



# Staff Report

**To:** Planning Commission

**Through:** Chris Kerr, AICP, Community Development Director *CK*

**From:** Colin Cortes, AICP, CNU-A, Senior Planner

**Meeting Date:** December 14, 2023 (Prepared December 7, 2023)

**Item:** “Brown Street Annexation” (ANX 23-03)

**Tax Lot(s):** 051W18C001200 (1025 Brown St)

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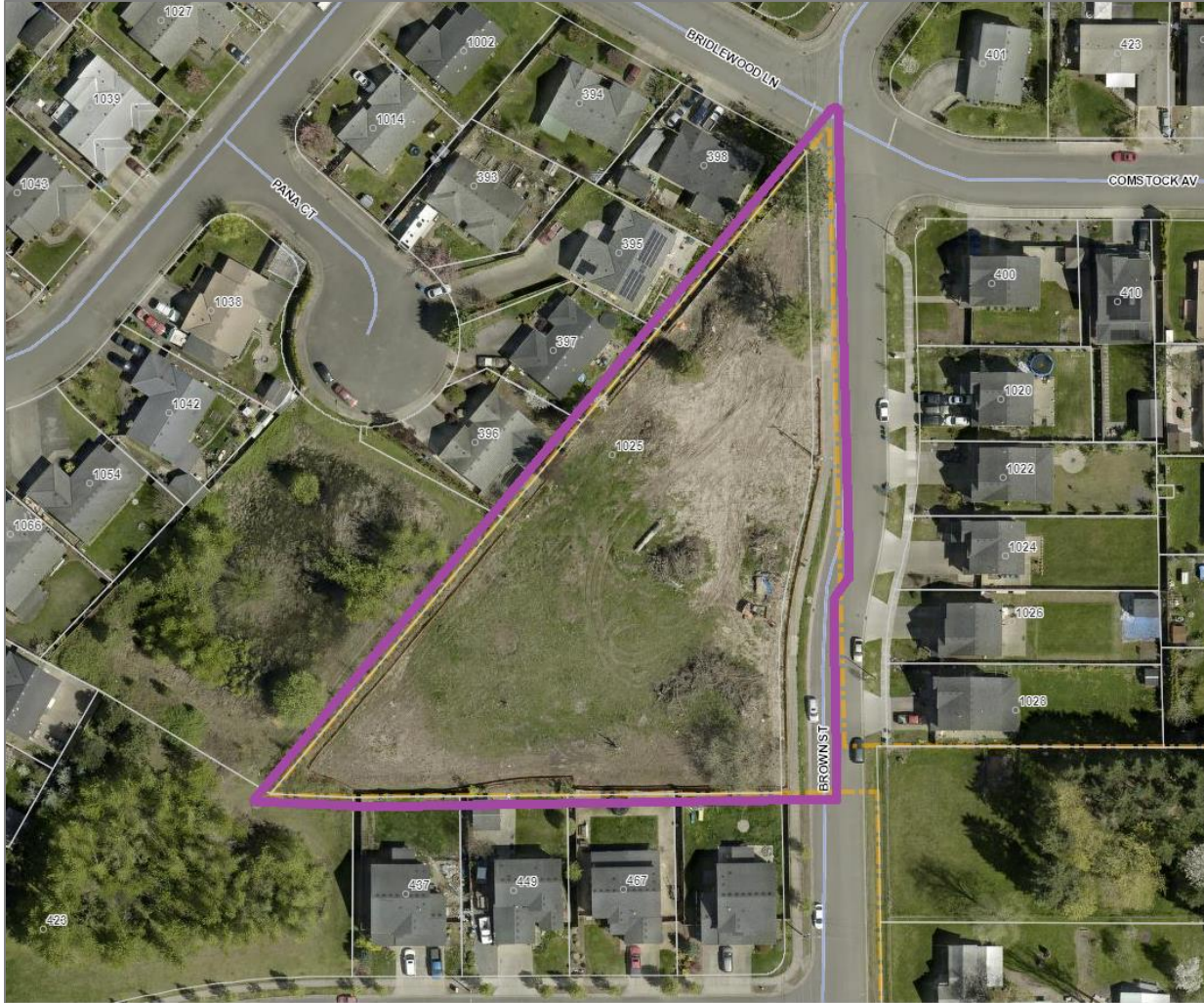
## Issue before the Planning Commission

Annexation ANX 23-03 (Type IV) of territory at 1025 Brown Street: Commission is to hold a public hearing and make a recommendation to the City Council.

## Executive Summary

### *Location*

The proposal is annexation of territory into city limits of approximately 1.43 gross acres composed of Tax Lot 051W18C001200 and adjacent right-of-way (ROW) of Brown Street.



*Vicinity of subject property; subject property outlined in purple*

### *Annexation & Zoning Designation*

Because the Comprehensive Plan land use map designates the territory Low Density Residential per Comprehensive Plan Policy Table 1, the default corresponding zoning district is Residential Single Family (RS). Along with an annexation ordinance, in response to the application for zone change (also termed rezoning or re-zoning), the Council would by separate ordinance designate the annexed territory as the RS base zoning district.

The Public Works Department, Woodburn Fire District, and Woodburn School District gave the applicant annexation service provider letters (SPLs; Attachment 103A).

Because of (a) the applicant's initially strong opposition in writing to public improvements that development would require, and (b) City concern that the legislature appears likely to pre-empt local governments from requiring the usual public improvements for developments of either housing generally or "middle housing" as both ORS 197.758(1)(b) and OAR 660-046-0020(12) define, staff applies an annexation condition.

It requires the applicant to enter into an annexation agreement for the annexation to become effective, and the applicant tentatively agreed to such conditioning during a November 20, 2023 with the Community Development Director and Senior Planner.

In short, an annexation agreement would list and describe the dedications, grants, and public improvements necessary to conform with the Woodburn Development Ordinance (WDO) and establish provisions for the effect on the agreement when changes in statute or administrative rules render compliance with agreement provisions impossible or unlawful, with the provisoes that (a) a prime objective of the agreement shall be and remain to secure public improvements despite such changes by the state, and (b) changes by the state reasonably interpreted to relieve developers generally of some or all burden of public improvements in and of themselves do not necessarily void the agreement in part or wholly.

In short, through an annexation agreement, despite any future changes in state law that exempt housing developments, especially "middle housing", from public improvements, when this property develops, whatever the development, any developer of it will still construct or pay fees in-lieu for public improvements (surface half-street improvements) per City ordinances.

This is in keeping with the WDO 1.02 definition of "development", for which WDO 3.01.01D requires street improvements, and a section of the purpose statement that opens WDO 3.01: "An objective is to have developers construct or fund street improvements, and other proportional share of improvements for the public, to lessen the cost of land development to the City in order to lessen taxpayer burden for landowners in the context of Oregon Ballot Measures 5 (1990) and 50 (1997)."

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

### **Recommendation**

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

### **Condition(s) of Approval**

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



#### *Annexation 23-03*

ANX-1. The applicant shall enter into an annexation agreement (the Agreement), made concurrent with and a part of any written decision by the Woodburn City Council that approves the annexation of the subject territory. The Agreement shall be subject to Council acceptance and have provisions addressing the following:

- a. The Agreement shall be contractually binding on the applicant, heirs, successors, and assigns and:
  - (1) Cite applicable details, provisions, requirements, rules, specifications, and standards from the Woodburn Development Ordinance (WDO) and other applicable ordinances relating to public improvements that following annexation would be applicable to the subject property at 1025 Brown Street upon development;
  - (2) List and describe the dedications, grants, and public improvements necessary to conform, addressing at least:
    - (a) Right-of-way (ROW) dedication,
    - (b) Streetside public utility easement (PUE) grant,
    - (c) Half-street improvements including surface improvements: roadway, curbing, landscape strip, street trees, and sidewalk,
    - (d) Removal of electric power pole(s) and burial of overhead lines, and



- (e) Any fair share or proportionate share costs for identified right-of-way improvements to increase traffic safety adequately at the intersection of Brown Street & Bridlewood Lane / Comstock Avenue;
  - (3) Specify that development shall come with such public improvements that a developer constructs or pays fees in lieu of as ordinances allow, with option to add administrative provisions for fees in-lieu not found in ordinances such as explicit due dates;
  - (4) Specify that the Agreement provisions are severable;
  - (5) Establish provisions for the effect on the Agreement when changes in statute or administrative rules render compliance with Agreement provisions impossible or unlawful, with the provisoes that (a) a prime objective of the Agreement shall be and remain to secure public improvements despite such changes by the state, and (b) changes by the state reasonably interpreted to relieve developers generally of some or all burden of public improvements in and of themselves do not necessarily void the Agreement in part or wholly; and
  - (6) Establish provisions for modification, which may also include setting Agreement expiration or sunset.
- b. Recordation: It is the intention of the City that the terms and obligations of the Agreement are necessary for the annexation and future development of the subject property and as such will run with the land and be construed to be both a benefit and burden upon the property. The City may record a duly executed copy of the Agreement in the real property records of Marion County.
- c. Effective date:
- (1) Option 1: The City Council adopts the annexation ordinance for ANX 23-03 and accepts the Agreement with the effective date the same as the annexation ordinance effective date.
  - (2) Option 2: The City Council adopts the annexation ordinance for ANX 23-03 with the effective date conditioned to be the date that the City Administrator signs the Agreement that the applicant had signed. Until this happens, the City holds in abeyance agency notices of ordinance adoption.

Note A: The applicant may request that City staff draft and format an agreement.

## **Actions**

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

1. Approve with modified condition(s), 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 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. The Council would also accept an annexation agreement that the applicant and staff prepared.)

## Attachment List

101. Marked Tax Map
102. Analyses & Findings
- 102A. Public Works comments (December 6, 2023)
103. Annexation Exhibit B map of legal description (August 2023)
- 103A. Annexation Service Provider Letters (SPLs; 4 pages)
- 104A. Applicant/DLCD e-mails: From applicant to DLCD:
  1. E-mail May 26, 2023 12:18 p.m. with 4 attachments:
    - a. Brown Street Cottages - Site Plan
    - b. SW 90th Ave Cottages - Site Plan
    - c. 886 Cottage Plan 2-Story Farmhouse Pre Eng 032923
    - d. 750 Cottage Plan 2-Story For Review 092122
  2. E-mail May 30, 2023 9:28 a.m.
  3. E-mail June 2, 2023 10:21 a.m. with 4 attachments:
    - a. Brown St - Annexation Application
    - b. Brown Street - Cottage Application Narrative
    - c. Incomplete Response - File No ANX 23-03 DR 23-04 ZC 2303
    - d. ANX2303 Letter of incompleteness 2023-05-10 fin w encloses
  4. E-mail June 2, 2023 10:42 a.m. with one attachment:
    - a. 1113\_001 [WDO excerpts]
  5. E-mail June 6, 2023 3:26 p.m.
- 104B. Applicant/DLCD e-mails: From DLCD to applicant:
  1. E-mail May 30, 2023 9:20 a.m.
  2. E-mail May 30, 2023 9:38 a.m.
  3. E-mail June 2, 2023 10:03 a.m.
  4. E-mail June 2, 2023 3:33 p.m.
  5. E-mail June 2, 2023 5:12 p.m.
  6. E-mail June 6, 2023 4:17 p.m.
  7. E-mail June 13, 2023 11:02 a.m. with one attachment:
    - a. DLCD memo (June 13, 2023; 7 pages)
- 104C. City Attorney legal opinion memo in response to the DLCD memo with two attachments (November 28, 2023; 15 pages):
  1. DLCD memo (June 13, 2023; 7 pages)
  2. E-mail June 13, 2023 11:02 a.m. (4 pages)
105. TSP Fig. 2 "Functional Roadway Classification"



05 1W 18C  
MOBILE HOME PARK

# 05 1W 18C WOODBURN



**MARION COUNTY, OREGON**  
SW1/4 SEC18 T5S R1W W.M.  
SCALE 1" = 200'

### LEGEND

- LINE TYPES**
- Taxlot Boundary
  - Road Right-of-Way
  - Railroad Right-of-Way
  - Private Road ROW
  - Subdivision/Plat Bndry
  - Waterline - Taxlot Bndry
  - Historical Boundary
  - Easement
  - Railroad Centerline
  - Taxcode Line
  - Map Boundary
  - Waterline - Non Bndry

- CORNER TYPES**
- + 1/16TH Section Cor.
  - ⊙ DLC Corner
  - ⊕ 1/4 Section Cor.
  - ⊕ 16, 15 Section Corner
  - ⊕ 21, 22

**NUMBERS**

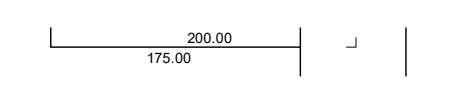
Tax Code Number  
**00 00 0**

Acreege  
**0.25 AC**

All acres listed are Net Acres, excluding any portions of the taxlot within public ROWs

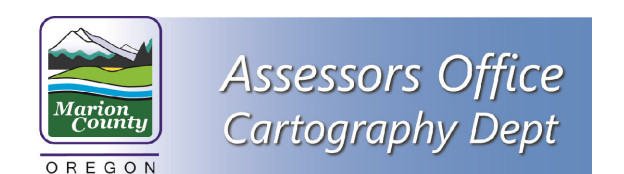
**NOTES**

Tick Marks: A tick mark in the road indicates that the labeled dimension extends into the public ROW



CANCELLED NUMBERS	
100	
200	
201	
300	
400	
500	
1000	
1300	
1301	
1400	
1401	
1402	
1403	
1404	
1500	

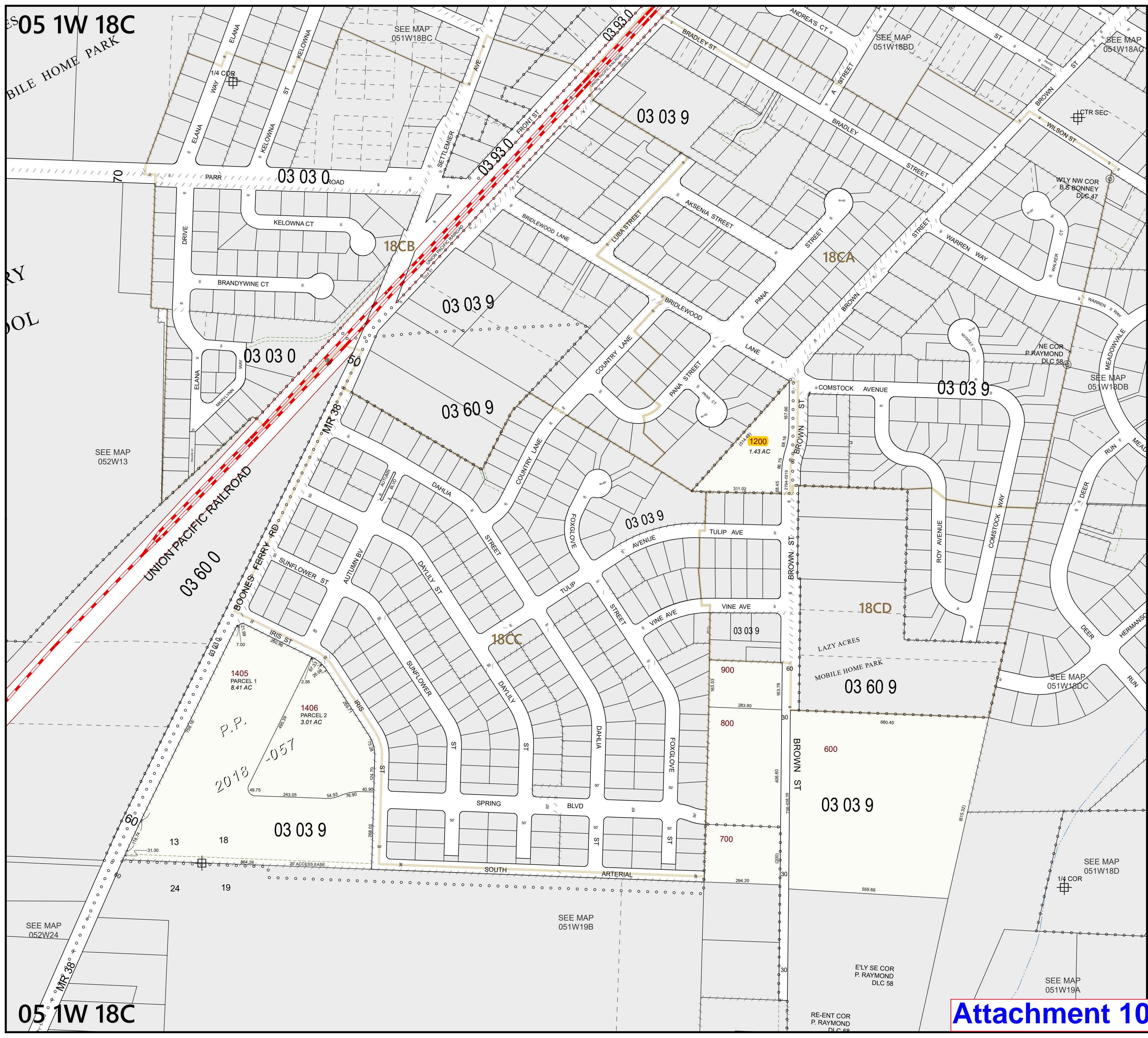
DISCLAIMER: THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY



FOR ADDITIONAL MAPS VISIT OUR WEBSITE AT [www.co.marion.or.us](http://www.co.marion.or.us)

PLOT DATE: 4/29/2022

# WOODBURN 05 1W 18C



**Attachment 101**



## 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:

<i>Symbol</i>	<i>Category</i>	<i>Indication</i>
✓	Requirement (or guideline) met	No action needed
✗	Requirement (or guideline) not met	Correction needed
⊖	Requirement (or guideline) not applicable	No action needed
▲	<ul style="list-style-type: none"> <li>Requirement (or guideline) met, but might become unmet because of condition applied to meet separate and related requirement that is not met</li> <li>Plan sheets and/or narrative inconsistent</li> <li>Other special circumstance benefitting from attention</li> </ul>	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 \(WDO\)](#).

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## Project Name & Case File Numbers

The project name is Brown Street Annexation. The land use application master/parent case file number is Annexation ANX 23-03, and the children/corollary case file numbers are Zone Change 23-03 and Design Review DR 23-04\*.

\*As part of an incompleteness response letter invoking ORS 227.178(4)(b) to force completeness of the land use application package, the applicant August 7, 2023 requested to sever the DR from the ANX/ZC land use application package:

“Pursuant to our discussions with Chris Kerr[, Community Development Director] and McKenzie Granum, [Assistant City Attorney] we request that you please proceed with the Type III review process for annexation and zone change applications separately from the Type I design review request for the cottage cluster development that is proposed for the site.” (Brackets indicate staff editorial notes.)

For this reason, these analyses and findings omit the DR. The City and will further review DR 23-04, likely as land use review Type I, for cottage cluster development of 20 cottages following either the effective date of the annexation ordinance or City Council denial of ANX 23-03 & ZC 23-03. Following the effective date of the annexation ordinance, ORS 227.178(1) & (2) would be applicable, the 30-day completeness review window starting on the effective date of the annexation ordinance.

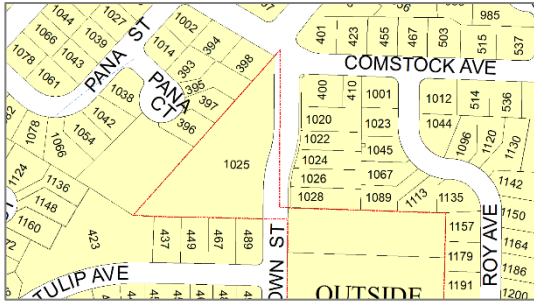
## Location

<i>Address(es)</i>	1025 Brown St
<i>Tax Lot(s)</i>	051W18C001200; 1.43 acres
<i>Nearest intersection</i>	Brown St & Bridlewood Ln / Comstock Ave

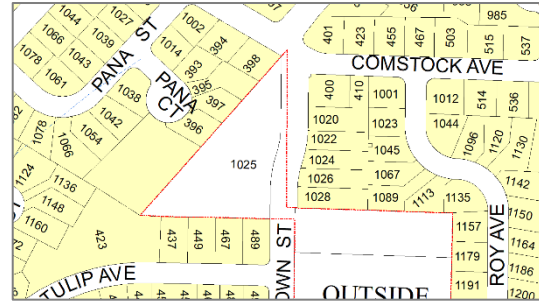
## Land Use & Zoning

<i>Comprehensive Plan Land Use Designation</i>	Low Density Residential
<i>Zoning District</i>	Residential Single Family (RS) upon annexation
<i>Overlay District(s)</i>	n/a
<i>Existing Use(s)</i>	None following demolition of rural homestead

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

<i>Cardinal Direction</i>	<i>Adjacent Zoning</i>
North	RS; east of Brown St: Meadowood in Woodburn subdivision, west of Brown St: Steklov Addition Phase 1 subdivision
East	RS; Brown Street Estates
South	RS; Boones Crossing Phase 2 subdivision
West	RS; Bridlewood Estates subdivision and its Tract A stormwater detention pond

## Statutory Dates

<i>Application Completeness</i>	August 21, 2023
<i>120-Day Final Decision Deadline</i>	December 19, 2023 per Oregon Revised Statutes (ORS) <a href="#">227.178</a> . (The nearest and prior regularly scheduled City Council date would be December 11, 2023.)*

\*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 April 10, 2023 and revised and additional materials through August 7, 2023 (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**



The applicant requests that the City designate the annexed territory with the Residential Single Family (RS) base zoning district.

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: Brown Street borders to the property to the east as a west half-street non-conforming with WDO Figure 3.01D “Service Collector” and provides a means of access. The annexation legal description and map series include the right-of-way (ROW) adjacent to the site.
  - Transit: Along Brown 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 or upgrade 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 improvements that guarantee that public facilities have adequate capacity to serve such development.



The Public Works Department comments (December 6, 2023; Attachment 102A) were simply that public works conditions are going to be addressed with the agreement.

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 103A. The Public Works one dated November 10, 2022 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 storm sewer collection system. The requirements for this collection facility would still need to be determined. The capacity analysis, design and installation of water, sewer, and storm 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 – and that the department will involve itself with the drafting the conditioned annexation agreement. (See two paragraphs ahead.)

Additionally, the applicant’s narrative (submitted April 10, 2023, pp. 4-11) addresses the annexation provisions. There’s no written objection by the Public Works Department to the applicant’s narrative.

Lastly and most importantly, because of (a) the applicant’s initially strong opposition in writing to public improvements that development would require, and (b) City concern that the legislature appears likely to pre-empt local governments from requiring the usual public improvements for developments of either housing generally or “middle housing” as both ORS 197.758(1)(b) and OAR 660-046-0020(12) define, staff applies an annexation condition.

It requires the applicant to enter into an annexation agreement for the annexation to become effective, and the applicant tentatively agreed to such conditioning during a November 20, 2023 with the Community Development Director and Senior Planner.

In short, an annexation agreement would list and describe the dedications, grants, and public improvements necessary to conform with the Woodburn Development Ordinance (WDO) and establish provisions for the effect on the agreement when changes in statute or administrative rules render compliance with agreement provisions impossible or unlawful, with the proviso that (a) a prime objective of the agreement shall be and remain to secure public improvements despite such changes by the state, and (b) changes by the state reasonably interpreted to relieve developers generally of some or all burden of public improvements in and of themselves do not necessarily void the agreement in part or wholly.

In short, through an annexation agreement, despite any future changes in state law that exempt housing developments, especially “middle housing”, from public improvements, when this property develops, whatever the development, any developer of it will still construct or pay fees in-lieu for public improvements (surface half-street improvements) per City ordinances.

This is in keeping with the WDO 1.02 definition of “development”, for which WDO 3.01.01D requires street improvements, and a section of the purpose statement that opens WDO 3.01:

“An objective is to have developers construct or fund street improvements, and other proportional share of improvements for the public, to lessen the cost of land development to the City in order to lessen taxpayer burden for landowners in the context of Oregon Ballot Measures 5 (1990) and 50 (1997).”

▲ In order to conform with WDO 5.04.01C.2a by guaranteeing that public facilities serve future development of the property, staff applies a condition for the applicant to enter into an annexation agreement.

3. a. Examining the considerations under subsection a. because the Comprehensive Plan land use map designates the territory Low Density Residential, and the territory is to be designated with Residential Single Family (RS) base zoning district consistent with both the applicant’s request and Comprehensive Plan Policy Table 1:
  - 1) 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. 7 & 8) states:

“The Comprehensive Plan Land Use Map designates the Property as Low Density Residential. The City’s Housing Needs Analysis dated December 9, 2019, included the Property in the city’s Buildable Lands Inventory and the Property has historically been designated Low-Density Residential. This application does not propose to change density or zoning designations the Property is presently subject to.

This petition for annexation represents only a small portion of the land the City has designated for residential use within the city’s urban growth boundary. The 2019 Housing Needs Analysis projects a future need for 1,563 new residential dwellings, which include single-family detached dwellings, manufactured homes, and mobile homes. Upon annexation, it is reasonable to expect that the Property may be subdivided to create seven new single-family residential lots, which represents approximately 0.038 percent of the City’s estimated need for single-family detached dwellings. There is no known oversupply of land zoned for low density residential use in the City’s existing boundary; therefore, approval of the requested annexation will not result in more than a 5-year supply land zoned for low density residential use in the City. Furthermore, the requested annexation will allow the City to meet the needs it identified in the Housing Needs Analysis and Buildable Lands Inventory make land available for needed housing.”

Staff mostly agrees, except that the number of dwellings might be more than 7 because the RS zoning district allows more than single-family houses. It also allows “middle housing”: duplexes, triplexes, quadplexes, townhouses, and cottage clusters. WDO Table 2.02B specifies for the RS zoning district a minimum net density of 5.2 dwellings per net acre. Though it lists no maximum, Comprehensive Plan Policy Table 1 indicates both the minimum of 5.2 and a maximum of 7.26 dwellings per net acre. If there were ROW dedication of 6 ft width along approximately 390 feet length of frontage, the reduction of 1,884 square feet from 1.43 gross acres would yield 1.38 net acres. This multiplied by 7.26 dwellings would yield 10 dwellings, with staff stressing that for some middle housing, like cottage clusters, state law appears to pre-empt application of a local maximum density requirement.

In short, development of the property could have far more dwellings if having, for example, 10 townhouses or (based on the Pre-App PRE 22-29 site plan) approximately 20 cottages, instead of 7 conventional detached single-family houses.

3) The applicant’s narrative (p. 8) states:

“The Property is presently served by existing public transportation (including bicycle and pedestrian improvements), water, sanitary sewer, and stormwater conveyance facilities, each with existing service capacities. The Property will not require any new capital improvements to allow for future development activities that are consistent with the Property’s planned residential use and density.”

Though there’s no written objection by the Public Works Department to the applicant’s narrative. Planning Division staff note that “capital improvements” refers to public improvements constructed by the City instead of a developer.

4) Regarding (a) & (b), the applicant’s narrative (p. 8) states:

“The Property’s frontage that abuts Brown Street measures approximately 391 feet. The existing public right-of-way measures 36 feet from the centerline on the east side of Brown Street and 30 feet on the west side of Brown Street. The west side of the Brown Street right-of-way is presently improved with a 17-foot pavement section measured from centerline to the face of curb (which allows for a 12-foot travel lane and a 5-foot bike lane), and a 6-foot planter strip, a 6-foot sidewalk, and a 1-foot section between the back of the sidewalk and the existing property line (which provides more than adequate safety for pedestrian movements). No additional right-of-way dedication or improvements are necessary or required to safely develop the Property consistent with its planned residential use and density following annexation.”

Staff disagrees. First, (b) is not applicable because no connection of existing street stubs is relevant. Returning to (a), completion or extension of the arterial/collector street pattern, the existing west half-street is non-conforming with WDO Figure 3.01D “Service Collector”, which is the applicable functional class per Transportation System Plan (TSP) Figure 2. Upon development of the territory the City would require right-of-way (ROW) dedication and street improvements that conform to the standard cross-section for the west half-street. A conditioned annexation agreement remains relevant as described farther above for criterion C.2.

▲ In order to conform with WDO 5.04.01C.3a4)b) by completing Brown Street, which is collector street as depicted in Transportation System Plan (TSP) Figure 2 and corresponding WDO Figure 3.01D “Service Collector”, staff applies a condition for the applicant to enter into an annexation agreement.

5) n/a at least for the Planning Commission hearing because no City Council hearing has yet occurred.

Annexation of the subject territory demonstrates some conformance with the criteria, but not with .04.01C.2a & C.3a4b), both of which relate to west half-street improvements.

Regarding D., the applicant addressed 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 district other than RS. (Pursuant to Comprehensive Plan Policy Table 1, RS and Retirement Community Single Family Residential [R1S] are the only zoning districts that implement the Low Density Residential designation, and the clear WDO and zoning map intent is that R1S came into being only to accommodate the existing Woodburn Senior Estates subdivision, the 1960s retirement development now named Woodburn Golf & Estates located in the north central and west central areas of the city.)

Regarding F., looking at subsections 1-3:

- “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.”

The application neither proposes to dedicate required ROW (6 ft) nor dedicate at least the streetside PUE (minimum 5 ft; maximum 8 ft), failing to meet 1. & 2. For the reasons described for criterion C.2a, 3. would not be met without a conditioned annexation agreement.

▲ The criteria can be met with a condition of approval requiring an annexation agreement that guarantees public facilities serve future development of the property.



## 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.



## 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 was consolidated with Design Review DR23-04 , but as part of an incompleteness response letter invoking ORS 227.178(4)(b) to force completeness of the land use application package, the applicant August 7, 2023 requested to sever the DR from the ANX/ZC land use application package:

“Pursuant to our discussions with Chris Kerr[, Community Development Director] and McKenzie Granum, [Assistant City Attorney] we request that you please proceed with the Type III review process for annexation and zone change applications separately from the Type I design review request for the cottage cluster development that is proposed for the site.” (Brackets indicate staff editorial notes.)

For this reason, these analyses and findings omit the DR. The City and will further review DR 23-04, likely as land use review Type I, for cottage cluster development of 20 cottages following either the effective date of the annexation ordinance or City Council denial of ANX 23-03 & ZC 23-03. Following the effective date of the annexation ordinance, ORS 227.178(1) & (2) would be applicable, the 30-day completeness review window starting on the effective date of the annexation ordinance.

## 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:

### *Annexation 23-03*

ANX-1. The applicant shall enter into an annexation agreement (the Agreement), made concurrent with and a part of any written decision by the Woodburn City Council that approves the annexation of the subject territory. The Agreement shall be subject to Council acceptance and have provisions addressing the following:

- a. The Agreement shall be contractually binding on the applicant, heirs, successors, and assigns and:
  - (1) Cite applicable details, provisions, requirements, rules, specifications, and standards from the Woodburn Development Ordinance (WDO) and other applicable ordinances relating to public improvements that following annexation would be applicable to the subject property at 1025 Brown Street upon development;
  - (2) List and describe the dedications, grants, and public improvements necessary to conform, addressing at least:
    - (a) Right-of-way (ROW) dedication,
    - (b) Streetside public utility easement (PUE) grant,
    - (c) Half-street improvements including surface improvements: roadway, curbing, landscape strip, street trees, and sidewalk,
    - (d) Removal of electric power pole(s) and burial of overhead lines, and
    - (e) Any fair share or proportionate share costs for identified right-of-way improvements to increase traffic safety adequately at the intersection of Brown Street & Bridlewood Lane / Comstock Avenue;
  - (3) Specify that development shall come with such public improvements that a developer constructs or pays fees in lieu of as ordinances allow, with option to add administrative provisions for fees in-lieu not found in ordinances such as explicit due dates;
  - (4) Specify that the Agreement provisions are severable;

- (5) Establish provisions for the effect on the Agreement when changes in statute or administrative rules render compliance with Agreement provisions impossible or unlawful, with the proviso that (a) a prime objective of the Agreement shall be and remain to secure public improvements despite such changes by the state, and (b) changes by the state reasonably interpreted to relieve developers generally of some or all burden of public improvements in and of themselves do not necessarily void the Agreement in part or wholly; and
- (6) Establish provisions for modification, which may also include setting Agreement expiration or sunset.
- b. Recordation: It is the intention of the City that the terms and obligations of the Agreement are necessary for the annexation and future development of the subject property and as such will run with the land and be construed to be both a benefit and burden upon the property. The City may record a duly executed copy of the Agreement in the real property records of Marion County.
- c. Effective date:
  - (1) Option 1: The City Council adopts the annexation ordinance for ANX 23-03 and accepts the Agreement with the effective date the same as the annexation ordinance effective date.
  - (2) Option 2: The City Council adopts the annexation ordinance for ANX 23-03 with the effective date conditioned to be the date that the City Administrator signs the Agreement that the applicant had signed. Until this happens, the City holds in abeyance agency notices of ordinance adoption.

Note A: The applicant may request that City staff draft and format an agreement.

## Applicant Identity

<i>Applicant</i>	Stafford Homes & Land, LLC
<i>Applicant's Representative</i>	Maxwell Root, Development Assistant, Stafford Homes & Land, LLC
<i>Landowner(s)</i>	Stafford Homes & Land, 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.



## Colin Cortes

---

**From:** Dago Garcia  
**Sent:** Wednesday, December 6, 2023 4:47 PM  
**To:** Colin Cortes  
**Cc:** Curtis Stultz  
**Subject:** RE: ANX 23-03 staff report due Thu Dec 7

Hi Colin,

There is not need for public works conditions since public works conditions are going to be address with the agreement.

Thank You

---

**From:** Colin Cortes <Colin.Cortes@ci.woodburn.or.us>  
**Sent:** Tuesday, December 5, 2023 10:35 AM  
**To:** Dago Garcia <Dago.Garcia@ci.woodburn.or.us>  
**Cc:** Curtis Stultz <Curtis.Stultz@ci.woodburn.or.us>  
**Subject:** ANX 23-03 staff report due Thu Dec 7

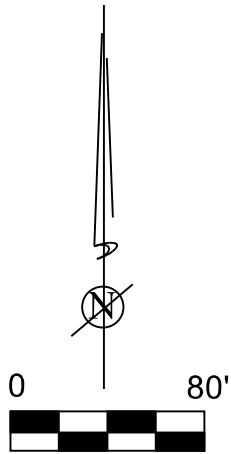
Dago:

If there's need for Public Works conditions of approval for ANX 23-03 Brown Street Annexation (1025 Brown St), please pass them along, thanks. Planning staff will publish the staff report sometime Thursday, December 7, a week prior to the December 14 Planning Commission hearing date.

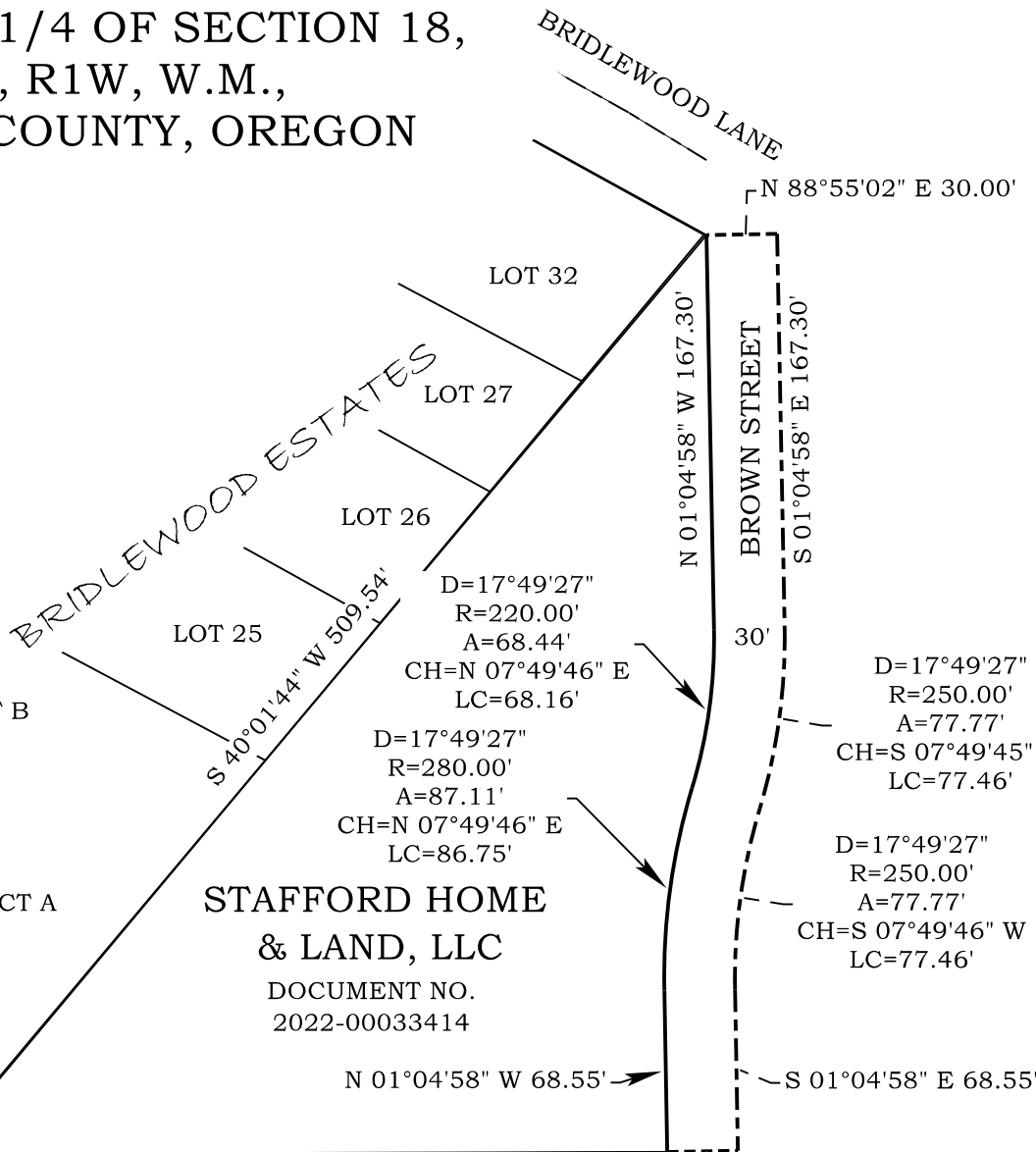
[View the shared drive copy of app materials.](#)

**Colin Cortes, AICP, CNU-A**  
Senior Planner  
Ph. (503) 980-2485

**EXHIBIT B  
ANNEXATION FOR  
STAFFORD HOMES AND LAND  
IN THE SW 1/4 OF SECTION 18,  
T5S, R1W, W.M.,  
MARION COUNTY, OREGON**



80 Ft/In  
DWG NO. ANNEX EXHIBIT B  
JOB NO. 22-303  
7-21-2023



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Donald D Wallace*

OREGON  
JANUARY 19, 1993  
DONALD D WALLACE, JR  
2601

RENEWS 6/30/24



**K.L.S. SURVEYING INC.**  
1224 ALDER STREET  
VERNONIA, OREGON 97064  
(503) 429-6115

**Attachment 103**



**PUBLIC WORKS DEPARTMENT  
190 GARFIELD STREET  
WOODBURN, OR 97071**

November 10, 2022

Max Root, Development Asst.  
Stafford Homes & Land  
8840 SW Holly Lane  
Wilsonville, OR 97070

Re: Annexation Certification  
Subject Property: 1025 Brown Street, Woodburn, OR 97071  
Marion County Tax Map: 051W18C001200

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 storm sewer collection system. The requirements for this collection facility would still need to be determined. The capacity analysis, design and installation of water, sewer and storm would be the responsibility of the applicant/property owner.

If you have any questions, please contact me at 503.982.5248.

Sincerely,

*Dago Garcia*

Dago Garcia, P.E.  
City Engineer  
City of Woodburn

ANX 23-03  
RECEIVED

APR 10 2023

COMMUNITY DEVELOPMENT  
DEPARTMENT

**Attachment 103A  
Page 1 of 4**

## Maxwell Root

---

**From:** James Gibbs <james.gibbs@woodburnfire.com>  
**Sent:** Tuesday, November 8, 2022 6:36 AM  
**To:** Maxwell Root  
**Subject:** RE: 1025 Brown St Annexation Service Provider Letter

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Max,

Typically I have sent in an email response to reflect we can absorb the capacity for Woodburn Fire District response. This email is an official response that Woodburn Fire District covers 75 square miles, this property was already a part of our response and the added houses, as long as water supply and fire access meet our requirements, we can support the added capacity for fire and medical responses.

James Gibbs  
Fire Marshal  
Woodburn Fire District  
1776 Newberg Hwy  
Woodburn, OR 97071  
(503) 982-2360  
[gibbsj@woodburnfire.com](mailto:gibbsj@woodburnfire.com)



ANX 23-03  
RECEIVED

APR 10 2023

COMMUNITY DEVELOPMENT  
DEPARTMENT

---

**From:** Maxwell Root [mailto:max@staffordlandcompany.com]  
**Sent:** Thursday, November 03, 2022 9:46 AM  
**To:** James Gibbs  
**Subject:** RE: 1025 Brown St Annexation Service Provider Letter

\*\*\*\* This email is from an EXTERNAL sender. Exercise caution when opening attachments or click links from unknown senders or unexpected email. \*\*\*\*

Good Morning,

IS there anything else I can provide to help expedite the service provider letter?

Thanks,  
Max

---

**From:** Maxwell Root  
**Sent:** Wednesday, October 12, 2022 10:44 AM

**To:** gibbsj@woodburnfire.com

**Subject:** 1025 Brown St Annexation Service Provider Letter

Good morning,

Thanks for taking my call, as discussed, we need a service provider letter from the Woodburn Fire District to annex in a property.

The property is 1.43 acres, zoned for 5-6 single family residential houses. Due to the lots configuration, 6 is a stretch.

Please let me know if you need any further information.



**Max Root** | Development Asst.

8840 SW Holly Lane, Wilsonville, OR 97070

[Max@staffordlandcompany.com](mailto:Max@staffordlandcompany.com)

**Mobile:** 503-739-2649

[staffordhomesandland.com](http://staffordhomesandland.com) | [staffordlandcompany.com](http://staffordlandcompany.com)

RECEIVED

APR 10 2023

COMMUNITY DEVELOPMENT  
DEPARTMENT



## Woodburn School District

1390 Meridian Drive, Woodburn, OR 97071

Phone: 503-981-9555

Fax: 971-983-3611

November 9, 2022

Max Root

Stafford Homes & Land; Development Asst.

8840 SW Holly Lane

Wilsonville, Or 97070

Re: Annexation for tax lot 01200 located at 1025 Brown Street.

Mr. Root

In response to your request, Woodburn School District has determined that your planned annexation located at 1025 Brown Street will affect our schools. However, if the City of Woodburn's traffic analysis determines that there will be no impact on the ability to provide safe and accessible routes to school and there will be no impact on the safety of our students, we will support their decision

Thank you,

Casey Woolley

Director of Safety and Operations

Woodburn School District

ANX 23-03  
RECEIVED

APR 10 2023

COMMUNITY DEVELOPMENT  
DEPARTMENT

**Attachment 103A**  
**Page 4 of 4**

Page 1 | 1



## Colin Cortes

---

**From:** Bryan Cavaness <bryan@staffordlandcompany.com>  
**Sent:** Friday, May 26, 2023 12:18 PM  
**To:** EDGING Sean \* DLCDC  
**Subject:** Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy  
**Attachments:** Brown Street Cottages - Site Plan.pdf; SW 90th Ave Cottages - Site Plan.pdf; 886 COTTAGE PLAN 2-STORY FARMHOUSE\_PRE ENG 032923.pdf; 750 COTTAGE PLAN 2-STORY\_FOR REVIEW 092122.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Good afternoon, Sean.

We recently reached out to Mark Kyle McCurdy concerning unforeseen difficulties we are experiencing with the city of Woodburn related to a 20 unit cottage cluster project. Mary Kyle suggested that we contact you to discuss any assistance DLCDC may be available to provide.

I have attached site plans for the Woodburn project and for a site in Washington County off of Hall that will support 12 cottages. I have also attached preliminary architectural drawings of the one and two bedroom cottages we would like to construct. We would appreciate any questions, comments, or suggestions you may have on both projects. (We also have a third 12 unit project in Salem that is in preliminary design.)

I cannot adequately emphasize to you how receptive and helpful Washington County staff have been since we presented the 12 unit project on a large lot near Washington Square with an existing home to them in a pre-application conference last fall. They truly want this project to succeed and it has been a pleasure to work with them.

Regretfully, our experience with the city of Woodburn has been substantially less welcoming and cooperative.

The Woodburn property is a single lot that abuts a fully improved right-of-way with curb, a 6-foot planter strip, and a six-foot sidewalk. The property has direct access to sanitary sewer, water, stormwater, and above ground franchise utilities. Streetlighting is provided across the property's frontage on existing PGE poles. It is a "shovel ready" property.

The city's recently adopted TSP reclassified the street the property abuts from a two-lane local street to a three-lane service collector with a mix of islands and turning lanes. Despite the fact that the term "sufficient Infrastructure" does not include transportation system improvements other than those necessary to provide emergency vehicle access, city staff is demanding that we dedicate 6-feet of additional right-of-way, demolish the existing curb and sidewalk, add 6-feet of additional pavement, construct new curb and sidewalk, underground existing franchise utilities (which PGE anticipates will need to be extended several hundred feet off site and require boring under three streets), and install new frontage streetlighting. We conservatively estimate the cost to construct these improvements will range from \$225,000 to \$250,000, which will unnecessarily add over \$11,000 to the cost to construct each cottage dwelling. During a pre-application conference we reminded staff that they would be required to provide both *Nolan* and *Dolan* findings to support the dedication and improvement requirements. Staff glibly responded that *Nolan* and *Dolan* did not apply "because the city code requires the right-of-way dedication and the frontage improvements." We have submitted evidence in the record that demonstrates the right-of-way improvements staff intends to impose on the project are 25 times greater than the impacts the development will have on adjacent transportation system (0.32% of PM peak trips vs. 7.9% of the combined street frontage that will be improved to the wider service collector street standard), but our comments are ignored.

**ANX 23-03**  
**Attachment 104A1**

The architectural design elements the city seeks to impose on this project are also very frustrating, both from the unnecessary costs they impose and the inconsistent manner staff arbitrarily chooses to interpret and apply the standards. For example, the code requires building plans to score a minimum 16 “design” points, but the design standards are primarily directed at detached single-family dwellings and many points that are available to single-family dwellings are not available to cottage dwellings. As a result, we are forced to produce construction plans with extraordinary design features such as 9/12 roofs and 2-foot eaves. A roof with a 9/12 pitch and 24-inch eaves results in a roof area that is 30% larger than the same cottage dwelling constructed with a 6/12 roof pitch and 12-inch eaves. The larger roof area requires larger trusses, more roof sheathing materials, more roofing materials, and increased labor costs to construct. We estimate the city’s roof design requirements unnecessarily increase the cottage’s roof construction costs 10% to 12%. Other examples include elevating the foundation a minimum of 18-inches above sidewalk grade (which does not allow for the construction of single story cottages with zero-barrier entries), constructing a porch railing (which would not be necessary if the city allowed the home to be constructed at grade), 3” window trim on all sides, and minimum dimensional requirements for front porches. However, my personal favorite is a requirement to provide 15% window coverage on all street-facing walls. We estimate the cost to comply with the 15% window requirement has the potential to add as much as \$5,000 to the cost of affected units. The requirement will also wreak havoc on the cottages’ thermal envelopes, which will result in increased energy consumption and cause owner’s/occupants to incur higher utility bills to heat and cool the cottages. We estimate the total cost to comply with the city’s architectural design standards will be approximately \$10,000 for units that are not street facing and \$15,000 to \$17,00 for units that are street facing.

All in, the requirements city staff has plainly stated they intend to impose on this project will unnecessarily increase the cost to construct each cottage unit approximately \$21,000 and as much as \$28,000. As we have told staff on multiple occasions, this is not what the legislature intended when it enacted HB 2001.

We appreciate your offer to discuss these matters with us as conveyed by Mark Kyle. I am presently responding to an incomplete notice the city returned to us requesting additional materials and information related to the annexation and Type I design review applications we have submitted for this project. Otherwise, I am generally available at your convenience next week.

Thank you for your time and assistance with this matter.

Bryan

**Bryan Cavaness**  
**General Counsel**  
**Land Development Manager**



8840 SW Holly Lane  
Suite 200  
Wilsonville, Oregon 97070  
CCB No. 203562

Mobile: 503.332.6699  
E-Mail: [bryan@staffordlandcompany.com](mailto:bryan@staffordlandcompany.com)

[staffordlandcompany.com](http://staffordlandcompany.com) | [staffordhomesandland.com](http://staffordhomesandland.com)



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# BROWN STREET COTTAGES

20 - UNIT COTTAGE CLUSTER DEVELOPMENT - TENTATIVE IMPROVEMENT PLANS  
 TAXLOT 051W18C1200  
 CITY OF WOODBURN, OREGON

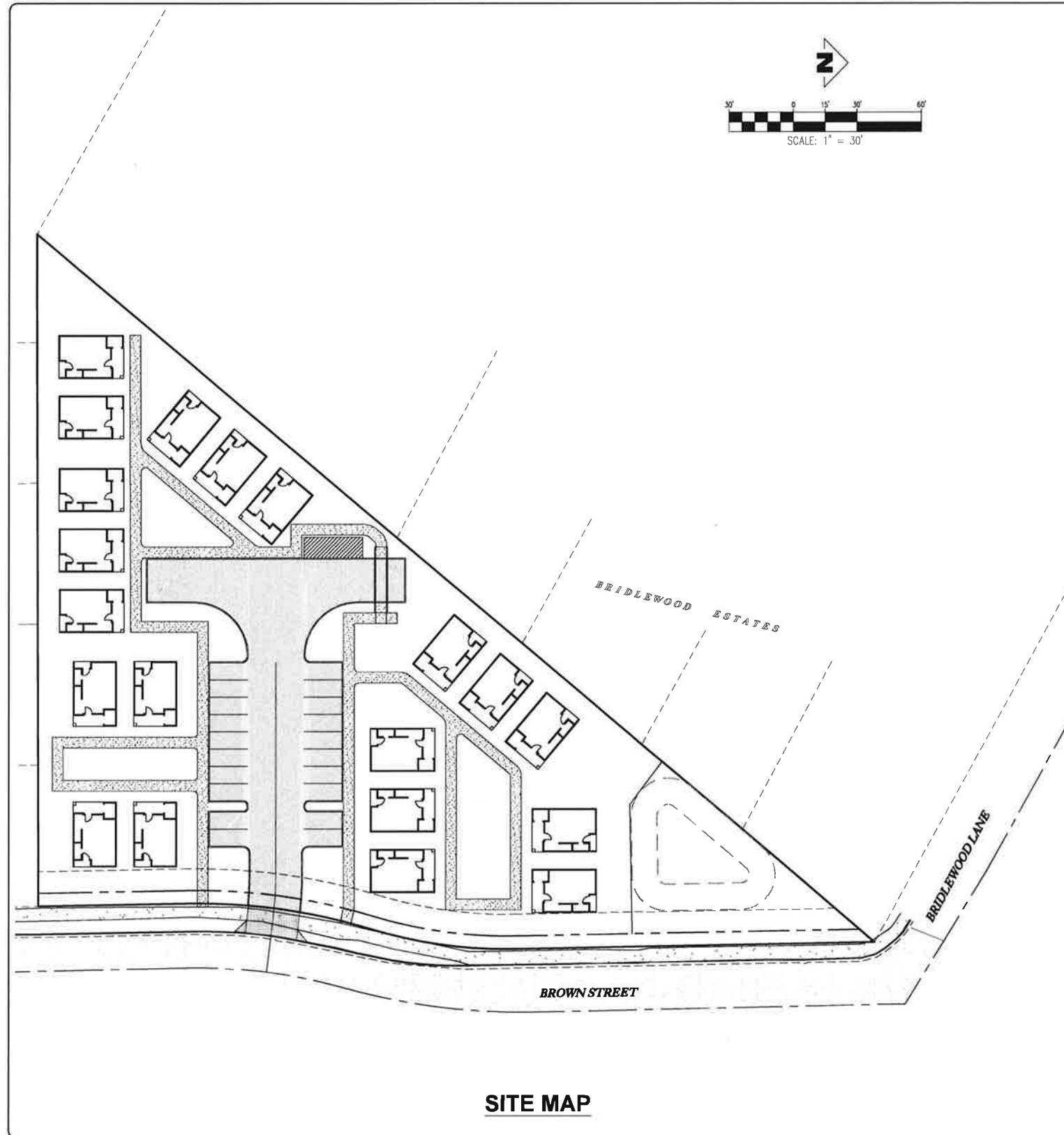
BROWN STREET COTTAGES  
 STAFFORD HOME & LAND, LLC  
 TAX LOT 1200  
 TAX MAP T55 R1W SECTION 18  
 CITY OF WOODBURN, OREGON

COVER SHEET

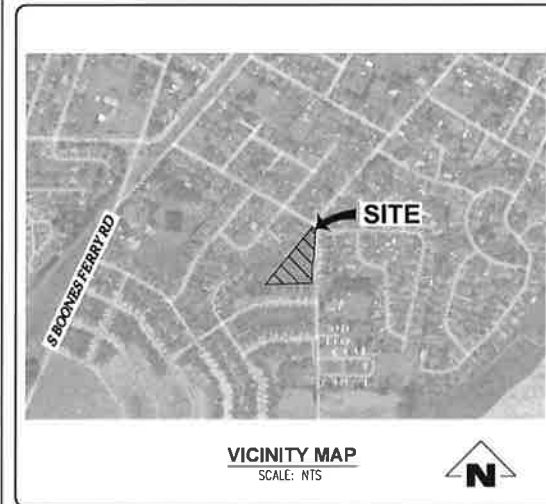
NO.	DATE	DESCRIPTION

**EMERIO**  
 ENGINEERING • SURVEYING • DESIGN  
 6445 SW FALLBROOK PLACE, SUITE 100  
 BEAVERTON, OREGON 97008  
 TEL: (503) 638-8932  
 FAX: (503) 638-8932  
 www.emeriodesign.com

SHEET  
 01 OF 04



**SITE MAP**



**VICINITY MAP**  
 SCALE: NTS

**LEGEND**

---	BOUNDARY LINE	SS	EXISTING SANITARY SEWER LINE
---	EASEMENT	W	EXISTING WATER LINE
---	EXISTING 1" CONTOUR LINE	---	EXISTING OVERHEAD POWER LINE
---	EXISTING 5" CONTOUR LINE	---	EXISTING GAS LINE
---	EXISTING CROWN (CENTER LINE OF ROAD)	---	EXISTING DITCH LINE
---	EXISTING TREE	ML	EXISTING WETLAND LINE
---	EXISTING STORM DRAIN MANHOLE	---	EXISTING HEDGE LINE
---	EXISTING SANITARY SEWER MANHOLE	---	EXISTING WOODEN FENCE
---	EXISTING CATCH BASIN	---	EXISTING RAIL FENCE
---	EXISTING CLEANOUT	X	EXISTING CHAIN LINK FENCE
---	EXISTING WATER METER	SD	PROPOSED STORM LINE
---	EXISTING WATER VALVE	---	PROPOSED SANITARY LINE
---	EXISTING FIRE HYDRANT	W	PROPOSED WATERLINE
---	EXISTING MAIL BOX	---	PROPOSED STORM LATERAL
---	EXISTING UTILITY POLE	---	PROPOSED SANITARY LATERAL
---	EXISTING GUY WIRE	---	PROPOSED SINGLE WATER METER
---	EXISTING LIGHT	---	PROPOSED STORM MANHOLE
---	EXISTING COMMUNICATION PEDESTAL	---	PROPOSED CATCH BASIN/AREA DRAIN
---	EXISTING ELECTRICAL METER	---	PROPOSED SANITARY MANHOLE
---	EXISTING JUNCTION BOX	---	PROPOSED BLOWOFF
---	EXISTING BOLLARD	---	PROPOSED WATER VALVE
---	EXISTING DOWNSPOUT	---	PROPOSED 1" CONTOUR LINE
---	EXISTING WETLAND FLAG	---	PROPOSED 5" CONTOUR LINE
---	EXISTING STORM LINE	---	PROPOSED SEDIMENT FENCE

**SITE DATA**

SITE AREA:	1.41 ACRES
CURRENT ZONING:	PROPERTY IS NOT ANNEXED INTO THE C.O.W.
PROPOSED ZONING:	SINGLE FAMILY RESIDENTIAL (RS)
TAXLOT:	051W18C1200
NO OF UNITS:	20

**DRAWING INDEX**

Sheet #	Sheet Title
01	COVER SHEET
02	EXISTING CONDITIONS
03	PRELIMINARY SITE PLAN
04	PRELIMINARY COMPOSITE UTILITY PLAN

**BENCHMARK INFORMATION**

THE HORIZONTAL DATUM FOR THIS SURVEY IS BASED UPON STATE PLANE COORDINATES, OREGON NORTH ZONE (3601), NAD83.

THE VERTICAL DATUM FOR THIS SURVEY IS BASED UPON BENCHMARK NO. 00120, ELEVATION = 418.260', NGVD 29. UNITS ARE INTERNATIONAL FEET.

**PROJECT CONTACTS**

**OWNER:**  
 STAFFORD DEVELOPMENT COMPANY  
 8840 SW HOLLY LANE  
 WILSONVILLE, OREGON 97070  
 CONTACT: BRYAN CAVANESS  
 (971) 206-8597 (P)

**SURVEYOR:**  
 KLS SURVEYING, INC.  
 1224 ALDER STREET  
 VERNONIA, OREGON 97064  
 CONTACT: DON WALLACE  
 (503) 429-6115 (P)

**GEOTECHNICAL ENGINEER:**  
 TBD

**CIVIL ENGINEER:**  
 EMERIO DESIGN, LLC  
 1500 VALLEY RIVER DR, SUITE 100  
 EUGENE, OR 97401  
 CONTACT: ROY W. HANKINS, PE  
 (503) 746-8812 (P)  
 (503) 639-9592 (F)

**TRANSPORTATION ENGINEER:**  
 TBD

**ENGINEER'S NOTE TO CONTRACTOR**

THE EXISTENCE AND LOCATION OF ANY UNDERGROUND UTILITIES OR STRUCTURES SHOWN ON THESE PLANS ARE OBTAINED BY A SEARCH OF AVAILABLE RECORDS. TO THE BEST OF OUR KNOWLEDGE, THERE ARE NO EXISTING UTILITIES EXCEPT THOSE SHOWN ON THESE PLANS. THE CONTRACTOR IS REQUIRED TO TAKE DUE PRECAUTIONARY MEASURES TO PROTECT THE UTILITY LINES SHOWN ON THESE DRAWINGS. THE CONTRACTOR FURTHER ASSUMES ALL LIABILITY AND RESPONSIBILITY FOR THE UTILITY PIPES, CONDUITS OR STRUCTURES SHOWN OR NOT SHOWN ON THESE DRAWINGS.

THE CONTRACTOR AGREES THAT HE SHALL ASSUME SOLE AND COMPLETE RESPONSIBILITY FOR THE JOB SITE CONDITIONS DURING THE COURSE OF CONSTRUCTION OF THIS PROJECT, INCLUDING SAFETY OF ALL PERSONS AND PROPERTY; THAT THIS SHALL APPLY CONTINUOUSLY AND NOT BE LIMITED TO NORMAL WORKING HOURS; AND THAT THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD THE OWNER AND THE ENGINEER HARMLESS FROM ANY AND ALL LIABILITY, REAL OR ALLEGED, IN CONNECTION WITH THE PERFORMANCE OF WORK ON THIS PROJECT, EXCEPT FOR LIABILITY ARISING FROM THE SOLE NEGLIGENCE OF THE OWNER OR THE ENGINEER.

CONTRACTOR SHALL VERIFY ALL CONDITIONS AND DIMENSIONS AND SHALL REPORT ANY DISCREPANCIES TO THE ENGINEER PRIOR TO THE COMMENCEMENT OF WORK.

**PAPER SCALE NOTE**

THESE PLANS ARE FULL SIZED ON 22"x34" PAPER, IF 11"x17", SCALE ACCORDINGLY.

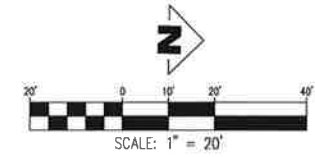
**NOTICE TO EXCAVATORS:**  
 ATTENTION: OREGON LAW REQUIRES YOU TO FOLLOW RULES ADOPTED BY THE OREGON UTILITY NOTIFICATION CENTER. THOSE RULES ARE SET FORTH IN OAR 952-001-0010 THROUGH OAR 952-001-0090. YOU MAY OBTAIN COPIES OF THE RULES BY CALLING THE CENTER.  
 (NOTE: THE TELEPHONE NUMBER FOR THE OREGON UTILITY NOTIFICATION CENTER IS (503)-232-1987.)

**Attachment 104A1a**  
**Dig Safely.**  
 Call the Oregon One-Call Center  
 DIAL 811 or 1-800-332-2344

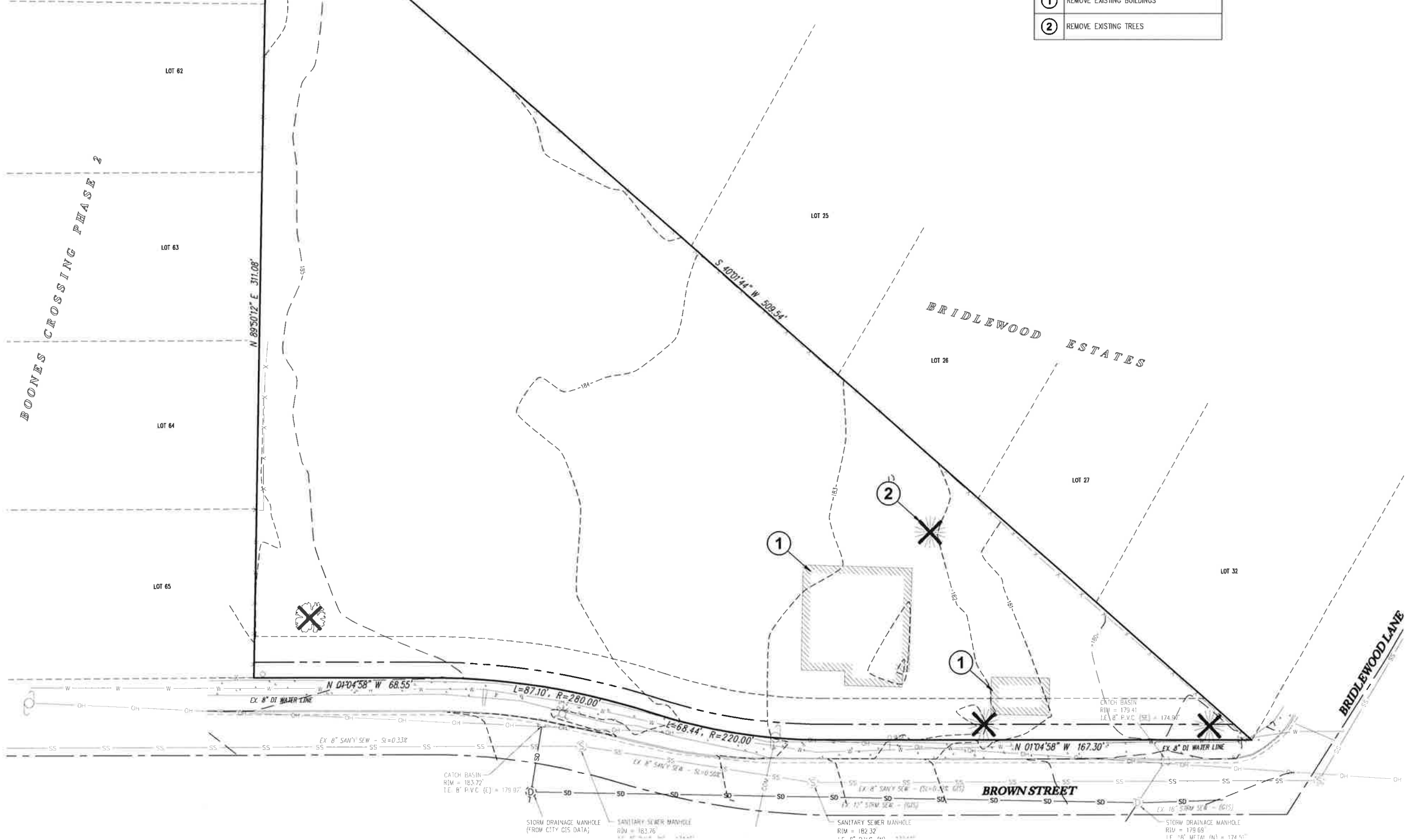
BOONES CROSSING  
PHASE 1

TRACT B

TRACT A



DEMOLITION NOTES	
①	REMOVE EXISTING BUILDINGS
②	REMOVE EXISTING TREES



BROWN STREET COTTAGES  
STAFFORD HOME & LAND, LLC  
TAX LOT 1200  
TAX MAP T5S R1W SECTION 18  
CITY OF WOODBURN, OREGON

EXISTING CONDITIONS

NO.	DATE	REVISIONS	DESCRIPTION

**EMERIO**  
ENGINEERING • SURVEYING • DESIGN  
8448 SW FALLBROOK PLACE, SUITE 100  
BEAVERTON, OREGON 97008  
TEL: (503) 639-8592  
FAX: (503) 639-8592  
www.emeriodesign.com

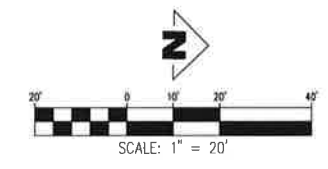
SHEET  
**02**  
OF  
**04**

**PRELIMINARY SITE PLAN**

NO.	DATE	DESCRIPTION

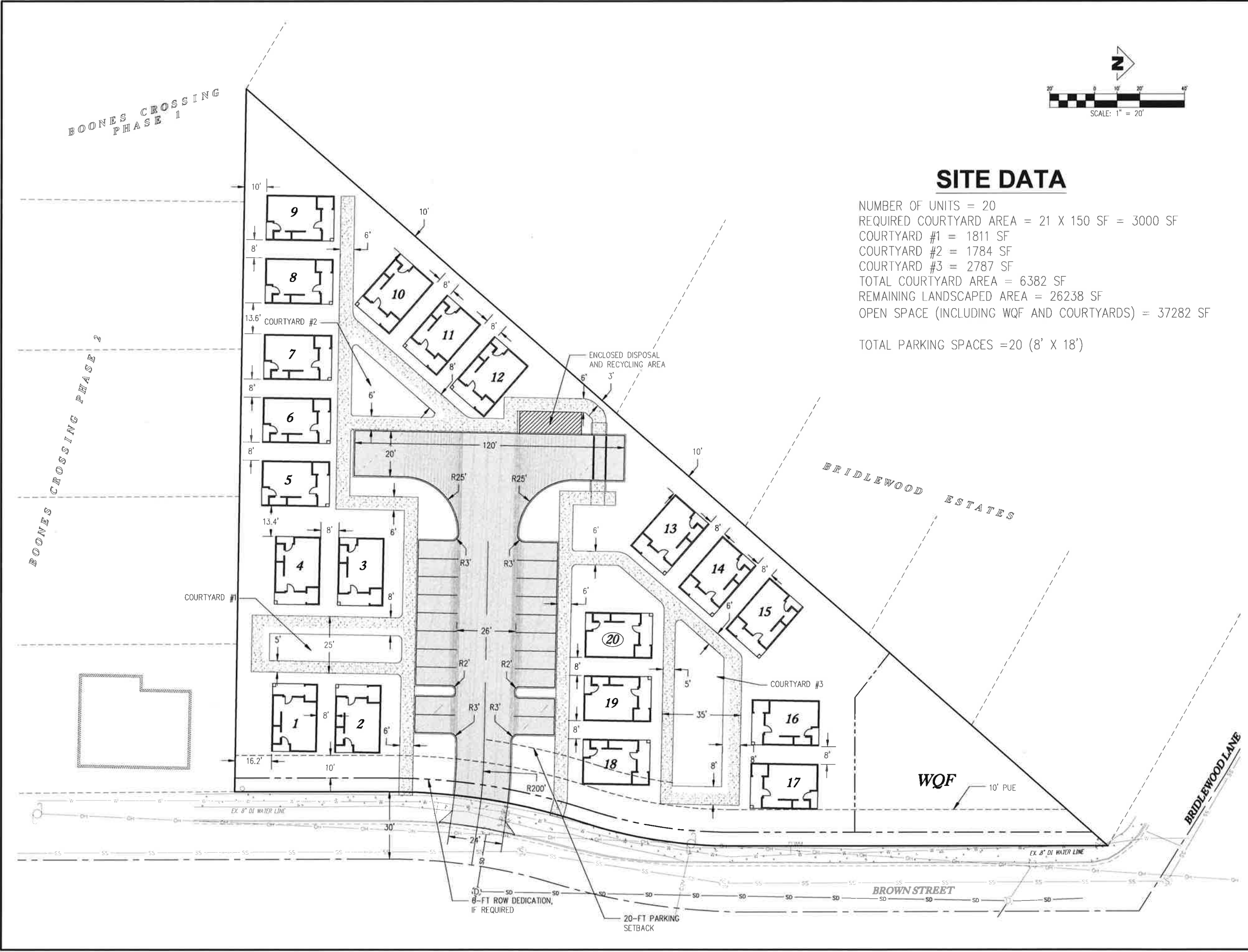
**EMERIO**  
**ENGINEERING • SURVEYING • DESIGN**  
 6448 SW FALLBROOK PLACE, SUITE 100  
 BEAVERTON, OREGON 97008  
 TEL: (503) 742-8481  
 FAX: (503) 639-6592  
 www.emeriodesign.com

FILE: P:\0471-012 Brown Street Cottages (dwg)\plan\0471-012\_03.dwg, Plot Date: 2/24/2023 3:55 PM, by: Peyton Harris

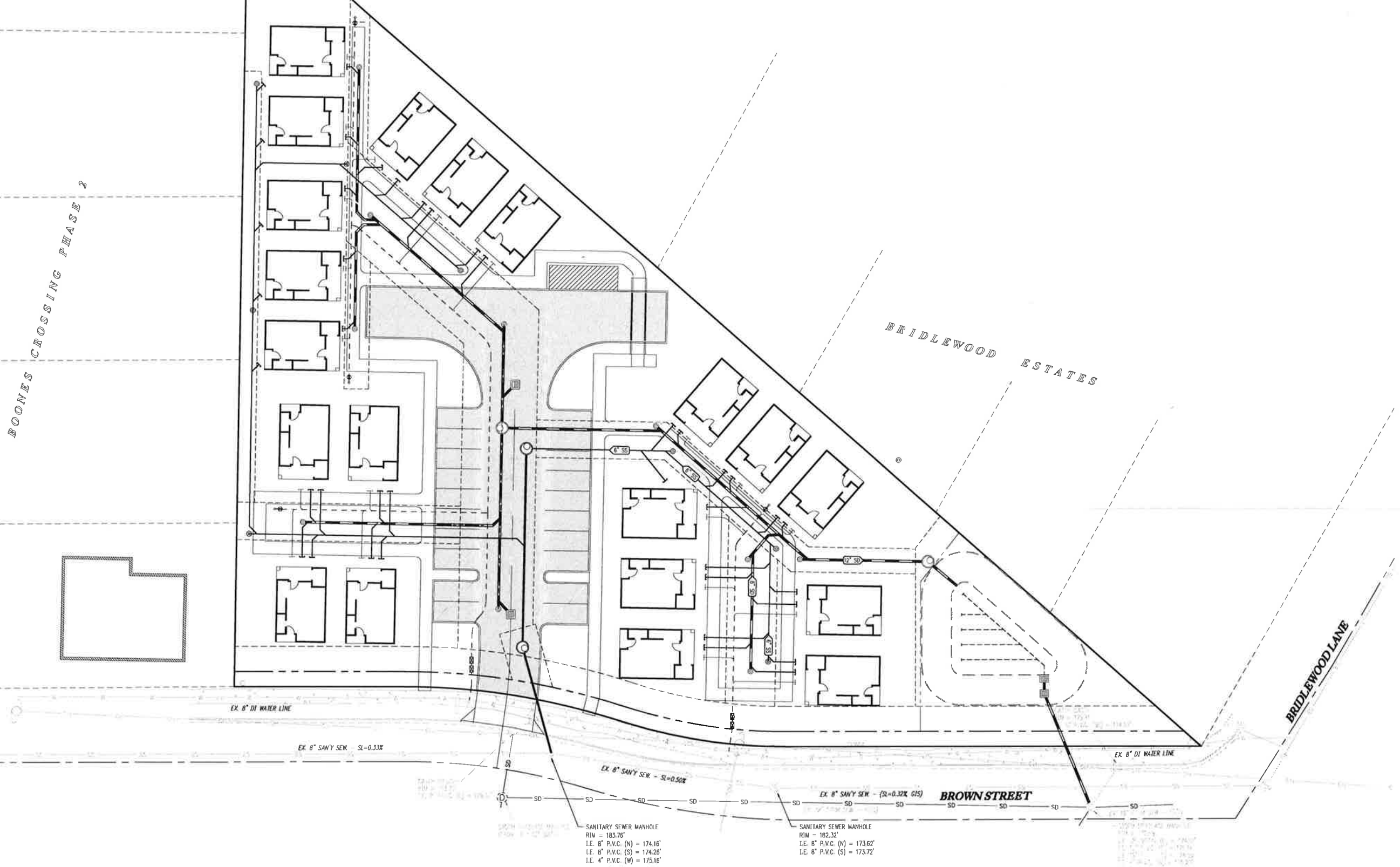
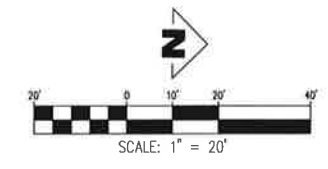


**SITE DATA**

NUMBER OF UNITS = 20  
 REQUIRED COURTYARD AREA = 21 X 150 SF = 3000 SF  
 COURTYARD #1 = 1811 SF  
 COURTYARD #2 = 1784 SF  
 COURTYARD #3 = 2787 SF  
 TOTAL COURTYARD AREA = 6382 SF  
 REMAINING LANDSCAPED AREA = 26238 SF  
 OPEN SPACE (INCLUDING WQF AND COURTYARDS) = 37282 SF  
  
 TOTAL PARKING SPACES = 20 (8' X 18')



BOONES CROSSING  
PHASE 1



BOONES CROSSING  
PHASE 2

BRIDLEWOOD  
ESTATES

BRIDLEWOOD LANE

BROWN STREET

SANITARY SEWER MANHOLE  
RIM = 183.76'  
I.E. 8" P.V.C. (N) = 174.16'  
I.E. 8" P.V.C. (S) = 174.26'  
I.E. 4" P.V.C. (W) = 175.16'

SANITARY SEWER MANHOLE  
RIM = 182.32'  
I.E. 8" P.V.C. (N) = 173.62'  
I.E. 8" P.V.C. (S) = 173.72'

BROWN STREET COTTAGES  
STAFFORD HOME & LAND, LLC  
TAX LOT 1200  
TAX MAP T5S R1W SECTION 18  
CITY OF WOODBURN, OREGON

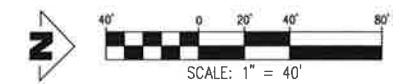
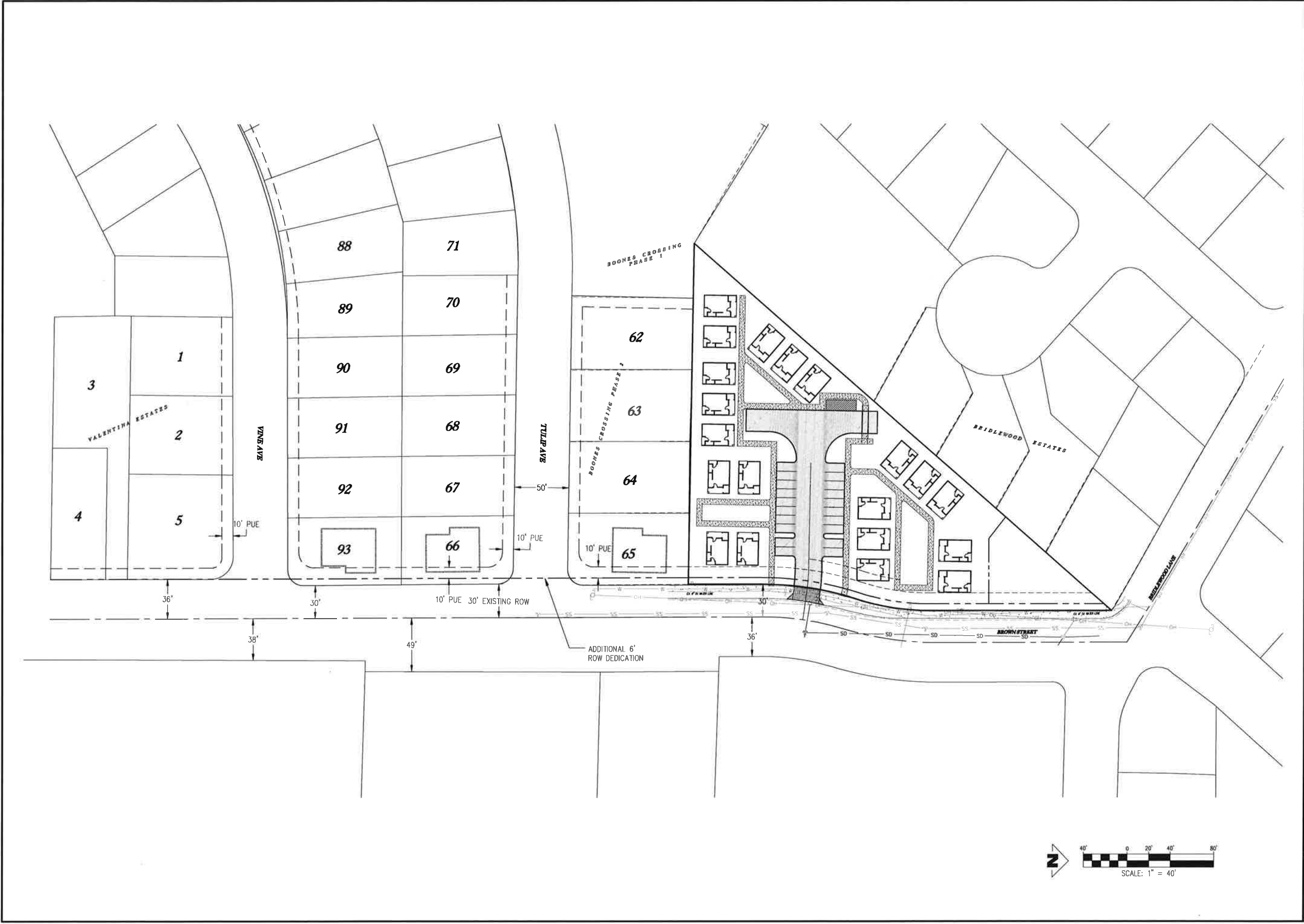
PRELIMINARY COMPOSITE  
UTILITY PLAN

NO.	DATE	DESCRIPTION

**EMERIO**  
ENGINEERING • SURVEYING • DESIGN  
6445 SW FALLBROOK PLACE, SUITE 100  
BEAVERTON, OREGON 97008  
PHONE: (503) 638-6512  
FAX: (503) 638-6512  
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SHEET  
**04**  
04





**BROWN STREET COTTAGES**  
**STAFFORD HOME & LAND, LLC**  
 TAX LOT 1200  
 TAX MAP T5S R1W SECTION 18  
 CITY OF WOODBURN, OREGON

**BROWN STREET**  
**EXPANDED LOCATION**  
**EXHIBIT**

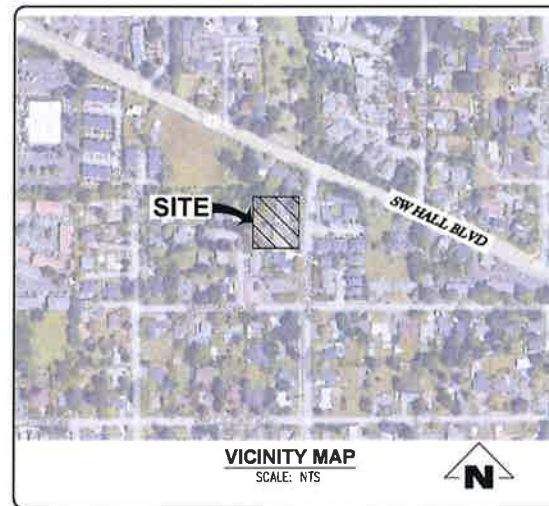
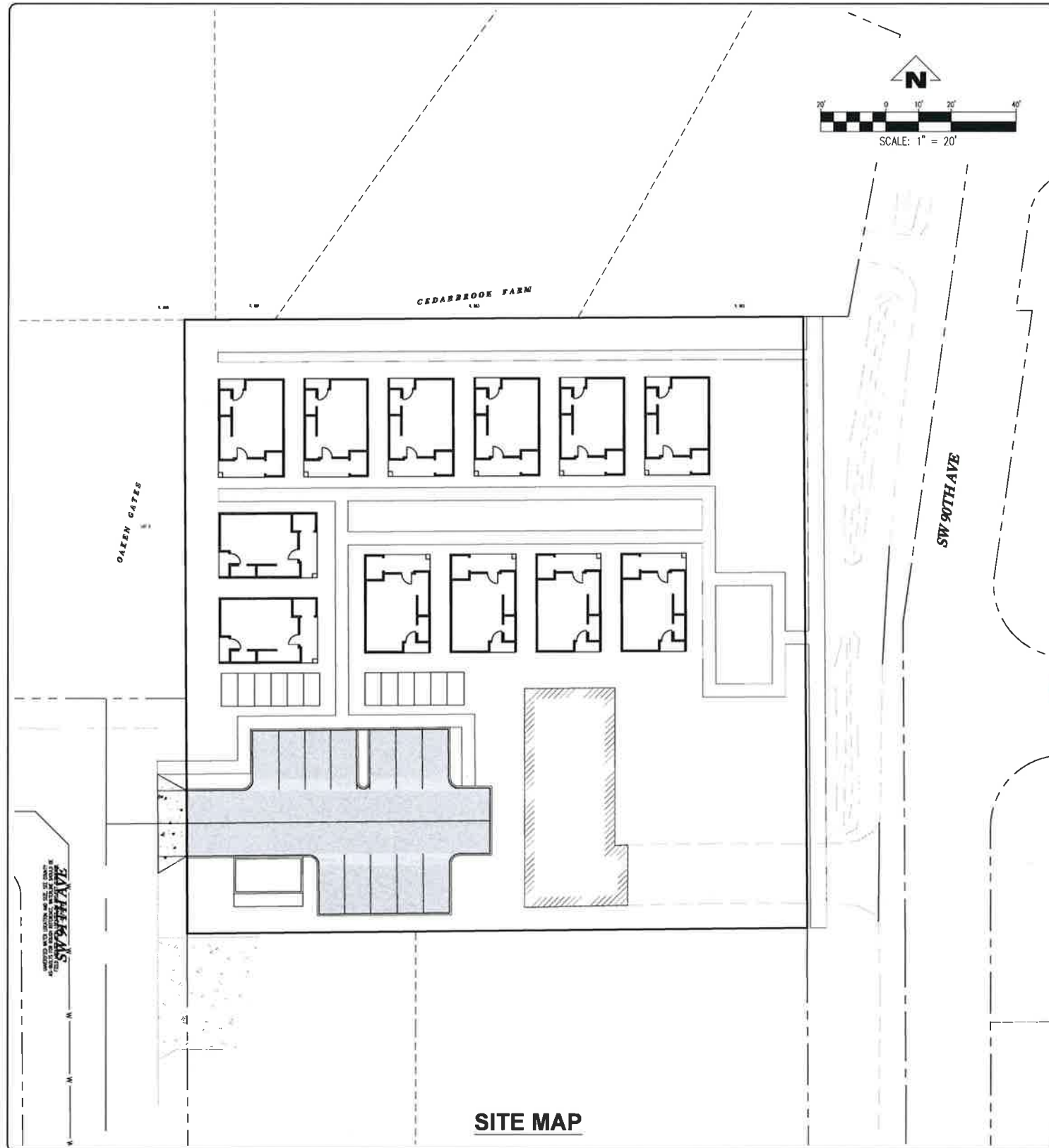
NO.	DATE	REVISIONS	DESCRIPTION

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 6445 SW FALLBROOK PLACE, SUITE 100  
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SHEET  
**01**  
 OF  
**01**

# SW 90TH AVE COTTAGES

12 - UNIT COTTAGE CLUSTER DEVELOPMENT - TENTATIVE IMPROVEMENT PLANS  
 TAX LOT 1S126DC100  
 WASHINGTON COUNTY, OREGON



LEGEND			
—	BOUNDARY LINE	SS	EXISTING SANITARY SEWER LINE
- - -	EASEMENT	W	EXISTING WATER LINE
- - -	EXISTING 1' CONTOUR LINE	- - -	EXISTING OVERHEAD POWER LINE
- - -	EXISTING 5' CONTOUR LINE	- - -	EXISTING GAS LINE
- - -	EXISTING CROWN (CENTER LINE OF ROAD)	- - -	EXISTING DITCH LINE
⊙	EXISTING TREE	- - -	EXISTING WETLAND LINE
⊙	EXISTING STORM DRAIN MANHOLE	⊙	EXISTING HEDGE LINE
⊙	EXISTING SANITARY SEWER MANHOLE	⊙	EXISTING WOODEN FENCE
⊙	EXISTING CATCH BASIN	⊙	EXISTING RAIL FENCE
⊙	EXISTING CLEANOUT	X	EXISTING CHAIN LINK FENCE
⊙	EXISTING WATER METER	SD	PROPOSED STORM LINE
⊙	EXISTING WATER VALVE	W	PROPOSED SANITARY LINE
⊙	EXISTING FIRE HYDRANT	W	PROPOSED WATERLINE
⊙	EXISTING MAIL BOX	- - -	PROPOSED STORM LATERAL
⊙	EXISTING UTILITY POLE	- - -	PROPOSED SANITARY LATERAL
⊙	EXISTING CITY WIRE	⊙	PROPOSED SINGLE WATER METER
⊙	EXISTING LIGHT	⊙	PROPOSED STORM MANHOLE
⊙	EXISTING COMMUNICATION PEDESTAL	⊙	PROPOSED SANITARY MANHOLE
⊙	EXISTING ELECTRICAL METER	⊙	PROPOSED BLOWOFF
⊙	EXISTING JUNCTION BOX	⊙	PROPOSED WATER VALVE
⊙	EXISTING BOLLARD	⊙	PROPOSED 1' CONTOUR LINE
⊙	EXISTING DOWNSPOUT	⊙	PROPOSED 5' CONTOUR LINE
⊙	EXISTING WETLAND FLAG	⊙	PROPOSED SEDIMENT FENCE
⊙	EXISTING STORM LINE		

SITE DATA	
SITE AREA:	0.81 ACRES
CURRENT ZONING:	R-5
TAXLOT:	1S126DC100
NO OF UNITS:	12

**BENCHMARK INFORMATION**  
 THE HORIZONTAL DATUM FOR THIS SURVEY IS BASED UPON STATE PLANE COORDINATES, OREGON NORTH ZONE (3601), NAD83.  
 THE VERTICAL DATUM FOR THIS SURVEY IS BASED UPON BENCHMARK NO. 00120, ELEVATION = 418.260', NGVD 29. UNITS ARE INTERNATIONAL FEET.

**PROJECT CONTACTS**  
**OWNER:**  
 STAFFORD DEVELOPMENT COMPANY  
 8840 SW HOLLY LANE  
 WILSONVILLE, OREGON 97070  
 CONTACT: BRYAN CAVANESS  
 (971) 206-8597 (P)  
**SURVEYOR:**  
 KLS SURVEYING, INC.  
 1224 ALDER STREET  
 VERNONIA, OREGON 97064  
 CONTACT: DON WALLACE  
 (503) 429-6115 (P)

**GEOTECHNICAL ENGINEER:**  
 TBD  
**CIVIL ENGINEER:**  
 EMERIO DESIGN, LLC  
 1500 VALLEY RIVER DR, SUITE 100  
 EUGENE, OR 97401  
 CONTACT: ROY W. HANKINS, PE  
 (503) 746-8812 (P)  
 (503) 639-9592 (F)

**TRANSPORTATION ENGINEER:**  
 TBD

DRAWING INDEX	
Sheet #	Sheet Title
01	COVER SHEET
02	EXISTING CONDITIONS & PRELIMINARY DEMOLITION PLAN
03	PRELIMINARY SITE PLAN
04	PRELIMINARY COMPOSITE UTILITY PLAN

**ENGINEER'S NOTE TO CONTRACTOR**  
 THE EXISTENCE AND LOCATION OF ANY UNDERGROUND UTILITIES OR STRUCTURES SHOWN ON THESE PLANS ARE OBTAINED BY A SEARCH OF AVAILABLE RECORDS. TO THE BEST OF OUR KNOWLEDGE, THERE ARE NO EXISTING UTILITIES EXCEPT THOSE SHOWN ON THESE PLANS. THE CONTRACTOR IS REQUIRED TO TAKE DUE PRECAUTIONARY MEASURES TO PROTECT THE UTILITY LINES SHOWN ON THESE DRAWINGS. THE CONTRACTOR FURTHER ASSUMES ALL LIABILITY AND RESPONSIBILITY FOR THE UTILITY PIPES, CONDUITS OR STRUCTURES SHOWN OR NOT SHOWN ON THESE DRAWINGS.  
 THE CONTRACTOR AGREES THAT HE SHALL ASSUME SOLE AND COMPLETE RESPONSIBILITY FOR THE JOB SITE CONDITIONS DURING THE COURSE OF CONSTRUCTION OF THIS PROJECT, INCLUDING SAFETY OF ALL PERSONS AND PROPERTY; THAT THIS SHALL APPLY CONTINUOUSLY AND NOT BE LIMITED TO NORMAL WORKING HOURS; AND THAT THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD THE OWNER AND THE ENGINEER HARMLESS FROM ANY AND ALL LIABILITY, REAL OR ALLEGED, IN CONNECTION WITH THE PERFORMANCE OF WORK ON THIS PROJECT, EXCEPT FOR LIABILITY ARISING FROM THE SOLE NEGLIGENCE OF THE OWNER OR THE ENGINEER.  
 CONTRACTOR SHALL VERIFY ALL CONDITIONS AND DIMENSIONS AND SHALL REPORT ANY DISCREPANCIES TO THE ENGINEER PRIOR TO THE COMMENCEMENT OF WORK.

THIS DESIGN COMPLIES WITH ORS 92.044 (7) IN THAT NO UTILITY INFRASTRUCTURE IS DESIGNED TO BE WITHIN ONE (1) FOOT OF A SURVEY MONUMENT LOCATION SHOWN ON A SUBDIVISION OR PARTITION PLAT. NO DESIGN EXCEPTIONS NOT FINAL. FIELD LOCATION CHANGES SHALL BE PERMITTED IF THAT CHANGE WOULD CAUSE ANY UTILITY INFRASTRUCTURE TO BE PLACED WITHIN THE PROHIBITED AREA.

**PAPER SCALE NOTE**  
 THESE PLANS ARE FULL SIZED ON 22" X 34" PAPER, IF 11" X 17", SCALE ACCORDINGLY.

**NOTICE TO EXCAVATORS:**  
 ATTENTION: OREGON LAW REQUIRES YOU TO FOLLOW RULES ADOPTED BY THE OREGON UTILITY NOTIFICATION CENTER. THOSE RULES ARE SET FORTH IN OAR 952-001-0010 THROUGH OAR 952-001-0090. YOU MAY OBTAIN COPIES OF THE RULES BY CALLING THE CENTER.  
 (NOTE: THE TELEPHONE NUMBER FOR THE OREGON UTILITY NOTIFICATION CENTER IS (503)-232-1967.)

**Attachment 104A1b**  
**Dig Safely.**  
 Call the Oregon One-Call Center  
 DIAL 811 or 1-800-332-2344

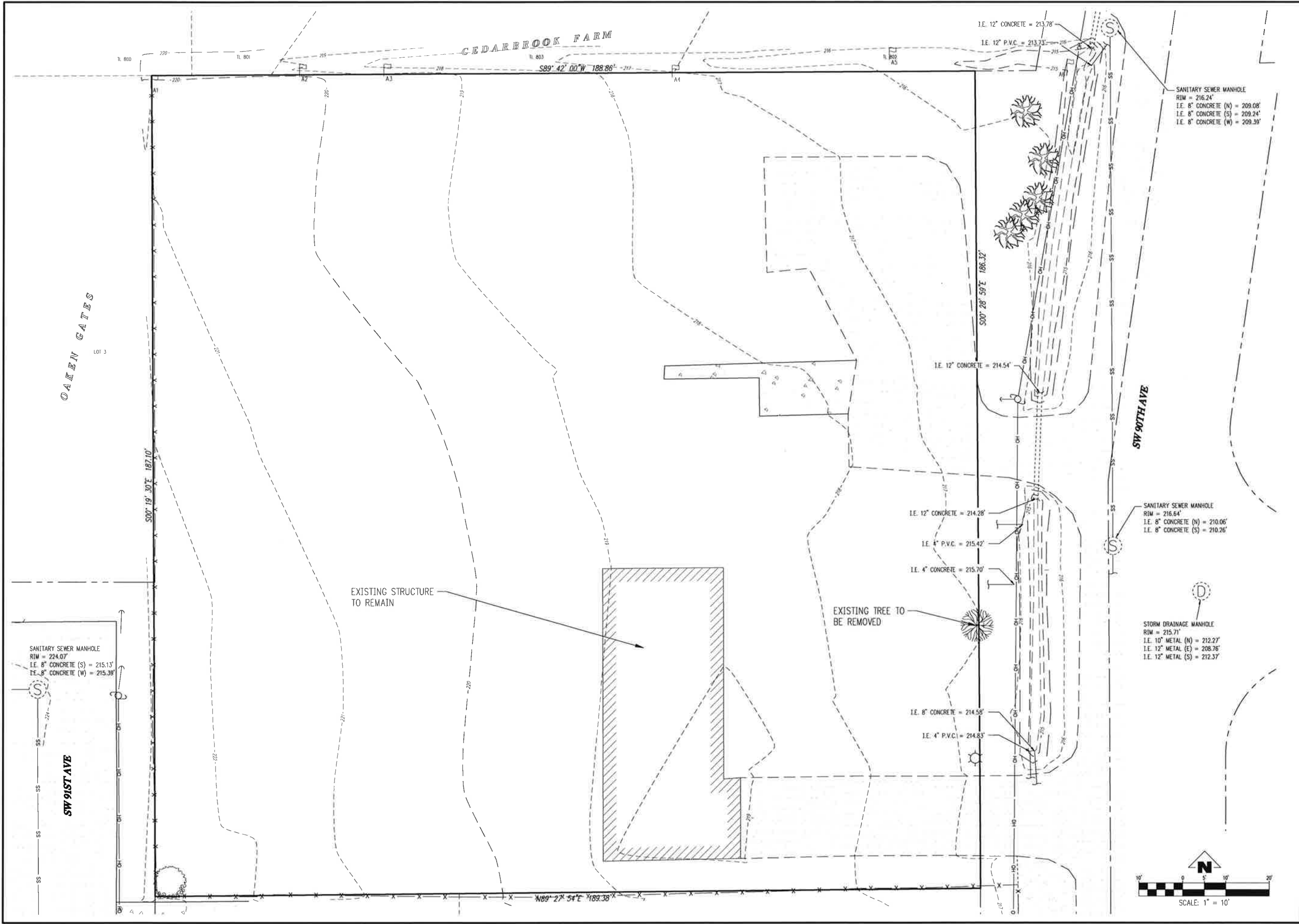
9515 SW 90TH AVE - COTTAGES  
 STAFFORD HOME & LAND, LLC  
 TAX LOT 100  
 TAX MAP T1S R1W SECTION 26  
 WASHINGTON COUNTY, OREGON

COVER SHEET

REVISIONS		
NO.	DATE	DESCRIPTION

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 BEAVERTON, OREGON 97008  
 FAX: (503) 639-8532  
 www.emeriodesign.com

SHEET  
 01 OF 05



9515 SW 90TH AVE - COTTAGES  
 STAFFORD HOME & LAND, LLC  
 TAX LOT 100  
 TAX MAP T1S R1W SECTION 26  
 WASHINGTON COUNTY, OREGON

**EXISTING CONDITIONS &  
 PRELIMINARY DEMOLITION  
 PLAN**

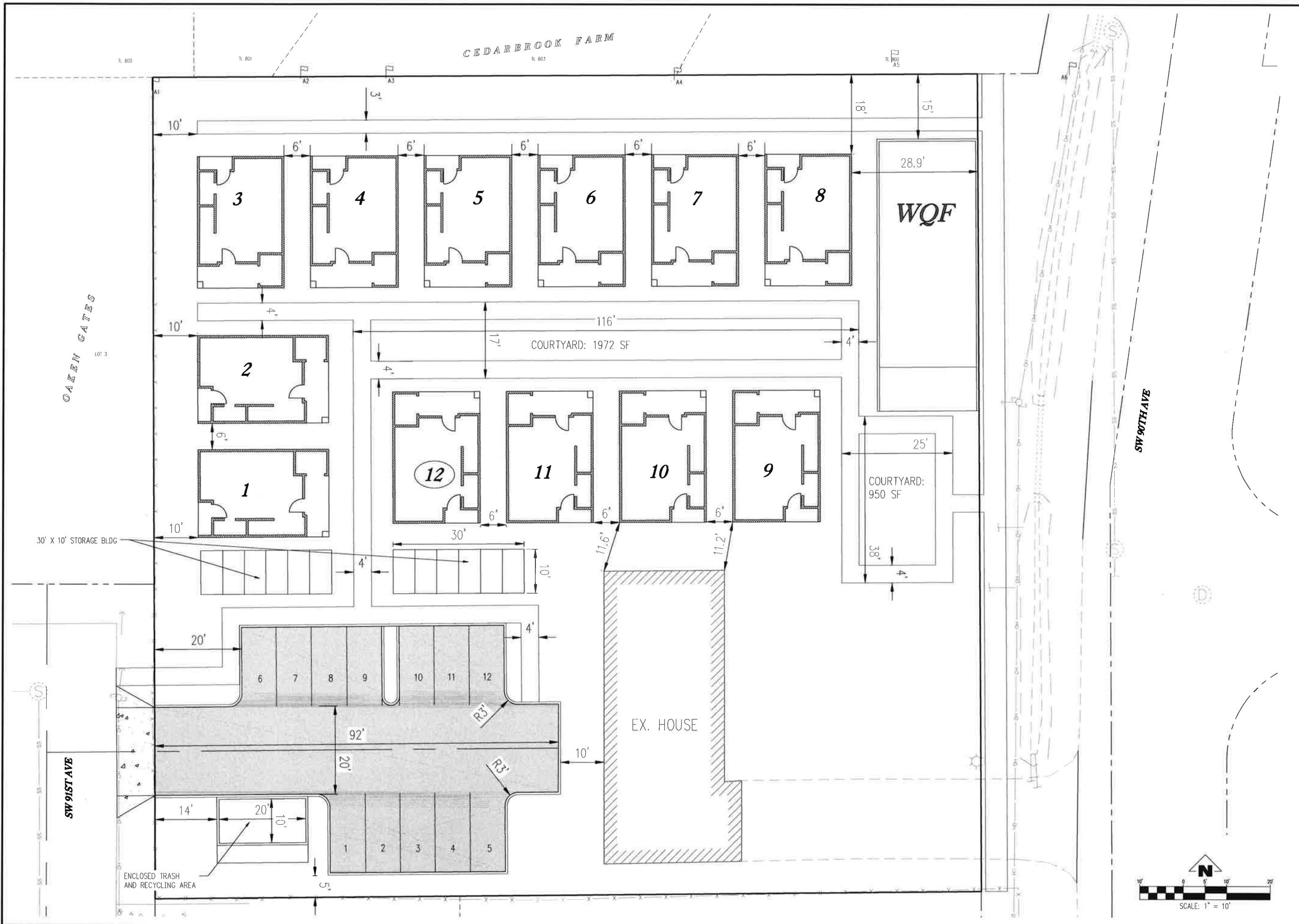
NO.	DATE	DESCRIPTION

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 BEAVERTON, OREGON 97008  
 TEL: (503) 746-8612  
 FAX: (503) 638-5582  
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SHEET  
**02**  
 OF  
**05**

FILE: P:\0471-013 9515 SW 90th Cottages\img\plan\0471-013-02pxcon. Layout: 02 EXISTING CONDITIONS & PRELIMINARY DEMOLITION PLAN, Plot Date: 3/22/2023 5:05 PM, by: Keenan Smith





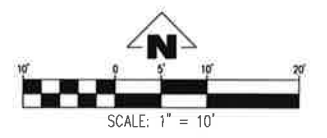
9515 SW 90TH AVE - COTTAGES  
 STAFFORD HOME & LAND, LLC  
 TAX LOT 100  
 TAX MAP T1S R1W SECTION 26  
 WASHINGTON COUNTY, OREGON

**PRELIMINARY SITE PLAN**

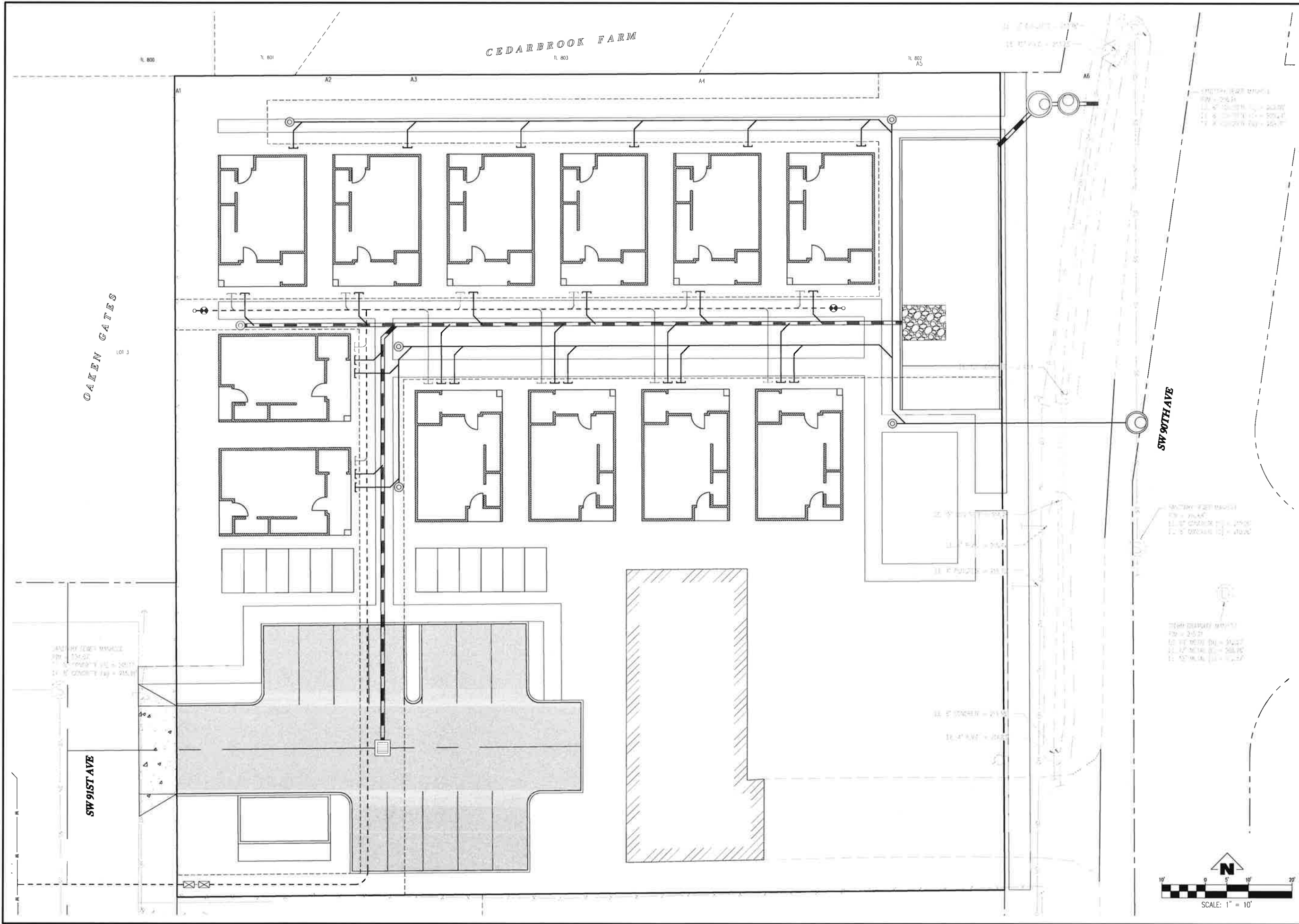
NO.	DATE	REVISIONS	DESCRIPTION

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 FAX: (503) 638-5552  
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SHEET  
**03**  
 OF  
**05**



FILE:P:\0471-013 9515 SW 90th Cottages\dwg\plan\0471-013\_03\Site Layout: 03 PRELIMINARY SITE PLAN, Plot Date: 3/22/2023 5:06 PM, Dwg: Keelan Smith



9515 SW 90TH AVE - COTTAGES  
 STAFFORD HOME & LAND, LLC  
 TAX LOT 100  
 TAX MAP T1S R1W SECTION 26  
 WASHINGTON COUNTY, OREGON

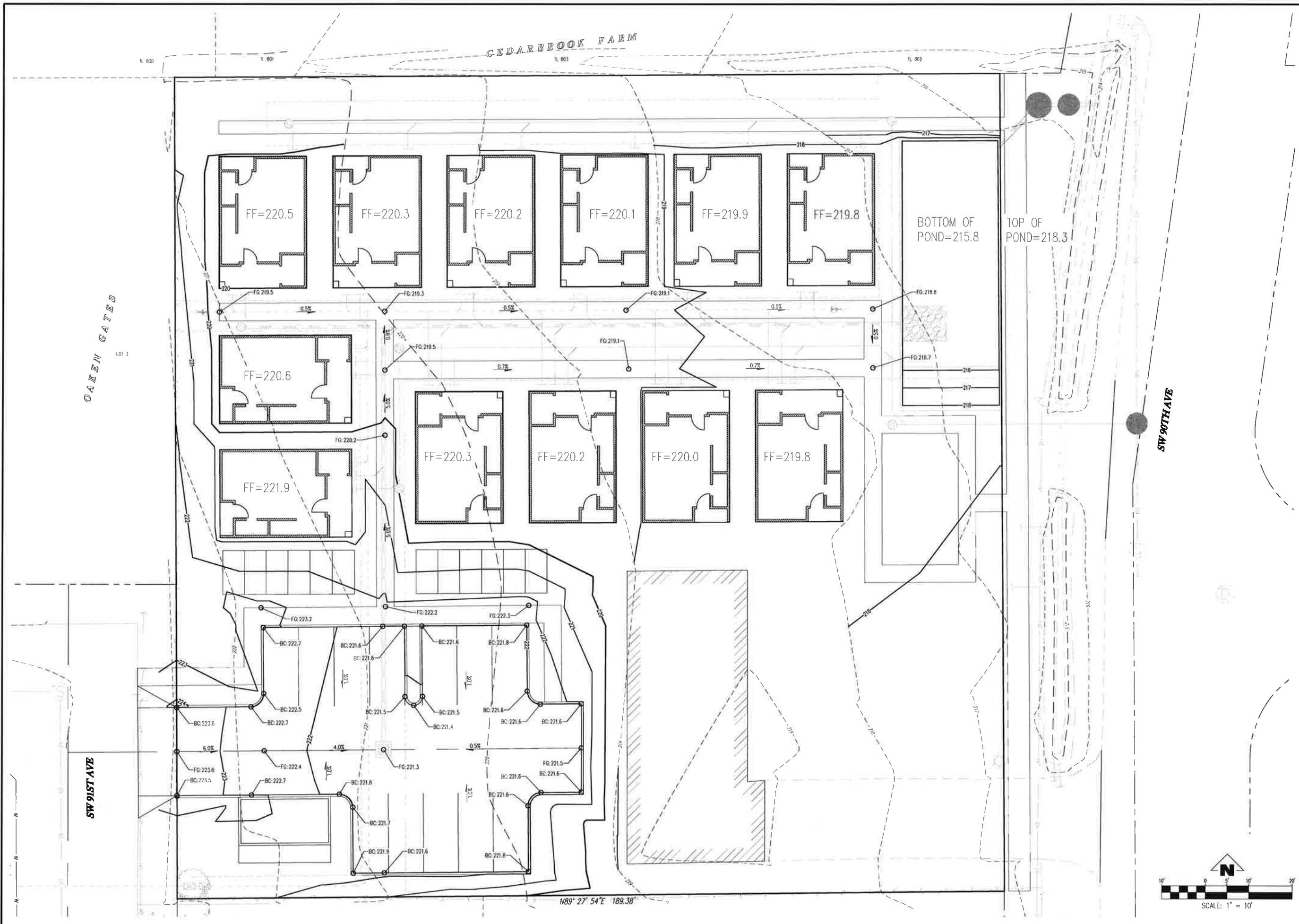
**PRELIMINARY COMPOSITE  
 UTILITY PLAN**

NO.	DATE	REVISIONS DESCRIPTION

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SHEET  
**04**  
 OF  
**05**

FILE-P:\0471-013 9515 SW 90th Cottages\dwg\plan\0471-013\_04p1.rvt Layout: 04 PRELIMINARY COMPOSITE UTILITY PLAN, Plot Date: 3/22/2023 3:06 PM, by: Kevlan Smith



9515 SW 90TH AVE - COTTAGES  
 STAFFORD HOME & LAND, LLC  
 TAX LOT 100  
 TAX MAP T1S R1W SECTION 26  
 WASHINGTON COUNTY, OREGON

**PRELIMINARY GRADING  
 PLAN**

NO.	DATE	REVISIONS DESCRIPTION

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 6445 SW FALLBROOK PLACE, SUITE 100  
 BEAVERTON, OREGON 97008  
 PHONE: (503) 638-8832  
 FAX: (503) 638-8832  
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SHEET  
**05**  
 05

FILE: P:\0471-013 9515 SW 90th Cottages\wg\plan\0471-013\_05grad.dwg; Plot Date: 3/22/2023 3:06 PM, by: Keaton\_Smith



DESIGNED PER: 2021 OREGON RESIDENTIAL SPECIALTY CODE

TABLE N1101.1(2) ADDITIONAL MEASURES	
Envelope Enhancement Measures (Select One)	
1	<b>HIGH EFFICIENCY HVAC SYSTEM<sup>a</sup></b> a. Gas-fired furnace or boiler AFUE 94 percent, or b. Air source heat pump HSPF 10.0/14.0 SEER cooling, or c. Ground source heat pump COP 3.5 or Energy Star rated
2	<b>HIGH EFFICIENCY WATER HEATING SYSTEM<sup>b</sup></b> a. Natural gas/propane water heater with minimum UEF 0.90, or b. Electric heat pump water heater with minimum 2.0 COP, or c. Natural gas/propane tankless/instantaneous heater with minimum 0.80 UEF and Drain Water Heat Recovery unit installed on minimum of one shower/tub-shower
3	<b>WALL INSULATION UPGRADE</b> Exterior walls—U-0.045/R-21 conventional framing with R-5.0 continuous insulation
4	<b>ADVANCED ENVELOPE</b> Windows—U-0.21 (Area weighted average), and Flat ceiling—U-0.017/R-60, and Framed floors—U-0.026/R-38 or slab edge insulation to F-0.48 or less (R-10 for 48"); R-15 for 36" or R-5 fully insulated slab
5	<b>DUCTLESS HEAT PUMP</b> For dwelling units with all-electric heat provide: Ductless heat pump of minimum HSPF 10 in primary zone replaces zonal electric heat sources, and Programmable thermostat for all heaters in bedrooms
6	<b>HIGH EFFICIENCY THERMAL ENVELOPE UA<sup>c</sup></b> Proposed UA is 8 percent lower than the code UA
7	<b>GLAZING AREA</b> Glazing area, measured as the total of framed openings is less than 12 percent of conditioned floor area
8	<b>3 ACH AIR LEAKAGE CONTROL AND EFFICIENT VENTILATION</b> Achieve a maximum of 3.0 ACH50 whole-house air leakage when third-party tested and provide a whole-house ventilation system including heat recovery with a minimum sensible heat recovery efficiency of not less than 66 percent

For SI: 1 square foot = 0.093 m<sup>2</sup>; 1 unit per square foot = 10.764/m<sup>2</sup>  
 a. Appliances located within the building thermal envelope shall have sealed combustion air installed. Combustion air shall be ducted directly from the outdoors.  
 b. The maximum vaulted ceiling surface area shall not be greater than 50 percent of the total heated space floor area unless vaulted area has a U-factor no greater than U-0.026.  
 c. In accordance with Table N1104.1(1), the Proposed UA total of the Proposed Alternative Design shall be a minimum of 8 percent less than the Code UA total of the Standard Base Case.

TABLE N1101.1(1) PRESCRIPTIVE ENVELOPE REQUIREMENTS <sup>a</sup>		
BUILDING COMPONENT	STANDARD BASE CASE	
	Required Performance	Equivalent Value <sup>b</sup>
Wall insulation-above grade	U-0.054 <sup>c</sup>	R-21 Intermediate <sup>d</sup>
Wall insulation-below grade <sup>e</sup>	C-0.063	R-15 c.i./R-21
Flat ceilings <sup>f</sup>	U-0.021	R-49
Vaulted ceilings <sup>g</sup>	U-0.033	R-30 Rafter or R30A <sup>h</sup> Scissor Truss
Underfloors	U-0.033	R-30
Slab edge perimeter	F-0.520	R-15
Heated slab interior <sup>i</sup>	n/a	R-10
Windows <sup>j</sup>	U-0.21	U-0.21
Skylights <sup>k</sup>	U-0.50	U-0.50
Exterior doors <sup>m</sup>	U-0.20	U-0.20
Exterior doors with > 2.5 ft <sup>2</sup> glazing <sup>n</sup>	U-0.40	U-0.40

For SI: 1 inch = 25.4 mm, 1 square foot = 0.0929 m<sup>2</sup>, 1 degree = 0.0175 rad, n/a = not applicable.  
 a. As allowed in Section N1104.1, thermal performance of a component may be adjusted provided that overall heat loss does not exceed the total resulting from conformance to the required U-factor standards. Calculations to document equivalent heat loss shall be performed using the procedure and approved U-factors contained in Table N1104.1(1).  
 b. R-values used in this table are nominal for the insulation only in standard wood-framed construction and not for the entire assembly.  
 c. Wall insulation requirements apply to all exterior wood-framed, concrete or masonry walls that are above grade. This includes cripple walls and rim joist areas. Nominal compliance with R-21 insulation and intermediate framing (N1104.5-2) with insulated headers.  
 d. The wall component shall be a minimum solid log or timber wall thickness of 3.5 inches.  
 e. Below-grade wood, concrete or masonry walls include all walls that are below grade and do not include those portions of such wall that extend more than 24 inches above grade. R-21 for insulation in framed cavity; R-15 continuous insulation.  
 f. Insulation levels for ceilings that have limited attic/rafter depth such as dormers, bay windows or similar architectural features totaling not more than 150 square feet in area may be reduced to not less than R-21. When reduced, the cavity shall be filled (except for required ventilation spaces); R-48 insulation installed to minimum 6-inches depth at top plate at exterior of structure to achieve U-factor.  
 g. Vaulted ceiling surface area exceeding 50 percent of the total heated space floor area shall have a U-factor no greater than U-0.026 (equivalent to R30 rafter or scissor truss with R-35 advanced framing).  
 h. A = Advanced frame construction. See Section N1104.6.  
 i. Heated slab interior applies to concrete slab floors (both on and below grade) that incorporate a radiant heating system within the slab. Insulation shall be installed underneath the entire slab.  
 j. Sliding glass doors shall comply with window performance requirements. Windows exempt from testing in accordance with Section NF1111.2, item 3 shall comply with window performance requirements if constructed with thermal break aluminum or wood, or vinyl, or fiberglass frames and double-pane glazing with low-emissivity coatings of 0.10 or less. Buildings designed to incorporate passive solar elements may include glazing with a U-factor greater than 0.35 by using Table N1104.1(1) to demonstrate equivalence to building thermal envelope requirements.  
 k. A maximum of 20 square feet of exterior door area per dwelling unit can have a U-factor of 0.34 or less.  
 l. Glazing that is either double pane with low-e coating on one surface, or triple pane shall be deemed to comply with this requirement.  
 m. Minimum 24-inch horizontal or vertical below-grade.  
 n. Minimum 24-inch horizontal or vertical below-grade.



BUILDING INFORMATION

FRAMING: (SEE STRUCTURAL & ARCHITECTURAL SHEETS FOR ADD. INFO.)	
<b>FIRST FLOOR</b> = 9'-1 1/8" HT	<b>SECOND FLOOR</b> = 8'-1 1/8" HT
<b>FLOOR-</b> 7/8" FLOOR SHEATHING 9 1/2"x1 3/4" JOIST SIZE 24" JOIST SPACING	<b>FLOOR-</b> 7/8" FLOOR SHEATHING 14"x1 3/4" JOIST SIZE 24" JOIST SPACING
<b>WALL-</b> 1/2" WALL SHEATHING 24" STUD SPACING	<b>WALL-</b> 1/2" WALL SHEATHING 24" STUD SPACING
<b>HEADERS - (HDR)</b> xxxx (UNO)	<b>HEADERS - (HDR)</b> xxxx (UNO)
<b>BEAMS - (BM)</b> xxxx (UNO)	<b>BEAMS - (BM)</b> xxxx (UNO)

INDEX SHEET

Sheet	Sheet Name
AO	Cover Sheet
A1	Building Elevations
A2	Foundation & Framing
A3	Floor Plans
A4	Roof Framing & Sections
A5	Details
S1	Structural Notes
S2	Structural Plans

**Attachment 104A1c**

PROJECT DESCRIPTION

FARMHOUSE STYLE  
**886 COTTAGE**

AREA CALCS:

MAIN FLOOR	=496 SQ. FT.
UPPER FLOOR	=390 SQ. FT.
TOTAL	=886 SQ. FT.

**DRAFTING CORP.**  
Your new home starts here  
 Brian Emrich: 360-409-4592  
 Email: edrafting@hotmail.com

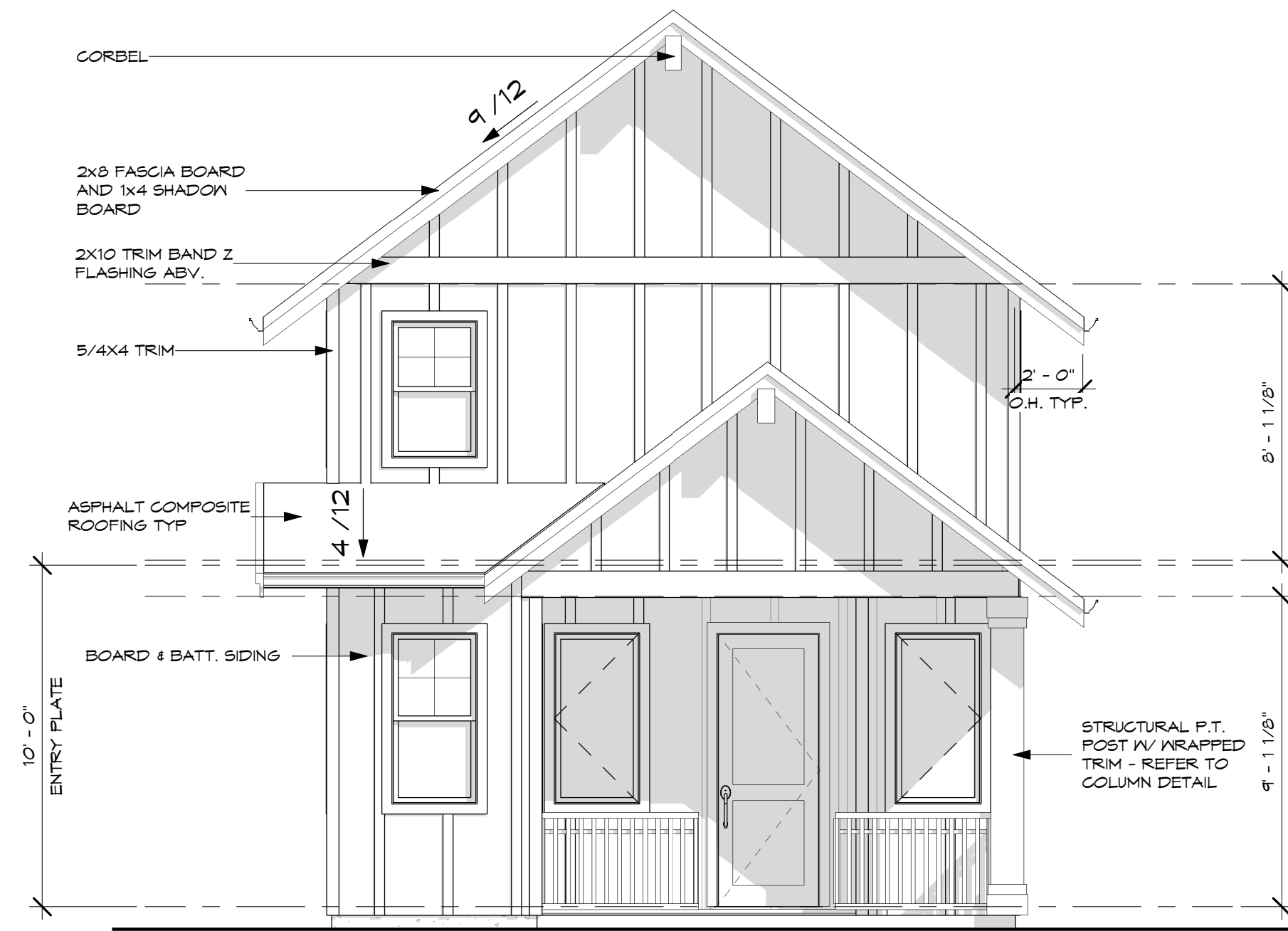
**STAFFORD LAND CO.**

FILE NAME :  
**886 COTTAGE-FARMHOUSE**  
 DRAWN BY:  
**E DRAFTING**  
 SCALE :  
 PLOT DATE :  
**3/29/2023 12:01:11 PM**

Written dimensions on these drawings shall have precedence over scaled dimensions. Contractor shall assume responsibility for all dimensions and conditions on the job. The designer must be notified and consent to any variations from dimensions set forth herein. The type of exterior finish, the installation and waterproofing details are all to be the full responsibility of the owner/builder. This Designer assumes no responsibility for the integrity of the building envelope. This document is the property of E Drafting Corp. No reuse or reproduction is allowed without the written consent from E Drafting Corp.

**SHEET**  
Cover Sheet

**AO**



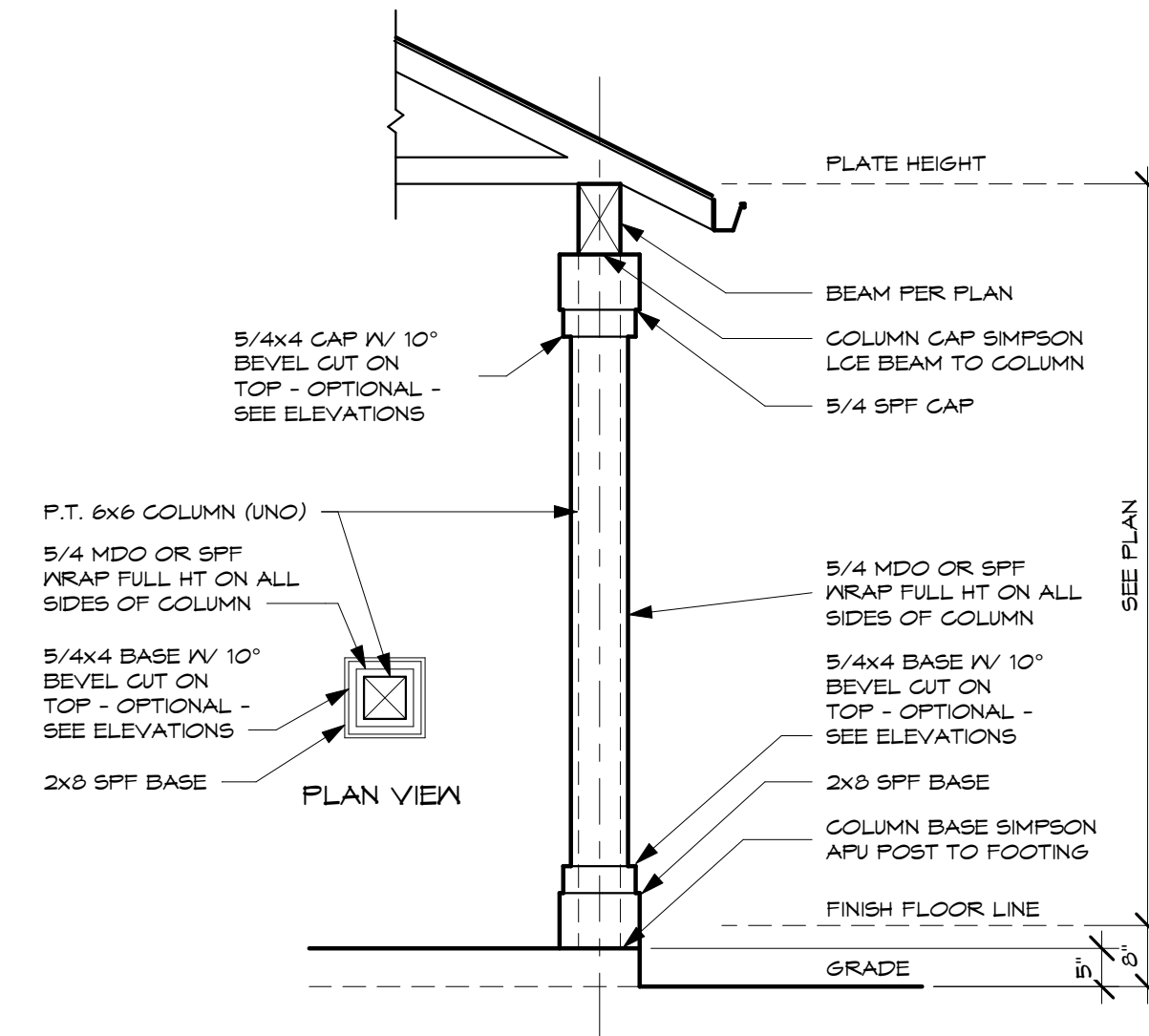
**FRONT ELEVATION**

1/4" = 1'-0"

FARMHOUSE ELEVATION

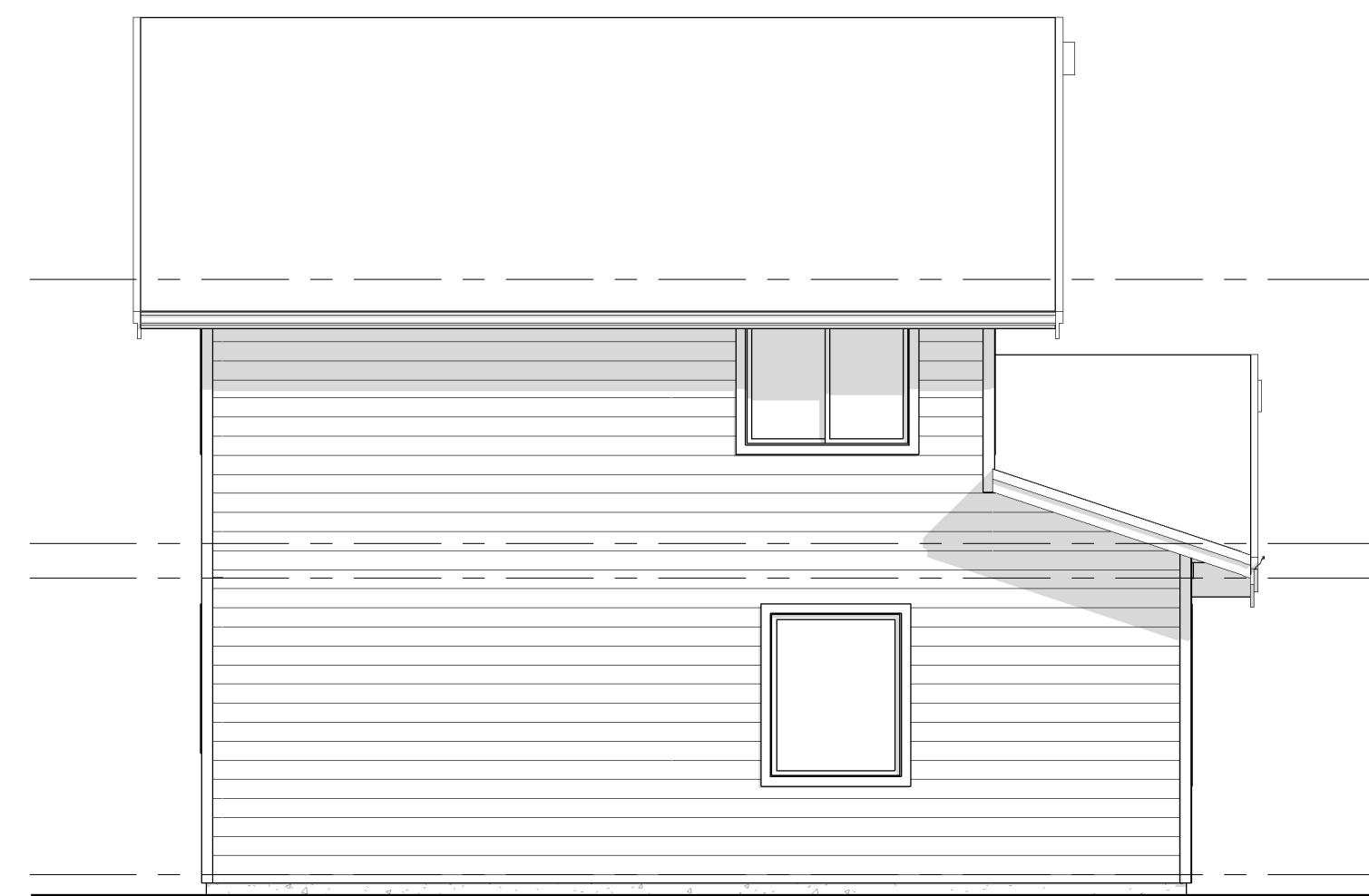


TOTAL FAÇADE: 405 SQ.FT.  
WINDOW AREA: 61 SQ.FT.  
= 15%



**EXTERIOR COLUMN DETAIL**

1/2" = 1'-0"



**LEFT ELEVATION**

3/16" = 1'-0"



**REAR ELEVATION**

3/16" = 1'-0"



**RIGHT ELEVATION**

3/16" = 1'-0"

**STAFFORD LAND CO.**

FILE NAME :  
**006**  
COTTAGE-FARMHOUSE  
DRAWN BY:  
**E DRAFTING**  
SCALE :  
**As Indicated**  
PLOT DATE :  
**3/29/2023**  
**12:01:14 PM**

Written dimensions on these drawings shall have precedence over scaled dimensions. Contractor shall assume responsibility for all dimensions and conditions on the job. The designer must be notified and consent to any variations from dimensions set forth herein. The type of exterior finish, the installation and waterproofing details are all to be the full responsibility of the owner/builder. This Designer assumes no responsibility for the integrity of the building envelope. This document is the property of E Drafting Corp. No reuse or reproduction is allowed without the written consent from E Drafting Corp.

**SHEET**  
Building Elevations

**A1**

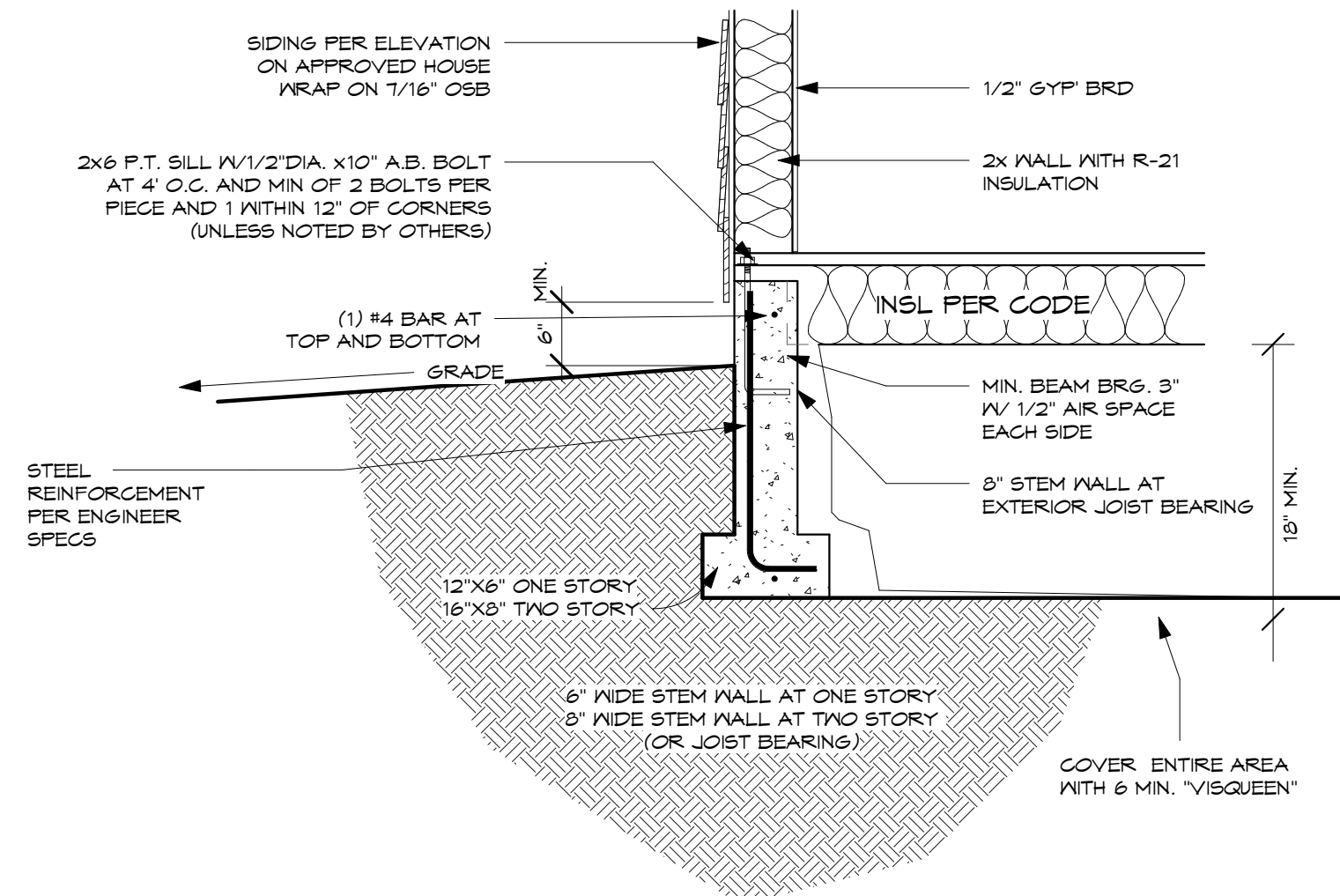
**E DRAFTING CORP.**  
Your new home starts here.  
Email: [edrafting@hotmail.com](mailto:edrafting@hotmail.com)  
Brian Emrich: 960-409-4592

**FOUNDATION NOTES:**

- FOOTINGS ARE TO BEAR ON UNDISTURBED LEVEL SOIL DEVOID OF ANY ORGANIC MATERIAL AND STEPPED AS REQUIRED TO MAINTAIN THE REQUIRED DEPTH BELOW THE FINAL GRADE.
- SOIL BEARING PRESSURE ASSUMED TO BE 1500 PSF.
- ANY FILL UNDER GRADE SUPPORTED SLABS TO BE A MINIMUM OF 4" GRANULAR MATERIAL COMPACTED TO 95%.  
 BASEMENT WALLS & FOUNDATIONS NOT EXPOSED TO WEATHER: 2500 PSI  
 BASEMENT & INTERIOR SLABS ON GRADE: 2500 PSI  
 BASEMENT WALLS & FOUNDATIONS EXPOSED TO THE WEATHER: 3000 PSI W/ 5 TO 1% ENTRAINED AIR  
 PORCHES, STEPS & GARPORT SLABS EXPOSED TO WEATHER: 3000 PSI W/ 5 TO 1% ENTRAINED AIR
- CONCRETE SLABS TO HAVE CONTROL JOINTS AT 25 FT. (MAXIMUM) INTERVALS EA. WAY.
- CONCRETE SIDEWALKS TO HAVE 1/2" TOOLED JOINTS AT 5 FT. (MINIMUM) O.C.
- WIRE MESH TO BE A-18S.
- EXCAVATE SITE TO PROVIDE A MINIMUM OF 18 IN. CLEARANCE UNDER ALL GIRDERS.
- COVER ENTIRE CRAWLSPACE WITH 6 MIL BLACK "VISQUEEN" AND EXTEND UP FDTN. WALLS TO F.T. MIDSILL.
- ALL WOOD IN CONTACT WITH CONCRETE TO BE PRESSURE TREATED OR PROTECTED WITH 55# ROLL ROOFING, MIN.
- BEAM POCKETS IN CONCRETE TO HAVE 1/2" AIRSPACE AT SIDES AND ENDS WITH A MINIMUM BEARING OF 3 IN.
- PROVIDE CRAWLSPACE DRAIN AT LOW POINT
- WATERPROOF BASEMENT WALLS BEFORE BACKFILLING PROVIDING A 4 IN. DIA. PERFORATED DRAIN TILE BELOW THE TOP OF THE FOOTING (SEE BUILDING SECTIONS).
- FLOOR SHEATHING PER SPECS ON 4x8 BEAMS U.N.O. BY ENGINEER
- 4" CONCRETE SLAB W/ 6x6 10/10 WUM. OVER 6 MIL VAPOR BARRIER, ON 6" COMPACTED GRANULAR FILL; SLOPE TO ENTRANCE.
- BLOCK OUT FOR FURNACE (15')
- USE 4" CMU, BELOW GRADE AT BRICK VENEER AREAS. HIDDEN FOOTING 6" AT VENEERED AREAS. - SEE PLAN FOR LOCATION

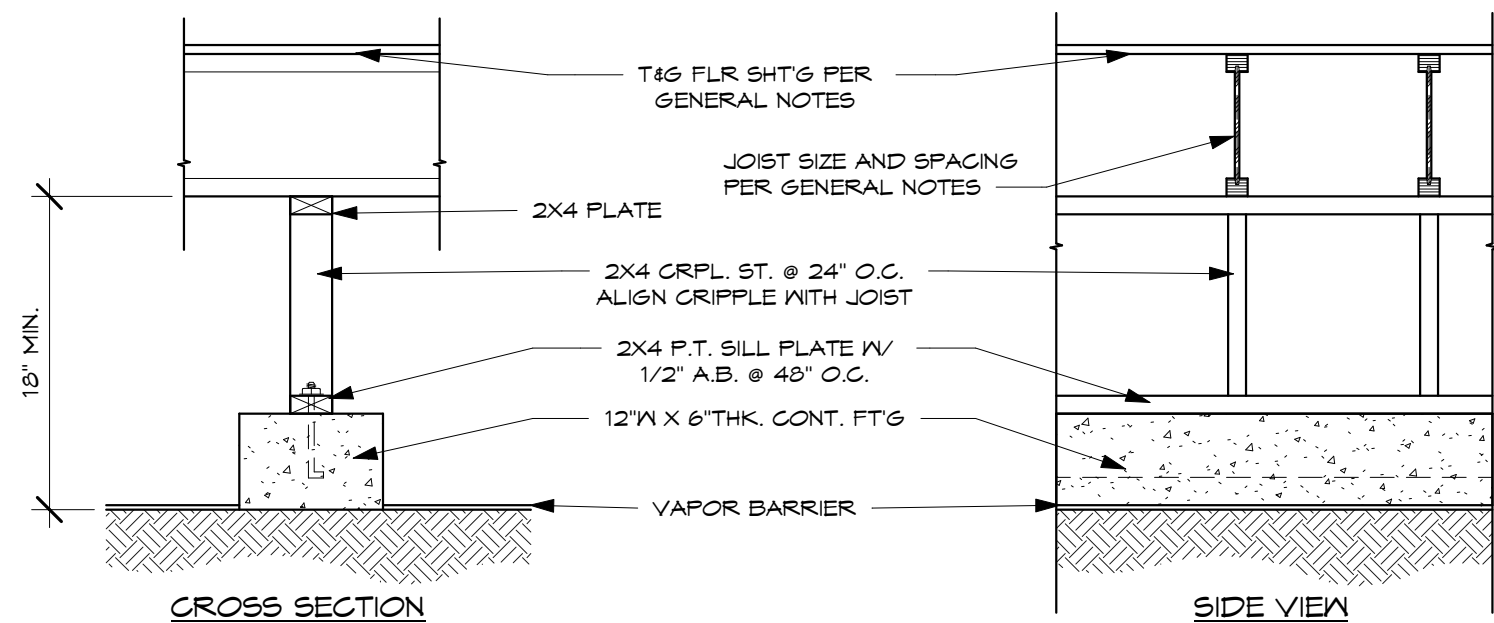
**CRAWLSPACE VENTILATION:**

UNDER-FLOOR AREAS SHALL HAVE A NET AREA OF NOT LESS THAN 1 SQ. FT. OF VENTILATION FOR EACH 150 SQ. FT. OF UNDER-FLOOR AREA. THE UNDER FLOOR AREA = 496 S.F. / 150 = 3.3 S.F. OF REQ'D VENTING AREA. USING 8"X14" SCREENED VENTS PROVIDES 0.68 S.F. OF VENTING FOR EACH VENT. 3.3 S.F. / 0.68 S.F. = 4.9 (5) 8"X14" VENTS REQUIRED.



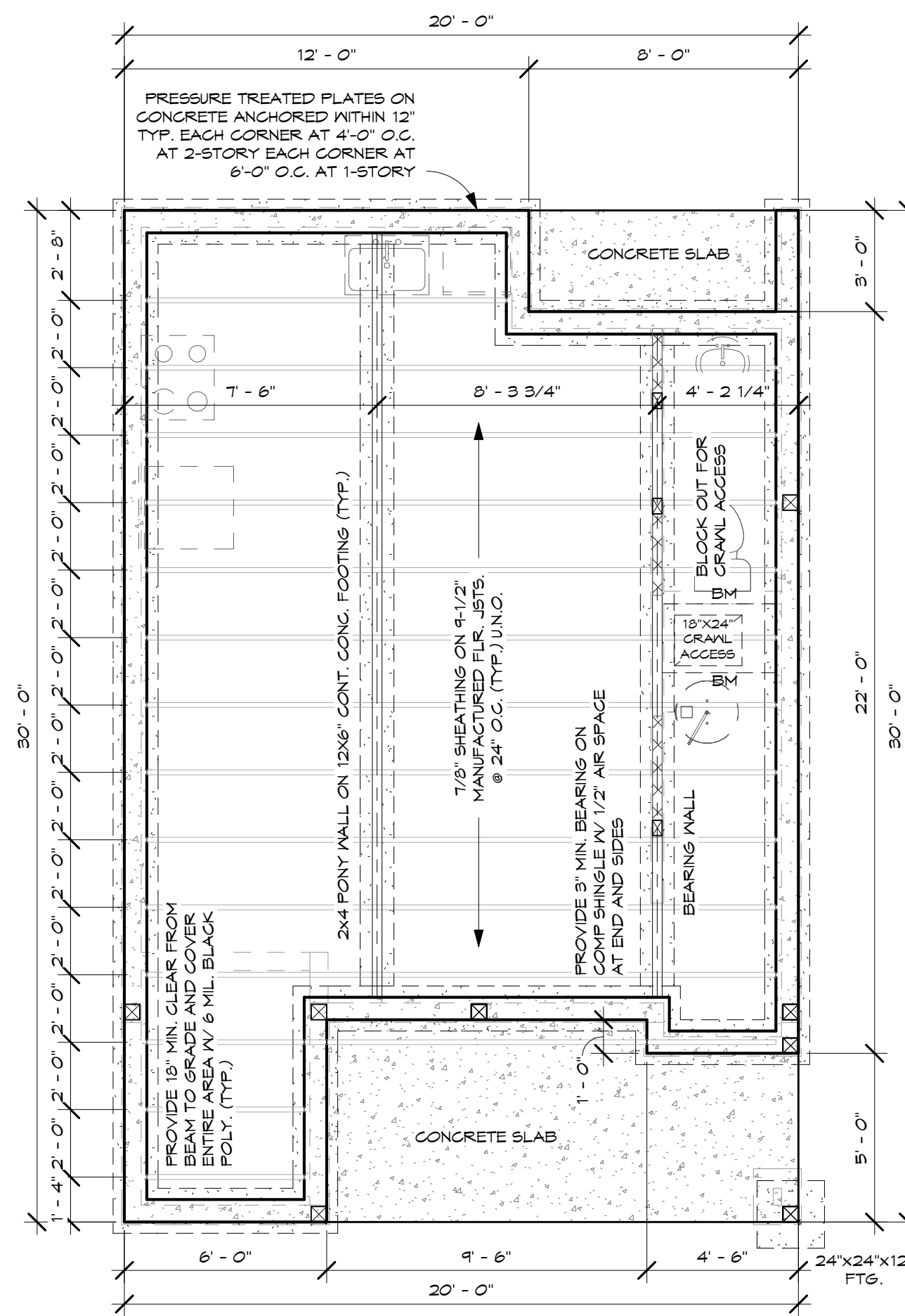
**FOUNDATION DETAIL (SS)**

3/4" = 1'-0"



**INTERIOR CONTINUOUS FOOTING**

3/4" = 1'-0"

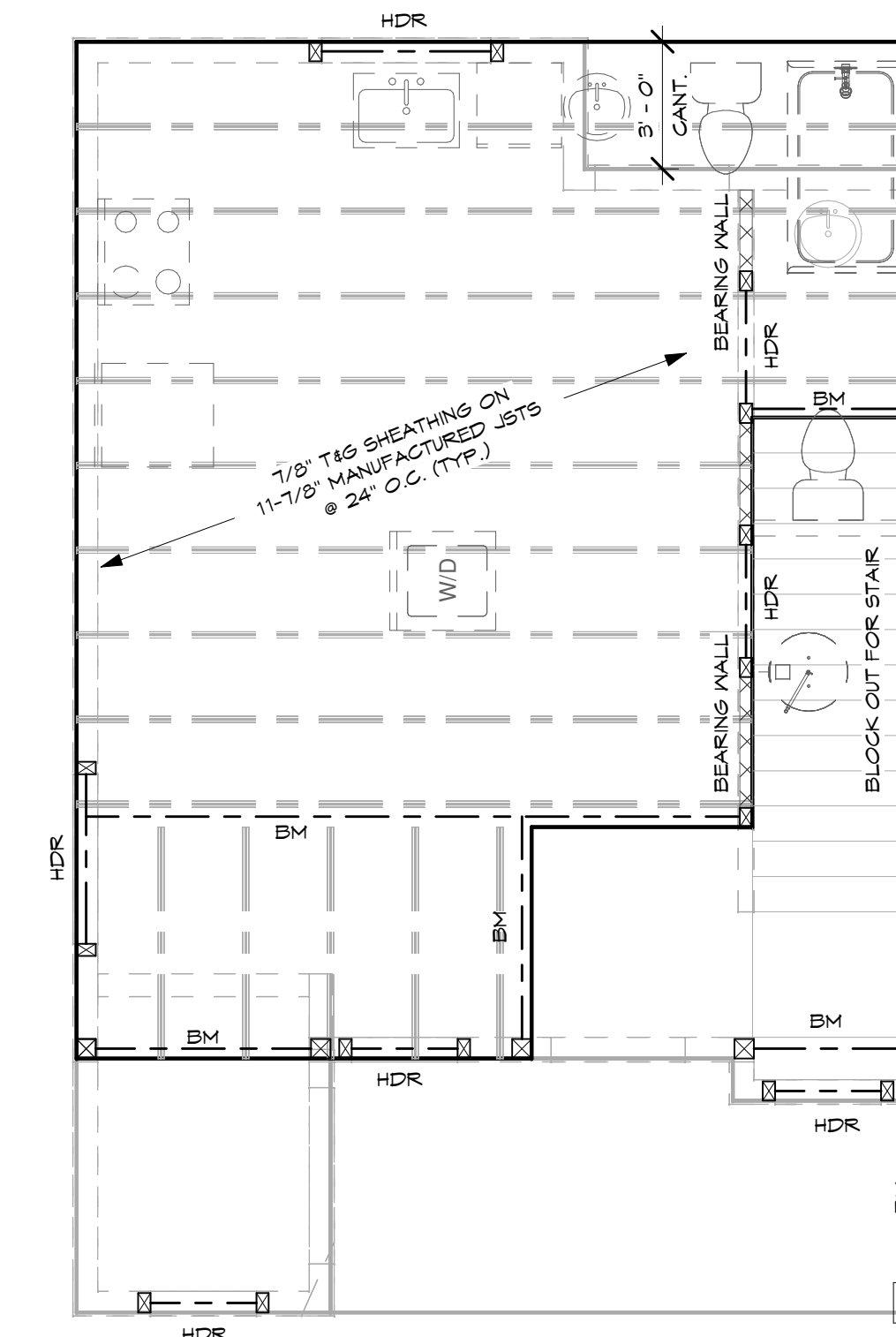


**FOUNDATION PLAN**

1/4" = 1'-0"

REFER TO THE MANUFACTURER JOIST LAYOUT FOR EXACT LAYOUT AND SPECIFICATIONS.

NOTE: REFER TO COVER PAGE BUILDING/CODE INFORMATION FOR HEADER AND BEAM SIZES



**UPPER FLOOR FRAMING**

1/4" = 1'-0"

REFER TO THE MANUFACTURER JOIST LAYOUT FOR EXACT LAYOUT AND SPECIFICATIONS.

**STAFFORD LAND CO.**

FILE NAME :  
**886**  
 COTTAGE-FARMHOUSE  
 DRAWN BY:  
**E DRAFTING**  
 SCALE :  
**As Indicated**  
 PLOT DATE :  
**3/29/2023**  
**12:01:15 PM**

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 Foundation  
 & Framing

**A2**

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 edrafting@hotmail.com



**GENERAL FLOOR PLAN NOTES:**

1. WINDOW SIZES & ROUGH OPENINGS TO BE VERIFIED BY CONTRACTOR.
2. WINDOWS THAT ARE BOTH WITHIN 24 INCHES OF A DOOR IN A CLOSED POSITION AND WITHIN 60 INCHES OF THE FLOOR SHOULD BE TEMPERED.
3. WINDOWS IN ENCLOSURES FOR BATHTUBS, SHOWERS, HOT TUBS, WHIRLPOOLS, SAUNAS AND STEAM ROOMS WHERE THE GLASS IS WITHIN 60 INCHES ABOVE A DRAIN INLET SHOULD BE TEMPERED.
4. WINDOWS WITH A PANE LARGER THAN NINE SQUARE FEET, HAVING A BOTTOM EDGE CLOSER THAN 10 INCHES TO THE FLOOR AND A TOP EDGE HIGHER THAN 56 INCHES ABOVE THE FLOOR SHOULD BE TEMPERED.
5. FIREBLOCK ALL PLUMBING PENETRATIONS AND STAIR RUNS.
6. ALL WOOD IN CONTACT WITH CONCRETE TO BE PRESSURE TREATED.
7. TOP OF HANDRAILS SHALL BE PLACED AT 36" ABOVE THE NOSING OF TREADS & LANDINGS THE NOSING OF TREADS AND LANDINGS. HANDRAILS SHALL BE CONTINUOUS THE FULL LENGTH OF THE STAIRS. THE HANDGRIP PORTION SHALL NOT BE LESS THAN 1 1/4" NOR MORE THAN 2" IN CROSS-SECTIONAL DIMENSION. PROVIDE A SMOOTH SURFACE WITH NO SHARP CORNERS. HANDRAILS PROJECTING FROM A WALL SHALL HAVE A SPACE NOT LESS THAN 1 1/2" BETWEEN THE WALL AND THE HANDRAIL.
8. PREFABRICATED FIREPLACES, CHIMNEYS AND RELATED COMPONENTS TO BEAR U.L. OR I.C.B.O. SEAL OF APPROVAL AND TO BE INSTALLED PER MANUFACTURER'S SPECIFICATION.
9. ELEV. OF FLOOR OR LAND'G 1/2" MAX (OR 13/4" MAX FOR INSING DR) BELOW THRESHOLD IS REQ'D FROM THE REG'D EXIT DOOR, WHERE DOOR IS NOT THE REG'D EXIT DOOR. A STAIRWAY OF 2 OR FEWER RISERS IS PERMITTED WHERE DOOR DOES NOT SWING OVER RISER.

**CEILING VENTILATION:**

THE NET FREE VENTILATING AREA SHALL NOT BE LESS THAN 1/150 OF THE AREA OF SPACE TO BE VENTILATED, EXCEPT THAT THE AREA MAY BE 1/300, PROVIDED AT LEAST 50% OF THE REQUIRED VENTILATING AREA IS PROVIDED BY VENTILATORS LOCATED IN THE UPPER PORTION OF THE SPACE TO BE VENTILATED AT LEAST 3 FEET ABOVE EAVE VENTS WITH THE BALANCE OF THE REQUIRED VENTILATION PROVIDED BY EAVE VENTS. THE OPENINGS SHALL BE COVERED WITH CORROSION-RESISTANT METAL MESH WITH MESH OPENINGS OF 1/4" IN DIMENSION.

- 110V SMOKE & CARBON MONOXIDE COMBO DETECTORS TO BE INSTALLED AS REQUIRED PER IRC R313.3. SMOKE DETECTORS TO BE INTERCONNECTED AND POWERED BY PREMISE WIRING AND HAVE BATTERY BACKUP.

DOMESTIC KITCHENS	
RANGE HOODS/DOWN DRAFT EXHAUST.	150 CFM FAN
BATHROOMS/ TOILET ROOMS	
ROOMS CONTAINING BATH AND SPA FACILITIES. (STATIC PRESSURE SHALL BE RATED @ 0.10-INCH WATER GAUGE FOR INTERMITTENT FANS.)	MIN. 80 CFM INTERMITTENT OR 20 CFM CONTINUOUS
TOILET ROOMS WITHOUT BATHING OR SPA FACILITIES, WHEN NOT PROVIDED WITH NATURAL VENTILATION IN ACCORDANCE WITH SECTION R303.3.2.	MIN. 50 CFM

**MISCELLANEOUS NOTES:**

1. EACH BEDROOM TO HAVE A MINIMUM WINDOW OPENING OF 5.7 SQ. FT. WITH A MINIMUM WIDTH OF 20 IN. AND A SILL LESS THAN 44 IN. ABOVE FIN. FLR.
2. ALL WINDOWS WITHIN 10 IN. OF THE FLOOR, AND WITHIN 12 IN. OF ANY DOOR ARE TO HAVE TEMPERED GLAZING.
3. SKYLIGHTS ARE TO BE GLAZED WITH TEMPERED GLASS ON OUTSIDE AND LAMINATED GLASS ON INSIDE (UNLESS PLEXIGLAS). GLASS TO HAVE MAXIMUM CLEAR SPAN OF 25 IN., AND FRAME IS TO BE ATTACHED TO A 2X CURB WITH A MINIMUM OF 4 IN. ABOVE ROOF PLANE.
4. ALL TUB AND SHOWER ENCLOSURES ARE TO BE GLAZED WITH SAFETY GLASS.
5. ALL EXTERIOR WINDOWS ARE TO BE DOUBLE GLAZED AND ALL EXTERIOR DOORS ARE TO BE SOLID CORE WITH WEATHER STRIPPING, PROVIDE 1/2 IN. DEADBOLT LOCKS ON ALL EXTERIOR DOORS, AND LOCKING DEVICES ON ALL DOORS AND WINDOWS WITHIN 10 FT. (VERTICAL) OF GRADE. PROVIDE PEEP-HOLE 54 - 66 IN. ABOVE FIN. FLOOR ON EXTERIOR ENTRY DOORS.
6. CONNECT ALL SMOKE DETECTORS (SEE PLAN FOR LOCATION) TO HOUSE ELECTRICAL SYSTEM AND INTER-CONNECT EACH ONE, SO THAT, WHEN ANY ONE IS TRIPPED, THEY WILL ALL SOUND.
7. PROVIDE COMBUSTION AIR VENTS (W/ SCREEN AND BACK DAMPER) FOR FIREPLACES, WOOD STOVES AND ANY APPLIANCES WITH AN OPEN FLAME.
8. BATHROOMS AND UTILITY ROOMS ARE TO BE VENTED TO THE OUTSIDE WITH A FAN CAPABLE OF PRODUCING A MINIMUM OF 4 AIR EXCHANGES PER HOUR. RANGE HOODS ARE ALSO TO BE VENTED TO THE OUTSIDE.
9. ELECTRICAL RECEPTACLES IN BATHROOMS, KITCHENS AND GARAGES SHALL BE G.F.I. OR G.F.I.C. PER NATIONAL ELECTRICAL CODE REQUIREMENTS.

**GENERAL NOTES:**

1. ALL WORK SHALL BE DONE IN CONFORMANCE WITH THE LATEST EDITION OF LOCAL BUILDING CODE, ONE AND TWO FAMILY DWELLING CODES AND ALL OTHER GOVERNING CODES, LAWS AND REGULATIONS.
2. SITE CONSTRUCTION DOCUMENTS AND CONSTRUCTION PHASE. CONTRACTOR SHALL NOT SCALE THE DRAWINGS, OR DETAILS. CONTRACTOR SHALL VERIFY ALL DIMENSIONS, ELEVATIONS AND CONDITIONS AT THE JOBSITE. NOTIFY DESIGN AGENCY IN WRITING OF ANY SIGNIFICANT DEVIATIONS, ANY CHANGES TO CONSTRUCTION DOCUMENTS OR IF ADDITIONAL DETAILS, SPECIFICATIONS ARE NEEDED FOR PROPER EXECUTION OF THE WORK. ALSO NOTIFY DESIGN AGENCY IN WRITING IF THERE ARE ANY CORRECTIONS OR CHANGES TO BE MADE TO THE CONSTRUCTION DOCUMENTS REQUIRED BY THE PLANNING/BUILDING DEPARTMENT OFFICIALS. PLANS CORRECTION LIST OR COMMENTS (FROM THE PLANNING/BUILDING DEPARTMENT OFFICIALS) MUST BE DELIVERED TO THE DESIGN AGENCY.
3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR COORDINATION OF ALL TRADES, INCLUDING ALL ARCHITECTURAL, STRUCTURAL, MECHANICAL AND ELECTRICAL REQUIREMENTS.
4. MECHANICAL AND ELECTRICAL WORK IS ON A CONTRACTOR DESIGN/BUILD BASIS. COORDINATE ALL ARCHITECTURAL AND STRUCTURAL WORK WITH MECHANICAL AND ELECTRICAL REQUIREMENTS.
5. ALL DIMENSIONS ARE TO THE FACE OF FRAMING MEMBERS UNLESS NOTED OTHERWISE. FOR ALL EXTERIOR AND INTERIOR WALL SPACINGS PLEASE REFER TO A0 SHEET BUILDING INFORMATION.
6. COORDINATE ALL ITEMS NOT SHOWN OR NOTED WITH OWNER AND/OR DESIGNER, INCLUDING BUT NOT LIMITED TO FINISHES, COLORS, CABINETS, HARDWARE, FIXTURES, ETC.
7. SEAL OR WEATHER STRIP ALL EXTERIOR OPENINGS AND PENETRATIONS IN MANNER TO PREVENT OUTSIDE AIR INFILTRATION AND MOISTURE FROM ENTERING STRUCTURAL AND OCCUPIED SPACES, INCLUDING AROUND PLUMBING AND ELECTRICAL LINES AND EQUIPMENT PASSING THROUGH WALLS, GUTTERS, DOWNSPOUTS, ETC.
8. IT IS THE GENERAL CONTRACTOR'S RESPONSIBILITY TO FOLLOW AND COORDINATE PER THE MANUFACTURER'S PRINTED INSTRUCTIONS, SPECIFICATIONS AND INSTALLATION DETAILS THE INSTALLATION OF ALL BUILDING PRODUCTS (INTERIOR AND EXTERIOR), FIXTURES, EQUIPMENT, ETC., OR FOLLOW THE INDUSTRY STANDARD DETAILS FOR ALL THE CONDITIONS NOT SHOWN ON THE DRAWINGS FOR PROPER EXECUTION OF THE WORK IN ACCORDANCE WITH THE CONSTRUCTION DOCUMENTS. THE DESIGN AGENCY MUST BE NOTIFIED IN WRITING TO PROVIDE ADDITIONAL DETAILS, SPECIFICATIONS OR INFORMATION PER REQUEST OF THE GENERAL CONTRACTOR OR OWNER FOR PROPER EXECUTION OF THE WORK.

**CONSTRUCTION PHASE:**

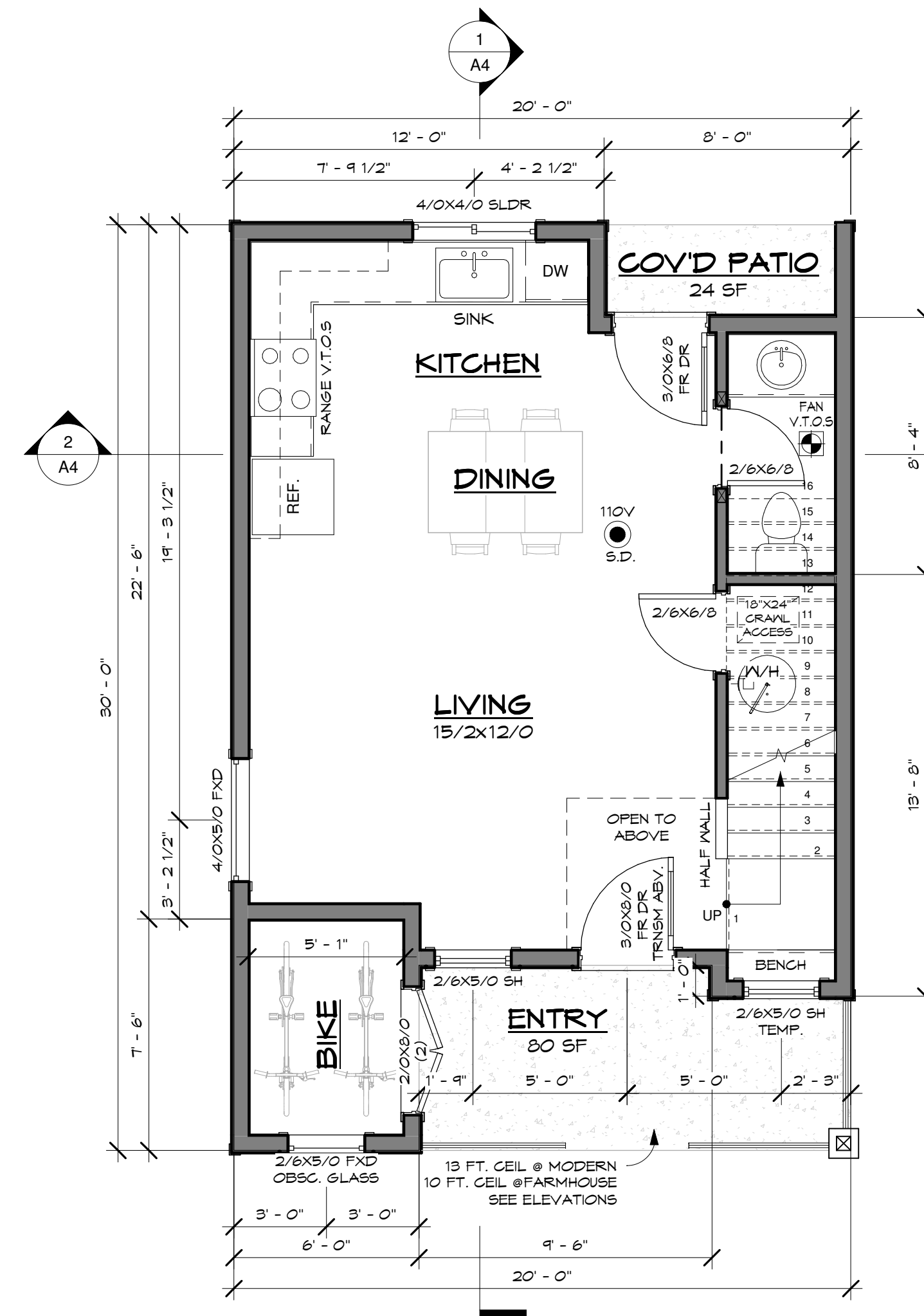
THE DESIGNER SHALL NOT HAVE CONTROL OVER OR CHARGE OF AND SHALL NOT BE RESPONSIBLE FOR CONSTRUCTION MEANS, METHODS, TECHNIQUES, SEQUENCES OR PROCEDURES, OR FOR SAFETY PRECAUTIONS AND PROGRAMS IN CONNECTION WITH THE WORK, SINCE THESE ARE SOLELY THE CONTRACTOR'S RESPONSIBILITY UNDER CONTRACT FOR CONSTRUCTION. THE DESIGNER SHALL NOT BE RESPONSIBLE FOR CONTRACTOR'S SCHEDULES OR FAILURE TO CARRY OUT THE WORK IN ACCORDANCE WITH THE CONSTRUCTION DOCUMENTS.

**MATERIAL SPECIFICATION NOTE:**

THE DESIGNER DOES NOT RECOMMEND OR SPECIFY USE OF ANY TYPE OF "STUCCO PRODUCTS" OR EXTERIOR INSULATED AND FINISH SYSTEM "EIF.S." FOR THE EXTERIOR OF THE HOUSE. THE DESIGNER WILL NOT BE LIABLE FOR ANY KIND OF DAMAGES TO THE BUILDING (STRUCTURAL OR COSMETIC) IF THE OWNER OR THE CONTRACTOR DECIDE TO USE SUCH PRODUCTS.

**RADON MITIGATION**

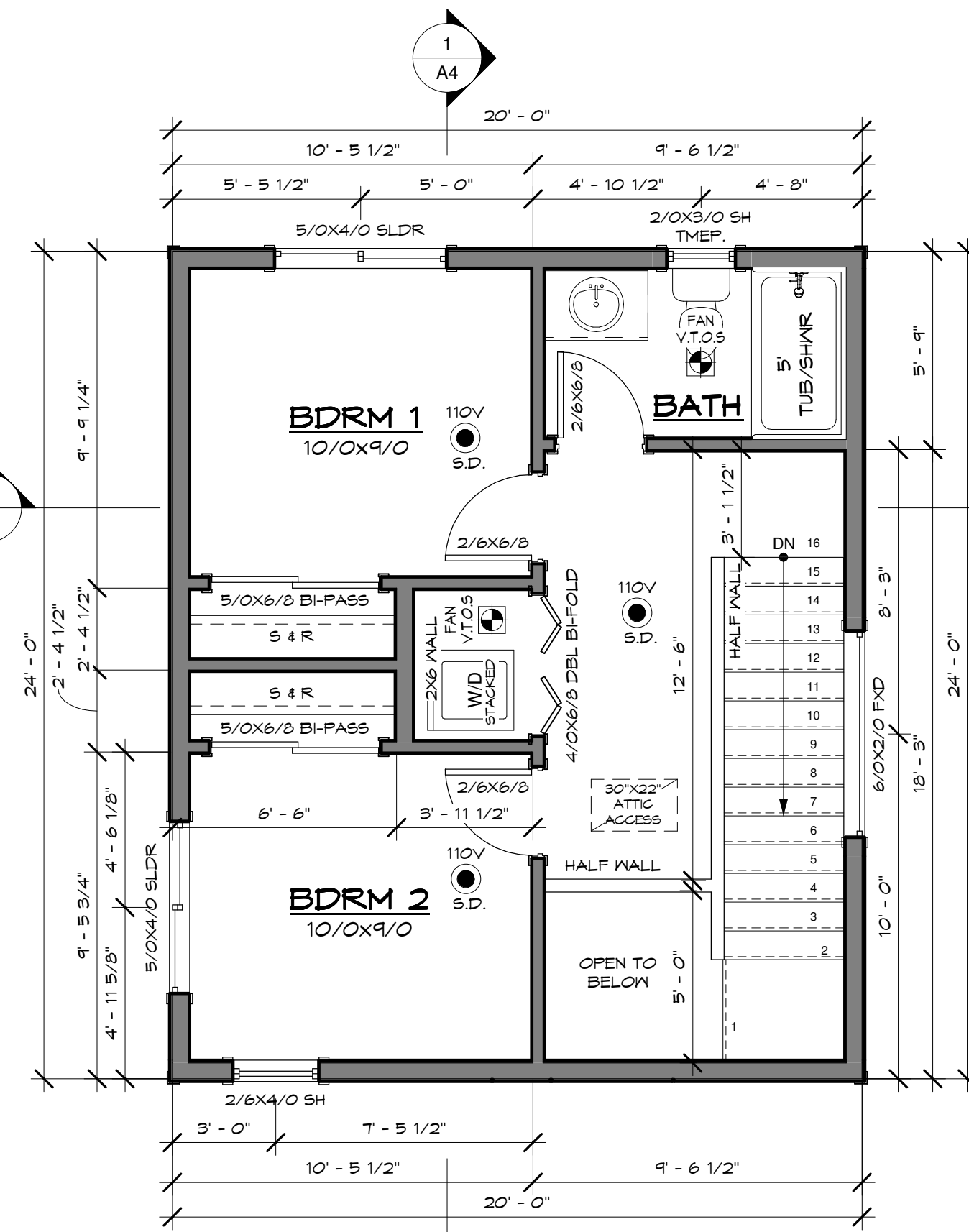
INSTALL A PASSIVE SUB-MEMBRANE DEPRESSURIZATION SYSTEM FOR RADON GAS MITIGATION. INSTALL A 3 OR 4 TEE FITTING UNDER THE VAPOR BARRIER THAT CONNECTS TO A PIPE RUNNING VERTICALLY THROUGH THE HOUSE AND TERMINATING THROUGH THE ROOF. AS PART OF THIS MITIGATION SOLUTION ALSO SEAL ALL OPENINGS / PENETRATIONS BETWEEN THE FLOOR LEVEL AND THE CRAWLSPACE. ALL DUCTWORK IN CRAWL SPACE TO BE PERFORMANCE TESTED. CRAWL SPACE ACCESS TO BE GASKETED. VENTILATION OPENINGS SHALL COMPLY WITH ALL CODE REQUIREMENTS. OPERABLE Louvers, DAMPERS, OR OTHER MEANS TO TEMPORARILY STOP THE VENTILATION SHALL NOT BE PERMITTED.



**MAIN FLOOR PLAN**

1/4" = 1'-0"

HEATED WITH MINI SPLIT



**UPPER FLOOR PLAN**

1/4" = 1'-0"



**STAFFORD LAND CO.**

FILE NAME : 886 COTTAGE-FARMHOUSE  
 DRAWN BY: E DRAFTING  
 SCALE: 1/4" = 1'-0"  
 PLOT DATE: 3/29/2023 12:01:16 PM

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**SHEET**  
 Floor Plans

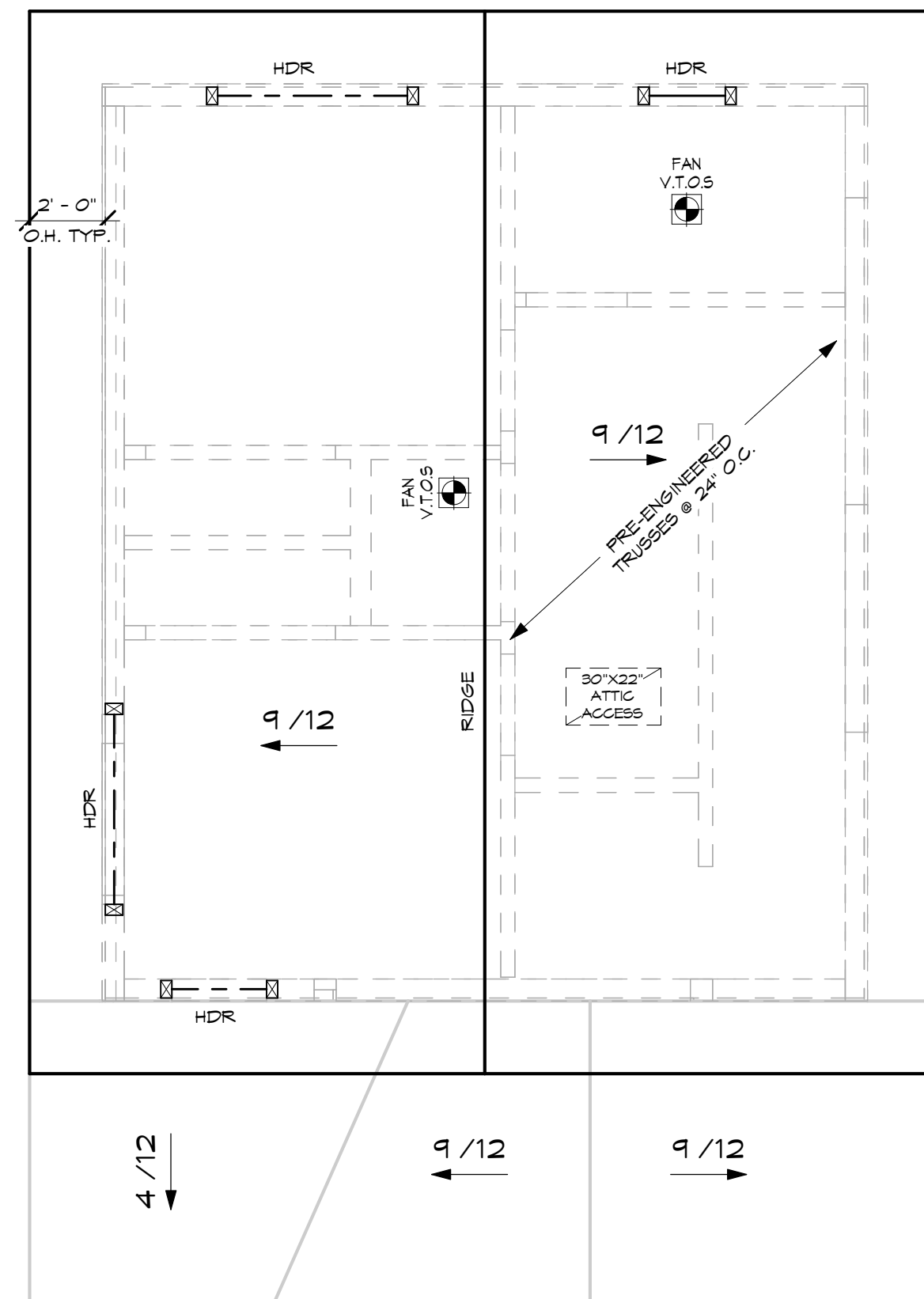
**A3**

**FLASHING NOTE: USE APPROVED CORROSION RESISTANT FLASHING IN ALL OF THE FOLLOWING AREAS:**

1. AT THE TOP OF ALL EXTERIOR WINDOW AND DOOR OPENINGS IN SUCH A MANNER TO BE LEAK PROOF, EXCEPT THAT SELF FLASHING WINDOWS CONTINUOUS LAP OF NOT LESS THAN 1" OVER THE SHEATHING MATERIAL AROUND THE PERIMETER OF THE OPENING, INCLUDING THE CORNERS. DO NOT REQUIRE FLASHING.
2. AT THE INTERSECTION OF CHIMNEYS AND OTHER MASONRY CONSTRUCTION WITH FRAME OR STUCCO WALLS, WITH PROJECTING LIPS ON BOTH SIDES UNDER STUCCO COPINGS.
3. UNDER AND AT THE ENDS OF MASONRY, WOOD OR METAL COPINGS AND SILLS.
4. CONTINUOUSLY ABOVE ALL PROJECTING WOOD TRIM.
5. WHERE EXTERIOR PORCHES, DECKS, OR STAIRS ATTACH TO A WALL OR FLOOR ASSEMBLY OF WOOD CONSTRUCTION.
6. AT WALL AND ROOF INTERSECTIONS.
7. AT BUILT-IN GUTTERS PER IRC SECTION R703.3.

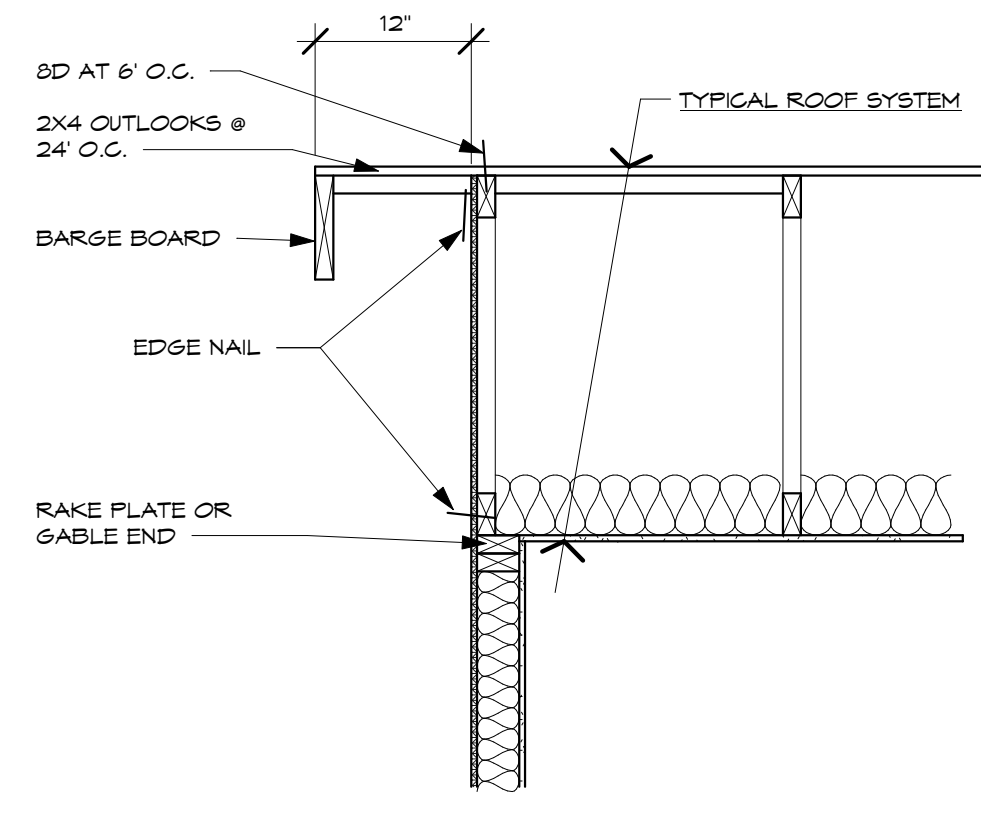
SHEAR WALL BOTTOM PLATE NAILING & ALL NAILING AT PRESSURE TREATED PLATE MEMBERS SHALL BE HOT DIPPED ZINC COATED GALV. STEEL OR STAINLESS STEEL NAILS PER IRC 319.3 FASTENERS FOR PRESSURE PRESERVATIVE & FIRE RETARDANT TREATED WOOD SHALL BE HOT DIPPED GALV. STEEL, STAINLESS STEEL, SILICON, BRONZE, OR COPPER PER IRC 320.3.1 FIELD CUT END, NOTCHES, AND DRILLED HOLES OF PRESSURE TREATED WOOD SHALL BE RETREATED IN THE FIELD IN ACCORDANCE WITH ANPA M4.

NOTE: REFER TO COVER PAGE BUILDING/CODE INFORMATION FOR HEADER AND BEAM SIZES

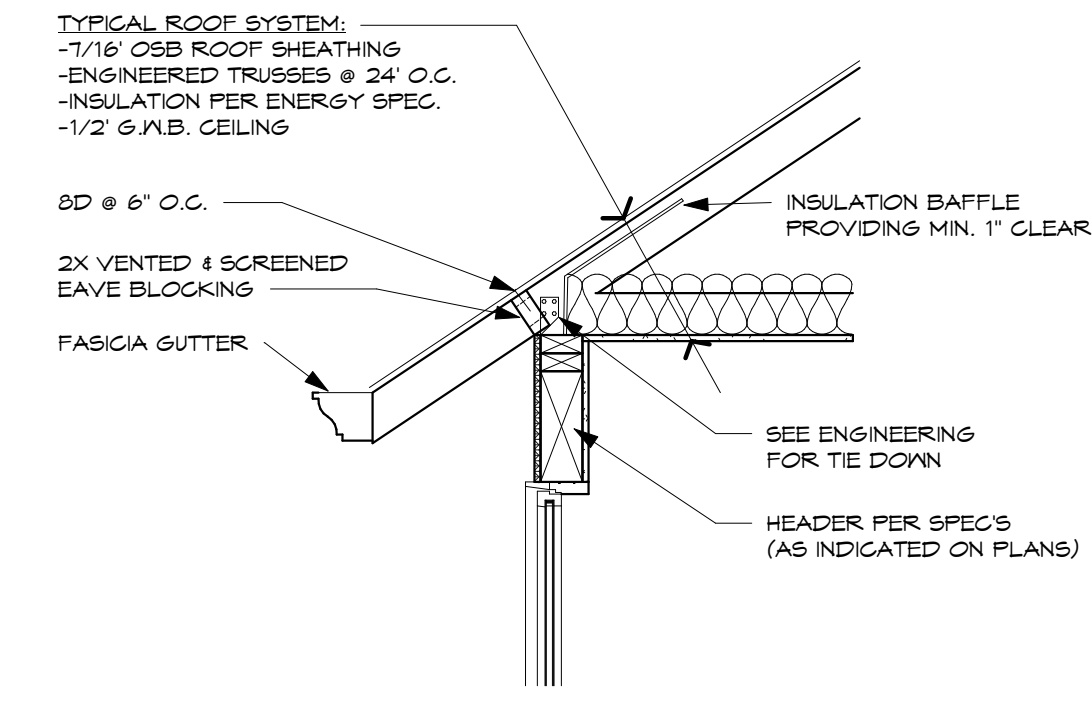


**ROOF FRAMING PLAN**  
1/4" = 1'-0"

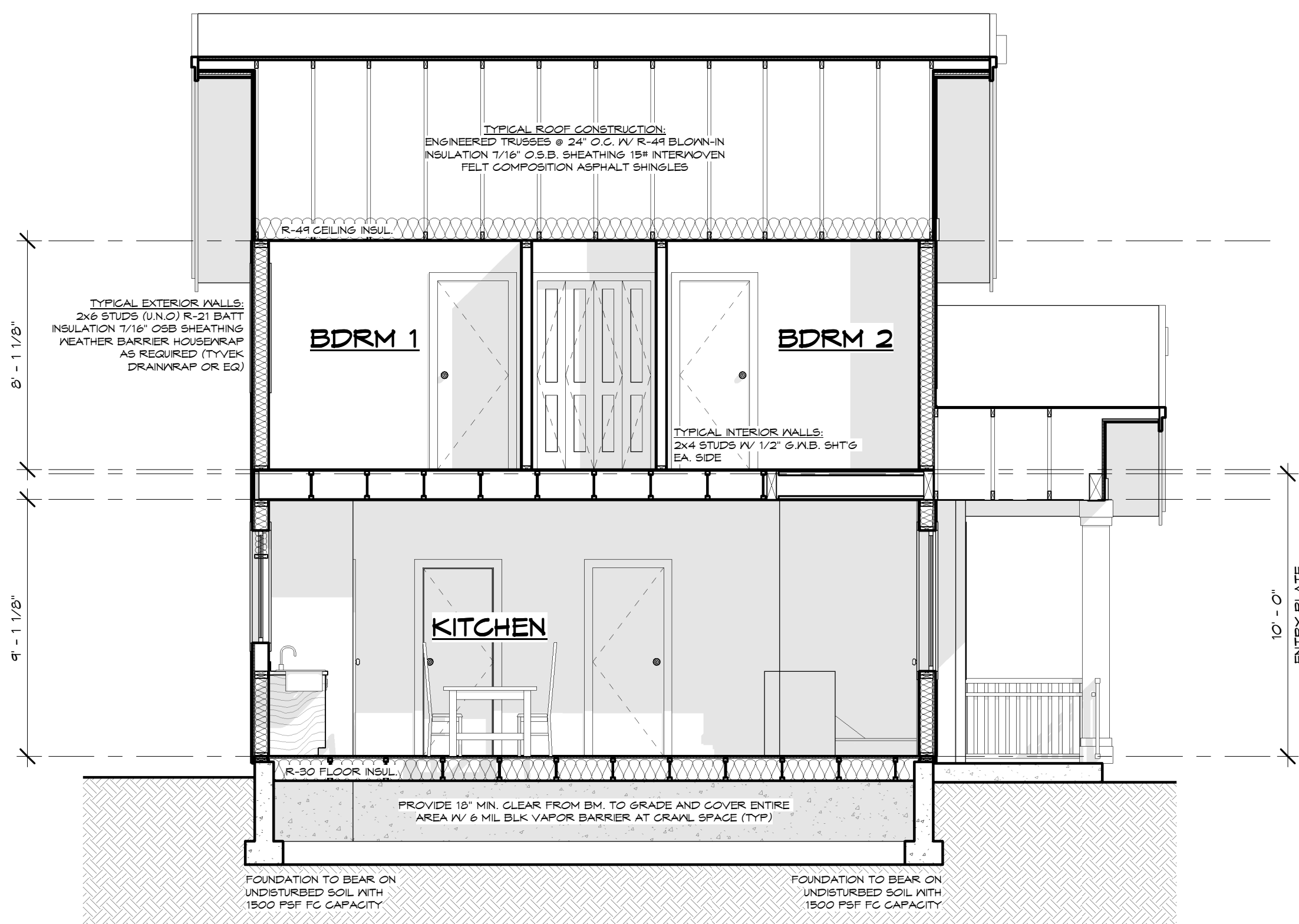
REFER TO THE MANUFACTURES TRUSS LAYOUT FOR EXACT LAYOUT AND SPECIFICATIONS.



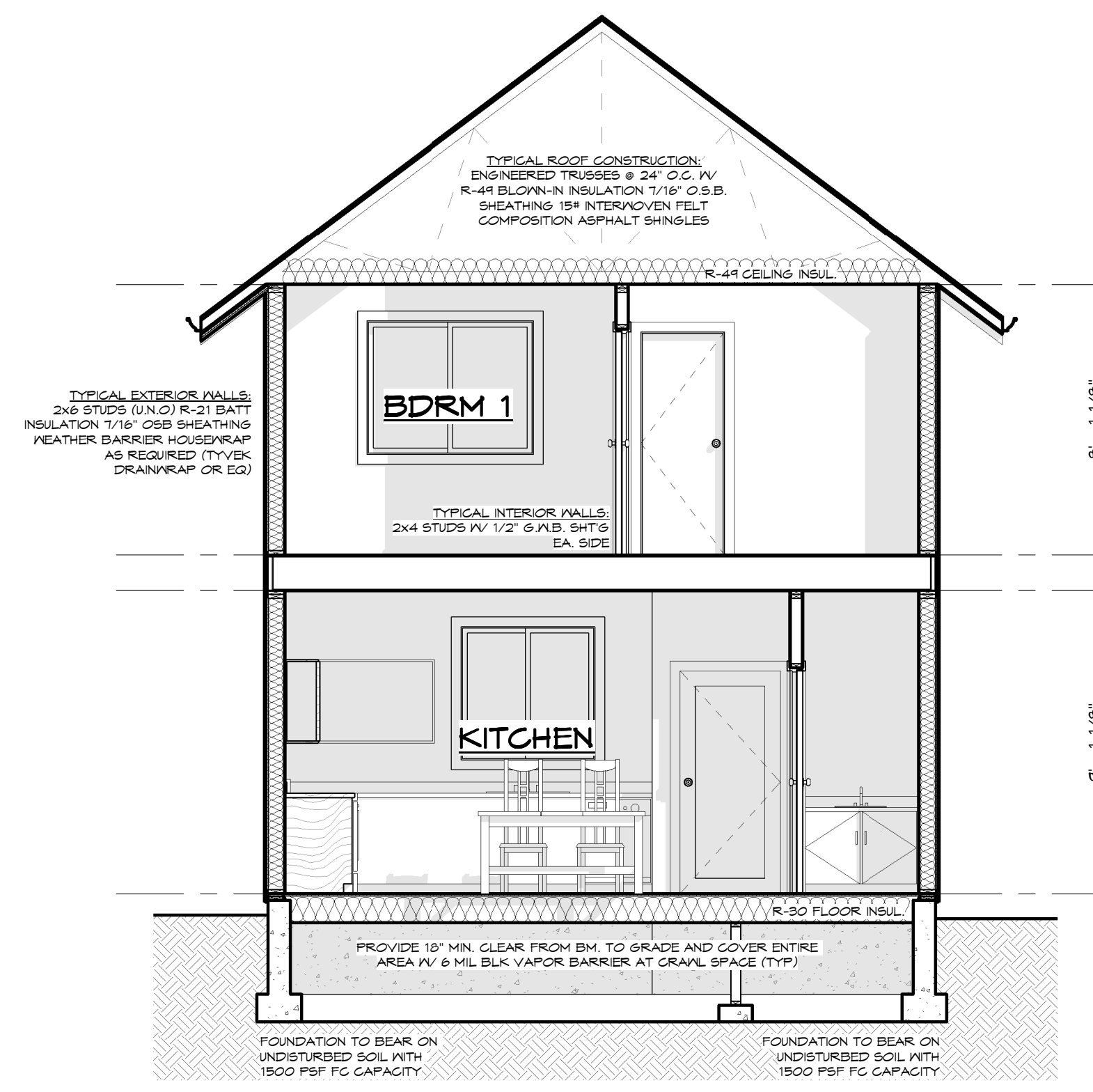
**RAKE & EAVE OVERHANG**  
3/4" = 1'-0"



EAVE OVERHANG

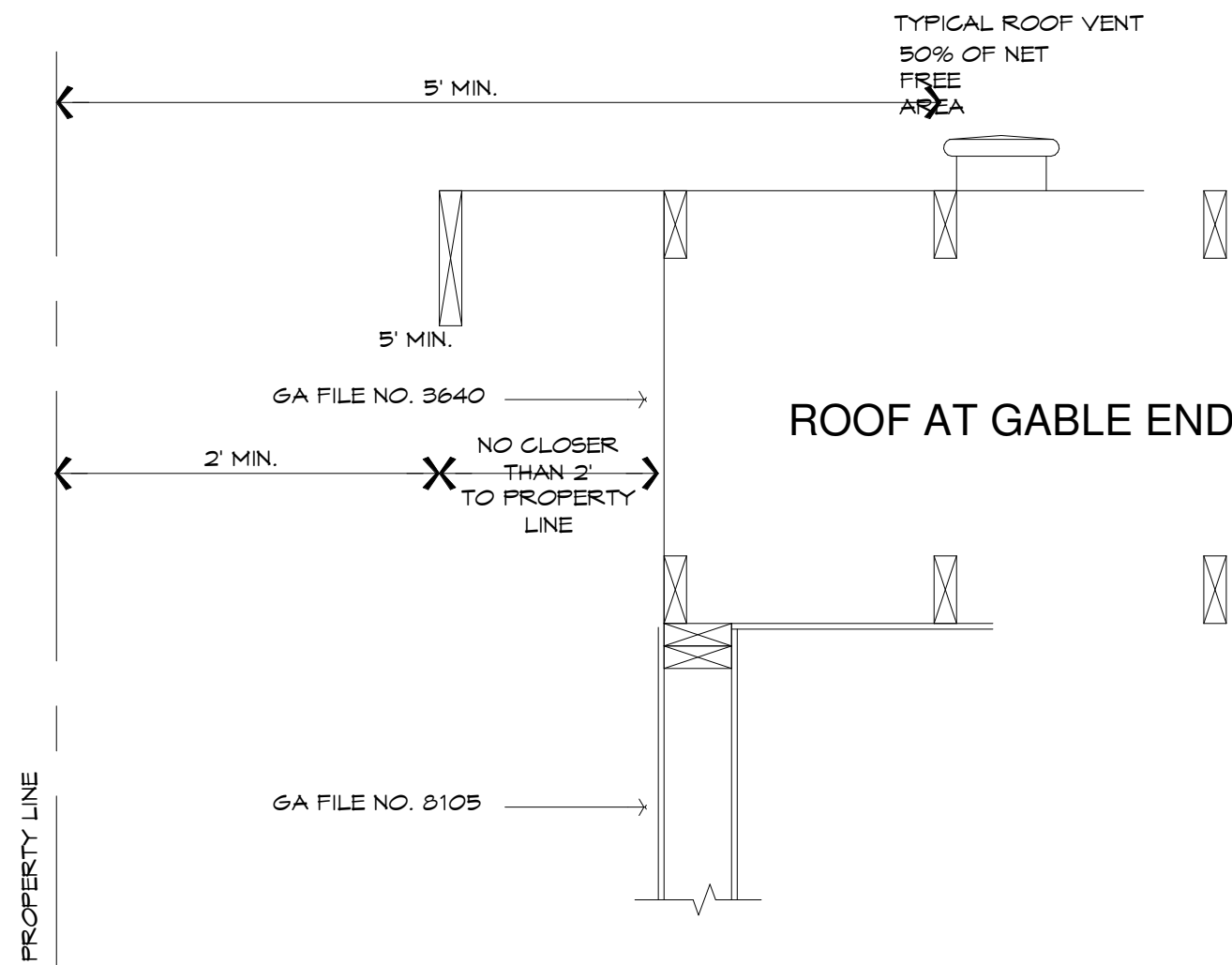
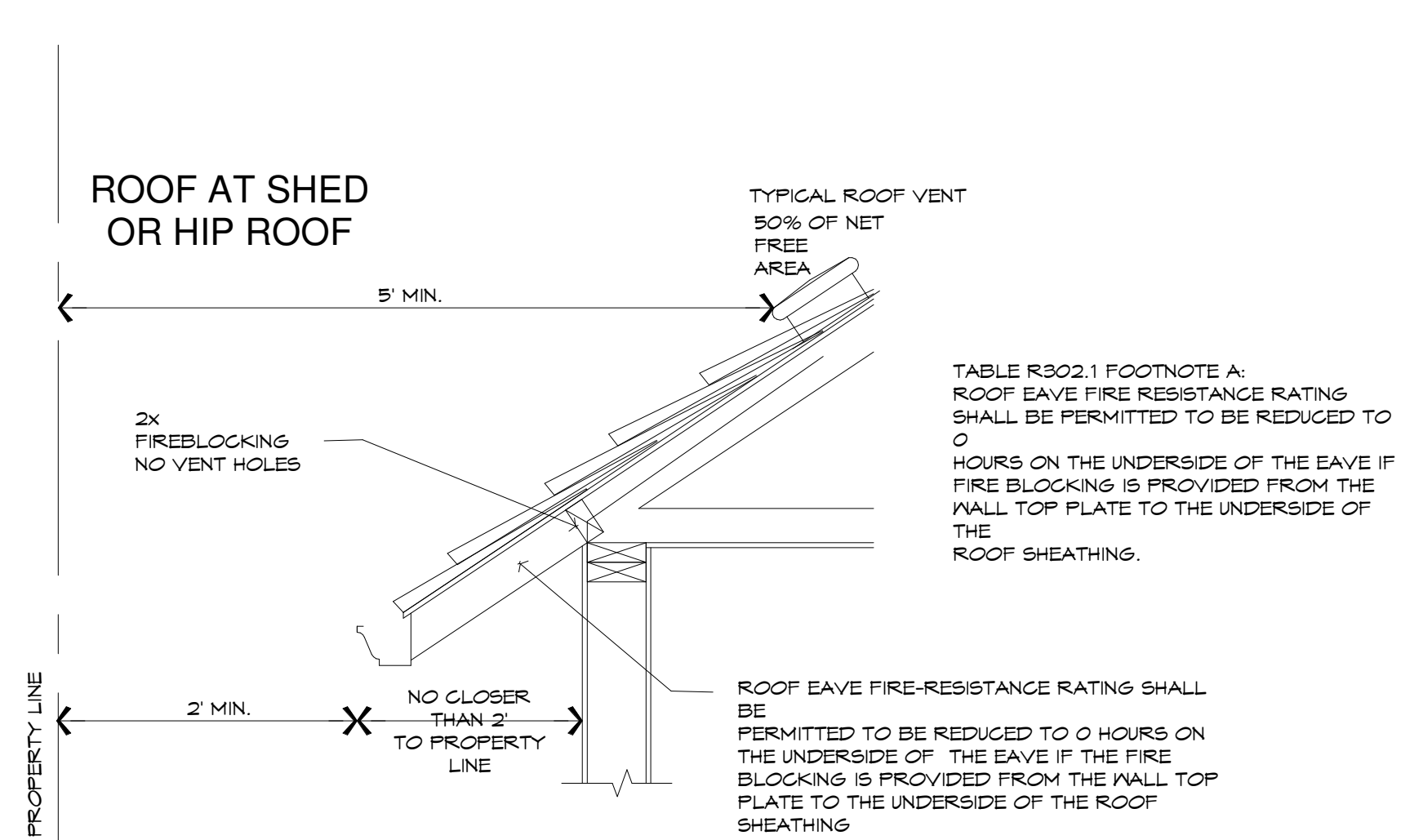


**SECTION 1**  
1/4" = 1'-0"

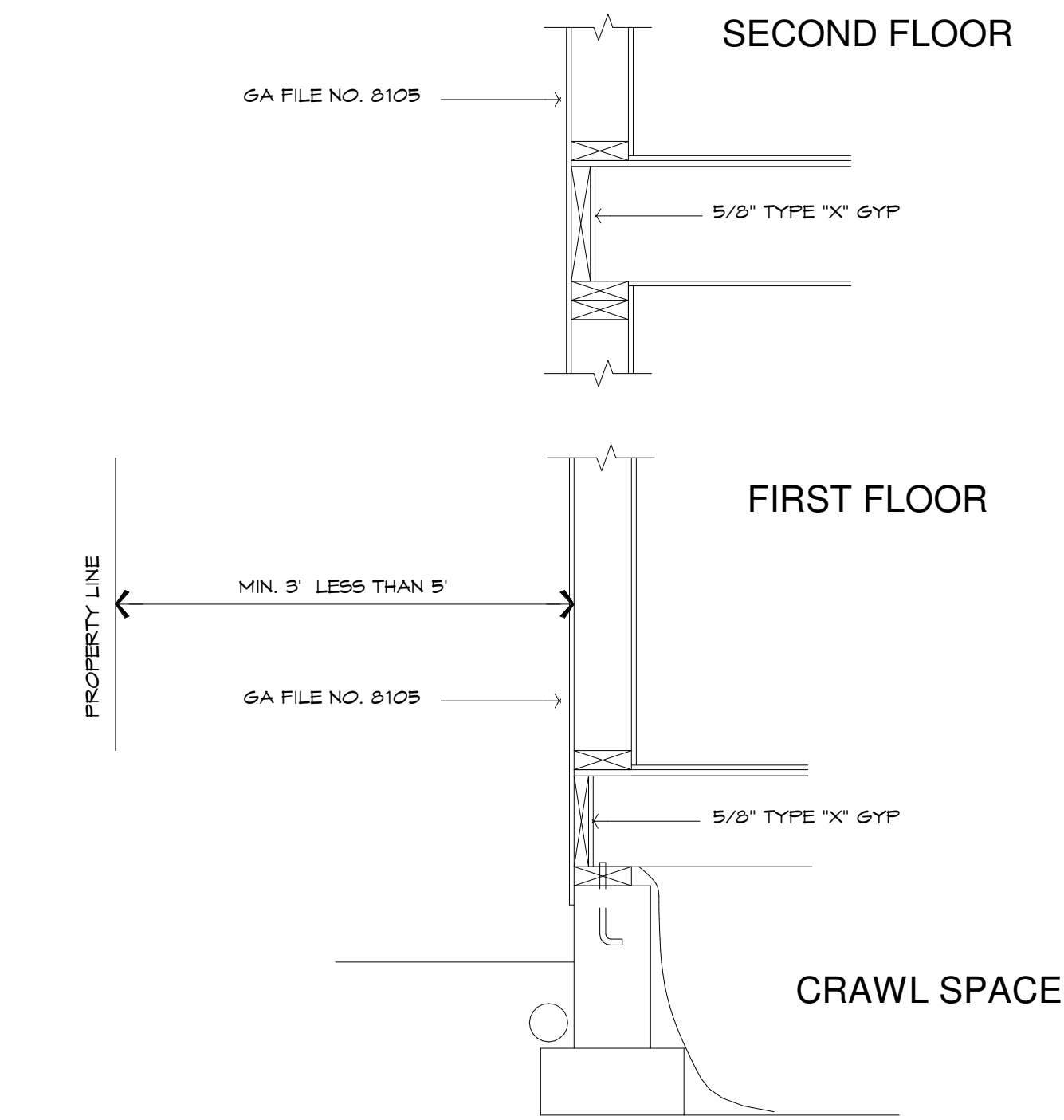


**SECTION 2**  
1/4" = 1'-0"





**1 HOUR EXTERIOR FIRE WALL @ ROOF  
R302.1 EXTERIOR WALLS**



EXTERIOR WALLS	GA FILE NO. WP 8105	GENERIC	1 HOUR FIRE
<p><b>GYPSON WALLBOARD, GYPSON SHEATHING, WOOD STUDS</b></p> <p><b>EXTERIOR SIDE:</b> One layer 48" wide 5/8" type X gypsum sheathing applied parallel to 2 x 4 wood studs 24" o.c. with 13/4" galvanized roofing nails 4" o.c. at vertical joints and 7" o.c. at intermediate studs and top and bottom plates. Joints of gypsum sheathing may be left untreated. Exterior cladding to be attached through sheathing to studs.</p> <p><b>INTERIOR SIDE:</b> One layer 5/8" type X gypsum wallboard, water-resistant gypsum backing board, or gypsum veneer base applied parallel or at right angles to studs with 6d cement-coated nails, 1 7/8" long, 0.0915" shank, 1/4" heads, 7" o.c. (LOAD-BEARING)</p>			
<p>Thickness: Varies Applic.: Weight 7 pd Fire Test: See WP 8105 UL 2550-47, -48, 9-17-65, UL Design 1295 UL Design 1295, 7-22-70, UL Design 1231-4</p>			
EXTERIOR WALLS	GA FILE NO. WP 3640	GENERIC	1 HOUR FIRE
<p><b>GYPSON WALLBOARD, WOOD STUDS</b></p> <p>ONE layer 5/8" type X gypsum wallboard or gypsum veneer base applied parallel or at right angles to each side of either 2 x 3 or 2 x 4 wood studs, turned flatwise, 24" o.c. with 6d cement-coated nails, 1 7/8" long, 0.0915" shank, 1/4" heads, 7" o.c. (NLS)</p>			
<p>Thickness: 27/8" Applic.: Weight 7 pd Fire Test: UL 9-12-66, UL Design 1295</p>			

TABLE R302.1 EXTERIOR WALLS:  
WINDOWS UP TO 25% MAXIMUM OF WALL AREA WITHIN A 0 HOUR FIRE RATING ARE PERMITTED  
PENETRATIONS (EXCEPT FOUNDATION VENTS) LESS THAN 5" FROM THE PROPERTY LINE TO COMPLY WITH R302.4  
THE ABOVE PROVISIONS SHALL NOT APPLY TO WALLS WHICH ARE PERPENDICULAR TO THE LINE USED TO DETERMINE THE FIRE SEPARATION DISTANCE.  
STRUCTURAL SHEATHING BASE LAYER APPLIED DIRECTLY TO STUDS SEE PLANS AND ENGINEERING FOR SHEATHING CALL OUT AND NAILING SCHEDULE

**1 HOUR EXTERIOR FIRE WALL  
R302.1 EXTERIOR WALLS  
FIRE RATING DETAIL**

1/4" = 1'-0"

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Brian Emrich  
960-409-4592  
edrafting@hotmail.com

**STAFFORD LAND CO.**

FILE NAME :  
886  
COTTAGE-FARMHOUSE  
DRAWN BY:  
E DRAFTING  
SCALE :  
1/4" = 1'-0"  
PLOT DATE :  
3/29/2023  
12:01:19 PM

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**SHEET  
Details**

**A5**

# COTTAGE 750 (2-STORY)

## FARMHOUSE ELEVATION



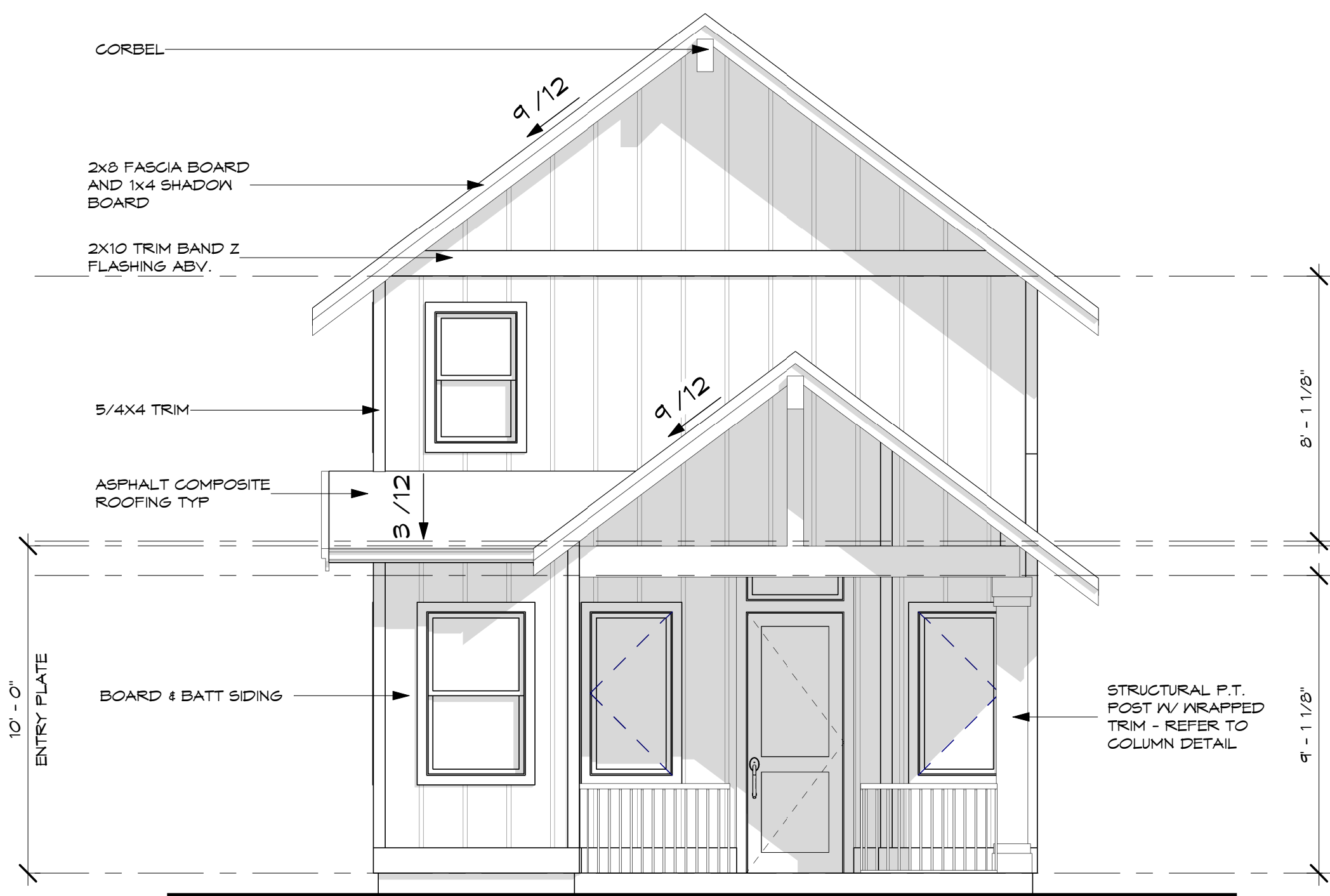
TOTAL FACADE: 408 SQ.FT.  
WINDOW AREA: 61 SQ.FT.  
= 15%

## MODERN ELEVATION



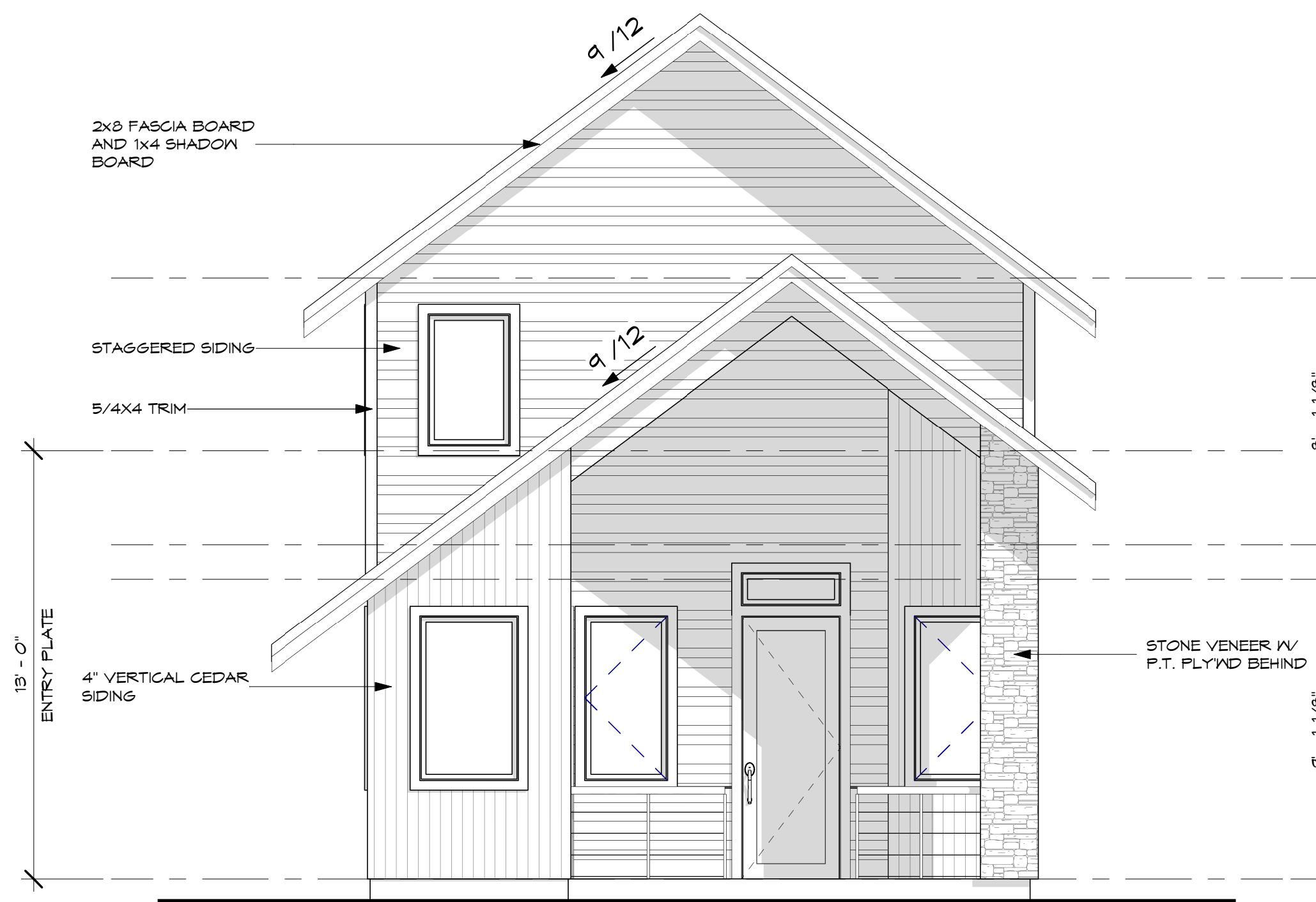
TOTAL FACADE: 419 SQ.FT.  
WINDOW AREA: 61 SQ.FT.  
= 15%

MAIN LIVING: 496 SQ.FT.  
UPPER LIVING: 275 SQ.FT.  
TOTAL: 771 SQ.FT.  
FRONT COV'D PORCH: 80 SQ.FT.  
REAR PATIO: 24 SQ.FT.



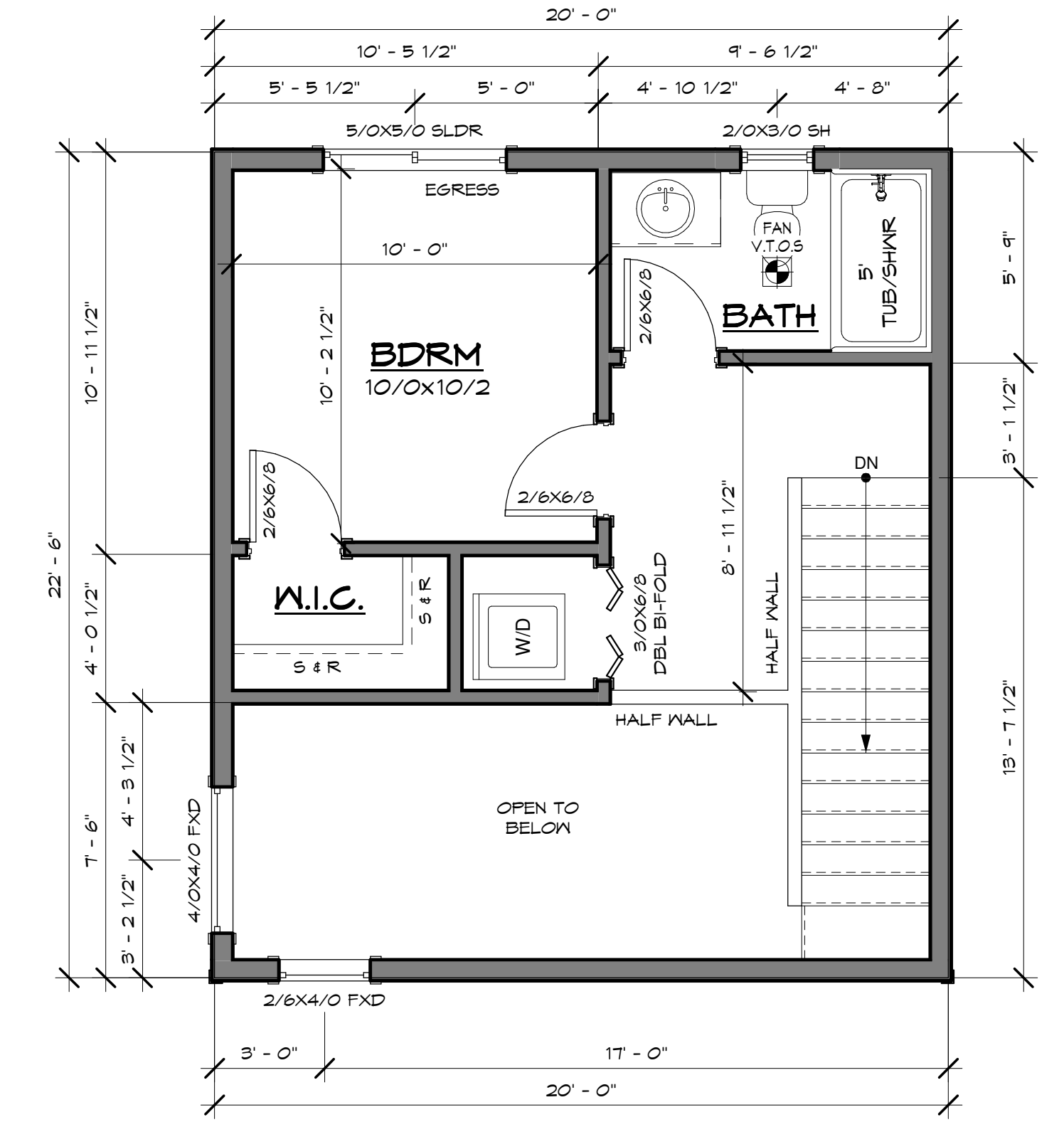
FRONT ELEVATION A

1/4" = 1'-0"



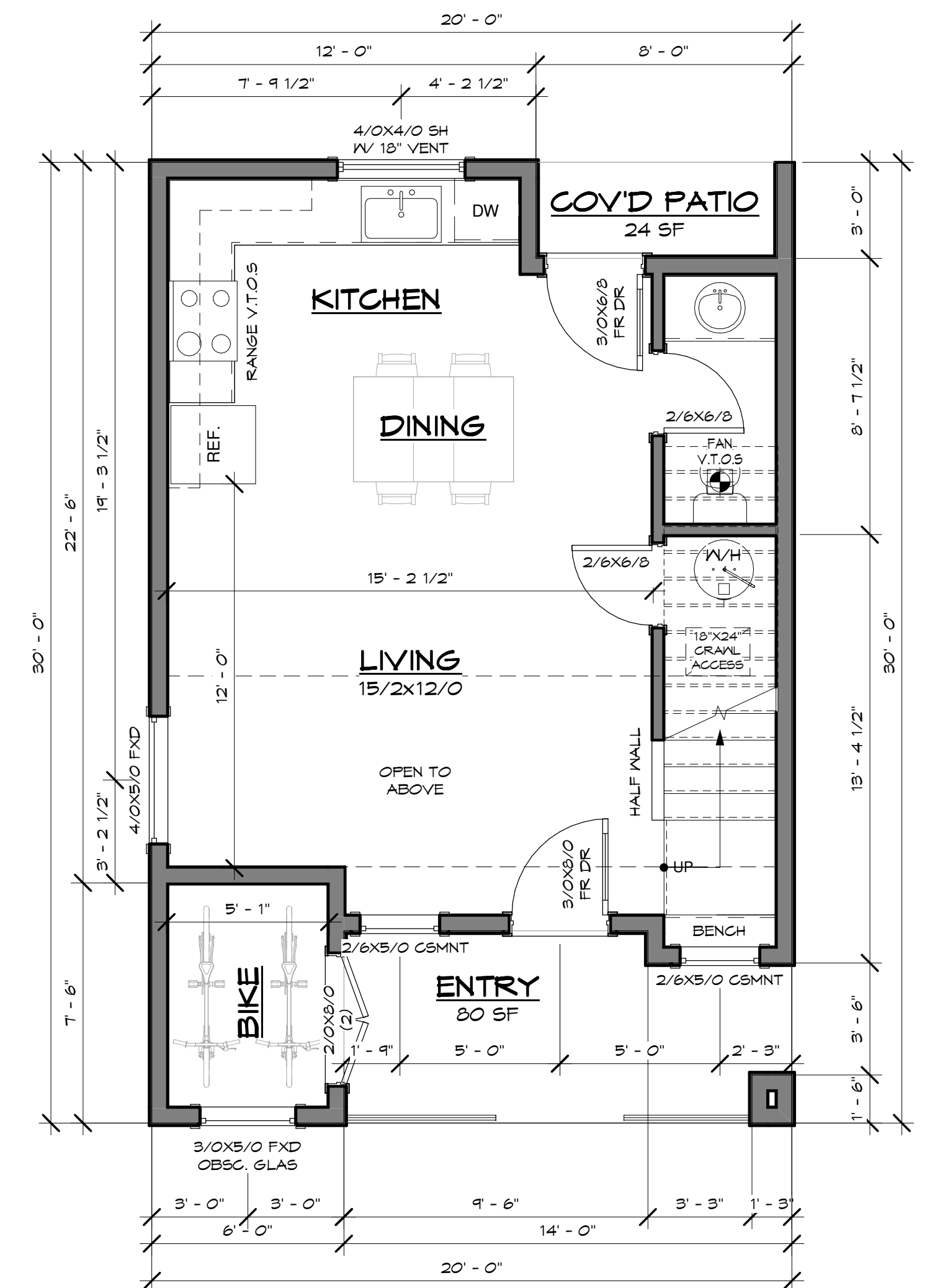
FRONT ELEVATION B

1/4" = 1'-0"



UPPER FLOOR PLAN

1/4" = 1'-0"



MAIN FLOOR PLAN

1/4" = 1'-0"

Attachment 104A1d

## Colin Cortes

---

**From:** Bryan Cavaness <bryan@staffordlandcompany.com>  
**Sent:** Tuesday, May 30, 2023 9:28 AM  
**To:** EDGING Sean \* DLCD  
**Cc:** STUCKMAYER Ethan \* DLCD  
**Subject:** RE: Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

Thank you, Sean.

I can provide a copy of the middle housing standards, the design standards, our initial application, staff's incomplete notice, and our response to the incomplete notice. That should provide you with good points of reference. I will forward the materials to you in one batch after I complete our response to the city's incomplete notice.

Thank you for your time and attention to this matter. I am available at your convenience to answer any questions you may have.

Bryan

**Bryan Cavaness**  
**General Counsel**  
**Land Development Manager**



8840 SW Holly Lane  
Suite 200  
Wilsonville, Oregon 97070  
CCB No. 203562

Mobile: 503.332.6699  
E-Mail: [bryan@staffordlandcompany.com](mailto:bryan@staffordlandcompany.com)

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---

**From:** EDGING Sean \* DLCD <sean.edging@dlcd.oregon.gov>  
**Sent:** Tuesday, May 30, 2023 9:20 AM  
**To:** Bryan Cavaness <bryan@staffordlandcompany.com>

[Attachment 104A2](#)

**Cc:** STUCKMAYER Ethan \* DLCD <Ethan.STUCKMAYER@dlcd.oregon.gov>  
**Subject:** RE: Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

Good morning Bryan,

Thank you for sharing this with our team! I am cc'ing my manager, Ethan Stuckmayer, on the response just so he's in the loop.

I believe we are the right folks to be reaching out to. So you are aware, a bill under consideration currently (HB 3414) would establish a "Housing Accountability and Production Office" at DLCD and Building Codes Division, whose role would be to investigate cases like this for compliance with state law and administrative rules related to housing.

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Best,



**Sean Edging**

Housing Planner | Community Services Division  
Pronouns: He / Him / His  
Cell: 971-375-5362 | Main: 503-373-0050  
[sean.edging@dlcd.oregon.gov](mailto:sean.edging@dlcd.oregon.gov) | [www.oregon.gov/LCD](http://www.oregon.gov/LCD)

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**From:** Bryan Cavaness <[bryan@staffordlandcompany.com](mailto:bryan@staffordlandcompany.com)>  
**Sent:** Friday, May 26, 2023 12:18 PM  
**To:** EDGING Sean \* DLCD <[sean.edging@dlcd.oregon.gov](mailto:sean.edging@dlcd.oregon.gov)>  
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The Woodburn property is a single lot that abuts a fully improved right-of-way with curb, a 6-foot planter strip, and a six-foot sidewalk. The property has direct access to sanitary sewer, water, stormwater, and above ground franchise utilities. Streetlighting is provided across the property's frontage on existing PGE poles. It is a "shovel ready" property.

The city's recently adopted TSP reclassified the street the property abuts from a two-lane local street to a three-lane service collector with a mix of islands and turning lanes. Despite the fact that the term "sufficient Infrastructure" does not include transportation system improvements other than those necessary to provide emergency vehicle access, city staff is demanding that we dedicate 6-feet of additional right-of-way, demolish the existing curb and sidewalk, add 6-feet of additional pavement, construct new curb and sidewalk, underground existing franchise utilities (which PGE anticipates will need to be extended several hundred feet off site and require boring under three streets), and install new frontage streetlighting. We conservatively estimate the cost to construct these improvements will range from \$225,000 to \$250,000, which will unnecessarily add over \$11,000 to the cost to construct each cottage dwelling. During a pre-application conference we reminded staff that they would be required to provide both *Nolan* and *Dolan* findings to support the dedication and improvement requirements. Staff glibly responded that *Nolan* and *Dolan* did not apply "because the city code requires the right-of-way dedication and the frontage improvements." We have submitted evidence in the record that demonstrates the right-of-way improvements staff intends to impose on the project are 25 times greater than the impacts the development will have on adjacent transportation system (0.32% of PM peak trips vs. 7.9% of the combined street frontage that will be improved to the wider service collector street standard), but our comments are ignored.

The architectural design elements the city seeks to impose on this project are also very frustrating, both from the unnecessary costs they impose and the inconsistent manner staff arbitrarily chooses to interpret and apply the standards. For example, the code requires building plans to score a minimum 16 "design" points, but the design standards are primarily directed at detached single-family dwellings and many points that are available to single-family dwellings are not available to cottage dwellings. As a result, we are forced to produce construction plans with extraordinary design features such as 9/12 roofs and 2-foot eaves. A roof with a 9/12 pitch and 24-inch eaves results in a roof area that is 30% larger than the same cottage dwelling constructed with a 6/12 roof pitch and 12-inch eaves. The larger roof area requires larger trusses, more roof sheathing materials, more roofing materials, and increased labor costs to construct. We estimate the city's roof design requirements unnecessarily increase the cottage's roof construction costs 10% to 12%. Other examples include elevating the foundation a minimum of 18-inches above sidewalk grade (which does not allow for the construction of single story cottages with zero-barrier entries), constructing a porch railing (which would not be necessary if the city allowed the home to be constructed at grade), 3" window trim on all sides, and minimum dimensional requirements for front porches. However, my personal favorite is a requirement to provide 15% window coverage on all street-facing walls. We estimate the cost to comply with the 15% window requirement has the potential to add as much as \$5,000 to the cost of affected units. The requirement will also wreak havoc on the cottages' thermal envelopes, which will result in increased energy consumption and cause owner's/occupants to incur higher utility bills to heat and cool the cottages. We estimate the total cost to comply with the city's architectural design standards will be approximately \$10,000 for units that are not street facing and \$15,000 to \$17,00 for units that are street facing.

All in, the requirements city staff has plainly stated they intend to impose on this project will unnecessarily increase the cost to construct each cottage unit approximately \$21,000 and as much as \$28,000. As we have told staff on multiple occasions, this is not what the legislature intended when it enacted HB 2001.

We appreciate your offer to discuss these matters with us as conveyed by Mark Kyle. I am presently responding to an incomplete notice the city returned to us requesting additional materials and information related to the annexation and Type I design review applications we have submitted for this project. Otherwise, I am generally available at your convenience next week.

Thank you for your time and assistance with this matter.

Bryan

**Bryan Cavaness**  
**General Counsel**  
**Land Development Manager**



8840 SW Holly Lane  
Suite 200  
Wilsonville, Oregon 97070  
CCB No. 203562

Mobile: 503.332.6699  
E-Mail: [bryan@staffordlandcompany.com](mailto:bryan@staffordlandcompany.com)

[staffordlandcompany.com](http://staffordlandcompany.com) | [staffordhomesandland.com](http://staffordhomesandland.com)

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## Colin Cortes

---

**From:** Bryan Cavaness <bryan@staffordlandcompany.com>  
**Sent:** Friday, June 2, 2023 10:21 AM  
**To:** EDGING Sean \* DLCD  
**Cc:** STUCKMAYER Ethan \* DLCD  
**Subject:** RE: Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy  
**Attachments:** Brown St - Annexation Application.docx; Brown Street - Cottage Application Narrative..docx; Incomplete Response - File No. ANX 23-03;DR 23-04; ZC 2303.docx; anx2303\_letter\_of\_incompleteness\_2023-05-10\_fin\_w\_encloses.pdf

Original copies of relevant documents are attached. Thank you, again, for taking time to look into this.

The incomplete response is not finalized and I am working on a street adjustment request staff referenced. I also need to make changes to the narrative to address some of staff's requests. I will provide a copy of the final documents for both.

Also have to yet to get a response from PGE on the street lighting matter staff continues to insist on. PGE is frustrated with the city as well so far as the city's demands to underground existing power and install new streetlights.

I am generally available all day. Please feel free to call if you have any questions.

Bryan

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**General Counsel**  
**Land Development Manager**



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**Subject:** RE: Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

Good morning Bryan,

I'll have a bit of time today to dive into the details on this. Would you mind sending me the documents outlined below? That will help my review!

Thank you!



**Sean Edging**

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Thank you, Sean.

I can provide a copy of the middle housing standards, the design standards, our initial application, staff's incomplete notice, and our response to the incomplete notice. That should provide you with good points of reference. I will forward the materials to you in one batch after I complete our response to the city's incomplete notice.

Thank you for your time and attention to this matter. I am available at your convenience to answer any questions you may have.

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Applicant: Stafford Homes & Land, LLC  
Attn: Bryan Cavaness & Maxwell Root  
8840 SW Holly Ln  
Suite 200  
Wilsonville, OR 97070  
Email: bryan@staffordlandcompany.com  
max@staffordlandcompany.com

Request: Type IV Island Annexation

Address 1025 Brown Street  
Marion County, OR

Nearest Intersection: Brown Street / Comstock Avenue

Tax Lot 05 1W 18C 001200  
Tax ID No. APN 513478

Size: 1.43 Acres

County Current Zoning: UT-20 Marion County

City Comprehensive Plan: Low Density Residential

City Zoning District: Residential Single Family (RS)

City Overlay District: None.

Current Use: Single Family Residential – Abandoned

Adjacent Zoning: North - Residential Single Family (RS)  
East – Residential Single Family (RS)  
South - West side of Brown: Residential Single Family (RS)  
East side of Brown: Unincorporated Marion County  
West – Residential Single Family (RS)

Pre-Application Conference: July 13, 2022 - PRE 22-29

## **I. Request**

This application requests the Woodburn City Council to annex a 1.43-acre area of land located at 1025 Brown Street (“the Property”) into the city of Woodburn’s corporate limits in the manner allowed by ORS 222.125 and Section 5.04.01 of the Woodburn Development Ordinance.

A legal description and map of the territory to be annexed is attached as **Exhibit 1**. A Certification of Legal Description and Map for the territory to be annexed executed by the Oregon Department of Revenue is attached as **Exhibit 2**.

Stafford Homes & Land, LLC, an Oregon limited liability company (“Stafford”), is the sole owner of the Property that is the subject of this annexation petition. A copy of a recorded deed that documents Stafford’s sole ownership of the Property is attached as **Exhibit 3**. A resolution of the members of Stafford Homes & Land, LLC that authorizes this annexation petition and the execution of all documents that may be necessary and required to accomplish the annexation is attached as **Exhibit 4**.

The Property is vacant and the territory to be annexed contains no electors. A Certification of Registered Voters executed by the Marion County Elections Office is attached as **Exhibit 5**.

An executed Petition for Annexation by Consent required by ORS 222.125 and written Waiver of Time Limit imposed by ORS 222.173 is attached as **Exhibit 6**.

## **II. Description of Property and Existing Conditions.**

The property to be annexed is located at 1025 Brown Street (the “**Property**”). The nearest intersections are Brown Street and Comstock Avenue to the north and Brown Street and Tulip Avenue to the south. The Property is generally described as Tax Lot 1200 of Marion County Assessor’s Map Township 5, Range 1 West, Section 18 C. The Property’s Tax ID No. is APN 513478. The Property contains approximately 1.43 acres. A legal description and a boundary map for the Property is attached as **Exhibit 1**.

The Marion County zoning map currently designates the Property’s zoning as Urban Transition with a 20-acre minimum lot size (UT-20).

The Woodburn Comprehensive Plan designates the Property for Low Density Residential use. The Property is zoned Residential Single Family (RS). The Property is not within a zoning overlay district. The minimum residential density in the RS zone is 5.2 units per acre. Under existing RS zoning, the Property’s minimum planned residential density is 7 residential dwellings ( $5.2 * 1.43 = 7.4$ ).

The Property previously supported a single residential structure and a detached 2-car garage. The residential structure and the detached garage were recently removed from the Property. The Property is otherwise unimproved.

Zoning and current uses of adjoining properties are as follows:

North - Residential Single Family (RS)/detached single-family residential homes;

East - Residential Single Family (RS)/detached single-family residential homes;

South - West side of Brown Street: Residential Single Family (RS)/detached single-family residential homes; East side of Brown Street: Unincorporated Marion County (UT-20), a single-family residential structure with several accessory structures;

West - Residential Single Family (RS)/ detached single-family residential homes.

The Property's frontage that abuts Brown Street measures approximately 391 feet. The existing public right-of-way measures 36 feet from the centerline on the east side of Brown Street and 30 feet on the west side of Brown Street. The right-of-way on the west side of the Brown Street that abuts the Property is presently improved with a 17-foot pavement section measured from centerline to the face of curb (which allows for a 12-foot travel lane and a 5-foot bike lane), a 6-foot planter strip, a 6-foot sidewalk, and a 1-foot section between the back of the sidewalk and the property line. No additional right-of-way dedication or improvements are necessary or required to safely develop the Property consistent with its planned residential use and density following annexation.

Sanitary sewer service is presently available to the Property via an 8-inch sanitary sewer main in Brown Street. The existing 8-inch sanitary sewer has capacity available to serve the Property at its planned residential use and density following annexation.

Water service is presently available to the Property via an 8-inch water main in Brown Street. The existing 8-inch water line has capacity available to serve the Property at its planned residential use and density following annexation.

Stormwater service is presently available to the Property via an existing stormwater line in Brown Street. The existing stormwater line has capacity available to serve the Property at its planned residential use and density following annexation.

A Service Provider Letter issued by the city of Woodburn public works department that documents existing public right-of-way conditions and the availability of existing public sanitary sewer, water, and stormwater services that immediately available with capacity to serve the Property upon annexation is attached as **Exhibit 7**.

Electric power, natural gas, and communication utility services are presently available to serve the Property from an existing public utility easement that abuts the Property and the Brown Street right-of-way.

A site plan that documents the Property's existing conditions, including existing right-of-way conditions, existing available public water, sanitary sewer, stormwater, traffic, bicycle, and pedestrian services is attached as **Exhibit 8**.

The Woodburn Fire District presently provides service to the Property and other existing residential uses in the immediate surrounding area. A Service Provider Letter issued by the Woodburn Fire District is attached as **Exhibit 9**.

The Woodburn School District presently provides public education services to the Property and other existing residential uses in the immediate surrounding area. A Service Provider Letter issued by the Woodburn School District is attached as **Exhibit 10**.

### **III. Annexation Criteria**

#### **WDO 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.*

**Applicant's Response:** This written narrative and the accompanying exhibits demonstrate that this annexation petition complies with applicable requirements of Oregon's statewide planning goals, the city of Woodburn's acknowledged comprehensive plan, and the 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. This provides the city an opportunity to understand the proposed annexation and an opportunity to provide information on the likely impacts, limitations, requirements, approval standards, and other information that may affect the proposal.*

**Applicant's Response:** Applicant participated in a pre-application conference with city staff to discuss its intention to annex the property on Wednesday, July 13, 2022. City of Woodburn File No. PRE 22-29.

#### **C. Criteria:**

**1. Compliance with applicable Woodburn Comprehensive Plan goals and policies regarding annexation.**

**Applicant's Response:** The city of Woodburn Comprehensive Plan sets forth goals and policies that are applicable to annexations in Volume I, Section G, Annexation Goals and Policies, relevant portions of which are addressed below:

#### **Goals**

**G-2. The goal is to guide the shape and geographic area of the City within the urban growth boundary so the City limits:**

**(a) Define a compact service area for the City;**



*(b) Reflect a cohesive land area that is all contained within the City; and*

*(c) Provide the opportunity for growth in keeping with the City's goals and capacity to serve urban development.*

**Applicant's Response:** This is an "island" annexation. The Property is within the City's Urban Growth Boundary and is surrounded by the city of Woodburn's municipal boundary to the north, south, east, and west. The requested annexation will not result in an outward expansion of the city's existing municipal corporate limits, it will not require an expansion of the city's current service area, and it will not require the extension or expansion of any new public water, sanitary sewer, stormwater, or transportation infrastructure services.

### *Policies*

*G-2.1 For each proposed expansion of the City, Woodburn shall assess the proposal's conformance with the City's plans, and facility capacity and assess its impact on the community.*

**Applicant's Response:** A Service Provider Letter issued by the city of Woodburn public works department that documents existing public right-of-way conditions and existing sanitary sewer, water, and stormwater services are presently available with capacity to serve the Property upon annexation is attached as **Exhibit 7**.

The Woodburn Fire District provides emergency fire service to the Property and other existing residential uses in the surrounding area. A Service Provider Letter issued by the Woodburn Fire District is attached as **Exhibit 9**.

The Woodburn School District provides public education services to the Property and other existing residential uses the surrounding area. A Service Provider Letter issued by the Woodburn School District is attached as **Exhibit 10**.

The Property's Brown Street frontage measures approximately 391 feet. The existing right-of-way measures 36 feet from the centerline on the east side of Brown Street and 30 feet on the west side of Brown Street. The west side of the Brown Street right-of-way is presently improved with a 17-foot pavement section measured from centerline to the face of curb (which allows for a 12-foot travel lane and a 5-foot bike lane), a 6-foot planter strip, a 6-foot sidewalk, and a 1-foot section between the back of the sidewalk. The existing right-of-way improvements provide adequate safety for vehicle, bicycle, and pedestrian movements. No additional right-of-way dedication or improvements are necessary or required to safely develop the Property consistent with its planned residential use and density following annexation.

Sanitary sewer service is presently available to the Property via an existing 8-inch sewer main in Brown Street. The existing 8-inch sanitary sewer has capacity available to serve the Property at its planned residential use and density following annexation. **Exhibit 7**.

Water service is presently available to the Property via an existing 8-inch water main in Brown Street. The existing 8-inch water line has capacity available to serve the Property at its planned residential use and density following annexation. **Exhibit 7.**

Stormwater service is presently available to the Property via an existing public stormwater line in Brown Street. The existing stormwater line has capacity available to serve the Property at its planned density following annexation. **Exhibit 7.**

Electric power, natural gas, and communication utility services are presently available to serve the Property from an existing 10-foot public utility easement that abuts the Property and the Brown Street right-of-way.

***G-2.2 Woodburn will achieve more efficient utilization of land within the City by:***

***(a) Incorporating all of the territory within the City limits that will be of benefit to the City.***

**Applicant's Response:** See Applicant's response to Goal 2, above.

***(b) Providing an opportunity for the urban in-fill of vacant and underutilized property.***

**Applicant's Response:** The Property is presently vacant and its proximity to existing public infrastructure services and franchise utilities make it "shovel ready" for the creation of needed housing.

***(c) Fostering an efficient pattern of urban development in the City, maximizing the use of existing City facilities and services, and balancing the costs of City services among all benefited residents and development.***

**Applicant's Response:** See Applicant's response to Goal 2 and Policy G-2.1, above. See also, Exhibit 7.

***(d) Requiring master development plans for land within Nodal Development Overlay or Southwest Industrial Reserve overlay designations prior to annexation. Master plans shall address street connectivity and access, efficient provision of public facilities, and retention of large parcels for their intended purpose(s).***

**Applicant's Response:** The Property is not subject to a Nodal Development Overlay or the Southwest Industrial Reserve Overlay.

***G-2.3 Woodburn will use annexation as a tool to guide:***

***(a) The direction, shape and pattern of urban development;***

*(b) Smooth transitions in the physical identity and the development pattern of the community; and*

*(c) The efficient use and extension of City facilities and services.*

**Applicant's Response:** This is an "island Annexation. See Applicant's response to Goal 2 and Policy G-2.1, above. See also, **Exhibit 7**.

**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.*

**Applicant's Response:** This is an "island" annexation. See Applicant's response to Goal 2 and Policy G-2.1, above. See also, **Exhibit 7**.

**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;*

**Applicant's Response:** The Property is a county "island" that is contiguous to the city on four sides. This criterion is met.

*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;*

**Applicant's Response:** The Comprehensive Plan Land Use Map designates the Property as Low Density Residential. The City's Housing Needs Analysis dated December 9, 2019, included the Property in the city's Buildable Lands Inventory and the Property has historically been designated Low-Density Residential. This application does not propose to change density or zoning designations the Property is presently subject to.

This petition for annexation represents only a small portion of the land the City has designated for residential use within the city's urban growth boundary. The 2019 Housing Needs Analysis projects a future need for 1,563 new residential dwellings, which include single-family detached dwellings, manufactured homes, and mobile homes. Upon annexation, it is reasonable to expect that the Property may be subdivided to create seven new single-family residential lots, which represents approximately 0.038 percent of the City's estimated need for

single-family detached dwellings. There is no known oversupply of land zoned for low density residential use in the City’s existing boundary; therefore, approval of the requested annexation will not result in more than a 5-year supply land zoned for low density residential use in the City. Furthermore, the requested annexation will allow the City to meet the needs it identified in the Housing Needs Analysis and Buildable Lands Inventory to make land available for needed housing.

***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;***

**Applicant’s Response:** The Property is presently served by existing public transportation (including bicycle and pedestrian improvements), water, sanitary sewer, and stormwater conveyance facilities, each with existing service capacities. The Property will not require any new capital improvements to allow for future development activities that are consistent with the Property’s planned residential use and density.

***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.***

**Applicant’s Response:** The Property’s frontage that abuts Brown Street measures approximately 391 feet. The existing public right-of-way measures 36 feet from the centerline on the east side of Brown Street and 30 feet on the west side of Brown Street. The west side of the Brown Street right-of-way is presently improved with a 17-foot pavement section measured from centerline to the face of curb (which allows for a 12-foot travel lane and a 5-foot bike lane), and a 6-foot planter strip, a 6-foot sidewalk, and a 1-foot section between the back of the sidewalk and the existing property line (which provides more than adequate safety for pedestrian movements). No additional right-of-way dedication or improvements are necessary or required to safely develop the Property consistent with its planned residential use and density following annexation.

***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.***

**Applicant’s Response:** Based on the population growth forecasts for the Woodburn UGB (20-year population growth of 8,845 people) and housing and demographic characteristics, the baseline housing needs forecast plans for 3,012 net new dwelling units. A variety of housing is needed over the next 20 years, including 1,322 owner-occupied dwellings and 1,690 renter-occupied dwellings. *City of Woodburn Housing Needs Analysis*, Adopted December 8, 2019, Ordinance No. 2576, Page 46. The Property is a county “island” and its proximity to

existing public infrastructure and franchise utilities make it “shovel ready” for the creation of needed housing as identified in the City’s 2019 Housing Needs Analysis.

***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.***

**Applicant’s Response:** This criterion is not applicable because the area proposed to be annexed does not contain any lands that are zoned for commercial or industrial uses.

***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.***

**Applicant’s Response:** Applicant has initiated this annexation petition for a single property and this application represents the written consent of 100 percent of the owners. There are no resident electors within the territory proposed to be annexed.

***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.***

**Applicant’s Response:** This annexation request concerns one parcel and Applicant is the sole property owner. This criterion/requirement is not applicable to this application.

***3. The City may initiate annexation of an island (ORS 222.750), with or without the consent of the property owners or the resident electors. An island is an unincorporated***

*territory surrounded by the boundaries of the City. Initiation of such an action is at the discretion of the City Council.*

**Applicant's Response:** This criterion is not applicable.

***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.***

**Applicant's Response:** The Woodburn Comprehensive Plan designates the Property as Low Density Residential. Applicant requests the city council to zone the Property Residential Single Family (RS) upon annexation, which is consistent with the zoning of the surrounding area. Applicant is not requesting the city council to re-designate the Property for high density residential or other non-residential use upon annexation.

***F. The timing of public improvements is as follows:***

***1. Street dedication is required upon annexation.***

**Applicant's Response:** A requirement to dedicate property as a condition of approving Applicant's request to annex the Property is an exaction of land that is subject to the requirements of *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 120 L Ed 2<sup>nd</sup> 304 (1994). See, *Carver v. City of Salem*, 42 Or LUBA 305, n. 16 (2002) (Dedications imposed as a condition approving an annexation request are subject to *Dolan's* rough proportionality requirement.) *Dolan* requires that exactions be "related both in nature and extent to the impact of the **proposed development**." *Dolan*, 512 US at 391. (Footnote omitted; emphasis added.)

No physical development is proposed with this annexation application. Except for replacement of a single residential dwelling and detached garage that previously existed on the Property, which would result in no new or increased impacts, the Property cannot be physically developed without further land use review, e.g., land use applications that request to partition or subdivide the Property or construct more than one residential dwelling on the site. "In the absence of any ability to physically develop the Property without further land use review, no exactions pass constitutional scrutiny." *Dressel v. City of Tigard*, \_\_\_ Or LUBA \_\_\_ 2020 (LUBA No. 2019-080, March 5, 2020) (Slip op. at page 8.)

***2. Dedication of public utility easements (PUE) is required upon annexation.***

**Applicant's Response:** The Property is subject to an existing public utility easement. The foregoing notwithstanding, as discussed immediately above, there is no constitutional basis to require Applicant to grant a public utility easement over the Property as a condition of approving this annexation request because no physical development of the Property is proposed and Applicant's ability to physically develop the Property is dependent on further land use review.

***3. Street improvements are required upon development.***

**Applicant's Response:** No development is proposed in connection with this petition to annex the Property. Applicant acknowledges that it may be required to construct frontage improvements the city has authority to require pursuant to applicable state law and administrative rules and that are roughly proportional to the impacts that will result from any future development activity Applicant may propose to construct on the Property.

***4. Connection to the sanitary sewer system is required upon development or septic failure.***

**Applicant's Response:** Applicant acknowledges it will be required to connect any structures constructed on the Property to the city's public sanitary sewer system.

***5. Connection to the public water system is required upon development or well failure.***

**Applicant's Response:** Applicant acknowledges it will be required to connect any structures constructed on the Property to the city's public water system.

***6. Connection to the public storm drain system is required upon development.***

**Applicant's Response:** Applicant acknowledges it will be required to connect all structures constructed on the Property to the city's public storm drainage system.

**IV. Conclusion**

Applicant has demonstrated compliance with the criteria and standards described in WDO 5.04.01 for annexation of land into the city of Woodburn and request the City Council to approve this application.

Applicant: Stafford Homes & Land, LLC  
Attn: Bryan Cavaness & Max Root  
8840 SW Holly Ln  
Suite 200  
Wilsonville, OR 97070  
Email: bryan@staffordlandcompany.com  
max@staffordlandcompany.com

Request: Type I Administrative Review  
Middle Housing Cottage Cluster Site Plan Review

Address 1025 Brown Street  
Woodburn, OR

Nearest Intersection: Brown Street / Comstock Avenue

Tax Lot 05 1W 18C 001200  
Tax ID No. APN 513478

Size: 1.43 Acres

Current Zoning: UT-20 Marion County

Comprehensive Plan: Low Density Residential

Zoning District: Residential Single Family (RS)

Overlay District: None.

Current Use: Single Family Residential – Vacant

Adjacent Zoning: North - Residential Single Family (RS)  
East – Residential Single Family (RS)  
South - West side of Brown: Residential Single Family (RS)  
East side of Brown: Unincorporated Marion County  
West – Residential Single Family (RS)

Pre-Application Conference: July 13, 2022 - PRE 22-29



## I. Request

This application requests Type I Administrative Review for a 20-unit middle housing cottage cluster development on an existing lot of record that is planned and zoned for low density residential use.

## II. Description of Existing Conditions

The subject property is located at 1025 Brown Street (the “**Property**”). The nearest intersection is Brown Street and Comstock Avenue. The Property is generally described as Tax Lot 1200 of Marion County Assessor’s Map Township 5, Range 1 West, Section 18 C. The Property’s Tax ID No. is APN 513478. The Property contains approximately 1.43 acres. A legal description and a boundary map for the Property is attached as **Exhibit 1**.

The Woodburn Comprehensive Plan designates the Property for Low Density Residential use. The Property is zoned Residential Single Family (RS). The Property is not within a zoning overlay district. The minimum residential density in the RS zone is 5.2 units per acre. The Property’s minimum planned residential density is 7 dwelling units ( $5.2 * 1.43 = 7.4$ ).

The Property previously supported a single residential dwelling and a detached garage. The residential structure and the detached garage were both recently removed from the Property. The Property is otherwise unimproved.

Zoning and current uses of adjoining properties are as follows:

North - Residential Single Family (RS)/detached single-family residential homes;

East - Residential Single Family (RS)/detached single-family residential homes;

South - West side of Brown: Residential Single Family (RS)/detached single-family residential homes; East side of Brown: Unincorporated Marion County (UT-20), single-family residential structure with several accessory structures; and

West - Residential Single Family (RS)/ detached single-family residential homes.

The Property’s frontage that abuts Brown Street measures approximately 391 feet. The existing public right-of-way measures 36 feet from the centerline on the east side of Brown Street and 30 feet on the west side of Brown Street. The Brown Street right-of-way that abuts the Property is presently improved with a 17-foot pavement section measured from centerline to the face of curb (which allows for a 12-foot travel lane and a 5-foot bike lane), a 6-foot planter strip, a 6-foot sidewalk, and a 1-foot section between the back of the sidewalk and the existing property line. The existing right-of-way that abuts the Property provides direct and unrestricted access to the Property that meets adopted emergency vehicle access standards.

Sanitary sewer service is presently available to the Property via an 8-inch sewer main in Brown Street. The existing 8-inch sanitary sewer has capacity available to serve the Property under proposed use and density .

Water service is presently available to the Property via an 8-inch water main in Brown Street. The existing 8-inch water line has capacity available to serve the Property under the proposed use and density.

Stormwater service is presently available to the Property via an existing stormwater line in Brown Street. The existing stormwater line has capacity available to serve the Property under the proposed use and density. An engineer’s stormwater report for the Project is attached as **Exhibit 13**.

Electric power, natural gas, and communication utility services are presently available to serve the Property from an existing public utility easement that abuts the Brown Street right-of-way.

A site plan that documents the Property’s existing conditions, including existing right-of-way conditions, existing available public water, sanitary sewer, stormwater, traffic, bicycle, and pedestrian services, and existing available franchise utility services is attached as **Exhibit 2**.

A Service Provider Letter issued by the city of Woodburn public works department that documents existing sanitary sewer, water, and stormwater services that are immediately available with capacity to serve the Property is attached as **Exhibit 3**.

### **III. Review Criteria**

#### **A. Oregon Revised Statutes**

The following Oregon Revised Statutes apply to this application:

ORS 197.303(1) Needed Housing  
ORS 197.307(4) and (6) Effect of Need for Certain Housing in Urban Growth Areas  
ORS 197.758(5) Development of Middle Housing

#### **B. Oregon Administrative Rules**

The following administrative rules adopted by the Oregon Department of Land Conservation and Development apply to this application:

OAR 660-008-0015(1), Clear and Objective Standards  
OAR 660-46-00010, Applicability of Middle Housing Rules;  
OAR 660-46-00020(2), (4), (8), (12), (15) and (16), Definitions;  
OAR 660-46-0030, Implementation of Middle Housing Ordinance;  
OAR 660-46-0040, Compliance;  
OAR 660-46-0205, Applicability of Middle Housing in Large Cities;

OAR 660-46-0210, Provisions Applicable to Middle Housing in Large Cities;  
OAR 660-46-0215, Permitted Uses and Approval Process;  
OAR 660-46-0220, Middle Housing Siting Standards in Large Cities; and  
OAR 660-46-0225, Middle Housing Design Standards in Large Cities.

### **C. Woodburn Development Ordinance**

The following sections of the Woodburn Development Ordinance (“WDO”) apply to this application:

#### **WDO 5.01.02 Type I Administrative Decisions - Residential Design Review**

This application seeks nondiscretionary, Type I administrative review of land use, zoning, and specified use standards contained in WDO Section 2 and development guidelines and standards set forth in WDO Section 3 that apply to this request to construct a 20-unit, middle housing cottage cluster development on the Property. Per ORS 197.307(4), the City must “apply only clear and objective standards, conditions and procedures,” and the “standards, conditions and procedures may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.” Also, per ORS 197.758(5), regulations the City applies to this application concerning siting and design of the proposed middle housing cottage cluster project must not, “individually or cumulatively, discourage the development of [middle housing] through unreasonable cost or delay.”

#### ***WDO 2.02 Residential Zones***

**Applicant’s Response:** The Property is zoned Residential Single Family (RS). WDO Table 2.02A states that middle housing cottage cluster projects are Special Permitted Uses that are subject to development standards set forth in WDO 2.07.21. WDO 2.07.21 incorporates site development standards described in WDO Table 2.02B that apply to cottage cluster projects. The Project’s compliance with the development standards described in WDO 2.07.21 and WDO Table 2.02B are discussed in Applicant’s response to WDO 2.07.21, below.

#### ***WDO 2.05 Overlay Districts***

**Applicant’s Response:** The Property is not subject to an Overlay District created by WDO 2.05.

#### ***WDO 2.07 Special Uses***

##### ***WDO 2.07.01 General Provisions***

###### ***A. Application***

***1. Special uses are subject to specific development standards. These standards are non-discretionary, so special review of a proposed development is not required. The standards contained in this Section apply to Special Uses.***

*2. The standards contained in this Section may be modified through the Conditional Use process.*

***B. Development Requirements***

*Unless specifically modified by the provisions of this Section, special uses are also subject to the development requirements of the underlying zone. Where the special use standard imposes a more restrictive standard, the special use standard shall apply.*

**Applicant's Response:** WDO 2.07.01 does not state any development standards, conditions, or procedures that apply to this application.

***WDO 2.07.21 Cottage Cluster***

***A. Purpose. The City permits cottage cluster housing in all residential zones to meet the following objectives to:***

- 1. Comply with Oregon House Bill 2001 (HB 2001; 2019) and OAR 660-046.***
- 2. Provide a variety of housing types that respond to changing household sizes and ages, including but not limited to retirees, small families, and single-person households.***
- 3. Encourage creation of more usable open space for residents of the development through flexibility in density and lot standards.***
- 4. Ensure that the overall size and visual impact of the cluster development be comparable to standard residential development, by balancing bulk and mass of individual residential units with allowed intensity of units.***
- 5. Provide centrally located and functional common open space that fosters a sense of community and a sense of openness in cottage cluster developments.***
- 6. Ensure minimal visual impact from vehicular use and storage areas for residents of the cottage cluster developments as well as adjacent properties.***

***B. Applicability. The standards of this section apply to all cottage cluster developments in all residential zones. Where there is a conflict between a cottage cluster provision and a provision in WDO 3.07, the cottage cluster provision shall supersede.***

**Applicant's Response:** Large Cities may adopt and apply only clear and objective standards, conditions, and procedures regulating the development of Middle Housing consistent with the requirements of ORS 197.307. See OAR 660-046-0215. WDO 2.07.21(A) and (B) do not state any clear and objective development standards, conditions, or procedures that are relevant or apply to this application.

***C. Development Standards.***

***1. Minimum Lot Size and Dimensions: Per the base zoning district per Chapter 2.02, and if and where an overlay district is applicable, 2.05.***

**Applicant's Response:** The Property is zoned Residential Single Family (RS). The minimum lot size in the RS Zone for cottage clusters is 7,000 square feet. The Property contains approximately 1.43 acres. The minimum lot width for interior lots in the RS zone is 60 feet. The Property's frontage that abuts Brown Street measures approximately 390 feet. The minimum average lot depth requirement for lots in the RS zone is 90 feet. The Property's average lot depth is approximately 155 feet. The minimum street frontage for lots in the RS Zone is 40 feet. As previously noted, the Property's frontage that abuts Brown Street measures approximately 390 feet. The Property complies with the minimum lot size and dimension standards for the RS Zone.

***2. Maximum Density. Density maximums do not apply to cottage clusters.***

***3. Maximum Lot Coverage. Maximum lot coverage standards do not apply to cottage clusters.***

***4. Setbacks and Building Separation.***

***a. Setbacks. Cottage clusters shall meet the minimum and maximum setback standards as specified in Chapter 2.02, and if and where applicable, 2.05.***

**Applicant's Response:** All cottage units comply with the 5-foot minimum side yard setback standard. All cottage units comply with the 10-foot minimum average rear yard setback standard. All cottage units that abut Brown Street comply with the 10-foot minimum street setback standard. See **Exhibit 2**.

***b. Building Separation. Cottages shall be separated by a minimum distance of 6 feet. The minimum distance between all other structures, including accessory structures, shall be in accordance with state building code requirements.***

**Applicant's Response:** All cottages are separated by a minimum distance of 6 feet. The Project does not propose any community buildings, garages, carports, or other accessory structures. **Exhibit 2**.

***5. Building Footprint. Cottages shall have a maximum building footprint of 900 square feet per OAR 660-046-0020(2).***

**Applicant's Response:** The Project proposes to construct two 2-story cottage types. Type I cottages will have a footprint of 600 square feet. See **Exhibit 4**. Type II cottages will also have a building footprint of 600 square feet. See **Exhibit 5**.

**6. Average Dwelling Size.** *The maximum average gross floor area (GFA) for a cottage cluster is 1,400 square feet per dwelling. Community buildings shall be included in the average GFA calculation for a cottage cluster.*

**Applicant's Response:** Type I cottages will have a gross floor area of 771 square feet. **Exhibit 4.** Type II cottages will have a gross floor area of 886 square feet. **Exhibit 5.** No community buildings are proposed.

**7. Building Height.** *The maximum building height for all structures is 25 feet or two (2) stories, whichever is greater.*

**Applicant's Response:** Both Type I and Type II cottages will be 22 feet 11 inches high measured from the finish grade to the mid-point of the highest section of the roof line. **Exhibit 4 and Exhibit 5.**

**8. Off-Street Parking.** *Per Table 3.05A.*

**Applicant's Response:** OAR 660-046-0220(4)(f)(A) does not permit Large Cities to require more than one off-street parking space per dwelling unit in a Cottage Cluster Project. The Project proposes to construct 20 cottage units on the Property. The Project's shared parking facility provides 20 off-street parking spaces. **Exhibit 2.**

**D. Design Standards.** *Cottage clusters shall meet the design standards in subsections (1) through (8).*

**1. Cottage Orientation.** *Cottages shall be clustered around a common courtyard, meaning they abut the associated common courtyard or are directly connected to it by a pedestrian path, and shall meet the following standards (see Figure 2.07A):*

*a. Each cottage within a cluster shall either abut the common courtyard or shall be directly connected to it by a pedestrian path.*

**Applicant's Response:** The front entries of 14 of the 20 cottage units abut a common courtyard that measures not less than 15 feet wide at its narrowest point. The front entries of the 6 remaining cottage units abut a pedestrian pathway that is not less than 6 feet wide and directly connects to a common courtyard, shared parking facilities, and existing pedestrian and bicycle connections in the adjacent Brown Street right-of-way. The Project meets the cottage orientation design standard described in WDO 2.07.21(D)(1)(a). **Exhibit 2.**

*b. A minimum of 50 percent of cottages within a cluster shall be oriented to the common courtyard and shall:*

*(1) Have a main entrance facing the common courtyard;*

*(2) Be within 10 feet from the common courtyard, measured from the facade of the cottage to the nearest edge of the common courtyard; and*

*(3) Be connected to the common courtyard by a pedestrian path.*

**Applicant's Response:** The cottage cluster development contains 20 units. The primary entrances of 14 units (70%) are oriented towards a common courtyard. The main entrances of all cottage units face a common courtyard or a pedestrian pathway with a direct connection to a common courtyard. The primary entrances of all cottages are not less than 10 feet from a common courtyard or pedestrian path that directly connects to a common courtyard, measured the nearest edge of a courtyard or pedestrian path. The Project meets the cottage orientation design standard described in WDO 2.07.21(D)(1)(b). **Exhibit 2.**

*c. Cottages within 20 feet of a street property line may have their entrances facing the street.*

**Applicant's Response:** The site plan does not propose to orient the primary front entrance of any cottages towards Brown Street. **Exhibit 2.**

*d. Cottages facing neither the common courtyard nor the street shall have their main entrances face a pedestrian path that is directly connected to the common courtyard.*

**Applicant's Response:** The primary front entrances of cottages that do not face onto a common courtyard face a hard-surfaced pedestrian path that is not less than 6 feet wide and is directly connected to a common courtyard and the shared common parking area. The Project meets the cottage entrance orientation design standard described in WDO 2.07.21(D)(1)(d). **Exhibit 2.**

**2. Common Courtyard Design Standards. Each cottage cluster shall share a common courtyard in order to provide a sense of openness and community of residents. Common courtyards shall meet the following standards (see Figure 2.07A):**

*a. The common courtyard shall be a single, contiguous area.*

*b. Cottages shall abut the common courtyard on at least two sides of the courtyard.*

*c. The common courtyard shall contain a minimum equal to 150 square feet per cottage within the associated cluster.*

*d. The common courtyard shall be a minimum of 15 feet wide at its narrowest dimension.*

*e. The common courtyard shall be developed with a mix of landscaping, lawn area, pedestrian paths, and/or paved courtyard area, and may also include recreational amenities. Impervious elements of the common courtyard shall be maximum 75 percent of the common courtyard total area.*

*f. Pedestrian paths shall be included in a common courtyard. Paths that are contiguous to a courtyard shall count toward the courtyard minimum dimension and area. Parking areas, minimum setbacks, driveways, and drive aisles do not qualify as part of a common courtyard.*

**Applicant's Response:** The Project proposes to construct 20 cottage units, which will require a total minimum courtyard area of 3,000 square feet (20 \* 150 sq ft = 3,000 sq ft). Given the Property's odd, non-standard, triangular shape, the most efficient development pattern is the creation of three cottage groupings, each with its own separate courtyard area.

Courtyard 1 contains approximately 1,811 square feet and has a minimum width of 25 feet. Courtyard 2 is a triangular shaped feature that contains approximately 1,784 square feet and has a mid-point width of 48 feet. Courtyard 3 contains 2,787 square feet and has a minimum width of 35 feet. The total combined area of Courtyards 1, 2, and 3 is 6,382 square feet, which is 213% of the minimum required courtyard area for 20 cottage dwellings.

A conceptual landscape plan for the Project is attached as **Exhibit 6**. The courtyard areas will be developed with a mix of lawn areas, landscape plantings, open patios fencing, pedestrian paths. Impervious elements of the individual common courtyards will not exceed 75 percent of the individual common courtyard areas.

The Project meets the common courtyard design standards described in WDO 2.07.21(D)(2).

**3. Community Buildings.** *Cottage cluster projects may include community buildings for the shared use of residents that provide space for accessory uses such as community meeting rooms, guest housing, exercise rooms, day care, or community eating areas. Community buildings shall meet the following standards:*

*a. Each cottage cluster is permitted one community building, which shall count towards the maximum average GFA.*

*b. A community building that meets the Chapter 1.02 definition of a dwelling unit shall meet the maximum 900 square foot footprint limitation that applies to cottages, unless a covenant is recorded against the property that (1) states that the structure is not a legal dwelling unit and will not be used as a primary dwelling and (2) conforms to Director administrative specifications.*



*Community buildings are not the same as community club buildings and facilities as Section 2.07.04 describes in the context of conventional residential subdivisions and planned unit developments.*

**Applicant's Response:** The requirements described in WDO 2.07.21(D)(3) are not applicable to this application because the Project does not propose to construct any community buildings.

**4. Pedestrian Access.**

*a. An accessible pedestrian path shall be provided that connects the main entrance of each cottage to the following:*

*(1) The common courtyard;*

*(2) Pooled parking or shared parking areas;*

*(3) Community buildings; and*

*(4) Boundary Street sidewalk, or, if such sidewalk neither exists nor is required, to the ROW boundary.*

*b. The pedestrian path shall be hard-surfaced and minimum width per Section 3.04.06C.*

**Applicant's Response:** Except as permitted by Design Standard CC described in WDO Table 3.07A, the Project provides hard-surfaced pedestrian paths with a minimum width of 6 feet that connect each cottage unit to the common courtyard, common parking areas, and the existing sidewalks that run the entire length of the Property's street frontage. The Project meets the pedestrian access requirements stated in WDO 2.07.21(D)(4) and WDO Table 3.07A. **Exhibit 2.**

**5. Architecture: Per 3.07.02.**

**Applicant's Response:** See Applicant's response to WDO Section 3.07.02, below.

**6. Parking Design (see Figure 2.07B).**

*a. Clustered parking. Off-street parking may be arranged in clusters, subject to the following standards:*

*(1) Cottage cluster projects with fewer than 16 cottages are permitted parking clusters of not more than 5 contiguous spaces.*

*(2) Cottage cluster projects with 16 cottages or more are permitted parking clusters of not more than eight 8 contiguous spaces.*

*(3) Parking clusters shall be separated from other spaces by at least 4 feet of landscaping.*

*(4) Clustered parking areas may be covered/sheltered.*

**Applicant's Response:** The Project proposes to construct 20 cottage units. A single common parking facility with 20 spaces will provide off-street parking for all 20 cottage units. The common parking facility will not have clusters of more than 8 contiguous parking spaces. Parking clusters will be separated by a landscaped area that is not less than 4 feet wide. The Project's parking area meets the design requirements stated in WDO 2.07.21(D)(6)(a). **Exhibit 2.**

*b. Parking location and access. The following two standards are not applicable along alleys or shared rear lanes:*

*(1) Off-street parking spaces and vehicle maneuvering areas shall not be located:*

*(a) Within 20 feet of any street property line;*

*(b) Between a street property line and the front facade of cottages located closest to the street property line.*

*(2) Off-street parking spaces shall not be located within 5 feet of any other property line, excepting property lines along alleys or shared rear lanes. Driveways and drive aisles shall not be located within 5 feet of other property lines except (A) along alleys or shared rear lanes or (B) Section 3.04 requires two adjoin such property lines to meet cross access or shared access standards.*

**Applicant's Response:** The off-street common parking facility will be set back a minimum of 20 feet from the Brown Street property line based on Brown Street's planned 72-foot right-of-way. No part of the common parking facility is located between the main front entry of a cottage unit and the Brown Street property line. No part of the common parking facility, including the driveway and drive aisles, is located within five feet of a rear or side yard property line. The Project meets the location and setback standards for parking areas described in WDO 2.07.21(D)(6)(b). **Exhibit 2.**

*c. Screening. Landscaping, fencing, or walls minimum 3 feet high, shall separate pooled parking or shared parking areas and parking structures from common courtyards and public streets.*

**Applicant's Response:** The conceptual landscape plan for the Project includes fencing or landscaping improvements a minimum of 3 feet high that screen the common parking area from the common courtyard area and the public street. The Project can meet the landscaping design standards for parking areas described in WDO 2.07.21(D)(6)(c). **Exhibit 6.**

*d. Garages and carports.*

*(1) Garages and carports (whether shared or individual) shall not abut common courtyards.*

*(2) Individual attached garages up to 200 square feet shall be exempt from the calculation of maximum building footprint for cottages.*

*(3) Individual detached garages shall be maximum 400 square feet GFA.*

*(4) Garage doors for attached and detached individual garages shall be maximum 20 feet in width.*

**Applicant's Response:** The Project does not propose to construct any garages or carports in the common parking area or to construct any garage or carport structures that will be attached or an accessory to individual cottage units. The standards and requirements stated in WDO 2.07.21(D)(6)(d) are not applicable to this application.

*7. Accessory Structures. Accessory structures shall be maximum 400 square feet GFA.*

**Applicant's Response:** The Project does not propose to construct any accessory structures. The standards and requirements stated in WDO 2.07.21(D)(7) are not applicable to this application.

*8. Existing Structures. On a lot or parcel to be used for a cottage cluster project, an existing detached single-family dwelling on the same lot at the time of proposed development of the cottage cluster may remain within the cottage cluster project area if the development meets the following provisions:*

*a. The existing dwelling may be nonconforming with the WDO as Section 1.04 allows.*

*b. The existing dwelling may be expanded up to the maximum height or the maximum building footprint per this Section 2.07.21; however, existing dwellings that exceed the maximum height and/or footprint per Chapters 1.04 and 2.02 shall not expand.*

*c. The GFA of the existing dwelling shall not count towards the maximum average GFA of a cottage cluster.*

*d. The existing dwelling shall be excluded from the calculation of orientation toward the common courtyard.*

**Applicant's Response:** The Property is presently vacant. The standards and requirements stated in WDO 2.07.21(D)(8) are not applicable to this application.

***WDO 3.01 Streets, Greenways and Other Off-Street Bicycle/Pedestrian Corridors, and Bus Transit***

***WDO 3.01.01 Applicability***

***A. Right-of-way standards apply to all public streets and public alleys.***

***B. Improvement standards apply to all public and private streets, public alleys, sidewalks, landscape strips, and on and off-street public bicycle pedestrian corridors. Standards do not exclude conformance with the public works construction code that the Public Works Department administers.***

***C. The Woodburn Transportation System Plan (TSP) designates the functional class of major thoroughfares and local streets.***

***D. This applies to all development as Section 1.02 defines, and is not limited to partitions, subdivisions, multi-family, commercial or industrial construction, or establishment of a manufactured dwelling or recreational vehicle park; however, a lesser set of standards applies to infill residential development of 4 or fewer dwellings and where no land division or Planned Unit Development is applicable, including construction of a single-family dwelling or placement of a manufactured dwelling on an infill lot. See Section 3.01.03C.2.***

**Applicant's Response:**

**I. A requirement to dedicate right-of-way and construct frontage improvements required to meet the City's current standard for Service Collector streets is unnecessary, impractical, and will create unsafe conditions.**

The Brown Street right-of-way section that abuts the Property presently measures 30 feet from the centerline. The right-of-way section is fully improved with pavement, curb, a six-foot planter strip, a six-foot sidewalk, and a one-foot section behind the sidewalk. **Exhibit 2.**

The right-of-way section south of the Property from Tulip Street to Vine Street is fully improved with curbs, planter strips, and sidewalks based on a prior 60-foot right-of-way standard. Requiring Applicant to dedicate 6 feet of additional right-of-way and reconstruct the existing frontage improvements to comply with the City's new standard for Service Collector streets would result in a zig-zag right-of-way alignment on west side of Brown Street that will create significant safety hazards for vehicle, bicycle, and pedestrian movements in the immediate area between Bridlewood and Vine. The City's only option to resolve the unsafe zig-zag condition would be for the City to expend funds and resources required to condemn 6 feet of additional right-of-way south of the Property and reconstruct 350 feet of existing and safely functioning transportation and pedestrian improvements, which would be cost prohibitive and

unreasonably intrusive into the side yards of existing dwellings on lots 65, 66, and 69 of the Boones Crossing subdivision that lie south of the Property.

Existing single-family homes constructed on lots 65, 66, and 93 of the Boones Crossing subdivision are setback approximately 10 feet from the existing right-of-way for Brown Street, which presumably complied with the street side yard setback standards that were in effect when the homes were constructed. **Exhibit 7.**

WDO Table 2.02G presently requires dwellings other than multiple-family and cottage dwellings to be set back a minimum of 13-feet from non-access street frontages. If the City initiated eminent domain proceedings to take 6-feet of property from the owners of lots 65, 66, and 93 and constructed frontage improvements required to comply with standards the City only recently adopted for Service Collector streets to match frontage improvements it has proposed for the Property, the side yard setbacks for Lots 65, 66, and 93 would be reduced to approximately 4 feet, which is less than the 5 foot minimum side yard setback standard Table 2.02B sets for interior side yards, and 9 feet less than the City’s current side yard setback requirement for street side yards. **More significantly, the required 10-foot public utility easement dedication would encroach 6 feet inside the foundations of the existing dwellings constructed on lots 65, 66, and 93.** Exhibit 7.

It would be impractical, highly disruptive, and an extraordinarily wasteful use of public funds and resources for the City to consider initiating eminent domain proceedings to take 6 feet of property from the owners of lots 65, 66, and 93 (which would necessarily include the cost of property taken plus substantial severance damages that would flow from livability impacts caused by the resulting substandard 4-foot street side yard setback), remove existing safe, functioning traffic, pedestrian, stormwater collection, and franchise utility improvements, and reconstruct approximately 350 feet of new frontage improvements necessary to bring a very small section of Brown Street into conformance with design standards the City only recently adopted for Service Collector streets.

## **II. Transportation infrastructure is not included in the definition of “Sufficient Infrastructure.”**

The requirements described in WDO 3.01.01 to construct frontage improvement that conform to current city standards for Service Collector streets are not applicable to Middle Housing projects, including this Cottage Cluster Project. OAR 660-046-0220(4) limits and restricts the scope of siting standards Large Cities may apply to Cottage Cluster Projects. Specifically, OAR 660-046-0220(4)(i) directs Large Cities to “work with an applicant for development [of Cottage Clusters] to determine whether Sufficient Infrastructure will be provided, or can be provided, upon submittal of a Cottage Cluster development application.

OAR 660-046-0020(16) defines “Sufficient Infrastructure” as the following levels of public services that are minimally required for development of middle housing projects, including cottage cluster projects:

- (a) Connection to a public sewer system capable of meeting established service levels;
- (b) Connection to a public water system capable of meeting established service levels;
- (c) Access via public or private streets meeting adopted emergency vehicle access standards to a city’s public street system; and
- (d) Storm drainage facilities capable of meeting established service levels for storm drainage.

OAR 660-046-0220(4) allows a Large City to condition approval of new a Cottage Cluster Project on a demonstrated availability of public sanitary sewer, water, and storm sewer services. OAR 660-046-0220(4) Also allows a Large City to condition approval of a new Cottage Cluster Project on a demonstration that the Cottage Cluster Project will have “[a]ccess via public or private streets meeting adopted emergency vehicle access standards to a city’s public street system.”

OAR 660-046-0220(4) does not authorize or permit a Large City to impose conditions of approval that require an applicant for a Cottage Cluster Project, or any other type of Middle Housing, to construct any public or private improvements that exceed the scope of improvements a Cottage Cluster Project may reasonably require to provide “[a]ccess via public or private streets meeting adopted emergency vehicle access standards to a city’s public street system.”

The Brown Street right-of-way section that abuts the Property is presently 66 feet wide. The right-of-way measures 30 feet from centerline on the west side of Brown Street and 36 feet from centerline on the east side of Brown Street. The right-of-way is fully improved with pavement, curbs, six-foot planter strips, and six-foot sidewalks on both sides of Brown Street.

A Service Provider Letter issued by the Woodburn Fire District confirms that the existing public street improvements meet the Fire District’s emergency vehicle access standards. See **Exhibit 8**. Accordingly, OAR 660-046-0220(4) does not authorize the City to impose conditions of approval that require Applicant to 1) dedicate 6 feet of additional right-of-way, 2) construct frontage improvements adjacent to the Property that comply with the City’s design standard for Service Collector streets or 3) pay a fee-in-lieu constructing frontage improvements prior to the issuance of buildings permits because the Property presently enjoys access to the City’s public street system that meets adopted emergency vehicle access standards.

### **III. Nollan Essential Nexus and Dolan Proportional Impact Tests.**

City staff made clear during the pre-application conference that it intends to impose conditions of approval that require Applicant to dedicate 6 feet of right-of-way along the Property’s frontage and to construct frontage improvements that meet the City’s current standards for Service Collector streets (or pay a fee in lieu of making improvements). Such requirements are exactions that raise constitutional concerns. See *Nollan v. California Coastal Comm'n*, 48 US 825, 831-32, 107 SCt 3141 (1987); and *Dolan v. City of Tigard*, 512 US 374, 384, 114 SCt 2309 (1994). Broadly speaking, *Nollan* and *Dolan* together establish a two-part

test for assessing the constitutionality of a government exaction of a dedication of private property:

"First, the exaction must substantially advance the same government interest that would furnish a valid ground for denial of the development permit-also known as the 'essential nexus' prong of the test. *Nollan*, 483 US at 836-37, 107 SCt 3141. Second, the nature and extent of the exaction must be 'roughly proportional' to the effect of the proposed development. *Dolan*, 512 U.S. at 385, 114 S.Ct. 2309."

*Brown v. City of Medford*, 251 Or App 42, 51, 283 P3d 367 (2012). *Koontz v. St. Johns River Water Management Dist.*, 570 US 595, 133 SCt 2586 (2013) is also critical to this discussion because it clarified: (1) *Nollan/Dolan* requirements apply to both permit denials and approvals; and (2) monetary exactions are subject to the heightened scrutiny of *Nollan* and *Dolan*.

**a. *Nollan*'s "Essential Nexus" Requirement**

Applicant concedes that the City's desire to provide safe, functioning public rights-of-way is a legitimate public interest. In this instance, however, the existing right-of-way adjacent to the Property is fully improved with a curb, there is room for a bicycle lane, and a 6-foot planter strip and 6-foot sidewalk provide ample pedestrian safety. Applicant questions how widening the existing right-of-way 6 feet and adding a middle turning lane would make existing conditions safer for vehicle, bicycle, or pedestrian travel to a degree that would justify the City's outright denial of this application; particularly when evaluated against the fact that the improvements would create an unsafe zig-zag condition between Bridlewood and Vine Street.

**b. *Dolan*'s "Roughly Proportional" Requirement.**

Assuming, arguendo, the City can meet *Nollan*'s Essential Nexus test, the City cannot meet its burden to demonstrate an exaction that requires Applicant to dedicate right-of-way and construct frontage improvements that meet the City's current improvement standards for Service Collector Streets is roughly proportional to the impact the development will have on the affected segments of the City's transportation system.

The proposed 20-unit Cottage Cluster Project is projected to generate 135 daily trips on a weekday basis. 8 trips are expected to occur in the AM peak hour and 10 trips are expected to occur in the PM peak hour. See *Applicant's Traffic Memorandum, Exhibit 9*.

Based on existing conditions, it is expected that approximately 95 vehicle trips per day will travel northbound on Brown Street, and 40 trips that will travel southbound, with 6 trips in the AM peak hour and 7 trips in the PM peak hour. When Brown Street is extended to the planned southern terminus described in TSP Figure 2, Functional Roadway Classification, and TSP Figure 6, Local Street Connectivity Plan, the site's driveway is expected to generate approximately 68 trips per day that will travel north and 67 trips per day that will travel south. 4 trips are expected to travel north, and 4 trips are expected to travel south during the AM Peak



Hour; and 5 trips are expected to travel north, and 5 trips are expected to travel south during the PM peak hour. **Exhibit 9.**

Brown Street is classified as Service Collector and will ultimately consist of one travel in each direction with a center left turn lane when fully built out. The function of collector streets to connect neighborhoods to arterial streets. An urban street with a travel lane profile similar to Brown Street (class IV - two lane minor street, speed limit 25-35 mph, ped activity present, moderate to high density development) has a capacity rating of 1,570 vehicles per hour (total both directions). **Exhibit 9.**

With a projection of seven site trips (total for both directions) using Brown Street under the current street conditions, the proposed development's worst-case PM peak hour impact compared to the street's design capacity equates to the following:

$$7 \text{ peak trips}/1570 \text{ vehicle capacity} = 0.00446 \text{ or } 0.45\%$$

With a projection of five site trips (total for both directions) using Brown Street under the future street conditions (with TSP local street plan in place), the worst-case PM peak hour impact due to the development compared to the street's capacity equates to the following:

$$5 \text{ peak trips}/1570 \text{ vehicle capacity} = 0.00318 \text{ or } 0.32\%$$

The Property's frontage abutting Brown Street measures approximately 391 lineal feet.

The distance from the Property's northern boundary adjacent to Bridlewood to the planned southern terminus of Brown Street as shown in TSP Figure 2, Functional Roadway Classification, and TSP Figure 6, Local Street Connectivity Plan, measures approximately 2,450 feet. At full build out, the total combined frontage from Bridlewood Street to the planned southern terminus of Brown Street will be approximately 4,900 lineal feet. The Property's 391 feet of frontage represents approximately 8 percent of Brown Street's total combined frontage at full build out (391 lineal feet/4,900 lineal feet = 0.079).

In summary, the proposed 20-unit cottage cluster project will, under worst-case conditions, contribute 0.00318 or 0.32% of total PM peak hour trips on future street conditions envisioned by the City's TSP, and the City expects Applicant to construct 0.079 or 8% of Brown Street's total right-of-way improvements described in the TSP's Functional Roadway Classification map and the City's Street Connectivity Plan.

Oregon case law supplies relevant examples of how the rough proportionality analysis is undertaken. In *McClure v. City of Springfield*, 39 Or LUBA 329 (2001), aff'd, 175 Or App 425, 28 P3d 1222 (2001), LUBA stated that a demand to dedicate (but not improve) 4,371 square feet of right-of-way was "roughly proportional" to the impact that 19 cars will have on a particular street corridor. The percentages worked out as follows: the impact of new development on the road was 1.83% of the total capacity of the road, while the exaction was 1.59% of total "trip load" on the corridor. LUBA cautioned that "the quantification of impacts does not, in and of itself, establish that the extent of the proposed exaction is roughly proportional to the extent of

the proposed impacts.” Id. at 339. LUBA ultimately held that the safety concerns and benefits to the property tipped the scales in favor of affirming the exaction in that case, though LUBA said it was a “very close question.”

In this case, the City has stated it intends to demand an exaction from Applicant that is 25 times greater than the proposed development’s impact. This extreme proportional imbalance is caused by the fact that Brown Street is a collector street that is designed to convey vehicle traffic generated by several hundred or more residential dwellings that access multiple local streets across multiple neighborhoods. Furthermore, the abutting right-of-way is fully improved with pavement, curb, a 6-foot planter strip, and a 6-foot sidewalk, so the “safety concerns” and “benefits to the property” LUBA referenced in *McClure* as tipping points in the city of Springfield’s favor are not present in this instance. Given LUBA’s struggle in *McClure* to conclude that a 1.83% impact compared to a 1.59% exaction were roughly proportional - even going so far as to admit their decision was a close call - the City should re-evaluate its prior statements regarding this matter.

**4. ORS 197.307(4) prohibits the City from imposing conditions of approval that require Applicant to construct street frontage improvements that meet the City’s current standards for Service Collector streets because the exaction will have the effect of discouraging needed housing through the imposition of unreasonable costs.**

ORS 197.307(4) requires local governments to adopt and apply “clear and objective standards, conditions, and procedures regulating the development of housing, including “needed housing.” Additionally, and importantly to this application, any standards, conditions, and procedures the City applies to this application “*[m]ay not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay*” (Emphasis added). ORS 197.307(4)(b).

The estimated cost to construct frontage improvements necessary to comply with the City’s standards for Service Collector Streets is **\$55,440.00**, including engineering design, permitting, inspection, and bonding costs. See Engineer’s Cost Estimate, **Exhibit 10**.

The estimated cost to relocate and underground utility services is approximately **\$114,789.89** (**\$40,000** payable to PGE to pull new wire, set new transformers, and energize the new system, and **\$74,789.89** to install required conduit and power vaults). **Exhibit 11**.

The estimated cost to remove existing and install new streetlights across the Property’s Brown Street frontage is approximately **\$24,200**. **Exhibit 12**.

The total estimated cost to construct frontage improvements necessary to comply with the City’s current standards for Service Collector streets, including relocation of existing franchise utilities and installation of new streetlighting, is approximately **\$194,329.89**. Adding 15% to the gross cost for Applicant’s reasonable overhead costs and profit results in a net cost of **\$223,479.38**. Allocating these costs across the 20-unit cottage cluster development results in an unnecessary cost increase of approximately **\$11,173.97** per unit.

**5. The City can be subject to an attorney fee award if it demands an exaction that is not roughly proportional to the proposed development’s impacts and results in the imposition of unreasonable costs.**

The City should take the legislature’s strict prohibition on the imposition of “unreasonable cost or delay” on the development of needed housing seriously. ORS 197.835(10)(a) requires LUBA to reverse decisions by local governments that are “outside the discretion allowed the city under its comprehensive plan and implementing ordinances.” The statute also makes cities vulnerable to paying an applicant’s attorney fees at LUBA if they wrongfully deny an application or impose impermissible conditions of approval on a land use application:

*(10)(a) The board shall reverse a local government decision and order the local government to grant approval of an application for development denied by the local government if the board finds:*

*(A) Based on the evidence in the record, that the local government decision is outside the range of discretion allowed the local government under its comprehensive plan and implementing ordinances; or*

*(B) That the local government’s action was for the purpose of avoiding the requirements of ORS 215.427 or 227.178.*

*(b) If the board does reverse the decision and orders the local government to grant approval of the application, **the board shall award attorney fees** to the applicant and against the local government. (Emphasis added.)*

LUBA routinely reverses decisions by local governments that impermissibly apply discretionary criteria to non-discretionary land use review proceedings or that rely on standards that are not “clear and objective” and orders those jurisdictions to approve the landowner’s application. See, e.g., *Walter v. City of Eugene*, 73 Or LUBA 356 (2016); *Legacy Development Group, Inc. v. City of The Dalles*, \_\_ Or LUBA \_\_ (LUBA No 2020-099, Feb 24, 2021); *Nieto v. City of Talent*, \_\_ Or LUBA \_\_ (LUBA No. 2020-100, March 10, 2021); *Hendrickson v. Lane County*, \_\_ Or LUBA \_\_ (LUBA No. 2021-117, April 11, 2022, page 21-22). The City can expect LUBA to respond in a similar manner to a decision that patently discourages the development of needed middle housing by impermissibly imposing unreasonable costs in the form of exactions that are **25 times greater** than the impacts the proposed cottage cluster development will have on the affected elements of the City’s transportation system.

ORS 197.835(10)(b) requires, without exception, that when LUBA “does reverse the decision and orders the local government to grant approval of the application, the board **shall** award attorney fees to the applicant and against the local government.” (Emphasis added.) LUBA has awarded substantial attorney fees against local governments under this statute, as the following cases demonstrate:

- ❖ *Walter v. City of Eugene*, \_\_ Or LUBA \_\_ (LUBA No. 2016-024, Dec. 21, 2016) (\$16,141.59 award against city);
- ❖ *Mjai Oregon 5 LLC v. Linn County*, \_\_ Or LUBA \_\_, (LUBA No. 2018-096, Order, Aug. 16, 2019) (\$24,958.50 award against county);
- ❖ *Nieto v. City of Talent*, \_\_ Or LUBA \_\_ (LUBA No. 2020-100, Order, May 10, 2021) (\$15,387.50 awarded against city) (\$15,387.50 award against city);
- ❖ *Hollander v. City of Astoria*, \_\_ Or LUBA \_\_ (LUBA No. 2021-061, Order, March 21, 2022), (\$18,940 award against city);
- ❖ *Legacy Devel. Group v. City of The Dalles*, \_\_ Or LUBA \_\_ (LUBA No. 2020-099, Order, May 17, 2021), (\$18,039.50 award against city);
- ❖ *Hendrickson v. Lane County*, \_\_ Or LUBA \_\_ (LUBA No. 2021-117, Order, Aug 18, 2022), (\$26,380 awarded against county);
- ❖ *East Park, LLC v. City of Salem*, \_\_ Or LUBA \_\_ (LUBA No. 2022-050, Order, Dec 6, 2022), (\$47,394 award against city).

If the City chooses to impose conditions of approval that require public right-of-way dedication and improvement exactions (including the assessment of a fee-in-lieu of constructing improvements) that are not roughly proportional to the impacts the proposed cottage cluster development will have on the adjoining transportation system, it is virtually guaranteed that LUBA will reverse the City’s decision and award Applicant substantial attorney fees.

***WDO 3.02 Utilities and Easements***

***WDO 3.02.01 Public Utility Easements & Public Access 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. Streetside: A streetside public utility easement (PUE) shall be dedicated along each lot line abutting a public street at minimum width 5 feet. Partial exemption for townhouse corner lot: Where such lot is 18 to less than 20 feet wide, along the longer frontage, streetside PUE minimum width shall be 3 feet; or, where the lot is narrower than 18 feet, the longer side frontage is exempt from streetside PUE.***
- C. Off-street: The presumptive minimum width of an off-street PUE shall be 16 feet, and the Public Works Director in writing may establish a different width as a standard.***
- D. City & public access: The minimum width of a public access easement along either a bicycle/pedestrian corridor or sidewalk overlap of property, where the easement serves***

*instead of dedication of either land or ROW to the City, shall be per Section 3.01.07C.*

*E. As a condition of approval for development, including property line adjustments, partitions, subdivisions, design reviews, Planned Unit Developments (PUDs), Street Adjustments, Zoning Adjustments, or Variances, the Director may require dedication of additional public easements, including off-street public utility easements and other easement types such as those that grant access termed any of bicycle/pedestrian access, cross access, ingress/egress, public access, or shared access, as well as those that identify, memorialize, and reserve future street corridors in place of ROW dedication.*

*F. Streetside PUE maximum width:*

*1. Purpose: To prevent developers and franchise utilities from proposing wider than minimum streetside PUEs along tracts or small lots after land use final decision; to prevent particularly for a tract or lot abutting both a street and an alley; to encourage developers to communicate with franchise utilities and define streetside PUE widths during land use review and how to what is defined; to avoid overly constraining yards, and to avoid such PUEs precluding front roofed patios, porches, or stoops.*

*2. Standards: Exempting any lot or tract subject to Figure 3.01B “Major Arterial”, the following standards are applicable to a lot or tract with:*

*a. No alley or shared rear lane: 8 feet streetside.*

*b. Alley or shared rear lane: Either 8 feet streetside and 5 feet along alley or shared rear lane, or, 5 feet streetside and 8 feet along alley or shared rear lane.*

*Nothing in this section precludes a streetside PUE from variable width where necessary such as to expand around public fire hydrants.*

**Applicant’s Response:** If required, Applicant will grant a public utility easement necessary to provide a 10-foot street-side public utility easement across the entire length of the Property’s frontage adjacent to Brown Street. No off-street public utilities are proposed within the boundary of the Project that would require Applicant to grant public utility easements across the Property.

### ***WDO 3.02.03 Street Lighting***

***A. Public Streets:***

***Public streets abutting a development shall be illuminated with streetlights installed to the standards of the City and the electric utility. A developer shall provide documentation to the attention of the Public Works Director indicating that any needed illumination***

*complies with the standards. A developer is to refer to Illuminating Engineering Society (IES) of North America Recommended Practice 8, Roadway Lighting (RP-8) or other source as the public works construction code specifies.*

***B. Manufactured Dwelling Park Private Streets***

***The full length of private streets and walkways in manufactured dwelling parks shall be illuminated with lighting designed to average 0.25 horizontal foot-candles.***

**Applicant's Response:** Existing public improvements in the Brown Street right-of-way that abut the Property include streetlights that comply with current illumination standards.

The requirements described in WDO 3.02.03 to provide “needed illumination” are not applicable to this application. OAR 660-046-0220(4) limits a Large City’s ability to regulate lighting standards for Cottage Cluster Projects. Specifically, OAR 660-046-0220(4)(i) directs Large Cities to “work with an applicant for development [of Cottage Clusters] to determine whether Sufficient Infrastructure will be provided, or can be provided, upon submittal of a Cottage Cluster development application. OAR 660-046-0220(4) does not authorize the City to impose a condition of approval that requires Applicant to install new street lighting or enhance existing street lighting.

Furthermore, as discussed above concerning WDO 3.01, the estimated cost to remove existing streetlighting that complies with current illumination standards and install new street lighting is approximately **\$24,100**, which will unnecessarily increase the purchase price of each cottage dwelling approximately **\$1,205**. ORS 197.307(4)(b) and ORS 197.758(5) prohibit the City from imposing conditions of approval that require Applicant to bear the cost of removing existing streetlighting in the Brown Street right-of-way and installing new streetlight improvements that meet the City’s current standards because the condition will have the effect of discouraging needed housing through the imposition of unreasonable costs. **Exhibit 12.**

***WDO 3.02.04 Underground Utilities***

***A. Purpose: To improve streetscape aesthetics, reduce the number of poles errant drivers going off the road can hit, improve reliability of electricity during and after storms, and require larger developments to bury or underground existing electric utilities, developers of larger developments being more likely able to fund such.***

***B. Street: All permanent utility service within ROW resulting from development shall be underground, except where overhead high-voltage (35,000 volts or more) electric facilities exist as the electric utility documents and the developer submits such documentation.***

***1. Developments along Boundary Streets shall remove existing electric power poles and lines and bury or underground lines where the following apply:***

***a. A frontage with electric power poles and lines is or totals minimum 250 feet; and***

*b. Burial or undergrounding would either decrease or not increase the number of electric power poles. The developer shall submit documentation from the electric utility.*

*Where the above are not applicable, a developer shall pay a fee in-lieu, excepting residential development that has 4 or fewer dwellings and involves no land division.*

*2. Fees in-lieu: Per Section 4.02.12.*

*C. Off-street: All permanent utility service to and within a development shall be underground, except where overhead high-voltage (35,000 volts or more) electric facilities exist.*

**Applicant's Response:** The existing public improvements in the Brown Street right-of-way include franchise utility services that are sufficient to serve the Project.

The requirements described in WDO 3.02.04 to underground existing franchise utilities are not applicable to this application. OAR 660-046-0220(4) limits a Large City's ability to regulate siting standards for Cottage Cluster Projects. Specifically, OAR 660-046-0220(4)(i) directs Large Cities to "work with an applicant for development [of Cottage Clusters] to determine whether Sufficient Infrastructure will be provided, or can be provided, upon submittal of a Cottage Cluster development application. OAR 660-046-0220(4) does not authorize the City to impose a condition of approval that requires Applicant to decommission and remove functional, existing aerial franchise utility services and reinstall the same services underground.

Moreover, as discussed above concerning WDO 3.01, the estimated cost to decommission and remove functional, existing aerial franchise utility services and reinstall the same services underground is approximately **\$114,789.89** which will unnecessarily increase the purchase price of each cottage dwelling approximately **\$5,739.50**. ORS 197.307(4)(b) and ORS 197.758(5) prohibit the City from imposing conditions of approval that require Applicant to underground existing franchise utility services because the regulation will have the effect of discouraging needed housing through the imposition of unreasonable costs. **Exhibit 11.**

***WDO 3.03.01 Setbacks***

***A. Setbacks***

*1. No required setback provided for any building or structure shall be considered as providing a setback for any other building.*

*2. No required setback for any building or structure shall be considered as providing lot coverage for another building, except for a common area not required to be located within a lot, when owned by a homeowner's association in a Planned Unit Development (PUD).*

***B. Setbacks shall be open and unobstructed by buildings or structures from the ground to the sky, except as may otherwise be permitted in this Section and in Accessory Structures***

*(Section 2.06).*

*C. No portion of a lot necessary to meet the standards for lot area, width, frontage, setbacks, lot coverage, open space, or other requirement of this Ordinance shall have more than one owner, except through a zoning adjustment, or variance.*

**Applicant's Response:** The site plan complies with applicable building setback standards. See Exhibit 2.

***WDO 3.03.02 Street Widening Setbacks***

*A. Street Widening Setbacks are necessary when the existing street right-of-way is less than the designated right-of-way in the Woodburn Transportation System Plan, including as relates to Section 3.01.05F "Local Street Connectivity Plan." Street Widening Setbacks ensure that development will conform with setback and vision clearance requirements, after a full right-of-way has been acquired.*

*B. Street Widening Setback distances shall be measured at right angles to the center line of street rights-of-way.*

*C. Where dedicated rights-of-way are less than the Street Widening Setback, the setback abutting a street shall be measured from the Street Widening Setback. All regulations applicable to setbacks abutting streets and vision clearance areas shall apply to the area between the lot line and the Street Widening Setback. Fences and walls are allowed up to the property line.*

**Applicant's Response:** Brown Street is classified as a Service Collector. As specified in WDO Table 3.03.02(C), setbacks for cottage units and other site improvements abutting Brown Street are based on a 36-foot Street Widening Setback measured from the centerline of Brown Street.

***WDO 3.03.03 Projections into the Setback Abutting a Street***

*A. Chimneys, flues, bay windows, steps, eaves, gutters, sills, pilasters, lintels, cornices, planter boxes and other ornamental features may not project more than 24 inches into the setback abutting a street.*

*B. Covered, unenclosed porches shall maintain at least a 5 foot setback from the property line or Street Widening Setback.*

*C. A balcony, outside stairway or other unenclosed, unroofed projection may not project into a minimum front or street setback of the primary building so much that it would encroach into the streetside public utility easement (PUE). (Regarding PUEs, see Section 3.02.01.)*



*D. Arbors, archways, pergolas and trellises shall be exempt from the setback abutting a street.*

*E. Uncovered decks, not more than 18 inches above final grade, shall maintain at least a three foot setback from the property line or Street Widening Setback.*

*F. Flag poles shall maintain at least a five foot setback from the property line or Street Widening Setback.*

**Applicant's Response:** This Project does not propose any projections into the Brown Street setback that exceed the distances allowed by WDO 3.03.03(A) – (E). Subsection (F) is not applicable to this application because no flag lots are proposed.

***WDO 3.03.04 Projections into the Side Setback.***

*A. Chimneys, flues, bay windows, steps, eaves, gutters, sills, pilasters, lintels, cornices, planter boxes and other ornamental features may not project more than 24 inches into a side setback.*

*B. Fire escapes, when not prohibited by any other code or ordinance, may not project into a side setback farther than one-third of the width of the setback, or less than three feet.*

*C. Uncovered decks, not more than 18 inches above final grade, shall maintain at least a three-foot setback from the property line or Street Widening Setback.*

**Applicant's Response:** This Project does not propose any projections into a side yard setback area that exceed the distances allowed by WDO 3.03.04.

***WDO 3.03.05 Projections into the Rear Setback***

*A. Chimneys, flues, bay windows, steps, eaves, gutters, sills, pilasters, lintels, cornices, planter boxes and other ornamental features may project not more than 24 inches into the rear setback.*

*B. A balcony, outside stairway or other unenclosed, unroofed projection may not project more than 10 feet into a rear setback. In no case shall such a projection come closer than 5 feet from any lot line or Street Widening Setback.*

*C. Covered, unenclosed porches, extending not more than 10 feet beyond the rear walls of the building, shall maintain at least a 10 foot setback from the rear property line or 5 feet from Street Widening Setback, or, may have a zero setback along an alley or shared rear lane except it shall be set back to not encroach with the PUE, if any, along the alley or shared rear lane.*

*D. Uncovered decks not more than 18 inches above final grade shall maintain at least a three foot setback from the property line or Street Widening Setback.*

*E. No permitted projection into a rear setback shall extend over an alley, unless the projection is minimum 14 feet above alley grade and the Public Works Director in writing authorizes, or, come within six feet of an accessory structure.*

*F. Accessory structures are not considered projections into a rear setback, but have separate setback requirements listed in this Ordinance (Section 2.06).*

**Applicant's Response:** This Project does not propose any projections into a rear yard setback area that exceed the distances allowed by WDO 3.03.05(A) – (D). Subsections (E) and (F) are not applicable to this application because no alleys or accessory structures are proposed.

***WDO 3.03.06 Vision Clearance Area***

*A. A vision clearance area (Figures 3.03A and B) is an area at the intersection of two streets, a street and a driveway, or a street and an alley, in which visual obstructions are limited for safety purposes.*

*B. The vision clearance area is formed by a combination of the following lines:*

\* \* \*

*5. At the intersection of a public street and a driveway: a line extending ten feet from the intersection along the back of curb, a line extending ten feet along the side of the driveway, and a third line drawn across the corner of the lot that connects the ends of the lines.*

\* \* \*

**Applicant's Response:** The landscape plan for the Project provides a 10-foot by 10-foot vision clearance areas measured from the intersection of the driveway that will serve the common parking facilities and the existing improved Brown Street right-of-way. The landscaping plan also shows the location of future vision clearance areas that could result if the Brown Street right-of-way is reconstructed to the city's design standard for Service Collector roads. The Project meets the vision clearance area requirements described in WDO 3.03.06.

***WDO 3.04 Vehicular and Bicycle/Pedestrian Access***

***WDO 3.04.01 Applicability and Permit***

***A. Street Access***

*Every lot and tract shall have minimum access per subsection 1 or 2:*

- 1. Direct access to an abutting public street, alley, or shared rear lane; or*
- 2. Access to a public street by means of a public access easement and private maintenance agreement to the satisfaction of the Director, revocable only with the*

*concurrence of the Director, and that is recorded. The easement shall contain text that pursuant to Woodburn Development Ordinance (WDO) 3.04.03B.3, the public shared access (ingress and egress) right of this easement is revocable only with the written concurrence of the Community Development Director.*

*3. Alley: Where proposed or required, every lot and tract abutting it shall access it instead of a public street.*

*4. Shared rear lane: Where proposed or required, and it has a public access easement the same as per subsection 2, it may substitute for an alley, and every lot and tract abutting it shall access it instead of a public street.*

**Applicant's Response:** The Project will have a single, common, and direct point of access to Brown Street, which is a fully improved, public service collector street. The Project meets the minimum access requirements described in WDO 3.04.01(A)(1).

***WDO 3.04.03 Access Management: Driveway Guidelines and Standards***

***A. Purpose: To implement Woodburn Comprehensive Plan policies, to implement the Highway 99E Corridor Plan, to reduce vehicular points of conflict, to reduce driveways interrupting landscape strips and the pedestrian experience along sidewalk, to preserve the appearance of street-facing yards in developments of other than multiple-family dwellings, and to preserve on-street parking where existing or required of development.***

***B. Number of Driveways***

***1. For residential uses, along streets the maximum number of driveways per lot frontage shall be as follows and if and as subsection D further limits:***

***a. Single-family dwelling and dwelling other than multiple family and other than townhouse: One driveway for every 100 feet of lot frontage. For a corner lot wider than 25 feet, the Director may prohibit a driveway on one of the frontages based on the factors of street functional class and whether the required street cross section includes on-street parking.***

***b. Townhouse: One driveway as a joint driveway for each pair of lots.***

***c. Cottage cluster: Same as (a.) above except that if parking is pooled into a common facility with no direct driveway access to an individual carport or garage, then two driveways total along either the lot or, if partitioned or subdivided, the lots constituting the cottage cluster project.***

***d. Multiple-family dwelling and all other residential uses not listed above: One driveway for every 100 feet of lot frontage.***

**Applicant's Response:** Off-street vehicle parking for the proposed Cottage Cluster Project will be provided by a single, pooled parking facility. The pooled parking facility will have a single point of access to Brown Street. No direct driveway access to individual carports or garages is proposed. The Project meets the driveway access requirements described in WDO 3.04.03(B)(1)(c).

***WDO Access Requirements - Table 3.04A***

<b><i>Paved Width of Driveway: (5 or more dwelling units)</i></b>	<b><i>Minimum width: 20 feet minimum/24 feet maximum Design width: 24 feet</i></b>
<b><i>Throat Length (Service Collector)</i></b>	<b><i>Minimum length: 36 feet Design length: 42 feet</i></b>
<b><i>Corner Clearance (Service Collector)</i></b>	<b><i>Minimum distance: 50 feet Design distance: 200 feet</i></b>
<b><i>Turnaround</i></b>	<b><i>Per Oregon Fire Code standards.</i></b>

**Applicant's Response:** As referenced above, the Project complies with the driveway access requirements described in WDO Table 3.04(A).

***WDO 3.04.05 Transportation Impact Analysis***

***A. This section establishes when a proposal must be reviewed for potential transportation impacts; when developer must submit a transportation impact analysis (TIA) or transportation impact letter or memo with a development application in order to determine whether conditions are needed to mitigate impacts to transportation facilities; the methodology and scope of a TIA or letter or memo; who is qualified to prepare the analysis; and implements Woodburn Comprehensive Plan policies. Where the IMA Overlay District is relevant, see also Section 2.05.02.***

***B. A transportation study known as a transportation impact analysis (TIA) is required for any of the following:***

***1. Comprehensive Plan Map Change or Zone Change or rezoning that is quasi-judicial, excepting upon annexation designation of zoning consistent with the Comprehensive Plan.***

***2. A development would increase vehicle trip generation by 50 peak hour trips or more or 500 average daily trips (ADT) or more.***

***3. A development would raise the volume-to-capacity (V/C) ratio of an intersection to 0.96 or more during the PM peak hour.***

*4. Operational or safety concerns documented by the City or an agency with jurisdiction, such as ODOT or the County, and submitted no earlier than a pre-application conference and no later than as written testimony entered into the record before the City makes a land use decision.*

*5. A development involves or affects streets and intersections documented by ODOT as having a high crash rate, having a high injury rate of persons walking or cycling, having any cyclist and pedestrian deaths, or that partly or wholly pass through school zones that ODOT recognizes.*

*6. Where ODOT has jurisdiction and ORS or OAR, including OAR 734-051, compels the agency to require.*

*A developer shall submit a traffic impact letter or memo when the City or an agency with jurisdiction does not require a TIA. A development within the Downtown Development and Conservation (DDC) zoning district is exempt from TIA submittal.*

**Applicant's Response:** The requirement in WDO 3.04.05 to provide a traffic impact memo is not applicable to this application. OAR 660-046-0220(4) limits a Large City's ability to regulate siting standards for Cottage Cluster Projects. Specifically, OAR 660-046-0220(4)(i) directs Large Cities to "work with an applicant for development [of Cottage Clusters] to determine whether Sufficient Infrastructure will be provided, or can be provided, upon submittal of a Cottage Cluster development application.

OAR 660-046-0020(16) defines "Sufficient Infrastructure" as the following level of public services to serve new cottage cluster development:

- (a) Connection to a public sewer system capable of meeting established service levels;
- (b) Connection to a public water system capable of meeting established service levels;
- (c) Access via public or private streets meeting adopted emergency vehicle access standards to a city's public street system; and
- (d) Storm drainage facilities capable of meeting established service levels for storm drainage.

OAR 660-046-0220(4) allows Large Cities to condition approval of new a Cottage Cluster Project on a demonstrated availability of public sanitary sewer, water, and storm sewer services. OAR 660-046-0220(4) does not authorize or permit a Large City to condition approval of Cottage Cluster Projects on the mitigation of impacts to transportation facilities. Likewise, OAR 660-046-0220(4) does not authorize or permit a Large City to require an applicant for a Cottage Cluster Project, or any other type of Middle Housing, to make any improvements to the

city's transportation system that exceed improvements a Cottage Cluster Project may be required to construct to provide “[a]ccess via public or private streets meeting adopted emergency vehicle access standards to a city's public street system.” (Emphasis added.)

The foregoing notwithstanding, Applicant has submitted a traffic impact memorandum prepared by Frank Charbonneau, a registered professional traffic engineer. Mr. Charbonneau's report is attached as **Exhibit 9**.

The proposed 20-unit Cottage Cluster Project is projected to generate 135 daily trips on a weekday basis. 8 trips are expected to occur in the AM peak hour and 10 trips are expected to occur in the PM peak hour. **Exhibit 9**.

Based on existing conditions, it is expected that approximately 95 vehicle trips per day will travel northbound on Brown Street, and 40 trips that will travel southbound, with 6 trips in the AM peak hour and 7 trips in the PM peak hour. When Brown Street is extended to the planned southern terminus described in TSP Figure 2, Functional Roadway Classification, and TSP Figure 6, Local Street Connectivity Plan, the site's driveway is expected to generate approximately 68 trips per day that will travel north and 67 trips per day that will travel south. 4 trips are expected to travel north, and 4 trips are expected to travel south during the AM Peak Hour; and 5 trips are expected to travel north, and 5 trips are expected to travel south during the PM peak hour. **Exhibit 9**.

For reasons discussed above in Applicant's response to WDO 3.01, the findings contained in the traffic memorandum Applicant has provided for this project do not support the imposition of any conditions of approval that might require Applicant to dedicate additional right-of-way or remove existing safe, functional right-of-way improvements and reconstruct new improvements.

### ***WDO 3.06 Landscaping***

#### ***WDO 3.06.01 Applicability***

***The provisions of this Section shall apply:***

***A. To the site area for all new or expanded multiple-family dwelling and non-residential development, parking and storage areas for equipment, materials and vehicles.***

***B. Dwellings other than multiple-family need comply only with the street tree and significant tree provisions of this Section.***

**Applicant's Response:** This Cottage Cluster Project is subject to landscaping standards described in WDO 3.06.01B. The Site does not contain any “significant trees” that are 24 inches or more in diameter, measured five feet above ground level. The existing Brown Street right-of-way improvements include a 6-foot planter strip and a 6-foot sidewalk. There are no street trees in the planter strip. Applicant will install new street trees in the existing 6-foot-wide planter strip concurrent with the construction of the proposed cottage units in the manner shown in **Exhibit 6**.

### ***3.07 Architectural Design Standards.***

#### ***3.07.01 Applicability of Architectural Design Standards and Guidelines***

***A. For a Type I review, the criteria of this Section shall be read as “shall” and shall be applied as standards. For a Type II or III review, the criteria of this Section shall be read as “should” and shall be applied as guidelines.***

***B. The following are exempt from the provisions of this Section:***

***1. Any single-family, duplex, or manufactured dwelling that existed prior to October, 2005, except such dwellings located within the Neighborhood Conservation Overlay District (NCOD).***

***2. New dwellings in Manufactured Dwelling Parks containing more than three acres.***

#### ***3.07.02 Single-Family Dwellings, Manufactured Dwellings, & Dwellings Other Than Multiple-Family (“Middle Housing”) on Individual Lots.***

##### ***A. Applicability***

***This Section shall apply to all new single-family dwellings, dwellings other than multiple-family, and manufactured dwellings on individual lots. It shall apply also to subdivisions and Planned Unit Developments approved on or before August 12, 2013.***

***Manufactured dwellings have different standards for roofing; otherwise, all standards in this Section apply to manufactured dwellings.***

##### ***B. Minimum Requirements***

***1. Design Standards. Each single-family dwelling, duplex, triplex, quadplex, townhouse project, or manufactured dwelling shall meet all the design standards identified in Table 3.07A as required standards and a minimum number of points per subsection (2.) below.***

***2. Design Options. Each single-family dwelling, duplex, triplex, quadplex, townhouse project, or manufactured dwelling shall meet enough of the menu options identified in Table 3.07A as providing optional points to total 16 points. Totaling 16 or more points is a requirement, and the choice of any particular menu option is optional.***

##### ***C. Architectural and Design Standards (Table 3.07A)***

**Applicant’s Response:** To address the critical and ongoing shortage of housing, the Oregon Legislature has adopted laws to reduce costs and delays associated with obtaining permission from local governments to construct new housing.

ORS 197.307(4) mandates that local governments *adopt and apply only clear and objective standards, conditions, and procedures regulating the development of housing, including “needed housing.”* The legislature enacted the statute for the express purpose of ensuring that local governments do not use discretionary or subjective criteria to deny needed housing projects. The legislation also mandates that any clear and objective standards, conditions, and procedures a local government adopts must not discourage needed housing through *unreasonable cost or delay*. This includes development standards such as setbacks, building height, and aesthetic building design standards that are applied to needed housing through non-discretionary, administrative building permit application processes.

ORS 197.307(4) and (6) provide:

***(4) Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing. The standards, conditions and procedures:***

***(a) May include, but are not limited to, one or more provisions regulating the density or height of a development.***

***(b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.***

\* \* \* \* \*

***(6) In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in subsection (4) of this section, a local government may adopt and apply an alternative approval process for applications and permits for residential development based on approval criteria regulating, in whole or in part, appearance or aesthetics that are not clear and objective if:***

***(a) The applicant retains the option of proceeding under the approval process that meets the requirements of subsection (4) of this section;***

***(b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and***

***(c) The approval criteria for the alternative approval process authorize a density at or above the density level***



***authorized in the zone under the approval process provided in subsection (4) of this section.***

For purposes of ORS 197.307(4)-(6), LUBA has stated that “approval standards are ‘clear and objective’ if they do not impose ‘subjective, value-laden analyses that are designed to balance or mitigate impacts[.]’” *Rogue Valley Assoc. of Realtors v. City of Ashland*, 35 Or LUBA 139, 158 (1998), *aff’d*, 158 Or App 1, 970 P 2d 685, *rev den*, 328 Or 594 (1999).

Land use standards are not “clear and objective” if they are ambiguous and require interpretation. *Hardtla v. City of Cannon Beach*, 183 Or App 219, 58 P3d 437 (2002); *Tirumali v. City of Portland*, 169 Or App 241, 246, 7 P3d 761 (2000), *rev den*, 331 Or 674 (2001); *West Coast Media, LLC v. City of Gladstone*, 43 Or LUBA 585, 589 (2002); *Sullivan v. City of Ashland*, 27 Or LUBA 411, 413-14 (1994); *Group B, LLC v. City of Corvallis*, 72 Or LUBA 74 (2015). An ambiguous standard is one that requires interpretation because it is either internally inconsistent or capable of two reasonable interpretations. *See State v. Tarrence*, 161 Or App 583, 985 P2d 225 (1999); *Kenton Neighborhood Ass’n v. City of Portland*, 17 Or LUBA 784, 798 (1990) (internally inconsistent code provisions are ambiguous).

Finding ambiguity (or a lack thereof) in how a code standard is applied in any given case is critical to the inquiry. In other contexts, the Court of Appeals has held that a statute is ambiguous if there is more than one “plausible interpretation” of the disputed text. *Tharp v. Psychiatric Sec. Review Bd.*, 338 Or 413, 425–426, 110 P.3d 103 (2005) (court declared text ambiguous when counsel presented two plausible interpretations). “[T]he threshold of ambiguity is a low one. It does not require that competing constructions be equally tenable. It requires only that a competing construction not be ‘wholly implausible.’” *Godfrey v. Fred Meyer Stores (In re Godfrey)*, 202 Or App 673, 686, 124 P.3d 621 (2005) (quoting *Owens v. Motor Vehicles Div.*, 319 Or 259, 268, 875 P.2d 463 (1994)). In addition, “[i]t is true that the context of a statute or statutory scheme can sometimes reveal an ambiguity in a particular phrase that, standing alone, appears to have a clear meaning. *See Dennehy v. City of Portland*, 87 Or App 33, 40, 740 P.2d 806 (1987); and *Southwood Homeowners Ass’n v. City Council of Philomath*, 106 Or App 21, 806 P.2d 162 (1991).

ORS 227.173(2) was added to the statutes in 1999, and states “[w]hen an ordinance establishing approval standards is required under ORS 197.307 to provide only clear and objective standards, the standards must be clear and objective on the face of the ordinance.” *Lee v. City of Portland*, 57 Or App 798, 802, 646 P2d 662 (1982); *State ex rel. West Main Townhomes, LLC v. City of Medford*, 233 Or App 41, 225 P3d 56 (2009), opinion modified on reconsideration, 234 Or App 343, 228 P3d 607 (2009) (Purpose of requirement under zoning statute mandating that any approval or denial of discretionary permit applications be based upon clear, objective standards and criteria apparent on the face of the ordinance is to assure that the parties are provided with advance notice of the applicable law.).

ORS 227.175(4)(b)(A) states that “[a] city may not deny an application for a housing development located within the urban growth boundary if the development complies with clear and objective standards, including clear and objective design standards contained in the city comprehensive plan or land use regulations.”

ORS 197.831 places the burden on local governments to demonstrate, in an appeal before LUBA, that standards and conditions imposed on “needed housing” “are capable of being imposed only in a clear and objective manner.” In *Home Builders Assoc. v. City of Eugene*, LUBA discussed the genesis of the enactment of ORS 197.831. 41 Or LUBA 370, 377-83 (2002) in the following manner:

***In a proceeding before the Land Use Board of Appeals or an appellate court that involves an ordinance required to contain clear and objective approval standards, conditions and procedures for needed housing, the local government imposing the provisions of the ordinance shall demonstrate that the approval standards, conditions and procedures are capable of being imposed only in a clear and objective manner.***

Having summarized the applicable law on the topic of clear and objective criteria, we turn our attention to WDO 3.07.02, which staff has plainly stated they intend to apply to this application and discuss whether the aesthetic design standards the code section prescribes are “clear and objective” and, more specifically, if they are unambiguous and capable of only one plausible interpretation within the meaning of the applicable statutes and relevant case law.

WDO 3.07.02 establishes minimum architectural design requirements for single-family dwellings, manufactured dwellings, and dwellings other than multiple family. More specifically, WDO 3.07.02(A) states the section applies to:

***“all new single-family dwellings, dwellings other than multiple-family, and manufactured dwellings on individual lots.”***

WDO 3.07.02(B) establishes mandatory aesthetic architectural “Design Standards” and “Design Options” that are applicable to single-family dwellings, duplexes, triplexes, quadplexes, townhome projects, and manufactured dwellings.

**I. A plain reading of WDO 3.07.02(A) and (B) reveals that the aesthetic architectural design standards described in Table 3.07A are not applicable to cottage cluster developments.**

The Design Standards and Design Options described in WDO Table 3.07.A are not applicable to this cottage cluster development application because: 1) the cottages will not be constructed “on individual lots;” and 2) WDO 3.07.02(B) prominently excludes cottage dwellings from the list of dwellings that are subject to aesthetic architectural design standards.

WDO 1.02 defines Dwellings in the following manner:

- ***Cottage: A dwelling that is part of a cottage cluster and with a footprint of fewer than 900 square feet.***
- ***Duplex: Two (2) attached dwelling units on one lot.***

- ***Manufactured Dwelling.***
- ***Multiple-Family Dwelling: A building on a single lot containing 5 or more attached dwelling units.***
- ***Quadplex: Four (4) attached dwelling units on a lot.***
- ***Townhouse: A unit within a building containing 2 or more dwelling units, arranged so that each dwelling unit is located on a separate lot.***
- ***Single-Family Dwelling: A detached building constructed on a single lot, containing one dwelling unit designed exclusively for occupancy by one family.***
- ***Triplex: Three (3) attached dwelling units on a lot.***
- ***Accessory Dwelling Unit (ADU) – An interior, attached, or detached residential structure that is used in connection with, or that is accessory to, a single-family dwelling.***

Single-family dwellings, duplexes, triplexes, quadplexes, and townhomes all share two common traits: 1) they are individual structures that are constructed on separate, individual lots of record; and 2) their main entrances are required to face street lot lines and are subject to front yard setback standards.

Conversely, WDO 1.02 defines a Cottage Cluster as:

***Cottage Cluster: A grouping of no fewer than 4 detached dwelling units per acre, each with a footprint of fewer than 900 square feet, located on a single lot or parcel that includes a common courtyard.***

Cottage dwellings possess two unique traits that physically distinguish them from the dwelling types listed in WDO 3.07.02: 1) they are groupings of four or more detached structures that are constructed on a single, shared, common lot; and 2) their main entrance facades, which are the primary subject of the design standards, are not required to face street lot lines (Per WDO 2.07.21(D)(1)(b), 50 percent of cottage units must face a common courtyard, and per subsection (c), cottages within 20 feet of a street property line are permitted, but not required to have their front entrances face a street.). These clear and obvious distinctions, together with the apparent purposeful exclusion of cottage dwellings from the precise terms used in WDO 3.07.02(B), create a strong presumption that the city council intended to exclude cottage dwellings from both the Design Standards and Design Options described in WDO Table 3.07A. If staff chooses to advance an alternative interpretation of WDO 3.07.02 that makes cottage dwellings subject to WDO Table 3.07A, that would create an ambiguity, which, in turn, would presumptively

demonstrate that the design standards are not “clear and objective” and that they do not comply with ORS 197.307 (4) and (6). Moreover, as discussed above in Applicant’s Response to WDO 3.01.01, the City can be subject to an attorney fee award if it wrongfully requires Applicant to comply with an ambiguous development standard that is not “clear and objective.”

**II. The City must demonstrate that the Design Standards and Design Options in WDO Table 3.07A do not discourage needed housing through unreasonable costs or delay.**

The legislature expressed clear mandates in ORS 197.307(4)(b) and ORS 197.758(5) that bar local jurisdictions from subjecting needed housing projects to standards, conditions, or procedures that have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

The “Design Standards” and “Design Options” listed in WDO Table 3.07A are purely aesthetic and visually based. None of the Design Standards or Design Options are required by the Oregon Residential Specialty Code and they do not contribute to or enhance a residential dwelling’s functional livability in any manner. The Design Standards and Design Options will, however, pointlessly increase the cost to construct, and ultimately purchase, the proposed middle housing cottage dwellings. For example, Design Option R1 awards 2 points for increasing roof pitch from 6/12 minimum to 9/12 and Design Option R3 awards 2 points for increasing roof eaves from a 12-inch minimum to 24 inches. A 600 square foot home with 12-inch eaves and a 6/12 roof pitch has a roof area of 796 square feet. The same home constructed with 24-inch eaves and a 9/12 pitch has a roof area of 1,041 square feet, a 30.7% net increase. Applicant conservatively estimates that the cost to construct the roof section of a cottage dwelling with a 9/12 roof and 24-inch eaves is 10-12% greater than a similar dwelling with a 6/12 roof pitch and 12-inch eaves, which includes: 1) additional lumber to construct roof trusses with lengthened runs and heights and longer eaves; 2) additional roof sheathing materials; 3) additional time and labor costs to install roof sheathing on higher pitched roofs; 4) additional roofing materials; and 5) additional time and labor costs to install roofing materials on higher pitched roofs. Other mandatory Design Standards and Design Options, such as R2 - Dormers, E3 - Porch/Patio Delineation, E4 - Ornamental Columns, W1 - Window Area, W2 - Double Hung Divided Light Windows, F1 - Exterior Finish Materials, and P1 - Additional Off-Street Parking, all require additional labor and materials that will unreasonably increase construction costs and final sales prices for the proposed middle housing cottage dwellings.

If the City elects to apply the “Design Standards” and “Design Options” listed in WDO Table 3.07A to this middle housing cottage cluster development application, ORS 197.307(4)(b) and ORS 197.758(5) require the City’s decision to include findings that the Design Standards and Design Options do not, individually, or cumulatively, discourage the development of the proposed middle housing cottage dwellings through unreasonable cost or delay. As discussed above, the City could be liable for attorney fees on appeal if it issues a decision that is not supported by required findings.

### III. WDO Table 3.07A

The foregoing discussion concerning the City’s ability to apply the Design Standards and Design Options set forth in WDO Table 3.07A to this application and the requirement to make necessary findings that the aesthetic design standards do not discourage needed housing through unreasonable costs or delays notwithstanding, the tables provided below document the manner in which the middle housing cottage dwellings Applicant proposes to construct on the Property are capable of meeting the Design Standards and the Design Options set forth in WDO Table 3.07A. Applicant reserves the right to construct the cottage dwelling with different design elements that may or may not comply with WDO Table 3.07A if the City rightly determines WDO 3.07.02 is not applicable to cottage cluster developments or the City is unable to make required findings concerning the design standards’ impacts on housing affordability.

#### *Type I, 2-Story Unit:*

Design Options	Requirement	Meet	Points
M1	Maximum building facade width – 60 feet	Yes	2
M2	Façade articulation – front elevation less than 500 sq ft	Yes	-
M3 - 1	Privacy transition area option 1 – Porch elevated 1.5 feet above sidewalk grade. If porch is elevated, concrete stamped or patterned, covered with masonry, or lattice if wood and framed and void below.	Yes	2
M3 - 2	Privacy transition area option 2 - Main wall plane set back 10 feet from sidewalk.	Yes	-
R1	Minimum roof pitch 6/12	N/A	-
R1 - 1	8/12 roof pitch	N/A	-
R1 - 2	9/12 roof pitch	Yes	2
R2	Gable, Dormers, eyebrows	Yes	1
R3	Roof eave - minimum size 12”		-
R3 -1	Roof eave - 18”	N/A	-
R3 - 2	Roof eave - 24 inches	Yes	2
R4	Roof materials - architectural composition shingles	Yes	-
R4 - 1	Roof materials - clay/concrete tile, slate or Cedar shingles	N/A	-
E1	Entrance orientation - W/in 8’ of longest street-facing façade; entrance door with window; entrance opens to common open space.	Yes	-
E2	Covered front porch. 72 square foot covered porch, biased 8.5’ to (left/right) of front door, 8’ ceiling height.	Yes	-
E2 -1	Covered porch 14’ wide.	Yes	1
E2 - 2	Covered porch recessed 2’ feet into main wall a minimum distance of 6.5’.	Yes	2
E3	Porch railing with minimum height of 3.5’, 3” top member, and second horizontal member below top member.	Yes	-
E4	Front porch columns. Column shaft minimum 8”, with defined capital, shaft, and base.	Yes	-

W1	Window area. Street facing and open space facing facades must have a minimum of 15% dedicated to windows and doors.	Yes	-
W2 - 1	All windows trimmed with minimum dimension of 5/8" x 3".	Yes	1
W2 - 2	Windows recessed into walls 3-inches minimum.	N/A	-
W2 - 3	Street facing façade windows incorporate divided lights, grids, or muntins.	Yes	1
W3	Window proportion. No octagonal windows are proposed. Insect screens will be provided.	Yes	-
F1	Permitted finish materials.	Yes	-
F1 a	Single-story: Exterior wainscoting minimum 3' tall with minimum 2' side wrap. Street and open space facing facades to have wainscoting their entire length.	N/A	-
F1 b	Two-story: Exterior wainscoting a minimum of 7' high or to top of first floor windows and doors, with minimum 2' side wrapping.	N/A	-
F2	Poured concrete F\foundation reveal is less than 3 feet.	Yes	-
P1 alt 1	Parking ratio 1.5 spaces per dwelling unit.	N/A	-
P1 alt 2	Parking ratio 2.0 spaces per unit.	N/A	-
CC	24' wide courtyard with 8' and 5' sidewalks.	Yes	2
	<b>TOTAL POINTS</b>		<b>16</b>

***Type II, 2-Story Units:***

<b>Design Standard</b>	<b>Requirement</b>	<b>Meet</b>	<b>Points</b>
M1	Maximum building facade width – 60 feet	Yes	2
M2	Façade articulation – front elevation less than 500 sq ft	Yes	-
M3 - 1	Privacy transition area option 1 – Porch elevated 1.5 feet above sidewalk grade. If porch is elevated, concrete stamped or patterned, covered with masonry, or lattice if wood and framed and void below.	Yes	2
M3 - 2	Privacy transition area option 2 - Main wall plane set back 10 feet from sidewalk.	N/A	-
R1	Minimum roof pitch 6/12		-
R1 - 1	8/12 roof pitch	N/A	-
R1 - 2	9/12 roof pitch	Yes	2
R2	Gable, Dormers, eyebrows (2 gables provided)	Yes	1
R3	Roof eave - minimum size 12 inches		-
R3 -1	Roof eave - 18 inches	N/A	-
R3 - 2	Roof eave - 24 inches	Yes	2
R4	Roof materials - architectural composition shingles	Yes	-
R4 - 1	Roof materials - clay/concrete tile, slate or Cedar shingles	N/A	-

E1	Entrance orientation - W/in 8' of longest street-facing façade; entrance door with window; entrance opens to common open space.	Yes	-
E2	Covered front porch. 72 square foot covered porch, biased 8.5 feet to (left/right) of front door, 8' ceiling height.	Yes	-
E2 -1	Covered porch 14' wide.	Yes	1
E2 - 2	Covered porch recessed 2' feet into main wall a minimum distance of 6.5 feet.	Yes	2
E3	Porch railing with minimum height of 3.5-feet, 3-inch top member, and second horizontal member below top member.	Yes	-
E4	Front porch columns. Column shaft minimum 8-inches, with defined capital, shaft, and base.	Yes	-
W1	Window area. Street facing and open space facing facades must have a minimum of 15% dedicated to windows and doors.	Yes	-
W2 - 1	All windows trimmed with minimum dimension of 5/8" x 3".	Yes	1
W2 - 2	Windows recessed into walls 3-inches minimum.	N/A	-
W2 - 3	Street facing façade windows incorporate divided lights, grids, or muntins.	Yes	1
W3	Window proportion. No octagonal windows are proposed. Insect screens will be provided.	Yes	-
F1	Permitted finish materials.	Yes	-
F1 a	Single-story: Exterior wainscoting minimum 3' tall with minimum 2' side wrap. Street and open space facing facades to have wainscoting their entire length.	N/A	-
F1 b	Two-story: Exterior wainscoting a minimum of 7' high or to top of first floor windows and doors, with minimum 2' side wrapping.	Yes	2
F2	Poured concrete F\foundation reveal is less than 3 feet.	Yes	-
P1 alt 1	Parking ratio 1.5 spaces per dwelling unit.	N/A	-
P1 alt 2	Parking ratio 2.0 spaces per unit.	N/A	-
CC	24' wide courtyard with 8' and 5' sidewalks.	Yes	2
<b>TOTAL POINTS</b>			<b>16</b>

### 3.11 Lighting

#### **WDO 3.11.01 Purpose and Applicability**

***A. Purpose: To lessen glare and eyestrain interfering with walking, cycling, rolling along, and driving; to prevent nuisance and better protect nighttime sleepers' circadian rhythms; to reduce light pollution and advance "dark sky;" and to lessen off-street lighting from adding excess to or substituting for what streetlights provide.***

***B. Applicability: Applies outside ROW to all permanent exterior lighting for all development and uses, excepting residential that is other than multiple-family dwelling.***

*Application includes the contexts of building exteriors, walkways and wide walkways, parking areas, signage, and off-street bicycle/pedestrian facilities. Where Section 3.11 might conflict with nuisance Ordinance No. 2338 (2003), Section 5A “Light Trespass” as is or as amended, the more stringent provision shall supersede. Strands of small electric lights known as any of holiday lights, mini lights, or twinkle lights are exempt.*

**Applicant’s Response:** This Project is exempt from the exterior lighting standards and requirements imposed by WDO 3.11 because cottage dwelling fall within the definition of residential development that is “other than multiple-family dwellings.”

#### **IV. Conclusion**

Applicant has demonstrated compliance with the criteria and standards described in Oregon statutes, administrative rules adopted by the Oregon Department of Land Conservation and Development that are applicable to the development of middle housing, and relevant sections of the Woodburn Development Code, and requests that staff approve this Type I Administrative Review application.





8840 SW HOLLY LN WILSONVILLE OREGON 97070

PHONE: 503.305.7647 | STAFFORDHOMESANDLAND.COM | OR CCB NO. 204299

May 15, 2023

Mr. Colin Cortes, AICP, CNU-A  
Senior Planner  
City of Woodburn  
270 Montgomery St.  
Woodburn, OR 97071

**Re: Response to Incomplete Letter  
1025 Brown Street  
ANX 23-03; DR 23-04; and ZC 23-03**

Dear Mr. Cortes:

This correspondence is provided pursuant to ORS 227.178(2)(b) in response to the incompleteness letter dated May 10, 2023. In accordance with ORS 227.178(2)(b), Stafford Homes & Land (“Stafford”) will provide certain additional information requested in the incompleteness letter, as identified in detail herein. However, in other instances, Stafford will not provide certain additional requested information for reasons stated herein.

Stafford’s full response to the incompleteness letter, which we quote directly from below, is as follows:

*A. Annexation: Legal Exhibits.*

*Per past policy and with a few past annexations as examples, either revise or supplement the legal description and map to include as part of the annexation application that area of ROW not within city limits and lying between the north and south subject property corners.*

**Applicant’s Response:** Applicant is providing separate maps and legal descriptions for the subject property and the adjacent section of public right-of-way that is also to be annexed.

*B. Zone Change.*

*Payment of the Zoning [Map]Change application fee of \$1,042.*

**Applicant’s Response:** The requested Zone Change application fee is included herewith.

**Attachment 104A3c**

C. 2.07.21 Cottage Cluster Provisions

*To conform with 2.07.21C 5 & 6 (cottage footprints and average size), revise the site plan (Sheet 3) to reflect here the information found on narrative pages 6 & 7.*

**Applicant's Response:** Applicant has revised sheet 3 to describe dwelling footprint areas and unit sizes.

D. 3.01 Frontage/Street Improvements

*To conform with 3.01.02A, 3.01.03C.1e, Figure 3.01A, 3.01.04B, & Figure 3.01D "Service Collector", revise the site plan (Sheet 3) to illustrate and note a west "half-street" upgrade.*

**Applicant's Response:** Applicant has revised sheet 3 to illustrate conceptual half-street right-of-way frontage improvements on the west side of Brown Street that are consistent with the city's standards for Service Collector streets. As discussed in Applicant's narrative, the city may not condition approval of the requested annexation or the cottage cluster development on the dedication of new right-of-way or the demolition and reconstruction of the existing safe, functioning, full-service right-of-way improvements for the following reasons:

1. Transportation infrastructure improvements are not included in the definition of "Sufficient Infrastructure;"
2. The city cannot demonstrate a required "nexus" that is sufficient to support the imposition of a condition of approval to dedicate right-of-way or construct right-of-way improvements.
3. Even if the city can meet its burden and demonstrate a required "nexus," the nature and extent of the exaction the city seeks to impose on the project is not "roughly proportional" to the proposed development's impact on adjacent transportation infrastructure; and
4. ORS 197.307(4) prohibits the city from imposing conditions of approval that have the effect of discouraging needed housing through the imposition of unreasonable costs.

E. 3.02.01: PUE:

*To conform with 3.02.01F.2a, revise the site and utility plans (Sheets 3 & 4) to narrow to 8 ft the proposed 10-ft wide streetside public utility easement (PUE) that, because of ROW dedication, would displace the existing streetside PUE dedicated through Reel 2794, Page 218, Exhibits A & B (2007).*

**Applicant's Response:** Applicant has revised sheet 3 and sheet 4 to reduce the conceptual right-of-way dedication from 10-feet to 8-feet. Applicant's agreement to display a conceptual right-of-way dedication is not an acknowledgment of any duty or intention to dedicate additional right-of-way or construct any new right-of-way improvements as a condition of the city's approval of the requested annexation or the proposed cottage cluster development.

F. 3.02.04: *Electric:*

*Overhead electric power lines and a power pole exist along the street frontage. Because the frontage exceeds 250 ft, 3.02.04B.1a is applicable. Clarify if 1.b also is applicable.*

**Applicant's Response:** Applicant has amended the narrative to provide the requested information.

G. 3.04: *Traffic assessment memo: Revise:*

*1. To address the 3.04.05B thresholds for a transportation impact analysis (TIA). It's clear to staff that thresholds 1 and 2 aren't applicable; however, the memo needs to cite and address each threshold. Assuming none are met, the application materials could continue with a revised memo instead of a TIA.*

*2. The subject line to include the master/parent case file no. ANX 23-03 and subject property street address 1025 Brown Street.*

*3. To have a statement addressing the Woodburn School District service provide letter (SPL) of November 9, 2022, which states, "if the ... traffic analysis determines that there will be no impact on the ability to provide safe and accessible routes to school and there will be no impact on the safety of our students, we will support [the City] decision."*

**Applicant's Response:** Applicant has provided a revised traffic assessment memorandum that responds to the requested additions.

H. 3.05: *Parking: Revise the site plan (Sheet 3) to:*

*1. 3.05.02J: Indicate the required "no outlet" sign. The recommended placement is either at the driveway or the west end of the north parking aisle.*

**Applicant's Response:** Applicant has revised sheet 3 to include a proposed location for a "No Outlet" sign.

*2. 3.05.03B: Indicate an accessible/ADA parking stall and aisle per ORS 447.233.*

**Applicant’s Response:** Municipalities may not regulate, administer, or enforce accessible parking space requirements prescribed in ORS 447.233 through a land use decision making process. ORS 447.233(1) instructs the Director of the Department of Consumer and Business Services to incorporate accessible parking space requirements into the state building code. The Director has incorporated parking space accessibility requirements into Section 1106 of the 2022 Oregon Structural Specialty Code.

ORS 455.715(1) vests municipal building officials with exclusive responsibility to administer and enforce the state building code, including all specialty codes. *See also*, Section 104, 2022 Oregon Structural Specialty Code (“The *building official* is hereby authorized and directed to enforce the provisions of this code.”). In this instance, the state building code provides no basis for the city’s building official to require Applicant to provide an accessible parking space in the shared parking area.

The purpose of ORS 447.210 to ORS 447.280 is “to make affected buildings, including but not limited to commercial facilities, public accommodations, private entities, private membership clubs and churches, in the state accessible to and usable by persons with disabilities, as provided in the Americans with Disabilities Act, and to make covered multifamily dwellings in the state accessible to and usable by all persons with disabilities, as provided in the Fair Housing Act.” ORS 447.220.

“Affected buildings” include:

*[A]ny place of public accommodations and commercial facilities designed, constructed and altered in compliance with the accessibility standards established by the Americans with Disabilities Act. “Affected buildings” also includes any government building that is subject to Title II of the Americans with Disabilities Act. “Affected buildings” also includes private entities, private membership clubs and churches that have more than one floor level and more than 4,000 square feet in ground area or that are more than 20 feet in height, measured from the top surface of the lowest flooring to the highest interior overhead finish of the building.*

ORS 447.210(1).

The cottages are not “affected buildings” within the meaning of ORS 447.210 to ORS 447.280. Each cottage is a private, single-family residence. The cottages are not covered multifamily dwellings. The cottages are not places of public accommodation or commercial facilities. Moreover, such uses are prohibited in the RS zone. The cottage cluster development plan does not propose to construct a private facility, a private membership club, or a church on the Property that has more than one floor level and more than 4,000 square feet in ground area. The city’s

building official has no basis or authority to require Applicant to provide an accessible parking space in the shared parking area.

*3. Table 3.05A: Dimension a few typical parking stalls; the standard size for typical stall is 9 x 18 ft.*

**Applicant's Response:** Applicant has revised sheet 3 to provide typical width and depth dimensions of parking spaces.

*I. 3.06: Significant Trees:*

*Revise the existing conditions plan sheet (Sheet 2), which shows trees, to reflect here the information found on narrative p. 30 that there are no Significant Trees.*

**Applicant's Response:** Applicant has revised sheet 2 to show no structures or trees are present on the Property.

*J. 3.07: Architecture: Table 3.07A:*

*1. E2 "X": Sheet A3 proposes the front patio at min dimension 5 ft width measured at the bench window projection. The min for the narrowest dimension is 8.5 ft.*

*2. E2 option: The narrative p. 37 table indicates E2 option for points 2, but the points aren't eligible because Sheet A3 illustrates a front patio proposed off-set (located left of the bench window projection) of 1 ft. The min is 2 ft for a min span of 6.5 ft.*

**Applicant's Response:** Design Standard E2 states the following:

*Front Porch or Patio: On lots wider than 25 ft, each dwelling entrance shall meet the below. For lots with two or more street frontages, the standards apply to min one frontage.*

- A recessed entry, min 72 square ft, with min dimension 8.5 ft biased towards one side of the entry. A recess serving two entries, one each for two attached dwellings, shall be min 119 square ft; or*

- A covered porch or roofed patio, min 72 square ft with min dimension 8.5 ft. A porch or patio serving two entries, one each for two attached dwellings, shall be min 119 square ft.*

- Height: Min ceiling or clearance height 8 ft.*

*Where a lot is 25 ft or narrower and a street-facing recessed entry, covered porch, or roofed patio would be infeasible, then one of the G4 options instead shall be a standard: above a street-facing garage, as either interior living area, or, a covered balcony or deck.*

*Where a lot is 25 ft or narrower and it adjoins a tract or off-street bicycle/pedestrian corridor, the porch/patio requirement may be met on the adjoining facade instead of the street-facing facade.*

Design Standard E2 offers design “points” for building designs that provide the following architectural elements:

*A covered porch or roofed patio at minimums per above and with min width 14 ft facing the street. 1 Point.*

*The covered porch or roofed patio by min 2 ft either recesses into or projects from the main wall plane along min 6.5 ft of the width of the porch or patio. 2 Points.*

The E2 “X” standard prescribes a minimum “dimension” of 8.5 feet, presumably either length or width since the standard is silent in that respect. The term “dimension” typically refers to a measurement in one direction. See, e.g., “dimension.” *Merriam-Webster.com*. 2023. <https://www.merriam-webster.com> (26 May 2023). However, staff has altered and reinterpreted the E2 “X” standard to create a requirement to meet two minimum dimensions, i.e., both length and width. Staff’s actions here are akin to Humpty Dumpty’s admonishment to Alice “When I use a word, it means just what I choose it to mean - nothing more or less.”

The legislature rejected Humpty Dumpty’s philosophy that a word’s meaning should be determined by individuals asserting their authority to give them a particular meaning when it implemented ORS 197.307(4). The E2 “X” design standard the city council adopted requires covered porches to have a minimum length of 8.5’ in a single dimension, e.g., a single direction. The “X” standard does not require covered porches to provide minimum lengths in two dimensions, e.g., two directions. If the city council intended the E2 “X” standard to require minimum measurements in two directions, it could have used, and should have used, the plural “dimensions,” but it did not do so.

The porch has a minimum area that exceeds 72 square feet and a minimum dimension in a single direction that exceeds 8.5 feet. The porch complies with the minimum area and minimum dimension design standard the city council adopted. Moreover, staff’s supplemental pluralization and reinterpretation of the term “dimension” aptly demonstrates that the E2 “X” design standard is not “clear and objective” on its face and that it fails the requirements the legislature set in ORS 197.307.

The optional 2-point design standard is equally vague, open ended, ambiguous, and clumsily written. A plausible reading of the standard requires the “main wall plane” to project or be recessed a minimum depth of 2-feet for a minimum length of 6.5 feet. The standard does not define the term “main wall plane,” nor does the Woodburn Development Ordinance offer a definition for “main wall plane.”

The cottages’ front facades have three planes: (1) a forwardmost wall that is not within the porch area; (2) a rear wall within the porch area that is recessed furthest from the forwardmost wall and within which the cottage’s front entry door is framed; and (3) a mid-point wall that is also within the porch area and projects slightly from the front entry door.

Staff’s cryptic comments do not identify the cottage’s “main wall plane.” A possible reading suggests that staff believes the “main wall plane” is the wall section with the deepest recess within the porch area, and that the mid-point wall with the shortest length within the porch area should serve as the point to measure the required setback or projection.

Applicant believes the forwardmost wall is the cottage’s “main wall plane” because it serves as the measuring point to determine compliance with front setback requirements. The rearmost wall within the porch area is recessed approximately 6-feet from the “main wall plane” and extends 9-feet 6-inches across the width of the porch.

The fact that the term “main wall plane” is capable of two, and perhaps as many as three plausible interpretations, is *prima facie* evidence that the 2-point design standard is not “clear and objective” on its face and that it fails the requirements the legislature set in ORS 197.307. Staff’s suggestion to use a particular definition for the term “footprint” because it is “most applicable,” and comment that a “play in definition” will provide a means to avoid “overcomplicating” the porch dimension and area standards provide further evidence that the standard is not “clear and objective” on its face.

*3. E3: Revise Sheet A1 elevations to dimension front patio (a) railing height up to max 3.5 ft and (b) railing top member min width of 3 inches.*

**Applicant’s Response:** Applicant has added a detail to the architectural drawings to illustrate the railing’s height and top cap dimensions.

*4. E4: Regarding only the “modern” architectural plan set, the Sheet A1 front patio stone column lacks visual division into clear areas of capital, shaft, and base.*

**Applicant’s Response:** Applicant has revised the architectural drawing for the “Modern” architectural plan set to delete stone from the porch column and added requested capital, shaft, and base.

5. *W1:*

*a. Cottage 17: The blank right façade applied to proposed Cottage 17, the right side of which is street-facing, wouldn't meet min 15% window area. (Per the Sheet A3 floor plan, candidate locations appear to be at the ground floor half-bath (frosted or translucent window acceptable) and ground and/or second floors at stair landings.)*

*b. Cottages 1, 2, & 18: Revise or supplement Sheet A1, which tabulates front elevation window area, to do the same for the left side and rear – either for (1) the typical elevations or (2) as new, separate left side and rear elevations specific to the street-facing elevations of Cottages 1, 2, & 18.*

**Applicant's Response:** Applicant has provided separate sets of architectural drawings for cottages 1, 2, 17, and 18 that include additional window coverage as requested in the incompleteness letter.

The foregoing revisions notwithstanding, Applicant restates the following discussions contained in the narrative:

1. A plain reading of WDO 3.07.02A and (B) reveals that the aesthetic architectural design standards described in Table 3.07 A are not applicable to cottage cluster developments; and
2. The city must demonstrate that the Design Standards and Design Options in WDO Table 3.07 A do not discourage needed housing through the imposition of unreasonable costs or delays.

Regarding the city's request to provide additional window coverage on cottage units 1, 2, 17, and 18, Applicant submits that each window added to a cottage unit will cost approximately \$500 - \$600, depending on window size. The costs include: 1) window units at \$300 to \$400 each; 2) window tempering to comply with building code requirements at a cost of \$100 for each window; 3) window installation at a cost of \$60 per window unit; and 4) application of window trim materials to comply with separate city imposed aesthetic architectural design standards at a cost of approximately \$100 per window unit (includes labor and materials).

The affected cottage units will require 5 to 7 additional windows to comply with the aesthetic design standards the city has chosen to impose on Applicant, which will increase the cost to construct each affected cottage unit \$3,000 to \$4,200. Applicant also expects it will be required to enlarge 3 to 4 of the existing windows to comply with minimum window area design requirements at a cost of approximately \$50 - \$75 per enlarged window unit. Applicant conservatively estimates that the total cost to comply with the architectural design standards could increase the cost of each affected unit as much as \$4,500.



Adding unnecessary windows purely for perceived aesthetic reasons will substantially degrade the affected units' thermal efficiencies, which will necessarily result in increased energy consumption and cause owners/occupants to incur higher utility costs for heating and cooling.

If the city intends to impose a 15% window coverage standard on street facing facades, it bears the burden of demonstrating that the added costs of compliance, including increased construction costs and increased utility costs that will result from the reduction of the thermal insulation efficiencies of the affected exterior walls, are reasonable and do not discourage the construction of needed housing through the addition of unnecessary costs and expenses to construct the homes and to occupy the homes.

*K. Street Addressing.*

*Re-designate the cottages on the site plan to facilitate street addressing assignment after land use approval (per a request form to the Planning Division found via the application packets webpage).*

**Applicant's Response:** Applicant has re-designated the cottages in the requested format.

*L. Fire Access Plan.*

*There's no fire access plan sheet. Submit one illustrating, dimensioning, and noting fire apparatus access and lane routes, lane widths, lane inside and outside turning radii per Oregon Fire Code (OFC) Appendix D, a fire suppression water line, hydrants, and streetside and off-street public utility easements (PUEs) for the fire suppression water line and hydrants, and any fire department connections (FDCs). Submit evidence indicating that the proposal has an adequate number of hydrants, whether through existing conditions or the installation of relocated or additional hydrants.*

**Applicant's Response:** Applicant consulted with the Woodburn Fire Marshal and has prepared a fire access plan that responds to specific requests of the Fire Marshal. A copy of the fire marshal's response to our inquiry is included with this resubmittal.

*M. Administrative.*

*1. To the narrative, add a basic table of contents. Include page numbers for where text begins to address each WDO Chapter (e.g. 5.01, 2.02, 2.05, etc.).*

**Applicant's Response:** The Woodburn Development Ordinance does not prescribe formatting standards for application narratives or the submission of supporting exhibits and other materials. The foregoing notwithstanding, Applicant has revised the application narrative to comply with this request.

*2. List exhibit numbers and titles or descriptions, such as in the narrative after the table of contents.*

**Applicant's Response:** The Woodburn Development Ordinance does not prescribe formatting standards for application narratives or the submission of supporting exhibits and other materials. The foregoing notwithstanding, Applicant has revised the application narrative to comply with this request.

*3. There were not Adobe PDFs of all the application materials, particularly of most of the exhibits (Exhibits 2 and 4 onward) including the service provider letters (SPLs). Submit PDFs.*

**Applicant's Response:** Applicant has provided a new PDF copy of the application narrative and exhibit.

*4. The print copy of the narrative had 40 pages, but the PDF stopped at page 11.*

**Applicant's Response:** Applicant has provided a new PDF copy of the application narrative and exhibits.

*5. Submit plan size print copies not only of the site plans but also the planting plan.*

**Applicant's Response:** Applicant has provided a 24" x 36" "plan size" copy of the conceptual landscape plan for the project.

*N. Public Works:*

*1. Show all existing water and sewer laterals to the property and provide a note indicating that all existing sewer and water services shall be abandoned at the main as part of the improvements for this development.*

**Applicant's Response:** Applicant has revised the civil site plan to identify the locations of existing water and sanitary sewer service laterals and to add a statement that the existing water and sanitary sewer service laterals will be abandoned at the respective mains when the site is improved.

*2. The 6ft right-of-way dedication is required.*

**Applicant's Response:** The civil site plan identifies a conceptual 6-foot right-of-way dedication.

A requirement to dedicate property as a condition of approving Applicant's request to annex the Property is an exaction of land that is subject to the requirements of *Dolan v. City of*

*Tigard*, 512 US 374, 114 S Ct 2309, 120 L Ed 2<sup>nd</sup> 304 (1994). See, *Carver v. City of Salem*, 42 Or LUBA 305, n. 16 (2002) (Dedications imposed as a condition approving an annexation request are subject to *Dolan*'s rough proportionality requirement.) *Dolan* requires that exactions be "related both in nature and extent to the impact of the **proposed development**." *Dolan*, 512 US at 391. (Footnote omitted; emphasis added.)

The annexation application proposes no physical development of the Property. Except for replacement of a single residential dwelling and detached garage that previously existed on the Property, which would result in no new or increased impacts, the Property cannot be physically developed without further land use review, e.g., land use applications that request to partition or subdivide the Property or construct more than one residential dwelling on the site. "In the absence of any ability to physically develop the Property without further land use review, no exactions pass constitutional scrutiny." *Dressel v. City of Tigard*, \_\_\_ Or LUBA \_\_\_ 2020 (LUBA No. 2019-080, March 5, 2020) (Slip op. at page 8.)

3. *Provide a note indicating the relocation of the Fire Hydrant located in front of proposed driveway.*

**Applicant's Response:** Applicant has revised the civil site plan to include a note that states the existing fire hydrant will be relocated as part of the construction of the proposed driveway.

4. *Fire protection requirements shall comply with the Woodburn Fire District standards and requirements. Fire Hydrants shall be placed within the public right-of-way or public utility easement and be constructed in accordance with Public Works Department requirements, specifications, standards, and permit requirements. Fire protection access, fire hydrant locations and fire protection issues shall comply with current fire codes and Woodburn Fire District standards.*

**Applicant's Response:** As discussed above in response to Item "L," above, Applicant consulted with the Woodburn Fire Marshal and has prepared a fire access plan that responds to specific requests of the Fire Marshal. A copy of the fire marshal's response to our inquiry is included with this resubmittal.

5. *Provide preliminary street lighting plan on Brown Street.*

**Applicant's Response:**

6. *Add a quality control manhole to the civil plans, manhole to be installed prior to discharging private storm into the public system.*

**Applicant's Response:** Applicant has revised the preliminary civil site plan to include the requested water quality control manhole.

## Part II

*AA. Spur Walkway: Please revise the site and planting plans to connect the sidewalk and the northeast common area walkway with an 8-ft wide spur walkway, a distance of about 18 or 19 ft. Feel free to have this substitute for the proposed spur walkway connecting the sidewalk and north parking aisle east end.*

**Applicant's Response:** Pedestrian paths within the development exceed the 4-foot minimum width set by Chapter 5, Subsection (C)(4)(b) of the Large Cities Middle Housing Model Code. "The Model Code completely replaces and pre-empts any provision of those Medium and Large Cities' development codes that conflict with the Model Code." OAR 660-046-0010(4). Furthermore, the Woodburn Development Ordinance does not provide any basis for this request. The foregoing notwithstanding, Applicant will review the site plan with its consultants and consider staff's request.

*BB. Guest bicycle parking: Please locate a guest bicycle parking U-rack along a spur walkway near sidewalk.*

**Applicant's Response:** Staff provides no citation to the Woodburn Development Ordinance that supports this request. Regardless, Chapter 5, Subsection (C) of the Large Cities Middle Housing Model Code sets forth minimum design standards for cottage cluster developments and explicitly states that "[n]o other design standards shall apply to cottage clusters unless noted in this section." The Model Code does not contain any requirement for cottage cluster developments to provide on-site bicycle parking for residents or their guests. As discussed above, the Model Code completely replaces and pre-empts any provision of those Medium and Large Cities' development codes that conflict with the Model Code, and staff has no ability to independently create and apply random bicycle parking standards for cottage cluster developments.

*CC. Recycling and trash enclosure: Please revise and add information so that the enclosing wall would be an Architectural Wall as 3.06.06B describes and have a pedestrian opening as described in 3.06.06D, "minimum 3 feet, 4 inches wide in addition to the truck gates. If the pedestrian opening is gated, the gate shall swing inward."*

**Applicant's Response:** WDO 3.06.06D provides as follows:

*For **multiple-family dwelling development**, each refuse and recycling collection facility shall have a pedestrian opening minimum 3 feet, 4 inches wide in addition to the truck gates. If the pedestrian opening is gated, the gate shall swing inward. (Emphasis added.)*

WDO 3.06.01 states the following regarding the general applicability of WDO Section 3.06:

*3.06.01 Applicability*

*The provisions of this Section shall apply:*

*A. To the site area for all new or expanded multiple-family dwelling and non-residential development, parking and storage areas for equipment, materials and vehicles.*

*B. Dwellings other than multiple-family need comply only with the street tree and significant tree provisions of this Section.*

WDO 1.02 defines the term “Multiple-Family Dwelling: as:

*A building on a single lot containing 5 or more attached dwelling units. Note: This definition does not include townhouses, where attached single-family dwelling units are located on separate lots, or cottages, where detached units are part of a cottage cluster on the same lot.*

Since the Woodburn Development Ordinance specifically excludes cottage cluster developments on the same lot from the definition “multiple-family dwellings” and WDO 3.06.06(D)’s application is limited to “multiple-family dwelling developments,” staff has no basis to impose this request.

*DD. Exterior lighting: Outside of ROW, please use full cut-off models of fixtures as 3.11.02A describes, limit any parking area pole lights to a height of 14.5 feet above vehicular grade, and have models of fixtures with warm, yellowish light through color temperature in the range of 2,700-4,000° Kelvin.*

**Applicant’s Response:** As previously discussed above and in the application narrative, WDO 3.11.01(B) specifically exempts “residential that is other than multiple-family dwelling.” Cottage cluster developments fall within the definition of residential development that is “other than multiple-family dwellings.” Accordingly, the requirements imposed by WDO 3.11 are not applicable to this application. The foregoing notwithstanding, applicant does not propose to install, nor does the WDO require installation of, light poles in the shared parking area.

*EE. Association articles: As the time approaches to draft either condo association, homeowner association (HOA), or maintenance association – however termed – articles of incorporation per Oregon Revised Statute (ORS) 94, include a provision that the start of any attempt to dissolve the association (in the indefinite future by the homeowners) must include written notice delivered or mailed to the City c/o Assistant City Administrator. This is to alert the City that the association is abandoning its stormwater detention pond and common area maintenance responsibilities.*

Mr. Colin Cortes  
May 15, 2023  
Page 14 of 14

*Include also a provision that would result, were the Oregon Secretary of State Corporation Division to issue written warning of pending administrative dissolution, in either the Corporation Division sending notice to the City as well as the association.*

**Applicant's Response:** The submission of property to condominium ownership is governed by the Oregon Condominium Act, ORS 100.005 et seq ("Act"). If Applicant elects to record a declaration that submits the property and cottages constructed thereon to condominium ownership, Applicant will comply with all requirements of the Act.

In accordance with ORS 227.178(2)(b), please consider this application complete as of the date of this correspondence.



May 10, 2023

Maxwell Root, Development Assistant  
Stafford Homes & Land, LLC  
8840 SW Holly Lane  
Wilsonville, OR 97070-9800

RE: Status of ANX 23-03, DR 23-04, & ZC 23-03 "Brown Street Cottages" cottage cluster project at 1025 Brown St (Tax Lot 051W18C001200)

Dear Mr. Root:

Staff reviewed the degree of completion of the Annexation (ANX), Design Review (DR), and Zone Map Change (ZC) consolidated application package for the subject property submitted April 10, 2023 and determined it incomplete as of May 10, 2023.

I send this letter to clarify incompleteness and had intended it also to conform with Oregon Revised Statutes (ORS) [227.178\(2\)](#) that regulates completeness; however, the Assistant City Attorney had counseled staff on January 16, 2018 that annexation requests are not subject to the 120-day deadline for final action per [227.178\(8\)](#). This means that the 30-day completeness review window and the 120-day deadline are not applicable to annexation requests.

This letter is divided into two parts:

- Part I: Missing items required to make the application package complete; and
- Part II: Recommendations and initial site plan revision directions that are optional for a completeness response by the applicant and, if the applicant defers, would be resolved by the time of conditioning.

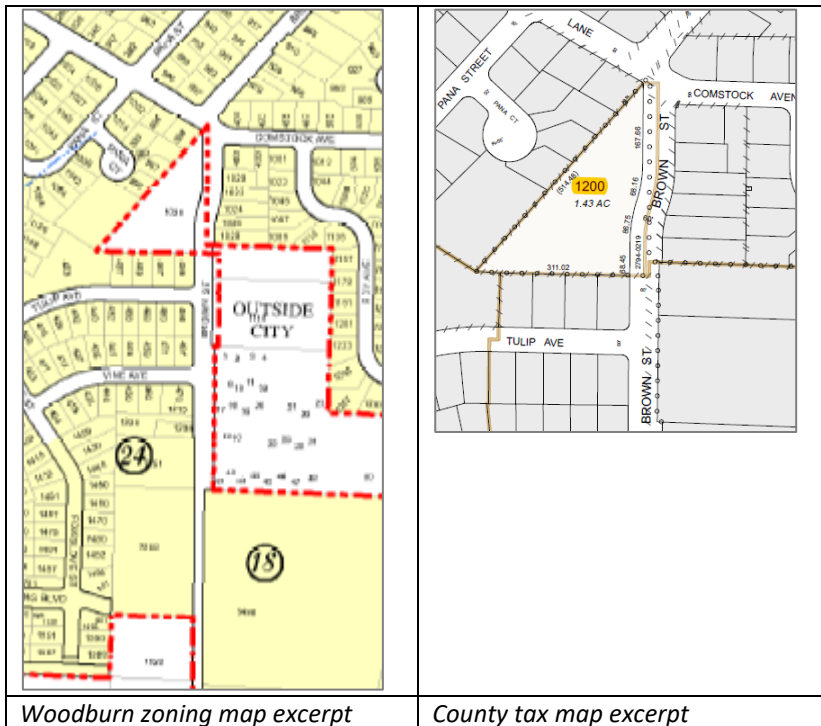
Section references are to the [Woodburn Development Ordinance \(WDO\)](#).

**Attachment 104A3d**

**Part I.**

**A. Annexation: legal exhibits:**

Through the City Engineer April 9, it came to the attention of other staff that some of the adjacent Brown Street right-of-way (ROW) is not also annexed, in part based on the representation on the zoning map and the County assessor tax map:



Per past policy and with a few past annexations as examples, either revise or supplement the legal description and map to include as part of the annexation application that area of ROW not within city limits and lying between the north and south subject property corners.

A recent example was ANX 22-02 Marion Pointe Planned Unit Development (now known as Macadam at Tukwila) as seen through [annexation Ordinance No. 2604](#) Exhibits A1 (legal description) and A2 (map), in which ROW both adjacent to the project and extending south to city limits are included.

An older example and closer to the subject property was ANX 2018-01 for 1490 Brown Street, recently entitled as Mill Creek Meadows PUD, as seen through [Ordinance No. 2563](#) Exhibits A & B, in which ROW both adjacent to the project and extending north to Vine Avenue are included.



If opting for two sets of description and map, one for property and one for ROW, then please label the subject property set as Exhibits A1 & A2 and the ROW set as B1 & B2. If not, then label the map, presently unlabeled, Exhibit B. (Labeling facilitates direct attachment to annexation and zone change ordinances the way City legal counsel likes it.)

- B. ZC: Payment of the Zone [Map] Change application fee of \$1,042 per the [Planning Division fee schedule](#) remains due. The person who interacts with the Community Development Department secretary should reference record number 971-23-000051-PLNG for faster payment.
- C. 2.07.21: Cottage cluster provisions: To conform with 2.07.21C.5 & 6 (cottage footprints and average size), revise the site plan (Sheet 3) to reflect here the information found on narrative pages 6 & 7.
- D. 3.01: Frontage/street improvements: To conform with 3.01.02A, 3.01.03C.1e, Figure 3.01A, 3.01.04B, & Figure 3.01D "Service Collector", revise the site plan (Sheet 3) to illustrate and note a west "half-street" upgrade.

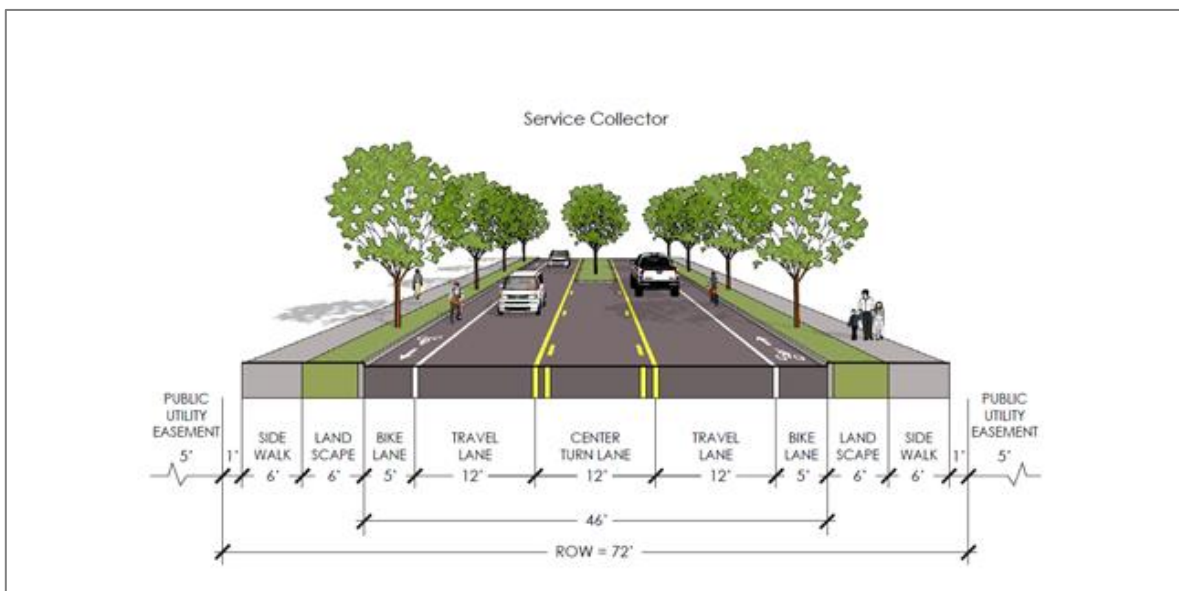


Fig. 3.01D "Service Collector"

Looking at surface improvements and with an eye towards Fig. 3.01D, this would include demolition of curb-tight sidewalk along the northerly frontage, installation of a northerly extension of landscape strip (assuming the southerly strip is already minimum 6 ft wide inc. curb width), planting of 13 street trees per 3.06.03A (the frontage being 391 ft) and lawn grass, and construction of new northerly 6-ft wide sidewalk.

The alternative to conformance would be per 3.01.02B and 5.02.04 to apply and pay for an Adjustment to Street Improvement Requirements ("Street Adjustment"), addressing the criteria and factors.

- E. 3.02.01: PUE: To conform with 3.02.01F.2a, revise the site and utility plans (Sheets 3 & 4) to narrow to 8 ft the proposed 10-ft wide streetside public utility easement (PUE) that, because of ROW dedication, would displace the existing streetside PUE dedicated through Reel 2794, Page 218, Exhibits A & B (2007).
- F. 3.02.04: Electric: Overhead electric power lines and a power pole exist along the street frontage. Because the frontage exceeds 250 ft, 3.02.04B.1a is applicable. Clarify if 1.b also is applicable.

Exhibit 11, an e-mail chain of Portland General Electric (PGE) communications, seems to attempt to address the item, but there's no clear statement from PGE about whether per 3.02.04B.1b, "burial or undergrounding would either decrease or not increase the number of electric power poles". Contact instead Ken Spencer, Customer Operations Engineer, (503) 970-7200, [kenneth.spencer@pgn.com](mailto:kenneth.spencer@pgn.com), who serves as the *de facto* development review coordinator for the Woodburn area and is familiar with the WDO requirement.

- G. 3.04: Traffic assessment memo: Revise:

1. To address the 3.04.05B thresholds for a transportation impact analysis (TIA). It's clear to staff that thresholds 1 and 2 aren't applicable; however, the memo needs to cite and address each threshold. Assuming none are met, the application materials could continue with a revised memo instead of a TIA.
2. The subject line to include the master/parent case file no. ANX 23-03 and subject property street address 1025 Brown Street.
3. To have a statement addressing the Woodburn School District service provide letter (SPL) of November 9, 2022, which states, "if the ... traffic analysis determines that there will be no impact on the ability to provide safe and accessible routes to school and there will be no impact on the safety of our students, we will support [the City] decision."

The Oregon Dept. of Transportation (ODOT) contact is Casey Knecht (pronounced "connect"), P.E., Development Review Coordinator [Region 2], (503) 986-5170, [casey.knecht@odot.state.or.us](mailto:casey.knecht@odot.state.or.us).

- H. 3.05: Parking: Revise the site plan (Sheet 3) to:

1. 3.05.02J: Indicate the required "no outlet" sign. The recommended placement is either at the driveway or the west end of the north parking aisle.
2. 3.05.03B: Indicate an accessible/ADA parking stall and aisle per ORS 447.233.
3. Table 3.05A: Dimension a few typical parking stalls; the standard size for typical stall is 9 x 18 ft.

- I. 3.06: Significant Trees: Revise the existing conditions plan sheet (Sheet 2), which shows trees, to reflect here the information found on narrative p. 30 that there are no Significant Trees.
- J. 3.07: Architecture: Table 3.07A: Regarding both the “farmhouse” and “modern” architectural plan sets:
  - 1. E2 “X”: Sheet A3 proposes the front patio at min dimension 5 ft width measured at the bench window projection. The min for the narrowest dimension is 8.5 ft.
  - 2. E2 option: The narrative p. 37 table indicates E2 option for points 2, but the points aren’t eligible because Sheet A3 illustrates a front patio proposed off-set (located left of the bench window projection) of 1 ft. The min is 2 ft for a min span of 6.5 ft.
  - 3. E3: Revise Sheet A1 elevations to dimension front patio (a) railing height up to max 3.5 ft and (b) railing top member min width of 3 inches.
  - 4. E4: Regarding only the “modern” architectural plan set, the Sheet A1 front patio stone column lacks visual division into clear areas of capital, shaft, and base.
  - 5. W1:
    - a. Cottage 17: The blank right façade applied to proposed Cottage 17, the right side of which is street-facing, wouldn’t meet min 15% window area. (Per the Sheet A3 floor plan, candidate locations appear to be at the ground floor half-bath (frosted or translucent window acceptable) and ground and/or second floors at stair landings.)
    - b. Cottages 1, 2, & 18: Revise or supplement Sheet A1, which tabulates front elevation window area, to do the same for the left side and rear – either for (1) the typical elevations or (2) as new, separate left side and rear elevations specific to the street-facing elevations of Cottages 1, 2, & 18.

Note: Staff doesn’t expect the above patio revisions to complicate meeting the cottage max footprint of 900 square feet (sq ft) per OAR 660-046-0020(2). Were it a concern, here’s some guidance. Because neither the OAR nor 1.02 define “footprint”, per the 1.02 introductory statement, the term has the meaning set forth in the *New Oxford American Dictionary*, 2010 Ed., in which definition (2) is most applicable: “the area covered by something”. It being not helpful, staff offers to interpret “footprint” to mean the ground floor gross floor area (GFA), regardless of size of any patio slabs or of any projections that begin above grade such as a bay window or upper story projections. This play in definition allows for revising the front patio dimensions without reducing cottage footprint below 900 sq ft.

- K. Street addressing: Re-designate the cottages on the site plan to facilitate street addressing assignment after land use approval (per a request form to the Planning Division found via the application packets webpage).

The development is multiple dwellings on one lot. However, in Exhibit 11, an e-mail chain of Portland General Electric (PGE) communications, the developer mentions intent to plat the development as condominiums (instead of subdivision). This means in regarding to addressing, the project is akin to an apartment complex, and the project will be one or more common areas distinct from the area under each cottage.

Based on past practice for addressing and what the Woodburn Fire District would likely accept, the development would retain the street address of 1025 Brown Street with the addition of 20 apartment, building, or unit numbers – Apt, Bldg, & Unit being standard U.S. Postal Service (USPS) [“Secondary Address Unit Designators”](#) options and that fit residential development.

Having building designations fixed on drawings now and continuing through land use approval and building permit reviews facilitates reviews and allows for seamless address assignment.

Revise the site plans to re-designate the cottages as the apartments, buildings, or units below. Re-designation is guided also by preference to designate from a northerly point south and either clockwise or in alternate rows. The re-designations also suggest that the three common courtyards can be distinguished as A, B, & C.

The table below and the enclosed site plan convey the same re-designation; use whatever is easier to understand.

*Table K. Cottage Addressing*

<i>Proposed</i>	<i>Re-designated</i>	<i>Proposed, cont.</i>	<i>Re- designated, cont.</i>
1	B102	11	C107
2	B101	12	C108
3	B104	13	A105
4	B103	14	A104
5	C101	15	A103
6	C102	16	A102
7	C103	17	A101
8	C104	18	A108
9	C105	19	A107
10	C106	20	A106

- L. Fire access plan: There's no fire access plan sheet. Submit one illustrating, dimensioning, and noting fire apparatus access and lane routes, lane widths, lane inside and outside turning radii per Oregon Fire Code (OFC) Appendix D, a fire suppression water line, hydrants, and streetside and off-street public utility easements (PUEs) for the fire suppression water line and hydrants, and any fire department connections (FDCs). Submit evidence indicating that the proposal has an adequate number of hydrants, whether through existing conditions or the installation of relocated or additional hydrants.

City staff realizes that the site plan sheets show the above in part or by implication; however, the independent Woodburn Fire District is volunteer-run, and a single fire access sheet goes a long way towards getting the district to review a development plan and identify problems and solutions before the City civil engineering plan (CEP) review and building permit stages. City staff recommends that the developer draft a sheet before contacting the Fire Marshal.

Also, the City Engineer often stresses to Planning Division staff desire to have developers ask for Woodburn Fire District comments on site plans – earlier than notices of public hearing – regarding access to developments. Contact Jim Gibbs, Fire Marshal, (503) 982-2360, [gibbsj@woodburnfire.com](mailto:gibbsj@woodburnfire.com).

M. Administrative:

1. To the narrative, add a basic table of contents. Include page numbers for where text begins to address each WDO Chapter (e.g. 5.01, 2.02, 2.05, etc.).
2. List exhibit numbers and titles or descriptions, such as in the narrative after the table of contents.
3. There were not Adobe PDFs of all the application materials, particularly of most of the exhibits (Exhibits 2 and 4 onward) including the service provider letters (SPLs). Submit PDFs.
4. The print copy of the narrative had 40 pages, but the PDF stopped at page 11.
5. Submit plan size print copies not only of the site plans but also the planting plan.

N. Public Works: See enclosed Public Works Department comments.

A helpful hint about item 1: The City Engineer believes that the developer of the earlier phases of the Boones Crossing subdivision to the south had owned the subject property and installed at least 5 laterals to it anticipating 5 conventional single-family house lots.

About item 4, the contact is Jim Gibbs, Fire Marshal, Woodburn Fire District, (503) 982-2360, [gibbsj@woodburnfire.com](mailto:gibbsj@woodburnfire.com).

## Part II

Part II anticipates developer actions and revisions, whether before or after public hearing and ideally before staff finalizes conditions of approval. Read in whole first, taking notes, before asking staff to clarify or revising app materials. I'd be happy to set up a virtual meeting between staff and the applicant or applicant's team to help understand the items and continue discussion from there. A phone call to me would also suffice, (503) 980-2485. As stated on the first page of this letter, these are optional for a completeness response by the applicant and, if the applicant defers, would be resolved later.

AA. Spur Walkway: Please revise the site and planting plans to connect the sidewalk and the northeast common area walkway with an 8-ft wide spur walkway, a distance of about 18 or 19 ft. Feel free to have this substitute for the proposed spur walkway connecting the sidewalk and north parking aisle east end.

BB. Guest bicycle parking: Please locate a guest bicycle parking U-rack along a spur walkway near sidewalk.

CC. Recycling and trash enclosure: Please revise and add information so that the enclosing wall would be an Architectural Wall as 3.06.06B describes and have a pedestrian opening as described in 3.06.06D, "minimum 3 feet, 4 inches wide in addition to the truck gates. If the pedestrian opening is gated, the gate shall swing inward."

DD. Exterior lighting: Outside of ROW, please use full cut-off models of fixtures as 3.11.02A describes, limit any parking area pole lights to a height of 14.5 feet above vehicular grade, and have models of fixtures with warm, yellowish light through color temperature in the range of 2,700-4,000° Kelvin.

EE. Association articles: As the time approaches to draft either condo association, homeowner association (HOA), or maintenance association – however termed – articles of incorporation per Oregon Revised Statute (ORS) [94](#), include a provision that the start of any attempt to dissolve the association (in the indefinite future by the homeowners) must include written notice delivered or mailed to the City c/o Assistant City Administrator. This is to alert the City that the association is abandoning its stormwater detention pond and common area maintenance responsibilities.

Include also a provision that would result, were the Oregon Secretary of State Corporation Division to issue written warning of pending administrative dissolution, in either the Corporation Division sending notice to the City as well as the association.

In closing, please provide to my attention all revised and new materials both in print (2 copies of site plans plotted at site plan size and 1 copy of other documents) and in Adobe PDF files. Acceptable print sizes are letter, ledger, and 24" x 36" plan size. Include a cover letter quoting and addressing each incompleteness item, referencing the plan set and sheet(s) or other document(s) and page number(s) that address each item.

You may email the PDF files if the total attachments remain under 10MB in size. Either a USB thumb drive or use of a file sharing website are also acceptable means to convey electronic files, and staff prefers a file sharing service.

Please contact me at (503) 980-2485 or [colin.cortes@ci.woodburn.or.us](mailto:colin.cortes@ci.woodburn.or.us) with questions.

Sincerely,



Colin Cortes, AICP, CNU-A  
Senior Planner

cc: Roy Hankins, PE, Senior Project Manager, Emerio Design, 6445 SW Fallbrook Pl, Ste 100, Beaverton, OR 97008-5485 [civil engineer]  
Russel Swalberg, Manager, Exterior Spaces LLC, P.O. Box 230361, Tigard, OR 97281-0361 [landscape architect]  
Chris Kerr, Community Development Director  
Cassandra Martinez, Administrative Specialist, Community Development Dept.  
Curtis Stultz, Public Works Director  
Dago Garcia, P.E., City Engineer

Enclosures (3):

1. Public Works comments (May 10, 2023)
2. Site plan (Sheet 3) marked for street address assignment guidance
3. Site plan (Sheet 3)

file(s): ANX 23-03, DR 23-04, & ZC 23-03 "Brown Street Cottages" at 1025 Brown ST (Tax Lot 051W18C001200); [Accela](#) record no. 971-23-000051-PLNG; Emerio Design project number 0471-012



**1025 Brown Street  
ANX 23-03 Brown Street Cottages  
May 10, 2023**

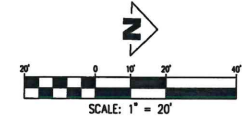
**PUBLIC WORKS INCOMPLETE ITEMS:**

1. Show all existing water and sewer laterals to the property and provide a note indicating that all existing sewer and water services shall be abandoned at the main as part of the improvements for this development.
2. The 6ft right-of-way dedication is required.
3. Provide a note indicating the relocation of the Fire Hydrant located in front of proposed driveway.
4. Fire protection requirements shall comply with the Woodburn Fire District standards and requirements. Fire Hydrants shall be placed within the public right-of-way or public utility easement and be constructed in accordance with Public Works Department requirements, specifications, standards, and permit requirements. Fire protection access, fire hydrant locations and fire protection issues shall comply with current fire codes and Woodburn Fire District standards.
5. Provide preliminary street lighting plan on Brown Street.
6. Add a quality control manhole to the civil plans, manhole to be installed prior to discharging private storm into the public system.



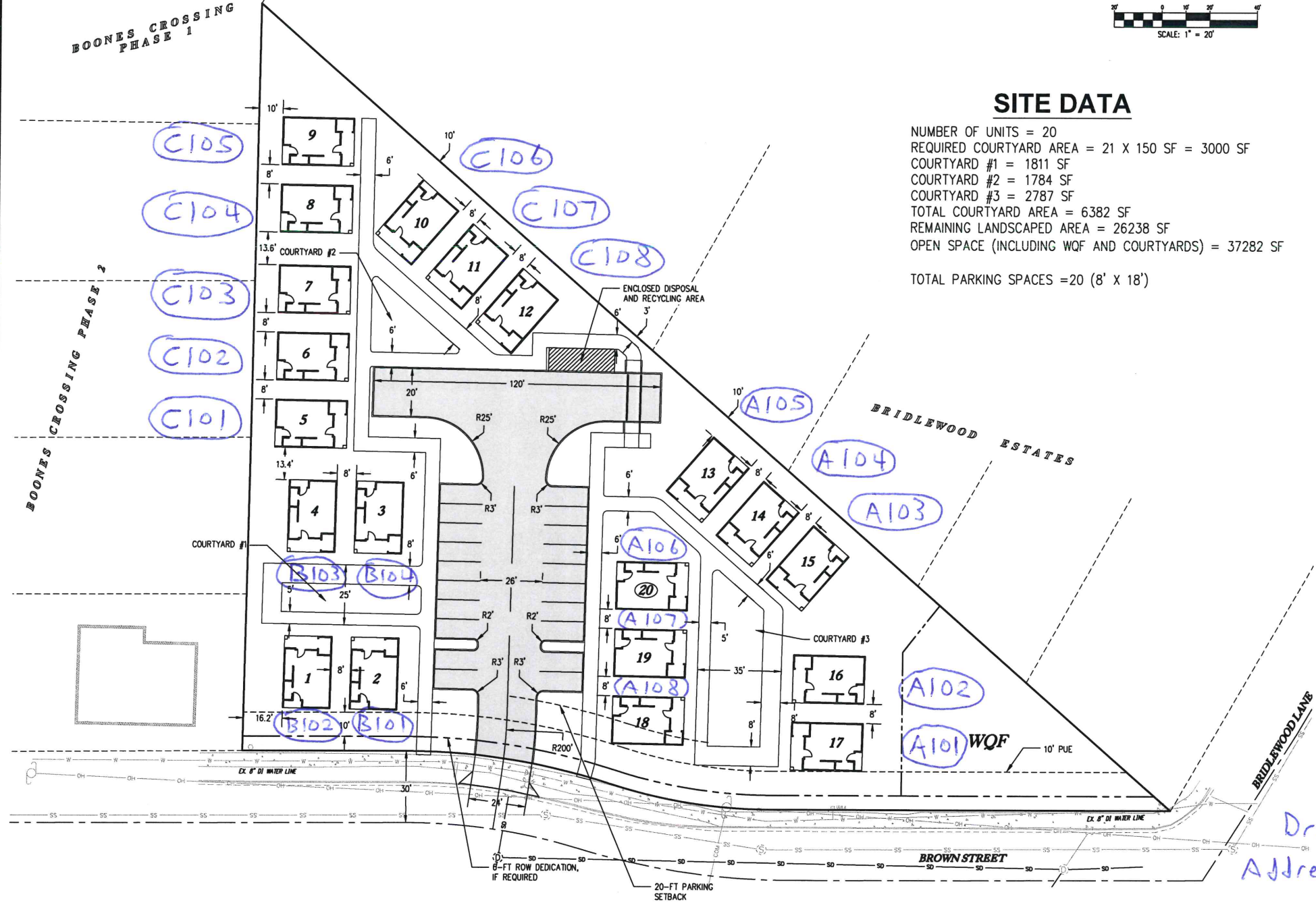
BOONES CROSSING  
PHASE 1

BOONES CROSSING  
PHASE 2



### SITE DATA

NUMBER OF UNITS = 20  
 REQUIRED COURTYARD AREA = 21 X 150 SF = 3000 SF  
 COURTYARD #1 = 1811 SF  
 COURTYARD #2 = 1784 SF  
 COURTYARD #3 = 2787 SF  
 TOTAL COURTYARD AREA = 6382 SF  
 REMAINING LANDSCAPED AREA = 26238 SF  
 OPEN SPACE (INCLUDING WQF AND COURTYARDS) = 37282 SF  
 TOTAL PARKING SPACES = 20 (8' X 18')



Draft  
Addressing

BROWN STREET COTTAGES  
 STAFFORD HOME & LAND, LLC  
 TAX LOT 1200  
 TAX MAP T5S R1W SECTION 18  
 CITY OF WOODBURN, OREGON

### PRELIMINARY SITE PLAN

NO.	DATE	REVISIONS DESCRIPTION

**EMERIO**  
 ENGINEERING - SURVEYING - DESIGN  
 6445 SW FALLBROOK PLACE, SUITE 100  
 WOODBURN, OREGON 97149  
 TEL: (503) 748-9412  
 FAX: (503) 748-9422  
 www.emeriodesign.com

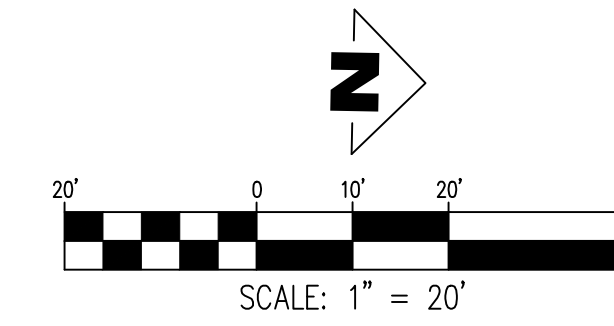
Enclosure  
2

SHEET  
03  
of  
04

FILE# 1979-012 Brown Street Cottages (map plan) 1979-012.dwg, Layout: 01 PRELIMINARY SITE PLAN, Plot Date: 2/24/2023 3:55 PM, by: Peyton Hanks



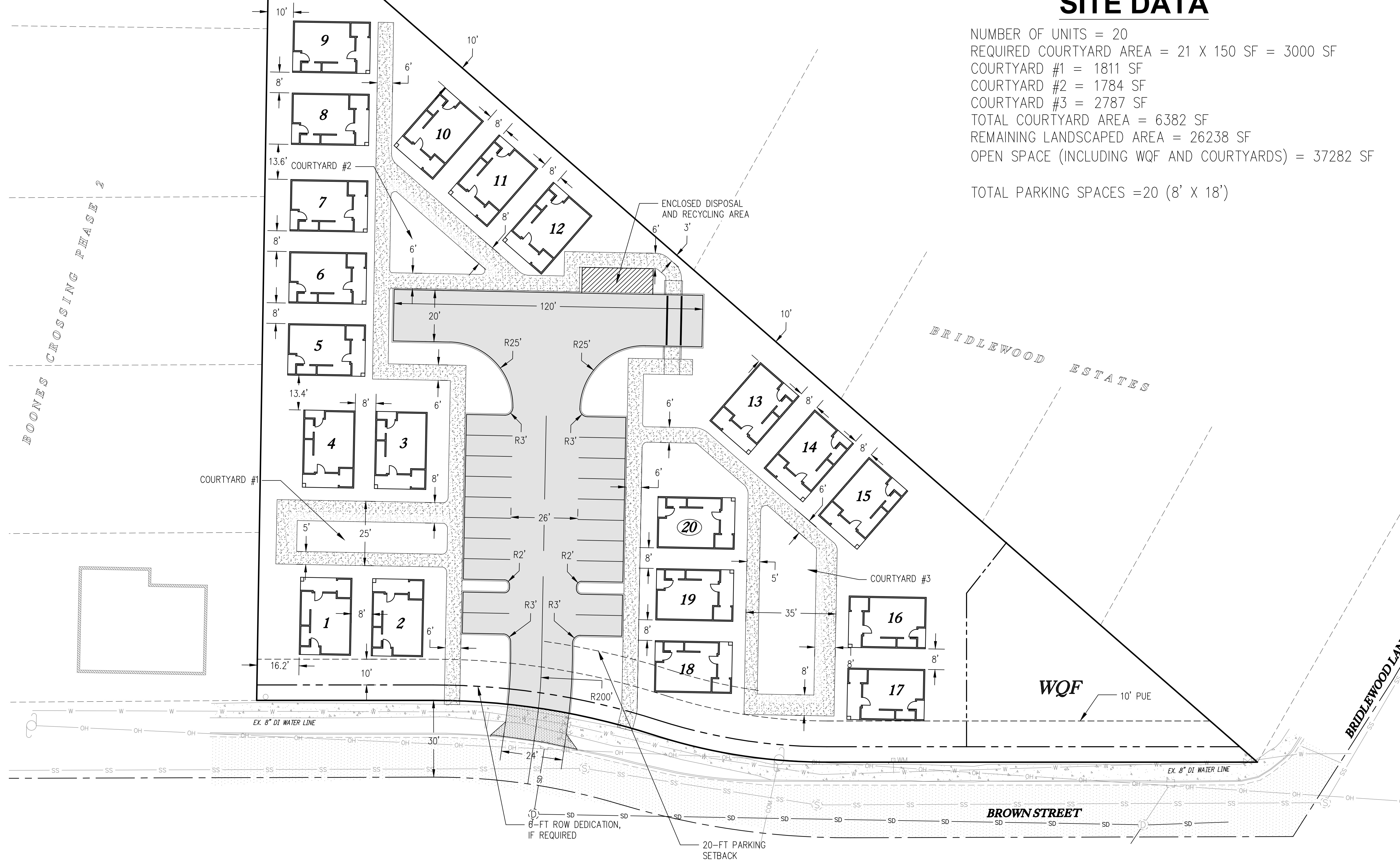
BOONES CROSSING  
PHASE 1



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**BROWN STREET COTTAGES**  
**STAFFORD HOME & LAND, LLC**  
 TAX LOT 1200  
 TAX MAP T5S R1W SECTION 18  
 CITY OF WOODBURN, OREGON

### PRELIMINARY SITE PLAN

REVISIONS	
NO.	DATE

**EMERIO**  
 ENGINEERING • SURVEYING • DESIGN  
 6445 SW FALLBROOK PLACE, SUITE 100  
 BEAVERTON, OREGON 97008  
 TEL: (503) 746-8812  
 FAX: (503) 639-9592  
 www.emeriodesign.com

SHEET  
**03**  
 OF  
**04**

FILE: P:\0471-012 Brown Street Cottages.dwg | Plot: 03 PRELIMINARY SITE PLAN, Plot Date: 2/24/2023 3:55 PM, by: Peyton Hankins

## Colin Cortes

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**From:** Bryan Cavaness <bryan@staffordlandcompany.com>  
**Sent:** Friday, June 2, 2023 10:42 AM  
**To:** EDGING Sean \* DLCD  
**Cc:** STUCKMAYER Ethan \* DLCD  
**Subject:** RE: Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy  
**Attachments:** 1113\_001.pdf

Copies of the development standards the city adopted for cottage clusters and the architectural design requirements the city is applying to the project are attached.

**Bryan Cavaness**  
**General Counsel**  
**Land Development Manager**



8840 SW Holly Lane  
Suite 200  
Wilsonville, Oregon 97070  
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**From:** EDGING Sean \* DLCD <sean.edging@dlcd.oregon.gov>  
**Sent:** Friday, June 2, 2023 10:03 AM  
**To:** Bryan Cavaness <bryan@staffordlandcompany.com>  
**Cc:** STUCKMAYER Ethan \* DLCD <Ethan.STUCKMAYER@dlcd.oregon.gov>  
**Subject:** RE: Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

Good morning Bryan,

I'll have a bit of time today to dive into the details on this. Would you mind sending me the documents outlined below? That will help my review!

Thank you!



**Sean Edging**

Housing Planner | Community Services Division  
Pronouns: He / Him / His  
Cell: 971-375-5362 | Main: 503-373-0050  
[sean.edging@dlcd.oregon.gov](mailto:sean.edging@dlcd.oregon.gov) | [www.oregon.gov/LCD](http://www.oregon.gov/LCD)

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**From:** Bryan Cavaness <[bryan@staffordlandcompany.com](mailto:bryan@staffordlandcompany.com)>  
**Sent:** Tuesday, May 30, 2023 9:28 AM  
**To:** EDGING Sean \* DLCD <[sean.edging@dlcd.oregon.gov](mailto:sean.edging@dlcd.oregon.gov)>  
**Cc:** STUCKMAYER Ethan \* DLCD <[Ethan.STUCKMAYER@dlcd.oregon.gov](mailto:Ethan.STUCKMAYER@dlcd.oregon.gov)>  
**Subject:** RE: Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

Thank you, Sean.

I can provide a copy of the middle housing standards, the design standards, our initial application, staff's incomplete notice, and our response to the incomplete notice. That should provide you with good points of reference. I will forward the materials to you in one batch after I complete our response to the city's incomplete notice.

Thank you for your time and attention to this matter. I am available at your convenience to answer any questions you may have.

Bryan

**Bryan Cavaness**  
**General Counsel**  
**Land Development Manager**



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**From:** EDGING Sean \* DLCD <[sean.edging@dlcd.oregon.gov](mailto:sean.edging@dlcd.oregon.gov)>  
**Sent:** Tuesday, May 30, 2023 9:20 AM  
**To:** Bryan Cavaness <[bryan@staffordlandcompany.com](mailto:bryan@staffordlandcompany.com)>  
**Cc:** STUCKMAYER Ethan \* DLCD <[Ethan.STUCKMAYER@dlcd.oregon.gov](mailto:Ethan.STUCKMAYER@dlcd.oregon.gov)>  
**Subject:** RE: Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

Good morning Bryan,

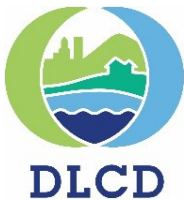
Thank you for sharing this with our team! I am cc'ing my manager, Ethan Stuckmayer, on the response just so he's in the loop.

I believe we are the right folks to be reaching out to. So you are aware, a bill under consideration currently (HB 3414) would establish a "Housing Accountability and Production Office" at DLCD and Building Codes Division, whose role would be to investigate cases like this for compliance with state law and administrative rules related to housing.

As you can imagine, this team is not yet established, so it will take me some time to comb through the facts of this particular case and review the relevant administrative rules related to the regulation of middle housing by local governments. I will follow up with a more thorough response as to what is within and not within the authority of the local government to regulate with regard to middle housing, based on statute (ORS 197.758) and administrative rule (OAR Chapter 660, Division 046). And of course, I welcome your review of these statutes and any others that are relevant to the case. I will add that something that would help aid my turnaround time on this are specific citations to city code that staff referenced, so I won't need to find all of the citations de novo.

And of course, while I will not be able to chime in fully on the constitutional questions raised (as a non-attorney), I will provide some preliminary thinking on the questions raised around unreasonable cost and delay to help both the applicant and city understand how to consider the proportionality of exactions as it relates to this case.

Best,



**Sean Edging**

Housing Planner | Community Services Division

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**From:** Bryan Cavaness <[bryan@staffordlandcompany.com](mailto:bryan@staffordlandcompany.com)>  
**Sent:** Friday, May 26, 2023 12:18 PM  
**To:** EDGING Sean \* DLCD <[sean.edging@dlcd.oregon.gov](mailto:sean.edging@dlcd.oregon.gov)>  
**Subject:** Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

Good afternoon, Sean.

We recently reached out to Mark Kyle McCurdy concerning unforeseen difficulties we are experiencing with the city of Woodburn related to a 20 unit cottage cluster project. Mary Kyle suggested that we contact you to discuss any assistance DLCD may be available to provide.

I have attached site plans for the Woodburn project and for a site in Washington County off of Hall that will support 12 cottages. I have also attached preliminary architectural drawings of the one and two bedroom cottages we would like to construct. We would appreciate any questions, comments, or suggestions you may have on both projects. (We also have a third 12 unit project in Salem that is in preliminary design.)



I cannot adequately emphasize to you how receptive and helpful Washington County staff have been since we presented the 12 unit project on a large lot near Washington Square with an existing home to them in a pre-application conference last fall. They truly want this project to succeed and it has been a pleasure to work with them.

Regretfully, our experience with the city of Woodburn has been substantially less welcoming and cooperative.

The Woodburn property is a single lot that abuts a fully improved right-of-way with curb, a 6-foot planter strip, and a six-foot sidewalk. The property has direct access to sanitary sewer, water, stormwater, and above ground franchise utilities. Streetlighting is provided across the property's frontage on existing PGE poles. It is a "shovel ready" property.

The city's recently adopted TSP reclassified the street the property abuts from a two-lane local street to a three-lane service collector with a mix of islands and turning lanes. Despite the fact that the term "sufficient Infrastructure" does not include transportation system improvements other than those necessary to provide emergency vehicle access, city staff is demanding that we dedicate 6-feet of additional right-of-way, demolish the existing curb and sidewalk, add 6-feet of additional pavement, construct new curb and sidewalk, underground existing franchise utilities (which PGE anticipates will need to be extended several hundred feet off site and require boring under three streets), and install new frontage streetlighting. We conservatively estimate the cost to construct these improvements will range from \$225,000 to \$250,000, which will unnecessarily add over \$11,000 to the cost to construct each cottage dwelling. During a pre-application conference we reminded staff that they would be required to provide both *Nolan* and *Dolan* findings to support the dedication and improvement requirements. Staff glibly responded that *Nolan* and *Dolan* did not apply "because the city code requires the right-of-way dedication and the frontage improvements." We have submitted evidence in the record that demonstrates the right-of-way improvements staff intends to impose on the project are 25 times greater than the impacts the development will have on adjacent transportation system (0.32% of PM peak trips vs. 7.9% of the combined street frontage that will be improved to the wider service collector street standard), but our comments are ignored.

The architectural design elements the city seeks to impose on this project are also very frustrating, both from the unnecessary costs they impose and the inconsistent manner staff arbitrarily chooses to interpret and apply the standards. For example, the code requires building plans to score a minimum 16 "design" points, but the design standards are primarily directed at detached single-family dwellings and many points that are available to single-family dwellings are not available to cottage dwellings. As a result, we are forced to produce construction plans with extraordinary design features such as 9/12 roofs and 2-foot eaves. A roof with a 9/12 pitch and 24-inch eaves results in a roof area that is 30% larger than the same cottage dwelling constructed with a 6/12 roof pitch and 12-inch eaves. The larger roof area requires larger trusses, more roof sheathing materials, more roofing materials, and increased labor costs to construct. We estimate the city's roof design requirements unnecessarily increase the cottage's roof construction costs 10% to 12%. Other examples include elevating the foundation a minimum of 18-inches above sidewalk grade (which does not allow for the construction of single story cottages with zero-barrier entries), constructing a porch railing (which would not be necessary if the city allowed the home to be constructed at grade), 3" window trim on all sides, and minimum dimensional requirements for front porches. However, my personal favorite is a requirement to provide 15% window coverage on all street-facing walls. We estimate the cost to comply with the 15% window requirement has the potential to add as much as \$5,000 to the cost of affected units. The requirement will also wreak havoc on the cottages' thermal envelopes, which will result in increased energy consumption and cause owner's/occupants to incur higher utility bills to heat and cool the cottages. We estimate the total cost to comply with the city's architectural design standards will be approximately \$10,000 for units that are not street facing and \$15,000 to \$17,00 for units that are street facing.

All in, the requirements city staff has plainly stated they intend to impose on this project will unnecessarily increase the cost to construct each cottage unit approximately \$21,000 and as much as \$28,000. As we have told staff on multiple occasions, this is not what the legislature intended when it enacted HB 2001.

We appreciate your offer to discuss these matters with us as conveyed by Mark Kyle. I am presently responding to an incomplete notice the city returned to us requesting additional materials and information related to the annexation and

Type I design review applications we have submitted for this project. Otherwise, I am generally available at your convenience next week.

Thank you for your time and assistance with this matter.

Bryan

**Bryan Cavaness**  
**General Counsel**  
**Land Development Manager**



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3. Density: Accessory dwelling units are not included part of the density calculation for the underlying zone.

E. Floor Area: The gross floor area of the accessory dwelling unit shall not exceed 50 percent of the primary dwelling, or 725 square feet, whichever is less. The garage area shall be excluded from calculation of the floor area.

F. Separation: There shall be a minimum six foot separation between detached accessory dwelling units and all other structures on the site.

G. Vehicles: Structures/vehicles licensed by the Oregon Department of Motor Vehicles shall not be permitted as accessory dwelling units.

H. Entrance: An accessory dwelling unit attached or located within a primary dwelling shall not result in any new door entrance being located on an exterior wall facing a front property line.

- J. Non-conformities: Legally non-conforming accessory structures located on residentially zoned land may be converted to an accessory dwelling unit in accordance with the requirements of Section 1.04.

#### **2.07.21 Cottage Cluster**

A. Purpose. The City permits cottage cluster housing in all residential zones to meet the following objectives to:

1. Comply with Oregon House Bill 2001 (HB 2001; 2019) and OAR 660-046.
2. Provide a variety of housing types that respond to changing household sizes and ages, including but not limited to retirees, small families, and single-person households.
3. Encourage creation of more usable open space for residents of the development through flexibility in density and lot standards.
4. Ensure that the overall size and visual impact of the cluster development be comparable to standard residential development, by balancing bulk and mass of individual residential units with allowed intensity of units.
5. Provide centrally located and functional common open space that fosters a sense of community and a sense of openness in cottage cluster developments.
6. Ensure minimal visual impact from vehicular use and storage areas for residents of the cottage cluster developments as well as adjacent properties.

B. Applicability. The standards of this section apply to all cottage cluster developments in all residential zones. Where there is a conflict between a cottage cluster provision and a provision in WDO 3.07, the cottage cluster provision shall supersede.

C. Development Standards.

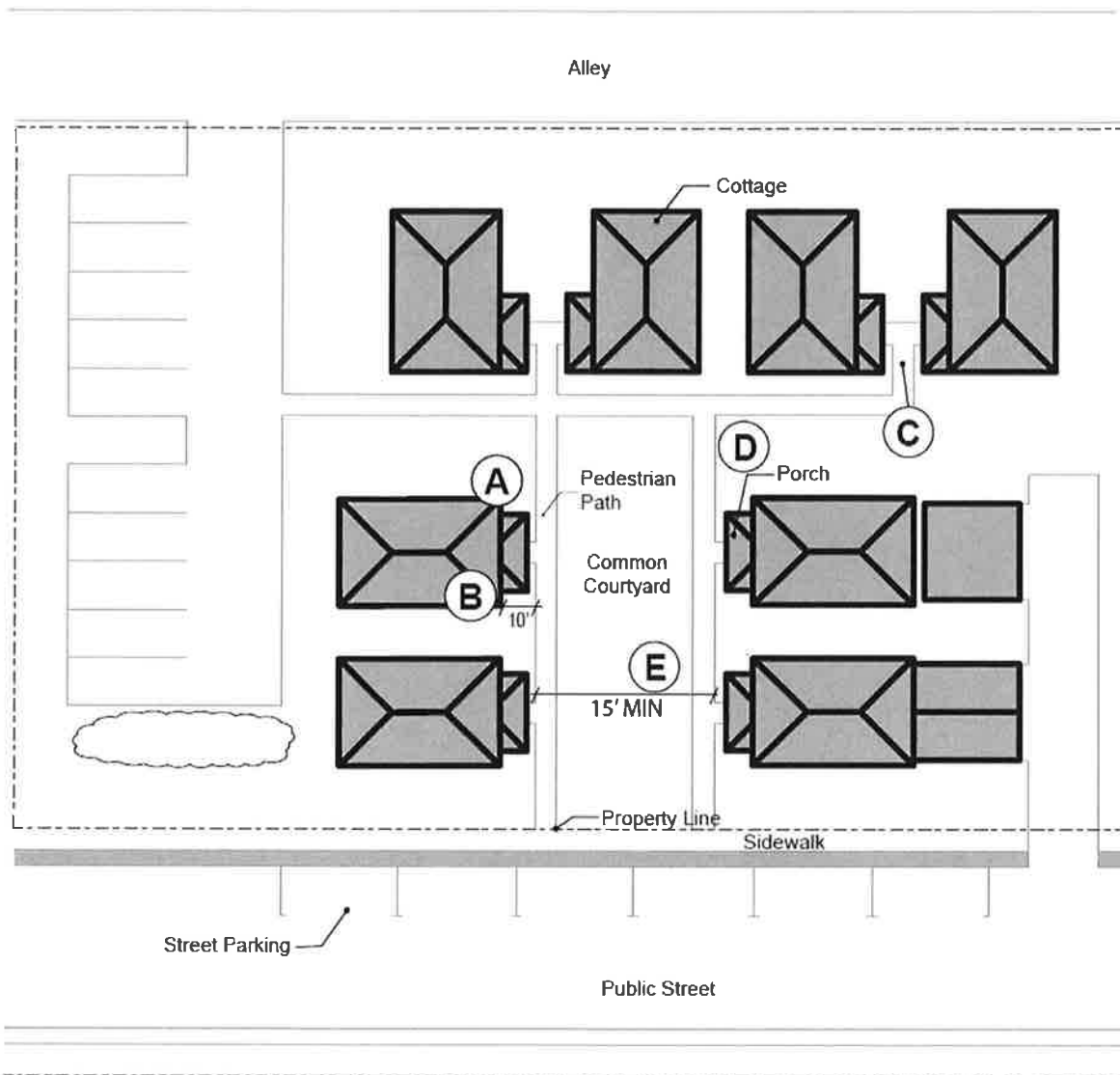
1. Minimum Lot Size and Dimensions: Per the base zoning district per Chapter 2.02, and if and where an overlay district is applicable, 2.05.
2. Maximum Density. Density maximums do not apply to cottage clusters.



3. Maximum Lot Coverage. Maximum lot coverage standards do not apply to cottage clusters.
  4. Setbacks and Building Separation.
    - a. Setbacks. Cottage clusters shall meet the minimum and maximum setback standards as specified in Chapter 2.02, and if and where applicable, 2.05.
    - b. Building Separation. Cottages shall be separated by a minimum distance of 6 feet. The minimum distance between all other structures, including accessory structures, shall be in accordance with state building code requirements.
  5. Building Footprint. Cottages shall have a maximum building footprint of 900 square feet per OAR 660-046-0020(2).
  6. Average Dwelling Size. The maximum average gross floor area (GFA) for a cottage cluster is 1,400 square feet per dwelling. Community buildings shall be included in the average GFA calculation for a cottage cluster.
  7. Building Height. The maximum building height for all structures is 25 feet or two (2) stories, whichever is greater.
  8. Off-Street Parking. Per Table 3.05A.
- D. Design Standards. Cottage clusters shall meet the design standards in subsections (1) through (8).
1. Cottage Orientation. Cottages shall be clustered around a common courtyard, meaning they abut the associated common courtyard or are directly connected to it by a pedestrian path, and shall meet the following standards (see Figure 2.07A):
    - a. Each cottage within a cluster shall either abut the common courtyard or shall be directly connected to it by a pedestrian path.
    - b. A minimum of 50 percent of cottages within a cluster shall be oriented to the common courtyard and shall:
      - (1) Have a main entrance facing the common courtyard;
      - (2) Be within 10 feet from the common courtyard, measured from the facade of the cottage to the nearest edge of the common courtyard; and
      - (3) Be connected to the common courtyard by a pedestrian path.
    - c. Cottages within 20 feet of a street property line may have their entrances facing the street.
    - d. Cottages facing neither the common courtyard nor the street shall have their main entrances face a pedestrian path that is directly connected to the common courtyard.
  2. Common Courtyard Design Standards. Each cottage cluster shall share a common courtyard in order to provide a sense of openness and community of residents. Common courtyards shall meet the following standards (see Figure 2.07A):
    - a. The common courtyard shall be a single, contiguous area.
    - b. Cottages shall abut the common courtyard on at least two sides of the courtyard.
    - c. The common courtyard shall contain a minimum equal to 150 square feet per cottage

within the associated cluster.

- d. The common courtyard shall be a minimum of 15 feet wide at its narrowest dimension.
- e. The common courtyard shall be developed with a mix of landscaping, lawn area, pedestrian paths, and/or paved courtyard area, and may also include recreational amenities. Impervious elements of the common courtyard shall be maximum 75 percent of the common courtyard total area.
- f. Pedestrian paths shall be included in a common courtyard. Paths that are contiguous to a courtyard shall count toward the courtyard minimum dimension and area. Parking areas, minimum setbacks, driveways, and drive aisles do not qualify as part of a common courtyard.



- (A)** A minimum of 50% of cottages must be oriented to the common courtyard.
- (B)** Cottages oriented to the common courtyard must be within 10 feet of the courtyard.
- (C)** Cottages must be connected to the common courtyard by a pedestrian path.
- (D)** Cottages must abut the courtyard on at least two sides of the courtyard.
- (E)** The common courtyard must be at least 15 feet wide at its narrowest width.

Figure 2.07A: Cottage Cluster Orientation and Common Courtyard Standards

3. Community Buildings. Cottage cluster projects may include community buildings for the shared use of residents that provide space for accessory uses such as community meeting rooms, guest housing, exercise rooms, day care, or community eating areas. Community buildings shall meet the following standards:
  - a. Each cottage cluster is permitted one community building, which shall count towards the maximum average GFA.
  - b. A community building that meets the Chapter 1.02 definition of a dwelling unit shall meet the maximum 900 square foot footprint limitation that applies to cottages, unless a covenant is recorded against the property that (1) states that the structure is not a legal dwelling unit and will not be used as a primary dwelling and (2) conforms to Director administrative specifications.

Community buildings are not the same as community club buildings and facilities as Section 2.07.04 describes in the context of conventional residential subdivisions and planned unit developments.

4. Pedestrian Access.
  - a. An accessible pedestrian path shall be provided that connects the main entrance of each cottage to the following:
    - (1) The common courtyard;
    - (2) Pooled parking or shared parking areas;
    - (3) Community buildings; and
    - (4) Boundary Street sidewalk, or, if such sidewalk neither exists nor is required, to the ROW boundary.
  - b. The pedestrian path shall be hard-surfaced and minimum width per Section 3.04.06C.
5. Architecture: Per 3.07.02.
6. Parking Design (see Figure 2.07B).
  - a. Clustered parking. Off-street parking may be arranged in clusters, subject to the following standards:
    - (1) Cottage cluster projects with fewer than 16 cottages are permitted parking clusters of not more than 5 contiguous spaces.
    - (2) Cottage cluster projects with 16 cottages or more are permitted parking clusters of not more than eight 8 contiguous spaces.
    - (3) Parking clusters shall be separated from other spaces by at least 4 feet of landscaping.
    - (4) Clustered parking areas may be covered/sheltered.
  - b. Parking location and access. The following two standards are not applicable along alleys or shared rear lanes:

- (1) Off-street parking spaces and vehicle maneuvering areas shall not be located:
  - (a) Within 20 feet of any street property line;
  - (b) Between a street property line and the front facade of cottages located closest to the street property line.
- (2) Off-street parking spaces shall not be located within 5 feet of any other property line, excepting property lines along alleys or shared rear lanes. Driveways and drive aisles shall not be located within 5 feet of other property lines except (A) along alleys or shared rear lanes or (B) Section 3.04 requires to adjoin such property lines to meet cross access or shared access standards.
- c. Screening. Landscaping, fencing, or walls minimum 3 feet high, shall separate pooled parking or shared parking areas and parking structures from common courtyards and public streets.
- d. Garages and carports.
  - (1) Garages and carports (whether shared or individual) shall not abut common courtyards.
  - (2) Individual attached garages up to 200 square feet shall be exempt from the calculation of maximum building footprint for cottages.
  - (3) Individual detached garages shall be maximum 400 square feet GFA.
  - (4) Garage doors for attached and detached individual garages shall be maximum 20 feet in width.
7. Accessory Structures. Accessory structures shall be maximum 400 square feet GFA.
8. Existing Structures. On a lot or parcel to be used for a cottage cluster project, an existing detached single family dwelling on the same lot at the time of proposed development of the cottage cluster may remain within the cottage cluster project area if the development meets the following provisions:
  - a. The existing dwelling may be nonconforming with the WDO as Section 1.04 allows.
  - b. The existing dwelling may be expanded up to the maximum height or the maximum building footprint per this Section 2.07.21; however, existing dwellings that exceed the maximum height and/or footprint per Chapters 1.04 and 2.02 shall not expand.
  - c. The GFA of the existing dwelling shall not count towards the maximum average GFA of a cottage cluster.
  - d. The existing dwelling shall be excluded from the calculation of orientation toward the common courtyard.

## **3.07 Architectural Design**

The purpose of this Section is to set forth the standards and guidelines relating to the architectural design of buildings in Woodburn. Design standards can promote aesthetically pleasing architecture, increase property values, visually integrate neighborhoods, and enhance the quiet enjoyment of private property.

3.07.01 Applicability of Architectural Design Standards and Guidelines

3.07.02 Single Family, Manufactured Dwellings, & Dwellings Other Than Multiple-Family ("Middle Housing") on Individual Lots

3.07.03

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3.07.04 Dwellings in the Neighborhood Conservation Overlay District (NCOD)

3.07.05 Standards for Medium Density Residential Buildings

3.07.06 Standards for Non-Residential Structures in Residential, Commercial and Public/Semi Public Zones

3.07.07 Downtown Development and Conservation Zone

3.07.08 Mixed Use Village Zone

3.07.09 Nodal Neighborhood Commercial Zone

3.07.10 Industrial Zones

### **3.07.01 Applicability of Architectural Design Standards and Guidelines**

- A. For a Type I review, the criteria of this Section shall be read as "shall" and shall be applied as standards. For a Type II or III review, the criteria of this Section shall be read as "should" and shall be applied as guidelines.
- B. The following are exempt from the provisions of this Section:
  1. Any single-family, duplex, or manufactured dwelling that existed prior to October, 2005, except such dwellings located within the Neighborhood Conservation Overlay District (NCOD).
  2. New dwellings in Manufactured Dwelling Parks containing more than three acres.

### **3.07.02 Single-Family Dwellings, Manufactured Dwellings, & Dwellings Other Than Multiple-Family ("Middle Housing") on Individual Lots**

#### **A. Applicability**

This Section shall apply to all new single-family dwellings, dwellings other than multiple-family, and manufactured dwellings on individual lots. It shall apply also to subdivisions and Planned Unit Developments approved on or before August 12, 2013.

Manufactured dwellings have different standards for roofing; otherwise, all standards in this Section apply to manufactured dwellings.

B. Minimum Requirements

1. Design Standards. Each single-family dwelling, duplex, triplex, quadplex, townhouse project, or manufactured dwelling shall meet all the design standards identified in Table 3.07A as required standards and a minimum number of points per subsection (2.) below.
2. Design Options. Each single-family dwelling, duplex, triplex, quadplex, townhouse project, or manufactured dwelling shall meet enough of the menu options identified in Table 3.07A as providing optional points to total 16 points. Totaling 16 or more points is a requirement, and the choice of any particular menu option is optional.

C. Architectural and Design Standards (Table 3.07A)

**Architectural & Design Standards for Single-Family Dwellings,  
Manufactured Dwellings <sup>1</sup>, and Dwellings other than Multiple-Family,  
on Individual Lots  
Table 3.07A**

Design Standard		Required (X)	Optional Points
<b>Building Massing</b>			
M1	<p>Maximum Facade Width: Exempting townhouses, the max width for any street-facing facade located within 25 ft of a street lot line shall be as follows. The portions of a facade subject to this standard must be separated 10 ft min. See Figure 3.07A. Max facade width of:</p> <ul style="list-style-type: none"> <li>• 100 ft</li> <li>• 80 ft</li> <li>• 60 ft</li> </ul>	-	-
	<ul style="list-style-type: none"> <li>• 100 ft</li> </ul>	X	-
	<ul style="list-style-type: none"> <li>• 80 ft</li> </ul>	-	1
	<ul style="list-style-type: none"> <li>• 60 ft</li> </ul>	-	2
M2	<p>Facade Articulation: The front elevation of large buildings shall be divided into smaller areas or planes. When the front elevation of a building is more than 500 square ft in area, the elevation shall be divided into distinct planes of 500 square ft or fewer. See Figure 3.07C. This division can be done by:</p> <ul style="list-style-type: none"> <li>• A porch; a dormer min 4 ft wide and placed min 3 ft from any building side wall; or a balcony that is at least 2 ft deep and is accessible from an interior room;</li> <li>• A bay, box, or oriel window that projects min 2 ft, encloses a width min 5 ft (for angled sides measured at closest corners) and a height min 6.5 ft; or</li> <li>• Recessing a section of the facade by min 2 ft, recess being min 6 ft wide.</li> </ul> <p>The requirement applies also to an elevation that adjoins a tract or off-street bicycle/pedestrian corridor.</p>	X	-
M3	<p>Privacy Transition Area: The street-facing ground floor is either elevated above sidewalk grade min 1.5 ft or has its main wall plane set back min 10 ft from sidewalk edge.</p> <p>Note M3: If elevated, any front covered porch or roofed patio also is elevated and below floor level has the front elevation either patterned or stamped if concrete or masonry wall or covered with lattice if a void.</p>	-	2



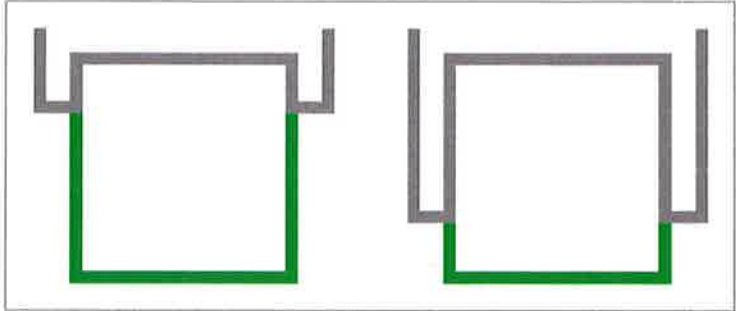
**Architectural & Design Standards for Single-Family Dwellings,  
Manufactured Dwellings <sup>1</sup>, and Dwellings other than Multiple-Family,  
on Individual Lots  
Table 3.07A**

Design Standard		Required (X)	Optional Points
<b>Roofs</b>			
R1	Roof Pitch: Manufactured dwellings shall have a min roof pitch of 3/12. All other buildings shall have min roof pitch as follows:	-	-
	• 6/12	X	-
	• 8/12	-	1
	• 9/12	-	2
R2	Dormer(s): The roof includes a gable, dormer min 4 ft wide and placed min 3 ft from any building side wall, or eyebrow at least 3 ft wide and 3 ft above eave. Total width of all dormers shall not exceed 50 percent of the width of the facade that they parallel.	-	1
R3	Eaves: Roof eaves, overhangs, and rakes shall project from the building wall the following min inches on all elevations:	-	-
	• 12	X	-
	• 18	-	1
	• 24	-	2
R4	Material: Roofing material shall be composition shingles, clay or concrete tile, metal, cedar or slate shingles or shakes. Composition shingles shall be architectural style.	X	-
	• Roofing material is clay, concrete tile, or cedar or slate shingles.	-	1
<b>Entrances</b>			
E1	Entrance Orientation: For every 40 lineal ft of street-facing facade, at least one entrance shall meet the following standards. For lots with two or more street frontages, this standard applies to min one frontage: <ul style="list-style-type: none"> <li>• The entrance must be within 8 ft of the longest street-facing wall of the building;</li> <li>• Have any of a door with either peephole or incorporated window, or, a door side lite (a tall narrow window to the</li> </ul>	X	-

**Architectural & Design Standards for Single-Family Dwellings,  
Manufactured Dwellings <sup>1</sup>, and Dwellings other than Multiple-Family,  
on Individual Lots  
Table 3.07A**

Design Standard	Required (X)	Optional Points
<p>side of the door); and</p> <ul style="list-style-type: none"> <li>• The entrance must any of of: <ul style="list-style-type: none"> <li>○ Face the street,</li> <li>○ Be at an angle of up to 45° from the street,</li> <li>○ Face a common open space that is adjacent to the street and is abutted by buildings on min two sides, or</li> <li>○ Open onto a porch or recessed entry meeting the E2 requirements below.</li> </ul> </li> </ul>		
<p>E2 Front Porch or Patio: On lots wider than 25 ft, each dwelling entrance shall meet the below. For lots with two or more street frontages, the standards apply to min one frontage.</p> <ul style="list-style-type: none"> <li>• A recessed entry, min 72 square ft, with min dimension 8.5 ft biased towards one side of the entry. A recess serving two entries, one each for two attached dwellings, shall be min 119 square ft; or</li> <li>• A covered porch or roofed patio, min 72 square ft with min dimension 8.5 ft. A porch or patio serving two entries, one each for two attached dwellings, shall be min 119 square ft.</li> <li>• Height: Min ceiling or clearance height 8 ft.</li> </ul> <p>Where a lot is 25 ft or narrower and a street-facing recessed entry, covered porch, or roofed patio would be infeasible, then one of the G4 options instead shall be a standard: above a street-facing garage, as either interior living area, or, a covered balcony or deck.</p> <p>Where a lot is 25 ft or narrower and it adjoins a tract or off-street bicycle/pedestrian corridor, the porch/patio requirement may be met on the adjoining facade instead of the street-facing facade.</p>	X	-
<ul style="list-style-type: none"> <li>• A covered porch or roofed patio at minimums per above and with min width 14 ft facing the street.</li> </ul>	-	1
<ul style="list-style-type: none"> <li>• The covered porch or roofed patio by min 2 ft either recesses into or projects from the main wall plane along min 6.5 ft of the width of the porch or patio.</li> </ul>	-	2

**Architectural & Design Standards for Single-Family Dwellings,  
Manufactured Dwellings <sup>1</sup>, and Dwellings other than Multiple-Family,  
on Individual Lots  
Table 3.07A**

Design Standard	Required (X)	Optional Points
 <p align="center">Figure 3.07A –Minimum Porch/Patio Recess &amp; Projection Example Plans</p>		
<p>E3 Porch/Patio Delineation: Includes any of balustrade, fall protection, wood fencing, and metal or wood railings and is required. 3.5 ft high max. 4 ft wide max gap as passage allowed. Fencing or railing with top member flat and min 3 inches wide. A second horizontal member below the top member (to allow affixing, hanging, or threading items below the top member).</p>	X	-
<p>E4 Columns: Ornamental columns. If the streetside porch or roofed patio provides one or more columns as supports, columns shall be divided visually into clear areas of capital, shaft, and base. Shaft min 8 inches square or diameter. Wrought iron style porch supports do not meet this requirement.</p>	X	-
<b>Garages</b>		
<p>G1 Garage Orientation: Garages shall face away from the street on lots abutting an alley or shared rear lane. On a corner lot with no alley or shared rear lane, a garage may face one frontage as the Director determines. On any lot with no alley or shared rear lane, any garage that faces away from the street frontage of the main pedestrian entry, at a min angle of 90°, is exempt from garage setback, width, and design standards (G2-G4).</p>	X	-
<p>G2 Minimum Garage Setback: The front of a garage shall be set back from street right-of-way either (a) the same distance as the dwelling main wall plane that encloses living area or (b) 20 ft,</p>	X	-

**Architectural & Design Standards for Single-Family Dwellings,  
Manufactured Dwellings <sup>1</sup>, and Dwellings other than Multiple-Family,  
on Individual Lots  
Table 3.07A**

Design Standard		Required (X)	Optional Points
	whichever is deeper. Garages set back farther or recessed are eligible for optional points:		
	<ul style="list-style-type: none"> <li>Garages either recessed behind the main wall plane min 2 ft or set back 21 ft.</li> </ul>	-	1
	<ul style="list-style-type: none"> <li>Garages either recessed behind the main wall plane min 3 ft or set back 22 ft.</li> </ul>	-	2
G3	<p>Maximum Garage Width: Excepting a lot with alley or shared rear lane access, the combined width of all attached garages shall not exceed a max per the below. Where in place of a garage there is a carport, or, a vehicular passage dividing the ground floor and serving parking area at the rear, then the max width shall be 10 ft for a one-car wide carport, 18 ft for a two-car wide carport, or 20 ft for a passage.</p> <p>A detached garage behind the dwelling building may exceed max width if the dwelling building in elevation view partly screens the detached garage such that the visible remainder of the garage is within the max width.</p> <p>For trapezoidal lots along cul-de-sacs or bends in streets where a street frontage width is narrower than the lot width, the applicable standard applies based on lot width instead of street frontage width.</p> <p>Garages and parking and circulation areas that are narrower than the max are eligible for optional points:</p>	X;	-
	<p>a. For a lot up to 25 ft wide: Max one garage door opening at max width 9 ft.</p>	X;	-
	<p>b. For a lot wider than 25 ft or less than 60 ft wide: Max width 18 ft total of garage door or doors.</p>	X;	-

**Architectural & Design Standards for Single-Family Dwellings,  
Manufactured Dwellings <sup>1</sup>, and Dwellings other than Multiple-Family,  
on Individual Lots  
Table 3.07A**

Design Standard	Required (X)	Optional Points
c. For a lot 60 ft wide or wider: Either (1) max width 18 ft total of garage door or doors for house or duplex, 27 ft total for triplex, or 36 ft total for quadplex; or (2) garage width max 45 percent of lot street frontage width, whichever of (1) or (2) is less restrictive.	X;	-
Garages and parking and circulation areas that are narrower than the above applicable max are eligible for optional points:	-	
<ul style="list-style-type: none"> <li>• Garage width total max is either 40 percent or less instead of 45.</li> </ul>	-	1
<ul style="list-style-type: none"> <li>• Street frontage has a single garage door max width 9 ft.</li> </ul>	-	2
G4 Garage Design: Street-facing garages that incorporate design features intended to minimize the prominence of the garage and integrate it into the primary structure are eligible for optional points as follows:	-	-
<ul style="list-style-type: none"> <li>• Interior living area above the garage is provided. The living area may adjoin or incorporate a garage rooftop balcony or deck, but the living area shall have its wall plane set back max 8.5 ft from the street-facing garage wall and shall be min width 8.5 ft.</li> </ul>	-	1
<ul style="list-style-type: none"> <li>• A covered balcony or deck above the garage is provided. The covered balcony or balcony min 8.5 ft wide across the garage and accessible from the interior living area of the dwelling unit. Coverage min 55 square ft.</li> </ul>	-	1
<ul style="list-style-type: none"> <li>○ The above covered balcony or deck projects min 2 ft beyond the street-facing garage wall and for min width 9 ft.</li> </ul>	-	2
<ul style="list-style-type: none"> <li>• Windows are min 15 percent of garage door area.</li> </ul>	-	1
<ul style="list-style-type: none"> <li>• Two one-car wide garage doors, max 9 ft wide each, serve a two-car wide garage.</li> </ul>	-	1

**Architectural & Design Standards for Single-Family Dwellings,  
Manufactured Dwellings <sup>1</sup>, and Dwellings other than Multiple-Family,  
on Individual Lots  
Table 3.07A**

Design Standard		Required (X)	Optional Points
<b>Windows</b>			
W1	Window Area: Min 15 percent of the area of all facades that face streets, tracts other than shared rear lane tracts, or off-street bicycle/pedestrian corridors, shall include windows and an entrance door or doors.	X	-
W2	Window Design: Building facades facing streets, tracts other than shared rear lane tracts, or off-street bicycle/pedestrian corridors, and which incorporate the following are eligible for optional points:	-	-
	<ul style="list-style-type: none"> <li>Window trim around all windows min 3 inches wide and 5/8 inches deep.</li> </ul>	-	1
	<ul style="list-style-type: none"> <li>Window recesses, in all windows, min 3 inches as measured horizontally from the face of the building facade.</li> </ul>	-	1
	<ul style="list-style-type: none"> <li>For all street facing single or double-hung windows, what is described by any of divided lites, grids, or muntins are min 2 in at least the upper half of each window.</li> </ul>	-	1
W3	Proportion: On facades facing streets, tracts other than shared rear lane tracts, or off-street bicycle/pedestrian corridors, each window must be square, round, or vertically proportioned. Operable windows shall have insect screens. Casement windows shall have symmetrical arrangement of lites.	X	-
<b>Exterior Finish Materials</b>			
F1	Permitted Finish Materials: The exterior finish of a dwelling shall have the appearance of either horizontal or vertical fiber cement, vinyl, or wood lap siding; shake or scallop shingles; batt and board; stone; brick; or stucco. Where horizontal lap siding is used, it shall appear to have a reveal of 3 to 6 inches. Plain concrete, corrugated metal, plywood and press board are prohibited as exterior finish material. Window shutters, if provided, shall be operable and able to cover the window when closed.	X	-
	<ul style="list-style-type: none"> <li>For a dwelling of one story, shakes, shingles, brick, stone</li> </ul>	-	1

**Architectural & Design Standards for Single-Family Dwellings,  
Manufactured Dwellings <sup>1</sup>, and Dwellings other than Multiple-Family,  
on Individual Lots  
Table 3.07A**

Design Standard	Required (X)	Optional Points
<p>or other similar decorative materials are applied as a band on the street-facing facade horizontally from grade upwards min either 3 ft or to bottoms of ground floor windows, and wrap around each side elevation for min distance 2 ft. If one of the side elevations also faces a street or faces either a tract other than a shared rear lane tract or an off-street bicycle/pedestrian corridor, the wrap-around shall extend along the whole width of the side elevation.</p> <p>F1b: If one of the side elevations also faces a street or faces either a tract other than a shared rear lane tract or an off-street bicycle/pedestrian corridor, the wrap-around shall extend along the whole width of the side elevation.</p>		
<ul style="list-style-type: none"> <li>For a dwelling of two or more stories, shakes, shingles, brick, stone or other similar decorative materials are applied as a band on the street-facing facade horizontally from grade upwards min either 7 ft or to tops of ground floor windows and doors, and wrap around each side elevation for min distance 2 ft. Same as F1b.</li> </ul>	-	2
F2 Foundation: Plain poured concrete may be used as foundation material if the foundation material is not revealed more than 3 ft above the finished grade level adjacent to the foundation wall and if the concrete is stamped or patterned to resemble rusticated or cut stone or wood or if decorative materials are applied per an F1 option.	X	-
<b>Additional Off-Street Parking</b>		
P1 A development of dwellings other than detached single-family dwellings and other than multiple-family dwellings opts to provide off-street parking that exceeds the min parking ratio per Table 3.05A:	-	-
<ul style="list-style-type: none"> <li>Off-street parking ratio min 1.5 spaces per dwelling</li> </ul>	-	1
<ul style="list-style-type: none"> <li>Off-street parking ratio min 2 spaces per dwelling</li> </ul>	-	2
<b>Cottage Cluster</b>		
CC Along with a house among those within a cottage cluster, a one-time option of 2 points is available if the common	-	2

**Architectural & Design Standards for Single-Family Dwellings,  
Manufactured Dwellings <sup>1</sup>, and Dwellings other than Multiple-Family,  
on Individual Lots**  
**Table 3.07A**

Design Standard	Required (X)	Optional Points
courtyard width is 24 feet wide or wider and with two walkways, one min 8 feet wide and the other min 5 feet, and the area between walkways is min 8 feet wide. See Section 2.07.21 for cottage cluster provisions.		
1. Zoning Adjustment permissible for manufactured dwelling.		

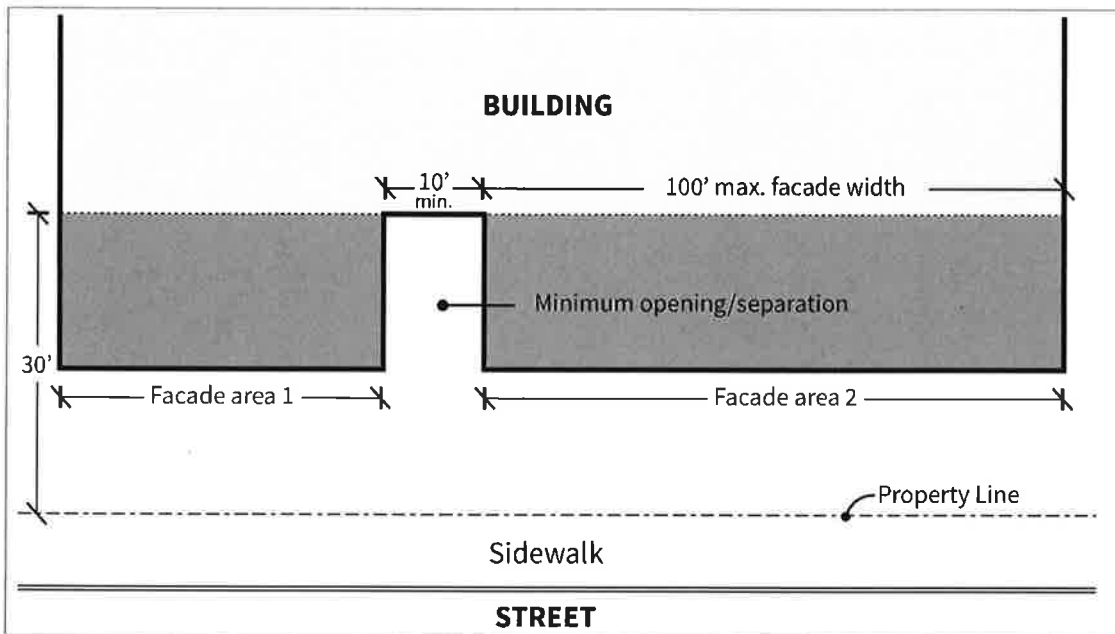


Figure 3.07A: Maximum Facade Width



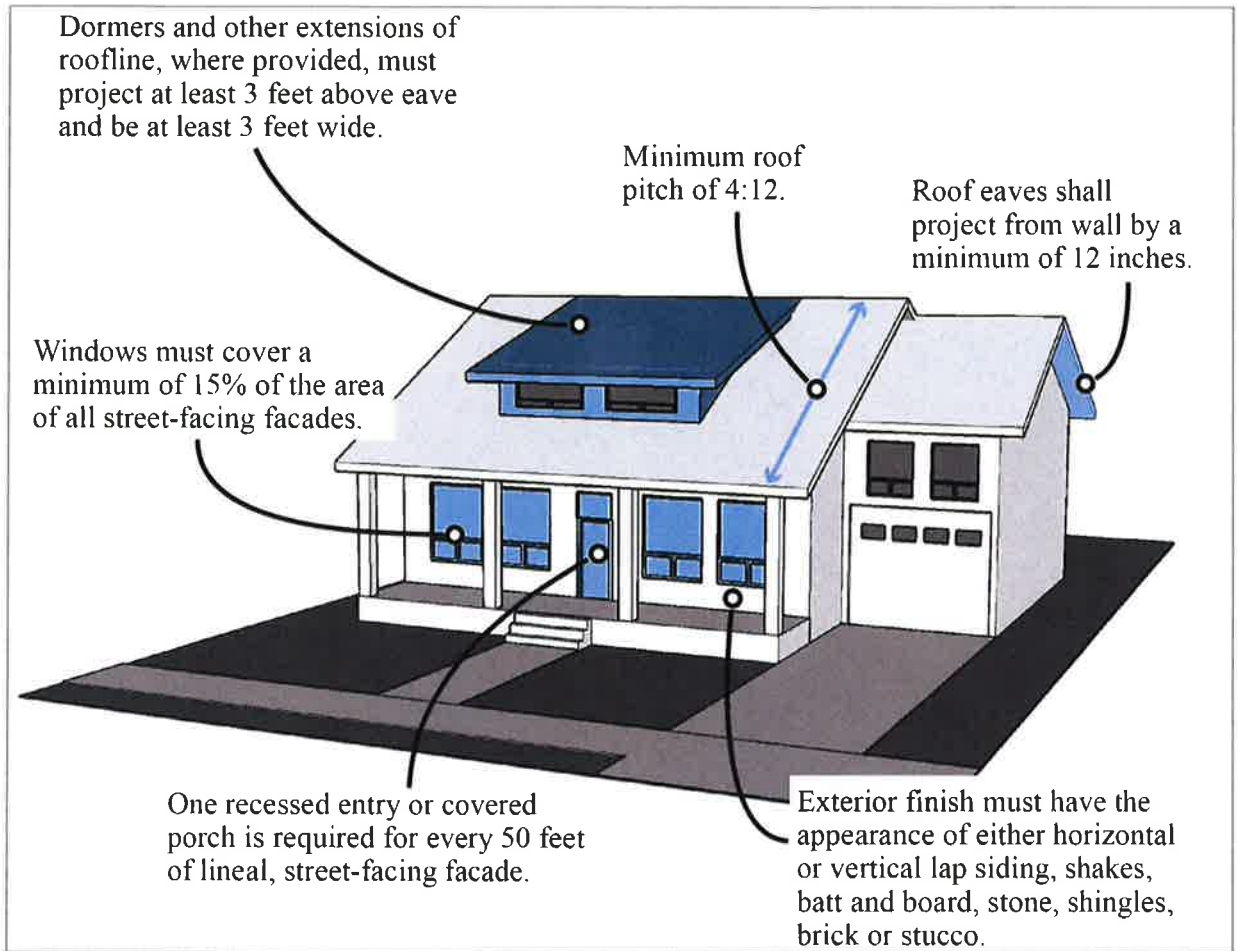


Figure 3.07C: Facade Articulation and Garage Design Standards

## Colin Cortes

---

**From:** Bryan Cavaness <bryan@staffordlandcompany.com>  
**Sent:** Tuesday, June 6, 2023 3:26 PM  
**To:** EDGING Sean \* DLCD  
**Cc:** STUCKMAYER Ethan \* DLCD  
**Subject:** RE: Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

Regarding your first question:

Staff, citing city code, expects that we will dedicate additional right-of-way as a condition of approving the annexation. For reasons I noted in the narrative we provided to the city, There is no “nexus” under *Nolan* that would support the dedication requirement because the property cannot be developed after the annexation is approved without further land use review processes, e.g., a subdivision application or other application such as a Type I administrative review. There is clear LUBA caselaw on this subject. Any right-of-way exaction would need to occur through the Type I site plan review process. I appreciate that this is a legal argument, but we would appreciate any input you would feel comfortable offering on this topic.

OAR 660-046-0220(4)(i) requires applicants to demonstrate “Sufficient Infrastructure” is available or can be made available to serve a proposed cottage cluster project. OAR 660-046-0020(16) limits the definition of “Sufficient Infrastructure” to; 1) public sanitary sewer service with capacity to serve the proposed development; 2) public water service with capacity to serve the proposed development; 3) emergency vehicle access via a public or private street; and 4) the provision of storm drainage facilities that meet applicable standards.

The definition of “Sufficient Infrastructure” is consistent with the reference to Goal 11 found at OAR 660-045-0010(e), and the subsection’s notable lack of any reference to Goal 12.

OAR 660-045-0010 (4) explicitly states “the applicable Model Code completely replaces and pre-empts any provision of those Middle and Large Cities’ development codes that conflict with the Model Code.” We believe this language prohibits cities from adding additional approval criteria related to transportation facilities or franchise utilities.

We believe that the legislature’s proviso that siting and design regulations a city opts to impose on Middle Housing may not “discourage the development of all middle housing types \* \* \* through unreasonable costs or delay” obligates and shifts the burden to cities to demonstrate on the record that the requirements do not impose unreasonable costs. To our knowledge, the city of Woodburn made no such findings when it adopted the design standards for Middle Housing units.

Re our constitutional concerns, staff has chosen to ignore the city’s burdens under *Nolan* and *Dolan* to identify a “nexus” between the proposed cottage cluster project and its resulting impacts that would warrant an outright denial and to demonstrate that the exactions they seek are proportional to the project’s impacts. Staff has simply told us we have to comply with the code and that *Nolan* and *Dolan* are not of any concern.

Regarding your second question:

We believe that OAR 660-045-0225(c) grants cities the ability to apply design standards to Middle Housing; provided the standards are uniformly applied to more traditional residential dwellings in the same zone. In this instance, the city purports to apply the same design standards to cottage cluster developments as single-family dwellings in the same zone. However, as we discuss in our narrative, the city’s code is not “clear and objective” both from the perspective that there is no clear intent to apply the design standards to cottages and the standards themselves are capable of multiple interpretations.

We are available at your convenience to discuss any other questions or concerns you may have.

Bryan

**Bryan Cavaness**  
**General Counsel**  
**Land Development Manager**



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**From:** EDGING Sean \* DLCD <[sean.edging@dlcd.oregon.gov](mailto:sean.edging@dlcd.oregon.gov)>  
**Sent:** Friday, June 2, 2023 5:12 PM  
**To:** Bryan Cavaness <[bryan@staffordlandcompany.com](mailto:bryan@staffordlandcompany.com)>  
**Cc:** STUCKMAYER Ethan \* DLCD <[Ethan.STUCKMAYER@dlcd.oregon.gov](mailto:Ethan.STUCKMAYER@dlcd.oregon.gov)>  
**Subject:** RE: Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

Hey Bryan,

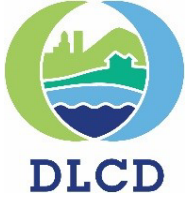
As mentioned in my previous message, I want to ensure I am fully responding to the questions that you raise. So fair, I break this down to two questions and two sub-questions:

1. Is the City, as part of their annexation/development review process and applicable standards, able to require transportation- and utility-related improvement requirements to the development of cottage clusters under administrative rules related to Middle Housing?
  - a. Are there constraints on the extent to which a city can require such dedications and frontage improvements, either through "unreasonable cost or delay" under ORS 197.303 or as a regulatory takings?

2. Is the City able to impose architectural design elements (specifically WDO 3.07.02) to cottage clusters under administrative rules related to Middle Housing?
  - a. Are there constraints in state law on the extent to which a city can require such architectural design elements?

Are there other issues that you would like our feedback on?

Thanks again and have a good weekend.



**Sean Edging**

Housing Planner | Community Services Division

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---

**From:** Bryan Cavaness <[bryan@staffordlandcompany.com](mailto:bryan@staffordlandcompany.com)>  
**Sent:** Friday, June 2, 2023 10:21 AM  
**To:** EDGING Sean \* DLCD <[sean.edging@dlcd.oregon.gov](mailto:sean.edging@dlcd.oregon.gov)>  
**Cc:** STUCKMAYER Ethan \* DLCD <[Ethan.STUCKMAYER@dlcd.oregon.gov](mailto:Ethan.STUCKMAYER@dlcd.oregon.gov)>  
**Subject:** RE: Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

Original copies of relevant documents are attached. Thank you, again, for taking time to look into this.

The incomplete response is not finalized and I am working on a street adjustment request staff referenced. I also need to make changes to the narrative to address some of staff's requests. I will provide a copy of the final documents for both.

Also have to yet to get a response from PGE on the street lighting matter staff continues to insist on. PGE is frustrated with the city as well so far as the city's demands to underground existing power and install new streetlights.

I am generally available all day. Please feel free to call if you have any questions.

Bryan

**Bryan Cavaness**  
**General Counsel**  
**Land Development Manager**



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**From:** EDGING Sean \* DLCD <[sean.edging@dlcd.oregon.gov](mailto:sean.edging@dlcd.oregon.gov)>  
**Sent:** Friday, June 2, 2023 10:03 AM  
**To:** Bryan Cavaness <[bryan@staffordlandcompany.com](mailto:bryan@staffordlandcompany.com)>  
**Cc:** STUCKMAYER Ethan \* DLCD <[Ethan.STUCKMAYER@dlcd.oregon.gov](mailto:Ethan.STUCKMAYER@dlcd.oregon.gov)>  
**Subject:** RE: Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

Good morning Bryan,

I'll have a bit of time today to dive into the details on this. Would you mind sending me the documents outlined below? That will help my review!

Thank you!



**Sean Edging**

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**From:** Bryan Cavaness <[bryan@staffordlandcompany.com](mailto:bryan@staffordlandcompany.com)>  
**Sent:** Tuesday, May 30, 2023 9:28 AM  
**To:** EDGING Sean \* DLCD <[sean.edging@dlcd.oregon.gov](mailto:sean.edging@dlcd.oregon.gov)>  
**Cc:** STUCKMAYER Ethan \* DLCD <[Ethan.STUCKMAYER@dlcd.oregon.gov](mailto:Ethan.STUCKMAYER@dlcd.oregon.gov)>  
**Subject:** RE: Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

Thank you, Sean.

I can provide a copy of the middle housing standards, the design standards, our initial application, staff's incomplete notice, and our response to the incomplete notice. That should provide you with good points of reference. I will forward the materials to you in one batch after I complete our response to the city's incomplete notice.

Thank you for your time and attention to this matter. I am available at your convenience to answer any questions you may have.

Bryan

**Bryan Cavaness**  
**General Counsel**  
**Land Development Manager**



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**From:** EDGING Sean \* DLCD <[sean.edging@dlcd.oregon.gov](mailto:sean.edging@dlcd.oregon.gov)>  
**Sent:** Tuesday, May 30, 2023 9:20 AM  
**To:** Bryan Cavaness <[bryan@staffordlandcompany.com](mailto:bryan@staffordlandcompany.com)>  
**Cc:** STUCKMAYER Ethan \* DLCD <[Ethan.STUCKMAYER@dlcd.oregon.gov](mailto:Ethan.STUCKMAYER@dlcd.oregon.gov)>  
**Subject:** RE: Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

Good morning Bryan,

Thank you for sharing this with our team! I am cc'ing my manager, Ethan Stuckmayer, on the response just so he's in the loop.

I believe we are the right folks to be reaching out to. So you are aware, a bill under consideration currently (HB 3414) would establish a "Housing Accountability and Production Office" at DLCD and Building Codes Division, whose role would be to investigate cases like this for compliance with state law and administrative rules related to housing.

As you can imagine, this team is not yet established, so it will take me some time to comb through the facts of this particular case and review the relevant administrative rules related to the regulation of middle housing by local governments. I will follow up with a more thorough response as to what is within and not within the authority of the local government to regulate with regard to middle housing, based on statute (ORS 197.758) and administrative rule (OAR Chapter 660, Division 046). And of course, I welcome your review of these statutes and any others that are relevant to the case. I will add that something that would help aid my turnaround time on this are specific citations to city code that staff referenced, so I won't need to find all of the citations de novo.

And of course, while I will not be able to chime in fully on the constitutional questions raised (as a non-attorney), I will provide some preliminary thinking on the questions raised around unreasonable cost and delay to help both the applicant and city understand how to consider the proportionality of exactions as it relates to this case.

Best,



**Sean Edging**

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---

**From:** Bryan Cavaness <[bryan@staffordlandcompany.com](mailto:bryan@staffordlandcompany.com)>  
**Sent:** Friday, May 26, 2023 12:18 PM  
**To:** EDGING Sean \* DLCD <[sean.edging@dlcd.oregon.gov](mailto:sean.edging@dlcd.oregon.gov)>  
**Subject:** Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

Good afternoon, Sean.

We recently reached out to Mark Kyle McCurdy concerning unforeseen difficulties we are experiencing with the city of Woodburn related to a 20 unit cottage cluster project. Mary Kyle suggested that we contact you to discuss any assistance DLCD may be available to provide.

I have attached site plans for the Woodburn project and for a site in Washington County off of Hall that will support 12 cottages. I have also attached preliminary architectural drawings of the one and two bedroom cottages we would like to construct. We would appreciate any questions, comments, or suggestions you may have on both projects. (We also have a third 12 unit project in Salem that is in preliminary design.)

I cannot adequately emphasize to you how receptive and helpful Washington County staff have been since we presented the 12 unit project on a large lot near Washington Square with an existing home to them in a pre-application conference last fall. They truly want this project to succeed and it has been a pleasure to work with them.

Regretfully, our experience with the city of Woodburn has been substantially less welcoming and cooperative.

The Woodburn property is a single lot that abuts a fully improved right-of-way with curb, a 6-foot planter strip, and a six-foot sidewalk. The property has direct access to sanitary sewer, water, stormwater, and above ground franchise utilities. Streetlighting is provided across the property's frontage on existing PGE poles. It is a "shovel ready" property.

The city's recently adopted TSP reclassified the street the property abuts from a two-lane local street to a three-lane service collector with a mix of islands and turning lanes. Despite the fact that the term "sufficient Infrastructure" does not include transportation system improvements other than those necessary to provide emergency vehicle access, city staff is demanding that we dedicate 6-feet of additional right-of-way, demolish the existing curb and sidewalk, add 6-feet of additional pavement, construct new curb and sidewalk, underground existing franchise utilities (which PGE anticipates will need to be extended several hundred feet off site and require boring under three streets), and install new frontage streetlighting. We conservatively estimate the cost to construct these improvements will range from \$225,000 to \$250,000, which will unnecessarily add over \$11,000 to the cost to construct each cottage dwelling. During a pre-application conference we reminded staff that they would be required to provide both *Nolan* and *Dolan* findings to support the dedication and improvement requirements. Staff glibly responded that *Nolan* and *Dolan* did not apply "because the city code requires the right-of-way dedication and the frontage improvements." We have submitted evidence in the record that demonstrates the right-of-way improvements staff intends to impose on the project are 25 times greater than the impacts the development will have on adjacent transportation system (0.32% of PM peak trips vs. 7.9% of the combined street frontage that will be improved to the wider service collector street standard), but our comments are ignored.

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**General Counsel**  
**Land Development Manager**



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## Colin Cortes

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**From:** EDGING Sean \* DLCD  
**Sent:** Tuesday, May 30, 2023 9:20 AM  
**To:** Bryan Cavaness  
**Cc:** STUCKMAYER Ethan \* DLCD  
**Subject:** RE: Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

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Housing Planner | Community Services Division

Pronouns: He / Him / His

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**Sent:** Friday, May 26, 2023 12:18 PM  
**To:** EDGING Sean \* DLCD <sean.edging@dlcd.oregon.gov>  
**Subject:** Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

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**Sent:** Tuesday, May 30, 2023 9:38 AM  
**To:** Bryan Cavaness  
**Cc:** STUCKMAYER Ethan \* DLCD  
**Subject:** RE: Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

Great! Thank you Bryan.



**Sean Edging**

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## Colin Cortes

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**From:** EDGING Sean \* DLCD  
**Sent:** Friday, June 2, 2023 10:03 AM  
**To:** Bryan Cavaness  
**Cc:** STUCKMAYER Ethan \* DLCD  
**Subject:** RE: Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

Good morning Bryan,

I'll have a bit of time today to dive into the details on this. Would you mind sending me the documents outlined below? That will help my review!

Thank you!



**Sean Edging**

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The city's recently adopted TSP reclassified the street the property abuts from a two-lane local street to a three-lane service collector with a mix of islands and turning lanes. Despite the fact that the term "sufficient Infrastructure" does not include transportation system improvements other than those necessary to provide emergency vehicle access, city staff is demanding that we dedicate 6-feet of additional right-of-way, demolish the existing curb and sidewalk, add 6-feet of additional pavement, construct new curb and sidewalk, underground existing franchise utilities (which PGE anticipates will need to be extended several hundred feet off site and require boring under three streets), and install new frontage streetlighting. We conservatively estimate the cost to construct these improvements will range from \$225,000 to \$250,000, which will unnecessarily add over \$11,000 to the cost to construct each cottage dwelling. During a pre-application conference we reminded staff that they would be required to provide both *Nolan* and *Dolan* findings to support the dedication and improvement requirements. Staff glibly responded that *Nolan* and *Dolan* did not apply "because the city code requires the right-of-way dedication and the frontage improvements." We have submitted evidence in the record that demonstrates the right-of-way improvements staff intends to impose on the project are 25 times greater than the impacts the development will have on adjacent transportation system (0.32% of PM peak trips vs. 7.9% of the combined street frontage that will be improved to the wider service collector street standard), but our comments are ignored.

The architectural design elements the city seeks to impose on this project are also very frustrating, both from the unnecessary costs they impose and the inconsistent manner staff arbitrarily chooses to interpret and apply the standards. For example, the code requires building plans to score a minimum 16 "design" points, but the design standards are primarily directed at detached single-family dwellings and many points that are available to single-family dwellings are not available to cottage dwellings. As a result, we are forced to produce construction plans with extraordinary design features such as 9/12 roofs and 2-foot eaves. A roof with a 9/12 pitch and 24-inch eaves results in a roof area that is 30% larger than the same cottage dwelling constructed with a 6/12 roof pitch and 12-inch eaves. The larger roof area requires larger trusses, more roof sheathing materials, more roofing materials, and increased labor costs to construct. We estimate the city's roof design requirements unnecessarily increase the cottage's roof construction costs 10% to 12%. Other examples include elevating the foundation a minimum of 18-inches above sidewalk grade (which does not allow for the construction of single story cottages with zero-barrier entries), constructing a porch railing (which would not be necessary if the city allowed the home to be constructed at grade), 3" window trim on all sides, and

minimum dimensional requirements for front porches. However, my personal favorite is a requirement to provide 15% window coverage on all street-facing walls. We estimate the cost to comply with the 15% window requirement has the potential to add as much as \$5,000 to the cost of affected units. The requirement will also wreak havoc on the cottages' thermal envelopes, which will result in increased energy consumption and cause owner's/occupants to incur higher utility bills to heat and cool the cottages. We estimate the total cost to comply with the city's architectural design standards will be approximately \$10,000 for units that are not street facing and \$15,000 to \$17,00 for units that are street facing.

All in, the requirements city staff has plainly stated they intend to impose on this project will unnecessarily increase the cost to construct each cottage unit approximately \$21,000 and as much as \$28,000. As we have told staff on multiple occasions, this is not what the legislature intended when it enacted HB 2001.

We appreciate your offer to discuss these matters with us as conveyed by Mark Kyle. I am presently responding to an incomplete notice the city returned to us requesting additional materials and information related to the annexation and Type I design review applications we have submitted for this project. Otherwise, I am generally available at your convenience next week.

Thank you for your time and assistance with this matter.

Bryan

**Bryan Cavaness**  
**General Counsel**  
**Land Development Manager**



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## Colin Cortes

---

**From:** EDGING Sean \* DLCD  
**Sent:** Friday, June 2, 2023 3:33 PM  
**To:** Bryan Cavaness  
**Cc:** STUCKMAYER Ethan \* DLCD  
**Subject:** RE: Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

Thanks Bryan,

I'll reach out with a more detailed response when I complete a detailed review. By EOD, I intend to (hopefully) send a list of what I understand to be the specific questions you would like me to respond to, based on your initial message – that way, you can ensure I am responding to the full scope of development standards you would like my attention on.

Thanks and have a good weekend!



**Sean Edging**

Housing Planner | Community Services Division

Pronouns: He / Him / His

Cell: 971-375-5362 | Main: 503-373-0050

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**From:** Bryan Cavaness <bryan@staffordlandcompany.com>  
**Sent:** Friday, June 2, 2023 10:42 AM  
**To:** EDGING Sean \* DLCD <sean.edging@dlcd.oregon.gov>  
**Cc:** STUCKMAYER Ethan \* DLCD <Ethan.STUCKMAYER@dlcd.oregon.gov>  
**Subject:** RE: Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

Copies of the development standards the city adopted for cottage clusters and the architectural design requirements the city is applying to the project are attached.

**Bryan Cavaness**  
**General Counsel**  
**Land Development Manager**



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**Subject:** RE: Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

Good morning Bryan,

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Thank you!



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**Sent:** Tuesday, May 30, 2023 9:28 AM  
**To:** EDGING Sean \* DLCD <[sean.edging@dlcd.oregon.gov](mailto:sean.edging@dlcd.oregon.gov)>  
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**Subject:** RE: Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

Thank you, Sean.

I can provide a copy of the middle housing standards, the design standards, our initial application, staff's incomplete notice, and our response to the incomplete notice. That should provide you with good points of reference. I will forward the materials to you in one batch after I complete our response to the city's incomplete notice.

Thank you for your time and attention to this matter. I am available at your convenience to answer any questions you may have.

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Good morning Bryan,

Thank you for sharing this with our team! I am cc'ing my manager, Ethan Stuckmayer, on the response just so he's in the loop.

I believe we are the right folks to be reaching out to. So you are aware, a bill under consideration currently (HB 3414) would establish a "Housing Accountability and Production Office" at DLCD and Building Codes Division, whose role would be to investigate cases like this for compliance with state law and administrative rules related to housing.

As you can imagine, this team is not yet established, so it will take me some time to comb through the facts of this particular case and review the relevant administrative rules related to the regulation of middle housing by local governments. I will follow up with a more thorough response as to what is within and not within the authority of the local government to regulate with regard to middle housing, based on statute (ORS 197.758) and administrative rule (OAR Chapter 660, Division 046). And of course, I welcome your review of these statutes and any others that are relevant to the case. I will add that something that would help aid my turnaround time on this are specific citations to city code that staff referenced, so I won't need to find all of the citations de novo.

And of course, while I will not be able to chime in fully on the constitutional questions raised (as a non-attorney), I will provide some preliminary thinking on the questions raised around unreasonable cost and delay to help both the applicant and city understand how to consider the proportionality of exactions as it relates to this case.

Best,





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**From:** Bryan Cavaness <[bryan@staffordlandcompany.com](mailto:bryan@staffordlandcompany.com)>  
**Sent:** Friday, May 26, 2023 12:18 PM  
**To:** EDGING Sean \* DLCD <[sean.edging@dlcd.oregon.gov](mailto:sean.edging@dlcd.oregon.gov)>  
**Subject:** Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

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We recently reached out to Mark Kyle McCurdy concerning unforeseen difficulties we are experiencing with the city of Woodburn related to a 20 unit cottage cluster project. Mary Kyle suggested that we contact you to discuss any assistance DLCD may be available to provide.

I have attached site plans for the Woodburn project and for a site in Washington County off of Hall that will support 12 cottages. I have also attached preliminary architectural drawings of the one and two bedroom cottages we would like to construct. We would appreciate any questions, comments, or suggestions you may have on both projects. (We also have a third 12 unit project in Salem that is in preliminary design.)

I cannot adequately emphasize to you how receptive and helpful Washington County staff have been since we presented the 12 unit project on a large lot near Washington Square with an existing home to them in a pre-application conference last fall. They truly want this project to succeed and it has been a pleasure to work with them.

Regretfully, our experience with the city of Woodburn has been substantially less welcoming and cooperative.

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We appreciate your offer to discuss these matters with us as conveyed by Mark Kyle. I am presently responding to an incomplete notice the city returned to us requesting additional materials and information related to the annexation and Type I design review applications we have submitted for this project. Otherwise, I am generally available at your convenience next week.

Thank you for your time and assistance with this matter.

Bryan

**Bryan Cavaness**  
**General Counsel**  
**Land Development Manager**



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## Colin Cortes

---

**From:** EDGING Sean \* DLCD  
**Sent:** Friday, June 2, 2023 5:12 PM  
**To:** Bryan Cavaness  
**Cc:** STUCKMAYER Ethan \* DLCD  
**Subject:** RE: Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

Hey Bryan,

As mentioned in my previous message, I want to ensure I am fully responding to the questions that you raise. So fair, I break this down to two questions and two sub-questions:

1. Is the City, as part of their annexation/development review process and applicable standards, able to require transportation- and utility-related improvement requirements to the development of cottage clusters under administrative rules related to Middle Housing?
  - a. Are there constraints on the extent to which a city can require such dedications and frontage improvements, either through “unreasonable cost or delay” under ORS 197.303 or as a regulatory takings?
2. Is the City able to impose architectural design elements (specifically WDO 3.07.02) to cottage clusters under administrative rules related to Middle Housing?
  - a. Are there constraints in state law on the extent to which a city can require such architectural design elements?

Are there other issues that you would like our feedback on?

Thanks again and have a good weekend.



**Sean Edging**

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**From:** Bryan Cavaness <bryan@staffordlandcompany.com>  
**Sent:** Friday, June 2, 2023 10:21 AM  
**To:** EDGING Sean \* DLCD <sean.edging@dlcd.oregon.gov>  
**Cc:** STUCKMAYER Ethan \* DLCD <Ethan.STUCKMAYER@dlcd.oregon.gov>  
**Subject:** RE: Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

Original copies of relevant documents are attached. Thank you, again, for taking time to look into this.

The incomplete response is not finalized and I am working on a street adjustment request staff referenced. I also need to make changes to the narrative to address some of staff’s requests. I will provide a copy of the final documents for both.

Also have to yet to get a response from PGE on the street lighting matter staff continues to insist on. PGE is frustrated with the city as well so far as the city’s demands to underground existing power and install new streetlights.

I am generally available all day. Please feel free to call if you have any questions.

Bryan

**Bryan Cavaness**  
**General Counsel**  
**Land Development Manager**



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**Subject:** RE: Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

Good morning Bryan,

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**Sent:** Friday, May 26, 2023 12:18 PM

**To:** EDGING Sean \* DLCD <[sean.edging@dlcd.oregon.gov](mailto:sean.edging@dlcd.oregon.gov)>

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The Woodburn property is a single lot that abuts a fully improved right-of-way with curb, a 6-foot planter strip, and a six-foot sidewalk. The property has direct access to sanitary sewer, water, stormwater, and above ground franchise utilities. Streetlighting is provided across the property's frontage on existing PGE poles. It is a "shovel ready" property.

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staff is demanding that we dedicate 6-feet of additional right-of-way, demolish the existing curb and sidewalk, add 6-feet of additional pavement, construct new curb and sidewalk, underground existing franchise utilities (which PGE anticipates will need to be extended several hundred feet off site and require boring under three streets), and install new frontage streetlighting. We conservatively estimate the cost to construct these improvements will range from \$225,000 to \$250,000, which will unnecessarily add over \$11,000 to the cost to construct each cottage dwelling. During a pre-application conference we reminded staff that they would be required to provide both *Nolan* and *Dolan* findings to support the dedication and improvement requirements. Staff glibly responded that *Nolan* and *Dolan* did not apply “because the city code requires the right-of-way dedication and the frontage improvements.” We have submitted evidence in the record that demonstrates the right-of-way improvements staff intends to impose on the project are 25 times greater than the impacts the development will have on adjacent transportation system (0.32% of PM peak trips vs. 7.9% of the combined street frontage that will be improved to the wider service collector street standard), but our comments are ignored.

The architectural design elements the city seeks to impose on this project are also very frustrating, both from the unnecessary costs they impose and the inconsistent manner staff arbitrarily chooses to interpret and apply the standards. For example, the code requires building plans to score a minimum 16 “design” points, but the design standards are primarily directed at detached single-family dwellings and many points that are available to single-family dwellings are not available to cottage dwellings. As a result, we are forced to produce construction plans with extraordinary design features such as 9/12 roofs and 2-foot eaves. A roof with a 9/12 pitch and 24-inch eaves results in a roof area that is 30% larger than the same cottage dwelling constructed with a 6/12 roof pitch and 12-inch eaves. The larger roof area requires larger trusses, more roof sheathing materials, more roofing materials, and increased labor costs to construct. We estimate the city’s roof design requirements unnecessarily increase the cottage’s roof construction costs 10% to 12%. Other examples include elevating the foundation a minimum of 18-inches above sidewalk grade (which does not allow for the construction of single story cottages with zero-barrier entries), constructing a porch railing (which would not be necessary if the city allowed the home to be constructed at grade), 3” window trim on all sides, and minimum dimensional requirements for front porches. However, my personal favorite is a requirement to provide 15% window coverage on all street-facing walls. We estimate the cost to comply with the 15% window requirement has the potential to add as much as \$5,000 to the cost of affected units. The requirement will also wreak havoc on the cottages’ thermal envelopes, which will result in increased energy consumption and cause owner’s/occupants to incur higher utility bills to heat and cool the cottages. We estimate the total cost to comply with the city’s architectural design standards will be approximately \$10,000 for units that are not street facing and \$15,000 to \$17,00 for units that are street facing.

All in, the requirements city staff has plainly stated they intend to impose on this project will unnecessarily increase the cost to construct each cottage unit approximately \$21,000 and as much as \$28,000. As we have told staff on multiple occasions, this is not what the legislature intended when it enacted HB 2001.

We appreciate your offer to discuss these matters with us as conveyed by Mark Kyle. I am presently responding to an incomplete notice the city returned to us requesting additional materials and information related to the annexation and Type I design review applications we have submitted for this project. Otherwise, I am generally available at your convenience next week.

Thank you for your time and assistance with this matter.

Bryan

**Bryan Cavaness**  
**General Counsel**  
**Land Development Manager**



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## Colin Cortes

---

**From:** EDGING Sean \* DLCD  
**Sent:** Tuesday, June 6, 2023 4:17 PM  
**To:** Bryan Cavaness  
**Cc:** STUCKMAYER Ethan \* DLCD  
**Subject:** RE: Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

Hey Bryan,

Thank you for this follow up! Thank you for confirming that these two topic areas are where you would like our feedback. So you know, I've been reviewing the documents you've provided and the WDO and am working on a more thorough response given some of the nuance of administrative rule (and your follow-up!)

Thanks,



**Sean Edging**

Housing Planner | Community Services Division

Pronouns: He / Him / His

Cell: 971-375-5362 | Main: 503-373-0050

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---

**From:** Bryan Cavaness <bryan@staffordlandcompany.com>  
**Sent:** Tuesday, June 6, 2023 3:26 PM  
**To:** EDGING Sean \* DLCD <sean.edging@dlcd.oregon.gov>  
**Cc:** STUCKMAYER Ethan \* DLCD <Ethan.STUCKMAYER@dlcd.oregon.gov>  
**Subject:** RE: Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

Regarding your first question:

Staff, citing city code, expects that we will dedicate additional right-of-way as a condition of approving the annexation. For reasons I noted in the narrative we provided to the city, There is no “nexus” under *Nolan* that would support the dedication requirement because the property cannot be developed after the annexation is approved without further land use review processes, e.g., a subdivision application or other application such as a Type I administrative review. There is clear LUBA caselaw on this subject. Any right-of-way exaction would need to occur through the Type I site plan review process. I appreciate that this is a legal argument, but we would appreciate any input you would feel comfortable offering on this topic.

ORAR 660-046-0220(4)(i) requires applicants to demonstrate “Sufficient Infrastructure” is available or can be made available to serve a proposed cottage cluster project. ORAR 660-046-0020(16) limits the definition of “Sufficient Infrastructure” to: 1) public sanitary sewer service with capacity to serve the proposed development; 2) public water service with capacity to serve the proposed development; 3) emergency vehicle access via a public or private street; and 4) the provision of storm drainage facilities that meet applicable standards.

The definition of “Sufficient Infrastructure” is consistent with the reference to Goal 11 found at ORAR 660-045-0010(e), and the subsection’s notable lack of any reference to Goal 12.

ORAR 660-045-0010 (4) explicitly states “the applicable Model Code completely replaces and pre-empts any provision of those Middle and Large Cities’ development codes that conflict with the Model Code.” We believe this language prohibits cities from adding additional approval criteria related to transportation facilities or franchise utilities.

We believe that the legislature’s proviso that siting and design regulations a city opts to impose on Middle Housing may not “discourage the development of all middle housing types \* \* \* through unreasonable costs or delay” obligates and shifts the burden to cities to demonstrate on the record that the requirements do not impose unreasonable costs. To our knowledge, the city of Woodburn made no such findings when it adopted the design standards for Middle Housing units.

Re our constitutional concerns, staff has chosen to ignore the city’s burdens under *Nolan* and *Dolan* to identify a “nexus” between the proposed cottage cluster project and its resulting impacts that would warrant an outright denial and to demonstrate that the exactions they seek are proportional to the project’s impacts. Staff has simply told us we have to comply with the code and that *Nolan* and *Dolan* are not of any concern.

Regarding your second question:

We believe that OAR 660-045-0225(c) grants cities the ability to apply design standards to Middle Housing; provided the standards are uniformly applied to more traditional residential dwellings in the same zone. In this instance, the city purports to apply the same design standards to cottage cluster developments as single-family dwellings in the same zone. However, as we discuss in our narrative, the city’s code is not “clear and objective” both from the perspective that there is no clear intent to apply the design standards to cottages and the standards themselves are capable of multiple interpretations.

We are available at your convenience to discuss any other questions or concerns you may have.

Bryan

**Bryan Cavaness**  
**General Counsel**  
**Land Development Manager**



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**From:** EDGING Sean \* DLCD <[sean.edging@dlcd.oregon.gov](mailto:sean.edging@dlcd.oregon.gov)>  
**Sent:** Friday, June 2, 2023 5:12 PM  
**To:** Bryan Cavaness <[bryan@staffordlandcompany.com](mailto:bryan@staffordlandcompany.com)>  
**Cc:** STUCKMAYER Ethan \* DLCD <[Ethan.STUCKMAYER@dlcd.oregon.gov](mailto:Ethan.STUCKMAYER@dlcd.oregon.gov)>  
**Subject:** RE: Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

Hey Bryan,

As mentioned in my previous message, I want to ensure I am fully responding to the questions that you raise. So fair, I break this down to two questions and two sub-questions:

1. Is the City, as part of their annexation/development review process and applicable standards, able to require transportation- and utility-related improvement requirements to the development of cottage clusters under administrative rules related to Middle Housing?
  - a. Are there constraints on the extent to which a city can require such dedications and frontage improvements, either through “unreasonable cost or delay” under ORS 197.303 or as a regulatory takings?
2. Is the City able to impose architectural design elements (specifically WDO 3.07.02) to cottage clusters under administrative rules related to Middle Housing?
  - a. Are there constraints in state law on the extent to which a city can require such architectural design elements?

Are there other issues that you would like our feedback on?

Thanks again and have a good weekend.



**Sean Edging**

Housing Planner | Community Services Division

Pronouns: He / Him / His

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---

**From:** Bryan Cavaness <[bryan@staffordlandcompany.com](mailto:bryan@staffordlandcompany.com)>  
**Sent:** Friday, June 2, 2023 10:21 AM  
**To:** EDGING Sean \* DLCD <[sean.edging@dlcd.oregon.gov](mailto:sean.edging@dlcd.oregon.gov)>  
**Cc:** STUCKMAYER Ethan \* DLCD <[Ethan.STUCKMAYER@dlcd.oregon.gov](mailto:Ethan.STUCKMAYER@dlcd.oregon.gov)>  
**Subject:** RE: Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

Original copies of relevant documents are attached. Thank you, again, for taking time to look into this.

The incomplete response is not finalized and I am working on a street adjustment request staff referenced. I also need to make changes to the narrative to address some of staff’s requests. I will provide a copy of the final documents for both.

Also have to yet to get a response from PGE on the street lighting matter staff continues to insist on. PGE is frustrated with the city as well so far as the city’s demands to underground existing power and install new streetlights.

I am generally available all day. Please feel free to call if you have any questions.

Bryan

**Bryan Cavaness**  
**General Counsel**  
**Land Development Manager**



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**From:** EDGING Sean \* DLCD <[sean.edging@dlcd.oregon.gov](mailto:sean.edging@dlcd.oregon.gov)>  
**Sent:** Friday, June 2, 2023 10:03 AM  
**To:** Bryan Cavaness <[bryan@staffordlandcompany.com](mailto:bryan@staffordlandcompany.com)>  
**Cc:** STUCKMAYER Ethan \* DLCD <[Ethan.STUCKMAYER@dlcd.oregon.gov](mailto:Ethan.STUCKMAYER@dlcd.oregon.gov)>  
**Subject:** RE: Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

Good morning Bryan,

I'll have a bit of time today to dive into the details on this. Would you mind sending me the documents outlined below? That will help my review!

Thank you!



**Sean Edging**  
Housing Planner | Community Services Division  
Pronouns: He / Him / His  
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**From:** Bryan Cavaness <[bryan@staffordlandcompany.com](mailto:bryan@staffordlandcompany.com)>  
**Sent:** Tuesday, May 30, 2023 9:28 AM  
**To:** EDGING Sean \* DLCD <[sean.edging@dlcd.oregon.gov](mailto:sean.edging@dlcd.oregon.gov)>

**Cc:** STUCKMAYER Ethan \* DLCD <[Ethan.STUCKMAYER@dlcd.oregon.gov](mailto:Ethan.STUCKMAYER@dlcd.oregon.gov)>

**Subject:** RE: Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

Thank you, Sean.

I can provide a copy of the middle housing standards, the design standards, our initial application, staff's incomplete notice, and our response to the incomplete notice. That should provide you with good points of reference. I will forward the materials to you in one batch after I complete our response to the city's incomplete notice.

Thank you for your time and attention to this matter. I am available at your convenience to answer any questions you may have.

Bryan

**Bryan Cavaness**  
**General Counsel**  
**Land Development Manager**



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**From:** EDGING Sean \* DLCD <[sean.edging@dlcd.oregon.gov](mailto:sean.edging@dlcd.oregon.gov)>

**Sent:** Tuesday, May 30, 2023 9:20 AM

**To:** Bryan Cavaness <[bryan@staffordlandcompany.com](mailto:bryan@staffordlandcompany.com)>

**Cc:** STUCKMAYER Ethan \* DLCD <[Ethan.STUCKMAYER@dlcd.oregon.gov](mailto:Ethan.STUCKMAYER@dlcd.oregon.gov)>

**Subject:** RE: Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

Good morning Bryan,

Thank you for sharing this with our team! I am cc'ing my manager, Ethan Stuckmayer, on the response just so he's in the loop.

I believe we are the right folks to be reaching out to. So you are aware, a bill under consideration currently (HB 3414) would establish a "Housing Accountability and Production Office" at DLCD and Building Codes Division, whose role would be to investigate cases like this for compliance with state law and administrative rules related to housing.

As you can imagine, this team is not yet established, so it will take me some time to comb through the facts of this particular case and review the relevant administrative rules related to the regulation of middle housing by local governments. I will follow up with a more thorough response as to what is within and not within the authority of the local government to regulate with regard to middle housing, based on statute (ORS 197.758) and administrative rule (OAR Chapter 660, Division 046). And of course, I welcome your review of these statutes and any others that are relevant to the case. I will add that something that would help aid my turnaround time on this are specific citations to city code that staff referenced, so I won't need to find all of the citations de novo.

And of course, while I will not be able to chime in fully on the constitutional questions raised (as a non-attorney), I will provide some preliminary thinking on the questions raised around unreasonable cost and delay to help both the applicant and city understand how to consider the proportionality of exactions as it relates to this case.

Best,



**Sean Edging**

Housing Planner | Community Services Division

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**From:** Bryan Cavaness <[bryan@staffordlandcompany.com](mailto:bryan@staffordlandcompany.com)>

**Sent:** Friday, May 26, 2023 12:18 PM

**To:** EDGING Sean \* DLCD <[sean.edging@dlcd.oregon.gov](mailto:sean.edging@dlcd.oregon.gov)>

**Subject:** Woodburn Cottage Cluster Project - Referral from Mary Kyle McCurdy

Good afternoon, Sean.

We recently reached out to Mark Kyle McCurdy concerning unforeseen difficulties we are experiencing with the city of Woodburn related to a 20 unit cottage cluster project. Mary Kyle suggested that we contact you to discuss any assistance DLCD may be available to provide.

I have attached site plans for the Woodburn project and for a site in Washington County off of Hall that will support 12 cottages. I have also attached preliminary architectural drawings of the one and two bedroom cottages we would like to construct. We would appreciate any questions, comments, or suggestions you may have on both projects. (We also have a third 12 unit project in Salem that is in preliminary design.)

I cannot adequately emphasize to you how receptive and helpful Washington County staff have been since we presented the 12 unit project on a large lot near Washington Square with an existing home to them in a pre-application conference last fall. They truly want this project to succeed and it has been a pleasure to work with them.

Regretfully, our experience with the city of Woodburn has been substantially less welcoming and cooperative.

The Woodburn property is a single lot that abuts a fully improved right-of-way with curb, a 6-foot planter strip, and a six-foot sidewalk. The property has direct access to sanitary sewer, water, stormwater, and above ground franchise utilities. Streetlighting is provided across the property's frontage on existing PGE poles. It is a "***shovel ready***" property.

The city's recently adopted TSP reclassified the street the property abuts from a two-lane local street to a three-lane service collector with a mix of islands and turning lanes. Despite the fact that the term "sufficient Infrastructure" does not include transportation system improvements other than those necessary to provide emergency vehicle access, city

staff is demanding that we dedicate 6-feet of additional right-of-way, demolish the existing curb and sidewalk, add 6-feet of additional pavement, construct new curb and sidewalk, underground existing franchise utilities (which PGE anticipates will need to be extended several hundred feet off site and require boring under three streets), and install new frontage streetlighting. We conservatively estimate the cost to construct these improvements will range from \$225,000 to \$250,000, which will unnecessarily add over \$11,000 to the cost to construct each cottage dwelling. During a pre-application conference we reminded staff that they would be required to provide both *Nolan* and *Dolan* findings to support the dedication and improvement requirements. Staff glibly responded that *Nolan* and *Dolan* did not apply “because the city code requires the right-of-way dedication and the frontage improvements.” We have submitted evidence in the record that demonstrates the right-of-way improvements staff intends to impose on the project are 25 times greater than the impacts the development will have on adjacent transportation system (0.32% of PM peak trips vs. 7.9% of the combined street frontage that will be improved to the wider service collector street standard), but our comments are ignored.

The architectural design elements the city seeks to impose on this project are also very frustrating, both from the unnecessary costs they impose and the inconsistent manner staff arbitrarily chooses to interpret and apply the standards. For example, the code requires building plans to score a minimum 16 “design” points, but the design standards are primarily directed at detached single-family dwellings and many points that are available to single-family dwellings are not available to cottage dwellings. As a result, we are forced to produce construction plans with extraordinary design features such as 9/12 roofs and 2-foot eaves. A roof with a 9/12 pitch and 24-inch eaves results in a roof area that is 30% larger than the same cottage dwelling constructed with a 6/12 roof pitch and 12-inch eaves. The larger roof area requires larger trusses, more roof sheathing materials, more roofing materials, and increased labor costs to construct. We estimate the city’s roof design requirements unnecessarily increase the cottage’s roof construction costs 10% to 12%. Other examples include elevating the foundation a minimum of 18-inches above sidewalk grade (which does not allow for the construction of single story cottages with zero-barrier entries), constructing a porch railing (which would not be necessary if the city allowed the home to be constructed at grade), 3” window trim on all sides, and minimum dimensional requirements for front porches. However, my personal favorite is a requirement to provide 15% window coverage on all street-facing walls. We estimate the cost to comply with the 15% window requirement has the potential to add as much as \$5,000 to the cost of affected units. The requirement will also wreak havoc on the cottages’ thermal envelopes, which will result in increased energy consumption and cause owner’s/occupants to incur higher utility bills to heat and cool the cottages. We estimate the total cost to comply with the city’s architectural design standards will be approximately \$10,000 for units that are not street facing and \$15,000 to \$17,00 for units that are street facing.

All in, the requirements city staff has plainly stated they intend to impose on this project will unnecessarily increase the cost to construct each cottage unit approximately \$21,000 and as much as \$28,000. As we have told staff on multiple occasions, this is not what the legislature intended when it enacted HB 2001.

We appreciate your offer to discuss these matters with us as conveyed by Mark Kyle. I am presently responding to an incomplete notice the city returned to us requesting additional materials and information related to the annexation and Type I design review applications we have submitted for this project. Otherwise, I am generally available at your convenience next week.

Thank you for your time and assistance with this matter.

Bryan

**Bryan Cavaness**  
**General Counsel**  
**Land Development Manager**



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## Colin Cortes

---

**From:** EDGING Sean \* DLCD  
**Sent:** Tuesday, June 13, 2023 11:02 AM  
**To:** Bryan Cavaness  
**Cc:** AHRENS Melissa \* DLCD; STUCKMAYER Ethan \* DLCD; Colin Cortes; Chris Kerr; Renata Wakeley  
**Subject:** RE: Woodburn Cottage Cluster - DLCD Response  
**Attachments:** 20230613\_Woodburn\_Cottage\_Cluster\_DLCD\_Response.pdf

Good morning Bryan,

This message is a follow-up to a request you sent our way to answer questions on applicable statute and administrative rule in relationship to a proposed cottage cluster project in the City of Woodburn. Attached is a response based on our review of the shared materials, including the proposal, incompleteness determination, and applicable sections of the WDO. Copied on this message are staff at the City of Woodburn, so they are in the loop and have access to the same guidance.

As mentioned in the memo, our guidance is not a substitute for legal counsel, but we hope it will be helpful in understanding the intersection between state law and local development ordinances, as applied to this proposal. We would also encourage the City to apply for technical assistance to address any identified housing-related issues in their code (either identified in the memo or more broadly) with funding appropriated by the Legislature for this purpose.

If you have any questions about the attached memo, please let Melissa and I know.

Thank you,



**Sean Edging**

Housing Planner | Community Services Division  
Pronouns: He / Him / His  
Oregon Department of Land Conservation and Development  
635 Capitol Street NE, Suite 150 | Salem, OR 97301-2540  
Cell: 971-375-5362 | Main: 503-373-0050  
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**ANX 23-03**  
**Attachment 104B7**



June 13, 2023

TO: Bryan Cavaness, Stafford Development Company

FROM: Sean Edging, DLCD

CC: Ethan Stuckmayer, DLCD      Chris Kerr, City of Woodburn  
Melissa Aherns, DLCD      Renata Wakeley, City of Woodburn  
Colin Cortes, City of Woodburn



RE: Woodburn Cottage Cluster Development - ANX 23-03, DR 23-04, & ZC 23-03

The purpose of this memorandum is to provide feedback from DLCD staff in response to questions surrounding the applicability of state law and administrative rules in relationship to a proposed cottage cluster development in the City of Woodburn. This memorandum explores two major topic areas related to frontage dedication/improvements and design standards applied by the City to the proposed development.

This memorandum will address the following questions:

1. Is the City, as part of their annexation or development review process and applicable standards, able to require transportation- and utility-related improvement requirements to the development of cottage clusters under administrative rules related to Middle Housing?
  - a. Are there constraints on the extent to which a city can require such dedications and frontage improvements, either through administrative rule, “unreasonable cost or delay” under ORS 197.303, or the 5<sup>th</sup> Amendment of the Constitution ([Nollan, Dolan, and Koontz](#))?
2. Is the City able to impose architectural design elements (specifically WDO 3.07.02) to cottage clusters under administrative rules related to Middle Housing?
  - a. Are there constraints in state law on the extent to which a city can require such architectural design elements?

Please note that while DLCD staff’s feedback is not substitute for legal counsel, we hope that this feedback will be helpful for both the applicant and the City in understanding the intersection between state law/administrative rule and local development standards. Should the City need technical support to address statutory inconsistencies in code, we encourage reaching out to DLCD staff. If you have questions about the feedback herein, please reach out to Sean Edging, [sean.edging@dlcd.oregon.gov](mailto:sean.edging@dlcd.oregon.gov) and Melissa Ahrens, [melissa.ahrens@dlcd.oregon.gov](mailto:melissa.ahrens@dlcd.oregon.gov)

Acronyms used in this document:

DLCD – Department of Land Conservation and Development	SFD – Single-Family Detached Dwelling
OAR – Oregon Administrative Rule	WDO – Woodburn Development Ordinance
ORS – Oregon Revised Statute	

**ANX 23-03**  
**Attachment 104B7a**

## Frontage Dedications and Improvements

The proposed cottage cluster development is on a single 1.43-acre unincorporated lot surrounded by incorporated lands. The adjacent street, Brown Street, is a two-lane local street that is identified on Woodburn's Transportation System Plan as a future three-lane service collector. The City, in a letter of incompleteness to the applicant, indicated that the applicant must update the site plan to include a "half-street" upgrade for the western portion of the street or pay a fee-in-lieu. These improvements include the dedication of 6 feet of additional right-of-way, demolition of existing curb & sidewalk, addition of 6 feet of travel lane, construction of a new curb, sidewalk, & street trees, and undergrounding of existing franchise utilities. The applicant estimates the total cost of these improvements to be between \$225,000 and \$250,000 (or roughly \$11,000 per cottage dwelling).

A core question raised by the applicant is whether the City has the authority under administrative rule to require frontage improvements for the development of Middle Housing. Further, the applicant asked whether there are potential limitations to this authority, either in rule, statute, or via the 5<sup>th</sup> Amendment of the Constitution.

On the first question, the applicant raises that the definition of "Sufficient Infrastructure" under [OAR 660-046-0020](#) (16) does not include street frontage improvements beyond what is necessary for emergency vehicle access. However, the definition of "Sufficient Infrastructure" is not the 'ceiling' of what cities can require in relationship to Triplexes, Quadplexes, Townhouses, and Cottage Clusters; it is the 'floor'. The intent and operationalization of the rule is to provide cities certainty that, regardless of individual application circumstances, all of these Middle Housing types will have a baseline of infrastructure that Cities may require, even in situations where they may not be able to require further improvements.

As an illustrating example, there are often instances in which a City may allow single-family detached dwellings in certain circumstances on septic where sewer connections would otherwise be infeasible. The "sufficient infrastructure" provisions ensure that cities can require Triplexes, Quadplexes, Townhouses, and Cottage Clusters to provide a sewer connection, even if they otherwise cannot require full infrastructure improvements. This is in contrast to a Duplex, which may be allowed on septic in this scenario if it meets the standards applied to a SFD.

The authority of a Large City to require right-of-way dedications and frontage improvements are set forth in [OAR 660-046-0205](#) (6):

(6) A Large City may require applicants of Middle Housing to provide the same right-of-way dedications, frontage improvements, and connectivity standards that would apply to detached single-family dwellings on the same Lot or Parcel, including applicable exemptions related to proportionality.

The premise of this rule provision is that cities maintain the same basic authority to require improvements to Middle Housing, provided that those standards apply equally to SFDs and Middle Housing. This includes any application of exemptions related to proportionality under the 5<sup>th</sup> Amendment of the Constitution ([Nollan, Dolan, and Koontz](#)). In this case, if the exactions required to the Cottage Cluster are the same as what would apply to an equivalent proposal consisting of single-family detached dwellings at the density permitted in the Residential Single-

Family zone (i.e. seven SFDs based on the maximum permitted density), and the City extends the same exemptions to the proposed Cottage Cluster development as would be extended to an equivalent proposal consisting of single-family detached dwellings, then the City is in conformance with OAR Chapter 660, Division 046.

However, even if a City is in substantial conformance with administrative rules implementing ORS 197.758, it's important to emphasize that the authority for a local government to require dedications and improvements is not limitless. First, all local governments may only adopt and apply clear and objective standards to the development of housing, including needed housing. Further, these standards cannot have the effect, either individually or cumulatively, of discouraging needed housing through unreasonable cost or delay. This applies to public facilities standards, in addition to any other regulatory standards a city applies to housing.

Based on previous case law, the determination of whether an individual standard or set of standards create "unreasonable cost or delay" requires an "as applied" challenge<sup>1</sup>:

"ORS 197.307(6) prohibits standards, conditions or procedures for approval that, either in themselves or cumulatively, discourage needed housing "through unreasonable cost or delay." The statute does not prohibit reasonable cost or delay. In our view, the question of whether approval standards or procedures discourage needed housing through unreasonable cost or delay cannot, in most cases, be resolved in the abstract, in a challenge to a legislative decision that adopts such standards or procedures. In the absence of actual application of standards or procedures in a particular case, it is difficult to see how any party could demonstrate what the delay or additional cost might be, whether that delay or cost is reasonable or unreasonable, and whether that delay or cost discourages needed housing, either alone or in combination with other standards or procedures."

Second, all exactions, including land, money, or services, must have an essential nexus and be roughly proportional to the burden imposed. Requiring dedications, frontage, and access or public improvements in a development ordinance does not relieve a government entity of the obligation to make particularized findings determining that the development impacts justify the exactions imposed<sup>2</sup>:

"where a condition of land use approval imposes an exaction, the local government must make an individualized determination that the exaction is roughly proportional in nature and extent to the impact of the proposed development"

"The fact that an exaction is required by city ordinance is irrelevant to whether an exaction imposed pursuant to that ordinance is in fact roughly proportional to the impacts of development."

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The applicant indicated that they have submitted evidence in the record demonstrating that the right-of-way improvements staff intends to impose on the project are 25 times greater than the impacts the development will have on adjacent transportation system (i.e. 0.32% of PM peak trips vs. 7.9% of the combined street frontage that will be improved to the wider service collector street standard). The applicant also alleges that the City has not responded to the applicant's concerns regarding rough proportionality.

DLCD staff lacks the expertise to opine on the proportionality of the exaction in this scenario, nor have we seen anything in the shared materials suggesting the City will or will not prepare findings. However, it is important to emphasize that a local government maintains the responsibility to make particularized findings justifying the nexus and rough proportionality of the exaction. We encourage coordination with legal counsel to ensure the exaction substantially conforms with essential nexus and rough proportionality requirements.

## Cottage Cluster Design Standards

The City of Woodburn applies two distinct sets of design standards to Cottage Clusters, including a general set of design standards (WDO 2.07.21.D) taken directly from the [Large Cities Model Code](#), as well as a set of architecturally-oriented design standards (WDO 3.07.02) applicable to single-family detached dwellings and middle housing. This inquiry focuses on whether the latter substantially conforms with administrative rules related to middle housing.

First, applying two sets of standards in this manner is broadly permissible under ORS 197.758 (5) and as further operationalized in [OAR 660-046-0225](#) (1)(a) & (c):

(1) A Large City is not required to apply design standards to Middle Housing. However, if a Large City chooses to apply design standards to Middle Housing, it may only apply the following:

(a) Design standards in the Model Code for Large Cities as provided in OAR 660-046-0010(4)(b);

(c) The same clear and objective design standards that the Large City applies to detached single-family structures in the same zone. Design standards may not scale by the number of dwelling units or other features that scale with the number of dwelling units, such as primary entrances. Design standards may scale with form-based attributes, including but not limited to floor area, street-facing façade, height, bulk, and scale;

In evaluating whether WDO 3.07.02 substantially conforms with [OAR 660-046-0225](#)(1)(c), it must meet three conditions:

1. The standards must be clear and objective (note that cities may provide optional discretionary alternative review standards & procedures under ORS 197.307 (6));
2. The design standards must apply to detached single-family dwellings in the same zone; and
3. The design standards may not scale by dwelling units but may scale by form-based attributes.

In reviewing the application narrative, the applicant purports that the standards applied to cottage clusters via WDO 3.07.02 create unreasonable cost or delay and are not clear and objective.

## Unreasonable Cost or Delay

On the first point, the applicant purports that, because the city had not adopted findings demonstrating that the standards do not create unreasonable cost or delay, they cannot be applied to middle housing development. As established above, the determination of whether a standard or standards create unreasonable cost or delay requires an “as applied” challenge. A city does not need to adopt findings demonstrating adopted standards do not create unreasonable cost or delay. Furthermore, [OAR 660-046-0210](#) establishes an effective ‘safe harbor’ on the types of standards cities can apply that do not cause unreasonable cost or delay to Middle Housing:

(3) Siting and design standards that do not, individually or cumulatively, discourage the development of Middle Housing through unreasonable cost and delay include...

(d) Design standards in Large Cities provided in OAR 660-046-0225;

This means that a City can apply standards as provided in administrative rule with confidence that the provisions do not cause unreasonable cost or delay to Middle Housing. To apply standards more restrictive than what is expressly allowed in rule can be permissible but requires a consideration of the proportional costs imposed in relationship to the public benefit of a standard or standards to have the same certainty against ‘unreasonable cost or delay’ in rule. This analysis is outlined in [OAR 660-046-0235](#). Provided the applicant meets the three criteria outlined above to demonstrate compliance with [OAR 660-046-0225](#) (1)(c), they would not need to perform that proportional analysis to demonstrate the standards do not cause unreasonable cost or delay.

## Clear and Objective Standards

On the applicant’s second point, we concur that the standards set forth in WDO 3.07.02 contain provisions that are either not clear or not objective. We think these issues can be fixed with minor amendments to the text but the standards cannot be applied to the development of housing as currently written under ORS 197.307. The following are a non-exhaustive list of code excerpts that as written, are either unclear or discretionary:

- WDO 3.07.02.E3: “*Includes any of the balustrade, fall protection, wood fencing, and metal or wood railings and is required. 3.5 ft high max. 4 ft wide max gap as passage allowed...*” – This standard does not indicate *what* of the listed options is required. Additionally, “4 ft wide max gap as passage allowed” is not readily understandable or interpretable as written. While this standard may be objective, it is not clear.
- WDO 3.07.02.G1: “*On a corner lot with no alley or shared rear lane, a garage may face one frontage as the Director determines*” – This requires a discretionary decision by the City on the orientation of a garage frontage.
- WDO 3.07.02.F1: “*Where horizontal lap siding is used, it shall appear to have a reveal of 3 to 6 inches*” – The inclusion of the term “shall appear to” requires a discretionary evaluation of whether a reveal “appears to” be 3-6 inches.

While these examples are minor individually, they are not clear and objective as provided in ORS 197.307. Collectively, they create substantial uncertainty about the design features an applicant can provide to meet the standards herein. To comply with statute, they must be revised such that they are clear and objective on the face of the ordinance, and an applicant has

certainty on how a proposal can meet the standards without necessitating clarification or an exercise of judgement by City staff.

### **Single-Family Applicability and Siting Standards**

In addition to being clear and objective, the design standards applied to cottage clusters must also apply to single-family detached dwellings in the same zone. While the ordinance, on its face, appears to apply architectural standards in an equivalent manner to both cottage clusters and single-family detached dwellings, the full design standards include provisions that are expressly disallowed in rule, creating a situation in which a cottage cluster application must either 1) waive protections in administrative rule against provisions that cause unreasonable cost or delay or 2) fulfill design standards that are more restrictive than what applies to single-family detached dwellings.

WDO 3.07.02 is structured as a “points-based” system, in which proposals must include a total of 16 “points”, mixing and matching various design standards. While any individual standard with points is optional, the applicant is required to choose an amount that equals 16. There are eight categories of design standards, with a maximum number of points that can be achieved in each:

1. Building Massing – 4 points
2. Roofs – 6 points
3. Entrances – 2 points
4. Garages – 8 points
5. Windows – 3 points
6. Exterior Finish Materials – 2 points
7. Additional off-street parking for middle housing – 2 points
8. Cottage Cluster; Larger Common Courtyard – 2 points

While a points-based system is an acceptable format for regulating the design of middle housing, the approach must apply equally to single-family dwellings and middle housing. The standards may not apply more strictly to middle housing, including through categorical omissions. For example, including points for structures where individual units are detached would be disallowed, because it would categorically exclude attached middle housing types and subject them to a stricter set of code provisions.

In administrative rule, cottage clusters are extended several protections to prevent unreasonable cost or delay. Notably, OAR 660-046-0220 (4)(f) provides the following for cottage clusters:

(f) Parking:

(A) A Large City may not require more than one off-street parking space per dwelling unit in a Cottage Cluster.

(B) A Large City may allow but may not require off-street parking to be provided as a garage or carport.

Additionally, Cottage Clusters are provided protections in rule for certain design standards, including the dimensional requirements of common courtyards:



(1) A Large City is not required to apply design standards to Middle Housing. However, if a Large City chooses to apply design standards to Middle Housing, it may only apply the following:

(a) Design standards in the Model Code for Large Cities as provided in OAR 660-046-0010(4)(b);

As constructed, the design standards provide points to projects that either provide more parking than what is provided in administrative rule (1 space per unit), provide a garage with specified design features, or for Cottage Clusters, provide larger common courtyards than what is provided in the Model Code. While an applicant may elect to provide any of these features, these cannot be required by the City. In rulemaking, these standards in particular were identified as effectually inhibiting or preventing cottage cluster development.

While the standards state that these design features are “optional”, they are only optional insofar as an applicant may choose between one requirement or another. In total, the applicant *must* achieve 16 points. This construction of WDO 3.07.02 provides cottage cluster applicants a choice: Either waive protections specified in administrative rule against unreasonable cost and delay by providing more parking, garages/carports, or common courtyard space *or* fulfill a set of design standards that are categorically more restrictive than what would apply to a single-family detached dwelling. Discounting points for garages, additional off-street parking, and larger common courtyards, cottage clusters have 17 points that are possible to achieve, meaning they must effectually implement nearly all of these standards or waive protections in rule. This is in contrast to a single-family detached dwelling that can more easily mix and match standards, including those applied to garages.

To develop a points-based system that is substantially compliant with administrative rule, the City must apply design standards in a manner that equally applies between housing types. The standards cannot categorically apply a stricter set of standards to Middle Housing due to differences in their use typologies, including differences wrought by protections in rule against unreasonable cost or delay. Additionally, while a City may apply incentives to encourage specific outcomes for Middle Housing in exchange for regulatory flexibility, these incentives cannot contradict the explicit protections in administrative rule against unreasonable cost or delay.



## **LEGAL OPINION NO. 2023-03**

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**TO:** Scott Derickson, City Administrator  
**CC:** Chris Kerr, Community Development Director  
**FROM:** N. Robert Shields, City Attorney  
**DATE:** November 28, 2023  
**RE:** **Memorandum from DLCD – Woodburn Cottage Cluster Development**

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The City of Woodburn received a copy of a Memorandum from the Oregon Department of Land Conservation and Development (DLCD) dated June 13, 2023, addressed to an attorney for Stafford Development Company (Attachment 1). An email exchange between DLCD and the Woodburn Community Development Director (Attachment 2) places the Memorandum in context.

**Question No. 1:** Why did DLCD issue the Memorandum?

**Answer:** The answer to this question is unknown. DLCD has no legal obligation to issue the Memorandum and its issuance is inconsistent with the process provided by ORS 197.090.

**Discussion:** As you are aware, the Land Conservation and Development Commission (LCDC) is legally required to review city comprehensive plans, and their implementing land use regulations, to ensure compliance with the statewide goals. Once city comprehensive plans are “acknowledged” by the state, cities and counties have jurisdiction to apply local land use law, consistent with state statutes, to site specific land use development applications. A main function of DLCD is to support LCDC’s legislative review function (i.e., when new plans are adopted or amended by cities and counties, LCDC and DLCD review the proposed legislative changes for compliance with state law).

Incredibly, it was only last year that that DLCD reviewed and the City’s legislative adoption of the new “middle housing” requirements (commonly referred to as HB 2001). Under the direct guidance of DLCD and with a DLCD sponsored grant, the City adopted amendments to the Woodburn Development Ordinance (WDO) in compliance with the new statutes and administrative rules. In exercising this legislative review function, DLCD, raised no issues with the City’s proposed cottage housing provisions. In stark contrast to this, the Memorandum takes the position that the language violates the applicable statute and cannot be applied:

*On the applicant’s second point, we concur that the standards set forth in WDO 3.07.02 contain provisions that are either not clear or*

*not objective. We think these issues can be fixed with minor amendments to the text but the standards cannot be applied to the development of housing as currently written under ORS 197.307 (Memorandum, page 5).*

ORS 197.090 (2) (a) addresses the duties and authority of the DLCD Director, including the Director's limited legal role in local government land use decisions:

Subject to local government requirements and the provisions of ORS 197.830 (Review procedures) to 197.845 (Stay of decision being reviewed), the director may participate in and seek review of:

(A) A land use decision, expedited land division or limited land use decision involving the goals or involving an acknowledged comprehensive plan and land use regulations implementing the plan;

ORS 197.090 (2) (b) (c) (d) further requires the DLCD Director to report to LCDC on each case in which the department participates and on the positions taken by the director in each case. Also, any review of a land use decision sought by the DLCD Director must be authorized by LCDC.

It appears that, for whatever reason, DLCD chose to disregard the process provided in ORS 197.090 and gratuitously issued the Memorandum in an attempt to influence the disposition of a land use decision pending in Woodburn. The Memorandum specifically states that it is regarding "Woodburn Cottage Cluster Development – ANX 23-03, DR 23-04 & ZC 23-03."

Although a copy of the Memorandum was provided to the Woodburn Community Development Director by email, the Memorandum is not addressed to the City but to Bryan Cavaness, an attorney representing Stafford Development Company. Also, references in the Memorandum to questions "raised by the applicant," and the "applicant's" position on many issues, make it clear that DLCD composed the Memorandum in response to communication submitted to it on behalf of Stafford Development. Nevertheless, DLCD did not provide to the City any communication or communications made to DLCD on behalf of Stafford Development that resulted in the issuance of the Memorandum. Moreover, the email exchange (Attachment 2) between DLCD and the Woodburn Community Development Director makes it clear that DLCD did not want to discuss any issues with the City, it just wanted to issue a directive.

These "ambush tactics" are particularly troubling because DLCD has created its own process that is outside of both the local government land use review process and DLCD's statutory role. To summarize, in Woodburn's case: (1) DLCD raised no issues when Woodburn implemented "middle housing" and formally submitted the proposed WDO amendments to DLCD; (2) at the request of an applicant, reviewed application materials in a site specific case without even communicating with the City; and (3) issued a Memorandum, addressed to the applicant,



criticizing the City's application process and finding that the WDO "middle housing" amendments violate the statute and cannot be applied.

**Legal Recommendation:** The City should immediately request and obtain all communications submitted on behalf of Stafford Development to DLCD regarding DLCD's issuance of the Memorandum. These are all public records. Once these records are obtained, they may clarify the context of the Memorandum.

**Question No. 2:** Is the Memorandum Legally Binding?

**Answer:** No.

**Discussion:** As pointed out above, the DLCD Director has no legal authority to issue an opinion that is dispositive of local land use applications pending in Woodburn. Therefore, the Memorandum is not legally binding.

From its text, it seems that even the author of the Memorandum struggles with its legal relevancy. The Memorandum first states that "DLCD staff's feedback is not substitute (sic) for legal counsel," but then says that the Memorandum "will be helpful for both the applicant and the City in understanding the intersection between state law/administrative rule, and local development standards."

In fact, the Memorandum is a clear illustration of DLCD attempting to substitute its own judgment for that of the Woodburn City Council and decide the pending land use case. As important as a Fifth Amendment analysis is to any land use decision, DLCD using the Memorandum to explain to Woodburn officials the constitutional limitations of exactions under *Nollan*, *Dolan* and *Koontz* is not only professionally disrespectful, it has nothing to do with the legal role of DLCD under state law.

**Legal Recommendation:** City officials should not construe the Memorandum as legally binding.

**Question No. 3:** Can the Memorandum, communications between representatives of Stafford Development Company and DLCD, and this Legal Opinion be admitted into the record in City land use hearings on related development applications?

**Answer:** Yes.

**Discussion:** The Memorandum, communications between representatives of Stafford Development Company and DLCD, and this Legal Opinion are all public records.

ORS 197.797 provides procedures that govern the conduct of quasi-judicial land-use hearings. In quasi-judicial land use hearings, "evidence" is introduced into the record and considered by the decision-maker. ORS 197.797 (9) (b) provides that "evidence means, facts, documents, data,

or other information offered to demonstrate compliance, or noncompliance, with the standards, believed by the proponent to be relevant to the decision”.

**Legal Recommendation:** Since the Memorandum, communications between representatives of Stafford Development Company and DLCD, and this Legal Opinion all will have some weight “to demonstrate compliance, or noncompliance, with the standards,” they should be entered into the land use record as evidence.

**Attachments:**

1. Memorandum from the Oregon Department of Land Conservation and Development
2. Email communication between the Oregon Department of Land Conservation and Woodburn Community Development Director



# Oregon

Tina Kotek, Governor

## Attachement 1

### Department of Land Conservation and Development

Housing Services Division  
635 Capitol Street NE, Suite 150  
Salem, Oregon 97301-2540  
Phone: 503-373-0050  
Fax: 503-378-5518

[www.oregon.gov/LCD](http://www.oregon.gov/LCD)

June 13, 2023

TO: Bryan Cavaness, Stafford Development Company

FROM: Sean Edging, DLCD

CC: Ethan Stuckmayer, DLCD      Chris Kerr, City of Woodburn  
Melissa Ahrens, DLCD      Renata Wakeley, City of Woodburn  
Colin Cortes, City of Woodburn



RE: Woodburn Cottage Cluster Development - ANX 23-03, DR 23-04, & ZC 23-03

The purpose of this memorandum is to provide feedback from DLCD staff in response to questions surrounding the applicability of state law and administrative rules in relationship to a proposed cottage cluster development in the City of Woodburn. This memorandum explores two major topic areas related to frontage dedication/improvements and design standards applied by the City to the proposed development.

This memorandum will address the following questions:

1. Is the City, as part of their annexation or development review process and applicable standards, able to require transportation- and utility-related improvement requirements to the development of cottage clusters under administrative rules related to Middle Housing?
  - a. Are there constraints on the extent to which a city can require such dedications and frontage improvements, either through administrative rule, "unreasonable cost or delay" under ORS 197.303, or the 5<sup>th</sup> Amendment of the Constitution ([Nollan, Dolan, and Koontz](#))?
2. Is the City able to impose architectural design elements (specifically WDO 3.07.02) to cottage clusters under administrative rules related to Middle Housing?
  - a. Are there constraints in state law on the extent to which a city can require such architectural design elements?

Please note that while DLCD staff's feedback is not substitute for legal counsel, we hope that this feedback will be helpful for both the applicant and the City in understanding the intersection between state law/administrative rule and local development standards. Should the City need technical support to address statutory inconsistencies in code, we encourage reaching out to DLCD staff. If you have questions about the feedback herein, please reach out to Sean Edging, [sean.edging@dlcd.oregon.gov](mailto:sean.edging@dlcd.oregon.gov) and Melissa Ahrens, [melissa.ahrens@dlcd.oregon.gov](mailto:melissa.ahrens@dlcd.oregon.gov)

Acronyms used in this document:

DLCD – Department of Land Conservation and Development	SFD – Single-Family Detached Dwelling
OAR – Oregon Administrative Rule	WDO – Woodburn Development Ordinance
ORS – Oregon Revised Statute	

**Attachment 104C1**

## Frontage Dedications and Improvements

The proposed cottage cluster development is on a single 1.43-acre unincorporated lot surrounded by incorporated lands. The adjacent street, Brown Street, is a two-lane local street that is identified on Woodburn's Transportation System Plan as a future three-lane service collector. The City, in a letter of incompleteness to the applicant, indicated that the applicant must update the site plan to include a "half-street" upgrade for the western portion of the street or pay a fee-in-lieu. These improvements include the dedication of 6 feet of additional right-of-way, demolition of existing curb & sidewalk, addition of 6 feet of travel lane, construction of a new curb, sidewalk, & street trees, and undergrounding of existing franchise utilities. The applicant estimates the total cost of these improvements to be between \$225,000 and \$250,000 (or roughly \$11,000 per cottage dwelling).

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The premise of this rule provision is that cities maintain the same basic authority to require improvements to Middle Housing, provided that those standards apply equally to SFDs and Middle Housing. This includes any application of exemptions related to proportionality under the 5<sup>th</sup> Amendment of the Constitution ([Nollan, Dolan, and Koontz](#)). In this case, if the exactions required to the Cottage Cluster are the same as what would apply to an equivalent proposal consisting of single-family detached dwellings at the density permitted in the Residential Single-



Family zone (i.e. seven SFDs based on the maximum permitted density), and the City extends the same exemptions to the proposed Cottage Cluster development as would be extended to an equivalent proposal consisting of single-family detached dwellings, then the City is in conformance with OAR Chapter 660, Division 046.

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DLCD staff lacks the expertise to opine on the proportionality of the exaction in this scenario, nor have we seen anything in the shared materials suggesting the City will or will not prepare findings. However, it is important to emphasize that a local government maintains the responsibility to make particularized findings justifying the nexus and rough proportionality of the exaction. We encourage coordination with legal counsel to ensure the exaction substantially conforms with essential nexus and rough proportionality requirements.

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First, applying two sets of standards in this manner is broadly permissible under ORS 197.758 (5) and as further operationalized in [OAR 660-046-0225](#) (1)(a) & (c):

(1) A Large City is not required to apply design standards to Middle Housing. However, if a Large City chooses to apply design standards to Middle Housing, it may only apply the following:

(a) Design standards in the Model Code for Large Cities as provided in OAR 660-046-0010(4)(b);

(c) The same clear and objective design standards that the Large City applies to detached single-family structures in the same zone. Design standards may not scale by the number of dwelling units or other features that scale with the number of dwelling units, such as primary entrances. Design standards may scale with form-based attributes, including but not limited to floor area, street-facing façade, height, bulk, and scale;

In evaluating whether WDO 3.07.02 substantially conforms with [OAR 660-046-0225](#)(1)(c), it must meet three conditions:

1. The standards must be clear and objective (note that cities may provide optional discretionary alternative review standards & procedures under ORS 197.307 (6));
2. The design standards must apply to detached single-family dwellings in the same zone; and
3. The design standards may not scale by dwelling units but may scale by form-based attributes.

In reviewing the application narrative, the applicant purports that the standards applied to cottage clusters via WDO 3.07.02 create unreasonable cost or delay and are not clear and objective.



## Unreasonable Cost or Delay

On the first point, the applicant purports that, because the city had not adopted findings demonstrating that the standards do not create unreasonable cost or delay, they cannot be applied to middle housing development. As established above, the determination of whether a standard or standards create unreasonable cost or delay requires an “as applied” challenge. A city does not need to adopt findings demonstrating adopted standards do not create unreasonable cost or delay. Furthermore, [OAR 660-046-0210](#) establishes an effective ‘safe harbor’ on the types of standards cities can apply that do not cause unreasonable cost or delay to Middle Housing:

(3) Siting and design standards that do not, individually or cumulatively, discourage the development of Middle Housing through unreasonable cost and delay include...

(d) Design standards in Large Cities provided in OAR 660-046-0225;

This means that a City can apply standards as provided in administrative rule with confidence that the provisions do not cause unreasonable cost or delay to Middle Housing. To apply standards more restrictive than what is expressly allowed in rule can be permissible but requires a consideration of the proportional costs imposed in relationship to the public benefit of a standard or standards to have the same certainty against ‘unreasonable cost or delay’ in rule. This analysis is outlined in [OAR 660-046-0235](#). Provided the applicant meets the three criteria outlined above to demonstrate compliance with [OAR 660-046-0225](#) (1)(c), they would not need to perform that proportional analysis to demonstrate the standards do not cause unreasonable cost or delay.

## Clear and Objective Standards

On the applicant’s second point, we concur that the standards set forth in WDO 3.07.02 contain provisions that are either not clear or not objective. We think these issues can be fixed with minor amendments to the text but the standards cannot be applied to the development of housing as currently written under ORS 197.307. The following are a non-exhaustive list of code excerpts that as written, are either unclear or discretionary:

- WDO 3.07.02.E3: “*Includes any of the balustrade, fall protection, wood fencing, and metal or wood railings and is required. 3.5 ft high max. 4 ft wide max gap as passage allowed...*” – This standard does not indicate *what* of the listed options is required. Additionally, “4 ft wide max gap as passage allowed” is not readily understandable or interpretable as written. While this standard may be objective, it is not clear.
- WDO 3.07.02.G1: “*On a corner lot with no alley or shared rear lane, a garage may face one frontage as the Director determines*” – This requires a discretionary decision by the City on the orientation of a garage frontage.
- WDO 3.07.02.F1: “*Where horizontal lap siding is used, it shall appear to have a reveal of 3 to 6 inches*” – The inclusion of the term “shall appear to” requires a discretionary evaluation of whether a reveal “appears to” be 3-6 inches.

While these examples are minor individually, they are not clear and objective as provided in ORS 197.307. Collectively, they create substantial uncertainty about the design features an applicant can provide to meet the standards herein. To comply with statute, they must be revised such that they are clear and objective on the face of the ordinance, and an applicant has

certainty on how a proposal can meet the standards without necessitating clarification or an exercise of judgement by City staff.

### **Single-Family Applicability and Siting Standards**

In addition to being clear and objective, the design standards applied to cottage clusters must also apply to single-family detached dwellings in the same zone. While the ordinance, on its face, appears to apply architectural standards in an equivalent manner to both cottage clusters and single-family detached dwellings, the full design standards include provisions that are expressly disallowed in rule, creating a situation in which a cottage cluster application must either 1) waive protections in administrative rule against provisions that cause unreasonable cost or delay or 2) fulfill design standards that are more restrictive than what applies to single-family detached dwellings.

WDO 3.07.02 is structured as a “points-based” system, in which proposals must include a total of 16 “points”, mixing and matching various design standards. While any individual standard with points is optional, the applicant is required to choose an amount that equals 16. There are eight categories of design standards, with a maximum number of points that can be achieved in each:

1. Building Massing – 4 points
2. Roofs – 6 points
3. Entrances – 2 points
4. Garages – 8 points
5. Windows – 3 points
6. Exterior Finish Materials – 2 points
7. Additional off-street parking for middle housing – 2 points
8. Cottage Cluster; Larger Common Courtyard – 2 points

While a points-based system is an acceptable format for regulating the design of middle housing, the approach must apply equally to single-family dwellings and middle housing. The standards may not apply more strictly to middle housing, including through categorical omissions. For example, including points for structures where individual units are detached would be disallowed, because it would categorically exclude attached middle housing types and subject them to a stricter set of code provisions.

In administrative rule, cottage clusters are extended several protections to prevent unreasonable cost or delay. Notably, OAR 660-046-0220 (4)(f) provides the following for cottage clusters:

(f) Parking:

(A) A Large City may not require more than one off-street parking space per dwelling unit in a Cottage Cluster.

(B) A Large City may allow but may not require off-street parking to be provided as a garage or carport.

Additionally, Cottage Clusters are provided protections in rule for certain design standards, including the dimensional requirements of common courtyards:

(1) A Large City is not required to apply design standards to Middle Housing. However, if a Large City chooses to apply design standards to Middle Housing, it may only apply the following:

(a) Design standards in the Model Code for Large Cities as provided in OAR 660-046-0010(4)(b);

As constructed, the design standards provide points to projects that either provide more parking than what is provided in administrative rule (1 space per unit), provide a garage with specified design features, or for Cottage Clusters, provide larger common courtyards than what is provided in the Model Code. While an applicant may elect to provide any of these features, these cannot be required by the City. In rulemaking, these standards in particular were identified as effectually inhibiting or preventing cottage cluster development.

While the standards state that these design features are “optional”, they are only optional insofar as an applicant may choose between one requirement or another. In total, the applicant *must* achieve 16 points. This construction of WDO 3.07.02 provides cottage cluster applicants a choice: Either waive protections specified in administrative rule against unreasonable cost and delay by providing more parking, garages/carports, or common courtyard space *or* fulfill a set of design standards that are categorically more restrictive than what would apply to a single-family detached dwelling. Discounting points for garages, additional off-street parking, and larger common courtyards, cottage clusters have 17 points that are possible to achieve, meaning they must effectually implement nearly all of these standards or waive protections in rule. This is in contrast to a single-family detached dwelling that can more easily mix and match standards, including those applied to garages.

To develop a points-based system that is substantially compliant with administrative rule, the City must apply design standards in a manner that equally applies between housing types. The standards cannot categorically apply a stricter set of standards to Middle Housing due to differences in their use typologies, including differences wrought by protections in rule against unreasonable cost or delay. Additionally, while a City may apply incentives to encourage specific outcomes for Middle Housing in exchange for regulatory flexibility, these incentives cannot contradict the explicit protections in administrative rule against unreasonable cost or delay.

Chris Kerr

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**From:** EDGING Sean \* DLCD <Sean.EDGING@dlcd.oregon.gov>  
**Sent:** Tuesday, June 13, 2023 11:02 AM  
**To:** Bryan Cavaness  
**Cc:** AHRENS Melissa \* DLCD; STUCKMAYER Ethan \* DLCD; Colin Cortes; Chris Kerr; Renata Wakeley  
**Subject:** RE: Woodburn Cottage Cluster - DLCD Response  
**Attachments:** 20230613\_Woodburn\_Cottage\_Cluster\_DLCD\_Response.pdf

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Good morning Bryan,

This message is a follow-up to a request you sent our way to answer questions on applicable statute and administrative rule in relationship to a proposed cottage cluster project in the City of Woodburn. Attached is a response based on our review of the shared materials, including the proposal, incompleteness determination, and applicable sections of the WDO. Copied on this message are staff at the City of Woodburn, so they are in the loop and have access to the same guidance.

As mentioned in the memo, our guidance is not a substitute for legal counsel, but we hope it will be helpful in understanding the intersection between state law and local development ordinances, as applied to this proposal. We would also encourage the City to apply for technical assistance to address any identified housing-related issues in their code (either identified in the memo or more broadly) with funding appropriated by the Legislature for this purpose.

If you have any questions about the attached memo, please let Melissa and I know.

Thank you,



**Sean Edging**

Housing Planner | Community Services Division  
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**Chris Kerr**

---

**From:** EDGING Sean \* DLCD <Sean.EDGING@dlcd.oregon.gov>  
**Sent:** Monday, June 12, 2023 5:29 PM  
**To:** Chris Kerr; Renata Wakeley  
**Cc:** AHRENS Melissa \* DLCD; Colin Cortes  
**Subject:** RE: Woodburn Cottage Cluster Development Application  
**Attachments:** anx2303\_letter\_of\_incompleteness\_2023-05-10\_fin\_w\_encloses.pdf

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Hey Chris,

The memorandum will address two major questions that the applicant sought feedback on:

1. Is the City, as part of their annexation or development review process and applicable standards, able to require transportation- and utility-related improvement requirements to the development of cottage clusters under administrative rules related to Middle Housing?
  - a. Are there constraints on the extent to which a city can require such dedications and frontage improvements, either through administrative rule, "unreasonable cost or delay" under ORS 197.303, or the 5<sup>th</sup> Amendment of the Constitution ([Nollan, Dolan, and Koontz](#))?
2. Is the City able to impose architectural design elements (specifically WDO 3.07.02) to cottage clusters under administrative rules related to Middle Housing?
  - a. Are there constraints in state law on the extent to which a city can require such architectural design elements?

The memorandum speaks to applicable statute, administrative rule, and case law to each of these questions. They are based on my review of the facts surrounding the application, applicable code sections, and materials in the record (including the incompleteness letter from the City, which is attached). If you would like to meet to discuss, I am happy to, but I will not delay my response to discuss this with the City without the applicant's knowledge or opportunity for participation/rebuttal.

Best,



**Sean Edging**

Housing Planner | Community Services Division

Pronouns: He / Him / His

Cell: 971-375-5362 | Main: 503-373-0050

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**From:** Chris Kerr <Chris.Kerr@ci.woodburn.or.us>  
**Sent:** Monday, June 12, 2023 5:12 PM  
**To:** EDGING Sean \* DLCD <Sean.EDGING@dlcd.oregon.gov>; Renata Wakeley <Renata.Wakeley@ci.woodburn.or.us>  
**Cc:** AHRENS Melissa \* DLCD <Melissa.Ahrens@dlcd.oregon.gov>; Colin Cortes <Colin.Cortes@ci.woodburn.or.us>  
**Subject:** RE: Woodburn Cottage Cluster Development Application

Sean – I know that they have an application under review with the city, and that it is currently 'incomplete'. I'm not sure what specific issues or inconsistencies have been raised by them to you or exactly what you're referring to. We obviously don't ever want to violate any required statutes or OAR's.



## Attachement 2

If you think that, prior to providing a written response to issues raised by an applicant and cc'ing us, it would be fruitful to discuss them with the City first— both the project planner on this case (Colin Cortes) and myself are available to meet.

Thanks  
CK

**Chris Kerr**  
Community Development Director  
Ph. (503) 980-2445

City Website



270 Montgomery St | Woodburn, OR 97071

**From:** EDGING Sean \* DLCD <[Sean.EDGING@dlcd.oregon.gov](mailto:Sean.EDGING@dlcd.oregon.gov)>  
**Sent:** Monday, June 12, 2023 4:35 PM  
**To:** Chris Kerr <[Chris.Kerr@ci.woodburn.or.us](mailto:Chris.Kerr@ci.woodburn.or.us)>; Renata Wakeley <[Renata.Wakeley@ci.woodburn.or.us](mailto:Renata.Wakeley@ci.woodburn.or.us)>  
**Cc:** AHRENS Melissa \* DLCD <[Melissa.Ahrens@dlcd.oregon.gov](mailto:Melissa.Ahrens@dlcd.oregon.gov)>  
**Subject:** RE: Woodburn Cottage Cluster Development Application

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Good morning Chris and Renata,

Chris, I am not sure if we had met before, but my name is Sean Edging, a Housing Planner at DLCD. An applicant for a proposed cottage cluster development in Woodburn had reached out to us to ask about the applicability of statute and administrative rule in relationship to the development application. I wanted to reach out to both of you to give you a bit of a heads up that we completed a review of the applicable facts of the case and found some inconsistencies between portions of the Woodburn Development Ordinance and statute.

I wanted to let you know in advance so this isn't coming out of the blue for your team. I plan on including both the applicant's contact (Bryan Cavaness) and cc'ing you both. Feel free to forward that memo to anyone in your team, including the assigned planner and legal counsel. We state pretty explicitly that our advice is not a substitute for legal counsel, but offer staff's interpretation of administrative rule related to middle housing implementation as well as other relevant areas of state statute.

Additionally, I also wanted to encourage the City to apply for funding in the forthcoming biennium to receive support to fix identified issues, along with any other housing-related code work the City is aware of. I say this, because the Legislature is currently refining a priority bill of the Governor including a very substantial amount of funding for this purpose, and while we cannot make guarantees about what the Legislature will or will not do, the odds of receiving code-related funding is very high next biennium.

Attached is the notice we sent out with application materials. Let me know if you have any questions.

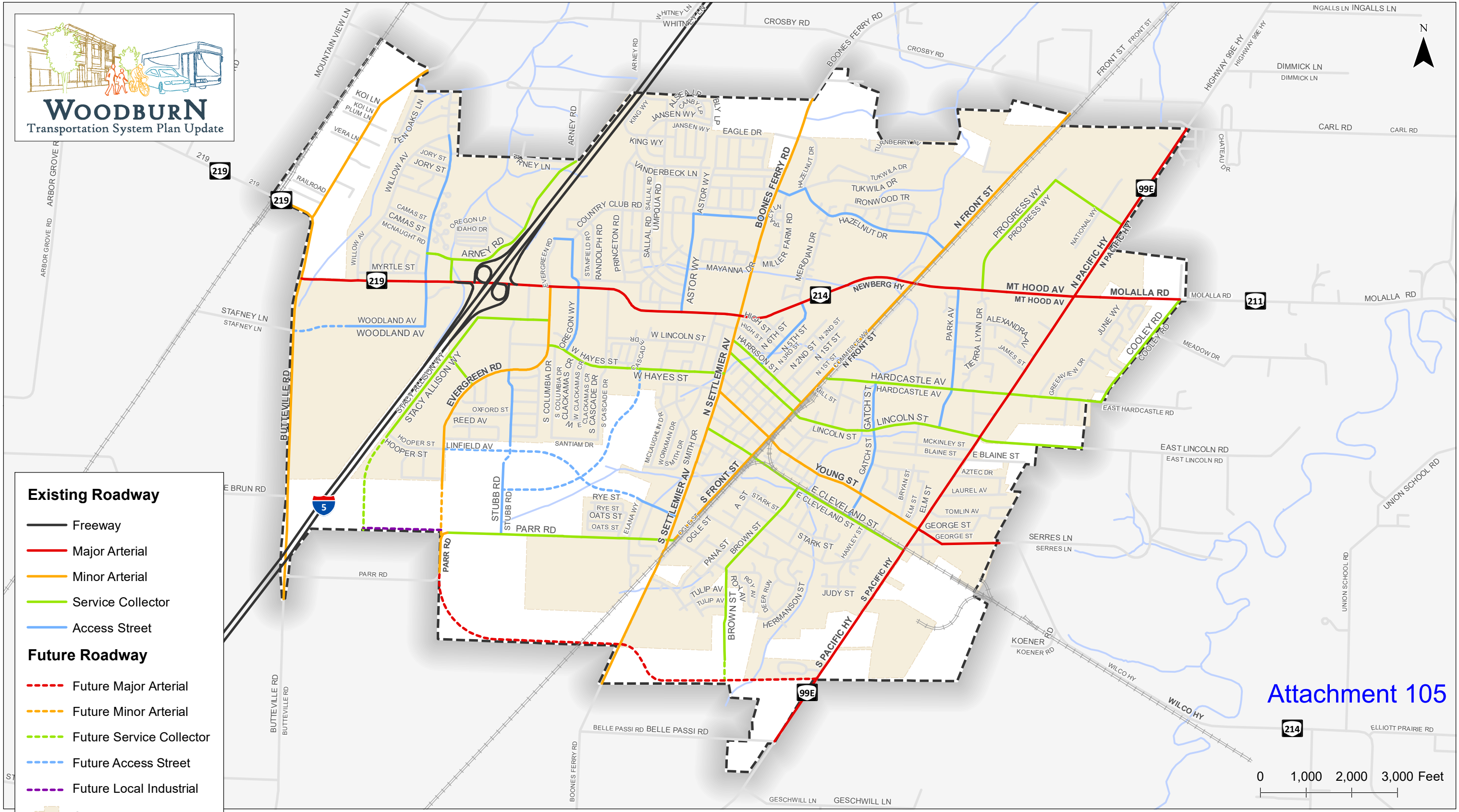
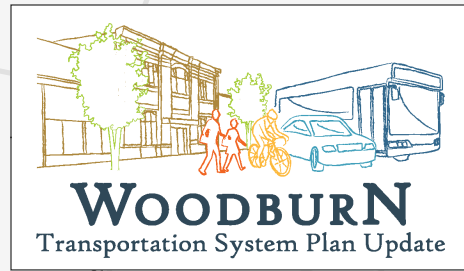


**Sean Edging**

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## **Attachement 2**

**PUBLIC RECORDS LAW DISCLOSURE** This e-mail is a public record of the City of Woodburn and is subject to public disclosure unless exempt from disclosure under Oregon Public Records Law. This e-mail is subject to the State Retention Schedule.



**Existing Roadway**

- Freeway
- Major Arterial
- Minor Arterial
- Service Collector
- Access Street

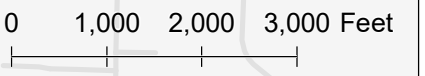
**Future Roadway**

- - - Future Major Arterial
- - - Future Minor Arterial
- - - Future Service Collector
- - - Future Access Street
- - - Future Local Industrial

City Boundary

Urban Growth Boundary

Attachment 105



**Functional Roadway Classification  
Woodburn, Oregon**

**Figure  
2**

Note: Future roadway alignments are approximate and subject to further refinement.

Coordinate System: NAD 1983 HARN StatePlane Oregon North FIPS 3601 Feet Intl  
Data Source: City of Woodburn, Oregon Department of Transportation

H:\12121071 - Woodburn TSP Update\GIS\TSP02 Functional Roadway Classification.mxd - mmcormick - 5:25 PM 9/18/2019