

**ASHLAND PLANNING DIVISION
STAFF REPORT
September 13, 2022**

PLANNING ACTION: PA-T3-2022-00004

APPLICANT: Casita Developments LLC

OWNER: Linda Zare/Casita Developments LLC

LOCATION: 1511 Hwy 99N

COMPREHENSIVE PLAN DESIGNATION: Multi-Family Residential

120-DAY TIME LIMIT: (**Type III applications not subject to 120-day limits pursuant to ORS 227.178.7*)

ORDINANCE REFERENCES:

(See also <https://ashland.municipal.codes/LandUse>)

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REQUEST: A request for the Annexation of 16.86 acres located at 1511 Highway 99 North into the City of Ashland, along with 6.6 acres of adjacent Oregon Department of Transportation state highway right-of-way and 7.68 acres of California Oregon & Pacific railroad property. The property is currently located in Jackson County and zoned Rural Residential (RR-5); with Annexation these properties would be brought into the City as Low Density, Multi-Family Residential (R-2). Concurrent with Annexation, the application also requests: Outline Plan subdivision approval to create 12 lots; Site Design Review to construct 230 apartments in ten buildings including 38 affordable units; an Exception to the Street Design Standards; and Tree Removal Permits to remove two trees greater than six-inches in diameter at breast height.

The primary differences between the current request and a similar application from 2019 which was approved by the city but subsequently reversed by the Land Use Board of Appeals are that the current application includes a Site Design Review component to construct 230 apartments where the previous application included only a conceptual development proposal, and that the Ashland Municipal Code has since been modified to make clear that Exceptions to the Street Design Standards may be granted for applications involving annexation.

I. Relevant Facts

A. Background - History of Application

In December of 2020, Planning Action #PA-T3-2019-00001 was approved by the Ashland City Council. This application involved a request for Annexation of a 16.86-acre parcel and Zone Change from County RR-5 (Rural Residential) to City R-2 (Low Density, Multi-Family Residential) for the properties located at 1511 Highway 99 North. The application also requested an Exception to the Street Design Standards to deviate from city standard parkrow and sidewalk improvements to respond to right-of-way constraints including width, grade and existing encroachments. The application did not include a concurrent residential development, but provided conceptual details for the future phased development of 196 apartments.

Following the Council's approval, the decision was appealed to the Land Use Board of Appeals (LUBA) by Rogue Advocates, a local land use advocacy group, based on three assignments of error which included:

- **That the city code did not provide for Exceptions to the Street Design Standards for annexations, and as such an Exception request should not have been approved.**
- **That the city's findings misconstrued AMC 18.5.8.060 because the city failed to give effect to the term of art "parcel" or explain why the city's use of the term parcel was not given its typical meaning in a land use context.**
- **That the city's findings for AMC 18.5.8.050(E) dealing with adequate transportation were not supported by substantial evidence in the record.**

LUBA ultimately found that the appellant was correct that the city's Land Use Ordinance did not provide for Exceptions to the Street Design Standards where annexations were involved, and overturned the original approval solely on that basis. Because responding to that determination was likely to trigger modifications to the proposal, LUBA chose not to rule on the appellant's other assignments of error.

Subsequent to the LUBA reversal, the Planning Commission and Council recognized that in properties to be annexed may be adjacent to streets which are and will remain under state or county jurisdiction (and thus subject to standards other than the city's) and which may have constraints in terms of existing improvements, available right-of-way and physical impediments such as steep slopes, or as is the case here, the prescribed standard street design cross-sections do not account for the installation of transit facilities such as the bus pull-out lane proposed despite requiring that adequate transit facilities be considered with Annexation. As such, since the LUBA reversal of the previous application to annex the subject property, the Ashland Municipal Code was amended to make clear in AMC 18.5.8.050.I that, "*The approval authority may approve exceptions to and variances from the approval criteria and standards in this section using the criteria in section 18.4.6.020.B.1 Exceptions to the Street Design Standards or chapter 18.5.5. Variances.*"

B. Detailed Description of the Site and Proposal

The subject property consists of two tax lots totaling 16.86 acres at the northwest corner of Ashland. Tax Lot #1700 is an approximately 11.81-acre parcel which contains a 1,182 square foot single family residence built in approximately 1948 according to County Tax Assessor's records. Tax Lot #1700 is located behind a series of smaller properties containing commercial uses along the highway (Anderson Auto Body, Paradise Garden Supply, the Animal Medical Hospital, and various medical offices, restaurants and auto dealerships), and the existing home is accessed via a driveway easement running between Paradise Garden Supply and the Animal Medical Hospital. Tax Lot #1702 is an approximately 5.06-acre vacant parcel located southeast of Tax Lot #1700, and is located immediately adjacent to the highway with approximately 902 feet of linear highway frontage. Both are irregularly shaped, and generally extend northwest of the railroad overpass at the north end of Ashland along Highway 99N. The parcels are generally bounded on the south side by the railroad tracks and on the north side by Highway 99, and to the west by commercial development on county lands within the Urban Growth Boundary (UGB).

The application materials note that the majority of Tax Lot #1700 is steep and densely forested with native Oak savannah, and further indicates that there are a limited number of trees in and around the areas of proposed development. Trees are noted as being concentrated within the wetland and its associated protection zone, around the existing single family residence, and in the northwest portion of the property where development is not proposed. The application includes an inventory of 23 trees identified on the property and an assessment of their current condition and relative tolerance to development disturbance along with a Tree Preservation and Protection Plan (Applicant's Sheet L.1.1). Three trees are proposed to be removed including an 18-inch cottonwood noted as being dead, an 18-inch Ponderosa Pine and a 30-inch d.b.h. Cedar Elm (*ulmus crassifolia*, Tree #23).

The application materials explain that while the site has a generally consistent grade and is moderately sloped with an approximate ten- to 15-percent slope from southeast to northwest, the western half of Tax Lot #1700, west of the existing residence, consists of large terraces with areas of steep slopes between and a substantial amount of this property has slopes in excess of 35 percent which, by city codes, would be considered “severe constraints” lands and therefore unbuildable.

The application further notes that there is a riparian land drainage identified as a tributary of Bear Creek at the north end of Tax Lot #1700. In addition, two wetlands have been identified on the subject properties. One is only 60-square feet and is located at the base of a small depression northwest of the existing single family residence on Tax Lot #1700. The other is larger at approximately 4,606 square feet in area and located on Tax Lot #1702. In staff’s view, it would be advisable to update the Wildfire Lands, Physical & Environmental Constraints Hillside Lands and Severe Constraints, and Water Resource Protection Zones maps and associated overlays to fully incorporate the subject properties’ natural features with annexation, and a condition to that effect is recommended below.

In addition to these natural water features, a 100-foot wide easement for “The Billings Siphon” transects the property. According to the federal Bureau of Reclamation (BOR), the Billings Siphon is a high pressure pipeline that is critical infrastructure for the continued functioning of irrigation facilities within the Talent Irrigation District, and the pipe and the easement are owned by the United States government, administered under the jurisdiction of the Bureau of Reclamation (BOR), and operated and maintained under a federal contract by the Talent Irrigation District (TID).

The application materials note that the existing residence is serviced by Rogue Valley Sanitary Sewer Service (RVSS) as successor to the Bear Creek Valley Sanitary Authority (BCVSA) and is within their district boundaries for sanitary sewer service. The existing residence is served by Pacific Power for electric service, and water service is from a well on the property. While city code requirements typically necessitate that all utilities transition to city services with annexation, there is a “Cooperative Agreement/Urban Services Agreement” in place between the City of Ashland, Jackson County and the Bear Creek Valley Sanitary Authority, now Rogue Valley Sanitary Sewer Service which dates to November 8, 1995 and which provides that the district shall continue to provide urban level sanitary sewer and/or storm water services it has historically provided to territory within the district’s existing limits and that the City and the sewer district may agree to joint provision of service to areas within the City or its UGB by contract, mutual agreement or other method.

The subject properties are located in Jackson County within the city’s Urban Growth Boundary (UGB). The current zoning within the County is RR-5 (Rural Residential, with a five-acre minimum lot size) and the city Comprehensive Plan designation is Multi-Family Residential. The applicant proposes to annex the properties as R-2, a Low-Density Multi-Family Residential zoning which allows for a base density of 13½ dwelling units per acre, which is consistent with the properties’ Comprehensive Plan designations.

Highway 99 North is a state highway under Oregon Department of Transportation (ODOT) jurisdiction, and was re-striped by ODOT as part of a lane reduction program which includes a single motor vehicle travel lane in each direction with a shared central turn lane and bicycle

lanes on both sides. With annexation, the highway would come into the city limits and be subject to city street standards as a boulevard or arterial street but would remain under ODOT's jurisdiction. The subject properties are setback substantially from the highway's paved edge, and there is a significant grade change between the pavement and the subject property. The applicant notes that there is a bar ditch, a steep incline and in some locations a secondary ditch that conveys stormwater diverted from the railroad across the south end of the subject property, and the roadside ditch and culvert system enters an underground system at the shared, west property line of Anderson Auto Body and then daylight again further west of the Animal Medical Hospital.

II. Project Impact

A request for the Annexation of 16.86 acres located at 1511 Highway 99 North into the City of Ashland, along with 6.6 acres of adjacent Oregon Department of Transportation state highway right-of-way and 7.68 acres of California Oregon & Pacific railroad property. The property is currently located in Jackson County and zoned Rural Residential (RR-5); with Annexation these properties would be brought into the City as Low Density, Multi-Family Residential (R-2) which is consistent with the Multi-Family Residential Comprehensive Plan designation.

A. Annexation

The first criterion for Annexation is that, "*The annexed area is within the City's Urban Growth Boundary.*" In this instance, the subject properties are all located within the Urban Growth Boundary.

The second approval criterion is that, "*The annexation proposal is consistent with the Comprehensive Plan plan designations applicable to the annexed area, including any applicable adopted neighborhood, master, or area plan, and is an allowed use within the proposed zoning.*" The requested zoning is consistent with the site's Comprehensive Plan designation of "Multi-Family Residential." There are no applicable neighborhood, master or area plans in the immediate vicinity, however Site Design Review has been requested for a 230-unit multi-family residential development which is an allowed use within the R-2 zoning district.

The third criterion is that, "*The annexed area is contiguous with the city limits.*" The area identified for annexation in the application is contiguous with the city limits.

Adequacy of Public Facilities

The fourth criterion for Annexation approval is that, "*Adequate City facilities for the provision of water to the annexed area as determined by the Public Works Department; the transport of sewage from the annexed area to an approved waste water treatment facility as determined by the Public Works Department; the provision of electricity to the annexed area as determined by the Electric Department; urban storm drainage as determined by the Public Works Department can and will be provided from the annexed area. Unless the City*

has declared a moratorium based upon a shortage of water, sewer, or electricity, it is recognized that adequate capacity exists system-wide for these facilities. All required public facility improvements shall be constructed and installed in accordance with 18.4.6.030.A.”

The existing residence relies on a well for water service, and is serviced by Rogue Valley Sewer Service (RVSS) for sanitary sewer and Pacific Power for electric service. Storm drainage is via a roadside ditch in the ODOT highway right-of-way as part of RVSS’s system. Annexation requests must demonstrate that adequate city facilities can and will be provided to the subject property. Each of the listed city services is discussed below:

- **Water:** The Water Division has noted that the property is not currently served by a water main, and a new main will need to be installed to connect to the existing city water system. The nearest point of connection is the intersection of North Main Street and Highway 99 North. The applicant notes that water lines to service the property are proposed to be extended, and indicates that these will be adequately sized to provided water pressure for residential service and fire suppression systems. The Water Division has indicated that with extension of a new main, there will be adequate supply of potable water available to the site subject to the following:
 - The City will require the applicant to extend the existing 12-inch main line at a location uphill and south of the site, between Fox & Schofield Streets, to a location north of the railroad trestle at the site’s northernmost driveway. Final engineered details of the exact location and method of connection to the existing 12-inch city-owned water main will be included in the final engineered plans provided with the Final Plan submittal. In preparing the final civil drawings, consultation with RH2 Engineering, the contract engineer for the City, and use of the city’s water model may be required to evaluate domestic consumption and fire flow needs for Grand Terrace, the potential future extension of the main further to the north and resultant impacts to the city system.
 - As this is at the low end of the City’s water system, the applicant must anticipate high water pressures at the meter (160+ psi). This will require a pressure reducing valve (PRV) station at the point of connection. The final type, size, and location of the PRV station will need to be determined in consultation with the project civil engineer, the city-approved PRV supplier and Water Department staff based on the city water model currently managed by RH2 Engineering. PRV stations of this size are typically in underground vaults big enough to walk around in and will need to be in a location where regular maintenance can be performed without stopping traffic or endangering Water Division personnel. The applicant’s design team should also evaluate the need for PRV’s for each building. The final civil drawings provided with the Final Plan submittal shall include complete PRV details.
 - Water meters must be placed in the public right-of-way and within the city limits as close to the roadway as possible, but in a protected area safe from vehicular damage and also safe for Water Division employees to access them. The proposed annexation should extend at least to centerline of the highway right-of-way. (*Water meters may not be connected to private water mains inside the development.*)
 - Each water meter or connection will be required to be backflow protected immediately on the private side of the meter, with a double check backflow

preventer, due to the increase in altitude of the terrain and height of the structures above the service connection height. It is also likely that a reduced pressure backflow assembly will be required behind each meter instead of the double check backflow preventer, due to the presence of ponds and TID irrigation on the property. Final backflow protection details are to be included in the civil drawings provided with the Final Plan for review and approval of the Water Division.

- At the two locations where the private on-site water main branches off the proposed City water main extension, a Double Check Detector Assembly or a Reduced Pressure Zone Detector assembly, will be required to isolate and separate the City water main from the private water main as it enters the development, as close to the right-of-way as practical.
 - Fire hydrants to be installed on-site will be located on private property and will require yearly testing be conducted, with the annual results reported to the City's Water Division.
 - The existing well on site will need to be abandoned, or the applicant will be required to install premises isolation measures (RPZ/double check).
 - The applicant will need to work with the Bureau of Reclamation (BOR) on any necessary modifications to proposed site improvements and associated permitting to address the "Billings Siphon" irrigation easement and associated federal requirements.
- **Sanitary Sewer & Storm Drainage:** City code requirements typically necessitate that all utilities transition to city services with annexation, however in this instance the property is well outside and downhill of the city's sanitary and storm sewer systems, and a significant extension of new services would be needed and all sewage and stormwater would need to be pumped. However, there is a "Cooperative Agreement/Urban Services Agreement" in place between the City of Ashland, Jackson County and the Bear Creek Valley Sanitary Authority - now Rogue Valley Sewer Service (RVSS) - which dates to November 8, 1995 and which provided that with annexation, the sewer district *shall* continue to provide an urban level of sanitary sewer and/or storm water services that it has historically provided to territory within the district's existing limits and that the City and the sewer district may agree to joint provision of service to areas within the City or its UGB by contract, mutual agreement or other method. As proposed by the applicant here, RVSS will continue to provide these services to the subject properties per the 1995 agreement. RVSS has indicated that their sanitary sewer system has adequate capacity for the proposed development, and there is an eight-inch main in the right-of-way due north of the project site. On-site storm water drains to a roadside ditch that is within the state highway right-of-way and maintained by the Oregon Department of Transportation (ODOT). The proposed development's physical improvements have been preliminary engineered to comply with the RVSS Stormwater Quality Design Manual, which is used by the City of Ashland, Jackson County and RVSS. The project Civil Engineer has determined the approximate sizes and locations for on-site detention and treatment facilities. A condition of approval has been recommended below that the Final Plan submittal include a final stormwater management plan including necessary calculations and operational and maintenance details.

- **Electric:** The application explains that the property is currently served by Pacific Power, but that with the development the property will be served by the City of Ashland Electric Department with the installation of new electrical infrastructure by the applicant. The application explains that there is presently low-voltage city electric service in place to power street and landscape lighting in and around the central median at the railroad trestle overpass. With the proposal, electric facilities are to be provided in or adjacent to the highway right-of-way to provide adequate infrastructure to the proposed development and future development in the vicinity, and a preliminary electric service plan has been provided with the application materials. Conditions are recommended below to require that a final approved electric service plan for the proposed development be provided with the Final Plan submittal, and that this plan makes clear that all utility installations will not disturb the wetland or its associated water resource protection zone.

Adequacy of Transportation Facilities

The subject properties front on Highway 99N, sometimes referred to as the Rogue Valley Highway, which is a state highway under the jurisdiction of the Oregon Department of Transportation. Highway 99N becomes North Main Street within the current city limits. North Main Street is a boulevard or arterial as classified in the Transportation System Plan (TSP). City street standards for an arterial street generally call for 11-foot motor vehicle travel lanes, a 12-foot median/center turn lane, six-foot bike lanes on each side, eight- to nine-foot parking lanes where on-street parking is appropriate, a six-inch curb, a seven- to eight-foot parkrow planting strip with irrigated street trees, and six-foot sidewalks.

As it currently exists under the lane reduction sometimes called “*The Road Diet*”, Highway 99N has one motor vehicle travel lane in each direction separated by a single, shared center turn lane, and variable width bicycle lanes on the shoulder. There are no curbs in place along the property frontage, and roadside ditches are present in some locations. On the opposite side of the roadway, a guardrail is in place at the outside edge of the bike lane.

The criterion and sub-criteria relative to transportation facilities for annexations are detailed below in italics, with responses following:

Adequate transportation can and will be provided to serve the annexed area. For the purposes of this section "adequate transportation" for annexations consists of vehicular, bicycle, pedestrian, and transit transportation meeting the following standards.

The application materials explain that the subject properties abut Highway 99 N, which is under the jurisdiction of Oregon Department of Transportation (ODOT). Highway 99 N is designated by ODOT as an ‘Urban Fringe Highway’ and ODOT’s specific standards include an eight-foot curbside sidewalk and six-foot bike lane. City of Ashland Street Standards call for a six-foot bike lane, seven to eight-foot landscaped park row planting strip with irrigated street trees and a six-foot sidewalk. ODOT accepts buffered sidewalk development as required by the city standards as an alternative to the ODOT-standard eight-foot curbside sidewalk. The applicant asserts that the proposed improvements include public infrastructure improvements that comply with the ODOT standards for the entirety of the highway frontage

improvements, and in addition to a Traffic Impact Analysis the application materials also include a “Technical Memo, Grand Terrace Development – Access Safety Evaluation” which provides detailed safety findings from the project’s Transportation Engineer.

1. *For vehicular transportation a minimum 22-foot wide paved access exists, or can and will be constructed, providing access to the annexed area from the nearest fully improved collector or arterial street. All streets bordering on the annexed area shall be improved, at a minimum, to an applicable City half-street standard. The approval authority may, after assessing the impact of the development, require the full improvement of streets bordering on the annexed area. All streets located within annexed areas shall be fully improved to City standards unless exception criteria apply. Where future street dedications are indicated on the Street Dedication Map or required by the City, provisions shall be made for the dedication and improvement of these streets and included with the application for annexation.*

The application explains that a 22-foot-wide paved access exists along the full frontage of the project site to the nearest fully improved collector or arterial street. The full improvement of the highway frontage adjacent to the development and in the annexed area is proposed to be improved to ODOT and city standards. The full frontage of the project site is proposed to be improved with bike lane, curb, gutter, seven-and-a-half-foot park row and a six-foot sidewalk, except for the portion of the frontage where the bus pull out and transit-oriented plaza are to be installed.

There are some areas where some exceptions to the street standards are requested due to topographical difficulties, utility encroachments, and physical encumbrances in the form of the railroad trestle, a drainage ditch, private driveway approaches and other private property encroachments. The proposal seeks an Exception to the Street Design Standards for the sidewalk and bike lane under the overpass of the railroad trestle where a shared sidewalk will be installed. Where city standard sidewalks are not possible due to physical constraints, ODOT-compliant frontage improvements are proposed.

The application goes on to explain that a gridded street system connecting to other streets in the vicinity through the development is not possible due to the physical barrier posed by the railroad tracks, and by the topography of the adjacent property to the south. As such, the traffic into and out of the development will be limited to residents, visitors, and traffic for the complex itself, and there will be no through-traffic accessing adjacent properties or destinations.

The application notes that a Transportation Impact Analysis (TIA) was conducted as required by state’s Transportation Planning Rule (TPR). The key findings of the TIA by Kelly Sandow PE, of Sandow Engineering, LLC include:

- The TIA shows all studied intersections (Hwy 99N at South Valley View, Highway 99N at Jackson Road, North Main Street at Jackson Road, North Main Street at Maple Street, and Hwy 99N at the project access points) will meet the mobility standards through the Year 2034 with the addition of the traffic associated with

anticipated development of the subject property.

- The addition of development traffic will not substantially increase queuing conditions over the background conditions.
- All site driveways are projected to operate safely and efficiently.
- The TIA recommends that Highway 99N be restriped to include a left-turn lane for vehicles entering the site.
- The TIA concludes that the Transportation Planning Rule (TPR) has been demonstrated to be met.

Given the complexity of the TIA, an additional Safety Access Evaluation has also been provided to summarize how the proposal complies with the ODOT safety standards for sight distance stopping distance and intersection sight distance. The applicant summarizes this evaluation as follows:

- **Sight Distance – A Safe and Clear Line of Sight Exists at the Driveways.** Clear line of sight, or sight distance for vehicles at the driveway access connection allows for drivers entering and exiting the access drive to make safe turning movements and allows vehicle traveling on the roadway time to react to turning vehicles in a safe manner. The proposed application has the clear line of sight required for all conditions.
- **Stopping Sight Distance – Safe Stopping Sight Distance Exceeds Requirement.** Stopping sight distance (SSD) is based on the speed of the roadway being traveled. Highway 99 has a posted speed of 45 miles per hour (mph) within 800 feet of the driveway access in either direction. As per American Association of State Highway & Transportation Officials (AASHTO) standards, the required SSD was over 700 feet in both the north and south directions. The available SSD exceeds the minimum required distance.
- **Intersection Sight Distance – Safe Reaction Time to Turn Exceeds Required Distance.** Intersection Sight Distance (ISD) is a measure of the length of visibility of the roadway for a stopped vehicle on a driveway/minor road approach. The distance provides time to perceive and react to gaps in traffic and allow a driver to safely turn into the roadway. For this calculation, it is assumed that the driver's eye is 3½-feet above the ground and that the object to be seen is 3½-feet above the ground of the intersecting road. The recommended ISD is calculated for a vehicle turning from the access onto Highway 99N for both left and right turn maneuvers, based on Case B1 of the AASHTO manual. The AASHTO methodology measures the ISD from the typical driver position 14 feet back from the travel lane. Here, the speed used is 45 mph which results in an ISD of 500 feet for this approach. The available ISD to the north was measured at 569 feet, and the available ISD to the south was measured at 577 feet meaning that the ISD requirements are met in both cases.

2. *For bicycle transportation safe and accessible bicycle facilities according to the safety analysis and standards of the governing jurisdiction of the facility or street (e.g., City of Ashland, Jackson County, Oregon Department of Transportation) exist, or can and will be constructed. Should the annexed area border an arterial street, bike lanes shall be constructed along the*

arterial street frontage of the annexed area. Likely bicycle destinations within a quarter of a mile from the annexed area shall be determined and the approval authority may require the construction of bicycle lanes or multi-use paths connecting the annexed area to the likely bicycle destinations after assessing the impact of the development proposed concurrently with the annexation.

With regard to bicycle transportation, the application materials explain that Highway 99N which is an arterial street and state highway, currently has bicycle lanes buffered by striping along the frontage of the property, with bicycle lanes on both sides of the highway extending north of Valley View Road and south into downtown Ashland. The bike lanes are of typical width and the striped buffer along the frontage provides an additional measure of safety. The proposal maintains these bicycle lanes in accordance with City standards along the frontage with two multi-use path connections into the site. A crossing will be installed on Highway 99N at Schofield Street with pedestrian- or cyclist-activated rectangular rapid flash beacons (RRFBs) to support crossing Highway 99N near RVTD's northbound flag stop. The bicycle facilities that exist or will be provided as part of the annexation comply with the design and safety criteria for ODOT as the governing jurisdiction, and the applicant thus asserts that this criterion is satisfied.

Bicycle destinations within ¼-mile include two coffee shops, two restaurants, a new financial institution now under construction, and a bicycle shop, and the Bear Creek Greenway is accessible at Valley View Road within ½-mile of the site. The application materials assert that all of these destinations are easily accessed from the existing protected bicycle lanes which are to be maintained, and that these bicycle lanes continue the 1¼-miles into downtown Ashland.

3. *For pedestrian transportation safe and accessible pedestrian facilities according to the safety analysis and standards of the governing jurisdiction of the facility or street (e.g., City of Ashland, Jackson County, Oregon Department of Transportation). exist, or can and will be constructed. Full sidewalk improvements shall be provided on one side of all streets bordering on the proposed annexed area. Sidewalks shall be provided as required by ordinance on all streets within the annexed area. Where the annexed area is within a quarter of a mile of an existing sidewalk system or a location with demonstrated significant pedestrian activity, the approval authority may require sidewalks, walkways or multi-use paths to be constructed and connect to either or both the existing system and locations with significant pedestrian activity.*

In responding to the safe and accessible pedestrian facilities criterion, the applicant explains that there are currently no sidewalks along Highway 99N on either side of the street between the subject properties' frontage and Schofield Street to the south which limits pedestrian access and safety for north Ashland residents. The applicant proposes street frontage improvements including sidewalk improvements which comply with the design and safety

criteria of ODOT as the governing jurisdiction, and as such asserts that this criterion is satisfied.

There are no interior streets proposed within the development, however the site circulation system includes pedestrian connections between the public sidewalks along the highway, the apartments, parking areas and other areas of the site. These include two ADA-compliant multi-use paths through the landscape open spaces into the site from the north and the south along the highway frontage for pedestrians and bicycles, including the main entrance driveway with adjacent sidewalks that are also ADA-compliant.

To the south of the project, towards Ashland, the width of the highway is restricted to the single travel lane, bike lane and shoulder by the railroad overpass. The railroad overpass currently lacks any sidewalk or lighting, but a shared bicycle and pedestrian path with overhead lighting is proposed. As an extra measure of caution, a vertical barrier will be provided at the curb. This will provide a safer, well-lit area increasing the comfort and safety over what currently exists. The applicant emphasizes that ODOT Engineering staff have been actively involved in this design, and has confirmed that all the improvements conform to ODOT standards.

The application materials further explain that the applicant will be providing a high-visibility crosswalk across Highway 99N with Rectangular Rapid Flashing Beacons (RRFBs). The application further notes that mid-block crosswalks are dangerous, and RRFBs increase the safety of pedestrians and cyclists crossing when compared to a traffic signal. The application materials go on to indicate that studies have shown that RRFBs increase motorist yielding rates because the lights are controlled by the pedestrian's presence and will not go off until they are safely out of the crosswalk. The proposed RRFB crossing is to be placed between North Main Street at Schofield Street, between the north- and south-bound bus stops. The RRFB crossing will provide a safe pedestrian and bicyclist crossing for all the residents in north Ashland where none existed before, both to access to Grand Terrace and to cross the highway to access these bus stops safely. The applicant notes that local ODOT authorities have given approval to install a crossing with RRFBs in this location, and that final approval will be subject to review by the regional office in Salem. The developer will be responsible for the design, cost and installation of the crosswalk and RRFBs. A condition has been recommended below to require that the final location and design of the RRFB crossing be detailed in the Final Plan submittal.

4. *For transit transportation, should transit service be available to the annexed area, or be likely to be extended to the annexed area in the future based on information from the local public transit provider, the approval authority may require construction of transit facilities, such as bus shelters and bus turn-out lanes.*

In discussing transit, the application materials explain that the nearest transit stop is currently located approximately 950 feet south of the site between North Main and Schofield Streets. The applicant proposes to provide a high-visibility pedestrian crossing with RRFBs in this location to provide a safe pedestrian and bicycle crossing serving this transit stop and

providing access into the proposed Grand Terrace development and the north Ashland neighborhoods.

There are two other existing transit stops serving north- and south-bound trips; these are approximately 2,100 feet (0.39 miles) and 1,767 feet (0.33 miles) to the north. The north-bound stop is in front of Bear Creek Cycle, while the south bound stop is in front of Butler Automotive. Both are “flag stops” where the rider must flag down the bus, and there are no bus shelters or bus turn-out lanes provided at these stops. The applicant team has consulted with the Rogue Valley Transportation District (RVTD) Planning & Strategic Programs Manager regarding installation of a new stop directly in front of the project site where the property abuts the highway. The applicant will be constructing a bus lane and a covered bus plaza for an enhanced transit stop along the southern site frontage. The design will allow buses to stop outside the travel lane and have a dedicated lane to accelerate prior to merging back into the travel lane. The applicant will be providing a direct multi-use path from the apartment buildings to the bus plaza. RVTD has already tested the merging area for safety entering traffic from the planned location and has approved it for development.

The applicant asserts that the proposed development meets and in places exceeds the Federal Highway Administration’s (FHA’s) Pedestrian Safety guide for Transit Agencies (https://safety.fhwa.dot.gov/ped_bike/ped_transit/ped_transguide/ch4.cfm) with the development of the bus stop immediately at the site entrance, and the safe pedestrian and bicycle crosswalk with RRFBs at the current bus stop 0.31 miles from the Grand Terrace pedestrian access area. According to the FHA guide, “*Most people are willing to walk for five to ten minutes, or approximately 1/4- to 1/2-mile to a transit stop...*” The proposed distance here to the north-bound flag stop is 1/3 of a mile which is 30 percent less than the maximum walking distance under the FHA Pedestrian Safety Guide. The applicant concludes that the proposed improvements will encourage pedestrians to comfortably walk to the transit stop by installing sidewalks and a safe crosswalk, as well as installing a new bus stop and transit supportive plaza directly on the frontage. In addition, the application also emphasizes that for transit riders that need additional services due to disability, RVTD’s Valley Lift service can be scheduled to serve users from their front door or at the proposed transit plaza.

5. *Timing of Transportation Improvements. All required transportation improvements shall be constructed and installed in accordance with 18.4.6.030.A.*

The application materials emphasize that all required public facility improvements will be installed in accordance with approved designs, and that necessary financial guarantee will be provided.

The Transportation Commission considered the proposal at the pre-application level at its March 2022 meeting. The key issues they identified were reducing the highway speeds, implementing protected bike lanes and providing better sidewalks.

Staff Discussion & Recommendations: Transportation Facilities

With regard to the Transportation Commission's issues, staff would note that the City's Street Design Standards do not currently include requirements for protected bicycle lanes, although the lanes here are buffered with striping. Similarly, the sidewalks proposed are designed to city standards with the exception of park row planting strips which are to be omitted where prevented by physical constraints or transit facilities, and also meet the standards of ODOT as the governing jurisdiction. The bicycle and pedestrian facility standards for annexation speak to "*safe and accessible... facilities according to the safety analysis and standards of the governing jurisdiction of the facility or street*" which here is ODOT and the applicant has provided a Safety Access Evaluation prepared by a Transportation Engineer which details the vehicular, bicycle, pedestrian and transit improvements proposed and finds them to meet ODOT's standards.

The 45 mph speed limit along the highway here was a significant discussion point in 2019, and continues to be an issue for the Transportation Commission. In 2021, ODOT as the governing jurisdiction conducted a speed zone investigation to determine if a speed reduction was merited. This investigation resulted in no changes to the existing speed zones, finding that there was not a density of pedestrian or bicycle transportation users to justify a reduced speed. ODOT staff are expected to be present at the Planning Commission hearing, and could discuss this study and the possibility for a re-evaluation once the project develops.

In staff's assessment, the proposal has adequately addressed the requirements for vehicular, bicycle, pedestrian and transit transportation. Vehicle travel lanes are in place, bicycle lanes are to be widened where necessary to meet standards, continuous sidewalks are to be provided along the frontage extending to connect with the existing pedestrian facilities in both directions for a total distance of 3,088 linear feet, and a new bus pull-out lane, bus stop and transit-supportive plaza are to be provided. The Exception requested with regard to the parkrow configuration is merited given right-of-way constraints including the existing roadside ditches, grades and encroachments, and the new southbound transit stop with pull-out, plaza and shelter to be provided directly along the frontage.

In the 2019 application, ODOT, RVTD and the Transportation Commission had suggested that there be some consideration for a crossing south of the trestle near the intersection of North Main Street, Jackson Road and the Highway 99 intersection to accommodate pedestrian and bicycle traffic accessing a north-bound RVTD flag stop. City staff had expressed concern that the alignment of streets at this intersection, lack of sidewalks on the north side, grades, and sight distances with the curving roadway under the trestle could complicate placing a safe crossing here, and the applicant has shift this crossing location further south nearer to Schofield Street now, with the final design to be provided for ODOT and City of Ashland review with the Final Plan submittal.

The application materials include a Transportation Impact Analysis and a Safety Access Evaluation which speak favorably to the proposed transportation facilities in terms of the applicable standards of the governing jurisdiction. Staff believe that the placement of the

development set back from the right-of-way, buffered by open space with multi-use paths providing circulation options well back from the roadway, and the provisions for continuous sidewalks, bike lanes, southbound transit improvements and a new crossing to the northbound transit stop can be found to provide safe and accessible facilities despite the highway speeds.

Minimum Density

The sixth Annexation approval criteria is that, *“For all residential annexations, a plan shall be provided demonstrating that the development of the annexed area will ultimately occur at a minimum density of 90 percent of the base density for the zone, unless reductions in the total number of units are necessary to accommodate significant natural features, topography, access limitations, or similar physical constraints. The owner or owners of the annexed area shall sign an agreement, to be recorded with the county clerk after approval of the annexation, ensuring that future development will occur in accord with the minimum density indicated in the development plan. For purposes of computing maximum density, portions of the annexed area containing unbuildable lots, parcels, or portions of the annexed area such as existing streets and associated rights-of-way, railroad facilities and property, wetlands, floodplain corridor lands, slopes greater than 35 percent, or land area dedicated as a public park, shall not be included.”*

The application materials include the following calculations:

Total land Area:	16.86 acres
Unconstrained Area:	13.75 acres
Base Density (R-2):	13.5 dwelling units (du) per acre
Gross Base Density Dwelling Units Allowed:	13.75 acres x 13.5 du/acre = 185.625 du
90 Percent Minimum Density Requirement:	185.625 x 0.90 = 167.06 du

The application notes that per AMC 18.2.5.080.B.2., units that are less than 500 square feet gross habitable floor area are considered as $\frac{3}{4}$ -units (0.75 dwelling units) for the purposes of calculating density. The 230 dwelling units proposed equate to 172.5 units (230 d.u. x 0.75 = 172.5 dwelling units), and the applicant concludes that the 230 units proposed therefore comply with the base density standards of the zone and exceeds the minimum density required with annexation. The application materials further indicate that the property owner will sign a recorded agreement after approval of the annexation ensuring that future development of the property will occur in accord with the minimum density as indicated in the development plan.

Affordability Requirements

The seventh approval criterion is an involved one, dealing with affordability. The criterion and its sub-criteria are detailed below in italics, followed by responses to each.

- G. Except as provided in 18.5.8.050.G.7, below, annexations with a density or potential density of four residential units or greater and involving residential zoned lands, or commercial, employment or industrial lands with a Residential Overlay (R-Overlay)*

shall meet the following requirements.

1. *The total number of affordable units provided to qualifying buyers, or to qualifying renters, shall be equal to or exceed 25 percent of the base density as calculated using the unit equivalency values set forth herein. The base density of the annexed area for the purpose of calculating the total number of affordable units in this section shall exclude any unbuildable lots, parcels, or portions of the annexed area such as existing streets and associated rights-of-way, railroad facilities and property, wetlands, floodplain corridor lands, water resource areas, slopes greater than 35 percent, or land area dedicated as a public park.*
 - a. *Ownership units restricted to households earning at or below 120 percent the area median income shall have an equivalency value of 0.75 unit.*
 - b. *Ownership units restricted to households earning at or below 100 percent the area median income shall have an equivalency value of 1.0 unit.*
 - c. *Ownership or rental units restricted to households earning at or below 80 percent the area median income shall have an equivalency value of 1.25 unit.*

The application materials explain that the proposed annexation has a density of more than four residential units, that the development proposal demonstrates that minimum density can be met with the future development of the residentially zoned land, and that 25 percent of the base density shall be dedicated as affordable housing. The proposed units will be rentals under item “c”. The application further asserts that the proposal provides the necessary land area for the development for the affordable housing required, as the ordinance stipulates that when utilized as rentals, the affordable units would be restricted to households earning 80 percent or less of the area median income (AMI), with an equivalency value of 1.25 units. Twenty-five percent of the 185.625 base density is 46.406 units, which they equate to 37 affordable units being required ($46.406/1.25 = 37.125$).

2. *As alternative to providing affordable units per section 18.5.8.050.G.1, above, the applicant may provide title to a sufficient amount of buildable land for development complying with subsection 18.5.8.050.G.1.b, above, through transfer to a non-profit (IRC 501(3)(c) affordable housing developer or public corporation created under ORS 456.055 to 456.235.*
 - a. *The land to be transferred shall be located within the project meeting the standards set forth in sections 18.5.8.050.G.5 and 18.5.8.050.G.6.*
 - b. *All needed public facilities shall be extended to the area or areas proposed for transfer.*

- c. *Prior to commencement of the project, title to the land shall be transferred to the City, an affordable housing developer which must either be a unit of government, a non-profit 501(C)(3) organization, or public corporation created under ORS 456.055 to 456.235.*
- d. *The land to be transferred shall be deed restricted to comply with Ashland's affordable housing program requirements.*
- e. *Transfer of title of buildable land in accordance with this subsection shall exempt the project from the development schedule requirements set forth in 18.5.8.050.G.4.*

The application materials indicate that the applicant intends to create separate lots for legally separate title to provide the flexibility to transfer a legal lot to a non-profit. These lots are to have in place all the infrastructure, driveways, parking and open space. The applicant indicates that the land area will be provided and thus the criterion is satisfied. The application materials further explain that the land to be transferred is located within the project and the affordable units will meet the standards set forth in AMC 18.5.8.050.G.5 and G.6 below. The land area is proposed as two of the building pads in the proposed Grand Terrace development as illustrated on the preliminary property boundary map provided. The necessary facilities for the area of the affordable housing units to be transferred will be extended to the building pad area. The common area improvements include the utility infrastructure, sidewalks, curbs, gutters, parking lot improvements, shade trees for the development of the affordable housing units. The building pad areas for the affordable housing are to be the same as the building pad areas of the market rate building areas. The title to the land area for development of the affordable housing units will be transferred to the city, an affordable housing development or other appropriate non-profit organization or public corporation that meets the ORS 456.055 to 456.235 prior to the commencement of the project, and the land transferred will be deed restricted to comply with the affordable housing program requirements.

- 3. *The affordable units shall be comparable in bedroom mix with the market rate units in the development.*
 - a. *The number of bedrooms per dwelling unit in the affordable units within the residential development shall be in equal proportion to the number of bedrooms per dwelling unit in the market-rate units within the residential development. This provision is not intended to require the same floor area in affordable units as compared to market-rate units. The minimum square footage of each affordable unit shall comply with the minimum required floor area based as set forth in Table 18.5.8.050.G.3, or as established by the U.S. Department of Housing and Urban Development (HUD) for dwelling units developed under the HOME program.*

<i>Table 18.5.8.050.G.3 – Minimum Required Floor Area for Affordable Units</i>	
<i>Unit Type</i>	<i>Minimum Required Unit Floor Area (Square Feet)</i>
<i>Studio</i>	<i>350</i>
<i>1 Bedroom</i>	<i>500</i>
<i>2 Bedroom</i>	<i>800</i>
<i>3 Bedroom</i>	<i>1,000</i>
<i>4 Bedroom</i>	<i>1,250</i>

The application materials indicate that the required affordable units are proposed to be developed by the developer or by others, and that in either case the units will be comparable to the proposed one bedroom deluxe and micro-studio units. The proportion of affordable units and the unit types and sizes will be similar in proportion to the market rate units as detailed in Table 18.5.8.050.G.3.

4. *A development schedule shall be provided that demonstrates that that the affordable housing units per subsection 18.5.8.050.G shall be developed, and made available for occupancy, as follows.*
 - a. *That 50 percent of the affordable units shall have been issued building permits prior to issuance of a certificate of occupancy for the last of the first 50 percent of the market rate units.*
 - b. *Prior to issuance of a building permit for the final ten percent of the market rate units, the final 50 percent of the affordable units shall have been issued certificates of occupancy.*

Where the affordability requirements are to be met through a land dedication to an affordable housing provider, the project is exempt from the development schedule requirements set forth in AMC 18.5.8.050. G.4. above. The application materials indicated that the required affordable units may be provided through the dedication of land area sufficient to develop affordable housing by others or the developer of the project may construct the required affordable units themselves. The application goes on to indicate that unless dedicated, the developer will obtain building permits for 50 percent of the affordable units prior to the issuance of the certificate of occupancy for the last of the first 50 percent of the market rate units and prior to issuance of a building permit for the final ten percent of the market rate units, the final 50 percent of the affordable units shall have been issued certificates of occupancy.

5. *That affordable housing units shall be constructed using comparable*

building materials and include equivalent amenities as the market rate units.

- a. The exterior appearance of the affordable units in any residential development shall be visually compatible with the market-rate units in the development. External building materials and finishes shall be substantially the same in type and quality for affordable units as for market-rate units*
- b. Affordable units may differ from market-rate units with regard to floor area, interior finishes and materials, and housing type provided that the affordable housing units are provided with comparable features to the market rate units, and shall have generally comparable improvements related to energy efficiency, including plumbing, insulation, windows, appliances, and heating and cooling systems.*

The applications materials reiterate that the affordable units may be built by the developer or by others, but that the applicant's expectation is that with this Site Design Review the units demonstrate the exterior appearance of the affordable units will be visually compatible with the market rate units. The exterior materials and finishes will be substantially the same in type and quality for the affordable units as the they are the market rate units unless a modification of the Site Design Review approval requested here is obtained. Whether developed by the developer or an affordable housing provider, the affordable units will have comparable improvements related to energy efficiency, including plumbing, insulation, windows, appliances, and heating and cooling systems as the market-rate units.

- 6. Exceptions to the requirements of 18.5.8.050, subsections G.2 – G.5, above, may be approved by the City Council upon consideration of one or more of the following.*
 - a. That an alternative land dedication as proposed would accomplish additional benefits for the City, consistent with the purposes of this chapter, then would development meeting the on-site dedication requirement of subsection 18.5.8.050.G.2.*
 - b. That the alternative phasing proposal not meeting subsection 18.5.8.050.G.4 provided by the applicant provides adequate assurance that the affordable housing units will be provided in a timely fashion.*
 - c. That the materials and amenities applied to the affordable units within the development, that are not equivalent to the market rate units per subsection 18.5.8.050.G.5, are necessary due to local, State, or Federal Affordable Housing standards or financing limitations.*

No exceptions to the requirements of subsections 18.5.8.050.G.2 through 18.5.8.050.G.5 have been requested.

7. *The total number of affordable units described in this section 18.5.8.050.G shall be determined by rounding up fractional answers to the nearest whole unit. A deed restriction or similar legal instrument shall be used to guarantee compliance with affordable criteria for a period of not less than 60 years for units qualified as affordable rental housing, or 30 years for units qualified as affordable for-purchase housing.*

The application materials explain that with the request for Annexation, deed-restricted, dedicated affordable housing units are required and the applicant's calculations are that the number of affordable units required is 37. These are proposed to be developed by the developer or adequate land area for the required affordable rental units will be dedicated to a provider with the lots over pad areas 9 and 10. These units will be deed-restricted as affordable rental housing for 60 years.

Staff Discussion & Recommendation: Affordability

Rounding

AMC 18.5.8.050.G.7 provides that the total number of affordable units described in AMC 18.5.8.050.G shall be determined by *rounding up* fractional answers to the nearest whole unit. Twenty-five percent of the 185.625 dwelling unit base density is 46.406 affordable units, which rounds up to 47 units ($185.625 \text{ d.u.} \times 0.25 = 46.406$, which rounds up to 47 units). When the 1.25-unit equivalency factor is applied for the 80 percent AMI affordability level for rental units this equates to 38 units ($46.406/1.25 = 37.125$ units, which rounds up to 38 units.). These rounded-up numbers will need to be addressed in the required affordability agreement and the Final Plan submittal.

Dedication of Land to an Affordable Housing Provider

Uncertainty over whether the developer will provide the required affordable units themselves or dedicate the required land area to an affordable housing provider poses some potential complication here. While AMC 18.5.8.050.G.1.a-c provides for the use of a unit equivalency factor based on the type and level of affordability (i.e. one rental unit provided at 80 percent AMI equates to 1.25 units in the calculations under G.1.c.), the alternative to allow the dedication of land area to a non-profit is specific to AMC 18.5.8.050.G.1.b and does not provide for the use of an equivalency factor, and as such if land is simply dedicated to a provider it must be a land area sufficient to accommodate the required number of affordable *ownership* units at 100 percent AMI (i.e. 47 units, not 38). This does not pose an issue if the applicant provides the affordable units themselves, or if they find a partner provider who agrees to provide rental units in the proposed location of the same design, lay-out and construction and willing to participate in the owners' association at the proposed level of affordability.

Recommendation

Staff have recommended a condition that the Final Plan submittal make clear how the affordability requirements are to be addressed, and that if the applicant opts to dedicate land to an affordable housing provider, rather than constructing them themselves or with a provider partner, that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and include adequate land area to accommodate the required number of 47 affordable ownership units at 100 percent AMI on the final plat.

A condition has also been recommended below to require that a deed restriction be recorded on the property to require that the affordability requirements for annexation be addressed with any future development of the site.

The eight approval criterion is that,

H. *“One or more of the following standards are met:*

1. *The annexation proposal shall meet the requirements of subsection 18.5.8.080.B, above.*
2. *A current or probable danger to public health exists within the proposed area for annexation due to lack of full City sanitary sewer or water services in accordance with the criteria in ORS Chapter 222 or successor state statute.*
3. *Existing development in the proposed area for annexation has inadequate water or sanitary sewer service, or the service will become inadequate within one year.*
4. *The proposed area for annexation has existing City water or sanitary sewer service extended, connected, and in use, and a signed consent to annexation agreement has been filed and accepted by the City.*
5. *The proposed area for annexation is an island surrounded by lands within the city limits.*

The application materials respond to H.1 above, explaining that the annexation proposal is consistent with the Comprehensive Plan designation applicable to the annexed area, and that the proposed apartment development is an allowed use within the proposed R-2 zoning.

The ninth and final criterion provides that, *“The approval authority may approve exceptions to and variances from the approval criteria and standards in this section using the criteria in section 18.4.6.020.B.1 Exceptions to the Street Design Standards or chapter 18.5.5. Variances.”* Subsequent to the Land Use Board of Appeals’ (LUBA) reversal of a previous annexation approval for this applicant and property because an Exception was included, the Planning Commission and Council recognized that in many cases, properties to be annexed are adjacent to streets which are and will remain under state or county jurisdiction (and thus subject to standards other than the city’s) and which may have constraints in terms of

existing improvements, available right-of-way and physical impediments such as steep slopes, or as is the case here, the prescribed standard street design cross-sections do not account for the installation of transit facilities such as the bus pull-out lane proposed despite requiring that adequate transit facilities be considered with Annexation. As such, this criterion was added to make clear that where merited, Exceptions or Variances may be granted to the approval criteria for Annexation.

B. Performance Standards Options Outline Plan Subdivision

The Performance Standards Option Chapter (AMC 18.39) provides for more flexible design than is permissible under the conventional zoning codes. Under the Performance Standards Option, designs should stress energy efficiency, architectural creativity, and innovation; use the natural features of the landscape to their greatest advantage; provide a quality of life equal to or greater than that provided in developments built under the standard zoning codes; be aesthetically pleasing; provide for more efficient land use; and reduce the impact of development on the natural environment and neighborhood. The applicant here has proposed to develop the subject properties with two parcels. Parcel 1 is proposed at 8.34 acres and would include the existing single family residence and the areas to its north. Parcel 2 would include ten footprint lots to accommodate the proposed buildings as well as the associated common areas for the development.

Outside of the PSO Overlay, the Performance Standards Option is available where the subject parcel is larger than two acres and is greater than 200 feet in average width; where development under the Performance Standards Option is necessary to protect the environment and the neighborhood from degradation which would occur from development to the maximum density allowed under subdivision standards, or would be equal in its aesthetic and environmental impact; and for properties zoned R-2, R-3 or CM. In this instance, the subject property is to be zoned R-2 with annexation and as such may be developed under the Performance Standards Options Chapter as proposed.

The application materials explain that the Grand Terrace Subdivision land area is 371,131 square feet, and will include ten building pad lot areas of approximately 7,428 square feet each. These lots will include building footprints, exterior stairs, covered walkways, laundry rooms, and covered bicycle parking. All other areas outside the building pad are to be part of the common area, including walkways, parking lots, driveways and play areas and will be managed by the owners' association. The applicant further explains that the ten pad lots reduce the hurdle of financing the project as a whole and provide the possibility of transferring ownership of the affordable units to non-profits. With the remaining units split into eight individual buildings on their own pad lots, individual loans can be reasonably financed by local institutions while reducing risk to the local banking community, the non-profit, and the developer. The applicant further explains that mixing nonprofit and private development is not possible without separate land ownerships, and that this is the only way to achieve the development of the affordable components. The applicant also indicates that financing large development in the local area is beyond the capacity of the region and local financial institutions could not participate, and concludes that local participation is important in keeping the jobs and local financial businesses economically healthy and vibrant while participating in building their own communities.

The applicant explains that the proposed buildings are to be built offsite. All walls, floors and roofs will be built offsite, delivered to the site and stood up in approximately five days per building. The interior and exterior layout, design and build stress energy efficiency. The exteriors are to be fire resistant and the interior areas will have fire suppression systems. The applicant emphasizes that while architectural creativity is expressed throughout the process, the project's innovation is driven by changing demographics as they apply to the diminishing household sizes and costs versus rental amounts. In speaking to the Building Official, he has indicated that off-site assembly will require that there be necessary inspections and certifications at the point of construction and that these certifications will need to be provided to the Building Division. A condition to this effect has been included below.

The first criterion for Outline Plan approval is that, *“The development meets all applicable ordinance requirements of the City.”*

The application materials indicate that the proposed development complies with all applicable ordinance requirements of the city, as the proposed lots exceed minimum areas and dimensions, and the subdivision complies with the lot coverages and access standards and provides for the perpetual upkeep and maintenance of the common area through the creation of a property owner's association with CC&Rs.

The second approval criterion is that, *“Adequate key City facilities can be provided including water, sewer, paved access to and through the development, electricity, urban storm drainage, police and fire protection, and adequate transportation; and that the development will not cause a City facility to operate beyond capacity.”*

The application materials explain that all of the proposed utility extensions to the subject properties are through existing and proposed easements or from the adjacent street rights-of-way. The applicant asserts that the extension of city facilities to service the development will not cause a facility to operate beyond the city's capacity, noting that written statements verifying capacity from the various service providers were provided with PA-T1-2019-00003 stating that there was adequate capacity to serve the development.

All utilities are proposed to extend to and through the property as identified on the Conceptual Utility Plan provided as the applicant's Sheet C.5, and the application materials note that the applicant's Final Plan submittal will include final civil-engineered utility plans.

The application materials further note that the proposed development complies with the Street Standards, except where an Exception has been requested, and street cross-section drawings have been provided in the applicant's Sheet C7.2. The Exception requested is to not install standard park row planting strips with street trees between the curb and sidewalk for a portion of the proposed street improvements. This Exception is addressed in Section E below.

The third criterion is that, *“The existing and natural features of the land; such as wetlands, floodplain corridors, ponds, large trees, rock outcroppings, etc., have been identified in the plan of the development and significant features have been included in the common open space, common areas, and unbuildable areas.”*

The application materials assert that to the best of the applicant's abilities, the site's natural features have been identified and included in the open space and common areas of the development. Overall, the proposal recognizes the site's significant natural features including the wetland area, the riparian corridors, and the oak savannah. Large open spaces are included throughout the Grand Terrace plan, and trees and landscape islands within the parking area and pedestrian walkways connect the apartment buildings to the open spaces, parking areas, sidewalks, and the public pedestrian and transit improvements.

The fourth approval criterion for an Outline Plan subdivision is that, "*The development of the land will not prevent adjacent land from being developed for the uses shown in the Comprehensive Plan.*" The application materials indicate that the proposal provides the opportunity for adjacent properties to be developed for the uses shown in the Comprehensive Plan, and that without this annexation, the north Ashland Urban Growth Boundary is prevented from future development as shown in the City's Comprehensive Plan, including existing residential subdivisions to the south, and commercial areas to the north.

The fifth criterion is that, "*There are adequate provisions for the maintenance of common open space and common areas, if required or provided, and that if developments are done in phases that the early phases have the same or higher ratio of amenities as proposed in the entire project.*" The applicant explains that at this early juncture, they believe the proposed subdivision will be completed as presented, with the only unknowns being the length of time required for land use and permit approvals and the state of the economy once permitting is completed. The applicant further suggests that if phasing of the development ultimately proves necessary, it would occur as follows:

- Offsite improvements as depicted in the "Offsite Development Plan" and land clearing and preliminary grading of the site.
- Infrastructure installation consisting of water, electric, and other utilities.
- Building pads with infrastructure stubbed-in, driveways and parking areas.
- Buildings 1-8 as lease-up demands. The affordable housing is to be developed by others.

The applicant indicates that a final Phasing Plan will be submitted with the project's Final Plan application once the project's final civil engineering is prepared. All open space areas within either phase will be left in their natural state (i.e. the wetland and the buffer zone) or improved as illustrated on the plans, and the common open space improvements will be timed so that 50 percent of the value of the common open space will be provided in the first phase and all common open space will be provided when 2/3 of the units are finished. All identified open spaces within the planned subdivision are to be owned and managed in perpetuity by the Grand Terrace Association subject to Conditions, Covenants and Restrictions (CC&Rs). A draft copy of the CC&Rs will be provided with the Final Plan application submittal.

Conditions requiring that a final phasing plan and draft CC&Rs be provided with the Final Plan submittal have been recommended below.

The sixth criterion is that, “*The proposed density meets the base and bonus density standards established under this chapter.*”

The application materials include the following calculations:

Total land Area:	16.86 acres
Unconstrained Area:	13.75 acres
Base Density (R-2):	13.5 dwelling units (du) per acre
Gross Base Density Dwelling Units Allowed:	13.75 acres x 13.5 du/acre = 185.625 du
90% Minimum Density Requirement:	185.625 x 0.90 = 167.06 du

The application notes that per AMC 18.2.5.080.B.2., units that are less than 500 square feet gross habitable floor area are considered as $\frac{3}{4}$ (0.75) of a dwelling unit for the purposes of calculating density. The 230 dwelling units proposed equate to 172.5 units (230 d.u. x 0.75 – 172.5 dwelling units), and the applicant concludes that the proposed 230 units proposed comply with the base density standards of the zone and exceeds the minimum density required with annexation.

The application materials further indicate that the property owner will sign a recorded agreement after approval of the annexation ensuring that future development of the property will occur in accord with the minimum density as indicated in the development plan, and a condition requiring this agreement has been recommended below.

The seventh criterion for Outline Plan approval is that, “*The development complies with the street standards.*”

The application materials explain that as evidenced in the street cross-sections provided as the applicant’s Sheet C7.2, the existing right-of-way is under Oregon Department of Transportation (ODOT) jurisdiction and the width and current street improvements are not under the applicant’s control. The applicants are requesting an Exception to the Street Design Standards to install some portions of the proposed sidewalks at curbside, without a city-standard parkrow planting strip between the curb and sidewalk. This Exception is discussed in Section E below. Other than those areas where an Exception has been requested, the street improvements proposed are to be consistent with the applicable street design standards.

The final approval criterion is that, “*The proposed development meets the common open space standards established under section [18.4.4.070](#). Common open space requirements may be satisfied by public open space in accordance with section [18.4.4.070](#) if approved by the City of Ashland.*”

The application materials explain that the proposed site plan demonstrates that a substantial area of common open space is available in excess of the minimum requirements of AMC 18.4.4.070. The development proposal demonstrates that a variety of positive green spaces and recreational open spaces area will be included in the development. The applicant goes on to detail that the development area consists of 371,131 square feet with 27 percent provided as open space that is a combination of 59,417 square feet or 16 percent of the

applicant's property and an additional 11 percent which is to be obtained from ODOT. The applicant emphasizes that the open space to be provided is significantly more than required by the standard, and goes on to suggest that the large setback from the highway, the large area of open space along the frontage and the substantial area of open space within the development will enhance the livability of the development and the appearance of this gateway area to Ashland.

The application materials go on to explain that in addition to large areas of outdoor common open space, each individual unit is to have a patio or deck space. The applicant concludes that the proposal greatly exceeds the minimal dimensional standards for required open space, and notes that the open space is to be surfaced in a material appropriate for human recreational use, including lawn and play areas, while achieving a 'functional' open space area grade of less than five percent in most areas as illustrated on the Landscape Site Plan provided as the applicant's Sheet L1.0.

The application materials further suggest that along with the vast amount of open space located at the entry of Ashland, and the forested land adjacent to and north of the development, the Grand Terrace development will be unique and encourage more economic development along this arterial street within the UGB. The application further explains that currently, this area is without sidewalks, has glaring lights blocking the night sky and auto-oriented commercial buildings with no appeal, and that pedestrians and bicycles are not in view because of the barrage of poor urban development which is dark and unsafe. The applicant asserts that the proposal will substantially improve the safety of this section of highway, noting that the Grand Terrace development team has seen this before and sees a future of more urban living and mixed-use development in this area of the urban growth boundary. The applicant suggests that as property values go up, the uses that exist today will change to create a new exceptionally livable area which will be a resource to the city.

C. Site Design Review

Where a proposal involves three or more dwelling units on a lot in a residential zone, Site Design Review approval is required. In this case, each of the ten proposed buildings is to be on its own lot a will contain 23 units. Site Design Review approval requires that the approval criteria in AMC 18.5.2.050 be addressed.

The first approval criterion for Site Design Review approval is that, "*The proposal complies with all of the applicable provisions of the underlying zone (part 18.2), including but not limited to: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other applicable standards.*"

The application materials assert that the proposed site development complies with all of the applicable provisions of the R-2 (Low-Density, Multi-Family Residential) zone, explaining that:

- **Building & Yard Setbacks:** There is a substantial area of additional right-of-way between the improved portions of the existing highway and the subject properties' boundary lines. In addition to this substantial area of state highway right-of-way,

the proposed buildings are placed to meet or exceed the standard minimum 15-foot front yard setback required in the R-2 zone. **(Staff Note: As provided in AMC 18.3.9.020, developments under the Performance Standards Options chapter are not required to meet the standard setback standards of part 18.2. AMC 18.3.9.070 requires that the perimeter setbacks of the parent property be consistent with the underlying zone and that standard front yard setbacks be provided.)**

- **Lot Area and Dimensions:** The minimum lot area in the R-2 zone is 5,000 square feet, and all of the proposed pad lots for the building areas exceed minimum lot area and dimensions. **(Staff Note: As provided in AMC 18.3.9.020, developments under the Performance Standards Options chapter are not required to meet minimum lot size, lot width, or lot depth standards of part 18.2.)**
- **Density & Floor Area:** The total proposed number of units is 230 and is in compliance with the base density of the zone and the minimum density requirement for annexation. The base density calculation for the proposal, which will be zoned R-2 with annexation, is 13.5 dwelling units per acre based on a developable area of 13.75 acres. The base density of the property is 185.625 dwelling units (13.75 acres x 13.5 du/acre = 185.625 du). The minimum density for annexation is 90 percent of the base density or 167 dwelling units (0.90 x 185.625 du = 167.0625 du). All of the proposed units are less than 500 square feet in size and are considered as 0.75 of a dwelling unit for the purposes of calculating density. As such, the minimum density with units less than 500 square feet is 223 units (167 du/0.75 = 223 du). The proposed density of 230 units complies with the minimum density standards of 167 units. The applicant asserts that with open space and affordability density bonus options, an additional 70+ units could be provided but providing greater open space and setbacks along the highway are important to the occupants and the city, and as such the applicant is not proposing adding any additional units. The proposed 230 dwelling units is consistent with the minimum density requirement.
- **Lot Coverage:** The total proposed impervious areas including building footprints, pathways, parking areas, patios and decks is 41,747 square feet, which equates to a total lot coverage of 55.5 percent. This is substantially less than the maximum of 65 percent coverage allowed in the R-2 zone.
- **Building Height:** The proposed buildings are not more than 35-feet tall and each is two-stories with a “walkout basement”. The proposed garden-style apartments are less tall than what is permitted in the zone and the rooflines of the proposed units are substantially lower than the residential neighborhood that is uphill from the project site, preserving their views.
- **Building Orientation:** Residential buildings are generally required to have a primary orientation toward a street. Where located within 20 feet of a street, they are to have a primary entrance toward the street with a walkway connection to the right-of-way, and no parking or circulation between the buildings and the street. Here there is no build-to line or maximum front yard setback, and none of the buildings is proposed to be located within 20 feet of the street.
- **Architecture:** The proposed buildings are modern, contemporary, simple, use negative space very well, provide interior spatial privacy for double occupancy, are simple-shaped, using local topographic color tones, and are low profile, but visually

interesting, garden flat-style units with separate, individual entrances to the immediate outdoors. The buildings have slightly pitched roofs behind the parapets. Each building has residential-style windows and doors that provide orientation to the street. The proposed design for the buildings has the façades broken into smaller elements using reveals, recesses, trim, window and door locations. Retaining walls, landscaping and outdoor patio areas follow the grade, and each unit has a private outdoor living area provided on upper story decks and walkout patios.

- **Other Applicable Standards:** There is a required building separation within the Performance Standards Options subdivision chapter which requires that buildings be separated by one-half the height of the taller building, with the maximum required separation being 12 feet. Here, all of the proposed buildings are illustrated with at least a 20-foot separation and providing at least the minimum required separation.

The second Site Design Review approval criterion is that, *“The proposal complies with applicable overlay zone requirements (part 18.3).”*

The application explains that, upon annexation the property will be within the city, and the overlay zones typical for development within the city limits will be applied to the property. The application materials assume that these overlays will include the Physical and Environmental Constraints Overlay (AMC 18.3.10.060. A., B., C., D.); Water Resources Protection Zones Overlay (18.3.11); and the Site Development and Design Overlay (18.3.12).

The proposal complies with applicable overlay zone requirements. Staff have recommended conditions below that the Wildfire Lands, Physical & Environmental Constraints - Hillside Lands and Severe Constraints, and Water Resource Protection Zones maps and associated overlays be revised to fully incorporate the subject properties’ natural features with annexation, and that development of the property be subject to regulation under these overlays. In terms of Site Development and Design overlay zones, these include the Detail Site Review, Downtown, Historic, Pedestrian Places and Transit Triangle overlays. Residential development of the subject properties would be subject to Site Design Review approval wherever three or more units per lot are proposed, however none of the specific Site Development and Design overlays seem directly applicable to the subject property and it’s proposed multi-family residential zoning (i.e. the zoning is not commercial and the location is not within the downtown or historic districts or located along the transit triangle or any of the specific nodes identified as pedestrian places.).

The properties are currently within Jackson County’s wildfire hazards overlay, and the application materials note that it is assumed that the Wildfire Lands designation from AMC 18.3.10.060.C will be applied. With that in mind, the application materials explain that apply in addition to the neighborhood planning efforts at fuel reduction conducted annually within the Wild Cat Gulch riparian area, all of the proposed buildings are being designed to comply with the recently adopted wildfire mitigation efforts in ORS R327.4 which include: roofing to be metal roofing with no opening between the exterior walls and the roofing material; gutters to be encapsulated for protection from fire embers; vent openings to be fire resistant; exterior walls to be non-combustible materials, including under eave overhangs and porch extensions; all decks and porch surfaces to be constructed of fire retardant wood or

non-combustible materials; all exterior windows to be tempered glass or similar rating; all areas within five feet of the perimeter of the building will be non-combustible in accordance with AMC 18.3.10.100.B; all fencing to be non-combustible (vinyl) within five feet of the buildings; all standing dead and dying vegetation shall be removed from the property prior to initial construction; and all new plantings, including trees, shrubs and ground cover throughout the site will not include any plant materials listed on the Prohibited Flammable Plant List.

The application materials further note that the proposal complies with AMC 18.3.10.110, which regulates hillside lands with severe constraints, as all areas with slopes of more than 35 percent slopes are to be considered undevelopable.

On that basis, the applicant concludes that the proposed site development can be found to comply with the overlay zone requirements which are to be applied to the subject property.

The third criterion is that, *“The proposal complies with the applicable Site Development and Design Standards of part 18.4, except as provided by subsection E, below.”* These standards include: Building Placement, Orientation & Design; Parking, Access and Circulation; Landscaping, Lighting & Screening, and Tree Preservation and Protection.

The ‘Building Placement, Orientation & Design Standards’ for residential development generally speak to dwelling units having a primary orientation to the street, and where they are located within 20 feet of the street, providing a primary entrance toward the street and connected to the right-of-way via an approved walkway. Automobile circulation and parking are not to be placed between the building and the street, and parking is instead to be to the rear or the sides. Where there is a build-to line or maximum front setback yard, buildings are to comply with the build-to line. Here, there is no build-to line or maximum front yard setback, and the buildings are not located within 20 feet of the street. There is a varying width right-of-way of 30 to 60 feet between the dwelling units and the highway improvements, some portions of which includes significant changes in topography or the wetland and its protection zone. The buildings are setback more than 20-feet from the front property line. The dwelling units have glazing, decks and a clear orientation to the street even though they are placed more than 20 feet from the property line, although the buildings do have their entrances oriented to the driveway system. No parking is proposed between the buildings and the street, parking is located to the side or rear of the structures, or between the buildings and other properties separating them from the street. Proposed materials and paint colors are to be compatible with the surrounding area, with a mix of fiber cement siding, stucco, metallic bamboo partitions, metal cladding, a water impenetrable “standing seam” metal roofing to accommodate solar panels, black vinyl clad windows and doors and a minimal amount of split face CMU block reveal along the foundation line. One street tree selected from the street tree list is to be placed every 30 feet for the portion of the property fronting the street. There is substantially more landscape and open space areas than required by code, and the proposal preserves all the trees on the site with the exception of removing one dead tree near the wetland buffer area and two trees near the existing house in order to build the driveway. The landscape plan provides a variety of deciduous and evergreen trees, shrubs and ground covers, with plants selected to be appropriate for the climate, exposure, and availability of water. The stormwater facilities utilize water tolerant species. Common

refuse and recycling areas are to be provided in a screened area adjacent to the parking lot area and will comply with city's standards and meet the access needs of Recology.

In terms of parking, access and circulation, the applicant's proposal includes 230 units that are less than 500-square feet in area. The required parking is 230 spaces, which could be reduced by up to 23 spaces for the transit supportive plaza credit. 212 parking spaces are proposed, including ADA-accessible parking spaces consistent with the requirements of the building code. The application notes that van-accessible spaces, location of spaces, accessible routes, identification, lighting, design, and construction requirements will be addressed in all building permit submittal materials. One covered bicycle parking space is required for each unit, and the plan provided includes covered bicycle parking structures at the entry areas of each building to address this requirement. In addition, units are to have a hanging bicycle rack within the units where possible to prevent theft.

The parking areas shown on the site plan are noted as being designed in accordance with the standards and dimensions as required by AMC 18.4.3.080.B, with more than 50 percent of the parking area consists of parking spaces that are 9-feet by 18-feet, the remaining parking spaces consist of compact parking spaces that are 8-feet by 16-feet. The parking spaces are all accessed via a drive isle that is 26 feet wide, which is wider than the required 22-feet in width. The parking area serves more than 50 parking spaces and pedestrians must traverse more than 150-feet of the parking area; as such the parking areas have been divided into separate areas by grouping spaces near the buildings, the parking areas are connected with walkways that lead to the larger open space features.

Five-foot wide, continuous walkways with narrowed crossings at the intersections of the parking areas and driveways are proposed. The parking area has curbing, accessible ramps, pedestrian scaled and landscape-level lighting and shade trees, with raised mid-parking lot crossings to provide a street like system through the development. The parking areas have been designed in a manner consistent with the standards for Parking Lot Construction and Design. The parking lot surface treatment include 50 percent of the vehicle parking area surface as cement and the remaining parking area surface is proposed as asphalt. Run-off from the hardscape surface areas will be treated through a series of stormwater treatment facilities, bio-swales and below grade storage systems. The applicant concludes that the proposed site development plan meets the standards for parking area development.

The fourth criterion is that, *"The proposal complies with the applicable standards in section 18.4.6 Public Facilities and that adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the property and adequate transportation can and will be provided to the subject property."* The adequacy of public facilities and transportation is addressed in detail in the Annexation discussion in Section A above.

The fifth approval criterion is specific to requests for *"Exception to the Site Development and Design Standards"*, and explains that, *"The approval authority may approve exceptions to the Site Development and Design Standards of part 18.4 if the circumstances in either subsection 1 or 2, below, are found to exist: 1) There is a demonstrable difficulty meeting the specific requirements of the Site Development and Design Standards due to a unique or*

unusual aspect of an existing structure or the proposed use of a site; and approval of the exception will not substantially negatively impact adjacent properties; and approval of the exception is consistent with the stated purpose of the Site Development and Design; and the exception requested is the minimum which would alleviate the difficulty.; or 2) There is no demonstrable difficulty in meeting the specific requirements, but granting the exception will result in a design that equally or better achieves the stated purpose of the Site Development and Design Standards.” In addressing the Exception of the Site Development and Design Standards’ criteria, the application materials speak to the Exception to the Street Design Standards request, which is discussed in detail in Section E below. The application does not include any specific request for an Exception to the Site Development and Design Standards.

D. Tree Removal Permit

The removal of trees in multi-family residential zones on lots occupied only by a detached single-family dwelling and any associated accessory structures is exempted from Tree Removal Permits when the property cannot be further developed with additional dwelling units. While the subject property here only contains a single residence, its size and further development potential mean that the removal of any trees greater than six-inches in diameter at breast height (d.b.h.) requires a Tree Removal Permit. The application includes an inventory of the 23 trees identified on the property and an assessment of their current condition and relative tolerance to development disturbance along with a Tree Preservation and Protection Plan (Applicant’s Sheet L.1.1). Three trees are proposed to be removed. The first is an 18-inch d.b.h. cottonwood tree (Tree #7) which is identified as being dead and as such is exempt from Tree Removal Permit requirements, and the other trees two trees are an 18-inch d.b.h. Ponderosa Pine (Tree #22) and a 30-inch d.b.h. Cedar Elm (*ulmus crassifolia*, Tree #23). Trees #22 and #23 are noted as being in good condition.

The first approval criterion to remove a tree that is not a hazard is that, *“The tree is proposed for removal in order to permit the application to be consistent with other applicable Land Use Ordinance requirements and standards, including but not limited to applicable Site Development and Design Standards in part 18.4 and Physical and Environmental Constraints in part 18.3.10.”* The application materials explain that there are 23 trees greater than six-inches d.b.h. on or directly adjacent to the property. Three trees are proposed for removal. One is a dead 18-inch d.b.h. cottonwood, and the other two are an 18-inch d.b.h. Ponderosa Pine and a 30-inch d.b.h. Cedar Elm. These two trees are within the driveway providing access to the site. The trees proposed for removal were carefully considered, but their locations were not conducive to retaining the trees.

The second approval criterion is that, *“Removal of the tree will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks.”* The application materials assert that the removal of the three trees will not have impacts on erosion, soil stability, flow of surface waters, and protection of adjacent trees or existing windbreaks. One tree is a dead cottonwood, and the other two trees are near the residences and will be negatively impacted by the construction.

The third criterion is that, *“Removal of the tree will not have a significant negative impact on the tree densities, sizes, canopies, and species diversity within 200 feet of the subject*

property. The City shall grant an exception to this criterion when alternatives to the tree removal have been considered and no reasonable alternative exists to allow the property to be used as permitted in the zone.” The application materials explain that there are a significant number of deciduous and conifer trees within 200-feet of the property, and that the removal of the three trees will not have a negative impact on the densities, sizes, canopies or species diversity.

The fourth Tree Removal Permit criterion makes clear that, *“Nothing in this section shall require that the residential density to be reduced below the permitted density allowed by the zone. In making this determination, the City may consider alternative site plans or placement of structures of alternate landscaping designs that would lessen the impact on trees, so long as the alternatives continue to comply with the other provisions of this ordinance.”* The application materials note that the proposal complies with residential densities of the R-2 zone, and that the trees proposed for removal provide no significant environmental benefits that will not be achieved in the near future with the planting of proposed mitigation trees.

The final approval criterion notes that, *“The City shall require the applicant to mitigate for the removal of each tree granted approval pursuant to section [18.5.7.050](#). Such mitigation requirements shall be a condition of approval of the permit.”* The application materials emphasize that numerous mitigation trees are proposed to be planted throughout the project site, while only two living trees are proposed for removal.

The Tree Commission has not yet reviewed the request as this is being written, but is scheduled to do so at its regular monthly meeting on September 8, 2022. Tree Commission comments will be provided at the Planning Commission hearing, and a condition of approval has been recommended below to make the recommendations of the Tree Commission, where consistent with applicable criteria and standards and with final approval of the Staff Advisor, conditions of any approval here.

E. Exception to the Street Design Standards

The application materials explain that over 3,000 linear feet of sidewalk installation is proposed in conjunction with the request, and of this only 900 linear feet directly fronts upon the applicant’s properties. Along the applicant’s frontage, an Exception is requested to allow curbside sidewalks in order to install a bus pull-out lane, bus stop and transit supportive plaza. For the remainder of the areas to be improved, these are outside the applicant’s ownership or control and there are impediments to city-standard improvements due to steepness of other’s properties adjacent to the right-of-way; obstructions created by private property owners, and privately-owned encroachments into the highway right-of-way; and physical barriers including private property curbing and the railroad overpass. The applicant emphasizes that the installation of a continuous sidewalk system will have a positive impact on the adjacent properties while providing greater connectivity, comfort and safety for bicyclists, pedestrians and transit users.

It should again be noted that the Land Use Board of Appeals previous reversal of the approval of PA-T3-2019-00003 was based on the Ashland Municipal Code at the time requiring that for Annexations, streets be fully-improved to city street design standards with no provision allowing for Exceptions to the Street Design Standards. The Planning Commission and Council recognized that in many cases, properties to be annexed are

adjacent to streets which are and will remain under state or county jurisdiction (and thus subject to standards other than the city's) and which may have constraints in terms of existing improvements, available right-of-way and physical impediments such as steep slopes, or as is the case here, the prescribed standard street design cross-sections do not account for the installation of transit facilities such as the bus pull-out lane proposed here despite requiring that adequate transit facilities be considered with Annexation. As such, since the LUBA reversal of the previous application to annex the subject property, the Ashland Municipal Code was amended to make clear in AMC 18.5.8.050.I that, "*The approval authority may approve exceptions to and variances from the approval criteria and standards in this section using the criteria in section 18.4.6.020.B.1 Exceptions to the Street Design Standards or chapter 18.5.5. Variances.*" As such, an Exception is again requested here.

The first criterion for the approval of an Exception to the Street Design Standards is that, "*There is demonstrable difficulty in meeting the specific requirements of this chapter due to a unique or unusual aspect of the site or proposed use of the site.*" The application materials explain that there are numerous natural and man-made physical impediments that prevent city-standard street improvements and which are currently hazardous to pedestrians and bicyclist along the area of the highway to be improved. These include an existing curbside sidewalk that terminates at a wide, open drainage ditch where pedestrians need to transition to the road shoulder for over a ¼-mile until the sidewalk resumes at Schofield Street. The application further notes that there are several non-conforming driveways in the area. One is a 30-foot wide, non-conforming driveway entrance at the Animal Medical Hospital where there is no clear and safe demarcation for entry or exit, and the driveway opening is so wide drivers use it to make U-turns from the highway. The northern driveway access to the subject property has encroachments that have narrowed the driveway width at the highway, including a sign built into the driveway. Adjacent is the non-conforming 30-foot driveway along the Animal Medical Hospital frontage, and the driveway serving Paradise Supply. There is an abundance of confusion as to where to enter and exit making the driveway area dangerous. To the south of Paradise Supply is Anderson Auto-body, where a driveway connects to a curb built to the edge of the right-of-way extending the length of the business frontage. The application explains that these encroachments and driveways reduce useable highway right-of-way for construction of full improvements necessitating the Exception to the Street Design standards.



Applicant's photo illustrating existing driveway configuration north of the subject property frontage

The applicant goes on to explain that the entire area north of their frontage is not part of the subject property and is not under their ownership or control. They emphasize that after the proposed improvements are installed, the highway frontage will be much safer for pedestrians, bicyclist and vehicles than it is in the current configuration, and the area will be beautified and property values increased.

The application materials detail that along the development frontage, from Anderson Auto Body for approximately 900-feet south, city-standard improvements with the bike lane widened to six-feet where necessary, curb, seven-foot landscaped park row and six-foot sidewalk will be installed. Near the railroad trestle, the sidewalk will transition to curbside with a safety barrier built on top of the curb to provide comfort and a feeling safety to pedestrians and bicyclists walking their bikes along the sidewalk to the development. Under the railroad trestle, a shared bike lane and sidewalk (i.e. multi-use path) is proposed with overhead lighting to be added to make the 'dark tunnel' safer. South of the railroad trestle and beyond the frontage of the development area, there are other physical barriers that prevent required city-standard street improvements. These include the steepness of the adjacent hillside and the presence of a drainage culvert and utility cabinets.



Applicant's photo illustrating area south of the railroad trestle where steep slopes and utility installations limit the ability to install full city-standard street improvements.

The applicant concludes that these physical barriers are present for nearly 2,218-feet of the approximately 3,088-feet of frontage proposed to be improved as part of this Annexation request. This combination of unique and unusual aspects makes the installation of city-standard improvements not only difficult but impossible when private ownership of much of the abutting property is taken into consideration. Retrofitting existing conditions can cause greater damage and harm to adjacent areas and facilities.

The second criterion is that, *“The exception will result in equal or superior transportation facilities and connectivity considering the following factors where applicable: 1) For transit facilities and related improvements, access, wait time, and ride experience; 2) For bicycle facilities, feeling of safety, quality of experience (i.e., comfort level of bicycling along the roadway), and frequency of conflicts with vehicle cross traffic; and 3) For pedestrian facilities, feeling of safety, quality of experience (i.e., comfort level of walking along roadway), and ability to safety and efficiency crossing roadway.”* The application materials address these factors as follows:

- **Transit:** The requested exception to sidewalks and park row dimensions will not have a negative impact on transit facilities but will only improve and make them safer. A new southbound bus stop and transit supportive plaza area and new overhead street lighting, a proposed sidewalk and a pedestrian-activated flashing light crossing near the site entry and near the Schofield Street intersection (near the northbound RVTD flag stop) will provide citizens additional, safer access and reduce wait times to cross Highway 99N, and will greatly improve pedestrian and

bicycle safety. A new crosswalk will provide a signalized crossing for pedestrians and bicyclist seeking access to the north bound flag stop location across Highway 99N between the T-intersection of Scofield to the east and Jackson Road to the west where none previously existed for the north Ashland residents. The connection of the more than 3,000-foot gap in the sidewalk system will not only improve transit users' access and safety it will provide sidewalks and transit access where none existed before.

- **Bicycle:** The exception should have no impacts on the bicycle facilities but only enhance and encourage bicycling with the proposed improvements. The proposed improvements will only increase safety; along the frontage of the property, a six-foot bike lane is provided along with lights added overhead along the highway and within the railroad trestle making it much safer. Being able to be seen is an important element and the lighting will greatly improve safety and use.
- **Pedestrian:** Presently from the *El Tapatio* Restaurant to Schofield Street along Highway 99N there is a lack of sidewalk improvements and pedestrian/bicycle lighting along the highway, under the railroad trestle, and to the north and south of the project. At the same time, there is no safe crosswalk to cross the highway. The entire area is dark and unsafe to vehicles, pedestrians and bicycles driving along the area and for those turning into and exiting driveways. This area has no pedestrian or bicycle safety features. Presently it is unsafe, lacking sidewalks and curbs as buffers, or street lighting which would provide vehicles driving along this area any evidence of pedestrian activity. Cars tend to travel faster, making it unsafe for pedestrians and bicyclists. With the improvements to the bike lanes, new sidewalks, new overhead lighting for pedestrians, and a crosswalk with a flashing beacon that can be seen for a ¼-mile combined, it will provide a safer experience and comfort to pedestrians and bicyclists. A new roadside culture will have been developed that will encourage vehicles to be more attentive to their surroundings and increase vehicle behavior and promote the feeling of safety for pedestrians and bicyclists when walking and riding along the roadway.

The third criterion is that, *“The exception is the minimum necessary to alleviate the difficulty.”* The application materials explain that the requested exceptions to the sidewalks, bike lanes and park-rows that deviate from city standards are the minimum necessary to alleviate the difficulty in installing standard dimension sidewalks, park rows, and bike lanes. The exceptions are only requested in areas where there are significant natural or man-made obstacles to construction. The applicant suggests that with the new additions and corrections to the existing unsafe condition, the exception request is inconsequential to the alternative of the newly installed features that will provide increased safety to all modes.

The applicant further asserts that the proposed development complies with the Street Standards, stating that as evidenced with the attached street cross-sections in their Sheet C7.2, the proposed streets comply with the city's adopted Street Standards and/or are consistent with the existing right-of-way widths and street improvements currently abutting the subject property. The requested Exception to the Street Design Standards is for the park

row (planting strip) and street trees abutting the travel lanes for a portion of the highway frontage, as further detailed below:

- **Stations 1-16 (North of Land of Paws):** An eight-foot curbside sidewalk is proposed. There is a large roadside ditch and private property belonging to Anderson Auto Body which prevents standard park-row installation, and this curbside sidewalk will connect to the curbside sidewalk to the north of the subject properties.
- **Stations 16-23:** A three-foot bike buffer, six-foot bike lane, 7-½ foot parkrow, and six-foot sidewalk are proposed along this section of the property frontage.
- **Stations 23-27:** This section includes a bus turn-out lane, bus stop and eight-foot curbside sidewalk. The applicant suggests that this should not be considered an exception as curbside sidewalks at transit stops in other locations have not been treated as such.
- **Station 27-34:** A three-foot bike buffer, six-foot bike lane, and curbside sidewalk are proposed. This section is physically constrained by a steep roadside embankment and by the existing railroad trestle. ODOT has indicated that for a state facility, a six-foot sidewalk is the minimum acceptable width under the railroad trestle.
- **Station 34 (Schofield/North Main):** City standard improvements including a six-foot bike lane, 7½ -foot parkrow and six-foot sidewalk are proposed in this section.

The final approval criterion for an Exception to the Street Design Standards is that, *“The exception is consistent with the Purpose and Intent of the Street Standards in subsection 18.4.6.040.A.”* Here, the applicant asserts that the proposed development furthers the positive purpose and intent by connecting more than 3,000 feet of incomplete sidewalk system for the City of Ashland. The proposal provides as close to application of the city street standards as possible when considering the numerous encumbrances from factors that the property owner does not have control over. The proposal increases the feeling of safety and security for the pedestrians, increases opportunities for transit and greater safety for cyclist with lighting, sidewalks, and a new roadside culture. The proposed improvements comply with the standards and specifications of the Oregon Department of Transportation, the responsible jurisdiction.

III. Procedural - Required Burden of Proof

The criteria for Annexation approval are described in 18.5.8.050 as follows:

An application for an annexation may be approved if the proposal meets the applicable criteria in subsections A through H below. The approval authority may, in approving the application, impose conditions of approval consistent with the applicable criteria and standards, and grant exceptions and variances to the criteria and standards in this section in accordance with subsection 18.5.8.050.I.

- A.** The annexed area is within the City's Urban Growth Boundary.
- B.** The annexation proposal is consistent with the Comprehensive Plan plan designations applicable to the annexed area, including any applicable adopted neighborhood, master, or area plan, and is an allowed use within the proposed zoning.
- C.** The annexed area is contiguous with the city limits.

- D.** Adequate City facilities for the provision of water to the annexed area as determined by the Public Works Department; the transport of sewage from the annexed area to an approved waste water treatment facility as determined by the Public Works Department; the provision of electricity to the annexed area as determined by the Electric Department; urban storm drainage as determined by the Public Works Department can and will be provided from the annexed area. Unless the City has declared a moratorium based upon a shortage of water, sewer, or electricity, it is recognized that adequate capacity exists system-wide for these facilities. All required public facility improvements shall be constructed and installed in accordance with 18.4.6.030.A.
- E.** Adequate transportation can and will be provided to serve the annexed area. For the purposes of this section "adequate transportation" for annexations consists of vehicular, bicycle, pedestrian, and transit transportation meeting the following standards.
1. For vehicular transportation a minimum 22-foot wide paved access exists, or can and will be constructed, providing access to the annexed area from the nearest fully improved collector or arterial street. All streets bordering on the annexed area shall be improved, at a minimum, to an applicable City half-street standard. The approval authority may, after assessing the impact of the development, require the full improvement of streets bordering on the annexed area. All streets located within annexed areas shall be fully improved to City standards unless exception criteria apply. Where future street dedications are indicated on the Street Dedication Map or required by the City, provisions shall be made for the dedication and improvement of these streets and included with the application for annexation.
 2. For bicycle transportation safe and accessible bicycle facilities according to the safety analysis and standards of the governing jurisdiction of the facility or street (e.g., City of Ashland, Jackson County, Oregon Department of Transportation) exist, or can and will be constructed. Should the annexed area border an arterial street, bike lanes shall be constructed along the arterial street frontage of the annexed area. Likely bicycle destinations within a quarter of a mile from the annexed area shall be determined and the approval authority may require the construction of bicycle lanes or multi-use paths connecting the annexed area to the likely bicycle destinations after assessing the impact of the development proposed concurrently with the annexation.
 3. For pedestrian transportation safe and accessible pedestrian facilities according to the safety analysis and standards of the governing jurisdiction of the facility or street (e.g., City of Ashland, Jackson County, Oregon Department of Transportation). exist, or can and will be constructed. Full sidewalk improvements shall be provided on one side of all streets bordering on the proposed annexed area. Sidewalks shall be provided as required by ordinance on all streets within the annexed area. Where the annexed area is within a quarter of a mile of an existing sidewalk system or a location with demonstrated significant pedestrian activity, the approval authority may require sidewalks, walkways or multi-use paths to be constructed and connect to either or both the existing system and locations with significant pedestrian activity.
 4. For transit transportation, should transit service be available to the annexed area, or be likely to be extended to the annexed area in the future based on information from the local public transit provider, the approval authority may require construction of transit facilities, such as bus shelters and bus turn-out lanes.
 5. Timing of Transportation Improvements. All required transportation improvements shall be constructed and installed in accordance with 18.4.6.030.A.
- F.** For all residential annexations, a plan shall be provided demonstrating that the development of the annexed area will ultimately occur at a minimum density of 90 percent of the base density for the zone, unless reductions in the total number of units are necessary to accommodate significant natural features, topography, access limitations, or similar physical constraints. The owner or owners of the annexed area shall sign an agreement, to be recorded with the county clerk after approval of the

annexation, ensuring that future development will occur in accord with the minimum density indicated in the development plan. For purposes of computing maximum density, portions of the annexed area containing unbuildable lots, parcels, or portions of the annexed area such as existing streets and associated rights-of-way, railroad facilities and property, wetlands, floodplain corridor lands, slopes greater than 35 percent, or land area dedicated as a public park, shall not be included.

- G.** Except as provided in 18.5.8.050.G.7, below, annexations with a density or potential density of four residential units or greater and involving residential zoned lands, or commercial, employment or industrial lands with a Residential Overlay (R-Overlay) shall meet the following requirements.
1. The total number of affordable units provided to qualifying buyers, or to qualifying renters, shall be equal to or exceed 25 percent of the base density as calculated using the unit equivalency values set forth herein. The base density of the annexed area for the purpose of calculating the total number of affordable units in this section shall exclude any unbuildable lots, parcels, or portions of the annexed area such as existing streets and associated rights-of-way, railroad facilities and property, wetlands, floodplain corridor lands, water resource areas, slopes greater than 35 percent, or land area dedicated as a public park.
 - a. Ownership units restricted to households earning at or below 120 percent the area median income shall have an equivalency value of 0.75 unit.
 - b. Ownership units restricted to households earning at or below 100 percent the area median income shall have an equivalency value of 1.0 unit.
 - c. Ownership or rental units restricted to households earning at or below 80 percent the area median income shall have an equivalency value of 1.25 unit.
 2. As alternative to providing affordable units per section 18.5.8.050.G.1, above, the applicant may provide title to a sufficient amount of buildable land for development complying with subsection 18.5.8.050.G.1.b, above, through transfer to a non-profit (IRC 501(3)(c) affordable housing developer or public corporation created under ORS 456.055 to 456.235.
 - f. The land to be transferred shall be located within the project meeting the standards set forth in sections 18.5.8.050.G.5 and 18.5.8.050.G.6.
 - g. All needed public facilities shall be extended to the area or areas proposed for transfer.
 - h. Prior to commencement of the project, title to the land shall be transferred to the City, an affordable housing developer which must either be a unit of government, a non-profit 501(C)(3) organization, or public corporation created under ORS 456.055 to 456.235.
 - i. The land to be transferred shall be deed restricted to comply with Ashland's affordable housing program requirements.
 - j. Transfer of title of buildable land in accordance with this subsection shall exempt the project from the development schedule requirements set forth in 18.5.8.050.G.4.
 3. The affordable units shall be comparable in bedroom mix with the market rate units in the development.
 - b. The number of bedrooms per dwelling unit in the affordable units within the residential development shall be in equal proportion to the number of bedrooms per dwelling unit in the market-rate units within the residential development. This provision is not intended to require the same floor area in affordable units as compared to market-rate units. The minimum square footage of each affordable unit shall comply with the minimum required floor area based as set forth in Table 18.5.8.050.G.3, or as established by the U.S. Department of Housing and Urban Development (HUD) for dwelling units developed under the HOME program.

Table 18.5.8.050.G.3 – Minimum Required Floor Area for Affordable Units	
Unit Type	Minimum Required Unit Floor Area (Square Feet)
Studio	350
1 Bedroom	500
2 Bedroom	800
3 Bedroom	1,000
4 Bedroom	1,250

4. A development schedule shall be provided that demonstrates that that the affordable housing units per subsection 18.5.8.050.G shall be developed, and made available for occupancy, as follows.
 - a. That 50 percent of the affordable units shall have been issued building permits prior to issuance of a certificate of occupancy for the last of the first 50 percent of the market rate units.
 - b. Prior to issuance of a building permit for the final ten percent of the market rate units, the final 50 percent of the affordable units shall have been issued certificates of occupancy.
5. That affordable housing units shall be constructed using comparable building materials and include equivalent amenities as the market rate units.
 - a. The exterior appearance of the affordable units in any residential development shall be visually compatible with the market-rate units in the development. External building materials and finishes shall be substantially the same in type and quality for affordable units as for market-rate units
 - b. Affordable units may differ from market-rate units with regard to floor area, interior finishes and materials, and housing type provided that the affordable housing units are provided with comparable features to the market rate units, and shall have generally comparable improvements related to energy efficiency, including plumbing, insulation, windows, appliances, and heating and cooling systems.
6. Exceptions to the requirements of 18.5.8.050, subsections G.2 – G.5, above, may be approved by the City Council upon consideration of one or more of the following.
 - d. That an alternative land dedication as proposed would accomplish additional benefits for the City, consistent with the purposes of this chapter, then would development meeting the on-site dedication requirement of subsection 18.5.8.050.G.2.
 - e. That the alternative phasing proposal not meeting subsection 18.5.8.050.G.4 provided by the applicant provides adequate assurance that the affordable housing units will be provided in a timely fashion.
 - f. That the materials and amenities applied to the affordable units within the development, that are not equivalent to the market rate units per subsection 18.5.8.050.G.5, are necessary due to local, State, or Federal Affordable Housing standards or financing limitations.
7. The total number of affordable units described in this section 18.5.8.050.G shall be

determined by rounding up fractional answers to the nearest whole unit. A deed restriction or similar legal instrument shall be used to guarantee compliance with affordable criteria for a period of not less than 60 years for units qualified as affordable rental housing, or 30 years for units qualified as affordable for-purchase housing.

- H. One or more of the following standards are met.
2. The annexation proposal shall meet the requirements of subsection 18.5.8.080.B, above.
 2. A current or probable danger to public health exists within the proposed area for annexation due to lack of full City sanitary sewer or water services in accordance with the criteria in ORS Chapter 222 or successor state statute.
 3. Existing development in the proposed area for annexation has inadequate water or sanitary sewer service, or the service will become inadequate within one year.
 4. The proposed area for annexation has existing City water or sanitary sewer service extended, connected, and in use, and a signed consent to annexation agreement has been filed and accepted by the City.
 5. The proposed area for annexation is an island surrounded by lands within the city limits.
- I. **Exceptions and Variances to the Annexation Approval Criteria and Standards.** The approval authority may approve exceptions to and variances from the approval criteria and standards in this section using the criteria in section 18.4.6.020.B.1 Exceptions to the Street Design Standards or chapter 18.5.5. Variances.

The criteria for Outline Plan subdivision approval are described in 18.3.9.040.A as follows:

3. **Approval Criteria for Outline Plan.** The Planning Commission shall approve the outline plan when it finds all of the following criteria have been met:
- a. The development meets all applicable ordinance requirements of the City.
 - b. Adequate key City facilities can be provided including water, sewer, paved access to and through the development, electricity, urban storm drainage, police and fire protection, and adequate transportation; and that the development will not cause a City facility to operate beyond capacity.
 - c. The existing and natural features of the land; such as wetlands, floodplain corridors, ponds, large trees, rock outcroppings, etc., have been identified in the plan of the development and significant features have been included in the common open space, common areas, and unbuildable areas.
 - d. The development of the land will not prevent adjacent land from being developed for the uses shown in the Comprehensive Plan.
 - e. There are adequate provisions for the maintenance of common open space and common areas, if required or provided, and that if developments are done in phases that the early phases have the same or higher ratio of amenities as proposed in the entire project.
 - f. The proposed density meets the base and bonus density standards established under this chapter.
 - g. The development complies with the street standards.
 - h. The proposed development meets the common open space standards established under section [18.4.4.070](#). Common open space requirements may be satisfied by public open space in accordance with section [18.4.4.070](#) if approved by the City of Ashland.
4. **Approval of the Outline Plan.**
- a. After the City approves an outline plan and adopts any zone change necessary for the development, the developer may then file a final plan in phases or in its entirety.
 - b. If an outline plan is phased, 50 percent of the value of the common open space shall be

provided in the first phase and all common open space shall be provided when two-thirds of the units are finished.

The criteria for Site Design Review approval are described in 18.5.2.050 as follows:

- A. **Underlying Zone:** The proposal complies with all of the applicable provisions of the underlying zone (part 18.2), including but not limited to: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other applicable standards.
- B. **Overlay Zones:** The proposal complies with applicable overlay zone requirements (part 18.3).
- C. **Site Development and Design Standards:** The proposal complies with the applicable Site Development and Design Standards of part 18.4, except as provided by subsection E, below.
- D. **City Facilities:** The proposal complies with the applicable standards in section 18.4.6 Public Facilities and that adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the property and adequate transportation can and will be provided to the subject property.
- E. **Exception to the Site Development and Design Standards.** The approval authority may approve exceptions to the Site Development and Design Standards of part 18.4 if the circumstances in either subsection 1 or 2, below, are found to exist.
 - 1. There is a demonstrable difficulty meeting the specific requirements of the Site Development and Design Standards due to a unique or unusual aspect of an existing structure or the proposed use of a site; and approval of the exception will not substantially negatively impact adjacent properties; and approval of the exception is consistent with the stated purpose of the Site Development and Design; and the exception requested is the minimum which would alleviate the difficulty.; or
 - 2. There is no demonstrable difficulty in meeting the specific requirements, but granting the exception will result in a design that equally or better achieves the stated purpose of the Site Development and Design Standards.

The criteria for the approval of a Tree Removal Permit are described in 18.5.7.040.B as follows:

- 1. **Hazard Tree.** A Hazard Tree Removal Permit shall be granted if the approval authority finds that the application meets all of the following criteria, or can be made to conform through the imposition of conditions.
 - a. The applicant must demonstrate that the condition or location of the tree presents a clear public safety hazard (i.e., likely to fall and injure persons or property) or a foreseeable danger of property damage to an existing structure or facility, and such hazard or danger cannot reasonably be alleviated by treatment, relocation, or pruning. See definition of hazard tree in part [18.6](#).
 - b. The City may require the applicant to mitigate for the removal of each hazard tree pursuant to section [18.5.7.050](#). Such mitigation requirements shall be a condition of approval of the permit.
- 2. **Tree That is Not a Hazard.** A Tree Removal Permit for a tree that is not a hazard shall be granted if the approval authority finds that the application meets all of the following criteria, or can be made to conform through the imposition of conditions.
 - a. *The tree is proposed for removal in order to permit the application to be consistent with other applicable Land Use Ordinance requirements and standards, including but not limited to applicable Site Development and Design Standards in part [18.4](#) and Physical and Environmental Constraints in part 18.3.10.*
 - b. *Removal of the tree will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks.*
 - c. *Removal of the tree will not have a significant negative impact on the tree densities, sizes,*

canopies, and species diversity within 200 feet of the subject property. The City shall grant an exception to this criterion when alternatives to the tree removal have been considered and no reasonable alternative exists to allow the property to be used as permitted in the zone.

- d. Nothing in this section shall require that the residential density to be reduced below the permitted density allowed by the zone. In making this determination, the City may consider alternative site plans or placement of structures of alternate landscaping designs that would lessen the impact on trees, so long as the alternatives continue to comply with the other provisions of this ordinance.
- e. The City shall require the applicant to mitigate for the removal of each tree granted approval pursuant to section [18.5.7.050](#). Such mitigation requirements shall be a condition of approval of the permit.

The criteria for an Exception to Street Standards are described in AMC Section 18.4.6.020.B.1 as follows:

Exception to the Street Design Standards. The approval authority may approve exceptions to the standards section in 18.4.6.040 Street Design Standards if all of the following circumstances are found to exist.

- a. There is demonstrable difficulty in meeting the specific requirements of this chapter due to a unique or unusual aspect of the site or proposed use of the site.
- b. The exception will result in equal or superior transportation facilities and connectivity considering the following factors where applicable.
 - i. For transit facilities and related improvements, access, wait time, and ride experience.
 - ii. For bicycle facilities, feeling of safety, quality of experience (i.e., comfort level of bicycling along the roadway), and frequency of conflicts with vehicle cross traffic.
 - iii. For pedestrian facilities, feeling of safety, quality of experience (i.e., comfort level of walking along roadway), and ability to safety and efficiency crossing roadway.
- c. The exception is the minimum necessary to alleviate the difficulty.
- d. The exception is consistent with the Purpose and Intent of the Street Standards in subsection 18.4.6.040.A.

IV. Conclusions and Recommendations

The application requests Annexation of 16.86 acres located at 1511 Highway 99 North into the City of Ashland, along with 6.6 acres of adjacent Oregon Department of Transportation state highway right-of-way and 7.68 acres of California Oregon & Pacific railroad property. The property is currently located in Jackson County and zoned Rural Residential (RR-5); with Annexation these properties would be brought into the City as Low Density, Multi-Family Residential (R-2). Concurrent with Annexation, the application also requests: Outline Plan subdivision approval to create 12 lots; Site Design Review to construct 230 apartments in ten buildings including 38 affordable units; an Exception to the Street Design Standards; and Tree Removal Permits to remove two trees greater than six-inches in diameter at breast height. As required with annexations, the property will be deed-restricted to ensure that the future development would occurs in keeping with both minimum density and affordability requirements.

Annexation procedures require a public hearing before the Planning Commission, as well as hearings and ordinance adoption by the City Council. The Planning Commission has the authority to make the final decision with respect to other land use permits, but annexations and zoning map amendments call for a decision through a hearing before the Council and

adoption of the decision by ordinance. As such, the Commission’s decision will need to incorporate a recommendation to the Council for the Annexation request.

The site involved here has a number of challenges to annexation and development. There are significant road cuts and significant areas of unimproved right-of-way along the property frontage providing a barrier between the state highway and the developable area of the property. There are limited improvements currently in place to provide utilities or transportation facilities to the property, and the adjacent railroad corridor limits connectivity between the property and contiguous areas of the city. Site topography, wetlands, a stream corridor and steeply-sloped, forested areas pose further challenges, and the “Billings Siphon,” critical infrastructure for the entire valley’s irrigation system, bisects the property with a 100-foot wide easement. Established commercial uses along the highway limit access between the subject property and the roadway for a large proportion of its width.

In staff’s assessment, after the applicant team’s efforts in working with the City, Rogue Valley Sewer Services, Rogue Valley Transportation District, Oregon Department of Transportation, Talent Irrigation District and the Bureau of Reclamation to address these challenges, the proposal as detailed herein and with the conditions recommended below can be found to satisfy the applicable approval criteria. Should Planning Commissioners concur, staff recommends that the Commission approve the proposed Performance Standards Option subdivision, Site Design Review and Tree Removal requests and forward a recommendation to Council to approve the annexation subject to the conditions below.

- 1) That all proposals of the applicants shall be conditions of approval unless otherwise modified herein.
- 2) That the applicants shall obtain required land use approvals including but not limited to Final Plan subdivision approval as well as any necessary federal or state approvals necessary prior to development of the property.
- 3) That with annexation, the Wildfire Lands, Physical & Environmental Constraints - Hillside Lands and Severe Constraints, and Water Resource Protection Zones maps and associated overlays shall be revised to fully incorporate the subject properties’ natural features. Any future development of the property shall be subject to regulation under these overlays.
- 4) That any new addresses shall be assigned by City of Ashland Engineering Department. Street and subdivision names shall be subject to City of Ashland Engineering Department review for compliance with applicable naming policies.
- 5) That a final Fire Prevention and Control Plan addressing the General Fuel Modification Area requirements in AMC 18.3.10.100.A.2 of the Ashland Land Use Ordinance shall be provided prior to bringing combustible materials onto the property, and any new landscaping proposed shall comply with these standards and shall not include plants listed on the Prohibited Flammable Plant List per Resolution 2018-028.

- 6) That the recommendations of the Ashland Tree Commission from its September 8, 2022 regular meeting shall be conditions of this approval where consistent with applicable standards and with final approval by the Staff Advisor.
- 7) That the tree protection fencing and other tree preservation measures shall be installed according to the approved plan, inspected and approved by the Staff Advisor prior to any site work, storage of materials, staging or issuance of a building or excavation permit. The tree protection fencing shall consist of chain link fencing six feet tall and installed in accordance with 18.4.5.030.C. No construction activity, including dumping or storage of materials such as building supplies, soil, waste, equipment, or parked vehicles, shall occur within the tree protection zones.
- 8) That prior to final approval and annexation of the property, the applicant shall provide:
 - a. A final boundary description and map of the properties to be included in the annexation prepared by a registered land surveyor in accordance with ORS 308.255, including the full Highway 99N right-of-way. The boundary shall be surveyed and monumented as required by statute subsequent to City Council approval of the proposed annexation.
 - b. A final, signed irrevocable consent to annexation as required in AMC 18.5.8.020.A.
 - c. A final signed agreement to deposit an amount sufficient to retire any outstanding indebtedness of special districts defined in ORS 222.510 as required in AMC 18.5.8.020.B.
 - d. A deed restriction agreement ensuring that any future development will occur in accord with the minimum required 90 percent of the subject properties' base density, as indicated in the development plan, as required in AMC 18.5.8.050.F.
 - e. A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that, should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI.
 - f. A deed restriction agreement that the required utility infrastructure and street frontage improvements required of annexation and approved herein shall be completed, or sufficient security to insure their completion shall be provided, prior to any development of the site.
- 9) That the Final Plan application submittal shall include:
 - a. Final electric service, utility and civil plans including but not limited to the water, sewer, storm drainage, electric, street and driveway improvements

shall be submitted for the review and approval of the Planning, Building, Electric, and Public Works/Engineering Departments, Rogue Valley Sewer Services and Oregon Department of Transportation with the Final Plan submittal. The street improvement plan shall include full designs with cross-sections consistent with city standards, except where exceptions have been approved herein. Street lights shall be included in keeping with city street light standards. The utility plan shall include the location of connections to all public facilities including the locations of water lines and meter sizes; fire hydrant; sanitary sewer lines, manholes and clean-out's; storm drain lines and catch basins; and locations of all primary and secondary electric services including line locations, transformers (to scale), cabinets, meters and all other necessary equipment. Transformers, cabinets and vaults shall be located in areas least visible from streets, while considering the access needs of the utility departments. Any required private or public utility easements shall be delineated on the civil plans. All civil infrastructure shall be installed by the applicants, inspected and approved prior to the signature of the final survey plat.

- b. The final water service plan shall address the extension of the existing 12-inch main line near Fox & Schofield Streets to a location north of the railroad trestle at the site's northernmost driveway in consultation with the applicant's civil engineer and the city's contract engineer (RH2 Engineering), and shall include necessary details of meter placement, pressure reducing valves, backflow prevention and premises isolation. Fire hydrants to be installed on-site will be located on private property and will require yearly testing be conducted, with the annual results reported to the City's Water Division.
- c. The applicant shall submit a final electric plan including any necessary load calculations and locations of all primary and secondary services including transformers, cabinets, streetlights and all other necessary equipment. Transformers and cabinets shall be located in areas least visible from streets and outside of the sidewalk corridor and vision clearance areas, while considering the access needs of the Electric Department. Electric services shall be installed underground to serve all lots within the applicable phase prior to signature of the final survey plat. At the discretion of the Staff Advisor, a bond may be posted for the full amount of underground service installation (with necessary permits and connection fees paid) as an alternative to installation of service prior to signature of the final survey plat. Electric services shall not be installed within the wetland or its buffer. With annexation, the property will no longer be served by Pacific Power and Light; service will be provided by the City's municipal electric utility and the necessary services to make this transition will need to be installed at the applicant's expense. This plan shall be reviewed and approved by the Planning, Engineering and Electric Departments prior installation. Transformers and cabinets shall be located outside of the pedestrian corridor, and in those areas least visible from the street while considering the access needs of the Electric Department.
- d. A final storm drainage plan detailing the location and final engineering for all storm drainage improvements associated with the project shall be submitted

for review and approval by the Departments of Public Works, Planning and Building Divisions. The applicant shall provide evidence that this plan has been reviewed and approved by the Oregon Department of Transportation and Rogue Valley Sewer Services as well. The storm drainage plan shall demonstrate that post-development peak flows are less than or equal to the pre-development peak flow for the site as a whole, and that storm water quality mitigation has been addressed through the final design.

- e. Engineered construction drawings for the required improvements along the property's Highway 99N frontage, from the existing terminus of the sidewalk south of the site near Schofield Street to the existing terminus of the sidewalk north of the site shall be provided for review and approval by the Oregon Department of Transportation and the City of Ashland's Planning and Engineering Departments prior to any work within the street right-of-way or pedestrian corridor. The required improvements shall be as described herein and illustrated in the applicant's civil drawings, and shall generally consist of:
 - i. **From Schofield to North Main Street:** City standard improvements including a six-foot bike lane, 7½-foot parkrow and six-foot sidewalk are proposed in this section. A pedestrian crossing with RRFBs is to be installed in this section, with the final design to be provided for the review and approval of the City and ODOT.
 - ii. **From North Main Street to the Railroad Trestle:** Where roadside slopes pose a constraint, an eight-foot curbside sidewalk is proposed in this section.
 - iii. **At the railroad trestle on the south end of the site:** *Beneath the trestle, a shared bicycle and pedestrian path is proposed with overhead lighting and a vertical barrier at the curb. Any signage or striping necessary for the transition from sidewalk to multi-use path to sidewalk shall be detailed in the civil drawings.]*
 - iv. **A southbound transit stop** with pull-out lane, bus stop shelter and eight-foot sidewalk are to be installed along the frontage, likely in the more level area just north of the trestle.
 - v. **In the more sloped area at the south end of the site:** The applicant would widen the existing bike lane to the full, required six-foot width and install an eight-foot curbside sidewalk.
 - vi. **Along the site frontage:** A three-foot bike buffer, six-foot bike lane, 7-½ foot parkrow, and six-foot sidewalk are proposed along this section of the property frontage.
 - vii. Private sidewalks would also be extended into the subject properties along the driveway with development of the site.

- viii. **To the north of the driveway:** The sidewalk is proposed to transition to an eight-foot curbside sidewalk with curb and extend north to connect to existing curbside sidewalk.

The final engineered designs shall include details of the transition from the existing sidewalks, and any additional right-of-way necessary to accommodate these improvements shall be provided through a right-of-way dedication if deemed necessary by the Public Works/Engineering Department or Oregon Department of Transportation.

- f. A final grading and erosion control plan which includes the location of any silt fencing placement to protect wetlands, creek corridors or their protection zones during construction.
- g. Final lot coverage calculations demonstrating that lot coverage is to comply with the applicable 65 percent lot coverage allowance of the R-2. Lot coverage includes all building footprints, driveways, parking areas and other circulation areas, and any other areas other than natural landscaping.
- h. That the requirements of the Ashland Fire Department relating to approved addressing; fire apparatus access, fire apparatus access approach, aerial ladder access, firefighter access pathways, and fire apparatus turn-around; fire hydrant distance, spacing and clearance; fire department work area; fire sprinklers; limitations on gates, fences or other access obstructions; and addressing standards for wildfire hazard areas including vegetation standards and limits on work during fire season shall be satisfactorily addressed in the Final Plan submittals. Fire Department requirements shall be included in the civil drawings.
- i. That draft CC&Rs for the Homeowner's Association shall be provided for review and approval of the Staff Advisor with the Final Plan submittal. The CC&R's shall describe responsibility for the maintenance of all common use-improvements including driveway, open space, landscaping, utilities, and stormwater detention and drainage system, and shall include an operations and maintenance plan for the stormwater detention and drainage system.
- j. The approved Tree Protection Plan, Water Resource Protection Zone, and accompanying standards for compliance shall be noted in the CC&Rs. The CC&Rs must state that deviations from the approved Tree Preservation and Protection Plan or disturbance of the Water Resource Protection Zones shall be considered violations of the Planning approval and subject to penalties described in the Ashland Municipal Code.
- k. If fencing is proposed, a fencing plan which demonstrates that all fencing shall be consistent with the provisions of the "Fences and Walls" requirements in AMC 18.4.4.060, and that fencing around common open space, except for deer fencing, shall not exceed four feet in height. Fencing limitations shall be noted in the subdivision CC&R's. The location and height of fencing shall be identified at the time of building permit submittals, and fence permits shall be obtained prior to installation.
- l. Any necessary easements for transit amenities shall be identified in the Final Plan submittal to allow for the future placement of a Rogue Valley

Transportation District (RVTD) bus stop, transit-supportive plaza and bus pull-out lane. The final easement details shall be mutually agreed upon with RVTD.

- m. A final phasing plan for the subdivision.
 - n. Evidence of concurrence from the Division of State Lands (DSL) for the wetland delineation.
- 10) That prior to any work within the right-of-way:
- a. The applicants shall obtain any necessary permit approvals from ODOT, ODOT Rail and/or CORP Rail. The applicants shall provide evidence of permit approval, including copies of all approved plans, for all work to be done within ODOT right-of-way prior to the commencement of work.
 - b. The applicants shall also obtain any necessary plan and permit approvals from the City of Ashland Public Works Department/Engineering Division. The applicants shall obtain all required Public Works inspection approvals for work completed within the right-of-way.
 - c. That the applicant shall obtain and provide evidence of any necessary permits or approvals from the Bureau of Reclamation (BOR) and/or Talent Irrigation District (TID) for any work within the “Billings Siphon” irrigation easement.
 - d. That the applicant shall obtain and provide evidence of any necessary permits or approvals from Rogue Valley Sewer Services (RVSS) for the sanitary sewer and storm connections to the RVSS system.
- 11) That a final survey plat shall be submitted within 12 months of Final Plan approval and approved by the City of Ashland within 18 months of that approval. Prior to submittal of the final subdivision survey plat for signature:
- a. All easements including but not limited to public and private utilities, mutual access and parking, public pedestrian and public bicycle access, drainage, irrigation and fire apparatus access shall be indicated on the final subdivision plat submittal for review by the Planning, Engineering, Building and Fire Departments.
 - b. That the subdivision name shall be approved by the City of Ashland Engineering Division.
 - c. That all infrastructure improvements associated with the annexation and subdivision including but not limited to utilities, driveways, street frontage improvements and common area improvements shall be completed according to approved plans, inspected and approved.
 - d. Irrigated street trees selected from the Recommended Street Tree Guide and planted according to city planting and spaces standards shall be planted where park row planting strips have been approved, inspected and approved by the Staff Advisor.
 - e. Electric services shall be installed underground to serve all lots, inspected and approved. The final electric service plan shall be reviewed and approved by

the Ashland Electric, Building, Planning and Engineering Divisions prior to installation.

- f. That the sanitary sewer laterals and water services including connection with meters at the street shall be installed to serve all lots within the applicable phase, inspected and approved.
 - g. If the applicant opts to dedicate land area to a non-profit affordable housing developer, dedication shall occur in a manner consistent with AMC 18.5.8.050.G.2 and recording of deed restrictions guaranteed affordability described herein shall occur in conjunction with plat signature and recording.
- 12) Off-site pre-fabrication of the proposed structures will require necessary inspections and certifications at the point of pre-fabrication. Pre-fabrication details will need to be included with the building permit submittals, and evidence of required certifications will need to be provided to the Building Division.