREGON, hereinafter called *CITY*, a permanent easement and right-of-way, including the permanent right to construct, reconstruct, operate, and maintain [phone lines, electricity, natural gas, water, sewer, internet cable] on the following described land:

See attached Exhibit "A" Legal Description of Permanent Easement and attached Exhibit "B" Sketch for Legal Description of Permanent Easement which are by this reference incorporated herein

GRANTOR also grants to CITY a temporary Easement and right-of-way upon, across, and under so much of the aforesaid land as described as:

See attached Exhibit "C" Legal Description of Temporary Easement and attached Exhibit "D" Sketch for Legal Description of Temporary Easement, which are by this reference incorporated herein.

It being understood that said temporary easement is only for the original excavation, construction and installation of the public utilities referenced above and upon the completion of the construction thereof shall cease to exist, save and except for the portion hereinbefore described as being a permanent easement.

GRANTOR reserves the right to use the surface of the land for any purpose that will not be inconsistent or interfere with the use of the easement by CITY. No building or utility shall be placed upon, under, or within the property subject to the foregoing easement during the term thereof, however, without the written permission of CITY.

Upon completion of the construction, *CITY* shall restore the surface of the property to its original condition and shall indemnify and hold *GRANTOR* harmless against any and all loss, cost, or damage arising out of the exercise of the rights granted herein.

The true consideration of the conveyance is zero ($\frac{0}{N}$), and other valuable consideration, the receipt of which is acknowledged by *GRANTOR*.

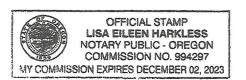
GRANTOR covenants to CITY that GRANTOR is lawfully seized in fee simple of the above-granted premises, free from all encumbrances and that GRANTOR and their heirs and personal representatives shall warrant and forever defend the said premises and every part thereof to CITY against the lawful claims and demands of all persons claiming by, through, or under GRANTOR.

DATED this 19 day of July Woodburn Flower Farm LLC

CORPORATE ACKNOWLEDGEMENT

STATE OF OREGON, County of Marion ss.

The foregoing instrument was acknowledged before me this 19th day of July, 2022 by Lucinda A. Wurdinger-Kelly, as member of Woodburn Flower Farm LLC, on behalf of whom instrument was executed a corporation and the foregoing instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and each of them acknowledged said instrument to be its voluntary act and deed.



NOTARY PUBLIC FOR OREGON

My Commission Expires: 12-2-3

City of Woodburn 270 Montgomery Street Woodburn, OR 97071

Woodburn Flower Farm LLC 16751 Boones Ferry Rd NE Woodburn, OR 97071

Lucinda A. Wurdinger-Kelly (Member)

By Signature below, the city of Woodburn, Oregon, Approves and Accepts this Conveyance Pursuant to ORS 93.808.

City Recorder:

Heather Pierson

EXHIBIT "A"

A variable-width tract of land, situated in the southeast and northeast one-quarters of Section 12, Township 5 South, Range 2 West of the Willamette Meridian in the City of Woodburn, Marion County, Oregon, said tract being more particularly described as follows:

Beginning at the southwest corner of that property described in that instrument recorded in Reel 4256, Page 45, Marion County Deed Records, said corner being the southeast corner of Parcel 1, Partition Plat 2013-35, as platted and recorded in the Marion County Book of Partition Plats, also said corner also being on the northerly right of way of Newberg Highway (State HWY 214); thence North 01°20'35" East 105.27 feet along the west line of said property to the northwest corner thereof; thence South 87°12'32" East 58.27 feet along the north line of said property to the northeast corner thereof, said point also being on the southwesterly right of way of Country Club Road at a perpendicular distance of 30.00 feet Southwesterly from the centerline of said road, and is the True Point of Beginning of this description; and running thence:

South 48°57'42" East 48.88 feet along said southwesterly right of way to an angle point thereof; thence South 43°38'56" East 32.40 feet along said southwesterly right of way to a point which bears 33.00 feet at a perpendicular distance Southwesterly of said centerline, said point being the beginning of a non-tangent curve concave to the Southwest;

thence Southeasterly along the arc of a 67.00-foot radius non-tangent curve to the right (whose radius point bears South 41°02'18" West and the chord of which bears South 30°06'50" East 43.29 feet) 44.08 feet to a point on the northerly right of way of Newberg Highway;

thence South 49°16'11" West 10.06 feet along said northerly right of way to the beginning of a non-tangent curve concave to the Northwest;

thence leaving said northerly right of way, Northeasterly along the arc of a 12.50-foot radius non-tangent curve to the left (whose radius point bears North 53°33'34" West and the chord of which bears North 07°24'53" East 12.13 feet) 12.66 feet to a point of compound curvature;

thence Northwesterly along the arc of an 87.00-foot radius curve to the left (the chord of which bears North 35°22'57" West 41.42 feet) 41.82 feet to a point of reverse curvature;

thence Northwesterly along the arc of a 413.00-foot radius curve to the right (the chord of which bears North 46°58'15" West 31.47 feet to a point of tangency;

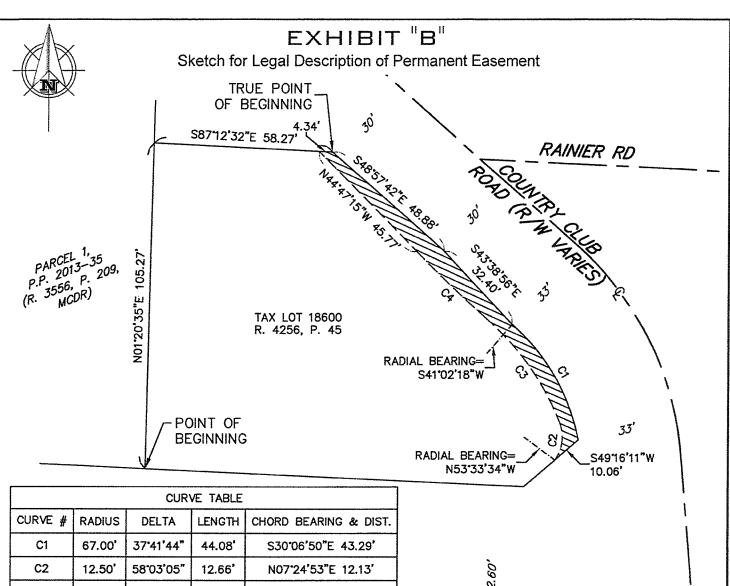
thence North 44°47'15" West 45.77 feet to a point on the north line of said property; thence South 87°12'32" East 4.34 feet along said north line to the True Point of Beginning, containing 632 square feet of land, more or less.

Bearings are based on OCRS (Oregon Coordinate Reference System) Salem Zone using the ORGN (Oregon Real Time GNSS Network).

REGISTERED
PROFESSIONAL
LAND SURVEYOR

CREGON JULY 19, 1994 GREGORY L. WILSON 2687

EXPIRES: 6-30-22



CURVE #	RADIUS	DELTA	LENGTH	CHORD BEARING & DIST.
C1	67.00'	37'41'44"	44.08'	S30°06'50"E 43.29'
C2	12.50	58'03'05"	12.66	N07°24'53"E 12.13'
С3	87.00'	27'32'36"	41.82	N35°22'57"W 41.42'
C4	413.00'	4*21'59"	31.47°	N46'58'15"W 31.47'

NEWBERG HWY (STATE HWY 214)

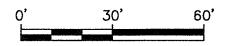
PUBLIC ROADWAY EASEMENT

OWNER:

TIMOTHY R BROWN & PAMELA RAE BAKER 2874 NEWBERG HWY WOODBURN, OR 97071



EASEMENT AREA = 632 SQ FT



LOCATED IN THE N.E. & S.E. 1/4 SEC. 12, T. 5 S., R. 2 W., W.M., CITY OF WOODBURN, MARION COUNTY, OREGON

R. 4256, P. 45, MCDR

REGISTERED **PROFESSIONAL** LAND SURVEYOR

ÖREGON JULY 19, 1994 GREGORY L. WILSON 2687

EXPIRES: 6/30/2022

BARKER SURVEYING 3657 KASHMIR WAY SE SALEM, OREGON 97317 PHONE (503) 588-8800

> DATE: 5/26/2022 DRAWN BY R.J.C.



Agenda Item

August 8, 2022

TO: Honorable Mayor and City Council

FROM: Scott C. Derickson, City Administrator

SUBJECT: American Rescue Plan Act (ARPA) Agreement with A Ray of Hope,

Today! for the Emergency Clothing and Supplies Program

RECOMMENDATION:

Approve the proposed ARPA Agreement with A Ray of Hope, Today! for their Emergency Clothing and Supplies Program effective upon execution of the Agreement, through June 30, 2023, (see Exhibit A).

BACKGROUND:

The American Rescue Plan Act ("ARPA") is expected to provide the City with local fiscal recovery funds in the amount of approximately \$5.8 million over the next two years. In October 2021, the City authorized the expenditure of ARPA funds to provide economic support for local nonprofit organizations, including funds for A Ray of Hope, Today!.

The City has identified A Ray of Hope, Today! as an eligible nonprofit organization and an essential partner in providing clothing and supplies and resources to benefit low- and moderate-income individuals, especially as the needs of the community have grown as a result of the COVID-19 pandemic.

The City desires to provide financial support for A Ray of Hope, Today!'s Emergency Clothing and Supplies Program in order to support Woodburn organizations and residents in the amount of seven thousand dollars (\$7,000).

The proposed Agreement provides the terms and conditions under which A Ray of Hope, Today! shall receive and may expend the ARPA funding.

Authorized or allowable costs exclude expenditures for any of the following: (i) religious instruction or recruitment; (ii) real estate purchases; (iii) lobbying or political activities; (iv) costs for providing services outside of North Marion County; (v) indirect costs and overheard not readily assignable to Project Services; and (vi) any activity prohibited by state, federal, or local law or rule.

Agenda Item Review:	City Administrator	x Cit	v Attornev	x Finance	Э X

DISCUSSION/ FINANCIAL IMPACT:

The proposed use of the ARPA funding is to support A Ray of Hope, Today!'s operation of the Emergency Clothing and Supplies Program where clothing and supplies are provided to Woodburn organizations and community members. ARPA funding will be expended towards the costs incurred to provide clothing and supplies.

ARPA funds have been approved and are included in the adopted FY 2022-23 budget. The effective date of this Agreement with A Ray of Hope, Today! is as of the day and year specified the Agreement is executed through July 31, 2024.

The total fiscal impact of the proposed Agreement is seven thousand dollars (\$7,000) from the FY 2022-23 budget

CITY OF WOODBURN

ARPA FUNDED SOCIAL SERVICES GRANT AGREEMENT RAY OF HOPE TODAY – EMERGENCY CLOTHING AND SUPPLIES PROGRAM

THIS ARPA Funded Social Services Grant Agreement ("Agreement"), dated this	day of
, 2022 ("Effective Date"), is made and entered into by and between the O	City of
Woodburn, an Oregon municipal corporation (the "City"), and the A Ray of Hope, Today!, an O	regon
nonprofit corporation ("Grantee") (together the "Parties").	

BACKGROUND

- A. The American Rescue Plan Act ("ARPA") is expected to provide the City with local fiscal recovery funds in the amount of approximately \$5.8 million over the next two years. In October 2021, the City authorized the expenditure of ARPA funds to provide economic support for local nonprofit organizations, including funds for Grantee.
- B. The City has identified Grantee as a regional nonprofit organization that is an essential partner in providing clothing and supplies and resources to benefit low- and moderate-income individuals, especially as the needs of the community have grown as a result of the COVID-19 pandemic.
- C. Specifically, Grantee provides clothing and supplies to community organizations and/or members.
- D. The City desires to provide financial support for Grantee for the Emergency Clothing and Supplies Program in order to support Woodburn organizations and residents in the amount of seven thousand dollars (\$7,000).
- E. This Agreement provides for the terms and conditions under which Grantee shall receive and may expend the identified grant funding.

THE PARTIES AGREE AS FOLLOWS:

AGREEMENT

- 1. <u>Purpose</u>. The purpose of the grant funding is to support Grantee's operation of the Emergency Clothing and Supplies Program where clothing and supplies are provided to Woodburn organizations and community members ("Project Services"). ARPA funding will be applied towards the costs incurred by Grantee to provide said clothing and supplies.
- 2. <u>Effective Date & Duration</u>. The Effective Date of this Agreement is as of the day and year specified above, and unless extended or terminated earlier in accordance with its terms, will expire on July 31, 2024.

3. **Grant Funding.**

- 3.1. <u>Grant Amount</u>. In accordance with the terms and conditions of this Agreement, the City shall provide Grantee with seven thousand 0/100 dollars (\$7,000) ("Grant Funds") to carry out the identified Project Services. The City shall disburse the Grant Funds from monies available through its federal ARPA funding.
- 3.2. <u>Disbursement Schedule</u>. The City shall allocate and distribute the Grant Funds to Grantee pursuant to the following schedule:

Funding Cycle	Issuance Date	Total Funds
FY 2022-2023	Within 30 days of Effective Date	\$7,000

^{*}FY means the City's fiscal year that runs from July 1st – June 30th of the following calendar year.

3.3. <u>Disbursement Generally</u>. The City shall disburse Grant Funds to Grantee for the allowable Project Services that are undertaken during the Term of this Agreement, subject to the availability of sufficient moneys in and from the ARPA funding source. Grantee agrees that it shall provide to the City any information or detail regarding the expenditure of Grant Funds prior to future disbursements or as the City may request.

4. Conditions of Funding.

4.1. <u>Project Activities</u>. Grantee is a nonprofit organization that serves as a resource to the Woodburn and outlying areas providing clothing and supplies to benefit low- and moderate-income individuals. The Grantee has been operating the Emergency Clothing and Supplies Program out of the Ray of Hope Thrift Store located at 335 N. Pacific Highway Woodburn, OR, with limited resources. Now, due to the increased demand for assistance resulting from impacts of the Coronavirus pandemic, the Grantee has been faced with the needed to expand its program in order to serve a larger base of residents in need. It is the expectation of the City that Grantee shall utilize the Grant Funds to facilitate and support the Emergency Clothing and Supplies Program to provide expanded Project Services.

On or before December 1, 2022, it is expected that Grantee shall provide increased capacity to area organizations and residents and that Grantee will increase its level of Project Services to meet the community's needs.

- 4.2. <u>Annual Project Work Plans</u>. On or prior to <u>September 1, 2022</u>, Grantee shall submit to the City a Project Work Plan that outlines Grantee's proposed project activities for the following year. The work plan should include, at a minimum, a proposed budget plan for expenditure of the Grant Funding, a Program staffing plan for the Program, and any performance targets or goals for the upcoming year.
- 4.3. <u>Eligible Use of Grant Funds</u>. In providing Project Services under this Agreement, Grantee may use and expend Grant Funds for the following costs/purposes: (i) clothing and supplies to support the Emergency Clothing and Supplies Program.

Authorized or allowable costs exclude expenditures for any of the following: (i) religious instruction or recruitment; (ii) real estate purchases; (iii) lobbying or political activities; (iv) costs for providing services outside of North Marion County; (v) indirect costs and overheard not readily assignable to Project Services; and (vi) any activity prohibited by state, federal, or local law or rule.

- 4.4. Reporting. Grantee shall submit recurring reports and updates to the City related to the Project Services as follows:
 - 4.4.1. <u>Bi-Annual.</u> Grantee shall submit to the City bi-annual expenditure and data reports that capture a summarized form of the Grant Fund expenditures of Grantee along with the service metric data for the Program for the previous bi-annual period. Along with the bi-annual reports, Grantee shall also include, as necessary, a summary of any material modifications Grantee has made to either its proposed budget or operational plan that differs significantly from its submitted Annual Project Work Plan.
 - 4.4.2. <u>Annual</u>. Grantee shall submit a comprehensive annual report to the City that includes: (i) a narrative report that provides a description of activities, challenges, successes, and progress Grantee has made in providing Project Services in Woodburn; (ii) a data report that captures information such as level of service and number of community members served; and (iii) an annual expenditure report that includes a complete accounting of Grant Fund expenditures for the previous year.
 - 4.4.3. <u>Reporting Schedule</u>. Grantee shall submit the bi-annual and annual reports as follows:

Year/Quarter	Reporting Period	Report Due Date
Y1 – Bi-Annual	August 8, 2022 to December 31, 2022	January 31, 2023
Y1 – Annual	Through June 30, 2023	July 31, 2023

- 4.5. <u>Grant Administrator</u>. Grantee has identified Alesa Hintz as its designated grant administrator and primary point of contact for the City for matters related to this Agreement
- 5. Grantee Representations & Warranties. Grantee represents and warrants to the City that:
 - (a) Grantee is a non-profit entity duly organized and validly existing in the State of Oregon;
 - (b) Grantee has all necessary rights, powers, and authority under any organizational documents and under Oregon law to (i) execute this Grant; (ii) incur and perform its obligations under this Grant; and (iii) receive financing, including the Grant Funds for this Project Services; and
 - (c) There is no proceeding pending or threatened against Grantee before any court or governmental authority that if adversely determined would materially affect the ability of Grantee to carry out Project Services.

The representations and warranties set forth in this Section are in addition to, and not in lieu of, any other representations or warranties provided by Grantee.

6. <u>Responsibilities of the City</u>.

- 6.1. <u>ARPA Compliance</u>. The City retains responsibility for federal ARPA compliance requirements through the duration of this Agreement.
- 6.2. <u>Grant Administrator</u>. The City's Community Services Director shall be the City's designated grant administrator and will serve as the primary point of contact for Grantee for matters related to this Agreement.

7. Default & Termination.

7.1. Default.

- 7.1.1. <u>Grantee</u>. Grantee will be in default under this Agreement upon the occurrence of any of the following events:
- (a) Grantee fails to use the Grant Funds for the intended purpose described in the Agreement or otherwise fails to perform, observe, or discharge any of its covenants, agreements, or obligations under this Agreement;
- (b) Any representation, warranty, or statement made by Grantee in this Agreement or in any documents relied upon by the City in issuing the Grant Funding is untrue in any material respect when made; or
- (c) A petition, proceeding or case is filed by or against Grantee under any federal or state bankruptcy, insolvency, receivership or other law relating to reorganization, liquidation, dissolution, winding up or adjustment of debts; in the case of a petition filed against Grantee, Grantee acquiesces to such petition or such petition is not dismissed within 20 calendar days after such filing, or such dismissal is not final or is subject to appeal; or Grantee becomes insolvent or admits its inability to pay its debts as they become due, or Grantee makes an assignment for the benefit of its creditors.
- 7.1.2. <u>City</u>. The City will be in default under this Agreement if, after 30 days written notice specifying the nature of the default, the City fails to perform, observe, or discharge any of its covenants, agreements, or obligations under this Agreement; provided, however, the City will not be in default should the City fail to disburse Grant Funds because there is insufficient expenditure authority for, or moneys available from the ARPA funding source.

7.2. Remedies.

- 7.2.1. <u>City Remedies</u>. In the event Grantee is in default under Section 7.1.1, the City may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (i) termination of this Agreement under Section 7.3; (ii) reducing or withholding payment of Grant Funds; (iii) requiring Grantee to complete, at Grantee's expense, additional activities necessary to satisfy its obligations or meet performance standards under this Agreement; (iv) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief; (v) exercise of its right of recovery of overpayments under Section 7.4; or (vi) declaring Grantee ineligible for the receipt of future awards from the City. These remedies are cumulative to the extent the remedies are not inconsistent, and the City may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.
- 7.2.2. <u>Grantee Remedies</u>. In the event the City is in default under Section 7.1.2 and whether or not Grantee elects to terminate this Agreement, Grantee's sole monetary remedy will be, within any limits set forth in this Agreement, the pro-rated amount of Grant Funds owing to Grantee through the date of termination, less any claims the City has against Grantee. In no event will the City be liable to Grantee for any expenses, direct, indirect, consequential or otherwise related to termination of this Agreement.

7.3. <u>Termination</u>.

- 7.3.1. <u>Mutual</u>. This Agreement may be terminated at any time by the mutual written consent of the Parties.
- 7.3.2. By the City. The City may terminate this Agreement as follows:
 - (a) At the City's discretion, upon 30 days advanced written notice to Grantee prior to the following fiscal year funding schedule (i.e., 30 days prior to July 1st);
 - (b) Immediately upon written notice to Grantee should the City fail to receive funding or appropriations or other expenditure authority at levels sufficient in the City's reasonable administrative discretion to perform its obligations under this Agreement;
 - (c) Immediately upon written notice to Grantee, if federal or state laws, rules, regulations, or ARPA guidelines are modified or interpreted in such a way that the City's performance under this Agreement is prohibited or the City is prohibited from funding this grant from the ARPA funding source; or
 - (d) Immediately upon written notice to Grantee, if Grantee is in default under this Agreement and such default remains uncured for 30 days after written notice is provided to Grantee.

- 7.3.3. <u>By Grantee</u>. Grantee may terminate this Agreement as follows:
 - (a) At Grantee's discretion, upon 90 days advanced written notice to the City prior to the following fiscal year funding schedule (i.e., 90 days prior to July 1st);
 - (b) Immediately upon written notice to the City, if the City is in default under this Agreement and such default remains uncured for 30 days after written notice is provided to the City.
- 7.4. Recovery of Grant Funds. Grantee must return to the City, within 30 days of City's written demand: (i) any Grant Funds paid to Grantee that exceed the amount to which Grantee is entitled under this Agreement; (ii) any Grant Funds received by Grantee that remain unexpended or contractually committed for Project Services by December 31, 2024; or (iii) any Grant Funds determined by the City to be expended for purposes other than allowable Grant Fund Expenditures under Section 4.
- 8. <u>Non-Discrimination</u>. Grantee shall provide access to its services on a basis that does not discriminate against any person on the basis of the person's race, color, sex, sexual orientation, religion, ethnicity, national origin, age, disability, familial status, marital status, gender identity, source of income, veteran status, or membership in any other protected class under state or federal law.
- 9. <u>Limitation of Liability</u>. Grantee shall take all necessary precautions and shall be responsible for the safety of its employees, volunteers, agents, and subcontractors in the performance of all services provided under this Agreement. The City shall not be liable for injury, damage, or loss suffered by Grantee, its employees, volunteers, agents, and subcontractors, not otherwise caused by the intentional acts of the City, its agents, employees, or contractors.
- 10. <u>Indemnification</u>. Grantee shall defend, indemnify, and hold the City, its officers, officials, employees, agents, and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out of or in connection with Grantee's performance and activities under this Agreement, except for that portion of the injuries and damages caused by the intentional acts of the City.
- 11. <u>Insurance</u>. Grantee shall ensure that the following insurance is procured and maintained for the duration of this Agreement in the types and amounts described as follows:
 - 11.1. <u>Workers' Compensation Insurance</u>. Workers' Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers (contractors with one or more employees, and as defined by ORS 656.027).
 - 11.2. <u>General Liability Insurance</u>. Commercial General Liability Insurance with coverage written on a per occurrence basis, in adequate quantity to protect against legal liability arising out of the Project Services, but no less than \$1,000,000 each occurrence. It shall include contractual liability coverage for the indemnity provided under this Agreement. It shall also provide that the City of Woodburn and its officers, agents, and employees are Additional Insureds but only with respect to Grantee's activities and services to be provided under this Agreement.

- 11.3. <u>Notice of cancellation or change</u>. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days written notice from Grantee or its insurer(s) to the City.
- 11.4. <u>Certificates of insurance</u>. As evidence of the insurance coverages required by this Agreement, Grantee shall have on file and furnish upon request acceptable insurance certificates to the City prior to commencing the work. The certificate will specify all of the parties who are Additional Insureds. If requested, complete policy copies shall be provided to the City. Grantee shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.
- 12. <u>Relationship of the Parties</u>. Nothing in this Agreement is intended, or is to be deemed to create a partnership or joint venture between the Parties. Grantee shall at no time hold itself out as a subsidiary or affiliate of the City. Further, nothing contained herein shall be deemed or construed by the Parties, nor by any third parties, as creating a relationship between the City and any officers, employees, volunteers, suppliers, contractors, or subcontractors used by Grantee to carry out any activities under this Agreement.
- 13. <u>Subcontracts and Assignment; Successors and Assigns</u>. City has selected Grantee based on its reputation and specialized expertise. Grantee shall not enter into any subcontracts for any of the activities required by this Agreement, or assign or transfer any of its interest in this Agreement without City's prior written consent.

The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns, if any.

14. <u>No Third Party Beneficiaries</u>. The City and Grantee are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

15. Miscellaneous.

- 15.1. <u>Compliance with Applicable Law.</u> Grantee shall comply with all federal, state and local laws, regulations, and ordinances applicable to this Agreement or to Grantee's obligations under this Agreement, as those laws, regulations and ordinances may be adopted or amended from time to time.
- 15.2. Records. Grantee must maintain all financial records relating to this grant Agreement in accordance with generally accepted accounting principles. In addition, Grantee must maintain any other records, whether in paper, electronic or other form, pertinent to this Agreement in such a manner as to clearly document Grantee's performance. All financial records and other records, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Grantee acknowledges and agrees the City and the federal government and their duly authorized representatives will have access to all Records to perform

examinations and audits and make excerpts and transcripts. Grantee must retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

- 15.3. <u>Force Majeure</u>. Neither the City, nor Grantee shall be held responsible for delay or default caused by fire, riot, acts of God, or war where such cause was beyond the reasonable control of the City or Grantee, respectively. Grantee shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- 15.4. <u>Notices</u>. Any notice under this Agreement must be in writing and will be effective when actually delivered in person or three (3) days after being deposited in the U.S. mail, registered or certified, postage prepaid and addressed to the party at the address stated in this Agreement or such other address as either party may designate by written notice to the other. Mailing addresses for the parties are as follows:
 - (a) <u>The City</u>. City Administrator, City of Woodburn, 270 Montgomery Street, Woodburn, Oregon 97071.
 - (b) <u>Grantee</u>. Alesa Hintz, A Ray of Hope, Today!-Emergency Clothing & Supplies 335 Pacific Highway, Woodburn OR 97071
- 15.5. <u>Severability</u>. The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
- 15.6. <u>Governing Law; Venue; Consent to Jurisdiction</u>. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the City and Grantee that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. Grantee hereby agrees to the in personam jurisdiction of such court and waives any claims of an inconvenience forum.
- 15.7. Merger Clause; Waiver. This Agreement constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of the City to enforce any provision of this Agreement shall not constitute a waiver by the City of that or any other provision.

CITY OF WOODBURN, an Oregon municipal corporation	A RAY OF HOPE, TODAY!, an Oregon nonprofit corporation
Scott Derickson, City Administrator	By: Alesa Hintz, Vice President
Date	Date

The Parties have executed this Agreement effective as of the day and year specified above.



Agenda Item

August 8, 2022

TO: Honorable Mayor and City Council

FROM: Scott C. Derickson, City Administrator

SUBJECT: American Rescue Plan Act (ARPA) Agreement with the Woodburn

Area Chamber of Commerce for the Woodburn Business Resource

Center

RECOMMENDATION:

Approve the proposed ARPA Agreement with Woodburn Area Chamber of Commerce for their Woodburn Business Resource Center effective upon execution of the Agreement, through June 30, 2024, (see Exhibit A).

BACKGROUND:

The American Rescue Plan Act ("ARPA") is expected to provide the City with local fiscal recovery funds in the amount of approximately \$5.8 million over the next two years. In October 2021, the City authorized the expenditure of ARPA funds to provide economic support for local nonprofit organizations, including funds for Woodburn Area Chamber of Commerce.

The City has identified Woodburn Area Chamber of Commerce as an eligible nonprofit organization and an essential partner in providing vital business services in Woodburn, especially as the needs of the community have grown as a result of the COVID-19 pandemic; and Grantee itself has been financially and operationally harmed as a result of the impact of the pandemic.

The City desires to provide financial support for Grantee for the establishment of the Woodburn Business Resource Center in order to provide services, assistance and referrals to area businesses in the amount of twenty-five thousand dollars (\$25,000).

The proposed Agreement provides the terms and conditions under which Woodburn Area Chamber of Commerce shall receive and may expend the ARPA funding.

Authorized or allow	able costs exclude e	xpenditures for any of	the following: (i)
religious instruction	or recruitment; (ii) re	eal estate purchases;	(iii) lobbying or
Agenda Item Review:	City Administratorx_	City Attorneyx	Financex

political activities; (iv) costs for providing services outside of North Marion County; (v) indirect costs and overheard not readily assignable to Project Services; and (vi) any activity prohibited by state, federal, or local law or rule.

DISCUSSION/ FINANCIAL IMPACT:

The proposed use of the ARPA funding is to support the Woodburn Area Chamber of Commerce's operation of the Woodburn Business Resource Center where business services, assistance, and referrals will be provided. ARPA funding will be applied towards the monthly rent of the Resource Center office space located at 1755 Mt. Hood Avenue-Suite 120, Woodburn, OR as well as staffing for the operation of the Center.

ARPA funds have been approved and are included in the adopted FY 2022-23 budget. The effective date of this Agreement with Woodburn Area Chamber of Commerce is as of the day and year specified the Agreement is executed through July 31, 2024.

The total FY 2022-23 fiscal impact of the proposed Agreement is twenty-five thousand dollars (\$25,000).

CITY OF WOODBURN ARPA FUNDED BUSINESS SERVICES GRANT AGREEMENT WOODBURN AREA CHAMBER OF COMMERCE – WOODBURN BUSINESS RESOURCE CENTER

THIS ARPA Funded Social Services Grant Agreement ("Agreement"), dated this	_ day of
, 2022 ("Effective Date"), is made and entered into by and between the Ci	ty of
Woodburn, an Oregon municipal corporation (the "City"), and the Woodburn Chamber of Comr	nerce, an
Oregon nonprofit corporation ("Grantee") (together the "Parties").	

BACKGROUND

- A. The American Rescue Plan Act ("ARPA") is expected to provide the City with local fiscal recovery funds in the amount of approximately \$5.8 million over the next two years. In October 2021, the City authorized the expenditure of ARPA funds to provide economic support for local nonprofit organizations, including funds for Grantee.
- B. The City has identified Grantee as a regional nonprofit organization that is an essential partner in providing vital business services in Woodburn, especially as the needs of the community have grown as a result of the COVID-19 pandemic; and Grantee itself has been financially and operationally harmed as a result of the impact of the pandemic.
- C. Specifically, Grantee provides assistance and services to area businesses through the Woodburn Business Center.
- D. The City desires to provide financial support for Grantee for the establishment of the Woodburn Business Resource Center in order to provide services, assistance and referrals to area businesses in the amount of twenty-five thousand dollars (\$25,000).
- E. This Agreement provides for the terms and conditions under which Grantee shall receive and may expend the identified grant funding.

THE PARTIES AGREE AS FOLLOWS:

AGREEMENT

- 1. <u>Purpose</u>. The purpose of the grant funding is to support Grantee's operation of the Woodburn Business Resource Center where business services, assistance, and referrals will be provided ("Project Services"). ARPA funding will be applied towards the monthly rent of the Resource Center office space located at 1755 Mt. Hood Avenue-Suite 120, Woodburn, OR as well as staffing for the operation of the Center.
- 2. <u>Effective Date & Duration</u>. The Effective Date of this Agreement is as of the day and year specified above, and unless extended or terminated earlier in accordance with its terms, will expire on June 30, 2024.

3. **Grant Funding.**

- 3.1. <u>Grant Amount</u>. In accordance with the terms and conditions of this Agreement, the City shall provide Grantee with twenty-five thousand 0/100 dollars (\$25,000) ("Grant Funds") to carry out the identified Project Services. The City shall disburse the Grant Funds from monies available through its federal ARPA funding.
- 3.2. <u>Disbursement Schedule</u>. The City shall allocate and distribute the Grant Funds to Grantee pursuant to the following schedule:

Funding Cycle	Issuance Date	Total Funds
FY 2022-2023	Within 30 days of Effective Date	\$25,000

^{*}FY means the City's fiscal year that runs from July 1st – June 30th of the following calendar year.

3.3. <u>Disbursement Generally</u>. The City shall disburse Grant Funds to Grantee for the allowable Project Services that are undertaken during the Term of this Agreement, subject to the availability of sufficient moneys in and from the ARPA funding source. Grantee agrees that it shall provide to the City any information or detail regarding the expenditure of Grant Funds prior to future disbursements or as the City may request.

4. <u>Conditions of Funding.</u>

4.1. <u>Project Activities</u>. Grantee is a nonprofit organization that serves as a resource to Woodburn area businesses providing services and referrals for business assistance and development. The Grantee has been operating out of a single office located in the Woodburn City Hall however the increased demand for business services provided an opportunity for the Grantee to establish the Business Resource Center and expand current services, program and resources offered. It is the expectation of the City that Grantee shall utilize the Grant Funds to facilitate and support the Woodburn Business Resource Center to provide expanded Project Services.

Once open and operational (on or before September 1, 2022), it is expected that Grantee shall provide access and staffing for Project Services at the Woodburn Business Resource Center location a minimum of 3 days per week - 5 hours per day, with the Parties' understanding that Grantee will increase its level of Project Services to meet the needs of area businesses.

- 4.2. <u>Annual Project Work Plans</u>. On or prior to August 8, 2022, and again on or prior to July 1, 2023, Grantee shall submit to the City a Project Work Plan that outlines Grantee's proposed project activities for the following year. The work plan should include, at a minimum, a proposed budget plan for expenditure of the Grant Funding, a program staffing plan for the Woodburn Business Resource Center facility, and any performance targets or goals for the upcoming year.
- 4.3. <u>Eligible Use of Grant Funds</u>. In providing Project Services under this Agreement, Grantee may use and expend Grant Funds for the following costs/purposes: (i) Woodburn Business Resource Center facility rent; and (ii) staffing to ensure access to Center by businesses and resource providers.

Authorized or allowable costs exclude expenditures for any of the following: (i) religious instruction or recruitment; (ii) real estate purchases; (iii) lobbying or political activities; (iv) costs for providing services outside of North Marion County; (v) indirect costs and overheard not readily assignable to Project Services; and (vi) any activity prohibited by state, federal, or local law or rule.

- 4.4. Reporting. Grantee shall submit recurring reports and updates to the City related to the Project Services as follows:
 - 4.4.1. <u>Bi-Annual.</u> Grantee shall submit to the City bi-annual expenditure and data reports that capture a summarized form of the Grant Fund expenditures of Grantee along with the service metric data for the Woodburn facility for the previous bi-annual period. Along with the bi-annual reports, Grantee shall also include, as necessary, a summary of any material modifications Grantee has made to either its proposed budget or operational plan that differs significantly from its submitted Annual Project Work Plan.
 - 4.4.2. <u>Annual</u>. Grantee shall submit a comprehensive annual report to the City that includes: (i) a narrative report that provides a description of activities, challenges, successes, and progress Grantee has made in providing Project Services in Woodburn; (ii) a data report that captures information such as level of business services, resources and referral made at the Woodburn facility; (iii) list of resource partners utilizing the facility; and (iv) an annual expenditure report that includes a complete accounting of Grant Fund expenditures for the previous year.
 - 4.4.3. Reporting Schedule. Grantee shall submit the bi-annual and annual reports as follows:

Year/Quarter	Reporting Period	Report Due Date
Y1 – Bi-Annual	August 8, 2022 to December 31, 2022	January 31, 2023
Y1 – Annual	Through June 30, 2023	July 31, 2023
Y2 – Bi-Annual	July 1, 2023 – December 31, 2023	January 31, 2024
Y2 – Annual	Through June 30, 2024	July 31, 2024

- 4.5. <u>Grant Administrator</u>. Grantee has identified its Executive Director as its designated grant administrator and primary point of contact for the City for matters related to this Agreement
- 5. <u>Grantee Representations & Warranties</u>. Grantee represents and warrants to the City that:
 - (a) Grantee is a non-profit entity duly organized and validly existing in the State of Oregon;
 - (b) Grantee has all necessary rights, powers, and authority under any organizational documents and under Oregon law to (i) execute this Grant; (ii) incur and perform its obligations under this Grant; and (iii) receive financing, including the Grant Funds for this Project Services; and

(c) There is no proceeding pending or threatened against Grantee before any court or governmental authority that if adversely determined would materially affect the ability of Grantee to carry out Project Services.

The representations and warranties set forth in this Section are in addition to, and not in lieu of, any other representations or warranties provided by Grantee.

6. Responsibilities of the City.

- 6.1. <u>ARPA Compliance</u>. The City retains responsibility for federal ARPA compliance requirements through the duration of this Agreement.
- 6.2. <u>Grant Administrator</u>. The City's Community Services Director shall be the City's designated grant administrator, coordinator, and primary point of contact for Grantee for matters related to this Agreement.

7. Default & Termination.

7.1. Default.

- 7.1.1. <u>Grantee</u>. Grantee will be in default under this Agreement upon the occurrence of any of the following events:
- (a) Grantee fails to use the Grant Funds for the intended purpose described in the Agreement or otherwise fails to perform, observe, or discharge any of its covenants, agreements, or obligations under this Agreement;
- (b) Any representation, warranty, or statement made by Grantee in this Agreement or in any documents relied upon by the City in issuing the Grant Funding is untrue in any material respect when made; or
- (c) A petition, proceeding or case is filed by or against Grantee under any federal or state bankruptcy, insolvency, receivership or other law relating to reorganization, liquidation, dissolution, winding up or adjustment of debts; in the case of a petition filed against Grantee, Grantee acquiesces to such petition or such petition is not dismissed within 20 calendar days after such filing, or such dismissal is not final or is subject to appeal; or Grantee becomes insolvent or admits its inability to pay its debts as they become due, or Grantee makes an assignment for the benefit of its creditors.
- 7.1.2. <u>City</u>. The City will be in default under this Agreement if, after 30 days written notice specifying the nature of the default, the City fails to perform, observe, or discharge any of its covenants, agreements, or obligations under this Agreement; provided, however, the City will not be in default should the City fail to disburse Grant Funds because there is insufficient expenditure authority for, or moneys available from the ARPA funding source.

7.2. Remedies.

- 7.2.1. <u>City Remedies</u>. In the event Grantee is in default under Section 7.1.1, the City may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (i) termination of this Agreement under Section 7.3; (ii) reducing or withholding payment of Grant Funds; (iii) requiring Grantee to complete, at Grantee's expense, additional activities necessary to satisfy its obligations or meet performance standards under this Agreement; (iv) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief; (v) exercise of its right of recovery of overpayments under Section 7.4; or (vi) declaring Grantee ineligible for the receipt of future awards from the City. These remedies are cumulative to the extent the remedies are not inconsistent, and the City may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.
- 7.2.2. <u>Grantee Remedies</u>. In the event the City is in default under Section 7.1.2 and whether or not Grantee elects to terminate this Agreement, Grantee's sole monetary remedy will be, within any limits set forth in this Agreement, the pro-rated amount of Grant Funds owing to Grantee through the date of termination, less any claims the City has against Grantee. In no event will the City be liable to Grantee for any expenses, direct, indirect, consequential or otherwise related to termination of this Agreement.

7.3. <u>Termination</u>.

- 7.3.1. <u>Mutual</u>. This Agreement may be terminated at any time by the mutual written consent of the Parties.
- 7.3.2. By the City. The City may terminate this Agreement as follows:
 - (a) At the City's discretion, upon 30 days advanced written notice to Grantee prior to the following fiscal year funding schedule (i.e., 30 days prior to July 1st);
 - (b) Immediately upon written notice to Grantee should the City fail to receive funding or appropriations or other expenditure authority at levels sufficient in the City's reasonable administrative discretion to perform its obligations under this Agreement;
 - (c) Immediately upon written notice to Grantee, if federal or state laws, rules, regulations, or ARPA guidelines are modified or interpreted in such a way that the City's performance under this Agreement is prohibited or the City is prohibited from funding this grant from the ARPA funding source; or
 - (d) Immediately upon written notice to Grantee, if Grantee is in default under this Agreement and such default remains uncured for 30 days after written notice is provided to Grantee.

- 7.3.3. <u>By Grantee</u>. Grantee may terminate this Agreement as follows:
 - (a) At Grantee's discretion, upon 90 days advanced written notice to the City prior to the following fiscal year funding schedule (i.e., 90 days prior to July 1st);
 - (b) Immediately upon written notice to the City, if the City is in default under this Agreement and such default remains uncured for 30 days after written notice is provided to the City.
- 7.4. Recovery of Grant Funds. Grantee must return to the City, within 30 days of City's written demand: (i) any Grant Funds paid to Grantee that exceed the amount to which Grantee is entitled under this Agreement; (ii) any Grant Funds received by Grantee that remain unexpended or contractually committed for Project Services by December 31, 2024; or (iii) any Grant Funds determined by the City to be expended for purposes other than allowable Grant Fund Expenditures under Section 4.
- 8. <u>Non-Discrimination</u>. Grantee shall provide access to its services on a basis that does not discriminate against any person on the basis of the person's race, color, sex, sexual orientation, religion, ethnicity, national origin, age, disability, familial status, marital status, gender identity, source of income, veteran status, or membership in any other protected class under state or federal law.
- 9. <u>Limitation of Liability</u>. Grantee shall take all necessary precautions and shall be responsible for the safety of its employees, volunteers, agents, and subcontractors in the performance of all services provided under this Agreement. The City shall not be liable for injury, damage, or loss suffered by Grantee, its employees, volunteers, agents, and subcontractors, not otherwise caused by the intentional acts of the City, its agents, employees, or contractors.
- 10. <u>Indemnification</u>. Grantee shall defend, indemnify, and hold the City, its officers, officials, employees, agents, and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out of or in connection with Grantee's performance and activities under this Agreement, except for that portion of the injuries and damages caused by the intentional acts of the City.
- 11. <u>Insurance</u>. Grantee shall ensure that the following insurance is procured and maintained for the duration of this Agreement in the types and amounts described as follows:
 - 11.1. <u>Workers' Compensation Insurance</u>. Workers' Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers (contractors with one or more employees, and as defined by ORS 656.027).
 - 11.2. <u>General Liability Insurance</u>. Commercial General Liability Insurance with coverage written on a per occurrence basis, in adequate quantity to protect against legal liability arising out of the Project Services, but no less than \$1,000,000 each occurrence. It shall include contractual liability coverage for the indemnity provided under this Agreement. It shall also provide that the City of Woodburn and its officers, agents, and employees are Additional Insureds but only with respect to Grantee's activities and services to be provided under this Agreement.

- 11.3. <u>Notice of cancellation or change</u>. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days written notice from Grantee or its insurer(s) to the City.
- 11.4. <u>Certificates of insurance</u>. As evidence of the insurance coverages required by this Agreement, Grantee shall have on file and furnish upon request acceptable insurance certificates to the City prior to commencing the work. The certificate will specify all of the parties who are Additional Insureds. If requested, complete policy copies shall be provided to the City. Grantee shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.
- 12. <u>Relationship of the Parties</u>. Nothing in this Agreement is intended, or is to be deemed to create a partnership or joint venture between the Parties. Grantee shall at no time hold itself out as a subsidiary or affiliate of the City. Further, nothing contained herein shall be deemed or construed by the Parties, nor by any third parties, as creating a relationship between the City and any officers, employees, volunteers, suppliers, contractors, or subcontractors used by Grantee to carry out any activities under this Agreement.
- 13. <u>Subcontracts and Assignment; Successors and Assigns</u>. City has selected Grantee based on its reputation and specialized expertise. Grantee shall not enter into any subcontracts for any of the activities required by this Agreement, or assign or transfer any of its interest in this Agreement without City's prior written consent.

The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns, if any.

14. <u>No Third Party Beneficiaries</u>. The City and Grantee are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

15. Miscellaneous.

- 15.1. <u>Compliance with Applicable Law.</u> Grantee shall comply with all federal, state and local laws, regulations, and ordinances applicable to this Agreement or to Grantee's obligations under this Agreement, as those laws, regulations and ordinances may be adopted or amended from time to time.
- 15.2. Records. Grantee must maintain all financial records relating to this grant Agreement in accordance with generally accepted accounting principles. In addition, Grantee must maintain any other records, whether in paper, electronic or other form, pertinent to this Agreement in such a manner as to clearly document Grantee's performance. All financial records and other records, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Grantee acknowledges and agrees the City and the federal government and their duly authorized representatives will have access to all Records to perform

examinations and audits and make excerpts and transcripts. Grantee must retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

- 15.3. <u>Force Majeure</u>. Neither the City, nor Grantee shall be held responsible for delay or default caused by fire, riot, acts of God, or war where such cause was beyond the reasonable control of the City or Grantee, respectively. Grantee shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- 15.4. <u>Notices</u>. Any notice under this Agreement must be in writing and will be effective when actually delivered in person or three (3) days after being deposited in the U.S. mail, registered or certified, postage prepaid and addressed to the party at the address stated in this Agreement or such other address as either party may designate by written notice to the other. Mailing addresses for the parties are as follows:
 - (a) <u>The City</u>. City Administrator, City of Woodburn, 270 Montgomery Street, Woodburn, Oregon 97071.
 - (b) <u>Grantee</u>. <u>Executive Director, Woodburn Area Chamber of Commerce,</u> <u>PO Box 194, Woodburn OR 97071</u>
- 15.5. <u>Severability</u>. The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
- 15.6. <u>Governing Law; Venue; Consent to Jurisdiction</u>. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the City and Grantee that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. Grantee hereby agrees to the in personam jurisdiction of such court and waives any claims of an inconvenience forum.
- 15.7. Merger Clause; Waiver. This Agreement constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of the City to enforce any provision of this Agreement shall not constitute a waiver by the City of that or any other provision.

CITY OF WOODBURN, an Oregon municipal corporation	WOODBURN AREA CHAMBER OF COMMERCE, an Oregon nonprofit corporation
Scott Derickson, City Administrator	By: John Zobrist Title: Executive Director
Date	Date

The Parties have executed this Agreement effective as of the day and year specified above.



Agenda Item

August 8, 2022

TO: Honorable Mayor and City Council

FROM: Curtis Stultz, Public Works Operations Director

SUBJECT: Cooperative Improvement Agreement for the Construction of the

OR 219/Butteville Road Roundabout

RECOMMENDATION:

Approve the Cooperative Improvement Agreement (CIA) No. 73000-00004669 ("the Cooperative Agreement") with the State of Oregon through the Oregon Department of Transportation (ODOT) and TC Woodburn Development, LLC, for the Butteville Road realignment and roundabout at OR 219 and Butteville Road, and authorize the City Administrator to sign and execute said agreement.

BACKGROUND:

TC Woodburn Development, LLC, is the developer responsible for constructing the new Amazon e-commerce distribution center located along Butteville Road, south of OR 219 in Woodburn. In September of 2021, the City approved Developer's application to build this facility, conditioned upon the developer constructing a number of roadway improvements in the surrounding area.

The subject of the Cooperative Agreement results from the Amazon construction improvements that must be made to the Hillsboro-Silverton Highway (OR-219), the new Butteville Road re-alinement, and adjustments to Willow Ave. and Woodland Ave. The plan for the new alignment of Butteville and the closure of the existing connection to OR-219 made it necessary for the developer to construct a new Roundabout intersection to address much needed safety concerns and expected increases to traffic flows to this area of Woodburn.

The new Butteville re-alinement will become part of the Woodburn Street System. The new Roundabout will be under the jurisdiction and control of ODOT.

DISCUSSION:

The primary purpose of the CIA is to address the roadway improvements outlined in the conditions of the land use action approved by the City, including those

Agenda Item Review: City Administrator __x_ City Attorney __x_ Finance _x_

involving reconstruction of Butteville Road to close the current intersection with OR 219, construction of a new roundabout farther east connecting back into OR 219, new signing and striping at OR 219 and Woodland Avenue, and widening the southbound off-ramp from I-5 to OR 219. The CIA also covers details regarding land realignment; traffic improvements including construction of the roundabout, installation of bike lanes, construction of sidewalks, striping, sign installation, sign relocation; construction of a new storm detention and water quality facility; installation of illumination; installation of landscaping elements; and property dedication for highway right of way purposes.

All components of the project described above will be designed and constructed by the Developer and will be financed entirely by the Developer at an estimated cost of \$6,886050.

By entering into the CIA, the City will be agreeing to the future maintenance of all landscaping within the Roundabout. This also includes irrigation maintenance and repair, and city water supplied for irrigation. The City will also be responsible for all maintenance and cost of illumination for the roundabout.

FINANCIAL IMPACT:

Additional costs to maintain the Roundabout are not know at this time, but information will be gathered during the construction process to help incorporate any updates necessary for the 20023-24 budget and future budget years.

Future City costs will include forecasted illumination costs; maintenance hours needed for landscaping and general repair due to repairs from weather, vehicle damage and routine maintenance activities. The goal is maintain the area in a cost effective manner while still keeping the area aesthetically pleasing to our community.

COOPERATIVE IMPROVEMENT AGREEMENT Butteville Road Realignment and Roundabout OR 219 at Butteville Road City of Woodburn, TC Woodburn Development, LLC

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State" or "ODOT"; the CITY OF WOODBURN, acting by and through its elected officials, hereinafter referred to as "Agency" or "City;" and TC WOODBURN DEVELOPMENT, LLC a private party, hereinafter referred to as "Developer," all herein referred to individually or collectively as "Party" or "Parties."

RECITALS

- 1. Pacific Highway (Interstate 5 / I-5) and Hillsboro-Silverton Highway (OR 219) are a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). Butteville Road is currently a part of the Marion County road system under the jurisdiction and control of Marion County. Willow Avenue, Woodland Avenue, and are a part of the City of Woodburn street system under the jurisdiction and control of the City of Woodburn. The future realigned portion of Butteville Road to be constructed as part of the project will be made a part of the City of Woodburn street system under the jurisdiction and control of the City of Woodburn.
- 2. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities, and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
- 3. State, by ORS 366.220, is vested with complete jurisdiction and control over the roadways of other jurisdictions taken for state highway purposes. By the authority granted by ORS 373.020, the jurisdiction extends from curb to curb, or, if there is no regular established curb, then control extends over such portion of the right of way as may be utilized by State for highway purposes. Responsibility for and jurisdiction over all other portions of streets remain with Agency or Developer.
- 4. By the authority granted in ORS <u>366.425</u>, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.
- 5. By the authority granted in ORS <u>810.080</u> State has the authority to establish marked pedestrian crosswalks on its highway facilities.
- 6. By the authority granted in ORS 810.210, State is authorized to determine the character or type of traffic control devices to be used, and to place or erect them upon state highways at places where State deems necessary for the safe and expeditious control of traffic. No traffic

- control devices shall be erected, maintained, or operated upon any state highway by any authority other than State, except with its written approval. Traffic signal work on this Project will conform to the current State standards and specifications.
- 7. Developer is constructing a five-story, 3.8 million square foot e-commerce distribution center located along Butteville Road, south of OR 219 in Woodburn, Oregon. On September 9, 2021, Agency conditionally approved Developer's application Design Review 21-07 to construct this Amazon distribution facility ("Facility").
- 8. Amazon.com Services LLC, a Delaware limited liability company ("Amazon") is the owner of the Facility being constructed by Developer pursuant to an engagement between Amazon and Developer, and the Project (as defined below) is within the scope of the Facility.
- 9. Through review of Developer's plans and confirmation from State regarding the closure of the existing Butteville Road, Marion County as of September 21, 2021 has provided the necessary approvals for the closure of Butteville road at its current location.
- 10. This Agreement addresses the roadway improvements outlined in the conditions of the land use action approved by Agency, and involves reconstruction of Butteville Road to close the current intersection with OR 219, construction of a new roundabout farther east connecting back into OR 219, new signing and striping at OR 219 and Woodland Avenue, and widening the southbound off-ramp from I-5 to OR 219.
- 11. This Agreement covers lane realignment; traffic improvements including construction of the roundabout, installation of bike lanes, construction of sidewalks, striping, sign installation, sign relocation; construction of a new storm detention and water quality facility; installation of illumination; installation of landscaping elements; and property dedication for highway right of way purposes.
- 12. Agency is a recipient of an Immediate Opportunity Fund award which will fund some project activities.
- 13. Developer shall be responsible for the construction of the project identified below in Terms of Agreement, Paragraph 1. Developer is responsible for funding the project.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

- Under such authority, State, Agency, and Developer agree that Developer shall design and construct improvements to OR 219 from approximately Mile Post (MP) 36.02 to 36.15, and improvements to Interstate 5 from approximately MP 272.17 to 272.32, including but not limited to:
 - a. Closing the existing Butteville Road connection to OR 219 at MP 36.02 and reconstruct Butteville Road to connect near MP 36.15
 - b. Constructing guardrail to connect with existing guardrail on OR 219 at the existing Butteville Road intersection
 - c. Constructing roundabout at new Butteville Road intersection with OR 219

- ("Roundabout")
- d. Constructing bike lanes along OR 219 within the Project limits
- e. Constructing sidewalks around entire Roundabout with ramps and crossings at all splitter islands. Construct transition ramps back to the shoulder of OR 219 west of the Roundabout. Tie in new sidewalks with existing sidewalks east of the Roundabout
- f. Installing irrigation and landscaping in the center of the Roundabout and in planter strips between curb and sidewalk
- g. Installing illumination on OR 219 within the Project limits
- h. Constructing storm detention and water quality facility immediately southwest of the Roundabout
- i. Constructing Americans with Disabilities Act (ADA) compliant curb ramp improvements on all four corners of the intersection with Willow Avenue
- j. Installing pedestrian-activated rectangular rapid flashing beacons (RRFB) at the following locations:
 - i. Southbound Butteville Road exiting the Roundabout
 - ii. Northbound Butteville Road entering the Roundabout
 - iii. Eastbound OR 219 exiting the Roundabout
 - iv. Westbound OR 219 entering the Roundabout
- k. Installing signage and pavement striping throughout the Project limits
- I. Installing a welcome sign within the Roundabout
- m. Widening the I-5 southbound off-ramp, Exit 271, from one lane to three lanes beginning at MP 272.17 and extending to MP 272.32
- n. Modify the intersection of OR 219 and Woodland Avenue with signing and striping to allow eastbound U-turns

Collectively, these activities shall hereinafter be referred to as "Project." The location of the Project is approximately as shown on the maps or diagrams attached hereto, marked Exhibits A, B, and C, and by this reference made a part hereof.

- 2. Developer shall be responsible for technical inspection of all construction work on all proposed highway facilities. Due to the complexity of the Project and the accelerated timeline ODOT has requested to contract a consultant engineering firm through the State's Contract Administration and Construction Engineering Inspection ("CA/CEI") Price Agreements program to perform this inspection work. Costs incurred by the State will be documented and charged to the Developer. Developer shall pay \$175,000 to ODOT as an initial deposit upon execution of this Agreement and receipt of a letter of request from ODOT. Total consultant inspector costs may exceed the initial deposit amount. Developer will be billed for all consultant inspector costs over and above the initial deposit.
- 3. The Project will be financed entirely by Developer with Developer funds at an estimated cost of \$6,886,050, which includes Developer's \$175,000 advance deposit for CA/CEI services. The estimate for the total Project cost is subject to change. Developer shall be responsible for all Project costs beyond the estimate.
- 4. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance and power responsibilities for the useful life of the facilities constructed as part of the Project. The useful life is defined as

twenty (20) calendar years. The Project shall be completed within five (5) calendar years following the date of final execution of this Agreement by all Parties.

AGENCY OBLIGATIONS

- 1. Agency shall be responsible for the maintenance of Butteville Road south of the Roundabout, beginning at a point approximately 350 feet south of the Roundabout.
- 2. Agency shall be responsible for the maintenance of landscaping and irrigation installed in and around the Roundabout.
- 3. Agency shall be responsible for the maintenance of and all power costs associated with illumination on OR 219
- 4. Americans with Disabilities Act Compliance.
 - a. Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Agency ensuring that:
 - i. Pedestrian access is maintained as required by the ADA,
 - ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed.
 - iii. Agency, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered,
 - iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
 - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
 - b. This Paragraph 5 shall survive expiration or termination of this Agreement.
- 5. Agency shall obtain a miscellaneous permit from State's District 3 Office prior to preparation and construction of any feature installed in the Roundabout, and agrees to comply with all provisions of said permit. In the event of a conflict between this Agreement and any permits issued by ODOT, this Agreement will control. The installation and maintenance of any feature in the Roundabout is the responsibility of Agency and shall be performed at Agency's expense.
- 6. Agency, by execution of Agreement, gives its consent as required by ORS 373.050(1) to any and all closure of streets that intersect the state highway, if any there be in connection

- with or arising out of the Project covered by the Agreement.
- 7. Agency grants Parties the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.
- 8. Agency shall not issue to Developer a Final Certificate of Occupancy until Project improvements are substantially completed and Agency verifies the Project is accepted by State.
- 9. If Agency enters into a contract for performance of work under this Agreement, Agency agrees to comply with the following:

a. Contracts:

- i. All contracts must be in writing, executed by Agency, and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the contract. Use of a contract does not relieve Agency of its responsibilities under this Agreement.
- ii. Agency shall require all of its contractors performing work under this Agreement to name State as a third-party beneficiary of the resulting contract with the contractor.
- iii. Agency shall provide State with a copy of any signed contract upon request by State. This paragraph 10.a.iii shall survive expiration or termination of this Agreement.
- iv. Agency must report to State any material breach of a term or condition of a contract within ten (10) days of Agency discovering the breach.

b. Contract Indemnification:

- i. To the fullest extent permitted by law, and except to the extent otherwise void under ORS 30.140, Agency shall require each of its contractors that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, the Oregon Transportation Commission, and the Oregon Department of Transportation, Developer, and Developer's contractors, and their respective officers, members, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever (hereinafter, referred to individually and collectively as "Claims") to the extent such Claims result from, arise out of, or relate to the activities or omissions of Agency's contractor, subcontractor(s), or their respective officers, employees, or agents under the resulting contract or otherwise related to the Project.
 - ii. Any such indemnification shall also provide that Agency's contractor shall ensure that neither Agency's contractor(s) or its subcontractor(s) nor any attorney engaged by any Agency contractor or subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election assume its own defense and settlement in the event that it determines that any Agency contractor or subcontractor is prohibited from defending the State of

Oregon, or that any Agency contractor or subcontractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor(s) and subcontractor(s) if the State of Oregon elects to assume its own defense.

c. Contract Insurance:

- i. Agency shall require the other party or parties to each of its contracts, that are not units of local government as defined in ORS 190.003, to meet the minimum insurance requirements provided in Exhibit E, attached hereto and by this reference made a part hereof.
- ii. Agency shall perform a risk assessment for the work to be performed under its contract(s) and determine insurance types and amounts as appropriate based on the risk of the work outlined within each contract, and shall require its contractor(s) to carry such insurance, except that the required insurance types and amounts may not be less than those identified in Exhibit E. Agency may specify insurance requirements for its contractor(s) above the minimum insurance requirements specified in Exhibit E.
- iii. Agency shall obtain proof of the required insurance coverages, as applicable, from any contractor it hired to provide services related to the contract.
- iv. Agency shall require its contractor(s) to require and verify that all subcontractors carry insurance coverage that the contractor(s) deems appropriate based on the risk of the subcontracted work.
- d. Agency shall include provisions in each of its contracts requiring its contractors to comply with the indemnification and insurance requirements in subparagraphs b and c of this AGENCY OBLIGATIONS, Paragraph 10.

10. CONTRIBUTION AND DISPUTE RESOLUTION BETWEEN ODOT AND AGENCY:

This Paragraph 11 applies only between State and City, and shall survive the termination of this Agreement.

- a. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or City with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
- b. With respect to a Third Party Claim for which State is jointly liable with City(or would be

if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by City in such proportion as is appropriate to reflect the relative fault of State on the one hand and of City on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of City on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.

- c. With respect to a Third Party Claim for which City is jointly liable with State (or would be if joined in the Third Party Claim), City shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of City on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of City on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. City's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
- 11. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members, or representatives, and to legally bind Agency.
- 12. Agency's Project Manager for this Project is Curtis Stultz, Public Works Director, City of Woodburn; 270 Montgomery Street, Woodburn, Oregon 97071; 503-982-5268; Curtis.stultz@ci.woodburn.or.us, or assigned designee upon individual's absence. Agency shall notify the other Parties in writing of any contact information changes during the term of this Agreement.

DEVELOPER OBLIGATIONS

- Developer shall upon receipt of a fully executed copy of this Agreement, and upon a subsequent letter of request form State, forward to State an advance deposit in the amount of \$175,000 for CA/CEI services for the Project, said amount being equal to the estimated total cost for the work performed by State at Developer's request under Terms of Agreement, paragraph 2. Developer agrees to make additional deposits as needed upon request from State.
- 2. Upon completion of CA/CEI services for the Project and receipt from State of an itemized

statement of the actual total cost of State's participation for the CA/CEI services for the Project, Developer shall pay any amount which, when added to Developer's advance deposit, will equal 100 percent of actual total State costs for the CA/CEI services for the Project. Any portion of said advance deposit which is in excess of the State's total costs will be refunded or released to Developer.

- 3. Developer shall conduct the necessary field surveys, environmental studies, traffic investigations, preliminary engineering, and design work required to produce and provide final plans, specifications, and cost estimates for the Project; identify and obtain all required permits; perform all construction engineering, including all required materials testing and quality documentation; prepare all bid and contract documents; advertise for construction bid proposals; award all contracts; pay all contractor costs, provide technical inspection (other than inspections provided by State under State Obligations), project management services and other necessary functions for sole administration of the construction contract entered into for this Project.
- 4. Developer shall design and construct the Project in conformance with the current edition of the ODOT Highway Design Manual and the Oregon Standard Specifications for Construction in place when the applicable work is conducted. Developer understands the Project shall be designed and constructed to State standards and approved by State prior to advertisement for bid, or construction of Project by Developer.
- 5. Developer shall protect the Project area in accordance with the current edition of the *Manual on Uniform Traffic Control Devices* and the *Oregon Temporary Traffic Control Handbook* in place at the time the applicable work is conducted.
- 6. Developer shall be responsible and liable for (1) investigating presence/absence of any legally protected or regulated environmental resource(s) in the action area; (2) determining any and all restrictions or requirements that relate to the proposed actions, and complying with such, including but not limited to those related to hazardous material(s), water quality constraints, wetlands, archeological or historic resource(s) state and federal threatened or endangered species, etc., (3) complying with all federal, state, and local laws, and obtaining all required and necessary permits and approvals.
- 7. If Developer, or its contractors, impacts a legally protected/regulated resource, Developer shall be responsible for all costs associated with such impact, including, but not limited to all costs of mitigation and rehabilitation, and shall indemnify and hold State harmless for such impacts and be responsible and liable to the State for any associated costs for claims that State may have.
- 8. Developer shall notify the State District office at least three (3) business days prior to performing work within state highway right of way to coordinate the work under this Agreement with other work occurring on the state highway.
- 9. Developer shall not restrict travel on the roadway during normal commute times (6:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m.), holidays, or weekends (Friday 12:00 p.m. to Sunday 9:00 p.m.).

- 10. Americans with Disabilities Act Compliance.
 - i. <u>State Highway</u>: For portions of the Project located on or along the State Highway System or a State-owned facility ("state highway"):
 - i. Developer shall utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA"), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;
 - ii. Developer shall follow ODOT's processes for design, construction, or alteration of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;
 - iii. At Project completion, Developer shall complete and send applicable ODOT Curb Ramp Inspection Forms 734-5020A through 734-5020G, 734-5245A, and 734-5245B to the address on the form and to State's Project Manager for each curb ramp constructed or altered as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

https://www.oregon.gov/odot/About/Pages/AssetandInspection.aspx

- iv. Developer shall promptly notify ODOT of Project completion and allow ODOT to inspect Project sidewalks, curb ramps, and pedestrian-activated signals located on or along a state highway prior to acceptance of Project by Developer and prior to release of any Developer contractor.
- v. Developer shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. Developer shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, disability organizations, and ODOT at least 10 days prior to the start of construction.
- ii. <u>Local Roads</u>: For portions of the Project located on Agency roads or facilities that are not on or along a state highway:
 - Developer shall ensure that the Project, including all sidewalks, curb ramps, and pedestrian-activated signals, is designed and constructed in compliance with the ADA.
 - ii. Developer may follow Agency's processes or may use ODOT's processes for design, construction, or alteration of Project sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design

Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current Curb Ramp Inspection form, available at:

https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx

Additional ODOT resources are available at the above-identified link. ODOT has made its forms, processes, and resources available for Developer's use and convenience.

- iii. Developer assumes sole responsibility for ensuring that the Project complies with the ADA, including when Developer uses ODOT forms and processes. Developer acknowledges and agrees that ODOT is under no obligation to review or approve Project plans or inspect the completed Project to confirm ADA compliance.
- iv. Developer shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs and include accessibility features equal to or better than the features present in the existing pedestrian route. Developer shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations prior to the start of construction.
- 11. Developer shall require their contractor to submit a performance bond and payment bond to Developer for an amount equal to or greater than the estimated cost of the Project.
- 12. Developer shall require its contractor to name State as an additional or "dual" obligee on contractor's performance and payment bonds.
- 13. DEVELOPER SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY THE STATE OF OREGON, THE OREGON TRANSPORTATION COMMISSION AND ITS MEMBERS, THE DEPARTMENT OF TRANSPORTATION, AND THEIR RESPECTIVE OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES LIABILITIES, COSTS (INCLUDING ATTORNEYS' FEES) AND EXPENSES OF ANY NATURE WHATSOEVER RESULTING FROM OR ARISING OUT OF THE ACTS OR OMISSIONS OF DEVELOPER OR ITS CONTRACTORS OR THEIR RESPECTIVE AGENTS OR EMPLOYEES UNDER THE AGREEMENT. This Paragraph shall survive any expiration or termination of this Agreement.
- 14. Notwithstanding the foregoing defense obligations under the paragraph above, neither Developer nor any attorney engaged by Developer shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election assume its own defense and settlement in the event that it determines that Developer is prohibited from defending the State of Oregon, or that Developer is not adequately defending the State of Oregon's interests, or that an important governmental

principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against Developer if the State of Oregon elects to assume its own defense. This Paragraph shall survive any expiration or termination of this Agreement.

- 15. Developer shall meet the insurance requirements within Exhibit F, attached hereto and by this reference made a part hereof.
- 16. Developer shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, any applicable provisions of ORS 279A, 279B and 279C incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Developer expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142, as amended; (iv) section 306 of the Clean Air Act (42 U.S.C. 1857(h)); (v) section 508 of the Clean Water Act (33 U.S.C. 1368); (vi) Executive Order 11738; (vii) Environmental Protection Agency regulations (40 CFR part 15); (viii) the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Article 9601, et seg. (CERCLA); (ix) the Resource Conservation and Recovery Act, 42 U.S.C. Article 6901, et seg. (RCRA); (x) the Toxic Substances Control Act, 15 U.S.C. Article 2601, et seq. (ISCA); (xi) the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Article 136 et seq. (FIFRA); (xii) the Federal Water Pollution Control Act, 33 U.S.C. Article 1251, et seq. (Clean Water Act); (xiii) the Safe Drinking Water Act, 42 U.S.C. Article 300, et seq.; (xiv) the Solid Waste Disposal Act, 42 U.S.C. Article 6901, et seq.; (xv) the Emergency Planning and Community Right To Know Act, 42 U.S.C. Article 11001, et seq.; (xvi) Oregon Environmental Cleanup Laws, Oregon Revised Statutes (ORS) 466.005, et seq.; (xvii) Air and Water Pollution Control, ORS Chapters 459, 459A, 465, and 468; (xviii) all regulations and administrative rules established pursuant to the foregoing laws; and (xix) all other applicable requirements of federal and State civil rights and rehabilitation statutes, rules and regulations.
- 17. Developer is required to pay, on behalf of State, any applicable fee due because of this Project, pursuant to ORS 279C.825, to the Bureau of Labor and Industries. In the event Developer does not pay such fee, and State is required to do so, Developer shall reimburse State such amount, within three (3) business days, upon its request. In addition, Developer agrees to indemnify, hold harmless and reimburse State and its officers, employees and agents for any liability, cost, expense, fine, fee or penalty payable to a private party or governmental entity, including another agency of the State of Oregon resulting from or arising out of this Project, including but not limited to expenses incurred to comply with, to obtain a determination under, or in any other way related to the Prevailing Wage Rate Laws set forth in ORS 279C.800 to 279C.870.
- 18. Developer shall construct the Project in accordance with the applicable requirements of ORS 276.071 including the public contracting laws within ORS Chapters 279A, 279B, and 279C.
- 19. Developer is responsible for obtaining all property rights, land, and right of way necessary for the completion of the Project.
- 20. Upon completion of the Project, Developer shall dedicate to State right of way as approximately shown in Exhibit D, attached hereto and by this reference made a part hereof.

- 21. Developer shall assist State and Agency in obtaining rights for State and Agency to enter onto property owned by Amazon for the performance of duties as set forth in this Agreement, including but not limited to:
 - i. maintenance of the storm water management facility beyond the dedicated public drainage easement shown in Exhibit D;
 - ii. maintenance and clearing of debris in case of flooding or other emergency situations along Developer property encompassing the total area of the facility adjacent to OR 219.
- 22. If Developer chooses to assign its contracting responsibilities to a contractor, Developer shall inform the contractor of the requirements of ORS 276.071 to ensure that applicable public contracting laws within ORS 279A, 279B, and 279C are followed.
- 23. Developer shall, within ninety (90) calendar days of completion or termination without completion of the Project, provide to State permanent Mylar "as constructed" plans for work on state highways. If Developer or its consultant redrafts the plans, done in Computer Aided Design and Drafting (CADD) or MicroStation, to get the "as constructed" set, and they follow the most current version the "ODOT CAD Manual" of https://www.oregon.gov/odot/Engineering/Pages/Drafting.aspx and the "Contract Plans" Development Guide, Volume Chapter https://www.oregon.gov/odot/Engineering/CPDevelopmentGuide/v1-16.pdf. shall provide to State a Portable Document Format (PDF) file and a paper copy of the plan
- 24. Developer shall, pursuant to OAR Chapter 734, Division 10, ensure that its contractor has been prequalified and registered with the Construction Contractor's Board, to function as the general contractor for the performance of this work. All obligations of the Developer stated in this Agreement shall remain the responsibility of the Developer regardless of whether or not a contractor performs the work. It is the Developer's responsibility to inform any such contractor of its obligations.
- 25. This Agreement is conditioned upon Developer obtaining a "Permit to Occupy or Perform Operations upon a State Highway" from State's District 3 Office, and other required approvals, including but not limited to, land use permits, building permits, and engineering design review approval from State and Agency. In addition, Developer shall ensure that a utility permit issued by State's District 3 office is in place prior to installation of any utility service line installed in state highway right of way as part of the Project. Developer agrees to comply with all provisions of any permits, and shall require its contractors, subcontractors, or consultants performing such work to comply with all permits and provisions. In the event of a conflict between this Agreement and any permits issued by ODOT, this Agreement will control.
- 26. Developer shall, prior to its advertisement for construction bid proposals, provide the Project preliminary and final plans and specifications to State's District 3 Office for review and

- written concurrence. The plans and specifications must be approved by Office of the State Traffic Roadway Engineer. State's District 3 office shall coordinate all such review.
- 27. Plans are reviewed by State and State's approval of plans does not relieve Developer from completing the Project in a manner satisfactory to State. The State Project Manager may require field changes. When revisions are made in the field, Developer is responsible to provide "as constructed" drawings as described in Developer Obligations Paragraph 23.
- 28. Developer or its contractor shall follow Oregon Locate Laws (ORS 757 and OAR 952).
- 29. For all work being performed on State facilities, Developer shall cause the Project to be designed and constructed in accordance with State standards and shall, upon completion of the Project, release ownership of all traffic signal equipment to State.
- 30. Developer, or its contractor's electrical inspectors shall possess a current State Certified Traffic Signal Inspector certificate, in order to inspect electrical installations on State highways. The State District 3 Permitting Office shall verify compliance with this requirement prior to construction. Said inspectors must coordinate their traffic inspections with State District 3 and State electrical inspectors during the course of the Project.
- 31. Developer is responsible for and ensures that all survey monuments recorded with a county and within or adjacent to the highway right of way shall be preserved in accordance with ORS 209.140 and 209.150. Any such monumentation that is damaged or removed during the course of the Project must be replaced in compliance with ORS Chapter 209 stipulations, the State Right of Way Monumentation Policy, and at Developer's own expense. Developer is also responsible, at its own expense, for replacement of any additional State survey marks or other monumentation not recorded with a county that are damaged or removed during the course of the Project. In the event of such replacement, Developer shall contact the State Geometronics Unit for replacement procedures.
- 32. If additional right of way is acquired for State highway right of way purposes as a result of the Project, then a right of way monumentation survey is required as defined in ORS 209.150 and 209.155. Developer agrees to provide such a survey, at its own expense, following ORS Chapter 209 stipulations, State Right of Way Monumentation Policy, and State Geometronics Unit review and approval, and to file the legal survey with the appropriate county surveyor's office as required.
- 33. If Developer enters into a contract for performance of work under this Agreement, Developer agrees to comply with the following:

a. Contracts:

- i. All contracts must be in writing, executed by Developer, and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the contract. Use of a contract does not relieve Developer of its responsibilities under this Agreement.
- ii. Developer shall require all of its contractors performing work under this Agreement to name State as a third-party beneficiary of the resulting contract with the contractor

City of Woodburn/TC Woodburn Development, LLC/ODOT Agreement No. 73000-00004669

and to name the State as an additional or "dual" oblige on contractor's performance and payment bonds.

- iii. Developer shall provide State with a copy of any signed contract upon request by State. This paragraph 33.a.iii shall survive expiration or termination of this Agreement.
- iv. Developer must report to State any material breach of a term or condition of a contract within ten (10) days of Developer discovering the breach.

b. Contract Indemnification:

- i. To the fullest extent permitted by law, and except to the extent otherwise void under ORS 30.140, Developer shall require each of its contractors that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, the Oregon Transportation Commission, and the Oregon Department of Transportation and their respective officers, members, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever (hereinafter, referred to individually and collectively as "Claims") to the extent such Claims result from, arise out of, or relate to activities or omissions of Developer's contractor, subcontractor(s), or their respective officers, employees, or agents under the resulting contract or otherwise related to the Project.
- ii. Any such indemnification shall also provide that Developer's contractor shall ensure that neither Developer's contractor(s) or its subcontractor(s) nor any attorney engaged by any Developer contractor or subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election assume its own defense and settlement in the event that it determines that any Developer contractor or subcontractor is prohibited from defending the State of Oregon, or that any Developer contractor or subcontractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Developer's contractor(s) and subcontractor(s) if the State of Oregon elects to assume its own defense.

c. Contract Insurance:

- i. Developer shall require the other party or parties to each of its contracts, that are not units of local government as defined in ORS 190.003, to meet the minimum insurance requirements provided in Exhibit G, attached hereto and by this reference made a part hereof.
- ii. Developer shall perform a risk assessment for the work to be performed under its contract(s) and determine insurance types and amounts as appropriate based on the

risk of the work outlined within each contract, and shall require its contractor(s) to carry such insurance, except that the required insurance types and amounts may not be less than those identified in Exhibit G. Developer may specify insurance requirements for its contractor(s) above the minimum insurance requirements specified in Exhibit G.

- iii. Developer shall obtain proof of the required insurance coverages, as applicable, from any contractor it hired to provide services related to the contract.
- iv. Developer shall require its contractor(s) to require and verify that all subcontractors carry insurance coverage that the contractor(s) deems appropriate based on the risk of the subcontracted work.
- d. Developer shall include provisions in each of its contracts requiring its contractors to comply with the indemnification and insurance requirements in subparagraphs b and c of this DEVELOPER OBLIGATIONS, Paragraph 33.
- 34. In the event any portion of this Project affects railroad right of way, Developer shall be responsible for notifying the appropriate railroad company of the Project, the construction and approval of all required agreements, and for all costs associated with railroad related tasks identified above.
- 35. Developer certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Developer, under the direction or approval of its governing body, commission, board, officers, members, or representatives, and to legally bind Developer.
- 36. Developer's Project Manager for this Project is Tom Nieswander, Senior Vice President, Development Management, Trammell Crow Company, 1300 SW 5th Avenue, Suite 3350 Portland, Oregon 97201, 503-946-4971, tnieswander@trammellcrow.com, or assigned designee upon individual's absence. Developer shall notify the other Parties in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

- 1. State shall continue to maintain OR 219, with the exception of maintenance of illumination which is the responsibility of Agency.
- 2. State shall maintain ADA curb ramps to be installed at the intersection of OR 219 and Willow Avenue.
- 3. State shall be responsible for maintenance of the newly-constructed I-5 southbound offramp and a section of the new Butteville Road connection extending south 350 feet from the center of the Roundabout.
- 4. State shall be responsible for maintenance of signage on OR 219.
- 5. State shall be responsible for the maintenance of the improved stormwater management

facility.

- 6. State grants authority to Agency and Developer to enter upon State right of way for the construction of this Project as provided in this Agreement upon State approval of Project plans, in coordination with State District 3 office, and in accordance with the permit issued by State's District 3 office.
- 7. State shall review and approve all Project plans prior to construction by Developer, Agency, or their contractors.
- 8. State shall, upon execution of the Agreement, forward to Developer a letter of request for an advance deposit in the amount of \$175,000 for payment of CA/CEI services for the Project. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the CA/CEI services for the Project.
- 9. Upon completion of CA/CEI services for the Project, State shall either send to Developer a bill for the amount which, when added to Developer's advance deposit, will equal 100 percent of the total state costs for CA/CEI services for the Project or State will refund to Developer any portion of said advance deposit which is in excess of the total State costs for the CA/CEI services for the Project.
- 10. State's project manager for this Project is Casey Knecht, Development Review Coordinator; ODOT Region 2, 885 Airport Road SE, Building P, Salem, Oregon 97301; 503-986-5170; Casey.Knecht@odot.oregon.gov, or assigned designee upon individual's absence. State shall notify the other Parties in writing of any contact information changes during the term of this Agreement.
- 11. State's District 3 office contact for this Project is Cole Mullis, ODOT District 3 Manager; 885 Airport Road SE, Salem Oregon, 97301; 503-986-2867; Cole.F.Mullis@odot.oregon.gov, or assigned designee upon individual's absence. State shall notify the other Parties in writing of any contact information changes during the term of the Agreement.

GENERAL PROVISIONS

- 1. This Agreement may be terminated by mutual written consent of all Parties.
- 2. State may terminate this Agreement effective upon delivery of written notice to Agency and Developer, or at such later date as may be established by State, under any of the following conditions:
 - a. If Agency or Developer fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Agency or Developer fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.

- c. If Developer fails to provide payment of its share of the cost of the Project.
- d. If State fails to receive funding, appropriations, limitations, or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
- e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited, or State is prohibited from paying for such work from the planned funding source.
- 3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
- 4. Upon written consent by State, Developer may assign its rights and obligations under this Agreement to Amazon, or any of Amazon's affiliated companies. State's consent does not relieve Developer of any of its duties or obligations under this Agreement. This Agreement is binding upon and inures to the benefit of each of the Parties, and, except as otherwise provided, their permitted legal successors and assigns.
- 5. If Agency fails to maintain facilities in accordance with the terms of this Agreement, State, at its option, may maintain the facility and bill Agency, seek an injunction to enforce the duties and obligations of this Agreement, or take any other action allowed by law.
- 6. All employers, including Agency and Developer, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employer's Liability insurance with coverage limits of not less than \$500,000 must be included. Agency and Developer shall each ensure that each of its contractors complies with these requirements.
- 7. Agency and Developer shall perform the work under this Agreement as independent contractors and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
- 8. Agency and Developer acknowledge and agree that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency and Developer which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after completion of Project. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
- 9. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

City of Woodburn/TC Woodburn Development, LLC/ODOT Agreement No. 73000-00004669

- 10. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification, or change of terms of this Agreement shall bind either Party unless in writing and signed by all Parties and all necessary approvals have been obtained. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.
- 11. Electronic Signatures. The Parties agree that signatures showing on PDF documents, including but not limited to PDF copies of the Agreement and amendments, submitted or exchanged via email are "Electronic Signatures" under ORS Chapter 84 and bind the signing Party and are intended to be and can be relied upon by the Parties. State reserves the right at any time to require the submission of the hard copy originals of any documents

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

Signature Page to Follow

CITY OF WOODBURN, by and through its designated officials	STATE OF OREGON , by and through its Department of Transportation			
By Title:	By			
Date	Manager Date			
By Title:	APPROVAL RECOMMENDED			
Date	ByState Traffic Roadway Engineer			
LEGAL REVIEW APPROVAL (If required in Agency's process)	Date			
By Agency Counsel	By Region 2 Manager			
Date	Date			
Agency Contact: Chris Kerr, Community Development Director 270 Montgomery Street Woodburn, OR 97071 503-980-2445	APPROVED AS TO LEGAL SUFFICIENCY By Jennifer O'Brien Assistant Attorney General Date July 28, 2022			
Chris.Kerr@ci.woodburn.or.us TC WOODBURN DEVELOPMENT LLC, by and through its senior officers By Stur Wills President Date 8/1/2022	State Contact: Casey Knecht, P.E., Development Review Coordinator, ODOT – Region 2 885 Airport Road SE Salem, Oregon 97301 503-986-5170 Casey.Knecht@odot.oregon.gov			
BySteve Wells	<u>Developer Contact:</u> Tom Nieswander, Senior Vice			
Date LEGAL REVIEW APPROVAL (If required in Developer's process)	President, Development Management Trammell Crow Company 1300 SW 5 th Avenue, Suite 3350 Portland, Oregon 97201 503-946-4971 tnieswander@trammellcrow.com			
By Developer's Counsel				

EXHIBIT A
Project Limits

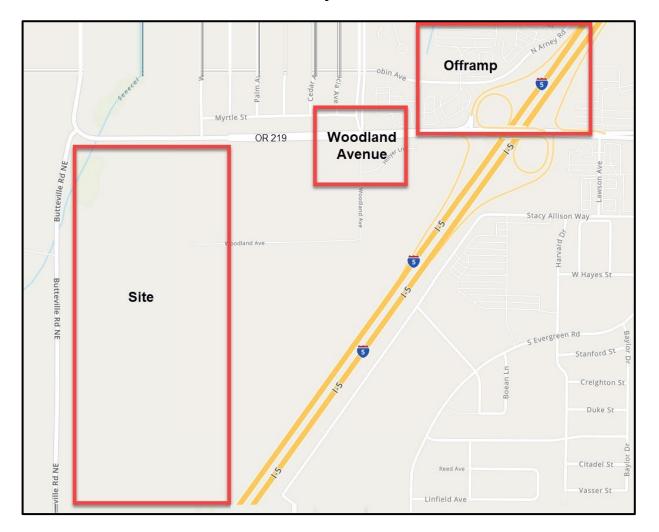


EXHIBIT B

Current Alignment of Butteville Road, OR-219, and Willow Avenue



EXHIBIT C
Development Site Plan

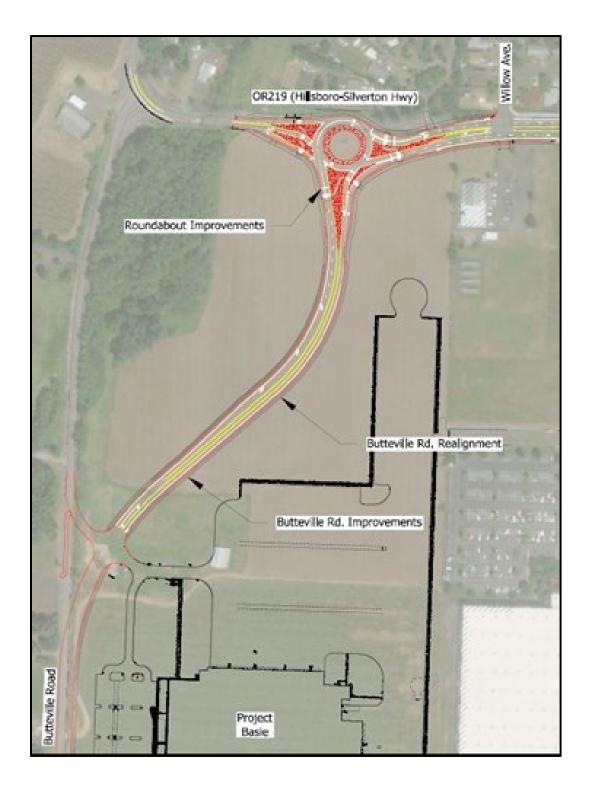


EXHIBIT C, Cont.

Development Site Plan

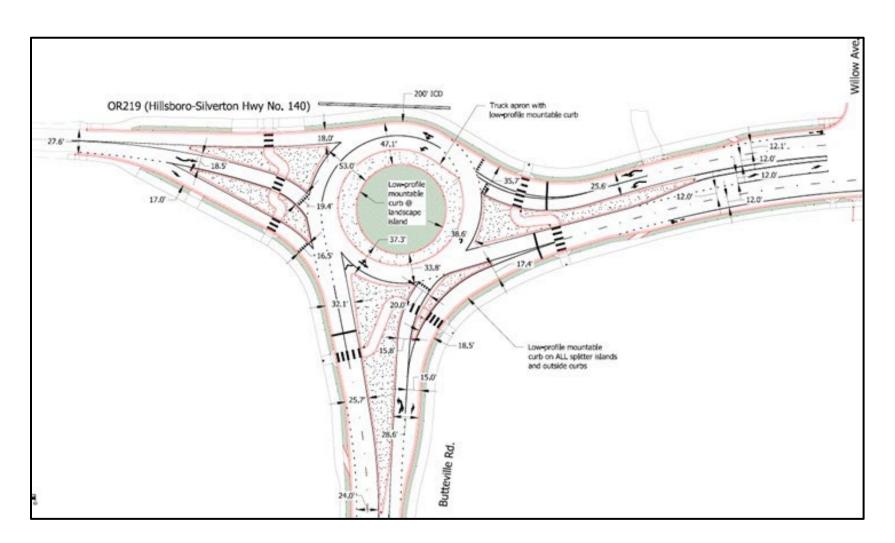


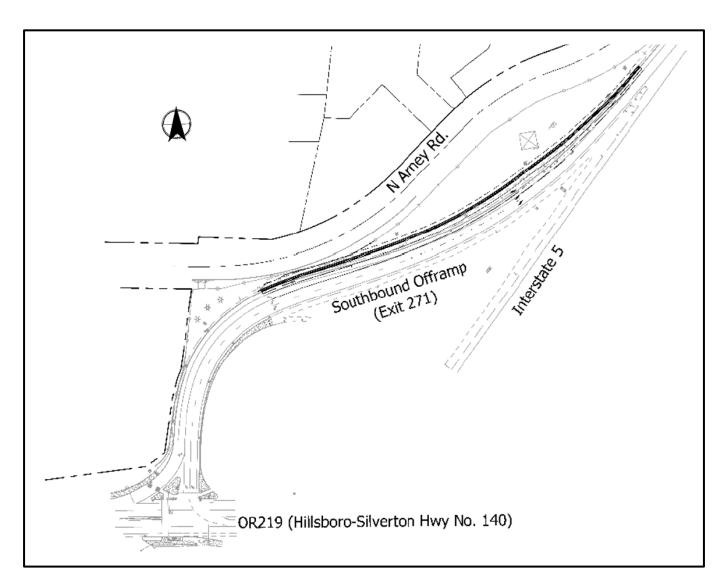
EXHIBIT C, Cont.

Development Site Plan



EXHIBIT C, Cont.

Development Site Plan



Right of Way Dedication Willow Ave. OR219 Hillsboro-Silverton Hwy No. 140 Donated ODOT Right-of-Way 0.17± Acres Butteville Rd. Dedicated Public Utility Easement Dedicated Public Drainage Easement Dedicated ODOT Right-of-Way 2.19± Acres TL 5S2W11 00400 TL 5S2W11 00200 Approximate Limits of ODOT Jurisdiction ODOT Right-of-Way Dedication Exhibit

Exhibit D

EXHIBIT E

Agency Contract Insurance Requirements

1. GENERAL.

- a. Agency shall require, in its contracts with entities that are not units of local government as defined in ORS 190.003 (if any), that its contractors: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements ADDITIONAL INSURED, "TAIL" COVERAGE. CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the contract commences, and ii) maintain the insurance in full force throughout the duration of the contract. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Agency. Agency shall not authorize work to begin under the contract until the insurance is in full force. Thereafter, Agency shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Agency shall incorporate appropriate provisions in the contract permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Agency permit work under a contract when Agency is aware that the contractor is not in compliance with the insurance requirements. All references to "contractor" in this Exhibit E refer to Agency's contractor as identified in this Paragraph 1.a.
- b. The insurance specified below is a minimum requirement that Agency shall require its contractor to meet, and shall include such requirement in Agency's contract with its contractor. Agency may determine insurance types and amounts in excess of the minimum requirement as deemed appropriate based on the risks of the work outlined within the contract.
- c. Agency shall require each of its contractors to require that all of its subcontractors carry insurance coverage that the contractor deems appropriate based on the risks of the subcontracted work. Contractor shall obtain proof of the required insurance coverages, as applicable, from any subcontractor providing services related to the Contract.

2. TYPES AND AMOUNTS.

a. WORKERS COMPENSATION.

All employers, including Agency's contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide **Workers' Compensation Insurance** coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). The coverage shall include Employer's Liability Insurance with limits not less than \$500,000 each accident. **Contractor shall require compliance with these requirements in each of its subcontractor contracts.**

b. PROFESSIONAL LIABILITY.

Architecture and Engineering (A&E) and Related Services:

Professional liability insurance is required for A&E design services and A&E-related services, except that professional liability coverage may be waived by Agency for low-risk related services, such as public involvement or outreach.

Genera	Ŀ

C.

Professional liability insurance must cover damages caused by negligent acts, errors or omissions of contractor and contractor's subcontractors agents officers

or employees related to the professional services to be provided under the contract.
Coverage shall be written with a per claim, incident, or occurrence limit, or the equivalent, of not less than \square \$1,000,000 \boxtimes \$2,000,000 \square \$5,000,000.
Annual aggregate limits shall not be less than \square \$2,000,000 \square \$4,000,000 \square \$10,000,000.
If this insurance is provided on a "claims made" basis, contractor shall maintain continuous claims made liability coverage or shall acquire tail coverage to continue the same coverage for a duration of at least 2 years , unless 3 years or 5 years is specified, after completion of the contract or for the foregoing extended period beyond contract expiration or termination. Evidence of any required extended period coverage will be a condition of final payment under the contract.
COMMERCIAL GENERAL LIABILITY. Commercial General Liability Insurance shall be issued on an occurrence basis covering bodily injury and property damage and shall include personal and advertising injury liability, products and completed operations, and contractual liability coverage. When work to be performed includes operations or activity within fifty (50) feet of any railroad property, bridge, trestle, track, roadbed, tunnel, underpass, or crossing, the contractor shall provide the Contractual Liability – Railroads CG 24 17 endorsement, or equivalent, on the Commercial General Liability policy. Amounts below are a minimum requirement as determined by State:
Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 \subseteq\$\$5,000,000 per occurrence.
Annual aggregate limit shall not be less than \square \$2,000,000 \square \$4,000,000 \square \$10,000,000.

d. AUTOMOBILE LIABILITY.

Automobile Liability Insurance covering contractor's business-related automobile use covering all owned, non-owned, or hired vehicles for bodily injury and property damage. Amount below is a minimum requirement as determined by State:

Coverage shall be written with a combined single limit of not less than \$1,000,000.

This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability).

e. EXCESS/UMBRELLA LIABILITY.

A combination of primary and Excess/Umbrella Liability Insurance may be used to meet the required limits of insurance.

f. ADDITIONAL INSURED.

The liability insurance coverages, except Professional Liability or Workers' Compensation/Employer's Liability, if included, must endorse the "State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents, and employees" as an endorsed Additional Insured but only with respect to the contractor's activities to be performed under the contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Additional Insured Endorsements on the Commercial General Liability shall be written on ISO Form CG 20 10 07 04, or equivalent, with respect to liability arising out of ongoing operations and ISO Form CG 20 37 07 04, or equivalent, with respect to liability arising out of completed operations.

Additional Insured Endorsements shall be submitted with the Certificate(s) of Insurance and must be acceptable to Agency.

g. "TAIL" COVERAGE.

If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance or pollution liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the contract, for a minimum of twenty-four (24) months following the later of: (i) the contractor's completion and Agency's acceptance of all Services required under the contract or, (ii) the expiration of all warranty periods provided under the contract. Notwithstanding the foregoing twenty-four (24) month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the twenty-four (24) month period described above, then the contractor may request and State may grant approval of the maximum "tail "coverage period reasonably available in the marketplace. If State approval is granted, the contractor shall

maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

3. NOTICE OF CANCELLATION OR CHANGE.

The contractor or its insurer must provide thirty (30) days' written notice to Agency before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s). **Agency shall immediately notify State of any change in insurance coverage.**

4. CERTIFICATE(S) OF INSURANCE.

Agency shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the contract. The certificate(s) or an attached endorsement must endorse: i) "State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents, and employees" as an endorsed Additional Insured in regards to the Commercial General Liability and Automobile Liability policies and ii) that all liability insurance coverages shall be primary and non-contributory with any other insurance and self-insurance, with exception of Professional Liability and Workers' Compensation/Employer's Liability.

EXHIBIT F

Developer Insurance Requirements

1. GENERAL.

a. Developer shall: i) obtain at the Developer's expense the insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under this Agreement commences, and ii) maintain the insurance in full force and at its own expense throughout the duration of this Agreement. Developer shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to State. Coverage shall be primary and non-contributory with any other insurance and self-insurance with the exception of Professional Liability and Workers' Compensation/Employer's Liability. Developer shall pay for all deductibles, self-insurance retention and self-insurance, if any.

b. INSURANCE REQUIREMENT REVIEW.

Developer agrees to periodic review of insurance requirements by State under this Agreement and to provide updated requirements as mutually agreed upon by Developer and State.

2. TYPES AND AMOUNTS.

a. WORKERS COMPENSATION.

All employers, including Developer, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide Workers' Compensation Insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). The coverage shall include Employers Liability Insurance with coverage limits of not less than \$500,000.

b. COMMERCIAL GENERAL LIABILITY.

Commercial General Liability Insurance shall be issued on an occurrence basis covering bodily injury, death, and property damage and shall include personal and advertising injury liability, products and completed operations and contractual liability coverage. When work to be performed includes operations or activity within 50 feet of any railroad property, bridge, trestle, track, roadbed, tunnel, underpass or crossing, Developer shall provide the Contractual Liability – Railroads CG 24 17 endorsement, or equivalent, on the Commercial General Liability policy. Commercial General Liability Insurance shall not be less than the following amounts as determined by State:

							not less than
$oxed{oxed}$ \$1,000),000 🗌	\$2,000,000)	,000 per o	ccurren	ce.	

City of Woodburn/ TC Woodburn Development, LLC /ODOT Agreement No. 73000-0004669

	Annual aggregate limit shall not be less than \square \$2,000,000 \square \$4,000,000 \square \$10,000,000.
C.	AUTOMOBILE LIABILITY. Automobile Liability Insurance covering business-related automobile use on all owned, non-owned or hired vehicles for bodily injury and property damage. Automobile Liability Insurance shall not be less than the following amount as determined by State:
	Coverage shall be written with a combined single limit of not less than \$1,000,000 \$\subseteq\$ \$5,000,000.

d. EXCESS/UMBRELLA LIABILITY.

A combination of primary and Excess/Umbrella Liability Insurance may be used to meet the required limits of insurance.

e. ADDITIONAL INSURED.

The liability insurance coverages, except Professional Liability or Workers' Compensation/Employer's Liability, if included, must endorse the "State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees" as an endorsed Additional Insured but only with respect to the Developer's activities to be performed under this Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Additional Insured Endorsements on the Commercial General Liability shall be written on ISO Form CG 20 10 07 04, or equivalent, with respect to liability arising out of ongoing operations and ISO Form CG 20 37 07 04, or equivalent, with respect to liability arising out of completed operations.

Additional Insured Endorsements shall be submitted with the Certificate(s) of Insurance and must be acceptable to State.

f. "TAIL" COVERAGE.

If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, Developer shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Agreement, for a minimum of 24 months following the later of: (i) Developer's completion and State's acceptance of all Services required under this Agreement or, (ii) the expiration of all warranty periods provided under this Agreement. Notwithstanding the foregoing 24-month requirement, if Developer elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then Developer may request and State may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If State approval is

granted, Developer shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

3. NOTICE OF CANCELLATION OR CHANGE.

Developer or its insurer must provide 30 days' written notice to State before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

4. CERTIFICATE(S) OF INSURANCE.

Developer shall provide to State a certificate(s) of insurance for all required insurance before the effective date of this Agreement. The certificate(s) or an attached endorsement must specify: i) "State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees" as an endorsed Additional Insured in regards to the Commercial General Liability and Automobile Liability policies and ii) that all liability insurance coverages shall be primary and non-contributory with any other insurance and self-insurance, with exception of Workers' Compensation/Employer's Liability.

5. STATE ACCEPTANCE.

All insurance providers are subject to State acceptance. In addition, all of the following are subject to State acceptance and, if requested by State, Developer shall provide complete copies of the following to State's representatives responsible for verification of the insurance coverages required by this Agreement: insurance policies, endorsements, self-insurance documents, and related insurance documents.

EXHIBIT G

Developer Contractor Insurance Requirements

1. GENERAL.

- a Developer shall require, in its contracts with entities that are not units of local government as defined in ORS 190.003 (if any), that its contractors: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements INSURED, "TAIL" ADDITIONAL COVERAGE. NOTICE under CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the contract commences, and ii) maintain the insurance in full force throughout the duration of the contract. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to State. Developer shall not authorize work to begin under the contract until the insurance is in full force. Thereafter, Developer shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Developer shall incorporate appropriate provisions in the contract permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Developer permit work under a contract when Developer is aware that the contractor is not in compliance with the insurance requirements. All references to "contractor" in this Exhibit G refer to Developer's contractor as identified in this Paragraph 1.a.
- **b.** The insurance specified below is a minimum requirement that Developer shall require its contractor to meet, and shall include such requirement in Developer's contract with its contractor. Developer may determine insurance types and amounts in excess of the minimum requirement as deemed appropriate based on the risks of the work outlined within the contract.
- **c.** Developer shall require each of its contractors to require that all of its subcontractors carry insurance coverage that the contractor deems appropriate based on the risks of the subcontracted work. Contractor shall obtain proof of the required insurance coverages, as applicable, from any subcontractor providing services related to the Contract.

2. TYPES AND AMOUNTS.

a WORKERS COMPENSATION.

All employers, including Developer's contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide **Workers' Compensation Insurance** coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). The coverage shall include Employer's Liability Insurance with limits not less than \$500,000 each

accident. Contractor shall require compliance with these requirements in each of its subcontractor contracts.

b. PROFESSIONAL LIABILITY.

Architecture and Engineering (A&E) and Related Services:

Professional liability insurance is required for A&E design services and A&E-related services, except that professional liability coverage may be waived by State for low-risk related services, such as public involvement or outreach.

General:

C.

Professional liability insurance must cover damages caused by negligent acts, errors, or omissions of contractor and contractor's subcontractors, agents, officers, or employees related to the professional services to be provided under the contract.

Coverage shall be written with a per claim, incident, or occurrence limit, or the

equivalent, of not less than 🗌 \$1,000,000 🖂 \$2,000,000 🖂 \$5,000,000.
Annual aggregate limits shall not be less than ☐ \$2,000,000 ☐ \$4,000,000 ☐ \$10,000,000.
If this insurance is provided on a "claims made" basis, contractor shall maintain continuous claims made liability coverage or shall acquire tail coverage to continue the same coverage for a duration of at least 2 years , unless 3 years or 5 years is specified, after completion of the contract or for the foregoing extended period beyond contract expiration or termination. Evidence of any required extended period coverage will be a condition of final payment under the contract.
COMMERCIAL GENERAL LIABILITY. Commercial General Liability Insurance shall be issued on an occurrence basis covering bodily injury and property damage and shall include personal and advertising injury liability, products and completed operations, and contractual liability coverage. When work to be performed includes operations or activity within fifty (50) feet of any railroad property, bridge, trestle, track, roadbed, tunnel, underpass, or crossing, the contractor shall provide the Contractual Liability – Railroads CG 24 17 endorsement, or equivalent, on the Commercial General Liability policy. Amounts below are a minimum requirement as determined by State:
Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 \subseteq\$\$5,000,000 per occurrence.
Annual aggregate limit shall not be less than \square \$2,000,000 \boxtimes \$4,000,000 \square \$10,000,000.

d. AUTOMOBILE LIABILITY.

Automobile Liability Insurance covering contractor's business-related automobile use covering all owned, non-owned, or hired vehicles for bodily injury and property damage. Amount below is a minimum requirement as determined by State:

Coverage shall be written with a combined single limit of not less than \$1,000,000.

This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability).

e. EXCESS/UMBRELLA LIABILITY.

A combination of primary and Excess/Umbrella Liability Insurance may be used to meet the required limits of insurance.

f. ADDITIONAL INSURED.

The liability insurance coverages, except Professional Liability or Workers' Compensation/Employer's Liability, if included, must endorse the "State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents, and employees" as an endorsed Additional Insured but only with respect to the contractor's activities to be performed under the contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Additional Insured Endorsements on the Commercial General Liability shall be written on ISO Form CG 20 10 07 04, or equivalent, with respect to liability arising out of ongoing operations and ISO Form CG 20 37 07 04, or equivalent, with respect to liability arising out of completed operations.

Additional Insured Endorsements shall be submitted with the Certificate(s) of Insurance and must be acceptable to State.

q. "TAIL" COVERAGE.

If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance or pollution liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the contract, for a minimum of twenty-four (24) months following the later of: (i) the contractor's completion and State's acceptance of all Services required under the contract or, (ii) the expiration of all warranty periods provided under the contract. Notwithstanding the foregoing twenty-four (24) month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the twenty-four (24) month period described above, then the contractor may request and State may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If State approval is granted, the contractor shall

maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

3. NOTICE OF CANCELLATION OR CHANGE.

The contractor or its insurer must provide thirty (30) days' written notice to State or Developer before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s). Developer shall immediately notify State of any change in insurance coverage.

4. CERTIFICATE(S) OF INSURANCE.

Developer shall obtain from the contractor a certificate(s) of insurance for all required insurance and provide to State for review and approval before the contractor performs under the contract. The certificate(s) or an attached endorsement must endorse: i) "State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents, and employees" as an endorsed Additional Insured in regards to the Commercial General Liability and Automobile Liability policies and ii) that all liability insurance coverages shall be primary and non-contributory with any other insurance and self-insurance, with exception of Professional Liability and Workers' Compensation/Employer's Liability.

CITY OF WOODBURN

Community Development Department

MEMORANDUM

270 Montgomery Street

Woodburn, Oregon 97071

(503) 982-5246

Date: August 1, 2022

To: Chris Kerr, Community Development Director

From: Melissa Gitt, Building Official

Subject: Building Activity for July 2022

	2020		2021		2022	
	No.	Dollar Amount	No.	Dollar Amount	No.	Dollar Amount
Single-Family Residential	6	\$1,165,167	29	\$9,592,407	0	\$0
Multi-Family Residential	0	\$0	1	\$2,841,215	0	\$0
Assisted Living Facilities	0	\$0	0	\$0	0	\$0
Residential Adds & Alts	8	\$81,552	7	\$51,850	22	\$790,746
Industrial	1	\$1,372,000	0	\$0	0	\$0
Commercial	4	\$1,165,458	3	\$1,535,449	6	\$544,600
Signs and Fences	0	\$0	0	\$0	0	\$0
Manufactured Homes	0	\$0	0	\$0	0	\$0
TOTALS	19	\$3,784,177	40	\$14,020,921	28	\$1,335,346
Fiscal Year to Date (July 1 – June 30)		\$3,784,177		\$14,020,921		\$1,335,346



Agenda Item

August 8, 2022

TO: Honorable Mayor and City Council through City Administrator

FROM: Chris Kerr, Community Development Director

Colin Cortes, AICP, CNU-A, Senior Planner

SUBJECT: Ordinances Enabling Annexation and City Zoning Designation of

Approximately 39.21 Acres of Territory Known as the Oregon Golf Association (OGA) Property with No Street Address Located along the East Side of Boones Ferry Road NE North of Hazelnut Drive (ANX 22-02 & ZC 22-02) and Approval of Final Decision Document for Marion

Pointe Planned Unit Development (PUD 22-02)

RECOMMENDATION:

- 1. Enact an Ordinance annexing approximately 39.21 acres of territory known as the Oregon Golf Association (OGA) Property;
- 2. Enact an Ordinance designating city zoning for the annexed territory; and
- 3. Authorize the Mayor to sign the Final Order approving the Marion Pointe Planned Unit Development (PUD 22-02) with the conditions of approval.

BACKGROUND:

The City Council held a meeting and public hearing on July 25, 2022, following which it deliberated upon the evidence and voted to tentatively approve Annexation ANX 22-02 for the Oregon Golf Association (OGA) property with no street address located along the east side of Boones Ferry Road NE north of Hazelnut Drive and directed staff to prepare ordinances for Council adoption that annex and designate City zoning. It also tentatively approved the Marion Pointe PUD and directed staff to prepare a final decision document.

DISCUSSION:

The Council reviews and decides upon the consolidated applications package for the development project because per WDO 4.01.07, the City reviews a package at the highest land use review type among the application types. (In this context, it's the annexation application type, which is Type IV – a Council decision.)

Agenda Item Review:	City Administrator	Χ	City Attorney	Χ	Finance	Χ

FINANCIAL IMPACT:

n/a

ATTACHMENTS:

- 1. Ordinance to annex
 - A1. Exhibit A1: Legal Description
 - A2. Exhibit A2: Map
 - B. Exhibit B: Analyses & Findings
- 2. Ordinance to designate City zoning
 - A1. Exhibit A1: Legal Description
 - A2. Exhibit A2: Map
 - B1. Exhibit B1: Legal Description RS
 - B2. Exhibit B2: Map RS
 - B3. Exhibit B3: Legal Description RS N. Boones Ferry Rd ROW
 - B4. Exhibit B4: Map RS N. Boones Ferry Rd ROW
 - B5. Exhibit B5: Legal Description P/SP
 - B6. Exhibit B6: Map P/SP
 - B7. Exhibit B7: Legal Description RCWOD
 - B8. Exhibit B8: Map RCWOD
- 3. Final decision document and its attachments (PUD 22-02)

COUNCIL BILL NO. 3191

ORDINANCE NO. 2604

AN ORDINANCE ANNEXING APPROXIMATELY 39.21 ACRES OF TERRITORY KNOWN AS THE OREGON GOLF ASSOCIATION (OGA) PROPERTY WITH NO STREET ADDRESS INTO THE CITY OF WOODBURN, LOCATED ALONG THE EAST SIDE OF BOONES FERRY ROAD NE NORTH OF HAZELNUT DRIVE, MARION COUNTY, OREGON

WHEREAS, the subject property is owned by Tukwila Partners, of which the authorized representative is W. Trent Withers, and Oregon Golf Association c/o Members Club Inc., of which the authorized representative is Tim Stetson, and is legally described in Exhibit "A1" and mapped in Exhibit "A2", which are affixed hereto and by this reference incorporated herein; and

WHEREAS, the subject property is composed of Marion County Tax Lots 051W06D000502 (primary), 500, & 800 and 051W06DC00201 & 300; and

WHEREAS, consistent with Oregon Revised Statutes (ORS) 222.111(2) the owner of real property in the territory to be annexed initiated by petition a proposal for annexation, a copy of the petition being on file with the City Recorder (ANX 22-02); and

WHEREAS, the applicant, Holt Group Holdings LLC, of which the agent is Robin Holt, and the applicant's representative, Rand Waltz, Project Manager, AKS Engineering & Forestry, LLC, obtained written consent from the owners of the territory and have requested annexation of the subject property; and

WHEREAS, the property to be annexed is within the City Urban Growth Boundary (UGB); and

WHEREAS, the property to be annexed is contiguous to the City and can be served with City services; and

WHEREAS, the applicant intends to develop the territory into the Marion Pointe Planned Unit Development (PUD); and

WHEREAS, on June 23, 2022 the Woodburn Planning Commission considered the annexation application and, after a duly advertised public hearing, recommended approval of the annexation; and

Page - 1 - Council Bill No. 3191 Ordinance No. 2604 WHEREAS, on July 25, 2022, the Woodburn City Council held a public hearing, reviewed the record, heard all public testimony presented on said application, and upon deliberation concluded that the proposed annexation meets the applicable approval criteria under City of Woodburn Development Ordinance (WDO) 5.04.01C; and

WHEREAS, the City of Woodburn has determined it necessary, expedient, and in the best interest of the City to acquire jurisdiction over the County road identified as North Boones Ferry Road, to the extent that road is annexed within the boundary of the Woodburn City limits per this Ordinance, to the same extent that the City has jurisdiction over other public streets and alleys within the City; and the City, through this Ordinance, formally requests surrender of jurisdiction by Marion County over the road identified; and

WHEREAS, per the Woodburn City Charter, Section 34, an ordinance enacted by the Council shall take effect on the thirtieth day after its enactment; NOW, THEREFORE,

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

- **Section 1.** That the subject property, legally described in Exhibit "A1" and mapped in Exhibit "A2", is annexed to the City of Woodburn.
- **Section 2.** That the City Council adopts the Analysis & Findings, affixed hereto as Exhibit "B" and by this reference incorporated herein.
- **Section 3.** The City hereby requests that the Commissioners of Marion County, Oregon, transfer jurisdiction to the City of Woodburn for the County road, identified as North Boones Ferry Road, located within the area that has been annexed into the City of Woodburn per the attached Exhibits "A1" & "A2".

Approved as to form:			
· · · —	City Attorney	Date	
	Approved:_		
	E	Eric Swenson, Mayor	
Passed by the Council			
Submitted to the Mayor			
· · · · · · · · · · · · · · · · · · ·	2101	-	
Page - 2 - Council Bill No.	3191		

Ordinance No. 2604

Approve	ed by the Mayor	
Filed in t	he Office of the Recorder	
ATTEST:		
	Heather Pierson, City Recorder	
	City of Woodburn Oregon	

AKS Job #7564

OFFICES IN: BEND, OR - KEIZER, OR - TUALATIN, OR - VANCOUVER, WA

EXHIBIT A1

Annexation Description

A portion of Parcel 1 of Partition Plat 2018-010, Marion County Partition Plat Records, and a portion of right-of-way, located in the Southeast One-Quarter of Section 6 and the Northeast One-Quarter of Section 7, Township 5 South, Range 1 West, Willamette Meridian, Marion County, Oregon, and being more particularly described as follows:

Beginning at the northwesterly corner of said Parcel 1; thence along the northerly line of said Parcel 1, South 86°59'16" East 289.17 feet to the northeasterly corner of said Parcel 1; thence along the easterly line of said Parcel 1 the following eight (8) courses: South 03°00'44" West 155.48 feet; South 15°51'11" West 84.94 feet; South 68°43'10" East 732.69 feet; South 12°24'49" West 273.77 feet; South 05°37'33" West 278.64 feet; South 78°31'12" East 60.25 feet; South 01°03'51" West 249.91 feet; South 29°43'15" East 244.61 feet to the southeasterly corner of said Parcel 1 and the City of Woodburn city limits line; thence along the southerly line of said Parcel 1 and said city limits line, North 88°57'02" West 1213.47 feet; thence continuing along said southerly line and the westerly extension thereof, North 85°41'15" West 498.99 feet to the southerly right-of-way line of Hazelnut Drive (25.00 feet from centerline); thence leaving said city limits line along said southerly right-of-way line, North 72°00'04" West 46.07 feet; thence continuing along said southerly right-of-way line on a curve to the left with a Radius of 20.00 feet, a Delta of 88°18'33", a Length of 30.83 feet, and a Chord of South 63°50'39" West 27.86 feet to the easterly right-of-way line of Boones Ferry Road (Market Road 69) (33.00 feet from centerline) and the said city limits line; thence leaving said easterly right-of-way line along said city limit line, South 67°31'10" West 44.58 feet to the centerline of Boones Ferry Road; thence along said centerline and said city limits line on a non-tangent curve to the right (Radial Bearing of North 70°09'39" West) with a Radius of 11459.13 feet, a Delta of 02°44'07", a Length of 547.04 feet, and a Chord of South 21°12'24" West 546.99 feet; thence continuing along said centerline and said city limits line, South 22°35'15" West 227.99 feet to the easterly extension of the south rightof-way line of Vanderbeck Road (20.00 feet from centerline); thence along said easterly extension and said city limits line, North 88°10'33" West 32.08 feet to the westerly right-of-way line of Boones Ferry Road (30.00 feet from centerline); thence along said westerly right-of-way line and said city limits line, North 22°35'16" East 42.78 feet to the north right-of-way line of Vanderbeck Road (20.00 feet from centerline); thence leaving said city limits line along said westerly right-ofway line, North 22°35'16" East 193.94 feet; thence along a curve to the left with a Radius of 11429.13 feet, a Delta of 04°35'23", a Length of 915.53 feet, and a Chord of North 20°17'34" East 915.28 feet; thence continuing along said westerly right-of-way line, North 17°59'52" East 85.38 feet to the westerly extension of the north line of Reel 370, Page 306, Marion County Records, also being Reference Point 'A'; thence continuing along said westerly right-of-way line following four (4) courses: North 17°59'52" East 151.78 feet; a curve to the right with a Radius of 1462.40 feet, a Delta of 15°49'56", a Length of 404.10 feet, and a Chord of North 25°57'05" East 404.81 feet; North 33°52'03" East 631.37 feet; a curve to the right with a Radius of 1175.92 feet, a Delta of 01°36'02", a Length of 32.85 feet, and a Chord of North 34°40'05" East 32.85 feet to the

westerly extension of the northerly line of said Parcel 1; thence along said westerly extension, South 86°59'16" East 80.40 feet to the Point of Beginning.

The above described tract of land contains 42.45 acres, more or less.

Bearings for this description are based on State Plane Grid bearing, Oregon State Plane, North Zone 3601, NAD83(2011) Epoch: 2010.0000. Distances shown are International Foot ground values.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

ORÉGON
JANUARY 11, 2005
ROBERT D. REITIG
60124LS
RENEWS: 12/31/22

EXHIBIT A2

A PORTION OF PARCEL 1 OF PARTITION PLAT 2018-010, AND A PORTION OF RIGHT-OF-WAY, LOCATED IN THE SOUTHEAST 1/4 OF SECTION 6 AND THE NORTHEAST 1/4 OF SECTION 7, TOWNSHIP 5 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, MARION COUNTY, OREGON

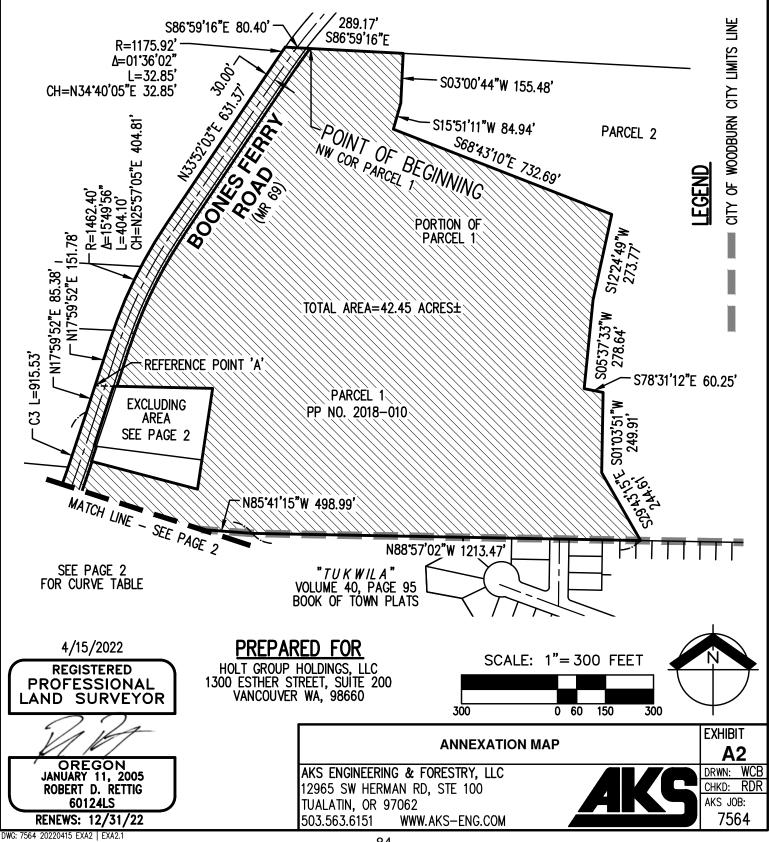
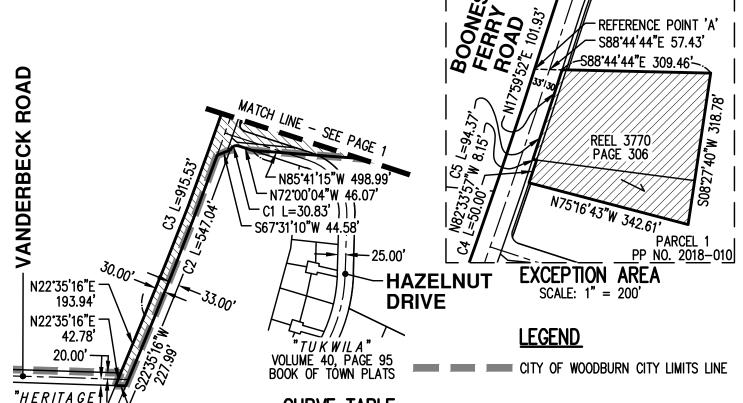


EXHIBIT A2

A PORTION OF PARCEL 1 OF PARTITION PLAT 2018-010, AND A PORTION OF RIGHT-OF-WAY, LOCATED IN THE SOUTHEAST 1/4 OF SECTION 6 AND THE NORTHEAST 1/4 OF SECTION 7, TOWNSHIP 5 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, MARION COUNTY, OREGON



CURVE TABLE

CURVE	RADIAL BEARING	RADIUS	DELTA	LENGTH	CHORD
C1		20.00'	8818'33"	30.83'	S63°50'39"W 27.86'
C2	N70°09'39"W	11459.13'	02*44'07"	547.04	S2112'24"W 546.99'
C3		11429.13'	04°35'23"	915.53'	N2017'34"E 915.28'
C4	N7117'23"W	11492.13	00៕4'57"	50.00'	N18'35'08"E 50.00'
C5	N71°31'53"W	11484.13'	00°28'15"	94.37	N1814'00"E 94.37'

4/15/2022

REGISTERED

PROFESSIONAL
LAND SURVEYOR

OREGON JANUARY 11, 2005

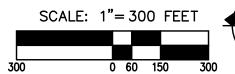
ROBERT D. RETTIG

60124LS

PREPARED FOR

N8810'33"W 32.08'

HOLT GROUP HOLDINGS, LLC 1300 ESTHER STREET, SUITE 200 VANCOUVER WA, 98660



ANNEXATION MAP

AKS ENGINEERING & FORESTRY, LLC 12965 SW HERMAN RD, STE 100 TUALATIN, OR 97062 503.563.6151 WWW.AKS-ENG.COM <u>AKS</u>

DRWN: WCB CHKD: RDR

EXHIBIT

AKS JOB: **7564**

RENEWS: 12/31/22
DWG: 7564 20220415 EXA2 | EXA2.2

PARK PHASE V41, P59 BOTP

ANX 22-02: Analyses & Findings

This attachment to the staff report analyzes the application materials and finds through statements how the application materials relate to and meet applicable provisions such as criteria, requirements, and standards. They confirm that a given standard is met or if not met, they call attention to it, suggest a remedy, and have a corresponding recommended condition of approval. Symbols aid locating and understanding categories of findings:

Symbol	Category	Indication		
~	Requirement (or guideline) met	No action needed		
×	Requirement (or guideline) not met Correction needed			
	Requirement (or guideline) not applicable	No action needed		
<u> </u>	 Requirement (or guideline) met, but might become unmet because of condition applied to meet separate and related requirement that is not met Plan sheets and/or narrative inconsistent Other special circumstance benefitting from attention 	Revision needed for clear and consistent records		
	Deviation: Planned Unit Development, Zoning Adjustment, and/or Variance	Request to modify, adjust, or vary from a requirement		

Section references are to the Woodburn Development Ordinance (WDO).

Table of Contents

Project Name & Case File Numbers	2
_ocation	
and Use & Zoning	
Statutory Dates	
Annexation Provisions	
Zoning Map Change Provisions	
Riparian Corridor and Wetlands Overlay District (RCWOD) Provisions	
Property Line Adjustment Provisions	
Subdivision Preliminary Approval Provisions	17

Marion Pointe ANX 22-02, PUD 22-02, etc. Staff Report

Ordinance Exhibit B Attachment 102 Page 1 of 56

Planned Unit Development Provisions	
Remaining Provisions	34
Recommended Conditions of Approval	42
Applicant Identity	51
Notes to the Applicant	51

Project Name & Case File Numbers

The project name is Marion Pointe. The land use application master/parent case file number is Annexation ANX 22-02, and the children/corollary case file numbers are Property Line Adjustment PLA 22-02, Planned Unit Development PUD 22-02, Riparian Corridor and Wetlands Overlay District Permit RCWOD 22-01, Preliminary Subdivision SUB 22-03, & Zone Change 22-02.

Location

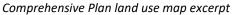
Address(es)	None (east side of N. Boones Ferry Rd north of Hazelnut Dr)
Tax Lot(s)	051W06D000502 (primary), 500, & 800 and 051W06DC00201 & 300; respectively
	39.21, 0.15, 0.07, 0.09, & 0.16 acres, totaling 39.69 acres
Nearest	N. Boones Ferry Rd & Hazelnut Dr
intersection	

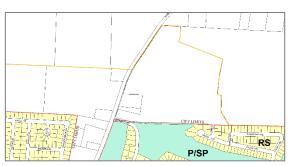
Land Use & Zoning

Comprehensive Plan Land Use Designation	Low Density Residential and Open Space and Parks
Zoning District	Residential Single Family (RS) and Public and Semi-Public (P/SP) – the latter covering the existing golf course – upon annexation
Overlay District(s)	Riparian Corridor and Wetlands Overlay District (RCWOD) along the west tributary of Mill Creek
Existing Use(s)	Closed orchard and part of Oregon Golf Association golf course

For context, the comprehensive plan land use map designations and zoning are illustrated below with excerpts from the City geographic information system (GIS) and the zoning is tabulated further below:







Zoning map excerpt

Cardinal Direction	Adjacent Zoning
North	No City zoning because not annexed
	and outside the City urban growth
	boundary (UGB)
East	No City zoning because not annexed
	and outside the City urban growth
	boundary (UGB)
South	Mix of RS & P/SP; from east to west:
	The Links at Tukwila Phase IV
	subdivision, golf course, Tukwila
	Orchard Greens No. 1 subdivision, and
	more golf course
West	Orchard and two rural houses to be
	demolished and developed into the
	Dove Landing PUD [ANX 2020-03]

Statutory Dates

Application	February 14, 2022
Completeness	
120-Day Final	September 9, 2022 per Oregon Revised Statutes (ORS) 227.178. (The nearest
Decision Deadline	and prior regularly scheduled City Council date would be August 22, 2022.)*

^{*}However, the Assistant City Attorney had counseled staff on January 16, 2018 that an annexation request is not subject to the 120-day deadline for final action per 227.178(8).

Annexation Provisions

Because the proposal is for annexation, per 5.04 it requires a Type IV review with City Council decision. The applicant submitted application materials on February 14, 2022 and revised and additional materials through April 21, 2022 (excerpted within Attachment 103).

5.04.01 Annexation

- A. Purpose: The purpose of this Type IV review is to provide a procedure to incorporate contiguous territory into the City in compliance with state requirements, Woodburn Comprehensive Plan, and Woodburn Development Ordinance.
- B. Mandatory Pre-Application Conference: Prior to requesting annexation to the City, a Pre-Application Conference (Section 4.01.04) is required. ...

C. Criteria:

- 1. Compliance with applicable Woodburn Comprehensive Plan goals and policies regarding annexation.
- 2. Territory to be annexed shall be contiguous to the City and shall either:
 - a. Link to planned public facilities with adequate capacity to serve existing and future development of the property as indicated by the Woodburn Comprehensive Plan; or
 - b. Guarantee that public facilities have adequate capacity to serve existing and future development of the property.
- 3. Annexations shall show a demonstrated community need for additional territory and development based on the following considerations:
 - a. Lands designated for residential and community uses should demonstrate substantial conformance to the following:
 - 1) The territory to be annexed should be contiguous to the City on two or more sides;
 - 2) The territory to be annexed should not increase the inventory of buildable land designated on the Comprehensive Plan as Low or Medium Density Residential within the City to more than a 5-year supply;
 - 3) The territory proposed for annexation should reflect the City's goals for directing growth by using public facility capacity that has been funded by the City's capital improvement program;
 - 4) The site is feasible for development and provides either:
 - a) Completion or extension of the arterial/collector street pattern as depicted on the Woodburn Transportation System Plan; or

- b) Connects existing stub streets, or other discontinuous streets, with another public street.
- 5) Annexed fulfills a substantial unmet community need, that has been identified by the City Council after a public hearing. Examples of community needs include park space and conservation of significant natural or historic resources.
- b. Lands designated for commercial, industrial and other uses should demonstrate substantial conformance to the following criteria:
 - 1) The proposed use of the territory to be annexed shall be for industrial or other uses providing employment opportunities;
 - 2) The proposed industrial or commercial use of the territory does not require the expansion of infrastructure, additional service capacity, or incentives that are in excess of the costs normally borne by the community for development;
 - 3) The proposed industrial or commercial use of the territory provides an economic opportunity for the City to diversify its economy.

D. Procedures:

- 1. An annexation may be initiated by petition based on the written consent of:
 - a. The owners of more than half of the territory proposed for annexation and more than half of the resident electors within the territory proposed to be annexed; or
 - b. One hundred percent of the owners and fifty percent of the electors within the territory proposed to be annexed; or
 - c. A lesser number of property owners.
- 2. If an annexation is initiated by property owners of less than half of property to be annexed, after holding a public hearing and if the City Council approves the proposed annexation, the City Council shall call for an election within the territory to be annexed. Otherwise no election on a proposed annexation is required.
- E. Zoning Designation for Annexed Property: All land annexed to the City shall be designated consistent with the Woodburn Comprehensive Plan, unless an application to re-designate the property is approved as part of the annexation process.
- F. The timing of public improvements is as follows:
 - 1. Street dedication is required upon annexation.
 - 2. Dedication of public utility easements (PUE) is required upon annexation.
 - 3. Street improvements are required upon development.
 - 4. Connection to the sanitary sewer system is required upon development or septic failure.
 - 5. Connection to the public water system is required upon development or well failure.
 - 6. Connection to the public storm drain system is required upon development.

Regarding subsection B., staff hosted the pre-application conference (Pre-App PRE 21-20) on August 12, 2021.

The applicant requests that the City designate the annexed territory with the Residential Single Family (RS) and Public and Semi-Public (P/SP) base zoning districts and the Riparian Corridor and Wetlands Overlay District (RCWOD).

Regarding the criteria of subsection C.:

1. The City Comprehensive Plan, Section G. Growth Management and Annexation contains annexation policies on pp. 30-31. The annexation criteria in the WDO already reflect the goals, including efficient City services.

First, the territory to be annexed is within the Woodburn Urban Growth Boundary (UGB). The premise of a UGB is to define an area feasible for the City to provide services to greenfield development over approximately 20 years as described in the Comprehensive Plan. So, in this way the annexation of territory within the UGB is consistent with the comp plan.

Second, the territory also is adjacent to infrastructure that development can make use of or extend into the territory to develop it:

- Roads and street: N. Boones Ferry Road borders to the property to the west, providing a means of access. The property also has a second access by bordering to the south the dead-end of Olympic Street. The annexation legal description and map series include the right-of-way (ROW) adjacent to the site, from the north end south to the south leg of the intersection of N. Boones Ferry Road & Hazelnut Drive.
- Transit: Along N. Boones Ferry Road and Olympic Street, the City and other agencies could run transit vehicles.
- Potable water, sanitary sewer, and stormwater sewer: These are adjacent or nearby, and as the Public Works Department Directs at the civil engineer plan (CEP) review and public works permit stage, the developer will upgrade and extend them as necessary to provide laterals to the site development and for these upgraded and extended utilities to accommodate the demands of the development.
- Other: Other franchise utility providers attend to such utilities as electric power, cable television and internet, natural gas, and cellular wireless telephony, often using existing or extended ROWs.
- 2. The territory is contiguous to the City. Per the comp plan and with implementation through the WDO, upon development of the territory the City would require

Marion Pointe ANX 22-02, PUD 22-02, etc. Staff Report
Attachment 102
Page 6 of 56

improvements that guarantee that public facilities have adequate capacity to serve such development.

The Public Works Department identified no impediments to serve the development that would not be resolved at the permitting stage, evidenced by the Public Works comments that are Attachment 102A.

Second, the Public Works Department, Woodburn Fire District (WFD), and Woodburn School District (WSD) submitted service provider letters (SPLs) as annexation applications require. They are in Attachment 103B. The Public Works one dated September 3, 2020 states:

"This letter is to certify that the City of Woodburn has no capacity issue with the public wastewater treatment facility or public water treatment facility. However, the subject property is not adjacent to an existing collection system for water, wastewater or a public storm sewer collection system. The requirements for these collection facilities would still need to be determined. The capacity analysis, design and installation would be the responsibility of the applicant/property owner."

Along with the Public Works comments that are Attachment 102A, it appears to Planning Division staff that the Public Works Department has no objection to annexation and that public works can serve the development through typical public improvements by a developer of the territory to be annexed.

Additionally, the applicant's narrative (April 21, 2022, pp. 46-47) states:

"Water service via a 12-inch-diameter mainline is available at the intersection of Hazelnut Drive and N Boones Ferry Road. This water line is planned to be extended through the community and looped back into an 8-inch-diameter water line at the current stub end of Olympic Street.

Stormwater from the project is planned to be routed to internal stormwater facilities. Per the Preliminary Composite Utility Plans (included in Exhibit D) and Preliminary Stormwater Report (Exhibit H), these facilities have capacity to accommodate surface water runoff from the project.

Sanitary sewer for the project is planned to be routed to a point of confluence at the south end of the planned extension of Olympic Street, then east and south through the golf course to an existing sanitary sewer mainline within an existing utility easement near the intersection of Troon Avenue and Tukwila Drive. The existing line has the capacity for the planned PUD project and potential future development west of N Boones Ferry Road.

Marion Pointe ANX 22-02, PUD 22-02, etc. Staff Report
Attachment 102
Page 7 of 56

Application to Marion County to extend sanitary sewer utilities within the Exclusive Farm Use (EFU) zone has been previously approved (Administrative Review Case No. 20-027), included as Exhibit L. Plans depicting the sanitary sewer and other planned utilities are included as part of Exhibit D.

The Applicant plans to install necessary water, wastewater, stormwater, and other utility facilities needed to serve the project. No obstructions to the orderly provision of public services have been identified by the Applicant or service providers. Additional review and details will be provided prior to permitting of public improvements. These criteria are met."

There's no written objection by the Public Works Department to the applicant's narrative.

- 3. a. Examining the considerations under subsection a. because the Comprehensive Plan land use map designates the territory Low Density Residential and Open Space and Parks, and the territory is to be designated with Residential Single Family (RS) and Public and Semi-Public (P/SP) base zoning districts consistent with both the applicant's request and Comprehensive Plan Policy Table 1:
 - 1) Following ANX 2020-03 Dove Landing PUD west across Boones Ferry Road NE, the territory to be annexed meets the guideline that it "should be contiguous to the City on two or more sides".
 - 2) The applicant's narrative (pp. 47) states:

"The Comprehensive Plan Land Use Map designates the territory as a combination of Low Density Residential and Open Space and Parks. Per the City's Housing Needs Analysis adopted December 9, 2019, the territory was included in the Buildable Lands Inventory and had been previously designated Low-Density Residential; therefore, the project helps meet the needs identified within the Housing Needs Analysis and Buildable Lands Inventory. Changes to density or zoning designation are not planned.

This petition for annexation represents only a small portion of the residentially designated lands within the UGB. The Housing Needs Analysis states that the future estimated housing need to be provided by single-family detached dwellings, manufactured homes, and mobile homes is 1,563 net new dwellings. The planned 90-lot PUD is planned to provide 5.76 percent of the total needed single-family detached dwellings or slightly more than one year's supply. There is no known oversupply of annexed Low Density Residential lands and the supply of these lands following annexation is not more than a 5-year supply for residential growth."

Marion Pointe ANX 22-02, PUD 22-02, etc. Staff Report
Attachment 102
Page 8 of 56

Staff concurs.

3) The applicant's narrative (p. 48) states:

"The project involves the extension of an existing public street stub from Olympic Street to N Boones Ferry Road and provide for future local street connections to surrounding development. The project is planned to also correct a previous dedication error to accommodate right-of-way for future N Boones Ferry Road widening needs. Utility projects related to this project that increase capacity or serve other developments are part of the City's Capital Improvement Plan."

There's no written objection by the Public Works Department to the applicant's narrative.

4) Regarding (a) & (b), the applicant's narrative (p. 48) states:

"The territory is feasible for development. The RS-zoned lands are relatively flat former farmland with no obvious physical constraints other than the unnamed North Mill Creek tributary. The territory is adjacent to City utilities and street infrastructure. The annexation includes right-of-way along N Boones Ferry Road. Infrastructure for the project including potable water extends along or under N Boones Ferry Road. The Woodburn Comprehensive Plan addresses the extension of utility infrastructure for the project and its criteria are addressed within this written narrative below. The existing Olympic Street stub is planned to be extended to N Boones Ferry Road. These provisions, required by WDO, are illustrated within the Preliminary Plans (Exhibit D). Additional street stubs are shown to be dedicated for potential future development. These criteria are met."

Staff concurs.

5) The applicant asserts (p. 48) that the annexation fulfills a substantial unmet community need by filling the City's housing needs per the City adopted Housing Needs Analysis (December 9, 2019). Because these analyses and findings come before the first public hearing by the Planning Commission, it is yet unknown if annexation fulfills a substantial unmet community need because the City Council has not yet identified such a need. Examples of community needs include park space and conservation of significant natural or historic resources, and the corollary development includes Tracts G & H along the west tributary of Mill Creek that the developer is to improve and dedicate as common area tracts to be owned and maintained by an association such as a homeowners association (HOA).

Marion Pointe ANX 22-02, PUD 22-02, etc. Staff Report
Attachment 102
Page 9 of 56

No public parkland is proposed, and the applicant's narrative (p. 48) notes, "Public park land, as yet undeveloped, is available for resident use approximately 200 feet from the PUD. The next closest public park, Heritage Park, is located ±2,000 feet from Marion Pointe." The applicant is referring to ANX 2020-03 Dove Landing PUD.

Annexation of the subject territory demonstrates substantial conformance with the criteria.

Regarding D., the applicant obtained the requisite written consent and such that no election is needed.

Regarding E., the applicant confirms the proposal includes no request to amend the Comprehensive Plan land use designation or upon annexation to designate the territory with City base zoning districts other than RS and P/SP. (Pursuant to Comprehensive Plan Policy Table 1, RS and P/SP are each the only zoning district that implements the respective Low Density Residential and Open Space and Parks designations.)

Regarding F., the applicant need not address subsection 1. because the territory to be annexed includes adjacent ROW and because the public improvements including ROW and public utility easement (PUE) dedications that F. describes are addressed through development review, i.e. site plan review process, instead of annexation itself.

✓ The criteria are met.

COUNCIL BILL NO. 3192

ORDINANCE NO. 2605

AN ORDINANCE AMENDING THE WOODBURN ZONING MAP TO DESIGNATE ZONING OF APPROXIMATELY 39.21 ACRES OF ANNEXED TERRITORY KNOWN AS THE OREGON GOLF ASSOCIATION (OGA) PROPERTY WITH NO STREET ADDRESS, LOCATED ALONG THE EAST SIDE OF BOONES FERRY ROAD NE NORTH OF HAZELNUT DRIVE, MARION COUNTY, OREGON AS RESIDENTIAL SINGLE FAMILY (RS), PUBLIC AND SEMI-PUBLIC (P/SP), AND RIPARIAN CORRIDOR AND WETLANDS OVERLAY DISTRICT (RCWOD)) ZONING DISTRICTS

WHEREAS, the subject property is owned by Tukwila Partners, of which the authorized representative is W. Trent Withers, and Oregon Golf Association c/o Members Club Inc., of which the authorized representative is Tim Stetson, and is legally described in Exhibit "A1" and mapped in Exhibit "A2", which are affixed hereto and by this reference incorporated herein; and

WHEREAS, the subject property is composed of Marion County Tax Lots 051W06D000502 (primary), 500, & 800 and 051W06DC00201 & 300; and

WHEREAS, consistent with Oregon Revised Statutes (ORS) 222.111(2) the owner of real property in the territory to be annexed initiated by petition a proposal for annexation, a copy of the petition being on file with the City Recorder (ANX 22-02); and

WHEREAS, because the subject property is already within the Woodburn Urban Growth Boundary (UGB), having existing Comprehensive Plan map land use designations of Low Density Residential over area other than the existing golf course and Open Space and Parks over the golf course; and

WHEREAS, the landowners through the applicant requested that, consistent with Woodburn Development Ordinance (WDO) 5.04.01 E., the City designate the area within the annexed territory that is other than the existing golf course as Residential Single Family (RS), which is one of two zoning districts that are consistent with the Comprehensive Plan per its Policy Table 1, and the area within the annexed territory that is the golf course as Public and Semi-Public (P/SP)(ZC 22-02); and

WHEREAS, the Riparian Corridor and Wetlands Overlay District (RCWOD) is applicable based on WDO 2.05.05B, the applicant having requested and the City designating it where applicable along the piped drainage and west

Page - 1 - Council Bill No. 3192 Ordinance No. 2605 tributary leading to Mill Creek and as legally described in Exhibit "B7" and mapped in Exhibit "B8"; and

WHEREAS, the zoning designations are contingent upon annexation of the subject property to the City of Woodburn, for which the applicant has petitioned and filed the petition with the City Recorder; and

WHEREAS, the applicant intends to develop the territory into the Marion Pointe Planned Unit Development (PUD); and

WHEREAS, on June 23, 2022, the Woodburn Planning Commission considered the annexation application and, after a duly advertised public hearing, recommended approval of the annexation; and

WHEREAS, on July 25, 2022, the Woodburn City Council held a public hearing, reviewed the record, heard all public testimony presented on said application, and upon deliberation concluded that the proposed annexation meets the applicable approval criteria under City of Woodburn Development Ordinance (WDO) 5.04.01C; and

WHEREAS, the City Council agenda item cover staff memo mentioned that zoning designation follows annexation and that an RS & P/SP districts and RCWOD zoning designations conform to the Comprehensive Plan land use map designation; and

WHEREAS, per the Woodburn City Charter, Section 34, an ordinance enacted by the Council shall take effect on the thirtieth day after its enactment; NOW, THEREFORE,

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Upon the effective date of the annexation enacted by Ordinance 2604 being considered contemporaneously with this request, the Woodburn Zoning Map is amended designating the zoning on the subject property described in Exhibits "B1" & "B3" and mapped in Exhibits "B2" & "B4" as Residential Single Family (RS), in Exhibits "B5" & "B6" as Public and Semi-Public (P/SP), and in Exhibits "B7" & "B8" as Riparian Corridor and Wetlands Overlay District (RCWOD).

Approved as to form:		 	
• •	City Attorney	 Date	

Page - 2 - Council Bill No. 3192 Ordinance No. 2605

Approved:	
• •	Eric Swenson, Mayor
Passed by the Council	- -
Submitted to the Mayor	
Approved by the Mayor	
Filed in the Office of the Recorder	
ATTEST:	
Heather Pierson, City Recorder	
City of Woodburn, Oregon	

Page - 3 - Council Bill No. 3192 Ordinance No. 2605

AKS Job #7564



OFFICES IN: BEND, OR - KEIZER, OR - TUALATIN, OR - VANCOUVER, WA

EXHIBIT A1

Annexation Description

A portion of Parcel 1 of Partition Plat 2018-010, Marion County Partition Plat Records, and a portion of right-of-way, located in the Southeast One-Quarter of Section 6 and the Northeast One-Quarter of Section 7, Township 5 South, Range 1 West, Willamette Meridian, Marion County, Oregon, and being more particularly described as follows:

Beginning at the northwesterly corner of said Parcel 1; thence along the northerly line of said Parcel 1, South 86°59'16" East 289.17 feet to the northeasterly corner of said Parcel 1; thence along the easterly line of said Parcel 1 the following eight (8) courses: South 03°00'44" West 155.48 feet; South 15°51'11" West 84.94 feet; South 68°43'10" East 732.69 feet; South 12°24'49" West 273.77 feet; South 05°37'33" West 278.64 feet; South 78°31'12" East 60.25 feet; South 01°03'51" West 249.91 feet; South 29°43'15" East 244.61 feet to the southeasterly corner of said Parcel 1 and the City of Woodburn city limits line; thence along the southerly line of said Parcel 1 and said city limits line, North 88°57'02" West 1213.47 feet; thence continuing along said southerly line and the westerly extension thereof, North 85°41'15" West 498.99 feet to the southerly right-of-way line of Hazelnut Drive (25.00 feet from centerline); thence leaving said city limits line along said southerly right-of-way line, North 72°00'04" West 46.07 feet; thence continuing along said southerly right-of-way line on a curve to the left with a Radius of 20.00 feet, a Delta of 88°18'33", a Length of 30.83 feet, and a Chord of South 63°50'39" West 27.86 feet to the easterly right-of-way line of Boones Ferry Road (Market Road 69) (33.00 feet from centerline) and the said city limits line; thence leaving said easterly right-of-way line along said city limit line, South 67°31'10" West 44.58 feet to the centerline of Boones Ferry Road; thence along said centerline and said city limits line on a non-tangent curve to the right (Radial Bearing of North 70°09'39" West) with a Radius of 11459.13 feet, a Delta of 02°44'07", a Length of 547.04 feet, and a Chord of South 21°12'24" West 546.99 feet; thence continuing along said centerline and said city limits line, South 22°35'15" West 227.99 feet to the easterly extension of the south rightof-way line of Vanderbeck Road (20.00 feet from centerline); thence along said easterly extension and said city limits line, North 88°10'33" West 32.08 feet to the westerly right-of-way line of Boones Ferry Road (30.00 feet from centerline); thence along said westerly right-of-way line and said city limits line, North 22°35'16" East 42.78 feet to the north right-of-way line of Vanderbeck Road (20.00 feet from centerline); thence leaving said city limits line along said westerly right-ofway line, North 22°35'16" East 193.94 feet; thence along a curve to the left with a Radius of 11429.13 feet, a Delta of 04°35'23", a Length of 915.53 feet, and a Chord of North 20°17'34" East 915.28 feet; thence continuing along said westerly right-of-way line, North 17°59'52" East 85.38 feet to the westerly extension of the north line of Reel 370, Page 306, Marion County Records, also being Reference Point 'A'; thence continuing along said westerly right-of-way line following four (4) courses: North 17°59'52" East 151.78 feet; a curve to the right with a Radius of 1462.40 feet, a Delta of 15°49'56", a Length of 404.10 feet, and a Chord of North 25°57'05" East 404.81 feet; North 33°52'03" East 631.37 feet; a curve to the right with a Radius of 1175.92 feet, a Delta of 01°36'02", a Length of 32.85 feet, and a Chord of North 34°40'05" East 32.85 feet to the

westerly extension of the northerly line of said Parcel 1; thence along said westerly extension, South 86°59'16" East 80.40 feet to the Point of Beginning.

The above described tract of land contains 42.45 acres, more or less.

Bearings for this description are based on State Plane Grid bearing, Oregon State Plane, North Zone 3601, NAD83(2011) Epoch: 2010.0000. Distances shown are International Foot ground values.

4/15/2022

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JANUARY 11, 2005
ROBERT D. RETTIG
60124LS

RENEWS: 12/31/22

EXHIBIT A2

A PORTION OF PARCEL 1 OF PARTITION PLAT 2018-010, AND A PORTION OF RIGHT-OF-WAY, LOCATED IN THE SOUTHEAST 1/4 OF SECTION 6 AND THE NORTHEAST 1/4 OF SECTION 7, TOWNSHIP 5 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, MARION COUNTY, OREGON

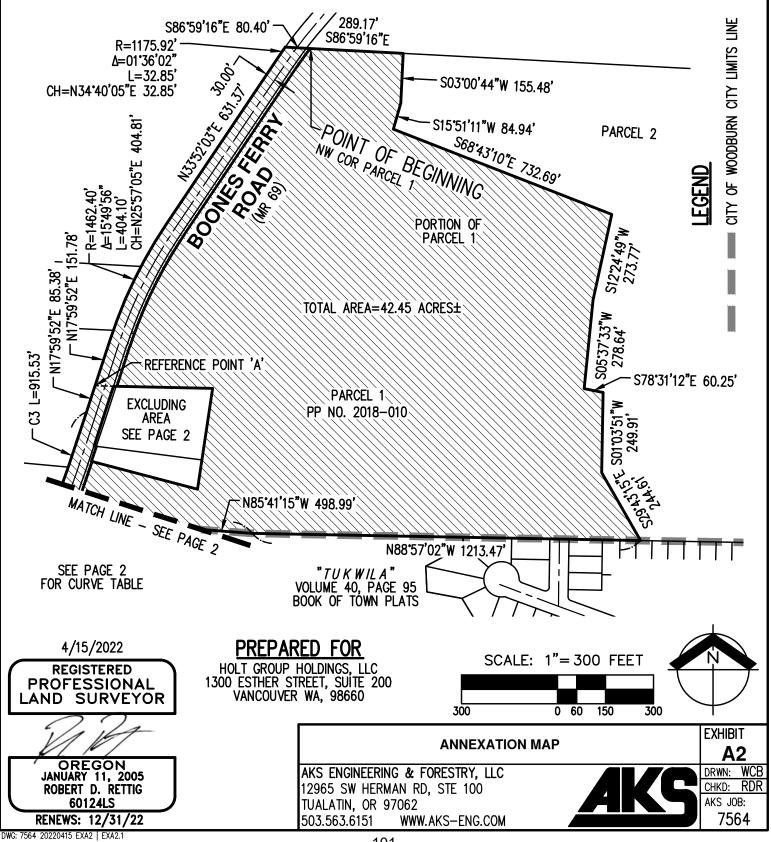
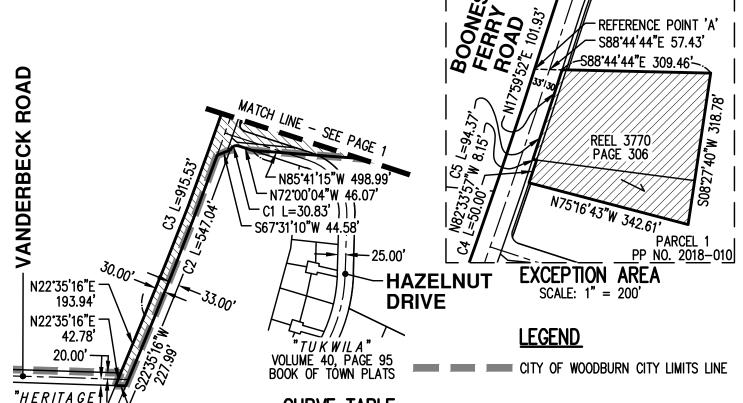


EXHIBIT A2

A PORTION OF PARCEL 1 OF PARTITION PLAT 2018-010, AND A PORTION OF RIGHT-OF-WAY, LOCATED IN THE SOUTHEAST 1/4 OF SECTION 6 AND THE NORTHEAST 1/4 OF SECTION 7, TOWNSHIP 5 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, MARION COUNTY, OREGON



CURVE TABLE

CURVE	RADIAL BEARING	RADIUS	DELTA	LENGTH	CHORD
C1		20.00'	8818'33"	30.83'	S63°50'39"W 27.86'
C2	N70°09'39"W	11459.13'	02*44'07"	547.04	S2112'24"W 546.99'
C3		11429.13'	04°35'23"	915.53'	N2017'34"E 915.28'
C4	N7117'23"W	11492.13'	00៕4'57"	50.00'	N18'35'08"E 50.00'
C5	N71°31'53"W	11484.13'	00°28'15"	94.37	N1814'00"E 94.37'

4/15/2022

REGISTERED

PROFESSIONAL
LAND SURVEYOR

OREGON JANUARY 11, 2005

ROBERT D. RETTIG

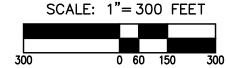
60124LS

RENEWS: 12/31/22

PREPARED FOR

N8810'33"W 32.08'

HOLT GROUP HOLDINGS, LLC 1300 ESTHER STREET, SUITE 200 VANCOUVER WA, 98660



ANNEXATION MAP

AKS ENGINEERING & FORESTRY, LLC 12965 SW HERMAN RD, STE 100 TUALATIN, OR 97062 503.563.6151 WWW.AKS-ENG.COM <u>AKS</u>

EXHIBIT
A2
DRWN: WCB

CHKD: RDR AKS JOB: 7564

DWG: 7564 20220415 EXA2 | EXA2.2

PARK PHASE V41, P59 BOTP

AKS Job #7564

OFFICES IN: BEND, OR - KEIZER, OR - TUALATIN, OR - VANCOUVER, WA

EXHIBIT B1

"Legal Description RS"

A portion of Parcel 1 of Partition Plat 2018-010, Marion County Plat Records, and a portion of right-of-way, located in the Southeast One-Quarter of Section 6, Township 5 South, Range 1 West, Willamette Meridian, Marion County, Oregon, and being more particularly described as follows:

Beginning at the northwesterly corner of said Parcel 1, also being on the City of Woodburn city limits line; thence along the northerly line of said Parcel 1 and said city limits line, South 86°59'16" East 289.17 feet to the northeasterly corner of said Parcel 1; thence along the easterly line of said Parcel 1 and said city limits line the following eight (8) courses:1 South 03°00'44" West 155.48 feet; South 15°51'11" West 84.94 feet; South 68°43'10" East 732.69 feet; South 12°24'49" West 273.77 feet; South 05°37'33" West 278.64 feet; South 78°31'12" East 60.25 feet; South 01°03'51" West 249.91 feet; South 29°43'15" East 244.61 feet to the southerly line of said Parcel 1; thence leaving said city limits line along said southerly line, North 88°57'02" West 555.53 feet; thence leaving said southerly line, North 06°55'17" West 60.05 feet; thence North 34°33'35" East 240.00 feet; thence North 11°34'36" East 662.05 feet; thence North 67°04'40" West 128.93 feet; thence South 28°06'25" West 202.32 feet; thence North 68°27'07" West 330.00 feet; thence North 21°32'53" East 90.00 feet; thence North 56°08'31" West 225.80 feet; thence South 86°59'10" West 50.00 feet; thence South 33°51'10" West 428.44 feet; thence South 15°31'47" West 295.39 feet to the northeasterly corner of Reel 3770, Page 306, Marion County Records, and said city limits line; thence along the northerly line of said deed and the westerly extension thereof and said city limits line, North 88°44'44" West 309.46 feet to said easterly right-of-way line of Boones Ferry Road (Market Road 69) (25.00 feet from centerline); thence along said easterly right-of-way line and said city limits line, South 17°59'52" West 101.93 feet; thence continuing along said easterly right-of-way line on a curve to the left with a Radius of 11484.13 feet, a Delta of 01°41'09", a Length of 337.91 feet, and a Chord of South 18°50'27" West 337.90 feet to the northwesterly corner of Reel 1124, Page 650, Marion County Records; thence leaving said easterly right-of-way line and said city limits line, North 71°31'33" West 55.00 feet to the westerly rightof-way line of Boones Ferry Road (30.00 feet from centerline) and said city limits line; thence along said westerly right-of-way line and said city limits line the following six (6) courses: a curve to the left (Radial Bearing of North 71°31'53" West) with a Radius of 11429.13 feet, a Delta of 00°28'15", a Length of 93.91 feet, and a Chord of North 18°14'00" East 93.91 feet; North 17°59'52" East 236.21 feet; a curve to the right with a Radius of 1462.40 feet, a Delta of 15°49'56", a Length of 404.10 feet, and a Chord of North 25°57'05" East 404.81 feet; North 33°52'03" East 631.37 feet; a curve to the right with a Radius of 1175.92 feet, a Delta of 01°36'02", a Length of 32.85 feet, and a Chord of North 34°40'05" East 32.85 feet to the westerly extension of the northerly line of said Parcel 1; thence along said westerly extension and said city limits line, South 86°59'16" East 80.40 feet to the Point of Beginning.

The above described tract of land contains 20.73 acres, more or less.

Bearings for this description are based on State Plane Grid bearing, Oregon State Plane, North Zone 3601, NAD83(2011) Epoch: 2010.0000. Distances shown are International Foot ground values.

4/15/2022

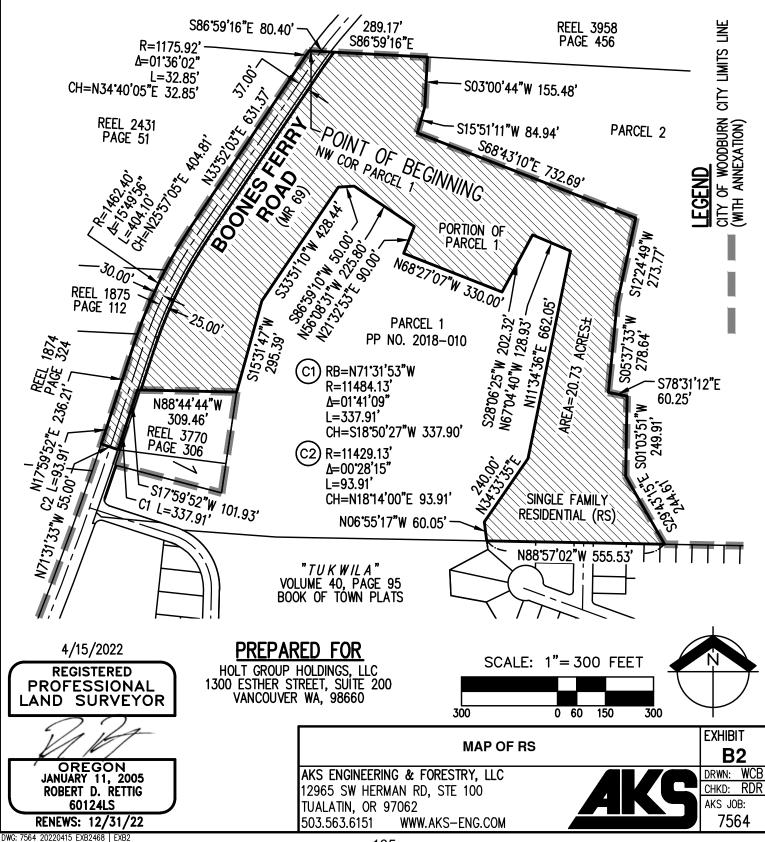
REGISTERED PROFESSIONAL LAND SURVEYOR

> JANUARY 11, 2005 ROBERT D. RETTIG 60124LS

RENEWS: 12/31/22

EXHIBIT B2

A PORTION OF PARCEL 1 OF PARTITION PLAT 2018-010, AND A PORTION OF RIGHT-OF-WAY, LOCATED IN THE SOUTHEAST 1/4 OF SECTION 6, TOWNSHIP 5 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, MARION COUNTY, OREGON



ENDZ400 | ENDZ

AKS ENGINEERING & FORESTRY, LLC

12965 SW Herman Road, Suite 100, Tualatin, OR 97062 P: (503) 563-6151 | www.aks-eng.com

AKS Job #7564

OFFICES IN: BEND, OR - KEIZER, OR - TUALATIN, OR - VANCOUVER, WA

EXHIBIT B3

"Legal Description RS"

A portion of Parcel 1 of Partition Plat 2018-010, Marion County Plat Records, and a portion of right-of-way, located in the Southeast One-Quarter of Section 6, Township 5 South, Range 1 West, Willamette Meridian, Marion County, Oregon, and being more particularly described as follows:

Beginning at the northeasterly corner of Lot 7 of the plat "Tukwila", Volume 40, Page 95, Marion County Book of Town Plats, also being on the southerly line of said Parcel 1; thence along said southerly line, North 88°57'02" West 657.94 feet; thence continuing along said southerly line and the westerly extension thereof, North 85°41'15" West 498.99 feet to the southerly right-of-way line of Hazelnut Drive (25.00 feet from centerline); thence along said southerly right-of-way line, North 72°00'03" West 46.07 feet; thence continuing along said southerly right-of-way line on a curve to the left with a Radius of 20.00 feet, a Delta of 88°18'33", a Length of 30.83 feet, and a Chord of South 63°50'39" West 27.86 feet to the easterly right-of-way line of Boones Ferry Road (Market Road 69) (33.00 feet from centerline); thence leaving said easterly right-of-way line, North 70°18'38" West 33.00 feet to the centerline of Boones Ferry Road and the Point of Beginning; thence along said centerline on a non-tangent curve to the right (Radial Bearing of North 70°18'38" West) with a Radius of 11459.13 feet, a Delta of 02°53'53", a Length of 579.61 feet, and a Chord of South 21°08'19" West 579.55 feet; thence continuing on said centerline, South 22°35'16" West 225.35 feet to the easterly extension of the south right-of-way line of Vanderbeck Road (20.00 feet from centerline); thence along said easterly extension, North 88°10'33" West 32.08 feet to the westerly right-of-way line of Boones Ferry Road (30.00 feet from centerline) and the City of Woodburn city limits line; thence along said westerly right-of-way line and said city limits line, North 22°35'16" East 236.72 feet; thence continuing along said westerly right-of-way line and said city limits line on a curve to the left with a Radius of 11429.13 feet, a Delta of 02°53'53", a Length of 578.10 feet, and a Chord of North 21°08'19" East 578.04 feet; thence leaving said westerly right-of-way line and said city limits line, South 70°18'38" East 30.00 feet to the Point of Beginning.

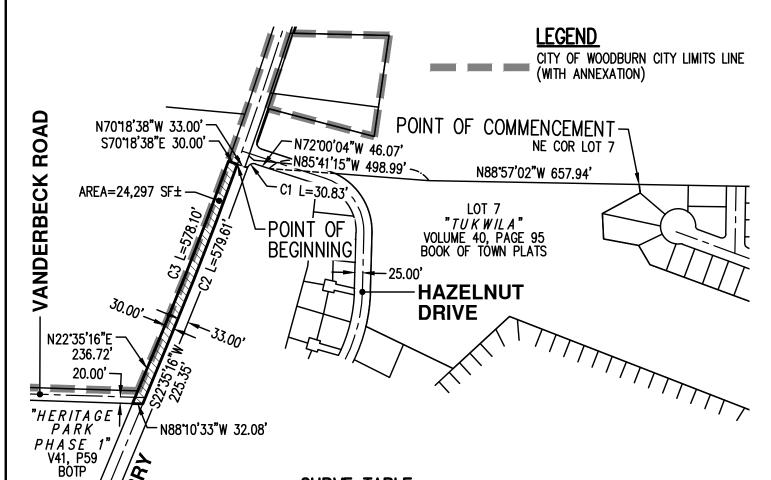
The above described tract of land contains 24,297 square feet, more or less.

Bearings for this description are based on State Plane Grid bearing, Oregon State Plane, North Zone 3601, NAD83(2011) Epoch: 2010.0000. Distances shown are International Foot ground values.



EXHIBIT B4

A PORTION OF RIGHT-OF-WAY, LOCATED IN THE SOUTHEAST 1/4 OF SECTION 6, TOWNSHIP 5 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, MARION COUNTY, OREGON



<u>CURVE TABLE</u>

CURVE	RADIAL BEARING	RADIUS	DELTA	LENGTH	CHORD
C1		20.00'	8818'33"	30.83'	S63°50'39"W 27.86'
C2	N7018'38"W	11459.13'	02*53'53"	579.61'	S21°08'19"W 579.55'
C3		11429.13'	02*53'53"	578.10'	N21°08'19"E 578.04'

4/15/2022

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON JANUARY 11, 2005 ROBERT D. RETTIG

60124LS

RENEWS: 12/31/22

PREPARED FOR

HOLT GROUP HOLDINGS, LLC 1300 ESTHER STREET, SUITE 200 VANCOUVER WA, 98660 SCALE: 1"= 300 FEET

300 0 60 150 300



MAP OF RS

AKS ENGINEERING & FORESTRY, LLC 12965 SW HERMAN RD, STE 100 TUALATIN, OR 97062 503.563.6151 WWW.AKS-ENG.COM AKS

DRWN: WCB
CHKD: RDR
AKS JOB:

7564

EXHIBIT

DWG: 7564 20220415 EXB2468 | EXB4

AKS ENGINEERING & FORESTRY, LLC 12965 SW Herman Road, Suite 100, Tualatin, OR 97062

P: (503) 563-6151 | www.aks-eng.com

OFFICES IN: BEND, OR - KEIZER, OR - TUALATIN, OR - VANCOUVER, WA

EXHIBIT B5

"Legal Description P/SP"

A portion of Parcel 1 of Partition Plat 2018-010, Marion County Plat Records, and a portion of right-of-way, located in the Southeast One-Quarter of Section 6, Township 5 South, Range 1 West, Willamette Meridian, Marion County, Oregon, and being more particularly described as follows:

Beginning at the northeasterly corner of Lot 7 of the plat "Tukwila", Volume 40, Page 95, Marion County Book of Town Plats, also being on the southerly line of said Parcel 1; thence along said southerly line, North 88°57'02" West 657.94 feet; thence continuing along said southerly line and the westerly extension thereof, North 85°41'15" West 498.99 feet to the southerly right-of-way line of Hazelnut Drive (25.00 feet from centerline); thence along said southerly right-of-way line, North 72°00'03" West 46.07 feet; thence continuing along said southerly right-of-way line on a curve to the left with a Radius of 20.00 feet, a Delta of 88°18'33", a Length of 30.83 feet, and a Chord of South 63°50'39" West 27.86 feet to the easterly right-of-way line of Boones Ferry Road (Market Road 69) (33.00 feet from centerline); thence leaving said easterly right-of-way line, North 70°18'38" West 63.00 feet to the westerly right-of-way line of Boones Ferry Road (30.00 feet from centerline) and said city limits line; thence along said westerly right-of-way line and said city limits line on a non-tangent curve to the left (Radial Bearing of North 70°18'38" West) with a Radius of 11429.13 feet, a Delta of 01°13'15", a Length of 243.52 feet, and a Chord of North 19°04'45" East 243.51 feet; thence leaving said westerly right-of-way line and said city limits line, South 71°31'33" East 55.00 feet to the northwesterly corner of Reel 1124, Page 650, Marion County Records, and said city limits line; thence along the northerly line of said deed and said city limits line, South 82°33'57" East 8.15 feet to the northeasterly corner of said deed; thence along the easterly line of said deed and said city limits line on a non-tangent curve to the left (Radial Bearing of North 71°32'21" West) with a Radius of 11492.13 feet, a Delta of 00°14'57", a Length of 50.00 feet, and a Chord of South 18°35'08" West 50.00 feet to the southwesterly corner of Reel 3770, Page 306, Marion County Records; thence along the southerly line of said deed and said city limits line, South 75°16'43" East 342.61 feet to the southeasterly corner of said deed; thence along the easterly line of said deed and said city limits line, North 08°27'40" East 318.78 feet to the northeasterly corner of said deed; thence leaving said northeasterly corner and said city limits line, North 15°31'47" East 295.39 feet; thence North 33°51'10" East 428.44 feet; thence North 86°59'10" East 50.00 feet; thence South 56°08'31" East 225.80 feet; thence South 21°32'53" West 90.00 feet; thence South 68°27'07" East 330.00 feet; thence North 28°06'25" East 202.32 feet; thence South 67°04'40" East 128.93 feet; thence South 11°34'36" West 662.05 feet; thence South 34°33'35" West 240.00 feet; thence South 06°55'17" East 60.05 feet to the Point of Beginning. 4/15/2022

The above described tract of land contains 21.15 acres, more or less.

Bearings for this description are based on State Plane Grid bearing, Oregon State Plane, North Zone 3601, NAD83(2011) Epoch: 2010.0000. Distances shown are International Foot ground values.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

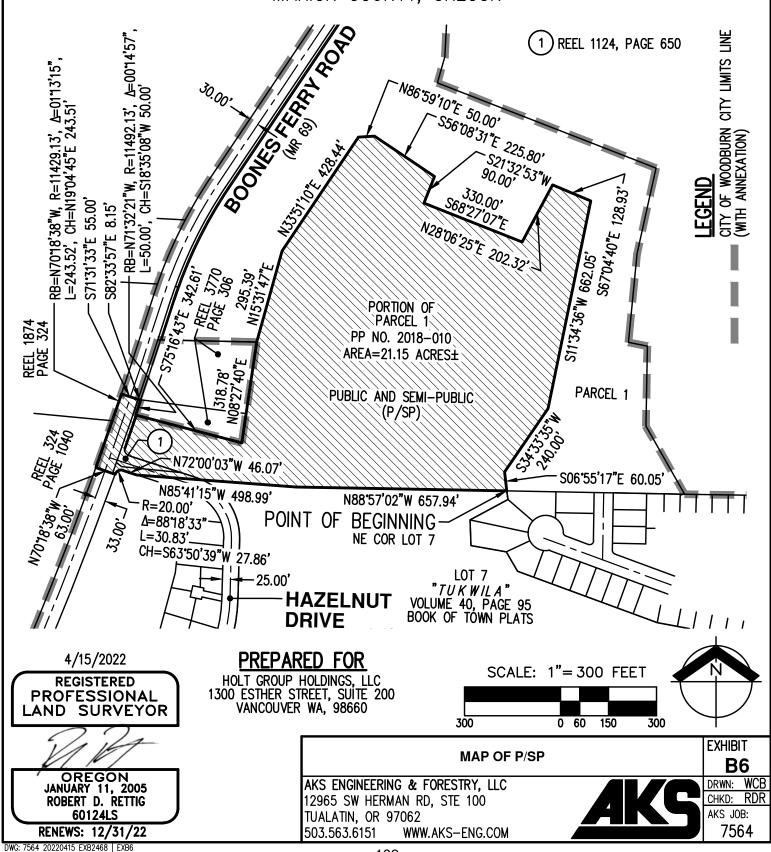
ORÉGON
JANUARY 11, 2005
ROBERT D. RETTIG
60124LS

RENEWS: 12/31/22

AKS Job #7564

EXHIBIT B6

A PORTION OF PARCEL 1 OF PARTITION PLAT 2018-010, AND A PORTION OF RIGHT-OF-WAY, LOCATED IN THE SOUTHEAST 1/4 OF SECTION 6, TOWNSHIP 5 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, MARION COUNTY, OREGON



AKS ENGINEERING & FORESTRY, LLC

12965 SW Herman Road, Suite 100, Tualatin, OR 97062 P: (503) 563-6151 | www.aks-eng.com

AKS Job #7564

OFFICES IN: BEND, OR - KEIZER, OR - TUALATIN, OR - VANCOUVER, WA

EXHIBIT B7

"Legal Description RCWOD"

A portion of Parcel 1 of Partition Plat 2018-010, Marion County Plat Records, located in the Southeast One-Quarter of Section 6, Township 5 South, Range 1 West, Willamette Meridian, Marion County, Oregon, and being more particularly described as follows:

Beginning at the northeasterly corner of Lot 7 of the plat "Tukwila", Volume 40, Page 95, Marion County Book of Town Plats, also being on the southerly line of said Parcel 1; thence along said southerly line, South 88°57'02" East 555.53 feet to the southeasterly corner of said Parcel 1; thence along the easterly line of said Parcel 1, North 29°43'15" West 244.61 feet; thence continuing along said easterly line, North 01°03'51" East 249.91 feet to the Point of Beginning; thence leaving said easterly line, South 83°33'42" West 50.00 feet; thence North 73°06'53" West 73.53 feet; thence North 50°49'10" West 144.37 feet; thence North 69°18'45" West 76.42 feet; thence South 83°41'31" West 80.63 feet; thence South 75°19'35" West 107.97 feet; thence South 82°12'43" West 204.04 feet; thence South 71°46'52" West 356.25 feet; thence South 79°43'19" West 208.58 feet to the easterly line of Reel 3770, Page 306, Marion County Records; thence along said easterly line, North 08°27'40" East 92.64 feet to the northeasterly corner of said deed; thence leaving said northeasterly corner, North 15°31'47" East 58.06 feet; thence North 79°43'19" East 143.82 feet; thence North 71°46'52" East 359.31 feet; thence North 82°12'43" East 208.40 feet; thence North 75°19'35" East 109.79 feet; thence North 83°41'31" East 124.48 feet; thence South 69°18'45" East 132.82 feet; thence South 50°49'10" East 139.57 feet; thence South 73°06'53" East 6.81 feet to the easterly line of said Parcel 1; thence along said easterly line, South 05°37'33" West 128.35 feet; thence continuing along said easterly line, South 78°31'12" East 60.25 feet to the Point of Beginning.

The above described tract of land contains 3.98 acres, more or less.

Bearings for this description are based on State Plane Grid bearing, Oregon State Plane, North Zone 3601, NAD83(2011) Epoch: 2010.0000. Distances shown are International Foot ground values.

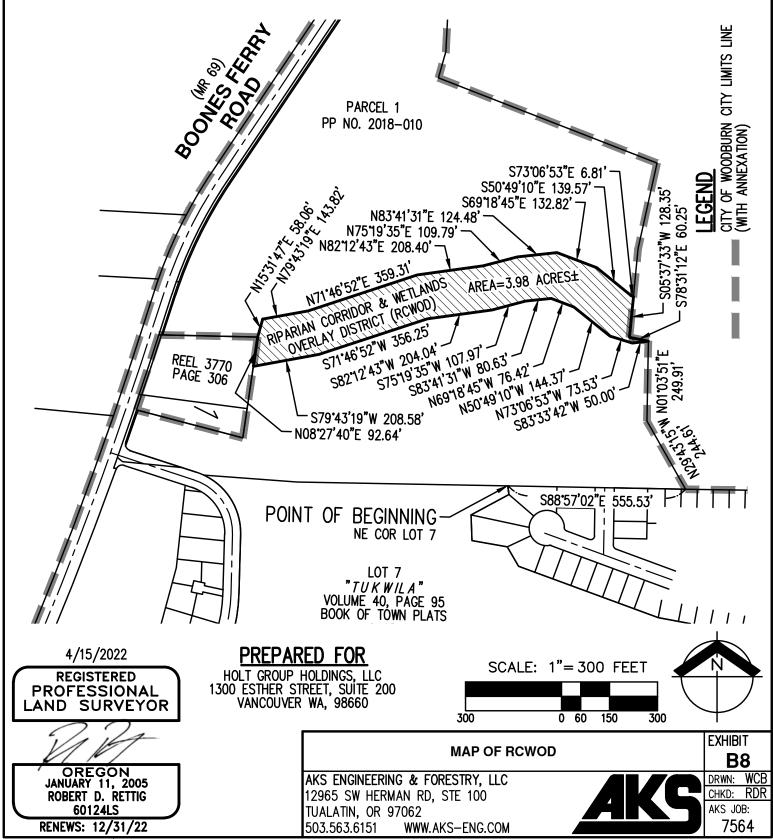
REGISTERED
PROFESSIONAL
LAND SURVEYOR

ORÉGON
JANUARY 11, 2005
ROBERT D. RETTIG
60124LS

RENEWS: 12/31/22

EXHIBIT B8

A PORTION OF PARCEL 1 OF PARTITION PLAT 2018-010, LOCATED IN THE SOUTHEAST 1/4 OF SECTION 6, TOWNSHIP 5 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, MARION COUNTY, OREGON



DWG: 7564 20220415 EXB2468 | EXB8



Land Use Final Decision

City Council

File number(s): PUD 22-02, PLA 22-02, RCWOD 22-01, SUB 22-03, & ZC 22-02 Related to

ANX 22-02

Project name: Marion Pointe

Date of decision: August 8, 2022

Applicant: Holt Group Holdings, LLC, P.O. Box 61426, Vancouver, WA 98666-1426

Landowner: Tukwila Partners, P.O. Box 128, Woodburn, OR 97071-0128; and Oregon Golf

Association c/o Members Club Inc., 2850 Hazelnut Dr, Woodburn, OR 97071-

9698

Site location: No address; Tax Lots 051W06D000502 (primary), 500, & 800 and

051W06DC00201 & 300 (east side of N. Boones Ferry Rd north of Hazelnut Dr)

Summary: First, the Planning Commission on June 23, 2022 held a public hearing and unanimously recommended that the City Council approve the consolidated applications package (Type IV) with the conditions recommended by staff through the staff report published June 16, except for revision items that staff proposed through a staff memo addendum dated June 23 and its Attachment 104D.

Second, the City Council held a public hearing on July 25, 2022 and unanimously tentatively approved the consolidated applications package with the conditions recommended by staff through the Commission staff report and staff memo addendum.

The development applications depend upon annexation ANX 22-02 through the annexation and zoning designation Ordinance Nos. 2604 & 2605 the Council is to have adopted August 8. (Ordinances take effect on the 30th day after enactment per the City Charter, Chapter VIII, Section 34, p. 10.)

The request is for annexation, zone change, planned unit development (PUD), and property line adjustment followed by preliminary subdivision to develop a defunct orchard into 87 houses on small lots with several common area tracts as open space privately owned and maintained by a homeowners association (HOA) and two local street connections with N. Boones Ferry Road. The subject property is approximately 39.69 acres, including the existing Oregon Golf Association (OGA) golf course to remain.

The subject property is in the Residential Single Family (RS) zoning district.

Several parties testified (besides the applicant). The table below in the "Testifiers" section lists them.

Section references are to the Woodburn Development Ordinance (WDO).

Conditions of Approval:

General

- G1. By and as part of building permit application, the applicant shall submit revised site plans meeting the conditions of approval and obtain Planning Division approval through sign-off on permit issuance by the Building Division.
- G2. The applicant or successors and assigns shall develop the property in substantial conformance with the final plans submitted and approved with these applications, except as modified by these conditions of approval. Were the applicant to revise plans other than to meet conditions of approval or meet building code, even if Planning Division staff does not notice and signs off on building permit issuance, Division staff retains the right to obtain restoration of improvements as shown on an earlier land use review plan set in service of substantial conformance.
- G3. References: Attachment 201 serves as a dictionary or glossary defining certain abbreviations, acronyms, phrases, terms, and words in the context of the conditions of approval. The 200 series of attachments are as binding as the conditions of approval in the main body of the final decision.

G4. Due dates / public improvements:

- a. When public street improvements, and any fees in lieu of public improvements, are due shall be per WDO 3.01.02E & F and 4.02.12 unless if and where a condition of approval has more restrictive timing:
 - (1) The construction of all public improvements, their passing City inspections, and acceptance by the City are due no later than by either 5.01.06B in the context of land division final plat application to the City or by building permit issuance, except if (a) the developer applies to the City through the Public Works Department for deferral and (b) the City Administrator or designee issues a document approving and describing a bond or performance guarantee pursuant to Section 4.02.08. Administration of bonding and performance guarantees for improvements that are public defaults to the Public Works Department, and the department shall notify the Community Development Director of deferral applications and any approvals and conditions of approval.
 - (2) Fees in lieu of public improvements: Per Condition G6.
- b. Where changes to street addresses are necessary, the developer shall apply through the Planning Division for and obtain approval of an <u>Address Assignment Request</u>. This is due prior to building permit application, and if property line adjustment or lot consolidation were to become relevant, then also after recordation with County.

- G5. Recordation due dates: The applicant shall apply to the County for recordations of items that the City requires no later than six (6) months prior to expiration of the land use approval as WDO 4.02.04B establishes, and shall complete recordations no later than three years past the land use "final decision" date. The due date to complete recordations shall not supersede when recordations are due relative to the building permit stage.
- G6. Fees: The developer shall pay fees per Attachment 205, and fees in-lieu shall be per WDO 4.02.12:
 - a. Fees in-lieu are permissible if the Director allows, whether wholly in-lieu for one, some, or all of the kinds of required improvements or for some or all of a kind.
 - b. Fees in lieu of public improvements are due before either building permit application or, when and where any of Partition or Subdivision Final Plat is involved, completion of recordation with the County, specifically no later than before a City official signs a plat or re-plat Mylar per Section 5.01.06C.1. A developer may request in writing to pay later, specifically by issuance of building permit, or if the Director allows, across issuance of two or more structural building permits for the subject development.
- G7. Demolition: Because the City through the Building Division now requires <u>demolition permits</u>, upon annexation and before beginning to demolish buildings or structures or demolishing more of them, consult the Permit Technician and apply for and obtain a permit or permits as applicable.

G-PW. Public Works: Follow the appended PW comments (June 16, 2022); Attachment 102A).

Preliminary Subdivision 22-03

SUB-1. Expiration: Based on ORS 92.040(3), development per the Council land use final decision may continue 3 years past the decision date, the 3-year approval period being established as follows:

- a. Final Plat: The developer shall apply to the City prior to applying to Marion County for recordation. Owl extending east across BFR from Dove Landing PUD to Nightingale shall continue its name
- b. Recordation with Marion County: Same as WDO 5.01.06C.1. (within 30 calendar days of the Director's signature on the plat Mylar).
- c. Vesting: The decision is vested unless:
 - (1) Regarding WDO 4.02.04B.1, if by 10 years past the final decision date there is no substantial construction as Section 1.02 defines following issuance of a building permit, the final decision shall expire and fail to vest; or
 - (2) Regarding subsection WDO 4.02.04B.2 as applies to Property Line Adjustment and Subdivision Final Plat Approval applications, the developer shall complete recordation no later than the land use expiration date.

SUB-2. Documents:

- a. Geotech report: Prior to final plat approval by the City, the developer shall submit to the Director a geotechnical report documenting that, whether or not the developer spreads any fill or spoil dirt across lots and tracts, soil is compacted and ready to accommodate the construction of buildings on lots and tracts proposed for development.
- b. Easements: Per WDO 2.01.05, where any of extinguished, altered, or additional public easements are involved, the developer shall not apply for building permit until having completed recordations with the County and provided electronic copies of the recorded easement documents and drawings to the Director and the Public Works Director when and as any of them direct. The developer shall also follow Attachments 102A (Public Works) and 203, Part D.
- c. Plat: Upon recordation, the developer shall submit to PW and cc the Director copies of recorded documents per WDO 2.01.05.

Planned Unit Development 22-02

PUD-PW. Stormwater management: Prior to civil engineering plan approval through CEP review, the applicant shall provide an Engineer Stamped Storm Drainage Hydraulic Analysis Report that existing private storm drainage systems have capacity to handle the additional flow from the Marion Pointe and ANX 2020-03 Dove Landing Planned Unit Developments (PUDs), and that the culvert/pipe under Olympic Street has capacity to handle a 100 year base flood event, and to provide a final 100 year floodway, floodplain, and wetland delineation for this development. The applicant is responsible for correcting any capacity deficiencies, including installing new or additional drainage systems, and/or attaining the right to increase stormwater flows into neighboring private stormwater systems.

PUD-1. Mods: The City approves PUD modifications only as written in conditions of approval and the 200 series of attachments, particularly Attachment 202. Other modifications that site plans imply are subject to later administrative approval or denial by the Director.

PUD-2.

- a. ROWs: For BFR and the proposed local class streets, the developer shall dedicate ROWs that meet or exceed the min widths necessary to conform to WDO Figures 3.01C & G.
- b. PUEs: Per WDO 3.02.01, a PUE shall be dedicated along each lot line or tract boundary abutting a public street at minimum width 5 feet and maximum width 8 ft.

PUD-3. Frontage/street improvements: These shall be as follows and due per Condition G4a:

- a. BFR: Per WDO Fig. 3.01C except that planter strip shall be min 6½ ft wide inc. curb width.
- b. Olympic: Bridge or culvert crossing over Mill Creek tributary: Per WDO 3.01.03H:
 - (1) ROW: Required ROW shall remain such regardless of the physical width of the crossing.
 - (2) Parking: Any parking lane(s) required by the applicable cross section shall remain required.
 - (3) Sidewalk widths: A developer may omit from a bridge or culvert the street landscape strips, thereby resulting in curb-tight sidewalk, the minimum width of which shall be either 8 ft where there is to be no adjacent on-street parking or 9 ft where there is to be. Wider width shall apply where ADA per WDO 3.01.03G applies such that it is required.
 - (4) Fence/railings: Where (a) a street segment is a bridge or culvert crossing, and (b) the public works construction code requires any pedestrian guardrail, handrail, fall protection railing, or safety railing, then it shall be decorative or ornamental (as examples, having an artistic pattern or resembling wrought iron), and a color other than black or charcoal. Any required fence at each end of railings shall be the same color(s).
 - (5) Bridge sides: If the bridge sides are concrete, the surface shall be stamped or treated to resemble either cut stone or rough stone.

- (6) Elevation: Shall be such that the travel way and parking lanes wouldn't flood during the 100-year flood.
- (7) Design details are deferred to PUD Final Plan Approval process; refer to Condition PUD-11.
- c. Tract D: The developer shall grant to the City over the entire tract a public street easement. The easement shall allow for all purposes permitted by what would have been ROW dedication including construction of street improvements. One or more legal instruments that dedicates the easement shall contain text that the easement is revocable only with the written concurrence of both the Community Development Director and Public Works Director and by City Council action. (The objective is to have maintenance responsibility remain with a party other than the City.)
- d. Hazelnut: Per WDO Fig. 3.01G, except that the territory contiguous with Tax Lots
 051W06DC00201 & 300, which is occupied by Hazelnut, shall be dedicated to the City as ROW.
 (Note: To not meet this condition part would require modification of condition [MOC]
 application and approval per WDO 4.02.07.)
- e. Planter strip remainder: Per WDO 3.01.04B, landscape strips shall have area remaining after street tree plantings landscaped with lawn grass or, if the Public Works Director in writing allows, a species of groundcover. Cobblestones, gravel, pebbles, and rocks are prohibited. Bark dust, mulch, or wood chips are permissible only within the immediate vicinity of a street tree trunk. The developer shall install landscape strip irrigation, and shall provide temporary irrigation during construction, per the public works construction code.

f. Sidewalks: Min 6 ft wide except wider as Exhibit PUD-3f supersedes. BFR sidewalk southerly and two northerly dead-ends shall have ADA-compliant transitions spanning between sidewalk and road shoulder as the applicable public works authority specifies. The segment extending north from Hazelnut sidewalk may meander, including PUE overlap, and taper to 6 ft through RPZs to save most of the loose row of trees along the road.

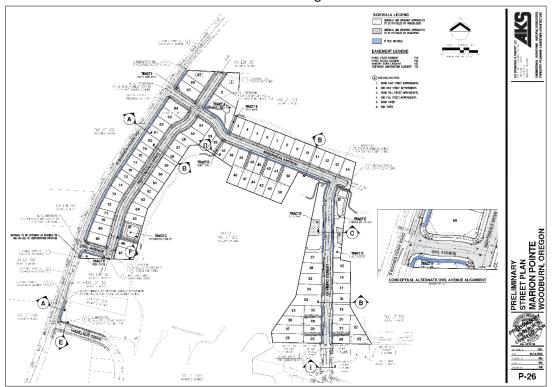


Exhibit PUD-3f: Site Plan Sheet P-26 Sidewalks (blue: min 8 ft wide); see Attachment 103 for full size

g. Overlap: The extra width of planter strip and sidewalk shall either (1) overlap outside ROW into streetside PUE and come with a recorded legal instrument granting public access to the overlap to the satisfaction of the Public Works Director, or (2) come with additional ROW to accommodate them. Wider sidewalks shall not narrow planter strips.

h. Street trees:

(1) Min numbers equal to block frontage ratios per Exhibit PUD-3h:



Exhibit PUD-3h: Site Plan Sheet P-31 Street Tree Min No. (green: equal to 1 tree per 30 ft of block frontage)

- (2) Along Magnolia, revise street trees from Capital pear to *Magnolia grandiflora* "Victoria" cultivar.
- (3) Fee in-lieu shall be per Attachment 205.
- i. Electric power lines: Electric power lines, whether in or beyond ROW, shall be buried.
- j. Traffic calming: A min number of pedestrian crossings along intersection legs shall be patterned poured concrete each min 8 ft wide:
 - (1) Magnolia & Nightingale, 3 legs: N/NE, E/SE, & S/SW; and
 - (2) Magnolia & Olympic: 2-3 legs: S/SW & whichever one or both of the E/SE or W/NW legs that would have a curb ramp along the top of the "T" of the T-intersection.

PUD-4. Streets, dead-end: Barricades/Signage: Based on WDO 3.01.05A.2b & c, the developer shall place:

- a. A barricade with sign at the south end of Nightingale; and
- b. A barricade at each of the north end of Nightingale the east end of Magnolia.

Consult PW for a barricade detail, and no later than CEP show both it and a modified version with a sign in conformance with 3.01.05A.2c.

PUD-5. Tree preservation: The developer shall preserve trees per Attachment 204 or pay removal fees per Attachment 205.

PUD-6. RCWOD designation: The developer shall through zone change ordinance exhibits apply not only the base zoning districts consistent with the Comprehensive Plan but also the RCWOD that WDO 2.05.05 describes to the applicable areas within Tracts C & E and where the applicable area overlaps the golf course lot.

PUD-7. Environmental remediation: The developer shall remediate per Attachment 204, Part C.

PUD-8. Lot and tract development standards: The standards shall be per Attachment 202.

PUD-9. Common area improvements: Improvements shall be per Attachment 203.

PUD-10. Association: The developer shall establish an association/HOA per Attachment 203, Part E.

PUD-11. PUD Final Plan Approval Process:

- a. The developer shall conform to WDO 5.01.07, the purpose of which is to ensure that the PUD is in substantial conformance with the conditions of the PUD Detailed Development Plan (DDP) approval, including regarding street improvements, public improvements outside ROW if any, and common area improvements. The developer shall apply to the Director for PUD Final Plan Approval no later than when applying to PW for CEP review.
- b. Scope: The scope of DDP includes any topic for which any given final decision condition of approval, and any separate document it might reference, is too general to establish civil engineering standards and construction levels of detail. It also includes any topic or situation for which no standard exists through previous adoption by PW. The Final Plan Approval process is to establish any and all design details deferred from land use review.
- c. CEP: The developer shall incorporate a PUD Final Plan Approval by the Director into CEP review by PW and the civil engineering plan set that PW would approve through CEP.

PUD-12. Construction access: Construction access is prohibited from and to Olympic. If public works construction code standards necessary for PW to administer this condition are absent, the Public Works Director may administratively through a PW permit process establish details, specifications, and revisions to administer including regarding time, place, manner, and temporary signage directing traffic.

PUD-13. Dove Landing park improvements: The developer shall pay a fee per Attachment 205 towards improvement of the public park land within the Dove Landing PUD, which is west across BFR.

Planned Unit Development 22-02: Transportation

T-A. BFR & OR 214: The developer shall pay towards TSP signal timing studies or a combined study per Attachment 205. [TSP R8, R9, & R11, p. 32 as Attachment 104A]

T-BP. Wayfinding: To further TDM, the developer shall do one of the following:

- a. Install 3 min devices, such as signage, that provide wayfinding to bicycle routes, multi-use paths, parks, schools, and other essential destinations. If the developer were to opt for signage and assuming pole signage, sign face min dimensions shall be 2 ft by 1 ft and the placements shall be min:
 - (1) 1 installation of 1 face along Tract A Magnolia frontage;
 - (2) 1 installation of 2 faces at or near the intersection of BFR & Owl and along Tract H;
 - (3) 1 installation of 2 faces at or near the intersection of BFR & Magnolia and near Tract I; Note: The developer may mimic the typical wayfinding per <u>WDO interpretation</u> memo INT 22-0608.
- b. Pay a fee in-lieu per Attachment 205. [TSP B40 "wayfinding"/P62]

T-T1. Bus shelter: To further TDM through bus transit, the developer shall provide for a bus shelter by either (a) installing a shelter to the specs per <u>WDO interpretation</u> memo INT 22-0609 or (b) paying a fee in-lieu per Attachment 205. [TPU 9]

T-T2. Bus stop bicycle parking: To further TDM through bus transit, the developer shall at each of the following locations provide for bicycle parking by either (1) installing a bicycle rack to the specs specified WDO interpretation memo INT 22-0609 or (2) paying a fee in-lieu per Attachment 205:

- a. BFR along Tract H; and
- b. BFR northbound adjacent to Tax Lot 051W07BA01300 (2348 N. Boones Ferry Rd). [TSP T18]

T-T3. Bus transit fee: To further transportation demand management (TDM) through bus transit, the developer shall pay a bus transit fee per Attachment 205.

Expiration: Per Woodburn Development Ordinance (WDO) 4.02.04B:

"Expiration Period: A final decision on any application shall expire within three years of the final decision date unless:

- 1. The City has issued a building permit to exercise the right granted by the decision;
- 2. The activity approved in the decision has commenced; or
- 3. The City has approved a time extension per Section 4.02.05.

Regarding subsection B.1 above, if by 10 years past the final decision date there is no substantial construction as Section 1.02 defines following issuance of a building permit, the final decision shall expire and fail to vest.

Regarding subsection B.2 above as applies to Property Line Adjustment, Consolidation of Lots, and Partition and Subdivision Final Plat Approval application, the developer shall complete recordation no later than the land use expiration date."

Notes to the Applicant:

- 1. Records: Staff recommends that the applicant retain a copy of the subject approval.
- 2. Fences, fencing, & free-standing walls: The approval excludes any fences, fencing, & free-standing walls, which are subject to WDO 2.06 and the permit process of 5.01.03.
- 3. Signage: The approval excludes any private signage, which is subject to WDO 3.10 and the permit process of 5.01.10.
- 4. PLA Time Limit: WDO 4.02.04B. specifies that, "A final decision on any application shall expire within three years of the date of the final decision unless: 1. a building permit to exercise the right granted by the decision has been issued; 2. the activity approved in the decision has commenced; or 3. a time extension, Section 4.02.05, has been approved. Because unrecorded re-plats lingering indefinitely have burdened staff, a condition sets sooner time limits for subsection 2. to begin and finish recordation.
- 5. Mylar signature: The Community Development Director is the authority that signs plat Mylars and not any of the mayor, City Administrator, Public Works Director, or City Engineer. Only one City signature title block is necessary.
- 6. PLA Plat Tracker: Marion County maintains a plat tracking tool at http://apps.co.marion.or.us/plattracker/>. Use it to check on the status of a recordation request to the County. City staff does not track County plat recordation.

7. Technical standards:

- a. Context: A reader shall not construe a land use condition of approval that reiterates a City technical standard, such as a PW standard, to exclude remaining standards or to assert that conditions of approval should have reiterated every standard the City has in order for those standards to be met.
- b. Utilities: A condition involving altered or additional sidewalk or other frontage/street improvement that would in the field result in displacement or relocation of any of utility boxes, cabinets, vaults, or vault covers does not exempt the developer from having to move or pay to move any of these as directed by the City Engineer and with guidance from franchise utilities.
- 8. Other Agencies: The applicant, not the City, is responsible for obtaining permits from any county, state and/or federal agencies, which may require approval or permit, and must obtain all applicable City and County permits for work prior to the start of work and that the work meets the satisfaction of the permit-issuing jurisdiction. The Oregon Department of Transportation (ODOT) might require highway access, storm drainage, and other right-of-way (ROW) permits. All work within the public ROW or easements within City jurisdiction must conform to plans approved by the Public Works Department and must comply with a Public Works Right-of-Way permit issued by said department. Marion County plumbing permits must be issued for all waterline, sanitary sewer, and storm sewer work installed beyond the Public Right-of-Way, on private property.

- 9. Inspection: The applicant shall construct, install, or plant all improvements, including landscaping, prior to City staff verification. *Contact Planning Division staff at least three (3) City business days prior to a desired date of planning and zoning inspection of site improvements*. This is required and separate from and in addition to the usual building code and fire and life safety inspections. Note that Planning staff are not primarily inspectors, do not have the nearly immediate availability of building inspectors, and are not bound by any building inspector's schedule or general contractor convenience.
- 10. Stormwater management: The storm sewer system and any required on-site detention for the development must comply with the City Storm Water Management Plan, Public Works storm water practices and the Storm Drainage Master Plan.
- 11. Public Works Review: Staff performs final review of the civil plans during the building permit stage. Public infrastructure must be constructed in accordance with plans approved by the City, as well as current Public Works construction specifications, Standard Drawings, Standard Details, and general conditions of a permit type issued by the Public Works Department.

12. ROW:

- a. Dedication: The Public Works Department Engineering Division has document templates for ROW and easement dedications that applicants are to use.
 - ROW and public utility easement (PUE) dedications are due prior to building permit issuance per Public Works policy.
- b. Work: All work within the public ROWs or easements within City jurisdiction must require plan approval and permit issuance from the Public Works Department. All public improvements construction work must be performed in accordance with the plans stamped "approved" by the City, and comply with the City's Standard Specifications and Standard drawings.
- 13. Franchises: The applicant provides for the installation of all franchised utilities in any required easements.
- 14. Water: All water mains and appurtenances must comply with Public Works, Building Division, and Woodburn Fire District requirements. Existing water services lines that are not going to be use with this new development must be abandoned at the main line. The City performs required abandonment of existing water facilities at the water main with payment by the property owner. All taps to existing water mains must be done by a "Hot Tap" method and by approved City of Woodburn Contractors. The applicant shall install the proper type of backflow preventer for all domestic, lawn irrigation and fire sprinkler services. The backflow devices and meters shall be located near the city water main within an easement, unless approved otherwise by Public Works. Contact Byron Brooks, City of Woodburn Water Superintendent, for proper type and installation requirements of the backflow device at (503) 982-5380.
- 15. Grease Interceptor/Trap: If applicable, a grease trap would need to be installed on the sanitary service, either as a central unit or in a communal kitchen/food preparation area. Contact Marion County Plumbing Department for permit and installation requirements, (503) 588-5147.
- 16. Fire: Fire protection requirements must comply with Woodburn Fire District standards and requirements, including how the District interprets and applies Oregon Fire Code (OFC). Place fire hydrants within the public ROW or public utility easement and construct them in accordance with

Public Works Department requirements, specifications, standards, and permit requirements. Fire protection access, fire hydrant locations and fire protection issues must comply with current fire codes and Woodburn Fire District standards. See City of Woodburn Standard Detail No. 5070-2 Fire Vault. The fire vault must be placed within the public right-of-way or public utility easement.

- 17. SDCs: The developer pays System Development Charges prior to building permit issuance. Staff will determine the water, sewer, storm and parks SDCs after the developer provides a complete Public Works Commercial/Industrial Development information sheet.
- 18. Public Improvements Civil Plan Review: The process by which to receive, review, and approve drawings and other documents related to public improvements required by these conditions of approval may be paired with or incorporated into building permit review, or, if directed by the City Engineer, through a civil engineering plans (CEP) review process led by the Engineering Division. If opting for CEP, the applicant shall not only follow the direction of the Engineer Division, but also take some actions to facilitate tracking by Planning staff and coordination with Engineering:
 - a. Cover letter: Upon submitting application to the Engineering Division, simultaneously alert the Planning Division through a cover letter to the attention of the Planning Division referencing the intended or, if known, actual submittal date as well as the project name, project phase, tax lot number(s), street address(es), and the land use / planning / zoning final decision conditions of approval that require the public improvement that is the subject of the civil engineering plans. Referencing conditions may be by quotation or citing the identification numbers (e.g., T-A1). Identify the specific sheet (by number) or document page number that illustrates or notes how each subpart of a condition is met.
 - b. Contact information: State the applicant's name, company, phone number, e-mail, and desired date for City staff to respond with review comments. The cover letter may include these.
 - c. Plan copies: Submit to the attention of the Planning Division at least two plan size copies of plan sets (24 by 36 inches). Within the cover sheet title block(s), include the phrase "civil engineering plans" or "public improvements civil plans". Submit also Adobe PDFs using a fileshare service.
 - d. Re-submittal fee: If there are multiple re-submittals, beginning with a third submittal / second revised submittal and continuing with each subsequent submittal, the applicant must pay through the Planning Division into City general revenue a fee of \$100.

Where public improvements involve the jurisdiction of an outside agency such as the Oregon Department of Transportation (ODOT), the developer must account for that when interacting with the City Engineer and City Public Works Department process.

19. PUD Final Plan (FP) Approval Process:

A. Context and project management:

- 1. The process by which to receive, review, and approve drawings and other documents related to public improvements required by these conditions of approval may be paired with or incorporated into building permit review, or, if directed by the City Engineer, through a civil engineering plans (CEP) review process led by PW.
- 2. CEP remains the means for implementing final decision conditions of approval affecting street improvements, both surface and underground, and extending into PUEs.
- 3. The developer is project manager. Because PW establishes that CEP applicants have a single point of contact termed the "Engineer of Record", the developer manages the engineer of

- record who handles the CEP and also interacts with the Planning Division regarding FP review. For Planning Division staff, the developer is the point of contact, namely whoever on the developer's team the developer tasks with being the project manager.
- 4. The developer shall be completely responsible for integrating staff directions found in FP documents issued by Planning Division staff into civil engineering plans that the engineering of record submits to PW.
- 5. If, when, and where conflicting directions arise between FP directions and CEP directions, the developer shall be responsible for communicating with formal cover or transmittal letters messages from the conflicting division to the other division, and shall communicate such.
- 6. The Planning Division observes the CEP for other projects has come after land use final decision and before the building permit stage. Except where otherwise conditioned, it's up to the developer to determine when to submit for CEP and PUD Final Plan relative to each other to best meet this "context and project management" condition.

B. PUD Final Plan review scope and result:

- 1. The scope of FP review includes any topic for which any given final decision condition of approval, and any separate document it might reference, is too general to establish civil engineering standards and construction levels of detail. It also includes any topic or situation for which no standard exists through previous adoption by PW or, where applicable, parks and recreation staff. It includes, as examples, pavement, game and sports courts and fields, buildings including pre-fabricated ones, playgrounds and other structures including pre-fabricated ones, exterior lights, landscaping, signage, and appurtenances such as benches, bicycle parking, dog waste stations, ornamental fountains, and water fountains, as well as materials, textures, colors, and model specifications. (Although in or partially in ROW, a bus shelter or shelters are to be subject to FP instead of CEP based on PW preference, unless PW were to direct the engineer of record to include such in CEP scope.)
- 2. There shall result an official version of a civil engineering plan set marked approved by PW that shows all common area improvements and all public improvements, including off-street public improvements, resulting from both FP review and CEP. It shall come to be prior to building permit application; however, PW is prohibited from approving any time prior to the developer paying conditioned fees related to CEP Planning Division review.

C. Submittal directions FP review:

- 1. Due date: For CEP, none other than what PW might specify. For FP, original / 1st submittal is due whichever occurs earlier: When the developer applies for either CEP or final plat application to the City.
- 2. Cover letter: Upon submitting CEP application to PW, simultaneously alert the Planning Division through a cover letter to the attention of the Planning Division referencing the intended or, if known, actual submittal date as well as the project name, tax lot number(s), street address(es), and the land use final decision conditions of approval that require the public improvements that ares the subject of the civil engineering plans. Referencing conditions may be by quotation or citing the identification numbers (e.g., T-A1). Identify the specific sheet (by number) or document page number that illustrates or notes how each part of a condition is met.

- 3. Contact information: State the applicant's name, company, phone number, e-mail, and desired date for City staff to respond with review comments. The cover letter to the Planning Division may include these. The developer may submit to the Planning Division a copy of the stamped CEP application form submitted to PW if the form includes the required information.
- D. Site Plans: For CEP Planning Division review and FP:
 - 1. CEP: Submit to the attention of the Planning Division at least 2 plan size copies of plan sets, one plotted at native scale (min 22 by 34 inches, max 24 by 36) and one at ledger (11 by 17). Within the cover sheet title block(s), include the anticipated date of submittal and the phrase "civil engineering plans", "civil plans for CEP", or "public improvements civil plans".
 - 2. FP: Submit to the attention of the Planning Division at least 6 plan size copies of plan sets, 3 plotted at native scale (min 22 by 34 inches, max 24 by 36) and 3 at ledger (11 by 17). Within the cover sheet title block(s), include the anticipated date of submittal.
 - 3. Both: Fold the plan size sets if thin enough to do so. Submit also Adobe PDFs using a fileshare service.

Appeals: The decision is final unless appealed to the Oregon Land Use Board of Appeals (LUBA) pursuant to Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR) 661-010. The appeal due date is "on or before the 21st day" after the decision date per OAR 661-010-0015(1)(a). A valid appeal must meet the rules. If appealing to LUBA, as a courtesy inform City staff in writing.

A copy of the decision is available for inspection at no cost, and the City would provide a copy at reasonable cost at the Community Development Department, City Hall, 270 Montgomery Street, Woodburn, OR 97071-4730. For questions or additional information, contact Cassandra Martinez, Administrative Specialist, at (503) 982-5246 or cassandra.martinez@ci.woodburn.or.us.

Testifiers:

Name	Address	Planning Commission		City Council	
		Written	Verbal	Written	Verbal
Garrett	Schwabe, Williamson, Wyatt, 1211	Х	x	Х	
Stephenson	SW 5th Ave, Ste 1900, Portland, OR				
(applicant's	97204				
attorney)					
Jim Nicolarsen	620 Troon Ave	Х		х	
	Woodburn, OR 97071-7691				
Julie Nicolarsen	620 Troon Ave	x		х	
	Woodburn, OR 97071-7691				
Dennis & Lorell	408 Turnberry Ave, Woodburn, OR			х	
Ortega	97071-7740				
Eric Svela	549 Turnberry Ave, Woodburn, OR	Х	x		
	97071-7742				

Attachments:

- Planning Commission June 23, 2022 Staff Report Attachment 101. Marked Tax Map
- 102. Analyses & Findings
- 102A. Public Works comments (June 15, 2022)
- 103. Site plans (27 sheets)
- 103A. Annexation Service Provider Letters (SPLs; 4 pages)
- 104A. TSP Tables 2 & 5 marked excerpts from pages 32 & 62: Projects R8, R9, R11, & P36 (2 pages)
- 104B. TSP Fig. 2 "Functional Roadway Classification"
- 104C. TSP Fig. 6 "Local Street Connectivity Plan"
- Planning Commission June 23, 2022 staff addendum memo Attachment 104D. ANX 22-02
 Strikethrough-and-U Conditions of Approval Revised from June 23, 2022 Planning Commission
 Staff Report
- 201.* ANX 22-02 Marion Pointe PUD: Dictionary & Glossary
- 202. ANX 22-02 Marion Pointe PUD: Lot & Tract Development Standards
- 203. ANX 22-02 Marion Pointe e PUD: Common Area Improvements & Public Easements
- 204. ANX 22-02 Marion Pointe PUD: Tree Preservation & Protection and Environmental Remediation
- 205. ANX 22-02 Marion Pointe PUD: Conditioned Fees

Sincerely,		
Colin Cortes		
Colin Cortes, AICP, CNU-A		
Senior Planner		
As authorized by the City Council on August 8, 2022		
Eric Swenson, Mayor	Date	
EC /		
ES/cmc		
cc: Chris Kerr, Community Development Director		

^{*}The 200 series of attachments are details for the conditions of approval.

Curtis Stultz, Public Works Director

Dago Garcia, P.E., City Engineer

Melissa Gitt, Building Official

Jason Space, GIS Technician

Holt Group Holdings, LLC, P.O. Box 61426, Vancouver, WA 98666-1426 (applicant) [mail]

Rand Waltz, Project Manager, AKS Engineering & Forestry, LLC, 12965 SW Herman Rd, Ste 100, Tualatin, OR 97062-7052 (applicant's representative) [mail]

Tukwila Partners, P.O. Box 128, Woodburn, OR 97071-0128; and Oregon Golf Association c/o Members Club Inc., 2850 Hazelnut Dr, Woodburn, OR 97071-9698 (landowner) [mail]

Testifiers: Per the table above. [mail]

Casey Knecht, P.E., Development Review Coordinator, Oregon Dept. of Transportation (ODOT) Region 2 <casey.knecht@odot.oregon.gov>

Ken Spencer, Customer Operations Engineer, Portland General Electric (PGE) kenneth.spencer@pgn.com

Marion County:

Assessor's Office <assessor@co.marion.or.us>

Elections < rpatraw@co.marion.or.us> [for annexations, land divisions with new streets, and address assignments]

Geographic Information System (GIS) <gis@co.marion.or.us>

Land Development Engineering & Permits <mcldep@co.marion.or.us>

Planning Division <planning@co.marion.or.us>

Public Works Dept. <mcdpw@co.marion.or.us>



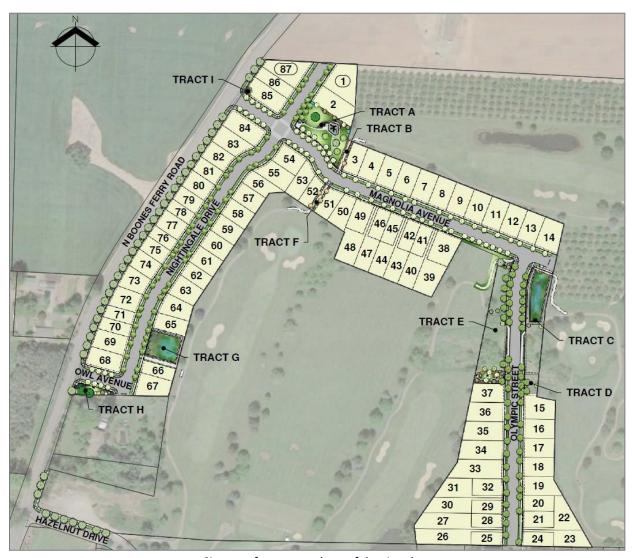
Staff Report

То:	Planning Commission			
Through:	Chris Kerr, AICP, Community Development Director \mathcal{CK}			
From:	Colin Cortes, AICP, CNU-A, Senior Planner			
Meeting Date:	June 23, 2022 (Prepared June 15, 2022)			
Item:	"Marion Pointe" Planned Unit Development (ANX 22-02)			
Tax Lot(s):	051W06D000502 (primary), 500, & 800 and 051W06DC00201 & 300 (no address; Boones Ferry Rd NE east side north of Hazelnut Dr)			
Table of Contents				
ISSUE BEFORE THE PLANNING COMMISSION				
EXECUTIVE SUMMARY				
RECOMMENDATION				
CONDITIONS OF APPROVAL				
ACTIONS				
ATTACHMENT LIST				
Issue before the Planning Commission				
Annexation ANX 22-02 (Type IV) with proposed planned unit development PUD 22-02 Marion Pointe: Commission is to hold a public hearing and make a recommendation to the City Council.				

Executive Summary

Location

The proposed Marion Pointe PUD of 87 houses on small lots is based on annexation of 39.21 acres from Marion County. The territory is a former orchard located at northeast city limits along the east side of Boones Ferry Road NE and includes part of the existing Oregon Golf Association golf course. Annexation includes road right-of-way (ROW) down to include the south leg of the intersection of the road with Hazelnut Drive.



Site map from cover sheet of the site plans

Annexation & Zoning Designation

Because the Comprehensive Plan land use map designates the territory Low Density Residential and – on the golf course – Open Space and Parks per Comprehensive Plan Policy Table 1 the default corresponding zoning districts are Residential Single Family (RS) and Public and Semi-Public (P/SP). Along with an annexation ordinance, the Council would by separate ordinance designate the annexed territory as RS & P/SP base zoning districts. Because a west tributary of Mill Creek and wetlands are within the territory, designation would include the Riparian Corridor and Wetlands Overlay District (RCWOD).

Development

Staff and the developer worked diligently to produce a superior site development that includes features such as:

- 1. Frontage/street improvements including enhanced public amenities in form of wider sidewalks and more street trees;
- 2. Street stubs that allow a logical network for future development to extend;
- 3. Two street connections with Boones Ferry Road NE;
- 4. Lessened driveway curb cuts through shared driveways at flag lots;
- 5. Common area improvements such as benches and a shelter;
- 6. Remediation of the riparian corridor of the west tributary of Mill Creek through invasive groundcover removal (e.g. Himalaya blackberry) and restorative plantings;
- 7. Walking and cycling wayfinding signage;
- 8. Tree preservation or fees in-lieu;
- 9. Fees towards City bus stop improvements and bus service; and
- 10. Fee towards improvement of the public park land in the Dove Landing PUD west across Boones Ferry Road NE.

The recommended conditions of approval secure things like the above. Site plans are within Attachment 103.

The Public Works Department, Woodburn Fire District, and Woodburn School District gave the applicant annexation service provider letters (SPLs; Attachment 103B) indicating that they can serve the development.

Staff finds that the proposal meets applicable Woodburn Development Ordinance (WDO) provisions per the analyses and findings (Attachment 102) and with the recommended conditions of approval.

Staff notes that, following City Council denial on April 12, 2021 of ANX 2020-01 Trillium Reserve PUD for the same property, the ANX 22-02 Marion Pointe PUD application materials do a good job of addressing the City Council reasons for denial of Trillium Reserve stated in that final decision document.

Recommendation

Approval: Staff recommends that the Planning Commission consider the staff report and attachments and recommend approval to the City Council application with the conditions recommended included with this report.

Conditions of Approval

The conditions are copied from towards the end of the analyses and findings (Attachment 102):

General

- G1. By and as part of building permit application, the applicant shall submit revised site plans meeting the conditions of approval and obtain Planning Division approval through sign-off on permit issuance by the Building Division.
- G2. The applicant or successors and assigns shall develop the property in substantial conformance with the final plans submitted and approved with these applications, except as modified by these conditions of approval. Were the applicant to revise plans other than to meet conditions of approval or meet building code, even if Planning Division staff does not notice and signs off on building permit issuance, Division staff retains the right to obtain restoration of improvements as shown on an earlier land use review plan set in service of substantial conformance.
- G3. References: Attachment 201 serves as a dictionary or glossary defining certain abbreviations, acronyms, phrases, terms, and words in the context of the conditions of approval. The 200 series of attachments are as binding as the conditions of approval in the main body of the final decision.
- G4. Due dates / public improvements:
 - a. When public street improvements, and any fees in lieu of public improvements, are due shall be per WDO 3.01.02 and 4.02.12 through Ordinance No. 2603 (LA 21-02) unless if and where a condition of approval has more restrictive timing.
 - b. Where changes to street addresses are necessary, the developer shall apply through the Planning Division for and obtain approval of an Address Assignment Request. This is due prior to building permit application, and if property line adjustment or lot consolidation were to become relevant, then also after recordation with County.
- G5. Recordation due dates: The applicant shall apply to the County for recordations of items that the City requires no later than six (6) months prior to expiration of the land use approval as WDO 4.02.04B establishes, and shall complete recordations no later than three years past the land use "final decision" date. The due date to complete recordations shall not supersede when recordations are due relative to the building permit stage.

- G6. Fees: The developer shall pay fees per Attachment 205, and fees in-lieu shall be per WDO 4.02.12 through Ordinance No. 2603 (LA 21-02) adopted June 13, 2022.
- G7. Demolition: Because the City through the Building Division now requires demolition permits, upon annexation and before beginning to demolish buildings or structures or demolishing more of them, consult the Permit Technician and apply for and obtain a permit or permits as applicable.
- G8. WDO version: Upon annexation, conformance to the Woodburn Development Ordinance (WDO) and conditions of approval references to the WDO shall be to the WDO as amended by Ordinance No. 2603 (Legislative Amendment LA 21-02) adopted June 13, 2022.

G-PW. Public Works: Follow the appended PW comments (June 16, 2022); Attachment 102A).

Preliminary Subdivision 22-03

SUB-1. Expiration: Based on ORS 92.040(3), development per the Council land use final decision may continue 3 years past the decision date, the 3-year approval period being established by WDO 4.02.04 through Ordinance No. 2603 (LA 21-02) adopted June 13, 2022, and as follows:

- a. Final Plat: The developer shall apply to the City prior to applying to Marion County for recordation. Owl extending east across BFR from Dove Landing PUD to Nightingale shall continue its name.
- b. Recordation with Marion County: Same as WDO 5.01.06C.1. (within 30 calendar days of the Director's signature on the plat Mylar).
- c. Vesting: The decision is vested unless:
 - (1) The developer fails to meet subdivision and PUD requirements, resulting in the City being unable to authorize staff to sign a final plat Mylar by July 1, 2027; or
 - (2) There is no substantial construction as defined in 1.02 through Ordinance No. 2603 (LA 21-02) by July 1, 2032.

SUB-2. Documents:

- a. Geotech report: Prior to final plat approval by the City, the developer shall submit to the Director a geotechnical report documenting that, whether or not the developer spreads any fill or spoil dirt across lots and tracts, soil is compacted and ready to accommodate the construction of buildings on lots and tracts proposed for development.
- b. Easements: WDO 2.01.05A through Ordinance No. 2603 (LA 21-02) adopted June 13, 2022 shall be applicable, and follow Attachments 102A (Public Works) and 203, Part D.
- c. Plat: Upon recordation, the developer shall submit to PW and cc the Director copies of recorded documents per WDO 2.01.05 through Ordinance No. 2603 (LA 21-02) adopted June 13, 2022.

Planned Unit Development 22-02

PUD-PW. Stormwater management: Prior to civil engineering plan approval through CEP review, the applicant shall provide an Engineer Stamped Storm Drainage Hydraulic Analysis Report that existing private storm drainage systems have capacity to handle the additional flow from the Marion Pointe and ANX 2020-03 Dove Landing Planned Unit Developments (PUDs), and that the culvert/pipe under Olympic Street has capacity to handle a 100 year base flood event, and to provide a final 100 year floodway, floodplain, and wetland delineation for this development. The applicant is responsible for correcting any capacity deficiencies, including installing new or additional drainage systems, and/or attaining the right to increase stormwater flows into neighboring private stormwater systems.

PUD-1. Mods: The City approves PUD modifications only as written in conditions of approval and the 200 series of attachments, particularly Attachment 202. Other modifications that site plans imply are subject to later administrative approval or denial by the Director.

PUD-2.

- a. ROWs: For BFR and the proposed local class streets, the developer shall dedicate ROWs that meet or exceed the min widths necessary to conform to WDO Figures 3.01C & G.
- b. PUEs: The developer shall grant streetside PUEs that meet or exceed the min width and do not exceed the max per WDO 3.02.01 through Ordinance No. 2603 (LA 21-02) adopted June 13, 2022.

PUD-3. Frontage/street improvements: These shall be as follows:

- a. BFR: Per WDO Fig. 3.01C except that planter strip shall be min 6½ ft wide inc. curb width.
- b. Olympic: Bridge or culvert crossing over Mill Creek tributary: Per WDO 3.01.03H through Ordinance No. 2603 (LA 21-02) adopted June 13, 2022, and:
 - (1) Elevation: Shall be such that the travel way and parking lanes wouldn't flood during the 100-year flood.
 - (2) Sidewalks: min width 9 ft inc. curbing.
 - (3) Fencing/railings: Permissible colors are blue, bronze, brown, green, teal, metal, and rust color. (Black prohibited.)
 - (4) Design details are deferred to PUD Final Plan Approval process; refer to Condition PUD-11.
- c. Tract D: The developer shall grant to the City over the entire tract a public street easement. The easement shall allow for all purposes permitted by what would have

- been ROW dedication including construction of street improvements. One or more legal instruments that dedicates the easement shall contain text that the easement is revocable only with the written concurrence of both the Community Development Director and Public Works Director and by City Council action. (The objective is to have maintenance responsibility remain with a party other than the City.)
- d. Hazelnut: Per WDO Fig. 3.01G, except that the territory contiguous with Tax Lots 051W06DC00201 & 300, which is occupied by Hazelnut, shall be dedicated to the City as ROW. (Note: To not meet this condition part would require modification of condition [MOC] application and approval per WDO 4.02.07.)
- e. Planter strip remainder: Landscape the remainder area the area remaining after street tree plantings per WDO 3.01.04B through Ordinance No. 2603 (LA 21-02) adopted June 13, 2022.
- f. Sidewalks: Min 6 ft wide except wider as Exhibit PUD-3f supersedes. BFR sidewalk southerly and two northerly dead-ends shall have ADA-compliant transitions spanning between sidewalk and road shoulder as the applicable public works authority specifies. The segment extending north from Hazelnut sidewalk may meander, including PUE overlap, and taper to 6 ft through RPZs to save most of the loose row of trees along the road.

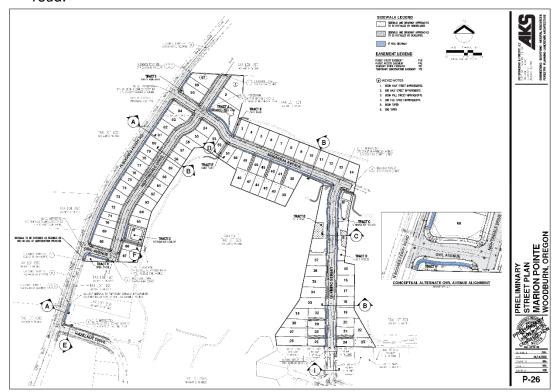


Exhibit PUD-3f: Site Plan Sheet P-26 Sidewalks (blue: min 8 ft wide); see Attachment 103 for full size

g. Overlap: The extra width of planter strip and sidewalk shall either (1) overlap outside ROW into streetside PUE and come with a recorded legal instrument granting public

access to the overlap to the satisfaction of the Public Works Director, or (2) come with additional ROW to accommodate them. Wider sidewalks shall not narrow planter strips.

h. Street trees:

(1) Min numbers equal to block frontage ratios per Exhibit PUD-3h:



Exhibit PUD-3h: Site Plan Sheet P-31 Street Tree Min No. (green: equal to 1 tree per 30 ft of block frontage)

- (2) Along Magnolia, revise street trees from Capital pear to *Magnolia grandiflora* "Victoria" cultivar.
- (3) Fee in-lieu shall be per Attachment 205.
- (4) Landscape strips and street trees shall conform to WDO 3.01.04B (landscaping, irrigation) and 3.06.03A.3 (root barriers) through Ordinance 2603.
- i. Electric power lines: Electric power lines, whether in or beyond ROW, shall be buried.
- j. Traffic calming: A min number of pedestrian crossings along intersection legs shall be patterned poured concrete each min 8 ft wide:
 - (1) Magnolia & Nightingale, 3 legs: N/NE, E/SE, & S/SW; and
 - (2) Magnolia & Olympic: 2-3 legs: S/SW & whichever one or both of the E/SE or W/NW legs that would have a curb ramp along the top of the "T" of the T-intersection.

PUD-4. Streets, dead-end: Barricades/Signage: Based on WDO 3.01.05A.2b & c, the developer shall place:

- a. A barricade with sign at the south end of Nightingale; and
- b. A barricade at each of the north end of Nightingale the east end of Magnolia. Consult PW for a barricade detail, and no later than CEP show both it and a modified version with a sign in conformance with 3.01.05A.2c.
- PUD-5. Tree preservation: The developer shall preserve trees per Attachment 204 or pay removal fees per Attachment 205.
- PUD-6. RCWOD designation: The developer shall through zone change ordinance exhibits apply not only the base zoning districts consistent with the Comprehensive Plan but also the RCWOD that WDO 2.05.05 describes to the applicable areas within Tracts C & E and where the applicable area overlaps the golf course lot.
- PUD-7. Environmental remediation: The developer shall remediate per Attachment 204, Part C.
- PUD-8. Lot and tract development standards: The standards shall be per Attachment 202.
- PUD-9. Common area improvements: Improvements shall be per Attachment 203.
- PUD-10. Association: The developer shall establish an association/HOA per Attachment 203, Part E.

PUD-11. PUD Final Plan Approval Process:

- a. The developer shall conform to WDO 5.01.07, the purpose of which is to ensure that the PUD is in substantial conformance with the conditions of the PUD Detailed Development Plan (DDP) approval, including regarding street improvements, public improvements outside ROW if any, and common area improvements. The developer shall apply to the Director for PUD Final Plan Approval no later than when applying to PW for CEP review.
- b. Scope: The scope of DDP includes any topic for which any given final decision condition of approval, and any separate document it might reference, is too general to establish civil engineering standards and construction levels of detail. It also includes any topic or situation for which no standard exists through previous adoption by PW. The Final Plan Approval process is to establish any and all design details deferred from land use review.
- c. CEP: The developer shall incorporate a PUD Final Plan Approval by the Director into CEP review by PW and the civil engineering plan set that PW would approve through CEP.

PUD-12. Construction access: Construction access is prohibited from and to Olympic. If public works construction code standards necessary for PW to administer this condition are absent, the Public Works Director may administratively through a PW permit process establish details, specifications, and revisions to administer including regarding time, place, manner, and temporary signage directing traffic.

PUD-13. Dove Landing park improvements: The developer shall pay a fee per Attachment 205 towards improvement of the public park land within the Dove Landing PUD, which is west across BFR.

Planned Unit Development 22-02: Transportation

T-A. BFR & OR 214: The developer shall pay towards TSP signal timing studies or a combined study per Attachment 205. [TSP R8, R9, & R11, p. 32 as Attachment 104A]

T-BP. Wayfinding: To further TDM, the developer shall do one of the following:

- a. Install 3 min devices, such as signage, that provide wayfinding to bicycle routes, multiuse paths, parks, schools, and other essential destinations. If the developer were to opt for signage and assuming pole signage, sign face min dimensions shall be 2 ft by 1 ft and the placements shall be min:
 - (1) 1 installation of 1 face along Tract A Magnolia frontage;
 - (2) 1 installation of 2 faces at or near the intersection of BFR & Owl and along Tract H;
 - (3) 1 installation of 2 faces at or near the intersection of BFR & Magnolia and near Tract I;

Note: The developer may mimic the typical wayfinding per WDO interpretation memo INT 22-0608.

- b. Pay a fee in-lieu per Attachment 205. [TSP B40 "wayfinding"/P62]
- T-T1. Bus shelter: To further TDM through bus transit, the developer shall provide for a bus shelter by either (a) installing a shelter to the specs per WDO interpretation memo INT 22-0609 or (b) paying a fee in-lieu per Attachment 205. [TPU 9]
- T-T2. Bus stop bicycle parking: To further TDM through bus transit, the developer shall at each of the following locations provide for bicycle parking by either (1) installing a bicycle rack to the specs specified WDO interpretation memo INT 22-0609 or (2) paying a fee in-lieu per Attachment 205:
 - a. BFR along Tract H; and
 - b. BFR northbound adjacent to Tax Lot 051W07BA01300 (2348 N. Boones Ferry Rd). [TSP T18]
- T-T3. Bus transit fee: To further transportation demand management (TDM) through bus transit, the developer shall pay a bus transit fee per Attachment 205.

Actions

The Planning Commission may instead act on the land use application to recommend to:

- 1. Approve with modified conditions, or
- 2. Deny, based on WDO criteria or other City provisions.

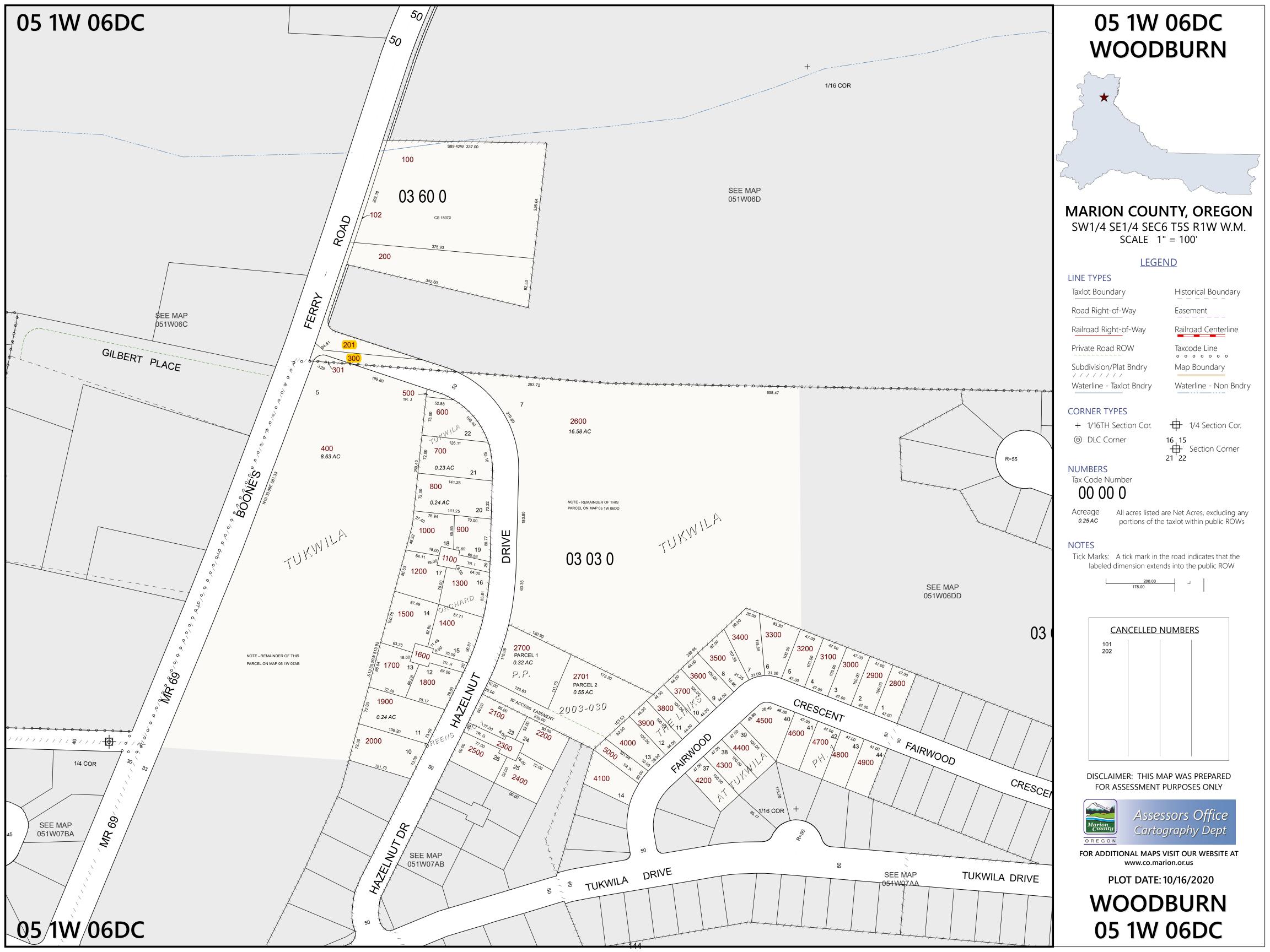
If the Planning Commission were to act upon the recommendation, staff would proceed to a City Council hearing, tentatively scheduled for July 25, 2022, with the Commission recommendation. (Were the Council to approve the consolidated application package, it would do so by adopting two ordinances, one for annexation and one for zoning, and authorizing a final decision document for the applications besides the annexation.)

Attachment List

- 101. Marked Tax Maps (2 sheets)
- 102. Analyses & Findings
- 102A. Public Works comments (June 15, 2022)
- 103. Site plans (dated Apr. 14, 2022 and submitted Apr. 21, 2022; 27 sheets)
- 103A. Annexation Service Provider Letters (SPLs; 4 pages)
- 104A. TSP Tables 2 & 5 marked excerpts from pages 32 & 62: Projects R8, R9, R11, & P36 (2 pages)
- 104B. TSP Fig. 2 "Functional Roadway Classification"
- 104C. TSP Fig. 6 "Local Street Connectivity Plan"
- 201.* ANX 22-02 Marion Pointe PUD: Dictionary & Glossary
- 202. ANX 22-02 Marion Pointe PUD: Lot & Tract Development Standards
- 203. ANX 22-02 Marion Pointe PUD: Common Area Improvements & Public Easements
- 204. ANX 22-02 Marion Pointe PUD: Tree Preservation & Protection and Environmental Remediation
- 205. ANX 22-02 Marion Pointe PUD: Conditioned Fees

^{*}The 200 series of attachments are details for the conditions of approval.





ANX 22-02: Analyses & Findings

This attachment to the staff report analyzes the application materials and finds through statements how the application materials relate to and meet applicable provisions such as criteria, requirements, and standards. They confirm that a given standard is met or if not met, they call attention to it, suggest a remedy, and have a corresponding recommended condition of approval. Symbols aid locating and understanding categories of findings:

Symbol	Category	Indication		
	Requirement (or guideline) met No action needed			
×	Requirement (or guideline) not met	Correction needed		
	Requirement (or guideline) not applicable	No action needed		
not met clea		Revision needed for clear and consistent records		
•	Deviation: Planned Unit Development, Zoning Adjustment, and/or Variance	Request to modify, adjust, or vary from a requirement		

Section references are to the Woodburn Development Ordinance (WDO).

Table of Contents

Project Name & Case File Numbers	
Location	
Land Use & Zoning	
Statutory Dates	
Annexation Provisions	
Zoning Map Change Provisions	
Riparian Corridor and Wetlands Overlay District (RCWOD) Provisions	
· · · · · · · · · · · · · · · · · · ·	
Property Line Adjustment Provisions	
SUDDIVISION PREHIMINARY ADDROVAL PROVISIONS	1 /

Marion Pointe ANX 22-02, PUD 22-02, etc. Staff Report
Attachment 102
Page 1 of 56

Planned Unit Development Provisions	18
Remaining Provisions	34
Recommended Conditions of Approval	
Applicant Identity	
Notes to the Applicant	51

Project Name & Case File Numbers

The project name is Marion Pointe. The land use application master/parent case file number is Annexation ANX 22-02, and the children/corollary case file numbers are Property Line Adjustment PLA 22-02, Planned Unit Development PUD 22-02, Riparian Corridor and Wetlands Overlay District Permit RCWOD 22-01, Preliminary Subdivision SUB 22-03, & Zone Change 22-02.

Location

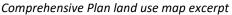
Address(es)	None (east side of N. Boones Ferry Rd north of Hazelnut Dr)		
Tax Lot(s)	051W06D000502 (primary), 500, & 800 and 051W06DC00201 & 300; respectively		
	39.21, 0.15, 0.07, 0.09, & 0.16 acres, totaling 39.69 acres		
Nearest	N. Boones Ferry Rd & Hazelnut Dr		
intersection			

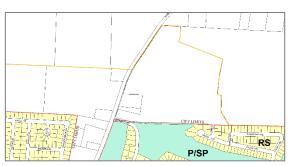
Land Use & Zoning

Comprehensive Plan Land Use Designation	Low Density Residential and Open Space and Parks
Zoning District	Residential Single Family (RS) and Public and Semi-Public (P/SP) – the latter covering the existing golf course – upon annexation
Overlay District(s)	Riparian Corridor and Wetlands Overlay District (RCWOD) along the west tributary of Mill Creek
Existing Use(s)	Closed orchard and part of Oregon Golf Association golf course

For context, the comprehensive plan land use map designations and zoning are illustrated below with excerpts from the City geographic information system (GIS) and the zoning is tabulated further below:







Zoning map excerpt

Cardinal Direction	Adjacent Zoning
North	No City zoning because not annexed
	and outside the City urban growth
	boundary (UGB)
East	No City zoning because not annexed
	and outside the City urban growth
	boundary (UGB)
South	Mix of RS & P/SP; from east to west:
	The Links at Tukwila Phase IV
	subdivision, golf course, Tukwila
	Orchard Greens No. 1 subdivision, and
	more golf course
West	Orchard and two rural houses to be
	demolished and developed into the
	Dove Landing PUD [ANX 2020-03]

Statutory Dates

Application	February 14, 2022
Completeness	
120-Day Final	September 9, 2022 per Oregon Revised Statutes (ORS) <u>227</u> .178. (The nearest
Decision Deadline	and prior regularly scheduled City Council date would be August 22, 2022.)*

^{*}However, the Assistant City Attorney had counseled staff on January 16, 2018 that an annexation request is not subject to the 120-day deadline for final action per 227.178(8).

Annexation Provisions

Because the proposal is for annexation, per 5.04 it requires a Type IV review with City Council decision. The applicant submitted application materials on February 14, 2022 and revised and additional materials through April 21, 2022 (excerpted within Attachment 103).

5.04.01 Annexation

- A. Purpose: The purpose of this Type IV review is to provide a procedure to incorporate contiguous territory into the City in compliance with state requirements, Woodburn Comprehensive Plan, and Woodburn Development Ordinance.
- B. Mandatory Pre-Application Conference: Prior to requesting annexation to the City, a Pre-Application Conference (Section 4.01.04) is required. ...

C. Criteria:

- 1. Compliance with applicable Woodburn Comprehensive Plan goals and policies regarding annexation.
- 2. Territory to be annexed shall be contiguous to the City and shall either:
 - a. Link to planned public facilities with adequate capacity to serve existing and future development of the property as indicated by the Woodburn Comprehensive Plan; or
 - b. Guarantee that public facilities have adequate capacity to serve existing and future development of the property.
- 3. Annexations shall show a demonstrated community need for additional territory and development based on the following considerations:
 - a. Lands designated for residential and community uses should demonstrate substantial conformance to the following:
 - 1) The territory to be annexed should be contiguous to the City on two or more sides;
 - 2) The territory to be annexed should not increase the inventory of buildable land designated on the Comprehensive Plan as Low or Medium Density Residential within the City to more than a 5-year supply;
 - 3) The territory proposed for annexation should reflect the City's goals for directing growth by using public facility capacity that has been funded by the City's capital improvement program;
 - 4) The site is feasible for development and provides either:
 - a) Completion or extension of the arterial/collector street pattern as depicted on the Woodburn Transportation System Plan; or

- b) Connects existing stub streets, or other discontinuous streets, with another public street.
- 5) Annexed fulfills a substantial unmet community need, that has been identified by the City Council after a public hearing. Examples of community needs include park space and conservation of significant natural or historic resources.
- b. Lands designated for commercial, industrial and other uses should demonstrate substantial conformance to the following criteria:
 - 1) The proposed use of the territory to be annexed shall be for industrial or other uses providing employment opportunities;
 - 2) The proposed industrial or commercial use of the territory does not require the expansion of infrastructure, additional service capacity, or incentives that are in excess of the costs normally borne by the community for development;
 - 3) The proposed industrial or commercial use of the territory provides an economic opportunity for the City to diversify its economy.

D. Procedures:

- 1. An annexation may be initiated by petition based on the written consent of:
 - a. The owners of more than half of the territory proposed for annexation and more than half of the resident electors within the territory proposed to be annexed; or
 - b. One hundred percent of the owners and fifty percent of the electors within the territory proposed to be annexed; or
 - c. A lesser number of property owners.
- 2. If an annexation is initiated by property owners of less than half of property to be annexed, after holding a public hearing and if the City Council approves the proposed annexation, the City Council shall call for an election within the territory to be annexed. Otherwise no election on a proposed annexation is required.
- E. Zoning Designation for Annexed Property: All land annexed to the City shall be designated consistent with the Woodburn Comprehensive Plan, unless an application to re-designate the property is approved as part of the annexation process.
- F. The timing of public improvements is as follows:
 - 1. Street dedication is required upon annexation.
 - 2. Dedication of public utility easements (PUE) is required upon annexation.
 - 3. Street improvements are required upon development.
 - 4. Connection to the sanitary sewer system is required upon development or septic failure.
 - 5. Connection to the public water system is required upon development or well failure.
 - 6. Connection to the public storm drain system is required upon development.

Regarding subsection B., staff hosted the pre-application conference (Pre-App PRE 21-20) on August 12, 2021.

The applicant requests that the City designate the annexed territory with the Residential Single Family (RS) and Public and Semi-Public (P/SP) base zoning districts and the Riparian Corridor and Wetlands Overlay District (RCWOD).

Regarding the criteria of subsection C.:

1. The City Comprehensive Plan, Section G. Growth Management and Annexation contains annexation policies on pp. 30-31. The annexation criteria in the WDO already reflect the goals, including efficient City services.

First, the territory to be annexed is within the Woodburn Urban Growth Boundary (UGB). The premise of a UGB is to define an area feasible for the City to provide services to greenfield development over approximately 20 years as described in the Comprehensive Plan. So, in this way the annexation of territory within the UGB is consistent with the comp plan.

Second, the territory also is adjacent to infrastructure that development can make use of or extend into the territory to develop it:

- Roads and street: N. Boones Ferry Road borders to the property to the west, providing a means of access. The property also has a second access by bordering to the south the dead-end of Olympic Street. The annexation legal description and map series include the right-of-way (ROW) adjacent to the site, from the north end south to the south leg of the intersection of N. Boones Ferry Road & Hazelnut Drive.
- Transit: Along N. Boones Ferry Road and Olympic Street, the City and other agencies could run transit vehicles.
- Potable water, sanitary sewer, and stormwater sewer: These are adjacent or nearby, and as the Public Works Department Directs at the civil engineer plan (CEP) review and public works permit stage, the developer will upgrade and extend them as necessary to provide laterals to the site development and for these upgraded and extended utilities to accommodate the demands of the development.
- Other: Other franchise utility providers attend to such utilities as electric power, cable television and internet, natural gas, and cellular wireless telephony, often using existing or extended ROWs.
- 2. The territory is contiguous to the City. Per the comp plan and with implementation through the WDO, upon development of the territory the City would require

Marion Pointe ANX 22-02, PUD 22-02, etc. Staff Report
Attachment 102
Page 6 of 56

improvements that guarantee that public facilities have adequate capacity to serve such development.

The Public Works Department identified no impediments to serve the development that would not be resolved at the permitting stage, evidenced by the Public Works comments that are Attachment 102A.

Second, the Public Works Department, Woodburn Fire District (WFD), and Woodburn School District (WSD) submitted service provider letters (SPLs) as annexation applications require. They are in Attachment 103B. The Public Works one dated September 3, 2020 states:

"This letter is to certify that the City of Woodburn has no capacity issue with the public wastewater treatment facility or public water treatment facility. However, the subject property is not adjacent to an existing collection system for water, wastewater or a public storm sewer collection system. The requirements for these collection facilities would still need to be determined. The capacity analysis, design and installation would be the responsibility of the applicant/property owner."

Along with the Public Works comments that are Attachment 102A, it appears to Planning Division staff that the Public Works Department has no objection to annexation and that public works can serve the development through typical public improvements by a developer of the territory to be annexed.

Additionally, the applicant's narrative (April 21, 2022, pp. 46-47) states:

"Water service via a 12-inch-diameter mainline is available at the intersection of Hazelnut Drive and N Boones Ferry Road. This water line is planned to be extended through the community and looped back into an 8-inch-diameter water line at the current stub end of Olympic Street.

Stormwater from the project is planned to be routed to internal stormwater facilities. Per the Preliminary Composite Utility Plans (included in Exhibit D) and Preliminary Stormwater Report (Exhibit H), these facilities have capacity to accommodate surface water runoff from the project.

Sanitary sewer for the project is planned to be routed to a point of confluence at the south end of the planned extension of Olympic Street, then east and south through the golf course to an existing sanitary sewer mainline within an existing utility easement near the intersection of Troon Avenue and Tukwila Drive. The existing line has the capacity for the planned PUD project and potential future development west of N Boones Ferry Road.

Marion Pointe ANX 22-02, PUD 22-02, etc. Staff Report
Attachment 102
Page 7 of 56

Application to Marion County to extend sanitary sewer utilities within the Exclusive Farm Use (EFU) zone has been previously approved (Administrative Review Case No. 20-027), included as Exhibit L. Plans depicting the sanitary sewer and other planned utilities are included as part of Exhibit D.

The Applicant plans to install necessary water, wastewater, stormwater, and other utility facilities needed to serve the project. No obstructions to the orderly provision of public services have been identified by the Applicant or service providers. Additional review and details will be provided prior to permitting of public improvements. These criteria are met."

There's no written objection by the Public Works Department to the applicant's narrative.

- 3. a. Examining the considerations under subsection a. because the Comprehensive Plan land use map designates the territory Low Density Residential and Open Space and Parks, and the territory is to be designated with Residential Single Family (RS) and Public and Semi-Public (P/SP) base zoning districts consistent with both the applicant's request and Comprehensive Plan Policy Table 1:
 - 1) Following ANX 2020-03 Dove Landing PUD west across Boones Ferry Road NE, the territory to be annexed meets the guideline that it "should be contiguous to the City on two or more sides".
 - 2) The applicant's narrative (pp. 47) states:

"The Comprehensive Plan Land Use Map designates the territory as a combination of Low Density Residential and Open Space and Parks. Per the City's Housing Needs Analysis adopted December 9, 2019, the territory was included in the Buildable Lands Inventory and had been previously designated Low-Density Residential; therefore, the project helps meet the needs identified within the Housing Needs Analysis and Buildable Lands Inventory. Changes to density or zoning designation are not planned.

This petition for annexation represents only a small portion of the residentially designated lands within the UGB. The Housing Needs Analysis states that the future estimated housing need to be provided by single-family detached dwellings, manufactured homes, and mobile homes is 1,563 net new dwellings. The planned 90-lot PUD is planned to provide 5.76 percent of the total needed single-family detached dwellings or slightly more than one year's supply. There is no known oversupply of annexed Low Density Residential lands and the supply of these lands following annexation is not more than a 5-year supply for residential growth."

Marion Pointe ANX 22-02, PUD 22-02, etc. Staff Report
Attachment 102
Page 8 of 56

Staff concurs.

3) The applicant's narrative (p. 48) states:

"The project involves the extension of an existing public street stub from Olympic Street to N Boones Ferry Road and provide for future local street connections to surrounding development. The project is planned to also correct a previous dedication error to accommodate right-of-way for future N Boones Ferry Road widening needs. Utility projects related to this project that increase capacity or serve other developments are part of the City's Capital Improvement Plan."

There's no written objection by the Public Works Department to the applicant's narrative.

4) Regarding (a) & (b), the applicant's narrative (p. 48) states:

"The territory is feasible for development. The RS-zoned lands are relatively flat former farmland with no obvious physical constraints other than the unnamed North Mill Creek tributary. The territory is adjacent to City utilities and street infrastructure. The annexation includes right-of-way along N Boones Ferry Road. Infrastructure for the project including potable water extends along or under N Boones Ferry Road. The Woodburn Comprehensive Plan addresses the extension of utility infrastructure for the project and its criteria are addressed within this written narrative below. The existing Olympic Street stub is planned to be extended to N Boones Ferry Road. These provisions, required by WDO, are illustrated within the Preliminary Plans (Exhibit D). Additional street stubs are shown to be dedicated for potential future development. These criteria are met."

Staff concurs.

5) The applicant asserts (p. 48) that the annexation fulfills a substantial unmet community need by filling the City's housing needs per the City adopted Housing Needs Analysis (December 9, 2019). Because these analyses and findings come before the first public hearing by the Planning Commission, it is yet unknown if annexation fulfills a substantial unmet community need because the City Council has not yet identified such a need. Examples of community needs include park space and conservation of significant natural or historic resources, and the corollary development includes Tracts G & H along the west tributary of Mill Creek that the developer is to improve and dedicate as common area tracts to be owned and maintained by an association such as a homeowners association (HOA).

Marion Pointe ANX 22-02, PUD 22-02, etc. Staff Report
Attachment 102
Page 9 of 56

No public parkland is proposed, and the applicant's narrative (p. 48) notes, "Public park land, as yet undeveloped, is available for resident use approximately 200 feet from the PUD. The next closest public park, Heritage Park, is located ±2,000 feet from Marion Pointe." The applicant is referring to ANX 2020-03 Dove Landing PUD.

Annexation of the subject territory demonstrates substantial conformance with the criteria.

Regarding D., the applicant obtained the requisite written consent and such that no election is needed.

Regarding E., the applicant confirms the proposal includes no request to amend the Comprehensive Plan land use designation or upon annexation to designate the territory with City base zoning districts other than RS and P/SP. (Pursuant to Comprehensive Plan Policy Table 1, RS and P/SP are each the only zoning district that implements the respective Low Density Residential and Open Space and Parks designations.)

Regarding F., the applicant need not address subsection 1. because the territory to be annexed includes adjacent ROW and because the public improvements including ROW and public utility easement (PUE) dedications that F. describes are addressed through development review, i.e. site plan review process, instead of annexation itself.

✓ The criteria are met.

Zoning Map Change Provisions

Zoning Map Change Provisions

5.04.04

- A. Purpose: The purpose of an Owner Initiated Official Zoning Map Change is to provide a procedure to change the Official Zoning Map, in a manner consistent with the Woodburn Comprehensive Plan.
- B. Criteria: The following criteria shall be considered in evaluating an Official Zoning Map Change;
- 1. Demonstrated need for the proposed use and the other permitted uses within the proposed zoning designation.
- 2. Demonstrated need that the subject property best meets the need relative to other properties in the existing developable land inventory already designated with the same zone considering size, location, configuration, visibility and other significant attributes of the subject property.
- 3. Demonstration that amendments which significantly affect transportation facilities ensure that allowed land uses are consistent with the function, capacity, and level of service of the facility identified in the Transportation System Plan. This shall be accomplished by one of the following:
- a. Limiting allowed land uses to be consistent with the planned function of the transportation facility; or
- b. Amending the Transportation System Plan to ensure that existing, improved, or new transportation facilities are adequate to support the proposed land uses consistent with the requirement of the Transportation Planning Rule; or,
- c. Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes of transportation.

 Staff interprets this section such that it applies only to rezoning a change from one City zoning district to another. Because the zone change proposed through ZC 22-02 comes with annexation in order to assign City zoning, and the proposed zoning districts comply with the Comprehensive Plan land use map designations, the criteria are not applicable.

Not applicable.

Riparian Corridor and Wetlands Overlay District (RCWOD) Provisions

RCWOD Provisions

2.05.05 Riparian Corridor and Wetlands Overlay District

A. Purpose

The Riparian Corridor and Wetlands Overlay District (RCWOD) is intended to conserve, protect and enhance significant riparian corridors, wetlands, and undeveloped floodplains in keeping with the goals and policies of the Comprehensive Plan. The RCWOD is further intended to protect and enhance water quality, prevent property damage during floods and storms, limit development activity in designated areas, protect native plant species, maintain and enhance fish and wildlife habitats, and conserve scenic and recreational values.

- B. Boundaries of the RCWOD
- 1. The RCWOD includes:
- a. Riparian corridors extending upland 50 feet from the top of the bank of the main stem of Senecal Creek and Mill Creek and those reaches of their tributaries identified as fish-bearing perennial streams on the Woodburn Wetlands Inventory Map; and
- b. Significant wetlands identified on the Woodburn Wetlands Inventory Map. Where significant wetlands are located fully or partially within a riparian corridor, the RCWOD shall extend 50 feet from the edge of the wetland; and
- c. The 100-year floodplain on properties identified as vacant or partly vacant on the 2005 Woodburn Buildable Lands Inventory.
- 2. The approximate boundaries of the RCWOD are shown on the Zoning Map. The precise boundaries for any particular lot should be verified by the property owner when making a land use application. Map errors may be corrected as provided in this Ordinance (Section 1.02.04).

RCWOD applies per subsection B. and mainly aligns with the west tributary of Mill Creek across Tracts C & E and under the golf course, as well as over associated wetlands, and the applicant submitted a legal description and map as the zoning ordinance exhibits to designate the RCWOD. (Incidentally, no other overlay districts from 2.05 apply.)

✓ The criteria are met.

C. Permitted Uses and activities

The following uses and activities are allowed, provided they are designed and constructed to minimize intrusion into the RCWOD:

- 1. Erosion or flood control measures that have been approved by the Oregon Department of State Lands, the U.S. Army Corps of engineers, or another state or federal regulatory agency
- 2. Maintenance of existing structures, lawns and gardens
- 3. Passive recreation uses and activities

Marion Pointe ANX 22-02, PUD 22-02, etc. Staff Report
Attachment 102
Page 12 of 56

- 4. Removal of non-native plant species and replacement with native plant species
- 5. Streets, roads, and paths that are included in an element of the Comprehensive Plan
- 6. Utilities
- 7. Water-related and water-dependent uses, including drainage facilities, water and sewer facilities, flood control projects, drainage pumps, public paths, access ways, trails, picnic areas or interpretive and educational displays and overlooks, including benches and outdoor furniture
- D. Prohibited Uses and Activities
- 1. New buildings or structures or impervious surfaces, except for replacement of existing structures within the original building footprint
- 2. Expansion of existing buildings or structures or impervious surfaces
- 3. Expansion of areas of pre-existing non-native landscaping such as lawn, gardens, etc.
- 4. Dumping, piling, or disposal of refuse, yard debris, or other material
- 5. Removal of vegetation except for:
- a. Uses permitted by this Section
- b. Perimeter mowing of a wetland for fire protection purposes;
- c. Water-related or water-dependent uses, provided they are designed and constructed to minimize impact on the existing riparian vegetation;
- d. Removal of emergent in-channel vegetation that has the potential to cause flooding;
- e. Hazardous tree removal.
- 6. Grading, excavation and the placement of fill except for uses permitted by this Section.

The site plans illustrate nothing that would conflict.

✓ The standards are met.

G. Site Plan

When a use or activity that requires the issuance of a building permit or approval of a land use application is proposed on a parcel within, or partially within the RCWOD, the property owner shall submit a site plan to scale showing the location of the top-of-bank, 100-year flood elevation, jurisdictional delineation of the wetland boundary approved by the Oregon Department of State Lands (if applicable), riparian setback, existing vegetation, existing and proposed site improvements, topography, and other relevant features.

The applicant is conforming to such through land use review site plan sheets, DSL application #63057-GP in review, and DSL approved wetland delineation WD2020-0463, and will factor in the RCWOD through civil engineering plan (CEP) review by the Public Works Department, which comes after land use final decision, for the Olympic Street bridge/culvert/crossing of the west tributary.

H. Coordination with the Department of State Lands

The Oregon Department of State Lands shall be notified in writing of all applications to the City for development activities, including applications for plan and/or zone amendments, development or building permits, as well as any development proposals by the City that may affect any wetlands, creeks or waterways.

Marion Pointe ANX 22-02, PUD 22-02, etc. Staff Report
Attachment 102
Page 13 of 56

Planning staff notified DSL through the webform	n form specific to that agency for what became
agency case file number WN2020-0690.	

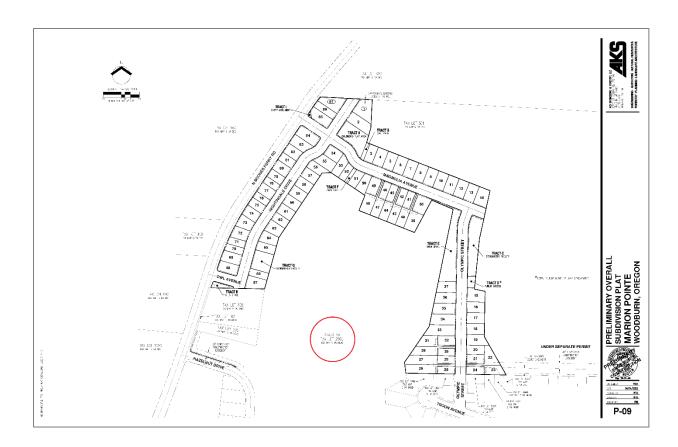
✓ The criteria are met.

Property Line Adjustment Provisions

Property Line Adjustment; Consolidation of Lots

- A. Purpose: The purpose of this review is to ensure that adjustments to property lines or the consolidation of existing lots and parcels, complies with the standards of this ordinance (Section 2), and State Statutes (ORS Chapters 92 and 209). Property line adjustments and consolidation of lots are allowed in all zones.
- B. Criteria:
- 1. Lot area, depth, width, frontage, building setbacks, vehicular access and lot coverage comply with the standards of this ordinance (Sections 2 and 3);
- 2. Existing easements are accurately reflected;
- 3. Existing land use and development on the subject property comply with the requirements of prior land use actions; and
- 4. Buildings and structures abutting the adjusted property lines comply with State building codes and with respect to current occupancy.
- 5. Property line adjustments are surveyed and monumented to the requirements set forth in State statutes (ORS Chapters 92 and 209) and recorded by the County Surveyor.
- C. Procedure: The Director shall review and approve the application when it is found that it meets this Ordinance and the State Building Codes.

The proposal through PLA 22-02 is to adjust the northerly boundary of Tax Lot 051W06DC02600 so that the golf course remains on its own lot. Below is an excerpt of land use review Sheet P-09 with the adjusted tax lot labeled circled in red, and Sheet P-08 shows the adjustment.



The applicant proposes re-routing some segments of golf cart paths to align with new paths on adjacent subdivision tracts, and the proposal includes no new buildings or building additions on the golf course adjusted lot. The northerly adjusted lot line doesn't come near any existing building, and the City geographic information system (GIS) showed no public easements on the adjusted golf course lot with which the adjustment would interfere.

The golf course lot is to be zoned Public/Semi-Public (P/SP) zoning district, which has few development standards per Table 2.04D. There are no minimums for lot area, width, depth, or street frontage. Because the proposal includes no new buildings or building additions, the remainder of the standards in the table are not applicable.

✓ The criteria are met.

Subdivision Preliminary Approval Provisions

Subdivision Preliminary Approval Provisions

5.03.10 Subdivision Preliminary Approval

- A. Purpose: The purpose of a Type III Subdivision decision is to ensure that the division of properties into 4 or more lots complies with the standards of this Ordinance (Sections 2 and 3). Subdivisions are allowed in all zones, provided the proposal meets applicable standards.
- B. Criteria: Preliminary approval of a Subdivision shall require compliance with the following:
- 1. That approval does not impede the future best use of the remainder of the property under the same ownership or adversely affect the safe and efficient development of the remainder of any adjoining land or access thereto.
- 2. That the proposed development shall be served with city streets, water, sewer and storm drainage facilities with adequate capacity.
- 3. That the plan for the development takes into account topography, vegetation and other natural features of the site.
- 4. That adequate measures have been planned to alleviate identified hazards and limitations to development:
- a. For wetlands these shall be the measures required by the Division of State Lands for regulatory wetlands.
- b. For unstable areas, demonstration that streets and building sites are on geologically stable soil considering the stress and loads.
- 5. The preliminary plat complies with all applicable provisions of this Ordinance (Sections 2 and 3), except where waived by variance.

Because the subdivision is for planned unit development (PUD), which can and does modify WDO provisions, the criteria are met through the PUD provisions, including modification by PUD to establish a smaller minimum lot area standard.

■ *PUD*: Staff further addresses WDO and modified subdivision standards below under the Planned Unit Development Provisions section.

Planned Unit Development Provisions

Planned Unit Development Provisions

3.09

The purpose of this Section is to establish the requirements for Planned Unit Developments (PUDs). PUDs allow flexible development standards, unique street cross-sections, and more variety in permitted uses. They are especially appropriate when developing properties with unique topographic, geotechnical, or other constraints. They also encourage innovation and creative approaches for developing land. In exchange for the ability to modify development and use standards, PUDs must provide common open space and enhanced public amenities.

PUD is a discretionary land use application type allowing developers to modify WDO provisions – such as getting smaller minimum lot areas and higher residential density – in exchange for a minimum area of open space, minimum common area improvements, and what the City interprets to mean "enhanced public amenities". More to the point, the conditions of approval and the related 200 series of attachments establish PUD development standards and common area improvements.

3.09.01 Allowable Types and Minimum Area of PUDs

- A. Transfer of Density PUD
- 1. A Transfer of Density PUD shall consist entirely of property in any residential zone, or in more than one residential zone. A Transfer of Density PUD may only be used to transfer residential density from undevelopable areas of a site (riparian corridor, floodplain, wetlands, unstable soils or slopes) to developable areas of a site, but not to increase the overall number of dwelling units allowed on the site. Note: This development option is often called cluster housing.
- 2. There is no minimum site area for a Transfer of Density PUD.
- B. Residential PUD
- 1. A Residential PUD shall consist entirely of property zoned RS, RM, RSN, RMN, R1S, or P/SP, or in more than one such zone. A PUD is not allowed in the Neighborhood Conservation Overlay District (NCOD).
- 2. A Residential PUD shall contain a minimum of two acres.
- C. Mixed-Use PUD
- 1. A Mixed-Use PUD may consist of property in any zone or zones. A Mixed-Use PUD is not allowed in the Neighborhood Conservation Overlay District (NCOD).
- 2. A Mixed-Use PUD shall contain a minimum of three acres.

The applicant's narrative (April 21, 2022, p. 31) states, "This application involves a 'Residential PUD' with RS and P/SP zoning districts and not a 'Transfer of Density PUD.'" The PUD contains at least two acres and territory to be annexed and zoned RS & P/SP.

✓ The provisions are met.

3.09.02 Allowed Uses

A. Transfer of Density PUD

Single-family dwellings, manufactured dwellings, duplexes, row houses, and multiple-family dwellings shall be allowed in a Transfer of Density PUD.

B. Residential PUD

Any use allowed in any residential zone shall be allowed in a Residential PUD (see Table 2.02A). No separate Conditional Use process shall be required for any use that is described in the Detailed Development Plan and the project narrative.

C. Mixed-Use PUD ...

Because the proposal includes no conditional use for the Residential PUD, subsection B isn't applicable.

Not applicable.

3.09.03 Density Transfer

- A. Any PUD may be used to transfer residential density from undevelopable areas of a site (riparian corridor, floodplain, wetlands, unstable soils or slopes) to developable areas of a site. Up to 40 percent of the density may be transferred, except as provided in Sections B through G, below. No more than 100 percent of the density may be transferred.
- B. If the PUD dedicates to the City or provides an easement for a trail or bike path shown in any adopted City Plan, an additional 20 percent of the density may be transferred.
- C. If the PUD dedicates to the City property abutting a public park, the Commission may allow up to an additional 20 percent of the density to be transferred, commensurate with the amount and usability of the property dedicated.
- D. If the improved common area of the PUD is available for use by the public, the Commission may allow up to an additional 10 percent of the density to be transferred, commensurate with the amount and usability of the improved common area. The area must be permanently posted with a sign reading, "This common area is available for use by the public."
- E. If the PUD plan proposes landscaping or buffering that exceeds the WDO minimum standards by at least 25 percent, the Commission may allow up to an additional 20 percent of the density to be transferred, commensurate with the amount, quality, and variety of the enhanced landscaping or buffering.
- F. If the PUD plan proposes stormwater mitigation measures that exceed minimum City standards by at least 25 percent, the Commission may allow up to an additional 10 percent of the density to be transferred, upon a recommendation by the Public Works Department.
- G. If the PUD plan proposes other environmental, sustainability, or architectural enhancements, the Commission may allow up to an additional 10 percent of the density to be transferred, commensurate with the amount, quality, and community benefit of the enhancements. Such enhancements may include, but are not limited to, solar heating or electrical generation, community gardens, public art, mitigation of off-site stormwater, and greywater diversion.

The applicant's narrative skips this section except for subsection A, stating, "The Marion Pointe Residential PUD does not plan the transfer of density as part of the project. These criteria do not apply."

Not applicable.

3.09.04 **Conceptual Development Plan**

- PUDs require both a Conceptual Development Plan and a Detailed Development Plan. These reviews may be accomplished sequentially or as a consolidated review, at the applicant's discretion.
- A Conceptual Development Plan shall include drawings and a narrative describing the surrounding neighborhood, existing site conditions, general development areas, phasing, land uses, building envelopes, architectural theme, landscaping and buffering, streets, bicycle and pedestrian circulation, common areas, utility locations, sign theme, and other information the Director may deem necessary to convey the concept plan.

The application materials indicate that the applicant seeks Conceptual Development Plan approval.

✓ The provisions are met.

3.09.05 **Detailed Development Plan**

- A. PUDs require both a Conceptual Development Plan and a Detailed Development Plan. These reviews may be accomplished sequentially or as a consolidated review, at the applicant's discretion.
- No building, grading, access, or other development permit may be issued until a Detailed Development Plan has been approved for at least one phase of the project.
- C. Buildings shown on a Detailed Development Plan are exempt from Design Review if they are in substantial conformity to the Detailed Development Plan (see Section 3.07.01.B).
- D. A Detailed Development Plan shall include drawings and a narrative sufficient to demonstrate compliance with the Conceptual Development Plan and any conditions of approval previously imposed. A Detailed Development Plan shall provide specific information regarding the site layout, architecture, and proposed amenities. A Detailed Development Plan that proposes land uses not in the Conceptual Development Plan or that deviates by more than ten percent from any development standard in the Conceptual Development Plan for any phase, or that does not meet the standards of this Section shall not be approved. The applicant may request that the decision-maker approve such a plan as an amended Conceptual Development Plan.

The application materials indicate that the applicant seeks both PUD Conceptual Development Plan and Detailed Development Plan (DDP) approvals.

Staff applies a PUD condition, similar to as was done for the Smith Creek PUD (ANX 2017-05), to conform to 5.01.07, the purpose of which is to ensure that the PUD is in substantial conformance with the conditions of the DDP approval.

Staff applies a PUD condition for PUD Final Plan Approval process.

3.09.06 Development Standards

A PUD is intended to allow flexibility in the development standards of Sections 2.02 through 2.04 and 3.01 through 3.10. The Detailed Development Plan may propose modified standards without a separate Variance. Any standard that is not proposed for modification shall apply to the PUD. The development standards stated below shall not be modified through the PUD process.

A. Common area and density shall comply with Table 3.09A.

Commo	n Area and Density Standards for P	lanned Unit D	evelopments 1	Table 3.09A
		Transfer of Density	Residential	Mixed-Use
Common	Four or fewer dwelling units	All undevel	opable site are	ea
Area, Minimum	Five or more dwelling units, or nonresidential uses	30 percent of gross site area, including all undevelopable site area ¹		
Improved	Four or fewer dwelling units	None		
Common Area,	Five or more dwelling units	100 square feet per dwelling unit		
Minimum	Nonresidential uses	None	None	None
Residential Density, Minimum (units per net acre)		Pursuant to the Comprehensive Plan ²		
Residential Density, Maximum (units per net acre)		Not specifie	ed ⁴	

- 1. At least one common area shall be sized to accommodate a circle 25 feet in diameter.
- 2. In residential zones only. There is no minimum for non-residential zones.
- 3. Child care facility for 13 or more children, group home for six or more persons.
- 4. The maximum density is determined by setbacks, off-street parking, open space, and other requirements. Pursuant to Comprehensive Plan Policy Table 1, Note (p. 7), allowable densities may be increased through PUD above the maximum(s) of the base zone(s).

First, before applying standards from the table, definitions from 1.02 are in order:

- "Common area": Not defined.
- "Improved common area": Not defined. However, the next section beyond Table 3.09A, which is 3.09.06B, states that, "Common areas are deemed improved if they are provided with benches, playground equipment, gazebos, picnic facilities, or similar amenities. Lawn area by itself does not constitute improvement. Trails or paths do not constitute improvement, unless they connect to the public trail system. Common meeting or recreation rooms are deemed to be improved common areas."

- "Open space, common": "An area, feature, building or other facility within a
 development which has been dedicated in common to the ownership within the
 development, or to the public, specifically for the purpose of providing places for
 recreation, conservation or landscaping, and which is intended for the use of the
 residents and property owners of the development."
- "Open space, usable common": "Common open space, the use of which conforms with use and development guidelines specified by the Woodburn Development Ordinance."

It appears that through the table, "common area" describes the same as "open space, common". "Improved common area" could mean the same as "open space, usable common", except that the definition is vague and refers to WDO guidelines and specifications that simply don't exist except for 3.09.06B, so the description in 3.09.06B stands. Staff concludes that the City through PUD can define the details of what "improved common area" and "similar amenities" mean as standards and require that they be met. Staff concluded the same and acted accordingly for the Smith Creek Development (ANX 2017-05), for example.

Second, looking at the applicable standards from the table, they are as follows:

Common Area, Minimum: Five or more dwelling units, or nonresidential uses	30 percent of gross site area, including all undevelopable site area ¹	30.0% of the subdivision gross area is (18.58 acres x 0.3) =5.57 acres
	¹ At least one common area shall be sized to accommodate a circle 25 feet in diameter.	The applicant proposes 30% with common area tracts totaling 1.90 acres (10.2% among the 30%) and part of the existing golf course crediting towards the remaining 3.67 acres (19.8% among the 30%) Looking at the 30% common
		area as a base of 100%, the tracts are 34.1%, and part of the existing golf course credits towards 65.9% of the remaining common area standard.
		In other words, the vast share of the 30% PUD common area is golf course.
Improved Common Area, Minimum: Five or more dwelling units	100 square feet per dwelling unit	The next section beyond Table 3.09A, which is 3.09.06B, defines improved common area.

Marion Pointe ANX 22-02, PUD 22-02, etc. Staff Report
Attachment 102
Page 22 of 56

		What the applicant proposes on
		land use review revised Sheets P-31 to P-36 is improved common area, and a PUD
		condition or conditions recognize or expand these improvements.
Residential Density, Maximum (units per net acre)	Pursuant to the Comprehensive Plan ²	Through Policy Table 1 starting on plan p. 7, the table has a footnote stating, "Note:
	² In residential zones only. There is no minimum for non- residential zones.	Allowable densities may be increased through the discretionary planned unit development
		review process." The proposal does so and proposes at least 7.1 dwelling units (DUs) per net acre. The conditioned development standards acknowledge such.
Residential Density, Maximum (units per net acre)	AThe maximum density is determined by setbacks, offstreet parking, open space, and other requirements. Pursuant to Comprehensive Plan Policy Table 1, Note (p. 7), allowable densities may be increased	The applicant's narrative (submitted 4/21/2022, p. 33) states that the average lot size of the 87 house lots of Trillium Reserve is 5,920 sq ft. The resulting density is (43,560 / 5,920) = 7.4 houses (DUs) per net acre.
	through PUD above the maximum(s) of the base zone(s).	Additionally, Oregon House Bill (HB) 2001 (2019) and OAR 660-046 took effect that require most cities including Woodburn to allow "middle housing" – duplexes, triplexes, quadplexes, cottage clusters, and townhouses – as follows: (a) All middle housing types in
		areas zoned for residential use that allow for the development of detached single-family dwellings; and (b) A duplex on each lot or parcel zoned for residential use that allows for the development

Marion Pointe ANX 22-02, PUD 22-02, etc. Staff Report
Attachment 102
Page 23 of 56

of detached single-family dwellings. The max densities are as follows: 7.4 DUs per net acre for the proposed 90 houses on 90 lots; and 46.1 DUs per net acre for the 90 lots to allow a theoretical maximum of four dwellings per lot composed of a combination of houses and middle housing. Note: Accessory dwelling units (ADUs) don't count against max density, and the bulleted maximums exclude the golf course territory. In service of substantial conformance and out of caution, a PUD condition establishes as a development

Lastly, here staff addresses development standards in lieu of addressing them in the Subdivision Preliminary Approval Provisions section: A PUD condition establishes development standards, each on either modified by PUD or as in the WDO. Because the standards accommodate the proposed subdivision, the proposed subdivision meets them.

- ✓ The provisions are met.
- B. Improved Common Area
- 1. Common areas are deemed improved if they are provided with benches, playground equipment, gazebos, picnic facilities, or similar amenities. Lawn area by itself does not constitute improvement. Trails or paths do not constitute improvement, unless they connect to the public trail system.
- 2. Common meeting or recreation rooms are deemed to be improved common areas.

Marion Pointe ANX 22-02, PUD 22-02, etc. Staff Report
Attachment 102
Page 24 of 56

standard min density as a little less than what's proposed, and higher than 7.0, the min density necessary as a city planning rule of thumb to make bus service viable at a frequency of at least

once every 30 minutes.

3. Improved common areas are subject to the performance guarantee provisions of Section 4.02.08.

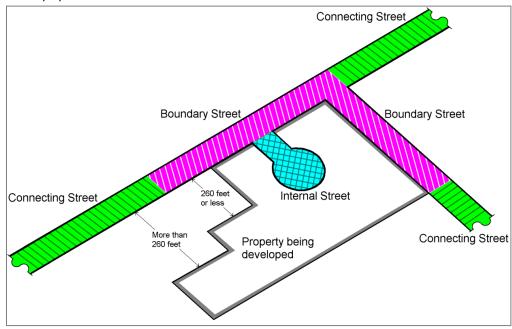
Staff addressed this through 3.09.06A above.

- C. Streets
- 1. A PUD shall conform to and, where possible, enhance existing or planned vehicle, pedestrian and bicycle networks, including connections and functionality. Note: See Figures 7-1 (Functional Classification Designations), 7-3 (Pedestrian Plan), and 7-4 (Bicycle Plan) of the Transportation System Plan.
- 2. All streets shall be public.
- 3. Boundary and connecting streets shall use the street sections of Section 3.01.04.
- 4. Internal streets may use the street sections of Section 3.01.04, or the PUD may propose other street sections, provided that the streets:
- a. conform to the Oregon Fire Code (see Figures 3.04C and 3.04D)
- b. include sidewalks, and
- c. are constructed to the specifications of the Public Works Department.
- D. Parking

If a front setback of less than 20 feet is proposed, the requirement of Section 3.05.03 for an improved parking pad for single-family and duplex dwellings may be satisfied by on-street parking or by a common off-street parking lot.

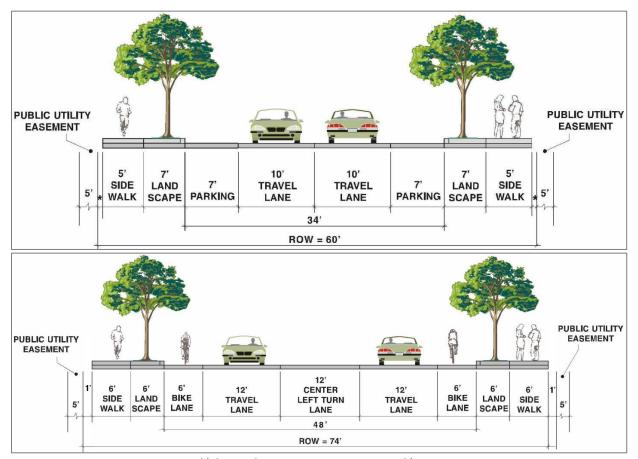
- E. Signs
- 1. A PUD may include a sign plan to require a common architectural design and location.
- 2. The standards of the Mixed Use Village (MUV) zone shall apply to commercial uses in the residential zones of a Mixed-Use PUD.

The street improvements as proposed or conditioned meet or exceed 3.01, including Figures 3.01A, C, & G:



Marion Pointe ANX 22-02, PUD 22-02, etc. Staff Report
Attachment 102
Page 25 of 56

Figure 3.01A – Internal, Boundary, and Connecting Streets



Top: Figure 3.01C - Minor Arterial (This applies to N. Boones Ferry Road.)

Bottom: Figure 3.01G - Local Residential Street with Parking Both Sides, 60 Foot Right-of-Way (This applies to remaining streets.)

Street improvements include wider sidewalks to encouraging walking and accommodate cyclists who feel safer on sidewalk.

Staff applies a PUD condition to specify street improvements.

3.09.09 Owners/Tenants Association

Any land and structures not dedicated to the public, but reserved for the common use of the owners or tenants, shall be subject to control by an association of owners or tenants.

Staff applies a PUD condition to ensure conformance.

3.09.10 Phasing

A PUD may be developed in phases, pursuant to Section 5.03.05. A.

- В. Phases shall be functionally self-contained with regard to access, parking, utilities, open spaces, and similar physical features, and capable of occupancy, operation, and maintenance upon completion.
- The phased provision of common areas and improvements shall be roughly proportional to C. the development of housing and other elements intended for private ownership.
- D. At least one improved common area sized to accommodate a circle 25 feet in diameter shall be provided with the first phase.

There's no phasing.

Not applicable.

[Other]

ORS 92.040(3) sets a 10-year expiration on development approvals in order to help with the issue of entitlement "vesting". It also local governments to set shorter periods, and staff opts to do so in case the project begins to manifest during the 3-year land use approval window but slows down or stops afterwards. Condition SUB-1 sets an ultimate deadline. As an example, were another recession like the Great Recession to occur and lead to a "zombie" project, it would be clear when an apparently dormant project was dead.

Staff applies a SUB condition to clarify the issue of "vesting".

A geotechnical or "geotech" report is necessary for subdivision improvements. It became necessary for Smith Creek Development building permits, and the master developer happened to have prepared one in keeping with private agreements with homebuilders and so was able to submit it on short notice. Thankfully, the report document no field conditions that needed correction. The Building Official thought Public Works handled Geotech reports, and this item isn't a WDO requirement or a Planning Division policy item. So, staff established a condition that gets the developer to submit a copy prior to the City accepting subdivision improvements.

Staff applies a SUB condition regarding a geotech report.

PUD per the opening purpose statement of 3.09 refers to "enhanced public amenities", which along with annexation as interpreted by staff includes upgrades to public works. The Public Works Department asked for what became Condition PUD-PW to reinforce related items with the Public Works comments that are Attachment 102A. Staff mentions annexation again because public facilities, a.k.a. public works, with adequate capacity are an annexation criterion.

Staff applies Condition PUD-PW supporting Public Works Department desires regarding stormwater management.

PUD per the opening purpose statement of 3.09 refers to both "enhanced public amenities" and "unique street cross-sections", which staff interprets to include what it considers "upgrades" such as wider sidewalk segments, more street trees, traffic calming in the form of patterned poured concrete crosswalks as subtle visual reinforcement for drivers, and public works as civic art, e.g. more than simply functional sides of the Olympic Street bridge over the tributary of Mill Creek.

Staff also accommodates some of the developer's desires, such as to have Tract D in place of an improved street stub, while conditioning a public street easement that secures to the City the right to have a street constructed (by someone other than the present developer).

There are also conditions about tree preservation (or fee in-lieu).

Staff also notes for the developer, PUD is a tool for getting more lots and more houses than a standard subdivision in order to get greater profit. In exchange, the City gets enhanced public amenities. For example, staff interprets enhanced public amenities to include through easement public access to common area off-street bicycle/pedestrian paths. Another example is improved park land.

Staff applies PUD conditions requiring street improvements that meet or exceed the WDO or provide an enhanced public amenity in exchange for meeting a street standard.

"Enhanced public amenities" includes common area and "off-street" improvements. Examples are to preserve trees outside ROW, specifying how to apply and remediate the RCWOD, and specifying common area improvements.

Staff accommodates some of the developer's desires by requiring common area improvements that are basically the same as what the developer proposed after many discussions with staff, the purpose being to have standards that remain clear to all heading into the final plat stage.

Conditions also gain variety in trees, getting more evergreens, establishes a table of standards for off-street bicycle/pedestrian paths, and establishes a table of standards for public easements to secure public access to off-street bicycle/pedestrian paths and allow for future mid-block public utility corridors where and as needed.

Because all proposed common areas are just that – private, not any City/public parkland to be dedicated – there is a condition reiterating that there needs to be maintenance association per WDO 3.09.09.

Dove Landing PUD Park Land Improvement Funding

As examined in the table above, the developer proposes that the existing golf course meet most of the PUD 30% common area / open space requirement:

"30.0% of the subdivision gross area is (18.58 acres x 0.3) =5.57 acres

The applicant proposes 30% with common area tracts totaling 1.90 acres (10.2% among the 30%) and part of the existing golf course crediting towards the remaining 3.67 acres (19.8% among the 30%)

Looking at the 30% common area as a base of 100%, the tracts are 34.1%, and part of the existing golf course credits towards 65.9% of the remaining common area standard.

In other words, the vast share of the 30% PUD common area is golf course."

The developer proposes no public parkland.

Across Boones Ferry Road to the west is entitled ANX 2020-03 Dove Landing PUD. By conditioning, that developer is dedicating two tracts totaling 8.31 acres of park land and improving it to a degree.

Based on input from City officials including the Assistant City Administrator (the de facto parks and recreation director), and premised on improved park land being an "enhanced public amenity" as the 3.09 purpose statement references, a simple way for Mario Pointe PUD to provide "enhanced public amenity" regarding open space is to pay money towards the large amount of park land next door in Dove Landing, this park land being of benefit not only to Dove Landing and Marion Pointe future residents, but also the public. Fee payment involves no Marion Pointe site plan disruption, acknowledges the spatial constraint on Marion Pointe from providing more and public open space because of the existing golf course and the RCWOD, and involves no construction or contractor logistics with which the developer would have to deal.

Staff applies a PUD condition requiring the developer to pay a fee to the City towards improvement of the park land within the Dove Landing PUD.

Lastly, there is a condition reiterating that there needs to be PUD "Final Plan Approval" per WDO 5.01.07 so that outstanding details are deferred after land use approval, allowing the developer to proceed, but also securing between the developer and the City resolution of details before final plat approval by the City.

Staff applies PUD conditions requiring common area improvements and public access to some improvements.

Relating to annexation and more so PUD, a number of transportation (T) conditions call out modest transportation improvements (or fees in-lieu where conditions of approval allow), all from the <u>Transportation System Plan (TSP)</u>:

Funding a signal timing study or studies.

A factor is that much traffic passes through the already highly trafficked intersection of N. Boones Ferry Road and Oregon Highway 214 (OR 214) to and from I-5 (Portland and Salem metros).

The development being all houses, it would attract households with commuters to and from those metro areas.

The developer proposes no traffic mitigation or transportation demand management (TDM), and staff anticipates Planning Commission and City Council to seek the developer doing something about traffic.

TSP signal timing study Projects R8, R9, & R11 are readily identifiable and might identify a way to deal with traffic that wouldn't' require construction. They also cost less than a conventional road widening or traffic signal installation.

Lastly, with ANX 2020-03 Dove Landing also in review and across the street from the subject development, Trillium Reserve, the condition requires Trillium Reserve to pay a small fraction – 35.2% -- as a proportionate share of the total cost of the three studies, the idea being that the City Council would approve with conditions both developments and that Dove Landing would be conditioned to pay the remaining 64.8% share, thereby completing the funding of the three signal timing studies. (See below the Remaining Provisions section, under 3.04.05, to the Tables T-A1-1 & 2 for detail about how staff determined the shares based on number of houses.)

Wayfinding signage for people walking and cycling.

The basic objective is that if people perceive they can walk and cycle more easily and safely, they'll do so and drive less. This includes being able to see wayfinding signage

Marion Pointe ANX 22-02, PUD 22-02, etc. Staff Report Attachment 102

Page 30 of 56

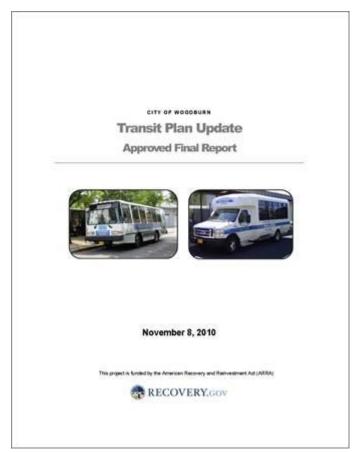
to quell concerns they might have like, "Is that public?", "Can my kids go there?", and "Can I get to Boones Ferry from here?"

Based on input from the Assistant City Administrator (the *de facto* parks and recreation director) about what a wayfinding installation would cost, staff discussions about conditioning of ANX 2019-01 Woodburn Eastside Apartments, and ANX 2019-01 Condition T-BP4, staff applies the set figure of \$1,500 per installation location.

A bus shelter.

The basic objective is that if people perceive they can wait to ride the bus in greater comfort, they'll do so and drive less. PUD per the opening purpose statement of 3.09 refers to "enhanced public amenities", which along with annexation as interpreted by staff includes upgrades to public works. Public facilities, a.k.a. public works, with adequate capacity are an annexation criterion. Both annexation and PUD support the City requiring a bus shelter or fee in-lieu. The fee in-lieu option is practical accommodation of the fact that the City is yet to expand its transit system beyond city limits into the outer urban growth boundary (UGB) area as territory is annexed and developed. However, where development expands, transit generally will follow. Getting a shelter or fee in-lieu now allows the Assistant City Administrator (the *de facto* transit director) to use an installed shelter or pay to install one when the City extends bus service. This is an enhanced public amenity.

Also, a basis is the Transit Plan Update (November 8, 2010):



Specifically, TPU Project 9 "Install New Bus Shelters" on p. 10-11, which states, ""Safe and comfortable passenger amenities are an important element of any successful transit service. As such, bus shelters are recommended ...", and indicates a City bus shelter cost \$10,000 – in 2010 dollars, which equates to about \$12,000 in present dollars.

(Note: a separate condition requires a public easement accommodating placement on Tract A along N. Boones Ferry Road of the required shelter. This accommodates later decision by the Assistant City Administrator to install a shelter in the region of the development and identifies a tract along and visible from the major road next to and that serves the development. Clearing a default and readily identifiable space for a shelter enables the enhanced public amenity of a bus shelter.)

Bus stop bicycle parking.

Marion Pointe ANX 22-02, PUD 22-02, etc. Staff Report
Attachment 102
Page 32 of 56

The basic objective is that if people perceive they can walk and cycle more easily and safely as well as wait to ride the bus in greater comfort and without having to mount their bicycles, they'll do so and drive less. Bike parking also is inexpensive.

There's a bus stop bike parking fee in-lieu option based on the table below:

Table TSP-18.		
TSP Project 18	TSP Cost	Method
Description	Estimate	
Evaluate all bus stops to verify static bus	\$25,000	50 existing bus stops are WTS stops.
route information		Of these, the Woodburn Memorial Transit
signage is visible and		Center/Facility already has bike racks, and the DR
accessible and that		2019-05 Allison Way Apts. developer will install bike
bike racks are		parking at Stop 11 (along Harvard Drive behind
available at major bus		Walmart) at a cost of 25,000 by 49 = \$510.20.
stops		
		This leaves 48 stops, and an updated cost of
		(\$25,000 - \$510.20) / 48 = \$510.20 per bus stop.
		Second, staff identifies two bus stops, a new one
		that could be along or on Tract A and the existing
		nearest one south of the development along N.
		Boones Ferry Road, both for which no bike parking
		exists. 2 stops x \$510.20 = \$1,020.40 total.

Another factor for staff for all the above bulleted items that are in the TSP is that they reflect the Council's legislative intent for transportation citywide and that the developer constructing them manifests them sooner than if the City managed them as projects. P36 would be less expensive to construct by private labor than the 2019 cost estimate based on City construction at public wages. Projects R8, R9, R11, & P36 would benefit residents traveling between the development and both I-5 and Woodburn H.S. The wayfinding and transit improvements per Conditions T-BP2, T-T2, & T-T3 serve to provide public facilities to preserve (a) adequate encouragement to walk and cycle more and (b) the ability of the City to extend a bus transit route or routes adequately with signage, a shelter, and bike parking that encourages walking and cycling to the bus. Staff concludes by nothing that together Trillium Reserve and Dove Landing all but constitute the north area within the UGB, and it is necessary with development to obtain infrastructure concurrent with development of the north UGB.



Staff applies transportation (T) conditions requiring the construction or funding of transportation improvements.

Remaining Provisions

These are applicable provisions not already addressed in the application type provisions sections above.

4.01.07 Consolidated Applications

An applicant may request, in writing, to consolidate applications needed for a single development project. Under a consolidated review, all applications shall be processed following the procedures applicable for the highest type decision requested. It is the express policy of the City that development review not be segmented into discrete parts in a manner that precludes a comprehensive review of the entire development and its cumulative impacts.

The proposal is consolidated.

2.07 Special Uses

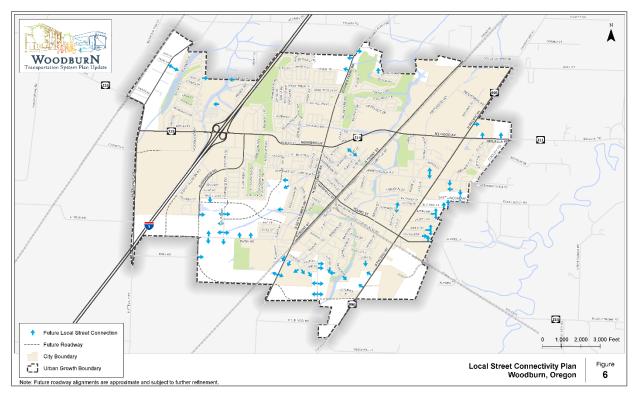
There is no "community club building" (clubhouse).

None apply.

3.01 Streets

Long-range Planning

TSP Figure 6 "Local Street Connectivity Plan" shows street connections into the northeast area of the urban growth boundary (UGB) that includes the subject property:



TSP Figure 6

There are two blue arrows, one each to N. Boones Ferry Road and one from the dead-end of Olympic Way. The two connections – the proposed extension of Olympic Street to N. Boones Ferry Road (as Magnolia Avenue) and the extension of Owl Avenue east from Dove Landing PUD across Boones Ferry Road – conform to Figure 6.

3.02 Utilities & Easements

3.02.01

A. The Director shall require dedication of specific easements for the construction and maintenance of municipal water, sewerage and storm drainage facilities located on private property.

- B. A five-foot wide public utility easement shall be dedicated along each lot line abutting a public street.
- C. As a condition of approval for development, including property line adjustments, partitions, subdivisions, design reviews, or Planned Unit Developments (PUDs), the Director may require dedication of public utility easements.

Planning staff expects the Public Works Department during the final plat stage to ensure that the developer dedicates the minimum streetside PUEs, and the preliminary subdivision drawings indicate conformance with 3.02.01B.

Regarding 3.02.01A & C, staff applies a PUD condition for additional public easements for public bicycle/pedestrian access and potential mid-block utility corridors.

> Marion Pointe ANX 22-02, PUD 22-02, etc. Staff Report Attachment 102 Page 35 of 56

3.04 Vehicular Access

3.04.03 Driveway Guidelines and Standards

- **B.** Joint Access
 - 3. Every joint driveway or access between separate lots shall be established by an access easement and maintenance agreement to the satisfaction of the Director and revocable only with the concurrence of the Director.

Staff applies a PUD condition ensuring the subdivision plat will provide for flag lot pole access easements to lessen curb curbs and thereby preserve more room for on-street parking and street trees.

3.04.05 Traffic Impact Analysis

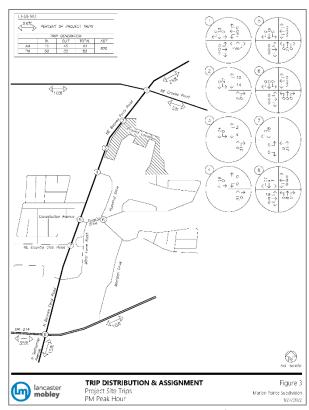
A. A Traffic Impact Analysis (TIA) may be required by the Director prior to the approval of a City access permit when the Director estimates a development proposal may generate either 100 or more additional, peak hour trips, or 1,000 or more additional daily trips, within ten years of a development application.

The applicant submitted two exhibits as a TIA: the original TIA (February 11, 2022) and an updated TIA (application materials Exhibit G, April 15, 2022).

The TIA studied 8 intersections, the northernmost being N. Boones Ferry Road at Crosby Road and the southernmost Boones Ferry Road at Oregon Highway 214 (OR 214) / Newberg Highway. The traffic modeling distributed 40% of trips generated by development to north of the development (to and past Crosby Road) and 60% to the south.

The TIA identified no vehicle trip reduction or transportation demand management (TDM) measures.

Below is an image serving as a vicinity map of the intersections:



TIA intersection locations map adapted from exhibits

As of June 14, 2022, no agency including ODOT responded to notice of hearing with any written comment.

Boones Ferry Road & OR 214

- The one studied intersection north of the project is outside the urban growth boundary (UGB).
- South of the project, BFR & OR 214 is heavily trafficked at peak hours.
- Of the studied intersections, the trips that the project would add show that BFR & OR 214 is the most trafficked.
- Staff supposes that most of the generated trips are to and from I-5 (Portland and Salem), the back way to Salem along S. Settlemier Avenue and S. Boones Ferry Road and outer rural roads southwest of Woodburn, and central Woodburn.
- The intersection includes a state highway under ODOT control (OR 214).
- There are no specific plans in any foreseeable time horizon by ODOT to make major physical changes to the intersection or highway.
- It thus seems that the best thing to do is collect money for some kind of transportation improvement somewhere under City control that benefits travel through the intersection, whether directly or indirectly. This leads to Condition T-A1.

Marion Pointe ANX 22-02, PUD 22-02, etc. Staff Report
Attachment 102
Page 37 of 56

Automotive

Looking to specific TSP projects, Condition T-A gets money to study the highway. Specifically, Transportation System Plan (TSP) Projects R8, R9, & R11 relate to traffic signal timing on three highway intersections east of I-5. (The City already conditioned DR 2019-05 Allison Way Apartments with funding R10.)

This condition has a proportionate fair share based on the following logic that these two tables show:

Table T-A-1			
Case file no.	Development Name	Dwelling Units	Percentage
ANX 22-02	Marion Pointe	87*	35.2%
ANX 2020-03	Dove Landing	166	64.8%
tot.		253*	100.0%

^{*}The proportionate share ratios were determined when the proposal was ANX 2020-01 Trillium Reserve with 90 dwellings and the total of both developments was 256, and ANX 2020-03 is entitled and conditioned at the 64.8% payment based on these earlier, higher numbers. For simplicity, staff is keeping the remaining 35.2% and applying it to Marion Pointe though 87 lots so that the total remains 100%.

Staff notes that together Marion Pointe and Dove Landing all but constitute the north area within the UGB.

Table T-A-2				
TSP Project No.	Cost Estimate	Proport	portionate Shares	
		Marion	Dove	
		Pointe	Landing	
R8	\$15,000			
R9	\$15,000			
R11	\$15,000			
tot.	\$45,000:	35.2%	64.8%	
		\$15,840	\$29,160	

Staff applies Condition T-A.

Bicycle/Pedestrian & Transit

In the interest of PUD per the purpose statement that opens 3.09 of providing enhanced public amenities, below are comprehensive plan policies that relate to infrastructure upgrades, enhanced public amenities, and improved traveling for those who walk, cycle, and ride transit.

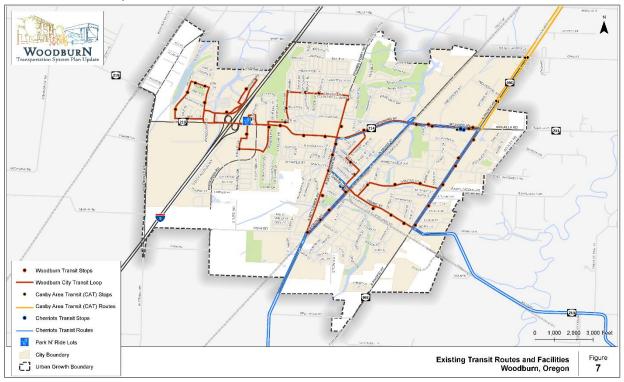
Policy	Page No.	What Related Conditions Address
G-1.1	27	Expansion areas of the City are served by adequate public facilities and services.
H-1.1	33	Develop an expanded intracity bus transit system that provides added service and route coverage to improve the mobility and accessibility of the transportation disadvantaged and to attract traditional auto users to use the system – specifically by conditioning construction and/or fees to add a bus shelter and bus stop bicycle parking.
H-1.3	34	Develop a low stress network of bicycle lanes and routes that link major activity centers such as residential neighborhoods, schools, parks, commercial areas and employment centers. Identify off-street facilities in City greenway and park areas. Ensure all new or improved collector and arterial streets are constructed with bicycle lanes – specifically duly requiring frontage/street improvements and also conditioning wide sidewalk segments as a public bicycle/pedestrian path and planter strip segments that are wider and/or have more street trees than standard. The subdivision connection path through Tract C also serves.
H-1.4	34	Develop a comprehensive network of sidewalks and off-street pathways. Identify key connections to improve pedestrian mobility within neighborhoods and link residential areas to schools, parks, places of employment and commercial areas. Ensure all new collector and arterial streets are constructed with sidewalks. Specifically, to do so by duly requiring frontage/street improvements, conditioning wide sidewalk segments as a public bicycle/pedestrian path and planter strip segments that are wider and/or have more street trees than standard, having the proposed Tract C subdivision connection path, and having some common area bike parking. These are all to raise the attractiveness, ease, safety, and potential cyclists' perception of safety of cycling.
H-1.5	34	Maintain adequate intersection and roadway capacity on the key east-west and norths south arterials, in this case OR 214 through Condition T-A1.
H-3.2	35	Implement strategies to address pedestrian and bicycle safety issues, specifically for travel to and from local schools, commercial areas, and major activity centers – through Conditions T-BP1 (the part about Project P36) & T-BP2.
H-5.1	35	Implement, where appropriate, a range of potential Transportation Demand Management (TDM) strategies that can be used to improve the efficiency of the transportation system by shifting single-occupant vehicle trips to other models and reducing automobile reliance at times of peak traffic volumes – specifically through Conditions T-BP1, T-BP2, T-T2, & T-T3.

Marion Pointe ANX 22-02, PUD 22-02, etc. Staff Report
Attachment 102
Page 39 of 56

For these transportation reasons and based on the PUD, staff applies bicycle/pedestrian (T-B/P) conditions.

Additional Issues: Transit

Presently, the Woodburn Transit System (WTS) bus loops through east, central, and west Woodburn, but is yet to reach into the north UGB area:



TSP Figure 7 (2019)

Neither do Salem-Keizer Cherriots nor Canby Area Transit (CAT) serve it. Staff discussed conditioning fees towards local and regional bus service and vanpooling, similar as for DR 2019-05 Allison Way Apartments (Condition T-T) and ANX 2019-01 Woodburn Eastside Apartments (recommended Condition T-T1). The Assistant City Administrator declined to support such for Trillium Reserve. Conditions T-T2 & T-T3 require a bus shelter or fee in-lieu and bicycle parking at two bus stops or fee(s) in-lieu.

As a concluding summary, City objectives are for the development to contribute towards the objectives of:

- Increasing walking and cycling appeal and safety
- Bus shelter installation or purchase
- Installation of bicycle parking where bus stops lack it, and
- Dealing with traffic along OR 214 near I-5.

Marion Pointe ANX 22-02, PUD 22-02, etc. Staff Report
Attachment 102
Page 40 of 56

To address transportation problems, staff applies transportation (T) conditions.

3.06 Landscaping

3.06.02 General Requirements

Staff expects the development to meet this section except where otherwise conditioned and will confirm such during PUD Final Plan Approval process.

✓ The requirement is met.

3.06.03 Landscaping Standards A. Street Trees

The applicant proposes street trees that appear to meet the provisions.

To secure a higher minimum amount of street trees, staff applies a PUD condition.

Staff expects the development to meet the remainder of 3.06 except where otherwise conditioned.

3.06.05 Significant Trees on Private Property

There are two Significant Trees that are healthy and structurally sound enough and appear feasible to save, as well as a number of additional mature trees in a row along the road. However, the application materials including an Exhibit M arborist memo dated February 11, 2022 make a plausible case that removal of Tree 12610 (a 64-inch diameter Douglas-fir), as well as a grove of trees (Douglas-firs of 6-18 inches diameter) along the Boones Ferry Road east side near the NE corner of the road and Hazelnut Drive, are inevitable to construct Boones Ferry Road east half-street improvements, and for Significant Tree 13296 near the rear lot line of Lot 65, an arborist can and will advise at the time of lot site planning and building of a dwelling about preservation before staff confirms whether this tree must remain or the developer can remove. Staff applies conditions that allow for removal with fee in lieu of preservation to fund tree plantings elsewhere in town.

To secure tree preservation or fee in-lieu, staff applies a PUD condition.

Recommended Conditions of Approval

Staff recommends approval of the consolidated applications based on the findings in the staff report and attachments, which are incorporated by this reference, as well as applying the following conditions of approval:

General

- G1. By and as part of building permit application, the applicant shall submit revised site plans meeting the conditions of approval and obtain Planning Division approval through sign-off on permit issuance by the Building Division.
- G2. The applicant or successors and assigns shall develop the property in substantial conformance with the final plans submitted and approved with these applications, except as modified by these conditions of approval. Were the applicant to revise plans other than to meet conditions of approval or meet building code, even if Planning Division staff does not notice and signs off on building permit issuance, Division staff retains the right to obtain restoration of improvements as shown on an earlier land use review plan set in service of substantial conformance.
- G3. References: Attachment 201 serves as a dictionary or glossary defining certain abbreviations, acronyms, phrases, terms, and words in the context of the conditions of approval. The 200 series of attachments are as binding as the conditions of approval in the main body of the final decision.
- G4. Due dates / public improvements:
 - a. When public street improvements, and any fees in lieu of public improvements, are due shall be per WDO 3.01.02 and 4.02.12 through Ordinance No. 2603 (LA 21-02) unless if and where a condition of approval has more restrictive timing.
 - b. Where changes to street addresses are necessary, the developer shall apply through the Planning Division for and obtain approval of an <u>Address Assignment Request</u>. This is due prior to building permit application, and if property line adjustment or lot consolidation were to become relevant, then also after recordation with County.
- G5. Recordation due dates: The applicant shall apply to the County for recordations of items that the City requires no later than six (6) months prior to expiration of the land use approval as WDO 4.02.04B establishes, and shall complete recordations no later than three years past the land use "final decision" date. The due date to complete recordations shall not supersede when recordations are due relative to the building permit stage.
- G6. Fees: The developer shall pay fees per Attachment 205, and fees in-lieu shall be per WDO 4.02.12 through Ordinance No. 2603 (LA 21-02) adopted June 13, 2022.

Marion Pointe ANX 22-02, PUD 22-02, etc. Staff Report
Attachment 102
Page 42 of 56

G7. Demolition: Because the City through the Building Division now requires <u>demolition</u> <u>permits</u>, upon annexation and before beginning to demolish buildings or structures or demolishing more of them, consult the Permit Technician and apply for and obtain a permit or permits as applicable.

G8. WDO version: Upon annexation, conformance to the Woodburn Development Ordinance (WDO) and conditions of approval references to the WDO shall be to the WDO as amended by Ordinance No. 2603 (Legislative Amendment LA 21-02) adopted June 13, 2022.

G-PW. Public Works: Follow the appended PW comments (June 16, 2022); Attachment 102A).

Preliminary Subdivision 22-03

SUB-1. Expiration: Based on ORS 92.040(3), development per the Council land use final decision may continue 3 years past the decision date, the 3-year approval period being established by WDO 4.02.04 through Ordinance No. 2603 (LA 21-02) adopted June 13, 2022, and as follows:

- a. Final Plat: The developer shall apply to the City prior to applying to Marion County for recordation. Owl extending east across BFR from Dove Landing PUD to Nightingale shall continue its name.
- b. Recordation with Marion County: Same as WDO 5.01.06C.1. (within 30 calendar days of the Director's signature on the plat Mylar).
- c. Vesting: The decision is vested unless:
 - (1) The developer fails to meet subdivision and PUD requirements, resulting in the City being unable to authorize staff to sign a final plat Mylar by July 1, 2027; or
 - (2) There is no substantial construction as defined in 1.02 through Ordinance No. 2603 (LA 21-02) by July 1, 2032.

SUB-2. Documents:

- a. Geotech report: Prior to final plat approval by the City, the developer shall submit to the Director a geotechnical report documenting that, whether or not the developer spreads any fill or spoil dirt across lots and tracts, soil is compacted and ready to accommodate the construction of buildings on lots and tracts proposed for development.
- b. Easements: WDO 2.01.05A through Ordinance No. 2603 (LA 21-02) adopted June 13, 2022 shall be applicable, and follow Attachments 102A (Public Works) and 203, Part D.
- c. Plat: Upon recordation, the developer shall submit to PW and cc the Director copies of recorded documents per WDO 2.01.05 through Ordinance No. 2603 (LA 21-02) adopted June 13, 2022.

Planned Unit Development 22-02

PUD-PW. Stormwater management: Prior to civil engineering plan approval through CEP review, the applicant shall provide an Engineer Stamped Storm Drainage Hydraulic Analysis Report that existing private storm drainage systems have capacity to handle the additional flow from the Marion Pointe and ANX 2020-03 Dove Landing Planned Unit Developments (PUDs), and that the culvert/pipe under Olympic Street has capacity to handle a 100 year base flood event, and to provide a final 100 year floodway, floodplain, and wetland delineation for this development. The applicant is responsible for correcting any capacity deficiencies, including installing new or additional drainage systems, and/or attaining the right to increase stormwater flows into neighboring private stormwater systems.

PUD-1. Mods: The City approves PUD modifications only as written in conditions of approval and the 200 series of attachments, particularly Attachment 202. Other modifications that site plans imply are subject to later administrative approval or denial by the Director.

PUD-2.

- a. ROWs: For BFR and the proposed local class streets, the developer shall dedicate ROWs that meet or exceed the min widths necessary to conform to WDO Figures 3.01C & G.
- b. PUEs: The developer shall grant streetside PUEs that meet or exceed the min width and do not exceed the max per WDO 3.02.01 through Ordinance No. 2603 (LA 21-02) adopted June 13, 2022.

PUD-3. Frontage/street improvements: These shall be as follows:

- a. BFR: Per WDO Fig. 3.01C except that planter strip shall be min 6½ ft wide inc. curb width.
- b. Olympic: Bridge or culvert crossing over Mill Creek tributary: Per WDO 3.01.03H through Ordinance No. 2603 (LA 21-02) adopted June 13, 2022, and:
 - (1) Elevation: Shall be such that the travel way and parking lanes wouldn't flood during the 100-year flood.
 - (2) Sidewalks: min width 9 ft inc. curbing.
 - (3) Fencing/railings: Permissible colors are blue, bronze, brown, green, teal, metal, and rust color. (Black prohibited.)
 - (4) Design details are deferred to PUD Final Plan Approval process; refer to Condition PUD-11.

Marion Pointe ANX 22-02, PUD 22-02, etc. Staff Report
Attachment 102
Page 45 of 56

- c. Tract D: The developer shall grant to the City over the entire tract a public street easement. The easement shall allow for all purposes permitted by what would have been ROW dedication including construction of street improvements. One or more legal instruments that dedicates the easement shall contain text that the easement is revocable only with the written concurrence of both the Community Development Director and Public Works Director and by City Council action. (The objective is to have maintenance responsibility remain with a party other than the City.)
- d. Hazelnut: Per WDO Fig. 3.01G, except that the territory contiguous with Tax Lots 051W06DC00201 & 300, which is occupied by Hazelnut, shall be dedicated to the City as ROW. (Note: To not meet this condition part would require modification of condition [MOC] application and approval per WDO 4.02.07.)
- e. Planter strip remainder: Landscape the remainder area the area remaining after street tree plantings per WDO 3.01.04B through Ordinance No. 2603 (LA 21-02) adopted June 13, 2022.
- f. Sidewalks: Min 6 ft wide except wider as Exhibit PUD-3f supersedes. BFR sidewalk southerly and two northerly dead-ends shall have ADA-compliant transitions spanning between sidewalk and road shoulder as the applicable public works authority specifies. The segment extending north from Hazelnut sidewalk may meander, including PUE overlap, and taper to 6 ft through RPZs to save most of the loose row of trees along the road.

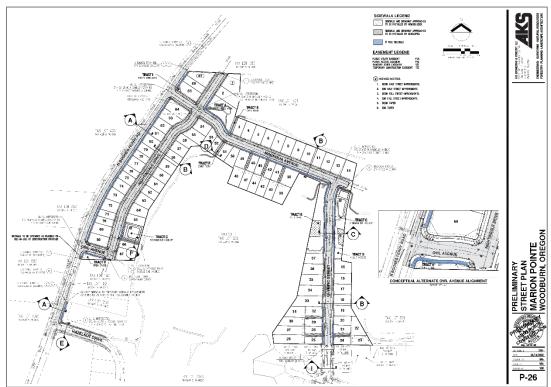


Exhibit PUD-3f: Site Plan Sheet P-26 Sidewalks (blue: min 8 ft wide); see Attachment 103 for full size

- g. Overlap: The extra width of planter strip and sidewalk shall either (1) overlap outside ROW into streetside PUE and come with a recorded legal instrument granting public access to the overlap to the satisfaction of the Public Works Director, or (2) come with additional ROW to accommodate them. Wider sidewalks shall not narrow planter strips.
- h. Street trees:
 - (1) Min numbers equal to block frontage ratios per Exhibit PUD-3h:



Exhibit PUD-3h: Site Plan Sheet P-31 Street Tree Min No. (green: equal to 1 tree per 30 ft of block frontage)

- (2) Along Magnolia, revise street trees from Capital pear to *Magnolia grandiflora* "Victoria" cultivar.
- (3) Fee in-lieu shall be per Attachment 205.
- (4) Landscape strips and street trees shall conform to WDO 3.01.04B (landscaping, irrigation) and 3.06.03A.3 (root barriers) through Ordinance 2603.
- i. Electric power lines: Electric power lines, whether in or beyond ROW, shall be buried.
- j. Traffic calming: A min number of pedestrian crossings along intersection legs shall be patterned poured concrete each min 8 ft wide:
 - (1) Magnolia & Nightingale, 3 legs: N/NE, E/SE, & S/SW; and
 - (2) Magnolia & Olympic: 2-3 legs: S/SW & whichever one or both of the E/SE or W/NW legs that would have a curb ramp along the top of the "T" of the T-intersection.

PUD-4. Streets, dead-end: Barricades/Signage: Based on WDO 3.01.05A.2b & c, the developer shall place:

- a. A barricade with sign at the south end of Nightingale; and
- b. A barricade at each of the north end of Nightingale the east end of Magnolia. Consult PW for a barricade detail, and no later than CEP show both it and a modified version with a sign in conformance with 3.01.05A.2c.
- PUD-5. Tree preservation: The developer shall preserve trees per Attachment 204 or pay removal fees per Attachment 205.
- PUD-6. RCWOD designation: The developer shall through zone change ordinance exhibits apply not only the base zoning districts consistent with the Comprehensive Plan but also the RCWOD that WDO 2.05.05 describes to the applicable areas within Tracts C & E and where the applicable area overlaps the golf course lot.
- PUD-7. Environmental remediation: The developer shall remediate per Attachment 204, Part C.
- PUD-8. Lot and tract development standards: The standards shall be per Attachment 202.
- PUD-9. Common area improvements: Improvements shall be per Attachment 203.
- PUD-10. Association: The developer shall establish an association/HOA per Attachment 203, Part E.

PUD-11. PUD Final Plan Approval Process:

- a. The developer shall conform to WDO 5.01.07, the purpose of which is to ensure that the PUD is in substantial conformance with the conditions of the PUD Detailed Development Plan (DDP) approval, including regarding street improvements, public improvements outside ROW if any, and common area improvements. The developer shall apply to the Director for PUD Final Plan Approval no later than when applying to PW for CEP review.
- b. Scope: The scope of DDP includes any topic for which any given final decision condition of approval, and any separate document it might reference, is too general to establish civil engineering standards and construction levels of detail. It also includes any topic or situation for which no standard exists through previous adoption by PW. The Final Plan Approval process is to establish any and all design details deferred from land use review.
- c. CEP: The developer shall incorporate a PUD Final Plan Approval by the Director into CEP review by PW and the civil engineering plan set that PW would approve through CEP.

PUD-12. Construction access: Construction access is prohibited from and to Olympic. If public works construction code standards necessary for PW to administer this condition are absent, the Public Works Director may administratively through a PW permit process establish details, specifications, and revisions to administer including regarding time, place, manner, and temporary signage directing traffic.

PUD-13. Dove Landing park improvements: The developer shall pay a fee per Attachment 205 towards improvement of the public park land within the Dove Landing PUD, which is west across BFR.

Planned Unit Development 22-02: Transportation

T-A. BFR & OR 214: The developer shall pay towards TSP signal timing studies or a combined study per Attachment 205. [TSP R8, R9, & R11, p. 32 as Attachment 104A]

T-BP. Wayfinding: To further TDM, the developer shall do one of the following:

- a. Install 3 min devices, such as signage, that provide wayfinding to bicycle routes, multiuse paths, parks, schools, and other essential destinations. If the developer were to opt for signage and assuming pole signage, sign face min dimensions shall be 2 ft by 1 ft and the placements shall be min:
 - (1) 1 installation of 1 face along Tract A Magnolia frontage;
 - (2) 1 installation of 2 faces at or near the intersection of BFR & Owl and along Tract H;
 - (3) 1 installation of 2 faces at or near the intersection of BFR & Magnolia and near Tract I:

Note: The developer may mimic the typical wayfinding per <u>WDO interpretation</u> memo INT 22-0608.

- b. Pay a fee in-lieu per Attachment 205. [TSP B40 "wayfinding"/P62]
- T-T1. Bus shelter: To further TDM through bus transit, the developer shall provide for a bus shelter by either (a) installing a shelter to the specs per <u>WDO interpretation</u> memo INT 22-0609 or (b) paying a fee in-lieu per Attachment 205. [TPU 9]
- T-T2. Bus stop bicycle parking: To further TDM through bus transit, the developer shall at each of the following locations provide for bicycle parking by either (1) installing a bicycle rack to the specs specified WDO interpretation memo INT 22-0609 or (2) paying a fee in-lieu per Attachment 205:
 - a. BFR along Tract H; and
 - BFR northbound adjacent to Tax Lot 051W07BA01300 (2348 N. Boones Ferry Rd). [TSP T18]
- T-T3. Bus transit fee: To further transportation demand management (TDM) through bus transit, the developer shall pay a bus transit fee per Attachment 205.

Applicant Identity

Applicant	Holt Group Holdings, LLC
Applicant's	Rand Waltz, Project Manager, AKS Engineering & Forestry, LLC (Tualatin office)
Representative	
Landowner(s)	Tukwila Partners; and
	Oregon Golf Association c/o Members Club Inc.

Notes to the Applicant

The following are not planning / land use / zoning conditions of approval, but are notes for the applicant to be aware of and follow:

- 1. Records: Staff recommends that the applicant retain a copy of the subject approval.
- 2. Fences, fencing, & free-standing walls: The approval excludes any fences, fencing, & free-standing walls, which are subject to WDO 2.06 and the permit process of 5.01.03.
- 3. Signage: The approval excludes any private signage, which is subject to WDO 3.10 and the permit process of 5.01.10.
- 4. PLA Time Limit: WDO 4.02.04B. specifies that, "A final decision on any application shall expire within three years of the date of the final decision unless: 1. a building permit to exercise the right granted by the decision has been issued; 2. the activity approved in the decision has commenced; or 3. a time extension, Section 4.02.05, has been approved. Because unrecorded re-plats lingering indefinitely have burdened staff, a condition sets sooner time limits for subsection 2. to begin and finish recordation.
- 5. Mylar signature: The Community Development Director is the authority that signs plat Mylars and not any of the mayor, City Administrator, Public Works Director, or City Engineer. Only one City signature title block is necessary.
- 6. PLA Plat Tracker: Marion County maintains a plat tracking tool at http://apps.co.marion.or.us/plattracker/>. Use it to check on the status of a recordation request to the County. City staff does not track County plat recordation.

7. Technical standards:

a. Context: A reader shall not construe a land use condition of approval that reiterates a City technical standard, such as a PW standard, to exclude remaining standards or to assert that conditions of approval should have reiterated every standard the City has in order for those standards to be met.

Marion Pointe ANX 22-02, PUD 22-02, etc. Staff Report
Attachment 102
Page 51 of 56

- b. Utilities: A condition involving altered or additional sidewalk or other frontage/street improvement that would in the field result in displacement or relocation of any of utility boxes, cabinets, vaults, or vault covers does not exempt the developer from having to move or pay to move any of these as directed by the City Engineer and with guidance from franchise utilities.
- 8. Other Agencies: The applicant, not the City, is responsible for obtaining permits from any county, state and/or federal agencies, which may require approval or permit, and must obtain all applicable City and County permits for work prior to the start of work and that the work meets the satisfaction of the permit-issuing jurisdiction. The Oregon Department of Transportation (ODOT) might require highway access, storm drainage, and other right-of-way (ROW) permits. All work within the public ROW or easements within City jurisdiction must conform to plans approved by the Public Works Department and must comply with a Public Works Right-of-Way permit issued by said department. Marion County plumbing permits must be issued for all waterline, sanitary sewer, and storm sewer work installed beyond the Public Right-of-Way, on private property.
- 9. Inspection: The applicant shall construct, install, or plant all improvements, including landscaping, prior to City staff verification. Contact Planning Division staff at least three (3) City business days prior to a desired date of planning and zoning inspection of site improvements. This is required and separate from and in addition to the usual building code and fire and life safety inspections. Note that Planning staff are not primarily inspectors, do not have the nearly immediate availability of building inspectors, and are not bound by any building inspector's schedule or general contractor convenience.
- 10. Stormwater management: The storm sewer system and any required on-site detention for the development must comply with the City Storm Water Management Plan, Public Works storm water practices and the Storm Drainage Master Plan.
- 11. Public Works Review: Staff performs final review of the civil plans during the building permit stage. Public infrastructure must be constructed in accordance with plans approved by the City, as well as current Public Works Construction specifications, Standard Details, and general conditions of a permit type issued by the Public Works Department.

12. ROW:

- a. Dedication: The Public Works Department Engineering Division has document templates for ROW and easement dedications that applicants are to use.
 - ROW and public utility easement (PUE) dedications are due prior to building permit issuance per Public Works policy.
- b. Work: All work within the public ROWs or easements within City jurisdiction must require plan approval and permit issuance from the Public Works Department. All public Marion Pointe ANX 22-02, PUD 22-02, etc. Staff Report

Attachment 102

improvements construction work must be performed in accordance with the plans stamped "approved" by the City, and comply with the City's Standard Specifications and Standard drawings.

- 13. Franchises: The applicant provides for the installation of all franchised utilities in any required easements.
- 14. Water: All water mains and appurtenances must comply with Public Works, Building Division, and Woodburn Fire District requirements. Existing water services lines that are not going to be use with this new development must be abandoned at the main line. The City performs required abandonment of existing water facilities at the water main with payment by the property owner. All taps to existing water mains must be done by a "Hot Tap" method and by approved City of Woodburn Contractors. The applicant shall install the proper type of backflow preventer for all domestic, lawn irrigation and fire sprinkler services. The backflow devices and meters shall be located near the city water main within an easement, unless approved otherwise by Public Works. Contact Byron Brooks, City of Woodburn Water Superintendent, for proper type and installation requirements of the backflow device at (503) 982-5380.
- 15. Grease Interceptor/Trap: If applicable, a grease trap would need to be installed on the sanitary service, either as a central unit or in a communal kitchen/food preparation area. Contact Marion County Plumbing Department for permit and installation requirements, (503) 588-5147.
- 16. Fire: Fire protection requirements must comply with Woodburn Fire District standards and requirements, including how the District interprets and applies Oregon Fire Code (OFC). Place fire hydrants within the public ROW or public utility easement and construct them in accordance with Public Works Department requirements, specifications, standards, and permit requirements. Fire protection access, fire hydrant locations and fire protection issues must comply with current fire codes and Woodburn Fire District standards. See City of Woodburn Standard Detail No. 5070-2 Fire Vault. The fire vault must be placed within the public right-of-way or public utility easement.
- 17. SDCs: The developer pays System Development Charges prior to building permit issuance. Staff will determine the water, sewer, storm and parks SDCs after the developer provides a complete Public Works Commercial/Industrial Development information sheet.
- 18. Public Improvements Civil Plan Review: The process by which to receive, review, and approve drawings and other documents related to public improvements required by these conditions of approval may be paired with or incorporated into building permit review, or, if directed by the City Engineer, through a civil engineering plans (CEP) review process led by the Engineering Division. If opting for CEP, the applicant shall not only follow the direction of the

Engineer Division, but also take some actions to facilitate tracking by Planning staff and coordination with Engineering:

- a. Cover letter: Upon submitting application to the Engineering Division, simultaneously alert the Planning Division through a cover letter to the attention of the Planning Division referencing the intended or, if known, actual submittal date as well as the project name, project phase, tax lot number(s), street address(es), and the land use / planning / zoning final decision conditions of approval that require the public improvement that is the subject of the civil engineering plans. Referencing conditions may be by quotation or citing the identification numbers (e.g., T-A1). Identify the specific sheet (by number) or document page number that illustrates or notes how each subpart of a condition is met.
- b. Contact information: State the applicant's name, company, phone number, e-mail, and desired date for City staff to respond with review comments. The cover letter may include these.
- c. Plan copies: Submit to the attention of the Planning Division at least two plan size copies of plan sets (24 by 36 inches). Within the cover sheet title block(s), include the phrase "civil engineering plans" or "public improvements civil plans". Submit also Adobe PDFs using a fileshare service.
- d. Re-submittal fee: If there are multiple re-submittals, beginning with a third submittal / second revised submittal and continuing with each subsequent submittal, the applicant must pay through the Planning Division into City general revenue a fee of \$100.

Where public improvements involve the jurisdiction of an outside agency such as the Oregon Department of Transportation (ODOT), the developer must account for that when interacting with the City Engineer and City Public Works Department process.

19. PUD Final Plan (FP) Approval Process:

A. Context and project management:

- 1. The process by which to receive, review, and approve drawings and other documents related to public improvements required by these conditions of approval may be paired with or incorporated into building permit review, or, if directed by the City Engineer, through a civil engineering plans (CEP) review process led by PW.
- CEP remains the means for implementing final decision conditions of approval affecting street improvements, both surface and underground, and extending into PUEs.
- 3. The developer is project manager. Because PW establishes that CEP applicants have a single point of contact termed the "Engineer of Record", the developer manages the engineer of record who handles the CEP and also interacts with the Planning Division regarding FP review. For Planning Division staff, the developer is the point of contact, namely whoever on the developer's team the developer tasks with being the project manager.

Marion Pointe ANX 22-02, PUD 22-02, etc. Staff Report
Attachment 102
Page 54 of 56

- 4. The developer shall be completely responsible for integrating staff directions found in FP documents issued by Planning Division staff into civil engineering plans that the engineering of record submits to PW.
- 5. If, when, and where conflicting directions arise between FP directions and CEP directions, the developer shall be responsible for communicating with formal cover or transmittal letters messages from the conflicting division to the other division, and shall communicate such.
- 6. The Planning Division observes the CEP for other projects has come after land use final decision and before the building permit stage. Except where otherwise conditioned, it's up to the developer to determine when to submit for CEP and PUD Final Plan relative to each other to best meet this "context and project management" condition.

B. PUD Final Plan review scope and result:

- 1. The scope of FP review includes any topic for which any given final decision condition of approval, and any separate document it might reference, is too general to establish civil engineering standards and construction levels of detail. It also includes any topic or situation for which no standard exists through previous adoption by PW or, where applicable, parks and recreation staff. It includes, as examples, pavement, game and sports courts and fields, buildings including prefabricated ones, playgrounds and other structures including pre-fabricated ones, exterior lights, landscaping, signage, and appurtenances such as benches, bicycle parking, dog waste stations, ornamental fountains, and water fountains, as well as materials, textures, colors, and model specifications. (Although in or partially in ROW, a bus shelter or shelters are to be subject to FP instead of CEP based on PW preference, unless PW were to direct the engineer of record to include such in CEP scope.)
- 2. There shall result an official version of a civil engineering plan set marked approved by PW that shows all common area improvements and all public improvements, including off-street public improvements, resulting from both FP review and CEP. It shall come to be prior to building permit application; however, PW is prohibited from approving any time prior to the developer paying conditioned fees related to CEP Planning Division review.

C. Submittal directions FP review:

- 1. Due date: For CEP, none other than what PW might specify. For FP, original / 1st submittal is due whichever occurs earlier: When the developer applies for either CEP or final plat application to the City.
- Cover letter: Upon submitting CEP application to PW, simultaneously alert the Planning Division through a cover letter to the attention of the Planning Division referencing the intended or, if known, actual submittal date as well as the project name, tax lot number(s), street address(es), and the land use final decision conditions

Marion Pointe ANX 22-02, PUD 22-02, etc. Staff Report
Attachment 102
Page 55 of 56

- of approval that require the public improvements that ares the subject of the civil engineering plans. Referencing conditions may be by quotation or citing the identification numbers (e.g., T-A1). Identify the specific sheet (by number) or document page number that illustrates or notes how each part of a condition is met.
- 3. Contact information: State the applicant's name, company, phone number, e-mail, and desired date for City staff to respond with review comments. The cover letter to the Planning Division may include these. The developer may submit to the Planning Division a copy of the stamped CEP application form submitted to PW if the form includes the required information.
- D. Site Plans: For CEP Planning Division review and FP:
 - 1. CEP: Submit to the attention of the Planning Division at least 2 plan size copies of plan sets, one plotted at native scale (min 22 by 34 inches, max 24 by 36) and one at ledger (11 by 17). Within the cover sheet title block(s), include the anticipated date of submittal and the phrase "civil engineering plans", "civil plans for CEP", or "public improvements civil plans".
 - 2. FP: Submit to the attention of the Planning Division at least 6 plan size copies of plan sets, 3 plotted at native scale (min 22 by 34 inches, max 24 by 36) and 3 at ledger (11 by 17). Within the cover sheet title block(s), include the anticipated date of submittal.
 - 3. Both: Fold the plan size sets if thin enough to do so. Submit also Adobe PDFs using a fileshare service.



Public Works Comments ANX 22-02 Marion Pointe PUD _ Land Use Application

June 15, 2022

Attachment 102A

A. CONDITIONS OF LAND USE APPROVAL:

- The Applicant, not the City, is responsible for obtaining any necessary permits from the State, Marion County, Oregon Division of State Lands, US Army Corps of Engineering and/or federal agencies that may require such permit or approval for the construction of this development.
- 2. Applicant to obtain necessary approvals/permits from Marion County for proposed improvements to N Boones Ferry Road that will continue to be under Marion County jurisdiction.
- 3. The Applicant is responsible for obtaining permit/approval/agreement from applicable property owners for the conveyance and maintenance of the storm water drainage from the Marion Pointe PUD into the existing storm drainage system located on current tax lot 051W06D000502 and tax lot 051W06D000501.
- 4. Applicant to provide a final Engineer stamped storm drainage hydraulic analysis report for detention and conveyance system. The storm drainage hydraulic analysis shall comply with Marion County, Oregon Division of State Lands, US Army Corps of Engineering and City's requirements, as applicable. Applicant is responsible for correcting/upgrading any existing storm drainage capacity deficiencies, including upgrading private storm drainage systems or installing a new drainage system as per City's requirements and per approved Storm Drainage Hydraulic Analysis Report.
- 5. Prior to civil engineering plan approval the applicant shall provide a final Engineer Stamped Storm Drainage Hydraulic Analysis Report that existing private storm drainage systems have capacity to handle the additional flow from the Marion Pointe and ANX 2020-03 Dove Landing Planned Unit Developments (PUDs), and that the culvert/pipe under Olympic Street has capacity to handle a 100 year base flood event, and to provide a final 100 year floodway, floodplain, and wetland delineation for this development. The applicant is responsible for correcting any capacity deficiencies, including installing new or additional drainage systems, and/or attaining the right to increase stormwater flows into neighboring private stormwater systems.
- Applicant is responsible for obtaining approval from the Woodburn Fire District for deadend turnarounds requirements for streets and private share access. Buncherry Drive north end and all proposed private share access.

 ANX 22-02

7. Improvements to N Boones Ferry Road shall be redesigned/adjusted accordingly with pending future improvements to N Boones Ferry that are part of the Dove Landing PUD project. Improvements to Boones Ferry Road shall comply with City and Marion County Requirements.

Design items to be aware that are part of the Dove Landing project but not limited:

- Aligning Marion Pointe intersections with Dove Landing intersections on N Boones Ferry Road.
- Align Pedestrian crossing on N Boones Ferry Road with Dove Landing crossing.
- Maintain/reconstruct future sidewalk on the east side of Boones Ferry Road that maybe constructed, as per the Dove Landing project.
- 8. Engineer of record to provide memo indicating that proposed intersections at N Boones Ferry Road complies with current Federal and State safety, sight distance and vehicular traffic/ turning movement guidelines. The engineer report shall take into consideration the proposed Dove Landing PUE intersection on N Boones Ferry Road. Please find Dove Landing information on the City's website under the following link: https://www.woodburn-or.gov/dev-planning/project/annexation-anx-2020-03-schultz-farm-dove-landing-boones-ferry-rd-ne-west-side
- Engineer of record to provide a recommendation for safety pedestrian crossings along N
 Boones Ferry Road, including enhancements to the crossing based on current State and
 Federal guidelines.

B. CONDITIONS TO BE COMPLETED PRIOR TO CIVIL PLANS APPROVAL:

- 1. Applicant to provide a copy of approved permit(s) from the Oregon Division of State Lands and US Army Corps of Engineering and Marion County, as applicable, if a permit shall be obtained for discharging storm drainage into state lands. This permit(s) shall be obtained prior to City approval of the Marion Pointe PUD Civil Plans.
- 2. The Applicant is to provide a recorded permit/approval/agreement from applicable property owners for the conveyance and maintenance of the storm water drainage from the Marion Pointe PUD Development into the existing storm drainage system located in current tax lot 051W06D000502 and tax lot 051W06D000501. The agreement(s) shall be obtained prior to City approval of the Marion Pointe PUE Civil plans.
- Applicant to provide for the installation of all franchise utilities and shall provide any required easements for these facilities. All permanent utility services to the development shall be underground.

- 4. Department of Environmental Quality Erosion Control 1200C permit will need to be obtained for this development prior to City issuing approval of civil plans.
- 5. All sewer mains are a gravity system and the termini of sewer lines locations and depths shall be such that it is suited for future extensions to adjoining areas.
- Culvert pipes at Olympic Street shall be sized to accommodate future development of adjoining areas, specifically properties located west of N Boones Ferry Road. The culvert pipes shall be designed by a Professional Engineer to handle a 100-year flow event.
- 7. Final review of the Civil Plans will be done during the Subdivision Application for Construction. Public infrastructure will be constructed in accordance with plans approved by public works and Marion County (where applicable).
- 8. For general information, the minimum cover depth for water mains is 4ft.
- 9. Applicant to adjust/redesign the water main on N Boones Ferry in accordance with the plan to extend the main line north of Hazelnut Drive towards Dove Landing Development.
- 10. Engineer of record to provide a storm analysis report indicating that the existing pipes in Olympic can provide capacity to convey a 100-year event for the entire basing. Engineer of record to provide a pipe analysis certifying the integrity of the existing pipes and strength to support a public road, meet the Oregon Department of Transportation Standards and Specifications. In the event that the pipes cannot provide the capacity or strength requirements the applicant shall provide new culverts or bridge over the drainage pattern. The applicant is responsible for acquiring permits from applicable regulatory agencies for all work within the limits of designated wetlands or waterways prior to, during and/or after the construction of all private and public development improvements, including all culverts/bridge installations and roadway improvements.

PROJECT

LOCATION

HOLT GROUP HOLDINGS, LLC 1300 ESTHER STREET, SUITE 200 VANCOUVER. WA 98660

PLANNING / ENGINEERING / AKS ENGINEERING & FORESTRY, LLC **SURVEYING TEAM:**

CONTACT: RAND WALTZ / GLEN SOUTHERLAND 12965 SW HERMAN RD, SUITE 100

TUALATIN, OR 97062 PH: 503-563-6151

PROJECT LOCATION:

NORTHEAST OF THE INTERSECTION OF NORTH BOONES FERRY ROAD AND HAZELNUT DRIVE WOODBURN, OREGON

PROPERTY DESCRIPTION:

TAX LOT 502, MARION COUNTY ASSESSOR'S MAP 5S 1W 6D, SOUTHEAST ONE QUARTER SECTION OF TOWNSHIP 5 SOUTH, RANGE 1 WEST, LOCATED IN SECTION 6, WILLAMETTE MERIDIAN,

CITY OF WOODBURN, MARION COUNTY, OREGON.

EXISTING LAND USE: VACANT/GOLF COURSE

PROJECT PURPOSE:

PLANNED UNIT DEVELOPMENT FOR FUTURE SINGLE-FAMILY

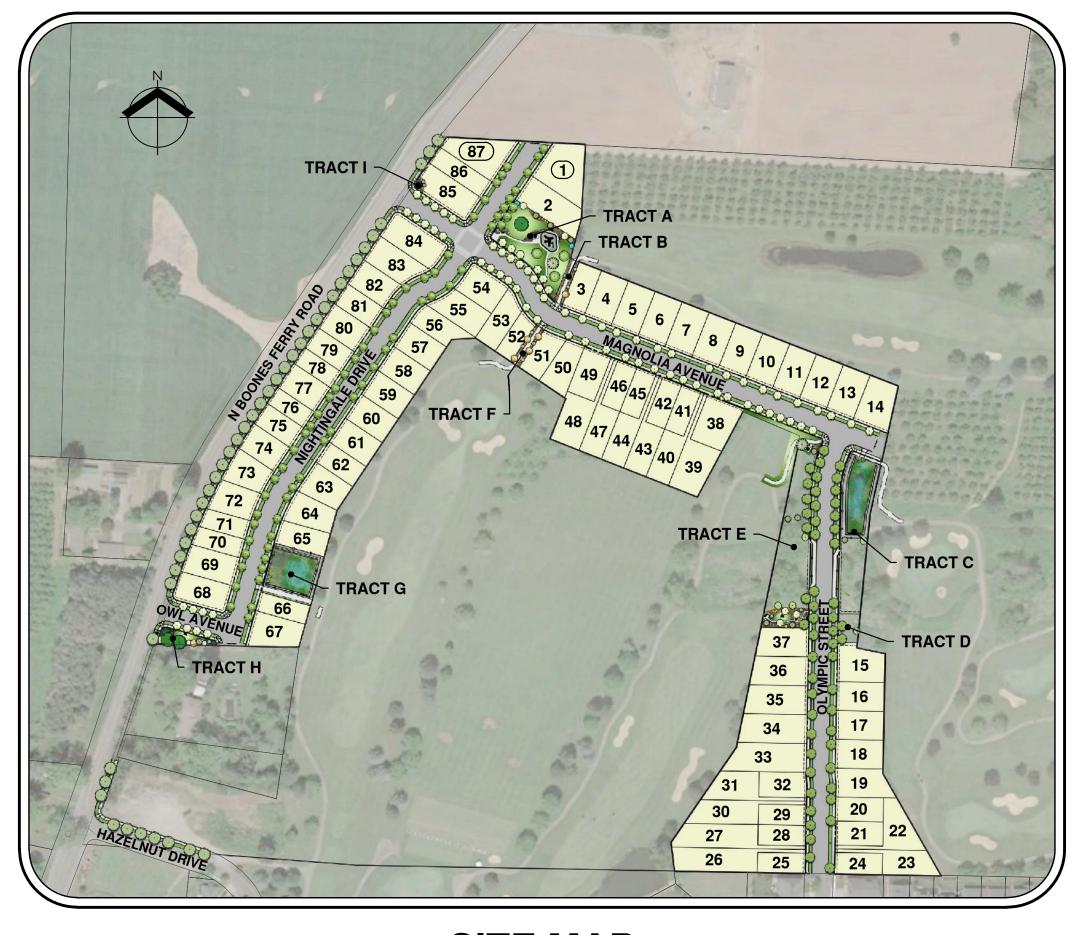
DETACHED RESIDENTIAL DWELLING UNITS.

VICINITY MAP 1" = 500'

CROSBY RD NE

<u>CITY</u>LIMITS/U.G.B.

		<u>LE</u>	GEND		
	EXISTING	<u>PROPOSED</u>		EXISTING	PROPOSEI
DECIDUOUS TREE	\bigcirc		STORM DRAIN CLEAN OUT	0	•
CONTERDATE THE	M	V	STORM DRAIN CATCH BASIN		
CONIFEROUS TREE	W		STORM DRAIN AREA DRAIN		
FIRE HYDRANT	Д	_	STORM DRAIN MANHOLE		
WATER BLOWOFF	Ŷ	•	GAS METER	0	
WATER METER		-	GAS VALVE	Ø	
WATER VALVE	M	H	GUY WIRE ANCHOR	\leftarrow	\leftarrow
DOUBLE CHECK VALVE	\boxtimes	◩	UTILITY POLE	-0-	
AIR RELEASE VALVE	රු	**	POWER VAULT	Р	Р
SANITARY SEWER CLEAN OF		•	POWER JUNCTION BOX		A
SANITARY SEWER MANHOLE	. 0	•	POWER PEDESTAL		•
SIGN		-	COMMUNICATIONS VAULT	C	С
STREET LIGHT	\$	*	COMMUNICATIONS JUNCTION BOX	\triangle	A
MAILBOX	MB	[MB]	COMMUNICATIONS RISER	\bigcirc	•
		EXISTING		PROPOSED	
RIGHT-OF-WAY LINE					-
BOUNDARY LINE					
PROPERTY LINE					
CENTERLINE					
DITCH		>	> - >-	>	->
CURB					
EDGE OF PAVEMENT					
EASEMENT					
FENCE LINE		· · · · · · · · ·	·	 	
GRAVEL EDGE	•••••				
POWER LINE			PWR PWR		PWR
OVERHEAD WIRE		— онw — –	OHW OHW		онw ———
COMMUNICATIONS LINE		— сом — –	COM — COM —		сом ———
FIBER OPTIC LINE		CFO	cro	— CFO — — —	— CFO —
GAS LINE		GAS	— GAS — GAS —	GAS	— GAS ———
STORM DRAIN LINE		— sтм — — -	stm stm		ьтм ———
SANITARY SEWER LINE		— SAN — — -	— SAN — SAN — SAN —		SAN



SITE MAP

1" = 200'

VERTICAL DATUM:

VERTICAL DATUM: ELEVATIONS ARE BASED ON NGS BENCHMARK RD1523, LOCATED AT THE SOUTHEASTERLY CORNER OF THE INTERSECTION OF STATE HIGHWAY 99E AND INDUSTRIAL AVENUE

ACCESS BEING A PAVED ROAD LEADING EAST TO MACLAREN YOUTH CORRECTIONAL FACILITY. ELEVATION = 182.27 FEET (NAVD 88)

HORIZONTAL DATUM: HORIZONTAL DATUM: A LOCAL DATUM PLANE SCALED FROM OREGON STATE PLANE NORTH 3601 NAD83(2011) EPOCH 2010.0000 BY HOLDING A PROJECT MEAN GROUND COMBINED SCALE FACTOR OF 1.0001105030 AT A CALCULATED CENTRAL PROJECT POINT WITH GRID VALUES OF (NORTH 553991.748, EAST 7595761.288). THE MERIDIAN CONVERGENCE ANGLE AT THE CALCULATED CENTRAL POINT IS -1°40'03". THE STATE PLANE COORDINATES WERE DERIVED FROM THE TRIMBLE VRS NOW NETWORK.

SHEET INDEX

P-01 COVER SHEET WITH LEGEND, VICINITY, AND SITE MAPS

P-02 PRELIMINARY LANDSCAPE AMENITY PLAN

P-03 PRELIMINARY OVERALL EXISTING CONDITIONS PLAN

P-04 PRELIMINARY EXISTING CONDITIONS PLAN

P-05 PRELIMINARY EXISTING CONDITIONS PLAN

P-06 PRELIMINARY EXISTING CONDITIONS PLAN P-07 PRELIMINARY EXISTING CONDITIONS PLAN

P-08 PRELIMINARY PROPERTY LINE ADJUSTMENT PLAN

P-09 PRELIMINARY OVERALL SUBDIVISION PLAT

P-10 PRELIMINARY DETAILED SUBDIVISION PLAT

P-11 PRELIMINARY DETAILED SUBDIVISION PLAT

P-12 PRELIMINARY DETAILED SUBDIVISION PLAT

P-13 CONCEPTUAL NEIGHBORHOOD CIRCULATION PLAN

P-14 PRELIMINARY DETAILED TREE PRESERVATION AND REMOVAL PLAN

P-15 PRELIMINARY DETAILED TREE PRESERVATION AND REMOVAL PLAN

P-16 PRELIMINARY DETAILED TREE PRESERVATION AND REMOVAL PLAN

P-17 PRELIMINARY DETAILED TREE PRESERVATION AND REMOVAL PLAN

P-18 PRELIMINARY DEMOLITION PLAN

P-19 PRELIMINARY GRADING AND EROSION CONTROL PLAN

P-20 PRELIMINARY OVERALL COMPOSITE UTILITY PLAN

P-21 PRELIMINARY DETAILED COMPOSITE UTILITY PLAN

P-22 PRELIMINARY DETAILED COMPOSITE UTILITY PLAN

P-23 PRELIMINARY DETAILED COMPOSITE UTILITY PLAN P-24 PRELIMINARY OFFSITE SANITARY SEWER COMPOSITE UTILITY PLAN

P-25 PRELIMINARY STREET CROSS SECTIONS

P-26 PRELIMINARY STREET PLAN

P-27 PRELIMINARY STREET PROFILES

P-28 PRELIMINARY STREET PROFILES

P-29 PRELIMINARY STREET PROFILES

P-30 PRELIMINARY AERIAL PHOTOGRAPH PLAN

P-31 PRELIMINARY OVERALL STREET TREE AND LANDSCAPE PLAN

P-32 PRELIMINARY LANDSCAPE PLAN TRACT A CHILDREN'S PLAY AREA

P-33 PRELIMINARY LANDSCAPE PLAN TRACT B, F & I PATHS & ENTRY MONUMENT

P-34 PRELIMINARY LANDSCAPE PLAN TRACT C, D, & E OPEN SPACE

P-35 PRELIMINARY LANDSCAPE PLAN TRACT C & G - STORMWATER FACILITIES

P-36 PRELIMINARY LANDSCAPE PLAN TRACT H OPEN SPACE

P-37 PRELIMINARY SHARED DRIVEWAY LAYOUT CONCEPT PLAN

P-38 PRELIMINARY FLAG LOT FRONTAGE ELEVATIONS

P-39 PRELIMINARY TYPICAL FLAG LOT VEHICLE ENTRY & EXIT SIMULATION

P-40 PRELIMINARY DRIVING RANGE PROFILE EXHIBIT

P-41 EXHIBIT Y PROPOSED COMMON AREAS

P-42 PRELIMINARY FIRE ACCESS AND WATER SUPPLY PLAN ANX 22-02

P-43 PRELIMINARY FIRE ACCESS AND WATER SUPPLY PLAN Attachment 103

P-44 PRELIMINARY FIRE ACCESS AND WATER SUPPLY PLAN

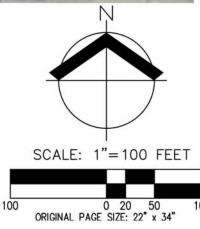


SEND,

P-01



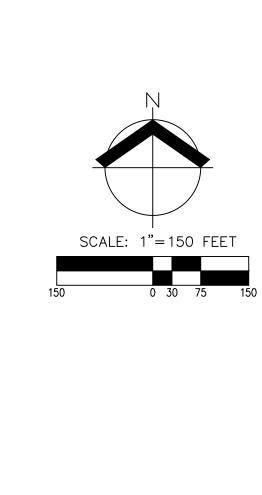
POTENTIAL PLAN ELEMENTS, LOCATIONS, AND DETAILS AS SHOWN ARE CONCEPTUAL AND SUBJECT TO CHANGE.

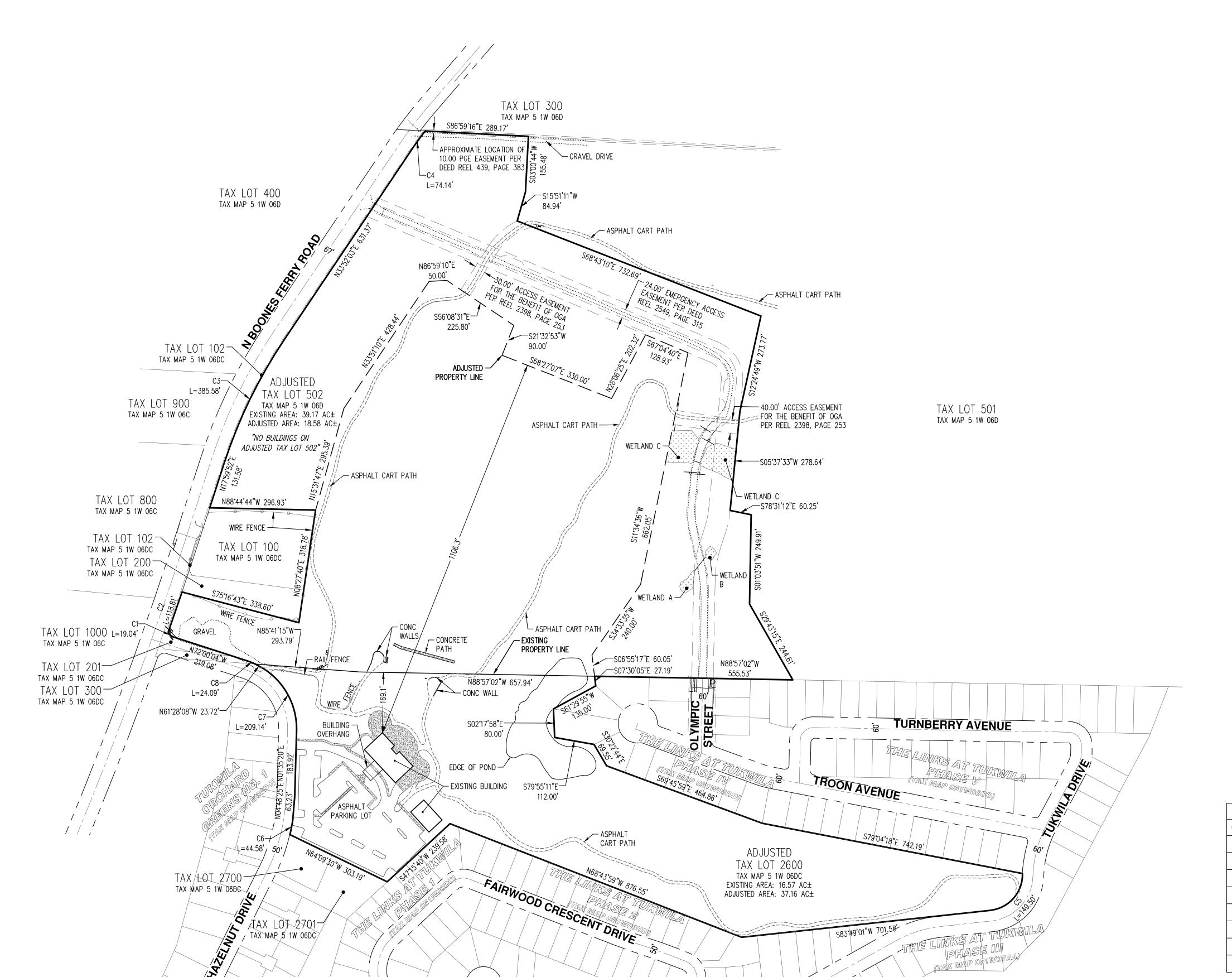




DESIGNED BY:

CHECKED BY:





CURVE TABLE					
CURVE	RADIUS	DELTA	LENGTH	CHORD	
C1	20.00'	54*32'08"	19.04'	N44*44'00"W 18.33'	
C2	11496.13	0°35'32"	118.81'	N19°00'18"E 118.81'	
C3	1395.40'	15°49'56"	385.58'	N25*57'05"E 384.36'	
C4	1108.92'	3°49'50"	74.14'	N35°46'58"E 74.12'	
C5	100.52	8513'02"	149.50'	S40°49'29"W 136.10'	
C6	524.66	4*52'06"	44.58'	N10*52'44"E 44.57'	
C7	199.63'	60°01'32"	209.14	N28*25'26"W 199.71'	
C8	200.00'	6*54'05"	24.09'	N68'33'02"W 24.08'	



DESIGNED BY:

P-08

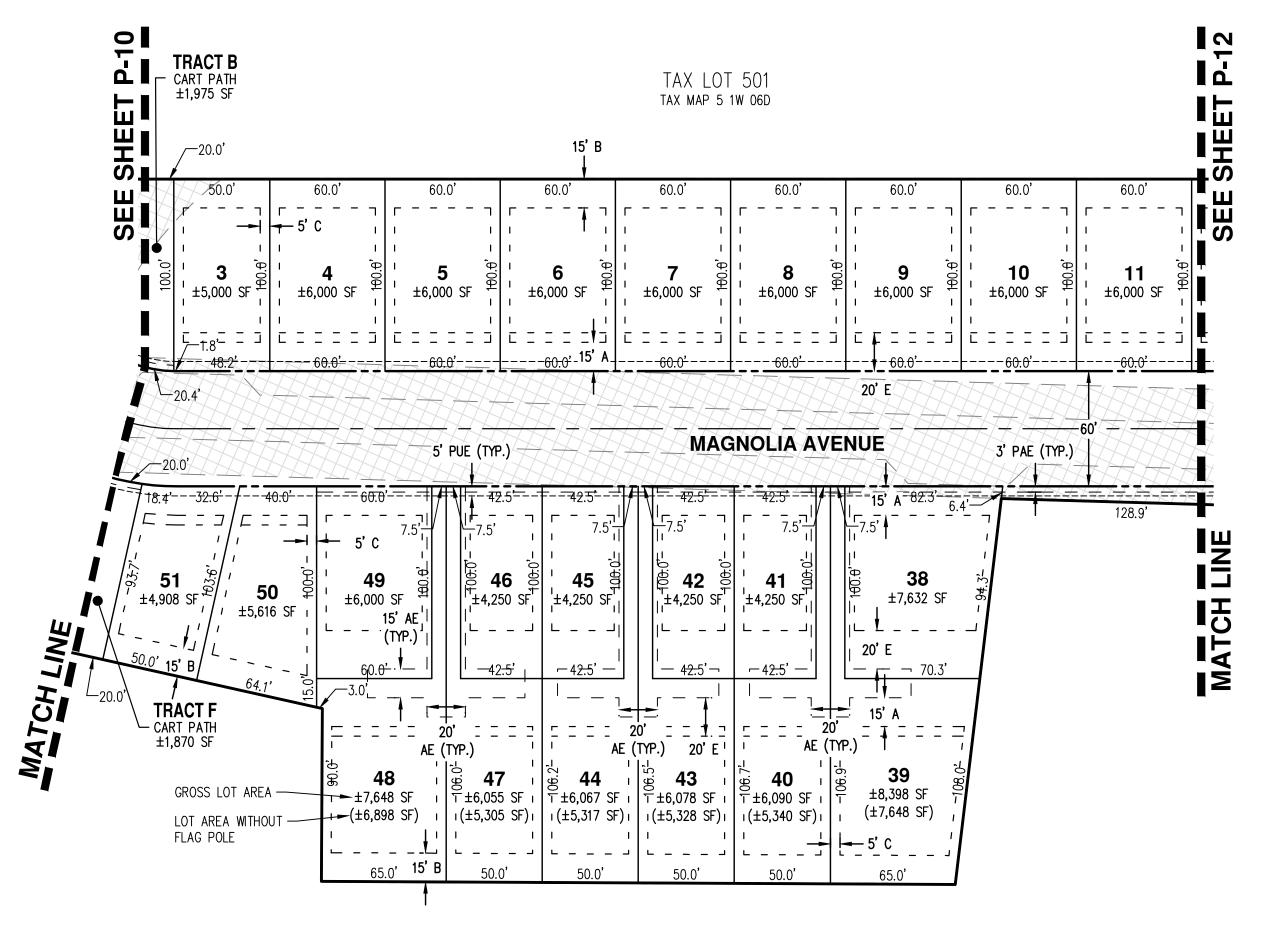
DRAWN BY:

MTB

207

SUBDIVISION

04/14/2022



ADJUSTED
TAX LOT 2600
TAX MAP 5 1W 06DC

PUD SETBACK LEGEND A. FRONT YARD:

B. REAR YARD: 15 FT
C. SIDE YARD: 5 FT
D. STREET SIDE YARD: 15 FT
E. GARAGE SETBACK: 20 FT

NOTE:

THE PURPOSE OF THIS PRELIMINARY SUBDIVISION PLAT IS TO SHOW LOT DIMENSIONS AND AREAS FOR PLANNING PURPOSES. THIS IS <u>NOT</u> AN OFFICIAL RECORDED FINAL PLAT AND IS NOT TO BE USED FOR SURVEY PURPOSES. ALL DIMENSIONS ARE SUBJECT TO CHANGE.

EASEMENT LEGEND

ACCESS AND UTILITY EASEMENT PUBLIC UTILITY EASEMENT PUE PAE SSE PUBLIC ACCESS EASEMENT SANITARY SEWER EASEMENT TEMPORARY CONSTRUCTION EASEMENT TCE

LEGEND



EXISTING EASEMENT TO BE VACATED

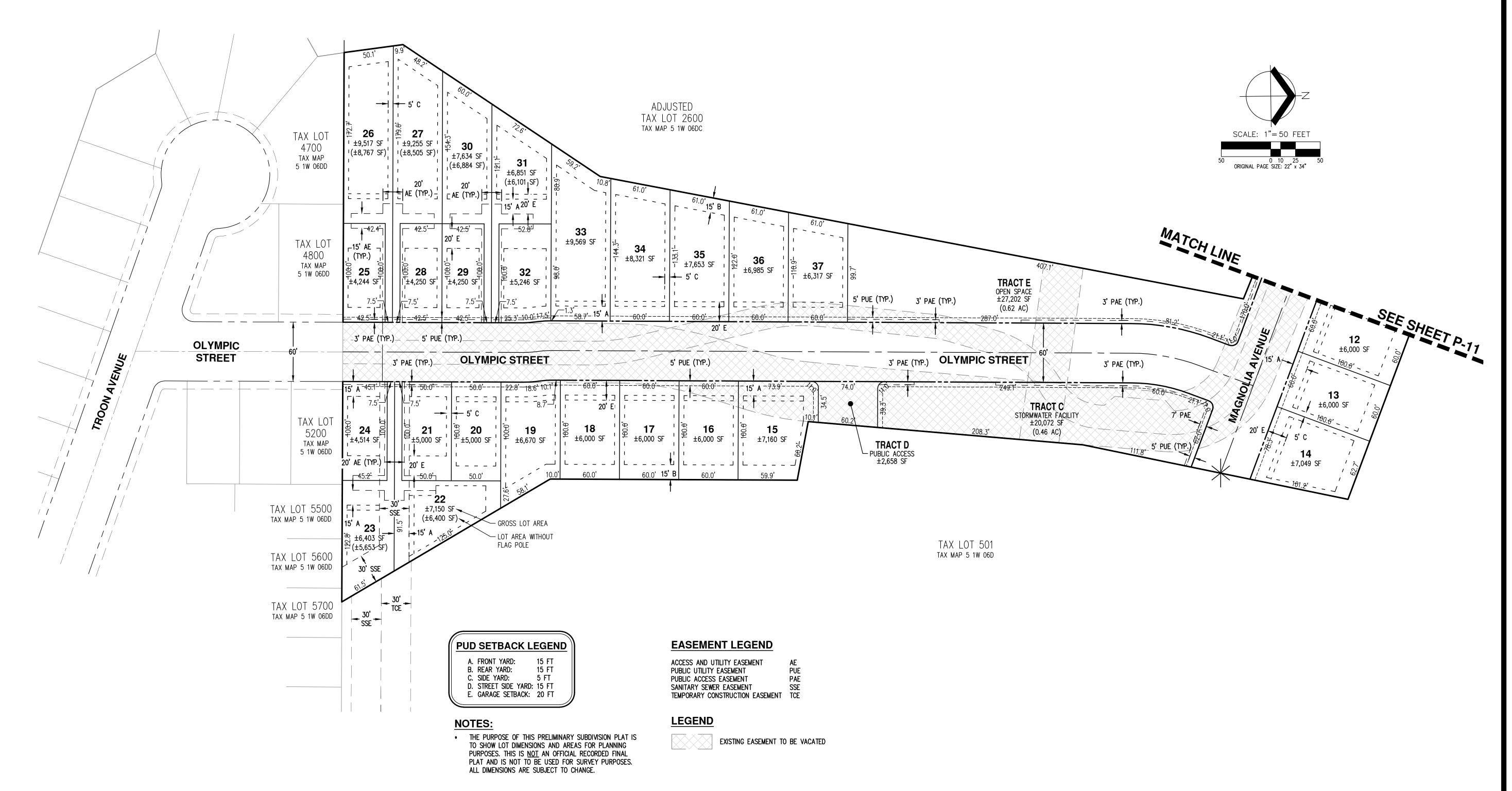
SCALE: 1"=50 FEET

0 10 25 ORIGINAL PAGE SIZE: 22" x 34"

MARION PO WOODBURN, **PRELIMINARY** SUBDIVISION

DETAILED

04/14/2022 DESIGNED BY: DRAWN BY:



DETAILED SUBDIVISION

DESIGNED BY: DRAWN BY:

CROSBY RD NE

U.G.B.

THIS DRAWING DOES NOT REPRESENT A FIELD VERIFIED TOPOGRAPHIC/PROPERTY BOUNDARY SURVEY.

DATA SOURCES FOR THIS CONCEPTUAL DRAWING INCLUDE INFORMATION EXTRAPOLATED FROM CITY OF WOODBURN FUTURE STREET PLAN, GIS AND NOAA LIDAR TOPOGRAPHY.

AREAS, DIMENSIONS, EASEMENT LOCATIONS, AERIAL PHOTO FEATURES, ETC. ARE THEREFORE CONSIDERED APPROXIMATE.

LEGEND

PUD BOUNDARY

PLANNED LOCAL STREET

EXISTING LOCAL STREET

EXISTING MINOR ARTERIAL

CONCEPTUAL FUTURE LOCAL STREET

PLANNED CART PATH

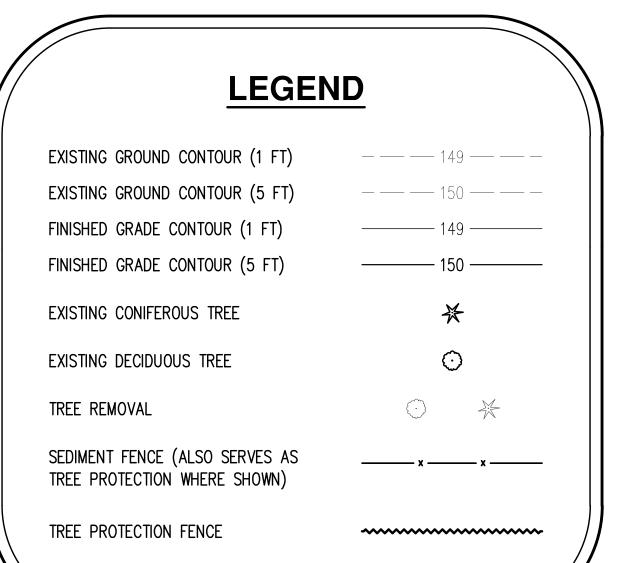
EXISTING CART PATH

PLANNED MULTI-USE TRAIL

U.G.B.

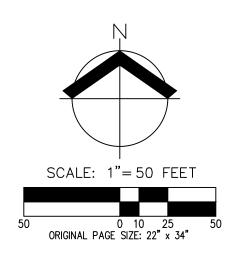
RHOOD **NEIGHBO**

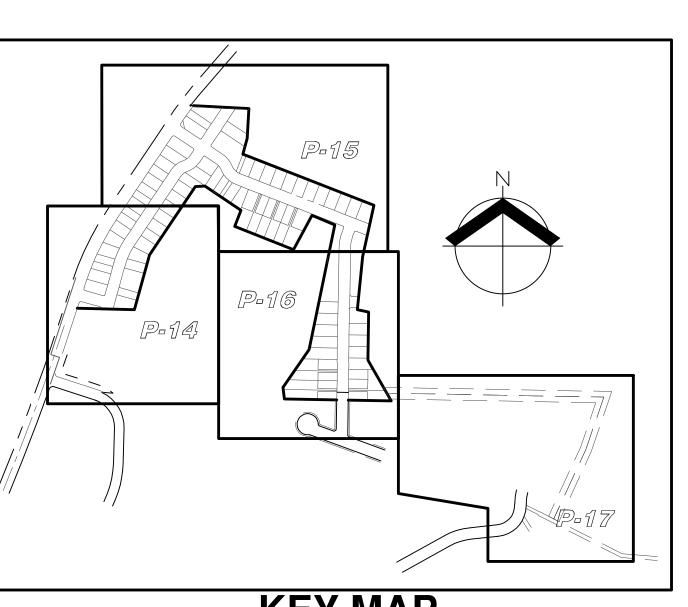
DRAWN BY:



<u>NOT</u>

- REFER TO THE MARION POINTE PRELIMINARY TREE
 PRESERVATION AND REMOVAL TABLE FOR ADDITIONAL TREE
 RELATED INFORMATION.
- 2. TREE REMOVAL BEHIND TREE PROTECTION FENCE TO BE DONE USING HAND TOOLS AND METHODS.





KEY MAP1" = 500'

PRELIMINARY DETAILED TREE
PRESERVATION AND REMOVAL PLA
MARION POINTE
WOODBURN, OREGON

P-14

DRAWN BY:



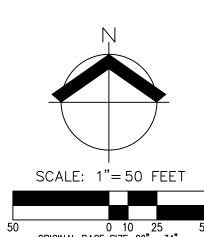
PRELIMINARY DETAILED TREE
PRESERVATION AND REMOVAL PLAN
MARION POINTE
WOODBURN, OREGON

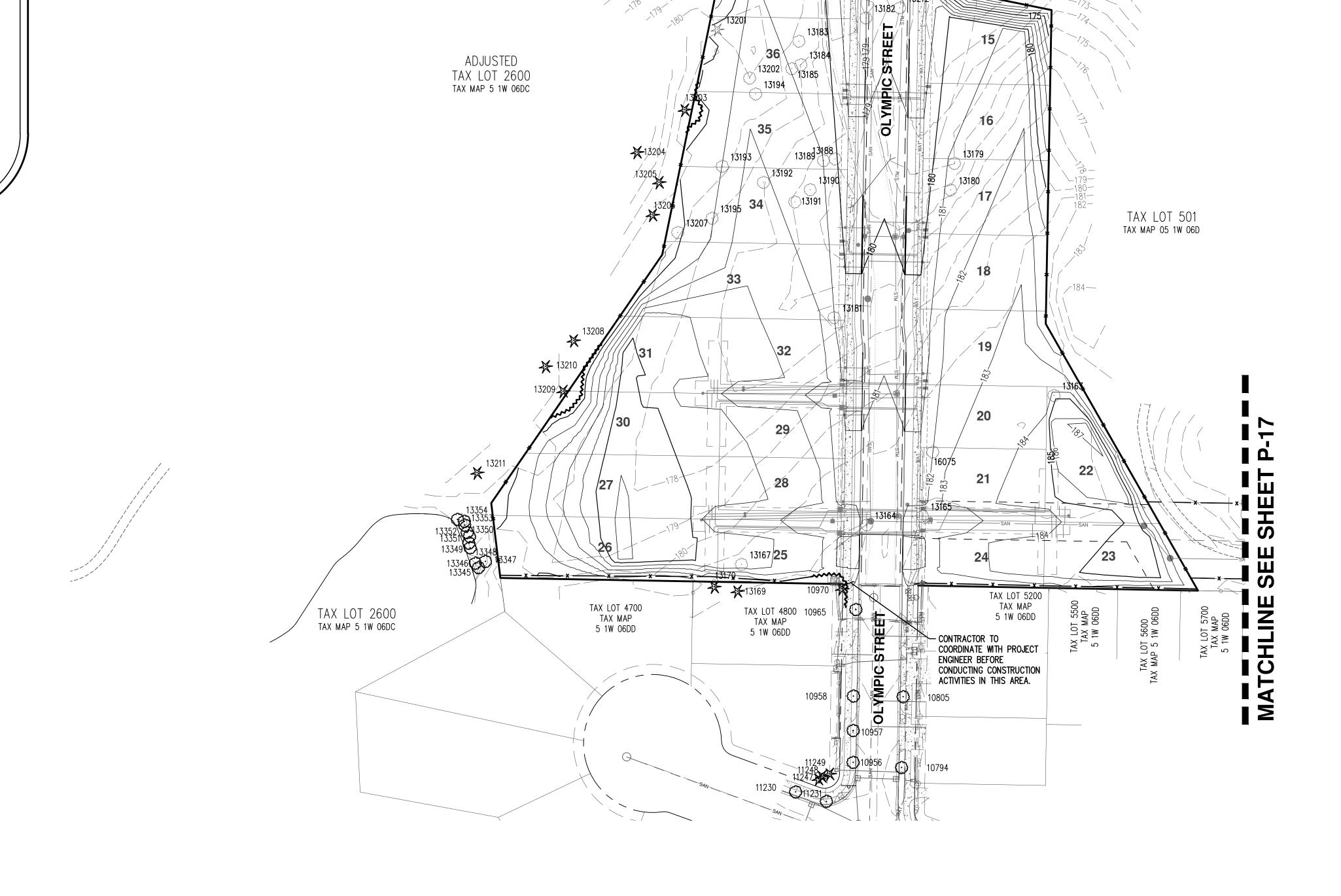
P-15

LEGEND

EXISTING GROUND CONTOUR (1 FT)	— — 149 — — —
EXISTING GROUND CONTOUR (5 FT)	150
FINISHED GRADE CONTOUR (1 FT)	 149
FINISHED GRADE CONTOUR (5 FT)	150
EXISTING CONIFEROUS TREE	₹
EXISTING DECIDUOUS TREE	\odot
TREE REMOVAL	○ ※
SEDIMENT FENCE (ALSO SERVES AS TREE PROTECTION WHERE SHOWN)	xx
TREE PROTECTION FENCE	~~~~~~

- REFER TO THE MARION POINTE PRELIMINARY TREE
 PRESERVATION AND REMOVAL TABLE FOR ADDITIONAL TREE
 RELATED INFORMATION.
- 2. TREE REMOVAL BEHIND TREE PROTECTION FENCE TO BE DONE USING HAND TOOLS AND METHODS.



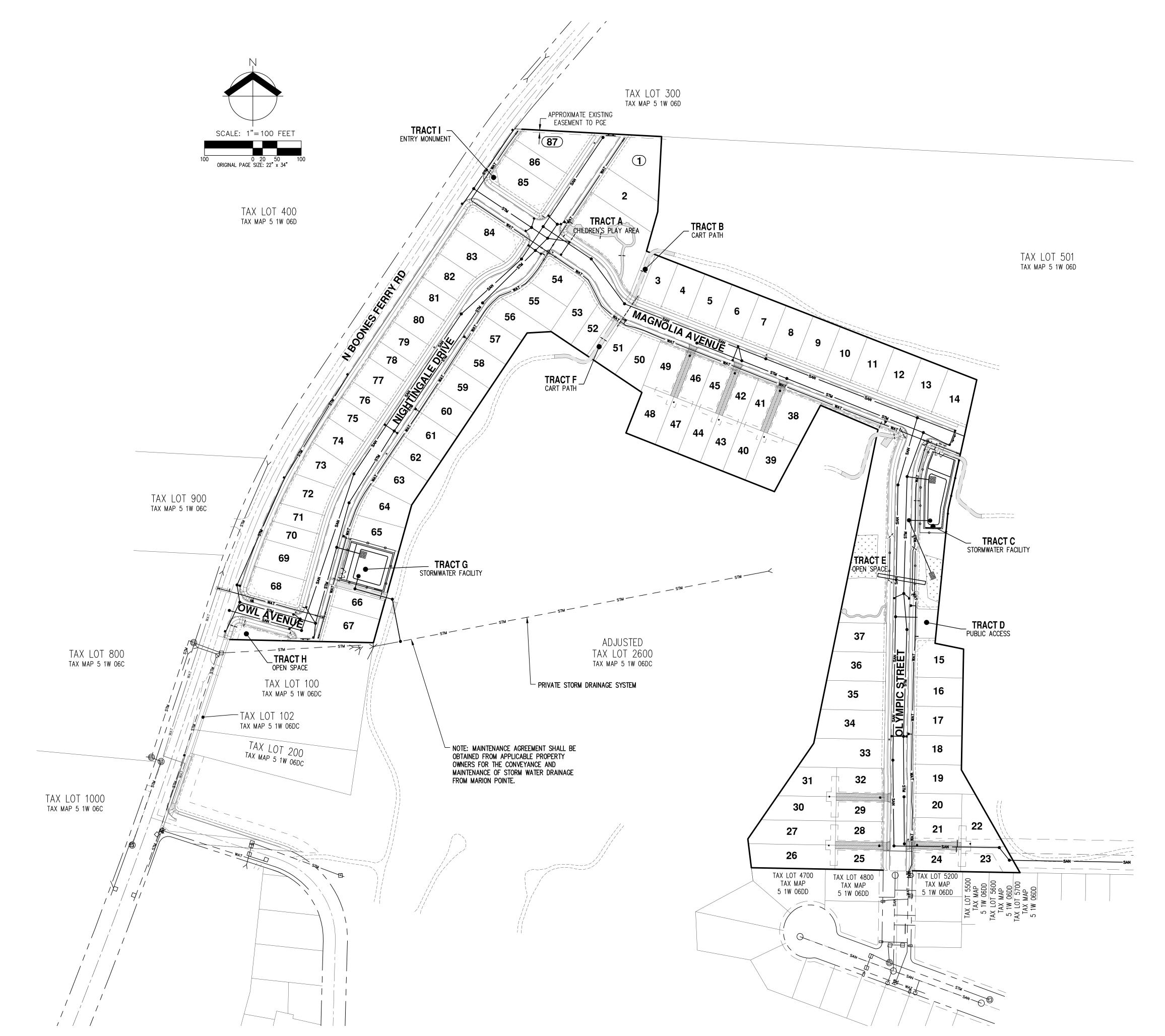


MATCHLINE SEE SHEET P-15

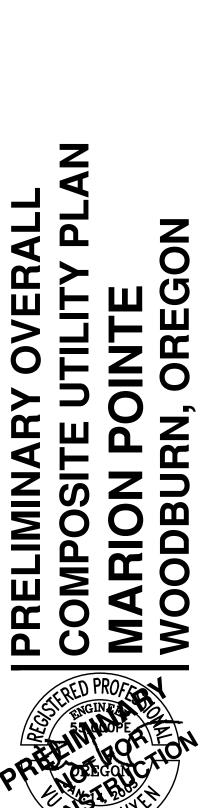
) TREE PRELIMINARY DETAILED PRESERVATION AND RE MARION POINTE WOODBURN, OREGON

04/14/2022

¥ 13275





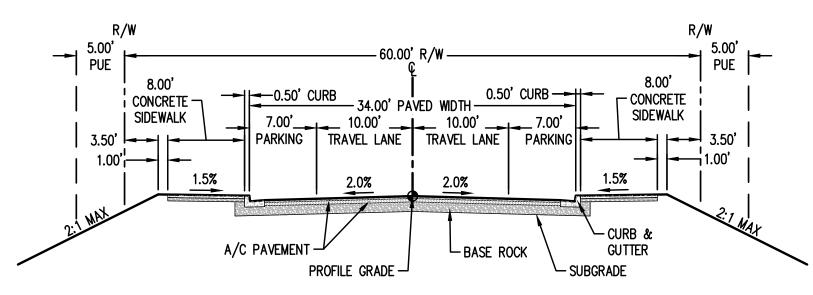


04/14/2022

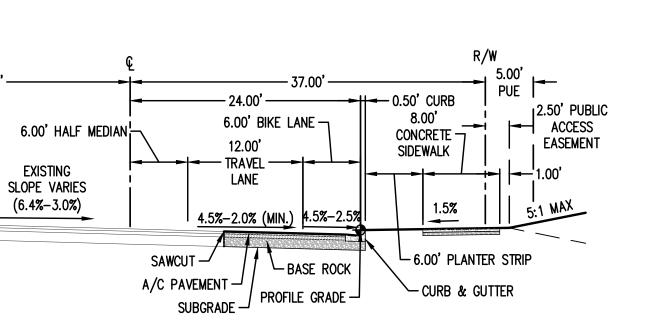
DESIGNED BY:
DRAWN BY:







LOCAL STREET CROSS SECTION AT NATURAL RESOURCES (WETLANDS) CROSSING SCALE: 1" = 10'



TYPICAL MINOR ARTERIAL HALF STREET IMPROVEMENT SCALE: 1'' = 10'

R/W

TYPICAL LOCAL STREET CROSS SECTION

2.0%

PROFILE GRADE -

— 34.00' PAVED WIDTH ——

7.00'_____ 10.00' ____ 10.00' ____ 7.00' ___ PARKING TRAVEL LANE TRAVEL LANE PARKING __

2.0%

STA 18+83.52 TO 20+98.82 RT, STA 19+08.02 TO 20+98.82 LT

L BASE ROCK

R/W

- CONCRETE

PLANTER -

STRIP

A/C PAVEMEN

1.5%

SIDEWALK

5.00' PUE

CONCRETE —

SIDEWALK

R/W

CONCRETE -

6.50' └ PLANTER

STRIP

CURB & GUTTER

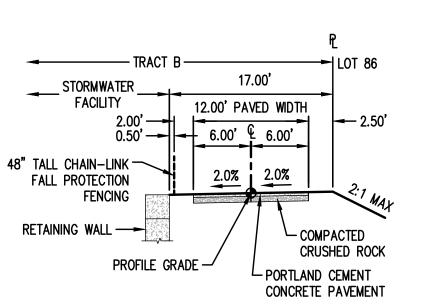
<u>U</u> SUBGRADE

SIDEWALK

0.50' CURB --||-

CROSS SECTION G SHALL BE USED IN THE FOLLOWING LOCATIONS: OWL AVENUE: STA 10+46.73 TO 11+46.92 RT NIGHTINGALE DRIVE: STA 10+93.06 TO 11+99.17 RT, STA 20+03.02 TO 20+92.83 RT MAGNOLIA AVENUE: STA 12+37.10 TO 14+48.07 LT, STA 15+23.36 TO 20+50.64 RT OLYMPIC STREET: STA 12+09.95 TO 13+19.95 RT, STA 12+09.95 TO 14+20.50 LT STA 16+84.13 TO 17+74.92 RT, STA 17+20.07 TO 18+01.01 LT

CROSS SECTION H SHALL BE USED IN THE FOLLOWING LOCATIONS: MAGNOLIA AVENUE: STA 21+24.64 TO 21+83.51 RT



LOCAL STREET WITH 8-FOOT SIDEWALK CROSS SECTION G SCALE: 1" = 10'

CURB & GUTTER

8.00'

CONCRETE

SIDEWALK

1.5%

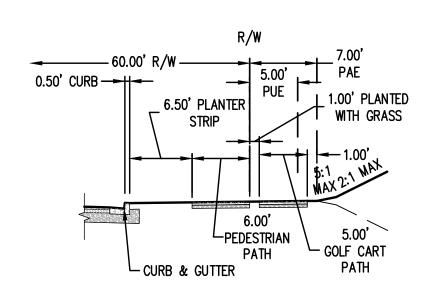
- 6.50' PLANTER STRIP

3.00' PUBLIC

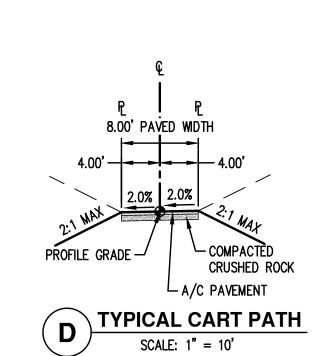
ACCESS

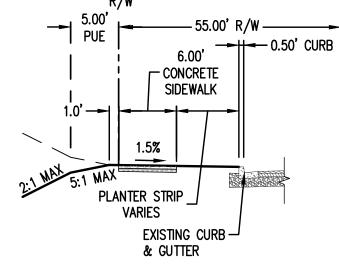
EASEMENT

0.50' CURB --||-



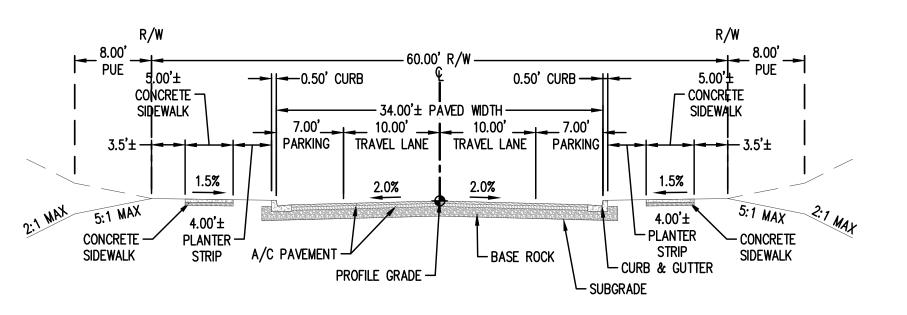
LOCAL STREET WITH SIDEWALK AND GOLF CART PATH CROSS SECTION SCALE: 1" = 10'



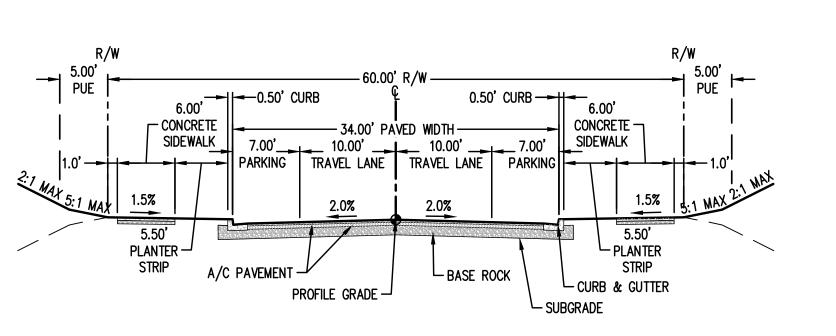


TYPICAL HAZELNUT DRIVE SIDEWALK IMPROVEMENT SCALE: 1" = 10'





EXISTING OLYMPIC STREET CROSS SECTION SCALE: 1" = 10'



2019 TSP LOCAL STREET CROSS SECTION (FOR REFERENCE ONLY)
SCALE: 1" = 10'



STREE

04/14/2022 DESIGNED BY: DRAWN BY:

AKS ENGINEERING & FORESTRY, LLC
12965 SW HERMAN RD, STE 100
TUALATIN, OR 97062
503.563.6151
WWW.AKS-ENG.COM
ENGINEERING • SURVEYING • NATURAL RESOURCES
FORESTRY • PLANNING • LANDSCAPE ARCHITECTURE

STREET PLAN
MARION POINTE
WOODBURN, OREGON

Exp. 12-31-22

 JOB NUMBER:
 7564

 DATE:
 04/14/2022

 DESIGNED BY:
 NRA

 DRAWN BY:
 NRA

 CHECKED BY:
 VHN

P-26



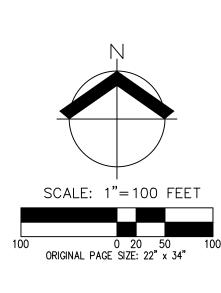


CONCEPTUAL STREET TREE PLANT SCHEDULE

	STREET TREES	<u>QTY</u>	BOTANICAL NAME	COMMON NAME	SIZE/CONTAINER	<u>SPACING</u>	
	O	64	ACER RUBRUM 'BOWHALL'	BOWHALL RED MAPLE	2" CAL. B&B	AS SHOWN	
(.)	53	ACER RUBRUM 'FRANKSRED'	RED SUNSET MAPLE	2" CAL. B&B	AS SHOWN	
	0	78	PYRUS CALLERYANA 'CAPITAL'	CAPITAL PEAR	2" CAL. B&B	AS SHOWN	
()	44	ZELKOVA SERRATA 'VILLAGE GREEN'	VILLAGE GREEN ZELKOVA	2" CAL. B&B	AS SHOWN	
	GROUND COVERS	<u>QTY</u>	DESCRIPTION				
± 12,054 SF			II PERENNIAL RYEGRASS (LOLIMUM PER RYEGRASS (LOLIMUM PERENNE VAR DA RUBRA) 15%; WINDWARD CHEWINGS FES	JNMARK SEEDS OR OTHER APPROVED DISTRIBUTOR. CUTTER RENNE VAR. CUTTER II) 35%; DASHER III PERENNIAL ASHER III) 35%; GARNET CREEPING RED FESCUE (FESTUCA SCUE (FESTUCA RUBRA SPP LONGIFOLIA) 15%.			

PRELIMINARY LANDSCAPE NOTES

- 1. LANDSCAPE AND SITE FURNISHINGS ARE PRELIMINARY AND SHOWN TO PORTRAY THE CHARACTER OF THE SITE. PLAN REVISIONS INCLUDING CHANGES TO PLANT SPECIES, SIZES, SPACING, QUANTITIES, ETC., DUE TO PLANT AVAILABILITY OR UNFORESEEN SITE CONDITIONS MAY BE MADE PRIOR TO INSTALLATION WHERE ALLOWED BY THE CITY OF WOODBURN DESIGN STANDARDS.
- 2. CONTRACTOR IS RESPONSIBLE FOR VERIFYING PLANT QUANTITIES AND ALL MATERIALS. IF DISCREPANCIES OCCUR, DESIGN INTENT PREVAILS OVER QUANTITIES LISTED.
- 3. REFER TO DETAIL PLANS P-32 THROUGH P-36 FOR PRELIMINARY OPEN SPACE AND STORMWATER FACILITY PLANTING PLANS.
- 4. ALL PLANTS AND INSTALLATION SHALL CONFORM TO THE CITY OF WOODBURN LANDSCAPE DESIGN STANDARDS AND TO AMERICAN NURSERY STANDARDS ANSI Z60.1 IN ALL WAYS. PLANT IN ACCORDANCE WITH BEST PRACTICE STANDARDS ADOPTED BY THE OREGON LANDSCAPE CONTRACTOR'S BOARD (OLCB) AND THE AMERICAN ASSOCIATION OF NURSERYMEN, INC. FIELD ADJUST PLANT LOCATION AS NECESSARY TO AVOID CONFLICTS WITH UTILITIES, TREE CANOPIES, BUILDING OVERHANGS, EXISTING VEGETATION TO REMAIN, ETC.
- 5. TREES TO BE PLANTED SHALL MEET THE REQUIREMENTS OF THE AMERICAN ASSOCIATION OF NURSERYMEN (AAN) STANDARDS FOR NURSERY STOCK (ANSI Z60.1). DOUBLE STAKE ALL TREES UNLESS OTHERWISE SPECIFIED. TREES SHALL BE PLANTED NO CLOSER THAN 3' O.C. FROM SIDEWALKS, CURBING, OR OTHER HARDSCAPING; TREES IN PLANTING ISLANDS SHALL BE CENTERED IN ISLAND.
- 6. A PERMANENT UNDERGROUND IRRIGATION SYSTEM SHALL BE INSTALLED FOR ALL NEW LANDSCAPE AREAS FOR THE ESTABLISHMENT AND LONG—TERM HEALTH OF PLANT MATERIAL. THE IRRIGATION SYSTEM SHALL BE 'DESIGN—BUILD' BY THE LANDSCAPE CONTRACTOR, USING CURRENT WATER—SAVING TECHNOLOGY, AND INCLUDE ALL MATERIALS, COMPONENTS, CITY APPROVED BACKFLOW OR ANTI—SIPHON DEVICES, VALVES, ETC. NECESSARY FOR THE COMPLETE AND EFFICIENT COVERAGE OF LANDSCAPE AREAS SHOWN.
- 7. MULCH: APPLY 3" DEEP WELL-AGED DARK HEMLOCK OR FIR, MEDIUM GRIND, UNDER AND AROUND ALL PLANTS IN PLANTING BEDS.
- 8. ADJUST PLANTING ON SITE AS NECESSARY TO AVOID CONFLICTS WITH DRIVEWAYS, UTILITIES, METERS, STREET LIGHTS, ETC. STREET TREES SHALL NOT BE PLACED IN FRONT OF STOP SIGNS, FIRE HYDRANTS, OR STREET LIGHTS
- 9. ALL STREET TREES WITHIN A VISION CLEARANCE TRIANGLE SHALL HAVE BRANCHES AND FOLIAGE LIMBED UP 7' ABOVE GRADE.





PRELIMINARY OVERALL STREE
TREE AND LANDSCAPE PLAN
MARION POINTE
WOODBURN, OREGON

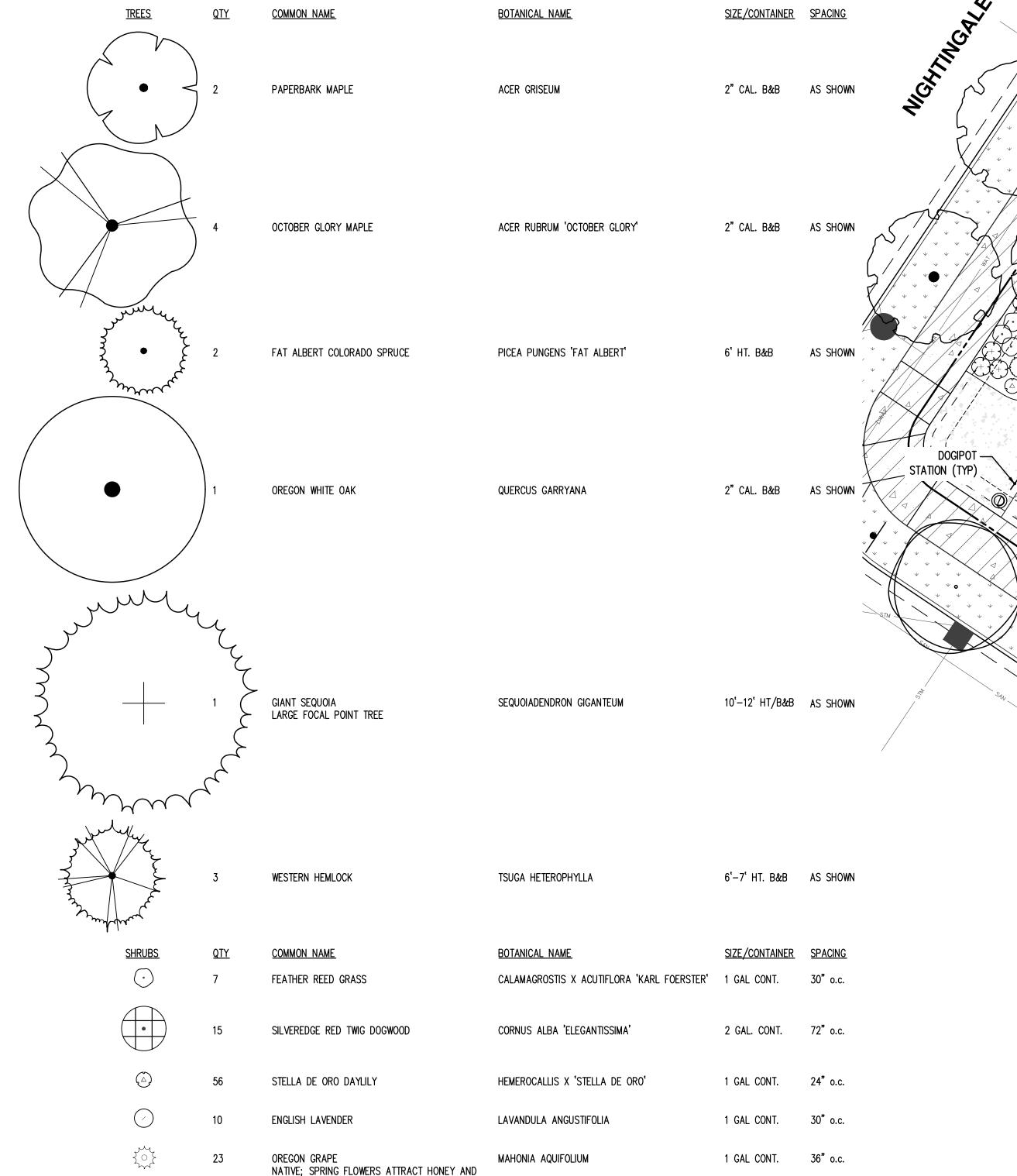
04/14/2022 TEB/NKP

TEB/NKP

DESIGNED BY:

- UNIQUE RHODODENDRON (TYP) — PAPERBARK MAPLE (TYP)

- OREGON GRAPE (TYP)



REA DREN'S

> 04/14/2022 TEB/NKP TEB/NKP

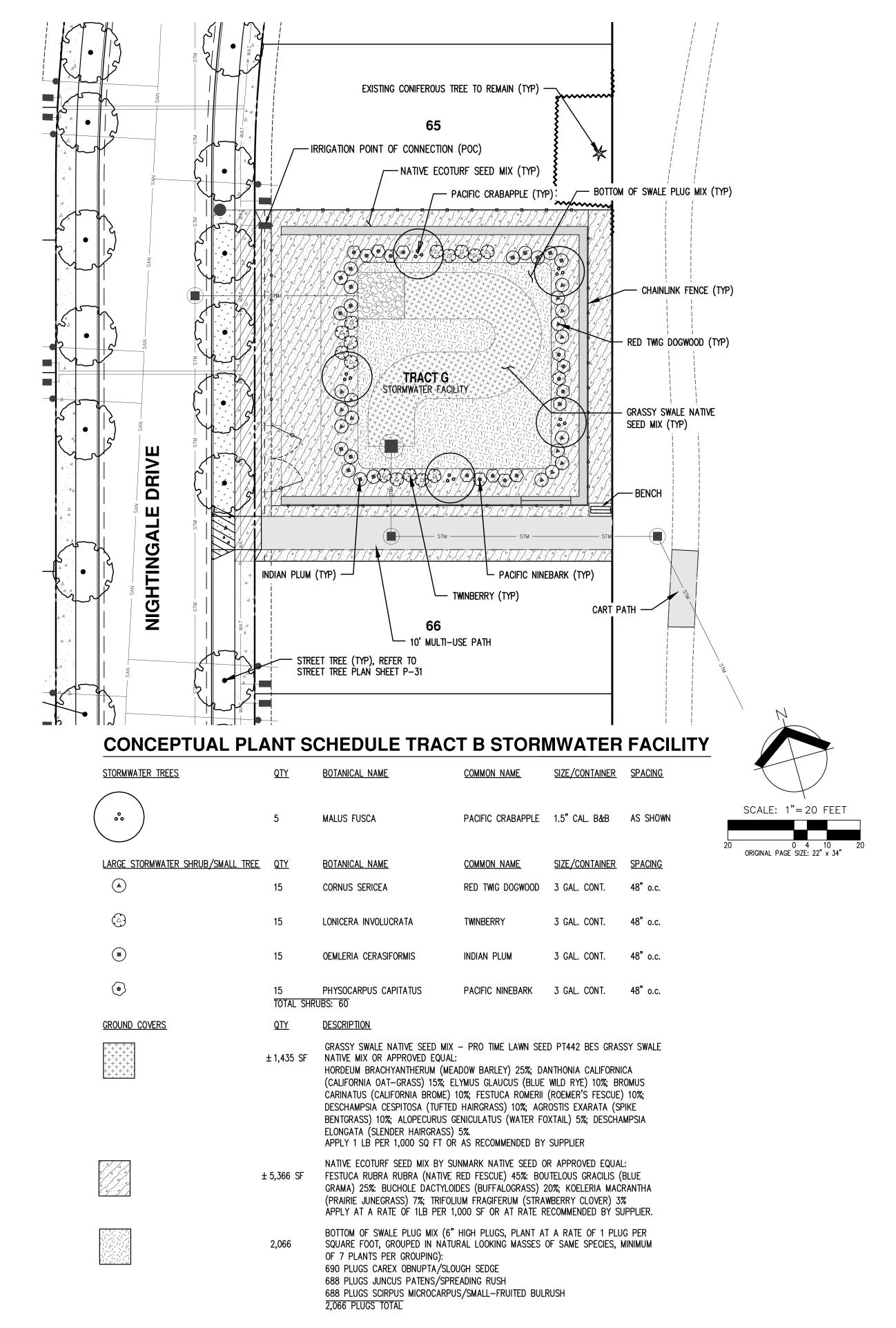


PRELIMINARY LANDSCAPE PLAN
TRACT C, D, & E OPEN SPACE
MARION POINTE

DESIGNED BY:

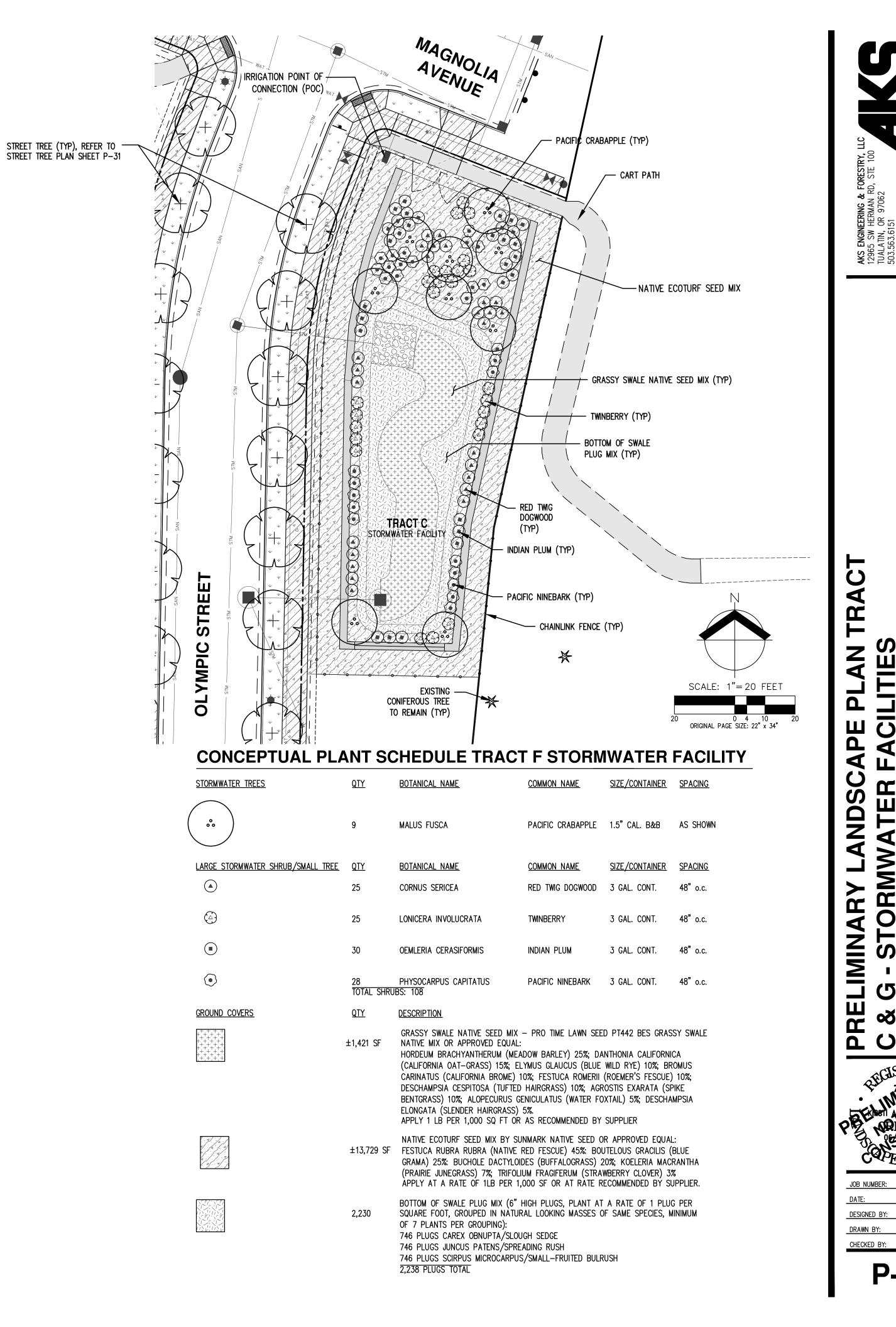
DRAWN BY:

04/14/2022



CONCEPTUAL TRACT G FURNISHINGS

BENCH: 6-FOOT LENGTH, SUCH AS DUMOR BENCH 88-60PL OR SIMILAR.



O

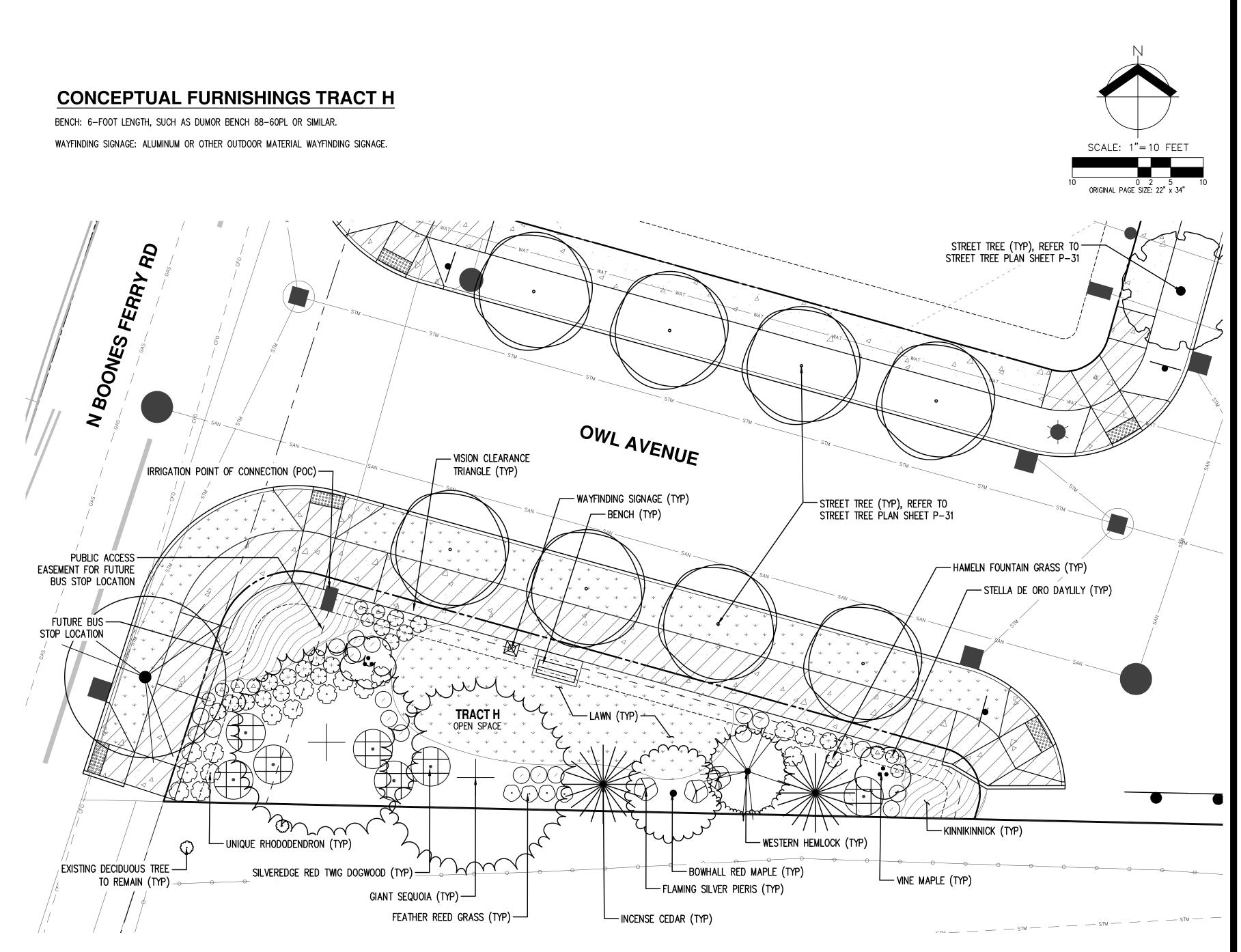
04/14/2022

TEB/NKP

Teb/NKP

CONCEPTUAL PLANT SCHEDULE TRACT H

	<u>TREES</u>	QTY	BOTANICAL NAME	COMMON NAME	SIZE/CONTAINER	<u>SPACING</u>
	••	2	ACER CIRCINATUM	VINE MAPLE	6' HT. B&B	AS SHOWN
		1	ACER RUBRUM 'BOWHALL'	BOWHALL RED MAPLE	2" CAL. B&B	AS SHOWN
		2	CALOCEDRUS DECURRENS	INCENSE CEDAR	10° MIN. HT./B&B	AS SHOWN
	+ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~	2	SEQUOIADENDRON GIGANTEUM LARGE FOCAL POINT TREE	GIANT SEQUOIA	10'-12' HT/B&B	AS SHOWN
7	3 market	· 1	TSUGA HETEROPHYLLA	WESTERN HEMLOCK	6'-7' HT. B&B	AS SHOWN
	<u>SHRUBS</u>	QTY	BOTANICAL NAME	COMMON NAME	SIZE/CONTAINER	<u>SPACING</u>
	\odot	4	CALAMAGROSTIS X ACUTIFLORA 'KARL FOERSTER'	FEATHER REED GRASS	1 GAL CONT.	30" o.c.
		7	CORNUS ALBA 'ELEGANTISSIMA'	SILVEREDGE RED TWIG DOGWOOD	2 GAL. CONT.	72" o.c.
		10	HEMEROCALLIS X 'STELLA DE ORO'	STELLA DE ORO DAYLILY	1 GAL CONT.	24" o.c.
	\bigcirc	19	LAVANDULA ANGUSTIFOLIA	ENGLISH LAVENDER	1 GAL CONT.	30" o.c.
	(+)	19	PENNISETUM ALOPECUROIDES 'HAMELN'	HAMELN FOUNTAIN GRASS	1 GAL CONT.	30" o.c.
		3	PIERIS JAPONICA 'FLAMING SILVER'	FLAMING SILVER PIERIS	3 GAL CONT.	42" o.c.
		16	RHODODENDRON X 'UNIQUE'	UNIQUE RHODODENDRON	3 GAL CONT.	36" o.c.
	GROUND COVERS	QTY	DESCRIPTION			
		83	ARCTOSTAPHYLOS UVA-URSI	KINNIKINNICK	1 GAL CONT.	24" o.c.
	\(\frac{\psi}{\psi}\) \(\psi\)	± 763 SF	NORTHWEST SUPREME LAWN MIX — SUNMARK SEE RYEGRASS (LOLIMUM PERENNE VAR. CUTTER II) 35 DASHER III) 35%; GARNET CREEPING RED FESCUE RUBRA SPP LONGIFOLIA) 15%. APPLY AT A RATE OF 8 POUNDS PER 1,000 SF C	5%; DASHER III PERENNIAL RYEGRAS (FESTUCA RUBRA) 15%; WINDWARD	S (LOLIMUM PERENNE CHEWINGS FESCUE (F	VAR



IARY LANDSCAPE PLAN
OPEN SPACE

HE STEWN A FROSWART ON ORDER CONCESSION AS CALLED A RECTAL ARCTILLARY OF A RECTAL ARCTILLAR

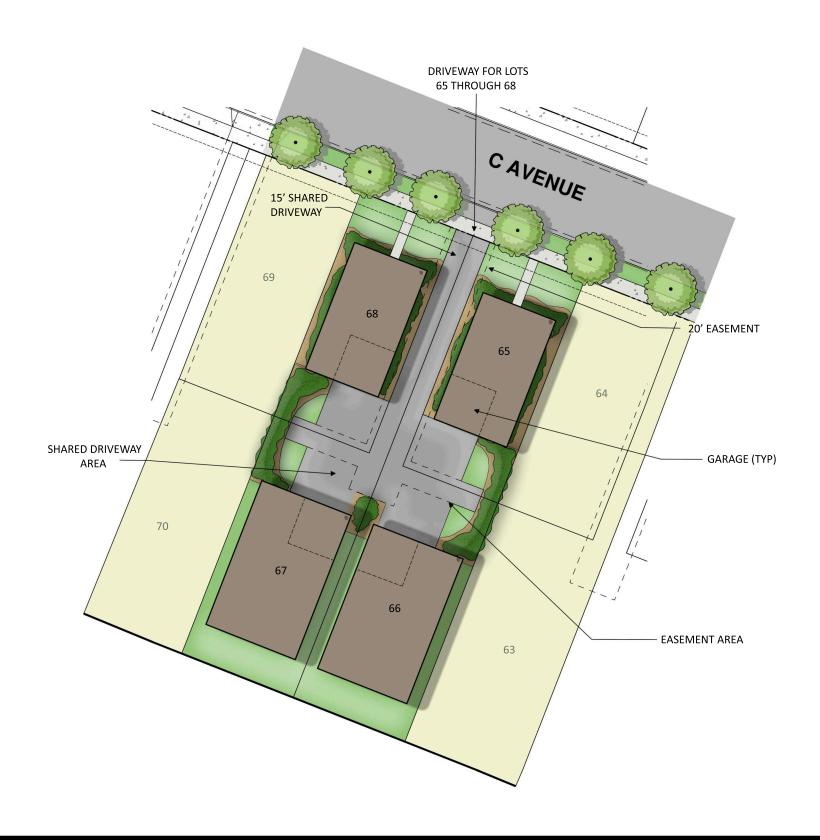
 JOB NUMBER:
 7564

 DATE:
 04/14/2022

 DESIGNED BY:
 TEB/NKP

 DRAWN BY:
 TEB/NKP

P-36



ENGINEERING · SURVEYING · NATURAL RESOURCES FORESTRY · PLANNING · LANDSCAPE ARCHITECTURE

FLAG LOT DRIVEWAY LAYOUT CONCEPT PLAN 2850 N BOONES FERRY ROAD

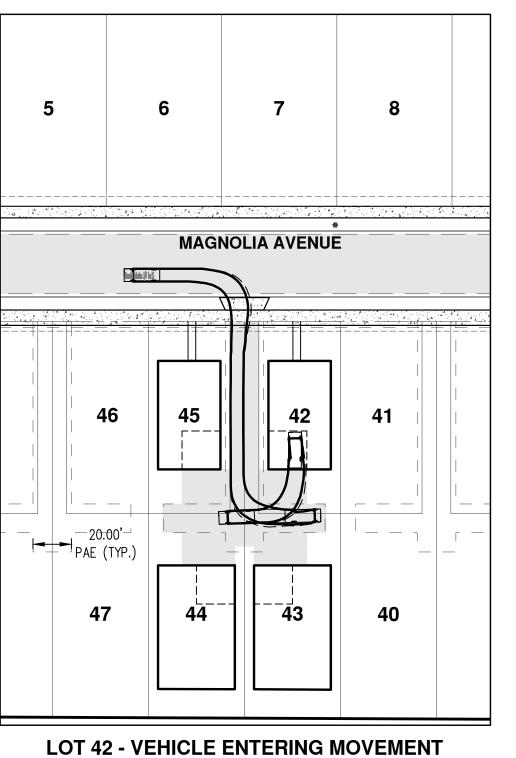


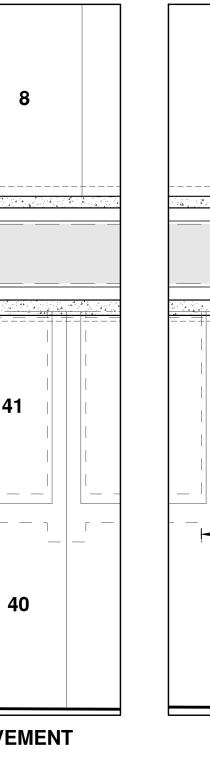
WOODBURN, OREGON SHEET 10

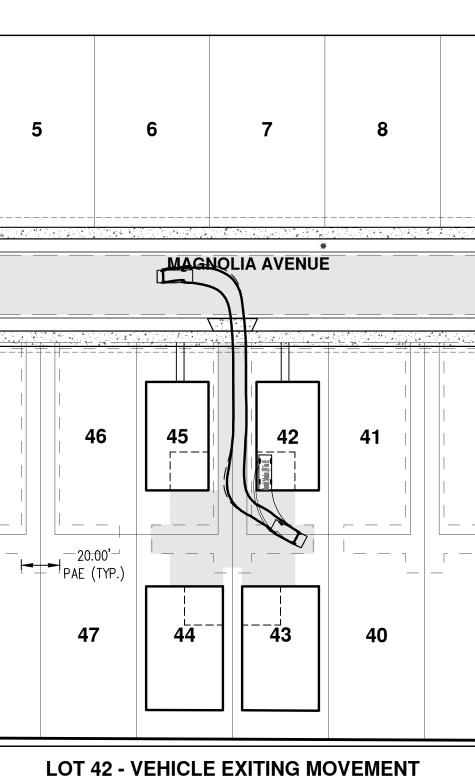
DISCLAIMER

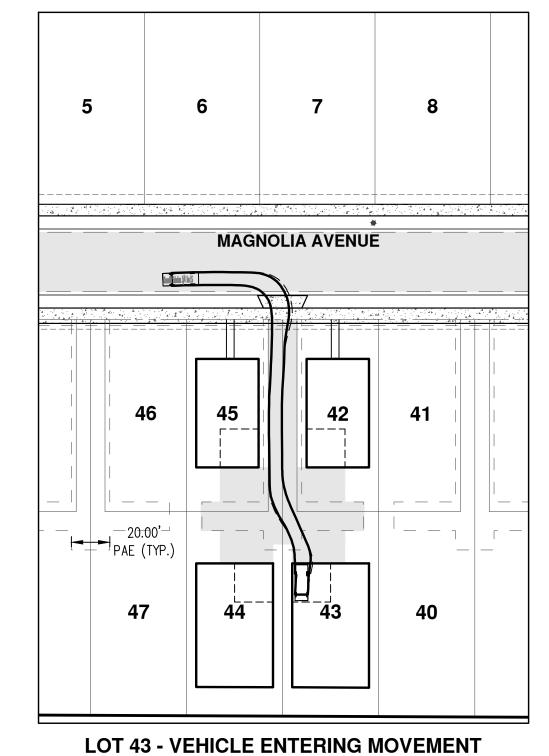
1. PROPERTY LINES AND RIGHT-OF-WAY LINES ARE BASED ON GIS OR SURVEY INFORMATION AND ARE CONSIDERED APPROXIMATE.

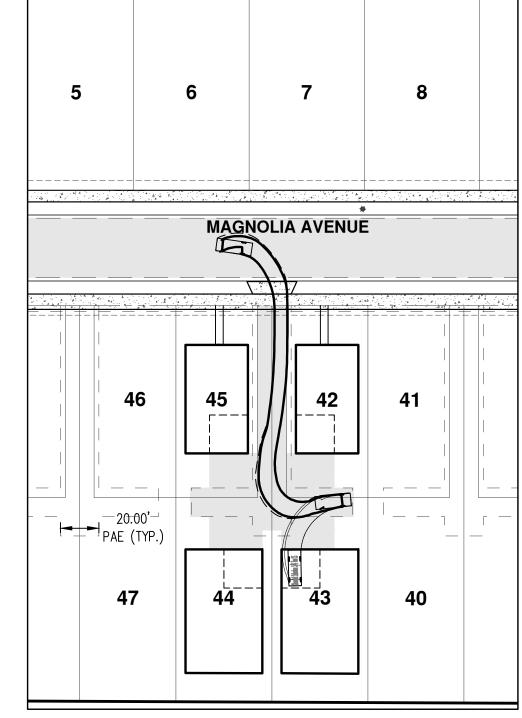
2. THIS MAP IS FOR PRE-APPLICATION CONFERENCE.



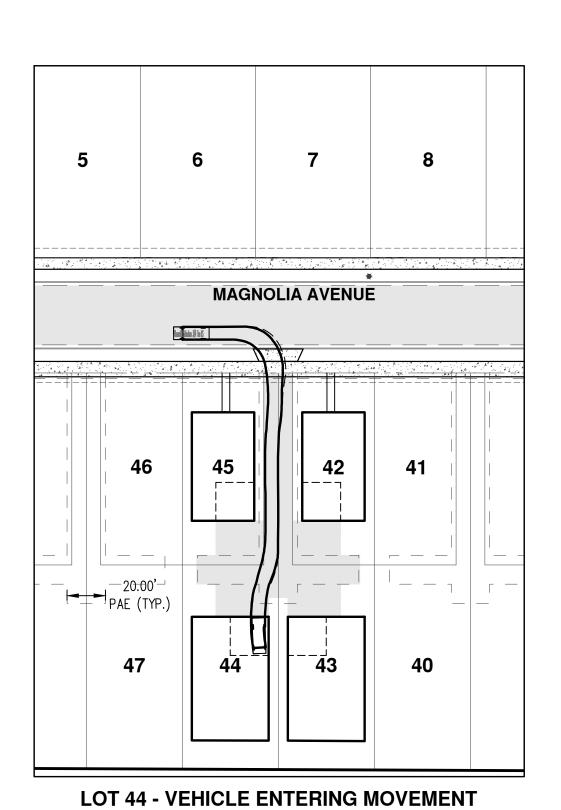


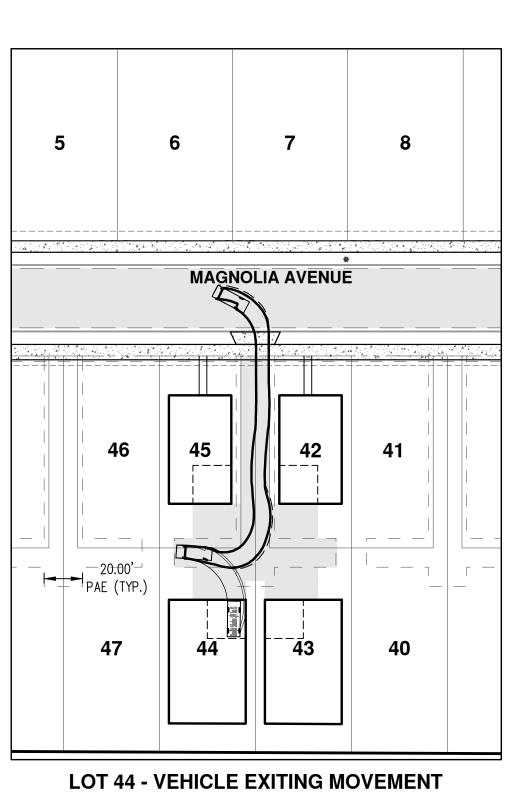


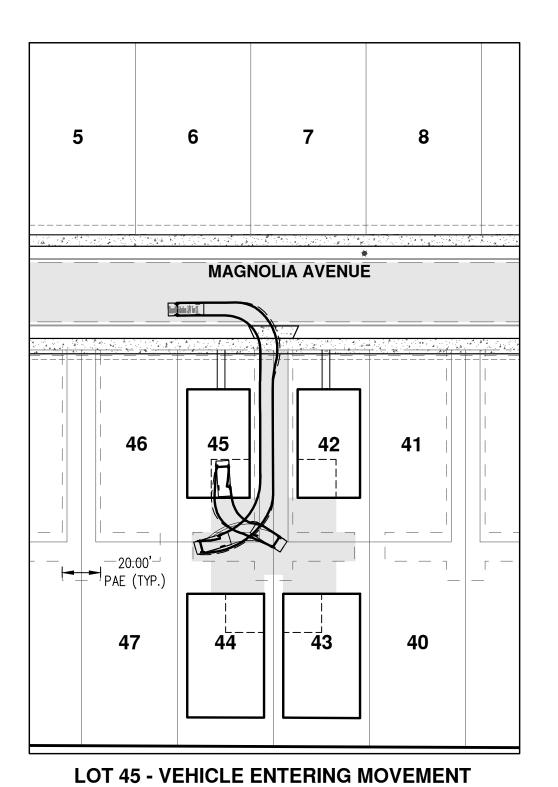


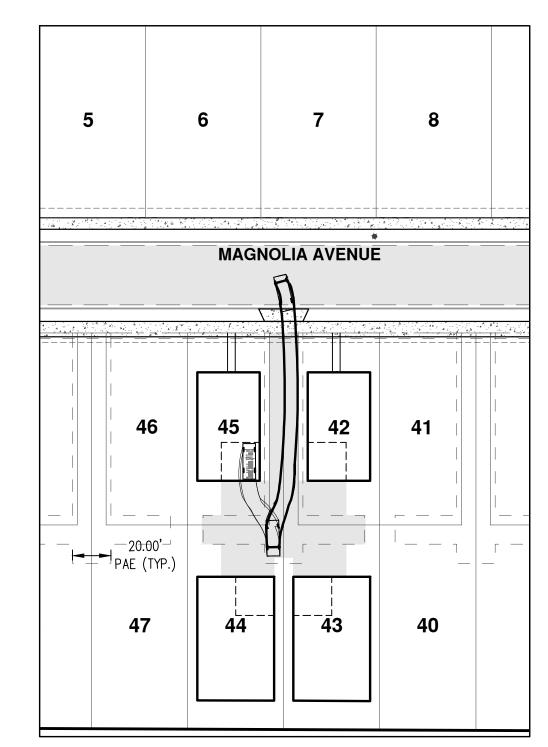


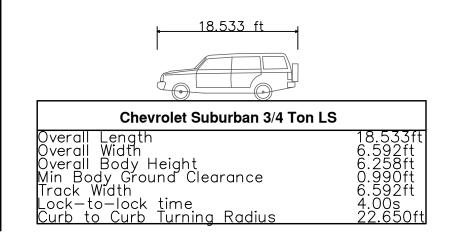
LOT 43 - VEHICLE EXITING MOVEMENT











LOT 45 - VEHICLE EXITING MOVEMENT

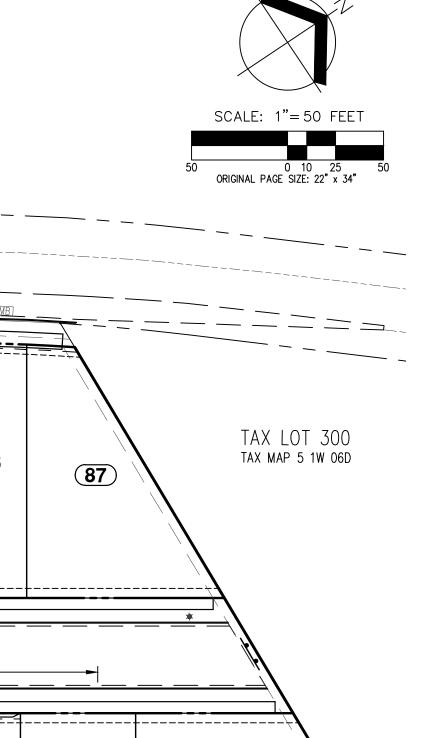
04/14/2022

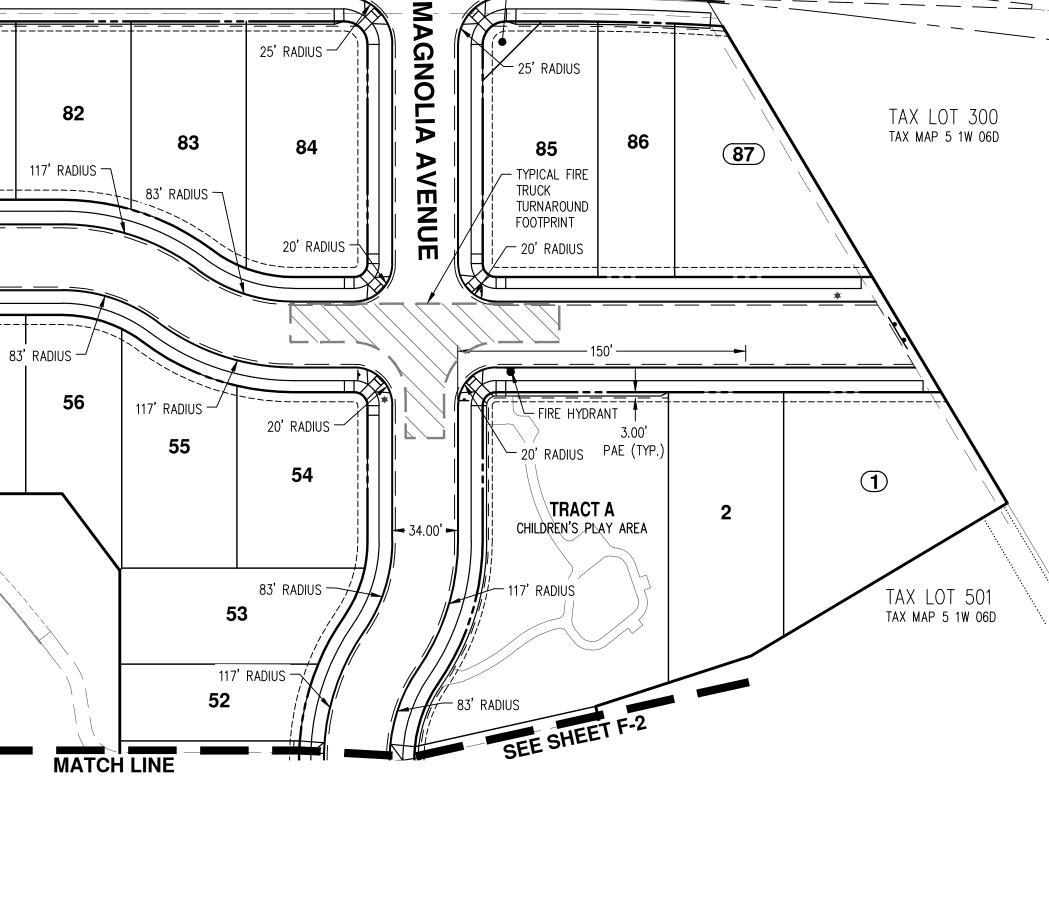
FLAG LOT SIMULATION

H 田 Ħ Ш FLAG LOT DRIVEWAY FLAG LOT DRIVEWAY FLAG LOT DRIVEWAY LOT 58 LOT 61 LOT 65 LOT 69 LOT 62 LOT 66

STANDARD ELEVATIONS
1" = 20'0"

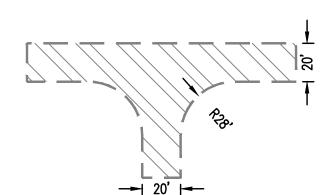
227





TRACT I
ENTRY MONUMENT



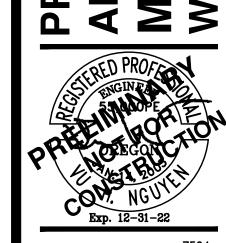


EASEMENT LEGEND

ACCESS AND UTILITY EASEMENT AE
PUBLIC UTILITY EASEMENT PUE
PUBLIC ACCESS EASEMENT PAE
SANITARY SEWER EASEMENT SSE
TEMPORARY CONSTRUCTION EASEMENT TCE

LEGEND:

- ▼ PROPOSED FIRE HYDRANT
- WEXISTING FIRE HYDRANT



ESS AN

	01 1010
JOB NUMBER:	7564
DATE:	04/14/2022
DESIGNED BY:	NRA
DRAWN BY:	NRA
CHECKED BY:	VHN

TAX LOT 900 TAX MAP 5 1W 06C

66

67

73

─ FIRE HYDRANT

65

/ 417' RADIUS

63

72

71

TRACT G TORMWATER FACILITY

70

75

76

FIRE HYDRANT —

ADJUSTED TAX LOT 2600 TAX MAP 5 1W 06DC

TAX LOT 800 TAX MAP 5 1W 06C

TRACT H_ OPEN SPACE

TAX LOT 100 TAX MAP 5 1W 06DC

TAX LOT 400 TAX MAP 5 1W 06D

PUE (TYP.)

N BOONES FERRY ROAD

5.00'

PUE (TYP.)

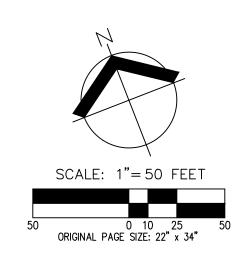
FIRE HYDRANT -

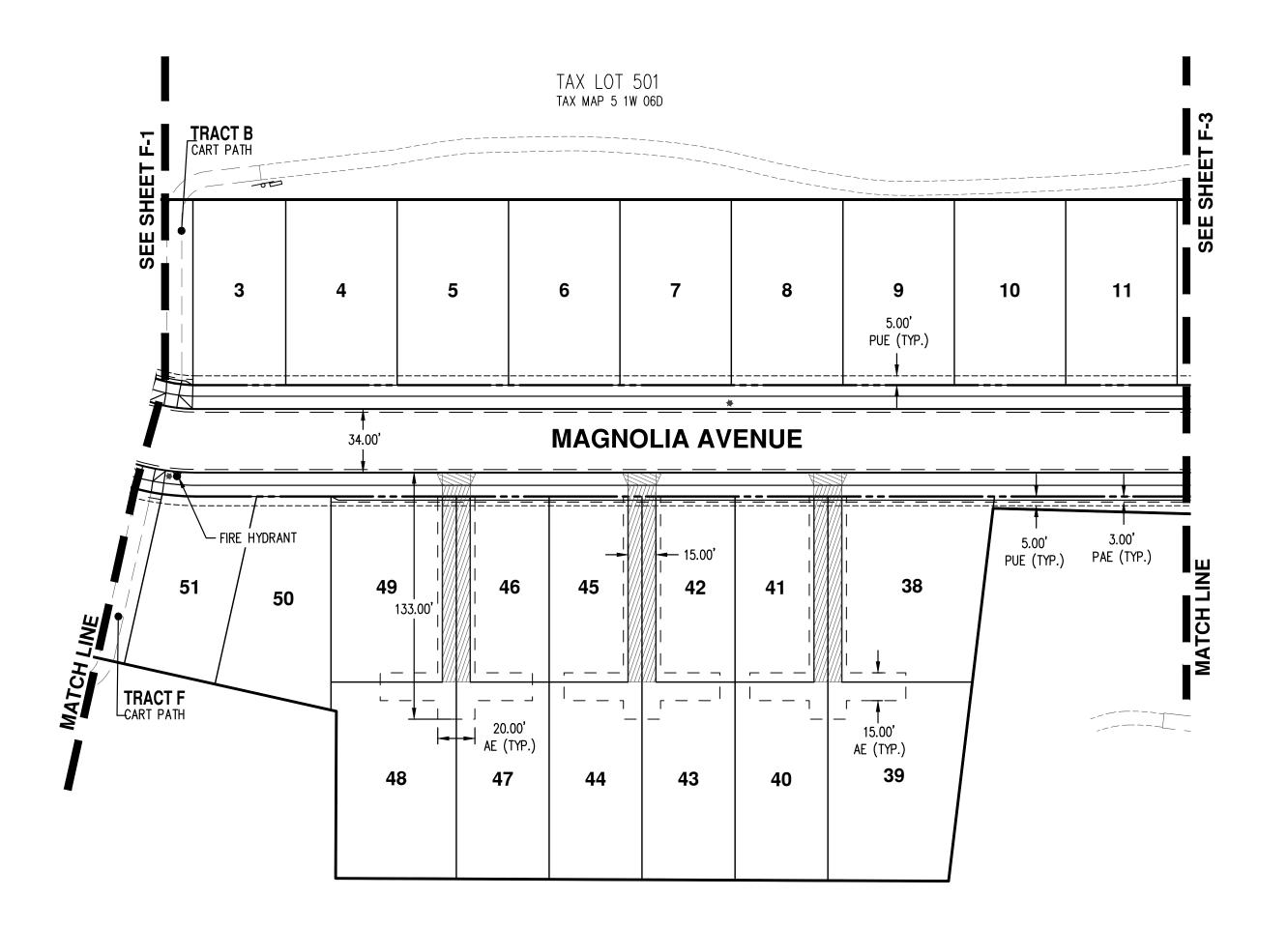
2.50' PAE (TYP.)

NIGHTINGALE DRIVE

79

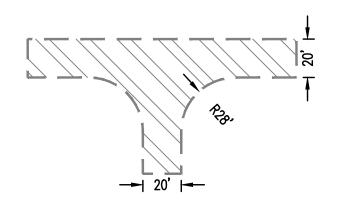
PUE (TYP.)





ADJUSTED TAX LOT 2600 TAX MAP 5 1W 06DC

TYPICAL FIRE TRUCK TURNAROUND FOOTPRINT (OFC 503.2.5)



EASEMENT LEGEND

ACCESS AND UTILITY EASEMENT AE
PUBLIC UTILITY EASEMENT PUE
PUBLIC ACCESS EASEMENT PAE
SANITARY SEWER EASEMENT SSE
TEMPORARY CONSTRUCTION EASEMENT TCE

LEGEND:

- ▼ PROPOSED FIRE HYDRANT
- W
 EXISTING FIRE HYDRANT

MINARY FIRE ACCESS
ATER SUPPLY PLAN
ON POINTE

 STING FIRE HYDRANT

ESS AN

SUPPL

S



PUBLIC WORKS DEPARTMENT 190 GARFIELD STREET WOODBURN, OR 97071

September 3, 2020, 2020 Attn: Chris Goodell, AICP, LEED AP AKS Engineering & Forestry, LLC 12965 SW Herman Road, Suite 100 Tualatin, OR 97062

Re: Annexation Certification

Subject Property Address: N/A

Marion County Tax Map: 051W06D000502

This letter is to certify that the City of Woodburn has no capacity issue with the public wastewater treatment facility or public water treatment facility. However, the subject property is not adjacent to an existing collection system for water, wastewater or a public storm sewer collection system. The requirements for these collection facilities would still need to be determined. The capacity analysis, design and installation would be the responsibility of the applicant/property owner.

If you have any questions, please contact me at 503.982.5248.

Sincerely,

Dago Garcia, P.E.

Dago Garcia

City Engineer

City of Woodburn



Woodburn School District

1390 Meridian Drive, Woodburn, OR 97071 Phone: 503-981-9555

Fax: 971-983-3611

September 18, 2020

Glen Southerland, AICP AKS Engineering and Forestry, LLC 12965 SW Herman Road, Suite 100 Tualatin, OR 97062

Re: Annexation for 90-lot subdivision located at 2850 North Boones Ferry Road

Mr. Southerland:

In response to your request, Woodburn School District has determined that your planned annexation located at 2850 North Boones Ferry Road will impact our schools in our district however we believe we will be able to accommodate the growth.

Thank you,

Casey Woolley

Director of Safety and Operations

Woodburn School District

Attachment 103A Letter 2 of 3

Glen Southerland

From: James Gibbs <gibbsj@woodburnfire.com>
Sent: Thursday, September 24, 2020 1:41 PM
To: Glen Southerland; Joe Budge; Scott Heesacker
Subject: RE: City of Woodburn Annexation SPL Request

EXTERNAL EMAIL: This email originated from outside of AKS Engineering & Forestry. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Glen,

Per our conversation this afternoon, this email is our response to the housing development in the northern City of Woodburn area and our capability/capacity to support/respond. This additional housing development is within our district and we have the capabilities to support this new addition.

James Gibbs
Fire Marshal
Woodburn Fire District
1776 Newberg Hwy
Woodburn, OR 97071
(503) 982-2360
gibbsj@woodburnfire.com



From: Glen Southerland [mailto:southerlandg@aks-eng.com]

Sent: Thursday, September 17, 2020 4:19 PM

To: Joe Budge; James Gibbs

Subject: RE: City of Woodburn Annexation SPL Request

**** This email is from an EXTERNAL sender. Exercise caution when opening attachments or click links from unknown senders or unexpected email. ****

Hello Chief and Fire Marshal.

I hope you're both doing well!

I realize that you are probably incredibly busy at the moment, so I was just hoping you could tell me whether the WFD has capacity to serve the additional 90 dwellings on N Boones Ferry Road.

Please let me know if you have any questions or need any more information.

Best Regards,

Attachment 103A Letter 3 of 3

Glen Southerland, AICP AKS ENGINEERING & FORESTRY, LLC

P: 503.563.6151 Ext. 166 | www.aks-eng.com | southerlandg@aks-eng.com

From: Glen Southerland

Sent: Monday, August 31, 2020 3:03 PM

To: James Gibbs (gibbsj@woodburnfire.com) <gibbsj@woodburnfire.com>

Subject: City of Woodburn Annexation SPL Request

Hello James,

I was hoping to get your input and request a Service Provider Letter for an annexation of territory/new 90-unit subdivision at the northern extent of the city limits. I'm not sure if you've been apprised yet what is being proposed or not.

I've attached preliminary site plans for your review. Water mains and hydrants will be installed by the developer. At the pre-app, the City specified 12" lines to the city limits and 8" within the development.

Please let me know if there is anything else you need or questions I can answer. I look forward to your comments!

Thank you!

Glen Southerland, AICP



AKS ENGINEERING & FORESTRY, LLC

12965 SW Herman Road, Suite 100 | Tualatin, OR 97062 P: 503.563.6151 Ext. 166 | www.aks-eng.com | southerlandg@aks-eng.com Offices in: Bend, OR | Keizer, OR | Tualatin, OR | Vancouver, WA

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply e-mail and immediately delete the message and any attachments without copying or disclosing the contents. AKS Engineering and Forestry shall not be liable for any changes made to the electronic data transferred. Distribution of electronic data to others is prohibited without the express written consent of AKS Engineering and Forestry.



CITY OF WOODBURN | TRANSPORTATION SYSTEM PLAN

Project Number	Location	Responsible Jurisdiction	Туре	Description	Priority	Cost Estimate ²
R7	Brown Street from Comstock Avenue to end of roadway	City	Street design	Upgrade to Service Collector urban standards including bicycle and pedestrian enhancements	Low	\$01 (Project includes P20)
(R8)	OR 214/I-5 Southbound Ramp Intersection	State	Traffic signal timing	Investigate corridor signal timing and coordination adjustments in coordination with ODOT	Medium	\$15,000
(R9)	OR 214/I-5 Northbound Ramp Intersection	State	Traffic signal timing	Investigate corridor signal timing and coordination adjustments in coordination with ODOT	Medium	\$15,000
R10	OR 214/Evergreen Road Intersection	State	Traffic signal timing	Investigate corridor signal timing and coordination adjustments in coordination with ODOT	Medium	\$15,000
(R11)	OR 214/Oregon Way/Country Club Road Intersection	State	Traffic signal timing	Investigate corridor signal timing and coordination adjustments in coordination with ODOT	Medium	\$15,000
R12	OR 214/Front Street Ramp Intersection	State	Traffic control	Install intersection capacity improvement such as traffic signal (if warranted), turn lanes, or roundabout in coordination with ODOT	Medium	\$1,000,000
R13	OR 214/Park Street Intersection	State	Traffic control	Install intersection capacity improvement such as traffic signal (if warranted), turn lanes, or roundabout in coordination with ODOT	Medium	\$1,000,000
R14	OR 214/OR 211/OR 99E Intersection	State	Intersection - geometric considerations	Install a second left-turn lane on the southbound approach, install a second receiving lane on the east leg, and update signal timing in coordination with ODOT	Medium	\$900,000
R15	Parr Road/ Settlemier Avenue Intersection	City	Traffic control	Install intersection capacity improvement such as traffic signal (if warranted), turn lanes, or roundabout	Low	\$500,000
R16	OR 99E/Hardcastle Avenue Intersection	State	Intersection - geometric considerations	Reconfigure the westbound approach to incorporate one left-turn lane and one thruright turn lane in coordination with ODOT	Medium	\$50,000
R17	OR 99E/Lincoln Street Intersection	State	Intersection - geometric considerations	Install a shared through-right turn lane on the eastbound approach and reconfigure the existing approach lane as a separate left-turn lane in coordination with ODOT	Medium	\$500,000
R18	OR 99E/Young Street Intersection	State	Intersection - geometric considerations	As identified in the Highway 99E Corridor Plan, install a third westbound lane to provide separate left, thru, and right turn lanes in coordination with ODOT. Implement protected-permissive left-turn phasing on the eastbound and westbound approaches.	Medium	\$550,000

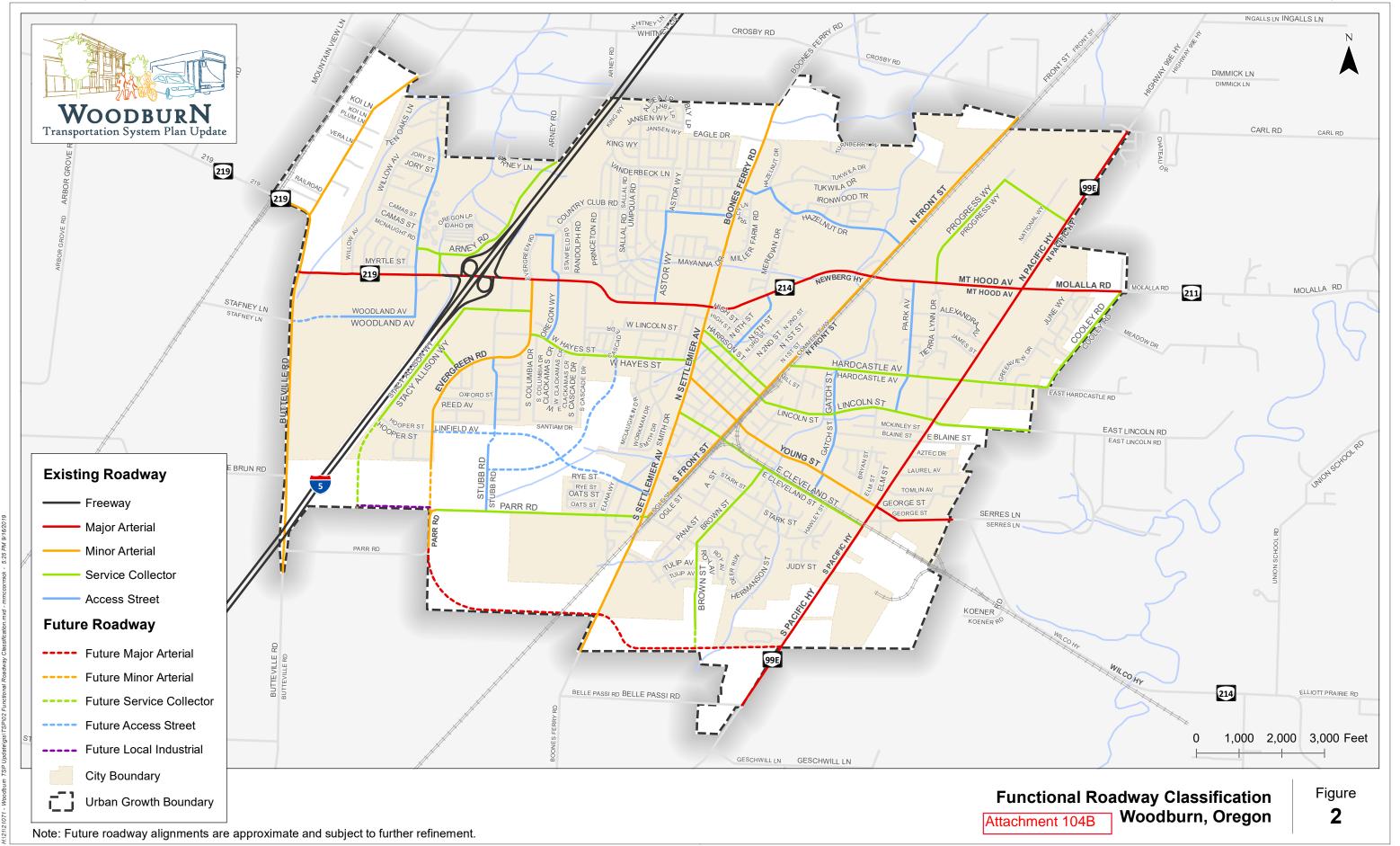
Attachment 104A Page 1 of 2

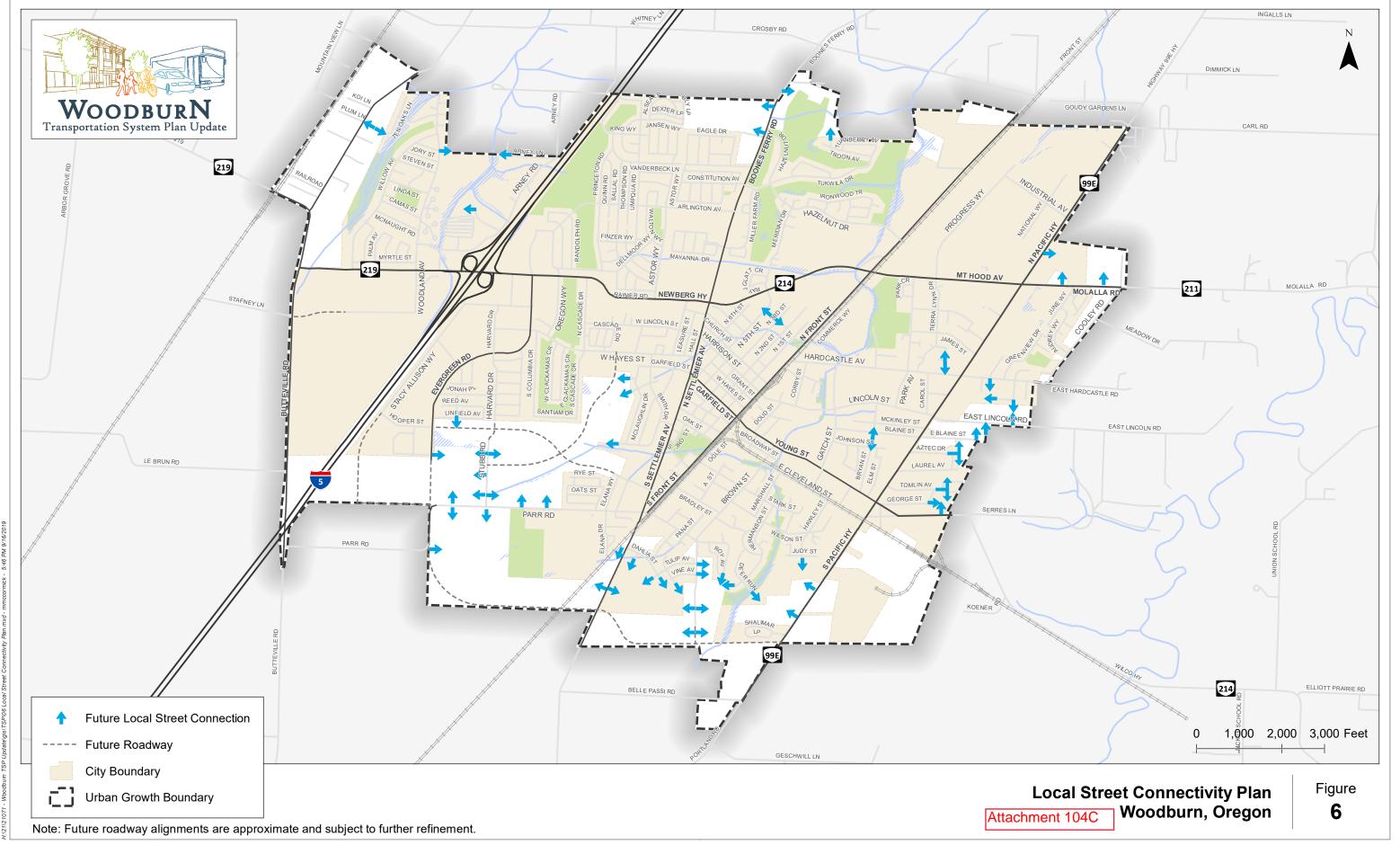


CITY OF WOODBURN | TRANSPORTATION SYSTEM PLAN

Project Number	Location	Responsible Jurisdiction	Туре	Description	Priority	Cost Estimate ³
P25	Gatch Street from Hardcastle Road to Cleveland Street	City	Sidewalks - Fill in gaps	Fill in the gaps. This project improves safe routes to school for Washington Elementary School	High	\$350,000
P26	Park Avenue from Hardcastle Avenue to Lincoln Street	City	New sidewalks	Install new sidewalks on one side. This project improves safe routes to school for Washington Elementary School	High	\$65,000
Local Stre	ets					
P27	Willow Avenue from McNaught Road to OR 219	City	New sidewalks	Install new sidewalks on both sides	Medium	\$350,000
P28	Cascade Drive from OR 214 to Hayes Street	City	New sidewalks	Install new sidewalks. This project improves safe routes to school for Nellie Muir Elementary School	High	\$400,000
P29	Ben Brown Lane from end of roadway to Boones Ferry Road	City	Sidewalks - Fill in gaps	Fill in the gaps	Medium	\$200,000
P30	Oak Street from Boones Ferry Road to Front Street	City	New sidewalks	Install new sidewalks on one side	Medium	\$150,000
P31	Ogle Street from Cleveland Street to Boones Ferry Road	City	New sidewalks	Install new sidewalks on one side	Medium	\$900,000
Pedestriar	Crossing Enhancem	nents				
P32	Front Street/Young Street	City	Enhanced crossing	Construct ADA-compliant ramps and sidewalks on the east leg of the intersection	Medium	\$15,000
P33	Front Street/Lincoln Street	City	Enhanced crossing	Construct ADA-compliant ramps and sidewalks on the east leg of the intersection. This project improves safe routes to school for St Luke's School	High	\$15,000
P34	Cascade Drive/Hayes Street	City	Enhanced crossing	Install an enhanced pedestrian crossing. This project improves safe routes to school for Nellie Muir Elementary School	High	\$65,000
P35	Park Avenue/Legion Park Driveway	City	Enhanced crossing	Install an enhanced pedestrian crossing. This project improves access to Legion Park	Medium	\$65,000
P36	Hazelnut Drive/ Broadmoor Place Accessway	City	Enhanced crossing	Install an enhanced pedestrian crossing. This project improves safe routes to school for Woodburn High School	High	\$65,000

Attachment 104A Page 2 of 2





Recommended Conditions of Approval

Staff recommends approval of the consolidated applications based on the findings in the staff report and attachments, which are incorporated by this reference, as well as applying the following conditions of approval:

General

- G1. By and as part of building permit application, the applicant shall submit revised site plans meeting the conditions of approval and obtain Planning Division approval through sign-off on permit issuance by the Building Division.
- G2. The applicant or successors and assigns shall develop the property in substantial conformance with the final plans submitted and approved with these applications, except as modified by these conditions of approval. Were the applicant to revise plans other than to meet conditions of approval or meet building code, even if Planning Division staff does not notice and signs off on building permit issuance, Division staff retains the right to obtain restoration of improvements as shown on an earlier land use review plan set in service of substantial conformance.
- G3. References: Attachment 201 serves as a dictionary or glossary defining certain abbreviations, acronyms, phrases, terms, and words in the context of the conditions of approval. The 200 series of attachments are as binding as the conditions of approval in the main body of the final decision.
- G4. Due dates / public improvements:
 - a. When public street improvements, and any fees in lieu of public improvements, are due shall be per WDO 3.01.02 <u>E & F</u> and 4.02.12 through Ordinance No. 2603 (LA 21-02) unless if and where a condition of approval has more restrictive timing:
 - (1) The construction of all public improvements, their passing City inspections, and acceptance by the City are due no later than by either 5.01.06B in the context of land division final plat application to the City or by building permit issuance, except if (a) the developer applies to the City through the Public Works Department for deferral and (b) the City Administrator or designee issues a document approving and describing a bond or performance guarantee pursuant to Section 4.02.08. Administration of bonding and performance guarantees for improvements that are public defaults to the Public Works Department, and the department shall notify the Community Development Director of deferral applications and any approvals and conditions of approval.
 - (2) Fees in lieu of public improvements: Per Condition G6.
 - b. Where changes to street addresses are necessary, the developer shall apply through the Planning Division for and obtain approval of an <u>Address Assignment Request</u>. This is due

Marion Pointe ANX 22-02, PUD 22-02, etc. Staff Report

prior to building permit application, and if property line adjustment or lot consolidation were to become relevant, then also after recordation with County.

- G5. Recordation due dates: The applicant shall apply to the County for recordations of items that the City requires no later than six (6) months prior to expiration of the land use approval as WDO 4.02.04B establishes, and shall complete recordations no later than three years past the land use "final decision" date. The due date to complete recordations shall not supersede when recordations are due relative to the building permit stage.
- G6. Fees: The developer shall pay fees per Attachment 205, and fees in-lieu shall be per WDO 4.02.12 through Ordinance No. 2603 (LA 21 02) adopted June 13, 2022:
 - a. Fees in-lieu are permissible if the Director allows, whether wholly in-lieu for one, some, or all of the kinds of required improvements or for some or all of a kind.
 - application or, when and where any of Partition or Subdivision Final Plat is involved, completion of recordation with the County, specifically no later than before a City official signs a plat or re-plat Mylar per Section 5.01.06C.1. A developer may request in writing to pay later, specifically by issuance of building permit, or if the Director allows, across issuance of two or more structural building permits for the subject development.
- G7. Demolition: Because the City through the Building Division now requires <u>demolition</u> <u>permits</u>, upon annexation and before beginning to demolish buildings or structures or demolishing more of them, consult the Permit Technician and apply for and obtain a permit or permits as applicable.

G8. WDO version: Upon annexation, conformance to the Woodburn Development Ordinance (WDO) and conditions of approval references to the WDO shall be to the WDO as amended by Ordinance No. 2603 (Legislative Amendment LA 21-02) adopted June 13, 2022.

G-PW. Public Works: Follow the appended PW comments (June 16, 2022); Attachment 102A).

Preliminary Subdivision 22-03

SUB-1. Expiration: Based on ORS 92.040(3), development per the Council land use final decision may continue 3 years past the decision date, the 3-year approval period being established by WDO 4.02.04 through Ordinance No. 2603 (LA 21 02) adopted June 13, 2022, and as follows:

- a. Final Plat: The developer shall apply to the City prior to applying to Marion County for recordation. Owl extending east across BFR from Dove Landing PUD to Nightingale shall continue its name.
- b. Recordation with Marion County: Same as WDO 5.01.06C.1. (within 30 calendar days of the Director's signature on the plat Mylar).
- c. Vesting: The decision is vested unless:
 - (1) The developer fails to meet subdivision and PUD requirements, resulting in the City being unable to authorize staff to sign a final plat Mylar by July 1, 2027 Regarding WDO 4.02.04B.1, if by 10 years past the final decision date there is no substantial construction as Section 1.02 defines following issuance of a building permit, the final decision shall expire and fail to vest.; or
 - (2) There is no substantial construction as defined in 1.02 through Ordinance No. 2603 (LA 21-02) by July 1, 2032 Regarding subsection WDO 4.02.04B.2 as applies to Property Line Adjustment and Subdivision Final Plat Approval applications, the developer shall complete recordation no later than the land use expiration date.

SUB-2. Documents:

- a. Geotech report: Prior to final plat approval by the City, the developer shall submit to the Director a geotechnical report documenting that, whether or not the developer spreads any fill or spoil dirt across lots and tracts, soil is compacted and ready to accommodate the construction of buildings on lots and tracts proposed for development.
- b. Easements: Per WDO 2.01.05A through Ordinance No. 2603 (LA 21-02) adopted June 13, 2022 shall be applicable, and, where any of extinguished, altered, or additional public easements are involved, the developer shall not apply for building permit until having completed recordations with the County and provided electronic copies of the recorded easement documents and drawings to the Director and the Public Works Director when and as any of them direct. The developer shall also follow Attachments 102A (Public Works) and 203, Part D.
- c. Plat: Upon recordation, the developer shall submit to PW and cc the Director copies of recorded documents per WDO 2.01.05 through Ordinance No. 2603 (LA 21 02) adopted June 13, 2022.

Marion Pointe ANX 22-02, PUD 22-02, etc. Staff Report
Attachment 102
Page 44 of 57

Planned Unit Development 22-02

PUD-PW. Stormwater management: Prior to civil engineering plan approval through CEP review, the applicant shall provide an Engineer Stamped Storm Drainage Hydraulic Analysis Report that existing private storm drainage systems have capacity to handle the additional flow from the Marion Pointe and ANX 2020-03 Dove Landing Planned Unit Developments (PUDs), and that the culvert/pipe under Olympic Street has capacity to handle a 100 year base flood event, and to provide a final 100 year floodway, floodplain, and wetland delineation for this development. The applicant is responsible for correcting any capacity deficiencies, including installing new or additional drainage systems, and/or attaining the right to increase stormwater flows into neighboring private stormwater systems.

PUD-1. Mods: The City approves PUD modifications only as written in conditions of approval and the 200 series of attachments, particularly Attachment 202. Other modifications that site plans imply are subject to later administrative approval or denial by the Director.

PUD-2.

- a. ROWs: For BFR and the proposed local class streets, the developer shall dedicate ROWs that meet or exceed the min widths necessary to conform to WDO Figures 3.01C & G.
- b. PUEs: The developer shall grant streetside PUEs that meet or exceed the min width and do not exceed the max per WDO 3.02.01-through Ordinance No. 2603 (LA 21-02) adopted June 13, 2022, a PUE shall be dedicated along each lot line or tract boundary abutting a public street at minimum width 5 feet and maximum width 8 ft.

PUD-3. Frontage/street improvements: These shall be as follows and due per Condition G4a:

- a. BFR: Per WDO Fig. 3.01C except that planter strip shall be min 6½ ft wide inc. curb width.
- b. Olympic: Bridge or culvert crossing over Mill Creek tributary: Per WDO 3.01.03H through Ordinance No. 2603 (LA 21 02) adopted June 13, 2022, and:
 - (1) ROW: Required ROW shall remain such regardless of the physical width of the crossing.
 - (2) Parking: Any parking lane(s) required by the applicable cross section shall remain required.
 - (3) Sidewalk widths: A developer may omit from a bridge or culvert the street

 landscape strips, thereby resulting in curb-tight sidewalk, the minimum width of
 which shall be either 8 ft where there is to be no adjacent on-street parking or 9 ft

Marion Pointe ANX 22-02, PUD 22-02, etc. Staff Report
Attachment 102
Page 45 of 57

- where there is to be. Wider width shall apply where ADA per WDO 3.01.03G applies such that it is required.
- (4) Fence/railings: Where (a) a street segment is a bridge or culvert crossing, and (b) the public works construction code requires any pedestrian guardrail, handrail, fall protection railing, or safety railing, then it shall be decorative or ornamental (as examples, having an artistic pattern or resembling wrought iron), and a color other than black or charcoal. Any required fence at each end of railings shall be the same color(s).
- (5) Bridge sides: If the bridge sides are concrete, the surface shall be stamped or treated to resemble either cut stone or rough stone.
- (1)(6) Elevation: Shall be such that the travel way and parking lanes wouldn't flood during the 100-year flood.
- (2) Sidewalks: min width 9 ft inc. curbing.
- (3) Fencing/railings: Permissible colors are blue, bronze, brown, green, teal, metal, and rust color. (Black prohibited.)
- (4)(7) Design details are deferred to PUD Final Plan Approval process; refer to Condition PUD-11.
- c. Tract D: The developer shall grant to the City over the entire tract a public street easement. The easement shall allow for all purposes permitted by what would have been ROW dedication including construction of street improvements. One or more legal instruments that dedicates the easement shall contain text that the easement is revocable only with the written concurrence of both the Community Development Director and Public Works Director and by City Council action. (The objective is to have maintenance responsibility remain with a party other than the City.)
- d. Hazelnut: Per WDO Fig. 3.01G, except that the territory contiguous with Tax Lots 051W06DC00201 & 300, which is occupied by Hazelnut, shall be dedicated to the City as ROW. (Note: To not meet this condition part would require modification of condition [MOC] application and approval per WDO 4.02.07.)
- e. Planter strip remainder: Landscape the remainder area the area remaining after street tree plantings pPer WDO 3.01.04B through Ordinance No. 2603 (LA 21-02) adopted June 13, 2022, landscape strips shall have area remaining after street tree plantings landscaped with lawn grass or, if the Public Works Director in writing allows, a species of groundcover. Cobblestones, gravel, pebbles, and rocks are prohibited. Bark dust, mulch, or wood chips are permissible only within the immediate vicinity of a street tree trunk. The developer shall install landscape strip irrigation, and shall provide temporary irrigation during construction, per the public works construction code.
- f. Sidewalks: Min 6 ft wide except wider as Exhibit PUD-3f supersedes. BFR sidewalk southerly and two northerly dead-ends shall have ADA-compliant transitions spanning between sidewalk and road shoulder as the applicable public works authority specifies. The segment extending north from Hazelnut sidewalk may meander, including PUE

Marion Pointe ANX 22-02, PUD 22-02, etc. Staff Report
Attachment 102
Page 46 of 57

overlap, and taper to 6 ft through RPZs to save most of the loose row of trees along the road.

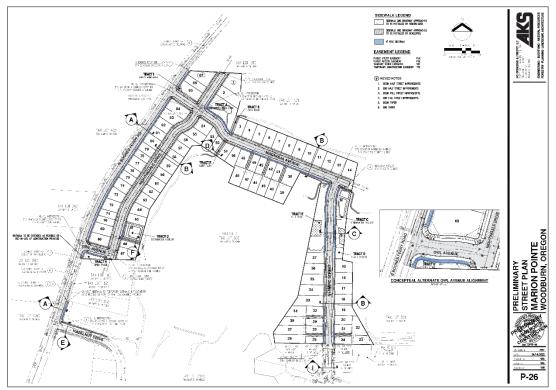


Exhibit PUD-3f: Site Plan Sheet P-26 Sidewalks (blue: min 8 ft wide); see Attachment 103 for full size

- g. Overlap: The extra width of planter strip and sidewalk shall either (1) overlap outside ROW into streetside PUE and come with a recorded legal instrument granting public access to the overlap to the satisfaction of the Public Works Director, or (2) come with additional ROW to accommodate them. Wider sidewalks shall not narrow planter strips.
- h. Street trees:
 - (1) Min numbers equal to block frontage ratios per Exhibit PUD-3h:



Exhibit PUD-3h: Site Plan Sheet P-31 Street Tree Min No. (green: equal to 1 tree per 30 ft of block frontage)

- (2) Along Magnolia, revise street trees from Capital pear to *Magnolia grandiflora* "Victoria" cultivar.
- (3) Fee in-lieu shall be per Attachment 205.
- (4) Landscape strips and street trees shall conform to WDO 3.01.04B (landscaping, irrigation) and 3.06.03A.3 (root barriers) through Ordinance 2603.
- i. Electric power lines: Electric power lines, whether in or beyond ROW, shall be buried.
- j. Traffic calming: A min number of pedestrian crossings along intersection legs shall be patterned poured concrete each min 8 ft wide:
 - (1) Magnolia & Nightingale, 3 legs: N/NE, E/SE, & S/SW; and
 - (2) Magnolia & Olympic: 2-3 legs: S/SW & whichever one or both of the E/SE or W/NW legs that would have a curb ramp along the top of the "T" of the T-intersection.

PUD-4. Streets, dead-end: Barricades/Signage: Based on WDO 3.01.05A.2b & c, the developer shall place:

- a. A barricade with sign at the south end of Nightingale; and
- b. A barricade at each of the north end of Nightingale the east end of Magnolia.

Consult PW for a barricade detail, and no later than CEP show both it and a modified version with a sign in conformance with 3.01.05A.2c.

Marion Pointe ANX 22-02, PUD 22-02, etc. Staff Report

Attachment 102 Page 48 of 57

ANX 22-02 Marion Pointe PUD:

Attachment 201: Dictionary & Glossary

This document defines and explains abbreviations, acronyms, phrases, and words particularly in the context of conditions of approval.

- "ADA" refers to the federal Americans with Disabilities Act of 1990.
- "BFR" refers to Boones Ferry Road, whether N. Boones Ferry Road or Boones Ferry Road NF.
- "C of O" refers to building certificate of occupancy.
- "CC&Rs" refers to covenants, conditions, and restrictions in the context of private contract among an association of owners and/or tenants within a PUD or a conventional subdivision with common area improvements.
- "CEP" refers to civil engineering plan review, which is a review process independent of land use review led by the Community Development Department Planning Division and that is led by the Public Works Department Engineering Division through any application forms, fees, and review criteria as the Division might establish. A staff expectation is that CEP follows land use review and approval, that is, a final decision, and precedes building permit application.
- "County" refers to Marion County.
- "Director" refers to the Community Development Director.
- "exc." means excluding.
- "ft" refers to feet.
- "Hazelnut" refers to Hazelnut Drive.
- "inc." means including.
- "max" means maximum.
- "min" means minimum.
- "Magnolia" refers to Magnolia Avenue, the proposed easterly-westerly street that connects with BFR.
- "Modal share" means the percentage of travelers using a particular type of transportation or number of trips using a type, as examples walking, cycling, riding transit, and driving.
- "Modal shift" means a change in modal share.
- "MUTCD" refers to *Manual on Uniform Traffic Control Devices* of the U.S. Department of Transportation (U.S. DOT) Federal Highway Administration (FHWA).
- "Nightingale" refers to Nightingale Drive, the proposed northerly-southerly street.
- "NE means northeast.
- "NW" means northwest.
- "OAR" refers to Oregon Administrative Rules.

- "o.c." refers to on-center spacing, such as of trees or shrubs.
- "ODOT" refers to the Oregon Department of Transportation.
- "OGA" refers to the Oregon Golf Association.
- "Olympic" refers to Olympic Street and its proposed north extension.
- "Owl" refers to Owl Avenue, an easterly-westerly street proposed to continue east across BFR from Dove Landing PUD into Marion Pointe to Nightingale.
- "ORS" refers to Oregon Revised Statutes.
- "PBPE" refers to a public bicycle/pedestrian easement that grants pedestrian and cyclist access along sidewalk that overlaps private property or along an off-street bicycle/pedestrian path on private property. It substitutes for a PUBPE.
- "PLA" refers to property line adjustment.
- "PU" refers to plant unit as WDO Table 3.06B describes.
- "PUBPE" refers to a PUE adapted to grant pedestrian and cyclist access along sidewalk that overlaps private property ("streetside" PUBPE) or along an off-street bicycle/pedestrian path on private property ("off-street" PUBPE). A PBPE may substitute.
- "PUD" refers to planned unit development.
- "PUE" refers to public utility easement, whether along and abutting public ROW ("roadside" or "streetside" PUE) or extending into or across the interior of private property ("off-street" PUE). In the context of property line adjustment, partition, or subdivision, the developer records through the plat with drawings and notes on the face of the plat. Absent this context, recordation is separate from land use review pursuant to a document template or templates established by PW. PW is the project manager for receiving, reviewing, accepting, obtaining City Council approval for, and recording public easement materials that a developer submits.
- "PW" refers to Public Works (the department) or on rare occasion public works (civil infrastructure) depending on context.
- "RCWOD", pronounced by City staff as "R quad", refers to the Riparian Corridor and Wetlands Overlay District that WDO 2.05.05 describes.
- "Root barrier" refers to that illustrated by PW SS&Ds, <u>Drawing No. 1 "Street Tree Planting New Construction"</u>.
- "ROW" refers to right-of-way.
- "RPZ" refers to root protection zone in the context of tree preservation.
- "SDCs" refers to system development charges, also known as impact fees.
- "SE" means southeast.
- "SDA" refers to site development area, the entire territory that is the subject of the land use application package.
- "sq ft" refers to square feet.
- "SS&Ds" refers to PW standard specifications and drawings.

- "Street trees" refer to trees that conform to the WDO, including 3.06.03A and Tables 3.06B
 C, and that have root barriers where applicable per PW <u>Drawing No. 1 "Street Tree</u> Planting New Construction".
- "SW" means southwest.
- "Tot." means total.
- "TPU" means the Transit Plan Update Approved Final Report dated November 8, 2010.
- "TDM" refers to transportation demand management, which means according to the TSP (p. 82), "a policy tool as well as a general term used to describe any action that removes single occupant vehicle trips from the roadway during peak travel demand periods", and according to Wikipedia as of October 13, 2020, "the application of strategies and policies to reduce travel demand, or to redistribute this demand in space or in time."
- "TSP" means the Woodburn Transportation System Plan (TSP).
- "UGB" means urban growth boundary.
- "Walkway" refers to what would otherwise be called sidewalk except the paved walking surface is on private property outside of any of ROW or an easement granting public access.
- "WDO" refers to the <u>Woodburn Development Ordinance</u>.
- "WFD" refers to the Woodburn Fire District.
- "WTS" refers to the Woodburn Transit System.
- "w/i" means within.
- "w/o" means without.
- "VCA" refers to vision clearance area as WDO 1.02 and 3.03.06 establish or as a specific condition establishes.

248

ANX 22-02 Marion Pointe PUD:

Attachment 202: Lot & Tract Development Standards

Introduction

This attachment establishes PUD lot and tract development standards and could serve as a standalone document for both homebuilders and Planning Division review of building permits assuming the developer will have constructed or paid fees in-lieu for all public improvements (if such fees are due earlier than building permit issuance), obtained final plat approval by the City, have had the Director sign the Mylar, and recorded the plat.

"WDO" refers to the Woodburn Development Ordinance. Refer to Attachment 201 for a dictionary/glossary, including other acronyms and abbreviations.

For improvements that the City requires of tracts, see Attachment 203.

Part A. Lot Development Standards Table

Table 202A. PUD 22-02 Marion Pointe PUD								
	Lot Development Standards							
T. A. A.	Interior, flag	or cul-de-sac lot	3,700 ¹					
Lot Area, Minimum (square feet)	Corner lot	Single-family dwelling	6,200 1					
i cet)		Child care facility or group home ²	Per WDO					
		Middle housing: duplex, triplex, quadplex, townhouse, or cottage cluster	Same as required for single-family dwelling					
		Any other use	Per WDO					
Lot Width,	Interior, flag	or cul-de-sac lot	40					
Minimum (feet)	Corner lot		50					
Lot Depth, Average	Interior, flag	or cul-de-sac lot	50					
(feet)	Corner lot		Per WDO					
	Interior or cu	l-de-sac lot	Per WDO					
Street Frontage Minimum (feet)	Corner lot Dwelling		Per WDO, except min capped at 40					
Table 202A cont.								

		Any other	er use		Per WDO	
	Flag lot				Per each pole if poles of adjacent flag lots are paired: $7\frac{1}{2}$ Per independent pole: 11^{12}	
Residential Density,	Minimum (u	ınits per ne	et acre)		7.1	
Front Setback and Se	,		n corner lot		15	
Abutting a Street, M (feet) – excluding ga carport ^{3, 5}		Corner los	t		15 with second frontage 10	
Setback Abutting an and carport	Alley, Minii	mum (feet)	– excludin	g garage	Either zero or where there is a required alleyside PUE then 5	
Side Setback,	Primary stru	icture			Per WDO	
Minimum (feet) – excluding garage	Accessory s	tructure			Per WDO	
Rear Setback, Average	Primary stru	ry structure Other than flag lot		15 7, 11		
(feet)			Flag lot	Yard closest to street; rear	Yard closest to street: 12 from the lot line parallel to the street ^{7, 11} ; Rear: 12	
				Rear	12 7, 11	
				Sides	5 11	
	Accessory s	tructure			Per WDO	
Garage and carport setback, Minimum (feet)					Per WDO Table 3.07A.	
Setback to a streetside porch or roofed patio, Minimum (feet)					Per WDO Table 2.02G. A maximum setback is not applicable to flag lots.	
Setback to a Private	1					
Lot Coverage, Maximum (percent)					51.1	
Building Height, Maximum (feet)	I •			Per WDO		
	Features not	t used for h	nabitation		Per WDO	

		Accessory structure	Per WDO
--	--	---------------------	---------

- 1. Per WDO Table 2.02B Footnote 1
- 2. Per WDO Table 2.02B Footnote 2
- 3. Is not applicable to through lots to the lot lines along N. Boones Ferry Road (BFR).
- 5. Regarding flag lots, a front setback applies to only to the pole frontage. A flag is considered to have three sides and a rear.
- 7. Per WDO Table 2.02B Footnote 7
- 11. Encroachments and projections into setback minimums remain permissible per WDO 3.03.03, 04, & 05.
- 12. Where flag lot poles adjoin to share a driveway and driveway approach / apron / curb cut / ramp ("shared rear lane"), public shared access easement shall be per WDO 3.04.01A.2 and/or A.4 as well as 3.04.03D.1. Shared utilities might necessitate a wider public easement than that necessary for vehicular access only; refer to WDO 3.02.01C.

Part B. Related Development Standards Table

	Table 202B. PUD 22-02 Marion Pointe PUD				
	Related Develo	opment Standards			
Architecture		Per WDO 3.07.02 through by Ordinance No. 2603 (LA 21-02) adopted June 13, 2022, except Table 3.07A item P1 is not available for optional			
Driveways	Approach / apron / curb cut	Per WDO through by Ordinance No. 2603 (LA 21-02) adopted June 13, 2022.			
	Throat / portion outside ROW	Per WDO through by Ordinance No. 2603 (LA 202) adopted June 13, 2022.			
	Access Lots 21, 24, 25, 28, 29, 32, 38, are prohibited from having the along the street and shall take a shared driveway along an adjactor To facilitate such, these lots are parking pad requirement.		aving their own driveways hall take access from the g an adjacent flag lot pole. see lots are exempt from any		
D. I.	Ratio	Per WDO Table 3.05A			
Parking	Parking pad (WDO	Number, Minimum	Per WDO 3.05.03F.1b. The		
spaces/stalls	3.05.03F.1b)	Dimensions, Minimum	parking pad requirement is not applicable to flag lots.		
	Stalls within a garage and/or carport	Number, Minimum	2, either both garaged or as both a carport and garage on the same lot.		
		Dimensions, Minimum	Per WDO Table 3.05B, footnote 6.		
The 5-ft parking setback of WDO 3.05.02E does not apply.					

Part C. Tract Development Standards

- 1. Driveway approaches / aprons / curb cuts / ramps: max 10 ft wide.
- 2. Fencing: Stormwater facilities: If any fencing proposed for such facilities, max 3½ ft high and w/ the coating (required for fencing per WDO 2.06.02D.2) any of blue, bronze, brown, green, teal, metal, or rust color. (Black prohibited.) By PUD modification of 2.06.02D.2, slats aren't required.
- 3. Tracts: Any retaining walls shall conform to 3.06.05C as a standard.
- 4. Golf cart path: If PW during CEP allows a golf cart path in lieu of direct access to and from Magnolia and possibly additional streets, the path shall be:
 - a. Min 1 ft away from the southerly edge of the Magnolia sidewalk as a buffer.
 - b. The resulting buffer area shall be planted with mostly groundcover and some lawn grass.
 - c. Groundcover shall each be min number equal to average spacing of 1 plant per 3 ft of buffer length.
 - d. The design details resulting from a golf cart path deflecting northerly to street corners and its crossing of Olympic or any street, if any, is deferred to CEP and remains up to PW to decide whether to allow and, if it were to allow, to regulate.
- 5. Tract C is limited to one driveway approach / apron / curb cut / ramp (to serve the stormwater facility).
- 6. Subdivision identification sign: Tract I subdivision identification monument or wall sign maximum height shall be 6 ft above grade.

Part D. VCA

WDO 3.03.06 is hereby modified such that:

- 1. The alley part of Fig 3.03A shall apply to alleys except that VCA triangles shall measure min 5 by 5 ft.
- 2. Regarding the street corner part of Fig. 3.03A, VCA triangles shall measure min 15 by 15 ft.

Part E. Lighting:

- 1. Shall conform to WDO 3.11.
- 2. The Planning Division may require inspection to be scheduled evening or night.

ANX 22-02 Marion Pointe PUD:

Attachment 203: Common Area Improvements & Public Easements

Introduction

This attachment establishes PUD common area tract improvements and types and placements of public easements.

Refer to Attachment 201 for a dictionary/glossary, including other acronyms and abbreviations.

For lot and tract development standards, see Attachment 202.

Part A. Common area improvements: Amenities / appurtenances / street furniture / support facilities

The mins of the improvement types are per Table 203A below:

Table 203A. Co	ommon Area	Improvements	
Improvement Type	Number	Placements	Details
Benches	7	Tract A: 1, w/i 8 ft of ROW Tract D: 1 Tract E: 2 (1 each paved path) Tract G: 1 (path south side) Tract H: 1, w/i 8 ft of ROW	Place along paths and sidewalks, set back 2 ft min, and on at least 6 by 4 ft of asphalt, brick, concrete pavers, or poured concrete. If brick or pavers, pour concrete for bench post footings. 6 ft width min; 75% min of them having backs. The recommended model (with back) is per WDO interpretation memo INT 22-0608. For Tracts D, E, & G, this model is the standard.
Picnic bench	2	Tract A: 1 Tract E: 1	1 under a shelter (as required for Tract A or E). Min 1 shall be ADA-accessible from a sidewalk or path other than a golf cart path. The recommended model (with back) is per WDO interpretation memo INT 22-0608. For Tract E, this model is the standard.

Table 203A. Co	ommon Area	Improvements	
Improvement	Number	Placements	Details
Туре			
Bicycle	4 (2 U-	Tract A: 2 (w/i 12 ft of ROW)	For Tract A, the recommended
parking	racks)	Tract E: 2	model is per WDO interpretation
			memo INT 22-0608. See OCE parks
			and recreation catalog. For Tract E,
			this model is the standard. See the
			memo for remaining specs.
Dog waste	3	Tract A: 1	The model shall be per WDO
stations		Tract E: 1	<u>interpretation</u> memo INT 22-0608.
		Either Tract G or H: 1	For Tracts E & H, this model is the
	_		standard.
Shelter	1	Either Tract A or E: 1	A gazebo, pavilion, or shelter min 12
			by 12 ft and with min 10 ft height
			clearance.
			If a shelter floor level is at grade,
			place an ADA-compliant picnic
			bench; the recommended model is
			per WDO interpretation memo INT
			22-0608. Provide a walkway min 4
			ft wide between each shelter and
			any of a sidewalk or path other than
			a golf cart path. Walkway may be
			flush with a golf cart path if
			distinguished with any of (i)
			concrete or (ii) hatch pattern
			thermoplastic striping of walkway
			asphalt.
Trash	3	Tract A: 1	The recommended model is per
receptacles		Tract E: 1	WDO interpretation memo INT 22-
		Either Tract G or H: 1	0608. For Tract E, this model is the
			standard.

Administrative minor adjustment by the Director to common area improvement location or placement is permissible.

Part B. Common area landscaping:

- 1. Bark dust: 5.0% max of landscaped area may be bark dust or wood chip.
- 2. Evergreen: 8 min of trees new to the site and outside of ROW. The 8 shall be 1 min of the following coniferous or evergreen species:

Cedar, Western Red	Madrone, Pacific
Douglas-Fir	Oak, Oregon White
Fir. Grand	Pine. Ponderosa: and

ANX 22-02, PUD 22-02, etc. Staff Report / Final Decision
Attachment 203
Page 2 of 6

Hemlock, Western	Yew, Pacific
------------------	--------------

- 3. Screening: Evergreen hedge or shrubbery shall be screen at-grade electrical and mechanical equipment along their sides, excepting the side intended for technician access.
- 4. Complementary trees: A row of trees shall complement and be offset from street trees, planted within 5-14 ft of ROW. 4 min shall be one or more species other than maple.

Tract	Tree Min No.
Α	9
С	8
D	4 (2 as proposed near Olympic, plus 2, 1 each centered within where north and south street stub landscape strips would have been)
E	14
G	4 (2 as proposed near Nightingale, plus 2 along bicycle/pedestrian path south side)
Н	4

Part C. Paths

Bicycle/pedestrian paths: As proposed, Tracts E & G shall have an off-street bicycle/pedestrian path or multi-use path follows:

Table 2	203C. Pat	hs				
Tract	Path					
	Min Width (ft)	Placement	Pavement	Construction	Shoulders & Furniture Zones	Reference
D	6	Same as where street stub north and south sidewalks would have been relative to centerline, plus east end connecting segment, forming a rectangular loop.	Same specifica works construc	tions as for sidewa	lk per public	"Path D"
E	10	As proposed: south yard.	Per <u>WDO inter</u>	pretation memo IN	IT 22-0608	"Path E1"

Table 2	203C. Pati	hs					
Tract	Path						
	Min Width (ft)	Placement	Pavement	Construction	Shoulders & Furniture Zones	Reference	
	3	Just south of RCWOD south boundary, meandering along the boundary.	Bark dust, hazelnut shells, or wood chips min 4 inches deep.	n/a	n/a	"Path E2"	
G	10	As proposed: south yard.	Per WDO interp	oretation memo INT	22-0608	"Path G"	

Part D. Public Easements

In addition to standard streetside PUEs per WDO 3.02.01, based on WDO 3.02.01C the developer shall dedicate public easements as follows:

Table 203D. Public	Easements	
Locations	Types	Details
Wherever	Either a streetside PBPE	-
sidewalk overlaps	or streetside PUBPE	Note: See Attachment 201 for dictionary/glossary
area where		including acronyms.
streetside PUE		
would be		
Tract A and/or B	Off-street PUE	Min 16 ft wide along any of (1) Tract A north boundary, (2) Tract A east boundary, (3) straddling common boundary line of Tracts A & B, or (4) along Tract B east boundary.
Tract C	Either two easements, a watercourse easement and a PUBPE, or a consolidated easement serving the functions of both and covering the larger area.	For watercourse: Per WDO 3.02.02A, or, if the min. width/area is unclear, default to the same area as the RCWOD. For PUBPE: Same area as the RCWOD.
Tract E	Either two easements, a watercourse easement and an off-street PUBPE, or a consolidated easement serving the functions of both and	One the same area as the RCWOD. (Surveyor may substitute with adapted watercourse easement.) A second one min 16 ft wide along south tract boundary.

ANX 22-02, PUD 22-02, etc. Staff Report / Final Decision Attachment 203 Page 4 of 6

Table 203D. Public	Easements	
Locations	Types	Details
	covering the larger required area.	The additional, separate PUBPE is min 16 ft wide along the south tract boundary.
	Also, provide an additional, separate offstreet PUBPE.	
Tract F	Off-street PUE	Min 16 ft wide
Tract G	Off-street PUBPE	Min 16 ft wide along south tract boundary
Tract H: Westerly boundary	Either an easement allowing installation of a public bus shelter and pad to extend beyond ROW, or some other easement type such as a PUBPE adapted to serve this function.	Absent direction by PW, default to a PUE total min width of either (1) 16 ft along both tract westerly and northerly boundaries or (2) entire width of tract, whichever is narrower.
Golf course: Along the piped tributary of Mill Creek, west of the east golf cart path	Off-street PUE	Min 16 ft wide centered along the pipe. [WDO 3.02.02C]
Golf course: Along the open channel tributary of Mill Creek, east of the east golf cart path	Watercourse easement	Per WDO 3.02.02A, or, if the min width/area is unclear, default to the same area as the RCWOD.
Flag lot adjacent poles with shared driveways ("shared rear lane")	Public access and utility easement(s)	Public access: Per WDO 3.04.01A.2 and/or A.4. Utilities: Per WDO 3.02.01C.
Various	PUE	Wherever PW requires.

Part E. Association / HOA

To meet WDO 3.09.09, there shall be an association of owners and/or tenants as follows:

1. Prior to conveying land ownership of any tract, the developer shall establish an association, such as homeowners association (HOA), pursuant to ORS 94 and other applicable statutes.

- 2. The association shall assume maintenance of improvements on common area tracts, inc. stormwater facilities; repair, replace, and restore improvements; identify and make clear to owners association duties; and levy assessments to owners in a fair, transparent, and written way. (If the association ceases to exist resulting in a tract or tracts no longer having an existing owner for a year or more based on the Oregon Secretary of State Corporation Division business registry, and where this provision does not conflict with ORS or OAR, the City shall have right of first refusal to acquire the property in coordination with the Marion County Assessor's Office.)
- 3. Golf carts on public streets: Association documents applying to the Marion Pointe PUD shall make owners or occupants eligible for membership in or the use of one or more golf courses within the development by virtue of ownership or occupancy of a residential dwelling unit in the development. (This facilitates City regulation of golf cart access to public streets per ORS 810.070.)
- 4. "Middle Housing": The association documents shall cite and comply with enrolled Oregon House Bill 2001 (HB 2001) (2019), Sect. 13 (p. 10).
- 5. Abandonment/dissolution: The association documents shall include a provision that the start of any attempt to dissolve the HOA must include written notice delivered or mailed to the City c/o Assistant City Administrator. (This is to alert the City that the HOA is abandoning its stormwater facility and open space maintenance responsibilities.) They shall also include a provision that would result, were the Oregon Secretary of State Corporation Division to issue written warning of pending administrative dissolution, in the City receiving notice as well as the HOA.
- 6. Documents: The developer shall provide copies of articles of incorporation, bylaws, and CC&Rs for the association to the Assistant City Attorney and Director for review upon final plat application to the City or earlier if ORS 94.565(2) requires. Bylaws and/or CC&Rs shall describe the responsibilities of the association to maintain common area improvements, and bylaws and CC&Rs shall reiterate that because of ORS 94.626, any dissolution would not also dissolve obligations. To this end, the corporation shall comply with applicable statutes and the administrative rules of the Oregon Secretary of State Corporation Division.

The above would continue to apply were the developer to either (1) establish multiple associations or (2) make use of an existing association related to adjacent existing development. The developer shall provide copies of articles of incorporation, bylaws, and CC&Rs for the multiple associations or these documents amended to conform to conditions of approval.

ANX 22-02 Marion Pointe PUD:

Attachment 204: Tree Preservation & Protection and Environmental Remediation

Part A. Tree preservation

- On-site: Development shall preserve Tree 13296 along the Lot 65 rear lot line, contingent per both Sheet P-14 and the application materials Exhibit M February 11, 2022 arborist memo having mentioned preservation is situational and premised on arborist examination during construction. Were the arborist at that time to recommend removal, the developer or homebuilder may remove the tree and shall pay a fee in-lieu per Attachment 205.
- 2. Protection during construction: The developer shall follow Attachment 204, Part B.

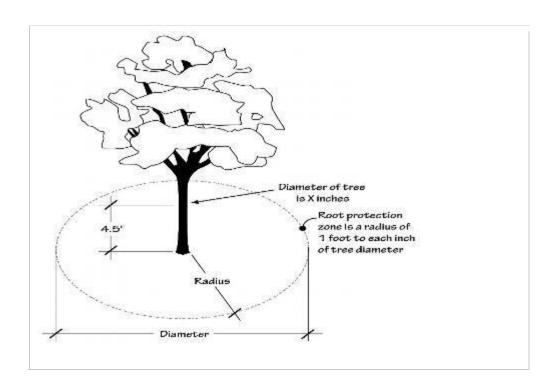
Part B. Tree preservation During Construction

Tree preservation: Protection during construction:

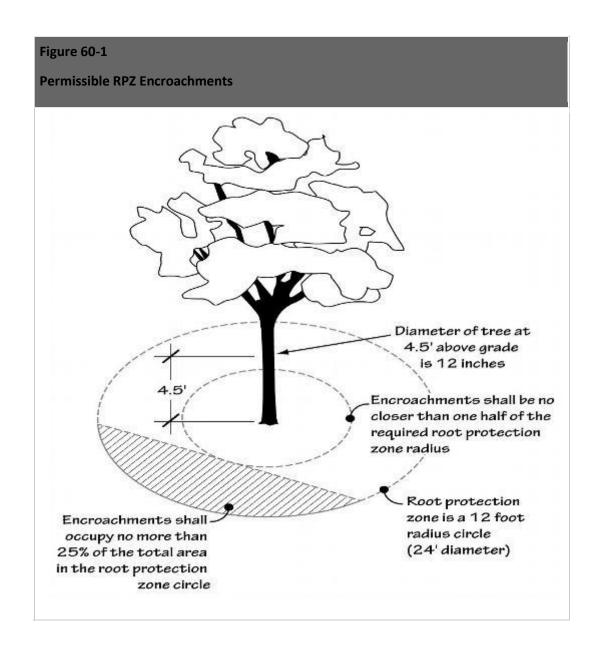
The applicant shall protect the preserved trees pursuant similar to City of Portland Title <u>11.60.030</u>, specifically either the subsections set of C.1.a.(1), (3) and C.1.b., e., & f. (clear and objective) and D.; or, the subsections set of C.2.a., b., & d.-f. (arborist's discretion) and D. as modified below and shall do so between Design Review approval and issuance of certificate of occupancy (C of O):

- C. Protection methods. The Tree Plan shall show that the contractor adequately protects trees to be preserved during construction using one of the methods described below:
 - 1. Clear & Objective Path.
 - a. A root protection zone is established as follows:
- (1) For trees on the development site a minimum of 1 foot radius (measured horizontally away from the face of the tree trunk) for each inch of tree diameter (see Figure 80-2)

Figure 80-2		
Root Protection Zone		

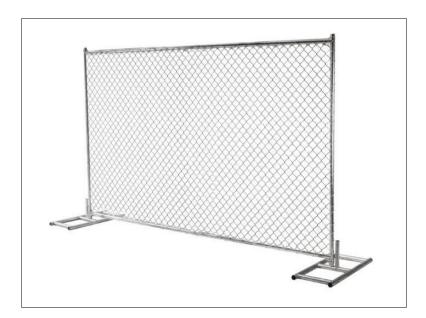


- (3) Existing encroachments into the root protection zone, including structures, paved surfaces and utilities, may remain. New encroachments into the root protection zone are allowed provided:
 - (a) the area of all new encroachments is less than 25 percent of the remaining root protection zone area when existing encroachments are subtracted; and
 - (b) no new encroachment is closer than 1/2 the required radius distance (see Figure 60-1);



b. Protection fencing

(1) Protection fencing consisting of a minimum 6-foot high metal chain link construction fence, secured with 2-foot metal posts shall be established at the edge of the root protection zone and permissible encroachment area on the development site. Existing structures and/or existing secured fencing at least 3½ feet tall can serve as the required protective fencing.



- (2) When a root protection zone extends beyond the development site, protection fencing is not required to extend beyond the development site. Existing structures and/or existing secured fencing at least 3½ feet tall can serve as the required protective fencing.
- e. The following is prohibited within the root protection zone of each tree or outside the limits of the development impact area: ground disturbance or construction activity including vehicle or equipment access (but excluding access on existing streets or driveways), storage of equipment or materials including soil, temporary or permanent stockpiling, proposed buildings, impervious surfaces, underground utilities, excavation or fill, trenching or other work activities; and
- f. The fence shall be installed before any ground disturbing activities including clearing and grading, or construction starts; and shall remain in place until final inspection by Planning Division staff.
- 2. Arborist's Discretion. When the prescriptive path is not practicable, the applicant may propose alternative measures to modify the clear and objective root protection zone (RPZ), provided the following standards are met:
 - a. The alternative RPZ is prepared by an arborist who has visited the site and examined the specific tree's size, location, and extent of root cover, evaluated the tree's tolerance to construction impact based on its species and health, identified any past impacts that have occurred within the root zone, and forwarded a report through the developer to Planning Division staff;
 - b. The arborist has prepared a plan providing the rationale used to demonstrate that the alternate method provides an adequate level of protection based on the findings from the site visit described above;

- d. If the alternative methods require the arborist be on site during construction activity, the applicant shall submit a copy of the contract for those services prior to permit issuance and a final report from the arborist documenting the inspections and verifying the viability of the tree(s) prior to final inspection by the Planning Division;
- e. If the alternative tree protection method involves alternative construction techniques, an explanation of the techniques and materials used shall be submitted;
- f. The arborist shall sign the tree preservation and protection plan and include contact information.
- D. Changes to tree protection. Changes to the tree protection measures during the course of the development may be approved as a revision to a permit provided that the change is not the result of an unauthorized encroachment into a root protection zone (RPZ), and the applicant demonstrates that the tree protection standards of this Section continue to be met. When an unauthorized encroachment has occurred, the City may pursue an enforcement action or other remedy.

Part C. Environmental Remediation

- 1. Invasive plant removal: This applies to all tracts and where the RCWOD overlaps the golf course lot. The developer shall eradicate invasive creepers, groundcover, shrubbery, vines, and weeds that might exist, at min. any of the following species:
 - (a) Himalaya blackberry (Rubus armeniacus)
 - (b) English ivy (Hedera helix)
 - (c) Common reed (*Phragmites australis*)
 - (d) Giant hogweed (Heracleum mantegazzianum)
 - (e) Gorse (*Ulex europaeus*)
 - (f) Kudzu (*Pueraria lobata*)
 - (g) Old man's beard (*Clematis vitalba*)
 - (h) Ribbongrass (*Phalaris arundinacea var. Picta*)
 - (i) Water primrose (Ludwigia hexapetala, peploides)
 - (j) Yellow flag or yellow water iris (*Iris pseudacorus*)
- 2. Grass: Within the RCWOD, where removal of invasive plants or the unintended effect of nearby construction results in bare ground, plant lawn grass, wild grass, or a combination.
- 3. Other plants: Within the RCWOD area where it overlaps Tracts C & E, plant min 20 PUs of any of the following four Trillium species: *albidum* 'J.D.Freeman', *chloropetalum* (giant trillium), *ovatum* 'Pursh' (common name wake robin), *kurabayashii* 'J.D.Freeman' (large purple wake robin), and *petiolatum* 'Pursh'. Also plant 80 PUs of any min 3 non-invasive species of shrubbery most likely to attract honeybees, having identified such species on a landscape plan.

4. Trees:

- (a) Number: Within the RCWOD area where it overlaps Tracts C & E, plant a min number of trees that, combined with existing trees, is a number equal to 1 per 15 ft of Mill Creek tributary centerline distance.
- (b) Placement: These RCWOD trees shall be placed within a 5-ft band inside of each of the northerly and southerly RCWOD boundaries, and have distribution approximate average o.c. spacing of 1 tree every 30 ft across the four bands (The RCWOD north and south bands on Tracts C & E each).
- (c) Species: This applies to all tracts. Have 10.0% min. of existing and additional trees combined be coniferous/evergreen. WDO Table 3.06C is hereby modified by PUD to allow anywhere within the SDA (outside of ROW) any tree species that isn't invasive. A number of street trees may be coniferous/evergreen if and where PW allows during CEP, and were this to happen, such trees may count towards the min percentage.

ANX 22-02 Marion Pointe PUD:

Attachment 205: Conditioned Fees

All of the following conditioned fees are due as applicable, whether or not mentioned directly by a condition of approval.

Refer to Condition G3 and/or Attachment 201 for a dictionary/glossary, including acronyms and shorthand text.

Part A. Fee Provisions

- 1. Any and all conditioned fees are in addition to, and not in place or as discounts of, any existing charge or fee however termed ordinarily assessed based on any existing ordinance, resolution, or administrative policy, inc. adopted fee schedules. If and when the City amends any ordinance, resolution, or administrative policy, inc. a fee schedule, to increase a charge or fee that is (a) the same kind of charge or fee that is conditioned, (b) the amended charge or fee amount would exceed the amount conditioned, and (c) the increase takes effect before the conditioned fee is due, then the developer shall pay the greater amount.
- 2. Payments of conditioned fees shall reference a final decision case file number and the condition of approval letter/number designation, be it in a check memo field or through a cover or transmittal letter.
- 3. For fees due by building permit issuance, a developer may request the Director to allocate payments the same as allowed for fees in-lieu by WDO 4.02.12A.2 through Ordinance No. 2603 (LA 21-02) adopted June 13, 2022, specifically, to pay across issuance of two or more structural building permits for the subject development.

For all administrative and logistical questions about payment of land use conditioned fees outside the context of assessment and payment through building permit, the developer is to contact the Administrative Assistant at (503) 982-5246 and refer to this attachment within the ANX 22-02 Marion Pointe PUD final decision.

For payment method policy details, the developer is to contact the Finance Department at (503) 982-5222, option zero, for payment method policy details.

Part B. Fee Table

Condition	Fee Туре	Amount	Context	Timing	Staff
Reference	γες τγρε	Amount	Context	Tilling	Tracking:
T-A	Transportation: Automotive: TSP signal timing study or studies	\$15,840	Proportionate share of the TSP Projects R8, R9, & R11 (p. 32+). (ANX 2020-03 Dove Landing PUD pays remaining share.)	Building permit issuance	
PUD-3	Street tree fee in-lieu for street trees omitted through civil engineering plan (CEP) review, or, inspection missing tree fee	\$950 per tree	Applies to omitted street trees, or, ones missing from required number upon inspection	If CEP context, then by building permit issuance; if in inspection context, then prior to passing final inspection / obtaining certificate of occupancy	
PUD-5	Significant Tree 12610 removal	\$1,900	Tree 12610 removal from BFR east side	Building permit issuance	
	Significant Tree 13296 removal	\$1,900	Tree 13296 removal from Lot 65, if and after removal justified per conditions	Building permit issuance or passing of final inspection	
	Tree removal	\$246 per tree assessed at min 18 trees	Removal of trees from along BFR east side near NE corner of BFR & Hazelnut	Building permit issuance	
PUD-13	Dove Landing PUD public park land improvement fee	By year of assessment: 2022: \$100,000 2023: \$103,000 2024: \$106,090 or 2025 or later: \$109,273	The developer of Dove Landing PUD, which is west across BFR, conveyed/dedicated/deeded to the City public park land. Fee towards park improvements.	Building permit issuance	
T-BP	Wayfinding signage fee in-lieu	\$1,500 per location	Regardless of number of sign faces that would've been at the location	Building permit issuance	

ANX 22-02, PUD 22-02, etc. Staff Report / Final Decision Attachment 205 Page 2 of 3

Table 205. Fe	ee Table				
Condition Reference	Fee Туре	Amount	Context	Timing	Staff Tracking:
T-T1	Bus shelter fee in-lieu	By year of assessment: 2022: \$13,214 2023: \$13,610 2024: \$14,018 or 2025 or later: \$14,439	See condition.	Building permit issuance	
T-T2	Bus stop bicycle parking fee in-lieu	\$510.20 per location	See condition.	Building permit issuance	
T-T3	Bus service	\$290 per dwelling	For City bus service	Building permit issuance per each dwelling	
G6 through this Attachment	Public Works Dept. civil engineering plan (CEP) review: Review by Planning Division	\$250; \$346	Original/1 st submittal; each subsequent inc. deferral/piecemeal	Upon CEP application to Public Works Dept. (PW)	
205	Inspections by Planning Division	\$75; \$346	1st inspection or "walkthrough"; each subsequent	Inspection requests related to public (street) improvements and building permits	
G6 through this Attachment 205	Bond / bonding / performance guarantee: Specifically any that would allow or allows the developer to delay construction of street improvements beyond building permit issuance, with the exceptions of (a) sidewalk along individual dwelling lots and (b) street trees.	\$4,474	Serves as bond application / review request min fee and isn't a bond amount itself. Fee not applicable to warranty bonds or ordinary construction bonds if they do not authorize delay of construction of street improvements beyond building permit issuance. (See WDO 3.01.02E through Ordinance No. 2603 [LA 21-02] adopted June 13, 2022.)	If CEP context, then payment (through Planning Division) upon CEP application to PW; if developer applies for building permit review and there has been no CEP application to PW, then building permit issuance	



Azenda Item

August 8, 2022

TO: Honorable Mayor and City Council

FROM: Scott Derickson, City Administrator

McKenzie Granum, Assistant City Attorney

SUBJECT: Oregon Psilocybin Service Act (Measure 109) - Ballot Referral for

Question of Prohibiting Psilocybin-Related Businesses within the City

of Woodburn

RECOMMENDATION:

Per the direction to Staff:

- (1) Enact an Ordinance Declaring a Ban on Psilocybin Service Centers and the Manufacture of Psilocybin Products within the City of Woodburn.
- (2) Adopt a Resolution Placing on the Ballot the Question of Prohibiting Psilocybin-Related Businesses within the City of Woodburn; Adopting a Ballot Title and Explanatory Statement; and Authorizing all Steps Necessary to Effectuate the Resolution.

BACKGROUND:

At the July 25, 2022, City Council Meeting, Council directed staff to prepare appropriate documentation to put the question of whether to ban psilocybin service centers, the manufacturing of psilocybin products, and related activities to the voters of the City of Woodburn. Such documentation is attached.

As previously reviewed during the July 25th meeting, general background on this matter includes the following:

 In November 2020, Oregon voters passed Measure 109, which legalized the manufacturing, delivery, and administration of psilocybin at licensed facilities.

Agenda Item Review: City Administrator __x__ City Attorney ___x_ Finance __x_

- Pursuant to ORS 475A.235, the Oregon Health Authority ("OHA") will issue and regulate four license types as part of the implementation of Measure 109: Manufacturer Licenses, Laboratory Licenses, Facilitator Licenses, and Service Center Licenses.
- OHA has initiated a rulemaking process and intends to begin accepting applications for the identified licenses on January 2, 2023.
- As part of the implementation of Measure 109, local governments have the
 option to seek a local prohibition or temporary moratorium on the
 establishment of psilocybin-related businesses through referral at a statewide general election. In the alternative, local governments may look at
 adopting reasonable time, place, and manner restrictions over such
 businesses.

DISCUSSION:

Council directed the City Attorney to prepare appropriate documentation to place the question of a permanent ban on psilocybin-related businesses before the voters of the City of Woodburn.

To move forward with that course of action, Council needs to adopt the attached ordinance and resolution. Thereafter, the City Recorder will file the appropriate ballot title and explanatory statement for the measure with the County Clerk of Marion County.

- A ballot title is a concise and impartial statement prepared by the city governing body or the city attorney that will be printed on the ballot summarizing the referral and its major effect. After receiving a ballot title from the city governing body, the city elections official publishes notice in the next available edition of a newspaper of general circulation that any voter may challenge the ballot title. It is advisable to also publish the notice on the city website for a minimum of seven days.
- An explanatory statement is an impartial, simple and understandable statement explaining the measure. The city governing body must prepare and file an explanatory statement of no more than 500 words for a referral, which will be placed in the voter's pamphlet.

FINANCIAL IMPACT:

Honorable Mayor and City Council August 8, 2022 Page 3

The Financial Impact for the ballot referral action includes staff time necessary to complete the appropriate filings with the County Clerk of Marion County.

Under ORS 475A.534, local governments cannot impose a tax or fee on the manufacturing and sale of psilocybin products, nor a tax or fee on the provision of psilocybin services.

COUNCIL BILL NO. 3193

ORDINANCE NO. 2606

AN ORDINANCE DECLARING A BAN ON PSILOCYBIN SERVICE CENTERS AND THE MANUFACTURE OF PSILOCYBIN PRODUCTS.

WHEREAS, in November 2020, Oregon voters approved Ballot Measure 109, known as the Oregon Psilocybin Service Act (codified at ORS 475A), which allows for the manufacture, delivery and administration of psilocybin at licensed facilities; and

WHEREAS, ORS 475A.235 provides that the Oregon Health Authority will regulate the manufacturing, transportation, delivery, sale and purchase of psilocybin products and the provision of psilocybin services in the state; and

WHEREAS, the Oregon Health Authority has initiated a rulemaking process to implement the state's psilocybin regulatory program and intends to begin accepting applications for psilocybin-related licenses on January 2, 2023; and

WHEREAS, ORS 475A.718 provides that a city council may adopt an ordinance to be referred to the electors of the city prohibiting the establishment of state licensed psilocybin product manufacturers and/or psilocybin service centers in the area subject to the jurisdiction of the city; and

WHEREAS, the Woodburn City Council believes that prohibiting psilocybin product manufacturers and psilocybin service centers within the city's jurisdictional boundaries is in the best interest of the health, safety and welfare of the people of Woodburn; and

WHEREAS, the City Council seeks to refer to the voters of Woodburn the question of whether to establish a ban on state-licensed psilocybin product manufacturers and psilocybin service centers within the city's jurisdictional boundaries; **NOW**, **THEREFORE**,

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. <u>Prohibition</u>. The establishment of psilocybin product manufacturers licensed under ORS 275A.290 and psilocybin service centers licensed under ORS 475A.305 is prohibited in the City of Woodburn.

Section 2. <u>Referral</u>. This Ordinance is referred to the electors of the City of Woodburn for approval at the next statewide general election on November 8, 2022.

Section 3. <u>Effective Date</u>. This Ordinance shall take effect and become operative thirty (30) days after the date on which it is approved by a majority of the voters of the City of Woodburn.

Approve	ed as to form:	
1-1-	City Attorney	Date
	Approved:	
	- · · ·	Eric Swenson, Mayor
D		
Passed k	by the Council	-
Submitte	ed to the Mayor	
Approve	ed by the Mayor	
Filed in t	he Office of the Recorder	
ATTEST:		
ATTEST.	Heather Pierson, City Recorder	•
	City of Woodburn, Oregon	

COUNCIL BILL NO. 3194

RESOLUTION NO. 2195

A RESOLUTION APPROVING REFERRAL TO THE ELECTORS OF THE CITY OF WOODBURN THE QUESTION OF PROHIBITING PSILOCYBIN-RELATED BUSINESSES WITHIN THE CITY OF WOODBURN; ADOPTING A BALLOT TITLE AND EXPLANATORY STATEMENT; AND AUTHORIZING ALL STEPS NECESSARY TO EFFECTUATE THIS RESOLUTION

WHEREAS, in November 2020, Oregon voters approved Ballot Measure 109, known as the Oregon Psilocybin Service Act (codified at ORS 475A), which allows for the manufacture, delivery and administration of psilocybin at licensed facilities; and

WHEREAS, ORS 475A.718 provides that a city council may adopt an ordinance to be referred to the electors of the city prohibiting the establishment of state licensed psilocybin product manufacturers and/or psilocybin service centers in the area subject to the jurisdiction of the city; and

WHEREAS, the Woodburn City Council believes that prohibiting psilocybin product manufacturers and psilocybin service centers within the city's jurisdictional boundaries is in the best interest of the health, safety and welfare of the people of Woodburn; and

WHEREAS, the Woodburn City Council voted to adopt Ordinance No. 2606, which declares a ban on psilocybin product manufacturers and psilocybin service centers in the City of Woodburn and refers the matter to the electors of Woodburn; **NOW**, **THEREFORE**,

THE CITY RESOLVES AS FOLLOWS:

Section 1. The City Council refers to the November 8, 2022, election a ballot measure proposing to establish a ban on the establishment of statelicensed psilocybin product manufacturers and psilocybin service centers within the City of Woodburn.

Section 2. The City Council adopts the Ballot Title for the proposed measure as set forth in Exhibit A.

Section 3. The City Council adopts the Explanatory Statement for the Ballot Title as set forth in Exhibit B.

Page 1 – Council Bill No. 3194 Resolution No. 2195 **Section 4.** The Ballot Title and Explanatory Statement adopted by this Resolution shall be filed with the City Elections Officer. The City Attorney and City Elections Officer are jointly and severally authorized and directed to take all necessary steps for and on behalf of the City to effectuate this Resolution, including providing public notice and submitting required materials to the County Elections Officer to cause the measure to appear on the ballot for the November 8, 2022, election and to otherwise carry out the intent and purpose of this Resolution.

Section 5. The City Ordinance that is the subject of this referral is attached hereto and incorporated herein as <u>Exhibit C</u>.

Approve	ed as to form:				
		City Attorney		Date	
		Approved	<u>:</u>		
			Eric Swenson, N	Лауог	
Passed k	by the Council				
Submitte	ed to the Mayor				
Approve	ed by the Mayo	-			
Filed in t	he Office of the	Recorder			
ATTEST:					
	Heather Pierso	n, City Recorder	-		
	City of Woodb	urn, Öregon			

EXHIBIT A

BALLOT TITLE

CAPTION:

Prohibits psilocybin-related businesses within the City of Woodburn.

QUESTION:

Shall the City of Woodburn prohibit psilocybin service centers and the manufacture of psilocybin in Woodburn?

SUMMARY:

State law allows for the manufacturing, transportation, delivery, sale and purchase of psilocybin, the psychedelic drug found in certain mushrooms.

State law provides that a local government may adopt an ordinance to be referred to the voters to prohibit the establishment of certain psilocybin-related businesses. Approval of this measure would prohibit the establishment of psilocybin service centers and the manufacture of psilocybin products within the jurisdictional boundary of Woodburn.

EXHIBIT B

EXPLANATORY STATEMENT

Approval of this measure would prohibit the establishment and operation of psilocybin-related businesses within the City of Woodburn. Psilocybin is a naturally occurring psychedelic compound derived from certain mushrooms. Oregon voters legalized psilocybin through Ballot Measure 109 (2020), which directed the Oregon Health Authority to develop a psilocybin licensing and regulatory program for the state by January 2, 2023.

Under Ballot Measure 109, a city council may adopt an ordinance prohibiting the establishment of psilocybin-related businesses within its city, but the council must refer the ordinance to the voters at a statewide general election. The City of Woodburn City Council has adopted an ordinance prohibiting the establishment of psilocybin-related businesses within Woodburn and, as a result, has referred this measure to the voters.

A "Yes" vote means psilocybin-related businesses are prohibited within Woodburn. A "No" vote means that psilocybin-related businesses would not be prohibited within Woodburn.

EXHIBIT C

CITY ORDINANCE SUBJECT TO REFERRAL

COUNCIL BILL NO. 3193

ORDINANCE NO. 2606

AN ORDINANCE DECLARING A BAN ON PSILOCYBIN SERVICE CENTERS AND THE MANUFACTURE OF PSILOCYBIN PRODUCTS.

WHEREAS, in November 2020, Oregon voters approved Ballot Measure 109, known as the Oregon Psilocybin Service Act (codified at ORS 475A), which allows for the manufacture, delivery and administration of psilocybin at licensed facilities; and

WHEREAS, ORS 475A.235 provides that the Oregon Health Authority will regulate the manufacturing, transportation, delivery, sale and purchase of psilocybin products and the provision of psilocybin services in the state; and

WHEREAS, the Oregon Health Authority has initiated a rulemaking process to implement the state's psilocybin regulatory program and intends to begin accepting applications for psilocybin-related licenses on January 2, 2023; and

WHEREAS, ORS 475A.718 provides that a city council may adopt an ordinance to be referred to the electors of the city prohibiting the establishment of state licensed psilocybin product manufacturers and/or psilocybin service centers in the area subject to the jurisdiction of the city; and

WHEREAS, the Woodburn City Council believes that prohibiting psilocybin product manufacturers and psilocybin service centers within the city's jurisdictional boundaries is in the best interest of the health, safety and welfare of the people of Woodburn; and

WHEREAS, the City Council seeks to refer to the voters of Woodburn the question of whether to establish a ban on state-licensed psilocybin product manufacturers and psilocybin service centers within the city's jurisdictional boundaries; **NOW**, **THEREFORE**,

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. <u>Prohibition</u>. The establishment of psilocybin product manufacturers licensed under ORS 275A.290 and psilocybin service centers licensed under ORS 475A.305 is prohibited in the City of Woodburn.

Section 2. <u>Referral</u>. This Ordinance is referred to the electors of the City of Woodburn for approval at the next statewide general election on November 8, 2022.

Section 3. <u>Effective Date</u>. This Ordinance shall take effect and become operative thirty (30) days after the date on which it is approved by a majority of the voters of the City of Woodburn.

Approve	ed as to form:	
1-1-	City Attorney	Date
	Approved:	
	· · · —	ric Swenson, Mayor
Danaalk	and the angle of the state of t	
Passed K	by the Council	
Submitte	ed to the Mayor	
Approve	ed by the Mayor	
	, , ,	
Filed in t	he Office of the Recorder	
ATTEST:		
7 (11201)	Heather Pierson, City Recorder	
	City of Woodburn, Oregon	



Azenda Item

August 8, 2022

TO: Honorable Mayor and City Council

FROM: Scott Derickson, City Administrator

McKenzie Granum, City Attorney

SUBJECT: Collective Bargaining Agreement with AFSCME, Local 642

RECOMMENDATION:

Adopt the attached Resolution authorizing the execution of a new Collective Bargaining Agreement with the American Federation of State, County, and Municipal Employees AFL-CIO ("AFSCME"), Local 642.

BACKGROUND:

Beginning in April of this year, the City and AFSCME opened collective bargaining for a successive contract to begin July 1, 2022. The Assistant City Attorney acted as the City's lead negotiator with Human Resources Director, Mel Gregg, Assistant City Administrator, Jim Row, and Public Works Director, Curtis Stultz, also participating on the City's negotiating team. The City Administrator and Finance Department support staff were also instrumental in reaching the new agreement.

Representatives from the City and AFSCME met in a number of bargaining sessions during the spring and summer months and tentatively reached agreement on a new three-year contract, running July 1, 2022 – June 30, 2025. On July 26, 2022, AFSCME members met and voted to ratify the contract.

DISCUSSION:

Representatives of the City and AFSCME met in a number of meetings throughout the bargaining process to discuss the economic and operational realities facing the City and its employees. Significant to the discussions was ensuring that the new contract incorporates competitive wage adjustments that will not only benefit AFSCME members struggling with the impacts of the

Agenda Item Review:	City Administrator	Χ	City Attorney x	Finance x

economy and inflation, but will hopefully aid the City with retention and hiring activities, which remain challenging during the post-Covid era.

Ratification of this new contract will allow both parties to continue working together under an arrangement that provides stability and reliability for the City and the community.

In addition to the wage adjustments described above, the new Agreement also includes the following:

- 1. <u>Contract Term</u>. A three-year term, effective July 1, 2022 June 30, 2025. This three-year term results in offsetting the years for future bargaining of both the AFSCME and WPA contracts.
- 2. <u>Wages</u>. Effective and retroactive to June 26, 2022, a new wage schedule will be implemented that includes (i) a number of specialized market rate adjustments for the wages of about half of all represented positions; and (ii) an overall COLA increase applied to all positions of five percent (5%).

Effective June 25, 2023, positions within the wage schedule will receive a COLA increase of four percent (4%).

Effective June 23, 2024, positions within the wage schedule will receive a COLA increase of three percent (3%).

3. <u>Longevity Pay</u>. Implementation of a Longevity Pay schedule that provides an additional premium adjustment to wages for members that have been continually employed with the City for certain lengths of service as follows:

Longevity	Premium Percentage
(years of continuous service)	(calculated on base wage rate)
10 years	1%
15 years	1.5%
20 years	2%

4. <u>Premiums & Health Insurance</u>. Beginning January 2024, the City will increase the percentage amount of the employer contribution it pays for employees' health insurance monthly premiums. Currently, the City pays for 85% of eligible employees' monthly premiums for City-offered health insurance. Starting January 1, 2024, the City will increase that percentage to 90% of premium costs. The increase in coverage will put Woodburn more consistently in line with generally comparable cities in this region for

benefits offerings. Health insurance benefit coverage runs on a calendar year and any expected increased costs will be accounted for in future year budget adoptions.

- 5. <u>Standby Compensation</u>. Through negotiations, the City maintained its current standby compensation wage rates, which were restructured during bargaining three years ago. The parties did, however, agree to add a holiday-pay differential that will apply when employees are assigned to the standby schedule during weeks when a holiday is observed. Added holiday pay differentials are commonly found in standby program compensation schedules in other local jurisdictions.
- 6. Flexible Holiday Exchange Program. Recognizing that City employees have diverse backgrounds and that not everyone's heritage and beliefs match the public holiday schedule, the City and Union agreed to a new program that will allow an employee to exchange or swap out a City-observed holiday that they may not celebrate for one not covered by the contract. The parties believe that this unique program will largely aid with providing religious accommodation for employees, but may also provide employees with the opportunity to better observe culturally-significant events or ethnic holidays or to recognize a day of personal significance. The program will of course be subject to certain limitations, including the operational limitations of certain departments and positions, but the benefits of such a cost-neutral program seemed to outweigh any potential drawbacks that may arise from its implementation.
- 7. <u>Vacation Accrual Schedule</u>. The parties agreed to adjustments in the vacation accrual schedule, which will better align with the benchmark schedule of non-represented and contract employee positions. Both parties feel the new schedule will still provide generous benefits, while also resulting in a more sensible and uniform accrual of vacation time for all employees.
- 8. Other Operational Matters. Other operational adjustments that are included in the new contract include, (i) updates to sick leave usage policies; (ii) adjustments to how paid leave time is provided to union members for collective bargaining activities (per Oregon HB 2016); (iii) added procedural elements to the layoff provisions; and (iv) a new specialized pay adjustment for employees attaining/retaining desirable (non-required) professional licenses and certifications.

9. Retention Bonus. Upon execution of the new Agreement, the City will pay a pandemic-related retention bonus to each AFSCME member up to \$5,000. The bonus will be pro-rated based on the number of calendar days that the member employee was in service between March 20, 2020 – March 6, 2022.

This same retention bonus was previously approved for WPA members as part of their most recent contract ratification. Additionally, the City Administrator has authorized a similar bonus amount be provided to eligible non-represented, part-time, and contract employees of the City. The retention bonuses were approved by the Budget Committee and City Council and are included in the adopted FY 22/23 budget. They will be funded by a portion of the City's American Rescue Plan (ARPA) allocation, as authorized by the US Treasury.

A copy of the new agreement as tentatively agreed to by the parties, is attached to the ratification resolution for the Council's review.

FINANCIAL IMPACT:

The proposed new Agreement ensures that the City remains competitive among comparable jurisdictions and cities for recruitment and retention purposes, while meeting the City Council's financial objectives that were set by the current budget policies. The monetary impact of the new agreement is within the City's budgetary parameters.

COUNCIL BILL NO. 3195

RESOLUTION NO. 2196

A RESOLUTION AUTHORIZING EXECUTION OF A COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF WOODBURN AND THE AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES (AFSCME) LOCAL 642 FOR A CONTRACT BEGINNING JULY 1, 2022 AND ENDING JUNE 30, 2025

WHEREAS, the purpose of labor negotiations is to reach an agreement on matters relating to wages, hours, working conditions, and fringe benefits for certain represented employees; and

WHEREAS, the City of Woodburn (the "City") and the American Federation of State, County, and Municipal Employee AFL-CIO, Local 642 ("AFSCME") have engaged in a number of good faith bargaining sessions in order to reach an understanding on provisions to be included in a new Collective Bargaining Agreement (the "Agreement");

WHEREAS, the negotiating teams for the City and AFSCME have tentatively agreed to the contractual terms of the Agreement, and AFSCME ratified the Agreement through a ballot process with its members that concluded on July 26, 2022; NOW, THEREFORE,

THE CITY RESOLVES AS FOLLOWS:

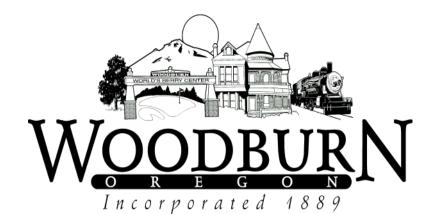
Section 1. That the Agreement tentatively agreed to by the parties and ratified by the AFSCME membership, attached to this Resolution as <u>Exhibit A</u>, is approved.

Section 2. That the City Administrator is authorized to execute the Agreement on behalf of the City.

Approved as to form:			
	City Attorney	Date	
	Approved: _		
		Eric Swenson, Mayor	
Passed by Council			

Page 1 – Council Bill No. 3195 Resolution No. 2196

Submitted to the Mayor	
Approved by the Mayor	
Filed in the Office of the Recorder	
ATTEST:	
Heather Pierson, City Recorder	
City of Woodburn, Oregon	





COLLECTIVE BARGAINING AGREEMENT between CITY OF WOODBURN

&

CITY OF WOODBURN LOCAL 642 AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES AFL-CIO.

July 1, 2022 – June 30, 2025

PREAMBLE

This Agreement is entered into between the City of Woodburn, Oregon, hereinafter referred to as the City, and the City of Woodburn Local 642, American Federation of State, County, and Municipal Employees AFL-CIO, hereinafter referred to as the Union. The purpose of this Agreement is to set forth the entire Agreement between the parties on matters relating to wages, hours, working conditions, and fringe benefits.

Table of Contents

Article	e 1 – Recognition	5
1.1	Included Positions	5
1.2	New Positions	5
Article	e 2 – Union Rights	5
2.1	Union Dues	5
2.2	Business Representatives	6
	Stewards	
2.4	Bulletin Boards	6
2.5	Leave Time for Collective Bargaining Activities	7
	Contract Distribution	
2.7	Addresses	7
Article	e 3 – Non Discrimination & Anti-Harassment Policy	7
	e 4 – Hours of Work	
4.1	General Provisions	8
4.2	Work Day and Work Shift Rotation	8
	Shift Assignment	
	Work Schedule Flexibility	
	Part-Time Employees	
	e 5 – Holidays	
	Holidays Observed	
	.1 Flexible Holiday Exchange Program	
	Holiday Pay	
	Weekend Holidays	
	e 6 – Vacation	
	Vacation Accrual	
	Vacation Utilization	
	Inclement Conditions	
	Termination	
	e 7 – Sick Leave	
	Sick Leave Accrual	
	Sick Leave Utilization	
	Sick Leave Limitations	
	FMLA/OFLA Sick Leave	
	Catastrophic Leave Bank	
	e 8 – Insurance and Retirement Benefits	
	Long Term Disability ("LTD") Insurance	
	Medical/Dental/Vision Insurance	
	Life Insurance	
	Coverage During Leaves of Absence	
	Workers Compensation	
	Retirement	
	e 9 – Premium Pay	
	Overtime	
	1 Callback Compensation	
	.2 Compensatory Time	
	Stand By	
	Acting in Capacity & Working out of Class	
9.3	Acting in Capacity & Working out Of Class	. 20

Article	10 – Rest Periods/Lunch Periods	.20
Article	11 – Leaves	.21
11.1	Bereavement Leave	21
11.2	Witness/Jury Duty	21
11.3	Military	21
11.4	Leave Without Pay	21
11.5	Voting Leave	21
	12 – Wages	
	Wage Rates	
	Pay Periods/Pay Days	
	Annual Performance Evaluations	
12.4	Longevity Pay	22
	13 – Discipline and Discharge	
13.1	Disciplinary Action	23
	Due Process	
13.3	Just Cause	24
13.4	Confidentiality	24
13.5	Probationary Employees	24
	14 – Seniority	
14.1	Definitions	24
14.2	Seniority List	24
	Effect of Leave Without Pay	
	Transfers	
14.5	Job Posting and Seniority	25
	15 – Probation	
15.1	Voluntary Demotion	26
	16 – Layoff	
	Definition	
16.2	Procedure	26
16.3	Recall	27
	17 – Clothing and Equipment	
	Protective Clothing and Safety Equipment	
	Uniforms	
	18 – Grievance	
	Definition	
	Procedure	
	Limitations on Arbitration	
	Time Limits	
	19 – Management Rights	
	General Rights	
	Specific Rights	
	Contracting and Subcontracting of Work	
	Existing Benefits and Work Rules	
	20 – City Security	
	21 – Substance Abuse Policy	
	22 – Savings Clause	
	23 – Labor/Management Committee	
	Formation	37

23.2 Representation	
23.3 Intent	
23.4 Continuance	
Article 24 – Bilingual Pay	38
Article 25 – Educational Incentives	
25.1 Tuition Reimbursement	38
25.2 Certifications & Licenses	39
Article 26 – Mileage Reimbursement	4
Article 27 – Terms	
27.1 Terms of Agreement	4
27.2 Contract Amendments	
Appendix A – Wage Rates	4
Appendix B – Stand-by Assigned Employees	

ARTICLE 1 – RECOGNITION

1.1 INCLUDED POSITIONS:

The City recognizes the Union as the sole and exclusive bargaining agent for full-time and part-time (regularly scheduled to work 20 hours per week or more).

Employees in the bargaining unit with respect to matters relating to wages, hours, and working conditions. Appendix A, attached hereto and by reference incorporated herein, is a listing of all bargaining unit employees.

Supervisory employees and confidential employees as governed by State statute, irregular part-time employees regularly scheduled to work less than twenty (20) hours per week (except in circumstances that they must replace full-time and part-time employees on a temporary basis), seasonal and special projects employees, who shall not be employed by the City for more than nine (9) months in any calendar year, and persons hired for a limited period of time for training funded in whole or in part, by the state, federal, or other governmental unit are specifically excluded.

Part time Library staff: Two (2) Part-Time Librarians may work up to 25 hours/week and be exempt from health benefits coverage (not transferable to other departments).

1.2 **NEW POSITIONS:**

In the event the City creates a new classification or revises a current classification that would place the classification in the bargaining unit, the Union will be notified of such classification before any employees are hired in such new classification. If the Union disagrees with the proposed salary range, the Union shall notify the City within fifteen (15) days in writing if it wishes to discuss the wage or other conditions of employment for the classification, and an additional fifteen (15) days in which to commence discussion on the issue. If the parties are not in agreement over the proposed salary range or other issues, the City may fill the position with its proposed salary rate serving as a provisional salary rate until the above-described discussions have resulted in an agreement on the issue. If the parties subsequently agree upon a salary rate that is different than the initial City-proposed rate, such agreed-upon rate shall be retroactive to the date that the position was filled.

ARTICLE 2 - UNION RIGHTS

2.1 UNION DUES:

- The City agrees to deduct the Union membership dues and other authorized fees or
 assessments from the pay of those employees who have affirmatively consented to- and
 authorized such deductions in writing. Unless otherwise required by law, affirmative consent
 and authorization for the deduction of membership dues will be evidenced by the Union
 providing the City with a copy of any new member's signed AFSCME Local 642 membership card.
- 2. Union dues will be deducted from each employee's paycheck and disbursed to the Union on schedule with the City's biweekly pay period. The aggregate deductions of all employees shall be remitted by Automatic Clearing House (ACH) transfer to AFSCME by the tenth (10th) day after such deductions are made.

- 3. Along with the remittance of employee deductions, the City shall also provide electronic employee list(s) to the Union by the tenth (10th) day after deductions are made. Such list(s) shall include: all new and terminated employees in the bargaining unit, the listed names of employees with first and last name in separate columns, the employee's ID, address, date of birth, job title, and the employee's membership dues amount contribution for the subject pay period.
- 4. Employees are subject to the terms of their Union membership. The amount of dues to be deducted for Union-represented employees shall be indicated by the Union to the City in writing and shall be effective on the date indicated by the Union.
- 5. The Union will indemnify, defend and hold the City harmless against any claim made and against any suit instituted against the City as a result of any City action taken pursuant to the provisions of this Article. The Union and the City each agree to reimburse any monies paid or not paid in error within thirty (30) days of notification of such error.

2.2 BUSINESS REPRESENTATIVES:

The Union shall provide the City with an updated list of authorized representatives, who shall number no more than two at any one time. Union activities will normally be carried on outside of working hours. Use of any City location deemed a public facility shall be available to the Union on the same basis as any other organization.

Reasonable access to employee work locations shall be granted to the authorized representative, provided the visit does not interfere with the normal operations of the department or with established safety or security requirements.

2.3 STEWARDS:

The Union shall make a diligent effort to have in place a minimum of two and up to four stewards, one of whom shall serve as Chief Steward.

The Union shall provide the City with timely written notification of all steward appointments. All meetings held with City management pursuant to Steps I through IV of the Grievance Procedure (Article 18) hereof, shall include the grievant and/or one union representative of the Union's choosing. Stewards who attend meetings with City representatives pursuant to the above shall suffer no loss of regular pay as a result of such attendance. The City shall, however, be under no obligation to hold such meetings during the paid time of the stewards and other employees attending same. Except as provided above, all time taken off by stewards shall be without pay. It shall be the responsibility of each individual employee to provide reasonable advance notice to his or her immediate supervisor when time away from the job will be required under this section. Union Representatives may attend meetings held pursuant to any step of the Grievance Procedure, provided the City has received reasonable advance notice of such attendance.

2.4 BULLETIN BOARDS:

In accordance with past practice, the Union will be allowed use of adequate space on designated City bulletin boards to post information regarding Union business. Specifically, such notices will include information about time and place of meeting, Union social and charitable activities, and posting of official Union publications.

2.5. LEAVE TIME FOR COLLECTIVE BARGAINING ACTIVITIES

Pursuant to Oregon House Bill 2016 (2019), the City shall grant designated representatives of the Union with leave time to engage in Collective Bargaining as follows:

- 1. **Negotiation Team**: The Union's collective bargaining negotiation team may consist of up to four (4) on-duty employees that may engage in bargaining activities during regularly scheduled work hours without loss of compensation, seniority, leave accrual, or any other benefits.
- 2. **Bargaining Activities**: Bargaining activities include attendance at collective bargaining negotiation sessions or meetings with City representatives, as well as Union bargaining-team meetings and caucuses that may occur on the day before-, day of-, or day after scheduled negotiation sessions.
- 3. Supervisor Notification: It shall be the responsibility of the Union's designated representatives to provide reasonable advanced notice to their immediate supervisor(s) when time away from the job will be required under this Section. All time spent on bargaining activities during regularly scheduled work hours will be subject to the reasonable operational needs of the City.
- 4. Activities Outside of Working Hours: Nothing herein shall require City representatives to engage in collective bargaining activities with the Union during an employees' regularly scheduled work hours. Attendance at meetings or activities that occur outside of an employee's regularly scheduled working hours will be unpaid, will not be considered as time worked, and will not incur any overtime compensation or otherwise cause the employee to go into an overtime status.
- 5. Attendance by Non-Bargaining Team Members: Nothing herein shall prevent the Union from having non-bargaining team members attend the bargaining activities identified in this Section, however, such employees attend activities on their own time without compensation and with prior notice to the City.

2.6 CONTRACT DISTRIBUTION:

The City shall, at no cost to the Union, provide the Union with the original paper and digital copy of this Agreement. The Union shall provide at its cost a copy of this Agreement to each current employee, and the City shall provide at its cost a copy of this Agreement to each employee who is hired during the term of this Agreement.

At the time an employment offer letter has been extended to an individual for a union-represented position, the City agrees to provide the individual with contact information for the current Union chief steward.

2.7 ADDRESSES:

The City will provide current home addresses it has on record for all bargaining unit employees each fiscal year at the request of the Union.

ARTICLE 3 - NON-DISCRIMINATION & ANTI-HARASSMENT POLICY

The City maintains a Non-Discrimination Policy and Procedures to address workplace harassment, discrimination, and retaliation that violates state and federal law. This policy document was most

recently adopted in January 2017, with a commitment from the City to review the policy every three years or as state and federal regulations are revised and necessitate a change in the policy or procedures.

It is recognized that both state and federal law provide the means for resolution of discrimination and harassment questions. Therefore, a claimed violation of the provisions of this Article shall not serve as the basis for a claim of a violation of this Agreement.

ARTICLE 4 - HOURS OF WORK

4.1 GENERAL PROVISIONS:

A full-time employee's work week shall consist of five (5) consecutive work days, not necessarily Monday through Friday, followed by two (2) consecutive days off. A full-time employee's regular workday shall be eight (8) consecutive hours except for an unpaid lunch period. Except in an emergency or in such instances that a shift position is vacant due to a circumstance outside the control of the City, such as illness on a temporary basis, established work schedules showing workdays, shift assignments, and work hours will not be changed without fourteen (14) calendar days written notice to affected full-time employees. For the purposes of this Agreement, emergency shall be defined as the performance of City functions or services necessary to protect or reserve the lives, safety, health, or property of the citizens of Woodburn threatened by unusual or unforeseen circumstances. Nothing in this Article or any part of this Agreement shall be construed as a guarantee of hours of work.

4.2 WORK DAY AND WORK SHIFT ROTATION:

When a change in the assigned work day schedule or change in shift occurs, the provisions of 4.1 shall not apply. Such rotation shall not normally occur more than once each four weeks. In such instances, overtime shall not be required unless it is required under Article 9 of this Agreement.

4.3 SHIFT ASSIGNMENTS:

Excepting probationary employees, who may be assigned to work any shift, the City shall do one of the following within each operational area:

- 1. Allow employees within a given classification and job assignment to select their shift assignment based upon seniority with the most senior employee to select his or her desired shift first; or
- 2. Provide for a rotation of shift assignments whereby all employees within a given classification and job assignment serve an equal amount of time on each of the available shifts or work schedules.

4.4 WORK SCHEDULE FLEXIBILITY:

It is not the intention of this Article to prevent the City and an individual employee from mutually agreeing to alternative work schedule(s). Such alternative work schedule may be initiated by either the City or an employee(s), but must be reduced to writing before it is implemented. In the event an employee requested flexible work schedule is denied, the employee shall be provided the operational reason for such a refusal by the Department head. Refusals of flexible scheduling by the Department Head are not grieve-able but may be subject to review by the City Administrator. In all cases, the City reserves any and all management rights related to scheduling employee work hours, or any other rights that may be applicable under this article. An alternative work schedule shall conform to the

requirements of the Fair Labor Standards Act but may be at variance with the provisions of 4.1, 4.2, and 4.3 of this Article and may also, notwithstanding the provisions of 9.1, allow an employee to agree to a work schedule that includes more than eight (8) hours of daily work without overtime pay.

4.5 PART-TIME EMPLOYEES:

Part-time employees are included under the provisions of this Article as it is applicable to their work assignments.

ARTICLE 5 - HOLIDAYS

5.1 HOLIDAYS OBSERVED:

Employees shall receive the following paid holidays:

New Year's Day January 1

Martin Luther King Day
Presidents Day
Third Monday in January
Third Monday in February
Memorial Day
Last Monday in May

June teenth June 19
Fourth of July July 4

Labor Day First Monday in September

Veterans Day November 11

Thanksgiving Day Fourth Thursday in November

Day after Thanksgiving Day Friday after the fourth Thursday of November

Christmas Eve last half of the shift on December 24

Christmas Day December 25

After completion of twelve (12) months of continuous service, each employee shall be entitled to one (1) floating holiday with pay during each fiscal year. The floating holiday shall be taken at the option of the employee, subject to the operating requirements of the City.

Part-time employees shall earn prorated holiday benefits based on how their regularly scheduled work week compares to that of a full-time employee.

5.1.1. FLEXIBLE HOLIDAY EXCHANGE PROGRAM

Recognizing that City employees have diverse backgrounds and that not everyone's heritage and beliefs match the public holiday schedule detailed above, the City will allow an employee to exchange or swap out a City-observed holiday that they may not celebrate for one not covered by the above list, subject to the limitations and procedures outlined below. Meaning, an employee would work on one of the observed holidays listed above in exchange for a holiday day off that would occur at a different time.

An Employee working on an observed holiday under this Section does not incur holiday premium pay for those hours worked.

Holiday Exchanges may be used for purposes of providing a religious accommodation for an employee, but may also be used by an employee to recognize a day of personal significance, to undertake a civic engagement, to observe a culturally-significant event or ethnic holiday, or carry out some other personally important activity.

To get approval for a Holiday Exchange, the employee must first get their supervisor's pre-approval for the exchanged/swapped days, complete a Holiday Exchange Form, and submit the form to Human Resources at least two (2) weeks prior to the subject holiday.

Not all City positions or departments may be able to suitably accommodate Holiday Exchanges. Holiday Exchanges will only be approved when the employee's position has the operational capacity to be performed either remotely or onsite while city facilities are otherwise closed due to the observed holiday. Additionally, a holiday exchange will only be approved when it won't negatively impact City or departmental operations. The City may also give preference to approving Holiday Exchanges that correspond to an employee's request for a religious accommodation.

Exchanged Holidays will only be approved for full-day swaps; no partial days or hours. Exchanged Holidays must also be forward-looking swaps or occur within the same pay period. The Exchanged Holiday day off must then be taken within three (3) months of the originally swapped holiday and cannot carry over to a future fiscal year (i.e. past June 30th of the current FY). Exchanged holidays also have no cash value and will not be paid out should an employee separate from City employment before taking their Exchanged Holiday day off.

5.2 HOLIDAY PAY:

If an employee's scheduled day off falls on such holiday, he or she shall be granted a holiday with pay to be taken at the mutual convenience of the employee and the City.

Whenever a holiday occurs during an employee's authorized leave with pay, eight (8) hours of such leave shall be charged to holiday time.

Employees required to work on a recognized holiday shall be compensated for all hours worked on the holiday at one and-one-half times (1-1/2) times their regular rate of pay, in addition to their regular holiday pay. In lieu of holiday premium pay, the city and an employee may agree to an alternative day off with pay. Such agreement shall be in written form and executed prior to the holiday.

When a holiday occurs on a day which an employee is regularly scheduled to work more than eight hours (such as for an employee working a four 10 hour day schedule), the employee may choose one of the following options:

- 1. Receive eight (8) hours of holiday pay and charge two (2) hours against any of the employees accrued leave, except sick leave;
- 2. Receive eight (8) hours of holiday pay and forfeit two (2) hours of pay;
- 3. Change to a work schedule of five 8-hour days for the entire week. To select this option the employee must notify the supervisor at least seven (7) days in advance of the start of the work week and receive approval from the supervisor to do this; or
- 4. With the supervisors' approval, work two (2) extra hours during the same work week. These two (2) extra hours will be paid at the employee's regular rate of pay.

5.3 WEEKEND HOLIDAYS:

Whenever a holiday falls on Sunday, the following Monday shall be observed as the holiday. Whenever a holiday falls on Saturday, the previous Friday shall be observed as the holiday. In the case where Christmas Day falls on a Monday, Christmas Eve will be observed on the preceding Friday.

ARTICLE 6 - VACATION

6.1 VACATION ACCRUAL:

Full-time employees shall accrue vacation time per the accrual schedule outlined below.

Accrued vacation shall be credited as earned (per pay period), except that newly hired employees are not eligible to take accrued vacation time until the employee has completed their first six (6) months of continuous service.

An employee's earned but unused vacation credits shall not be allowed to accumulate beyond the maximum accrual amounts included in the schedule below. Employees who are unable to use vacation due to unusual or catastrophic circumstances, the City's operational needs, or due to a medical or worker's compensation leave where sick leave use is required first, may be allowed an exception to the maximum accrual rule, provided all other options are exhausted and a request is made to the employee's Department Director and the HR Director.

The City may initiate a mandatory vacation of sufficient duration to reduce unused vacation below the maximum allowable accumulation.

Part-time employees shall earn prorated vacation benefits based on how their regularly scheduled workweek compares to that of a full-time employee.

Vacation accrual schedule

Below is the table of the vacation accrual schedule.

Length of Service	Full-Time Hourly Accrual Per Pay Period	Full-Time Days Per Year	Max Accrual in Days
Beginning day 1 through 24th month (years 1 – 2)	3.38	11 days	22 days
Beginning on 25th month – 60th month (years 3 – 5 years)	4.00	13 days	26 days
Beginning on 61st month – 120th month (years 6 – 10)	5.23	17 days	34 days
Beginning on 121st month – 180th month (years 11 – 15)	6.15	20 days	40 days
Beginning on 181st month – 240th month (years 16 – 20)	6.77	22 days	40 days
Beginning on 241st month – 300th month (years 21 – 25)	7.38	24 days	40 days
301+ months (years 26+)	8	26 days	40 days

^{**}This accrual schedule will be implemented beginning January 1, 2023 (prior to January 1, 2023, employees shall continue to accrue vacation benefits pursuant to the schedule in the AFSCME-City of

Woodburn Collective Bargaining Agreement, dated July 1, 2019 – June 30, 2022). No employee will have their current vacation accrual rate (per pay period) decreased through implementation of this schedule.

6.2 VACATION UTILIZATION:

Starting on the 1st business day of April and for the remainder of the month, the City shall circulate or post within each department or division, as applicable, a signup register. Such register shall be posted/circulated to employees in the order of their seniority, beginning with the most senior employee. At the time such vacation sign-up register is posted/circulated, each employee shall have the opportunity to designate one uninterrupted period for vacation within those parts of the upcoming fiscal year when utilization of vacation will be allowed. Following the circulation of the vacation sign-up register, each employee may schedule any remaining accrued vacation on a first-bid basis; that is, the first employee to request vacation for a period when the utilization of vacation is allowed shall, subject to operational needs of the City, be allowed to utilize vacation. The foregoing shall not preclude the possibility of several employees within a given department or division, as applicable, being allowed to take vacation at the same time, nor shall it preclude the possibility of denying requested vacation to an employee or several employees while other employees are allowed to take vacation when such denial of vacation is due to operational requirements that do not uniformly affect all employees in the given department or division. Nothing in this article precludes the granting of vacation outside of the bid process, at any time, so long as such approval does not provide operational difficulties for the department or division.

6.3 INCLEMENT CONDITIONS:

In the event inclement conditions exist to the extent that the employee cannot safely travel to the work site, and neither the City nor the employee can determine an alternative method of transportation, the employee may use accrued vacation leave or compensatory time to cover their absence.

In the event that the City Administrator closed one or more the City's operations center(s) due to inclement weather, all employees affected by the closure will receive the same benefit of paid hours if paid hours are available.

6.4 TERMINATION:

Upon the termination of a regular employee, he or she shall be paid for all unused vacation at his or her current rate of pay. In case of death, compensation for accrued vacation leave shall be paid in the same manner the salary due the deceased is paid to the estate/spouse.

ARTICLE 7 - SICK LEAVE

7.1 SICK LEAVE ACCRUAL:

Full-time employees shall accrue sick leave at the rate of one eight-hour (8-hour) day for each full calendar month of service from the first month of employment to a maximum of one hundred eighty (180) eight-hour (8-hour) days.

Part-time employees shall accrue prorated sick leave benefits based on how their regularly scheduled work week compares to that of a full-time employee. Accrued but unused sick leave shall not be compensated upon termination or death.

7.2 SICK LEAVE UTILIZATION:

If any employee is unable to work his or her regularly scheduled work day(s) by reason of illness or injury, accrued sick leave shall be applied subject to the following limitations:

- 1. **Secondary Employment**: Unless the employee has notified the City in advance and received approval, sick leave benefits shall not be allowed when an employee is working for another employer, or otherwise engaged in an activity for profit during the period of disability.
- 2. **Industrial Accidents**: Employees who become eligible for worker's compensation benefits and who are off work due to a compensable injury shall be allowed to use accrued sick leave to supplement the worker's compensation so as to receive their regular gross wage. Employees can also use sick leave for the three (3) day waiting period for worker's compensation benefits.
- 3. **Doctor's Certification**: The City may, through the employee, request verification from the employee's health care provider that substantiates the injury or illness preventing the employee from working. An employee may be required by their department head or designee to provide a release to return to work form from the employee's health care provider upon injury or illness.
- 4. **Family Illness**: Employees may use their allowance of sick leave when unable to perform their work duties by reason of illness or injury, or by serious illness or disability in their immediate families requiring the presence of the employee, or any other purpose provided by FMLA, OFLA, or Oregon SB 454 (2015) for such period as the employee has accrued sick leave. Immediate family is defined as: husband, wife, mother, father, son, daughter, foster children, brother, sister, father-in-law, mother-in-law, grandparents, or other relative living in the employee's household.

If the City has reason to believe that an employee may have been abusing sick leave, it may, by prior written notification to that employee, require a physician's certification of illness for absences of three (3) days or less as a condition of receipt of sick leave benefits.

In addition, a physician's certification of fitness to return to work may be required if there is some reason to question the employee's fitness to perform his or her assigned duties.

7.3 SICK LEAVE LIMITATIONS:

- Notification: The employee shall notify his or her immediate supervisor in accordance with
 procedures that may be established by such supervisor of the need for sick leave as soon as
 possible after his or her knowledge of the need. If the employee fails to notify his or her
 supervisor in a timely manner, it shall be cause for denial of sick leave benefits.
- 2. **Abuse**: The abuse of sick leave shall be cause for disciplinary action.

7.4 FMLA/OFLA SICK LEAVE:

Employees, who meet the requirements, may be eligible for federal or state protected leave such as the Family Medical Leave Act (FMLA) and Oregon Family Medical Leave Act (OFLA).

7.5. CATASTROPHIC LEAVE BANK:

The City offers a Catastrophic Leave Program as a temporary means for employees to assist another employee who, because of a personal non-occupational catastrophic illness or injury, or the catastrophic illness or injury of a family member, is unable to work and whose absence will result in a substantial loss of pay to the employee.

In addition to the catastrophic leave policy on donations that permits an employee to donate their accrued vacation, executive, or management leave, employees may also donate a limited number of hours of their accrued sick leave. In accordance with all other provisions of the catastrophic leave policy and procedures, an employee with at least 120 hours of accrued sick leave, may donate a maximum of up to one-third (1/3) of their accrued sick leave hours to the catastrophic leave bank for use by one or more eligible employees.

ARTICLE 8 - INSURANCE AND RETIREMENT BENEFITS

8.1 LONG-TERM DISABILITY ("LTD") INSURANCE:

The City shall provide a long-term disability insurance benefit that insures sixty-six and two thirds percent (66 2/3%) of the employee's gross base salary at the time of disability or illness, if the employee is disabled or becomes ill and is unable to work. This coverage shall provide protection when ninety (90) calendar days have elapsed from the time of injury or illness. Benefits paid by LTD insurance are not considered City paid leave or City paid time. Employees on LTD who have exhausted all paid leave will be placed on leave without pay status. The employee on leave without pay status may at their own expense purchase health insurance coverage as allowed by law.

If the provisions of this Section 8.1 conflict with the actual policy language or the decision of the insurer, the policy and/or the insurer's decision shall prevail and such matters shall not be subject to the grievance procedure.

8.2 MEDICAL DENTAL VISION INSURANCE:

The City agrees to offer two Health plans from which employees may choose; The Kaiser Plan or the Regence Blue Cross High Deductible Health Plan (with a Health Savings Account (HSA)). Kaiser participants will <u>not</u> be eligible for the HSA account.

City Contributions for July 1, 2022 – December 31, 2023

The City's contribution for eligible employees and their eligible dependents (as defined by the Plan Administrator) shall be 85% of the monthly premiums for City-offered health insurance (medical, dental, and vision), plus the Health Savings Account contribution for Regence Blue Cross participants only as outlined below. Employees are eligible to enroll in the City-offered health insurance if the employee is regularly scheduled to work 20 or more hours per week. For part-time employees regularly scheduled to work 20 or more hours per week, the City's contribution to the HSA and the medical plan premiums shall be prorated based on the budgeted FTE of the position.

City Contributions for January 1, 2024 – July 30, 2025

The City's contribution for eligible employees and their eligible dependents (as defined by the Plan Administrator) shall be 90% of the monthly premiums for City-offered health insurance (medical, dental, and vision), plus the Health Savings Account contribution for Regence Blue Cross participants only as outlined below. Employees are eligible to enroll in the City-offered health insurance if the employee is regularly scheduled to work 20 or more hours per week. For part-time employees regularly scheduled to

work 20 or more hours per week, the City's contribution to the HSA and the medical plan premiums shall be prorated based on the budgeted FTE of the position.

HSA Contributions

The City will provide HSA contributions for all employees enrolled in the Regence Blue Cross High Deductible Plan, with annual funding at 100% of the employee's deductible amount. HSA funding contributions will be prorated throughout the year, with the total contribution amount based on an employee's time in service during the year (i.e. based on start/end dates of employment with the City).

Employees eligible to receive City contributions to their HSA account, will receive payments from the City on a bimonthly basis on schedule with the employee's pay period. The amount of the bimonthly contribution will equal the deductible total, based on the employee's health plan level, divided by twenty-four (24) pay periods over the year. As with the employee health coverage premium, there will be two (2) pay periods annually for which no contributions will be made.

It is also noted that the insurance coverage runs on a calendar year and therefore funding to the HSA will also be as per calendar year in concurrence with the insurance plan duration.

Opt-Out

All employees regularly scheduled to work 20 or more hours per week are required to participate in the health insurance program unless the employee can prove they have attained medical insurance coverage via an alternative means. In which case, employees may opt out of the Plan and receive a \$100.00/month incentive from the City (starting January 1, 2023). In order for the City to offer the optout, the following must apply:

- The employee and dependents shall be enrolled in another employer's group health plan (e.g. a spouse's employer group plan) that provides minimum essential health coverage as required by the Affordable Care Act, and the employee shall provide documentation of such enrollment upon each annual opt-out election and upon City request.
- The City will randomly audit employees who opt out of the City medical insurance program. Any
 employee who has opted out of the program and does not have and/or maintain group
 coverage will be required to pay back any incentive pay they have received for the entire
 contract period regardless of when their coverage ceased.

HRA VEBA

For any employee regularly scheduled to work over 30 hours per week who is ineligible to participate in the HSA program because of Federal rules, an HRA (Health Reimbursement Account) funded through a VEBA (Voluntary Employee Beneficiary Association) Plan with an equivalent contribution from the Employer may be made on behalf of the employee. Contributions on behalf of each eligible employee shall be based on the following selected funding sources/formulas:

 Contributions for employees who are HSA ineligible. Eligibility is limited to employees who are ineligible to receive and/or make contributions into a health savings account due to other firstdollar / non-high deductible health plan coverage or Medicare. Such employees will receive a contribution into an HRA VEBA account instead of an HSA. 2. If an employee becomes HSA eligible in subsequent plan years (e.g. is no longer covered under another non-high deductible health plan), the city will establish and make contributions into an HSA and cease contributing to the employee's HRA VEBA account. If the employee has a balance in their HRA VEBA account, they will be required to fill out an "election of limited plan coverage" form for their HRA VEBA account so that they are eligible to receive and/or make contributions into their HAS.

8.3 LIFE INSURANCE:

The City shall provide the following life insurance benefits for the duration of this Agreement:

- 1. A 24-hour term life insurance policy equal to one times the employee's basic annual salary rounded to the next higher \$1,000.
- 2. An Accidental Death and Dismemberment insurance policy equal to one times the employee's basic annual salary rounded to the next higher \$1,000.

8.4 COVERAGE DURING LEAVES OF ABSENCE:

Employees on leaves of absence with pay will have their group benefits continued as long as they maintain benefit eligible status. The employee portion of the premium will continue to be deducted from their pay. Premiums for benefits are paid one (1) month in advance.

Coverage will continue during authorized protected leave whether paid or unpaid. For authorized unpaid leave, employees may elect to continue coverage at their own expense through COBRA. The City shall comply with all state and federal laws on COBRA benefits. Health plan participants no longer eligible for coverage, may be eligible to purchase coverage under the City's health insurance program in accordance with federal and state laws.

8.5 WORKERS' COMPENSATION:

Pursuant to applicable law, the City shall continue to provide coverage under the Workers' Compensation plan for job-connected injuries or disabilities. In the event an employee suffers an injury while on the job with the City for which he or she is eligible for time-loss benefits, such employee shall continue to receive the medical, dental, long-term disability, and life insurance benefits provided for herein for the first ninety (90) days of such injury while the employee is on concurrent FMLA leave.

8.6 RETIREMENT:

For the duration of this Agreement, the City shall continue the current retirement plan offered through the Public Employees Retirement System (PERS).

- 1. **Retirement Contributions.** On behalf of employees, the City will continue to "pick up" the six percent (6%) employee contribution payable as the law requires.
- 2. Effect of Changes in Law. In the event that the City's payment of a six percent (6%) employee contribution under Section 1, as applicable, must be discontinued due to a change in law, valid ballot measure, constitutional amendment, or a final, non-appealable judgment from a court of competent jurisdiction, The City shall increase by six percent (6%) the base salary for each classification in the salary schedules in lieu of the pick-up. This transition shall be done in a manner to assure continuous payment of either the pick-up contribution or a six percent (6%) salary increase.

For the reasons indicated above, or by mutual agreement, if the City ceases paying the applicable pickup and instead provides a salary increase for eligible bargaining unit employees during the term of the Agreement, and bargaining unit employees are able, under the existing law, to make their own six percent (6%) contributions to their PERS account or the Individual Account Program account, as applicable, such employees' contributions shall be treated as "pretax" contributions pursuant to Internal Revenue Code, Section 414 (h)(2).

ARTICLE 9 - PREMIUM PAY

9.1 **OVERTIME**:

Employees, who are eligible for overtime pay under the Fair Labor Standards Act (FLSA), and required by the City to work beyond eight (8) hours in any twenty four-hour (24 hour) period beginning at 12:01 a.m., or more than forty (40) hours per week, shall receive overtime compensation.

In no case shall overtime be paid twice for the same hours.

Overtime shall be computed to the nearest quarter-hour (1/4) hour.

Overtime pay shall be based on the actual number of hours on duty per day or week, except in instances of Emergency Callback, Stand-by Callback, or Remote Emergency Callback (see 9.1.1 and 9.2. below).

The overtime rate shall be time-and-one-half the regular rate of compensation, in the form of either compensatory time (see 9.1.2) or pay.

In the event that sufficient acceptable personnel do not accept overtime on a voluntary basis, or in the event of an emergency, such additional personnel as are deemed necessary by the City may be required to work overtime. As provided by ORS 653.269, the provisions of ORS 653.268 shall not apply to the employees covered by this Agreement.

9.1.1 CALLBACK COMPENSATION:

Employees who are called to return to work due to either an Emergency Callback, Stand-by Callback, or Remote Emergency Callback shall receive overtime compensation as follows:

- 1. **Emergency Callback & Stand-by Callback**: Three (3) hours of overtime will be guaranteed; except, in instances where an employee's callback overlaps or coincides with the start of employee's regularly scheduled shift, then the employee may opt to either:
 - (i) Receive compensation for the callback at the rate of three hours of overtime in addition to working their regularly scheduled 8-hour day at the regular rate of pay for those eight hours; or
 - (ii) Request to work a flexible schedule on the day of the callback, working a total time of an 8-hour shift at their regular rate of pay, starting at the time of the callback and allowing for an early departure from the work site.

Example of Compensation Options:

**Assuming an 8 a.m. – 5 p.m. regularly-scheduled workday	Callback Time	Total Hours Worked	OT Hours Paid	Regular Rate Hours Paid
Option (i)	Callback at	9.5 Hours	3	8
Option (i)	6:30 a.m.	(6:30 a.m. – 5 p.m.)		
	Callback at	8 Hours	0	8
Option (ii)	6:30 a.m.	(6:30 a.m 3:30 p.m.)	J	

2. **Remote Emergency Callback**: Thirty (30) minutes of overtime will be guaranteed in instances where an employee troubleshoots from home using an electronic device.

For purposes of this Section:

- 1. **Emergency Callback**: means when an employee has completed a work shift and is called to return to work prior to the start of their next regularly scheduled shift.
- 2. **Remote Emergency Callback**: means when an employee trouble shoots from home using an electronic device and would otherwise, except for use of said device, be required to return to the work site to resolve an emergency.
- 3. Stand-by Callback: defined pursuant to Section 9.2

Hours worked on City property as a result of a callback excludes any travel time to and from the work site, which is unpaid.

9.1.2 COMPENSATORY TIME:

Unless otherwise prohibited by state or federal law, employees may elect to be compensated for overtime either in the form of pay or compensatory time off. Compensatory time off in lieu of overtime pay shall accrue at the rate of one and one-half (1 1/2) hours for each eligible overtime hour worked. Employees may accrue a maximum of forty (40) hours of compensatory time off between January 1st and November 30th of each calendar year. By the last day of each calendar year (Dec. 31), the City shall pay out to applicable employees any accrued and unused compensatory time off earned.

Accrued compensatory time may be used by the employee in the same manner and in conjunction with accrued vacation time. The foregoing shall not preclude the possibility of the City denying requested compensatory time off to an employee or several employees when such denial is due to operational requirements of the given department or division.

Upon the termination of a regular employee, he or she shall be paid for all unused compensatory time off at his or her current rate of pay. In case of death, compensation for accrued compensatory time off shall be paid in the same manner the salary due the deceased is paid to the estate/spouse.

9.2 STANDBY:

Stand-by Responsibilities:

Subject to program needs and budget limitations, the City may assign certain bargaining unit employees to "Stand-by Required" positions. The determination of the number, qualifications, and the assigned

individuals is the sole and exclusive determination of management. Stand-by positions are ones that require an employee to receive emergency phone calls during the evenings or weekends outside their normal working hours, and respond to such emergencies either remotely or in-person over the course of a weekly assignment.

Stand-by duty "standards" are required to be met by any employee assigned to Stand-by duty and include the following:

- 1. Employee shall be immediately accessible by telephone or other agreed to device at all times while on Stand-by.
- 2. The employee shall respond within 15 minutes of a call out and be on City property within 60 minutes of the original call out for service.
- 3. Employees must be in "duty ready" condition; this means strict adherence to the substance abuse policy. In the event an employee is taking medications while on Stand-by by duty the employee has a responsibility to immediately report such condition to his/her supervisor immediately.

A failure to fully adhere to the Stand-by standards listed above will result in the employee losing its Stand-by compensation for the subject assignment period and may result in the employee being subject to discipline.

Scheduling:

Management will use its best efforts to schedule Stand-by duties on a rotational basis and based on operational needs not less than three (3) months in advance. Management will schedule Stand-by duty assignments to be on a weekly basis. No employee shall be scheduled for more than seven (7) consecutive days until they have had fourteen (14) consecutive days without a Stand-by assignment, except in cases of an emergency.

The City shall schedule those employees currently assigned and serving in Stand-by required positions to a minimum of twelve weeks of Stand-by duties per calendar year, provided the employee meets fitness for duty requirements and is available for assignments (see attached <u>Appendix B</u> for a list of subject employees). If a subject employee is voluntarily removed from the Stand-by schedule that employee thereafter relinquishes the right to the twelve weeks of guaranteed assignments provided for by this section.

Stand-by assignments made by management shall be tracked on a calendar year basis. Employees may voluntarily "swap shifts" provided the employees' immediate supervisor is informed of the swap in writing at least ten (10) days in advance of the proposed swap.

Whenever an unforeseen event occurs requiring a variation from the posted schedule, management will attempt to remedy such occurrences by asking for volunteers first; then by assigning duty by inverse seniority second. If management still cannot adequately meet the Stand-by shifts needed, due to an emergency and/or unforeseen need then additional Stand-by assignments may be made to employees not normally assigned.

Notwithstanding the above, the intent of management is to fairly schedule Stand-by duties to bargaining unit employees to the extent practical.

Right-to re-assigns:

It is agreed by all parties to this agreement that the assignment of employees to "Stand-by required" is recognition of quality superior work performance. Accordingly, if management determines that an employee is no longer performing at such a standard then nothing in this agreement will preclude the reassignment of a different employee.

Compensation:

Employees assigned to Stand-by duties shall be compensated for each weekly Stand-by assignment as follows:

• For those employees named in <u>Appendix B</u>: 13 hours pay at the employee's regular rate

• For all other assigned employees: 10 hours pay at the employee's regular rate

For weeks where an employee is assigned to standby duties and an observed holiday falls within that same week, the employee will receive three (3) hours of pay at the employee's regular rate in addition to the regular compensation provided for the standby assignment.

If a subject employee named in <u>Appendix B</u> is voluntarily removed from the 12-weeks per year Stand-by schedule that employee thereafter relinquishes the right to the thirteen (13) hours pay provided for by this section and will thereafter only be compensated at the ten (10) hour rate for any future Stand-by assignments.

Employees that are on Stand-by for less than a seven (7)-day period will be paid a daily pro-rated amount of the weekly compensation rate. Payments for Stand-by assignments will be made through regular payroll.

9.3 ACTING-IN-CAPACITY & WORKING OUT OF CLASS:

The City maintains an Acting-in-Capacity and Working out of Class Policy within its HR Rules (Sections 5.4.2.4 & 5.4.2.5). This policy document was most recently adopted in March 2018, with a commitment from the City to review the policies as part of the HR rules every five years or as state and federal regulations are revised and necessitate a change in the policy or procedure.

During the duration of this contract, the City agrees not to make unilateral changes to these policies.

ARTICLE 10 - REST PERIODS/LUNCH PERIODS:

All employees shall be granted a fifteen-minute (15-minute) rest period during each one-half (1/2) shift, except in emergency situations. Rest periods shall be taken at approximately the middle of each one-half (1/2) shift as designated by the supervisor. All employees shall be granted a lunch period of not less than one-half-hour (1/2 hour) or more than one (1) hour, except in emergency situations. Such lunch periods shall be without pay and be utilized at approximately the middle of the work shift as designated by the supervisor.

ARTICLE 11 - LEAVES

11.1 BEREAVEMENT LEAVE:

In the event of a death in the employee's immediate family, for purposes of this article immediate family shall include grandparents, parents, parents-in-law, siblings, children, grandchildren, or any member of the immediate household, an employee may be granted a leave of absence not to exceed five (5) working days without loss of pay, to be used within six (6) months. This leave shall be separate from sick leave and shall not accumulate from year to year. Additional unpaid bereavement leave may be available to qualifying employees under the Oregon Family Leave Act (OFLA). Employees may use accrued leave while using bereavement leave that is not City-paid. City-paid bereavement leave runs concurrently with OFLA.

In the event of a death of a co-worker, employees may request and be granted vacation leave or other mutually agreeable time off to attend the funeral. In instances where the essential work of the City would be seriously handicapped by the temporary absence of a group of employees in a division, the City may set a reasonable limit on the number of employees that are to receive such leave.

11.2 WITNESS/JURY DUTY:

When an employee is called for jury duty or subpoenaed to appear in court as a witness, he or she will be paid the difference between his or her regular salary and the amount of jury pay. However, if he or she transfers all compensation, less mileage and meal allowances, received from the court to the City, he or she shall receive his or her regular compensation for the time covered by the absence. Time not worked because of such service will not affect vacation or sick leave accrual. The foregoing shall not apply if the employee is a party in interest to the proceeding or is serving as a witness against the City or on behalf of the Union. In such instance, leave of absence without pay will be provided.

11.3 MILITARY:

Military leave with or without pay shall be provided in accordance with applicable State and Federal statutes.

11.4 LEAVE WITHOUT PAY:

Upon the written request of an employee to the department head, the City may, in writing, grant an employee a leave of absence without pay for a period not exceeding twelve (12) months. Such request shall include the reason for requesting such leave and establish reasonable justification for consideration by the City. An employee shall not accrue benefits or seniority during such leave, but will be reinstated with **all** previously earned leave and seniority upon his or her return to work.

11.5 VOTING LEAVE:

Employees who are registered voters shall be granted necessary time off, up to one (1) hour, to vote on election day if, due to their work schedule, they otherwise would not be able to vote.

ARTICLE 12 - WAGES

12.1 WAGE RATES:

 Effective June 26, 2022, employees covered by this Agreement shall be compensated in accordance with the wage schedule attached to this Agreement and titled as <u>Appendix A</u> – <u>Wage Rates, Effective June 26, 2022</u>. This wage schedule reflects agreement on market-rate specialized adjustments for certain positions and an overall COLA increase of five percent (5%) to previous wage rates.

In addition, following ratification of the Agreement, the City shall pay a retention bonus to each employee for their service during the pandemic (defined as the period from March 20, 2020 to March 6, 2022), up to an amount of \$5,000.00, pro-rated per calendar day employed during the subject period of time.

- 2. Effective June 25, 2023, positions included in the wage schedule will receive a COLA increase of four percent (4%).
- 3. Effective June 23, 2024, positions included in the wage schedule will receive a COLA increase of three percent (3%).

At the beginning of each fiscal year, the City will update the wage schedule by applying any contracted annual COLA increases and other agreed upon classification changes during the contract period and will post the updated wage schedule online.

12.2 PAY PERIODS/PAY DAYS:

The pay period for purposes of calculating overtime shall be from Sunday, 12:00 am through Saturday 11:59 p.m.

The City shall pay on a biweekly basis for a total of 26 pay periods per calendar year.

Time keeping shall be maintained via an electronic time keeping system. It is the responsibility of each employee to clock in (enter) their actual time worked within the system accurately and timely. Any employee found to have reported time inaccurately may be subject to disciplinary action up to and including termination.

Unless expressly authorized by an immediate supervisor, time record entries shall not be made from an off-site work location. All cell phone entries must be pre-approved by the employee's immediate supervisor.

12.3 ANNUAL PERFORMANCE EVALUATIONS:

Each employee will receive an annual performance evaluation from the appropriate supervisor. This evaluation will outline the employee's performance of the past year and determine eligibility for a step increase within the employee's classification wage schedule. The evaluation will be held on or near the employee's anniversary date.

If the performance evaluation is not held within 30 calendar days of the employee's anniversary date, the employee shall receive a step increase effective as of the anniversary date.

12.4 LONGEVITY PAY

Beginning June 25, 2023, eligible Employees will receive a longevity pay premium in addition to their base rate of pay pursuant to the following schedule:

Longevity	Premium Percentage
(years of continuous service)	(calculated on base wage rate)
10 years	1%
15 years	1.5%
20 years	2%

Payments for Longevity will be made through regular payroll.

ARTICLE 13 - DISCIPLINE AND DISCHARGE

13.1 DISCIPLINARY ACTION:

By way of illustration but without limitation, disciplinary action shall include the following:

- 1. Written reprimand.
 - An employee may grieve a written reprimand through Step IV, City Administrator level of the grievance procedure, but shall not pursue such a grievance to Step V, Arbitration. The decision of the City Administrator shall be final and binding. If the employee disagrees with the written reprimand, he/she may attach a written rebuttal thereto.
 - Written reprimands not involving other disciplinary action, upon request of the employee, shall be removed from an employee's personnel file at the end of five (5) years from the date the written reprimand was issued, provided subsequent disciplinary action has not been taken during the intervening period of time, and there are not subsequent concerns of a similar nature or ongoing investigations into the employee's conduct. Documents removed from an employee's personnel file as a result of an employee request will be placed in a confidential file maintained by the Human Resources Director. Such documents will not be used against an employee for the purpose of establishing progressive discipline, but may be used in any arbitration and civil proceeding for the purpose of establishing consistency of disciplinary action, lack of discrimination, the existence of mitigation circumstances, and compliance with legal obligations.
- 2. Suspension without pay.
- 3. Temporary reduction in pay to a lower step within the established pay range for the employee's classification.
- 4. Demotion.
- 5. Discharge.

Verbal or oral warnings or similar supervisory counseling, even if reduced to writing, may also be given to employees, but such shall not be considered disciplinary action, inasmuch as such counseling will not be placed in the employee's personnel file and the employee experiences no loss of compensation as a result thereof. A counseling can be maintained in a supervisory file to be reviewed as part of an employee's annual evaluation, but will be considered stale upon completion of the annual evaluation

13.2 DUE PROCESS:

Due process shall require that the following steps be accomplished before any decision to take disciplinary action is finalized:

- 1. The employee will be informed of the charges in writing and given the information that is the basis for the possible disciplinary action.
- After the employee has been informed of the charges, he or she shall have the opportunity to
 meet and discuss the matter with the supervisor who initiated the charges. If the employee
 chooses to meet with the supervisor to discuss the charges, he/she shall be allowed to have a
 representative of the Union present.
- 3. After the decision is made, the employee shall be given written notification thereof. If the decision is adverse to the employee, the employee shall have the opportunity to include a statement in his/her personnel file and to file a grievance in accordance with the provisions of Article 18 thereof.

13.3 JUST CAUSE:

The City shall not take disciplinary action against an employee under this Article without just cause. If there is disagreement as to whether or not just cause exists, such dispute shall be resolved in accordance with the provisions of the grievance procedure, Article 18 hereof.

13.4 CONFIDENTIALITY:

If a supervisor has reason to discipline an employee, he or she shall make reasonable effort to impose such discipline in a manner that will not unduly embarrass the employee before other employees or the public.

13.5 PROBATIONARY EMPLOYEES:

A probationary employee shall serve at the pleasure of the City and shall not have the right to appeal any disciplinary action as a violation of this Agreement. This provision does not apply to existing regular employees who have previously completed a probationary period with the City and enter into a probationary period through promotion or transfer.

ARTICLE 14 - SENIORITY

14.1 **DEFINITIONS:**

Effective with this Agreement seniority shall be defined as an employee's continuous length of service with the City from his/her last date of hire. Seniority as used in this Agreement means the length of continuous employment with the employer. In most cases, seniority shall be looked at for full time employees first and then part-time employees second. An employee's total hours accumulation of straight time compensable hours will be the basis of exercising seniority rights throughout this Agreement unless specifically exempted by Article. Seniority shall accrue by hours paid. An employee shall lose all seniority credit in the event of a termination/resignation or failure to return from an expired leave of absence.

14.2 SENIORITY LIST:

The City will provide the Local Union President with a copy of the seniority list at the beginning of each fiscal year. Prior to the initiation of any layoffs an up to date seniority list will be provided to the local union and council representative.

14.3 EFFECT OF LEAVE WITHOUT PAY:

An employee who is absent without leave for more than seventeen (17) working hours shall be considered to have resigned. Such employee may be reinstated without loss of previously accrued seniority and other benefits if he/she can show that it was not feasible to obtain prior approval for the absence.

14.4 TRANSFERS:

Employees desiring to transfer to other comparable open positions may submit a request in writing to their immediate supervisor. The request shall state the reason(s) for the desired transfer to another City department having the same pay grade or lower. There must be an agreement between the Department Head for the position being exited and with the Department Head of the department being entered. Nothing shall prevent the City from an outside hire if Management deems there are other more qualified candidates for an existing opening.

14.5 JOB POSTING AND SENIORITY:

All bargaining unit job vacancies will be posted on the City website as well as other sources as appropriate for the available position(s). For position(s) within the bargaining unit, incumbent employees who are members of the bargaining unit and who are qualified, or can be reasonably assumed to become qualified for the position within a mutually agreeable time frame, shall be guaranteed an interview for a posted position they apply to. The incumbent employees are required to follow all application instructions as posted.

ARTICLE - 15 PROBATION

The probationary period is an integral part of the employee selection process and provides the City with the opportunity to upgrade and improve the department by observing an employee's work, training and aiding employees in adjustment to their positions, and by providing an opportunity to reject any employee whose work performance fails to meet required work standards.

Every new employee hired into the bargaining unit shall serve a probationary period of twelve (12) full months, which may by written notice to the employee prior to the completion of the initial twelvemonth (12 month) period be extended for up to three (3) additional months.

Employees promoted into a higher classification shall serve a probationary period of six (6) full months, which may by written notice to the employee prior to the completion of the initial six-month (6 month) period be extended for up to six (6) additional months.

The Union recognized the right of the City to terminate new employees on probationary status at any time for any reason without recourse to appeal and to exercise all rights not specifically modified by this Agreement with respect to such employees, including, but not limited to, the assignment of on-the-job training in other classifications. The Union also recognized the right of the City to demote an employee on promotional probationary status to his or her previous position.

Employees who as a result of a layoff or reduction-in-force assume a new position must be able to demonstrate proficiency in said position within sixty (60) days. An employee who has bumped from their

regular position and has failed to demonstrate proficiency in the new position within the 60 days may be subject to layoff thereafter by the City.

15.1 VOLUNTARY DEMOTION:

Employees who, within 1040 hours following a promotion, voluntarily demote to their previously held classification may return to the step of the previously held classification from which they promoted. Demotion under this section shall be with the mutual agreement of the employee and involved Department Head(s) and an opening must exist.

ARTICLE 16 - LAYOFF

16.1 DEFINITIONS:

Layoff means the elimination of a position within the City's workforce, the reduction of a position's percent FTE, or a reduction in the number of hours the position works annually, due to a lack of work, a lack of funds, and/or because of a reorganization.

Seniority is defined per Article 14.

16.2 PROCEDURE:

It is the intent of the City of Woodburn to provide and maintain as many full time employment positions as practical. However, in the event the City needs to initiate a Layoff, written notice of not less than 45 calendar days will be given to the Union and the employees the City intends to layoff, except in cases of an emergency that are beyond the City's control.

Following the issuance of any Layoff notice, the City agrees that it will meet with the Union and any affected employees (either as a group or individually) upon their request for purposes of providing the employee(s) an opportunity to respond to the City's Layoff decision. Employees may also respond to the City's decision in writing.

Nothing in this Agreement shall prohibit the parties from agreeing to a temporary alternative arrangement in lieu of a normal layoff as outlined in this Agreement.

In the event of a Layoff, the City will determine the job classifications to be reduced, as well as resulting staffing levels (full-time and part-time positions) within the specific department or division. Probationary, temporary, seasonal and limited assignment/duration employees in affected job classifications shall be reduced in hours or laid off first. Thereafter, layoffs will be accomplished for each job classification within the affected department based on seniority, with the least senior employees being the first laid off. The City may make exception to a layoff on the basis of seniority where employees who possess special skills or certifications would otherwise be laid off.

Employees subject to layoff shall have the following rights:

- (i) Accept the Layoff;
- (ii) Request assignment to a vacant position within the City for which they possess the necessary minimum qualifications; or

(iii) Displace or "bump" an employee in equal or lower paying job grades within the same department, provided that they have seniority and the minimum qualifications as specified in the most recent job description.

If the employee has no prior City service in the job to which they are newly assigned, a probationary period as outlined in Article 15 shall be required. A reduction from fulltime to part-time for the same job shall not incur a new probationary period for an employee. In no event may a layoff result in an employee being placed into a higher paying job than the job the employee held prior to the layoff.

16.3 RECALL:

Employees will have recall rights under this Section on the following basis;

1-5 years of continuous service – 12 months 5+ years of continuous service – 24 months

Recalls from a layoff shall be made according to the inverse order of layoff within the job classification and department from which the layoff occurred. No new employees shall be hired into a classification until all laid off employees that have recall rights under this Section and that are qualified to do the job have been given a chance to return to work.

In order for an employee to maintain their right to recall, they must notify the Human Resources Department of any change of address, email address, and/or telephone number, and at least annually signifying their availability for recall.

Laid off employees shall be recalled only by certified letter, return receipt requested and shall have ten (10) business days from receipt of such notification in which to inform the City of their intent to return to work. Thereafter, the employee must be available to be placed on a schedule by the 15th business day following receipt of the recall letter, or such later date as the City may allow. An earlier reporting date may be set by mutual agreement of the parties.

Employees on layoff status shall have the same rights as other employees in applying for any openings which may occur within the City. Employees that are assigned or hired into a position in a lower job classification or who accept part-time work do not forfeit their recall rights to the job classification they held prior to layoff.

Former employees who are rehired from the recall list into the same department and classification previously held will serve no probationary period assuming the former employee had successfully completed the probationary period at the time of lay off.

Former employees who are rehired from the recall list shall have their previously accrued seniority and unused sick leave time restored (not including for the time while on layoff).

ARTICLE 17 - CLOTHING AND EQUIPMENT

17.1 PROTECTIVE CLOTHING AND SAFETY EQUIPMENT:

The City shall provide protective clothing and safety equipment pursuant to applicable laws and regulations, based on a review performed by the City's insurance carrier or other similar resource acceptable to the parties. Only those items which are required by law or regulation shall be provided.

17.2 UNIFORMS:

In addition to safety equipment and clothing provided under the above, the City shall continue to provide work uniforms for selected employees within the bargaining unit, under the following conditions:

- 1. It shall be the employee's responsibility to launder and to otherwise maintain the uniform in a proper manner.
- 2. Uniforms or any portion thereof shall not be worn except while on duty or while in transit to or from the job.
- 3. Uniforms shall be replaced on an exchange basis only, and employees may from time to time be required to account for all uniforms originally issued. The cost of replacement of any uniform lost, destroyed, or otherwise not accounted for shall be borne by the employee.

ARTICLE 18 - GRIEVANCE

18.1 DEFINITION:

A grievance, for the purpose of this Agreement, is defined as a dispute regarding the meaning or interpretation of a particular clause of this Agreement or regarding an alleged violation of this Agreement.

18.2 PROCEDURE:

Employees are highly encouraged to discuss any contract dispute with their direct supervisor with the intent of resolving the issue before resorting to the grievance process. In an effort to provide for a peaceful procedure for resolution of disputes the parties agree to the following procedure when the issue cannot be resolved between the employee and the supervisor.

Grievances shall be initiated and processed in the manner provided in this agreement. The parties mutually acknowledge the procedures outlined in this agreement to be the exclusive and binding process for the resolution of grievances.

STEP I:

The employee, and his/her Union Business Representative or Steward, will file a written grievance with the employee's immediate Supervisor within 20 working days of the occurrence of the grievance or the date that the employee should have first known the facts upon which the grievance is based. The grievance shall contain:

- 1. A statement of the action or lack of action on the part of the City that is the cause for the grievance.
- 2. A statement as to the specific contract Article or Articles with Section and/or paragraph that was violated.
- 3. The specific remedy or alternative remedies that the City must take to correct the alleged contract violation.

Any grievance referred on the basis of past practice must cite the specific practice involved. The Supervisor will respond to the employee and his/her Union representative or Steward in writing within ten (10) working days of receiving the grievance.

STEP II:

If the grievance remains unresolved at Step I, it must be submitted in writing to the Department Head within ten (10) working days of Step I response. The Department Head may meet with the employee's immediate Supervisor and the aggrieved party and his/her Union representative or Steward. The Department Head shall respond to the grievance in writing within ten (10) working days to the employee and his/her Union Representative or Steward.

STEP III:

Individual grievances that remain unresolved at Step II, must be submitted in writing to the Human Resources Director within ten (10) working days of the receipt of Step II response. The Human Resources Director shall respond to the grievance in writing within ten (10) working days to the employee and his/her Union Representative or Steward.

For Group grievances initiated by the Union, the grievance must be submitted in writing to the Human Resources Director within thirty (30) working days of the occurrence of the violation or the date that the affected employees or the Union Representative should have first known the facts upon which the grievance is based.

A meeting shall occur as soon as possible, but in no event longer than ten (10) working days from the date of referral by the Union to the Human Resources Director and the Department Head. The entire issue giving rise to the grievance will be reviewed. The Human Resources Director shall respond to the grievance in writing within ten (10) working days of the meeting to the employee and his/her Union Representative or Steward.

STEP IV:

If the grievance remains unresolved at Step III, it must be submitted in writing to the City Administrator within ten (10) working days of receipt of Step III response and a copy shall be sent to the Human Resources Director. The City Administrator (or his/her designee) shall meet with the aggrieved party and Union Representative or Steward within ten (10) working days. The City Administrator shall respond to the grievance in writing within ten (10) working days of the meeting to the Union Representative or Steward, with a copy also being sent to the grievant. If the issue still remains unresolved it may be referred to arbitration (with the exception of written reprimands).

STEP V

If the grievance remains unresolved at Step IV, it must be submitted to arbitration in the following manner:

- 1. The Union shall provide the City with written notification of intent to proceed to arbitration within ten (10) working days of the conclusion of Step IV.
- 2. The Union and the City shall have ten (10) working days from the date of such notification to reach a mutual agreement upon an arbitrator.

- 3. If the Union and the City fail to agree upon an arbitrator within the ten (10) day period, the Union will request a list of seven (7) arbitrators to the State of Oregon Mediation and Conciliation Service. The arbitrators shall reside in the States of Oregon or Washington. Starting with the Union the parties shall alternately strike one name from the list until only one name from the list remains.
- 4. The City and the Union shall have ten (10) days from the date of receipt of the list of arbitrators to select the arbitrator.

18.3 LIMITATIONS ON ARBITRATION:

The powers of the arbitrator shall be limited to interpreting this Agreement and determining if it has been violated. The arbitrator shall have no power to alter, modify, add to, or detract from the terms of this Agreement. The decision of the arbitrator shall be final and binding on both parties.

No issue whatsoever shall be arbitrated or subject to arbitration unless such issue results from an action or occurrence which takes place while this Agreement is in effect, and no arbitration determination or award shall be made by the arbitrator which grants any right or relief for any period of time whatsoever prior to the execution or after the expiration date of this Agreement.

Expenses for the arbitrator's services and the proceedings shall be borne equally by the parties. However, each party shall be completely responsible for the cost of preparing, presenting its own case, including compensating its own representatives and witnesses. If either party desires a record of the proceedings, it shall solely bear the cost of such records. Both parties agree that if access to the transcript/recording is requested by only one party and then a subsequent right of access is made by the opposing party not originally made said arrangement, then the opposing party must compensate the original party for 50% of the incurred cost before access to the transcript/recording is made available.

It is specifically and expressly understood and agreed that taking a grievance appeal to arbitration constitutes an election of remedies. Specifically, the Union agrees that it shall not pursue an issue that has been the subject of a grievance to any court, quasi-judicial body or other outside authority for a determination, and that when an issue is presently pending before, or has been decided by a court, quasi-judicial body or other outside authority, no grievance with respect thereto may exist.

18.4 TIME LIMITS:

Any or all time limits specified in the grievance procedure may be waived by mutual consent of the parties. Failure to submit the grievance in accordance with these time limits without such waiver shall constitute abandonment of the grievance. Failure by the City to submit a reply within the specified time will constitute a rejection of the grievance at that Step. And thereby allow the Union to proceed to the next step within the applicable time limit. A grievance may be terminated at any time upon receipt of a signed statement from the employee that the matter has been resolved. The employee may be represented at any level of the grievance procedure by a Union representative

ARTICLE 19 - MANAGEMENT RIGHTS

19.1 GENERAL RIGHTS:

Except as otherwise expressly and specifically limited by the terms of this Agreement, the city retains all rights, decision-making prerogatives, functions and authority connected with or in any way incidental to

its responsibility to manage the affairs of the City or any part of the City. The rights of the employees in the bargaining unit and the Union hereunder are limited to those specifically set forth in this Agreement.

19.2 SPECIFIC RIGHTS:

Without limitation, but by way of illustration, the exclusive prerogatives, functions and rights of the city shall include the following:

- 1. To determine the services to be rendered to the citizens of the City.
- 2. To determine and to follow the City's financial, budgetary, and accounting procedures.
- 3. To direct and supervise all operations, functions, and policies of the departments in which the employees in the bargaining unit are employed, and operations, functions, and policies in the remainder of the city as they may affect employees in the bargaining unit.
- 4. To close or liquidate any office, branch, operations or facility, or combination of facilities or to relocate, reorganize or combine the work of divisions, offices, branches, operation or facilities for budgetary or other reasons.
- 5. To manage and direct the work force, including but not limited to, the right to determine the methods, processes, and manner of performing work; the right to hire, promote, transfer and retain employees; the right to layoff; the right to abolish positions or reorganize departments; the right to determine schedules of work; the right to purchase, dispose of and assign equipment or supplies.
- 6. To determine the need for a reduction or an increase in the work force and the implementation of any decision with regard thereto.
- 7. To establish, revise and implement standards for hiring, classification, promotion, quality of work safety, materials, and equipment.
- 8. To implement new and to revise or discard, wholly or in part, old methods, procedures, materials, equipment, facilities and standards.
- 9. To assign shifts, workdays, hours of work and work locations.
- 10. To assign and designate all work duties.
- 11. To introduce new duties within the unit.
- 12. To determine the need for and the qualifications of new employees, transfers and promotions.
- 13. To discipline, reprimand, suspend and discharge an employee subject to the discipline Article of this Agreement.
- 14. To determine the need for additional educational courses, training programs, on the-job training and cross-training and to assign employees to such duties for such periods to be determined by the City
- 15. To determine the need for overtime and the employees to work such overtime.

19.3 CONTRACTING AND SUBCONTRACTING OF WORK:

The Union recognizes that the City retains the right to contract and to subcontract work, provided that as to the contracting or subcontracting of work that may reasonably be expected to result in the layoff or demotion of any bargaining unit member(s), the City will provide prior notice to the Union and afford it an opportunity to make a presentation to the Council as follows:

The Union shall be sent a copy of any Request for Proposal or advertisement for bids at the time such request or advertisement is made. After receipt of proposals or bids from potential bidders, the Union shall receive a copy of same and a copy of all other relevant material, including City staff analysis of the various bids or proposals that the Council will use as the basis for its decision.

No decision to contract or subcontract shall be made until:

- 1. Thirty (30) days following the receipt by the Union of all material specified in #1 above; and
- 2. After the Union has had an opportunity to make a presentation to the Council (or City Administrator if such is mutually agreeable) regarding the proposed contracting of work.

The City agrees to give full consideration to all information and recommendations that may be submitted by the Union prior to making a final decision.

In consideration of the above-delineated agreement by the City to allow the Union to be informed of and to make its position known prior to a contracting decision which would adversely affect bargaining unit employees, parties agree that notwithstanding the requirements of ORS 243, the City shall have no duty to bargain:

- 1. Any decision to contract or subcontract work; and
- 2. The impact of any decision to contract or subcontract work.

The City may use non-paid volunteers without following the procedural steps outlined above, and without a duty to bargain over the decision or the impact of such decision. The City has no intent to modify existing practice on the use of volunteers.

19.4 EXISTING BENEFITS AND WORK RULES:

Nothing in this Agreement is intended to nullify existing wage and fringe benefits to employees under policies, practices and work rules unless specifically included in this Agreement. The City agrees to notify the Union, in writing, prior to changing or making additions to the existing personnel policy manual. Should the Union disagree with the proposed change(s), the City, upon request, shall meet with the Union to discuss its concerns.

ARTICLE 20 - CITY SECURITY

During the term of this Agreement, the Union and members of the bargaining unit, as individuals or as a group, will not initiate, cause, permit or participate or join in any strike, work stoppage or slowdown, picketing, or any other interruption of City services.

Employees in the bargaining unit, while acting in the course of their employment, shall not honor any picket line established in the City by the Union, or by any other labor organization when called upon to cross such picket line.

Disciplinary action, including discharge, may be taken by the City against any employee or employees engaged in a violation of this Article. Such disciplinary action may be undertaken selectively at the option of the City.

In the event of a strike, work stoppage, slowdown, picketing, observance of a picket line, or other restriction of work in any form, either on the basis of individual choice or collective employee conduct,

the Union will, immediately upon notification, publicly attempt to secure an immediate and orderly return to work.

The obligations set forth above shall not be affected or limited to the subject matter involved in the dispute giving rise to the stoppage or by whether such subject matter is or is not subject to the grievance procedure of this Agreement.

It is understood that employees shall not be entitled to any benefits or wages whatsoever while they are engaged in such strike, work stoppage, or other interruption of work.

There will not be a lockout against the employees in the bargaining unit during the term of this Agreement.

ARTICLE 21 - SUBSTANCE ABUSE

Substance Abuse Policy

This Substance Abuse Policy is effective upon execution of the Agreement and applies to all AFSCME represented employees. In addition to this Policy, AFSCME represented employees in what are determined to be 'safety sensitive' positions are subject to the requirements of state and federal law.

Purpose

The City has a strong commitment to its employees to provide a safe work environment and promotes high standards of employee fitness. Consistent with the intent of this commitment, the City established this policy regarding drugs and alcohol.

While the City has no intention of interfering with the private lives of its employees, the City expects its employees to report to work in a condition to perform their duties in a safe, effective and efficient manner. All persons covered by this policy should be aware that violations of this policy will result in discipline, up to and including termination, or in not being hired.

The parties to this Agreement understand that with the passage of measure 91 (Legalization of Marijuana), that the law intended no new employment rights. The parties further agree that there are no changes to the enforcement of the substance abuse policy by the City.

Definitions

CDL	Federal Commercial Driver's License Standards
EAP	Employee Assistance Program
THC	The principal <u>psychoactive constituent</u> of the <u>cannabis</u> plant (marijuana)
PCP	Commonly <u>initialized</u> as PCP and known colloquially as angel dust or wet, is a
	recreational dissociative drug
BAC	Blood Alcohol Content
NIDA	National Institute of Drug Abuse
GCMS	Gas chromatography–Mass spectrometry (GC-MS) is a method that combines
	the features of gas-liquid chromatography and mass spectrometry to identify
	different substances within a test sample
SAP	Substance Abuse Professional

Scope

For the purpose of this Policy, "drugs" is defined as all controlled substances including but not limited to: opiates, cocaine, marijuana (THC), phencyclidine (PCP), amphetamines/ methamphetamines and barbiturates. However, "drugs" does not include prescription and over-the-counter medications that are lawfully prescribed and used in a manner consistent with a physician's instructions and/or medication warnings.

Employees who violate this Policy conduct will be subject to discipline, including discharge.

Prohibited Conduct

The following conduct is strictly prohibited:

- 1. Buying, selling, consuming, distributing or possessing drugs or alcohol during working hours, including rest and meal periods.
- 2. Reporting for work or returning to duty under the influence of alcohol or drugs. For the purpose of this Policy, an employee is considered to be "under the influence" of alcohol if his/her alcohol concentration is .04 BAC or more. Alcohol concentration levels measuring less than .04 BAC are considered a negative test result. An employee is considered to be "under the influence" of drugs, if the employee tests positive for having such substances present in his/her body.
- 3. Consuming drugs or alcohol while on Stand-by as defined by this Agreement. If an employee is on Stand-by and has used any prescription or nonprescription medications which may interfere with the safe and effective performance of duties or operation of City equipment or vehicles, the employee is required to notify his or her supervisor prior to responding to a call for service.
- 4. Failure to report an arrest, conviction and/or plea-bargain for an alcohol or drug-related criminal offense to the employee's supervisor within 10 days after the arrest conviction or plea bargain occurs.
- 5. Failure to disclose use of over-the-counter or prescribed medication containing a controlled substance that may influence behavior and/or one's ability to safely perform one's job.

Any determination of a positive substance abuse test for any substance will be on the same basis used for the Federal CDL Standards.

Disclosure of Medications

Employees are responsible for consulting with their physicians and carefully reviewing medication warnings, including any warnings pertinent to the effects of use of a combination of medications. Employees who are using over-the-counter or prescribed medications which have any reported side effects that could reasonably affect their ability to safely perform all essential job duties must notify their supervisor of the substance taken and its side effects before reporting for work. Medical verification of ability to safely perform job duties may be required before the employee is allowed to continue his/her job assignment. Employees are eligible to utilize sick leave benefits pending receipt of acceptable verification.

Although the use of prescribed and over-the-counter medication as part of a medical treatment program is not grounds for disciplinary action, failure to fully disclose the use of substances which could

reasonably impair the safe performance of essential job duties; and/or illegally obtaining the substance or use which is inconsistent with prescriptions or labels will subject an employee to disciplinary action.

Employee Testing

The Employer agrees to train all supervisors to recognize behaviors which may give rise to a suspicion test request. It is agreed that the employer will regularly train supervisors as to the proper procedures for dealing with a possible substance abuse and that this training will be provided, at minimum, once every two years.

A supervisor may order an employee to immediately submit to a urinalysis test for drugs and/or a breathalyzer test for alcohol whenever the City has reasonable suspicion to believe that the employee has violated the provisions of this Policy concerning reporting to work or being at work "under the influence" of drugs or alcohol.

"Reasonable suspicion" shall be defined as suspicion based on articulated observations concerning the appearance, unusual behavior, speech, breath odor, body symptoms or other reliable indicators that an employee has consumed drugs and/or alcohol in violation of this Policy.

For any employee holding a safety sensitive positions that requires a pre-employment substance abuse test and who is off the job for more than 30 calendar days regardless of the cause then the employee will be required to submit to the same test used for pre-employment testing before returning to work. This means any leave for any reason in excess for more than 30 calendar days, including vacation in excess of 30 days.

The City reserves the right to substance abuse test any safety sensitive employee involved in an on-the-job accident incident.

Testing Procedures

- All testing will be conducted at a laboratory certified by the federal DOT and shall be conducted
 in accordance with the standards for procedural safeguards and testing integrity disseminated
 by the NIDA. All drug tests will be conducted through collection of a split sample. All positive
 drug tests will be confirmed by a second cross confirmatory test from the same sample using
 GCMS testing methodology and reviewed by a Medical Review Officer before the test result is
 reported as positive.
- 2. The residual specimen sample shall remain at the testing facility in frozen storage for a minimum of 90 days from the date the test was conducted. This sample shall be made available for testing to the employee or his attorney, should the original sample result in a legal dispute or the chain of custody be broken.
- 3. Whenever there is a reason to believe that the employee may have altered, diluted and/or substituted the specimen provided for the initial test that was not determinative, a second test will be conducted. The second test procedures shall be identical to the first test procedures.
- 4. If no confirmatory test is requested by the employer, the employee will have the option of having any remaining untested original specimen sent to a qualified and certified laboratory of the employee's own choosing at the employee's expense for testing. If the second confirmatory

test results in a negative reading then said test shall be paid by the employer. Any testing shall be in conformance with the original testing protocols.

5. All records pertaining to required drug and alcohol tests, as well as compliance with rehabilitation terms shall remain confidential, and shall not be released, except on a need to know basis, in accordance with applicable law. All documents pertaining to testing and test results will be maintained in employee medical, not personnel, files.

Searches

The City reserves the right to conduct searches of City equipment or facilities generally, and may search any area or item of City property (such as desks, files, lockers, cabinets, etc.), as well as personal property brought onto City property consistent with applicable law. Personal property, such as brief cases, lunch boxes, etc. brought onto City property, as well as lockers, may be searched when the City has reasonable suspicion that alcohol or probable cause that drugs or drug-related paraphernalia may be found.

Prior to a search, notice will be given to the employee, who may elect to be present with a Union representative, if such presence does not delay the search in excess of forty-five (45) minutes.

Consequences of Violations

1. Employees who Report Dependencies and Seek Treatment <u>before</u> Committing a Policy Violation.

Rehabilitation: The City encourages employees who have drug and/or alcohol dependencies or think they may have such dependencies to seek assistance voluntarily. When an employee voluntarily reports a drug or alcohol dependency to his/her supervisor and seeks assistance before violating this Policy, that employee may be placed on a leave of absence or adjusted working hours to allow for in-patient or outpatient rehabilitation treatment if recommended by a Substance Abuse Professional (SAP).

The employee will not be permitted to work until such time as a Substance Abuse Professional agrees him/her:

- a. Has been evaluated by a Substance Abuse Professional (SAP);
- b. If recommended by the SAP, has complied with all rehabilitation/after-care prescribed; and
- c. Has a verified negative drug or alcohol test (as applicable).

In order to return to work for the City, an employee having sought assistance must agree to all treatment, rehabilitation, after-care and follow-up testing as set forth in a written Rehabilitation and Return to Work Agreement required by the City. Any employee who violates the terms of the Rehabilitation Agreement or the Return to Work Agreement is subject to immediate termination. The term of a said agreement shall be for 2080 straight-time hours worked.

The time an employee is off work undergoing rehabilitation is unpaid. However, employees may draw their unused, accumulated sick leave, and/or vacation pay, holiday and compensatory time. Also, employees who are receiving health insurance coverage will be eligible for continuation of health insurance benefits with standard employee contributions as required by the Family Medical Leave Act.

2. Employees who Report Dependencies and Seek Treatment <u>after</u> Committing a Policy Violation.

Employees who notify the City of drug or alcohol dependencies *after* violating this Policy may be subject to discharge, irrespective of such dependencies.

The City may however, at its discretion, allow an employee to undergo evaluation and rehabilitation in lieu of discharge, provided the employee promptly complies with the terms and conditions set forth in this Policy. The City will consider the following factors in exercising its discretion: the employee's length of service; the employee's work record, in particular, whether the employee has committed a previous alcohol or drug policy infraction; the consequences of the violation; any other circumstances offered by the employee that militates against discharge.

It is understood and agreed that the references to discipline and discharge set forth in this Policy and the Rehabilitation and Return to Work Agreement are not intended to supersede "just cause" requirements.

ARTICLE 22 - SAVINGS CLAUSE

The provisions of this contract are declared to be severable, and if any section, subsection sentence, clause, or phrase of this Agreement shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Agreement, but they shall remain in effect, it being the intent of the parties that this Agreement shall stand, notwithstanding the invalidity.

In the event of an applicable Federal or State law, statute, regulation or administrative rule is enacted that materially affects the bargaining unit resulting in additional costs to the City, the parties agree to renegotiate any affected terms and conditions necessary to mitigate any additional costs incurred by the City. In the event the parties are unable to reach a mutually agreeable resolution then said issue may be referred to a third party neutral arbitrator per the terms of Article 18 of this agreement.

ARTICLE 23 - LABOR/MANAGEMENT COMMITTEE

23.1 FORMATION:

The parties agree to establish a joint Labor/Management Committee.

23.2 REPRESENTATION:

The City's representative will include the City Administrator or a representative and up to three (3) designees. The Union representatives will include three (3) elected representatives who are City employees with preference given to differing departments. Either party with advance notice may invite guests whose attendance shall be germane to the agenda.

23.3 INTENT:

The intent of the committee is to facilitate communications between parties by providing a forum for discussion of issues not addressed by the Contract, such as staff morale, operation methods and procedures, attendance and other policies of the workplace which affect the working conditions of the

employees when such policies are not mandatory subject of bargaining. The committee shall not become involved in individual grievances nor shall the committee meetings be construed as formal negotiations. The committee shall meet with a formal agenda, at least once each quarter or such other time as both parties mutually agree to. The time, date and place shall be mutually agreed upon by the parties.

23.4 CONTINUANCE:

The committee shall discontinue meetings during the quarter in which contract negotiations have begun and remain adjourned until a contract has been signed by both parties.

ARTICLE 24 - BILINGUAL PAY

The City may designate positions in the City where having a bilingual speaker of either the Spanish or Russian language (in addition to English) would be an operational advantage to the City. Upon designating these positions, the City may certify employees within these positions that meet/pass language competency testing for the subject position. The City will require proficiency testing before certification can occur, at the City's expense, and employees will be on paid time for such testing.

Employees certified to receive bilingual pay must be assigned work on a regular and continuing basis that requires a second language to effectively meet the service demand of the City's customers. Designation of positions eligible to receive bilingual pay is the responsibility of the Department Head.

- o Employees certified to be orally proficient in the Spanish or Russian language shall receive a three and one-half (3.5) percent premium to their normal base pay.
- Employees certified to be proficient both orally and in writing in the Spanish or Russian language shall receive a five (5) percent premium to their normal base pay.

Recertification for employees eligible to receive bilingual pay will occur every 2 years.

In such a case as the need for bilingual services ceasing to exist, revocation of bilingual pay shall be made in writing by the City Administrator; stating the reason(s) for the revocation. Such reasons shall be discussed with the Union prior to implementation of such revocation. Additionally, if the employee is transferred, demoted, or promoted to another position in which the bilingual skill has not been designated or identified as a business necessity, the premium will also cease.

The City reserves the right to contract out bilingual services as it deems necessary. The City also reserves the right to expand the bilingual program to include certifications for languages other than Spanish and Russian as the operational needs of the City change over time.

ARTICLE 25 - EDUCATIONAL INCENTIVES

25.1 Tuition Reimbursement: The City of Woodburn may reimburse an employee for up to 50% of the amount of tuition for courses approved by the City Administrator which are deemed directly applicable and beneficial to City goals and objectives. The tuition reimbursement policy will be limited by budgetary resources within the Department and will follow the following guidelines:

- 1. The City may reimburse an employee for the amount of tuition for approved courses conducted outside the employee's regular working hours, provided the employee has made application for approval to the City Administrator at least ten days prior to the registration for such course.
- Course work eligible for reimbursement must be completed at a college or university holding statewide accreditation.
- 3. Job-related courses which are only offered during regular working hours may be approved by the Department Head and the City Administrator subject to the operating requirements of the Department. If the course is approved, leave of absences without pay, and/or vacation time, compensatory time, or other paid leave time will be made available to the employee.
- 4. The City may allow time off with pay, and will reimburse an employee for the expenses of attending classes, or workshops, when attendance is on an assignment basis with prior approval of the employee's Department Head.
- 5. Reimbursement will not include the cost of travel, books, materials, or other ancillary costs. Reimbursement will be limited to a maximum of six (6) units per semester.
- 6. Reimbursement for baccalaureate studies shall be based on the average per-unit registration cost of course work at Portland State University, and Western Oregon State University.
- 7. Reimbursement will be provided upon documentation of a successful completion of coursework- (i.e., a copy of report card or transcript, and a receipt, cancelled check, or other proof that registration has been paid by the employee).
- 8. Employee will be reimbursed 50% of tuition cost when course- work is completed with an "A" or "B" grade. Tuition will be reimbursed at only 40% for course- work completed with a "C" grade. There will be no reimbursement for courses completed with a "D" or for failed courses.
- 9. Employees will be obligated, when deemed applicable, to share the benefit of their education and training with other City employees.

25.2 Certifications & Licenses:

Required. The City of Woodburn agrees that it will pay the certification or licensing fees
associated with those certificates or licenses incurred by an employee, wherein the certificate or
license is related to- and required by their employment with the City and approved by their
supervisor. The City will also pay an employee for the expense of attending classes or exams
necessary to maintain or renew a required certificate or license.

Employees are responsible for renewing and maintaining certificates or licenses they acquired as qualifications for the job they hold. If such a required certificate or license lapses, expires, or is revoked solely because of an employee's action or inaction, the employee may be subject to discipline and the responsibility of renewing the certificate or license at the employee's own cost.

- 2. <u>Non-Required</u>. The City may, at the Department Heads discretion and within the budgetary resources of the Department, pay for- or reimburse an employee for the training and/or testing fees for certification or licenses that (i) allows advancement of the employee to the next certification level within his/her same division; or (ii) in the sole discretion of the City would benefit the overall operations of that employee's department. Payment or Reimbursement is subject to the following:
 - a. The employee must request Department Head approval for payment at least ten days prior to the registration for any certification/licensing course, seminar, or exam.
 - b. The City will pay for the training and testing fees for an employee's first attempt at attaining a specific certification or license, but will only reimburse an employee for a subsequent successful attempt at the same certification or license.
 - c. With prior approval of the employee's Department Head, the City may allow time off with pay for the employee's attendance at a certification/licensing course, seminar, or exam when attendance is during the employee's regularly scheduled work hours. Attendance at a non-required certification/licensing course, seminar, or exam that occurs outside the employee's regularly scheduled work hours will not be compensated or result in any overtime obligations on the part of the City.

An employee holding or possessing a non-required certification or license that could provide the employee an opportunity to advance within its division or department will not auto-promote or move the employee to a higher classification based solely on attaining the higher certification/license. Employees will only be promoted into a higher classification position when a position is both vacant and budgeted for, and the employee has successfully completed the appropriate recruitment process or reclassification.

- 3. On-Site Training Resources. The City may, at a supervisor's discretion and within its operational and budgetary means, provide on-site training to employees looking to utilize or access specific City resources (e.g. commercial vehicles, software, other tools/equipment, etc.) to practice or improve certain operational skills that may (i) allow advancement of the employee to the next certification level within his/her same division; or (ii) in the sole discretion of the City would benefit the overall operations of that employee's department. To the extent possible, access to such City resources will be during an employee's regularly scheduled work hours. Employees may be provided opportunities to borrow or take home certain City property (e.g. books) with their supervisor's prior approval. All property borrowed under this section remains City property and must be returned by the employee within reasonable due course or upon request by the employee's supervisor. Any on-site training or at-home study provided for by this section will not result in any overtime obligations on the part of the City.
- 4. <u>Financial Incentive/Premium</u>. The City acknowledges that there may be a mutual benefit to the City and employee when an employee holds a non-required, but related professional license or certification for their position classification. Therefore, the City agrees that it will provide a 3% incentive premium (calculated on base wage rate) to an employee should the following conditions be met:
 - i. Employee possesses or acquires a license or certification that is not required within their current job classification;

- The license or certification may be listed as desired for the employee's job classification or it is included as a required license/certification of a higher classification within employee's current job series; and
- iii. Employee is responsible for providing ongoing, current documentation of their certification/license level.

The 3% premium will not be applied cumulatively even if an employee holds more than one non-required license or certification.

The provisions and any incentives provided for by this Article will take affect and be applied starting January 1, 2023. Through labor-management meetings, the City and Union may review classification standards to consider and discuss what licenses and certifications may be appropriate to be listed as "Desired" for purposes of applying this incentive pay.

ARTICLE 26 - MILEAGE REIMBURSEMENT

When an employee is approved by his supervisor to use their personal vehicle for City use, they shall be reimbursed at the rate established by the Internal Revenue Service.

ARTICLE 27 - TERMS

27.1 TERM OF AGREEMENT

This Agreement shall become effective July 1, 2022 through June 30, 2025, except that all language changes become effective upon the signing of this Agreement.

This Agreement shall be binding upon the City, the Union, and its members, and shall remain in full force and effect through June 30, 2025.

27.2 CONTRACT AMENDMENTS

This Agreement may be amended at any time by mutual agreement of the Union and the City. Such amendments shall be in writing and signed by both parties.

IN WITNESS WHEREOF, the City and the Union have executed this Agreement by the signatures of their respective authorized representatives.

FOR THE UNION		FOR THE CITY	
Ross Kiely Council 75 Representative	date	Eric Swenson Mayor	date
Dan Handel AFSCME President	date	Scott Derickson City Administrator	date

APPENDIX A

WAGE RATES - EFFECTIVE JUNE 26, 2022

Grade	Position	Ste	p 1	Ste	p 2	Ste	р 3	Ste	ep 4	Ste	p 5	Ste	p 6	Ste	p 7	Ste	ep 8
Α		\$	15.77	\$	16.56	\$	17.38	\$	18.24	\$	19.16	\$	20.12	\$	21.13	\$	21.97
В	Custodial Worker I	\$	16.07	\$	16.88	\$	17.73	\$	18.61	\$	19.54	\$	20.52	\$	21.54	\$	22.40
	Parks and Maintenance Worker	\$		\$		\$		\$		\$		\$		\$		\$	
С	Custodial Worker II	\$	16.42	\$	17.24	\$	18.10	\$	19.00	\$	19.96	\$	20.95	\$	22.01	\$	22.90
D		\$	16.80	\$	17.63	\$	18.53	\$	19.43	\$	20.41	\$	21.44	\$	22.51	\$	23.40
E		\$	17.24	\$	18.10	\$	19.01	\$	19.98	\$	20.97	\$	22.01	\$	23.11	\$	24.04
F	Grounds & ROW Maintenance Worker	\$	17.73	\$	18.60	\$	19.54	\$	20.52	\$	21.54	\$	22.61	\$	23.75	\$	24.70
G	Transportation Bus Driver	\$	18.27	\$	19.19	\$	20.14	\$	21.14	\$	22.20	\$	23.31	\$	24.47	\$	25.46
Н	Administrative Specialist	\$	18.85	\$	19.78	\$	20.78	\$	21.81	\$	22.91	\$	24.05	\$	25.25	\$	26.27
	Cashier	\$	10.05	\$	15.70	\$	20170	\$		\$		\$	203	\$	25.25	\$	
	Library Assistant	\$		\$		\$		\$		\$		\$		\$		\$	
	Transportation Lead Bus Driver	\$		\$		\$		\$		\$		\$		\$		\$	
1	Court Operations Clerk	\$	19.61	\$	20.60	\$	21.61	\$	22.70	\$	23.84	\$	25.02	\$	26.28	\$	27.33
•	Police Records Clerk	\$	15.01	\$	20.00	\$		\$		\$	20.0	\$	23.02	\$	20.20	\$	27.00
j	Utility Worker I	\$	20.22	\$	21.23	\$	22.30	\$	23.41	\$	24.58	\$	25.82	\$	27.09	\$	28.18
-	Water Meter Reader	\$		\$		\$		\$	201.12	\$	2 1.50	\$	23.02	\$	27.03	\$	
К	Administrative Analyst	\$	20.61	\$	21.63	\$	22.71	\$	23.85	\$	25.04	\$	26.30	\$	27.61	\$	28.71
	Library Associate	\$	20.01	\$	_1.00	\$	-4./1	\$	_5.55	\$	_5.54	\$	_0.50	\$	_,.01	\$	
L	Engineering Technician I	\$	21.02	\$	22.08	\$	23.18	\$	24.34	\$	25.56	\$	26.83	\$	27.92	\$	29.30
	Permit Technician	\$	21.02	\$	22.00	\$	23.10	\$	24.54	\$	23.30	\$	20.03	\$	27.52	\$	23.30
	Water Operator I	\$		\$		\$		\$		\$		\$		\$		\$	
М	Utility Worker II	\$	22.32	\$	23.44	\$	24.60	\$	25.85	\$	27.13	\$	28.49	\$	29.91	\$	31.10
IVI	Wastewater Operator I	\$	22.32	\$	23.44	\$	24.00	\$	23.83	\$	27.13	\$	26.43	\$	29.91	\$	31.10
	Wastewater Collections Operator I	\$		\$		\$		\$		\$		\$		\$		\$	
N	Accounting Assistant	\$	22.92	\$	24.06	\$	25.26	\$	26.52	\$	27.85	\$	29.24	\$	30.70	\$	31.93
- 14	Sr. Court Ops Clerk	\$	22.32	\$	24.00	\$	23.20	\$	20.52	\$	27.03	\$	23.24	\$	30.70	\$	31.55
	Police Property & Evidence Technician	\$		\$		\$		\$		\$		\$		\$		\$	
0	CAD Technician	\$	24.32	\$	25.53	\$	26.80	\$	28.15	\$	29.56	\$	31.04	\$	32.60	\$	33.88
	Engineering Technician II	\$	24.52	\$	23.33	\$	20.00	\$	20.13	\$	25.50	\$	31.04	\$	32.00	\$	33.00
	Fleet Maintenance Technician	\$		\$		\$		\$		\$		\$		\$		\$	
	IT Network Technician	\$		\$		\$		\$		\$		\$		\$		\$	
	PW Utility Crew Lead	\$		\$		\$		\$		\$		\$		\$		\$	
	Water Operator II	\$		\$		\$		\$		\$		\$		\$		\$	
	Wastewater Operator II	\$		\$		\$		\$		\$		\$		\$		\$	
	Wastewater Collections Operator II	\$		\$		\$		\$		\$		\$		\$		\$	
P	Associate Planner	\$	25.55	\$	26.81	\$	28.16	\$	29.57	\$	31.05	\$	32.61	\$	34.23	\$	35.60
	Economic Development Specialist	\$		\$		\$		\$		\$		\$		\$		\$	
	IT Software Support Specialist	\$		\$		\$		\$		\$		\$		\$		\$	
	Librarian	\$		\$		\$		\$		\$		\$		\$		\$	
Q	GIS Technician	\$	26.91	\$	28.24	\$	29.65	\$	31.15	\$	32.69	\$	34.34	\$	36.05	\$	37.31
	Plans Examiner/Inspector I	\$		\$		\$		\$		\$		\$		\$		\$	
	Sewer Line Maintenance Technician	\$		\$		\$		\$		\$		\$		\$		\$	
	Wastewater Operator III	\$		\$		\$		\$		\$		\$		\$		\$	
R	Engineering Technician III	\$	28.47	\$	29.89	\$	31.39	\$	32.95	\$	34.60	\$	36.34	\$	38.14	\$	39.67
	Industrial Pre-treatment Coordinator	\$		\$		\$		\$		\$		\$		\$		\$	
	Planner	\$		\$		\$		\$		\$		\$		\$		\$	
	PW Maintenance Technician	\$		\$		\$		\$		\$		\$		\$		\$	
S	Engineering Associate	\$	29.33	\$	30.80	\$	32.34	\$	33.96	\$	35.83	\$	37.80	\$	39.68	\$	41.27
	Plans Examiner/Inspector II	\$		\$		\$		\$		\$		\$		\$		\$	
	Wastewater Laboratory Coordinator	\$		\$		\$		\$		\$		\$		\$		\$	
Т	IT Network Administrator	\$	32.26	+ -	33.88	\$	35.57	\$	37.35	\$	39.22	\$	41.18	\$	43.24	\$	45.40
	IT Systems Administrator	\$		\$		\$		\$		\$		\$		\$		\$	
U	Plans Examiner/Inspector III	\$	36.51	\$	37.80	\$	39.12	\$	40.49	\$	42.31	\$	44.21	\$	46.20	\$	48.05
	Project Engineer	\$		\$		\$		\$		\$		\$		\$		\$	

APPENDIX A

WAGE RATES - EFFECTIVE JUNE 25, 2023

Grade	Position	Ste	p 1	Ste	p 2	Ste	р 3	Ste	ep 4	Ste	p 5	Ste	p 6	Ste	p 7	Ste	p 8
Α		\$	16.40	\$	17.22	\$	18.08	\$	18.97	\$	19.93	\$	20.92	\$	21.98	\$	22.85
В	Custodial Worker I	\$	16.71	\$	17.56	\$	18.44	\$	19.35	\$	20.32	\$	21.34	\$	22.40	\$	23.30
	Parks and Maintenance Worker	\$		\$		\$		\$		\$		\$		\$		\$	
С	Custodial Worker II	\$	17.08	\$	17.93	\$	18.82	\$	19.76	\$	20.76	\$	21.79	\$	22.89	\$	23.82
D		\$	17.47	\$	18.34	\$	19.27	\$	20.21	\$	21.23	\$	22.30	\$	23.41	\$	24.34
E		\$	17.93	\$	18.82	\$	19.77	\$	20.78	\$	21.81	\$	22.89	\$	24.03	\$	25.00
F	Grounds & ROW Maintenance Worker	\$	18.44	\$	19.34	\$	20.32	\$	21.34	\$	22.40	\$	23.51	\$	24.70	\$	25.69
G	Transportation Bus Driver	\$	19.00	\$	19.96	\$	20.95	\$	21.99	\$	23.09	\$	24.24	\$	25.45	\$	26.48
н	Administrative Specialist	\$	19.60	\$	20.57	\$	21.61	\$	22.68	\$	23.83	\$	25.01	\$	26.26	\$	27.32
	Cashier	\$		\$		\$		\$		\$		\$		\$		\$	
	Library Assistant	\$		\$		\$		\$		\$		\$		\$		\$	
	Transportation Lead Bus Driver	\$		\$		\$		\$		\$		\$		\$		\$	
ı	Court Operations Clerk	\$	20.39	\$	21.42	\$	22.47	\$	23.61	\$	24.79	\$	26.02	\$	27.33	\$	28.42
	Police Records Clerk	\$		\$		\$		\$		\$		\$		\$		\$	
J	Utility Worker I	\$	21.03	\$	22.08	\$	23.19	\$	24.35	\$	25.56	\$	26.85	\$	28.17	\$	29.31
	Water Meter Reader	\$		\$		\$		\$		\$		\$		\$		\$	
К	Administrative Analyst	\$	21.43	\$	22.50	\$	23.62	\$	24.80	\$	26.04	\$	27.35	\$	28.71	\$	29.86
	Library Associate	\$		\$		\$		\$		\$		\$		\$		\$	
L	Engineering Technician I	\$	21.86	\$	22.96	\$	24.11	\$	25.31	\$	26.58	\$	27.90	\$	29.04	\$	30.47
	Permit Technician	\$		\$		\$		\$		\$		\$		\$		\$	
	Water Operator I	\$		\$		\$		\$		\$		\$		\$		\$	
М	Utility Worker II	\$	23.21	\$	24.38	\$	25.58	\$	26.88	\$	28.22	\$	29.63	\$	31.11	\$	32.34
	Wastewater Operator I	\$		\$		\$		\$		\$		\$		\$		\$	
	Wastewater Collections Operator I	\$		\$		\$		\$		\$		\$		\$		\$	
N	Accounting Assistant	\$	23.84	\$	25.02	\$	26.27	\$	27.58	\$	28.96	\$	30.41	\$	31.93	\$	33.21
	Sr. Court Ops Clerk	\$		\$		\$		\$		\$		\$		\$		\$	
	Police Property & Evidence Technician	\$		\$		\$		\$		\$		\$		\$		\$	
0	CAD Technician	\$	25.29	\$	26.55	\$	27.87	\$	29.28	\$	30.74	\$	32.28	\$	33.90	\$	35.24
	Engineering Technician II	\$		\$		\$		\$		\$		\$		\$		\$	
	Fleet Maintenance Technician	\$		\$		\$		\$		\$		\$		\$		\$	
	IT Network Technician	\$		\$		\$		\$		\$		\$		\$		\$	
	PW Utility Crew Lead	\$		\$		\$		\$		\$		\$		\$		\$	
	Water Operator II	\$		\$		\$		\$		\$		\$		\$		\$	
	Wastewater Operator II	\$		\$		\$		\$		\$		\$		\$		\$	
	Wastewater Collections Operator II	\$		\$		\$		\$		\$		\$		\$		\$	
Р	Associate Planner	\$	26.57	\$	27.88	\$	29.29	\$	30.75	\$	32.29	\$	33.91	\$	35.60	\$	37.02
	Economic Development Specialist	\$		\$		\$		\$		\$		\$		\$		\$	
	IT Software Support Specialist	\$		\$		\$		\$		\$		\$		\$		\$	
	Librarian	\$		\$		\$		\$		\$		\$		\$		\$	
Q	GIS Technician	\$	27.99	\$	29.37	\$	30.84	\$	32.40	\$	34.00	\$	35.71	\$	37.49	\$	38.80
	Plans Examiner/Inspector I	\$		\$		\$		\$		\$		\$		\$		\$	
	Sewer Line Maintenance Technician	\$		\$		\$		\$		\$		\$		\$		\$	
	Wastewater Operator III	\$		\$		\$		\$		\$		\$		\$		\$	
R	Engineering Technician III	\$	29.61	\$	31.09	\$	32.65	\$	34.27	\$	35.98	\$	37.79	\$	39.67	\$	41.26
	Industrial Pre-treatment Coordinator	\$		\$		\$		\$		\$		\$		\$		\$	
	Planner	\$		\$		\$		\$		\$		\$		\$		\$	
	PW Maintenance Technician	\$		\$		\$		\$		\$		\$		\$		\$	
S	Engineering Associate	\$	30.50	\$	32.03	\$	33.63	\$	35.32	\$	37.26	\$	39.31	\$	41.27	\$	42.92
	Plans Examiner/Inspector II	\$		\$		\$		\$		\$		\$		\$		\$	
	Wastewater Laboratory Coordinator	\$		\$		\$		\$		\$		\$		\$		\$	
Т	IT Network Administrator	\$	33.55	<u> </u>	35.24	\$	36.99	\$	38.84	\$	40.79	\$	42.83	\$	44.97	\$	47.22
	IT Systems Administrator	\$		\$		\$		\$		\$		\$		\$		\$	
U	Plans Examiner/Inspector III	\$	37.97	_	39.31	\$	40.68	<u> </u>	42.11	\$	44.00	\$	45.98	\$	48.05	\$	49.97
	Project Engineer	\$		\$		\$		\$		\$		\$		\$		\$	

APPENDIX A

WAGE RATES - EFFECTIVE JUNE 23, 2024

Grade	Position	Ste	p 1	Ste	p 2	Ste	p 3	Ste	ep 4	Ste	ep 5	Ste	p 6	Ste	p 7	Ste	p 8
Α		\$	16.89	\$	17.74	\$	18.62	\$	19.54	\$	20.53	\$	21.55	\$	22.64	\$	23.54
В	Custodial Worker I	\$	17.21	\$	18.09	\$	18.99	\$	19.93	\$	20.93	\$	21.98	\$	23.07	\$	24.00
	Parks and Maintenance Worker	\$		\$		\$		\$		\$		\$		\$		\$	
С	Custodial Worker II	\$	17.59	\$	18.47	\$	19.38	\$	20.35	\$	21.38	\$	22.44	\$	23.58	\$	24.53
D		\$	17.99	\$	18.89	\$	19.85	\$	20.82	\$	21.87	\$	22.97	\$	24.11	\$	25.07
Е		\$	18.47	\$	19.38	\$	20.36	\$	21.40	\$	22.46	\$	23.58	\$	24.75	\$	25.75
F	Grounds & ROW Maintenance Worker	\$	18.99	\$	19.92	\$	20.93	\$	21.98	\$	23.07	\$	24.22	\$	25.44	\$	26.46
G	Transportation Bus Driver	\$	19.57	\$	20.56	\$	21.58	\$	22.65	\$	23.78	\$	24.97	\$	26.21	\$	27.27
Н	Administrative Specialist	\$	20.19	\$	21.19	\$	22.26	\$	23.36	\$	24.54	\$	25.76	\$	27.05	\$	28.14
	Cashier	\$	20.13	\$		\$	LLILO	\$	20.00	\$	2	\$	2317 0	\$	27.00	\$	20.2
	Library Assistant	\$		\$		\$		\$		\$		\$		\$		\$	
	Transportation Lead Bus Driver	\$		\$		\$		\$		\$		\$		\$		\$	
- 1	Court Operations Clerk	\$	21.00	\$	22.06	\$	23.14	\$	24.32	\$	25.53	\$	26.80	\$	28.15	\$	29.27
•	Police Records Clerk	\$	21.00	\$	22.00	\$	23.14	\$	24.52	\$	23.33	\$	20.00	\$	20.13	\$	23.21
J	Utility Worker I	\$	21.66	\$	22.74	\$	23.89	\$	25.08	\$	26.33	\$	27.66	\$	29.02	\$	30.19
,	Water Meter Reader	\$	21.00	\$	22.74	\$	23.03	\$	23.08	\$	20.33	\$	27.00	\$	23.02	\$	30.13
К	Administrative Analyst	\$	22.07	\$	23.18	\$	24.33	\$	25.54	\$	26.82	\$	28.17	\$	29.57	\$	30.76
N.	· · · · · · · · · · · · · · · · · · ·	\$	22.07	\$	23.18	\$	24.33	\$	25.54	\$	20.82	\$	28.17	\$	29.57	\$	30.76
L	Library Associate	+-	22.52	<u> </u>	22.65	<u> </u>	24.02	·	26.07	١	27.38	·	20.74	÷	20.01	i -	24.20
L	Engineering Technician I	\$	22.52	\$	23.65	\$	24.83	\$	26.07	\$	27.38	\$	28.74	\$	29.91	\$	31.38
	Permit Technician	\$		\$		\$		\$		\$		\$		\$		\$	
	Water Operator I	÷	22.04	<u> </u>	25.44	<u> </u>	26.25	\$	27.60	\$	20.07	\$	20.52	Ė	22.04	\$	22.24
М	Utility Worker II	\$	23.91	\$	25.11	\$	26.35	\$	27.69	\$	29.07	\$	30.52	\$	32.04	\$	33.31
	Wastewater Operator I	\$		\$		\$		\$		\$		\$		\$		\$	
	Wastewater Collections Operator I	\$		\$		\$		\$		\$		\$		\$		\$	
N	Accounting Assistant	\$	24.56	\$	25.77	\$	27.06	\$	28.41	\$	29.83	\$	31.32				34.21
	Sr. Court Ops Clerk	\$		\$		\$		\$		\$		\$		\$		\$	
	Police Property & Evidence Technician	\$		\$		\$		\$		\$		\$		\$		\$	
0	CAD Technician	\$	26.05	\$	27.35	\$	28.71	\$	30.16	\$	31.66	\$	33.25	\$	34.92	\$	36.30
	Engineering Technician II	\$		\$		\$		\$		\$		\$		\$		\$	
	Fleet Maintenance Technician	\$		\$		\$		\$		\$		\$		\$		\$	
	IT Network Technician	\$		\$		\$		\$		\$		\$		\$		\$	
	PW Utility Crew Lead	\$		\$		\$		\$		\$		\$		\$		\$	
	Water Operator II	\$		\$		\$		\$		\$		\$		\$		\$	
	Wastewater Operator II	\$		\$		\$		\$		\$		\$		\$		\$	
	Wastewater Collections Operator II	\$		\$		\$		\$		\$	20	\$		\$		\$	
Р	Associate Planner	\$	27.37	\$	28.72	\$	30.17	\$	31.67	\$	33.26	\$	34.93	\$	36.67	\$	38.13
	Economic Development Specialist	\$		\$		\$		\$		\$		\$		\$		\$	
	IT Software Support Specialist	\$		\$		\$		\$		\$		\$		\$		\$	
	Librarian	\$		\$		\$		\$		\$		\$		\$		\$	
Q	GIS Technician	\$	28.83	_	30.25	\$	31.77	\$	33.37	\$	35.02		36.78	\$	38.61	\$	39.96
	Plans Examiner/Inspector I	\$		\$		\$		\$		_		\$		\$		\$	
	Sewer Line Maintenance Technician	\$		\$		\$		\$		\$		\$		\$		\$	
	Wastewater Operator III	\$		\$		\$		\$		\$		\$		\$		\$	
R	Engineering Technician III	\$	30.50		32.02	\$	33.63	\$	35.30	\$	37.06	\$	38.92	\$	40.86	\$	42.50
	Industrial Pre-treatment Coordinator	\$		\$		\$		\$		\$		\$		\$		\$	
	Planner	\$		\$		\$		\$		\$		\$		\$		\$	
	PW Maintenance Technician	\$		\$		\$		\$		\$		\$		\$		\$	
S	Engineering Associate	\$	31.42	\$	32.99	\$	34.64	\$	36.38	\$	38.38	\$	40.49	\$	42.51	\$	44.21
	Plans Examiner/Inspector II	\$		\$		\$		\$		\$		\$		\$		\$	
	Wastewater Laboratory Coordinator	\$		\$		\$		\$		\$		\$		\$		\$	
T	IT Network Administrator	\$	34.56		36.30	\$	38.10	\$	40.01	\$	42.01	\$	44.11	\$	46.32	\$	48.64
	IT Systems Administrator	\$		\$		\$		\$		\$		\$		\$		\$	
U	Plans Examiner/Inspector III	\$	39.11		40.49	\$	41.90	\$	43.37	\$	45.32	\$	47.36	\$	49.49	\$	51.47
i	Project Engineer	\$		\$		\$		\$		\$		\$		\$		\$	

APPENDIX B

STAND-BY ASSIGNED EMPLOYEES

[As of July 1, 2022]

STREETS / COLLECTIONS

- Chris Chandlee
- Max Vallejo

WATER

- James Hands
- Scott Bergren

WASTEWATER



Agenda Item

August 8, 2021

TO: Honorable Mayor and City Council through City Administrator

FROM: Chris Kerr, Community Development Director

Colin Cortes, AICP, CNU-A, Senior Planner

SUBJECT: Action on Final Decision Document Denying the US Market Gas

Station Development at 2540 & 2600 Newberg Hwy at the Southwest

Corner of Newberg Hwy & Oregon Way (CU 21-02)

RECOMMENDATION:

Adopt the attached Final Decision document denying land use applications, Conditional Use 21-02, Design Review 21-10, Exception to Street Right of Way and Improvement Requirements ("Street Exception") EXCP 21-05, & Phasing Plan PP 21-01 for the US Market Gas Station project and authorize the Mayor to sign the final decision document.

BACKGROUND:

The Council on July 25, 2022, voted to tentatively deny the consolidated applications package and directed staff to prepare a final decision document.

ATTACHMENTS:

Final Decision document and its Attachments



Land Use Final Decision (Denial)

City Council

File number(s): CU 21-02, DR 21-10, EXCP 21-05, & PP 21-01

Project name: US Market Gas Station

Date of decision: August 8, 2022

Applicant: Ronald "Ron" James Ped, Ronald James Ped Architect, PC, 145 21st St SE, Salem,

OR 97301-8846

Lal Din Sidhu ("Don" Sidhu), Woodburn Petroleum LLC, 1038 Broadway St NE,

Salem, OR 97301-1276

Site location: 2540 & 2600 Newberg Hwy (OR Hwy 214); Tax Lots 052W12DB03700 [primary]

& 3600

Zoning: Commercial General Zone (CG)

I. INTRODUCTION & PROCEDURAL HISTORY

Proposal: The Applicant requests approval on a consolidated land use application package (Type III), Conditional Use 21-02, Design Review 21-10, Exception to Street Right of Way and Improvement Requirements ("Street Exception") EXCP 21-05, & Phasing Plan PP 21-01 for a gas station with convenience store, known as US Market, and commercial office space, in the Commercial General (CG) zoning district.

Approval Criteria: To be approved, this proposal would need to comply with the following applicable approval criteria:

Transportation System Plan (TSP) Figures 1, 4 & 7 and Woodburn Development Ordinance (WDO) 1.02, 1.04, 2.03, 2.06, 3.01-3.07, 4.01, 4.02, and 5.03.01, 02, 03, & 05

All section references are to the Woodburn Development Ordinance (WDO).

Procedural History:

Woodburn Planning Staff Recommendation to Planning Commission: Approval with conditions.

Public Hearing before Planning Commission: The Planning Commission held a public hearing on June 9, 2022, and by a vote of 4-1 approved the consolidated land use applications package with the conditions recommended by staff through the staff report published June 2, 2022, except for two revision items:

- 1. Raising the Architectural Wall minimum height along the Panor 360 condominiums boundary (950 Evergreen Rd; Tax Lot 052W12DB90000) from 8 to 9 feet, which is the maximum that Woodburn Development Ordinance (WDO) 2.06.02C.1 allows, and striking allowance for that wall to have upper segments of cedar wood between columns/piers.
- Striking allowance for the developer to refine and construct site plan Option 2, the one that the applicant had drafted because of Oregon Department of Transportation (ODOT) highway access restrictions.

Testimony topics raised generally during the Planning Commission Hearing included concerns about:

- Crime
- Gas fumes smell
- The homeless
- Noise
- Theft
- Traffic
- Trespass
- Unsavory convenience store customers; and
- Vandalism.

Testified at the Planning Commission Hearing:

- D. Michael Mills, Lawyer PC (Applicant's Attorney)
- Joseph Bressman (Transight Consulting, LLC, Applicant's Traffic Consultant)
- Del Huttington (Huntington Traffic Solutions, Applicant's Traffic Consultant)
- Wayne Kittleson (Kittelson & Associates, Traffic Engineer representing The Woodburn Fast Serv Inc. and LB Group, LLC)
- David Petersen (Tonkon Torp, LLC, Attorney representing The Woodburn Fast Serv Inc. and LB Group, LLC)
- Largo Abshere
- Janice Aiken
- Carol Bettandorff
- Nancy Ferguson
- Karen Halter
- Mickey Harrison
- Rebecca Haves
- Doris Ehlen Kruse
- Dorothy Monnier
- Bobbi Reisner
- Carolyn Schindlebower

- Betty Torabi
- Don Zehrung

Written testimony was also submitted at or prior to the hearing by:

- Rebecca Hayes, on behalf of the Panor 360 Condominiums Homeowners & Residents, Letter dated May 5, 2022
- Anna Phillips, Letter dated May 10, 2022
- Wayne Kittleson, Kittelson & Associates, Traffic Engineer representing The Woodburn Fast Serv Inc. and LB Group, LLC, Letter dated May 11, 2022
- David Petersen, Tonkon Torp, LLC, Attorney representing The Woodburn Fast Serv Inc. and LB Group, LLC, Letters dated May 12, 2022 & June 8, 2022; and
- D. Michael Mills, Lawyer PC, Applicant's Attorney, Letter dated June 9, 2022

Planning Commission Decision: The Planning Commission Chair, Charles Piper, on June 14, 2022, signed the Final Decision of the Planning Commission. Then staff mailed the Final Decision on June 15, 2022.

Appeal: Type III decisions rendered by the Planning Commission are appealable to the City Council. The City Council's decision is the City's final decision. The last date to appeal the Planning Commission's decision for consolidated applications for the US Market applications was June 27, 2022. The Woodburn Fast Serv Inc. and LB Group, LLC, represented by David J. Petersen of Tonkon Torp, LLC, timely appealed by submitting a Notice of Intent to Appeal, dated June 21, 2022, which included each of the elements required by WDO 4.02.01.B.2., including a statement of the grounds for the appeal.

The Appellant specifically cited the following grounds for appeal: (i) failure of the Planning Commission to make any findings with respect to the applicable approval criteria; (ii) inadequate findings with respect to numerous approval criteria; (iii) vague conditions of approval or conditions of approval that improperly defer a determination of compliance to administrative staff; (iv) improper approval of Site Plan 1 due to infeasible ODOT access restrictions on the two parcels; (v) failure of the City to apply a condition of approval to mitigate adverse impacts on the OR 214/Oregon Way traffic system that includes an elevated crash rate; and (vi) inadequate findings related to the street exception application where the findings are not supported by substantial evidence.

City Council Hearing: Notice of the Public Hearing before the City Council on appeal of a land use decision by the Planning Commission was mailed on July 1, 2022, to all parties who signed in or participated before the close of the record of the Planning Commission Hearing (per WDO 4.02.01.C).

The City Council held a public hearing on the appeal at its regularly scheduled meeting on July 25, 2022. The meeting was held in person at Woodburn City Hall, 270 Montgomery Street, Woodburn, Oregon, with the hearing beginning at 7:38 p.m. The hearing was simultaneously held virtually over the videoconferencing software GoToMeeting.

Per WDO 4.01.15, the City Council conducted the public hearing pertaining to the Type III appeal pursuant to the standard quasi-judicial hearing procedure, proceeding in the following general order: (i) staff report; (ii) applicant's presentation; (iii) testimony in favor of the application; (iv) testimony in opposition to the application (with appellant permitted to testify and present its evidence and argument first); (v) rebuttal by the applicant; (vi) record closed; and (v) deliberation and decision.

During the Council Appeal Hearing, Council also followed the procedural instructions of WDO 4.01.16.E.1-3:

- "E. If the decision is appealed, the City Council shall consider:
 - 1. The Planning Commission or Director's decision.
 - 2. The applicant and other parties shall have an opportunity to present testimony, arguments and evidence <u>on all applicable criteria</u>.
 - 3. The presentation of testimony, arguments and evidence <u>shall not be</u> limited to issues raised in a notice of appeal.
 - The rights of participants to continuances or open record persons applicable to initial public hearings do not apply." (emphasis added)

While the WDO standard for appeal hearing notices provides that the notice shall include the following statement, "the appeal hearing is confined to the issues raised in the notice of appeal" (WDO 4.02.01.C.7); the Council interprets that provision to be limited in application to the notice itself and not to any restriction on evidence that may be admitted during the appeal hearing. Further, the notice for the hearing did not include any such statement that the appeal hearing would be confined to the issues raised in the notice of appeal.

During the hearing itself, City staff entered its full Staff Memorandum with associated attachments, dated July 25, 2022, into the hearing record. Attachments included, but were not limited to the Planning Commission Final Decision, PC Staff Report and related Findings & Analyses, as well as all written testimony received by the City up to the date and time of the Council Hearing.

Several parties testified at the Council Hearing (besides the applicant) and/or submitted written testimony prior to the hearing. The Appellant submitted additional written testimony and argument at the hearing. The Applicant also submitted an additional piece of written evidence regarding a sound impact assessment that was prepared for the proposed gas station use. The table below in the "Testifiers" section lists further details.

Following testimony by the Appellant and others opposed to the applications, the Council provided the Applicant an opportunity for rebuttal.

Following the testimony and closure of the record, a motion was made to (i) Overturn the Planning Commission's Decision; (ii) Tentatively Deny the Consolidated Applications, CU 21-02, DR 21,10, EXCP 21-05, and PP 21-01 for US Market Gas Station, on the basis that it fails to meet the Conditional Use Criteria Section B.3 on the basis of evidence in the record that demonstrates that the proposed development will not be compatible with surrounding properties; and (iii) Direct Staff to return with a final decision at the next Council meeting. The motion was seconded. A vote was taken and the City Council voted 4-0 in support of the motion overturning the Planning Commission decision and denying the applications. Staff was directed to prepare findings consistent with the Council's tentative decision and return to a future Council meeting with a final decision in writing.

The City Council considered the findings at a public meeting on August 8, 2022, and approved this Final Decision along with the associated findings at that time.

Summary of Decision: Following a hearing on the appeal of the Planning Commission's decision for the consolidated land use applications for the US Market gas station and office building, the Council voted to overturn the Planning Commission's decision and deny the applications.

The denial was made on the basis that the proposed development would not be compatible with the surrounding properties. Specifically, that unsafe traffic patterns and increased daily trips to and from the site would cause additional road safety hazards and an unreasonable level of congestion to the adjacent neighborhood of single and multi-family dwellings that primarily house senior citizens. Additionally, the adverse noise, odors, illumination, air quality, and aesthetic impacts from adding a third gas station within a two block area would negatively affect the quality of the living environment of the residential properties in the vicinity of the site.

II. GENERAL BACKGROUND

Applications

The land use application master case file number is Conditional Use CU 21-02, and the corollary case file numbers are Design Review 21-10, Exception to Street Right of Way and Improvement Requirements ("Street Exception") EXCP 21-05, & Phasing Plan PP 21-01.

- CU 21-02 & DR 21-10: Conditional use application and design review to redevelop vacant land following demolition of two vacant bank buildings into a gas station of 12 pumps with a convenience store of 4,314 square feet (sq ft) and an office building of 3,800 sq ft with a total minimum of 36 parking stalls and a 6-foot high "Architectural Wall" where segments don't yet exist as a buffer/screen wall along southerly property lines adjacent to the Retirement Community Single Family Residential (R1S) zoning district.
- EXCP 21-05: Street Exception (EXCP) application to *not* upgrade the highway frontage by demolishing the curb-tight sidewalk and planting a landscape strip with street trees and new sidewalk. Includes partial upgrade of Oregon way frontage with some new landscape strip and street trees.
- PP 21-01: A Phasing Plan (PP) to allow different timing to develop the gas station / convenience store versus the office building and accommodate developer's choice of one of two alternative site plans following City approval and dependent on how severely the Oregon Department of Transportation (ODOT) restricts access via the highway driveway via its own agency permitting process.

Site

The subject property is 2540 & 2600 Newberg Highway, composed of two lots totaling 1.42 acres, and located at the southwest corner of the intersection of Newberg Highway (Oregon Highway 214) and Oregon Way.

History of the Site

The subject property was occupied by two vacant bank buildings. A contractor demolished the buildings and cleared the site in 2021.

Zoning

Commercial General (CG)

Surrounding Properties and Neighborhood



Zoning map excerpt

Cardinal Direction	Adjacent Zoning
North	Across OR Hwy 214: Commercial General (CG)
East	Across Oregon Way: Retirement Community Single Family Residential (R1S)
South	East to west: R1S (943 & 953 Oregon Way; houses) and CG (950 Evergreen
	Rd; Panor 360 condominiums)
West	CG (950 Evergreen Rd; Panor 360 condominiums; and 2620 Newberg Hwy;
	Dairy Queen)

^{*}Surrounding Properties and Neighborhood Table

CU 21-02 Option 1 Site & Phasing Plan



Traffic Impact Analysis

The applicant as part of the application materials submitted a traffic impact analysis (TIA) dated August 13, 2021 as required by WDO 3.04.05. The applicant revised the TIA May 26, 2022, and submitted it May 31, 2022.

The TIA demonstrated that the development would have generated more daily vehicle trips than the two banks, now demolished, did – 422 net increase per revised TIA Table 1 on p. 6.

III. STANDARDS & CRITERIA

The Conditional Use Criteria apply to gasoline stations located in the commercial general zoning district when that use will be located within 200 feet of residentially zoned properties (WDO Table 2.03A).

WDO 5.03 General Requirements

- A. The purpose of this Section is to identify what types of actions are considered Type III decisions. Type III decisions involve significant discretion and evaluation of subjective approval standards, yet are not required to be heard by the City Council, except upon appeal. The process for these land use decisions is controlled by ORS 197.763. Notice of the application and the Planning Commission or Design Review Board hearing is published and mailed to the applicant, recognized neighborhood associations and property owners. The decision of the Planning Commission or Design Review Board is appealable to the City Council. The City Council's decision is the City's final decision and is appealable to the Land Use Board of Appeals.
- B. To initiate consideration of a Type III decision, a complete City application, accompanying information, and filing fee must be submitted to the Director. The Director will evaluate the application as outlined in this Section.
 - 5.03.01 Conditional Use
 - 5.03.02 Design Review, Type III
 - 5.03.03 Exception to Street Right of Way and Improvement Requirements
 - 5.03.04 Manufactured Dwelling Park, Preliminary Approval
 - 5.03.05 Phasing Plan for a Subdivision, PUD, Manufactured Dwelling Park or any other Land Use Permit
 - 5.03.06 Planned Unit Development (PUD), Preliminary Plan Approval
 - 5.03.07 Planned Unit Development (PUD), Design Plan Final Approval
 - 5.03.08 Special Conditional Use Historically or Architecturally Significant Building
 - 5.03.09 Special Use as a Conditional Use
 - 5.03.10 Subdivision Preliminary Approval
 - 5.03.11 Telecommunications Facility, Specific Conditional Use
 - 5.03.12 Variance

WDO 5.03.01 Conditional Use

A. Purpose: A conditional use is an activity which is permitted in a zone but which, because of some characteristics, is not entirely compatible with other uses allowed in the zone, and cannot be permitted outright. A public hearing is held by the Planning Commission and conditions may be imposed to offset impacts and make the use as compatible as practical with surrounding uses. Conditions can also be

imposed to make the use conform to the requirements of this Ordinance and with other applicable criteria and standards. Conditions that decrease the minimum standards of a development standard require variance approval.

B. Criteria:

- 1. The proposed use shall be permitted as a conditional use within the zoning district.
- 2. The proposed use shall comply with the development standards of the zoning district.
- 3. The proposed use shall be compatible with the surrounding properties.

Relevant factors to be considered in determining whether the proposed use is compatible include:

- a. The suitability of the size, shape, location and topography of the site for the proposed use;
- b. The capacity of public water, sewerage, drainage, street and pedestrian facilities serving the proposed use;
- c. The impact of the proposed use on the quality of the living environment:
 - 1) Noise;
 - 2) Illumination;
 - 3) Hours of operation;
 - 4) Air quality;
 - 5) Aesthetics; and
 - 6) Vehicular traffic.
- d. The conformance of the proposed use with applicable Comprehensive Plan policies; and
- e. The suitability of proposed conditions of approval to ensure compatibility of the proposed use with other uses in the vicinity.

IV. APPLICATION OF CRITERIA & FINDINGS

Conditional Use Criteria #3

3. The proposed use shall be compatible with the surrounding properties.

Relevant factors to be considered in determining whether the proposed use is compatible include:

- a. The suitability of the size, shape, location and topography of the site for the proposed use;
- b. The capacity of public water, sewerage, drainage, street and pedestrian facilities serving the proposed use;
- c. The impact of the proposed use on the quality of the living environment:
 - 1) Noise;
 - 2) Illumination;
 - 3) Hours of operation;
 - 4) Air quality;
 - 5) Aesthetics; and
 - 6) Vehicular traffic.
- d. The conformance of the proposed use with applicable Comprehensive Plan policies; and
- e. The suitability of proposed conditions of approval to ensure compatibility of the proposed use with other uses in the vicinity.

Evidence:

The proposal is to consolidate and redevelop lots totaling 1.42 acres at 2540 & 2600 Newberg Highway (Oregon Highway 214). The subject property is located at the southwest corner of the intersection of Hwy OR 214 and Oregon Way.

The subject property is zoned Commercial General (CG) and was occupied by two previous bank buildings, now demolished. The site is bounded on the north side by Hwy OR 214, on the west side by a Dairy Queen fast food restaurant, on the west and part of the south side by a senior-living condominium building (Panor 360 Condominiums), and on the remainder of the south boundary and on the east boundary by single-family residential homes that make up part of the Woodburn Estates 55+ residential living community.

From the proposed US Market site, going west along Hwy OR 214 toward Interstate-5, there are already two existing gas/fuel stations with convenience stores operating. These gas stations are on the same south side of Hwy OR 214 and would be within 1-2 blocks of the subject site. These two gas stations are located closer to the Interstate-5 interchange and are not bounded by or adjacent to residentially zoned properties or residential uses.

While specific operating hours for the proposed gas station were not confirmed by the applicant during the public hearing process, testimony offered by adjacent residential neighbors indicated that the gas station and convenience store use would likely be a 24-hour operation, similar to the typical operation of others in the area. This assertion regarding long/late night operating hours, made by numerous neighboring property owners, was not rebutted by the Applicant.

In addition to the concerns raised regarding hours of operation of the proposed use, Applicant's TIA indicated that the overall daily vehicle trip counts generated for the gas station use would exceed that of the previous bank buildings (net increase of 422 daily trips), even while peak hour trips from the gas station use would be lower than that of the banks.

During the hearing and through written testimony, the Appellant's traffic engineer identified that the Applicant's TIA was insufficient in a number of regards, but most importantly it identified the following:

"No queuing analysis was performed for critical lane groups at the intersections that were studied. This is a particularly important consideration with respect to the throughand left-turning vehicle queues on the EB approach on OR 214 to Oregon Way. It is important because the right-out movement being proposed to be maintained from the development onto ORS 214 could be affected if queue backups at the downstream signal make it difficult for vehicles leaving the site to enter OR 214 safely. Drivers wanted to make a U-turn at Oregon Way to return to the freeway or other destinations to the west may be most severely affected by long queues at this intersection. Likewise, no queuing analysis was reported for the full access drive to Oregon Way. . . . "

While the Applicant did refer to queuing in an appendix to their TIA, that analysis identifies issues of queuing along ORS 214 at several intersections under existing conditions as well as with in-process traffic being added. Further, the issue of eastbound queues on OR 214 blocking

the right-in right-out driveway exit from the proposed site during PM peak hours was identified as a concern.

Further analysis from the City's own traffic consultant, also identified problematic conditions presented in the Applicant's TIA:

"The TIA identified the intersection of ORS 214 and Oregon Way/Country Club Road as having an elevated crash rate that exceeds ODOT's 90th percentile crash rate for these types of intersections. This results in the intersection having an elevated crash rate and potentially adding trips could exacerbate this condition."

"The TIA indicated that the OR 214/Oregon Way intersection has an elevated crash rate under existing conditions, primarily due to left turns at this flashing yellow arrow left turn signal. Not only would the additional trips likely exacerbate this condition, but would require a quick multi-lane weave maneuver across eastbound OR 214, which increases the risk of collisions due to such a maneuver."

While the Council acknowledges that the flashing yellow arrow, left turn signal option was recently deactivated or turned-off by ODOT at the OR 214/Oregon Way intersection, testimony received during the public hearing from residential neighbors in the area still identified continued problematic vehicle crashes, near-misses, and other incidents at or near the OR 214/Oregon Way intersection, including a recent roll-over vehicle collision at that intersection.

Furthermore, the Applicant did not propose any mitigation or solution to the problematic vehicular pattern that may occur when vehicles would exit the site and take a right-turn out of the gas station onto OR 214 and then theoretically weave across a bike land and two lanes of highway traffic to then turn left or make a U-turn at Oregon Way. This multi-lane weaving would have to occur within a space of less than 200 feet for a vehicle to be able to turn left or make a U-turn at Oregon Way. Making a U-Turn at Oregon Way would be one of two routes that vehicles could theoretically take leaving the gas station to travel west back to Interstate 5.

With regards to vehicle traffic on Oregon Way, that street is a local street that provides a connection from OR 214 to the residential neighborhood of Woodburn Estates. Woodburn Estates is a 55+ senior community with residents that have homes along Oregon Way, both adjacent to and across from the proposed site. Residents testified to regularly using Oregon Way (which does not have sidewalks) for walking and to travel by golf cart to and from their club house for recreational activities.

As part of the Planning Commission's approval, it added a condition that a 9 foot masonry wall would need to be built between the proposed gas station property and the adjacent residential uses. Many of the neighbors testifying during the hearing illustrated that while the proposed screening provided by an architectural wall along the southern boundary of the property may help mitigate some noise and site issues, it would still not alleviate every concern related to typical convenience store and gas station operations, such as long operating hours (sometime 24 hours), increases in constant/regular circulating traffic to and from the site, increased exhaust/fumes from idling vehicles, and vehicle headlight illumination spreading across Oregon Way into neighboring homes when vehicles would be leaving/exiting the site to the east.

Findings:

Type III decisions involve significant discretion and evaluation of subjective approval standards. For Conditional Use applications, relevant factors to be considered in determining whether the proposed use is compatible with the surrounding properties include the following:

a. The suitability of the size, shape, location and topography of the site for the proposed use;

This approval criterion requires a proposed facility to remain compatible with the surrounding development in terms of the noted factors. While the proposed site is currently vacant, relatively flat, and located along a state highway within a close vicinity to Interstate-5, the suitability of the site location remains problematic due to the adjacent residentially zoned properties and uses.

Unlike the two nearby existing gas stations located closer to Interstate-5, within the City's interchange management area, this site would be bounded by properties that are used solely for residential purposes. The secondary access to the site would be along a local residentially-classified street. Additionally, current single-family homes that are located directly across from the site, separated only by Oregon Way, would have little buffer from an intensive gas station and commercial use (in contrast to those residences that might have had some protection through a previously proposed condition of approval that would have required an architectural wall be constructed for screening purposes).

For these reasons, the location of this site for the proposed gas station use is unsuitable.

- b. The capacity of public water, sewerage, drainage, street and pedestrian facilities serving the proposed use;
- c. The impact of the proposed use on the quality of the living environment:
 - 1) Noise;
 - 2) Illumination;
 - 3) Hours of operation;
 - 4) Air quality;
 - 5) Aesthetics; and
 - 6) Vehicular traffic.

Both the Woodburn Estates and Panor 360 Condominium communities pointed to adverse traffic volumes and traffic safety issues as the most concerning impacts of the proposed gas station development on their communities and their quality of living. To the extent that those concerns were consistent with findings in the Appellant's traffic engineer memo and the City's own traffic consultant's conclusions regarding the Applicant's TIA, the City Council finds that evidence to be both credible and compelling.

Specifically, the potentially hazardous vehicular conditions that would be created or exacerbated if this particular project is approved is of legitimate concern to the Council as it would negatively impact the surrounding neighborhood and all residents of Woodburn that travel through the OR 214/Oregon Way intersection.

Notably, the following vehicular traffic and safety issues are of greatest concern:

- The OR 214/Oregon Way intersection already has an elevated crash rate that exceeds ODOT's 90th percentile crash rate for these types of intersections under existing conditions. While the proposed gas station use would only contribute an additional 10 vehicles to the PM peak hour, the overall impact would be a daily increase in overall trip counts (+244 trips) to and from the site, likely exacerbating the crash rate condition. It is also reasonable to believe that a gas station, more so than a bank, will attract an increased number of drivers from Interstate-5 that will be unfamiliar with the road configuration and elevated crash risk at the subject intersection.
- Drivers exiting the proposed gas station using the driveway along OR 214 would likely engage in a multi-lane weave maneuver across eastbound OR 214 when desiring to return to Intestate-5 or generally head west on OR 214, which would increase the risk of collisions at the OR 214/Oregon Way intersection due to such a maneuver.

While staff proposed a number of conditions for the project that may have mitigated some of the traffic safety concerns (including added onsite directional signage and proportional cost-sharing for future signal timing studies), the Council finds that the most effective and compelling mitigation option would be to deny the project. The Council finds this option to be reasonable primarily because the proposed gas station use would not only increase a particularly dangerous condition, but it would do so without clear assurances or evidence from the Applicant that any of the proposed mitigation measures would effectively reduce or address the vehicular traffic impacts of the use.

In addition to the traffic safety concerns related to the OR 214/Oregon Way intersection, it is reasonable to believe that the proposed use will also have a measurable effect on other quality of living factors due to increased noise, illumination, hours of operation, air quality, and aesthetics of a gas station. Approving the conditional use application would significantly change the use of the property from two bank building operations to a more intensive gas station, convenience store, and speculative office use. That change would have discernable resulting impacts on the adjacent residential neighbors. The onsite impacts from a gas station are notably apparent when contrasted to a former bank operation. Hours of operation are increased to nights and weekends, visibly intense illumination for the fueling islands would be required to be installed (noticeable even with full cut-off fixtures as proposed as a condition by staff), and fumes from gas station fueling or idling cars would likely increase as the total number of daily vehicle trips to and from the site would increase.

Due to the identified negative impacts that the proposed use would have on the quality of the living environment, it is clear that the proposed gas station use is unsuitable.

- d. The conformance of the proposed use with applicable Comprehensive Plan policies; and
- e. The suitability of proposed conditions of approval to ensure compatibility of the proposed use with other uses in the vicinity.

Council finds the conditional use criteria (WDO 5.03.01.B.3), has not been met by the Applicant on the basis that evidence in the record demonstrates that the proposed gas station development will not be compatible with surrounding properties. Furthermore, the Council finds that it cannot reasonably condition the proposed use given the problematic vehicular traffic findings and adverse livability issues discussed above, and must therefore deny the application.

V. DECISION

Based on the above findings, the City Council makes the following Decision:

- 1. Reverse the Planning Commission Decision; and
- Deny the land use applications for the US Market Gas Station project, Conditional Use 21-02, Design Review 21-10, Exception to Street Right of Way and Improvement Requirements EXCP 21-05, & Phasing Plan PP 21-01.

VI. APPEALS

This decision may be appealed to the Oregon Land Use Board of Appeals (LUBA) pursuant to Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR) 661-010.

A copy of the decision is available for inspection at no cost, and the City would provide a copy at reasonable cost at the Community Development Department, City Hall, 270 Montgomery Street, Woodburn, OR 97071-4730. For questions or additional information, contact Cassandra Martinez, Administrative Specialist, at (503) 982-5246 or cassandra.martinez@ci.woodburn.or.us.

Testifiers:

Name	Address	City Council	
		Written	Verbal
Wallace W. Lien,	1004 Crescent Dr NW	X	x
(applicant's attorney)	Salem, OR 97304		
Wayne Kittelson	Kittelson & Associates, Inc.		x
(appellant's traffic	851 SW 6 th Ave, Ste 600		
consultant)	Portland, OR 97204		
David Petersen	Tonkon Torp, LLC, 888 SW 5 th Ave, Ste	X	x
(appellant's attorney)	1600, Portland, OR 97204		
Joseph Bessman	Transight Consulting, LCC		x
(applicant's traffic	61271 Splendor Ln		
consultant)	Bend, OR 97702		
Del Huntington	Huntington Traffic Solutions		x
(applicant's traffic	1665 A St NE		
consultant)	Salem, OR 97301		
Nancy Ferguson	950 Evergreen RD, Unit 323 Woodburn,		х
	OR 97071		
Rebecca Hayes	950 Evergreen RD, Unit 205 Woodburn,		Х
	OR 97071		
Doris Ehlen Kruse	950 Evergreen RD, Unit 312 Woodburn,		х
	OR 97071		
Bobbi Reisner	950 Evergreen RD, Unit 221 Woodburn,		х
	OR 97071		
Carolyn Schindlebower	950 Evergreen RD, Unit 206 Woodburn,		х
	OR 97071		
Betty Torabi	925 Oregon Way	Х	
	Woodburn, OR 97071		
Charles Stein	2238 OREGON CT	Х	
	Woodburn, OR 97071		
Julitta Bromenschenkel	2330 OREGON CT	Х	
	Woodburn, OR 97071		
Doris M Ebanks	2340 OREGON CT	Х	
	Woodburn, OR 97071		
Norman Ebanks	2340 OREGON CT	Х	
	Woodburn, OR 97071		
John Englin	2325 Oregon CT	Х	
	Woodburn, OR 97071		
Sharon Hoyt	2287 Oregon CT	X	
5.1d. 5.1. 1.6 / C	Woodburn, OR 97071		
Beverly Ramsey	2343 Oregon CT	X	
beverry namisey	Woodburn, OR 97071	^	
Sandra L. Alsbury	2227 Oregon CT	X	
Juliara E. Alsbury	Woodburn, OR 97071	^	
Ruth B. Teneyck	2207 Oregon CT	X	
Ratif D. Telleytk	Woodburn, OR 97071	^	
Jeanette E. Johnson	170 E Clackamas CIR.	V	
Jeanette E. Johnson	Woodburn, OR 97071	Х	

Name	Address	City Council	_
		Written	Verbal
Neil A. Johnson	170 E Clackamas CIR.	×	
	Woodburn, OR 97071		
Sandra White	892 Oregon Way	x	
	Woodburn, OR 97071		
Charlie Nilson	892 Oregon Way	x	
	Woodburn, OR 97071		
Susan M Huggins	910 Oregon Way	х	
	Woodburn, OR 97071		
Jill Morris	952 Oregon Way	х	
	Woodburn, OR 97071		
Don Lee Zehrung	966 Oregon Way	х	
_	Woodburn, OR 97071		
Janice K Duncum	980 Oregon Way	x	
	Woodburn, OR 97071		
Lorena Soto Astorga	953 Oregon Way	X	
· ·	Woodburn, OR 97071		
Debra S. Mendenhall	943 Oregon Way	Х	
	Woodburn, OR 97071		
Adam P. Mendenhall	943 Oregon Way	Х	
7.00	Woodburn, OR 97071		
Jay E. Toll	889 Oregon Way	Х	
3dy 2. 1011	Woodburn, OR 97071	^	
Timothy K. Gordon	876 Oregon Way	Х	
Timothy R. Gordon	Woodburn, OR 97071	^	
Magdalena	796 Oregon Way	X	
Martinez	Woodburn, OR 97071	^	
Glenda Sheldon	778 Oregon Way	X	
Glerida Sileidori	Woodburn, OR 97071	^	
Vickie J. Hibbard	2317 Umpqua RD	X	
VICKIE J. HIDDalu	Woodburn, OR 97071	^	
Laura Harryman	724 Oregon Way	X	
Laura Harryman	Woodburn, OR 97071	^	
Maria William Wright			
Marie William Wright	706 Oregon Way Woodburn, OR 97071	X	
Patty S. Bathen			
Pally 3. Ballien	690 Oregon Way	X	
Damill Elabara	Woodburn, OR 97071		
Daryll Fisher	618 Oregon Way	Х	
	Woodburn, OR 97071		
Jerrilynn Vanslkye	741 Oregon Way	Х	
	Woodburn, OR 97071		
Marjorie Vanslkye	741 Oregon Way	×	
	Woodburn, OR 97071		
David C. Bunnell	763 Oregon Way	Х	
	Woodburn, OR 97071		ļ
Donna Rector	853 Oregon Way	Х	
	Woodburn, OR 97071		
Dennis Martin	817 Oregon Way	Х	
	Woodburn, OR 97071		
Carol A. Bettandorff	717 N. Cascade DR	X	

Name	Address	City Council	
		Written	Verbal
	Woodburn, OR 97071		
Diana Meithof	275 S. Cascade DR	X	
	Woodburn, OR 97071		
Betty Yaws	784 S Columbia DR	x	
	Woodburn, OR 97071		
Marilyn M. Dykes	2005 W. Santiam DR	x	
	Woodburn, OR 97071		
Karen Ewing	1910 Sallal DR	X	
	Woodburn, OR 97071		
Louise Davidson	643 S. Columbia DR	x	
	Woodburn, OR 97071		
Diane Mann	1366 Astor CT	x	
	Woodburn, OR 97071		
Mickey Harrison	924 Oregon Way	x	
	Woodburn, OR 97071		
Paula Kilgore	636 Oregon Way	x	
	Woodburn, OR 97071		
Sandra Blogloch	2220 Oregon CT	x	
	Woodburn, OR 97071		
Mary Edinger	2256 Oregon CT	х	
	Woodburn, OR 97071		
Jane Stein	2238 Oregon CT	Х	
	Woodburn, OR 97071		
Connie Cobb	1760 Vanderbeck LN	Х	
	Woodburn, OR 97071		
Karen Halter	938 Oregon Way	Х	
	Woodburn, OR 97071		
Connie Johnson	1363 Princeton RD	x	
	Woodburn, OR 97071		
Gary Johnson	1363 Princeton RD	x	
	Woodburn, OR 97071		
Ronald Sartin	797 N Cascade DR	x	
	Woodburn, OR 97071		
Donna Burnside	1580 Thompson RD	х	
	Woodburn, OR 97071		
Largo Abshere	855 N. Cascade DR	х	
	Woodburn, OR 97071		
Ruth DeSantis	173 McLaughlin DR	х	
	Woodburn, OR 97071		
Betty Burrows	1099 Princeton RD	x	
	Woodburn, OR 97071		
Sally Carter	740 S Columbia DR	x	
	Woodburn, OR 97071		
Christina Morris	950 Evergreen RD	х	
	Woodburn, OR 97071		
Terri Smith	1975 W Santiam DR	Х	
	Woodburn, OR 97071		
Sherry Manier	760 Oregon Way	Х	
	Woodburn, OR 97071		

Name	Address	City Council	
		Written	Verbal
Maggie Sasse	345 S Cascade DR	Х	
	Woodburn, OR 97071		
Vickie Lambert	1260 Randolph RD	Х	
	Woodburn, OR 97071		
Madaline Delnick	1244 Randolph RD	Х	
	Woodburn, OR 97071		
Resident/Homeowner	813 S. Columbia Rd	Х	
[petition signature	Woodburn, OR 97071		
illegible]			
Jan Duncum	980 Oregon Way		х
	Woodburn, OR 97071		
Anne Reslock	1375 Quinn Rd		х
	Woodburn, OR 97071		
Janie Torabi	925 Oregon Way		х
	Woodburn, OR 97071		
Doris Ehlen-Kruse	950 Evergreen Rd, Unit 128		х
	Woodburn OR, 97071		

Attachment(s):

- A. City Council July 25, 2022, Staff Report with its Attachments
- B. Written Testimony Submitted at or prior to the City Council Hearing
- C. Written Testimony Submitted at or prior to the Planning Commission Hearing
- D. Memorandum to the City of Woodburn Development Review from Chuck Green, PE, Otak, RE: Review of US Market Revised Traffic Impact Study (CU 21-02), dated June 1, 2022
- E. Memorandum to the City of Woodburn Development Review from Chuck Green, PE, Otak, RE: Review of US Market Traffic Impact Study (CU 21-02), dated May 18, 2022
- F. Memorandum to the City of Woodburn Development Review from Chuck Green, PE, Otak, RE: Review of US Market Traffic Impact Study (CU 21-02), dated May 10, 2022

	erely,		
0	olin Cortes		
	or Planner		
As au	uthorized by the City Council on August 8,	2022	
Eric S	Swenson, Mayor	 Date	, 2022
ES/cn	nc		
cc:	Chris Kerr, Community Development Direc Ronald "Ron" James Ped, Ronald James Pe (applicant) [mail])R 97301-8846
	Lal Din Sidhu ("Don" Sidhu), Woodburn Pe (landowner) [mail]	troleum LLC, 1038 Broadway St NE, Sale	m, OR 97301-1276
	David Petersen, Tonkon Torp, LLC, 888 SW Testifiers: Per the table above [mail]	5th Ave, Ste 1600, Portland, OR 97204	(appellant) [mail]
	Casey Knecht, P.E., Development Review C <casey.knecht@odot.oregon.gov></casey.knecht@odot.oregon.gov>		ition (ODOT) Region 2



Agenda Item

July 25, 2022

TO: Honorable Mayor and City Council through City Administrator

FROM: Chris Kerr, Community Development Director

Colin Cortes, AICP, CNU-A, Senior Planner

SUBJECT: Appeal of the Planning Commission Approval with Conditions of the

US Market Gas Station Development at 2540 & 2600 Newberg Hwy at the Southwest Corner of Newberg Hwy & Oregon Way (CU 21-02)

RECOMMENDATION:

Conduct a public hearing and make a motion to affirm the Planning Commission approval with conditions, directing staff to prepare a final land use decision for consideration at the next City Council meeting.

BACKGROUND:

The item before the Council is an appeal of the Planning Commission's approval with conditions of Conditional Use CU 21-02 and corollary applications Design Review 21-10, Exception to Street Right of Way and Improvement Requirements ("Street Exception") EXCP 21-05, & Phasing Plan PP 21-01 for the US Market gas station development at 2540 & 2600 Newberg Highway, which is at the southwest corner of the intersection of the highway and Oregon Way.

The subject property of approximately 1.42 gross acres, is zoned Commercial General (CG), and was previously occupied by two vacant bank buildings, now demolished.

The applicant is architect Ronald "Ron" Ped, acting on behalf of property owner Lal "Don" Sidhu of Woodburn Petroleum LLC. The parties appealing the Planning Commission's decision (appellant) are LB Group, LLC and Woodburn Fast Serv Inc, represented by attorney David Petersen of Tonkon Torp LLP. A copy of the appellant's letter received June 21 requesting an appeal is included as Attachment 2.

Final decision (denial) Attachment A

Agenda Item Review: City Administrator ___x__ City Attorney ___x__ Finance _x___

Project Summary

The proposal is to develop a gas station with convenience store and speculative commercial office area on two lots. (There is no lot consolidation.) A colored site plan is included on a later page.

The site plan that the Planning Commission approved for development includes the following features:

- The east, corner lot, which has the one driveway along Oregon Way, would have a single northeast building with a convenience store of 4,110 square feet (sq ft) at the north end and a speculative commercial office of 1,863 sq ft at the south end.
- The west lot, which has the one driveway along the highway, would have a north fuel pump canopy and a south commercial office building of 5,000 sq ft.

Development Applications

A gas station is a conditional use (CU) in the CG zoning district if and where it would be within 200 feet of residentially zoned property.

A "conditional" use is called such because (1) it's conditional upon discrete approval by the City, and (2) the City can condition physical or operation aspects of a proposal, including on issues particular to the case at hand and above and beyond what Woodburn Development Ordinance (WDO) provisions directly address. Consistent with the CU purpose statement in WDO 5.03.01A, the Commission approved with conditions that offset the effects of development and make a gas station as compatible as practical with existing residential uses in the vicinity.

Incidentally, commercial office and retail are permitted uses in the CG zoning district, in other words, are allowed by right.

There are associated development applications submitted as part of the consolidated application package:

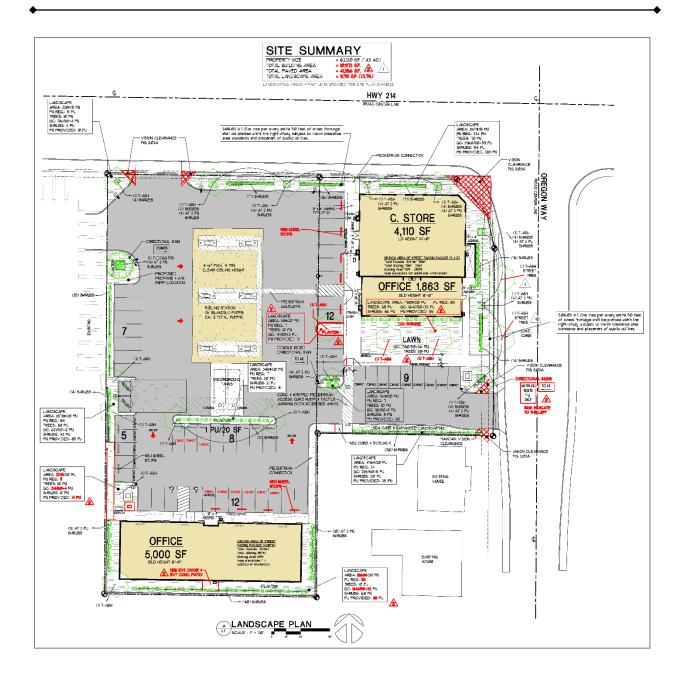
- Design Review DR 21-10: This relates to the site plans and the overall physical site development.
- Exception to Street Right of Way and Improvement Requirements ("Street Exception") EXCP 21-05: EXCP is a discretionary land use application type

- allowing developers to lessen street improvement requirements and standards.
- Phasing Plan PP 21-01: A phasing plan is a discretionary land use application type allowing developers to divide development across space and time, the main purpose being that the City and a developer define increments of public improvement obligations for each phase so that the developer can better manage financial obligations through completion of the project. A phasing plan can also be a tool to accommodate different development options or scenarios.

See below and the next pages for an aerial photo and a site plan.



County assessor aerial with subject property outlined in green; the two vacant bank buildings are now demolished



Though the applicant proposed two site plan options, Option 1 above is the only option the Planning Commission approved.

Commission Decision

The Planning Commission held a public hearing on June 9, 2022, and by a vote of 4-1 approved the consolidated applications package with the conditions recommended by staff through the staff report published June 2, except for two revision items:

- 1. Raising the Architectural Wall minimum height along the Panor 360 condominiums boundary (950 Evergreen Rd; Tax Lot 052W12DB90000) from 8 to 9 feet, which is the maximum that Woodburn Development Ordinance (WDO) 2.06.02C.1 allows, and striking allowance for that wall to have upper segments of cedar wood between columns/piers.
- 2. Striking allowance for the developer to refine and construct site plan Option 2, the one that the applicant had drafted because of Oregon Department of Transportation (ODOT) highway access restrictions.

Testimony

Commission: The list of testifiers is on final decision p. 23 (Attachment 3). Testimony topics raised generally included concerns about:

- Crime
- Gas fumes smell
- The homeless
- Noise
- Theft
- Traffic
- Trespass
- Unsavory convenience store customers; and
- Vandalism.

Council: Besides the applicant's attorney, "citizens of Woodburn Estates" submitted a three-page petition (Attachment 6).

DISCUSSION:

On June 21, 2022, the appellant submitted a Notice of Intent to Appeal the Commission decision on consolidated application CU 21-02 pursuant to WDO

4.02.01. Staff thereafter schedule this public hearing of the City Council in accordance with WDO 4.01.15.

The appellant's notice of appeal letter sets out seven bases or grounds for its appeal (Attachment 2). In response to appellant's appeal letter, the applicant's attorney, Wallace W. Lien, also submitted a Memorandum in Support of the Application (CU 21-02; Attachment 1) as well as a copy of an ODOT July 19, 2022 e-mail to the applicant's traffic engineers (Attachment 5).

While the City Council appeal hearing on the consolidated applications may consider or include discussion on any number of issues regarding the consolidated applications, including those raised in the appellant's appeal letter or by other parties that testified during the Planning Commission hearing, staff includes below a brief summary on two primary matters of interest:

1. Appellant's Argument related to the Applicant's TIA

One of the appellant's issues is whether the transportation impact analysis (TIA) should have factored in vehicle trips generated by a different development codenamed Project Basie that later became public as the Amazon distribution center. (See appellant's Attachment 2, p. 3). The applicant addresses the appellant's argument in Attachment 1 on p. 9.

Staff also contacted the City's transportation consultant on July 19 for his comment on the issue as the two documents describe, and he e-mailed the same day that:

"[I]n my June 1 memo I made the following comment: 'The TIA analysis should be revised to include Project Basie trips.' This would be added to the predevelopment background plus in-process analysis scenario.

[E]ven if the applicant were to submit a revised TIA to include Project Basie as noted, it is my conclusion that this would not change any of the mitigation conditions of approval. To wit, these are conditions for mitigation for impacts to intersections with elevated crash rates or mobility threshold exceedances, which would not change even including Project Basie trips in the pre-development analysis"

2. Applicant's Request for Approval of Site Plan Option 2

As noted previously, the applicant submitted a Phasing Plan application for consideration of developing two slightly different site plan options. As part of the final decision, the Planning Commission added a condition striking the allowance for the developer to refine and construct site plan Option 2.

In addition to responding to the appellant's grounds for appeal, the applicant's attorney also sets out in the Memorandum (Attachment 1, pages 10-12), a request urging the City Council to approve its Site Plan Option 2 over the approval of the current Option 1. The applicant's primary argument supporting Option#2 is related to the ODOT grant-of-access approval process:

"Option #2 eliminates the cross access issue, and is a site plan that ODOT Access Management can support... Having a site plan that ODOT prefers makes the most sense and provides the best and fastest path to construction of the project."

Next Steps

If the Council were to act upon the recommendation, staff would return with a final decision document for consideration on August 8, 2022.

FINANCIAL IMPACT:

None.

ATTACHMENTS:

- 1. Applicant's response to appeal issues (July 19, 2022; 12 pages)
- 2. Appellant's letter of appeal (June 21, 2022; 3 pages)
- 3. Planning Commission June 9, 2022 final decision and attachments:
 - 101. Marked Tax Map
 - 102A. Public Works comments (May 5, 2022; 2 pages)
 - 102B. Agency commentary ODOT e-mail with two exhibits (May 4, 2021; 15 pages)
 - 103A. Application materials / site plans Option 1 (Feb. 9, 2022; 3 sheets)
 - 104. Transportation System Plan (TSP) Fig. 2 "Functional Roadway Classification"
 - 201.* CU 21-02 US Market Gas Station: Dictionary & Glossary

- 202. CU 21-02 US Market Gas Station: Civil Engineering Plan (CEP) Review Provisions
- 203. CU 21-02 US Market Gas Station: Conditioned Fees
- *The 200 series of attachments are details for the conditions of approval.
- 4. Planning Commission June 9, 2022 Staff Report and attachments not attached to the final decision:
 - 102. Analyses & Findings
 - 103B. Application materials / site plans Option 2 (May 2, 2020; 5 sheets)
- 5. Applicant's copy of ODOT July 19, 2022 e-mail (received July 20, 2022; 1 page)
- 6. Petition from "citizens of Woodburn Estates" (July 20, 2022; 3 pages)

BEFORE THE CITY COUNCIL

FOR THE CITY OF WOODBURN

and Ronald James Ped, Architect	EXCP 21-05 and PP 21-01) MEMORANDUM IN SUPPORT
and Ronald James Ped, Architect	EXCP 21-05 and PP 21-01
In the Matter of the Application of: WOODBURN PETROLEUM, LLC) Case No. CU 21-02) Corollary Cases: DR 21-10,

COMES NOW the Applicant, by and through their attorney, Wallace W. Lien, and does hereby submit the following evidence and testimony in support of the above referenced application and in answer to the appeal of the Planning Commission approval of said application.

1. RESPONSE TO APPEAL ISSUE NO. 1

The first issue raised in this appeal is the alleged lack of findings in the Planning Commission decision, and in the alternative that what findings that were adopted are inadequate, not supported by substantial evidence or improperly defer compliance with approval criteria.

Once the Planning Commission decision was appealed, jurisdiction moved to the City Council. It is the City Council that will make a final decision, which decision will include adequate findings that are supported by substantial evidence and will not improperly defer any approval criteria compliance. As such this first issue is essentially moot.

The Applicant offers to assist the City in the preparation of such findings, if such assistance is requested.

2. RESPONSE TO APPEAL ISSUE NO. 2

The second appeal issue involves an allegation that Conditions D3 and CU9.d.2(c) are too vague or improperly defer compliance to staff in violation of state law and WDO 4.01.06.A and 4.02.07. The allegation goes on to allege other unidentified conditions are similarly compromised.

The appeal does not cite to any specific provision in state law to support its claim, therefore it is impossible to respond to. Such an allegation is not raised with sufficient specificity to warrant the need for a response by the City. Similarly, citing to unidentified conditions is not sufficient to

1 - Memorandum in Support of the Application

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

PAGE

City Council July 25, 2022 CU 21-02 Appeal Attachment 1 RECEIVED

IIII 19 2022

WALLACE W. LIEN

1004 Crescent Dr NW, Salem, Oregon 97304 • 503-585-0105 office Contact by e-mail at: wallace.lien@lienlaw.com COMMUNITY DEVELOPMENT DEPARTMENT properly raise any issue as to any conditions but the two that are specifically stated. Because of this, only Conditions D3 and CU9.d.2(c) are properly raised and which will be addressed here.

A. Condition D3 relates to parking and vehicular circulation directional markings/signage.

This condition states:

To conform to WDO 3.05.02J, during building permit review the Director may administratively establish details, specifications, and revisions to administer the WDO section. Further site plan revisions necessary to conform, if any, shall be due by building permit issuance.

In order to understand this condition, it is necessary to review WDO 3.05.02. J which states that all uses required to provide 20 or more off-street parking spaces shall have directional markings or signs to control vehicle movement, and any dead-end drive aisle 50 feet or longer shall have an MUTCD-compliant "no outlet" sign.

Compliance with WDO 3.05.2J is not an approval standard, but instead is a developmental regulation that applies to how a site is constructed once all of the actual land use approval criteria are complied with. It is only appeal of issues that actually relate to approval criteria that are subject to a legitimate appeal.

The appeal does not state in what manner it is alleged this condition is vague, just that they say it is so. What WDO 3.05.02J provides is the need for directional signs and markings. This condition requires compliance with that code provision, and simply advises staff to establish the details and specifications of the directional signs and markings. Such a task is best carried out by staff, as it is not the responsibility of the City Council to decide what size and color and location such signs are to be made.

Further, there is no delegation of compliance. The condition clearly states the intention that WDO 3.05.02J is to be complied with, therefore the directional signs and marking have to be in place. The details of how and where that happens certainly can be left up to staff to decide during the building permit process.

To the extent the City Council believes that clarification in the language of Condition D3 is 2 - Memorandum in Support of the Application

WALLACE W. LIEN

necessary such can be made as part of the City Council's final decision.

B. Condition CU9.d.2(c) relates to the issue of cross access between parcels. That condition states:

If after City land use decision ODOT objects specifically to how the City administers or the developer conforms to other parts of the condition or to other conditions concerning vehicular access, then the developer may request and the Director may administratively approve in writing changes to administration or conformance to accommodate the ODOT factor while still having the development meet the WDO and conditions of approval to the max extent remaining. The Director may require developer application for any of Extension of a Development Decision per WDO 4.02.05 or Modification of Conditions per WDO 4.02.07.

As before, the appeal does not state in what manner it is alleged this condition is vague, just that they say it is so, which simply isn't good enough. This condition of approval is advisory, as it only comes into play if ODOT objects to the method of implementation utilized by the City in the final decision. If ODOT does not object, this condition never has to be addressed. Conditions that relate to post-approval administration of the decision do not rise to the level of compliance with approval criteria, and therefore are not the appropriate subject of an appeal here. The language used in this condition clearly states the intent of the City in how to deal with post-approval issues.¹

Further, there is no delegation of compliance. The condition clearly states the intention that the City will accommodate the ODOT factor. Further, if there is to be an Extension or Modification of the site plan, the condition specifies that such an application will be required and it will be processed according to the provisions of the WDO, which would include notice and opportunity to be heard which is all that is necessary.

To the extent the City Council believes that clarification in the language of Condition CU9.d.2(c) is necessary, such can be made as part of the City Council's final decision.

PAGE

The Applicant believes the most appropriate response to the issue of cross access is to adopt Option #2 which ODOT has stated its Access Committee could support. See Section 7 hereof for other reasons why Option #2 should be adopted over Option #1.

3 - Memorandum in Support of the Application

PAGE

C. The appeal cites to violations of WDO 4.01.06.A which grants the City the right to impose conditions of approval that are reasonably related to impacts caused by the development or designed to ensure that all applicable approval standards are, or can be, met. All conditions must be clear and objective, or if the condition requires discretion, opportunity for a public hearing is made. As noted above, there is nothing in these conditions that are not clear and objective, or for which provision is made for future opportunity to be heard. There is no violation of WDO 4.01.06.A.

The appeal also alleges a violation of WDO 4.02.07, which provides that any request to modify a condition of approval is to be considered pursuant to the procedure and the standards and criteria applicable to a new application of the type of permit or zone change that is proposed to be amended, except that the modification of a condition limiting the use of property may only be considered as a Type IV Official Zoning Map Change application. This provision applies only to post-approval applications to modify conditions that were adopted in a previous decision. That is certainly not the situation involved here, therefore this code provision is not even applicable.

3. RESPONSE TO APPEAL ISSUE NO. 3

The appeal alleges that Option #1 which was approved by the Planning Commission was adopted in error, contending that there is no evidence of feasibility of eventual ODOT approval of that Option. The key allegation here is the legal standard of feasibility. It is true that conditions imposed for compliance with approval criteria must have evidence to show that compliance is feasible, however the appeal overstates what it takes to meet the feasibility requirement.

Feasibility simply means that an applicant is not prohibited as a matter of law from obtaining the ODOT approval. *Citizens for Responsible Development v. City of The Dalles*, 59 Or LUBA 369 (2009). So long as there is a process to follow, and the potential for ultimate approval from ODOT, the condition requiring eventual ODOT approval is lawful. There is evidence in this Record from ODOT that indicates ODOT approval is not prohibited, and that there is a process for obtaining ODOT approval. See ODOT Memo of May 4, 2022, Attachment 102B to the Planning Commission decision.

4 - Memorandum in Support of the Application

That being said, the Applicant here is urging the City to adopt Option #2 which also needs ODOT's blessing, but for which ODOT appears much more amenable to approve. For a more detailed discussion of why Option #2 is the better site plan see Section 7 below.

4. RESPONSE TO APPEAL ISSUE NO. 4

This appeal issue alleges that a condition of approval is needed to mitigate an alleged elevated crash rate at the intersection of Highway 214 and Oregon Way.

The appellant's premise for this appeal issue is that the proposed project will elevate the crash rates at the intersection of Highway 214 and Oregon Way, citing to the May 10, 2022 OTAK Memo. However, OTAK directly addressed the issue of crash rates in a subsequent Memo dated May 18, 2022, where at page 4, it was said:

The TIA identified the intersection of OR 214 and Oregon Way/ Country Club Road as having an existing elevated crash rate that exceeds ODOT's 90th percentile crash rate for these types of intersections. Potentially adding trips could exacerbate this condition. However, within the past month ODOT has converted the east-west left turn signal from flashing yellow arrow to protected left turns, which should alleviate the elevated crash rate condition. Thus, with this signal modification in place, no mitigation requirement would be placed on US Market to contribute toward mitigating the elevated crash rate condition. (Emphasis Supplied)

Therefore, based on the most recent OTAK Memo, no mitigation condition of approval is necessary in this case.

It should also be noted that, as conceded by the appellant, this issue arises only if it is Option #1 that is adopted. In the event of adoption of Option #2, the safer traffic maneuvers provided there will further mitigate the crash rate. This issue is addressed in detail by the attached Memo from the Applicant's Transight Consulting as follows:

The ideal access option within this area is to serve the combined site from Oregon Way. This is the lowest-volume abutting street, and it provides a signalized connection to access or cross OR 214. Increased access onto Oregon Way reduces the number of cars weaving or making U-turns on the highway, and since these movements contain elevated crash rates, by reducing these maneuvers it improves safety.

The first access option ("Option 2") presented is the most intuitive. It allows vehicles exiting the convenience market and fuel center access onto Oregon Way to use the traffic signal. This option supports exiting truck turning movements and makes the site

5 - Memorandum in Support of the Application

PAGE

more functional. It also reduces the amount of traffic accessing directly onto OR 214, thereby reducing the weaving and U-turn maneuvers that were raised as concerns by the City. The limitation with this access configuration is that it makes access from westbound OR 214 difficult, forcing these motorists to make a U-turn at the Evergreen Road traffic signal (which has the highest crash rate within this area).

While the appellant seeks an unnecessary condition of approval to provide safe turning movements at this intersection, the better approach is the adoption of Option #2 instead of Option #1.

5. RESPONSE TO APPEAL ISSUE NO. 5

The next appeal issue challenges the staff report regarding the exception to street right of way and improvement requirements. The appeal argues that the staff report contains the findings to support the exception grant, and that those findings are illogical, unresponsive and not supported by substantial evidence. The appeal does not explain what portions of the staff report are bad, nor is it set forth how the decision is bad, or what parts are not supported by evidence. As such this appeal issue is not stated with sufficient specificity for the City to respond to. It is not for the Applicant or the City to guess what it is that the appellant thinks is wrong. Reference to an entire staff report without more specificity is simply not good enough to warrant a response.

The exception referred to is EXCP 21-05 (See page 18 of the Planning Commission Decision). The findings here require the following dedication of right of way and construction of improvements:

- Dedication, if necessary, to bring the Major Arterial into conformance with WDO
 Figure 3.01B; and
- b. Dedication, if necessary, to bring the Access Street into conformance with WDO Figure 3.01E; and
- c. Dedication, if necessary, to provide for Public Utility Easements in conformance with WDO Figure 3.01B and 3.02.01F.2; and
- d. Fees are required to be paid in lieu of highway and parking improvements, which is a standard procedure authorized by the WDO; and
- e. Landscaping and sidewalk requirements are all pursuant to WDO 3.01.04B

6 - Memorandum in Support of the Application

These requirements are stated in clear and objective language, and are very logical in light of the site design for the project. Conditions of approval do not have to be supported by evidence, that requirement only applies to findings. The applicant has to comply with the conditions imposed or no building permit will be issued.

Staff's findings are clear, unambiguous and are supported by evidence in the Record in the form of the site design drawings. Explanation of compliance with WDO 5.03.03 is set forth in Attachment 102, relevant excerpts of which follow:

The existing frontages on Hwy 214 and Oregon Way meet the WDO standards with the exception of the landscape strip and sidewalk being reversed. On Hwy 214 conforming strictly to the WDO standards would actually narrow the road by 6' to add a landscape strip adjacent to the roadway, see A1.1. Changing this would not affect the extent to which the right of way and improvements will be used by persons served by the building or development.

Staff concurs about no effect on the extent to which the right of way and improvements will be used by persons served by the development in the sense that there are at present and will remain the same number of vehicular lanes along both frontages, highway bicycle lane, and sidewalks. The proposed land uses of gas station and convenience store are for convenience and not safety.

Relative to Figure 3.01B, highway non-conformance is limited to lack of planter strip and street trees. Conventional traffic engineering does not address effects of development on walking and cycling as it does for vehicular trips, there is no widely recognized norm for how to address such, and the WDO provides no guidance on the topic. Second, the north frontage context is strip commercial along a heavily trafficked state highway, the kind of dangerous and noisy environment that repels pedestrian and cyclists. Those who do walk and cycle are likely those who are living nearby, the homeless, those without access to car, and those few who wish to brave existing conditions. The presence of a sidewalk is sufficient for sheer practicality for those who wish to walk along a highway or cycle outside of the bicycle lane because they don't feel safe in a highway bicycle lane. In this context, the number of pedestrians and off-street cyclists is moot. Pedestrians and cautious cyclists can and do use the wide sidewalk today, and the pedestrians and cautious cyclists the development might attract would use the same wide sidewalk.

Relative to Figure 3.01E, Oregon Way non-conformance is limited to lack of parking lane, planter strip, and street trees. Staff applies conditions that excepts only the parking lane but also requires fee in lieu of such parking. Additionally, the conditions require wider planter strip and wider sidewalk exceeding the minimums of Figure 3.01E. Like conventional development and zoning codes, the WDO requires off-street parking for almost all developments, including the subject development, so the absence of on-street parking is not of concern from this perspective. Second, pedestrians and cautious cyclists can and do use the narrow curb-tight sidewalk today, and the pedestrians and cautious cyclists the development might attract would

7 - Memorandum in Support of the Application

PAGE

use the new wider sidewalk. Third, Figure 3.01E does not account for the presence of a left turn lane at intersections, and such exists because of ODOT, and given that ODOT and the Public Works Department assume its continued existence, Public Works assumes that the developer would adapt required Oregon Way half-street improvements to fit along the turn lane, and that ODOT typically asks that there be no on-street parking within a certain distance of state highway intersections, usually 50 ft, it is reasonable in this case to allow for fee in lieu of what little on-street parking a civil engineer could fit.

As stated above there is no change to the extent of use from existing conditions to WDO standards, thus no improvements are needed to meet the estimated use, beyond those shown on the submitted plans.

About Street Exceptions in general, Planning staff adds that the Public Works Department is content with frontages along the corridor, and defers to ODOT for developments where ODOT has jurisdiction. By 2015, ODOT improved the I-5 interchange and as part of that project widened OR 214 east of the interchange to a little east of Oregon Way. As expected, the agency constructed to its own economized standards, which resulted in curb-tight sidewalk, though wide at about 8 ft, no street trees, and no burial of the south side overhead electric power lines. Also, until late 2017 and early 2018, staff approved any Street Exception that a developer requested, and Planning staff experience in these years was that the Public Works Department prefers curb-tight sidewalk and existing conditions anyway generally beyond curbs as long as there were minimum improvements to driving area between curbs and subsurface/underground potable water, sanitary sewer, and stormwater utilities. In more recent years, Planning staff took the lead in at least imposing conditions on Street Exception approvals to get a degree of improvements and/or fees in-lieu. Regarding OR 214, Planning staff years ago recognized the de facto policy decision by other departments to leave the ODOT-improved segment as is and not have individual redevelopments upgrade their frontages to have landscape strips, new sidewalk that conforms, and buried power lines redevelopment by redevelopment.

Through both conditional use and Street Exception, Planning staff applies conditions that grant EXCP approval for both frontages, but also to give the City some public benefit for leaving the highway as is or mostly as is and for Oregon way not having required on-street parking; require the developer to make the Oregon Way frontage the best for pedestrians through wide landscape strip with street trees, wide sidewalk, and setting maximums for Oregon Way driveway width; and securing fees in-lieu.

The staff report goes on to list out with engineering calculations the actual fees to be paid for the inlieu conditions.

The current findings and conditions are sufficient for compliance with the approval criteria for Exceptions.

/////

/////

25

24

26

PAGE

8 - Memorandum in Support of the Application

6. RESPONSE TO APPEAL ISSUE #6

The last issue raised in this appeal is a categorical refuting of Option #1, as not being able to meet the unnamed "traffic-related criteria". The Applicant does not agree with the allegations in the appeal, but does agree that Option #1 should not be adopted, in favor of adoption of Option #2.

As with most of the appeal, this issue is not raised with sufficient specificity to warrant a response from the City or the Applicant. Appellant does not set forth any specific provisions of the WDO that are alleged to be violated in the Planning Commission decision. Simply saying "trafficrelated criteria" is not good enough.

The issue of cross access was raised in a previous allegation, and responded to above, which response does not need to be repeated here.

The issue of inclusion of the amount of trip generation from this project is discussed in detail by the engineers at Transight Consulting in the Memo dated July 18, 2022 that is submitted contemporaneously herewith. In particular, the issue of inclusion of Project Basie traffic is addressed as follows:

A comment raised by the opposing gas station's engineer was that our project did not account for Project Basie, which is the new Amazon distribution facility that is now under construction. When the traffic report was prepared this facility was not under construction, was not listed on the City's website as an approved "In Process" development, and our discussion with Dago did not identify this as a project to include because it was not approved (it appears that this was intended to remain confidential during the entitlements period). Our June 2021 confirmation of inprocess developments with staff followed discussion with Dago, our review of the enclosed map of locations to include and was followed by validation in our email correspondence. OTAK's review comment that this was "a memo with no apparent response" is an incorrect reflection of our discussion and diligence, yet still clearly pre-dates the submitted TIA for Project Basie that occurred in September 2021.

As previously discussed and agreed to within the City consultant comments, the proposed redevelopment of the banks to a fuel center, convenience market, and office generates fewer peak hour trips. Accordingly, no updates to the analysis presented within Project Basie are needed, as conditions will operate better than those reported within this previously approved report. As noted in Comment #2, our trip generation estimates for the US Market site are very conservative, and reflect the upper-end estimates for this type of use.

Finally, Project Basie was a rezone project that has a higher burden of proof. The analysis for Project Basie is required to modify the City's adopted Transportation

9 - Memorandum in Support of the Application

WALLACE W. LIEN

1

2 3

4

5

6

7

8

9

10

11

12

13

14

15

16

17 18

19

20

21

22

23

24

25

26

PAGE

PAGE

System Plan by showing that all developable lands plus its impact are accounted for. The Project Basie analysis (prepared by the Opposition Traffic Engineer's firm) did not appear to account for the entitlements of the former bank sites in its near-term analysis, or the allowable site uses in the long-term analysis.

While the US Market site reduces peak hour trips on the system, Project Basie adds between 176 peak hour trips on the system (as assessed in the Kittelson Transportation Impact Analysis based on their own estimated trip generation methodology) and 3,959 peak hour trips (increased to 4,787 in the more current ITE manual), or a factor of 22 times the number of peak hour trips assessed based on national ITE trip generation estimates assessed at numerous other sites of similar scale, see Figures 3 and 4. If the actual trip rates at the Amazon facility mirror those at other high cube fulfillment centers this level of trips would require its own dedicated four-lane facility. For this reason, the burden of proof on a zone change is much higher and it must account for other developable lands as it seeks to amend both the Transportation System Plan amendment and the supporting Interchange Area Management Plan.

The US Market site is in no way opposed to Project Basie and fully intends to serve its patrons with competitive products and lower-cost fuel options. With the US Market showing less trips during the critical evening commute period than the banks operations will be better than those shown in the Project Basie report, regardless of whether or not Project Basie's actual trip rates reflect those presented by the Opposition Engineer's report or the much higher trip rates within national surveys of similar locations.

The technical issues related to transportation planning are clearly set out and are supported by the engineering evidence. Any allegations of error in this issue is incorrect and should be rejected.

7. ADOPTION OF OPTION 2

The only real substantive issue left in this case is whether to adopt the site plan Option #1, or to adopt Option #2. The Applicant urges the City to adopt Option #2 for the following reasons:

- a. The motivation for this appeal lies not in the good administration of land use laws and sound planning, but an attempt to thwart competition. This motivation shows in the lack of foresight put in to the appeal allegations. Competition is the foundation of our free market economic system. It is good for the public in stablizing pricing and ensuring adequate supply of reasonably priced goods. The conglomeration of the four gas station owners who comprise the appellants here have banned together to stop a competitor from entering the market. The City has an obligation to foster competition and to ignore the monopolistic intentions of the other gas station owners.
- b. Option #2 eliminates the cross access issue, and is a site plan that ODOT Access 10 Memorandum in Support of the Application

PAGE

Management can support. While both Options have the requirement of submitting to the ODOT Grant of Access modification process, Option #1 is not preferred by ODOT because it would require Dairy Queen and/or Dutch Brothers to close their driveways, which they would rightly never agree to do. As noted above, Option #2 is the preferred alternative as it does not require closure of the neighbors access driveways. Having a site plan that ODOT prefers makes the most sense and provides the best and fasted path to construction of the project.

- c. Option #2 allows safer and more efficient turning movements onto Oregon Way and through its intersection with Highway 214. As noted above, this eliminates the U-Turn movements through that intersection that may be experienced with Option #1.
- d. Option #2 is the most intuitive site plan. It allows vehicles exiting the convenience market and fuel center access onto Oregon Way to use the traffic signal at Highway 214. This option further supports exiting truck turning movements and makes the site more functional. It also reduces the amount of traffic accessing directly onto OR 214.
- e. Option #2 allows the now vacant site to be developed much sooner because of the preference for this option. Converting this now vacant site to a fully operational commercial facility will greatly benefit the City in the aesthetics of the area, but also the public in providing additional competition in the fuel market.
- f. The Mass of the C store between the gas stations in Option #2 will do a better job of screening light, noise that filters to the senior apartments (on the south) than Option #1. Parking on south side of the C-Store will be a lower number of movements than the high turnover space on the North side of the C store. The parking at the south property line would be employees.
- g. The low impact parking behind C store in Option #2 will provide more visual relief from the residential properties to the south. Option #1 is 10' from the 8' Masonry wall where Option #2 is 58'. The Senior apartments are 120' south of the development, which makes the blank side of the building over half a football field away.
- h. The Option #2 office on the corner (as opposed to Office at the south side of Option #1 and 11 Memorandum in Support of the Application

1	tł
2	6
3	a
4	#:
5	
6	tł
7	
8	
9	Α
10	
11	C
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	

the office adjacent C-store) is smaller. Option #2 is 3,649 sf, where Option #1 is much bigger at 6,836 sf. This is a 53% reduction in building area. There is a linear reduction between traffic count and area. The TIA did not account for this reduction, which means less traffic generation in Option #2. This reduction in traffic generation would support traffic safety by reducing the number of cars.

I. The gas pumps in Option #2 will be 170' from the south property line, where in Option #1, the pumps are only 158' feet from that property line. This means reduced vapors to the south.

8. CONCLUSION

With the exception of the adoption of Option #1 instead of the preferable Option #2, the Applicant concurs with the decision, findings and conditions imposed by the Planning Commission.

The Applicant urges the City Council to approve these applications with the adoption of Option #2 instead of Option #1 as the better site plan for the City, the neighbors and the Applicant.

DATED this 18th day of July, 2022.

Wallace W. Lien, OSB No. 793011 Attorney for Applicant

12 - Memorandum in Support of the Application



David J. Petersen david.petersen@tonkon.com Admitted to Practice in Oregon and California

503.802.2054 direct 503.221.1440 main

June 21, 2022

VIA HAND DELIVERY

Woodburn City Council c/o Chris Kerr, Community Development Director 270 Montgomery Street Woodburn, OR 97071

Re: Woodburn Fast Serv Inc. and LB Group, LLC 2540-2600 Newberg Highway, Woodburn, OR City File No. CU 21-02 Planning Commission Final Order dated June 9, 2022

Dear City Council:

This firm's clients Woodburn Fast Serv Inc. and LB Group, LLC appeal the abovereferenced decision of the Woodburn Planning Commission. This letter is attached to the appellants' appeal notice pursuant to WDO 4.02.01.

As an initial matter, it is not clear when notice of the Planning Commission's final decision was given, which means it is not clear when the appeal period expires. The order itself is dated June 9, which seems inaccurate since the Planning Commission hearing did not end until 9:30 that evening. The order is signed by the Commission Chair on June 14. There is no affidavit of mailing attesting to service of the final order on parties entitled to notice, but the postmark on the envelope mailing the notice to me is dated June 15. Mr. Cortes confirmed to me in an e-mail earlier today that the date of mailing is June 15. Nonetheless, without an affidavit of notice the appellants reserve the right to dispute any calculation of the appeal deadline.

The underlying land use matter is a Type III decision. The appellants have standing to appeal under WDO 4.02.01.A.3 because they participated orally and in writing in the Planning Commission proceedings below.

The grounds for appeal are as follows:

The Planning Commission's order does not make any findings with respect to the applicable approval criteria, and is therefore inadequate. Findings were recommended to the Planning Commission in the staff report dated June 2,

> City Council July 25, 2022 CU 21-02 Appeal Attachment 2

City of Woodburn City Council June 21, 2022 Page 2

2022, but nowhere does the final order adopt, modify or incorporate those findings, nor does the Planning Commission make its own findings.

- Even if staff's recommended findings from the June 2 staff report are considered to have been incorporated into the final decision, those findings are inadequate with respect to numerous approval criteria by either failing to find that the criteria are satisfied, making findings not supported by substantial evidence in the record or improperly deferring a determination of compliance to administrative staff.
- Several conditions of approval are too vague, or improperly defer a determination of compliance to administrative staff, in violation of state law and WDO 4.01.06.A and 4.02.07. These conditions include, but are not limited to, conditions D3 and CU9.D.2(c).
- The applicant's Option 1, which is the only site plan approved by the Planning Commission, is not feasible because the applicant has provided no evidence that ODOT will lift the deed restriction that must be removed to allow the internal site circulation of Option 1 to work. As the City's own transportation consultant stated in a letter to the Community Development Director dated June 1, 2022:

The Transight statement in the new TIA does not address how their cross-circulation proposal avoids this violation, as the shifting of access to a shared access just to the west of the current RIRO [right in right out] driveway would still need ODOT approval and approach permit, and [the] Applicant would need to be successful arguing to ODOT that the existing RIRO driveway would be closed and replaced with this new, shared access and thus, they would need to argue that this new shared access driveway does not have the same deed restriction as the current driveway. Additionally, they have not presented any evidence that the properties to the west, not subject to the site development proposal, have agreed to this [change] of access and granting of shared access easements.

• The applicant's traffic consultant acknowledges that Option 1 exacerbates an existing elevated crash rate at the OR 214/Oregon Way intersection, yet no condition is imposed to mitigate this adverse impact on the transportation system. As the City's transportation consultant stated in a letter to the Community Development Director dated May 10, 2022:

The TIA indicated that the OR 214/Oregon Way intersection has an elevated crash rate under existing conditions, primarily due to left turns at this flashing yellow arrow left turn signal. Not only would the additional trips likely exacerbate this condition, but would require a quick multi-lane weave maneuver across eastbound OR 214, which increases the risk of collisions due to such a maneuver...[S]hould the applicant be successful in achieving ODOT approval of a shared, public access easement between the two tax lots and thus provide for on-site circulation that provides access for both lots to the right-in/right-out driveway on OR 214 as well as the full access onto

City of Woodburn City Council June 21, 2022 Page 3

Oregon Way, the driveway onto OR 214 should be [designed] and signed so as to prohibit vehicles turning right onto OR 214 and then crossing over traffic lanes to turn left onto northbound Country Club Road (a multi-lane weaving maneuver over a short distance).

- Assuming it was adopted by the Planning Commission as its own findings, the analysis in the June 2 staff report in support of the grant of an exception to street right of way and improvement requirements is illogical, unresponsive to the applicable criteria and not supported by substantial evidence in the record.
- The approval does not meet the applicable traffic-related criteria as described in the May 10, 2022 and June 1, 2022 memoranda from the City's transportation consultant. As noted above, Option 1 does not provide adequate access between the two lots that is consistent with ODOT's deed restrictions on the site. Also, the applicant's traffic impact analysis is inadequate for failure to include the significant number of additional vehicle trips and turning movements associated with the approved Project Basie. As the City's transportation consultant stated in a letter to the Community Development Director dated June 1, 2022:

Project Basie has been approved, US Market has not. The reference to a memo submitted to city staff in July 2021, with no apparent response,, does not change the fact that there was never a scoping approved for a TIA for this site, and such a scoping request would have yielded Project Basie as a pending in-process development. The TIA analysis should be revised to include Project Basie trips.

Best regards,

David J. Petersen

DJP/rkb

cc (via e-mail):

Robert J. Barman Garry L. LaPoint

Wayne K. Kittelson

Danny Draper

RECEIVED

JUN 2 1 2022

COMMUNITY DEVELOPMENT DEPARTMENT





Final Decision

Planning Commission

File number(s): CU 21-02, DR 21-10, EXCP 21-05, & PP 21-01

Project name: US Market gas station

Date of decision: June 9, 2022

Applicant: Ronald "Ron" James Ped, Ronald James Ped Architect, PC, 145 21st St SE, Salem,

OR 97301-8846

Lal Din Sidhu ("Don" Sidhu), Woodburn Petroleum LLC, 1038 Broadway St NE,

Salem, OR 97301-1276

Site location: 2540 & 2600 Newberg Hwy (OR Hwy 214); Tax Lots 052W12DB03700 [primary]

& 3600

Summary: The Planning Commission held a public hearing on June 9, 2022 and by a vote of 4-1 approved the consolidated applications package (Type III) with the conditions recommended by staff through the staff report published June 2, except for two revision items:

- 1. Raising the Architectural Wall minimum height along the Panor 360 condominiums boundary (950 Evergreen Rd; Tax Lot 052W12DB90000) from 8 to 9 feet, which is the maximum that Woodburn Development Ordinance (WDO) 2.06.02C.1 allows, and striking allowance for that wall to have upper segments of cedar wood between columns/piers.
- Striking allowance for the developer to refine and construct site plan Option 2, the one that the applicant had drafted because of Oregon Department of Transportation (ODOT) highway access restrictions.

They are shown below in strikethrough-and-underline text.

The request is for conditional use (for a gas station), design review, Exception to Street Right of Way and Improvement Requirements ("Street Exception"), and phasing plan application types to develop a corner site of two lots totaling approximately 1.42 acres into a gas station with convenience store as well as speculative commercial office area. (There is no lot consolidation.)

The subject property is in the Commercial General (CG) zoning district.

Several parties testified (besides the applicant). The table below in the "Testifiers" section lists them.

Section references are to the Woodburn Development Ordinance (WDO).

City Council July 25, 2022 CU 21-02 Appeal Attachment 3

Conditions of Approval:

General

- G1. By and as part of building permit application, the applicant shall submit revised site plans meeting the conditions of approval and obtain Planning Division approval through sign-off on permit issuance by the Building Division.
- G2. The applicant or successors and assigns shall develop the property in substantial conformance with the final plans submitted and approved with these applications, except as modified by these conditions of approval. Were the applicant to revise plans other than to meet conditions of approval or meet building code, even if Planning Division staff does not notice and signs off on building permit issuance, Division staff retains the right to obtain restoration of improvements as shown on an earlier land use review plan set in service of substantial conformance.
- G3. References: Attachment 201 serves as a dictionary or glossary defining certain abbreviations, acronyms, phrases, terms, and words in the context of the conditions of approval. The 200 series of attachments are as binding as the conditions of approval in the main body of the final decision.
- G4. Due dates / public improvements:
 - a. When public street improvements, and any fees in lieu of public improvements, are due shall be per WDO 3.01.02 and 4.02.12 through Ordinance No. 2602 (LA 21-01) unless if and where a condition of approval has more restrictive timing.
 - b. Where phasing is relevant, building permit issuance means issuance for the phase in which the conditioned improvement is located.
 - c. Where changes to street addresses are necessary, the developer shall apply through the Planning Division for and obtain approval of an <u>Address Assignment Request</u>. This is due prior to building permit application, and if property line adjustment or lot consolidation were to become relevant, then also after recordation with County.
- G5. Recordation due dates: The applicant shall apply to the County for recordations of items that the City requires no later than six (6) months prior to expiration of the land use approval as WDO 4.02.04B establishes, and shall complete recordations no later than three years past the land use "final decision" date. The due date to complete recordations shall not supersede when recordations are due relative to the building permit stage.
- G6. Fees: The developer shall pay fees per Attachment 203.

Phasing Plan 21-01

PP. Phasing Plan:

- Options 1 & 2: The developer may develop a site plan revised to conform to conditions of approval and based on-either:
 - a. Option 1: The site plan concept last revised and re-submitted for land use review on February 9, 2022 and premised on there being no ODOT factor (see the ODOT factor condition); or
 - b. Option 2: The different site plan revised and submitted May 2, 2022 premised on the developer's understanding of the ODOT factor.

This due by building permit application.

- 2. Basic Descriptions:
 - a. Option 1: See Exhibit PP1 below for plan details.
 - (1) On Tax Lot 3600 (east, corner lot), a single northeast building of with convenience store of 4,110 sq ft and a commercial office of 1,863 sq ft.
 - (2) On Tax Lot 3700 (west, interior lot), a north fuel pump canopy and a south commercial office building of 5,000 sq ft.
 - b. Option 2: See Exhibit PP2 below for plan details.
 - (1) On Tax Lot 3600 (east, corner lot), a single northeast commercial office building of 3,649 sq ft.
 - (2) On Tax Lot 3700 (west, interior lot), a north fuel pump canopy and a south convenience store of 4,314 sq ft.
- 3. Phasing: The developer may phase an option:
 - a. Option 1: To develop the south office building and necessary corollary improvements later than the gas station complex of convenience store, attached commercial office, and fuel pump canopy and necessary corollary improvements.
 - b. Option 2: To develop at different times (1) the gas station complex of convenience store and fuel pump canopy and necessary corollary improvements, and (2) the northeast office building and necessary corollary improvements.
- 4. All conditions apply to any option, any phasing, unless worded or under a header such that a condition applies more specifically. Where something is due by building permit application or issuance, it means the first of any phase, any building, unless a condition is more specific.
- 5. By and as part of building permit application, the applicant shall submit revised site plans meeting the conditions of approval.
- 6. The Planning Commission prohibits Option 2 because of its decision at the June 9, 2022 hearing. Developer pursuit of Option 2 would require a Modification of Conditions (MOC) application and approval per WDO 4.02.07.

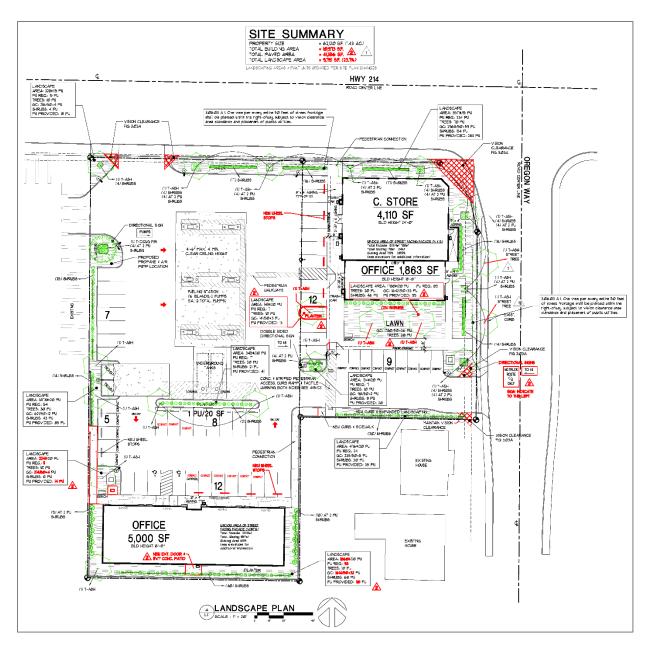


Exhibit PP1: Option 1 Site Plan Excerpt Prior to Revision per Conditions of Approval

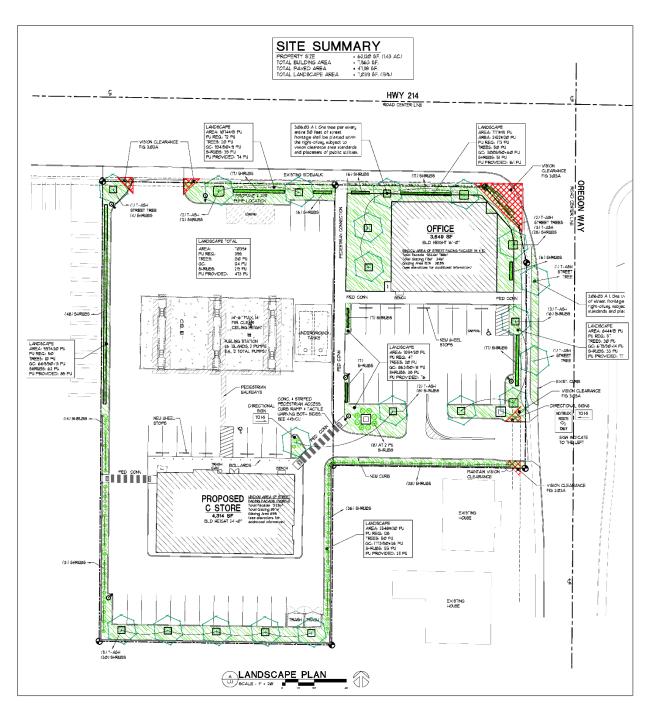


Exhibit PP2: Option 2 Site Plan Excerpt Prior to Revision per Conditions of Approval

Design Review 21-10

- D1. PUEs: If minimum width streetside PUEs do not yet exist as 10 ft along the highway per WDO Figure 3.01B or 5 ft along Oregon way per 3.02.01B, the developer shall grant such. Max widths shall be per Conditions EX1 & EX2. This is due by building permit application.
- D2. Parking / vehicular circulation setback: Option 2: To conform to WDO 3.05.02E, the developer shall do one of the following: (a) revise the site plan to set back parking and vehicular circulation area min 5 ft from the northerly east lot line of 2600 Newberg Hwy (Tax Lot 3700) and to landscape the setback per 3.06 and plant min 4 trees within it; (b) have a shared use agreement per 3.05.02E; or (c) doing (a) in part and in combination with (b). This is due by building permit issuance.
- D3. Parking / vehicular circulation directional markings/signage: To conform to WDO 3.05.02J, during building permit review the Director may administratively establish details, specifications, and revisions to administer the WDO section. Further site plan revisions necessary to conform, if any, shall be due by building permit issuance.

Conditional Use 21-02

CU1. Architecture:

- a. Canopies / fixed awnings:
 - 1. General: Min height clearance 9 ft.
 - 2. Fuel pump canopy: Max ceiling height 14.5 ft to either (a) ceiling or (b) ceiling-mounted lighting fixtures, whichever is lower.
 - 3. Option 1:
 - (a) Convenience store / NE office building: Each west entrance shall have a fixed awning, canopy, building wall projection, or secondary roof that shelters from the weather, min area 48 sq ft, min depth 4 ft. Each east mandoor shall have the same, except min area 18 sq ft, min depth 3 ft.
 - (b) South commercial office: Each north entrance shall have a fixed awning, canopy, building wall projection, or secondary roof that shelters from the weather, min area 48 sq ft, min depth 4 ft. It may be smaller if combined with a building recess and together they meet the min area. The south patio door elsewhere conditioned shall have the same, except min area 18 sq ft, min depth 3 ft.

4. Option 2:

- (c) Convenience store: North entrance shall have a fixed awning or a canopy that shelters from the weather, min area 48 sq ft, min depth 4 ft. Each side or rear mandoor shall have the same, except min area 12 sq ft, min depth 2 ft.
- (d) NE commercial office: The main entrance shall have any of the following that that shelters from the weather: (1) a fixed awning or a canopy, (2) a building recess, or (3) combination. Min area 64 sq ft, narrowest dimension 6 ft. Min one of the other entrances shall have the same, except min area 24 sq ft, narrowest dimension 4 ft. Every south and west façade storefront window shall have any of a fixed awning, canopy, building wall projection, secondary roof, or sun louver min width same as the window and min depth 2 ft. Building color shall be other than black or charcoal.

b. Cladding/materials:

- (1) Option 1: Convenience store / NE commercial office: Base cladding min height 2 ft of brick, CMU finished to resemble cut stone, or adhered stone. The proposed east CMU mandoor screen wall, if not precluded by streetside PUE, shall be max height 4 ft, 2 inches, have the bottom 2 courses be split face and the upper 4 courses ground face and be capped with smooth concrete. The NE corner angled wall shall have a window min area 15 sq ft, min 2.5 ft wide, and wholly within 8.5 ft of grade.
- (2) Option 2: NE commercial office: Base cladding min height 2 ft of brick, CMU finished to resemble cut stone, or adhered stone.

- c. Entrance: Option 2: NE commercial office: The main entrance door or doors of the office building shall be at any of the NE corner, within the east façade, or at the SE corner of the building. A corner entrance may be angled or both at one side of a corner and within 12 ft of the corner where main wall planes intersect or would intersect.
- d. Scuppers: Any building rainwater scuppers shall not to dump onto the pavement of a wide walkway.
- e. Setbacks:
 - (1) General: Site NE corner min setback shall equal streetside PUE.
 - (2) Option 1:
 - (a) Convenience store / NE commercial office: max 15 ft from highway and max 20 ft from Oregon Way ROW (measured from straight line ROW, not variable ROW at intersection).
 - (b) South commercial office: min 5 ft from Tax Lot 3700 east, south, and west lot lines.
 - (3) Option 2: NE commercial office: max 15 ft from each of highway and Oregon Way ROW (measured from straight line ROW, not variable ROW at intersection). NE corner min setback shall equal streetside PUE. West and south setbacks each shall be min 10 ft.
- f. Windows:
 - (1) General: All windows shall be square, round, or vertically proportioned. Operable windows shall have insect screens.
 - (2) Min area:
 - (a) Option 1:
 - (1) Convenience store: West façade 30%; north 30%; east 36 sq ft.
 - (2) NE commercial office: West and south façades 30%; east 144 sq ft.
 - (3) South commercial office: North façade 30%; east 15%; south 20%; and west 20%.
 - (b) Option 2:
 - (i) Convenience store: North façade 30%. Each of east, south, and west facades min 1 window min 7.5 sq ft, min 1.5 ft wide, and wholly within 8.5 ft of grade.
 - (ii) NE commercial office: North façade 30%; east 40%; south 30%; and west 20%.

CU2: Architectural Wall (AW) / Fences / Fencing:

- a. Exemption: Where chain-link fence with slats already exists along the north and west lot lines of Tax Lot 3500 (953 Oregon Way), the developer may exempt these two lines from AW if the homeowner in writing consents to exemption and the developer submits documentation by and as part of building permit application.
- b. Min height shall be along the:
 - (1) North and west lot lines of Tax Lot 3500 6 ft, 2 inches (if CMU, equal to 9 courses of blocks plus 2-inch smooth concrete cap).
 - (2) North and east lot lines of Tax Lot 90000 (950 Evergreen Road) 8 ft, 2 inches (if CMU, equal to 12 courses of blocks plus 2 inch smooth concrete cap)9 ft, including a 2-inch smooth concrete cap.
 - (3) Where fencing may substitute per other conditions, for part 1. above it shall be 6 ft, and for part 2. above, 8 ft.

- c. Height at AW ends: Min height shall drop where subject to stair-stepped height limits in yards abutting streets per WDO 2.06.02, within VCA or sight triangles per 3.03.06, and AW shall remain outside streetside PUEs. AW may cross an off-street PUE, if any exist, with written authorization by the Public Works Director, and the Public Works Director may instead direct that instead of a segment of wall that there be coated chain-link fencing with slats across an off-street PUE. For crossing of private easements, the developer similarly may instead fence.
- d. Gaps or rectangular openings:
 - (1) There shall be one along the east lot line of Tax Lot 90000, min 4 ft wide and 6 ft, 8 inches high above grade, and with the south end of the gap aligned with the Tax Lot 90000 north east-west drive aisle, south curb, north face.



Exhibit CU2d(1)



Exhibit CU2d(2)

- (2) If AW exemption per part a. above is not applicable, then there may be a gap along the west lot line of Tax Lot 3500, aligned with where there exist west backyard chain-link gates, minimum width equal to the width of the gates.
- e. Color: Masonry and any paint shall be a color or colors other than black, charcoal, or gray. For any other fence / fencing or free-standing wall, including gates if any, the coating and slats that WDO 2.06.02D requires and any wall shall be a color or colors other than black or charcoal. On free-standing walls with two or more colors, darker colors shall be towards the bottom and lighter ones towards the top.

f. Material: AW segments—at 40 ft north or farther from the south lot line of Tax Lot 3700, other than those along the north and east lot lines of Tax Lot 90000 (950 Evergreen Road), may be partly made of opaque cedar wood fencing if the wall remains mostly masonry. Specifically, masonry must constitute the bottom extent of wall segment from grade up to min 2 ft, 8 inches above grade, and there shall be piers or pilasters per "Details" below. Exhibit CU2f below illustrates a similar, conforming example:

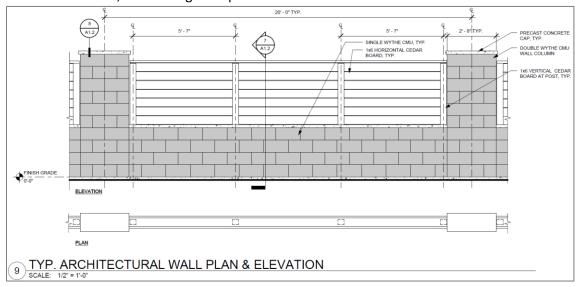


Exhibit CU2f (DR 2017-08)

g. Details: Each AW segment end shall have a pier or pilaster min 16 inches wide relative to wall face and projecting min 4 inches. Each segment shall have a min number of piers or pilasters equal to a ratio of 1 per 40 ft of wall. Each pier or pilaster shall be capped with ornamental concrete in the form of any of a shallow-sloped pyramid or sphere or other finial atop such pyramid. If the AW is CMU, the 8th and 9th CMU courses above grade shall be ground face (5 ft, 4 inches through 6 ft above grade).

CU3. Bicycle parking: Amount and general location: The developer shall provide bicycle parking as follows:

- a. Option 1 min stalls:
 - (1) Convenience store: 2
 - (2) NE commercial office: 2
 - (3) South commercial office: 4
- b. Option 2 min stalls:
 - (1) Convenience store: 2
 - (2) NE commercial office: 4
- c. General: Standards other than amount and general location shall conform to WDO 3.05.06 through Ordinance No. 2602 (LA 21-01).

CU4. Electric power lines: The development shall conform to WDO 3.02.04 through Ordinance No. 2602 (LA 21-01).

CU5. Landscaping:

- a. Bench: In the landscaped open space at or near the NE commercial office space, along a wide walkway or in a plaza, install either a 6-ft wide bench with back or a picnic bench. Set back from walkway and pave the setback, min either 2 ft for a bench or 3 ft for a picnic bench.
- b. Buffering/Screening: Evergreen hedge or shrubbery shall:
 - (1) Line AW segments.
 - (2) Screen transformers and other at-grade electrical and mechanical equipment along their sides, excepting the side intended for technician access.
 - (3) Serve as means of conformance with WDO 3.06.05B (parking screening).
- c. Coniferous/evergreen trees: 1 min of trees new to the site. The 1 shall be 1 min of the following coniferous or evergreen species:

Cedar, Western Red	Madrone, Pacific
Douglas-Fir	Oak, Oregon White
Fir, Grand	Pine, Ponderosa; and
Hemlock, Western	Yew, Pacific

d. Front yard

- (1) Trees:
 - (a) Plant min 7 trees in the yard along the highway and min 10 ft and max 20 ft from ROW.
 - (b) Plant min 4 trees in the yard along Oregon Way, min 5 ft and max 20 ft from ROW, in a loose row with min 3 of them spaced offset from and complementing street trees.
- (2) Hedge/shrubbery: In all areas not occupied by buildings and pavement, landscape per WDO 3.06.
 - (a) On Tax Lot 3700 in the yard along the highway, plant a hedge or row of continuous small or medium shrubbery extending between the driveway and east lot line. Plant and maintain min 5 ft from sidewalk and max 12 ft from ROW.
 - (b) Option 1: On Tax Lot 3600 in the yard along the Oregon Way, line the convenience store rear east free-standing wall with a hedge or row of continuous small or medium shrubbery.
 - (c) Option 2: On Tax Lot 3600 in the yard along the Oregon Way, plant a hedge or row of continuous small or medium shrubbery extending along the east dead-end of the drive aisle. Plant and maintain min 1 ft from sidewalk.

e. Site interior:

- (1) AW: Line each Architectural Wall segment with a hedge or row of continuous medium or large shrubbery.
- (2) Bark dust: Of landscaped area, max 3% may be bark dust, mulch, wood chip, pebbles, or sand. Walkway and plaza paving do not count against landscaping minimums.
- (3) Lawn large tree: Within open space within 30 ft of the NE commercial office, plant min 2 trees, either both large or min 1 medium and 1 large.
- (4) Plaza: At or within 30 ft of the NE commercial office space and adjacent to a wide walkway shall be a plaza min 81 sq ft, exc. walkway area, at 9 ft narrowest dimension, paved with bricks, concrete pavers, field or flagstone, or poured cement.
- (5) South yard: Within 100 ft of the Tax Lot 3700 south lot line, plant either for Option 1 min 2 trees or for Option 2 min 5 trees. Of these for Option 2, min 2 large with the westernmost tree being one of the large ones.

f. Parking area:

- (1) Option 1:
 - (a) Convenience store: A landscape island shall be roughly in the middle the parking aisle fronting the convenience store that conform to WDO 3.06.03C through Ordinance No. 2602 (LA 21-01).
 - (b) NE office: Plant a large tree in the southwesterly area of the south yard lawn.
 - (c) South office: For common use by tenants, have a south rear door and a patio of brick, pavers, or poured concrete min 7 ft north-south by 11 ft east-west. Align patio flush with door outer swing. Plant a small tree near patio west side.

(2) Option 2:

- (a) Convenience store: A landscape island shall cap each end of the parking aisle fronting the convenience store per WDO 3.06.03C through Ordinance No. 2602 (LA 21-01), and the east island may be on the west side of the wide walkway that another condition requires.
- (b) NE office: The office parking area drive aisle east end shall have the inside of curb min 3 ft from edge of streetside PUE, and the 3-ft width shall have a tree.

CU6. Lighting:

- a. General: Shall conform to WDO 3.11 through Ordinance No. 2602 (LA 21-01).
- b. Buffer: Parking area or other pole-mounted fixtures are prohibited between the north lot line of 953 Oregon Way (Tax Lot 3500) and the east-west drive aisle.
- c. Fuel pump canopy: Max 16 ceiling fixtures. Any ceiling fixture shall be no closer to ceiling outer edge than 4 ft. Neon lighting, or a lighting technology that mimics the appearance of neon lighting, is prohibited on the fuel pump canopy and on the southernmost primary building on Tax Lot 3700. The developer shall make so either of the following: (1) ceiling light fixtures shall not drop below the ceiling plane, or (2) for ceiling-mounted fixtures, the canopy roof edge perimeter shall as a shield drop or extend down to the same plane as the underside of the lowest fixture. In either case, fixtures that drop or extend down from the ceiling shall each have opaque housing on all sides.
- d. Option 1: Max of:
 - (1) Convenience store: 1 wall fixture on the east rear and none on the north side.
 - (2) NE commercial office: 1 wall fixture each on the west front and east rear.
 - (3) South commercial office: 1 wall fixture at the south rear and none at the east and west sides.
- e. Option 2: Max of:
 - (1) Convenience store: 2 wall fixtures on the south rear, 1 each on the east and west sides. Parking area or other pole fixtures prohibited in the east side, south rear, and west side yards.
 - (2) NE commercial office: 1 wall fixture on the south, 1 each on the east and west sides, and the south yard limited to 2 parking area poles. No other pole types in the north, east, or west yards.

CU7: Parking:

- 1. Standard stall length: The developer may set standard size 90° angle stall length at 18 ft instead of 19 per WDO Table 3.05B through Ordinance No. 2602 (LA 21-01).
- EV: Electric vehicle (EV) parking shall be min 1 stall with a charging station and placed near commercial office area. Remaining EV parking standards shall be per WDO 3.05 through Ordinance No. 2602 (LA 21-01).
- 3. Wheelstops / wheel stops: Every angled or 90° parking stall along a wide walkway shall have a wheel stop max 4 inches high. A wheel stop shall not straddle adjacent stalls. If and where the developer opts to install wheel stops where not required, they also shall conform to the height limit.

CU8. Walkways:

- a. General: Shall conform with WDO 3.04.06 through Ordinance No. 2602 (LA 21-01).
- b. Gap: A walkway, min 3.5 ft wide as an exception to part a., shall connect a building perimeter walkway system west to the AW conditioned gap or opening along the west lot line of Tax Lot 3700.
- c. Convenience store & fuel pump canopy: The three pump islands together shall have one or more walkway crossings to the convenience store main entrance walkway, and as an exception to part (a) above, each min 3 ft wide. For Option 1, minimum 1 crossing; for Option 2, min 2. A walkway crossing may incorporate an ADA parking space accessible aisle. Walkways should be straight, and where needing to jog, should jog at 45° max and at the point where vehicles pass in opposite directions or between vehicle lanes.
- d. Option 2: At the NE of the convenience store, the wide walkway crossing of drive aisle shall be at or near a right angle to drive aisle.

CU9. Access management: These are due by building permit application:

- a. General: Access management shall conform with WDO 3.02.01E, 3.04.01A.2, and 3.04.03C & D through Ordinance No. 2602 (LA 21-01). Regarding recordation of one or more types of legal instruments and how, the developer shall conform to the conditions in ways that satisfy the County.
- b. Bicycle/pedestrian: The develop shall grant the public access to walk, cycle, and roll along each wide walkway across Tax Lot 3600 to the benefit of 3700, relating to Oregon Way sidewalk access, and across Tax Lot 3700 to the benefit of 3600, relating to highway sidewalk access.
- c. Shared parking: If and where one or both of the subject lots lack minimum off-street parking ratio for all land uses on the lot, the developer shall revise site plans to conform to WDO 3.05.02
 & Table 3.05A or shall create a shared parking agreement per WDO 3.05.05. This is due by building permit issuance.

d. Cross access:

(1) Local: To conform to WDO 3.04.03A.3, B.1, B.3 & C.2 and, through Ordinance No. 2602 (LA 21-01), WDO 3.04.03B.3, C.1, C.3, C.4, & D.2, for what is termed any of cross access, ingress/egress, public access, or shared access, the developer shall grant the public access (a) across Tax Lot 3600 to the benefit of 3700, (b) across Tax Lot 3700 to the benefit of 3600, and (c) across Tax Lot 3700 to the benefit of 3800. The cross access shall follow a drive aisle or aisles and align at the common lot line. Regarding (c), the north east-west drive aisle shall stub to somewhere along the northerly 75 ft of the west lot line and at min 20 ft wide, and though the stub shall not be curbed it may be fenced.

(2) ODOT factor:

- (a) The developer shall apply to and obtain from ODOT the proper access rights for both tax lots prior to any construction, so as to not violate the deeds.
- (b) For context, see Attachment 102B. The ODOT Region 2 contact is Casey Knecht, P.E., Development Review Coordinator, (503) 986-5170, casey.knecht@odot.state.or.us. The City interprets "prior to any construction" to mean by issuance of the first structural building permit. Otherwise, City staff are inclined to defer to ODOT interpretation of part (a) above, including whether it is applicable to either Option 1 only or both site plan options.
- (c) If after City land use decision ODOT objects specifically to how the City administers or the developer conforms to other parts of the condition or to other conditions concerning vehicular access, then the developer may request and the Director may administratively approve in writing changes to administration or conformance to accommodate the ODOT factor while still having the development meet the WDO and conditions of approval to the max extent remaining. The Director may require developer application for any of Extension of a Development Decision per WDO 4.02.05 or Modification of Conditions per WDO 4.02.07.
- (d) If after City land use decision ODOT directs access management in conflict with other parts of the condition or to other conditions concerning vehicular access, then the developer shall forward the written direction from ODOT to the attention of the Director; describe the conflict(s); describe the minimum deviation from conformance necessary to comply with ODOT direction while also conforming to the remainder of the condition to the maximum, including plan view illustrations where helpful; and request Director approval through a dated document that cites the land use case file and condition numbers. The Director may approve what the developer first requests or a modified request. The City intends that if the developer were to make use of this part (d) of the condition, he would do so once.

CU10. Gas station operations:

1. Noise:

- a. Fuel pumps: Audible audiovisual advertising, if any, is prohibited from sounding from fuel pump electronic display speakers. Such advertising shall be limited to sight only.
- b. Tire/vacuum: Addition of any vehicle interior vacuum facility outdoors, tire pump facility outdoors, or other similar mechanical facility outdoors for gas station customers that makes noise shall be located min 100 ft north of the south lot line of Tax Lot 3700. Based on Ordinance No. 2312, any vacuum shall be closed to customer use min from 9:00 p.m. to 7:00 a.m.
- 2. Trash: There shall be at least one trash receptacle along each of the walkways, at min 1 ft from walkway edge, to and from the highway and Oregon Way sidewalks, within 25 ft of ROW, for intended use by convenience store customers, and remaining privately maintained and serviced.

3. Vehicular circulation:

- a. Driveways:
 - (1) Highway: Max 1 driveway. The driveway shall remain right-in, right-out and be max width equal to the existing 30 ft unless ODOT approves wider up to 36 ft; however, if the developer widens the driveway from the existing 30 ft, then min 12 ft of the width and min depth equal to either the throat or 13.5 ft, whichever is longer, shall be poured concrete. The area of poured concrete that is outside the ROW shall be patterned, stamped, or treated to resemble paving stones and shall be felt by motorists driving over it. (The objective is to calm traffic by preventing fast, swooping maneuvers and to direct vehicles to 24 ft width of asphalt within the driveway throat, while allowing semitrailer truck turning movement across 36 ft of width.) If the driveway widens, the developer also shall reconstruct the entire driveway to conform to City Public Works standard drawing Detail No. 4150-4 "Property Line Sidewalk at Driveway", except that if and where a specific conflict arises between City and ODOT public works construction standards, that of ODOT engineering guidance would supersede.
 - (2) Oregon Way: Max 1 driveway, max width 24 ft if two-way or 12 ft if one-way. Option 2: Throat, if two-way, then the inbound lane max 24 ft deep where lane is parallel with the outbound lane.
- b. I-5 directional signage: There shall be on Tax Lot 3700 outside of ROW and streetside PUEs directional signage that accomplishes directing on-site motorists bound for I-5, min 2 signs for Option 1 and 3 signs for Option 2, each min area 18 by 24 inches, mounted min 2 ft and max 7 ft above grade, text min 6 inches high, and including the standard Interstate 5 logo. The Director may administratively establish locations, details, specifications, and revisions to administer this condition part during building permit review. Further site plan revisions necessary to conform, if any, shall be due by building permit issuance.
- c. Option 2: fuel pump queueing:
 - (1) General: Fuel pump queues shall be one-way either eastbound in Option 1 or southbound in Option 2. The developer shall stripe directional arrows and lines to direct motorists into fuel pump queues and distinguish the queues from driving routes around the fuel pump canopy.

(2) Stacking:

- (i) Option 1: Of six queues, min 3 shall each fit stacking of min one car west of the fuel pump island.
- (ii) Option 2: Of six queues, min 2 shall each fit stacking of min two cars north of the fuel pump island, and the remaining 4 shall each fit stacking of min one car.
- d. Trucks: Until July 1, 2030, the Public Works Department may administratively regulate time, place, and manner of freight and truck access (ingress/egress) to and from the development and adjacent public streets. This condition shall not be construed to preclude the City past the date from regulating development freight and truck access via ordinances that are applicable generally to properties that happen to include the subject property.

CU11. Modification: Because the WDO, including 5.03.01, does not specify how changes to an approved conditional use (CU) and related site improvements might trigger another CU or modification of a CU approval, for Director determination the following serve as criteria and – where noted – as factors:

- a. Significant expansion of the use(s), factors being an increase in any of: total GFA by 25.0% or more or by an absolute value of 1,825 sq ft or more, and, the number of buildings by 1 or more;
- b. Increase in off-street parking by 6 or more stalls, even if the existing supply were in excess of the minimum required ratio(s);
- c. Net increase in impervious surface totaling at least 1,000 sq ft;
- d. Adding the land uses of automotive maintenance and repair, whether or not including through service bay structures.
- e. Development as defined in WDO 1.02 within twenty (20) feet of a property boundary and not already conditioned through the subject approval;
- f. Any proposal necessitating a request for Exception to Street Right-of-Way and Improvement Requirements ("Street Exception");
- g. Any proposal necessitating a request to vary from the WDO, that is, a variance;
- h. Any proposal necessitating a Type III or IV land use application type; and

the provisions supersede this condition of approval.

i. City adoption of a unified development ordinance replacing the WDO were to have intervened. Modification of a specific condition of approval remains pursuant to WDO 4.02.07. Were the City to have amended the WDO to establish modification provisions for conditional uses, the Director may decide that

Conditional Use 21-02: Transportation

T-A:

- 1. OR 214 & Oregon Way: The developer shall pay a fee per Attachment 203 to fund a transportation study, specifically to investigate in coordination with ODOT (1) corridor signal timing and coordination adjustments and (2) improving safety by reducing vehicle turning or angle crashes. This is due by building permit issuance. [TSP R11 & TIA p. 12]
- 2. Consultant review: The developer shall pay a fee for the City to recoup the cost of its transportation consultant reviewing and advising upon the TIA.
- 3. I-5 interchange with OR 214: To reduce vehicle crashes, the developer shall pay a fee per Attachment 203.
- 4. OR 214 & Evergreen Rd: To mitigate effect on the intersection and reduce vehicle crashes, the developer shall pay a fee per Attachment 203.
- 5. OR 99E & OR 211/214: To mitigate effect on the intersection and reduce vehicle crashes, the developer shall pay a fee per Attachment 203.

T-T. Bus transit: Bus stop improvements: To further TDM through bus transit, regarding the WTS Oregon Way northbound stop that is adjacent to 966 & 980 Oregon Way, where because ROW and streetside PUE are too narrow relative to the street to accommodate installation, the developer shall pay a fee in-lieu as well as a fee in lieu of a bus stop bicycle rack per Attachment 203.

Street Exception 21-05

EX1. Frontage/street improvements: Highway: These shall be as follows:

- a. ROW: If and where there is a deficit, the developer shall dedicate ROW that meets or exceeds the min width necessary to conform to WDO Figure 3.01B "Major Arterial".
- b. PUE: If minimum width streetside PUE does not yet exist per WDO Figure 3.01B, then the developer shall grant it. Max width shall be 10 ft, unless if and where existing utilities that the developer does not relocate necessitate wider as documented by franchise utilities and the developer.
- c. Improvements: No min surface improvements other than either elsewhere conditioned or necessary to comply with ODOT engineering guidance or conform to PW direction. The developer shall pay fees in lieu of highway improvements per Attachment 203.

EX2. Frontage/street improvements: Oregon Way: These shall be as follows:

- a. ROW: The developer shall dedicate ROW that meets or exceeds the min width necessary to conform to WDO Figure 3.01E "Access Street" and exceeds that width where necessary to accommodate both the existing northbound left turn lane and required half-street improvements.
- b. PUE: If minimum width streetside PUE does not yet exist per WDO 3.02.01B, then the developer shall grant it. Max width shall be per WDO 3.02.01F.2 through Ordinance No. 2602 (LA 21-01).
- c. Improvements:
 - (1) Parking: No 8-ft wide on-street parallel parking lane is required, this being an exception from what Figure 3.01E would have required. The developer shall pay a fee in-lieu per Attachment 203.
 - (2) Landscape strip: Min 6½ ft wide inc. curb width and with min 3 street trees with allowance of fee in lieu of 1 tree max. Planting of area remaining after tree planting and irrigation shall be per WDO 3.01.04B through Ordinance No. 2602 (LA 21-01).
 - (3) Sidewalk: Min 8 ft wide.

Overlap: Wider sidewalk shall not narrow the landscape strip. The extra width of planter strip and sidewalk shall either (a) be within additional ROW that accommodates them, or (b) overlap outside ROW into streetside PUE, there being a recorded legal instrument granting public access to the overlap. If (b), then the developer shall submit a draft of the legal instrument for Planning and PW review by either civil engineering plan (CEP) review application to PW or building permit application, whichever is earlier. The developer shall submit copies of correctly recorded documents to the Planning Division by building permit issuance.

Expiration: Per Woodburn Development Ordinance (WDO) 4.02.04B., a final decision expires within three years of the date of the final decision unless:

- 1. A building permit to exercise the right granted by the decision has been issued;
- 2. The activity approved in the decision has commenced; or
- 3. A time extension, Section 4.02.05, has been approved.

Notes to the Applicant:

- 1. Records: Staff recommends that the applicant retain a copy of the subject approval.
- 2. Fences, fencing, & free-standing walls: The approval excludes any fences, fencing, & free-standing walls, which are subject to WDO 2.06 and the permit process of 5.01.03.
- 3. Signage: The approval excludes any private signage, which is subject to WDO 3.10 and the permit process of 5.01.10.
- 4. PLA Time Limit: WDO 4.02.04B. specifies that, "A final decision on any application shall expire within three years of the date of the final decision unless: 1. a building permit to exercise the right granted by the decision has been issued; 2. the activity approved in the decision has commenced; or 3. a time extension, Section 4.02.05, has been approved. Because unrecorded re-plats lingering indefinitely have burdened staff, a condition sets sooner time limits for subsection 2. to begin and finish recordation.
- 5. Mylar signature: The Community Development Director is the authority that signs plat Mylars and not any of the mayor, City Administrator, Public Works Director, or City Engineer. Only one City signature title block is necessary.
- 6. PLA Plat Tracker: Marion County maintains a plat tracking tool at http://apps.co.marion.or.us/plattracker/>. Use it to check on the status of a recordation request to the County. City staff does not track County plat recordation.

7. Technical standards:

- a. Context: A reader shall not construe a land use condition of approval that reiterates a City technical standard, such as a PW standard, to exclude remaining standards or to assert that conditions of approval should have reiterated every standard the City has in order for those standards to be met.
- b. Utilities: A condition involving altered or additional sidewalk or other frontage/street improvement that would in the field result in displacement or relocation of any of utility boxes, cabinets, vaults, or vault covers does not exempt the developer from having to move or pay to move any of these as directed by the City Engineer and with guidance from franchise utilities.
- 8. Other Agencies: The applicant, not the City, is responsible for obtaining permits from any county, state and/or federal agencies, which may require approval or permit, and must obtain all applicable City and County permits for work prior to the start of work and that the work meets the satisfaction of the permit-issuing jurisdiction. The Oregon Department of Transportation (ODOT) might require highway access, storm drainage, and other right-of-way (ROW) permits. All work within the public ROW or easements within City jurisdiction must conform to plans approved by the Public Works Department and must comply with a Public Works Right-of-Way permit issued by said department. Marion County plumbing permits must be issued for all waterline, sanitary sewer, and storm sewer work installed beyond the Public Right-of-Way, on private property.

- 9. Inspection: The applicant shall construct, install, or plant all improvements, including landscaping, prior to City staff verification. *Contact Planning Division staff at least three (3) City business days prior to a desired date of planning and zoning inspection of site improvements.* This is required and separate from and in addition to the usual building code and fire and life safety inspections. Note that Planning staff are not primarily inspectors, do not have the nearly immediate availability of building inspectors, and are not bound by any building inspector's schedule or general contractor convenience.
- 10. Stormwater management: The storm sewer system and any required on-site detention for the development must comply with the City Storm Water Management Plan, Public Works storm water practices and the Storm Drainage Master Plan.
- 11. Public Works Review: Staff performs final review of the civil plans during the building permit stage. Public infrastructure must be constructed in accordance with plans approved by the City, as well as current Public Works construction specifications, Standard Drawings, Standard Details, and general conditions of a permit type issued by the Public Works Department.

12. ROW:

- a. Dedication: The Public Works Department Engineering Division has document templates for ROW and easement dedications that applicants are to use.
 - ROW and public utility easement (PUE) dedications are due prior to building permit issuance per Public Works policy.
- b. Work: All work within the public ROWs or easements within City jurisdiction must require plan approval and permit issuance from the Public Works Department. All public improvements construction work must be performed in accordance with the plans stamped "approved" by the City, and comply with the City's Standard Specifications and Standard drawings.
- 13. Franchises: The applicant provides for the installation of all franchised utilities in any required easements.
- 14. Water: All water mains and appurtenances must comply with Public Works, Building Division, and Woodburn Fire District requirements. Existing water services lines that are not going to be use with this new development must be abandoned at the main line. The City performs required abandonment of existing water facilities at the water main with payment by the property owner. All taps to existing water mains must be done by a "Hot Tap" method and by approved City of Woodburn Contractors. The applicant shall install the proper type of backflow preventer for all domestic, lawn irrigation and fire sprinkler services. The backflow devices and meters shall be located near the city water main within an easement, unless approved otherwise by Public Works. Contact Byron Brooks, City of Woodburn Water Superintendent, for proper type and installation requirements of the backflow device at (503) 982-5380.
- 15. Grease Interceptor/Trap: If applicable, a grease trap would need to be installed on the sanitary service, either as a central unit or in a communal kitchen/food preparation area. Contact Marion County Plumbing Department for permit and installation requirements, (503) 588-5147.

- 16. Fire: Fire protection requirements must comply with Woodburn Fire District standards and requirements, including how the District interprets and applies Oregon Fire Code (OFC). Place fire hydrants within the public ROW or public utility easement and construct them in accordance with Public Works Department requirements, specifications, standards, and permit requirements. Fire protection access, fire hydrant locations and fire protection issues must comply with current fire codes and Woodburn Fire District standards. See City of Woodburn Standard Detail No. 5070-2 Fire Vault. The fire vault must be placed within the public right-of-way or public utility easement.
- 17. SDCs: The developer pays <u>System Development Charges</u> prior to building permit issuance. Staff will determine the water, sewer, storm and parks SDCs after the developer provides a complete Public Works Commercial/Industrial Development information sheet.

Appeals: Per WDO 4.01.11E., the decision is final unless appealed pursuant to Oregon Revised Statutes (ORS), state administrative rules, and WDO <u>4.02.01</u>. The appeal to City Council due date is twelve (12) days from the mailing date of this notice per 4.02.01B.1. A valid appeal must meet the requirements of 4.02.01.

A copy of the decision is available for inspection at no cost, and the City would provide a copy at reasonable cost at the Community Development Department, City Hall, 270 Montgomery Street, Woodburn, OR 97071. For questions or additional information, contact Cassandra Martinez, Administrative Specialist, at (503) 982-5246 or cassandra.martinez@ci.woodburn.or.us.

Testifiers:

Name	Address	Planning Commission		City Council	
		Written	Verbal	Written	Verbal
Michael Mills (applicant's attorney)	P.O. Box 1307, Silverton, OR 97381	х	Х		
Wayne Kittelson (competing gas stations' traffic consultant)	Kittelson & Associates, Inc., 851 SW 6 th Ave, Ste 600, Portland, OR 97204	х	x		
David Petersen (competing sta- tions' attorney)	Tonkon Torp, LLC, 888 SW 5 th Ave, Ste 1600, Portland, OR 97204	Х	х		
Joseph Bessman (applicant's traffic consultant)	Transight Consulting, LCC, 61271 Splendor Ln, Bend, OR 97702		x		
Del Huntington (applicant's traffic consultant)	Huntington Traffic Solutions, 1665 A St NE, Salem, OR 97301		х		
Largo Abshere	855 N. Cascade Dr Woodburn, OR 97071		Х		
Janice Aiken	1331 Princeton Rd Woodburn, OR 97071		Х		
Carol Bettandorff	717 N. Cascade Dr Woodburn, OR 97071		Х		
Nancy Ferguson	950 Evergreen Rd, Unit 323 Woodburn, OR 97071		Х		
Karen Halter	938 Oregon Way Woodburn, OR 97071		Х		
Mickey Harrison	924 Oregon Way Woodburn, OR 97071		Х		
Rebecca Hayes	950 Evergreen Rd, Unit 205 Woodburn, OR 97071		х		
Doris Ehlen Kruse	950 Evergreen Rd, Unit 312 Woodburn, OR 97071		Х		
Dorothy Monnier	1200 Quinn Rd Woodburn, OR 97071		х		
Bobbi Reisner	950 Evergreen Rd, Unit 221 Woodburn, OR 97071		Х		
Carolyn Schindlebower	950 Evergreen Rd, Unit 206 Woodburn, OR 97071		Х		
Betty Torabi	925 Oregon Way Woodburn, OR 97071		Х		
Don Zehrung	966 Oregon Way Woodburn, OR 97071		х		

Attachments:

- Planning Commission June 9, 2022 Staff Report Attachment 101. Marked Tax Map
- 102A. Public Works comments (May 5, 2022; 2 pages)
- 102B. Agency commentary ODOT e-mail with two exhibits (May 4, 2021; 15 pages)
- 103A. Application materials / site plans Option 1 (Feb. 9, 2022; 3 sheets)
- 104. Transportation System Plan (TSP) Fig. 2 "Functional Roadway Classification"
- 201.* CU 21-02 US Market Gas Station: Dictionary & Glossary
- 202. CU 21-02 US Market Gas Station: Civil Engineering Plan (CEP) Review Provisions
- 203. CU 21-02 US Market Gas Station: Conditioned Fees

Sincerely,

Colin Cortes, AICP, CNU-A

Colin Cortes

Senior Planner

Affirmed,

Charles Piper, Planning Commission Chair

June <u>/ 4</u>__, 2022

Date

cc: Chris Kerr, Community Development Director [e-mail]

Dago Garcia, P.E., City Engineer [e-mail]

Melissa Gitt, Building Official [e-mail]

Jason Space, GIS Technician [e-mail]

Ronald "Ron" James Ped, Ronald James Ped Architect, PC, 145 21st St SE, Salem, OR 97301-8846 [applicant] [mail & e-mail]

Lal Din Sidhu ("Don" Sidhu), Woodburn Petroleum LLC, 1038 Broadway St NE, Salem, OR 97301-1276 [landowner] [mail & e-mail]

Testifiers: Per the table above. [mail]

Casey Knecht, P.E., Development Review Coordinator, Oregon Dept. of Transportation (ODOT) Region 2 [mail & e-mail]

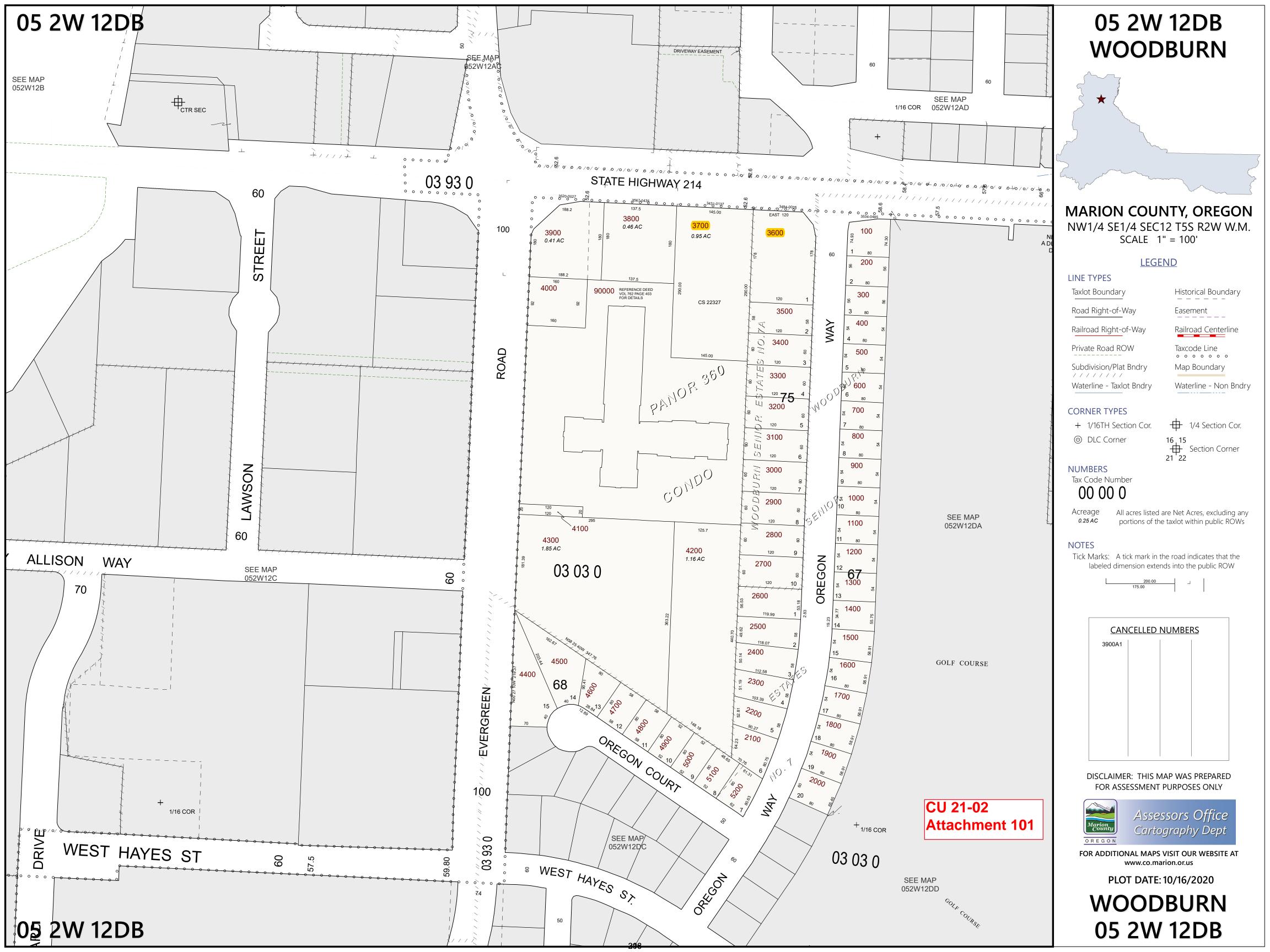
Marion County Assessor's Office [e-mail]

Marion County Geographic Information System (GIS) [e-mail]

Marion County Planning Division [e-mail]

Marion County Public Works Dept. [e-mail]

^{*}The 200 series of attachments are details for the conditions of approval.





CU 21-02 "US Market" Gas Station / Convenience Store / Office Building 2540 – 2600 Newberg Highway Public Works

May 5, 2022

LAND USE CONDITIONS:

- The Applicant/owner, not the City, is responsible for obtaining permits from City, State, County and/or Federal agencies that may require such permit or approval. All work within the Oregon Department of Transportation (ODOT) jurisdiction shall comply with ODOT's permit and requirements. Use ODOT details for work within ODOT's jurisdiction.
- 2. Construct private storm sewer system, including detention facilities, in accordance with the City of Woodburn storm master plan and approved plans and drainage report. The on-site detention area for the runoff from this site shall be provided in accordance with the hydraulic analysis. The property owner shall maintain all on-site detention areas in perpetuity. Applicant is require to obtain approval from the Oregon Department of Transportation (ODOT) for connections to ODOT's storm system along Hwy 214 and Oregon Way.
- 3. Provide and record required right-of-way and public utility easements dedications prior to building permit issuance if required.
- 4. The Applicant shall obtain the required 1200C Erosion Control Permit from the Department of Environmental Quality prior to City issuance of permit(s), if applicable.
- 5. Final review of the Civil Plans will be done during the building permit application. Public infrastructure will be constructed in accordance with plans approved by public works and other agencies that may require the applicant to obtain permits.
- 6. All sanitary sewer laterals serving the proposed developments are private up to the main line. All existing sewer laterals shall be abandoned at the main if they are not going to be utilized.
- 7. Fire hydrants locations and fire protection requirements shall be as per the Woodburn Fire District and City of Woodburn requirements.

CU 21-02 Attachment 102A

- 8. System Development Charges shall be paid prior to building permit issuance.
- Pending ODOT's review and approval and oil/water and sand separator shall be use on the private storm system. Storm system shall comply with ODOT, City and Marion County requirements.
- 10. All onsite private storm system and sewer lateral lines shall comply with Marion County plumbing permit and requirements.
- 11. Provide private utility easements for the private storm system that benefit both tax lots (3700 and 3600) if necessary.
- 12. Storm systems for both gasoline/petroleum product spill and parking areas are not allowed to connect/discharge into the public sanitary sewer system. Applicant to redesign their storm system on the proposed pumps area and to comply with Federal, State, and City's regulations for containment of spills and storm discharges.

Colin Cortes

From: KNECHT Casey <Casey.KNECHT@odot.oregon.gov>

Sent: Wednesday, May 4, 2022 11:10 AM

To: Colin Cortes
Cc: Dan Handel

Subject: ODOT Comments for City of Woodburn CU 21-02 - Ped

Attachments: R3431-0137.pdf; R3986-0148.pdf

**** This email is from an EXTERNAL sender. Exercise caution when opening attachments or click links from unknown senders or unexpected email. ****

Colin,

Thank you for notifying the Oregon Department of Transportation (ODOT) of the proposal at 2540 & 2600 Newberg Hwy in Woodburn. Please include these comments as part of the Planning Commission hearing and notify ODOT of the decision by sending a copy to odotr2planmgr@odot.state.or.us when available.

The site has frontage on Hillsboro-Silverton Highway, No. 140 (OR-214), and is subject to state laws administered by ODOT. The site comprises two different tax lots, each with access restrictions recorded in the property deeds. Tax lot 3700 (2600 Newberg Hwy) has one access reservation at MP 37.09 that can serve tax lot 3700 only. This corresponds with the existing driveway on the highway. Tax lot 3600 (2540 Newberg Hwy) has no access rights to the highway and no access rights to a portion of Oregon Way between the highway intersection and a point 191 feet south of the highway intersection center. This leaves a 36-foot window along Oregon Way adjacent to the southern property line where all vehicular access must occur for tax lot 3600. This corresponds with the existing driveway on Oregon Way. I have attached the relevant property deeds from the Marion County clerk.

Both site plans allow for vehicles to enter tax lot 3600 (2540 Newberg Hwy) via tax lot 3700 (2600 Newberg Hwy) which is in violation of the access rights listed in the deeds. The additional driveway on Oregon Way falls in the area of access control (outside the 36-foot window), and would also be in violation of the access rights listed in the deeds. There is a process for modifying or lifting access rights, called a Grant of Access. The applicant would need to apply to the state for a Grant of Access, and demonstrate that the changes to the access rights would benefit the highway. If the application is approved, the deeds would be modified and re-recorded with the county clerk to reflect the change.

If the city approves this land use proposal with either of the site plan options, there must be a condition of approval that the applicant shall obtain the proper access rights for both tax lots prior to any construction, so as to not violate their own deeds. Please contact me with any questions.

Casey Knecht, P.E.

Development Review Coordinator | ODOT Region 2

503-986-5170 | casey.knecht@odot.oregon.gov

CU 21-02 Attachment 102B File 7139 036 Map 11B-4-30

TOLOST 130707

REEL 3431 PAGE 137

MARION COUNTY

BILL BURGESS, COUNTY CLERK
10-04-2012 03:47 pm.

Control Number 325141 \$ 71.00

Instrument 2012 34034618

WARRANTY DEED with EASEMENT

WELLS FARGO BANK, NA, successor by merger to First Federal Savings and Loan Association of Salem, a federal corporation, Grantor, whose address is 1300 SW Fifth Avenue, 5th Floor, Portland, Oregon 97201, for the true and actual consideration of \$21,100.00, does convey unto the STATE OF OREGON, by and through its DEPARTMENT OF TRANSPORTATION, Grantee, fee title to the property described as Parcel 1 on Exhibit "A" dated 12/10/2010, attached hereto and by this reference made a part hereof.

TOGETHER WITH ALL abutter's rights of access, if any, between the above-described parcel and Grantor's remaining real property, EXCEPT, however,

Reserving access rights for the service of Grantor's remaining property, to and from said remaining property to the abutting highway at the following place(s), in the following width(s):

Hwy. Engr's Sta. 522+80 Side of Hwy. South Width 30 Feet

The access rights reserved herein are subject to, and may only be exercised in accordance with, the statutes and administrative rules applicable to access control and road approaches. Such access is contingent upon issuance of an approach road permit, and no access rights may be exercised or construction of an approach road begun unless, and until, a standard Approach Road Permit application is submitted and a permit issued by the Oregon Department of Transportation. The approach road may only be constructed or maintained upon issuance of such permit and in accordance with such permit. If the State constructs the approach road during a highway project, Grantor is required to sign a standard Approach Road Permit to ensure proper operation and maintenance of the approach road.

RETURN TO AND TAX STATEMENTS TO:
OREGON DEPARTMENT OF TRANSPORTATION
RIGHT OF WAY SECTION
4040 FAIRVIEW INDUSTRIAL DRIVE SE, MS#2
SALEM OR 97302-1142

Map and Tax Lot #: 5-2W-12DB-3700

Property Address: 2600 Newberg Highway

Woodburn, OR 97071

Grantor also grants to Grantee, its successors and assigns, a permanent easement to construct and

maintain slopes, to construct, operate and maintain drainage facilities, and to relocate, construct and maintain water,

gas, electric and communication service lines, fixtures and facilities, and appurtenances therefore, upon, over,

under, and across the property described as Parcel 2 on Exhibit "A" dated 12/10/2010, attached hereto and by

this reference made a part hereof.

IT IS UNDERSTOOD that the easement herein granted does not convey any right, or interest in the above-

described Parcel 2, except for the purposes stated herein, nor prevent Grantor from the use of said property;

provided, however, that such use shall not be permitted to interfere with the rights herein granted or endanger the

lateral support of the public way, or to interfere in any way with the relocation, construction, and maintenance of

said utilities, and their appurtenances, as granted herein above.

IT IS ALSO UNDERSTOOD that Grantee shall never be required to remove the necessary slope materials

placed by it on said property nor shall Grantor, Grantor's heirs successors and assigns have any claim to Grantee

for compensation for damages to Parcel 2, by reason thereof or by reason of any change of grade of the public way

abutting on said property.

IT IS ALSO UNDERSTOOD that this easement shall be subject to the same conditions, terms and

restrictions contained in the easements, licenses and/or permits granted to the owner of any facilities being

relocated.

IT IS ALSO UNDERSTOOD that Grantor shall not place or erect any buildings or structures upon the

easement area without the written consent of Grantee.

IT IS FURTHER UNDERSTOOD that nothing herein contained is intended to create any obligation on the

203

part of Grantee for the maintenance of said utilities unless installed by Grantee.

8/24/2012

Page 2 of 5 - wd pemulti slope&drain

Grantor covenants to and with Grantee, its successors and assigns, that grantor is the owner of said property which is free from encumbrances, except for easements, conditions, and restrictions of record, and will warrant the same from all lawful claims whatsoever, except as stated herein.

Grantor agrees that the consideration recited herein is just compensation for the property or property rights conveyed, including any and all reduction in value to Grantor's remaining property, if any, which may result from the acquisition or use of said property or property rights. However, the consideration does not include damages resulting from any use or activity by Grantee beyond or outside of those uses expressed herein, if any, or damages arising from any negligence.

In construing this document, where the context so requires, the singular includes the plural and all grammatical changes shall be made so that this document shall apply equally to corporations and to individuals.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

The statement above is required by law to be included in this instrument. PLEASE NOTE: the property described in this instrument is not a "lot" or "parcel" as defined in ORS 92.010 or 215.010. Nevertheless, the property is a legally created unit of land as described in ORS 92.010 (9) (d) or (e).

It is understood and agreed that the delivery of this document is hereby tendered and that terms and obligations hereof shall not become binding upon the State of Oregon Department of Transportation, unless and until accepted and approved by the recording of this document.

Dated this 24th day of August ,20 12 .

WELLS FARGO BANK, NA, successor by merger to First Federal Savings and Loan Association of Salem, a federal corporation

Joshua S. Gutzwiler, Vice-President

STATE OF OREGON, County of <u>Multnoman</u>

Dated August 7 1 1 20 12 Personally appeared the above named Joshua S. Gutzwiler, known by me to be the Vice-President, of Wells Fargo Bank, NA, who acknowledged that he executed the same for the purposes therein expressed and in the capacity therein stated, as the act and deed of said Bank. Before me:

OFFICIAL SEAL
STEPHANIE LYNN MC GUIRE
NOTARY PUBLIC-OREGON
COMMISSION NO. 442217
MY COMMISSION EXPIRES SEPTEMBER 12, 2013

Notary Public for Oregon

My Commission expires

*SEE ATTACHED SEPARATE SIGNATURE AND ACKNOWLEDGMENT ON PAGE 5 of 5

*THIS SIGNATURE AND ACKNOWLEDGMENT IS ATTACHED TO A WARRANTY DEED with EASEMENT DOCUMENT DATED August 24, 2012

WELLS FARGO BANK, NA, successor by merger to First Federal Savings and Loan Association of Salem, a federal corporation

*SIGNATURE AND ACKNOWLEDGMENT PAGE 5 OF 5

ACKNOWLEDGMENT State of California County of Son Francisco before me, was personally appeared _ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. JUDY GONZALES Commission # 1893659 WITNESS my hand and official seal. Notary Public - California San Francisco County My Comm. Expires Jun 25, 2014

(Seal)

Signature

PARCEL 1 - Fee

A parcel of land lying in the Andrew Dubois D.L.C. No. 98, Township 5 South, Range 2 West, W.M., Marion County, Oregon and being a portion of that property described in that Warranty Deed to First Federal Savings & Loan Association of Salem, recorded March 24, 1969 in Book 661, Page 638 of Marion County Record of Deeds; the said parcel being that portion of said property included in a strip of land 52.60 feet in width, lying on the Southerly side of the center line of the relocated Hillsboro - Silverton Highway, which center line is described as follows:

Beginning at Engineer's center line Station 514+00.00, said station being 59.48 feet South and 1,652.55 feet East of the Northwest corner of the Andrew Dubois D.L.C. No. 98, Township 5 South, Range 2 West, W.M.; thence South 87° 17′ 33″ East 1,124.18 feet to Engineer's center line Station 525+24.18.

Bearings are based on County Survey No. 37627, filed August 27, 2009, Marion County, Oregon.

This parcel of land contains 492 square feet, more or less.

PARCEL 2 – Permanent Easement For Slopes, Drainage, Water, Gas, Electric and Communication Service Lines, Fixtures and Facilities

A parcel of land lying in the Andrew Dubois D.L.C. No. 98, Township 5 South, Range 2 West, W.M., Marion County, Oregon and being a portion of that property described in that Warranty Deed to First Federal Savings & Loan Association of Salem, recorded March 24, 1969 in Book 661, Page 638 of Marion County Record of Deeds; the said parcel being that portion of said property included in a strip of land 62.60 feet in width, lying on the Southerly side of the center line of the relocated Hillsboro - Silverton Highway, which center line is described in Parcel 1.

EXCEPT therefrom Parcel 1.

This parcel of land contains 1,447 square feet, more or less.

REEL: 3431 PAGE: 137

October 04, 2012, 03:47 pm.

CONTROL #: 325141

State of Oregon County of Marion

I hereby certify that the attached instrument was received and duly recorded by me in Marion County records:

FEE: \$ 71.00

BILL BURGESS COUNTY CLERK

THIS IS NOT AN INVOICE.

File 7139037A PM224A-005 Drawing 11B-4-30

REEL 3986 PAGE 148
MARION COUNTY
BILL BURGESS, COUNTY CLERK
08-28-2017 02:10 pm.
Control Number 473317 \$
66.00
Instrument 2017 00044715

FATCO NCS-858022-0R1

DEED

The STATE OF OREGON, by and through its DEPARTMENT OF TRANSPORTATION, Grantor, for the true and actual consideration of \$500,000.00 does convey unto, ZOYA PROPERTIES, Inc., Grantee, the property described as Parcel 1 on Exhibit "A" dated 8/13/2015, attached hereto and by this reference made a part hereof.

AND RESERVING unto Grantor an permanent easement for slopes, drainage facilities, water, gas, electric and communication service lines, fixtures and facilities upon the property described as Parcel 2 on Exhibit "A" dated 8/13/2015, attached hereto and by this reference made a part hereof.

This conveyance is made and delivered upon the following express conditions, reservations, and restrictions:

- 1. Subject to special assessments, existing restrictions, reservations and easements of record, if any.
- 2. That there is reserved by Grantor, and waived by Grantee, all access rights between the above described real property and the Hillsboro-Silverton Highway and to Oregon Way (City Street) Northerly of Engineer's Station "OW" 11+91 abutting on said parcel.

This reservation shall run with the land and shall not be subject to modification, cancellation, or destruction by adverse user or estoppel, no matter how long continued. Nothing in this conveyance shall be construed as conveying any estate, right, title, or interest in and to said abutting public highway right of way or any rights of reversion therein or thereto.

3. That the above described land shall never be used for the placing or maintenance of any advertising sign, display, or device, except such sign, display, or device used to advertise the activities on said land, or the lease or sale of said land or any portion thereof. In the event of violation of this condition, Grantor shall have the right, through its authorized officers, agents, or employees to enter upon said land and remove, destroy, or obliterate any unauthorized sign, display, or device, without liability for damage or injury thereto, and to recover the cost of such removal, destruction or obliteration from the owner of said land.

TAX STATEMENTS TO:

Zoya Properties, Inc. 1600 NW 167th Place Suite 300 Beaverton, OR 97003 **AFTER RECORDING RETURN TO:**

OREGON DEPARTMENT OF TRANSPORTATION PROPERTY MANAGEMENT / ACCESS RESEARCH 4040 FAIRVIEW INDUSTRIAL DRIVE SE, MS#2 SALEM OR 97302-1142

- 4. That no junk, scrap, junked motor vehicles, or parts thereof, debris, trash, waste, or other such materials shall be placed on said land for whatever purpose in any manner so as to be visible from a state highway, provided that such items as listed above can otherwise be placed on said land without violating any applicable law, ordinance, or regulation. In the event of violation of this condition, Grantor shall have the right, through its authorized officers, agents, or employees, to enter upon said land and remove or destroy any unauthorized junk, scrap, or other material mentioned above and recover the cost of such removal or destruction from the owner of said land.
- 5. That this property shall not be used for the operation of any garbage dump or sanitary land fill. If such use is made of the property, Grantor may, at its election, enter upon said land and restore it to the condition that existed prior to said use for garbage dump or sanitary land fill purposes and recover the cost thereof from the owner of said land.
- 6. That this conveyance is made upon the further condition, which shall constitute a covenant running with the land, that Grantor shall not at any time become liable to Grantee and grantee's heirs, successors and assigns in interest, for damages to the land herein described or any buildings, structures, improvements, or property of any kind or character now or hereafter located upon said land or for any injuries to any owner, occupant, or any person in or upon said land or for any interference with the use and enjoyment of said land or for damages which except for this covenant might constitute a nuisance caused directly or indirectly by noise or air pollutant emissions from transportation vehicles using the highway or transportation facility adjacent to said land. Any reference in this covenant to the highway or transportation facility adjacent to said land refers to the highway or transportation facility as it now exists and also as it will exist with future improvements. Grantee and grantee's heirs, successors and assigns covenant not to sue Grantor for any said injuries or damages.
- 7. That Grantee acknowledges that it has examined the above described Property to its own satisfaction and has formed its own opinion as to the condition (including environmental condition) and value thereof. Grantee has not relied on any statements or representations from Grantors or any person acting on behalf of Grantors concerning any of the following: the size or area of the Property or any of the parcels of the Property; the location of corners or boundaries of any parcel of the Property; the conditions of the Property, including but not limited to, environmental condition above or below the surface of the Property or compliance with environmental laws and other governmental requirements; the availability of services to the Property; the ability of Purchaser to use the Property or any portion thereof for any intended purpose; or any other matter affecting or relating to the Property or any portion thereof. Grantee is acquiring the Property, both above surface and below surface, in the condition existing at the time of closing, AS IS, with all defects, if any. Grantee waives, releases and forever discharges Grantors of and from all claims, actions, causes of action, fines, penalties, damages (including consequential, incidental and special damages), costs (including the cost of complying with any judicial or governmental order), and expenses (including attorney fees), direct or indirect, known or unknown, foreseen or unforeseen, which may arise on account of or in any way growing out of or in connection with any physical characteristic or condition of the Property, including any surface or subsurface condition, or any law, rule or regulation applicable to the Property.
- 8. Subject to the rights of any utilities located within said property and further subject to the rights of said existing facilities, if any there be, to operate, reconstruct, and maintain their utility facilities presently located within said property.
- It is understood that the conditions, reservations, restrictions, and covenants herein set out have been considered in determining the amount of consideration of this conveyance.

The rights and remedies herein reserved or provided shall not be exclusive and shall not be in derogation of any other right or remedy which Grantor may have. The conditions and restrictions herein contained shall run with said land and shall forever bind Grantee and grantee's heirs, successors and assigns. Where any action is taken to enforce the above mentioned conditions and restrictions, Grantor shall not be liable for any trespass or conversion as to any real or personal property. Where legal proceedings are commenced by Grantor to enforce the foregoing conditions and restrictions or for the recovery of the aforementioned removal or destruction costs, the successful party shall be entitled to reasonable attorney fees and court costs.

File 7139037A PM224A-005 Drawing 11B-4-30

In construing this deed, where the context so requires, the singular includes the plural and all grammatical changes shall be made so that this deed shall apply equally to corporations and to individuals.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

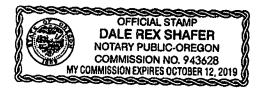
Dated this 25TH day of August ,20 17

STATE OF OREGON, by and through its DEPARTMENT OF TRANSPORTATION

Scott C. Claus, Interim State Right of Way Manager

STATE OF OREGON, County of Marion

Dated August J5, 20_17. Personally appeared Scott C. Claus, who being sworn, stated that he is the Interim State Right of Way Manager for the State of Oregon, Department of Transportation, and that this document was voluntarily signed on behalf of the State of Oregon by authority delegated to him. Before me:



Notary Public for Oregon
My Commission expires 10/13/2019

8/13/2015

Parcel 1 – To Be Sold

A parcel of land lying in Lot 1, Block 75, WOODBURN SENIOR ESTATES NO. 7A, Marion County, Oregon; the said parcel being that property designated as Parcel 2 and described in that Bargain and Sale Deed to the State of Oregon, by and through its Department of Transportation, recorded April 18, 2013 on Reel 3494, Page 26 of Marion County Records.

This parcel of land contains 20,602 square feet, more or less.

Parcel 2 – Permanent Easement For Slopes, Drainage Facilities, Water, Gas, Electric And Communication Service Lines, Fixtures And Facilities (To Be Retained By The Oregon Department Of Transportation)

A parcel of land lying in Lot 1, Block 75, WOODBURN SENIOR ESTATES NO. 7A, Marion County, Oregon and being a portion of that property designated as Parcel 2 and described in that Bargain and Sale Deed to the State of Oregon, by and through its Department of Transportation, recorded April 18, 2013 on Reel 3494, Page 26 of Marion County Records, the said parcel being that portion of said property lying Northerly and Easterly of the following described line:

Beginning at a point opposite and 62.60 feet Southerly of the center line of the relocated Hillsboro – Silverton Highway at Engineer's center line Station 523+00.00; thence Easterly parallel with said center line to Engineer's Station 524+89.00; thence Southeasterly in a straight line to a point opposite and 35.00 feet Westerly of the center line of Oregon Way (City Street) at Engineer's Station "OW" 10+99.00; thence Southerly in a straight line to a point opposite and 33.60 feet Westerly of said Oregon Way center line at Engineer's Station "OW" 11+19.00; thence Southerly parallel with said Oregon Way center line to Engineer's Station "OW" 12+06.00; thence Southerly in a straight line to the Westerly right of way of said Oregon Way a point opposite and 30.00 feet Westerly of said Oregon Way center line at Engineer's Station "OW" 12+60.00 and the terminus of said described line.

The center line of the relocate Hillsboro – Silverton Highway is described as follows:

Beginning at Engineer's center line Station 514+00.00, said station being 59.48 feet South and 1,652.55 feet East of the Northwest corner of the Andrew Dubois D.L.C. No. 98, Township 5 South, Range 2 West, W.M.; thence South 87° 17' 33" East 1,124.18 feet to Engineer's center line Station 525+24.18.

The center line of Oregon Way is described as follows:

Beginning at Engineer's center line Station "OW" 10+00.00, said station being 113.39 feet South and 2,792.00 feet East of the Northwest corner of the Andrew Dubois D.L.C. No. 98, Township 5 South, Range 2 Wes, W.M., thence South 2° 14' 09" West 817.80 feet to Engineer's center line Station "OW" 18+17.80.

Bearings are based on County Survey No. 37627, filed August 27, 2009, Marion County, Oregon.

This parcel contains 1,729 square feet, more or less.

REGISTERED PROFESSIONAL LAND SURVEYOR

DIGITAL SIGNATURE

OREGON
JULY 19, 1994
SCOTT RICHARD MORRISON
2674

RENEWS: 12/31/2016

REEL: 3986 PAGE: 148

August 28, 2017, 02:10 pm.

CONTROL #: 473317

State of Oregon County of Marion

I hereby certify that the attached instrument was received and duly recorded by me in Marion County records:

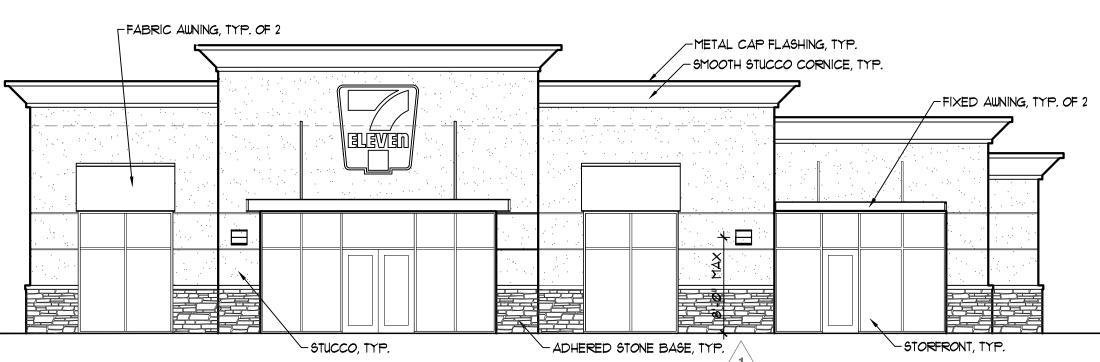
FEE: \$ 66.00

BILL BURGESS COUNTY CLERK

THIS IS NOT AN INVOICE.

236

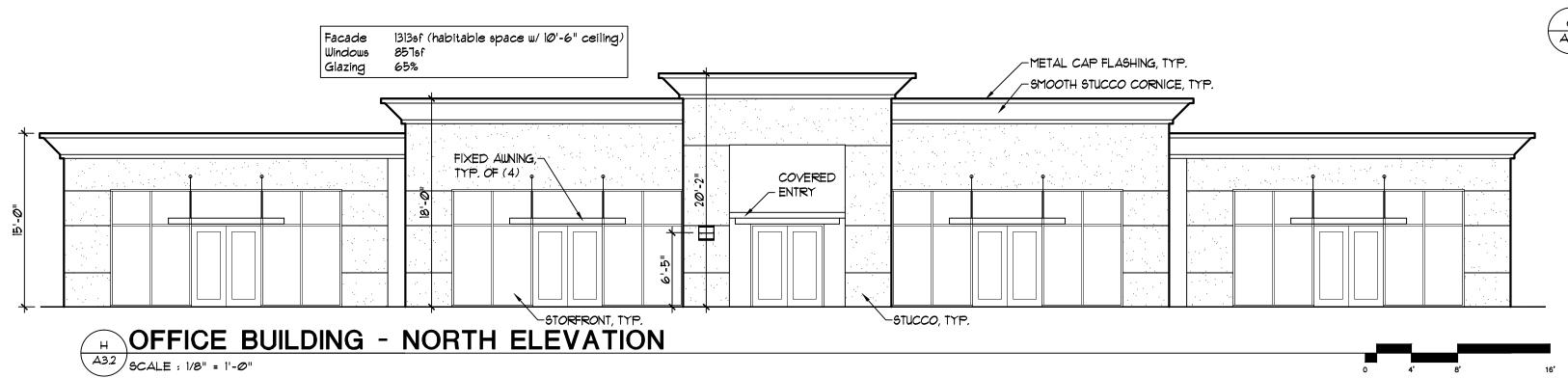


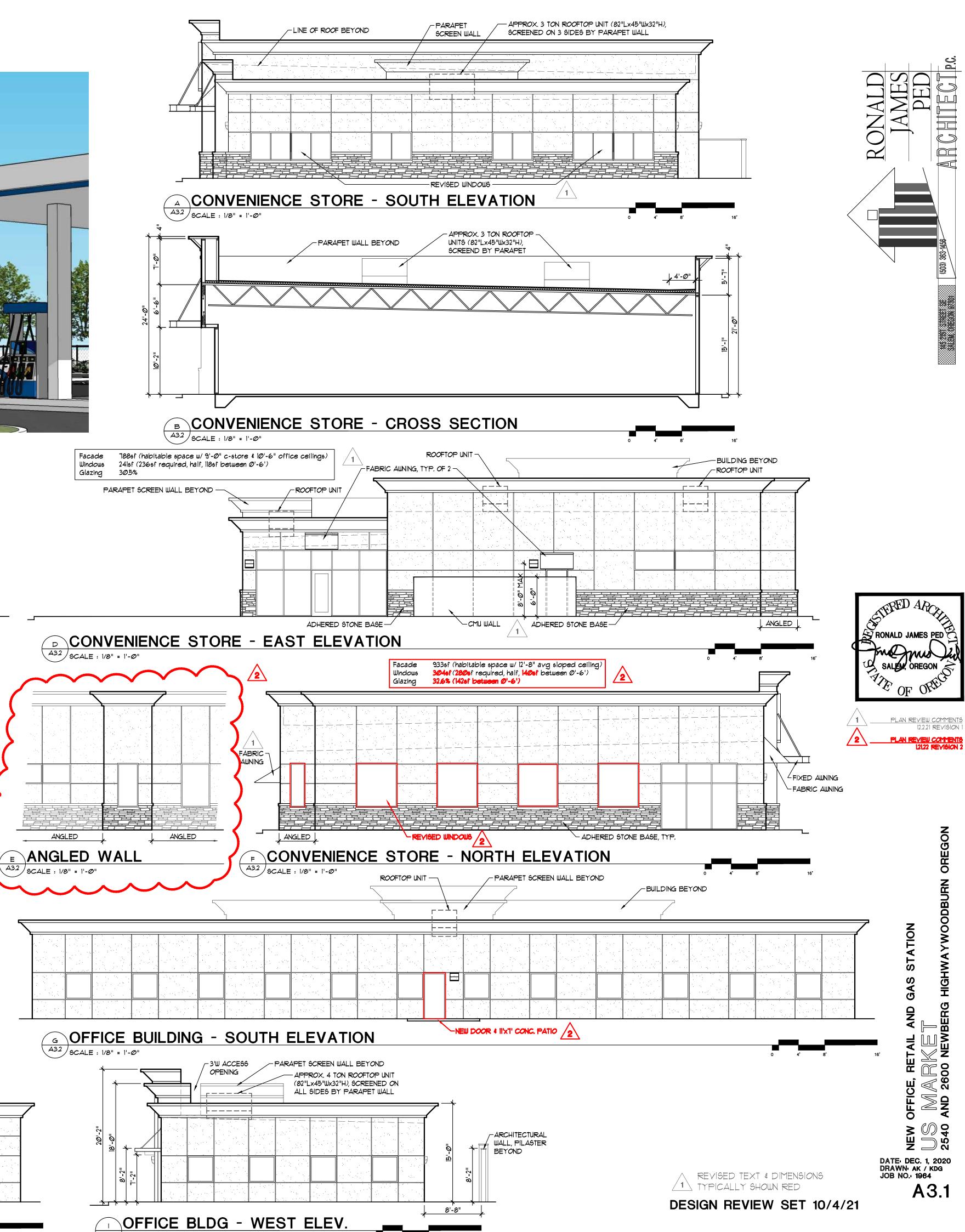


CONVENIENCE STORE - WEST ELEVATION

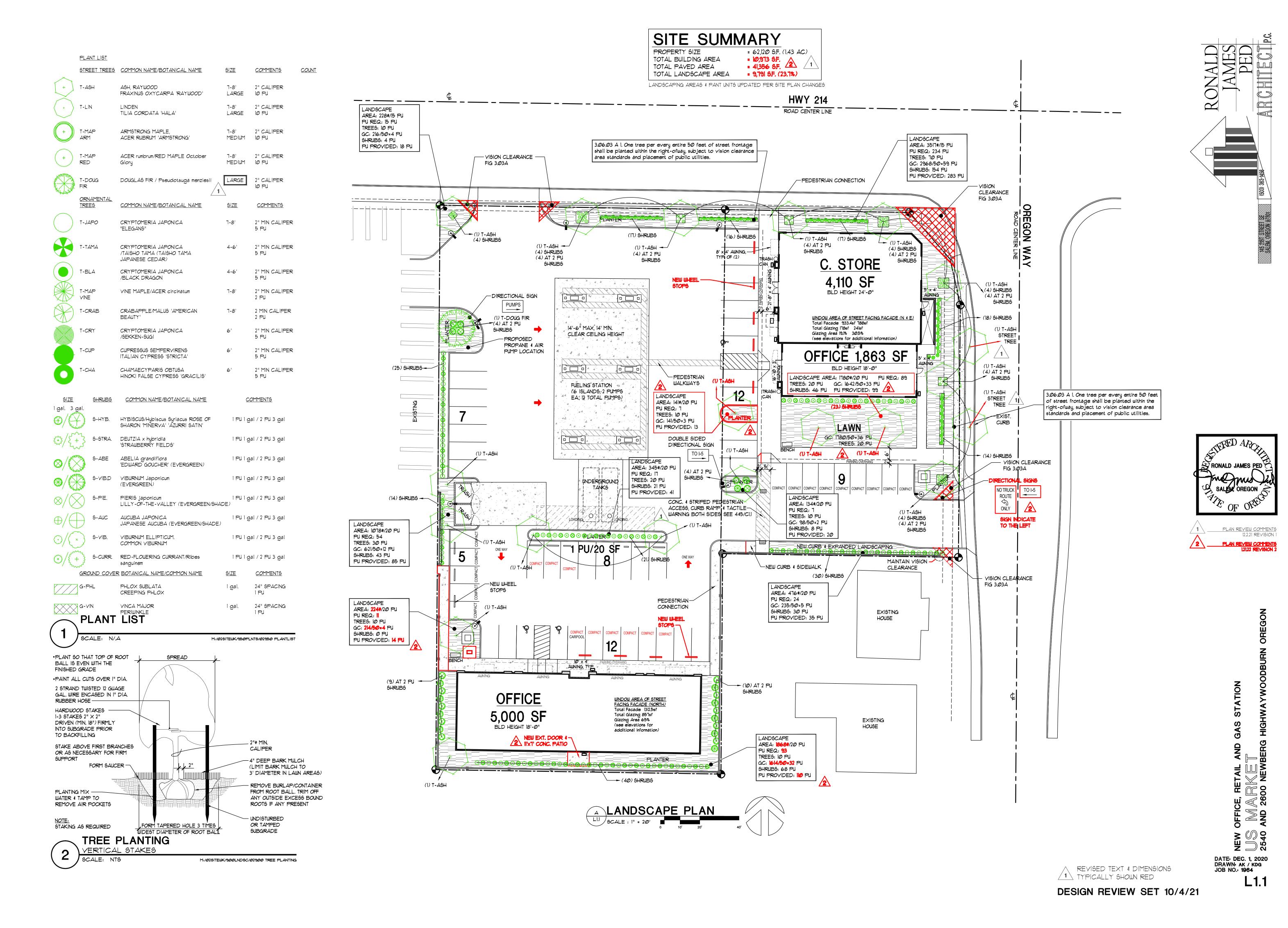
OFFICE BUILDING

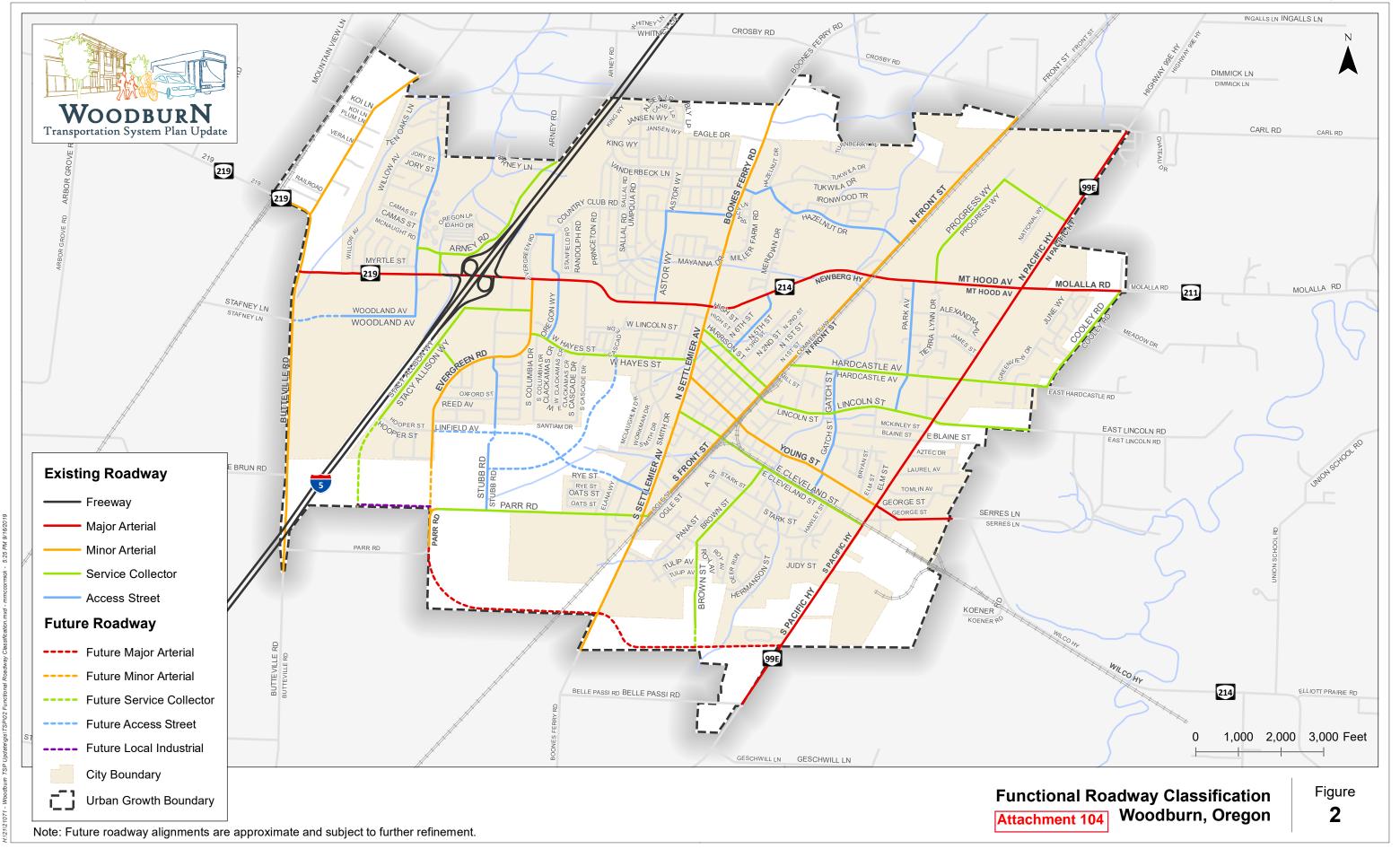






ANGLED





CU 21-02 US Market Gas Station:

Attachment 201: Dictionary & Glossary

This document defines and explains abbreviations, acronyms, phrases, and words particularly in the context of conditions of approval.

- "ADA" refers to the federal Americans with Disabilities Act of 1990.
- "AW" refers to Architectural Wall.
- "BFR" refers to Boones Ferry Road.
- "CAE" refers to cross access easement.
- "CDD" refers to the Community Development Department.
- "CEP" refers to civil engineering plan review, which is a review process independent of land use review led by the Community Development Department Planning Division and that is led by the Public Works Department Engineering Division through any application forms, fees, and review criteria as the Division might establish. A staff expectation is that CEP follows land use review and approval, that is, a final decision, and precedes either building permit application or issuance as PW determines.
- "County" refers to Marion County.
- "Director" refers to the Community Development Director.
- "exc." means excluding.
- "GFA" refers to gross floor area.
- "ft" refers to feet.
- "highway" refers to Oregon Highway 214 / Newberg Highway.
- "max" means maximum.
- "min" means minimum.
- "Modal share" means the percentage of travelers using a particular type of transportation or number of trips using a type, as examples walking, cycling, riding transit, and driving.
- "Modal shift" means a change in modal share.
- "MUTCD" refers to Manual on Uniform Traffic Control Devices of the U.S. Department of Transportation (U.S. DOT) Federal Highway Administration (FHWA).
- "NE means northeast.
- "NW" means northwest.
- "OAR" refers to Oregon Administrative Rules.
- "o.c." refers to on-center spacing, such as of trees or shrubs.
- "ODOT" refers to the Oregon Department of Transportation.
- "OR 211" refers to Oregon Highway 211, which is Molalla Road.
- "OR 214" refers to Oregon Highway 214, which is Newberg Highway.
- "OR 99E" refers to Oregon Highway 99E, which is Pacific Highway.

- "ORS" refers to Oregon Revised Statutes.
- "PBPE" refers to a public bicycle/pedestrian easement that grants pedestrian and cyclist access along sidewalk that overlaps private property or along an off-street bicycle/pedestrian path on private property. It substitutes for a PUBPE. "PLA" refers to property line adjustment.
- "PU" refers to plant unit as WDO Table 3.06B describes.
- "PUBPE" refers to a PUE adapted to grant pedestrian and cyclist access along sidewalk that overlaps private property ("roadside" or "streetside" PUBPE) or along an off-street bicycle/pedestrian path on private property ("off-street" PUBPE). A PBPE may substitute.
- "PUE" refers to public utility easement, whether along and abutting public ROW ("streetside" PUE) or extending into or across the interior of private property ("off-street" PUE). In the context of property line adjustment, partition, or subdivision, the developer records through or with the plat. Absent this context, recordation is separate from land use review pursuant to a document template or templates established by PW. PW is the project manager for receiving, reviewing, accepting, obtaining City Council approval for, and recording legal instrument materials that a developer submits.
- "PW" refers to Public Works (the department) or on rare occasion public works (civil infrastructure) depending on context.
- "Root barrier" refers to that illustrated by PW SS&Ds, <u>Drawing No. 1 "Street Tree Planting</u> New Construction".
- "ROW" refers to right-of-way.
- "RPZ" refers to root protection zone in the context of tree preservation.
- "SE" means southeast.
- "SDA" refers to site development area, the entire territory that is the subject of the land use application package.
- "Shared rear lane" refers to what resembles and functions like an alley, but isn't public ROW.
- "sq ft" refers to square feet.
- "SS&Ds" refers to PW standard specifications and drawings.
- "Street trees" refer to trees that conform to the WDO, including 3.06.03A and Tables 3.06B & C, and that have root barriers where applicable per PW <u>Drawing No. 1 "Street Tree Planting New Construction"</u>.
- "Substantial construction" means that per WDO 1.02 through Ordinance No. 2602 (LA 21-01).
- "SW" means southwest.
- "Tax Lot 3400" means 052W12DB03400, which is 943 Oregon Way.
- "Tax Lot 3600" means 052W12DB03600, which is 2600 Newberg Hwy.
- "Tax Lot 3700" means 052W12DB03700, which is 2540 Newberg Hwy.
- "Tax Lot 3700" means 052W12DB03700, which is 2540 Newberg Hwy.
- "Tax Lot 3500" means 052W12DB03500, which is 953 Oregon Way.

- "Tax Lot 90000" means 052W12DB90000, which is 950 Evergreen Rd.
- "TCE" refers to temporary construction easement.
- "Tot." means total.
- "TPU" means the <u>Transit Plan Update</u> Approved Final Report dated November 8, 2010.
- "TDM" refers to transportation demand management, which means according to the TSP (p. 82), "a policy tool as well as a general term used to describe any action that removes single occupant vehicle trips from the roadway during peak travel demand periods", and according to Wikipedia as of October 13, 2020, "the application of strategies and policies to reduce travel demand, or to redistribute this demand in space or in time."
- "TSP" means the <u>Woodburn Transportation System Plan (TSP)</u>.
- "UGB" means urban growth boundary.
- "WDO" refers to the <u>Woodburn Development Ordinance</u>.
- "WFD" refers to the Woodburn Fire District.
- "WTS" refers to the Woodburn Transit System.
- "w/i" means within.
- "w/o" means without.
- "VCA" refers to vision clearance area as WDO 1.02 and 3.03.06 establish or as a specific condition establishes.

CU 21-02 US Market Gas Station:

Attachment 202: Civil Engineering Plan (CEP) Review Provisions

Refer to Condition G3 / Attachment 201 for a dictionary/glossary, including acronyms and shorthand text.

- A. Purpose: For other departments and divisions, to facilitate review of plans that following a land use final decision a developer submits to the PW Engineering Division for civil engineering plan (CEP) review. To be a means of implementing land use final decision conditions of approval affecting street improvements, both surface and underground, and extending into PUEs. To specify public improvement standards where there is no detailed specification in the WDO or the public works construction code.
- B. Administration: The process by which to receive, review, and approve drawings and other documents related to public improvements required by land use conditions of approval may be through CEP that is paired with or incorporated into building permit review, if the City Engineer in writing allows the latter.
- C. Application: For CEP, per what PW requires, and original / 1st submittal shall be due no later than final plat application to the Director.
- D. Cover letter: Upon submitting CEP application to PW, a developer shall simultaneously alert the Director through a cover letter to the attention of the Community Development Department Planning Division referencing the intended or, if known, actual submittal date as well as the project name, tax lot number(s), street address(es), and the land use final decision conditions of approval that require the public improvements that are the subject of the civil engineering plans. Referencing conditions may be by quotation or citing the identification numbers. The developer shall identify the specific sheet (by number) or document page number that illustrates or notes how each part of a condition is met.
- E. Contact information: The developer shall state the applicant's name, company, phone number, e-mail address, and desired date for City staff to respond with review comments. The cover letter to the Director may include these. The developer may submit to the attention of the Director a copy of the stamped CEP application form submitted to PW if the form includes this required information.
- F. Fees: The developer shall pay review fees per Attachment 203 and submit to the attention of the Director a copy of proof of payment, which should be bundled with other materials for the Director.

- G. Site plans and other drawings: For any of CEP review by the Director:
 - 1. Sizes/copies: From among the minimum number of copies submitted to PW, submit to the attention of the Director at least 4 plan size copies of plan sets, 2 plotted at native scale (minimum 22 by 34 inches, maximum 24 by 36) and 2 at ledger (11 by 17). Within the cover sheet title block(s), include the date or anticipated date of submittal and the phrase "Civil Engineering Plans" or "Civil Plans for CEP".
 - 2. Folding/electronic: Fold the plan size sets if thin enough to do so. Submit also Adobe PDF copies using a fileshare service.
- H. Developer's role: The developer is the project manager. Because the Engineering Division may establish that CEP applicants have a single point of contact termed the "engineer of record", the developer manages the engineer of record who handles the CEP and also interacts with the Community Development Director regarding DDP review. For the Director, the developer is the point of contact, namely whoever on the developer's team the developer tasks with being the project manager. The developer shall be responsible for integrating Director directions into CEP review that the engineer of record leads with the Engineering Division. If, when, and where conflicts arise between Director directions and Engineering Division directions, the developer shall be responsible for communicating with formal cover or transmittal letters messages from the conflicting division to the other division, and shall communicate such.
- I. [Letter "I" skipped].
- J. Approved plan set: There shall result an official version of a civil engineering plan set marked approved and issued by PW that shows all common area improvements and public improvements, including off-street public improvements, resulting from CEP, and where applicable resulting from DDP, that conforms to land use final decision conditions of approval. It shall come to be prior to building permit application, and CEP approved plan set approval and issuance shall be prohibited until the developer pays any CEP review fees per Attachment 203. The developer shall submit to the Director print and electronic copies of the plan set marked approved and issued by PW.

CEP approval shall precede any of (1) completion of recordation with the County, specifically no later than a City official signing a plat or re-plat Mylar per WDO 5.01.06C.1 and (2) building permit application, whichever is earlier.

CU 21-02 US Market Gas Station:

Attachment 203: Conditioned Fees

All of the following conditioned fees are due as applicable, whether or not mentioned directly by a condition of approval.

Refer to Condition G3 for a dictionary/glossary, including acronyms and shorthand text.

Part A. Fee Provisions

- 1. Any and all conditioned fees are in addition to, and not in place or as discounts of, any existing charge or fee however termed ordinarily assessed based on any existing ordinance, resolution, or administrative policy, inc. adopted fee schedules. If and when the City amends any ordinance, resolution, or administrative policy, inc. a fee schedule, to increase a charge or fee that is both (1) the same kind of charge or fee that is conditioned, (2) the amended charge or fee amount would exceed the amount conditioned, and (3) the increase takes effect before the conditioned fee is due, then the developer shall pay the greater amount.
- 2. Payments of conditioned fees due outside the context of assessment and payment through building permit shall reference a final decision case file number and the condition of approval letter/number designation, be it in a check memo field or through a cover or transmittal letter.
- 3. For fees due by building permit issuance, a developer may request the Director to allocate payments the same as allowed for fees in-lieu by WDO 4.02.12A.2 through Ordinance No. 2602 (LA 21-01), specifically, to pay across issuance of two or more structural building permits for the subject development.

For all administrative and logistical questions about payment of land use conditioned fees outside the context of assessment and payment through building permit, the developer is to contact the Administrative Assistant at (503) 982-5246 and refer to this attachment within the CU 21-02 US Market gas station final decision.

For payment method citywide policy details, the developer is to contact the Finance Department at (503) 982-5222, option 1, for payment method policy details or view its <u>webpage</u>.

Part B. Fee Table

Table 203B.	Conditioned Fees					
Condition Reference	Fee Туре		Amount	Context	Timing	Staff Tracking:
T-A	Transportation signal timing and crash safety study fee in-lieu		By year of assessment: 2022: \$16,890 2023: \$17,489 2024: \$18,014 or 2025 or later: \$18,555	Fee in lieu of investigation in coordination with ODOT of corridor signal timing and coordination adjustments. (TSP R11 adjusted for inflation from Sept. 2019 to Apr. 2022 as 2022 amount.)	Building permit issuance	
	2. City transportation consultant recoupment fee		\$4,760	To recoup the cost of its transportation consultant reviewing and advising upon the TIA	Building permit issuance	
	3. I-5 interchange with OR 214		\$1,000	To mitigate and to reduce vehicle crashes	Building permit issuance	
	4. OR 214 & Evergreen Rd		\$15,000	To reduce vehicle crashes	Building permit issuance	
	5. OR 99E & OR 211/214		\$21,000	To mitigate and to reduce vehicle crashes	Building permit issuance	
Т-Т	Bus shelter fee in-lieu		By year of assessment: 2022: \$13,214 2023: \$13,610 2024: \$14,018 or 2025 or later: \$14,439	Oregon Way northbound stop	Building permit issuance	
	Bus stop bicycle parking fee in-lieu		\$510.20			
EX1 & EX2	Street tree fee in-lieu:	For highway	\$950 per tree. For EX1, assessed at minimum 5 trees.	Street Exception EXCP 21-05 from standard frontage improvements, which includes existing curb-tight sidewalk	Building permit issuance	

Table 203B.	Conditioned Fees					
Condition Reference	Fee Туре		Amount	Context	Timing	Staff Tracking:
		For Oregon Way street trees omitted through civil engineering plan (CEP) review, or, inspection missing tree fee	\$950 per tree	Applies to omitted street trees, or, ones missing from required number upon inspection	If CEP context, then by building permit issuance; if in inspection context, then prior to passing final inspection / obtaining certificate of occupancy	
EX1	Fee in lieu of upgrading highway sidewalk to conform		\$78,705	A fee for sidewalk that EXCP 21-05 excepts from conformance/upgrade	Building permit issuance	
EX2	Fee in lieu of upgrading street to have on-street parallel parking per Fig. 3.01E		\$13,860	A fee for on-street parking that EXCP 21-05 excepts from conformance/upgrade	Building permit issuance	
G6 through this Attachment 203	City tree fund		\$2,850	Existing City tree fund (for new trees in City ROWs and in parks and on other City properties)	Building permit issuance	
G6 through this Attachment 203	Public Works Dept. civil engineering plan (CEP) review: Review by Planning Division		\$250; \$346	Original/1 st submittal; each subsequent inc. deferral/piecemeal	Upon CEP application to Public Works Dept. (PW)	
	Inspections by Planning Division		\$75; \$346	1st inspection or "walkthrough"; each subsequent	Inspection requests related to public (street) improvements and building permits	
G6 through this Attachment 203	Bond / bonding / performance guarantee: Specifically any that would allow or allows the developer to delay construction of street improvements beyond building permit issuance.		\$4,474; \$346	Original/1st submittal; each subsequent inc. deferral/piecemeal. Serves as bond application / review request fee and isn't a bond amount itself. Fees not applicable to warranty bonds or ordinary construction bonds if they do not authorize delay of	If CEP context, then payment (through Planning Division) upon CEP application to PW; if developer applies for building permit review and there has been no CEP application to PW, then building permit issuance	

CU 21-02 US Market Gas Station etc. Staff Report / Final Decision
Attachment 203
Page 3 of 4

Condition	Fee Type	Amount	Context	Timing	Staff
Reference					Tracking:
			construction of street		
			improvements beyond		
			building permit issuance		
G4a & CU4	Fees in lieu per Ordinance No. 2602 through WDO	Per Part A Fee	WDO 4.02.12	Per WDO 4.02.12A:	
	4.02.12.	Provisions above, City ordinance, resolution, or policy. *	*If by the time necessary to assess in order to issue building permit, the City would have not yet established the fee in lieu of electric power line burial/ undergrounding, then the fee would default to \$568 per lineal ft of line assessed at minimum 265 ft.	Building permit issuance	



Staff Report

То:	Planning Commission					
Through:	Chris Kerr, AICP, Community Development Director \mathcal{CK}_{ℓ}					
From:	Colin Cortes, AICP, CNU-A, Senior Planner					
Meeting Date:	June 9, 2022 (Prepared June 2, 2022)					
Item:	2540 & 2600 Newberg Hwy, "US Market" gas station (CU 21-02)					
Tax Lot(s):	052W12DB03700 (primary) & 3600					
Table of Conte	nts					
ISSUE BEFORE THE PLANNING COMMISSION1						
EXECUTIVE SUMMARY2						
RECOMMENDATION						
ACTIONS						
ATTACHMENT LIST						
Issue before the Planning Commission						
Action on a consolidated land use application package (Type III), Conditional Use 21-02, Design						
Review 21-10, Exception to Street Right of Way and Improvement Requirements ("Street						
Exception") EXCP 21-05, & Phasing Plan PP 21-01 for a gas station with convenience store, known as US Market, and commercial office space, in the Commercial General (CG) zoning						
district. City Council July 25, 2022						
GISCITOL.	2.1, 223.13.1 23.1, 2012					

CU 21-02 Appeal Attachment 4

Executive Summary

Location

The proposal is to consolidate and redevelop five lots totaling 1.42 acres at 2540 & 2600 Newberg Highway (Oregon Highway 214). The subject property is located at the southwest corner of the intersection of the highway and Oregon Way.

Existing Context

The subject property is zoned Commercial General (CG) and was occupied by two vacant bank buildings, now demolished.



Subject property outlined in green

Conditional Use

The applicant/developer applied for a conditional use (CU) for the gas station because it is within 200 feet of residentially zoned property.

A "conditional" use is called such because (1) it's conditional upon discrete approval by the City, and (2) the City can condition physical or operation aspects of a proposal, including on issues particular to the case at hand and above and beyond what Woodburn Development Ordinance (WDO) provisions directly address.

The Proposal

Staff and the developer have worked to produce a good site development by focusing on:

- a. The look and feel of street frontage for passers-by walking, cycling, and driving;
- b. The look and feel of yard landscaping along streets for passers-by walking, cycling, and driving as well as on-site employees and customers;
- c. Urban design: how close buildings are to sidewalk, how many and how large are windows, are their entrances visible from sidewalk and whether the public can see main entrances to buildings from sidewalk, and whether placements of entrances orient to those who walk or cycle no worse than to those who drive and park;
- d. How safely and comfortably pedestrians and cyclist can access and circulation among onsite buildings through walkways and visibly distinct crossings of drive aisles;
- e. Having enough on-site trash receptacles near sidewalk to lessen the likelihood of litter of yards along streets and street frontage by convenience store customers on foot;
- f. Avoiding excessive exterior lighting;
- g. Having reasonably decent architecture in the context of strip commercial development;
- h. Having the Architectural Wall look reasonably decent;
- i. Getting highway electric power poles and overhead electric power lines buried or fees inlieu paid to fund such elsewhere in town;
- j. Having a few evergreen trees among newly planted trees; and
- k. Increase street trees and on-site trees, and provide for fee in-lieu to fund tree plantings elsewhere in town;
- I. Administering Street Exception EXCP 21-05 to have the developer improve Oregon Way to be the best of the two frontages for pedestrians and cyclists in exchange for leaving the highway frontage as is or largely as is;
- m. Mitigation of the unpleasant aspects of neighboring and patronizing a gas station and convenience store.

The staff analyses and findings (Attachment 102), especially the Conditional Use Provisions and Street Exception Provisions sections, provide much more detail, and the recommended conditions of approval secure the above things.

Site Plan

The development is phased and has two site plan Options 1 & 2.

Site plan excerpts follow on the next page(s), and a larger version is among the attached site plans (Attachment 103).

Staff finds that the proposal meets applicable Woodburn Development Ordinance (WDO) provisions per the analyses and findings (Attachment 102).

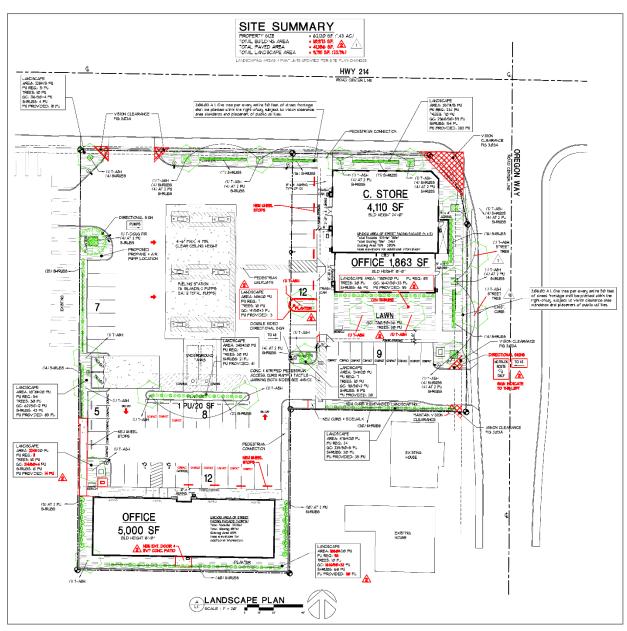


Exhibit PP1: Option 1 Site Plan Excerpt Prior to Revision per Conditions of Approval

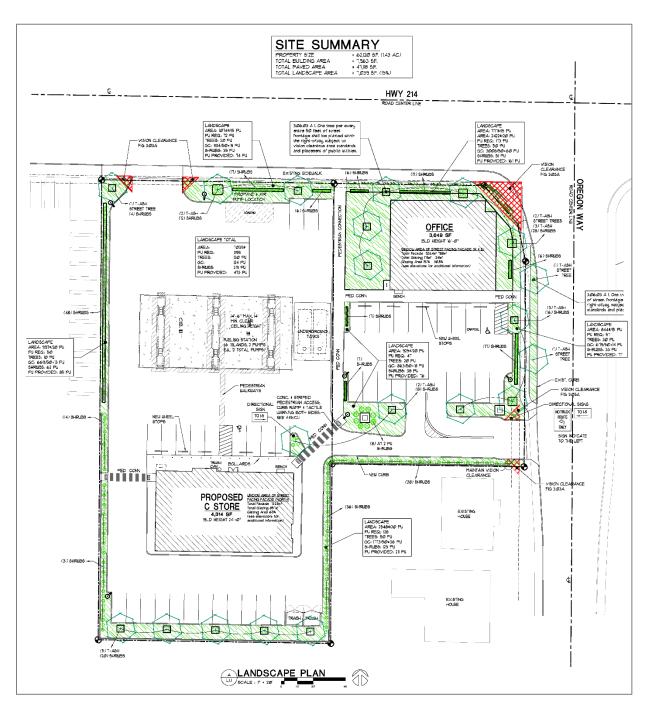


Exhibit PP2: Option 2 Site Plan Excerpt Prior to Revision per Conditions of Approval

Recommendation

Approval with conditions: Staff recommends that the Planning Commission consider the staff report and its attachments and approve the consolidated applications package with the conditions recommended by staff below.

Conditions of Approval

The conditions are copied from towards the end of the analyses and findings (Attachment 102):

General

- G1. By and as part of building permit application, the applicant shall submit revised site plans meeting the conditions of approval and obtain Planning Division approval through sign-off on permit issuance by the Building Division.
- G2. The applicant or successors and assigns shall develop the property in substantial conformance with the final plans submitted and approved with these applications, except as modified by these conditions of approval. Were the applicant to revise plans other than to meet conditions of approval or meet building code, even if Planning Division staff does not notice and signs off on building permit issuance, Division staff retains the right to obtain restoration of improvements as shown on an earlier land use review plan set in service of substantial conformance.
- G3. References: Attachment 201 serves as a dictionary or glossary defining certain abbreviations, acronyms, phrases, terms, and words in the context of the conditions of approval. The 200 series of attachments are as binding as the conditions of approval in the main body of the final decision.
- G4. Due dates / public improvements:
 - a. When public street improvements, and any fees in lieu of public improvements, are due shall be per WDO 3.01.02 and 4.02.12 through Ordinance No. 2602 (LA 21-01) unless if and where a condition of approval has more restrictive timing.
 - b. Where phasing is relevant, building permit issuance means issuance for the phase in which the conditioned improvement is located.
 - c. Where changes to street addresses are necessary, the developer shall apply through the Planning Division for and obtain approval of an Address Assignment Request. This is due prior to building permit application, and if property line adjustment or lot consolidation were to become relevant, then also after recordation with County.
- G5. Recordation due dates: The applicant shall apply to the County for recordations of items that the City requires no later than six (6) months prior to expiration of the land use approval as WDO 4.02.04B establishes, and shall complete recordations no later than three years past the

land use "final decision" date. The due date to complete recordations shall not supersede when recordations are due relative to the building permit stage.

G6. Fees: The developer shall pay fees per Attachment 203.

Phasing Plan 21-01

PP. Phasing Plan:

- 1. Options 1 & 2: The developer may develop a site plan revised to conform to conditions of approval and based on either:
 - a. Option 1: The site plan concept last revised and re-submitted for land use review on February 9, 2022 and premised on there being no ODOT factor (see the ODOT factor condition); or
 - b. Option 2: The different site plan revised and submitted May 2, 2022 premised on the developer's understanding of the ODOT factor.

This due by building permit application.

- 2. Basic Descriptions:
 - a. Option 1: See Exhibit PP1 below for plan details.
 - (1) On Tax Lot 3600 (east, corner lot), a single northeast building of with convenience store of 4,110 sq ft and a commercial office of 1,863 sq ft.
 - (2) On Tax Lot 3700 (west, interior lot), a north fuel pump canopy and a south commercial office building of 5,000 sq ft.
 - b. Option 2: See Exhibit PP2 below for plan details.
 - (1) On Tax Lot 3600 (east, corner lot), a single northeast commercial office building of 3,649 sq ft.
 - (2) On Tax Lot 3700 (west, interior lot), a north fuel pump canopy and a south convenience store of 4,314 sq ft.
- 3. Phasing: The developer may phase an option:
 - a. Option 1: To develop the south office building and necessary corollary improvements later than the gas station complex of convenience store, attached commercial office, and fuel pump canopy and necessary corollary improvements.
 - b. Option 2: To develop at different times (1) the gas station complex of convenience store and fuel pump canopy and necessary corollary improvements, and (2) the northeast office building and necessary corollary improvements.
- 4. All conditions apply to any option, any phasing, unless worded or under a header such that a condition applies more specifically. Where something is due by building permit application or issuance, it means the first of any phase, any building, unless a condition is more specific.
- 5. By and as part of building permit application, the applicant shall submit revised site plans meeting the conditions of approval.

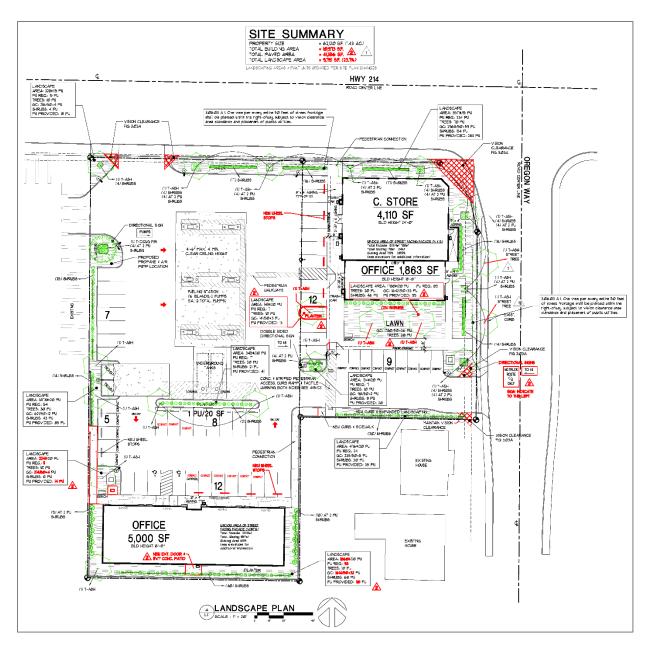


Exhibit PP1: Option 1 Site Plan Excerpt Prior to Revision per Conditions of Approval

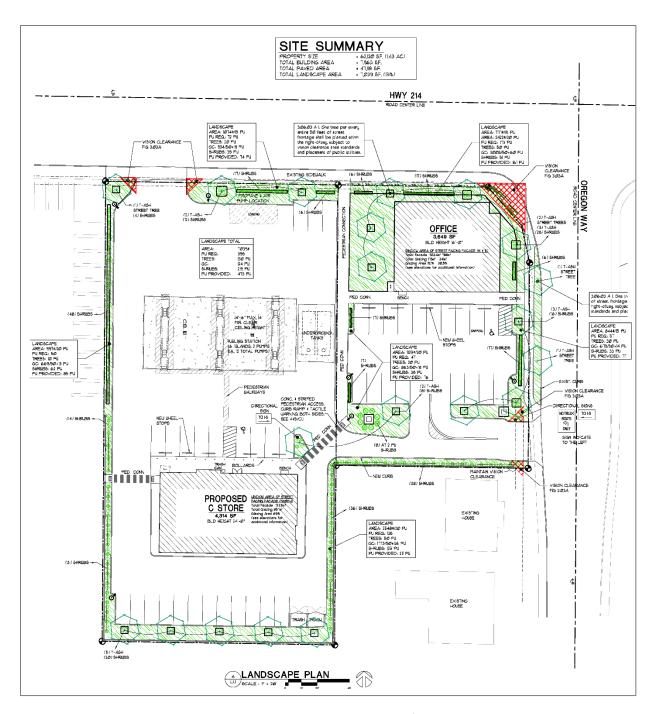


Exhibit PP2: Option 2 Site Plan Excerpt Prior to Revision per Conditions of Approval

Design Review 21-10

- D1. PUEs: If minimum width streetside PUEs do not yet exist as 10 ft along the highway per WDO Figure 3.01B or 5 ft along Oregon way per 3.02.01B, the developer shall grant such. Max widths shall be per Conditions EX1 & EX2. This is due by building permit application.
- D2. Parking / vehicular circulation setback: Option 2: To conform to WDO 3.05.02E, the developer shall do one of the following: (a) revise the site plan to set back parking and vehicular circulation area min 5 ft from the northerly east lot line of 2600 Newberg Hwy (Tax Lot 3700) and to landscape the setback per 3.06 and plant min 4 trees within it; (b) have a shared use agreement per 3.05.02E; or (c) doing (a) in part and in combination with (b). This is due by building permit issuance.
- D3. Parking / vehicular circulation directional markings/signage: To conform to WDO 3.05.02J, during building permit review the Director may administratively establish details, specifications, and revisions to administer the WDO section. Further site plan revisions necessary to conform, if any, shall be due by building permit issuance.

Conditional Use 21-02

CU1. Architecture:

- a. Canopies / fixed awnings:
 - 1. General: Min height clearance 9 ft.
 - 2. Fuel pump canopy: Max ceiling height 14.5 ft to either (a) ceiling or (b) ceiling-mounted lighting fixtures, whichever is lower.
 - 3. Option 1:
 - (a) Convenience store / NE office building: Each west entrance shall have a fixed awning, canopy, building wall projection, or secondary roof that shelters from the weather, min area 48 sq ft, min depth 4 ft. Each east mandoor shall have the same, except min area 18 sq ft, min depth 3 ft.
 - (b) South commercial office: Each north entrance shall have a fixed awning, canopy, building wall projection, or secondary roof that shelters from the weather, min area 48 sq ft, min depth 4 ft. It may be smaller if combined with a building recess and together they meet the min area. The south patio door elsewhere conditioned shall have the same, except min area 18 sq ft, min depth 3 ft.

4. Option 2:

- (c) Convenience store: North entrance shall have a fixed awning or a canopy that shelters from the weather, min area 48 sq ft, min depth 4 ft. Each side or rear mandoor shall have the same, except min area 12 sq ft, min depth 2 ft.
- (d) NE commercial office: The main entrance shall have any of the following that that shelters from the weather: (1) a fixed awning or a canopy, (2) a building recess, or (3) combination. Min area 64 sq ft, narrowest dimension 6 ft. Min one of the other entrances shall have the same, except min area 24 sq ft, narrowest dimension 4 ft. Every south and west façade storefront window shall have any of a fixed awning, canopy, building wall projection, secondary roof, or sun louver min width same as the window and min depth 2 ft. Building color shall be other than black or charcoal.

b. Cladding/materials:

- (1) Option 1: Convenience store / NE commercial office: Base cladding min height 2 ft of brick, CMU finished to resemble cut stone, or adhered stone. The proposed east CMU mandoor screen wall, if not precluded by streetside PUE, shall be max height 4 ft, 2 inches, have the bottom 2 courses be split face and the upper 4 courses ground face and be capped with smooth concrete. The NE corner angled wall shall have a window min area 15 sq ft, min 2.5 ft wide, and wholly within 8.5 ft of grade.
- (2) Option 2: NE commercial office: Base cladding min height 2 ft of brick, CMU finished to resemble cut stone, or adhered stone.

- c. Entrance: Option 2: NE commercial office: The main entrance door or doors of the office building shall be at any of the NE corner, within the east façade, or at the SE corner of the building. A corner entrance may be angled or both at one side of a corner and within 12 ft of the corner where main wall planes intersect or would intersect.
- d. Scuppers: Any building rainwater scuppers shall not to dump onto the pavement of a wide walkway.
- e. Setbacks:
 - (1) General: Site NE corner min setback shall equal streetside PUE.
 - (2) Option 1:
 - (a) Convenience store / NE commercial office: max 15 ft from highway and max 20 ft from Oregon Way ROW (measured from straight line ROW, not variable ROW at intersection).
 - (b) South commercial office: min 5 ft from Tax Lot 3700 east, south, and west lot lines.
 - (3) Option 2: NE commercial office: max 15 ft from each of highway and Oregon Way ROW (measured from straight line ROW, not variable ROW at intersection). NE corner min setback shall equal streetside PUE. West and south setbacks each shall be min 10 ft.

f. Windows:

- (1) General: All windows shall be square, round, or vertically proportioned. Operable windows shall have insect screens.
- (2) Min area:
 - (a) Option 1:
 - (1) Convenience store: West façade 30%; north 30%; east 36 sq ft.
 - (2) NE commercial office: West and south façades 30%; east 144 sq ft.
 - (3) South commercial office: North façade 30%; east 15%; south 20%; and west 20%.
 - (b) Option 2:
 - (i) Convenience store: North façade 30%. Each of east, south, and west facades min 1 window min 7.5 sq ft, min 1.5 ft wide, and wholly within 8.5 ft of grade.
 - (ii) NE commercial office: North façade 30%; east 40%; south 30%; and west 20%.

CU2: Architectural Wall (AW) / Fences / Fencing:

a. Exemption: Where chain-link fence with slats already exists along the north and west lot lines of Tax Lot 3500 (953 Oregon Way), the developer may exempt these two lines from AW if the homeowner in writing consents to exemption and the developer submits documentation by and as part of building permit application.

- b. Min height shall be along the:
 - (1) North and west lot lines of Tax Lot 3500 6 ft, 2 inches (if CMU, equal to 9 courses of blocks plus 2-inch smooth concrete cap).
 - (2) North and east lot lines of Tax Lot 90000 (950 Evergreen Road) 8 ft, 2 inches (if CMU, equal to 12 courses of blocks plus 2-inch smooth concrete cap).
 - (3) Where fencing may substitute per other conditions, for part 1. above it shall be 6 ft, and for part 2. above, 8 ft.
- c. Height at AW ends: Min height shall drop where subject to stair-stepped height limits in yards abutting streets per WDO 2.06.02, within VCA or sight triangles per 3.03.06, and AW shall remain outside streetside PUEs. AW may cross an off-street PUE, if any exist, with written authorization by the Public Works Director, and the Public Works Director may instead direct that instead of a segment of wall that there be coated chain-link fencing with slats across an off-street PUE. For crossing of private easements, the developer similarly may instead fence.
- d. Gaps or rectangular openings:
 - (1) There shall be one along the east lot line of Tax Lot 90000, min 4 ft wide and 6 ft, 8 inches high above grade, and with the south end of the gap aligned with the Tax Lot 90000 north east-west drive aisle, south curb, north face.



Exhibit CU2d(1)



Exhibit CU2d(2)

- (2) If AW exemption per part a. above is not applicable, then there may be a gap along the west lot line of Tax Lot 3500, aligned with where there exist west backyard chain-link gates, minimum width equal to the width of the gates.
- e. Color: Masonry and any paint shall be a color or colors other than black, charcoal, or gray. For any other fence / fencing or free-standing wall, including gates if any, the coating and slats that WDO 2.06.02D requires and any wall shall be a color or colors other than black or charcoal. On free-standing walls with two or more colors, darker colors shall be towards the bottom and lighter ones towards the top.
- f. Material: AW segments at 40 ft north or farther from the south lot line of Tax Lot 3700 may be partly made of opaque cedar wood fencing if the wall remains mostly masonry. Specifically, masonry must constitute the bottom extent of wall segment from grade up to min 2 ft, 8 inches above grade, and there shall be piers or pilasters per "Details" below. Exhibit CU2f below illustrates a similar, conforming example:

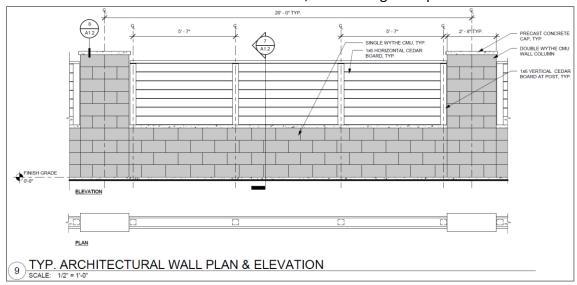


Exhibit CU2f (DR 2017-08)

- g. Details: Each AW segment end shall have a pier or pilaster min 16 inches wide relative to wall face and projecting min 4 inches. Each segment shall have a min number of piers or pilasters equal to a ratio of 1 per 40 ft of wall. Each pier or pilaster shall be capped with ornamental concrete in the form of any of a shallow-sloped pyramid or sphere or other finial atop such pyramid. If the AW is CMU, the 8th and 9th CMU courses above grade shall be ground face (5 ft, 4 inches through 6 ft above grade).
- CU3. Bicycle parking: Amount and general location: The developer shall provide bicycle parking as follows:
 - a. Option 1 min stalls:

(1) Convenience store: 2(2) NE commercial office: 2(3) South commercial office: 4

- b. Option 2 min stalls:
 - (1) Convenience store: 2
 - (2) NE commercial office: 4
- c. General: Standards other than amount and general location shall conform to WDO 3.05.06 through Ordinance No. 2602 (LA 21-01).

CU4. Electric power lines: The development shall conform to WDO 3.02.04 through Ordinance No. 2602 (LA 21-01).

CU5. Landscaping:

- a. Bench: In the landscaped open space at or near the NE commercial office space, along a wide walkway or in a plaza, install either a 6-ft wide bench with back or a picnic bench. Set back from walkway and pave the setback, min either 2 ft for a bench or 3 ft for a picnic bench.
- b. Buffering/Screening: Evergreen hedge or shrubbery shall:
 - (1) Line AW segments.
 - (2) Screen transformers and other at-grade electrical and mechanical equipment along their sides, excepting the side intended for technician access.
 - (3) Serve as means of conformance with WDO 3.06.05B (parking screening).
- c. Coniferous/evergreen trees: 1 min of trees new to the site. The 1 shall be 1 min of the following coniferous or evergreen species:

Cedar, Western Red	Madrone, Pacific	
Douglas-Fir	Oak, Oregon White	
Fir, Grand	Pine, Ponderosa; and	
Hemlock, Western	Yew, Pacific	

- d. Front yard
 - (1) Trees:
 - (a) Plant min 7 trees in the yard along the highway and min 10 ft and max 20 ft from ROW.
 - (b) Plant min 4 trees in the yard along Oregon Way, min 5 ft and max 20 ft from ROW, in a loose row with min 3 of them spaced offset from and complementing street trees.
 - (2) Hedge/shrubbery: In all areas not occupied by buildings and pavement, landscape per WDO 3.06.
 - (a) On Tax Lot 3700 in the yard along the highway, plant a hedge or row of continuous small or medium shrubbery extending between the driveway and east lot line. Plant and maintain min 5 ft from sidewalk and max 12 ft from ROW.
 - (b) Option 1: On Tax Lot 3600 in the yard along the Oregon Way, line the convenience store rear east free-standing wall with a hedge or row of continuous small or medium shrubbery.

(c) Option 2: On Tax Lot 3600 in the yard along the Oregon Way, plant a hedge or row of continuous small or medium shrubbery extending along the east deadend of the drive aisle. Plant and maintain min 1 ft from sidewalk.

e. Site interior:

- (1) AW: Line each Architectural Wall segment with a hedge or row of continuous medium or large shrubbery.
- (2) Bark dust: Of landscaped area, max 3% may be bark dust, mulch, wood chip, pebbles, or sand. Walkway and plaza paving do not count against landscaping minimums.
- (3) Lawn large tree: Within open space within 30 ft of the NE commercial office, plant min 2 trees, either both large or min 1 medium and 1 large.
- (4) Plaza: At or within 30 ft of the NE commercial office space and adjacent to a wide walkway shall be a plaza min 81 sq ft, exc. walkway area, at 9 ft narrowest dimension, paved with bricks, concrete pavers, field or flagstone, or poured cement.
- (5) South yard: Within 100 ft of the Tax Lot 3700 south lot line, plant either for Option 1 min 2 trees or for Option 2 min 5 trees. Of these for Option 2, min 2 large with the westernmost tree being one of the large ones.

f. Parking area:

- (1) Option 1:
 - (a) Convenience store: A landscape island shall be roughly in the middle the parking aisle fronting the convenience store that conform to WDO 3.06.03C through Ordinance No. 2602 (LA 21-01).
 - (b) NE office: Plant a large tree in the southwesterly area of the south yard lawn.
 - (c) South office: For common use by tenants, have a south rear door and a patio of brick, pavers, or poured concrete min 7 ft north-south by 11 ft east-west. Align patio flush with door outer swing. Plant a small tree near patio west side.

(2) Option 2:

- (a) Convenience store: A landscape island shall cap each end of the parking aisle fronting the convenience store per WDO 3.06.03C through Ordinance No. 2602 (LA 21-01), and the east island may be on the west side of the wide walkway that another condition requires.
- (b) NE office: The office parking area drive aisle east end shall have the inside of curb min 3 ft from edge of streetside PUE, and the 3-ft width shall have a tree.

CU6. Lighting:

- a. General: Shall conform to WDO 3.11 through Ordinance No. 2602 (LA 21-01).
- b. Buffer: Parking area or other pole-mounted fixtures are prohibited between the north lot line of 953 Oregon Way (Tax Lot 3500) and the east-west drive aisle.
- c. Fuel pump canopy: Max 16 ceiling fixtures. Any ceiling fixture shall be no closer to ceiling outer edge than 4 ft. Neon lighting, or a lighting technology that mimics the appearance of neon lighting, is prohibited on the fuel pump canopy and on the

southernmost primary building on Tax Lot 3700. The developer shall make so either of the following: (1) ceiling light fixtures shall not drop below the ceiling plane, or (2) for ceiling-mounted fixtures, the canopy roof edge perimeter shall as a shield drop or extend down to the same plane as the underside of the lowest fixture. In either case, fixtures that drop or extend down from the ceiling shall each have opaque housing on all sides.

d. Option 1: Max of:

- (1) Convenience store: 1 wall fixture on the east rear and none on the north side.
- (2) NE commercial office: 1 wall fixture each on the west front and east rear.
- (3) South commercial office: 1 wall fixture at the south rear and none at the east and west sides.

e. Option 2: Max of:

- (1) Convenience store: 2 wall fixtures on the south rear, 1 each on the east and west sides. Parking area or other pole fixtures prohibited in the east side, south rear, and west side yards.
- (2) NE commercial office: 1 wall fixture on the south, 1 each on the east and west sides, and the south yard limited to 2 parking area poles. No other pole types in the north, east, or west yards.

CU7: Parking:

- 1. Standard stall length: The developer may set standard size 90° angle stall length at 18 ft instead of 19 per WDO Table 3.05B through Ordinance No. 2602 (LA 21-01).
- 2. EV: Electric vehicle (EV) parking shall be min 1 stall with a charging station and placed near commercial office area. Remaining EV parking standards shall be per WDO 3.05 through Ordinance No. 2602 (LA 21-01).
- 3. Wheelstops / wheel stops: Every angled or 90° parking stall along a wide walkway shall have a wheel stop max 4 inches high. A wheel stop shall not straddle adjacent stalls. If and where the developer opts to install wheel stops where not required, they also shall conform to the height limit.

CU8. Walkways:

- a. General: Shall conform with WDO 3.04.06 through Ordinance No. 2602 (LA 21-01).
- b. Gap: A walkway, min 3.5 ft wide as an exception to part a., shall connect a building perimeter walkway system west to the AW conditioned gap or opening along the west lot line of Tax Lot 3700.
- c. Convenience store & fuel pump canopy: The three pump islands together shall have one or more walkway crossings to the convenience store main entrance walkway, and as an exception to part (a) above, each min 3 ft wide. For Option 1, minimum 1 crossing; for Option 2, min 2. A walkway crossing may incorporate an ADA parking space accessible aisle. Walkways should be straight, and where needing to jog, should

- jog at 45° max and at the point where vehicles pass in opposite directions or between vehicle lanes.
- d. Option 2: At the NE of the convenience store, the wide walkway crossing of drive aisle shall be at or near a right angle to drive aisle.

CU9. Access management: These are due by building permit application:

- a. General: Access management shall conform with WDO 3.02.01E, 3.04.01A.2, and 3.04.03C & D through Ordinance No. 2602 (LA 21-01). Regarding recordation of one or more types of legal instruments and how, the developer shall conform to the conditions in ways that satisfy the County.
- b. Bicycle/pedestrian: The develop shall grant the public access to walk, cycle, and roll along each wide walkway across Tax Lot 3600 to the benefit of 3700, relating to Oregon Way sidewalk access, and across Tax Lot 3700 to the benefit of 3600, relating to highway sidewalk access.
- c. Shared parking: If and where one or both of the subject lots lack minimum off-street parking ratio for all land uses on the lot, the developer shall revise site plans to conform to WDO 3.05.02 & Table 3.05A or shall create a shared parking agreement per WDO 3.05.05. This is due by building permit issuance.

d. Cross access:

(1) Local: To conform to WDO 3.04.03A.3, B.1, B.3 & C.2 and, through Ordinance No. 2602 (LA 21-01), WDO 3.04.03B.3, C.1, C.3, C.4, & D.2, for what is termed any of cross access, ingress/egress, public access, or shared access, the developer shall grant the public access (a) across Tax Lot 3600 to the benefit of 3700, (b) across Tax Lot 3700 to the benefit of 3600, and (c) across Tax Lot 3700 to the benefit of 3800. The cross access shall follow a drive aisle or aisles and align at the common lot line. Regarding (c), the north east-west drive aisle shall stub to somewhere along the northerly 75 ft of the west lot line and at min 20 ft wide, and though the stub shall not be curbed it may be fenced.

(2) ODOT factor:

- (a) The developer shall apply to and obtain from ODOT the proper access rights for both tax lots prior to any construction, so as to not violate the deeds.
- (b) For context, see Attachment 102B. The ODOT Region 2 contact is Casey Knecht, P.E., Development Review Coordinator, (503) 986-5170, casey.knecht@odot.state.or.us. The City interprets "prior to any construction" to mean by issuance of the first structural building permit. Otherwise, City staff are inclined to defer to ODOT interpretation of part (a) above, including whether it is applicable to either Option 1 only or both site plan options.
- (c) If after City land use decision ODOT objects specifically to how the City administers or the developer conforms to other parts of the condition or to other conditions concerning vehicular access, then the developer may request

- and the Director may administratively approve in writing changes to administration or conformance to accommodate the ODOT factor while still having the development meet the WDO and conditions of approval to the max extent remaining. The Director may require developer application for any of Extension of a Development Decision per WDO 4.02.05 or Modification of Conditions per WDO 4.02.07.
- (d) If after City land use decision ODOT directs access management in conflict with other parts of the condition or to other conditions concerning vehicular access, then the developer shall forward the written direction from ODOT to the attention of the Director; describe the conflict(s); describe the minimum deviation from conformance necessary to comply with ODOT direction while also conforming to the remainder of the condition to the maximum, including plan view illustrations where helpful; and request Director approval through a dated document that cites the land use case file and condition numbers. The Director may approve what the developer first requests or a modified request. The City intends that if the developer were to make use of this part (d) of the condition, he would do so once.

CU10. Gas station operations:

- 1. Noise:
 - a. Fuel pumps: Audible audiovisual advertising, if any, is prohibited from sounding from fuel pump electronic display speakers. Such advertising shall be limited to sight only.
 - b. Tire/vacuum: Addition of any vehicle interior vacuum facility outdoors, tire pump facility outdoors, or other similar mechanical facility outdoors for gas station customers that makes noise shall be located min 100 ft north of the south lot line of Tax Lot 3700. Based on Ordinance No. 2312, any vacuum shall be closed to customer use min from 9:00 p.m. to 7:00 a.m.
- 2. Trash: There shall be at least one trash receptacle along each of the walkways, at min 1 ft from walkway edge, to and from the highway and Oregon Way sidewalks, within 25 ft of ROW, for intended use by convenience store customers, and remaining privately maintained and serviced.
- 3. Vehicular circulation:
 - a. Drivewavs:
 - (1) Highway: Max 1 driveway. The driveway shall remain right-in, right-out and be max width equal to the existing 30 ft unless ODOT approves wider up to 36 ft; however, if the developer widens the driveway from the existing 30 ft, then min 12 ft of the width and min depth equal to either the throat or 13.5 ft, whichever is longer, shall be poured concrete. The area of poured concrete that is outside the ROW shall be patterned, stamped, or treated to resemble paving stones and shall be felt by motorists driving over it. (The objective is to calm traffic by

- preventing fast, swooping maneuvers and to direct vehicles to 24 ft width of asphalt within the driveway throat, while allowing semi-trailer truck turning movement across 36 ft of width.) If the driveway widens, the developer also shall reconstruct the entire driveway to conform to City Public Works standard drawing Detail No. 4150-4 "Property Line Sidewalk at Driveway", except that if and where a specific conflict arises between City and ODOT public works construction standards, that of ODOT engineering guidance would supersede.
- (2) Oregon Way: Max 1 driveway, max width 24 ft if two-way or 12 ft if one-way. Option 2: Throat, if two-way, then the inbound lane max 24 ft deep where lane is parallel with the outbound lane.
- b. I-5 directional signage: There shall be on Tax Lot 3700 outside of ROW and streetside PUEs directional signage that accomplishes directing on-site motorists bound for I-5, min 2 signs for Option 1 and 3 signs for Option 2, each min area 18 by 24 inches, mounted min 2 ft and max 7 ft above grade, text min 6 inches high, and including the standard Interstate 5 logo. The Director may administratively establish locations, details, specifications, and revisions to administer this condition part during building permit review. Further site plan revisions necessary to conform, if any, shall be due by building permit issuance.
- c. Option 2: fuel pump queueing:
 - (1) General: Fuel pump queues shall be one-way either eastbound in Option 1 or southbound in Option 2. The developer shall stripe directional arrows and lines to direct motorists into fuel pump queues and distinguish the queues from driving routes around the fuel pump canopy.
 - (2) Stacking:
 - (i) Option 1: Of six queues, min 3 shall each fit stacking of min one car west of the fuel pump island.
 - (ii) Option 2: Of six queues, min 2 shall each fit stacking of min two cars north of the fuel pump island, and the remaining 4 shall each fit stacking of min one car.
- d. Trucks: Until July 1, 2030, the Public Works Department may administratively regulate time, place, and manner of freight and truck access (ingress/egress) to and from the development and adjacent public streets. This condition shall not be construed to preclude the City past the date from regulating development freight and truck access via ordinances that are applicable generally to properties that happen to include the subject property.

CU11. Modification: Because the WDO, including 5.03.01, does not specify how changes to an approved conditional use (CU) and related site improvements might trigger another CU or modification of a CU approval, for Director determination the following serve as criteria and – where noted – as factors:

- a. Significant expansion of the use(s), factors being an increase in any of: total GFA by 25.0% or more or by an absolute value of 1,825 sq ft or more, and, the number of buildings by 1 or more;
- b. Increase in off-street parking by 6 or more stalls, even if the existing supply were in excess of the minimum required ratio(s);
- c. Net increase in impervious surface totaling at least 1,000 sq ft;
- d. Adding the land uses of automotive maintenance and repair, whether or not including through service bay structures.
- e. Development as defined in WDO 1.02 within twenty (20) feet of a property boundary and not already conditioned through the subject approval;
- f. Any proposal necessitating a request for Exception to Street Right-of-Way and Improvement Requirements ("Street Exception");
- g. Any proposal necessitating a request to vary from the WDO, that is, a variance;
- h. Any proposal necessitating a Type III or IV land use application type; and
- i. City adoption of a unified development ordinance replacing the WDO were to have intervened.

Modification of a specific condition of approval remains pursuant to WDO 4.02.07. Were the City to have amended the WDO to establish modification provisions for conditional uses, the Director may decide that the provisions supersede this condition of approval.

Conditional Use 21-02: Transportation

T-A:

- 1. OR 214 & Oregon Way: The developer shall pay a fee per Attachment 203 to fund a transportation study, specifically to investigate in coordination with ODOT (1) corridor signal timing and coordination adjustments and (2) improving safety by reducing vehicle turning or angle crashes. This is due by building permit issuance. [TSP R11 & TIA p. 12]
- 2. Consultant review: The developer shall pay a fee for the City to recoup the cost of its transportation consultant reviewing and advising upon the TIA.
- 3. I-5 interchange with OR 214: To reduce vehicle crashes, the developer shall pay a fee per Attachment 203.
- 4. OR 214 & Evergreen Rd: To mitigate effect on the intersection and reduce vehicle crashes, the developer shall pay a fee per Attachment 203.
- 5. OR 99E & OR 211/214: To mitigate effect on the intersection and reduce vehicle crashes, the developer shall pay a fee per Attachment 203.

T-T. Bus transit: Bus stop improvements: To further TDM through bus transit, regarding the WTS Oregon Way northbound stop that is adjacent to 966 & 980 Oregon Way, where because ROW and streetside PUE are too narrow relative to the street to accommodate installation, the developer shall pay a fee in-lieu as well as a fee in lieu of a bus stop bicycle rack per Attachment 203.

Street Exception 21-05

EX1. Frontage/street improvements: Highway: These shall be as follows:

- a. ROW: If and where there is a deficit, the developer shall dedicate ROW that meets or exceeds the min width necessary to conform to WDO Figure 3.01B "Major Arterial".
- b. PUE: If minimum width streetside PUE does not yet exist per WDO Figure 3.01B, then the developer shall grant it. Max width shall be 10 ft, unless if and where existing utilities that the developer does not relocate necessitate wider as documented by franchise utilities and the developer.
- c. Improvements: No min surface improvements other than either elsewhere conditioned or necessary to comply with ODOT engineering guidance or conform to PW direction. The developer shall pay fees in lieu of highway improvements per Attachment 203.

EX2. Frontage/street improvements: Oregon Way: These shall be as follows:

- a. ROW: The developer shall dedicate ROW that meets or exceeds the min width necessary to conform to WDO Figure 3.01E "Access Street" and exceeds that width where necessary to accommodate both the existing northbound left turn lane and required half-street improvements.
- b. PUE: If minimum width streetside PUE does not yet exist per WDO 3.02.01B, then the developer shall grant it. Max width shall be per WDO 3.02.01F.2 through Ordinance No. 2602 (LA 21-01).
- c. Improvements:
 - (1) Parking: No 8-ft wide on-street parallel parking lane is required, this being an exception from what Figure 3.01E would have required. The developer shall pay a fee in-lieu per Attachment 203.
 - (2) Landscape strip: Min 6½ ft wide inc. curb width and with min 3 street trees with allowance of fee in lieu of 1 tree max. Planting of area remaining after tree planting and irrigation shall be per WDO 3.01.04B through Ordinance No. 2602 (LA 21-01).
 - (3) Sidewalk: Min 8 ft wide.

Overlap: Wider sidewalk shall not narrow the landscape strip. The extra width of planter strip and sidewalk shall either (a) be within additional ROW that accommodates them, or (b) overlap outside ROW into streetside PUE, there being a recorded legal instrument granting public access to the overlap. If (b), then the developer shall submit a draft of the legal instrument for Planning and PW review by either civil engineering plan (CEP) review application to PW or building permit application, whichever is earlier. The developer shall submit copies of correctly recorded documents to the Planning Division by building permit issuance.

Actions

The Planning Commission may instead act on the land use application to:

- 1. Approve with modified conditions, or
- 2. Deny, based on WDO criteria or other City provisions.

If the Planning Commission were to act upon the recommendation, staff would prepare a "final decision" document for signature by the Commission chair in the days following the hearing.

Attachment List

- 101. Marked Tax Map
- 102. Analyses & Findings
- 102A. Public Works comments (May 5, 2022; 2 pages)
- 102B. Agency commentary ODOT e-mail with two exhibits (May 4, 2021; 15 pages)
- 103A. Application materials / site plans Option 1 (Feb. 9, 2022; 3 sheets)
- 103B. Application materials / site plans Option 2 (May 2, 2020; 5 sheets)
- 104. Transportation System Plan (TSP) Fig. 2 "Functional Roadway Classification"
- 201.* CU 21-02 US Market Gas Station: Dictionary & Glossary
- 202. CU 21-02 US Market Gas Station: Civil Engineering Plan (CEP) Review Provisions
- 203. CU 21-02 US Market Gas Station: Conditioned Fees

^{*}The 200 series of attachments are details for the Attachment 102 conditions of approval.

CU 21-02: Analyses & Findings

This attachment to the staff report analyzes the application materials and finds through statements how the application materials relate to and meet applicable provisions such as criteria, requirements, and standards. They confirm that a given standard is met or if not met, they call attention to it, suggest a remedy, and have a corresponding recommended condition of approval. Symbols aid locating and understanding categories of findings:

Symbol	Category	Indication
	Requirement (or guideline) met	No action needed
×	Requirement (or guideline) not met Correction needs	
	Requirement (or guideline) not applicable No action needed	
 Requirement (or guideline) met, but might become unmet because of condition applied to meet separate and related requirement that is not met Plan sheets and/or narrative inconsistent Other special circumstance benefitting from attention 		Revision needed for clear and consistent records
•	Deviation: Planned Unit Development, Zoning Adjustment, and/or Variance	Request to modify, adjust, or vary from a requirement

Section references are to the Woodburn Development Ordinance (WDO).

Table of Contents

Project Name & Case File Numbers	2
Location	
Land Use & Zoning	4
Statutory Dates	
Design Review Provisions	5
Conditional Use Provisions	16
Exception to Street Right of Way and Improvement Requirements ("Street Exception") Provisions	30
Phasing Plan Provisions	37
Remaining Provisions	40

CU 21-02 US Market Gas Station, etc. Staff Report Attachment 102

Recommendation	41
Applicant Identity	59
Notes to the Applicant	59
Notes to the Applicant	33

Project Name & Case File Numbers

The applicant submitted the project name US Market. The land use application master/parent case file number is Conditional Use CU 21-02, and the children/corollary case file numbers are Design Review 21-10, Exception to Street Right of Way and Improvement Requirements ("Street Exception") EXCP 21-05, & Phasing Plan PP 21-01.

The subject property is composed of two lots, and the developer of the proposed strip commercial development proposes no Property Line Adjustment (PLA) or lot consolidation.

Options 1 & 2: The developer may develop a site plan revised to conform to conditions of approval and based on either:

- Option 1: The site plan concept last revised and re-submitted for land use review on February 9, 2022 and premised on there being no ODOT factor (see an "ODOT factor" condition of approval); or
- 2. Option 2: The different site plan revised and submitted May 2, 2022 premised on the developer's understanding of the ODOT factor.

Basic Descriptions:

- 3. Option 1: See a condition exhibit for plan details.
 - On Tax Lot 3600 (east, corner lot), a single northeast building of with convenience store of 4,110 square feet (sq ft) and a commercial office of 1,863 sq ft.
 - On Tax Lot 3700 (west, interior lot), a north fuel pump canopy and a south commercial office building of 5,000 sq ft.
- 4. Option 2: See a condition exhibit for plan details.
 - On Tax Lot 3600 (east, corner lot), a single northeast commercial office building of 3,649 sq ft.
 - On Tax Lot 3700 (west, interior lot), a north fuel pump canopy and a south convenience store of 4,314 sq ft.

Location

Address(es)	2540 & 2600 Newberg Hwy (SW corner of Oregon Hwy 214 / Newberg Hwy & Oregon
	Way)
Tax Lot(s)	052W12DB03700 (primary) & 3600; respectively 0.95 & 0.47 acres, totaling 1.42 acres
Nearest	Oregon Hwy 214 / Newberg Hwy & Oregon Way
intersection	

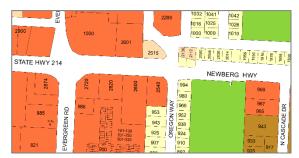


Subject property outlined in green

Land Use & Zoning

Comprehensive Plan Land Use Designation	Commercial	
Zoning District Commercial General (CG)		
Overlay District(s) none		
Existing Use(s)	None following demolition of two vacant bank buildings	

For context, the comprehensive plan land use map designations and zoning are illustrated below with excerpts from the City geographic information system (GIS) and the zoning is tabulated further below:



Comprehensive Plan land use map excerpt



Zoning map excerpt

Cardinal Direction	Adjacent Zoning	
North	Across OR Hwy 214: Commercial	
	General (CG)	
East	Across Oregon Way: Retirement	
	Community Single Family Residential	
	(R1S)	
South	East to west: R1S (943 & 953 Oregon	
	Way; houses) and CG (950 Evergreen	
	Rd; Panor 360 condominiums)	
West	CG (950 Evergreen Rd; Panor 360	
	condominiums; and 2620 Newberg	
	Hwy; Dairy Queen)	

Statutory Dates

Application	March 8, 2022
Completeness	
120-Day Final	July 6, 2022 per Oregon Revised Statutes (ORS) 227.178. (The nearest and
Decision Deadline	prior regularly scheduled City Council date would be June 27, 2022.

CU 21-02 US Market Gas Station, etc. Staff Report
Attachment 102
Page 4 of 61

Design Review Provisions

DR Provisions

Volume 1 Organization and Structure

1.04 Nonconforming Uses and Development

The developer already obtained demolition permits from the Building Division, and the site is cleared. Because the proposal is full redevelopment, nonconformance of private, on-site improvements is not an applicable concept and the development will conform to the WDO and conditions of approval. Regarding nonconforming public street improvements, staff further addresses this nonconformance under the Exception to Street Right of Way and Improvement Requirements ("Street Exception") section of this document.

Not applicable.

Volume 2 Land Use Zoning and Specified Use Standards

2.03 Commercial Zones

2.05 Overlay Districts

2.06 Accessory Structures

2.07 Special Uses

2.08 Specific Conditional Uses

Uses Allowed in Commercial Zones		
	Table 2.03A	
Use Zone		
Accessory Use	Accessory Uses (A) Conditional Uses (CU) Permitted Uses	
(P) Special Pe	(P) Special Permitted Uses (S) Specific Conditional Uses	
(SCU)		
В	Commercial Retail and Services	
2	Automotive maintenance and gasoline	CU ³
	stations, including repair services	
6	Business services	Р
16	Office and office services and supplies	Р
19 Printing, publishing, copying, bonding, P		Р
finance, insurance, medical, data		
processing, social assistance, legal services,		
management, and corporate offices		
20 Professional services P		Р
3. Allowed outright if not within 200 feet of residentially zoned properties		

CU 21-02 US Market Gas Station, etc. Staff Report
Attachment 102

Page 5 of 61

A proposed use is a gasoline station, hereafter referred to as gas station. Because it is within 200 ft of residentially zoned property – 943 & 953 Oregon Way to the southeast that is zoned R1S, for the subject property the use remains a conditional use.

The remaining commercial office use is permitted.

2.05 Overlay Districts

2.05.02 Interchange Management Area Overlay District

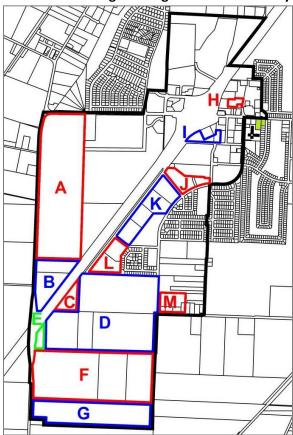


Figure 2.05B – Interchange Management Area Boundary and Subareas (with subject property at NE marked in green)

For those aware of the Interchange Management Area Overlay District (IMA), the above WDO figure marked to show the subject property confirms that the property lies just outside the IMA, that is, the property is *not* in the IMA. (Also, none of the other overlay districts are applicable.)

Not applicable.

2.06 Accessory Structures

2.06.02 Fences and Walls

Regarding the "Architectural Wall" as a buffer or screen wall per 3.06.05 to the standards of 3.06.06 and any fence or fencing the developer would build and install, a condition or conditions of approval would secure conformance, as well as a fence permit application type per 5.01.03 "Fence and Free Standing Wall".

In order to secure conformance to 2.06.02, staff applies a condition or conditions.

2.06.03 Structures

Within the proposal, which is phased development, neither the Option 1 nor Option 2 site plan include accessory structures such as sheds, making this WDO section not applicable.

Not applicable.

2.07 Special Uses

2.07.08 Facilities During Construction

This is not directly relevant to land use review. Contractor behavior is to conform during construction. No condition of approval is necessary to reiterate the requirement.

Not applicable.

2.08 Specific Conditional Uses

None relate to a gas station.

Not applicable.

Volume 3 Development Guideline and Standards

3.01 Streets

Regarding public street improvements, staff further addresses this under the Exception to Street Right of Way and Improvement Requirements ("Street Exception") section of this document.

EXCP: Staff further addresses public street improvements under the Planned Unit Development Provisions section.

3.02 Utilities and Easements

3.02.01 Public Utility Easements

A. The Director shall require dedication of specific easements for the construction and maintenance of municipal water, sewerage and storm drainage facilities located on private property.

B. A five-foot wide public utility easement shall be dedicated along each lot line abutting a public street.

> CU 21-02 US Market Gas Station, etc. Staff Report Attachment 102 Page 7 of 61

C. As a condition of approval for development, including property line adjustments, partitions, subdivisions, design reviews, or Planned Unit Developments (PUDs), the Director may require dedication of public utility easements.

Regarding A, the Public Works Department handles this through its own conditions and processes. Additionally, one of the two frontages is a state highway, which involves the standards and permitting processes of the Oregon Department of Transportation (ODOT). Regarding B, because the application materials fail to demonstrate conformance along Oregon Way, staff applies a condition or conditions. The highway is subject to a superseding standard requiring a 10-ft wide easement: Figure 3.01B "Major Arterial". Staff further addresses this under the Exception to Street Right of Way and Improvement Requirements ("Street Exception") section of this document.

Regarding C, the Public Works Department implements this through its own permit processes, standards, and specifications, and Planning Division also staff apply a condition or conditions for WDO conformance and to deal with existing context of public utilities. Additionally, one of the two frontages is a state highway, which involves ODOT standards and permitting processes.

3.02.02 Creeks and Watercourse Maintenance Easements

There are no creeks or watercourses.

Not applicable.

3.02.03 Street Lighting

The Public Works Department handles this through its own permit processes, standards, and specifications. Additionally, one of the two frontages is a state highway, which involves the standards and permitting processes of the Oregon Department of Transportation (ODOT).

In order to secure conformance to 3.02.03, the Public Works Department might apply public works standards and specifications.

3.02.04 Underground Utilities

Because the application materials fail to show that the development would conform along the highway where electric power poles and overhead electric power lines existing, staff applies a condition or conditions.

In order to secure conformance to 3.02.04, staff applies a condition or conditions.

3.02.04 Underground Utilities

Because the application materials fail to show that the development would conform along the highway where electric power poles and overhead electric power lines existing, staff applies a condition or conditions.

> CU 21-02 US Market Gas Station, etc. Staff Report Attachment 102 Page 8 of 61

3.03 Setbacks and Open Space

3.03.02 Special Setbacks

This is a street widening setback. Because the development proposes and/or is conditioned to conform regarding ROW widths, the Special Setback is not applicable.

Not applicable.

3.03.03 Projections into the Setback Abutting a Street

3.03.04 Projections into the Side Setback

3.03.05 Projections into the Rear Setback

Because the development is strip commercial with conventional setbacks that meet or exceed zoning minimums, there are no projections. Were that to change later, the developer would still have to demonstrate conformance and the development conform.

Not applicable.

3.03.06 Vision Clearance Area

The application materials indicate that the applicant is aware of and intending to conform regarding driveways and the building closest to the site NE corner, which is the SW corner of the highway and Oregon Way, because in site plan Option 1, the NE building is notched at the NE to keep out of the vision clearance area (VCA) or sight triangle, and in Option 2 the NE building is set back far enough to be outside the sight triangle. In both site plans, no buildings are near any driveway. (Were a site plan to fall out of conformance upon building permit application, staff would prompt the developer to correct during permit reviews.)

In order to secure conformance to 3.03.06 during building permit were a site plan to fall out of conformance upon building permit application and to lessen potential resistance by the applicant, staff might apply a condition or conditions to reinforce the WDO VCA provisions.

3.04 Vehicular Access 3.04.01 Applicability and Permit

A. Street Access

Every lot shall have:

- 1. Direct access to an abutting public street, or
- 2. Access to a public street by means of an access easement and maintenance agreement to the satisfaction of the Director, and revocable only with the concurrence of the Director

This standard plus the highway being a state highway affects access management. A main reason the developer proposes site plan Options 1 & 2 is because the Oregon Department of Transportation (ODOT) regulates highway access such that it affects access for both lots composing the subject property and affects site planning.

> CU 21-02 US Market Gas Station, etc. Staff Report Attachment 102 Page 9 of 61

ODOT agency commentary of May 4, 2022 found as staff report Attachment 102B provides more context. The developer intends through ODOT permitting and standards to obtain an outcome that allows Option 1, but might remain stuck with Option 2. The developer's Phasing Plan application is a basis for having options. In either scenario, each lot would have access to a public street.

3.04.02 Drive-Throughs

The strip commercial development includes none.

Not applicable.

3.04.03 Driveway Guidelines and Standards

One of the two frontages is a state highway, which involves the standards and permitting processes of the Oregon Department of Transportation (ODOT). The developer wants to widen the highway driveway from 30 to 36 ft, which involves ODOT permitting and standards. That width is within WDO maximum. The Oregon Way driveway width differs between site plan Options 1 & 2. Section 3.04.03 encourages and in part requires joint or shared driveways. Through the conditional use process staff applies conditions limiting driveway widths for both frontages.

In order to secure conformance to conditional use criteria, staff applies a condition or conditions.

3.04.05 Traffic Impact Analysis

B. A TIA shall evaluate the traffic impacts projected of a development proposal and the estimated effectiveness of potential traffic impact mitigation measures.

The applicant submitted a traffic impact analysis (TIA) dated August 13, 2021. Page 31, "Findings and Recommendations" proposed no mitigation measures. Staff addresses the TIA further under the Conditional Use Provisions section of this document.

3.05 Off-Street Parking and Loading

3.05.02 General Provisions

- A. All required parking and loading spaces shall be retained and maintained in accordance with the standards of the WDO.
- B. The land for off-street parking and loading areas shall either be:
- 1. Owned in fee title by the owner of the structure or site being served by the parking area, or
- 2. Subject to legal documentation to the satisfaction of the Director, establishing permanent use of offstreet parking that is under separate ownership. The parking, subject to such a parking agreement, shall be in compliance with all requirements and development standards of the WDO. The agreement shall be recorded with the County Recorder and filed with the Director.
- D. Location

CU 21-02 US Market Gas Station, etc. Staff Report Attachment 102 Page 10 of 61

- 1. Off-street parking and loading spaces shall be provided on the same lot as the primary building or use except that:
- a. In RS, R1S or RM zones, parking spaces for non-residential uses permitted in the zone may be located on another site, if such site is within 250 feet of the lot containing the primary building, structure or use.
- b. In any zone other than RS, R1S or RM, the parking spaces may be located on another site, if such site is within 500 feet of the site containing the primary building, structure or use.

Because the application materials fail to show that the development would conform to the requirements, staff applies a condition or conditions.

In order to secure conformance with the above subsections of 3.05.02, staff applies a condition or conditions.

E. Setback

2. Parking, loading, and circulation areas shall be set back from a property line a minimum of five feet, unless there is a shared use agreement to the satisfaction of the Director, verifying shared use between the separate properties.

In site plan Option 2, there is no parking setback along northerly east lot line of 2600 Newberg Hwy (Tax Lot 3700), and there is no and might not be a shared use agreement. Because staff can apply a reasonable condition or conditions to secure conformance, staff does so. (The idea of doing such in preference to denying either a development or one or more of its land use applications is explained further under the Phasing Plan Provisions section regarding Phasing Plan criterion B.3 in the paragraph about statute legislative intent.)

Also, the WDO provisions do not specify that a shared use agreement be in place prior to land use approval, and the Community Development Director has not interpreted the provisions to require that a shared use agreement be in place prior to land use approval.

Lastly, because the parking setback issue in question is relevant only to site plan Option 2, reviewing a draft agreement might or might not become moot were the applicant to deal with the ODOT factor such that the applicant could developer Option 2, making it a potential waste of time to review a shared use agreement as part of land use review. The applicant can manifest a shared use agreement, if it remains relevant, following land use approval with conditions.

In order to secure conformance with 3.05.02E.2, staff applies a condition or conditions.

J. All uses required to provide 20 or more off-street parking spaces shall have directional markings or signs to control vehicle movement.

The phrase, "directional markings or signs to control vehicle movement" leaves room for interpretation about what kinds of markings or signs, number, size, placements, and symbols and text. A gas station involves a lot of queuing and conflicts among vehicles moving across the site. Site plan Option 1 shows

> CU 21-02 US Market Gas Station, etc. Staff Report Attachment 102

> > Page 11 of 61

little detail, and Option 2 shows more, but in staff opinion not enough to direct gas station motorists to pump queues and distinguish queuing areas from drive aisles.

Also, because of how access management would work, motorists returning to I-5 would either exit to Oregon Way to turn left/north to then turn left/west at OR 214, or, turn right onto OR 214 and change across the left through lane to the left turn lane to make a U-turn. (Oregon being a state that prohibits U-turns on public roads and allows them only where signed, this intersection is signed to allow U-turns.)

Anticipating the preferences of ODOT and those who believe in conventional traffic engineering, Planning Division staff intends that markings and signage direct motorists seeking I-5 to go to Oregon Way. Because of the room for interpretation, and that the applicant will later choose and refine site plan option 1 or 2, it is during building permit review that administratively establishing details, specifications, and revisions to administer the WDO section would be timely and fruitful.

3.05.03 Off-Street Parking

C. A maximum of 20 percent of the required vehicle parking spaces may be satisfied by compact vehicle parking spaces.

The developer proposes none.

E. All uses that are required to provide 10 or more off-street parking spaces and residential structures with four or more dwelling or living units shall provide a bicycle rack within 50 feet of the main building entrance. The number of required rack spaces shall be one space per ten vehicle parking spaces, with a maximum of 20 rack spaces.

Staff addresses this further under the Conditional Use Provisions section of this document.

Table 3.05A

Off-Street Parking Ratio Standards Table 3.05A		
Use ¹	Parking Ratio - spaces per activity unit or square feet of gross floor area	
COMMERCIAL / PUBLIC		
6. Motor vehicle service	1/ 200 retail area + 3/ service bay + 1/ pump island	
12. Offices (such as professional, scientific and sechnical services, finance and insurance, real estate, administrative and support services, social assistance, and public administration – but not notuding ambulatory health services)		

1. The Director may authorize parking for any use not specifically listed in this table. The applicant shall submit an analysis that identifies the parking needs, and a description of how the proposed use is similar to other uses permitted in the zone. The Director may require additional information, as needed, to document the parking needs of the proposed use.

Because the application materials fail to show that the development would conform to the requirements, including as applies to the 3 pump islands of the gas station in both site plan Options 1 & 2, staff applies a condition or conditions.



In order to secure conformance with Table 3.05A, staff applies a condition or conditions.

Remaining provisions of 3.05 either conform or the developer will revise any nonconformance during building permit review.

3.05.05 Shared Parking

As described elsewhere in this document regarding the access management ODOT factor and site plan Options 1 & 2, the developer by the time of building permit application likely will propose a site plan that necessitates shared parking, which would make applicable 3.05.05.



igtree In order to secure conformance with 3.05.02, Table 3.05A, and 3.05.05, staff applies a condition or conditions.

3.06 Landscaping

3.06.03 Landscaping Standards

A. Street Trees

Staff addresses this further under the Conditional Use Provisions and/or Exception to Street Right of Way and Improvement Requirements ("Street Exception") sections of this document.

> CU 21-02 US Market Gas Station, etc. Staff Report Attachment 102 Page 13 of 61

3.06.05 Screening

A. Screening between zones and uses shall comply with Table 3.06D.

The row "Property being Developed – must provide screening if no comparable screening exists on abutting protected property" and "CG or MUV zone" that intersects with the columns "Adjacent properties – zone or use that receives the benefit of screening" and both "RS, R1S, or RSN zone" and "Multiple-family dwelling" necessitates an "Architectural Wall" (AW) along the lot lines abutting the lots with the two houses at 943 & 953 Oregon Way and the Panor 360 condominiums at 950 Evergreen Road.

△ In order to secure conformance with Table 3.06D, staff applies a condition or conditions.

B. All parking areas, except those for single-family and duplex dwellings, abutting a street shall provide a 42-inch vertical visual screen from the abutting street grade. Acceptable design techniques to provide the screening include plant materials, berms, architectural walls, and depressed grade for the parking area. All screening shall comply with the clear vision standards of this ordinance (Section 3.03.06). Because the application materials fail to show that the development would conform to the requirement, staff applies a condition or conditions.

△ In order to secure conformance with the screening requirement, staff applies a condition or conditions.

3.06.06 Architectural Walls

Because the application materials fail to show that the development would conform to the requirement, staff applies a condition or conditions.

△ In order to secure conformance with AW standards, staff applies a condition or conditions.

3.06.07 Significant Trees on Private Property

See the Conditional Use Provisions section under criterion 3, factor c5) "aesthetics", for analysis.

Through conditional use process, staff applies a fee to mitigate the loss of Significant Trees and to increase the City tree fund that 3.06.07F mentions.

△ In order to secure Significant Tree removal mitigation, staff applies a condition or conditions.

3.07 Architectural Design

3.07.06 Standards for Non-Residential Structures in Residential, Commercial and Public/Semi Public Zones

CU 21-02 US Market Gas Station, etc. Staff Report
Attachment 102
Page 14 of 61

Per 3.07.01A, the architectural provisions are standards for land use review Type I and guidelines for higher types. The application types composing the consolidated package result in Type III.

The site plans and building elevations show largely what the guidelines describe. However, as described elsewhere there are two site plan Options 1 & 2. Also, it is unclear from the application materials if each guideline is followed. Also, without conditions applied through the conditional use process, guidelines would remain just that – optional for the developer.

In order to secure reasonably decent architecture in the context of strip commercial development, staff applies a condition or conditions.

3.08 Partitions and Subdivisions

None proposed.

Not applicable.

3.08 Partitions and Subdivisions

None proposed.

Not applicable.

3.10 Signs

Land use application types generally are not the means for the City to review or approve signage. Signage, including wall and monument signs, remain subject to review and approval through a Type I sign permit through 5.01.10 "Sign Permit".

Not applicable.

Conditional Use Provisions

CU Provisions

5.03.01 Conditional Use

A. Purpose: A conditional use is an activity which is permitted in a zone but which, because of some characteristics, is not entirely compatible with other uses allowed in the zone, and cannot be permitted outright. A public hearing is held by the Planning Commission and conditions may be imposed to offset impacts and make the use as compatible as practical with surrounding uses. Conditions can also be imposed to make the use conform to the requirements of this Ordinance and with other applicable criteria and standards. Conditions that decrease the minimum standards of a development standard require variance approval.

B. Criteria:

- 1. The proposed use shall be permitted as a conditional use within the zoning district.
- 2. The proposed use shall comply with the development standards of the zoning district.
- 3. The proposed use shall be compatible with the surrounding properties.

Relevant factors to be considered in determining whether the proposed use is compatible include:

- a. The suitability of the size, shape, location and topography of the site for the proposed use;
- b. The capacity of public water, sewerage, drainage, street and pedestrian facilities serving the proposed use;
- c. The impact of the proposed use on the quality of the living environment:
 - 1) Noise;
 - 2) Illumination;
 - 3) Hours of operation;
 - 4) Air quality;
 - 5) Aesthetics; and
 - 6) Vehicular traffic.
- d. The conformance of the proposed use with applicable Comprehensive Plan policies; and
- e. The suitability of proposed conditions of approval to ensure compatibility of the proposed use with other uses in the vicinity.

Looking at each criterion and factor:

- 1 "The proposed use shall be permitted as a conditional use within the zoning district."

 The use of gas station is permitted as a conditional use as examined under the Design Review Provisions section of this document.
- ✓ The criterion is met.

2 "The proposed use shall comply with the development standards of the zoning district." It complies with some but not others as examined under other sections in this document, particularly the Design Review Provisions section.

In order to secure full compliance, staff applies a condition or conditions.

3 "The proposed use shall be compatible with the surrounding properties. Relevant factors to be considered in determining whether the proposed use is compatible include:

a. The suitability of the size, shape, location and topography of the site for the proposed use;" The site is composed of two lots totaling 1.42 acres, is L-shaped, located at a street corner and zoned Commercial General (CG), and flat. Nothing about these are compelling factors against a gas station.

"b. The capacity of public water, sewerage, drainage, street and pedestrian facilities serving the proposed use;"

Regarding the capacity of public water, sewerage, and drainage facilities, the Public Works Department handles this through its own conditions and processes. The proposed use for any given facility is either sufficient or will be after the developer upgrades per Public Works Department.

Regarding street and pedestrian facilities, the Planning Division is taking the lead. The developer applied for Exception to Street Right of Way and Improvement Requirements ("Street Exception") EXCP 21-05 for both the highway and Oregon Way. Both frontages are nonconforming relative to Figures 3.01B "Major Arterial" and 3.01E "Access Street". They lack both landscape strips with street trees and sidewalk that is not curb-tight.

Allowing the existing context to remain with strip commercial development would make the walking and cycling environment along highly-trafficked streets (for those cyclists who feel and are safer riding on sidewalk) no less hostile. Additionally, an EXCP is a discretionary application type. Second, staff applies conditions that secure improvements less than WDO standards, that are reasonably proportional to the development, and serve to secure additional landscape strip and street trees and fees in-lieu of some of them as well as to limit driveway widths because driveways interrupt landscape strips and pedestrian experience. Such trees, funds, and driveway maximum width will help physical and psychologically buffer pedestrians and cyclists from traffic along Oregon way, and along the highway will help shade the remaining curb-tight sidewalk.

> CU 21-02 US Market Gas Station, etc. Staff Report Attachment 102 Page 17 of 61

Along highway curb-tight sidewalk to remain is reasonable in terms of being compatible with surrounding properties, particularly those along the highway. However, it is not compatible with those along Oregon Way, where most the street south of the highway intersection lacks any sidewalk. Sidewalk is needed to partly relieve the tedium of those walking between those houses to the south and commercial area at the highway to the north, as well as going to and from the proposed development.

"c. The impact of the proposed use on the quality of the living environment: 1) Noise:"

Based on experience at other gas stations, staff fears gas station fuel pumps audible audiovisual advertising, in other words, those loud obnoxious video ads that play while refueling. Staff considers that noise and applies a condition to spare both persons neighboring the development as well as customers, and in case the state of Oregon allows local self-serve and pump attendants disappear. Similarly, gas stations come with tire pumps and vacuums, that is, noisy mechanical equipment. Though the application materials don't show such, that doesn't mean the gas station company doesn't intend them and wouldn't put them in. No particular Planning Division permit is required for such equipment, so a condition of approval is the only regulatory way to address their noise outside of the Ordinance No. 2312. No car wash is proposed. Staff doesn't conceive of other development sources of unusual and continual noise.

"2) Illumination;"

Whatever one's feelings and perceptions of safety from crime, gas stations and convenience store fronts are brightly lit. Lighting by itself doesn't prevent assault or theft.

Second, there are two houses and a three-story condo building next door. The required "Architectural Wall" buffer/screen wall by itself wouldn't and couldn't handle by itself all mitigation of conventional gas station and convenience store annoyances to neighbors.

Third, fuel pumps come with fixed canopies with high ceilings and many ceiling lights, sometimes with neon-like exterior trim.

Fourth, as is conventional in any new development with extensive parking and vehicular circulation area, there are on-site light poles, and both site plan Options 1 & 2 illustrate such.

Fifth, the City Council approved Legislative Amendment LA 21-01 of the WDO on April 25, 2022 and directed staff to prepare an ordinance for adoption, which staff did for the May 9, 2022 Council meeting. As of the May 5, 2022 publication date of the CU 21-02 Planning Commission May 12, 2022 staff report, Administration had published the City Council May

CU 21-02 US Market Gas Station, etc. Staff Report
Attachment 102
Page 18 of 61

9, 2022 agenda packet. It includes LA 21-01 as Ordinance No. 2602, and its Exhibit A is the amended version of the WDO. Through the conditional use process regarding illumination specifically, because Ordinance No. 2602 includes a new WDO Chapter 3.11 about lighting, staff conditions conformance with it. Conformance with the lighting chapter will have the development avoid lighting annoyances to neighbors as well as to passers-by on sidewalk.

"3) Hours of operation;"

The City could condition this, but staff sees no need to. Through WDO conformance and conditions of approval, the annoyances that could come with neighboring a gas station and convenience store would be avoided or at least much ameliorated. Additionally, if there was conditioned hours of operation, the City would in theory inspect and enforce, and there is no sign that conditioning and enforcing hours of operation would be City Council or Planning Commission direction.

That said, staff applies a condition that, if a vacuum does appear, based on Ordinance No. 2312, it will be closed to customer use minimum from 9:00 p.m. to 7:00 a.m. Staff goes easy on any tire pump that might appear because motorists expect a gas station any time of day or night to have a pump available and working when their car tires need air.

"4) Air quality;"

Staff addresses climate change simply to say, it's a gas station with all the greenhouse gas and volatile organic compound (VOC) emissions that it would enable.

Putting aside climate change, what else is "air quality?" A gas station comes with fumes, particularly easy to get a whiff of near the pumps. However, once a gas station is in place, a city government can do little to change that fact. If this factor is important to someone, the question would be a simple yes or no to a gas station.

Otherwise regarding air quality, staff applies a condition for electric vehicle (EV) parking associated with the commercial office space. Also, regarding on-site trees, see factor 5) below.

5) Aesthetics; and

Staff interprets this to include:

- a. The look and feel of street frontage for passers-by walking, cycling, and driving;
- b. The look and feel of yard landscaping along streets for passers-by walking, cycling, and driving as well as on-site employees and customers;
- c. Urban design: how close buildings are to sidewalk, how many and how large are windows, are their entrances visible from sidewalk and whether the public can see

CU 21-02 US Market Gas Station, etc. Staff Report
Attachment 102
Page 19 of 61

- main entrances to buildings from sidewalk, and whether placements of entrances orient to those who walk or cycle no worse than to those who drive and park;
- d. How safely and comfortably pedestrians and cyclist can access and circulation among on-site buildings through walkways and visibly distinct crossings of drive aisles;
- e. Having enough on-site trash receptacles near sidewalk to lessen the likelihood of litter of yards along streets and street frontage by convenience store customers on foot;
- f. Avoiding excessive exterior lighting;
- g. Having reasonably decent architecture in the context of strip commercial development;
- h. Having the Architectural Wall look reasonably decent;
- i. Getting highway electric power poles and overhead electric power lines buried or fees in-lieu paid to fund such elsewhere in town;
- j. Having a few evergreen trees among newly planted trees; and
- k. Increase street trees and on-site trees, and provide for fee in-lieu to fund tree plantings elsewhere in town;
- I. Administering Street Exception EXCP 21-05 to have the developer improve Oregon Way to be the best of the two frontages for pedestrians and cyclists to give the City some public benefit for leaving the highway frontage as is or largely as is.

Also, regarding on-site trees, for a condition and Attachment 203 (fee table) regarding contribution to the City tree fund, having a fee is based on conditional use compatibility with surrounding properties (criterion 3) and impact of the proposed use on the quality of the living environment (factor 3c) including air quality and aesthetics (factors 3c4 & 3c5). The reason is a demolition contractor, while demolishing the two vacant banks, removed from the subject property at least two but likely three Significant Trees (as 1.02 defines) in May 2021 without City authorization, particularly a Significant Tree Removal Permit per 5.01.11. Staff had seen and photographed on-site trees during at least two site visits, one each on November 9, 2018 and April 26, 2019. The removal prompted neighbor complaints to the City Council at the May 24, 2021 meeting, and there was code enforcement. The Council on August 9, 2021 adopted Ordinance No. 2592 "establishing an enhanced penalty" for violations of WDO tree preservation and removal provisions.

Through conditional use process, staff applies a fee to mitigate the loss and to increase the City tree fund that 3.06.07F mentions.

Staff applies conditions towards these objectives.

6) Vehicular traffic.

The proposal is strip commercial development of a gas station with convenience store and one or two commercial office spaces. The applicant submitted a traffic impact analysis (TIA) dated August 13, 2021 premised on site plan Option 1. Page 31, "Findings and

CU 21-02 US Market Gas Station, etc. Staff Report
Attachment 102
Page 20 of 61

Recommendations" proposed no mitigation measures. The applicant revised the TIA May 26, 2022 and submitted it May 31, 2022.

P. 12 of the original TIA identifies high vehicle turning and angle crash rate at the intersection of the highway and Oregon Way, and p. 9 of the revised TIA references crash history. It states:

"As noted within the City review comments, reliance on right-in, right-out only access to the fuel station and convenience market would increase the number of vehicles turning right and then weaving into the left-turn lane to make a U-turn and return to I-5."

Staff notes that vehicles make U-turns would still be turning across traffic similar to left-turning vehicles, and there remains risk of crashes with vehicles turning right/west onto the highway from the Oregon Way north leg and with highway eastbound vehicles coming up from behind (towards the right or rear of U-turning vehicles).

The revised TIA goes on to say:

"With either Access Option 2 (egress only) or Access Option 3 (Oregon Way ingress and egress) the impact to left-turns on Oregon Way will be reduced."

This overlooks that with either site plan option, development generates more daily vehicle trips than the two banks, now demolished, did – 422 per revised TIA Table 1 on p. 6, of which 44 of the additional trips are in the AM peak. This would include greater numbers of both left turns (from Oregon Way) and U-turns (from the highway eastbound), suggesting that crash risk remains or rises.

For the above two reasons, staff finds the revised TIA unconvincing about crash safety and applies Condition T-A1 as a mitigation measure to fund the Transportation System Plan (TSP) Project R11, a signal timing study, and to supplement with addition funding both to examine improving safety and to account for inflation after the City Council adopted the TSP in September 2019, using the <u>U.S. Bureau of Labor Consumer Price Index (CPI) Inflation Calculator</u> to adjust from then to April 2022.

Staff had the transportation consultant to the City review the TIA and draft a memo (May 10, 2022), which he then revised (May 18, 2022). Staff applies Condition T-A2 to recoup most if not all of the consultant fees for review of the TIA based on the May 12 invoice for service through April 29 of \$1,020 and a phone call May 31 to the project accountant with Otak for an estimate of the next invoice for service through May: \$3,740.

CU 21-02 US Market Gas Station, etc. Staff Report
Attachment 102
Page 21 of 61

The consultant's memo included:

"OR-214 and I-5 northbound ramps – elevated crash rate

The TIA indicated this intersection has an existing elevated crash rate, which has been confirmed by other recent TIAs in the vicinity. Project Basie was conditioned to provide a proportionate share contribution of \$10,000 toward a future safety improvement project at this location. Based on a comparison of trip impacts, the US Market share of a signal study and signal timing improvements to alleviate the crash rate issue at the interchange is a reasonable minimum share of \$1,000." (p. 5)

Staff applies Condition T-A3.

The consultant's memo included:

"OR-214 and Evergreen Road – elevated crash rate

Allison Way Apts. was conditioned to provide a proportionate share contribution (fee-in-lieu) of \$15,000 toward a signal/intersection study and improvement to alleviate the crash condition for the 67 additional PM peak hour trips added to that intersection. Project Basie should be conditioned similarly, based on the following calculations:

US Market would add 229 trips to that intersection, a factor of 3.4 compared to Allison Way. The proportionate share calculation then is \$15,000 * 3.4 = \$50,000." (p. 5)

"OR-214 and OR 99E – mobility threshold exceeded in 2040; elevated crash rate today

The with-site trips incorporated into 2040 background traffic based on previous traffic impact analyses will result in this intersection exceeding ODOT's volume-to-capacity and the City's level-of-service ODOT thresholds.

There is a current TSP project and a different mitigation project contained in the Woodburn Eastside Apartments development traffic impact analysis, each of which are estimated to cost approximately \$1,100,000.

Woodburn Eastside Apartments was conditioned to contribute an approximate 10.1% share of the cost of the mitigation project as a condition of approval, or approximately \$111,000. This was based on the site generating an additional 84 PM peak hour trips through the intersection.

This intersection was not analyzed in the US Market TIA. I estimate this site would contribute an additional 15 PM trips to this intersection. Based on proportionate share calculations for other projects, US Market's mitigation share is approximately \$21,000." (p. 5)

Staff adds that on June 1, the consultant revised the recommendation regarding OR 214 & Evergreen Road resulting in a dollar amount in the applicant's favor:

CU 21-02 US Market Gas Station, etc. Staff Report
Attachment 102
Page 22 of 61

"OR-214 and Evergreen Road – elevated crash rate

Allison Way Apts. was conditioned to provide a proportionate share contribution (fee-in-lieu) of \$15,000 toward a signal/intersection study and improvement to alleviate the crash condition for the 67 additional PM peak hour trips added to that intersection. US Market should be conditioned similarly, based on their net new trip contribution to weekday traffic volumes."

Following the consultant's memo, staff requested that the applicant revise the TIA including to address the above two intersections. P. 9 of the revised TIA does so, but did not study the intersections to calculate specific trip numbers. Staff goes by the consultant's estimates and applies Conditions T-A4 & T-A5.

To further transportation demand management (TDM) through bus transit, regarding the Woodburn Transportation System (WTS) Oregon Way northbound stop that is adjacent to 966 & 980 Oregon Way, where because ROW and streetside PUE are too narrow relative to the street to accommodate installation staff applies Condition T-T for fees in lieu of a bus shelter and bus stop bicycle parking. The cost is based on the City Transit Plan Update (TPU; 2010), Chapter 10 "Potential Service Strategies", p. 10-11, item 9 "Install New Bus Shelters" that estimated the price of a bus shelter at \$10,000. Because the plan dates from November 2010, staff adjusted that figure for inflation.

"d. The conformance of the proposed use with applicable Comprehensive Plan policies; and" Staff applies conditions in support of Comprehensive Plan Policies:

Policy	Page	Policy & Analysis
Commercial Land		
Development and		
Employment:		
F-1.3	24	"Strip zoning should be discourage as a most unproductive form of commercial land development. Strip zoning is characterized by the use of small parcels of less than one acre, with lot depths of less than 150 feet and parcels containing multiple driveway access points. Whenever possible, the City should encourage or require commercial developments which are designed to allow pedestrians to shop without relying on the private automobile to go from shop to shop. Therefore, acreage site lots should be encouraged to develop "mall type" developments that allow a one stop and shop opportunity. Commercial developments or commercial development patterns that require the use of the private automobile shall be discouraged."

CU 21-02 US Market Gas Station, etc. Staff Report
Attachment 102
Page 23 of 61

Policy	Page	Policy & Analysis
		The two lots total 1.42 acres with highway and Oregon Way frontages of 265 and 178 ft respectively.
		Conditions implement access management to reduce the number of driveways within the development and across successive developments along the major thoroughfares that are the spines of the CG zoning district.
		Conditions induce walking and cycling, which could make a dent in some vehicular traffic at least for the convenience store and commercial office area, by requiring rain canopies at building entrances, minimum window area on street-facing walls, bicycle parking and some covering/sheltering of it, wide walkways connecting sidewalks with all building main entrances on the site, trees in yards along streets, and landscape strip with street trees and wide sidewalk along Oregon Way, the less trafficked and noisy street.
F-1.4	24	"Architectural design of commercial areas should be attractive with a spacious feeling and enough landscaping to reduce the visual impact of large expanses of asphalt parking areas. Nodal and mixed use village commercial areas should be neighborhood and pedestrian oriented, with parking to the rear or side of commercial buildings, and with pedestrian connections to neighboring residential areas."
		Conditions make a dent in large expanses of asphalt parking areas through a few more parking area landscaped islands/peninsulas with a tree each, more trees in yards along streets, and hedge or shrubbery screening parking areas from streets. From the first pre-application meeting up through CU 21-01, staff also got the applicant for both site plan Options 1 & 2 to locate parking to the rear or side of buildings relative to streets, and with pedestrian connections to neighboring residential areas. Conditions require minimum window area on street-facing walls for attractiveness, and wide walkways connecting sidewalks with all building main entrances on the site. An objective is to make a gas station development less ugly than it might otherwise be.
F-1.6	25	"Commercial office and other low traffic generating commercial retail uses can be located on collectors or in close proximity to residential areas if care in architecture and site planning is exercised. The City should ensure by proper regulations that any commercial uses located close to residential areas have the proper architectural and landscaping buffer zones."

CU 21-02 US Market Gas Station, etc. Staff Report Attachment 102 Page 24 of 61

Policy	Page	Policy & Analysis
		The WDO and conditions secure care in architecture and site planning for the commercial development close to residential area to the south and southwest through a combination of wall, slatted fencing, vegetation, and height limits on light poles and wall-mounted lights.
Transportation:		
H-1.1	33	"Develop an expanded intracity bus transit system that provides added service and route coverage to improve the mobility and accessibility of the transportation disadvantaged and to attract traditional auto users to use the system."
		Conditions induce walking and cycling, which could make a dent in some vehicular traffic at least for the convenience store and commercial office area, by requiring rain canopies at building entrances, minimum window area on street-facing walls, bicycle parking and some covering/sheltering of it, wide walkways connecting sidewalks with all building main entrances on the site, trees in yards along streets, and landscape strip with street trees and wide sidewalk along Oregon Way, the less trafficked and noisy street. The easier walking and cycling are, the more likely they become the means of "last mile" travel for those who ride the bus.
		Conditions also secure a bus shelter and bus stop bicycle parking or fees in-lieu, relating to the Oregon Way northbound stop.
H-1.3	34	"Develop a low stress network of bicycle lanes and routes that link major activity centers such as residential neighborhoods, schools, parks, commercial areas and employment centers. Identify offstreet facilities in City greenway and park areas. Ensure all new or improved collector and arterial streets are constructed with bicycle lanes."
		Conditions induce cycling by requiring rain canopies at building entrances, bicycle parking and some covering/sheltering of it, wide walkways connecting sidewalks with all building main entrances on the site, and wide sidewalk along Oregon Way, the less trafficked and noisy street. The wide sidewalk and wide walkways are minimum 8 ft, enough to serve as a bicycle/pedestrian path (or "multi-use path").
H-1.4	34	"Develop a comprehensive network of sidewalks and off-street pathways. Identify key connections to improve pedestrian mobility within neighborhoods and link residential areas to schools, parks, places of employment and commercial areas. Ensure all new collector and arterial streets are constructed with sidewalks."

CU 21-02 US Market Gas Station, etc. Staff Report Attachment 102 Page 25 of 61

Policy	Page	Policy & Analysis
		Conditions induce walking and cycling by requiring rain canopies at building entrances, bicycle parking and some covering/sheltering of it, wide walkways connecting sidewalks with all building main entrances on the site, and wide sidewalk along Oregon Way, the less trafficked and noisy street. The wide sidewalk and wide walkways are minimum 8 ft, enough to serve as a bicycle/pedestrian path (or "multi-use path").
H-2.3	34	"Encourage multi-model transportation options, including parkand-ride facilities, carpooling, and use of transit services."
		Conditions induce walking and cycling, which could make a dent in some vehicular traffic at least for the convenience store and commercial office area, by requiring rain canopies at building entrances, minimum window area on street-facing walls, bicycle parking and some covering/sheltering of it, wide walkways connecting sidewalks with all building main entrances on the site, trees in yards along streets, and landscape strip with street trees and wide sidewalk along Oregon Way, the less trafficked and noisy street. The easier walking and cycling are, the more likely they become the means of "last mile" travel for those who ride the bus. Conditions secure carpool/vanpool (C/V) parking for commercial office area. They also secure a bus shelter and bus stop bicycle parking or fees in-lieu, relating to the Oregon Way northbound stop.
		distance southeast from the Woodburn Memorial Transit Center / Woodburn Park and Ride at 2900 Tom Tennant Drive.
H-2.5	34	"Provide inter-parcel circulation through crossover easements, frontage or backage roads, or shared parking lots where feasible."
		A CU condition secures access management based on WDO 3.04.03 and Table 3.04A through Ordinance No. 2602 (LA 21-01), accounting for the ODOT factor. (Attachment 102B agency commentary provides ODOT factor context.)
H-3.1	35	"Continue coordination with ODOT to improve safety on state facilities within the City and citywide access management strategies."
		A CU condition secures access management based on WDO 3.04.03 and Table 3.04A through Ordinance No. 2602 (LA 21-01), accounting for the ODOT factor. (Attachment 102B agency commentary provides ODOT factor context.)

CU 21-02 US Market Gas Station, etc. Staff Report Attachment 102 Page 26 of 61

Policy	Page	Policy & Analysis
		CU transportation conditions secure transportation mitigation fees relating to study of highway signal timing and intersection crash reduction. They also secure a bus shelter and bus stop bicycle parking or fees in-lieu, relating to the Oregon Way northbound stop, which could make a dent in some vehicular traffic at least for the convenience store and commercial office area.
H-3.2	35	"Implement strategies to address pedestrian and bicycle safety issues, specifically for travel to and from local schools, commercial areas, and major activity centers."
		Conditions induce walking and cycling by requiring rain canopies at building entrances, minimum window area on street-facing walls, bicycle parking and some covering/sheltering of it, wide walkways connecting sidewalks with all building main entrances on the site, trees in yards along streets, and landscape strip with street trees and wide sidewalk along Oregon Way, the less trafficked and noisy street.
		CU transportation conditions secure transportation mitigation fees relating to study of highway signal timing and intersection crash reduction. They also secure a bus shelter and bus stop bicycle parking or fees in-lieu, relating to the Oregon Way northbound stop.
		The development site NE corner is approximately 1,000 ft walking distance southeast from the Woodburn Memorial Transit Center / Woodburn Park and Ride at 2900 Tom Tennant Drive.
H-4.1	35	"Evaluate the feasibility of various funding mechanisms, including new and innovative sources."
		CU transportation conditions secure transportation mitigation fees relating to study of highway signal timing and intersection crash reduction. They also secure a bus shelter and bus stop bicycle parking or fees in-lieu, relating to the Oregon Way northbound stop.
H-5.1	35	"Implement, where appropriate, a range of potential Transportation Demand Management (TDM) strategies that can be used to improve the efficiency of the transportation system by shifting single-occupant vehicle trips to other models [sic] and reducing automobile reliance at times of peak traffic volumes."
		Conditions induce walking and cycling, which could make a dent in some vehicular traffic at least for the convenience store and commercial office area, by requiring rain canopies at building

CU 21-02 US Market Gas Station, etc. Staff Report Attachment 102 Page 27 of 61

Policy	Page	Policy & Analysis
		entrances, minimum window area on street-facing walls, bicycle parking and some covering/sheltering of it, wide walkways connecting sidewalks with all building main entrances on the site, trees in yards along streets, and landscape strip with street trees and wide sidewalk along Oregon Way, the less trafficked and noisy street. The easier walking and cycling are, the more likely they become the means of "last mile" travel for those who ride the bus. Conditions secure carpool/vanpool (C/V) parking for commercial office area.
		They also secure a bus shelter and bus stop bicycle parking or fees in-lieu, relating to the Oregon Way northbound stop.
		The development site NE corner is approximately 1,000 ft walking distance southeast from the Woodburn Memorial Transit Center / Woodburn Park and Ride at 2900 Tom Tennant Drive.
Natural Resources:		
J-1.1	40	" Outside of designated floodplains and riparian corridors, developers should be required to leave standing trees in developments where feasible."
		See the Conditional Use Provisions section under criterion 3, factor c5) "aesthetics", for analysis relating to Significant Tree removal mitigation. A condition secures contribution to the City tree fund.
Energy Conservation:		
M-1.2	49	"The City shall increase its commitment to energy conservation, including alternative energy vehicles, increased recycling, and reduction in out-of-direction travel"
		Conditions secure both carpool/vanpool (C/V) and electric vehicle (EV) parking for commercial office area.

[&]quot;e. The suitability of proposed conditions of approval to ensure compatibility of the proposed use with other uses in the vicinity."

Staff applies conditions regarding chiefly a few main topics:

- a. WDO conformance;
- b. Mitigation of the unpleasant aspects of neighboring and patronizing a gas station and convenience store; and
- c. Aesthetics as examined above for 3c5), both (1) on-site and (2) through Street Exception EXCP 21-05 the Oregon Way frontage in particular.

CU 21-02 US Market Gas Station, etc. Staff Report
Attachment 102
Page 28 of 61

Particularly topics b. & c.(2) but also the three topics together ensure compatibility of the development.

△ In order to secure the development meeting criteria 2 & 3, staff conditions.

Exception to Street Right of Way and Improvement Requirements ("Street Exception") Provisions

EXCP Provisions

5.03.03 Exception to Street Right of Way and Improvement Requirements

A. Purpose: The purpose of a Type III Exception is to allow a deviation from the development standard required for the functional classification of the street identified in the Transportation System Plan. Street exceptions are processed in conjunction with a development proposal that is a Type III application.

B. Criteria:

- 1. The estimated extent, on a quantitative basis, to which the rights of way and improvements will be used by persons served by the building or development, whether the use is for safety or convenience;
- 2. The estimated level, on a quantitative basis, of rights of way and improvements needed to meet the estimated extent of use by persons served by the building or development;
- 3. The estimated impact, on a quantitative basis, of the building or development on the public infrastructure system of which the rights of way and improvements will be a part; and
- 4. The estimated level, on a quantitative basis, of rights of way and improvements needed to mitigate the estimated impact on the public infrastructure system.
- C. Proportionate Reduction in Standards: An exception to reduce a street right of way or cross- section requirement below the functional classification standard may be approved when a lesser standard is justified based on the nature and extent of the impacts of the proposed development. No exception may be granted from applicable construction specifications.
- D. Minimum Standards: To ensure a safe and functional street with capacity to meet current demands and to ensure safety for vehicles, bicyclists and pedestrians, as well as other forms of non-vehicular traffic, there are minimum standards for right of way and improvement that must be provided to meet the standards of this Ordinance (Section 3.01). Deviation from these minimum standards may only be considered by a variance procedure.

What would have been the standard cross sections are below:

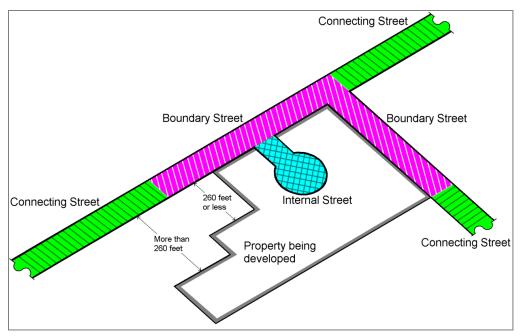
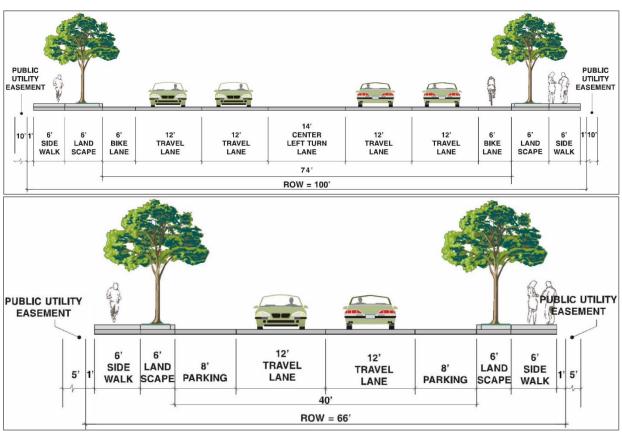


Figure 3.01A - Internal, Boundary, and Connecting Streets



Top: Figure 3.01B - Major Arterial (Oregon Hwy 214 / Newberg Hwy)

Bottom: Figure 3.01E - Access Street (Oregon Way)

CU 21-02 US Market Gas Station, etc. Staff Report
Attachment 102
Page 31 of 61

The application materials include a Street Exception narrative dated October 11, 2021 and submitted October 18, 2022.

Regarding criterion 1, the applicant's narrative (p. 2) states:

"The existing frontages on Hwy 214 and Oregon Way meet the WDO standards with the exception of the landscape strip and sidewalk being reversed. On Hwy 214 conforming strictly to the WDO standards would actually narrow the road by 6' to add a landscape strip adjacent to the roadway, see A1.1. Changing this would not affect 'the extent to which the right of way and improvements will be used by persons served by the building or development."

Staff concurs about no effect on the extent to which the right of way and improvements will be used by persons served by the development in the sense that there are at present and will remain the same number of vehicular lanes along both frontages, highway bicycle lane, and sidewalks. The proposed land uses of gas station and convenience store are for convenience and not safety.

Paragraph 1

Relative to Figure 3.01B, highway non-conformance is limited to lack of planter strip and street trees. Conventional traffic engineering does not address effects of development on walking and cycling as it does for vehicular trips, there is no widely recognized norm for how to address such, and the WDO provides no guidance on the topic. Second, the north frontage context is strip commercial along a heavily trafficked state highway, the kind of dangerous and noisy environment that repels pedestrian and cyclists. Those who do walk and cycle are likely those who are living nearby, the homeless, those without access to car, and those few who wish to brave existing conditions. The presence of a sidewalk is sufficient for sheer practicality for those who wish to walk along a highway or cycle outside of the bicycle lane because they don't feel safe in a highway bicycle lane. In this context, the number of pedestrians and off-street cyclists is moot. Pedestrians and cautious cyclists can and do use the wide sidewalk today, and the pedestrians and cautious cyclists the development might attract would use the same wide sidewalk.

Staff conditions fees in lieu of highway street trees and new sidewalk along a landscape strip.

Paragraph 3

Relative to Figure 3.01E, Oregon Way non-conformance is limited to lack of parking lane, planter strip, and street trees. Staff applies conditions that excepts only the parking lane but also requires fee in lieu of such parking. Additionally, the conditions require wider planter strip and wider sidewalk exceeding the minimums of Figure 3.01E. Like conventional development

CU 21-02 US Market Gas Station, etc. Staff Report
Attachment 102
Page 32 of 61

and zoning codes, the WDO requires off-street parking for almost all developments, including the subject development, so the absence of on-street parking is not of concern from this perspective. Second, pedestrians and cautious cyclists can and do use the narrow curb-tight sidewalk today, and the pedestrians and cautious cyclists the development might attract would use the new wider sidewalk. Third, Figure 3.01E does not account for the presence of a left turn lane at intersections, and such exists because of ODOT, and given that ODOT and the Public Works Department assume its continued existence, Public Works assumes that the developer would adapt required Oregon Way half-street improvements to fit along the turn lane, and that ODOT typically asks that there be no on-street parking within a certain distance of state highway intersections, usually 50 ft, it is reasonable in this case to allow for fee in lieu of what little on-street parking a civil engineer could fit.

Staff conditions fee in lieu of Oregon Way on-street parking.

With conditioning, the criterion is met.

Regarding criterion 2, the applicant's narrative (p. 2) states:

"As stated above there is no change to the extent of use from existing conditions to WDO standards, thus no improvements are needed to meet the estimated use, beyond those shown on the submitted plans. According to our engineer of record:

'I would estimate that the quantitative impact to remove and replaced existing infrastructure to the current standard would be on the order of \$150/lf over the approximately 425 feet of frontage is around \$65,000 not including engineering, permitting and survey work which may add another \$25,000 when dealing with ODOT. The addition of a parking lane on Oregon Way would require ROW dedication, additional paving, adjustment of utilities, etc... to potentially gain 1 or 2 parking spaces since we have a driveway on the south end and you can't park too close to the intersection. The additional cost for that might be \$50,000 or more.'"

Staff has no interest in the developer's estimated civil engineering improvements cost.

Here, the same as criterion 1 analysis "Paragraph 1" and "Paragraph 3".

Staff conditions fees in lieu of highway street trees and new sidewalk along a landscape strip. Staff conditions fee in lieu of Oregon Way on-street parking.

With conditioning, the criterion is met.

Regarding criterion 3, the applicant's narrative (p. 3) states:

CU 21-02 US Market Gas Station, etc. Staff Report
Attachment 102
Page 33 of 61

"The extent to which the building or development will impact the public infrastructure would be unaffected by maintaining the existing conditions vs an increased impact the change to strict conformance to the WDO requirements would create."

Staff has no interest in the developer's estimated civil engineering improvements cost.

Here, the same as criterion 1 analysis "Paragraph 1" and "Paragraph 3".

Staff conditions fees in lieu of highway street trees and new sidewalk along a landscape strip. Staff conditions fee in lieu of Oregon Way on-street parking.

With conditioning, the criterion is met.

Regarding criterion 4, the applicant's narrative (p. 3) states:

"Changing to conform strictly to the WDO requirements, rather than letting the existing conditions that meet the intent of the code remain, is what would create an impact on the public infrastructure system that is unnecessary. According to our engineer of record:

'I would estimate that the quantitative impact to remove and replaced existing infrastructure to the current standard would be on the order of \$150/lf over the approximately 425 feet of frontage is around \$65,000 not including engineering, permitting and survey work which may add another \$25,000 when dealing with ODOT. The addition of a parking lane on Oregon Way would require ROW dedication, additional paving, adjustment of utilities, etc... to potentially gain 1 or 2 parking spaces since we have a driveway on the south end and you can't park too close to the intersection. The additional cost for that might be \$50,000 or more.'"

Staff has no interest in the developer's estimated civil engineering improvements cost.

Here, the same as criterion 1 analysis "Paragraph 1" and "Paragraph 3".

Staff conditions fees in lieu of highway street trees and new sidewalk along a landscape strip. Staff conditions fee in lieu of Oregon Way on-street parking.

With conditioning, the criterion is met.

About Street Exceptions in general, Planning staff adds that the Public Works Department is content with frontages along the corridor, and defers to ODOT for developments where ODOT has jurisdiction. By 2015, ODOT improved the I-5 interchange and as part of that project widened OR 214 east of the interchange to a little east of Oregon Way. As expected, the agency constructed to its own economized standards, which resulted in curb-tight sidewalk, though wide at about 8 ft, no street trees, and no burial of the south side overhead electric

CU 21-02 US Market Gas Station, etc. Staff Report
Attachment 102
Page 34 of 61

power lines. Also, until late 2017 and early 2018, staff approved any Street Exception that a developer requested, and Planning staff experience in these years was that the Public Works Department prefers curb-tight sidewalk and existing conditions anyway generally beyond curbs as long as there were minimum improvements to driving area between curbs and subsurface/underground potable water, sanitary sewer, and stormwater utilities. In more recent years, Planning staff took the lead in at least imposing conditions on Street Exception approvals to get a degree of improvements and/or fees in-lieu. Regarding OR 214, Planning staff years ago recognized the *de facto* policy decision by other departments to leave the ODOT-improved segment as is and not have individual redevelopments upgrade their frontages to have landscape strips, new sidewalk that conforms, and buried power lines redevelopment by redevelopment.

The developer's chief justification for the EXCP, which originally proposed no upgrades of nonconforming street frontages, was convenience, saving money, and be of no profit to the gas station or commercial office enterprises. For any development, if and where the City grants Street Exceptions, it implicitly assumes the taxpayer cost of upgrading frontages itself through capital improvement projects. This guided Planning staff applying the EXCP criteria and conditioning.

Through both conditional use and Street Exception, Planning staff applies conditions that grant EXCP approval for both frontages, but also to give the City some public benefit for leaving the highway as is or mostly as is and for Oregon way not having required on-street parking; require the developer to make the Oregon Way frontage the best for pedestrians through wide landscape strip with street trees, wide sidewalk, and setting maximums for Oregon Way driveway width; and securing fees in-lieu.

Fees in-Lieu

For Condition EX1 and Attachment 203 (fee table) regarding fees in lieu of upgrading highway sidewalk to conform to Fig. 3.01B, staff derived as follows:

- Poured concrete at \$33.00 per sq ft;
- Sidewalk 6 ft wide per Fig. 3.01B;
- Frontage width of 265 ft per Tax Map 052W12DB as sidewalk extent; and
- 150% of the subtotal to account for construction public labor instead of private labor, based on the percentage in WDO 4.02.08 as Ordinance No. 2602 amended.

This calculates as $(\$33 \times 6 \times 265) \times 1.5 = \$78,705$.

For Condition EX1 and Attachment 203 (fee table) regarding fee in lieu of electric powerline burial/undergrounding to conform with 3.02.04 and 4.02.12 as amended by Ordinance No. 2602, because as of June 2, 2022 the City has not yet adopted a fees in-lieu schedule, staff

CU 21-02 US Market Gas Station, etc. Staff Report
Attachment 102
Page 35 of 61

establishes a default fee the would be applicable if by the time necessary to assess the fee in order to issue building permit, the City would have not yet established this among other fees in lieu. The default fee is based on a Pacific Gas and Electric Company, a subsidiary of PG&E Corp., estimate that in general burial costs \$3 million per mile (PG&E "Currents" newsletter, article "Facts About Undergrounding Electric Lines", October 31, 2017

< $\frac{\text{https://www.pgecurrents.com/2017/10/31/facts-about-undergrounding-electric-lines/}{\text{equates to $3,000,000 / 5,280 ft = $568.18 per foot.}}$

For Condition EX2 and Attachment 203 (fee table) regarding fee in lieu of on-street parallel parking, staff derived as follows:

- Asphalt at \$15.00 per sq ft;
- Parking stall dimensions of 8 ft wide by 22 ft long;
- 3.5 parking stalls after taking the distance from in line with the south property line at
 Oregon Way north to the stop bar at the intersection with the highway (172 ft), then
 subtracting 50 ft (minimum parking distance from intersection), 30 ft (driveway and its
 curb flares), and 16 ft (two 8-ft long transition areas of curb at each end of parking aisle)
 resulting in (172 [50+30+16]) / 22 = 3.5; and
- 150% of the subtotal to account for construction public labor instead of private labor, based on the percentage in WDO 4.02.08 as Ordinance No. 2602 amended.

This calculates as $($15 \times [8 \times 22] \times 3.5) \times 1.5 = $13,860$.

△ In order to secure the development meeting the conditional use criteria and justify Street Exception, staff applies conditions.

Phasing Plan Provisions

5.03.05 Phasing Plan for a Subdivision, PUD, Manufactured Dwelling Park or any other Land Use Permit

A. Purpose: The purpose of a Type III Phasing Permit is to allow phased construction of development while meeting the standards of this ordinance (Sections 2 and 3), while providing fully functional phases that develop in compliance with the tentative approval for the development.

- B. Criteria: The proposed phasing of development shall:
 - Ensure that individual phases will be properly coordinated with each other and can be designed to meet City development standards; and
 - 2. Ensure that the phases do not unreasonably impede future development of adjacent undeveloped properties;
 - 3. Ensure that access, circulation, and public utilities are sized for future development of the remainder of the site and adjacent undeveloped sites.

Regarding B.1, the same as for B.3 below, and the applicant's Phasing Plan narrative dated October 11, 2021 and submitted October 18 states, "The project was designed as a whole to meet the requirements of the WDO and each phase of the project shall be coordinated and the appropriate steps shall be taken to ensure compatibility of the phases and conformance to the project as a whole." Staff concurs. A few site plan details of both Options 1 & 2 need revision, and reasonable conditions of approval can and would secure such following a land use decision. The criterion is met.

Regarding B.2, the applicant's Phasing Plan narrative dated October 11, 2021 and submitted October 18 states, "[T]he properties in question are not adjacent to any undeveloped sites." This is correct, and staff concurs. Additionally, in both of site plan Options 1 & 2, there are corollary improvements for the proposed buildings across both lots, and so either option would not impede development of either of the two lots composing the subject property. The criterion is met.

Regarding B.3, first, the same as for B.2 above. Also, the applicant's Phasing Plan narrative dated October 11, 2021 and submitted October 18 states, "All access, circulation, utilities, and other items have been designed as one project and will be constructed so that additional phases will fit seamlessly into the project as a whole." The applicant applied for a Phasing Plan to allow not having to construct all improvements with the first of several buildings, such as to stage development of the commercial office and its related improvements at a different time than development of the gas station, convenience store, and fuel pump canopy and related improvements.

CU 21-02 US Market Gas Station, etc. Staff Report
Attachment 102
Page 37 of 61

The Oregon Department of Transportation (ODOT) through Casey Knecht, P.E., Development Review Coordinator, ODOT Region 2, later informed the applicant and City staff by phone and e-mail of what staff terms the "ODOT factor", a phrase also found in a condition of approval, and put in an e-mail May 4, 2022 as agency commentary what City staff labels Attachment 102B. The following quotes Attachment 102B:

"Please include these comments as part of the Planning Commission hearing and notify ODOT of the decision by sending a copy to odotr2planmgr@odot.state.or.us when available.

The site has frontage on Hillsboro-Silverton Highway, No. 140 (OR-214), and is subject to state laws administered by ODOT. The site comprises two different tax lots, each with access restrictions recorded in the property deeds. Tax lot 3700 (2600 Newberg Hwy) has one access reservation at MP 37.09 that can serve tax lot 3700 only. This corresponds with the existing driveway on the highway. Tax lot 3600 (2540 Newberg Hwy) has no access rights to the highway and no access rights to a portion of Oregon Way between the highway intersection and a point 191 feet south of the highway intersection center. This leaves a 36-foot window along Oregon Way adjacent to the southern property line where all vehicular access must occur for tax lot 3600. This corresponds with the existing driveway on Oregon Way. I have attached the relevant property deeds from the Marion County clerk.

Both site plans allow for vehicles to enter tax lot 3600 (2540 Newberg Hwy) via tax lot 3700 (2600 Newberg Hwy) which is in violation of the access rights listed in the deeds. The additional driveway on Oregon Way falls in the area of access control (outside the 36-foot window), and would also be in violation of the access rights listed in the deeds. There is a process for modifying or lifting access rights, called a Grant of Access. The applicant would need to apply to the state for a Grant of Access, and demonstrate that the changes to the access rights would benefit the highway. If the application is approved, the deeds would be modified and re-recorded with the county clerk to reflect the change.

If the city approves this land use proposal with either of the site plan options, there must be a condition of approval that the applicant shall obtain the proper access rights for both tax lots prior to any construction, so as to not violate their own deeds."

Staff had no reason to decline the access management desire of ODOT or challenge its authority over state highways and access to and from them.

Second, the ODOT factor became a reason, if not the compelling reason, for City staff to support with conditions a Phasing Plan for which the applicant had already applied.

Third, either site plan Option 1 or 2 would meet City requirements for access and circulation and meet whatever ODOT access permit decision the agency later makes apart from the City land use process and decision-making. Staff believe it would appear and be punitive for the City to deny the subject development because of the authority and stated position of a state agency regarding its own permit process, particularly a large, byzantine, and slow agency, and because the outcome of that ODOT permit process could be either approval or denial of what

CU 21-02 US Market Gas Station, etc. Staff Report
Attachment 102
Page 38 of 61

the developer wants: widening the highway driveway and having no restrictions on vehicular access to, from, and within the development as a whole.

Fourth, as is routine for its land use review of developments, the Public Works Department through Attachment 102A has the usual kind of infrastructure text for the development in question and that is premised on the department approach to *de facto* approve any development, in turn premised on the idea that during its own department processes and reviews following the land use review stage, such as for civil engineering plan (CEP) plan review and right-of-way (ROW) permits, it will coordinate with ODOT to apply specific agency and City public works requirements and have the developer make so whatever is necessary to get ODOT and Public Works Department approvals that both respect conditions of approval that the Department sees as led and administered by the Planning Division while also meeting public works requirements for public infrastructure both on-site and in ROW and public utility easements (PUEs), the "public utilities" that criterion B.3 mentions. Essentially, the Public Works Department indicates that criterion B.3 is met or can be met through Attachment 102A and its later department processes and reviews following the land use review stage, such as for civil engineering plan (CEP) plan review and right-of-way (ROW) permits, so Planning Division staff defer and concur.

Lastly, City staff act on the premise that while a local government can and should deny an application that is inconsistent with applicable land use regulations, it can and should avoid denial if staff can impose reasonable conditions of approval. For virtually every land use review, staff can impose reasonable conditions of approval to avoid denial, and the review of the subject development is such a case.

The legislature gives implicit support for the concept in at least two statutes. The statutes are not applicable as regulations but are relevant regarding legislative intent. ORS 197.522 "Local government to approve subdivision, partition or construction; conditions" is about partition, subdivision, and needed housing, none of which are relevant to the subject development; however, its subsection (4) states, "A local government shall deny an application that is inconsistent with the comprehensive plan and applicable land use regulations and that cannot be made consistent through amendments to the application or the imposition of reasonable conditions of approval." The second, OS 227.185 "Transmission tower; location; conditions" – no transmission tower being relevant to the subject development – states, "The governing body of a city or its designee may allow the establishment of a transmission tower over 200 feet in height in any zone subject to reasonable conditions imposed by the governing body or its designee". These statutes indicate that the legislature expects local governments to apply land use conditions of approval in preference to denying. Also, neither statute defines the term "reasonable", and the term is elastic. Staff drafted the conditions to be reasonable and based on the characteristics of the subject development. Staff emphasizes that besides the Phasing Plan, the master or parent application type is Conditional Use, a term that says it all about the premise of conditioning. Criterion B.3 is met.

CU 21-02 US Market Gas Station, etc. Staff Report
Attachment 102
Page 39 of 61

Remaining Provisions

These are applicable provisions not already addressed in the application type provisions sections above.

4.01.07 Consolidated Applications

An applicant may request, in writing, to consolidate applications needed for a single development project. Under a consolidated review, all applications shall be processed following the procedures applicable for the highest type decision requested. It is the express policy of the City that development review not be segmented into discrete parts in a manner that precludes a comprehensive review of the entire development and its cumulative impacts.

The proposal is consolidated.

In conclusion to the above analyses and findings, staff would recommend that the Planning Commission consider the staff report and its attachments and approve the consolidated applications package with conditions. Approval would include the site plan Options 1 & 2.

Recommendation

Approval with conditions: Staff recommends that the Planning Commission consider the staff report and its attachments and approve the consolidated applications package with the conditions recommended by staff below:

General

- G1. By and as part of building permit application, the applicant shall submit revised site plans meeting the conditions of approval and obtain Planning Division approval through sign-off on permit issuance by the Building Division.
- G2. The applicant or successors and assigns shall develop the property in substantial conformance with the final plans submitted and approved with these applications, except as modified by these conditions of approval. Were the applicant to revise plans other than to meet conditions of approval or meet building code, even if Planning Division staff does not notice and signs off on building permit issuance, Division staff retains the right to obtain restoration of improvements as shown on an earlier land use review plan set in service of substantial conformance.
- G3. References: Attachment 201 serves as a dictionary or glossary defining certain abbreviations, acronyms, phrases, terms, and words in the context of the conditions of approval. The 200 series of attachments are as binding as the conditions of approval in the main body of the final decision.
- G4. Due dates / public improvements:
 - a. When public street improvements, and any fees in lieu of public improvements, are due shall be per WDO 3.01.02 and 4.02.12 through Ordinance No. 2602 (LA 21-01) unless if and where a condition of approval has more restrictive timing.
 - b. Where phasing is relevant, building permit issuance means issuance for the phase in which the conditioned improvement is located.
 - c. Where changes to street addresses are necessary, the developer shall apply through the Planning Division for and obtain approval of an <u>Address Assignment Request</u>. This is due prior to building permit application, and if property line adjustment or lot consolidation were to become relevant, then also after recordation with County.
- G5. Recordation due dates: The applicant shall apply to the County for recordations of items that the City requires no later than six (6) months prior to expiration of the land use approval as WDO 4.02.04B establishes, and shall complete recordations no later than three years past the land use "final decision" date. The due date to complete recordations shall not supersede when recordations are due relative to the building permit stage.
- G6. Fees: The developer shall pay fees per Attachment 203.

CU 21-02 US Market Gas Station, etc. Staff Report
Attachment 102
Page 41 of 61

Phasing Plan 21-01

PP. Phasing Plan:

- 1. Options 1 & 2: The developer may develop a site plan revised to conform to conditions of approval and based on either:
 - a. Option 1: The site plan concept last revised and re-submitted for land use review on February 9, 2022 and premised on there being no ODOT factor (see the ODOT factor condition); or
 - b. Option 2: The different site plan revised and submitted May 2, 2022 premised on the developer's understanding of the ODOT factor.

This due by building permit application.

- 2. Basic Descriptions:
 - a. Option 1: See Exhibit PP1 below for plan details.
 - (1) On Tax Lot 3600 (east, corner lot), a single northeast building of with convenience store of 4,110 sq ft and a commercial office of 1,863 sq ft.
 - (2) On Tax Lot 3700 (west, interior lot), a north fuel pump canopy and a south commercial office building of 5,000 sq ft.
 - b. Option 2: See Exhibit PP2 below for plan details.
 - (1) On Tax Lot 3600 (east, corner lot), a single northeast commercial office building of 3,649 sq ft.
 - (2) On Tax Lot 3700 (west, interior lot), a north fuel pump canopy and a south convenience store of 4,314 sq ft.
- 3. Phasing: The developer may phase an option:
 - a. Option 1: To develop the south office building and necessary corollary improvements later than the gas station complex of convenience store, attached commercial office, and fuel pump canopy and necessary corollary improvements.
 - b. Option 2: To develop at different times (1) the gas station complex of convenience store and fuel pump canopy and necessary corollary improvements, and (2) the northeast office building and necessary corollary improvements.
- 4. All conditions apply to any option, any phasing, unless worded or under a header such that a condition applies more specifically. Where something is due by building permit application or issuance, it means the first of any phase, any building, unless a condition is more specific.
- 5. By and as part of building permit application, the applicant shall submit revised site plans meeting the conditions of approval.

CU 21-02 US Market Gas Station, etc. Staff Report
Attachment 102
Page 42 of 61

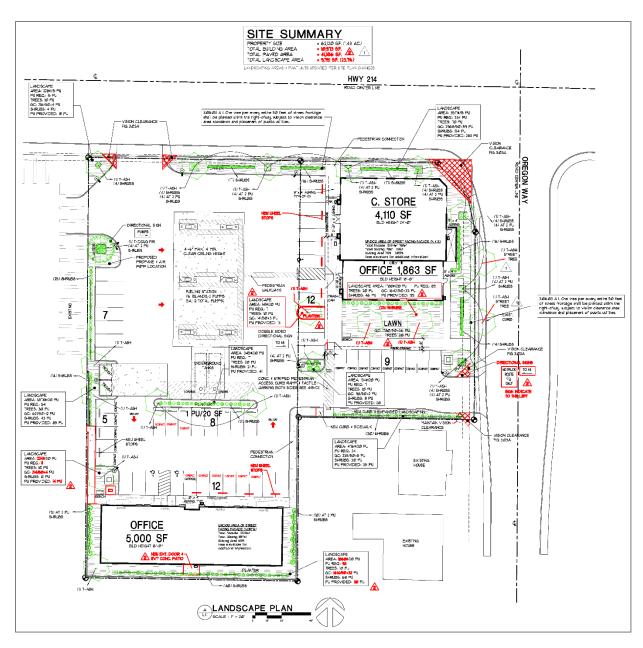


Exhibit PP1: Option 1 Site Plan Excerpt Prior to Revision per Conditions of Approval

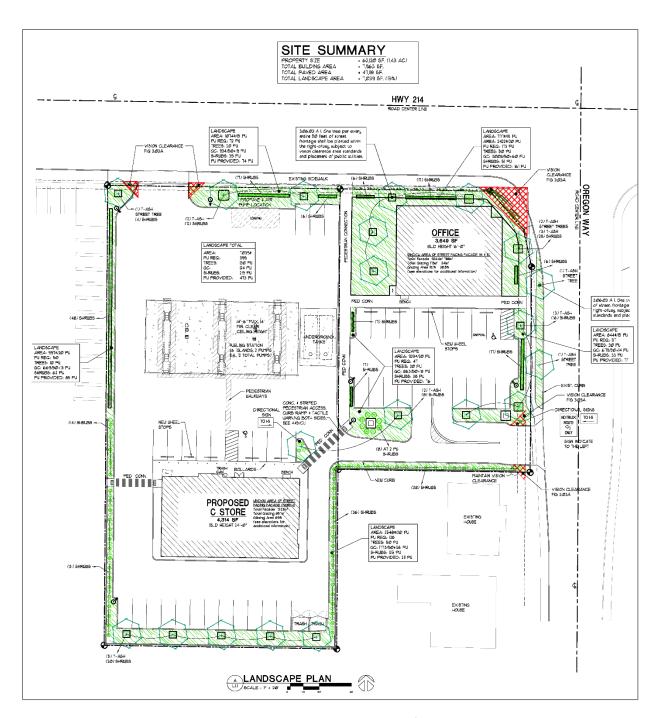


Exhibit PP2: Option 2 Site Plan Excerpt Prior to Revision per Conditions of Approval

Design Review 21-10

- D1. PUEs: If minimum width streetside PUEs do not yet exist as 10 ft along the highway per WDO Figure 3.01B or 5 ft along Oregon way per 3.02.01B, the developer shall grant such. Max widths shall be per Conditions EX1 & EX2. This is due by building permit application.
- D2. Parking / vehicular circulation setback: Option 2: To conform to WDO 3.05.02E, the developer shall do one of the following: (a) revise the site plan to set back parking and vehicular circulation area min 5 ft from the northerly east lot line of 2600 Newberg Hwy (Tax Lot 3700) and to landscape the setback per 3.06 and plant min 4 trees within it; (b) have a shared use agreement per 3.05.02E; or (c) doing (a) in part and in combination with (b). This is due by building permit issuance.
- D3. Parking / vehicular circulation directional markings/signage: To conform to WDO 3.05.02J, during building permit review the Director may administratively establish details, specifications, and revisions to administer the WDO section. Further site plan revisions necessary to conform, if any, shall be due by building permit issuance.

Conditional Use 21-02

CU1. Architecture:

- a. Canopies / fixed awnings:
 - (1) General: Min height clearance 9 ft.
 - (2) Fuel pump canopy: Max ceiling height 14.5 ft to either (a) ceiling or (b) ceilingmounted lighting fixtures, whichever is lower.
 - (3) Option 1:
 - (a) Convenience store / NE office building: Each west entrance shall have a fixed awning, canopy, building wall projection, or secondary roof that shelters from the weather, min area 48 sq ft, min depth 4 ft. Each east mandoor shall have the same, except min area 18 sq ft, min depth 3 ft.
 - (b) South commercial office: Each north entrance shall have a fixed awning, canopy, building wall projection, or secondary roof that shelters from the weather, min area 48 sq ft, min depth 4 ft. It may be smaller if combined with a building recess and together they meet the min area. The south patio door elsewhere conditioned shall have the same, except min area 18 sq ft, min depth 3 ft.
 - (4) Option 2:
 - (c) Convenience store: North entrance shall have a fixed awning or a canopy that shelters from the weather, min area 48 sq ft, min depth 4 ft. Each side or rear mandoor shall have the same, except min area 12 sq ft, min depth 2 ft.
 - (d) NE commercial office: The main entrance shall have any of the following that that shelters from the weather: (1) a fixed awning or a canopy, (2) a building recess, or (3) combination. Min area 64 sq ft, narrowest dimension 6 ft. Min one of the other entrances shall have the same, except min area 24 sq ft, narrowest dimension 4 ft. Every south and west façade storefront window shall have any of a fixed awning, canopy, building wall projection, secondary roof, or sun louver min width same as the window and min depth 2 ft. Building color shall be other than black or charcoal.
- b. Cladding/materials:
 - (1) Option 1: Convenience store / NE commercial office: Base cladding min height 2 ft of brick, CMU finished to resemble cut stone, or adhered stone. The proposed east CMU mandoor screen wall, if not precluded by streetside PUE, shall be max height 4 ft, 2 inches, have the bottom 2 courses be split face and the upper 4 courses ground face and be capped with smooth concrete. The NE corner angled wall shall have a window min area 15 sq ft, min 2.5 ft wide, and wholly within 8.5 ft of grade.

CU 21-02 US Market Gas Station, etc. Staff Report
Attachment 102
Page 46 of 61

- (2) Option 2: NE commercial office: Base cladding min height 2 ft of brick, CMU finished to resemble cut stone, or adhered stone.
- c. Entrance: Option 2: NE commercial office: The main entrance door or doors of the office building shall be at any of the NE corner, within the east façade, or at the SE corner of the building. A corner entrance may be angled or both at one side of a corner and within 12 ft of the corner where main wall planes intersect or would intersect.
- d. Scuppers: Any building rainwater scuppers shall not to dump onto the pavement of a wide walkway.
- e. Setbacks:
 - (1) General: Site NE corner min setback shall equal streetside PUE.
 - (2) Option 1:
 - (a) Convenience store / NE commercial office: max 15 ft from highway and max 20 ft from Oregon Way ROW (measured from straight line ROW, not variable ROW at intersection).
 - (b) South commercial office: min 5 ft from Tax Lot 3700 east, south, and west lot lines.
 - (3) Option 2: NE commercial office: max 15 ft from each of highway and Oregon Way ROW (measured from straight line ROW, not variable ROW at intersection). NE corner min setback shall equal streetside PUE. West and south setbacks each shall be min 10 ft.

f. Windows:

- (1) General: All windows shall be square, round, or vertically proportioned. Operable windows shall have insect screens.
- (2) Min area:
 - (a) Option 1:
 - (i) Convenience store: West façade 30%; north 30%; east 36 sq ft.
 - (ii) NE commercial office: West and south façades 30%; east 144 sq ft.
 - (iii) South commercial office: North façade 30%; east 15%; south 20%; and west 20%.
 - (b) Option 2:
 - (i) Convenience store: North façade 30%. Each of east, south, and west facades min 1 window min 7.5 sq ft, min 1.5 ft wide, and wholly within 8.5 ft of grade.
 - (ii) NE commercial office: North façade 30%; east 40%; south 30%; and west 20%.

CU2: Architectural Wall (AW) / Fences / Fencing:

a. Exemption: Where chain-link fence with slats already exists along the north and west lot lines of Tax Lot 3500 (953 Oregon Way), the developer may exempt these two lines

CU 21-02 US Market Gas Station, etc. Staff Report
Attachment 102
Page 47 of 61

from AW if the homeowner in writing consents to exemption and the developer submits documentation by and as part of building permit application.

- b. Min height shall be along the:
 - (1) North and west lot lines of Tax Lot 3500 6 ft, 2 inches (if CMU, equal to 9 courses of blocks plus 2-inch smooth concrete cap).
 - (2) North and east lot lines of Tax Lot 90000 (950 Evergreen Road) 8 ft, 2 inches (if CMU, equal to 12 courses of blocks plus 2-inch smooth concrete cap).
 - (3) Where fencing may substitute per other conditions, for part 1. above it shall be 6 ft, and for part 2. above, 8 ft.
- c. Height at AW ends: Min height shall drop where subject to stair-stepped height limits in yards abutting streets per WDO 2.06.02, within VCA or sight triangles per 3.03.06, and AW shall remain outside streetside PUEs. AW may cross an off-street PUE, if any exist, with written authorization by the Public Works Director, and the Public Works Director may instead direct that instead of a segment of wall that there be coated chain-link fencing with slats across an off-street PUE. For crossing of private easements, the developer similarly may instead fence.
- d. Gaps or rectangular openings:
 - (1) There shall be one along the east lot line of Tax Lot 90000, min 4 ft wide and 6 ft, 8 inches high above grade, and with the south end of the gap aligned with the Tax Lot 90000 north east-west drive aisle, south curb, north face.



Exhibit CU2d(1)



Exhibit CU2d(2)

- (2) If AW exemption per part a. above is not applicable, then there may be a gap along the west lot line of Tax Lot 3500, aligned with where there exist west backyard chain-link gates, minimum width equal to the width of the gates.
- e. Color: Masonry and any paint shall be a color or colors other than black, charcoal, or gray. For any other fence / fencing or free-standing wall, including gates if any, the coating and slats that WDO 2.06.02D requires and any wall shall be a color or colors other than black or charcoal. On free-standing walls with two or more colors, darker colors shall be towards the bottom and lighter ones towards the top.
- f. Material: AW segments at 40 ft north or farther from the south lot line of Tax Lot 3700 may be partly made of opaque cedar wood fencing if the wall remains mostly masonry. Specifically, masonry must constitute the bottom extent of wall segment from grade up to min 2 ft, 8 inches above grade, and there shall be piers or pilasters per "Details" below. Exhibit CU2f below illustrates a similar, conforming example:

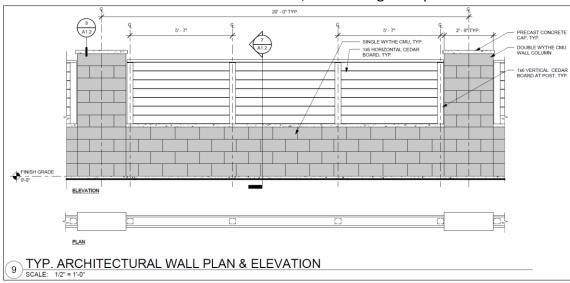


Exhibit CU2f (DR 2017-08)

g. Details: Each AW segment end shall have a pier or pilaster min 16 inches wide relative to wall face and projecting min 4 inches. Each segment shall have a min number of piers or pilasters equal to a ratio of 1 per 40 ft of wall. Each pier or pilaster shall be capped with ornamental concrete in the form of any of a shallow-sloped pyramid or sphere or other finial atop such pyramid. If the AW is CMU, the 8th and 9th CMU courses above grade shall be ground face (5 ft, 4 inches through 6 ft above grade).

CU 21-02 US Market Gas Station, etc. Staff Report
Attachment 102
Page 49 of 61

CU3. Bicycle parking: Amount and general location: The developer shall provide bicycle parking as follows:

a. Option 1 min stalls:

(1) Convenience store: 2(2) NE commercial office: 2(3) South commercial office: 4

b. Option 2 min stalls:

(1) Convenience store: 2(2) NE commercial office: 4

c. General: Standards other than amount and general location shall conform to WDO 3.05.06 through Ordinance No. 2602 (LA 21-01).

CU4. Electric power lines: The development shall conform to WDO 3.02.04 through Ordinance No. 2602 (LA 21-01).

CU5. Landscaping:

- a. Bench: In the landscaped open space at or near the NE commercial office space, along a wide walkway or in a plaza, install either a 6-ft wide bench with back or a picnic bench. Set back from walkway and pave the setback, min either 2 ft for a bench or 3 ft for a picnic bench.
- b. Buffering/Screening: Evergreen hedge or shrubbery shall:
 - (1) Line AW segments.
 - (2) Screen transformers and other at-grade electrical and mechanical equipment along their sides, excepting the side intended for technician access.
 - (3) Serve as means of conformance with WDO 3.06.05B (parking screening).
- c. Coniferous/evergreen trees: 1 min of trees new to the site. The 1 shall be 1 min of the following coniferous or evergreen species:

Cedar, Western Red	Madrone, Pacific
Douglas-Fir	Oak, Oregon White
Fir, Grand	Pine, Ponderosa; and
Hemlock, Western	Yew, Pacific

- d. Front yard
 - (1) Trees:
 - (a) Plant min 7 trees in the yard along the highway and min 10 ft and max 20 ft from ROW.
 - (b) Plant min 4 trees in the yard along Oregon Way, min 5 ft and max 20 ft from ROW, in a loose row with min 3 of them spaced offset from and complementing street trees.
 - (2) Hedge/shrubbery: In all areas not occupied by buildings and pavement, landscape per WDO 3.06.

CU 21-02 US Market Gas Station, etc. Staff Report
Attachment 102
Page 50 of 61

- (a) On Tax Lot 3700 in the yard along the highway, plant a hedge or row of continuous small or medium shrubbery extending between the driveway and east lot line. Plant and maintain min 5 ft from sidewalk and max 12 ft from ROW.
- (b) Option 1: On Tax Lot 3600 in the yard along the Oregon Way, line the convenience store rear east free-standing wall with a hedge or row of continuous small or medium shrubbery.
- (c) Option 2: On Tax Lot 3600 in the yard along the Oregon Way, plant a hedge or row of continuous small or medium shrubbery extending along the east deadend of the drive aisle. Plant and maintain min 1 ft from sidewalk.

e. Site interior:

- (1) AW: Line each Architectural Wall segment with a hedge or row of continuous medium or large shrubbery.
- (2) Bark dust: Of landscaped area, max 3% may be bark dust, mulch, wood chip, pebbles, or sand. Walkway and plaza paving do not count against landscaping minimums.
- (3) Lawn large tree: Within open space within 30 ft of the NE commercial office, plant min 2 trees, either both large or min 1 medium and 1 large.
- (4) Plaza: At or within 30 ft of the NE commercial office space and adjacent to a wide walkway shall be a plaza min 81 sq ft, exc. walkway area, at 9 ft narrowest dimension, paved with bricks, concrete pavers, field or flagstone, or poured cement.
- (5) South yard: Within 100 ft of the Tax Lot 3700 south lot line, plant either for Option 1 min 2 trees or for Option 2 min 5 trees. Of these for Option 2, min 2 large with the westernmost tree being one of the large ones.

f. Parking area:

- (1) Option 1:
 - (a) Convenience store: A landscape island shall be roughly in the middle the parking aisle fronting the convenience store that conform to WDO 3.06.03C through Ordinance No. 2602 (LA 21-01).
 - (b) NE office: Plant a large tree in the southwesterly area of the south yard lawn.
 - (c) South office: For common use by tenants, have a south rear door and a patio of brick, pavers, or poured concrete min 7 ft north-south by 11 ft east-west. Align patio flush with door outer swing. Plant a small tree near patio west side.
- (2) Option 2:
 - (a) Convenience store: A landscape island shall cap each end of the parking aisle fronting the convenience store per WDO 3.06.03C through Ordinance No. 2602 (LA 21-01), and the east island may be on the west side of the wide walkway that another condition requires.
 - (b) NE office: The office parking area drive aisle east end shall have the inside of curb min 3 ft from edge of streetside PUE, and the 3-ft width shall have a tree.

CU 21-02 US Market Gas Station, etc. Staff Report
Attachment 102
Page 51 of 61

CU6. Lighting:

- a. General: Shall conform to WDO 3.11 through Ordinance No. 2602 (LA 21-01).
- b. Buffer: Parking area or other pole-mounted fixtures are prohibited between the north lot line of 953 Oregon Way (Tax Lot 3500) and the east-west drive aisle.
- c. Fuel pump canopy: Max 16 ceiling fixtures. Any ceiling fixture shall be no closer to ceiling outer edge than 4 ft. Neon lighting, or a lighting technology that mimics the appearance of neon lighting, is prohibited on the fuel pump canopy and on the southernmost primary building on Tax Lot 3700. The developer shall make so either of the following: (1) ceiling light fixtures shall not drop below the ceiling plane, or (2) for ceiling-mounted fixtures, the canopy roof edge perimeter shall as a shield drop or extend down to the same plane as the underside of the lowest fixture. In either case, fixtures that drop or extend down from the ceiling shall each have opaque housing on all sides.

d. Option 1: Max of:

- (1) Convenience store: 1 wall fixture on the east rear and none on the north side.
- (2) NE commercial office: 1 wall fixture each on the west front and east rear.
- (3) South commercial office: 1 wall fixture at the south rear and none at the east and west sides.

e. Option 2: Max of:

- (1) Convenience store: 2 wall fixtures on the south rear, 1 each on the east and west sides. Parking area or other pole fixtures prohibited in the east side, south rear, and west side yards.
- (2) NE commercial office: 1 wall fixture on the south, 1 each on the east and west sides, and the south yard limited to 2 parking area poles. No other pole types in the north, east, or west yards.

CU7: Parking:

- a. Standard stall length: The developer may set standard size 90° angle stall length at 18 ft instead of 19 per WDO Table 3.05B through Ordinance No. 2602 (LA 21-01).
- b. EV: Electric vehicle (EV) parking shall be min 1 stall with a charging station and placed near commercial office area. Remaining EV parking standards shall be per WDO 3.05 through Ordinance No. 2602 (LA 21-01).
- c. Wheelstops / wheel stops: Every angled or 90° parking stall along a wide walkway shall have a wheel stop max 4 inches high. A wheel stop shall not straddle adjacent stalls. If and where the developer opts to install wheel stops where not required, they also shall conform to the height limit.

CU8. Walkways:

CU 21-02 US Market Gas Station, etc. Staff Report
Attachment 102
Page 52 of 61

- a. General: Shall conform with WDO 3.04.06 through Ordinance No. 2602 (LA 21-01).
- b. Gap: A walkway, min 3.5 ft wide as an exception to part a., shall connect a building perimeter walkway system west to the AW conditioned gap or opening along the west lot line of Tax Lot 3700.
- c. Convenience store & fuel pump canopy: The three pump islands together shall have one or more walkway crossings to the convenience store main entrance walkway, and as an exception to part (a) above, each min 3 ft wide. For Option 1, minimum 1 crossing; for Option 2, min 2. A walkway crossing may incorporate an ADA parking space accessible aisle. Walkways should be straight, and where needing to jog, should jog at 45° max and at the point where vehicles pass in opposite directions or between vehicle lanes.
- d. Option 2: At the NE of the convenience store, the wide walkway crossing of drive aisle shall be at or near a right angle to drive aisle.

CU9. Access management: These are due by building permit application:

- a. General: Access management shall conform with WDO 3.02.01E, 3.04.01A.2, and 3.04.03C & D through Ordinance No. 2602 (LA 21-01). Regarding recordation of one or more types of legal instruments and how, the developer shall conform to the conditions in ways that satisfy the County.
- b. Bicycle/pedestrian: The develop shall grant the public access to walk, cycle, and roll along each wide walkway across Tax Lot 3600 to the benefit of 3700, relating to Oregon Way sidewalk access, and across Tax Lot 3700 to the benefit of 3600, relating to highway sidewalk access.
- c. Shared parking: If and where one or both of the subject lots lack minimum off-street parking ratio for all land uses on the lot, the developer shall revise site plans to conform to WDO 3.05.02 & Table 3.05A or shall create a shared parking agreement per WDO 3.05.05. This is due by building permit issuance.

d. Cross access:

- (1) Local: To conform to WDO 3.04.03A.3, B.1, B.3 & C.2 and, through Ordinance No. 2602 (LA 21-01), WDO 3.04.03B.3, C.1, C.3, C.4, & D.2, for what is termed any of cross access, ingress/egress, public access, or shared access, the developer shall grant the public access (a) across Tax Lot 3600 to the benefit of 3700, (b) across Tax Lot 3700 to the benefit of 3600, and (c) across Tax Lot 3700 to the benefit of 3800. The cross access shall follow a drive aisle or aisles and align at the common lot line. Regarding (c), the north east-west drive aisle shall stub to somewhere along the northerly 75 ft of the west lot line and at min 20 ft wide, and though the stub shall not be curbed it may be fenced.
- (2) ODOT factor:
 - (a) The developer shall apply to and obtain from ODOT the proper access rights for both tax lots prior to any construction, so as to not violate the deeds.

CU 21-02 US Market Gas Station, etc. Staff Report
Attachment 102
Page 53 of 61

- (b) For context, see Attachment 102B. The ODOT Region 2 contact is Casey Knecht, P.E., Development Review Coordinator, (503) 986-5170, casey.knecht@odot.state.or.us. The City interprets "prior to any construction" to mean by issuance of the first structural building permit. Otherwise, City staff are inclined to defer to ODOT interpretation of part (a) above, including whether it is applicable to either Option 1 only or both site plan options.
- (c) If after City land use decision ODOT objects specifically to how the City administers or the developer conforms to other parts of the condition or to other conditions concerning vehicular access, then the developer may request and the Director may administratively approve in writing changes to administration or conformance to accommodate the ODOT factor while still having the development meet the WDO and conditions of approval to the max extent remaining. The Director may require developer application for any of Extension of a Development Decision per WDO 4.02.05 or Modification of Conditions per WDO 4.02.07.
- (d) If after City land use decision ODOT directs access management in conflict with other parts of the condition or to other conditions concerning vehicular access, then the developer shall forward the written direction from ODOT to the attention of the Director; describe the conflict(s); describe the minimum deviation from conformance necessary to comply with ODOT direction while also conforming to the remainder of the condition to the maximum, including plan view illustrations where helpful; and request Director approval through a dated document that cites the land use case file and condition numbers. The Director may approve what the developer first requests or a modified request. The City intends that if the developer were to make use of this part (d) of the condition, he would do so once.

CU10. Gas station operations:

a. Noise:

- (1) Fuel pumps: Audible audiovisual advertising, if any, is prohibited from sounding from fuel pump electronic display speakers. Such advertising shall be limited to sight only.
- (2) Tire/vacuum: Addition of any vehicle interior vacuum facility outdoors, tire pump facility outdoors, or other similar mechanical facility outdoors for gas station customers that makes noise shall be located min 100 ft north of the south lot line of Tax Lot 3700. Based on Ordinance No. 2312, any vacuum shall be closed to customer use min from 9:00 p.m. to 7:00 a.m.
- b. Trash: There shall be at least one trash receptacle along each of the walkways, at min 1
 ft from walkway edge, to and from the highway and Oregon Way sidewalks, within 25 ft

CU 21-02 US Market Gas Station, etc. Staff Report
Attachment 102
Page 54 of 61

of ROW, for intended use by convenience store customers, and remaining privately maintained and serviced.

c. Vehicular circulation:

- (1) Driveways:
 - (a) Highway: Max 1 driveway. The driveway shall remain right-in, right-out and be max width equal to the existing 30 ft unless ODOT approves wider up to 36 ft; however, if the developer widens the driveway from the existing 30 ft, then min 12 ft of the width and min depth equal to either the throat or 13.5 ft, whichever is longer, shall be poured concrete. The area of poured concrete that is outside the ROW shall be patterned, stamped, or treated to resemble paving stones and shall be felt by motorists driving over it. (The objective is to calm traffic by preventing fast, swooping maneuvers and to direct vehicles to 24 ft width of asphalt within the driveway throat, while allowing semi-trailer truck turning movement across 36 ft of width.) If the driveway widens, the developer also shall reconstruct the entire driveway to conform to City Public Works standard drawing Detail No. 4150-4 "Property Line Sidewalk at Driveway", except that if and where a specific conflict arises between City and ODOT public works construction standards, that of ODOT engineering guidance would supersede.
 - (b) Oregon Way: Max 1 driveway, max width 24 ft if two-way or 12 ft if one-way. Option 2: Throat, if two-way, then the inbound lane max 24 ft deep where lane is parallel with the outbound lane.
- (2) I-5 directional signage: There shall be on Tax Lot 3700 outside of ROW and streetside PUEs directional signage that accomplishes directing on-site motorists bound for I-5, min 2 signs for Option 1 and 3 signs for Option 2, each min area 18 by 24 inches, mounted min 2 ft and max 7 ft above grade, text min 6 inches high, and including the standard Interstate 5 logo. The Director may administratively establish locations, details, specifications, and revisions to administer this condition part during building permit review. Further site plan revisions necessary to conform, if any, shall be due by building permit issuance.
- (3) Option 2: fuel pump queueing:
 - (a) General: Fuel pump queues shall be one-way either eastbound in Option 1 or southbound in Option 2. The developer shall stripe directional arrows and lines to direct motorists into fuel pump queues and distinguish the queues from driving routes around the fuel pump canopy.
 - (b) Stacking:
 - (i) Option 1: Of six queues, min 3 shall each fit stacking of min one car west of the fuel pump island.
 - (ii) Option 2: Of six queues, min 2 shall each fit stacking of min two cars north of the fuel pump island, and the remaining 4 shall each fit stacking of min one car.

CU 21-02 US Market Gas Station, etc. Staff Report
Attachment 102
Page 55 of 61

(4) Trucks: Until July 1, 2030, the Public Works Department may administratively regulate time, place, and manner of freight and truck access (ingress/egress) to and from the development and adjacent public streets. This condition shall not be construed to preclude the City past the date from regulating development freight and truck access via ordinances that are applicable generally to properties that happen to include the subject property.

CU11. Modification: Because the WDO, including 5.03.01, does not specify how changes to an approved conditional use (CU) and related site improvements might trigger another CU or modification of a CU approval, for Director determination the following serve as criteria and – where noted – as factors:

- a. Significant expansion of the use(s), factors being an increase in any of: total GFA by 25.0% or more or by an absolute value of 1,825 sq ft or more, and, the number of buildings by 1 or more;
- b. Increase in off-street parking by 6 or more stalls, even if the existing supply were in excess of the minimum required ratio(s);
- c. Net increase in impervious surface totaling at least 1,000 sq ft;
- d. Adding the land uses of automotive maintenance and repair, whether or not including through service bay structures.
- e. Development as defined in WDO 1.02 within twenty (20) feet of a property boundary and not already conditioned through the subject approval;
- f. Any proposal necessitating a request for Exception to Street Right-of-Way and Improvement Requirements ("Street Exception");
- g. Any proposal necessitating a request to vary from the WDO, that is, a variance;
- h. Any proposal necessitating a Type III or IV land use application type; and
- i. City adoption of a unified development ordinance replacing the WDO were to have intervened.

Modification of a specific condition of approval remains pursuant to WDO 4.02.07. Were the City to have amended the WDO to establish modification provisions for conditional uses, the Director may decide that the provisions supersede this condition of approval.

Conditional Use 21-02: Transportation

T-A:

- 1. OR 214 & Oregon Way: The developer shall pay a fee per Attachment 203 to fund a transportation study, specifically to investigate in coordination with ODOT (1) corridor signal timing and coordination adjustments and (2) improving safety by reducing vehicle turning or angle crashes. This is due by building permit issuance. [TSP R11 & TIA p. 12]
- 2. Consultant review: The developer shall pay a fee for the City to recoup the cost of its transportation consultant reviewing and advising upon the TIA.
- 3. I-5 interchange with OR 214: To reduce vehicle crashes, the developer shall pay a fee per Attachment 203.
- 4. OR 214 & Evergreen Rd: To mitigate effect on the intersection and reduce vehicle crashes, the developer shall pay a fee per Attachment 203.
- 5. OR 99E & OR 211/214: To mitigate effect on the intersection and reduce vehicle crashes, the developer shall pay a fee per Attachment 203.

T-T. Bus transit: Bus stop improvements: To further TDM through bus transit, regarding the WTS Oregon Way northbound stop that is adjacent to 966 & 980 Oregon Way, where because ROW and streetside PUE are too narrow relative to the street to accommodate installation, the developer shall pay a fee in-lieu as well as a fee in lieu of a bus stop bicycle rack per Attachment 203.

Street Exception 21-05

EX1. Frontage/street improvements: Highway: These shall be as follows:

- a. ROW: If and where there is a deficit, the developer shall dedicate ROW that meets or exceeds the min width necessary to conform to WDO Figure 3.01B "Major Arterial".
- b. PUE: If minimum width streetside PUE does not yet exist per WDO Figure 3.01B, then the developer shall grant it. Max width shall be 10 ft, unless if and where existing utilities that the developer does not relocate necessitate wider as documented by franchise utilities and the developer.
- c. Improvements: No min surface improvements other than either elsewhere conditioned or necessary to comply with ODOT engineering guidance or conform to PW direction. The developer shall pay fees in lieu of highway improvements per Attachment 203.

EX2. Frontage/street improvements: Oregon Way: These shall be as follows:

- a. ROW: The developer shall dedicate ROW that meets or exceeds the min width necessary to conform to WDO Figure 3.01E "Access Street" and exceeds that width where necessary to accommodate both the existing northbound left turn lane and required half-street improvements.
- b. PUE: If minimum width streetside PUE does not yet exist per WDO 3.02.01B, then the developer shall grant it. Max width shall be per WDO 3.02.01F.2 through Ordinance No. 2602 (LA 21-01).
- c. Improvements:
 - (1) Parking: No 8-ft wide on-street parallel parking lane is required, this being an exception from what Figure 3.01E would have required. The developer shall pay a fee in-lieu per Attachment 203.
 - (2) Landscape strip: Min 6½ ft wide inc. curb width and with min 3 street trees with allowance of fee in lieu of 1 tree max. Planting of area remaining after tree planting and irrigation shall be per WDO 3.01.04B through Ordinance No. 2602 (LA 21-01).
 - (3) Sidewalk: Min 8 ft wide.
 - (4) Overlap: Wider sidewalk shall not narrow the landscape strip. The extra width of planter strip and sidewalk shall either (a) be within additional ROW that accommodates them, or (b) overlap outside ROW into streetside PUE, there being a recorded legal instrument granting public access to the overlap. If (b), then the developer shall submit a draft of the legal instrument for Planning and PW review by either civil engineering plan (CEP) review application to PW or building permit application, whichever is earlier. The developer shall submit copies of correctly recorded documents to the Planning Division by building permit issuance.

CU 21-02 US Market Gas Station, etc. Staff Report
Attachment 102
Page 58 of 61

Applicant Identity

Applicant	Ronald "Ron" James Ped, Ronald James Ped Architect, PC
Applicant's	n/a
Representative	
Landowner(s)	Lal Din Sidhu ("Don" Sidhu), Woodburn Petroleum LLC

Notes to the Applicant

The following are not planning / land use / zoning conditions of approval, but are notes for the applicant to be aware of and follow:

- 1. Records: Staff recommends that the applicant retain a copy of the subject approval.
- 2. Fences, fencing, & free-standing walls: The approval excludes any fences, fencing, & free-standing walls, which are subject to WDO 2.06 and the permit process of 5.01.03.
- 3. Signage: The approval excludes any private signage, which is subject to WDO 3.10 and the permit process of 5.01.10.
- 4. PLA Time Limit: WDO 4.02.04B. specifies that, "A final decision on any application shall expire within three years of the date of the final decision unless: 1. a building permit to exercise the right granted by the decision has been issued; 2. the activity approved in the decision has commenced; or 3. a time extension, Section 4.02.05, has been approved. Because unrecorded re-plats lingering indefinitely have burdened staff, a condition sets sooner time limits for subsection 2. to begin and finish recordation.
- 5. Mylar signature: The Community Development Director is the authority that signs plat Mylars and not any of the mayor, City Administrator, Public Works Director, or City Engineer. Only one City signature title block is necessary.
- 6. PLA Plat Tracker: Marion County maintains a plat tracking tool at http://apps.co.marion.or.us/plattracker/>. Use it to check on the status of a recordation request to the County. City staff does not track County plat recordation.

7. Technical standards:

a. Context: A reader shall not construe a land use condition of approval that reiterates a City technical standard, such as a PW standard, to exclude remaining standards or to assert that conditions of approval should have reiterated every standard the City has in order for those standards to be met.

CU 21-02 US Market Gas Station, etc. Staff Report
Attachment 102
Page 59 of 61

- b. Utilities: A condition involving altered or additional sidewalk or other frontage/street improvement that would in the field result in displacement or relocation of any of utility boxes, cabinets, vaults, or vault covers does not exempt the developer from having to move or pay to move any of these as directed by the City Engineer and with guidance from franchise utilities.
- 8. Other Agencies: The applicant, not the City, is responsible for obtaining permits from any county, state and/or federal agencies, which may require approval or permit, and must obtain all applicable City and County permits for work prior to the start of work and that the work meets the satisfaction of the permit-issuing jurisdiction. The Oregon Department of Transportation (ODOT) might require highway access, storm drainage, and other right-of-way (ROW) permits. All work within the public ROW or easements within City jurisdiction must conform to plans approved by the Public Works Department and must comply with a Public Works Right-of-Way permit issued by said department. Marion County plumbing permits must be issued for all waterline, sanitary sewer, and storm sewer work installed beyond the Public Right-of-Way, on private property.
- 9. Inspection: The applicant shall construct, install, or plant all improvements, including landscaping, prior to City staff verification. Contact Planning Division staff at least three (3) City business days prior to a desired date of planning and zoning inspection of site improvements. This is required and separate from and in addition to the usual building code and fire and life safety inspections. Note that Planning staff are not primarily inspectors, do not have the nearly immediate availability of building inspectors, and are not bound by any building inspector's schedule or general contractor convenience.
- 10. Stormwater management: The storm sewer system and any required on-site detention for the development must comply with the City Storm Water Management Plan, Public Works storm water practices and the Storm Drainage Master Plan.
- 11. Public Works Review: Staff performs final review of the civil plans during the building permit stage. Public infrastructure must be constructed in accordance with plans approved by the City, as well as current Public Works Construction specifications, Standard Details, and general conditions of a permit type issued by the Public Works Department.

12. ROW:

- a. Dedication: The Public Works Department Engineering Division has document templates for ROW and easement dedications that applicants are to use.
 - ROW and public utility easement (PUE) dedications are due prior to building permit issuance per Public Works policy.
- b. Work: All work within the public ROWs or easements within City jurisdiction must require plan approval and permit issuance from the Public Works Department. All public

CU 21-02 US Market Gas Station, etc. Staff Report

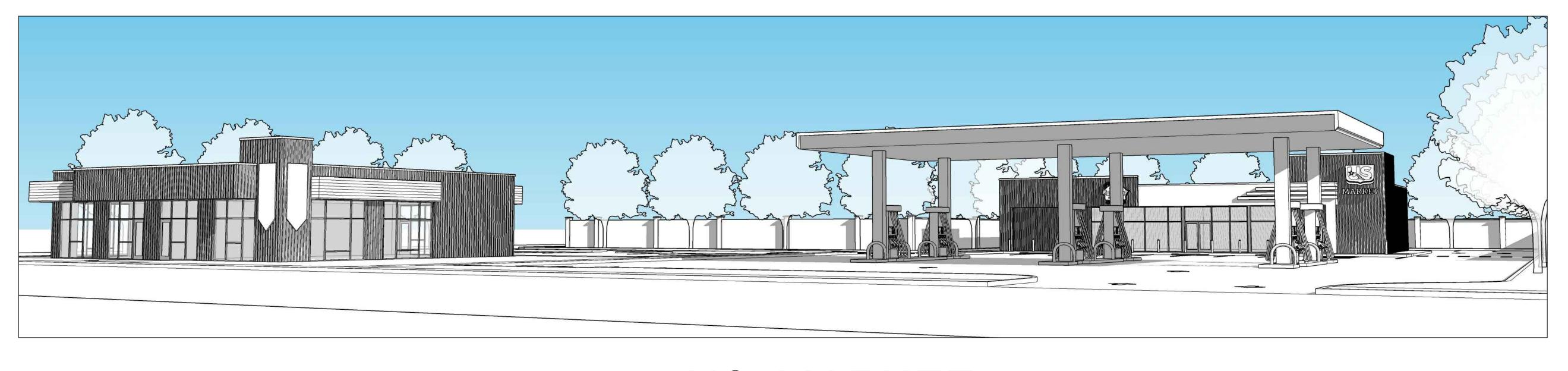
improvements construction work must be performed in accordance with the plans stamped "approved" by the City, and comply with the City's Standard Specifications and Standard drawings.

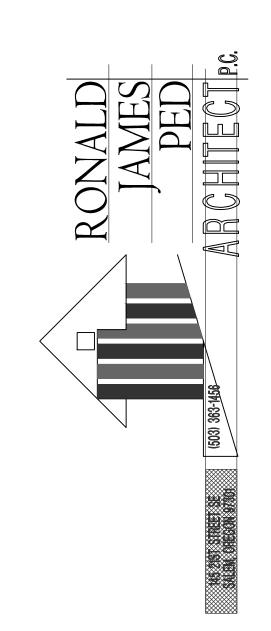
- 13. Franchises: The applicant provides for the installation of all franchised utilities in any required easements.
- 14. Water: All water mains and appurtenances must comply with Public Works, Building Division, and Woodburn Fire District requirements. Existing water services lines that are not going to be use with this new development must be abandoned at the main line. The City performs required abandonment of existing water facilities at the water main with payment by the property owner. All taps to existing water mains must be done by a "Hot Tap" method and by approved City of Woodburn Contractors. The applicant shall install the proper type of backflow preventer for all domestic, lawn irrigation and fire sprinkler services. The backflow devices and meters shall be located near the city water main within an easement, unless approved otherwise by Public Works. Contact Byron Brooks, City of Woodburn Water Superintendent, for proper type and installation requirements of the backflow device at (503) 982-5380.
- 15. Grease Interceptor/Trap: If applicable, a grease trap would need to be installed on the sanitary service, either as a central unit or in a communal kitchen/food preparation area. Contact Marion County Plumbing Department for permit and installation requirements, (503) 588-5147.

Fire: Fire protection requirements must comply with Woodburn Fire District standards and requirements, including how the District interprets and applies Oregon Fire Code (OFC). Place fire hydrants within the public ROW or public utility easement and construct them in accordance with Public Works Department requirements, specifications, standards, and permit requirements. Fire protection access, fire hydrant locations and fire protection issues must comply with current fire codes and Woodburn Fire District standards. See City of Woodburn Standard Detail No. 5070-2 Fire Vault. The fire vault must be placed within the public right-ofway or public utility easement.

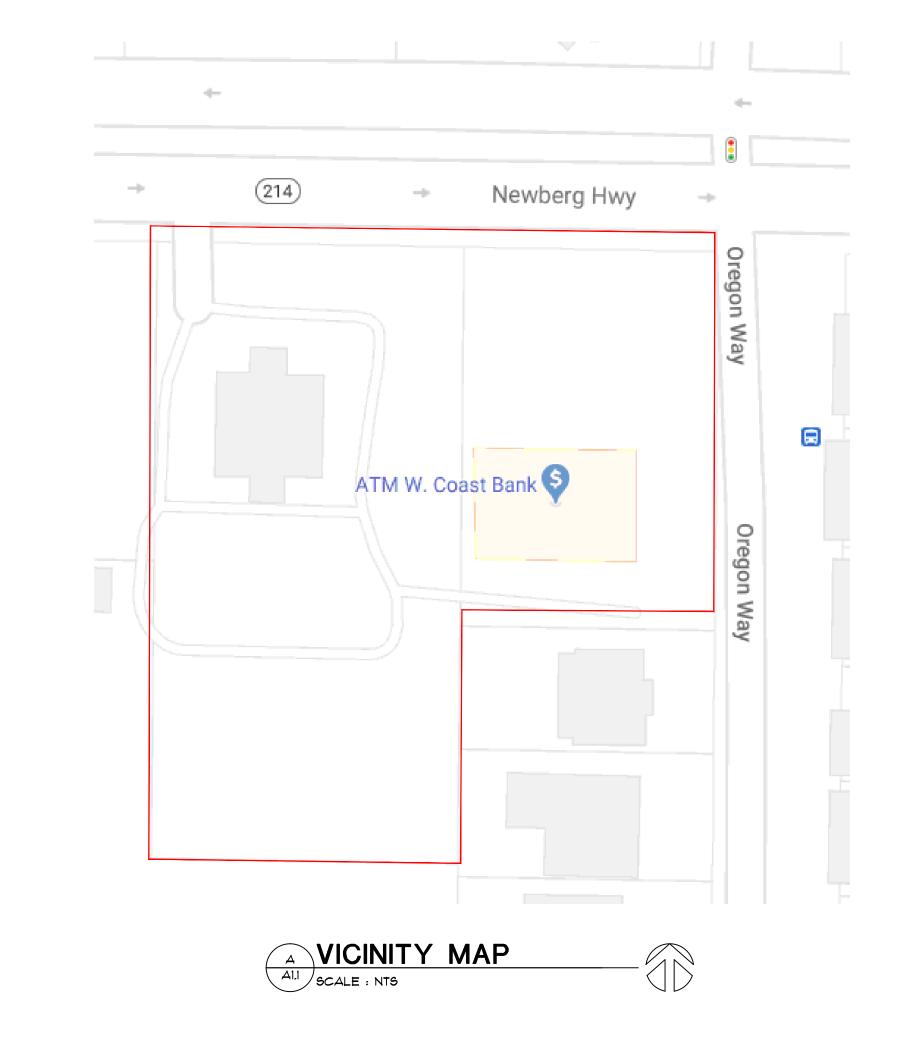
16. SDCs: The developer pays System Development Charges prior to building permit issuance. Staff will determine the water, sewer, storm and parks SDCs after the developer provides a complete Public Works Commercial/Industrial Development information sheet.

534





US MARKET SITE REDESIGN



SITE PLAN SUMMARY

ZONED: CG - GENERAL COMMERCIAL

= 62,120.42 S.F. (1.43 AC) PROPERTY SIZE REQ'D LANDSCAPE P.U. = 399 P.U. PROPOSED LANDSCAPE P.U.

PARKING REQ.

OFFICE: 3,649 SQ.FT. / 350 = 10.4, 11 REQ. (item 12 table 3.05A)
TOTAL REQUIRED SPACES: 29 REQ. PARKING SPACES: 42 PROVIDED (2 van accessible spaces)

STREET TREES REQ.:

ONE TREE EVERY 50'-0" REQ. 8 TREES PROPOSED

BIKE PARKING REQ.

3.05.03 Off-Street Parking

E. All uses that are required to provide 10 or more off-street parking spaces and residential structures with four or more dwelling or living units shall provide a bicycle rack within 50 feet of the main building entrance. The number of required rack spaces shall be one space per ten vehicle parking spaces, with a maximum of 20 rack spaces.

42/10 = 4 REQUIRED

1 BIKE RACKS (2 BIKE SPACES) PROVIDED AT CONVENIENCE STORE 1 BIKE RACK (2 BIKE SPACES) PROVIDED AT OFFICE BUILDING (2 BIKE PER RACK)

DRAWING INDEX

A1.0 COVER PAGE

A1.1 SITE PLAN

A1.2 EXISTING SITE PLAN AND DEMO PLAN

A1.3 FIRE ACCESS PLAN

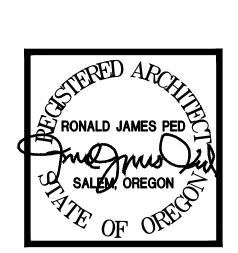
C1.1 GRADING PLAN

C1.2 UTILITY PLAN & DETAILS

E1.1 LIGHTING PLAN

L1.1 PLANTING AND IRRIGATION PLAN

A3.1 BUILDING ELEVATIONS & SECTIONS



DATE: DEC. 1, 2020 DRAWN: GLM / KDG JOB NO.: 1964

A1.0

CU 21-02 Attachment 103B **Site Plans Option 2** Sheet 1 of 5

SCALE: 1/4" = 1'-0"

M:/025ITEUK/580PVMRK/02580 RAMP

M:/029ITEWK/600PIPNG/02600 BIKE RACK

SALEM OREGON OF OFFICE

DATE: DEC. 1, 2020 DRAWN: GLM / KDG JOB NO.: 1964

E1.1

D: Mon, 02 May 2022 - 09:22 am LOCATION: C:\Users\kevin\appdata\local\temp\AcPublish_9432\SITE REDESIGN 4.25.22.dwg E1.1

__

OR TAMPED

SUBGRADE

M:/029ITEWK/900LNDSC/02900 TREE PLANTING

FORM TAPERED HOLE 3 TIMES WIDEST DIAMETER OF ROOT BALL

STAKING AS REQUIRED

TREE PLANTING

VERTICAL STAKES

SCALE: NTS

<u>PLANT LIST</u>

T-ASH

T-LIN

T-MAP

T-MAP

T-DOUG

RED

STREET TREES COMMON NAME/BOTANICAL NAME

ASH, RAYWOOD

TILIA CORDATA 'HALA'

ARMSTRONG MAPLE,

ACER RUBRUM 'ARMSTRONG'

ACER rumbrum/RED MAPLE October

DOUGLAS FIR / Pseudotsuga menziesii

FRAXINUS OXYCARPA 'RAYWOOD'

<u>SIZE</u>

<u>COMMENTS</u>

7-8' 2" CALIPER

7-8' 2" CALIPER

7-8' 2" CALIPER

7-8' 2" CALIPER

LARGE 2" CALIPER

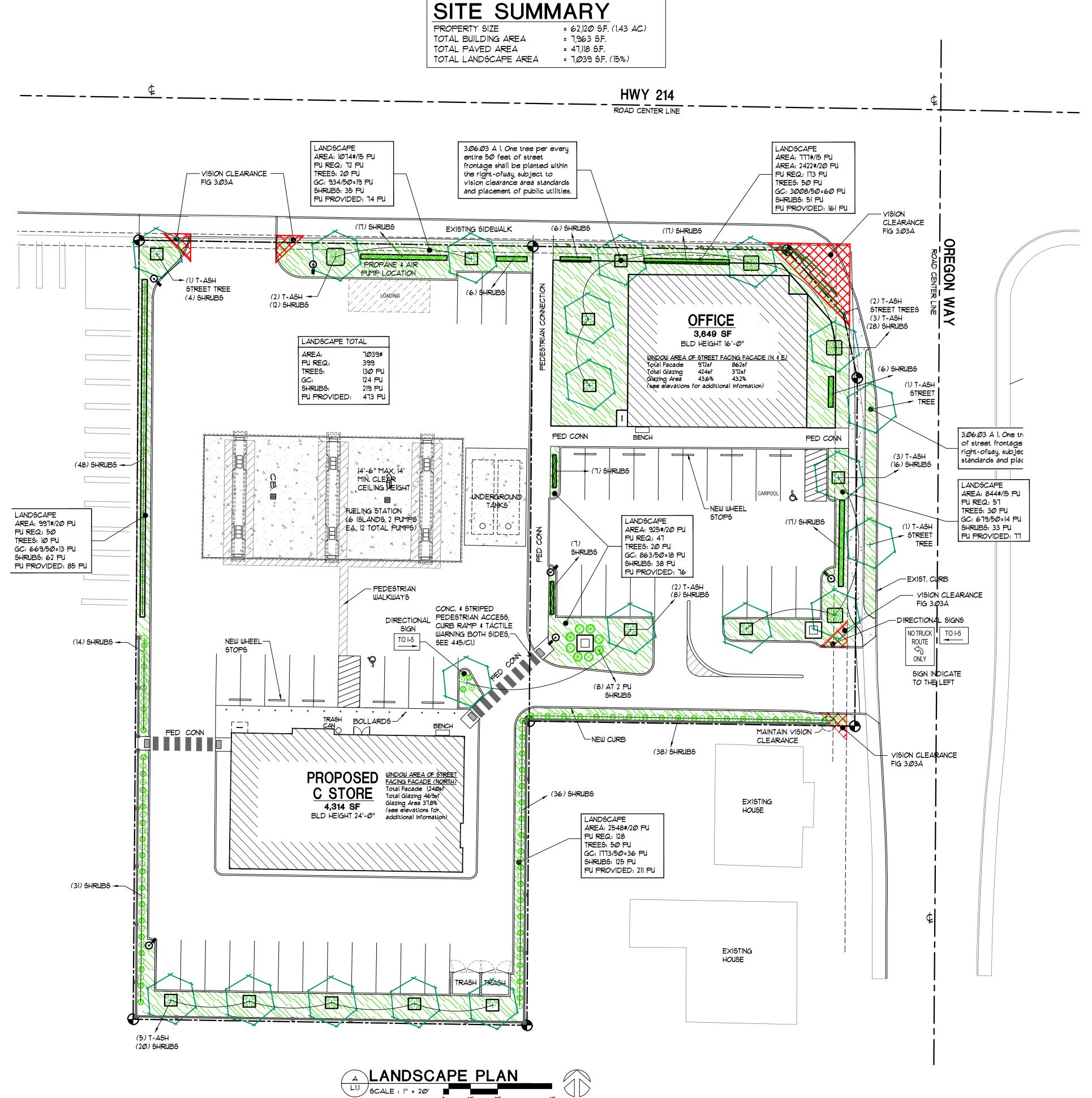
LARGE 10 PU

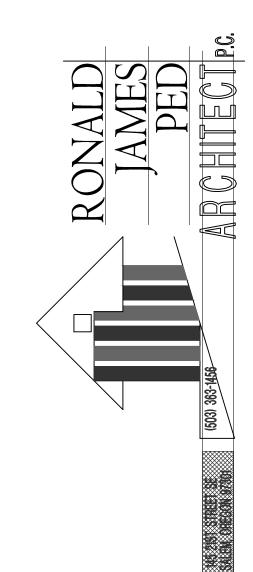
LARGE 10 PU

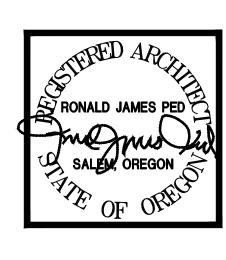
MEDIUM 10 PU

MEDIUM 10 PU

<u>COUNT</u>

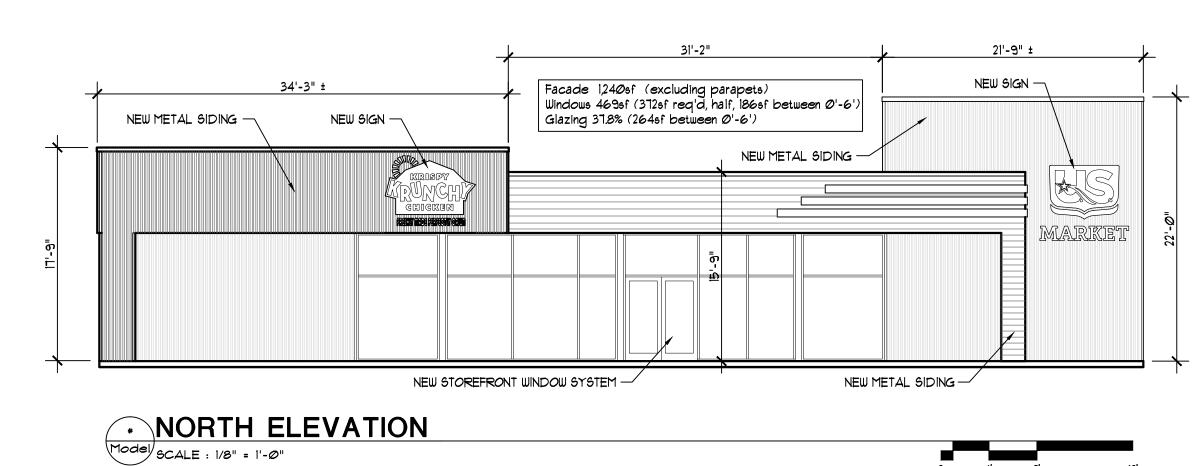


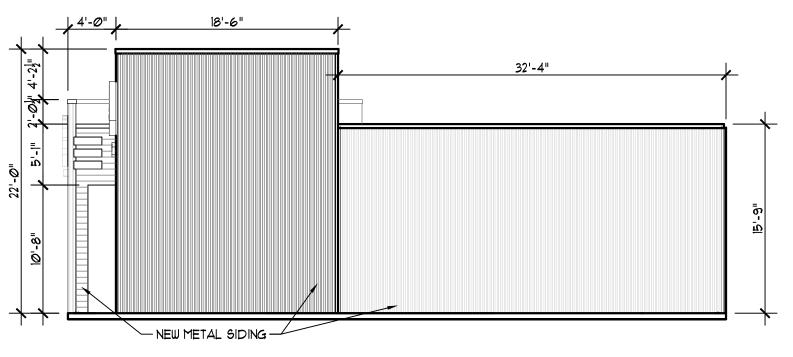


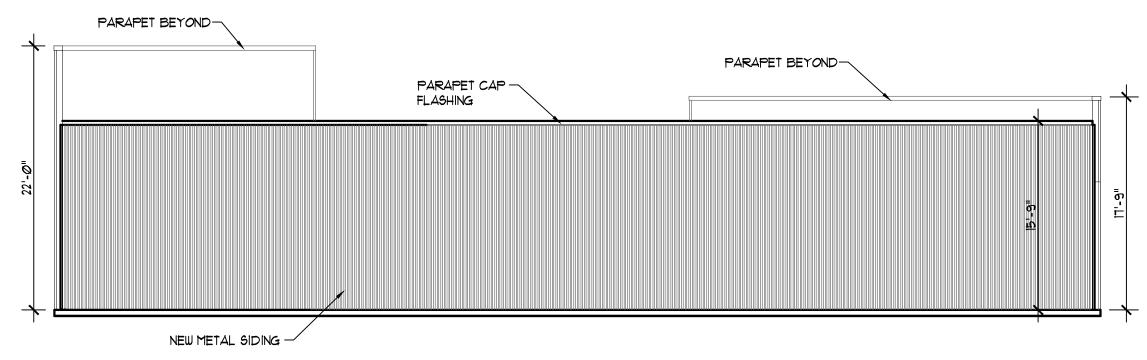


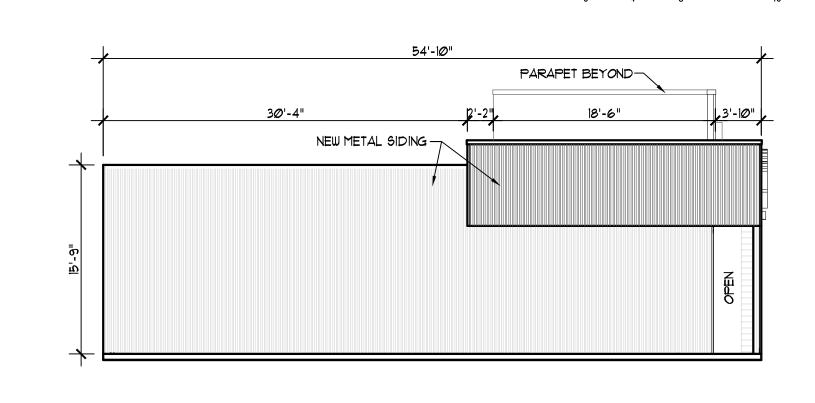
GOVERNO STAND GAS STAND STAND









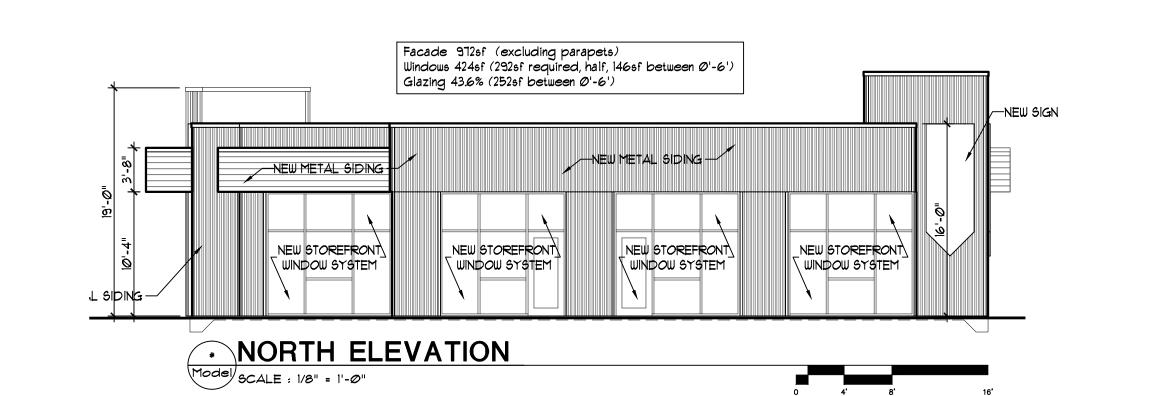


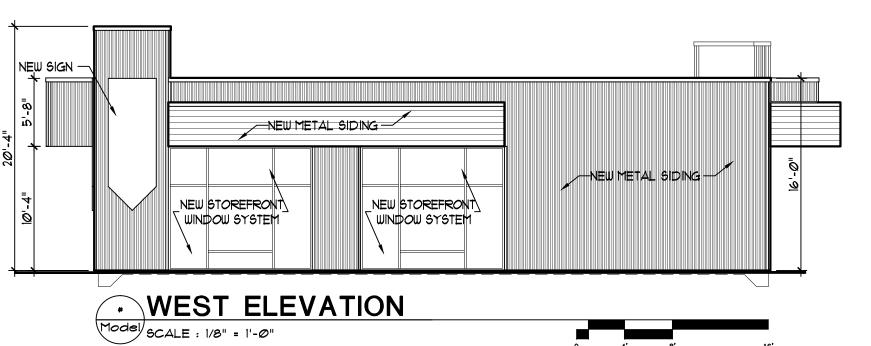


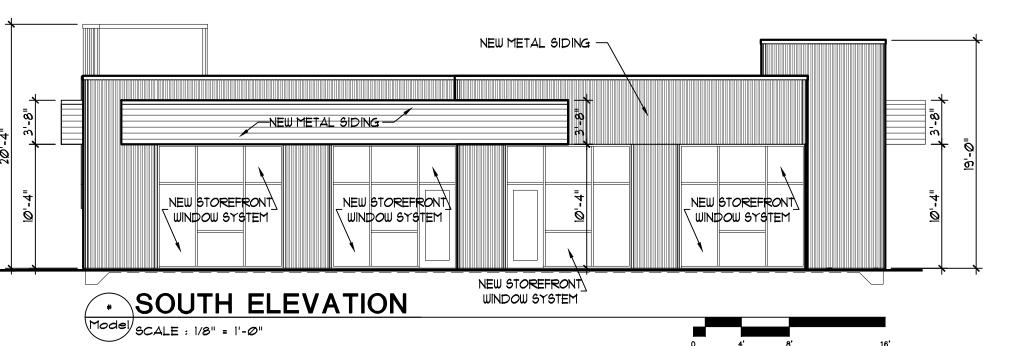


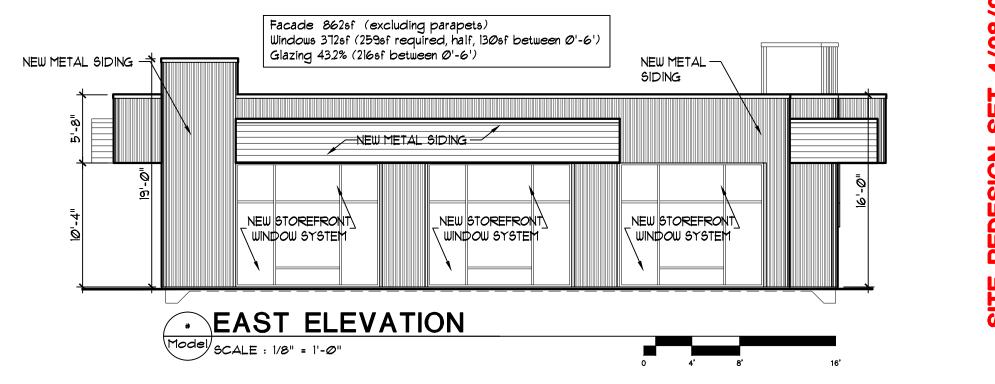












'AIL AND GAS STATION ⟨E∏ NEWBERG HIGHWAY WOODBURN OREGON

DATE: DEC. 1, 2020 DRAWN: AK / KDG JOB NO.: 1964

A3.1

SALEM OREGON OF OFFICE

From: KNECHT Casey < <u>Casey.KNECHT@odot.oregon.gov</u>>
Subject: RE: Woodburn US Market Request for Comments

Date: July 19, 2022 at 10:54:10 AM PDT

To: Del Huntington < del@huntingtontrafficsolutions.com>

Cc: Joe Bessman < Joe@transightconsulting.com >

Del,

I wanted to make sure we are on the same page with timelines. The Grant of Access process can take up to a year. Six to nine months is probably more realistic, but some can take a full year. Construction would not be able to start until the ODOT grant committee gives approval. We could issue a construction permit at grant approval prior to recording with the county.

In talking with the other Region 2 staff, our goal would be for the grant approval to allow both parcels to have unrestricted access to both the existing driveway on OR-214 and the existing driveway on Oregon Way. That would eliminate the need for the one-way configurations in Options 2 and 3. I am still trying to set up a meeting with the necessary staff in the statewide office to discuss options. After those discussions we will have a better grasp on what the grant committee will approve (and possibly condition) before having you apply.

For the city council discussion tonight, ODOT would support the city approving the proposal with a condition that the applicant obtain all ODOT approvals prior to occupancy (including deed modifications and approach permits).

Regarding the cross-access with the Dairy Queen and Dutch Bros, ODOT generally supports connectivity between parcels with the goal of reducing highway access points and taking short-distance trips off the highway. The Dairy Queen and Dutch Bros owners would need to be included in the grant and easement discussions. Expanding the access rights to include an additional parcel would likely be accompanied by a consolidation of highway access points. The overall plan in Option 1 will full connectivity between all of the highway frontage properties would be best accommodated by a single highway access point in the middle of the block. If the Dairy Queen and Dutch Bros owners are interested in the idea we can continue the conversation, but I don't imagine they would be willing to give up their driveway.

Thanks,

Casey Knecht, P.E.

ODOT Region 2 503-986-5170

> City Council July 25, 2022 CU 21-02 Appeal Attachment 5

COMMUNITY DEVELOPMENT

Citizens of Woodburn Estates would like to express our concerns with the proposed Gas Station/Convenience Store on 214/Oregon Way. We are concerned about the amount of traffic and disruption this will create on Oregon Way. The increased cars and trucks speeding down the street, excessive noise and trash due to 24 hour operation, and the probability of questionable characters hanging around. It will be highly disturbing to our 55+ community. Oregon Way residents and others use this street for walking and golf carts to get to our clubhouse.

Please consider our concerns for our homes and community.

ADDRESS 1706. Clarkomor Circle 1706. Clarkomor Circle East 892 Oragon Way Charlie Nilson Chegon Way who 952 Oregan way 966 oregn Way 980 Oregon Way 953 OBEGONULAY LORENA SOTO ASTORGED adam Mundenlesell 943 Dregon Way 943 Oregon Way Debra Mendenhall 925 Origon Wa 889 Oregon Way LM Cejombre U 21-02 Appeal Attachment 6 529

COMMUNITY DEVELOPMENT DEPARTMENT

Citizens of Woodburn Estates would like to express our concerns with the proposed Gas Station/Convenience Store on 214/Oregon Way. We are concerned about the amount of traffic and disruption this will create on Oregon Way. The increased cars and trucks speeding down the street, excessive noise and trash due to 24 hour operation, and the probability of questionable characters hanging around. It will be highly disturbing to our 55+ community. Oregon Way residents and others use this street for walking and golf carts to get to our clubhouse.

522

Please consider our concerns for our homes and community.

NAME Carol Bettandorff Meana Nethox Betty Jews In willyn Dykes Karen Ewina Viane Mann Mickey Harrism Paula Kilgone Sandre Glogloch may Edinger Jonnie Colle Karen Halten Haly Johnson Knald Sout Donna Burusido Margo Abohere Put Os Som

ADDRESS 717 N. Cascade Dr. Woodlum 275 S. Cascade Dr. Modburn 734 J. Coleenbara Dr. Woodburn 2005 Santiam Dr. Woodburn 1910 Sallal Rd. Woodburn 643 5. Columbia Woolkers 1366 ASTOR CT, Woodburn, 924 Oregon Way Woodburn, 636 Dregon Way, Woodbern 2220 Oregon Court, Woodbern 2256 Oregon Ct, Woodburn Progon 2238 Oregon Court Woodburn 1960 Vanderbeck Lane, Woodburn 938 organ Way Woodburn 1363 Princeton Rd., Woodsum 1363 Princeton Rd, Woodburn 797 N CASCADE DR 9707/ -1580 Thompson Rd - Woodburn, of 97011 855 N. Cascade DR. Woodburn OR '9707/ 1019 Prenceton Rd. Woodlean, OR

9

JUL 2 0 2022

COMMUNITY DEVELOPMENT

DEPARTMENT

Citizens of Woodburn Estates would like to express our concerns with the proposed Gas Station/Convenience Store on 214/Oregon Way. We are concerned about the amount of traffic and disruption this will create on Oregon Way. The increased cars and trucks speeding down the street, excessive noise and trash due to 24 hour operation, and the probability of questionable characters hanging around. It will be highly disturbing to our 55+ community. Oregon Way residents and others use this street for walking and golf carts to get to our clubhouse.

Please consider our concerns for our homes and community.

NAME

ADDRESS

Sally Cartes

Christina Movis Juni Smith Sherry Manier Maggie Sasse

Modalu Dill

740 S. Cilumbier Dr. Woodburn, OR 97071

970 Every ve- pol #106 1975 Santom Dr 760 Oregon Way 315 S. Cascade

1240 Randolph Rd 1244 Randolph Rd 813 Stolumbia Rd

SOUND IMPACT ASSESSMENT

EXISTING SOUND LEVEL AT PANOR 360 CONDOMINIUMS BASED ON NOISE FROM HWY 214 \$ 1-5

DISTANCE SOUND LEVEL

Hwy 214

400ft

63dB

1500ft

55dB

I-5 TOTAL

63.6dB

ESTIMATED SOUND LEVEL OF PROPOSED USE

Metro area (avg)

65dB

Suburban area (avg)

47dB

TOTAL !

56dB

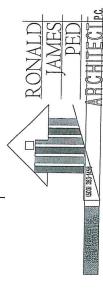
ESTIMATED NEW SOUND LEVEL

63.6dB (existing) + 56dB (new) = 64.3dB¹ (less than IdB increase, insignificant, almost imperceptible)

CONCLUSION: The proposed use will be no louder than some of the existing, surrounding uses and the increase in sound level will be barely perceptible. With the increased mitigation provided by the proposed 8ft high wall at the perimeter of the property no further action is needed.

1 L=10Log₁₀
$$\left(\sum_{i=1}^{n} 10^{(L_1/10)}\right)$$

- Existing sound level is likely to be higher due to noise from adjacent uses not factored into this assessment
- SOURCES 1 Dooling, Robert & Popper, Arthur. (2007). The Effects of Highway Noise on Birds.
 - 2 NoiseMeters.com
 - 3 U.S. Environmental Protection Agency 1978





IEW OFFICE, RETAIL AND GAS STATION JS MARKET 1540 AND 2800 NEWBERG HIGHWAY WOODBURN ORE



David J. Petersen david.petersen@tonkon.com Admitted to Practice in Oregon and California

503.802.2054 direct 503.221.1440 main

July 25, 2022

VIA E-MAIL - <u>chris.kerr@ci.woodburn.or.us</u>; <u>colin.cortes@ci.woodburn.or.us</u>; <u>cassandra.martinez@ci.woodburn.or.us</u>

Woodburn City Council c/o Chris Kerr, Community Development Director 270 Montgomery Street Woodburn, OR 97071

RECEIVED

JUL 25 2022

COMMUNITY DEVELOPMENT DEPARTMENT

Re:

Woodburn Fast Serv Inc. and LB Group, LLC 2540-2600 Newberg Highway, Woodburn, OR

City File No. CU 21-02

Planning Commission Final Order dated June 9, 2022 (the "Order")

Dear City Council:

On behalf of our clients Woodburn Fast Serv Inc. and LB Group, LLC, we submit this written testimony and argument in support of our clients' appeal regarding the above-referenced Order of the Woodburn Planning Commission. The Council is scheduled to hear the appeal July 25, 2022 at 7:00 p.m.

1. The Order does not make any findings with respect to the applicable approval criteria.

To approve the application, the Planning Commission must make findings that "(1) identify the relevant approval standards, (2) set out the facts which are believed and relied upon, and (3) explain how those facts lead to the decision on compliance with the approval standards." *Mountain Gate Homeowners Association v. Washington County*, 34 Or LUBA 169, 173 (1998); see also ORS 227.173(3). Nowhere does the Order make any findings, nor does it incorporate any findings in any other document or attachment. Thus, the Order is defective and cannot be upheld.

2. Staff's draft findings and conditions are inadequate with respect to numerous approval criteria and, in some cases, affirmatively find that approval criteria are not met.

City staff prepared draft findings for the Planning Commission's consideration in its June 2, 2022 staff report. As noted above, none of these findings were adopted by the Planning Commission, either expressly or by reference. Accordingly there is

RECEIVED

City of Woodburn City Council July 25, 2022 Page 2

JUL 25 2022

COMMUNITY DEVELOPMENT DEPARTMENT

no basis to conclude that staff's draft findings are the Planning Commission's final findings, but even if that assumption is made, the findings are inadequate. Specifically, the attached chart lists no less than 17 draft findings and conditions that would be inadequate if adopted by the Planning Commission without change.

These findings and conditions fail for numerous reasons and sometimes multiple reasons. First, in at least four cases, staff's draft findings expressly conclude that applicable approval criteria are not met (see attached chart with respect to WDO¹ 3.05.02, 3.05.02(J), 3.05.05 and 5.03.01(B)(2)). The Commission has not changed these draft findings, so if these are the final findings of the Commission then the application must be denied for failure to meet all the applicable criteria.

Second, conditions of approval are not findings, and cannot substitute for a determination of compliance with applicable approval criteria. Instead, a decision must find that compliance with the criteria is feasible, which means that "substantial evidence supports findings that solutions to certain problems ... are possible, likely and reasonably certain to succeed." *Meyer v. City of Portland*, 67 Or App 274 fn. 5 (1984), *rev den* 297 Or 82 (1984). Once those findings are made, conditions may then be imposed to evaluate the details of how to achieve compliance and to select the precise solution. *Id*.

Here, many of staff's draft findings do not come close to this standard. Instead, they cite no evidence whatsoever supporting the conclusion that the criterion is met, and merely refer to a proposed condition of approval. Several times the draft findings do not even make a conclusory statement of compliance and only refer to a proposed condition. And in some cases, it is not even clear if staff proposes a condition, stating only that it "might apply a condition" or "might apply public works standards." Findings like these are inadequate. Findings may not be conclusory and instead must be written "to establish the factual and legal basis for the particular conclusions drawn," none of which has occurred here. Thormalen v. City of Ashland, 20 Or LUBA 218, 229 (1990). Decisions based on findings that offer no factual support for the conclusions reached are inadequate and will lead to a remand from LUBA. Middleton v. Josephine County, 31 Or LUBA 423, 433 (1996).

Third, in many cases the draft findings and conditions are hopelessly vague as to the solution or improperly defer the determination of compliance to administrative staff. For example, see condition D3 which merely states that "[t]o conform to WDO 3.05.02J, during building permit review the Director may administratively establish details, specifications, and revisions to administer the WDO section."



¹ Woodburn Development Ordinance.

City of Woodburn City Council July 25, 2022 Page 3 RECEIVED

JUL 2 5 2022

COMMUNITY DEVELOPMENT DEPARTMENT

This gives the Commission and the public absolutely no insight into how unspecified "details, specifications and revisions" might possibly insure that WDO 3.05.02J is met. The Director's obligation is not even mandatory, as he or she only "may" establish standards. See also conditions CU9(d)(2)(c) and (d) which purport to give the Director administrative authority to make unspecified changes to the project if needed to address an ODOT objection in the future. Other, similar errors are identified in the attached chart.

Findings and conditions that defer a determination of compliance to a later process are not always suspect, but that later process must provide for public notice and a hearing. Rhyne v. Multnomah County, 23 Or LUBA 442, 447 (1992). In this case, however, several conditions shift discretionary decisions to administrative personnel without notice and a hearing in violation of the requirements of Goal 1, state law and the WDO. See WDO 4.01.06.A, which states that "[a]ll conditions of approval shall be clear and objective or if the condition requires discretion shall provide for a subsequent opportunity for a public hearing" (emphasis added), and WDO 4.02.07 which requires that any request to subsequently modify a condition of approval must be considered pursuant to the procedures and standards that applied to the original application (i.e., notice and a public hearing). The conditions proposed by staff and adopted by the Commission fail to meet these requirements of the City's own code.

Because many of staff's draft findings and conditions fail to meet the standards required by law, they are insufficient to support the decision even if they are understood to be the final findings of the Commission. The Order must therefore be reversed and the application denied.

3. Staff's analysis in support of the grant of exceptions to street right of way and improvement requirements is illogical, unresponsive to the applicable criteria and not supported by substantial evidence in the record.

The June 2 staff report also contains draft findings with respect to the requested exceptions to street right of way and improvement requirements. As with other findings, these have not been adopted by the Planning Commission, but even if they had been, the draft findings would be inadequate.

The applicant seeks two exceptions to street improvement requirements. First, it requests an exception to not reconstruct both frontages with a landscape strip between the sidewalk and the street. Currently, the sidewalks directly abut the streets. It is well known that a landscape strip between street and sidewalk is a safety improvement, to create a buffer between persons on the sidewalk and traffic



RECEIVED

City of Woodburn City Council July 25, 2022 Page 4

JUL 25 2022

COMMUNITY DEVELOPMENT DEPARTMENT

in the street. Staff, however, takes the position that because the current situation is unsafe, very few people use the sidewalk, and with few people using the sidewalk a landscape strip is not justified. This is just backwards analysis – the point of the landscape strip is to improve safety and thereby encourage increased use of the sidewalk. Existing unsafe conditions that discourage use do not justify the continuation of those unsafe conditions due to lack of use.

Second, the applicant requests an exception from on-street parking requirements on Oregon Way, which staff justifies by "assuming" what half-street improvements the developer will build based on what ODOT "typically asks" for. This is not analysis of criteria based on evidence in the record. It is straight-up speculation about what might happen based on things that might be required, or might not.

Furthermore, none of this analysis is responsive to the actual approval criteria in WDO 5.03.03.B. Those criteria, in summary, require an evaluation of the quantitative use of public improvements by persons visiting the proposed development, and the resulting need for further public improvements. In other words, if the nature of the development is that its users will not make much use of certain public improvements, then it is perhaps justifiable to grant an exception to those public improvement standards. Nothing in staff's analysis evaluates these issues. In fact, the evidence in the record shows that persons visiting this project will make rather significant use of the public improvements for which exceptions are sought (particularly parking), so granting the requested exceptions is in fact not justified.

As with the findings for other criteria, the findings in response to the exception requests do not adequately address the applicable criteria or provide any evaluation of the evidence in support of the findings, and are therefore inadequate. For this additional reason, the Order should be reversed and the application denied.

In summary, the staff report punts on many of the required findings and merely recommends conditions of approval requiring the applicant to satisfy the criteria later. In essence, many proposed findings do little more than restate the criteria and improperly transfer the obligation to evaluate the project and make a decision from the Planning Commission (and its associated public process) to later administrative processes shielded from public review. And in a few cases, staff actually found that applicable criteria were not met and just assumed that the proposal could be corrected later. Given that the applicant has not carried its burden of proof to show that all the applicable approval criteria are met, the Council should reverse the Order, make its own findings that the approval criteria are not met and deny the application.



City of Woodburn City Council July 25, 2022 Page 5

Additional testimony will be provided at the appeal hearing from Appellants' traffic consultant regarding the additional grounds for appeal related to traffic issues.

Please enter this letter and attachment into the record on appeal. Thank you.

Best regards,

David J. Petersen

DJP/rkb

Attachment

cc (via e-mail, w/attach):

Robert J. Barman

Garry L. LaPoint

Wayne K. Kittelson

Danny Draper

Lindsay Willson

RECEIVED

JUL 25 2022

COMMUNITY DEVELOPMENT DEPARTMENT



Criteria or Conditions	Defect
WDO 2.06.02; WDO 3.06.06; WDO	
5.01.03	Vague and conclusory; no citation to evidence; improper deferral to a condition
	Vague; no citation to evidence; lack of a conclusion (the city "might" apply
WDO 3.02.03	standards)
WDO 3.02.04	Vague and conclusory; no citation to evidence; improper deferral to a condition
WDO 3.04.03	Vague and conclusory; no citation to evidence; improper deferral to a condition
	Staff expressly finds that the development does not meet the criteria; fails to
WDO 3.05.02	explain how a condition will result in compliance
	Staff expressly finds that development does not meet the criteria; improperly defers
WDO 3.05.02(J)	revision of site plan to later administrative process
	Staff expressly finds that the development does not meet the criteria; fails to
	explain how a condition will result in compliance; improperly defers determination
WDO 3.05.05; Table 3.05A	of compliance to later administrative review
WDO 3.06.05(A); Table 3.06D	Vague and conclusory; no citation to evidence; improper deferral to a condition
WDO 3.06.05(B)	Vague and conclusory; no citation to evidence; improper deferral to a condition
WDO 3.06.06	Vague and conclusory; no citation to evidence; improper deferral to a condition
	Vague; lack of a conclusion (it is "unclear" if the architectural design guidelines have
WDO 3.07.01A; WDO 3.07.06	been followed); improper deferral to a condition
WDO 5.03.01(B)(2)	Staff expressly finds that the development does not meet all the criteria
	Staff report discloses that the Public Works Department de facto approves all
	development, improperly deferring consideration of applicable public works criteria
	to later administrative processes without public review; staff also relies on two
	statutes expressly inapplicable to this application (ORS 197.522 and 227.185) to put
WDO 5.03.05(B)(3)	a thumb on the scale in favor of approval
	Improper deferral; Director "may" establish further specifications or revisions during
G - 1''' - D2 WD 0 0 07 02(1)	building permit review; no process for public review of proposed future
Condition D3; WDO 3.05.02(J)	modifications
Condition CU9(a); WDO 3.02.01(E);	
WDO 3.04.01(A)(2); WDO 3.04.03(C-	
D)	("developer shall conform to the conditions in ways that satisfy the county")
	Manusa na citatian ta suidan sa la la Casa de la Casa d
Condition CLIQ(d)(2)(a d): WDC	Vague; no citation to evidence; lack of a conclusion (the developper "may" request
Condition CU9(d)(2)(c-d); WDO	and the Director "may" approve); imrpoper deferral to a later administrative
4.02.05; WDO 4.02.07	process; no process for public review of proposed future modifications
	Improper deferral; Director "may" establish further specifications or revisions during
Condition CU10(3)(b)	building permit review; no process for public review of proposed future
Condition CU10(3)(b)	modifications

RECEIVED

JUL 25 2022

COMMUNITY DEVELOPMENT DEPARTMENT Citizens of Woodburn Estates would like to express our concerns with the proposed Gas Station/Convenience Store on 214/Oregon Way. We are concerned about the amount of traffic and disruption this will create on Oregon Way. The increased cars and trucks speeding down the street, excessive noise and trash due to 24 hour operation, and the probability of questionable characters hanging around. It will be highly disturbing to our 55+ community. Oregon Way residents and others use this street for walking and golf carts to get to our clubhouse.

Please consider our concerns for our homes and community.

/ NAME	ADDRESS
Chaffes Stein	1, 2338 oveyen Cerut, Woodbring
Homun	2330 Oregan Chi Wastell
Poris Ebank	2040 Oregon Willy
- Gullen	
Beverly Pas	nse 2434 Orgon Stames
01/19	2325 OREGOW CT.
O_{0}	2287 Oylegon Ct
	Liberry 2227 Oregon Ct.
	2207 Orgon Ot Wordburn
<i>Z</i> :	
•	
4	RECEIVED
	JUL 2 2 2022
	COMMUNITY DEVELOPMENT DEPARTMENT

COMMUNITY DEVELOPMENT

Citizens of Woodburn Estates would like to express our concerns with the proposed Gas Station/Convenience Store on 214/Oregon Way. We are concerned about the amount of traffic and disruption this will create on Oregon Way. The increased cars and trucks speeding down the street, excessive noise and trash due to 24 hour operation, and the probability of questionable characters hanging around. It will be highly disturbing to our 55+ community. Oregon Way residents and others use this street for walking and golf carts to get to our clubhouse.

Please consider our concerns for our homes and community.

ADDRESS (Inches Circle) Leanette O Johnson Charlie Nilson Chegon Way who Duran Huggers 952 Oregan way 966 oregn Way 980 Oregon Way 953 DBGGONULAY LORENA SOTO ASTORGED 943 Dregon Way adan Mundenleste 943 Oregon Way Debra Mendenhall 925 Oregon Wal 889 Oregon Way 876 Orogon Way. LM (Rejonder 796 Oregon Way 533

Glenda Shelden 778 Oregon Way
Wicke Nahled 2317 Umpgua Rel

Laura Harryman 724 Oregon Way
Marie C. Wright 706 Oregon Way
Fritz S Bathen 690 Oregon Way
DRYLL Fister 610 Oregon Way
Jerrilynn Van Slyke 741 Oregon Way
Marge Causlyke 741 Oregon Way
David & Bunnel 763 Oregon Way
Norma Resor 853 Oregon INRY
Wennis Martin 817 Or. Way

Citizens of Woodburn Estates would like to express our concerns with the proposed Gas Station/Convenience Store on 214/Oregon Way. We are concerned about the amount of traffic and disruption this will create on Oregon Way. The increased cars and trucks speeding down the street, excessive noise and trash due to 24 hour operation, and the probability of questionable characters hanging around. It will be highly disturbing to our 55+ community. Oregon Way residents and others use this street for walking and golf carts to get to our clubhouse.

535

Please consider our concerns for our homes and community.

NAME Carol Bettandorff Meana Nethox Betty Jews In willyn Dykes Karen Ewina Viane Mann Mickey Harrism Paula Kilgone Sandre Glogloch may Edinger Jonnie Colle Karen Halten Haly Johnson Knald Sout Donna Burusido Margo Abohere Ruth Os Somm

ADDRESS 717 N. Cascade Dr. Woodlum 275 S. Cascade Dr. Modburn 734 J. Coleenbara Dr. Woodburn 2005 Santiam Dr. Woodburn 1910 Sallal Rd. Woodburn 643 5. Columbia Woolkers 1366 ASTOR CT, Woodburn, 924 Oregon Way Woodburn, 636 Dregon Way, Woodbern 2220 Oregon Court, Woodbern 2256 Oregon Ct, Woodburn Progon 2238 Oregon Court Woodburn 1960 Vanderbeck Lane, Woodburn 938 organ Way Woodburn 1363 Princeton Rd., Woodsum 1363 Princeton Rd, Woodburn 797 N CASCADE DR 9707/ -1580 Thompson Rd - Woodburn, of 97011 855 N. Cascade DR , Woodburn OR, 9707/ 1099 Prenceton Rd. Woodlean, R

9)

JUL 2 0 2022

COMMUNITY DEVELOPMENT

DEPARTMENT

Citizens of Woodburn Estates would like to express our concerns with the proposed Gas Station/Convenience Store on 214/Oregon Way. We are concerned about the amount of traffic and disruption this will create on Oregon Way. The increased cars and trucks speeding down the street, excessive noise and trash due to 24 hour operation, and the probability of questionable characters hanging around. It will be highly disturbing to our 55+ community. Oregon Way residents and others use this street for walking and golf carts to get to our clubhouse.

Please consider our concerns for our homes and community.

NAME

ADDRESS

Sally Cartes

Christina Morris Terris Smill Sherry Manier Maggie Dasse

Macalu Dell indy Sinst 740 S. Columbia Dr. Woodburn, OR 97071

970 Everyn-pd #106 1975 Santon Dr 760 Oregon Way 345 S. Cascade

1240 Randolph Rd 1244 Randolph Rd 813 Stofumbia Rd

BEFORE THE CITY COUNCIL FOR THE CITY OF WOODBURN

and Ronald James Ped, Architect	EXCP 21-05 and PP 21-01) MEMORANDUM IN SUPPORT
and Ronald James Ped, Architect	EXCP 21-05 and PP 21-01
In the Matter of the Application of: WOODBURN PETROLEUM, LLC) Case No. CU 21-02) Corollary Cases: DR 21-10,

COMES NOW the Applicant, by and through their attorney, Wallace W. Lien, and does hereby submit the following evidence and testimony in support of the above referenced application and in answer to the appeal of the Planning Commission approval of said application.

1. RESPONSE TO APPEAL ISSUE NO. 1

The first issue raised in this appeal is the alleged lack of findings in the Planning Commission decision, and in the alternative that what findings that were adopted are inadequate, not supported by substantial evidence or improperly defer compliance with approval criteria.

Once the Planning Commission decision was appealed, jurisdiction moved to the City Council. It is the City Council that will make a final decision, which decision will include adequate findings that are supported by substantial evidence and will not improperly defer any approval criteria compliance. As such this first issue is essentially moot.

The Applicant offers to assist the City in the preparation of such findings, if such assistance is requested.

2. RESPONSE TO APPEAL ISSUE NO. 2

The second appeal issue involves an allegation that Conditions D3 and CU9.d.2(c) are too vague or improperly defer compliance to staff in violation of state law and WDO 4.01.06.A and 4.02.07. The allegation goes on to allege other unidentified conditions are similarly compromised.

The appeal does not cite to any specific provision in state law to support its claim, therefore it is impossible to respond to. Such an allegation is not raised with sufficient specificity to warrant the need for a response by the City. Similarly, citing to unidentified conditions is not sufficient to

1 - Memorandum in Support of the Application

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

PAGE

RECEIVED

JUL 19 2022

COMMUNITY DEVELOPMENT DEPARTMENT

WALLACE W. LIEN

1004 Crescent Dr NW, Salem, Oregon 97304 • 503-585-0105 office Contact by e-mail at: wallace.lien@lienlaw.com

PAGE

properly raise any issue as to any conditions but the two that are specifically stated. Because of this, only Conditions D3 and CU9.d.2(c) are properly raised and which will be addressed here.

A. Condition D3 relates to parking and vehicular circulation directional markings/signage. This condition states:

To conform to WDO 3.05.02J, during building permit review the Director may administratively establish details, specifications, and revisions to administer the WDO section. Further site plan revisions necessary to conform, if any, shall be due by building permit issuance.

In order to understand this condition, it is necessary to review WDO 3.05.02. J which states that all uses required to provide 20 or more off-street parking spaces shall have directional markings or signs to control vehicle movement, and any dead-end drive aisle 50 feet or longer shall have an MUTCD-compliant "no outlet" sign.

Compliance with WDO 3.05.2J is not an approval standard, but instead is a developmental regulation that applies to how a site is constructed once all of the actual land use approval criteria are complied with. It is only appeal of issues that actually relate to approval criteria that are subject to a legitimate appeal.

The appeal does not state in what manner it is alleged this condition is vague, just that they say it is so. What WDO 3.05.02J provides is the need for directional signs and markings. This condition requires compliance with that code provision, and simply advises staff to establish the details and specifications of the directional signs and markings. Such a task is best carried out by staff, as it is not the responsibility of the City Council to decide what size and color and location such signs are to be made.

Further, there is no delegation of compliance. The condition clearly states the intention that WDO 3.05.02J is to be complied with, therefore the directional signs and marking have to be in place. The details of how and where that happens certainly can be left up to staff to decide during the building permit process.

To the extent the City Council believes that clarification in the language of Condition D3 is 2 - Memorandum in Support of the Application

WALLACE W. LIEN

PAGE

necessary such can be made as part of the City Council's final decision.

B. Condition CU9.d.2(c) relates to the issue of cross access between parcels. That condition states:

If after City land use decision ODOT objects specifically to how the City administers or the developer conforms to other parts of the condition or to other conditions concerning vehicular access, then the developer may request and the Director may administratively approve in writing changes to administration or conformance to accommodate the ODOT factor while still having the development meet the WDO and conditions of approval to the max extent remaining. The Director may require developer application for any of Extension of a Development Decision per WDO 4.02.05 or Modification of Conditions per WDO 4.02.07.

As before, the appeal does not state in what manner it is alleged this condition is vague, just that they say it is so, which simply isn't good enough. This condition of approval is advisory, as it only comes into play if ODOT objects to the method of implementation utilized by the City in the final decision. If ODOT does not object, this condition never has to be addressed. Conditions that relate to post-approval administration of the decision do not rise to the level of compliance with approval criteria, and therefore are not the appropriate subject of an appeal here. The language used in this condition clearly states the intent of the City in how to deal with post-approval issues.

Further, there is no delegation of compliance. The condition clearly states the intention that the City will accommodate the ODOT factor. Further, if there is to be an Extension or Modification of the site plan, the condition specifies that such an application will be required and it will be processed according to the provisions of the WDO, which would include notice and opportunity to be heard which is all that is necessary.

To the extent the City Council believes that clarification in the language of Condition CU9.d.2(c) is necessary, such can be made as part of the City Council's final decision.

The Applicant believes the most appropriate response to the issue of cross access is to adopt Option #2 which ODOT has stated its Access Committee could support. See Section 7 hereof for other reasons why Option #2 should be adopted over Option #1.

3 - Memorandum in Support of the Application

PAGE

C. The appeal cites to violations of WDO 4.01.06.A which grants the City the right to impose conditions of approval that are reasonably related to impacts caused by the development or designed to ensure that all applicable approval standards are, or can be, met. All conditions must be clear and objective, or if the condition requires discretion, opportunity for a public hearing is made. As noted above, there is nothing in these conditions that are not clear and objective, or for which provision is made for future opportunity to be heard. There is no violation of WDO 4.01.06.A.

The appeal also alleges a violation of WDO 4.02.07, which provides that any request to modify a condition of approval is to be considered pursuant to the procedure and the standards and criteria applicable to a new application of the type of permit or zone change that is proposed to be amended, except that the modification of a condition limiting the use of property may only be considered as a Type IV Official Zoning Map Change application. This provision applies only to post-approval applications to modify conditions that were adopted in a previous decision. That is certainly not the situation involved here, therefore this code provision is not even applicable.

3. RESPONSE TO APPEAL ISSUE NO. 3

The appeal alleges that Option #1 which was approved by the Planning Commission was adopted in error, contending that there is no evidence of feasibility of eventual ODOT approval of that Option. The key allegation here is the legal standard of feasibility. It is true that conditions imposed for compliance with approval criteria must have evidence to show that compliance is feasible, however the appeal overstates what it takes to meet the feasibility requirement.

Feasibility simply means that an applicant is not prohibited as a matter of law from obtaining the ODOT approval. *Citizens for Responsible Development v. City of The Dalles*, 59 Or LUBA 369 (2009). So long as there is a process to follow, and the potential for ultimate approval from ODOT, the condition requiring eventual ODOT approval is lawful. There is evidence in this Record from ODOT that indicates ODOT approval is not prohibited, and that there is a process for obtaining ODOT approval. See ODOT Memo of May 4, 2022, Attachment 102B to the Planning Commission decision.

4 - Memorandum in Support of the Application



That being said, the Applicant here is urging the City to adopt Option #2 which also needs ODOT's blessing, but for which ODOT appears much more amenable to approve. For a more detailed discussion of why Option #2 is the better site plan see Section 7 below.

4. RESPONSE TO APPEAL ISSUE NO. 4

This appeal issue alleges that a condition of approval is needed to mitigate an alleged elevated crash rate at the intersection of Highway 214 and Oregon Way.

The appellant's premise for this appeal issue is that the proposed project will elevate the crash rates at the intersection of Highway 214 and Oregon Way, citing to the May 10, 2022 OTAK Memo. However, OTAK directly addressed the issue of crash rates in a subsequent Memo dated May 18, 2022, where at page 4, it was said:

The TIA identified the intersection of OR 214 and Oregon Way/ Country Club Road as having an existing elevated crash rate that exceeds ODOT's 90th percentile crash rate for these types of intersections. Potentially adding trips could exacerbate this condition. However, within the past month ODOT has converted the east-west left turn signal from flashing yellow arrow to protected left turns, which should alleviate the elevated crash rate condition. Thus, with this signal modification in place, no mitigation requirement would be placed on US Market to contribute toward mitigating the elevated crash rate condition. (Emphasis Supplied)

Therefore, based on the most recent OTAK Memo, no mitigation condition of approval is necessary in this case.

It should also be noted that, as conceded by the appellant, this issue arises only if it is Option #1 that is adopted. In the event of adoption of Option #2, the safer traffic maneuvers provided there will further mitigate the crash rate. This issue is addressed in detail by the attached Memo from the Applicant's Transight Consulting as follows:

The ideal access option within this area is to serve the combined site from Oregon Way. This is the lowest-volume abutting street, and it provides a signalized connection to access or cross OR 214. Increased access onto Oregon Way reduces the number of cars weaving or making U-turns on the highway, and since these movements contain elevated crash rates, by reducing these maneuvers it improves safety.

The first access option ("Option 2") presented is the most intuitive. It allows vehicles exiting the convenience market and fuel center access onto Oregon Way to use the traffic signal. This option supports exiting truck turning movements and makes the site

5 - Memorandum in Support of the Application

PAGE

more functional. It also reduces the amount of traffic accessing directly onto OR 214, thereby reducing the weaving and U-turn maneuvers that were raised as concerns by the City. The limitation with this access configuration is that it makes access from westbound OR 214 difficult, forcing these motorists to make a U-turn at the Evergreen Road traffic signal (which has the highest crash rate within this area).

While the appellant seeks an unnecessary condition of approval to provide safe turning movements at this intersection, the better approach is the adoption of Option #2 instead of Option #1.

5. RESPONSE TO APPEAL ISSUE NO. 5

The next appeal issue challenges the staff report regarding the exception to street right of way and improvement requirements. The appeal argues that the staff report contains the findings to support the exception grant, and that those findings are illogical, unresponsive and not supported by substantial evidence. The appeal does not explain what portions of the staff report are bad, nor is it set forth how the decision is bad, or what parts are not supported by evidence. As such this appeal issue is not stated with sufficient specificity for the City to respond to. It is not for the Applicant or the City to guess what it is that the appellant thinks is wrong. Reference to an entire staff report without more specificity is simply not good enough to warrant a response.

The exception referred to is EXCP 21-05 (See page 18 of the Planning Commission Decision). The findings here require the following dedication of right of way and construction of improvements:

- Dedication, if necessary, to bring the Major Arterial into conformance with WDO
 Figure 3.01B; and
- b. Dedication, if necessary, to bring the Access Street into conformance with WDO Figure 3.01E; and
- c. Dedication, if necessary, to provide for Public Utility Easements in conformance with WDO Figure 3.01B and 3.02.01F.2; and
- d. Fees are required to be paid in lieu of highway and parking improvements, which is a standard procedure authorized by the WDO; and
- e. Landscaping and sidewalk requirements are all pursuant to WDO 3.01.04B

6 - Memorandum in Support of the Application

These requirements are stated in clear and objective language, and are very logical in light of the site design for the project. Conditions of approval do not have to be supported by evidence, that requirement only applies to findings. The applicant has to comply with the conditions imposed or no building permit will be issued.

Staff's findings are clear, unambiguous and are supported by evidence in the Record in the form of the site design drawings. Explanation of compliance with WDO 5.03.03 is set forth in Attachment 102, relevant excerpts of which follow:

The existing frontages on Hwy 214 and Oregon Way meet the WDO standards with the exception of the landscape strip and sidewalk being reversed. On Hwy 214 conforming strictly to the WDO standards would actually narrow the road by 6' to add a landscape strip adjacent to the roadway, see A1.1. Changing this would not affect the extent to which the right of way and improvements will be used by persons served by the building or development.

Staff concurs about no effect on the extent to which the right of way and improvements will be used by persons served by the development in the sense that there are at present and will remain the same number of vehicular lanes along both frontages, highway bicycle lane, and sidewalks. The proposed land uses of gas station and convenience store are for convenience and not safety.

Relative to Figure 3.01B, highway non-conformance is limited to lack of planter strip and street trees. Conventional traffic engineering does not address effects of development on walking and cycling as it does for vehicular trips, there is no widely recognized norm for how to address such, and the WDO provides no guidance on the topic. Second, the north frontage context is strip commercial along a heavily trafficked state highway, the kind of dangerous and noisy environment that repels pedestrian and cyclists. Those who do walk and cycle are likely those who are living nearby, the homeless, those without access to car, and those few who wish to brave existing conditions. The presence of a sidewalk is sufficient for sheer practicality for those who wish to walk along a highway or cycle outside of the bicycle lane because they don't feel safe in a highway bicycle lane. In this context, the number of pedestrians and off-street cyclists is moot. Pedestrians and cautious cyclists can and do use the wide sidewalk today, and the pedestrians and cautious cyclists the development might attract would use the same wide sidewalk.

Relative to Figure 3.01E, Oregon Way non-conformance is limited to lack of parking lane, planter strip, and street trees. Staff applies conditions that excepts only the parking lane but also requires fee in lieu of such parking. Additionally, the conditions require wider planter strip and wider sidewalk exceeding the minimums of Figure 3.01E. Like conventional development and zoning codes, the WDO requires off-street parking for almost all developments, including the subject development, so the absence of on-street parking is not of concern from this perspective. Second, pedestrians and cautious cyclists can and do use the narrow curb-tight sidewalk today, and the pedestrians and cautious cyclists the development might attract would

7 - Memorandum in Support of the Application

PAGE

use the new wider sidewalk. Third, Figure 3.01E does not account for the presence of a left turn lane at intersections, and such exists because of ODOT, and given that ODOT and the Public Works Department assume its continued existence, Public Works assumes that the developer would adapt required Oregon Way half-street improvements to fit along the turn lane, and that ODOT typically asks that there be no on-street parking within a certain distance of state highway intersections, usually 50 ft, it is reasonable in this case to allow for fee in lieu of what little on-street parking a civil engineer could fit.

As stated above there is no change to the extent of use from existing conditions to WDO standards, thus no improvements are needed to meet the estimated use, beyond those shown on the submitted plans.

About Street Exceptions in general, Planning staff adds that the Public Works Department is content with frontages along the corridor, and defers to ODOT for developments where ODOT has jurisdiction. By 2015, ODOT improved the I-5 interchange and as part of that project widened OR 214 east of the interchange to a little east of Oregon Way. As expected, the agency constructed to its own economized standards, which resulted in curb-tight sidewalk, though wide at about 8 ft, no street trees, and no burial of the south side overhead electric power lines. Also, until late 2017 and early 2018, staff approved any Street Exception that a developer requested, and Planning staff experience in these years was that the Public Works Department prefers curb-tight sidewalk and existing conditions anyway generally beyond curbs as long as there were minimum improvements to driving area between curbs and subsurface/underground potable water, sanitary sewer, and stormwater utilities. In more recent years, Planning staff took the lead in at least imposing conditions on Street Exception approvals to get a degree of improvements and/or fees in-lieu. Regarding OR 214, Planning staff years ago recognized the de facto policy decision by other departments to leave the ODOT-improved segment as is and not have individual redevelopments upgrade their frontages to have landscape strips, new sidewalk that conforms, and buried power lines redevelopment by redevelopment.

Through both conditional use and Street Exception, Planning staff applies conditions that grant EXCP approval for both frontages, but also to give the City some public benefit for leaving the highway as is or mostly as is and for Oregon way not having required on-street parking; require the developer to make the Oregon Way frontage the best for pedestrians through wide landscape strip with street trees, wide sidewalk, and setting maximums for Oregon Way driveway width; and securing fees in-lieu.

The staff report goes on to list out with engineering calculations the actual fees to be paid for the inlieu conditions.

The current findings and conditions are sufficient for compliance with the approval criteria for Exceptions.

/////

25 | /////

26

23

24

PAGE

8 - Memorandum in Support of the Application

6. RESPONSE TO APPEAL ISSUE #6

The last issue raised in this appeal is a categorical refuting of Option #1, as not being able to meet the unnamed "traffic-related criteria". The Applicant does not agree with the allegations in the appeal, but does agree that Option #1 should not be adopted, in favor of adoption of Option #2.

As with most of the appeal, this issue is not raised with sufficient specificity to warrant a response from the City or the Applicant. Appellant does not set forth any specific provisions of the WDO that are alleged to be violated in the Planning Commission decision. Simply saying "trafficrelated criteria" is not good enough.

The issue of cross access was raised in a previous allegation, and responded to above, which response does not need to be repeated here.

The issue of inclusion of the amount of trip generation from this project is discussed in detail by the engineers at Transight Consulting in the Memo dated July 18, 2022 that is submitted contemporaneously herewith. In particular, the issue of inclusion of Project Basie traffic is addressed as follows:

A comment raised by the opposing gas station's engineer was that our project did not account for Project Basie, which is the new Amazon distribution facility that is now under construction. When the traffic report was prepared this facility was not under construction, was not listed on the City's website as an approved "In Process" development, and our discussion with Dago did not identify this as a project to include because it was not approved (it appears that this was intended to remain confidential during the entitlements period). Our June 2021 confirmation of inprocess developments with staff followed discussion with Dago, our review of the enclosed map of locations to include and was followed by validation in our email correspondence. OTAK's review comment that this was "a memo with no apparent response" is an incorrect reflection of our discussion and diligence, yet still clearly pre-dates the submitted TIA for Project Basie that occurred in September 2021.

As previously discussed and agreed to within the City consultant comments, the proposed redevelopment of the banks to a fuel center, convenience market, and office generates fewer peak hour trips. Accordingly, no updates to the analysis presented within Project Basie are needed, as conditions will operate better than those reported within this previously approved report. As noted in Comment #2, our trip generation estimates for the US Market site are very conservative, and reflect the upper-end estimates for this type of use.

Finally, Project Basie was a rezone project that has a higher burden of proof. The analysis for Project Basie is required to modify the City's adopted Transportation

9 - Memorandum in Support of the Application

WALLACE W. LIEN

1

2 3

4

5

6

7

8

9

10

11

12

13

14

15

16

17 18

19

20

21

22

23

24

25

26

PAGE

PAGE

System Plan by showing that all developable lands plus its impact are accounted for. The Project Basie analysis (prepared by the Opposition Traffic Engineer's firm) did not appear to account for the entitlements of the former bank sites in its near-term analysis, or the allowable site uses in the long-term analysis.

While the US Market site reduces peak hour trips on the system, Project Basie adds between 176 peak hour trips on the system (as assessed in the Kittelson Transportation Impact Analysis based on their own estimated trip generation methodology) and 3,959 peak hour trips (increased to 4,787 in the more current ITE manual), or a factor of 22 times the number of peak hour trips assessed based on national ITE trip generation estimates assessed at numerous other sites of similar scale, see Figures 3 and 4. If the actual trip rates at the Amazon facility mirror those at other high cube fulfillment centers this level of trips would require its own dedicated four-lane facility. For this reason, the burden of proof on a zone change is much higher and it must account for other developable lands as it seeks to amend both the Transportation System Plan amendment and the supporting Interchange Area Management Plan.

The US Market site is in no way opposed to Project Basie and fully intends to serve its patrons with competitive products and lower-cost fuel options. With the US Market showing less trips during the critical evening commute period than the banks operations will be better than those shown in the Project Basie report, regardless of whether or not Project Basie's actual trip rates reflect those presented by the Opposition Engineer's report or the much higher trip rates within national surveys of similar locations.

The technical issues related to transportation planning are clearly set out and are supported by the engineering evidence. Any allegations of error in this issue is incorrect and should be rejected.

7. ADOPTION OF OPTION 2

The only real substantive issue left in this case is whether to adopt the site plan Option #1, or to adopt Option #2. The Applicant urges the City to adopt Option #2 for the following reasons:

- a. The motivation for this appeal lies not in the good administration of land use laws and sound planning, but an attempt to thwart competition. This motivation shows in the lack of foresight put in to the appeal allegations. Competition is the foundation of our free market economic system. It is good for the public in stablizing pricing and ensuring adequate supply of reasonably priced goods. The conglomeration of the four gas station owners who comprise the appellants here have banned together to stop a competitor from entering the market. The City has an obligation to foster competition and to ignore the monopolistic intentions of the other gas station owners.
- b. Option #2 eliminates the cross access issue, and is a site plan that ODOT Access 10 Memorandum in Support of the Application

PAGE

Management can support. While both Options have the requirement of submitting to the ODOT Grant of Access modification process, Option #1 is not preferred by ODOT because it would require Dairy Queen and/or Dutch Brothers to close their driveways, which they would rightly never agree to do. As noted above, Option #2 is the preferred alternative as it does not require closure of the neighbors access driveways. Having a site plan that ODOT prefers makes the most sense and provides the best and fasted path to construction of the project.

- c. Option #2 allows safer and more efficient turning movements onto Oregon Way and through its intersection with Highway 214. As noted above, this eliminates the U-Turn movements through that intersection that may be experienced with Option #1.
- d. Option #2 is the most intuitive site plan. It allows vehicles exiting the convenience market and fuel center access onto Oregon Way to use the traffic signal at Highway 214. This option further supports exiting truck turning movements and makes the site more functional. It also reduces the amount of traffic accessing directly onto OR 214.
- e. Option #2 allows the now vacant site to be developed much sooner because of the preference for this option. Converting this now vacant site to a fully operational commercial facility will greatly benefit the City in the aesthetics of the area, but also the public in providing additional competition in the fuel market.
- f. The Mass of the C store between the gas stations in Option #2 will do a better job of screening light, noise that filters to the senior apartments (on the south) than Option #1. Parking on south side of the C-Store will be a lower number of movements than the high turnover space on the North side of the C store. The parking at the south property line would be employees.
- g. The low impact parking behind C store in Option #2 will provide more visual relief from the residential properties to the south. Option #1 is 10' from the 8' Masonry wall where Option #2 is 58'. The Senior apartments are 120' south of the development, which makes the blank side of the building over half a football field away.
- h. The Option #2 office on the corner (as opposed to Office at the south side of Option #1 and 11 Memorandum in Support of the Application

	ш	
1		tl
2		6
3		a
4		#
5		
6		tl
7		
8		
9		A
10		
11		C
12	$\ $	
13		
14		
15		
16		
17	1	
18	1	
19		
20	ı	
21		
22		
23		
24		
25		
26		
	- 11	

the office adjacent C-store) is smaller. Option #2 is 3,649 sf, where Option #1 is much bigger at 6,836 sf. This is a 53% reduction in building area. There is a linear reduction between traffic count and area. The TIA did not account for this reduction, which means less traffic generation in Option #2. This reduction in traffic generation would support traffic safety by reducing the number of cars.

I. The gas pumps in Option #2 will be 170' from the south property line, where in Option #1, the pumps are only 158' feet from that property line. This means reduced vapors to the south.

8. CONCLUSION

With the exception of the adoption of Option #1 instead of the preferable Option #2, the Applicant concurs with the decision, findings and conditions imposed by the Planning Commission.

The Applicant urges the City Council to approve these applications with the adoption of Option #2 instead of Option #1 as the better site plan for the City, the neighbors and the Applicant.

DATED this 18th day of July, 2022.

Wallace W. Lien, OSB No. 79301 Attorney for Applicant

12 - Memorandum in Support of the Application

D. Michael Mills, Lawyer PC

MICHAEL MILLS mmlawpc@aol.com

OSB #721698

PO Box 1307 Silverton, Oregon 97381 Phone: (503) 510-0748

June 9, 2022 City of Woodburn Planning Commission SENT VIA email to chris.kerr@ci.woodburn.or.us

Re: 2540 & 2600 Newberg Hwy, "US Market" gas station (CU 21-02)

052W12DB03700 (primary) & 3600

Consolidated land use application package (Type III), Conditional Use 21-02, Design Review 21-10, Exception to Street Right of Way and Improvement Requirements ("Street Exception") EXCP 21-05, & Phasing Plan PP 21-01 for a gas station with convenience store, known as US Market, and commercial office space, in the Commercial General (CG) zoning district.

Chairperson, Members of the Planning Commission:

My name is Michael Mills. I am a Lawyer representing Woodburn Petroleum LLC. The proposed development of the US Market is consistent with Oregon law that requires balancing of infill economic development of properties abutting Oregon State highways ORS 374.331(2),

US Markets are Oregon born and bred. I have represented the Sidhu Family since 1998 when they acquired their first convenience store in Silverton Oregon.

Since that time, they have expanded and grown. They now have over 35 US Markets/gas stations and travel centers, serving over 15,000 customers per day. Those US Markets are similar to what the Planning commission and the City of Woodburn is considering.

Their brand partners at other locations include, Chevron, Arco AMPM, Shell, TA Express. Mobil, Exxon and One 9 Fuel Stop. This location will be the introduction into the Woodburn community of the first Space Age gasoline station, and the first Krispy Krunchy Chicken outlet.

Space Age has been marketing gasoline and diesel products in Oregon for 20 years. In these times of high gasoline prices, Space Age will offer very competitive pricing. According to Gas Buddy, as of the morning of June 6, US Market's Space

ORLAW "Providing Legal Services for the Oregon Restaurant and Lodging Industry since 1972"

Age gasoline just 11 miles South on the freeway at Brooks I-5 Interchange was \$5.19 per gallon, cash or credit for regular. Chevron at Woodburn I-5 was \$5.69 per gallon and Shell at I-5 Interchange was \$5.69 per gallon.

The Krispy Krunchy Chicken franchise has over 2600 locations in 47 states. And from personal experience I can tell you it is delicious.

US Market will employ 20 full time and 4 part time employees and will stock over 3000 items. They will offer products available to Food Stamp (SNAP) recipients.

US Markets will be a very good neighbor and a strong supporter of the Woodburn Community. Don Sidhu has lived in Woodburn since 2003.

Every year for 16 years including this year, US Markets has organized and hosted the US Market Golf Tournament at the OGA course in Woodburn. Last year the US Market Golf Tournament raised and donated over \$80,000.00 to Doernbecher Children's Hospital with 280 out of town golfers and 72 sponsors participating and contributing to the City of Woodburn economy. They plan on continuing this tradition.

1. WHY THIS IS A CONDITIONAL USE APPLICATION

The proposed Convenience store and offices are allowed under existing zoning. The proposed use of gas station is allowed outright unless located within 200 feet of residential zoned properties. There are 2 Residential units zoned R1S that are located within 200 feet, i.e. 943 and 953 Oregon Way.

Exhibit 3. shows those two residential properties and their relationship to the proposed development.

Exhibits 4 and 5 shows them from Oregon Way. Note that one of the residences was adjacent to the drive through driveway of the bank. Exhibits 6 and 7 show the previous bank building.

2. CONCERNS OF RESIDENTS OF PANOR 360 CONDOMINIUMS

A. GREEN AREAS

One of the comments received by some condominium owners stated a desire for more significant open landscaped area. "We need more green areas especially with ...a residential area close" US Market worked closely with Staff to develop a site that will maximize greenery in accordance with Woodburn development codes. The proposed plan is shown at Exhibit 12. It may be modified slightly but no proposed vegetation will be eliminated in final form.

Exhibit 10 shows existing lack of vegetation at 214. This will be improved per the landscape plan developed in cooperation with City Staff to add more vegetation than was at original site especially at 214.

B. NOISE VOLUME

"Another concern we have is noise volume and environmental pollution"

Staff and Developer have incorporated the following into the Development plan:

Fuel pumps: Audible audiovisual advertising, if any, is prohibited from sounding from fuel pump electronic display speakers. Such advertising shall be limited to sight only.

Tire/vacuum: Addition of any vehicle interior vacuum facility outdoors, tire pump facility outdoors, or other similar mechanical facility outdoors for gas station customers that makes noise shall be located min 100 ft north of the south lot line of Tax Lot 3700. Based on Ordinance No. 2312, any vacuum shall be closed to customer use min from 9:00 p.m. to 7:00 a.m.

There is 120 feet distance to back lot line of development with convenience store set back another 50 feet from south property line. The North yard of the condominiums adjacent to the site is fully landscaped. See Exhibits 11 and 13.

A sound impact assessment of the effect of the proposed activity on the condominiums was commissioned by US Market and concluded that "the proposed use will be no louder than some of the existing, surrounding uses and the increase in sound level will be barely perceptible. With the increased mitigation provided by the 8ft high wall at the perimeter property no further action is needed."

C. FUEL FUMES

New style dispensing nozzles allow less fumes to enter the atmosphere. Preset fuel amount monitors and "No top offs" greatly reduce any inadvertent spillage from dispensing nozzles. None of the US Markets have ever had a gasoline or diesel spill that required Department of Environmental Quality to investigate or take remedial action.

US Market expects up to ten fuel truck deliveries per month. Woodburn's Public Works Department can regulate time, place and manner of fuel truck access to and from the development and adjacent public streets. US Market will have

[&]quot;We are Already subjected to constant traffic noise...."

employees who supervise fueling delivery access to the site, fueling procedures while on site, and egress from the site. Such deliveries can be scheduled at light traffic times, very early morning or later in evening.

D. CRIMINAL ACTIVITY

"Hang out for criminal activity and much louder crowd of people in addition to the existing Dairy Queen."

US Market will have motion detecting lighting and in-store continual video monitoring of surveillance cameras located in outside areas, with a thirty day retention period. They will post signs prohibiting loitering or consuming alcohol on the US Market premises and "trespass" people who loiter, and call the police to have them arrested. They will cooperate with Woodburn Police and your City Attorney if the City decides to prosecute.

E. SUMMARY

The City of Woodburn Staff has worked closely with the Architects and Engineers. Exhibit 14 pp 1-3 is a comprehensive summary. The development that Staff has recommended you approve will be a valuable addition to your City of Woodburn, supporting it with tax revenue, new services, competitive pricing and general overall support of the Woodburn Community.

I thank you for your attention.

Michael Mills

OSB#721698

____S/__Michael Mills
Michael Mills
OSB #721698
Enclosures:
Exhibit list
Exhibit 1-16

EXHIBITS

- EX. 1 SITE PLAN
- EX. 2 SITE PLAN SHOWING LOCATION OF PREVIOUS BANK BLDGS
- EX. 3 SHOWS TWO RESIDENTIAL PROPERTIES IN ORANGE THAT MAKES THIS A CONDITIONAL USE APPLICATION
- EX. 4 953 OREGON WAY, RESIDENTIAL, LOOKING WEST FROM OREGON WAY. PREVIOUS BANK BLDG ON RIGHT
- EX. 5 943 RESIDENTIAL, LOOKING WEST FROM OREGON WAY
- EX. 6 PREVIOUS BANK BLDG ON RIGHT LOOKING SW FROM OREGON WAY
- EX. 7 PREVIOUS BANK BLDG LOOKING WEST FROM OREGON WAY, DRIVEWAY SHOWN WILL REMAIN
- EX. 8 OREGON WAY, LOOKING SOUTH FROM 214
- EX. 9 OREGON WAY LOOKING SOUTH, SHOWING DRIVEWAY TO SITE
- EX. 10 SITE FRONTAGE AT HWY 214
- EX. 11 CONDO YARD, SITE CIRCLED CENTER LEFT
- EX. 12 LANDSCAPE PLAN
- EX. 13 SHOWS 50 FOOT SET BACK OF C-STORE FROM CONDO NORTH LOT LINE
- EZ.14 STAFF SUMMARY SHOWING MITIGATION APPLIED
- EX. 15 STAFF PAGES 1 AND TWO REPORT SHOWING MITIGATION CONDITIONS APPLIED TO GAS STATION
- EX. 16 PAGES 1-3 FEES TO BE PAID BY APPLICANT FOR TRANSPORTATION STUDY; FEE IN LIEU OF BUS STOP BYCYCLE RACK





Executive Summary

Location

The proposal is to consolidate and redevelop five lots totaling 1.42 acres at 2540 & 2600 Newberg Highway (Oregon Highway 214). The subject property is located at the southwest corner of the intersection of the highway and Oregon Way.

Existing Context

The subject property is zoned Commercial General (CG) and was occupied by two vacant bank buildings, now demolished.



Subject property outlined in green

Conditional Use

The applicant/developer applied for a conditional use (CU) for the gas station because it is within 200 feet of residentially zoned property.

A "conditional" use is called such because (1) it's conditional upon discrete approval by the City, and (2) the City can condition physical or operation aspects of a proposal, including on issues particular to the case at hand and above and beyond what Woodburn Development Ordinance (WDO) provisions directly address.

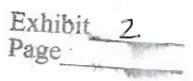




Image capture: Jun 2019 © 2022 Google

Exhibit	4
Page -	

943 Oregon Way



Woodburn, Oregon



Street View - Jun 2019



 \leftarrow

Exhibit 5
Page



image capture: Jun 2019 © 2022 Google

Exhibit 6
Page



Image capture: Jun 2019 © 2022 Google

Woodburn, Oregon



Street View - Jun 2019

60.



Image capture: Jun 2019 © 2022 Google

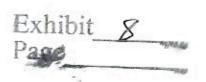




Figure 13. Oregon Way access facing south.



Figure 14. Oregon Way access facing north toward the Newberg Highway.

Exhibit 9
Page



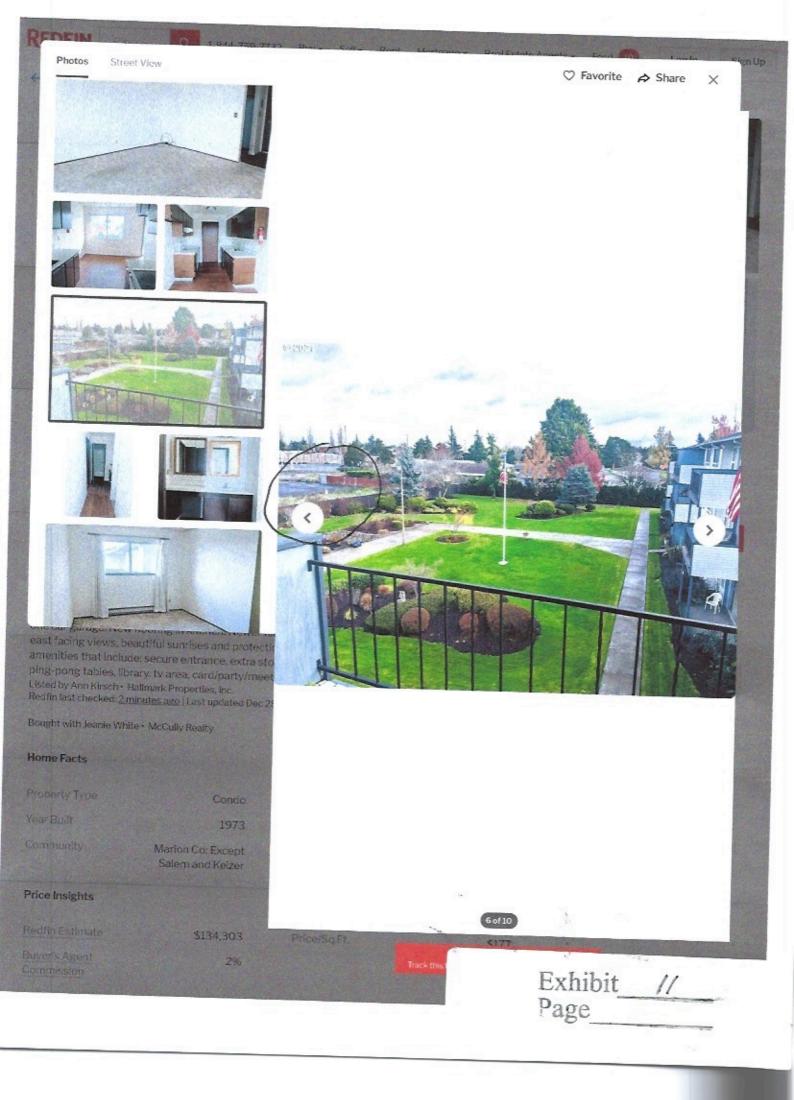
Figure 11. Newberg Highway right-in, right-out access facing east highlighting the straight and flat topography (to highlight potential pedestrian conflicts at the access).



Figure 12. Newberg Highway right-in, right-out access facing west toward opcoming traffic

Exhibit 10

Page 16



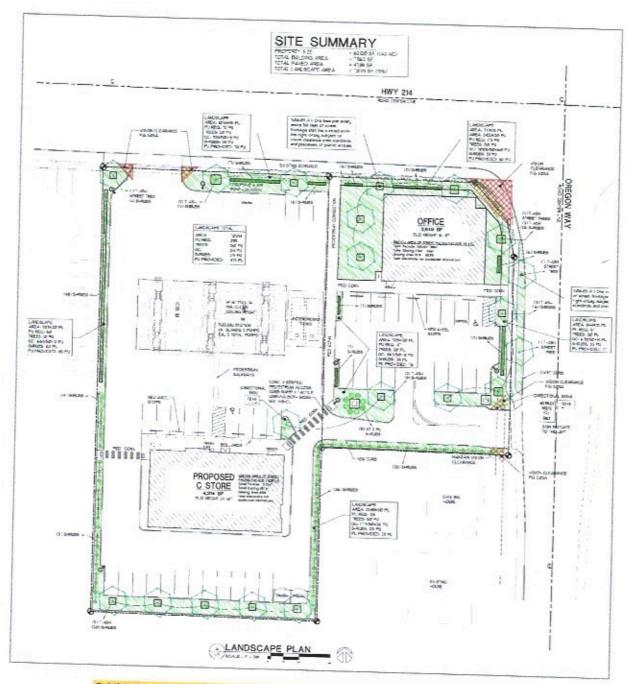
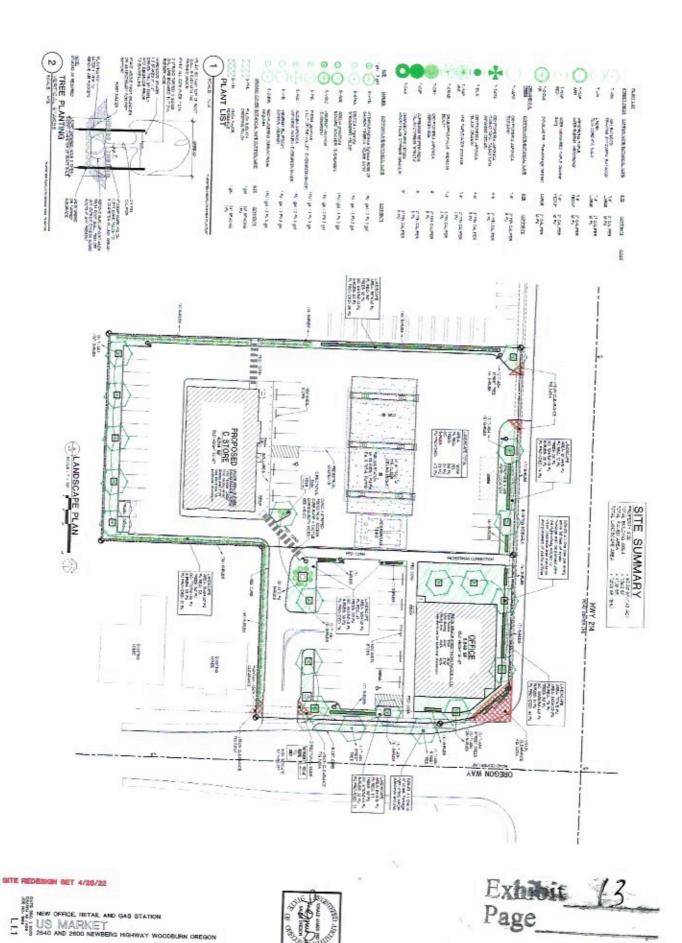


Exhibit PP2: Option 2 Site Plan Excerpt Prior to Revision per Conditions of Approval

Exhibit /2.
Page



The Proposal

Staff and the developer have worked to produce a good site development by focusing on these categories:

- a. The look and feel of street frontage for passers-by walking, cycling, and driving;
- The look and feel of yard landscaping along streets for passers-by walking, cycling, and driving as well as on-site employees and customers;
- c. Urban design: how close buildings are to sidewalk, how many and how large are windows, are their entrances visible from sidewalk and whether the public can see main entrances to buildings from sidewalk, and whether placements of entrances orient to those who walk or cycle no worse than to those who drive and park;
- d. How safely and comfortably pedestrians and cyclist can access and circulation among onsite buildings through walkways and visibly distinct crossings of drive aisles;
- Having enough on-site trash receptacles near sidewalk to lessen the likelihood of litter of yards along streets and street frontage by convenience store customers on foot;
- f. Avoiding excessive exterior lighting;
- g. Having reasonably decent architecture in the context of strip commercial development;
- h. Having the Architectural Wall look reasonably decent;
- Getting highway electric power poles and overhead electric power lines buried or fees inlieu paid to fund such elsewhere in town;
- Having a few evergreen trees among newly planted trees; and
- Increase street trees and on-site trees, and provide for fee in-lieu to fund tree plantings elsewhere in town;
- Administering Street Exception EXCP 21-05 to have the developer improve Oregon Way to be the best of the two frontages for pedestrians and cyclists in exchange for leaving the highway frontage as is or largely as is;
- m. Mitigation of the unpleasant aspects of neighboring and patronizing a gas station and convenience store.

The staff analyses and findings (Attachment 102), especially the Conditional Use Provisions and Street Exception Provisions sections, provide much more detail, and the recommended conditions of approval secure the above things.

Site Plan

The development is phased and has two site plan Options 1 & 2.

Site plan excerpts follow on the next page(s), and a larger version is among the attached site plans (Attachment 103).

Staff finds that the proposal meets applicable Woodburn Development Ordinance (WDO) provisions per the analyses and findings (Attachment 102).

Exhibit 14
Page /

extent remaining. The Director may require developer application for any of Extension of a Development Decision per WDO 4.02.05 or Modification of Conditions per WDO 4.02.07.

CU10. Gas station operations:

- 1. Noise:
 - Fuel pumps: Audible audiovisual advertising, if any, is prohibited from sounding from fuel pump electronic display speakers.
 Such advertising shall be limited to sight only.
 - b. Tire/vacuum: Addition of any vehicle interior vacuum facility outdoors, tire pump facility outdoors, or other similar mechanical facility outdoors for gas station customers that makes noise shall be located min 100 ft north of the south lot line of Tax Lot 3700. Based on Ordinance No. 2312, any vacuum shall be closed to customer use min from 9:00 p.m. to 7:00 a.m.
- Trash: There shall be at least one trash receptacle along each of the walkways, at min 1
 ft from walkway edge, to and from the highway and Oregon Way sidewalks, within 25 ft
 of ROW, for intended use by convenience store customers, and remaining privately
 maintained and serviced.
- 3. Vehicular circulation:
 - a. Driveways:
 - (1) Highway: The driveway shall remain right-in, right-out and be max width 36 ft; however, if the developer widens the driveway from the existing 30 ft, then min 12 ft of the width and min depth equal to either the throat or 13.5 ft, shall be poured concrete. The area of poured concrete that is outside the ROW shall be patterned, stamped, or treated to resemble paving stones and shall be felt by motorists driving over it. (Objective is to calm traffic by preventing fast, swooping maneuvers and to direct vehicles to 24 ft width of asphalt within the driveway throat, while allowing semi-trailer truck turning movement across 36 ft of width.) If the driveway widens, the developer also shall reconstruct the entire driveway to conform to City Public Works standard drawing Detail No. 4150-4 "Property Line Sidewalk at Driveway", except that if and where a specific conflict arises between City and ODOT public works construction standards, that of ODOT engineering guidance shall supersede.
 - (2) Oregon Way: Max 1 driveway, max width 24 ft if two-way or 12 ft if one-way. Option 2: Throat, if two-way, then the inbound lane max 24 ft deep where lane is parallel with the outbound lane.
 - b. I-5 directional signage: There shall be on Tax Lot 3700 outside of ROW and streetside PUEs directional signage that accomplishes directing on-site motorists bound for I-5, min 2 signs for Option 1 and 3 signs for Option 2, each min area 18 by 24 inches, mounted min 2 ft and max 7 ft above grade, text min 6 inches high, and including the standard Interstate 5 logo. The Director may administratively establish

Exhibit 14
Page 2

locations, details, specifications, and revisions to administer this condition part during building permit review.

- c. Option 2: fuel pump queueing:
 - (1) General: Fuel pump queues shall be one-way either eastbound in Option 1 or southbound in Option 2. The developer shall stripe directional arrows and lines to direct motorists into fuel pump queues and distinguish the queues from driving routes around the fuel pump canopy.
 - (2) Stacking:
 - (a) Option 1: Of six queues, min 3 shall each fit stacking of min one car west of the fuel pump island.
 - (b) Option 2: Of six queues, min 2 shall each fit stacking of min two cars north of the fuel pump island, and the remaining 4 shall each fit stacking of min one car.
- d. Trucks: Until July 1, 2032, the Public Works Department may administratively regulate time, place, and manner of freight and truck access (ingress/egress) to and from the development and adjacent public streets. This condition shall not be construed to preclude the City past the date from regulating development freight and truck access via ordinances that are applicable generally to properties that happen to include the subject property.

CU11. Modification: Because the WDO, including 5.03.01, does not specify how changes to an approved conditional use (CU) and related site improvements might trigger another CU or modification of a CU approval, for Director determination the following serve as criteria and – where noted – as factors:

- a. Significant expansion of the use(s), factors being an increase in any of: total GFA by 25.0% or more or by an absolute value of 1,825 sq ft or more, and, the number of buildings by 1 or more;
- Increase in off-street parking by 6 or more stalls, even if the existing supply were in excess of the minimum required ratio(s);
- c. Net increase in impervious surface totaling at least 1,000 sq ft;
- Adding the land uses of automotive maintenance and repair, including through service bay structures.
- Development as defined in WDO 1.02 within twenty (20) feet of a property boundary and not already conditioned through the subject approval;
- f. Any proposal necessitating a request for Exception to Street Right-of-Way and Improvement Requirements ("Street Exception");
- g. Any proposal necessitating a request to vary from the WDO;
- h. Any proposal necessitating a Type III or IV land use application type; and
- City adoption of a unified development ordinance replacing the WDO were to have intervened.

Exhibit 14
Page 3

Conditional Use 21-02: Transportation

T-A. OR 214 & Oregon Way: The developer shall pay a fee per Attachment 203 to fund a transportation study, specifically to investigate in coordination with ODOT (1) corridor signal timing and coordination adjustments and (2) improving safety by reducing vehicle turning or angle crashes. This is due by building permit issuance. [TSP R11 & TIA p. 12]

T-T. Bus transit: Bus stop improvements: To further TDM through bus transit, regarding the WTS Oregon Way northbound stop that is adjacent to 966 & 980 Oregon Way, where because ROW and streetside PUE are too narrow relative to the street to accommodate installation, the developer shall pay a fee in-lieu as well as a fee in lieu of a bus stop bicycle rack per Attachment 203.

Exhibit 15
Page 7

Part B. Fee Table

1 able 2038.	Conditioned Fees					
Condition Reference	Fee Туре		Amount	Context	Timing	Staff
T-A	Transportation signal timing and crash safety	g and crash safety	\$25,000	Fee in lieu of investigation	Building permit issuence	Tracking:
	study fee in-lieu			in coordination with ODOT of (1) corridor signal timing and coordination adjustments and (2) safety improving by reducing vehicle turning or angle	Building permit issuance	
Ī	Bus shelter fee in-lieu		By year of assessment: 2022: \$13,140 2023: \$13,535 2024: \$13,940 or 2025 or	Oregon Way northbound stop	Building permit issuance	
	Bus stop bicycle parking fee in-lieu	n-lieu	\$510.20			
EX1 & EX2	Street tree fee in-lieu	For highway:	\$950 per tree. For EX1, assessed at minimum 5 trees.	Street Exception EXCP 21-05 from standard frontage improvements, which includes existing curb-tight sidewalk	Building permit issuance	
		For Oregon Way street trees omitted through civil engineering plan (CEP) review, or, inspection missing tree fee	\$950 per tree	Applies to omitted street trees, or, ones missing from required number upon inspection	If CEP context, then by building permit issuance; if in inspection context, then prior to passing final inspection / obtaining certificate of occupancy	
EX1	Sidewalk upgrade fee in-lieu	For highway sidewalk	\$76,320	A fee for sidewalk that EXCP 21-05 excepts from	Building permit issuance	

CU 21-02 US Market

Exhibit 15
Page 2

	ree IVDe				
Reference	Charles	Amount	Context	Timing	Staff
this Attachment	and account	\$2,850	Existing City tree fund (for new trees in City ROWs and	Building permit issuance	
G6 through	Public Works Dept. civil engineering plan (CEP)	\$250; \$346	Original/1st submittal: each	I DO OFF	
Attachment	review: Review by Planning Division		subsequent inc.	PW PW	
203	Inspections by Planning Division	\$75;\$346	1st inspection or "walkthrough"; each subsequent	Inspection requests related to public (street) improvements and	
this Attachment 203	Specifically any that would allow or allows the developer to delay construction of street improvements beyond building permit issuance.	\$4,474;\$346	Original/1st submittal; each subsequent inc. deferral/piecemeal. Serves as bond application / review request fee and isn't a bond amount itself. Fees not applicable to warranty bonds or ordinary.	If CEP context, then payment (through Planning Division) upon CEP application to PW; if developer applies for building permit review and there has been no CEP	
			construction bonds if they do not authorize delay of construction of street	building permit issuance	



David J. Petersen david.petersen@tonkon.com Admitted to Practice in Oregon and California

503.802.2054 direct 503.221.1440 main

June 8, 2022

VIA E-MAIL - <u>chris.kerr@ci.woodburn.or.us</u>; <u>colin.cortes@ci.woodburn.or.us</u>; <u>cassandra.martinez@ci.woodburn.or.us</u>

Woodburn Planning Commission City of Woodburn Attn: Chris Kerr, Colin Cortes, Cassandra Martinez 270 Montgomery Street Woodburn, OR 97071 RECEIVED

IUN 0 9 2022

COMMUNITY DEVELOPMENT DEPARTMENT

Re:

Woodburn Fast Serv Inc. and LB Group, LLC 2540-2600 Newberg Highway, Woodburn, OR City File No. CU 21-02

Dear Planning Commission:

This letter supplements my letter of May 12, 2022 in this matter on behalf of Woodburn Fast Serv Inc. and LB Group, LLC. We have reviewed the supplemental staff report dated June 2, 2022 and have the following additional comments on behalf of our clients.

In the supplemental report, staff has not addressed most of the issues that I raised in my May 12 letter. The proposed approval remains too vague and uncertain for the public to provide meaningful comment, recommends legally insufficient findings and improperly defers the determination of compliance with applicable criteria to future, non-public administrative processes.

The revised staff report does adequately identify and evaluate the applicable Comprehensive Plan policies, so that ground for objection is withdrawn.

With respect to the requested exceptions to street right of way and improvement requirements, the previous staff report contained no analysis of any applicable criteria. The updated report does attempt to analyze the applicable criteria, but the analysis is still insufficient.

The applicant seeks two exceptions to street improvement requirements. First, it requests an exception to not reconstruct both frontages with a landscape strip between the sidewalk and the street. Currently, the sidewalks directly abut the streets. It is well known that a landscape strip between street and sidewalk is a safety improvement, to create a buffer between persons on the sidewalk and traffic

City of Woodburn Planning Commission June 8, 2022 Page 2

in the street. Staff, however, takes the position that because the current situation is unsafe, very few people use the sidewalk, and with few people using the sidewalk a landscape strip is not justified. This is just backwards analysis – the point of the landscape strip is to improve safety and thereby encourage increased use of the sidewalk. Existing unsafe conditions that discourage use do not justify the continuation of those unsafe conditions.

Second, the applicant requests an exception from on-street parking requirements on Oregon Way, which staff justifies by "assuming" what half-street improvements the developer will build based on what ODOT "typically asks" for. This is not analysis of criteria based on evidence in the record. It is straight-up speculation about what might happen based on things that might be required, or might not.

Furthermore, none of this analysis is responsive to the actual approval criteria in WDO 5.03.03.B. Those criteria, in summary, require an evaluation of the quantitative use of public improvements by persons visiting the proposed development, and the resulting need for further public improvements. In other words, if the nature of the development is that its users will not make much use of certain public improvements, then it is perhaps justifiable to grant an exception to those public improvement standards. Nothing in staff's analysis evaluates these issues. In fact, persons visiting this project will make rather significant use of the public improvements for which exceptions are sought (particularly off-street parking), so granting the requested exceptions is in fact not justified.

In summary, and without restating them here in full, my clients reiterate the objections made in my May 12 letter as supplemented herein, with the exception of the concerns about findings of compliance with Comprehensive Plan policies.

Thank you for your consideration of these comments. Please enter this letter into the record of this matter.

Best regards,

David J. Petersen DJP/rkb

cc (via e-mail):

Robert J. Barman Garry L. LaPoint Wayne K. Kittelson Danny Draper





David J. Petersen david.petersen@tonkon.com Admitted to Practice in Oregon and California

503.802.2054 direct 503.221.1440 main

May 12, 2022

VIA E-MAIL - planning@ci.woodburn.or.us

Woodburn Planning Commission City of Woodburn Attn: Planning Division 270 Montgomery Street Woodburn, OR 97071

Re: Woodburn Fast Serv Inc. and LB Group, LLC

2540-2600Newberg Highway, Woodburn, OR

City File No. CU 21-02

RECEIVED

MAY 1 2 2022

COMMUNITY DEVELOPMENT

Dear Commissioners:

This law firm represents Woodburn Fast Serv Inc. and LB Group, LLC, which both own real property in the City of Woodburn. We have reviewed the staff report in the above-referenced land use matter and the related materials, and have the following comments on behalf of our clients in opposition to the proposal. Also, enclosed please find separate comments specific to the applicant's Traffic Impact Analysis prepared on behalf of our clients by Kittelson & Associates.

First, the approval recommended by staff is too vague and uncertain to be approved. The applicant submitted two alternative site plans, and staff has recommended allowing the applicant to develop either site plan, depending on how the applicant resolves an issue related to access from Highway 214 (this is referred to in the staff report as the "ODOT factor"). In this case, the two alternative site plans are significantly different as to the proposed uses of each parcel, the total square footage to be built and the location of the convenience store. As such, the applicant has basically made two different applications, and the recommended approval fails to choose between them. Instead, it allows the applicant to later choose which site plan it wants based on the applicant's own understanding of the ODOT factor (see condition PP.1). A land use decision that does not even identify the site plan being approved makes it difficult if not impossible for the public to meaningfully comment on whether or not the proposal meets the applicable criteria, since the public cannot even determine what the proposal is.

Second, the staff report fails to make adequate findings that numerous applicable criteria are or can be satisfied. Instead, staff repeatedly makes noncommittal statements like "it is unclear if there is conformance" (see, e.g., pages 7, 11, 12), or

City of Woodburn Planning Commission May 12, 2022 Page 2

the proposal is "probably conforming" (page 8), or that the applicant will "revise any nonconformance during building permit review" (page 11). As to other criteria, staff outright finds that the criteria are not met (see, e.g., WDO 3.05.02(E)(2) on page 10). In both situations, staff then states (without further analysis) that conditions of approval will be imposed to secure conformance.

These are not legally adequate findings. Conditions of approval are not findings, and cannot substitute for a determination of compliance with applicable approval criteria. Instead, a decision must find that compliance with the criteria is feasible, which means that "substantial evidence supports findings that solutions to certain problems ... are possible, likely and reasonably certain to succeed." *Meyer v. City of Portland*, 67 Or App 274 fn. 5 (1984), *rev den* 297 Or 82 (1984). Once those findings are made, conditions may then be imposed to evaluate the details of how to achieve compliance and to select the precise solution. *Id*.

Here, the findings do not come close to this standard. Instead, they expressly abdicate the obligation to determine if criteria are or can be met, and in at least one case the findings outright conclude that a criterion is not met. Findings must be written "to establish the factual and legal basis for the particular conclusions drawn," none of which has occurred here. *Thormalen v. City of Ashland*, 20 Or LUBA 218, 229 (1990).

Furthermore, in many cases the draft conditions are hopelessly vague as to the solution or improperly defer the determination of compliance to administrative staff. For example, see condition D3 which merely states that "[t]o conform to WDO 3.05.02J, during building permit review the Director may administratively establish details, specifications, and revisions to administer the WDO section." This gives the Commission and the public absolutely no insight into how unspecified "details, specifications and revisions" might possibly insure that WDO 3.05.02J is met. The Director's obligation is not even mandatory, as he or she only "may" establish standards. See also condition CU9.D.2(c) which purports to give the Director administrative authority to make unspecified changes to the project if needed to address an ODOT objection in the future. Conditions like these that shift discretionary decisions to administrative personnel expressly violate requirements of Meyer and also the WDO. See WDO 4.01.06.A, which states that "[a]ll conditions of approval shall be clear and objective or if the condition requires discretion shall provide for a subsequent opportunity for a public hearing," and WDO 4.02.07 which requires that any request to subsequently modify a condition of approval must be considered pursuant to the procedures and standards that applied to the original application (i.e., notice and a public hearing).



City of Woodburn Planning Commission May 12, 2022 Page 3

Third, the staff report is similarly deficient in its findings of conformance with applicable Comprehensive Plan policies. There is simply no analysis of the relevant policies or any facts in evidence as to how those policies are met (see page 19). Instead, staff merely lists the policies that it thinks are applicable and states that conditions are imposed "in support of" those policies, but then none of the conditions cross-reference any of the policies so there is no way to cross-check to see if such conditions have in fact been recommended. Any analysis of how the proposal meets or doesn't meet those policies, or of the facts that support imposition of conditions to meet those policies, is completely absent and therefore meaningful review by the public or the Commission is impossible.

Fourth, the analysis supporting the recommendation to approve the exception to street right of way and improvement requirements is inadequate. WDO 5.03.03(B) requires a weighing and balancing of four criteria in deciding whether or not to grant an exception, all of which relate to the proposed project's impacts on public infrastructure. The staff report (page 22) contains no analysis of any of those criteria. The report makes no mention at all of the project's impacts and instead expressly relies on the applicant's desire to reduce costs, which is plainly not a relevant criterion. Staff then describes some kind of trade with the applicant where the exception is granted in exchange for certain improvements by the applicant on Oregon Way. However, staff does not explain why this trade is appropriate or even allowed, nor does it explain why the improvements on Oregon Way cannot be imposed as a condition of approval and thereby eliminate the need for any trade. As with the findings for other criteria, the findings in response to the exception request do not address the applicable criteria or provide any evaluation of the evidence in support of the findings, and are therefore inadequate.

In summary, the staff report and hence the proposed findings are almost entirely devoid of the analysis of the evidence in the record necessary for the Planning Commission to be able to determine whether or not the proposal meets the requirements of the WDO. Instead, staff punts on almost every required finding and merely recommends conditions of approval requiring the applicant to satisfy the criteria later. The staff report does not even make a recommendation as to the most basic finding of all – the site plan that is being approved – and instead defers this most fundamental of issues to a later time. In essence, the proposed findings do little more than restate the criteria and improperly transfer the obligation to evaluate the project and make a decision from the Planning Commission (and its

¹ Moreover, the Comprehensive Plan policies are only listed by number, thereby completely frustrating review by anyone who does not concurrently have access to a copy of the Comprehensive Plan.



City of Woodburn Planning Commission May 12, 2022 Page 4

associated public process) to later administrative processes shielded from public review. The application should be denied.

Thank you for your consideration of these comments. Please enter this letter into the record of this matter.

Best regards,

David J. Petersen

DJP/rkb Enclosure

cc (via e-mail):

Robert J. Barman

Garry L. LaPoint Wayne K. Kittelson Danny Draper

042947\00001\13609150v1

RECEIVED

MAY 1 2 2022

COMMUNITY DEVELOPMENT



851 SW 6th Avenue, Suite 600 Portland, OR 97204 P 503.228.5230

Portland, Oregon

May 11, 2022

Project #: 27861.0

Woodburn Planning Commission Attention: Planning Division City of Woodburn 270 Montgomery Street Woodburn, OR 97071

RE: Woodburn Fast Serv Inc. and LB Group, LLC; City File No. CU 21-02

Dear Commissioners:

At the request of Woodburn Fast Serv Inc. and LB Group, LLC, we have reviewed the Traffic Impact Analysis (TIA) submitted in support of City Case File No. CU 21-02 and offer the following comments for your consideration.

- 1) The TIA does not account for traffic associated with the new Amazon facility. Confidential discussions about the new Amazon facility began with City staff in 2020. Public awareness of this project as an in-process development existed prior to the time the TIA was submitted. The Amazon facility is now an approved project and work is well underway in completing the building and beginning operations. Due to the size of the facility that is now under construction and the nature of its operations, the traffic-related effects of this approved development should be recognized and taken into account by this TIA.
- 2) The TIA relied on background traffic volume counts conducted in 2019. Recent (2021) traffic counts in the area of the I-5/Woodburn interchange are 15-25% higher than the 2019 base counts relied upon in the TIA. Reliance on 2019 traffic counts is problematic for at least three reasons: a) they are three years old; b) they are measurably lower than counts conducted in 2021; and c) they do not reflect any long-term travel behavior changes that were initially instigated by the pandemic. The TIA will provide a more accurate characterization of traffic conditions within the site vicinity if the base traffic volumes are updated to reflect current conditions.
- 3) No queuing analysis was performed for critical lane groups at the intersections that were studied. This is a particularly important consideration with respect to the through- and left-turning vehicle queues on the EB approach on OR 214 to Oregon Way. It is important because the right-out movement being proposed to be maintained from the development onto OR 214 could be affected if queue backups at the downstream signal make it difficult for vehicles leaving the site to enter OR 214 safely. Drivers wanting to make a U-turn at Oregon Way to return to the freeway or other destinations to the west may be most severely affected by long queues at this intersection. Likewise, no queuing analysis was reported for the full access drive to Oregon Way. It would therefore be prudent to determine and report the 95th percentile queue lengths for all movements at all studied intersections to quard against unintended safety or operational problems.
- 4) The TIA found operational issues at the OR 219/Evergreen Road intersection. This finding is similar to what was found when Amazon completed its own TIA. For Amazon, the City conditioned a proportional share contribution toward a future intersection improvement, but it does not appear that a similar condition has been imposed upon this particular application. The City should consider imposing a similar condition for purposes of both consistency and fairness.

We hope these comments are useful and believe the Planning Commission will be able to reach a more informed decision after it receives and evaluates the additional information recommended in the comments above.

Sincerely,

MAY 1 2 2022

Wayne Kittelson Senior Principal Engineer COMMUNITY DEVELOPMENT

To: City of Woodburn

Planning Commission

270 Montgomery St.

Woodburn, Or 97071

From: Anna Phillips

2329 Oregon Court

Woodburn, OR 97071

RE: Notice of Land Use (tax lots 052W12DB03600 & 3700)

Please note my strong objection to this proposal. When we purchased our home at 2329 Oregon Court in 2009, we took into consideration our location between Hwy 214 and Hayes St. We spent time in the area and decided that traffic flow was not too bad and noise level was fairly low. How it has changed in 12 years!

The flow of vehicles in all cases has increased to the point that we time our travel to avoid morning and evening rush-hour. Add to that the back-up that occurs where the highway narrows before the elementary school and you have another period when traffic is terrible. On weekends and even some evenings, those commuters who must have their coffee no matter what, begin lining up in the highway waiting to get into Dutch Bros at the corner of Hwy214 and Evergreen.

I noticed with alarm when flashing yellow lights permitting traffic to turn when deemed safe were installed on Highway 214 at Oregon Way and Evergreen. I was not at all surprised when that feature was uninstalled about 6 month later. Using that feature caused lots of risk-taking and I'm guessing, an increase in accidents.

Now, it's being proposed that you allow yet another high volume business to add to the tangle we already have. I repeat, I strongly object!!

Anna Phillips

2329 Oregon Court

anna L. Phillips

Woodburn, OR 97071

RECEIVED

Date: May 10, 2022

MAY 1 0 2022



Addendum

May 9, 2022

To:

Planning Commission (May 12, 2022)

From:

Colin Cortes, AICP, CNU-A, Senior Planner

Cc:

McKenzie Granum, Assistant City Attorney

Chris Kerr, Community Development Director CK.

Ron Ped, Ronald James Ped Architect, PC

Subject:

Addendum to Agenda Item 6a: US Market Gas Station (CU 21-02)

Summary:

Staff received the attached May 6, 2022 letter of testimony from Rebecca L Hayes, a resident of Panor 360 condominiums that are at 950 Evergreen Road and border the southwest of the proposed development. This cover memo provides context.

The letter third paragraph states, "A 6-foot 'architectural wall' will not be adequate, this should be changed to a 12-foot Noise Abatement Wall where our property line meets with the proposed Market Gas Station." The recommended Condition CU2b(2) (pp. 12-13) requires along the Panor 360 property a minimum height of 8 feet plus a two-inch cap, not 6 feet.

Regarding Option 2 comment 1, "Convenience stores typically operate long hours or even 24 hours", staff notes that per Woodburn Development Ordinance (WDO) 5.03.01B, one of the factors for criterion 3 is hours of operation.

Regarding Option 2 comment 3, "Having a charging station for Hybrid Auto leaves the question, where would the travelers go while their vehicles are charging?": Recommended Condition CU7 requires one electric vehicle (EV) parking stall with charging and that it be at or near the commercial office space. One or more employees would work in the commercial office while the EV charges.

Regarding Option 2 comment 4 about traffic:

- a. Per WDO 5.03.01B, one of the factors for criterion 3 is vehicular traffic.
- b. The applicant submitted a traffic impact analysis (TIA) dated August 13, 2021 and available via the CU 21-02 City project webpage.
- c. TIA page 31 lists findings and recommendations.
- d. Recommended Condition T-A (p. 22) requires funding of a study of the intersection of the highway & Oregon Way both for both signal timing and reduction of vehicle turning or angle crashes, which TIA p. 12 identified as a problem.

Recommendation:

As per the staff report.

Attachment(s):

• Public testimony by Rebecca L. Hayes of <u>950 Evergreen Rd, Apt. 205</u>, May 6, 2022 (3 pages)

Residents of Panor 360 Condominium 950 Evergreen Road Woodburn, OR 97071 503-981-6059

May 5, 2022

Planning Commission
City of Woodburn
270 Montgomery Street
Woodburn, Oregon 97071-4730

Subject: CU 21-02 US Market Gas Station, 2540-2600 Newberg Hwy.

To: Planning Commissioners

Attention: Mayor Eric Swensen and City Council Members,

We are a 90-unit Condominium with over 100 senior citizens (55 plus), located next to the proposed project. There are obstacles inherent with aging that Seniors face daily, including lack of sleep with its a negative impact on health and quality of life. We have purchased what we hope to be our final residence. We pay taxes and are concerned with the value of our investment decreasing.

We oppose having another gas station, while we already have a Chevron and Arco within 1,058- feet from our front door. In addition to those two-gas stations with adjoining convenience stores, a Shell Station and convenience store are on the West side, immediately off the I5 exit.

The other concern we have is the noise volume and environmental pollution. Gas stations with adjoining convenience stores normally operate around the clock or at least long hours, with a constant flow of autos with exhaust fumes, increased noise, and lights. We are already subjected to constant traffic noise from loud mufflers, revving engines, and loud music. With Baker & Baker Towing service on the corner of Newberg Highway and Evergreen Road, we hear extremely loud large truck backup alarms and what sounds like police alarms, sometimes so loud as to cause ear pain even at a distance usually starting at the evening hour. A 6-foot "architectural wall" will not be adequate, this should be changed to a 12-foot Noise Abatement Wall where our property line meets with the proposed Market Gas Station.

Should this proposal be accepted, we would like to state for the record that <u>Option #1</u> is preferred and a much better choice for Panor 360 residents. However, we have some questions and concerns.

- 1. Architectural Wall We request an actual Noise Abatement Wall of 12-feet surrounding our property lines.
- 2. Having propane tanks and trash bins right next to property belonging to condo owners increases danger from fumes, rodents, homeless people, and criminals. These need to be relocated.
- 3. An office building would be acceptable, so long as there are appropriate trees and greenery planted next to our property for both buffering & reduction of damage done to the ozone. We need more green areas especially with noticeable climate changes and a residential area close.

Option #2 – Is not acceptable for us.

1. Convenience stores typically operate long hours or even 24 hours. Most of our residents have problems sleeping as it is. The constant traffic would generate continual automobiles, noise from autos, music & people, exhaust fumes, and headlights. This makes it even harder to get any quality sleep in their own home.

- 2. With the property line backing up to Senior Citizens residences, a Convenience Store provides a variety of problems, one of them including a hang-out for criminal activity and a much louder crowd of people in addition to the existing Dairy Queen.
- 3. Having a charging station for Hybrid Auto leaves the question, where would the travelers go while their vehicles are charging? The traffic flow according to the diagram in Option 2 does not clearly indicate the flow of ALL traffic. Will all traffic be directed to go around the convenience store? Having this occur will definitely increase noise volume next to our property line.
- 4. Before this project is approved at location of 2540 & 2600 Newburg Hwy (Tax Lots 052W12SB03600 & 3700) we submit that serious evaluation of changes to traffic flow and safety crossovers be completed. If ODOT does not give serious consideration to the increase volume of traffic this will bring, more accidents occurring around the site is of deep concern.

We are asking you to address our concerns, comments and suggestions while processing/finalizing this project. Thank you for your time and attention on our concerns with many repercussions that building another gas station/convenience store will generate.

Sincerely,

Rebecca L Hayes, Owner & Resident

Rhisca L'Apiges

Panor 360 Condominium Homeowners & Residents

C:

Casey Knecht, Development Review Coordinator, ODOT Region 2 Chris Kerr, AICP Community Development Director, City of Woodburn Colin Cortes, AICP, CNU-A Senior Planner, City of Woodburn Jimmy Apple, Panor 360 Board of Directors, President Jean Britton, Panor Manger

See Attachment



COMMUNITY DEVELOPMENT DEPARTMENT

	Name	Unit#	Date	Signature
1	JOHN BOORE	103	5/5/22	John Boose
5	WILLIAM BROOMFIELD	108	5/5/22	William Lossonfield
4	Murva Justier	358	8/5/22	John Boore William Lesonfiel Genvariestere
		303	5/5/22	Mapine Educade
6	Bordie Carman	302	5/5/22	Rosolie Carman
7	Steven A. Aprilips	304	5/5/22	Stevent . Phellips
٥	Lyolys	301	5/5	I Johnson
9	LARRY WILLIAMS	102	5/5/2012	Lychison Junteum
1	Patrick Clancy	223	5/6/22	Am Jan
	Name	Unit#	Date	Signature
1	JIMMYL APPLE	326	5-05-22	Juin appe
2	Judy Scott			Judy Scott
	Maureen O'Rourke	215	5-5-22	naureer Exaushe
	Carolyn W Shindlebower	204	5-5-22	Carolyn w Shindlebower
6				
7				
8				
9				
3				
-	1			
			506	



Memorandum

To: Woodburn Development Review: Chris Kerr, Community Development Director

From: Chuck Green, PE

Copies: File

Date: June 1, 2022

Subject: Review of US Market Revised Traffic Impact Study (CU 21-02)

Otak Project #: 40141

This memo serves as my review of the May 26, 2022 revised traffic impact analysis report prepared by Transight Consulting. This revised analysis document focuses on comments submitted by ODOT, Otak, the public and Kittelson and Associates. I am providing review comments based on the points raised in their new document.

ODOT Access Restrictions and Alternative Cross-Circulation concepts

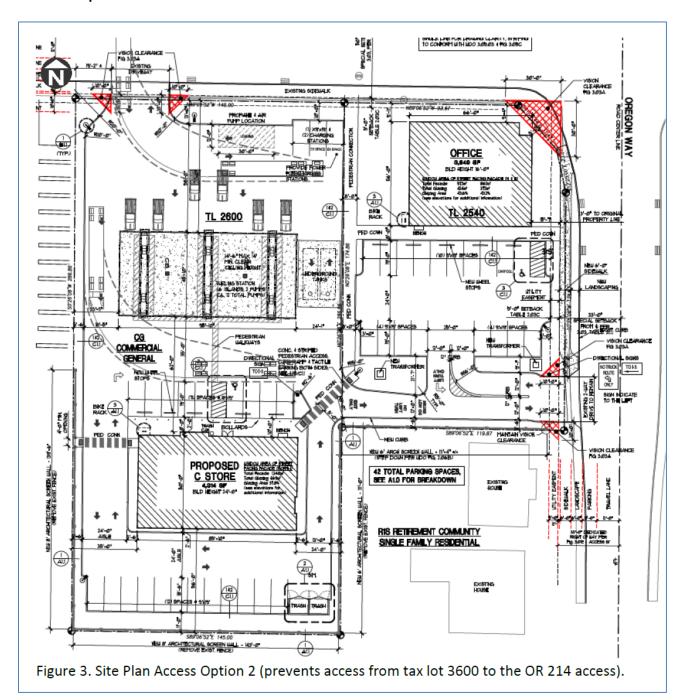
Figure 1 in their document proposes a cross-access easement configuration with adjoining parcels to the west and to the east, running from Evergreen Road to Oregon Way, combined with what appears to be a new shared-access driveway onto OR 214 on the west side of Tax Lot 3700, shared with the Dairy Queen/Dutch Brothers lots to the west. They state that their understanding of the grant of access to ODOT for Tax Lot 3700 (exclusively) precludes Tax Lot 3600 from using that access, but there is nothing in the deed restrictions that preclude Tax Lot 3700 from building a new access through Tax Lot 3600 to Oregon Way and, implicitly, preclude Tax Lot 3600 from accessing the new shared driveway to OR 214 to the west.

Casey Knecht (ODOT) commented on May 4, 2022 that "Both site plans allow for vehicles to enter tax lot 3600 (2540 Newberg Hwy) via tax lot 3700 (2600 Newberg Hwy) which is in violation of the access rights listed in the deeds." As I understand this, vehicles from Tax Lot 3600 would be able to travel through the joint access between the two lots to the Right-in/Right-out (RIRO) driveway onto OR 214 from Tax Lot 3700, which would technically violate the deed restrictions for both tax lots. The Transight statement in the new TIA does not address how their cross-circulation proposal avoids this violation, as the shifting of access to a shared access just to the west of the current RIRO driveway would still need ODOT approval and approach permit, and they Applicant would need to be successful arguing to ODOT that the existing RIRO driveway would be closed and replaced with this new, shared access and thus, they would need to argue that this new shared access driveway does not have the same deed restriction as the current driveway.

Additionally, they have not presented any evidence that the properties to the west, not subject to the site development proposal, have agreed to this chance of access and granting of shared access easements.

They do present a new option, Access Option 2, which is to provide an eastbound "out only" connection between Tax Lot 3700 and Tax Lot 3600 that they argue would not violate the deed restrictions as Tax Lot 3600 would not have access to the RIRO driveway. They present a rather unique driveway concept to preclude trips destined for Tax Lot 3600 from using the Tax Lot 3700 RIRO driveway onto OR 214 to travel to Tax Lot 3600. A snip from Figure 3 in that document is below. My understanding is that this would be an interim application until such time that ODOT approves removing the deed restrictions noted above. This would require some "trigger" mechanism to require whoever controls the site after development approval and occupancy to make the changes to a more common shared access and remove the turn restrictions from the driveways.

While this technically appears to avoid the deed violation, ODOT will need to weigh in on whether they would accept this.



June 1, 2022

Access Option 3 (Figure 4, shown below) is presented to allow access to Tax Lot 3700 from Oregon Way to "reduce reliance on u-turns" on OR 214 to access the site. The option, while appearing to prevent the deed restriction violation, results in a rather confusing driveway operation without guarantee of enforcement of which way vehicles turn, and will increase the risk of driver confusion with an unusual combination of turn restrictions.

I advise not to approve this option.

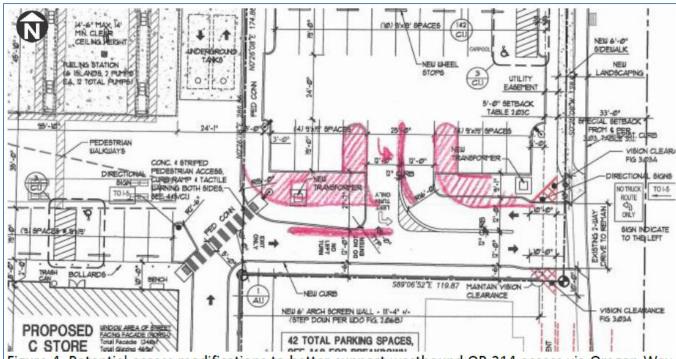


Figure 4. Potential access modifications to better support westbound OR 214 access via Oregon Way (Access Option 3).

Revised trip generation based on updated square footages.

A revised trip generation analysis is presented which reaches a conclusion that the site plan will *reduce* overall PM peak trips while still resulting in a net increase in AM peak and weekday trips. The primary reason for this reduction is using the ITE 1th Edition <u>Trip Generation Manual</u> and a reduction in the office and convenience "center" size.

Using the ITE 11th Edition Trip Generation query tool, and average rates for a 12 vehicle fueling position (VFP) service station, my calculations are different from theirs, with a higher weekday yield and lower AM and PM peak yields:

Weekday trips (without pass-by adjustment):

Transight: 3,086 tripsOtak: 3,181 trips

• AM Peak trips (without pass-by adjustment):

Transight: 324 tripsOtak: 193 trips

• PM Peak trips (without pass-by adjustment):

\lwfs\department\community development\community development\planning\2021\cu conditional use\cu 21-02 us market gas station 2540 2600 newberg hwy dr10 ex05 pp01\transpo consultant\woodburn us market revised tia review_060122.docx

Transight: 273 tripsOtak: 221 trips.

Transight should review and if necessary, revise their trip generation table accordingly. This will affect the trip distribution and site traffic assignment numbers accordingly.

I do concur that there is a net increase in weekday trips, and a net decrease in PM peak hour trips.

• The revised TIA states that the access revisions as noted above (Access Options 2 and 3) would reduce the potential of vehicles turning from the RIRO driveway onto eastbound OR 214 and then weaving across two lanes of the highway to turn left or make a u-turn at Oregon Way.

I concur that while these options theoretically alleviate the potential of these "weaving trips", Access Option 2 needs concurrence from ODOT that it would not violate the deed restrictions, and I am recommending against approving Access Option 3.

The TIA did not address intersections east of Oregon Way along OR 214.

The revised TIA notes "very few (net) new trips traveling east on OR 214". This may be true for the PM peak, but the AM peak needs revising. This could absolve them of proportionate share contributions toward the mitigation project to alleviate future conditions at Settlemier where the mobility threshold is exceeded, but not at the OR 214 intersection with OR 99E, which has an *existing* elevated crash rate. With a net increase in at least weekday trips, that would still result in the site adding trips which could exacerbate this elevated crash rate condition. They should propose a proportionate share based on their contribution toward the *weekday* trip totals at this intersection.

• The City is collecting proportionate share mitigation in-lieu payments and the Applicant awaits the methodology and SDC implications.

The proportionate share contributions for which the City has been collecting payments in-lieu as mitigation are generally either toward projects not included in the TSP, or safety improvement projects for which the City is not collecting SDC payments. I do concur that the mitigation calculations should be based on the *net new* trips.

Additionally, since mitigation in-lieu payments are being collected for OR 214 at Settlemier and OR 214 at OR 99E, a new analysis of these intersections is not necessary, just a tracking of net new trips from this site using these intersections is the only information requested.

Public comments

These relate to e-vehicle charging stations and the safety of vehicle maneuvers turning onto and using OR 214. I have no further comment related to the e-vehicle charging stations. I do note that the response related to maneuvering vehicles is covered above with the discussion on the various access options.

"Opposition Engineer" comments from Wayne Kittelson of Kittelson and Associates.

They did provide response and some commentary related to Mr. Kittelson's letter. I will not respond to the commentary provided by Transight.

The following are my comments related to their response:

 Opposition Argument #8: The "opposition engineer" argues that the traffic study for the US Market did not include trips associated with Project Basie and should be revised to include these as in-process trips.

Project Basie has been approved, US Market has not. The reference to a memo submitted to city staff in July 2021, with no apparent response, does not change the fact that there was never a scoping approved for a TIA for this site, and such a scoping request would have yielded Project Basie as a pending in-process development. **The TIA analysis should be revised to include Project Basie trips.**

 The US Market revised TIA indicated they had made an incorrect citation for collecting baseline traffic counts, and in fact had collected counts in June 2021.

A comparison they provided of counts from April and June 2021 for the OR 214 at Evergreen intersection indicated that counts are very close to each other, but they did not address whether the impacts of COVID-19 are still affecting traffic volumes like they did early in the pandemic.

A comparison I provided in my earlier memo on the previous TIA indicated that there has indeed been substantial traffic growth from 2019 (pre-pandemic conditions) to 2021. **Thus, using June 2021 counts for baseline conditions is acceptable without any further adjustments for COVID-19 impacts**. See table below.

Seasonally Adjusted Counts, Total		Growth (Pcts)			
Intersection	2016	2019	2021	2016-2019	2019-2021
I-5 SB Ramps, AM Peak	1,549	1353	1,583	-12.7%	17.0%
I-5 SB Ramps, PM Peak	2,648	2975	3,152	12.3%	5.9%
I-5 NB Ramps, AM Peak	2,180	1954	2,392	-10.4%	22.4%
I-5 NB Ramps, PM Peak	2,903	2978	3,315	2.6%	11.3%
Average				-2.0%	14.2%

"Opposition Argument #10: Queuing Analysis: The opposition engineer argues that a queuing analysis
was not performed for the US Market site and expresses concern that queue blockages of the existing
driveway access on OR 214 could lead to an unsafe situation where the driveway is blocked by queues."

Transight did refer to queuing analysis for intersections in their original TIA; however, there was no formal "queuing table and analysis" typically shown in other TIAs and instead appears to need to be gleaned from the Synchro reports contained in the Appendix.

They also analyzed queuing at their RIRO driveway onto OR 214. Queuing at OR 214 and Evergreen Road, and at other critical intersections, was addressed in their response. There are extensive queues along OR 214 at several intersections under existing conditions as well as with in-process traffic being added. The larger issue is one of the elevated crash condition at intersections along OR 214 and mitigation payments toward improvements at these intersections, some of which may alleviate some of the queuing issues along the corridor. The issue of eastbound queues on OR 214 blocking the RIRO driveway exit during PM peak hours is a concern that would be alleviated with shared access from the Tax Lot 3700 site that allows exiting trips to travel to Oregon Way to then get to OR 214 without having to enter and maneuver within traffic queues.

"Opposition Argument #11: Evergreen Avenue Intersection: The opposition engineer argues that
operational issues noted within the US Market TIA at the OR 214/Evergreen Avenue intersection should
require similar pro-rata payments to what was required of Project Basie."

Transight uses a land use argument to avoid the contribution that others such as Project Basie have been required to make at this and other intersections along OR 214. They also provided a level-of-service table for 2023 that shows quite different operational results (LOS, V/C) than recent studies have concluded for that intersection. Their original TIA showed a Year 2033 conditions table which indicates a forecast exceedance of the mobility threshold at this intersection.

Due to time limitations, I am not able to pinpoint what they did in their analysis to reach quite different results that several other recent TIAs concluded for that intersection. However, in the end, this is not a land use argument; it is an intersection with an elevated crash rate, which would be exacerbated by net new trips from this site. Thus, they should revise their trip generation numbers and accordingly, their net impacts to this intersection.

Mitigation for Impacts to Intersections With Elevated Crash Rates or Mobility Threshold Exceedances

This was included in my earlier review memo and is updated for informational purposes.

Oregon 214 at Oregon Way/Country Club Road

The TIA identified the intersection of OR 214 and Oregon Way/ Country Club Road as having an existing elevated crash rate that exceeds ODOT's 90th percentile crash rate for these types of intersections. Potentially adding trips could exacerbate this condition. However, within the past month ODOT has converted the east-west left turn signal from flashing yellow arrow to protected left turns, and has indicated this modification was to alleviate the elevated crash rate condition. Thus, with this signal modification in place, no mitigation requirement would be placed on US Market to contribute toward mitigating the elevated crash rate condition.

The following discussion provides for mitigation conditions for other intersections along OR 214:

OR-214 and I-5 northbound ramps - elevated crash rate

The TIA indicated this intersection has an existing elevated crash rate, which has been confirmed by other recent TIAs in the vicinity. Project Basie was conditioned to provide a proportionate share contribution of \$10,000 toward a future safety improvement project at this location. Based on a comparison of trip impacts, the US Market share of a signal study and signal timing improvements to alleviate the crash rate issue at the interchange is a reasonable minimum share of \$1,000, based on their weekday net new projects at this intersection.

OR-214 and Evergreen Road - elevated crash rate

Allison Way Apts. was conditioned to provide a proportionate share contribution (fee-in-lieu) of \$15,000 toward a signal/intersection study and improvement to alleviate the crash condition for the 67 additional PM peak hour trips added to that intersection. US Market should be conditioned similarly, based on their net new trip contribution to weekday traffic volumes.

OR-214 and Settlemier - mobility threshold exceeded in 2040

As noted above, the revised TIA did indicate a net reduction in PM peak hours trips at this intersection when accounting for previously-approved trips generated by this site. I concur that this site appears to be reduction net overall PM peak trips using this intersection, and thus a mitigation contribution is not required.

OR-214 and OR 99E - mobility threshold exceeded in 2040; elevated crash rate today

The with-site trips incorporated into 2040 background traffic based on previous traffic impact analyses will result in this intersection exceeding ODOT's volume-to-capacity and the City's level-of-service ODOT thresholds.

There is a current TSP project and a different mitigation project contained in the Woodburn Eastside Apartments development traffic impact analysis, each of which are estimated to cost approximately \$1,100,000.

Woodburn Eastside Apartments was conditioned to contribute an approximate 10.1% share of the cost of the mitigation project as a condition of approval, or approximately \$111,000. This was based on the site generating an additional 84 PM peak hour trips through the intersection.

The US Market site appears to be contributing net new AM Peak and weekday trips to this intersection, and thus exacerbating a condition that occurs over the course of an entire day, not just PM peak. Therefore, they should contribute a proportionate share based on weekday trip contribution to this intersection.



Memorandum

To: Woodburn Development Review: Chris Kerr, Community Development Director

From: Chuck Green, PE

Copies: File

Date: May 18, 2022

Subject: Review of US Market Traffic Impact Study (CU 21-02)

Otak Project #: 40141

This memo serves as my review of the August 13, 2021 traffic impact analysis report prepared by Transight Consulting. Based on the Applicant's submittal and the staff report for this project, there are two options being considered:

- 1. Option 1 would build a fueling station, a 5,000 square foot office building, an a mixed-use building containing 4,110 square feet of "store" and 1,863 square feet of office;
- 2. Option 2 would build a fueling station, a 4,314 square foot store, and a 3,849 square foot office.

The TIA analyzed what is approximately Option 1: a 12-position gas station, a 4,500 square-foot convenience market with 1,500 square-feet of attached office space, and a 5,000 square-foot office building.

This TIA was reviewed with input from the following documents:

- Oregon Department of Transportation (ODOT) <u>Analysis Procedures Manual (APM)</u>, Version 2 as Revised, November 2020 with new Appendix 3E, "Traffic Volume Development During Disruptive Events" including the effects of the COVID-19 Pandemic
- City of Woodburn's Comprehensive Plan (September 2019)
- City of Woodburn's Transportation System Plan (September 2019)
- City of Woodburn's Transit Plan Update (November 2010)
- Institute of Transportation Engineers' <u>Trip Generation Manual 10th Edition</u>. The 11th Edition of the ITE manual was released a month after this TIA was developed.
- Woodburn Development Ordinance (WDO), as revised in April 2020, including Section 2.05.02 <u>Interchange</u>
 Management Area Overlay District, and Section 3.04.05 <u>Traffic Impact Analysis</u>.
- Recent development traffic impact analyses in the site vicinity.

ODOT Comments

There is a critical comment received from ODOT:

"The site has frontage on Hillsboro-Silverton Highway, No. 140 (OR-214), and is subject to state laws administered by ODOT. The site comprises two different tax lots, each with access restrictions recorded in the property deeds. Tax lot 3700 (2600 Newberg Hwy) has one access reservation at MP 37.09 that can serve tax lot 3700 only. This corresponds with the existing driveway on the highway. Tax lot 3600 (2540 Newberg Hwy) has no access rights to the highway and no access rights to a portion of Oregon Way between the highway intersection and a point 191 feet south of the highway intersection center.

This leaves a 36-foot window along Oregon Way adjacent to the southern property line where all vehicular access must occur for tax lot 3600. This corresponds with the existing driveway on Oregon Way... Both site plans allow for vehicles to enter tax lot 3600 (2540 Newberg Hwy) via tax lot 3700 (2600 Newberg Hwy) which is in violation of the access rights listed in the deeds. The additional driveway on Oregon Way falls in the area of access control (outside the 36-foot window), and would also be in violation of the access rights listed in the deeds.

There is a process for modifying or lifting access rights, called a Grant of Access. The applicant would need to apply to the state for a Grant of Access, and demonstrate that the changes to the access rights would benefit the highway. If the application is approved, the deeds would be modified and re-recorded with the county clerk to reflect the change. If the city approves this land use proposal with either of the site plan options, there must be a condition of approval that the applicant shall obtain the proper access rights for both tax lots prior to any construction, so as to not violate their own deeds."

Public Comments

A public comment was received on May 6, 2022 from Ms. Rebecca L Hayes with two items related to Transportation:

- "Having a charging station for Hybrid Auto leaves the question, where would the travelers go while their vehicles are charging? The traffic flow according to the diagram in Option 2 does not clearly indicate the flow of ALL traffic. Will all traffic be directed to go around the convenience store? Having this occur will definitely increase noise volume next to our property line.
- Before this project is approved at location of 2540 & 2600 Newburg Hwy (Tax Lots 052W12SB03600 & 3700) we submit that serious evaluation of changes to traffic flow and safety crossovers be completed. If ODOT does not give serious consideration to the increase volume of traffic this will bring, more accidents occurring around the site is of deep concern."

The first comment relates to the EV charging station which is a requirement of City code for off-street parking. I'm not sure how a TIA could be scoped to address Ms. Hayes' concern about what people would do while their vehicle is charging. Given the office, gas station and commercial uses proposed, they could easily work or shop for the 20 minutes or so their vehicle would be charging. This should be addressed in the land use narrative rather than an updated TIA.

Regarding the second Transportation item and safety concerns of the driveway onto OR 214, I believe these concerns can be addressed as part of the revised TIA which is recommended below.

Comments from Kittelson and Associates' Letter

A letter dated May 11, 2022 was received from Wayne Kittelson of Kittelson and Associates. There were four points made by Mr. Kittelson which I would like to address below.

- The US Market TIA did not include trips associated with Project Basie. The US Market TIA scoping memo and date were not available for this review. I do note that the date of the TIA was August 13, 2021, which predated the final approval for Project Basie/Amazon, which was in September 2021. It appears that the US Market TIA was not scoped to include in-process trips associated with Project Basie, nor does it appear that Project Basie received final site plan approval before the US Market TIA was scoped. An updated TIA can include Project Basie's in-process trips into the analysis.
- The US Market TIA relied on traffic counts from 2019; recent (2021) counts conducted at the I-5/Woodburn interchange are 15-25% higher than 2019. The TIA is confusing in this regard. While the narrative discusses counts taken on June 30, 2019, the count data sheets in the appendix are dated June 30, 2021. I'm assuming that the appendix is reporting the date and time of pulling the data from the previous 2019 count.

Nevertheless, the question here is whether using 2019 counts and relating them as representative of 2021 counts is a valid question. To analyze this, I pulled 2016, 2019 and 2021 counts from previous studies for the two I-5 ramp intersections. The 2016 and 2021 counts were from Kittelson and Associates' TIA for Project Basie. The 2019 counts were from the Allison Way Apartments TIA. All counts were seasonally adjusted.

The table below compares growth rates from 2016-2019 and 2019-2021. It appears that there was a slight decrease in traffic at the interchange from 2016-2019, but an increase from 2019-2021. The average increase from 2019-2021 was 14.2%. Although lower than the 15-25% stated by Mr. Kittelson, it does indicate that to adequately reflect 2021 existing conditions volumes based on 2019 counts needs an adjustment factor to bring them in line with that growth. The revised TIA recommended here should include a 2019-2021 traffic growth factor with which to form a baseline for the analysis.

Seasonally Adjusted Counts, Tota		Growth (Pcts)			
Intersection	2016	2019	2021	2016-2019	2019-2021
I-5 SB Ramps, AM Peak	1,549	1353	1,583	-12.7%	17.0%
I-5 SB Ramps, PM Peak	2,648	2975	3,152	12.3%	5.9%
I-5 NB Ramps, AM Peak	2,180	1954	2,392	-10.4%	22.4%
I-5 NB Ramps, PM Peak	2,903	2978	3,315	2.6%	11.3%
Average		·		-2.0%	14.2%

- No queuing analysis was performed at critical intersections, including OR 214 at Oregon Way. I concur
 that no queuing analysis was performed at critical intersections. I also note that ODOT in their comments
 did not comment on this. However, I do have a concern about the operational and safety implications of
 the right-in/right-out driveway from the site onto OR 214 and the weaving maneuvers to get from the
 outbound driveway to the left turn lane at the Oregon Way intersection to make a u-turn to head west.
 This is included in my recommendation to request a revised TIA.
- The TIA found operational issues at the OR 219 (sic) at Evergreen Road intersection. This has confirmed a consistent finding from other recent TIAs. I also address this in the findings below.

Summary of Findings

It is recommended that the Applicant submit for review a revised traffic impact analysis (TIA).

This is due to the following issues.

- First, the TIA did not analyze the two options presented for the site for the Conditional Use Permit consideration, just roughly Option 1 although the square footages by use are moderately different.
- The TIA did not analyze a new northern driveway north of the existing driveway from tax lot 3600 that is
 referenced by ODOT. This new driveway does not appear in either of the options presented in the May 5,
 2022 staff report, and also does not appear in the conditions of approval in the staff report. Thus, the
 second driveway issue on Oregon Way appears to be moot.
- The TIA analyzed the site with a public accessway easement between the two parcels. This requires an ODOT approval to do so based on their condition referenced. The TIA did not address a scenario in the event that ODOT would deny this request. In that event, all of the Lot 3600 trips needing to either head north on Oregon Way or west on OR 214 would need to turn right, cross multiple lanes of OR 214 to the left turn lane in a short multi-lane weave maneuver, and then turn left or make a u-turn at the Oregon Way intersection. This could increase the risk of collisions due to such a maneuver. The TIA did not include a queuing analysis to indicate if this would increase the risk of collisions, especially if there was a pronounced queue in the eastbound left-turn lane. The TIA should update its analysis of this intersection to include recent signalization changes (see below) and include a queuing analysis for the OR 214/ Oregon Way intersection.
- As noted in my response to Mr. Kittelson's comments and concerns, the updated TIA will need to address traffic growth from 2019-2021 in order to develop a defensible "2021 existing conditions" baseline with which to conduct the operational analysis.
- Additionally, it appears that the TIA for this site was conducted without an approved scoping from the City. The updated TIA recommended herein should include a revised set of in-process trips, including Project Basie.
- Finally, the TIA did not analyze any intersections east of the OR 214/Oregon Way/ Country Club
 intersection. The City has been requiring and collecting proportionate shares at intersections along OR
 214, including east of Oregon Way, due to existing high crash rates or mobility threshold exceedances.

Mitigation for Impacts to Intersections With Elevated Crash Rates or Mobility Threshold Exceedances

The TIA identified the intersection of OR 214 and Oregon Way/ Country Club Road as having an existing elevated crash rate that exceeds ODOT's 90th percentile crash rate for these types of intersections. Potentially adding trips could exacerbate this condition. However, within the past month ODOT has converted the east-west left turn signal from flashing yellow arrow to protected left turns, which should alleviate the elevated crash rate condition. Thus, with this signal modification in place, no mitigation requirement would be placed on US Market to contribute toward mitigating the elevated crash rate condition.

Should the Applicant be successful in achieving ODOT approval of a shared, public access easement between the two tax lots and thus provide for on-site circulation that provides access for both lots to the right-in/right-out driveway on OR 214 as well as the full access onto Oregon Way, the driveway onto OR 214 should be designed and signed so as to discourage vehicles turning right onto OR 214 and then crossing over traffic lanes to turn left onto northbound County Club Road (a multi-lane weaving maneuver over a short distance). These vehicles should be directed to the Oregon Way exit to turn left to go north toward Country Club Road from the site.

The following discussion provides for mitigation conditions for other intersections along OR 214:

OR-214 and I-5 northbound ramps - elevated crash rate

The TIA indicated this intersection has an existing elevated crash rate, which has been confirmed by other recent TIAs in the vicinity. Project Basie was conditioned to provide a proportionate share contribution of \$10,000 toward a future safety improvement project at this location. Based on a comparison of trip impacts, the US Market share of a signal study and signal timing improvements to alleviate the crash rate issue at the interchange is a reasonable minimum share of \$1,000.

OR-214 and Evergreen Road - elevated crash rate

Allison Way Apts. was conditioned to provide a proportionate share contribution (fee-in-lieu) of \$15,000 toward a signal/intersection study and improvement to alleviate the crash condition for the 67 additional PM peak hour trips added to that intersection. Project Basie should be conditioned similarly, based on the following calculations:

US Market would add 229 trips to that intersection, a factor of 3.4 compared to Allison Way. The proportionate share calculation then is \$15,000 * 3.4 = \$50,000.

OR-214 and Settlemier – mobility threshold exceeded in 2040

The TIA indicates that the site will add 22 PM peak hour trips east of the Oregon Way intersection. Prior traffic impact analyses indicate that the 2040 background trips result in this intersection exceeding ODOT's volume-to-capacity and the City's level-of-service thresholds. The with-site trips from US Market will exacerbate the future condition. There is no current TSP project. Based on a proportionate share contribution precedent established with Project Basie, the US Market project should contribute \$10,000 as their proportionate share contribution toward an intersection study and eventual project to resolve this deficiency.

OR-214 and OR 99E - mobility threshold exceeded in 2040; elevated crash rate today

The with-site trips incorporated into 2040 background traffic based on previous traffic impact analyses will result in this intersection exceeding ODOT's volume-to-capacity and the City's level-of-service ODOT thresholds.

There is a current TSP project and a different mitigation project contained in the Woodburn Eastside Apartments development traffic impact analysis, each of which are estimated to cost approximately \$1,100,000.

Woodburn Eastside Apartments was conditioned to contribute an approximate 10.1% share of the cost of the mitigation project as a condition of approval, or approximately \$111,000. This was based on the site generating an additional 84 PM peak hour trips through the intersection.

This intersection was not analyzed in the US Market TIA. I estimate this site would contribute an additional 15 PM trips to this intersection. Based on proportionate share calculations for other projects, US Market's mitigation share is approximately \$21,000.



Memorandum

To: Woodburn Development Review: Chris Kerr, Community Development Director

From: Chuck Green, PE

Copies: File

Date: May 10, 2022

Subject: Review of US Market Traffic Impact Study (CU 21-02)

Otak Project #: 40141

This memo serves as my review of the August 13, 2021 traffic impact analysis report prepared by Transight Consulting. Based on the Applicant's submittal and the staff report for this project, there are two options being considered:

- 1. Option 1 would build a fueling station, a 5,000 square foot office building, an a mixed-use building containing 4,110 square feet of "store" and 1,863 square feet of office;
- 2. Option 2 would build a fueling station, a 4,314 square foot store, and a 3,849 square foot office.

The TIA analyzed what is approximately Option 1: a 12-position gas station, a 4,500 square-foot convenience market with 1,500 square-feet of attached office space, and a 5,000 square-foot office building.

The TIA scoping memo was reviewed with input from the following documents:

- Oregon Department of Transportation (ODOT) <u>Analysis Procedures Manual (APM)</u>, Version 2 as Revised, November 2020 with new Appendix 3E, "Traffic Volume Development During Disruptive Events" including the effects of the COVID-19 Pandemic
- City of Woodburn's Comprehensive Plan (September 2019)
- City of Woodburn's Transportation System Plan (September 2019)
- City of Woodburn's Transit Plan Update (November 2010)
- Woodburn Development Ordinance (WDO), as revised in April 2020, including Section 2.05.02 <u>Interchange</u>
 Management Area Overlay District, and Section 3.04.05 <u>Traffic Impact Analysis</u>.
- Recent development traffic impact analyses in the site vicinity.

Summary of Findings

There is a critical comment received from ODOT:

"The site has frontage on Hillsboro-Silverton Highway, No. 140 (OR-214), and is subject to state laws administered by ODOT. The site comprises two different tax lots, each with access restrictions recorded in the property deeds. Tax lot 3700 (2600 Newberg Hwy) has one access reservation at MP 37.09 that can serve tax lot 3700 only. This corresponds with the existing driveway on the highway. Tax lot 3600 (2540 Newberg Hwy) has no access rights to the highway and no access rights to a portion of Oregon Way between the highway intersection and a point 191 feet south of the highway intersection center.

This leaves a 36-foot window along Oregon Way adjacent to the southern property line where all vehicular access must occur for tax lot 3600. This corresponds with the existing driveway on Oregon Way... Both site plans allow for vehicles to enter tax lot 3600 (2540 Newberg Hwy) via tax lot 3700 (2600 Newberg Hwy) which is in violation of the access rights listed in the deeds. The additional driveway on Oregon Way falls in the area of access control (outside the 36-foot window), and would also be in violation of the access rights listed in the deeds.

There is a process for modifying or lifting access rights, called a Grant of Access. The applicant would need to apply to the state for a Grant of Access, and demonstrate that the changes to the access rights would benefit the highway. If the application is approved, the deeds would be modified and re-recorded with the county clerk to reflect the change. If the city approves this land use proposal with either of the site plan options, there must be a condition of approval that the applicant shall obtain the proper access rights for both tax lots prior to any construction, so as to not violate their own deeds."

It is recommended that the Applicant submit for review a revised traffic impact analysis (TIA).

This is due to the following issues.

- First, the TIA did not analyze the two options presented for the site for the Conditional Use Permit consideration, just roughly Option 1 although the square footages by use are moderately different.
- The TIA did not analyze a new northern driveway north of the existing driveway from tax lot 3600 that is
 referenced by ODOT. This new driveway does not appear in either of the options presented in the May 5,
 2022 staff report, and also does not appear in the conditions of approval in the staff report. Thus, the
 second driveway issue on Oregon Way appears to be moot.
- The TIA analyzed the site with a public accessway easement between the two parcels. This requires an ODOT approval to do so based on their condition referenced. The TIA did not address a scenario in the event that ODOT would deny this request. In that event, all of the Lot 3600 trips needing to either head north on Oregon Way or west on OR 214 would need to turn right, cross multiple lanes of OR 214 to the left turn lane in a short distance, and then make either a left or u-turn. The TIA indicated that the OR 214/Oregon Way intersection has an elevated crash rate under existing conditions, primarily due to left turns at this flashing yellow arrow left turn signal. Not only would the additional trips likely exacerbate this condition, but would require a quick multi-lane weave maneuver across eastbound OR 214, which increases the risk of collisions due to such a maneuver.
- Finally, the TIA did not analyze any intersections east of the OR 214/Oregon Way/ Country Club
 intersection. The City has been requiring and collecting proportionate shares at intersections along OR
 214, including east of Oregon Way, due to existing high crash rates or mobility threshold exceedances.

Mitigation for Impacts to Intersections With Elevated Crash Rates or Mobility Threshold Exceedances

As noted above, the TIA identified the intersection of OR 214 and Oregon Way/ County Club Road as having an existing elevated crash rate that exceeds ODOT's 90th percentile crash rate for these types of intersections. This results in the intersection having an elevated crash rate and potentially adding trips could exacerbate this condition. Woodburn *Transportation System Plan* (TSP) Project R11: OR 214/Oregon Way/Country Club Road Intersection, is to "investigate corridor signal timing and coordination adjustments in coordination with ODOT." The cost in the TSP is estimated as \$15,000.

The signalization of the OR 214/Oregon Way/County Club Road intersection includes protected left turns on the side street, and flashing yellow arrow left turns on the main street (OR 214). The TIA indicated the majority of the collisions at this intersection involved turning vehicles, primarily involving left-turning vehicles from OR 214 colliding with through vehicles on OR 214.

Since the crash rate is currently elevated, the development should contribute a proportionate share toward the TSP project with the intent of alleviating the elevated crash rate. The future year 2023 PM peak background traffic volumes on OR 214 turning left and traveling straight is projected in the TIA to be 1,965 vehicles. The site will contribute an additional 10 vehicles to the PM peak hour. The proportionate share contribution as mitigation should be \$500 as a reasonable minimum contribution toward the TSP project.

Additionally, should the Applicant be successful in achieving ODOT approval of a shared, public access easement between the two tax lots and thus provide for on-site circulation that provides access for both lots to the right-in/right-out driveway on OR 214 as well as the full access onto Oregon Way, the driveway onto OR 214 should be design and signed so as to prohibit vehicles turning right onto OR 214 and then crossing over traffic lanes to turn left onto northbound County Club Road (a multi-lane weaving maneuver over a short distance). These vehicles should be directed to the Oregon Way exit to turn left to go north toward Country Club Road from the site.

The following discussion provides for mitigation conditions for other intersections along OR 214:

OR-214 and I-5 ramps – impact to TSP signal timing project

The US Market share of a signal study and signal timing improvements to alleviate queuing and congestion issues at the interchange is \$1,000 (minimum share).

OR-214 and Evergreen Road – elevated crash rate

Allison Way Apts. was conditioned to provide a proportionate share contribution (fee-in-lieu) of \$15,000 toward a signal/intersection study and improvement to alleviate the crash condition for the 67 additional PM peak hour trips added to that intersection. Project Basie should be conditioned similarly, based on the following calculations:

US Market would add 229 trips to that intersection, a factor of 3.4 compared to Allison Way. The proportionate share calculation then is 15,000 * 3.4 = 50,000.

OR-214 and Settlemier - mobility threshold exceeded in 2040

Prior traffic impact analyses indicate that the 2040 background trips result in this intersection exceeding ODOT's volume-to-capacity and the City's level-of-service thresholds. The with-site trips from US Market will exacerbate the condition by adding another 25 PM peak hour trips. There is no current TSP project. The \$10,000 contribution would be toward an intersection study and eventual project to resolve this deficiency.

OR-214 and OR 99E - mobility threshold exceeded in 2040; elevated crash rate today

The with-site trips incorporated into 2040 background traffic based on previous traffic impact analyses will result in this intersection exceeding ODOT's volume-to-capacity and the City's level-of-service ODOT thresholds.

There is a current TSP project and a different mitigation project contained in the Woodburn Eastside Apartments development traffic impact analysis, each of which are approximately \$1,100,000.

Woodburn Eastside Apartments was conditioned to contribute an approximate 10.1% share of the cost of the mitigation project as a condition of approval, or approximately \$111,000. This was based on the site generating an additional 84 PM peak hour trips through the intersection.

This intersection was not analyzed in the US Market TIA. The City's TIA reviewer estimates this site would contribute an additional 15 PM trips to this intersection. Based on proportionate share calculations for other projects, US Market's mitigation share is approximately \$21,000.

Public Comment

A public comment was received on May 6, 2022 from Ms. Rebecca L Hayes with two items related to Transportation:

- "Having a charging station for Hybrid Auto leaves the question, where would the travelers go while their vehicles are charging? The traffic flow according to the diagram in Option 2 does not clearly indicate the flow of ALL traffic. Will all traffic be directed to go around the convenience store? Having this occur will definitely increase noise volume next to our property line.
- Before this project is approved at location of 2540 & 2600 Newburg Hwy (Tax Lots 052W12SB03600 & 3700) we submit that serious evaluation of changes to traffic flow and safety crossovers be completed. If ODOT does not give serious consideration to the increase volume of traffic this will bring, more accidents occurring around the site is of deep concern."

The first comment relates to the EV charging station which is a requirement of City code for off-street parking. I'm not sure how a TIA could be scoped to address Ms. Hayes' concern about what people would do while their vehicle is charging. Given the office, gas station and commercial uses proposed, they could easily work or shop for the 20 minutes or so their vehicle would be charging. This should be addressed in the land use narrative rather than an updated TIA.

Regarding the second Transportation item and safety concerns of the driveway onto OR 214, hopefully the scope for a revised TIA, or the design considerations prohibiting vehicles exiting the driveway onto OR 214 from turning left or making u-turns at the Oregon Way intersection noted above, address Ms. Hayes' concerns.



Agenda Item

August 8, 2022

TO: Honorable Mayor and City Council through City Administrator

FROM: Jesse Cuomo, Community Services Director

SUBJECT: Smith Creek Public Park Names

RECOMMENDATION:

Approve the following park names suggested by the Ad Hoc Smith Creek Park Naming Committee for the public parks located within the Smith Creek residential housing development:

- Hazel Smith Plaza
- Killian's Well Park
- Madame Dorion Trail

The enclosed map identifies the location of each park space.

BACKGROUND:

The Smith Creek Residential Development was approved by the City Council on November 13, 2018. A significant portion of the development was approved through the Planned Unit Development (PUD) section of the Woodburn Development Ordinance (WDO), in which the developer provided a large amount of open space in exchange for reduced lot sizes and increased housing density. While many of the open space areas will remain privately owned and maintained by future homeowners associations, the City agreed to accept a few of the more significant areas as City owned public parks.

The Smith Creek Residential Development is being constructed on approximately 150 acres of land that was formerly owned by the late Hazel M. Smith, a prominent Woodburn figure. It is worth noting that Ms. Smith's family has requested that some of the parklands be named in her honor.

With many of them already completed, the development will be constructed over the course of nine phases. By project end, the City will have taken possession

Agenda Item Review: C	ity Administrator	Χ	City Attorney _x	Financex_

of approximately 14 acres of public parkland, including a 4,670 sq. ft. plaza with a restroom building and picnic shelter, nearly one mile of greenway trail, and undeveloped open space along Smith Creek.

In February 2021, the City Council approved the Smith Creek Parks Naming Process. With appointments to the Ad Hock Smith Creek Park Naming Committee on May 23, 2022.

COMMITTEE MEMBERS:

- Mary Beth Cornwell (City Council)
- Debbie Cabrales (City Council)
- Cindy Thomas (Community Member)
- Merri Berlin (Community Member)
- Sharon Corning (Community Member)
- Judy Marquez (Community Member)
- Ruth DeSantis (Community Member & Smith Family Representative)
- Kasi Pankey (Recreation & Parks Board Member)
- Richard Irish (Recreation & Parks Board Member)
- David Piper (Recreation & Parks Board Member)

PARK NAMING:

On June 22, 2022 the Ad Hock Smith Creek Park Naming Committee made the selection for naming three Public Park Spaces as follows (see enclosed map):

Hazel Smith Plaza

o Hazel Smith was the matriarch of the Smith family, which included seven children. Hazel Smith was a key contributor to the Woodburn community and was president of the Woodburn Chamber of Commerce and awarded 1st Senior Citizen of the year in 1974. Hazel owned the property that is now the site of the Smith Creek residential development.

- Killian's Well Park

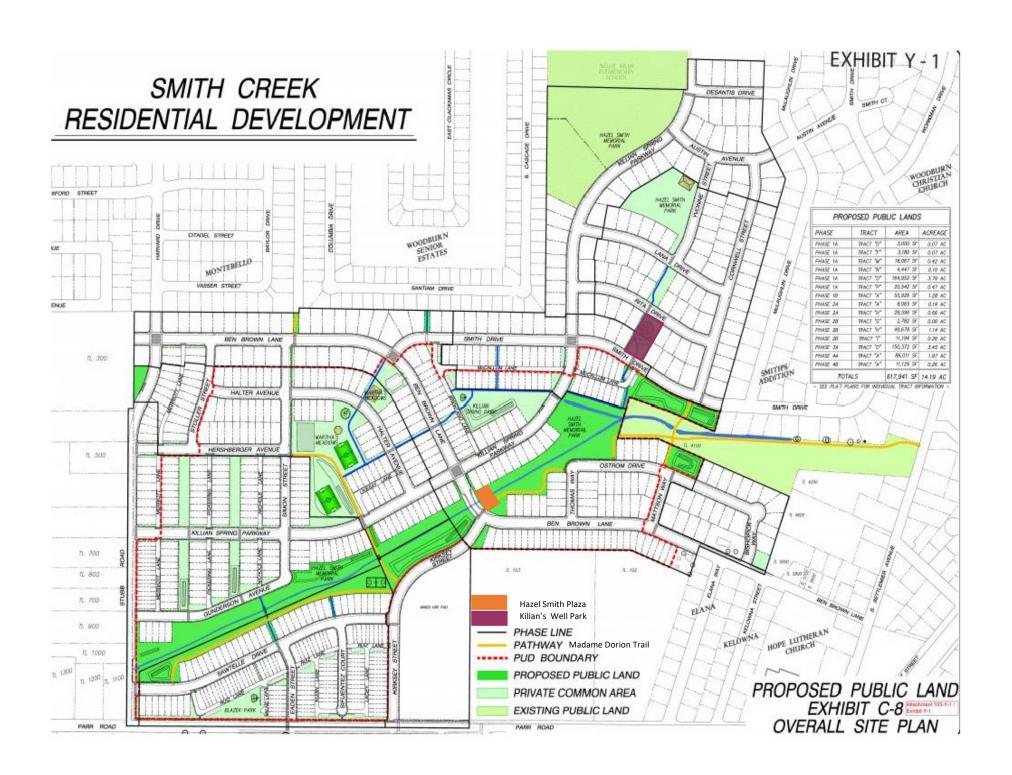
o Killian Smith, was the patriarch of the Smith family. Kilian had the well constructed on the site near the large Oak trees located in the North portion of the Smith Creek housing development.

Madame Dorion Trail*

- o "Madame Dorion of the lowa tribe was the second woman to come west on an overland route. She made the Journey with her husband, Pierre and two young sons. They were part of the Wilson Price Hunt party employed by the Pacific Fur Comany. The Hunt party was part of American John Jacob Astor's attempt to establish a fur trading empire in the Pacific Northwest. Her husband was an experienced guide that had earlier traveled west with the Lewis and Clark expedition. The trip was especially arduous for Marie. She was at that time expecting her third child and caring for her sons, Baptise, age 5 and Paul, age 3.
- o The party left the Missouri territory in 1811 to establish trading posts along the Columbia River. After enduring cold, starvation and perilous whitewater river crossings the party arrived near this location on January 21, 1812. The Pacific Fur Company later established Fort Nez Perces along the Walla Walla and Columbia Rivers just west of this location. They eventually reached Fort Astoria for a long deserved rest.
- o The Dorion family and a party of trappers later set out for the Snake River country in the winter of 1813 on a fur trapping expedition. Here Snake warriors attacked the party. All the men were killed, leaving Marie Dorion and her two young children to live out the winter hiding in the Blue Mountains, near present day Hilgard, Oregon. Marie managed to keep her family alive and they endured the cruel hardships of cold and starvation. Marie then led her family to safety in the spring.
- o Marie Dorion later remarried and lived in Walla Walla, Washington and later in the Willamette Valley of Oregon. She died on September 5, 1850 at the age of 64. Even in death she was revered by those who knew her. She was buried in a place of honor at the parish of St. Louis Catholic Church in the Willamette Valley. She had died as she had lived, a brave and noble pioneer esteemed by all who knew her."
 - *Information provided by: Engraved stone marker located at the Madame Dorion Memorial Park.

FINANCIAL IMPACT:

None.





Azenda Item

August 8, 2022

To: Honorable Mayor and City Council through City Administrator

From: Chris Kerr, Community Development Director CK.

Subject: Call-Up Briefing: Planning Commission approval of a Variance

application for 2515 Newberg Hwy (VAR 22-08)

RECOMMENDATION:

Staff recommends no action and briefs the Council on this item pursuant to Woodburn Development Ordinance (WDO) Section <u>4.02.02</u>. The Council may call up this item for review if desired and, by majority vote, initiate a review of this decision.

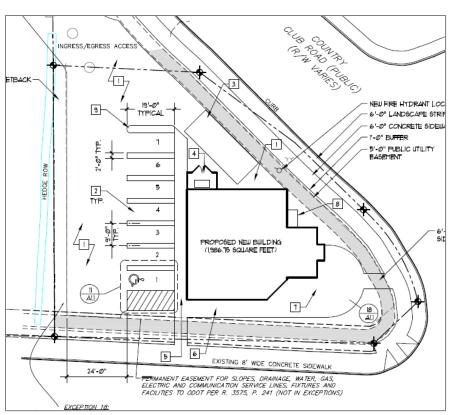
BACKGROUND:

The Planning Commission held a public hearing in person and via the GoToMeeting teleconference platform on July 28, 2022 and unanimously approved the Variance (VAR) application with the conditions recommended by staff through the staff report. No public testimony was received, only the applicant spoke during the hearing.

The subject property is within the Commercial General (CG) zoning district and the Interchange Management Area (IMA) overlay district. It is currently undeveloped; however, City staff reviewed and approved a land use application package on December 3, 2021 for a proposed retail flower shop development. The approved development was required to provide eight parking spaces. Because the approved site plan only showed seven parking spaces, a condition of approval was applied to have the applicant obtain a shared parking agreement with a neighboring property to provide the eighth space. The applicant had attempted to obtain this agreement, without success.

Through this Variance application, the applicant requested to modify the minimum parking requirement from eight spaces down to seven.

Agenda Item Review:	City Administratorx	City Attorneyx	



Approved Site Plan for Valley Pacific Floral (DR 21-09 & EXCP 21-06)



Aerial image of the subject property.



Azenda Item

August 8, 2022

To: Honorable Mayor and City Council through City Administrator

From: Chris Kerr, Community Development Director

Subject: Call-Up Briefing: Community Development Director approval of a

Design Review and Exception to Street Right of Way and Improvement Requirements "Street Exception" application package for Legion Park

at 1385 Park Ave (DR 22-09 & EXCP 22-04)

RECOMMENDATION:

Staff recommends no action and briefs the Council on this item pursuant to Woodburn Development Ordinance (WDO) Section <u>4.02.02</u>. The Council may call up this item for review if desired and, by majority vote, initiate a review of this decision.

BACKGROUND:

The site is approximately 15.59 acres and located within the Public / Semi-Public (P/SP) zoning district. The project encompasses various upgrades to Legion Park at 1385 Park Ave. Proposed improvements are to include a synthetic turf soccer field with new lighting, new bleachers, sidewalk improvements, four pickleball courts, two basketball courts and improved park entry way. The Street Exception application was included to request to maintain Park Avenue and Queen City Boulevard improvements as they exist today.

Agenda Item Review: City Administrator ___x__ City Attorney __x___



Conceptual illustration of the upgrades to Legion Park.