



Planning Commission Meeting Agenda

ASHLAND PLANNING COMMISSION

REGULAR MEETING AGENDA

Tuesday, April 8, 2025

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.

I. CALL TO ORDER

7:00 p.m., Civic Center Council Chambers, 1175 E. Main Street

II. ANNOUNCEMENTS

1. Staff Announcements
2. Advisory Committee Liaison Reports

III. CONSENT AGENDA

1. Approval
 - a. February 11, 2025 Regular Meeting
 - b. March 11, 2025 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-public-testimony@ashland.or.us by April 8, 2025 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/99910988744>

V. TYPE II PUBLIC HEARING - CONTINUED

PLANNING ACTION: PA-T2-2024-00053
SUBJECT PROPERTY: 231 Granite Street
PROPERTY OWNERS: Stephanie & Bryan DeBoer
APPLICANTS: Carlos Delgado Architect
DESCRIPTION: A request for a Physical and Environmental (P&E) Constraints permit to construct a new single-family dwelling in steep slopes greater than 25% within the hillside overlay area, including exceptions to the hillside design standards. The proposal includes a Type 2 variance due to the proposed driveway grade exceeding 18%. The applicant also requests a tree removal permit to remove 67 trees, 63 of which are between 6" and 12" Diameter at Breast Height (DBH), 8 of which are dead, and 4 are significant trees which are larger than 12" DBH. **COMPREHENSIVE PLAN DESIGNATION:** Low Density Residential; **ZONING:** RR-.5; **MAP:** 39 1E 08 DA; **TAX LOTS:** 1800

VI. TYPE III PUBLIC HEARING

PLANNING ACTION: PA-T3-2024-00012
SUBJECT PROPERTY: 2320 Ashland St
APPLICANT: City of Ashland





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DESCRIPTION: A request to modify the officially adopted maps for the locally adopted Ashland Modified Floodplain to be consistent with the original studies conducted and City Council Approvals. The amendment would remove the Local Ashland Floodplain along Hamilton Creek from Mistletoe Road downstream to Interstate Five. This amendment would have no change on the FEMA flood zones, and those regulations would stay in full effect.

VII. OPEN DISCUSSION

VIII. ADJOURNMENT

Next Meeting Date: April 22, 2025

If you need special assistance to participate in this meeting, please contact Derek Severson at planning@ashlandoregon.gov or 541.488.5305 (TTY phone number 1.800.735.2900). Notification at least three business days before the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting in compliance with the Americans with Disabilities Act.





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January 28, 2025

STUDY SESSION

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. Commissioner Perkinson attended the meeting via Zoom.

Commissioners Present:

Lisa Verner
Eric Herron
Gregory Perkinson
Russell Phillips
Susan MacCracken Jain
Kerry KenCairn

Staff Present:

Brandon Goldman, Community Development Director
Derek Severson, Planning Manager
Michael Sullivan, Executive Assistant

Absent Members:

John Maher

Council Liaison:

Doug Knauer

II. ANNOUNCEMENTS

1. Staff Announcements:

Community Development Director Brandon Goldman made the following announcements:

- The Housing and Human Services Advisory Committee will hold a community resource fair at the Ashland Library on February 26, 2025.
- The April 22, 2025 Study Session will be a joint meeting with the City Council to review the SOU Masterplan update and the City's recent Economic Opportunity Analysis.
- The Council approved a carbon pollution impact fee at its February 18, 2025 meeting, which will go into effect in January, 2026. They also approved Ordinance 3245, which are amendments to Chapter 2.11 and will introduce universal standards for Advisory Committees.
- An appeal of the Kestrel Park Phase III subdivision will be received by the Council at its March 4, 2025 meeting.
- Following the recent snow storm, the City has suspended enforcement of the removal of hazard trees if they became damaged during the storm. This suspension will end on April 30, 2025.

2. Advisory Committee Liaison Reports – None





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IV. **PUBLIC FORUM** – None

V. **UNFINISHED BUSINESS**

1. **Approval of Findings for PA-T1-2024-00255, 110 Terrace Street.**

Ex Parte Contact

No ex parte contact was disclosed.

Decision

Commissioner KenCairn/Phillips m/s to approve the Findings as presented. Roll Call Vote: All AYES. Motion passed 6-0.

VI. **OTHER BUSINESS**

1. **Climate-Friendly Areas Code Update Discussion with 3J Consulting & JET Planning**

Consultant Presentation and Discussion

Elizabeth Decker of JET Planning provided an update on the firms' ongoing code audit and proposed updates to align with the state's Climate-Friendly and Equitable Communities (CFEC) guidelines, which includes the implementation of Climate-Friendly Areas (CFAs). CFAs, in addition to zoning code updates, parking reform, and an updated Transportation System Plan (TSP), also included the following guidelines that appropriate cities must adopt:

- Allow multifamily residential (with ground-floor mixed-use)
- Allow townhouses
- Allow commercial, office and civic uses
- Allow at least 50-foot building height
- Require at least a minimum density of 15 du/ac
- Apply no maximum density

Ms. Decker stated that the two CFAs proposed are in the Railroad Property and the commercial section of the Transit Triangle (see attachment #1), and that the Commission could also consider the following optional code updates:

- **Remove maximum density in C-1 and E-1 zones citywide?**
 - o The Commission expressed concern about the potential unintended consequences of removing maximum density in these zones.
- **Companion changes to downtown (C-1-D) zoning for similar CFA-scale development,**





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without CFA designation

- o The Commission was generally in favor of increasing building height allowances to 60ft and removing density maximums. The Commission wanted to discuss this further with the Council.
- **Consider whether to limit other auto-oriented uses**
 - o The Commission generally agreed to limit, but not eliminate, auto-oriented uses within CFAs and determined to continue this discussion at a later date.
- **Consider whether to limit large-scale storage uses**
 - o The Commission generally agreed that this could be permitted in mixed-use buildings.
- **Consider any changes to industrial and employment uses in E-1**
 - o The Commission generally agreed not to limit industrial uses within CFAs as it could have unintended consequences on small, owner-operated businesses.
- **Consider whether to limit applicability of solar setbacks within CF Overlay**
 - o The Commission generally agreed that solar and height setbacks should be limited or removed in CFAs except near residential buildings on the periphery of those CFAs.
- **Consider any specific design goals for the CF Overlay, beyond Detail Site Review Overlay and walkable urban design standards**
 - o Commissioner MacCracken Jain suggested design standards that promote outdoor spaces as part of the townhouse, and that there should be intent behind developing whole neighborhoods rather than developing building-by-building.

2. Walkable Design Standards Code Update Discussion with Cascadia Partners

Pauline Ruegg provided a brief presentation on the Walkable Design Standards Code Audit her team at Cascadia Partners conducted, stating that this project focused on land use requirements and guidelines from the Department of Land Conservation and Development (DLCD) to support compact, pedestrian friendly, mixed-use land use development patterns. Walkable Design Standard code changes included promoting clear transitions in residential properties to public areas; a higher percentage of ground-floor windows on residential and commercial buildings; and requiring weather protection along a percentage of the ground floor façade of a certain depth to support use of sidewalk in all weather conditions. Ms. Ruegg also provided information regarding areas where the City abides by, exceeds, or falls short of Oregon Administrative Rules (OARs) (see attachment #2).

Ms. Ruegg provided the following questions to facilitate the Commission's discussion:

- **What questions do you have about the CFEC rules and model code?**
- **Are there any code concepts that you have major concerns about?**
- **What issues related to walkable design are a high priority for you?**





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The Commission was generally in favor of the suggestions made by the consultants. Commissioner KenCairn suggested that guidelines regarding street orientation include language for groupings of houses that do not have street frontage.

The Commission discussed the difficulty in promoting affordability while enforcing guidelines that increase development costs, and emphasized the need to include clear and objective development standards.

VII. OPEN DISCUSSION

The Commission expressed interest in reviewing the TSP update in conjunction with the new Walkability Design Standards. Mr. Goldman informed them that the TSP has a two-year development process and would not be completed by the time the Walkability Design Standards are implemented, but that revisions to these standards could be made once the TSP update is complete.

VIII. ADJOURNMENT

Meeting adjourned at 9:12 p.m.

*Submitted by,
Michael Sullivan, Executive Assistant*



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March 11, 2025

REGULAR 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. Commissioner Perkinson attended the meeting via Zoom.

Commissioners Present:

Lisa Verner
Eric Herron
Gregory Perkinson
Russell Phillips
Susan MacCracken Jain
John Maher

Staff Present:

Brandon Goldman, Community Development Director
Derek Severson, Planning Manager
Veronica Allen, Associate Planner
Michael Sullivan, Executive Assistant

Absent Members:

Kerry KenCairn

Council Liaison:

Doug Knauer

II. ANNOUNCEMENTS

1. Staff Announcements:

Community Development Director Brandon Goldman made the following announcements:

- He introduced Associate Planner Veronica Allen to the Commission.
- The Community Development Department has completed an update to its online permitting software.
- At its most recent meeting the City Council upheld the Commission's approval of the Kestrel Park Phase III subdivision and rejected an appeal of that action.
- Staff did not receive an appeal of the Commission's interpretation of PA-T1-2024-00255, 110 Terrace Street.
- The Council will have a study session on Climate-Friendly Areas (CFAs) and an orientation on the manufactured housing park zone at its March 17, 2025 meeting.
- The Parks and Recreation Strategic Plan online survey is open until March 15, 2025.

2. Advisory Committee Liaison Reports – None





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III. CONSENT AGENDA

1. January 28, 2025 Study Session
2. February 11, 2025 Regular Meeting

Commissioners Phillips/MacCracken Jain m/s to approve the consent agenda as presented.
Voice Vote: All AYES. Motion passed 6-0.

IV. CONSENT AGENDA – None

V. UNFINISHED BUSINESS

A. **Approval of Findings for PA-T3-2024-00010, 300 Clay Street**

Ex Parte Contact

No ex parte contact was disclosed.

Decision

Planning Manager Derek Severson noted several non-substantive corrections to the Findings and stated that these corrections would be included in the final version.

Commissioners Phillips/Maher m/s to approve the Findings as presented with the corrections noted by staff. Roll Call Vote: All AYES. Motion passed 6-0.

VI. TYPE II PUBLIC HEARING

PLANNING ACTION: PA-T2-2024-00053

SUBJECT PROPERTY: 231 Granite Street

PROPERTY OWNERS: Stephanie & Bryan DeBoer

APPLICANTS: Carlos Delgado Architect

DESCRIPTION: A request for a Physical and Environmental (P&E) Constraints permit to construct a new single-family dwelling in steep slopes greater than 25% within the hillside overlay area, including exceptions to the hillside design standards. The proposal includes a Type 2 variance due to the proposed driveway grade exceeding 18%. The applicant also requests a tree removal permit to remove 67 trees, 63 of which are between 6" and 12" Diameter at Breast Height (DBH), 8 of which are dead, and 4 are significant trees which are larger than 12" DBH. **COMPREHENSIVE**

PLAN DESIGNATION: Low Density Residential; **ZONING:** RR-.5; **MAP:** 39 IE 08 DA; **TAX LOTS:** 1800

Ex Parte Contact

Commissioners Herron, Maher, Phillips, and Verner conducted site visits. The following Commissioners disclosed ex parte contact: Commissioner Herron received a group email regarding





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this project; Commissioner MacCracken Jain saw a news article on this item but did not read it; Commissioner Phillips was approached by a neighbor about this project before he informed them that he could not discuss this topic. No other ex parte contact was disclosed.

Staff Presentation

Chair Verner noted that the Commission had received numerous public comments since the packet had been posted (see attachment #1).

Staff Presentation

Mr. Goldman noted that this proposal is for the development of a single-family home in a hillside zone, and that this specific property was created prior to adoption of the City's hillside ordinance, and as such is considered a developable property for 1-2 homes under state law. Mr. Goldman also clarified that the existing irrigation ditch is uphill from the proposed home, and that there is currently no public trail access through the property, although one has historically been used by neighbors and the community for recreational use. He noted that this site is included in the City's Parks, Trails, and Open Space 2024 plan as a trail segment that the Parks Department would like to acquire. He noted that the City's Comprehensive Plan states that the City would not use eminent domain to take private property for parks purposes, and would instead negotiate with those owners to this end. As such, the dedication of a public easement is not a criteria of approval related to the development of a single-family home on a legal lot of record.

Ms. Allen outlined the application request and provided a background on the property, reiterating that it is a legal lot of record and stated that, while the site contains severe slopes, it is acknowledged to be developable for a single-family home or duplex consistent with the underlying zoning pursuant to AMC 18.3.10.090.A1.a, and therefore considered buildable for up to two dwelling units. She stated that the applicant is requesting an exception to hillside standards and another for building design standards due to the topography of the lot. The applicant is also requesting a Type II variance to flag drive standards (see attachment #2). She outlined the applicant's request to remove 74 trees, though several of these are unregulated trees. The Tree Management Advisory Committee (TMAC) expressed concern with the loss of so many trees, but they recognized that all trees proposed for removal were either within the building envelope or very close to required excavation. The TMAC noted that the applicant included a pool in their application request and that pools are discouraged in hillside zones but not outright unpermitted.

Ms. Allen pointed out that the following revisions had been made to the staff report:

- On page 4 of the Staff Report, "15.23-percent" needs to be corrected to "23-percent"
- On page 2, incorrectly states that there is a lot coverage variance, the property meets lot coverage requirements.



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- 4 pages of the applicant's submittals were unintentionally omitted from the packet materials & online posting as follows:
 - o 2 pages for floor plan (A1.0 & A1.1)
 - o 1 page for West & South Elevations (A2.2)
 - o And a site plan that shows the distance from the nearest downhill fire hydrant to the proposed structure

Staff recommended that the Planning Commission approve the Physical and Environmental Constraints review permit for a new single-family dwelling in the hillside overlay, including the requested variance to driveway grade, the exceptions to the hillside design standards, and the requested 67 tree removals with staff's originally proposed 11 conditions of approval, including the follow revisions and added conditions:

- **Modify: Condition #5:** Given the number of trees to be mitigated, this condition would need to be changed to comply with the mitigation standard. "Mitigation trees, to be planted on-site, off-site, or payment in lieu at the rate of 1:1 of regulated tree removals."
- Remove duplicate condition 4.I on page 12 of Staff Report
- **Add condition #12:** "Prior to issuance of a building permit, applicant must provide documentation for the access easement."
- **Add condition #13:** "Prior to issuance of building permit, applicant must have the retaining wall designed by the project engineer (Thornton Engineering) to conform with AMC 18.3.10.090.B."
- **Add condition #14:** "Prior to submittal of building permit, applicant must provide a surveyor's map that confirms the driveway grade does not exceed 23% and that the length of the portion of the driveway in 35% does not exceed 200 feet."
- **Add condition #15:** "Prior to bringing combustible materials on site, applicant must provide documentation of fire hydrant location within 600 feet and access (easement), and fire sprinklers as required by the Ashland fire department."

Questions of Staff

Commissioner Phillips requested clarification on Condition #12 and the flag lot partition criteria under AMC 18.5.3.060.C.. Ms. Allen responded that the proof of access easement would show that there is a legal right to access the parcel through adjacent parcels. Mr. Severson responded that the partition criteria would apply if the applicant were creating a flag lot, but that the driveway and lot in question are already in existence.

Commissioner MacCracken Jain noted that a public comment asserted that there are two significant madrones on the property, not one, as was listed on the application. Ms. Allen responded that one of the conditions of approval requires that any omitted trees be added to the applicant's tree management plan.



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Commissioner Herron asked if the proposal would also improve driveways along other properties. Mr. Severson responded that they likely won't improve the entirety of the driveway.

Applicant Presentation

Bryan DeBoer affirmed his family's commitment to the community and stated that this home was being built for his children.

Amy Gunter represented the owners and stated that the cause of this meeting was primarily because of the requested variance to the driveway grade, and stated that a flag lot is not being created. She reiterated the details of the application as well as displayed site and topographical maps. She stated that the development would result in less than the amount of disturbance allowed by the hillside ordinance and that the surrounding area would retain many more trees than those proposed to be removed. She explained how the dwelling had been designed to result in a minimal visual impact to the surrounding area (see attachment #3). She emphasized that the property owners had committed on April 4, 2024 to providing a permanent easement on their portion of the TID ditch trail. Ms. Gunter submitted two pages of additional testimony into the record (see attachment #4)

Questions of the Applicant

Commissioner MacCracken Jain questioned the application's request for an exception to the hillside design standards. Ms. Gunter stated that the building was designed to not go further into the hillside as much as possible and to avoid the ditch. The architect for the project, Carlos Delgado, answered that the designed offsets of the building meet the intent of the code.

Commissioner Maher asked if the applicants had considered a smaller dwelling. Ms. Gunter responded that the proposed building is only 10% larger than neighboring houses.

The Commission requested clarification regarding the driveway. Ms. Gunter responded that the variance request is necessary because the existing length and grade of the driveway necessitates a variance for the development.

Public Comments

The following public speakers spoke in opposition to the project:

- Len Eisenberg (see attachment #5)
- Paul Rostykus
- Gaia Layser
- Gus Janeway
- Denise Kester
- Kent McLaughlin



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- Julia Janeway
- Douglas Smith
- Zahara Solomon
- Jay Reeck
- Sarah Sameh
- David Oursler
- Craig Anderson on behalf of Rogue Advocates

Barbara Shor, John Richards, and Irene Simms signed up to speak but relinquished their time.

Jay Reeck, Sarah Sameh, and Craig Anderson requested that the meeting be continued to allow for further public testimony.

Applicant Rebuttal

Ms. Gunter reiterated that the variance requested is for a preexisting lot of record with a preexisting drive, that the exception to design standards results in the building being less visible to neighbors, and that developing on slopes of over 35% is permitted on legal lots of record. She stated that the proposed driveway is within the legal access easement for this property, and that the owners providing an access easement to the nearby trail the objectives of the City's Trails, and Open Space 2024 plan are met. She added that neighbors were aware of the driveway easement because it was included in legal documents.

Ms. Gunter asked that the specific engineering firm be removed from Condition #13.

The Public Hearing was closed at 9:07 p.m.

The Public Record was left open to allow written testimony to be submitted by 4:30 p.m. on March 18, 2025. Any party-of-record would then have until 4:30 p.m. on March 25, 2025 to offer a rebuttal to those comments received by March 18. The applicant would then have until 4:30 p.m. on April 1, 2025 to offer any final arguments or comments.

IV. OPEN DISCUSSION – None

V. ADJOURNMENT

Meeting adjourned at 9:09 p.m.

*Submitted by,
Michael Sullivan, Executive Assistant*



ATTENTION

**For attachments to the February 11 and March
11 Minutes, please use the link below:**

<https://ashlandor.portal.civicclerk.com/event/450/files/agenda/1190>

**TYPE II PUBLIC HEARING -
CONTINUED**

**231 Granite Street,
PA-T2-2024-00053**

Memo

DATE: April 1, 2025

TO: Planning Commission

FROM: Veronica Allen, Associate Planner

DEPT: Planning

RE: 231 Granite Street Application – Summary of Proposed Conditions

All the conditions listed in this memo have previously been included in the public record. This memo does not include any new information but is a summary of all conditions provided in the record thus far. This memo is being put together for organizational purposes only to assist the Planning Commissioners. Below is a list of all the conditions proposed and what documentation they are pulled from:

March 11th Staff Report Conditions:

1. That all proposals of the applicant become conditions of approval.
2. 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 67 trees to be removed and the installation of tree protection fencing for the remaining trees on and adjacent to the site. The tree protection shall be chain link fencing six feet tall and installed in accordance with 18.61.200.B.
3. That all recommendations of the Tree Management Advisory Committee, where consistent with the applicable ordinances and standards and with final approval of the Staff Advisor, shall be conditions of approval unless otherwise modified herein.
4. Prior to building permit issuance:
 - a. 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

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not in substantial conformance with those approved as part of this application, an application to modify the Variance and Physical and Environmental Constraints Review permit approval shall be submitted and approved prior to issuance of a building permit.

- b. Identification of all easements, including public and private utility easements, mutual access easements, public pedestrian access easements, and fire apparatus access easements.
- c. 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.
- d. Lot coverage calculations including all building footprints, driveways, parking, and circulation areas. Lot coverage shall be limited to no more than 20 percent as required in AMC 18.2.5.030.C.
- e. That storm water from all new impervious surfaces and runoff associated with peak rainfalls must 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.
- f. That a revised Tree Protection Plan consistent with the standards described in 18.4.5 be submitted for review by the Tree Commission and approval by the Staff Advisor prior to the issuance of a building permit. The plan shall identify the location and placement of fencing around the

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drip lines of trees identified for preservation. The amount of fill and grading within the drip line shall be minimized. Cuts within the drip line shall be noted on the tree protection plan, and shall be executed by handsaw and kept to a minimum. No fill shall be placed around the trunk/crown root.

- g. That the tree protection fencing shall be installed according to the approved plan prior to any site work, storage of materials or issuance of the building permit. The tree protection shall be inspected and approved by the Ashland Planning Department prior to site work, storage of materials and/or the issuance of a building permit.
- h. No construction shall occur within the tree protection zone including dumping or storage of materials such as building supplies, soil, waste, equipment, or parked vehicles.
- i. That a landscaping and irrigation plan to include irrigation details satisfying the requirements of the Site Design and Use Standards Water Conserving Landscaping Guidelines and Policies and showing parkrow improvements shall be provided prior to building permit issuance.
- j. That the tree protection and temporary erosion control measures (i.e. silt fence and bale barriers) shall be installed according to the approved plan prior to any site work, storage of materials, issuance of an excavation permit and issuance of a building permit. The erosion control measures shall be installed as identified in the Marquess & Associates' report dated December 5, 2024. The tree protection and temporary erosion control measures shall be inspected and approved by the Ashland Planning Department prior to site work, storage of materials, the issuance of an excavation permit, and/or the issuance of a building permit.
- k. A written verification from the project geotechnical expert addressing the consistency of the building permit

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submittals with the geotechnical report recommendations (e.g. grading plan, storm drainage plan, foundation plan, etc.) shall be submitted with the building permit.

- ~~I. That written verification from the project geotechnical experts addressing the consistency of the building permit submittals with the geotechnical report recommendations (e.g. grading plan, storm drainage plan, foundation plan, etc.) shall be submitted with the building permit submittals.~~
5. ~~Replacement trees to mitigate the trees removed shall be planted and irrigated according to the approved plan.~~ Mitigation trees, to be planted on-site, off-site, or payment in lieu at the rate of 1:1 of regulated tree removals.
6. That a preconstruction conference to review the requirements of the Hillside Development Permit shall be held prior to site work, the issuance of an excavation permit or the issuance of a building permit, whichever action occurs first. The conference shall include the Ashland Planning Department, Ashland Building Department, the project engineer, project geotechnical experts (i.e. Marquess & Associates), landscape professional, arborist (i.e. Canopy) and the general contractor. The applicant or applicants' representative shall contact the Ashland Planning Department to schedule the preconstruction conference.
7. That the foundation shall be designed by an engineer or architect with demonstrable geotechnical design experience in accordance with 18.62.080.F.
8. That 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 maintained in perpetuity on all areas in accordance with 18.62.089.B.7.
9. Prior to Certificate of Occupancy:
 - a. The landscaping and irrigation for re-vegetation of cut/fill slopes and erosion control shall be

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- installed in accordance with the approved plan prior to issuance of the certificate of occupancy. Vegetation shall be installed in such a manner as to be substantially established within one year of installation.
- b. That all landscaping in the new landscaped areas shall be installed according to the approved plan, and tied into the existing irrigation system, prior to the issuance of a certificate of occupancy.
 - c. That Marquess & Associates shall inspect the site according to the inspection schedule of the engineering geology report by Marquess & Associates included in the application and date stamped December 5, 2024. Prior to the issuance of the certificate of occupancy, Marquess & Associates shall provide a final report 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.
 - d. That the flag drive shall be paved to 12 feet, a vertical clearance of 13-feet, 6-inches and be able to withstand 44,000 lbs. prior to the certificate of occupancy. The flag drive shall be constructed so as to prevent surface drainage from flowing over the private property lines and / or public way in accordance with 18.76.060.B.
10. Requirements of the Ashland Fire Department shall be met, including that all addressing shall be approved prior to being installed, that fire apparatus access be provided, and that a fuel break is required.
11. That a 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

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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.

March 11th Staff Presentation:

12. Prior to issuance of a building permit, applicant must provide documentation for the access easement.
13. Prior to issuance of building permit, applicant must have the retaining wall designed by the project engineer (Thornton Engineering) to conform with AMC 18.3.10.090.B.
14. Prior to submittal of building permit, applicant must provide a surveyor's map that confirms the driveway grade does not exceed 23% and that the length of the portion of the driveway in 35% does not exceed 200 feet.
15. Prior to bringing combustible materials on site, applicant must provide documentation of fire hydrant location within 600 feet and access (easement), and fire sprinklers as required by the Ashland fire department.

March 18th Staff Memo from Brandon Goldman:

16. As a proposal of the applicant, a public pedestrian access easement shall be provided to the City of Ashland along the Talent Irrigation Ditch, allowing public trail use from the northern to the southern boundary of the property.
17. As proposed by the applicant, a permanent public access easement shall be provided to the City of Ashland along the Talent Irrigation Ditch, allowing public trail use from the northern to the southern boundary of the property prior to issuance of a certificate of occupancy. Dedicating a public access easement to the City satisfies and fulfills the trail acquisition expectation outlined in the adopted 2024 Parks, Trails & Open Space Plan for the property designated as #11 on the map.

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Memo

March 25th Applicant Submittal:

18. Prior to issuance of building permits for the proposed residence, applicants/property owners shall execute and deliver to the City a perpetual public trail easement in favor of the City of Ashland along the existing "Ditch Trail", which generally follows the Talent Irrigation District's (TID) "Ashland Canal" as it traverses the subject property (Tax Lot 1800). The public trail easement shall be in substantial conformance with the proposed draft "Public Trail Easement" submitted by Applicant during the Planning Commission's public hearing process, subject to approval and any final revisions required by City's Legal Department. Applicant shall also provide a centerline legal description of the Easement Area to be appended to the easement document, and reflecting an easement area 10-feet in width and shall include the traveled portion of the existing Ditch Trail crossing the property. The public trail easement shall be signed by applicants/property owners and delivered to the City prior to issuance of a certificate of occupancy for the new dwelling. This condition was voluntarily offered by the applicants/property owners during the public hearing process in PA-T2-2024-00053, and is accepted by the Planning Commission as such; accordingly, said public trail easement is not an exaction required by the City, and is not subject to constitutional takings concerns or nexus/proportionality analysis.

Planning Department

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PUBLIC COMMENTS

**Applicant's Final Submittal Materials
Received by 04-01**

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SIDNEY E. AINSWORTH (1927-2003)
DONALD M. PINNOCK - Retired
DANIEL L. HARRIS - Retired
DAVID V. GILSTRAP - Retired
SUSAN V. SALADOFF - Retired
JEFFREY K. MCCOLLUM - Retired
GARRISON F. TURNER - Retired

APRIL 1, 2025

Transmitted by Email

TO: Ashland Planning Commission (planning@ashland.or.us)
c/o Michael Sullivan, City of Ashland Community Development
51 Winburn Way | Ashland, OR 97520

FROM: Chris Hearn (chearn@davishearn.com)

RE: **APPLICANT FINAL WRITTEN ARGUMENT/REBUTTAL**
Planning Action: PA-T2-2024-00053
Applicants: Bryan & Stephanie DeBoer
Subject Property: 231 Granite Street (39-1E-08DA, Tax Lot 1800)

Dear Ashland Planning Commission:

Our firm represents applicants Bryan & Stephanie DeBoer (“Applicants”) in their pending planning action for 231 Granite Street. Please include this final written argument in the record for PA-T2-2024-00053. This memorandum summarizes the key issues to aid the Commission in its decision. Please note that this memo is not intended to abandon any arguments made by Applicants elsewhere in the record; those arguments are retained and incorporated here by reference.

Introduction

Applicants seek approval to construct a single-family residence for their daughter’s family at 231 Granite Street (Tax Lot 1800), a pre-existing undeveloped hillside lot that was created with City approval and recognized as buildable nearly 30 years ago. Due to the unique access and topography of Tax Lot 1800, Applicants’ proposal requires a Physical & Environmental Constraints Permit for development on Hillside Lands, including a Type II Variance to allow use of the historic nonconforming driveway access from Granite Street, and a Tree Removal Permit for removal of a limited number of trees necessary to safely develop the site.

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Planning staff have thoroughly evaluated the application and recommended approval with conditions, confirming that all applicable criteria are satisfied or can be satisfied with feasible conditions of approval.¹ Some neighbors raised concerns about driveway safety, hillside disturbance, home size, and tree removal. However, these concerns are either fully addressed by the proposal, reasonably handled via conditions of approval, appropriately deferred to final plan review, or simply not valid grounds for denial under the applicable approval criteria in the City's Land Use Ordinance (AMC's Title 18). As detailed below, the application meets each required approval criterion, and state law mandates a favorable, clear-and-objective review of this needed housing proposal. The Planning Commission should approve the application, allowing this long-planned homesite to be developed in a safe and environmentally responsible manner. (For the Commission's ease of reference, citations to the record and legal authorities are provided in bracketed footnotes.)

Home Size Context: Opponents have characterized the proposed home as too large. In fact, the home's habitable floor area is approximately 3,426 square feet (plus a garage and basement, as defined by building code) – a size that is proportional to the large lot and well within code limits. Moreover, as discussed below, over 80% of the property will remain undisturbed natural open space, far exceeding the minimum required. Subjective opinions that the home is “too big” are not approval criteria and cannot be the basis for denial.

Variance for Driveway Access – Not Self-Imposed and Justified by Unique Circumstances

Applicants request a Type II Variance from the strict limitations on flag-drive slope and length in order to use the only possible access to this landlocked hillside parcel. Under AMC 18.5.5.050, a variance may be granted if the Commission finds that four criteria are met. Here, each criterion is satisfied:

(1) Unique Physical Circumstances (18.5.5.050.A.1):

The historic nonconforming driveway access is a product of the property's unique history and topography, not a situation of the Applicants' making. Tax Lot 1800, in its current configuration, was approved by the Planning Commission in 1995 in connection with Planning Action #PA-95-024, as identified on the 1996 partition plat recorded as

¹ See: Staff Report for the Commission's March 11, 2025 public hearing; Email from Community Development Director Brandon Goldman (3/14/2025); and Director Goldman's Memo (3/18/2025) with attachments.

Partition Plat P-43-1996.²

In connection with approving the relevant “Land Partition Survey Partition Plat” in 1995, Tax Lot 1800 is clearly identified as “Parcel 3”, and thus a legal residential lot appropriate for the development of a single-family home, with access via the historic (“grandfathered”) nonconforming private easement extending uphill from Granite Street.³ In a 1992 letter, then-Planning Director John McLaughlin acknowledged that the grade of the access easement for Tax Lot 1800 exceeded then-current city standards, but concluded that, because the flag drive provided the landlocked Tax Lot 1800 with historic access to Granite Street, the existing nonconforming driveway’s use for a future residence on Tax Lot 1800 “would be allowable.”⁴ The 1992 letters from City’s Planning Director effectively recognize the special circumstances associated with Tax Lot 1800’s driveway access – which was and is the only feasible access for the landlocked Lot. Based on Planning Director’s 1993 letters, the historic owners of Tax Lot 1800 secured an access easement on the existing nonconforming driveway in 1994; then pursued Planning Action #PA-95-024 in 1995. The official Partition Plat was recorded in 1996, and includes the signature of the Planning Commission’s chair.⁵

The existing access from Granite Street, and the City’s acknowledgment of the nonconforming nature of the driveway easement serving Tax Lot 1800, were established more than 30 years ago by the historic owners and the City. The circumstances necessitating the driveway variance were not created by the Applicants, who reasonably relied on the buildable status of Tax Lot 1800 when they purchased the Lot in December of 2023. This is a textbook example of the type of “special or unique physical circumstance” foreseen by the Code as justification for a variance.

² Tax Lot 1800 is identified as “Parcel 3” in Partition Plat P-43-1996, signed by the Planning Commission’s chair on 08/10/1995 (PA# 95-024).

³ See: Applicant’s Easement Agreement recorded 02/02/1994, JCOR #94-04302.

⁴ See: Memo and attachments provided by Community Development Director Brandon Goldman’s Memo dated 03/18/2025.

⁵ See: Sheet 1 of Land Partition Survey Partition Plat PA-43-1996 (Survey No. 14932), signed by “Ashland Planning Commission” on 08/10/1995.

(2) Minimum Deviation Necessary & No Negative Impacts (18.5.5.050.A.2):

The variance requested is narrowly tailored to what is necessary to develop a home on Tax Lot 1800. The residence is sited at the closest feasible location to the end of the existing flag drive, minimizing any new driveway length or grading. Steep portions of the existing driveway (which currently reaches grades of ~23%) will be improved and paved to enhance safety and durability. Fire safety will be addressed with residential sprinklers and, if required, a new hydrant and pump, per Fire Department standards anticipated when the lot was created. In staff's assessment, the variance sought is the minimum necessary deviation from the 18% slope / 200-foot length standard to allow use of this pre-existing nonconforming access, and all variance criteria are met because the code's general limits simply do not account for the property's unique situation.

Importantly, allowing this driveway variance will not harm adjacent properties or the public since the driveway is private and will serve only this one home. In fact, improving the driveway will enhance emergency access to this area (as discussed further below in the Fire Safety section). Any minor impacts of allowing the steeper drive are outweighed by the benefits of providing safe access to a new residence on a legal lot.

(3) Public Benefits Exceed Any Negative Impacts (18.5.5.050.A.3):

Granting the requested driveway variance will provide significant and unique public benefits with minimal downsides. The primary benefit is allowing a new family home to be built within the City on an existing infill lot – furthering Ashland's infill housing goals, and adding to the City's tax base, and addressing the "needed housing" supply.

The third variance approval criterion is:

*"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.**"*
(emphasis supplied.)

Public Trail Easement. Applicants have voluntarily offered a condition of approval dedicating a permanent Public Trail Easement across their Tax Lot 1800 in the location of the popular TID "Ditch Trail". This represents a substantial public recreational benefit that more than compensates for the relatively minor impacts of the driveway variance. The City's Comprehensive Plan expressly identifies the trail across Tax Lot 1800 as a desired link in Ashland's trails network (listed as Project #11, "Talent

Irrigation Ditch Trail Segment,” in the 2024 Parks, Trails, and Open Space Plan).⁶ This easement will guarantee the community’s perpetual use of this critical trail segment crossing Tax Lot 1800. Applicants have submitted a draft Public Trail Easement document into the record as a voluntary condition of approval.⁷ Tax Lot 1800 appears in the Open Space & Trails Plan as “Project #11, Talent Irrigation Ditch Trail Segment,”. City’s Open Space Trails Plan was adopted by Council during 2024, and is a part of City’s Comprehensive Plan. By offering to formalize this trail connection as a voluntary condition of approval, Applicants are directly furthering a specific Comprehensive Plan goal. In sum, the “public benefit” criterion for a variance is easily met: “The proposal’s benefits will be greater than any negative impacts on development of adjacent uses and will further the purpose and intent of the ordinance and Comprehensive Plan of the City.”⁸

The public benefits of this proposal are substantial and clear, while any potential negative effects are minimal.

(4) Not a Self-Imposed Hardship (AMC 18.5.5.050.A.4):

The need for the variance “is not self-imposed by the applicant or property owner.” (AMC 18.5.5.050.A.4.) This requirement is unequivocally met. The physical constraints (steep terrain and the long-existing nonconforming access easement) were established by others long before the Applicants acquired the property in 2023. Applicants had no role in creating the lot’s access situation. Denying the variance would therefore deny any reasonable use of this residential lot – a result wholly contrary to the intent of the code and fairness (and potentially triggering regulatory takings issues).

Again, City’s former Planning Director effectively recognized in 1993 that insisting on full compliance with the driveway slope standards here would serve “no

⁶ See: Letter from APRC attached to Community Development Director Goldman’s Memo the the Planning Commission. dated 03/18/2025[5]

⁷ See: Recitals in Public Trail Easement offered by Applicants, submitted into the record on 03/25/2025.

⁸ Ashland Parks, Trails, and Open Space Plan (2024), adopted as part of the Ashland Comprehensive Plan. See Ashland Parks & Recreation Dept. Letter to Planning Division (Mar. 12, 2024) (noting Tax Lot 1800 as Project #11, "Talent Irrigation Ditch Trail Segment," targeted for trail acquisition).

practical purpose” given the lack of any alternative access.⁹

In short, allowing use of the steeper existing driveway harms no one, whereas denying the variance would deprive the owner of any use of Tax Lot 1800. Such a denial would not only conflict with the broader public interest in utilizing residential land, but it would also raise serious fairness and legal concerns (as discussed under Needed Housing law, below).

Conclusion (Variance):

Substantial evidence in the Commission’s record demonstrates that this variance is necessary to permit development of a home on a pre-existing legal lot, and that approving it is consistent with the purpose of the code (ensuring safe access and reasonable use of residential land). City staff, after careful review, concluded that all variance criteria (AMC 18.5.5.050.H) are met and that the unique physical characteristics of the site warrant approval. We urge the Commission to reach the same conclusion as Planning staff and approve the driveway variance, so that this infill lot can finally be put to its intended use as a homesite after 30 years in City’s inventory of buildable lands.

Hillside Development Standards – Design is Safe, Minimizes Impacts, and Exceeds Requirements

Apart from the driveway variance, the proposed development is designed to meet or exceed Ashland’s Hillside Development Standards (AMC 18.3.10.090) – which were adopted after Tax Lot 1800 was created.¹⁰ The application carefully minimizes disturbance on this steep, wooded site, complying with both the purpose and the specific requirements of the City’s Physical & Environmental Constraints chapter. Initially, Applicants requested a couple of exceptions to the Hillside Design Standards pursuant to AMC 18.3.10.090.H (for a slightly taller downhill building wall and a less-than-6-foot upper-story offset). Findings were provided showing those exception criteria would be met. However, Applicants have since modified the home’s design to eliminate these exceptions. The plans were revised (during the post-hearing information period) to increase the upper-floor step-backs to a full 6 feet on the downhill elevations, and to ensure the downhill wall height meets the 20-foot limit. These design changes reduced

⁹ 1993 Letters from Planning Director McLaughlin (acknowledging that a driveway variance would be necessary and appropriate for this parcel's development).

¹⁰ City of Ashland Ordinance No. 2808, adopted 12/02/1997, establishing the Hillside Development Standards.

the home's floor area by about 44 square feet, and brought the project into compliance with those two standards. As a result, no major exceptions to the Hillside Standards are needed at this time (the only relief now being sought is the driveway variance discussed above). Even if an exception had been required, the record shows the criteria could be met – but importantly, the project as revised fully complies with City's Hillside Design Standards for building wall height and step-backs.

Overall, the project will be safe and environmentally sound – as confirmed by the geotechnical reports and by staff. Any visual or aesthetic impacts will be negligible due to the home's location and extensive natural screening. The home will be tucked against the slope and not visible from Granite Street or other public vantage points. Applicants address a few key hillside development issues in turn:

- **Slope Stability & Hazard Mitigation:** Applicants have thoroughly evaluated potential geologic hazards (landslide, erosion, etc.) and incorporated all required measures to mitigate them, per AMC 18.3.10.090.A. The home and driveway will be engineered with appropriate retaining systems and drainage to stabilize the slope. A geotechnical engineering report and site-specific grading plans (in the record) include detailed recommendations to ensure the development will be safe on the steep terrain. City staff concluded that the proposal adequately “considered the potential hazards” and that conditions of approval (e.g. erosion control plans, construction management measures) will reduce risks to acceptable levels. No evidence in the record refutes the expert analysis provided by Applicants, which demonstrates that Tax Lot 1800 can be developed as proposed without jeopardizing neighboring properties or hillside stability. Furthermore, Applicants will post a bond and obtain a Physical & Environmental Constraints Verification Permit before construction, giving the City additional oversight to confirm all hazard-mitigation measures are in place (a standard condition of approval). In sum, Applicants’ proposed development complies with the City’s Hillside Standards intended to prevent unsafe construction on steep lands.
- **Limiting Disturbance / “Natural State” Preservation:** Ashland’s Hillside Development Standards require that a substantial portion of a hillside lot remain in its natural state (undisturbed). Applicants’ site plan far exceeds this requirement. Approximately 18.7% of the lot area will be disturbed by development, meaning over 81% of the property remains in its natural, untouched condition – well beyond the 52% minimum natural area required (i.e. a maximum of 48% disturbance allowed under AMC 18.3.10.090.B.3). Similarly, lot coverage by impervious surfaces is substantially less than the 20% coverage allowed in this zoning. In other words, the proposed development easily meets

the code's objective of minimizing grading and preserving the majority of the site in natural hillside vegetation. The disturbance that does occur (driveway, building footprint, small yard areas) is concentrated in one portion of the lot to avoid spreading impacts. All retained areas will remain densely vegetated. Thus, the project is in harmony with the natural terrain and will maintain the hillside's overall character.

- **Hillside Building Design (Height & Step-Backs):** The home design incorporates stepped massing and vertical articulation to break up bulk, and it is well under the City's normal height limit for this zone. In fact, the building's overall height will be roughly 15 feet above natural grade at its tallest point, which is less than half the 35-foot height limit permitted on hillside lands. The design also meets all building envelope requirements. As noted, Applicants revised the design to comply fully with the specific Hillside Design Standards for downhill wall height and upper-story step-backs. The final plans demonstrate that the vertical wall portion on the downhill side is under 20 feet high, and the additional height above that (the roof gable and eaves) does not count as "wall" for the step-back rule. By adding 6-foot offsets to the upper floor, the continuous building plane on each elevation now conforms to the 36-foot maximum length standard (no exception needed). Staff concluded that, due to the site's steep slope and the desire to cluster development, allowing a modest exception in these areas would be justified to better protect the hillside. But now that the plans have been adjusted, no exception is required. It is worth noting that the project's approach (a two-story design snug against the slope) actually protects hillside resources better than a sprawling single-story or further stepped design. By concentrating the house on a small portion of the lot near the driveway entrance, grading outside the driveway and footprint is minimized, also preserving the vast majority of the trees (over 70 out of 75 significant trees on site will remain). Applicants have adhered to the primary objective of the Hillside Ordinance: reduce hillside disturbance while allowing reasonable development consistent with Tax Lot 1800's residential zoning. The result will be a well-designed home that respects its environment.
- **Retaining Walls:** Some neighbors raised a concern about the height of a proposed retaining wall along the north side of the driveway cut. The plans do not actually show a 22-foot-tall unbroken wall, as the neighbors asserted. The notations "+14 TOW, +15 TOW, +22 TOW" on Applicants' Landscape Plan refer to elevations relative to a datum, not exposed wall height. In fact, those correspond to actual wall heights of approximately 1 foot, 2 feet, and 5 feet above adjacent grade, respectively, for segments of the wall. All retaining walls will be engineered and will comply with AMC 18.3.10.090.B.4.b at the building permit

stage (which requires terracing or other measures for cuts over 7 feet). If necessary, the final design will incorporate terraced wall segments or other structural solutions so that no single vertical cut exceeds code limits without mitigation. In any event, Applicants are not asking to simply cut a 22-foot vertical bank with no terracing or stabilization. If minor adjustments (such as an additional terrace or shifting the wall location slightly inward) are needed during final engineering, Applicants can and will accommodate them – there is ample room on site to modify slopes or wall design as needed. The Commission can impose a condition that “*final grading and retaining wall plans shall meet the terracing requirements of AMC 18.3.10.090.B.4.b to the satisfaction of the Staff Advisor,*” and Applicants will gladly comply. This specific technical detail can be resolved between the project engineers and staff during final plan review; it does not affect the fundamental approvability of the project. Moreover, the retaining wall will be entirely on the Applicants’ property and will be properly constructed so as not to undermine soils on the downslope neighbor’s side. To the extent the wall may end up closer to the property line than the guideline of “half the wall height,” that guideline applies to raw cut slopes without structural support – here a structural wall is proposed, which by intent of the code allows more flexibility. If a small exception or variance is ultimately deemed necessary for the wall placement, the same hardship (steep topography and narrow lot configuration) justifies it, and it can be handled as a condition of approval. In summary, the retaining wall issue is a normal part of detailed hillside engineering and will be addressed in the final plan. It is not grounds for denial of the project.

Conclusion (Hillside Standards): The proposed home complies with or exceeds the Hillside Development Standards intended to protect the environment and public safety on steep lands. Where minor relief was initially sought from certain design standards, Applicants proactively modified the design to meet those standards outright. The project’s design represents the minimum necessary disturbance to develop a single-family home on this lot, and in many respects it goes above and beyond the code’s requirements (for example, preserving far more natural area and trees than required). City staff found the hillside development criteria satisfied (with conditions), and no evidence to the contrary has been provided.

Tree Removal Permit – Consistent with Standards and Necessary to Allow Reasonable Use

The application includes a request to remove a total of 67 trees from the site, 63 of which are small diameter (< 6 inches DBH) saplings or scrub trees that serve as ladder fuels. Only four significant trees (6 inches DBH or greater) are planned for removal, which is the minimum necessary to accommodate the driveway and the

homesite in a safe manner. The Ashland Tree Commission reviewed the proposal and, as reflected in the Staff Report, did not oppose the removals subject to recommended conditions (all of which Applicants accept). Staff likewise concluded that, with conditions, the Tree Removal criteria are met and the permit should be granted.

Under AMC 18.5.7.040.B, a Tree Removal Permit for hillside lands must satisfy two key approval criteria (in addition to fire safety considerations):

- (1) **Removal is Necessary for Allowed Use:** The proposed removals are necessary to enable reasonable development of this residential lot. The trees slated for removal directly conflict with the planned driveway location or building footprint, or are within the mandatory wildfire defensible space around the new home. In particular, a few trees near the driveway must be cleared to widen and improve the drive to meet safety standards, and a cluster of trees in the immediate construction area must be removed for the house foundation and fire clearance. It is not feasible to construct the home and driveway on Tax Lot 1800 without removing these specific trees – they lie essentially within the only developable area of the Lot. The code asks whether the tree removal is the “minimum necessary” to allow the use of the property, and here it clearly is.¹¹ Applicants have already modified their plans during the review process to preserve certain trees that were initially proposed for removal. For example, two trees that straddle the property line with the neighbors (a 16-inch oak and a dual-stem madrone ~10”/12”) were originally marked for removal but, to address the neighbor’s concerns, Applicants adjusted the driveway design to avoid cutting those trees. Those shared trees will be retained if at all possible, with the driveway shifted slightly and construction under the supervision of the project arborist to protect their roots. The only tree located near the property line that still must be removed is a large madrone (approximately 34–36” DBH) situated entirely within the recorded driveway easement area. That tree lies in the direct path of the Applicant’s recorded legal access easement and must be taken out to achieve the necessary driveway improvements (and importantly, the terms of Applicant’s easement allow removal of any obstructions within the easement area to allow for access). No trees are being removed solely to create yard amenities – for instance, the proposed patio and pool are sited on the portion of the lot with the least slope and outside any significant tree canopy, so no additional tree removal is required for those features. In summary, the trees proposed for removal have been limited to those absolutely needed for the driveway, building

¹¹ AMC 18.5.7.040.B.2.c (tree removal criterion requiring that removal be the minimum necessary to allow the lawful development).

pad, or required wildfire safety clearances. Applicant's requested Tree Removal Permit must be granted to the extent necessary to allow a home to be built on this pre-existing residential lot (denying it would preclude development – effectively a regulatory taking of the property).

- (2) **No Significant Negative Environmental Impacts:** The trees removed will have no significant adverse impact on the environment (erosion, soil stability, runoff, or impacts to remaining trees). An erosion control plan and other construction-phase safeguards will be in place to prevent any soil runoff or instability resulting from the clearing. The majority of the site's tree cover will remain intact, providing continued slope stability and erosion control. In terms of the forest ecology, the removals have been evaluated by a certified arborist and a forester; both professionals concluded that removing this small subset of trees (mostly suppressed understory growth) will not appreciably diminish canopy cover or species diversity in the area. Even with the removal of up to five significant trees, there will be no notable reduction in overall tree canopy density within 200 feet of the site – the hillside will remain heavily treed. Numerous mature madrone, pine, fir, and oak trees on the property and adjacent properties will be retained. Any trees removed will be mitigated as required by planting of new trees on site. With the recommended mitigation, the project proposes no net loss of tree values over the long term – the scenic and environmental functions of the trees will be replenished by new growth. Additionally, many of the smallest trees being removed are actually fire-prone ladder fuels; eliminating these combustibles improves wildfire safety for the property and its neighbors (an ancillary environmental benefit). In short, the limited tree removals proposed will not cause undue environmental harm.

Fire Safety and Forest Health Considerations:

Although not an explicit approval criterion in the Tree Removal chapter, it bears noting that the removal of many of the smaller trees is beneficial for wildfire safety. The property is in a designated Wildfire Hazard area where creating defensible space around structures is critical. Applicants' fire fuel reduction plan (included in the application) was reviewed by Ashland Fire & Rescue. It entails clearing brush and closely spaced small trees around the home. Many of the "67 trees" counted for removal are actually slender understory saplings or scrub that pose fire risks. Eliminating this excess fuel will improve safety for the new home and the neighborhood, while healthy larger trees will remain to provide shade and soil stability. In sum, Applicants' Tree Removal Plan, aligns with recommended wildfire mitigation practices. All trees to be removed are concentrated on a limited area of one private lot; adjacent properties and the broader neighborhood will still enjoy substantial tree cover. To further offset the removal of four

significant trees, Applicants will contribute to off-site tree planting as needed (per city requirements) to ensure no overall loss of urban forest canopy. With these measures, the project advances both safety and environmental stewardship.

Conclusion (Tree Removal):

Applicant's Tree Removal Plan satisfies the criteria of AMC 18.5.7.040, supporting the requested for a Tree Removal Permit. The few significant trees to be removed are the minimum necessary to accommodate code-compliant development of this lot, and their removal will not cause significant environmental harm. The tree removed will be mitigated as required. The Ashland Tree Commission reviewed the plan and did not oppose the proposed tree removals given the mitigation and safety rationale. Staff likewise concluded that, with conditions, the tree removal criteria are met and the permit should be approved. Applicants respectfully request that the Commission concur with its staff and approve the needed tree removals to allow the project to proceed. This will allow the new home to be built while ensuring the long-term health and safety of the remaining urban forest on and around the site.

Applicants' Rebuttal to Opponent Comments (Submitted March 12–25, 2025)

Applicants will now briefly respond to specific issues raised by various neighbors during the open-record period (March 12–25). Many of the neighbors' concerns were already addressed in the Rebuttal Memorandum submitted by Applicant's consulting planner, Amy Gunter of Rogue Planning & Development Services, on March 25, 2025, which is incorporated here by reference. Below, we summarize each key issue raised and provide a concise rebuttal, often referring back to the more detailed discussions in the sections above:

1. Tree Ownership and Removal Near the Property Line

Summary of Opponents' Argument: Neighbors (including the Eisenbergs and McLaughlins) assert that certain trees near the driveway area – specifically a 16-inch Oregon White Oak and a two-stem madrone (~10" and 12" DBH, identified as tree #68 and #71 on the plans) – straddle the property line between the subject property (Tax Lot 1800) and the McLaughlins' property (Tax Lot 700). They argue these trees are co-owned by Applicant and the neighbor and thus "cannot be removed without the neighbor's consent." Opponents also point out a recently identified ~34" diameter madrone at the northeast corner of the flag lot (within the access easement) that straddles the boundary, suggesting Applicants failed to account for this shared tree in the initial submittals.

Applicants' Response: Applicants acknowledge the updated survey information confirming that these three trees lie on or very near the shared property line. However, none of these shared trees creates an insurmountable problem for the

project. In fact, Applicant's development plans have now been adjusted to address the neighbor's concerns and to preserve the two property-line trees (#68 the oak, and #71 the small madrone). As noted above, the driveway design was slightly shifted and construction methods will be employed (under the project arborist's guidance) to protect those two trees so they can remain in place. The only large tree on the border – the ~34" madrone at the northeast flag lot corner – falls within the driveway easement area and is slated for removal, but that tree is entirely within the recorded access easement and its removal is permitted as part of Applicants' legal rights under the terms of the Easement Agreement (i.e. the Applicants have the legal right to remove it as necessary to allow use their access for its intended purpose). In any event, any tree that technically lies on a property line will only be removed in compliance with legal requirements – meaning if neighbor consent is required, Applicants will obtain it, or if consent is not granted, the plans will be adjusted to retain the tree. Applicants have every intention of being good neighbors and will work with the McLaughlins regarding any co-owned trees. Notably, by revising the plan during the post-hearing period, the only shared tree now planned for removal is the large madrone lying directly within the easement, and that removal is necessary for access and allowed by the terms of Applicant's recorded easement. This is a manageable issue and not grounds for denial. In fact, Ms. Gunter's March 25 memo confirms that the minimum number of significant trees are being removed to accommodate development, and that all such removals are necessary for the driveway, the residence footprint, or the wildfire safety buffer – none are being taken out gratuitously. Even with these removals, there will be no significant reduction in overall tree canopy or diversity in the vicinity. The shared trees in question do not derail the project: Applicants will either secure the neighbors' consent or simply design around the shared trees if need be (as they have already done for two of them). The Tree Removal Permit criteria are met, as detailed above – the removal is the minimum necessary for the project and will not have significant adverse impact on the area. (For additional details on tree protection measures, please refer to the March 25 Gunter Rebuttal and the arborist's reports in the record.) Finally, to reiterate: the large madrone located within the driveway easement may be removed under the terms of that easement, so its straddling the property line does not prevent the driveway improvements from moving forward.

2. Driveway Slope and Length (Variance Validity)

Summary of Opponents' Argument: Some neighbors (e.g. Ms. Sarah Sameh and Dr. Jay Reeck) argue that the flag-lot driveway's grade and length violate city standards and that the required variance should be denied. They suggest that because the driveway doesn't meet the standard 18% slope/200-foot length, the project is unacceptable or that this "self-imposed" condition should not be relieved by a variance.

Applicants' Response: This issue was the central focus of the application and has been fully addressed in the application narrative, staff reports, and in Applicants' prior submittals in the Commission's record (including Ms. Gunter's planning analysis).

In summary, the need for the driveway slope/length variance is driven by the lot's unique circumstances and historic approvals – it is the only possible access to a legal hillside lot that was created decades ago with the City's approval and knowledge that the driveway would exceed the usual standards. Again, the City explicitly contemplated this situation when the parcel was created in the 1990s. As previously mentioned, during 1992, Planning Director John McLaughlin acknowledged in writing that the access grade of the pre-existing nonconforming driveway would exceed code limits, but concluded that a variance for the driveway would be necessary and allowable to develop the lot. In fact, City staff correspondence from 1992–1993 (now in the record) confirms that Tax Lot 1800 would be recognized as a legal lot once an access easement was provided, and noted that “the future development of the driveway would require a variance.” City later approved Planning Action #PA95-024, and signed the official Plat showing Tax Lot 1800 as “Parcel 3” on 09/10/1995. The need for a steep, lengthy driveway is not a self-created hardship – it is an inherent condition of the lot's location and history. City staff today have likewise concluded that the variance criteria are met for all the reasons discussed earlier in this memo. As explained in the Variance section above, denying the variance would essentially preclude any home from ever being built on this lot, which was never the City's intent, and creates regulatory takings issues. In short, this variance is justified by the unique physical circumstances and prior City actions. The opponents have not introduced any new facts to refute the comprehensive variance justification already in the record – they largely repeat general objections to any steep driveway – and the historic driveway in question has existed for decades as a nonconforming use. The evidence remains that the variance meets all criteria and will ensure safe, reasonable access. Applicants incorporate by reference the full analysis provided in Section (1) of this memo and in the staff report. There is no basis to withhold the driveway variance in this case.

3. Emergency Vehicle Access and Fire Safety

Summary of Opponents' Argument: Building on the driveway length issue, opponents contend that emergency vehicle access will be unsafe or non-compliant due to the long, steep driveway. They question whether fire trucks can adequately reach the new house and whether lack of a standard turnaround near the house will pose a safety risk.

Applicants' Response: Applicants agree that fire safety and emergency access are critical, and have taken multiple steps to ensure the project will comply with all Fire Code requirements. First and foremost, the new house will be equipped with a NFPA-compliant fire sprinkler suppression system throughout. Adding sprinklers

dramatically improves fire safety for the occupants and neighbors, and it is a key factor that allows flexibility in fire apparatus access distance. Under AMC 18.5.3.060.J (and the Oregon Fire Code), the Fire Marshal may allow a turnaround to be farther from a home (up to 250 feet away) when the building is sprinklered. In this case, because the driveway is longer than normal, Applicants worked closely with Ashland Fire & Rescue to craft an acceptable alternative to the typical on-site turnaround. Ashland's Fire Marshal has indicated (in email correspondence in the record) that providing a widened turnout along the driveway – designed to Jackson County standards – would be an acceptable solution instead of a full hammerhead or cul-de-sac turnaround near the house (which is not feasible on this steep site). In other words, rather than having a turnaround at the top, a strategically placed pull-out on the driveway will allow a fire engine to stop and reverse direction as needed. This approach has been deemed acceptable by the Fire Marshal and is within his discretion under the code. While a formal sign-off letter from the Fire Marshal was not yet in the March 18 evidence, Applicants anticipate providing final written confirmation before the Commission's decision. In any event, the Commission can impose a condition of approval that final fire department approval of the access plan (turnouts, etc.) be obtained – and Applicants are amenable to such a condition. Applicants will comply with any and all fire code provisions (turnouts, sprinklers, fuel reduction, etc.) required by the Fire Official to ensure emergency access is safe. It is also worth noting that the shared lower portion of the driveway already serves multiple existing homes and is generally of adequate width for fire apparatus in most places. Applicants will be improving the driveway surface and ensuring that the new upper driveway segment meets the Fire Code's width requirement (minimum 12 feet clear) and weight capacity for firefighting equipment. Defensible space and vegetation management will be implemented around the new home in accordance with the Wildfire Lands ordinance. In sum, although the total driveway length exceeds the norm, the combination of a fully sprinklered residence, a mid-drive turnout, and Fire Marshal oversight will meet the intent of the fire code – which is to provide reasonable and safe access for emergency responders. The opponents' fears about wildfire are understandable given the site's wooded nature, but the appropriate way to address those fears is exactly what Applicants are doing: complying with enhanced fire safety measures. Importantly, no evidence exists in the Planning Commission's record supporting the assertion that emergency access will be insufficient once these measures are in place. This issue has been addressed by Ms. Gunter's memo and in discussions with the Fire Department, and it will be finalized as a condition of approval rather than serving as any basis for denial.

4. Retaining Wall Height and Hillside Impacts

Summary of Opponents' Argument: Opponents (Ms. Sameh and Dr. Reeck) argue that the north-side retaining wall along the driveway cut will not meet the City's Hillside Development Standards – claiming it might be as tall as 22 feet and too close to

the property line.

Applicants' Response: The final engineered design of the driveway retaining walls will comply with applicable standards or approved exceptions. Applicants believe the opponents have misinterpreted the preliminary plan schematic. As explained earlier, the plan's callouts "+14," "+15," and "+22" for the wall do not represent exposed wall height in feet – they are elevation references. The actual heights of the wall segments, relative to adjacent grade (driveway or landscaped planters), are on the order of 1 foot, 2 feet, and 5 feet, respectively. In any case, even if a taller combined retaining structure is needed for the steep cut, the Hillside Standards provide methods to address it. AMC 18.3.10.090.B.4.b requires that cut slopes over 7 feet be terraced or structurally stabilized. Here, a structural retaining wall is proposed to retain the cut. If the wall needs to be tiered to meet the 7-foot terracing rule, it can be designed with two shorter tiers (for example, two ~11-foot walls with a planting terrace between). If, alternatively, the geotechnical engineer determines a single taller wall is more appropriate for stability, a minor exception can be sought – but that scenario is unlikely given Applicants can terrace if needed. Importantly, Applicants are not asking for permission to simply cut a 22-foot vertical bank with no mitigation. Applicants fully intend to meet the code's requirements through proper engineering. The Commission can comfortably condition approval on the requirement that "final grading and retaining wall plans shall meet the terracing requirements of AMC 18.3.10.090.B.4.b," as noted above. Applicants will comply with that. Notably, this retaining wall detail was not a focus of the March 11 hearing (likely because it is understood to be solvable at the staff/engineering level). It does not affect the basic approvability of the project – it is a typical item to be resolved during final plan review. All retaining walls will be designed by a licensed engineer to ensure stability and code compliance. If that means adding a terrace or shifting the wall further inward onto Applicants' property, that can be done – there is ample room to make such adjustments. As for the wall's proximity to the property line (adjacent to Mr. Eisenberg's lot at 223 Granite), Applicants will ensure no adverse impact to the neighbor's property. All construction will occur on Applicants' side of the line, with proper structural support to avoid soil encroachment. It is true the wall may be closer to the property line than the guideline of "half the wall's height," but again, that guideline is meant for earthen slopes; a structural wall provides more flexibility. If a formal variance or exception is technically required for the wall's setback or height, Applicants will request it and can demonstrate the same hardship (steep slope and narrow lot) justifies it. In summary, the retaining wall concern is addressable in final engineering and is not a reason to deny the application.

5. Construction Access via the Shared Easement

Summary of Opponents' Argument: Some neighbors have expressed concern about construction impacts to the shared driveway easement (the lower access from Granite Street). They worry that heavy construction vehicles on the narrow, steep driveway could cause damage, block access for existing residents, or otherwise create problems – especially since multiple families use this easement. They question how equipment will reach the site and whether the Applicants have the right to use the easement for large construction vehicles.

Applicants' Response: The easement serving Tax Lot 1800 is a legal access and utility easement benefitting Tax Lot 1800 – it was granted specifically to allow not only residential traffic but also whatever access is necessary to build and maintain a residence (which was the very purpose of securing the easement in the 1990s). Using the easement for construction ingress/egress is clearly within the rights of the easement holder (Applicants). That said, Applicants are committed to minimizing construction disturbances for the neighbors. Applicants will coordinate a construction management plan that addresses the scheduling of large deliveries, contractor parking, and roadway maintenance. For example, Applicants can ensure that concrete trucks or excavation equipment access the site during off-peak hours for the neighbors, and will provide advance notice to adjacent residents of any temporary disruptions. If any damage occurs to the shared driveway surface or its edges due to construction activities, Applicants will promptly repair and restore the driveway. Applicants' goal is to leave the easement in equal or better condition than it was before construction. It's important to note that temporary construction inconvenience is not a land use approval criterion under the code. The Planning Commission typically does not base a decision on construction-period impacts, as the City has separate procedures (and the building permit can include conditions) to manage those issues. The key point for the Commission's purposes is that the Applicants' recorded easement establishes their right to access their property – and that inherently includes access during construction. Applicants will be good neighbors in exercising that right, employing best practices to reduce construction impacts. In sum, this concern, to the extent it has been raised, does not relate to any applicable approval criterion and thus should not affect the Commission's decision on the land use application.

6. Open Space and Trail Easement Commitments

Summary of Opponents' Argument: Many public comments alluded to the property's role in the city's open space and trails network. Given the parcel's size and location, neighbors want to ensure that the existing TID Ditch trail is preserved. Some suggested that allowing development might jeopardize this community trail connection or the general open-space value of the land.

Applicants’ Response: Applicants have gone above and beyond to address open space and trail concerns. As noted at the hearing, Applicants have repeatedly stated their willingness to dedicate a perpetual public pedestrian easement along the TID Ditch Trail segment that crosses their property. In fact, as mentioned above, Applicant Bryan DeBoer met with Ashland Parks & Recreation Commission (APRC) members in early 2024 and offered to grant such a trail easement. Although APRC never followed-up with provided Applicants with any easement documents, Applicants did not withdraw the offer. Applicants now formalized their offer by submitting a draft Public Trail Easement into the record, which they propose as a voluntary Condition of Approval in this land use action. This means that the portion of the trail crossing Tax Lot 1800 will be permanently secured for public recreational use for generations to come, enhancing the City’s trail system. This voluntary easement directly advances a specific goal incorporated into the City’s Comprehensive Plan (connected open spaces and trails) and provides a public benefit that more than compensates for the single variance Applicants request. In terms of general open space, it is also important to highlight that over 80% of the lot will remain undeveloped natural hillside. The development footprint (home, driveway, small yard/patio areas) is confined to about 18–19% of the parcel, leaving more than four-fifths of the land in its natural state. This far exceeds the code’s requirements (which would allow up to 48% of the site to be disturbed). Thus, neighbor concerns about “losing” open space are largely unfounded – the vast majority of the property’s natural land will remain untouched and will continue to provide wildlife habitat and scenic value.

7. Home Design, Size, and Aesthetic Concerns

Summary of Opponents’ Argument: Opponents raise general objections to the size and scale of the proposed home, and to certain design features (e.g., that it doesn’t “blend in,” or that it includes a swimming pool, which the Hillside Guidelines discourage but do not prohibit). Some suggest the home is too large for the neighborhood or otherwise aesthetically inappropriate.

Applicants’ Response: Applicants have worked diligently to ensure the home design complies with all clear-and-objective standards in the code. Where feedback was received, Applicants have made design concessions to address concerns. For example, as noted above, the plans were modified after the March 11 hearing to eliminate the need for any exception on the east and south elevations by providing full 6-foot offsets in the upper story, thereby meeting the horizontal plane standard (this change slightly reduced the home’s floor area as well). At this point, the project meets all applicable building design standards, and the only relief being sought is the driveway variance. The comment about the downhill wall height exceeding 20 feet has been addressed – the revised plans show that the vertical wall portion is under 20 feet, with only the roof structure above that height (which does not count toward the 20-foot wall limit). In

short, the design now conforms to the letter of the hillside development standards. To the extent opponents argue the project doesn't meet the "spirit" of those standards, Applicants believe the opposite is true: The primary objective of the Hillside Ordinance is to reduce impacts to hillsides while allowing reasonable development. As described, the project concentrates development in a small area, minimizes grading and retains the vast majority of existing trees (70+ out of ~75 significant trees will remain). In doing so, the design actually achieves the goals of the ordinance – it results in a home that is both site-appropriate and environmentally sensitive. Applicants fully intend for 231 Granite to be another example of a well-designed Ashland home that respects its natural setting. Finally, it must be stressed that general opposition to development or subjective aesthetic preferences are not approval criteria on which the Commission can base a denial. This is a privately owned, buildable lot created with the Planning Commission's approval in 1995. The owners are entitled to develop it in accordance with the City's Land Use Ordinance. As confirmed by staff's findings, the application meets or exceeds all applicable standards (or seeks proper relief where needed, in the case of the driveway). Personal preferences of neighbors – for instance, a desire to keep this lot undeveloped as quasi "open space," or dislike of the home's modern appearance or the inclusion of a pool – cannot override the fact that the proposal is code-compliant. The Hillside Development Standards about blending structures into the natural setting have been applied by staff in a reasonable, objective manner consistent with state law. The Planning Commission's role is to apply the law and standards as adopted, not to impose subjective design critiques. In this case, those standards support approval. The opponents' post-hearing submittals did not reveal any new instance of non-compliance with the code; they mainly re-emphasized concerns that were already considered and addressed by staff and the Applicants during the initial hearing.

Oregon's Needed Housing Law – Clear and Objective Standards Must Govern the Decision

Finally, it is important to recognize that this application is for "needed housing" under Oregon law. ORS 197.303 broadly defines needed housing to include "all housing on residentially zoned land" that meets the community's housing needs – explicitly including detached single-family homes like the one proposed here. The opponents' suggestion that a single large home is not "needed" is misplaced; the statute expressly includes single-family homes in the definition of needed housing. Because this application is for needed housing, the City may only apply "clear and objective" standards, conditions, and procedures in its decision, per ORS 197.307(4) (the State's Needed Housing mandate). Oregon law prohibits local governments from applying discretionary approval criteria in a way that would discourage needed housing through unreasonable cost or delay. In practical terms, this means that if the evidence shows the application meets the literal requirements of an approval criterion (or can meet them

with reasonable conditions), the City cannot deny or downsize the housing project based on subjective policies or extra-stringent interpretations not stated in clear terms.

Oregon courts and the Land Use Board of Appeals (LUBA) have consistently enforced these needed housing provisions. In *Rogue Valley Association of Realtors v. City of Ashland* (involving Ashland’s original 1997 hillside standards), the Court of Appeals struck down the City’s attempt to apply subjective architectural design conditions to a housing development, holding that appearance or aesthetic standards must be clear and objective if they are to be applied to needed housing developments.¹² In other words, if a standard has no purpose other than aesthetics, it falls under ORS 197.307(4)’s mandate for clarity and objectivity. That precedent is directly relevant here because much of the opposition to this project centers on subjective aesthetic preferences (such as the home’s size or appearance, or the inclusion of a swimming pool which the code “discourages” but pointedly does not prohibit). Under the Needed Housing law, the City cannot deny – or require a redesign of – a housing project due to aesthetic concerns unless those concerns are codified in clear and objective standards. Ashland’s Hillside standards about blending with the natural setting are indeed important, but they have been applied in this case in the clear-and-objective manner intended: specifically, staff identified how the project meets all the quantifiable limits (coverage, height, open space, etc.) and reasonably exercised professional judgment on the discretionary aspects in favor of approval, consistent with the needed housing mandate. This approach is in line with the state law.

Because no entirely clear-and-objective approval path was available for developing a home on this particular Hillside lot (the process inherently required a discretionary Physical & Environmental Constraints Permit and variance), the City must apply the required criteria as objectively as possible in order to comply with ORS 197.307(4). Unlike some applicants who voluntarily choose a discretionary track, here the Applicants had no alternative “clear and objective” track to select – so they did not waive their rights under the Needed Housing statute. Therefore, the only available path (the discretionary review) must be applied with an eye toward fulfilling the needed housing mandate, not frustrating it. In practical terms, this means the Commission should not impose any subjective or extra-statutory hurdles on this application. If the evidence demonstrates that the proposal meets the literal requirements of the code criteria (or can do so with conditions), the City should approve it. The law does not allow Ashland to deny needed housing on the basis of rigid or subjective application of standards that the property cannot practically meet.

¹² *Rogue Valley Ass’n of Realtors v. City of Ashland*, 158 Or App 1 (1999).

Recent LUBA cases underscore that local governments cannot use discretionary variance or conditional use criteria to thwart needed housing when no clear-and-objective alternative is available. For example, in *Zirker v. City of Bend*, LUBA overturned a denial of a housing project where the city had applied a variance “hardship” test too strictly, noting that a property’s unique characteristics must be considered and that a variance should be granted if needed for development of the housing and no adverse impacts would result.¹³ Similarly, in *Nordlund v. Clackamas County*, LUBA emphasized that a “physical characteristic of the property” (in that case, topography) can justify variance relief for housing, and if a condition is common to many properties (i.e. not unique), that is a different situation – but where the hardship is unique, the variance should be allowed to enable the housing use.¹⁴ The point is that needed housing may not be denied on the basis of slavish application of standards that the property cannot meet, when those standards can be flexibly applied or varied without undermining their purpose. Here, the physical constraints are unique and were known to the City when the lot was approved and created; applying the variance criteria with reasonable flexibility to allow this house is in keeping with the spirit of the law. Put simply, the law does not allow Ashland to deny this application unless it fails to meet an applicable clear and objective standard – and as discussed, it does not so fail. A denial or onerous conditions based on open-ended criteria would risk violating ORS 197.307. Fortunately, in this case, we do not face that issue because the proposal, as conditioned by staff, satisfies all applicable standards.

Conclusion

Applicants appreciate the neighbors’ engagement in this process and understand their concerns. Applicants have strived to address each substantive point with factual corrections or mitigation measures. Many issues – such as tree removal, fire safety, and driveway design – were thoroughly examined in Applicants’ prior submittals and by their team of professionals (planner, engineer, surveyor, and arborist). The record before the Commission is replete with substantial evidence justifying approval of the application, subject to the reasonable conditions recommended by Staff (most of which Applicants had already proposed or do not object to). In conclusion, Applicants respectfully request approval of the Physical & Environmental Constraints Permit (with the driveway slope/length variance), the Tree Removal Permit, and associated conditions, so that this long-planned family home can finally be built. The application meets all applicable approval criteria or seeks proper relief where needed, and it advances the City’s housing and trails objectives in the process. We urge the Planning

¹³ *Zirker v. City of Bend*, 59 Or LUBA 1 (2009).

¹⁴ *Nordlund v. Clackamas County*, 64 Or LUBA 100 (2011).

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April 1, 2025

Commission to affirm staff's recommendation and approve the project. Thank you for your careful consideration.

Respectfully submitted,
DAVIS HEARN ANDERSON & SELVIG, PC

A handwritten signature in blue ink, appearing to read "Chris", is centered below the typed name.

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PUBLIC COMMENTS

**Parties of Record Rebuttals
Received between 03-18 & 03-25**

Sarah Sameh & Jay Reeck
230 Strawberry Lane
Ashland, Oregon, 97520

March 25, 2025

Ashland Planning Commission
Ashland Community Development Department
51 Winburn Way
Ashland, OR 97520

Subject: Rebuttal Regarding Planning Action PA-T2-2024-00053: 231 Granite St.

Dear Ashland Planning Commission,

We are writing during the rebuttal period to respond to comments submitted between March 11 and March 18, 2025 regarding the proposed land use application PA-T2-2024-00053 for the construction of a new single-family residence at 231 Granite Street. The rebuttals below are in sequence as encountered in the online submittal presentation, "Public Comments from Parties-of-Record Received Between 3/11/25 - 3/18/25 (PDF)."

First, we would like to extend our gratitude to the Ashland Planning Commission, having responsibility to the City Council for citizen involvement. Specifically, Ashland Municipal Code 2.17.070 assigns the Planning Commission the power and duty to promote and enhance citizen involvement in land use planning and assist the implementation of citizen involvement in land use planning.

Amy Gunter Letter

#1

The memo notes that the applicant has modified the design of the house to include required 6-foot setbacks. The note states that the house square footage is thereby reduced by 44 square feet. We note that the plans showed a pre-existing square footage of 6,046. This decrease to 6,002 square feet represents a reduction of 0.7% in square footage. The attached revised plans indicate the square footage has decreased to 5,945 square feet. Either the plans or the calculations continue to be inaccurate.

#2

The downhill vertical wall height has not been adjusted to be less than 20 feet. The design has not been altered and is still out of compliance with ALUO 18.3.10.090 E. 2. c. per the Planning Department's notice at the March 11 public hearing. The plans clearly show that the vertical surface on the downhill above grade wall is 21.33 feet. Whether the vertical surface is wall or fascia is immaterial.

The applicant addresses the requested variance for the driveway. For reasons previously articulated due largely to driveway access issues, we contend and maintain that the lot is not buildable. Also, as previously articulated, we dispute the claim that the driveway is under 200 feet on the property. The applicant's stated length of driveway is unclear: 153 feet in the engineering report in the initial application, 197 feet in the graphic representation in the initial application, 183 feet in the March 17 document, 192 feet in the site plan in their new packet additions, and 223 feet in the new engineering information. As the applicant makes clear in the March 17 submittal, they are asking for a Type II variance for a slope steeper than 15% – and indeed steeper than 18% – and for a driveway length greater than 200 feet with excessive slope. The applicant states that the proposed grade and length are the sole options and the minimum necessary to comply with the criteria of the ALUO. The proposed grade and length of the driveway actually **do not** comply with the criteria. The applicant's statement is misleading.

The applicant refers to included correspondence from 1992 when the City of Ashland recognized the property as a legal lot and provided an access easement. They also refer to correspondence in 1993 from City of Ashland staff recognizing that driveway development would require a variance. We note that the 1992 and 1993 correspondence did not imply or guarantee that a variance would be granted. The letters do not in any way suggest that the lot has guaranteed access in perpetuity.

The letter to Ms. Rapp in 1992 from Acting Planning Director of the City of Ashland, John McLaughlin, did not guarantee or imply access ON the subject property. His letter to Ms. Rapp indicates that the EASEMENT from Granite Street to the property could be used to access the landlocked lot, and only if an easement agreement was created. The excessive slope he refers to is on the easement access road. In no way does his letter indicate that a driveway on the subject property was approved. In fact, TL 1800 did not legally exist at the time of the letter because a minor land partition survey and approval was still needed to remedy an illegal lot boundary line adjustment.

Acting Planning Director John McLaughlin's 1992 letter to Ms. Rapp also notes that the parcel is still subject to development requirements regarding driveway surfacing and hydrant/sprinkler requirements. This letter from 32 ½ years ago didn't have the proverbial crystal ball to know about the ordinances in force in 2025 or about the extreme wildfire conditions we now face in the Ashland wildland-urban interface.

Furthermore, the Planning Commission should note that the 1993 letter from John McLaughlin to Mr. Stout (in the packet) noted that at that time, no variance request had withstood appeal to the Land Use Board of Appeals. The letter to Mr. Stout also indicates that opinion from neighbors on Granite Street and Strawberry Lane will carry significant weight regarding the outcome of variance requests for this property. We hope the Planning Commission rightly and genuinely weighs opinions from such neighbors.

Ms. Gunter posited that the need for the variance for the driveway is not self-imposed. As she noted, the current owner purchased the property with information that has been on file with the City for over three decades, which clearly explains that access to the lot is non-compliant with city ordinances. The same instructive document indicates that a variance would be needed in order to obtain permission to construct a driveway up the flag portion of the lot. Furthermore, current Ashland Municipal Codes are publicly available and were available at the time of the owner's purchase. The owner did not create the lot. The owner has created the need for the variance by purchasing the lot and submitting non-compliant plans, knowing that the conditions and ordinances were pre-existing. The Planning Commission is not required to grant a variance. As the Planning Director for the City of Ashland wrote in 1993, "Variances are the most difficult land use process for which to obtain approval."

#4

There have been several critical errors in the tree maps provided. Of particular note is the specimen 36" DBH Pacific Madrone that was not disclosed on the initial plan. This is one of the trees that has been of great concern to neighbors on adjacent properties. The tree now appears in the revised tree map provided by the applicant on March 17 and is slated to be removed. It is difficult to fathom how this enormous and stately tree – in the path of the driveway – was not disclosed or included in the initial tree map. In addition to this significant tree, the applicant states that the removal of four other significant trees won't affect or create negative impact within 200 feet of the subject property. On the contrary, the applicant's plan to remove tree #68, tree #71, and the 36" DBH Pacific Madrone does, in fact, cause significant adverse impact within 200 feet of the subject property because all of these trees are partially on a neighboring tax lot (ALUO 18.5.7.040 B. 2. c.). As a side note, the initial survey for the project misplaced the eastern border of Tax Lot 700 by six feet too far westerly. The revised map lists the address for Tax Lot 700 as 234 Granite Street when it is actually 234 Strawberry Lane.

At the hearing, Ms. Gunter said that the applicant would move the driveway to allow more room for protection of yet another 36" DBH Pacific Madrone, located just north of the property line adjacent to the retaining wall and parking portion of the driveway. No revised plans were submitted. The plans in the initial packet show the tree protection fence 10 feet from this tree and an excavated area with a retaining wall 12 feet from this tree. Best practices for fencing to protect a critical root zone (CRZ) use a *radius* of 12 x DBH. In this case, that would be a 36-foot radius around this 36" Pacific Madrone. Ten to twelve feet from a 36" DBH tree is *well below* the general standards of protection for a CRZ and will likely lead to damage of this significant tree. ALUO 18.4.5.030 C. 1. states that "Chain link fencing...shall be installed at the edge of the tree protection zone or dripline, whichever is greater..." Furthermore, ALUO 18.4.5.030 C. 6. states that "No excavation, trenching, grading, root pruning, or other activity shall occur within the tree protection zone unless approved by the Staff Advisor." The applicant's tree protection plan and map, as explained above, do not adhere to these standards or best practices, putting tree health at risk.

The applicant should revise the tree protection plan to comply with these ALUOs and protect critical root zones.

Other

The applicant acknowledged that the lot was created before hillside standards were adopted, illustrating that it is not an inherently buildable lot. They note that "flexibility" is a necessity for their plan. Flexibility here appears to be the luxury of non-compliance, which is being requested of the Planning Commission. Again, ordinances exist for a reason – for the safety and preservation of our community and citizens, all worthy of our communal respect.

Ms. Gunter stated repeatedly that the proposed lot coverage is only 10%, while 20% is allowed. This is a misleading statement, implying that the applicant is only using half of the land that could potentially be developed on the subject property. Twenty percent coverage is not possible on this lot, given the constraints. The suggestion that the applicant has minimized the footprint of the project is a false narrative, likely written to create the impression that the proposed plans are less impactful on the land and environment. The presented narrative does not demonstrate that all measures have been taken to reduce the impact. Such measures previously suggested by parties-of-record include a plan with a smaller structural footprint, less outdoor hardscape, less terracing, and no pool.

Brandon Goldman Letter

Driveway

Mr. Goldman notes that the City, nearly three decades before the owner acquired the property, made clear that: 1. Development of the driveway would need to meet Ashland Fire Department's requirements regrading fire hydrants and sprinklers, and 2. A pump station and fire hydrant may need to be installed to comply with Uniform Fire Code. The applicant has not shown compliance with these requirements in the documents. Fire hydrant #2192, which the applicant references on a neighboring property, is greater than 600 feet from the proposed house (per the application diagram in the March 17, 2025 documents, it measures 640 feet from the closest edge of the house) and is more than 12 feet from the fire department access road (it appears to be about 200 feet from the fire department access road on the same diagram). The distance of greater than 600 feet from the house does not comply with the Planning Department's suggested condition of a fire hydrant within 600 feet of the proposed house. The distance of greater than 600 feet from the house and the distance of significantly greater than 12 feet from a fire department access road are each out of compliance with National Fire Protection Association regulations. (See addendum for more information on Uniform Fire Code regulations NFPA 1 and NFPA 13.)

Mr. Goldman's letter points out that the current Physical and Environmental Constraints Review Ordinance was implemented after the 1992-1993 correspondence. He shows that the pre-existing

correspondence is therefore not instructive on compliance with current ordinances, as it could not have possibly addressed barriers to permitting and construction that did not exist at that time.

Mr. Goldman implies that the driveway design ensures compliance with safety and accessibility requirements, but no such safety and accessibility requirements are cited. Intuitively, a driveway exceeding allowed variances is unsafe and impedes accessibility due to the nature of slope up to 25% (see applicant's engineering documents in the March 17, 2025 submission) and length well over 200 feet. Ordinances exist for safety and accessibility. Therefore, non-compliance with ordinances, by definition, does **not** comply with safety and accessibility requirements. Unmentioned in this section is the fact that safety and accessibility are further compromised by the lack of a required emergency vehicle turnaround (see our correspondence dated March 18, 2025 for detailed references).

Home Size

Complete plans were not initially included in the publicly available materials before the March 11 hearing. Plans shared at the March 11 hearing showed a home size of 6,046 square feet. The revised plans as of March 18 are 5,945 square feet. This and the extensive outdoor living area including a pool do not meet the spirit of ALUO 18.3.10.090 D. 3. b. (location and size of the building envelopes to preserve the maximum number of trees on site) or ALUO 18.3.10.050 C. (take all reasonable steps to reduce adverse impact on the environment...irreversible actions shall be considered more seriously than reversible actions).

Design Exceptions

The staff does not point out that decreasing the size and footprint of the house and decreasing the ceiling height on each story could bring the home into compliance with the requested exceptions under 18.3.10.090 H. The exceptions should not be granted under 18.3.10.090 H. Criterion 1 is not met: there is no difficulty in changing the plans to achieve less square footage and less height on the downhill vertical wall due to an unusual aspect of the site or proposed use of the site. Criterion 2 is not met: the exception of vertical height will not result in equal or greater protection of resources. Criterion 3 is not met: the difficulty is the design's size, not the constraints of the property. The exception doesn't address any development difficulty. Criterion 4 is not met: the intention is not consistent with the intent and purpose of said ordinance. The exception is only needed because of the submitted design.

Staff Evaluation

The staff writes that the design, including the building size, patio area, and pool, minimize site disturbance. This statement is misleading. Site disturbance and tree removal, in accordance with ALUO 18.3.10.090 D. 3. b. and ALUO 18.3.10.050 C., could be and should be minimized with a design that includes a smaller building, less hardscaping and patio, and no pool.

Planning Manager Derek Severson Memo Regarding Select Public Comments

Needed Housing

The Planning Commission should determine that the housing – a nearly 6,000 square foot single-family home on this subject property is not "needed housing." That notion is absurd and disingenuous. Needed housing, as demonstrated by City of Ashland publications and initiatives, is affordable housing: apartments, multifamily units, ADUs, and some reasonably affordable single-family homes. The proposed project does not meet the definition of needed housing in our community.

This lot has never been built on because of its physical constraints and lack of access. The Planning Commission should determine that benefits of building a non-compliant steep and long driveway to reach a very large single-family home with extensive hardscaping and a pool is **not greater** than the **negative impacts** of building an extremely steep and long driveway (requiring significant tree removal and skirting requirements for an emergency turnaround) that demands a Type II variance.

City of Ashland Prior Agreement Regarding Subject Property

Our previous correspondence stated, "the City of Ashland *had* entered an agreement to purchase the subject property to preserve its natural state..." The Planning Manager responds that, "The City has not entered into an agreement to purchase the property to preserve it in its natural state." We did not mean to assert that the City is currently in an agreement to purchase the property. Rather, we attempted to illustrate the value of the natural state of the property, just as the City did with its prior orchestration of an agreement to purchase the property. Obviously, the agreement did not come to fruition.

ALUO 18.5.5.050 A. 4. Self-Imposed Condition

The memo response does not refute the self-imposed nature of the requested variance. It simply refers to statements in the 1992 and 1993 correspondence about the lot without making any particular point. The memo erroneously suggests that the correspondence noted that the access driveway on the lot would exceed grade requirements. As we explained above, the correspondence actually indicates that the excessive grade already existed on the shared access road which would be used to reach the subject lot. For more information about this correspondence, see rebuttal remarks regarding this correspondence above in the Amy Gunter Letter section.

As previously articulated, the new owners made a conscious choice to knowingly purchase the subject property with challenging conditions which would require a variance. The conditions were self-imposed with the elective purchase. The purchase was not willfully forced upon the new owners. At the time of purchase, and currently, there are many other property options available in and near the City of Ashland to build the house and yard of their preferred design.

Emergency Turnaround ALUO 18.5.3.060 J.

The application does not include the ordinance-required emergency turnaround. The memo implies that an email from Fire Marshal Mark Shay, in which he writes, "...for an alternate to the fire department turnaround I'll consider a turnout designed to Jackson County Development standards..." fulfills this requirement. It does not, as explained in our March 18, 2025 letter.

Pool as a Water Source for Firefighting

The memo indicates that the pool is cited as a water source for fighting fire. A dry hydrant or fire department connection should be present near the pool to ensure easy use of the water source. These features aren't in the applicant's plans. If the firefighters need to set up a submersible or floating pump in the pool, it will add time to their response to the fire. In addition, there should be easy access to the pool for the firefighters. In the current plan, the pool is positioned at the far end of the house, away from the driveway. Presumably the metal fence in the plans would have a lock to prevent children and animals from easy entry into the pool area. Both of these features impede use of the pool as a plausible and accessible water source. If these modifications aren't addressed and/or if the Fire Marshal has concerns about it, the pool may not be a legitimate or reliable water source for fire suppression.

Rebuttal Summary and Conclusion

It is worth noting that there have been multiple inaccuracies and missing documentation in the applicant's supplied information. The publicly available documents before the March 11 public hearing did not include architectural floorplans for the house, which disclosed its dimensions, square footage, and design. The publicly available documents before the March 11 public hearing did not include a schematic of the fire hydrant location. Non-compliant tree protection zones appear in the plan without requests for exceptions. Important distances and measurements relevant to municipal codes have been difficult or impossible to ascertain from the applicant's supplied information. The driveway length, for instance, has been stated or diagrammed in multiple places with different values, making a reasonable assessment by the public or Commission very difficult. Some information was not provided until its absence and importance was pointed out by the public or Commission, such as the distance to the fire hydrant; the presence of an additional tree, and the need for said existing tree to be removed; a neighboring significant tree impinged upon by the driveway and excavation plan; an out-of-compliance retaining wall due to vertical height and lack of setback; and excessive vertical downhill wall height. Furthermore, misleading statements and misleading attributions have been identified throughout the application process: suggesting the 1992-1993 correspondence conferred driveway access on the subject property; using verbiage to suggest that the driveway slope and length comply with ordinances; implying that the proposed development is only disturbing half of the land arguably available for a building envelope; and suggesting that the design, including the building size, patio area, and pool, minimize site disturbance.

The applicants and staff may argue that the misattributions and missing documentation occurred because of the complexity of the project and the challenges the subject property presents. They would be partially correct in their assertions: this is a challenging, steep, landlocked property, and it is one with hillside ordinance and wildfire ordinance constraints. We appreciate the inherent complexities. However, the pre-existing conditions don't excuse the non-compliant, confusing, or misleading information. The applicant carries the burden and responsibility of demonstrating compliance and beneficial intent to the public, Planning Department, and Planning Commission.

Responses from Ms. Gunter, Mr. Goldman, and Mr. Severson do not show that the application complies with the ordinances in letter or in spirit and intent. In addition to the rebuttal above, please consider our previous written testimony as well as that of our neighbors and fellow citizens of Ashland. We have learned of and heard from many Ashland residents who are very concerned about this development and were either unaware of the hearing or are loath to speak up due to the influential nature and/or funding apparatus of the applicants. One of our intentions in this process is to help represent other voices in our community.

The Planning Commission is endowed with the power and duty to assist the implementation of citizen involvement in land use planning, hence this thorough and powerful process with public engagement and discourse. Remember the words of John McLaughlin, that variances are the most difficult land use process for which to obtain approval. As citizens of Ashland, we entrust you, the members of the Planning Commission, to follow the guiding principles and intent of the established Land Use Ordinances. We hope you read, hear, feel, and respect the input of concerned and interested neighbors and members of your community.

With appreciation and respect,

Jay Reeck and Sarah Sameh

Addendum: Uniform Fire Code and PA-T2-2024-00053

The National Fire Protection Association Code 1 (NFPA 1) 2024 is a fire code providing a minimum set of requirements for a reasonable level of fire and life safety.

Hydrant Distance

NFPA 1 recommends a location within 600 feet of a single-family home. This requirement is not met with the applicant's current plan, referencing Hydrant #2192, located on a different tax lot (237 Granite Street) on the access road from Granite Street. It is shown to be 640 feet from the proposed house on the applicant's diagram provided in the March 17 packet.

Hydrant Access

NFPA 1 states that hydrants must be within 12 feet of the fire department access road. This requirement is not met with the applicant's current plan, referencing Hydrant #2192. According to the applicant's diagram provided in the March 17 packet, the hydrant location appears to be over 200 feet from the easement driveway from Granite Street to the subject parcel, which serves as the fire department access road.

Hydrant Fire Flow

NFPA 1 outlines the fire flow (appropriate gallons per minute for distance from the structure for typically a 2-hour duration, appropriate to the type of structure). NFPA 13 indicates that additional flow is needed to support the sprinkler system in addition to the fire departments hose requirements. While it may be outside the Planning Commission's purview, the lack of information about adequate fire flow for the proposed development is highly concerning.

Michael Sullivan

From: Michael Sullivan
Sent: Tuesday, March 25, 2025 3:55 PM
To: Michael Sullivan
Subject: FW: 231 Granite St. application comments

From: Leonard Eisenberg <evogeneao@gmail.com>
Sent: Tuesday, March 25, 2025 3:25 PM
To: City Managers Office <citymanageroffice@ashlandoregon.gov>
Subject: 231 Granite St. application comments

[EXTERNAL SENDER]

Greetings,

Regarding the memo submitted March 18, 2025 by Derek Severson, Planning Manager, in reply to comments submitted about 231 Granite St. PA-T2-2024-0005

We note that no mention is made of our comments, both written and in March 11, 2025 Planning Commission testimony, that:

Applicant's statement in their PA-T2-2024-0005 proposal "There are no slopes greater than 35 percent within the areas of proposed development" is false.

This is proved by the Site Slope Analysis Map 1 (pg 33 of PA-T2-2024-0005 proposal pdf) which shows four significant areas of slope greater than 35% within the proposed development envelope. Measurement of the areas of slope >35% within applicant's development envelope using applicant's Site Slope Analysis Map 1 (pg 33 of the pdf), determined a total of about 3327 square feet. This represents about 18% of the 18,738 square foot proposed development area.

Development Standards for Hillside Lands 18.3.10.090 clearly states that 'Slopes >35% are unbuildable', and a variance must be requested and granted to build. No request for such a variance was submitted by the applicant.

Development Standards for Hillside Lands 18.3.10.090 makes no mention of a minimum area of slope >35% which would trigger a variance requirement. It also makes no mention of 'the average slope' of a property. The meaning and intent of Development Standards for Hillside Lands 18.3.10.090 is clear; if any portion of a proposed development has a slope >35% a variance must be requested and granted before approval.

Even though the parcel TL 1800 was established prior to the Hillside Ordinance, the driveway variance requested by the applicant confirms their understanding that the Hillside Ordinance applies to the driveway for their proposed development. The slope requirement of Development Standards for Hillside Lands 18.3.10.090 therefore must also be applied.

If the City of Ashland will follow its own Code requirement as stated in Development Standards for Hillside Lands 18.3.10.090, a variance to the 35% slope standard must be submitted by applicant.

We also noted in our written and oral comments that:

Development Standards for Hillside Lands 18.3.10.090 requires satisfaction of all four conditions from 18.3.10.090 H to grant a variance to develop hillside lands >35% slope, and that applicant's proposal could not meet criterion #2 because the exception will NOT result in equal or greater protection of the resources protected under this chapter
or
criterion #3 because the exception is NOT the minimum necessary to alleviate the difficulty.

There is ample room to build on applicant's TL 1800 on slopes less than 35%.

We would appreciate it if the Ashland planning department included, and responded to, our current, and any future comments regarding PA-T2-2024-0005.

Sincerely
Len and Karen Eisenberg
223 Granite Street
Ashland, Oregon. 97520

JACK DAVIS
CHRISTIAN E. HEARN
EUGENE V. ANDERSON
RACHELE R. SELVIG
ANDREW M. NARUS

DAVIS HEARN
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DONALD M. PINNOCK - Retired
DANIEL L. HARRIS - Retired
DAVID V. GILSTRAP - Retired
SUSAN V. SALADOFF - Retired
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GARRISON F. TURNER - Retired

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MARCH 25, 2025

TO: Ashland Planning Commission (planning@ashland.or.us)

FROM: Chris Hearn (chearn@davishearn.com)

RE: Applicants' Additional Evidence Responsive to "New Evidence"
Submitted During First Open Record Period
Planning Action: PA-T2-2024-00053
Applicants/Clients: Bryan & Stephanie DeBoer
Subject Property: 231 Granite Street (39-1E-08DA, Tax Lot 1800)

Dear Ashland Planning Commission,

Our firm represents applicants Bryan & Stephanie DeBoer ("Applicants") in connection with Planning Action PA-T2-2024-00053.

This is Applicants' second open record period submission. In response to "new evidence" submitted by neighbor-opponents during the Commission's first open record period (March 12-18), we attach the documents listed in the table below. Please include this memo the attachments in the record.

In compliance with the "7+7+7" open record schedule established by the Commission at the conclusion of its March 11 public hearing, we will submit Applicants' final written argument on April 1.

Respectfully submitted,
DAVIS HEARN ANDERSON & SELVIG, PC



Christian E. Hearn (OSB #911829)
chearn@davishearn.com

Attachments: listed below.

Attorneys for Applicants Bryan & Stephanie DeBoer

DAVIS HEARN ANDERSON & SELVIG, PC
515 EAST MAIN STREET | ASHLAND, OREGON 97520
541.482.3111 | chearn@davishearn.com | www.davishearn.com

ATTACHMENTS

1.	Rebuttal Memo from Applicants’ consulting planner -- Amy Gunter of Rogue Planning & Development Services LLC (Addressing “new evidence” submitted by Opponent’s during Planning Commission’s first open record period).
2.	Applicants’ Proposed Condition of Approval for PA-T2-2024-00053 (Public Trail Easement for Ditch Trail Segment Crossing TL 1800)
3.	Public Trail Easement – Offered by Applicant as Condition of Approval in PA-T2-2024-00053.
4.	Applicant’s Driveway Easement – Providing Access from Granite Street to Applicant’s Tax Lot 1800 (Recorded on February 2, 1994, as Jackson County Doc. #94-04302)
5.	Screenshots of Applicant’s Driveway Easement Area from various survey maps.

(25 PAGES - INCLUDING THIS COVER MEMO)

cc: Michael Sullivan (michael.sullivan@ashland.or.us) (City of Ashland Planning Staff)
Bryan & Stephanie DeBoer (Applicants-Property Owners)
Amy Gunter, Rogue Development Services LLC (Applicants’ consulting planner)
Carlos Delgado (Applicants’ Architect)

DAVIS HEARN ANDERSON & SELVIG, PC
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March 25, 2025

RE: Applicant's Rebuttal
PA-T2-2024-00053

Dear Planning Commissioners and Planning Division Staff,

Please accept this letter as a rebuttal to the public comments received during the open record period before the Planning Commission's April 8, 2025, Public Hearing.

The proposed development complies with the standards for the development of a single-family residence on a legal, buildable lot with a private vehicle and utility access easement.

The property was created before the adoption of the Physical and Environmental Constraints Ordinance, Hillside Development Overlay and Design Standards criteria, and before the Severe Constraints Ordinance, which regulates the development of slopes that exceed 35 percent.

Development of land that exceeds 35 percent is not prohibited by ordinance, especially when the property pre-dates the current requirements. A geotechnical evaluation that determines whether the property is safe and stable for the proposed construction is required, and one has been provided.

The driveway grade and length of the proposed driveway exceed the standards; this necessitates a variance to the criteria from the Ashland Municipal Code to access the buildable lot. This need for a variance was acknowledged by the City of Ashland before the property was platted. There is no other option for access to this property.

Specific Rebuttals:

Tree Removal of Shared Trees:

As noted in the information provided during the new information period, a site survey performed by Phil Drossos of Terra Survey verified the location of the access and utility easement and the trees within and near the easement. A large-stature madrone (36-inch DBH Madrone) will be required to be removed as it is entirely within the legal access and utility easement (pg. 49 of 73; PA-T2-2024-00053_Public Comments Received before 03.18.25.pdf), this tree also straddles the property line of the adjacent property to the north, the McLaughlin Parcel 391E08DA TL700; 234 Strawberry Lane.

Three additional trees, a 10-inch DBH and 12-inch DBH, dual stemmed Madrone tree and a 16-inch DBH



Oak tree (Tree numbers 68 and 71, Sheet L0.3 (Tree Removal Plan), Applicant's original submittal) are shared between the subject property and the adjacent property to the north (McLaughlin Parcel TL700; 234 Strawberry Lane).

The impacts from the construction of the driveway within the access easement may have a substantial impact on the root zone of the Madrone trees and less impact on the Oak tree. The applicant will take all necessary steps, including excavation under the guidance of the project arborist, to reduce impacts to these trees by shifting the driveway to the southeast additional space will be provided between the trunk of the trees and the driveway in an attempt to preserve these trees that are shared between the two properties.

Horizontal Building Plane:

As noted in the new information provided by the applicant and submitted on March 18, 2025, an Exception to Hillside Design Standard AMC 18.3.10.090.E.2.d. was requested. *18.3.10.090.E.2.d. Continuous horizontal building planes shall not exceed a maximum length of 36 feet. Planes longer than 36 feet shall include a minimum offset of six feet.*

This exception has been eliminated from the east and south sides of the proposed structure through footprint and façade alterations that increase the offsets to six feet. This also reduces the floor area of the home by 44 square feet. (pg. 30 of 73; PA-T2-2024-0053_Public Comments Received before 03.18.25.pdf)

Building Height:

The proposed residence is cut into the hillside, greatly reducing the massing of the structure. At 15 feet above natural grade is substantially less than the maximum building height of 35 feet from natural grade allowed on hillside lands. The proposed building's downhill wall height also complies with the maximum downhill wall height of 20 feet from the natural grade. (Addressing Mr. Oursler's comments from pg. 23 of 73; PA-T2-2024-00053_Public Comments Received before 03.18.25.pdf)

Retaining Wall Height

The plans (Sheet L2.0) do not show a 22-foot-tall retaining wall as referenced in Sarah Sameh and Jay Reeck's comments (pg. 29 of 73; PA-T2-2024-0053_Public Comments Received before 03.18.25.pdf).

The wall height callouts (+14 TOW, +15 TOW, +22 TOW) on the driveway retaining wall to the north refer to heights relative to a benchmark for the drawing. The ACTUAL heights of the walls shown on the drawings are relative to adjacent surfaces (the driveway and planters). The actual heights: +14 TOW = 1-foot wall height above the driveway, +15 TOW = 2-foot wall height above the driveway, +22 TOW = 5-foot wall height above the planter (Sheet L2.0, Applicant's original submittal).

All retaining walls at the time of building permit submittal will demonstrate compliance with the standards of 18.3.10.090 B.4.b.



Grading:

The grading standard in 18.3.10.090.B.8.c. note that "Building pads should be of minimum size to accommodate the structure and a reasonable amount of yard space. Pads for tennis courts, swimming pools, and large lawns are discouraged. As much of the remaining lot area as possible should be kept in the natural state of the original slope."

Based on the standards for development of hillside lands which require preservation of a certain percentage of the property to be retained in a natural state and that the applicant has taken all measures to reduce impacts to the subject property, the adjacent properties and the environment the development of the property substantially complies through the preservation of the property in a natural state (18.7 percent disturbance where 48 percent disturbance permitted (18.3.10.090.B.3)). The proposed lot coverage is substantially less than the 20 percent allowed in the rural residential zone. The number of trees proposed for removal is the minimum necessary to all for adequate wildfire hazards reduction and to allow for the development of a residential home and a functional outdoor patio area. The patio area which does include a pool is the area of disturbance for construction of the driveway and residence and does not increase the impact area of the development and the building pads is of minimum size to accommodate the structure and a reasonable amount of yard space with much of the remaining lot area as possible should be kept in the natural state of the original slope.

Thank you,

Amy

Amy Gunter

Rogue Planning & Development Services, LLC

Amygunter.planning@gmail.com

TO: Ashland Planning Commission

FROM: Bryan & Stephanie DeBoer (Applicants/Property Owners)

DATE: March 25, 2025

RE: Condition of Approval Proposed by Applicant/Property Owner
Granting a Public Trail Easement to the City of Ashland
Planning Action: PA-T2-2024-00053 (231 Granite Street)

1. **Background.** As you know, we are the owners of the property at 231 Granite Street (County Assessor's Map: 39-1E-08DA, Tax Lot 1800), which we purchased in December of 2023 ("Tax Lot 1800").
2. **Our Planning Application.** During 2024, through our agents, we submitted to the City's Planning Division our application requesting approval to construct a single-family home for our daughter and her family on Tax Lot 1800. Our application is currently pending as City of Ashland Planning Action PA-T2-2024-00053 (the "Application").
3. **The Ditch Trail.** Our Tax Lot 1800 is bisected by Talent Irrigation District's "Ashland Canal" – commonly known in the neighborhood as the "TID Ditch". Running along side the TID Ditch is the popular "Ditch Trail". Consistent with testimony provided at the Planning Commission's March 11 public hearing, like so many other members of the community, our family enjoys hiking on Ashland's trail system, which provides a treasured amenity to the public. We understand that, while the City of Ashland has secured and recorded public trail easements for other segments of the popular Ditch Trail, the City lacks a recorded easement securing perpetual public access for the segment of the Ditch Trail crossing our Tax Lot 1800.
4. **No Intention to Close the Trail.** We reiterate that it has never been our intention to close the portion of the Ditch Trail crossing our Tax Lot 1800. In fact, since purchasing the property in December of 2023, we repeatedly offered a trail easement to the City during April of 2024 (specifically, in communications with APRC's Rick Landt on or around 04/03/2024; and again during a meeting with APRC's Interim Director, Leslie Eldridge, on 04/16/2024). But the City never provided us with any easement documents.
4. **Additional Evidence Submitted During First Open Record Period.** In the Planning Commission's record is Planning Director Brandon Goldman's email dated March 14, 2025, sent in reply to Dr. Oursler's email of March 14, concerning the Ditch Trail easement issue. You will recall this trail easement was a topic of much public concern during the Commission's March 11 hearing, and the easement issue was repeatedly raised by many community members who commented on our application.

Planning Director Goldman's March 14 email to Dr. Oursler explains, in relevant part:

"...[T]he applicant/property owner has voluntarily proposed to dedicate a pedestrian access easement along the Talent Irrigation Ditch (TID) and is working with the Parks Department to facilitate this. Since the dedication is being made voluntarily, concerns about a potential violation of the Takings Clause of the Fifth Amendment and the Dolan v. Tigard case are not applicable in this case."

5. **Applicant's Proposed Condition of Approval.** While a matter of legitimate public concern, we understand this trail easement issue to be unrelated to the City's land use standards and criteria applicable to the Planning Commission's review of our Application. We are requesting approval to build a home on an existing residential lot that was legally created with the City's approval in 1994. We are not seeking to partition or otherwise develop Tax Lot 1800, in any manner that might trigger a nexus/proportionality analysis under the so-called "Nollan/Dolan Test". As good neighbors, we hereby again confirm in writing our voluntary offer to provide the City with a perpetual public easement preserving this popular hiking trail for generations to come. To that end, we again formally offer the following proposed condition of approval in connection with our pending Planning Action PA-T2-2024-00053:

Proposed Condition of Approval re: Public Trail Easement: *"Prior to issuance of building permits for the proposed residence, applicants/property owners shall execute and deliver to the City a perpetual public trail easement in favor of the City of Ashland along the existing "Ditch Trail", which generally follows the Talent Irrigation District's (TID) "Ashland Canal" as it traverses the subject property (Tax Lot 1800). The public trail easement shall be in substantial conformance with the proposed draft "Public Trail Easement" submitted by Applicant during the Planning Commission's public hearing process, subject to approval and any final revisions required by City's Legal Department. Applicant shall also provide a centerline legal description of the Easement Area to be appended to the easement document, and reflecting an easement area 10-feet in width and shall include the traveled portion of the existing Ditch Trail crossing the property. The public trail easement shall be signed by applicants/property owners and delivered to the City prior to issuance of a certificate of occupancy for the new dwelling. This condition was voluntarily offered by the applicants/property owners during the public hearing process in PA-T2-2024-00053,*

and is accepted by the Planning Commission as such; accordingly, said public trail easement is not an exaction required by the City, and is not subject to constitutional takings concerns or nexus/proportionality analysis.”

6. **Draft Public Trail Easement Attached.** Since the City’s APRC never provided one, **we attach Applicant’s proposed Public Trail Easement for the Planning Commission’s review.**

DocuSigned by:

12FAA43A57A5435...

Bryan DeBoer

Dated: 3/25/2025

DocuSigned by:

D8369E7E862743A...

Stephanie DeBoer

Dated: 3/25/2025

Record and Return to:

City Recorder, City of Ashland
20 East Main Street
Ashland, OR 97520

PROPOSED PUBLIC TRAIL EASEMENT
OFFERED BY APPLICANT AS A
CONDITION OF APPROVAL IN
PLANNING ACTION: PA-T2-2024-00053

Grantors:

Bryan & Stephanie DeBoer
85 Winburn Way
Ashland, OR 97520

Grantee:

City of Ashland
20 East Main Street
Ashland, OR 97520

(Space above for Jackson County Recorder's Use)

Actual Consideration Paid:

No monetary consideration

Send Tax Statements to:

No Change

PUBLIC TRAIL EASEMENT

THIS EASEMENT AGREEMENT ("Public Trail Easement") is made and entered into this _____ day of _____, 202____, by and between Bryan DeBoer and Stephanie DeBoer ("Grantors"); and the City of Ashland, Oregon, a municipal corporation ("Grantee" or "City").

RECITALS

- A. **WHEREAS**, Grantors are the owners of the real property commonly known as 231 Granite Street, Ashland, Oregon (Jackson County Assessor's Map ID: 39-1E-08DA, Tax Lot 1800)("Grantors' Property"), and more specifically described as:

Parcel 3 of Partition Plat recorded April 12, 1996, as Partition Plat No. P-43-1996 of Records of Partition Plats in Jackson County, Oregon, and filed as Survey No. 14932, in the Office of the County Surveyor.
("Grantors' Property"); and

- B. **WHEREAS**, Grantors submitted a planning application in City of Ashland Planning Action PA-T2-2024-00053 ("Grantors' Application"), seeking approval for the construction of a single-family residence, driveway access, and associated improvements on Grantors' Property, including a variance for driveway grade exceeding Ashland Municipal Code standards; and

- C. **WHEREAS**, Ashland Municipal Code 18.5.5.050.A.3 (Variance Approval Criteria) requires the City of Ashland to balance the overall benefits of the Application's proposal against any potential negative impacts to the community, thereby evaluating the "public benefit" resulting from granting such a variance in connection with approval of the Application, and whether it will further the purpose and intent of the ordinance and the Comprehensive Plan of the City; and
- D. **WHEREAS**, public testimony received by the Ashland Planning Commission in connection with Grantors' Applicant underscored widespread community interest in preserving and securing perpetual public trail access along the Talent Irrigation District's ("TID") "Ashland Canal" irrigation ditch corridor traversing Grantors' Property, which provides a crucial connection between Grantee's existing easements collectively known as the "Ditch Trail", as identified in the City of Ashland Trails Master Plan, and which functions as a component of the City's Open Space Plan, and as such is incorporated as a part of the City of Ashland's Comprehensive Plan; and
- E. **WHEREAS**, during the City of Ashland's Planning Commission public hearing on March 11, 2025, a number of community members testified concerning the importance of the City obtaining a recorded public trail easement across Grantors' Property to secure the public's right to continued recreational use of that segment of the popular Ditch Trail in perpetuity; and
- F. **WHEREAS**, at the Planning Commission's public hearing on March 11, 2025, Grantors verbally confirmed their willingness to dedicate to Grantee a perpetual public trail easement for the segment of the existing Ditch Trail traversing Grantors' Property, as was previously communicate to City's Ashland Parks & Recreation Commissioners during April of 2024; and
- G. **WHEREAS**, Grantors thereafter formally confirmed in writing their intent to offer dedication of a Public Trail Easement to the City as a binding condition of approval of Grantors' Application, thereby satisfying in substantial measure the public benefit criterion under AMC 18.5.5.050.A.3, and demonstrating that the public benefits of approving the variances requested in Grantors' Application substantially outweigh any potential negative impacts, and directly further the intent of City's Comprehensive Plan by permanently securing a crucial public trail connection identified on City's Trails Master Plan, which is incorporated into City's Comprehensive Plan;

NOW, THEREFORE, for valuable consideration in the form of City's conditional approval of Grantors' Application, and for the public benefit described above, the parties agree as follows.

AGREEMENT

- 1. Grant of Easement.** Grantors hereby grant to Grantee (the City of Ashland), its successors and assigns, a perpetual, non-exclusive easement in gross for public pedestrian recreational trail use (the "Trail Easement"), across and upon the Easement Area described herein. The Trail Easement shall be recorded against and shall run with title to the servient estate (Grantors' Property), and shall be binding on Grantors, and Grantors' successors, assigns, heirs, and all subsequent owners of Grantors' Property (the "Trail Easement"). Said Trail Easement shall be 10 feet in width, and shall run upon, over, and across Grantor's Property generally parallel to the existing Talent Irrigation District canal which traverses Grantors' Property in the location of the existing "Ditch Trail". The legal description of the Easement Area setting forth the specific location and boundaries of the Trail Easement granted herein is attached hereto as **EXHIBIT A** (the "Easement Area").
- 2. Purpose and Use.** The Trail Easement is granted solely for purposes of public pedestrian access, walking, hiking, running and similar recreational use and enjoyment by the general public. The Trail Easement expressly does not grant any rights for vehicular or motorized use or uses other than public pedestrian use of the Trail Easement within the Easement Area described in attached EXHIBIT A.
- 3. Grantee's Rights.** Grantee shall have the right to construct, reconstruct, install, use, operate, inspect, maintain, repair, remove and replace a hiking trail for use by the public within the Easement Area. Grantee shall have the right to install any reasonable trail signage or fencing within the Easement Area.
- 4. Grantors' Rights.** Grantors retain the right to use and enjoy the Easement Area in any manner that does not unreasonably interfere with or impair the public's right to use and enjoy the Trail Easement established herein. Grantors shall not build or erect any structure within the Easement Area without the prior written consent of Grantee.
- 5. Maintenance and Repair.** Grantee shall be solely responsible for the reasonable maintenance and repair of the Easement Area, including maintenance necessary to ensure safe public use.
- 6. Liability and Indemnification.** To the maximum extent permitted by the Oregon Constitution and the City of Ashland's Charter, Grantee shall, within the limits of the Oregon Tort Claims Act, indemnify and defend Grantors against any liability or damage to persons or property arising from the public's use of the Trail Easement under this agreement. Grantee shall not be required to indemnify

Grantors for any liability arising from the wrongful acts of Grantors or the employees or agents of Grantors.

7. Perpetual Easement. This agreement shall be perpetual in duration and shall run with the land. It shall be binding upon Grantee and Grantors and their successors, assigns; including any heirs, and personal representatives in title to Grantors' Property.

8. Prior Encumbrances. This Easement is granted subject to all prior existing easements and other encumbrances of record affecting title to Grantors' Property.

IN WITNESS WHEREOF, Grantors and Grantee have executed this agreement as of the date first set forth above.

GRANTORS:

Bryan DeBoer

Stephanie DeBoer

GRANTEE (City of Ashland):

By: _____

Title: _____

Approved as to Form:

Christian E. Hearn
Davis Hearn Anderson & Selvig, PC
Of Attorneys for Grantors

Douglas M. McGeary
City of Ashland Legal Department
Of Attorneys for Grantee

[NOTARY ACKNOWLEDGEMENTS ON FOLLOWING PAGE]

STATE OF OREGON)
) §§
County of Jackson)

On this _____ day of _____, 202____, appeared before me the above-named Bryan DeBoer and Stephanie DeBoer (“Grantors”), who at that time acknowledged their execution of the foregoing instrument as their voluntary act and deed.

WITNESS MY HAND AND OFFICIAL SEAL:

Notary Public for Oregon
My Commission Expires: _____

STATE OF OREGON)
) §§
County of Jackson)

On the _____ day of _____, 202____, before me appeared _____ as the authorized representative of the City of Ashland (“Grantee”), at that time acknowledging their execution of the foregoing instrument on behalf of said municipal corporation as their authorized and voluntary act and deed.

WITNESS MY HAND AND OFFICIAL SEAL:

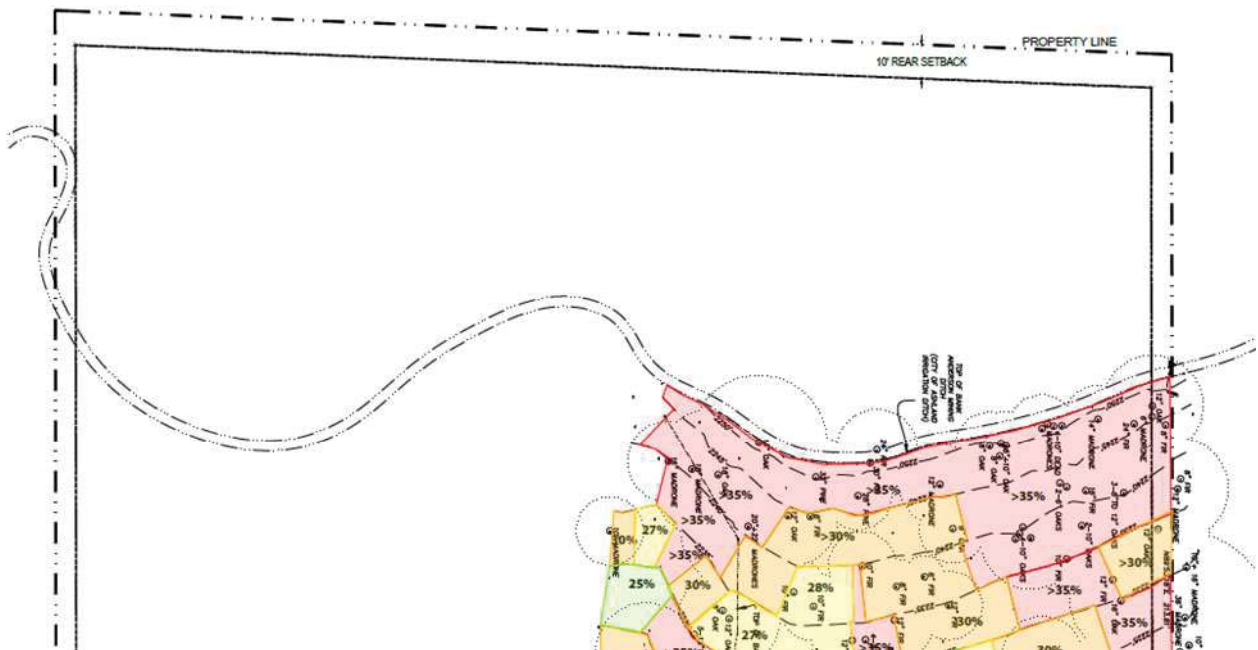
Notary Public for Oregon
My Commission Expires: _____

EXHIBIT A

("EASEMENT AREA")

[PROVISIONAL PLACEHOLDER]

[Note: Prior to recording, this provisional placeholder exhibit will be replaced with a final Exhibit A providing a legal description of the centerline of the 10-foot-wide "Easement Area" traversing Grantors' Tax Lot 1800. Said centerline legal description will be prepared by a licensed professional land surveyor, and will include the traveled surface of the existing hiking trail along the TID canal, which generally traverses Grantor's Property from East-West, as provisionally depicted in the diagram provided below.]



94-04302
~~94-03306~~

5
LA 57820
19

55
28

AFTER RECORDING RETURN TO:

Carlyle F. Stout III
Attorney at Law
215 Laurel Street
Medford, OR 97501

THIS INSTRUMENT BEING RE-RECORDED TO CORRECT SCRIVENER'S
ERROR IN LEGAL DESCRIPTION

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is made by and between JAMES WARREN STRAUS and SHEILA STRAUS, husband and wife, of Ashland, Jackson County, Oregon, hereinafter "Grantor", and ADELAIDE BROWN and SANDRA L. RAPP, of Ashland, Jackson County, Oregon, hereinafter "Grantee". The effective date of this agreement is the last date of the signature placed hereon of either Grantor or Grantee.

RECITALS:

WHEREAS, Grantor is the owner of certain real property located in Jackson County, Oregon, more particularly described on Exhibit "A" attached hereto and by this reference incorporated herein, commonly known as Jackson County Assessor's Map No. 39 1E 08DA, Tax Lot 700, Tax Lot 702 and Tax Lot 1200;

WHEREAS, Grantee is the owner of certain real property located in Jackson County, Oregon, more particularly described on Exhibit "B" attached hereto and by this reference incorporated herein, commonly known as Jackson County Assessor's Map No. 39 1E 08DA, Tax Lot 1800;

WHEREAS, Grantee does not have legal access to Tax Lot 1800 and WHEREAS Tax Lot 1800 was previously partitioned by Grantee's predecessor in interest without obtaining the approval of the City of Ashland;

WHEREAS, there is an existing road which runs off of Granite Street to Tax Lot 1800 which was historically used as access to Grantee's property; WHEREAS, there used to be a dwelling unit on Tax Lot 1800 which was accessed by said existing road; WHEREAS, Grantee believes that Grantee has an easement for ingress and egress to Tax Lot 1800 by means of prescription and/or by necessity; WHEREAS, Grantor disputes Grantee's claim of easement;

WHEREAS, the parties would like to resolve all disputes and differences concerning said easement and to provide access to Grantee's property;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereby agree as follows:

1. Grantor hereby grants to Grantee, their heirs, successors and assigns, a perpetual non-exclusive easement over and across a strip of land 15 feet in width, being 7.5 feet on either side of the following described center line:

Commencing at the intersection of the south line of the North Half of the Northeast Quarter of the Southeast Quarter of Section 8, Township 39 South, Range 1 East of the Willamette Meridian in Jackson County, Oregon and the westerly right of way line of Granite Street, thence South 89°54'24" West, along said south line, 321.50 feet to the southwest corner of that tract described in instrument recorded as No. 70-00870, Official Records of said County and State, thence North 0°01'21" East, along the west line of said tract, 23.31 feet to a point on the center line of that road

-1- EASEMENT AGREEMENT

94-04302

~~94-03306~~

easement described in instrument recorded in Volume 346 Page 378 Deed Records of said County and State, being also the true point of beginning; thence North 89°57'30" West 360.53 feet to a point on the west line of that tract described in instrument recorded as No. 88-07671 said Official Records; thence South 89°54'24" West 10.00 feet; thence South 42°17'38" West 32.71 feet to a point on the south line of that tract described in instrument recorded in Volume 129 Page 479 Deed Records for said County and State and the point of terminus of the center line described herein.

A diagram of said easement is depicted on Exhibit "C" attached hereto and by this reference incorporated herein. If any subsequent surveys of Grantor or Grantee's property indicating a discrepancy, the parties agree to execute whatever documents are necessary to effect the intent of this agreement which is to provide a 15 foot wide easement for access and utilities to Grantee's property. By signing this agreement, the Grantee does not agree that the property line between their respective properties is the survey line as disclosed on Exhibit "C" prepared by Edwards Surveying of Medford, Oregon.

2. The purpose of said easement is for Ingress and egress and for the installation and maintenance of utilities. Said easement includes the right of Ingress and egress for public or private emergency vehicles and for construction of an improvement upon Grantee's property. Grantee shall be responsible for restoring the road to the same condition which existed prior to the installation of the utilities.

3. Grantee shall pay Grantor, as consideration for this easement, the sum of Five Thousand Dollars (\$5,000) upon execution of this agreement, receipt of which is hereby acknowledged.

4. Grantor shall pave the easement area described above in Paragraph 1 to the specifications of the City of Ashland, Oregon, within 90 days of written notice of request to do the same by Grantee. Grantee shall be responsible for the completion of construction of the road from its present terminus to the end of the easement where it accesses Grantee's property and this construction must be done before Grantor has the obligation to pave the easement area as set forth in this paragraph.

5. If Grantor installs a water line on their property, then Grantor shall give written notice to Grantee prior to said installation and Grantee shall have the option to increase the size of the water line so that it will also serve Grantee's property and improvements thereon; however, Grantee shall be responsible and pay for any price increase concerning the same. Grantee shall notify Grantor of election of said option by giving Grantor written notice within twenty (20) days after receipt of Grantor's notice otherwise this option is waived.

6. Except as set forth herein, the maintenance and repair of the easement shall be pursuant to ORS 105.170 through 105.185 as said statute existed on the date of recording of this easement.

7. This easement is appurtenant to Grantee's property described on Exhibit "B" hereto, which is the dominant estate. This easement burdens Grantor's property described on Exhibit "A" hereto, which is the servient estate.

8. Any notice, whether required or not to be given under this agreement, shall be deemed given when actually delivered or when mailed to either party at their respective addresses given below if deposited in the U. S. Mails, Certified Mail, Return Receipt Requested or at any other address given by either party pursuant to this section.

Grantor: James Warren Straus and Sheila Straus
223 Granite
Ashland, OR 97520

Grantee: Adelaide Brown and Sandra L. Rapp
P. O. Box 131
Ashland, OR 97520

-2- EASEMENT AGREEMENT

94-04302

~~94-03306~~

9. In the event either party takes any action, judicial or otherwise, concerning this agreement or any of its terms, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including but not limited to costs incurred in searching records and taking and transcription of depositions, the cost of title reports, surveyors reports and foreclosure reports and attorney fees, whether incurred in a suit or action or appeal from a judgment or decree or in connection with non-judicial action.

10. No waiver of a breach of any covenant, term or condition of this agreement shall be a waiver of any other or subsequent breach of the same, or any other term, covenant, or condition, or as a waiver of the term, covenant or condition itself; nor shall such waiver require any notice of any kind to be given to reinstate the defaulted term, covenant or condition, or to make time and strict performance again of the essence.

11. The paragraph headings herein are intended only as a reference index and shall not control the interpretation or limit or enlarge the meaning of any term of this agreement. In construing this agreement it is understood that Seller and/or Buyer may be more than one person or entity and if the context so requires, the singular shall mean and include the plural, the masculine shall mean and include the feminine and neuter and all grammatical changes shall be made, implied and construed to apply equally to corporations, partnerships and individuals.

12. This easement applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year indicated below.

DATED: 1/21/94 James Warren Straus
James Warren Straus

DATED: 1-21-94 Sheila Straus
Sheila Straus

"Grantor"

DATED: 1-21-94 Adelaide Brown
Adelaide Brown

DATED: 1-21-94 Sandra L. Rapp
Sandra L. Rapp

"Grantee"

-3- EASEMENT AGREEMENT

94-04302
94-03306

STATE OF OREGON)
)ss.
County of Jackson)



Personally appeared the within named James Warren Straus and Sheila Straus and acknowledged the foregoing instrument to be their voluntary act and deed. Before me this 21 day of January, 1994.

Cynthia Skinner
Notary Public for Oregon
My Commission Expires: 9-23-97

STATE OF OREGON)
)ss.
County of Jackson)



Personally appeared the within named Adelaide Brown and Sandra L. Rapp and acknowledged the foregoing instrument to be their voluntary act and deed. Before me this 21 day of January, 1994.

Cynthia Skinner
Notary Public for Oregon
My Commission Expires: 9-23-97

-4- EASEMENT AGREEMENT

94-04302

~~94-03306~~

Commencing at the east quarter corner of Section 8, Township 39 South, Range 1 East, Willamette Meridian, Jackson County, Oregon; thence South 660 feet; thence West 370.9 feet, more or less, to a point on the westerly line of Granite Street; thence North 05°30' West, along said westerly line, 120.0 feet, more or less, to the southeast corner of that tract described in instrument recorded in Volume 95, page 238, of the Deed Records of Jackson County, Oregon; thence West, along the south line of said tract, 361 feet, more or less, to the southwest corner thereof; thence North, along the west line of said tract, 209 feet, more or less, to the most northerly northeast corner of tract described in instrument recorded in Volume 129, page 479, said Deed Records; thence West, along said north line, 311.1 feet, to a 5/8" steel pin at the northwest corner of tract described in instrument recorded as No. 88-07671 of the Official Records of Jackson County, Oregon and the true point of beginning; thence North 89°54'24" West (Record West), along the north line of said tract described in Volume 129, page 479, said Deed Records, 220.0 feet; to a 5/8" steel pin at the northwest corner thereof; thence South 0°01'21" West 328.61 feet (Record South 327 feet) along the westerly line of said tract, to a 5/8" steel pin at the southwest corner thereof; thence East along the south line of said tract, 339.51 feet, more or less, to a 5/8" steel pin at the most southwesterly corner of that tract described in instrument recorded as No. 88-07671 of said Official Records, being a point on the westerly line of that easement road described in instrument recorded in Volume 346 page 378 of said Deed Records; thence North 19°30'00" East, along said westerly line, 21.23 feet, to a 5/8" steel pin; thence South 89°54'24" West, along the southerly line of said tract described in instrument recorded as No. 88-07671 said Official Records, 126.59 feet to a 5/8" steel pin at the west southwest corner thereof; thence North 0°01'21" East along the west line of said tract 308.61 feet to the true point of beginning.

(Code 5-1, Account #1-06068-1, Map #391E08DA, Tax Lot #700)

~~Commencing~~ at the east quarter corner of Section 8, Township 39 South, Range 1 East, of the Willamette Meridian in Jackson County, Oregon, thence South 660 feet, thence West 370.9 feet, more or less, to a point on the westerly line of Granite Street, thence North 05°30' West, along said westerly line, 120.0 feet, more or less, to the southeast corner of that tract described in instrument recorded in Volume 95 page 238, of the Deed Records of Jackson County, Oregon, thence West, along the south line of said tract, 361 feet, more or less, to the southwest corner thereof, thence North, along the west line of said tract, 209 feet, more or less, to the most northerly northeast corner of tract described in instrument recorded in Volume 129 page 479, said Deed Records, thence West, along said north line, 311.1 feet to a 5/8" steel pin, thence South 0°01'21" West 308.61 feet (Record South 307 feet, more or less) to a 5/8" steel pin, thence North 89°54'24" East 126.59 feet (Record easterly 130 feet, more or less) to a 5/8" steel pin on the westerly line of that easement road described in instrument recorded in Volume 346 page 378 said Deed Records, thence South 19°30'00" West, along said westerly line 21.23 feet to a 5/8" steel pin on the south line of said tract described in Volume 129 page 479, said Deed Records; thence East, along said south line, to the southwest corner of that tract described in instrument recorded as No. 70-00870 of the Official Records of Jackson County, Oregon, thence North, along the west line of said tract 79.54 feet to the northwest corner thereof, thence East, along the north line of said tract and the north line of that tract described in instrument recorded as No. 78-09163 said Official Records, 311.91 feet, more or less, to the westerly line of Granite Street, thence North 05°30' West, along said westerly line, to the true point of beginning.

~~1-06070-2~~

(Code 5-1, Account #1-06068-1, Map #391E08DA, Tax Lot #700)
(Code 5-1, Account #1-06074-5, Map #391E08DA, Tax Lot #1200)

EXHIBIT A

94-04302

~~94-03506~~

Beginning at a point on the west line of the Northeast Quarter of the Southeast Quarter of Section 8, Township 39 South, Range 1 East, of the Willamette Meridian in Jackson County, Oregon, which point is 10 chains South and 20.15 chains West of the east quarter corner of said Section, thence East 297 feet, thence South 25 feet, thence West 163 feet, thence South 301.04 feet, thence West 135 feet, thence North 326.04 feet to the point of beginning.

(Code 5-1, Account #1-006081-8, Map #391ESDA, Tax Lot #1800)

6
EXHIBIT 6

0001/0001

339.5F
APPDIX. EAST
TL 1800 pgs
Dave Edwards
sketch

5. 0° 01' 21" W.

Jackson County, Oregon
Recorded
OFFICIAL RECORDS

2:10 JAN 26 1994 P.M.

2:10 JAN 26 1994 / M.
KATHLEEN S. BECKETT
CLERK and RECORDER
By Kathleen S. Beckett Deputy

Doc. No. 88-07671

Jackson County, Oregon
Recorded
OFFICIAL RECORDS

2:10 FEB 02 1994 P.M.

KATHLEEN S. BECKETT
CLERK and RECORDER

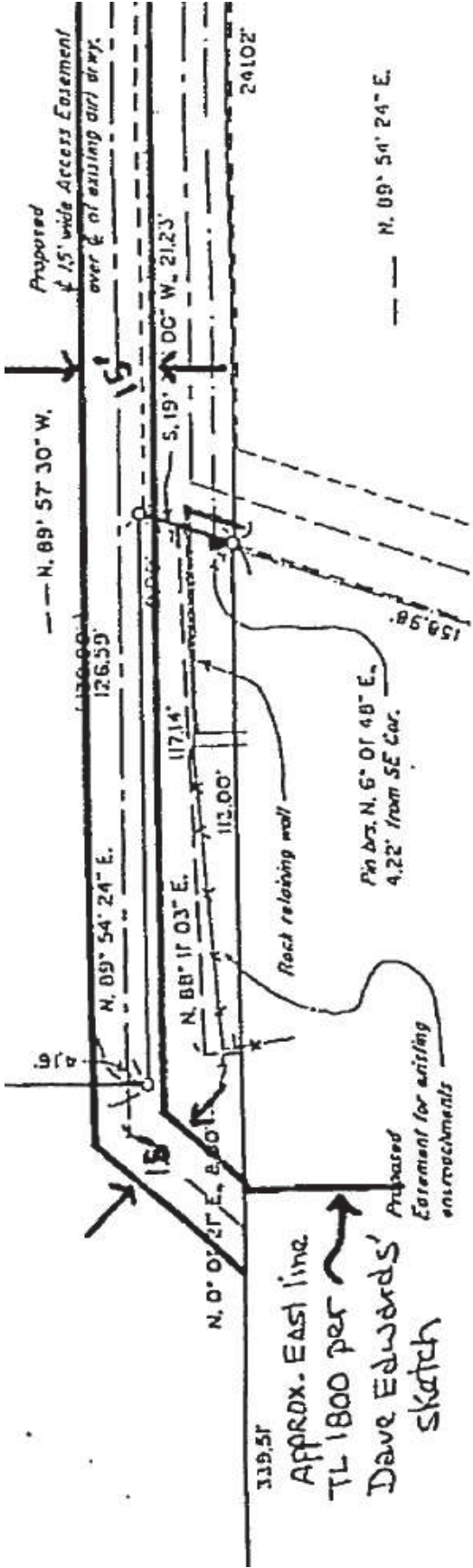
By Mary Ann Sullivan Deputy

Fl. 3/4" diam. 1 p/yr
par. S.N. 3623
6472, N. 13" 26" 32" W
from camp. pos.

EXHIBIT C

Submitted by Applicant in Response to New Evidence Submitted by Opponents on March 13, 2025 (Eisenberg); and March 18, 2025 (McLaughlin)

Screenshot of 15' wide Driveway Easement Area Depicted in Exhibit "C" to 01/21/1994 Easement Agreement between James & Shiela Straus (Grantors), and Adelaide Brown & Sandra Rapp (Grantees):



Doc. No. 80-03687

Easement for existing and proposed road

Center line of access easement

552.30' ——— 120.00'

N. 44° 22" E.

N. 89° 54' 24" E.

126.59'

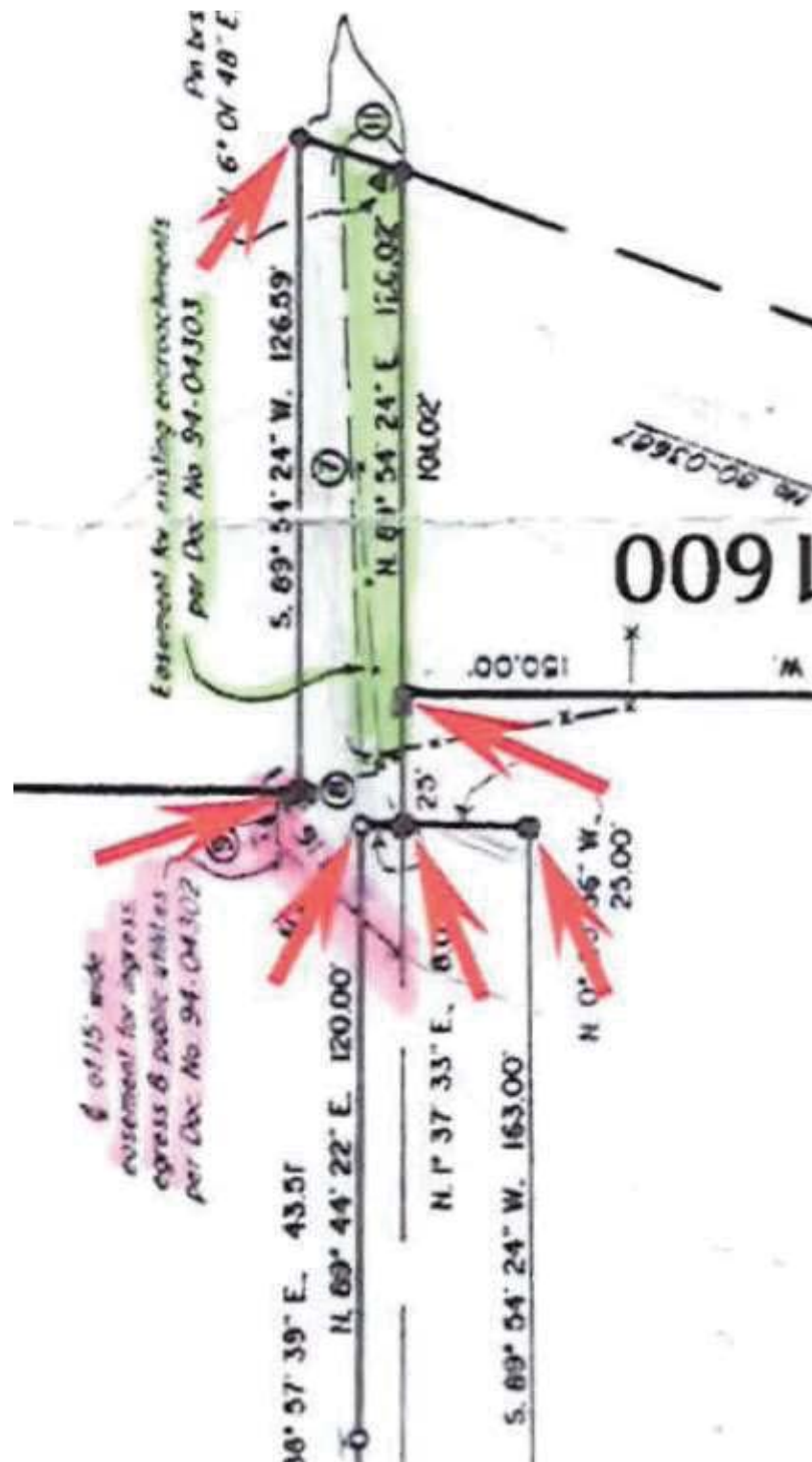
100.00'

25'

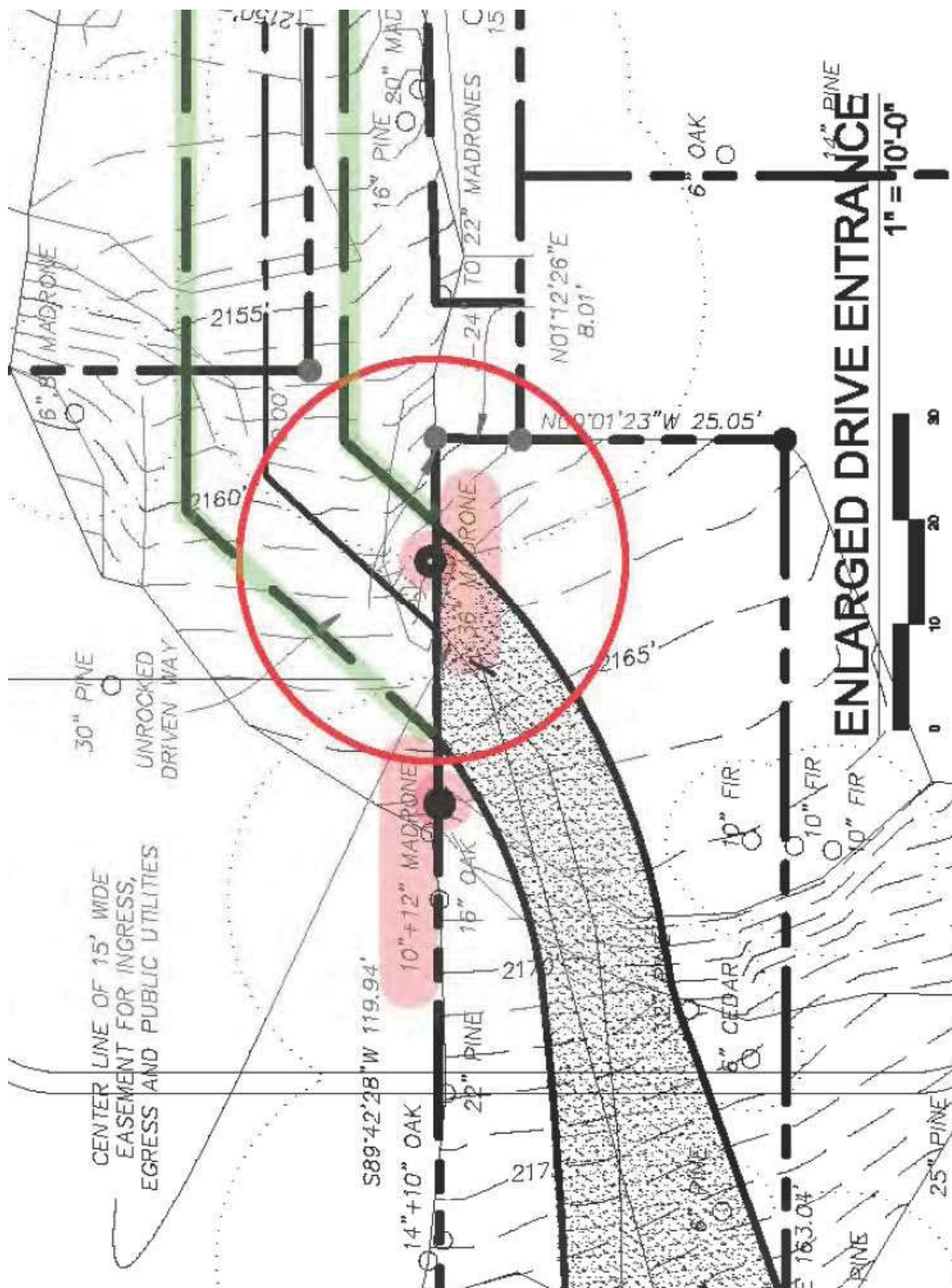
163.00'

N. 0° 05' 36" W.

Screenshot of Map Submitted by Pacific Crest Surveying on 03/13/2025 (Eisenberg) and 03/18/2025 (McLaughlin):



Screenshot from Record Showing Madrone Obstructing Applicant's Recorded Access Easement:



PUBLIC COMMENTS

Public Comments Received by Parties-of-Record Between 03-11 & 03-18

Michael Sullivan

From: gshaff@gmail.com
Sent: Tuesday, March 11, 2025 6:45 PM
To: Planning Commission - Public Testimony
Subject: HEARINGS PLANNING ACTION: PA-T2-2024-00053 - Variance

Follow Up Flag: Follow up
Flag Status: Flagged

[EXTERNAL SENDER]

TO: Planning Commission

A variance to the driveway grade standard should not be granted.

The code's driveway standards are designed to ensure safe, reasonable access to all developed properties in the city. Allowing a variance to the standard would create a hazardous area within what is already recognized as a wildfire hazard area. Excessive grades, together with the narrow width of the proposed driveway poses risks for emergency personnel and equipment during a wildfire or at times when there is snow accumulation.

3.

Criteria #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.

Finding:

The proposal's benefits (a large residential structure built in a recognized wildfire hazard area with inadequate access) do not exceed the risks posed to the community in the event that a fire started on the subject property and subsequently destroys nearby homes or an entire areas of the community.

Criteria 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.

Finding:

It is recognized that the driveway (i.e. flag lot) was not created by the applicant. However, the previous property owner or owners created the conditions that the applicant now hopes the city will ignore. The flag lot and its steep grade were recognized and were created with full knowledge that access via the flag lot was not practical but, instead, satisfied a dubious requirement that all lots have "frontage" on a public road.

The lot in question was created by individuals that were fully aware of the property's constraints. They created the lot and its flag anyway.

Allowing a "new" owner to develop an "undevelopable" lot simply because they didn't have an active role in creating the tax lot is inconsistent with the purpose of the code. Imagine, if there were illegal structures built in the city and then subsequently sold to another property owner who then sought a "variance" from the city to use the "illegal" structure even though it was inconsistent with the code. It wouldn't be permitted.

Conclusion Finding:

The applicant knew or should have known that the property was impossible to develop when they purchased the subject property. Their justification for a variance is inadequate to meet the requirements of the code.

Gary Shaff

Ashland

Michael Sullivan

From: noreply@civicplus.com
Sent: Tuesday, March 11, 2025 5:24 PM
To: planning
Subject: Online Form Submittal: Contact Planning Commission

Follow Up Flag: Follow up
Flag Status: Flagged

[EXTERNAL SENDER]

Contact Planning Commission

Full Name	Douglas Smith
Phone	541-941-2874
Email Address	dougzmail7@gmail.com
Subject	231 Granite Street Proposal
Type of Testimony	Written
Message	I am a resident of Ashland since 1977, when my wife and I rented and then purchased a residence on lower Granite Street. I'm writing to you with concerns regarding two properties on Granite Street, one was approved several years ago and the other is being discussed in tonight's Planning Commission. The first one is 329 Granite and was approved by Planning and then City Council. I discussed the project with the Mayor online and a City Planner who were helpful. At this point, I would like to make you aware of similarities of that property (329 Granite) which was approved with multiple variances and then multiple "modifications" - and then additional modifications-to-the-modifications which had to be extended by the Planning Department to complete that project. All those extreme modifications had to occur through the Planning Department staff without public or Council/Commission input after the original project application was approved. Btw - the City Council only examined - in person - the actual slope of the property a month AFTER they approved the 329 proposal. (I included photos of the slope and driveway and have more written concerns regarding that

project if interested).

This new project at 231 Granite is similar in slope and would disrupt hiking trails, creating extreme excavation and habitat loss which are some of our best city assets for common outdoor enjoyment. Aside from that, thousands (yes, thousands) of dump truck trips such as those that occurred with the 329 Granite project, will bring the mountain (excavation) down Granite and High Streets (and thousands more carried gravel and cement up to the project) creating noise, vibration, and traffic hazards. This, on a street which supports many pedestrians (tourists included), bike riders, driveways, etc.

Thank you for any attention you will give to my concerns and I would be happy to discuss it further.

Douglas Smith
dougzmail7@gmail.com
Cell: 541-941-2874

Attachment 1	Land329 Granite-4436.jpg
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Attachment 2	Land329 Granite-4444-1.jpg
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Attachment 3	Land329 Granite-4501.jpg
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Email not displaying correctly? [View it in your browser.](#)









Len and Karen Eisenberg
223 Granite Street
Ashland, Oregon. 97520

March 13, 2025

Additional written comments

RE: Planning Action PA-T2-2024-00053
Subject Property. 231 Granite Street

Community Development Department
Ashland Planning Commission
51 Winburn Way
Ashland, Oregon. 97520

Each new information item below is preceded by a summary of the relevant discussion from the March 11, 2025 Public Forum.

Chapter 18.3.10 Physical and Environmental Constraints > 18.3.10.090 Development.
Standard for Hillside Lands - Section A General Requirements Subhead 1 Buildable Area.

Applicant states "There are no slopes greater than 35 percent within the areas of proposed development". This is contradicted by the Site Slope Analysis Map 1 (pg 33 of proposal pdf) which shows four significant areas of slope greater than 35% within the proposed development envelope. Development on slopes >35% requires a variance. No request for such a variance was submitted by the applicant.

Development Standards for Hillside Lands 18.3.10.090 requires satisfaction of all four conditions from 18.3.10.090 H to grant a variance to develop hillside lands >35% slope.

New Information

Measurement of the areas of slope >35% within applicant's development envelope, using applicant's Site Slope Analysis Map 1 (pg 33 of the pdf), determined a total of about 3327 square feet. This represents about 18% of the 18,738 square foot proposed development area.

There are four areas of slope >35% within the proposed development area. A central area is about 880 square feet. The northern area is about 832 square feet. A southern area is about 681 square feet, and a small western area is about 54 square feet.

Chapter 18.3.10 Physical and Environmental Constraints > 18.3.10.090 Development.
Standard for Hillside Lands - Section D Tree Conservation and Removal

Tree Removal

Applicant states that "...of the 75 trees in the vicinity of the area of disturbance, four (4) significant trees are proposed for removal,..." This statement is incorrect.

There are 5. The fifth tree is a 30" dbh madrone near the northeast corner of the flag portion of the lot, and is not plotted on any of the tree survey or tree removal plan maps. This 30"dbh madrone, and two trees that are slated for removal on the Tree Removal map L0.3 (pg 28 of the pdf), (a 16" oak and a two stem 10" and 12"), all appear to straddle the property line between

TL 1800 and TL700. These trees are thus half owned by the owners of TL 700, Kent and Pamela McLaughlin. These trees cannot be removed without the consent of the McLaughlins.

New Information

Pacific Crest Surveying the morning of March 11 determined that the large madrone at the northeast corner of the flag portion of TL 1800 was as large as 32" dbh, and confirmed that it, and a 16" oak and a two-stem 10-" and 12" madrone slated for removal in the applicant's proposal, all straddle the property line between TL 1800 and TL 700.

Attached is a letter from Pacific Crest Surveying confirming their assessment.

The Planning Commissioners had several questions about the distance between the east termination of the flag portion of TL 1800 and the head of the existing driveway, and how that was reflected in applicant's variance request on hillside driveway standards from AMC 18.5.3.060F.

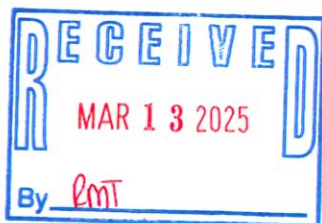
New Information

The distance from the northeast corner of the flag portion of TL 1800 to the head of the existing driveway, which is where the driveway turns into the garage area of TL 702, is about 30 feet.

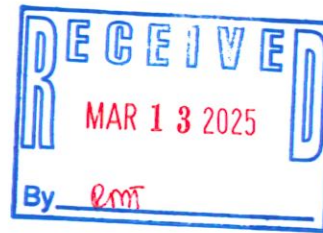
The morning of March 11, Curt Chappell, registered surveyor of Pacific Crest Surveying located, flagged and staked several relevant survey pins that mark property corners in that area. A portion of partition plat no. P-43-1996 attached is annotated to show which property corners are currently flagged. Commissioners and staff may want to revisit the property to help them better assess the issue.

Len Eisenberg Karen Eisenberg

Len and Karen Eisenberg
223 Granite Street
Ashland, Oregon. 97520
evogeneao@gmail.com



City of Ashland Planning Division,
51 Winburn Way
Ashland, OR 97520



RE: PLANNING ACTION: PA-T2-2024-00053 – 231 Granite Avenue

Planning Commission Members,

On March 11, 2025, we surveyed and established the boundary line common to the Deboer parcel (Tax Lot 391E8DA 1800) and the McLaughlin parcel (Tax Lot 391E8DA 700) and the trees at the proposed driveway access point.

Our survey determined that the trunks of the 10" and 12" Pacific Madrone, and the 16" Oregon White Oak, tree numbers 68 and 71 respectively, as on Sheet L0.3 (Tree Removal Plan) straddle said common boundary line.

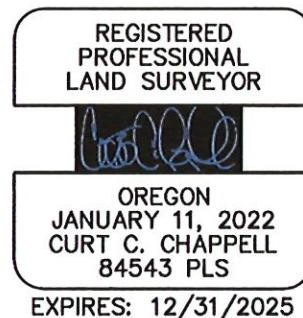
Additionally, a 32" Madrone not shown on the Tree Removal Plan, which is in the vicinity of the proposed driveway access point, straddles said common boundary line.

Regards,

A handwritten signature in blue ink, appearing to read "Curt Chappell".

Curt Chappell, President – Pacific Crest Surveying
PLS 84543

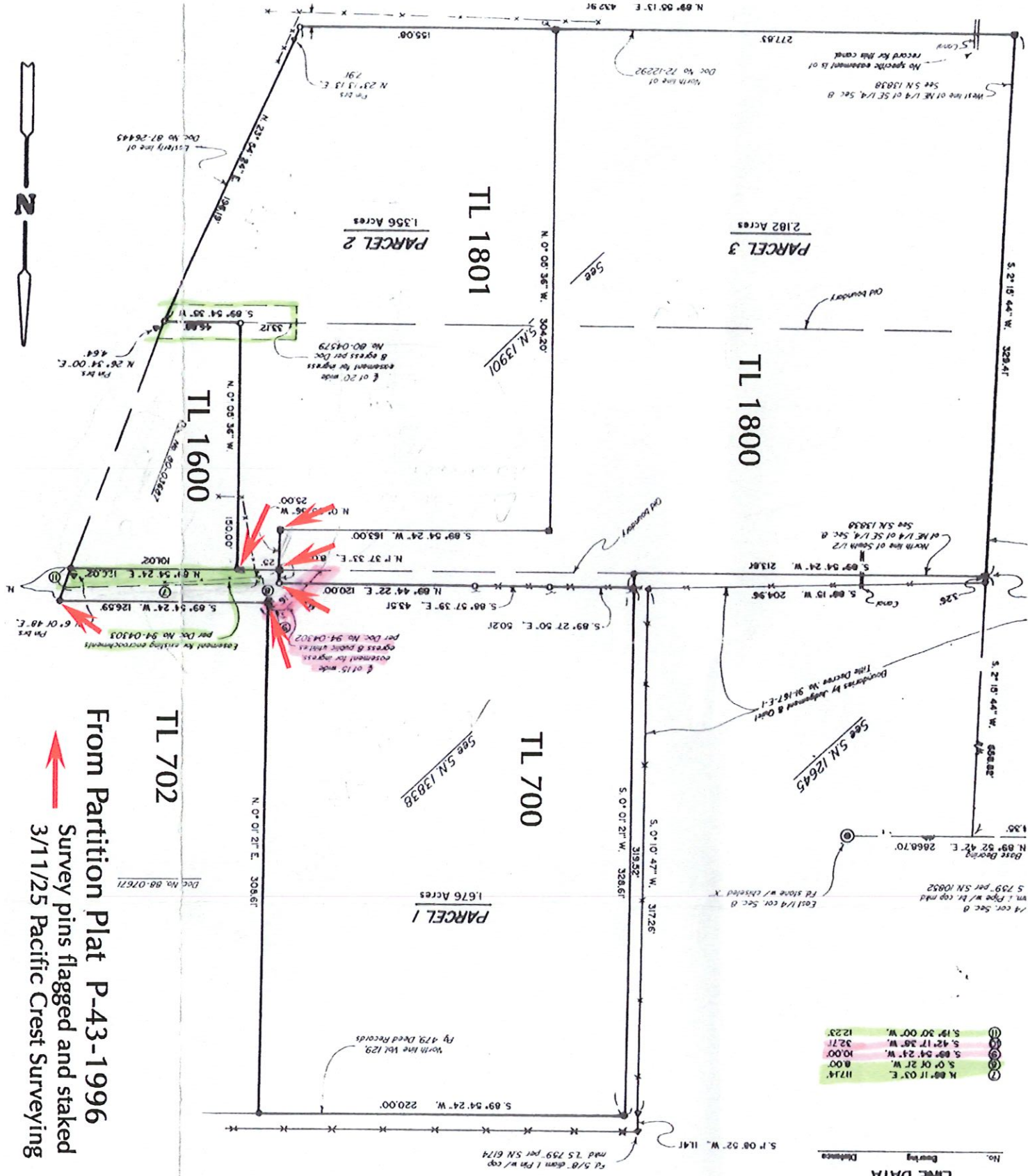
131 Helman Street
Ashland, OR 97520
408.375.5220



⑦	N. 89° 11' 03" E.	117.14'
⑧	S. 0° 02' 27" W.	8.00'
⑨	S. 89° 54' 24" E.	10.00'
⑩	S. 42° 17' 30" W.	32.71'
⑪	S. 19° 30' 00" W.	12.23'

No. Bearing Distance

RECEIVED
MAR 13 2025
By RMT



From Partition Plat P-43-1996
Survey pins flagged and staked
3/11/25 Pacific Crest Surveying

PA

Michael Sullivan

From: noreply@civicplus.com
Sent: Thursday, March 13, 2025 7:31 AM
To: planning
Subject: Online Form Submittal: Contact Planning Commission

[EXTERNAL SENDER]

Contact Planning Commission

Full Name	Catherine M. Ellison MD
Phone	5037807420
Email Address	cmellison@comcast.net
Subject	DeBoers and The Ditch Trail, Ashland
Type of Testimony	Written
Message	Dear Council: I had submitted a comment earlier about the construction planned by the DeBoer family. I had not realized that the project made a threat to the Ditch Trail system. If indeed the DeBoer family provides for an easement through their project to maintain the integrity of The Trail then my concerns lessen greatly. There are sections of this unique, fantastic and Historic trail which are currently blocked from public access to the dismay of many of us. We are of the opinion that the city or the park system should be acquiring this blocked land and opening up more miles of the Ditch Trail. (Perhaps the DeBoer family with their love for our trail system would be willing to help with other property owners improving & restoring our historic trail!!!!). In any case the City of Bellingham Washington has done just that, acquiring land where the treasured trail system crosses it. Thankyou for taking my comments. I feel so very strongly about this unique & historic trail system (The Ditch). Friends from out of town find it fascinating & and asset to what makes our town so special!!!! -Catherine Ellison
Attachment 1	<i>Field not completed.</i>
Attachment 2	<i>Field not completed.</i>
Attachment 3	<i>Field not completed.</i>

Michael Sullivan

From: David Oursler <paul.oursler@gmail.com>
Sent: Friday, March 14, 2025 10:14 AM
To: planning
Subject: Planning Actions

Some people who received this message don't often get email from paul.oursler@gmail.com. [Learn why this is important](#)

[EXTERNAL SENDER]

Dear Mr. Goldman-

I request that you help me find the answers to the following questions:

At the 3/11/24 meeting, a Planning Commission member stated that easements could not be compelled at the time of Planning actions.

Please see Planning Action #90-008 (regarding 252 Strawberry Lane) signed 2/22/90 that required "That a granting of a 10' easement for public pedestrian access be granted along the irrigation ditch along the property. Such easement to be shown on the final survey plat." This was a "condition" of the Planning Commission's granting that Planning action.

- When the law or policy changed?
- Was there a legal finding requiring this?
- Are prior easements which were required as part of planning actions void?

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- Is it the policy of the Planning Department to provide exceptions to the ordinances based on the characteristics of the applicant?
- Is there any explicit statement to the contrary in Planning rules?

In questions to the applicant and his staff by members of the Planning Commission, it was evident that the Planning Commission might be being purposely misled on issues including the actual slopes of the property, the placement and type of the trees involved, the actual size of building walls, and the length and slope of the driveway.

- What mechanisms are in place to confirm the information provided by an applicant?
- Are there any consequences of providing inaccurate or misleading information to the Planning Division or Planning Commission?
- Once building starts, are there any consequences for violating the plan?
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-Is this correct?

-Is the Planning Division and the Planning Commission obliged to provide variances if variances are required to build?

Thanks for your answers.

Sincerely,

David P. Oursler

252 Strawberry Lane

Ashland OR 97520

paul.oursler@gmail.com

Michael Sullivan

From: Brandon Goldman
Sent: Friday, March 14, 2025 3:20 PM
To: David Oursler
Cc: planning
Subject: 231 Granite Street - Questions and Response

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Mr. Ousler,

Thank you for your inquiry regarding the application currently in process for 231 Granite Street. As you are a party of record who testified before the Planning Commission, and since your inquiry was received after the close of the public hearing but during the seven-day period in which the record remained open for additional written information, it will be included in the public record for this planning action. Likewise, my response will be documented as part of the official record and incorporated into the materials submitted to ensure full transparency and accessibility.

Requirement for Easements and the Dolan v. Tigard Nexus Test

Regarding your question about the requirement for pedestrian easements, a partition or subdivision—such as the three-lot partition that created 252 Strawberry Lane—was and would be subject to requirements ensuring adequate transportation access to and through the property, which can include pedestrian access. The 1990 Planning Action PA#90-008 required a 10-foot public pedestrian access easement along the irrigation ditch as a condition of approval under the regulations in place at that time. Such a public easement once dedicated remains valid and “runs with the land” whenever the property ownership changes, the easement persists.

In 1994 U.S. Supreme Court ruling in *Dolan v. City of Tigard* established a “nexus and rough proportionality” test for government-imposed exactions, such as requiring public easements. This two-part test states that:

1. There must be a direct connection (nexus) between the development and the required dedication.
2. The required dedication must be roughly proportional to the impact created by the development.

A single-family home on an individual lot, such as the proposed development at 231 Granite Street, does not meet the second prong of this test, as it does not create a level of impact that would justify the requirement of a pedestrian easement. As a result, the City cannot require a trail easement in this case as no new lots are created and the development will not result in increases in traffic generated by pedestrians independent of the property owner’s use of their own property.

The City does require by code (<https://ashland.municipal.codes/LandUse/18.4.6.060.A>) public use improvements that are subdivided and creating new transportation impacts proportional to the dedication requested. As such the 1990 Planning Action you referenced which created multiple lots would even today trigger the evaluation of the dedication for a easement as proportional to the increased development potential.

However, the applicant/property owner has voluntarily proposed to dedicate a pedestrian access easement along the Talent Irrigation Ditch (TID) and is working with the Parks Department to facilitate this. Since the dedication is being made voluntarily, concerns about a potential violation of the Takings Clause of the Fifth Amendment and the *Dolan V Tigard* case are not applicable in this case.

Consideration of the Applicant’s Identity in Land Use Decisions

With regard to your question about the applicant's statements at the hearing regarding their community standing, the identity of the applicant is not a factor in the review of a land use application. All applications are reviewed exclusively based on the applicable land use criteria by both the Planning Division and the Planning Commission, and exceptions or variances are not granted based on the personal characteristics of an applicant. The City's review process ensures that decisions are made based on adopted standards rather than subjective considerations.

Accuracy of Information Provided in Applications

You also raised concerns about whether the Planning Commission was misled regarding aspects of the proposal, including slope calculations, tree impacts, structure size, and driveway dimensions. The record for this application includes scalable drawings, a slope analysis, and other detailed materials prepared by licensed architects and engineers. Additionally, the slope analysis submitted by the applicant aligns with the general topographic data available through the City's GIS system. In the event any party of record has additional information and expert testimony asserting the materials presented in the application are inaccurate, it would be incumbent upon them to submit such new information by 4:30on 3/18 to allow the Planning Commission to consider such information in their deliberations.

While members of the public may have differing interpretations of project details, all technical information submitted is reviewed by staff for consistency with adopted standards. If a project is approved by the Planning Commission, it is subject to conditions of approval, which are enforced through the permitting process.

Enforcement of Conditions and Compliance Monitoring

When a project is approved, compliance is ensured through the building permit review and inspection process. Specifically:

- Building permit review ensures that the submitted plans comply with the approved land use decision and conditions of approval prior to issuance of the permit.
- Prior to excavation and tree removal, staff conducts a site visit to verify compliance with tree protection fencing and removal requirements.
- Construction inspections confirm that the development is proceeding in accordance with the approved plans.
- If a developer does not comply with the approved plans or conditions, enforcement actions may be taken.

Reference to 329 Granite Street

Regarding your reference to the development at 329 Granite Street, that project encountered modifications to address site constraints during driveway construction, which necessitated an additional hearing before the Planning Commission to review and approve changes to the driveway configuration and its impact on hillside lands. However, that project is entirely separate from the proposal at 231 Granite Street and has no bearing on the current application. I

Buildability of the Lot and Variance Considerations

With regard to the buildability of the lot, 231 Granite Street is a legal lot of record, and the staff report and application materials address its eligibility for development under local and state land use laws. While the City cannot prohibit development on a legal lot of record, all development proposals must meet the applicable standards or obtain necessary variances.

Regarding variances, the criteria for approval are explicitly outlined in the land use ordinance, and it is the applicant's burden of proof to demonstrate that those criteria are met. Because each variance request is reviewed on a case-by-case basis, I cannot provide a general statement about any obligation of the Planning Division or Planning Commission to approve a variance. Instead, each request is evaluated on its own merits against the applicable standards.

Conclusion

Your questions raise important points about land use review, enforcement, and legal requirements for exactions such as trail easements. I appreciate the opportunity to clarify these matters as part of the public record for this application. Should you have any further questions, please feel free to reach out.
Sincerely,

Brandon Goldman, AICP
Director of Community Development

Pronouns: he, him, his



City of Ashland
Community Development

51 Winburn Way, Ashland, Oregon 97520
541-552-2076 | TTY 800.735.2900
Brandon.goldman@ashland.or.us

Online [ashland.or.us](https://www.ashland.or.us); social media (Facebook @CityOfAshlandOregon | Twitter @CityofAshland)

This email transmission is official business of the City of Ashland, and it is subject to Oregon Public Records Law for disclosure and retention. If you have received this message in error, please contact me at 541-552-2076.

From: April Lucas <april.lucas@ashland.or.us>
Sent: Friday, March 14, 2025 10:26 AM
To: Brandon Goldman <brandon.goldman@ashland.or.us>
Cc: planning <planning@ashland.or.us>
Subject: FW: Planning Actions

From: David Oursler <paul.oursler@gmail.com>
Sent: Friday, March 14, 2025 10:14 AM
To: planning <planning@ashland.or.us>
Subject: Planning Actions

Some people who received this message don't often get email from paul.oursler@gmail.com. [Learn why this is important](#)

[EXTERNAL SENDER]

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Thanks for your answers.

Sincerely,

David P. Oursler

252 Strawberry Lane
Ashland OR 97520
paul.oursler@gmail.com

Planning Action- City of Ashland Planning Commission

Kent McLaughlin <kbmc22@gmail.com>

Tue, Mar 18, 2025 at 10:11 AM

~~Draft~~ K.B.M.

Kent and Pamela McLaughlin
234 Strawberry Ln
Ashland, OR 97520



Subject Property: 231 Granite Street [PA-T2-2024-00053]

New Information

TREES ON OUR PROPERTY LINE:

Pacific Crest Surveying on the morning of March 11, 2025 determined that the 16" Oak and the two-stem 10" and 12" Madrone slated for removal on the Tree Removal map LO.3 {pg. 28, Tree Removal Plan} of the applicant, straddle the property/boundary line shared with the McLaughlin parcel {Tax Lot 391E8DA 700}. It also determined that "...a 32" dbh Madrone not shown on the Tree Removal Plan, which is in the vicinity of the proposed driveway access point, straddles said common boundary line."

We have given no consent for any trees on our boundary being removed. Nor have we even been approached. See accompanying letter and plat partition from Pacific Crest Surveying confirming their above assessment.

One other major concern is twofold in nature. First, there is another major [significant] Madrone, which *is* shown on the Tree Removal map LO.3 and is *not* slated for removal. However, it is also located very near to the proposed driveway access point. It, too, straddles the common boundary line, as do many of our other trees. None of these trees are to be removed without our consent.

Second, **ALUO 18.5.7.040 B.2.c** states that :

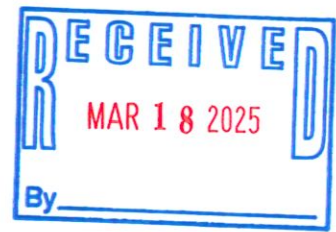
"Removal of the tree will not have a significant negative impact on the tree densities, sizes, canopies, and species diversity within 200 feet of the subject property. The City shall grant an exception to this criterion when alternatives to the tree removal have been considered and no reasonable alternative exists to allow the property to be used as permitted in the zone."

We do not see any evidence that alternatives have been explored. Perhaps the Applicant should have assessed the many difficulties of building on this site. Regardless, we do not want any of our trees removed or damaged "irreversibly" by either the proposed construction or the proposed driveway.

Respectfully,

Kent and Pamela McLaughlin

Kent B. McLaughlin
Pamela R. McLaughlin



City of Ashland Planning Division,
51 Winburn Way
Ashland, OR 97520



RE: PLANNING ACTION: PA-T2-2024-00053 – 231 Granite Avenue

Planning Commission Members,

On March 11, 2025, we surveyed and established the boundary line common to the Deboer parcel (Tax Lot 391E8DA 1800) and the McLaughlin parcel (Tax Lot 391E8DA 700) and the trees at the proposed driveway access point.

Our survey determined that the trunks of the 10" and 12" Pacific Madrone, and the 16" Oregon White Oak, tree numbers 68 and 71 respectively, as on Sheet L0.3 (Tree Removal Plan) straddle said common boundary line.

Additionally, a 32" Madrone not shown on the Tree Removal Plan, which is in the vicinity of the proposed driveway access point, straddles said common boundary line.

Regards,

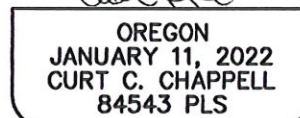
A handwritten signature in black ink, appearing to read "Curt Chappell".

Curt Chappell, President – Pacific Crest Surveying
PLS 84543

131 Helman Street
Ashland, OR 97520
408.375.5220



A handwritten signature in black ink, appearing to read "Curt Chappell".



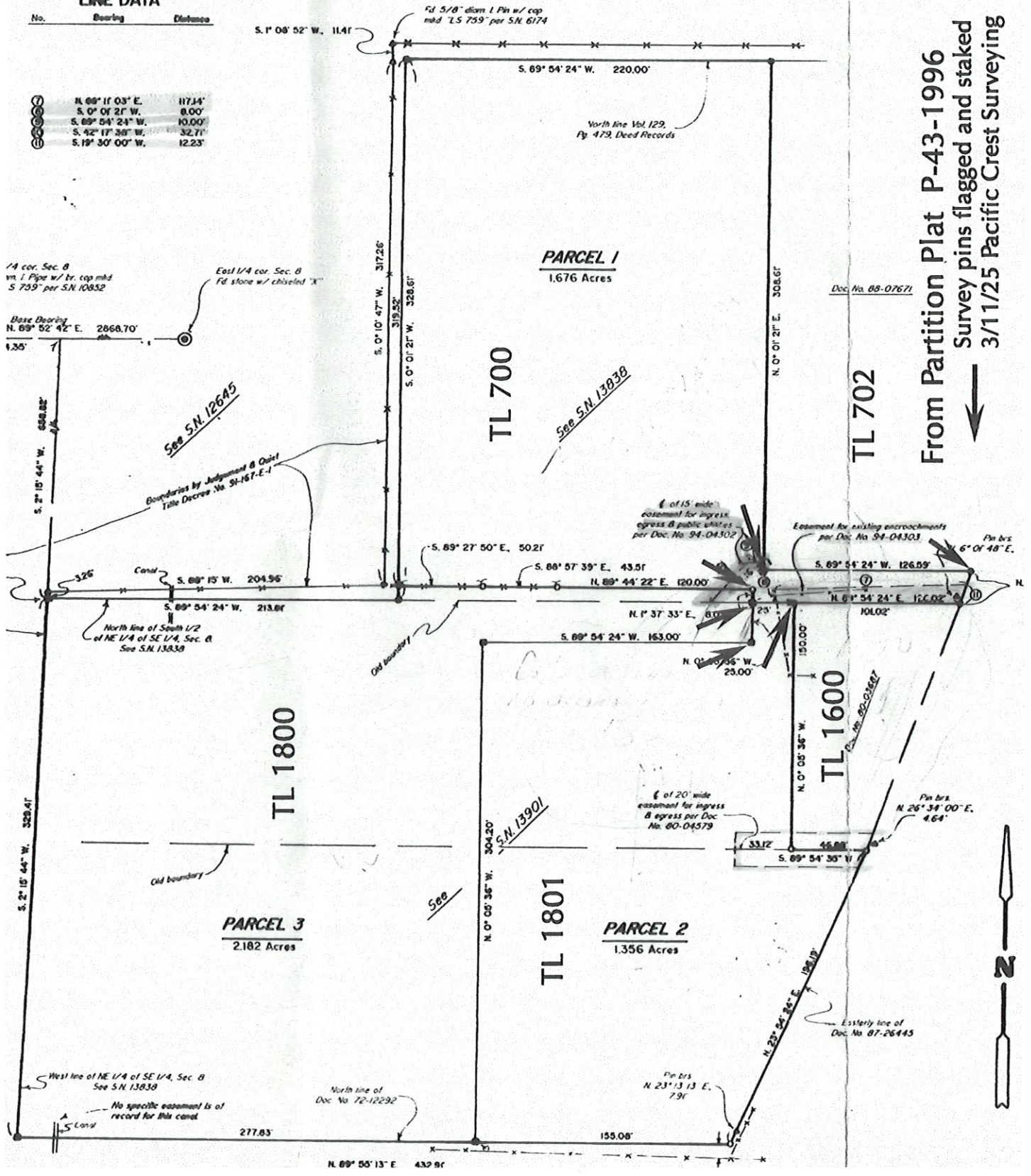
EXPIRES: 12/31/2025

PA

LINE DATA

No. Bearing Distance

1	N. 89° 11' 03" E.	117.34'
2	S. 0° 01' 21" W.	8.00'
3	S. 89° 54' 24" W.	10.00'
4	S. 42° 17' 38" W.	32.71'
5	S. 19° 30' 00" W.	12.23'



From Partition Plat P-43-1996
Survey pins flagged and staked
3/11/25 Pacific Crest Surveying

Ashland Planning Commission
51 Winburn Way
Ashland, OR 97520

March 17, 2025

Subject: Planning Action PA-T2-2024-00053 – 231 Granite Street

Dear Ashland Planning Commission,

If the Commission feels compelled to allow building, it should try to follow the intent of the ordinances even if it is unable to enforce the letter of the ordinances. The neighbors deserve the protection of the ordinances to the use of their properties.

One of the goals of the Hillside Ordinance was to limit houses with high front sides from looming over their neighbors and the landscape. Given that the proposed structure sits on land exceeding Hillside Ordinance slopes, it would be reasonable for the approved structure to be less tall than the Hillside Ordinance usually allows. The structure should be limited to a single story on the downhill side so that its overall facade exposure as seen downslope would be similar to a taller building on a less steep slope. Limiting the length of the structure could also limit the amount of steep slope it violates and would also allow for the preservation of more trees while still allowing the applicants to build on their land.

The driveway however presents an intractable problem. There is no way to make this access work in a way that is safe and fair. The access is so steep that even walking it would be difficult. (As a reference, we try to limit the slope of hiking trails to about 10% maximum.) Cars would slide out of control much of the year—a disaster waiting to happen. The rest of the time the neighbors would be subjected to the sound of cars straining and skidding to try to get up the hill feet from their home.

The best option is to deny the building permit and facilitate the offer that has been made to buy the land for open space (which would seem to prevent claims of harm). There are many uses for land other than building. The applicants bought a piece of land knowing its characteristics. This lot's characteristics have prevented it from being used as a home site for all of Ashland's history.

Respectfully,

David P. Oursler 
252 Strawberry Lane
Ashland, OR 97520

Michael Sullivan

From: noreply@civicplus.com
Sent: Tuesday, March 18, 2025 7:50 AM
To: planning
Subject: Online Form Submittal: Contact Planning Commission

Follow Up Flag: Follow up
Flag Status: Flagged

[EXTERNAL SENDER]

Contact Planning Commission

Full Name	Craig Anderson c/o Rogue Advocates
Phone	5414992844
Email Address	craig.ashland@gmail.com
Subject	PA-T2-2024-00053
Type of Testimony	Electronic (to appear electronically)
Message	The following are comments from Rogue Advocates on the above application: Rogue Advocates hereby references record submissions from others on substantive approval criteria as our own. Further, we understand that an easement for trail/recreation purposes is not part of any approval criteria for this application. However, since the applicant has offered such an easement as part of his public testimony, we will withdraw any objections to this application if the applicant is willing to make such an easement a condition of approval. Thank you for your consideration in this matter.
Attachment 1	<i>Field not completed.</i>
Attachment 2	<i>Field not completed.</i>
Attachment 3	<i>Field not completed.</i>

Email not displaying correctly? [View it in your browser.](#)

Sarah Sameh & Jay Reeck
230 Strawberry Lane
Ashland, Oregon, 97520

March 18, 2025

Ashland Planning Commission
Ashland Community Development Department
51 Winburn Way
Ashland, OR 97520

Subject: New Evidence and Information Regarding Planning Action PA-T2-2024-00053: 231 Granite St.

Dear Ashland Planning Commission,

We are writing to provide additional testimony, argument, and evidence regarding the proposed land use application PA T2-2024-0053 for the construction of a new single-family residence that is actually 6,046 square feet, including living space, basement, and garage, at 231 Granite Street. The additional information and evidence below contribute to our significant concerns about the impacts of this development. The Planning Commission should not approve the application as it currently stands.

The information below demonstrates that the ALUO has internal conflicts about whether the lot is buildable. While the applicants contend that the lot favorably falls within the general requirements of **ALUO 18.3.10.090 A. 1.**, the conflicts enumerated below demonstrate that the proposed application PA-T2-2024-00053 is not feasible.

Driveway Slope

The project requests a variance for driveway slope exceeding 18% (**ALUO 18.5.3.060 F.**). Per the applicant's information in their packet, the proposed driveway is greater than 18%. The application indicates a driveway slope of 23%. The applicant notes that the current slope of the flag portion of the lot is 27%. The applicant's topographic map indicates portions of the existing slope for the driveway are 29% and even over 35% at the top portion of the driveway adjacent to the garage (see topographic map included). Notably, the ALUO does not even allow for a variance greater than 18%.

An additional ordinance, **ALUO 18.4.3.080 D. 8.**, stipulates that no portion of a driveway shall be greater than 20%. The proposed driveway is much steeper than 20% and includes multiple portions of existing slope of 27% and an area greater than 35% per the applicant's supplied topographic map in their application. The applicant has not requested a variance to this ordinance.

In our initial written comments on March 6, 2025, a typographical error indicated ALUO 18.5.5.060 F. pertaining to this matter, instead of **18.5.3.060 F.**

Driveway Length

ALUO 18.5.3.060 F. also indicates that "the cumulative length of such variances ... does not exceed 200 feet." The application indicates a length of 197 feet, and this is the number the applicants' development consultant, Amy Gunter, referred to at the public hearing. This number is incorrect.

Commissioner Herron asked pointed questions about the length of the driveway and public comments from citizens indicated that the supplied length of the driveway may be inaccurate. The 197 feet in the application is measured linearly on the map, not following the course of the driveway. In fact, the measurement courses outside the boundaries of the tax lot. Best practice for surveyors includes measuring the length of the driveway along the centerline of the driveway. If the driveway is curved, distances are usually measured along the actual travel path, rather than a straight-line approximation. For instance, a driveway that travels north for 200 feet from point A to point B and then turns ninety degrees and travels west for 200 feet to point C is 400 feet long. No reasonable person would describe the length of the driveway as the distance directly from point A to point C (283 feet).

Common start and stop points for measuring driveway length include the edge of the public right of way and the front of the garage, carport, or designated parking area. In the application, the applicant indicates that the garage itself is the designated parking area for the required three parking spots. Therefore, it follows that the length of the driveway is from the property edge of the flag to the closest garage (furthest east). On the applicant's maps, this is measured as 210 feet along centerline as described above. Furthermore, the actual length of the distance (corrected for the slope (rise and run)) is 215 feet. This accounts for the fact that the 210 feet is measured on a two-dimensional map and the calculation of the distance over the course of the sloped driveway is correctly calculated using the Pythagorean theorem.

Mr. Herron also noted that the measurements of the driveway length didn't account for the additional driveway length that needs to be built on adjacent properties through an easement to reach the existing shared driveway. Using the applicant's provided maps, this adds approximately 16 more feet to the length of the driveway, for a total of 231 feet, far exceeding the 200-foot limit of code, notwithstanding the slope exceeding 18% per upper level of variance considered.

The above driveway calculations are a very significant issue related to the plans for this property. We have seen multiple problems with steep driveways in Ashland, resulting in injuries and damage.

Driveway Emergency Turnaround

ALUO 18.5.3.060 J. states that, "When required by the Oregon Fire Code, flag drives greater than 150 feet in length shall provide a turnaround ... The Staff Advisor, in coordination with the Fire Code Official,

may extend the distance of the turnaround requirement up to a maximum of 250 feet in length as allowed by Oregon Fire Code access exemptions."

In the current application, there is no exemption provided by a Staff Advisor or Fire Code Official.

Section 503 of Oregon Fire Code requires access roads to "extend to within 150 feet of all portions of the facility and all portions of the exterior walls of the first story of the building as measured by an approved route around the exterior of the building or facility." Exceptions include "1.1 The building is equipped throughout with an *approved automatic sprinkler system* installed in accordance with Section 903.3.1.1, 903.3.1.2 or 903.3.1.3." The applicant includes a fire suppression system within the plans for the residence. However, **ALUO 18.5.3.060 J.** only allows an exception in the City of Ashland to extend the turnaround distance to 250 feet. Reading the Oregon Fire Code, the intent is for the far extent of the road to be "within 150 feet of all portions of the exterior walls of the first story of the building as measured by an approved route around the exterior of the building." The distance to a turnaround, or a pseudo-turnaround as shown below, is well over 250 feet. Additionally, an estimated distance of a route around the first story of the proposed building conservatively adds another 100 feet. While the Ashland ordinance doesn't include this verbiage, it illustrates the intent of a turnaround to be within a reasonable distance of the structure to aid in fire suppression for occupant safety, preservation of the structure, safety of first responders, and the ability to stop spread of fire.

At the March 11 public hearing, the applicant said that a designed turnout in the flag portion of the driveway (a widened portion illustrated in the application packet) serves as an adequate replacement for the required turnaround. In the application, there is an email from the Ashland Fire Marshal stating that he would consider such an arrangement designed to Jackson County Standards. However, there is no exemption or confirmation provided by a Staff Advisor or Fire Code Official, nor is there any confirmation that the proposed turnout is designed to Jackson County Standards.

During questioning and response during the March 11 public hearing, commissioners noted there is no turnaround and asked if the plan was for emergency vehicles to back out of the driveway after accessing a structure in the proposed building envelope. The applicant indicated that yes, backing the vehicles up was the plan. The applicant said that there is a pseudo-hammerhead turnaround located below the applicant's property on the shared easement driveway from Granite Street, implying that this fulfills turnaround requirements. This pseudo-hammerhead turnaround is another 150-160 feet from easternmost end of the subject flag lot. This is a total of about 360-370 feet from the proposed single-family dwelling. This far exceeds the intention of **ALUO 18.5.3.060 J.**, which clearly aims to have a turnaround within 150 feet of a structure, or within 250 feet in extenuating circumstances with appropriate approval. With the additional 100 feet to reach the far side of the house, the distance from a turnaround increases to 460-470 feet. This is a significant distance, including a steep slope, that far

exceeds the intentions of safety for emergency vehicle access as outlined in **ALUO 18.5.3.060 J.** and the intentions of Oregon Fire Code section 503.

No exemption has been provided to confirm that fire authorities have approved the lack of a turnaround, a pullout option, or a distant pseudo-hammerhead turnaround as an acceptable option. Furthermore, the ALUO does not have any language that states a turnout is a permissible replacement for a turnaround. A pullout does not provide maneuvering room to turn around a large emergency vehicle.

Given what we have all experienced within the last five years in our valley regarding real fire danger, we hope the Commission takes this section extremely seriously.

Invalid Variance Argument

The type II variance should be not be approved, per **ALUO 18.5.5.050**. Notably, four criteria are listed (1-4), and all of the criteria must be met. The criterion of **ALUO 18.5.5.050. A. 4.** is not met because the variance is self-imposed. The proposal and design (driveway, building, outdoor area, etc.) were voluntarily submitted by the applicant in 2024 and 2025. As the applicant points out in their application, the ordinances were in place at the time of the application. Due diligence before the purchase of the land and before the application would have demonstrated that there is no compliant way to create vehicular access to a building envelope on this tax lot.

Ordinances which are in effect at the time of application for a building permit are enforceable, and the plans must comply with said ordinances. These facts stand regardless of the chronology of lot partitions and ordinance adoption if the application of interest was submitted after current ordinances are in effect.

Additionally, while the City's intent with the lot partition in the 1990s was presumably to create a buildable lot, conditions have changed over the years since the original partition. Safety awareness has increased. Wildfire risks have increased. Environmental fragility has increased. Thus, the city has wisely implemented land use ordinances to protect residents, neighbors, and the community, accounting for the new conditions and to incorporate new environmental and engineering knowledge.

The applicant has not demonstrated that the benefits of the proposed development outweigh the negative impact of the development, as required in **18.5.5.050. A. 3.** Adjacent uses include hillside safety (see retaining wall concerns below relating to **ALUO 18.3.10.090 B. 4. b.**), tree and wildlife impacts of the development (as pointed out by neighbors at the March 11 public hearing, trees to be removed straddle the property line and are half on a neighbor's property – see **ALUO 18.5.7.040 B. 2. c.**), headlight impacts upon neighboring properties (as pointed out by a commissioner during the public

hearing), and downhill neighborhood danger from runaway vehicles on the exceedingly steep slope (as pointed out during oral testimony at the March 11 hearing).

At the March 11 public hearing, Ms. Gunter stated that the project must be accepted because there are no other developable lots in the city. In fact, there are indeed residential lots for sale in the Ashland city limits. In addition, there are approximately 60 single-family homes for sale in Ashland at this time. There are also three single-family homes for sale within two blocks of the applicant's current home, as they indicated that they would like the proposed new home to be occupied by family, and to be within close proximity to their current home. One of the nearby properties is a beautiful, high-end property with a pool and outdoor living area on Granite Street. It is a stunning home and is actually part of the applicants' family legacy.

Rather than choosing to purchase a more readily buildable lot, purchase another home, or purchase another home and make significant modifications, the applicants have chosen to attempt to build on a lot that is not conducive to achieving their desired vision. One of the above options could most certainly yield a large, inspiring, beautiful home and outdoor living area without the self-imposed environmental challenges, engineering requirements, and land use ordinance exceptions and variances.

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The retaining wall criteria **ALUO 18.3.10.090 B. 4. b.** states that, "Exposed cut slopes, such as those for streets, driveway accesses, or yard areas, greater than seven feet in height shall be terraced. Cut faces on a terraced section shall not exceed a maximum height of five feet. Terrace widths shall be a minimum of three feet to allow for the introduction of vegetation for erosion control. Total cut slopes shall not exceed a maximum vertical height of 15 feet. The top of cut slopes not utilizing structural retaining walls shall be located a minimum setback of one-half the height of the cut slope from the nearest property line." The plans show (in the north landscape elevation schematic) that the retaining wall on the north aspect of the driveway will be as high as 22 feet at its westernmost end and is set back 6 feet from the North property line per the applicant's schematics. This is A) a cut slope for a driveway; B) greater than 7 feet in height; C) not terraced; D) exceeding a maximum vertical height of 15 feet; E) not indicating utilization of a structural retaining wall; and F) the top of the wall (not structural) is not setback one-half of the height of the cut slope (approximately 11 feet setback) from the nearest property line (the north property line).

Environmental Impact and Tree Removal

At the March 11 public hearing, Ms. Gunter characterized the proposed house as a single-level home that is similar in size to neighboring homes. In layman's terms, the proposed home includes two levels with living areas. Additionally, the applicant characterized the house as similar in size to neighboring homes. Using the applicant's architectural plans (which were absent from the initial public records

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During the public hearing on March 11, the applicant noted that they plan to shift the driveway to create more buffer zone to the 36" DBH Madrone on adjacent property on the north property line. We request that the new plans be submitted for consideration by the Planning Commission (and the Tree Commission, as appropriate). Please note that this modification does not fulfill the additional required assessment for tree removal per **ALUO 18.5.7.040 B. 2. c.**, analyzing impacts of tree removal within 200 feet of the property. (In our original March 6 letter, a typographical error said 18.5.7.040 B. 2. b.)

Exceptions Requested

The same logic leading to the conclusion to deny the requested variance for the driveway applies to the following requested exceptions. All of these exceptions are self-imposed features of the applicant's proposed design and do not create benefits outweighing drawbacks for the neighbors and community. They are self-imposed simply because the design submitted can and should be altered to comply with the ALUO standards.

- Downhill height exemption greater than 20 feet (introduced as an exception at the public hearing) **ALUO 18.3.10.090. E. 2. c.**
- Tree removal exception **ALUO 18.3.10.090 D. 3. b.** (note that our March 6 written comments had a typographical error reading ALUO 18.3.10.900 D. 3. b.).
- Horizontal length without 6-foot setback exception **ALUO 18.3.10.090 E. 2. d.**
- Terracing exceptions **ALUO 18.3.10.090 B. 8. a.**

Variance Conditions

If, despite the above facts and conditions, the Planning Commission grants a variance for access to the building lot via the proposed driveway, the Commission is compelled to implement conditions as noted in **ALUO 18.5.5.050 B.** These conditions should include a new design. The new design should include the intent of complying with ALUOs, including but not limited to: not having a pool (discouraged on hillside lands per **ALUO 18.3.10.090 B. 8. c.**), limiting outdoor space and terracing per **ALUO 18.3.10.090 B. 8. a.**, having a fire turnaround per **ALUO 18.5.3.060 J.**, minimizing its footprint and excavation to preserve the maximum number of trees per **ALUO 18.3.10.090 D. 3. b.**, and creating a safe ingress and egress to prevent increased risk to the occupants of the property, first responders, neighbors, and the community

in the case of emergency or wildfire. Simply put, the Planning Commission, if they grant the variance for the driveway access, should compel the applicants to submit new designs for a single-family dwelling that meets the spirit of the ALUOs, with a smaller footprint, a smaller house, and less outdoor living space development.

Community Commitment

We want to reiterate that we respect and appreciate the applicants/owners and their many contributions to our community. They are an upstanding family, and we are grateful for their commitment to numerous causes, including their conviction to protect the trail. Likewise, we appreciate the design aesthetic of previous projects by the applicant/owners and the architect. We want the best for the applicants and their family, just as we would want for any family endeavoring to live closer to one another. We are family-oriented people, and we deeply value strong connections with our neighbors and the community at large. This lot is clearly a very tricky area that does not present ideal building conditions. Please understand that we are simply afraid – gravely, in fact – about the safety ramifications and long-term impacts of excavating this lot, tearing down 70 trees, attempting to secure a long and very steep driveway, and building a large structure with major terracing.

Ordinances are in place for a reason. We value the ongoing open dialogue and public discourse, as these are traits that make a community stronger and more committed to each other in the end. We are grateful for the efforts of the applicants, owners, public citizens, planning department staff, and commission members.

Thank you for your thoughtful consideration of our concerns.

Warm regards,

Jay Reeck and Sarah Sameh

Michael Sullivan

From: noreply@civicplus.com
Sent: Tuesday, March 18, 2025 3:39 PM
To: planning
Subject: Online Form Submittal: Contact Planning Commission

Follow Up Flag: Follow up
Flag Status: Flagged

[EXTERNAL SENDER]

Contact Planning Commission

Full Name	Douglas R Smith
Phone	541-941-2874
Email Address	dougzmail7@gmail.com
Subject	321 Granite Street
Type of Testimony	Electronic (to appear electronically)
Message	I spoke at the 4/11 meeting and was told that I could submit more comments/evidence. Please see attached letter.
Attachment 1	Land New Evidence Regarding PA-T2-2024-00053.pdf
Attachment 2	Field not completed.
Attachment 3	Field not completed.

Email not displaying correctly? [View it in your browser.](#)

Sarah Sameh & Jay Reeck
230 Strawberry Lane
Ashland, Oregon, 97520

March 18, 2025

Ashland Planning Commission
Ashland Community Development Department
51 Winburn Way
Ashland, OR 97520

Subject: New Evidence and Information Regarding Planning Action PA-T2-2024-00053: 231 Granite St.

Dear Ashland Planning Commission,

We are writing to provide additional testimony, argument, and evidence regarding the proposed land use application PA T2-2024-0053 for the construction of a new single-family residence that is actually 6,046 square feet, including living space, basement, and garage, at 231 Granite Street. The additional information and evidence below contribute to our significant concerns about the impacts of this development. The Planning Commission should not approve the application as it currently stands.

The information below demonstrates that the ALUO has internal conflicts about whether the lot is buildable. While the applicants contend that the lot favorably falls within the general requirements of **ALUO 18.3.10.090 A. 1.**, the conflicts enumerated below demonstrate that the proposed application PA-T2-2024-00053 is not feasible.

Driveway Slope

The project requests a variance for driveway slope exceeding 18% (**ALUO 18.5.3.060 F.**). Per the applicant's information in their packet, the proposed driveway is greater than 18%. The application indicates a driveway slope of 23%. The applicant notes that the current slope of the flag portion of the lot is 27%. The applicant's topographic map indicates portions of the existing slope for the driveway are 29% and even over 35% at the top portion of the driveway adjacent to the garage (see topographic map included). Notably, the ALUO does not even allow for a variance greater than 18%.

An additional ordinance, **ALUO 18.4.3.080 D. 8.**, stipulates that no portion of a driveway shall be greater than 20%. The proposed driveway is much steeper than 20% and includes multiple portions of existing slope of 27% and an area greater than 35% per the applicant's supplied topographic map in their application. The applicant has not requested a variance to this ordinance.

In our initial written comments on March 6, 2025, a typographical error indicated ALUO 18.5.5.060 F. pertaining to this matter, instead of **18.5.3.060 F.**

Driveway Length

ALUO 18.5.3.060 F. also indicates that "the cumulative length of such variances ... does not exceed 200 feet." The application indicates a length of 197 feet, and this is the number the applicants' development consultant, Amy Gunter, referred to at the public hearing. This number is incorrect.

Commissioner Herron asked pointed questions about the length of the driveway and public comments from citizens indicated that the supplied length of the driveway may be inaccurate. The 197 feet in the application is measured linearly on the map, not following the course of the driveway. In fact, the measurement courses outside the boundaries of the tax lot. Best practice for surveyors includes measuring the length of the driveway along the centerline of the driveway. If the driveway is curved, distances are usually measured along the actual travel path, rather than a straight-line approximation. For instance, a driveway that travels north for 200 feet from point A to point B and then turns ninety degrees and travels west for 200 feet to point C is 400 feet long. No reasonable person would describe the length of the driveway as the distance directly from point A to point C (283 feet).

Common start and stop points for measuring driveway length include the edge of the public right of way and the front of the garage, carport, or designated parking area. In the application, the applicant indicates that the garage itself is the designated parking area for the required three parking spots. Therefore, it follows that the length of the driveway is from the property edge of the flag to the closest garage (furthest east). On the applicant's maps, this is measured as 210 feet along centerline as described above. Furthermore, the actual length of the distance (corrected for the slope (rise and run)) is 215 feet. This accounts for the fact that the 210 feet is measured on a two-dimensional map and the calculation of the distance over the course of the sloped driveway is correctly calculated using the Pythagorean theorem.

Mr. Herron also noted that the measurements of the driveway length didn't account for the additional driveway length that needs to be built on adjacent properties through an easement to reach the existing shared driveway. Using the applicant's provided maps, this adds approximately 16 more feet to the length of the driveway, for a total of 231 feet, far exceeding the 200-foot limit of code, notwithstanding the slope exceeding 18% per upper level of variance considered.

The above driveway calculations are a very significant issue related to the plans for this property. We have seen multiple problems with steep driveways in Ashland, resulting in injuries and damage.

Driveway Emergency Turnaround

ALUO 18.5.3.060 J. states that, "When required by the Oregon Fire Code, flag drives greater than 150 feet in length shall provide a turnaround ... The Staff Advisor, in coordination with the Fire Code Official,

may extend the distance of the turnaround requirement up to a maximum of 250 feet in length as allowed by Oregon Fire Code access exemptions."

In the current application, there is no exemption provided by a Staff Advisor or Fire Code Official.

Section 503 of Oregon Fire Code requires access roads to "extend to within 150 feet of all portions of the facility and all portions of the exterior walls of the first story of the building as measured by an approved route around the exterior of the building or facility." Exceptions include "1.1 The building is equipped throughout with an *approved automatic sprinkler system* installed in accordance with Section 903.3.1.1, 903.3.1.2 or 903.3.1.3." The applicant includes a fire suppression system within the plans for the residence. However, **ALUO 18.5.3.060 J.** only allows an exception in the City of Ashland to extend the turnaround distance to 250 feet. Reading the Oregon Fire Code, the intent is for the far extent of the road to be "within 150 feet of all length of all portions of the exterior walls of the first story of the building as measured by an approved route around the exterior of the building." The distance to a turnaround, or a pseudo-turnaround as shown below, is well over 250 feet. Additionally, an estimated distance of a route around the first story of the proposed building conservatively adds another 100 feet. While the Ashland ordinance doesn't include this verbiage, it illustrates the intent of a turnaround to be within a reasonable distance of the structure to aid in fire suppression for occupant safety, preservation of the structure, safety of first responders, and the ability to stop spread of fire.

At the March 11 public hearing, the applicant said that a designed turnout in the flag portion of the driveway (a widened portion illustrated in the application packet) serves as an adequate replacement for the required turnaround. In the application, there is an email from the Ashland Fire Marshal stating that he would consider such an arrangement designed to Jackson County Standards. However, there is no exemption or confirmation provided by a Staff Advisor or Fire Code Official, nor is there any confirmation that the proposed turnout is designed to Jackson County Standards.

During questioning and response during the March 11 public hearing, commissioners noted there is no turnaround and asked if the plan was for emergency vehicles to back out of the driveway after accessing a structure in the proposed building envelope. The applicant indicated that yes, backing the vehicles up was the plan. The applicant said that there is a pseudo-hammerhead turnaround located below the applicant's property on the shared easement driveway from Granite Street, implying that this fulfills turnaround requirements. This pseudo-hammerhead turnaround is another 150-160 feet from easternmost end of the subject flag lot. This is a total of about 360-370 feet from the proposed single-family dwelling. This far exceeds the intention of **ALUO 18.5.3.060 J.**, which clearly aims to have a turnaround within 150 feet of a structure, or within 250 feet in extenuating circumstances with appropriate approval. With the additional 100 feet to reach the far side of the house, the distance from a turnaround increases to 460-470 feet. This is a significant distance, including a steep slope, that far

exceeds the intentions of safety for emergency vehicle access as outlined in **ALUO 18.5.3.060 J.** and the intentions of Oregon Fire Code section 503.

No exemption has been provided to confirm that fire authorities have approved the lack of a turnaround, a pullout option, or a distant pseudo-hammerhead turnaround as an acceptable option. Furthermore, the ALUO does not have any language that states a turnout is a permissible replacement for a turnaround. A pullout does not provide maneuvering room to turn around a large emergency vehicle.

Given what we have all experienced within the last five years in our valley regarding real fire danger, we hope the Commission takes this section extremely seriously.

Invalid Variance Argument

The type II variance should be not be approved, per **ALUO 18.5.5.050**. Notably, four criteria are listed (1-4), and all of the criteria must be met. The criterion of **ALUO 18.5.5.050. A. 4.** is not met because the variance is self-imposed. The proposal and design (driveway, building, outdoor area, etc.) were voluntarily submitted by the applicant in 2024 and 2025. As the applicant points out in their application, the ordinances were in place at the time of the application. Due diligence before the purchase of the land and before the application would have demonstrated that there is no compliant way to create vehicular access to a building envelope on this tax lot.

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Thank you for your thoughtful consideration of our concerns.

Warm regards,

Jay Reeck and Sarah Sameh



Memo

To: Planning Commissioners
From: Amy Gunter, Rogue Planning & Development Services, LLC
Date: March 17, 2025
Re: PA-T2-2024-00053

This memo serves to clarify and amend some of the information related to the review and decision regarding the development of the residence proposed at 231 Granite Street.

1. An Exception to Hillside Design Standard AMC 18.3.10.090.E.2.d. was requested.
18.3.10.090.E.2.d. Continuous horizontal building planes shall not exceed a maximum length of 36 feet. Planes longer than 36 feet shall include a minimum offset of six feet.

This exception has been eliminated from the east and south sides of the proposed structure through footprint and façade alterations that increase the offsets to six feet. This also reduces the floor area of the home by 44 square feet. See attached sheet A1.0., A1.1., A2.2., and A2.1.

2. An Exception to Hillside Design Standard AMC 18.3.10.090.E.2.c. is not required.
18.3.10.090.E.2.c. A building step-back shall be required on all downhill building walls greater than 20 feet in height, as measured above natural grade. Step-backs shall be a minimum of six feet. Decks projecting out from the building wall and hillside shall not be considered a building step-back. No vertical walls on the downhill elevations of new buildings shall exceed a maximum height of 20 feet above natural grade. See Figure 18.3.10.090.E.2.c.

As noted during the hearing, the proposed residence complies with the downhill wall height as depicted in the graphic from the land development ordinance 18.3.10.090.E.2.c. The roof framing and the fascia board are not part of the wall and should

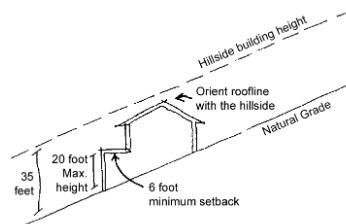


Figure 18.3.10.090.E.2.c. Downhill Building Step-Back



not be included in the downhill wall height measurements. This does not require an exception to the design standards. See attached sheet A2.1. and A2.2.

3. A Variance to exceed the driveway grades allowed for flag lot driveways 18.5.3.060.F. has been requested. *Variances may be granted for flag drives for grades in excess of 15 percent but no greater than 18 percent; provided, that the cumulative length of such variances across multiple sections of the flag drive does not exceed 200 feet. Such variances shall be required to meet all of the criteria for approval in chapter 18.5.5, Variances.*

The length of the shared driveway and the grade of the shared driveway is a pre-existing, legal, non-conforming situation. The subject property is a legal, buildable lot of record with no other access. The location and grade of the proposed driveway are within the only guaranteed access.

The proposed driveway length on the subject property is 183 feet and 223 feet to the edge of the existing gravel-surfaced driveway. This existing and proposed driveway exceeds 18 percent and exceeds 200 feet in length. The requested variance for the required access to the property is not only for the grade but the maximum length of the allowed grade. A graphic of the entire driveway has been provided on attached Sheet AS1.1., AS1.2., and on the Civil Sheet (C1).

The proposed grade and length are the sole options and the minimum necessary to comply with the criteria. The subject property was not created by the property owner when it was platted in 1995. It had previously been acknowledged by the City of Ashland in 1992 that the property would be recognized as a legal lot of record when an access easement was provided. The 1992 letter from staff also recognizes that the future development of the driveway would require a variance.

The need for the variance was not self-imposed as the property owners did not create the lot nor did they create the existing shared driveway. The existing driveway grade, the lot location, and limited access are unique and unusual circumstances that do not typically apply to other properties because shared driveways with nine lots are a unique situation that is 'grandfathered'.



4. A revised tree survey has been completed with the addition of a 36-inch diameter at breast height (DBH) Madrone tree near the northeast property corner where the subject property flagpole begins and is shared with the adjacent property at 234 Strawberry Lane. This tree is within the access easement. This tree will require removal because the preservation of the madrone will narrow the driveway below what is acceptable for fire apparatus access, and it is unlikely to survive the construction of the driveway within a substantial portion of its root zone.

74 trees are six inches DBH or larger within the impact area of the site development. Of these trees, there are 24 trees in fair or poor health and 10 dead trees. Only seven deciduous trees and two conifers are considered significant trees.

The Planning Commission can find that the proposed tree removal removes the minimum number of significant stature trees to accommodate the development of the 2.1-acre parcel with a single-family residence on the oversized Rural Residential lot. The proposed tree removal increases wildfire hazard safety for the subject property and the adjacent properties.

The removal of the significant trees is necessary to allow for the development of the driveway within both the deeded driveway access and utility easement, within the footprint of the proposed residence, within the impact area of the construction area, or within the wildfire buffer.

The removal of the trees will not have a significant negative impact on erosion, soil stability, flow of surface waters, or protection of adjacent trees or windbreaks. The trees proposed for removal are within the portion of the property that will be developed with the driveway, the structure, the retaining walls, the patio area, or within the construction impact area. Slope and soil stability are replaced through development and revegetation. There are no surface waters or wind breaks.

The removal of the trees, including the removal of nine significant stature trees will not have a negative impact on tree densities, canopies, and species diversity within 200 feet of the subject property. There are numerous significant stature madrone, Ponderosa pine, Douglas fir, and oak trees on the subject property and upon the properties within 200 feet of the subject property. The removal of five significant trees will not reduce tree density, tree canopy, or species diversity within 200 feet of the subject property.



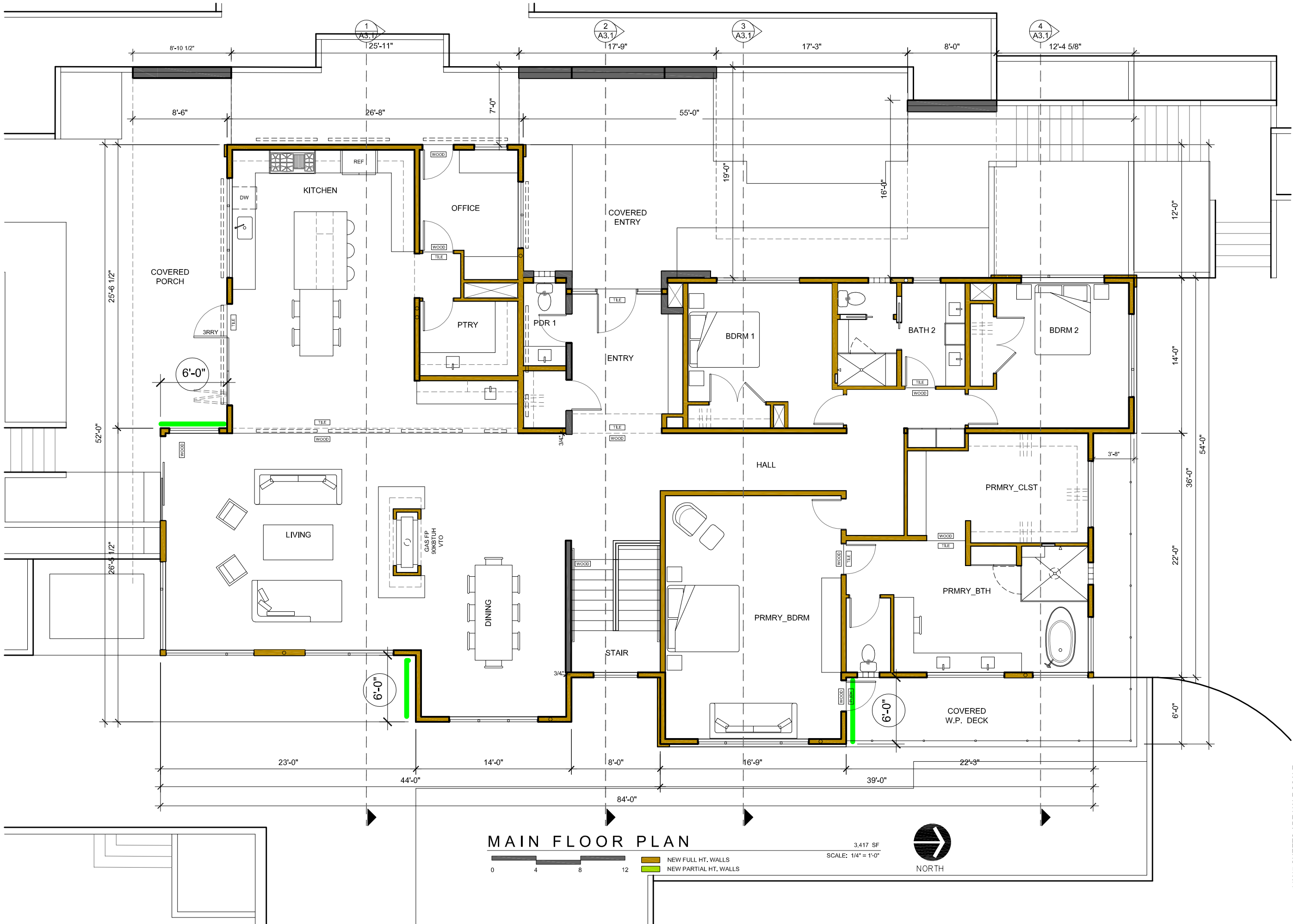
All significant trees proposed for removal will be mitigated onsite with a mitigation tree consistent with AMC 18.5.7.050.A.

The proposed tree removal is consistent with the requirements of 18.3.10.100 and areas of heavy vegetation including the removal of the dead and dying trees to clear sufficient vegetation to reduce the fuel load on the property have been proposed.

5. As noted during the public hearing, the property owners, Bryan and Stephanie DeBoer will dedicate a perpetual public pedestrian access easement for recreational purposes along the Talent Irrigation District trail.

The subject property is a buildable lot. Though the lot is subject to hillside design and development standards today, it was created in 1995 before the hillside development standards were adopted and some flexibility is necessary to allow for the site development.

With hillside development, the primary objective is to preserve the natural environment and to reduce impacts on the hillside slopes. The proposed site disturbance is less than 20 percent of the 2.1-acre, parcel while the code allows for up to 48 percent disturbance. Lot coverage is less than 10 percent while 20 percent is allowed. This demonstrates that all measures to reduce impacts have been taken and the development standards for hillside lots that include a small area of severely constrained slopes (~900 square feet) have been considered.



MAIN FLOOR PLAN



NEW FULL HT. WALLS
NEW PARTIAL HT. WALLS

3,417 SF
SCALE: 1/4" = 1'-0"



11X17 SHEETS ARE HALF SCALE



Carlos Delgado
ARCHITECT

200 Clear Crk #C • Ashland OR 97520
541.552.9502
info@CarlosDelgadoArchitect.com

DESCRIPTION	DATE

NEW RESIDENCE
BRYAN & STEPHANIE DEBOER
231 GRANITE ST.
ASHLAND OR 97520

ASSESSOR'S MAP NO. 391E 08DA TAX LOT NO. 1800

DRAWN : CHECKED :
TS CD
DATE :
03/12/25
PROJECT :
ROGERS_24
SHEET :

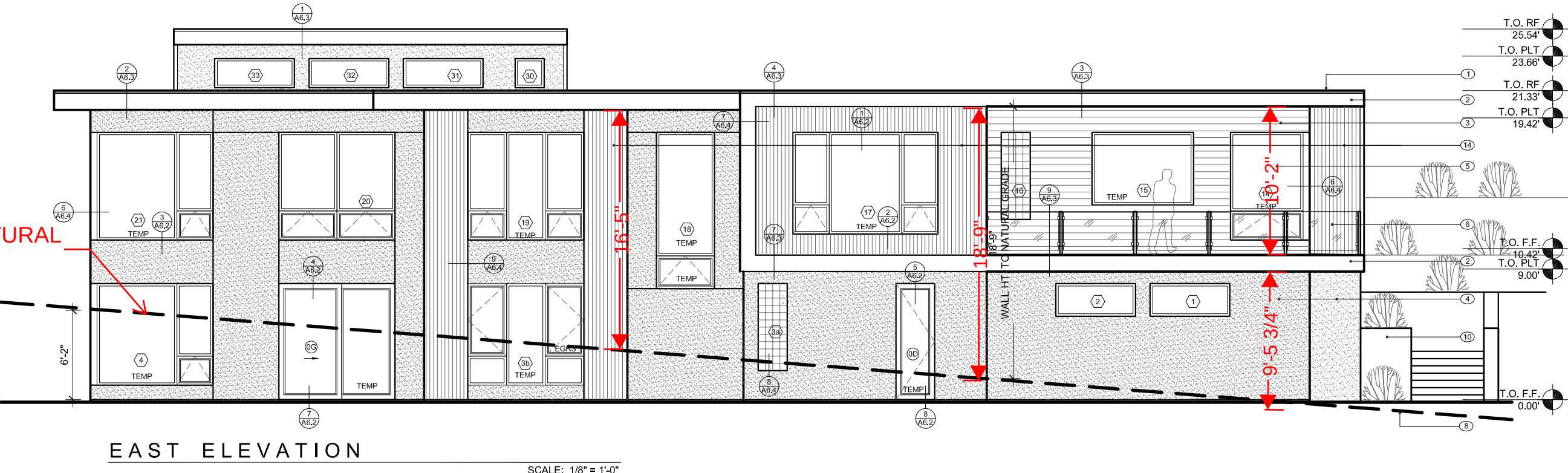
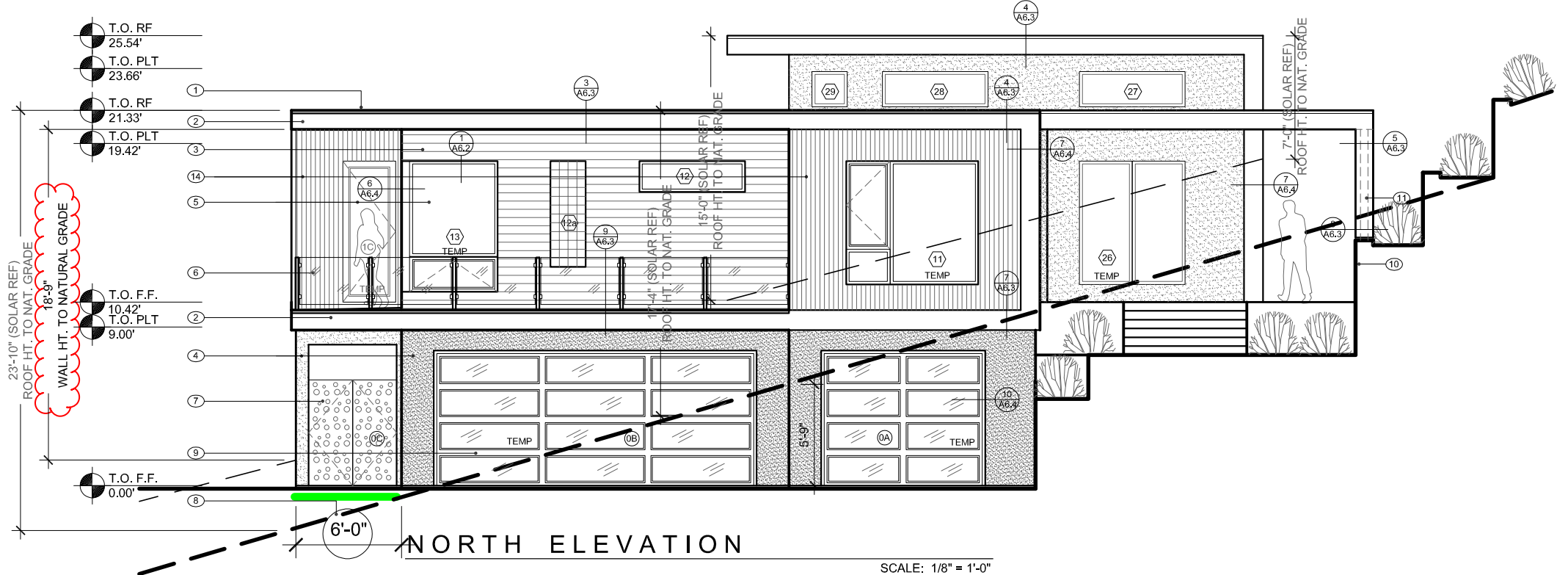
A1.1

DESCRIPTION	DATE

NOT FOR CONSTRUCTION

1X17 SHEETS ARE HALF SCALE

- ELEVATION KEY NOTES
- PVC MEMBRANE ROOFING, DARK GRAY, CLASS 'B' FIRE RATED
 - STUCCO FASCIA W/ FLASHING TO MATCH STUCCO
 - THERMALLY MOD. HORIZ. SHIPLAP SIDING, 6" EXP.
 - WESTERN 'ONE COAT' STUCCO FINISH W/ INTEGRAL COLOR
 - FIBERGLASS WINDOWS & DOORS, BLACK
 - +36" BRNZE POWDER COATED METAL POSTS W/ METAL RAIL & TEMP. GLASS GUARD, 4" SPHERE TO NOT PASS THRU
 - STEEL FRAME DOORS FOR GARBAGE NICHE
 - LINE OF APROX. EXISTING NATURAL GRADE
 - WAYNE DALTON ALUMINUM & GLASS GARAGE DOOR, BLACK
 - LANDSCAPE WALLS, SEE LANDSCAPE PLAN
 - STUCCO 'WATERFALL' COVERED PORCH AREAS
 - POURED CONCRETE ACCENT WALL
 - STUCCO VENEER CHIMNEY FOR GAS F.P.
 - COMPOSITE WIDE SLAT VERTICAL SIDING



DESCRIPTION	DATE

NOT FOR CONSTRUCTION

DRAWN : CHECKED:
TS CD

DATE :
03/12/25

PROJECT :
ROGERS_24

SHEET :
A2.2

11X17 SHEETS ARE HALF SCALE





	DESCRIPTION	DATE
		
		
		
		
		
		
		
		
		
		
		
		
		
		
		

NEW RESIDENCE

BRYAN & STEPHANIE DEBOER
231 GRANITE ST.
ASHLAND OR 97520

ASSESSOR'S MAP NO. 391E 08DA TAX LOT NO. 1800

NOT FOR CONSTRUCTION

DRAWN : CHECKED:
TS CD

DATE :
3/12/25

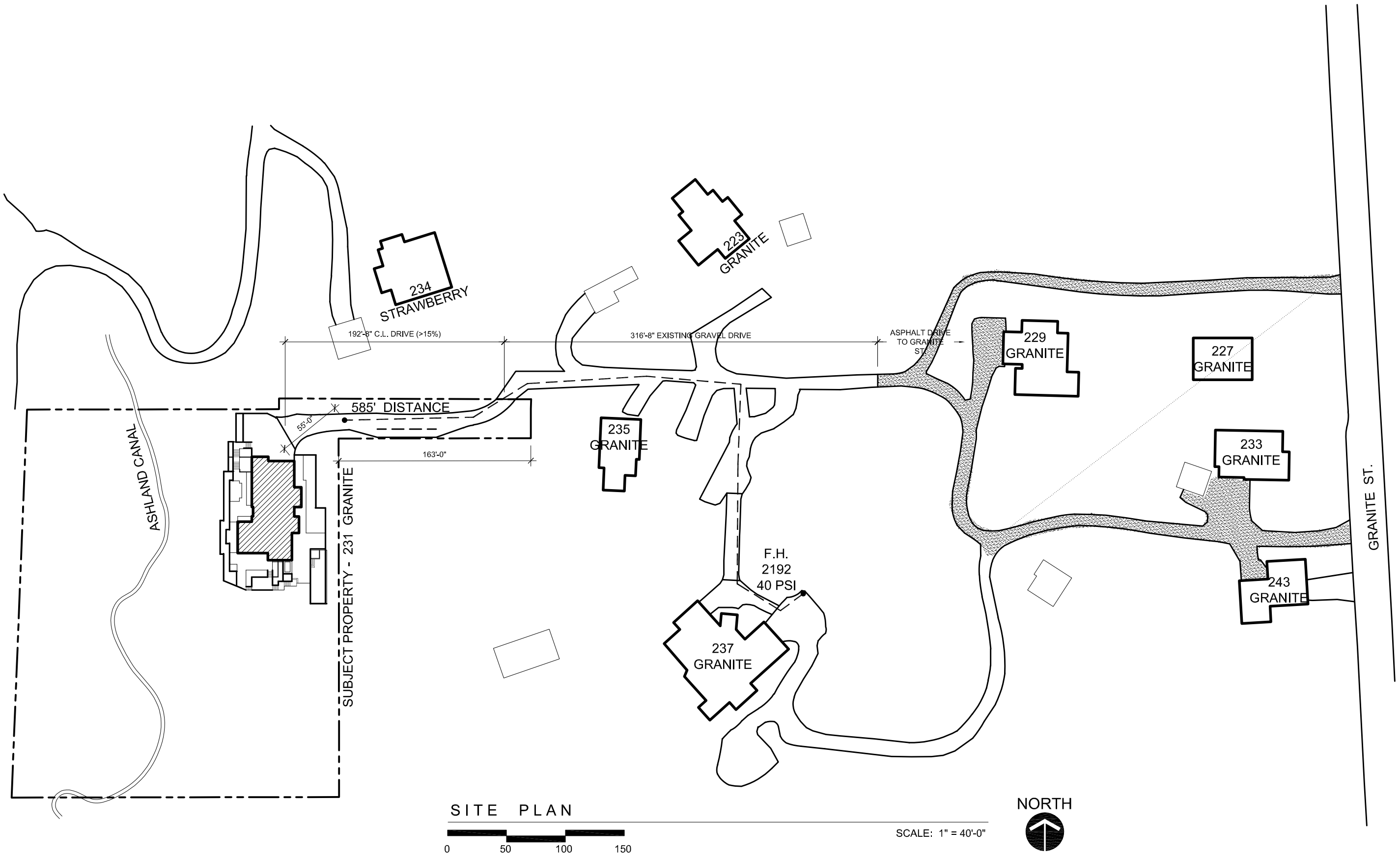
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ROGERS_24

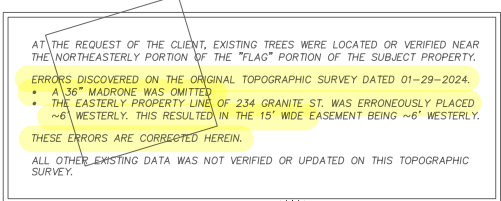
SHEET :

AS1.1

11X17 SHEETS ARE HALF SCALE

Total Page Number: 136





ACCESS EASEMENT

ASPHALT
DRIVE
TO GRANITE ST.
APPROX. 504'

TOPOGRAPHIC / BOUNDARY SURVEY

OF
PARCEL 3
PARTITION PLAT No. P-43-1990

LOCATED IN THE NORTHWEST QUARTER OF SECTION 1, TOWNSHIP 38 SOUTH
RANGE 1 WEST OF THE WILLAMETTE MERIDIAN, IN THE CITY OF ASHLAND,
JACKSON COUNTY, OREGON

CARLOS DELGADO, ARCHITECT, LLC

200 CLEAR CREEK DRIVE
ASHLAND, OREGON 97520

LEGEND:

- S/N FILED SURVEY NUMBER AT THE JACKSON COUNTY SURVEYOR'S OFFICE
 BASIS OF BEARING IS BASED ON FOUND MONUMENTS PER S/N 14932
 ● FOUND MONUMENT PER S/N 14932
 ▲ CALCULATED POSITION
 — SITE PROPERTY BOUNDARY LINE
 — 15' EASEMENT LINE
 — 20' EASEMENT LINE
 APPROXIMATE TREE DRIP - ADDITIONAL TREES LOCATED 03-15-2025
 ○ APPROXIMATE TREE DRIP LINE
 ROCKED ROAD SURFACE
 ELEVATIONS ARE DERIVED FROM JACKSON COUNTY GIS
 PROPERTY BOUNDARY IS BASED ON FOUND MONUMENTS AND RECORD DATA AND MAY VARY SHOULD A FULLY RESOLVED BOUNDARY SURVEY BE PERFORMED.

SCALE: 1" = 20'
CONTOUR INTERVALS ARE ONE FOOT
DATE: JANUARY 29, 2024
REVISED 03-15-2025
ADDED TREE AND
UPDATED PROPERTY AND
EASEMENT LINES

TERRASURVEY, INC.
PROFESSIONAL LAND SURVEYORS

270 FOURTH STREET
ASHLAND, OREGON 97520

(541) 482-6474
 terrasurveyinc.com
 terrain@bisp.net
 JOB NO. 1797-24

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 12, 2016
PHILIP J. DROSSOS
90718

RENEWS: 12-31-2025

Carlos Delgado
ARCHITECT

200 Clear Crk #C • Ashland OR 97520
541.552.9502
info@CarlosDelgadoArchitect.com

info@CarlosDelgadoArchitect.com

	DESCRIPTION	DATE

NEW RESIDENCE

AN & STEPHANIE DEBOER
231 GRANITE ST.
ASHLAND OR 97520

ASSESSOR'S MAP NO. 391E 08DA TAX LOT NO. 1800

NOT FOR CONSTRUCTION

DRAWN : CHECKED:
TS CD

DATE :
03/12/25

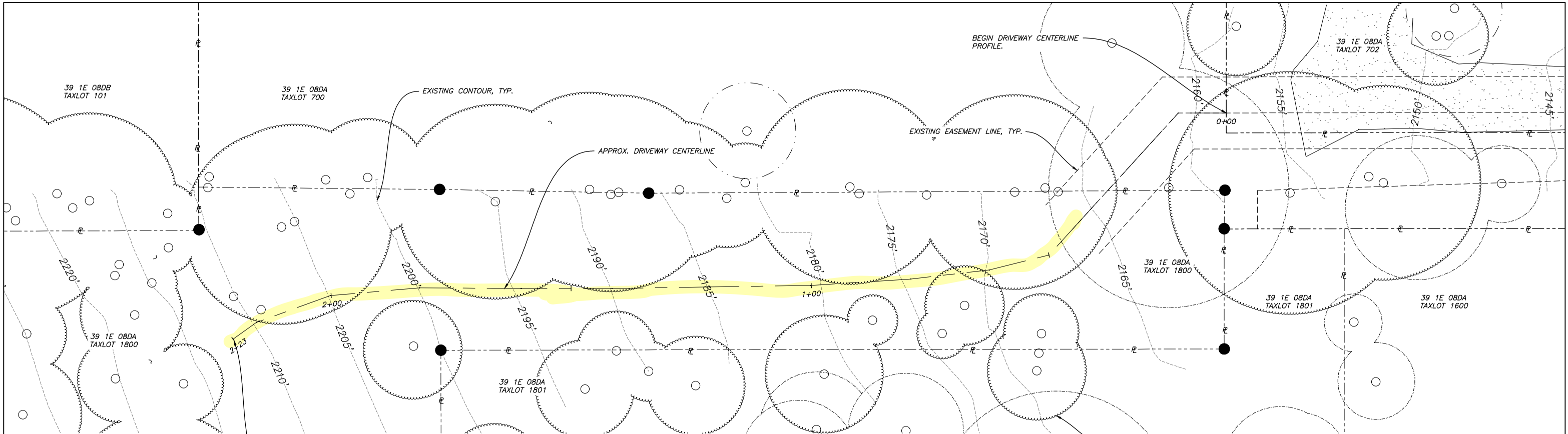
PROJECT :
ROGERS 24

SHEET :

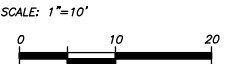
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Total Page Number: 137

11X17 SHEETS ARE HALF SCALE

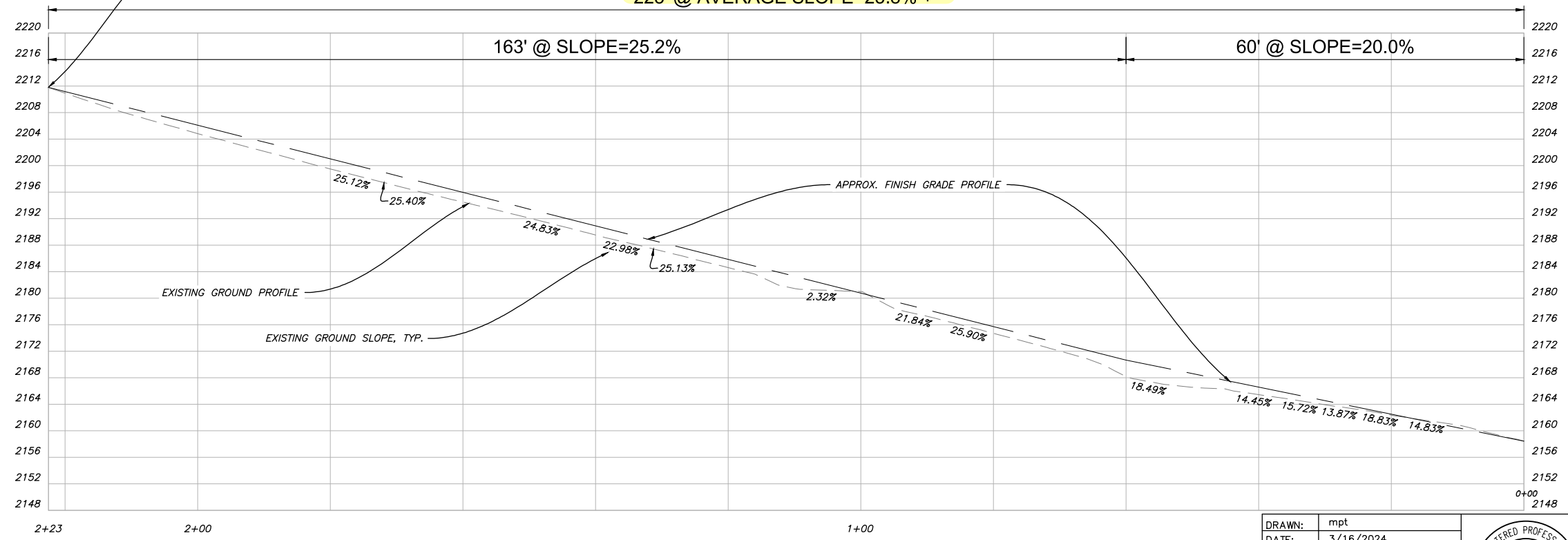


PRELIMINARY PLAN - DRIVEWAY CENTERLINE

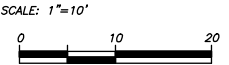


APPROX. END OF DRIVEWAY CENTERLINE AT PROPOSED TURNAROUND.

223' @ AVERAGE SLOPE=23.8% +/-



PRELIMINARY PROFILE - DRIVEWAY CENTERLINE



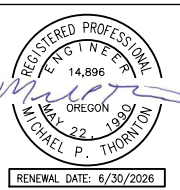
PLAN NOTES

1. Topographic and boundary information provided by Terrasurvey, Inc., 1/29/2024.

2. Approximate driveway alignment and grades provided Scharen Design Studio, Preliminary Plan, 12/6/2024.

3. This plan is for land use application information only, Not for Construction.

DRAWN:	mpt
DATE:	3/16/2024
	REVISIONS



THORNTON
ENGINEERING INC.

NEW RESIDENCE
GRANITE STREET
ASHLAND, OREGON 97520

p.o. box 476 • 260 north 3rd street
jacksonville, oregon 97530
(541) 899-1489 (541) 899-3419 fax

PRELIMINARY DRIVEWAY PLAN/PROFILE

SHEET
C1

JOB NO. 24-064
FILE: BASEMAP.DWG

Memo

DATE: March 18, 2025
TO: Planning Commission
FROM: Brandon Goldman, Community Development Director
RE: 231 Granite Street

During the period in which the record remains open for written material, staff is providing this memo to offer additional clarity regarding the Staff recommendation on several key items discussed during the public hearing. These clarifications address the variance request for driveway grade and length, the design exceptions related to hillside development standards, the absence of home size regulations outside of Historic Districts, and considerations regarding the Talent Irrigation Ditch (TID) trail easement. This information is intended to ensure a clear understanding of how the proposal aligns with applicable code requirements and the rationale for staff's assessment.

Variance Request – Driveway Grade and Length

The applicant has requested a Type II Variance to allow for a driveway that exceeds both the maximum permitted grade of 18% and the cumulative length of 200 feet for sections exceeding 15% grade.

- **Code Requirement:**
 - o **AMC 18.5.3.060.F** *“Flag drive grades shall not exceed a maximum grade of 15 percent. Variances may be granted for flag drives for grades in excess of 15 percent but no greater than 18 percent; provided, that the cumulative length of such variances across multiple sections of the flag drive does not exceed 200 feet.”*
 - o **AMC 18.3.10.090 A.3.b.** *The portion of the street, flag drive, or driveway on land greater than 35 percent slope does not exceed a length of 100 feet.*
- **Historical Background:** Staff has included attached correspondence from 1992–1993 between then Acting Planning Director John McLaughlin and attorney Carlyle F. Stout, III representing the property owner at the time. At that time, in considering an adjustment to the boundary lines of Tax Lot #1800, the subject property under consideration in the current application, McLaughlin noted that historical access for this area was from Granite Street, and that

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ashlandoregon.gov

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provided that the owner could provide evidence of an easement for their landlocked parcel, staff would sign a boundary line adjustments and recognize this as a buildable lot. McLaughlin recognized that the grade of the access would exceed the allowable grades established by city ordinance, however since this was the historical, existing access for the area, its use for access purposes to the existing otherwise-landlocked parcel to access a residence would be allowable. McLaughlin emphasized that the driveway would need to be paved from the end of the existing easement to a proposed residence, and that development would need to meet Ashland Fire Department's requirements regarding hydrants and sprinklers, including the need to potentially install a pump station and hydrant and provide residential fire sprinklers to comply with the Uniform Fire Code. Staff present this memo from the planning application records for the subject property to make clear that the issue of the use of the driveway to serve the subject property, and the fact that it would exceed driveway grade standards and need to meet Ashland Fire requirements, was recognized in the early 1990's (well before the adoption of the current Physical & Environmental Constraints Review Ordinance regulating hillside development) and is not something now being self-imposed by the applicant. (*The city signed the boundary line adjustment discussed as Partition Plat #P-43-1996 which was recorded as [Jackson County Survey #14932](#) nearly 29 years before the applicant acquired the subject property.*)

- **Staff Assessment:** The existing and proposed driveway well exceeds both the 200-foot cumulative limit and the 18% grade threshold, rendering it ineligible for a Type I variance under AMC 18.5.3.060.F. As such, a Type II variance is required, which is the process currently being followed in this application. Should the Planning Commission approve a variance to the Flag Drive Standards (AMC 18.5.3.060.F), such approval would apply to both the grade and length, as each element is exceeded due to the pre-existing lot configuration and the necessity of locating access on steep slopes.
- **Necessity of Variance:** The driveway's location is determined by the existing private drive and the lot's flagpole configuration, which extends to this established access. The natural slope within the flagpole area averages 23%, making it impossible for the applicant to comply with the standard requirement for a driveway on slopes less than 15%. Additionally, due to the final grade and length required to extend the driveway from the existing private drive to the building envelope, the proposal does not qualify for a Type I variance, necessitating a Type II variance instead. The driveway is not proposed to be developed over land with slopes greater than 35% for a length of 100 feet or more, and as such complies with 18.3.10.090.A.3.b

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- As the proposed building envelope is situated immediately adjacent to the end of the flag-pole along the east property line, it is evident to staff that the proposed building location minimizes the length of the driveway to the greatest extent feasible while still providing necessary vehicular and emergency vehicle access to the property.
- Staff considers the requested flag drive variance to be the minimum necessary deviation to facilitate development of the site while ensuring compliance with safety and accessibility requirements. The Type II Variance Criteria in 18.5.5.05 are met in staff's assessment as the standard code provisions for maximum driveway grade and length do not account for the unique physical characteristics and topography of the site which is recognized as a pre-existing legal lot of record.

Home Size and Design Exceptions

Public testimony at the March 11th hearing referenced concerns regarding the size of the proposed home in comparison to surrounding residences.

Home Size: The Severe Constraints and Hillside Development Standards do not regulate home size but instead emphasize site disturbance limitations by requiring a portion of the lot to remain in a natural state. Specifically, AMC 18.3.10.090.B.3 requires that the percentage of the site preserved in its natural state be determined as follow:

On all projects on Hillside Lands involving partitions and subdivisions, and existing lots with an area greater than one-half acre, an area equal to 25 percent of the total project area, plus the percentage figure of the average slope of the total project area, shall be retained in a natural state.

For this property, the required percentage of the site to remain undisturbed is 52 percent [27% average slope + 25% = 52% to be retained in a natural state], ensuring that development is balanced with environmental preservation by limiting excessive grading and modification of the site. The application indicates that 80% of the property is to be retained in its natural state.

Design Exceptions: Exception to the Development Standards for Hillside Lands are not subject to the variance requirements of chapter [18.5.5](#), Variances, rather they are addressed under ALUO 18.3.10.090.H. While the specific design exceptions requested—vertical wall height and horizontal plane step-backs—are primarily aesthetic, they can also be relevant in evaluating the overall impact of development on the site. The intent of these exceptions is to reduce the perceived bulk and visual prominence of the home when viewed from below; however, they also influence the extent of

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grading, excavation, and tree removal required for construction. For instance, requiring a six-foot setback of the second story without the applicant reducing the building floor area could potentially result in expansion of the building footprint to the west, increasing grading and excavation on steep slopes on the western side of the proposed building and necessitating the removal of additional trees to accommodate the structural shift. Similarly, requiring further excavation to lower the ground floor below natural grade could significantly increase site disturbance, impacting the stability of steeper slopes and further encroaching on preserved natural areas.

Likewise, constructing a one-story home of the same square footage would expand the area of disturbance, as a larger footprint would require additional grading, excavation, and tree removal beyond what is currently proposed.

Staff evaluation: Staff's evaluation of the proposed exceptions focused on their visibility from the downhill side, rather than as a method of constraining the overall building size. The City of Ashland does not regulate maximum home size in this area. Factors that do limit building size and patio area include lot coverage restrictions, which account for the driveway, parking areas, hardscaping (including a pool), and the building footprint. In this application, the proposed development remains within the maximum lot coverage allowance and requirements for retention in a natural state, ensuring compliance with regulations designed to preserve the majority of the site in a natural condition while also minimizing additional site disturbance. Due to the building's location within a heavily wooded area far from Granite Street, it will largely not be visible from below, and in Staff's assessment, the typical concerns regarding prominent bulk and mass on the downhill side of a hillside home are not a factor in this case, which is why Staff has recommended approval of the exceptions requested. Further, in the design of the building effort has been made to reduce the vertical height of the building as viewed from the TID irrigation ditch trail above.

Talent Irrigation Ditch (TID) Trail Easement

Concerns were raised regarding the impact of development on the existing Talent Irrigation Ditch (TID) easement and the potential for a public trail.

- **Driveway & Homesite Impact:** The proposed development does not interfere with the existing TID easement.
- **Public Trail Consideration:** Public testimony and the applicant have indicated an interest in dedicating a public pedestrian easement along the TID ditch to maintain historic recreational use.

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- **Coordination with Parks Department:** While this falls outside the scope of the planning action, the applicant has indicated that he is working separately with the Parks Department to formalize this easement. Attached to this memo is a letter from Parks Director Rocky Houston confirming that the easement acquisition is in progress. Director Houston further clarifies that the parcel's inclusion on the Parks Open Space and Trails Map was to recognize its potential for trail connectivity, but that the City does not require acquisition of the entire property to achieve this goal.
- As the applicant has voluntarily proposed the dedication of a public pedestrian access easement along the Talent Irrigation Ditch (TID) and is actively working with the Parks Department to facilitate this, staff acknowledges that while there is no direct regulatory requirement for such an easement in relation to the development of a single-family home, the applicant's proposal could still be considered for adoption as a condition of approval. Should the Planning Commission wish to formalize this commitment, staff recommends the condition be worded as follows: *"As a proposal of the applicant, a public pedestrian access easement shall be provided to the City of Ashland along the Talent Irrigation Ditch, allowing public trail use from the northern to the southern boundary of the property."*

Questions Raised During Public Comments

In reviewing the public comments received during the hearing, Staff has prepared a document attached to this memo entitled "Staff Response to Select Public Comments". This provided document specifically address certain points raised in written testimony received. This response is not intended to be an exhaustive review of all public comments submitted but rather serves to provide additional written information for the Planning Commission's consideration during their deliberations. The intent is to clarify key issues, provide relevant context, and ensure the record includes staff analysis on select matters that may inform the Commission's decision-making process.

Conclusion

The Staff report presented on March 11, 2025 provided a recommendation to approve the Planning Action as presented and with the conditions of approval as outlined in the report and as presented during the public hearing. This recommendation was based on the following:

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1. The Type II variance process is the appropriate path for addressing the driveway grade and length.
2. The design exceptions do not compromise the intent of the hillside standards due to the project's minimal visibility from public rights-of-way.
3. There is no regulatory basis for limiting the size of the proposed home.
4. The TID trail easement is a separate matter being coordinated through the Parks Department. During the public hearing, the applicant/property owner indicated their commitment to voluntarily dedicate an easement along the Talent Irrigation Ditch (TID) to maintain pedestrian access. While this is not a requirement for the development of a single-family home, the Planning Commission could choose to formalize this voluntary proposal of the applicant as a condition of approval to align with the applicant's commitment. Should the Planning Commission wish to formalize this commitment, staff recommends a condition as follows:

"As proposed by the applicant, a permanent public access easement shall be provided to the City of Ashland along the Talent Irrigation Ditch, allowing public trail use from the northern to the southern boundary of the property prior to issuance of a certificate of occupancy. Dedicating a public access easement to the City satisfies and fulfills the trail acquisition expectation outlined in the adopted 2024 Parks, Trails & Open Space Plan for the property designated as #11 on the map.

Attachments:

- Letter from Parks Director Rocky Houston confirming TID easement process.
- 1992–1993 Correspondence between Acting Planning Director McLaughlin and attorney Carlyle F. Stout, III representing a prior owner of the subject property regarding access.
- Staff Memo dated 3/18/2025– Staff Responses to select Public Comments

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March 12, 2024

Planning Division
51 Winburn Way
Ashland, OR 97520

RE: 231 Granite – PA-T32-2024

Dear Planning Division,

The Parks & Recreation Department did not respond to the initial request due to discussions with the property owner prior to the application being submitted. That discussion addressed the recreational need we had identified, an easement for the TID "Ditch" Trail.

The parcel is identified in our 2024 Parks, Trails, and Open Space plan as acquisition #11 – Talent Irrigation Ditch Segment. The entire parcel was identified if the entire parcel was needed to be acquired to ensure the trail easement could be procured. Since the property owner has agreed in principle to an easement and we are working with them on recording the easement, the entire parcel is not needed for other recreational purposes.

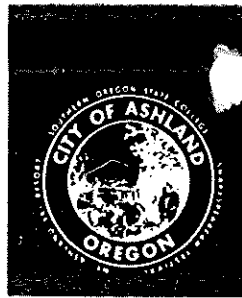
Don't hesitate to contact me if there are any questions.

Thanks for the opportunity to clarify our position on this matter.

Sincerely,

Rocky Houston
Director

CITY OF ASHLAND



CITY HALL

ASHLAND, OREGON 97524
telephone (code 503) 482-XXXX

March 22, 1992

Mr. Carlyle F. Stout III
215 Laurel Street
Medford, OR 97501

RE: Adelaide Clary/Tax Lot 1800
Access to tax lot 39 1E 08DA 1800 - Granite Street
Possible access from Strawberry Lane

Mr. Stout:

In regards to your letter of March 15, 1993 regarding the above referenced property, I am submitting a copy of a letter to Sandra Rapp, dated August 12, 1992. In that letter, I stated that, in the City's opinion, the most appropriate access to lot 1800 would be via the existing easement from Granite Street.

The option of using Strawberry Lane, and the possible use of the flag drive from the Sennett partition has been raised. As stated in the previous letter, the use of this drive as an access to tax lot 1800 would require a modification of the Sennett partition approval, and a variance to allow for four parcels to access off a private easement. As you are aware, variances are the most difficult land use process for which to obtain approval. The criteria for approval of a variance, under Ashland's land use ordinance, are as follows:

- (1) That there are unique or unusual circumstances which apply to this site which do not typically apply elsewhere.*
- (2) That approval of the application is necessary for the preservation of property rights.*
- (3) That 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) That the conditions or circumstances have not been willfully or purposely self-imposed.*

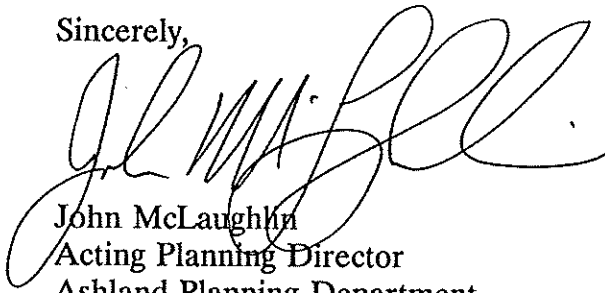
You have asked that I ascertain the possibilities of a positive outcome of such a variance request. That is extremely difficult to do, given that no formal application has been

filed, and that I do not have detailed knowledge of all of the particulars of a proposed application. However, it is known that should a variance request be contested, for whatever reason, that none have withstood appeal to the Land Use Board of Appeals.

The outcome of a variance request at the local level would depend very much on the presentation of facts, the weighing of evidence, and the concerns of the surrounding property owners; both those on the Granite Street easement and those on Strawberry Lane. And given the myriad of scenarios that could be presented, I would say that it is near impossible to predict the outcome of a vote of the Planning Commission or City Council.

However, the City still believes that the Granite Street access is the most appropriate for this site, and recommends that you pursue obtaining the necessary easements to finalize this access. Please be advised that all issues of the previous letter of August 12, 1992 still apply, including the survey requirements, and fire requirements.

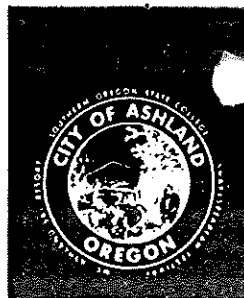
Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'John McLaughlin', is written over the typed name and title.

John McLaughlin
Acting Planning Director
Ashland Planning Department

attachment - Rapp letter 8/12/93

CITY OF ASHLAND



CITY HALL

ASHLAND, OREGON 97520
telephone (code 503) 482-3211

August 12, 1992

Ms. Sandra Rapp
P.O. Box 131
Ashland, OR 97520

RE: Access to tax lot 39 1E 08DA 1800 - Granite Street

Ms. Rapp:

After review of your request, the City of Ashland has made the following determinations:

It would be most appropriate to access lot 1800 via the easement from Granite Street, since this has been the historical access to this area. The Strawberry Lane access of the Sennett's is a very specific access tied to their approval of the minor land partition, as well as now serving three parcels (two of the Sennetts, and one of the Strauss'). Any changes beyond those already approved to allow access to your landlocked parcel would require Planning Commission review and approval, and perhaps a time consuming, litigated process. Therefore the historical access via easement from Granite Street may be used for access to this parcel, once you acquire the necessary easements from the adjoining properties.

The grade of this access exceeds the allowable grades established by our ordinance. However, since this is the historical and existing access to this area, it is allowable to use it for access purposes to this existing parcel for a residence.

The surfacing requirements for access shall be as required by the ordinance, with paving required for the driveway portion extending from the end of the existing easement to the proposed residence on lot 1800. Further, all requirements of the Ashland Fire Department regarding hydrant and sprinklerization shall apply. This may include the installation of a pumping station and hydrant, and possibly residential sprinklers to comply with the requirements of the Uniform Fire Code.

The final issue regards the ultimate clarification of the lots and boundaries. As you are aware, a boundary line adjustment was done on parcels 1800 and 1801 without approval of the City of Ashland. Basically, no survey was completed as required by ordinance. And the survey has been unable to be completed since lot 1800 has not had legal access. Therefore, the City of Ashland does not recognize lots 1800 and 1801 in the configuration currently shown on the assessor's plat. However, should an access easement be provided to lot 1800, and a survey completed in compliance with all requirements of the City of Ashland Municipal Code 18.76 for lots 1800 and 1801, then

the City would recognize these as buildable parcels, subject to all development requirements mentioned above for driveways and fire concerns.

Further, we would encourage you to continue working with the Sennetts and Strauss' in connecting the Strawberry Lane drive with that accessing from Granite Street, if only for emergency purposes, since this will be in the best interest of all involved.

To summarize the above statements, if an easement is granted for access to lot 1800 from the existing drive from Granite Street, the City will allow this as the driveway to this parcel, even though it exceeds the current allowable grades. Further, a minor land partition survey will be required for the parcels to approve the boundary line adjustment previously made illegally. Once these are complete, parcels 1800 and 1801 become buildable parcels, subject to all development requirements of the City regarding driveway surfacing and hydrant/sprinkler requirements.

If you have any further questions regarding the fire hydrant concerns, please contact Don Paul of the Ashland Fire Department. If you have specific concerns regarding the survey requirements, either contact myself or Jim Olson of the Engineering Division.

I hope this answers your concerns on this matter.

Sincerely,

John McLaughlin
Senior Planner

c: Jim Olson, Engineering
Don Paul, Fire Department
Ron Cue, Attorney
Carlyle Stout, Attorney
file

ATTORNEYS:
Carlyle F. Stout III

LAW OFFICE OF
CARLYLE F. STOUT III
215 LAUREL STREET
MEDFORD, OR 97501
TELEPHONE: (503) 776-2020
FAX NUMBER: (503) 776-9841
March 15, 1993

PARALEGALS:
Deanna "Dee" Dirks

John McLoughlin
Department of Planning
City of Ashland
City Hall
Ashland, OR 97520

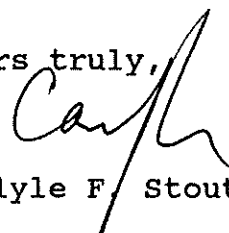
Re: Adelaide Clary/Tax Lot 1800

Dear John:

As you know from our previous discussion and correspondence, my clients are trying to resolve the non-conforming tax lot problem concerning tax lot 1800 by gaining legal access to it. My clients have attempted to obtain an easement from the Strausses over and across the existing road which provides access to the other tax lots off of Granite Street. Recently the Strausses indicated they believed my clients should obtain access off of Strawberry Lane. I advised my clients that the city's current ordinance only allows access for three lots off of a flag drive and these were already allocated.

During our telephone conversation of approximately two weeks ago, you indicated you would write a letter to me explaining that such access could only be obtained by a variance and that the burden of proof for a variance was quite high. You further indicated you would state how the planning commission has treated variances in the past and that the success ratio of obtaining them was quite low. I have not yet received this letter and my clients would like to conclude matters with the Strausses. I am hoping your letter will make the Strausses realize that a variance is not practical nor feasible. Please send me your letter concerning this matter as soon as possible. Thank you for your cooperation.

Yours truly,


Carlyle F. Stout III

CFS:dd
cc: clients

Memo

DATE: March 18, 2025
TO: Planning Commission
FROM: Derek Severson, Planning Manager
RE: 231 Granite Street; PA-T2-2024-00053

Staff Responses to select Public Comments

The responses below provide specific staff replies to select public testimony submitted during the March 11, 2025, public hearing regarding 231 Granite Street. These responses are not comprehensive and do not address all comments received; rather, they are intended to clarify specific questions or concerns raised by multiple parties. They are being submitted into the written record within the first seven days following the request to keep the record open.

*Staff comments are provided in **blue Times New Roman font** below to select public comments received, which are in **black Calibri font** text.*

Environmental Impact and Hillside Ordinance Compliance

The project falls under Ashland Land Use Ordinance (ALUO) 18.3.10.090, which governs development in environmentally constrained areas. The proposed removal of 67 trees, including four significant trees, raises concerns about erosion control, stormwater runoff, and soil stability. Specifically, ALUO 18.3.10.900 D. 3. b. states that "Building envelopes shall be located and sized to preserve the maximum number of trees on site while recognizing and following the general fuel modification standards if the development is located in Wildfire Lands." This lot and the development are located in the Wildfire Lands Overlay Zone. A smaller sized building envelope (structure and pad) should be considered to preserve trees.

- *As noted elsewhere, the proposed building envelope is as near the driveway access as possible which minimizes disturbance to the site and avoids additional site disturbance and tree removal which would be required if the driveway were extended to construct a building elsewhere, further up the slope.*

The site disturbance is stated as 18,738 square feet, and while the application claims this meets the minimum retention of natural land, the extent of vegetation removal and grading should be reviewed under ALUO 18.3.10.050 (Approval Criteria for Physical Constraints Review Permits) to ensure adverse environmental impacts have been minimized. The Planning Commission should consider the entire

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application, with particular attention to trees and excavation, to ensure that, per ALUO 18.3.10.050 C., *"...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."*

- As noted elsewhere, based on an average 27 percent slope of the property, AMC 18.3.10.090.B.3, 52 percent of the property must be retained in its natural state. As proposed, the applicants would retain 80 percent of the property in the natural state, significantly exceeding this minimum standard.

The application does not include an analysis of tree removal impacts within 200 feet of the property, as required by ALUO 18.5.7.040 B. 2. b. A full assessment of the environmental impact on the surrounding area should be included, particularly as it relates to the 36-inch dbh Madrone on the north property line, sitting just 6 feet from the proposed development setback.

- The applicant noted during their presentation that there are hundreds of deciduous and coniferous trees on and adjacent to the property, and that the removals proposed will not have significant adverse impacts within 200 feet of the subject property.

ALUO 18.3.10.090 B. 8. a. states that "No terracing shall be allowed except for the purposes of developing a level building pad and for providing vehicular access to the pad." The plans show a large outdoor space between the terraced/tiered retaining wall and the house, which actually increases excavation beyond what would be needed if the retaining wall were closer to the uphill side of the house. This outdoor space could be reduced or eliminated to reduce excavation and preserve uphill trees, including the five-stem Madrone of significant value.

- The grading standard referenced does note in 18.3.10.090.B.8.c that, "Building pads should be of minimum size to accommodate the structure and a reasonable amount of yard space. Pads for tennis courts, swimming pools and large lawns are discouraged. As much of the remaining lot area as possible should be kept in the natural state of the original slope."
- The Planning Commission will ultimately need to determine whether the proposed yard space, including the lap pool, is reasonable in the hillside context of the site.

The Planning Commission should consider that, with regard to Hillside Lands Development, ALUO 18.3.10.090 B. 8. c. states that *"...swimming pools...are discouraged. As much of the remaining lot area as possible should be kept in the natural state of the original slope."*

- Swimming pools are discouraged under AMC 18.3.10.090.B.8.c but are not outright prohibited.
- The application suggests that a small outdoor lap pool area is proposed to provide additional "emergency firefighting water outflow", and notes that more than half of the pool area is located on lands with slopes of less than 25 percent (i.e. lands that are not subject to hillside design standards) and that will already be disturbed with construction staging.

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- As noted elsewhere, roughly 80 percent of the subject property is proposed to be retained in its natural state where the minimum hillsides standard calls for 52 percent retention in a natural state.
- The Planning Commission will ultimately need to determine whether placement of the pool in an area already disturbed by construction, with a potential fire response benefit, is acceptable.

Wildfire Zone Hardening Compliance

The project is located in a Wildfire Lands Overlay Zone (ALUO 18.3.10.100), requiring strict adherence to fire prevention measures. The application does not fully specify fire-resistant materials and mitigation strategies and instead defers providing this information. Exact material specifications, as required by Oregon Residential Specialty Code (ORSC) R327.4, should be finalized before approval to ensure compliance.

The proposal allows for thinning and tree removal, but significant vegetation removal could increase wind exposure and erosion risks, potentially exacerbating wildfire spread. The application does not delineate a required Fire Management Plan for fire safety and mitigation, which is required under ALUO 18.3.10.100 A. 4. a.

The application does not indicate whether there will be adequate water pressure for residential use and fire suppression systems. The applicant should provide data on water pressure availability and plans for ensuring adequate supply during site work and occupation.

- R327.4 is part of the Oregon Residential Specialty Code and applies to the review of building permits. The current application is not a building permit submittal and is not reviewed for compliance with building codes as the specifics of the proposal are very likely to change through the land use process. Neither the Building or Fire Departments provide review for compliance with building or fire codes until a formal building permit submittal has been made. Ensuring exact compliance with these codes is not a function of the Planning Commission, or Planning staff, but rather part of the Building Division review of final building permit submittals.
- Similarly, demonstration of adequate water pressure for fire suppression will be considered by the Fire Marshall in their review of the building permit submittals.
- Conditions relating to fire requirements have been recommended to be attached to any approval, including that:
 - **#10** - Requirements of the Ashland Fire Department shall be met, including that all addressing shall be approved prior to being installed, that fire apparatus access be provided, and that a fuel break is required.
 - **#11** - That a 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.

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- **#15** - Prior to bringing combustible materials on site, applicant must provide documentation of fire hydrant location within 600 feet and access (easement), and fire sprinklers as required by the Ashland Fire Department.

Compliance with Seasonal Restrictions on Power Equipment

Ashland enforces seasonal restrictions on power equipment use during high wildfire risk periods, particularly for hillside developments. The application does not address how the construction timeline will comply with these restrictions, which should be required as part of ALUO 18.3.10.100 (Development Standards for Wildfire Lands).

- The land use ordinance regulates “timing of improvements” in <https://ashland.municipal.codes/LandUse/18.3.10.090.B.2> with regard to grading and excavation, but explicitly exempts single family residential development from these timing limitations.
- Seasonal restrictions on the use of power equipment are not part of the city’s hillside or wildfire regulations and are not regulated through the land use process. These are Oregon Department of Forestry regulations enforced by Ashland Fire & Rescue during specific periods, dependent on conditions, and are not a consideration of the Planning Commission.

Impact on Talent Irrigation Ditch

The Talent Irrigation Ditch runs near the property, yet no direct assessment has been made regarding how excavation and grading could impact its structural integrity. There is no referenced hydrological study or geotechnical analysis that specifically assesses the ditch’s potential vulnerability to runoff or erosion caused by new development. This is a significant concern under ALUO 18.3.10.090 4., which requires that development not alter hydrology in a manner that negatively impacts adjacent properties or waterways.

- The Talent irrigation ditch is an irrigation facility and is not considered a regulated water resource under Ashland’s Water Resource Protection Zone Ordinance (AMC 18.3.11).
- The Talent Irrigation District (TID) regulates the irrigation canal system and was provided the opportunity to provide written comment on the current application at the pre-application level. No comments were received.
- The most recent survey of the property which was recorded in 1996 indicates that there is no specific easement of record for the canal through the property.
- The proposed homesite is approximately 60 feet from the canal, and is downhill, 15-20 feet below the canal in elevation.

Variance Requests and Legal Justifications

The project requests a Variance for driveway slope exceeding 18%, citing ALUO 18.5.5.060.F. The engineering letter states that the 153-foot-long driveway will have a slope of 23%, while the topographic map and the applicant's landscaper's map indicate a 27% slope in this area (even going as high as 29%).

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Given the steepness of the existing slope, detailed information on how a decrease in slope will be achieved should be included in the application, per ALUO 18.5.5.060.F.

While the applicant justifies the variance based on pre-existing nonconforming conditions, the increased steepness will likely pose access issues for emergency services, particularly during fire season. Furthermore, the steep nature of the driveway and lot access may cause engineering issues with sewage drainage. Notably, this proposed driveway is very steep, approximately the same slope as the lower portion of Strawberry Lane between Scenic and Granite.

ALUO 18.5.5.050 A. 3. states that "The proposal's benefits will be greater than any negative impacts...and will further the purpose of this ordinance and the Comprehensive Plan of the City." The benefit of the placement of a single-family residence is not greater than the negative impacts of the hillside excavation and loss of trees.

- The existing average slope of the property is noted at 27 percent, and the materials provided from the project engineer suggest that as engineered, the final average slope of the driveway portion will be approximately 23 percent. A condition has been recommended by staff that the driveway grade as installed is consistent with that described in the application, with verification by a professional land surveyor prior to occupancy.
- Both the Fire Department and Public Works Department have commented in the record, and both will review the final civil engineering and building permit submittals to insure that fire apparatus access and public infrastructure are provided in a manner consistent with applicable codes and standards.
- The application includes only one Variance request, for driveway grade, and in determining the lot was buildable in the early 1990's the city recognized that the driveway could not meet grade standards. The Commission may determine that enable the construction of needed housing on an existing buildable lots using an existing driveway system is greater than the negative impacts of a steeper than normal driveway that will be engineered to meet emergency access requirements.

Furthermore, the fact that the City of Ashland had entered an agreement to purchase the subject property to preserve its natural state as part of the Comprehensive Plan of the City demonstrates the greater benefit of preservation.

- The City has not entered into an agreement to purchase the subject property to preserve it in its natural state. The recently adopted Parks, Open Space & Trails Map identifies the subject property as "#11" and notes the aspiration of acquiring public pedestrian easements to continue the "Ditch Trail" through the subject property. The property owner indicates that a perpetual public pedestrian access easement for use of the trail as envisioned in the Parks, Open Space & Trails Map has already been promised to the Parks Department, and the Parks Department has provided written confirmation.

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ALUO 18.5.5.050 A. 4. states that "The need for the variance is not self-imposed by the applicant or property owner." In this case, the need for the variance is self-imposed by the applicant/property owner, as the need for the variance was known before the purchase of the property. The topography and land use ordinances were already in effect prior to the purchase of the property.

- As noted elsewhere in the record, when the lot was recognized as a buildable lot in the early 1990's, it was also recognized both that vehicular access would need to come from Granite Street, as it historically always had, and that such an access would exceed grade requirements. There is no other viable vehicular access to this land-locked property.

The applicant does not provide an emergency vehicle turnaround, as required in ALUO 18.5.3.060 J., and there is no exception provided from the Staff Advisor and Fire Code Official. This, compounded with the very steep driveway, will likely interfere with emergency vehicle response, particularly during fire season.

- AMC 18.5.3.060.J requires a turnaround where required by Oregon Fire Code, with the requirement to be determined in coordination between the Staff Advisor and the Fire Code Official. In this instance, the applicant has provided an e-mail from Ashland Deputy Chief & Fire Marshal Mark Shay dated December 5, 2024 which indicates that he would consider a turnout designed to Jackson County standards to meet the Fire Code requirement. Such a turnout is identified on the plans submitted in the record.

The applicant should demonstrate that construction equipment can feasibly access the construction site, given the steep driveway.

- There are not construction equipment access requirements separate from driveway and emergency access requirements.

A snow removal plan for winter access should be provided prior to development.

- There is no requirement for snow removal/winter access plan in the Land Use Ordinance.

The applicant seeks an exception to the Hillside Development Standards (ALUO 18.3.10.090. E. 2. d.) for exceeding continuous horizontal building plane limits. The request to exceed the 36-foot horizontal plane limit with offsets of only 4-5 feet rather than 6 feet sets a precedent for allowing excessive structural massing on steep slopes, undermining the intent of the hillside regulations.

- The Hillside Development Standards contain specific criteria for considering an exception (i.e. there is a demonstrable difficulty meeting the requirement due to a unique or unusual aspect of the site or proposed use; the exception results in equal or greater protection; the exception is the minimum necessary to alleviate the difficulty, and the exception is consistent with the purpose and intent of the chapter). The Commission's decision should focus on whether these specific criteria are satisfied by the proposal as presented.

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The application does not include proposed color selections for compliance with the neutral color requirements of ALUO 18.3.10.090 E. 2. g. 6. .

- The standard referenced is a recommendation rather than a requirement.
- The application narrative asserts that, “*Neutral colors found in the surrounding landscape that minimize contrast between the natural environment and the structure will be used on the exterior paint.*” The images included in the application submittals reflect dark neutral tones.

Fire Hydrant, Water Supply, Utility Supply, and Flag Driveway Screening Issues

The application references a fire hydrant on the private drive from Granite Street, but this is not shown on any application maps. This is required as set forth in ALUO 18.3.10.100 A. 2. d. Local neighbors indicate no fire hydrant exists on this private driveway. If the applicant refers to hydrants on a separate private driveway, the applicant does not have legal access.

- The applicant’s hearing submittals included a map illustrating the location of Fire Hydrant #2192 at 237 Granite Street (Presentation Slide #3), and noted that the Fire Department has indicated that they will utilize available hydrants when they are needed for fire response.

ALUO 18.5.3.060 (Flag Lot Partition Criteria) requires that flag lots demonstrate adequate public facilities, including utility access, before approval. If utility easements or shared access agreements are necessary, they must be clearly delineated in the application. The current application does not adequately demonstrate the easements or provide access agreements.

- The applicants’ presentation to the Planning Commission included a slide (#18) illustrating all easements in place relating to access to the subject property via the existing driveway down to Granite Street, with instrument numbers or volume and page records to the Official Records of Jackson County.
- Condition #4b also requires that all easements be identified on the building permit submittals.

The application does not include specifications for the required 4- to 6-foot-high screen of sight-obscuring fence, wall, or fire-resistant broadleaf evergreen for the flag driveway, as mandated by ALUO 18.5.3.060 N.

- The flag drive screening requirements noted are typically conditioned at the creation of the driveway, and serve to screen a flag drive where it passes windows to an established home. The driveway here is long-established, and the applicants would not have the option to install fencing on other properties. This application is not a request to create a new Flag Partition, and as such the standard condition requiring screening has not been recommended by staff. Should the Planning Commission determine that screening on the applicants’ property is necessary, it could be included as a condition.

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Requested Actions Given the concerns outlined above, we respectfully request the following before any approval is granted:

1. Demonstrate clearly how the benefits of this hillside development are greater than the negative impacts in this area, especially given the Wildfire Lands Overlay Zone.
 - The Planning Commission may determine that the proposal to enable the development of an existing, otherwise-landlocked buildable lot from an existing driveway is a benefit in terms of providing needed housing, particular when the city recognized that the driveway grade would be an issue when determining the lot to be buildable in the early 1990's.
2. Consider a smaller sized building envelope (structure and pad) to preserve trees.
 - The Planning Commission must consider the request before them in light of applicable criteria and standards. The Planning Commission cannot redesign the project.
3. Review the extent of vegetation removal and grading.
 - A designated percentage of a hillside lot must be preserved in its natural state, as required under the Hillside Development Standards. The specific percentage is determined based on the lot size and slope using the formula outlined in AMC 18.3.10.090 to ensure minimal disturbance and maintain hillside stability. An analysis of this standard is addressed in the applicant submittals.
4. Analyze tree removal impacts within 200 feet of property.
 - The applicant noted during their presentation that there are hundreds of deciduous and coniferous trees on and adjacent to the property, and that the removals proposed will not have significant adverse impacts within 200 feet of the subject property.
 - Those Commissioners who made site visits likely observed the heavily treed nature of the surrounding hillside and the variety of tree species.
5. Review the nature of the terraced retaining wall and living space uphill of the house, which increases the building pad size and increases environmental impact.
 - Design and construction must adhere to the requirements outlined in **AMC 18.3.10.090.B**, ensuring that retaining walls, slope stabilization, and overall site development are consistent with the intent to preserve hillside stability and natural character.
6. Review the inclusion of a pool in the building pad, which increases the building pad size and increases environmental impact.
 - The grading standard referenced does note in 18.3.10.090.B.8.c that, "Building pads should be of minimum size to accommodate the structure and a reasonable amount of yard space. Pads for tennis courts, swimming pools and large lawns are discouraged. As much of the remaining lot area as possible should be kept in the natural state of the original slope."

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- The Planning Commission will ultimately need to determine whether the proposed yard space, including the lap pool, is reasonable in the hillside context of the site.
 - Swimming pools are discouraged under AMC 18.3.10.090.B.8.c but are not outright prohibited.
 - The application suggests that a small outdoor lap pool area is proposed to provide additional “emergency firefighting water outflow”, and notes that more than half of the pool area is located on lands with slopes of less than 25 percent (i.e. lands that are not subject to hillside design standards) and that will already be disturbed with construction staging.
 - As noted elsewhere, roughly 80 percent of the subject property is proposed to be retained in its natural state where the minimum hillsides standard calls for 52 percent retention in a natural state.
 - The Planning Commission will ultimately need to determine whether placement of the pool in an area already disturbed by construction, with a potential fire response benefit, is acceptable.
7. Mandate finalization of wildfire-resistant materials and construction measures before approval, rather than allowing a deferred submittal.
- The wildfire-resistant material requirements in OSSC R327.4 are reviewed by Building and Fire Officials during building permit review, rather than at the stage of the land use approval, where Planning Commission-imposed conditions may ultimately alter the proposal prior to final engineering.
8. Require a complete Fire Management Plan, including demonstrating adequate water pressure during and after construction.
- Conditions relating to fire requirements have been recommended to be attached to any approval, including that:
 - **#10** - Requirements of the Ashland Fire Department shall be met, including that all addressing shall be approved prior to being installed, that fire apparatus access be provided, and that a fuel break is required.
 - **#11** - That a 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.
 - **#15** - Prior to bringing combustible materials on site, applicant must provide documentation of fire hydrant location within 600 feet and access (easement), and fire sprinklers as required by the Ashland Fire Department.
9. Ensure compliance with seasonal construction restrictions, particularly regarding power equipment use during high fire-risk months.

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- The land use ordinance regulates “timing of improvements” in <https://ashland.municipal.codes/LandUse/18.3.10.090.B.2> with regard to grading and excavation, but explicitly exempts single family residential development from these timing limitations.
 - Seasonal restrictions on the use of power equipment are not part of the city’s hillside or wildfire regulations and are not regulated through the land use process. These are Oregon Department of Forestry regulations enforced by Ashland Fire & Rescue during specific time periods, dependent on conditions, and are not a consideration for the Planning Commission.
10. Require a hydrological and geotechnical study to determine excavation and construction impacts to the TID, ensuring minimal negative impacts to adjacent properties or waterways.
- The TID ditch is an irrigation facility, not a regulated waterway, and is 60 feet away and 20 feet above the proposed home.
 - The application includes a geotechnical study of the site and its potential for development from Rick Swanson, a registered professional geotechnical engineer with Marquess & Associates.
11. Reevaluate the necessity and precedent-setting nature of the requested variances, particularly the request for variance of driveway slope, variance of no emergency vehicle turnaround, and request to exceed the 36-foot horizontal plane limit with offsets of only 4-5 feet rather than 6 feet; demonstrate how these variances are not self-imposed.
- The only variance requested is to driveway grade.
 - Deviations from the architectural standards for hillside lots may be approved as "exceptions" rather than through a variance process. Unlike variances, which require a finding that the hardship is not “self-imposed”, exceptions proposed by the applicant and do not require such a finding. An exception to architectural standards may be approved if the applicant demonstrates if the applicant demonstrates that the proposed design meets the intent of the standard, and provides an equal or superior design solution.
 - With the recognition of the property as a buildable lot in the early 1990’s, it was also recognized that development of this otherwise land-locked property would require access from the existing driveway to Granite Street and that such as access would not meet driveway grade requirements.
12. Require color selections for compliance with neutral color requirements.
- AMC 18.3.10.090.E.2.g is a recommendation, rather than a requirement.
 - The application narrative asserts that, *“Neutral colors found in the surrounding landscape that minimize contrast between the natural environment and the structure will be used on the exterior paint.”* The images included in the application submittals reflect dark neutral tones.

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13. Clarify fire hydrant location and access rights, ensuring adequate water pressure for fire suppression and residential use.
 - The applicant's hearing submittals included a map illustrating the location of Fire Hydrant #2192 at 237 Granite Street (Presentation Slide #3), and noted that the Fire Department has indicated that they will utilize available hydrants when they are needed for fire response.
14. Require a complete snow removal plan.
 - There is no requirement in the Physical & Environmental Constraints Review Chapter (AMC 18.3.10) for a snow removal plan.
15. Ensure compliance with required flag driveway screening, per Ashland's requirements.
 - Should the Planning Commission determine that flag driveway screening is appropriate here, it could be made a condition of the approval.
16. Require demonstration of utility easements and shared access agreements prior to approval of application and demolition or excavation of any part of the property.
 - The applicants' presentation to the Planning Commission included a slide (#18) illustrating all easements in place relating to access to the subject property via the existing driveway down to Granite Street, with instrument numbers or volume and page records to the Official Records of Jackson County.
 - Condition #4b also requires that all easements be identified on the building permit submittals.

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PUBLIC COMMENTS

**Public Comments Received by
Non-Parties of Record After March 11,
2025 Meeting**

Michael Sullivan

From: Mary Hough <hough.mm@gmail.com>
Sent: Tuesday, March 11, 2025 9:23 PM
To: planning
Subject: Stephanie and Bryan DeBoer request for exemptions to Ashland Hillside Ordinance / PA-T@-2024-00053

Follow Up Flag: Follow up
Flag Status: Flagged

[EXTERNAL SENDER]

Dear Members of the Ashland Planning Council,

We are writing to express our strong opposition to the proposed construction of a large home(PAA-T2-2024-00053) that will significantly impact our community's shared outdoor space. This project threatens a well-used hiking trail that is unique for its flat and shaded path, offering easy access to water alongside the irrigation ditch, making it an ideal location for walking pets and enjoying the outdoors. This trail is a treasured resource, accessible for people of all ages, and plays an integral role in our community's lifestyle and well-being.

The hillside ordinance guidelines were established to protect our hillsides from erosion and to ensure access for emergency services, such as fire response. Allowing this development to proceed not only jeopardizes these protections but also sets a concerning precedent by making exceptions to rules designed to benefit the entire community. This project seems to prioritize the interests of a privileged few over the needs and enjoyment of the many. We purchased a hillside lot in Ashland 26 years ago. We were advised of the need to adhere to the hillside ordinance when we purchased our lot and we worked with our architect and builder to be sure we followed the guidelines.

We are deeply disappointed by the willingness of both local and national leadership to favor the desires of the most privileged class at the expense of community well-being and environmental preservation. It is crucial that we uphold the principles of fairness and equity, ensuring that all community members have access to our shared natural spaces and no community members are offered exceptional access based on their wealth.

we urge the Ashland Planning Council to reconsider this project and prioritize the preservation of our community's cherished outdoor spaces. Protecting these areas is essential not only for our current residents but for future generations as well.

Thank you for considering our concerns.

Sincerely,

Mary and Matthew Hough

333 Alta St

Ashland OR 97520

541-482-7809

Michael Sullivan

From: Jennifer Lind <lind.jennifer@gmail.com>
Sent: Tuesday, March 11, 2025 9:39 PM
To: planning
Subject: Public comment re PA-T2-2024-00053

Follow Up Flag: Follow up
Flag Status: Flagged

[EXTERNAL SENDER]

I am writing about my concerns related to this development proposal. There are 3 main topics that drive my outreach:

1. Environmental impact: the number of trees that will be removed is significant. I would like to better understand how the trees for removal are identified, the impact they will have on the area, and mitigation steps. The concern here is related to slope stability, soil impact, shade deprivation, and general changes to the microclimate of this area.
2. Concern about TID: I do not see how stability and permanence of the TID is taken into consideration. The slope causes concerns for this critical infrastructure. In addition, I often use the TID path through here as a walking and jogging route. Maintaining this trail is of high value to all of us in the city.
3. Wildfire safety: it appears the driveway will be steep, does not have safe turnaround clearance for emergency vehicles, and will contribute to the fire risk all of our neighborhoods face.

Please reconsider allowing private development for a large single dwelling home. Instead, I encourage you to review opportunities to maintain this as a public space for environmental and recreational use.

Thank you,
-Jennifer
Ashland resident

Sent from my iPhone

Michael Sullivan

From: Sylvia Chatroux (Poetica) <sylvia@poeticapress.com>
Sent: Wednesday, March 12, 2025 8:02 AM
To: Planning Commission - Public Testimony
Subject: The proposed De Boer house

Follow Up Flag: Follow up
Flag Status: Flagged

[Some people who received this message don't often get email from sylvia@poeticapress.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

[EXTERNAL SENDER]

Hello there this is Sylvia Chatroux and I've been in the valley now living in Ashland for 30 years. I find it very sad that a house would have to take down 67 trees and totally unfair to our climate and the rest of Ashland. I hate to point out these folks keep building huge houses and taking down the environment. I know they're generous donors to the community but nonetheless it does feel unfair and you can't buy clean air or beauty that's natural. I vote that you block this proposal. Thank you for hearing me, Sylvia Chatroux MD.
Sent from my iPhone

Michael Sullivan

From: noreply@civicplus.com
Sent: Thursday, March 13, 2025 7:51 PM
To: planning
Subject: Online Form Submittal: Contact Planning Commission

Follow Up Flag: Follow up
Flag Status: Flagged

[EXTERNAL SENDER]

Contact Planning Commission

Full Name	Brandon Kelsey
Phone	<i>Field not completed.</i>
Email Address	nether8671@gmail.com
Subject	Opinion on the potential construction of another DeBoer house near Lithia Park
Type of Testimony	Written

Message

As a concerned Ashland citizen, I urge the commission to reject Bryan DeBoer's attempt to shut down a public trail to build another ridiculous house. It is one of the few flat, lengthy trails in and around Ashland. Because of this, I regularly run along this trail and I know that the SOU cross country team also uses it most weeks for training. It would be a shame for that to end.

I am also by principle, against those with ridiculous wealth being able to bend or break rules with no consequence. It is no secret that the DeBoers would not be able to build without the city granting them exceptions to multiple city ordinances. This is another example of what is currently happening across the nation, wealthy interests and individuals pillaging public resources for their own gain.

Adding to the absurdity of the situation, this house isn't even needed. To echo Zahara Soleman, the Deboers already have a residence within walking distance. A residence, from what I have seen, is barely even used itself. Clearly this family, like a greedy toddler, need to finish their first helping before moving on to seconds.

I urge in the strongest possible terms that the commission reject this bid and keep this land open to the public. Thank you.

Attachment 1	<i>Field not completed.</i>
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Attachment 2	<i>Field not completed.</i>
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Attachment 3	<i>Field not completed.</i>
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Email not displaying correctly? [View it in your browser.](#)

Michael Sullivan

From: noreply@civicplus.com
Sent: Monday, March 17, 2025 6:54 PM
To: planning
Subject: Online Form Submittal: Contact Planning Commission

Follow Up Flag: Follow up
Flag Status: Flagged

[EXTERNAL SENDER]

Contact Planning Commission

Full Name	Zoe Varaday
Phone	4582467335
Email Address	zoevaraday@gmail.com
Subject	The Deboer Construction Project
Type of Testimony	Electronic (to appear electronically)
Message	I kinda grew up in Ashland. I graduated from the JUNIOR HIGH (back in 1978), and AHS (Class of '81). Since I live in poverty, I have lived in Talent since 1993, but naturally, I'm still concerned about the development of Ashland and wonder if my opinions matter. They don't seem to matter in Talent. I love Lithia Park, and from what I've learned about the Deboer Project, I wish to make my OBJECTION to this Project noted and counted. Thank you!
Attachment 1	<i>Field not completed.</i>
Attachment 2	<i>Field not completed.</i>
Attachment 3	<i>Field not completed.</i>

Email not displaying correctly? [View it in your browser.](#)

Michael Sullivan

From: Brian Lovett <brianclovett@hotmail.com>
Sent: Wednesday, March 19, 2025 1:45 PM
To: Planning Commission - Public Testimony
Subject: March 11, 2025 Hearing Testimony

Follow Up Flag: Follow up
Flag Status: Flagged

[EXTERNAL SENDER]

Hello,

This might be too late for any public comment. I only was made aware of this through a news article as I never saw any public notice sign posted near the homesite.

Regarding the Deboer homesite, I don't really have any comment about the home or details about it but I hope that there is a public easement given for the trail. The TID trail that runs through this property is well used and very important access point for other trails off of TID for that area. Also, all the trails that connect to that portion of TID trail are steep so anyone that don't have good mobility is only able to use this flat TID trail.

In order to make the trails in this area of town work there were easements created through adjoining properties for the trails at Hald Strawberry, Birdsong, Hitt rd, etcetera....so I really hope that this section of TID is kept open.

sincerely,
Brian Lovett

TYPE III PUBLIC HEARING

Hamilton Creek Floodplain Modification

NOTICE OF APPLICATION

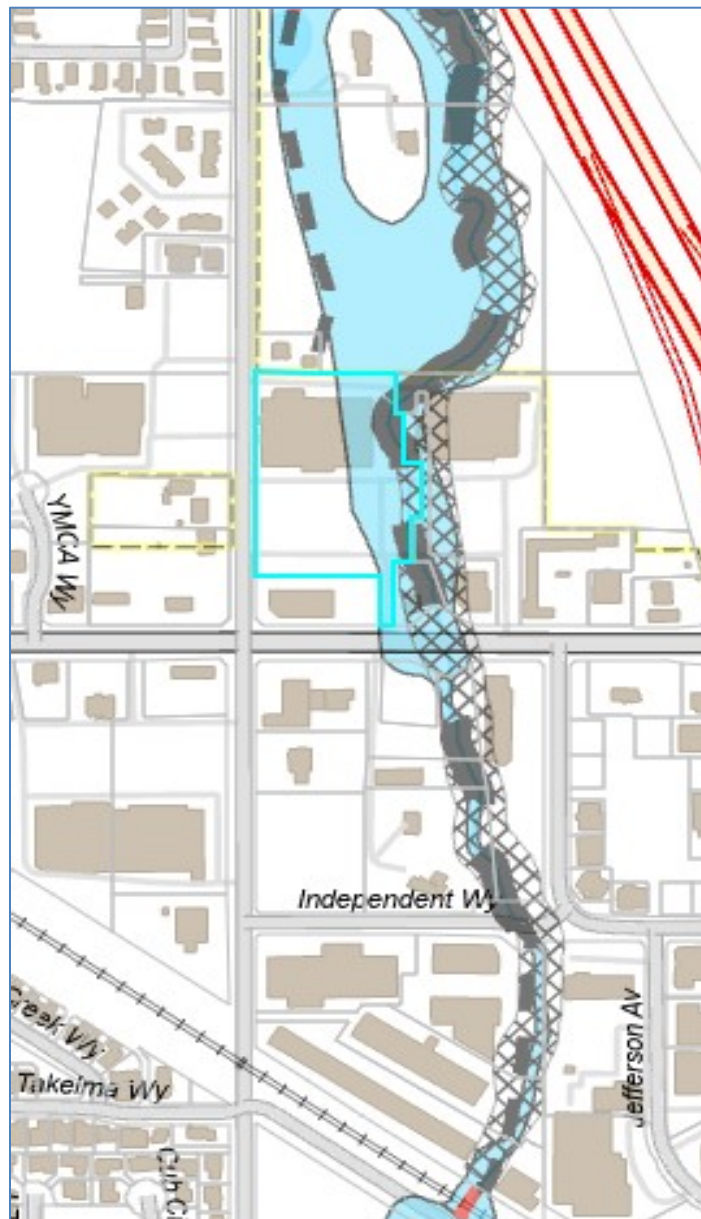
PLANNING ACTION: PA-T3-2024-00012

SUBJECT PROPERTY: 2320 Ashland St

APPLICANT: City of Ashland

DESCRIPTION: A request to modify the officially adopted maps for the locally adopted Ashland Modified Floodplain to be consistent with the original studies conducted and City Council Approvals. The amendment would remove the Local Ashland Floodplain along Hamilton Creek from Mistletoe Road downstream to Interstate Five. This amendment would have no change on the FEMA flood zones, and those regulations would stay in full effect.

ASHLAND PLANNING COMMISSION MEETING: *Tuesday April 8, 2025 at 7:00 PM, Ashland Civic Center, 1175 East Main Street*



COMMUNITY DEVELOPMENT DEPARTMENT

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

Tel: 541.488.5305
Fax: 541.552.2050
TTY: 800.735.2900

PLANNING COMMISSION HEARING

Notice is hereby given that a PUBLIC HEARING on the following request with respect to the ASHLAND LAND USE ORDINANCE will be held before the ASHLAND PLANNING COMMISSION on meeting date shown above. The meeting will be at the ASHLAND CIVIC CENTER, 1175 East Main Street, Ashland, Oregon. You can watch the meeting on local channel 9, on Charter Communications channels 180 & 181, or you can stream the meeting via the internet by going to <https://rvtv.sou.edu> and selecting 'RVTV Civic.' Join the Zoom meeting at: <https://zoom.us/j/99910988744>

All application materials are available on-line and written comments will be accepted via e-mail to PC-public-testimony@ashlandoregon.gov or can be provided in person or via Zoom during the public hearing. A copy of the application, including all documents, evidence and applicable criteria will be available on-line at "What's Happening in my City" at <https://gis.ashland.or.us/developmentproposals/> no less than 20 days prior to the meeting date shown above. A copy of the staff report will be available on-line in the Commission packet at: https://ashlandor.portal.civicclerk.com/?category_id=30 seven days prior to the meeting date shown above. Copies of application materials will be provided at reasonable cost, if requested. Application materials may be requested to be reviewed in-person during business hours at the Ashland Community Development & Engineering Services Building, 51 Winburn Way, via a pre-arranged appointment by calling (541) 488-5305 or emailing planning@ashland.r.us.

The ordinance criteria applicable to this application are attached to this notice. Oregon law states that failure to raise an objection concerning this application, either in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes your right of appeal to the Land Use Board of Appeals (LUBA) on that issue. Failure to specify which ordinance criterion the objection is based on also precludes your right of appeal to LUBA on that criterion. Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow this Commission to respond to the issue precludes an action for damages in circuit court.

Anyone wishing to submit comments can do so by sending an e-mail to PC-public-testimony@ashlandoregon.gov with the subject line "**April 8 PC Hearing Testimony**" by 10:00 a.m. on Monday, April 7, 2025. If the applicant wishes to provide a rebuttal to the testimony, they can submit the rebuttal via e-mail to PC-public-testimony@ashlandoregon.gov with the subject line "**April 8 PC Hearing Testimony**" by 10:00 a.m. on Tuesday, April 8, 2025. Written testimony received by these deadlines will be available for Planning Commissioners to review before the hearing and will be included in the meeting minutes.

Oral testimony will be taken both in person and via Zoom during the public hearing. If you wish to provide oral testimony via Zoom, please send an email to PC-public-testimony@ashlandoregon.gov by 10:00 a.m. on Monday, April 7, 2025. In order to provide testimony at the public hearing, please provide the following information: 1) make the subject line of the email "**April 8 PC Speaker Request**", 2) include your name, 3) the agenda item on which you wish to speak on, 4) specify if you will be participating by computer or telephone, and 5) the name you will use if participating by computer or the telephone number you will use if participating by telephone. Join the Zoom meeting at: <https://zoom.us/j/99910988744>

During the Public Hearing, the Chair shall allow testimony from the applicant and those in attendance concerning this request. The Chair shall have the right to limit the length of testimony and require that comments be restricted to the applicable criteria. Unless there is a continuance, if a participant so requests before the conclusion of the hearing, the record shall remain open for at least seven days after the hearing.

If you have questions or comments concerning this request, please feel free to contact Senior Planner Aaron Anderson, the staff planner assigned to this project, at 541-552-2052 or via e-mail to: aaron.anderson@ashland.or.us.

In compliance with the American with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Administrator's office at 541-488-6002 (TTY phone number 1-800-735-2900). Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting. (28 CFR 35.102.-35.104 ADA Title I).

COMMUNITY DEVELOPMENT DEPARTMENT

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

Tel: 541.488.5305
Fax: 541.552.2050
TTY: 800.735.2900

LEGISLATIVE AMENDMENTS, PLAN AMENDMENTS, & ZONE CHANGES

18.5.9.020 Applicability and Review Procedure

Applications for Plan Amendments and Zone Changes are as follows:

- A. *Type II.* The Type II procedure is used for applications involving zoning map amendments consistent with the [Comprehensive Plan map](#), and minor map amendments or corrections. Amendments under this section may be approved if in compliance with the Comprehensive Plan and the application demonstrates that one or more of the following.
1. The change implements a public need, other than the provision of affordable housing, supported by the Comprehensive Plan.
 2. A substantial change in circumstances has occurred since the existing zoning or Plan designation was proposed, necessitating the need to adjust to the changed circumstances.
 3. Circumstances relating to the general public welfare exist that require such an action.
 4. Proposed increases in residential zoning density resulting from a change from one zoning district to another zoning district, will provide 25 percent of the proposed base density as affordable housing consistent with the approval standards set forth in subsection [18.5.8.050.G](#).
 5. Increases in residential zoning density of four units or greater on commercial, employment, or industrial zoned lands (i.e., Residential Overlay), will not negatively impact the City's commercial and industrial land supply as required in the Comprehensive Plan, and will provide 25 percent of the proposed base density as affordable housing consistent with the approval standards set forth in subsection [18.5.8.050.G](#).
 6. The total number of affordable units described in 18.5.9.020.A, subsections 4 or 5, above, shall be determined by rounding down fractional answers to the nearest whole unit. A deed restriction, or similar legal instrument, shall be used to guarantee compliance with affordable criteria for a period of not less than 60 years. 18.5.9.020.A, subsections 4 and 5 do not apply to Council initiated actions.
- B. *Type III.* It may be necessary from time to time to make legislative amendments in order to conform with the Comprehensive Plan or to meet other changes in circumstances or conditions. The Type III procedure applies to the creation, revision, or large-scale implementation of public policy requiring City Council approval and enactment of an ordinance; this includes adoption of regulations, zone changes for large areas, zone changes requiring comprehensive plan amendment, comprehensive plan map or text amendment, annexations (see chapter [18.5.8](#) for annexation information), and urban growth boundary amendments. The following planning actions shall be subject to the Type III procedure.
1. Zone changes or amendments to the [Zoning Map](#) or other official maps, except where minor amendments or corrections may be processed through the Type II procedure pursuant to subsection 18.5.9.020.A, above.
 2. Comprehensive Plan changes, including text and map changes or changes to other official maps.
 3. Land Use Ordinance amendments.
 4. Urban Growth Boundary amendments.

COMMUNITY DEVELOPMENT DEPARTMENT

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Staff Report

**ASHLAND PLANNING DEPARTMENT
STAFF REPORT**

Before the Planning Commission – April 8, 2025

PLANNING ACTION: PA-T3-2025-00011
APPLICANT: City of Ashland

LOCATION: The regulated portion of Hamilton Creek
ZONE DESIGNATION: Various
COMP. PLAN DESIGNATION: Various

ORDINANCE REFERENCES: 18.3.10 Physical and Environmental Constraints
18.5.9 Comp Plan, Zoning & LUO Amendments
18.6.1 Definitions

APPLICATION DATE: February 12, 2025
DLCD NOTICE: February 28, 2025 *39 days in advance*
PUBLIC MEETING NOTICE: March 13, 2025 *26 days in advance*
MEETING DATE: April 8, 2025

120-DAY DEADLINE: (*Type III applications not subject to 120-day limits)

PROPOSAL: A request to modify the officially adopted maps for the locally adopted Ashland Modified Floodplain to be consistent with the original studies conducted and City Council Approvals. The amendment would remove the Local Ashland Modified Floodplain along Hamilton Creek from Mistletoe Road downstream to Interstate-5. This amendment would have no change on the Federal Emergency Management Agency (FEMA) flood zones and the related flood administration regulations.

I. Introduction

1) The current application

On February 11th Staff brought a request to the Planning Commission to make a motion to initiate a planning action as allowed by AMC 18.5.8.040 to amend to the officially adopted maps of the Ashland Modified Floodplain. The reason for this amendment is that it came to Staff's attention that the stretch of Hamilton Creek, while shown on the official maps since 2010, was adopted in error. The Planning Commission passed a motion, and staff took action to return with this application. The amendment impacts 12 properties within the city limits and two properties that are within the UGB but outside of the City.

2) Background

Opportunities for Housing Resources, & Assistance (OHRA) operates at 2350 Ashland St. in the former Super 8 Motel. The property has both the FEMA A flood zone as well as the Ashland Modified Floodplain. OHRA has plans to expand and construct additional facilities in areas

shown to be covered in the adopted Ashland Modified Floodplain. In preparation for those additions, OHRA have been in contact with Staff who advised that a map amendment was required. In preparing for an application of a map amendment OHRA's land use consultant did extensive research into the history of the Hamilton Creek portion of the Ashland Modified Floodplain and discovered that it was adopted in error. Rather than have OHRA apply for a map amendment, Staff asked the Planning Commission to initiate the amendment.

II. National Flood Insurance Program (NFIP)

The National Flood Insurance Program (NFIP) is a program that helps protect property owners from flood damage. It was established in 1968 by the National Flood Insurance Act. The NFIP is managed by the Federal Emergency Management Agency (FEMA). The NFIP has two main policy goals: (1) to provide access to primary flood insurance, thereby allowing for the transfer of some of the financial risk from property owners to the federal government, and (2) to mitigate and reduce the nation's comprehensive flood risk through the development and implementation of floodplain management standards.

1) NFIP Primer

Ashland is a participating member of the National Flood Insurance Program (NFIP). The NFIP, was the result of market failure in the private insurance industry because the only people who would buy flood insurance were those who were most likely to suffer flood losses. In 1968 the federal government created the NFIP, but at first flood insurance was not mandatory and few communities joined. In 1973 the Flood disaster protection act was passed which made flood insurance mandatory as a condition of any federally backed loan. In addition to access to Fannie Mae & Freddie Mac loans, a community must participate in the NFIP for their residents to have the ability to purchase flood insurance. This provided a strong incentive to join the program and by 1975 over 15,000 communities were participating.

As communities joined in the program, but before FEMA had produced maps, the community's obligation was to ensure that 'development' was 'reasonably safe from flooding' CFR 60.3[a][3]. This is why the issuance of building permits in many communities coincided with participation in the NFIP, because any development now needed to be permitted to be in compliance with the NFIP to ensure that the proposed development was 'reasonably safe from flooding.'

As Flood Boundary Maps (1975) were made available, followed in 1981 with the introduction of Flood Insurance Rate Maps (FIRMS) and their accompanying Flood Insurance Studies (FIS), flood regulations were then limited to special flood hazard areas (SFHAs) designated by different flood zones.

2) FEMA Flood zones

The NFIP approaches the goal of reducing comprehensive flood risk primarily by requiring participating communities to collaborate with FEMA to develop and adopt flood maps called Flood Insurance Rate Maps (FIRMS) which are also accompanied with a Flood Insurance Study (FIS). Flood hazard areas identified on the Flood Insurance Rate Map are identified as a Special Flood Hazard Area (SFHA). SFHA are defined as the area that will be inundated by the flood event having a 1-percent chance of being equaled or exceeded in any given year. The 1-percent

annual chance flood is also referred to as the base flood or 100-year flood. FIRMs provide the basis for identifying properties whose owners are required to purchase flood insurance and establishing floodplain management standards that communities must adopt and enforce as part of their participation in the NFIP.

Locally there are two main flood zones or SFHA's; These are "A" and "AE."

- Zone A – Approximate areas with a 1% annual chance of flooding. Because detailed analyses are not performed for such areas; no base flood elevations are provided
- Zone AE - The base floodplain (1% annual chance of flooding) where base flood elevations are provided based on Hydraulic and Hydrologic (H&H) modeling.

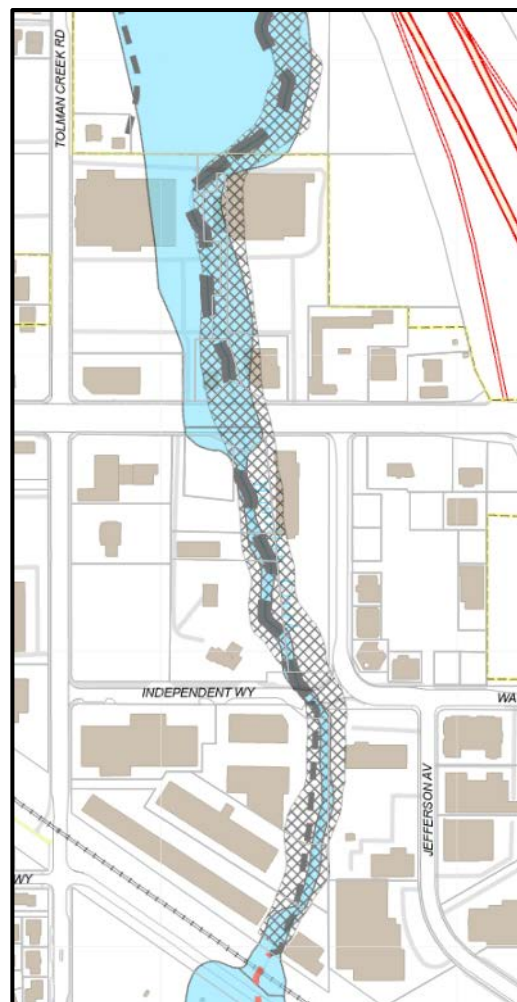
Hamilton Creek has a FEMA zone A designation, so it only identifies approximate areas of flood hazard and is not supported by hydrological modeling of any type.

3) Ashland Modified Floodplain

Shown at right is the stretch of Hamilton Creek from the railroad to City limits with both the FEMA A zone in blue, and the locally adopted flood zone shown in hatched overlay.

The NFIP is focused on minimum federal standards, but rewards communities for standards that exceed the federal minimum in the name resiliency. To that end, the City of Ashland has adopted a number of standards that exceed the federal minimum including adopting flood plan maps that far exceed FEMA's as well as freeboard* requirements. The purpose of adopting more stringent flood zones than the FEMA maps was to prevent flood losses based on local historical knowledge of flooding in the city of Ashland. To that end, in 1989 Ashland adopted the 'Ashland Modified Floodplain' which, at the time of adoption, was limited to Ashland, Bear and Clay Creeks.

The Ashland Modified Floodplain was based on local studies involving analysis of historic flooding and determined flood elevations associated with the floodplain. Originally studied and adopted were Ashland, Clay and Bear Creeks. Hamilton Creek was not studied in detail and a draft map was inadvertently included by a GIS technician during the conversion to



* In the context of FEMA and floodplain management, "freeboard" refers to an additional height above the Base Flood Elevation (BFE) used as a factor of safety to determine the level at which a building's lowest floor must be elevated or floodproofed

digital mapping. The Hamilton Creek portion of the Ashland Modified Flood Zone first appeared on the officially adopted maps in 2010.

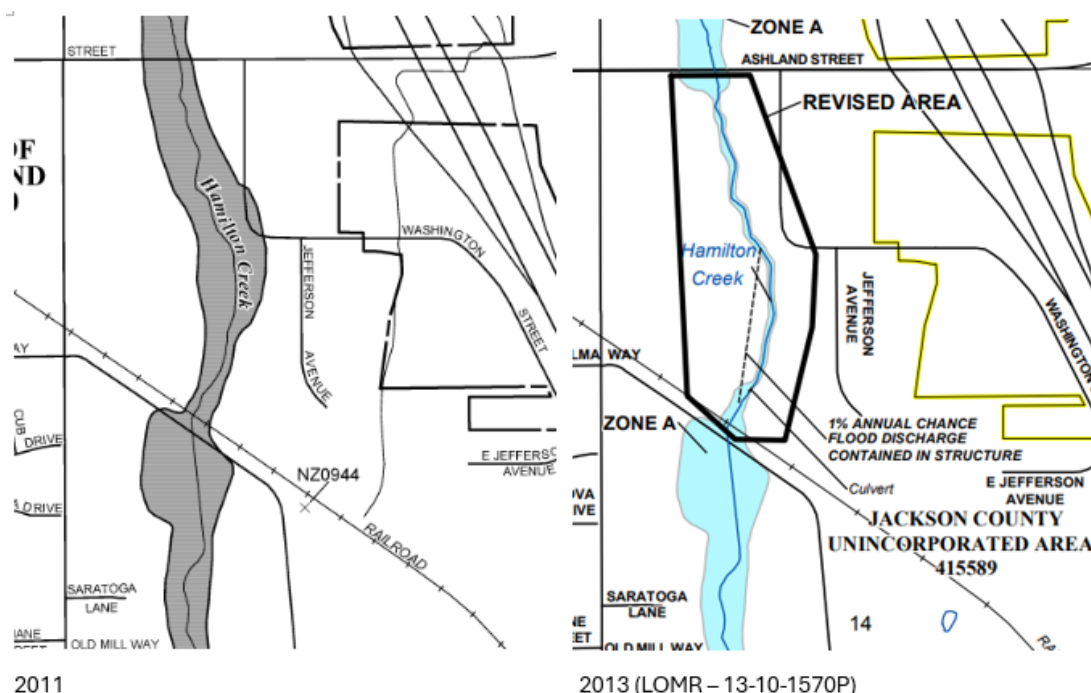
Since Ashland adopted the modified floodplain there have continued to be floods that have brought damage to the city, most recently the 1997 flood. However, regulation of the expanded floodplain beyond the FEMA flood zone has significantly limited recent flood losses.

4) FIS and FIRM Revision History

In December of 1980 the first Flood Insurance Study for the area was published. Since that time there have been five significant revisions to the FIS/FIRMs in 1990, 1993, 2002, 2011 and 2017. The Federal Emergency Management Agency (FEMA) may revise and republish part or all of this FIS report at any time. In addition, FEMA may revise part of this FIS report by the Letter of Map Revision process, which does not involve republication or redistribution of the FIS report.

A Letter of Map Revision (LOMR) is FEMA's modification to an effective Flood Insurance Rate Map (FIRM). Letter of Map Revisions are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA). An approved LOMR officially revises the Flood Insurance Rate Map (FIRM).

As it relates to the present application in October of 2013 a LOMR was applied for and approved in March of 2014 (Case No.: 13-10-1570P). Shown below is the comparison of the 2011 FIRM and the map associated with the LOMR where the base flood is shown to be contained in a large culvert and then restricted tightly to the deeply incised channel. The fifth revision to the FIS included the LOMR change in the 2017 FIRM panel and continues to show the regulated A zone as shown in the 2013 LOMR application.



III. Proposed Amendment

1) Official Maps

The Land Use ordinance provides the following

18.3.10.070 Official Maps

A. The City Council shall adopt official maps denoting the above-identified areas. Substantial amendments of these maps shall be a Type III procedure in section 18.5.1.070.

B. 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 or in the findings of the Council in adopting an official map may be processed as a Type I procedure in section 18.5.1.050.

Because the removal of the entire stretch of Hamilton Creek is a substantial amendment Staff initiated a Type-III planning action. Presuming that the Planning Commission recommends approval, staff will bring the application to the City Council for the adoption of an ordinance to formally modify the official maps.

2) Introduction of Hamilton Creek

The P&E Map has been updated three times in recent history, 2008, 2010, and then again in 2017. The stretch of Hamilton Creek is not shown on the 2008 map, but then starting in 2010 Hamilton Creek is shown to have the “Ashland Modified Floodplain” as well as the 2017 map. Based on the research from their land use consultant, as well as meta data recorded to the GIS file, Staff believe that the Hamilton Creek section of the Ashland Modified Flood plain was added sometime following the approval of the 2008 map at the request of the Planning Department.

Subsequent updates addressing the official maps in 2010 (with the adoption of the Water Resource Protection Zones) and again in 2017 (updating the FEMA maps) did include Hamilton Creek, but this was not discussed in the findings. Therefore, it appears to be a graphical error to have Hamilton Creek covered by the Ashland Floodplain and was introduced beginning in late 2008 or early 2009.

3) Hydrological Engineering Report

In addition to research into the history of the adopted maps OHRA has also undertaken an Engineering Hydraulics Report prepared by RogueTech Civil Engineering. The full report is 68 pages and by its reference is incorporated herein as if set out in full. The report details the methods for determining peak flows and then used a Hydraulic model that was developed using the U.S. Army Corps of Engineers (USACE) HEC-RAS version 6.6.

The report provides the following:

“RogueTech performed an engineering hydraulic analysis to provide a Base Flood Elevation (BFE) Determination for the property located at 2350 Ashland Street along Hamilton Creek in Ashland, Oregon. A small area on the southern end of the subject

property" is within a FEMA Special Flood Hazard Area (SFHA) Zone A, which is an approximated flood zone without published BFEs and not based on a detailed hydraulic study. In addition, the western edge and most of the southern portion of the subject property is within the City of Ashland's Modified Floodplain Overlay. The City of Ashland's Modified Floodplain Overlay is also approximated and not based on a detailed hydraulic study. RogueTech's hydraulic analysis was performed to determine the flood zone area resulting from determined BFEs for comparison with both FEMA's SFHA Zone A, and the City's Modified Floodplain Overlay. Results of the hydraulic analysis show that the flood zone resulting from the determined BFE's is smaller than FEMA's SFHA Zone A, and the City's Modified Floodplain Overlay."

Shown below is the modeled BFE with the Ashland Street culvert blocked during a base flood event, and includes the Ashland Modified Floodplain.



This report shows that even with the culvert under Ashland Street completely blocked the modeled Base Flood Elevation (BFE) is well below the high bank, as such the extent of the “Ashland Modified Floodplain” far exceeds the area that is at risk of inundation during a base flood event even under the most dire conditions (culvert blocked).

The report concluded that:

“The results of this Base Flood Elevation determination conclude that when the culvert is operating as it was at the time of this report, the modeled flood zone area is comparable, but smaller than the FEMA SFHA Zone A; it is much smaller than the City of Ashland’s Modified Floodplain Overlay.” And that, “The topographic analysis required for the model shows that the City’s Modified Floodplain Overlay as mapped, would result in inconsistent and irregular water surfaces that are much higher than could actually occur, and are physically impossible to occur.” [emphasis added]

4) Conclusion

When considering both the legislative history as well as the engineering report provide staff believe that the correct course of action is to amend the officially adopted maps removing the ‘Ashland Modified Floodplain from this portion of Hamilton Creek.

IV. Procedural – Approval Criteria

1) Plan Amendments and Zone Changes

AMC 18.5.9.020 provides the Applicability and Review Procedure for Plan Amendments and Zone Changes. Because the proposal is legislative in nature approval criteria are not required.

Applications for Plan Amendments and Zone Changes are as follows:

A. Type II. The Type II procedure is used for applications involving zoning map amendments consistent with the Comprehensive Plan map, and minor map amendments or corrections. Amendments under this section may be approved if in compliance with the Comprehensive Plan and the application demonstrates one or more of the following:

1. The change implements a public need supported by the Comprehensive Plan.
2. A substantial change in circumstances has occurred since the existing zoning or Plan designation was proposed, necessitating the need to adjust to the changed circumstances.
3. Circumstances relating to the general public welfare exist that require such an action.
4. Proposed increases in residential zoning density resulting from a change from one zoning district to another zoning district will provide 25 percent of the proposed base density as affordable housing consistent with the approval standards set forth in section 18.5.8.050.G.
5. Increases in residential zoning density of four units or greater on commercial, employment, or industrial zoned lands (i.e., Residential

Overlay) will not negatively impact the City's commercial and industrial land supply as required in the Comprehensive Plan, and will provide 25 percent of the proposed base density as affordable housing consistent with the approval standards set forth in section 18.5.8.050.G.

6. The total number of affordable units described in subsection 18.5.9.020.A.4 or 18.5.9.020.A.5, above, shall be determined by rounding down fractional answers to the nearest whole unit.

7. A deed restriction, or similar legal instrument, shall be used to guarantee compliance with affordable criteria for a period of not less than 60 years for units qualified as affordable rental housing, or 30 years for units qualified as affordable for-purchase housing. Subsections 18.5.9.020.A.4 and 18.5.9.020.A.5 do not apply to Council-initiated actions.

B. Type III. It may be necessary from time to time to make legislative amendments in order to conform with the Comprehensive Plan or to meet other changes in circumstances or conditions. The Type III procedure applies to the creation, revision, or large-scale implementation of public policy requiring City Council approval and enactment of an ordinance; this includes adoption of regulations, zone changes for large areas, zone changes requiring comprehensive plan amendment, comprehensive plan map or text amendment, annexations (see chapter 18.5.8 for annexation information), and urban growth boundary amendments. The following planning actions shall be subject to the Type III procedure.

1. Zone changes or amendments to the Zoning Map or other official maps, except where minor amendments or corrections may be processed through the Type II procedure pursuant to subsection 18.5.9.020.A, above.
2. Comprehensive Plan changes, including text and map changes or changes to other official maps.
3. Land Use Ordinance amendments.
4. Urban Growth Boundary amendments.

V. Conclusion and Recommendations

Staff recommend that the Planning Commission recommend to the city council that they approve the removal of the locally adopted flood plain along Hamilton Creek as it was adopted in error.

Applicant Submittal



Planning Division
51 Winburn Way, Ashland OR 97520
541-488-5305 Fax 541-488-6006

ZONING PERMIT APPLICATION

FILE # _____

DESCRIPTION OF PROJECT

Hamilton Creek Flood plain modification

DESCRIPTION OF PROPERTY

Pursuing LEED® Certification? ☐ YES ☐ NO

Street Address _____

Assessor's Map No. 39 1E _____ Tax Lot(s) _____

Zoning _____ Comp Plan Designation _____

APPLICANT

Name City of Ashland Phone _____ E-Mail _____

Address Aaron Anderson City Zip _____

PROPERTY OWNER

Name Varies Phone _____ E-Mail _____

Address _____ City _____ Zip _____

SURVEYOR, ENGINEER, ARCHITECT, LANDSCAPE ARCHITECT, OTHER

Title _____ Name _____ Phone _____ E-Mail _____

Address _____ City _____ Zip _____

Title _____ Name _____ Phone _____ E-Mail _____

Address _____ City _____ Zip _____

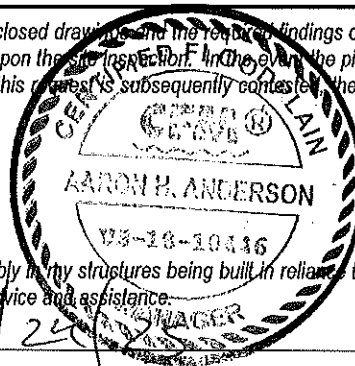
I hereby certify that the statements and information contained in this application, including the enclosed drawings and the required findings of fact, are in all respects, true and correct. I understand that all property pins must be shown on the drawings and visible upon the site inspection. In the event the pins are not shown or their location found to be incorrect, the owner assumes full responsibility. I further understand that if this request is subsequently contested, the burden will be on me to establish:

- 1) that I produced sufficient factual evidence at the hearing to support this request;
- 2) that the findings of fact furnished justifies the granting of the request;
- 3) that the findings of fact furnished by me are adequate; and further
- 4) that all structures or improvements are properly located on the ground.

Failure in this regard will result most likely in not only the request being set aside, but also possibly in my structures being built in reliance thereon being required to be removed at my expense. If I have any doubts, I am advised to seek competent professional advice and assistance.

Aaron Anderson
Applicant's Signature

2/24/2008
Date



As owner of the property involved in this request, I have read and understood the complete application and its consequences to me as a property owner.

Property Owner's Signature (required)

Date

[To be completed by City Staff]

Date Received _____ Zoning Permit Type _____ Filing Fee \$ _____

OVER ►►

Memo

To: Planning Commission

Date: February 11, 2025

RE: Ashland Modified Flood zone along Hamilton Creek

Summary

Staff requests that the Planning Commission initiate a planning action as allowed by AMC 18.5.8.040 to make an amendment to the officially adopted maps of the "Ashland Modified Floodplain." The reason for this amendment is that it has come to Staff's attention that the stretch of Hamilton Creek, while shown on the official maps, was adopted in error sometime between 2008 and 2010.

Introduction

Opportunities for HOHRA) operates at 2350 Ashland St. in the former Super 8 Motel. The property is shown at right with both the FEMA A flood zone as well as the hatched "Ashland Modified Floodplain."

OHRA have plans to expand and construct additional facilities in areas shown to be covered in the adopted "Ashland Modified Floodplain." In preparation for those additions, they have been in contact with City Staff who advised that a map amendment was required. In preparing for an application of a map amendment their land use consultant did extensive research into the history of the Hamilton Creek portion of the Ashland Floodplain.

The P&E Map has been updated three times in recent history, 2008, 2010, and then again in 2017. The stretch of Hamilton Creek is not shown on the 2008 map, but then starting in 2010 Hamilton Creek is shown to have the "Ashland Modified Floodplain" as well as the 2017 map.

Based on the research from their land use consultant, as well as meta data recorded to the GIS file, Staff believe that the Hamilton Creek section of the Ashland Modified Flood plain was added sometime following the approval of the 2008 map at the request of the planning department. Subsequent updates addressing the official maps in 2010 (with the adoption of



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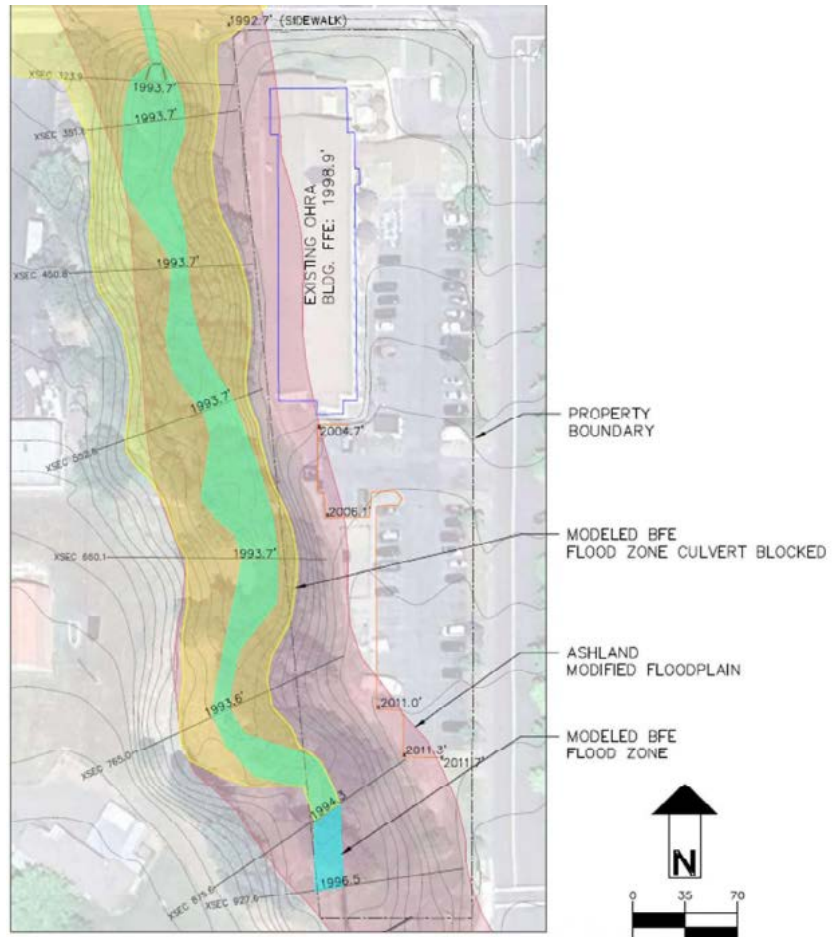
51 Winburn Way Tel: 541.488.5305
Ashland Oregon 97520 Fax: 541.552.2050
Ashland.or.us TTY: 800.735.2900



the Water Resource Protection Zones) and again in 2017 (updating the FEMA maps) did include Hamilton Creek, but this was not discussed in the findings. Therefore, it appears to be a graphical error to have Hamilton Creek covered by the Ashland Floodplain.

In addition to research into the history of the adopted maps OHRA has also undertaken an Engineering Hydraulics Report prepared by RougeTech Civil Engineering. This report shows that even with the culvert under Ashland Street completely blocked the modeled Base Flood Elevation (BFE) is well below the high bank, as such the extent of the "Ashland Modified Floodplain" far exceeds the area that is at risk of inundation during a base flood event even under the most dire conditions (culvert blocked).

Shown at right is the modeled BFE with the Ashland Street culvert blocked during a base flood event.



Conclusion

When considering both the legislative history as well as the engineering report provide staff believe that the correct course of action is to amend the officially adopted maps removing the 'Ashland Modified Floodplain' from this portion of Hamilton Creek. At the planning commissions request staff will prepare findings to amend the official maps so that they can then be forwarded to the City Council for their approval.

/s/ Aaron Anderson, CFM
Senior Planner



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