



Planning Commission Agenda

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 the public testimony may be limited by the Chair.

June 13, 2023
REGULAR MEETING
AGENDA

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

II. ANNOUNCEMENTS

III. CONSENT AGENDA

A. Approval of Minutes

1. May 9, 2023, Regular Meeting

IV. PUBLIC FORUM

Note: To speak to an agenda item in person you must fill out a speaker request form at the meeting and will then be recognized by the Chair to provide your public testimony. Written testimony can be submitted in advance or in person at the meeting. If you wish to discuss an agenda item electronically, please contact PC-publictestimony@ashland.or.us by June 13, 2023 to register to participate via Zoom. If you are interested in watching the meeting via Zoom, please utilize the following link: <https://zoom.us/j/99735505922>

V. UNFINISHED BUSINESS

A. Approval of Findings for PA-T2-2023-00040, 1111 Granite St.

B. Approval of Findings for PA-T2-2023-00042, Clear Creek Dr. Parcel 7 - 391E09AB TL 6700 & 391E09AA TL 6200

VI. TYPE II PUBLIC HEARING - CONTINUED

A. PLANNING ACTION: PA-T2-2023-00041

SUBJECT PROPERTY: Tax Lot 404 Clinton St.

OWNER: Magnolia Heights LLC

DESCRIPTION: A request Performance Subdivision Outline Plan approval for a 12-lot, 11-unit residential subdivision. The application also includes requests for an Exception to Street Standards, and a Tree Removal Permit for four significant trees. Additionally, the applicant has applied for a minor amendment to the adopted Physical





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and Environmental Constraints map to effectively remove a drainage way from the map that is not extant on the property. And finally, the applicant has addressed the applicability standards of the Water Resource Protection Zone WRPZ by providing a wetland determination demonstrating that there are no regulated wetland resources on the subject property. **COMPREHENSIVE PLAN DESIGNATION:** Single Family Residential; **ZONING:** R-1-5; **MAP:** 39 1E 04 DB; **TAX LOT:** 404 ***(PLEASE NOTE: The record and public hearing are closed on this matter. The Planning Commission's consideration of this item will be limited to their deliberation and decision. No further submittals (evidence or argument) will be accepted into the record.)***

VII. OTHER BUSINESS

A. Election of Officers

VIII. OPEN DISCUSSION

IX. ADJOURNMENT

Next Meeting Date: June 27, 2023



Planning Commission Minutes

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May 9, 2023

SPECIAL MEETING

***DRAFT* MINUTES**

I. CALL TO ORDER:

Chair Verner called the meeting to order at 7:00 p.m. at the Civic Center Council Chambers, 1175 E. Main Street. She called for moment of silence for Commissioner Michael Dawkins, who passed away on May 2, 2023.

Commissioners Present:

Lisa Verner
Kerry KenCairn
Doug Knauer
Eric Herron

Staff Present:

Brandon Goldman, Community Development Director
Derek Severson, Planning Manager
Aaron Anderson, Senior Planner
Michael Sullivan, Executive Assistant

Absent Members:

Council Liaison:

Paula Hyatt

II. ANNOUNCEMENTS

Community Development Director Brandon Goldman made the following announcements:

- There is currently no plan to hold the May 23, 2023 Planning Commission Study Session.
- Staff has been in contact with Sandra Slattery, Executive Director of the Chamber of Commerce, about providing a presentation to the Commission at the June 27, 2023 Study Session regarding the economic diversification study that the Chamber recently completed. Staff felt the study's findings would be relevant to the Commission's work.
- The City is currently reviewing applications to fill the three vacant Commission positions. An Election of Officers will be conducted at the June 13, 2023 Commission meeting to formally select a Chair and Vice Chair.

III. CONSENT AGENDA

A. Approval of Minutes

1. April 11, 2023, Regular Meeting
2. April 25, 2023 Special Meeting

Commissioners KenCairn/Knauer m/s to approve the consent agenda as presented. Voice Vote: all AYES. Motion passed 4-0.





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IV. **PUBLIC FORUM** – None

V. **TYPE II PUBLIC HEARING**

- A. PLANNING ACTION:** PA-T2-2023-00042
SUBJECT PROPERTY: Clear Creek Dr. Parcel 7 - 391E09AB TL 6700 & 391E09AA TL 6200
OWNER: Jacobs on behalf of Union Pacific Railroad
APPLICANT: City of Ashland
DESCRIPTION: A request to modify a condition of approval and change a deed restriction that was required in a 1999 planning approval (PA 99-048), amended in 2016 (PA-2016-00684), and recorded on the vacant 20-acre site owned by Union Pacific Railroad (UPRR). The deed restriction required that the 20-acre site meets Oregon Department of Environmental Quality's (DEQ) cleanup standards applicable to a "single residential property" before further land divisions or development occurs. The proposed revision to the deed restriction clarifies the site be cleaned to an "urban residential standard" to enable future development consistent with the E-1 zoning of the property including commercial, employment, and ground floor residential within mixed-use and apartment buildings. The modified condition would stipulate the deed restriction would be removed from the property upon the City receiving written documentation from the Department of Environmental Quality demonstrating compliance with these standards.
COMPREHENSIVE PLAN DESIGNATION: Employment; **ZONING:** E-1; **ASSESSOR'S MAP #:** 391E09AB & 391E09AA; **TAX LOT:** 6700 & 6200

Chair Verner read the procedure for a Type II Public Hearing.

Ex Parte Contact

Commissioner Knauer informed the Commission that he had inadvertently discussed this item with Mr. Goldman within earshot of a representative of the Union Pacific Railroad before the start of the meeting. No other ex parte contact was reported.

Applicant Presentation

Mr. Goldman began by informing the Commission that this is an application from the City. The reason is because the City Council had heard a request from the Union Pacific Railroad (UPRR) on March 21, 2023, and subsequently directed staff to bring an application before the Commission to consider modifying the 2016 condition of approval.

Mr. Goldman introduced both Greg Aitken, a member of staff who has experience in environmental cleanup, and Michael Niemet, who was representing UPRR. Don Hanson and Margaret Oscilia were





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also in attendance via Zoom, and are consulting on behalf of the Department of Environmental Quality (DEQ).

Mr. Goldman provided historical background on the site, and detailed how a 1999 application to partition the property resulted in a condition of approval that established a deed restriction on the UPRR which would require the site to be cleaned to Residential standards before further land divisions or development could occur. This condition was amended in 2016 when the UPRR requested a modification in order to allow the entirety of the property to be cleaned to a single-residential property. There were subsequent changes to the DEQ's cleanup standards in 2017, which redesignated properties that could accommodate ground-floor residential units. The applicant is requesting a modification to the condition of approval and the corresponding deed restriction to stipulate that the property be cleaned to urban-residential standards, which is the type of development that could occur on the property with E-1 zoning. Mr. Goldman stated that UPRR has indicated that it will proceed with cleanup of the site after receiving approval of a modification to the deed restriction.

Mr. Niemet provided a brief presentation where he outlined the scope of the project and the proposed covenant modification. He pointed out that residential standards have changed since the condition of approval was imposed, and requested that the Commission adopt the changes (see attachment #1). Mr. Niemet stated that the applicants are merely requesting a change to make it consistent with current land use.

Mr. Goldman added that the cleanup plan and Record of Decision is part of a public process to keep City residents informed and allow them to provide feedback. The DEQ will be the jurisdictional authority over the cleanup, but the process will invite public comments.

Questions of the Applicant

Commissioner Knauer inquired if the DEQ would set the targeted cleanup level of the property, or if the City would set the goal. Mr. Niemet responded that DEQ cleanup standards have recently changed, so this modification would create consistency between their standards and those of the City. Commissioner Knauer requested clarification over the applicant's expectation of this application, and expressed concern that there could be confusion over the amount of contamination that they wish to remove from the site. Mr. Niemet responded that the main contaminant on the site is lead, and the same level of lead removal is present in both DEQ and City cleanup standards.

The Commission discussed the appropriateness of including language in the condition to allow clean-up to an "urban residential **and/or** occupational standard", and whether allowing clean-up to the occupational standard would preclude future residential development.





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Commissioners Knauer/Herron m/s to approve a modification to the deed restriction with the following conditions:

1. All conditions of Planning Action 99-048 shall remain conditions of approval unless otherwise specifically modified herein.
2. That the deed restriction required in condition 9 of PA 99-048, and amended per PA-2016-00684, shall be revised to read as follows:
Parcel 7 is restricted from further development or land division until Grantor obtains a determination from the Department of Environmental Quality that the property meets cleanup standards for current and likely future land use zoning for the property consistent with the ODEQ designation of Urban Residential for the identified contaminants on the parcel. Thereafter, development of or any subdivided parcel cannot occur until Grantor obtains a determination from the Department of Environmental Quality that the property meets cleanup standards applicable to the use proposed for the subdivided parcel. This covenant will be removed from the property, and/or any subdivided parcel(s), upon the grantor providing the City written documentation from the Department of Environmental Quality demonstrating compliance with these standards to the City.
3. That evidence shall be submitted demonstrating that the deed restriction has been revised in accordance with Condition 2 above and recorded prior to issuance of City excavation permit or any site work.

Roll Call Vote: all AYES. Motion passed 4-0.

- B. PLANNING ACTION:** PA-T2-2023-00041
SUBJECT PROPERTY: Tax Lot 404 Clinton St.
OWNER: Magnolia Heights LLC
DESCRIPTION: A request Performance Subdivision Outline Plan approval for a 12-lot, 11-unit residential subdivision. The application also includes requests for an Exception to Street Standards, and a Tree Removal Permit for four significant trees. Additionally, the applicant has applied for a minor amendment to the adopted Physical and Environmental Constraints map to effectively remove a drainage way from the map that is not extant on the property. And finally, the applicant has addressed the applicability standards of the Water Resource Protection Zone WRPZ by providing a wetland determination demonstrating that there are no regulated wetland resources on the subject property. **COMPREHENSIVE PLAN DESIGNATION:** Single Family Residential;
ZONING: R-1-5; **MAP:** 39 1E 04 DB; **TAX LOT:** 404

Chair Verner stated the Commission and applicants had received public testimony concerning this item prior to the meeting. (see attachment #2).





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Ex parte Contact

No ex parte contact was reported. Chair Verner conducted a site visit.

Staff Presentation

Senior Planner Aaron Anderson began by informing the Commission that a continuance of the meeting had been requested by a noticed resident, Eric Elerath. He provided a brief presentation where he outlined the subject property, and identified the site as an ephemeral stream in the floodzone. He stated that the application included requests for a Water Resource Protection Zone (WRPZ) delineation, an exception to Street Standards, and the removal of 4 significant trees. Mr. Anderson concluded that staff recommended approval of the application with the conditions included in the staff report (see attachment #3).

Applicant's Presentation

Applicant Amy Gunter detailed the site and described the surrounding neighborhood, City parklands and restricted wetland areas, and stated that the property is within a R-1-5 zone. She noted that the application proposes dividing the property into twelve-lot residential subdivisions with a common area parcel, and that the requested exception to Street Standards is for a portion of the sidewalk to be curbside. She added that the layout of the subdivision was naturally derived from the adjoining streets, and that the homes shown in the proposal do not necessarily depict the final product. The streets will also be extended to existing City street standards, except where the curbside sidewalk is proposed. Ms. Gunter identified an access easement north of the property which will be improved as a multi-use pathway for pedestrian access. Ms. Gunter concluded that the application complies with existing standards, excluding the requested exception to Street Standards, and that this project would help alleviate the City's need for additional housing (see attachment #4).

Questions of the Applicant

Commissioner Knauer inquired about the placement of the open space designated in the application. Ms. Gunter responded that this is due to it being located at the lowest point of the property, and will include a required consolidated storm drain.

Chair Verner noted that the application showed potential duplexes on the lot, which would result in twenty-two dwelling units on the eleven lots. Ms. Gunter responded that two residential units are now permitted on a lot provided they show adequate accessibility and development standards, and that the property will likely include duplexes. Chair Verner asked if all twenty-two dwelling units would be accessed from the alley. Ms. Gunter responded that they would, and that applicants are no longer required to include parking, but that adequate parking would be provided.

Public Comments

Eric Elerath/Mr. Elerath requested a continuance of the meeting to allow for additional research to



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be submitted into the record. He stated that the conditions of approval of PA-T1-2019-00109, which allowed the subdivision, did not appear to have been carried over to this project. He said that he objected to the proposal, stating that the review of the project conducted by the Community Development Department appeared to violate article 6, paragraph 2 of the U.S. Constitution, as well as the balance of powers doctrine. Mr. Elerath stated that the application also appeared to violate Oregon State laws that regulate the licensing of land use professionals.

Mr. Elerath noted apparent inconsistencies between a 2020 review of the site that located a “slight slope” on the property, which is shown as a “steep slope” in the current proposal. He lamented that the Ashland Municipal Code (AMC) does not require applicants to abide by prior approval conditions, and that the prior planning action referred to the development of Single-Family Residences (SFRs), not duplexes. He concluded that these changes are not consistent with the prior approval conditions.

Bob Weibel/Mr. Weibel read from a memorandum provided his wife and himself (see attachment #5).

Gordan Longhurst/Mr. Longhurst stated that he did not receive a notice of the application, despite living three houses away from the subject property. Mr. Longhurst commented that this development would increase neighborhood traffic, and that additional traffic signs would need to be installed. He stated that his understanding of R-1-5 zones is that a minimum of 5,000sqft is required for each dwelling on a lot, and that none of the proposed lots would have the space to accommodate two dwellings. He requested clarification regarding this discrepancy. Mr. Longhurst suggested that a further review of the wetlands be conducted, as the initial review was done during a drought period and therefore not indicative of its natural state.

Linda Hilligoss/Ms. Hilligoss echoed Mr. Longhurst’s concerns regarding the environmental impact of the development, stating that there are inconsistencies between a past wetland review and one done more recently. She expressed concern that the wetland area is not listed as a WRPZ. Ms. Hilligoss suggested that the applicant reduce the number of lots from eleven to ten to provide a open space in lot one that could provide additional water protection. Ms. Hilligoss expressed concern that a traffic report was not included in the application, and requested that more traffic signs be installed around the neighborhood.

Mr. Goldman pointed out that any property that can accommodate one dwelling unit can now contain two, per House Bill 2001. He mentioned that the City has long allowed this, and that it cannot prohibit two units where one would be allowed.

Applicant’s Rebuttal

Ms. Gunter stated that there are no required licenses for land use developers. She stated that her





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licensed team proposed this development plan, and that they would be stamped in accordance with licensing laws. Ms. Gunter suggested that any concerns regarding signage around the neighborhood should be directed to the Transportation Advisory Committee. She stated that her team's licensed professional, Jodi Forgione, can speak more to the wetlands, but that no previous wetland studies had been conducted on this property. She explained that the determination of a wetland is based on the combined presence of specific plants, soil, and water types, and that the wetland delineation has not yet been completed at the state level. Ms. Gunter stated that her client, Gil Livni, received a copy of the memo read by Mr. Weibel.

Chair Verner reminded the Commission that a continuance request had been submitted by Mr. Elerath. Commissioner KenCairn remarked that keeping the record open for only seven days would not provide sufficient time for additional research to be done or for comments to be submitted. The Commission discussed an appropriate timeframe for the record to remain open. Commissioner Herron suggested that the record be kept open for an additional seven days to allow for further comments to be received, and then a further seven days be provided for any participant of the meeting to respond to comments received during the extension period. The Commission agreed, with Chair Verner recommending a two-week period for additional comments.

Commissioners Herron/Knauer m/s to close the Public Hearing and keep the Public Record open for fourteen additional days, followed by seven days for participating parties to respond, followed by seven days for a final argument from the applicant. DISCUSSION: Commissioner Herron expressed appreciation for the opinions shared during the meeting, and requested that all further comments be limited to the criteria over which the Commission has purview. Commissioner KenCairn concurred, stating that the Commission will not have purview over the issues raised regarding lights and street signs. **Voice Vote: All AYES. Motion passed 4-0.**

Mr. Goldman stated that this item would be returning the Commission at the June 13, 2023 Regular Meeting, and reminded the Commission that any ex parte contact should be avoided since the record has been left open. Mr. Goldman explained that the City's process for noticing neighbors about planning actions includes mailing notices to all addresses within 200ft of the subject property, as well as placing signs around the property. He commented that state guidelines for notices only require those within 100ft to be noticed. Mr. Goldman requested that any evidence of noticing procedures not being met should be submitted and entered into the record.

VI. **OPEN DISCUSSION** – None

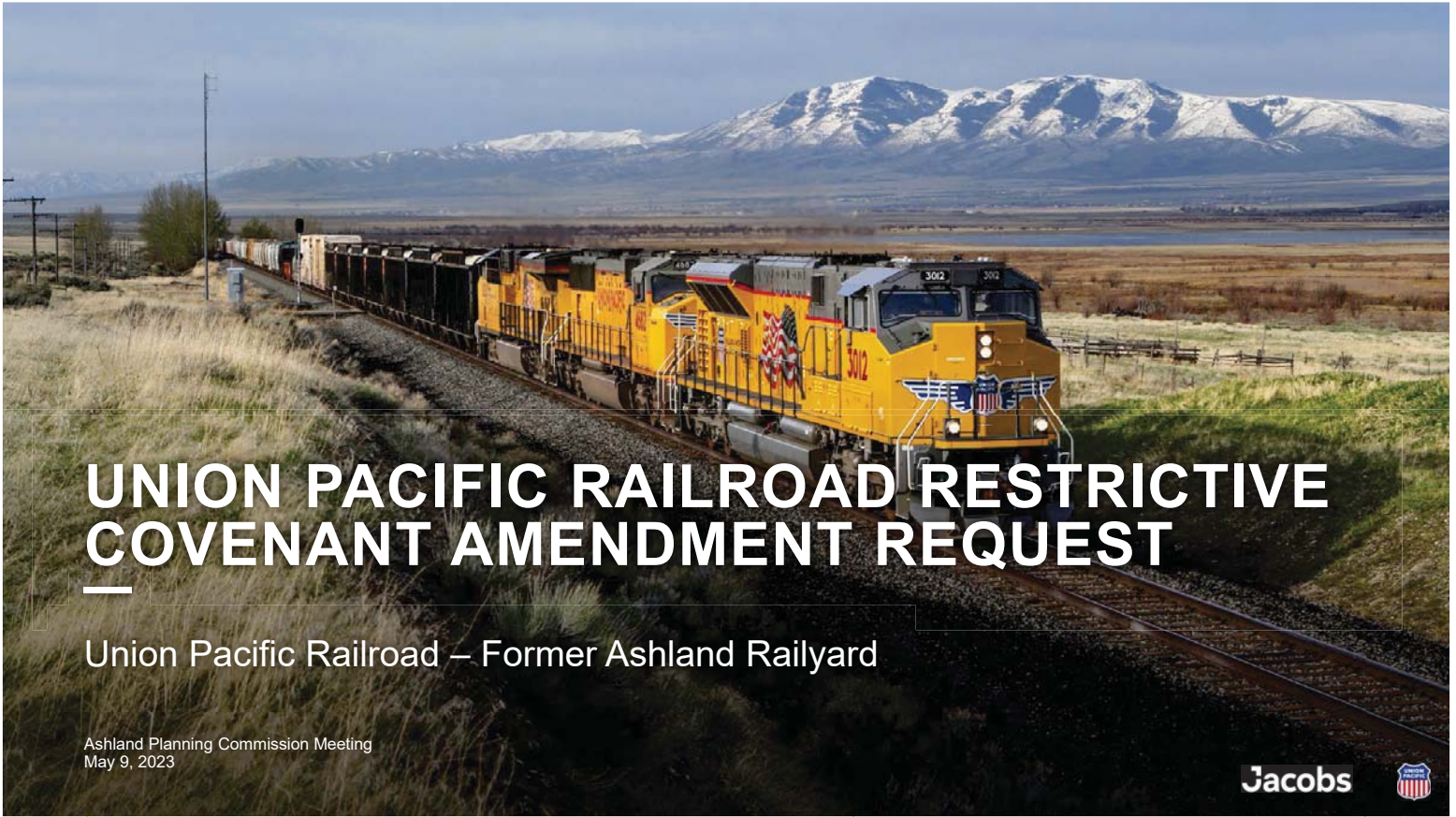
VII. **ADJOURNMENT**

Meeting adjourned at 9:06 p.m.

Submitted by,

Michael Sullivan, Executive Assistant





UNION PACIFIC RAILROAD RESTRICTIVE COVENANT AMENDMENT REQUEST

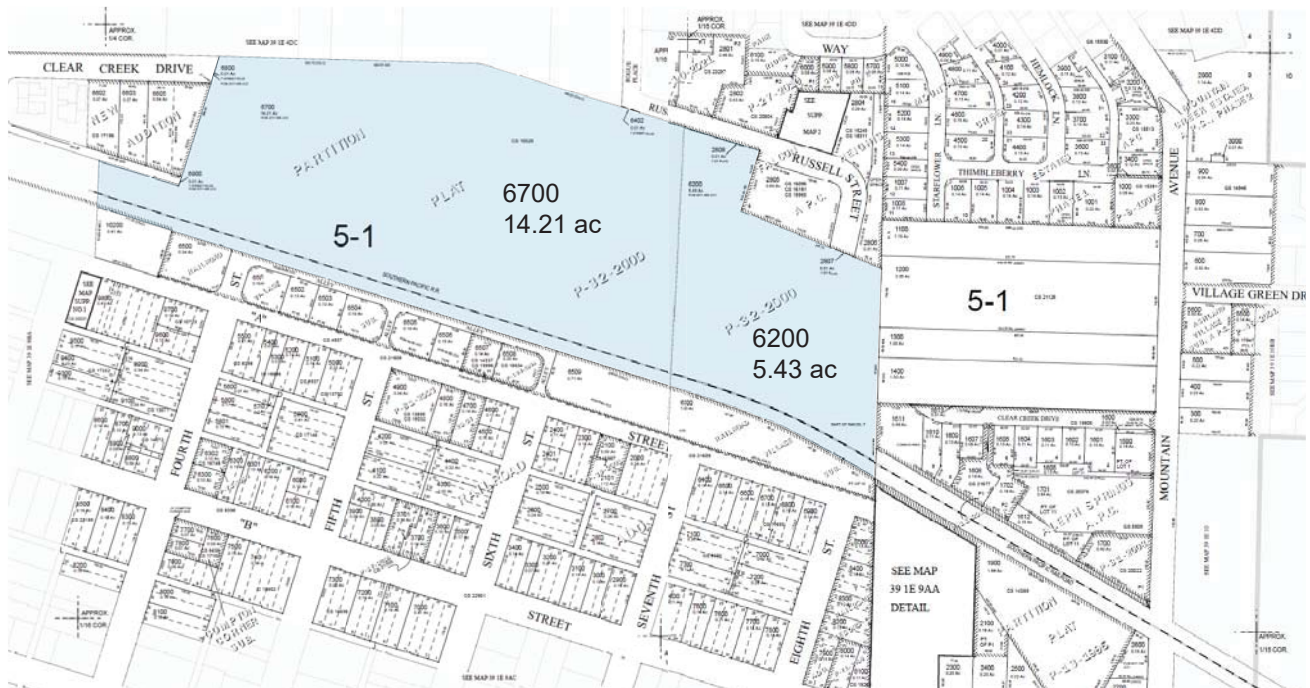
Union Pacific Railroad – Former Ashland Railyard

Ashland Planning Commission Meeting
May 9, 2023

Jacobs



Parcel 7 of Partition Plan No. P-32-2000



Proposed Covenant Modification

(Condition 9 of PA 2016-00684)

Parcel 7 is restricted from further development or land division until Grantor obtains a determination from the Department of Environmental Quality that the property meets cleanup standards applicable to a single residential property. Thereafter, development of or any subdivided parcel cannot occur until Grantor obtains a determination from the Department of Environmental Quality that the property meets cleanup standards applicable to the use proposed for the subdivided parcel. Grantor will provide written document from the Department of Environmental Quality demonstrating compliance with these standards to the City.

Parcel 7 is restricted from further development or land division until Grantor obtains a determination from the Department of Environmental Quality that the property meets cleanup standards consistent with the current and likely future land use zoning for the property applicable to a single residential property. These land uses correspond with the Department of Environmental Quality Urban Residential and/or Occupational exposure scenarios. Thereafter, development of ~~or~~ any subdivided parcel cannot occur until Grantor obtains a determination from the Department of Environmental Quality that the property meets cleanup standards applicable to the use proposed for the subdivided parcel. This covenant will be removed from the property, and/or any subdivided parcel(s), upon the gGrantor will provide-providing the City written document~~ation~~ from the Department of Environmental Quality demonstrating compliance with these standards to the City.



Estimated Timeline – Next Steps

- **Spring 2023:** Planning Commission approval of covenant modification
- **Summer 2023:** Public town hall and City Council Study Session
- **Fall 2023:** DEQ finalizes Record of Decision
- **Winter 2023:** Complete remedial design remedial action work plan
- **Spring 2024:** Solicit bids from remediation contractors
- **Summer 2024:** Commence remediation activities
- **Fall 2024:** Completion of remediation activities





QUESTIONS

- More information:
 - <https://www.deq.state.or.us/Webdocs/Forms/Output/FPController.ashx?SourceId=1146&SourceIdType=11>
- ODEQ contact:
 - margaret.oscilia@deq.oregon.gov

Risk-Based Concentrations for Shallow Soil

| Analyte | Single-Family Residential (mg/kg) | Urban Residential (mg/kg) | Occupational (mg/kg) | Basis |
|-------------------------|-----------------------------------|---------------------------|----------------------|--|
| Arsenic | 18 30 | 30 | 30 | Site-specific background (refer to Section 3.2.2) |
| Lead | 400 ^a | 400 ^a | 426 800 ^a | Oregon Department of Environmental Quality (DEQ). 2018. Risk Based Concentrations. May. |
| TPH as diesel | 1,100 1,830 | 2,200 | 14,000 | Oregon Department of Environmental Quality (DEQ). 2018. Risk Based Concentrations. May. |
| TPH as gasoline | 1.83 1,200 | 2,500 | 20,000 | Oregon Department of Environmental Quality (DEQ). 2018. Risk Based Concentrations. May. |
| TPH as oil ^b | 2,300 2,940 | 4,600 | 29,000 | Oregon Department of Environmental Quality (DEQ). 2019. Calculating RBCs for Total Petroleum Hydrocarbons. http://www.deq.state.or.us/Docs/cu/RBCsTPH11a.xlsm |
| PAHs as BaP-Equiv | 0.06 0.11 | 0.25 | 2.1 | Oregon Department of Environmental Quality (DEQ). 2018. Risk Based Concentrations. May. |

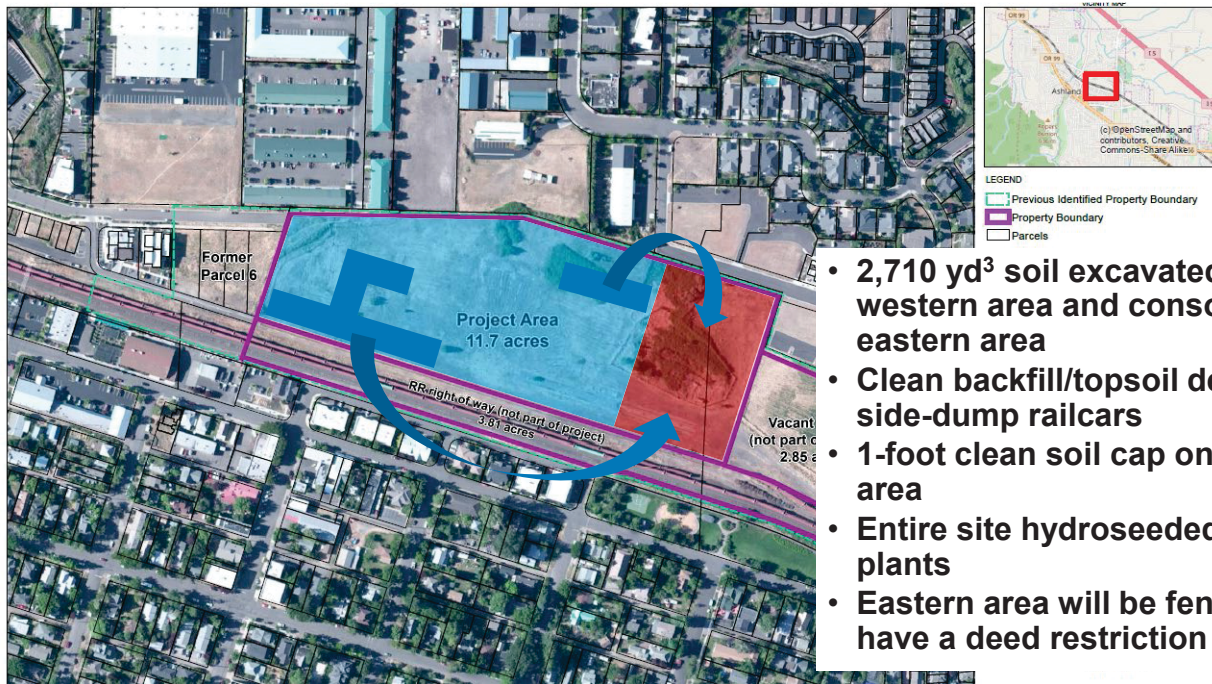
^a Concentrations of lead above 1,000 mg/kg should be addressed although the statistical calculations showed acceptable risk for some scenarios (refer to Section 3.2.2).

^b Calculated using DEQ (2019) and default exposure assumptions for Residential and Occupational scenarios, assuming a 0%/100% mixture of high carbon range (>C21-C34) aliphatic/aromatic compounds. For the Urban Residential scenario, the default exposure frequency was changed to 175 days per year (Jacobs 2019).

mg/kg = milligram(s) per kilogram
 PAHs as BaP-Equiv = polycyclic aromatic hydrocarbons, calculated as total benzo(a)pyrene equivalents
 TPH = total petroleum hydrocarbons



Cleanup Plan



- 2,710 yd³ soil excavated from western area and consolidated in eastern area
- Clean backfill/topsoil delivered by side-dump railcars
- 1-foot clean soil cap on eastern area
- Entire site hydroseeded with native plants
- Eastern area will be fenced and have a deed restriction



Eric Elerath
419 Clinton St.
Ashland, OR 97520
(310) 429-8093

May 8, 2023

Ashland Planning Commission / Community Development Department
City of Ashland
51 Winburn Way
Ashland, OR 97520
(541) 488-5305

PLANNING ACTION: PA-T1-2023-00041
SUBJECT PROPERTY: Tax Lot 404 Clinton St.
OWNER: Magnolia Heights LLC
SUBJECT: REQUEST FOR CONTINUANCE
REQUEST FOR INJUNCTION

Dear Planning Commission / Community Development Department:

My name is Eric Elerath, and I have lived at 419 Clinton St. in Ashland since 2017. I am a full-time resident, taxpayer, and homeowner, and I received written Notice by mail from the City of Ashland regarding the application for the subdivision noted above. I (hereafter, "Mr. Elerath") write to object to the municipal proceedings and the content of the application for the reasons which follow.

I request a continuance to the proceedings and an injunction against the Owner/Applicant and the owner/applicant's 'team' prohibiting further business activities within the City limits until they show evidence of compliance with Ashland municipal law and Oregon State law.

Respectfully,



Eric Elerath

Attachments:

City of Ashland Business License search results: 3 pages, Attachments 1 - 3
Riverwalk HOA CCRs, Recitals, p. 2: 1 pg., Attachment 4

I. REQUEST FOR CONTINUANCE

Mr. Elerath requests that this proceeding be continued for a period of 30 days to allow further review of the material presented by the Applicant parties and to assemble and prepare evidence in rebuttal. There is a significant amount of information involved and the Subject Property has been the subject of multiple planning actions in the past.

On information and belief, it appears that the Applicants will have 15 minutes to present their case, while affected respondent property owners will have only 3 minutes each in rebuttal. The owner and his 'team' have had ample time to prepare, but affected property owners have not had adequate time to prepare for rebuttal, and the 14 day time frame is insufficient and unfair.

ORS 197.797(6)a provides that:

(6)(a) Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application. The local hearings authority shall grant such request by continuing the public hearing pursuant to paragraph (b) of this subsection or leaving the record open for additional written evidence, arguments or testimony pursuant to paragraph (c) of this subsection.

II. REQUEST FOR JUDICIAL / ADMINISTRATIVE NOTICE

To the extent allowed and required by these administrative proceedings, Mr. Elerath requests notice of prior subdivision and development applications, findings of fact and conditions of future approvals relating to the Subject Property, including:

- PA-T1-2020-00109 <http://records.ashland.or.us/WebLink/0/doc/130491/Page1.aspx>;
- PA-APPEAL-2020-00011 <http://records.ashland.or.us/webink/0,0/doc/130490/Page1.aspx>

He also requests notice of the Riverwalk Homeowners' Association (HOA) governing documents, covenants, codes and restrictions (CCRs), which read in part:

Recitals

¶ 2 "Declarant desires to provide for the preservation and enhancement of the property values, amenities, and opportunities in the Riverwalk subdivision and desires to subject the Property ... each and all of which is for the benefit of the Property and each Owner of any Lot thereof." ¹

¹ See Attachment 4. Mr. Elerath does not represent the Riverwalk HOA, but includes the attachment in support of his rights to maintain property values, among others.

III. REQUEST FOR INJUNCTION

1.) Ashland Municipal Code Chapter 18.2.3 - Special Use Standards reads, in part: ²

18.2.3.150 Home Occupation

D. Permit Required – Application.

1. No person shall conduct a home occupation without **first** [bold added] obtaining a home occupation permit from the Planning Department and a valid business license as required under AMC title 6.

3. The home occupation permit is valid only to the person named on the permit and for the business to be conducted at the location stated on the permit. The permit is not transferable to another location or to another applicant.

2.) Ashland Municipal Code Chapter 6.04 - Business Licenses

6.04.030 Business License Required

It shall be unlawful for any persons for themselves, or as agent or employee of another, to undertake a business activity within the City of Ashland, Oregon, unless:

A. Such business activity has been duly licensed as herein provided; and the license is valid at the time of the business activity; or

B. The business activity is exempt pursuant to AMC 6.04.085 (Ord. 3087, amended, 10/01/2013)

Pursuant to a license search performed on May 8, 2023, at the website of Ashland's designated business license processor, ³ neither Magnolia Heights LLC, nor Magnolia Fine Homes, nor Mr. Gil Livni has a current business license or conditional use permit to operate within the City of Ashland. It appears that Magnolia Fine Homes was licensed for one year - 2015 - at a different location, 234 Tucker St. - but Magnolia Heights LLC appears never to have had a business license or conditional use permit to conduct business at 2974 Chapman Lane, a residential zone. Applicant appears to be "undertaking a business activity" in violation of law.⁴

Mr. Elerath requests an injunction prohibiting Mr. Livni, or any entity with which he is associated, from continuing to conduct business within the City until the entity produces evidence of compliance with the above municipal ordinances, including: the time period during which the Applicant purchased the Subject Property from the prior owners; the time Applicant submitted the application to the City for approval; the time during which the City considered Applicant's submittal documents; and the time during which the Applicant has been contracting with other entities, such as realtors, subcontractors, and consultants.

² <https://ashland.municipal.codes/LandUse/18.2.3.150>

³ <https://ashlandor.hdlgov.com/Search/>

⁴ See Attachments 1-3

Federal Law

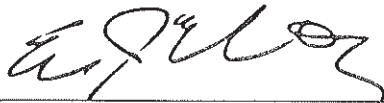
Mr. Elerath objects to the proceedings on the grounds that the review scheme under which the City's Community Development Department / Planning Commission process, review and approve land use applications - including the instant application - deprives him of rights to procedural and substantive due process. The argument is not developed here, but the objection is lodged.

Due Process:

1. Mr. Elerath has a right to due process. Mr. Elerath's property rights are affected. Those property rights include the right to its quiet use and enjoyment, the preservation of its character, and the maintenance of his property's value. These rights are not abstract or conceptual; they are affirmed in the CCRs and governing documents of the adjacent Riverwalk HOA,⁵ which was not only approved, but required by the City as a condition of the Riverwalk property's development. His property rights are well-established under federal case law, and he has standing to object to the process by which his property rights are affected, including their potential devaluation.

2. The process appears to lack the required elements of a valid administrative proceeding. In *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994) ("*Thunder Basin*") the U.S. Supreme Court affirmed certain principles related to administrative proceedings. It also established criteria for concurrent jurisdiction under federal law, recently affirmed and upheld in *Axon Enterprise, Inc. v. Federal Trade Commission, et al.* No. 21-86 (U.S. Apr. 14, 2023) ("*Axon*"). It is beyond the scope of this objection to argue this point, but Mr. Elerath asserts that the process lacks the required elements established by *Thunder Basin* and affirmed in *Axon*.

Respectfully submitted



Eric J Elerath
Ashland, OR

May 8, 2023

Date

⁵ See Attachment 4



City of Ashland
Processing Center

Guest

Home Report a Problem

Business Search

Search By

Business Address

Value

2974 Chapman

Specify Start Date Range (Optional)

Start Date Range From

01/01/2000

To

05/08/2023



No records found that match your search criteria.

Contact Us



City of Ashland
Processing Center

Guest

Home Report a Problem

Business Search

Search By

Business Name

Value

Magnolia

Specify Start Date Range (Optional)

Start Date Range From

01 / 01 / 2016

To

05 / 08 / 2023



No records found that match your search criteria.

Contact Us



City of Ashland
Processing Center

Guest

Home Report a Problem

Business Search

Search By

Business Name

Value

Magnolia

Specify Start Date Range (Optional)

Start Date Range From

01/01/2015

To

01/01/2016

Search

| Business Name | Business Type | Address |
|-------------------------|----------------------|---------------------------------------|
| MAGNOLIA FINE HOMES LLC | CONTRACTOR - GENERAL | 453 TUCKER ST, ASHLAND, OR 97520-1531 |

Total records found: 1

**Declaration of Covenants, Conditions, and Restrictions
for The Riverwalk Homeowners' Association**

THIS DECLARATION is made on the date last written below by Nomoco, LLC, an Oregon limited liability company (referred to below as "Declarant").

Recitals

Declarant is the owner of all the real Property described in Exhibit "A" attached hereto and made a part hereof, including Lots 1 through 62 depicted in the plat of The Riverwalk Subdivision, filed in the Plat Records of Jackson County, Oregon (the "Property"), and desires to create thereon a planned community to be known as The Riverwalk Subdivision, with permanent roadways and utility installations for the benefit of such community.

→ Declarant desires to provide for the preservation and enhancement of the property values, amenities, and opportunities in The Riverwalk Subdivision and desires to subject the Property to the covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth, each and all of which is and are for the benefit of the Property and each Owner of any Lot thereof.

Declarant has deemed it desirable for the efficient preservation of the values and amenities in such community to create a non-profit corporation, to which should be delegated and assigned the powers of owning, maintaining, and administering the Common Property and facilities, and administering and enforcing the covenants, conditions and restrictions, and collecting and disbursing the assessments and charges hereinafter created, and promoting the recreation, health, safety, and welfare of the residents.

Now, therefore, the Declarant declares that the Property shall be held, transferred, sold, conveyed, and occupied subject to the provisions of the Oregon Planned Community Act, ORS 94.550 et seq., and to the covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth in this Declaration.

**ARTICLE I
DEFINITIONS**

1.1 "Articles" shall mean the Articles of Incorporation for the non-profit corporation, The Riverwalk Homeowners' Association, Inc., as filed with the Oregon Corporation Commissioner

1.2 "Association" shall mean and refer to The Riverwalk Homeowners' Association, Inc., its successors, and assigns.

1.3 "Bylaws" shall mean and refer to the Bylaws of the Association.

1.4 "Common Property" shall mean and refer to that area of land outside of Lots 1 through 62 shown on the recorded plat of the Property, including any improvements thereon, which land will be conveyed to the Association.

1.5 "Declaration" shall mean the covenants, conditions, restrictions, and all other provisions set forth in this Declaration of Covenants, Conditions, and Restrictions for The Riverwalk Subdivision.

1.6 "Declarant" shall mean and refer to Nomoco, LLC, an Oregon limited liability company, its successors, or assigns, or any successor or assign to all remainder of his or her interest in the development of the Property.

1.7 "General Plan of Development" shall mean the Declarant's general plan of development of the Property as approved by appropriate governmental agencies and as set forth in this Declaration

Michael Sullivan

From: Aaron Anderson
Sent: Tuesday, May 09, 2023 8:39 AM
To: Michael Sullivan
Subject: FW: Comment on Planning Action PA-T2-2023-00041
Attachments: PA-T2-2023-00041 B Long Comment.docx

Follow Up Flag: Follow up
Flag Status: Flagged

From: Brian Long <blong873@yahoo.com>
Sent: Monday, May 08, 2023 8:06 PM
To: Aaron Anderson <aaron.anderson@ashland.or.us>
Subject: Comment on Planning Action PA-T2-2023-00041

[EXTERNAL SENDER]

Hi Mr Anderson,

Attached you'll find my comments regarding planning action PA-T2-2023-00041. Please let me know if you have trouble with the document.

Thanks for your consideration.

Brian Long

Ashland Planning Commission,

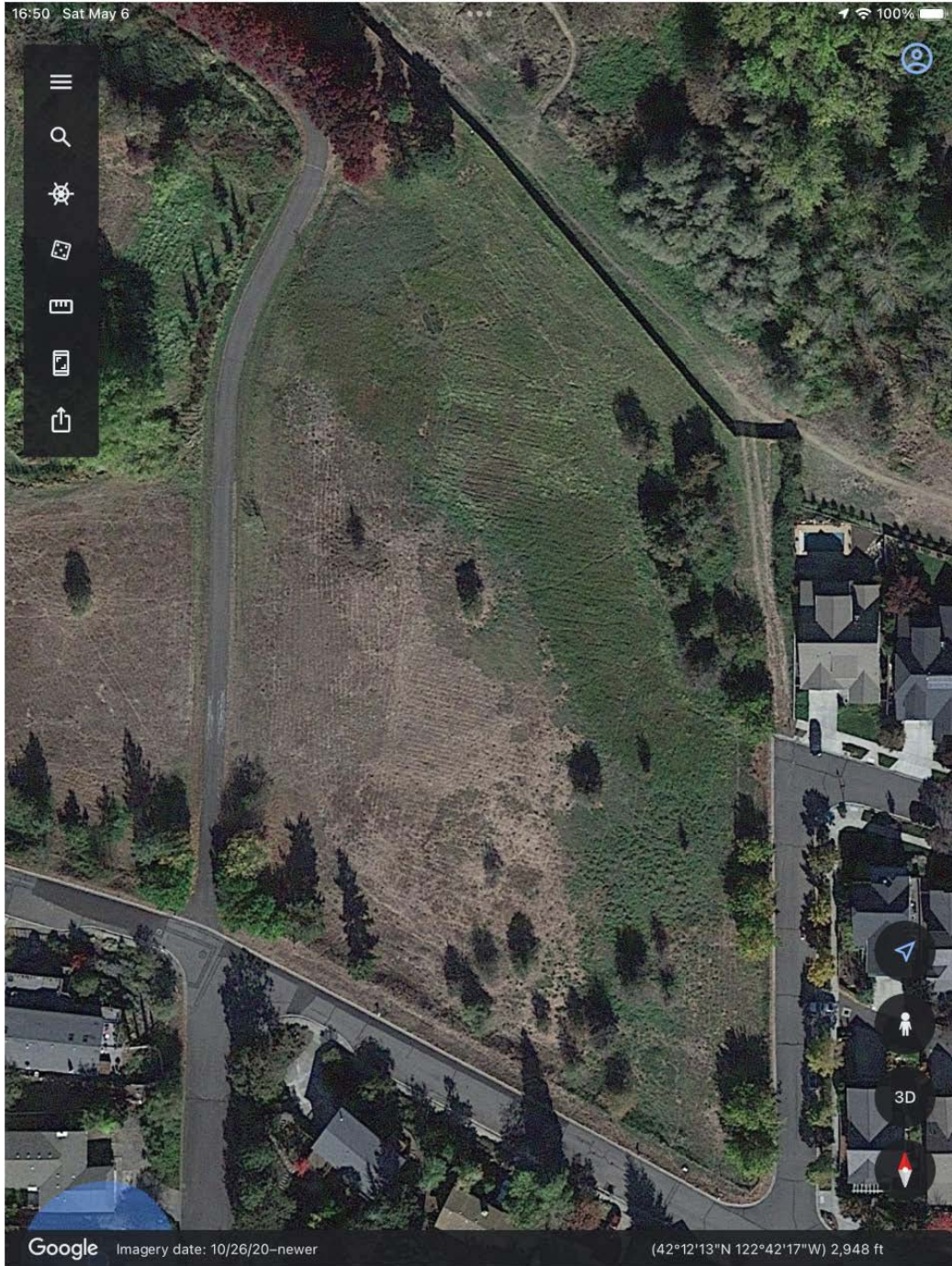
I live at 547 Phelps Street and I recently received a copy of the Notice of Application for tax lot 404 Clinton Street, planning action PA-T2-2023-00041 and I have a couple of comments concerning the project that I would like to have considered.

I downloaded and reviewed the outline plan for Magnolia Meadows subdivision and though at this time in the process it is not determined if it will be 11 single family units or 11 duplexes my first concern has to do with traffic. I know according to city regulations a traffic study is not needed if the anticipated peak hour vehicle trips doesn't exceed a threshold and in the case it is 50 (Pg7). I feel this regulation doesn't really take into account the potential for traffic issues with a development. There should be some consideration based on scale. For instance, in this case Phelps street is being extended and will be one of the primary access points to the development, but currently Phelps street only has 9 residences that use Phelps street for access. In this case the development could more than double the amount of traffic on Phelps street, which is a pretty significant increase in traffic and could have potential impacts.

Phelps street currently has no sidewalks and many residents park on the street and with the steep blind hill, there should be some consideration for people that walk the street and for those residents like myself when backing out of our driving. All the intersections in this area have no stop or yield signs and have recently been identified as near miss accident locations (May Ashland Sneak Preview). My concern is that Magnolia Meadows residents will use Phelps street and with the blind hill will come at a high rate of speed endangering walkers and residents that live up from the development on Phelps street.

I have to admit I would love to see the bottom of Phelps street designed more as an alley access to the neighborhood rather than a full neighborhood street to cut down on speed, but I realize that may not be practical. So, at a minimal I would like to see stop signs on Phelps on each side of Clinton, so those departing and entering the neighborhood would stop and then something to address the traffic traveling down Phelps off of Hersey. I know Ashland isn't real keen on speed bumps that actually work, but I'd suggest something like the topes in Mexico, that would be adequate. 😊

My second concern is the wetland delineation. The report summary states that based on vegetation, soils and hydrology data no wetland waters were identified and that there is essentially a significant deviation between the LWI and NWI (Figure 3 and COA Local Wetlands Inventory map). Looking at Figure 3: Wetland inventory map, I feel that this is closer to what the wetland should be delineated as, but it might even fall a little short. I understand wetlands were identified by vegetation, soil and hydrology, but when I looked at the Google Earth image of the area taken on 10/26/20 (see below), at the driest part of the year there is clearly green thriving vegetation which must indicate that there is water present year-round in that area. All the surrounding vegetation is bone dry and brown, so clearly the vegetation isn't green due to precipitation, but from groundwater. Given that wetlands play an important roll in our environment that support wildlife and help to control erosion and groundwater and with over a 50% decline of wetlands in the continental US, I would think protecting a wetland even though it may not meet the strictest definition should be a priority of any development.



Thank you for your consideration of my comments.

Brian Long

Brian Long
547 Phelps Street

Michael Sullivan

From: City of Ashland, Oregon <administration@ashland.or.us>
Sent: Monday, May 08, 2023 9:05 PM
To: Public Testimony; Dorinda Cottle; Dana Smith
Subject: Council Public Testimony Form Submitted

Follow Up Flag: Follow up
Flag Status: Flagged

[EXTERNAL SENDER]

*** FORM FIELD DATA***

Full Name: **Nancy Martin**

Phone: **5412009167**

Email: **Nancyelizamartin@gmail.com**

Meeting Date : **05/09/2023**

Type of Testimony: **WRITTEN**

Written Testimony: **Dear Members of the Ashland City Council, Wouldn't it be wonderful if the land on the corner of Ann and Clinton could be turned into a park or protected as part of a nature conservancy for bird habitat, instead of replaced with more dense housing? I live a block away from the field, and I walk past it every day with my baby. I've had ample time to observe it through the seasons and my concerns about developing it include: ?The land is clearly wonderful bird habitat. I see more birds in that field than anywhere nearby. More than in North Mountain Park. There is a Great Heron who lives there. I've seen him multiple times and watched him hunt for mice. I would love to have the city protect his home. ?More dense housing by Bear Creek worries me because of fire danger. I think there are better places in Ashland to develop where there is less risk, like out by Tolman Creek road. Oak street is also being developed, and apartments are being built on Garfield St where the church used to be. Can we make sure to preserve some land as natural habitat in the midst of all this development? ?There are places where the land isn't wildlife habitat that would be preferable for building (such as the places listed above). ?Part of the reason my family and I chose to live here was because of this open land. Everyone in the neighborhood loves having it open and undeveloped. Last night a neighbor stopped my family to whisper to us to keep an eye out for the mother goose and her little babies, who have been wandering through that field for the last several evenings. We love the animals it provides a home for. ?It is prone to flooding. I walk on the trail next to it every day, except for when the trail is completely flooded and impassable, which has been over seven times this spring. I know we are having heavy rains this season, but with weather patterns continuing to become more severe, it seems this easily flooded area is not ideal for construction. I think it's better suited for the bathing habits of the Great Heron, the finches, the geese, and the robins. I hope you will consider preserving this land as a park or as a nature reserve. The city has done this in the past with the land next to Terrace St. I grew up there with a beautiful field that was at risk of being developed until neighbors got together to ask for it to be a park. The company graciously sold the land to the city and the city made it into a park, and we and the wildlife have enjoyed the natural landscape since. I hope the field on Clinton and Ann, with its beautiful flowering trees, hidden foxes, and abundant birds, will have the same lovely fate. Thank you for considering making it into a park or nature reserve! Sincerely, Nancy Martin 343 Patterson St Ashland**

*** USER INFORMATION ***

SubscriberID: **-1**

SubscriberUserName:

SubscriberEmail:

RemoteAddress: **66.241.70.76**

RemoteHost: **66.241.70.76**

RemoteUser:

May 9, 2023

To: Gil Livni
Magnolia Heights LLC

Re: Magnolia Meadows Subdivision

1. We would like to see a subdivision that blends in with and enhances the character of the neighborhoods surrounding the proposed building area. Hopefully, this would be a mix of housing sizes that would appeal to families as well as adults. We think the houses you built at Helman Springs would be a great fit for the new subdivision, and are in line with your proposal description of the houses to be built, i.e. "Modern Craftsman Bungalows."
2. With the expected increase in traffic, we hope you'll work to minimize that impact on the neighborhoods, with yield and stop signs and other means to slow traffic and to create multiple ways of leaving and entering the subdivision so that not just one or two streets end up with the bulk of the traffic flow.
3. We have questions about the report regarding what constitutes a wetland. We've observed that some of the areas proposed for building have seasonal ponds depending on the amount of rainfall that year. Not only will this be a problem for the homebuyer but also for plants and animals that are using those areas.
4. The proposed building site area has been home to multiple species of animals, including rabbits, coyotes, foxes, and varieties of birds, and provides feeding, nesting and resting places. Whenever possible we hope that you'll consider the impact of this subdivision on the wildlife and the plants that live in and outside the wetland areas. Please take advantage of the natural beauty of the property and incorporate this into your subdivision layout.
5. Riverwalk storm drains were purposely over-engineered by a factor of three to avoid flooding, which has proved successful. We hope that will also be considered.
6. Please use streetlights similar to those used in Riverwalk that provide safety but have low impact on the neighborhoods.
7. It would be greatly appreciated if you would bring neighbors into decision making whenever possible. The developers of Riverwalk were will-

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Bob Weibel

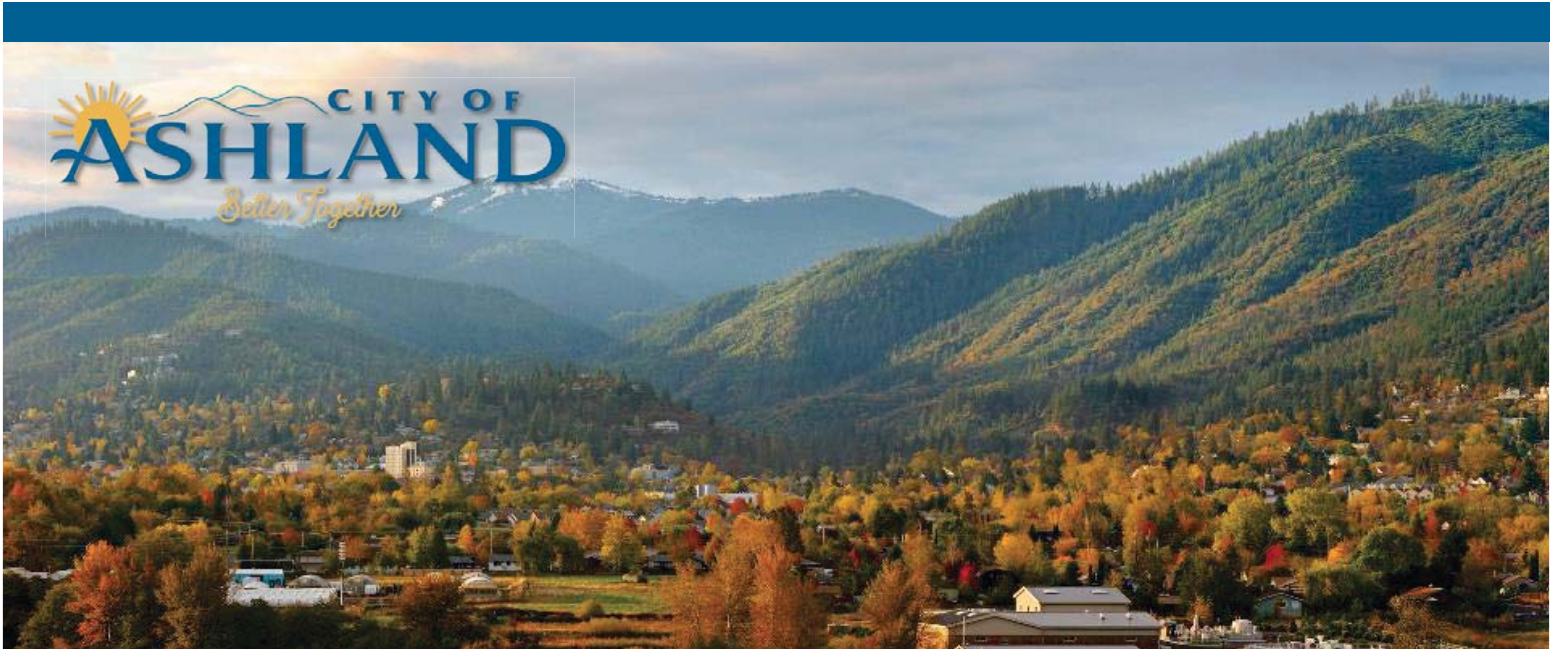
541-499-2798
bweibel1@mind.net

A handwritten signature in cursive script that reads "Robert W. Weibel". The signature is written in black ink and is positioned below the printed contact information for Bob Weibel.

Diana Standing

A handwritten signature in cursive script that reads "Diana Standing". The signature is written in black ink and is positioned below the printed name of Diana Standing.

541-499-2414
dianas@mind.net



Magnolia Meadows

PLANNING COMMISSION

MAY 9, 2023





PA-T2-2023-00041

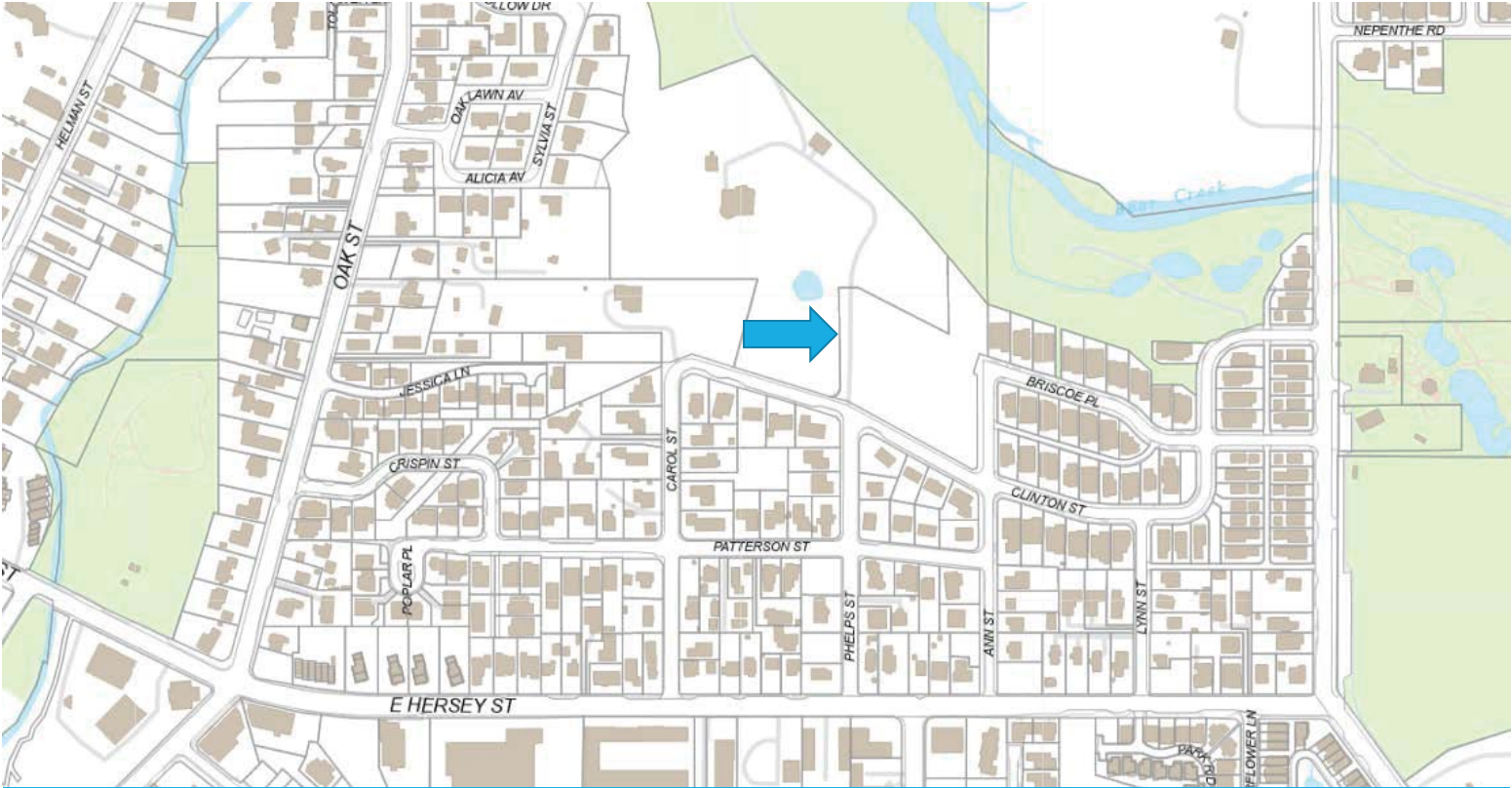
Request for outline plan approval for a 12 lot, 11 residential unit subdivision. Included in the application is a request for an exception to street standards, a tree removal permit for two significant trees and a minor map amendment to the adopted physical and environmental constraint map



PA-T2-2023-00041

We have received a request for a continuance.

The Planning Commission shall either grant the continuance to a 'date and time certain' or leave the record open pursuant to ORS 197.797(6)...



Site Description

The subject property is 2.66 acres in area and zoned R-1-5 (Single Family Residential) and within the Performance Standards Overlay (PSO). The property is currently vacant.

The property was created in its current configuration on Partition Plat No. P-30-2022 recorded as CS 23736 and approved as City of Ashland Planning Action PA-T1-2020-00109



Performance Subdivision

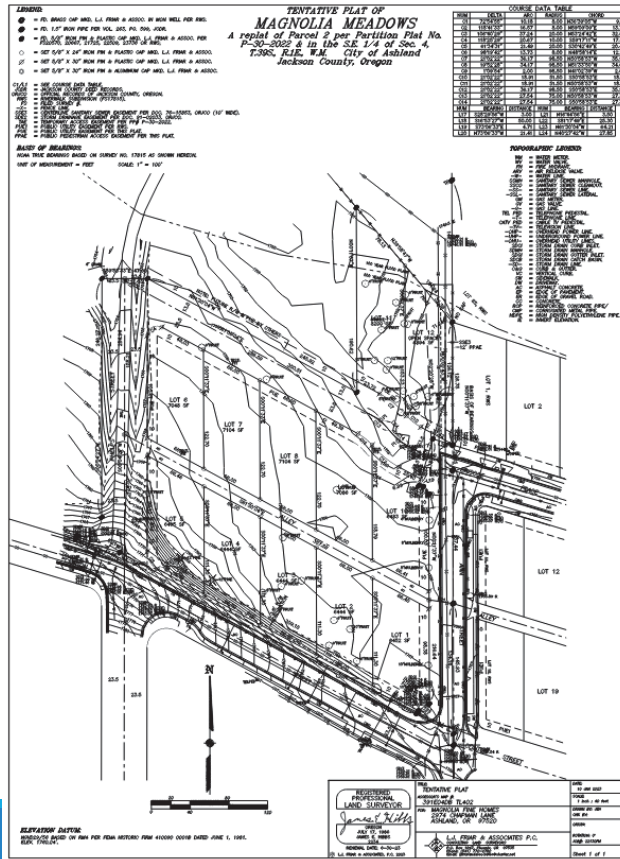
As proposed, the is to be subdivided to create 11 residential lots and a single common area lot. A new extension of both Phelps and Briscoe create a new block very similar in size to the western block of Riverwalk Subdivision to the east.

An Exception to the Street Design Standards is requested to not install a park row planting strip in the southwest corner of the subdivision due to an immediate change in grade.

Allowed density = 4.5/ac.

$$2.66 \times 4.5 = 11.97$$



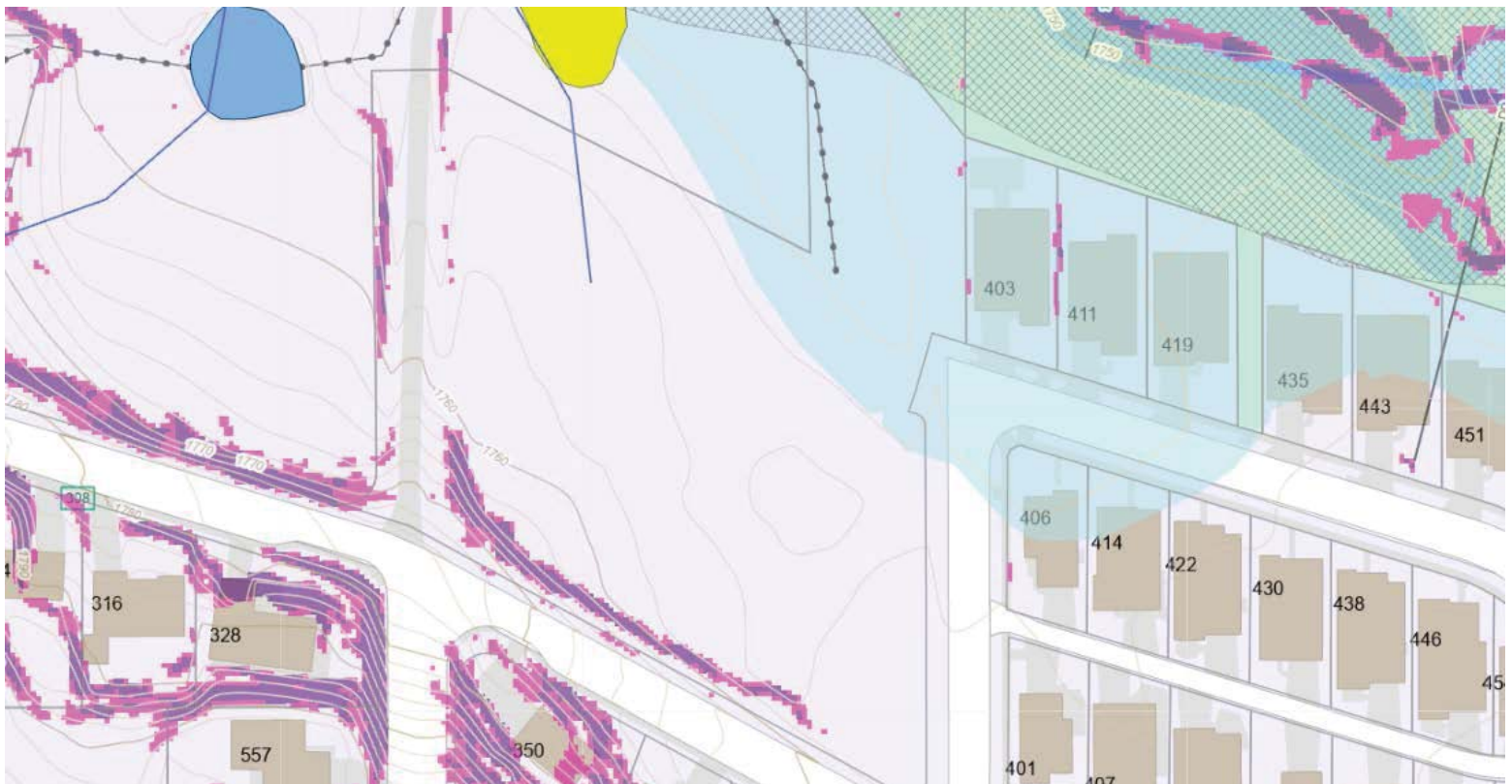
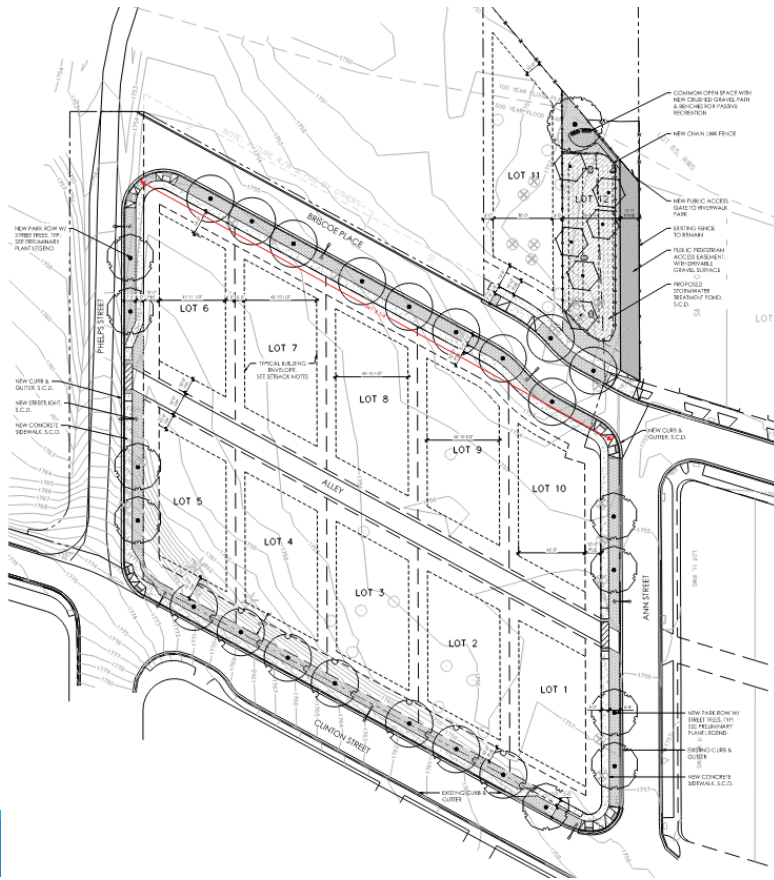


Exception to Street Standards

The application materials explain that the requested exception is required due to the immediate change in grade adjacent to the proposed improvement. The application explains that the topography creates “challenges to construction of a park row and sidewalk as there would be a large retaining wall required to hold the sidewalk up which will then require a guardrail or other barrier.”

Staff feels that the steepness of the slope immediately adjacent to an improved ROW which is a result of the original creation of Clinton Street is an unusual aspect of the site and that the exception is justified.





Physical and Environmental Constraints

AMC 18.3.10.070 provides for “Minor amendments of the maps to correct mapping errors when the amendments are intended to more accurately reflect” the conditions on the ground.

During site visits there was no evidence of a drainage in the area.

The application states that the area does “not contain the physiographic conditions or significant natural vegetation or trees or soil characteristics to warrant calling it a stream or a protected floodplain.”

Staff recommends a minor amendment is appropriate to ‘more accurately reflect’ the conditions on the ground and formally amend the adopted Physical and Environmental map herein.



Water Resource Protection Zone

The Water Resource Protection Zone applicability at AMC 18.3.11.020 puts the burden on the property owner that the regulations of AMC 18.3.11 “are met or are not applicable” to a proposed development.

The application included a wetland delineation acknowledged by the Department of State Lands concluding that there is no regulated wetland on the subject property.





Date: 1/12/2023

Data Source: ESRI, 2020 Jackson County GIS, Dept., 2019; DOGAMI, 2009

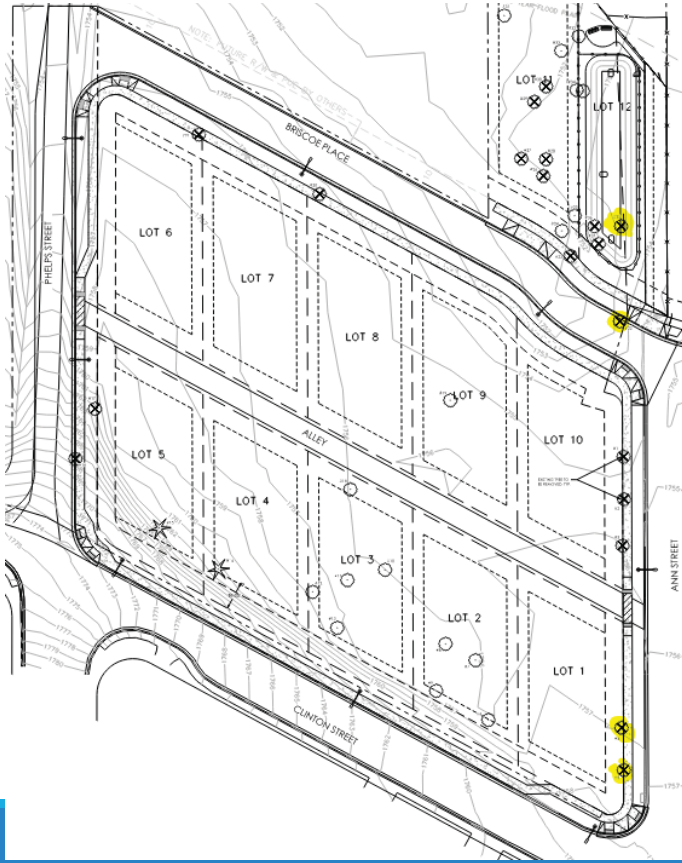
Figure 6. Wetland Delineation Map

Tree Removal

The four significant trees are all proposed to be removed due to be located either in the proposed right-of-way or in the storm water facility which will require significant grading.

The Ashland Tree Management Advisory Committee has reviewed the proposal and recommended approval.





| EXISTING TREE INVENTORY | | | |
|-------------------------|-----------------|--------------------|--------------------|
| TREE DESCRIPTION | | | |
| # | DBH (APPROX) | BOTANICAL NAME | COMMON NAME |
| 1 | 8" | MORUS SPP. | MULBERRY |
| 2 | 8" | MORUS SPP. | MULBERRY |
| 3 | 10" | MORUS SPP. | MULBERRY |
| 4 | 12" | MORUS SPP. | MULBERRY |
| 5 | 12" | MORUS SPP. | MULBERRY |
| 6 | MULTI | CRATAEGUS MONOGYNA | COMMON HAWTHORNE |
| 7 | MULTI | CRATAEGUS MONOGYNA | COMMON HAWTHORNE |
| 8 | MULTI | CRATAEGUS MONOGYNA | COMMON HAWTHORNE |
| 9 | MULTI | CRATAEGUS MONOGYNA | COMMON HAWTHORNE |
| 10 | MULTI | CRATAEGUS MONOGYNA | COMMON HAWTHORNE |
| 11 | MULTI | CRATAEGUS MONOGYNA | COMMON HAWTHORNE |
| 12 | MULTI | CRATAEGUS MONOGYNA | COMMON HAWTHORNE |
| 13 | MULTI | CRATAEGUS MONOGYNA | COMMON HAWTHORNE |
| 14 | 14" | PINUS MONTICOLA | WESTERN WHITE PINE |
| 15 | 14" - 2 LEADERS | PINUS MONTICOLA | WESTERN WHITE PINE |
| 16 | MULTI | CRATAEGUS MONOGYNA | COMMON HAWTHORNE |
| 17 | MULTI | CRATAEGUS MONOGYNA | COMMON HAWTHORNE |
| 18 | MULTI | CRATAEGUS MONOGYNA | COMMON HAWTHORNE |
| 19 | MULTI | CRATAEGUS MONOGYNA | COMMON HAWTHORNE |
| 20 | MULTI | CRATAEGUS MONOGYNA | COMMON HAWTHORNE |
| 21 | MULTI | CRATAEGUS MONOGYNA | COMMON HAWTHORNE |
| 22 | 12" | MORUS SPP. | MULBERRY |
| 23 | MULTI | CRATAEGUS MONOGYNA | COMMON HAWTHORNE |
| 24 | MULTI | CRATAEGUS MONOGYNA | COMMON HAWTHORNE |
| 25 | MULTI | CRATAEGUS MONOGYNA | COMMON HAWTHORNE |
| 26 | MULTI | CRATAEGUS MONOGYNA | COMMON HAWTHORNE |
| 27 | MULTI | CRATAEGUS MONOGYNA | COMMON HAWTHORNE |
| 28 | MULTI | CRATAEGUS MONOGYNA | COMMON HAWTHORNE |
| 29 | MULTI | CRATAEGUS MONOGYNA | COMMON HAWTHORNE |
| 30 | MULTI | CRATAEGUS MONOGYNA | COMMON HAWTHORNE |
| 31 | MULTI | CRATAEGUS MONOGYNA | COMMON HAWTHORNE |
| 32 | MULTI | CRATAEGUS MONOGYNA | COMMON HAWTHORNE |
| 33 | MULTI | CRATAEGUS MONOGYNA | COMMON HAWTHORNE |
| 34 | MULTI | CRATAEGUS MONOGYNA | COMMON HAWTHORNE |
| 35 | 16" | MORUS SPP. | MULBERRY |
| 36 | MULTI | CRATAEGUS MONOGYNA | COMMON HAWTHORNE |
| 37 | MULTI | CRATAEGUS MONOGYNA | COMMON HAWTHORNE |

NOTES:
1. TREE LOCATIONS WERE TAKEN FROM PRELIMINARY PLAT SURVEY, DATED JANUARY 10, 2023.

Staff Recommendation

Staff recommends that the application be approved with the conditions detailed in the attached draft findings.



QUESTIONS?



Timeline

| | |
|------------------------------|----------------|
| SUBMITTAL DATE: | March 6, 2023 |
| DEEMED COMPLETE DATE: | April 19, 2023 |
| HEARING NOTICE: | April 25, 2023 |
| PUBLIC HEARING: | May 9, 2023 |

We have received a request for a continuance. The Planning Commission shall either grant the continuance to a date and time certain or leave the record open pursuant to ORS 197.797(6)...

| | |
|--|-------------------------|
| New Evidence or Argument from Parties: | May 16, 2023 @ 4:30 pm |
| Parties May Respond to New Submittals: | May 23, 2023 @ 4:30 pm |
| Final Legal Argument from Applicant: | May 30, 2023 @ 4:30 pm |
| Next Regular PC Meeting Date: | June 13, 2023 @ 7:00 pm |
| Potential Deliberation Findings adoption | June 27, 2023 |

120-DAY DEADLINE: August 17, 2023



Density

18.3.9.050 Performance Standards for Residential Developments

A. Base Densities. The density of the development shall not exceed the density established by this section. The density shall be computed by dividing the total number of dwelling units by the acreage of the project, including land dedicated to the public. Fractional portions of the final answer, after bonus point calculations, shall not apply towards the total density. Accessory residential units and **duplexes are not required to meet the density requirements** of this chapter in accordance with sections [18.2.3.040](#) and [18.2.3.110](#).



Density

Density(ies). A measurement of the number of dwelling units in relationship to a specified amount of land. A common standard is dwelling units per acre.

Dwelling. A structure conforming to the definition of a dwelling under applicable building codes and providing complete, independent living facilities for one family, including permanent provisions for living, sleeping, eating, cooking, and sanitation. Buildings with more than one set of cooking facilities are considered to contain multiple dwelling units unless the additional cooking facilities are clearly accessory to the primary use, such as an outdoor grill or wet bar. For the purposes of this title, the following types of dwelling units are defined as follows:

- **Duplex** Two dwellings on one lot in any configuration including either in attached or detached structures. Two attached dwellings in a stand-alone structure that is included in a multifamily development of three or more units shall be considered multifamily dwellings and shall not be considered a duplex.



ORS 197.797(6) (a) Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application. The local hearings authority shall grant such request by continuing the public hearing pursuant to paragraph (b) of this subsection or leaving the record open for additional written evidence, arguments or testimony pursuant to paragraph (c) of this subsection.



(b) If the hearings authority grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments or testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence, arguments or testimony for the purpose of responding to the new written evidence.

(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.

(d) A continuance or extension granted pursuant to this section shall be subject to the limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179, unless the continuance or extension is requested or agreed to by the applicant.

(e) Unless waived by the applicant, the local government shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. This seven-day period shall not be subject to the limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179.

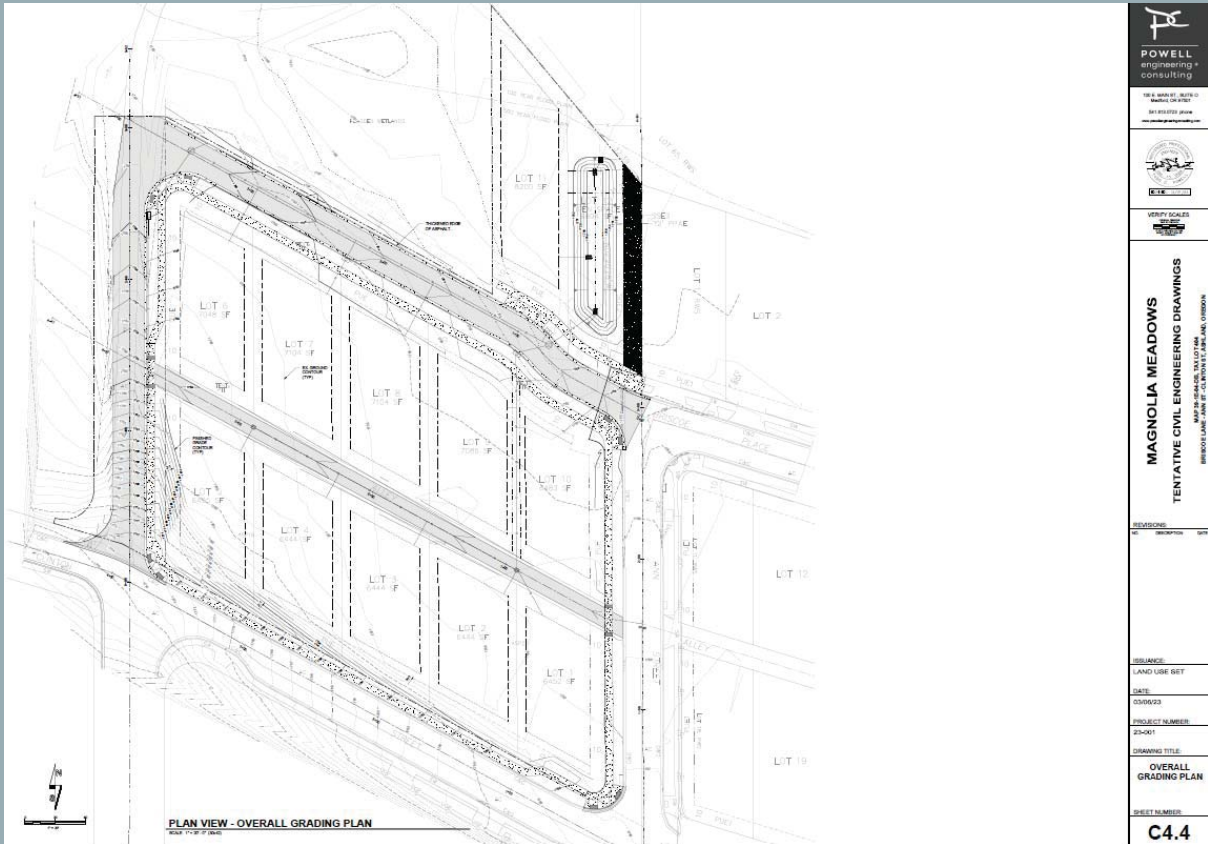
REQUEST FOR OUTLINE PLAN APPROVAL 12 LOT SUBDIVISION

Clinton Street

39 1E 04DB: Tax Lots: 404







CONCLUSION

- The proposal complies with the criteria for a Performance Standards Subdivision.
- All proposed lot area and dimensions exceed the minimum lot size in the R-1-5-P zone.
- Adequate vehicular, pedestrian and bicycle access is proposed through the improvements to the streets, the extension of streets, sidewalks, a pedestrian/bicycle pathway access to the public parkland north of the subject site.
- Ample open space with connection to the public park.

May 9, 2023

To: Gil Livni
Magnolia Heights LLC

Re: Magnolia Meadows Subdivision

1. We would like to see a subdivision that blends in with and enhances the character of the neighborhoods surrounding the proposed building area. Hopefully, this would be a mix of housing sizes that would appeal to families as well as adults. We think the houses you built at Helman Springs would be a great fit for the new subdivision, and are in line with your proposal description of the houses to be built, i.e. "Modern Craftsman Bungalows."
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Bob Weibel

541-499-2798
bweibel1@mind.net

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Diana Standing

A handwritten signature in cursive script that reads "Diana Standing". The signature is written in black ink and is positioned below the printed name of Diana Standing.

541-499-2414
dianas@mind.net

FINDINGS

**PA-T2-2023-00040,
1111 Granite Street**

BEFORE THE PLANNING COMMISSION

June 13, 2023

**IN THE MATTER OF PLANNING ACTION #PA-T2-2023-00040, A)
REQUEST FOR SITE DESIGN REVIEW AND CONDITIONAL USE)
PERMIT APPROVALS TO CONSTRUCT A NEW WATER)
TREATMENT PLANT (WTP) FOR THE 80-ACRE CITY-OWNED)
PROPERTY AT 1111 GRANITE STREET. THE APPLICATION)
ALSO INCLUDES: EXCEPTIONS TO THE SITE DESIGN)
DEVELOPMENT & DESIGN STANDARDS WITH REGARD TO)
BICYCLE PARKING, PEDESTRIAN ACCESS AND CIRCULATION,)
PLANT SIZES, STREET TREES, IRRIGATION SYSTEM DESIGN)
STANDARDS, FENCES AND WALLS AND OPEN SPACE;)
EXCEPTIONS TO THE STREET DESIGN STANDARDS; PHYSICAL)
& ENVIRONMENTAL CONSTRAINTS REVIEW PERMITS FOR)
HILLSIDE LANDS WITH SEVERE CONSTRAINTS AND)
FLOODPLAIN LANDS, EXCEPTIONS TO THE DEVELOPMENT)
STANDARDS FOR HILLSIDE LANDS, AND A LIMITED USE)
PERMIT TO REPLACE THE CULVERT CROSSING OVER)
ASHLAND CREEK AT HORN CREEK ROAD TO PROVIDE)
ACCESS TO THE WTP; A VARIANCE TO THE WR ZONE’S 35-)
FOOT MAXIMUM BUILDING HEIGHT TO ALLOW A 48.38-FOOT)
RESERVOIR/CLEARWELL STRUCTURE; AND A TREE)
REMOVAL PERMIT TO REMOVE 99 TREES WITHIN THE)
PROPOSED BUILDING ENVELOPES, ROADS, PAVED SURFACES,)
AND AREAS TO BE GRADED. TREES TO BE REMOVED WILL BE)
MITIGATED ON A ONE-FOR-ONE BASIS, AND THE REMAINING)
848 TREES ON THE LOT WILL NOT BE IMPACTED.)**

**FINDINGS,
CONCLUSIONS
& ORDERS**

OWNER/APPLICANT: CITY OF ASHLAND

RECITALS:

- 1) Tax lots #600 of Map 39 1E 17 is a vacant city-owned parcel located at 1111 Granite Street, on the west side of Granite Street near its intersections with Glenview Drive, and is zoned WR (Woodland Residential).

- 2) The applicant is requesting Site Design Review and Conditional Use Permit approvals to construct a new water treatment plant (WTP) for the 80-acre city-owned property at 1111 Granite Street. The application also includes: Exceptions to the Site Design Development & Design Standards with regard to bicycle parking, pedestrian access and circulation, plant sizes, street trees, irrigation system design

standards, fences and walls and open space; Exceptions to the Street Design Standards; Physical & Environmental Constraints Review Permits for Hillside Lands with Severe Constraints and Floodplain Lands, Exceptions to the Development Standards for Hillside Lands, and a Limited Use Permit to replace the culvert crossing over Ashland Creek at Horn Creek Road to provide access to the WTP; a Variance to the WR zone's 35-foot maximum building height to allow a 48.38-foot reservoir/clearwell structure; and a Tree Removal Permit to remove 99 trees within the proposed building envelopes, roads, paved surfaces, and areas to be graded. Trees to be removed will be mitigated on a one-for-one basis, and the remaining 848 trees on the lot will not be impacted. The proposal is outlined in plans on file at the Department of Community Development.

3) The criteria for Site Design Review approval are described in **AMC 18.5.2.050** as follows:

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

- 4) The criteria for Conditional Use Permit approval are described in **AMC 18.5.4.050** as follows:

A Conditional Use Permit shall be granted if the approval authority finds that the application meets all of the following criteria, or can be made to conform through the imposition of conditions.

1. *That the use would be in conformance with all standards within the zoning district in which the use is proposed to be located, and in conformance with relevant Comprehensive plan policies that are not implemented by any City, State, or Federal law or program.*
2. *That adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the development, and adequate transportation can and will be provided to the subject property.*
3. *That the conditional use will have no greater adverse material effect on the livability of the impact area when compared to the development of the subject lot with the target use of the zone, pursuant with subsection 18.5.4.050.A.5, below. When evaluating the effect of the proposed use on the impact area, the following factors of livability of the impact area shall be considered in relation to the target use of the zone.*
 - a. *Similarity in scale, bulk, and coverage.*
 - b. *Generation of traffic and effects on surrounding streets. Increases in pedestrian, bicycle, and mass transit use are considered beneficial regardless of capacity of facilities.*
 - c. *Architectural compatibility with the impact area.*
 - d. *Air quality, including the generation of dust, odors, or other environmental pollutants.*
 - e. *Generation of noise, light, and glare.*
 - f. *The development of adjacent properties as envisioned in the Comprehensive Plan.*
 - g. *Other factors found to be relevant by the approval authority for review of the proposed use.*
4. *A conditional use permit shall not allow a use that is prohibited or one that is not permitted pursuant to this ordinance.*
5. *For the purposes of reviewing conditional use permit applications for conformity with the approval criteria of this subsection, the target uses of each zone are as follows.*
 - a. **WR and RR.** *Residential use complying with all ordinance requirements, developed at the density permitted by chapter 18.2.5 Standards for Residential Zones.*

5) The criteria for a Variance are described in **AMC 18.5.5.050** as follows:

1. *The variance is necessary because the subject code provision does not account for special or unique physical circumstances of the subject site, such as topography, natural features, adjacent development, or similar circumstances. A legal lot determination may be sufficient evidence of a hardship for purposes of approving a variance.*
2. *The variance is the minimum necessary to address the special or unique physical circumstances related to the subject site.*
3. *The proposal's benefits will be greater than any negative impacts on the development of the adjacent uses and will further the purpose and intent of this ordinance and the Comprehensive Plan of the City.*
4. *The need for the variance is not self-imposed by the applicant or property owner. For example, the variance request does not arise as result of a property line adjustment or land division approval previously granted to the applicant.*

6) The criteria for a Physical & Environmental Constraints Review Permit are described in **AMC 18.3.10.050** as follows:

An application for a Physical Constraints Review Permit is subject to the Type I procedure in section 18.5.1.050 and shall be approved if the proposal meets all of the following criteria.

- A. *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.*
- B. *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.*
- C. *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 development permitted by this ordinance.*

7) The criteria for an Exception to the Development Standards for Hillside Lands are described in **AMC 18.3.10.090.H** as follows:

An exception under this section is not subject to the variance requirements of chapter 18.5.5 Variances. An application for an exception is subject to the Type I procedure in section 18.5.1.050 and may be granted with respect to the development standards for Hillside Lands if the proposal meets all of the following criteria.

1. *There is demonstrable difficulty in meeting the specific requirements of this chapter due to a unique or unusual aspect of the site or proposed use of the site.*
2. *The exception will result in equal or greater protection of the resources protected under this chapter.*
3. *The exception is the minimum necessary to alleviate the difficulty.*

4. *The exception is consistent with the stated Purpose and Intent of chapter [18.3.10 Physical and Environmental Constraints Overlay](#) chapter and section 18.3.10.090 Development Standards for Hillside Lands.*

8) The criteria for a Limited Activities & Uses Permit for work within a Water Resources Protection Zone are described in **AMC 18.3.11.060.D** as follows:

All Limited Activities and Uses described in section 18.3.11.060 shall be subject to a Type I procedure in section 18.5.1.050. An application for a Limited Activities and Uses Permit shall be approved if the proposal meets all of the following criteria.

1. *All activities shall be located as far away from streams and wetlands as practicable, designed to minimize intrusion into the Water Resources Protection Zone and disturb as little of the surface area of the Water Resource Protection Zone as practicable.*
2. *The proposed activity shall be designed, located and constructed to minimize excavation, grading, area of impervious surfaces, loss of native vegetation, erosion, and other adverse impacts on Water Resources.*
3. *On stream beds or banks within the bank full stage, in wetlands, and on slopes of 25 percent or greater in a Water Resource Protection Zone, excavation, grading, installation of impervious surfaces, and removal of native vegetation shall be avoided except where no practicable alternative exists, or where necessary to construct public facilities or to ensure slope stability.*
4. *Water, storm drain, and sewer systems shall be designed, located and constructed to avoid exposure to floodwaters, and to avoid accidental discharges to streams and wetlands.*
5. *Stream channel repair and enhancement, riparian habitat restoration and enhancement, and wetland restoration and enhancement will be restored through the implementation of a mitigation plan prepared in accordance with the standards and requirements in section 18.3.11.110 Mitigation Requirements.*
6. *Long term conservation, management and maintenance of the Water Resource Protection Zone shall be ensured through preparation and recordation of a management plan as described in subsection 18.3.11.110.C, except a management plan is not required for residentially zoned lots occupied only by a single-family dwelling and accessory structures.*

9) The criteria for an Exception to the Street Design Standards are described in **AMC 18.4.6.020.B.1** as follows:

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

- a. *There is demonstrable difficulty in meeting the specific requirements of this chapter due to a unique or unusual aspect of the site or proposed use of the site.*
- b. *The exception will result in equal or superior transportation facilities and connectivity considering the following factors where applicable.*

- i. *For transit facilities and related improvements, access, wait time, and ride experience.*
 - ii. *For bicycle facilities, feeling of safety, quality of experience (i.e., comfort level of bicycling along the roadway), and frequency of conflicts with vehicle cross traffic.*
 - iii. *For pedestrian facilities, feeling of safety, quality of experience (i.e., comfort level of walking along roadway), and ability to safety and efficiency crossing roadway.*
 - c. *The exception is the minimum necessary to alleviate the difficulty.*
 - d. *The exception is consistent with the Purpose and Intent of the Street Standards in subsection 18.4.6.040.A.*
- 10) The criteria for a Tree Removal Permit are described in **AMC 18.5.7.040.B** as follows:
- 1. **Hazard Tree.** *A Hazard Tree Removal Permit shall be granted if the approval authority finds that the application meets all of the following criteria, or can be made to conform through the imposition of conditions.*
 - a. *The applicant must demonstrate that the condition or location of the tree presents a clear public safety hazard (i.e., likely to fall and injure persons or property) or a foreseeable danger of property damage to an existing structure or facility, and such hazard or danger cannot reasonably be alleviated by treatment, relocation, or pruning. See definition of hazard tree in part 18.6.*
 - b. *The City may require the applicant to mitigate for the removal of each hazard tree pursuant to section 18.5.7.050. Such mitigation requirements shall be a condition of approval of the permit.*
 - 2. **Tree That is Not a Hazard.** *A Tree Removal Permit for a tree that is not a hazard shall be granted if the approval authority finds that the application meets all of the following criteria, or can be made to conform through the imposition of conditions.*
 - a. *The tree is proposed for removal in order to permit the application to be consistent with other applicable Land Use Ordinance requirements and standards, including but not limited to applicable Site Development and Design Standards in part 18.4 and Physical and Environmental Constraints in part 18.10.*
 - b. *Removal of the tree will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks.*
 - c. *Removal of the tree will not have a significant negative impact on the tree densities, sizes, canopies, and species diversity within 200 feet of the subject property. The City shall grant an exception to this criterion when alternatives to the tree removal have been considered and no reasonable alternative exists to allow the property to be used as permitted in the zone.*
 - d. *Nothing in this section shall require that the residential density to be reduced below the permitted density allowed by the zone. In making this determination, the City*

may consider alternative site plans or placement of structures of alternate landscaping designs that would lessen the impact on trees, so long as the alternatives continue to comply with the other provisions of this ordinance.

- e. The City shall require the applicant to mitigate for the removal of each tree granted approval pursuant to section 18.5.7.050. Such mitigation requirements shall be a condition of approval of the permit.*

11) The Planning Commission, following proper public notice, held a public hearing on April 25, 2023 at which time testimony was received and exhibits were presented both in person and electronically via Zoom teleconferencing. Following the closing of the public hearing, the Planning Commission approved the application subject to conditions pertaining to the appropriate development of the site.

Now, therefore, the Planning Commission of the City of Ashland finds, concludes and recommends as follows:

SECTION 1. EXHIBITS

For the purposes of reference to these Findings, the attached index of exhibits, data, and testimony will be used.

Staff Exhibits lettered with an "S"

Proponent's Exhibits, lettered with a "P"

Opponent's Exhibits, lettered with an "O"

Hearing Minutes, Notices, Miscellaneous Exhibits lettered with an "M"

SECTION 2. FINDINGS & CONCLUSIONS

2.1 The Planning Commission finds that it has received all information necessary to make a decision based on the staff report, public hearing testimony and the exhibits received.

2.2 The Planning Commission finds that the proposal meets all applicable criteria for Site Design Review approval as described in AMC 18.5.2.050, for Conditional Use Permit approval as described in AMC 18.5.4.050, for a Variance described in AMC 18.5.5.050, for a Physical & Environmental Constraints Review Permit as described in AMC 18.3.10.050, for an Exception to the Development Standards for Hillside Lands as described in AMC 18.3.10.090.H, for a Limited Activities and Uses Permit as described in AMC 18.3.11.060.D, for an Exception to Street Standards as described in AMC 18.4.6.020.b; and for a Tree Removal Permit as described in AMC 18.5.7.040.D.

2.3 The Planning Commission finds that the proposal satisfies all applicable criteria for Site Design Review approval as described in AMC 18.5.2.050.

The Planning Commission notes that the application requests Site Design Review approval to construct a new water treatment plant. New non-residential structures in any zone, including public buildings in residential zones, require Site Design Review approval. The subject property here is 80-acres, and the area to be developed is approximately 4½-acre of that (196,020 square feet). The proposal includes WTP structures (a pre-treatment building and ozone generator, operations buildings, backwash recovery basins, pump station, a solar array, and a reservoir/clearwell) as well as a seven-space parking area, including six standard parking stalls and one ADA-compliant parking space, and associated access and circulation. The total square footage of landscaping proposed is 74,241 square feet which includes 59,878 square feet of site restoration seeding, 10,407 square feet of stream restoration planting mix and 3,956 square feet of parking lot landscaping mix.

The Commission further notes that the Public Services element of the Ashland Comprehensive Plan in 9.03 “Water Supply and Service” indicates that:

The Comprehensive Water Plan also studied the efficiency of the City’s water distribution system. It was found that this system is in need of upgrading and improvement. At present, 28 percent of the water released from the water treatment plant is lost throughout the distribution system. A normal system in good condition can expect 10 percent system losses.

Overall, the City’s water system is in need of improvement to adequately supply the residents in the years to come. Improvements will be costly and large capital expenditures should be planned for as part of the City’s overall Capital Improvement Program.”

The Public Services element includes Goal 9.03.03 “To provide sufficient water supply for Ashland residents” supported by Policies in 9.03.04 including #17) *The City should further study the construction of a new impoundment on Ashland Creek at the Winburn site to augment the City’s storage capacity in the watershed.* And #18) *The City should prioritize and implement needed water system improvements, as identified by the City Water Plan, as part of the City’s overall Capital Improvement Plan.*

The Planning Commission finds that in terms of its underlying zoning, the subject property is within the Woodland Residential Zoning District (WR-20) base zone, and the proposal complies with building and yard setbacks (*See applicant’s Appendix A, Sheet 000C002, Overall Site Layout Plan*). The closest structure to a property line is approximately 300 feet away where standard setbacks include six-foot side yards, ten-foot rear yard, and a 20-foot front yard. The application includes a request for a Variance to the maximum allowed building height which is discussed in detail in section 2.7 below.

In terms of overlay zones, the project area is within both the Physical and Environmental Constraints and the Water Resources Protection Zones overlay zones, which are discussed in detail in sections 2.8 and 2.9 below.

The Planning Commission finds that the WTP project is in compliance with as many standards as practicable; however, some standards do not apply or are not feasible due to existing site conditions, including topography, or to unusual aspects of the proposed use of the site, which is in the instance a piece

of critical municipal infrastructure where no public access is to be permitted and which is located at the south edge of the city on hillside lands with severe constraints and the floodplain and water resource protection zones associated with a riparian stream. The Site Development and Designs Standards are discussed below, and specific Exceptions requested are addressed in detail in section 2.4 later in this document.

□ **Building Placement, Orientation & Design**

The “Building Placement, Orientation & Design” standards largely speak to building placement and design for the building(s)’ relationship and contribution to the streetscape. In this case, the Planning Commission finds that the WTP is a secure facility that is not open to the public so the standards in subsections 18.4.2.040.B.1.a-d do not apply as the building is not accessed by pedestrians. The project site is not on a corner lot, and it is not practicable to provide public sidewalks along Granite Street due to the amount of disturbance that would be required for construction. No sidewalks to the WTP are proposed as the secure facility is not open to the public, and an Exception to the Street Design Standards is discussed in section 2.5 below.

□ **Parking, Access & Circulation**

The subject property is more than one-half mile from RVTD’s Route 10 which is the nearest frequent transit, and as such must address the automobile parking requirements of AMC 18.4.3. The proposal involves an unspecified use, and the amount of required parking was determined by the applicant based on providing one space per employee for the maximum number of employees that would be present at the plant at one time, given that there will not be customer or visitor access. The Planning Commission finds that the six standard spaces and one ADA-compliant space proposed are sufficient to address off-street parking demand.

□ **Landscaping, Lighting & Screening**

The Planning Commission finds that the plant species selected in the landscaping design are drought tolerant and highly-adapted to the climate and rainfall regimes of the region. Proposed landscaping complies with the standards for Hillside Lands and the Water Resource Protection Zone. A variety of species are proposed, including seven trees and 11 shrubs (*See Appendix G, Sheet 001L601 for a list and quantity of proposed species*). Trees in two-gallon containers and shrubs in one-gallon containers are proposed, and a requested Exception to the 1.5-inch caliper requirement is discussed under Exceptions in section 2.4 below. The Commission further finds that all portions of the project site that are not developed are proposed to be landscaped with various seed mixes, including site restoration seeding within the perimeter fence, parking lot landscaping plant mix adjacent to the parking area, and stream restoration plant mix adjacent to the culvert. Additionally, trees to mitigate the trees proposed for removal are identified to be planted in the applicant’s *Appendix G Landscape Plan*. Areas with proposed landscaping have been designed to have more than 50 percent coverage after one year and will be maintained by the

contractor during that time. After the first year, a separate contract will be implemented for maintenance during the next four years as detailed in the applicant's *Appendix F Management Plan*.

□ **Tree Preservation & Protection**

The Planning Commission finds that although 99 trees are proposed for removal, 48 trees will be protected in place and an additional 848 trees on the property will not be impacted and far enough away from any construction activities that they will be undisturbed and protection will not be required. Orange construction fencing is proposed in lieu of standard chain link panels for tree protection. The Commission notes that the Tree Management Advisory Commission has been supportive of the use of orange construction fencing for tree protection in similar circumstances where hillside or creek side slopes make it difficult to install chain link panels. A condition has been included below to require that a Tree Verification inspection occur prior to sitework to verify the marking of trees to be removed and the installation of tree protection fencing for the trees to be protected.

□ **Public Facilities**

In terms of public facilities and the standards in AMC 18.4.6, the Planning Commission finds that no new or reconstructed streets, alleys, or pathways are proposed, and that roadway improvements to Granite Street and Horn Creek Road will include grading for slope stability and the re-application of gravel as detailed in the applicant's *Appendix A, Sheets 001C101-001C103*.

The Planning Commission finds that the new water treatment plant (WTP) will be constructed to connect to city water and sanitary sewer systems. There are raw water mains that will connect to the water treatment plant site to provide the source water, with potable distribution mains leaving the site to provide the city with potable water. Sanitary sewer will be installed to serve the site and connect to the City's existing collection system as detailed in the applicant's *Appendix A, Sheets 002C101-002C503*. The Planning Commission finds that the capacity of the water treatment plant and its associated piping are designed to accommodate for future growth, and will provide an upgrade to the existing facilities which are currently inadequate. As the water treatment plant will be new and designed to accommodate for future growth, no deficiencies are anticipated. Sewer discharge flow from the new water treatment plant will be equalized to prevent overwhelming the existing City sewer collection system. The facilities are sized for current proposed improvements including the upstream drainage areas. No upstream improvements are under consideration within the near future that would require additional upsizing. Drainage facilities will not be overloaded from runoff discharging directly into Ashland Creek as detailed in the applicant's Stormwater Plan in *Appendix A, Sheets 001C202-001C207 and Sheets 002C519-002C523*. The facilities are sized for current proposed improvements including the storm drainage system. No future development is under consideration within the near future that would require oversizing.

The Planning Commission further finds that the City of Ashland’s Electric Department will provide a utility transformer and pull the primary conductors from an existing vault near the culvert at Ashland Creek. The contractor will install conduit from the vault to the utility transformer, and will install the transformer vault per city specifications as detailed in the applicant’s electrical details in *Appendix A, Sheet 004E101 for the overall electrical site plan and Sheets 000E001-000E704, 100E101-100E604, 300E101-300E611, 400E101, 500E101, and 600E101-600E603*. All proposed electrical utilities will be underground. Proposed work for the crossing of Ashland Creek is within the existing City of Ashland right-of-way, and the Commission finds that no additional easements or right-of-way impacts are involved.

□ **Solar Access**

The Planning Commission finds that the application materials include solar calculations which demonstrate that the proposed buildings require a 65-foot solar setback from the north property line, based on an approximately 20 percent south facing slope. The setback provided is approximately 400 feet, which more than satisfies the solar access requirement.

The Planning Commission concludes that the relevant criteria and standards for Site Design Review have been satisfied.

2.4 The Planning Commission finds that the proposal satisfies the applicable criteria for Exceptions to the Site Design and Development Standards in AMC 18.5.2.050.

The Planning Commission finds that the application includes several requests for Exceptions to the Site Design and Development Standards. The application materials explain that the project area is located on Hillside Lands with Severe Constraints which constrain the potential designs, and in order to have the least disturbance possible while still meeting the project purpose, these Exceptions are requested. The application materials emphasize that none of the exceptions, if approved, would negatively impact adjacent properties, as the project site is not visible from public right-of-way, is approximately 400 feet from the northern property line, and is not to be accessed by the general public. The specific Exceptions requested are discussed below:

- **AMC 18.4.2.040.B.3.b Recycling & Refuse Disposal Areas:** The application explains that there is no Recology refuse or recycling service on this portion of Granite Street, meaning staff will be required to haul refuse and recycling back to the city yard at 90 North Mountain Avenue by truck for disposal and recycling, and as such a refuse and recycling area is not needed on site.
- **AMC 18.4.3.070 Bicycle Parking:** The application explains that the project is a City-owned and managed water treatment plant on a City-owned parcel where there will be no public access. The application asserts that public bicycle parking is not needed or provided as the water treatment plant will not be open to the public, and staff choosing to ride bicycles to the site will be able to bring their bicycle inside the building and will not require outdoor bicycle parking areas. AMC 18.4.3.070.I.7 provides that an indoor area may be designated for bicycle parking in lieu of providing racks outside, and provided that there is space for such an area to be designated, the

Planning Commission finds that the proposal as described does not required an Exception.

- **AMC 18.4.2.040.B.1.f Basic Site Review Standards, Orientation and Scale & AMC 18.4.3.090 Pedestrian Access and Circulation:** There are no existing sidewalks at the project site or the roads leading to the site, and none are proposed here. Access to the site is from a private road that leads to the site, which is gated with a security fence. Therefore, it is not anticipated that pedestrians will be accessing the site. The Planning Commission finds that adding sidewalks would not be practicable due to the amount of disturbance that would be required to connect to existing sidewalks on Granite Street which are nearly one-mile north of the proposed roadway improvements. This is also discussed as an Exception to the Street Standards in section 2.5 later in this document.
- **AMC 18.4.4.030.C.6.a Plant Sizes:** Instead of 1½-inch caliper trees, trees in two-gallon containers are proposed to be planted on site. The application explains that not only are the smaller containers more readily available from growers, but plantings of this size are also more likely to succeed in comparison to the larger nursery stock. The Commission finds that the proposal will accomplish the same level of coverage as more trees would be able to be planted.
- **AMC 18.4.2.040.B.2 Streetscape & AMC 18.4.4.030.E Street Trees:** No street trees are proposed. Granite Street and Horn Creek Road have no existing sidewalks or curbs. The portion of the right-of-way with street frontage where street trees would be required has only minor work proposed, including roadway improvements such as gravel replacement. The project area and its vicinity are heavily wooded, including along Granite Street and Horn Creek Road where work is proposed. Installation of street trees would be impractical due to the existing improvement width relative to the WRPZ for Ashland Creek and steep topography at the edge of the roadway. The Planning Commission finds that extensive grading and tree removal would be required in order to construct sidewalks with planter strips to provide street trees, and that although no street trees are proposed, the applicant proposes to plant vegetation below the roadway at the crossing over Ashland Creek. The Commission further finds that the riparian areas impacted during the culvert replacement will be mitigated at a 1:1.5 ratio with a stream restoration plant mix as detailed in the applicant's Landscape Plan in *Appendix G*. This is also discussed under the Exception to Street Standards in section 2.5 below.
- **AMC 18.4.4.030.I.2 Irrigation System Design Standards:** The application proposes not to provide a permanent irrigation system for the project's landscaping. Instead, temporary irrigation will occur during plant establishment and will be implemented and maintained by the contractor. Irrigation will be provided through either a temporary above ground irrigation system or by contractor-provided water trucks during the growing season that will provide water to newly-installed landscaping at the project site. The Planning Commission finds that the proposed plant species are drought tolerant and were chosen as they are well-suited for the climate, and once established, irrigation will not be needed; therefore, a temporary irrigation system will achieve the purpose of the irrigation standards in this subsection.
- **AMC 18.4.4.060 Fences and Walls:** Two retaining walls are proposed that exceed the height limit limits in AMC 18.4.4.060.3.B.1. Wall 1 will be 10 feet tall, and Wall 2 will be 12 feet tall (*See applicant's Appendix A, Sheet 001C503*). In addition, the proposed perimeter security fence is eight feet tall. The application materials suggest that the design standards are intended for residential uses rather than for a circumstance where taller fencing is necessary to secure a critical facility. The retaining walls and fences have been designed to have the least impact possible and

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the proposed heights are the minimum required for slope stability and security. In considering this request, the Commission notes that the fence and wall height limitations in AMC 18.4.4.060.B.1 are applicable only within required front, side and rear yard areas. As provided in AMC 18.4.4.060.B.3.a, “*fences and walls exceeding the height requirements of this section shall meet yard requirements.*” Here, the fences and walls under considered are well outside of the required yard areas for the property, and so are not subject to the height limitations. The Planning Commission finds that, as proposed, no Exception or Variance is required.

- **AMC 18.4.4.070 Open Space:** The application materials note that open space requirements include eight percent of the total lot area as shown in Table 18.4.4.070.A. Because the size of the lot is 80 acres, 6.4 acres would need to be dedicated to open space. The application materials assert that because the lot is privately-owned, with no sidewalks leading to it and restricted access, public open space would be inappropriate and is not proposed. The application further notes that much of the lot will not be disturbed as part of the project and it is not practicable to develop the site to provide open space. The application also notes that private open space is also not proposed as it is intended for residents of dwelling units, and there are no dwelling units proposed as part of the project. The Planning Commission finds that the Open Space standards are intended to apply to residential development per AMC 18.4.2.030.H, and while the property here is residentially-zoned, the proposal is a non-residential use subject to Basic (Non-Residential) Site Review under AMC 18.4.2.040 and as such, no Exception is required.

The Planning Commission concludes that where Exceptions are necessary, the application satisfactorily addresses the applicable criteria and merits approval.

2.5 The Planning Commission finds that the proposal satisfies all applicable criteria for an Exception to Street Standards as described in AMC 18.4.6.020.b.

The Planning Commission notes that Granite Street in this vicinity is a residential neighborhood collector street, and the typical cross-section envisioned for this street type would include a 25- to 34-foot curb-to-curb width with two 9- to 10-foot paved travel lanes and any on-street parallel parking, and seven-foot parkrows with irrigated street trees and five-to-six foot sidewalks. The existing improvements in place consists of a gravel surface within a 40-foot right-of-way. Full improvement to city street design standards would require additional right-of-way of between ten- and 21-feet, and paving to at least a 25-foot width. The applicant’s proposed improvements to Granite Street and the private Horn Creek Road are limited to grading to improve slope stability and the driving surface by re-applying gravel. Exceptions are required not to pave the roadway to city standards and install sidewalks and parkrows with street trees along the property’s frontage.

The application materials explain that there are no existing sidewalks at the project site or the roads leading to the site, and none are proposed. Access to the site is from a private road, which is gated with a security fence. It is not anticipated that pedestrians will be accessing the site, and the applicant asserts that adding sidewalks would not be practical given the amount of disturbance that would be required to connect to existing sidewalks on Granite Street which are nearly one-mile north of the proposed roadway improvements.

Similarly, the application explains that no street trees are proposed. Neither Granite Street nor Horn Creek Road have existing sidewalks or curbs. The portion of the right-of-way with street frontage where street trees would be required has only minor work proposed, including roadway improvements such as gravel replacement. The project area and its vicinity are heavily wooded, including along Granite Street and Horn Creek Road where work is proposed. Installation of street trees would be impractical due to the existing topography. Extensive grading and tree removal would be required in order to construct sidewalks with planter strips to provide street trees. While no street trees are proposed, the applicant does propose to plant vegetation below the roadway at the crossing over Ashland Creek, and the riparian areas impacted during the culvert replacement will be mitigated at a 1:1.5 ratio with a stream restoration plant mix as detailed in the applicant's Landscape Plan in *Appendix G*.

The Planning Commission finds that the presence of Ashland Creek and the "Swimming Hole" in Lithia Park immediately east of the existing Granite Street improvements, with the associated riparian protection zone and floodplain, and a very steep hillside immediately west of the improvements pose demonstrable difficulties in widening the existing roadway to accommodate full city-standard frontage improvements, and the exceptions requested are the minimum necessary to respond to the difficulty while still serving the site. In terms of the use of the site, the new WTP is not expected to generate additional pedestrian or bicycle trips on the roadway given its restricted access, and the existing WTP is already accessed from the same roadway meaning that there are limited additional transportation impacts which would merit requiring frontage improvements. In addition, the subject property is within the city limits, but outside the city's urban growth boundary and as such, the extension of sidewalks is not needed to support future urban development to the south. As the roadway shifts to the north and becomes Glenview Drive, it transitions to a shared street facility where neither sidewalks nor bicycle lanes are part of the envisioned cross-section. As such, the Commission finds that the existing roadway can be found to provide equal transportation facilities and connectivity.

The Planning Commission concludes that these exceptions are consistent with the Purpose and Intent of the Street Standards, and that the application demonstrates that the Exception criteria are satisfied.

2.6 The Planning Commission finds that the proposal satisfies all applicable criteria for Conditional Use Permit approval as described in AMC 18.5.4.050.

The application materials explain that the WTP project is subject to a Conditional Use Permit due to the proposal involving the construction of a utility building within the Woodland Residential (WR-) zoning district. The Planning Commission finds that the proposal complies with the standards within the WR-20 zoning district outlined in AMC Table 18.2.5.030.B, except for maximum building height, for which the applicant has concurrently requested a Variance.

The Planning Commission further finds that access and city facilities will be connected to serve the project and will be of adequate capacity as detailed in the applicant's *Appendix A, Sheets 001C202-001C207 for the Stormwater Plan, 004E100-004E104 for the Electrical Plan, and Sheets 002C101-002C503 for the Piping Plan*.

The Conditional Use Permit requested here is to allow a city-operated water treatment plant (WTP) on an 80-acre city-owned property in the Woodland Residential zone. Although the site is within a residential zoning district, it is on the outskirts of the city (i.e. the city limits line is the south boundary of the subject property) and access is and will continue to be limited. The Commission finds that the WTP will not adversely impact the livability of the area as it will not be visible from adjacent lots nor cause visual impacts or generate traffic on surrounding streets. The WTP building will be of a similar scale to a residence, and the associated site development will disturb roughly five acres of the 80-acre property. Coverage and site disturbance will be relatively small, and the project will not impact the development of adjacent properties.

The Planning Commission concludes that the proposal involves critical infrastructure identified as necessary in the city's Comprehensive Plan, and the proposed WTP is being placed on a large property, long-owned by the city, at the outer edge of the city limits. With the exception of the proposed 48-foot tall Clearwell reservoir, the proposed buildings are of a typical residential scale and will not be visible from adjacent properties or rights-of-way, and as such will have limited adverse material effects on the livability of the impact area.

2.7 The Planning Commission finds that the proposal satisfies all applicable criteria for a Variance described in AMC 18.5.5.050. The application includes a request for a Variance to the maximum 35-foot height allowance within the Woodland Residential (WR) zones. The application requests the Variance to allow a 48.38-foot height which the application explains is necessary to allow for a reservoir/clearwell tank that has enough capacity to hold 850,000 gallons of water. The topography of the site is steep and uneven, and the water tank needs to be a specific volume to meet the treatment requirements. The height was specifically selected as a cost-effective balance between meeting this needed volume while minimizing site work and still allowing a planned City trail by the project site to be built. In addition, the height of the tank is necessary to provide direct radio communications from other City water utility stations to the new water plant.

The Planning Commission finds that the additional 13 feet in height for the reservoir structure is the minimum height necessary to be able to hold the volume of water required for treatment and have stability on the site's uneven and constrained topography, noting that reducing the tank height further would involve more tree clearing, dynamite blasting, and rock removal to flatten out a larger area around the tank.

The Commission further finds that the Variance to the maximum height allowance for the reservoir will provide a public benefit by having the capacity to store 850,000 gallons of water, and that there will be no negative impacts of the additional height on adjacent uses, as the proposed water treatment plant will not be visible from the public right-of-way or adjacent properties.

The Commission also finds that the need for the Variance is not self-imposed by the applicant or property owner, but is needed to provide adequate volume to meet treatment requirements to serve a community of Ashland's size from the subject property.

The Planning Commission further finds that the provision limiting height in the WR zone does not account for the topography or tree cover on the site here. If the height of the reservoir were to be reduced for compliance with the standard, it would necessitate significantly more site disturbance (tree and rock removal, dynamite blasting) to achieve the volume of storage required for treatment while maintaining stability on the site's uneven, constrained topography. In considering the WTP proposal and the Variance request specifically, the Commission notes that the need for water system improvements is not only identified in the Comprehensive Plan but the site here is also identified specifically, and as such is in keeping with the Comprehensive Plan's vision. The application materials rightly note the project will not be visible from public rights-of-way, and as such the additional height requested should have no adverse impacts while have a public benefit in providing the volume necessary to treat and provide water to the citizenry. In the final assessment, the Planning Commission concludes that the Variance request here is merited.

2.8 The Planning Commission finds that the proposal satisfies all applicable criteria for a Physical & Environmental Constraints Review Permit as described in AMC 18.3.10.050.

The Planning Commission finds that the subject property lies within the Physical and Environmental Constrains Overlay, and both the Hillside Lands and Wildfire Lands overlays apply to the entire property, while the Flood Plain Corridor Lands and Severe Constraints overlays are applicable to portions of the site. The Commission further finds that the project has been designed to have the least amount of adverse impacts to the project site as possible while still meeting the project purpose. This has been accomplished by minimizing the building and structure footprints during the design stage and locating them in the flattest areas at the site to reduce the volume of grading required and to avoid excavation on steep slopes. Work within the flood plain corridor lands is the minimum necessary to replace the culvert at Ashland Creek. Impacts were minimized during early design stages to limit impacts to the resources within the overlay, including alignment changes that would allow for a smaller in-water work footprint as illustrated in the applicant's *Appendix I* for the Physical and Environmental Constraints Overlay Site Plan detailing the proposed impacts for each overlay zone.

The Commission further finds that potential hazards of developing on physically and environmentally constrained lands have been considered throughout the design process. The slopes throughout the project area vary greatly, and to mitigate steep hillsides, grading will be done to provide stability and two retaining walls will be constructed. During construction, erosion and sediment control measures will be implemented to prevent erosion on site, including straw wattles, check dams, and sediment fencing. The project will improve flood capacity at Ashland Creek as the Granite Street/Horn Creek Road culvert will be replaced with a larger culvert that will pass the 100-year flood elevation. The project site is located on wildfire lands and the fire risks will be mitigated by the contractor removing fuel and ground litter within the proposed fence line to create a fire break for the buildings.

The Commission finds that the project has been designed to have the minimum amount of environmental disturbance while still meeting the project purpose. This includes minimizing the number of trees to be removed, protecting trees to remain, providing tree mitigation, and placing the building footprint in the most practical area to allow for the least amount of grading and soil disturbance. Overall, the Commission finds that the project will benefit the public by providing a new water treatment plant and replacing a

culvert to allow for fish passage and higher flood capacity.

In terms of the standards for Flood Plain Corridor Lands, the Commission notes that there is an existing crossing at Granite Street/Horn Creek Road over Ashland Creek with an existing culvert that allows Ashland Creek to flow under the road crossing. The Commission finds that all proposed work to improve this stream crossing has been designed by an engineer and will be stamped when plans are completed. The existing culvert is proposed to be replaced with a larger culvert engineered to pass a 100-year flood event without increasing upstream elevations of Ashland Creek. The stream crossing is at a right angle to the stream, and proposed fill at the stream crossing is the minimum necessary to achieve the project purpose and will consist of a net total of 88 cubic yards of fill. The fill is required to support the road and culvert replacement (*See applicant's Figure 1 of Appendix I 'Physical Constraints Review Plan' for details of work proposed within floodplain corridor lands*). The Commission further finds that, other than the culvert replacement, no structures are proposed on Flood Plain Corridor Lands.

The Commission finds that utility connections proposed to cross the Flood Plain Corridor, include eight-inch sanitary sewer, fiber, electric, 20-inch raw water, and two 16-inch water mains (*See applicant's Appendix A, Sheet 001C300*) and that all other utilities are to be located outside of the Flood Plain Corridor.

With regard to the development standards for Hillside Lands, the Commission finds that portions of the site that are proposed for development have slopes greater than 35 percent and are considered to be unbuildable due to their slopes. The applicant is requesting an Exception to build on these lands. The application includes requisite geotechnical studies for the development of Hillside Lands with Severe Constraints including a Geotechnical Engineering Report and a Geotechnical Engineering Report Addendum (*see applicant's Appendix C for the Geotechnical Report and Appendix D for the Addendum*). The Commission finds that recommendations of these geotechnical studies have been incorporated in the design process, and building permit plan submittals will be stamped and sealed by a registered Professional Engineer. Erosion control measures will be implemented to minimize run-off (*see applicant's Appendix A, 'Erosion and Sediment Control Plan' on Sheets 000C004-000C010*). The Commission further finds that the applicant has also agreed to provide geotechnical inspections and a final geotechnical report prior to final sign-off on the project, and a condition to that effect has been included below.

Two retaining walls are proposed to retain steep cut slopes at the site (*see applicant's Appendix A, Sheet 001C503*). These walls are not proposed to be terraced to limit the area of site disturbance. Areas of grading are proposed to be revegetated with a site restoration seed mix (*see applicant's Appendix G for the Landscape Plan*). The Planning Commission finds that no fill slopes over 20 feet tall are proposed. The tallest fill slope is approximately 14 feet tall, and netting or seeding will be implemented for erosion control during construction. Site soils will be permanently stabilized with vegetation using a restoration seed mix that includes native species (*see applicant's Appendix G, Sheet 001L601*). Due to the topography at the site, it is necessary to locate utilities in fill slopes (*see applicant's Appendix A, Sheets 001C202-001C207 for the Stormwater Plan, 004E100-004E104 for the Electrical Plan, and Sheets 002C101-002C503 for the Piping Plan, Appendix C for the Geotechnical Report, and Appendix D for the Geotechnical Addendum*). The Planning Commission finds that as required when utilities must be provided in fill slopes, the plans will need to be designed by a geotechnical expert.

The Planning Commission finds that all areas of cut and fill are to be revegetated with a site restoration seeding mix which will include the following plant species: western fescue, red fescue, sheep fescue, Sandberg bluegrass, squirrel-tail grass, wild blue rye, and California brome. Seeding and vegetation will be installed with the goal of being established after one year. The contractor will maintain all planting areas for one year, which will include removal and replacement of all dead or dying plants (*see applicant's Appendix F for the Management Plan, and S Specification Section 32 92 00 'Seeding, Sodding, and Landscaping' for maintenance details*). The Commission finds that this is a city project, and the city will fund the operations of this critical infrastructure for the foreseeable future, and as such no separate security or instrument of financial guarantee is proposed.

Stormwater facilities will be constructed to collect and convey stormwater runoff and will include manholes and proprietary filter cartridge systems. Existing ditches will be utilized, including one outfall that will discharge to a rock-lined ditch. Stormwater facilities were designed to avoid erosion on site and downstream (*see applicant's Appendix A, Sheets 001C202-001C207 for the Stormwater Plan, Sheets 002C519-002C523 for Stormwater Details, and Appendix H for the Stormwater Report*).

The application materials include a tree survey completed by the City of Ashland's Arborist, Pete Baughman. Trees were physically located and documented by the project's surveyor. A total of 99 trees are proposed to be removed due to their locations within the proposed project site. Proposed tree removals are required to allow the building and road to be constructed. Since the trees will be removed, the applicant is seeking an exception for a tree evaluation. There are 995 total existing trees in the project area, with 99 trees proposed for removal and 48 existing trees proposed to be retained and protected. The remaining 848 trees will not be impacted or protected as they are too far from the project impact area to require removal or protection (*see applicant's Appendix G for the Landscape Plan*).

The Planning Commission finds that the trees proposed to be removed are the minimum necessary to allow the buildings and road to be constructed. Existing trees were taken into consideration during the design process of the site layout. Twenty-nine significant trees are to be retained and protected, while 36 significant trees are proposed for removal (*see applicant's Appendix G, Sheet 001L501 for the tree protection details, and Appendix G, Sheets 001C111A-B for the trees identified to be removed*).

The Commission finds that the applicant intends to follow tree protection standards, and a Tree Protection Plan has been provided identifying protection for the 48 trees in proximity of the project site. Protection measures include the following elements: 4-foot-tall orange plastic fencing secured to two-inch by two-inch wood posts or steel T-bar posts. Posts will be set at a minimum of two feet in depth. Fencing will remain in place until construction activities are completed (*see applicant's Appendix G, Sheets 001C111 and 001L501 for tree protection details*). The Planning Commission notes that the Tree Commission has been supportive of the use of orange plastic construction fencing for Hillside Lands where slopes may make it difficult to install and maintain protection fencing with chain link panels.

The Planning Commission finds that a replanting plan was completed for the project that includes tree replacement at a 1:1 ratio (*see applicant's Appendix G 'Landscape Plan' for locations and species of proposed trees*). Maintenance is proposed to be conducted by the contractor for the first year, which includes watering, pruning, replacement, and pest management. A subsequent contract will be required

for continued maintenance after the first year (*see applicant's Appendix F for the Management Plan*).

The height of the clearwell tank exceeds 35 feet and the applicant is applying for a Variance to the maximum height allowance for the zone which is discussed in section 2.7 above. There are continuous horizontal building planes longer than 36 feet that include the requisite six-foot offset. The proposed roof on the operations building is broken into multiple components. No overhanging decks are proposed. Structure colors include neutral gray tones that will balance with the surrounding natural environment (*see applicant's Appendix A, Sheets 000A001-000A012, Sheets 100A101-100A301, Sheets 300A103-300A401, and Sheets 600A101-600A301 for Architectural Details*). All structures on Hillside Lands have been designed by professional engineers, and the plans to be submitted for permits will be stamped and sealed upon completion.

The Planning Commission finds that the proposal satisfies all applicable criteria for an Exception to the Development Standards for Hillside Lands as described in AMC 18.3.10.090.H. The application materials include requests for Exception to the following Development Standards for Hillside Lands:

- **AMC 18.3.10.090.A.1 Buildable Area:** The subject property is located in an area of varied topography, including some portions of steep slopes within the project area. The proposed water treatment plant (WTP) and access roads have been designed to have the smallest disturbance area as possible while still meeting the project purpose. Grading will be required to flatten slopes to provide structurally sound building foundations and access roads. Grading will occur in only the areas necessary to provide opportunity for safe development, consistent with the purpose and intent of chapter 18.3.10 (*see applicant's Appendix A, Sheets 001C108-001C010 for the Grading Plan*).
- **AMC 18.3.10.090.A.3 New Streets and Driveways:** Access roads will be constructed on portions of the site that exceed 35 percent slopes, and some will be longer than 100 feet. Because of the variable topography at the existing site, there are no feasible options to construct roadways entirely on slopes less than 35 percent. Grading will be required to flatten the existing steep slopes before constructing roadways. The proposed grading for access roads is the minimum necessary to support a stable roadway base and was limited to the extent possible, consistent with the purpose and intent of chapter 18.3.10.
- **AMC 18.3.10.090.B.2 Timing of Improvements:** The applicant is requesting modifications to the timing of improvements to allow construction outside the “May 1 to October 31” work window so the new WTP can be built in a timely manner, and to enable in-water work to occur within the allowed in-water work window for Ashland Creek (June 15-September 15). Construction is tentatively scheduled to begin in February 2024 and last a total of 24-30 months. An erosion and sediment control plan has been completed for the project and will be implemented during construction (*see applicant's Appendix A, Sheets 000C004-000C010 for the erosion and sediment control plan*). The Planning Commission finds that allowing construction to begin in February as proposed to prepare so that in-stream work can occur during the appropriate window and the project itself can be completed on the planned timeline

seems appropriate given that the applicant will implement and maintain erosion and sediment control measures during construction.

- **AMC 18.3.10.090.B.3 Retention in Natural State:** The application materials explain that the existing lot is greater than one-half acre. The total disturbance area is 4.58 acres (198,030 square feet). The average slope of the project area is 26.2 percent, and as such the natural state retention requirement would be 51 percent of the project area, which is equal to approximately 100,000 square feet. The applicant is unable to meet the standard due to the existing steep slopes of the project site. Grading is proposed to create buildable lands (slopes less than 35 percent) before constructing roadways, buildings, or other structures in those areas. The proposed grading is the minimum required to ensure stable structural foundations, consistent with the purpose and intent of chapter 18.3.10, for this critical facility (*see applicant's Appendix A, Sheets 001C108-001C010 for the Grading Plan and Figure 4 of Appendix I 'Physical Constraints Review Plan' for the Slope Analysis*). Here, the Planning Commission notes that, as typically applied, the project area has been considered the entire tax lot rather than limiting it to only the area to be disturbed and if only 4.58 acres of the 80-acre parent property are to be disturbed, more than 94 percent of the parent property would remain in its natural state, satisfying the standard and as such an Exception is not necessary here.
- **AMC 18.3.10.090.B.4 Grading:** Two retaining walls are proposed to retain steep cut slopes at the site (*See applicant's Appendix A, Sheet 001C503*) however terracing of these cut slopes is not proposed in order to minimize the footprint of associated disturbance. No terracing is proposed at the project site. Hazardous areas will be avoided to the extent possible. Site grading has been designed to have the least amount of disturbance as possible. Building pads are the minimum necessary to support proposed buildings (*see applicant's Appendix A, Sheets 001C008-001C010 for the Grading Plan and Sheets 000C004-000C010 for the Erosion and Sediment Control Plan*). No cut slopes for structure foundations have been proposed to reduce visual bulk. Areas of grading are proposed to be revegetated with a site restoration seed mix (*see applicant's Appendix G for the Landscape Plan*).
- **AMC 18.3.10.090.D.2 Evaluation of Suitability for Conservation:** A tree survey was conducted for the project, however, many of the trees are proposed to be removed due to their location within the proposed project site and building envelopes. The Planning Commission finds that proposed tree removals are necessary to allow buildings and access roads to be constructed, and requiring preservation of these trees could affect the relationship of the buildings to one another, cause substantially more site disturbance of Hillside Lands with Severe Constraints, or shift buildings to less stable areas. The applicant asserts that it is not possible to conserve the trees within the proposed project area, and as such an analysis of their suitability for conservation was not part of the design process. The applicant emphasizes that there are 995 total existing trees in the project area, with 99 trees proposed for removal and 48 existing trees proposed to be retained and protected. The remaining 848 trees will not be impacted or protected as they are too far from the project impact area to require removal or protection. The Planning Commission finds that natural features will be protected to the extent possible, consistent with the purpose and intent of chapter 18.3.10 (*see applicant's Appendix*

G for the Landscape Plan). The Commission finds that given the heavily forested nature of the site it seems likely that shifting building and access placement to preserve certain trees would result in the disturbance of more trees, and more surface area, elsewhere. And limiting the project area to as near to the roadway access point as possible seems the most beneficial approach to the site and its trees.

In considering the requested Exceptions to the Development Standards for Hillside Lands, the Commission finds that both the site and its proposed use have unique aspects which result in demonstrable difficulties in meeting the standards. The site is an 80-acre property with roughly 4.58 acres nearest the existing street access point to be developed with a critical facility identified as necessary in the Comprehensive Plan. The site itself is constrained in that it consists of Hillside Lands with Severe Constraints due to slopes, but also contains Flood Plain Corridor Lands and the Water Resource Protection Zone for Ashland Creek, a riparian stream. The nature of the proposed use requires designs which balance the design standards with safely storing and treating a significant volume of water, ensuring the stability of the site for this critical infrastructure and limiting to the greatest extent feasible the amount of disturbance in the constrained areas of the site. The Commission concludes that the proposal achieves that balance and approval of the Exceptions will result in equal or greater protection of the site's resources as all site work is being carefully engineered to ensure a safe and stable site for this critical facility while also seeking to minimize disturbance to the site. For the Commission, these Exceptions are the minimum necessary to accommodate the unique use (i.e. a critical facility) safely in light of site constraints, and are consistent with the purpose of the chapter and the section.

Severe Constraints Lands

In speaking to the Severe Constraints Lands requirements, the application notes that alternative sites were considered and analyzed at the beginning of the project. The project site was selected from among other potential sites because it would have the least required disturbance, including on Severe Constraints Lands. The project team carefully considered Severe Constraint Lands during the design process, and the grading and fill required to support project construction is the minimum necessary. Retaining walls are proposed in areas of steep slopes. The applicant is meeting as many of the Development Standards for Hillside Lands as possible while still meeting the project purpose. Exceptions have been requested where the design standards could not be met, as discussed above.

The Planning Commission finds that a geotechnical engineering report was completed for the project in August 2019, with a subsequent addendum completed in May 2020, summarizing investigations of the project site, including subsurface explorations, laboratory testing, geologic conditions, groundwater levels, and site recommendations (*see applicant's Appendix C for the Geotechnical Engineering Report and Appendix D for the Geotechnical Engineering Report Addendum*).

Development is proposed within the floodway in order to replace the existing culvert under Granite Street at Horn Creek Road. The culvert and roadway have been designed to pass the 100-year flood event and provide safe access to this critical facility (*See applicant's Appendix A, Sheets 000C101-*

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000C106 and Sheets 001C300-001C303 for the culvert work).

Wildfire Lands

With regard to the requirements for Wildfire Lands, the application materials note that a Fire Prevention and Control Plan compliant with AMC 18.3.10.100.A has been prepared for the project. Standing dead and dying vegetation will be removed from the project site. No vegetation proposed within 30 feet of a building is on the City's prohibited flammable plant list. Any existing vegetation listed on the prohibited flammable plant list will be removed if within five feet of a building. No combustible materials are proposed to be located within five feet of a building. Any existing trees listed on the prohibited flammable plant list that will remain on site will be maintained to provide a ten-foot clearance from new structures and will be pruned to provide a ground clearance of eight feet above ground. Existing shrubs on the prohibited flammable plant list will be maintained to provide a five-foot clearance from structures. Proposed shrubs listed on the prohibited flammable plant list will be located a minimum of 30 feet away from any building. Fuel modification areas are included in the erosion control measures (*see applicant's Appendix L for the Fire Prevention and Control Plan*). The Fire Prevention and Control Plan will be implemented during installation of utilities and site improvements, and the applicant acknowledges that a final inspection will be required. The applicant emphasizes that they will maintain the property to comply with the Fire Prevention and Control Plan, and because the project is a city-sponsored, it will be funded by the city for the foreseeable future. The applicant acknowledges that additional conditions may be imposed by the approval authority.

The applicant explains that the contractor will be required to remove fuel/ground litter within the fence line within 30 feet of buildings, which will act as a fire break to the proposed buildings. No decks, additions to existing buildings, or detached accessory structures are proposed (*See applicant's Specification Section 21 05 00 'Fire Protection Systems'*). The application notes that a General Fuel Modification Area is required for the project, as new buildings are proposed that increase the lot coverage by 200 square feet. Establishment of the fuel modification area will be completed before any combustible materials are brought onto the property.

2.9 The Planning Commission finds that the proposal satisfies all applicable criteria for a Limited Activities and Uses Permit as described in AMC 18.3.11.060.D. The application includes replacement of an existing culvert on Ashland Creek at Granite Street and at Horn Gap Road. Downstream of the "swimming hole", Ashland Creek is a Locally Significant (i.e. Riparian) Stream with a Water Resource Protection Zone (WRPZ) extending 50 feet upland of the top-of-bank, while upstream it is a Local Stream with a protection zone extending 40 feet upland of its centerline. Within WRPZ's, the construction of new private or public access and utilities is subject to a Limited Activities and Uses Permit under AMC 18.3.11.060.A.3.

In speaking to the approval criteria for a Limited Activities & Uses Permit, the application materials explain that construction activities have been minimized to the extent possible; however, the existing culvert at Ashland Creek will need to be replaced and requires in-water work and intrusion into the (WRPZ) in order to provide safe and functional access to this new critical facility. The culvert replacement

will create a higher flood storage capacity and allow for fish passage. In-stream enhancements and riparian restoration are proposed for impacts to Ashland Creek (*see applicant's Appendix A, Sheets 000C101-000C106 and Sheets 001C300-001C303 for the work within the WRPZ, and see applicant's Appendix G for the Landscape Plan*). Excavation and fill will be required to replace the culvert at Granite Street/Horn Creek Road. The proposed cut and fill amounts are the minimum necessary to support the culvert replacement and roadway. Erosion and sediment control measures will be in place prior to any ground disturbance. Mitigation will include riparian restoration at a ratio of 1:1.5 within the riparian zone of Ashland Creek. The Planning Commission finds that the culvert replacement as proposed will have a net benefit since it will create a higher flood storage capacity and allow for fish passage.

Proposed work on the bed and banks of Ashland Creek is required to replace the existing culvert. Excavation and fill are the minimum necessary to construct the roadway and wing walls, and to ensure slope stability (*see applicant's Appendix J for the Water Resources Protection Zone Plan*). Water mains and sewer systems will cross Ashland Creek over the culvert and under the roadway of Horn Creek Road/Granite Street. Utilities will be buried underneath the roadway and will be encased as to avoid accidental discharges (*see applicant's Appendix A, Sheet 001C101 for details on utilities crossing the creek*).

A Mitigation Plan has been prepared for the project (*see applicant's Appendix E for the Mitigation Plan*). A Management Plan has also been prepared for the project, and the applicant intends to contract out all post-construction maintenance activities (*see applicant's Appendix F for the Management Plan*).

The location and construction of either public or private access and utilities through a Water Resource Protection Zone require a demonstration that no other reasonable, alternate location outside the Water Resource Protection Zone exists, and for public access and utilities, a further finding that they are deemed necessary to maintain a functional system. The Land Use Ordinance, Comprehensive Plan, Transportation System Plan, adopted utility master plans, and other adopted documents shall guide this determination. In this instance, the Planning Commission finds that the applicant has gone to great lengths to select a site that could accommodate this critical facility with the least disturbance to the site's resources. Taking access to the site outside of the WRPZ would involve cutting into a very steep hillside along Granite Street in close proximity to Ashland Creek, and would likely have greater impact to the street and the hillside than simply replacing the existing culvert as proposed, but would also potentially impact the site's ability to accommodate this critical facility. The Public Services element of the Ashland Comprehensive Plan in 9.03 "Water Supply and Service" notes that:

The Comprehensive Water Plan also studied the efficiency of the City's water distribution system. It was found that this system is in need of upgrading and improvement. At present, 28 percent of the water released from the water treatment plant is lost throughout the distribution system. A normal system in good condition can expect 10 percent system losses.

Overall, the City's water system is in need of improvement to adequately supply the residents in the years to come. Improvements will be costly and large capital expenditures should be planned for as part of the City's overall Capital Improvement Program."

The Public Services element includes Goal 9.03.03 *“To provide sufficient water supply for Ashland residents”* supported by Policies in 9.03.04 including *“#17) The City should further study the construction of a new impoundment on Ashland Creek at the Winburn site to augment the City’s storage capacity in the watershed.”* And *“#18) The City should prioritize and implement needed water system improvements, as identified by the City Water Plan, as part of the City’s overall Capital Improvement Plan.”*

The Planning Commission concludes that, based on the application materials and the Comprehensive Plan, the proposal demonstrates that no other reasonable, alternate location existing outside the WRPZ and that the new WTP proposed, and safe access thereto, are necessary to maintaining a functional system.

2.10 The Planning Commission finds that the proposal satisfies all applicable criteria for a Tree Removal Permit as described in AMC 18.5.7.040.D. The application materials provided explain that in order to construct the proposed WTP, 99 trees that are not hazardous are proposed for removal as they are located within building envelopes, roadways or paved surfaces, and/or areas where grading is needed. Before any tree removal occurs, erosion and sediment control measures will be implemented.

The application emphasizes that although 99 trees are proposed for removal, 48 trees will be protected in place and an additional 848 trees on the lot will not be impacted and will be far enough away from any construction activities that they will be undisturbed and protection will not be required.

The Planning Commission finds that the trees identified for removal are the minimum number necessary to construct the project; tree removal will not have a negative impact on erosion or soil stability, as the site will be graded to decrease the existing slopes; out of the 995 total trees on site, the 99 being removed will not significantly impact the tree densities on site; and to mitigate for tree removals, tree plantings are proposed at the required 1:1 ratio to restore the site (*see applicant’s Appendix G for the Landscape Plan showing tree removal, protection, and proposed plantings*).

The Planning Commission concludes that the requested Tree Removal Permits satisfy the applicable criteria, and a condition has been included below to require that tree protection fencing for the 48 trees requiring protection, as well as necessary erosion or sediment control measures, be installed, inspected and approved by the Staff Advisor prior to any site work.

SECTION 3. DECISION

3.1 Based on the record of the Public Hearing on this matter, the Planning Commission concludes that the proposal for Site Design Review and Conditional Use Permit approvals to construct a new Water Treatment Plant (WTP) with requests for: Exceptions to the Site Design Development & Design Standards with regard to bicycle parking, pedestrian access and circulation, plant sizes, street trees, irrigation system design standards, fences and walls and open space; Exceptions to the Street Design Standards; Physical & Environmental Constraints Review Permits for Hillside Lands with Severe Constraints and Floodplain Lands, Exceptions to the Development Standards for Hillside Lands, and a Limited Use Permit to construct a new road crossing over Ashland Creek at Horn Creek Road to provide access to the WTP; a Variance to the WR zone’s 35-foot maximum building height to allow a 48.38-foot reservoir/clearwell

structure; and a Tree Removal Permit to remove 99 trees within the proposed building envelopes, roads, paved surfaces, and areas to be graded is supported by evidence contained within the whole record.

The property here is a vacant 80-acre site which has been under city ownership for more than a century and which contains slopes in excess of 35 percent as well as water resource protection zones and flood plain lands associated with Ashland Creek, a riparian stream. The proposed Water Treatment Plant (WTP) is a critical facility to serve the entire community, the need for which is recognized in the Comprehensive Plan and to fulfill that function the plant design must accommodate treatment facilities and an 850,000 gallon clearwell (water reservoir). The applicant has looked carefully to select a site and design a proposal which minimizes the impacts of the proposal to the site's natural resources while still fulfilling the identified community need. This has been accomplished with a facility that is proposed near the existing access point at Granite Street and which will rely on replacement of an existing culvert over Ashland Creek, rather than adding a new crossing, to minimize disturbance.

While the application involves a number of requests for Exceptions, the use here is unique. While many of the design standards seek building placement, orientation and design to contribute to a pedestrian streetscape, and building and site designs which break-up building massing to minimize visual impacts, the site here is at the outer limits of Ashland's urbanizable area, the WTP itself will be gated for security, without public access allowed, and the proposed WTP will not be visible from adjacent rights-of-way or neighboring properties. In the final assessment, the Planning Commission concludes that the application demonstrates that all relevant criteria have been satisfied and that the application merits approval.

Therefore, based on our overall conclusions, and upon the proposal being subject to each of the following conditions, we approve Planning Action #T2-2023-00040. Further, if any one or more of the conditions below are found to be invalid, for any reason whatsoever, then Planning Action #T2-2023-00040 is denied. The following are the conditions and they are attached to the approval:

- 1) That all proposals of the applicant shall be conditions of approval unless otherwise modified herein.
- 2) That the plans submitted for the building permit shall be in substantial conformance with those approved as part of this application. If the plans submitted for the building permit are not in substantial conformance with those approved as part of this application, an application to modify the current approval shall be submitted and approved prior to issuance of a building permit.
- 3) That the applicant shall obtain any required state or federal permits and abide by the requirements thereof.
- 4) That any new addresses shall be assigned by the City of Ashland Planning Division.
- 5) That the applicants shall obtain any necessary plan and permit approvals from the City of Ashland Public Works Department/Engineering Division prior to work within the public rights-of-way. The applicants shall obtain all required Public Works inspection approvals for work completed within the rights-of-way.

- 6) That a final Fire Prevention and Control Plan addressing the General Fuel Modification Area requirements in AMC 18.3.10.100.A.2 of the Ashland Land Use Ordinance shall be provided prior to bringing combustible materials onto the property, and any new landscaping proposed shall comply with these standards and shall not include plants listed on the Prohibited Flammable Plant List per Resolution 2018-028. All site work shall comply with applicable fire season restrictions. The most current restrictions are kept up to date on-line at: <http://www.ashland.or.us/fireseason>.
- 7) That a Verification Permit shall be applied for and approved by the Ashland Planning Division prior to site work, tree removal, building demolition, and/or storage of materials. The Verification Permit is to inspect the identification of the 99 trees to be removed and the installation of tree protection fencing for the 48 trees on and adjacent to the site. The tree protection shall be either chain link fencing six feet tall and installed in accordance with the requirements of the Tree Ordinance or orange construction fencing where topography makes the installation of chain link panels impractical. No construction activity, including dumping or storage of materials such as building supplies, soil, waste, equipment, or parked vehicles, shall occur within the tree protection zones.
- 8) That protective and silt fencing be installed along the water resource protection zone boundaries, in accordance with the approved plans and any State and Federal permit requirements, prior to issuance of a building permit, grading, grubbing, notice to proceed with construction or other site improvements. Protective and silt fencing shall be inspected and approved in conjunction with the Tree Verification Permit inspection.
- 9) That the building permit submittals shall include:
 - a. Identification of all easements, including but not limited to utility, access and fire apparatus access easements.
 - b. Written verification from the project geotechnical expert addressing the consistency of the building permit submittals with the geotechnical report recommendations (e.g. grading plan, storm drainage plan, foundation plan, etc.).
 - c. Demonstration that storm water from all new impervious surfaces and run-off associated with peak rainfalls will be collected on-site and channeled to the City storm water collection system (i.e., curb gutter at public street, public storm pipe or public drainage way) or through an approved alternative in accordance with Ashland Building Division policy BD-PP-0029. On-site collection systems shall be detailed on the building permit submittals.
 - d. Foundation plans designed by an engineer or architect with demonstrable geotechnical design experience in accordance with 18.3.10.090.F.

- 10) That prior to the issuance of a building permit:
- a. Final electric service, utility and civil plans including but not limited to the water, sewer, storm drainage, electric, street and driveway improvements shall be submitted for the review and approval of the Planning, Building, Electric, and Public Works/Engineering Departments. The street improvement plan shall be consistent with designs and Exceptions approved herein. The utility plan shall include the location of connections to all public facilities including the locations of water lines and meter sizes; fire hydrant; sanitary sewer lines, manholes and clean-out's; storm drain lines and catch basins; and locations of all primary and secondary electric services including line locations, transformers (to scale), cabinets, meters and all other necessary equipment. Transformers, cabinets and vaults shall be located in areas least visible from streets, while considering the access needs of the utility departments. Any required private or public utility easements shall be delineated on the civil plans. All civil infrastructure shall be installed, inspected and approved prior to the issuance of a certificate of occupancy or final project sign-off.
 - b. The applicant shall submit a final electric plan including any necessary load calculations and locations of all primary and secondary services including transformers, cabinets, streetlights and all other necessary equipment. Transformers and cabinets shall be located outside of vision clearance areas and in areas least visible from streets. Electric equipment shall not be installed within the Water Resource Protection Zone except at the approved crossing as described herein. This plan shall be reviewed and approved by the Planning, Engineering and Electric Departments prior installation.
 - c. A final storm drainage plan detailing the location and final engineering for all storm drainage improvements associated with the project shall be submitted for review and approval by the Departments of Public Works, Planning and Building Divisions. The storm drainage plan shall demonstrate that post-development peak flows are less than or equal to the pre-development peak flow for the site as a whole, and that storm water quality mitigation has been addressed through the final design.
 - d. Final grading, erosion and sediment control plans which include the location of any silt fencing placement or other measures necessary to protect Ashland Creek and its water resource protection zone during construction.
 - e. Final lot coverage calculations demonstrating that lot coverage is to comply with the applicable seven percent lot coverage allowance of the WR-20 zone. Lot coverage includes all building footprints, driveways, parking areas and other circulation areas, and any other areas other than natural landscaping.
 - f. That the requirements of the Ashland Fire Department relating to approved addressing; fire apparatus access, fire apparatus access approach, aerial ladder access, firefighter access pathways, and fire apparatus turn-around; fire hydrant distance, spacing and clearance; fire department work area; fire sprinklers; limitations on gates, fences or other access obstructions; and addressing standards for wildfire hazard areas including vegetation standards and limits on work during fire season shall be satisfactorily addressed in the Final Plan submittals. Fire Department requirements shall be included in the civil drawings.
 - g. Evidence of any necessary permit approvals by the Division of State Lands and/or the Army Corps of Engineers for the work proposed with Ashland Creek.

- 11) Prior to final project approval and/or issuance of a certificate of occupancy:
- a. That all infrastructure improvements including but not limited to utilities, driveways, street improvements shall be completed according to approved plans, inspected and approved.
 - b. That all landscaping, temporary irrigation and hardscaping improvements shall be completed according to the approved plan, inspected and approved.
 - c. That all exterior lighting shall be placed, directed and/or shrouded so as not to directly illuminate adjacent properties.
 - d. Mitigation of the trees removed shall be completed in a manner consistent with the mitigation requirements of AMC 18.5.7.050, inspected and approved. Required mitigation may be accomplished through replanting on-site on a one-for-one basis, replanting off-site, or payment to the city's tree account in lieu of replanting. Final details of the proposed means of mitigation shall be provided with the building permit submittal.
 - e. Streambank mitigation consistent with the prescriptive option outlined in AMC 18.3.11.110.B shall be completed according to the approved plans, inspected and approved by the Staff Advisor prior to final project sign-off.
 - f. The geo-technical engineer shall complete all scheduled project inspections and provide a written report to the Staff Advisor indicating that the approved grading, drainage and erosion control measures were installed as per the approved plans, and that all scheduled inspections were conducted by the project geotechnical expert periodically throughout the project.
 - g. All measures installed for the purposes of long-term erosion control, including but not limited to vegetative cover, rock walls, retaining walls and landscaping shall be installed according to the approved plans, inspected and approved. These measures shall be maintained in perpetuity as required in AMC 18.3.10.090.B.7.a.

Planning Commission Approval

June 13, 2023
Date

FINDINGS

**PA-T2-2023-00042,
Clear Creek Drive, Parcel 7**

BEFORE THE PLANNING COMMISSION
June 13, 2023

IN THE MATTER OF PLANNING ACTION PA-T2-2023-00042, A REQUEST TO)
MODIFY A CONDITION OF APPROVAL AND CHANGE A DEED RESTRICTION)
THAT WAS REQUIRED IN PLANNING ACTION #99-048, AMENDED IN PLAN-)
NING ACTION #2016-00684, AND RECORDED ON THE VACANT 20-ACRE SITE)
OWNED BY UNION PACIFIC RAILROAD (UPRR) AT 202 CLEAR CREEK DRIVE.)
THE DEED RESTRICTION REQUIRED THAT THE 20-ACRE SITE MEET THE)
OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY’S (DEQ) CLEANUP)
STANDARDS APPLICABLE TO A “SINGLE RESIDENTIAL PROPERTY” BEFORE)
FURTHER LAND DIVISION OR DEVELOPMENT. THE PROPOSED REVISION TO)
THE DEED RESTRICTION CLARIFIES THE SITE IS TO BE CLEANED TO AN)
“URBAN RESIDENTIAL STANDARD” TO ENABLE FUTURE DEVELOPMENT)
CONSISTENT WITH THE E-1 ZONING OF THE PROPERTY, INCLUDING COM-)
MERCIAL, EMPLOYMENT AND GROUND FLOOR RESIDENTIAL IN MIXED-)
USE AND APARTMENT BUILDINGS. THE MODIFIED CONDITION WOULD)
STIPULATE THAT THE DEED RESTRICTION WOULD BE REMOVED FROM THE)
PROPERTY UPON THE CITY RECEIVING WRITTEN DOCUMENT FROM THE)
DEQ DEMONSTRATING COMPLIANCE WITH THESE STANDARDS.)

APPLICANTS: City of Ashland)

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RECITALS:

- 1) Tax lot #6700 of Map 39 1E 09 AB and tax lot #6200 of Map 39 1E 09 AA are located at 202 Clear Creek Dr., north of the railroad tracks and south of Hersey St., and are zoned E-1, Employment.
- 2) The hearing before the Planning Commission involves a request to modify a condition of approval and change a deed restriction that was required in a 1999 planning approval (PA 99-048), amended in 2016 (PA-2016-00684), and recorded on the vacant 20-acre site owned by Union Pacific Railroad (UPRR) at 202 Clear Creek Drive. The 2016 deed restriction required that the 20-acre site meets Oregon Department of Environmental Quality’s (DEQ) cleanup standards applicable to a “single residential property” before further land divisions or development occurs. The proposed revision to the deed restriction clarifies the site be cleaned to an “urban residential standard” to enable future development consistent with the E-1 zoning of the property including commercial, employment, and ground floor residential within mixed-use and apartment buildings. The modified condition would stipulate the deed restriction would be removed from the property upon the City receiving written documentation from the Department of Environmental Quality demonstrating compliance with these standards. The proposal is outlined in the plans on file in the Department of Community Development.
- 3) The criteria for a Major Modification are described in **Ashland Municipal Code (AMC) 18.5.6.030.C** as follows:

C. Major Modification Approval Criteria. A Major Modification shall be approved only upon the approval authority finding that all of the following criteria are met.

1. Major Modification applications are subject to the same approval criteria used for the initial project approval, except that the scope of review is limited to the modification request. For example, a request to modify a commercial development's parking lot shall require Site Design Review only for the proposed parking lot and any changes to associated access, circulation, etc.
2. A modification adding or altering a conditional use, or requiring a variance, administrative variance, or exception may be subject to other ordinance requirements.
3. The approval authority shall approve, deny, or approve with conditions the application, based on written findings.

4) The criteria for a Preliminary Partition Plat are described in **AMC 18.5.3.050** as follows:

The approval authority shall approve an application for preliminary partition plat approval only where all of the following criteria are met.

- A. The future use for urban purposes of the remainder of the tract will not be impeded.*
- B. The development of the remainder of any adjoining land or access thereto will not be impeded.*
- C. The partition plan conforms to applicable City-adopted neighborhood or district plans, if any, and any previous land use approvals for the subject area.*
- D. The tract of land has not been partitioned for 12 months.*
- E. Proposed lots conform to the requirements of the underlying zone, per part [18.2](#), any applicable overlay zone requirements, per part [18.3](#), and any applicable development standards, per part 18.4 (e.g., parking and access, tree preservation, solar access and orientation).*
- F. Accesses to individual lots conform to the standards in section [18.4.3.080](#) Vehicle Area Design. See also, [18.5.3.060](#) Additional Preliminary Flag Lot Partition Plat Criteria.*
- G. The proposed streets, utilities, and surface water drainage facilities conform to the street design standards and other requirements in part [18.4](#), and allow for transitions to existing and potential future development on adjacent lands. The preliminary plat shall identify all proposed public improvements and dedications.*
- H. Unpaved Streets.**
 - 1. Minimum Street Improvement. When there exists a 20-foot wide access along the entire street frontage of the parcel to the nearest fully improved collector or arterial street, as designated in the Comprehensive Plan, such access shall be improved with an asphaltic concrete pavement designed for the use of the proposed street. The minimum width of the street shall be 20-feet with all work done under permit of the Public Works Department.*
 - 2. Unpaved Streets. The Public Works Director may allow an unpaved street for access for a land partition when all of the following conditions exist.*

- a. *The unpaved street is at least 20-feet wide to the nearest fully improved collector or arterial street. The City may require the street to be graded (cut and filled) to its standard physical width, and surfaced as required in chapter [18.4.6](#) prior to the signature of the final partition plat by the City.*
- b. *The centerline grade on any portion of the unpaved street does not exceed ten percent.*
- c. *The final elevation of the street shall be established as specified by the Public Works Director except where the establishment of the elevation would produce a substantial variation in the level of the road surface. In this case, the slope of the lot shall be graded to meet the final street elevation.*
- d. *Should the partition be on an unpaved street and paving is not required, the applicant shall agree to participate in the costs and to waive the rights of the owner of the subject property to remonstrate both with respect to the owners agreeing to participate in the cost of full street improvements and to not remonstrate to the formation of a local improvement district to cover such improvements and costs thereof. Full street improvements shall include paving, curb, gutter, sidewalks, and the undergrounding of utilities. This requirement shall be precedent to the signing of the final survey plat, and if the owner declines to so agree, then the application shall be denied.*
- I. *Where an alley exists adjacent to the partition, access may be required to be provided from the alley and prohibited from the street.*
- J. *Required State and Federal permits, as applicable, have been obtained or can reasonably be obtained prior to development.*
- K. *A partition plat containing one or more flag lots shall additionally meet the criteria in section [18.5.3.060](#).*

5) The Planning Commission, following proper public notice, held a public hearing on May 9, 2023, at which time testimony was heard and evidence was presented. Subsequent to the closing of the hearing, the Planning Commission approved the application subject to conditions pertaining to the appropriate development of the site.

Now, therefore, the Planning Commission of the City of Ashland finds, concludes and recommends as follows:

SECTION 1. EXHIBITS

For the purposes of reference to these Findings, the attached index of exhibits, data, and testimony will be used.

Staff Exhibits lettered with an "S"

Proponent's Exhibits, lettered with a "P"

Opponent's Exhibits, lettered with an "O"

Hearing Minutes, Notices, and Miscellaneous Exhibits lettered with an "M"

SECTION 2. CONCLUSORY FINDINGS

2.1 The Planning Commission finds that it has received all information necessary to make a decision based on the Staff Report, public hearing testimony, and the exhibits received.

2.2 The Planning Commission notes that the application involves a request to modify a condition of approval and change a deed restriction that was first required in the 1999 planning approval (Planning Action #99-048), subsequently amended in 2016 (Planning Action #2016-00684) and recorded on the vacant 20-acre site owned by Union Pacific Railroad (UPRR). The deed restriction required that the 20-acre site meets Oregon Department of Environmental Quality's (DEQ) cleanup standards applicable to a "single residential property" before further land divisions or development occurs. The proposed revision to the deed restriction clarifies the site is to be cleaned to an "urban residential standard" to enable future development consistent with the E-1 zoning of the property including commercial, employment, and ground floor residential within mixed-use and apartment buildings. The modified condition would stipulate the deed restriction would be removed from the property upon the City receiving written documentation from the Department of Environmental Quality demonstrating compliance with these standards.

2.3 The Planning Commission finds that a modification of an approved application or condition of approval that could have a detrimental effect on adjoining properties requires Major Modification under chapter 18.5.6. The review procedure (i.e., Type I administrative approval or Type II public hearing) for a modification is the same as the procedure used for the original application. In this case, a Type II public hearing process is required because the original land partition and lot line adjustment were processed as a Type II (AMC 18.5.6.030.A.7).

2.4 The Planning Commission finds that the subject property is a large inactive rail yard that is centrally located in Ashland. The UPRR property is approximately 20 acres in size and located north of the railroad tracks, south of Hersey St., and between the two dead-end portions of Clear Creek Dr. The west side of Clear Creek Dr. intersects with Oak St. and the east side intersects with N. Mountain Ave. Rouge Place is a third dead-end street that abuts the property in the northeast portion of the site. Clear Creek Dr. and Rogue Place are planned to continue through the UPRR property at the time the site is developed.

The property is zoned Employment (E-1) and located in the Residential and Detail Site Review overlays. The Residential overlay allows 15 dwelling units per acre as a special permitted use in conjunction with permitted commercial and employment uses. A building can have up to 35 percent of its ground floor in residential uses (e.g., ground floor commercial or employment with upper story residential units) or up to half of a lot used for residential purposes if there are to be multiple buildings on a site. The areas to the north, south, and west of the property are zoned E-1. The areas to the northeast and east are zoned residential and include Multi-Family Residential (R-2), Suburban Residential (R-1-3.5), and Single Family Residential (R-1) properties.

The general topography of the site slopes to the north toward Hersey St. The property's most significant natural features include Mountain Creek that flows south to north on the eastern boundary of the property.

A trail connection is shown in the Mountain Creek area on the City's adopted 2002 Open Space Plan. The Water Resource Protection Zones Requirements map also identifies three possible wetlands on the site.

The subject property was used for a rail yard for locomotive maintenance, service, and rail car repair between 1887 and 1986. Various structures including a hotel/passenger station, a freight station, a car repair shed, a turntable, a roundhouse, and miscellaneous work and storage buildings were once present. The Ashland rail yard peaked in the early 1900's. Subsequently, the site was used for light locomotive maintenance and car repair functions until the early 1970's by the Southern Pacific Transportation Company (SPTCo). UPRR acquired SPTCo and many of its assets, including the Ashland site, in 1997. UPRR has not operated or performed any railroad related activities at the site since its acquisition in 1997. The property is in DEQ's voluntary cleanup program because the contaminants on the property are considered low risk. As a result, DEQ cannot compel UPRR to clean up the property in a specific time period. However, the property does have to be cleaned up before it can be redeveloped.

The only structures remaining on the site are the foundations of several of the buildings. There is a fenced area on the eastern portion of the site that includes an oil/water separator and two manmade retention ponds. A mainline track and rail spur operated by Central Oregon and Pacific Railroad, Inc. (CORP) are located along the site's southern boundary.

2.5 The Planning Commission notes that a Major Modification of an approved application or condition of approval may be granted if the approval authority finds that the application meets all applicable criteria, except that the scope of the review is limited solely to the modification request. As a result, the application review here is limited to the deed restriction modification request and the applicable approval criteria are those for a Preliminary Partition Plat. The Planning Commission finds here that the proposal for a Major Modification meets all applicable criteria described in AMC 18.5.6.030.C and AMC 18.5.3.050.

Original Approval (1999)

The Planning Commission notes that in August of 1999, the City Council approved a Comprehensive Plan map amendment from Industrial to Employment and a Zoning map amendment from M-1 to E-1 as Planning Action #99-066 (Ordinance #2843). In addition, the area was included in the Detail Site Review and Residential overlay zones.

In November of 1999, the Planning Commission approved a land partition, including the construction of a new public street and alley system and a lot line adjustment for the property located southeast of the intersection of Hersey and Oak Streets and north of the railroad tracks as Planning Action #99-048. This Planning Action included a condition requiring a deed restriction stating that the site is required to be cleaned up to DEQ residential standard before further land division or development, and that written confirmation from DEQ be submitted to the City of Ashland when the cleanup to residential standards was completed. The west end of Clear Creek Dr. and six surrounding lots were created as a result of the approved land partition and lot line adjustment. A variety of mixed-use buildings have since been developed in the area. The seventh lot created by the land partition and lot line adjustment is the undeveloped 20-acre Union Pacific Railroad (UPRR) site that is the subject of the current application.

The Planning Commission notes that the original 1999 condition of approval was based on the land partition criteria in AMC 18.5.3.050.A which requires “*the future use for urban purposes of the remainder of the tract will not be impeded.*” Specifically, the staff report included the following discussion:

The application notes that the deed restriction will be placed on the remaining approximately 25 acres due to subsurface contamination resulting from past railroad operations. The E-1 zoning and residential overlay (R-Overlay) allow for a variety of commercial and residential uses. The City’s Comprehensive Plan encourages mixed-use development, and existing City ordinances and neighborhood planning efforts provide a variety of incentives in the hope of achieving this goal. Consequently, it is important that the contaminants on the remaining 20+ acres be removed or reduced to levels which would allow for commercial, as well as residential uses. Staff has attached a condition requiring that the final cleanup achieve this goal and verification be provided from the Department of Environmental Quality (DEQ).

Condition #9 of Planning Action #99-048 as adopted read that, “*A deed restriction be placed on the remaining 25 acres (approximately) precluding further “development” or land divisions until the property has been cleaned to residential standards. Written compliance with these standards shall be provided to the City from the Department of Environmental Quality.*”

Condition Modification (2016)

The Planning Commission further notes that in 2016, UPRR indicated they would like to cleanup and sell the property; however, they indicated that the deed restriction from the 1999 land use approval posed a barrier to potential buyers/developers because it required future subdivided lots that may not be used for residential purposes to nonetheless be cleaned up to residential standards. They argued that DEQ’s standards required cleanup to match the proposed use of the individual lots, with DEQ’s “occupational” standard providing for retail, office, or light industrial uses, while DEQ’s “residential” standard allows for ground level housing. According to the UPRR representative, the 1999 deed restriction had deterred potential buyers/developers because it was not consistent with DEQ’s remediation requirements.

The proposed modification was to amend the deed restriction to require two levels of cleanup. First, the initial cleanup of the 20-acre site would be to the residential standard for a single residential property. Subsequent development or subdivided lots would have to be cleaned up to the standard DEQ requires for the proposed use of the individual lots: the “occupational” standard for retail, office, or light industrial uses; the “residential” standard for ground level housing.

As adopted, Condition #2 of Planning Action #2016-00684 amended the original condition to read:

Parcel 7 is restricted from further development or land division until Grantor obtains a determination from the Department of Environmental Quality that the property meets cleanup standards applicable to a single residential property. Thereafter, development of or any subdivided parcel cannot occur until Grantor obtains a determination from the Department of Environmental Quality that the property meets cleanup standards applicable to the use proposed for the subdivided parcel. Grantor will provide written documentation from the Department of Environmental Quality demonstrating compliance with these standards to the

City.

Current Request (2023)

The current request again seeks to modify the language in the deed restriction/restrictive covenant. According to UPRR, the existing deed restriction language, as revised in 2016, speaks to clean up to “single residential” standards and remains inconsistent with DEQ’s remediation standards for the “urban residential” and “occupational” uses allowable on the property under its E-1 zoning. After completion of full-site remediation to DEQ’s cleanup standards, the proposed revised deed restriction would allow subdivision and development of individual parcels upon further remediation in conformance with the DEQ risk standards applicable to the proposed actual uses of the parcels and the parcel-specific risks posed by the actual contaminants on them. After hearing UPRR’s request, the City Council directed staff to apply for a modification to the prior condition and amend the restrictive covenant and to continue to work with UPRR and DEQ regarding the remediation plan to clean up the property for future development.

I move to direct staff to prepare, file, and seek approval of an application for a Major Amendment to replace the condition of approval in PA2016-00684 with the modified condition of approval presented in the March 21, 2023, Council Communication and to continue working with Union Pacific Railroad and DEQ to achieve remediation of the rail yard site to applicable DEQ standards.

The modified condition considered by Council and forwarded by motion to the Planning Commission for review as a Major Amendment to the PA2016-000684 condition was as follows:

Parcel 7 is restricted from further development or land division until Grantor obtains a determination from the Department of Environmental Quality that the property meets cleanup standards consistent with the current and likely future land use zoning for the property. These land uses correspond with the Department of Environmental Quality Urban Residential and/or Occupational exposure scenarios. Thereafter, development of any subdivided parcel cannot occur until Grantor obtains a determination from the Department of Environmental Quality that the property meets cleanup standards applicable to the use proposed for the subdivided parcel. This covenant will be removed from the property, and/or any subdivided parcel(s), upon the grantor providing the City written documentation from the Department of Environmental Quality demonstrating compliance with these standards to the City.

UPRR has indicated that if the condition were modified as requested, they would move forward with a full cleanup of the site.

In considering this request, the Planning Commission finds that the intent of the original 1999 condition was somewhat ambiguous because the extent of the required cleanup to residential standards was unclear. Neither UPRR nor DEQ were directly involved in that application. Instead, a local real estate agent, representing UPRR and a second property owner, was the applicant. In addition, the focus of the 1999 application was in separating the far western end of the UPRR property (now the west end of Clear Creek Dr.) for further development. While the cleanup of the far western end of the property was required by DEQ before the area was developed, the level and extent of contaminants there was comparatively minor.

As a result, the 1999 land partition application and the subsequent Planning Commission public hearing discussion and decision did not involve extensive information regarding UPRR’s plans for the remaining UPRR property (the subject property here) or about DEQ’s remediation process and cleanup standards. The Planning Commission and staff were aware that cleanup of the remaining UPRR property was necessary and would be an issue in the future, but detailed information regarding the remediation process and clean-up standards was not presented or evaluated.

Further, the Commission finds that the terminology used to refer to the clean up to “residential” standards in the 1999 condition and to “single residential” in the 2016 condition would typically apply to single family detached homes, or townhomes, which can have individual yards. The presence of such yards gives occupants direct access to subsurface contaminants through activities such as gardening, and thus poses a greater risk. The “urban residential” standard is now used by DEQ to distinguish more suburban, single family residential uses from the higher density, multi-family residential at urban levels of development that would be consistent with the permitted uses under the current E-1 zoning. Essentially, a property cleaned to “urban residential” standards can accommodate a multi-story mixed-use building or an apartment complex even when residential uses occupy the ground floor. Lastly, if future lots were to be subdivided from the parent parcel and developed to accommodate only commercial, employment, or light-industrial buildings, only DEQ’s “occupational” standard would be applicable.

The Planning Commission notes that the UPRR property represents approximately one fourth of Ashland’s inventory of Employment and Industrial zoned land and therefore is a significant portion of the City’s 20-year land supply for employment purposes. The statewide planning program and implementing state laws require all cities to designate sufficient land to accommodate the project land need for employment and job creation for a 20-year planning period. The City’s adopted 2010 Economic Opportunity Analysis (EOA) comparison of land supply and need in Ashland indicated an adequate supply of employment land until 2027 and a deficit in the 2028-2057 planning period.

The bulk of Ashland’s buildable employment lands are divided between the UPRR property; the Washington St./Jefferson Ave./Benson Way area; and the Croman Mill district on Mistletoe Rd. Each of these three areas will require significant infrastructure improvements in the form of utilities and streets before development is possible, and both the UPRR property and the Croman Mill district will be required to be cleaned up prior to further development. In contrast to the Washington Ave. area and Croman Mill district, the UPRR property is entirely located in the Residential Overlay.

The central location of the site makes the UPRR property a logical candidate for future development. The E-1 zoning and inclusion in the Residential and Detail Site Review overlays provide a flexible approach for future development that allows a mix of commercial, employment, and residential uses. This type of mixed-use development is consistent with the following Ashland Comprehensive Plan policies that speak to providing a mix of uses, especially as a buffer between employment areas and residential neighborhoods, and encouraging a mix of uses in close proximity so that people that work and live in the area have the option of making trips by walking or bicycling.

Chapter VII, The Economy, Policy 2, E. *The City shall design the Land Use Ordinance to provide for e) Commercial or employment zones where business and residential uses are*

mixed. This is especially appropriate as buffers between residential and employment or commercial areas and in the Downtown.

Chapter X, Transportation Element, Goal III, Policy 2. *Promote a mixed land use pattern, where appropriate, and pedestrian environment design that supports walking and bicycling trips.*

Despite the central location and significant contribution to the City’s land supply for employment purposes, the UPRR property has been effectively unavailable for development because of the need to clean up the site. Making the UPRR property a viable piece of the City’s 20-year land supply for employment purposes, including urban residential mixed-use development, is consistent with the City’s adopted 2011 Economic Development Strategy (EDS) which includes identifying barriers to development for key industrial lands and working to make them “shovel ready” for re-sale for business development. The EDS includes the following strategy and action.

Strategy 6. *Provide appropriate land supplies for needed business growth/expansion with quality infrastructure to all commercial and employment lands.*

Action 6.6 *Determine feasibility and cost/benefit for public purchase of key industrial lands to make “shovel ready” for re-sale for business development.*

The EDS discusses identifying lands that have been neglected and determining the existing barriers of development such as lack of services, access limitations, and environmental abatement needs. In addition, the EDS discusses evaluating “... *whether direct public financial involvement may be the more appropriate tool to address those barriers and make lands more financially attractive and operationally functional for private development (i.e., the railroad property).*”

The Planning Commission finds that to not impede the future use of the subject property for the urban purposes envisioned by its E-1 zoning and Residential Overlay, the condition and associated deed restriction must not preclude or present barriers to future residential uses on the subject property as allowed under its E-1 zoning and residential (R) overlay. As such, any modification must make clear that the initial clean-up of the property would be to “urban residential” standards to accommodate mixed use development allowed within the zone. For the Commission, the language necessary to make this clear is:

“Parcel 7 is restricted from further development or land division until Grantor obtains a determination from the Department of Environmental Quality that the property meets the cleanup standards consistent with the current and likely future land use zoning for the property, consistent with the DEQ Urban Residential exposure standard. Thereafter, development of any subdivided parcel cannot occur until Grantor obtains a determination from the Department of Environmental Quality that the property meets cleanup standards applicable to the use proposed for the subdivided parcel. This covenant will be removed from the property, and/or any subdivided parcel(s), upon the grantor providing the City written documentation from the Department of Environmental Quality demonstrating compliance with these standards to the City”

The Planning Commission finds that this modification of the condition and deed restriction is consistent with

the mix of uses and potential configurations that are allowed on the UPRR property under the current zoning and does not preclude the inclusion of residential uses consistent with the E-1 zone and Residential Overlay. Further this change in the deed restriction language is consistent with intention of establishing the condition in 1999 and revising it in 2016. The location in the E-1 zone and the Residential overlay allows residential dwelling units in conjunction with a permitted commercial or employment use. A variety of uses and building and site configurations are possible on the subject property. These uses, including the provision of residential uses on the ground floor of multistory mixed-use, or apartment buildings would be considered “urban residential” development by DEQ. After the initial clean up of the site to a “urban residential standard”, the amended condition would allow the City’s deed restriction to be removed, and each development to be evaluated independently by DEQ to ensure subsequent developments comply with the cleanup standard that matches the type and configuration of the proposed uses.

2.6 The Planning Commission finds that many of the criteria for a Preliminary Plat approval were satisfied when the subject parcel was created and are not affected by the proposal to modify the deed restriction regarding the cleanup of the subject property. As discussed above, the Commission finds that the amendment of the modified 2016 condition and associated deed restriction will not impede the future use of the subject property for urban purposes. In contrast, the need to clean up the property has prevented development over the past two decades and UPRR has indicated that the change to the deed restriction will facilitate the cleanup of the property in the near future.

The Commission finds that development of adjacent land and access is not impacted by a change in the deed restriction on the subject property. In the future, Clear Creek Dr. and Rogue Place will be extended through the property along with public utilities to serve the employment area located between the railroad tracks and Hersey St. The continuation of the network of streets and public services will eventually allow the development of the site and general area.

Finally, the proposed change in the deed restriction has been developed cooperatively between the City, DEQ and UPRR and has been crafted to meet DEQ’s standards. As a result, the Commission finds that the amendment here will allow the owner to obtain the required State and Federal permits for the cleanup of the property.

SECTION 3. DECISION

3.1 Based on the record of the Public Hearing on this matter, the Planning Commission concludes that the request for a Major Modification to amend a condition of approval of the land partition and lot line adjustment of Planning Action #2016-00684 is supported by evidence contained within the whole record.

Therefore, based on our overall conclusions, and upon the proposal being subject to each of the following conditions, we approve Planning Action #2023-00042. Further, if any one or more of the conditions below are found to be invalid, for any reason whatsoever, then Planning Action #2023-00042 is denied. The following are the conditions and they are attached to the approval.

- 1) All conditions of the PA #99-048 and PA #2016-00684 shall remain conditions of approval unless otherwise specifically modified herein.

- 2) That the deed restriction required in Condition #2 of PA 2016-00684 shall be revised to read as follows.

“Parcel 7 is restricted from further development or land division until Grantor obtains a determination from the Department of Environmental Quality that the property meets the cleanup standards consistent with the current and likely future land use zoning for the property, consistent with the DEQ Urban Residential exposure standard. Thereafter, development of any subdivided parcel cannot occur until Grantor obtains a determination from the Department of Environmental Quality that the property meets cleanup standards applicable to the use proposed for the subdivided parcel. This covenant will be removed from the property, and/or any subdivided parcel(s), upon the grantor providing the City written documentation from the Department of Environmental Quality demonstrating compliance with these standards to the City”

- 3) That evidence shall be submitted demonstrating that the deed restriction has been revised in accordance with Condition 2 above and recorded prior to issuance of City excavation permit or any site work.

Planning Commission Approval

June 13, 2023

Date

Return Document to:

Melissa Huhtala,
Ashland City Recorder,
20 East Main,
Ashland, OR 97520

CITY OF ASHLAND
AMENDMENT TO CLEANUP RESTRICTION COVENANT

| | |
|--|---|
| Owner: Union Pacific Railroad | Property Address: Not Applicable Property Description: Parcel 7 of Partition Plat No. P-32-2000 Index Volume 11 Page 32 in the Record of Partition Plats in Jackson County, Oregon, Jackson County Survey File No. 16528 |
| Planning Action: PA-T2-2023-00042 | Consideration: \$Zero, but relief from restrictions of use of the property, the sufficiency of which the Owner deems sufficient. |
| Name of Development: City of Ashland Planning Action 99-048 and 2016-00684 | |

As Owner of the property listed above, Owner hereby consents to the following restrictive covenant as required by the City of Ashland by ordinance in order to permit land use activities on the Subject Property that affect legal rights landowners have in their land. This restrictive covenant is to be binding upon Owner, its heir(s), executors, and assigns, and it is Owner's express intention that this restrictive covenant shall run with the land, and shall be binding upon future owners of the property.

RECITALS

A. As a condition of approval in a City of Ashland Planning Action (PA) 99-048, a Restriction Covenant was recorded on the property and the following notation was included on Parcel 7 of Partition Plat No. P-32-2000 Index Volume 11 Page 32 in the Record of Partition Plats in Jackson County, Oregon, Jackson County Survey File No. 16528.

"As a condition of approval of this plat, the City of Ashland has required the following statement: Parcel 7 is restricted from further development or land division until the property has been cleaned to residential standards. Written compliance with these standards shall be provided to the city from the Department of Environmental Quality."

B. On June 28, 2016 and after a properly noticed public hearing, the City of Ashland Planning Commission approved the following change to the original condition, as of record Planning Action 2016-00684:

"2) That the deed restriction required in condition 9 of PA 99-048 shall be revised to read as follows

Parcel 7 is restricted from further development or land division until Grantor obtains a determination from the Department of Environmental Quality that the property meets cleanup standards applicable to a single residential property. Thereafter, development of or any subdivided parcel cannot occur until Grantor obtains a determination from the Department of Environmental Quality that the property meets cleanup standards applicable to the use proposed for the subdivided parcel. Grantor will provide written document from the Department of Environmental Quality demonstrating compliance with these standards to the City."

C. On May 9, 2023 and after a properly noticed public hearing, the City of Ashland Planning Commission approved the following change to the original condition, as of record Planning Action PA-T2-2023-00042:

"2) That the deed restriction required in condition 9 of PA 99-048, and amended per PA-2016-00684, shall be revised to read as follows:

"Parcel 7 is restricted from further development or land division until Grantor obtains a determination from the Department of Environmental Quality that the property meets the

AMENDMENT TO CLEANUP RESTRICTION COVENANT

cleanup standards consistent with the current and likely future land use zoning for the property, consistent with the DEQ Urban Residential exposure standard. Thereafter, development of any subdivided parcel cannot occur until Grantor obtains a determination from the Department of Environmental Quality that the property meets cleanup standards applicable to the use proposed for the subdivided parcel. This covenant will be removed from the property, and/or any subdivided parcel(s), upon the grantor providing the City written documentation from the Department of Environmental Quality demonstrating compliance with these standards to the City.

D. All periods for appeal to land use decision of PA-T2-2023-00042 have expired; and

THEREFORE, the City has established lawful authority, to which Owner voluntarily consents and agrees, to amend the cleanup restriction covenant as follows:

AMENDED RESTRICTION COVENANT

City approves and Owner acknowledges and agrees:

1. The recitals set forth above are hereby incorporated as substantive to this Amended Restriction Covenant.

2. Reference in 2016-00684, the deed, or Partition Plan No. P-32-3000 to the original condition of approval for Parcel 7 from PA 99-048 on 11/9/1999, which specifically reads:

"Parcel 7 is restricted from further development or land division until Grantor obtains a determination from the Department of Environmental Quality that the property meets cleanup standards applicable to a single residential property. Thereafter, development of or any subdivided parcel cannot occur until Grantor obtains a determination from the Department of Environmental Quality that the property meets cleanup standards applicable to the use proposed for the subdivided parcel. Grantor will provide written document from the Department of Environmental Quality demonstrating compliance with these standards to the City."

is removed as a condition and replaced with the amended condition that is a final land use decision as approved by the Planning Commission in Planning Action PA-T2-2023-00042 as follows:

"Parcel 7 is restricted from further development or land division until Grantor obtains a determination from the Department of Environmental Quality that the property meets the cleanup standards consistent with the current and likely future land use zoning for the property, consistent with the DEQ Urban Residential exposure standard. Thereafter, development of any subdivided parcel cannot occur until Grantor obtains a determination from the Department of Environmental Quality that the property meets cleanup standards applicable to the use proposed for the subdivided parcel. This covenant will be removed from the property, and/or any subdivided parcel(s), upon the grantor providing the City written documentation from the Department of Environmental Quality demonstrating compliance with these standards to the City.

3. Except as modified above the terms of the City of Ashland Planning Action 99-048 and PA 2016-000684 shall remain in full force and effect.

CITY OF ASHLAND:

OWNER: UNION PACIFIC RAILROAD

By: _____
Joe Lessard, City Manager

By _____

STATE OF OREGON)
) ss.
County of Jackson)

AMENDMENT TO CLEANUP RESTRICTION COVENANT

Personally appeared before me this ____ day of _____, **2023, Joe Lessard, City Manager of the City of Ashland, Oregon**, and acknowledged the foregoing instrument to be his voluntary act and deed.

Notary Public for Oregon
My Commission Expires: _____

STATE OF OREGON)
) ss.
County of Jackson)

Personally appeared before me this ____ day of _____, **2023**, _____
_____, and acknowledged the foregoing instrument to be their
voluntary act and deed.

Notary Public for Oregon
My Commission Expires: _____

**TYPE II PUBLIC HEARING -
CONTINUED**

**PA-T2-2023-00041,
Tax Lot 404, Clinton Street**

Public Comments



MEMO: PA-T2-2023-00041

To: Planning Commission
Re: Additional Comments during open record

At the Conclusion of the May 9th public hearing the record was left open in response to Mr. Elerath's request.

The record was to stay open for two weeks until end of day May 23rd. During that time four public comments were received and are attached to this memo.

For the next week, until May 30th Parties could respond to any new material submitted. During that week no additional comments were received.

Revised findings have also been included in the packet.

COMMUNITY DEVELOPMENT DEPARTMENT

51 Winburn Way
Ashland, Oregon 97520
ashland.or.us

Tel: 541.488.5305
Fax: 541.552.2050
TTY: 800.735.2900



From: [Aaron Anderson](#)
To: [planning](#)
Subject: FW: Planning Acton PA-T2-2023-0041; Tax Lot 404 Clinton St.
Date: Monday, May 15, 2023 8:19:36 AM

All: Please see below.

This was sent directly to me and copied to mayor and (most of) council (it appears that she missed cc'ing to councilor Dahle).

Front office: please reply letting Betsy and all parties originally cc'ed that this has been received and placed in the record.

I will take care of forwarding to Gill and Amy.

Thank you.

Aaron Anderson CFM, Sr. Planner

From: Betsy A. McLane <clumb3@yahoo.com>
Sent: Sunday, May 14, 2023 6:17 PM
To: Aaron Anderson <aaron.anderson@ashland.or.us>
Cc: Bob Kaplan <bob@council.ashland.or.us>; Dylan Bloom <dylan.bloom@council.ashland.or.us>; Gina DuQuenne <Gina.DuQuenne@council.ashland.or.us>; Tonya Graham <tonya@council.ashland.or.us>; Eric Hansen <eric@council.ashland.or.us>; paula.hyab@council.ashland.or.us
Subject: Planning Acton PA-T2-2023-0041; Tax Lot 404 Clinton St.

[EXTERNAL SENDER]

Dear Aaron and Ashland City Council,

I am writing to urge that the Planning Commission reject the proposal submitted for building on the above referenced tax lot. I attended the Planning Commission meeting on this subject via Zoom and was appaled at the lack of clarity and information provided in the proposal.

The most simple google search reveals that the company proposing the development has almost no experience in successfully building anything and is run out of a private home This is reflected in lack of care evident in the proposal. Below are just some of the problems that were apparent to me:

The proposed development includes:

A plan for 11 buildable lots, for a total of 21 new residences with one lot size open space. The State of Oregon allows that land zoned for single family housing can have two dwelling units on it. The submitted proposal shows these to be three bedroom duplexes. The developer recently created a new business as a property rental firm. This could mean 80-132 rental occupants. These could be short term housing for air b&bs, tourists, or students and/or longer term rentals. In either case,

this could easily overwhelm streets with traffic and noise and completely change the character of the neighborhood.

The proposal includes plans to cut down at least four large significant trees, because the developer does not want to pay to build a retaining wall and handrail. It also includes a requested waiver to change the normal sidewalk to be built on Clinton. If approved, there will likely be no parkrow as we now have in Riverwalk.

No plan for preservation of wetland or a riparian area. The proposal uses a temporary wetlands sample with no final ruling as to whether there is wetland here. Since this property is adjacent to Bear Creek, special care should be taken to protect plants and wildlife.

No adequate drawings of the look of the housing

No mention of fire wise planning.

No study of traffic mitigation was presented. It appears that Briscoe would be most affected since the proposal includes extending Briscoe and Ann into the development and traffic would move to and from Mountain via Briscoe and to and from Hersey via Ann. Ann is already a dangerous very steep street. There is potential for up to 100 vehicles trips using Briscoe every day.

Complete disregard for the Riverwalk subdivision CC&R's which state that one of our goals is to preserve property value.

These are only the most obvious dubious elements of the proposal. During the meeting the Commission refused to address the issue of stop signs and street lighting stating that those questions "should be directed to the city department that deals with streets." Obviously, city departments are not sharing information in collegial ways.

Believing as I do that residents of Ashland have a right to transparency in our government, I find that the proposed project is the opposite of transparent. It seems that a development is somehow being ramrodded into a single family home community with no regard for community values. I ask that the City Council investigate this proposal more thoroughly and that the planning commission reject it.

I am an owner at 419 Clinton.

Most sincerely,

Betsy A. McLane, Ph.D.

Betsy A. McLane
clumb3@yahoo.com

From: [Aaron Anderson](#)
To: [planning](#)
Subject: FW: Magnolia Heights subdivision
Date: Tuesday, May 23, 2023 8:22:22 AM

Front Office please reply to Mr. Longhurst that we have received his email Thank you

Aaron Anderson CFM, Sr. Planner

-----Original Message-----

From: Gordon Longhurst <gordonlonghurst7580@gmail.com>
Sent: Saturday, May 20, 2023 12:55 PM
To: Aaron Anderson <aaron.anderson@ashland.or.us>
Subject: Magnolia Heights subdivision

[EXTERNAL SENDER]

Hi Aaron,

I attended the public hearing on May 9th regarding the Magnolia Heights subdivision and spoke about a few concerns I had.

You and I spoke after the meeting about how the state mandate to allow duplexes on land zoned single family homes superseded local zoning restrictions.

This letter is to request that traffic study be done (required?) to assess the impacts the added residences will have on neighborhood traffic and safety. The proposal states that no traffic study is required because there will be less than 50 trips, but does not indicate whether that estimate is based on 11 residences or 22. Even if the number of trips doesn't require a traffic study it would still be useful to determine how best to deal with two already problematic intersections that will be made moire so by increased traffic; Ann St at Hersey and Phelps at Patterson.

Please enter this letter in the record.

Thanks,
Gordon Longhurst
515 Ann St
Ashland 97520

From: [Aaron Anderson](#)
To: [planning](#)
Subject: FW: PLANNING ACTION: PA-T2-2023-00041
Date: Tuesday, May 23, 2023 8:23:37 AM

Front Office, Please reply to Dean below,
Thank you

Aaron Anderson CFM, Sr. Planner

From: Dean Ichikawa <deanichikawa@gmail.com>
Sent: Sunday, May 21, 2023 10:07 PM
To: Aaron Anderson <aaron.anderson@ashland.or.us>
Subject: PLANNING ACTION: PA-T2-2023-00041

[EXTERNAL SENDER]
PLANNING ACTION: PA-T2-2023-00041
SUBJECT PROPERTY: Tax Lot 404 Clinton St
OWNER: Magnolia Heights LLC

Hi Aaron Anderson,

My apologies, I missed the public hearing on May 9th, but hoping you can consider my concerns, if someone hasn't already raised them. When I read the application—unless I missed it—the applicant isn't taking into account anything regarding N Mountain Ave. I live right on N Mountain Ave (521) and I can tell you that it is already quite busy. It's also a pretty long stretch of road with no stop signs in between. This allows for cars to often go well above the speed limit. And with the park right across the street, I have an 11-year old daughter who crosses the street quite a bit and the majority of cars do not stop for her when she stands waiting at the crosswalk to cross the street.

This new development is likely to increase the number of cars traveling on N Mountain Ave and I'm concerned that the additional traffic will cause issues, especially as cars attempt to make a left turn on N Mountain Ave towards I-5 without any stop signs or traffic control. As it is, cars honk their horns at cars trying to turn in and out of the neighborhood and in and out of the park on an almost daily basis. I don't think they should be allowed to add so many new dwellings without addressing this issue by contributing to a new intersection or some type of traffic control.

Otherwise, they will just be adding to a problem and won't be responsible if an accident should happen or other disturbances result.

Thank you so much for hearing my concerns!

—Dean Ichikawa
(650) 703-9578

Eric Elerath
419 Clinton St.
Ashland, OR 97520
(310) 429-8093

May 23, 2023

Ashland Planning /Community Development
City of Ashland
51 Winburn Way
Ashland, OR 97520
(541) 488-5350

Douglas M. McGeary, City Attorney
City of Ashland
20 East Main Street
Ashland, OR 97520
(541) 488-5305

PLANNING ACTION: PA-T1-2023-00041
SUBJECT PROPERTY: Tax Lot 404 Clinton St.
OWNER: Magnolia Heights LLC

SUBJECT: OBJECTIONS TO PLANNING ACTION
REQUEST FOR STAY OF DECISION

Dear Ashland Planning / City of Ashland:

Mr. Elerath renews his objection to approval of the above Planning action on the grounds that such approval and development would be in violation of Mr. Elerath's rights under the takings clause of the 5th Amendment, and that approval of the proposed project would set an adverse precedent which could be nearly impossible to challenge or reverse. He now requests a stay of any decision by the Planning Commission and the City Council which would grant approval of the project as proposed, so as to allow prior judicial review.

Mr. Elerath specifically alleges:

Despite the terms of HB2001 and its effect on Oregon State law, the subdivision project as submitted violates Ashland Municipal Code §13.9.050 because it proposes the permitting of duplexes on property zoned R-1-5 in a unit density twice that of the unit density allowed under the ordinances. The result would be 22 dwelling units, apparently designed for shorter-term rental, instead of the 11 dwelling units currently allowable in R-1-5 and which are typically sold to owner-occupants. The proposed density and rental occupancy is intended for projects in zones designated for high density multifamily use, not the R-1-5 zone intended for single family dwellings.

One effect of the proposed development with that density increase and change of use will be to lower Mr. Elerath's appraised property value in a significant amount not yet determined and which can only be estimated now or determined by future appraisal after the fact.

Wherever the City's interest lies in controlling the cost of rental housing to end users and tenants, lowering the property values of owner-occupants who have made an investment in property for their own security during end-of-life years, and who have an established right to maintain those property values, is not a legitimate use of the city's police powers.

Mr. Elerath respectfully asks that approval for this project be stayed until review can be had in federal court.

Regards,



Eric Elerath
419 Clinton St.

**PA-T2-2023-00041,
Tax Lot 404, Clinton Street**

BEFORE THE PLANNING COMMISSION

JUNE 13, 2023

IN THE MATTER OF PLANNING ACTION PA-T2-2023-00041 A)
REQUEST FOR OUTLINE PLAN APPROVAL FOR A 12 LOT, 11)
RESIDENTIAL UNIT SUBDIVISION. INCLUDED IN THE)
APPLICATION IS A REQUEST FOR AN EXCEPTION TO STREET)
STANDARDS, A TREE REMOVAL PERMIT FOR TWO SIGNIFICANT)
TREES AND A MINOR MAP AMENDMENT TO THE ADOPTED)
PHYSICAL AND ENVIRONMENTAL CONSTRAINT MAP.)

**FINDINGS,
CONCLUSIONS,
AND ORDERS.**

OWNER MAGNOLIA FINE HOMES)
APPLICANT: ROGUE DEVELOPMENT SERVICES)

RECITALS:

- 1) Tax lot #404 of Assessor’s Map 39-1E-04-DB is located at the northwest corner of the intersection of Clinton and Ann Streets. The subject property is 2.66 acres in area and zoned R-1-5 (Single Family Residential) and within the Performance Standards Overlay (PSO).
- 2) The property was created in its current configuration on Partition Plat No. P-30-2022 which was recorded as CS 23736 and approved as City of Ashland Planning Action PA-T1-2020-00109.
- 3) There are regulated elements shown on the adopted maps of the subject property including:
 - a. A 10’ drainage in the northwest corner of the property as shown on the adopted Physical and Environmental Constraints map.
 - b. A small stretch of an ‘intermittent and ephemeral stream’ in the northeast of the property as shown on the adopted Water Resources Protection Zone map,
 - c. A small part of the Ashland modified flood zone exist in the most northern portion of the development, as well as the 500-year flood zone (No portion of the property is in the regulated SFHA (100-year / AE Flood zone)),
 - d. Steep slopes more than 35% (severely constrained) at the southern edge of the property along Clinton Street.
- 4) The applicant is requesting Outline Plan approval for a 12-lot, 11-unit residential subdivision. The application also includes requests for an Exception to Street Standards, and a Tree Removal Permit for four significant trees. Additionally, the applicant has applied for a minor amendment to the adopted Physical and Environmental Constraints map to effectively remove a drainage way form the map that is not extant on the property. And finally, the applicant has addressed the applicability standards of the Water Resource Protection Zone

WRPZ by providing a wetland determination demonstrating that there are no regulated wetland resources on the subject property. The applicant's proposal is detailed in plans which are on file at the Department of Community Development and by their reference are incorporated herein as if set out in full.

- 5) The criteria for Outline Plan approval are described in **AMC 18.3.9.040.A.3** as follows:
 - a. The development meets all applicable ordinance requirements of the City.
 - b. Adequate key City facilities can be provided including water, sewer, paved access to and through the development, electricity, urban storm drainage, police and fire protection, and adequate transportation; and that the development will not cause a City facility to operate beyond capacity.
 - c. The existing and natural features of the land; such as wetlands, floodplain corridors, ponds, large trees, rock outcroppings, etc., have been identified in the plan of the development and significant features have been included in the common open space, common areas, and unbuildable areas.
 - d. The development of the land will not prevent adjacent land from being developed for the uses shown in the Comprehensive Plan.
 - e. There are adequate provisions for the maintenance of common open space and common areas, if required or provided, and that if developments are done in phases that the early phases have the same or higher ratio of amenities as proposed in the entire project.
 - f. The proposed density meets the base and bonus density standards established under this chapter.
 - g. The development complies with the street standards.
 - h. The proposed development meets the common open space standards established under section [18.4.4.070](#). Common open space requirements may be satisfied by public open space in accordance with section [18.4.4.070](#) if approved by the City of Ashland.

- 6) The criteria for an Exception to the Street Standards are described in **AMC 18.4.6.020.b** as follows:
 - a. There is demonstrable difficulty in meeting the specific requirements of this chapter due to a unique or unusual aspect of the site or proposed use of the site; and the exception is the minimum necessary to alleviate the difficulty; and the exception is consistent with the purpose, intent, and background of the street design standards in subsection [18.4.6.040.A](#); and the exception will result in equal or superior transportation facilities and connectivity considering the following factors where applicable:
 - i. For transit facilities and related improvements, access, wait time, and ride experience.
 - ii. For bicycle facilities, feeling of safety, quality of experience (i.e., comfort level of bicycling along the roadway), and frequency of conflicts with vehicle cross traffic.
 - iii. For pedestrian facilities, feeling of safety, quality of experience (i.e., comfort level of walking along roadway), and ability to safely and efficiently cross roadway; or

- b. There is no demonstrable difficulty in meeting the specific requirements, but granting the exception will result in a design that equally or better achieves the stated purposes, intent, and background of the street design standards in subsection [18.4.6.040.A](#).
- 7) The applicability for Tree Removal is set forth at AMC 18.5.7.020.B and requires a type 1 review for “Removal of significant trees, as defined in part 18.6, on vacant property zoned for residential purposes ...”
- 8) The criteria for a Tree Removal Permit are described in **AMC 18.5.7.040.B** as follows:
2. Tree That is Not a Hazard. A Tree Removal Permit for a tree that is not a hazard shall be granted if the approval authority finds that the application meets all of the following criteria, or can be made to conform through the imposition of conditions.
 - a. The tree is proposed for removal in order to permit the application to be consistent with other applicable Land Use Ordinance requirements and standards, including but not limited to applicable Site Development and Design Standards in part [18.4](#) and Physical and Environmental Constraints in part 18.3.10.
 - b. Removal of the tree will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks.
 - c. Removal of the tree will not have a significant negative impact on the tree densities, sizes, canopies, and species diversity within 200 feet of the subject property. The City shall grant an exception to this criterion when alternatives to the tree removal have been considered and no reasonable alternative exists to allow the property to be used as permitted in the zone.
 - d. Nothing in this section shall require that the residential density to be reduced below the permitted density allowed by the zone. In making this determination, the City may consider alternative site plans or placement of structures of alternate landscaping designs that would lessen the impact on trees, so long as the alternatives continue to comply with the other provisions of this ordinance.
 - e. The City shall require the applicant to mitigate for the removal of each tree granted approval pursuant to section [18.5.7.050](#). Such mitigation requirements shall be a condition of approval of the permit.
- 9) AMC 18.3.10.070 provides for “Minor amendments of the maps to correct mapping errors when the amendments are intended to more accurately reflect the mapping criteria contained in this chapter ...” and may be processed as a Type 1 procedure.
- 10) The Water Resource Protection Zone applicability at AMC 18.3.11.020 states the following: “The burden is on the property owner to demonstrate that the requirements of this chapter are met or are not applicable to development activity or other proposed use or alteration of land. The Staff Advisor may make a determination based on the Water Resources map, field check, and any other relevant maps, site plans, and information that a Water Resource or Water Resource Protection Zone is not located on a particular site or is not impacted by proposed development, activities or uses. In cases where the location of the Water Resource or Water Resource Protection Zone is unclear or disputed, the Staff Advisor may require a survey, delineation prepared by a natural resource professional, or a sworn

statement from a natural resource professional that no Water Resources or Water Resource Protection Zones exist on the site.”

- 11) The Planning Commission, following proper public notice, held a public hearing on May 09, 2023. Testimony was received, and exhibits were presented. At the conclusion of the public hearing the record was left open for two weeks (until May 23rd) for any party to submit additional materials, and the matter was continued to a date and time certain; June 13, 2023 at 7:00p.m.
- 12) During the period that the public record was open four comments were received. These are attached as Exhibits P1 through P4, and by their reference are incorporated herein. These comments were provided to the applicant and were specifically requested by one participant. For one week following the May 23rd deadline for additional materials to be provided, participants were allowed to respond to those new submittals by May 30th. No party provided any additional information between May 23rd and May 30th, 2023 and the record was closed.
- 13) The Planning Commission reconvened on June 13, 2023 for deliberations.

Now, therefore, the Planning Commission of the City of Ashland finds, concludes and recommends as follows:

SECTION 1. EXHIBITS

For the purposes of reference to these Findings, the attached index of exhibits, data, and testimony will be used.

Staff Exhibits lettered with an "S"

Proponent's Exhibits, lettered with a "P"

Opponent's Exhibits, lettered with an "O"

Hearing Minutes, Notices, and Miscellaneous Exhibits lettered with an "M"

SECTION 2. CONCLUSORY FINDINGS

2.1 The Planning Commission finds that AMC Title 18 Land Use regulates the development pattern envisioned by the Comprehensive Plan and encourages efficient use of land resources among other goals. When considering the decision to approve or deny an application the Planning Commission considers the application materials against the relevant approval criteria in the AMC.

2.2 The Planning Commission finds that it has received all information necessary to render a decision based on the application itself, the Staff Report, the public hearing testimony, and the exhibits received.

2.3 The Planning Commission notes that the application was deemed complete on April 17, 2023, and further finds that the notice for the public hearing was both posted at the frontage of

the subject property and mailed to all property owners within 200-feet of the subject property on April 25, 2023.

2.4 The Planning Commission finds that the proposal for Outline Plan approval meets all applicable criteria for Outline Plan approval described in AMC 18.3.9.040.A.3 and detailed below.

The first approval criterion for Outline Plan approval is that *“The development meets all applicable ordinance requirements of the City.”* The application materials assert that, except as discussed elsewhere herein, the proposed subdivision meets all applicable ordinance requirements of the City. The Planning Commission finds that the proposal meets all applicable ordinance requirements or has requested exceptions thereto, and that this criterion has been satisfied.

The second approval criterion for Outline Plan approval is that *“Adequate key City facilities can be provided including water, sewer, paved access to and through the development, electricity, urban storm drainage, police and fire protection, and adequate transportation; and that the development will not cause a City facility to operate beyond capacity.”* The application materials explain that all of the site’s utilities will be extended through the new public street rights-of-way from adjacent services surrounding the site as illustrated in the conceptual utility plans provided. The Planning Commission notes that at the time of Final Plan application submittal, engineered civil drawings will be provided with full utility, electrical, grading and drainage plans. The application materials further note that after discussions with the various service providers, no capacity deficiencies have been identified. The Public Works/Engineering Department has confirmed that:

- **Water** – At the northwest corner of the site there is an eight-inch stub to city water at the end of Briscoe Place. A condition of approval required by Public Works for water quality will be to continue that connection along the newly dedicated Phelps Street, creating a looped system. The Planning Commission notes that the Public Works Department has no concerns about capacity or water pressure.
- **Sanitary Sewer** - At the northwest corner of the site there is a 12-inch concrete main that extends north and connects to a twenty-four-inch trunk line. The Planning Commission notes that the Public Works Department has no concerns about capacity.
- **Transportation** – The Planning Commission notes that the proposal can and will provide paved access and transportation to and through the development. The Planning Commission notes that the street standards for local access street require a 22’ paved width which allows for a 15’ queuing lane and parking on one side. The Planning Commission notes that along the southern right-of-way (ROW) of the extension of Briscoe there is over 244 feet of frontage, with additional frontage along the eastern side of the ROW of the extension of Phelps. The Planning Commission notes that on-street parking is required per AMC 18.3.9.060 at a ratio of one space per unit. The Planning Commission notes that the available frontage provides for at least 16 on street parking spaces exceeding the required amount.
- **Storm Drainage** - At the northwest corner of the site there is a 36-inch storm drain main. The Planning Commission notes that the applicant will be required to meet all Rogue Valley Sewer Services (RVSS) cooperative regional requirements. The

Planning Commission notes that the Public Works Department has no concerns about capacity.

The Planning Commission finds based on the above that adequate key City facilities are available within the adjacent rights-of-way and will be extended by the applicant to serve the proposed development. Conditions have been included below to require that final electric service, utility and civil plans be provided for the review and approval of the Staff Advisor and city departments, and that civil infrastructure be installed by the applicants according to the approved plans, inspected and approved prior to the signature of the final survey plat. The Planning Commission concludes that this criterion has been satisfied.

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

The Planning Commission notes that the application includes a wetland delineation prepared by Schott and Associates concluding that no regulated wetlands are located on the subject property and further notes that the delineation was acknowledged by the Department of State Lands (DSL). The Planning Commission notes that there is a small portion of the Ashland Modified Floodplain on the northern portion of lot-11 but is outside of the building envelope. The Planning Commission notes that there are no ponds or rock outcroppings. The Planning Commission notes that there are four significant trees and will discuss them further under section 2.6. Finally, The Planning Commission notes that the steep slopes adjacent to Clinton St. are the result of the development of Clinton Street and a vestige of the street cut and are not ‘unbuildable areas.’ The Planning Commission notes that the band of severely constrained land is less than ten feet in width and finds that these steep slopes are not representative of the overall site. The Planning Commission notes that each individual resultant lot will have a minor encroachment into these steep slopes and further finds that the encroachment into these steep slopes is de minimums enough to not be subject to further planning review at the time of the development of the individual lots. The Planning Commission finds based on the above that existing natural features have been addressed in the application and concludes that this criterion has been satisfied.

The fourth criterion for approval of an Outline Plan is that *“The development of the land will not prevent adjacent land from being developed for the uses shown in the Comprehensive Plan.”* The Planning Commission notes that to the east and south of the subject property the neighborhoods are fully developed. The Planning Commission further notes that the land to the north has been preserved as city open space and contains flood plain and possible wetlands. The Planning Commission notes that the parent parcel to the subject parcel lies to the west and is over nine acres and has over 245’ of frontage along Clinton and will also be fronted by the extension of Phelps. The Planning Commission concludes that the proposed development of the subject property will not prevent the adjacent land from developing as envisioned in the Comprehensive Plan and that this criterion has been satisfied.

The fifth approval criterion is that *“There are adequate provisions for the maintenance of open space and common areas, if required or provided, and that if developments are done in phases that the early phases have the same or higher ratio of amenities as proposed in the entire project.”* The Planning Commission notes that the application states that the final plan application will include draft Conditions, Covenants & Restrictions (CC&Rs) and that *“the CC&Rs will provide details regarding the maintenance of the open space and standards for the subdivision.”* The Planning Commission notes that all open spaces identified in the subdivision are to be owned and managed in perpetuity by the subdivision’s Homeowners’ Association (HOA), and the Final Plan application will include draft CC&Rs outlining the HOA’s budget and maintenance responsibilities for such open spaces. Conditions have been included below to require that the CC&R’s include provisions for the long-term operation and maintenance of open space and common areas including the trees preserved and protected with the subdivision, common utilities and the drainage system, including a stormwater operations and maintenance plan. With the inclusion of these conditions, the Planning Commission finds that there are adequate provisions for the maintenance of the open space and common areas and concludes that this criterion has been satisfied.

The sixth criterion is that *“The proposed density meets the base and bonus density standards established under this chapter.”* The application materials explain that the subject property is 2.66-acres and is zoned R-1-5, a Single-Family Residential zoning district with a base density of 4.5 dwelling units per acre which yields a base density of 11.9 total units. The application proposes a total of 11 residential lots with one lot reserved for open space. The Planning Commission finds that the proposed 11-lots are within the allowed density for the zone and concludes that this criterion has been satisfied.

The Planning Commission notes that State Law commonly referred to as *“HB2001 *”* requires, among other things, that cities of our size *“shall allow the development of a duplex on each lot or parcel zoned for residential use that allows for the development of detached single-family dwellings.”* The Planning Commission further notes that following extensive public hearings[†] the City Council adopted Ordinance No. 3199 in June of 2021 amending several chapters of the Land Use Ordinance to be compliant with HB2001. The Planning Commission further notes that the special use provisions governing duplexes at AMC 18.2.3.110.C which states that *“duplexes are not subject to the maximum density or minimum lot area requirements of the zone”*. The Planning Commission concludes that the 11-lot proposal is consistent with the densities allowed in the zone and further notes that should the developer wish, a duplex could be built on each of the residential lots.

The seventh Outline Plan approval criterion is that *“The development complies with the Street Standards.”* The application materials explain that all proposed streets and alleys

* House Bill 2001 An Act Relating to housing; creating new provisions; amending ORS 197.296, 197.303, 197.312 and 455.610 and section 1, chapter 47, Oregon Laws 2018

[†] See <https://www.ashland.or.us/duplexcode> for complete records

have been designed according to the City's adopted Street Design Standards for residential neighborhood streets and alleys, and that connections will be provided to transition the proposed new streets to the improvements already in place within the surrounding established subdivisions. The application includes a request for an Exception to the Street Design Standards to not include required park row planting strips with street trees along Clinton. The exception is discussed in detail in section 2.5 below. A condition has been included to require that final civil engineering be provided with the Final Plan submittal illustrating full street designs and cross-section consistent with the City's Street Design Standards for residential neighborhood streets and alleys. The Planning Commission notes that there were concerns raised with regard to additional traffic in the surrounding neighborhood. The Planning Commission notes that the application was not required to perform a traffic analysis because the applications trip generation[‡] is below the regulatory threshold[§]. The Planning Commission notes that the public works dept indicated that there were no concerns regarding capacity as stated above. The Planning Commission notes that in terms of new traffic generation a single-family dwelling has 9.6 Average Daily Trips (ADT). The Planning Commission also notes that the proposed street cross sections meet the full required paving width for a neighborhood street and have a designed capacity of 1500 ADT. The Planning Commission determines that even if all eleven residential lots were developed with duplexes (as discussed above), the total number of new ADT generated from this subdivision would be 211. Even if all these new trips were to pass through the busiest local street in the area, that road would still be operating at less than half of its designed capacity. The Planning Commission concludes that the road system is designed well above the required capacity in terms of ADT generation. The Planning Commission finds based on the above, that (with the approval of the street exception discussed below) the proposal complies with the Street Standards and concludes that this criterion has been satisfied.

The final Outline Plan approval criterion is that "*The proposed development meets the common open space standards*" AMC 18.4.4.070 requires that Performance Standards Option subdivisions with a base density of ten units or more must provide a total of at least five percent of the total lot area in common open space. The total subject property area is 115,738 square feet; five percent of this is 5,786. The Planning Commission notes that the applicant proposes an open space lot that is 6,894 square feet exceeding the required amount. The Planning Commission finds that the proposal meets the common open space standards and concludes that this criterion has been satisfied.

The Planning Commission concludes based on the above that all applicable approval criteria for Outline Plan subdivision approval have been satisfied.

2.5 The Planning Commission finds that the proposal satisfies all applicable criteria for the approval of an Exception to the Street Design Standards described in AMC 18.4.6.020.B1a and detailed below.

[‡] All numbers are from the Institute of Transportation Engineers Trip Generation Handbook, 7th Edition.

[§] The threshold for a traffic analysis is 50 PM Peak Hour trips. ITE category 210 Single Family Home provides an average PM Peak Hour trip rate of 1.02 per dwelling.

An option to demonstrate that an Exception to the Street Design Standards is justified is to show that, *“There is demonstrable difficulty in meeting the specific requirements of this chapter due to a unique or unusual aspect of the site or proposed use of the site.”* The application materials explain that the requested exception is required due to the immediate change in grade adjacent to the proposed improvement. The application explains that the topography creates “challenges to construction of a park row and sidewalk as there would be a large retaining wall required to hold the sidewalk up which will then require a guardrail or other barrier.” The Planning Commission finds that the steepness of the slope immediately adjacent to an improved ROW which is a result of the original creation of Clinton Street is an unusual aspect of the site and that the exception is justified.

The Planning Commission notes that when it has been found that there is a demonstrable difficulty meeting the requirements to must also be shown that: *“the exception is the minimum necessary to alleviate the difficulty; and the exception is consistent with the purpose, intent, and background of the street design standards in subsection 18.4.6.040.A; and the exception will result in equal or superior transportation facilities and connectivity...”* The Planning Commission notes that the only areas where an exception is requested are the areas along the southwest corner of the development where the topography is challenging and finds that the proposed exception is therefore the minimum necessary. The Planning Commission further notes that the application proposes the installation of shade trees directly behind the sidewalk in areas where the park-row cannot be installed. The Planning Commission finds that the exception requested is consistent with the Purpose and Intent of the Street Standards and that the result is Equal or superior transportation facilities for all modes of travel.

The Planning Commission concludes that the exception request satisfies all applicable criteria for an Exception to the Street Design Standards.

2.6 The Planning Commission notes that the application includes a request to remove four significant trees. The Planning Commission further notes that the only regulated trees on the property are those that meet the threshold requirement to be considered significant**. The Planning Commission further notes that each of the four significant trees are either located in the proposed street Right-of-way or storm drain infrastructure where significant grading is required.

The Planning Commission notes that one of the approval criteria for a non-hazard tree removal includes that “The tree is proposed for removal in order to permit the application to be consistent with other applicable Land Use Ordinance requirements and standards.” The Planning Commission notes that the orientation of the roadway network conforms to the standards in the land use ordinance, and that that the location of the storm drain facility is dictated by topography. The Planning Commission notes that the removal of these trees will not have a significant negative impact to the environment nor on the tree densities. The Planning Commission further notes that the trees to be planted along the new park rows far exceed the required mitigation

** AMC 18.6.1 Significant Tree: A conifer tree having a trunk 18 caliper inches or larger in diameter at breast height (DBH), or a deciduous tree having a trunk 12 caliper inches in diameter at breast height.

plantings. The Planning Commission finds that the removal of the four trees meets the relevant approval criteria.

2.7 The Planning Commission notes that AMC 18.3.10.070 provides for “Minor amendments of the maps to correct mapping errors when the amendments are intended to more accurately reflect” the conditions on the ground. The Planning Commission notes that the Staff Advisor made a site visit and saw no evidence of a drainage in the area. The application states that the area does “not contain the physiographic conditions or significant natural vegetation or trees or soil characteristics to warrant calling it a stream or a protected floodplain.” The Planning Commission concludes that a minor amendment is appropriate to ‘more accurately reflect’ the conditions on the ground and formally amend the adopted Physical and Environmental map herein.

2.8 The Planning Commission notes that the Water Resource Protection Zone applicability at AMC 18.3.11.020 (full text set out above) puts the burden on the property owner that the regulations of AMC 18.3.11 “are met or are not applicable” to a proposed development. The Planning Commission notes, as mentioned above, that the application included a wetland delineation acknowledged by the Department of State Lands (DSL) concluding that there is no regulated wetland on the subject property. The Planning Commission notes that there were concerns raised during the initial evidentiary hearing regarding the possible existence of wetlands in the southeast corner of the subject property. Absent other expert testimony, the Planning Commission must rely on the conclusions of both the Shotts and Associates report and the DSL. The Planning Commission finds, based on the above, that the regulations at AMC 18.3.11 are not applicable to the present development.

2.9 The Planning Commission finds that there is substantial evidence in the record to make findings that each of the criteria have been met, as was presented in the applicant’s submittal, as well as the Staff Report dated May 9th, and by each of their reference are hereby incorporated herein as if set out in full.

2.10 After the closing of the deliberations the Planning Commission approved the application subject to the conditions of approval in the Staff Report. The Planning Commission finds that with the conditions of approval included in the decision, the proposal satisfies the applicable approval criteria.

SECTION 3. DECISION

3.1 Based on the record of the Public Hearings on this matter, the Planning Commission concludes that the request for a 12-lot, 11-residential unit Performance Standards subdivision including a request for an Exception to Street Standards, a Tree Removal Permit for four significant trees and a Minor Map Amendment to the adopted physical and environmental constraint map is supported by evidence contained within the whole record with the conditions of approval below:

- 1) That all proposals of the applicant shall be conditions of approval unless otherwise specifically modified herein.

- 2) That any new addresses shall be assigned by City of Ashland Engineering Department. Street and subdivision names shall be subject to City of Ashland Engineering Department review for compliance with applicable naming policies.
- 3) That permits shall be obtained from the Ashland Public Works Department prior to any work in the public right of way, including but not limited to permits for driveway approaches, street improvements, utilities or any necessary encroachments.
- 4) That the recommendations of the project arborist including tree protection fencing placement, provisions for temporary watering systems and pruning recommendations shall be conditions of this approval.
- 5) That the tree protection fencing and other tree preservation measures shall be installed according to the approved plan, inspected and approved by the Staff Advisor prior to any site work, storage of materials, staging or issuance of a building or excavation permit. The tree protection shall be chain link fencing six feet tall and installed in accordance with 18.4.5.030.C. and no construction activity, including dumping or storage of materials such as building supplies, soil, waste, equipment, or parked vehicles, shall occur within the tree protection zones.
- 6) That a final Fire Prevention and Control Plan addressing the General Fuel Modification Area requirements in AMC 18.3.10.100.A.2 of the Ashland Land Use Ordinance shall be provided prior to bringing combustible materials onto the property, and any new landscaping proposed shall comply with these standards and shall not include plants listed on the Prohibited Flammable Plant List per Resolution 2018-028.
- 7) That the Final Plan application shall include:
 - a) Final electric service, utility and civil plans including but not limited to the water, sewer, storm drainage, electric, street and driveway improvements shall be submitted for the review and approval of the Planning, Building, Electric, and Public Works/Engineering Departments with the Final Plan submittal. The street system plan shall include full street designs with cross-sections consistent with the City's Street Design Standards for the proposed residential neighborhood streets and alleys, as approved, except that no parkrow planting strip is required on the bridge over Beach Creek. Street lights shall be included in keeping with city street light standards. The utility plan shall include the location of connections to all public facilities including the locations of water lines and meter sizes; fire hydrant; sanitary sewer lines, manholes and clean-out's; storm drain lines and catch basins; and locations of all primary and secondary electric services including line locations, transformers (to scale), cabinets, meters and all other necessary equipment. Transformers, cabinets and vaults shall be located in areas least visible from streets, while considering the access needs of the utility departments. Any required private or public utility easements shall be delineated on the civil plans. All civil infrastructure shall be installed by the applicants, inspected and approved prior to the signature of the final survey plat.
 - b) That the applicant shall submit a final electric design and distribution plan including load calculations and locations of all primary and secondary

services including transformers, cabinets, street lights and all other necessary equipment. This plan must be reviewed and approved by the Electric Department prior to the signature of the final survey plat. Transformers and cabinets shall be located in areas least visible from streets and outside of the sidewalk corridor and vision clearance areas, while considering the access needs of the Electric Department. Electric services shall be installed underground to serve all lots within the applicable phase prior to signature of the final survey plat. At the discretion of the Staff Advisor, a bond may be posted for the full amount of underground service installation (with necessary permits and connection fees paid) as an alternative to installation of service prior to signature of the final survey plat. In either case, the electric service plan shall be reviewed and approved by the Electric, Engineering, Building and Planning Departments prior to installation of facilities.

- c) A final storm drainage plan detailing the location and final engineering for all storm drainage improvements associated with the project shall be submitted for review and approval by the Departments of Public Works, Planning and Building Divisions. The storm drainage plan shall demonstrate that post-development peak flows are less than or equal to the pre-development peak flow for the site as a whole, and that storm water quality mitigation has been addressed through the final design.
- d) A final grading and erosion control plan.
- e) Calculations demonstrating that the proposed new lots have been designed to permit the location of a 21-foot-high structure with a solar setback that does not exceed 50 percent of the lot's north-south dimension based on Solar Standard A, or identification of a solar envelope for each lot which provides comparable solar access protections, as required in AMC 18.4.8.040
- f) That the requirements of the Ashland Fire Department relating to approved addressing; fire apparatus access, fire apparatus access approach, aerial ladder access, firefighter access pathways, and fire apparatus turn-around; fire hydrant distance, spacing and clearance; fire department work area; fire sprinklers; limitations on gates, fences or other access obstructions; and addressing standards for wildfire hazard areas including vegetation standards and limits on work during fire season shall be satisfactorily addressed in the Final Plan submittals. Fire Department requirements shall be included in the civil drawings.
- g) That draft CC&Rs for the Homeowner's Association shall be provided for review and approval of the Staff Advisor with the Final Plan submittal. The CC&R's shall describe responsibility for the maintenance of all common use-improvements including driveway, open space, landscaping, utilities, and stormwater detention and drainage system, and shall include an operations and maintenance plan for the stormwater detention and drainage system.
- h) The approved Tree Protection Plan, Water Resource Protection Zone Mitigation and Management Plans, and accompanying standards for compliance shall be noted in the CC&Rs. The CC&Rs must state that

deviations from the approved Tree Preservation and Protection Plan or Water Resource Protection Zone Mitigation and Management Plans shall be considered violations of the Planning approval and subject to penalties described in the Ashland Municipal Code.

- i) A fencing plan which demonstrates that all fencing shall be consistent with the provisions of the “Fences and Walls” requirements in AMC 18.4.4.060, and that fencing around common open space, except for deer fencing, shall not exceed four feet in height. Fencing limitations shall be noted in the subdivision CC&R’s. The location and height of fencing shall be identified at the time of building permit submittals, and fence permits shall be obtained prior to installation.
- 8) That a final survey plat shall be submitted within 12 months of Final Plan approval and approved by the City of Ashland within 18 months of this approval. Prior to submittal of the final subdivision survey plat for signature:
- a) All easements including but not limited to public and private utilities, public pedestrian and public bicycle access, drainage, irrigation, and fire apparatus access shall be indicated on the final subdivision plat submittal for review by the Planning, Engineering, Building and Fire Departments.
 - b) The final survey plat shall include the dedication of right-of-way necessary to accommodate the proposed street system.
 - c) That the subdivision name and all street names shall be approved by the City of Ashland Engineering Division.
 - d) Subdivision infrastructure improvements including but not limited to utilities, driveways, streets and common area improvements shall be completed according to approved plans, inspected and approved.
 - e) Irrigated street trees selected from the Recommended Street Tree Guide and planted according to city planting and spaces standards shall be planted along the full North Mountain Avenue of the subject property, inspected and approved by the Staff Advisor.
 - f) Electric services shall be installed underground to serve all lots, inspected and approved. The final electric service plan shall be reviewed and approved by the Ashland Electric, Building, Planning and Engineering Divisions prior to installation.
 - g) That the sanitary sewer laterals and water services including connection with meters at the street shall be installed to serve all lots within the applicable phase, inspected and approved.
- 9) That the building permit submittals shall include the following:
- a) Identification of all easements, including but not limited to any public and private utility easements, mutual access easements, and fire apparatus access easements.

- b) Solar setback calculations demonstrating that all new construction complies with Solar Setback Standard A in the formula $[(\text{Height} - 6) / (0.445 + \text{Slope}) = \text{Required Solar Setback}]$ and elevations or cross section drawings clearly identifying the highest shadow producing point(s) and the height(s) from natural grade.
- c) Final lot coverage calculations demonstrating how lot coverage is to comply with the applicable coverage allowances of the R-1-5 zoning district. Lot coverage includes all building footprints, driveways, parking areas and other circulation areas, and any other areas other than natural landscaping.

Planning Commission Approval

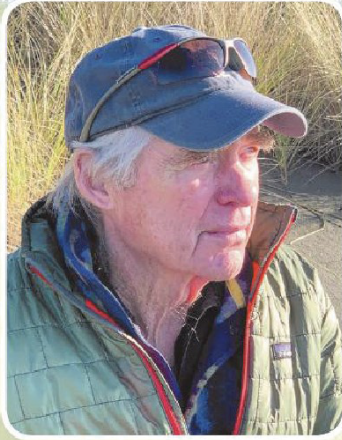
Date

INFORMATIONAL

**In Memorium
Michael Dawkins**

Michael Todd Dawkins

August 1, 1946 - May 2, 2023



Michael was born in Lancaster, PA to William and Martha Dawkins. His father was a writer/music aficionado and his mother was an artist/gardener. He was an alchemy of sorts.

As a child, dad read him a variety of books which led to a lifelong passion for reading and an extensive library. Like his mother he was an artist. His last canvas was the arboretum he established at his home on East Main Street in Ashland. It is a mixture of ornamentals, conifers, succulents and perennials.

At age 7, Michael began acting at the Oregon Shakespeare Festival. He stated, "I was raised by the theater, from the make-up room to costume design to rehearsals. They were my babysitter." When they tired of him, he was sent next door to the YMCA, now the Angus Bowmer Theater.

After a brief stint at the University of Oregon and Haight Ashbury, Michael found his calling (compass) at Southern Oregon College in a Botany class. It led to a lifelong passion for studying plants, learning their latin names and observing their interaction with their environment.

Michael described himself as "a ski bum." From the first years at Mt. Ashland to Colorado and back to Buck Prairie he evolved from an alpine to telemark to a dual discipline cross country skier. As a long time groomer and volunteer instructor for the Southern Oregon Nordic Club he was recognized by the Oregon Nordic Club with the 2019 John Day Award.

As a member of the Ashland Garden Club, a chapter that his grandmother Ella Hendrixson helped found in the early 50s, Michael was given the "Award of Distinction." He was noted for his "soil building magic" and turning an asphalt slope into a terraced arboretum at his home.

When Michael moved back to his hometown in 2002 from Aspen, Colorado he became a candidate for the Ashland Parks and Recreation Commission. He barely lost. Fortuitously, the city council asked him to become a member of the Planning Commission; a position he held for over 19 years until the day he passed. The Ashland City Council recognized Michael with the Alan C. Bates public service award in April, 2023. There were stories of Michael's bringing together different positions to build consensus and on a lighter note that Michael at one time either lived in or ran by many of the properties discussed.

As an alumnus of the AHS class of 1965 he maintained friendships that crossed classes. Many were forged on the track, cross country and golf teams. He coupled his athletic prowess with leadership, representing AHS at Boys State.

As proprietor of Native Gardens and Artisan Gardens he has left a landscape legacy from Snowmass Village, CO to Sunriver, OR to Ashland.

Michael was preceded in death by his father, Bill (1991), mother, Marti (2019) and sister Ellen (2022). He is survived by his brother Chris and sister-in-law Michelle (Hood River), niece Steph Hoppe (Peter) and family (Hood River), nephew Joe (Kristina) and family (Hood River), and his soulmate, Kathy Fennell (Medford), with whom he shared many cross country and kayaking excursions.

For those wishing to honor Michael, please make contributions to the Ashland Woodlands and Trail Association at ashlandtrails.org/donations/

