

Note: Anyone wishing to speak at any Planning Commission meeting is encouraged to do so. If you wish to speak, please rise and, after you have been recognized by the Chair, give your name and complete address for the record. You will then be allowed to speak. Please note that the public testimony may be limited by the Chair and normally is not allowed after the Public Hearing is closed.

**ASHLAND PLANNING COMMISSION  
REGULAR MEETING  
JUNE 8, 2010  
AGENDA**

I. **CALL TO ORDER:** 7:00 PM, Civic Center Council Chambers, 1175 E. Main Street

II. **ANNOUNCEMENTS**

III. **CONSENT AGENDA**

A. **Approval of Minutes**

1. May 11, 2010 Planning Commission Minutes
2. May 28, 2010 Study Session Minutes

B. **Approval of Findings for PA-2009-00726, 720 Grandview Drive Appeal**

IV. **PUBLIC FORUM**

V. **TYPE II PUBLIC HEARINGS**

A. **PLANNING ACTION: #2009-01244**

**SUBJECT PROPERTY: 1644 Ashland Street**

**APPLICANT: Goodman Networks, Inc. for AT&T Wireless, LLC**

**DESCRIPTION:** A request for Site Review approval and a Conditional Use Permit to install rooftop wireless communications facilities on the existing Ashland Street Cinema building located at 1644 Ashland Street, and associated ground mounted equipment. The installation consists of 12 architecturally-integrated panel antennas. The application includes a request for an Administrative Variance from Site Design and Use Standards required landscape buffer. The subject property is located within the Detail Site Review Zone and the Ashland Boulevard Corridor, and the existing building is also subject to Additional Standards for Large Scale Projects. **COMPREHENSIVE PLAN DESIGNATION:** Commercial; **ZONING:** C-1; **ASSESSOR'S MAP #:** 39 1E 15 AB; **TAX LOT:** 6800. *Public hearing is closed. The Planning Commission will consider a request to reopen the record pursuant to ORS 197.763(6)(c).*

VI. **TYPE III PUBLIC HEARINGS**

A. **PLANNING ACTION: #2010-00560**

**SUBJECT PROPERTY: FEMA Regulated Floodplains Citywide**

**APPLICANT: City of Ashland**

**DESCRIPTION:** A request to amend the Flood Insurance Rate Maps and Chapter 18.62 (Physical & Environmental Constraints) of the Ashland Land Use Ordinance to provide consistency with Chapter 15.10 (Flood Damage Prevention Regulations) of the Ashland Municipal Code and federal regulations regarding building within the 100 year floodplain.

VII. **ADJOURNMENT**

**CITY OF  
ASHLAND**



In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Community Development office at 541-488-5305 (TTY phone is 1-800-735-2900). Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting (28 CFR 35.102-35.104 ADA Title 1).

**CITY OF  
ASHLAND**  
ASHLAND PLANNING COMMISSION  
REGULAR MEETING  
MINUTES  
May 11, 2010

**CALL TO ORDER**

Chair Pam Marsh called the meeting to order at 7:00 p.m. in the Civic Center Council Chambers, 1175 East Main Street.

**Commissioners Present:**

Larry Blake  
Michael Dawkins  
Dave Dotterer  
Pam Marsh  
\*Debbie Miller  
Melanie Mindlin  
Mike Morris  
John Rinaldi, Jr.

*\*Commissioner Miller did not participate in the first two agenda items.*

**Staff Present:**

Bill Molnar, Community Development Director  
Derek Severson, Associate Planner  
Richard Appicello, City Attorney  
April Lucas, Administrative Assistant

**Absent Members:**

**Council Liaison:**

Eric Navickas, absent

**ANNOUNCEMENTS**

Community Development Director Bill Molnar noted the City Council is scheduled to hold a Special Meeting on May 26<sup>th</sup> for the Croman Mill District Plan. Commissioner Marsh announced the vacancy on the Commission and encouraged interested citizens to submit an application to the Mayor's Office.

**CONSENT AGENDA**

- A. Approval of Minutes
1. April 13, 2010 Planning Commission Minutes
  2. April 27, 2010 Planning Commission Minutes

Commissioners Dawkins/Dotterer m/s to approve the Consent Agenda. Voice Vote: all AYES. Motion passed 7-0.

**PUBLIC FORUM**

No one came forward to speak.

**TYPE II PUBLIC HEARINGS**

- A. PLANNING ACTION: #2009-00726  
SUBJECT PROPERTIES: 720 Grandview Drive  
APPLICANT: McDonald, Lynn & Bill  
DESCRIPTION: Appeal by Bonnie Brodersen of the Staff Advisor's decision to approve a Physical and Environmental Constraints Review Permit for the property located at 720 Grandview Drive. Planning Action #2006-01784 previously granted approval for development in the Wrights Creek Floodplain and Riparian Preservation Lands for the improvement of a portion of an existing driveway, re-grading the transition of the driveway to Grandview Drive, the installation a private storm drain and the extension of utilities to serve a new single-family residence. The current application again requests a Physical & Environmental Constraints Review Permit for development in the Wrights Creek Floodplain and Riparian Preservation Lands for the improvement of a portion of an existing driveway, re-grading the transition of the driveway to Grandview Drive, the installation a private storm drain and the extension of utilities to serve a new single-family residence. The current request

differs from the previous approval in that it involves alterations to accommodate changes in vehicular access. A request for a Tree Removal Permit to remove two dead poplar trees is also included. COMPREHENSIVE PLAN DESIGNATION: Single Family Residential; ZONING: R-1-10; ASSESSOR'S MAP #: 39 1E 05 CD; TAX LOT: 500.

#### Declaration of Ex Parte Contact

Commissioner Marsh noted that Commissioner Miller has asked to be excused since she was absent from last month's hearing.

No ex parte contact was reported by any of the commissioners.

#### Deliberations & Decision

Commissioners Dotterrer/Blake m/s to approve Planning Action #2009-00726 and deny the appeal, finding it has no merit, and direct staff to bring back findings consistent with approval. Roll Call Vote: Commissioners Morris, Blake, Dawkins, Dotterrer, Mindlin, Rinaldi and Marsh, YES. Motion passed 7-0.

#### **B. PLANNING ACTIONS: #2009-01244**

**SUBJECT PROPERTY: 1644 Ashland Street**

**APPLICANT: Goodman Networks, Inc. for AT&T Wireless, LLC**

**DESCRIPTION: A request for Site Review approval and a Conditional Use Permit to install rooftop wireless communications facilities on the existing Ashland Street Cinema building located at 1644 Ashland Street, and associated ground mounted equipment. The installation consists of 12 architecturally-integrated panel antennas. The application includes a request for an Administrative Variance from Site Design and Use Standards required landscape buffer. The subject property is located within the Detail Site Review Zone and the Ashland Boulevard Corridor, and the existing building is also subject to Additional Standards for Large Scale Projects.**

**COMPREHENSIVE PLAN DESIGNATION: Commercial; ZONING: C-1; ASSESSOR'S MAP #: 39 1E 15 AB; TAX LOT: 6800.**

Commissioner Marsh read aloud the public hearing procedures for land use hearings.

#### Declaration of Ex Parte Contact

Commissioners Morris, Rinaldi, Blake, Dotterrer, Dawkins and Marsh reported site visits. Commissioner Mindlin stated she had a drive by site visit and also received a phone call from Sarah Breckenridge. Mindlin stated the substance of this call is captured in Ms. Breckenridge's written comments which are included in the record.

No ex parte contact was reported by any of the commissioners.

#### Staff Presentation

Associate Planner Derek Severson presented the staff report for this application. He reviewed the Federal Telecommunications Act of 1996 which regulates how cities can address wireless communication facilities, and stated some of the key points of this Act include: 1) cities cannot discriminate among providers, 2) cities cannot pass laws or take actions that prohibit or have the effect of prohibiting wireless service, 3) there is no regulating of wireless facilities based on environmental concerns about radio frequency emissions if the facility will operate within FCC standards, 4) cities must act on requests to site wireless facilities within a reasonable amount of time, and 5) cities must issue zoning denials or approvals in writing, supported by substantial evidence and findings contained in the written record. As a result of this Act, Mr. Severson stated the City of Ashland adopted a fairly stringent ordinance that regulates the placement, appearance and visual impacts of wireless communication facilities. He stated the City's ordinance identifies preferred design alternatives, including collocation on an existing facility, the use of preexisting structures, or in some cases alternative structures or monopoles. It also prohibits lattice towers, requires a landscape buffer, requires visual impacts to be mitigated, limits exterior lighting and signage, and requires the setback from residential zones to be at least twice the height of the installation. Mr. Severson noted wireless facilities in Ashland are currently located at the Ashland Springs Hotel and the Holiday Inn Express.

Mr. Severson reviewed the elements of the application. He stated the site is located at 1644 Ashland Street, which is the location of the Ashland Shopping Center, and the building involved is the Ashland Street Cinema. He stated the zoning in the vicinity is almost entirely commercial, except for some residential to the east. He stated the Pines Trailer Park is about 80 ft.

from this building and clarified while this is a residential use this area is commercially zoned. Mr. Severson stated the applicants are proposing to install wireless facilities in an integrated penthouse structure on the front of the building, and an equipment cabinet at the rear of the building. He stated the proposal is to add two-tiered parapet walls to shield the installation and conceal the antennas, which will increase the height of the building by approximately 10 ft.

Mr. Severson explained as part of the application, the applicants are requesting an administrative variance in order to not install the required landscaping around the proposed accessory building. He stated the application states the 10 ft. landscape buffer around exterior would extend into the existing driveway and impair fire access. He added the application asserts that the accessory structure, by mimicking the existing structure, is architecturally integrated into the building and does not need screening.

Mr. Severson clarified Federal Law prohibits denials based on radiation or radio frequency emissions. He stated in reviewing the application staff feels it does comply with the City's standards and are recommending approval with the conditions listed in the staff report.

### **Applicant's Presentation**

**Gary Spanovich/Applicant's Representative/**Stated he has participated in over 40 land use approvals, buildings and design reviews for telecommunication facilities and stated the Telecommunications Act is key tonight. Mr. Spanovich explained the Act states that as long as the antennas and equipment meet the FCC regulations for radio emissions, there are no health effects. He stated in this application all of the FCC regulations are followed and all of the equipment meets those standards. He stated this Act empowered the use of cell phones in the United States, and noted today many people don't have land lines and rely solely on their cell phones for communication. Mr. Spanovich stated while elected bodies can receive testimony on health concerns, the Telecommunications Act prohibits denial of an application based on those concerns. He stated AT&T currently has holes in their coverage area in Ashland and this installation will correct that. Mr. Spanovich explained their Radio Frequency Engineer identified a specific location where the wireless antennas would need to be located in order to correct their coverage issues, and stated collocating their antennas on one of the other facilities would not fix their coverage problem. He stated he hopes the Commission will approve this application and noted the new antennas would be integrated into the architecture of the building. Mr. Spanovich noted they have held two public meetings prior to tonight's hearing to speak with concerned neighbors and stated they believe they have addressed the concerns of both citizens and the City's Planning staff, and have addressed all of the zoning issues.

Mr. Spanovich clarified they initially looked at a number of locations, but needed to find a location in the heart of their problem area as well as a willing landlord. He stated the proposed site is their only option and stated collocating at the Ashland Springs Hotel or the Holiday Inn Express would not solve their coverage problems.

### **Public Testimony**

Commissioner Marsh listed the written testimony that has been submitted into the record and whether the individuals were for or against this action.

**Preston Moser/1501 Siskiyou Blvd, Medford/**Stated he is a broadcast radio and TV engineer and voiced his support for the application. Mr. Moser stated cell phones emit far more radiation than the cell tower would and stated the further away the cell tower is the more radiation the phones put out. He stated the cell phone itself is the major source of radiation and the tower is very minimal because of its distance from the persons being exposed.

**Rod Newton/1196 Timberline Terrace/**Stated he and his wife own the Hidden Springs Wellness Center and requested the Commission deny this application based on the following three points: 1) approval of this conditional use permit would lower the livability of the area due to the economic impact, 2) the applicant's materials indicate there is an acceptable alternative location at the Holiday Inn Express, and 3) the location will impact the north and south views, and future towers could be collocated there which will further expand the visual impacts. Mr. Newton stated at Hidden Springs they rent space to 13 holistic healthcare practitioners and none of them have indicated they would be willing to work close to a microwave tower. He stated this not about health impacts, this is about the impacts this proposal will have on his business. Mr. Newton stated his is not opposed to cell towers but wants them sited at a location that will have the least impact on the community. Mr. Newton concluded his testimony and requested the record for this action be left open for seven days.

**Aaron Brian/307 N. Main St/**Stated he has reviewed the application, the City's code, and the Telecommunications Act of 1996 and stated he is opposed to this proposal. Mr. Brian stated this application does not comply with the City's own standards for siting cellular facilities and stated the applicant's materials indicate there is another reasonable location at the Holiday Inn Express. He stated under the City's municipal code, if there is a feasible collocation site this is the end of the story. He stated in this situation there is an option for collocation and does not understand why the applicants have focused their efforts away from the Holiday Inn site which already has wireless facilities on it. Mr. Brian stated the proposed tower would have visual and aesthetics impacts, and noted the City's code states that if this is approved future collocation efforts would be allowed on top of the cinema. He stated there is also an issue of space for the ground equipment and commented on the need for good access for fire trucks. Mr. Brian voiced his opposition to this proposal and stated the Ashland Municipal Code supports the denial of this application.

**Alan Sasha Lithman/669 Park St/**Stated giving more weight to the rights of the electromagnetic fields than the citizens of this town is not appropriate. Mr. Lithman stated the precautionary principle states that if an action or policy has a suspected risk of causing harm to the public or to the environment the burden of proof that it is not harmful falls on those who advocate taking the action. He stated this principle allows policy makers to make discretionary decisions in situations where there is evidence of potential harm in the absence of complete scientific proof. He stated such potential harm is sufficient grounds for preventive measures, safeguards and protections, and these protections can only be relaxed if further scientific findings provide sound trustworthy evidence that no harm will result. Mr. Lithman stated a town such as Ashland should be a leading edge model for the practice of this principle.

**Naomi Marie/2305-C Ashland St #248/**Stated two of the tenants of the building have made it clear they are either opposed or do not want to be associated with this proposal and believes this speaks to the potential economic impacts for the tenants and existing businesses. Ms. Marie stated the Telecommunications Act of 1996 was pushed through and there is so much information on both sides of the health impacts issue, we don't really know for sure what the real affects are. She recommended they have some foresight about what they are exposing themselves to and stated the Commission should pay attention when people are speaking out about their concerns. Ms. Marie stated she is very concerned about the proliferation on the cinema's rooftop and stated this proposal would definitely reduce the views.

**Skip Andrews/103 Manzanita St/**Acknowledged that the federal statute prohibits them from using claims about radiation as the basis for their decision, but stated what they can take into consideration is the fact that there are so many practitioners that will go out of business if this proposal is approved. Mr. Andrews questioned when a conditional use permit has ever been allowed when it results in the closing of an established business in the area. He stated Hidden Springs is an internationally known wellness center and people from all over the world hold seminars there, and the construction of the proposed wireless facilities would have a real effect on that area.

**Suzanne Sky/1605 Siskiyou Blvd/**Stated she is the owner of Ashland Acupuncture which is located just behind the cinema. Ms. Sky explained the back of her clinic overlooks the back of the cinema building and stated this proposal would severely impact the views from her location. She stated there are six other holistic practitioners in her office and the perceived health impacts associated with these antennas would have a serious negative impact on her business and the livability of the area. Ms. Sky stated the AT&T representative assured the concerned neighbors that there was an alternative site AT&T would be looking at and she was very disappointed to hear this proposal is going forward. She asked that the Commission deny the application and request they find an alternate site for their antennas.

**Judi Johnston/1025 Pinecrest Terrace/**Stated she is a health care practitioner and stated they are in a difficult position. She stated she personally supports the cell tower, regardless of where they put it, because she has no cell phone coverage at her house. She stated she is dependent on her cell phone for her business and also would be in a tough spot if she had an emergency. Ms. Johnston stated she hopes either the proposed site or an alternate site is approved so that the cell phone coverage can be improved. Stated she is in support of a tower because businesses need it to thrive, and our tourists and visitors also need coverage.

**Pau Pollard/308 Crowson Rd/**Stated he is an AT&T client, has poor coverage, and would like this to change. Mr. Pollard stated these antennas are raised to send out signals in a way that reaches the coverage area; the signals do not just run off

the building and filter down into the parking lot. He stated there is a lack of understanding with how this system works and agreed with the first speaker that there is greater damage caused by holding a cell phone to your ear. He stated it is not as detrimental as some say and stated he would like to see a tower installed somewhere in Ashland.

**Kimberly Hall/745 Iowa St**/Stated she is a massage therapist at Hidden Springs Wellness Center and is saddened that her time at this facility may be coming to an end because of their beliefs around this issue. Ms. Hall stated it will be a great loss to the community if Hidden Springs were to close.

**Robin Rose/625 Lit Way**/Stated she is a family physician and provided some information on possible effects of cell towers. She stated between 10-25 out of 100 people will be affected if they are 300 meters from one of these towers. Ms. Rose listed some of the symptoms she has researched and questioned how this proposal would affect the more fragile individuals in our community. Ms. Rose stated even if they are not sure of the impacts, they do not know for sure yet whether these are dangerous and does not want to take that risk.

**Michael Maichezak/894 Blackberry**/Stated the energy emitting hazards of cell towers has been widely documented and it would be in the best interest of the Planning Commission, the community, and the nearby tenants and residents to deny this application. Mr. Maichezak stated he uses Verizon and has great coverage and asked if AT&T could place their antennas at the Verizon site instead. He also questioned if other carriers would add antennas to the cinema building if this application was approved and questioned the loading potential for that roof.

**Will Wilkinson/2940 Old Highway 99**/Stated he is a fitness director at Hidden Springs and noted the impressive number of citizens who have appeared tonight to show their opposition to this proposal. Mr. Wilkinson stated the applicant's representative stated the Telecommunications Act empowered the use of cell phones, but he has heard nothing from the representative about the welfare of the people. Mr. Wilkinson noted the International Association of Firefighters have expressed their opposition to towers located on fire stations until a study on exposure to low intensity RF/MW radiation is conducted and it is proven that such conditions are not hazardous. Mr. Wilkinson disputed the staff findings which indicate this action would not have a negative impact on the livability of the area and stated there would be aesthetic damages and severe business losses. He recommended the Commission deny this application or at the very least delay this action in order to have more time to study this issue.

**Lisa Long/1003 Oneida Circle**/Stated she is very impressed with the consciousness of this town and disagreed that these towers pose no health effects. Ms. Long cited an article titled *The Radiation Poisoning of America* and stated she researched where cell towers were located in Ashland before she moved here and would not have allowed her daughter to move to Ashland to go to SOU if she had know a tower would be going in at this location.

**John Kalb/580 Elizabeth Ave**/Voiced his opposition to the AT&T proposal because of the possibility of collocation and stated this should be given preference over building new towers. Mr. Kalb stated the Planning Commission is not obliged to give AT&T the exact site they want and urged the Commission to reject this proposal and require AT&T to provide more information on the other potential site.

**Joanne Lescher/347 High St**/Stated whether or not cell towers are harmful is not the primary issue, the issue is that they are perceived to be harmful by many citizens. Ms. Lescher stated she cannot continue to practice in this area if the tower is built. She noted there are 24 health practitioners in this area and asked the Commission to consider the economic impact and loss of services to Ashland citizens if this application is approved. She recommended the Commission deny this proposal and encourage AT&T to collocate at a different location.

**David Schieber/586 Glenwood Dr**/Stated that health effects cannot be considered according to the federal government, but stated this proposal would add height to the cinema building and this added height would block mountain views from both north and south directions, particularly for those closest to the building. Mr. Schieber stated AT&T has indicated they would be willing to allow others to collocate at this location and questioned if the roof structure is adequate to accommodate this. He stated there is another location that AT&T could use and it seems logical to add their antennas where this is already accommodated for rather than adding a new facility. Mr. Schieber stated they simply do not know what the health effects of long term expose are, and stated the only reasonable course is to conduct a study at the highest possible merit.

**Alissa Lukara/248 Meadow Dr/**Shared her opinion as a consumer and stated due to the perceived impacts she would no longer visit this shopping center if this application is approved. Ms. Lukara stated she often books workshops in Ashland and Hidden Springs is her preferred location. She stated this is a wonderful location, but will no longer rent this space if the cell tower goes in. She added she would also stop visiting Susanne Sky at this location if the application is approved.

**Vitaly Geyman/1172 N. Main St/**Stated he is a telecommunications engineer and has installed 600 towers across Australia. Mr. Geyman stated he is surprised by AT&T's choice to build a new tower on top of a family center and in such close proximity to health care practitioners. He stated this is not an appropriate location and believes the Commission and AT&T are creative enough to find a different location for the tower.

**Elissa Walsh/106 Fairview, Talent/**Stated she works at Hidden Springs and noted this facility is an oasis and sanctuary for many individuals. Ms. Walsh stated she is certain this tower would result in a huge loss and stated not only does she not want to lose her job, she does not want the community to lose this wonderful center. She stated she is strongly opposed to this application.

**Brooks Newton/1196 Timberline Terrace/**Stated she is the owner of Hidden Springs along with her husband, which is located less than 100 yards from the proposed site. Ms. Newton stated she cannot believe corporate profits are being put above human values and shared her sadness at the thought of losing this complex. Ms. Newton invited the AT&T representative to come and visit their facility and talk about the effects this proposal would have on their community center and work this out together.

**Deborah Gordon/276 Orange Ave/**Noted she and Susanne Sky are the health practitioners closest to the proposed tower location. Ms. Gordon stated half of the view from her office is of the cinema and the other half is of the mountains beyond it. She noted the law states the health effects are outside of the Commission's purview, but stated it is not outside the purview of her patients. Ms. Gordon stated she would have to move her business if the cell tower goes in and hopes AT&T can come up with a different solution.

**Bonnie Nedrow/635 Lit Way/**Commented on the types of clients who come to visit her and stated she would not be able to continue her practice at this location if the cell tower goes in. She stated her clients perceive the cell tower to be a problem, regardless of whether it is proven or not. Ms. Nedrow stated approval of this action would create a huge burden for the medical practitioners in the area.

**Guy Nutter/1037 Pinecrest Terrace/**Stated he owns the property at 1736 Joy Ave, which is closer to the proposed cell tower location than Hidden Springs. Mr. Nutter shared his concerns that sufficient notice to AT&T's public meeting was not given and stated at those meetings they were given different information than what the AT&T representative is now saying. He explained at the public meeting the representative indicated AT&T was considering alternate locations and the citizens who attended that meeting were left with the impression that these sites would be preferred due to the public opposition. Mr. Nutter requested the Commission deny this application based on architectural reasons.

**Dennis Cooper/1182 Timberline Terrace/**Stated he owns the building immediately behind the Ashland cinema and noted his tenants have already given their testimony tonight that they will move out if this cell tower goes in. Mr. Cooper stated if a conditional use permit has a significant negative impact on the property owners than it should not be granted and stated the loss of his tenants is a significant issue. He stated adding an additional 10 ft to the top of the cinema building will block the views of the mountains for his tenants and does believe they should be allowed to build that much higher. Mr. Cooper stated the preferred alternative is to collocate and stated if this is feasible than the city code says it should be done. He also noted the applicant's request for an administrative variance to the landscaping requirement and stated their reasoning for this is because of his nice landscaping. He added from his building you will be able to see their equipment very clearly.

**Emily Folmar/1644 Ashland St/**Stated she is speaking on behalf of Coming Attractions Theater. Ms. Folmar stated they have received numerous calls and emails from citizens and customers concerned about this proposal and clarified that they are not the building owners and this is not their application. Ms. Folmar shared her concerns regarding this proposal and stated if approved, they will lose a significant amount of business. In addition, she stated they have not seen the engineering

specifications and are concerned about load bearing issues and potential water damage. She added anything that might damage the roof could cause great damage to their equipment.

**Elise Thiel/321 Clay St #19/Voiced** her opposition to the cell tower and stated this would have significant impacts on the Ashland Shopping Center. Ms. Thiel stated she spends a considerable amount of money at that shopping center and will no longer take her business there if this application is approved. She stated she is a nurse and has seen what happened to people who smoke and noted companies claimed that was safe too. She stated she does not want to see this shopping center close down and asked that the Commission deny this application.

**Marvin Ratner/1125 Village Green Dr/Stated** he is opposed to the cell tower and stated it would be detrimental to the community and the lifestyle here. Mr. Ratner stated this would cause the Hidden Springs Wellness Center to close down and noted he attends many lectures and events at that location and it adds to his quality of life. He stated whether or not the danger posed by the cell tower is real is irrelevant, the perception of danger will cause the center to close. He stated there are alternate sites where this equipment could be located and does not believe these have been adequately researched.

**Steven Maryanoff/654 Oak St/Voiced** his opposition to the cell tower and suggested they consider making Ashland a cell tower free zone. Mr. Maryanoff noted his career in electronic engineering and stated there are many alternatives to accomplishing what you want. He stated the alternate options were not considered by AT&T because they are more cost prohibitive and stated alternatives do exist.

**Ari Frires/92 Dewey St/Voiced** his opposition to the cell tower. Mr. Frires stated he does not know the impacts of these microwaves, and until he does he does not want to be exposed to it.

**Cate Hartzell/892 Garden Way/Asked** that the Commission deny this application based on the financial impacts on the surrounding businesses. Ms. Hartzell stated this location serves as her primary shopping center and stated the cell tower would have a negative impact on her consumer activities. She stated the Telecommunications Act did not take away a community's right to regulate as best they can their exposure to microwave frequencies or other environmental hazards. Ms. Hartzell commented on consumer habits and stated they need to come together as a community and revisit the criteria for the placement of wireless facilities in a well publicized process where everyone can become better informed about these issues.

**Jeff Golden/925 Oak St/Stated** 1) the Ashland Municipal Code mandates that new wireless facilities be collocated with existing facilities if doing so would reasonably meet the need, and 2) in the applicant's correspondence, they state there is another wireless site that would reasonably meet their needs. Mr. Golden stated if both these statements are proven accurate this leads to a very clear decision. He stated regardless of the radiation perception, the only lawful decision would be to deny the application.

**Tej Steiner/610 Ashland St/Stated** he is against this proposal and commented that there is something very special about the Hidden Springs Wellness Center. Mr. Steiner stated the impacts of these cell towers needs to be further investigated before they should be allowed.

### **Rebuttal by the Applicant**

**Gary Spanovich/Clarified** this is not a cell tower, but rather 5 antennas that will be hidden in the façade. He stated they are fairly small at 4-6 inches wide and 4-6 feet in height. Mr. Spanovich noted the engineering drawings are included in the packet materials and stated the structural studies that were completed show that everything is to code. He stated their engineer did look at the collocation possibility and determined that it would not be possible to collocate at the Holiday Inn Express. Mr. Spanovich cited the Telecommunications Act and stated they believe their submittal is complete. He also stated that they do not feel the need to keep the record open and do not need rebuttal time.

Commissioner Marsh noted the request made by Rod Newton to leave the record open for 7 days and explained written testimony received during this period will become part of the written record and circulated to the Planning Commission.

City Attorney Richard Appicello noted the Commission will need to make two motions: 1) to keep the record open until the end of business day on May 19, 2010, and 2) to continue their deliberations to the June 8, 2010 Planning Commission meeting.

Mr. Appicello stated he heard the applicant state that he does not want to file final written argument and asked if this was accurate. Mr. Spanovich confirmed that they do not want an additional seven days to submit final written argument and stated they do not feel they need to submit anything else.

*Commissioner Marsh closed the public hearing at 9:17 p.m.*

#### **Questions for Staff**

Mr. Severson provided additional information on the collocation issue. He stated the City's ordinance requires applicants to look at collocation, but does not require it. He also clarified that according to the applicant's submittal, the antennas at the cinema location would be 25% higher than what would be possible at the Holiday Inn site, and the length of the coaxial cable to the Holiday Inn would be much greater than the run to the cinema and would result in a greater loss of signal.

Request was made for staff to address conditional use permit criterion C(7) and the economic concerns related to this. Comment was made questioning if the Fire Department has approved the placement of the ground equipment in terms of emergency access issues. It was also questioned if information was going to be provided on how the Holiday Inn site and the proposed site compare. Mr. Severson clarified the applicant could choose to submit this information within the next 7 days while the record is open.

**Commissioners Dotterrer/Miller m/s to leave the record open until 4:30 p.m. on May 19, 2010. Voice Vote: all AYES. Motion passed 8-0.**

**Commissioners Rinaldi/Dotterrer m/s to continue this item to the June 8, 2010 Planning Commission meeting. Voice Vote: all AYES. Motion passed 8-0.**

#### **ADJOURNMENT**

Meeting adjourned at 9:30 p.m.

*Respectfully submitted,  
April Lucas, Administrative Assistant*

**CITY OF  
ASHLAND**  
ASHLAND PLANNING COMMISSION  
STUDY SESSION  
MINUTES  
May 25, 2010

**CALL TO ORDER**

Chair Pam Marsh called the meeting to order at 7:00 p.m. in the Civic Center Council Chambers, 1175 East Main Street.

**Commissioners Present:**

Larry Blake  
Michael Dawkins  
Pam Marsh  
Debbie Miller  
Melanie Mindlin  
Mike Morris  
John Rinaldi, Jr.

**Staff Present:**

Bill Molnar, Community Development Director  
Maria Harris, Planning Manager  
Adam Hanks, Project Manager  
April Lucas, Administrative Assistant

**Absent Members:**

Dave Dotterrer

**Council Liaison:**

Eric Navickas, absent

**ANNOUNCEMENTS**

Community Development Director Bill Molnar noted the City Council will be holding a Special Meeting tomorrow evening to deliberate on the Croman Mill District Plan.

**PRESENTATIONS**

**A. Economic Development Strategy Update.**

Project Manager Adam Hanks provided a presentation on the City's Economic Development Strategy. He provided some background information and noted this process began in January 2009 after the City Council adopted a goal to "Develop and implement a comprehensive economic development strategy." Mr. Hanks stated the Council agreed to use the EcoNorthwest Draft Implementation Plan as a starting point and following that decision the Mayor appointed 20 individuals to participate in an Ad Hoc strategy committee. This committee was separated into two groups, the Technical Advisory Committee and the Policy Group, and over a five month period each group met a total of 6 times and developed a draft vision statement and over 50 draft strategies.

Mr. Hanks reviewed the next steps in the process. He stated the draft strategies have been sorted by the Ad Hoc committee and they are ready to begin the public comment stage. He clarified the citizen involvement plan will involve focus groups, public forums and open houses, and an online questionnaire available to citizens via the City's website. Mr. Hanks stated during this stage staff is hoping to get a lot of feedback from the public as well increased exposure.

Mr. Hanks read aloud the draft vision statement drafted by the Ad Hoc Committee and the draft strategies list included in the packet materials. He answered the Commission's general questions and provided further information on how the Ad Hoc committee narrowed down their list of draft strategies. He clarified all of the draft strategies (including those not selected by the committee) will be included in the document that goes out for public comment. Recommendation was made for staff to not include the Ad Hoc Committee's rankings when this document moves forward for public comment.

Mr. Hanks reviewed the next steps in the process. He stated following the citizen involvement and input stage, they will establish the specific actions with timelines, identify the responsible groups/entities and progress measurements, and lastly final review and approval of the document by the City Council. Mr. Hanks stated staff expects this process will be completed by the end of 2010.

The Planning Commission shared their thoughts and suggestions on the draft strategies. Some of the key comments and suggestions included:

- Develop a strategy that more adequately addresses the Council goal of supporting the creation and growth of businesses that use and provide local and regional products.
- Is there a way to identify the types of jobs needed in Ashland to help our under-employed population, and is there a way to tie this into this process?
- Does the City keep track of lease space stock and occupancy rates, and is there a way to make sure this existing space is utilized?
- Develop a strategy that speaks to the needs of young families, such as "Sustain the social and educational infrastructure that attracts young families to the community."
- Sustainability is a three-legged stool, and currently the "social" component is missing from the equation.

Mr. Hanks thanked the Commission for their input and clarified this will come back before the Commission for additional input as they move through the process.

## **OTHER BUSINESS**

### **A. Status Update on 2010 Planning Commission Goals.**

Commissioner Pam Marsh listed the Commission goals that were selected at their annual retreat and noted the first item has been completed:

1. Adopt Croman Mill Redevelopment Plan
2. Transportation Planning – TSP
  - Transit and Pedestrian Oriented Development (TOD) Overlay
3. Sustainable Land Use Goals
  - Solar Orientation, Green Street Standards, and Stormwater Management
4. Railroad District Parking Management Plan
5. Arterial Setbacks
  - Evaluate existing standards for Ashland St, E. Main St, Siskiyou Blvd, and N. Main St

Community Development Director Bill Molnar and Planning Manager Maria Harris provided a short presentation to the Commission. Staff reviewed the Community Development Department's long range work plan and the City Council goal projects that involve department staff. The ongoing Planning and Housing projects were also listed for the Commission.

Staff answered the Commission's general questions. It was clarified the TSP has not started yet and kickoff is scheduled for this summer. Ms. Harris added a number of joint meetings between the Transportation Commission and Planning Commission have been identified in the scope of work for the TSP. Comment was made requesting the TSP meeting schedule be provided to the Commission. Additional suggestion was made for the Commission to have more discussion on the arterial nodes in relation to the TSP.

Commission Marsh asked if staff could meld their work plan into a list that is specific to the Planning Commission. She stated she would like to form a plan that looks forward to the next 3 months and anticipates the actions the Commission will be taking. She added if the Commissioners have any additional thoughts on this to please forward their suggestions to staff, and stated she will meet with staff before their next Study Session to form a plan.

## **ADJOURNMENT**

Meeting adjourned at 8:55 p.m.

*Respectfully submitted,  
April Lucas, Administrative Assistant*

**BEFORE THE PLANNING COMMISSION  
CITY OF ASHLAND, JACKSON COUNTY, OREGON**

**JUNE 8, 2010**

In the Matter of an Appeal of Planning Action PA-2009-00726, a )  
Request for a Physical and Environmental Constraints Permit )  
for Development in the Wrights Creek Floodplain and Riparian ) FINDINGS OF FACT  
Preservation Area for access and utility improvements to serve ) CONCLUSIONS OF LAW  
property located at 720 Grandview Drive. The application seeks ) ORDER  
re-approval of driveway, re-grading, and utility improvements, )  
previously approved in PA 2006-01784 with some modifications )  
to accommodate changes in access, said property being located )  
within the City of Ashland, Jackson County, Oregon. )

Applicant: Lynn and Bill MacDonald [PA-#2009-00726]

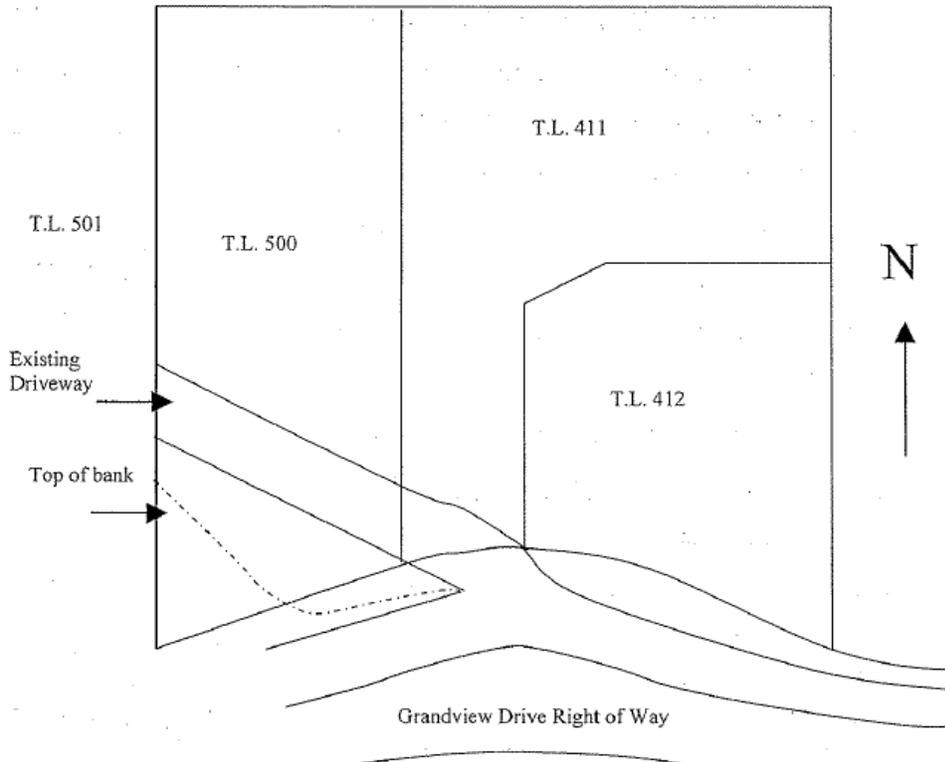
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**I. NATURE OF PROCEEDINGS**

This matter comes before the Planning Commission of the City of Ashland for a *de novo* appeal hearing. This appeal is from a November 6, 2009, decision of the Staff Advisor for the City of Ashland Planning Division approving a request for a “modification” to a previously approved Physical and Environmental Constraints Permit for Development in the Wrights Creek Floodplain. [PA 2006-01784 / LUBA 2007-162]. The August 2007 approval, upheld by LUBA, was for development in the Wrights Creek Floodplain and Riparian Preservation Lands for the improvement of a portion of an existing driveway, re-grading the transition of the driveway to Grandview Drive, the installation of a private storm drain and the extension of utilities to serve a future single-family residence. The “modification” proposed in this 2009 application involves alterations to the development previously authorized in order to accommodate changes in vehicular access. Specifically, in September 2007, following the approval of PA 2006-01784, and during the appeal to LUBA, Appellant Bonnie Broderson, (hereinafter “Broderson” or “Appellant”) purchased Tax Lot 411. An access easement over Tax Lot 411 benefitting Applicant’s Tax Lot 500 was contemplated in PA 2006-01784 as approved; however, it was not finalized. Broderson, as the new owner of Tax Lot 411, is unwilling to provide the access easement, necessitating redesign as reflected in this application. In fact, this was the second property acquisition by Broderson, causing redesign of the access. Earlier, during the pendency of local land use proceedings on PA 2006-01784, Broderson purchased Tax Lot 412, necessitating similar re-design. Among other things, a request for a Tree Removal Permit to remove two dead poplar trees was also included in this 2009 application.

The rough sketch of the property configuration and access as depicted in Figure 1 of the final opinion for LUBA 2007-162, [55 Or LUBA 350 (2007)], is set forth below:

FIGURE 1



As discussed more fully below, while the subject application [PA-2009-00726] is only a modification of the development previously authorized in PA 2006-01784 / LUBA 2007-162, it is approved by the Planning Commission here as a new application independent of the prior approval. As such, this approval does not require the continued validity of 2006-01784. Notwithstanding this finding, the application *can also* be approved as a modification because the prior approval continues with a time extension approved on April 8, 2010. [PL-2010-00435] [See LUBA 2010-038] Also, because of the nature of this application, the entire record for PA 2006-01784 / LUBA 2007-162 has been incorporated into this record to support this application.

The subject application for a Type I Physical and Environmental Constraints permit was originally filed by the Applicant with the Planning Department on June 15, 2009. The application was deemed incomplete. The Applicant made several applications, some of which staff determined to be unnecessary, as discussed in findings below. Additional materials were submitted by the Applicant and the application was deemed completed on September 23, 2009. Staff granted preliminary approval on November 6, 2009 and a Notice of Final Decision was mailed on November 9, 2009. Broderson was provided notice of the preliminary action. On November 20, 2010, Broderson filed an appeal of the preliminary approval, alleging that: (1) the application was a new application and not a modification; (2) The underlying approval PA 2006-01784 was revoked [*in 2008*]and could not be modified; (3) the application involved severe constraint land and had to be reviewed and permitted under AMC 18.62.050; and (4) the application involved new elements not included in the prior approval. Due to the unavailability

of the applicant's attorney in December 2009, the applicant granted an extension of the 120-day clock for the processing of the application (to March 22, 2010).

On January 21, 2010, notification of the public hearing before the Planning Commission on February 9, 2010, was mailed, pursuant to Chapter 18, Ashland Land Use Ordinance to area property owners, including Broderson, and affected public agencies. Notice of the February 9, 2010, public hearing was also published in the Ashland Daily Tidings. On February 8, 2010, Broderson submitted a letter to the City Attorney, copy to the Planning file alleging that: (1) she did not receive notice of the appeal hearing on February 9, 2010, (2) she did not see the sign posted on the subject property, and (3) the sign was placed in a way to obstruct anyone from receiving notice. Broderson requested the matter be continued, alleging prejudice to preparation of her case. Broderson submitted a second letter on February 9, 2010, repeating her allegations of inadequate notice. Upon hearing of Broderson's objections, the Applicant requested a continuance and extended the 120 day clock by sixty days to May 21, 2010. Findings concerning this alleged notice error are set forth below under "Allegations by Appellant"

On April 2, 2010 notification of the public hearing before the Planning Commission on April 13, 2010, was mailed, pursuant to Chapter 18, Ashland Land Use Ordinance to area property owners, including Broderson, and affected public agencies. Notice of the April 13, 2010, public hearing was also published in the Ashland Daily Tidings. An additional sign was posted in the location requested by Broderson. The April 2, 2010, written notice refers to the application simply as a request "to approve a Physical and Environmental Constraints permit," including the notation that the applicant "again requests" a physical and environmental constraints permit. The application considered on April 13, 2010, was not noticed as a "modification." Findings concerning this alleged "modification" error are set forth below under "Preliminary Matters" and "Allegations by Appellant."

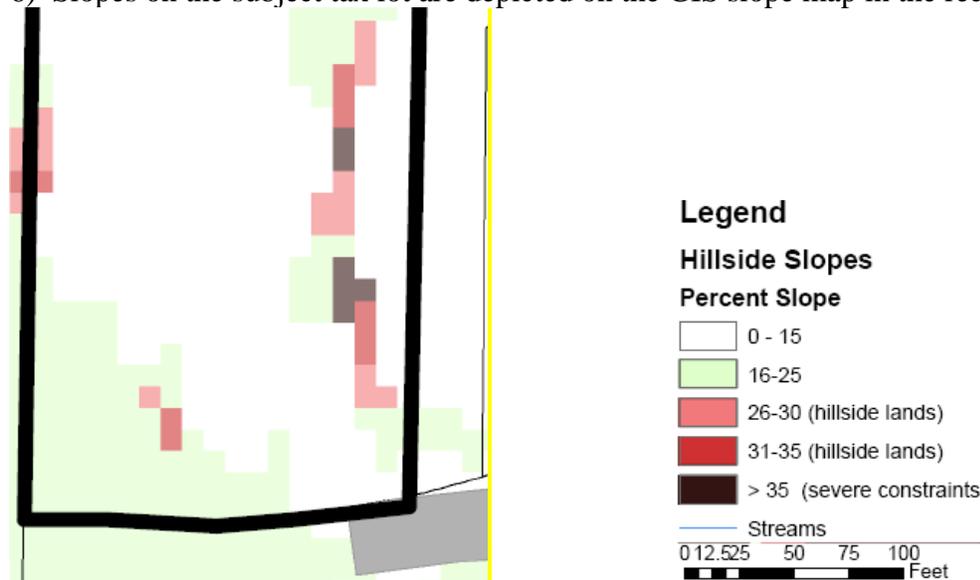
On April 13, 2010, the date of the hearing, Broderson submitted 62 pages to the Planning Department for the record, but she did not appear at the Planning Commission hearing. The Planning Commission conducted a public hearing and considered the oral and written testimony presented, additional documentary evidence, the record as a whole, and the staff report,. On April 13, 2010, the hearing was closed. However, Broderson's April 13, 2010, submittal included a request to leave the record open. The Planning Commission left the record open until April 21, 2010, at 4:30 p.m. The deadline for final written argument was set for April 28, 2010, and deliberations were set for May 11, 2010. Planning staff entered a memorandum in the record on April 14, 2010, responding to notice and modification issues raised by Broderson. Broderson submitted an additional 274 pages of materials on April 20, 2010. Planning staff submitted selected items from Planning Department files. The Applicant submitted final written argument on April 27, 2010. On May 11, 2010, the Planning Commission convened and deliberated on the application; the motion approved by the Planning Commission: 1) approved PA 2009-00726, 2) denied the appeal as having "no merit" and 3) directed Staff to prepare findings of fact and conclusions of law for approval at its June 8, 2010, meeting. The applicant's representative extended the 120 day limit to allow adoption of the findings on June 8, 2010. On June 8, 2010,

the Findings, Conclusions, and Orders of City’s Planning Commission were approved by the Planning Commission and signed by the Chair.

Based upon the evidence in the record, the Commission makes the following findings of fact and conclusions of law:

## II. FINDINGS OF FACT

- 1) The Nature of Proceedings set forth above are true and correct and are incorporated herein by this reference.
- 2) The subject of Planning Action [PA-#2009-00726] concerns real property located within the City of Ashland (“City”), and said property is described on the County Tax Assessor’s Maps as 39-1E-5CD, Tax Lot 500 (the “Property”). The street address of the subject property is 720 Grandview Drive, Ashland, Oregon, 97520.
- 3) The zoning of the subject property is R-1-10. (10,000 sq. ft. lots) (Single Family Residential District). The Comprehensive Plan designation is Single Family Residential.
- 4) In September 1979, the Planning Commission approved a Land Partition and Variance for lot depth (PA 79-110). The subject property was one of the three lots created by the land partition.
- 5) The Applicants for Planning Action # 2009-00726 are Lynn and Bill McDonald (hereinafter “Applicants”). Attorney Mark Bartholomew, among others, represent Applicants.
- 6) Slopes on the subject tax lot are depicted on the GIS slope map in the record:



According to the GIS slope and topographic information in the record, the subject property contains slopes of approximately a 14-percent grade sloping downhill in an easterly and

northeasterly direction. Smaller portions of the site adjacent to the flag of Tax Lot 411 and away from the proposed development appear to contain steeper slopes.

7) The application survey identifies three trees on the site including a cluster of plum trees and two poplar trees that are eight- and ten-inches in diameter-at-breast-height (d.b.h.). The two poplars are identified as being dead. The remainder of the site is covered primarily in native grasses.

8) One of the forks of Wrights Creek, a Riparian Preservation Creek, runs to the south of the subject property. The creek is culverted to the south of Grandview Drive and daylights at the edge of the Grandview Drive right-of-way near the southwestern corner of the parcel. The top of the creek bank, and the associated protection zone extending 20-feet beyond the top of bank, are partially located in the southwest corner of the parcel and is identified on the Topographic Survey included in the application.

9)The subject parcel and the surrounding properties to the east, north and south are located in the R-1-10 Single-Family Residential zoning district. The Ashland city limits are located on the western border of the property. As a result, the properties to the west of the parcel are under the jurisdiction of Jackson County. There are several parcels to the north and to the east of the subject property that are also vacant.

10) The subject property is a vacant, approximately 0.54-acre rectangular lot located on the north side of Grandview Drive. This portion of Grandview Drive is the western terminus of the city street, and is located west of the intersection with Wrights Creek Drive. Grandview Drive in this vicinity is a gravel road.

11) A segment of the Wrights Creek drainage runs generally parallel to and south of Wrights Creek Drive in the vicinity, and is culverted at driveway crossings for properties on the south side of the road. The creek turns north and is culverted under Wrights Creek Drive, daylighting approximately 22 feet southwest of the subject property's southwestern-most corner.

12) There is an existing gravel driveway in place that serves the subject parcel as well as the parcel to the west located at 507 Grandview Dr. This existing driveway serving the subject parcel splits from Grandview Dr. approximately 40 feet east of the subject property. The driveway splits again shortly after entering the subject property, with one driveway going to the north onto the subject property, and the other driveway continuing west to serve the residence located at 507 Grandview Drive. The driveway is surfaced in gravel and varies from nine to 15 feet in width. The property located at 507 Grandview Drive contains an existing single-family residence that is located outside of the Ashland city limits. The portion of the driveway serving 507 Grandview Drive is located within a 20-foot wide access easement that traverses the southern portion of the subject parcel. This shared driveway also crosses the corner of the vacant property to the east of the subject property (39 1E 05 CD Tax Lot #411). The previous owner of Tax Lot #411 had authorized the applicants to proceed with their original application in anticipation of granting an access easement. However, subsequent to the approval of Planning

Action #2006-01784, Tax Lot #411 was sold and the new owner (the appellant) has been unwilling to allow the applicants an access easement over the corner of this lot. The modifications making up the current application 2009-00726 are proposed by the applicants as a response to the loss of this access, which requires that the proposed driveway be extended further into the right-of-way and consequently further towards Wrights Creek in order to provide access from the street right-of-way to the subject property.

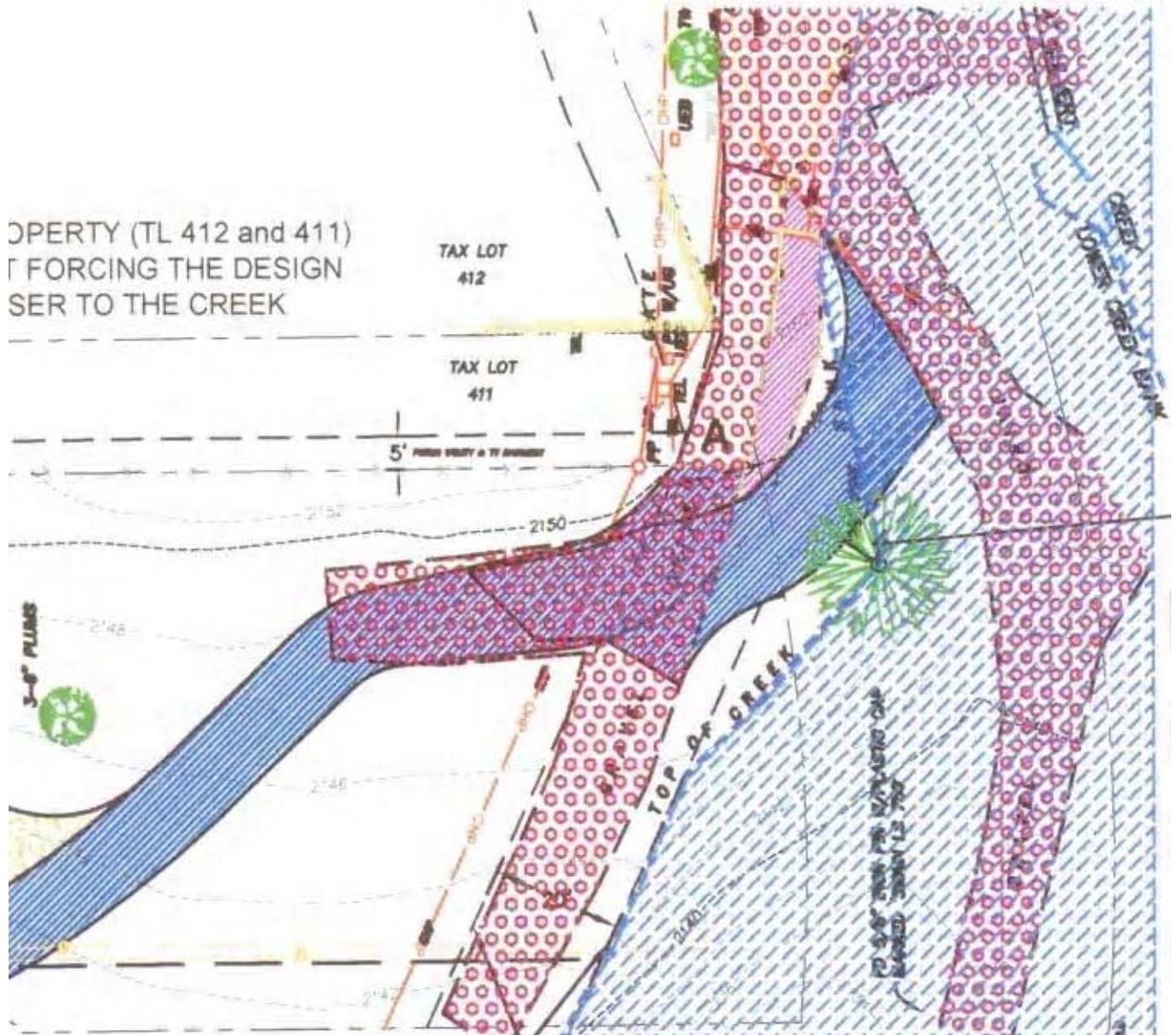
### **III. PRELIMINARY MATTERS-SCOPE OF PA-2009-00726**

Proceedings concerning Physical and Environmental Constraints permits for this property have had a history of straying into matters not pertinent to the approval criteria or matters not actually before the approval authority. *Brodersen v. City of Ashland*, 55 Or. LUBA 350, 375 (2007). Accordingly, the Planning Commission finds that it is important to clarify that the scope of the subject application is the approval of a Physical Constraints Review Permit. Both the original application upheld by LUBA and the “new” application or “modification” here, are limited to the development of the portion of the driveway and utility trenches located in the Wrights Creek Floodplain and Riparian Preservation Lands. The single-family home and most of the driveway are not located in the Wrights Creek Floodplain, and as a result are not subject to the Physical Constraints Review Permit. The property is located in the R-1-10 Single-Family Residential zoning district, and a single-family home is an outright permitted use. As an outright permitted use, the construction of a single-family home requires only a building permit, and does not require a land use action in and of itself.

Planning Action #2006-01784, the previously approved Physical and Environmental Constraints Review Permit, allowed for development in the Wrights Creek Floodplain and Riparian Preservation Lands for the improvement of a portion of an existing driveway, the re-grading of the transition of the driveway to Grandview Drive, the installation of a private storm drain, and the extension of utilities to serve a new single-family residence. The applicants are now proposing to “modify” this approval with this action in order to accommodate changes in vehicular access, as the neighboring property to the east was sold subsequent to the previous approval and the new owner (the appellant) has been unwilling to provide the access easement over the corner of the parcel in a manner consistent with the existing prior approval.

In response to this change in vehicular access, the proposed development places the access drive in closer proximity to the creek by approximately 13 feet in order to avoid the corner of the neighbor’s property [TL 411], while providing the necessary driveway width and clearance. Previously approved improvements would have resulted in approximately 324 square feet of disturbance within the riparian zone, and avoided disturbance between the top of bank and the centerline of the creek. With the current proposal, the disturbed area has been increased to 743 square feet, and 275 square feet of this disturbance is below the identified top of bank. Graphically, an enlarged portion of Exhibit 2010-002 is included below to demonstrate the difference between the prior approval and the present application.

-  EXISTING GRAVEL ROADS AND DRIVEWAYS
-  PREVIOUSLY APPROVED DRIVEWAY
-  CURRENT PROPOSED DRIVEWAY
-  RIPARIAN - TOP OF BANK TO CENTER LINE OF CREEK



The current proposal is analyzed more fully under the approval criteria below. However, related to the Scope of Review is the fact that certain other applications are **not** before the Commission.

Site Review

The application submittal included a request for Site Review approval because the appeal of the 2006 application raised the question of whether Site Review approval was required for the  
**ASHLAND PLANNING COMMISSION FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**  
 Page -7-

proposed home. On appeal, the City Council interpreting its own ordinance, rejected the assertion that Site Review was required for the single family home. “The City Council finds and determines that Chapter 18.72, Site Design and Use Standards and the Site Review approval do not apply to single-family homes on individual lots.” See August 7, 2007, Findings of Fact Conclusions of Law and Order PA 2006-01784. Following the LUBA appeal, the City Council amended the Ashland Land Use Ordinance to expressly codify the interpretation by listing single family dwellings in AMC 18.72.030 exemptions:

- B. Exemptions. The following development is exempt from Site Design Review application and procedure requirements provided that the development complies with applicable standards as set forth by this Chapter.*
- 1. Detached single family dwellings and associated accessory structures and uses.*

The Planning Commission concurs with staff, the development code amendment and the prior interpretation of the City Council as expressed in the adopted findings for PA 2006-01784, and finds and determines that the siting of a single family dwelling on the subject property is not subject to requirements for Site Design Review approval.

#### Tree Removal

The 2009 application submittal also included a request to remove two poplars (*populus nigra*) identified as Tree #4 and Tree #5 on the tree inventory in the record. These trees are located on the southern portion of the subject property, roughly near the centerline of the lot. Tree #4 is described as being nine-inches in diameter-at-breast-height (d.b.h.) and is identified as dead; Tree #5 is described as being six-inches d.b.h. and is also identified as being dead. Both trees are located more than twenty feet from the top of the creek bank identified in the application in an area with a slope of less than 25 percent according to city geographic information system (GIS) data, and as such their removal is not subject to review under the Physical & Environmental Constraints Ordinance. Similarly, tree removal on vacant, residentially-zoned property is subject to permitting only for the removal of significant trees (i.e. those having a trunk 18 caliper inches or larger in diameter at breast height) as noted in AMC 18.61.042.D.1.c. In addition, the removal of dead trees is specifically exempted from regulation in AMC 18.61.035.G. Accordingly, the Planning Commission concurs with staff and finds and determines that given the trees’ locations, their sizes and the fact that they are dead, no tree removal permit is required for the applicants to remove these two identified trees.

## **IV. PRELIMINARY MATTERS- APPLICABLE LAW**

The appellant makes several arguments concerning the applicable law, including allegations that newly adopted ordinances, such as the Water Resources ordinance, must

be applied to this application. The Planning Commission herein clarifies the applicable law as it relates to this application.

The Planning Commission finds and determines that the City ordinances applicable to this development proposal (whether it is deemed a new application or modification) are those City land use laws and ordinances *in effect* on September 23, 2009, the date the application was deemed complete. Oregon law fixes the local law for land use applications and assures applicants that the law will not change during the pendency of the application. ORS 227.178(3)(a), commonly referred to as the goal post rule, provides:

(3)(a) If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted and the city has a comprehensive plan and land use regulations acknowledged under ORS 197.251, *approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted. (emphasis added)*

The law is fixed for no less than 365 days, which includes the original 120 day period and all extensions, up to 245 days. ORS 227.178(5). The application was deemed complete on September 23, 2009. As noted in prior findings, application requirements are not approval criterion. Even if the Appellant disagrees with the completeness determination, applicants may proceed with an application without supplying requested information. ORS 227.178(2). The City's water resources ordinance [Ordinance 3000] was adopted on December 15, 2009 and took effect on January 14, 2010. The Commission finds that the law does not require or compel the application of the water resources ordinance to the present application.

Moreover, the fact that newly adopted laws (like the water resources ordinance) are not required to be applied to this application applies regardless of whether the application is viewed as a "modification" of a previous approval or a "new" application. Brodersen's challenge to the validity of the current application based on the original [2007] approval having allegedly "expired" is irrelevant. As noted above, the application was noticed as a new application. However, it can also be approved as a modification. AMC 18.108.040.A.2.a provides for amendments or modifications to conditions of approval for Type I planning actions. As was noted by staff previously, the first listed condition of approval of PA 2006-01784 is that all proposals of the applicant approved by the prior decision maker are conditions of approval. Accordingly, a modification of condition 1 is a modification of the prior approval. The proposal, whether termed a modification or a new proposal is subject to the same exact procedural review and approval criteria as a new

application. They are indistinguishable. Both a modification of a Physical & Environmental Constraints Review Permit and a new Physical & Environmental Constraints Review Permit are considered to be Type I procedures, allowing for administrative approval and subject to appeal. Both are subject to the same \$917

application fee, both receive the same procedural handling including the required noticing and review, and both are considered in light of the same review criteria and standards for a Physical & Environmental Constraints Review Permit found in AMC 18.62. In addition, and perhaps most importantly, the work proposed to be completed here remains the same regardless of whether the request is termed a modification of the previously approved Physical & Environmental Constraints Review Permit or simply approval of a new Physical & Environmental Constraints Review Permit. The reference to a modification simply puts the current request in context in light of what is now a six-year history for the applicants, the appellant, staff and the Commission, as evidenced by the 400+ page record. Similarly, the Planning Commission finds and determines that the alleged expiration(s) of the previous approval have no bearing on the review of the current proposal, which remains subject to the same procedures and the same review criteria and standards, and which will result in the same work being completed on the ground if approved. The current application remains valid whether it is deemed a modification of the 2007 approval kept valid by the 2010 recession extension or a new application (or re-approval). The application is reviewed and considered by the Commission in terms of the Physical & Environmental Constraints Permit review criteria and other ordinances in effect on September 23, 2009.

## **V. FINDINGS APPLYING APPLICABLE CODE CRITERIA**

1) The Ashland City Council Findings of Fact, Conclusions of Law and Order for PA 2006-01784, dated August 7, 2007, together with supporting documents thereto, and interpretations of applicable City Code provisions contained therein, including findings of fact and conclusions of law demonstrating compliance with applicable approval criteria of the similar elements of the prior application and those findings and interpretations rejecting Broderson's assignments of error in common with this application are specifically incorporated herein and made a part hereof by this reference.

2) The Final Order and Opinion of the Oregon Land Use Board of Appeals for LUBA Case 2007-162, including findings of compliance with applicable approval criteria of the substantially similar prior application [ PA 2006-01784] and rejecting Broderson's assignments of error in common with this application are specifically incorporated herein and made a part hereof by this reference.

3) The Ashland Planning Commission finds and determines that the relevant approval criteria are found in or referenced in ALUO Chapter 18.62, including but not limited to the criteria for issuance of a Physical Constraints Review Permit as described in ALUO 18.62.040.I as follows:

- I. Criteria for approval. A Physical Constraints Review Permit shall be issued by the Staff Advisor when the Applicant demonstrates the following:**

1. **Through the application of the development standards of this chapter, the potential impacts to the property and nearby areas have been considered, and adverse impacts have been minimized.**
2. **That the applicant has considered the potential hazards that the development may create and implemented measures to mitigate the potential hazards caused by the development.**
3. **That the applicant has taken all reasonable steps to reduce the adverse impact on the environment. Irreversible actions shall be considered more seriously than reversible actions. The Staff Advisor or Planning Commission shall consider the existing development of the surrounding area, and the maximum permitted development permitted by the Land Use Ordinance.**

The Commission further finds that it has received all information necessary to make a decision based on the Staff Report, public hearing testimony and the exhibits received in the record as a whole.

4) The Commission finds and determines that this development proposal, as revised in 2009 to accommodate changes in access, including grading, paving and utility construction in the Flood Plain and Riparian Preservation Area, to support the construction of a single family residential building meets all applicable criteria for an Environmental Constraints Review Permit described or referenced in the ALUO Chapter 18.62. This finding is supported by competent substantial evidence in the whole record as well as by the detailed findings set forth herein, the detailed findings of the prior approval, dated August 7, 2007, and the detailed findings of the Staff Advisor dated November 6, 2009, the April 14, 2010, Staff Memo, the detailed findings provided by the Applicant, including specifically the August 2009 "Project Narrative/Findings" document, and supplements and supporting materials to that document, specifically incorporated herein and made a part hereof by this reference.

5) Criterion: [ALUO 18.62.040.I.1.] **Through the application of the development standards of this chapter, the potential impacts to the property and nearby areas have been considered, and adverse impacts have been minimized.**

The Commission finds and determines that this criterion requires consideration of the potential impacts of the proposed development to the property and nearby area and minimization of adverse impacts. The standard does not specify "no impact." It is through the application of the development standards of this Chapter that the consideration and minimization of impacts is to be accomplished. The development standards to be applied are determined by the applicable land classification for the lands being developed as established under ALUO 18.62.050. More than one classification may apply; however, the restrictions applied are only those which pertain to those portions of the land being developed and not necessarily the whole parcel. [ALUO 18.62.050.F.]

Portions of the subject property are within two distinct land classifications – Flood Plain and Riparian Preservation. The property is adjacent to Wrights Creek which is identified as a

Riparian Preservation Creek on the adopted City of Ashland Physical and Environmental Constraints Map and ALUO 18.62.050B. All areas within 20 feet (horizontal distance) of any creek designated for Riparian Preservation are classified as Floodplain Corridor Lands in accordance with 18.62.050.A.4. Although the Code does not expressly so provide, the distance of “20 feet of any creek” has been interpreted to be 20 feet from the top of the bank. A Physical Constraints Review Permit is therefore required for any “development” within Floodplain Corridor Lands and Riparian Preserve Lands on the subject property in accordance with 18.62.040.

“Development” is defined in Chapter 18.62.030 E. as follows:

**Development - Alteration of the land surface by:**

1. **Earth-moving activities such as grading, filling, stripping, or cutting involving more than 20 cubic yards on any lot, or earth-moving activity disturbing a surface area greater than 1000 sq. ft. on any lot;**
2. **Construction of a building, road, driveway, parking area, or other structure; except that additions to existing buildings of less than 300 sq. ft. to the existing building footprint shall not be considered development for section 18.62.080.**
3. **Culverting or diversion of any stream designated by this chapter.**

The Applicants propose construction of a new driveway. Applicants will not be utilizing the existing driveway on the adjacent lot [T.L.411]; the inability to utilize the existing driveway will result in approximately 743 square feet more disturbed area than the previously approved proposal which utilized the existing driveway. Although the driveway is considerably longer, only a small portion of the driveway improvement is located within 20 feet from the top of the bank of Wrights Creek. Grading and driveway construction as well as placement of fill is expressly listed as development. Additionally, a private storm drain line and outlet, and a utility trench connecting the new home to the existing services near the intersection of Wrights Creek Dr. will be installed; portions of the private storm drain system and of the utility trench are located within 20 feet from the top of the bank. Accordingly, the Planning Commission finds and determines that a Physical Constraints Review Permit is required for this proposed development on that portion of the properties identified within 20 feet of the top of bank.

**18.62.070 Development Standards for Flood Plain Corridor Lands.**

**For all land use actions which could result in development of the Flood Plain Corridor, the following is required in addition to any requirements of Chapter 15.10:**

**A. Standards for fill in Flood Plain Corridor lands:**

1. **Fill shall be designed as required by the Uniform Building Code, Chapter 70, where applicable.**
2. **The toe of the fill shall be kept at least ten feet outside of floodway channels, as defined in section 15.10, and the fill shall not exceed the angle of repose of the material used for fill.**

3. **The amount of fill in the Flood Plain Corridor shall be kept to a minimum. Fill and other material imported from off the lot that could displace floodwater shall be limited to the following:**
  - a. **Poured concrete and other materials necessary to build permitted structures on the lot.**
  - b. **Aggregate base and paving materials, and fill associated with approved public and private street and driveway construction.**
  - c. **Plants and other landscaping and agricultural material.**
  - d. **A total of 50 cubic yards of other imported fill material.**
  - e. **The above limits on fill shall be measured from April 1989, and shall not exceed the above amounts. These amounts are the maximum cumulative fill that can be imported onto the site, regardless of the number of permits issued.**
4. **If additional fill is necessary beyond the permitted amounts in (3) above, then fill materials must be obtained on the lot from cutting or excavation only to the extent necessary to create an elevated site for permitted development. All additional fill material shall be obtained from the portion of the lot in the Flood Plain Corridor.**
5. **Adequate drainage shall be provided for the stability of the fill.**
6. **Fill to raise elevations for a building site shall be located as close to the outside edge of the Flood Plain Corridor as feasible.**

The Commission finds and determines that the above fill standards are met or will be met by the proposal as evidenced by competent substantial evidence in the whole record as well as by the detailed findings set forth herein, the detailed findings of the Staff Advisor, the detailed findings provided by the Applicant, as well as Council findings incorporated herein and made a part hereof by this reference. Compliance with the standards ensures identification and minimization of project impacts on the site and the surrounding area.

As was noted it is through the application of the development standards of this Chapter that the consideration and minimization of impacts is to be accomplished. The Grading and Drainage Plans and other submittals note that all imported material [road base] to be used for driveway construction is to be placed at the original ground elevation, so that there is no additional fill which would impede floodwaters. A Grading Plan prepared by Thornton Engineering, Inc. has been provided by the applicants to demonstrate how the grading necessary to accommodate the proposed driveway is to be accomplished, to specifically delineate the disturbed area within the Riparian Preservations Lands and to illustrate the relationship of the disturbance to the creek, top of bank, and to existing improvements already in place.

Specifically, the Applicant proposes to fully comply with the applicable fill standards identified in 18.62.070 A. [Applicant Findings P.6] As regards A.1, the reference to the Uniform Building Code is now outdated and the reference should be to the International Building Code. As regards 18.62.070A.2. The standard requires a ten foot separation outside “floodway channels” as defined in section 15.10. AMC 15.10.050 I. defines “Flood-way” as “that channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.” (emphasis added) The definition of floodway includes both the “channel” and adjacent lands sufficient to accept discharge. Accordingly, the Commission finds and determines that the standard is not violated. As regards 18.62.070A.3., plans indicate in a note that “All import material used for

**ASHLAND PLANNING COMMISSION FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

driveway construction shall be placed at original ground elevation (i.e. no fill will impede floodwaters).” Accordingly, the standard in A.3. to minimize fill appears to be met or will be met. Off site materials are limited by A.3. to specific purposes. The reference in A.3.b. to “aggregate base and paving materials and fill associated with . . . private . . . driveway construction” *clearly authorizes the use of this material and fill in the Flood Plain* in the construction of the proposed driveway. (See also the demonstrated compliance with standards for driveway construction below). Given the small amount of driveway located in the Flood Plain the limitation to 50 cubic yards in the floodplain is not exceeded. If additional fill is necessary beyond the permitted amounts in (3) above, then such fill materials must be obtained from on the lot from cutting or excavation. A subsurface drainage plan is provided for the driveway as required by standard 18.62.070.A.5. The building site is not located in the Flood Plain rendering 18.62.070.A.6 inapplicable.

The applicants have also proposed to minimize adverse impacts by utilizing permeable asphalt for the driveway surface to control drainage and filter possible pollutants through the driveway’s sand and gravel base. In addition, applicants have also proposed to plant riparian-appropriate ground cover and shrubs in the area to curb erosion and assist in screening the creek. Finally, applicants propose to utilize a combination of silt fencing, hay bales, “V” ditches and underground drainage pipes to convey drainage. Detailed drainage and Erosion Control Plans prepared by the project civil engineers, Thornton Engineering, Inc. have been provided.

- B. Culverting or bridging of any waterway or creek identified on the official maps adopted pursuant to section 18.62.060 must be designed by an engineer. Stream crossings shall be designed to the standards of Chapter 15.10, or where no floodway has been identified, to pass a one hundred (100) year flood without any increase in the upstream flood height elevation. The engineer shall consider in the design the probability that the culvert will be blocked by debris in a severe flood, and accommodate expected overflow. Fill for culverting and bridging shall be kept to the minimum necessary to achieve property access, but is exempt from the limitations in section (A) above. Culverting or bridging of streams identified as Riparian Preservation are subject to the requirements of 18.62.075.**

No bridging or culverting is proposed in the Riparian Preservation Area or Flood Plain. This criterion is inapplicable to the requested development.

- C. Non-residential structures shall be flood-proof to the standards in Chapter 15.10 to one foot above the elevation contained in the maps adopted by chapter 15.10, or up to the elevation contained in the official maps adopted by section 18.62.060, whichever height is greater. Where no specific elevations exist, then they must be floodproofed to an elevation of ten feet above the creek channel on Ashland, Bear or Neil Creek; to five feet above the creek channel on all other Riparian Preserve creeks defined in section 18.62.050.B; and three feet above the stream channel on all other drainage ways identified on the official maps.**

No non-residential structures are proposed in the Riparian Preservation Area or Flood Plain. This criterion is inapplicable to the requested development.

- D. All residential structures shall be elevated so that the lowest habitable floor shall be raised to one foot above the elevation contained in the maps adopted in chapter 15.10, or to the elevation contained in the official maps adopted by section 18.62.060, whichever height is greater. Where no specific**

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elevations exist, then they must be constructed at an elevation of ten feet above the creek channel on Ashland, Bear, or Neil Creek; to five feet above the creek channel on all other Riparian Preserve creeks defined in section 18.62.050.B; and three feet above the stream channel on all other drainage ways identified on the official maps, or one foot above visible evidence of high flood water flow, whichever is greater. The elevation of the finished lowest habitable floor shall be certified to the city by an engineer or surveyor prior to issuance of a certificate of occupancy for the structure.

No residential structures are proposed in the Riparian Preservation Area or Flood Plain. This criterion is inapplicable to the requested development.

- E. To the maximum extent feasible, structures shall be placed on other than Flood Plain Corridor Lands. In the case where development is permitted in the Flood Plain Corridor area, then development shall be limited to that area which would have the shallowest flooding.**

Residential structures are proposed on the subject property outside Flood Plain Corridor lands. This criterion is complied with or otherwise inapplicable to the requested development.

- F. Existing lots with buildable land outside the Flood Plain Corridor shall locate all residential structures outside the Corridor land, unless 50% or more of the lot is within the Flood Plain Corridor. For residential uses proposed for existing lots that have more than 50% of the lot in Corridor land, structures may be located on that portion of the Flood Plain Corridor that is two feet or less below the flood elevations on the official maps, but in no case closer than 20 feet to the channel of a Riparian Preservation Creek. Construction shall be subject to the requirements in paragraph D above.**

Residential structures are proposed on the subject property outside Flood Plain Corridor lands. This criterion is not applicable or is met by the proposed development of the residential structure.

- G. New non-residential uses may be located on that portion of Flood Plain Corridor lands that equal to or above the flood elevations on the official maps adopted in section 18.62.060. Second story construction may be cantilevered over the Flood Plain Corridor for a distance of 20 feet if the clearance from finished grade is at least ten feet in height, and is supported by pillars that will have minimal impact on the flow of floodwaters. The finished floor elevation may not be more than two feet below the flood corridor elevations.**

Residential structures are proposed on the subject property outside Flood Plain Corridor lands. This criterion is not applicable or is met by the proposed development of the residential structure. No cantilevering over Flood Plain Corridor lands is proposed.

- H. All lots modified by lot line adjustments, or new lots created from lots which contain Flood Plain Corridor land must contain a building envelope on all lot(s) which contain(s) buildable area of a sufficient size to accommodate the uses permitted in the underlying zone, unless the action is for open space or conservation purposes. This section shall apply even if the effect is to prohibit further division of lots that are larger than the minimum size permitted in the zoning ordinance.**

The proposal does not include the creation of lots or modification of lot lines. Accordingly this criterion is inapplicable.

- I. Basements.**

1. **Habitable basements are not permitted for new or existing structures or additions located within the Flood Plain Corridor.**
2. **Non-habitable basements, used for storage, parking, and similar uses are permitted for residential structures but must be flood-proofed to the standards of Chapter 15.10.**

Residential structures are proposed on the subject property outside Flood Plain Corridor lands. Accordingly this criterion is inapplicable.

- J. Storage of petroleum products, pesticides, or other hazardous or toxic chemicals is not permitted in Flood Plain Corridor lands.**

No storage of prohibited materials is proposed by the application. This criterion is met.

- K. Fences constructed within 20 feet of any Riparian Preservation Creek designated by this chapter shall be limited to wire or electric fence, or similar fence that will not collect debris or obstruct flood waters, but not including wire mesh or chain link fencing. Fences shall not be constructed across any identified riparian drainage or riparian preservation creek. Fences shall not be constructed within any designated floodway.**

No fences are proposed for construction in the Flood Plain Corridor lands. Accordingly this criterion is inapplicable.

- L. Decks and structures other than buildings, if constructed on Flood Plain Corridor Lands and at or below the levels specified in section 18.62.070.C and D, shall be flood-proofed to the standards contained in Chapter 15.10.**

Residential structures are proposed on the subject property outside Flood Plain Corridor lands. No decks are proposed for construction in the Flood Plain Corridor lands. Accordingly this criterion is inapplicable.

- M. Local streets and utility connections to developments in and adjacent to the Flood Plain Corridor shall be located outside of the Flood Plain Corridor, except for crossing the Corridor, and except in the Bear Creek Flood Plain Corridor as outlined below:**

1. **Public street construction may be allowed within the Bear Creek Flood Plain Corridor as part of development following the adopted North Mountain Neighborhood Plan. This exception shall only be permitted for that section of the Bear Creek Flood Plain Corridor between North Mountain Avenue and the Nevada Street right-of-way. The new street shall be constructed in the general location as indicated on the neighborhood plan map, and in the area generally described as having the shallowest potential for flooding within the corridor.**
2. **Proposed development that is not in accord with the North Mountain Neighborhood Plan shall not be permitted to utilize this exception.**

The Commission finds and determines that the above Flood Plain standard (subsection M) prohibits development proposals from locating or siting *new* local streets and associated utilities in Flood Plain Corridors. This interpretation of the City ordinance was made by the City Council in 2007 in 2006-01784 and was upheld by LUBA. The purpose of the prohibition is to keep new subdivisions and new partitions from attempting to maximize development by utilization of Flood

Plain and Riparian Lands for subdivision or partition infrastructure. Grandview Drive, the existing local street right-of-way and gravel street abutting the subject property, (from the intersection with Wrights Creek Dr. to the subject parcel), is currently existing within 20 feet from the top of the bank of Wrights Creek, and therefore is currently existing and located in Flood Plain Corridor Lands and Riparian Preservation Lands. Grandview Dr. is a public street right-of-way and the section of Grandview Dr. from the intersection with Wrights Creek Dr. to the southeast corner of the subject parcel was dedicated as street right-of-way in 1971. The portion of the Grandview Dr. right-of-way adjacent to the southern boundary of the subject parcel was dedicated as right-of-way as part of the land partition process that created the parcel in 1979. Chapter 18.62, Physical and Environmental Constraints, including development standards for riparian corridor lands, was adopted in 1986. The existing gravel street and right of way, including utilities located therein, do not violate the Code, because they were legally established at the time the Flood Plain Corridor standards prohibiting locating streets in the corridor were adopted. No new street is being located in the Corridor with this application.

The Commission finds and determines that the existing Grandview Drive right-of-way including existing utilities are not prohibited by this code provision, as no new street is being located. In addition, “crossing” the flood plain corridor is not defined in subsection M as a perpendicular crossing. The Commission finds and determines that crossing into the corridor for authorized purposes, [18.62.070.A.3; 18.62.075.A.3] including encroachment for access, utilities and driveway construction is consistent with the minimization of impacts. This provision of the Code does not prohibit grading or improvement to the existing right-of-way or the construction of driveways and private utility lines to service individual homes. Driveways and their associated stormwater drainage are expressly authorized in the Flood Plain Corridor in 18.62.070 A.3.b and A.5. Similarly, fill and culverting for access, which clearly includes driveways and utilities, is expressly permitted in Riparian Preservation Lands [18.62.075.A.3.]. Appellant’s interpretation of this section negates these substantive ALUO provisions. Further, the Commission finds and determines that an interpretation of ALUO 18.62.070.M in the manner proposed by appellant, would preclude all access and utilities to the subject property, and preclusion of all access and utilities would preclude all reasonable use of the site. While it may be the appellant’s objective to stop all development of the property, the Commission finds and determines that this Code section does not preclude improvements necessary for access (driveway and utility) and reasonable use of private property. This finding is consistent with Goal 5 allowances for encroachments into protection zones for access and utilities and exceptions to avoid takings claims. In addition, while non-perpendicular crossings of Flood Plain Corridors and Riparian Preservation Lands are to be avoided, such right angles are required only to the greatest extent feasible. [18.62.075.A.3.] To minimize impact of private utility lines and connections crossing into the Flood Plain Corridor and Riparian Preservation Areas, and to minimize tree destruction, the Council in 2007 modified former Condition 6 to require locating the lines as far north as possible. Finally, as noted above, the Commission finds and determines that the ground disturbance associated with the utility construction in the right-of-way does not fit within the express definition of development on a lot, and even if the definition of lot applied to a right of way, the utility extension is much less than 1000 square feet of disturbance. Similarly, the stormwater utility on the lot appears to be below the ‘development’ threshold.

The Commission finds and determines that the above Flood Plain Corridor standards are met or will be met by the proposal as evidenced by competent substantial evidence in the whole record as well as by the detailed findings set forth herein, the detailed findings of the Staff Advisor, the incorporated memoranda, the detailed findings provided by the Applicant, as well as the Council Findings documents, incorporated herein and made a part hereof by this reference. Compliance with the above standards ensures identification and minimization of project impacts on the site and surrounding area.

### **18.62.075 Development Standards for Riparian Preservation Lands.**

- A. All development in areas indicated for Riparian Preservation, as defined in section 18.62.050(B), shall comply with the following standards:**
- 1. Development shall be subject to all Development Standards for Flood Plain Corridor Lands (18.62.070)**
  - 2. Any tree over six inches d.b.h. shall be retained to the greatest extent feasible.**
  - 3. Fill and Culverting shall be permitted only for streets, access, or utilities. The crossing shall be at right angles to the creek channel to the greatest extent possible. Fill shall be kept to a minimum.**
  - 4. The general topography of Riparian Preservation lands shall be retained.**

Based on the detailed findings herein and those set forth above for Flood Plain Corridors referenced in 18.62.070.A.1.&2 , the Commission finds and determines that the above Riparian Preservation Land standards [including specifically 18.62.075.A(1)] are met or will be met by the proposal as evidenced by competent substantial evidence in the whole record as well as by the detailed findings set forth herein, the detailed Staff Advisor findings, the detailed findings provided by the Applicant, as well as the City Council Findings documents incorporated herein and made a part hereof by this reference.

The Development Standards for Riparian Preservation Lands require that trees over six inches be retained to the greatest extent feasible [18.62.075.A(2)]. Fill is limited to streets, access and utilities. Any crossings are to occur at right angles to the creek channel to the greatest extent possible. [18.62.075.A(3)]. Fill is to be kept to a minimum and the general topography of the Riparian Preservation lands is to be retained [18.62.075.A(3)&(4)].

**Tree Protection to greatest extent feasible[18.62.075.A(2)].:** The applicants have provided a plan for retaining and protecting Tree #1, the Ponderosa Pine located on the Riparian Preservation Lands. A Tree Protection Plan and arborist's reports have been provided to address protection of the trees to be retained on and adjacent to the site. These materials note that Tree #1, a 28-inch Ponderosa Pine within the Grandview Drive right-of-way and the Riparian Protection Zone, merits special attention given the proximity of the driveway access to the tree's trunk. The project arborist, Tom Myers of Upper Limb-It, notes that Grandview Drive and associated gravel driveways are already within the tree's protection zone. He indicates that the the protection zone will need to be adjusted to the edge of the existing road improvement rather than the typical installation, which would require fencing to the full extent of the 28-foot radius of the tree protection zone. Myers also indicates that an arborist will need to be on-site when

paving begins to ensure that all necessary precautions are taken to protect the tree. Myers recommends that paving of the driveway be done with minimal grading to minimize root damage, noting that it would be preferable to raise the grade of the road surface within the tree's protection zone rather than cutting and filling to achieve the desired road surface. Myers also recommends that equipment be kept away from the trees trunk in order to avoid structural damage, and he indicates that if these precautions are taken the tree should survive the proposed construction without damaging its health. The application materials note that the engineered design proposed was developed based on these recommendations.

The Tree Commission reviewed arborist Myers' recommendations at their meeting of October 8, 2009. They were in general concurrence, emphasizing that a permeable material should be used within the tree protection zone and that the driveway should be installed at surface grade within the tree protection zone. The Commission also recommended that the tree be pruned to 13-feet 6-inches above the finished driving surface prior to site work to provide adequate vehicular and fire apparatus clearance. In their discussion, Tree Commissioners noted that Ponderosa Pines are generally better able to handle construction and compaction when traffic is concentrated closer to the trunk where stabilizing roots are located, and that this could be preferable to having traffic and compaction concentrated more to the outer, smaller feeder roots. The Tree Commission had additional recommendations with regard to the project's Tree Protection; specifically, that tree protection fencing be provided along the west property line to protect trees on the property to the west, at 507 Grandview Drive, from impacts relating to driveway construction and that tree preservation and protection measures listed in the arborist's recommendations be followed during driveway construction adjacent to this property. A condition has been included below requiring that a revised Tree Protection and Preservation Plan be provided incorporating the recommendations of the Tree Commission. The Commission finds and determines that trees involved herein are preserved to the greatest extent feasible. This criterion is met.

**Fill for access and utilities[18.62.075.A(3)]:** The work proposed is limited to that necessary to provide access and utilities to a single family home on a single family residentially-zoned lot and is to be installed within the existing Grandview Drive street right-of-way. The Commission finds and determines that "access" fairly describes *driveway and utility* access consistent with the allowance for driveways and utilities in 18.62.070. The City Council previously found and LUBA upheld the interpretation of "access" as inclusive of driveway and associated utility improvements. *Broderson v. City of Ashland 55 Or LUBA 350, 360 (2007)*. No new crossing of Wrights Creek is being proposed and the Code does not require a crossing; however, the angle of the transition from the existing street to the new driveway improvements minimizes the disturbance within the Riparian Preservation Lands while responding to applicable driveway standards, avoiding the neighboring property to the east, and retaining and protecting the Ponderosa Pine. This criterion is met.

**Minimum Fill and retain general topography [18.62.075.A(3)&(4)]:** The application notes that imported fill materials for driveway construction are to be placed at the original ground elevation, generally retaining the existing topography to the extent possible and avoiding additional fill that would impede floodwaters. The Commission specifically acknowledges the

need to vary from the existing topography to protect the ponderosa pine as required by these standards. [18.62.075.A(2)] The Commission finds and determines that the preservation of topography is qualified by the word “generally”, accordingly, absolute *in situ* preservation of Riparian Preservation Areas is not required by the Code; alteration is permitted under many specific standards listed in Flood Plain standards noted above, to require otherwise would render these provisions moot. This development is consistent with those standards. In considering these impacts, the Commission notes that the existing topography is located within existing street right-of-way and already accommodates established driveways in the immediate vicinity. The applicable Development Standards for Flood Plain Corridor Lands set limits for fill, but expressly allows outside fill material associated with public and private street and driveway construction as proposed herein provided that it is “kept to a minimum.” The Commission finds and determines that the proposed installation of a driveway at the minimum allowed width from the only available adjacent right-of-way demonstrates compliance with the standard to keep fill to a minimum by requiring it to be installed generally at the original ground elevation so as not to impede flood waters and limited to permeable materials. In conclusion, the Commission finds and determines that the general topography of Riparian Lands is retained. Mitigation measures which enhance and improve the existing altered condition of the riparian area are not inconsistent with this standard. Compliance with the standards herein ensures identification and minimization of project impacts on the site and surrounding area. This criterion is met.

6) Criterion: [ALUO 18.62.040.I. 2.] **That the Applicant has considered the potential hazards that the development may create and implemented measures to mitigate the potential hazards caused by the development.**

The Planning Commission finds and determines that the above criterion is met or will be met by the proposal as evidenced by competent substantial evidence in the whole record as well as by the detailed findings set forth herein, the detailed findings of the Staff Advisor, the incorporated memoranda, the detailed findings set forth above, the findings provided by the Applicant, as well as the Council Findings documents specifically incorporated herein and made a part hereof by this reference. The Commission finds and determines that compliance with the standards identified in ALUO 18.62.040.I. 1. & 3. herein ensures identification and minimization of project impacts on the site and surrounding area. In addition, the record reflects Applicant has considered potential hazards that the development may create, and that the Applicant has proposed suitable implementation measures to mitigate the potential hazards. Specifically, the Applicant has proposed grading, drainage and erosion control measures as well as the placement of improvements, use of permeable paving materials, minimization of fill and revegetation to minimize the impacts of the proposal. While these impacts have increased over the original approval, the applicants’ response to changes in available vehicular access is the minimum necessary to provide vehicular access to the site from the only available adjacent right-of-way while avoiding impacts to the adjacent Tax Lot #411 or the large Ponderosa Pine, and appropriate mitigation measures have been proposed in detail in the application materials. Accordingly, the Commission finds and determines that potential hazards have been considered and appropriate mitigation measures proposed. This criterion is met.

7) Criterion: [ALUO 18.62.040.I.3.] **That the Applicant has taken all reasonable steps to reduce the adverse impact on the environment. Irreversible actions shall be considered more seriously than reversible actions. The Staff Advisor or Planning Commission shall consider the existing development of the surrounding area, and the maximum permitted development permitted by the Land Use Ordinance.**

The Planning Commission finds and determines that the above criterion is met or will be met by the proposal as evidenced by competent substantial evidence in the whole record as well as by the detailed findings set forth herein, the detailed findings of the Staff Advisor, the incorporated memoranda, the detailed findings provided by the Applicant, as well as the Council Findings incorporated herein and made a part hereof by this reference. The Commission finds and determines that compliance with the standards identified in ALUO 18.62.040.I. 1. & 2. above ensures identification and minimization of project impacts on the site and surrounding area. In addition, the record reflects Applicant has taken all reasonable steps to reduce or minimize adverse impacts on the environment.

This criterion requires an Applicant to take all reasonable steps to minimize or reduce adverse impact. This standard does not require “no adverse impact” on the environment, nor does it require the applicant to take “unreasonable” steps to reduce adverse impact. Importantly, the analysis of whether the Applicant has taken all reasonable steps to reduce or minimize adverse impact on the environment is required to be undertaken in the context of the existing conditions of the property and the surrounding area, as well as the context of the maximum permitted development of the property (i.e. consider the reasonable use of the property involved).

The record demonstrates that the property and surrounding area, including Riparian and Flood Plain areas, are *significantly altered*. The section of existing Grandview Drive from the intersection with Wrights Creek Drive to the subject parcel is located within 20 feet from the top of bank of a fork of Wrights Creek, and therefore is located in Floodplain Corridor Lands. This public street right-of-way from the intersection with Wrights Creek Drive to the southeast corner of the subject parcel was dedicated as street right-of-way in 1971. The portion of the Grandview Drive right-of-way adjacent to the southern boundary of the subject parcel was dedicated as part of the land partition process that created the parcel in 1979. Both dedications preceded the 1986 adoption of Chapter 18.62, Physical and Environmental Constraints, which include development standards for riparian corridor lands.

The Applicants cannot control the location of the existing Grandview Drive, nor can they change the fact that it was platted adjacent to and in a riparian corridor. Furthermore, the Applicants did not have any influence over the original location of Grandview Drive. The construction of Grandview Drive and the adjacent driveways obviously altered the floodplain and riparian corridor at some time in the past. In review of the Land Partition file that created the subject parcel, Grandview Drive was constructed and in place and was required to be re-graded as a condition of the 1979 planning approval. This indicates that the gravel driving surface that constitutes Grandview Drive was in place at least as far back as 1979.

The previously established location of the street right-of-way dictates the location of the driveway access and utility connections to serve the subject parcel. Given the location of the Grandview Drive right-of-way, there are no alternative locations available for the driveway or private storm drain line located outside of the Wrights Creek floodplain. An alternative access to the subject parcel is not available because the subject property is not adjacent to any other street right-of-ways, nor does it have any other available access easements. The section of the existing driveway that currently serves the subject property is now unavailable due to the circumstances noted above. Regardless of the development of the subject parcel, this existing gravel driveway will continue to serve the existing home on the adjacent parcel at 507 Grandview Drive.

Finally, the Code also mandates inquiry into the maximum permitted development allowed by the Land Use Ordinance. The maximum permitted residential density as reflected in the record for this parcel is one single family unit, [1.29 under AMC 18.88] which is the same as the future use proposed. No other development can be facilitated or accomplished pursuant to this application. It appears that the proposal, considering the existing conditions and maximum density allowed, will improve the existing conditions through mitigation of existing adverse impacts to the environment.

Accordingly, the Planning Commission finds and determines that any significant adverse impact to the Wrights Creek floodplain and Riparian Preservation lands occurred prior to the current proposal when Grandview Drive and the existing shared driveways were located and constructed. The Planning Commission further finds and determines that the current proposal takes all reasonable steps to reduce adverse impacts. The proposal preserves and protects the large Ponderosa Pine and the improvements proposed are limited to those necessary to provide access and utilities to a single family zoned lot from the only adjacent, existing street right-of-way available to provide utilities and vehicular access. The driveway is proposed at the minimum widths and clearances allowed by city standard, is to be installed in permeable materials, and grading and erosion control plans have been provided demonstrating efforts to minimize fill and control erosion. Similarly, the Commission finds and determines that the adverse impacts of the private storm drain line have been mitigated by use of the rock outfall, as modified. Given the fact that existing shared driveways have been rendered unavailable, the current proposal demonstrates that the applicant has taken all reasonable steps to reduce the adverse impact on the environment caused by the construction of the access to facilitate use of the property consistent with land use regulations. This criterion is met.

## **VI. ALLEGATIONS BY APPELLANT**

Appellant Bonnie Brodersen has made several written submittals alleging numerous assignments of error. As before, some of the assignments concern approval criteria and others do not. Some assignments are repeated. By the following review the Planning Commission addresses each assignment of error:

October 8, 2009 Letter by Bonnie Brodersen

**ASHLAND PLANNING COMMISSION FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

1) That there are not code provisions for amending a previously approved application, and the current application must be processed as a new action.

The Commission finds and determines that PA 2009-00726 is herein approved as a new application, independent of the continued validity of PA 2006-01784. Notwithstanding this finding, the application *can also* be approved as a modification because the prior approval continues with a time extension approved on April 8, 2010. [PL-2010-00435] [See LUBA 2010-038] The conditions of approval which incorporate the entire proposal can be modified. As noted in the staff report narrative, the Land Use Ordinance provides for amendments or modifications to the conditions of approval of previously approved Type I planning actions as a miscellaneous action subject to Type I review (i.e. administrative approval) under AMC 18.108.040.A.2.a. The findings concerning this issue set forth herein are incorporated herein by this reference.

2) That the applicants' proposed driveway will negatively effect entry onto the public street from TL #411 because the proposal places the driveway in part in the right-of-way.

The Commission finds and determines that the Land Use Board of Appeals rejected Broderson's similar argument regarding Tax Lot 412. *Brodersen v. City of Ashland*, 55 Or. LUBA 350, 368-369 (2007). The Planning Commission finds and determines, that like access to Tax Lot 412, access to Tax Lot 411 will not be blocked or precluded. Imported materials for driveway construction are to be placed at original ground elevation, as noted and illustrated on the grading plan provided. With these improvements installed at the original ground level, and within public right-of-way, it does not appear that physical access to the parcel would be negatively impacted. While the driveway improvements proposed are to be installed to provide access to the Applicants' parcel, they are located within public street right-of-way and no easement would be required for the owners of tax lot #411 to cross them in gaining access to their property. The encroachment permit does not grant Applicant's exclusive use of the public right of way. As stated by LUBA, Appellant does not own the right of way and there can be no taking of Appellants' property. : *Brodersen v. City of Ashland*, 55 Or. LUBA 350, 369 (2007).

Notwithstanding the above, landscape improvements within the right-of-way just south of the frontage of tax lot 411 outlined in the Applicants' landscape plan submittal could present a barrier to future vehicular access to that site, and as such, a condition of approval has been added to require that these plant materials be removed from a revised landscape plan to be provided before building permit approval.

3) That the applicants' proposal changes the topography and natural state of the Riparian Preservation area within the City-owned right-of-way.

The Commission finds and determines that the criterion for riparian preservation concerning retention of the general topography has been met. City-owned right-of-way predates current regulations and provides the only available access to the subject property. As indicated on the applicants' grading plan, the proposal generally maintains the existing grade and topography. As noted in the Council findings for the previous approval, absolute *in situ* preservation of Riparian

Preservation Lands is not required the Code and alteration is permitted under many specific elements within the Development Standards for Flood Plain Corridor Lands and to require otherwise would render the standards themselves moot. The findings set forth above regarding topography are incorporated herein by this reference.

4) That the 28-inch Ponderosa Pine may not survive the proposed development in the riparian area;

The Commission finds and determines that the criterion for riparian preservation concerning retention of trees to the greatest extent feasible has been met. A Tree Protection Plan prepared by a local certified arborist has been provided. This plan includes specific recommendations intended to preserve and protect the Ponderosa Pine given the development proposed, and notes that the tree should survive the construction process without damage to its health. This plan was reviewed by the City's Tree Commission, and they made recommendations in support of the plan. The findings set forth above regarding tree retention are incorporated herein by this reference.

5) That the applicants' utility plan shows storm water being piped directly into Wrights Creek which flows into Bear Creek, protected as a water quality limited creek, and may be a violation of Ashland's DEQ-approved TMDL plan.

The Planning Commission finds and determines that the Applicant has taken all reasonable steps to reduce the adverse impact on the environment. The Commission further finds that TMDL plan is not an approval criterion for the Physical and Environmental Constraints permit. In the original application, the Planning Commission determined that direct discharge into Wrights Creek may not be appropriate given its Riparian Preservation designation. A condition (#5) was added to the original approval requiring pre-treatment measures; this condition was reviewed and accepted as appropriate by the Council on appeal and was agreed to by the Applicants. The condition remains in effect, and the Applicants will need to address the requirements of the condition prior to permit issuance.

6) That there is no estimate of the amount of fill required or whether the project can be feasibly completed using only on-site fill.

The Land Use Board of Appeals agreed with the City that there is no requirement in ALUO 18.62.075(A)(3) for quantification of the amount of fill to be used. The Planning Commission finds and determines based on the substantial evidence in the record that the amount of fill will be minimized. The Development Standards for Flood Plain Corridor Lands expressly provide for the use of off-site fill within the limitations of AMC 18.62.070.A.3. Off-site fill in the form of aggregate base, paving materials, and fill associated with approved public and private street and driveway construction are expressly permitted. All fill proposed within the Riparian Preservation and Flood Plain Corridor Lands in the application is limited to these purposes. The findings above concerning this criterion are incorporated herein by this reference.

7) That the AMC requires applications for all permits required of the development to be submitted simultaneously, and that the city should require findings that the applicant can meet all requirements of the zoning district and for

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issuance of an encroachment permit simultaneously.

The Commission finds and determines that the requirement that other applications be filed simultaneously and reviews conducted simultaneously within AMC 18.62.040.E and G refers to Site Review, Performance Standards Development, Conditional Use Permits, Subdivisions, Partitions, master site plans or other planning actions and does not apply to other permits such as encroachments which have other reviewing authorities and/or may require that land use approval be in place prior to review. In this instance, the applicants have submitted for the applicable planning action approvals, and a building permit application has also been made; although, the building permit review is on hold pending land use approval.

8) That there is no documentation in the Planning Department file that the MacDonald's property was legally created and is a legal lot of record.

The Planning Commission finds and determines that legal lot status is not an applicable approval criterion for a physical and environmental constraints permit. In the Council findings for the original approval the City Council previously found that the lot was legally created pursuant to a 1981 partition plat, and that the plat was valid. This argument was considered and rejected by the Council during the last appeal of the original approval, and that rejection was upheld by the Land Use Board of Appeals. The findings below concerning legal lot are incorporated herein by this reference.

9) That the proposal places a driveway in the middle of a riparian area where Wrights Creek daylight within the city right-of-way, that the riparian area is elevated from approximately one to four feet, and that there is no information on how the topography of the riparian preservation area will be retained while placing a driveway through the daylighted area.

The Commission finds and determines that the criterion for riparian preservation concerning retention of the general topography has been met. The applicants have provided a grading plan from a licensed professional engineering firm illustrating the proposed driveway installation. Plan details and notes illustrate installation of the driveway at original ground elevation and identify both the existing and proposed finish grades. The findings above concerning this criterion are incorporated herein by this reference.

10) That there are no studies of how run-off from a driveway in excess of 250 feet, a required turnaround, and large home site will affect the floodplain corridor which flooded in 1997.

The Commission finds and determines that the scope of review for the Physical Constraints Review Permit, both in the original application and the modifications proposed here, is limited to only that portion of the driveway and utility trenches located in the floodplain. The single-family home and most of the driveway are not located in the Wrights Creek Floodplain, and as a result are not subject to the Physical Constraints Review Permit. The property is located in the R-1-10 Single-Family Residential zoning district, and a single-family home is an outright permitted use. As an outright permitted use, the construction of a single-family home requires only a building permit, and does not require a planning action in and of itself.

## Appeal Issues Raised by Bonnie Brodersen

Following a November 6, 2009, administrative approval, neighbor Bonnie Brodersen appealed the application. The issues she raised and staff responses thereto are provided below:

1) The City states the application is a "modification of conditions of approval." This is not a modification but a new application which more than doubles the square footage of construction, places driveway in a new location, adds new proposals, e.g. drainage ditches et al, the changes proposed are the "meat" of the original application. This is an error because the applicable criteria or procedure in the Ashland Municipal Code §18.108.040A requires that this be reviewed as a new application.

The Commission finds and determines that PA 2009-00726 is herein approved as a new application, independent of the continued validity of PA 2006-01784. Notwithstanding this finding, the application *can also* be approved as a modification because the prior approval continues with a time extension approved on April 8, 2010. [PL-2010-00435] [See LUBA 2010-038] The conditions of approval which incorporate the entire proposal can be modified. As noted in the staff report narrative, the Land Use Ordinance provides for amendments or modifications to the conditions of approval of previously approved Type I planning actions as a miscellaneous action subject to Type I review (i.e. administrative approval) under AMC 18.108.040.A.2.a. The findings regarding this issue set forth above are incorporated herein by this reference.

2) There can be no "modification" of a permit that is revoked. The City ignores the AMC which is clear on its face. This is an error because the applicable criteria or procedure in the Ashland Municipal Code §18.112.030 requires that the permit was revoked on 8/07/08.

The Commission finds and determines that the independent approval of PA 2009-00726 as a new application makes this argument moot. Notwithstanding that fact, appellant is untimely in her challenge to the 2008 time extension. Specifically, the "error" referred to is in fact an attempt to appeal a previously approved ministerial action which extended the applicants' original land use approval, and which was not appealed - or what is often referred to as a "collateral attack." If Appellant believed this 2008 time extension required the exercise of interpretation or discretion, she should have timely appealed that decision. *Hardtla v. City of Cannon Beach*, 183 Or. App. 219 (2002). The 2008 time extension, and the validity of 2006-00726 may not be collaterally attacked in this application. AMC 18.112.030 notes that planning actions are deemed revoked if not used within one year from the date of approval, unless another time period is specified in another section of the Land Use Ordinance. The previous land use approval was extended as a ministerial action as specified in AMC 18.108.020.A, that section empowers the Staff Advisor to review and approve the extension of time limits of approved planning actions as provided in AMC 18.112.030. On July 30, 2008, and before expiration of the previous approval on August 7, 2008, the Applicants applied for an 18-month extension of Planning Action #2008-01250. Applicants paid the required fee for a ministerial action on August 6, 2008. This extension request was reviewed and approved by the Staff Advisor. On August 20, 2008, which was within 21 days of the extension being requested, and thus within the time frame allowed by

ordinance, the Staff Advisor provided written notice of the extension approval to the Applicants. As explained in AMC 18.108.070.A, ministerial actions are effective on the date of the decision of the Staff Advisor and are not subject to appeal. To challenge a ministerial action, the Appellant would need to have raised the issue before the Land Use Board of Appeals or in Circuit Court within 21 days of becoming aware of what she believed to be an error. While this issue was raised by the Appellant in her hearing request to the city in November, indicating that she was aware of it, no attempt has been made to address that alleged error through proper legal channels within the time limits prescribed by law; therefore, the Staff Advisor's approval of the ministerial action may not be challenged through this decision. The City Council subsequently amended AMC 18.112 to clarify that submission of the extension request prior to expiration preserves the approval thereby rejecting Appellant's interpretation of the section.

3) This application is for a severe constraints land and the city has failed to apply the review required for development on said land. This is an error because the applicable criteria or procedure in the Ashland Municipal Code § 18.62.050 requires that the city apply provisions for severe constraints land.

The Planning Commission finds and determines that the application does not involve development on "Severe Constraints" lands. Severe constraints lands are defined in AMC 18.62.050.D as "Lands with severe development characteristics which generally limit normal development. The following lands are classified as Severe Constraint Lands: 1) All areas which are within the floodway channels, as defined in Chapter 15.10; and 2) All lands with a slope greater than 35 percent." The lands proposed for development are not "floodway channels" nor do the areas proposed for development exceed 35 percent slope.

While the Physical & Environmental Constraints Ordinance (AMC 18.62) classes all lands within 20 feet of any creek designated for Riparian Preservation as Flood Plain Corridor Lands, the floodway channel is much more narrowly defined to those lands defined as such under AMC 15.10. AMC 15.10.050(I) defines the flood-way as, "... *that channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.*" 15.10.050(D) further defines a base floods as, "... *the flood having a one percent (1%) chance of being equaled or exceeded in any given year. Also referred to as the '100-year flood'.* Designation on flood maps always includes the letters A or V." Under the general provisions for that chapter, AMC §§ 15.10.060.A. further clarifies that, "*This Chapter shall apply to all areas of special flood hazards within the jurisdiction of the City of Ashland, Oregon.*" The basis for establishing the special flood hazard areas is explained in AMC §15.10.060.B as "*The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study: City of Ashland, Oregon, Jackson County", dated June 1, 1981, with accompanying Flood Insurance Maps is hereby adopted by reference and declared to be a part of this Ordinance. The Flood Insurance Study and accompanying maps (as updated) are on file at City Hall, Ashland, Oregon.*" No area of special flood hazard, floodplain, floodway or floodway channel was identified for Wrights Creek or its tributaries in this vicinity as part of the study cited. (See Staff Exhibit S-1 taken from "Floodway

Flood Boundary and Floodway Map for the City of Ashland, Oregon, Jackson County Community Panel 1 of 3 Community-Panel Number 410090 0001 Effective Date June 1, 1981” showing no areas of special flood hazard.)

In the absence of the requisite federal study, the Applicants’ engineer, Mike Thornton of Thornton Engineering, Inc., has prepared a “Flood Analysis” and delineated the 100-year flood boundary, concluding that:

“The improvements comply with both sections 15.10 (Flood Damage Prevention Regulations) and 18.62.070 (Development Standards for Flood Plain Corridor Lands). The proposed improvements are more than 20 feet beyond the flood plain boundary and are not located within a flood hazard area or within a floodway.” (See July 20, 2009 letter from Thornton and applicants’ supporting sheet C-3.)

Based on both Chapter 15.10 and the flood analysis by Thornton Engineering, the area of disturbance is outside of the floodway channel.

Based on City of Ashland Geographic Information System (GIS) data (see Staff Exhibit S-2) and on-site observations by staff, there are no lands with slopes greater than 35 percent in the area proposed for disturbance, and as such the area in question is not classified as “Severe Constraints Lands” and is not subject to the development standards associated with those lands. The findings above concerning this criterion are incorporated herein by this reference.

4) Piping of stormwater directly into Wrights Creek, an historically fish-bearing creek, violates Ashland’s Master Stormwater & Drainage Plan, the Bear Creek Watershed TMDL’s (as applied to the City) & it’s NPDES Phase 2 permit and the federal Clean Water Act. Dumping of large amounts of water at one time creates erosion of the creek bank at the point of entry. Best Management Practices and required state permits have not been addressed. Further, the City is approving the dumping of stormwater runoff from a City property into Wrights Creek where it is located outside of the city and in the county. The City has not addressed how county ordinances/approvals come into play.

The Planning Commission finds and determines, consistent with the finding by LUBA, that stormwater and drainage master plan, site design standards, city’s discharge permit and water quality statutes are not approval criteria for a physical and environmental constraints permit. *Brodersen v. City of Ashland*, 55 Or. LUBA 350, 372-373 (2007). In the original application, the Planning Commission determined that direct discharge into Wrights Creek may not be appropriate given its Riparian Preservation designation. Condition (#5) was added to the original approval requiring pre-treatment measures; this condition was reviewed and accepted as appropriate by the Council on appeal and was agreed to by the Applicants. The condition remains in effect, and the Applicants will need to address the requirements of the condition prior to permit issuance; the Applicants will also need to obtain any necessary permits or approvals from other jurisdictions that have authority, such as Jackson County. The Planning Commission finds and determines that the Applicant has taken all reasonable steps to reduce the adverse impact on the environment. The findings concerning this issue are incorporated herein by this

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reference.

5) The City has failed to enforce Street Standards requirements: (See for example, AMC 18.88.050(B). With the proposed development, Grandview Drive will provide access to four or more homes. Four driveways within a few feet of each other will enter Grandview Drive. Implementation of mandatory Street Standards will fall within the riparian/floodplain corridors requiring a physical and environmental constraints review.

The Planning Commission finds and determines that the Street Standards of AMC 18.88 are not approval criteria for a physical and environmental constraints permit, nor are they implicated for construction of a single family home. The property is located in the R-1-10 Single-Family Residential zoning district, and a single-family home is an outright permitted use. As an outright permitted use, the construction of a single-family home requires only a building permit and is not subject to a land use action which would require street improvements to comply with Street Standards. As findings above indicate Site Design Review is not required for a single family home. The application involves the construction of a private driveway within the Grandview Drive right-of-way, and because of its length the driveway is subject to, and complies with, the width and paving standards for a flag drive found in AMC 18.76.060.B. Where serving two lots or being shared by adjacent properties, the flag drive must have a 20-foot width with a 15-foot paved driving surface. Where the drive serves only one lot it may be reduced to a 15-foot width with a 12-foot paved driving surface.

6) The City's findings are inadequate when the City states "imported fill materials for driveway construction are to be placed at the "original ground elevation" and Applicants Narrative provides no info on how a 20-foot wide paved driveway will be placed at the original ground elevation when Grandview Drive sits anywhere between 2-9 feet below the elevated riparian/wetland.

The Commission finds and determines that the criterion for riparian preservation concerning retention of the general topography has been met. The applicants have provided a grading plan from a licensed professional engineering firm, Thornton Engineering, Inc., illustrating the proposed driveway installation. The grading plan details and notes illustrate installation of the driveway at the original ground elevation and identify both the existing grade and proposed finish grades. Based on this plan, the area of disturbance within Grandview Drive is at most one to four feet above the existing grade at the tree – not two to nine feet below it - and finished grade details and section drawings are provided to demonstrate how the driveway installation is to be accomplished. (See applicants' Sheet C-1.) The findings concerning this criterion are incorporated herein by this reference.

7) City's Order violates the Tree Ordinance when Applicant's arborist recommends the "paving of the new road should be done with a minimum of grading in order to keep root damage to a minimum," yet there are no findings on how close to the surface the tree root system is, how the root system will be protected, how the driveway's sand and gravel base will affect the root system, how compaction from heavy construction equipment will affect the significant pine and oak trees and how a permanent paved driveway extending from the trunk of the pine and over its drip line will affect its long-term survival and the long-term survival of the riparian area.

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The Commission finds and determines that the criterion for riparian preservation concerning retention of trees to the greatest extent feasible has been met. A Tree Protection Plan and arborist's reports have been provided to address protection of the trees to be retained on and adjacent to the site. These materials note that Tree #1, a 28-inch Ponderosa Pine within the Grandview Drive right-of-way and the Riparian Protection Zone, merits special attention given the proximity of the driveway access to the tree's trunk.

The project arborist, Tom Myers of Upper Limb-It, notes that Grandview Drive and associated gravel driveways are already in use within the tree's protection zone. He indicates that the protection zone will need to be adjusted to the edge of the existing road improvement rather than the typical installation, which would require fencing to the full extent of the 28-foot radius of the tree protection zone. Myers also indicates that an arborist will need to be on-site when paving begins to ensure that all necessary precautions are taken to protect the tree. Myers recommends that paving of the driveway be done with minimal grading to minimize root damage, noting that it would be preferable to raise the grade of the road surface within the tree's protection zone rather than cutting and filling to achieve the desired road surface. Myers also recommends that equipment be kept away from the trees trunk in order to avoid structural damage, and he indicates that if these precautions are taken the tree should survive the proposed construction without damaging its health. The application materials note that the engineered design proposed was developed based on these recommendations.

The Tree Commission reviewed arborist Myers' recommendations at their meeting of October 8, 2009. They were in general concurrence, emphasizing that a permeable material should be used within the tree protection zone and that the driveway should be installed at surface grade within the tree protection zone. The Commission also recommended that the tree be pruned to 13-feet 6-inches above the finished driving surface prior to site work to provide adequate vehicular and fire apparatus clearance. In their discussion, Tree Commissioners noted that Ponderosa Pines are generally better able to handle construction and compaction when traffic is concentrated closer to the trunk where stabilizing roots are located, and that this could be preferable to having traffic and compaction concentrated more to the outer, smaller feeder roots. The Tree Commission had additional recommendations with regard to the project's Tree Protection, specifically that tree protection fencing be provided along the west property line to protect trees on the property to the west, at 507 Grandview Drive, from impacts relating to driveway construction and that tree preservation and protection measures listed in the arborist's recommendations be followed during driveway construction adjacent to this property. A condition has been included below requiring that a revised Tree Protection and Preservation Plan be provided incorporating the recommendations of the Tree Commission.

8) The City violates ALUO 18.62.075 requiring that "the general topography of riparian preservation lands shall be retained" because, among other things, the new proposals (placing 743 square feet of driveway in the protected riparian corridor and 275 square feet below the top of the bank of the creek) will decimate the topography of the riparian area which is in the city-owned right-of-way. It's incomprehensible that the City spends time/money/energy restoring the fish-habitat of lower Wrights Creek, while at the same time relinquishing the City-owned (right-of-way)

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Wrights Creek riparian corridor at Grandview Drive, to destructive private development, which development will cause irretrievable harm by reducing shade and wildlife habitat, increasing sediment flow into the Creek and increasing water temperature, among other things.

The Commission finds and determines that the criterion for riparian preservation concerning retention of the general topography has been met. The City-owned right-of-way predates current regulations and provides the only available access to the subject property. As indicated on the applicants' grading plan, prepared by a licensed professional engineer, the proposal generally maintains the existing grade and topography. As noted in the Council findings for the previous approval, absolute *in situ* preservation of Riparian Preservation Lands is not required the Code and alteration is permitted under many specific elements within the Development Standards for Flood Plain Corridor Lands and to require otherwise would render the standards themselves moot. Findings concerning this criterion are incorporated herein by this reference.

9) The City fails to enforce ALUO 18.62.070 and violates the NPDES Phase II permit when it fails to find that the toe of the fill will be kept at least 10 feet out of floodway channels and when it fails to determine how much fill is being used. Is a removal/fill permit required? There is no finding about how the development will affect flow of surface waters and bank erosion.

As with the prior application the Planning Commission finds and determines that the floodway channel is located well below the top of the bank and that the proposed driveway improvements are located much more than 10 feet from the "channel". ***Broderson v. City of Ashland 55 Or LUBA 350, 365 (2007)***. Also, the Land Use Board of Appeals agreed with the City that there is no requirement in ALUO 18.62.075 (A)(3) for quantification of the amount of fill to be used. As noted above, no floodway channel is defined for this tributary of Wrights Creek as determined by the scientific and engineering studies conducted by FEMA and referenced as the basis for a floodway determination in AMC Chapter 15.10. An analysis by the Applicants' engineer, Thornton Engineering, Inc. has determined that the area of disturbance is more than 20 feet beyond the flood plain boundary, which would also place it more than 20 feet from the floodway channel.

The Development Standards for Flood Plain Corridor Lands expressly provide for the use of off-site fill within the limitations of AMC 18.62.070(A)(3). Off-site fill in the form of aggregate base, paving materials, and fill associated with approved public and private street and driveway construction are expressly permitted without a specific limitation on the amount of fill used for these purposes beyond that it be "kept to a minimum." In this instance, all fill proposed within the Riparian Preservation and Flood Plain Corridor Lands in the application is limited to these purposes and is being used to construct a paved driveway to minimum city standards within the existing right-of-way, which already accommodates a gravel driveway. This fill is to be installed at the existing ground level, except within the tree protection zone. To accommodate the tree protection recommendations of the project arborist the driveway may be above ground level in the tree protection zone; the arborist's recommendations were supported by the Tree

Commission in their review and were incorporated into the engineered plans. The engineered plans clearly demonstrate that the proposed fill in the Flood Plain Corridor has been kept to a minimum by showing how the proposed driveway will be installed and showing the associated grading and erosion control measures. demonstrate. The findings concerning this issue are incorporated herein by this reference.

10) The City engages in an unconstitutional taking of property when it allows applicant's proposed driveway to be constructed over a public city-owned right-of-way, which right-of-way provides in part, unobstructed access to tax lot #411. Ingress and egress for tax lot #411 onto Grandview Drive was approved by the City when tax lot #411 was created by partition years ago. Further, because Applicant's property is located to the west and sits significantly below tax lot #411, there is a blind area at the point where a vehicle from tax lot #411 will enter the public right-of-way. In other words, both driveways will meet at a "V". If the applicant's driveway is constructed as proposed this will create a dangerous intersection where a vehicle from applicant's property could collide with a vehicle entering from tax lot #411 because of vision clearance issues. Other issues the City hasn't addressed include: who will be liable in the event of an injury on that area of the driveway located in the public right-of-way which would have to be used for ingress and egress to both tax lot #411 and applicants' property. Who will be responsible for maintaining that area of the driveway? Note that the City found "problems with access to the lot," in 1982 in advising a minor land partition. The City is compounding the problem it was instrumental in causing by previous code-violating actions.

The Commission finds and determines that the Land Use Board of Appeals rejected Broderson's similar argument regarding Tax Lot 412. *Brodersen v. City of Ashland*, 55 Or. LUBA 350, 368-369 (2007). The Planning Commission finds and determines, that like access to Tax Lot 412, access to Tax Lot 411 will not be blocked or precluded. The encroachment permit does not grant Applicant's exclusive use of the public right of way. As was stated by LUBA, Appellant does not own the right of way and there can be no taking of Appellant's property. Specifically, imported materials for driveway construction are to be placed at original ground elevation, as noted and illustrated on the grading plan provided. With these improvements installed at the original ground level, and within public right-of-way, it does not appear that physical access to tax lot #411 would be obstructed beyond any already existing topographic obstruction. While the driveway improvements proposed are to be installed to provide access to the applicants' parcel, they are located within public street right-of-way and no easement would be required for the owners of tax lot #411 to cross them in gaining access to their property. Landscape improvements within the right-of-way just south of the frontage of tax lot #411 outlined in the applicants landscape plan submittal could present a barrier to future vehicular access to that site, and as such, a condition of approval has been recommended to require that these plant materials be removed from a revised landscape plan to be provided before building permit approval. The driveway installation would be subject to a demonstration of compliance with the vision clearance requirements of the ordinance at building permit. This would limit the height of obstructions within a ten foot triangle around the property corner, and it would be the applicants' responsibility to maintain the driveway as approved. In the event of an accident, the police and/or the court system would make an ultimate determination of liability following investigation of the specifics of the incident in light of applicable laws in place at the time.

11) All assignments of error appeal to LUBA which LUBA did not decide or which LUBA denied because said

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assignments of error were not ripe for decision or were considered dicta for appeal (Final Order for LUBA No. 2007-162) are hereby incorporated by reference and considered part of this appeal to the Planning Commission.

Neighbor Bonnie Brodersen, the Appellant, made eight assignments of error in her brief to the Land Use Board of Appeals (LUBA). Of those eight assignments of error, only four challenged the City's findings that the applicant complied with the Physical & Environmental Constraints Review Permit criteria. LUBA agreed with the City that there was substantial evidence to support the City's interpretation on each one of those assignments of error.

Ms. Brodersen had challenged whether the plan submittal requirements detailed in AMC 18.62.040(H)(1)(m), (n) and (q) were met. Those provisions require:

- m. Accurate locations of all existing natural features including, but not limited to, all trees as required in 18.62.080.D.1, including those of a caliper equal to or greater than six inches d.b.h., native shrub masses with a diameter of ten feet or greater, natural drainage, swales, wetlands, ponds, springs, or creeks on the site, and outcroppings of rocks, boulders, etc. Natural features on adjacent properties potentially impacted by the proposed development shall also be included, such as trees with driplines extending across property lines. In forested areas, it is necessary to identify only those trees which will be affected or removed by the proposed development. Indicate any contemplated modifications to a natural feature.*
- n. The proposed method of erosion control, water runoff control, and tree protection for the development as required by this chapter.*
- q. Location of all areas of land disturbance, including cuts, fills, driveways, building sites, and other construction areas. Indicate total area of disturbance, total percentage of project site proposed for disturbance, and maximum depths and heights of cuts and fill.*

LUBA denied this assignment of error, noting that the application was limited in scope and did not apply to the development of the entire subject property but rather only the limited portion within the riparian/floodplain area that was subject to the Physical & Environmental Constraints Review Permit. LUBA then concluded that the appellant had failed to explain why more information was needed to address specific approval criteria than was provided on the plans.

With the current modification proposal, the Applicants have provided a site plan and supporting topographic surveys identifying trees and natural features on and adjacent to the site, and a tree protection plan and supplementary recommendations from the project arborist detailing measures necessary to provide tree protection; therefore, the requirements of AMC 18.62.040(H)(1)(m) have been satisfied. To comply with 18.62.040(H)(1)(n), Erosion Control plans have also been provided from the project engineer specifying construction entrance preparations, inlet protection, sediment fencing placement, drainage ditches, and wattle/fiber roll installation necessary to address erosion and run-off. The Grading Plan meets the requirements of AMC 18.62.040(H)(1)(q) because it clearly specifies the area of disturbance as 743 square feet within the Riparian Protection Zone; although this is not specified as a percentage of the site area because the bulk of this disturbance is within the right-of-way rather than on the site. The plan notes further address 18.62.040(H)(1)(q) as well as the Development Standards for Flood Plain

Corridor Lands in 18.62.070(A)(3) because they clearly indicate that all imported material is to be placed at the original ground elevation so that there will be no excess fill which would impede flood waters, and this is supported with the grading details and section drawings provided.

In addition to those arguments the Appellant included four additional assignments of error that did not involve the criteria for a Physical & Environmental Constraints Review permit. LUBA found that appellant's argument that Chapter 18.62 of the Land Use Ordinance was in violation of the state's Goal 5 was a collateral attack and the argument was therefore barred. LUBA then stated that it did not have to decide the three remaining assignments of error because the arguments made were not specific to a Physical & Environmental Constraints Review permit. Because the current appeal request is again a challenge to a Physical & Environmental Constraints Review permit, these assignments of error are not related to the request being considered by the Commission, or the applicable approval criteria, and are not further addressed here.

#### February 8, and February 9, 2010 letters by Bonnie Brodersen

This Planning Action [PA-2009-00726] was scheduled to be heard by the Planning Commission at a public hearing at the February 9<sup>th</sup>, 2010 regular meeting. The appellant, neighbor Bonnie Brodersen, submitted a letter raising a number of issues including:

- That mailed notices of the hearing were not received by neighboring property owners.
- That the placement of the public notice sign on the property was not clearly visible from the adjacent right of way due to topography, vegetation, and the configuration of the lot relative to the right of way.
- That the previous land use approval (PA #2006-01784) expired on February 7<sup>th</sup>, 2010 (prior to the February 9<sup>th</sup> hearing date) and could thus not be modified or amended.

In order to allow for full consideration of the issues raised by Ms. Brodersen, and to allow a re-noticing of the hearing to eliminate any question of noticing irregularities, the Applicants asked that the February 9<sup>th</sup> hearing be postponed. Concurrently with this request, the Applicants provided an additional 60-day extension to the 120-day time limit.

The requisite mailed notices for the rescheduled April 13<sup>th</sup> hearing were mailed to surrounding property owners within the prescribed timeframe. Notice of the hearing was also published in the Ashland Daily Tidings as required by ordinance. In addition to the required sign which was posted on the subject property in a location selected for better visibility from the Grandview Drive right-of-way, a second sign (*not required by ordinance*) was also placed at the intersection of Grandview and Wrights Creek Drives as requested by the Appellant. The Planning Commission finds and determines that the Applicants' request for postponement in response to Appellant's claims and the subsequent efforts to ensure proper notice was provided for the

rescheduled hearing have more than adequately addressed any noticing concerns and the allegations of substantial prejudice raised by the appellant.

#### April 13, 2010 Memorandum and Supplement by Bonnie Brodersen

1. City erred when it reviewed this matter as a modification of Applicants' Permit. The Code does not provide for modifications only for "conditions of approval". There is no Code provision which allows for this Permit to be modified. To change the permit, requires a new application.

The Commission finds and determines that PA 2009-00726 is herein approved as a new application, independent of the continued validity of PA 2006-01784. Notwithstanding this finding, the application *can also* be approved as a modification because the prior approval continues with a time extension approved on April 8, 2010. [PL-2010-00435] [See LUBA 2010-038] and the conditions of approval which incorporate the entire proposal can be modified. The findings set forth above are incorporated herein by this reference.

2. City errs when it reviews this action as a "modification of a previously approved Physical and Environmental Constraints Review Permit" because the Permit had expired (was revoked) at the time Applicants' requested the "modifications". This must be reviewed as new application for Physical and Environmental Constraints Review Permit (hereinafter P&E Permit) as described above.
  - a. Planning Staff acted egregiously when it violated the code by granting Applicants an extension after the Permit had expired in violation of AMC.

Commission finds and determines that the independent approval of PA 2009-00726 as a new application makes this argument moot. Notwithstanding that fact, appellant is untimely in her challenge to the 2008 time extension. If Appellant believed this 2008 time extension required the exercise of interpretation or discretion, she should have timely appealed that decision. *Hardtla v. City of Cannon Beach*, 183 Or App 219 (2002). That time extension, and the validity of 2006-00726 may not be collaterally attacked in this application. Specifically, the "error" referred to is in fact an attempt to appeal a previously approved ministerial action which extended the applicants' original land use approval, and which was not appealed - or what is often referred to as a "collateral attack." AMC 18.112.030 notes that planning actions are deemed revoked if not used within one year from the date of approval, unless another time period is specified in another section of the Land Use Ordinance. The previous land use approval was extended as a ministerial action as specified in another section of the ordinance, in AMC 18.108.020.A, which empowers the Staff Advisor to review and approve the extension of time limits of approved planning actions as provided in AMC 18.112.030. The applicants made application for an 18-month extension as Planning Action #2008-01250 on July 30, 2008 and paid the required fee for a ministerial action on August 6, 2008 - prior to the previous approval's expiration on August 7, 2008. This extension request was reviewed and approved by the Staff Advisor. On August 20, 2008 - within 21 days of the extension being requested, and thus within the timeframe allowed by ordinance - written notice of the extension's approval was provided to the applicants. As explained in AMC 18.108.070.A, ministerial actions are effective on the date of the decision of the Staff Advisor and are not subject to appeal. To challenge a ministerial action, the appellant would need to have raised the issue before the Land Use Board of Appeals

or in Circuit Court within 21 days of becoming aware of what she believed to be an error. While this issue was raised by the appellant in her hearing request to the city in November, indicating that she was aware of it, no attempt has been made to address that alleged error through proper legal channels within the time limits prescribed by law and as such the ministerial action's approval by the Staff Advisor may not be challenged through this decision. The City Council subsequently amended AMC 18.112 to clarify that submission of the extension request prior to expiration preserves the approval – rejecting Appellant's interpretation of the section.

3. The City errs when it cites and applies to the application a revoked ordinance (ORD 2951, 2008) rather than NEW ALUO (ORD 2998, 2009) as its legal authority in this matter. (See Notice to Appellant Brodersen and other neighbors for City's citation to ORD 2951.)

The Commission finds and determines that the applicable law for this application is the City of Ashland land use law in effect on the date the application was deemed complete [September 23, 2009]. The ALUO amendment referred to by Brodersen [Water Resources Ordinance] was enacted after the date the application was deemed complete and is not required to be applied to the application. The findings set forth above are incorporated herein by this reference.

4. Applicants propose development on property which is a Wildfire Land, Hillside Land, Flood Plain Corridor Land and Severe Constraint Land according to City maps. The City has made no finding that the requirements for development on these lands, regulated by new ordinances, have been met.

The Commission finds and determines, consistent with Council's previous findings, that the land classifications that apply are only those which pertain to those portions of the land being developed, and not necessarily the whole parcel. [ALUO 18.62.050.F.] The application is for a Physical and environmental constraints permit for floodplain and riparian preservation lands because development is proposed on such lands. Other lands, such as severe constraints lands, are not proposed for development. The findings set forth above are incorporated herein by this reference.

5. Applicants propose development, to construct a 20' wide driveway and place utilities in Wrights Creek and on a city street (Grandview Drive), in a Water Resource Protection Zone – Wrights Creek – which development increases the amount of construction in the Water Resource area by more than double over their previous application. The ALUO standard is a 40 foot setback from the centerline of Wrights Creek.

The Commission finds and determines that the applicable law for this application is the City of Ashland land use law in effect on the date the application was deemed complete [September 23, 2009]. The ALUO amendment referred to by Brodersen [Water Resources Ordinance] was enacted after the date the application was deemed complete and is not required to be applied to the application. The findings set forth above are incorporated herein by this reference.

6. The City errs as a matter of law when it finds, contrary to the evidence, that the property is a legal lot.
  - a. Introduction: Applicants unit of land was created by Partition and by a Subdivision variance in 1979 by Planning Action #79-110. It did NOT comply with all applicable laws at the time it was created.

**ASHLAND PLANNING COMMISSION FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

The unit of land had a width of 85' and a depth of 295'. In 1979 ALUO 17.08.040(A) provided that the maximum depth for a lot was 150 feet.

- b. At the time of the Partitioning, use of a survey and a Minor Land Partition were not recognized for division of land. A deed had to be recorded with metes and bounds description of lots created by a Minor Land Partition in Jackson County. Further the City did not have jurisdiction to approve a partition of property located, in part, the county – beyond the city boundary.
- c. The minor land partition violated provisions of the AMC.
- d. The Final Plat – The Ashland Planning Commission gave preliminary approval for a partition-subdivision on September 14, 1979. A survey was done eleven months later in August, 1980. The AMC required that a survey be done within 6 months of preliminary approval. The relevant 1979 Code provision provided.
- e. The Plat was not timely filed as required by ordinance and is null and void.
- f. Other issues: An ordinance in effect in 1979 required the city engineer to “determine whether the subdivision as shown is substantially the same as it appeared on the approved preliminary plat and that there has been compliance with provisions of the law and of this code”..... Applicants have called this issue a collateral attack on a previous final decision.....
- g. Other issues: Stormwater / Driveway built on embankment / = Page 17

The Commission finds and determines, consistent with Council’s previous findings, that the determination of legal lot status is not a criterion for approval of a physical and environmental constraints permit. Appellant argues that because the Physical and Environmental Constraints chapter uses the word “lot” the definition of the word “lot” invites inquiry into the lot’s creation. Lot is defined in Chapter 18 as follows:

**18.08.350 Lot**

A unit of land created by a partition or a subdivision, or a unit or contiguous units of land under single ownership, which complies with all applicable laws at the time such lots were created. Any contiguous ownership of non-conforming lots will be considered one (1) tract of land. (Ord. 2097 S1, 1980)

The Commission finds and determines that the definition of the word “lot” does not invite a collateral attack on prior unappealed partition and subdivision decisions merely because it acknowledges that laws regarding partitioning and subdivision change over time. Further, for purposes of issuance of a physical and environmental constraints permit, the Code requires that such permit *shall* be issued if the application demonstrates compliance with the criteria for approval in ALUO 18.62.040.I as follows:

- I. Criteria for approval. A Physical Constraints Review Permit shall be issued by the Staff Advisor when the Applicant demonstrates the following:**
  - 1. Through the application of the development standards of this chapter, the potential impacts to the property and nearby areas have been considered, and adverse impacts have been minimized.**
  - 2. That the applicant has considered the potential hazards that the development may create and implemented measures to mitigate the potential hazards caused by the development.**

3. **That the applicant has taken all reasonable steps to reduce the adverse impact on the environment. Irreversible actions shall be considered more seriously than reversible actions. The Staff Advisor or Planning Commission shall consider the existing development of the surrounding area, and the maximum permitted development permitted by the Land Use Ordinance.**

The word “lot” is not used in the approval criteria for a physical and environmental constraints permit. When the term “lot” is used in the Flood Plain Corridor standards it is in relation to obtaining fill from the portion of the lot within the floodplain. This usage does not implicate the legality of the lot in any way. Again, the determination of legal lot status is not a criterion for approval of a physical and environmental constraints permit. The City Council previously found that the lot was legally created. The findings set forth above are incorporated herein by this reference.

7. Tree Ordinance: The information given to the Tree Commission and shown on the Applicants maps was that the driveway would not be closer to the Ponderosa Pine than the edge of the Ponderosa Pine dripline. In actuality, Applicants placement of the shakes has the shows the width of the driveway from the dripline to within a foot of the base of the Ponderosa Pine tree.

The Commission finds and determines that the evidence in the record, including specifically the “Specifications for Tree Preservation During Construction” will result in the retention of the Ponderosa Pine tree to the greatest extent feasible. The findings set forth above are incorporated herein by this reference.

Topography cannot be maintained.

The findings set forth above concerning retention of the general topography are incorporated herein by this reference.

8. Applicants proposal will negatively affect entry onto Grandview Drive from TL #411 and the City/Applicants need to indemnify Appellant for any extra expense or unforeseeable problems with access to Grandview Drive from TL 411 because of the proposed construction of a private driveway on the Grandview Drive Street.

The Commission finds and determines that the Land Use Board of Appeals rejected Brodersen’s similar argument regarding Tax Lot 412. *Brodersen v. City of Ashland*, 55 Or. LUBA 350, 368-369 (2007) The Planning Commission finds and determines, that like access to Tax Lot 412, access to Tax Lot 411 will not be blocked or precluded. The encroachment permit does not grant Applicant’s exclusive use of the public right of way. As was stated by LUBA, Appellant does not own the right of way and there can be no taking of Appellant’s property. The findings set forth above are incorporated herein by this reference.

April 20, 2010 Addendum by Bonnie Brodersen

1. This is a new application as outlined in my memo of April 13<sup>th</sup>, it is incomplete (an application cannot be “accepted” by the Planning Dept. until it is complete) and it must meet the development standards of the **ASHLAND PLANNING COMMISSION FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**
- Page -38-

AMC. ....there is no Report or application comments from the Applicants in the Record, so it is unclear where the information in the Staff Report came from.

The Commission finds and determines that the application was deemed complete on September 23, 2009. The applicable law is as set forth in the findings set forth above.

2. The City cannot grant a ministerial extension to a permit that was the result of a Type I procedure without giving notice and an opportunity for a hearing, especially when land use ordinances have changed.

The Commission finds and determines that the Recession Extension Ordinance was a lawful legislative enactment of the Ashland City Council which was not timely appealed and has been acknowledged. The Appellant did not participate in the legislative process and cannot collaterally attack the enactment in these proceedings. The independent approval of PA 2009-00726 makes this argument moot.

3. Applicants Private Driveway Section Map still shows the driveway crossing TL 411.

The Commission finds and determines that the record reflects the applicant has no intention of crossing Tax Lot 411.

4. Design Standards for Driveways: Damage to TL 411 ingress and egress.....

The Commission finds and determines that guidelines for driveway design are not approval criteria for physical and environmental constraints permit. Notwithstanding this finding the application demonstrates compliance with driveway standards in the area of the physical and environmental constraints permit and the construction of such is feasible based upon the detailed plans in the record.

5. Legal Lot: The Plat signed by Jim Olsen was inaccurate: at the top it says "Minor Land Partition Located in ...the City of Ashland." The largest parcel (a little less than 5 acres) is located in Jackson County and not within the Ashland city boundary.....

The findings set forth above concerning legal lot are incorporated herein by this reference.

6. State and Federal laws apply to Wetlands:
  - a. Both State and Federal laws require that any lost wetland habitat must be made up when development causes such loss. There is nothing in the Record demonstration how Applicants will do this, .....
  - b. Applicants landscape architect stated at the April 13<sup>th</sup> Commission hearing that there will be runoff from the driveway – that a permeable driveway does not prevent runoff, when it becomes saturated.....
  - c. The City violates ORS 509.585 and CWA when it proposes placing a driveway in Wrights Creek.....
  - d.. To restore our salmon habitat and preserve our riparian habitats, .....
  - e. Since the proposed development is on City-owned property, it follows that the City will be responsible for Federal and State Removal and Fill Permits. There needs to be a very accurate

assessment of the amount of removal and fill being used in the Grandview Drive area, but the Planning Department glosses over this issue and refuses to make a finding on fill.

The Commission finds and determines that state and federal laws such as the Clean Water Act, the National Pollution Discharge Elimination System and wetland protection are not approval criteria for a physical and environmental constraints permit.

7. The driveway turnaround placed on Hillside Lands, does not meet the standards of the city-approved/state approved driveway turnarounds.

The Commission finds and determines, consistent with Council's previous findings, that the land classifications that apply are only those which pertain to those portions of the land being developed, and not necessarily the whole parcel. [ALUO 18.62.050.F.] The application is for a Physical and environmental constraints permit for floodplain and riparian preservation lands because development is proposed on such lands. Other lands, such as Hillside Lands are not proposed for development. The findings set forth above are incorporated herein by this reference.

8. The AMC requires that Grandview Drive be developed to street standards when four properties are served.

The Commission finds and determines, consistent with Council's previous findings, that site design review is not required for a single family dwelling and that this criterion is not applicable to physical and environmental constraints permit. The findings set forth above are incorporated herein by this reference.

9. The City has relied totally on the report of Applicants engineer concerning whether standards for development in a floodway channel have been met and whether development will occur in a floodway channel. City has made no independent finding concerning this issue. The City has failed to look for historical evidence of flooding in this area, which occurred in 1997. A simple phone call to people living in the area would provide that historical evidence.

The Commission finds and determines based on the competent evidence in the record, and consistent with Council's previous findings and interpretation of its own ordinance, that the standards for Flood Plain Corridor protection for fill are met. The findings set forth above are incorporated herein by this reference.

10. The City in its staff report fails to explain how imported materials for fill are at "original ground elevation" when they also state that the "disturbance in Grandview Drive is at most one to four feet above the existing grade."

The Commission finds and determines that the Code requires both the protection of the Ponderosa Pine to the greatest extent feasible and the maintenance of the general topography. Neither standard is absolute and both are achieved by the current application. The findings set forth above are incorporated herein by this reference.

**ASHLAND PLANNING COMMISSION FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

11. Grading Plan does not show existing topography will be maintained.

The findings set forth above concerning retention of the general topography are incorporated herein by this reference.

## VI. ORDER

The Planning Commission finds and determines that the applicants have carefully considered the proposed development in terms of the potential impacts to the property and nearby areas, and adverse impacts have been minimized. Potential hazards that the development may create have been identified and considered, and the plans submitted identify measures to mitigate any potential hazards that might otherwise be created. The applicants have taken all reasonable steps to reduce the adverse impacts of the proposal on the environment. The proposal preserves and protects the large Ponderosa Pine, and the improvements proposed are limited to those necessary to provide access and utilities to a single family home on a single family residentially-zoned lot from the only adjacent, existing street right-of-way available to provide utilities and vehicular access. The driveway is proposed at the minimum widths and clearances allowed under city standards, is to be installed in permeable materials, and grading and erosion control plans have been provided demonstrating the efforts to be made both to minimize fill and control erosion. In addition, the applicants have provided a flood analysis prepared by a licensed professional engineer to demonstrate that the area to be disturbed is more than 20-feet beyond the 100-year flood plain boundary, is not located within a flood hazard area or floodway, and has been designed not to impede floodwaters regardless of the frequency of the flood-event.

In sum, the Ashland Planning Commission concludes that the request for a Physical and Environmental Constraints Review Permit, represented in Planning Action 2009-00726, to develop in the Wrights Creek Floodplain and Riparian Preservation Area, the improvement (grading and paving) and widening of a portion of an existing driveway, as modified to avoid Tax Lot 411, re-grading of a portion of Grandview Drive and extension of utilities to serve a future single-family residence for the property located at 720 Grandview, within the City of Ashland, Jackson County, Oregon is in compliance with all applicable approval criterion. Further, the Planning Commission finds and determines that the Assignments of Error in LUBA case 2007-162, and LUBA case 2004-201, as they remain applicable to the new development application processed and approved herein, are herein addressed and decided.

Accordingly, based on the above Findings of Fact and Conclusions of Law, and based upon the evidence in the whole record, the Ashland Planning Commission hereby APPROVES Planning Action #2009-00726, subject to strict compliance with the conditions of approval, set forth herein. Further, if any one or more of the conditions below are found to be invalid, for any reason whatsoever, then Planning Action #2009-00726, is denied. The following are the conditions and they are attached to the approval

1) That all conditions of Planning Action #2006-01784 shall be conditions of approval

**ASHLAND PLANNING COMMISSION FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

- unless otherwise modified herein.
- 2) That all proposals of the applicant are conditions of approval unless otherwise modified herein.
  - 3) That a revised landscape and irrigation plan shall be submitted with the building permit. Plant materials which would impede vehicular access to Tax Lot 411 shall be removed from this plan. The landscaping shall be installed and irrigated prior to issuance of the certificate of occupancy.
  - 4) That the recommendations of the Tree Commission's October 8<sup>th</sup>, 2009 meeting shall be incorporated in a revised Tree Protection Plan to be submitted for the review and approval of the Staff Advisor prior to issuance of a building permit. These recommendations are: 1) that the applicants install tree protection fencing along the west property line where proposed driveway is adjacent to the trees on the neighboring property directly west; 2) that the measures outlined in narrative of the Tree Protection and Preservation Plan shall be implemented during excavation and construction of the driveway near west property line at location of neighbor's shed to where driveway turns back east; 3) that the Ponderosa Pine tree within public right-of-way shall be pruned prior to sitework to provide adequate vehicular clearance (13-feet 6-inches above driving surface); 4) that a paver system, cold-mix asphalt/concrete mix, gravel or similar material shall be used under the dripline of the Ponderosa Pine where the driveway encroaches into the dripline area; and 5) that the driveway shall be installed at surface grade within the dripline of the Ponderosa Pine. In addition, unless the applicants can provide evidence of agreement from the neighbors to the north and east allowing the installation of the proposed tree protection fencing for Trees #7 and #8 on their respective properties, the Tree Protection Plan shall be modified to reflect placement of the fencing necessary to protect these two trees solely on the applicants' property.
  - 5) That prior to the issuance of a Certificate of Occupancy, the requirements of the Fire Department shall be satisfactorily addressed including: approved addressing; fire apparatus access including angle of approach, shared access agreements, turn-around, and approval of any gates or fences; firefighter access pathway; fire flow; fire hydrant distance to structures; and fire department work area. Temporary addressing must be in place prior to any sitework, and an approved "fuel break" must be in place prior to bringing combustible materials onto the site.
  - 6) That a Tree Verification inspection shall be applied for and approved by the Staff Advisor prior to site work, storage of materials or building permit issuance. This Verification Permit is to inspect the correct identification of the two dead poplar trees to be removed and the installation of tree protection fencing for the trees to remain on and adjacent to the site. The tree protection shall consist of chain link fencing six feet tall and installed in accordance with 18.61.200.B. Property lines shall be clearly identified within and adjacent to the tree protection zones at the time of inspection.

The conditions of approval for PA #2006-01784 are as follows:

- 1) That all proposals of the Applicant are conditions of approval unless otherwise modified here.

**ASHLAND PLANNING COMMISSION FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

- 2) [*Condition 2 concerned provision of an access easement on adjacent property and is no longer applicable given the redesign*]
- 3) That the area of disturbance for the private storm drain trench shall be landscaped to prevent erosion, and shall be addressed in the landscape plan submitted with the building permit submittals.
- 4) That a landscape and irrigation plan to re-vegetate the area between the driveway and the top of the bank shall be submitted with the building permit. The landscaping shall be installed and irrigated prior to issuance of the certificate of occupancy.
- 5) That the storm drainage from the roof and driveway shall be directed to a retention and water quality treatment system including but not limited to a planter box, vegetative swale or a filter strip. The retention and water quality treatment system shall be reviewed and approved by the Ashland Engineering and Building Divisions.
- 6) That the public utility trench and lines shall be moved away from the top of bank of Wrights Creek as far north as possible without disturbing the row of trees in the right of way and allowing for adjustments during the issuance of the encroachment permit.
- 7) That an encroachment permit from the Ashland Public Works Department for driveway improvements in the Grandview Dr. right-of-way shall be obtained prior to site disturbance and construction in the Grandview Dr. right-of-way.
- 8) That the building permit submittals shall demonstrate compliance with the maximum lot coverage requirement of 40 percent for the R-1-10 zoning district in accordance with 18.20.040.F.

**ASHLAND PLANNING COMMISSION**

\_\_\_\_\_  
 Pam Marsh, Planning Commission Chair

Signature authorized and approved by the full Commission this 8<sup>th</sup> day of June, 2010

Approved as to form:

\_\_\_\_\_  
 Ashland City Attorney

Date: \_\_\_\_\_

# Memo

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**DATE:** June 8th, 2010  
**TO:** Ashland Planning Commission  
**FROM:** Derek Severson, *Associate Planner*  
**RE:** 1644 Ashland Street  
PA 2009-01244

At the May 11<sup>th</sup> Planning Commission meeting, the opponents of PA #2009-01244 asked that the record remain open for seven days for the submittal of additional written comments. At that time, the applicants' representative indicated that they did not wish to request an additional seven days for the submittal of written argument. However, **ORS 197.763(6)(c)** provides that:

- c) *If the hearings authority leaves the record open for additional written evidence, arguments or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the local government for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings authority shall reopen the record pursuant to subsection (7) of this section (emphasis added)*

**ORS 197.763(7)** further provides that:

- 7) When a local governing body, planning commission, hearings body or hearings officer reopens a record to admit new evidence, arguments or testimony, any person may raise new issues which relate to the new evidence, arguments, testimony or criteria for decision-making which apply to the matter at issue.

On May 26<sup>th</sup>, the applicants filed a written request asking that the Planning Commission reopen the record for the presentation of additional evidence and written arguments in response to additional evidence presented after the close of the public hearing. While this request was made to reopen the record for seven days from May 26<sup>th</sup> to June 1<sup>st</sup>, because the ORS authority to reopen the record lies with the Planning Commission and because the reopening of the record allows new submittals from any person in response to new evidence since the close of the May 11<sup>th</sup> hearing, staff informed the applicants that this request would be considered at the June 8<sup>th</sup> meeting of the Planning Commission.

After consultation with the City Attorney, it appears that the Planning Commission is obligated under the ORS to honor the request to reopen the record to admit new evidence which responds to new evidence submitted since the hearing closed. This would allow any person to provide new submittals responding to new evidence submitted after the hearing closed on May 11<sup>th</sup>. **As such, staff would recommend announcing that while the hearing remains closed, the record has been re-opened for written submittals responding to new evidence submitted since the May 11<sup>th</sup> hearing was closed. New submittals will be accepted until 4:30 PM on Wednesday, June 16<sup>th</sup> and deliberations on this application will be continued until a special meeting to be held on June 22<sup>nd</sup>.**

Approximately twenty items (e-mails and written submittals) were received subsequent to the close of the record as well, and the Commission may wish to determine at this time whether to admit those items into the record now with the re-opening.





**Goodman Networks**

Network Knowledge... Delivered.

May 26, 2010

Derek Severson  
City of Ashland, Oregon  
Planning Division  
20 E. Main Street  
Ashland, Oregon 97520

Re: PA2009-001212

Dear Derek:

Pursuant to ORS 197.763(6)(c) and ORS 197.763(7), AT&T Mobility hereby requests that the Planning Commission reopen the record in this matter for the presentation of additional evidence in response to the additional evidence that was presented after the conclusion of the public hearing on May 11, 2010.

Due to the volume of additional evidence that was filed and made available to AT&T two days ago on Monday, May 24, 2010 at 3:51 p.m., AT&T will file its additional evidence on or before Tuesday, June 1, 2010.

In addition, AT&T would like to reserve its right under ORS 197.763(6)(e) to present final written arguments in support of the application. Any final written argument will be filed with the additional evidence on or before June 1, 2010.

Thank you for your assistance. If you have any comments or questions, please contact me at 503.207.1724.

Very truly yours,

Breah Pike-Salas

Cc: Rich Busch  
Gerl Roper, AT&T

**RECEIVED**

MAY 26 2010

City of Ashland  
Field \_\_\_ Office \_\_\_ County \_\_\_

## PUBLIC COMMENTS

1644 Ashland St, PA #2009-01244

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Due to the significant amount of written testimony received for this planning action, hard copies of the materials are not included in your packet.

All of the materials have been posted to the City's website and can be viewed online at:

<http://www.ashland.or.us/1644Ashland>

## **NOTICE OF PUBLIC HEARING**

This is to notify you that the City of Ashland has proposed a land use regulation that may affect the permissible uses of your property and other properties. As a result of an order of the Federal Emergency Management Agency (FEMA), the City of Ashland has proposed changes to the Physical and Environmental Constraints chapter of the Ashland Land Use Ordinance, Chapter 18.62.070 Development Standards for Flood Plain Corridor Lands and changes to the Building and Construction Code, Chapter 15.10 Flood Damage Prevention Regulations. The City has determined that adoption of these ordinance changes may affect the permissible uses of your property, and may change the value of your property. This notice, including the above statements, is required by Oregon state law. (ORS 227.186)

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On **June 8, 2010** the **Ashland Planning Commission** will hold a public hearing to take public testimony on Planning Action 2010-00560 regarding adoption of changes to the Flood Insurance Rate Map (FIRM), the City's Flood Plain Corridor Lands maps, and the ordinance amending the Ashland Municipal Code, Ashland Land Use Ordinance (ALUO) regarding **Chapter 18.62 Physical and Environmental Constraints** in Planning File 2010-00560. The meeting will be held at 7:00 p.m at the Ashland Civic Center, 1175 E. Main St., Ashland, Oregon.

On **July 20, 2010**, the **Ashland City Council** will hold a public hearing to take public testimony and for the City Council to discuss and deliberate on the proposed amendments. The City Council makes the final decision regarding adoption of changes to the Flood Insurance Rate Map (FIRM), the City's Flood Plain Corridor Lands maps, and the ordinance amendments to the Ashland Municipal Code. The meeting will be held at 7:00 p.m at the Ashland Civic Center, 1175 E. Main St., Ashland, Oregon.

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The proposed ordinance (PA-2010-00560), has been drafted to comply with Federal Emergency Management Agency (FEMA) regulations for Flood Insurance.

The proposed ordinance and Flood Insurance Rate Map changes are available for review online at [www.ashland.or.us/femaupdates](http://www.ashland.or.us/femaupdates), and at the City of Ashland Division of Community Development located at 51 Winburn Way, Ashland, OR between 8:00 a.m. and 4:30 p.m. Copies of the ordinance and file information are available for purchase if requested. For additional information concerning this ordinance, call the Ashland Planning Division at 541-488-5305.

Oral and written public testimony, regarding this matter will be accepted at the public hearing on June 8, 2010. Written statements are encouraged and may be submitted prior to the hearing date. Mail written comments to Amy Gunter, Assistant Planner, City of Ashland Department of Community Development, 20 E. Main St., Ashland OR 97520, via FAX at 541-552-2050, or via E-mail at [guntera@ashland.or.us](mailto:guntera@ashland.or.us). Failure to raise an issue in person or in writing prior to the close of the public hearing with sufficient specificity to provide the reviewing bodies opportunity to respond to the issue may preclude your opportunity for appeal on that issue.

You have received this notice because property you own is located within 75 feet of a Federal Emergency Management Agency (FEMA), flood plain corridor mapped stream. This notice is not a determination the regulations will for certain affect your property, but that the regulations may affect your property depending on various factors.

<p>In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Community Development office at 541-488-5305 (TTY phone number is 1-800-735-2900). Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting (28 CFR 35.102-35.104 ADA Title 1).</p>
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### Flood Insurance Rate Map:

- The Flood Insurance Rate Map, prepared by FEMA, is used to determine the location of the floodplain, flood insurance rates, and floodplain management.
- The majority of the original floodplain boundaries were established in 1981 through the analysis and review of aerial photography and do not accurately depict the true location of the floodplain. Detailed studies of a portion of Ashland Creek, Bear Creek and Clay Creek were completed creating base flood elevations (BFEs) which are included in the Flood Insurance Study (FIS).
- Map revisions reflect the results of a modification to the elevation datum for all streams in Jackson County including those in Ashland. These map revisions will reconfigure the floodplain and establish new base flood elevations for the creeks noted above.

### Property Owners are further advised that:

1. The above description of the proposed ordinance and its affect on property may change prior to adoption, as the hearing body takes into account testimony and evidence from the public and City staff. You are encouraged to attend the public hearing because revisions to the proposed ordinance are possible.
2. A second public hearing will be held by the City Council following the Planning Commission's public hearing on July 20, 2010. No additional mailed notice will be sent unless you either appear at the time of the Planning Commission's public hearing and file a written request for notice or submit a written request in person or by mail to the attention of Amy Gunter, at the address shown below, prior to the Planning Commission's decision and request notice of the public hearing before the City Council.

The streams that are regulated by the Physical and Environmental Constraints Ordinance are identified on the Flood Plain Corridor Maps. The proposed modifications to the Flood Plain Corridor Maps are available for review online at [www.ashland.or.us/femaupdate](http://www.ashland.or.us/femaupdate), and at the City of Ashland Department of Community Development located at 51 Winburn Way, Ashland, OR between 8:00 a.m. and 4:30 p.m. See the table below for a list of the regulated streams.

<b>Regulated Streams:</b> Ashland Creek, Bear Creek, Kitchen Creek, Neil Creek, Tolman Creek, Cemetery Creek, Clay Creek, Hamilton Creek,
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### 18.108.170 Legislative amendments

- A. It may be necessary from time to time to amend the text of the Land Use Ordinance or make other legislative amendments in order to conform with the comprehensive plan or to meet other changes in circumstances and conditions. A legislative amendment is a legislative act solely within the authority of the Council.*
- B. A legislative amendment may be initiated by the Council, by the Commission, or by application of a property owner or resident of the City. The Commission shall conduct a public hearing on the proposed amendment at its earliest practicable meeting after it is submitted, and within thirty days after the hearing, recommend to the Council, approval, disapproval, or modification of the proposed amendment.*
- C. An application for amendment by a property owner or resident shall be filed with the Planning Department thirty days prior to the Commission meeting at which the proposal is to be first considered. The application shall be accompanied by the required fee.*
- D. Before taking final action on a proposed amendment, the Commission shall hold a public hearing. After receipt of the report on the amendment from the Commission, the Council shall hold a public hearing on the amendment. Notice of time and place of the public hearings and a brief description of the proposed amendment shall be given notice in a newspaper of general circulation in the City not less than ten days prior to the date of hearing.*
- E. No application of a property owner or resident for a legislative amendment shall be considered by the Commission within the twelve month period immediately following a previous denial of such request, except the Commission may permit a new application if, in the opinion of the Commission, new evidence or a change of circumstances warrant it.*

The proposed ordinance, Frequently Asked Questions, proposed map modifications and other related information are available for review online at [www.ashland.or.us/femaupdate](http://www.ashland.or.us/femaupdate), and at the City of Ashland Department of Community Development located at 51 Winburn Way, Ashland, OR between 8:00 a.m. and 4:30 p.m. Copies of the ordinance and file information are available for purchase if requested. For additional information concerning this ordinance, call the Ashland Planning Division at 541-488-5305.

**ASHLAND PLANNING DIVISION**  
**STAFF REPORT**  
**June 8, 2010**

**PLANNING ACTION:** #2010-00560

**APPLICANT:** City of Ashland

**LOCATION:** FEMA regulated Floodplains citywide

**ORDINANCE REFERENCE:** #15.10 Flood Damage Prevention Regulations  
#18.62 Physical & Environmental Constraints

**REQUEST:** To amend the Flood Insurance Rate Maps, to amend chapter 18.62 (Physical & Environmental Constraints) of the Ashland Land Use Ordinance (ALUO) to provide consistency with Chapter 15.10 (Flood Damage Prevention Regulations) of the Ashland Municipal Code and federal regulations regarding building within the 100 year floodplain.

**I. Relevant Facts**

**A. Background - History of Application**

A Flood Insurance Study (FIS) was completed for Jackson County which evaluated flood hazards, floodway boundaries, and water surface elevations of the base flood utilizing the most current topographic information and current computer modeling of flood inundation scenarios. The result of this study is the creation of the new Digital FIRM which is to become the official map issued by the Flood Insurance Administration delineating the areas of special flood hazard.

Ashland's Land Use Ordinance and Building Code both contain requirements for construction within the 100 year floodplain and specifically reference the FIRM and FIS. The State of Oregon has reviewed Ashland's local Ordinance and has recommended a number of key definitions and code amendments for consistency with the Oregon Model Flood Damage Prevention Ordinance.

The Federal Emergency Management Agency (FEMA) is preparing to issue a letter of Final Determination to Jackson County and the City of Ashland stating that the new Flood Insurance Rate Map (FIRM) will become effective 6 months from the date of this letter. Prior to the effective date of the new FIRM the City shall have completed its local adoption process including necessary code amendments.

The City has previously held a Public Forum on April 14<sup>th</sup>, 2010 to assist residents with properties in or adjacent to regulated floodplains in understanding how the proposed FIRM changes may affect their property and associated insurance implications. The

Planning Commission reviewed preliminary FIRM maps at a study session on April 27<sup>th</sup>, 2010.

## **B. Detailed Description of the Site and Proposal**

Staff has been coordinating with FEMA and the Department of Land Conservation and Development since early 2009 regarding the FIRM updates. The following modifications were made for the FIRM update in Ashland

- Update of the “Flood Insurance Study for Jackson County and Incorporated Areas” containing the scientific and engineering data and analysis for establishing the flood zones. As the new FIS benefited from more accurate topographic information and computer flood modeling presently available, the delineated Special Flood Hazard areas including the 100 and 500 year floodplains have been modified for the FEMA regulated creeks within Ashland’s City Limits including Ashland Creek, Bear Creek, Kitchen Creek, Neil Creek, Tolman Creek, Cemetery Creek, Clay Creek, and Hamilton Creek.
- Update of the Vertical datum (or reference point) from National Geodetic Vertical Datum of 1929 (NVD) to the more current North American Vertical Datum of 1988. This has the effect of changing the flood elevations shown on the map.
- Convert paper maps to digital format. The previous paper FIRM maps were created and published in 1981 and were subject to interpretation by lenders and insurance agents due to their larger scale. Due to its digital, computerized format, the new digital FIRMs will provide a more accurate determination of a properties true flood zone status.
- Land Use Ordinance amendments to Chapter 18.62 (Physical & Environmental Constraints) to add or amend various definitions relating to flood hazards (18.62.030); revise references to the FIS and FIRM (18.62.050); amend the code to update the Development Standards for Floodplain Corridor Lands to correct the reference to the regulating Building Code (Oregon Structural Specialty Code and Oregon Residential Specialty Code) (18.62.070).
- Building Code amendments to Chapter 15.10 Flood Damage Prevention Regulations to incorporate definitions and standards as recommended for consistency with the Oregon Model Flood Damage Prevention Ordinance.

## **II. Project Impact**

### **A. Regulated Area**

The City of Ashland Physical and Environmental Constraints ordinance classifies

flood plain corridor lands as including:

- land within the FEMA 100 year Floodplain
- land within the area defined as Floodplain Corridor land in maps adopted by the Council
- All lands which have physical or historical evidence of flooding in the historical past.
- All areas within 20 feet (horizontal distance) of any stream identified as a Riparian Preservation Creek on the Physical and Environmental Constraints Floodplain Corridor Lands maps
- All areas within ten feet (horizontal distance) of any stream identified as a Land Drainage Corridor on the Physical and Environmental Constraints Floodplain Corridor Lands maps

Of these five distinct areas the proposed map changes to adopt the new Digital FIRMS only relate to the delineation of the 100 year Floodplain. The other areas which remain regulated are not modified by this planning action.

The FEMA regulated floodplains include areas along Ashland Creek, Bear Creek, Kitchen Creek, Neil Creek, Tolman Creek, Cemetery Creek, Clay Creek, and Hamilton Creek. Neighborhoods across Ashland will be affected differently by these map changes. Following the map change there will be some properties that have been mapped into a higher-risk area, some mapped into a lower-risk area, and some that are not affected. Altogether, more than 500 properties within the City Limits will show some change.

Detailed comparison maps showing the areas where the FEMA 100 and 500 year floodplain have been remapped to expand or contract are available for viewing or download at:

**[www.ashland.or.us/femaupdate](http://www.ashland.or.us/femaupdate)**

## **B. Insurance Rates**

The City of Ashland is a jurisdiction that exceeds the National Flood Insurance Programs (NFIP) minimum requirements for implementing protections in special flood hazard areas. Due to these efforts the City is ranked highly in the NFIP Community rating system which entitles residents to purchase NFIP insurance and receive a 15% reduction in flood insurance rates. Adoption of the model code language into the Municipal Code furthers Ashland's efforts to address structural and non-structural developments regulated by the NFIP and maintain Ashland's status as a participating jurisdiction.

The adjustments to the 100 and 500 year floodplain may impact flood insurance rates for individual properties within the special flood hazard areas. In cases where the land area delineated as within a flood zone is reduced as a result of the FIRM changes insurance costs could decrease. In cases where the flood zone area is increased on a property, or moved into a higher risk classification, they could see an increase in insurance premiums. In the event an increase in insurance rates is anticipated due to adjustments in the flood zone location or area property owners are well advised to

work with their insurer and the NFIP to determine if they can “grandfather” in their existing rates.

The NFIP will honor a Grandfather rule for buildings constructed after the first flood map for the community became effective if:

- the building was built in compliance with the flood map in effect at the time of construction; and
- if the building has not been substantially damaged or altered.

Under this Grandfather rule, the property owner must provide proper documentation to the insurance company. Locking in the current rate schedule is possible only prior to the effective date of the map change.

### **C. Planning Commission Deliberations**

The Planning Commission makes a recommendation on the Map amendments and Land Use Ordinance Changes to the City Council and the City Council makes the final decision. The Planning Commission does not provide review and comment regarding the proposed amendments to the Building Code (Chapter 15.10) however, this chapter is provided in the Commission packet materials as the Land Use Code amendments incorporates it by reference.

## **III. Procedural - Required Burden of Proof**

### **18.108.060 Standards for Type III Planning Actions:**

1. Zone changes, zoning map amendments and comprehensive plan map changes subject to the Type III procedure as described in subsection A of this section may be approved if in compliance with the comprehensive plan and the application demonstrates that one or more of the following:
  - a. The change implements a public need, other than the provision of affordable housing, supported by the Comprehensive Plan; or
  - b. A substantial change in circumstances has occurred since the existing zoning or Plan designation was proposed, necessitating the need to adjust to the changed circumstances; or
  - c. Circumstances relating to the general public welfare exist that require such an action; or
  - d. Proposed increases in residential zoning density resulting from a change from one zoning district to another zoning district, will provide 25% of the proposed base density as affordable housing consistent with the approval standards set forth in 18.106.030(G);or
  - e. Increases in residential zoning density of four units or greater on commercial, employment or industrial zoned lands (i.e. Residential Overlay), will not negatively impact the City of Ashland’s commercial and industrial land supply as required in the Comprehensive Plan, and will provide 25% of the proposed base density as affordable housing consistent with the approval standards set forth in 18.106.030(G). The total number of affordable units described in sections D or E shall be determined by rounding down 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. Sections D and E do not apply to council initiated actions.

### **18.108.170 Legislative Amendments**

- A. It may be necessary from time to time to amend the text of the Land Use Ordinance or make other legislative amendments in order to conform with the comprehensive plan or to meet other changes in circumstances and conditions. A legislative amendment is a legislative act solely within the

authority of the Council.

- B. A legislative amendment may be initiated by the Council, by the Commission, or by application of a property owner or resident of the City. The Commission shall conduct a public hearing on the proposed amendment at its earliest practicable meeting after it is submitted, and within thirty days after the hearing, recommend to the Council, approval, disapproval, or modification of the proposed amendment.
- C. An application for amendment by a property owner or resident shall be filed with the Planning Department thirty days prior to the Commission meeting at which the proposal is to be first considered. The application shall be accompanied by the required fee.
- D. Before taking final action on a proposed amendment, the Commission shall hold a public hearing. After receipt of the report on the amendment from the Commission, the Council shall hold a public hearing on the amendment. Notice of time and place of the public hearings and a brief description of the proposed amendment shall be given notice in a newspaper of general circulation in the City not less than ten days prior to the date of hearing.
- E. No application of a property owner or resident for a legislative amendment shall be considered by the Commission within the twelve month period immediately following a previous denial of such request, except the Commission may permit a new application if, in the opinion of the Commission, new evidence or a change of circumstances warrant it.

#### **IV. Conclusions and Recommendations**

Staff supports the adoption of the proposed Digital FIRM and supporting code amendments. Should the revised Flood Insurance Rate Maps amendments not be adopted, the City would not conform to federal regulations regarding development within the flood hazard areas.

# DRAFT AMENDMENTS

## Relating to FEMA FIRM Map Adoption

Annotated to show deletions and additions to the code sections being modified. Deletions are **~~bold lined through~~** and additions are **bold underlined**.

### CHAPTER 18.62

#### PHYSICAL & ENVIRONMENTAL CONSTRAINTS

##### SECTION 18.62.030 Definitions.

The following terms are hereby defined as they apply to this Chapter:

- A. **Architect** - An architect licensed by the State of Oregon.
- B. **Average slope** - average slope for a parcel of land or for an entire project, for the purposes of determining the area to remain in a natural state shall be calculated before grading using the following formula:

$$S = \frac{.00229(I)(L)}{A}$$

where "S" is the average percent of slope; ".00229" is the conversion factor for square feet; "I" is the contour interval in feet; "L" is the summation of length of the contour lines in scale feet; and "A" is the area of the parcel or project in acres.

- C. **Base Flood: means the flood having a one percent chance of being equaled or exceeded in any giving year.**

- D. **Base Flood Elevation (BFE): means the water surface elevation during the base flood in relation to a specified datum. The Base Flood Elevation (BFE) is depicted on the FIRM to the nearest foot and in the FIS to the nearest 0.1 foot.**

- E. **Building Code: Means the combined specialty codes adopted under ORS 446.062, 446.185, 447.020 (2), 455.020 (2), 455.610, 455.680, 460.085, 460.360, 479.730 (1) or 480.545, but not include regulations adopted by the State Fire Marshal pursuant to ORS chapter 476 or ORS 479.015 to 479.200 and 479.210 to 479.220.**

- C. **F. Buildable area** - That portion of an existing or proposed lot that is free of building restrictions. For the purpose of this ordinance, a buildable area cannot contain any setback areas, easements, and similar building restrictions, and cannot contain any land that is identified as Flood plain Corridor Lands, or any land that is greater than 35% slope.

- D. **G Cohesive Soils** - Residual or transported soils, usually originating from parent rock which contains significant quantities of minerals which weather to clay. Cohesive soils have a Plasticity Index of ten or more, based on laboratory testing according to AASHTO methods, or a site-specific scientific analysis of a particular soil material.

**E.H. Development** - Alteration of the land surface by:

1. Earth-moving activities such as grading, filling, stripping, or cutting involving more than 20 cubic yards on any lot, or earth-moving activity disturbing a surface area greater than 1000 sq. ft. on any lot;
2. Construction of a building, road, driveway, parking area, or other structure; except that additions to existing buildings of less than 300 sq. ft. to the existing building footprint shall not be considered development for section 18.62.080.
3. Culverting or diversion of any stream designated by this chapter.

**F.I. Designer** - a person not registered as an architect or engineer, approved to plan and design single family homes and other buildings defined as exempt by the building code.

**G.J. Engineer** - A registered professional engineer licensed by the State of Oregon.

**J.K. Engineering Geologist** - A registered professional engineering geologist licensed by the State of Oregon.

**L. Flood or flooding:** means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- 1) the overflow of inland or tidal waters; or
- 2) the unusual and rapid accumulation or runoff of surface waters from any source.

**M. Flood Insurance Rate Map (FIRM):** means an official map of a community, issued by the Federal Insurance Administration, delineating the areas of special flood hazard and/or risk premium zones applicable to the community.

**N. Flood Insurance Study (FIS):** means the official report by the Federal Insurance Administration evaluating flood hazards and containing flood profiles, floodway boundaries and water surface elevations of the base flood.

**I.O. Floodway Channel** - ~~The floodway channel as defined by ordinance.~~ channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

**J.P. Geotechnical Expert** - An engineering geologist or an engineer with demonstrable expertise in geologic hazards evaluation and geotechnical engineering.

**K.Q. Gully** - A drainage incision, commonly caused by erosion, which does not experience regular or seasonal stream flow, but does act as a channel for runoff during periods of high rainfall.

**L.R. Landscape Professional** - arborist certified by the International Society of Arboriculture, landscape architect licensed by the State of Oregon, or other expert with demonstrable expertise in tree and erosion control vegetation maintenance, and erosion control vegetation methods.

**M.S. Natural Grade** - the elevation of the ground level in its natural state, before construction, filling, or excavation. (see graphic)



CUT AND FILL CROSS SECTION

**N.T. Natural State** - all land and water that remains undeveloped and undisturbed. This means that

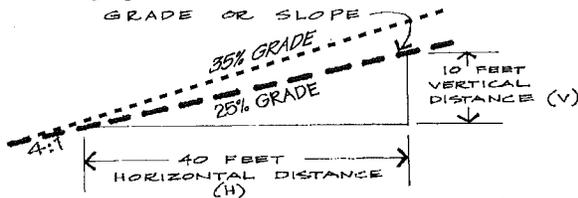
grading, excavating, filling and/or the construction of roadways, driveways, parking areas, and structures are prohibited. Incidental minor grading for hiking trails, bicycle paths, picnic areas and planting and landscaping which is in addition to and enhances the natural environment is permitted. Incidental brush removal for lot maintenance and ecosystem health is permitted. Further, vegetation removal for the purposes of wildfire control in conjunction with an approved fire prevention and control plan shall also be permitted.

**Ø.U. Non-cohesive Soils** - Residual or transported soils containing no or very little clay, usually from crystalline granitic parent rock. Non-cohesive soils have a Plasticity Index of less than ten, based on laboratory testing according to AASHTO methods, or a published scientific analysis of a particular soil type.

**P.V. Professional Arborist** - arborist certified by the International Society of Arboriculture and licensed by the State of Oregon State Landscape Contractors Board or Construction Contractors Board, or landscape architect licensed by the State of Oregon.

**Ø.W. Riparian** - That area associated with a natural water course including its wildlife and vegetation.

**R.X. Slope** - The deviation of a surface from the horizontal, usually expressed in percent. (see graphic)



$$\text{SLOPE CALCULATION} = \frac{V}{H}$$

$$\text{DEGREE OF SLOPE} = \text{ARC TANGENT OF } V/H$$

**S.Y. Stripping** - Any activity which significantly disturbs vegetated or otherwise stabilized soil surface, including clearing and grubbing operations.

**T.Z. Tree Removal** - the following activities are defined as tree removal:

1. The removal of three or more living trees of over six inches diameter at breast height (d.b.h.), or the removal of five percent of the total number of living (or dead trees) over six inches d.b.h., whichever is greater, on any lot within five year period, or any form of commercial logging;
2. The removal of one or more living conifers greater than two feet d.b.h., or living broadleaf trees greater than one foot d.b.h.;

**U.AA. Wildfire** - Fire caused by combustion of native vegetation, commonly referred to as forest fire or brush fire.

(Ord 2808, Added, 12/02/1997)

**SECTION 18.62.050 Land Classifications.**

The following factors shall be used to determine the classifications of various lands and their constraints to building and development on them:

- A. Flood plain Corridor Lands - Lands with potential stream flow and flood hazard. The following lands are classified as Flood plain Corridor lands:
1. All land contained within the 100 year Flood plain **as defined by the Federal Insurance Administration and identified in the Flood Insurance Map (FIRM) defined by the Federal Flood Insurance Program, and in maps adopted by the Council as provided for in** Chapter 15.10 of the Ashland Municipal Code.
  2. All land within the area defined as Flood plain Corridor land in maps adopted by the Council as provided for in section 18.62.060.
  3. All lands which have physical or historical evidence of flooding in the historical past.
  4. All areas within 20 feet (horizontal distance) of any stream identified as a Riparian Preservation Creek on the Physical and Environmental Constraints Floodplain Corridor Lands maps adopted pursuant to section 18.62.060
  5. All areas within ten feet (horizontal distance) of any stream identified as a Land Drainage Corridor on the Physical and Environmental Constraints Floodplain Corridor Lands maps adopted pursuant to section 18.62.060.

**SECTION 18.62.070 Development Standards for Flood plain Corridor Lands.**

For all land use actions which could result in development of the Flood plain Corridor, the following is required in addition to any requirements of Chapter 15.10:

A. Standards for fill in Flood plain Corridor lands:

1. Fill shall be designed as required by the ~~International Building Code~~ **Oregon Structural Specialty Code (OSSC)** and ~~International Residential Code~~ **Oregon Residential Specialty Code (ORSC)**, where applicable.
2. The toe of the fill shall be kept at least ten feet outside of floodway channels, as defined in section 15.10, and the fill shall not exceed the angle of repose of the material used for fill.
3. The amount of fill in the Flood plain Corridor shall be kept to a minimum. Fill and other material imported from off the lot that could displace floodwater shall be limited to the following:
  - a. Poured concrete and other materials necessary to build permitted structures on the lot.
  - b. Aggregate base and paving materials, and fill associated with approved public and private street and driveway construction.
  - c. Plants and other landscaping and agricultural material.
  - d. A total of 50 cubic yards of other imported fill material.
  - e. The above limits on fill shall be measured from April 1989, and shall not exceed the above amounts. These amounts are the maximum cumulative fill that can be imported onto the site, regardless of the number of permits issued.
4. If additional fill is necessary beyond the permitted amounts in (3) above, then fill materials must be obtained on the lot from cutting or excavation only to the extent necessary to create an elevated site for permitted development. All additional fill material shall be obtained from the portion of the lot in the Flood plain Corridor.
5. Adequate drainage shall be provided for the stability of the fill.
6. Fill to raise elevations for a building site shall be located as close to the outside edge of the Flood plain Corridor as feasible.

# DRAFT AMENDMENTS

## Relating to FEMA FIRM Map Adoption

Annotated to show deletions and additions to the code sections being modified. Deletions are **~~bold lined through~~** and additions are **bold underlined**.

### CHAPTER 15.10

#### FLOOD DAMAGE PREVENTION REGULATIONS

##### SECTIONS:

- 15.10.010 Purpose.
- 15.10.020 Statutory Authority.
- 15.10.030 Findings of Fact.
- 15.10.040 Methods of Reducing Flood Losses.
- 15.10.050 Definitions.
- 15.10.060 General Provisions.
- 15.10.070 Administration.
- 15.10.080 Provisions for Flood Hazard Protection.
- 15.10.090 Variances and Appeals.
- 15.10.100 Penalties.

##### SECTION 15.10.010 Purpose.

The purpose of this section is to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- A. Protect human life and health;
- B. Minimize expenditure of public money on costly flood control projects;
- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. Minimize prolonged business interruptions;
- E. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
- F. Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- G. Ensure that potential buyers are notified that property is in an area of special flood hazard; and
- H. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

(Ord 2925, Amended, 04/18/2006)

##### SECTION 15.10.020 Statutory Authority.

The Legislature of the State of Oregon has in Oregon Revised Statutes, Chapter 197, delegated the responsibility to local governments to adopt comprehensive plans and land use regulations designed to promote the public health, safety, and general welfare of its citizenry.  
(Ord 2925, Amended, 04/18/2006)

**SECTION 15.10.030 Findings of Fact.**

- A. The flood hazard areas of Ashland are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruptions of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
- B. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately flood-proofed, elevated, or otherwise protected from flood damage also contribute to the flood loss.

(Ord 2925, Amended, 04/18/2006)

**SECTION 15.10.040 Methods of Reducing Flood Losses.**

In order to accomplish its purpose, this section includes methods and provisions for:

- A. Restricting or prohibiting uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- B. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- C. Controlling the alteration of natural flood plains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
- D. Controlling filling, grading, dredging, and other development which may increase flood damage; and
- E. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards outside of identified flood hazard areas.

**F. Coordinating and supplementing the provisions of the state building code with local land use and development ordinances.**

(Ord 2925, Amended, 04/18/2006)

**SECTION 15.10.050 Definitions.**

Unless specifically defined below or elsewhere in this Code, words or phrases used in this Chapter shall be interpreted as to give them the meaning they have in common usage and to give this Chapter it's most reasonable application.

- A. Appeal means a request for a review of the Building Official's interpretation of any provision of this Section or a request for a variance.
- B. Area of Shallow Flooding means a designated AO or AH zone on the Flood Insurance Rate Map. The base flood depths range from one (1) to three (3) feet; clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and, velocity flow may be evident. AO is characterized as sheet flow and AH indicates ponding.
- C. Area of Special Flood Hazard means the land in the flood plain within a community subject to a one percent (1%) or greater chance of flooding in any given year. Designation on maps always includes the letters A or V.
- D. Base Flood means the flood having a one percent (1%) chance of being equaled or exceeded in

any given year. Also referred to as the "100-year flood". Designation on flood maps always includes the letters A or V.

**XX. Basement, for the purposes of this chapter, means the portion of a structure with its floor sub-grade (below ground level) on all sides, or the definition provided in Section 18.08.078 of the Ashland Municipal Land Use code, whichever is more restrictive.**

**XX. Below-Grade Crawl Space means an enclosed area below the base flood elevation in which the interior grade is not more than two feet below the lowest adjacent exterior grade and the height, measured from the interior grade of the crawlspace to the top of the crawlspace foundation, does not exceed 4 feet at any point.**

**XX. Building Code means the combined specialty codes adopted under ORS 446.062, 446.185, 447.020 (2), 455.020 (2), 455.610, 455.680, 460.085, 460.360, 479.730 (1) or 480.545, but not include regulations adopted by the State Fire Marshal pursuant to ORS chapter 476 or ORS 479.015 to 479.200 and 479.210 to 479.220.**

**XX. Critical Facility means a facility for which even a slight chance of flooding might be too great. Critical facilities include but are not limited to schools, nursing homes, hospitals, police, fire and emergency response installations, installations which produce, use, or store hazardous materials or hazardous waste.**

- E. Development means any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of special flood hazard.
- F. Flood or Flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:
  - 1. The overflow of inland or tidal waters; and/or
  - 2. The unusual and rapid accumulation of runoff of surface waters from any source.
- G. Flood Insurance Rate Map (FIRM) means the official map **of a community on which the issued by the** Federal Insurance Administration ~~has delineated both~~ **delineating** the areas of special flood hazards and/or the risk premium zones applicable to the community.
- H. Flood Insurance Study means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary - Flood way Map, and the water surface elevation of the base flood.
- I. Flood-way means that channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.
- J. Habitable Floor means any floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or a combination thereof. A floor used only for storage purposes is not a "habitable" floor.
- K. Lowest Floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance found in Section 15.10.080(B)(1)(b).
- L. Manufactured Home means a structure, transportable in one (1) or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For flood plain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for

greater than one hundred eighty (180) consecutive days. For insurance purposes the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

- M. Manufactured Home Park or Subdivision means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.
- N. New Construction means structures for which the "start of construction" commenced on or after the effective date of this Ordinance and includes new mobile home parks and mobile home subdivisions.
- O. Start of Construction includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a permanent basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory erection or temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.
- P. Structures as it pertains to the provisions of this Chapter is a walled and roofed building, including a gas or liquid storage tank that is principally above ground.
- Q. Substantial Improvement means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either:
  - 1. Before the improvement or repair is started; or
  - 2. If the structure has been damaged and is being restored, before the damage occurred. For the purpose of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term DOES NOT, however, include either:
    - a. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or
    - b. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.
- R. Variance means a grant of relief from the requirements of this Chapter which permits construction in a manner that would otherwise be prohibited by this Chapter.

(Ord 2925, Amended, 04/18/2006)

#### **SECTION 15.10.060 General Provisions.**

- A. Lands to which this Chapter applies. This Chapter shall apply to all areas of special flood hazards within the jurisdiction of the City of Ashland, Oregon.
- B. Basis for establishing the areas of special flood hazard. The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study: ~~City of Ashland, Oregon,~~ **for Jackson County, Oregon and Incorporated Areas**", dated ~~June 1, 1981,~~ **DATE OF FINAL DETERMINATION LETTER** with accompanying Flood Insurance Maps is hereby adopted by reference and declared to be a part of this Ordinance. The Flood Insurance Study and accompanying maps (as updated) are on file at City Hall, Ashland, Oregon.
- C. Compliance. No structure on land shall hereafter be constructed, located, extended, converted, or

altered without full compliance with the terms of this Ordinance and other applicable regulations.

- D. Abrogation and Greater Restrictions. This Chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Ordinance and another Ordinance, state building code, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- E. Interpretation. In the interpretation and application of this Chapter, all provisions shall be:
1. Considered as minimum requirements;
  2. Liberally construed in favor of the governing body; and
  3. Deemed neither to limit or repeal any other powers granted under state statutes and rules including the state building code.
- F. Warning and Disclaimer of Liability. The degree of flood protection required by this Chapter is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This section does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This Ordinance shall not create liability on the part of the City, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this Ordinance or any administrative decision lawfully made thereunder.

(Ord 2925, Amended, 04/18/2006)

#### **SECTION 15.10.070 Administration.**

- A. Establishment of Development Permit. A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 15.10.060(B). The permit shall be for all structures including manufactured homes, as set forth in the Definitions, and for all other development including fill and other activities, also set forth in Definitions.

Application for a development permit shall be made on forms furnished by the Building Official and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

1. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;
  2. Elevation in relation to mean sea level to which any structure has been flood-proofed;
  3. Certification by a registered professional engineer or architect that the flood-proofing methods for any nonresidential structure meet the flood-proofing criteria in Section 15.10.090(B)(2);
  4. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
- B. Designation of the Building Official. The Building Official is hereby appointed to administer and implement this Chapter by granting or denying development permit applications in accordance with its provisions.
- C. Duties and Responsibilities of the Building Official. Duties and responsibilities of the Building Official shall include, but not be limited to:
1. Permit Review:
    - a. Review all development permits to determine that the permit requirements of this Section have been satisfied.
    - b. Review all development permits to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.
    - c. Review all development permits to determine if the proposed development is located in the

- flood way. If located in the flood way, assure that the encroachment provisions of Section 15.10.080(C)(1) are met.
2. Use of Other Base Flood Data. When base flood elevation data has not been provided in accordance with Section 15.10.060(B), "Basis for Establishing the Areas of Special Flood Hazard", the Building Official shall obtain, review, and reasonably utilize any base flood elevation and flood-way data available from a federal, state or other source, in order to administer Sections 15.10.080(B)(1) "Specific Standards: Residential Construction", 15.10.080 (B)(2) "Specific Standards: Nonresidential Construction, and 15.10.080(C) "Flood-ways".
  3. Information to be Obtained and Maintained.
    - a. Where base flood elevation data is provided through the Flood Insurance Study or required as in Section 15.10.070(C)(2), obtain and record the actual elevation (in relation to mean sea level) of the lowest habitable floor (including basement and below grade crawlspaces) of all new or substantially improved structures, and whether or not the structure contains a basement.
    - b. For all new or substantially improved flood-proofed structures:
      - i. Verify and record the actual elevation (in relation to mean sea level); and
      - ii. Maintain the flood proofing certifications required in Section 15.10.070(A)(3).
    - c. Maintain for public inspection all records pertaining to the provisions of this Section.
  4. Alteration of Watercourses.
    - a. Notify adjacent communities and the ~~Water Resources Commission~~ **Department of Land Conservation and Development** and other appropriate state and federal agencies prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
    - b. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.
  5. Interpretation of FIRM Boundaries. Make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 15.10.090.

(Ord 2925, Amended, 04/18/2006)

#### **SECTION 15.10.080 Provisions for Flood Hazard Protection.**

- A. General Standards. In all areas of flood hazards the following standards are required:
1. Anchoring:
    - a. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure;
    - b. All manufactured homes must likewise be anchored to prevent flotation, collapse, or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook.
  2. Construction Materials and Methods:
    - a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
    - b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
    - c. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from

- entering or accumulating within the components during conditions of flooding.
3. Utilities:
    - a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
    - b. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and
    - c. On-site waste disposal systems shall be located to avoid impairment to them or contamination for the during flooding.
  4. Subdivision Proposals.
    - a. All subdivision proposals shall be consistent with the need to minimize flood damage;
    - b. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
    - c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and
    - d. Where base flood elevation data has not been provided or is not available from another authoritative source it shall be generated for subdivision proposals and other proposed development which contain at least fifty (50) lots or five (5) acres, whichever is less.
  5. Review of Building Permit:
    - a. Where elevation data is not available, either through the Flood Insurance Study or from another authoritative source (Section 15.10.070(C)) applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate **the lowest habitable floor** at least two (2) feet above grade in these zones may result in higher insurance rates.
    - b. To determine the flood base elevation, the applicant's Oregon registered engineer or land surveyor shall investigate all available sources of information, such as historic flooding profiles, high water marks, photographs of past flooding, soil characteristics, or any other feasible methods. A report shall be submitted to the City by the applicant, setting forth said elevation and citing the evidence upon which the estimate is made. Said report may be accepted or rejected by the City. The Oregon registered engineer or surveyor shall place a permanent elevation marker on the property.
- B. Specific Standards. In all areas of special flood hazards where base flood elevation data has been provided as set forth in Section 15.10.060(B), "Basis for Establishing the Areas of Special Flood Hazard", or Section 15.10.070(C)(2), "Use of Other Base Flood Data, the following provisions are required:
1. Residential Construction:
    - a. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to at least two (2) feet or above base flood elevation. Prior to the issuance of a certificate of occupancy by the City, the property owner shall furnish certification by a registered engineer or surveyor of the actual elevation of the lowest habitable floor, including a basement.
    - b. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood sources on exterior walls by allowing for entry and exit of flood-waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
      - i. A minimum of two openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding.

- ii. The bottom of all openings shall be no higher than one (1) foot above grade.
  - iii. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of flood-waters.
2. Nonresidential Construction: New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation; or together with attendant utility and sanitary facilities; shall:
- a. Be flood-proofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
  - b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
  - c. Be certified by an Oregon registered professional engineer or architect that the designs and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection based on their development review of the structural design, specifications and plans. Such certifications shall be provided to the official as set forth in Section 15.10.070(C)(3)(b).
  - d. Nonresidential structures that are elevated, not flood-proofed, must meet the same standards for space below the lowest floor as described in 15.10.080(B)(1)(b).
  - e. Applicants flood-proofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one (1) foot below the flood proofed level (e.g., a building constructed to the base flood level will be rated as one (1) foot below that level).
3. Manufactured Homes: All manufactured homes to be placed or substantially improved within Zones A1-30, AH, and AE shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at least two (2) feet above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 15.10.080(A)(1).
- 4. Critical Facility: Construction of new critical facilities shall be, to the extent possible, located outside the limits of the Special Flood Hazard Area (SFHA) (100-year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet above BFE or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.**
- 5. Below-grade Crawl Spaces: Below-grade crawl spaces area allowed provided they conform to the guidelines in FEMA Technical Bulletin 11-01, Crawlspace Construction for Buildings Located in Special Flood Hazard Areas.**
- C. Flood-ways: Located within areas of special flood hazard established in Section 15.10.060(B) are areas designated as flood-ways. Since the flood-way is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

1. Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
2. If Section 15.10.080(C)(1) above is satisfied, all new construction, and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section 15.10.080, "Provisions for Flood Hazard Protection".

(Ord 2925, Amended, 04/18/2006)

#### **SECTION 15.10.090 Variances and Appeals.**

- A. Appeals shall be granted consistent with the standards of Section 1910.6 of the Rules and Regulations of the National Flood Insurance Program (24 CFR 1909, etc.).
- B. The Board of Appeals established by Section 15.04.200 of this Chapter shall hear variances and appeals from the final decisions of the Building Official.
- C. In passing upon applications for appeal or variance, the Board of Appeals shall consider all technical evaluations, all relevant factors, standards specified in other parts of this Code; and
  1. The danger that materials may be swept onto other lands to the injury or loss of others;
  2. The danger to life and property due to flooding or erosion damage;
  3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  4. The importance of the services provided by the proposed facility to the community;
  - 5. The necessity to the facility of a waterfront location, where applicable;**
  - ~~5~~ **6.** The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
  - ~~6~~ **7.** The compatibility of the proposed use with existing and anticipated development;
  - ~~7~~ **8.** The consistency of the proposed use with the policies of the Comprehensive Plan and flood plain management program for that area;
  - ~~8~~ **9.** The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - ~~9~~ **10.** The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and effects of channel movement, if applicable, expected at the site; and
  - ~~10~~ **11.** The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- D. Upon consideration of the factors of and the purpose of the Chapter, the Board of Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Chapter.
- E. The Building Official shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon approval.
- F. Conditions for Variances:
  1. Variances shall not be issued within any designated flood-way if any increase in flood levels during the base flood discharge would result.
  2. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  3. Variances shall only be issued upon:
    - a. A showing of good and sufficient cause;
    - b. A determination that failure to grant the variance would result in exceptional hardship for the applicant; and,
    - c. A determination that granting the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud

- on or victimization of the public, or conflict with existing laws or Ordinances.
4. Any applicant to whom a variance is granted shall be given written notice that the cost of flood insurance will be commensurate with any increased risk that may result from development for which the variance is issued.

(Ord 2925, Amended, 04/18/2006)

**SECTION 15.10.100 Penalties.**

Any person, firm or corporation, whether as principal, agent, employee or otherwise, violating or causing the violation of any of the provisions of this ordinance has committed an infraction, and upon conviction thereof, is punishable as prescribed in Section 1.08.020 of the Ashland Municipal Code. Such person, firm or corporation is guilty of a separate violation for each and every day during which any violation of this Chapter is committed or continued by such person, firm or corporation. In addition, violation of this Ordinance shall constitute a public nuisance and may be regarded as such in all actions, suits and proceedings. Said nuisance may be prosecuted in the courts of the State of Oregon.

(Ord 2925, Amended, 04/18/2006)

The following map was created with the digital data provided to the City of Ashland by the Federal Emergency Management Agency.

These maps are for graphical representation only. The detailed comparison maps showing the areas where the FEMA 100 and 500 year floodplains have been remapped to expand or contract are available for viewing or download at:

[www.ashland.or.us/femaupdate](http://www.ashland.or.us/femaupdate)

The official Federal Insurance Rate Maps (FIRMs) are available in 24" X 36" copy format only.

It is the official FIRM which will be adopted by this ordinance. The FIRMs are available for review at the City of Ashland Community Development office located at 51 Winburn Way, Ashland, OR 97520.

# Flood Zone Comparison Map

**DRAFT**

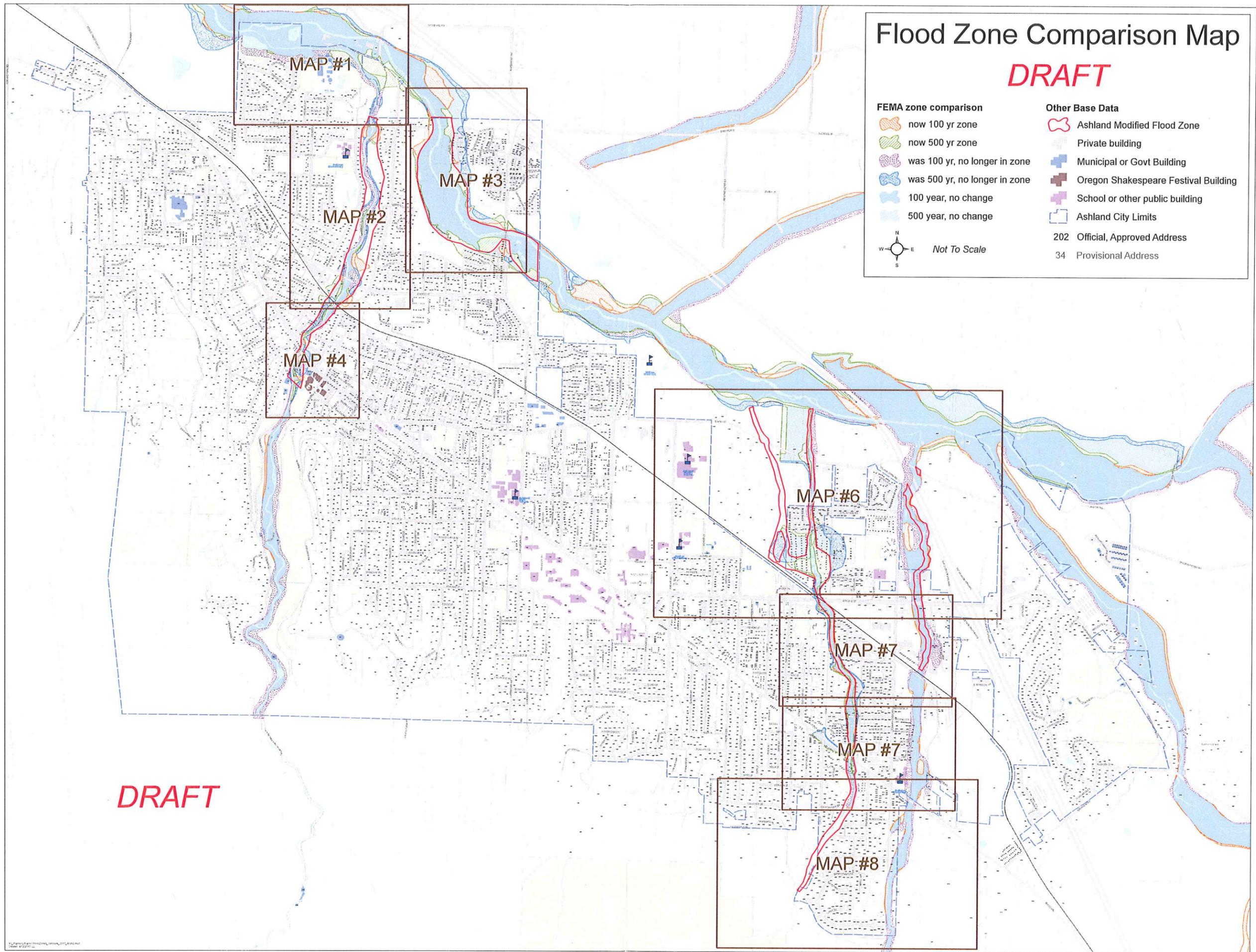
## FEMA zone comparison

- now 100 yr zone
- now 500 yr zone
- was 100 yr, no longer in zone
- was 500 yr, no longer in zone
- 100 year, no change
- 500 year, no change



## Other Base Data

- Ashland Modified Flood Zone
- Private building
- Municipal or Govt Building
- Oregon Shakespeare Festival Building
- School or other public building
- Ashland City Limits
- 202 Official, Approved Address
- 34 Provisional Address



**DRAFT**

Email Correspondence between Amy Gunter, Assistant Planner and Christine Shirley, National Flood Insurance Coordinator for FEMA Region X regarding existing Letter of Map Amendments (LOMA).

*My comments in **BOLD italics** -- Chris*

---

**From:** Amy Gunter [mailto:guntera@ashland.or.us]  
**Sent:** Tuesday, May 25, 2010 3:22 PM  
**To:** christine.shirley@state.or.us; Stephen Lucker  
**Subject:** Ashland map question

Christine,

This is in regards to Mr. Zach Brombacker's commercial properties on Tolman Creek Road in Ashland. The new DFIRM is not reflective of a letter of map amendment (Case # 03-10-0109A) that showed a considerable reduction in the 100 yr floodplain on a few taxlots in that area. (410090 FIRM Panel # 2216, Hamilton Creek)

Zach told me he had contact you about the discrepancy and you had indicated that the prior map amendment is still valid and that the City should amend the maps according. **Yes, the LOMA is still valid on the new map however the city is not obligated to change the DFIRM to reflect the amendment. Rather, the City must reference the LOMA as you would if the maps were still paper.** Given the DFIRM map shape files are provided to us electronically and that we are not the author I am sure we can not modify them except for internal use and display. This would work for local development issues but not insurance. Insurers will still look directly at the published DFIRMs from FEMA which would not reflect the change. **Insurance companies and lenders look at the DFIRM and the revalidated LOMAs.**

To resolve Zach's specific issue and get a better understanding of what may have been meant by the assertion that the City should change the map, is there a written statement available either about this specific case, or even a general statement that all such recent map amendments remain valid and are not trumped by the new Jackson County FIS/FIRM (if that is indeed the case). **Yes, Jackson County should have received a "Preliminary Summary of Map Actions" with the preliminary DFIRM. This report summarizes which letter of map change FEMA will revalidate when the maps become effective. Please review the "Preliminary Summary of Map Actions" carefully to ensure that it is complete. If you need a copy, please contact me and I can send it to you.** With this letter we could then provide a notation on a detail map (citing the case #) so future developments can reference the amended 100 year instead of the new DFIRM. **This is the correct procedure.**

Is it possible for FEMA to provide such a letter (and copy of the Case file)? We would like to include it all in our planning files so it's readily available. **See the "Preliminary Summary of Map Actions". This will be replaced with a final "Summary of Map Actions" when the DFIRM becomes effective.**

On a broader issue, there are other such small map amendments out there elsewhere in the City, and if there is one comprehensive list of case numbers I would like to put that in our FEMA map Modernization file along with the declarative letter that such prior delineations/amendments remain in effect (if that is the case). **See the "Preliminary Summary of Map Actions". This will be replaced with a final "Summary of Map Actions" when the DFIRM becomes effective.**

Thank you for your assistance.  
Amy

Amy D. Gunter, Assistant Planner  
City of Ashland, Dept. of Community Development  
20 E Main Street  
Ashland, OR 97520  
phone: (541) 552-2044  
fax: (541) 552-2050  
TTY: (800) 735-2900

*This email transmission is official business of the City of Ashland, and it is subject to Oregon Public Records law for disclosure and retention. If you have received this message in error, please contact me at (541) 552-2044. Thank you.*

**Amy Gunter - flood map**

---

**From:** Oak Hill Bed & Breakfast <innkeeper@oakhillbb.com>  
**To:** <guntera@ashland.or.us>  
**Date:** 5/11/2010 9:49 AM  
**Subject:** flood map

---

Ms. Guntera,

As residents on the south side of Siskiyou Blvd effected by the FEMA proposed map we are submitting this comment:

The flood waters are shown running west, down Siskiyou Blvd, from the flood flow that is to the east of the Ashlander Apartments. We are questioning what factors would cause the water not to continue it's flow downhill. Especially on what is a fairly steep grade. In short the flow down Siskiyou Blvd does not make sense and requires explanation. Further, the south side of Siskiyou is banked and a few feet higher than the north so that it is highly unlikely that if water ran down the boulevard it could reach our building as shown.

***Oak Hill Bed & Breakfast  
Pat & Tom Howard***

2190 Siskiyou Blvd.  
Ashland, OR 97520  
541-482-1554 888-482-1554  
<http://www.oakhillbb.com>

May 17, 2010

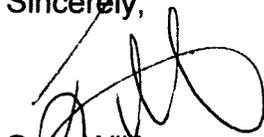
Amy Gunter, Assistant Planner  
City of Ashland  
Community Development Department  
20 East Main Street  
Ashland, Oregon

Dear Amy,

I would like to protest the enlargement of the flood plain corridor for our property; map and tax lot 391E04BC 2000 which is bordered by Ashland Creek on its eastern boundary and Nevada Street on its north boundary. The Nevada Street crossing of Ashland Creek is poorly designed and causes the creek to back up during high water conditions because the crossing is unable to handle the increased water volume. I believe this was addressed in the City's Otak Report that evaluated all of the creek crossings after the 1997 Flood. The City has known this for over 12 years and has failed to correct the crossing. If the crossing was better designed and improved, our property would not be nearly as severely affected, which would decrease the flood map.

I would like the City of Ashland to address its failure to provide a properly designed crossing.

Sincerely,



Greg Williams  
Ashland Flower Shop and Greenhouses  
744 Helman Street  
Ashland, Oregon 97520

RECEIVED

MAY 18 2010

City of Ashland

Email Correspondence between Amy Gunter, Assistant Planner and Christine Shirley, National Flood Insurance Coordinator for FEMA Region X regarding existing Letter of Map Amendments (LOMA).

*My comments in BLUE italics -- Chris*

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Amy D. Gunter, Assistant Planner  
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phone: (541) 552-2044  
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**From:** "Huff, Jamie" <jamie.huff@dhs.gov>  
**To:** "Stephanie Holtey" <Stephanie.Holtey@centralpointoregon.gov>, "Michael M...  
**CC:** <guntera@ashland.or.us>, "Derek Severson" <dereks@ashland.or.us>, <denar...  
**Date:** 2/22/2010 10:32 AM  
**Subject:** Jackson County, OR dFIRM Appeal Period Set to Begin

Hello,

After much anticipation, the 90-day appeal period for the digital Flood Insurance Rate Maps (FIRMs) for the City of Central Point and Unincorporated Jackson County is set to begin March 5, 2010!

Our mapping contractors have secured the publication of the newspaper notices for the revised Base Flood Elevations (BFEs) to happen on 2/26/2010 and 3/5/2010. This gives us the date of initiating the appeal period, which will run from 3/5/2010 to 6/2/2010. Our mapping contractors will also finalize and mail letters to the affected communities ASAP to provide enough time prior to the first publication of the BFE newspaper notice. This letter, sent the CEO and Floodplain Administrator of the community, will identify the dates of the appeal period, location to send all appeals and further mapping process information.

You can view the federal register publication here  
[https://www.floodmaps.fema.gov/fhm/Scripts/bfe\\_srch.asp?state=OR](https://www.floodmaps.fema.gov/fhm/Scripts/bfe_srch.asp?state=OR)

All remaining Jackson County communities not included in the appeal period, this email serves as a notification that the county now has a minimum of nine (9) months until the revised FIRMs become effective, pending any appeals received. It is suggested each community begin their ordinance update process to ensure ordinances are updated, adopted and EFFECTIVE by the date the revised FIRMs become effective to avoid suspension from the National Flood Insurance Program. DLCD will follow-up with each community to provide more information related to the ordinance update process and requirements.

Once the appeal period closes and any appeals are resolved, each community will receive a Letter of Final Determination (LFD) indicating the date the FIRMs become effective. This letter is currently projected to be delivered in September.

If you should have any further questions regarding this process or the ordinance requirements, please do not hesitate contact Steve Lucker or Chris Shirley with DLCD or myself.

Regards,

Jamie Huff, CFM  
Floodplain Management Specialist  
U.S. Department of Homeland Security  
FEMA Region X  
Phone: 425-487-4654  
Email: jamie.huff@dhs.gov