Council Business Meeting Agenda

ASHLAND CITY COUNCIL
BUSINESS MEETING AGENDA
Tuesday, October 3, 2023
Council Chambers, 1175 E Main Street

View on Channel 9 or Channels 180 and 181 (Charter Communications) or live stream via rvtv.sou.edu select RVTV Prime.

HELD HYBRID (In-Person or Zoom Meeting Access)

Public testimony will be accepted for both general public forum items and agenda items. **Please complete the online Public Testimony Form, for WRITTEN and ELECTRONIC testimony only.** Indicate on the Public Testimony Form if you wish to provide WRITTEN testimony, or if you wish to speak ELECTRONICALLY during the meeting.

Please submit your testimony no later than 10:00 a.m. the day of the meeting.

5:00 PM Executive Session

The Ashland City Council will hold an Executive Session for the following:

1. Deliberations with persons designated by the governing body to carry on labor negotiations, pursuant to ORS 192.660(2)(d).
2. City Manager Review, pursuant to ORS 192.660(2)(i).

6 p.m. Regular Business Meeting*

I. **CALL TO ORDER**
   1. Land Acknowledgement**

II. **PLEDGE OF ALLEGIANCE**

III. **ROLL CALL**

IV. **MAYOR'S ANNOUNCEMENTS**
   1. Indigenous Peoples' Day Proclamation

V. **APPROVAL OF MINUTES *****
   1. Minutes of the September 18, 2023 - Study Session
   2. Minutes of the September 19, 2023 - Business Meeting

VI. **SPECIAL PRESENTATIONS**
   1. DEQ Railyard Clean-up Presentation
   2. City Staffing Update

Better Together

Council Business Meeting Agenda

VII. **CITY MANAGER REPORT**

1. City Manager's Report
2. Community Development Recognition for Ashland's Housing Production Strategy

VIII. **PUBLIC FORUM (15 minutes)**

IX. **CONSENT AGENDA**

1. Liquor License Approval for Cru Siskiyou at 798 St. Andrews Circle

X. **PUBLIC HEARINGS**

1. Public Hearing and First Reading of LUBA remand for PA-T3-2022-00004 for the property at 1511 Hwy 99

XI. **UNFINISHED BUSINESS**

XII. **NEW BUSINESS**

1. City Council Standing Advisory Committees Workplans Review

XIII. **ORDINANCES, RESOLUTIONS AND CONTRACTS**

1. Contract with Grayback Forestry Inc. for prescribed burning for the Ashland Forest Resiliency All-Lands Restoration Project
2. Contract with Evan Brooks for Grant Application Services
3. Approval of multiple Public Contracts for internet Bandwidth

XIV. **OTHER BUSINESS FROM COUNCIL MEMBERS/REPORTS FROM COUNCIL LIAISONS**

XV. **ADJOURNMENT OF BUSINESS MEETING**

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Manager'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).

* Items on the Agenda not considered due to time constraints are automatically continued to the next regularly scheduled Council meeting [AMC 2.04.030.(D)(3)]

**** LAND ACKNOWLEDGEMENT**

We acknowledge and honor the aboriginal people on whose ancestral homelands we work—the Ikirakutsum Band of the Shasta Nation, as well as the diverse and vibrant Native communities who make their home here today. We honor the first stewards in the Rogue Valley and the lands we love and depend on: Tribes with ancestral lands in and surrounding the geography of the Ashland Watershed include the original past, present and future indigenous inhabitants of the Shasta, Takelma, and Athabaskan people. We also recognize and acknowledge the Shasta village of K'wakhakha - "Where the Crow Lights" - that is now the Ashland City Plaza.

***Agendas and minutes for City of Ashland Council, Commission and Committee meetings may be found at the City website, ashland.or.us/Agendas.asp.

Better Together

CITY OF ASHLAND
Better Together

A PROCLAMATION ON INDIGENOUS PEOPLE'S DAY 2023

WHEREAS, the United States endorsed the Rights of Indigenous Peoples on December 16, 2010 and recognizes that Indigenous People have suffered from historic injustices as a result of their colonization and dispossession of their lands, territories and resources,

WHEREAS, we recognize that Ashland is built on the ancestral homeland of the Ikirakutsum Band of the Shasta Nation, and we honor the Takelma, Athabaskan, and Shasta tribes with ancestral lands in and surrounding the geography of the Ashland watershed and gave bearing to future settlements that would become Ashland and,

WHEREAS, Indigenous people were forcibly removed from ancestral lands, displaced, assimilated, and banned from worshipping or performing many sacred ceremonies and yet they remain some of our greatest environmental stewards,

WHEREAS, we recognize the value of many contributions made to our community through Indigenous Peoples' knowledge, labor, spirituality, philosophy, arts, and cultural contributions and,

WHEREAS, we have responsibility to oppose the systemic racism toward Indigenous Peoples which perpetuates income inequality, disproportionate health, education, and social stability,

WHEREAS, on Indigenous People's Day, we celebrate Indigenous history and honor Native Americans for shaping the contours of this country since time immemorial.

NOW, THEREFORE, I, Tanya Graham, Mayor of the City of Ashland, Oregon, on behalf of the City Council, do hereby proclaim October 9, 2023, as Indigenous Peoples Day and call upon the people of Ashland to observe this day with appropriate reflection and learning and to continue our efforts to create a more just and equitable community. In Ashland we are Better Together.

Dated this 3rd day of October 2023

Tonya Graham, Mayor

Dana Smith, Clerk of the Council Pro Tem

Better Together

ASHLAND CITY COUNCIL
BUSINESS ROUNDTABLE
MINUTES
September 18, 2023

Mayor Graham, Councilor Hyatt, Bloom, Dahle, Kaplan, DuQuenne, and Hansen were present. Pete Wallstrom from Momentum Rafting, Andrew Gast from Mt. Ashland Ski Resort, Lisa Beam from Pie + Vine and Skout Tap House, Clarinda Merripen, from the Black Sheep, Elijah Katkin from the Brickroom, Eric Herron from Cascadia Prime Commercial Real Estate, Eric Strong from Full Circle Realty, Mark Philhower from Full Circle Realty, and Jordan Willing from Blue Marble were present. Eric Pool from Full Circle Realty was not present.

1. Introduction

Mayor Graham opened the meeting at 5:32 pm.

2. Short overview presentation of steps/initiatives since May 2022 Business Roundtable

City Manager Joe Lessard provided a presentation included in the packet.

- Business Roundtable Discussion - City of Ashland – 2023-2025 BN Budget
- Pedestrian Wayfinding Services
- Pilot of New Downtown Trashcans
- Beautification of Tourist Destination Areas
- Business Beautification Grant Program
- Even Support Grant Program
- Introduction of Online Permitting Module – Citizen Self Service
- Development Services Coordinator on City staff
- New Food Truck Ordinance adopted in May
- Customer Satisfaction Survey
- Development Process MAC
- Economic Roundtable of March 6, 2023

Thought Questions for the Roundtable:

a) ***What is the Sense of the Ashland Business Community Looking Forward?***
   a. ***Where do you see as issues and growth opportunities for the local/regional economy?***
   b. ***What is the changing landscape of Ashland's tourism?***
   c. ***What is the changing landscape for real estate (residential & commercial markets)?***

Business participants answered the questions with the following:

Jordan Willing/Blue Marble/The Oregon Shakespeare Festival (OSF) is the main draw of the town and there has been a decline of people attending their plays. It was important for OSF to

understand their customers, which typically were elderly people from the Bay areas who valued traditional plays with some pushing the edge. OSF needed to cater to that audience. Aggressive panhandling occurring downtown made people feel less safe. He suggested cleaning up the Railroad District and to think creatively to open more opportunities.

Eric Strong/Full Circle Realty/Thought that access was important. The reasons people came to Ashland was shifting. Access to trails and outdoor activities was growing. One challenge to accessibility for young families was home costs.

Lisa Beam/Pie & Vine/Skout/There has been a drastic shift in how we meet the tourist market. She noted challenges for restaurants when OSF shortened their season and closures related to covid and smoke and its impact on staffing. Finding consistency in tourism was critical. She supported beautification and cleanliness improvements. They were important to people's experience. There were growth opportunities to use outdoor spaces and the theaters between OSF seasons.

Andrew Gast/Mt. Ashland Ski Resort/Mt. Ashland experienced 20% more visitation over the past year. They were having capacity issues and challenges supporting the increase. Ashland was trending to more of an outdoor recreation destination. They were doing a lot to build on the non-ski season. Transportation to the mountain was a challenge for them. Another challenge was how to make Mt. Ashland part of the fabric of the community.

Eric Herron/Cascadia Prime Commercial Real Estate/Livability for Ashland was an issue. Ashland was livable if you had the means and if you do not, you are pushed to the side. Having a better transportation system and continuous bike lanes would be helpful. Tourism seemed to be shifting more towards outdoor recreation. The demographic of visitors was also changing from 65–75-year-olds to 35–55-year-olds in Sprinter vans with their children. Downtown landlords improving their buildings would be helpful.

Clarinda Merripen/The Black Sheep/Commented on businesses being down 40-50%. A positive was regional travelers coming to Ashland. Ashland should target attracting visitors Bend, Grants Pass, Yreka, and northern California. Another problem was the length of stay per were declining to three days. Transportation for staff was a challenge as well.

Elijah Katkin/Brickroom/Inflation and cost structure margins for small business was changing and used the price of a hamburger as an example. He suggested using OSF theaters for events other than plays. The city owned the buildings. Ashland needed to attract 25-45 year old visitors. There has been an exodus of people from 27 to 45 years old.

Mark Philhower/Full Circle Realty/Supporting outdoor activities were huge in addition to OSF. Possibly partner with the Britt Festival to have other events and live music. Transportation was

critical. Add a focus on mountain bike riding and skiing. Remote workers were coming to Ashland. It was something that should be promoted as well.

Pete Wallstrom/Momentum Rafting/Outdoor tourism was growing. There was white water rafting within a day. An issue was affordable housing. Economic diversity was good for the town and business. The city could make it easier to put up on events. Trail infrastructure was important.

Mr. Willing explained the success of his business was partially being lucky in finding a space to grow as a company. Commercial real estate boiled down to the way land was used. There was not much land in Ashland. He suggested having five preapproved ADU designs that bypassed the permit process.

The group discussed transportation methods some used that included making concessions to staff who used RVTD or paying employees to drive coworkers without cars home after a shift.

b) ***How Can We Build Economic Resilience?***
    a. ***What are our risks/weaknesses going forward?***
    b. ***What are our strengths/opportunities going forward?***
c) ***What can the City of Ashland do to support the local economy?***

Business participants responded with the following:

Pete Wallstrom/Momentum Rafting/Make it easier to build affordable housing, review zoning, and make it easier to put on events and build trails.

Elijah Katkin/Brickroom/Agreed with Mr. Wallstrom and added address height restrictions. Another suggestion was having a budget for wayfinding.

Clarinda Merripen/The Black Sheep/Increase communication between council and local business, possibly through a coalition. Make it easier to pay OLCC fees and improve pest control to tamp down the rat issues. She clarified the coalition could provide council a five update every council meeting.

Eric Herron/Cascadia Prime Commercial Real Estate/If OSF theaters were city property then they belonged to the public. Ashland needed to create resiliency for economic growth. Mr. Katkin added improving the band shell area and allowing alcohol in the park could be addressed by the city.

Andrew Gast/Mt. Ashland Ski Resort/Look into entertainment at night for winter travelers. Wayfinding for the ski area. Post little signs advertising there is a ski area.

Lisa Beam/Pie & Vine/Skout/View Ashland as a product. Increase beautification efforts. Work on consistently in utilizing Ashland twelvemonths a year. Bring Ashland, as a product into current times and make it a regional draw.

Eric Strong/Full Circle Realty/This town is risk adverse. People are caught in the expectation of what Ashland has been. Push the boundaries and take risks on new opportunities.

Mark Philhower/Full Circle Realty/Diversity is important and expanding on what we have to offer. Use real estate more efficiently. Easing up on requirements for ADUs would allow people to afford a house and rent out the ADU and create a wider range of people who could live here now.

Jordan Willing/Blue Marble/Agreed with Ms. Beam. He suggested adding comedy shows, working on alcohol permits for concerts in the park. There will be complaints, but the benefit of bringing people together outweighed them. Look at low hanging fruit, have a cookie cutter ADU, and simplify the application process. For the long term, convert farmland that is not being used.

Ms. Merripen noted the city needed to investigate property management companies.

Community Development Director Brandon Goldman noted changes to the ADU process and agreed on setting funding aside for preplanned units. Some land use obstacles had been eliminated no longer requiring a planning action. He shared government changes, that had made ADUs more assessable. Staff was also reaching out to other cities on their processes. He went on to address the housing inventory and potential land with council and the business representatives.

Interim Parks Director Leslie Elderidge explained the efforts being made to allow alcohol for permitted special events in the parks. They were Instituting park hours to deal with transients sleeping overnight. Updating the band shell was viable and something they were also looking into. They were also looking into wayfinding for trails.

The group further discussed housing, recruiting for year-round events and conferences, and having a community calendar and beautifying southeast Ashland as a gateway to the downtown.

The Roundtable concluded at 7:30 p.m.

Respectively submitted by:

Clerk of the Council Pro Tem Dana Smith

Attest:

Mayor Tonya Graham

ASHLAND CITY COUNCIL
BUSINESS MEETING MINUTES
September 19, 2023

I. CALL TO ORDER

Mayor Graham called the meeting to order at 6:01 p.m.

1. Land Acknowledgement

Councilor DuQuenne read the land acknowledgement.

II. PLEDGE OF ALLEGIANCE

Councilor Kaplan led the pledge of allegiance.

III. ROLL CALL

Mayor Graham, Councilor Hyatt, Bloom, Dahle, Kaplan, DuQuenne and Hansen were present.

IV. MAYOR'S ANNOUNCEMENTS

Mayor Graham announced Early Childhood Care grant applications were due September 27, 2023. DEQ was holding a Railroad clean up meeting on September 27, 2023.

V. APPROVAL OF MINUTES

1. **Minutes of the August 14, 2023 - Study Session**
2. **Minutes of the August 15, 2023 - Business Meeting**

Councilor Dahle/Hansen m/s to approve the minutes of the August 14, 2023, Study Session and the August 15, 2023, Business Meeting. Roll Call Vote: Councilor DuQuenne, Bloom, Kaplan, Dahle, Hyatt, and Hansen, YES. Motion passed.

Mayor Graham announced they would be pulling Consent Agenda Items #5, 7 and 9 and moving them to New Business between items #1 and 2 under that section.

VI. SPECIAL PRESENTATIONS

1. Travel Ashland Quarterly Report

Katherine Kato from Travel and Andrew Gast from Mt Ashland Ski Resort provided highlights of the quarterly report:

- Travel Ashland's role and impact
- Project and Programs

Ms. Kato discussed the Mystery Fest and provided details for council. They went on to discuss year-round consistency for events in Ashland. Travel Ashland was working with the Oregon

Shakespeare Festival on a possible partnership. They were also meeting with the Ashland Galley and Taste of Ashland.

Andrew Gast, the general manager for Mt. Ashland Ski Resort provided an update on their past record-breaking season. Inflation and insurance had increased dramatically. Mt. Ashland was scheduled to open December 9, 2023. This was the resort's 60th anniversary.

2. Financial Update – Preliminary Fourth Quarter Results

Finance Director Marianne Berry provided the financial update with a presentation (see attached):

- Finance Department – Quarterly Update
  - FY2023 Preliminary Financial Review
  - Departmental Updates & Current Projects
- Preliminary Financial Statements
  - Fiscal Year Ending June 30, 2023
- Moody's Annual Report – September 1, 2012
  - Confirmed Issuer taking Aa3 – in top 4 highest ratings.
  - Modest Constraints
- Finance Dept Update
  - Staffing
  - Process Improvements
  - Other
- Questions

Currently there was $76million in cash equivalent investments. The investment was based on safety liquidity and what was needed in the immediate or intermediate term. They took advantage of higher rates and went out on the yield curve that was very secure. Since the city did not need the funds in the 180-day term, staff decided to go out on the yield curve longer. There was $20million that matured every 6 months.

Ms. Berry addressed the additional debt of the water treatment plant. They were staying within the AA3 ratings and working with consultants on the debt coverage ratios. The city was well within the means to do a strong rating.

Tax revenue collection was based on all taxes, Property, Food and Beverage, TLT, and the Electric User tax.

VII. CITY MANAGER REPORT

City Manager Joe Lessard provided the management report and reviewed the Look Ahead. He addressed outreach efforts regarding the emergency shelter and OHRA's service.

VIII. **PUBLIC FORUM**

Sonya Daw/Ashland/Urged council to jump start the Ashland CEAP, update the progress report card, and find ways to collaborate with citizens.

Linda Adams/Ashland/Announced the Transportation Advisory Committee would hold a public hearing September 21, 2023, regarding a protected bike lane.

Joel Gerston/Ashland/Discussed the CEAP plan. The last progress report was in 2020.

JD Barons/Ashland/Shared her observations on the sunset to sunrise camping, pallet houses and Lacy McCoy and her family.

Emily Simon/Ashland/Noted the Social Equity and Racial Justice Committee needed more committee members.

IX. **CONSENT AGENDA**

1. **Social Equity and Racial Justice Advisory Committee Appointment**
2. **Liquor License Approval for House of India, (DBA SMAGS Corporation) at 1667 Siskiyou Boulevard**
3. **Liquor License Approval for Masala Library Bistro & Bar, (DBA Masala Library Bistro & Bar) at 258 A Street, #3B**
4. **2023-2025 BN Supplemental Budget Amendment – Revenue Recognition and Budget Appropriation for Fire Department**
5. **Emergency Procurement of Fire and Rescue Ambulance**
6. **Oregon Department of Land Conservation And Development (DLCD) Technical Assistance Grant Application**
7. **Contract with Axon Enterprises Inc. for APD body worn cameras (BWC) and support services and for conducted energy weapons (CEW or "tasers")**
8. **City Facility Rooftop Lease between the City of Ashland and Ashland Solar Cooperative**
9. **Professional Services Contract for TAP Intertie System Improvements (Scope 2)**

Councilor Dahle pulled consent item #8 and Councilor Hyatt pulled #6 for further discussion.

Councilor DuQuenne/Bloom m/s to accept the remaining consent agenda items.

Roll Call Vote: Councilor Kaplan, Bloom, Hyatt, DuQuenne, Dahle and Hansen, YES. Motion passed.

Councilor Hyatt spoke to consent agenda item **#6 Oregon Department of Land Conservation And Development (DLCD) Technical Assistance Grant Application** and noted the exceptional efforts of the Community Development Department staff.

Councilor Hyatt/DuQuenne m/s to authorize staff to prepare and submit an application for a planning grant from the Department of Land Conservation and Development to hire a consultant to assist the City in drafting an Economic Opportunity Analysis. Roll Call Vote: Councilor Hansen, DuQuenne, Kaplan, Dahle, Bloom, and Hyatt, YES. Motion passed.

Public Works Director Scott Fleury provided background on **#8 City Facility Rooftop Lease between the City of Ashland and Ashland Solar Cooperative**. Jim Hartman from the Ashland Solar Cooperative provided additional background and noted the agreement would provide solar to possibly twenty families with 20% going to low income. Councilor Hansen and Kaplan spoke in support of the agreement.

Councilor Dahle/Kaplan m/s to authorize the City Manager sign a long-term Legal Department approved lease agreement with the Ashland Solar Coop. Roll Call Vote: Councilor Kaplan, Bloom, Hyatt, Hansen, Dahle, and DuQuenne, YES. Motion passed.

X. **PUBLIC HEARINGS** - None

XI. **UNFINISHED BUSINESS** - None

XII. **NEW BUSINESS**

1. Purchase of Public Works Street and Wastewater Sewer Cleaning Equipment

Public Works Deputy Director Mike Morrison introduced the topic and spoke to the cooperative agreement. When a larger group made purchases together it resulted in better pricing. Ashland was smaller and it was difficult to get lower pricing.

The life of a street sweeper was approximately seven years. The Public Works Department tried to replace them every 3 years. The difference in what was budgeted and the actual purchase price of $90,000, was due to new emission standards and inflation. If the city went out for a competitive bid, they would not get a decent price.

Councilor Hyatt/Bloom m/s to approve the new street and wastewater cleaning equipment be purchased as outlined in the tables from the cooperative contracts. DISCUSSION: Councilor Hyatt emphasized the equipment was necessary to maintain the infrastructure. Councilor DuQuenne agreed it was a large amount of money but understood the need to maintain and take care of infrastructure. She would support the motion but did not want to do it as this time. **Roll Call Vote: Councilor DuQuenne, Hansen, Dahle, Kaplan, Bloom, and Hyatt, YES. Motion passed.**

2. Emergency Procurement of Fire and Rescue Ambulance

Finance Director Marianne Berry explained there were maintenance issues with other vehicles in the fleet. Emergency procurement allowed staff to bypass the bid process and buy directly. The purchase was in the approved budget and would cost less than what was budgeted.

Councilor Bloom/Hansen m/s to sign the contract for the procurement of the budgeted ambulance from Braun NW Inc, Chehalis WA. DISCUSSION: Councilor Bloom commented it needed to get done. Councilor Hanson added the ambulance was $200,000 but less than the cost of a fire truck ambulance. **Roll Call Vote: Councilor Bloom, Hyatt, Hansen, DuQuenne, Kaplan, and Dahle YES. Motion passed.**

3. **Contract with Axon Enterprises Inc. for APD body worn cameras (BWC) and support services and for conducted energy weapons (CEW or "tasers")**

Deputy Police Chief Dan Moulin explained the replacement process and contract.

Councilor Hyatt/Dahle m/s to approve a sole source procurement with Axon Enterprises for a five-year term in the annual amounts stipulated in the staff report dated September 19, 2023. DISCUSSION: Councilor Hyatt thought the sole source procurement was justified and it was prudent to continue with what worked. Councilor Dahle thanked the chief and deputy chief. Having the body cameras was a critical component. Councilor Kaplan supported the motion. He appreciated the equipment automatically turning on within 30-foot radius when a taser was deployed. **Roll Call Vote: Councilor Kaplan, Dahle, DuQuenne, Hyatt, Bloom, Hansen, YES. Motion passed.**

4. **Professional Services Contract for TAP Intertie System Improvements (Scope 2)**

Public Works Scott Fleury explained the contract was for the design and construction administration of TAP system improvements. He noted the improvements and how the scope would resolve design issues and part of the construction administration. This was approved in the budget and was part of the ARBOR Grant the city received.

Councilor Hansen/Kaplan m/s to approve a Legal Department approved professional services contract with RH2 Engineering Inc. for TAP system improvements in the amount of $196,650. DISCUSSION: Councilor Hansen noted the money was already appropriated and there was a plan He appreciated the work to keep the water flowing. Councilor Hyatt observed this was an excellent example of regional cooperation. Mayor Graham commented the biggest way to cause catastrophic issues was letting a water system fail. **Roll Call Vote: Councilor Hansen, Kaplan, Bloom, DuQuenne, Hyatt, and Dahle, YES. Motion passed.**

5. **Ashland Parks Commission Seat #1 Vacancy Appointment**

Interim Parks Director Leslie Eldridge provided background on her leaving the Parks Commission to become the interim parks director. This appointment would fill her vacancy. She explained the ranked choice voting process the commission used that resulted in appointing Stefani Seffinger. Council approval of the appointment recommendation was the final step.

Stefani Seffinger explained why she wanted this position. This was a transitional time and her prior experience as a city councilor and parks commissioner would be beneficial.

Councilor Hansen/Kaplan m/s to appointment of Stefani Seffinger to Position #1 of the Ashland Parks Commission. DISCUSSION: Councilor Hansen thanked Ms. Seffinger for her work with council and her love for parks. He believed she would work to bring these two bodies together and move into this new era. He thanked her for her public service. Councilor Kaplan thanked Ms. Seffinger for stepping up and liked her priorities. He was the liaison to the Senior Center Program and looked forward to working with her. Councilor Bloom noted City Charter Article 3, Section 4 stated vacancies were filled by council and this body was not part of that process. Alternately, he disagreed with the Charter and thought the Parks Commission should be appointing their own commissioners. This highlighted the need to review the Charter. It was outdated and needed clear lines between the organizations. He hoped council would set up a committee to review the Charter. However, because the Charter indicated council made this appointment and council was not included, he could not in good conscious support the motion. Councilor Dahle welcomed Ms. Seffinger and echoed the concern of seniors becoming homeless. Councilor Hyatt thanked the Parks Commission for going through the process in an open and transparent manner. She appreciated Ms. Seffinger's passion for seniors and looked forward to working with her more. The Charter did need review, but the Parks Commission was elected, and she supported the motion. **Roll Call Vote: Councilor DuQuenne, Hyatt, Dahle, Kaplan, and Hansen, YES; Councilor, Bloom, NO. Motion passed 5-1.**

6. Climate Friendly Areas (CFA) Study Adoption

Community Development Director Brandon Goldman and Planning Manager Derek Severson Provided the staff report. The Climate Friendly Areas (CFA) study would establish a set of rules that would define areas to reduce greenhouse gas, promote multimodal life and reduce vehicle trips. This was a regional effort. The DLCD hired 3J Consulting to develop the study.

Mr. Severson provided the following presentation (see attached):

- Why these Rules? Missing Oregon's Pollution Reduction Targets has Real Costs
- Updated land Use and Transportation Rules
- What is a Climate Friendly Area?
- Candidate CFAs
- Croman Mill District
- Railroad Property
- Transit Triangle
- Downtown
- Prescriptive Methodology
- CF & EC Implementation Timeline

Mr. Goldman explained the CFA minimum residential had 15 units per acre, but the city could increase that. The city could also create an ordinance with an upper cap of five stories instead of 4 stories.

Mr. Severson explained most of the local developers worked on a smaller scale and few would want to do something so different. Mr. Goldman added the current market condition and development community did not develop five story buildings but that could change over the next 15 years. They went on to further explain the units per acre and realistic amounts and potential CFA areas.

Public Comment

Robert Cortwright/Salem/Repeated a request to the Planning Commission in June, to establish additional CFAs to meet the climate goals. That translated into 3500 units of housing. He was concerned the CFA study did not reach the number.

Mr. Goldman was asked about annexing properties in the urban growth boundary and whether it would create more CFA. Council would have to go through a zone change and generate a comprehensive plan adjustment. DLCD requirements had specific dimensions, and it would have to be a larger area. Using a combination of the areas recommended for CFA would give the city a good starting point. Creating a CFA in the downtown posed a potential risk for rebuilding that might not align with historic district criteria.

Councilor Hyatt/Kaplan m/s to approve the attached Climate Friendly Area study report, authorize the mayor to sign the attached letter of approval and direct staff to submit the study to the Department of Land Conservation and Development before the December 31, 2023, deadline. DISCUSSION: Councilor Hyatt was glad RVCOG was there in support, the report showed the research was substantive and the effort had a lot of forethought. After the business roundtable the night before, this information was timely. Councilor Kaplan noted this was a tiny step and there was so much else needed to make it effective. He would rely on staff to guide council through these things. Councilor DuQuenne supported study and wanted to look at bringing in outside developers through incentives. Councilor Hansen supported it as well. He hoped that when development opportunities occurred, the market would be favorable. This gave them time ahead of the 3500 new units coming to Ashland. Councilor Bloom thanked staff and commented it was a big lift. Eight hundred units was not an acceptable number and he wanted to look at the zoning. Two of the CFA listed were in southeast Ashland. It was time for that area. **Roll Call Vote: Councilor Bloom, Hansen, Dahle, Hyatt, Kaplan, and DuQuenne, YES. Motion passed.**

XIII. ORDINANCES, RESOLUTIONS AND CONTRACTS

5. First Reading of Amendments to AMC 13.02 Rights-of-Way ordinance and the accompanying resolution for Design Standards and Applications Requirements regarding small cell wireless facilities

Acting City Attorney Doug McGeary worked with citizens opposing small wireless on the ordinance and explained the changes they had recommended. Recently, he had also met with members of the industry who had pointed out certain areas of the ordinance that would be problematic for the city and he concurred. They had offered to help work on the ordinance. If

council wanted the ordinance presented before them. He recommended another thirty days to work out the issues with both the citizens and members of the industry. Alternately, council could approve the LOC model ordinance which both the LOC and industry members supported and was used in many cities. The ordinance was close but needed some changes after talking with industry attorneys. The resolution would give the city the ability to control location.

Public Comment

Greggory Busch/ Seattle, WA/Represented AT&T. They had submitted a letter of joint concerns with the ordinance and the resolution that would leave a risk in the city. Wireless was critical for fire and medical services, coordinating responses to combat wildfire and other large event emergencies. Large festivals also required large network capacities. Small cells needed to be directly near the coverage to increase capacity for large scale. They were requesting additional time to provide suggestions on the proposed ordinance and resolution. He cited issues with the ordinance.

Areej Rajput/Portland, OR/Represented T Mobile. They respectively requested to partner with the city to work on an ordinance legally in compliance with federal law. In 2018 the FCC issued an order regulating small cell to wireless facilities in public right of ways. It was upheld by the ninth circuit court and was still in effect and preempted any of the inconsistencies the ordinance would have with federal law. She highlighted other inconsistencies in the ordinance. On a positive note, where the ordinance was not preemptive with federal law, was the language regarding aesthetics. She asked for a continuance of the first ordinance.

Kim Allen/Portland, OR/Represented Verizon. It was only recently the industry learned of the city's pending code change that prompted the letter with concerns for the ordinance and resolution. She was on the committee that formed the LOC ordinance model and provided background. Ashland's proposed code was one of the most difficult and restrictive code she had ever seen. It would make the City of Ashland an outlier in the state of Oregon. The wireless carriers provided an essential service to the residents, businesses, and visitors. They were ready to work with the city on this ordinance.

Paul Mozina/Ashland/Referred to an email he sent earlier titled ***So Who Decides***. He questioned the gap and thought they needed to start with the definition of personal wireless. He read from the Willits case in 1999. He supported a telecommunications cell to landline.

Marilyn Lindsay/Ashland/Spoke to the telecommunications industry spending $1.2billion to lobby congress for the past twenty years. Money was the number one reason laws were passed and the most egregious is the one that protects telecommunication from EMF radiation. The recent letter from AT&T T Mobile and Verizon identified as stakeholders prompted her to ask what is at stake for them? They were businesses and sought profits. The city attorney was concerned with protecting the city from litigation but not protecting humans and all life forms.

Kelly Marcoutulli/Ashland/Reminded council they were voted into office to uphold Ashland's common values. The decision to accept or reject the attorney's draft was a huge decision and thrown into the mix was the menacing threat from the letter. The ordinance draft was not based on the LOC model and not biased to allow telecommunications industry to profit. The LOC model ordinance was based on telecommunications intimidating tactics. This was the fork in the road. She asked if council would listen to citizen experts or greenlight the simplest path forward that did nothing to protect the public.

Pati Holman/Ashland/After 40 pages of documents from citizen research and safe technology with the draft of the resolution or ordinance not one of the recommendations was followed by the city attorney. This was after many years of engagement, activism, research, and knowledge. She referenced the FCC, SHC, EHT case from 2020, children's healthy defense, who won their petition, and responded the FCC had to address the safety concerns of healthy effect of radio frequency yet telecom had no problem supporting them. She referred to the Flower Hill case where the Willits case was upheld and stressed the importance of the significant gap.

Councilor DuQuenne confirmed the city attorney met with the community three times and there were agreements. Councilor Kaplan asked about disfavored locations that included residential and anything within 1500 feet of schools, medical and health facilities. Mr. MCGeary spoke with Kelly Burns regarding emergency and confirmed they rely heavily on technology for their emergency systems and provided examples. The city could regulate aesthetics but not safety. The intention was to provide space between facilities and lower the risk of litigation. Councilor Bloom confirmed there were franchise fee ordinances with a 5% cap per state legislature. Councilor Hyatt confirmed setback amounts, testing and radio frequency measurements was close to contradicting federal law.

Council went around the room and expressed their opinions on next steps. Councilor DuQuenne thought they were determining location, how much and what will it look like. She had been ready to move forward. Then she heard about the setback. She was not comfortable with the LOC model. They needed to find a common ground and were not there yet.

Councilor Kaplan had not looked at LOC model ordinance. He was concerned they did not prohibit cell service in Ashland. 5G was already here and they needed technology advanced cell service for emergencies, tourists, etc. He questioned if the 1500-foot setback would affect hospitals and other facilities. Now he was hearing it might. He was also concerned that all these specific requirements might raise the hassle factor so high that the city would not get any applications. He was not interested in bureaucratic procedures to make things hard. This ordinance did not seem ready. He wanted the opportunity to review the LOC model ordinance.

Councilor Dahle explained it broke down into safety, aesthetics, and design. He had worked with radio frequency for years. They were mandated through FCC law and regulation that when a transmitter was turned on, whether it was a radio station or cell service, it generated a certain

power and frequency that was measured. Those limits were defined federally and there was nothing a local government could do about that. He addressed the 1500-foot setback. Cell service was overlapping fields, so you do not lose service. He disagreed with the premise regarding making a land line call anywhere, it was an outdated statement.

Councilor Hyatt/Dahle m/s the need to balance the need of residents with EMF sensitivity to the economic needs to successfully conduct business while limiting the risk to our taxpayers for litigation. This does not do it. We need to request the base ordinance come back. We have a C minus do over on the resolution and we need to take it up again on another night.
DISCUSSION: Councilor Dahle was confused by the updated ordinance. He read the LOC model ordinance. It was good, not perfect. He thought the city could do better. They needed to focus on aesthetics and local design and control, safety would work itself out. The telecom companies competed against each other and policed each other. That was how it regulated itself in terms of safety. Councilor Hansen was new to this issue. He was not impressed with the new ordinance and did not think it covered what concerned citizens needed or getting what those of us who wanted safe tech were needing. He thought if they focused on what they could control, he leaned towards the LOC model ordinance. Council should go back to that and start there and work with the citizens and the industry. In lieu of not doing that, council should adopt the LOC ordinance. He did not support moving forward with what was presented tonight. Councilor Bloom was not happy how this played out. It was obvious they needed to start with the LOC model ordinance. The citizens had been collaborative, but he was left with a bitter feeling regarding the approach the industry took tonight and asked them to try a different tune next time. Mayor Graham summarized what was on the table was a motion to postpone but council had not given any direction of which way staff should go. Councilor Hyatt noted the motion intended to bring back the base ordinance for review by this body for the express fact there were four people on council not familiar with the issue. She suggested bringing back the base ordinance so this team could look at what the starting point had been last year. It would be either an up or down on the base ordinance but then they needed to look at the resolution carefully and the thoughts around land use and aesthetic. That was where the city was ok with local control. The moment it stepped out of that opened the balance of taxpayers to pay the legal fees associated with alternate tries at other solutions. She did not like being in the situation they were in right now. It did not feel good. But when she said they need to balance the needs of EMF sensitivity to the economic needs, including the medical institutions and limit the risk to taxpayer litigation, the way to balance that was to give staff direction to bring back the base and then dig into the resolution with regards to land use and aesthetic to advance those three pillars to the best of council's ability under the local control they had. That was her motion. Mayor Graham explained citizens had been asking council to push the envelope ad maintain as much control as they possibly could. It was her opinion that Oregon for Safer Technology (OST) version probably pushed them to have more local control than the LOC model. There had been so much work on this already, she did not want to go back through the LOC model again. OST had put forward their recommendations. This body had asked several times to go point by point through the differences between what was being brought forward by staff and what that base

ordinance was so council could decide if there was a risk. If they went back through this again, they needed a process that resulted in an ordinance and not another general conversation. She confirmed Councilor Hyatt's motion was to go back to the LOC model and put most of the attention into the resolution. Councilor Hyatt responded that was her understanding of where they had the most local control and that was in the resolution. They wanted something in place that was effective, enforceable and could at least have a chance to do what the residents were asking. And that would happen in the resolution. They were doing the ordinance they could legally do without stepping into federally regulated areas then taking up local control to the greatest extent possible through the resolution. Mayor Graham confirmed the ordinance before them tonight was close. She asked Councilor Hyatt if they wanted to go with that or go back to the LOC model. Councilor Hyatt confirmed the base ordinance was the LOC model ordinance. She felt hesitant to vote on the motion due to the confusion and the time. Mayor Graham confirmed they were at 9:40 p.m. and required to vote. **Roll Call Vote: Councilor Hyatt, Dahle, and Kaplan, YES; Councilor Hansen, DuQuenne, and Bloom, NO. Mayor Graham broke the tie with a NO vote. Motion failed 4-3.**

XIV. OTHER BUSINESS FROM COUNCIL MEMBERS/REPORTS FROM COUNCIL LIAISONS

5. City Council Standing Advisory Committees Workplans Review

Item postponed to a future meeting.

XV. ADJOURNMENT OF BUSINESS MEETING

The clock ran out and the meeting adjourned at 9:40 p.m.

Respectfully Submitted by:

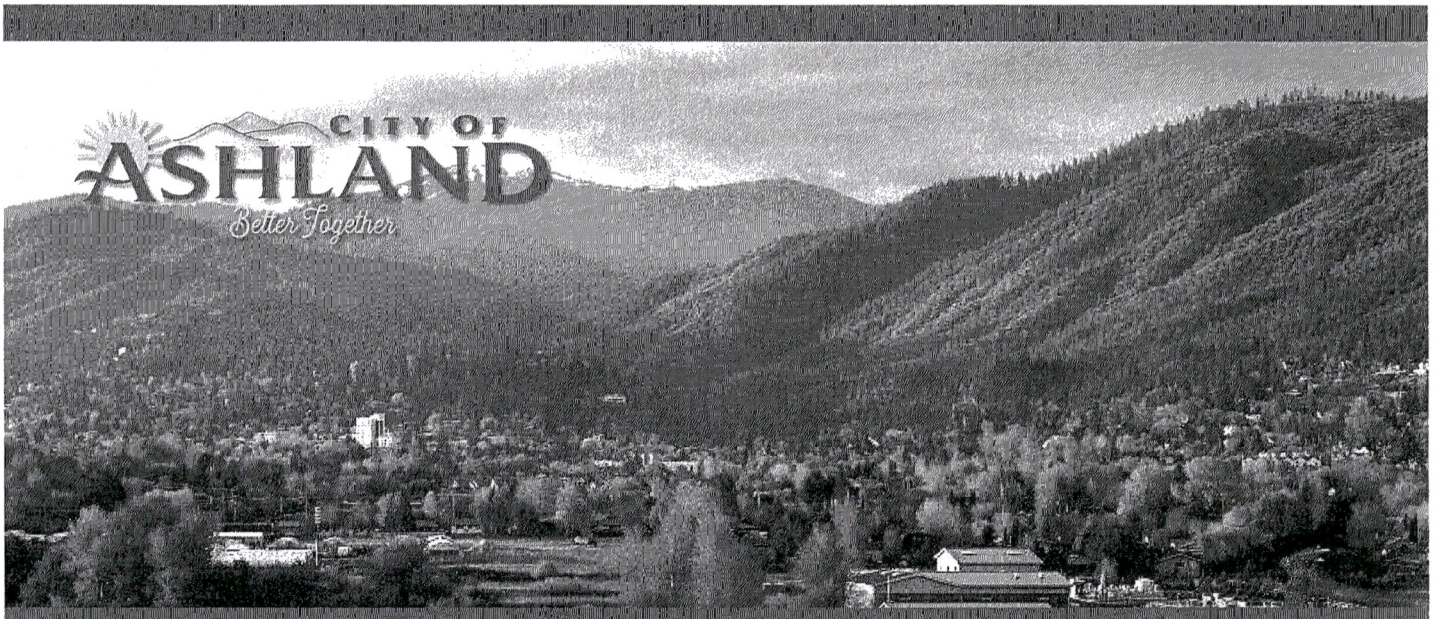
Dana Smith

Clerk of the Council Pro Tem Dana Smith

Attest:

Tonya Graham

Mayor Tonya Graham



BN 2023-2025 Finance Department

September 19, 2023

Finance Department – Quarterly Update

- FY2023 Preliminary Financial Review
  - Books are not closed – top level review only
  - Due to Audit, typically year-end close in November
  - ACFR (Annual Comprehensive Financial Report) and results of Audit presented in December
- Departmental Updates & Current Projects
  - Utility Billing ✦ Procurement ✦ Finance & Accounting
  - Staffing, Workflow, Projects

Financial Overview

Preliminary Financial Statements

- Fiscal Year Ending June 30, 2023
  - City-Wide Ending Fund Balances $83.1M
    - Increase of $12M from prior year
    - Primarily due to unmaterialized personnel costs, projects pushed out and inflationary pressures
  - Main tax revenues:
    - Increased 8% from budget and 4.9% from prior year
  - City in budgetary compliance for the fiscal year
  - Cash & Investments:
    - Total $76M: Cash & Cash Equivalents $58.8M and Investments $17.1M
    - Strong cash position

Financial Overview

Moody's Annual Report – September 1, 2023

Confirmed Issuer Rating Aa3 – in top 4 highest ratings

- Finances are solid
  - Strong liquidity ratio, Ashland 74% vs 69% of median Aa issuers
  - Low long-term liabilities ratio, 158% vs 245% (lower better)
- High wealth level
- Stable economic growth level

Modest Constraints:

- Resident income ratio – 90.3% vs 115% of Aa medians
- Local economic durability/diversification

Finance Dept Update

- Staffing
  - Added 3 new staff, two in Utility Billing and third in Audit/Budget
- Process Improvements
  - Lockbox implementation for UB
  - Procurement updates
  - Upgrading to next level version in Tyler Munis
- Other
  - Water Treatment (WIFIA) Loan
  - Electric/RESP Loan (Rural Energy Savings Program/On-bill Financing)
  - Revenue Study
  - Intermediate term: Investment Policy Review, Implement Forecasting/Modeling Tools

QUESTIONS?

Council Public Testimony Form Submitted

City of Ashland, Oregon <administration@ashland.or.us>
Mon 9/18/2023 7:59 AM
To:City Recorder <recorder@ashland.or.us>;Dorinda Cottle <dorinda.cottle@ashland.or.us>

[EXTERNAL SENDER]

*** FORM FIELD DATA***
Full Name: **Regina Ayars**
[redacted]
Meeting Date : **September 19, 2023**
Type of Testimony: **ELECTRONIC**
Written Testimony: **This is the same testimony I submitted to Parks & Recreation Commissioners on September 6, 2023. In my opinion, The Parks Department and Parks Commission have been in need of new leadership for many years. The department has new leadership with Leslie Eldridge. I have expectations that her leadership will move the department forward to ensure the the entire Ashland community is represented in Parks policies and decisions. I also think that the Parks Commission needs new members to ensure its direction to Parks department includes ideas from people who have not served previously. Institutional memory can be valuable. It can also inhibit "out of the box thinking" when considering innovative policies. This is a transition period that offers the opportunity to look forward not back. Regina Ayars**

*** USER INFORMATION ***
SubscriberID: **-1**
SubscriberUserName:
SubscriberEmail:
RemoteAddress: **66.241.70.76**
RemoteHost: **66.241.70.76**
RemoteUser:

Climate Friendly Communities

WENDY ADLER [redacted]

Fri 2023-09-15 02:26 PM

To:Derek Severson <derek.severson@ashland.or.us>

[EXTERNAL SENDER]

Dear Mr. Severson,

It just came to my attention that the city is moving forward with a preliminary plan to identify sections of Ashland that could be developed with much increased density. I am certainly in favor of doing what we can to reduce emissions. I don't know that increased building density will help, but I understand that the city is required to comply.

My concern is that, according to the preliminary map, my neighborhood will be completely surrounded by increased density. We just found out that a second homeless shelter will be opened just down the street from us, and now this. It looks like we are at risk of becoming the "bad" part of town. It seems to me like the effects of all this should be shared between all neighborhoods, not concentrated here.

The newspaper article predicted that most of the increased development would take place in the Crowson Mill area. That makes sense, except that project has been talked about for a very long time, and nothing seems to happen.

What do you recommend we do to help ensure that our neighborhood will remain a place we will want to live?

Sincerely,
Wendy Adler

[redacted]

Council Public Testimony Form Submitted

City of Ashland, Oregon <administration@ashland.or.us>
Tue 9/19/2023 7:26 AM
To:City Recorder <recorder@ashland.or.us>;Dorinda Cottle <dorinda.cottle@ashland.or.us>

[EXTERNAL SENDER]

*** FORM FIELD DATA***
Full Name: **Gary Shaff**
[redacted]
Meeting Date : **September 19, 2023**
Type of Testimony: **WRITTEN**
Written Testimony: **Mayor and Council, Draft - Climate Friendly Area (CFA) Study Downtown The downtown should be included as a ?priority? CFA because that designation is, in itself, an ? advertisement? for private investment. Downtown Ashland is the physical and fiscal center of our community and should be our first priority for new investment. Our downtown is our community?s identity and is crucial to the city?s future. Every other metropolitan city in the State understands this fact and, as a consequence, has designated, or plans to designate, its downtown as a CFA. Ashland should do so as well. There are no downsides to designating our downtown as a CFA. The city?s existing historic preservation codes and other new codes, that may be developed through a CFA zoning district, will protect those buildings that deserve protection. But vacant or under-developed lands (for example, the US Postal Service building, and the Key Bank and Well?s Fargo buildings or existing private or public parking lots) are prime candidates for development/redevelopment. That is especially true now that the city?s minimum parking requirements have been eliminated. Future residential development in the downtown will not meet a substantial portion of the city?s housing needs. However, the city could leverage private investment using its land holdings in the downtown to create affordable, workforce housing. Adding several hundred new residents in the downtown will help to make it more viable, lively, and successful. Maybe all or some of the empty storefronts will disappear. CFA?s will usher in a new wave of investment. The City Council should ensure that the downtown is among those areas that benefit from it and any public incentives that may be forthcoming Please modify the draft CFA Study to include the downtown as a priority CFA. _____. Croman Mill Site The designation of the entire Croman Mill Site as a CFA will have the effect of leaving the city without any large tracts of land zoned for industrial use. Industrial lands are crucial to diversify the economy and provide higher wage jobs that are not, otherwise, tied to the tourist or service industries. Limiting development to ?compatible industrial? uses, as suggested in the draft CFA Study, will preclude, in all likelihood, industrial uses that operate 24-hours a day, create noise, or fumes. Those limitations will only serve to restrict development to those which may be best described as heavy commercial (Costco in Central Point might be a good example). Why designate the city?s limited supply of industrially zoned lands for residential development? The draft CFA study shows that the proposed CFA?s, excluding the Croman Mill Site?s industrially zoned land, will include enough land to meet LCDC?s requirements and far exceed the city?s housing needs? Please protect the city?s future and retain the existing industrially zoned industrial lands in the Croman Mill Site. Designate part of the site as a CFA but not all of it. Gary Shaff** [redacted]

September 19, 2023

Mayor Tonya Graham & Council
City of Ashland
20 East Main Street
Ashland, OR. 97520

RE: Agenda Item XII.3: Climate Friendly Area (CFA) Study Adoption

Mayor & Councilors:

In June, I provided testimony to the Planning Commission encouraging the city to study additional Climate Friendly Areas (CFAs) in order to meet targets set in LCDCs Climate Friendly and Equitable Communities (CFEC) rules that call for 30% of all housing to be located in CFAs. I'm writing now to encourage you to take that action and respond to comments from DLCD about the 30% requirement.

A key premise of the CFEC rules and the state's overall strategy for reducing greenhouse gas emissions is that we change land use plans so that we get 30% of all housing in walkable, mixed use "Climate Friendly Areas" (CFAs) - the kind of neighborhoods that significantly reduce the amount of driving we need to do.

For Ashland, achieving the 30% target means that the city should have roughly 3500 housing units in CFAs by 2041. However, since the three proposed CFAs are largely undeveloped and the city expects only about 900 new housing units to be built in the next 18 years, the city would be about 2600 units short of meeting the 30% target, even if every new housing unit built in Ashland were located in a CFA. The point of this analysis is that the city should, if it wants to actually meet the 30% target, designate additional CFAs to make up the difference.

DLCD staff have not disputed this analysis but have advised that the city can comply with the CFEC rules if it simply designates CFAs that have enough "zoned capacity" to accommodate 30% of the city's housing needs. While DLCD may be technically correct about what the CFEC rules require, what they are really telling you - and other cities - is that the rules don't work to achieve their stated objective: i. e. that it's OK to adopt CFAs that have no chance of meeting the 30%

goal because they lack enough existing housing and future housing growth to meet the 30% target.

DLCD also suggests that the city might fill this gap and meet the 30% goal "over time" as it updates the city's housing plans. However, because the underlying problem is that the three CFAs contain too little existing housing and the city is expecting a only a modest amount of growth, it is completely unclear how the city can meet the 30% goal without doing what it should do now, which is to study and designate additional areas as CFAs.

The bottom line is this: while providing "zoned capacity" may technically meet DLCDs rule, it will leave the city well short of meeting the rule's stated objective of actually getting 30% of all housing in CFAs. If your interest is limited to complying with the letter of CFEC rules - rules that clearly fall short of their stated objective - then DLCDs advice may be helpful. However, if you want to position Ashland to actually meet the 30% goal, you should direct staff and the planning commission to propose one or more additional CFAs. This should include a downtown CFA which can, consistent with CFEC rules, be tailored to exclude or protect historic properties and structures.

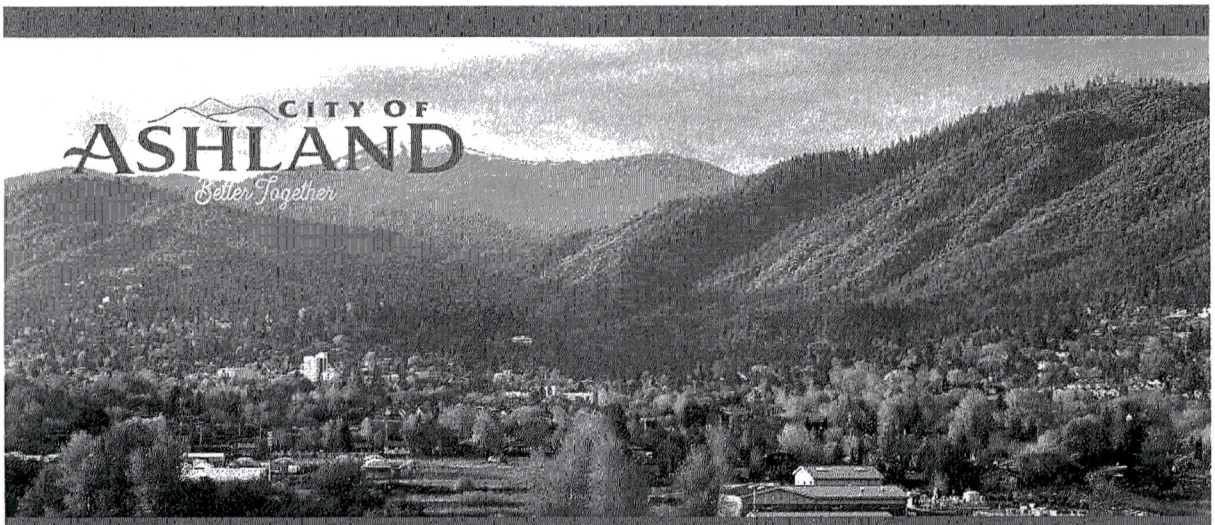
For decades, Ashland has served as a powerful example for other Oregon communities of effective ways to plan and achieve compact, walkable mixed use development. By designating CFAs that can actually accommodate 30% of its housing, Ashland would continue to provide this kind of needed leadership.

Bob Cortright[1]



cc: Kevin Young, DLCD

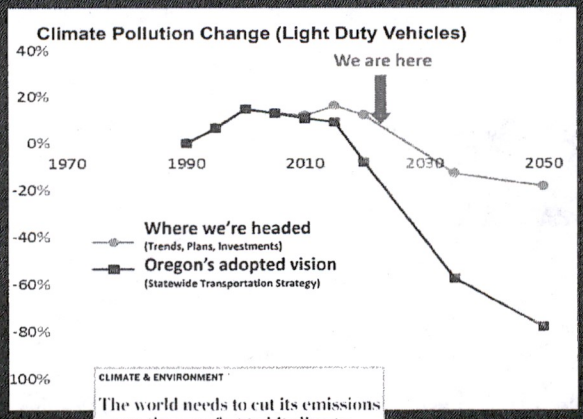
[1] I am a retired urban planner. For 25 years, I served as DLCDs lead staff on transportation planning issues, including 6 years as the agency's lead planner for reducing GHG emissions. I currently work with several climate and environmental groups that are advocating for strong, clear rules and effective state and local plans to carry out the Oregon Climate Action Plan (OCAP).



Climate Friendly Areas (CFAs) Study

Ashland City Council
September 19, 2023

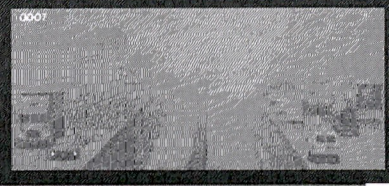
Why these Rules?
Missing Oregon's Pollution Reduction Targets Has Real Costs



CLIMATE & ENVIRONMENT

The world needs to cut its emissions seven times as fast to hit climate goals, U.N. report finds





DLCD

Updated Land Use and Transportation Rules

Focus Areas

Land Use/Building

- Designate walkable climate-friendly areas
- Reform parking management
- Support electric vehicle charging

Transportation

- Plan for high quality pedestrian, bicycle, and transit infrastructure
- Go beyond sole focus on motor vehicle congestion standards
- Prioritize and select projects meeting climate/equity outcomes

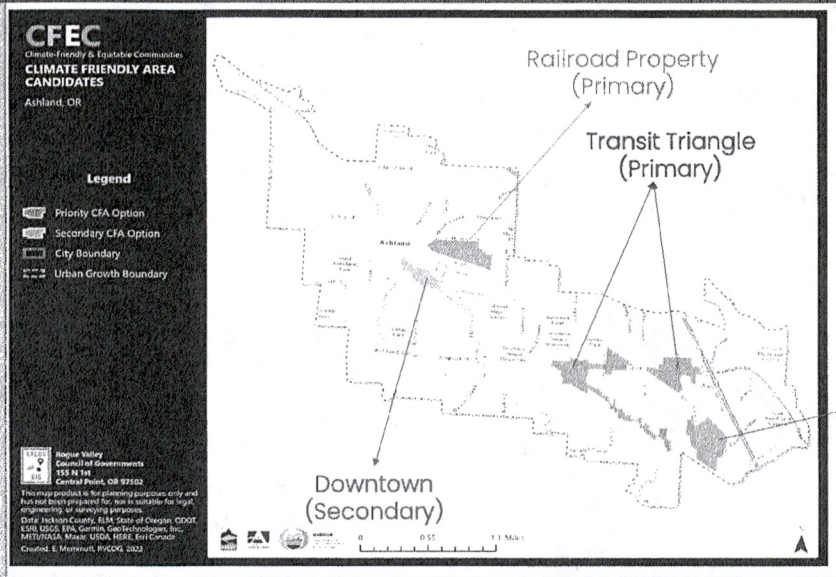
DLCD



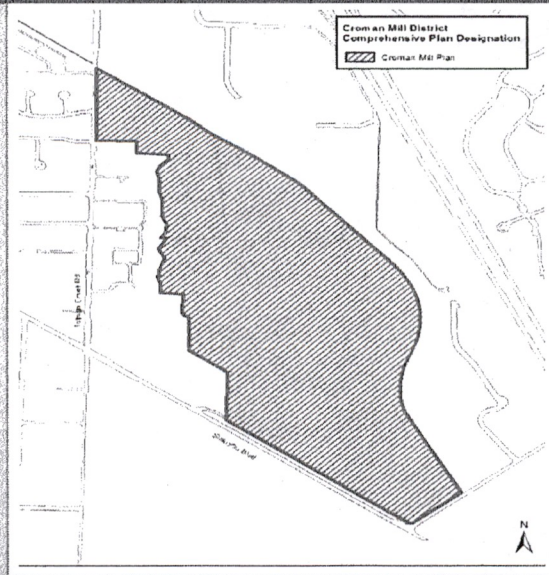
What is a Climate Friendly Area?

- Imagine downtowns and neighborhood centers
- Walkable area with a mix of residential, office, retail, services, and public uses
- High-quality pedestrian, bicycle, and transit services
- Parking is well-managed

DLCD



Candidate CFAs



- Approx. 92 acres total
- Masterplan Adopted 2008
- Remains Largely Undeveloped
- *Clean-Up Plan in process*
- Townmakers, LLC currently looking at code changes to develop approx. 65 acres.

<u>By *prescriptive* methodology:</u>

- 5,142 new dwelling units
- 79 dwelling units per acre
- 148 percent of needed housing

Croman Mill District

Image 3 - Railroad Property

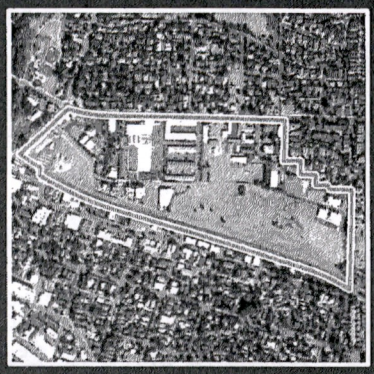
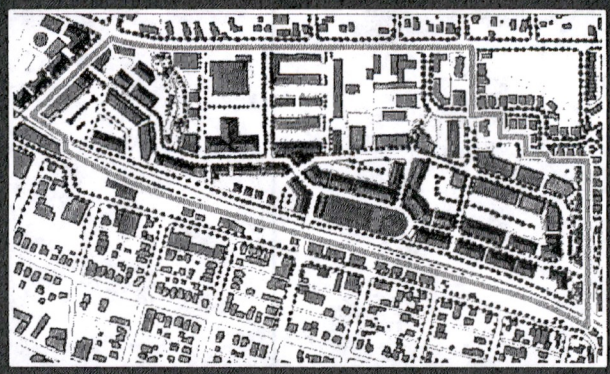


Image 4 - Railroad Property Master Plan *DRAFT*

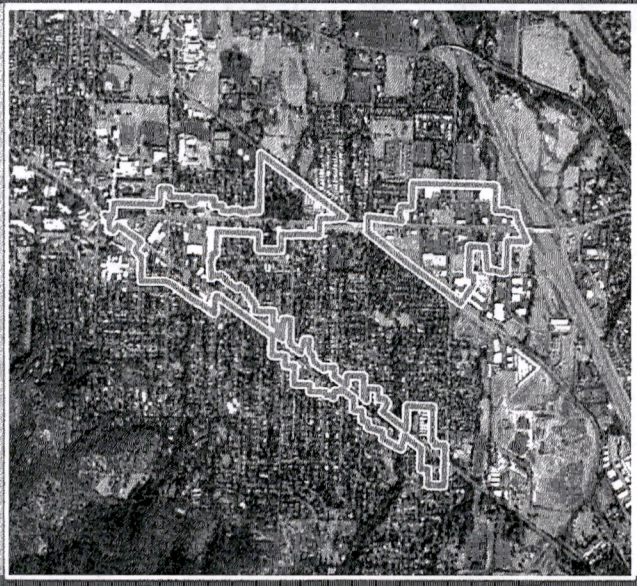


- Approx. 57 acres.
- Southern portion largely undeveloped.
- Clean-up Plan under development.
- 2001 Masterplan not adopted,. Street plan adopted.

<u>By the *prescriptive* methodology:</u>

- 2,226 new dwelling units
- 58 dwelling units per acre
- 64 percent of needed housing.

Railroad Property



<u>Transit Triangle</u>

- Approximately 167 acres
- Undeveloped or underdeveloped
- Largely auto-dependent uses in "strip development" pattern
- Likely a center of future growth

<u>By the *prescriptive* methodology:</u>

- 7,524 new dwelling units
- 52 dwelling units per acre
- 207 percent of needed housing.

Transit Triangle



Downtown

- Largely Developed without off-street parking requirements
- National Register-Listed Historic District

Given the level of development and the historic status, the Downtown is being looked at as a CFA, but was not analyzed under the lens of the prescriptive CFA methodology given it is nearly built out.

Downtown

- Prescribed methodology in CFEC looks at full potential developability or re-developability of a CFA – less an allowance for streets – as though it will redevelop from bare ground.
- No consideration for existing buildings, code-required on-site stormwater detention, parking that might be voluntarily provided (*though no longer required*), or any project-specific open space, plaza space or landscaping.
- On that basis, the potential build-out for Croman Mill District is envisioned at 79 dwelling units per acre yielding 5,142 dwelling units and providing more than the 30 percent of current and future housing capacity required under CFEC rules.

Prescriptive Methodology

For staff, some of these underlying assumptions of that methodology do not align with real world experience.

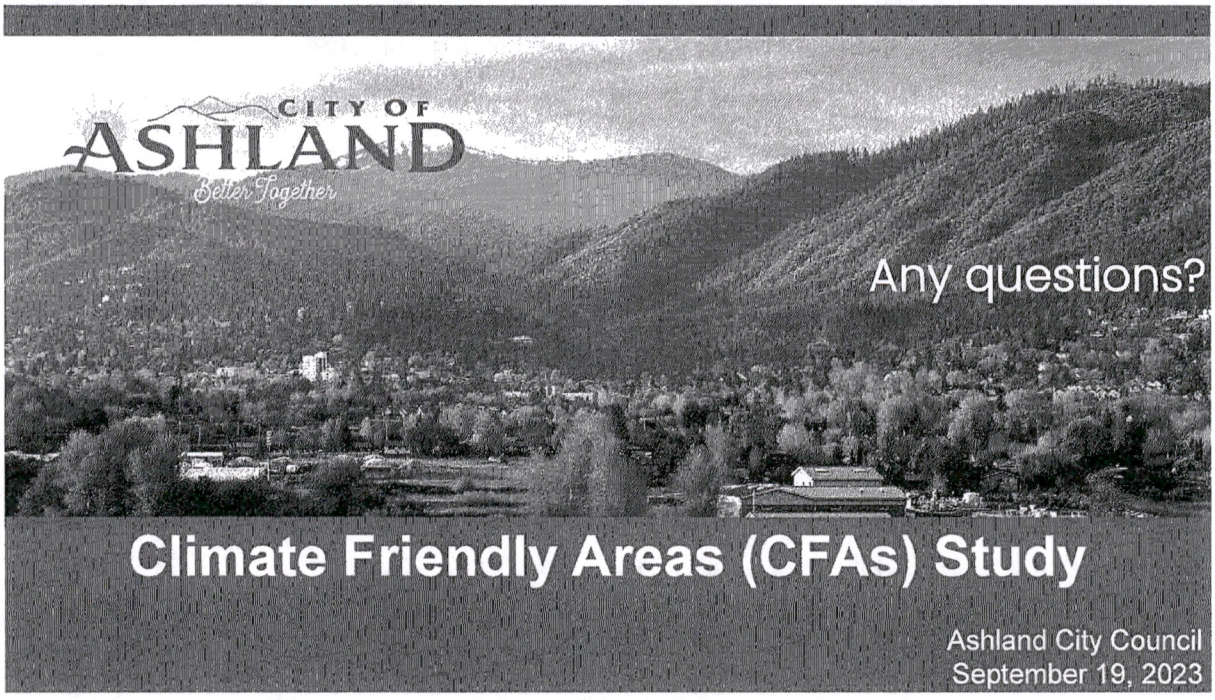
- It is neither realistic nor desirable to assume that all existing development will be razed in pursuit of this new vision (i.e. historic downtown).
- While parking is no longer required, it seems safe to assume that developers, tenants, buyers and financial institutions in the near-term will want some parking.
- Even with increased height and no limits on density, in the near-term developers will likely work within the framework and scale they are familiar with in southern Oregon.

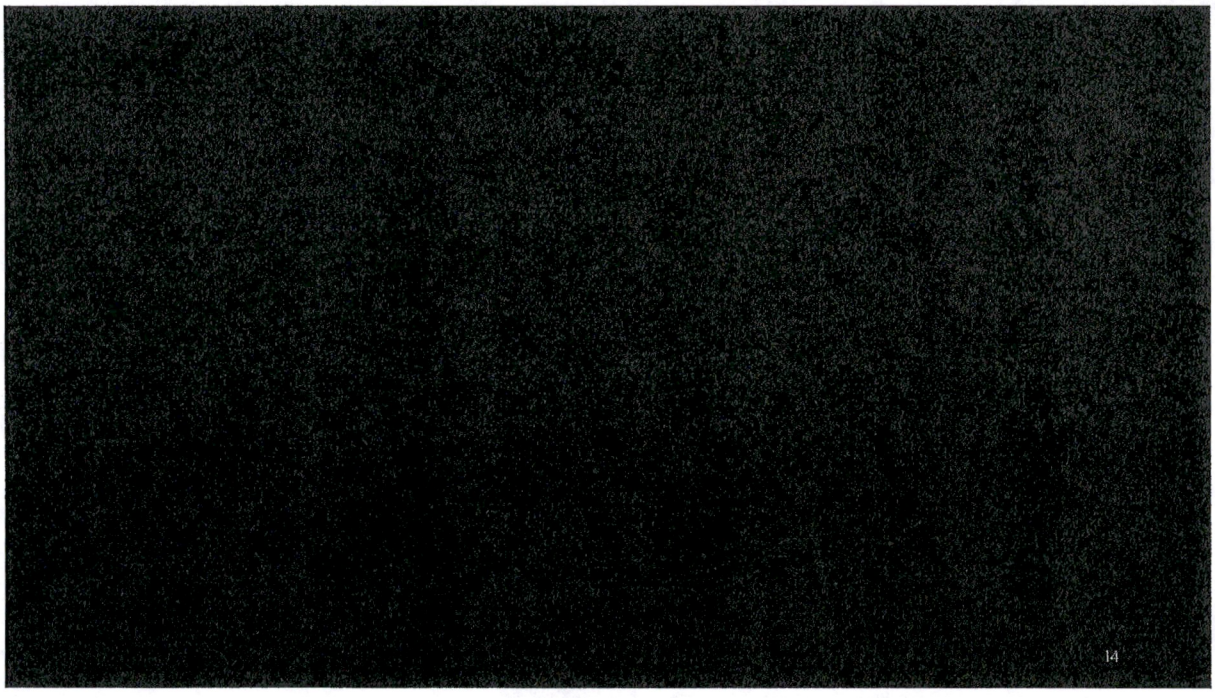
Staff believe that the combination of CFAs under consideration – rather than relying on a single area - are a more realistic attempt to not only meet the CFEC requirements, but also to achieve their underlying intent. (Even if future development were to provide only 15 dwelling units per acre density which is one of the minimum development metrics under the CFEC rules, the combined potential CFA's identified in the study would yield 3,770 units. The projected housing need required to be addressed under CFEC for Ashland is 3,469 units.)

Prescriptive Methodology

CFEC Parking Minimums (Parking I) by December 31, 2022
CFEC Electrical Vehicle Conduit Requirements by March 31, 2023 THROU
CFEC Parking Minimums (Parking II) by June 30, 2023 OC
Climate Friendly Areas (CFA) Study consultant work through June 30, 2023 [*Technical Assistance by Rogue Valley Council of Gov'ts*]
CFA Public Engagement Process consultant work through June 30, 2023 [*Technical Assistance by 3J Consulting, Inc.*]
Final CFA Study report due to DLCD by December 31, 2023
CFA Transportation Modeling by June 30, 2024
CFA Designation, Maps & Code Amendments consultant work through June 30, 2024 [*Consultants still to be determined based on available Technical Assistance funds.*]
CFA Designation, Maps and Code Amendments Adoption by 12/31/2024

CF&EC Implementation Timeline


CITY OF
ASHLAND
Better Together
Any questions?
Climate Friendly Areas (CFAs) Study
Ashland City Council
September 19, 2023


14

Speaker Request Form

THIS FORM IS A PUBLIC RECORD
ALL INFORMATION PROVIDED WILL BE MADE AVAILABLE TO THE PUBLIC

1) Complete this form and return it to the City Recorder prior to the discussion of the item you wish to speak about.
2) Speak to the City Council from the table podium microphone.
3) State your name and address for the record.
4) Limit your comments to the amount of time given to you by the Mayor, usually 3 or 5 minutes.
5) If you present written materials, please give a copy to the City Recorder for the record.
6) You may give written comments to the City Recorder for the record if you do not wish to speak. (Comments can be added to the back of this sheet if necessary)
7) Speakers are solely responsible for the content of their public statement.

Tonight's Meeting Date 9-19-23

Name Sonya Daw

Address (no P.O. Box) [redacted]

Phone Email

Regular Meeting

Agenda topic/item number_____ OR

Topic for public forum (non agenda item) Climate + Energy Action Plan for Ashland

Land Use Public Hearing

Please indicate the following:
For:_____ Against:_____

Challenge for Conflict of Interest or Bias

If you are challenging a member (a city councilor or a planning commissioner) with a conflict of interest or bias, please write your allegation complete with supporting facts on this form and deliver it to the clerk immediately. The Presiding Officer will address the written challenge with the member. Please be respectful of the proceeding and do not interrupt. You may also provide testimony about the challenge when you testify during the normal order of proceedings.
Written Comments/Challenge:_____

The Public Meeting Law requires that all city meetings are open to the public. Oregon law does not always require that the public be permitted to speak. The Ashland City Council generally invites the public to speak on agenda items and during public forum on non-agenda items unless time constraints limit public testimony. No person has an absolute right to speak or participate in every phase of a proceeding. Please respect the order of proceedings for public hearings and strictly follow the directions of the presiding officer. Behavior or actions which are unreasonably loud or disruptive are disrespectful, and may constitute disorderly conduct. Offenders will be requested to leave the room.

Comments and statements by speakers do not represent the opinion of the City Council, City Officers or employees or the City of Ashland.

Speaker Request Form

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7) Speakers are solely responsible for the content of their public statement.

Tonight's Meeting Date 9/19/23

Name Linda Adams (please print)

Address (no P.O. Box) [redacted]

Phone

Agenda topic/item number_____ OR

Topic for public forum (non agenda item) Transportation Advisory Committee meeting announcement

Land Use Public Hearing

Please indicate the following:
For:_____ Against:_____

Challenge for Conflict of Interest or Bias

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Written Comments/Challenge:_____

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Tonight's Meeting Date_____

Name Joel Goldman

[redacted]

Regular Meeting

Agenda topic/item number_____ OR

Topic for public forum (non agenda item) Ashland Climate & Energy Action Plan

Land Use Public Hearing

Please indicate the following:
For:_____ Against:_____

Challenge for Conflict of Interest or Bias

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Tonight's Meeting Date 4/19/23

Name JD Parsons (please print)

Address (no P.O. Box) Ashland

Phone [redacted]

Agenda topic/item number ~~Night Lawn~~ OR

Topic for public forum (non agenda item) Night Lawn news

Land Use Public Hearing

Please indicate the following:
For:_____ Against:_____

Challenge for Conflict of Interest or Bias

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Tonight's Meeting Date 9/19/2023

Name Emily Simon

Address (no P.O. Box) [redacted]

Regular Meeting

Agenda topic/item number_____ OR

Topic for public forum (non agenda item) Solicide, Appts for SEJAC etc

Land Use Public Hearing

Please indicate the following:
For:_____ Against:_____

Challenge for Conflict of Interest or Bias

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Zoom Public Speaker - NEW Business #3 Climate Friendly Areas

Council Public Testimony Form Submitted

City of Ashland, Oregon <administration@ashland.or.us>
Tue 9/19/2023 9:37 AM

To:City Recorder <recorder@ashland.or.us>;Dorinda Cottle <dorinda.cottle@ashland.or.us>

[EXTERNAL SENDER]

*** FORM FIELD DATA***
Full Name: **Robert Cortright**
Phone:
Email: **dana.smith@ashland.or.us**
Meeting Date : **9/19/2023**
Type of Testimony: **ELECTRONIC**
Written Testimony: **Speaking on Climate Friendly Areas under Special Presentations Robert** [redacted]

*** USER INFORMATION ***
SubscriberID: **-1**
SubscriberUserName:
SubscriberEmail:
RemoteAddress: **66.241.70.76**
RemoteHost: **66.241.70.76**
RemoteUser:

Zoom Public Speaker - ORD - ROW/Telecom

Council Public Testimony Form Submitted

City of Ashland, Oregon <administration@ashland.or.us>
Mon 9/18/2023 11:34 AM
To:City Recorder <recorder@ashland.or.us>;Dorinda Cottle <dorinda.cottle@ashland.or.us>

[EXTERNAL SENDER]

*** FORM FIELD DATA***
Full Name: **Greggory Busch**
[redacted]
Meeting Date : **09/19/2023**
Type of Testimony: **ELECTRONIC**
Written Testimony: **Electronic/remote testimony for Public Hearing: First Reading of Amendments to AMC 13.02 Rights-of-Way ordinance and the accompanying resolution for Design Standards and Applications Requirements regarding small cell wireless facilities.**

*** USER INFORMATION ***
SubscriberID: **-1**
SubscriberUserName:
SubscriberEmail:
RemoteAddress: **66.241.70.76**
RemoteHost: **66.241.70.76**
RemoteUser:

Zoom Public Speaker - ORD - ROW/Telecom

Council Public Testimony Form Submitted

City of Ashland, Oregon <administration@ashland.or.us>
Mon 9/18/2023 3:14 PM
To:City Recorder <recorder@ashland.or.us>;Dorinda Cottle <dorinda.cottle@ashland.or.us>

[EXTERNAL SENDER]

*** FORM FIELD DATA***
Full Name: **Areej Rajput**
[redacted]
Meeting Date : **09/19/2023**
Type of Testimony: **ELECTRONIC**
Written Testimony:

*** USER INFORMATION ***
SubscriberID: **-1**
SubscriberUserName:
SubscriberEmail:
RemoteAddress: **66.241.70.76**
RemoteHost: **66.241.70.76**
RemoteUser:

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Council Public Testimony Form Submitted

City of Ashland, Oregon <administration@ashland.or.us>
Mon 9/18/2023 11:26 AM
To:City Recorder <recorder@ashland.or.us>;Dorinda Cottle <dorinda.cottle@ashland.or.us>

[EXTERNAL SENDER]

*** FORM FIELD DATA***
Full Name: **Kim Allen**
[redacted]
Meeting Date : **9/19/2023**
Type of Testimony: **ELECTRONIC**
Written Testimony:

*** USER INFORMATION ***
SubscriberID: **-1**
SubscriberUserName:
SubscriberEmail:
RemoteAddress: **66.241.70.76**
RemoteHost: **66.241.70.76**
RemoteUser:

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Tonight's Meeting Date 9/19/23
Name PAUL Mozina
[redacted]

Regular Meeting

Agenda topic/item number XIII OR ROW ordinance

Topic for public forum (non agenda item)_____

Land Use Public Hearing

Please indicate the following:
For:_____ Against:_____

Challenge for Conflict of Interest or Bias

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Tonight's Meeting Date 9/19/2023

Name Marilyn Lindsay

[redacted]

Regular Meeting

Agenda topic/item number XIII - 13.02 Right of Way Ordinance
OR

Topic for public forum (non agenda item) _____

Land Use Public Hearing

Please indicate the following:
For: _____ Against: _____

Challenge for Conflict of Interest or Bias

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Tonight's Meeting Date September 19 2023

Name Pat Holman

[redacted]

Regular Meeting

Agenda topic/item number XIII ROW ORD
OR

Topic for public forum (non agenda item) Television

Land Use Public Hearing

Please indicate the following:
For: _____ Against: _____

Challenge for Conflict of Interest or Bias

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7) Speakers are solely responsible for the content of their public statement.

Tonight's Meeting Date 9/19/23

Name Kelly Marcotulio

[redacted]

Regular Meeting

Agenda topic/item number 5b ordinance OR (XIII)

Topic for public forum (non agenda item)_____

Land Use Public Hearing

Please indicate the following:

For:_____ Against:_____

Challenge for Conflict of Interest or Bias

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Council Business Meeting

October 3, 2023

Agenda Item	DEQ Presentation on Railyard Cleanup Plan	
From	Brandon Goldman	Community Development Director
Contact	Brandon.goldman@ashland.or.us	
Item Type	Requested by Council ☐ Update ☐ Request for Direction ☐ Presentation ☒	

SUMMARY

Union Pacific Railroad has proposed a revised cleanup plan for contamination on a former rail yard site in Ashland, covering 11.7 acres, for consideration by the Department of Environmental Quality. The plan aims to ready the site for safe industrial, commercial, or urban residential use by excavating contaminated soil from 8.7 acres and consolidating it on a three-acre portion of the property with a clean soil cap. DEQ's initial assessment is that this plan aligns with regulations, protects human health and the environment, and eliminates the need to transport contaminated soil through the community. Public comments will be considered before finalizing the plan.

POLICIES, PLANS & GOALS SUPPORTED

Comprehensive Plan - Economy Element

Goal 7.07.03 To ensure that the local economy increases in its health, and diversifies in the number, type, and size of businesses consistent with the local social needs, public service capabilities, and the retention of a high quality environment. *Policy 1)The City shall zone and designate within the Plan Map sufficient quantity of lands for commercial and industrial uses to provide for the employment needs of its residents and a portion of rural residents consistent with the population projection for the urban area. Policy 4) ... the City shall take such actions as are necessary to ensure that economic development can occur in a timely and efficient manner...*

BACKGROUND AND ADDITIONAL INFORMATION

In 1993, Southern Pacific Railroad, the original owner of a 21-acre property in Ashland, Oregon, initiated efforts to address contamination associated with rail yard operations on the site. However, by 1996, Southern Pacific Railroad merged with Union Pacific, which brought the property under the Union Pacific umbrella.

Over the years, the Department of Environmental Quality (DEQ), the regulatory authority regarding cleanup of this property, issued determinations indicating that no further action was required for approximately western 6.4 acres of the original 21-acre site. Concurrently, it was determined that the eastern most 2.85 acres of the property had no historical connection to rail yard activities and were instead being used for agricultural purposes and thus not subject to any cleanup requirements. Over the last decade the eastern 6.4 acres of the original railyard has been largely developed with multi-story mixed-use buildings. The western 2.85 acres remains undeveloped. The remaining 11.7 acres of the property has been identified as containing contaminants int eh soil and therefore necessitates an environmental cleanup to ready the land for potential uses such as industrial, commercial, or urban residential development.

The property owner, Union Pacific Railroad has prepared remediation plan for a voluntary cleanup of the 11.7 acre which involves the removal of contaminated soil from an 8.7-acre area, which will then be consolidated on a three-acre section of the site with the addition of a vegetated cap. Furthermore, upon completion of the voluntary cleanup deed restrictions will be implemented to prevent any future single-family residential development and to ensure the long-term effectiveness of the capped area, yet allowing for uses consistent with the City's E-1 employment zone.

In March of this year the Planning Commission and City Council approved a request modify a deed restriction placed on the railyard to require the cleanup of the site meet a DEQ's clearance requirements at a "urban residential" standard. Union Pacific Railroad's proposed cleanup plan for the railyard currently under consideration by DEQ achieves an urban residential cleanup standard.

After conducting a thorough review, DEQ has determined that this revised plan complies with state regulations, effectively protects human health and the environment, and importantly, avoids the previous practice of transporting contaminated soil through the local community for disposal. The next step in the process involves seeking public input before DEQ finalizes the cleanup plan through the issuance of a new Record of Decision. DEQ is holding a public open house on September 27th at the Ashland Library, and has agreed to present an overview of the proposed cleanup plan to the City Council on October 3rd, 2023 to receive additional comments from the City for their consideration. '

More information on the history and cleanup proposal is available on the City of Ashland Website located here:
https://www.ashland.or.us/Page.asp?NavID=16813.

Public comments regarding the remediation plan should be provided directly to DEQ here: margaret.oscilia@deq.oregon.gov.

FISCAL IMPACTS

There are no near-term fiscal impacts for the City. Future development of the railyard site following completion of a DEQ approved remediation plan could yield significant economic activity and City tax revenues.

STAFF RECOMMENDATION

Staff recommendations and questions relating to the proposed remediation plan were provided to DEQ in December 2022 (attachment#2) and received response in March 2023 (attachment #3). DEQ will review the comments submitted by the Council and public to understand their perspectives, questions, and any concerns regarding the proposed cleanup plan.

DISCUSSION QUESTIONS

Does the Council have any questions or comments for DEQ's consideration regarding the proposed Railyard Recommended Remediation Plan?

POTENTIAL MOTION/ COMMENT TO DEQ

If after the presentation by DEQ and UPRR, individual Councilors can provide comments, or could consider providing a joint comment in the form of a motion, to forward to the Department of Environmental Quality for consideration in their review and Record of Decision. Although a formal motion is not required, the Council could consider one of three example below, or an alternatively worded motion to reflect Council direction.

Motion to Approve the Ashland Railyard Remediation Plan with Encapsulation for Public Health Protection:

- Motion: I move that the City Council formally requests the Department of Environmental Quality to approve the Recommended Revision of the Remediation Action Plan for the Union Pacific Rail Yard Site (ECSI #1146) as proposed, with the condition that 8.7 acres are cleaned to the urban residential standard, and the remaining 3 acres are encapsulated and deed restricted to protect public health. We believe that this approach strikes a balance between development interests and safeguarding the well-being of our community while ensuring that the site is developed responsibly.

Motions to Deny the Ashland Railyard Remediation Plan as proposed:

- Motion: I move that the City Council formally requests the Department of Environmental Quality deny the Recommended Revision of the Remediation Action Plan for the Union Pacific Rail Yard Site (ECSI #1146) in its current form, citing concerns over its potential impact on public health and safety relating to the long term retention of contaminants on-site within the 3-acre encapsulated portion as proposed. We urge the Department to work closely with stakeholders and develop a more comprehensive remediation plan that ensures the complete removal of hazardous levels of contaminants from the entire 11.7-acre site.

Motions to amend the Ashland Railyard Remediation Plan as proposed:

- Motion: I move that the City Council formally requests the Department of Environmental Quality to amend the Recommended Revision of the Remediation Action Plan for the Union Pacific Rail Yard Site (ECSI #1146) to include a provision mandating the removal of designated contaminants from the site to achieve an urban residential standard for the full 11.7 acres, with removal of the contaminated soil by rail consistent with the 2016 cleanup plan, in leu of consolidating them onto a 3 acre portion of the property. We emphasize the importance of long term environmental responsibility and request the Department to work collaboratively with the responsible parties to implement this amendment.

These motions provide different options for the City Council to consider, each reflecting a distinct approach to the Ashland Railyard Remediation Plan and its potential impact on the site's development and public health. The Council can discuss and vote on these motions to determine their stance on the issue and formally communicate their request to the Department of Environmental Quality.

REFERENCES & ATTACHMENTS

Attachment #1: DEQ Staff Report- Railyard Recommended Remediation Plan
Attachment #2: City Staff Comments/Questions to DEQ on the proposed Remediation Plan
Attachment #3: DEQ Response To City Comments dated 03-10-2023
Attachment #4: Public Comments received.
Attachment #5: DEQ Ashland Railyard Public Notice

STAFF REPORT

RECOMMENDED REVISION OF THE REMEDIAL ACTION

For

Union Pacific Railroad Rail Yard Site

ECSI #1146

ASHLAND, OREGON

Prepared By:

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

Western Region Office

October 2022

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1. INTRODUCTION

1.1 INTRODUCTION

This document presents recommended revisions to the remedial action for the Union Pacific Railroad Company (UPRR) former rail yard site located at 536 A Street in Ashland, Oregon (Site). UPRR has been working voluntarily with the Oregon Department of Environmental Quality (DEQ) to investigate and clean up the Site since the early 1990s. In 2001 UPRR proposed, and after significant public engagement DEQ approved, a cleanup plan and issued a Record of Decision (ROD) to address contamination on parts of the rail yard. The 2001 ROD was not implemented because of a change (increase) in the regulatory cleanup limits, which meant not as much contamination would need to be cleaned up. UPRR has now proposed a new cleanup plan to address the contamination at the Site. DEQ has reviewed the new plan and agrees it meets state regulatory criteria considering future uses of the Site. The most significant change in this proposed remedial action approach is that contaminated soil will be consolidated and capped on a portion of the Site instead of being hauled away to a landfill.

This recommendation was informed primarily by the 2021 Supplemental Remedial Investigation/Feasibility Study Report (RI/FS) (Jacobs; 2021), and draws heavily, and often verbatim, from the results of more recent investigations, conducted after the 2001 ROD, described in the administrative record included in Section 9. UPRR proposes to continue with the revised remedial action described herein under Voluntary Cleanup Agreement No. ECVC-SWR-93-02, dated March 30, 1993, between Southern Pacific Railroad and DEQ. UPRR became responsible party for the Site in 1996 when Southern Pacific merged with UPRR on Sept. 11, 1996.

This Staff Report describes in detail the revised remedial action activities UPRR is proposing and why DEQ believes it will be protective of human health and the environment as required by Oregon cleanup laws. A public comment period will be held for this proposal and DEQ will consider all comments on this revised remedial action before issuing a new ROD for the Site.

1.2 SCOPE AND ROLE OF THE RECOMMENDED REMEDIAL ACTION

1.2.1 Property Description

The property covered under Voluntary Cleanup Agreement No. ECVC-SWR-93-02, dated March 30, 1993, between UPRR and DEQ included the original UPRR property, Parcel 3 in the City of Ashland, Jackson County, Oregon (Attachment 1). Parcel 3 was 21 acres. The City of Ashland eventually subdivided the area around and including the original UPRR property into multiple parcels. The UPRR-owned 21 acres was included in new parcels 2,3,4,5, 6 and 7 of City of Ashland Partition Plat P-32-2000 (Attachment 2).

On December 7, 2000, DEQ issued a No Further Action Letter for UPRR-owned portions of City of Ashland Partition Plat P-32-2000 Parcels 2, 3, 4 and 5. The Letter determined that, under the Oregon Environmental Cleanup Law, ORS 465.200 et. seq., no further action was required for the identified parcels unless new or previously undisclosed information that would change the finding becomes available. The property covered by the 2000 NFA included approximately 3.2 acres located along the western boundary of the original UPRR property. This finding did not include non UPRR-owned portions of Parcels 2, 3 and

4. On September 11, 2001, DEQ issued a No Further Action Letter for UPRR-owned Parcel 6 of City of Ashland Partition Plat P-32-2000.

The remaining Parcel 7 of the City of Ashland Partition Plat P-32-2000 of the original UPRR property consists of the western 11.7 acres and eastern 2.85 acres. This Staff Report and recommended modification of the remedial action is for the western 11.7 acres of Parcel 7 of the City of Ashland Partition Plat P-32-2000. Based on historical site use and past investigations, the main area of concern includes the Former Car Repair Shed Area and the Locomotive Maintenance and Service Area within the Site. The remaining 2.85 acres of uninvestigated UPRR property is discussed below.

1.2.2 Uninvestigated Areas

The eastern 2.85 acres of Parcel 7 (undeveloped property) of the City of Ashland Partition Plat P-32-2000 is currently used for agricultural purposes and is not believed to have been associated with railyard-related activities. The eastern 2.85 acres has not been thoroughly investigated based on historical site use and lack of recognized environmental conditions identified on the undeveloped property. This undeveloped property is not included as part of the recommended remedial action.

1.2.3 2001 Record of Decision

The 2001 ROD was prepared for the western 11.7 acres of Parcel 7 of the City of Ashland Partition Plat P-32-2000. This area was referred to as the Yard in the 2001 ROD. The Yard was the subject area of the ROD where industrial rail yard activities were conducted within the 21-acre original UPRR property.

The Yard operated as a locomotive maintenance, service, and railcar repair facility between 1887 and 1986. Facility operations resulted in environmental contamination at the Site. Based on the probable sources of contamination and the findings of Site investigations, the constituents of concern (COCs) at the Yard consisted of:

- Inorganic lead and arsenic in soil;
- Polynuclear aromatic hydrocarbon compounds (PAHs) in soil (associated with heavy fuels and treated wood used for railroad ties); and
- Longer carbon chain petroleum hydrocarbons, such as those associated with heavier fuels, in soil and limited areas of groundwater.

Remedial Action Objectives (RAOs) are media-specific goals for protecting human health and the environment, while providing the framework for developing and evaluating remedial action alternatives. The RAOs presented in the 2001 ROD included:

- Prevent human exposure (via ingestion or inhalation) to soil that exceeds the residential cleanup goals;
- Remove surface features associated with former rail yard operations;
- Prevent human exposure to the Bunker C/TPH impacts in the former landfill area; and
- Quantify TPH impacts in the surface water in Ponds A and B and remove and handle pond water appropriately.

The 2001 selected remedial action addressed potential human health risks associated with exposure to the contaminated soil and surface water. No long-term ecological risks were identified. The selected remedial action consisted of the following elements:

- Excavate soil containing contaminants above residential cleanup levels, and transport this soil off site for treatment and/or disposal
- Remove the oil/water separator, tank saddles, and contaminated soil near the separator and saddles:
- Abandon the oil collection culverts and recovery wells, free-product observation probes, piezometer, and monitoring wells;
- Backfill man-made Ponds A and B after water and sediments have been sampled and/or removed and disposed of, if necessary;
- Excavate contaminated impacted soil in the Bunker C area and dispose of the soil off site; and
- Remove ballast and residual petroleum associated with the former Drip Slab.

These actions were protective, effective, reliable, implementable, and cost-effective. The selected remedy was consistent with the future anticipated use of the Site as a mixed commercial/residential land use area.

1.2.4 Revised Remedial Action

The remedial action described in the 2001 ROD was not implemented due to public comment and a change in the regulatory limits. This updated recommendation for remedial action includes the Site, the same 11.7-acre area referred to as the Yard in the 2001 ROD, but also includes updated cleanup levels, consideration of public comments, and the results of additional investigations conducted since 2001. The Site COCs were updated in the Supplemental Remedial Investigation/Feasibility Study Risk Evaluation (Jacobs 2019). Current COCs include:

- Arsenic, lead, Benzo(a)pyrene (BaP), TPH as diesel (TPH-d), TPH as oil (TPH-o) in shallow soil (0 to 3 feet below ground surface); and
- Arsenic, TPH-d and TPH-o in groundwater.

Based on the extent of impacts under the current and anticipated future land use scenario (Section 3.3.4), the RAOs for the recommended remedial action have been revised as follows, with reference to the two exposure areas shaded in color on Figure 5 (west 8.7 acres and east 3 acres):

- Prevent human exposure via ingestion or inhalation to soil that exceeds the urban residential cleanup goals and background levels;
- Prevent human exposure to the contaminated soil and Bunker C/TPH impacts within the eastern 3 acres of the Site that would result in unacceptable risk; and
- Prevent human exposure to impacted groundwater on the Site that would result in unacceptable risk.

These RAOs are consistent with those presented in the 2001 ROD, however, were revised to reflect changes in anticipated future Site use from single-family residential to urban residential and to include the results of the revised risk assessment (Section 3.2.2), current DEQ guidance (DEQ 2010), and the various cleanup activities conducted since 2001 (Section 3.1.1). Achievement of the RAOs will determine the success of the remedial action and serve as the basis for potential DEQ letter(s) of No Further Action for both of the 8.7-acre western and 3-acre eastern areas.

As noted in Section 3.3.4, the urban residential scenario, not single-family residential scenario, is the appropriate residential exposure scenario for the property given the current and anticipated future zoning and land use. After completion of the remedial action, additional deed restriction(s) will be required and managed by DEQ for the western 8.7-acre and the eastern 3-acre portion of the Site. These deed

restriction(s) will specify that approval from DEQ will be required before any portion of the land from either area can be subdivided or redeveloped in the future for a use other than urban residential and/or commercial.

The revised recommended remedial action addresses the presence of lead, arsenic, polycyclic aromatic hydrocarbons (PAHs), and petroleum hydrocarbons in soil and arsenic and petroleum hydrocarbons in groundwater at the Site. The recommended remedial action consists of the following elements:

- Any standing water present in Ponds A and B during the soil consolidation project will be managed appropriately in manner approved by DEQ;
- Excavate soil exceeding applicable cleanup goals for COCs (Table 1) from the western 8.7-acre area and backfill the excavated areas with clean fill;
- Consolidate excavated soil in the eastern 3-acre area;
- Install vegetated soil cap over the eastern 3-acre area; and
- Deed restriction for eastern 3-acre area that restricts contact with underlying soil and groundwater use and requires regular inspection and maintenance of the vegetated cap.

These actions are considered to be protective, effective, reliable, implementable and cost-effective. The selected remedy is consistent with the future anticipated use of the Site as a mixed commercial/urban residential land use area.

2. SITE HISTORY AND DESCRIPTION

2.1 SITE LOCATION AND LAND USE

The Site consists of approximately 11.7 acres of the former rail yard Site located at 536 A Street in the city of Ashland, Jackson County, Oregon. Ashland lies within the Bear Valley in southwestern Oregon at an elevation of approximately 2,000 feet above mean sea level. The legal description includes Parcel 7, Tax Lots 6200 and 6700 within Section 9, Township 39 South, Range 1 East of the Willamette Baseline and Meridian (Attachment 3). The Site is shown on Figure 1 as the Project Area, along with the surrounding area.

The Site is currently inactive and is being considered for sale and redevelopment for urban residential, industrial, or commercial land use. The adjacent properties to the west and north are currently under development for a mixture of residential, industrial, and commercial land use. Agricultural and residential properties border the Site to the east, and residential and commercial properties border the Site to the south. A current zoning map, including the Site and surrounding areas, is shown on Figure 2.

2.2 PHYSICAL SETTING

2.2.1 Climate

Ashland receives approximately 20 inches of precipitation annually. Most of the precipitation falls in the fall, winter, and spring, with up to about 3 inches per month being the highest, in December. Precipitation totals in summer and early fall are generally less than one inch per month. The average annual high and low temperatures are approximately 67 and 38°F, respectively.

2.2.2 Geology

The shallow geology beneath the Site has been divided into four units, each with a unique lithologic character. These units include a surface soil unit, a silt/clay unit, a discontinuous sand unit, and an underlying dense sandy silt unit. The surface soil is composed of either native sandy clay or imported fill and extends to depths of approximately 3 to 4 feet below ground surface (bgs). Underlaying the surface soil is a silt/clay unit, which extends to between approximately 20 and 25 ft bgs. A discontinuous sand unit has been encountered within the silt/clay unit. This discontinuous sand unit is typically saturated and encountered at depths between approximately 10 and 15 feet bgs and is generally 1 to 5 feet thick, although it appears to be thicker in the eastern section of the Site. Underlying the silt/clay and discontinuous sand units is a dense sandy silt unit, which is encountered at approximately 18 to 30 ft bgs. Only the top 1 to 2 feet of this unit were observed during the RI fieldwork. However, the log for a water well located approximately 200 feet south of the Site indicates that a gray siltstone was encountered from approximately 14 feet bgs to a total depth at 499 feet bgs. Granite bedrock was encountered at total depth.

2.2.3 Hydrogeology

The groundwater table beneath the Site ranges between about 8 and 12 feet bgs. The silt/clay unit discussed in Section 2.2.2 generally acts as a confining layer for water and NAPL across the Site. The discontinuous sand unit was observed to be fully saturated while the underlying dense sandy silt unit was observed to be

dry. A localized perched groundwater zone was identified in the area of the former drip slab foundation. Groundwater flow beneath the Site is northeast under an average hydraulic gradient of 0.05 foot/foot.

2.2.4 Surface Water and Stormwater Features

One pond is present in the north-central portion of the Site. The pond consists of a topographic depression that occasionally collects surface water via precipitation. A drainage ditch originates at the southwestern corner of the Site and reportedly drains into the pond as depicted in Figure 3. There are currently no surface water drainage pathways offsite. Two former man-made wastewater retention ponds, Pond A and Pond B, are located north of the former drip slab foundation and oil-water separator. These former wastewater retention ponds are now typically dry but can accumulate some ponded water during periods of extended precipitation. No surface water drains from these bermed ponds onto other areas of the Site.

Several creeks and areas of surface water drainage originate in the upland foothills to the south and flow generally northward to Bear Creek, a tributary to the Rogue River. None of these creeks or drainages traverses the Site.

2.3 RAIL YARD OPERATIONS

The Site operated as a locomotive maintenance, service, and railcar repair facility between 1887 and 1986. Various structures (including a hotel/passenger station, a freight station, a car repair shed, a turntable, a roundhouse, and miscellaneous work and storage buildings) were once present. A steel 55,000-barrel (2.3-million-gallon) aboveground Bunker C oil tank used for fueling steam locomotives was installed at the Site in the early 1900s and removed in the late 1940s.

Development of the Site reached its peak in the early 1900s, with some additional construction performed during the 1920s. Light locomotive maintenance and car repair functions were performed by the Southern Pacific Transportation Company (SPTCo), UPRR's predecessor, from the 1900s until the early 1970s. Most locomotive maintenance and fueling facilities were decommissioned before 1960. Diesel and steam locomotive fueling operations were performed in the same location and, similar to car repair activities, were limited to a relatively small area of the Site. No railroad maintenance activities were performed west of the car repair shed or east of the drip slab. UPRR acquired SPTCo and many of its assets, including the former Ashland Yard, in 1997. Since the acquisition, UPRR has not operated or performed any railroad-related activities at the Site.

The only structures and features currently remaining on the Site are the former drip slab foundation, former car repair shed foundation, former roundhouse foundation, and retention Ponds A and B. An interior fence surrounds the former oil-water separator location and Ponds A and B. An outer chain-link fence surrounds the Site (Figure 3).

2.3.1 Chemical Use and Waste Generation and Management

Based on results of the environmental investigations conducted at the Site, sources of environmental impacts at the Site may be attributed to (DEQ, 2001):

- Locomotive fueling and fuel storage (both Bunker C and diesel)
- Light locomotive maintenance and light car repair, which may have included limited use of paints and solvents
- Waste disposal

- Wastewater retention
- Potential historical application of lead arsenate pesticides at the Site prior to rail yard activities

3. RESULTS OF INVESTIGATION(S)

3.1 NATURE AND EXTENT OF CONTAMINATION

3.1.1 Summary of Environmental Investigations and Removal Actions

The Site has been the focus of multiple phases of environmental investigations conducted between 1990 and 1998. There have also been several completed focused cleanup activities and three proposed full-scale remedial actions since the original ROD was issued in 2001 that were not completed for various reasons. These proposed remedial actions have evolved based upon numerous regulatory and administrative changes and are summarized below.

Date	Investigation and Cleanup Activities
Mid-1980s	Ballast and soil impacted by former fueling operations were removed during installation of the former drip slab. Nine passive product recovery wells were installed downgradient to remove floating product from the perched groundwater zone. Additionally, an oil/water separator and two holding ponds (Ponds A and B) were installed.
1990	Phase I and Phase II Environmental Site Assessments performed. Assessments were performed near the drip slab, the oil-water separator, and ponds.
1999	Final Remedial Investigation Report (ERM 1999) submitted with COCs identified: lead and arsenic in soil, PAHs in soil, petroleum hydrocarbons from Bunker C and diesel in soil and limited areas of groundwater.
2001	Feasibility Study Report (ERM 2001) submitted. ROD prepared by Oregon Department of Environmental Quality (DEQ) (DEQ 2001), which specified excavation of all materials exceeding residential cleanup goals and offsite disposal. The quantity of impacted soil was estimated to be approximately 29,300 cubic yards (50,000 tons).
2006	A Remedial Design/Remedial Action Work Plan was prepared by Kennedy/Jenks in June 2006 (K/J 2006) that included excavation and disposal of all 29,300 cubic yards of impacted soil by truck. However, the project did not move forward because of public resistance regarding the high volume of dump trucks required (approximately 1,700 truckloads) in a residential area.
2010	All remaining monitoring wells and product recovery wells onsite were decommissioned. A total of twelve monitoring wells and nine product recovery wells were abandoned.
2012	A total of 54 test pits were dug to depths ranging from 2 to 8 feet below ground surface in order to better define the extent of NAPL onsite. A survey of the Site was conducted to support a pending remedial action.
2013	All remaining free-standing structures at the Site were demolished and removed, including an oil-water separator, catwalk, storage shed, and miscellaneous debris. Remedial action was re-evaluated, and a new Remedial Action Work Plan (RAWP) was submitted to DEQ and approved in February 2013 (CH2M 2013). However, the project was not implemented because of uncertainty as to whether the City of Ashland would concur that the conditions of an existing deed restriction on the property would be achieved after cleanup using the 90 percent UCL approach.
2016	The Ashland City Council agreed to revise the deed restriction to allow for a cleanup using the 90 percent UCL approach for a single residential parcel. An updated RAWP was submitted to DEQ (CH2M 2016).

Date	Investigation and Cleanup Activities
2017	DEQ approved the cleanup plan (February). EPA updated its toxicity standards for benzo(a)pyrene (BaP). As a result of the new toxicity standards, it was determined that the areas requiring excavation were greatly reduced (May). UPRR notified DEQ that it was withdrawing its cleanup plan, and that a new cleanup plan would be prepared based on current information (December).
2018	A Supplemental Remedial Investigation/Feasibility Study Work Plan (Jacobs 2018) was submitted (July). Updated groundwater and soil data collected (August).
2019	A revised risk assessment was presented in the Supplemental RI/FS Evaluation (Jacobs 2019). Data collected in 2018 replaced the historical data at the geographical locations where they were obtained. Updated toxicity standards for BaP were used to assess risk.
2021	A Supplemental Remedial Investigation/Feasibility Study Report (Jacobs 2021) was submitted and accepted by DEQ. The recommended remedial action alternative was: 1) excavate in the western 8.7-acre area, 2) consolidate excavated soil in the eastern 3-acre area, 3) install a vegetated soil cap in the eastern area, 4) deed restrictions.

3.1.2 Groundwater

The groundwater COCs identified in the 1999 Final RI Report (ERM 1999) were petroleum hydrocarbons from Bunker C and diesel (predominately in the form of nonaqueous liquid [NAPL]). Updated groundwater samples were collected in August 2018 and were used in a revised risk assessment (Section 3.2).

3.1.3 Soil

Soil COCs identified in the 1999 Final RI Report (ERM 1999) were lead, arsenic, PAHs, and petroleum hydrocarbons from Bunker C and diesel. Updated soil samples collected in August 2018 were used in a revised risk assessment (Section 3.2). Updated EPA toxicity standards for BaP were also incorporated into the revised risk assessment.

3.2 RISK ASSESSMENT

The standards for a protective cleanup are defined in the Oregon Revised Statute (ORS) and Oregon Administrative Rule (OAR). ORS 465.315 states in part:

Standards for degree of cleanup required; Hazard Index; risk protocol; hot spots of contamination; exemption. (1)(a) Any removal or remedial action performed under the provisions of ORS 465.200 to 465.510 and 465.900 shall attain a degree of cleanup of the hazardous substance and control of further release of the hazardous substance that assures protection of present and future public health, safety and welfare and of the environment.

(b) The Director of the Department of Environmental Quality shall select or approve remedial actions that are protective of human health and the environment. The protectiveness of a remedial action shall be determined based on application of both of the following:

(A) The acceptable risk level for exposures. For protection of humans, the acceptable risk level for exposure to individual carcinogens shall be a lifetime excess cancer risk of one per one million

people exposed, and the acceptable risk level for exposure to noncarcinogens shall be the exposure that results in a Hazard Index number equal to or less than one. "Hazard Index number" means a number equal to the sum of the noncarcinogenic risks (hazard quotient) attributable to systemic toxicants with similar toxic endpoints. For protection of ecological receptors, if a release of hazardous substances causes or is reasonably likely to cause significant adverse impacts to the health or viability of a species listed as threatened or endangered pursuant to 16 U.S.C. 1531 et seq. or ORS 496.172, or a population of plants or animals in the locality of the facility, the acceptable risk level shall be the point before such significant adverse impacts occur.

(B) A risk assessment undertaken in accordance with the risk protocol established by the Environmental Quality Commission in accordance with subsection (2)(a) of this section.

OAR 340-122-0084 describes the requirements for risk assessments while OAR 340-122-0115 provides additional definition of protectiveness.

(1) "Acceptable risk level" with respect to the toxicity of hazardous substances has the meaning set forth in ORS 465.315 (1)(b)(A) and (B) and is comprised of the acceptable risk level definitions provided for carcinogenic exposures, noncarcinogenic exposures, and ecological receptors in sections (2) through (6) of this rule.

(2) "Acceptable risk level for human exposure to individual carcinogens" means: (a) For deterministic risk assessments, a lifetime excess cancer risk of less than or equal to one per one million for an individual at an upper-bound exposure; or (b) For probabilistic risk assessments, a lifetime excess cancer risk for each carcinogen of less than or equal to one per one million at the 90th percentile, and less than or equal to one per one hundred thousand at the 95th percentile, each based upon the same distribution of lifetime excess cancer risks for an exposed individual.

(3) "Acceptable risk level for human exposure to multiple carcinogens" means the acceptable risk level for human exposure to individual carcinogens and: (a) For deterministic risk assessments, a cumulative lifetime excess cancer risk for multiple carcinogens and multiple exposure pathways of less than or equal to one per one hundred thousand at an upper-bound exposure; or (b) For probabilistic risk assessments, a cumulative lifetime excess cancer risk for multiple carcinogens and multiple exposure pathways of less than or equal to one per one hundred thousand at the 90th percentile and less than or equal to one per ten thousand at the 95th percentile, each based upon the same distribution of cumulative lifetime excess cancer risks for an exposed individual.

(4) "Acceptable risk level for human exposure to noncarcinogens" means: (a) For deterministic risk assessments, a hazard index less than or equal to one for an individual at an upper-bound exposure; or (b) For probabilistic risk assessments, a hazard index less than or equal to one at the 90th percentile, and less than or equal to ten at the 95th percentile, each based upon the same distribution of hazard index numbers for an exposed individual.

(5) "Acceptable risk level for individual ecological receptors" applies only to species listed as threatened or endangered pursuant to 16 USC 1531 et seq. or ORS 465.172, and means: (a) For deterministic risk assessments, a toxicity index less than or equal to one for an individual ecological receptor at an upper-bound exposure, where the toxicity index is the sum of the toxicity quotients attributable to systemic toxicants with similar endpoints for similarly-responding species and the toxicity quotient is the ratio of the exposure point value to the ecological benchmark value; or (b) For probabilistic risk assessments, a toxicity index less than or equal to one at the 90th percentile and less than or equal to 10 at the 95th percentile, each based on the same distribution of toxicity index numbers for an exposed individual ecological receptor; or (c) The probability of important changes in such factors as growth, survival, fecundity, or reproduction related to the health and viability of an individual ecological receptor that are reasonably likely to occur as a consequence of exposure to hazardous substances is de minimis.

(6) "Acceptable risk level for populations of ecological receptors" means a 10 percent chance, or less, that no more than 20 percent of the total local population will be exposed to an exposure point value

greater than the ecological benchmark value for each contaminant of concern and no other observed significant adverse effects on the health or viability of the local population.

Human health and ecological risk assessments were originally performed as part of the 1999 RI and the results were incorporated into the 2001 ROD. A revised risk assessment was completed in the Supplemental RI/FS Risk Evaluation using new soil and groundwater data collected in 2018 at the locations shown in Figure 4 (Jacobs 2019).

The revised risk assessment for the recommended remedial action alternative is summarized in Section 8.2 of this document. The results of the risk assessment for human health and potential ecological receptors at the Site are summarized below incorporating the results from the 2019 revised risk assessment.

3.2.1 Conceptual Site Model

A conceptual site model (CSM) identifies the following elements:

- Sources of contamination,
- Pathways by which this contamination could reach human and ecological receptors, and
- The human and ecological receptors currently and reasonably likely affected, and the degree of their exposure.

Evaluation of human exposure to residual chemical contamination requires an assessment of the type and extent of that exposure. This is based on current and reasonably likely future use. The risk assessment for the Site developed what the acceptable risk levels are for various kinds of exposures. These levels are referred to as Risk Based Concentrations (RBCs). The sources, pathways, and receptors (both human and ecological, as applicable) are outlined below.

3.2.2 Human Health Risk Assessment

The potential for unacceptable human health risk was identified in the risk assessment reports using the following risk thresholds established by DEQ in OAR 340-122:

- If the risk for individual carcinogenic compounds exceeds one in one million ($1x10^{-6}$) excess risk for cancer, or one in one hundred thousand ($1x10^{-5}$) for cumulative risks from all carcinogenic compounds, the major risk-contributing constituents should be evaluated as COCs.
- If the non-cancer hazard index (HI) is 1.0 or greater, the major risk-contributing constituents should be evaluated as COCs.
- If lead concentrations in exposure media result in a predicted blood-lead level of 10 micrograms per deciliter (µg/dL) in greater than 5 percent of the potentially exposed population, lead should be identified as a COC.

This section provides a summary of the current potential risks associated with the chemicals and media at the Site. Details of the procedures and calculations of the risk assessment, along with the complete data set, can be found in the *Supplemental Remedial Investigation/Feasibility Study Risk Evaluation* (Jacobs 2019).

Chemicals of Concern (COCs). Several chemicals of concern were identified, which are listed below:

- Arsenic, lead, Benzo(a)pyrene (BaP), TPH as diesel (TPH-d), TPH as oil (TPH-o) in shallow soil (0 to 3 feet below ground surface).
- Arsenic, TPH-d and TPH-o in groundwater

Areas of Unacceptable Risk. The human health risk assessment evaluated the Site in three different ways for shallow soil:

- One exposure area: 11.7 acres (Sitewide)
- Eleven exposure areas: approximately 1 acre each
- Two exposure areas: 8.7 acres (west) and 3 acres (east)

These three exposure areas were assessed under three hypothetical exposure scenarios:

- Residential (single-family)
- Urban residential
- Occupational

A summary of the human health risks in shallow soil identified for the three exposure areas are outlined below: The areas indicated are shown on Figure 5.

Two Exposure Areas: 8.7 Acres (West) and 3 Acres (East)
Western Area • The cumulative ELCR is 4×10^{-5} for the residential scenario, and 2×10^{-5} for the urban residential scenario, which exceed the DEQ cumulative risk threshold of 1×10^{-5}. • The primary risk driver is arsenic. The chemical specific ELCR for arsenic is 4×10^{-5} for the residential scenario, 2×10^{-5} for the urban residential scenario, and 9×10^{-6} for the occupational scenario, which exceed the DEQ threshold of 1×10^{-6} for individual chemicals. The uncertainties associated with inclusion of arsenic into the risk estimates are discussed below. • The cumulative HI is 3 for the residential scenario and 1 for the urban residential scenario. • The primary driver to the HI is TPH-d for the residential (HQ = 2) scenario. **Eastern Area** • The cumulative ELCR is 8×10^{-5} for the residential scenario, and 3×10^{-5} for the urban residential scenario, which exceed the DEQ cumulative risk threshold of 1×10^{-5}. • The primary risk driver is arsenic. The chemical specific ELCR for arsenic is 7×10^{-5} for the residential scenario, 3×10^{-5} for the urban residential scenario, and 2×10^{-5} for the occupational scenario, which exceed the DEQ threshold of 1×10^{-6} for individual chemicals. The uncertainties associated with inclusion of arsenic into the risk estimates are discussed below. • The cumulative HI is 6 for the residential scenario and 3 for the urban residential scenario. • The primary driver to the HI is lead for the residential (HQ = 6) scenario.
One Exposure Area: 11.7 Acres (Sitewide)
• The cumulative excess lifetime cancer risk (ELCR) is 5×10^{-5} for the residential scenario, and 2×10^{-5} for the urban residential scenario, which exceed the DEQ cumulative risk threshold of 1×10^{-5}. • The primary risk driver is arsenic. The chemical specific ELCR for arsenic is 4×10^{-5} for the residential scenario, 2×10^{-5} for the urban residential scenario, and 1×10^{-5} for the occupational scenario, which exceed the DEQ threshold of 1×10^{-6} for individual chemicals. The uncertainties associated with inclusion of arsenic into the risk estimates are discussed below. • The cumulative hazard index (HI) is 8 for the residential scenario and 4 for the urban residential scenario. • The primary driver to the HI is TPH-d for the residential (hazard quotient [HQ] = 7) and urban residential (HQ = 3) receptor scenarios.
Eleven Exposure Areas: Approximately 1 Acre Each
• Seven areas had unacceptable cumulative risk or HI for one or more of the three receptor scenarios. • All 11 areas had reported arsenic levels that pose risks exceeding the DEQ threshold of 1×10^{-6} for individual chemicals. The uncertainties associated with inclusion of arsenic into the risk estimates are discussed below.

Uncertainties Associated with Arsenic in Soil. The cumulative risk evaluation indicates that arsenic is the primary risk driver for potential receptor exposure to Site soil for all exposure scenarios evaluated. Because arsenic detected in Site soil occurs naturally, it is important to consider the relative level of potential risk posed by naturally occurring levels when interpreting risks. It is not uncommon for natural levels of metals like arsenic to result in calculated risks exceeding DEQ regulatory thresholds. As a result, including arsenic in these risk calculations can introduce significant uncertainty for risk management decisions.

To address this uncertainty, the Site-wide data set for arsenic in soil was initially compared directly to the range of data used by DEQ to calculate background concentrations of arsenic in soil in Oregon (DEQ 2018a). This comparison indicated that Site-related releases of arsenic likely have occurred and should be further evaluated for potential remedial action.

To evaluate the extent of this potential remedial action, soil locations with arsenic concentrations above 30 mg/kg (the high end of the background data set [Klamath Mountain region]) were removed from the Sitewide data set, and the remaining data were statistically compared to the more conservative DEQ default background concentrations for metals in the Klamath Mountain region data set, (12 mg/kg). The statistical comparison was conducted using EPA's online calculation tool ProUCL Version 5.1, Form 1. The ProUCL output indicated that the residual Sitewide data set is statistically indistinguishable from the background data set for arsenic.

These results indicate that if the seven soil locations with arsenic concentrations above 30 mg/kg were addressed in a remedial action and removed from the Site data set, then Sitewide arsenic levels would be consistent with naturally occurring regional levels (12 mg/kg), thus attaining the remedial goal, as shown in the numerical Remedial Action Objectives in the following Section 5.1, below. Additional details of this analysis are presented in the Supplemental Remedial Investigation/Feasibility Study Report (Jacobs 2021).

Uncertainties Associated with Lead in Soil. A site-specific RBC was determined in the Supplemental RI/FS (Jacobs; 2021). The hazard quotient was rounded to 1 using one significant digit for lead under the residential and urban residential receptor scenarios. DEQ commented in its review of the revised risk assessment (DEQ 2019b) that concentrations of lead above 1,000 mg/kg should be addressed although the statistical calculations showed acceptable risk for some scenarios.

3.2.3 Ecological Risk Assessment

An ecological risk assessment was completed during the 1999 RI and was summarized in the 2001 ROD. The ecological screening assessment of the Site consisted of a survey by the Oregon Natural Heritage Program (ONHP) for rare, threatened, and endangered species, and comparisons of concentrations of chemicals detected in surface water and sediment to ecological preliminary remediation goals (PRGs). Although three animal species and one plant species listed by the ONHP as rare, threatened, or endangered are present within a 2-mile radius of the Site, the locations of these species are not on or adjacent to the Site. The Site is not known to serve as a habitat for any of these rare, threatened, or endangered species. The reported locations in which these species occur are unlikely to be affected by chemicals detected in soil, sediment, ground water, or surface water at the Site.

Ecological screening criteria were exceeded in some sediment and surface water samples from Ponds A and B and the sediment in the natural pond. Since the 1999 RI, Ponds A and B and the natural pond have dried out and are now typically dry. These ponds currently contain standing water briefly following periods

of extended precipitation and are planned to be developed, thereby limiting or eliminating the available ecological habitat.

3.3 BENEFICIAL USE AND HOT SPOT DETERMINATION

3.3.1 Groundwater Beneficial Use Determination

A beneficial use determination for groundwater was completed during the 1999 RI and is summarized in the 2001 ROD. The groundwater beneficial use has not changed since the 2001 ROD. Beneficial uses were evaluated for onsite as well as offsite, considering current use and the following factors listed in OAR 340-122-0080(3)(f)(F):

- Historical land and water uses
- Anticipated future land and water uses
- Concerns of community and nearby property owners
- Regional and local development patterns
- Regional and local population projections
- Availability of alternate water sources

Elevated TPH-d and TPH-o concentrations in groundwater were noted in the 2001 ROD and in the 2021 Supplemental RI/FS. However, there are several reasons as to why beneficial use is not affected for onsite and offsite groundwater:

- Groundwater for beneficial use in the Site vicinity is drawn from a significantly deeper aquifer. There is no current or anticipated future use of shallow groundwater at or in the vicinity of the Site.
- The vertical separation between the shallow groundwater zone at the Site and the aquifer used for beneficial use is at least 40 to 60 feet thick, 20 to 40 feet of which is bedrock.
- Future land use in this area will continue to be devoted to mixed commercial and urban residential uses.
- Future property owners in this area are not likely to install wells because developments would be required to hook up to City of Ashland water lines.
- The viscous properties of Bunker C limit its mobility to transport offsite.

3.3.2 Surface Water Beneficial Use Determination

On-Site Surface Water: Ponds A and B and the natural pond have dried out and are now typically dry. These ponds currently contain standing water only briefly following periods of extended precipitation and have no current or future reasonably beneficial use. Areas of surface water drainage at the Site exist on the eastern and southeastern edges of the Site. This drainage appears to run only in response to storm water or other discharge from areas south of the Site.

Off-Site Surface Water: One irrigation canal was identified within the survey area. The intake to the canal is approximately ½-mile north of the Site near the intersection of Bear Creek and Oak Street. In addition to irrigation, likely future beneficial uses of Bear Creek include industrial water supply and livestock watering.

3.3.3 Land Use

Based on information from the City of Ashland's Department of Community Development, future land use in this area will continue to be devoted to employment, commercial, medical, and mixed-use residential uses. Current City of Ashland zoning for the Site and surrounding area is described in Figure 2, and summarized as follows:

- The Site and the adjacent property to the south and west are zoned as employment district (E-1) with residential overlay.
- The land further south and west of the Site is zoned as residential district (R-2).
- The adjacent area to the north of the Site is zoned as an employment district (E-1). The area north of the E-1 zoning and approximately 250 feet north of the Site is zoned E-1 with residential overlay.
- The area approximately 200 feet north of the northeast end of the Site is zoned as a multi-family residential district (R-2). The area approximately 100 to 150 feet north of this R-2 zone is zoned as a suburban residential district (R1-3.5).
- The land to the east is zoned as a single-family residential district (R-1-5).

Uses for land zoned E-1 with residential overlay include commercial use (i.e., retail, entertainment, offices) of at least 65 percent of first-floor space. Residential use is restricted to less than 15 units per acre, with residential use permitted on the second-floor space, and on no more than 35 percent of the first-floor space. No parks, other than the park presently at the corner of 6th and A Streets, are planned to be developed in the vicinity of the Site. Finally, there are no known structures protected at the Site, and there are no current conditional or non-confining uses existing within 350 feet of the Site boundaries.

In May of 2000, the City of Ashland restricted further development or land division on the former active railyard portion of the Site (shown as the 11.7-acre project area in Figure 1) until the property is remediated to residential standards, with written compliance provided by DEQ. Once the revised remedial action is complete and the property is remediated to urban residential standards, the City's deed restriction will be removed. However, a new deed restriction on the property will be filed with Jackson County that restricts single family residential use, without approval by DEQ.

3.3.4 Extent of Impacts Relative to a Commercial/Urban Residential Mixed Land Use Scenario

Oregon's Cleanup Law requires cleanup levels for properties that are protective of current and future likely use. Sites proposed for unrestricted multiple use are generally remediated to residential standards, which are the most restrictive. DEQ guidance (DEQ 2010) outlines two residential exposure scenarios to be considered when evaluating residential risk and cleanup alternatives, single-family residential or urban residential. The guidance specifies that the most appropriate residential scenario should be determined based on the current and reasonably likely future uses of the Site and adjacent properties. Areas proposed for commercial or industrial use are generally remediated to less stringent standards. Deed restrictions can be placed on industrial or commercial property to prevent future residential use, thereby enabling use of the less restrictive cleanup standards.

Various hypothetical future exposure area settings and receptor exposure scenarios were evaluated in the Supplemental RI/FS as summarized in Section 3.2.2. Some of these future risk assessment scenarios or exposure area settings are not appropriate for the expected current and future uses of the Site. Therefore, the Supplemental RI/FS focused on the following land use scenario to be consistent with 2010 DEQ guidance and produce the most achievable results:

- Two hypothetical future exposure area settings: 8.7 acres (west) and 3 acres (east)
- Urban residential hypothetical future receptor exposure scenario

The urban residential receptor exposure scenario is most consistent with the current land use zoning designation of Employment (E-1) with Residential Overlay and with the City's Master Plan for the Site (City of Ashland 2001). The current land use zoning of the Site does not allow single-family residential homes and residential dwelling units are only allowed in conjunction with a permitted commercial or employment use. The Risk-Based Concentrations (RBCs) presented in Table 1 were developed in the Supplemental RI/FS and are applicable for unlimited future commercial/residential mixed land use.

For the two hypothetical future exposure areas (an 8.7-acre western area and a 3-acre eastern area) and an urban residential hypothetical future receptor exposure scenario, the risk assessment (Section 3.2.2) showed that arsenic was the primary contaminant risk driver, with lead being a secondary driver. Figure 6 shows the sample locations where the arsenic and lead samples exceeded 30 and 1,000 mg/kg, respectively.

Contiguous rectangular polygons were drawn around sample locations with arsenic and lead exceedances within the 8.7-acre western area to form the remedial action target areas. Each of the rectangular polygons has a minimum dimension of 50 feet in all directions from the sample location. Adjacent areas were extended and connected when there were no clean samples in between. All the arsenic and lead samples to be addressed were in the upper 1.5 feet of the 0- to 3-foot depth horizon of the surface soil. Therefore, all the target areas extend to a depth of 1.5 feet. The dimensions and volumes of each of the target areas are shown on Figure 6. The total volume of soil to be excavated in the western area is 2,710 cubic yards.

The outer boundary of the 3-acre eastern area serves as its remedial action target area. Although the arsenic and lead exceedances were primarily in the upper 1.5 feet of the 0- to 3-foot depth horizon of the surface soil, the eastern area contains extensive petroleum NAPL at depths below 1.5 feet. Therefore, the remedial action alternatives considered in Section 5.2 will address various depths in the eastern 3-acre area, ranging from about 1.5 to 9 feet below ground surface. The volumes assumed for the eastern target area are shown on Figure 6 and range from 7,500 to 12,900 cubic yards.

3.3.5 Locality of Facility

Oregon regulations use "locality of the facility" to define the extent of facility-related hazardous substances, considering chemical and physical properties of COCs, migration pathways, natural and human activities affecting migration of COCs, biological processes affecting bioaccumulation of COCs, and the rate at which COCs migrate under these conditions. Based on the soil and ground water data collected during the various phases of RI, the locality of the facility is confined to within the 11.7-acre Site boundary (Figure 1). No current or potential future offsite impacts have been identified.

3.3.6 Hot Spots

A hot spot determination requires: (1) identification of hot spots as part of the RI/FS process, and (2) treatment of hot spots, to the extent feasible, as part of the remedial action selected or approved by DEQ.

The treatment requirement of hot spots is subject to the remedy selection balancing factors and criteria listed in OAR 340-122-0090(4), which specifies that a higher threshold be applied in evaluation of the reasonableness of costs for treating hot spots of contamination. Therefore, the purpose of identifying hot spots is to provide the information needed to evaluate the feasibility of various remedial action alternatives in light of the requirement to treat hot spots if feasible.

The definition of a hot spot depends upon the media that is potentially adversely impacted. Soil, NAPL, and groundwater are discussed in the following sections. A hot spot determination was conducted as part of the 2021 Supplemental RI/FS, and the results are summarized below.

Soil Hot Spot Determination. No hot spots were identified in soil for the two hypothetical future exposure areas (the 8.7-acre western area and 3-acre eastern area) and an urban residential hypothetical future receptor exposure scenario. Soil sample results were below the "highly concentrated" hot spot criteria of contaminant concentrations greater than 100 times (i.e., 1×10^{-4}) the acceptable risk level of 1×10^{-6} for human exposure to each individual carcinogen, or 10 times (i.e., HI = 10) the acceptable risk level (HI = 1) for human exposure to each individual noncarcinogen. Because the risk above acceptable levels was driven by arsenic and potentially lead, which are both strongly adsorbed to the soil particles, the hot spot criteria for "highly mobile" or "not reliably containable" contaminants are not a concern.

NAPL Hot Spot Determination. Past observations indicate that the present NAPL is from old releases, is highly weathered, and is not migrating. It is unlikely that under an urban residential use scenario people will come in direct contact with the NAPL given its generally observed depth from below about 3 feet bgs to the water table. Therefore, the NAPL-impacted regions of the Site are not considered to be hot spots. However, there is the potential for direct contact with NAPL during excavation activities, so the potential for exposure to NAPL via the construction or excavation worker receptor scenarios will be considered in the evaluation of alternatives for the 3-acre eastern area.

Groundwater Hot Spot Determination. A groundwater hot spot determination was performed for this Site in accordance with OAR 340-122-0115 (32)(a) and the DEQ Guidance for Identification of Hot Spots, (DEQ,1998b). As noted in Section 3.3.1, there are several reasons why no beneficial groundwater use exists at the Site, therefore, no groundwater hot spots are present.

4. PEER REVIEW SUMMARY

Technical documents produced during the investigation of the UPRR Ashland Site have been reviewed by a technical team at DEQ. The team consists of the project manager, a hydrogeologist, and a toxicologist. Because of the extended duration of the investigation, some team members have changed, while others have retired. The current team, some of whom have been actively working on this project for over 10 years, unanimously supports the recommended remedial action. Refer to the technical team evaluation file for more detailed information.

5. DESCRIPTION OF REMEDIAL ACTION ALTERNATIVES

5.1 REMEDIAL ACTION OBJECTIVES

Remedial Action Objectives (RAOs) are media-specific goals for protecting human health and the environment, while providing the framework for developing and evaluating remedial action alternatives. The RAOs have been updated from those presented in the 2001 ROD:

2001 RAOs (from 2001 ROD):

- Prevent human exposure (via ingestion or inhalation) to soil that exceeds the residential cleanup goals;
- Remove surface features associated with former rail yard operations;
- Prevent human exposure to the Bunker C/TPH impacts in the former landfill area; and
- Quantify TPH impacts in the surface water in Ponds A and B and remove and handle pond water appropriately.

Revised RAOs:

Based on the extent of impacts under the current and anticipated future land use scenario of commercial/urban residential mixed use (Section 3.3.4), the RAOs for this remedial action have been revised as follows, with reference to two exposure areas shaded in color on Figure 5:

- Prevent human exposure via ingestion or inhalation to soil that exceeds the urban residential cleanup goals and background levels;
- Prevent human exposure to the contaminated soil and Bunker C/TPH impacts within the eastern 3 acres of the Site that would result in unacceptable risk; and
- Prevent human exposure to impacted groundwater on the Site that would result in unacceptable risk.

These RAOs are consistent with those presented in the 2001 ROD, however, were revised to reflect updated planned site use changed from residential to urban residential and to include the results of the revised risk assessment (Section 3.2.2), current DEQ guidance (DEQ 2010), and the various cleanup activities conducted since 2001 (Section 3.1.1). Achievement of the RAOs will determine the success of the remedial action and serve as the basis for potential DEQ letter(s) of No Further Action for both of the 8.7-acre western and 3-acre eastern areas.

Upon completion of the remedy, as noted by approval of a Remedial Action Completion report by DEQ, the conditions of the existing deed restriction will have been met and the City of Ashland will remove their existing deed restriction on the property. The existing Cleanup Restriction Covenant on the property (Parcel 7) as revised on January 5, 2017 reads as follows:

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

Department of Environmental Quality demonstrating compliance with these standards to the City.

As noted in Section 3.3.4, the urban residential scenario, not single-family residential scenario, is the appropriate residential exposure scenario for the property given the current and anticipated future zoning and land use. After completion of the remedial action, additional deed restriction(s) will be required and managed by DEQ for the western 8.7-acre and the eastern 3-acre portion of the Site. These deed restriction(s) will specify that approval from DEQ will be required before any portion of the land from either area can be subdivided or redeveloped in the future for a use other than urban residential and/or commercial.

5.1.1 Acceptable Risk Levels

Acceptable risk levels, or Site-specific Risk Based Concentrations (RBCs) were established for each of the COCs based on the results of the human health risk assessment as described in Section 3.2.2. It is important to note that the RBCs are specific to a particular exposure scenario. However, they do not necessarily represent an acceptable risk threshold within a given exposure area, because of the statistical calculations involved with multiple data points within that exposure area. Therefore, RBCs are useful for screening purposes only, and not for determination of actual risk. Specifically, RBCs are used to:

- Screen and select technologies for assembly into remedial action alternatives,
- Assess the effectiveness of individual remedial action alternatives, and
- Assess the relative progress a remedial action.

The RBCs for the COCs in soil are listed in Table 1 for the urban residential and occupational exposure scenarios via soil ingestion, dermal contact, and inhalation. Most of these values correspond to an increased excess lifetime cancer risk of 1 in 1,000,000 (1×10^{6}), or noncancer hazard index of 1, as presented in Risk Based Concentrations (DEQ, 2018) for individual chemicals. For multiple chemicals and/or pathways, the risks are additive and acceptable cancer risk is 1 in 100,000 (1×10^{5}). The excess lifetime cancer risk of 1 in 1,000,000 and the hazard index of 1 correspond to the acceptable risk level under OAR 340-122-0115. The target and site-specific RBCs for arsenic and lead in surface soil, (30 and 1000 mg/kg, respectively) were determined as described in Section 3.2.2.

5.2 REMEDIAL ACTION ALTERNATIVES

Remedial action alternatives were developed in the Supplemental RI/FS Study Report (Jacobs 2021). The Remedial action alternatives considered in the Supplemental RI/FS are described below.

5.2.1 Alternative 1 – No Action

A No Action alternative is required to be evaluated in the remedy selection process.

5.2.2 Alternative 2 – Excavation and Offsite Disposal of Shallow Soil (Western 8.7 Acres) and Shallow and Deep Soil (Eastern 3 Acres)

Alternative 2 involves the excavation of soils in the remedial action target areas as shown on Figure 6. This alternative most closely matched the 2001 ROD selected alternative, except excavation areas are reduced. Excavation areas are estimated based on concentrations of COCs in soil that exceed urban residential RBCs

as opposed to residential RBCs referenced in the 2001 ROD. Approximately 2,710 cubic yards of excavated soils from the western 8.7-acre area and 12,900 cubic yards of excavated soils from the eastern 3-acre area would be disposed of offsite by rail. The excavation depth in the western 8.7-acre area would be 1.5 feet, whereas the excavation depth is expected to range from 2.5 to 9 feet over the majority of the eastern 3-acre area. The depths and extents of the excavation from the Updated RAWP (CH2M 2016) are assumed for the eastern 3-acre area to determine the volume estimates used for this alternative. After excavation, clean backfill would be purchased and delivered to the Site by rail to replace the excavated soils and fill in the former holding pond depressions. The entire 11.7-acre Site would then be graded and hydroseeded with native plants. This graded and vegetated Site would readily allow for annual mowing for fire suppression as required by the City of Ashland.

5.2.3 Alternative 3 – Excavation and Offsite Disposal of Shallow Soil (Western 8.7 Acres) and Shallow Soil (Eastern 3 Acres) and Institutional Controls

Alternative 3 involves the excavation of soils in the remedial action target areas as shown on Figure 6. Approximately 2,710 cubic yards of excavated soils from the western 8.7-acre area and 7,500 cubic yards of excavated soils from the eastern 3-acre area would be disposed of offsite by rail. The excavation depth in the western 8.7-acre area would be 1.5 feet, whereas the excavation depth in the eastern 3-acre area would need to be extended to 2.5 feet to capture all of the samples with concentrations exceeding updated applicable RBCs. The horizontal extents of the excavation from the Updated RAWP (CH2M 2016) are assumed for the eastern 3-acre area, excluding the deep excavations in the NAPL areas, to determine the volume estimates used for this alternative. After excavation, clean backfill would be purchased and delivered to the Site by rail to replace the excavated soils and fill in the former holding pond depressions. The entire 11.7-acre Site would then be graded and hydroseeded with native plants. This graded and vegetated Site would readily allow for annual mowing for fire suppression as required by the City of Ashland. A deed restriction would be required for the eastern 3-acre area as part of the institutional controls.

5.2.4 Alternative 4 – Excavation (Western 8.7 Acres) with Consolidation and Vegetated Soil Cap (Eastern 3 Acres) and Institutional Controls

Alternative 4 involves the excavation of soils from the remedial action target areas shown on Figure 6. Approximately 2,710 cubic yards of excavated soils from the western 8.7-acre area would be consolidated in the lowest spots in the eastern 3-acre area. An additional approximately 2,870 cubic yards of clean backfill would be purchased and delivered to the Site from the existing rail siding using side-dump railcars. The clean backfill would be used to supplement the consolidated soil from the western side to fill in the former holding pond depressions. After consolidation and grading, approximately 2,640 cubic yards of additional clean backfill would be delivered to the Site via side-dump railcars and consolidated in a 6-inch base layer on the eastern 3-acre area. This would be followed by delivery of approximately 2,640 cubic yards of clean topsoil via side-dump railcars and consolidated in a 6-inch top layer on the eastern 3-acre area. The combined base and top layers would form a 1-foot clean soil cap that would serve to protect potential receptors from contact with the underlying impacted soil. The entire 11.7-acre Site would then be graded and hydroseeded with native plants. This graded and vegetated Site would readily allow for annual mowing for fire suppression as required by the City of Ashland, until the property can be sold. The eastern 3-acre area would be fenced to limit access. The Site will carry a deed restriction requiring that future development be limited to mixed use commercial/urban residential land use and include measures to prevent receptor contact with the underlying impacted soils on the eastern 3-acre area.

6. EVALUATION OF REMEDIAL ACTION OPTIONS

6.1 EVALUATION CRITERIA

The criteria used to evaluate the remedial action alternatives described in Section 5 are defined in OAR 340-122-090 and establish a two-step approach to evaluate and select a remedial action. The first step evaluates whether a remedial action is protective; if not, the alternative is unacceptable, and the second step evaluation is not required. The remedial alternatives considered protective are evaluated and compared with each other using five balancing factors. The five balancing factors are 1) effectiveness in achieving protection, 2) long-term reliability, 3) implementability, 4) implementation risk, and 5) reasonableness of cost.

The alternative that compares most favorably against these balancing factors is selected for implementation. A residual risk assessment is then conducted for the selected alternative to document that it is protective of human health and the environment.

6.2 PROTECTIVENESS

The protectiveness of a given remedial action is evaluated by comparing its ability to mitigate the unacceptable risk due to the soil impacts as noted in Section 3.3.4. The pathways or beneficial uses for which the impacted soil results in unacceptable risk are:

- Urban residential and occupational scenarios (surface soil/0-3 feet) – 8.7-acre western area
- Urban residential and occupational scenarios (surface soil/0-3 feet and subsurface soil/3-15 feet) – 3-acre eastern area

These are the pathways and beneficial uses that will be directly evaluated to establish if a given remedial alternative is protective.

OAR 340-122-090 states that protectiveness may be achieved by any of the following methods:

- Treatment
- Excavation and off-Site disposal
- Engineering controls
- Institutional controls
- Any other method of protection
- A combination of the above

With the exception of hot spots, there is no preference for any one of the above methods for achieving protectiveness. Where a hot spot has been identified, OAR 340-122-0090(4) establishes a preference for treatment to the extent feasible, including a higher threshold for evaluating the reasonableness of costs for treatment. No hot spots have been identified at this Site.

6.2.1 Alternative 1 – No Action

Alternative 1 would not take any action to minimize potential human exposure by reducing concentrations of COCs or using engineering or institutional controls. The potential for future exposure of receptors to soil

that exceeds the acceptable risk levels would still exist. Therefore, Alternative 1 is not protective and will not be evaluated further.

6.2.2 Alternative 2 – Excavation and Offsite Disposal of Shallow Soil (Western 8.7 Acres) and Shallow and Deep Soil (Eastern 3 Acres)

Excavation of impacted soil would be protective of human health by eliminating risks associated with an urban residential exposure scenario over the entire 11.7-acre Site. Alternative 2 would enable unrestricted urban residential and occupational future use without any engineering or institutional controls. There would be no deed restrictions on any portion of the Site. Alternative 2 would be more protective than the other alternatives.

6.2.3 Alternative 3 – Excavation and Offsite Disposal of Shallow Soil (Western 8.7 Acres) and Shallow Soil (Eastern 3 Acres) and institutional Controls

Excavation of impacted soil would be protective of human health by eliminating risks associated with an urban residential exposure scenario in the western 8.7-acre area. The protectiveness of the shallow excavation in the eastern 3-acre area would depend on ent6gineering and institutional controls to protect receptors against potential contact with the NAPL-contaminated deep soil. Direct receptor exposure to impacted surface soil would be prevented by the removal of shallow soil over the entire 11.7-acre Site. A deed restriction would be required for the eastern 3-acre area as part of the institutional controls. There would be no deed restrictions or other engineering or institutional controls on the western 8.7-acre area. The protectiveness of Alternative 3 is about the same as that of Alternative 4, below.

6.2.4 Alternative 4 – Excavation (Western 8.7 Acres) with Consolidation and Vegetated Soil Cap (Eastern 3 Acres) and Institutional Controls

Excavation of impacted soil would be protective of human health by reducing risks associated with an urban residential exposure scenario in the western 8.7-acre area. Protectiveness in the eastern 3-acre area will be established through engineering controls, which include a vegetated soil cap and fence. Additionally, institutional controls would be used to maintain that the cap remain in place and in good condition. Direct receptor exposure to impacted soil on the eastern 3-acre area would be prevented by the soil cap, fence, and a deed restriction limiting potential future excavation activities. A deed restriction on the Site would also limit land use to urban residential, commercial, or industrial use. The protectiveness of Alternative 4 is about the same as that of Alternative 3.

6.3 BALANCING FACTORS

The three remedial action alternatives determined to be protective were evaluated against the following balancing factors defined in OAR 340-122-0090(3):

- **Effectiveness in achieving protection.** The evaluation of this factor includes the following components:

  - Magnitude of the residual risk from untreated waste or treatment residuals, without considering risk reduction achieved through on-Site management of exposure pathways (e.g., engineering and institutional controls). The characteristics of the residuals are considered to

the degree that they remain hazardous, considering their volume, toxicity, mobility, propensity to bio-accumulate, and propensity to degrade.

- Adequacy of any engineering and institutional controls necessary to manage residual risks.

- The extent to which the remedial action restores or protects existing or reasonably likely future beneficial uses of water.

- Adequacy of treatment technologies in meeting treatment objectives.

- The time until remedial action objectives are achieved.

- **Long-term reliability.** The following components are considered when evaluating this factor, as appropriate:

  - The reliability of treatment technologies in meeting treatment objectives.

  - The reliability of engineering and institutional controls needed to manage residual risks, taking into consideration the characteristics of the hazardous substances being managed, the ability to prevent migration and manage risk, and the effectiveness and enforceability over time of the controls.

  - The nature and degree of uncertainties associated with any necessary long-term management (e.g., operations, maintenance, monitoring).

- **Implementability.** This factor includes the following components:

  - Practical, technical, legal difficulties and unknowns associated with the construction and implementation of the technologies, engineering controls, and/or institutional controls, including the potential for scheduling delays.

  - The ability to monitor the effectiveness of the remedy.

  - Consistency with regulatory requirements, activities needed to coordinate with and obtain necessary approvals and permits from other governmental bodies.

  - Availability of necessary services, materials, equipment, and specialists, including the availability of adequate treatment and disposal services.

- **Implementation Risk.** This factor includes evaluation of the potential risks and the effectiveness and reliability of protective measures related to implementation of the remedial action, including the following receptors: the community, workers involved in implementing the remedial action, and the environment; and the time until the remedial action is complete.

- **Reasonableness of Cost.** This factor assesses the reasonableness of the capital, O&M, and periodic review costs for each remedial alternative; the net present value of the preceding; and if a hot spot has been identified at this Site, the degree to which the cost is proportionate to the benefits to human health and the environment created through treatment of the hot spot.

In general, the least expensive remedial action is preferred unless the additional cost of a more expensive corrective action is justified by proportionately greater benefits to one or more of the other balancing

factors. For sites with hot spots, the costs of remedial actions must be evaluated to determine the degree to which they are proportionate to the benefits created through restoration or protection of beneficial uses of water. A higher threshold will be used for evaluating the reasonableness of costs for treatment of hot spots than for remediation of areas other than hot spots. The sensitivity and uncertainty of the costs are also considered.

6.4 EVALUATION OF BALANCING FACTORS

This section evaluates each of the remedial action alternatives that met the protectiveness criteria against the balancing factors described in Section 6.3. The table in Section 7 describes how each alternative compares to all of the sub-criteria for each of the balancing factors. The sections below summarize the major conclusions of this comparison and provide additional discussion for differentiating issues at the Site.

6.4.1 Effectiveness

Alternatives 2, 3 and 4 are equally effective at achieving protection in the western 8.7-acre area since the same quantity of soil will be excavated in all cases. Alternative 2 is the most effective at achieving protection in the eastern 3-acre since the most contaminated soil would be removed. Alternative 4 would rely on engineering and institutional controls to be effective. Alternative 3 would rely on only institutional controls so would be less effective than Alternative 4. However, all of the alternatives adequately manage residual risks and meet the RAOs.

6.4.2 Long-term Reliability

The biggest reliability uncertainty with Alternatives 3 and 4 is that of the institutional controls. Because Alternative 2 does not rely on institutional controls, it is the most reliable. While institutional controls are relatively simple to implement by placing a deed restriction on the land or preparing management plans and health and safety plans, the larger challenge is making sure that the land is used appropriately and that future users are aware of the residual contamination, the plans, and restrictions; and that the plans are properly implemented. Alternative 4 will also have engineering controls in a vegetated soil cap and fence that will need to be periodically inspected and maintained until the land is developed for an appropriate use given the underlying soil contamination. For this reason, Alternative 4 is less reliable than Alternative 3. However, these types of controls are not uncommon for former industrial properties and if long term management is done properly, they all can be reliable.

6.4.3 Implementability

Alternative 4 is the easiest of the alternatives to implement, as it involves no removal of contaminated soil from the Site. Alternatives 2 and 3 would require the removal of 15,610 and 10,210 cubic yards of soil, respectively, from the Site by rail and the construction of a new rail spur on the Site to load the soil. Alternative 2 would also involve deep soil excavation and would be the most difficult of the alternatives to implement.

6.4.4 Implementation Risks

All of the alternatives have the potential short-term risks associated with excavating surface soil, which are dust generation and risks to Site workers. These risks could be addressed with dust suppression and air monitoring procedures. Stormwater runoff associated with excavation and offsite transportation of surface

soils may also pose a risk, which would be controlled with erosion prevention and sediment control measures. Risks to the community would be controlled by restricting Site access.

Alternatives 2 and 3 would require construction of a new rail spur, loading onto rail cars, and transporting the contaminated soil by rail to a landfill, all of which would come with added implementation risks. With Alternative 2, the excavation of soil deeper than 5 feet would require shoring and/or other measures to protect against collapse. Also, deep NAPL contamination could potentially end up in larger and/or deeper excavation areas than originally estimated.

6.4.5 Reasonableness of Cost

Based on the March 2021 costs from the FS, the cost estimates for Alternative 2 ($7,240,00) and Alternative 3 ($5,800,00) are significantly higher than Alternative 4 ($1,960,00). Alternatives 2 and 3 are 3.7 and 3.0 times more expensive than the estimated cost of Alternative 4, respectively.

6.5 SUSTAINABILITY/GREEN REMEDIATION

Beginning in 2011 DEQ began evaluating effects remedial actions may have on the community and the environment to advance DEQ's mission of restoring, maintaining and enhancing the quality of Oregon's air, land and water. DEQ's Green Remediation Policy supports the implementation of more sustainable practices that lessen the overall environmental impacts from investigation and remediation at cleanup projects. This includes encouraging the regulated community to implement greener approaches to remediation, such as by reducing air emissions and waste generation, limiting greenhouse gasses, and reduce energy usage.

Alternative 4 would have the least amount of greenhouse gas emissions because the soil would not need to be transported by rail long distances for disposal. Also, no waste would be generated with Alternative 4, because all waste would be managed onsite.

7. COMPARATIVE ANALYSIS OF REMEDIAL ACTION ALTERNATIVES

Balancing Factors	Alt. 2	Alt. 3	Alt. 4
Effectiveness			
- Magnitude of the residual risk			
- Adequacy of any engineering and institutional controls			
- Time to achieve remedial action objectives			
Long-term Reliability			
- Meet treatment objectives			
- Reliability of engineering and institutional controls			
- Nature and degree of uncertainties			
Implementability			
- Practical, technical, legal difficulties and unknowns			
- Ability to monitor effectiveness			
- Consistency with regulatory requirements			
- Availability of necessary services, materials, equipment, and specialists			
Implementation Risk			
- Potential risk and reliability of protective measures for the community			
- Potential risk and reliability of protective measures for remediation workers			
- Potential risk and reliability of protective measures for the environment			
- Time to remedial action completion			
Reasonableness of Cost			
- Net present value of capital, O&M, and periodic review costs			
Green Remediation			
- Sustainable: lessens overall environmental impacts (lower energy use, fewer greenhouse gasses, less waste generation.			

	Performs very well against the criteria relative to the other alternatives with minor disadvantages or uncertainty.
	Performs moderately well against the criteria relative to the other alternatives with some disadvantages or uncertainty.
	Performs poorly against the criteria relative to the other alternatives with significant disadvantages or uncertainty.

8. RECOMMENDED REMEDIAL ACTION ALTERNATIVE

Based on the detailed evaluation of the alternatives in Section 6 and 7, Alternative 4 is recommended for implementation at the UPRR Ashland Site. DEQ is recommending Alternative 4 because it is protective, is relatively easy to implement, is the most cost effective, and will have the lowest carbon footprint.

Under Alternative 4, deed restrictions will be required on the property to maintain that the soil cap remains intact on the eastern portion and that the future use of the entire Site remains mixed use urban residential and occupational. For the western 8.7-acre area, the parcel will be restricted from being subdivided into lots for single family residential use. For the eastern 3-acre area, the parcel will remain restricted from uses that could potentially result in exposure to the underlying contaminated soil. If the land from either area is sold, subdivided, or redeveloped in the future for a different use, then additional assessment and approval from DEQ would be required before the intended land use could be changed. The following sections detail the selected alternative, including engineering and institutional controls.

8.1 DESCRIPTION OF THE RECOMMENDED ALTERNATIVE

8.1.1 Excavation and Consolidation

- 2,710 cubic yards of soil will be excavated from the western 8.7-acre area of the Site and consolidated in the eastern 3-acre area as follows:
    - Surface soils in the western 8.7-acre area will be removed as shown in Figure 6 to a depth of 1.5 feet.
    - The 2,710 cubic yards of excavated soil will be consolidated in the lowest spots in the eastern 3-acre area.
    - Clean backfill will be purchased and delivered from the existing rail siding using side-dump railcars. The clean backfill will include 2,710 cubic yards to fill in the excavation areas on the west side plus an additional 2,870 cubic yards to supplement the consolidated soil on the eastern side and fill in the former holding pond depressions.

8.1.2 Engineering Controls

- A 1-foot-thick vegetated soil cap will be constructed over the eastern 3-acre area as follows:
    - Approximately 2,640 cubic yards of additional clean backfill would be delivered to the Site via side-dump railcars and consolidated in a 6-inch base layer on the eastern 3-acre area.
    - This would be followed by delivery of approximately 2,640 cubic yards of clean topsoil via side-dump railcars and consolidated in a 6-inch top layer on the eastern 3-acre area.
    - The combined base and top layers would form a 1-foot clean soil cap that would serve to protect potential receptors from direct contact with the underlying impacted soil with concentrations of COCs exceeding urban residential RBCs.
    - The entire 11.7-acre Site would then be graded and hydroseeded with native plants. This graded and vegetated Site would readily allow for annual mowing for fire suppression as required by the City of Ashland, until the property can be sold.
    - The eastern 3-acre area will be fenced to limit access until developed with approval by DEQ.
    - An Operation and Maintenance (O&M) Plan will be developed, approved by DEQ and maintained under the Institutional Controls.

8.1.3 Intuitional Controls

- Institutional Controls (ICs) would be developed and implemented to limit exposures to residents and workers from subsurface soils, as well as to prevent exposure to NAPL should any excavation and maintenance activities need to be conducted on the eastern 3-acre parcel.

  - Such ICs may include a Site Management Plan and a Contaminated Media Management Plan.

- Deed restriction(s) consisting of an Easement and Equitable Servitudes (EES) will be developed and agreed on by UPRR and DEQ to define the controls used to:

  - Limit potential exposures to onsite workers to soils and NAPL beneath the cap in the eastern 3-acre area.
  - Restrict the eastern 3-acre area from uses that could potentially result in compromising the soil cap and/or exposure to the underlying contaminated soil. Such restricted uses may include:
    - Single-family residential development;
    - Gardening/food production.
    - Underground structures; and
    - Intentional development within and below the vegetated soil cap.
  - Require DEQ review and approval of development planned on the eastern 3-acre area

  - Restrict the entire 11.7-acre Site from subdivision or redevelopment in the future for use other than commercial or urban-residential without additional assessment and/or approval from DEQ.

- The Site Management Plan and EES documents will dictate the level of periodic IC reviews and reporting to DEQ by UPRR to document how the ECs and ICs are working and any unforeseen circumstances or situations that may require addressing to ensure the protectiveness of the remedy.

8.1.4 Five Year Reviews

The remedy, and its protectiveness, will be reviewed every 5 years for the eastern 3-acre area. The 5-Year reviews will evaluate the effectiveness of the vegetated soil cap and fence and the performance of the ICs.

8.2 RESIDUAL RISK EVALUATION

OAR 340-122-0084(4)(c) requires a residual risk evaluation of the recommended alternative that demonstrates that the standards specified in OAR 340-122-0040 will be met, namely:

- Assure protection of present and future public health, safety, and welfare, and the environment

- Achieve acceptable risk levels

- For designated hot spots of contamination, evaluate whether treatment is reasonably likely to restore or protect a beneficial use within a reasonable time

- Prevent or minimize future releases and migration of hazardous substances in the environment

After excavation of 1.5 feet soil from the western 8.7-acre area and backfill with clean soil (as shown in Figure 6), the residual risk in the western area would be reduced to acceptable levels for the urban residential and occupational exposure scenarios. The cumulative ELCR is below the threshold of 1×10^{-5} and the

chemical specific ELCRs are below the threshold of 1 x 10^{-6} for individual chemicals. The cumulative HI is less than 1. Estimated residual arsenic and lead concentrations of 7.5 and 217 mg/kg, respectively, within a 90 percent upper confidence limit were calculated assuming soil removal (DEQ 2019b), which are below the RBCs in Table 1. The residual risk remaining after implementation of the preferred alternative will be recalculated based on the results of confirmation sampling in the western 8.7-acre area.

On the eastern 3-acre parcel where contaminated soil will be consolidated and capped, the residual risk will be at or below acceptable risk levels as long as institutional controls and long-term site management prevent uncontrolled exposures to contamination beneath the cap.

8.3 FINANCIAL ASSURANCE

UPRR will provide a financial assurance mechanism to cover the performance of the remedial actions described above that meets the requirements of 40 CFR §264.143(f)(1)(i) or a performance bond or letters of credit.

9. PROJECT COMPLETION

After active remedial action elements are completed as described in Section 8 and the EES is recorded, UPRR shall issue a Remedial Action Completion Report (Completion Report) to DEQ for review. Once DEQ approves the Completion Report, DEQ will prepare a draft Certification of Completion letter for public comment. DEQ will also provide public notice in the Secretary of State's Bulletin and a local paper stating that DEQ has made an NFA decision for the Site.After any comments are addressed, DEQ will issue the Certification of Completion. The City of Ashland will then remove their existing deed restriction on the property. The existing Cleanup Restriction Covenant on the property (Parcel 7) as revised on January 5, 2017, reads as follows:

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

A new deed restriction on the property will be filed with Jackson County that restricts single family residential use without approval by DEQ.

10. ADMINISTRATIVE RECORD INDEX

Administrative Record Index

Union Pacific Railroad Rail Yard Site

Ashland, Oregon

The Administrative Record consists of the documents on which the recommended remedial action for the Site is based. The primary documents used in evaluating remedial action alternatives for the UPRR Ashland Site are listed below. Additional background and supporting information can be found in the UPRR Ashland project file (ECSI No. 1146) located at DEQ Western Region Office, 165 E. 7th Avenue, Suite 100, Eugene, Oregon 97401.

SITE-SPECIFIC DOCUMENTS

Cascade Earth Sciences Ltd. 1992. Phase II Environmental Site Assessment - Ashland Package - Parcel 2; Southern Pacific Transportation Company, March 10.

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Industrial Compliance 1995. February 1995 Ground Water Sampling, Ashland Rail Yard, Southern Pacific Transportation Company, April 13.

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Jacobs Engineering Group Inc. (Jacobs). 2019. Supplemental Remedial Investigation/Feasibility Study Preliminary Risk Evaluation (Rev. 2). June 5.

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SP Environmental Systems 1991. Preliminary Environmental Site Assessment -Ashland Package - Parcel 3, Southern Pacific Transportation Company, February 6.

Terranext 1996. February 1996 Ground Water Sampling, Ashland Rail Yard, Southern Pacific Transportation Company, April 16.

STATE OF OREGON

DEQ 2000. No Further Action Required Union Pacific-Owned Portions of Parcels 2, 3, 4, and 5 Ashland Partition Plat P-32-2000. December 7.

DEQ 2001a. Remedial Action Recommendation for Union Pacific Railroad Ashland Rail Yard Site – Staff Report, Oregon DEQ. May 15.

DEQ 2001b. Record of Decision for Union Pacific Railroad Rail Yard Site, Ashland, Oregon. Western Region Cleanup Program. September 10.

DEQ 2001c. No Further Action Required Sale Parcel 6 - Ashland Partition Plat P-32-2000 Former Ashland Rail Yard. September 11.

DEQ 2018a. Fact Sheet: Background Levels of Metals in Soils for Cleanup. January 25. Full data set obtained from Susan Turnblom on March 5, 2019.

DEQ 2019b. Comments on the Supplemental Remedial Investigation/Feasibility Study Risk Evaluation 2nd Revision dated June 5, 2019. November 5.

Oregon's Environmental Cleanup Laws, Oregon Revised Statutes 465.200-.900, as amended by the Oregon Legislature in 1995.

Oregon's Hazardous Substance Remedial Action Rules, Oregon Administrative Rules, Chapter 340, Division 122, adopted by the Environmental Quality Commission in 1997.

Oregon's Hazardous Waste Rules, Chapter 340, Divisions 100 - 120.

Oregon's Water Quality Criteria, Chapter 340, Division 41, Willamette River Basin.

Oregon's Groundwater Protection Act, Oregon Revised Statutes, Chapter 468B.

GUIDANCE AND TECHNICAL INFORMATION

DEQ 1998. Consideration of Land Use in Environmental Remedial Actions. July.

DEQ 1998. Guidance for Conducting Beneficial Water Use Determinations at Environmental Cleanup Sites. July.

DEQ 1998. Guidance for Conducting Feasibility Studies. July.

DEQ 2001. Guidance for Ecological Risk Assessment: Levels I, II, III, IV. April 1998 (updated 12/01).

DEQ 1998. Guidance for Identification of Hot Spots. April.

DEQ 1998. Guidance for Use of Institutional Controls. April.

DEQ 2001. Cleanup Program Quality Assurance Policy. September 1990, updated April 2001.

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DEQ 2011. Green Remediation Policy. November.

DEQ 2013. Fact-Sheet: Background Levels of Metals in Soils for Cleanup. Web access: http://www.deq.state.or.us/lq/pubs/docs/cu/FSbackgroundmetals.pdf

DEQ 2018b. Risk-Based Concentrations. May.

DEQ 2019a. Calculating RBCs for Total Petroleum Hydrocarbons. Web access: http://www.deq.state.or.us/Docs/cu/RBCsTPH11a.xlsm.

EPA 1989. Risk Assessment Guidance for Superfund, Volume 1, Human Health Evaluation Manual, Part A, Interim Final. Office of Solid Waste and Emergency Response. EPA/540/1-89/002. December 1989

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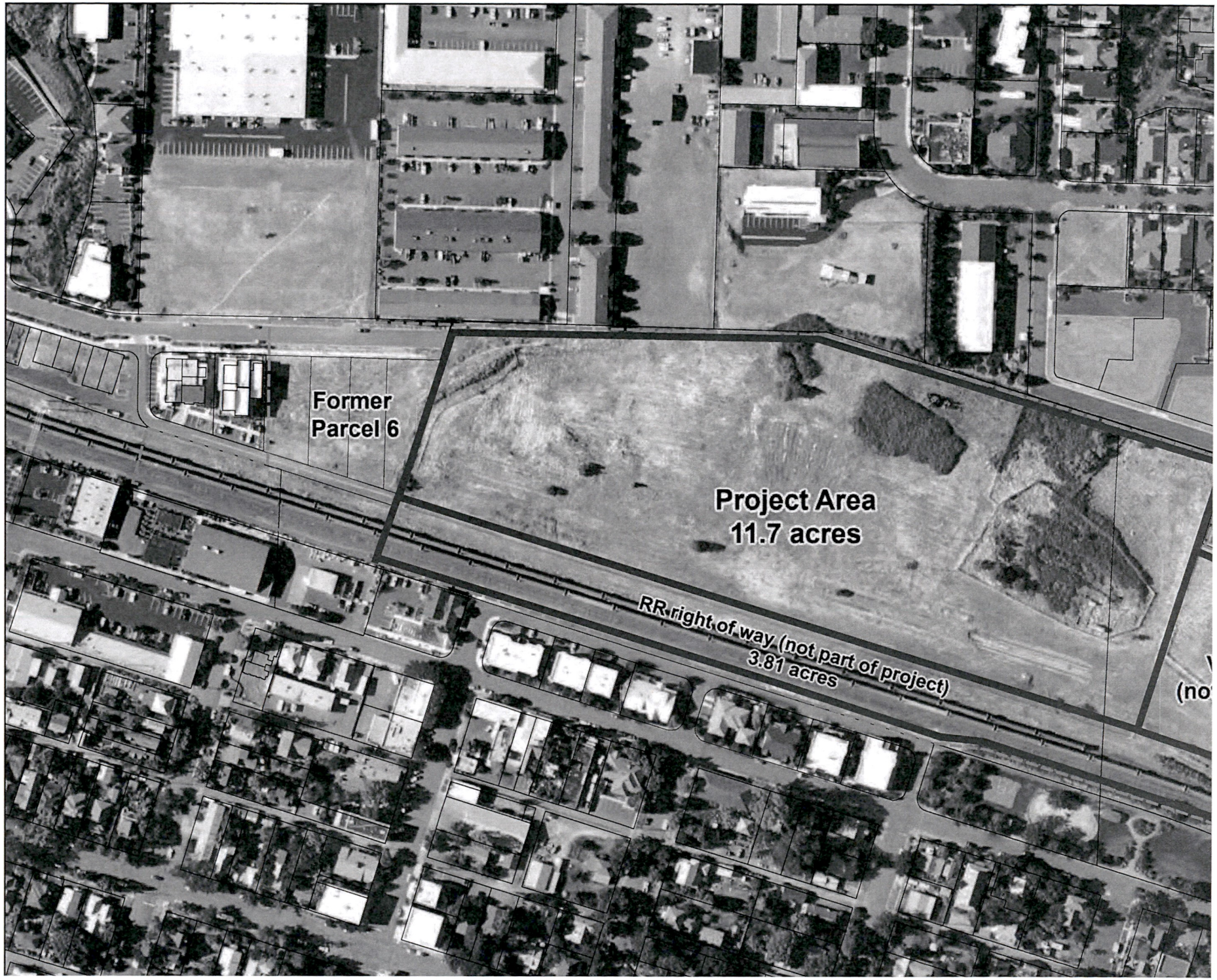
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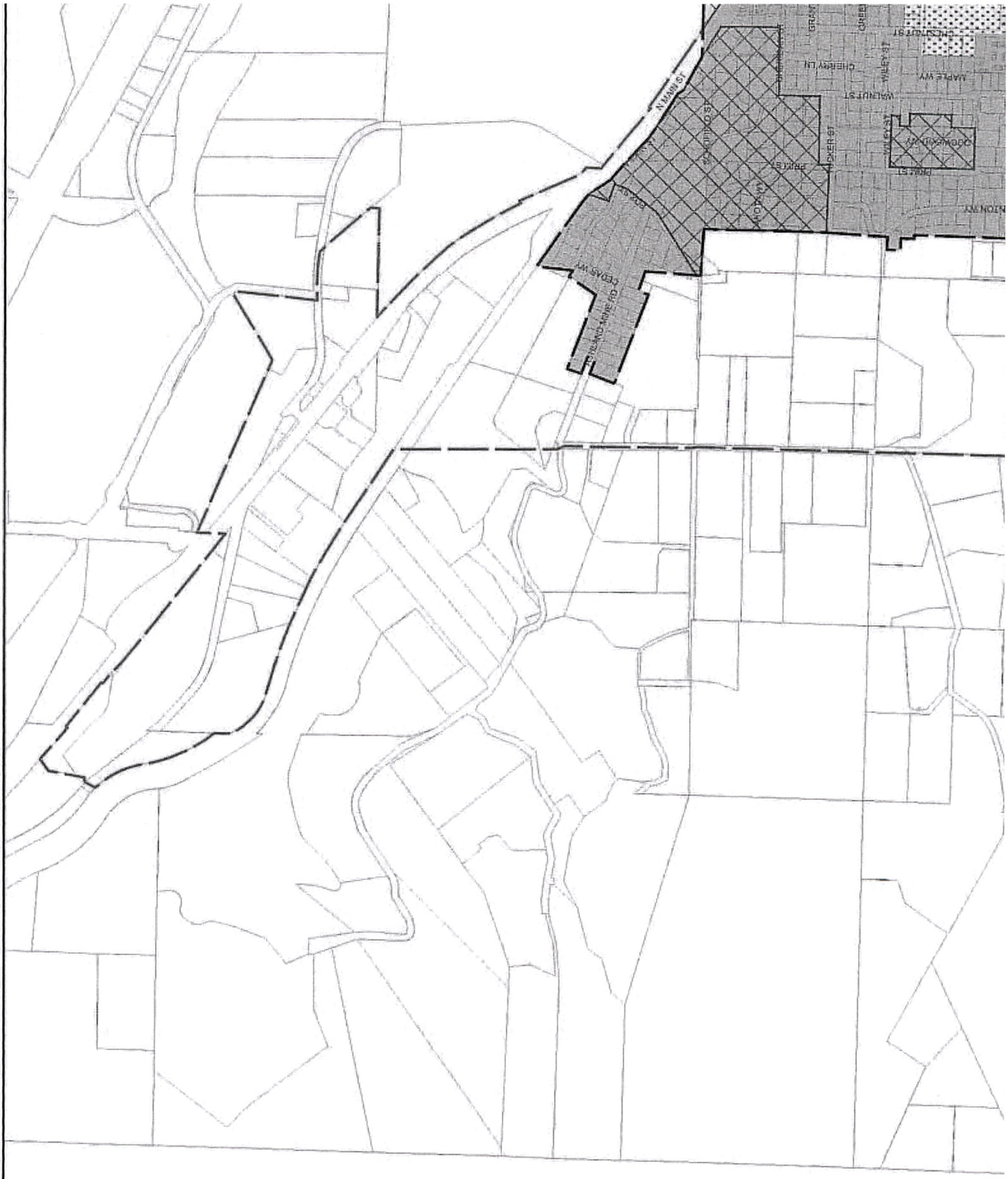
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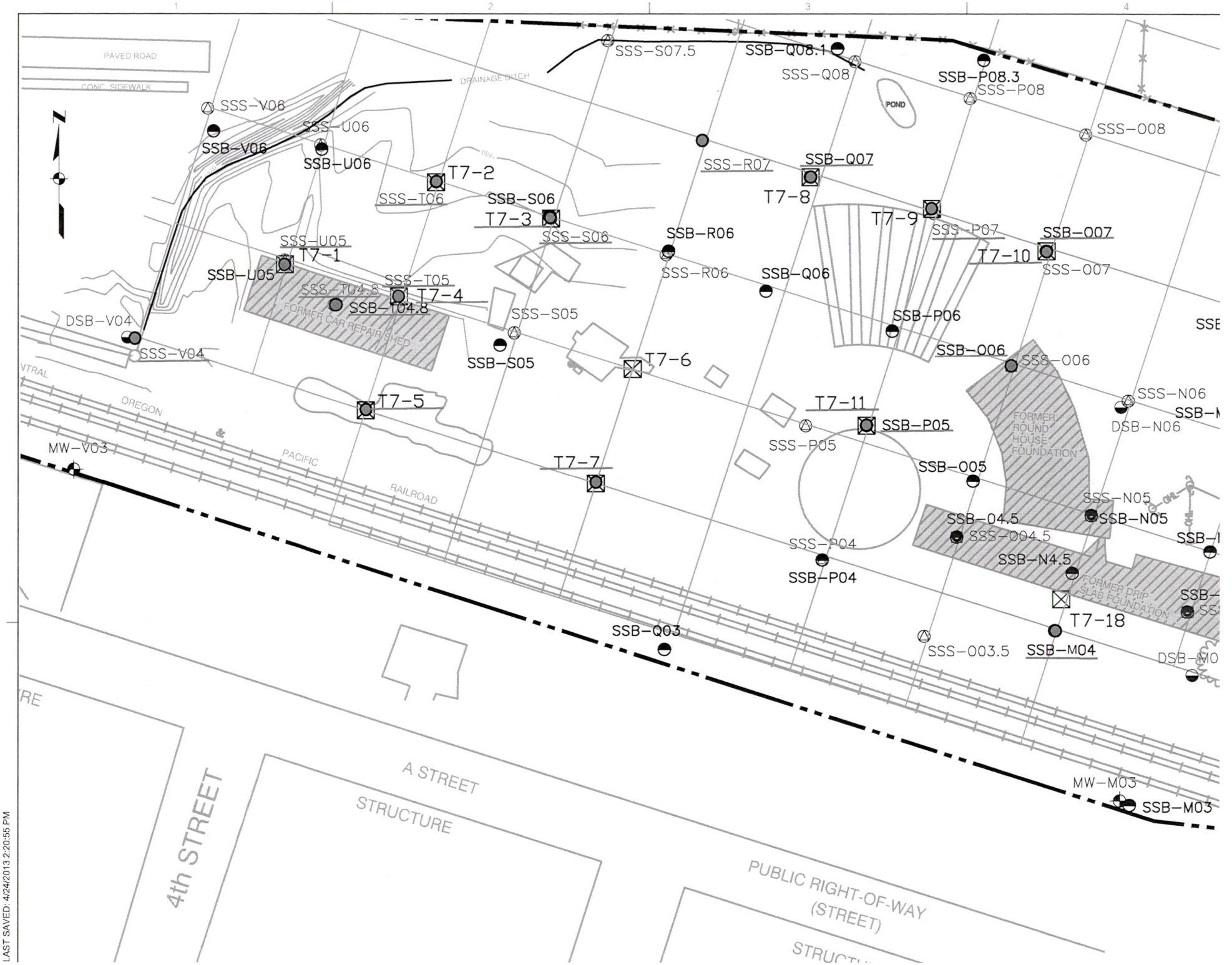
EPA 1998. Guidance for Conducting Remedial Investigations and Feasibility Studies Under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA/540/G-89/004. October.

EPA 2018. Regional Screening Levels. https://www.epa.gov/risk/regional-screening-levels-rsls. May.

FIGURES

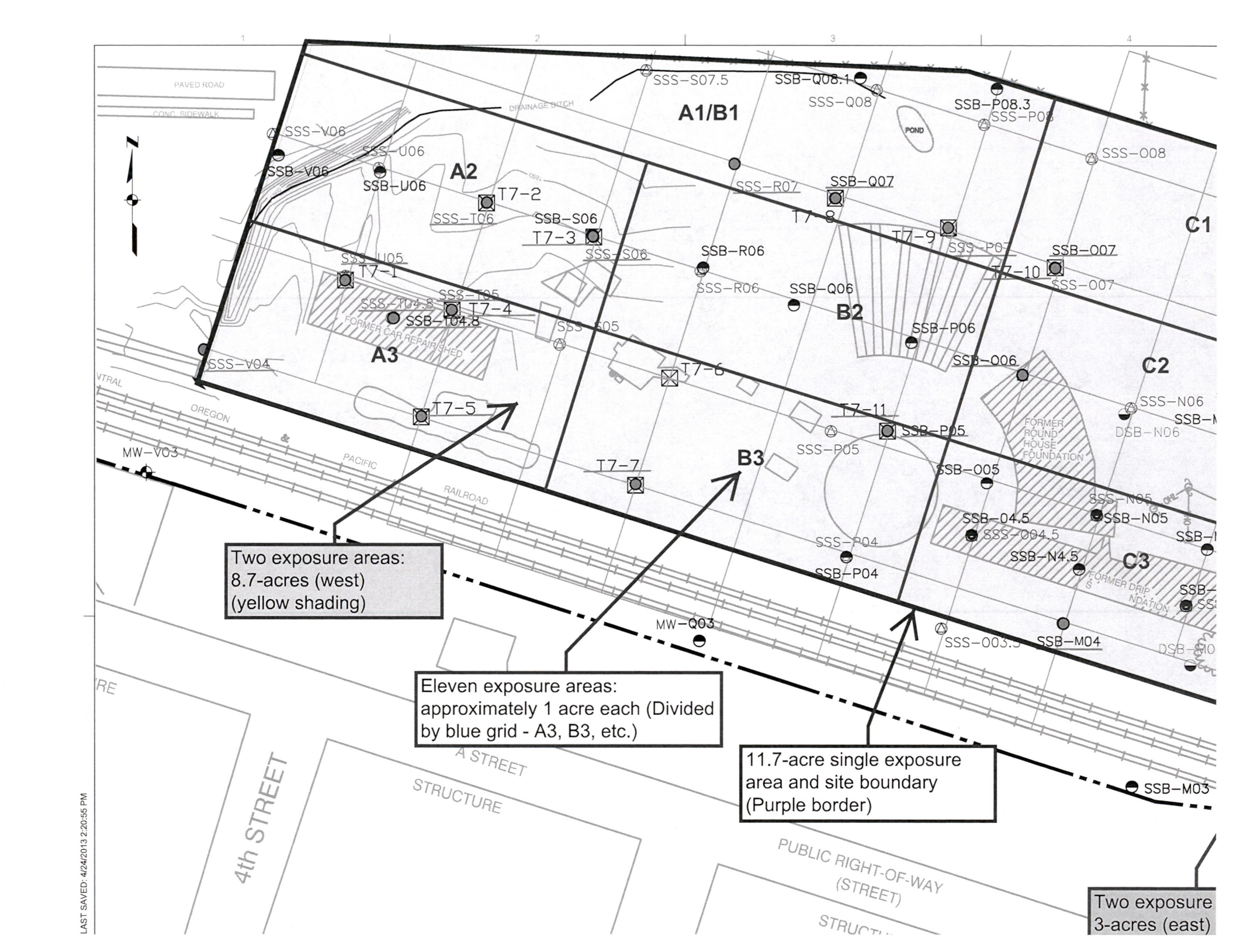

Former
Parcel 6
Project Area
11.7 acres
RR right of way (not part of project)
3.81 acres

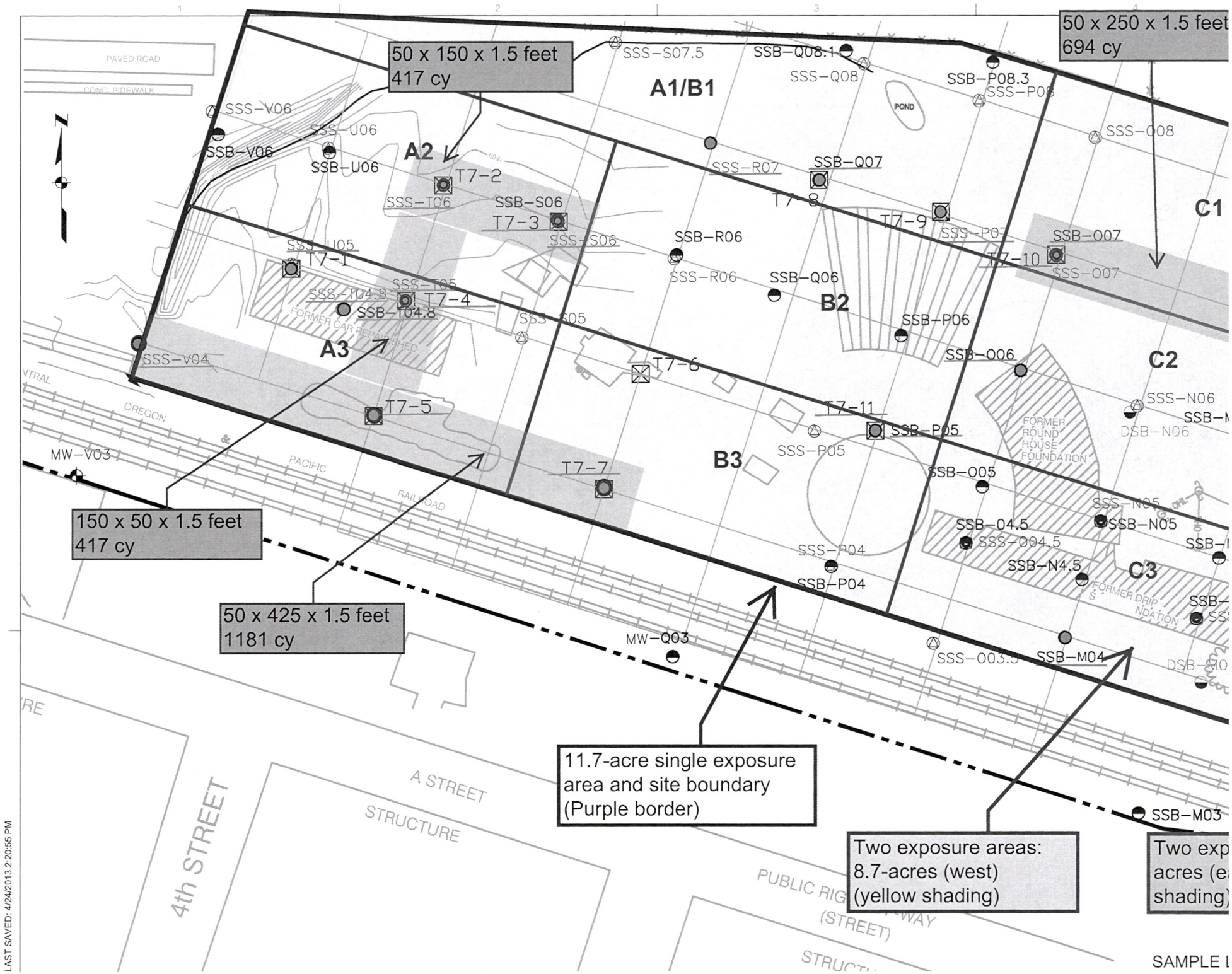

CHESTNUT ST
CHERRY LN
WALNUT ST
MAPLE WY
ELM ST
PINE ST
CEDAR WY
OLIVE WY



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SSS-R07
SSS-T06
SSS-S06
T7-3
SSS-Q07
SSB-007
T7-10
SSS-L07
TGW-001
TGW-002
SSS-U05
SSS-P07
SSS-T05
T7-4
T7-12
SSS-V04
SSS-006
SSB-K7.5
SSS-K08
SSS-TO4.8
SSB-TO4.8
T7-5
T7-7
SSB-P05
T7-11
SSB-L06
SSB-J0
T7-21
SSS-K07
SSB-L05
SSB-M04
SSS-K05
SSB-L4.5
SSB-K4.5
SSB-K04


Two exposure areas:
8.7-acres (west)
(yellow shading)
Eleven exposure areas:
approximately 1 acre each (Divided by blue grid - A3, B3, etc.)
11.7-acre single exposure area and site boundary (Purple border)
Two exposure
3-acres (east)
A1/B1
A2
A3
B2
B3
C1
C2
C3
T7-1
T7-2
T7-3
T7-4
T7-5
T7-6
T7-7
T7-8
T7-9
T7-10
T7-11
SSS-V06
SSB-V06
SSS-U06
SSB-U06
SSS-T06
SSB-S06
SSS-S06
SSS-U05
SSS-T05
SSS-T04.8
SSB-T04.8
SSS-V04
SSS-S05
SSS-S07.5
SSB-Q08.1
SSS-Q08
SSB-P08.3
SSS-P08
SSS-R07
SSB-Q07
SSS-P07
SSB-O07
SSS-O07
SSS-O08
SSB-R06
SSS-R06
SSB-Q06
SSB-P06
SSB-O06
SSS-N06
DSB-N06
SSS-P05
SSB-P05
SSB-O05
SSS-N05
SSB-N05
SSB-04.5
SSS-O04.5
SSB-N4.5
SSS-P04
SSB-P04
SSS-O03.5
SSB-M04
SSB-M03
MW-V03
MW-Q03
DRAINAGE DITCH
POND
PAVED ROAD
CONC. SIDEWALK
OREGON & PACIFIC RAILROAD
FORMER CAR REPAIR SHED
FORMER ROUND HOUSE FOUNDATION
FORMER DRIP
4th STREET
A STREET
STRUCTURE
PUBLIC RIGHT-OF-WAY (STREET)
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SAMPLE L

TABLES

Table 1. Site-Specific Risk-Based Concentrations for Shallow Soil

Former SP Yard, Ashland, Oregon

Analyte	Urban Residential (mg/kg	Occupational	Final Site-Specific Cleanup Goal	Basis
Arsenic	30	30	30	Site-specific background (refer to Section 3.2.2)
Lead	400	800	1,000 [a]	Oregon Department of Environmental Quality (DEQ). 20
TPH as diesel	2,200	14,000	2,200	Oregon Department of Environmental Quality (DEQ). 20
TPH as gasoline	2,500	20,000	2,500	Oregon Department of Environmental Quality (DEQ). 20
TPH as oil [b]	4,600	29,000	4,600	Oregon Department of Environmental Quality (DEQ). 20 Petroleum Hydrocarbons. http://www.deq.state.or.us/Doc
PAHs as BaP-Equiv	0.25	2.1	0.25	Oregon Department of Environmental Quality (DEQ). 20

[a] Concentrations of lead above 1,000 mg/kg should be addressed although the statistical calculations showed acceptable risk for

[b] Calculated using DEQ (2019) and default exposure assumptions for Residential and Occupational scenarios, assuming a 0%/1C (>C21-C34) aliphatic/aromatic compounds. For the Urban Residential scenario, the default exposure frequency was changed to 1

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

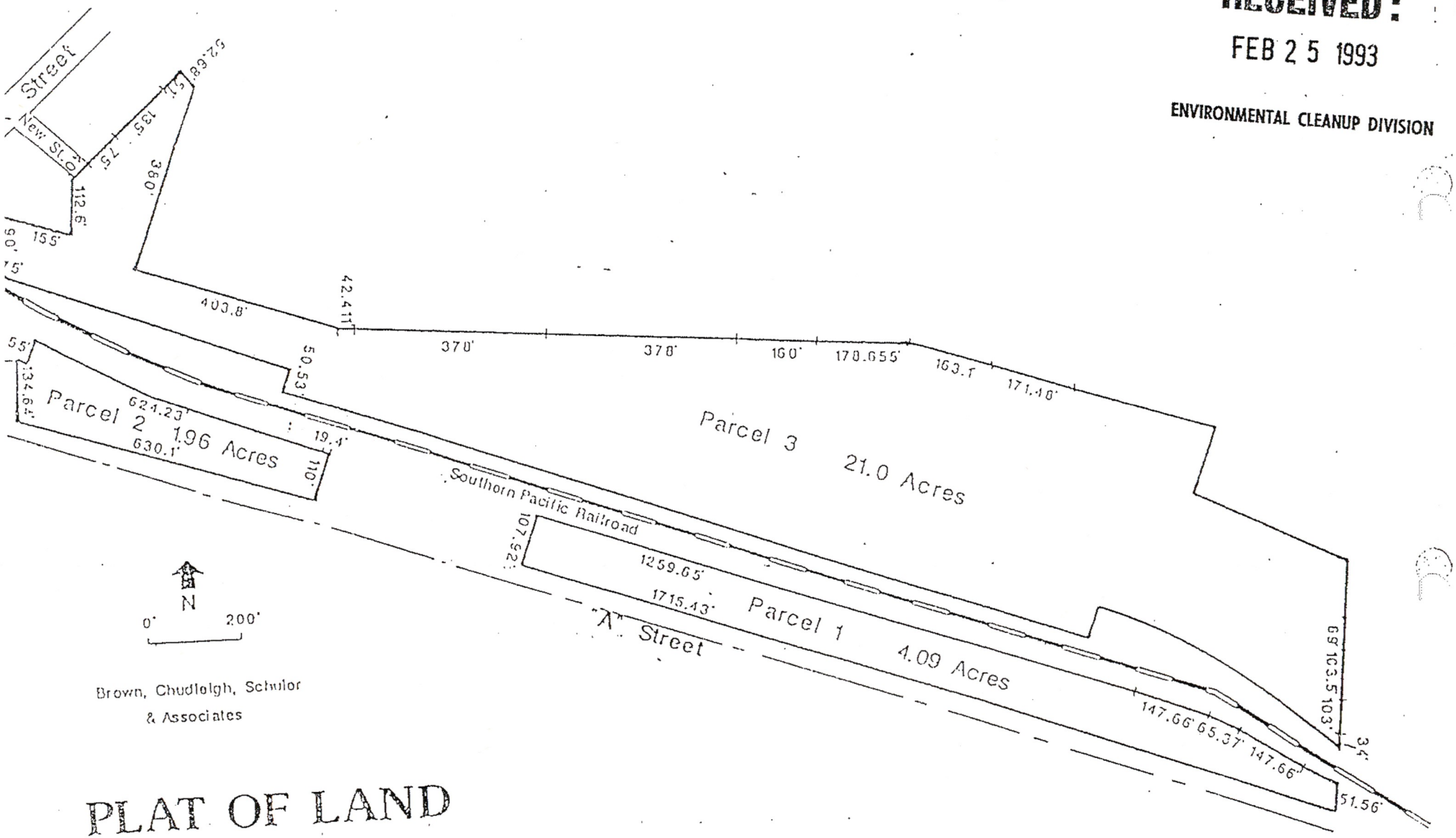
ATTACHMENTS

Attachment 1

Original UPRR Property, Parcel 3

DRAWING [illegible]
No. 1, DATED 11-2090

DEPT. OF ENVIRONMENTAL QUALITY
RECEIVED:
FEB 25 1993
ENVIRONMENTAL CLEANUP DIVISION



Brown, Chudleigh, Schulor
& Associates

PLAT OF LAND

"A" Street Parcels

Ashland, Oregon

Attachment 2

New Parcels 2, 3, 4, 5, 6 and 7 of City of Ashland Partition Plat P-32-2000

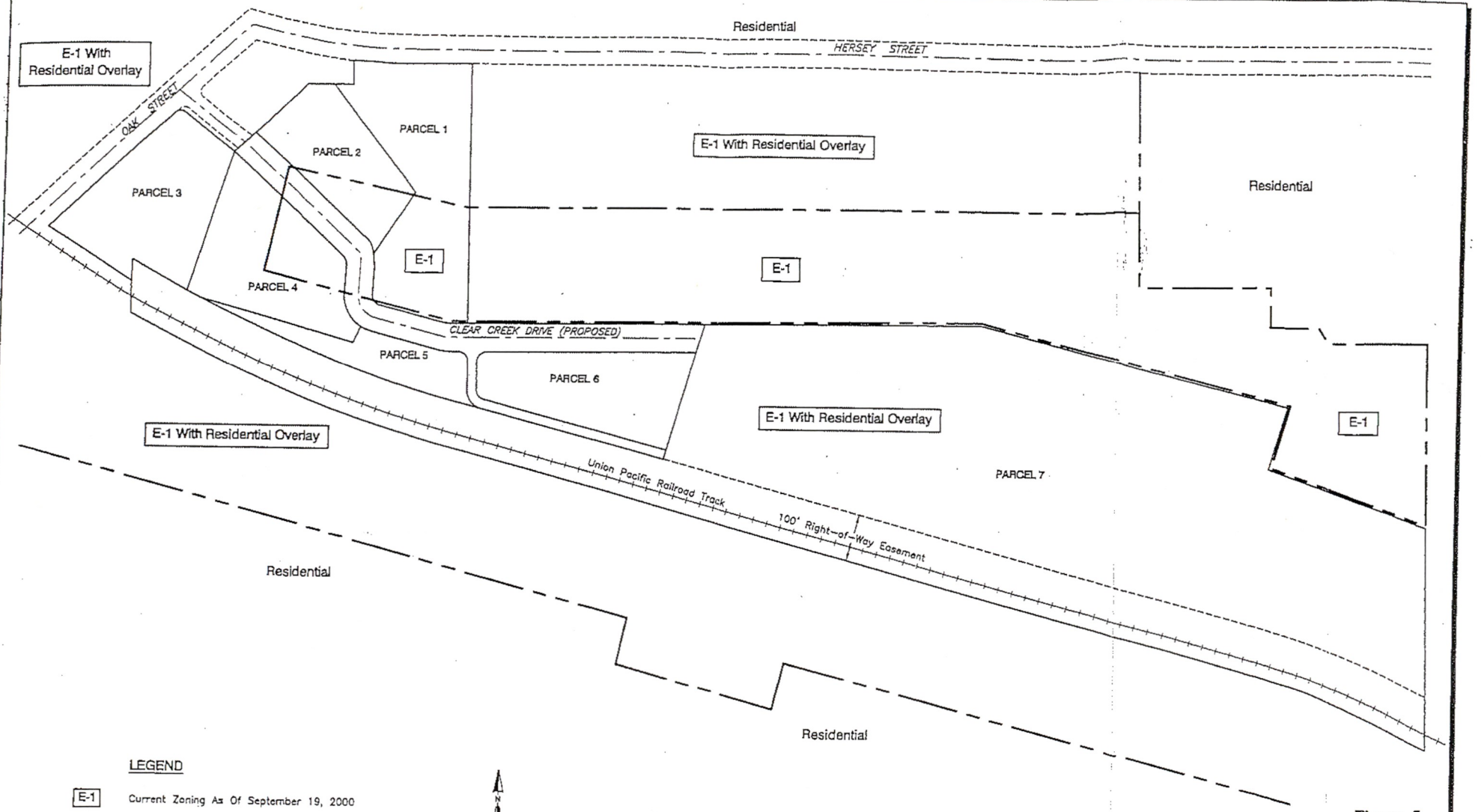


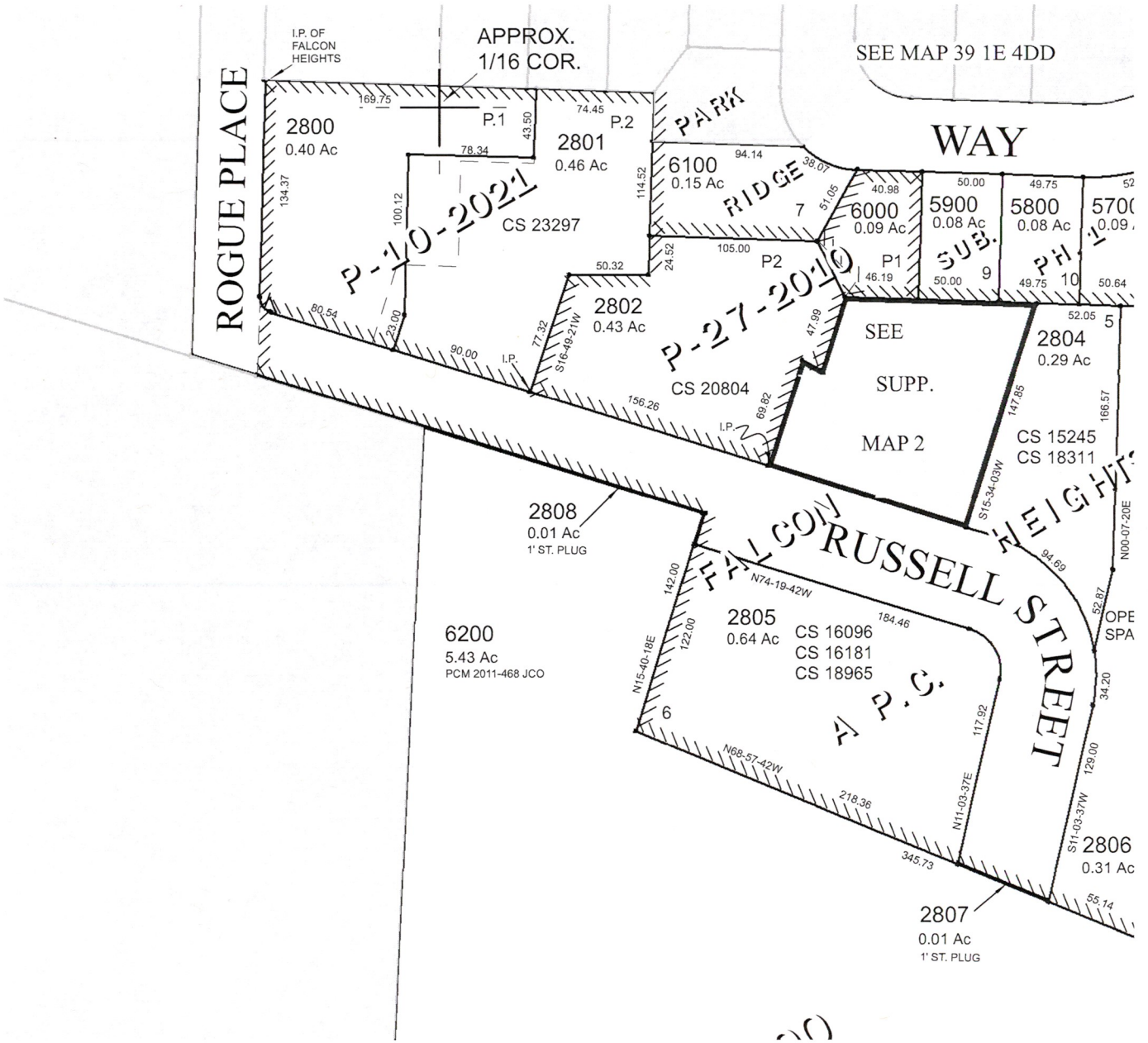
Figure 5
Site Parcels and Local Zoning
Union Pacific Railroad Company
Ashland Yard
Ashland, Oregon

Attachment 3

Parcel 7, Tax Lots 6200 and 6700

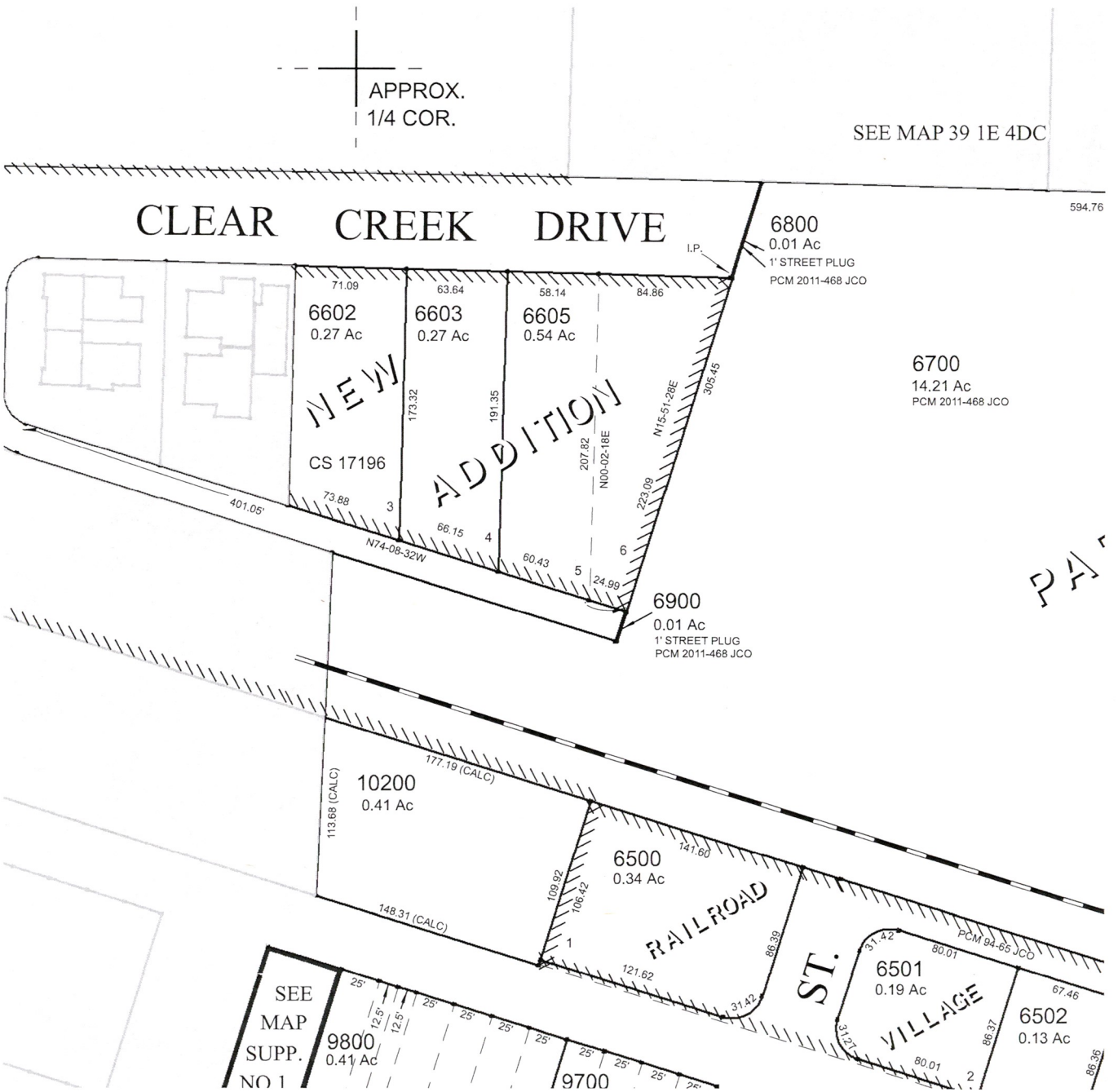
FOR ASSESSMENT AND TAXATION ONLY

N.E.1/4



FOR ASSESSMENT AND TAXATION ONLY

N.W.1/4 1



CITY OF
ASHLAND

December 6, 2022

Ms. Margaret Oscilia
Senior Project Manager/Environmental Engineer
Western Region Environmental Cleanup and Emergency Response
Oregon Department of Environmental Quality
4026 Fairview Industrial Drive SE
Salem, OR 97302

RE: City of Ashland questions and comments
DEQ's October 2022 Draft Staff Report
Environmental cleanup of Union Pacific's Ashland Railyard property

Dear Ms. Oscilia,

Thank you for the opportunity to review your October 2022 Draft Staff Report for the new proposed cleanup of Union Pacific's Ashland railyard property. We are grateful for your efforts to collaborate as much as possible with local government and consult with the local community about the merits of the proposed plan. We continue to view the completion of this 30-year cleanup effort as a critical part of our community's future development, given the location of the 12 currently vacant acres near the center of our city.

Please consider the following questions and comments and advise us of your responses at your earliest convenience. The City of Ashland may formally provide DEQ with additional comments and questions by January 30, 2023 regarding the proposed plan, depending on what issues are raised by the community during the January 5 public meeting and City Council's January 17 meeting.

1. The proposed cleanup plan relies on the assumption that the highest land use allowed for the western nine acres of the site will be an "urban residential" use scenario. Please provide a detailed plain language explanation of the "urban residential" land use scenario, including how the exposure assumptions differ from a "Single Family Residential" scenario. Note that the zone for this property (E-1) will allow some degree of residential occupation on the first floor of multi-floor mixed use buildings, as is currently the case adjacent to the railyard property on Clear Creek Drive.

2. How was the urban residential exposure frequency of 175 days/year established, as noted in Table 1? Can this be reconciled with the City's mixed use zoning designation for the property that allows a portion of the first-floor to have residential occupation?

DEPT. of COMMUNITY DEVELOPMENT
20 East Main Street
Ashland, Oregon 97520
www.ashland.or.us
Tel: 541-552-5305
Fax: 541-552-2050
TTY: 1-800-735-2900

3. It is not clear why DEQ's site specific cleanup goal for lead is indicated as 1,000 mg/kg, yet the urban residential risk-based concentration is shown in Table 1 as 400 mg/kg. The site-specific risk-based concentrations for all other contaminants in Table 1 are shown as being the same as urban residential RBCs.

4. Except briefly in Section 3.1.1, The draft staff report omits any explanation of the 2016/2017 cleanup plan, including total volume of contaminated soil to be excavated or that the soil was proposed to be moved off-site. We request a clear explanation and rationale for why the 2022 cleanup plan is significantly less extensive than the one proposed in 2017. The previous cleanup plan was painstakingly developed with extensive community involvement and the new plan should include a public explanation of how it provides at least an equivalent level of site mitigation and public health protection.

5. Similarly, the Administrative Record included in the draft staff report omits reference to the 2008 and 2016/2017 cleanup plans. These past documents were publicly available and are expected to be an important part of the project record for community members.

6. The draft staff report indicates that a deed restriction will be imposed by DEQ requiring its approval before any portion of the eastern three acres of the railyard be subdivided or redeveloped in the future. The staff report should explicitly state that additional site investigation and cleanup work would be required before approval of any land development or site work. How does DEQ contemplate the city's role in this process, including notification and consultation with city planning staff about proposed local land use changes and requirements for additional environmental work? An outline of DEA's review and approval process of a proposed subdivision or redevelopment should be provided, including a reference to DEQ's anticipated evaluation criteria and requirements for public notice and comment.

7. It appears that DEQ does not contemplate any limitations (e.g., deed restrictions) for the western nine acres of the railyard as long as it is used for commercial, industrial, or urban residential purposes. Since the risk assessment evaluated human exposures of this parcel using hypothetical 1-acre polygons as shown in Figure 5, is it possible that risk assessment outcomes would be different when the western nine acres is subdivided into a different configuration, other than the one acre lots shown in Figure 5?

8. How did DEQ establish that groundwater beneficial use has not changed since the 2001 ROD? Were Oregon Dept. of Water Resources records reviewed for possible new water wells drilled near the site since 2001? Since water supply is often a big concern to our community, possible use of

groundwater for irrigation in the future might be a concern and should be acknowledged in the report.

9. Two areas with high lead concentrations are targeted for cleanup, as well as one area with high arsenic. Sample resolution in these areas was very limited in past site investigations, so how were polygons determined for the excavations shown in Fig 6? The report should acknowledge the importance of future confirmation sampling when excavation occurs, to ensure removal of soil exceeding the cleanup criteria.

10. The report briefly acknowledges the presence of significant volumes of subsurface soil saturated with Bunker C oil (NAPL, or non-aqueous phase liquids) in the eastern parcel, and the potential for direct contact with Bunker C oil for future construction or excavation workers. Unlike the September 2016 Remedial Action Workplan, there is no acknowledgement of the estimated extent or volume of these NAPL areas, previously estimated by UP and DEQ as 5,400 cubic yards. For better transparency, shouldn't the three estimated Bunker C areas be shown graphically in Figure 5 (Hypothetical Future Exposure Areas) to address anticipated public concerns about future exposure to subsurface NAPL (similar to how they were shown in the 2016 plan)?

11. Regarding the three areas of soil saturated with Bunker C oil, it is evident that the proposed capping and securing of the three eastern acres of the railyard will possibly result in entombing this contamination in perpetuity, rather than eliminating it. How will DEQ address possible community concerns about the stigma of such legacy contamination remaining in an area that will be surrounded by development at some point in the future? Should monitoring wells be required to assure the entombing is effective in protecting the community's groundwater? As a practical matter, the proposed capping of the eastern three acres would appear to add little or no value to the local community, including expansion of the local tax base, facilitating economic growth, or taking development pressures off of undeveloped, open land elsewhere in Ashland or Jackson County. This concern may be important given the City of Ashland's obligation to address State of Oregon statutory goals and policy requirements for Climate Friendly and Equitable Communities.

12. The plan states that institutional controls are not uncommon for former industrial properties and if long term management is done properly, they all can be reliable. How will this be assured, and by whom, and with what processes? This would appear to be especially relevant given the current challenges with local and state government staff turnover during these long-term projects.

13. For the selected alternative, the staff report indicates that "…clean backfill will include 2,710 cubic yards to fill in the excavation areas on the west side plus an additional 2,870 cubic yards to supplement the consolidated soil on the eastern side and fill in the former holding pond

depressions." How will the clean soil backfill be delineated from underlying contaminated soil, to facilitate the possibility of future site investigation and cleanup that might be required in the eastern capped parcel? Given the current plan does not anticipate the removal or soil from the site, what is the anticipated site elevation profile following the introduction of the required backfill in relationship to the adjacent properties?

14. The plan states that: "The eastern three-acre area will be fenced to limit access". The fencing installed several years ago by UP to secure the contaminated railyard area have proven to be unreliable for preventing access. How will the proposed fencing be made more secure in perpetuity to prevent unauthorized access? Will signage be posted with information and contact information for citizen inquiries? City staff request an opportunity to review and comment on UP's soil management plan, contaminated media management plan, and cap O&M plan before final DEQ approval.

15. The staff report briefly acknowledges the need for a new Record of Decision as part of this cleanup. Please include a summary of DEQ's administrative process for making environmental cleanup decisions for this property, including the likelihood of a Certificate of Completion when the cleanup is done. This summary should include DEQ's public involvement milestones as part of its cleanup process going forward.

16. Before DEQ issues its Certificate of Completion when it deems the cleanup is complete, the city requests a public involvement process that is consistent with what is being planned in late 2022 and early 2023 for the proposed cleanup plan. This should include a 60-day public comment period, at least one DEQ-hosted public meeting, a presentation to the Ashland City Council, and continued collaboration with city staff on public communications.

Thank you in advance for your consideration of these questions and comments,

Brandon Goldman

Brandon Goldman, AICP
Interim Director
Department of Community Development
(541) 552-2076, TTY: 1-800-735-2900
FAX: (541) 552-2050
brandon.goldman@ashland.or.us

Oregon
Tina Kotek, Governor

Department of Environmental Quality
Western Region Salem Office
4026 Fairview Industrial Dr SE
Salem, OR 97302
(503) 378-8240
FAX (503) 373-7944
TTY 711

March 10, 2023

Brandon Goldman
20 East Main Street
Ashland, Oregon 97520

Re: Response to Comments
October 2022 Staff Report Recommended Revision of the Remedial Action
ECSI #1146 Union Pacific Railroad Ashland Rail Yard

Dear Brandon Goldman,

Thank you for providing questions and comments regarding the *Staff Report Recommended Revision of the Remedial Action* dated October 2022. Please see below questions and comments from the City of Ashland in the letter dated December 6, 2022 followed by DEQ's responses:

1) *The proposed cleanup plan relies on the assumption that the highest land use allowed for the western nine acres of the site will be an "urban residential" use scenario. Please provide a detailed plain language explanation of the "urban residential" land use scenario, including how the exposure assumptions differ from a "Single Family Residential" scenario. Note that the zone for this property (E-1) will allow some degree of residential occupation on the first floor of multi-floor mixed use buildings, as is currently the case adjacent to the railyard property on Clear Creek Drive.*

DEQ Response: DEQ's urban residential land use scenario assumes development with any combination of apartments, condos, or townhomes with minimal yard space maintained by the homeowner. Land use may also include mixed use commercial-residential buildings with residents on the first floor. Single family residential land use is assumed to include homes on larger lots (typically greater than 5,000 square ft) where landscaping is maintained by the owner, and the expected exposure duration would be longer than urban residential.

2) *How was the urban residential exposure frequency of 175 days/year established, as noted in Table 1? Can this be reconciled with the City's mixed use zoning designation for the property that allows a portion of the first floor to have residential occupation?*

DEQ Response: 175 days/year is the default exposure frequency used in DEQ's human health risk assessment guidance for urban residential. Risk assessment for the urban residential scenario includes half the exposure time, but the same consumption rate as single family residential. DEQ's urban residential scenario does account for apartment buildings with residence on first floor.

3) *It is not clear why DEQ's site specific cleanup goal for lead is indicated as 1,000 mg/kg, yet the urban residential risk-based concentration is shown in Table 1 as 400 mg/kg. The site-specific risk-based*

concentrations for all other contaminants in Table 1 are shown as being the same as urban residential RBCs.

DEQ Response: Table 1 will be revised to show 400 mg/kg as the site-specific cleanup goal for lead with a footnote added to the Final Site-Specific Goal column header that states, "The Final Site-Specific Cleanup Goals will be compared to the Exposure Point Concentrations (EPCs) calculated from the 90% upper confidence limits within a given exposure area." The EPC calculated from the 90% upper confidence limits of current lead concentrations within the western 8.7 indicated acceptable risk for residential, urban residential, and occupational exposure scenarios when compared to the RBC of 400 mg/kg. Some of the lead concentrations included in the EPC calculations exceeded 400 mg/kg and 1,000 mg/kg. Although the western 8.7 acres has a calculated acceptable risk for lead, DEQ commented in its review of the revised risk assessment[1] that concentrations of lead above 1,000 mg/kg should still be addressed on the western 8.7 acres as part of a risk management strategy.

4) Except briefly in Section 3.1.1, The draft staff report omits any explanation of the 2016/2017 cleanup plan, including total volume of contaminated soil to be excavated or that the soil was proposed to be moved off-site. We request a clear explanation and rationale for why the 2022 cleanup plan is significantly less extensive than the one proposed in 2017. The previous cleanup plan was painstakingly developed with extensive community involvement and the new plan should include a public explanation of how it provides at least an equivalent level of site mitigation and public health protection.

DEQ Response: A more thorough explanation of changes since the 2016/2017 cleanup plan will be included in the final Record of Decision (ROD). Changes to DEQ RBCs for contaminants of concern at the Site required less cleanup to meet urban residential exposure requirements. Capping excavated soil on-site addresses community concerns about transporting the impacted soil through town. Since this cleanup is being done voluntarily by UPRR, they have significant leeway as to how they want to implement a remedial action as long as it is protective of human health. The remedy as proposed in the Staff Report is protective for urban residential and commercial use. The current plan will remove pockets of high levels of contamination that previously would not have been removed.

5) Similarly, the Administrative Record included in the draft staff report omits reference to the 2008 and 2016/2017 cleanup plans. These past documents were publicly available and are expected to be an important part of the project record for community members.

DEQ Response: Reference to the 2008 and 2016/2017 cleanup plans will be included in the Administrative Record in the final ROD.

6) The draft staff report indicates that a deed restriction will be imposed by DEQ requiring its approval before any portion of the eastern three acres of the railyard be subdivided or redeveloped in the future. The staff report should explicitly state that additional site investigation and cleanup work would be required before approval of any land development or site work. How does DEQ contemplate the city's role in this process, including notification and consultation with city planning staff about proposed local

[1] Oregon Department of Environmental Quality (ODEQ). 2019. Comments on the Supplemental Remedial Investigation/Feasibility Study Risk Evaluation 2nd Revision dated June 5, 2019. November 5.

land use changes and requirements for additional environmental work? An outline of DEQ's review and approval process of a proposed subdivision or redevelopment should be provided, including a reference to DEQ's anticipated evaluation criteria and requirements for public notice and comment.

DEQ Response: DEQ anticipates that the City would be notified of a potential subdivision, development, or land use changes through the local permitting process. The requirements and process for notifying DEQ will be outlined in the Site deed restriction, also known as an Environmental Protection Easement and Equitable Servitude (EES) document, that accompanies the property deed. If DEQ determines that additional investigation or cleanup is required, then the identified responsible party would likely have to follow the usual DEQ cleanup process including a work plan review, and possible site investigation, feasibility study, public notification, ROD, remedial design, and closure. DEQ would continue our collaborative communication with the City of Ashland and follow a process similar to that outlined in the following *DRAFT Public Involvement Phases of the UPRR Ashland ROD and Remedial Action.*

7) It appears that DEQ does not contemplate any limitations (e.g., deed restrictions) for the western nine acres of the railyard as long as it is used for commercial, industrial, or urban residential purposes. Since the risk assessment evaluated human exposures of this parcel using hypothetical 1-acre polygons as shown in Figure 5, is it possible that risk assessment outcomes would be different when the western nine acres is subdivided into a different configuration, other than the one acre lots shown in Figure 5?

DEQ Response:

State deed restriction(s) consisting of an EES will be applied to the western 8.7-acres and agreed on by UPRR and DEQ to define controls used to:

- Restrict site use to urban-residential and/or commercial use; and
- Restrict development or subdivision without additional assessment and/or approval from DEQ.

DEQ would need to review and approve any request to subdivide or develop either the western 8.7-acres or the eastern 3-acres to verify that development meets allowed land use requirements and that a subdivision does not result in unacceptable risk within any of the proposed subdivided parcels. DEQ would conduct a risk evaluation similar to how the hypothetical 1-acre subdivisions were considered, but evaluation areas and locations would be based on the proposed subdivision.

8) How did DEQ establish that groundwater beneficial use has not changed since the 2001 ROD? Were Oregon Dept. of Water Resources records reviewed for possible new water wells drilled near the site since 2001? Since water supply is often a big concern to our community, possible use of groundwater for irrigation in the future might be a concern and should be acknowledged in the report.

DEQ Response: A beneficial water use survey has not been conducted since 2001, however changes in water use in this area are unlikely based on requirements for new developments to connect to City water. To be certain, DEQ will include an updated beneficial water use survey in the revised ROD. DEQ can also include groundwater use restrictions in the EES if there is concern about possible future use and climate change and resource demands, etc.

Also, the likelihood that contaminants will migrate to off-site supply wells and affect current and/or future, reasonably likely, beneficial use is minimal. Groundwater is first encountered at the Site within the silt/clay unit and/or discontinuous sand unit at depths between approximately 6 and 20 feet below ground surface. A dense sandy silt unit (weathered bedrock) is located below this shallow water-bearing formation and above a deeper water bearing zone. Groundwater for beneficial use in the Site vicinity is drawn from the deep aquifer at depths greater than 60 to 100 feet below ground surface. Site contaminants of concern (Bunker C Oil and diesel) were detected in shallow groundwater. The likelihood that Bunker C oil and diesel will migrate to off-site supply wells and affect current and/or future, reasonably likely, beneficial use is minimal because: the viscous properties of Bunker C Oil limit its mobility; the vertical separation between the impacted shallow groundwater and the deeper aquifer utilized for beneficial use is at least 40 to 60 feet, containing at least 20 to 40 feet of bedrock; and cross-contamination of the deeper aquifer by a future installation of a well or borehole through contaminated shallow soil or groundwater is minimized through the use of Oregon well construction standards.

9) Two areas with high lead concentrations are targeted for cleanup, as well as one area with high arsenic. Sample resolution in these areas was very limited in past site investigations, so how were polygons determined for the excavations shown in Fig 6? The report should acknowledge the importance of future confirmation sampling when excavation occurs, to ensure removal of soil exceeding the cleanup criteria.

DEQ Response: This information will be added to the final ROD. Confirmation sampling will be required after excavation and removal of contaminated soil. Regarding the excavation areas, the Site risk assessment showed that arsenic was the primary contaminant risk driver, with lead being a secondary driver. Figure 6 shows the sample locations where the arsenic and lead samples exceeded 30 mg/kg and 1,000 mg/kg, respectively. Contiguous rectangular polygons were drawn around sample locations with arsenic and lead exceedances within the 8.7-acre western area to form the remedial action target areas. Each of the rectangular polygons has a minimum dimension of 50 feet in all directions from the sample location. Adjacent areas were extended and connected when there were no clean samples in between. All the arsenic and lead samples to be addressed were in the upper 1.5 feet of the 0- to 3-foot depth horizon of the surface soil, therefore, all the target areas extend to a depth of 1.5 feet.

10) The report briefly acknowledges the presence of significant volumes of subsurface soil saturated with Bunker C oil (NAPL, or non-aqueous phase liquids) in the eastern parcel, and the potential for direct contact with Bunker C oil for future construction or excavation workers. Unlike the September 2016 Remedial Action Workplan, there is no acknowledgement of the estimated extent or volume of these NAPL areas, previously estimated by UP and DEQ as 5,400 cubic yards. For better transparency, shouldn't the three estimated Bunker C areas be shown graphically in Figure 5 (Hypothetical Future Exposure Areas) to address anticipated public concerns about future exposure to subsurface NAPL (similar to how they were shown in the 2016 plan)?

DEQ Response: DEQ will include the estimated extent and volume of NAPL areas in the final ROD. However, there is significant uncertainty associated with both estimates, which will be noted in any graphics or estimates.

11) Regarding the three areas of soil saturated with Bunker C oil, it is evident that the proposed capping and securing of the three eastern acres of the railyard will possibly result in entombing this contamination in perpetuity, rather than eliminating it. How will DEQ address possible community concerns about the stigma of such legacy contamination remaining in an area that will be surrounded by development at some point in the future? Should monitoring wells be required to assure the entombing is effective in protecting the community's groundwater? As a practical matter, the proposed capping of the eastern three acres would appear to add little or no value to the local community, including expansion of the local tax base, facilitating economic growth, or taking development pressures off of undeveloped, open land elsewhere in Ashland or Jackson County. This concern may be important given the City of Ashland's obligation to address State of Oregon statutory goals and policy requirements for Climate Friendly and Equitable Communities.

DEQ Response: Leaving pockets of non-mobile petroleum in-place to degrade naturally is commonplace with the redevelopment of former industrial sites. Acceptable risk for the Site has been demonstrated in the risk assessment with the Bunker C contamination remaining in-place. This is because petroleum compounds are relatively non-toxic, and the toxicity decreases over time as it degrades and weathers. DEQ will attempt to address community concerns by engaging the public to inform them of the proposed plan and gain their input. DEQ does not feel that monitoring is required for the Bunker C based on its observed immobility and age. Clearing the western 8.7 acres for urban residential and/or commercial use will offer opportunities for development. After capping, the eastern 3 acres will also be available for development, recreation or greenspace.

12) The plan states that institutional controls are not uncommon for former industrial properties and if long term management is done properly, they all can be reliable. How will this be assured, and by whom, and with what processes? This would appear to be especially relevant given the current challenges with local and state government staff turnover during these long-term projects.

DEQ Response: Sites with institutional controls are recorded in the DEQ database and property owners are required to provide DEQ environmental reviews typically every five years. This process will be detailed in an EES attached to the property deed.

13) *For the selected alternative, the staff report indicates that "...clean backfill will include 2,710 cubic yards to fill in the excavation areas on the west side plus an additional 2,870 cubic yards to supplement the consolidated soil on the eastern side and fill in the former holding pond depressions." How will the clean soil backfill be delineated from underlying contaminated soil, to facilitate the possibility of future site investigation and cleanup that might be required in the eastern capped parcel? Given the current plan does not anticipate the removal or soil from the site, what is the anticipated site elevation profile following the introduction of the required backfill in relationship to the adjacent properties?*

DEQ Response: The excavation areas in the western 8.7 acres and the pre-remediation topography of the eastern 3 acres will be surveyed. Construction barriers may be used to delineate impacted material from cap material in the eastern 3 acres. Details of the final grading elevations and the use of any construction barriers will be included in the remedial design.

14) The plan states that: "The eastern three-acre area will be fenced to limit access". The fencing installed several years ago by UP to secure the contaminated railyard area have proven to be unreliable for preventing access. How will the proposed fencing be made more secure in perpetuity to prevent unauthorized access? Will signage be posted with information and contact information for citizen inquiries? City staff request an opportunity to review and comment on UP's soil management plan, contaminated media management plan, and cap O&M plan before final DEQ approval.

DEQ Response: These details will be included in the final ROD. DEQ believes a locked gate and sign are adequate to secure the Site. An annual inspection of the cap and fence will be included as part of the Operations and Maintenance (O&M) Plan for the Site after the cleanup remedy has been completed. There is no immediate health risk to trespassers in the Site's current condition and there will be no immediate health risk to trespassers upon cleanup completion. The purpose of the fence is primarily to discourage vagrancy and prevent potential damage to the cap until the property is developed. UPRR also has a no-trespass agreement in place with the Ashland Police Department for the property.

A soil management plan/contaminated media management plan and O&M Plan are typically included in a Remedial Action Completion report and the final EES attached to the property deed. There will be a public comment period on these documents after the ROD cleanup remedy is complete and before Site closure.

15) The staff report briefly acknowledges the need for a new Record of Decision as part of this cleanup. Please include a summary of DEQ's administrative process for making environmental cleanup decisions for this property, including the likelihood of a Certificate of Completion when the cleanup is done. This summary should include DEQ's public involvement milestones as part of its cleanup process going forward.

DEQ Response: Once the public comment period has ended for the Staff Report, DEQ will prepare a final ROD to include a detailed description of the final remedial action. DEQ will then oversee implementation and documentation of the cleanup in conformance with the ROD. DEQ will enter into an RD/RA agreement with UPRR to define implementation timeline and requirements for the remedial action. DEQ will also review a remedial action and remedial design work plan before implementation for cleanup. The responsible party will submit a Remedial Action Completion Summary Report when cleanup is complete. If DEQ determines the cleanup has been performed as directed by the ROD, the regulatory process is complete. DEQ will provide public notice of cleanup completion and allow 30 days for submission of comments or questions. Then DEQ issues a document to the Site owner called a No Further Action letter/Certificate of Completion. Sites may carry long-term requirements that are recorded on their deeds, such as ongoing monitoring and development restrictions, when necessary. Below is a more detailed draft outline of the UPRR Ashland ROD and Remedial Action process with anticipated public involvement milestones:

DRAFT UPRR Ashland ROD and Remedial Action Process and Public Involvement
City Covenant
Revise City Cleanup Restriction Covenant
DEQ Staff Report
DEQ holds 30-day comment period on Staff Report (Draft ROD), including public meeting and presentation to City Council
ROD
DEQ Signs ROD – *provide CC to City*
Remedial Design/Remedial Action (RD/RA)
Enter into RD/RA Voluntary Agreement with UPRR for implementation of the ROD
RD/RA Work Plan prepared for DEQ review
DEQ approve final RD/RA work plan – *provide CC to City*
Remedial Design prepared for DEQ Review
DEQ approve final Remedial Design
Remedial Action
Remedial Action implementation (earthwork)
Remedial Action Completion Summary Report with CMMP/Cap Maintenance Plan(s) drafted for DEQ review
Easement and Equitable Servitude (EES) documents drafted by DEQ and UPRR
CMMP/Cap Maintenance Plans and EES documents reviewed and commented on by DEQ – *provide CC to City*
Public Comment
DEQ holds 30-day comment period on Remedial Action Completion, including draft CMMP/Cap Maintenance Plans and EES documents
Remedial Action Completion
DEQ responds to comments on remedial action completion – *provide CC to City*
EES documents and attachments signed and recorded
DEQ issues NFA/Cert of Completion – *provide CC to City*
City removes Cleanup Restriction Covenant

16) Before DEQ issues its Certificate of Completion when it deems the cleanup is complete, the City requests a public involvement process that is consistent with what is being planned in late 2022 and early 2023 for the proposed cleanup plan. This should include a 60-day public comment period, at least one DEQ-hosted public meeting, a presentation to the Ashland City Council, and continued collaboration with city staff on public communications.

DEQ Response: DEQ anticipates having a 30-day public comment period of the Remedial Action Completion report and follow the typical public notice process before a certificate of completion is processed or NFA is issued, including: Publication of a notice and brief description of the proposed action in a local paper of general circulation and in the Secretary of State's Bulletin, and continued collaboration with city staff on public communications.

I hope the information in this letter addresses your current questions and concerns. Please contact me at (503) 726-6522 with any additional questions. I can also be reached via e-mail at margaret.oscilia@deq.oregon.gov

Sincerely,

Margaret L Oscilia

Margaret L. Oscilia, P.E.
Project Manager
Western Region Cleanup and Emergency Response

Translation or other formats

Español | 한국어 | **繁體中文** | **Русский** | **Tiếng Việt** | العربية

800-452-4011 | TTY: 711 | deqinfo@deq.oregon.gov

Non-discrimination statement

DEQ does not discriminate on the basis of race, color, national origin, disability, age or sex in administration of its programs or activities. Visit DEQ's Civil Rights and Environmental Justice page.

1072 Clear Creek Dr.
Ashland, Oregon 97520

August 31, 2023

Commissioner Lisa Verner
City of Ashland Planning Commission
20 East Main St.
Ashland, Oregon 97520

Re: Proposed UPRR Yard Remediation Alternatives

Dear Commissioner Verner,

I take issue with the assessment of the Oregon DEQ's proposals for the Union Pacific Railroad Rail Yard Site in Ashland as recently recommended. The alternative proposals all seem to prioritize cost savings over public health, and I am concerned about the potential impacts of leaving three acres of the site contaminated with toxic arsenic and volatile hydrocarbons.

I believe that Alternative #3, which calls for the removal of toxic topsoil via rail for offsite disposal, is closest to a responsible option. Alternative #3 should include offsite rail removal of tainted topsoil to at least ten feet. This would ensure that the health of Ashland residents is not put at risk, and it would also allow for the site to be developed in a way that is consistent with the city's environmental values and need for additional affordable resident housing.

I am disappointed that the Oregon DEQ has not proposed a more comprehensive cleanup plan. I urge them to reconsider their proposals and to make the health of Ashland residents their top priority.

I am also concerned about the future of the Union Pacific Railroad Rail Yard Site. The city of Ashland has a history of approving light-manufacturing flex buildings on the site, but these buildings have often been vacant and have contributed little to the city's tax base. Please assess the vacant condition of many properties near the UPRR acreage.

I believe that the city should focus on developing the site in a way that creates jobs and enhances the existing local economy. This could include mixed-use development that includes housing, retail, entertainment, and office space. It is important to find a way to balance the need for economic development with the need to protect public health.

I hope that the city of Ashland will take the concerns of its residents seriously and will develop a plan for the Union Pacific Railroad Rail Yard Site that is both responsible and sustainable.

Respectfully,

James P. Jarrard

Enclosures

Oregon
Tina Kotek, Governor

Department of Environmental Quality
Salem Office
4026 Fairview Industrial Drive SE
Salem, OR 97302
503-378-8240
FAX 503-378-4196
TTY 711

Aug. 01, 2023

Re: Community Open House
Proposed Cleanup of Ashland Rail Yard
Environmental Cleanup Site Information database (ESCI) ID No. 1146

Dear Ashland Community Member,

You are invited to an open house on Sept. 27, 2023, to hear about a new proposed cleanup plan for Union Pacific's Ashland Rail Yard property.

DEQ Ashland Rail Yard Cleanup Open House
5:30 p.m. Wednesday, Sept. 27, 2023
Ashland Library[1], Gresham Room downstairs
410 Siskiyou Blvd., Ashland, OR 97520

Cleanup officials with DEQ will present the proposed cleanup project and hear questions and concerns from the public. The cleanup plan covers portions of the 21-acre former rail yard property located along A Street in Ashland.

The rail yard was operated by the Southern Pacific Railroad Company for nearly 100 years as a locomotive fueling, maintenance, and railcar repair facility near downtown Ashland until 1986. Over the past 30 years, environmental investigations of the rail yard have shown that soil and groundwater in portions of the property are contaminated with several heavy metals and petroleum products and byproducts. The contamination is at levels that may pose a health risk to people working or living on the rail yard property. Union Pacific Railroad merged with Southern Pacific in 1996 and recently proposed a new cleanup plan for the rail yard that DEQ is prepared to approve.

The new cleanup plan will allow the rail yard to be safely developed for industrial, commercial or urban residential use. The site covered under this cleanup plan is a 11.7-acre area located on the central portion of the former rail yard property. The proposed cleanup plan includes excavation of contaminated soil from the western 8.7-acre area of the site, consolidation on the eastern three-acre area of the site and covering contaminated soil with a protective vegetated cap. For more information and a link to DEQ's Staff Report detailing the revised plan go to **ordeq.org/AshlandRailYardInfo**.

DEQ has extended the public comment period for the project into September 2023. Public comments are now due by 5 p.m. on Sep. 30, 2023. Comments should be sent by email to DEQ Project Manager Margaret Oscilia at margaret.oscilia@deq.oregon.gov, given by phone call to 503-726-6522, or sent by mail to Western Region DEQ, Attn: Margaret Oscilia, 4026 Fairview Industrial Drive SE, Salem, OR 97302.

DEQ is happy to answer questions anytime and will formally address all comments after the end of the comment period. DEQ will consider all comments and input before making a final decision.

Sincerely,

Margaret L Oscilia

Margaret L. Oscilia P.E, Project Manager
Western Region Cleanup Program
Oregon Department of Environmental Quality

[1] This meeting or event is not sponsored nor endorsed by the library.

RECOMMENDED REVISION OF THE REMEDIAL ACTION
Ashland Union Pacific Railroad Yard

- The paper discusses the evaluation of different alternatives for remedial action at a contaminated site in Ashland, Oregon.

- Alternative 1 is deemed not protective and will not be further evaluated.

- Alternative 2 is considered more protective and allows for unrestricted urban residential and occupational future use without any engineering or institutional controls.

- Alternative 3 is found to be about as protective as Alternative 4.

- The remedial action involves excavation of impacted soil to eliminate risks associated with urban residential exposure scenarios.

- The protectiveness of the shallow excavation in the eastern 3-acre area depends on engineering and institutional controls.

- The western 8.7-acre area does not require deed restrictions or other controls.

- The total volume of soil to be excavated in the western area is 2,710 cubic yards.

- The paper also mentions the time until remedial action objectives are achieved and the long-term reliability of treatment technologies as factors for evaluation.

- The Administrative Record for the site includes the Phase II Environmental Site Assessment conducted by Cascade Earth Sciences Ltd. in 1992.

Alternative 2 from the paper:

- Alternative 2 involves the excavation of soils in the remedial action target areas, specifically the western 8.7-acre area and the eastern 3-acre area.

- Excavation of impacted soil in the western 8.7-acre area would enable unrestricted urban residential and occupational future use without any engineering or institutional controls.

- The protectiveness of the shallow excavation in the eastern 3-acre area would depend on engineering and institutional controls to protect receptors against potential contact with the NAPL-contaminated deep soil.

- Direct receptor exposure to impacted surface soil would be prevented by the removal of shallow soil over the entire 11.7-acre site.

- A deed restriction would be required for the eastern 3-acre area as part of the institutional controls, while no deed restrictions or other controls would be necessary for the western 8.7-acre area.

Deed restriction on the eastern 3-acre area in Alternative 2:

- A deed restriction would be required for the eastern 3-acre area as part of the institutional controls in Alternative 2.

- The deed restriction would restrict the use of the eastern 3-acre area from activities that could potentially result in exposure to the underlying contaminated soil.

- The restriction would prevent single-family residential use without approval from the Department of Environmental Quality (DEQ).

- If the land in the eastern 3-acre area is sold, subdivided, or redeveloped for a different use in the future, additional assessment and approval from DEQ would be required before the intended land use could be changed.

Summary of Alternative 3:

- Alternative 3 involves the excavation and offsite disposal of shallow soil in the western 8.7-acre area and shallow soil in the eastern 3-acre area, along with the implementation of institutional controls.

- The excavation of soil in both areas aims to eliminate risks associated with urban residential exposure scenarios.

- In the western 8.7-acre area, the excavation and offsite disposal of shallow soil would be conducted to protect human health.

- In the eastern 3-acre area, the excavation and offsite disposal of shallow soil would also be carried out, but the protectiveness of this action would depend on the implementation of engineering and institutional controls.

- Alternative 3 is considered to have a similar level of protectiveness as Alternative 4, which involves excavation in the western area and consolidation with a vegetated soil cap in the eastern area.

- The cost estimates for Alternative 3 are significantly higher than Alternative 4, making Alternative 4 a more cost-effective option .

Summary of Alternative 4:

- Alternative 4, recommended for implementation at the UPRR Ashland Site, involves excavation in the western 8.7-acre area and consolidation with a vegetated soil cap in the eastern 3-acre area.

- In Alternative 4, the same quantity of soil will be excavated in the western 8.7-acre area as in Alternatives 2 and 3, ensuring equal effectiveness in achieving protection in this area.

- The most contaminated soil would be removed in the eastern 3-acre area, and **engineering and institutional controls** would be relied upon for effectiveness.

- Alternative 4 is the easiest to implement as it **does not require the removal of contaminated soil from the site**, unlike Alternatives 2 and 3.
It is also the most cost-effective option, with significantly lower cost estimates compared to Alternatives 2 and 3.

- Alternative 4 would have the lowest carbon footprint and no waste generation, as all waste would be managed onsite.

Developing the railroad yard without removing most of the toxins in the soil from years of rail operations may not be safe, aesthetically pleasing, or conducive to healthy breathing.

– The rail yard site has been found to be contaminated with various substances, including inorganic lead, arsenic, polynuclear aromatic hydrocarbon compounds (PAHs), and petroleum hydrocarbons.

– The selected remedial action for the site involves excavation and offsite disposal of contaminated soil to prevent human exposure and protect human health.

– Alternative 2 and 3, which involve excavation and offsite disposal of contaminated soil, are considered more protective than Alternative 1.

– Excavation of soil deeper than 5 feet may require additional measures to protect against collapse, and deep contamination could potentially end up in larger excavation areas than estimated.

The remedial action objectives include preventing human exposure to contaminated soil and surface water. Therefore, it is **advisable to remove most of the toxins in the soil before developing the railroad** yard to ensure the safety, aesthetics, and breathing quality for the humans living in the vicinity of the UPRR rail yard.

Letter Published on 9/09/2023 in Rogue Valley Times by Barry Thalden:

LETTER TO THE EDITOR

Clean-up plan would create 'toxic dump' in Ashland

In the 1990s, soil and groundwater contamination (arsenic, lead and other heavy metals) were discovered in portions of the vacant 21-acre Union Pacific Railyard, between A Street and Hersey.

This was reported to the Oregon Department of Environmental Quality. The original clean-up plan proposed by Union Pacific Railroad was to remove 35,000 cubic yards of contaminated soil. After disagreements and delays over the past 30 years, Union Pacific, the landowner and creator of the toxic contamination, has dragged their feet in moving forward.

Their current plan is to not remove any of the contaminated soil, but to pile it up in a permanent "off limits" and "fenced" toxic 3-acre hill, with the obvious issues of poisons continuing to contaminate groundwater and runoff — leaving the remaining 18 acres still not meeting the EPA standards for "ground level residential."

This proposed plan is outrageous. For 30 years, the Oregon DEQ and Justice Department have been remiss in their responsibility to hold Union Pacific to federal requirements and to take action as necessary to cause them to fulfill their legal responsibility.

Ashland has little use for industrial land and is in desperate need of "unrestricted residential land" as the housing crisis worsens. Ashland is a residential and tourist community that has no need for a toxic waste dump in the city.

DEQ has scheduled a public meeting at 5 p.m. Sept. 27 at the Ashland Library to discuss the plan and listen to citizen comments.

Barry Thalden / Ashland

PUBLIC NOTICE

Date posted: 9/1/2023

Open House about DEQ's Recommended Revision of Remedial Action for Ashland Rail Yard Site

HOW TO PROVIDE PUBLIC COMMENT

Facility/property: Ashland Rail Yard

Project location: 536 A St., Ashland, Jackson County

Open house details: 5:30 p.m., Wednesday, Sept. 27, 2023, Ashland Library, Gresham Room, 410 Siskiyou Blvd., Ashland, OR 97520

Submit written comments:

By mail: Send comments to Margaret Oscilia, Oregon DEQ Project Manager, 4026 Fairview Industrial Drive SE, Salem, OR 97302

By email: margaret.oscilia@deq.oregon.gov

Comments due by: 5 p.m. Friday, Sept. 29, 2023

Proposal highlights: DEQ is proposing a revision of the recommended cleanup plan for contamination related to rail yard operations on the former Union Pacific Railroad rail yard site in Ashland. This site includes 11.7-acres located on the central portion of the original 21-acre property. The Southern Pacific Railroad entered the 21-acre property into the DEQ Voluntary Cleanup Program in 1993 for cleanup of contamination related to rail yard operations. Southern Pacific merged with Union Pacific in 1996. DEQ previously issued no further action determinations for approximately 6.4 acres of the original 21 acres. The eastern 2.85 acres of the original property are currently used for agricultural purposes and not believed to have been associated with rail yard-related activities. The cleanup plan is related to the remaining 11.7 acres. The recommended revised cleanup work will allow the site to be safely developed for industrial, commercial or urban residential use. The cleanup action includes excavation of contaminated soil from the western 8.7-acre area of the site and consolidation on the eastern three-acre area of the site with a vegetated cap. Deed restrictions will also be implemented to prevent development for single-family residential use and to maintain effectiveness of the capped three-acre area.

DEQ has reviewed the plan and agrees it meets state regulatory criteria considering future uses of the site and will protect human health and the environment. The most significant change to the approach is that contaminated soil will be consolidated and capped on a portion of the site instead of being hauled away to a landfill.

DEQ has determined the revised cleanup approach will be protective of human health and the environment as required by Oregon cleanup laws and will eliminate the need for transporting contaminated soil through the community for disposal. After holding the public comment period for this proposal, DEQ will consider all comments before issuing a new Record of Decision, which is the final cleanup plan.

Background: The site operated as a locomotive maintenance, service and railcar repair facility between 1887 and 1986. Facility operations resulted in environmental contamination at the site. The contaminants consist of polynuclear aromatic hydrocarbon compounds in shallow soil and metals and

Translation or other formats

Español | 한국어 | 繁體中文 | Русский | Tiếng Việt | العربية

800-452-4011 | TTY: 711 | deqinfo@deq.state.or.us

State of Oregon
DEQ Department of Environmental Quality

petroleum products, including diesel and bunker oil, in shallow soil and limited areas of groundwater. In 2001, Union Pacific proposed, and, after significant public engagement, DEQ approved a cleanup plan to address contamination for potential future single-family residential site use. Union Pacific did not implement the 2001 decision because of an increase in some of the applicable regulatory cleanup limits, which meant not as much contamination would need to be cleaned up. The railroad has since collected additional data and has now proposed a new cleanup plan to address contamination.

For more information: Detailed information supporting DEQ's recommended revision of the remedial action is located on DEQ's web site at: ordeq.org/AshlandRailYardInfo .

If you do not have web access and want to review the project file, contact DEQ Project Manager Margaret Oscilia at 503-726-6522.

The next steps: DEQ will host an open house about the project at 5:30 p.m. Wednesday, Sept. 27, 2023, in the Gresham Room of the Ashland Library located at 410 Siskiyou Blvd., Ashland, OR 97520. The library is not sponsoring or endorsing the meeting. DEQ cleanup staff will present the proposed cleanup project, answer questions, and discuss concerns from the public at open house.

DEQ will then address comments received after the end of the comment period and prior to issuing the revised Record of Decision. If approved, cleanup work would likely commence in the summer of 2024.

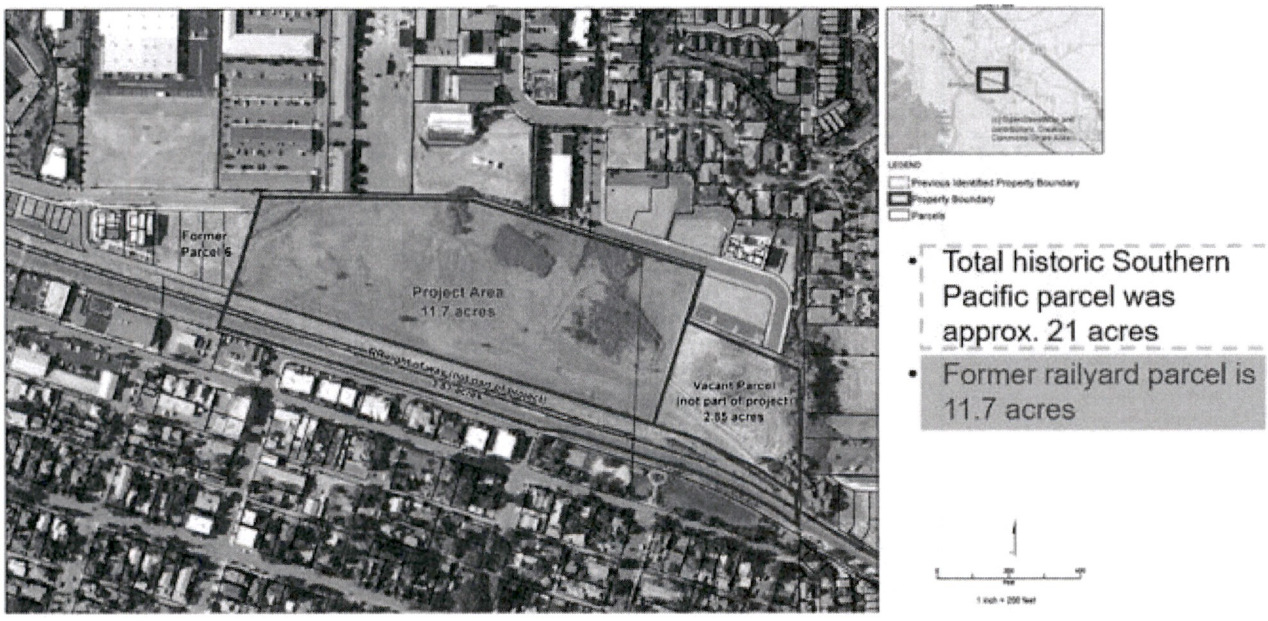


Figure 1- Dashed blue line indicates the approximate 21 acres of the total historic Southern Pacific parcel. Blue shading indicates the 11.7-acre Project Area of the former railyard parcel.

Non-discrimination statement

DEQ does not discriminate on the basis of race, color, national origin, disability, age or sex in. administration of its programs or activities. Visit DEQ's Civil Rights and Environmental Justice page.

Council Business Meeting

September 19, 2023

Agenda Item	Approval of Liquor License Request for Cru Siskiyou	
From	Dana Smith	Clerk of the Council Pro Tem
Contact	recorder@ashland.or.us; 541-488-5307	
Item Type	Requested by Council ☐ Update ☐ Request for Direction ☐ Presentation ☐	

SUMMARY

This is a request for approval of a liquor license application for the Liquor License Approval for Cru Siskiyou, at 798 St. Andrews Circle.

POLICIES, PLANS & GOALS SUPPORTED

AMC Chapter 6.32 Liquor License Review

BACKGROUND AND ADDITIONAL INFORMATION

This is an application for a New Outlet for a Winery Liquor License.

FISCAL IMPACTS

N/A

STAFF RECOMMENDATION

Staff recommends approval of the liquor license application. The City has determined that the location of this business complies with the City's land use requirements. The applicant has a Business License and has registered as a winery.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

I move to approve the liquor license for the Cru Siskiyou.

REFERENCES & ATTACHMENTS

Attachment 1: Application

Better Together

OREGON LIQUOR & CANNABIS COMMISSION

LIQUOR LICENSE APPLICATION

Bill 22972

$100.00

Instructions

1. **Complete and sign** this application.
2. Prior to submitting this application to the OLCC, send the completed application to **the local government for the premises address** to obtain a recommendation.
   - If the premises street address is within a city's limits, the local government is the city.
   - If the premises street address is not within a city's limits, the local government is the county.
3. You can submit the application if:
   1. You have WRITTEN documentation showing the date the local government received the application or;
   2. The local government has provided you their recommendation.
4. **Email the application that contains the local government recommendation or proof of submission** to: OLCC.LiquorLicenseApplication@Oregon.Gov.
5. **Do not** include any license fees with your application packet (fees will be collected at a later time).
   When it's time to pay the license fee you must pay the full yearly fee for the current license year (the license fee will not be prorated). If you pay in the last quarter of your license year you must also pay the yearly fee for the next license year.

License Request Options - *Please see the general definitions of the license request options below:*

- **New Outlet:** The licensing of a business that does not currently hold an active liquor license.
- **Change of Ownership:** The request to completely change the licensee of record at a licensed business.
- **Greater Privilege:** The request to replace a Limited On-Premises sales license with a Full On-Premises sales license.
- **Additional Privilege:** The licensee currently holds an active liquor license at the premises and that same licensee would like to request to add an **additional** different liquor license type at that same premises location.

Additional Information

Applicant Identification: Please review OAR 845-006-0301 for the definitions of "applicant" and "licensee" and OAR 845-005-0311 to confirm that all individuals or entities with an ownership interest (other than a waivable ownership interest, per OAR 845-005-0311[6]) in the business have been identified as license applicants on this document. If you have a question about whether an individual or entity needs to be listed as an applicant for the license, discuss this with the OLCC staff person assigned to your application.

Premises Address: This is the physical location of the business and where the liquor license will be posted.

Applicant Signature(s): Each individual listed in the applicant information box on page 2 (entity or individuals applying for the license) must sign the application.

If an applicant listed in the applicant information box on page 2 is an entity (such as a corporation or limited liability company), at least one individual who is authorized to sign for the entity must sign the application.

Applicant/Licensee Representative(s): In order to make changes to a license or application or to receive information about a license or application by someone other than the applicant/licensee you must:

- Complete the below Authorized Representative area on page 2 as the applicant/licensee and/or
- Provide a Power of Attorney document showing the permissions allowable on the behalf of the applicant/licensee with this submission

Please note that applicants/licensees are responsible for all information provided on this form, even if an authorized representative or individual with authority signs on behalf of the applicant.

For help with this application or any related documents or processes, email olcc.alcohollicensing@oregon.gov.

LIQUOR LICENSE APPLICATION

Check the appropriate license request option:

☒ New Outlet | ☐ Change of Ownership | ☐ Greater Privilege | ☐ Additional Privilege

Select the license type you are applying for.

More information about all license types is available online.

Full On-Premises

- ☐ Commercial
- ☐ Caterer
- ☐ Public Passenger Carrier
- ☐ Other Public Location
- ☐ For Profit Private Club
- ☐ Nonprofit Private Club

Winery

- ☒ Primary location
- Additional locations: ☐ 2nd ☐ 3rd ☐ 4th ☐ 5th

Brewery

- ☐ Primary location
- Additional locations: ☐ 2nd ☐ 3rd

Brewery-Public House

- ☐ Primary location
- Additional locations: ☐ 2nd ☐ 3rd

Grower Sales Privilege

- ☐ Primary location
- Additional locations: ☐ 2nd ☐ 3rd

Distillery

- ☐ Primary location

Additional tasting locations: ☐ 2nd ☐ 3rd ☐ 4th ☐ 5th ☐ 6th

☐ **Limited On-Premises**

☐ **Off Premises**

☐ **Warehouse**

☐ **Wholesale Malt Beverage and Wine**

LOCAL GOVERNMENT USE ONLY

LOCAL GOVERNMENT:

After providing your recommendation, return this application to the applicant WITH the *recommendation marked below*

City/County name:

(Please specify city or county)

Date application received:

Optional: Date Stamp Received Below

☐ Recommend this license be granted

☐ Recommend this license be denied

Printed Name _____ Date _____

Cru Siskiyou

Trade Name

LIQUOR LICENSE APPLICATION

APPLICANT INFORMATION

Identify the applicants applying for the license. This is the entity (example: corporation or LLC) or individual(s) applying for the license. Please add an additional page if more space is needed.

Name of entity or individual applicant #1:	Name of entity or individual applicant #2:
Joseph Shaughnessy	
Name of entity or individual applicant #3:	Name of entity or individual applicant #4:

BUSINESS INFORMATION

Trade Name of the Business (name customers will see):
Cru Siskiyou

Premises street address (The physical location of the business and where the liquor license will be posted):
798 St Andrews Cir

City:	Zip Code:	County:
Ashland	97520	Jackson

Business phone number:	Business email:
[redacted]	

Business mailing address (where we will send any items by mail as described in OAR 845-004-0065[1].):
798 St Andrews Cir.

City:	State:	Zip Code:
Ashland	Oregon	97520

Does the business address currently have an OLCC liquor license? ☐ Yes ☒ No	Does the business address currently have an OLCC marijuana license? ☐ Yes ☐ No

AUTHORIZED REPRESENTATIVE – A liquor applicant or licensee may give a representative authorization to make changes to the license or application on behalf of the licensee or to receive information about a license or application.

I give permission for the below named representative to:

☐ Make changes regarding this license/application on my behalf.
☐ Sign application forms regarding this license/application on my behalf.
☐ Receive information about the status of this application, including information about pending compliance action or communications between OLCC and the licensee/applicant.

Representative Name:

Phone number:	Email:

Mailing address:

City:	State:	Zip Code:

LIQUOR LICENSE APPLICATION

APPLICATION CONTACT INFORMATON – Provide the point of contact for this application. If this individual is not an applicant or licensee, the Authorized Representative section must be filled in and the appropriate permission(s) must be selected.

Application Contact Name:
Joseph Shaughnessy

Phone number:	Email: [redacted]

TERMS

- "Real property" means the real estate (land) and generally whatever is erected or affixed to the land (for example, the building) at the business address.
- "Common area" is a privately owned area where two or more parties (property tenants) have permission to use the area in common. Examples include the walking areas between stores at a shopping center, lobbies, hallways, patios, parking lots, etc. An area's designation as a "common area" is typically identified in the lease or rental agreement.

ATTESTATION – OWNERSHIP AND CONTROL OF THE BUSINESS AND PREMISES

- Each applicant listed in the "Application Information" section of this form has read and understands OAR 845-005-0311 and attests that:

1. At least one applicant listed in the "Application Information" section of this form has the legal right to occupy and control the real property proposed to be licensed as shown by a property deed, lease, rental agreement, or similar document.

2. No person not listed as an applicant in the "Application Information" section of this form has an ownership interest in the business proposed to be licensed, unless the person qualifies to have that ownership interest waived under OAR 845-005-0311.

3. The licensed premises at the premises street address proposed to be licensed either:
   a. Does not include any common areas; or
   b. Does include one or more common areas; however, only the applicant(s) have the exclusive right to engage in alcohol sales and service in the area to be included as part of the licensed premises.
      - In this circumstance, the applicant(s) acknowledges responsibility for ensuring compliance with liquor laws within and in the immediate vicinity of the licensed premises, including in portions of the premises that are situated in "common areas" and that this requirement applies at all times, even when the business is closed.

4. The licensed premises at the premises street address either:
   a. Has no area on property controlled by a public entity (like a city, county, or state); or
   b. Has one or more areas on property controlled by a public entity (like a city, county, or state) and the public entity has given at least one of the applicant(s) permission to exercise the privileges of the license in the area.

Cru Siskiyou

LIQUOR LICENSE APPLICATION

Cru Siskiyou

- Each applicant listed in the "Application Information" section of this form has read and understands OAR 845-006-0362 and attests that:

1. Upon licensure, each licensee is responsible for the conduct of others on the licensed premises, including in outdoor areas.
2. The licensed premises will be controlled to promote public safety and prevent problems and violations, with particular emphasis on preventing minors from obtaining or consuming alcoholic beverages, preventing over-service of alcoholic beverages, preventing open containers of alcoholic beverages from leaving the licensed premises unless allowed by OLCC rules, and preventing noisy, disorderly, and unlawful activity on the licensed premises.

I attest that all answers on all forms and documents, and all information provided to the OLCC as a part of this application, are true and complete.

Print name	Signature	Date	Atty. Bar Info (if applicable)
Joseph Shaugh	JOSEPH SHAUGHNESSY	08/14/2023	

Council Business Meeting

October 3, 2023

Agenda Item	Public Hearing and First Reading of LUBA remand for PA-T3-2022-00004 for the property at 1511 Hwy 99	
From	Brandon Goldman Derek Severson	Community Development Director Planning Manager
Contact	brandon.goldman@ashland.or.us derek.severson@ashland.or.us	541-552-2076 541-552-2040
Item Type	Requested by Council ☐ Update ☐ Request for Direction ☒ Presentation ☒	

SUMMARY

In December of 2022, the City Council approved the Annexation of 16.86 acres located at 1511 Highway 99 North into the City of Ashland, along with 6.6 acres of adjacent Oregon Department of Transportation (ODOT) state highway right-of-way and 7.68 acres of California Oregon & Pacific (CORP) railroad property. These properties are currently zoned Rural Residential (RR-5) in Jackson County; with Annexation they are to be brought into the City as Low Density, Multi-Family Residential (R-2). In addition to Annexation, the approved application included Outline Plan subdivision approval to create 12 lots; Site Design Review to construct 230 apartments in ten buildings including at least 38 affordable units; an Exception to the Street Design Standards; and Tree Removal Permits to remove two trees greater than six inches in diameter at breast height. The full record for this application can be reviewed on-line at: https://www.ashland.or.us/grandterrace.

The City's approval of the project was subsequently appealed to the Land Use Board of Appeals (LUBA) by Rogue Advocates and has been remanded to the City to further consider two issues:

1) **That the city erred in approving an exception to the on-street parking requirement in AMC 18.3.9.060; and**
2) **That the affordable unit sizes as approved do not comply with AMC 18.5.8.050.G.3 which requires that affordable studios be a minimum of 350 square feet and that affordable one-bedroom units be a minimum of 500 square feet.**

The Planning Commission held a limited public hearing on August 8, 2023 to consider only these two remand issues, and has provided the attached findings and recommendations to the Council.

POLICIES, PLANS & GOALS SUPPORTED

Comprehensive Plan, Housing Element
Housing Needs Analysis (HNA)
Housing Capacity Analysis (HCA)
Ashland 2020: A Strategic Plan for Ashland's Future
City Council Goals (2019)

BACKGROUND AND ADDITIONAL INFORMATION

Remand Issue #1: On-Street Parking Exception

The originally approved application included a request for Outline Plan subdivision approval under the Performance Standards Options (Chapter 18.3.9) to create ten buildable lots and two common open space properties. During the public hearing process, the Planning Commission noted that AMC 18.3.9.060 dealing with Parking Standards for subdivisions processed under AMC 18.3.9 required that:

> *All development under this chapter shall conform to the following parking standards, which are in addition to the requirements of chapter 18.4.3, Parking, Access, and Circulation.*
>
> **A. On-Street Parking Required.** *At least one on-street parking space per dwelling unit shall be provided, in addition to the off-street parking requirements for all developments in an R-1 zone, with the exception of cottage housing developments, and for all developments in R-2 and R-3 zones that create or improve public streets.*
>
> **B. On-Street Parking Standards.** *On-street parking spaces shall be immediately adjacent to the public right-of-way on publicly or association-owned land and be directly accessible from public right-of-way streets. On-street parking spaces shall be located within 200 feet of the dwelling that it is intended to serve. In addition, on-street public* parking may be provided pursuant to minimum criteria established under subsection 18.4.3.060.A.

While no Variance or Exception to this standard had been requested as part of the original application, the Planning Commission determined that AMC 18.3.9.060 was applicable, that an Exception to the Street Design Standards was the appropriate procedure if on-street parking was not to be provided, and that such an Exception was merited.

New Climate-Friendly and Equitable Communities (CFEC) rules were adopted July 21, 2022, by the Land Conservation and Development Commission (LCDC) in response to Executive Order #20-04 by Governor Kate Brown and took effect August 17, 2022. The CFEC rules address how cities may regulate a variety of land use and transportation issues, including a number of changes to the ways cities may regulate parking. Among the new CFEC rules:

- Oregon Administrative Rule (OAR) 660-012-0430(2) states that "*Cities and counties may not require more than one **parking space** per unit in residential developments with more than one dwelling unit on a single legally established property.*" **Parking spaces** are defined in OAR 660-012-00005(29) as meaning "*... on and off-street spaces designated for automobile parking, other than parking spaces reserved for carpools, vanpools, or parking under the Americans with Disabilities Act.*"

- OAR 660-012-430(3) states that, *"Cities and counties may not require parking for the following development types.... (d) Residential units smaller than 750 square feet; (e) Affordable housing as defined in OAR 660-039-0010;"* All of the residential units proposed in the application under consideration are smaller than 750 square feet, and under the new CFEC rules the city may not require parking for this development type.
- OAR 660-012-440(3) states that *"Cities and counties may not enforce **parking mandates** for development on a lot or parcel that includes land within one-half mile of frequent transit corridors, including... corridors with the most frequent transit route or routes in the community if the scheduled frequency is at least once per hour during peak service."* In OAR 660-012-00005(27), **parking mandates** are defined as *"requirements to include a minimum number of off-street parking spaces with development or redevelopment, or a fee-in-lieu of providing parking for residential development."* In this instance, the Rogue Valley Transit District's (RVTDs) Route 10 runs on Highway 99 North, which fronts directly on the subject properties here, with a peak hour scheduled frequency of every 20 minutes, and as such qualifies as frequent transit. Under the new CFEC rules, Ashland may not enforce parking mandates (i.e., require off-street parking) for the subject properties.

Under OAR 660-012-0012(5)(e) cities and counties were required to *"implement the requirements of OAR 660-012-0430 and 660-012-0440 when reviewing development applications submitted after December 31, 2022."* Guidance from the Department of Land Conservation and Development (DLCD) has been that cities must either modify their regulations or implement these new rules directly from the OAR and disregard local regulations. Ashland is in the process of amending its parking codes to comply with these new CFEC rules, and others which took effect on June 30, 2023, and has received an extension allowing these code amendments to occur no later than December 31, 2023. In the interim, the City has been directly applying the applicable state rules.

With regard to the current application, it was initially submitted on July 8, 2022, however it remains in process now more than eight months after these new CFEC rules have taken effect. The Performance Standards subdivision process requires a preliminary or outline plan review followed by a final plan review, so prior to the physical development of the site, another development application for final plan approval will be required at which time the applicant will not be subject to parking requirements under the new CFEC rules and could request to amend their proposal with regard to parking.

In staff's view, the Planning Commission and Council have the discretion to assess the current request based on the new CFEC rules, which remove the requirement for parking since all proposed residential units are smaller than 750 square feet. The fact that the CFEC parking regulations have been in effect for eight months, along with the LUBA remand for further review leading to the final decision of the City to occur after the new regulations were implemented, supports the consideration of the application under the current State law specified in OAR 660-012-0430 and 0440. Additionally, the applicant will need to submit a second development application, Final Plan review, during which the city will be unable to enforce parking requirements under the new Climate Friendly and Equitable Communities rules.

Therefore, the staff recommends evaluating the current request under the new CFEC rules without requiring parking, considering the nature of the proposed residential units.

DLCD's implementation guidance to cities notes that the parking rule changes seek to help "*meet Oregon's climate pollution reduction targets, while providing more housing and transportation choices and improving equity.*" In staff's view, applying the new parking rules to a project that combines small market rate units with deed-restricted affordable housing, situated on a transit route and providing substantial improvements to support transit and pedestrian travel is exactly what the Climate Friendly and Equitable Communities rules seek to enable, and requiring an applicant to withdraw and reapply with an identical proposal now in order to be subject to the new rules, when their application is still in process eight months after the new rules have taken effect, would pose an unreasonable impediment which would discourage the production of needed housing during a housing crisis.

The Planning Commission further found that Oregon Revised Statute (ORS) 197.307(4) requires that local governments adopt and apply only clear and objective standards, conditions, and procedures in regulating the development of housing, particularly "*needed housing.*" Standards and conditions may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay. This is to ensure that communities do not use discretionary or subjective criteria or procedures to deny housing projects. The Planning Commission found that the parking rules having changed so that an applicant proposing needed housing is subject to one set of rules for the first part of a two-part application process and a different set of rules for the second part of the procedure does not provide the applicant a clear path to approval without unreasonable cost or delay. In addition, the city's parking on-street parking requirement under AMC 18.3.9.060 in this instance would require that the applicant install on-street parking facilities on a state highway for which the city has no jurisdiction and where on-street parking is not allowed by the Oregon Department of Transportation (ODOT), which regulates this roadway. The Planning Commission found that the city's on-street parking standard being in direct conflict with ODOT's standard for the roadway does not provide a clear procedure for the applicant to move forward without unreasonable cost or delay. As such, the Planning Commission found that the on-street parking requirement in AMC 18.3.9.060 should not be applied to the application.

On that basis, the Planning Commission recommended that the City Council determine that the CFEC parking rules are appropriate here, to not require either on- or off-street parking, and to amend the findings for the original approval accordingly.

Remand Issue #2: Affordable Unit Sizes

The original application identified each of the ten identical buildings proposed as containing 20 one-bedroom units of 499.5 square feet each, and three studio units of 250 square feet each. Two of these ten buildings were to be relied on in meeting the affordability requirements, which were a total of 38 deed restricted affordable units, assuming that the applicant either builds the units themselves or does so in cooperation with a non-profit affordable housing provider partner.

AMC 18.5.8.050.G.3 requires that the minimum square footage for affordable one-bedroom units be 500 square feet, and that the minimum square footage for affordable studios be 350 square feet. The adopted conditions relating to affordability are:

> **Condition #7e.** *[That prior to final approval and annexation of the property, the applicant shall provide:]* A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that where the required number of affordable units is fractional it shall be rounded up, and that should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI.
>
> **Condition #10g.** If the applicant opts to dedicate land area to a non-profit affordable housing developer, dedication shall occur in a manner consistent with AMC 18.5.8.050.G.2 and recording of deed restrictions guaranteed affordability described herein shall occur in conjunction with plat signature and recording.

The City's approval was remanded by LUBA on the basis "**That the affordable unit sizes as approved do not comply with AMC 18.5.8.050.G.3 which requires that affordable studios be a minimum of 350 square feet and that affordable one-bedroom units be a minimum of 500 square feet.**"

In response to this issue, the applicant has provided a revised floor plan demonstrating how the one-bedroom units could be modified by reducing their recessed entry depth by three-inches to achieve the required 500 square feet per affordable one-bedroom unit.

- **AS ORIGINALLY PROPOSED:** 12.5 x 42 = 525 square feet less 25.98 square feet for recessed entry = 499.02 square feet.
- **AS MODIFIED:** 12.5 x 42 = 525 square feet less 24.8975 feet for recessed entry = 500.1025 square feet.

In addition, the applicant notes that affordable basement level studios would be modified to be 499.5 square feet to significantly exceed the required 350 square feet per affordable studio unit.

In considering this issue, the Planning Commission noted that the affordability requirement for this project calls for 38 affordable units to be provided. Each building proposed has 20 one-bedroom units, and assuming that two buildings will be developed by an affordable housing provider partner or the applicant themselves, the 38 required affordable units could be accommodated entirely with one-bedroom units, leaving one one-bedroom unit and three studios in each of the two buildings to be rented at market rate or provided as voluntarily affordable *(i.e. not deed-restricted and not subject to the square footage requirements of AMC 18.5.8.050.G.3.)*.

The Planning Commission found that the second remand issue could be fully addressed by increasing the size of the one-bedroom units by a *de minimis* amount to comply with AMC 18.5.8.050.G.3 and making clear that as configured in the original proposal the studio units need not be considered among the required affordable units. If this approach is satisfactory to the City Council, a modified condition #7e was recommended as follows:

> **Condition #7e.** A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that**: 1)** where the required number of affordable units is fractional it shall be rounded up, **2) ~~and~~** that should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI**, and 3) that each of the required affordable units comply with the minimum affordable units size requirements of AMC 18.5.8.050.G.3, with one bedroom affordable units being a minimum of 500 square feet, and affordable studio units being a minimum of 350 square feet.**

If the Council accepts the Planning Commission recommendations above with regard to both remand issues, staff recommends that the Council adopt the Commission's findings formalizing this approach, approve first reading of the ordinance and schedule second reading.

FISCAL IMPACTS

There are no direct fiscal impacts related to the proposed annexation and LUBA Remand response from the City.

The applicant has informed our staff that they may consider submitting a new application under two circumstances: first, if they receive an unfavorable ruling from LUBA on this remand, and second, if they believe that reapplying with the same proposal under the new Climate Friendly and Equitable Communities (CFEC) parking standards would speed up their project's development. They hold the view that the planning fees associated with processing a new application that is substantially the same as the prior application should be waived. The authority to grant such a fee waiver rests with the Council. From the staff's perspective, it seems reasonable to waive these fees for processing a similar application if the new one is submitted within 12 months of when either LUBA issues its final decision, or the existing application is withdrawn by the applicant. This is because the original application was previously reviewed and approved by the city, and the issues currently under appeal mainly revolve around conflicts between state and city requirements, which are beyond the applicant's control. *[Fees for resubmittal would otherwise be $31,914.50 for Annexation, Site Design Review for 230 units & Outline Plan approval for a 12-lot subdivision.]*

SUGGESTED NEXT STEPS

If the Council concurs with the Planning Commission's recommended approach, the Council can choose to conduct the first reading of the ordinance and move the ordinance to second reading. The Council

will also need to adopt written findings formalizing tonight's decision, and if accepting the Planning Commission's recommendations, the Commission's findings could be adopted by the Council and attached to the ordinance.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

- ❑ I move approval of first reading of the ordinance and scheduling of second reading of the ordinance for October 17, 2023; and to adopt the Planning Commission's recommendations and findings as an attachment thereto.
- ❑ I move to approve a fee waiver if a substantially similar application is resubmitted by the applicant within 12 months.

REFERENCES & ATTACHMENTS

The full record for the original application can be reviewed on-line at:
https://www.ashland.or.us/grandterrace.

Attachment 1: Ordinance #3225
Attachment 2: Ordinance Exhibit A: Planning Commission Findings, Orders & Recommendations
Attachment 3: August 8th Planning Commission Packet
Attachment 4: August 8th Planning Commission Minutes
Attachment 5: August 8th Planning Commission Testimony Received

ORDINANCE NO. 3225

AN ORDINANCE AMENDING ORDINANCE #3215 TO RESPOND TO ISSUES RAISED WITH THE GRAND TERRACE ANNEXATION REMAND WITH REGARD TO ON-STREET PARKING AND AFFORDABLE HOUSING UNITS SIZES (Grand Terrace Annexation – Planning Action #PA-T3-2022-00004)

WHEREAS, the Ashland City Council adopted Ordinance #3215 annexing the property at 1511 Highway 99 North and adjacent railroad corridor and state highway right-of-way and withdrawing the annexed area from Jackson County Fire District #5 on December 20, 2022.

WHEREAS, the City's approval of the annexation and associated land use approvals to subdivide the property into ten building buildable lots and two common/open space lots and develop 230 small apartments including at least 38 required affordable units was subsequently appealed to the Oregon Land Use Board of Appeals (LUBA) by Rogue Advocates.

WHEREAS, after considering the matter on appeal, LUBA remanded the application back to the city with regard to further address two specific elements of the original decision: 1) That the city erred in approving an exception to the on-street parking requirement in AMC 18.3.9.060; and 2) That the affordable unit sizes as approved do not comply with AMC 18.5.8.050.G.3 which requires that affordable studios be a minimum of 350 square feet and that affordable one-bedroom units be a minimum of 500 square feet.

WHEREAS, the Planning Commission conducted a limited public hearing focused on the two remand issues on August 8, 2023 and adopted specific recommendations to the Council on September 9, 2023. The Planning Commission found that requiring on-street parking in this instance did not result in a clear and objective procedure as required under ORS 197.307(4) both because it put the applicant in a position of providing on-street parking required by the City on a state facility where on-street parking is not allowed, and because the city's Performance Standards Options subdivision chapter (AMC 18.3.9) requires a two-step application process that, with the implementation of the state Climate-Friendly and Equitable Communities rules under OAR 660-012-430 to -440, means that the applicant's must plan for parking required in the first step in the application process but which will not be required in the second step which does

not provide a clear path to developing needed and affordable housing. With regard to the affordable unit size issue, the Planning Commission found that a *de minimus* adjustment of the one-bedroom units sizes by shifting a door three-inches into a recessed entry could satisfy the minimum affordable unit size requirements of the city's code.

WHEREAS, the Ashland City Council conducted a limited public hearing focused on the two remand issues on October 3, 2023 and after considering the Planning Commission's recommendations and the testimony presented during the limited public hearing, the Ashland City Council concurred with the Planning Commission's recommendations and adopted the Planning Commission's findings with regard to both remand issues.

THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. The City Council hereby adopts the Findings, Conditions and Orders which are attached hereto as Exhibit A of this ordinance. These findings include a revised condition #7e which is hereby adopted as a condition of the original land use approval (PA-T3-2022-00004) to replace the original condition #7e. These Findings, Conditions and Orders supplement the original written findings which were adopted in conjunction with Ordinance #3215.

The foregoing ordinance was first read by title only in accordance with Article X, Section 2(C) of the City Charter on the _____day of _____, 2023, and duly PASSED and ADOPTED this ____ day of _____, 2023.

ATTEST: _____
Dana Smith, Clerk of the Council Pro Tem

SIGNED and APPROVED this ____ day of _____, 2023.

_____
Tonya Graham, Mayor

Reviewed as to form: _____
Douglas M. McGeary, Acting City Attorney

BEFORE THE PLANNING COMMISSION
September 12, 2023

IN THE MATTER OF PLANNING ACTION #PA-T3-2022-00004, A REMAND OF THE ANNEXATION OF 16.86 ACRES LOCATED AT 1511 HIGHWAY 99 NORTH INTO THE CITY OF ASHLAND, ALONG WITH 6.6 ACRES OF ADJACENT OREGON DEPARTMENT OF TRANSPORTATION (ODOT) STATE HIGHWAY RIGHT-OF-WAY AND 7.68 ACRES OF CALIFORNIA, OREGON & PACIFIC (CORP) RAILROAD PROPERTY. THE PROPERTIES ARE CURRENTLY LOCATED IN JACKSON COUNTY AND ARE ZONED RURAL RESIDENTIAL (RR-5); WITH ANNEXATION THESE PROPERTIES WOULD BE BROUGHT INTO THE CITY AS LOW-DENSITY, MULTI-FAMILY RESIDENTIAL (R-2). CONCURRENT WITH ANNEXATION, THE APPLICANT ALSO REQUESTS OUTLINE PLAN SUBDIVISION APPROVAL TO CREATE 12 LOTS; SITE DESIGN REVIEW APPROVAL TO CONSTRUCT 230 APARTMENTS IN TEN BUILDINGS INCLUDING AT LEAST 38 AFFORDABLE UNITS; EXCEPTIONS TO THE STREET DESIGN STANDARDS; AND TREE REMOVAL PERMITS TO REMOVE TWO TREES GREATER THAN SIX-INCHES IN DIAMETER-AT-BREAST-HEIGHT (DBH).

FINDINGS, CONCLUSIONS & ORDERS

OWNER: LINDA ZARE/CASITA DEVELOPMENTS, LLC
APPLICANT: CASITA DEVELOPMENTS, LLC

RECITALS:

1) Tax lots #1700 and #1702 of Map 38 1E 32 are located at 1511 Highway 99 North, are presently outside the city limits within the city's urban growth boundary, and are currently zoned RR-5, Jackson County Rural Residential.

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

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

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

A. *The annexed area is within the City's Urban Growth Boundary.*

B. *The annexation proposal is consistent with the Comprehensive Plan plan designations applicable to the annexed area, including any applicable adopted neighborhood, master, or area plan, and is an allowed use within the proposed zoning.*

C. *The annexed area is contiguous with the city limits.*

D. *Adequate City facilities for the provision of water to the annexed area as determined by the Public Works Department; the transport of sewage from the annexed area to an approved waste water treatment facility as determined by the Public Works Department; the provision of electricity to the annexed area as determined by the Electric Department; urban storm drainage as determined by the Public Works Department can and will be provided from the annexed area. Unless the City has declared a moratorium based upon a shortage of water, sewer, or electricity, it is recognized that adequate capacity exists system-wide for these facilities. All required public facility improvements shall be constructed and installed in accordance with 18.4.6.030.A.*

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

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

2. For bicycle transportation safe and accessible bicycle facilities according to the safety analysis and standards of the governing jurisdiction of the facility or street (e.g., City of Ashland, Jackson County, Oregon Department of Transportation)

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

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

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

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

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

G. *Except as provided in 18.5.8.050.G.7, below, annexations with a density or potential density of four residential units or greater and involving residential zoned lands, or*

commercial, employment or industrial lands with a Residential Overlay (R-Overlay) shall meet the following requirements.

1. *The total number of affordable units provided to qualifying buyers, or to qualifying renters, shall be equal to or exceed 25 percent of the base density as calculated using the unit equivalency values set forth herein. The base density of the annexed area for the purpose of calculating the total number of affordable units in this section shall exclude any unbuildable lots, parcels, or portions of the annexed area such as existing streets and associated rights-of-way, railroad facilities and property, wetlands, floodplain corridor lands, water resource areas, slopes greater than 35 percent, or land area dedicated as a public park.*

    a. *Ownership units restricted to households earning at or below 120 percent the area median income shall have an equivalency value of 0.75 unit.*

    b. *Ownership units restricted to households earning at or below 100 percent the area median income shall have an equivalency value of 1.0 unit.*

    c. *Ownership or rental units restricted to households earning at or below 80 percent the area median income shall have an equivalency value of 1.25 unit.*

2. *As alternative to providing affordable units per section 18.5.8.050.G.1, above, the applicant may provide title to a sufficient amount of buildable land for development complying with subsection 18.5.8.050.G.1.b, above, through transfer to a non-profit (IRC 501(3)(c) affordable housing developer or public corporation created under ORS 456.055 to 456.235.*

    a. *The land to be transferred shall be located within the project meeting the standards set forth in sections 18.5.8.050.G.5 and 18.5.8.050.G.6.*

    b. *All needed public facilities shall be extended to the area or areas proposed for transfer.*

    c. *Prior to commencement of the project, title to the land shall be transferred to the City, an affordable housing developer which must either be a unit of government, a non–profit 501(C)(3) organization, or public corporation created under ORS 456.055 to 456.235.*

    d. *The land to be transferred shall be deed restricted to comply with Ashland's affordable housing program requirements.*

    e. *Transfer of title of buildable land in accordance with this subsection shall exempt the project from the development schedule requirements set forth in 18.5.8.050.G.4.*

3. *The affordable units shall be comparable in bedroom mix with the market rate units in the development.*

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

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

4. *A development schedule shall be provided that demonstrates that that the affordable housing units per subsection 18.5.8.050.G shall be developed, and made available for occupancy, as follows.*

   a. *That 50 percent of the affordable units shall have been issued building permits prior to issuance of a certificate of occupancy for the last of the first 50 percent of the market rate units.*

   b. *Prior to issuance of a building permit for the final ten percent of the market rate units, the final 50 percent of the affordable units shall have been issued certificates of occupancy.*

5. *That affordable housing units shall be constructed using comparable building materials and include equivalent amenities as the market rate units.*

   a. *The exterior appearance of the affordable units in any residential development shall be visually compatible with the market-rate units in the*

development. External building materials and finishes shall be substantially the same in type and quality for affordable units as for market-rate units

b. *Affordable units may differ from market-rate units with regard to floor area, interior finishes and materials, and housing type provided that the affordable housing units are provided with comparable features to the market rate units, and shall have generally comparable improvements related to energy efficiency, including plumbing, insulation, windows, appliances, and heating and cooling systems.*

6. *Exceptions to the requirements of 18.5.8.050, subsections G.2 – G.5, above, may be approved by the City Council upon consideration of one or more of the following.*

a. *That an alternative land dedication as proposed would accomplish additional benefits for the City, consistent with the purposes of this chapter, then would development meeting the on-site dedication requirement of subsection 18.5.8.050.G.2.*

b. *That the alternative phasing proposal not meeting subsection 18.5.8.050.G.4 provided by the applicant provides adequate assurance that the affordable housing units will be provided in a timely fashion.*

c. *That the materials and amenities applied to the affordable units within the development, that are not equivalent to the market rate units per subsection 18.5.8.050.G.5, are necessary due to local, State, or Federal Affordable Housing standards or financing limitations.*

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

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

1. *The annexation proposal shall meet the requirements of subsection 18.5.8.080.B, above.*

2. *A current or probable danger to public health exists within the proposed area for annexation due to lack of full City sanitary sewer or water services in accordance with the criteria in ORS Chapter 222 or successor state statute.*

3. *Existing development in the proposed area for annexation has inadequate water or sanitary sewer service, or the service will become inadequate within one year.*

4. *The proposed area for annexation has existing City water or sanitary sewer service extended, connected, and in use, and a signed consent to annexation agreement has been filed and accepted by the City.*

5. *The proposed area for annexation is an island surrounded by lands within the city limits.*

I. Exceptions and Variances to the Annexation Approval Criteria and Standards. *The approval authority may approve exceptions to and variances from the approval criteria and standards in this section using the criteria in section 18.4.6.020.B.1 Exceptions to the Street Design Standards or chapter 18.5.5. Variances.*

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

Approval Criteria for Outline Plan. *The Planning Commission shall approve the outline plan when it finds all of the following criteria have been met:*

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

Approval of the Outline Plan.

a. *After the City approves an outline plan and adopts any zone change necessary for the development, the developer may then file a final plan in phases or in its entirety.*
b. *If an outline plan is phased, 50 percent of the value of the common open space shall be provided in the first phase and all common open space shall be provided when two-thirds of the units are finished.*

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

A. ***Underlying Zone:*** *The proposal complies with all of the applicable provisions of the underlying zone (part 18.2), including but not limited to: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other applicable standards.*

B. ***Overlay Zones:*** *The proposal complies with applicable overlay zone requirements (part 18.3).*

C. ***Site Development and Design Standards:*** *The proposal complies with the applicable Site Development and Design Standards of part 18.4, except as provided by subsection E, below.*

D. ***City Facilities:*** *The proposal complies with the applicable standards in section 18.4.6 Public Facilities and that adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the property and adequate transportation can and will be provided to the subject property.*

E. ***Exception to the Site Development and Design Standards.*** *The approval authority may approve exceptions to the Site Development and Design Standards of part 18.4 if the circumstances in either subsection 1 or 2, below, are found to exist.*

1. *There is a demonstrable difficulty meeting the specific requirements of the Site Development and Design Standards due to a unique or unusual aspect of an existing structure or the proposed use of a site; and approval of the exception will not substantially negatively impact adjacent properties; and approval of the exception is consistent with the stated purpose of the Site Development and Design; and the exception requested is the minimum which would alleviate the difficulty.; or*
2. *There is no demonstrable difficulty in meeting the specific requirements, but granting the exception will result in a design that equally or better achieves the stated purpose of the Site Development and Design Standards.*

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

1. ***Hazard Tree.*** *A Hazard Tree Removal Permit shall be granted if the approval authority finds that the application meets all of the following criteria, or can be made to conform through the imposition of conditions.*

a. *The applicant must demonstrate that the condition or location of the tree presents a clear public safety hazard (i.e., likely to fall and injure persons or property) or a foreseeable danger of property damage to an existing structure or facility, and such hazard or danger cannot reasonably be alleviated by treatment, relocation, or pruning. See definition of hazard tree in part 18.6.*

b. The City may require the applicant to mitigate for the removal of each hazard tree pursuant to section 18.5.7.050. Such mitigation requirements shall be a condition of approval of the permit.

*2. **Tree That is Not a Hazard.** A Tree Removal Permit for a tree that is not a hazard shall be granted if the approval authority finds that the application meets all of the following criteria, or can be made to conform through the imposition of conditions.*

a. The tree is proposed for removal in order to permit the application to be consistent with other applicable Land Use Ordinance requirements and standards, including but not limited to applicable Site Development and Design Standards in part 18.4 and Physical and Environmental Constraints in part 18.3.10.

b. Removal of the tree will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks.

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

d. Nothing in this section shall require that the residential density to be reduced below the permitted density allowed by the zone. In making this determination, the City may consider alternative site plans or placement of structures of alternate landscaping designs that would lessen the impact on trees, so long as the alternatives continue to comply with the other provisions of this ordinance.

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

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

a. There is demonstrable difficulty in meeting the specific requirements of this chapter due to a unique or unusual aspect of the site or proposed use of the site.

b. The exception will result in equal or superior transportation facilities and connectivity considering the following factors where applicable.

i. For transit facilities and related improvements, access, wait time, and ride experience.

ii. For bicycle facilities, feeling of safety, quality of experience (i.e., comfort level of bicycling along the roadway), and frequency of conflicts with vehicle cross traffic.

iii. For pedestrian facilities, feeling of safety, quality of experience (i.e., comfort level of walking along roadway), and ability to safety and efficiency crossing roadway.

c. *The exception is the minimum necessary to alleviate the difficulty.*

d. *The exception is consistent with the Purpose and Intent of the Street Standards in subsection 18.4.6.040.A.*

8) The Planning Commission, following proper public notice held a public hearing on September 13, 2022 at which time testimony was received and exhibits were presented both in person and via Zoom. Prior to the conclusion of this initial evidentiary hearing, participant Steve Rouse representing Rogue Advocates requested an opportunity to present additional evidence, arguments or testimony regarding the application as provided in ORS 197.797(6)(a). The Planning Commission granted this request by continuing the public hearing to October 11, 2022 at 7:00 p.m. at the Ashland Civic Center at 1175 East Main Street.

The Planning Commission reconvened the continued hearing on October 11, 2022 and an opportunity was provided at this continued hearing for persons to present and rebut new evidence, arguments or testimony. Subsequent to the closing of the hearing and the record, the Planning Commission approved the request for Outline Plan subdivision approval to create 12 lots; Site Design Review to construct 230 apartments in ten buildings including at least 38 affordable units; Exceptions to the Street Design Standards; and Tree Removal Permits to remove two trees greater than six-inches in diameter at breast height subject to the City Council's approval of the Annexation request. The Planning Commission also adopted a recommendation that the City Council approve the Annexation request subject to a number of conditions.

9) The City Council, following proper public notice held a public hearing and conducted first reading of an ordinance annexing the property and withdrawing it from Fire District #5 on December 6, 2022, at which time testimony was received and exhibits were presented. Subsequent to the closing of the hearing, the City Council approved the Annexation request subject to a number of conditions. The second reading of the annexing ordinance was conducted on December 20, 2022.

10) Subsequent to the City's approval of the application and mailing of a Notice of Decision, the approval was timely appealed to the Oregon Land Use Board of Appeals (LUBA) by Rogue Advocates. After considering the application on the appeal, LUBA remanded the decision back to the City with regard to two issues:

1) That the city erred in approving an exception to the on-street parking requirement in AMC 18.3.9.060; and
2) That the affordable unit sizes as approved do not comply with AMC 18.5.8.050.G.3 which requires that affordable studios be a minimum of 350 square feet and that affordable one-bedroom units be a minimum of 500 square feet.

11) The Planning Commission, following proper public notice held a limited public hearing on August 8, 2023, at which time testimony was received and exhibits were presented. As explained in the Notice of Public Hearing, this hearing was strictly limited to consideration of the two remand issues. Subsequent to the closing of the limited hearing and the record, the Planning Commission found that with regard to the first remand issue dealing with on-street parking requirements, the Climate Friendly and Equitable Community parking rules as adopted under OAR660-012-430(3) could be appropriately applied here to not require either on- or off-street parking, and the findings for the original approval amended accordingly. With regard to the minimum size requirements for affordable units, in relation to the stipulated conditions for approval, it

should be noted that the initial approval criteria mandated adherence to the specifications outlined in 18.5.8.050.G. This encompassed the requisite fulfillment of the minimal unit dimensions as outlined in Table 18.5.8.G.3. To elucidate, the original condition of approval could be satisfied through the presentation of architectural layouts by the applicant. These layouts demonstrated the feasibility of accommodating augmented floor areas within the existing building footprints.

The Commission determined that the concern raised in this subsequent remand review is effectively resolved by increasing the size of the one-bedroom units by a *de minimis* amount to comply with AMC 18.5.8.050.G3 and making clear that as configured in the original proposal the studio units need not be considered among the required affordable units. This resolution entails a slight augmentation in the dimensions of the one-bedroom units, an alteration adding one-half of a square-foot to each designated affordable unit, ensuring compliance with AMC 18.5.8.050.G.3. Furthermore, the commission clarified that, as per the initial proposal's configuration, the studio units need not be regarded as mandated affordable units.

In light of this determination, the Planning Commission recommended a modification to the wording of the original condition #7e for the purposes of clarity. Moreover, it proposed that the City Council adopt this course of action in its response to the remand review process. Now, therefore, with regard to the two remand issues, the Planning Commission of the City of Ashland finds, concludes and recommends as follows:

SECTION 1. EXHIBITS

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

Staff Exhibits lettered with an "S"

Proponent's Exhibits, lettered with a "P"

Opponent's Exhibits, lettered with an "O"

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

SECTION 2. FINDINGS & CONCLUSIONS

2.1 The Planning Commission finds that it has received all information necessary to make a decision with regard to the two remand issues, and to make a recommendation to the City Council based on the staff's report, public hearing testimony and the exhibits received.

2.2 The Planning Commission notes that the originally approved application included a request for Outline Plan subdivision approval under the Performance Standards Options (Chapter 18.3.9) to create ten buildable lots and two common open space properties. During the public hearing process, the Planning Commission noted that AMC 18.3.9.060 dealing with Parking Standards for subdivisions proposed under AMC 18.3.9 requires that:

All development under this chapter shall conform to the following parking standards, which are in addition to the requirements of chapter 18.4.3, Parking, Access, and Circulation.

A. On-Street Parking Required. *At least one on-street parking space per dwelling unit shall be provided, in addition to the off-street parking requirements for all developments in an R-1 zone, with the exception of cottage housing developments, and for all developments in R-2 and R-3 zones that create or improve public streets.*

B. On-Street Parking Standards. *On-street parking spaces shall be immediately adjacent to the public right-of-way on publicly or association-owned land and be directly accessible from public right-of-way streets. On-street parking spaces shall be located within 200 feet of the dwelling that it is intended to serve. In addition, on-street public* parking may be provided pursuant to minimum criteria established under subsection 18.4.3.060.A.

The Planning Commission finds that while no Variance or Exception to this standard was requested as part of the original application, the Planning Commission at the time determined that AMC 18.3.9.060 was applicable, that an Exception to the Street Design Standards was the appropriate procedure if on-street parking could not be provided, and that such an Exception was merited.

The Planning Commission notes that new Climate-Friendly and Equitable Communities (CFEC) rules were adopted July 21, 2022, by the Land Conservation and Development Commission (LCDC) in response to Executive Order #20-04 by Governor Kate Brown and took effect August 17, 2022. The CFEC rules address how cities may regulate a variety of land use and transportation issues, including a number of changes to the ways cities may regulate parking. Among these new CFEC rules:

- Oregon Administrative Rule (OAR) 660-012-0430(2) states that "*Cities and counties may not require more than one **parking space** per unit in residential developments with more than one dwelling unit on a single legally established property.*" **Parking spaces** are defined in OAR 660-012-00005(29) as meaning "*... on and off-street spaces designated for automobile parking, other than parking spaces reserved for carpools, vanpools, or parking under the Americans with Disabilities Act.*"
- OAR 660-012-430(3) states that, "*Cities and counties may not require parking for the following development types.... (d) Residential units smaller than 750 square feet; (e) Affordable housing as defined in OAR 660-039-0010;*" The Planning Commission notes here that all of the residential units proposed in the application under consideration are smaller than 750 square feet, and under the new CFEC rules the city may not require parking for this development type.
- OAR 660-012-440(3) states that "*Cities and counties may not enforce **parking mandates** for development on a lot or parcel that includes land within one-half mile of frequent transit corridors, including... corridors with the most frequent transit route or routes in the community if the scheduled frequency is at least once per hour during peak service.*" In OAR 660-012-00005(27),

parking mandates are defined as "*requirements to include a minimum number of off-street parking spaces with development or redevelopment, or a fee-in-lieu of providing parking for residential development.*" In this instance, the Rogue Valley Transit District's (RVTDs) Route 10 runs on Highway 99 North, which fronts directly on the subject properties here, with a peak hour scheduled frequency of every 20 minutes, and as such qualifies as frequent transit. Under the new CFEC rules, Ashland may not enforce parking mandates (i.e., require off-street parking) for the subject properties.

The Planning Commission further notes that under OAR 660-012-0012(5)(e) cities and counties were required to "*implement the requirements of OAR 660-012-0430 and 660-012-0440 when reviewing development applications submitted after December 31, 2022.*" Guidance from the Department of Land Conservation and Development (DLCD) has been that cities must either modify their regulations or implement these new rules directly from the OAR and disregard local regulations. Ashland is in the process of amending its parking codes to comply with these new CFEC parking rules, and others which took effect on June 30, 2023, and has received an extension allowing these code amendments to occur no later than December 31, 2023. In the interim, the City has been directly applying the applicable state rules.

With regard to the current application, the Planning Commission notes that it was initially submitted on July 8, 2022, however it remains in process now more than eight months after these new CFEC rules have taken effect. The Commission further notes that the Performance Standards subdivision process requires a preliminary or outline plan review followed by a final plan review, so prior to the physical development of the site, another development application for final plan approval will be required at which time the applicant will not be subject to parking requirements under the new CFEC rules and could request to amend their proposal as it relates to parking.

The Planning Commission further finds that Oregon Revised Statute (ORS) 197.307(4) requires that local governments adopt and apply only clear and objective standards, conditions, and procedures regulating the development of housing, including "needed housing." Standards and conditions may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay. This is to ensure that communities do not use discretionary or subjective criteria to deny housing projects. The Planning Commission finds that the rules having changed so that an applicant proposing needed housing is subject to one set of rules for the first part of a two-part application process and a different set of rules for the second part of the procedure does not provide the applicant a clear path to approval without unreasonable cost or delay. In addition, the city's parking on-street parking requirement under AMC 18.3.9.060 in this instance would require that the applicant install on-street parking facilities on a state highway for which the city has no jurisdiction and where on-street parking is not allowed by the Oregon Department of Transportation (ODOT), which regulates this roadway. The Planning Commission finds that the city's on-street parking standard being in direct conflict with ODOT's standard for the roadway does not provide a clear procedure for the applicant to move forward without unreasonable cost or delay. As such, the Planning Commission finds that this standard should not be applied to the application.

The Planning Commission believes that the Council has the discretion to assess the current request based on the new CFEC rules, which remove the requirement for parking since all proposed residential units are smaller than 750 square feet. The CFEC parking regulations have been in effect for eight months, and the LUBA remand for further review here means the final decision of the City on this application is occurring well after the new regulations were implemented. In addition, the applicant will be required to submit a second development application, Final Plan review, during which the city will be unable to enforce parking requirements under the new Climate Friendly and Equitable Communities rules. The Planning Commission further finds that to comply with ORS 197.307(4), which requires that the City apply only clear and objective standards, conditions, and procedures, when regulating the development of housing, the on-street parking standard in AMC 18.3.9.060 should not be applied. The Planning Commission accordingly recommends that the application be considered by the City Council under the current State law specified in OAR 660-012-0430 and -0440, without requiring on- or off-street parking given the size of the proposed residential units.

DLCD's implementation guidance to cities notes that the parking rule changes seek to help "*meet Oregon's climate pollution reduction targets, while providing more housing and transportation choices and improving equity.*" The Planning Commission finds that applying the new parking rules to a project that combines small market rate units with deed-restricted affordable housing, situated on a transit route and providing substantial improvements to support both transit and pedestrian travel is exactly what the Climate Friendly and Equitable Communities rules seek to enable, and requiring an applicant to withdraw and reapply with an identical proposal now in order to be subject to the new rules, when their application is still in process eight months after the new rules have taken effect, would pose an unreasonable impediment which would discourage the production of needed housing during a housing crisis.

2.3 The Planning Commission notes that the original application identified each of the ten identical buildings proposed as containing 20 one-bedroom units of 499.5 square feet each, and three studio units of 250 square feet each. Two of these ten buildings were to be relied on in meeting the affordability requirements, which were a total of 38 deed restricted affordable units assuming that the applicant either builds the units themselves or does so in cooperation with a non-profit affordable housing provider partner.

AMC 18.5.8.050.G.3 requires that the minimum square footage for affordable one-bedroom units be 500 square feet, and that the minimum square footage for affordable studios be 350 square feet. The adopted conditions relating to affordability were as follows:

> **Condition #7e.** *[That prior to final approval and annexation of the property, the applicant shall provide:]* A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that where the required number of affordable units is fractional it shall be rounded up, and that should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI.
>
> **Condition #10g.** If the applicant opts to dedicate land area to a non-profit affordable housing developer, dedication shall occur in a manner consistent with AMC 18.5.8.050.G.2 and

recording of deed restrictions guaranteed affordability described herein shall occur in conjunction with plat signature and recording.

The Commission notes that the approval was remanded by LUBA on the basis "That the affordable unit sizes as approved do not comply with AMC 18.5.8.050.G.3 which requires that affordable studios be a minimum of 350 square feet and that affordable one-bedroom units be a minimum of 500 square feet."

In response to this issue, the applicant has provided a revised floor plan demonstrating how the floor area of the one-bedroom units could be modified by reducing their recessed entry depth by three-inches to achieve the required 500 square feet per affordable one-bedroom unit.

- **AS PROPOSED:** 12.5 x 42 = 525 square feet less 25.98 square feet for recessed entry = 499.02 square feet.
- **AS MODIFIED:** 12.5 x 42 = 525 square feet less 24.8975 feet for recessed entry = 500.1025 square feet.

In addition, the applicant notes that affordable basement level studios could be modified to be 499.5 square feet to significantly exceed the required 350 square feet per affordable studio unit.

The Planning Commission notes that the affordability requirements for the project call for 38 affordable units to be provided. Each building proposed has 20 one-bedroom units and three studio units, and assuming that two buildings will be developed by an affordable housing provider partner or the applicant themselves, the 38 required affordable units could be accommodated entirely with one-bedroom units, leaving one one-bedroom unit and three studios in each of the two buildings to be rented at market rate or provided as voluntarily affordable, rather than being deed-restricted as affordable. Those units not required as affordable would not subject to the square footage requirements of AMC 18.5.8.050.G.3.

The Planning Commission finds that the original condition intended that the units' sizes would be adjusted a de minimis amount (*i.e., a three-inch adjustment to recessed entry depth*) to comply with AMC 18.5.8.050.G, however this should have been articulated in the condition itself. The Commission finds that the second remand issue can be fully addressed by increasing the size of the one-bedroom units by a *de minimis* amount to comply with AMC 18.5.8.050.G.3 and by making clear in the findings that as configured in the original proposal the studio units need not be considered among the required affordable units. The Planning Commission accordingly recommends that the City Council modify the previous Condition #7e as follows:

> **Condition #7e.** A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that: **1)** where the required number of affordable units is fractional it shall be rounded up, **2) ~~and~~** that should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI, **and 3) that each of the required affordable units comply with the minimum affordable units size requirements of AMC 18.5.8.050.G.3, with one bedroom affordable units being a**

minimum of 500 square feet, and any affordable studio units being a minimum of 350 square feet.

2.4 The Planning Commission finds that while the project's density was not an issue under remand, the appellant has provided written testimony questioning the project density both in the original proposal and as modified here through the increase in square footage of the affordable units to comply with AMC 18.5.8.050.G.3. The Planning Commission finds that the *de minimis* increase in affordable unit sizes does nonetheless affect the project density, and as such needs to be addressed. The Planning Commission first notes that no density bonuses were granted with the original proposal. The *base* density of the subject property is 185.625 units (13.75 buildable acres x 13.5 units/acre). The *minimum* density of the subject property as required for annexation is 167.0625 units (0.90 x 185.625). The Planning Commission further notes that as initially proposed, all units were less than 500 square feet, and units less than 500 square feet are counted as 0.75 units for purposes of density calculations as detailed in AMC 18.2.5.080.B.2. The density as originally proposed was 172.5 units (230 x 0.75 units).

The Planning Commission finds that the increase in size of the 38 affordable units from 499.5 square feet to 500 square feet to comply with the minimum affordable unit size requirement will increase the project density to 182 units ([192 x 0.75 units] + [38 x 1.0 units]). The Planning Commission concludes that this is within the 185.625 unit base density of the property without the grant of any bonuses and that it exceeds the minimum 167.0625 unit density required for annexation.

SECTION 3. DECISION

3.1 The issues remanded to the City are limited to addressing the on-street parking requirements of AMC 18.3.9.060, and to the minimum size requirements for studio and one-bedroom affordable units under AMC 18.5.8.050.G.3.

For the first remand issue regarding on-street parking, the Commission notes that the application was initially submitted on July 8, 2022, but remains in process, now more than eight months after new Climate Friendly & Equitable Communities (CFEC) rules limiting cities' abilities to require parking took effect. In addition, the Performance Standards subdivision process requires outline plan review, as requested here, followed by a final plan review, so prior to the physical development of the site, another development application for final plan approval will be required at which time the application will no longer be subject to parking requirements under the new CFEC rules and the applicant could request to amend their proposal as it relates to parking. Oregon Revised Statutes (ORS) 197.307(4) require that local governments adopt and apply only clear and objective standards, conditions, and procedures regulating the development of housing, including "needed housing." The proposal here involves market-rate and deed-restricted affordable multi-family residential rental units, both of which are needed housing types locally. Standards and conditions may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay. The Planning Commission finds that rules relating to parking having changed so that an applicant proposing needed housing is subject to one set of rules for the first part of a two-part application process and a different set of rules for the second part of the procedure does not provide the applicant a clear path to their development approval without unreasonable cost or delay. In addition, the city's on-street parking requirement under AMC 18.3.9.060 in this instance requires that

the applicant install on-street parking facilities on a state highway for which the city has no jurisdiction and where on-street parking is not allowed by the Oregon Department of Transportation (ODOT), which has jurisdiction over improvements to the highway. The Planning Commission finds that the city's on-street parking standard being in direct conflict with the standards of the jurisdiction with authority for the roadway does not provide a clear procedure for the applicant to move forward without unreasonable cost or delay. As such, the Planning Commission finds that the on-street parking standard should not be applied to the application, and it should instead be considered in light of the new CFEC parking rules.

The Department of Land Conservation and Development (DLCD) implementation guidance to cities notes that the parking rule changes seek to help "*meet Oregon's climate pollution reduction targets, while providing more housing and transportation choices and improving equity.*" The Planning Commission finds that applying the new parking rules to a project that combines small market rate units with deed-restricted affordable housing, situated on a transit route and providing substantial improvements to support both transit and pedestrian travel is exactly what the Climate Friendly and Equitable Communities rules seek to enable. The Planning Commission further finds that requiring an applicant to withdraw and reapply with an identical proposal now in order to be subject to the new rules, when their application is still in process eight months after the new rules have taken effect, is not a clear or objective process and would pose an unreasonable impediment which would discourage the production of needed housing during a housing crisis.

For the second remand issue, the Planning Commission notes that the original application identified each of the ten identical buildings proposed as containing 20 one-bedroom units of 499.5 square feet each, and three studio units of 250 square feet each. Two of these ten buildings were to be relied on in meeting the affordability requirements, which were a total of 38 deed restricted affordable units assuming that the applicant either builds the units themselves or does so in cooperation with a non-profit affordable housing provider partner. AMC 18.5.8.050.G.3 requires that the minimum square footage for affordable one-bedroom units be 500 square feet, and that the minimum square footage for affordable studios be 350 square feet. In response to this discrepancy between the proposed and required affordable unit sizes, the applicant has provided a revised floor plan demonstrating that the one-bedroom units could be modified with a de minimis reduction in their recessed entry depth (i.e., reducing the depth by three-inches) to achieve the required 500 square feet per affordable one-bedroom unit. The applicant further indicates that the affordable basement level studios could be modified to be 499.5 square feet to significantly exceed the required 350 square feet per affordable studio unit.

The Planning Commission finds that the affordability requirements for the project call for 38 affordable units to be provided. Each building proposed has 20 one-bedroom units and three studio units, and assuming that two buildings will be developed by an affordable housing provider partner or the applicant themselves, the 38 required affordable units could be accommodated entirely with 19 one-bedroom units in each of the two buildings, leaving one one-bedroom unit and three studios in each of the two buildings to be rented at market rate or provided as voluntarily affordable, rather than being deed-restricted as affordable. Those units not required as affordable would not subject to the square footage requirements of AMC 18.5.8.050.G.3.

The Planning Commission finds that while the original condition intended that the units' sizes would be adjusted a de minimis amount (*i.e., a three-inch adjustment to recessed entry depth*) to comply with AMC 18.5.8.050.G, this was not clearly articulated in the condition itself. The Commissions finds that the second remand issue can be fully addressed by increasing the size of the one-bedroom units by a *de minimis* amount to comply with AMC 18.5.8.050.G.3 and by making clear in the findings that as configured in the original proposal the studio units need not be considered among the required affordable units. The Planning Commission accordingly recommends that the City Council modify the previous Condition #7e as follows:

> **Condition #7e.** A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that: **1)** where the required number of affordable units is fractional it shall be rounded up, **2)** ~~**and**~~ that should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI, **and 3) that each of the required affordable units comply with the minimum affordable units size requirements of AMC 18.5.8.050.G.3, with one bedroom affordable units being a minimum of 500 square feet, and any affordable studio units being a minimum of 350 square feet.**

The Planning Commission recommends that the City Council find that the Climate Friendly & Equitable Communities parking rules are appropriate for this planning action, that neither on- or off-site street parking are required in this case, and that the findings for the original approval should be amended accordingly.

Therefore, based on our overall conclusions, the Planning Commission recommends that the City Council adopt findings addressing the two remand issues as discussed above, and modify existing Condition #7e as detailed below, with all other conditions to remain as originally adopted:

> **#7e)** A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that: **1)** where the required number of affordable units is fractional it shall be rounded up, **2)** ~~**and**~~ that should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI, **and 3) that each of the required affordable units comply with the minimum affordable units size requirements of AMC 18.5.8.050.G.3, with one bedroom affordable units being a minimum of 500 square feet, and any affordable studio units being a minimum of 350 square feet.**

Lisa S. Verner

Planning Commission Approval

September 12, 2023

Date

Planning Commission 8/08/2023
Packet Materials

TYPE III
PUBLIC HEARING

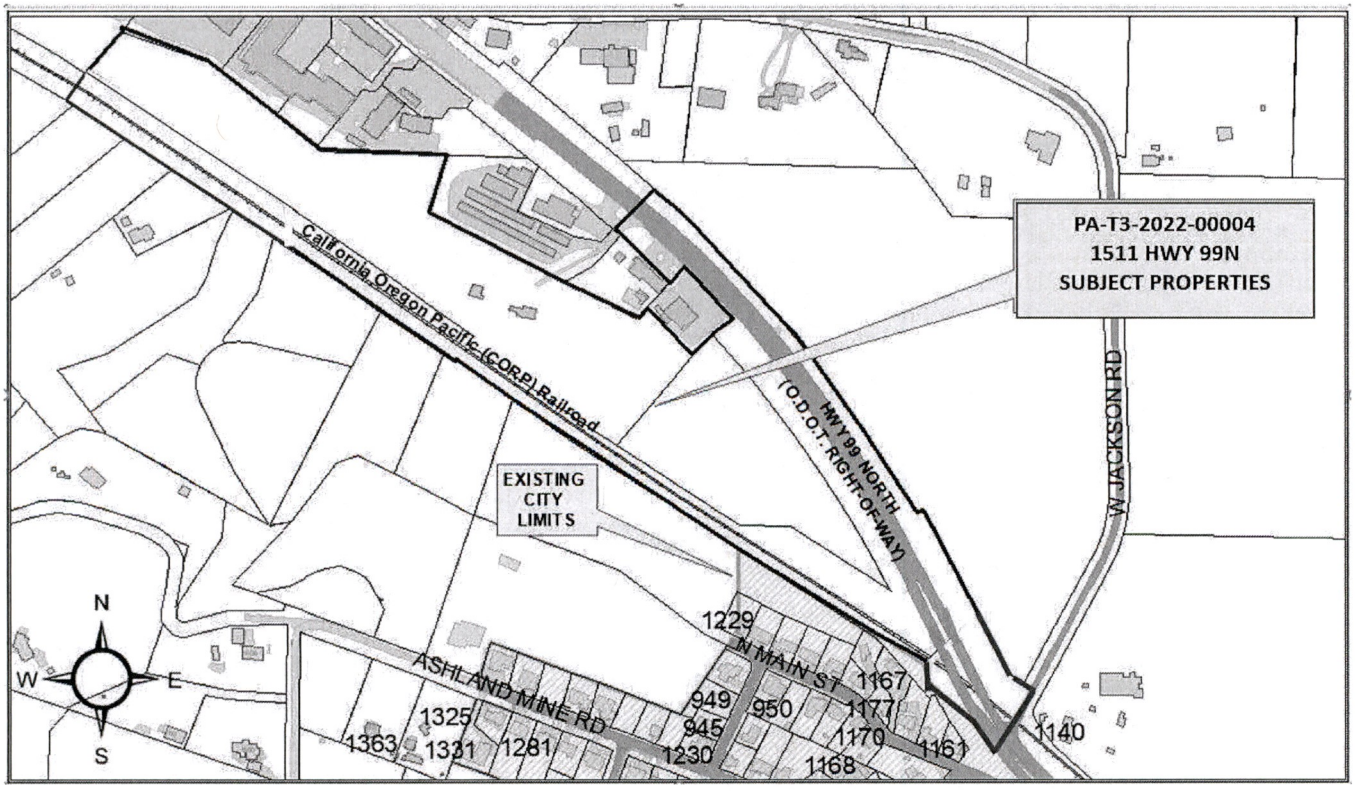
PA-T3-2022-00004
1511 Highway 99 North

Planning Department, 51 Winburn Way, Ashland, Oregon 97520
541-488-5305 Fax: 541-552-2050 www.ashland.or.us TTY: 1-800-735-2900

CITY OF ASHLAND

NOTICE OF LIMITED PUBLIC HEARING

PLANNING ACTION: PA-T3-2022-00004
SUBJECT PROPERTY: 1511 Highway 99 North
APPLICANT/OWNER: Casita Developments, LLC for owner Linda Zare
DESCRIPTION: The City Council previously approved the **Annexation** of 16.86 acres located at 1511 Highway 99 North into the City of Ashland, along with 6.6 acres of adjacent Oregon Department of Transportation state highway right-of-way and 7.68 acres of California Oregon & Pacific railroad property. These properties are located in Jackson County and zoned Rural Residential (RR-5); with Annexation they are to be brought into the City as Low Density, Multi-Family Residential (R-2). In addition to Annexation, the approved application included **Outline Plan** subdivision approval to create 12 lots; **Site Design Review** to construct 230 apartments in ten buildings including 37 affordable units; an **Exception to the Street Design Standards**; and **Tree Removal Permits** to remove two trees greater than six-inches in diameter at breast height. *This approval was appealed to the Land Use Board of Appeals (LUBA) and has been remanded to the city to consider two issues: 1) That the city erred in approving an exception to the on-street parking requirement in AMC 18.3.9.060; and 2) That the affordable unit sizes as approved do not comply with AMC 18.5.8.050.G.3 which requires that affordable studios be a minimum of 350 square feet and that affordable one-bedroom units be a minimum of 500 square feet. This Planning Commission hearing will be strictly limited in scope to the consideration of these two issues on remand.*
COMPREHENSIVE PLAN DESIGNATION: Multi-Family Residential; **ZONING: Existing** – County RR-5 Rural Residential**, Proposed –** City R-2 Low Density Multi-Family Residential; **ASSESSOR'S MAP:** 38 1E 32; **TAX LOT #'s:** 1700 & 1702



PLANNING COMMISSION LIMITED PUBLIC HEARING

Tuesday, August 8, 2023 at 7:00 p.m.
at the Ashland Civic Center/City Council Chambers, 1175 East Main Street

PLANNING COMMISSION HEARING

Notice is hereby given that the Ashland Planning Commission will hold a limited public hearing on the above described remand issues for PA-T3-2022-00004 on the meeting date and time shown above. The meeting will be held at the Ashland Civic Center/Ashland City Council Chambers at 1175 East Main Street in 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 rvtv.sou.edu and selecting '**RVTV Prime.**'

The ordinance criteria applicable to this planning action are attached to this notice. Oregon law states that failure to raise an objection concerning this application, or failure to provide sufficient specificity to afford the decision makers 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. **This hearing will be limited to the two issues on remand as they relate to the applicable criteria.**

A copy of the application, including all documents, evidence and applicable criteria relied upon by the applicant is available on-line at http://www.ashland.or.us/grandterrace. Copies of application materials will be provided at reasonable cost, if requested. A copy of the staff report will be available on-line at http://www.ashland.or.us/PCpackets seven days prior to the Planning Commission hearing. Alternative arrangements for reviewing the application can be made by contacting (541) 488-5305 or planning@ashland.or.us.

During the Public Hearing, the Planning Commission Chairperson will allow testimony from the applicant and those in attendance only concerning the two remand issues described above. The Chair shall have the right to limit the length of testimony and require that comments be restricted to the two remand issues.

Those wishing to submit written comments can do so by sending an e-mail to PC-public-testimony@ashland.or.us with the subject line "**August 8th PC Hearing Testimony**" by 10:00 a.m. on Monday, August 7, 2023. If the applicant wishes to provide a rebuttal to the testimony, they can submit the rebuttal via e-mail to PC-public-testimony@ashland.or.us with the subject line "**August 8th PC Hearing Testimony**" by 10:00 a.m. on Tuesday, August 8, 2023. *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 also be taken via Zoom during the in-person public hearing. If you wish to provide oral testimony via Zoom during the hearing, send an email to PC-public-testimony@ashland.or.us by 10:00 a.m. on Monday, August 7, 2023. In order to provide testimony at the public hearing, please provide the following information: 1) make the subject line of the email "**August 8 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.

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). If you have questions or comments concerning this request, please feel free to contact Planning Manager Derek Severson, the staff planner assigned to this application, at 541-552-2040 or e-mail: derek.severson@ashland.or.us.

AMC 18.5.8.050 Annexation Approval Criteria & Standards

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

A. The annexed area is within the City's Urban Growth Boundary.

B. The annexation proposal is consistent with the Comprehensive Plan plan designations applicable to the annexed area, including any applicable adopted neighborhood, master, or area plan, and is an allowed use within the proposed zoning.

C. The annexed area is contiguous with the city limits.

D. Adequate City facilities for the provision of water to the annexed area as determined by the Public Works Department; the transport of sewage from the annexed area to an approved waste water treatment facility as determined by the Public Works Department; the provision of electricity to the annexed area as determined by the Electric Department; urban storm drainage as determined by the Public Works Department can and will be provided from the annexed area. Unless the City has declared a moratorium based upon a shortage of water, sewer, or electricity, it is recognized that adequate capacity exists system-wide for these facilities. All required public facility improvements shall be constructed and installed in accordance with 18.4.6.030.A.

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

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

2. For bicycle transportation safe and accessible bicycle facilities according to the safety analysis and standards of the governing jurisdiction of the facility or street (e.g., City of Ashland, Jackson County, Oregon Department of Transportation) exist, or can and will be constructed. Should the annexed area border an arterial street, bike lanes shall be constructed along the arterial street frontage of the annexed area. Likely bicycle destinations within a quarter of a mile from the annexed area shall be determined and the approval authority may require the construction of bicycle lanes or multi-use paths connecting the annexed area to the likely bicycle destinations after assessing the impact of the development proposed concurrently with the annexation.

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

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

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

F. For all residential annexations, a plan shall be provided demonstrating that the development of the annexed area will ultimately occur at a minimum density of 90 percent of the base density for the zone, unless reductions in the total number of units are necessary to accommodate significant natural features, topography, access limitations, or similar physical constraints. The owner or owners of the annexed area shall sign an agreement, to be recorded with the county clerk after approval of the annexation, ensuring that future development will occur in accord with the minimum density indicated in the development plan. For purposes of computing maximum density, portions of the annexed area containing unbuildable lots, parcels, or portions of

the annexed area such as existing streets and associated rights-of-way, railroad facilities and property, wetlands, floodplain corridor lands, slopes greater than 35 percent, or land area dedicated as a public park, shall not be included.

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

1. The total number of affordable units provided to qualifying buyers, or to qualifying renters, shall be equal to or exceed 25 percent of the base density as calculated using the unit equivalency values set forth herein. The base density of the annexed area for the purpose of calculating the total number of affordable units in this section shall exclude any unbuildable lots, parcels, or portions of the annexed area such as existing streets and associated rights-of-way, railroad facilities and property, wetlands, floodplain corridor lands, water resource areas, slopes greater than 35 percent, or land area dedicated as a public park.

   a. Ownership units restricted to households earning at or below 120 percent the area median income shall have an equivalency value of 0.75 unit.

   b. Ownership units restricted to households earning at or below 100 percent the area median income shall have an equivalency value of 1.0 unit.

   c. Ownership or rental units restricted to households earning at or below 80 percent the area median income shall have an equivalency value of 1.25 unit.

2. As alternative to providing affordable units per section 18.5.8.050.G.1, above, the applicant may provide title to a sufficient amount of buildable land for development complying with subsection 18.5.8.050.G.1.b, above, through transfer to a non-profit (IRC 501(3)(c) affordable housing developer or public corporation created under ORS 456.055 to 456.235.

   a. The land to be transferred shall be located within the project meeting the standards set forth in sections 18.5.8.050.G.5 and 18.5.8.050.G.6.

   b. All needed public facilities shall be extended to the area or areas proposed for transfer.

   c. Prior to commencement of the project, title to the land shall be transferred to the City, an affordable housing developer which must either be a unit of government, a non–profit 501(C)(3) organization, or public corporation created under ORS 456.055 to 456.235.

   d. The land to be transferred shall be deed restricted to comply with Ashland's affordable housing program requirements.

   e. Transfer of title of buildable land in accordance with this subsection shall exempt the project from the development schedule requirements set forth in 18.5.8.050.G.4.

3. The affordable units shall be comparable in bedroom mix with the market rate units in the development.

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

Table 18.5.8.050.G.3 – Minimum Required Floor Area for Affordable Units

Unit Type	Minimum Required Unit Floor Area (Square Feet)
Studio	350
1 Bedroom	500
2 Bedroom	800
3 Bedroom	1,000
4 Bedroom	1,250

4. A development schedule shall be provided that demonstrates that that the affordable housing units per subsection 18.5.8.050.G shall be developed, and made available for occupancy, as follows.

    a. That 50 percent of the affordable units shall have been issued building permits prior to issuance of a certificate of occupancy for the last of the first 50 percent of the market rate units.

    b. Prior to issuance of a building permit for the final ten percent of the market rate units, the final 50 percent of the affordable units shall have been issued certificates of occupancy.

5. That affordable housing units shall be constructed using comparable building materials and include equivalent amenities as the market rate units.

    a. The exterior appearance of the affordable units in any residential development shall be visually compatible with the market-rate units in the development. External building materials and finishes shall be substantially the same in type and quality for affordable units as for market-rate units

    b. Affordable units may differ from market-rate units with regard to floor area, interior finishes and materials, and housing type provided that the affordable housing units are provided with comparable features to the market rate units, and shall have generally comparable improvements related to energy efficiency, including plumbing, insulation, windows, appliances, and heating and cooling systems.

6. Exceptions to the requirements of 18.5.8.050, subsections G.2 – G.5, above, may be approved by the City Council upon consideration of one or more of the following.

    a. That an alternative land dedication as proposed would accomplish additional benefits for the City, consistent with the purposes of this chapter, then would development meeting the on-site dedication requirement of subsection 18.5.8.050.G.2.

    b. That the alternative phasing proposal not meeting subsection 18.5.8.050.G.4 provided by the applicant provides adequate assurance that the affordable housing units will be provided in a timely fashion.

    c. That the materials and amenities applied to the affordable units within the development, that are not equivalent to the market rate units per subsection 18.5.8.050.G.5, are necessary due to local, State, or Federal Affordable Housing standards or financing limitations.

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

H. One or more of the following standards are met.

1. The annexation proposal shall meet the requirements of subsection 18.5.8.080.B, above.

2. A current or probable danger to public health exists within the proposed area for annexation due to lack of full City sanitary sewer or water services in accordance with the criteria in ORS Chapter 222 or successor state statute.

3. Existing development in the proposed area for annexation has inadequate water or sanitary sewer service, or the service will become inadequate within one year.

4. The proposed area for annexation has existing City water or sanitary sewer service extended, connected, and in use, and a signed consent to annexation agreement has been filed and accepted by the City.

5. The proposed area for annexation is an island surrounded by lands within the city limits.

I. Exceptions and Variances to the Annexation Approval Criteria and Standards. The approval authority may approve exceptions to and variances from the approval criteria and standards in this section using the criteria in section 18.4.6.020.B.1 Exceptions to the Street Design Standards or chapter 18.5.5. Variances.

AMC 18.3.9.040.A Performance Standards Options Subdivision/Outline Plan Approval Criteria & Standards

3. ***Approval Criteria for Outline Plan.*** *The Planning Commission shall approve the outline plan when it finds all of the following criteria have been met:*

   a. *The development meets all applicable ordinance requirements of the City.*

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

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

   d. *The development of the land will not prevent adjacent land from being developed for the uses shown in the Comprehensive Plan.*

   e. *There are adequate provisions for the maintenance of common open space and common areas, if required or provided, and that if developments are done in phases that the early phases have the same or higher ratio of amenities as proposed in the entire project.*

   f. *The proposed density meets the base and bonus density standards established under this chapter.*

   g. *The development complies with the street standards.*

   h. *The proposed development meets the common open space standards established under section 18.4.4.070. Common open space requirements may be satisfied by public open space in accordance with section 18.4.4.070 if approved by the City of Ashland.*

4. ***Approval of the Outline Plan.***

   a. *After the City approves an outline plan and adopts any zone change necessary for the development, the developer may then file a final plan in phases or in its entirety.*

   b. *If an outline plan is phased, 50 percent of the value of the common open space shall be provided in the first phase and all common open space shall be provided when two-thirds of the units are finished.*

AMC 18.5.2.050 Site Design Review Approval Criteria & Standards

An application for Site Design Review shall be approved if the proposal meets the criteria in subsections A, B, C, and D below. The approval authority may, in approving the application, impose conditions of approval, consistent with the applicable criteria.

A. ***Underlying Zone.*** *The proposal complies with all of the applicable provisions of the underlying zone (part 18.2), including but not limited to: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other applicable standards.*

B. ***Overlay Zones.*** *The proposal complies with applicable overlay zone requirements (part 18.3).*

C. ***Site Development and Design Standards.*** *The proposal complies with the applicable Site Development and Design Standards of part 18.4, except as provided by subsection E, below.*

D. ***City Facilities.*** *The proposal complies with the applicable standards in section 18.4.6 Public Facilities, and that adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the property, and adequate transportation can and will be provided to the subject property.*

E. ***Exception to the Site Development and Design Standards.*** *The approval authority may approve exceptions to the Site Development and Design Standards of part 18.4 if the circumstances in either subsection 1, 2, or 3, below, are found to exist.*

1. *There is a demonstrable difficulty meeting the specific requirements of the Site Development and Design Standards due to a unique or unusual aspect of an existing structure or the proposed use of a site; and approval of the exception will not substantially negatively impact adjacent properties; and approval of the exception is consistent with the stated purpose of the Site Development and Design; and the exception requested is the minimum which would alleviate the difficulty;*

2. *There is no demonstrable difficulty in meeting the specific requirements, but granting the exception will result in a design that equally or better achieves the stated purpose of the Site Development and Design Standards; or*

3. *There is no demonstrable difficulty in meeting the specific requirements for a cottage housing development, but granting the exception will result in a design that equally or better achieves the stated purpose of section 18.2.3.090. (Ord. 3147 § 9, amended, 11/21/2017)*

AMC 18.4.6.020.B Exception to the Street Design Standards Approval Criteria & Standards

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

   a. *There is demonstrable difficulty in meeting the specific requirements of this chapter due to a unique or unusual aspect of the site or proposed use of the site.*

   b. *The exception will result in equal or superior transportation facilities and connectivity considering the following factors where applicable.*

      i. *For transit facilities and related improvements, access, wait time, and ride experience.*

      ii. *For bicycle facilities, feeling of safety, quality of experience (i.e., comfort level of bicycling along the roadway), and frequency of conflicts with vehicle cross traffic.*

      iii. *For pedestrian facilities, feeling of safety, quality of experience (i.e., comfort level of walking along roadway), and ability to safety and efficiency crossing roadway.*

   c. *The exception is the minimum necessary to alleviate the difficulty.*

   d. *The exception is consistent with the Purpose and Intent of the Street Standards in subsection 18.4.6.040.A.*

AMC 18.5.7.040.B Tree Removal Permit Approval Criteria & Standards

1. ***Hazard Tree.*** *A Hazard Tree Removal Permit shall be granted if the approval authority finds that the application meets all of the following criteria, or can be made to conform through the imposition of conditions.*

   a. *The applicant must demonstrate that the condition or location of the tree presents a clear public safety hazard (i.e., likely to fall and injure persons or property) or a foreseeable danger of property damage to an existing structure or facility, and such hazard or danger cannot reasonably be alleviated by treatment, relocation, or pruning. See definition of hazard tree in part 18.6.*

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

2. ***Tree That is Not a Hazard.*** *A Tree Removal Permit for a tree that is not a hazard shall be granted if the approval authority finds that the application meets all of the following criteria, or can be made to conform through the imposition of conditions.*

   a. *The tree is proposed for removal in order to permit the application to be consistent with other applicable Land Use Ordinance requirements and standards, including but not limited to applicable Site Development and Design Standards in part 18.4 and Physical and Environmental Constraints in part 18.3.10.*

   b. *Removal of the tree will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks.*

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

d. *Nothing in this section shall require that the residential density to be reduced below the permitted density allowed by the zone. In making this determination, the City may consider alternative site plans or placement of structures of alternate landscaping designs that would lessen the impact on trees, so long as the alternatives continue to comply with the other provisions of this ordinance.*

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

Memo

DATE: August 8, 2023
TO: Planning Commissioners
FROM: Derek Severson, Planning Manager
RE: Land Use Board of Appeals (LUBA) Remand of PA-T3-2022-00004
1511 Highway 99 North "Grand Terrace" Annexation Approval

Background

In December of 2022, the City Council approved the Annexation of 16.86 acres located at 1511 Highway 99 North into the City of Ashland, along with 6.6 acres of adjacent Oregon Department of Transportation (ODOT) state highway right-of-way and 7.68 acres of California Oregon & Pacific (CORP) railroad property. These properties are currently zoned Rural Residential (RR-5) in Jackson County; with Annexation they are to be brought into the City as Low Density, Multi-Family Residential (R-2). In addition to Annexation, the approved application included Outline Plan subdivision approval to create 12 lots; Site Design Review to construct 230 apartments in ten buildings including 38 affordable units; an Exception to the Street Design Standards; and Tree Removal Permits to remove two trees greater than six inches in diameter at breast height. The record for this application can be reviewed on-line at: https://www.ashland.or.us/grandterrace.

The City's approval of the project was subsequently appealed to the Land Use Board of Appeals (LUBA) and has been remanded to the City to consider two issues:

1) **That the city erred in approving an exception to the on-street parking requirement in AMC 18.3.9.060; and**

2) **That the affordable unit sizes as approved do not comply with AMC 18.5.8.050.G.3 which requires that affordable studios be a minimum of**

COMMUNITY DEVELOPMENT DEPARTMENT
51 Winburn Way
Ashland, Oregon 97520
ashland.or.us
Tel: 541.488.5305
Fax: 541.552.2050
TTY: 800.735.2900

350 square feet and that affordable one-bedroom units be a minimum of 500 square feet.

To consider these two remand issues, staff has scheduled this limited public hearing before the Planning Commission. The notices mailed to parties made clear that the substance of the hearing would be strictly limited in scope to the consideration of only these two issues on remand from LUBA.

Remand Issue #1: On-Street Parking Exception

The originally approved application included a request for Outline Plan subdivision approval under the Performance Standards Options (Chapter 18.3.9) to create 10 buildable lots and two common open space properties. During the public hearing process, the Planning Commission noted that AMC 18.3.9.060 dealing with Parking Standards for subdivisions proposed under AMC 18.3.9 required that:

> *All development under this chapter shall conform to the following parking standards, which are in addition to the requirements of chapter 18.4.3, Parking, Access, and Circulation.*
>
> **A. On-Street Parking Required.** *At least one on-street parking space per dwelling unit shall be provided, in addition to the off-street parking requirements for all developments in an R-1 zone, with the exception of cottage housing developments, and for all developments in R-2 and R-3 zones that create or improve public streets.*
>
> **B. On-Street Parking Standards.** *On-street parking spaces shall be immediately adjacent to the public right-of-way on publicly or association-owned land and be directly accessible from public right-of-way streets. On-street parking spaces shall be located within 200 feet of the dwelling that it is intended to serve. In addition, on-street public* parking may be provided pursuant to minimum criteria established under subsection 18.4.3.060.A.

While no Variance or Exception to this standard had been requested as part of the original application, the Planning Commission determined that AMC 18.3.9.060 was applicable, that

an Exception to the Street Design Standards was the appropriate procedure if on-street parking would not be provided, and that such an Exception was merited.

New Climate-Friendly and Equitable Communities (CFEC) rules were adopted July 21, 2022, by the Land Conservation and Development Commission (LCDC) in response to Executive Order #20-04 by Governor Kate Brown and took effect August 17, 2022. The CFEC rules address how cities may regulate a variety of land use and transportation issues, including a number of changes to the ways cities may regulate parking. Among the new CFEC rules:

- Oregon Administrative Rule (OAR) 660-012-0430(2) states that *"Cities and counties may not require more than one **parking space** per unit in residential developments with more than one dwelling unit on a single legally established property."* **Parking spaces** are defined in OAR 660-012-00005(29) as meaning *"... on and off-street spaces designated for automobile parking, other than parking spaces reserved for carpools, vanpools, or parking under the Americans with Disabilities Act."*
- OAR 660-012-430(3) states that, *"Cities and counties may not require parking for the following development types.... (d) Residential units smaller than 750 square feet; (e) Affordable housing as defined in OAR 660-039-0010;"* All of the residential units proposed in the application under consideration are smaller than 750 square feet, and under the new CFEC rules the city may not require parking for this development type.
- OAR 660-012-440(3) states that *"Cities and counties may not enforce **parking mandates** for development on a lot or parcel that includes land within one-half mile of frequent transit corridors, including... corridors with the most frequent transit route or routes in the community if the scheduled frequency is at least once per hour during peak service."* In OAR 660-012-00005(27), **parking mandates** are defined as *"requirements to include a minimum number of off-street parking spaces with development or redevelopment, or a fee-in-lieu of providing parking for residential development."* In this instance, the Rogue Valley Transit District's (RVTDs) Route 10 runs on Highway 99 North, which fronts directly on the subject properties here, with a peak hour scheduled frequency of every 20 minutes, and as such qualifies as frequent transit. Under the new CFEC rules, Ashland may not enforce parking mandates (i.e., require off-street parking) for the subject properties.

Under OAR 660-012-0012(5)(e) cities and counties were required to "*implement the requirements of OAR 660-012-0430 and 660-012-0440 when reviewing development applications submitted after December 31, 2022.*" Guidance from the Department of Land Conservation and Development (DLCD) has been that cities must either modify their regulations or implement these new rules directly from the OAR and disregard local regulations. Ashland is in the process of amending its parking codes to comply with these new CFEC rules, and others which took effect on June 30, 2023, and has received an extension allowing these code amendments to occur no later than December 31, 2023. In the interim, the City has been directly applying the applicable state rules.

With regard to the current application, it was initially submitted on July 8, 2022, however it remains in process now more than eight months after these new CFEC rules have taken effect. The Performance Standards subdivision process requires a preliminary or outline plan review followed by a final plan review, so prior to the physical development of the site, another development application for final plan approval will be required at which time the applicant will not be subject to parking requirements under the new CFEC rules and could request to amend their proposal accordingly.

In staff's view, the Planning Commission and Council have the discretion to assess the current request based on the new CFEC rules, which remove the requirement for parking since all proposed residential units are smaller than 750 square feet. The fact that the CFEC parking regulations have been in effect for eight months, along with the LUBA remand for further review leading to the final decision of the City to occur after the new regulations were implemented, supports the consideration of the application under the current State law specified in OAR 660-012-0430 and 0440. Additionally, the applicant will need to submit a second development application, Final Plan review, during which the city will be unable to enforce parking requirements under the new Climate Friendly and Equitable Communities rules. Therefore, the staff recommends evaluating the current request under the new CFEC rules without requiring parking, considering the nature of the proposed residential units.

DLCD's implementation guidance to cities notes that the parking rule changes seek to help "*meet Oregon's climate pollution reduction targets, while providing more housing and transportation choices and improving equity.*" In staff's view, applying the new parking rules to a project that combines small market rate units with deed-restricted affordable housing, situated on a transit route and providing substantial improvements to support transit and pedestrian travel is exactly what the Climate Friendly and Equitable Communities rules seek

to enable, and requiring an applicant to withdraw and reapply with an identical proposal now in order to be subject to the new rules, when their application is still in process eight months after the new rules have taken effect, would pose an unreasonable impediment which would discourage the production of needed housing during a housing crisis.

In staff's view, the Planning Commission should advise the City Council to determine that the CFEC parking rules are appropriate here, to not require either on- or off-street parking, and to amend the findings for the original approval accordingly.

Remand Issue #2: Affordable Unit Sizes

The original application identified each of the ten identical buildings proposed as containing 20 one-bedroom units of 499.5 square feet each, and three studio units of 250 square feet each. Two of these ten buildings were to be relied on in meeting the affordability requirements, which were a total of 38 deed restricted affordable units assuming that the applicant either builds the units themselves or does so in cooperation with a non-profit affordable housing provider partner.

AMC 18.5.8.050.G.3 requires that the minimum square footage for affordable one-bedroom units be 500 square feet, and that the minimum square footage for affordable studios be 350 square feet. The adopted conditions relating to affordability are:

> **Condition #7e.** *[That prior to final approval and annexation of the property, the applicant shall provide:]* A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that where the required number of affordable units is fractional it shall be rounded up, and that should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI.
>
> **Condition #10g.** If the applicant opts to dedicate land area to a non-profit affordable housing developer, dedication shall occur in a manner consistent with AMC 18.5.8.050.G.2 and recording of deed restrictions guaranteed affordability described herein shall occur in conjunction with plat signature and recording.

The City's approval was remanded by LUBA on the basis "**That the affordable unit sizes as approved do not comply with AMC 18.5.8.050.G.3 which requires that affordable studios be a minimum of 350 square feet and that affordable one-bedroom units be a minimum of 500 square feet."**

In response to this issue, the applicant has provided a revised floor plan demonstrating how the one-bedroom units could be modified by reducing their recessed entry depth by three-inches in order to achieve the required 500 square feet per affordable one-bedroom unit.

- **AS PROPOSED:** 12.5 x 42 = 525 square feet less 25.98 square feet for recessed entry = 499.02 square feet.
- **AS MODIFIED:** 12.5 x 42 = 525 square feet less 24.8975 feet for recessed entry = 500.1025 square feet.

In addition, the applicant notes that affordable basement level studios would be modified to be 499.5 square feet to significantly exceed the required 350 square feet per affordable studio unit.

Here, staff would also note that the affordability requirement for this project calls for 38 affordable units to be provided. Each building proposed has 20 one-bedroom units, and assuming that two buildings will be developed by an affordable housing provider partner or the applicant themselves, the 38 required affordable units could be accommodated entirely with one-bedroom units, leaving one one-bedroom unit and three studios in each of the two buildings to be rented at market rate or provided as voluntarily affordable *(i.e. not deed-restricted and not subject to the square footage requirements of AMC 18.5.8.050.G.3.).*

Staff believe that the second remand issue can be fully addressed by increasing the size of the one-bedroom units by a *de minimis* amount to comply with AMC 18.5.8.050.G.3 and making clear that as configured in the original proposal the studio units need not be considered among the required affordable units. If this approach is satisfactory to the Planning Commission and City Council, staff would recommend that Condition #7e be modified as follows:

> **Condition #7e.** A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that**: 1)** where the required number of affordable units is fractional it shall be rounded up, **2)** ~~**and**~~ that should the applicant opt to

dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI**, and 3) that each of the required affordable units comply with the minimum affordable units size requirements of AMC 18.5.8.050.G.3, with one bedroom affordable units being a minimum of 500 square feet, and affordable studio units being a minimum of 350 square feet.**

If the Planning Commission accepts the approaches outlined above for both of the remand issues, staff will draft findings and bring them back to the September meeting for adoption.

COMMUNITY DEVELOPMENT DEPARTMENT
51 Winburn Way
Ashland, Oregon 97520
ashland.or.us
Tel: 541.488.5305
Fax: 541.552.2050
TTY: 800.735.2900

REQUEST TO PROCEED WITH APPLICATION ON LUBA REMAND

Robert Kendrick <bobk213@icloud.com>

Fri 2023-06-30 04:09 PM

To:Brandon Goldman <brandon.goldman@ashland.or.us>

Cc:Derek Severson <derek.severson@ashland.or.us>;Doug McGeary <doug.mcgeary@ashland.or.us>;Chris Hern <chearn@davishearn.com>;Amy Gunter <amygunter.planning@gmail.com>;Robert J Kendrick <bobk213@icloud.com>

[EXTERNAL SENDER]

Brandon Goldman
Director of Community Development
City of Ashland Community Development

June 30, 2023

Re: LUBA Decision Rogue Advocates vs City of Ashland
LUBA Case No. 2023-007
REMANDED 05/09/2023

Following up on LUBA's remand in case number 2023-007, this email is the applicant's request pursuant to ORS 227.181 for the city to proceed with the application on remand.

Please advise us as to the next steps.

Thank You
Robert Kendrick
Casita Developments LLC

July 18, 2023

REQUEST FOR REVIEW OF LUBA No. 2023-007 REMAND

On behalf of the Property Owner, Casita Development LLC, lease accept this request for review and public hearing of the Remand of a Land Use Board of Appeals Decision LUBA No. 2023-007, Final Opinion and Order, published on May 09, 2023.

It can be found that the information herein, the original application materials and supplemental record of PA-T3-2022-0004, the conditions of approval, and the record demonstrates compliance with the City of Ashland standards subject to remand.

Summary of Assignments of Error Subject to Remand:

FIRST ASSIGNMENT OF ERROR
B . Second Subassignment of Error

AMC 18.3.0.060(A) provides:
On-Street Parking Required. At least one on-street parking space per dwelling unit shall be provided in addition to the off-street parking requirements for all development in an R-1 zone, with the exception of cottage housing developments, and for all developments in the R-2 and R-3 zones that create or improve public streets.

> LUBA found in part that, the city council did not conclude that Casita's application satisfies AMC 18.3.9.060(A) at all, let alone by AMC 18.3.9.060(B). Record 69 (expressly concluding that Casita's application does not satisfy AMC 18.3.9.060). Rather, the city council approved an exception to the on-street parking requirement. Because this alternative basis is not presented in the city council's findings and appears for the first time in the respondent's brief, we will not consider it. The city may choose, on remand, to consider whether its decision could be justified on that basis. Anderson v. Coos County, 51 Or LUBA 454,472 (2006) (LUBA will remand a decision where an alternative theory for affirming the decision does not appear in the challenged findings). (LUBA Final Opinion and Order Pg. 10; Lines 16 – 24; Pg. 11; Lines 1 and 2).

Based on this finding, the second sub-assignment of error was sustained. The first assignment of error is sustained, in part.

RESPONSE:
Recent legislative amendments to the Oregon Administrative Rules (OAR) and Oregon Revised Statues (ORS) which direct cities and counties on Comprehensive Plan and Land Use Ordinance compliance with state law and legislative rulemaking adopted, Climate Friendly and Equitable Communities (CFEC) Rules that have direct consequences on the city's ability to require both on-site and off-site parking. The adopted OAR mandated that larger cities such as Ashland remove parking mandates.

As of January 1, 2023, consistent with OAR 660-012-400, Parking Management, that required that cities removed their parking mandates, Ashland no longer requires on-site parking from AMC 18.4.3.040, for dwelling units that are less than 750 square feet in area (OAR 660-012-0430(3d), for qualified affordable housing (OAR 660-12-0430)(3e) on properties that are within 1/2 mile of frequent transit corridors (OAR 660-012-440(3). OR HWY 99 is a frequent transit corridor with Rogue Valley Transit District (RVTD) Route 10 and a transit stop for the southbound bus is proposed on the property frontage. RVTD Route 10 qualifies as Ashland's most frequent transit route per OAR 660-012-0440(3c). See attached emails from Ashland Planning Department.

Following State approval of amendments to OAR 660-012-400 through OAR 660-012-0450, a map depicting the areas of town where the parking mandates are no longer enforced as of January 1, 2023 was presented to Ashland Planning Commission at a regularly noticed public meeting on August 9th, 2022. This map is included as an exhibit.

Where parking areas are provided, the construction of the parking area must comply with the CFEC standards, Oregon Building Code Standards for access to EV charging (OAR 660-012-0410), and city of Ashland Standards for landscaping, stormwater management, accessibility, and the city's parking area development standards.

This addresses the remand of the First Assignment of Error, Second Sub assignment of Error (LUBA Final Opinion and Order. Pages 9-11 and Page 12 Lines 1-4).

B. Fourth Assignment of Error
Second Sub Assignment of Error - The City's decision is inconsistent with AMC 18.5.8.050.G3. AMC 18.5.8.05.G.3 requires that the minimum square footage of each affordable unit shall comply with the minimum required floor area based as outlined in Table 18.5.8.050.G.c, The application materials propose units that are 499 square feet (one-bedroom units) and 250 square feet (studio units). This issue was remanded for clarification.

RESPONSE:
The attached floor plan graphic demonstrates how with a minor adjustment to the floor area, any designated affordable one-bedroom units are enlarged to 500 square feet in gross habitable

floor area. Any designated affordable studio units will be enlarged to no less than 350 square feet. This is in conformance with the city of Ashland Condition of Approval #7e which states.

> *"A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that where the required number of affordable units is fractional it shall be rounded up, and that should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI."*

These square footages are consistent with the Housing and Urban Development (HUD) unit size standards as found in Table 18.5.8.050(G)(3).

Therefore, it can be found that the information provided herein demonstrates that the city of Ashland can take further action to comply with Oregon amend their decision to comply with the Oregon Climate Friendly and Equitable Communities rule changes effective January 1, 2023 in lieu of applying parking mandates under AMC 18.4.3.040 and as directed in the LUBA Final Opinion and Order to Remand PA-T3-2022-0004.

Thank you,

Amy Gunter
Rogue Planning & Development Services, LLC

Attachments:
LUBA Final Opinion and Order
Unit Schematics
Floor Plans (First Floor and Basement)
CFEC Parking Handout Rapid Transit Map
Ashland Planning Division Staff email

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

ROGUE ADVOCATES,
Petitioner,

vs.

CITY OF ASHLAND,
Respondent.

LUBA No. 2023-007

FINAL OPINION
AND ORDER

Appeal from City of Ashland.

Sean Malone filed the petition for review and reply brief and argued on behalf of petitioner.

Douglas M. McGeary, Acting City Attorney, filed the respondent's brief and argued on behalf of respondent.

RYAN, Board Member; RUDD, Board Chair; ZAMUDIO, Board Member, participated in the decision.

REMANDED 05/09/2023

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

Opinion by Ryan.

NATURE OF THE DECISION

Petitioner appeals a city council decision approving (1) the annexation of two parcels totaling 16.86 acres, a railroad track corridor totaling 7.68 acres, and highway right-of-way totaling 6.6 acres; (2) an exception to the city's street design standards; (3) an outline plan for a subdivision creating 12 lots; (4) a site design for 230 apartments in 10 buildings; and (5) tree removal permits.

FACTS

This is the second time that the city has approved the challenged annexation. *Rogue Advocates v. City of Ashland*, ___ Or LUBA ___ (LUBA No 2021-009, May 12, 2021) (*Casita I*). We restate the description of the property from our decision in *Casita I*:

> "[Casita Developments (Casita)] own[s] two parcels (the property) totaling 16.8[6] acres that are located outside the city limits but within the city's adopted urban growth boundary (UGB). The property is zoned Rural Residential 5-acre minimum (RR-5) by Jackson County and contains an existing dwelling. The property slopes from the southeast to the northwest, with slopes generally between 10 and 15 percent. The portion of the property west of the existing residence contains steep slopes in excess of 35 percent.
>
> "The property is arrow-shaped, with the arrow 'tip' at the southeastern end of the property:

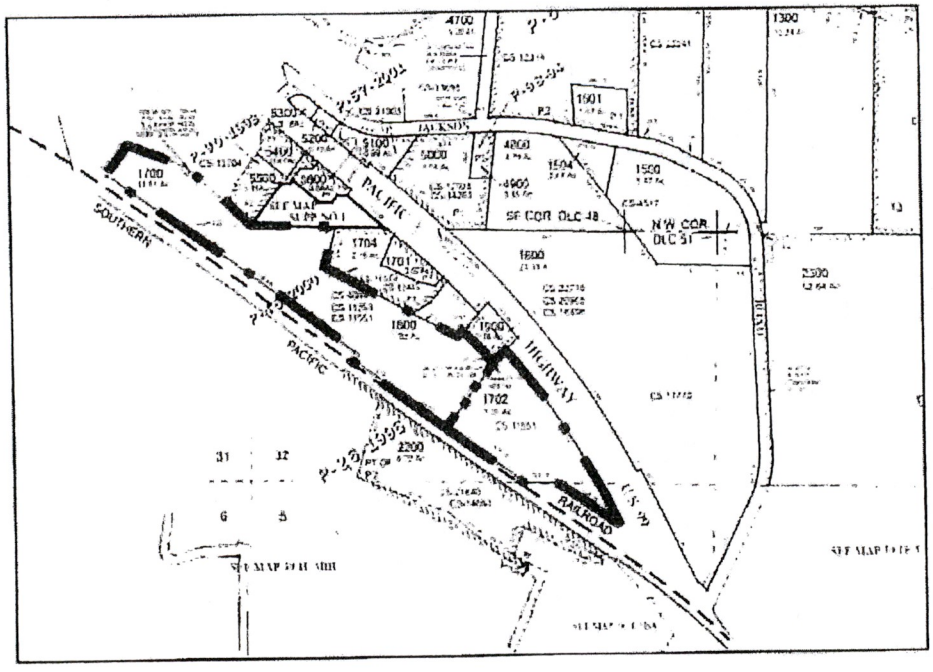


Figure 1: Assessor's Map

> "The property is bounded on the west by Central Oregon and Pacific Railroad (COPR) tracks, which separate the property from the existing city boundary; on the south by the junction of the railroad tracks and Highway 99 North; on the east by Highway 99 North and commercial development adjacent to Highway 99 North; and on the north by commercial development on lands that are within the county's jurisdiction and within the city's UGB. Highway 99 North is owned and managed by the Oregon Department of Transportation (ODOT)." ___ Or LUBA at ___ (citation omitted) (slip op at 3-4).

In *Casita I*, we explained that Casita applied to the city to annex its property, and city staff subsequently included both the adjacent railroad tracks and the portion of Highway 99 North adjacent to Casita's property in the annexation proposal. In *Casita I*, we sustained the first assignment of error, and reversed the city's decision. *Id.* at ___ (slip op at 12-19).

In December 2021, in response to our decision in *Casita I*, the city council amended the Ashland Municipal Code (AMC) to require that annexation applications be accompanied by planning applications for the annexation area, and to expressly allow the city to approve an annexation application with an exception to the city's street design standards. In July 2022, Casita again applied to the city to annex the property (and the adjacent railroad corridor and highway right-of-way) and zone it Residential – Low Density Multiple Family (R-2). Casita's application proposed sidewalk improvements along the property's frontage on Highway 99 North and beyond the property's frontage to connect to existing sidewalks north and south. In addition, the application proposed a new bus shelter, bus pull-out lane, and rectangular rapid flashing beacon (RRFB) crosswalk. Because only a portion of the proposed sidewalk improvements would have met the city's street design standards, the application requested an exception to those standards pursuant to AMC 18.4.6.020(B).[1] The application also

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[1] The city council's decision explains:

> "There are some areas where Exceptions to the Street Standards are requested due to topographical difficulties, utility encroachments, and physical encumbrances in the form of the railroad trestle, a drainage ditch, private driveway approaches and other private property encroachments. The proposal seeks Exceptions to the Street Design Standards for the sidewalk and bike lane under the overpass of the railroad trestle where a shared sidewalk will be installed, and where city standard sidewalks are not possible due to physical constraints, ODOT-compliant frontage improvements are proposed. In addition, on-street parking is not proposed." Record 18.

requested approval of an outline plan to subdivide the property into 12 lots, a site design for 230 apartments in 10 buildings, and tree removal permits.

The planning commission held hearings on the application and, at the conclusion, voted to recommend approval to the city council. The city council held a hearing and voted to approve the application. This appeal followed.

FIRST ASSIGNMENT OF ERROR

Casita sought to subdivide the property under the "performance standards option" in AMC chapter 18.3.9. "The purpose of [AMC chapter 18.3.9] is to allow an option for more flexible design than is permissible under the conventional zoning codes." AMC 18.3.9.010. Casita's application requested approval of an outline plan to subdivide the property.[2]

In the first assignment of error, petitioner argues that the city council improperly construed the outline plan approval criteria. ORS 197.835(9)(a)(D).

A. First Subassignment of Error

AMC 18.3.9.040(A)(3) provides, in part:

> "Approval Criteria for Outline Plan. The Planning Commission shall approve the outline plan when it finds all of the following criteria have been met:
>
> "* * * * *

---

[2] There are two required steps under the performance standards option: outline plan approval and final plan approval.

"g. The development complies with the street standards." (Underscoring in original.)

The city council adopted the planning commission's findings by reference. Record 31. The planning commission found:

> "[Casita is] requesting Exceptions to the Street Design Standards to install some portions of the proposed sidewalks at curbside, without a city-standard parkrow planting strip between the curb and sidewalk, and to not install on-street parking along the highway. These Exceptions are discussed in Section E below. The Planning Commission finds that other than those areas where these Exceptions have been requested, the street improvements proposed are to be consistent with the applicable street design standards." Record 59.

In the first subassignment of error, petitioner argues that the city council improperly construed AMC 18.3.9.040(A)(3)(g) in concluding that it could approve an exception to the requirement that an outline plan comply with the "street standards." Petitioner argues that while AMC 18.4.6.020(B)(1) authorizes "exceptions to the street design standards in section 18.4.6.040," neither that provision nor any provision in AMC chapter 18.3.9 authorizes exceptions to the "street standards" referenced in AMC 18.3.9.040(A)(3)(g). Petitioner argues that the city may therefore not approve an exception to those "street standards" in approving an outline plan.

The city responds that the "street standards" referenced in AMC 18.3.9.040(A)(3)(g) are the street design standards in AMC 18.4.6.040. The city argues that applications for approval of an outline plan under the city's performance standards option require a Type II review procedure and public

facility improvements. We understand the city to argue that such applications are "planning actions requiring a Type I, Type II, or Type III review procedure" for purposes of AMC 18.4.6.020(A), and that the city may therefore approve exceptions to the referenced "street standards" pursuant to AMC 18.4.6.020(B).[3]

Under ORS 197.829(1), as construed in *Siporen v. City of Medford*, 349 Or 247, 259, 243 P3d 776 (2010), LUBA must defer to a local governing body's interpretation of its comprehensive plan and land use regulations unless the local government's interpretation is inconsistent with the express language, purpose, or underlying policy of the comprehensive plan or land use regulation. *Crowley v. City of Hood River*, 294 Or App 240, 244, 430 P3d 1113 (2018). In *Crowley*, an appeal that involved the city council's interpretation of the city's comprehensive plan, the Court of Appeals explained:

> "Whether the city's interpretation of its comprehensive plan is inconsistent with the plan, or the purposes or policies underlying that plan, depends on whether the interpretation is plausible, given the interpretive principles that ordinarily apply to the construction of ordinances under the rules of *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-12, 859 P2d 1143 (1993), as modified

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[3] AMC 18.4.6.020(A) provides:

> "**Applicability.** This chapter applies to all new development *and planning actions requiring a Type I, Type II, or Type III review procedure* where public facility improvements are required. All public facility improvements within the City shall occur in accordance with the standards and procedures of this chapter." (Emphasis added.)

> by *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009)." *Id.* (quoting *Friends of the Hood River Waterfront v. City of Hood River*, 263 Or App 80, 88-89, 326 P3d 1229 (2014)) (internal quotation marks and brackets omitted).

The standard of review under ORS 197.829(1) and *Siporen* is "highly deferential" to the city, and the "existence of a stronger or more logical interpretation does not render a weaker or less logical interpretation 'implausible.'" *Mark Latham Excavation, Inc. v. Deschutes County*, 250 Or App 543, 555, 281 P3d 644 (2012) (citing *Siegert v. Crook County*, 246 Or App 500, 509, 266 P3d 170 (2011)). Our task in this appeal, as it was in *Casita I*, is to determine whether the city council's interpretation of the relevant provisions of the AMC plausibly accounts for the text and context of those provisions.

We conclude that an implied interpretation of the interrelationship between AMC 18.3.9.040(A)(3)(g) and AMC 18.4.6.020 can be understood from the findings in support of the decision and is adequate for review. *Alliance for Responsible Land Use v. Deschutes Cty.*, 149 Or App 259, 266-67, 942 P2d 836 (1997), *rev dismissed as improvidently allowed*, 327 Or 555 (1998). As seen in the findings quoted above, the planning commission and then the city council interpreted the "street standards" in AMC 18.3.9.040(A)(3)(g) to be the street design standards in AMC 18.4.6.040 and that it interpreted the exception standards at AMC 18.4.6.020(B) as being applicable to applications for approval of an outline plan under the city's performance standards option. Petitioner has not established that that interpretation is implausible.

The first subassignment of error is denied.

B. Second Subassignment of Error

AMC 18.3.9.060(A) provides:

> "**On-Street Parking Required.** At least one on-street parking space per dwelling unit shall be provided, in addition to the off-street parking requirements for all developments in an R-1 zone, with the exception of cottage housing developments, and for all developments in R-2 and R-3 zones that create or improve public streets." (Boldface in original.)

The city council applied the exception standards at AMC 18.4.6.020(B) and found that "the approval criteria for an Exception to the Street Design Standards to not provide on-street parking with the limited street improvements proposed have been satisfied." Record 70.

In the second subassignment of error, petitioner argues that the city council improperly construed AMC 18.3.9.060(A) in concluding that it could approve an exception to the requirement that an outline plan provide on-street parking. While AMC 18.4.6.020(B) authorizes "exceptions to the street design standards in section 18.4.6.040," petitioner observes that neither that provision nor any provision in AMC chapter 18.3.9 authorizes exceptions to the requirement for on-street parking in AMC 18.3.9.060(A). Petitioner argues that the city may therefore not approve an exception to that requirement in approving an outline plan.

The city does not dispute that the city council erred in approving an exception to the requirement for on-street parking in AMC 18.3.9.060(A). Instead, in the respondent's brief the city argues that "under Oregon's Equitable

Communities and Climate Friendly Act of 2023, as of January 1, 2023, cities within Oregon's [eight] Metropolitan Planning Organizations (MPOs), including the City of Ashland, can no longer require more tha[n] one parking space per multi-family unit." Respondent's Brief 10. The city argues that because Casita's application proposes one off-street parking space per unit, the referenced legislation prevents it from requiring on-street parking as well. We understand the city to argue that the issue of whether the city council improperly construed AMC 18.3.9.060(A) is moot because the city is precluded from applying that provision by virtue of the described legislation.

Petitioner replies that, because the described legislation took effect on January 1, 2023, and the challenged decision was made on December 20, 2022, the legislation does not apply to Casita's application. Neither the city nor petitioner provides us with a citation to or a reference to the text of "Oregon's Equitable Communities and Climate Friendly Act of 2023." However, we assume, as the parties appear to agree in their briefs, that the legislation exists and that it did not take effect before January 2023. Because the challenged decision was made in December 2022, we agree with petitioner the legislation does not apply to Casita's application. The city may or may not be correct that the legislation prevents it from requiring more than one parking space per multi-family unit and that, on remand, it will be unable to apply the requirement for on-street parking in AMC 18.3.9.060(A). However, the city does not develop that argument sufficiently for our review in the respondent's brief. We will therefore

not conclude that the issue of whether the city council improperly construed AMC 18.3.9.060(A) is moot.

AMC 18.3.9.060(B) provides:

> "**On-Street Parking Standards.** On-street parking spaces shall be immediately adjacent to the public right-of-way on publicly or association-owned land and be directly accessible from public right-of-way streets. On-street parking spaces shall be located within 200 feet of the dwelling that it is intended to serve. In addition, on-street public parking may be provided pursuant to minimum criteria established under subsection 18.4.3.060.A." (Boldface in original.)

The city asserts that the on-street parking spaces proposed in Casita's application will be on association-owned land. We understand the city to argue that, even if the issue is not moot, Casita's application satisfies AMC 18.3.9.060(A) because AMC 18.3.9.060(B) allows the required on-street parking spaces to be located on association-owned land.

The problem with that argument is that the city council did not conclude that Casita's application satisfies AMC 18.3.9.060(A) at all, let alone by virtue of AMC 18.3.9.060(B). Record 69 (expressly concluding that Casita's application does not satisfy AMC 18.3.9.060). Rather, the city council approved an exception to the on-street parking requirement. Because this alternative basis is not presented in the city council's findings and appears for the first time in the respondent's brief, we will not consider it. The city may choose, on remand, to consider whether its decision could be justified on that basis. *Anderson v. Coos County*, 51 Or LUBA 454, 472 (2006) (LUBA will remand a decision where an

alternative theory for affirming the decision does not appear in the challenged findings).

The second subassignment of error is sustained.

The first assignment of error is sustained, in part.

SECOND ASSIGNMENT OF ERROR

Petitioner's second assignment of error generally relates to the improvements that the application proposes along and beyond the property's frontage on Highway 99 North.

A. First Subassignment of Error

In the first subassignment of error, petitioner makes a variety of arguments that the city's findings are inadequate and unsupported by substantial evidence. Because the parties agree that the challenged decision is legislative, we assume for purposes of this opinion only that the decision is a legislative decision.[4] There is no generally applicable requirement that legislative land use decisions be supported by findings. However, the decision and record must be sufficient to demonstrate that applicable criteria were applied and "required considerations were indeed considered." *Citizens Against Irresponsible Growth v. Metro*, 179 Or App 12, 16 n 6, 38 P3d 956 (2002). In addition, Statewide Planning Goal 2

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[4] AMC 18.5.8.030 provides that all annexations must be processed under the city's Type III procedure, which applies to legislative decisions. The record demonstrates that the city processed the application according to that procedure. Record 579 (staff report explaining that the 120-day rule for quasi-judicial actions at ORS 227.178 did not apply to the application).

(Land Use Planning) requires that a legislative land use decision be supported by "an adequate factual base," which is an evidentiary standard that is equivalent to the requirement that a quasi-judicial decision be supported by substantial evidence in the whole record. *1000 Friends of Oregon v. City of North Plains*, 27 Or LUBA 372, 378, *aff'd*, 130 Or App 406, 882 P2d 1130 (1994). Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding. *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608 (1993); *Younger v. City of Portland*, 305 Or 346, 351-52, 752 P2d 262 (1988).

1. ODOT Standards

The annexation standards at AMC 18.5.8.050(E)(2) and (3) provide:

> "2. For bicycle transportation, *safe and accessible bicycle facilities according to the safety analysis and standards of the governing jurisdiction of the facility or street (e.g., City of Ashland, Jackson County, [ODOT]) exist, or can and will be constructed.* Should the annexed area border an arterial street, bike lanes shall be constructed along the arterial street frontage of the annexed area. Likely bicycle destinations within a quarter of a mile from the annexed area shall be determined and the approval authority may require the construction of bicycle lanes or multiuse paths connecting the annexed area to the likely bicycle destinations after assessing the impact of the development proposed concurrently with the annexation.
>
> "3. For pedestrian transportation, *safe and accessible pedestrian facilities according to the safety analysis and standards of the governing jurisdiction of the facility or street (e.g., City of Ashland, Jackson County, [ODOT]) exist, or can and will be constructed.* Full sidewalk improvements shall be provided

> on one side of all streets bordering on the proposed annexed area. Sidewalks shall be provided as required by ordinance on all streets within the annexed area. Where the annexed area is within a quarter of a mile of an existing sidewalk system or a location with demonstrated significant pedestrian activity, the approval authority may require sidewalks, walkways or multiuse paths to be constructed and connect to either or both the existing system and locations with significant pedestrian activity." (Emphases added.)

To demonstrate compliance with AMC 18.5.8.050(E), Casita submitted a Traffic Impact Analysis (TIA) and an Access Safety Evaluation, both of which were prepared by Sandow Engineering. Record 1244-505. With respect to AMC 18.5.8.050(E)(2), the city council found:

> "With regard to bicycle transportation, the application materials explain that Highway 99 N[orth] which is an arterial street and state highway, currently has bicycle lanes buffered by striping along the frontage of the property, with bicycle lanes on both sides of the highway extending north of Valley View Road and south into downtown Ashland. The bike lanes are of typical width and the striped buffer along the frontage provides an additional measure of safety. The proposal maintains these bicycle lanes in accordance with City standards along the frontage with two multi-use path connections into the site. A crossing will be installed on Highway 99 N[orth] at Schofield Street with pedestrian- or cyclist-activated [RRFBs] to support crossing Highway 99 N[orth] near RVTD's northbound flag stop. *The bicycle facilities that exist or will be provided as part of the annexation comply with the design and safety criteria for ODOT as the governing jurisdiction, and [Casita] thus asserts that this criterion is satisfied.*
>
> "Bicycle destinations within 1/4-mile include two coffee shops, two restaurants, a new financial institution now under construction, and a bicycle shop, and the Bear Creek Greenway is accessible at Valley View Road within 1/2-mile of the site. The application materials assert that all of these destinations are easily accessed from the

existing protected bicycle lanes which are to be maintained, and that these bicycle lanes continue the 1 1/4-miles into downtown Ashland." Record 20 (emphasis added).

With respect to AMC 18.5.8.050(E)(3), the city council found:

"In responding to the safe and accessible pedestrian facilities criterion, [Casita] explains that there are currently no sidewalks along Highway 99 N[orth] on either side of the street between the subject properties' frontage and Schofield Street to the south which limits pedestrian access and safety for north Ashland residents. [Casita] proposes street frontage improvements including sidewalk improvements which comply with the design and safety criteria of ODOT as the governing jurisdiction, and as such asserts that this criterion is satisfied.

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

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

"The application materials further explain that [Casita] will be providing a high-visibility crosswalk across Highway 99 N[orth] with [RRFBs]. The application further notes that mid-block

> crosswalks are dangerous, and RRFBs increase the safety of pedestrians and cyclists crossing when compared to a traffic signal. The application materials go on to indicate that studies have shown that RRFBs increase motorist yielding rates because the lights are controlled by the pedestrian's presence and will not go off until they are safely out of the crosswalk. The proposed RRFB crossing is to be placed between North Main Street at Schofield Street, between the north- and south-bound bus stops. The RRFB crossing will provide a safe pedestrian and bicyclist crossing for all the residents in north Ashland where none existed before, both to access to Grand Terrace and to cross the highway to access these bus stops safely. [Casita] notes that local ODOT authorities have given preliminary approval to install a crossing with RRFBs in this location, and that final approval will be subject to review of the final engineered designs by the regional office in Salem. The developer will be responsible for the design, cost and installation of the crosswalk and RRFBs. A condition has been included below requiring that the final location and design of the RRFB crossing be detailed in the Final Plan submittal." Record 20-21 (emphasis added).

Petitioner argues that the city council's findings that AMC 18.5.8.050(E)(2) and (3) are satisfied are inadequate and not supported by substantial evidence. Petitioner argues that the city council's findings that the proposed bicycle and pedestrian facilities satisfy those standards are inadequate and not supported by substantial evidence where neither Casita's Access Safety Evaluation nor the findings identify the ODOT standards that they applied to reach those conclusions.

We agree with the city's response that the city council was not required to list and apply ODOT's standards. In response, the city points to a letter that ODOT submitted into the record stating that ODOT reviewed Casita's TIA, stating that the city's street design standards exceed ODOT's standards,

acknowledging that exceptions would be required in some areas, and approving the proposed improvements with certain refinements.[5] Record 481. The city

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[5] ODOT's letter provides, as relevant here:

> "ODOT has worked with the City and [Casita] to try to find solutions which work for all parties. ODOT supports the proposal with conditions described below.
>
> "i. ODOT has reviewed the [TIA] prepared by Sandow Engineering and generally agree with the findings, believing that the analysis satisfies the requirements of the Transportation Planning Rule related to Plan and Land Use Amendments (OAR 660-012-0060).
>
> "ii. ODOT supports frontage improvements consistent with City of Ashland standards and the adopted Transportation System Plan, which exceed minimum standards identified in the State Highway Design Manual. We understand Right-of-Way constraints will require exceptions in certain locations.
>
> "iii. The most recent set of civil plans will need to be further refined prior to approval by ODOT. City of Ashland Municipal Code 18.4.6.030 requires installation of public improvements prior to issuance of building permits. No disturbance or construction within the State Right of Way is permitted until [Casita] has obtained an ODOT misc./utility permit. Legal access will not be granted to Highway 99 North until [Casita] has obtained an ODOT reservation indenture and access permit.
>
> "iv. Refined civil plans will need to incorporate:
>
> "a. Access points and curb cuts along the frontage improvements at existing accesses[, and]

council also imposed conditions of approval requiring Casita to (1) submit final civil plans for the street improvements for review and approval by ODOT at the final plan approval stage, (2) provide engineered construction drawings for the required street improvements for review and approval by ODOT, and (3) obtain any necessary permit approvals from ODOT prior to any work within the right-of-way. Record 34-35, 37. In light of ODOT's letter, a reasonable person could find that safe and accessible bicycle and pedestrian facilities, according to ODOT's standards, can and will be constructed. The city council's findings that AMC 18.5.8.050(E)(2) and (3) are satisfied are adequate and supported by substantial evidence.

"b. Details related to the striped pedestrian crossing and [RRFB] in the vicinity of North Main Street.

"v. ODOT has had discussions with the City, [Casita] and Rogue Valley Transit District about the proposed bus pull out and bus stop within the State Right of Way and is supportive pending review and approval of final civil plans.

"vi. ODOT's Region 3 staff supports the proposal for a striped crossing and RRFB. ODOT Region 3 Traffic evaluated a number of potential locations, and recommend a location south of the Subject Property near North Main Street. Approval from the State Traffic Engineer in Salem will be required once civil plans have been reviewed and accepted by local staff." Record 481.

2. *Nollan/Dolan* Findings

As explained above, Casita's application proposed sidewalk improvements along the property's frontage on Highway 99 North and beyond the property's frontage to connect to existing sidewalks north and south. In addition, the application proposed a new bus shelter and bus pull-out lane, and an RRFB crosswalk. The city council imposed conditions of approval incorporating all of the application's proposals and setting out the required improvements along different segments of Highway 99 North. Record 32, 35-36.

Petitioner argues that the city council's findings are inadequate because they do not address the requirements of the United States Supreme Court decisions *Nollan v. California Coastal Comm'n*, 483 US 825, 107 S Ct 3141, 97 L Ed 2d 677 (1987), and *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 L Ed 2d 304 (1994). In *Nollan*, the Court held that "a permit condition that serves the same legitimate police-power purpose as a refusal to issue the permit [is] not * * * a taking if the refusal to issue the permit would not constitute a taking." 483 US at 836. *Nollan* requires an "essential nexus" between a permit condition and the public purpose the condition is intended to further. In *Dolan*, the Court discussed the required relationship between a development and a proposed exaction, concluding:

> "[A] term such as 'rough proportionality' best encapsulates what we hold to be the requirement of the Fifth Amendment. No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed

development." 512 US at 391.

In *Koontz v. St. Johns River Water Mgmt. Dist.*, the Court explained that *Nollan* and *Dolan* "reflect an overarching principle, known as the unconstitutional conditions doctrine, that vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up." 570 US 595, 604, 133 S Ct 2586, 186 L Ed 2d 697 (2013). In other words, the requirements of *Nollan* and *Dolan* protect land use permit applicants from being *coerced* into giving up their Fifth Amendment right to just compensation for property the government takes.

We agree with the city that those requirements do not apply where, as here, the applicant proposes the improvements themselves and the local government merely accepts that proposal and memorializes it in the decision as a condition of approval. Accordingly, petitioner's *Nollan/Dolan* argument provides no basis for reversal or remand.

3. Inconsistent Findings

We understand petitioner to argue that the city's findings are inconsistent because they simultaneously (1) require Casita to construct certain improvements along and beyond the property's frontage on Highway 99 North and (2) conclude that it would be impossible for Casita to construct those improvements. The city found:

> "[P]hysical barriers are present for approximately 2,218-feet of the approximately 3,088-feet of frontage proposed to be improved as part of this annexation. * * * [T]he combination of unique and

> unusual aspects makes the installation of city-standard improvements impossible when private ownership of much of the abutting property is taken into consideration." Record 67.

Petitioner misreads the above-quoted findings. The city did not find that it would be impossible for Casita to construct the proposed improvements. Rather, the city found that it would be impossible for Casita to construct improvements that comply with the street design standards in AMC 18.4.6.040 in some cases. That is in part why the city council granted the exception to those standards pursuant to AMC 18.4.6.020(B). There is no inconsistency.

4. Curb Cuts and RRFB Crosswalk

The city council relied on Casita's proposal to construct an RRFB crosswalk on Highway 99 North to conclude that AMC 18.5.8.050(E)(3) is satisfied. Petitioner argues that certain drawings in the record do not depict the RRFB crosswalk among the proposed improvements. Petition for Review 20 (citing Record 707-08). Petitioner also argues that the drawings show a continuous sidewalk along Highway 99 North with no curb cuts, which, petitioner argues, will cut off access to several existing businesses. We understand petitioner to argue that, for those reasons, the city's conclusion that the proposed pedestrian facilities will be safe and accessible, as required by AMC 18.5.8.050(E)(3), is not supported by substantial evidence.

First, AMC 18.5.8.050(E)(3) does not require that pedestrian facilities be "safe and accessible" generally. Rather, the provision requires that pedestrian facilities be safe and accessible "according to the safety analysis and standards

of the governing jurisdiction of the facility or street." We conclude above that substantial evidence supports the city's conclusion that safe and accessible pedestrian facilities, according to ODOT's standards, can and will be constructed. Accordingly, any arguments that the proposed pedestrian facilities will not be safe and accessible, as a general matter, provide no basis for reversal or remand.

Second, to the extent that petitioner is arguing that curb cuts and an RRFB crosswalk are required by ODOT's standards, we agree with the city that a reasonable person could find that they can and will be constructed. We agree with the city that the drawings to which petitioner refers are preliminary. As petitioner itself concedes, the drawings contain a note which reads, "Plan created by others during annexation applicant and approval process. Shown for reference only." Record 707-08. The drawings also contain text which reads, "Not for construction." Record 707-09. In addition, unlike other drawings in the record, the drawings to which petitioner refers are not stamped by a registered professional engineer. As explained above, ODOT submitted a letter approving the proposed improvements with certain refinements. That letter provides:

> "ODOT supports the proposal with conditions described below.
>
> "* * * * *
>
> "iv. Refined civil plans will need to incorporate:
>
> "a. Access points and curb cuts along the frontage improvements at existing accesses[, and]

"b. Details related to the striped pedestrian crossing and [RRFB] in the vicinity of North Main Street." Record 481.

The city council imposed conditions of approval setting out the required improvements along different segments of Highway 99 North, including an RRFB crosswalk. Record 35. The city council also imposed conditions of approval requiring Casita to (1) submit final civil plans for the street improvements for review and approval by ODOT at the final plan approval stage, (2) provide engineered construction drawings for the required street improvements for review and approval by ODOT, and (3) obtain any necessary permit approvals from ODOT prior to any work within the right-of-way. Record 34-35, 37. In order to satisfy the conditions of approval, Casita will be required to construct ODOT-approved curb cuts and an RRFB crosswalk. The city council's conclusion that the proposed pedestrian facilities satisfy AMC 18.5.8.050(E)(3) is supported by substantial evidence.

5. Effectiveness of RRFB Crosswalks

With respect to the proposed RRFB crosswalk, the city council found:

"The application materials further explain that [Casita] will be providing a high-visibility crosswalk across Highway 99 N[orth] with [RRFBs]. The application further notes that *mid-block crosswalks are dangerous, and RRFBs increase the safety of pedestrians and cyclists crossing when compared to a traffic signal.* The application materials go on to indicate that studies have shown that RRFBs increase motorist yielding rates because the lights are controlled by the pedestrian's presence and will not go off until they are safely out of the crosswalk. The proposed RRFB crossing is to be placed between North Main Street at Schofield Street, between

> the north- and south-bound bus stops. The RRFB crossing will provide a safe pedestrian and bicyclist crossing for all the residents in north Ashland where none existed before, both to [provide] access to Grand Terrace and to cross the highway to access these bus stops safely. [Casita] notes that local ODOT authorities have given preliminary approval to install a crossing with RRFBs in this location, and that final approval will be subject to review of the final engineered designs by the regional office in Salem. The developer will be responsible for the design, cost and installation of the crosswalk and RRFBs. A condition has been included below requiring that the final location and design of the RRFB crossing be detailed in the Final Plan submittal." Record 21 (emphasis added).

In concluding that RRFB crosswalks are more effective than traffic lights, the city council relied on Casita's representation that

> "RRFB's increase the safety of pedestrians and cyclists crossing when compared to a traffic signal, and mid-block crosswalks are dangerous. Studies have shown that RRFB's increase motorist yielding rates because the lights are controlled by the pedestrians[']presence and will not go off until they are safely out of the crosswalk."[6] Record 1176.

Petitioner argues that the city council's conclusion that RRFB crosswalks are more effective than traffic lights is not supported by substantial evidence. Petitioner points to studies that it submitted into the record indicating that traffic lights have higher yield rates than RRFB crosswalks and that the former are therefore more effective than the latter. Given those studies, petitioner argues that

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[6] As far as we know, the studies to which Casita referred were not submitted into the record.

a reasonable person would not rely on Casita's mere representations to conclude that RRFB crosswalks are more effective than traffic lights.

As explained above, AMC 18.5.8.050(E)(3) requires that pedestrian facilities be safe and accessible "according to the safety analysis and standards of the governing jurisdiction of the facility or street." Petitioner does not explain how the city council's finding that RRFB crosswalks are more effective than traffic lights is necessary to support its conclusion that the proposed pedestrian facilities will be safe and accessible according to ODOT's standards. *Krueger v. Josephine County*, 17 Or LUBA 418, 421 (1989) (citing *Pardee v. City of Astoria*, 17 Or LUBA 226, 240 (1988); *Bonner v. City of Portland*, 11 Or LUBA 40, 52 (1984)). Accordingly, absent any argument that the city's finding is necessary to support its conclusion, petitioner's argument provides no basis for reversal or remand.

6. Suggestion in Access Safety Evaluation

The RRFB crosswalk is proposed to be located southeast of the property's frontage on Highway 99 North. According to petitioner, Casita's Access Safety Evaluation assumes that bicyclists wishing to access the property from the southeast will dismount when they reach the crosswalk, walk their bikes south through the crosswalk, and then walk their bikes northwest on the sidewalk for .3 miles until they reach the property. Petitioner argues that that assumption is unsupported by substantial evidence and that bicyclists are more likely to ride their bikes through the crosswalk and then continue until they reach the property

either (1) going the wrong way in the bike lane or (2) riding their bikes on the sidewalk, both of which are dangerous.

Petitioner does not explain how the assumption in Casita's Access Safety Evaluation was necessary to support the city council's conclusion that the proposed bicycle and pedestrian facilities will be safe and accessible according to ODOT's standards. Accordingly, petitioner's argument provides no basis for reversal or remand. *Krueger*, 17 Or LUBA at 421.

The first subassignment of error is denied.

B. Second Subassignnment of Error

The improvements beyond the property's frontage on Highway 99 North are proposed to be located within the Highway 99 North right-of-way, which is owned and managed by ODOT. In the second subassignment of error, petitioner argues that the city's conclusion that safe and accessible bicycle and pedestrian facilities, according to ODOT's standards, can and will be constructed, as required by AMC 18.5.8:050(E)(2) and (3), is not supported by substantial evidence because there is no evidence in the record that it is feasible for Casita to obtain ODOT's approval to construct improvements within the right-of-way.

In *Bouman v. Jackson County*, we explained:

> "[W]here a local government finds that approval criteria will be met if certain conditions are imposed, and those conditions are requirements to obtain state agency permits, * * * a decision approving the subject application simply requires that there be substantial evidence in the record that the applicant is not precluded from obtaining such state agency permits as a matter of law. There

> does not have to be substantial evidence in the record that it is feasible to comply with all discretionary state agency permit approval standards because the state agency, which has expertise and established standards and procedures, will ultimately determine whether those standards are met." 23 Or LUBA 628, 646-47 (1992).

The city council imposed conditions of approval (1) setting out the required improvements along different segments of Highway 99 North and (2) requiring Casita to obtain any necessary permit approvals from ODOT prior to any work within the right-of-way. Record 35-36, 37. If Casita is unable to obtain ODOT's approval, it will be unable to proceed with the development. As explained in *Bouman*, the record need not demonstrate that it is feasible for Casita to obtain ODOT's approval to construct the improvements, only that Casita is not precluded as a matter of law from obtaining such approval. Petitioner does not contend that Casita is precluded as a matter of law from obtaining ODOT's approval. Accordingly, petitioner's argument provides no basis for reversal or remand.

The second subassignment of error is denied.

C. Third Subassignment of Error

In the third subassignment of error, petitioner argues that "[t]he street design standards are intended to provide safe pedestrian and bicycle facilities, and the exception creates dangerous conditions for those same pedestrian and bicycle facilities[.]" Petition for Review 25-26. Petitioner does not develop this argument further. AMC 18.4.6.020(B)(1)(a) allows the city to grant an exception to the street design standards where, as relevant here, "the exception is consistent

with the purpose, intent, and background of the street design standards in subsection 18.4.6.040.A[.]" The city adopted findings addressing that criterion.[7] Record 70. To the extent that petitioner argues that those findings misconstrue

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[7] The city found:

> "AMC 18.4.6.040.A details the purpose and intent of the standards as, '*This section contains standards for street connectivity and design as well as cross sections for street improvements. The standards are intended to provide multiple transportation options, focus on a safe environment for all users, design streets as public spaces, and enhance the livability of neighborhoods, consistent with the Comprehensive Plan.*' The Planning Commission here finds that the exception is consistent with the intent of providing for multiple transportation options focused on a safe environment for all users and designing streets as public spaces which enhance livability. As noted, both jurisdictional limitations and physical constraints in the form of a larger than normal separation between the development and the right-of-way and the presence within that separation of other properties, significant grade changes, and an identified wetland pose difficulties in providing on-street parking immediately adjacent to the roadway as envisioned in the standard street cross-section, however such on-street parking here would also conflict with the bus pull-out lane being required as a condition of the annexation, and with the desire to better accommodate bicycles along the frontage. The proposal seeks to provide needed housing in the form of smaller and more affordable rental units along a transit corridor with a focus on providing increased connectivity not just for motor vehicles, but also for pedestrians, cyclists and transit users. The Planning Commission concludes that this is in keeping with the purpose and intent of the street standards, consistent with the Comprehensive Plan vision, and ultimately in line with the recently passed Climate Friendly and Equitable Communities rulemaking just adopted by the State of Oregon." Record 70 (italics in original).

AMC 18.4.6.020(B)(1) or AMC 18.4.6.040(A), are inadequate, or are unsupported by substantial evidence, petitioner does not develop that argument sufficiently for our review. We will not develop that argument for petitioner. *Deschutes Development v. Deschutes Cty.*, 5 Or LUBA 218, 220 (1982).

The third subassignment of error is denied.

The second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

A. Feasibility

AMC 18.4.6.020(B) provides:

"**Exceptions and Variances.** Requests to depart from the requirements of this chapter are subject to chapter 18.5.5, Variances, except that deviations from section 18.4.6.040, Street Design Standards, are subject to subsection B.1, Exception to the Street Design Standards, below.

"1. Exception to the Street Design Standards. The approval authority may approve exceptions to the street design standards in section 18.4.6.040 if the circumstances in either subsection B.1.a or b, below, are found to exist.

"a. There is demonstrable difficulty in meeting the specific requirements of this chapter due to a unique or unusual aspect of the site or proposed use of the site; and the exception is the minimum necessary to alleviate the difficulty; and the exception is consistent with the purpose, intent, and background of the street design standards in subsection 18.4.6.040.A; and the exception will result in equal or superior transportation facilities and connectivity considering the following factors where applicable:

"i. For transit facilities and related improvements, access, wait time, and ride experience.

"ii. For bicycle facilities, feeling of safety, quality of experience (i.e., comfort level of bicycling along the roadway), and frequency of conflicts with vehicle cross traffic.

"iii. For pedestrian facilities, feeling of safety, quality of experience (i.e., comfort level of walking along roadway), and ability to safely and efficiently cross roadway; or

"b. There is no demonstrable difficulty in meeting the specific requirements, but granting the exception will result in a design that equally or better achieves the stated purposes, intent, and background of the street design standards in subsection 18.4.6.040.A." (Boldface and underscoring in original.)

Again, the improvements beyond the property's frontage on Highway 99 North are proposed to be located within the Highway 99 North right-of-way, which is owned and managed by ODOT. In the third assignment of error, petitioner argues that the city's conclusion that the application satisfies the exception standards at AMC 18.4.6.020(B) is not supported by substantial evidence because there is no evidence in the record that it is feasible for Casita to obtain ODOT's approval to construct those improvements. Petitioner argues that without ODOT's approval to construct those improvements, the city's decision will result in an "island of sidewalk" along the property's frontage on Highway 99 North, which will not "result in equal or superior transportation facilities and connectivity" considering "feeling of safety," "quality of

experience," "frequency of conflicts with vehicle cross traffic," and "ability to safely and efficiently cross roadway," as required by AMC 18.4.6.020(B). Petition for Review 28.

Again, the city council imposed conditions of approval (1) setting out the required improvements along different segments of Highway 99 North and (2) requiring Casita to obtain any necessary permit approvals from ODOT prior to any work within the right-of-way. Record 35-36, 37. If Casita is unable to obtain ODOT's approval, it will be unable to proceed with the development at all. As explained in *Bouman*, the record need not demonstrate that it is feasible for Casita to obtain ODOT's approval to construct the improvements, only that Casita is not precluded as a matter of law from obtaining such approval. 23 Or LUBA 628. Petitioner does not contend that Casita is precluded as a matter of law from obtaining ODOT's approval. Accordingly, petitioner's argument provides no basis for reversal or remand.

B. Contradictory Statements in Application

Petitioner argues that Casita's application simultaneously states that (1) various impediments, including physical constraints and private property issues, limit Casita's ability to construct sidewalk improvements beyond the property's frontage on Highway 99 North and (2) constructing those improvements nevertheless "can be done." Petition for Review 28-29. We understand petitioner to argue that those statements are contradictory and that, given that contradiction, the city's conclusion that there is "demonstrable difficulty" in meeting the street

design standards, as required by AMC 18.4.6.020(B), is unsupported by substantial evidence.

The statements to which petitioner refers appear in Casita's submittal. Record 681-82, 1116-17, 1197-98. Petitioner misreads those statements. Casita did not state that there were physical and legal impediments to constructing the *proposed* sidewalk improvements. Rather, Casita stated that there were physical and legal impediments to constructing sidewalk improvements *that comply with the street design standards in AMC 18.4.6.040*. There is no contradiction.

The third assignment of error is denied.

FOURTH ASSIGNMENT OF ERROR

Petitioner's fourth assignment of error generally relates to the affordable units that will be provided as part of the development.

A. First Subassignment of Error

The annexation standards at AMC 18.5.8.050(G)(1) and (2) provide:

> "1. The total number of affordable units provided to qualifying buyers, or to qualifying renters, shall be equal to or exceed 25 percent of the base density as calculated using the unit equivalency values set forth herein. The base density of the annexed area for the purpose of calculating the total number of affordable units in this section shall exclude any unbuildable lots, parcels, or portions of the annexed area such as existing streets and associated rights-of-way, railroad facilities and property, wetlands, floodplain corridor lands, water resource areas, slopes greater than 35 percent, or land area dedicated as a public park.

"a. Ownership units restricted to households earning at or below 120 percent of the area median income shall have an equivalency value of 0.75 unit.

"b. Ownership units restricted to households earning at or below 100 percent of the area median income shall have an equivalency value of 1.0 unit.

"c. Ownership or rental units restricted to households earning at or below 80 percent of the area median income shall have an equivalency value of 1.25 unit.

"2. As an alternative to providing affordable units per section 18.5.8.050.G.1, above, the applicant may provide title to a sufficient amount of buildable land for development complying with subsection 18.5.8.050.G.1.b, above, through transfer to a non-profit (IRC 501(3)(c)) affordable housing developer or public corporation created under ORS 456.055 to 456.235.

"a. The land to be transferred shall be located within the project meeting the standards set forth in sections 18.5.8.050.G.5 and 18.5.8.050.G.6.

"b. All needed public facilities shall be extended to the area or areas proposed for transfer.

"c. Prior to commencement of the project, title to the land shall be transferred to the City, an affordable housing developer which must either be a unit of government, a non-profit 501(c)(3) organization, or a public corporation created under ORS 456.055 to 456.235.

"d. The land to be transferred shall be deed restricted to comply with Ashland's affordable housing program requirements.

"e. Transfer of title of buildable land in accordance with this subsection shall exempt the project from the

development schedule requirements set forth in subsection 18.5.8.050.G.4."

With respect to AMC 18.5.8.050(G)(1), the city council found:

"The application materials explain that the proposed annexation has a density of more than four residential units, that the development proposal demonstrates that minimum density can be met with the future development of the residentially zoned land, and that 25 percent of the base density shall be dedicated as affordable housing. The proposed units will be rentals under item 'c'. The application further asserts that the proposal provides the necessary land area for the development for the affordable housing required, as the ordinance stipulates that when utilized as rentals, the affordable units would be restricted to households earning 80 percent or less of the area median income (AMI), with an equivalency value of 1.25 units. Twenty-five percent of the 185.625 base density is 46.406 units, which the application equates to 37 affordable units being required (46.406/1.25 = 37.125)." Record 25-26.

With respect to AMC 18.5.8.050(G)(2), the city council found:

"The application materials indicate that [Casita] intends to create separate lots for legally separate title to provide the flexibility to transfer a legal lot to a non-profit. These lots are to have in place all the infrastructure, driveways, parking and open space. [Casita] indicates that the land area will be provided and thus the criterion is satisfied. The application materials further explain that the land to be transferred is located within the project and the affordable units will meet the standards set forth in AMC 18.5.8.050.G.5 and G.6 below. The land area is proposed as two of the building pads in the proposed Grand Terrace development as illustrated on the preliminary property boundary map provided. The necessary facilities for the area of the affordable housing units to be transferred will be extended to the building pad area. The common area improvements include the utility infrastructure, sidewalks, curbs, gutters, parking lot improvements, shade trees for the development of the affordable housing units. The building pad areas for the affordable housing are to be the same as the building pad areas of

the market rate building areas. The title to the land area for development of the affordable housing units will be transferred to the city, an affordable housing development or other appropriate non-profit organization or public corporation that meets the ORS 456.055 to 456.235 prior to the commencement of the project, and the land transferred will be deed restricted to comply with the affordable housing program requirements." Record 26-27.

The city council explained:

"[U]ncertainty over whether the developer will provide the required affordable units themselves or dedicate the required land area to an affordable housing provider poses some potential complication * * *. * * * The City Council has included a condition of approval requiring that the Final Plan submittal make clear how the affordability requirements are to be addressed, and that if [Casita] opts to dedicate land to an affordable housing provider, rather than constructing them themselves or with a provider partner, that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and include adequate land area to accommodate the required number of 47 affordable ownership units at 100 percent AMI on the final plat. A condition has also been included below to require that a deed restriction be recorded on the property to require that the affordability requirements for annexation be addressed with any future development of the site." Record 30.

Condition 7 provides, in part:

"[P]rior to final approval and annexation of the property, [Casita] shall provide:

"* * * * *

"e. A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that where the required number of affordable units is fractional it shall be rounded up, and that should [Casita] opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC

> 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI." Record 33-34.

In *Rhyne v. Multnomah County*, we explained:

> "Where the evidence presented during the first stage approval proceedings raises questions concerning whether a particular approval criterion is satisfied, a local government essentially has three options potentially available. First, it may find that although the evidence is conflicting, the evidence nevertheless is sufficient to support a finding that the standard is satisfied or that feasible solutions to identified problems exist, and impose conditions if necessary. Second, if the local government determines there is insufficient evidence to determine the feasibility of compliance with the standard, it could on that basis deny the application. Third, if the local government determines that there is insufficient evidence to determine the feasibility of compliance with the standard, instead of finding the standard is not met, it may defer a determination concerning compliance with the standard to the second stage. In selecting this third option, the local government is not finding all applicable approval standards are complied with, or that it is feasible to do so, as part of the first stage approval (as it does under the first option described above). Therefore, the local government must assure that the second stage approval process to which the decision making is deferred provides the statutorily required notice and hearing, even though the local code may not require such notice and hearing for second stage decisions in other circumstances." 23 Or LUBA 442, 447-48 (1992) (footnotes and citation omitted).

In the first subassignment of error, petitioner argues that, by imposing Condition 7(e), which allows Casita to determine whether it wishes to comply with AMC 18.5.8.050(G)(1) or (2) at a later time, the city council improperly deferred findings of compliance with either AMC 18.5.8.050(G)(1) or (2) to a subsequent proceeding that does not provide an opportunity for notice or public

participation, contrary to *Rhyne*. The city responds, initially, that petitioner failed to preserve this argument below and is precluded from raising it for the first time at LUBA. ORS 197.835(3); ORS 197.195(3); ORS 197.797(1). The so-called "raise or waive it" doctrine applies only to quasi-judicial proceedings. *Columbia Pacific v. City of Portland*, 76 Or LUBA 15, 24-25 (2017), *rev'd and rem'd on other grounds*, 289 Or App 739, 412 P3d 258, *rev den*, 363 Or 390 (2018); *DLCD v. Columbia County*, 24 Or LUBA 32, 36, *aff'd*, 117 Or App 207, 843 P2d 996 (1992); *Parmenter v. Wallowa County*, 21 Or LUBA 490, 492 (1991). Throughout its brief, the city takes the position that the challenged decision is legislative. We explained above that we assume for purposes of this opinion that the decision is legislative. Accordingly, we agree with petitioner that it is not precluded from raising this argument for the first time at LUBA.

However, we reject petitioner's argument on the merits. We do not understand the city council to have concluded, as petitioner argues, that there is insufficient evidence to determine Casita's compliance with either AMC 18.5.8.050(G)(1) or (2). We do not understand Condition 7(e) to be the city council's attempt to defer a determination of the feasibility of Casita's compliance with either AMC 18.5.8.050(G)(1) or (2) to a second stage. Rather, we understand the city council to have concluded that "the evidence * * * is sufficient to support a finding that the standard is satisfied, or that feasible solutions to identified problems exist" under the first *Rhyne* option. 23 Or LUBA at 447. In other words, we understand the city council to have concluded that it

is feasible to meet either AMC 18.5.8.050(G)(1) or (2) and to leave it to Casita to choose the path.

The first subassignment of error is denied.

B. Second Subassignment of Error

AMC 18.5.8.050(G)(3) provides:

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

The minimum floor area in AMC Table 18.5.8.050(G)(3) for studios is 350 square feet, and the minimum floor area in AMC Table 18.5.8.050(G)(3) for one-bedroom units is 500 square feet.

Casita's application proposes 230 apartments in 10 buildings. "Each of the buildings are proposed to have twenty, 499-square foot, one-bedroom units and three, 250 square foot studio units." Record 1506. The city council found:

> "The application materials indicate that the required affordable units are proposed to be developed by the developer or by others, and that in either case the units will be comparable to the proposed one bedroom deluxe and micro-studio units. The proportion of

> affordable units and the unit types and sizes will be similar in proportion to the market rate units as detailed in Table 18.5.8.050.G.3." Record 27.

In the second subassignment of error, petitioner argues that the city council improperly construed AMC 18.5.8.050(G)(3) in concluding that Casita's application satisfies that provision. Petitioner argues that an application that proposes affordable units with square footages lower those set forth in AMC Table 18.5.8.050(G)(3) does not comply with AMC 18.5.8.050(G)(3).

The city does not dispute that an application that proposes affordable units with square footages lower than those set forth in AMC Table 18.5.8.050(G)(3) does not comply with AMC 18.5.8.050(G)(3). Instead, the city responds that Casita will be required to demonstrate compliance with AMC 18.5.8.050(G)(3) at the final plan approval stage under the city's performance standards option. The city also argues that Casita "will be required to meet the conditions of approval included in the final decision of Respondent's Council with respect to the minimum square footage required by Respondent's code." Respondent's Brief 37.

We do not understand either of the city's arguments. Under AMC 18.3.9.040(B)(5), final plan approval requires the city to demonstrate "substantial conformance with the outline plan." The city does not identify a provision of the AMC, or a condition of approval, that requires Casita to demonstrate compliance with AMC 18.5.8.050(G)(3) at the final plan approval stage, and we are aware of none.

Moreover, the city council did not, as the city argues, conclude that Casita will be required to demonstrate compliance with AMC 18.5.8.050(G)(3) at the final plan approval stage. The city council concluded that Casita's application satisfied AMC 18.5.8.050(G)(3) because it proposed affordable units with square footages "comparable" or "similar" to those set forth in AMC Table 18.5.8.050(G)(3). Record 27. Accordingly, we agree with petitioner that the city council's interpretation of AMC 18.5.8.050(G)(3) as being satisfied where the proposed square footages are "comparable" or "similar" to those set forth in AMC Table 18.5.8.050(G)(3) is inconsistent with the express language of AMC 18.5.8.050(G)(3), which provides that the proposed square footages "shall" comply with those set forth in AMC Table 18.5.8.050(G)(3). ORS 197.829(1)(a).

The second subassignment of error is sustained.

The fourth assignment of error is sustained, in part.

The city's decision is remanded.

Certificate of Mailing

I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 2023-007 on May 9, 2023, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

Douglas M. McGeary
Acting City Attorney, City of Ashland
20 E Main St
Ashland, OR 97520

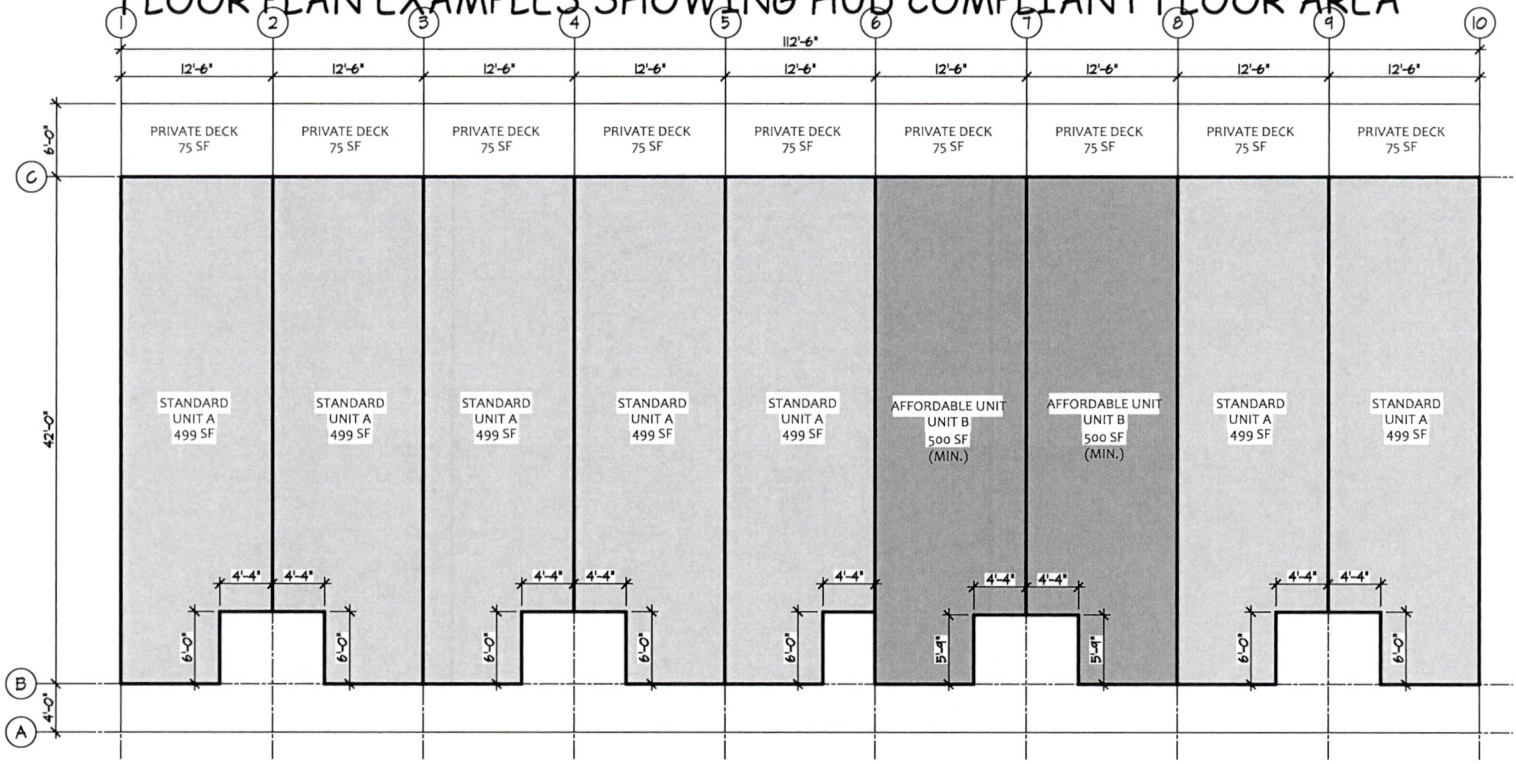
Sean T. Malone
Attorney at Law
259 E. 5th Avenue, Suite 200-C
Eugene, OR 97401

Dated this 9th day of May, 2023.

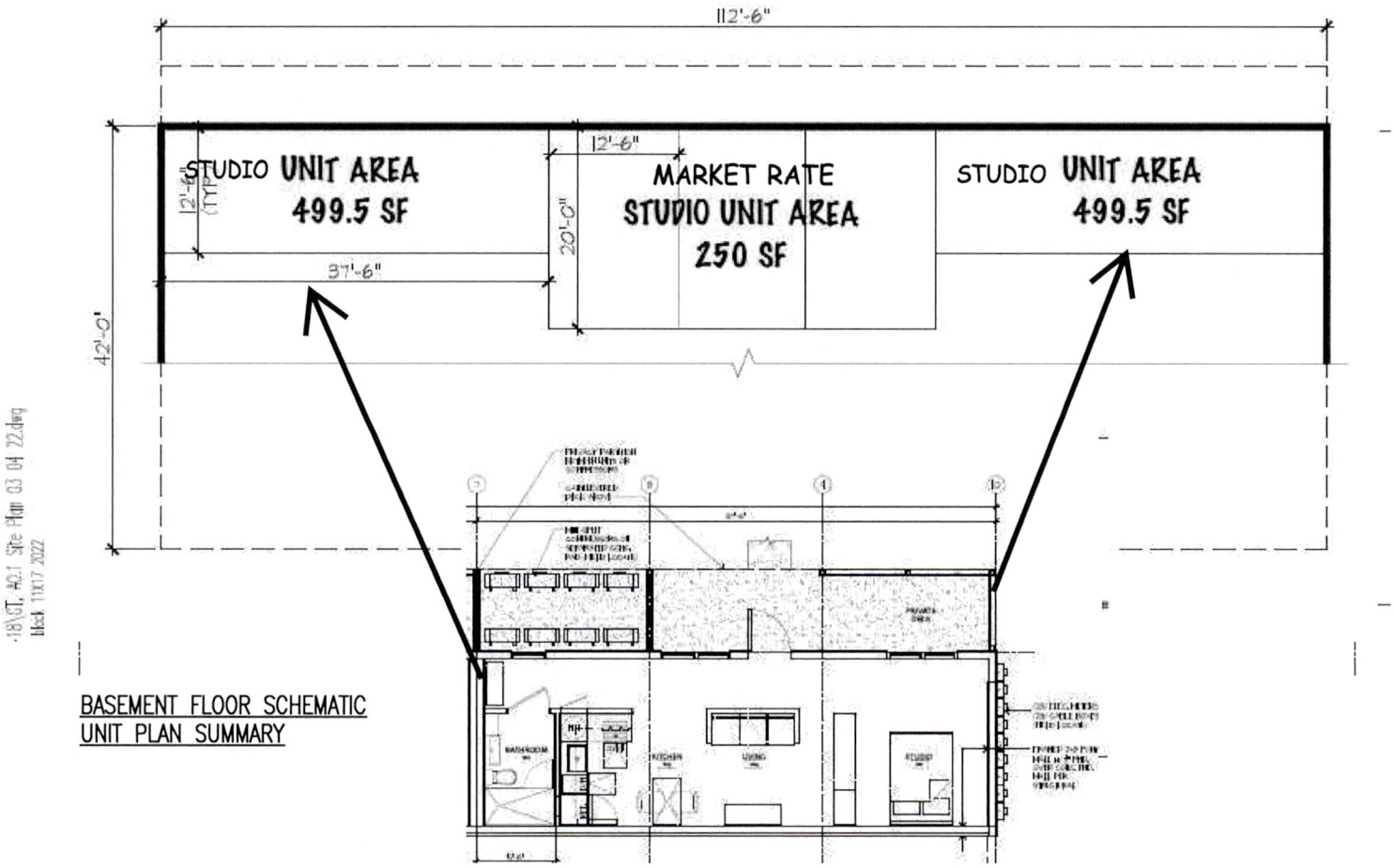
Erin Pence
Executive Support Specialist

Jessica Loftis
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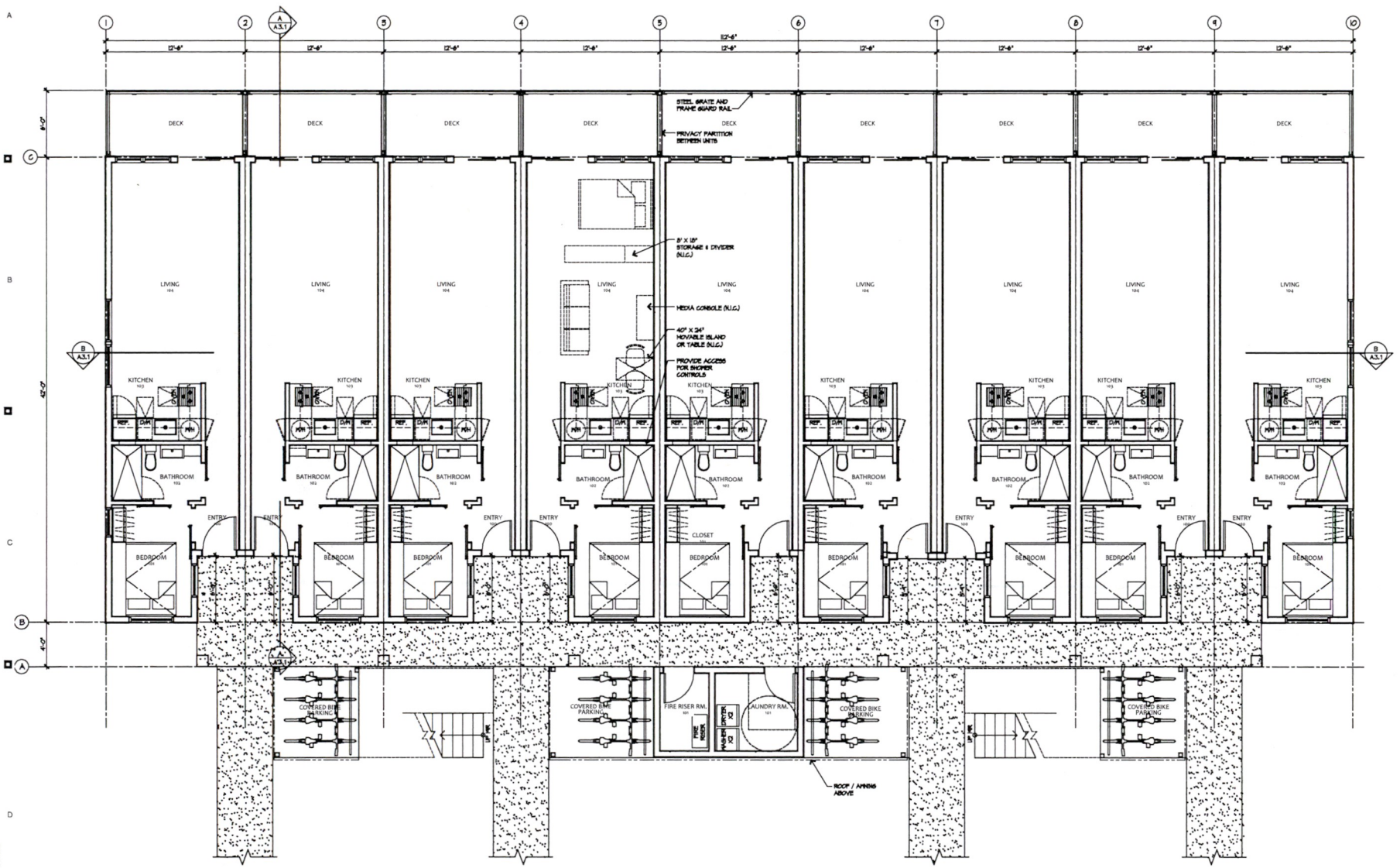
FLOOR PLAN EXAMPLES SHOWING HUD COMPLIANT FLOOR AREA



GROUND FLOOR / SECOND FLOOR SCHEMATIC
UNIT PLAN SUMMARY



BASEMENT FLOOR SCHEMATIC
UNIT PLAN SUMMARY



FIRST FLOOR PLAN
SCALE: 1/4" = 1'-0"

HUD COMPLIANT UNIT AREA = 500 SF.
STANDARD UNIT AREA = 494 SF.

SCALE: 1/4" = 1'-0"

GARY R. CAPERNA
ARCHITECT
architecture planning
190 North Ross Lane, Medford, Oregon
Post Office Box 4460 97501
541.773.8325 Cell: 541.840.4123
Email: garycaperna@charter.net
Member American Institute Of Architects
Idaho AR-986158, Colorado 404248
Oregon 5247, Washington 11470

STAFF

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J.B. STEEL, INC.
COMMERCIAL & INDUSTRIAL

P.O. Box 4460 : 190 North Ross Lane
Medford, Oregon 97501
Office: 541.773.8325 : Fax: 541.773.6523
OR CCB # 2599 : CA 298104 488 : ID RCO-4730 : WA JBSTEI962
Web: WWW.JBSTEELING.COM

PROJECT: A NEW HOUSING DEVELOPMENT FOR
GRAND TERRACE

Client:
KENDRICK ENTERPRISES LLC
153 Will Dodge Way, Ashland, OR 97520
Project Location:
Highway 99, Ashland, OR 97520
Map & Tax Lot #: 38-1E-32, 1700 & 1702

APPROVED BY:

MARK	DATE	DESCRIPTION
A	04/12/21	VE #1
B	04/08/22	UNIT REVISION
C	07/18/23	UNIT REVISION

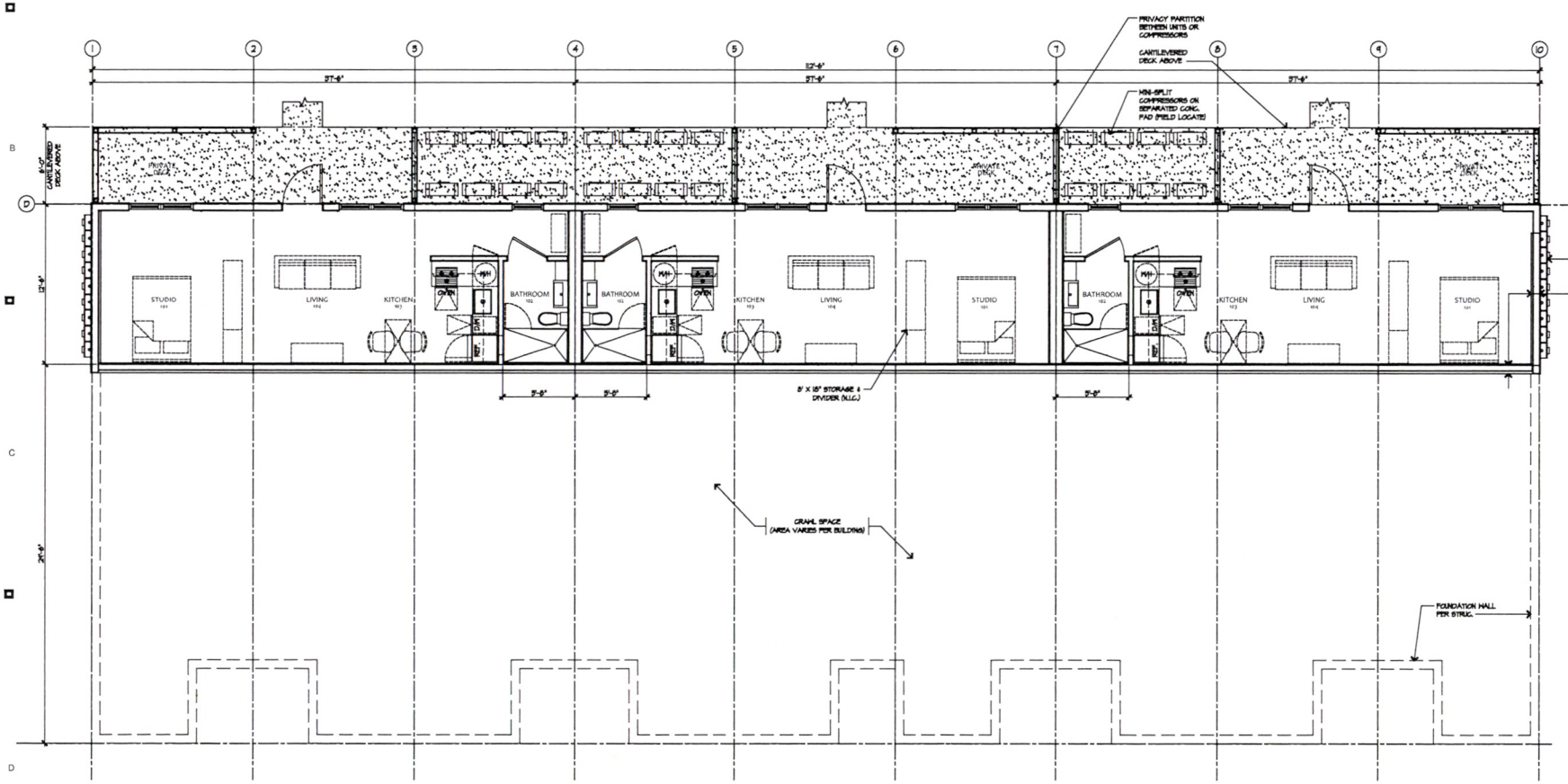
ISSUE DATE: 7/18/2023 2:48 PM
PROJECT NO.: 2737-18
DRAWN BY: JMK
CHECKED BY: GRC

SHEET TITLE:
CONCEPTUAL
1ST FLOOR PLAN

A1.1

PRELIMINARY
NOT FOR CONSTRUCTION

Login Name: jamie
File Date: 7/18/2023 2:48:41 PM
File Name: C:\Users\jamie\Desktop\PROJECTS\Grand Terrace 2737-18\Drawings\01 A1.1 01 15 25.dwg
Xrefs: _grid.dwg | _cbl-01-base.dwg



BASEMENT FLOOR PLAN

SCALE: 1/4" = 1'-0"

STUDIO UNIT 468.75 SF

0 2' 4' 8'

SCALE: 1/4" = 1'-0"

GARY R. CAPERNA
ARCHITECT
architecture
planning

190 North Ross Lane, Medford, Oregon
Post Office Box 4480 97501
541.773.8325 Cell: 541.840.4123
Email: garycaperna@charter.net

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Oregon 0247, Washington 11470

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J.B. STEEL, INC.
COMMERCIAL & INDUSTRIAL

P.O. Box 4480 :: 190 North Ross Lane
Medford, Oregon 97501
Office: 541.773.8325 :: Fax: 541.773.6523
OR CCB # 27599 :: CA 798154 A&B :: ID RCE-27730 :: NV 391393

Web: WWW.JBSTEELINC.COM

PROJECT: A NEW HOUSING DEVELOPMENT FOR

GRAND TERRACE

Client:
KENDRICK ENTERPRISES LLC
153 Will Dodge Way, Ashland, OR 97520

Project Location:
Highway 99, Ashland, OR 97520
Map & Tax Lot #: 38-1E-32, 1700 & 1702

APPROVED BY:

MARK	DATE	DESCRIPTION
A	04/12/21	VE #1
B	04/06/22	UNIT REVISION
C	07/18/23	UNIT REVISION

ISSUE DATE: 7/18/2023 2:50 PM
PROJECT NO: 2737-18
DRAWN BY: JMK
CHECKED BY: GRC

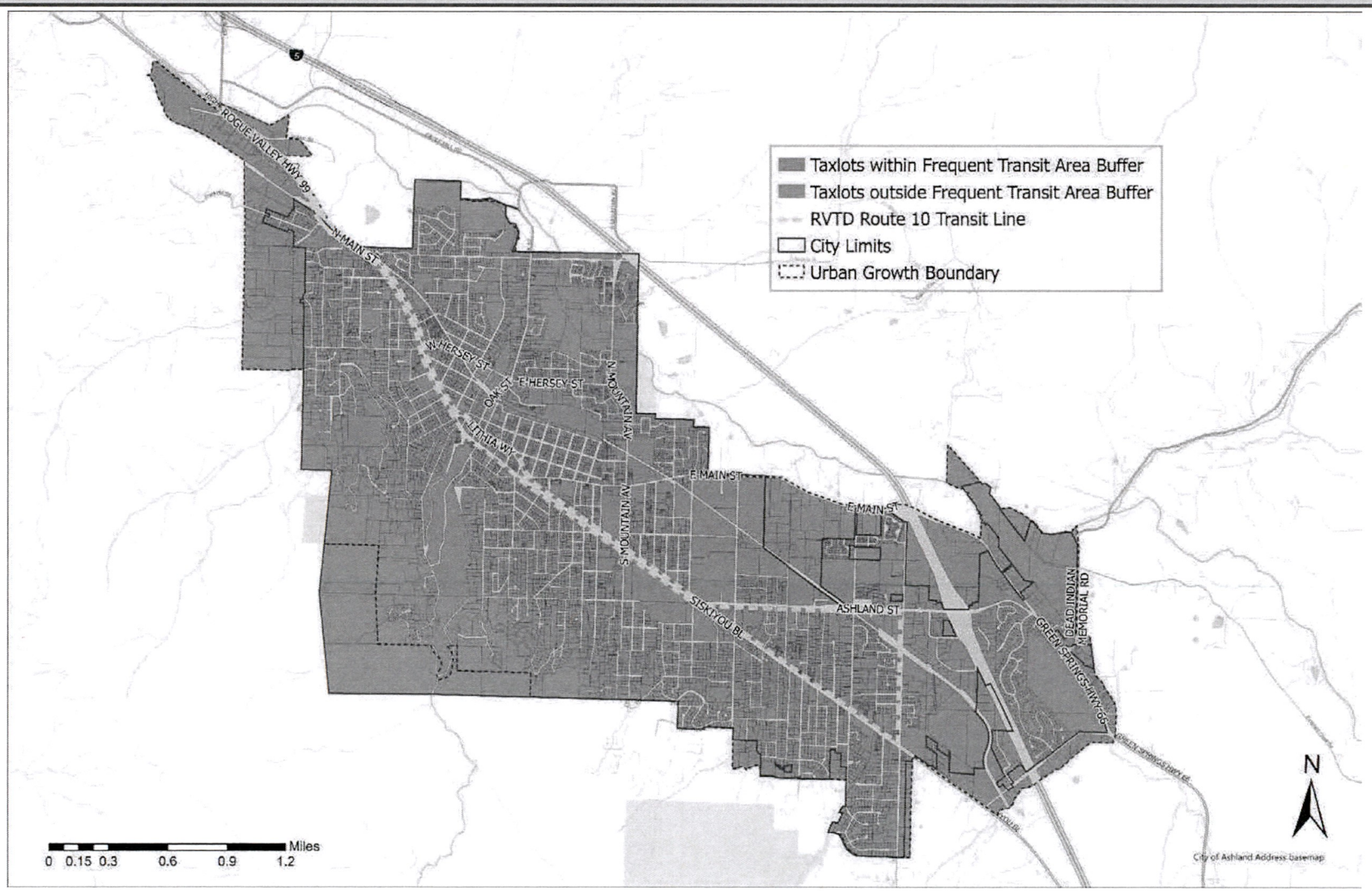
SHEET TITLE:
BASEMENT FLOOR PLAN

A1.3

PRELIMINARY NOT FOR CONSTRUCTION

Login Name: jamest
Plot Date: Tuesday, July 18, 2023 2:50:13 PM
File Name: S:\PROJECTS\2023\2737-18\Drawings\2737-18 A1.1 (F 11.13.dwg
HARDWARE: Canon imageRUNNER ADVANCE C5535i

ased on new "*Climate Friendly & Equitable Community*" rules adopted by the State of Oregon, beginning on **January 1, 2023** the cities in Oregon's eight metro areas (including Ashland) will no longer be able to nforce any minimum parking requirements within a ½-mile buffer of frequent transit routes (*i.e. the area in green on the map below, which is within ½-mile of RVTD's Route 10*). In addition, cities can no longer andate parking for small units (<750 s.f.), affordable units, single room occupancy housing, shelters, child care facilities, or facilities for people with disabilities or shelters, and cities can no longer require more an one parking space per dwelling unit.



ɴd: PA-T3-2022-00004 remand

nessage

ıbert Kendrick <bobk213@icloud.com> Tue, Jul 18, 2023 at 2:1(
: Amy Gunter <amygunter.planning@gmail.com>

Sent from my iPad

Begin forwarded message:

From: Derek Severson <derek.severson@ashland.or.us>
Date: June 27, 2023 at 3:35:50 PM PDT
To: Robert Kendrick <bobk213@icloud.com>
Subject: Re: PA-T3-2022-00004 remand

Bob,

The Climate Friendly & Equitable Communities rules, adopted by the state in July of 2022, are such that:

- Cities can no longer mandate parking within ½ mile of frequent transit. That rule took effect on January 1, 2023 and is the basis for the map I sent you previously. We are not enforcing any parking mandates in areas within ½ mile of frequent transit (RVTD Routes 10 & 17) even though parking regulations remain in our code.
- In addition, cities can no longer mandate parking for small units (<750 s.f.), affordable units, single room occupancy housing, shelters, child care facilities, or facilities for people with disabilities or shelters. Ashland will also no longer require more than one parking space per dwelling unit for residential developments with more than one dwelling unit.
- As a next step, cities have to either change their codes to eliminate parking mandates city-wide or adopt new rules from a menu of options. Ashland has received an extension for this step and we are scheduled to adopt new rules by the end of the year. We are auditing codes relative to parking now in preparation for that process.

Elimination of parking mandates citywide is discussed in the Oregon Administrative Rules (OAR) in OAR 660-012-420. The menu of other options are in OAR 660-012-425 to -450. See https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=3062 .

The state's climate friendly page has a lengthy list of explanatory materials on parking at https://www.oregon.gov/lcd/CL/Pages/CFEC.aspx under "Parking Reform & Guidance."

Just to be clear, *since I fully agree this is all confusing*, none of this at this point is in city codes - OAR 660-012-440(3) under the new rules says that cities may not enforce parking mandates (i.e. the requirements currently in the cities' codes) within ½ mile of frequent transit. So by state rule, we have to ignore our current parking codes until we go through the process of updating them. You would want to reference the state rules as the basis for the different treatment of parking.

Derek Severson, Planning Manager
Pronouns He/him/his

Better Together

City of Ashland
Community Development
51 Winburn Way, Ashland, Oregon 97520
541.552.2040 | TTY 800.735.2900
derek.severson@ashland.or.us

Online ashland.or.us; social media (Facebook @CityOfAshlandOregon | Twitter @CityofAshland)
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From: Robert Kendrick <bobk213@icloud.com>
Sent: Tuesday, June 27, 2023 03:04 PM
To: Brandon Goldman <brandon.goldman@ashland.or.us>
Cc: Amy Gunter <amygunter.planning@gmail.com>; Chris Hearn <chearn@davishearn.com>; Derek Severson <derek.severson@ashland.or.us>; Robert J Kendrick <bobk213@icloud.com>
Subject: Re: PA-T3-2022-00004 remand

[EXTERNAL SENDER]

Brandon, Derek

One another subject. We talked about the elimination of parking and no parking mandated, and i'm told there is a schedule on the look ahead to make it official, and also the city no longer mandates parking. This gives me a little pause to move because I'm confused.

On your June 12 email you said, " However, due to the CFEC rules Ashland is no longer mandating on-site parking at this time."

Bob, We have been working on formal code revisions relating to parking with the expectation of presenting them at Public Hearings for adoption in Oct, Nov, and December to the PC and CC. DLCD has provided for such changes to be completed by December 31, 2023. Ashland City Council's second hearing on the elimination of Parking mandates is

I was also sent some maps https://www.ashland.or.us/SIB/files/FINAL_CFEC_Parking_Handout(2).pdf of the areas where parking is eliminated from Derek and a copy of the state requirements https://www.oregon.gov/lcd/CL/Documents/ParkingReformOverview.pdf.
The City map says the following
"Based on new rules adopted by the State of Oregon, beginning January 1, 2023 the cities in Oregon's eight metro areas (including Ashland) will no longer enforce minimum parking requirements within a 1/2-mile buffer of frequent transit routes (the green area on the map below is within 1/2-mile of RVTD's Route 10). In addition, **Ashland will no longer mandate parking for small units (<750 s.f.), affordable units,** single room occupancy housing, shelters, child care facilities, or facilities for people with disabilities or shelters. Ashland will also no longer require more than one parking space per dwelling unit for residential developments with more than one dwelling unit".

Im sorry about my persistent questioning but I need some definitive answers so i can move forward.
This is what is confusing me:
1. You said parking is no longer mandated.
2. The city is working on the final code revisions for the parking and it's elimination.
3. There is a statement attached to the map that says the City is no Longer enforcing minimum parking requirements.

My question is "what can i refer to in the City that officially says parking is not required in the areas noted above in the emails and the Map and the Look Ahead agenda"?

Like i said i understand what I'm being told, but i want to make sure we are going to state exactly what is legal and official in the city for Grand Terrace to comply. Since the City hasn't adopted the new regulations does that mean the state law trumps the City and I refer to the State Law, or do I point to the just the Map of the areas that are exempt and to what I've been told in the emails from both you and Derek.

I want to make sure we do this correct.

Thanks for all your help.

Bob
Kendrick Enterprise LLC
Casita Developments LLC

Sent from my iPad

> On Jun 27, 2023, at 12:23 PM, Brandon Goldman <brandon.goldman@ashland.or.us> wrote:
>
> Bob, you are correct, I was incorrectly referencing the ORS citation in the example letter you sent, which applies to Counties, not cities.
>
> So as noted the correct reference for a City remand from LUBA is ORS 227.181.
>
> > *(1)*
> >
> > *Pursuant to a final order of the Land Use Board of Appeals under ORS 197.830 (Review procedures) remanding a decision to a city, the governing body of the city or its designee shall take final action on an application for a permit, limited land use decision or zone change within 120 days of the effective date of the final order issued by the board. For purposes of this subsection, the effective date of the final order is the last day for filing a petition for judicial review of a final order of the board under ORS 197.850 (Judicial review of board order) (3). If judicial review of a final order of the board is sought under ORS 197.830 (Review procedures), the 120-day period established under this subsection shall not begin until final resolution of the judicial review.*
>
> Moving forward, the City's actions will commence once you formally request in writing that the application proceed on remand. Please note that you have 180 days from the effective LUBA order to make this request. It would be wise to determine the best course of action before submitting the request, as the City will follow the review procedures (120 days) outlined in ORS 227.181 once we receive the written request.

Brandon Goldman, AICP

Director of Community Development

Pronouns: he, him, his

Better Together

City of Ashland

Community Development

51 Winburn Way, Ashland, Oregon 97520

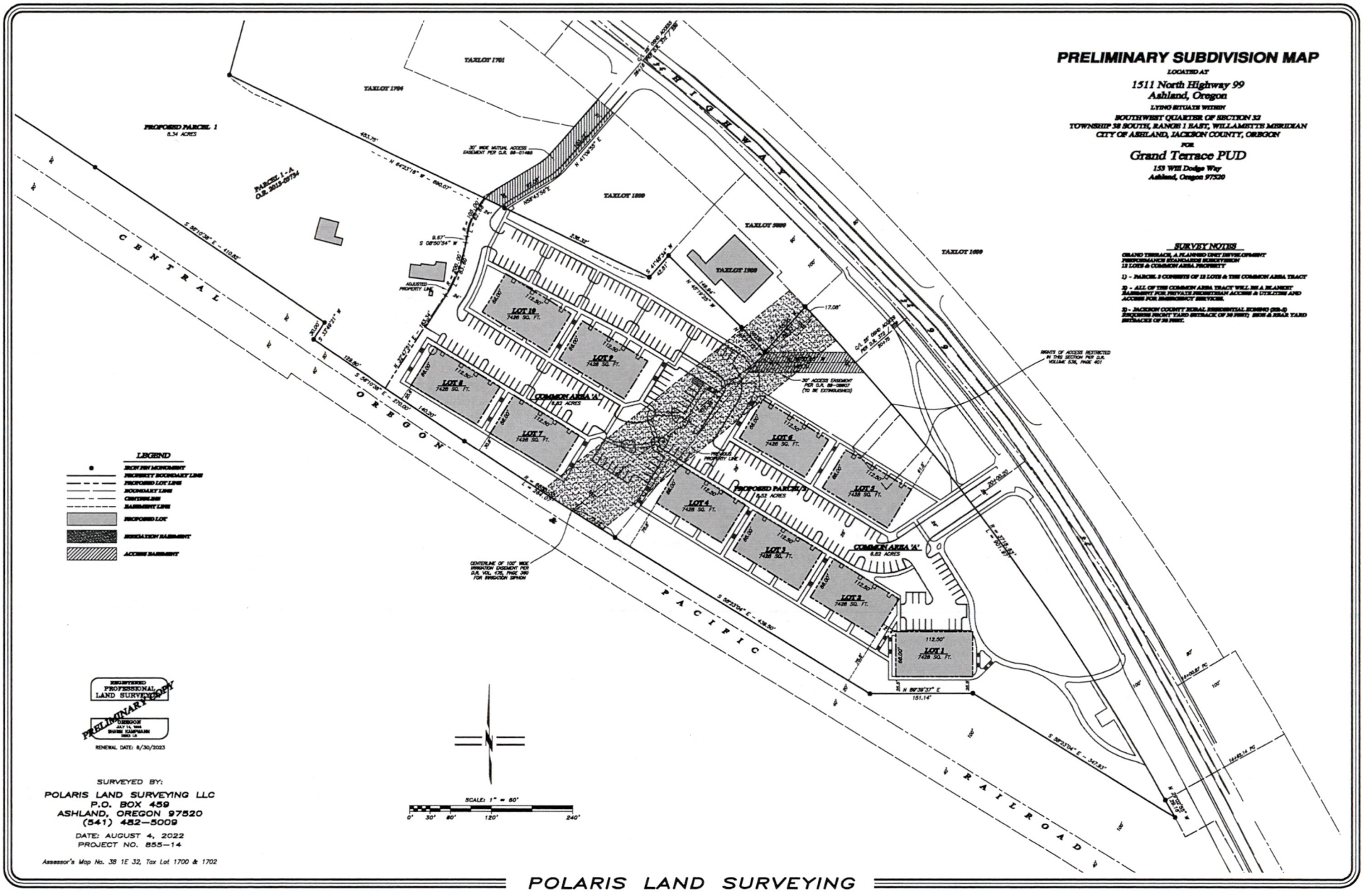
541-552-2076 | TTY 800.735.2900

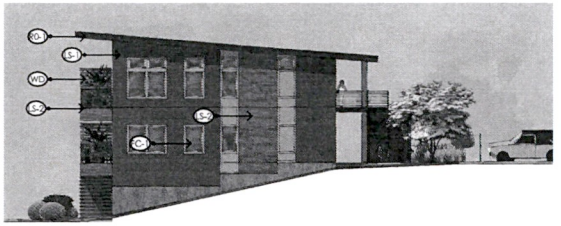
Brandon.goldman@ashland.or.us

Online ashland.or.us; social media (Facebook @CityOfAshlandOregon | Twitter @CityofAshland)

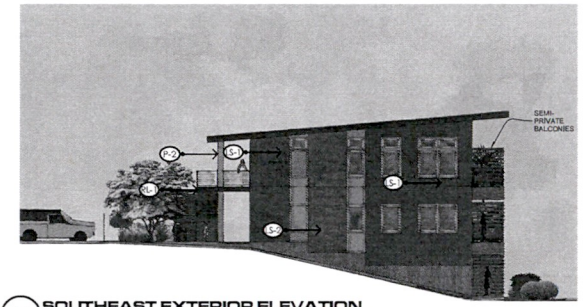
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From: Robert Kendrick <bobk213@icloud.com>
Sent: Tuesday, June 27, 2023 10:45 AM
To: Brandon Goldman <brandon.goldman@ashland.or.us>

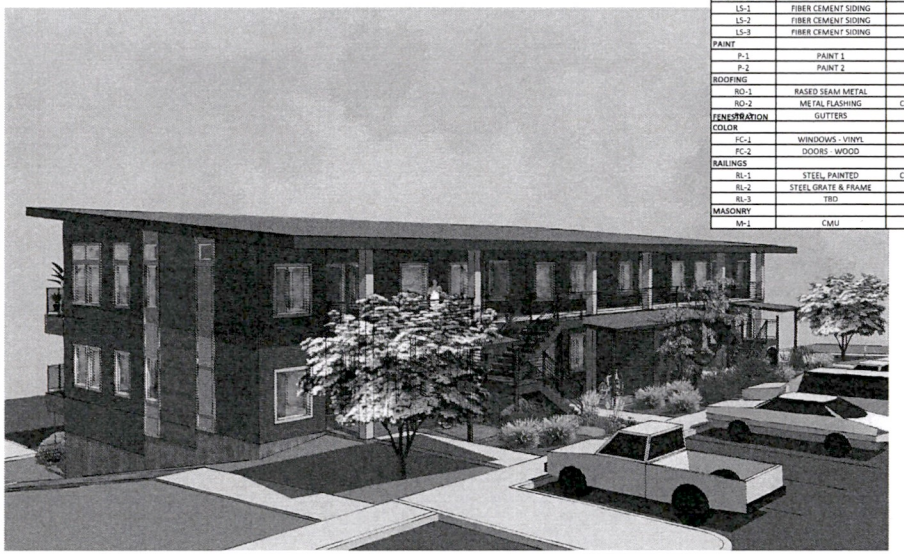

PRELIMINARY SUBDIVISION MAP
LOCATED AT
1511 North Highway 99
Ashland, Oregon
LYING SITUATE WITHIN
SOUTHWEST QUARTER OF SECTION 32
TOWNSHIP 38 SOUTH, RANGE 1 EAST, WILLAMETTE MERIDIAN
CITY OF ASHLAND, JACKSON COUNTY, OREGON
FOR
Grand Terrace PUD
153 Will Dodge Way
Ashland, Oregon 97520
SURVEY NOTES
GRAND TERRACE, A PLANNED UNIT DEVELOPMENT PERFORMANCE STANDARDS SUBDIVISION
12 LOTS & COMMON AREA PROPERTY
1) - PARCEL 2 CONSISTS OF 12 LOTS & THE COMMON AREA TRACT
2) - ALL OF THE COMMON AREA TRACT WILL BE A BLANKET EASEMENT FOR PRIVATE PEDESTRIAN ACCESS & UTILITIES AND ACCESS FOR EMERGENCY SERVICES.
3) - JACKSON COUNTY RURAL RESIDENTIAL ZONING (RR-5) REQUIRES FRONT YARD SETBACK OF 30 FEET; SIDE & REAR YARD SETBACKS OF 20 FEET.
LEGEND
INCH PIN MONUMENT
PROPERTY BOUNDARY LINE
PROPOSED LOT LINE
ROADWAY LINE
CENTERLINE
EASEMENT LINE
PROPOSED LOT
IRRIGATION EASEMENT
ACCESS EASEMENT
PROPOSED PARCEL 1
8.34 ACRES
PROPOSED PARCEL 2
5.42 ACRES
COMMON AREA 'A'
0.82 ACRES
LOT 1
7428 SQ. Ft.
LOT 2
7428 SQ. Ft.
LOT 3
7428 SQ. Ft.
LOT 4
7428 SQ. Ft.
LOT 5
7428 SQ. Ft.
LOT 6
7428 SQ. Ft.
LOT 7
7428 SQ. Ft.
LOT 8
7428 SQ. Ft.
LOT 9
7428 SQ. Ft.
LOT 10
7428 SQ. Ft.
TAXLOT 1701
TAXLOT 1704
TAXLOT 1800
TAXLOT 1900
TAXLOT 1908
PARCEL 1-A
O.R. 2013-09734
30' WIDE MUTUAL ACCESS EASEMENT PER D.R. 88-01485
30' ACCESS EASEMENT PER D.R. 84-09807 (TO BE EXTINGUISHED)
CENTERLINE OF 10'0" WIDE IRRIGATION EASEMENT PER D.R. VOL. 570, PAGE 360 FOR IRRIGATION SPIGOT
RIGHTS OF ACCESS RESTRICTED IN THIS SECTION PER D.R. VOLUME 536, PAGE 401
ADJUSTED PROPERTY LINE
CENTRAL
OREGON
PACIFIC
RAILROAD
HIGHWAY 99
S 56°10'26" E - 410.92'
N 84°23'16" W - 490.07'
S 54°10'26" E - 270.00'
S 35°37'04" E - 436.50'
S 35°37'04" E - 347.83'
N 89°38'37" E
151.14'
453.76'
336.32'
140.26'
128.82'
SCALE: 1" = 60'
0' 30' 60' 120' 240'
REGISTERED PROFESSIONAL LAND SURVEYOR
OREGON
JULY 11, 1986
ROGER L. CALPHAMS
PRELIMINARY COPY
RENEWAL DATE: 6/30/2023
SURVEYED BY:
POLARIS LAND SURVEYING LLC
P.O. BOX 459
ASHLAND, OREGON 97520
(541) 482-5009
DATE: AUGUST 4, 2022
PROJECT NO. 855-14
Assessor's Map No. 38 1E 32, Tax Lot 1700 & 1702
POLARIS LAND SURVEYING



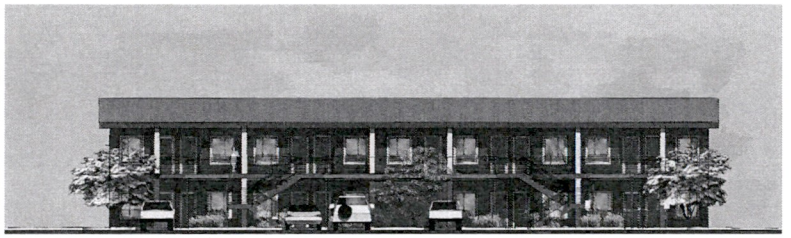
F NORTHWEST EXTERIOR ELEVATION
SCALE: NONE



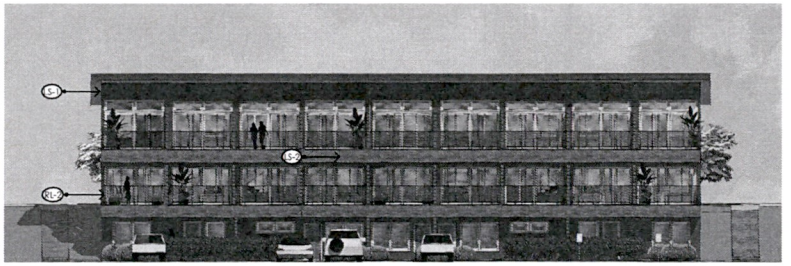
E SOUTHEAST EXTERIOR ELEVATION
SCALE: NONE



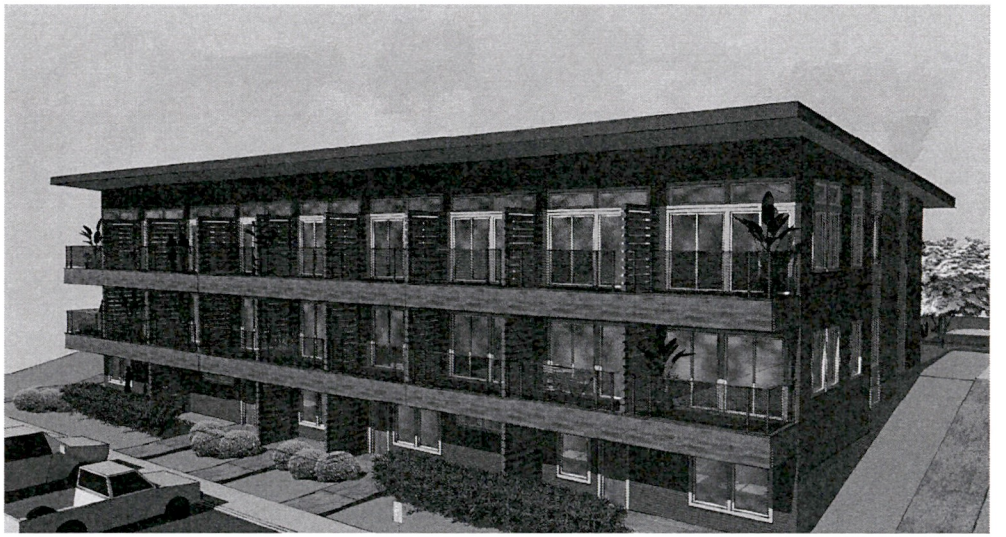
B NORTHWEST BIRDSEYE VIEW
SCALE: NONE



D SOUTHWEST EXTERIOR ELEVATION
SCALE: NONE



C NORTHEAST EXTERIOR ELEVATION
SCALE: NONE



A NORTHEAST BIRDSEYE VIEW
SCALE: NONE

EXTERIOR FINISH & COLOR SCHEDULE

SYMBOL	FINISH	COLOR	PRODUCT	NOTES
WALL FINISH				
LS-1	FIBER CEMENT SIDING	TBD	NICHIHA OR EQ.	
LS-2	FIBER CEMENT SIDING	TBD	NICHIHA OR EQ.	
LS-3	FIBER CEMENT SIDING	TBD	NICHIHA OR EQ.	
PAINT				
P-1	PAINT 1	MATCH LS-2	SHERWIN WILLIAMS	
P-2	PAINT 2	LIGHT GREY	SHERWIN WILLIAMS	
ROOFING				
RO-1	RASED SEAM METAL	GALVANIZED	BID SOURCE	
RO-2	METAL FLASHING	CHARCOAL GREY	BID SOURCE	
FENESTRATION	GUTTERS	MATCH P-2	BID SOURCE	
COLOR				
FC-1	WINDOWS - VINYL	WHITE	BID SOURCE	
FC-2	DOORS - WOOD	CLEAR COAT	BID SOURCE	
RAILINGS				
RL-1	STEEL, PAINTED	CHARCOAL GREY	BID SOURCE	
RL-2	STEEL GRATE & FRAME	GALV.	BID SOURCE	
RL-3	TBD	TBD	BID SOURCE	
MASONRY				
M-1	CMU	DRIFTWOOD	MUTUAL MATERIALS OR EQUAL	

GARY R. CAPERNA
ARCHITECT
ARCHITECTURE
PLANNING

190 North Ross Lane, Medford, Oregon
Post Office Box 4460 97501
541.773.7553 Fax: 541.773.6523
Email: garycaperna@charter.net
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P.O. Box 4460 . 190 North Ross Lane
Medford,Oregon 97501
Office: 541.773.8335 . Fax: 541.773.6523
OR CCB # 22599
WA CC JBSTESS831PT
CA 298104 A and B
ID RCE-42730
NM 391362
Web: WWW.JBSTEELINC.COM

PROJECT:
GRAND TERRACE

PROJECT LOCATION:
Highway 99
Ashland, Oregon 97520
Map & Taxlot Reference:
381E32 1700 & 1702

CLIENT:
Kendrick Enterprise LLC
153 Will Dodge Way
Ashland, Oregon 97520

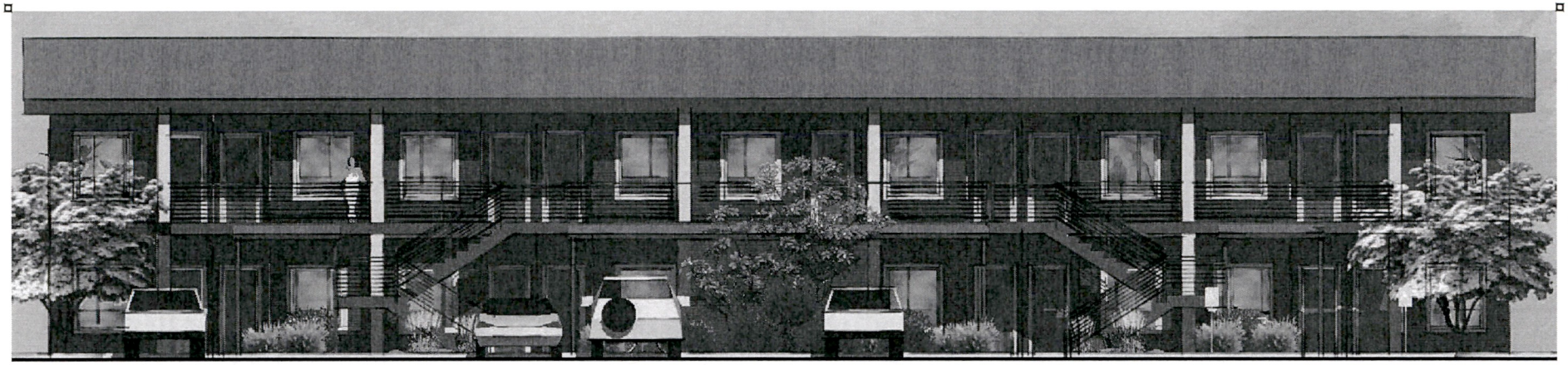
APPROVED FOR THE OWNER: DATE:

ISSUE: April 6, 2022
PROJECT No.: 2737-18
DRAWN BY: JAK
CHECKED BY: -

MARK	DATE	DESCRIPTION

SHEET TITLE:
Conceptual Perspective Views & Exterior Elevations

A2.0
FOR APPLICATION APPROVAL



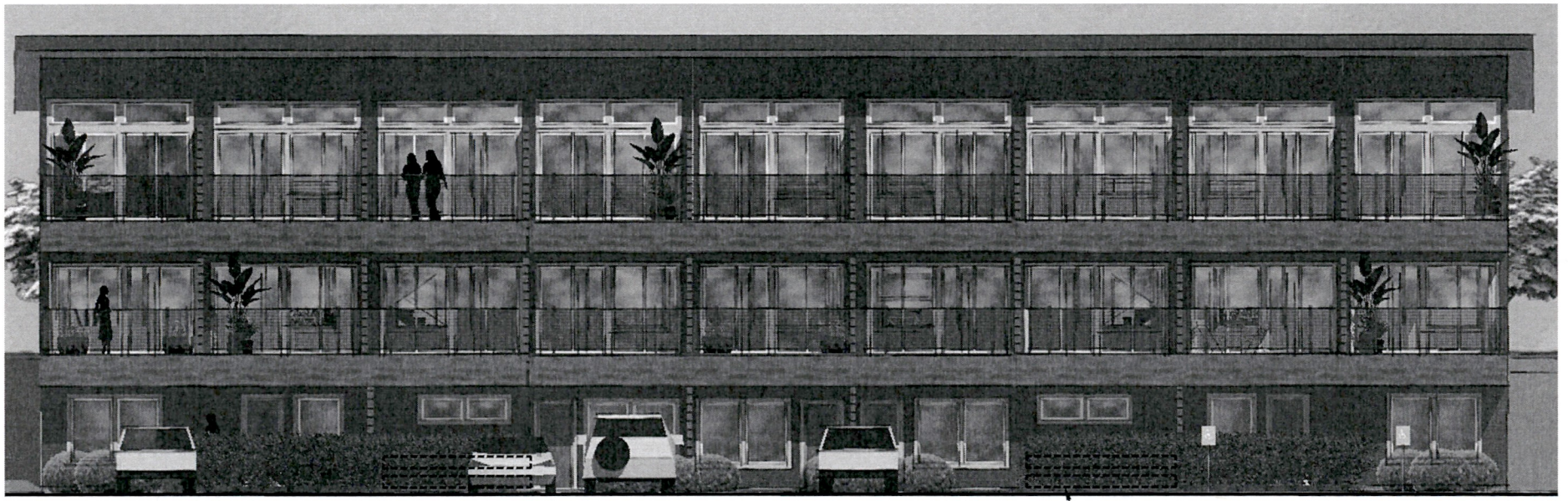
SOUTHWEST EXTERIOR ELEVATION

SCALE: 1/8" = 1'-0"

0 2 4 8

1/8"=1'-0"

NOTE: SEE A2.0 FOR EXTERIOR FINISHES AND FINISH KEY



NORTHEAST EXTERIOR ELEVATION

SCALE: 1/8" = 1'-0"

0 2 4 8

1/8"=1'-0"

NOTE: SEE A2.0 FOR EXTERIOR FINISHES AND FINISH KEY

HVAC COMPRESSOR BANKS CONCEALED BEHIND LANDSCAPING

GARY R. CAPERNA
ARCHITECT
architecture
planning
190 North Ross Lane, Medford, Oregon
Post Office Box 4460 97501
541.773.8325 Cell: 541.840.4123
Email: garycaperna@charter.net
Member American Institute Of Architects
Idaho AR-986156, Colorado 404248
Oregon 5247, Washington 11470

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J.B. STEEL, INC.
COMMERCIAL & INDUSTRIAL
P.O. Box 4460 ; 190 North Ross Lane
Medford, Oregon 97501
Office: 541.773.8325 : Fax: 541.773.6523
OR CCB # 22099 : CA 758934 A&B : ID RCE-07730 : NM 39135
Web: WWW.JBSTEELINC.COM

PROJECT: AN APARTMENT COMPLEX FOR
GRAND TERRACE

CLIENT:
Kenwik Enterprises LLC
1551 W. Dodge Way, Ashland, OR 97520
Project Location:
Highway 99, Ashland, OR 97520
Map: 39 1E 13 Lot #s: 1301, 1400 & 1700

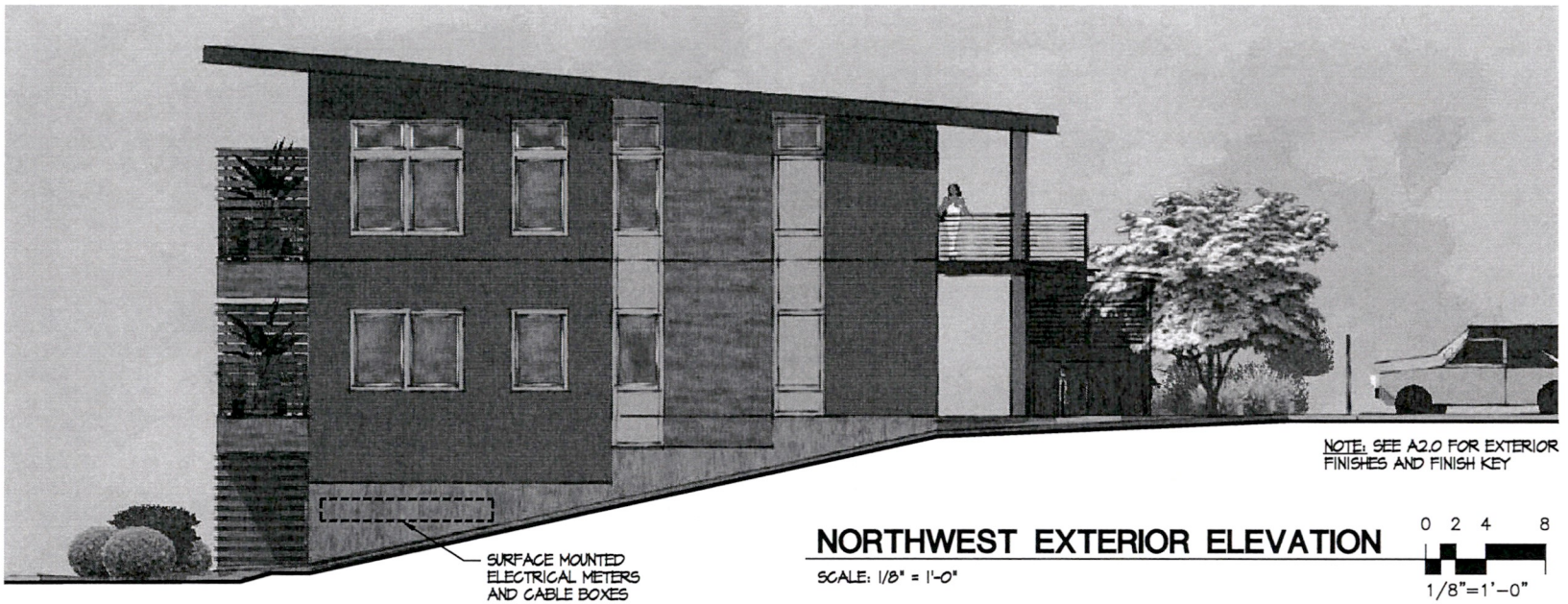
MARK	DATE	DESCRIPTION

ISSUE DATE: 7/29/2022 9:20 AM
PROJECT NO: 2737-18
DRAWN BY: JK
CHECKED BY: GRC

SHEET TITLE:
CONCEPTUAL ELEVATIONS

DRAWING NUMBER:
A2.0A

FOR LAND USE APPROVAL
NOT FOR CONSTRUCTION



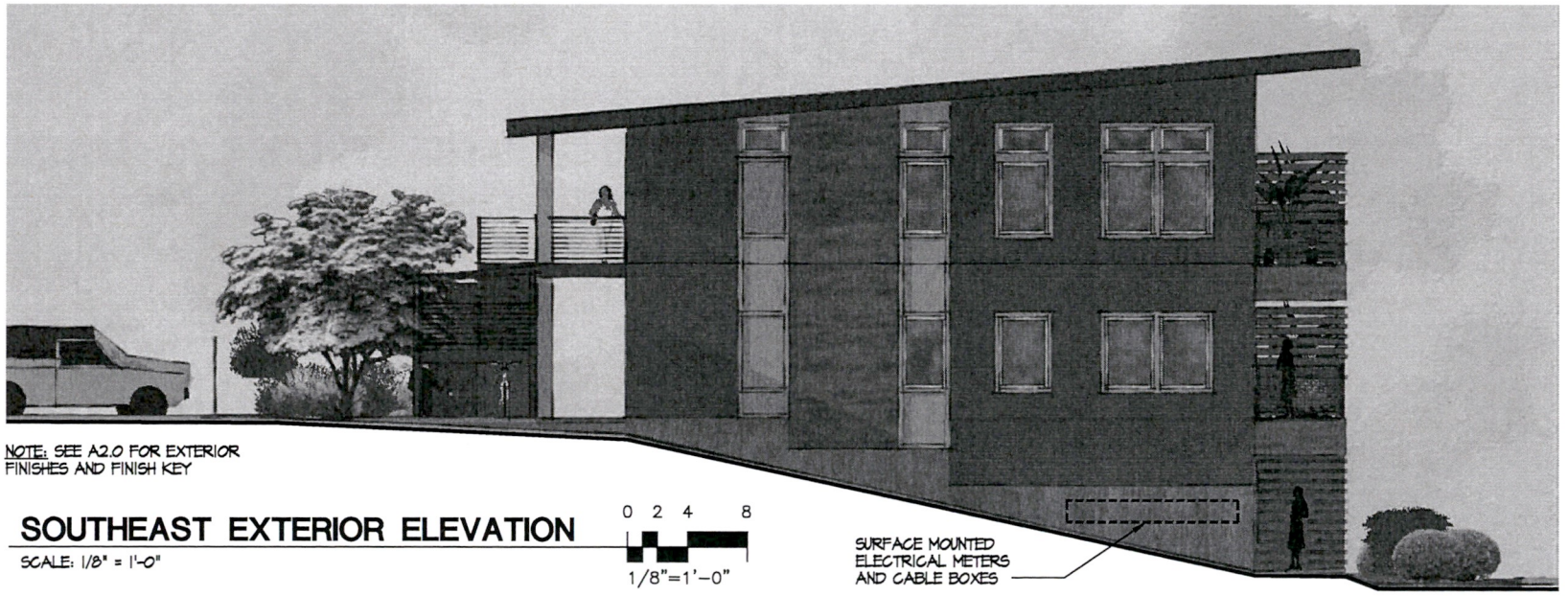
NOTE: SEE A2.0 FOR EXTERIOR FINISHES AND FINISH KEY

NORTHWEST EXTERIOR ELEVATION

SCALE: 1/8" = 1'-0"

0 2 4 8

1/8"=1'-0"



NOTE: SEE A2.0 FOR EXTERIOR FINISHES AND FINISH KEY

SOUTHEAST EXTERIOR ELEVATION

SCALE: 1/8" = 1'-0"

0 2 4 8

1/8"=1'-0"

GARY R. CAPERNA
ARCHITECT
◆ architecture planning ◆
190 North Ross Lane, Medford, Oregon
Post Office Box 4460 97501
541.773.8325 Cell: 541.840.4123
Email: garycapema@charter.net
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COMMERCIAL & INDUSTRIAL
P.O. Box 4460 :: 190 North Ross Lane
Medford, Oregon 97501
Office: 541.773.8325 :: Fax: 541.773.8523
OR CCB # 22099 CA 758104 A&B ID RCE-0730 NM 39136
Web: WWW.JBSTEELINC.COM

PROJECT: AN APARTMENT COMPLEX FOR
GRAND TERRACE

CLIENT:
Kendrick Enterprises LLC
153 Will Dodge Way, Ashland, OR 97520

Project Location:
Highway 99, Ashland, OR 97520
Map & Tax Lot #s: 391E03 1700 & 1709

MARK	DATE	DESCRIPTION

ISSUE DATE: 7/29/2022 9:26 AM
PROJECT NO: 2737-18
DRAWN BY: JK
CHECKED BY: GRC

SHEET TITLE:
CONCEPTUAL ELEVATIONS

DRAWING NUMBER:
A2.0B

FOR LAND USE APPROVAL
NOT FOR CONSTRUCTION

Planning Commission Minutes

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.

August 8, 2023

REGULAR MEETING

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.

Commissioners Present:
Lisa Verner
Doug Knauer
Eric Herron
Russell Phillips
Susan MacCracken Jain

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

Absent Members:
Kerry KenCairn
Gregory Perkinson

Council Liaison:
Paula Hyatt

II. ANNOUNCEMENTS

Community Development Director Brandon Goldman made the following announcement:

- The annual Planning Commission annual retreat will be held on August 29, 2023, and the August 22, 2023 Study Session will be cancelled.

III. CONSENT AGENDA

1. **Approval of Minutes**
   a. June 27, 2023, Study Session
   b. July 11, 2023, Regular Meeting

Commissioners Knauer/MacCracken Jain m/s to approve the consent agenda as presented. Voice Vote: All AYES. Motion passed 5-0.

IV. PUBLIC FORUM

Chair Verner noted that the Commission had received a letter from Brent Thompson prior to the meeting (see attachment #1).

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Echo Fields/Ms. Fields introduced herself as the Housing and Human Services Advisory Committee (HHSAC). She stated that there is significant overlap between items reviewed by the HHSAC and those reviewed by the Commission, and that she looks forward to working with them in the future.

Brent Thompson/Mr. Thompson implored the Commission to consider new projects and the rezoning of existing districts before approving annexations, and that the Croman Mill Site could be rezoned as a trailer park. Mr. Thompson stated that the periphery doesn't sustain the City as much as the core. He cautioned that large annexation projects are likely to get appealed to the Land Use Board of Appeals (LUBA), but that smaller projects and rezonings might not be appealed.

V. TYPE III PUBLIC HEARING

A. PLANNING ACTION: PA-T3-2022-00004
SUBJECT PROPERTY: 1511 Highway 99 North
OWNER: Casita Developments, LLC for owner Linda Zare
DESCRIPTION: The City Council previously approved the Annexation of 16.86 acres located at 1511 Highway 99 North into the City of Ashland, along with 6.6 acres of adjacent Oregon Department of Transportation state highway right-of-way and 7.68 acres of California Oregon & Pacific railroad property. These properties are located in Jackson County and zoned Rural Residential (RR-5); with Annexation they are to be brought into the City as Low Density, Multi-Family Residential (R-2). In addition to Annexation, the approved application included Outline Plan subdivision approval to create 12 lots; Site Design Review to construct 230 apartments in ten buildings including 37 affordable units; an Exception to the Street Design Standards; and Tree Removal Permits to remove two trees greater than six-inches in diameter at breast height. *This approval was appealed to the Land Use Board of Appeals (LUBA) and has been remanded to the city to consider two issues: 1) That the city erred in approving an exception to the on-street parking requirement in AMC 18.3.9.060; and 2) That the affordable unit sizes as approved do not comply with AMC 18.5.8.050.G.3 which requires that affordable studios be a minimum of 350 square feet and that affordable one-bedroom units be a minimum of 500 square feet. This Planning Commission hearing will be strictly limited in scope to the consideration of these two issues on remand.* **COMPREHENSIVE PLAN DESIGNATION**: Multi-Family Residential; **ZONING**: Existing – County RR-5 Rural Residential, Proposed – City R-2 Low Density Multi-Family Residential; **ASSESSOR'S MAP:** 38 1E 32; **TAX LOT #'s:** 1700 & 1702.

Chair Verner related how this project was approved by the City Council on December 6, 2022, but was subsequently appealed to LUBA by Rogue Advocates. LUBA remanded it to the City on the two counts noted above, which will be the only items considered by the Commission at this limited Public

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Hearing. Chair Verner noted that public testimony was submitted by Rogue Advocates prior to the meeting (see attachment #2).

Chair Verner stated that a letter was received from lawyers on behalf of the owners of Knox Storage, LLC, the property adjacent to 1511 Highway 99 North. She noted that the issue raised in the letter is a civil matter and will not be considered by the Commission (see attachment #3).

Chair Verner stated that Commissioners Phillips and MacCracken Jain were not present when this item was reviewed by the Commission on September 13 and October 11, 2022 meetings. She stated that they could both participate in the discussions and deliberations if they could attest to having reviewed the minutes from the aforementioned meetings, and read the Findings, Conclusions and Orders adopted at the November 8, 2022 meeting. Both Commissioners Phillips and MacCracken Jain attested that they had.

Ex Parte Contact

No ex parte contact was reported, and no site visits were conducted since this item was remanded back to the City.

Staff Presentation

Mr. Goldman reiterated that this item was remanded back to the City on two main issues; that the City erred in approving and Exception to the on-street parking requirements in Ashland Municipal Code (AMC)18.3.9.060; and that the affordable unit sizes as approved did not comply with AMC 18.5.8.050.G.3. Mr. Goldman noted that these unit sizes do not apply to market-rate housing units but are applied to affordable-housing units. The Commission's comments and recommendations will be incorporated into written findings which would be recommended by this body to the Council. He stated that the annexation portion of the application was adopted by ordinance by the Council, and any changes to the findings that reference the annexation would result in changes to the ordinance.

Planning Manager Derek Severson provided a brief background on the project, showing the proposed site layout, parking lot ingress/egress points, and the easement to the north of the property (see attachment #4). He restated that the affordable unit sizes, as approved, don't apply to the table laid out in AMC 18.5.8.050.G.3, which requires studios be at least 350sqft if affordable, and that one-bedroom affordable units be no less than 500sqft.

Mr. Severson noted that no Exception or Variance was requested to the on-street parking standards in the application, but that the Commission determined that these standards did apply based on the street improvements proposed, therefore an Exception to the street standards would be appropriate. Subsequently, the Climate Friendly and Equitable Communities (CFEC) rules were approved in July 2022 by the Land Conservation and Development Commission (LCDC) and went into effect on January 1, 2023. Part of these new CFEC rules prevent cities from enforcing existing off-street parking

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mandates within ½-mile of frequent transit, and that cities may not require parking for units less than 750sqft or affordable units. Staff recommended that the Commission evaluate the application based on the new CFEC rules. Mr. Severson noted that the City had dealt with similar situations where ordinances that have been adopted but not taken affect have been applied to planning actions being reviewed at the time. He cited Ordinance 3015 and its application to the Grand Terrace decision in 2019.

Mr. Severson stated that, in consultation with City Attorney Doug McGeary, Rogue Advocates' application of ORS 227.178(3)(a) to the project is erroneous, and that the rule is meant to protect applicants from being held to more stringent guidelines that were not in effect when the application was submitted. Mr. McGeary asserted that it is not used to prevent the City from applying a rule that is less strict, where the applicant accepts that rule, and doesn't require resubmitting the same request to get a different result under the new rule.

Mr. Severson related how the original application designated each of the ten identical proposed buildings as containing 20 one-bedroom units at 499.5sqft each, and three studio-units at 250 sqft each. Two of those buildings would be relied on to meet affordability requirements, which called for 38 deed-restricted units, assuming the applicant was building the units themselves or partnering with an affordable housing provider. Mr. Severson noted that AMC 18.5.8.050.G.3 requires the affordable one-bedroom units be a minimum of 500sqft, and that the affordable studios be a minimum of 350sqft. Mr. Severson pointed out that the original application was approved with the following added conditions relating to affordability:

> **Condition #7e.** [That prior to final approval and annexation of the property, the applicant shall provide:] A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that where the required number of affordable units is fractional it shall be rounded up, and that should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI.
>
> **Condition #10g.** If the applicant opts to dedicate land area to a non-profit affordable housing developer, dedication shall occur in a manner consistent with AMC 18.5.8.050.G.2 and recording of deed restrictions guaranteed affordability described herein shall occur in conjunction with plat signature and recording.

Mr. Severson stated that LUBA remanded the City's approval on the basis that the affordable unit seizes did not comply with AMC 18.5.8.050.G.3. The applicants had subsequently submitted a revised floor plan increasing the size of the one-bedroom units to meet the 500sqft minimum standard. Additionally, the applicant noted that affordable basement level studios would be modified to 499.5

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square feet to significantly exceed the required 350 square feet per affordable studio unit requirement. As such, staff recommended modifying Condition #7e to the following:

Condition #7e. [That prior to final approval and annexation of the property, the applicant shall provide:] A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that: ***1)*** where the required number of affordable units is fractional it shall be rounded up, ***2) ~~and~~*** that should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI, ***and 3) that each of the required affordable units comply with the minimum affordable units size requirements of AMC 18.5.8.050.G.3, with one bedroom affordable units being a minimum of 500 square feet, and affordable studio units being a minimum of 350 square feet.***

If approved by the Commission, Mr. Severson stated that staff will draft findings that address both remand issues and bring them back to the Commission at the September 12, 2023, Regular Meeting.

Mr. Severson noted that the letter from Rogue Advocates raised concerns over unit density with density bonuses, particularly after adjusting the unit sizes to meet the standards found in AMC 18.5.8.050.G.3. Mr. Severson stated that no density bonuses were included in the original application. He added that the increase of 38 affordable to 500sqft would increase the density of the property to 182 units, where the minimum density is 167.0625 units.

Questions of Staff

Commissioner Knauer asked if there would not be any 250sqft units in the revised proposal. Mr. Goldman responded that there would not be. He added that the increase of the 250sqft units to 499.5sqft resulted in a 182-unit density for the whole project.

Commissioner Knauer remarked that the remand issue over parking was seemingly due to the approval timeline of the application in relation to the recent implementation of CFEC rules. Mr. Goldman responded that neither the applicant nor the appellant addressed the CFEC rules during LUBA's deliberations, and so it was not considered. He indicated that LUBA did not feel that the City made an adequate argument for why the CFEC rules should be applied to this project, but that this would not be the case if the project is appealed again.

Commissioner MacCracken Jain requested clarification regarding the number of affordable housing units the applicant is required to provide. Mr. Goldman responded that the applicant is required to provide 38 affordable units, rented at 80% Area Median Income (AMI), if they partner with an affordable housing provider. However, if the applicant dedicates the land, then they are required to

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provide an additional 25% of the base density as affordable housing, which would result in 47 affordable units. He added that LUBA ruled in favor of the City on this issue.

Applicant Presentation

Applicants Robert Kendrick and Amy Gunter stated that staff had adequately presented their submitted materials and that they would reserve the remainder of their time for rebuttal.

Public Comments

Craig Anderson/Mr. Anderson began by noting an error he made on page three, paragraph two of the letter he submitted to the Commission. He stated that he erred in referring to a Type I planning action as a non-discretionary approval.

Mr. Anderson lamented that there had been no attempts by the applicants to meet with Rogue Advocates and expressed the opinion that there had been multiple breaches of conduct throughout the application process. Mr. Anderson stated that LUBA acts as a judiciary body, and can only rule on the evidence that is provided to them. He remarked that this project was finaled on December 20, 2022, and that it was incorrect to refer to it as "in-process" or to apply CFEC rules that went into effect on January 1, 2023. Mr. Anderson stated that Rogue Advocates would appeal any approval of this project by the Council to LUBA.

Chair Verner closed the Public Hearing and Public Record at 7:41.

Deliberation and Decision

Commissioner Knauer inquired if it is standard practice to have a preliminary outline plan that is approved before the final plan is reviewed. Mr. Goldman responded that it is, and that the final plan is an opportunity for the applicant to revise their plans, provided these changes do not deviate more than 10% from the outline plan. Commissioner Knauer asked how a 10% deviation would be measured. Mr. Goldman responded that it is relative to the plan itself but could involve items such as parking spaces and unit sizes, to be determined by the Commission. Mr. Severson added that any deviation of more than 10% would require the application to go back through the approval process.

Commissioner Knauer asked if staff was confident that the application did not need to restart the review process. Mr. Goldman assured him that staff was confident, and that the Commission can amend the findings on remand to clarify those issues that were previously approved, particularly regarding the affordable unit sizes and the parking requirements. Mr. Goldman pointed out that the discretionary review process of the final plan would be taking place after the CFEC rules went into effect. Therefore, the applicant would no longer be held to the City's parking requirements. In consultation with the City's legal department, it was determined that the application could move forward without going through the outline plan process.

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Commissioner Knauer remarked that the Commission made its recommendation for approval in December 2022, before the CFEC guidelines went into effect. He noted that Rogue Advocates cited an Oregon code where it is dictated that a project be subject to laws in effect at the time of approval, not those made after. Mr. Goldman that there is precedent for the City to apply less-stringent standards after an application has been approved, and that staff will clarify this in its findings. Commissioner Knauer emphasized the importance of basing any decision the Commission makes in established case law, to which Mr. Goldman agreed.

Chair Verner pointed out that the City approved the outline plan, and that the applicants would still be required to submit a final plan for approval. Mr. Goldman stated that the aspects of the application that were approved were the site review, annexation, and the outline plan. The site review and annexation will not be reviewed during the final plan process, but the outline plan that encompasses parking requirements will be subject to further review.

Commissioner MacCracken Jain requested clarification regarding the City Attorney's assessment of the CFEC rules overriding the City's current parking requirements. Mr. Goldman responded that the City Attorney considered the CFEC rules as superseding the City's parking requirements. Commissioner MacCracken Jain asked how many parking spaces would be included in the project. Staff responded that there will be 212 parking spaces for the 230 units, but that public transit facilities will also be provided.

Commissioners MacCracken Jain/Herron m/s to approve the application with the following amendments:

1. To insert a paragraph in the Planning Commission's findings as follows:
   The Planning Commission recommends that the City Council find that the Climate Friendly & Equitable Communities parking rules are appropriate for this planning action, that neither on- or off-site street parking are required in this case, and that the findings for the original approval should be amended accordingly.

2. To amend Condition #7e of the original approval as follows:
   Condition 7e. A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that: 1) where the required number of affordable units is fractional it shall be rounded up, 2) that should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI, and 3) that each of the required affordable units comply with the minimum affordable unit size requirements of

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AMC 18.5.8.050.G.3, with one bedroom affordable units being a minimum of 500 square feet and affordable studio units being a minimum of 350 square feet.

Roll Call Vote: All AYES. Motion passed 5-0.

VI. OTHER BUSINESS

A. Croman Mill Site Sampling Results & Next Steps

Staff Presentation

Mr. Goldman informed the Commission that the owners of the Croman Mill Site have engaged in a voluntary cleanup effort in consultation with SCS Engineering and under the regulatory authority of the Department of Environmental Quality (DEQ). Mr. Goldman stated that the DEQ is committed to engaging the community throughout this process, and that representatives already spoke before the Council on July 31, 2023. Mr. Goldman noted that several contaminates have been identified on the site, and the DEQ has already received an interim removal plan from SCS Engineering. Townmakers, LLC is requiring that the owners clean the site to residential standards as a pre-condition for this project. SCS Engineering's report noted different levels of safety for environmental cleanup for the intended use, with residential being the highest level of environmental quality. Some areas could be considered for non-residential uses if they could not be cleaned to residential levels. Mr. Goldman concluded that Townmakers, LLC is committed to and eager to proceed with the development.

Questions of Staff

Chair Verner asked how long the cleanup effort could take. Mr. Goldman responded that the most optimistic estimate is a matter of months but will likely be years. Some removal of contaminated materials is set to begin in sometime between September and November of 2023.

Commissioner Phillips asked if the cleanup will be done in phases. Mr. Goldman answered that the southern portion of the property, outside the City limits, has no contaminates, so development could begin there if applicant wished. However, Townmakers, LLC has indicated that it would like to receive a "no further action required" notice from the DEQ for the entire site before beginning any development.

B. Discussion of August 29, 2023 Planning Commission Retreat Details

The Commission discussed which items they would like to review as part of their annual retreat. Commissioner Knauer suggested discussing opportunities for regional cooperation, such as the sharing of general services.

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Mr. Goldman informed the Commission that staff had arranged for site visits to the Water Treatment Plant, as well as the Reeder Reservoir dam. Mr. Severson stated that the remaining site visits will include the West Village subdivision and cottages, the Railroad property, the Beach Creek subdivision, the former Croman Mill Site, Kingston Cannabis at 2366 Ashland Street, and the new Tesla charging station at 580 Clover Lane.

The Commission deliberated and decided to move the date of the retreat from August 29 to August 30, 2023.

VII. ADJOURNMENT

Meeting adjourned at 8:20 p.m.

Submitted by,
Michael Sullivan, Executive Assistant

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ROGUE ADVOCATES

Advocating for a livable and sustainable
Rogue Valley through responsible land use

August 8, 2023

Ashland Planning Commission
Filed via email: derek.severson@ashland.or.us

RE: Land Use Board of Appeals (LUBA) Remand of PA-T3-2022-00004, 1511 Highway 99 North "Grand Terrace" Annexation Approval

Dear Ashland Planning Commission,

Rogue Advocates is a land use advocacy organization with members in Ashland. We are supportive of Ashland's goal of increasing the availability of affordable housing. We are also supportive of Ashland's longstanding efforts to accomplish their housing goals while emphasizing reduced dependency on the automobile and while improving conditions for walking, cycling and transit. The achievement of these goals requires an adherence to Ashland's municipal code. Unfortunately, with respect to the Grand Terrace annexation, this has not been the case.

Rogue Advocates, as the petitioner in the appeal of Ashland's approval of Grand Terrace, submits the below comments for your consideration during these remand proceedings.

I. First Assignment of Error, Second Subassignment - AMC 18.3.9.060.A

Under petitioner's assignment of error here, LUBA found that:

> *The city does not dispute that the city council erred in approving an exception to the requirement for on-street parking in AMC 18.3.9.060(A). Instead, in the respondent's*

BOARD MEMBERS
Jamie Talarico Jimmy MacLeod Steve Rouse Hugo Hamblin-Agosto Pepper Trail Robin Elliott

> *brief the city argues that "under Oregon's Equitable Communities and Climate Friendly Act of 2023, as of January 1, 2023, cities within Oregon's [eight] Metropolitan Planning Organizations (MPOs), including the City of Ashland, can no longer require more tha[n] one parking space per multi-family unit."*

LUBA goes on to conclude that:

> *Because the challenged decision was made in December 2022, we agree with petitioner the legislation does not apply to Casita's application. The city may or may not be correct that the legislation prevents it from requiring more than one parking space per multi-family unit and that, on remand, it will be unable to apply the requirement for on-street parking in AMC 18.3.9.060(A). However, the city does not develop that argument sufficiently for our review in the respondent's brief. We will therefore not conclude that the issue of whether the city council improperly construed AMC 18.3.9.060(A) is moot.*

On remand, the city must show how the Climate-Friendly and Equitable Communities (CFEC) legislation prevents it from requiring more than one parking space per multi-family unit as per AMC 18.3.9.060.A.

In the August 8, 2023 memo to the Planning Commission, staff notes that OAR 660-012-0012(5)(e) requires cities and counties to *"implement the requirements of OAR 660-012-0430 and 660-012-0440 when reviewing development applications submitted after December 31, 2022."* Staff goes on to describe the final plan review process under the city's Performance Standards Option claiming that (the Grand Terrace approval) "remains in process now more than eight months after these new CFEC rules have taken effect." Staff further claims that "prior to the physical development of the site, another development application for final plan approval will be required at which time the applicant will not be subject to (AMC 18.3.9.060.A) parking requirements" and that "the Planning Commission and Council have the discretion to assess the current request based on the new CFEC rules."

Staff is incorrect in multiple respects. Firstly, the Grand Terrace annexation is not "in process," as staff claims. Final approval of the application occurred on December 20, 2022. The application was submitted on July 8, 2022, more than five months prior to that date. The CFEC rules are applicable to applications submitted after December 31, 2022, not applications that have been approved before that date. Further, Oregon law requires that "*approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.*" [ORS 227.178(3)(a)] The plain language of OAR 660-012-0012(5)(e) renders the CFEC rules inapplicable to the city's (unlawful) approval.

Secondly, AMC 18.3.9.060.A is not rendered "moot" through the final plan approval process, which is a "Type I"/non-discretionary approval that serves only to verify "substantial conformance with the outline plan." [AMC 18.3.9.040.B.5] There is nothing within the final plan approval criteria that requires a reevaluation of outline plan criteria under AMC 18.3.9.060, and if there were, such a reevaluation could not be done through a "Type I" process.

In conclusion, the city's approval of an exception to the parking standards under AMC 18.3.9.060.A was unlawful, as the city has already acknowledged. Further, the city has failed to show how AMC 18.3.9.060.A is rendered "moot" by legislation that went into effect after the city's approval.

II. Fourth Assignment of Error, Second Subassignment - AMC 18.5.8.050.G.3

Under petitioner's assignment of error here, LUBA found that:

> *The city does not identify a provision of the AMC, or a condition of approval, that requires Casita to demonstrate compliance with AMC 18.5.8.050(G)(3) at the final plan approval stage, and we are aware of none.*

On remand, the city must identify a provision of the AMC, or a condition of approval, that requires Casita to demonstrate compliance with AMC 18.5.8.050.G.3 at the final plan approval stage.

The city does not directly address LUBA's remand. Rather, in the August 8, 2023 memo to the Planning Commission, staff describes a proposed amendment to the approved annexation application that would presumably satisfy the requirements under AMC 18.5.8.050.G.3. Applicant's proposed amendments to increase dwelling unit sizes represent a substantial modification of the city's approval, particularly given the density bonuses that have been awarded under AMC 18.2.5.080.B.2.

As outlined in the city's ordinance findings of approval, only 185.625 dwelling units would be allowed under the applicant's modified proposal, not 230. This fact does not seem to have been considered by either the applicant or staff. Other impacts associated with increasing the size of the dwelling units, along with approval criteria that may be invoked through such a modification, have also not been evaluated by staff.

With regard to the proposed amendments as outlined by staff, these do not respond to LUBA's remand of this assignment of error, which is specific to determining how, given the city's approval, Casita would be required to demonstrate compliance with AMC 18.5.8.050.G.3 at the final plan approval stage. The city has no authority under this remand proceeding to approve a substantial modification to a prior approval in an effort to paper-over an illegal decision.

LUBA's rules [OAR 661-010-0071] require reversal of a decision that violates a provision of applicable law. The city's proposed method of complying with AMC 18.5.8.050.G.3, as outlined in the August 8, 2023 memo to the Planning Commission, amounts to an admission - the second such admission - that the Grand Terrace annexation approval violated a provision of applicable law.

III. Conclusion

The Grand Terrace annexation application was subject to approval criteria within AMC 18.3.9.060.A and AMC 18.5.8.050.G.3. Through their approval of the application, the city of Ashland made erroneous and illegal findings claiming that the application complied with these provisions when it clearly did not. Given the above facts, and the city's inability to absolve themselves from the assignments of error subject to LUBA's remand here, there are two options available to the applicant: 1) Withdrawal and resubmittal; or 2) Reversal at LUBA.

Respectfully submitted,



Craig Anderson
Member, Rogue Advocates

575 Elizabeth Ave.
Ashland, OR 97520
craig.ashland@gmail.com

JARVIS, GLATTE, LARSEN & BUNICK, LLP

ATTORNEYS AT LAW

MEDFORD OFFICE

823 Alder Creek Drive
Medford, OR 97504-8900
541-772-1977
Fax 541-772-3443

ASHLAND OFFICE

320 East Main Street
Suite 209
Ashland, OR 97520-6801
541-482-8491
Fax 541-772-3443

office@medfordlaw.net
www.medfordlaw.net

Partners
Darrel R. Jarvis
Erik J. Glatte*
Erik C. Larsen
Jacquelyn Bunick

Associates
Riley J. MacGraw

**Also admitted in Idaho*

Writer's Direct E-mail:
rmacgraw@medfordlaw.net

July 26, 2023

FIRST CLASS MAIL
Doug McGeary
City Attorney, City of Ashland
20 East Main Street
Ashland, OR 97520

RE: GRAND TERRACE DEVELOPMENT

Dear Doug:

Enclosed please find a copy of my office's letter to Linda Zare pertaining to the annexation of her property located at 1511 Highway 99 in Ashland. In short, plans for the Grand Terrace development on Ms. Zare's property appear to rely on an easement through property owned by Knox Storage LLC, an Oregon limited liability company, to provide one of two required points of access.

As articulated in the enclosed letter, Knox Storage takes the position that the dramatic increase in traffic along such easement which will result from the Grand Terrace development will impermissibly overburden the easement and interfere with the use and enjoyment of Knox Storage's use of its property. To the extent it may factor into the City's future approval of Grand Terrace development plans, Knox Storage intends to take any and all legal action necessary to prevent the overburdening of the above-referenced easement and protect its property interest.

Please feel free to contact me if discussion of this matter is necessary.

Very Truly Yours,

JARVIS, GLATTE, LARSEN & BUNICK, LLP

s/ Riley J. MacGraw
RILEY J. MACGRAW

RJM
Enclosed: Letter to Zare

JARVIS, GLATTE, LARSEN & BUNICK, LLP

ATTORNEYS AT LAW

MEDFORD OFFICE

823 Alder Creek Drive
Medford, OR 97504-8900
541-772-1977
Fax 541-772-3443

ASHLAND OFFICE

320 East Main Street
Suite 209
Ashland, OR 97520-6801
541-482-8491
Fax 541-772-3443

office@medfordlaw.net
www.medfordlaw.net

Partners
Darrel R. Jarvis
Erik J. Glatte*
Erik C. Larsen
Jacquelyn Bunick

Associates
Riley J. MacGraw

**Also admitted in Idaho*

Writer's Direct E-mail:
rmacgraw@medfordlaw.net

July 26, 2023

FIRST CLASS MAIL
Linda Zare
1511 Highway 99
Ashland, Oregon 97520

RE: GRAND TERRACE DEVELOPMENT

Dear Ms. Zare:

This office represents Knox Storage LLC, an Oregon limited liability company, and owner of the real property located at 1515 Highway 99, Ashland, Oregon ("Knox Storage Property"). As you are aware, the annexation of your property located at 1511 Highway 99, Ashland, Oregon ("Zare Property") into the City of Ashland, and to facilitate the Grand Terrace housing development, is likely in its final stages of approval.

According to the Grand Terrace development plans, the development will be accessed from Highway 99 at two separate points, one of which is over the existing 30-foot-wide easement for ingress and egress through the Knox Storage Property and depicted on Survey No. 12814 (the "Easement"). Robert Kendrick, on behalf of Casita Developments LLC, previously provided verbal assurances that the Easement would be used only for emergency ingress and egress from the Grand Terrace development, but the development plans clearly contemplate using the Easement as one of two main access point.

Although Knox Storage does not dispute your right to the above-referenced Easement, it firmly believes that the drastic increase in traffic along the Easement that will result from the Grand Terrace development would overburden the Knox Storage Property. The increase in vehicle trips per day resulting from the Grand Terrace development is estimated to be approximately 1,800. Assuming those trips are split evenly between the two contemplated points of access to Grand Terrace, that would result in an approximately 900% increase in traffic along the Easement.

The Zare Property has historically been used for agricultural purposes and is currently zoned as RR-5. When the Easement was granted, the grantor did not, and could not have, reasonability envisioned the prospect of a 200+ apartment complex on the Zare Property and the associated increase in traffic along the Easement. Indeed, the December 9, 2019, letter from grantor Leo van Dijk confirms as much. This letter and the previous use and zoning of the Zare Property would be highly relevant in determining the scope of the easement and whether a 900% increase in traffic would overburden it. Although there is no expressly restrictive language in the grant of Easement document, the dominant estate can only make such use of the Easement as is reasonably necessary for its intended purpose. *See, e.g., Clark v. Kuhn*, 171 Or. App. 29, 33 (2000). The

intended purpose of the Easement is for ingress and egress to a single residence. And while there is little doubt some increase in traffic would be within the scope of the Easement, the drastic increase in traffic that would result from the Grand Terrace development would overburden the Easement to extent it would interfere with the use and enjoyment of the servient estate.

Notwithstanding the above, Knox Storage's desire is to avoid litigation (abiding by Mr. Kendrick's verbal assurances that the Easement would be used only for emergency access would be acceptable and preferable to Knox Storage) but given the enormous increase in traffic along the Easement that will result from the Grand Terrace development, and the significant disruption it would have on Knox Storage's business located on the Knox Storage Property, and on the veterinary practice and grooming business adjacent to the Knox Storage Property, Knox Storage intends to take any and all legal action necessary to protect its interests and prevent the Grand Terrace development from overburdening the Easement.

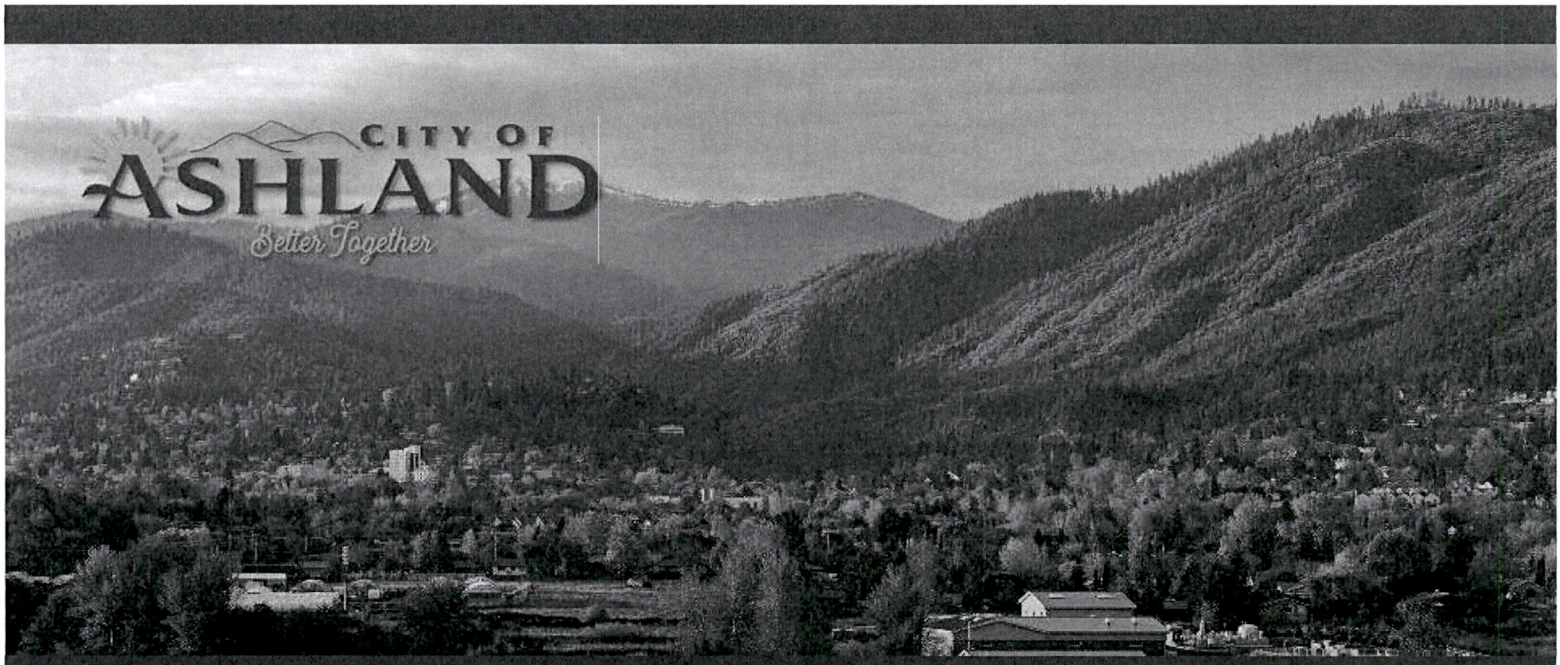
Please feel free to contact me, or have your legal counsel contact me, to discuss this matter further.

Very Truly Yours,

JARVIS, GLATTE, LARSEN & BUNICK, LLP

s/ Riley J. MacGraw
RILEY J. MACGRAW

RJM
Copy to: Client (via email); Casita Developments LLC; City of Ashland



Grand Terrace Remand

Planning Commission
Limited Public Hearing
August 8, 2023

Planning Commission

Grand Terrace Annexation (1511 Hwy 99N)

Annexation, Outline Plan Subdivision, Site Design Review & Exceptions to Street Standards

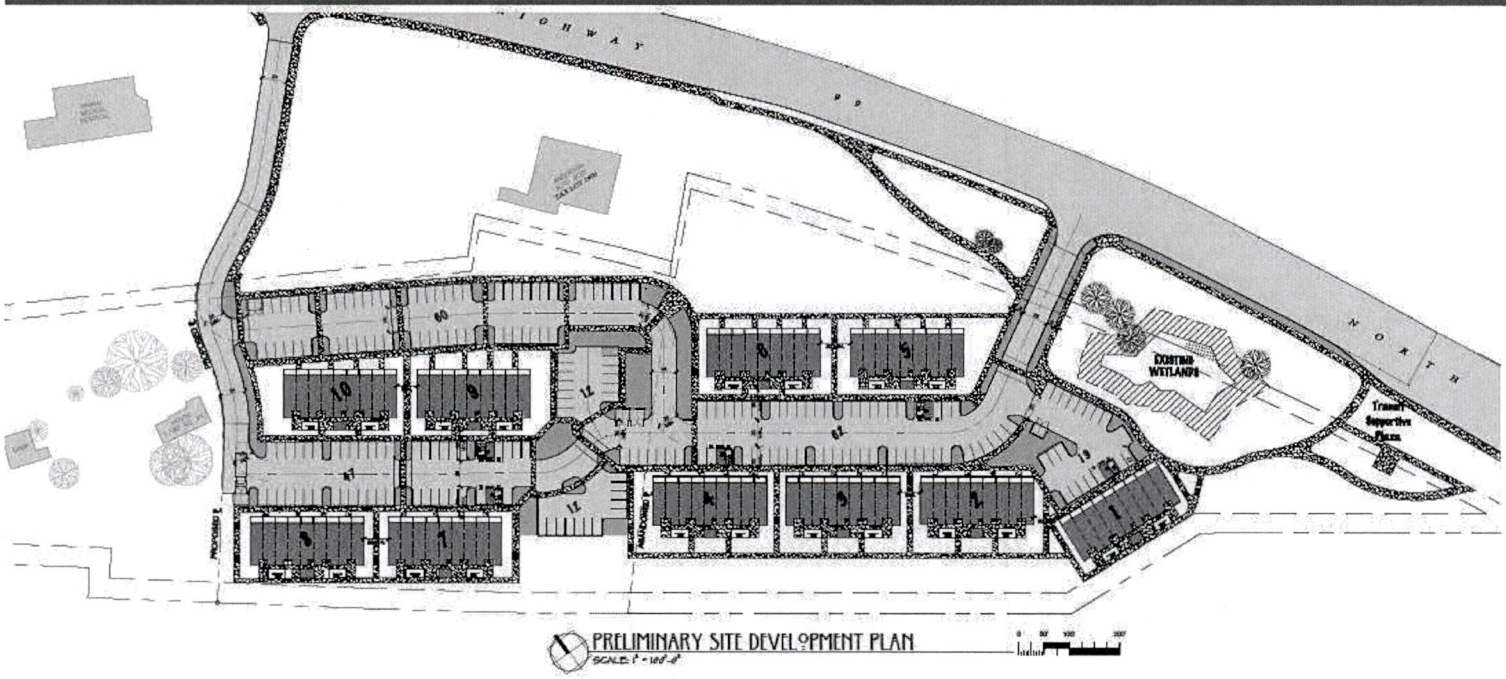
Remanded on Two Issues

On-Street Parking Exception & Affordable Unit Size Requirements

PA-T3-2019-00001 Annexation	LUBA Appeal 2021-009	PA-T3-2002-00004	LUBA Appeal 2023-007
Approved 12/20	*Reversed 5/21*	*Approved 12/22.*	*Remanded 5/23*

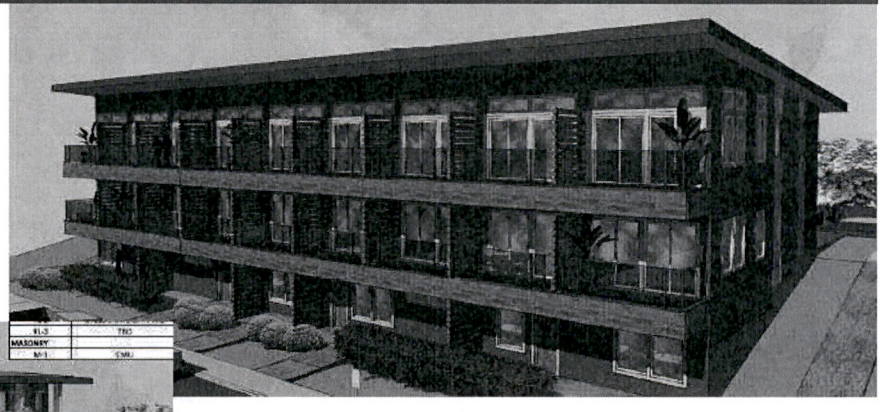
1511 Highway 99N
Site Design Review

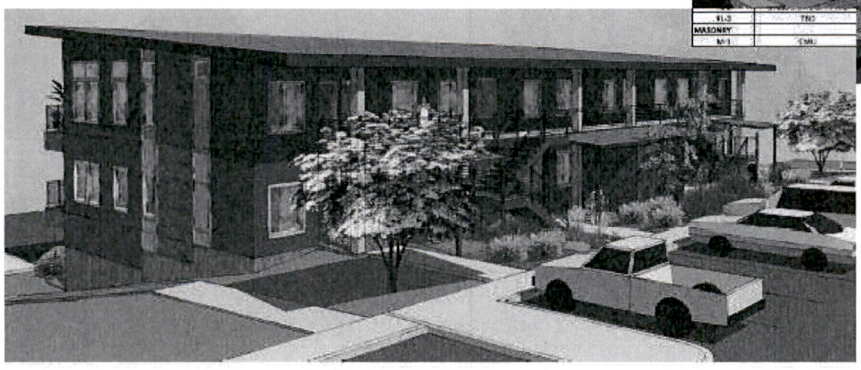
CITY OF ASHLAND



1511 Highway 99N
Site Design Review – Front/Rear Elevations

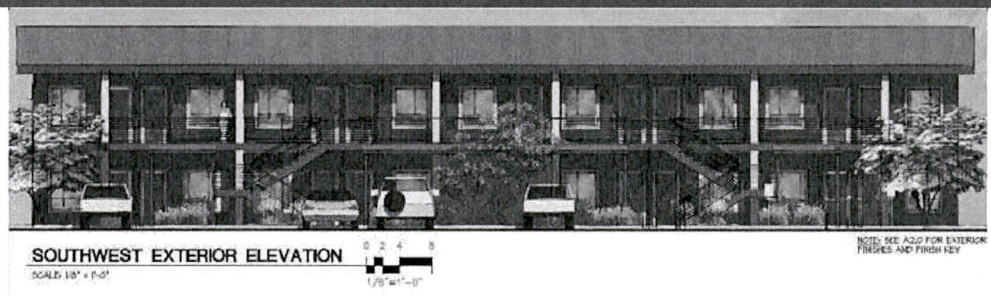
CITY OF ASHLAND

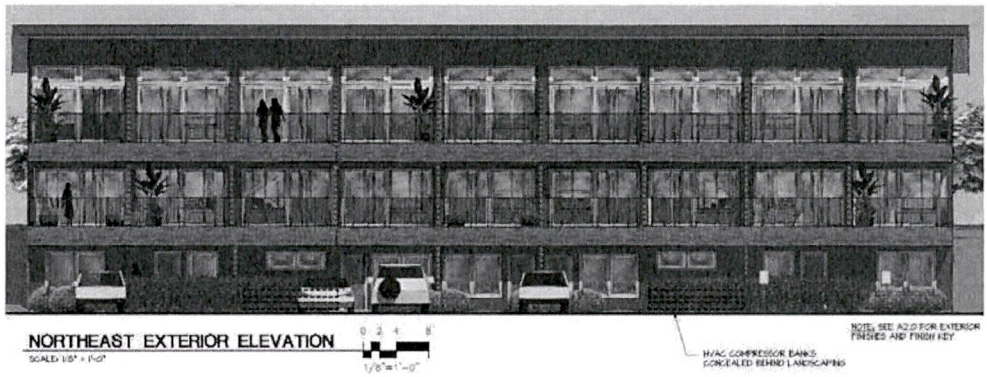




1511 Highway 99N
Site Design Review – Front/Rear Elevations

CITY OF ASHLAND

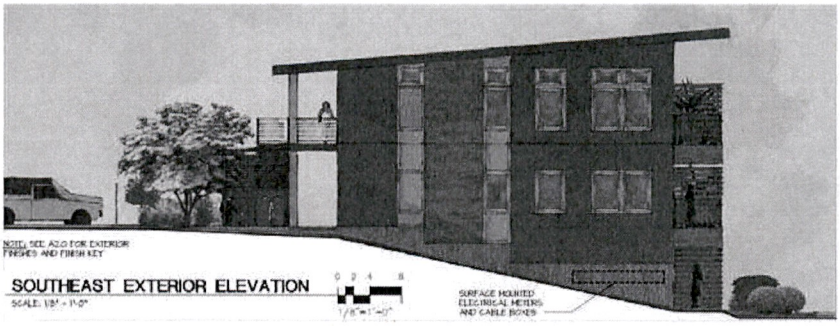




1511 Highway 99N
Site Design Review – Side Elevations

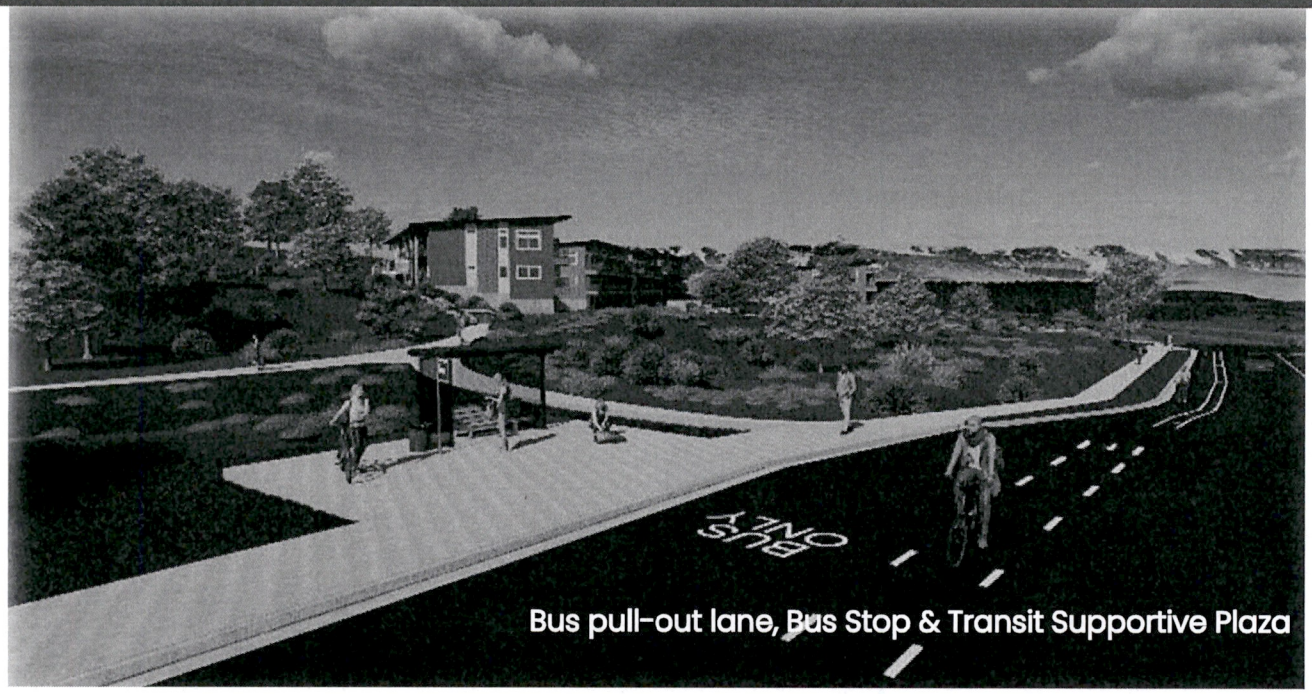
CITY OF ASHLAND





1511 Highway 99N
Site Review – Transit Supportive Plaza

CITY OF ASHLAND



Bus pull-out lane, Bus Stop & Transit Supportive Plaza

1511 Highway 99N
Site Design Review – Southern Driveway

CITY OF ASHLAND



LUBA REMAND ISSUES

The city erred in approving an Exception to the on-street parking requirements in AMC 18.3.9.060

- ❑ Performance Standards require one on-street space/unit.
- ❑ Approval granted an Exception to this standard, where a Variance was required.

That the affordable unit sizes as approved do not comply with AMC 18.5.8.050.G.3

- ❑ Affordable studio-units are to be at least 350 square feet *(Studios proposed were 250 square feet.)*
- ❑ Affordable one-bedroom units are to be at least 500 square feet. *(One-bedrooms proposed were 499.5 square feet..)*

REMAND ISSUE #1

On-Street Parking Exception

AMC 18.3.9.060 *All development under this chapter shall conform to the following parking standards, which are in addition to the requirements of chapter 18.4.3, Parking, Access, and Circulation.*

A. On-Street Parking Required. *At least one on-street parking space per dwelling unit shall be provided, in addition to the off-street parking requirements for all developments in an R-1 zone, with the exception of cottage housing developments, and for all developments in R-2 and R-3 zones that create or improve public streets.*

B. On-Street Parking Standards. *On-street parking spaces shall be immediately adjacent to the public right-of-way on publicly or association-owned land and be directly accessible from public right-of-way streets. On-street parking spaces shall be located within 200 feet of the dwelling that it is intended to serve. In addition, on-street public* parking may be provided pursuant to minimum criteria established under subsection 18.4.3.060.A.

REMAND ISSUE #1

On-Street Parking Exception

- No Variance or Exception to the on-street requirement was requested as part of the application.
- Planning Commission determined that AMC 18.3.9.060 was applicable, that an Exception to the Street Design Standards was the appropriate procedure if on-street parking could not be provided, and that such an Exception was merited.
- New Climate-Friendly and Equitable Communities (**CFEC**) rules were adopted in July of 2022 by the Land Conservation and Development Commission (**LCDC**) in response to Executive Order #20-04 by Governor Kate Brown.
- These CFEC rules delineate how cities may regulate a variety of land use and transportation issues, including a number of changes to the ways cities may regulate parking, going forward.

Among the new CFEC rules:

REMAND ISSUE #1

On-Street Parking Exception

- After January 1, 2023, the Climate-Friendly & Equitable Communities rules prevent cities from enforcing existing *off-street* parking mandates within ½-mile of frequent transit.
- Cities may not require more than one parking space (on- or off-street) for multi-family residential units.
- Cities may not require *parking* for units less than 750 square feet or for affordable units.
- Cities are to implement the new CFEC parking rules for development applications submitted after December 31, 2022.
- Cities may modify ordinances or implement directly from the new rules. Pending ordinance modifications, Ashland is implementing directly from the new rules.

REMAND ISSUE #1

On-Street Parking Exception

- Grand Terrace application submitted July 8, 2022 but remains in process now, 13 months after submittal and eight months after new rules are in place.
- LUBA remand for further review now, before City decision is final, is occurring after the new regulations were implemented.
- **Final** Plan approval, another development application, will be required before site development occurs.
- In staff's view, the Planning Commission and Council have the discretion to assess the current request based on the new CFEC rules, which remove parking requirements since all proposed residential units are smaller than 750 square feet.
- Staff recommends evaluating the current request under the new CFEC rules without requiring parking.

REMAND ISSUE #2

Affordable Unit Size Requirements

- Original application identified each of the 10 identical buildings proposed as containing 20 one-bedroom units of 499.5 square feet each, and three studio units of 250 square feet each.
- Two of these ten buildings were to be relied on in meeting the affordability requirements, which were a total of 38 deed restricted affordable units assuming that the applicant either builds the units themselves or does so in cooperation with a non-profit affordable housing provider partner.
- **AMC 18.5.8.050.G.3** requires that the minimum square footage for affordable one-bedroom units be 500 square feet, and that the minimum square footage for affordable studios be 350 square feet.

REMAND ISSUE #2

Affordable Unit Size Requirements

- The adopted conditions relating to affordability are:

  Condition #7e. *[That prior to final approval and annexation of the property, the applicant shall provide:]* A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that where the required number of affordable units is fractional it shall be rounded up, and that should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI.

  Condition #10g. If the applicant opts to dedicate land area to a non-profit affordable housing developer, dedication shall occur in a manner consistent with AMC 18.5.8.050.G.2 and recording of deed restrictions guaranteed affordability described herein shall occur in conjunction with plat signature and recording.



REMAND ISSUE #2

Affordable Unit Size Requirements

The City's approval was remanded by LUBA on the basis "**That the affordable unit sizes as approved do not comply with AMC 18.5.8.050.G.3 which requires that affordable studios be a minimum of 350 square feet and that affordable one-bedroom units be a minimum of 500 square feet."** In response to this issue, the applicant has provided a revised floor plan demonstrating how the one-bedroom units could be modified by reducing their recessed entry depth by 3-inches in order to achieve the required 500 square feet per affordable one-bedroom unit.

- **AS PROPOSED:** 12.5 x 42 = 525 square feet less 25.98 square feet for recessed entry = 499.02 square feet.
- **AS MODIFIED:** 12.5 x 42 = 525 square feet less 24.8975 feet for recessed entry = 500.1025 square feet.

In addition, the applicant notes that affordable basement level studios would be modified to be 499.5 square feet to significantly exceed the required 350 square feet per affordable studio unit requirement.



REMAND ISSUE #2

Affordable Unit Size Requirements

- Staff note that the affordability requirement for this project calls for 38 affordable units to be provided. Each building proposed has 20 one-bedroom units and 3 studios (i.e. 23 units).
- Assuming that two buildings will be developed by an affordable housing provider partner or the applicant themselves, the 38 required affordable units could be accommodated entirely with one-bedroom units, leaving one one-bedroom unit and three studios in each of the two buildings to be rented at market rate or provided as voluntarily affordable *(i.e. not deed-restricted and not subject to the square footage requirements of AMC 18.5.8.050.G.3.).*
- Staff believe that the second remand issue can be fully addressed by increasing the size of the one-bedroom units by a *de minimis* amount to comply with AMC 18.5.8.050.G.3 and making clear that as configured in the original proposal the studio units need not be considered among the required affordable units. If this approach is satisfactory to the Planning Commission and City Council, staff would recommend that Condition #7e be slightly modified as follows:

REMAND ISSUE #2

Affordable Unit Size Requirements

> **Modified Condition #7e.** *[That prior to final approval and annexation of the property, the applicant shall provide:]* A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that**: 1)** where the required number of affordable units is fractional it shall be rounded up, **2) ~~and~~** that should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI**, and 3) that each of the required affordable units comply with the minimum affordable units size requirements of AMC 18.5.8.050.G.3, with one bedroom affordable units being a minimum of 500 square feet, and affordable studio units being a minimum of 350 square feet.**

If the Planning Commission accepts the approaches outlined above for both of the remand issues, staff will draft findings and bring them back to the September meeting for adoption.

REMAND ISSUE #2

Density

- No density bonuses were granted with the original proposal. The *base* density of the subject property is **185.625 units** (13.75 buildable acres x 13.5 units/acre). The *minimum* density of the subject property is **167.0625 units** (0.90 x 185.625).
- As initially proposed, all units were less than 500 square feet, and units of less than 500 square feet count as 0.75 units for density calculations (AMC 18.2.5.080.B.2). The density as proposed was **172.5 units** (230 x 0.75 units).
- Increasing the size of 38 affordable units from 499.5 to 500 square feet to comply with the minimum affordable unit size would increase the density to **182 units** ([192 x 0.75 units] + [38 x 1.0 units]). This is within the base density of the property without bonuses and exceeds the minimum density required for annexation.

QUESTIONS?

Council Business Meeting

October 3, 2023

Agenda Item	Staffing Update	
From	Molly Taylor	Interim Human Resources Director
Contact	molly.taylor@ashland.or.us	
Item Type	Requested by Council ☐ Update ☐ Request for Direction ☐ Presentation ☒ Consent ☐ Public Hearing ☐ New Business ☐ Old Business ☐	

SUMMARY

Staffing update on where we are with current staffing levels and recruitment.

At the beginning of August, a survey was sent out to all staff members to provide critical feedback on employment with the City of Ashland.

POLICIES, PLANS & GOALS SUPPORTED

N/A

BACKGROUND AND ADDITIONAL INFORMATION

Since Covid, there has been a lot of turnover in the City. In the last year, we have made it a goal to bring departments back up to full staff status.

The last city-wide employee survey was completed over 5 years ago. The 2023 survey will provide a baseline for future surveys to measure successes and shortcomings. The goal is to have annual surveys to better understand staff's perspective on employment with the City of Ashland.

FISCAL IMPACTS

N/A

DISCUSSION QUESTIONS

N/A

SUGGESTED NEXT STEPS

N/A

REFERENCES & ATTACHMENTS

2023 Staffing Update PowerPoint



2023 Staffing Update

Staffing Statistics

Turnover Information:

2021 – 15%
- 4 Retirements
- 26 Resignations
- 3 Other

2022 – 18%
- 8 Retirements
- 28 Resignations
- 2 Other

2023 (thru 9/30) – 8%
- 7 Retirements
- 11 Resignations
- 2 Other

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Staffing Statistics

Recruitment:

Average number of applications per job posting:

Average run time for a job posting is 3 weeks

May / June – 2.75

June / July – 6

July / August – 4.75

August / September – 15.5

Better Together

Demographics

58% Participation

I have worked for the City for:

ANSWER CHOICES	RESPONSES
0 to 5 Years	31.11%
5 to 10 Years	27.41%
10 to 15 years	13.33%
15+ years	28.15%

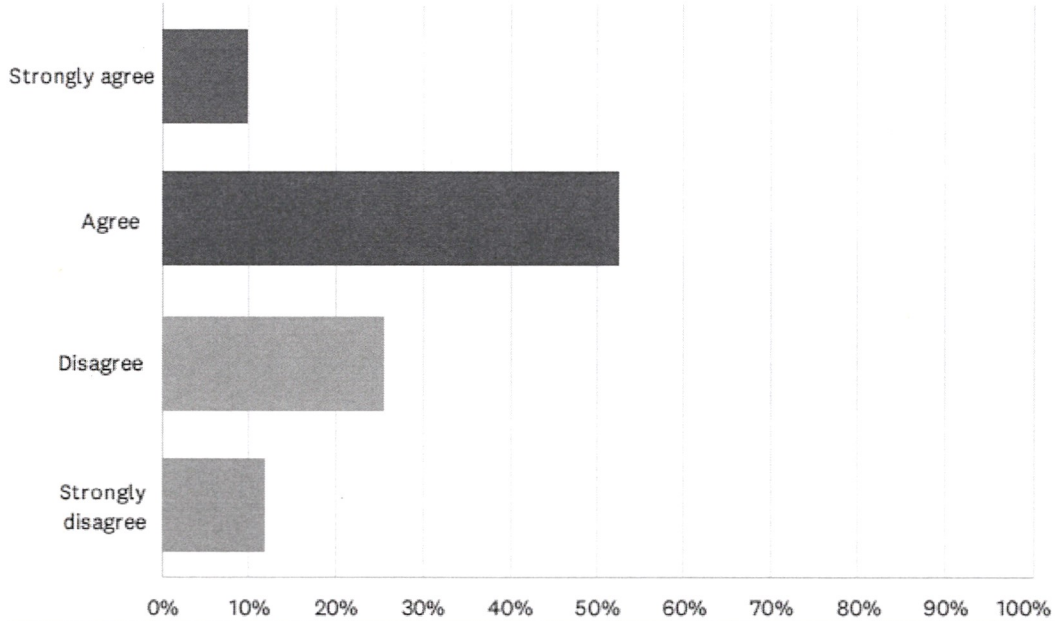
My job classification is:

ANSWER CHOICES	RESPONSES
Management/ Supervisory	33.83%
Non-Management	66.17%

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Survey Results

I believe the City respects, appreciates and is genu concerned about the welfare of its employees.

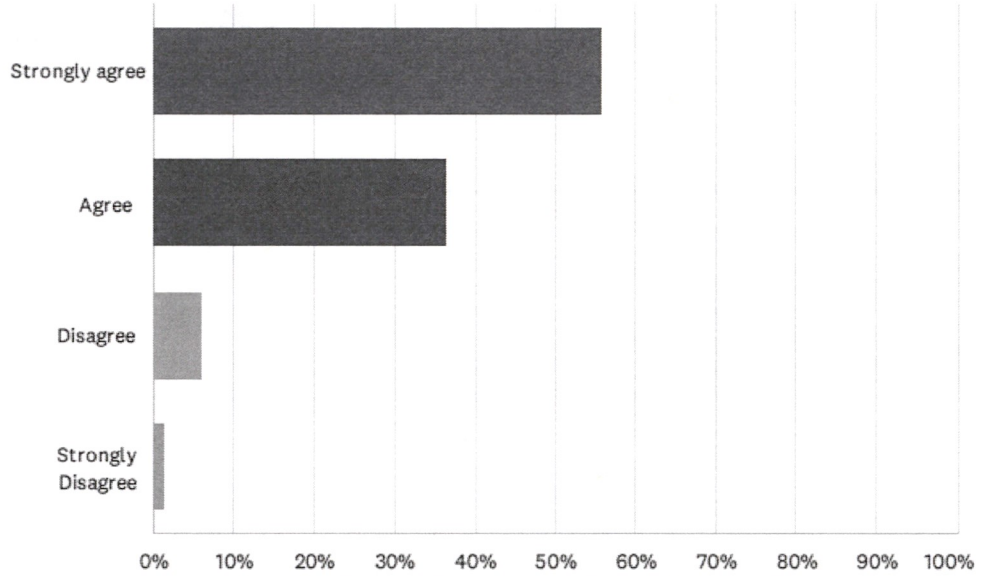


ANSWER CHOICES	RESPONSES
Strongly agree	9.77%
Agree	52.63%
Disagree	25.56%
Strongly disagree	12.03%

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Survey Results

The people in my department work together as a t make a significant contribution to the community.

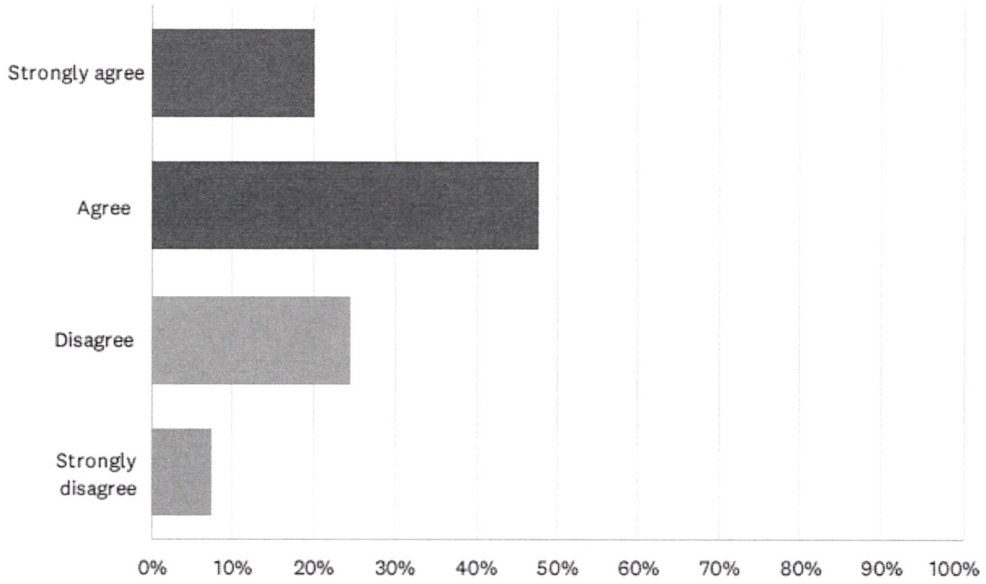


ANSWER CHOICES	RESPONSES
Strongly agree	55.97%
Agree	36.57%
Disagree	5.97%
Strongly Disagree	1.49%

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Survey Results

I have the appropriate tools and resources to prov best service I can.

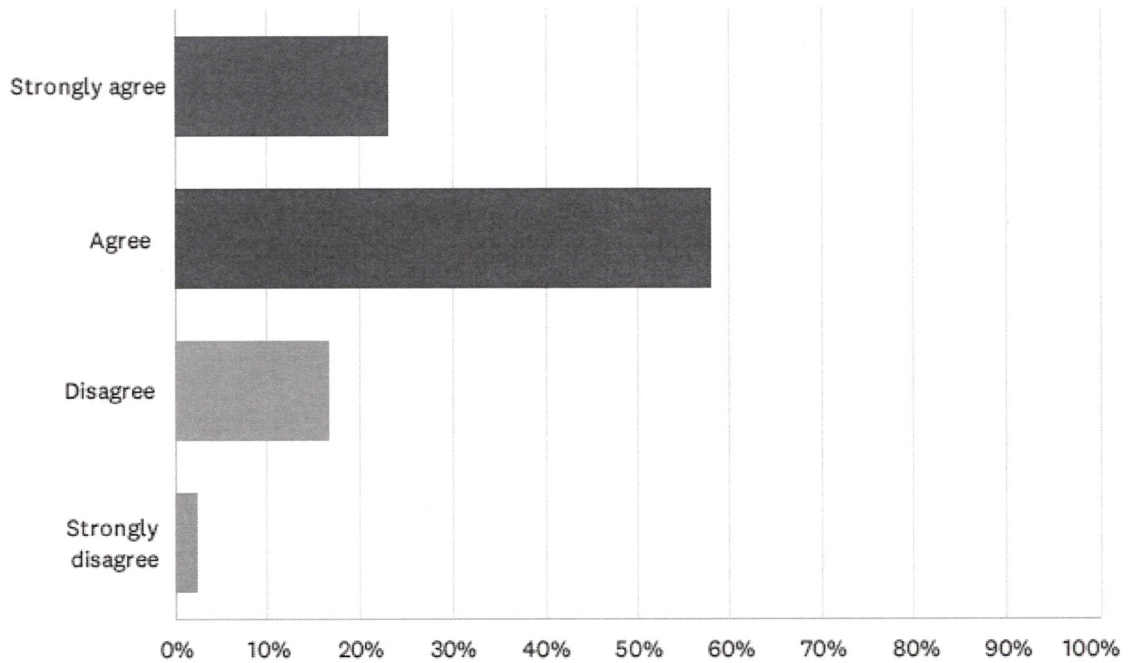


ANSWER CHOICES	RESPONSES
Strongly agree	20.15%
Agree	47.76%
Disagree	24.63%
Strongly disagree	7.46%

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Survey Results

I have the proper training to do my job well.

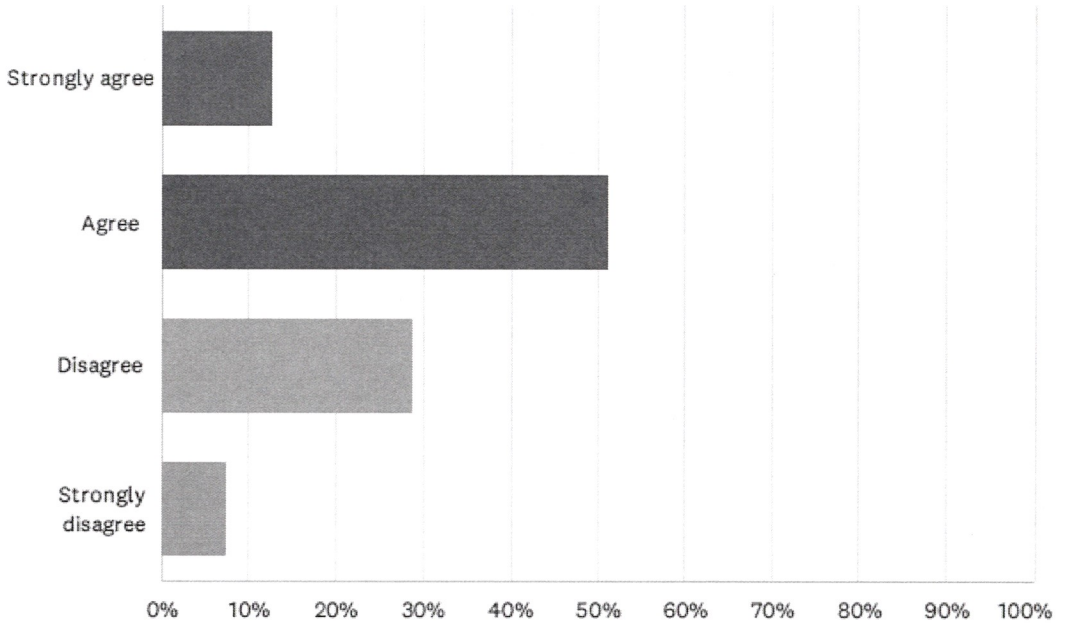


ANSWER CHOICES	RESPONSES
Strongly agree	23.31%
Agree	57.89%
Disagree	16.54%
Strongly disagree	2.26%

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Survey Results

I am informed about city news and developments timely manner.

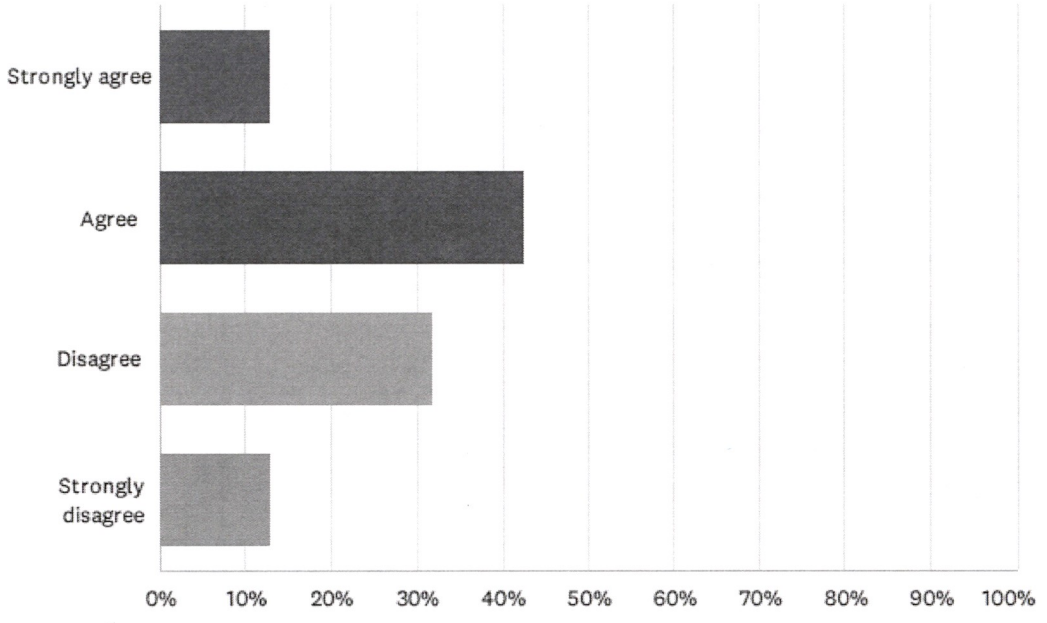


ANSWER CHOICES	RESPONSES
Strongly agree	12.59%
Agree	51.11%
Disagree	28.89%
Strongly disagree	7.41%

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Survey Results

I receive recognition for the work I do.

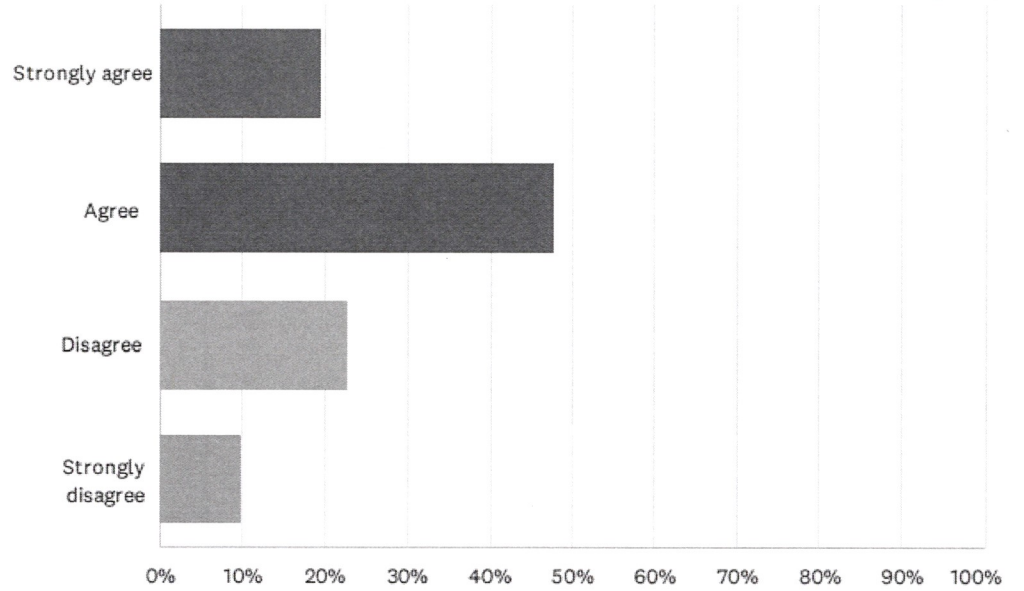


ANSWER CHOICES	RESPONSES
Strongly agree	12.88%
Agree	42.42%
Disagree	31.82%
Strongly disagree	12.88%

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Survey Results

I believe employees are comfortable communicat their supervisor and are taken seriously.

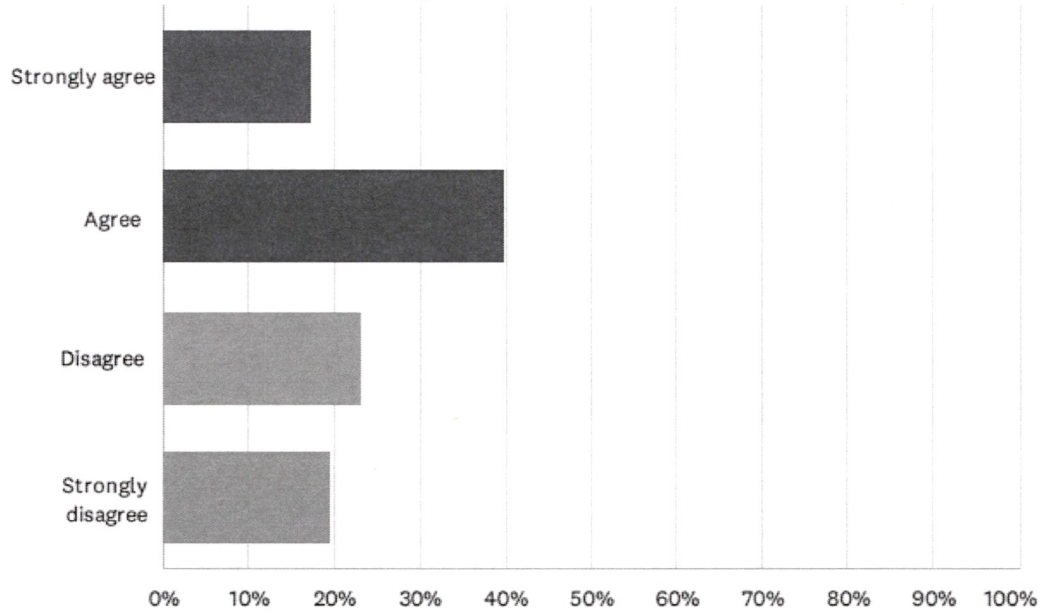


ANSWER CHOICES	RESPONSES
Strongly agree	19.70%
Agree	47.73%
Disagree	22.73%
Strongly disagree	9.85%

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Survey Results

I believe the city has worked to improve employee satisfaction in the last year.

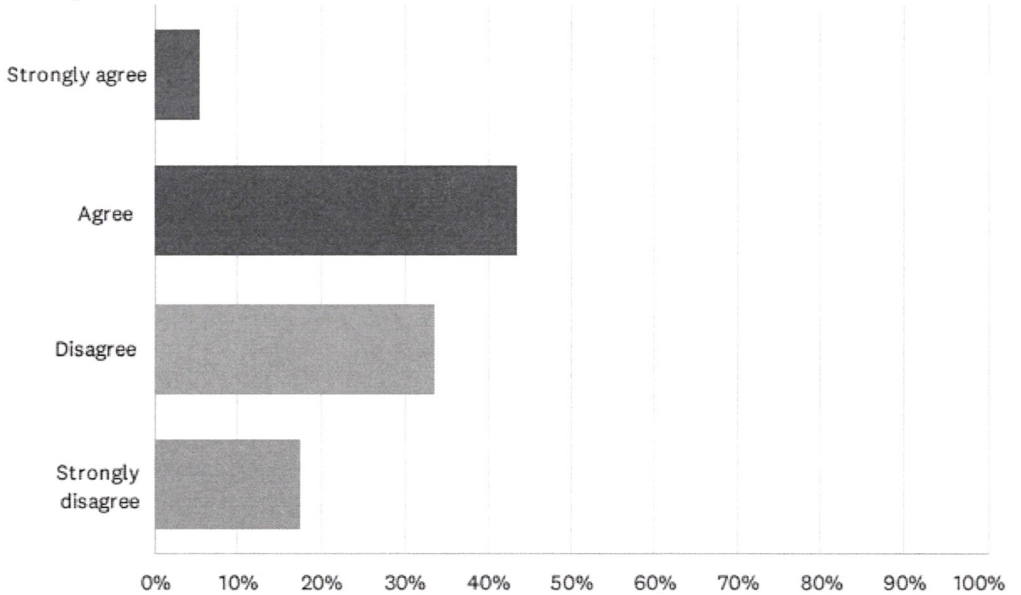


ANSWER CHOICES	RESPONSES
Strongly agree	17.29%
Agree	39.85%
Disagree	23.31%
Strongly disagree	19.55%

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Survey Results

I am confident with the direction the city manager leading the city.



ANSWER CHOICES	RESPONSES
Strongly agree	5.34%
Agree	43.51%
Disagree	33.59%
Strongly disagree	17.56%

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Comment Highlights

GENERAL THEMES:

City Manager's Office:

- Timeliness
- Staff expertise
- Collaborate
- Communicate
- Field time
- Workload

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Comment Highlights

GENERAL THEMES:

City Council:

- Workload
- New initiatives
- Political goals

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Comment Highlights

GENERAL THEMES:

Human Resources:

- Wages
- Employee evaluations
- Workload
- Onboarding / software training
- Annual survey

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Comment Highlights

POSITIVE COMMENTS:

- "We have great benefits. Overall this is a good place to work...."
- "Keep up the positive work."
- "I love my job and what I do here, thanks for the support."
- "I couldn't ask for a better supervisor... The crew that I work with h welcoming and some of the hardest working people I know."
- "I strongly believe that this is the highest moral [sp] I have seen h years."
- "I think the direction the city is headed is better than it has ever b
- "I am, however, optimistic that the city is getting back on the righ
- "I believe a lot has significantly improved in recent months...."
- "Staff are aware and appreciative – these have been monumer that have happened much quicker than expected and go a long building confidence."
- "I think we are going in the right direction overall...."
- ".....we have a new Mayor and a Council that seem to want to wo productively in the best interests of the city...."

Better Together

Comment Highlights

Questions?

Better Together

Council Business Meeting

Date: October 3rd, 2023

Agenda Item	Special Procurement Request for Approval for Contract to Grayback Forestry, Inc.	
From	Chris Chambers	Forestry Officer
Contact	Chris.chambers@ashland.or.us (541) 552-2066	

SUMMARY

The Fire Department is seeking approval of a Special Procurement to Grayback Forestry Inc implement wildfire safety and forestry work under the umbrella of the Ashland Forest All-lands Restoration Project (AFAR) and using City water bill fees earmarked by the City Council by directly awarding a contract. Grayback Forestry Inc. has unique experience and qualifications developed over 10 years of working in tandem with the AFR Partnership that creates a unique benefit to the City. In addition to AFAR work on federal and private land, Grayback has also contracted directly with the City since 2012 for prescribed burning on City forestlands, following their selection in both of two competitive bid processes where they were the only qualified bidder each time. This contract combines needs in AFAR federal and private lands with City forestlands management previously provided by long-time contractor Small Woodland Services, Inc that no longer hosts a workforce. Directly contracting saves money by not incurring pass through costs as was the case in the past and preserves accumulated experience and knowledge to accomplish complicated and high-risk work critical to the City's fire safety goals in a cost-effective manner.

POLICIES, PLANS & GOALS SUPPORTED

City Council Goal: Address Climate Change
City Council Goal: Reduce Wildfire and Smoke Risk
City Plans: Ashland Natural Hazard Mitigation Plan, Community Wildfire Protection Plan, 2016 Ashland Forest Plan and 2023 Forest Plan Climate Change Addendum.
Citizen Budget Goals: Wildfire Safety was the highest budget priority from resident in-person and online polling in spring 2023.

PREVIOUS COUNCIL ACTION

Council approved Special Procurements for past contracts using City funds to support the AFR project, including in BN19-21 and BN21-23 with Grayback Forestry, Inc.

Council created the AFR project water fee funding source with associated Resolution during the 2013-15 Biennium. The fee was increased with an updated Resolution for the 2019-2021 Biennium.

Council unanimously passed the 2023 Ashland Forest Plan Climate Change Addendum.

BACKGROUND AND ADDITIONAL INFORMATION

Beginning in the 2013-2015 biennium, the City Council elected to contribute funding to the AFR Project from an assessment placed on water meters throughout Ashland. This remains in place. To date, funds have been allocated through Lomakatsi Restoration Project, an AFR partner, to both accomplish primary fuels reduction treatments in the Ashland Creek Watershed and to maintain already completed treatments using prescribed burning or mechanical cutting. During the 2019 budget process, the City Council expanded the application of water fee dollars to include all lands (only federal in the past) strategic to the City's interest in wildfire safety. Lomakatsi

CITY OF ASHLAND

selected Grayback as a result of multiple competitive bidding processes to perform forest thinning, piling, and controlled burning tasks using City funds on the AFR project federal lands since 2013.

Concurrent with the water fee funding for AFR, the City has been implementing prescribed burning on City-owned forestlands (at the time, funded separately through a transfer from the Water Fund) to increase wildfire safety and forest health. Since 2012, and as a result of two competitive bidding processes, Grayback Forestry has been the sole contractor selected for this burning work on the City's forestlands.

Given their previous selection in multiple requests for bids, and the longstanding relationships and landscape intimacy developed over years implementing a high-risk activity in and around the Ashland Watershed, Grayback Forestry has developed a unique and desired set of qualifications. By contracting directly with Grayback, the City will continue to save administrative costs incurred by passing funds through another AFR partner to Grayback.

FISCAL IMPACTS

Funding will be dedicated through purchase orders as available in the budget. A program line cut in the 2023-2025 budget has reduced available funding for this work over past years. However, due to the drought and ensuing mass mortality of trees in forests close to town, the City Manager has declared that the program will be fully funded in BN 23-25. A recent budget supplement was passed by City Council adding over $141,000 of previously unappropriated funds. The contract amount allows for the possibility of future grant funding as well as potential transfers of funds from AFR partners.

STAFF RECOMMENDATION

Staff recommends approval of the Special Procurement to Grayback Forestry, Inc. for forestry services.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

"I move that the City Council, acting as local contract review board, approve this special procurement contract to Grayback Forestry, Inc not to exceed $700,000 through June 30, 2027 for forestry work critical to our watershed and community safety."

REFERENCES & ATTACHMENTS

Contract for Good and Services
Form for Special Procurement, Request for Approval
Determination of Feasibility Memo from Staff

GOODS & SERVICES AGREEMENT (GREATER THEN $25,000)

CITY OF ASHLAND 20 East Main Street Ashland, Oregon 97520 Telephone: 541/488-5587 Fax: 541/488-6006	PROVIDER: Grayback Forestry, Inc. PROVIDER'S CONTACT: Bryan Wheelock ADDRESS: P.O. Box 2458 White City, OR 97503 PHONE: (541) 830-4216

This Goods and Services Agreement (hereinafter "Agreement") is entered into by and between the City of Ashland, an Oregon municipal corporation (hereinafter "City") and Grayback Forestry, Inc., a domestic business corporation ("hereinafter "Provider"), for wildfire fuels reduction and forestry services.

1. PROVIDER'S OBLIGATIONS

1.1 Provide resources as ordered by the City to accomplish objectives set forth by the City and the Ashland Forest Resiliency Partnership to accomplish prescribed burning, forest thinning, piling, and other forestry related activities as set forth in the "SUPPORTING DOCUMENTS" attached hereto and, by this reference, incorporated herein. Provider expressly acknowledges that time is of the essence of any completion date set forth in the SUPPORTING DOCUMENTS, and that no waiver or extension of such deadline may be authorized except in the same manner as herein provided for authority to exceed the maximum compensation. The goods and services defined and described in the "SUPPORTING DOCUMENTS" shall hereinafter be collectively referred to as "Work."

1.2 Provider shall obtain and maintain during the term of this Agreement and until City's final acceptance of all Work received hereunder, a policy or policies of liability insurance including commercial general liability insurance with a combined single limit, or the equivalent, of not less than $2,000,000 (two million dollars) per occurrence for Bodily Injury and Property Damage.

1.2.1 The insurance required in this Article shall include the following coverages:

- Comprehensive General or Commercial General Liability, including personal injury, contractual liability, and products/completed operations coverage; and
- Automobile Liability.

1.2.2 Each policy of such insurance shall be on an "occurrence" and not a "claims made" form, and shall:

- Name as additional insured "the City of Ashland, Oregon, its officers, agents and employees" with respect to claims arising out of the provision of Work under this Agreement;
- Apply to each named and additional named insured as though a separate policy had been issued to each, provided that the policy limits shall not be increased thereby;
- Apply as primary coverage for each additional named insured except to the extent that two or more such policies are intended to "layer" coverage and, taken together, they provide total coverage from the first dollar of liability;
- Provider shall immediately notify the City of any change in insurance coverage
- Provider shall supply an endorsement naming the City, its officers, employees and agents as additional insureds by the Effective Date of this Agreement; and

- Be evidenced by a certificate or certificates of such insurance approved by the City.

1.3 All subject employers working under this Agreement are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. As evidence of the insurance required by this Agreement, the Provider shall furnish an acceptable insurance certificate prior to commencing any Work under this Agreement.

1.4 Provider agrees that no person shall, on the grounds of race, color, religion, creed, sex, marital status, familial status or domestic partnership, national origin, age, mental or physical disability, sexual orientation, gender identity or source of income, suffer discrimination in the performance of this Agreement when employed by Provider. Provider agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Further, Provider agrees not to discriminate against a disadvantaged business enterprise, minority-owned business, woman-owned business, a business that a service-disabled veteran owns or an emerging small business enterprise certified under ORS 200.055, in awarding subcontracts as required by ORS 279A.110.

1.5 In all solicitations either by competitive bidding or negotiation made by Provider for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Providers of the Provider's obligations under this Agreement and Title VI of the Civil Rights Act of 1964 and other federal nondiscrimination laws.

1.6 **Living Wage Requirements:** If the amount of this Agreement is $21,507.75 or more, Provider is required to comply with Chapter 3.12 of the Ashland Municipal Code by paying a living wage, as defined in that chapter, to all employees performing Work under this Agreement and to any Subcontractor who performs 50% or more of the Work under this Agreement. Provider is also required to post the notice attached hereto as "Exhibit A" predominantly in areas where it will be seen by all employees.

2. CITY'S OBLIGATIONS

2.1 City shall pay Provider at the rates specified in the pricing portions in the SUPPORTING DOCUMENTS as full compensation for all Work to be performed pursuant to this agreement.

2.2 In no event shall Provider's total of all compensation and reimbursement under this Agreement exceed the sum of $700,000 without express, written approval from the City official whose signature appears below, or such official's successor in office. Provider expressly acknowledges that no other person has authority to order or authorize additional Work which would cause this maximum sum to be exceeded and that any authorization from the responsible official must be in writing. Provider further acknowledges that any Work delivered or expenses incurred without authorization as provided herein is done at Provider's own risk and as a volunteer without expectation of compensation or reimbursement.

3. GENERAL PROVISIONS

3.1 This is a non-exclusive Agreement. City is not obligated to procure any specific amount of Work from Provider and is free to procure similar types of goods and services from other providers in its sole discretion.

3.2 Provider is an independent contractor and not an employee or agent of the City for any purpose.

3.3 Provider is not entitled to, and expressly waives all claims to City benefits such as health and disability insurance, paid leave, and retirement.

3.4 This Agreement embodies the full and complete understanding of the parties respecting the subject matter hereof. It supersedes all prior agreements, negotiations, and representations between the parties, whether written or oral.

3.5 This Agreement may be amended only by written instrument executed with the same formalities as this Agreement.

3.6 The following laws of the State of Oregon are hereby incorporated by reference into this Agreement: ORS 279B.220, 279B.230 and 279B.235.

3.7 This Agreement shall be governed by the laws of the State of Oregon without regard to conflict of laws principles. Exclusive venue for litigation of any action arising under this Agreement shall be in the Circuit Court of the State of Oregon for Jackson County unless exclusive jurisdiction is in federal court, in which case exclusive venue shall be in the federal district court for the district of Oregon. Each party expressly waives any and all rights to maintain an action under this Agreement in any other venue, and expressly consents that, upon motion of the other party, any case may be dismissed or its venue transferred, as appropriate, so as to effectuate this choice of venue.

3.8 Provider shall defend, save, hold harmless and indemnify the City and its officers, employees and agents from and against any and all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature resulting from, arising out of, or relating to the activities of Provider or its officers, employees, contractors, or agents under this Agreement.

3.9 Neither party to this Agreement shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's officers, employees or agents.

3.10 If any provision of this Agreement is found by a court of competent jurisdiction to be unenforceable, such provision shall not affect the other provisions, but such unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permitted the intent of Provider and the City set forth in this Agreement.

3.11 Deliveries will be F.O.B destination. Provider shall pay all transportation and handling charges for the Goods. Provider is responsible and liable for loss or damage until final inspection and acceptance of the Goods by the City. Provider remains liable for latent defects, fraud, and warranties.

3.12 The City may inspect and test the Goods. The City may reject non-conforming Goods and require Provider to correct them without charge or deliver them at a reduced price, as negotiated. If Provider does not cure any defects within a reasonable time, the City may reject the Goods and cancel this Agreement in whole or in part. This paragraph does not affect or limit the City's rights, including its rights under the Uniform Commercial Code, ORS Chapter 72 (UCC).

3.13 Provider represents and warrants that the Goods are new, current, and fully warranted by the manufacturer. Delivered Goods will comply with SUPPORTING DOCUMENTS and be free from defects in labor, material and manufacture. Provider shall transfer all warranties to the City.

4. SUPPORTING DOCUMENTS

The following documents are, by this reference, expressly incorporated in this Agreement, and are collectively referred to in this Agreement as the "SUPPORTING DOCUMENTS:"

- The Provider's "AFR Project Work Proposal and Pricing" document

5. REMEDIES

5.1 In the event Provider is in default of this Agreement, City may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to:

5.1.1 Termination of this Agreement;

5.1.2 Withholding all monies due for the Work that Provider has failed to deliver within any scheduled completion dates or any Work that have been delivered inadequately or defectively;

5.1.3 Initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief;

5.1.4 These remedies are cumulative to the extent the remedies are not inconsistent, and City may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

5.2 In no event shall City be liable to Provider for any expenses related to termination of this Agreement or for anticipated profits. If previous amounts paid to Provider exceed the amount due, Provider shall pay immediately any excess to City upon written demand provided.

6. TERM AND TERMINATION

6.1 Term

This Agreement shall be effective from the date of execution on behalf of the City as set forth below (the "Effective Date"), and shall continue in full force and effect until June 30th, 2027 unless sooner terminated as provided in Subsection 6.2.

6.2 Termination

6.2.1 The City and Provider may terminate this Agreement by mutual agreement at any time.

6.2.2 The City may, upon not less than thirty (30) days' prior written notice, terminate this Agreement for any reason deemed appropriate in its sole discretion.

6.2.3 Either party may terminate this Agreement, with cause, by not less than fourteen (14) days' prior written notice if the cause is not cured within that fourteen (14) day period after written notice. Such termination is in addition to and not in lieu of any other remedy at law or equity.

7. NOTICE

Whenever notice is required or permitted to be given under this Agreement, such notice shall be given in writing to the other party by personal delivery, by sending via a reputable commercial overnight courier, or by mailing using registered or certified United States mail, return receipt requested, postage prepaid, to the address set forth below:

If to the City:
City of Ashland – Fire Department
Attn: Chris Chambers, Forestry Officer
455 Siskiyou Boulevard
Ashland, Oregon 97520
Phone: (541) 482-2770

With a copy to:
City of Ashland – Legal Department
20 E. Main Street
Ashland, OR 97520
Phone: (541) 488-5350

If to Provider:
Grayback Forestry Inc.
Attn: Bryan Wheelock
bryan@graybackforestry.com
(541) 830-3100

8. WAIVER OF BREACH

One or more waivers or failures to object by either party to the other's breach of any provision, term, condition, or covenant contained in this Agreement shall not be construed as a waiver of any subsequent breach, whether or not of the same nature.

9. PROVIDER'S COMPLIANCE WITH TAX LAWS

9.1 Provider represents and warrants to the City that:

9.1.1 Provider shall, throughout the term of this Agreement, including any extensions hereof, comply with:

(i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;

(ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to Provider; and

(iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

9.1.2 Provider, for a period of no fewer than six (6) calendar years preceding the Effective Date of this Agreement, has faithfully complied with:

(i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;

(ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to Provider; and

(iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

9.2 Provider's failure to comply with the tax laws of the State of Oregon and all applicable tax laws of any political subdivision of the State of Oregon shall constitute a material breach of this Agreement. Further, any violation of Provider's warranty, as set forth in this Article 9, shall constitute a material breach of this Agreement. Any material breach of this Agreement shall entitle the City to terminate this Agreement and to seek damages and any other relief available under this Agreement, at law, or in equity.

IN WITNESS WHEREOF the parties have caused this Agreement to be signed in their respective names by their duly authorized representatives as of the dates set forth below.

CITY OF ASHLAND:

By: _____
City Manager

_____
Printed Name

_____
Date

Grayback Forestry, Inc. (PROVIDER):

By: _____
Signature

_____
Printed Name

_____
Title

_____
Date

Purchase Order No. _____

(**W-9** is to be submitted with this signed Agreement)

APPROVED AS TO FORM:

_____
Assistant City Attorney

_____
Date

FORM #9

CITY OF ASHLAND

SPECIAL PROCUREMENT REQUEST FOR APPROVAL

To: City Council, Local Contract Review Board

From: Chris Chambers, Fire Department

Date: September 27th, 2023

Subject: REQUEST FOR APPROVAL OF A SPECIAL PROCUREMENT

In accordance with ORS279B.085, this request for approval of a Special Procurement is being presented to the City Council for approval. This written request for approval describes the proposed contracting procedure and the goods or services or the class of goods or services to be acquired through the special procurement and the circumstances that justify the use of a special procurement under the standards set forth ORS 279B.085(4).

1. **Requesting Department Name:** Ashland Fire & Rescue

2. **Department Contact Name:** Chris Chambers, Forest Officer

3. **Type of Request:** _____ Class Special Procurement X Contract-specific Special Procurement

4. **Time Period Requested:** From: 10/10/23 To: 6/30/2027

5. **Total Estimated Cost:** Not to exceed $700,000

6. **Short title of the Procurement:** Ashland Forest Resiliency Special Procurement

Supplies and/or Services or class of Supplies and/or Services to be acquired:
Grayback Forestry, Inc will provide forestry services under the Ashland Forest All-lands Restoration Project, which includes federal, private, and City of Ashland/Ashland Parks and Recreation Commission lands. Grayback Forestry, Inc services include prescribed burning, tree and brush thinning and piling, weed removal, and associated planning, preparation, and layout to accomplish work items on specific properties designated by the City within the Ashland Forest All-lands Restoration area. Specifically, Grayback Forestry will provide the qualified and trained workforce and equipment necessary to implement said forestry operations under the direction of the City in consultation with the Ashland Forest Resiliency partnership, Ashland Forest Lands Committee and private landowners.

7. Background and Proposed Contracting Procedure:

Background: Beginning in the 2013-2015 biennium, the City Council elected to contribute funding toward watershed fire mitigation from an assessment placed on water use throughout Ashland. This remains in place and was increased in BN 19-21. Grayback Forestry was contracted by the City for the 2019-21 BN for these services and performed up to expectations. During the 2019 budget process, the City Council expanded the application of water fee dollars to include all lands (not only federal)

strategic to the City's interest in wildfire safety. Concurrent with the water fee funding, the City has been implementing prescribed burning on City-owned forestlands to further increase wildfire safety and forest health using Water Fund dollars that have been earmarked for City forestlands management since the mid 1990's. Since 2012, including two competitive bidding processes, Grayback Forestry has been the sole contractor selected for burning on the City's lands. Grayback has also been the sole subcontractor selected by Lomakatsi Restoration (an AFR project partner) to implement prescribed burning on federal lands in the Ashland Watershed, also through competitive bidding. Given their unanimous selection in multiple requests for bids, and the longstanding relationships and intimacy with the landscape of the Ashland Watershed, Grayback Forestry has developed a unique and desired set of qualifications to carry out the City's goals. By contracting directly with Grayback, the City will save administrative costs incurred by passing funds through to another AFR project entity, resulting in more acres of work accomplished each year.

Proposed Contracting Procedure: Due to the well-established relationship and unique qualifications of Grayback Forestry Inc. that allows financial savings while preserving accumulated knowledge and experience in the technical application of prescribed burning and related forestry activities, we propose the City directly enter into a contract outside the competitive bidding process using Special Procurement authority.

8. **Justification for use of Special Procurement:** Describe the circumstances that justify the use of a Special Procurement. Attach relevant documentation.

The complex ecological and social setting of the Ashland Watershed and surrounding areas is a difficult setting in which to accomplish highly skilled and nuanced work critical to protection of the community and our municipal water supply. For 12 years, Grayback has successfully worked with AFR Project partners as a sub-contractor on federal lands, primarily implementing prescribed burning, which is a difficult and highly skilled task. During this period, the City selected Grayback in two separate competitive bidding processes where Grayback had the only qualified and experienced workforce to carry out the City's goals for prescribed burning. Under City contract, Grayback carried out prescribed burn planning and implementation to City specifications in challenging terrain with intense public recreation use. Given Grayback's cumulative experience, trust, and familiarity with Ashland's forests, Grayback has unique and highly desirable qualifications that benefit the City's goals for wildfire safety and forest health. By combining the need for wildfire safety work on federal, private, and City lands, a direct contract with Grayback Forestry creates efficient and cost-effective use of City funds.

The City lacks the internal capacity to field a workforce that would accomplish the project outcomes desired by the AFR partners and as spelled out in the City Council's goals for watershed and community safety.

9. **Findings to Satisfy the Required Standards:** This proposed special procurement:

___X___ (a) will be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts because:

Through at least four competitive bidding processes executed by the City and AFR project partners since 2012, Grayback was uniquely qualified among all bidders during each distinct request for proposals. In each process conducted by the City, Grayback was the only bidder that met minimum qualifications for the complexity of work proposed. As the successful bidder and ongoing contractor on City, private, and federal lands, Grayback has accumulated desirable experience to implement highly technical and high-risk work in an efficient and effective manner.

(Please provide specific information that demonstrates how the proposed Special Procurement meets this requirement.); **and**

___X__ (b)(i) will result in substantial cost savings to the contracting agency or to the public because:

By contracting directly to Grayback, the City avoids administrative costs for passing funds through the AFR partnership, a savings of at least 22%. This was necessary in the past, but is no longer needed in the current work environment. Grayback also has other contacts with AFR partners under separate though complimentary funding, which means they will already be working in the area, cutting down mobilization costs.

(Please provide the total estimate cost savings to be gained and the rationale for determining the cost savings); **or**

__X___ (b)(ii) will otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the requirements of ORS 279B.055, 279B.060, 279B.065, or 279B.070, or any rules adopted there under because:

Grayback Forestry's years of experience in the Ashland Watershed has allowed them to accumulate site-specific knowledge of local ecology, fire behavior, expectations of the AFR partnership and public, and tested methods of implementation that have yielded acceptable outcomes across thousands of acres. The combination of experience and personal relationships built with AFR project partners makes Grayback Forestry's situation unique and of benefit to the City and community.

(Please provide specific information that demonstrates how the proposed Special Procurement meets this requirement.)

Public Notice:

Pursuant to ORS 279B.085(5) and OAR 137-047-0285(2), a Contracting Agency shall give public notice of the Contract Review Authority's approval of a Special Procurement in the same manner as a public notice of competitive sealed Bids under ORS 279B.055(4) and OAR 137-047-0300. The public notice shall describe the Goods or Services or class of Goods or Services to be acquired through the Special Procurement and shall give such public notice of the approval of a Special Procurement at least seven (7) Days before Award of the Contract.

After the Special Procurement has been approved by the City Council, the following public notice will be posted on the City's website to allow for the seven (7) day protest period.

Date Public Notice first appeared on www.ashland.or.us –*October 4th, 2023.*

PUBLIC NOTICE
Approval of a Special Procurement

First date of publication: October 4th, 2023

A request for approval of a Special Procurement was presented to and approved by the City Council, acting as the Local Contract Review Board, on *October 3rd, 2023*

This Special Procurement is a "Contract- specific Special Procurement". The proposed contracting procedure is direct award to Grayback Forestry Inc. for site-specific forestry work as part of the Ashland Forest Resiliency All-lands Restoration project. Grayback has unique experience and qualifications shown by their unanimous selection during each of several City and AFR partner supported competitive bidding processes since 2012. Their experience and safety record working with the City and AFR project partners is unique and highly beneficial to the City's goals and interests.

It has been determined based on written findings that the Special Procurement will be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts, and result in substantial cost savings or substantially promote the public interest in a manner that could not be realized by complying with the requirements that are applicable in ORS 279B.055, 279B.060, 279B.065, or 279B.070.

An affected person may protest the request for approval of a Special Procurement in accordance with ORS 279B.400 and OAR 137-047-0300. A written protest shall be delivered to the following address: City of Ashland, Chris Chambers, Forest Division Chief, 455 Siskiyou Blvd, Ashland, OR 97520. The seven (7) day protest period will expire at 5:00 p.m. on October 11th, 2021.

This public notice is being published on the City's Internet World Wide Web site at least seven days prior to the award of a public contract resulting from this request for approval of a Special Procurement.

CITY OF
ASHLAND

Memo

DATE: September 27, 2023

TO: City Council

FROM: Chris Chambers, Forestry Officer/Ashland Fire & Rescue

RE: Ashland Forest Resiliency and All-lands Special Procurement to Grayback Forestry, Inc.

The Ashland Municipal Code requires additional justification for any Special Procurement over $350,000. Per ORS 279B.036, *Determination of feasibility of procurement*, which in first part states that "a contracting agency may proceed with a procurement if the contracting agency reasonably determines in writing that using the contracting agency's own personnel or resources to perform the services that the contracting agency intends to procure is not feasible."

A cost analysis is unnecessary if the contracting agency finds it "lacks the specialized capabilities, experience or technical or other expertise necessary to perform the services." ORS 279B.036 (1)(a). Ashland Fire & Rescue (AF&R) must still "compare [AF&R's] capability, experience or expertise in the field most closely involved in performing the services with a potential contractor's capability, experience or expertise in the same or a similar field." *Id.*

Staff analysis: Ashland Fire & Rescue's internal expertise and workforce capacity does not fit the need for the identified work either by skills possessed or capability to perform the identified tasks. The vast majority of AF&R's workforce are firefighter/paramedics who have little technical forestry expertise or training that would lend to accomplishment of the pertinent outcomes in Ashland's forestlands and watershed. Though certain staff have experience with prescribed burning, there are currently no completed certificates like those required by the National Wildfire Coordinating Group for positions required during burn operations like Holding Boss, Ignition Boss, or Burn Boss. In addition, the AF&R workforce is necessarily tied to emergency response duties and cannot be out of the City where response time would be reduced, which would endanger public safety. Due to these factors, using our own personnel is not feasible.

Ashland Fire & Rescue
455 Siskiyou Boulevard
Ashland, Oregon 97520
www.ashland.or.us

Tel: 541-482-2770
Fax: 541-488-5318
TTY: 800-735-2900

Council Business Meeting

October 3, 2023

Agenda Item	Grant Support Services-Award of Professional Services Contract	
From	Scott Fleury PE	Public Works Director
Contact	Scott.fleury@ashland.or.us	
Item Type	Requested by Council ☐ Update ☐ Request for Direction ☒ Presentation ☐	

SUMMARY

Before the Council is a request to approve a professional services contract for grant support services with Evan Brooks Associates Inc. in an amount of $150,000 for the 2023-2025 Biennium. Evan Brooks was the highest ranked proposer in a formal solicitation developed by the City for grant support services.

POLICIES, PLANS & GOALS SUPPORTED

VISION STATEMENTS for Success:

- *Ashland is a resilient, sustainable community that maintains the distinctive quality of place for which it is known*
- *We will continue to be a unique and caring city that stresses environmental conservation, fosters artistic expression, and is open to new ideas and innovation*
- *We will plan and direct our efforts to fulfill this Vision for the long term with a constant view toward being an open, welcoming community for all with a positive economic future*

VALUE STATEMENTS for Success that Support the Vision:

COMMUNITY

- Community affordability, including in available housing and childcare
- Belonging through mutual respect and openness, inclusion and equity
- Quality of life that underpins the City's economic vibrancy
- Environmental resilience, including addressing climate change and ecosystem conservation
- Regional cooperation, including in support for public safety and homelessness

ORGANIZATION

- Respect for the citizens we serve, for each other, and for the work we do
- Excellence in governance and city services
- Sustainability through creativity, affordability and rightsized service delivery
- Public safety, including emergency preparedness for climate change risk
- Quality infrastructure and facilities through timely maintenance and community investment

BACKGROUND AND ADDITIONAL INFORMATION

Grants are an important revenue source for the City of Ashland. The City has obtained numerous grants over the years to support programs and projects and these grants have typically been part of the basic business operations for City Departments. With the previous passing of federal legislation called the Bipartisan Infrastructure Deal (Infrastructure Investment and Jobs Act), a whole new realm of grant

possibilities is available to the City. Research and review of these grant opportunities can add an additional burden to already limited staffing. In order to maximize limited staff resources and align projects/needs with potential grant opportunities it was determined the best immediate course of action would be to solicit for consultant services to support all City Departments in reviewing grant opportunities and assist if needed with the application process. Staff developed a formal solicitation for consultant services with this flexible service approach in mind, reference attachment #2.

The project was formally solicited on the OregonBuys on May 30, 2023 and responses were received on June 29, 2023. Five (5) responses were provided for the project. The proposals were graded by Rachel Dials, Parks and Recreation Deputy Director, Jason Strait, Engineering Project Manager, Sabrina Cotta, Deputy City Manager and Scott Fleury PE, Public Works Director.

Total Scoring Results:

CONSULTANT	TOTAL SCORE	RANK
Evan Brooks	370	1
BKF	349	2
Reis	345	3
Eleventh House	325	4
PDG	262	5

After scoring was completed, all firms were notified of the City's intent to begin scope and fee negotiations with Evan Brooks Associates for the project. Through several discussion with EBA and leadership staff a final scope and fee was agreed upon. The scope and fee is part of the professional services contract, reference attachment #1.

FISCAL IMPACTS

The proposed fee for the scope of work is $150,000 for the biennium. The $150,000 is broken across the Public Works Department ($50k), Electric Department ($50k) and the General Fund ($50k). The general fund amount covers Police, Fire, Parks, Administration and IT. This is a time and materials based contract structure and will be utilized by Departments as needed during the biennium.

DISCUSSION QUESTIONS

Does the Council have any questions about the solicitation process or scope of services?

ACTIONS, OPTIONS & POTENTIAL MOTIONS

- I move to approve a Legal Department approved professional services contract with Evan Brooks Associates Inc. for Grant Support Services in the amount of $150,000.

- I move to take no action.

SUGGESTED NEXT STEPS

Next steps include issuing notice to proceed after award of contract and having individual departments coordinate with Evan Brooks Associates on grant funding for projects/programs.

REFERENCES & ATTACHMENTS

Attachment #1: Professional Services Contract with Evan Brooks Associates
Attachment #2: Request for Proposal

PERSONAL SERVICES AGREEMENT (GREATER THAN $35,000.00)

CITY OF ASHLAND 20 East Main Street Ashland, Oregon 97520 Telephone: 541/488-5587 Fax: 541/488-6006	CONSULTANT: Evan Brooks Associates, Inc. CONSULTANT'S CONTACT: Daniel Bartelson/ Melissa Sandoval ADDRESS: 750 E. Green Street, Suite 301 Pasadena, CA 91101 TELEPHONE: (626) 799-8011

This Personal Services Agreement (hereinafter "Agreement") is entered into by and between the City of Ashland, an Oregon municipal corporation (hereinafter "City") and Evan Brooks Associates, Inc., (a foreign business corporation) ("hereinafter "Consultant"), for grant research and advisory services for the City of Ashland.

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

1. **Effective Date and Duration:** This Agreement shall become effective on the date of execution on behalf of the City, as set forth below (the "Effective Date"), and unless sooner terminated as specifically provided herein, shall terminate upon the City's affirmative acceptance of Consultant's Work as complete and Consultant's acceptance of the City's final payment therefore, but not later than June 30, 2025.
2. **Scope of Work:** Consultant will provide grant research and advisory services for the City of Ashland as more fully set forth in the Consultant's Scope of Services dated 9/21/2023, which is attached hereto as "Exhibit A" and incorporated herein by this reference. Consultant's services are collectively referred to in this Agreement as the "Work."
3. **Compensation:** City shall pay Consultant the sum of **$XXXXXXXX (this amount may be an hourly rate OR a lump sum - write out amount in long form here, e.g. two hundred thousand and eighty-five dollars)** as full compensation for Consultant's performance of all Work under this Agreement. In no event shall Consultant's total of all compensation and reimbursement under this Agreement exceed the sum of **$150,000.00 (one hundred fifty thousand US dollars)** without the express, written approval from the City official whose signature appears below, or such official's successor in office. Payments shall be made within thirty (30) days of the date of receipt by the City of Consultant's invoice. Should this Agreement be terminated prior to completion of all Work, payments will be made for any phase of the Work completed and accepted as of the date of termination.

4. **Supporting Documents/Conflicting Provisions:** This Agreement and any exhibits or other supporting documents shall be construed to be mutually complementary and supplementary wherever possible. In the event of a conflict which cannot be so resolved, the provisions of this Agreement itself shall control over any conflicting provisions in any of the exhibits or supporting documents.

5. **All Costs Borne by Consultant:** Consultant shall, at its own risk, perform the Work described above and, unless otherwise specified in this Agreement, furnish all labor, equipment, and materials required for the proper performance of such Work.

6. **Qualified Work:** Consultant has represented, and by entering into this Agreement now represents, that all personnel assigned to the Work to be performed under this Agreement are fully qualified to perform the services to which they will be assigned in a skilled manner and, if required to be registered, licensed, or bonded by the State of Oregon, are so registered, licensed, or bonded.

7. **Ownership of Work/Documents:** All Work, work product, or other documents produced in furtherance of this Agreement belong to the City, and any copyright, patent, trademark proprietary or any other protected intellectual property right shall vest in and is hereby assigned to the City.

8. **Statutory Requirements:** The following laws of the State of Oregon are hereby incorporated by reference into this Agreement: ORS 279B.220, 279B.230 and 279B.235.

9. **Living Wage Requirements:** If the amount of this Agreement is $25,335.05 or more, Consultant is required to comply with Chapter 3.12 of the Ashland Municipal Code by paying a living wage, as defined in that chapter, to all employees performing Work under this Agreement and to any Subcontractor who performs 50% or more of the Work under this Agreement. Consultant is also required to post the notice attached hereto as "Exhibit B" predominantly in areas where it will be seen by all employees.

10. **Indemnification:** Consultant hereby agrees to defend, indemnify, save, and hold City, its officers, employees, and agents harmless from any and all losses, claims, actions, costs, expenses, judgments, or other damages resulting from injury to any person (including injury resulting in death), or damage (including loss or destruction) to property, of whatsoever nature arising out of or incident to the performance of this Agreement by Consultant (including but not limited to, Consultant's employees, agents, and others designated by Consultant to perform Work or services attendant to this Agreement). However, Consultant shall not be held responsible for any losses, expenses, claims, costs, judgments, or other damages, caused solely by the gross negligence of City.

11. **Termination:**
    a. Mutual Consent. This Agreement may be terminated at any time by the mutual consent of both parties.
    b. City's Convenience. This Agreement may be terminated by City at any time upon not less than thirty (30) days' prior written notice delivered by certified mail or in person.
    c. For Cause. City may terminate or modify this Agreement, in whole or in part, effective

upon delivery of written notice to Consultant, or at such later date as may be established by City under any of the following conditions:

i. If City funding from federal, state, county or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services;

ii. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement; or

iii. If any license or certificate required by law or regulation to be held by Consultant to provide the services required by this Agreement is for any reason denied, revoked, suspended, or not renewed.

d. For Default or Breach.

i. Either City or Consultant may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination the party seeking termination shall give to the other party written notice of the breach and its intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) days of the date of the notice, or within such other period as the party giving the notice may authorize in writing, then the Agreement may be terminated at any time thereafter by a written notice of termination by the party giving notice.

ii. Time is of the essence for Consultant's performance of each and every obligation and duty under this Agreement. City, by written notice to Consultant of default or breach, may at any time terminate the whole or any part of this Agreement if Consultant fails to provide the Work called for by this Agreement within the time specified herein or within any extension thereof.

iii. The rights and remedies of City provided in this subsection (d) are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

e. Obligation/Liability of Parties. Termination or modification of this Agreement pursuant to subsections a, b, or c above shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination or modification. However, upon receiving a notice of termination (regardless whether such notice is given pursuant to Subsection a, b, c, or d of this section, Consultant shall immediately cease all activities under this Agreement, unless expressly directed otherwise by City in the notice of termination. Further, upon termination, Consultant shall deliver to City all documents, information, works-in-progress and other property that are or would be deliverables had the Agreement been completed. City shall pay Consultant for Work performed prior to the termination date if such Work was performed in accordance with this Agreement.

12. Independent Contractor Status: Consultant is an independent contractor and not an employee of the City for any purpose. Consultant shall have the complete responsibility for the

performance of this Agreement. Consultant shall provide workers' compensation coverage as required in ORS Chapter 656 for all persons employed to perform Work pursuant to this Agreement. Consultant is a subject employer that will comply with ORS 656.017.

13. **Assignment:** Consultant shall not assign this Agreement or subcontract any portion of the Work without the written consent of City. Any attempted assignment or subcontract without written consent of City shall be void. Consultant shall be fully responsible for the acts or omissions of any assigns or subcontractors and of all persons employed by them, and the approval by City of any assignment or subcontract of the Work shall not create any contractual relation between the assignee or subcontractor and City.

14. **Default.** The Consultant shall be in default of this Agreement if Consultant: commits any material breach or default of any covenant, warranty, certification, or obligation under the Agreement; institutes an action for relief in bankruptcy or has instituted against it an action for insolvency; makes a general assignment for the benefit of creditors; or ceases doing business on a regular basis of the type identified in its obligations under the Agreement; or attempts to assign rights in, or delegate duties under, this Agreement.

15. **Insurance.** Consultant shall, at its own expense, maintain the following insurance:
    a. Worker's Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers
    b. Professional Liability insurance with a combined single limit, or the equivalent, of not less than $2,000,000 (two million dollars) per occurrence. This is to cover any damages caused by error, omission or negligent acts related to the Work to be provided under this Agreement.
    c. General Liability insurance with a combined single limit, or the equivalent, of not less than $2,000,000 (two million dollars) per occurrence for Bodily Injury, Death, and Property Damage.
    d. Automobile Liability insurance with a combined single limit, or the equivalent, of not less than $1,000,000 (one million dollars) for each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.
    e. Notice of cancellation or change. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without thirty (30) days' prior written notice from the Consultant or its insurer(s) to the City.
    f. Additional Insured/Certificates of Insurance. Consultant shall name the City of Ashland, Oregon, and its elected officials, officers and employees as Additional Insureds on any insurance policies, excluding Professional Liability and Workers' Compensation, required herein, but only with
    respect to Consultant's services to be provided under this Agreement. The consultant's insurance is primary and non-contributory. As evidence of the insurance coverages required by this Agreement, the Consultant shall furnish acceptable insurance certificates prior to commencing the Work under this Agreement. The certificate will specify all of the parties who are Additional Insureds. Insuring companies or entities are subject to the City's acceptance. If requested, complete copies of insurance policies; trust agreements, etc. shall

be provided to the City. The Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

16. **Nondiscrimination:** Consultant agrees that no person shall, on the grounds of race, color, religion, creed, sex, marital status, familial status or domestic partnership, national origin, age, mental or physical disability, sexual orientation, gender identity or source of income, suffer discrimination in the performance of any Work under this Agreement when employed by Consultant. Consultant agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Further, Consultant agrees not to discriminate against a disadvantaged business enterprise, minority-owned business, woman-owned business, a business that a service-disabled veteran owns or an emerging small business enterprise certified under ORS 200.055, in awarding subcontracts as required by ORS 279A.110.

17. **Consultant's Compliance with Tax Laws:**

17.1 Consultant represents and warrants to the City that:

17.1.1 Consultant shall, throughout the term of this Agreement, including any extensions hereof, comply with:

(i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318;

(ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to Consultant; and

(iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

17.1.2 Consultant, for a period of no fewer than six (6) calendar years preceding the Effective Date of this Agreement, has faithfully complied with:

(i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318;

(ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to Consultant; and

(iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

18. **Notice.** Whenever notice is required or permitted to be given under this Agreement, such notice shall be given in writing to the other party by personal delivery, by sending via a reputable commercial overnight courier, by mailing using registered or certified United States mail, return receipt requested, postage prepaid, or by electronically confirmed at the address or facsimile number set forth below:

If to the City:

City Department
Attn: Scott Fleury
20 E. Main Street
Ashland, Oregon 97520
Telephone: (541) 488-5587

With a copy to:
City of Ashland – Legal Department
20 E. Main Street
Ashland, Oregon 97520
Phone: (541) 488-5350

If to Consultant:
Evan Brooks Associates, Inc.
750 E. Green Street, Suite 301
Pasadena, CA 91101

19. **Governing Law.** This Agreement shall be governed by the laws of the State of Oregon without regard to conflict of laws principles. Exclusive venue for litigation of any action arising under this Agreement shall be in the Circuit Court of the State of Oregon for Jackson County unless exclusive jurisdiction is in federal court, in which case exclusive venue shall be in the federal district court for the district of Oregon. Each party expressly waives any and all rights to maintain an action under this Agreement in any other venue, and expressly consents that, upon motion of the other party, any case may be dismissed or its venue transferred, as appropriate, so as to effectuate this choice of venue.

20. **Amendments.** This Agreement may be amended only by written instrument executed by both parties with the same formalities as this Agreement.

21. **Nonappropriations Clause**. Funds Available and Authorized: City has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement within the City's fiscal year budget. Consultant understands and agrees that City's payment of amounts under this Agreement attributable to Work performed after the last day of the current fiscal year is contingent on City appropriations, or other expenditure authority sufficient to allow City in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement. In the event City has insufficient appropriations, limitations or other expenditure authority, City may terminate this Agreement without penalty or liability to City, effective upon the delivery of written notice to Consultant, with no further liability to Consultant.

22. THIS AGREEMENT AND THE ATTACHED EXHIBITS CONSTITUTE THE ENTIRE UNDERSTANDING AND AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN.

THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. CONSULTANT, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

23. **Certification**. Consultant agrees to and shall sign the certification attached hereto as "Exhibit C" and incorporated herein by this reference.

IN WITNESS WHEREOF the parties have caused this Agreement to be signed in their respective names by their duly authorized representatives as of the dates set forth below.

CITY OF ASHLAND:

By: _____
Joseph L. Lessard, City Manager

_____
Date

Purchase Order No. _____

EVAN BROOKS ASSOCIATES, INC. (CONSULTANT):

By: _____
Signature

_____
Printed Name

_____
Title

_____
Date

(**W-9** is to be submitted with this signed Agreement)

APPROVED AS TO FORM:

_____
City Attorney

_____
Date

EXHIBIT B

CITY OF ASHLAND, OREGON

City of Ashland LIVING WAGE

ALL employers described below must comply with City of Ashland laws regulating payment of a living wage.

$18.12 per hour, effective June 30, 2023.

The Living Wage is adjusted annually every June 30 by the Consumer Price Index.

Employees must be paid a living wage:

- For all hours worked under a service contract between their employer and the City of Ashland if the contract exceeds **$25,335.05** or more.
- For all hours worked in a month, if the employee spends 50% or more of the employee's time in that month working on a project or portion of the business of their employer, if the employer has ten or more employees, and has received financial assistance for the project or business from the City of Ashland over **$25,335.05**;
- If their employer is the City of Ashland, including the Parks and Recreation Department.
- In calculating the living wage, employers may add the value of health care, retirement, 401K, and IRS eligible cafeteria plans (including childcare) benefits to the employee's amount of wages.
- **Note:** For temporary and part-time employees, the Living Wage does **not** apply to the first 1040 hours worked in any calendar year. For more details, please see Ashland Municipal Code Section 3.12.020.

For additional information:

Call the Ashland City Manager's office at 541-488-6002 or write to the City Manager, City Hall, 20 East Main Street, Ashland, OR 97520, or visit the City's website at www.ashland.or.us.

Notice to Employers: This notice must be posted in areas where it can be seen by all employees.

CITY OF ASHLAND

EXHIBIT C

CERTIFICATIONS/REPRESENTATIONS: Consultant, by and through its authorized representative, under penalty of perjury, certifies that (a) the number shown on the attached W-9 form is its correct taxpayer ID (or is waiting for the number to be issued to it and (b) Consultant is not subject to backup withholding because: (i) it is exempt from backup withholding, or (ii) it has not been notified by the Internal Revenue Service (IRS) that it is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified it that it is no longer subject to backup withholding. Consultant further represents and warrants to City that: (a) it has the power and authority to enter into this Agreement and perform the Work, (b) the Agreement, when executed and delivered, shall be a valid and binding obligation of Consultant enforceable in accordance with its terms, (c) the work under the Agreement shall be performed in accordance with the highest professional standards, and (d) Consultant is qualified, professionally competent, and duly licensed (if applicable) to perform the Work. Consultant also certifies under penalty of perjury that its business is not in violation of any Oregon tax laws, it is an independent contractor as defined in the Agreement, it is authorized to do business in the State of Oregon, and Consultant has checked four or more of the following criteria that apply to its business.

_____ (1) Consultant carries out the work or services at a location separate from a private residence or is in a specific portion of a private residence, set aside as the location of the business.

_____ (2) Commercial advertising or business cards or a trade association membership are purchased for the business.

_____ (3) Telephone listing is used for the business separate from the personal residence listing.

_____ (4) Labor or services are performed only pursuant to written contracts.

_____ (5) Labor or services are performed for two or more different persons within a period of one year.

_____ (6) Consultant assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission (professional liability) insurance or liability insurance relating to the Work or services to be provided.

_____

Consultant's signature

_____

Date

Exhibit A. Scope of Services

Consultant shall research, advise, and perform grant administration for the City (collectively, the "Services"). The Services shall include, but not be limited to, the following major tasks described below.

A. Task A: Grant Research, Strategic Counsel, Meetings, and General Advisory Services. Consultant shall provide services as follows:

Task A1. Targeted Grant Research. Consultant shall provide targeted grant research on projects specifically identified by the City. Consultant shall specifically conduct research and provide advice in the following priority areas:

(i) Police
- a. Crime Prevention and Community Safety
- b. Law Enforcement Technology Upgrades
- c. Training and Professional Development
- d. Drug and Alcohol Awareness Programs
- e. Diversity, Equity, and Inclusion (DEI) Initiatives
- f. Mental Health Response Teams
- g. Traffic Safety and Vehicle Equipment
- h. Emergency Response and Disaster Preparedness

(ii) Fire
- a. Fire Prevention and Community Risk Reduction
- b. Fuels reduction and Wildland Urban Interface fuels reduction
- c. Training and Professional Development
- f. Mental Health for first responders
- g. Vehicle and Equipment replacement
- h. Emergency Response and Disaster Preparedness

(iii) Parks and Recreation
- a. Park Development and Infrastructure
- b. Recreational Programming and Events
- c. Conservation and Natural Resources
- d. Wildlife Habitat Protection
- e. Playground Safety and Upgrades
- f. Cultural and Historical Programs
- g. Accessibility and Universal Design
- h. Green Space and Urban Forestry

(iv) Public Works
- a. Public Works/Infrastructure Development and Maintenance
- b. Transportation / Highways / Transit
- c. Waste Management and Recycling Programs
- d. Water and Sewer System Upgrades
- e. Climate Change / Resiliency and Sustainability Planning
- f. Energy Efficiency and Renewable Energy
- g. Traffic Management and Smart Cities
- h. Pedestrian and Bicycle Infrastructure

(v) Planning
   a. Land Use and Zoning Studies
   b. Housing and Housing Programs
   c. Urban Redevelopment and Revitalization
   d. Long-Range Community Planning
   e. Transportation and Mobility Planning
   f. Environmental Impact Assessments
   g. Smart Growth and Sustainable Development
   h. Economic Development and Business Incentives

Task A2. Strategic Counsel, Meetings, and General Advisory Services. Consultant shall offer City general advice on matters involving funding mechanisms, grants research, identification, grant writing, and administration. Upon request from the City, Consultant shall meet with City staff to discuss City projects, potential grants, grant requirements, and other grant and funding-related matters that may help fund existing and proposed City projects. These strategic meetings will provide City staff an opportunity to ask Consultant questions, such as:

- Does the City's project align with any existing or future grants?
- Is the City's project competitive under the grant program?
- What information does the City need to provide Consultant to prepare an application (e.g., planning documents, preliminary engineering, construction plans, etc.)?
- When can the City expect the award money?
- What post-award activities are required?

Additionally, for grants prepared by City staff, Consultant shall act as grant evaluators — reviewing and providing recommendations to improve grant applications prepared by the City.

B. Task B: Grant Writing Services. Consultant shall perform grant writing as follows:

At the direction of the City and/or upon a Task Order, Consultant shall provide, at no cost to the City, a Cost Proposal for grant writing services for specific grant opportunities. The Cost Proposal shall include a "not-to-exceed" cost estimate and a scope of work outlining the necessary steps to prepare and submit the grant application, such as:

(i) Project development: Identify steps that will be taken to manage project development, project kick-off, project scope, schedule, budget for the grant application, and communication with City staff (including communication with the City).
(ii) Data collection and review: Identify the tasks for data collection and review needed to support the grant application.

(iii) Grant preparation: Identify tasks related to preparation of information required for grant application, including project descriptions and narratives; quantitative data; draft letters of support; and project scope, timeline, and budget description and tables, and maps or conceptual site/project plans.

(iv) Review of draft: Provide a draft of the grant application for City review and approval.

(v) Grant application finalization and submission: Consultant shall submit the application by the grant application due date and provide City with confirmation of the grant application's delivery, as well as a copy of the final application package in physical and digital format of the City's choosing.

At no point shall the Consultant begin work on the grant application until the City has approved the Cost Proposal and the Consultant has confirmed receipt of approved Cost Proposal.

Exhibit A-1: Consultant Hourly Rates

Financial Arrangements

1. **Time and Materials**: Task A will be billed based on the hourly rates outlined in Table 1.
2. **Lump Sum**: For Task B services, the City will receive an individualized Cost Proposal for pre-approval. Charges will be as a lump sum.

Table 1. Consultant Hourly Rates

Personnel	Hourly Rate
President/Quality Assurance and Control	$298
Project Manager	$275
Assistant Project Manager/Project Engineer	$254
Senior Grant Writer/Planner/Environmental Specialist	$238
Associate Grant Writer/Planner/Engineer	$178
Research/Funds Analyst	$143
Graphics/Mapping	$130
Administrative Support	$113

REQUEST FOR PROPOSALS
QUALIFICATIONS BASED SELECTION

Professional Consultant Services
for
PROJECT 2023-02
Grant Support Services

PROJECT NO:	**2023-02**
PROJECT TYPE:	**Professional Consultant Services**
PROPOSALS DUE:	**June 30, 2023, not later than 2:00 PM PST**
SUBMIT PROPOSALS TO:	**City of Ashland Public Works - Engineering, at 51 Winburn Way, Ashland OR 97520; or by mail to: 20 E. Main Street, Ashland, OR 97520**
CITY PROJECT MANAGER:	**Scott Fleury P.E., Public Works Director**
PROJECT DURATION:	**Phase 1: Grant Support Services (24 Months)**

CITY OF
ASHLAND
PUBLIC WORKS ENGINEERING
20 E. MAIN STREET
ASHLAND OR 97520
541/488-5587

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ADVERTISEMENT
CITY OF ASHLAND PUBLIC WORKS – REQUEST FOR PROPOSALS
QUALIFICATIONS BASED SELECTION
for
PROFESSIONAL CONSULTANT SERVICES

The City of Ashland (City) is seeking Proposals for professional engineering services for Project **2023-02 Grant Support Services**. The purpose of this project is to support the City in grant review and application for grant funding offered through the Federal, State and Local Government. The City of Ashland has numerous funded, unfunded and deferred maintenance items associated with infrastructure systems, buildings/facilities, Emergency Services, Parks, Airport, Economic Development and Planning/Development that could benefit from grant related funding. Consultant services would include assisting the City in review of existing projects and locating functional grant opportunities that align with project applicability. Additional support could include developing the formal grant application for submittal to the correct funding agency.

The project will include, but is not specifically limited to, the following tasks and phases:

PHASE 1: Grant Support Services

Proposals must be physically received by **June 30, 2023, not later than 2:00 PM PST** (main lobby clock), in the City of Ashland Public Works Engineering Office located at 51 Winburn Way, Ashland OR 97520, or by mail at 20 E. Main Street, Ashland, OR 97520. Proposers mailing Proposals should allow normal delivery time to ensure the timely receipt of their Proposals. Any Proposal received after the date and time set for receipt of Proposals will not be considered and will be returned to the proposer unopened. For further information, contact the City's Project Manager, Scott Fleury P.E., Public Works Director at 541/488-5587 or by email at scott.fleury@ashland.or.us. Consultant selection is anticipated to result in the issuance of a contract for professional services in a form substantially similar to the one provided in this RFP.

Proposal documents may be downloaded from the Oregonbuys website (https://oregonbuys.gov/bso/). Any addenda that may be issued relating to this RFP will be available from Oregonbuys, and potential proposers are cautioned to continuously monitor the site for updates and addenda.

All Proposals shall be submitted as set forth in Section 7 - Instructions to Proposers. The City is not responsible for Proposals submitted in any manner, format, or to any delivery point other than as required by this RFP. Proposals shall be limited to six (6) pages.

Consultant selection will be based upon weighed criteria as set forth in this Solicitation Document and will include criteria including, but not limited to: similar project experiences, general experience, staffing availability, schedule and response time.

The City of Ashland reserves the right to cancel this procurement or reject any and all Proposals in accordance with ORS 279B.100.

Scott Fleury, PE, Public Works Director

First date of solicitation: May 30, 2023
RFP for Project #2023-02

CITY OF ASHLAND
DEPARTMENT OF PUBLIC WORKS
REQUEST FOR PROPOSALS – QUALIFICATIONS BASED SELECTION

PROJECT NO. 2023-02
Grant Support Services

SECTION 1 - **PROJECT OVERVIEW**

1.1 Objectives

The City of Ashland (City) is seeking Proposals from professional engineering consultants for Project **2023-02 Grant Support Services**. The purpose of this project is to support the City in grant review and application for funding offered through the Federal, State and Local Government. The City of Ashland has numerous funded, unfunded and deferred maintenance items associated with infrastructure systems, buildings/facilities, Emergency Services, Parks, Airport, Economic Development and Planning/Development that could benefit from grant related funding.

Consultant services would include assisting the City in review of existing projects and locating potential grant funding opportunities that corelate directly with the project definition and need. Additional support could include developing the formal grant application for submittal to the correct funding agency.

The project will include, but is not specifically limited to, the following tasks and phases:

1.1.1 PHASE 1: Grant Support Services

The project will include but is not specifically limited to the following tasks:

- Coordinate with City Departments and correlate potential grant funding opportunities that align with defined projects within each Department (Police, Fire, Parks, Public Works, Planning)
- As requested by Department, develop formal grant application and required background materials for submittal
- Support grant funding application process as needed and requested by Department
- Other miscellaneous grant funding assistance as necessary

1.2 Background Information

The City has been successful in numerous grant applications for planning, emergency services and infrastructure systems. The City understands there are numerous potential grant funding opportunities abounding from Federal, State and Local programs that require support to review and corelate with existing defined projects for the City of Ashland. Many of these "new" opportunities are outside of the experience level of understanding of existing staff, and the assistance of experts in grant funding review and application will benefit the City immensely.

1.3 Reference Documents

The City has several potential reference documents that will be provided to selected consultant in order to develop an understanding of system wide projects to support grant correlation and applications. This reference information can and will include master plans, assessments, and budget documents. Consultant will request additional support and reference information through a request for information process.

SECTION 2 - **SCHEDULE**

The schedule of events listed below represent City's estimated schedule for this request for proposal. This schedule is SUBECT TO CHANGE and will be adjusted as required.

	EVENT	DAILY COUNT (CALENDAR DAYS)	DATE
1.	Request for Proposal Released	0	5/30/2023
2.	Last Date for Request for changes/Protest for Specifications/Questions	10 days prior to Proposal Closing	6/19/2023
3.	Last Date for City to Post Addenda	3 days prior to Proposal Closing	6/26/2023
4.	Closing Date (last day to submit Proposals)	~30 days after Proposal Release	6/29/2023
5.	Responses Evaluated	~15 days after Closing Date	7/14/2023
6.	Interviews Held (if necessary)	~25 days after Closing Date	7/24/2023
7.	Intent to Award Announced	~30 days after Closing Date	7/31/2023
8.	Contract Negotiations	~40 days after Closing Date	8/7/2023
9.	Expected Project Completion (all phases)	36 months after Contract Award	6/1/2025

SECTION 3 - **SCOPE OF SERVICES**

3.1 General Requirements

- Personnel, Materials, & Equipment: The Consultant shall provide qualified and competent personnel and shall furnish all supplies, equipment, tools and incidentals required to accomplish the work. All materials and supplies shall be of good quality and suitable for the assigned work.

- Safety Equipment: The Consultant shall provide and use all safety equipment including, and not limited to hard hats, safety vests and clothing required by State, Federal regulations and Department policies and procedures.

- Professional Responsibilities: The Consultant shall perform the work using the standards of care, skill and diligence normally provided by a professional in the performance of such services in respect to similar work and shall comply will all applicable codes and standards.

- Project Management: The Consultant and the City staff will meet as required during project duration. The objectives of the meeting will include reviewing the scope, budget, schedule and deliverables. The Consultant will organize and manage the consultant project team and coordinate with city project manager and City staff. *Project Management will also include coordination with FERC and permitting agencies throughout the duration of the project.*

- Monthly Invoices and Progress Reports: The Consultant shall prepare monthly invoices and progress reports including the following:
    - Work Completed during the month by work task as a percentage of completion.
    - Needs for Additional Information, Reviews, or Changes to the Scope of Work.
    - Scope, Schedule, and Budget Issues and Changes.

3.2 Specific Requirements

The City of Ashland (City) is seeking professional consultant services for Project **2023-02 Grant Support Services**. The purpose of this project is to support the City in grant review and application for funding offered through the Federal, State and Local Government. The City of Ashland has numerous funded, unfunded and deferred maintenance items associated with infrastructure systems, buildings/facilities, Emergency Services, Parks, Airport and Planning/Development that could benefit from grant related funding.

Consultant services would include assisting the City in review of existing projects and locating potential grant funding opportunities that corelate directly with the project definition and need. Additional support could include developing the formal grant application for submittal to the correct funding agency.

3.2.1 PHASE 1: Grant Support Services

The purpose of this project is to support the City in grant review and application for funding offered through the Federal, State and Local Government. The City of Ashland has numerous funded, unfunded and deferred maintenance items associated with infrastructure systems, buildings/facilities, Emergency Services, Parks, Airport, Economic Development and Planning/Development that could benefit from grant related funding.

Consultant services would include assisting the City in review of existing projects and locating potential grant funding opportunities that correlate directly with the project definition and need. Additional support could include developing the formal grant application for submittal to the correct funding agency.

The project will include but is not specifically limited to the following tasks:

- Coordinate with City Departments and corelate potential grant funding opportunities that align with defined projects within each Department (Police, Fire, Parks, Public Works, Planning)
- I requested by Department, develop formal grant application and required background materials for submittal
- Support grant funding application process as needed and requested by Department
- Other miscellaneous grant funding assistance as necessary

SECTION 4 - **EVALUATION CRITERIA**

Written Proposals will be evaluated and scored and a contract may be awarded based upon the proposer's qualifications and experience as described below:

4.1 Project Approach (20 Points Possible)

Provide a description of your firm's approach to finding and applying for grant funding opportunities for Municipalities. Include a summary of prior partnerships city staff. Include a summary of your quality control and grant review program.

4.2 Project Experience (20 Points Possible)

a. Describe how your firm is organized and how its resources will be utilized to complete the work contemplated under the scope of services.
b. Provide a summary of relevant grant funding research, review and application.
c. Provide a concise description of at least three (3) projects in the last ten (10) years, involving similar work to those listed in the scope of work.
d. Indicate which members of the proposed project team, if any, who worked on the example projects, and their involvement. These team members should be included in the Key Persons list submitted in 4.3(b) below.
e. Submit references for three of the projects described above. Include the Owners name, organization name, contact name, contact email and phone.

4.3 Project Team Experience (30 Points Possible)

a. Provide a description of the proposed organizational structure to be used for the project.

b. Provide a list of the key staff proposed for this project ("Key Person(s)"). Be specific on the individuals that will play primary roles in development of grant review and applications and their experience working municipalities on grant funding review and applications. Provide a concise summary of each key person(s)'s role, and a description of their relevant experience for this project.
c. Submit resumes that support each Key Person's relevant experience. *No more than five resumes should be submitted as Appendix A, and will not count against page limit.*
d. Indicate which individual will manage the project and be the primary contact. Indicate the specific experience this individual has managing project similar to what is proposed in the scope of services
e. State the estimated proportion of each Key Person's time that will be spent on City's project vs. total time spent on all Key Person's projects during the term of contract.

4.4 Proposer's Demonstrated Ability to Successfully Complete Similar Projects on Time and Within Budget (30 Points Possible)

For each of the three (3) projects listed in response to 4.2(c), provide a discussion of whether the project was completed on time and on budget or needed to be revised. Briefly explain the reason for any revisions, and what attempts were made to bring the project back on schedule and within budget.

4.5 Termination for Default (Pass or Fail)

Proposers shall indicate if they have had a contract terminated for default in the last five years. Termination for default is defined as notice to stop performance that was delivered to the Proposer due to the Proposer's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Proposer, or (b) litigated and determined that the Proposer was in default.

NOTE: If a Proposer has had a contract terminated for default in this period, then the Proposer shall submit full details including the other party's name, address and phone number. City of Ashland will evaluate the facts and may, at its sole discretion, reject the Proposal on the grounds of past performance.

4.6 Scoring

	CATEGORY	POSSIBLE POINTS	POINTS SCORING
1.	Project Approach	20	
2.	Project Experience	20	
3.	Project Team Experience	30	
4.	Demonstrated Ability to Successfully Complete Projects on Time and Within Budget	30	
6.	Termination for Default	P/F	
	Total	100	

SECTION 5 - EVALUATION PROCESS AND CONSULTANT SELECTION

Proposals will be reviewed and evaluated by an evaluation committee of reviewers consisting of at least three City employees. The total number of points possible for written Proposals is 100, and an additional 100 points may be scored through the interview process.

5.1 Review and Acknowledgment of Defective Proposals

Due to limited resources, City generally will not completely review or analyze Proposals that on their faces fail to comply with the minimum mandatory requirements of the solicitation documents nor will City generally investigate the references or qualifications of such proposals. Therefore, City will not acknowledge whether or not an unsuccessful Proposal was complete, responsive, responsible, sufficient, or lawful in any respect. This is a public solicitation, the processes and procedures which are established and required by Oregon law and City-adopted rules. Proposers are advised to strictly follow the process, procedures, and requirements as set forth in this RFP and not anticipate or rely on any opportunity to negotiate, beyond such limitations that are identified herein.

5.2 Right of Rejection

Proposers must comply with all terms of this RFP and all applicable federal, state, and local laws, administrative rules, and regulations. The City may reject any Proposal that does not comply with all of the material and substantial terms, conditions, and performance requirements of this RFP.

Proposers may not qualify the Proposal nor restrict the rights of the City. If a Proposer does so, the City may determine the Proposal to be a non-responsive counter-offer, and the Proposal may be rejected.

Minor informalities that may be waived include those that:

- do not affect responsiveness,
- are merely a matter of form or format,
- do not change the relative standing or otherwise prejudice other offers,
- are trivial, negligible, or immaterial in nature,
- do not reflect a material change in the work, or,
- do not constitute a substantial reservation against a requirement or provision.

City reserves the right to refrain from making an award if the City determines that to be in its best interest.

A Proposal from a debarred or suspended Proposer shall be rejected.

5.3 References

The City reserves the right to investigate any and all references and the past performance information provided in the Proposal with respect to the proposer's successful performance of similar projects, compliance with specifications and contractual obligations, completion or delivery of a project on a schedule, and lawful payment of employees and workers.

The City reserves the right to check any and all sources for information on a proposer's past performance, including sources other than the references provided in the proposer's Proposal. The City may consider information available from any source, including government bodies and regulatory authorities.

5.4 Responsibility

The City reserves the right to investigate and evaluate, at any time prior to award and execution of the contract, the apparent successful Proposer's responsibility for performing the contract. Submission of a signed Proposal shall constitute approval for City to obtain any information City deems necessary to conduct evaluation. City reserves the right to request additional information or documentation from the successful Proposer prior to award of contract. Such information may include, but is not limited to, current and recent balance sheets, income statements, cash flow statements, or a performance bond from an acceptable surety. Failure to provide this information will result in rescission of City's Intent to Award.

City may postpone the award of contract after announcement of the apparent successful Proposer in order to complete its investigation and evaluation. Failure of the apparent successful Proposer to demonstrate responsibility shall render the Proposer non-responsible and shall constitute grounds for rejection of the proposal.

5.5 Clarification of Response

City reserves the right to request clarification of any item in any Proposal, or to request additional information necessary to properly evaluate a particular Proposal. All request for clarification and responses shall be in writing.

During the evaluation of Proposals, Proposers must respond to any request for clarification from the Evaluation Committee within 24 hours of request (Monday through Friday). Inability of the Evaluation Committee to reach a Proposer for clarification and/or failure of a Proposer to respond within the time stated may result in rejection of the Proposer's Proposal.

5.6 Interviews

The outcome of the Proposal evaluations *may* result in placement on an interview (short-listed) with time and date of the interview. Should City elect to hold interviews, the total additional points possible for the interview will be **100**.

City may invite up to three (3) of the highest-ranked firms (or at a natural break in scoring) to interview. The Firm's Key Persons, as identified by City shall be prepared to attend the interview within five (5) business days of notification by City, and shall be prepared to answer questions provided with the Interview Invite letter, and questions that will be provided at the time of the interview, and discuss the Firm's proposed project approach.

5.7 Finalist Selection

The firm with the highest total score as a result of written Proposal scoring and interview scoring, if conducted, will be considered the Finalist, and all other firms will be ranked according to next highest score, etc.

5.8 Ties among Proposers

If City determines after the ranking of potential firms, that two or more of them are equally qualified to be the Finalist, City may select a candidate through any process that the City believes will result in the best value for taking into account the scope, complexity and nature of the Work. The process shall instill public confidence through ethical and fair dealing, honesty and good faith on the part of City and Proposers and shall protect the integrity of the Public contracting process.

As part of the procedure for choosing the Finalist between two or more equally qualified candidates, City may elect to give a preference to a local consulting firm.

5.9 Notice of Intent to Award

After the completion of the evaluation and ranking, the City will issue a written Notice of Intent to Award, naming the Finalist, and send copies to all Proposers.

5.10 Contract Negotiation

City will begin negotiating the fees for the project, along with expanded scope of work detail, with the highest ranked Proposer and specifically, conduct direct negotiations toward obtaining written agreement on:

a) Contractor's performance obligations and schedule; and any expansion of the Scope of Work.

b) Contractor's fees, payment methodology, and a maximum amount payable to Contractor for the Work required under the Contract that is fair and reasonable to City determined solely by City, taking into account the value, scope, complexity and nature of work.
c) Any other provisions City believes to be in the City's best interest to negotiate.
d) Initial negotiations will be based upon Contract Phase 1.

City shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if City and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. City may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on, until negotiations result in a Contract. If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, as determined solely by City, City may end the particular formal solicitation. Nothing in the rule precludes City from proceeding with a new formal solicitation for the same Work described in the RFP that failed to result in a Contract.

5.11 Protest Procedures

City shall provide to all Proposers a copy of the selection notice that City sent to the highest ranked Proposer. A Qualified Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a written protest of the selection to the City. A Proposer submitting a protest must claim that the protesting Proposer is the highest ranked Proposer because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP or because the higher ranked Proposers otherwise are not qualified to perform the Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFP.

Eligible Proposers protesting award shall follow the procedures described herein. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to Proposers.

a) Protests must be received within seven (7) days after issuance of the notice of intent to award the Contract. City will not consider late protests.

b) All protests must be in writing, signed by the protesting party or an authorized Agent. The protest must specify the grounds for the protest to be considered by the City

c) Protests based on procedural matters will not be considered.

d) The City's Public Works Director will review the protest and will fax and mail the protesting party a written response within three (3) business days of receipt of the written protest to the fax number and address provided in the proposal. Any written response may be comprised of a determination of the protest, a notice to the protesting party of the need for additional time in which to evaluate the matter, or other notice to the protesting party.

e) If the Public Works Director's determination (response) is adverse to the protester, any further appeal of the Public Works Director's determination by the party must be submitted in writing to the City Manager within three (3) business days of issuance of the Public Works Director's determination (response).

f) The City Manager will review any appeal of the Public Works Director's determination and shall fax and mail, in accordance with the fax number and address provided in the proposal, the protesting party a written response within three (3) business days of receipt of written appeal.

g) If the determination of the City Manager is adverse to the protesting party's interest, the protesting party may only appeal to the City Council by filing a written notice of appeal to the Council with the City Manager within two (2) business days of issuance of the City Manager's written determination.

h) The Council, in considering the protest, shall review the documentation presented to the Public Works Director and the City Manager on the next regularly scheduled Council Meeting, but in no event shall they be required to review in less than ten (10) business days, and thereafter, base their decision on such material. The Council review will be limited to the evaluation of compliance with City's policies and procedures, requirements of the RFP and the equal and fair application of City's contracting rules. The City Council's determination shall be City's final decision.

An adversely affected or aggrieved proposer must exhaust all avenues of administrative remedies before seeking judicial review of City's Consultant selection or Notice of Intent to Award.

5.12 Resulting Contract

Upon reaching final agreement in regards to fees and a final scope of work with an awarded Proposer, the City will issue a Personal Services Agreement ('PSA"), in substantially the form as found in the Appendix of this RFP. The PSA will include the City's Standard Terms and Conditions and the final scope of work and fees.

SECTION 6 - CONTRACT

6.1 Contract Form

The consultant selected by the City will be expected to enter into a written contract in substantially the same form as attached to this RFP. The Proposal should indicate acceptance of the City's contract provisions. Suggested reasonable alternatives that do not substantially impair City's rights under the contract may be submitted as outlined under Section 5.11. Unconditional refusal to accept contract provisions will result in Proposal rejection.

Contract Duration –

Phase 1: Grant Support Services (24 months)

Contract Payment – Contingent upon City's need, consultant's performance and availability of approved funding, City reserves the right to amend the contract (within the scope of the project described in this RFP) for additional tasks, project phases and compensation as necessary to complete a particular project. Proposers are advised that the award and potential dollar amount of the contract under this RFP will be contingent upon approval by the Ashland City Council acting as the Contract Review Board.

Payment will be made for completion of, or acceptable monthly progress on, tasks and deliverables in conformance with contract requirements and applicable standards. The method of compensation will be determined by the City and may be based upon any one or combination of the following methods:

- Cost plus fixed-fee, up to a maximum NTE amount
- Fixed price for all services. Fixed price per deliverable. Fixed price per milestone
- Time and materials, up to a maximum NTE amount (City preferred method)
- Price per unit

Ashland Living Wage Requirements – Consultant is required to comply with Chapter 3.12 of the Ashland Municipal Code by paying at least the living wage as established by the City of Ashland on June 30, 2022 ($17.02 per hour):

- For all hours worked under a service contract between their employer and the City if the contract exceeds $24,050.68.or more.
- For all hours worked in a month if the employee spends 50% or more of the employee's time in that month working on a project or portion of business of their employer, if the employer has ten or more employees and has received financial assistance for the project or business from the City in excess of $24,050.68.
- Contractor is also required to post the notice included in the appendix predominantly in areas where it will be seen by all employees.
- In calculating the living wage for full time employees, employers may add the value of health care, retirement, 401K and IRS eligible cafeteria plans, and other benefits to the employee's wages. The City of Ashland Living Wage Statement is appended to the sample contract included in the appendix.

6.2 Business License Required

The selected consultant must have or acquire a current City of Ashland business license prior to conducting any work under the contract.

6.3 Insurance Requirements

Contactor shall at its own expense provide the following insurance:

a. Worker's Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers.
b. Professional Liability insurance with a combined single limit, or the equivalent, of not less than $2,000,000 per occurrence. This is to cover damages caused by any error, omission, or negligent act related to the professional services to be provided under the contract.
c. General Liability insurance with a combined single limit, or the equivalent, of not less than $2,000,000 per occurrence for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided under the contract.
d. Automobile Liability insurance with a combined single limit, or the equivalent, of not less than $1,000,000 per occurrence for each accident for bodily injury and property damage, including coverage for owned, hired or non-owned vehicles, as applicable.
e. Notice of Cancellation or Change. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days' written notice from the contractor or its insurer(s) to the City.

Additional Insured/Certificates of Insurance. Contractor shall name The City of Ashland, Oregon, and its elected officials, officers and employees as additional insurers on any insurance policies required herein but only with respect to contractor's services to be provided under this contract. As evidence of the insurance coverage required by this contract, the contractor shall furnish acceptable insurance certificates prior to commencing work under this contact. The certificate will specify all of the parties who are additional insures. The consultant's insurance is primary and non-contributory. Insuring companies or entities are subject to the City's acceptance. If requested, complete copies of insurance policies; trust agreements, etc. shall be provided to the City. The contractor shall be financially responsible for all pertinent deductibles, self-insured retention and/or self-insurance.

6.4 Laws and Regulations

The proposer is assumed to be familiar with all Federal, State, County or City laws or regulations, which in any manner affect those engaged or employed in the work or the materials or equipment used or which in any way affect the conduct of the work, and no pleas of misunderstanding will be considered

on account of ignorance thereof. If the proposer shall discover any provision in these specifications or project information, plans or contract documents which is contrary to or inconsistent with any law or regulations, they shall report it to the City of Ashland in writing.

All work performed by the contractor shall be in compliance with all Federal, State, County and local laws, regulations and ordinances. Unless otherwise specified, the contractor shall be responsible for applying for applicable permits and licenses.

SECTION 7 - INSTRUCTIONS TO PROPOSERS

7.1 General

All proposals and any resulting contracts are subject to the provision and requirements of Oregon Revised Statutes, Sections 279A and 279B. Engineering contracts are further subject to 279C and to the City of Ashland (City) Municipal Code Section 2.50.

7.2 Information of Record

This Request for Proposal (RFP) will be distributed through the Oregon Procurement Information Network (ORPIN). All updates, addendum, and related communications will be published through ORPIN. All prospective proposers are advised to continuously monitor the website for information regarding this proposal. It is the sole responsibility of the proposer to check the website on a timely basis for critical information regarding the proposal.

7.3 Proposal Preparation and Format

- Proposals shall be typewritten in 12 point font minimum.
- Except for proposer attachments, proposal form, cover letter and resumes, the Proposal shall contain no more than six (6) pages.
- Proposal narrative must follow along with scoring criteria sections
- No oral, telegraphic, telephone or facsimile Proposals shall be accepted.
- The electronic submission of a Proposal will not be permitted.
- To be considered, all Proposals must be received by the City prior to the date and time set for Proposal closing.
- A total of six original (wet signatures), complete Proposals shall be submitted to the City prior to the date and time set for closing.
- One (1) digital copy of the complete Proposal shall be submitted on a CD or thumb drive.

7.4 Signature on Proposal

Proposals shall be signed in ink by an authorized representative of the Proposer. Signature on a Proposal certifies that the Proposal is made without connection with any person, firm or corporation making a proposal for the same goods and/or services and is in all respects fair and made without collusion or fraud. Signature on a Proposal also certifies that the proposer has read, fully understands and agrees with all solicitation requirements, terms and conditions. No consideration will be given to any claim resulting from proposing without fully comprehending all requirements of this Request for Proposals.

7.5 Preparation Costs

The City may cancel a solicitation, whether informal or formal, or reject all Proposals, without liability incurred by City at any time after issuing an RFP, if City believes it is in City's best interest to do so. Consultants responding to RFPs are responsible for all costs they may incur in connection with submitting Proposals and responses to RFPs, which includes, but is not limited to: preparation, submittal, travel expenses, interviews, presentations, or evaluation of any Proposal.

7.6 Conformance to Solicitation Requirements

Proposals shall conform to the requirements of this Request for Proposals. All necessary attachments (Independent Contractor Certification, etc.) shall be submitted with the Proposal and in the required format. Failure to comply with all requirements may result in Proposal rejection.

7.7 Definitions

For the purpose of this RFP:
"Agency" or **"City"** means City of Ashland.
"Business days" means calendar days, excluding Saturdays, Sundays and all City recognized holidays.
"Calendar days" or **"days"** means any day appearing on the calendar, whether a weekday, weekend day, national holiday, State holiday or other day.
"Council" means City of Ashland Council
"Department" means the City of Ashland Engineering Department.
"Manager" means the City of Ashland Project Manager.
"Proposers"- All firms submitting proposals are referred to as Proposers in this document; after negotiations, an awarded Proposer will be designated as "Consultant".
"Qualification Based Selection" or **"QBS"** (for the purposes of this RFP) means evaluations and scoring of proposals based on qualifications, experiences and project approach, without considering cost.
"RFP" means Request for Proposal.
"Scope of Work" means the general character and range of services and supplies needed to complete the work's purpose and objectives, and an overview of the performance outcomes expected by Agency.
"Services" means the services to be performed under the Contract by the Consultant.
"Statement of Work" means the specific provision in the final contract which sets forth and defines in detail (within the identified Scope of Work) the agreed-upon objectives, expectations, performance standards, services, deliverables, schedule for delivery and other obligations.

7.8 Questions and Clarifications

All inquiries, whether relating to the RFP process, administration, deadline or award, or to the intent or technical aspects of the services, must be submitted in writing to the City's Project Manager listed in the advertisement for this RFP, at 20 East Main Street, Ashland, Oregon 97520. All questions must be received not later than ten (10) calendar days prior to the date and time set for closing.

Answers to questions received by City, which are deemed by City to be substantive, will be issued as official addenda to this RFP to ensure that all proposers base their proposals on the same information. When appropriate, as determined by City in its sole discretions, revisions, substitution or clarification of the RFP or attached terms and conditions, an official addendum to this RFP will be issued. Proposer shall indicate receipt of all issued addenda by indicating the number of addendum received on the Proposal Form.

Any addendum or addenda issued by the City which may include changes, corrections, additions, interpretations or information, and issued seventy-two (72) hours or more before the scheduled closing time for submission of bids, Saturday, Sunday and legal holidays not included, shall be binding upon the proposer. The City may elect to email addendum to registered proposers but will do so as a courtesy only. All official addendums will be issued through ORPIN and it shall be the proposer's sole responsibility to acquire any and all addendum pertaining to RFP. The proposer is strongly cautioned to monitor this site on a continual basis.

7.9 Protest of Requirements

Proposers may submit a written protest of any provision, specification or contract term contained in this RFP and may request a change to any provision, specification or contract term contained in this RFP, not later than ten (10) calendar days prior to the advertised proposal closing date.

A proposer's written protest must meet the following requirements:

- A detailed statement of the legal and factual grounds for the protest.
- The reason for the protest or request for change.
- A statement of the form of relief requested or any proposed changes to the specifications or contract document.

All protests shall be mailed or otherwise delivered to the City marked as follows:

PROPOSAL PROTEST
Proposal No. **2023-02**
City of Ashland Public Works Dept.
ATTN: Scott Fleury P.E., Public Works Director
20 East Main St
Ashland, OR 97520

City Response: The City may reject without consideration a proposer's protest after the deadline established for submitting protest. The City shall provide notice to the applicable proposer if it entirely rejects a protest. If the City agrees with the proposer's protest, in whole or in part, the City shall either issue an addendum reflecting its determination or cancel the solicitation.

Extension of Closing: If the City receives a written protest from a proposer in accordance with this rule, the City may extend closing if the City determines an extension necessary to consider the protest and to issue addenda, if any, to the solicitation of document.

Judicial review of the City's decision relating to a specification protest shall be in accordance with ORS. 279B.405.

7.10 Protest of Contract Award

Every Proposer who submits a proposal shall be notified of its selection status. Any Proposer who claims to have been adversely affected or aggrieved by the selection of another or any Proposer who contends that the provisions of this RFP or any aspect of the procurement process has promoted favoritism in the award of the contract or has substantially diminished competition, must file a written protest to this RFP within seven (7) calendar days after the date of the notice of intent to award. Failure to file a protest will be deemed a waiver of any claim by an offeror that the procurement process violates any provision of ORS Chapters 279A, 279B, or 279C, the City of Ashland Municipal Code, or the City's procedures for screening and selection of persons to perform personal services.

7.11 Proposal Modification

Modifications or erasures made before proposal submission shall be initialed in ink by the person signing the proposal. Proposals, once submitted, may be modified in writing before the time and date set for proposal closing. Any modification shall be prepared on company letterhead, shall be signed by an authorized representative, and shall state that the new document supersedes or modifies prior proposal submissions and any other prior proposal modifications. Proposal modifications shall be submitted in a sealed envelope clearly marked "Proposal Modification," identifying the RFP number and closing date and time. Proposers may not modify proposals after proposal closing date and time.

7.12 Proposal Withdrawals

Proposals may be withdrawn in writing on company letterhead signed by an authorized representative and received by the Engineering Services Manager prior to the date and time set for closing. Proposals may be withdrawn in person before closing time upon presentation of appropriate identification.

7.13 Proprietary Information

The City is subject to the Oregon Public Records Laws (ORS 192.311 to 192.478), which require the City to disclose all records generated or received in the transaction of City business, except as expressly exempted. The City will not disclose records submitted by a Proposer that are exempt from disclosure under the Oregon Public Records Law, subject to the following procedures and limitations.

The entire Proposal cannot be marked confidential; nor shall any pricing be marked confidential.

All pages containing the records exempt from disclosure shall be marked "confidential" and segregated in the following manner:

- It shall be clearly marked in bulk and on each page of the confidential document.
- It shall be kept separate from the other Proposal documents in a separate envelope or package
- Where the specification conflicts with other formatting and response instruction specifications, this specification shall prevail.
- Where such conflict occurs, the Proposer is instructed to respond with the following: "Refer to confidential information enclosed."
- This statement shall be inserted in the place where the requested information was to have been placed.

Proposers who desire that additional information be treated as confidential must mark those pages as "confidential." Proposers shall also cite the specific statutory basis for the exemption and give the reasons why the public interest would be served by the confidentially. Should a Proposal be submitted as described in this section, no portion of it will be held confidential unless that portion is segregated as described in the criteria above.

Notwithstanding the above procedures, the City reserves the right to disclose information that the City determines, in its sole discretion, is not exempt from disclosure or that the City is directed to disclose by the City's Attorney, the District Attorney, or a court of competent jurisdiction.

7.14 Terms and Conditions

Unless an official addendum has modified or reserved the right to negotiate any terms contained in the contract or exhibits thereto, the City will not negotiate any term or condition after the protest deadline, except the statement of work, pricing, and calendar with the selected proposer. By submitting a Proposal, the selected proposer agrees to be bound by the terms and conditions as set forth in this RFP and as such terms and conditions may have been modified or reserved by the City for negotiation. Any Proposal that is received conditioned upon City's acceptance of any other terms and conditions or rights to negotiate will be rejected.

7.15 Proposal Opening

Unless otherwise provided by law, Proposals received in response to this RFP shall be opened at the date and time set for closing at the Engineering Services Building at 51 Winburn Way, Ashland, Oregon 97520. Proposers who attend the Proposal opening shall be informed only of the names of the Proposers submitting Proposals. No other information shall be available, and no copies of the Proposals shall be made. Award decisions will NOT be made at that time.

SECTION 8 - **PROPOSAL FORM**

Proposals should be prepared and organized in a clear and concise manner and must include all information required by this RFP. Headers, Titles or Tabs should be used to identify required information. Responses to the Evaluation Criteria found in Section 4 shall be organized in the same order listed in that Section, preferably by re-stating the criteria and then responding below the restated criteria.

REQUIRED RESPONSE DOCUMENTS

THE FOLLOWING INFORMATION MUST BE RETURNED WITH YOUR RESPONSE:
(Place a check in front of the item indicating inclusion in your response)

- ☐ RESPONSE TO ALL EVALUATION CRITERIA listed in Section 4
- ☐ SECTION 8 – Proposal Form
- ☐ Independent Contractor Certification

MWESB INFORMATION

The City encourages contracting with minority owned, woman owned, and emerging small business (MWESB). The State of Oregon offers a certification process. Indicate below if your business is a MWESB and if so, which categories have been state certified. MWESB certified? Yes___ No____. If yes, indicate which categories below:

Minority Owned___ Woman Owned___ Emerging Small Business___ Veteran Owned___

ACKNOWLEDGMENT OF RECEIPT OF ADDENDA TO PROPOSAL DOCUMENTS:

Proposer acknowledges receipt of Addenda and agrees to be bound by their contents.

Circle each RFP addendum received: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10

Check if not applicable or if no addenda were received: _____

OSBEELS / OSBGE / ORBAE No.(s)
Provide name(s), title(s), and certification number(s) for each Key Person listed under Section 6.3 (b). Attach additional sheet if necessary)

Name:_____Title:_____Certification No:_____
Name:_____Title:_____Certification No:_____
Name:_____Title:_____Certification No:_____
Name:_____Title:_____Certification No:_____
Name:_____Title:_____Certification No:_____
Name:_____Title:_____Certification No:_____

PROPOSER INFORMATION:

_____

Proposer Company Name

_____

Company Address (from which work will be performed)

_____ _____ _____

Telephone Number Fax Number FEDERAL ID NUMBER

Printed Name of Person Signing RFP: _____

Title: _____

Signature: _____

Email Address: _____

APPENDIX A – **CONTRACT FORM INCLUDING EXHIBIT B, EXHIBIT C**

APPENDIX B – **FORM W-9**

PERSONAL SERVICES AGREEMENT (greater than $25,000.00)

CITY OF ASHLAND 20 East Main Street Ashland, Oregon 97520 Telephone: 541/488-XXXX Fax: 541/552-XXXX	CONSULTANT: CONSULTANT'S CONTACT: ADDRESS: TELEPHONE: EMAIL:

This Personal Services Agreement (hereinafter "Agreement") is entered into by and between the City of Ashland, an Oregon municipal corporation (hereinafter "City") and XXXXXXXXX, a (domestic professional corporation - for example) ("hereinafter "Consultant"), for (description of services to be provided.).

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

1. **Effective Date and Duration:** This Agreement shall become effective on the date of execution on behalf of the City, as set forth below (the "Effective Date"), and unless sooner terminated as specifically provided herein, shall terminate upon the City's affirmative acceptance of Consultant's Work as complete and Consultant's acceptance of the City's final payment therefore, but not later than XXXXXXXXX.
2. **Scope of Work:** Consultant will provide (description of services to be provided) as more fully set forth in the Consultant's Proposal dated XXXXXXXXX, which is attached hereto as "Exhibit A" and incorporated herein by this reference. Consultant's services are collectively referred to herein as the "Work."
3. **Supporting Documents/Conflicting Provisions:** This Agreement and any exhibits or other supporting documents shall be construed to be mutually complementary and supplementary wherever possible. In the event of a conflict which cannot be so resolved, the provisions of this Agreement itself shall control over any conflicting provisions in any of the exhibits or supporting documents.
4. **All Costs Borne by Consultant:** Consultant shall, at its own risk, perform the Work described above and, unless otherwise specified in this Agreement, furnish all labor, equipment, and materials required for the proper performance of such Work.
5. **Qualified Work:** Consultant has represented, and by entering into this Agreement now represents, that all personnel assigned to the Work to be performed under this Agreement are fully qualified to perform the service to which they will be assigned in a skilled and worker-like manner and, if required to be registered, licensed or bonded by the State of Oregon, are so registered, licensed and bonded.

6. **Compensation:** City shall pay Consultant the sum of **$XXXXXXXX** as full compensation for Consultant's performance of all Work under this Agreement. In no event shall Consultant's total of all compensation and reimbursement under this Agreement exceed the sum of **$XXXXXXXXXXXX** without the express, written approval from the City official whose signature appears below, or such official's successor in office. Payments shall be made within thirty (30) days of the date of receipt by the City of Consultant's invoice. Should this Agreement be terminated prior to completion of all Work, payments will be made for any phase of the Work completed and accepted as of the date of termination.

7. **Ownership of Work/Documents:** All Work, work product, or other documents produced in furtherance of this Agreement belong to the City, and any copyright, patent, trademark proprietary or any other protected intellectual property right shall vest in and is hereby assigned to the City.

8. **Statutory Requirements:** The following laws of the State of Oregon are hereby incorporated by reference into this Agreement: ORS 279B.220, 279B.230 and 279B.235.

9. **Living Wage Requirements:** If the amount of this Agreement is $21,127.46 or more, Consultant is required to comply with Chapter 3.12 of the Ashland Municipal Code by paying a living wage, as defined in that chapter, to all employees performing Work under this Agreement and to any Subcontractor who performs 50% or more of the Work under this Agreement. Consultant is also required to post the notice attached hereto as "Exhibit B" predominantly in areas where it will be seen by all employees.

10. **Indemnification:** Consultant hereby agrees to defend, indemnify, save, and hold City, its officers, employees, and agents harmless from any and all losses, claims, actions, costs, expenses, judgments, or other damages resulting from injury to any person (including injury resulting in death), or damage (including loss or destruction) to property, of whatsoever nature arising out of or incident to the performance of this Agreement by Consultant (including but not limited to, Consultant's employees, agents, and others designated by Consultant to perform Work or services attendant to this Agreement). However, Consultant shall not be held responsible for any losses, expenses, claims, subrogations, actions, costs, judgments, or other damages, caused solely by the negligence of City.

11. **Termination:**
    a. Mutual Consent. This Agreement may be terminated at any time by the mutual consent of both parties.
    b. City's Convenience. This Agreement may be terminated by City at any time upon not less than thirty (30) days' prior written notice delivered by certified mail or in person.
    c. For Cause. City may terminate or modify this Agreement, in whole or in part, effective upon delivery of written notice to Consultant, or at such later date as may be established by City under any of the following conditions:
        i. If City funding from federal, state, county or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services;
        ii. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement; or

iii. If any license or certificate required by law or regulation to be held by Consultant to provide the services required by this Agreement is for any reason denied, revoked, suspended, or not renewed.

d. For Default or Breach.

i. Either City or Consultant may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination the party seeking termination shall give to the other party written notice of the breach and its intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) days of the date of the notice, or within such other period as the party giving the notice may authorize in writing, then the Agreement may be terminated at any time thereafter by a written notice of termination by the party giving notice.

ii. Time is of the essence for Consultant's performance of each and every obligation and duty under this Agreement. City, by written notice to Consultant of default or breach, may at any time terminate the whole or any part of this Agreement if Consultant fails to provide the Work called for by this Agreement within the time specified herein or within any extension thereof.

iii. The rights and remedies of City provided in this subsection (d) are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

e. Obligation/Liability of Parties. Termination or modification of this Agreement pursuant to subsections a, b, or c above shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination or modification. However, upon receiving a notice of termination (regardless whether such notice is given pursuant to Subsection a, b, c, or d of this section, Consultant shall immediately cease all activities under this Agreement, unless expressly directed otherwise by City in the notice of termination. Further, upon termination, Consultant shall deliver to City all Agreement documents, information, works-in-progress and other property that are or would be deliverables had the Agreement been completed. City shall pay Consultant for Work performed prior to the termination date if such Work was performed in accordance with this Agreement.

12. **Independent Contractor Status:** Consultant is an independent contractor and not an employee of the City for any purpose. Consultant shall have the complete responsibility for the performance of this Agreement. Consultant shall provide workers' compensation coverage as required in ORS Chapter 656 for all persons employed to perform Work pursuant to this Agreement. Consultant is a subject employer that will comply with ORS 656.017.

13. **Assignment:** Consultant shall not assign this Agreement or subcontract any portion of the Work without the written consent of City. Any attempted assignment or subcontract without written consent of City shall be void. Consultant shall be fully responsible for the acts or omissions of any assigns or subcontractors and of all persons employed by them, and the approval by City of any assignment or subcontract of the Work shall not create any contractual relation between the assignee or subcontractor and City.

14. **Default.** The Consultant shall be in default of this Agreement if Consultant: commits any material breach or default of any covenant, warranty, certification, or obligation under the Agreement; institutes an action for relief in bankruptcy or has instituted against it an action for insolvency; makes a general assignment for the benefit of creditors; or ceases doing business on a regular basis of the type identified in its obligations under the Agreement; or attempts to assign rights in, or delegate duties under, this Agreement.

15. **Insurance.** Consultant shall, at its own expense, maintain the following insurance:

a. Worker's Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers

b. Professional Liability insurance with a combined single limit, or the equivalent, of not less than $2,000,000 (two million dollars) per occurrence. This is to cover any damages caused by error, omission or negligent acts related to the Work to be provided under this Agreement.

c. General Liability insurance with a combined single limit, or the equivalent, of not less than $2,000,000 (two million dollars) per occurrence for Bodily Injury, Death, and Property Damage.

d. Automobile Liability insurance with a combined single limit, or the equivalent, of not less than $1,000,000 (one million dollars) for each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.

e. Notice of cancellation or change. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without thirty (30) days' prior written notice from the Consultant or its insurer(s) to the City.

f. Additional Insured/Certificates of Insurance. Consultant shall name the City of Ashland, Oregon, and its elected officials, officers and employees as Additional Insureds on any insurance policies, excluding Professional Liability and Workers' Compensation, required herein, but only with respect to Consultant's services to be provided under this Agreement. The consultant's insurance is primary and non-contributory. As evidence of the insurance coverages required by this Agreement, the Consultant shall furnish acceptable insurance certificates prior to commencing the Work under this Agreement. The certificate will specify all of the parties who are Additional Insureds. Insuring companies or entities are subject to the City's acceptance. If requested, complete copies of insurance policies; trust agreements, etc. shall be provided to the City. The Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

16. Nondiscrimination: Consultant agrees that no person shall, on the grounds of race, color, religion, creed, sex, marital status, familial status or domestic partnership, national origin, age, mental or physical disability, sexual orientation, gender identity or source of income, suffer discrimination in the performance of any Work under this Agreement when employed by Consultant. Consultant agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Further, Consultant agrees not to discriminate against a disadvantaged business enterprise, minority-owned business, woman-owned business, a business that a service-disabled veteran owns or an emerging small business enterprise certified under ORS 200.055, in awarding subcontracts as required by ORS 279A.110.

17. Consultant's Compliance With Tax Laws:

17.1 Consultant represents and warrants to the City that:

17.1.1 Consultant shall, throughout the term of this Agreement, including any extensions hereof, comply with:

(i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318;

(ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to Consultant; and

(iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

17.1.2 Consultant, for a period of no fewer than six (6) calendar years preceding the Effective Date of this Agreement, has faithfully complied with:

(i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318;

(ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to Consultant; and

(iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

18. Governing Law; Jurisdiction; Venue: This Agreement shall be governed and construed in accordance with the laws of the State of Oregon without resort to any jurisdiction's conflict of laws, rules or doctrines. Any claim, action, suit or proceeding (collectively, "the claim") between the City and the Consultant that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Jackson County for the State of Oregon. If, however, the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon

filed in Jackson County, Oregon. Consultant, by its signature hereon of its authorized representative, hereby consents to the *in personam* jurisdiction of said courts.

19. THIS AGREEMENT AND THE ATTACHED EXHIBITS CONSTITUTE THE ENTIRE UNDERSTANDING AND AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. CONSULTANT, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

20. **Amendments.** This Agreement may be amended only by written instrument executed by both parties with the same formalities as this Agreement.

21. **Nonappropriations Clause**. Funds Available and Authorized: City has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement within the City's fiscal year budget. Consultant understands and agrees that City's payment of amounts under this Agreement attributable to Work performed after the last day of the current fiscal year is contingent on City appropriations, or other expenditure authority sufficient to allow City in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement. In the event City has insufficient appropriations, limitations or other expenditure authority, City may terminate this Agreement without penalty or liability to City, effective upon the delivery of written notice to Consultant, with no further liability to Consultant.

22. **Certification**. Consultant shall sign the certification attached hereto as "Exhibit C" and incorporated herein by this reference.

CITY OF ASHLAND:

By: _____
City Manager

_____
Printed Name

_____
Date

XXXXXXXXX (CONSULTANT):

By: _____
Signature

_____
Printed Name

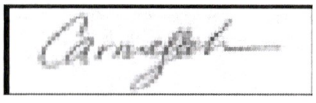
_____
Title

_____
Date

Purchase Order No. _____

(**W-9** is to be submitted with this signed Agreement)

APPROVED AS TO FORM:



_____
Assistant City Attorney
5.24.2023

_____
Date

EXHIBIT B

CITY OF ASHLAND, OREGON

City of Ashland LIVING WAGE

ALL employers described below must comply with City of Ashland laws regulating payment of a living wage.

$15.12 per hour, effective June 30, 2018.

The Living Wage is adjusted annually every June 30 by the Consumer Price Index.

Employees must be paid a living wage:

- For all hours worked under a service contract between their employer and the City of Ashland if the contract exceeds **$21,127.46** or more.
- For all hours worked in a month if the employee spends 50% or more of the employee's time in that month working on a project or portion of business of their employer, if the employer has ten or more employees, and has received financial assistance for the project or business from the City of Ashland in excess of **$21,127.46**.
- If their employer is the City of Ashland, including the Parks and Recreation Department.
- In calculating the living wage, employers may add the value of health care, retirement, 401K and IRS eligible cafeteria plans (including childcare) benefits to the amount of wages received by the employee.
- **Note:** For temporary and part-time employees, the Living Wage does **not** apply to the first 1040 hours worked in any calendar year. For more details, please see Ashland Municipal Code Section 3.12.020.

For additional information:

Call the Ashland City Manager's office at 541-488-6002 or write to the City Manager, City Hall, 20 East Main Street, Ashland, OR 97520, or visit the City's website at www.ashland.or.us.

\Notice to Employers: This notice must be posted predominantly in areas where it can be seen by all employees.

CITY OF ASHLAND

EXHIBIT C

CERTIFICATIONS/REPRESENTATIONS: Consultant, by and through its authorized representative, under penalty of perjury, certifies that (a) the number shown on the attached W-9 form is its correct taxpayer ID (or is waiting for the number to be issued to it and (b) Consultant is not subject to backup withholding because: (i) it is exempt from backup withholding, or (ii) it has not been notified by the Internal Revenue Service (IRS) that it is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified it that it is no longer subject to backup withholding. Consultant further represents and warrants to City that: (a) it has the power and authority to enter into this Agreement and perform the Work, (b) the Agreement, when executed and delivered, shall be a valid and binding obligation of Consultant enforceable in accordance with its terms, (c) the work under the Agreement shall be performed in accordance with the highest professional standards, and (d) Consultant is qualified, professionally competent, and duly licensed (if applicable) to perform the Work. Consultant also certifies under penalty of perjury that its business is not in violation of any Oregon tax laws, it is an independent contractor as defined in the Agreement, it is authorized to do business in the State of Oregon, and Consultant has checked four or more of the following criteria that apply to its business.

_____ (1) Consultant carries out the work or services at a location separate from a private residence or is in a specific portion of a private residence, set aside as the location of the business.

_____ (2) Commercial advertising or business cards or a trade association membership are purchased for the business.

_____ (3) Telephone listing is used for the business separate from the personal residence listing.

_____ (4) Labor or services are performed only pursuant to written contracts.

_____ (5) Labor or services are performed for two or more different persons within a period of one year.

_____ (6) Consultant assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission (professional liability) insurance or liability insurance relating to the Work or services to be provided.

_____

Consultant's signature

_____

Date

Form **W-9**
(Rev. October 2018)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

▶ Go to *www.irs.gov/FormW9* for instructions and the latest information.

Give Form to the requester. Do not send to the IRS.

Print or type. See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.

☐ Individual/sole proprietor or single-member LLC ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____

Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

☐ Other (see instructions) ▶

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) _____

Exemption from FATCA reporting code (if any) _____

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions.

Requester's name and address (optional)

6 City, state, and ZIP code

7 List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number

___ – ___ – ____

or

Employer identification number

__ – _____

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here Signature of U.S. person ▶ Date ▶

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/FormW9*.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, *later.*

Council Business Meeting

October 3, 2023

Agenda Item	Approval of multiple Public Contracts for Internet Bandwidth	
From	Chad Sobotka	AFN Operations Manager
Contact	chad.sobotka@ashland.or.us 541-552-2402	
Item Type	Requested by Council ☐ Update ☐ Request for Approval ☒ Presentation ☐ Consent ☐ Public Hearing ☐ New Business ☐ Old Business ☐	

SUMMARY

Approval is being requested to enter into multiple public contracts for Internet Bandwidth. The services include providing internet bandwidth, monitoring the City's internet bandwidth needs, and managing the network routing of the internet bandwidth. Multiple contracts are required to ensure carrier and path diversity.

POLICIES, PLANS & GOALS SUPPORTED

This contract award to renew and improve Internet services will support the City's goals of achieving carrier and physical path diversity and operational efficiencies. It will result in more robust and resilient Internet service to all AFN customers: citizens, businesses, and all departments of the City of Ashland.

BACKGROUND AND ADDITIONAL INFORMATION

The sourcing method used to obtain proposals for Internet Bandwidth is a formal Competitive Sealed Proposal (Request for Proposal). The City received four (4) proposals in response to this RFP. The proposals were evaluated in accordance with the evaluation process and criteria set forth in the RFP. A three-person evaluation committee evaluated the proposals and the evaluation summary is attached for your review.

AFN has had a presence in Portland since January 2018. Portland is an important connection point because major carriers have connection points there. While many tier 1 carriers may travel through Southern Oregon, none of them offer a connection point.

The existing contracts expire on October 31, 2023. Although we could extend the existing contracts an additional 2 years for a maximum term of 5-years, staff felt the cost savings would justify going out to bid again.

The new bandwidth contracts will begin on November 1, 2023 and will expire on October 31, 2025. There are options for 3 1-year extensions.

FISCAL IMPACTS

The new bandwidth contracts will save the City approximately $42,000 per year over the previous contract. The total amount for the proposed contacts is $180,552.

	Proposed Annual Cost	Savings from Existing Contracts
FY2024	$60,184	-$28,296
FY2025	$90,276	-$42,444
FY2026	$30,092	-$14,148
Total Proposed Cost	**$180,552**	

AFN will retain the dual 10 Gbps transports between Portland and Ashland as well as one IP transit connection in Ashland and one IP transit connection in Portland. This will continue to provide physical path and carrier diversity. Funds have already been allocated for FY2024 and FY2025.

DISCUSSION QUESTIONS

SUGGESTED NEXT STEPS

Staff recommends multiple public contracts be awarded to the highest ranked proposers that will ensure carrier and path diversity as follows:

Name of Proposer	Service to be Provided
Hunter Communications	IP Transit in Ashland (10 gig internet bandwidth)
LS Networks	Transport Ashland to Portland (10 gig)
LS Networks	Transport Ashland to Portland (10 gig diverse)
Cogent	IP Transit in Portland (10 gig internet bandwidth)

REFERENCES & ATTACHMENTS

Evaluation Summary
PowerPoint Presentation

CITY OF ASHLAND
REQUEST FOR PROPOSAL
INTERNET BANDWIDTH
EVALUATION SUMMARY
September 26, 2023

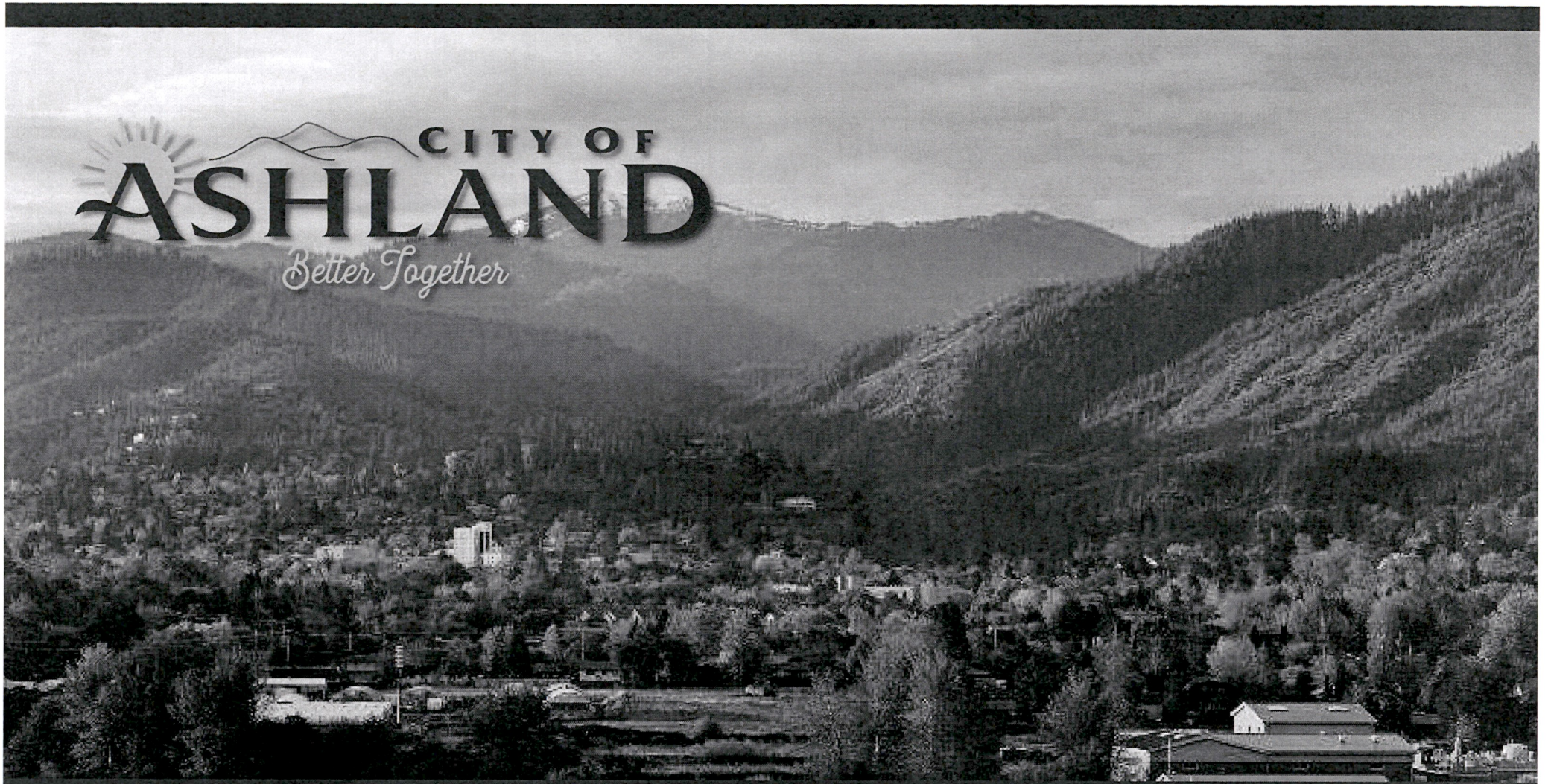
EVALUATION CRITERIA	POINTS	Cogent			Hunter			LS Networks			Spectrum		
		1	2	3	1	2	3	1	2	3	1	2	3
Letter of Introduction, Table of Contents, & Proposal Submission Form	5	5	5	5	5	5	5	5	5	5	5	4	5
Qualifications and Experience	15	12	13	14	15	15	15	15	15	15	10	5	7
Transports	20	0	3	0	0	0	0	20	20	20	15	10	11
IP Transits	20	20	18	19	20	20	20	20	20	20	15	15	13
Activation Plan	10	5	7	8	10	10	10	10	10	10	8	4	6
Outage Notification and Resolution Protocol	5	5	5	5	5	5	5	5	5	5	5	4	4
New Technologies and/or Additional Services	10	8	8	9	10	10	10	10	10	10	0	2	1
References	10	4	4	4	10	10	10	10	10	10	6	4	5
Contract Terms and Conditions	5	3	3	4	5	5	5	5	5	5	3	2	2
Subtotal	**100**	**62**	**66**	**68**	**80**	**80**	**80**	**100**	**100**	**100**	**67**	**50**	**54**
		65			**80**			**100**			**57**		
Cost Proposal	**25**	**8**			**4**			**23**			**11**		
Grand Total	**125**	**70**	**66**	**68**	**84**	**80**	**80**	**123**	**100**	**100**	**78**	**50**	**54**
		73			**84**			**123**			**68**		

Table 1 shows the three evaluator score cards.

	Cogent	Hunter	LS Networks	Spectrum
PDX IP Transit	25	0	19	6
Ash IP Transit	0	11	25	8
Transport	0	0	25	17
Average	8	4	23	11

PDX IP Transit	$800	n/a	$1,080	$3,299
Ash IP Transit	n/a	$2,500	$1,100	$3,299
Transport	n/a	n/a	$4,223	$6,040

Table 2 shows the Cost Proposal scores.



Ashland Fiber Network – Bandwidth RFP

AFN's Internet Connection

- AFN provides internet to over 4,000 residential and customers
- AFN currently purchases its bandwidth from multip across Oregon:
    - 10 Gigabit from Hunter Communications in Ashland
    - 10 Gigabit from LS Networks in Portland
    - 10 Gigabit from NWAX in Portland
    - 20 Gigabit transport from Ashland to Portland



Current Usage/Cost

Below is a table showing our current usage (in gigabits) and th
megabit:

	Usage (in gigabits)	Cost per megabit
LS Networks in PDX	4.54	$0.15
NWAX in PDX	3.47	$0.03
Hunter in Ashland	1.95	$0.45
Total	9.96	
Transport to PDX	8.01	$0.51

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New Bandwidth Contract

This table shows the cost per megabit under our new bandwic
well as the percent change from the previous contracts:

	Cost per Megabit	% Change
Cogent in PDX	$0.08	-47%
NWAX in PDX	$0.03	0%
Hunter in Ashland	$0.25	-44%
Transport to PDX	$0.42	-17%

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Internet Bandwidth Goals

The new internet bandwidth contracts continue to meet the g

- **Carrier diversity:** AFN will now use four separate companies the internet
- **Path diversity:** We will still maintain two diverse paths betwe Portland; one through Eastern Oregon and the other along I
- **Cost Savings:** Our new bandwidth contract reduces our co yearly cost savings is $42,444.

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Questions?



City Manager's Report

10.3.2023

CITY MANAGER'S OFFICE:

- **Emergency Shelter**: Information about the Emergency Homeless Shelter at 2200 Ashland St, can be found at **ashland.or.us/EmergencyShelter.** The community may submit comments or questions, and view Q&As.
- **October News:** The October 2023 newsletter is available online at **ashland.or.us/Communications,** and will be mailed out in City Utility Bills during the month of October. The newsletter contains November happenings.
- **Coffee & Conversation with Council and the City Manager:** The third Coffee & Conversation gathering will take place on Tuesday, November 14, 2023, 8:30-10 a.m., at SOU (Southern Oregon University; exact location TBD). **Councilors, Bob Kaplan** and **Eric Hansen,** along with **Mayor, Tonya Graham,** will attend.
- **Emergency Preparedness:**
    - A joint EOC (Emergency Operations Center) meeting was held on September 19, 2023. Representatives from the City, ASD (Ashland School District), SOU (Southern Oregon University), and the City of Talent attended. The group will meet regularly to discuss emergency operations, planning and training.
    - Promotion of the Everbridge Citizen Alert system is ongoing.
    - The Ashland School District (ASD) will send out the Citizen Alert message to ASD families from site newsletters. They are also putting a link to Citizen Alert on the School Safety page on the ASD website.
    - SOU will send out the Citizen Alert message in their next all-campus email.
    - Nationwide Emergency Alert Test scheduled for October 4, 2023 – More on the City website, **ashland.or.us.**

COMMUNITY DEVELOPMENT:

- **Ashland Housing Production Strategy:** DLCD (Department of Land Conservation and Development) has approved Ashland's Housing Production strategy, the first in the state to receive approval. See news release on City website, **ashland.or.us**.

ELECTRIC:

- The **Climate and Environment Policy Advisory Committee** will hold two meetings in October to discuss a possible ordinance that could affect natural gas usage in new residential buildings. The meetings will take place on October 18, from 6 to 7:30 p.m., or October 26, Noon to 1:30 p.m. Both meetings will take place in Council Chambers at 1175 E Main St. Comments may also be made **online**. See news release on City website, **ashland.or.us**. Information on CEPAC at **ashlandor.org/climate.**

City Manager's Report

FINANCE:

- **Staffing:** Brought on two new Utility Billing clerks and our Audit/Budget Lead
- **Process improvements** underway with implementation of Lockbox Processing in Utility Billing, which will aid in check processing and receipting, relieving 25 hours a week of staff time.
- **Reviewing the AMC (Ashland Municipal Code) Chapter 2.50, Procurements & Contracts,** and proposing updates to align with State thresholds and best practices – will present to Council in November 2023.
- **Annual Financial Audit** underway – September through November 2023.
- Will open **Utility Billing to in-person service** on Fridays from 9 a.m. to 1 p.m., at The Grove starting October 20, 2023. The Grove is located at 1195 E Main St.
- Approved by USDA for the **Rural Electric Service Program/On-bill Financing**, which will provide low-cost loans to Ashland residents to improve electric efficiency in their homes. Will start work on loan agreement in October 2023.

FIRE:

- Effective September 27, 2023, the fire danger had decreased to LOW. More information at **ashland.or.us/FireSeason**.
- Ashland Fire & Resue had a successful hiring process for the Training Officer and Fire Marshal positions. Both candidates have accepted the confidential job offers and are in background checks.
- The department's new fire engine should go into service in early October.

INNOVATION & TECHNOLOGY:

- The Geographic Information Systems (GIS) division along with the Ashland Fire & Rescue Department, Wildfire Division, received a prestigious **Special Achievement in GIS** (SAG) award this summer for their collaborative work using GIS technology to understand Ashland's wildfire risk. More information will be shared later this month, including a special presentation to Council at the October 17, 2023, City Council Regular Business meeting.

LEGAL:

- **Cheryl Artrip** has brought the City Recorder's Office up to date on scanning agreements into the City's digital repository. Council packets, ordinances and resolutions still need work; however, Cheryl's completion of the agreements is greatly appreciated!

City Manager's Report

PARKS & RECREATION:

- **Senior Services Division** will be hosting flu and COVID-19 vaccination clinics for seniors on October 13 and 27 at Ashland Senior Center. The October 13 and 27 senior vaccination clinics at Ashland Senior Center are almost full now. Senior Services Superintendent **Isleen Glatt** is seeking additional funding to be able to offer more slots.
- **Recreation –** Summer 2023 final program numbers for the Daniel Meyer Memorial Pool:
    - 8,950 Admissions (1,722 Lap Swim, 674 Senior Swim, 147 Water Aerobics, 6,322 Rec Swim, 85 Water Polo)
    - 279 SAI (Starfish Aquatic Institute) Group Lesson Registrations
    - 39 Private Swim Lessons
- **Parks –** The cool, wet weather has allowed Parks to reduce water-usage throughout the City. Parks has already installed "smart" irrigation systems in Lithia Park (including Ashland Japanese Garden) and North Mountain Park. This year, automated irrigation will be installed in Garfield Park, Triangle Park, Glenwood Park and Railroad Park.

WHAT'S COMING UP?

- CERT Training in October.
- Southern Oregon Pride, October 5-8 (The Pride Parade is October 7).
- Indigenous Peoples' Day on October 9.
- Ashland Senior Center will present, "Plan4Care: Creating Care Circles to Support One Another As We Age," on October 11, 1 to 3 p.m.
- The Ashland Mystery Festival the weekend of October 20-22, hosted by the Ashland Chamber of Commerce.
- The Ashland Chamber's 2023 Children's Halloween Parade will begin at 3:30 p.m. on Tuesday, October 31, 2023, at the Ashland Library.

Council Business Meeting

October 3, 2023

Agenda Item	City Council Standing Advisory Committees Workplans Review	
From	Tonya Graham	Mayor
Contact	tonya@council.ashland.or.us	
Item Type	Requested by Council ☐ Update ☐ Request for Direction ☐ Presentation ☐ Consent ☐ Public Hearing ☐ New Business ☐ Old Business ☐	

SUMMARY

This is a review of all the Standing Advisory committees workplans. This includes Social Equity and Racial Justice Advisory Committee (SERJ), Housing and Human Services Advisory Committee (HHSAC), Public Arts Advisory Committee (PAAC), Historic Preservation Advisory Committee (HPAC), Climate & Environment Policy Advisory Committee (CEPAC), Transportation Committee, and Forest Lands Advisory Committee.

POLICIES, PLANS & GOALS SUPPORTED

BACKGROUND AND ADDITIONAL INFORMATION

Resolution 2022-24 Creating Standing Advisory Committees to the City Council passed on September 20, 2022. On May 16, 2023, Council updated the Standing Advisory Committee structure with the adoption of Resolution 2023-06.

At the July 17, 2023, Council retreat, staff provided a summary of information from the Advisory Committees outlining potential goals or priorities for their work.

FISCAL IMPACTS

DISCUSSION QUESTIONS

SUGGESTED NEXT STEPS

REFERENCES & ATTACHMENTS

- Advisory Committees Goals list
- City Council Liaison Assignments
- Resolution No. 2023–06 A Resolution Updating and Consolidating Resolutions 2022-24 and 2022-32 Establishing City Council and Management Advisory Committees

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Joseph L. Lessard, City Manager
Sabrina Cotta, Deputy City Manager

Social Equity and Racial Justice Advisory Committee (SERJ)

The SERJAC will set their annual goals at their September meeting and will consider the following.

- Research what the City of Ashland has done to help and interfere with the civil rights of different groups of people (Black, Indigenous, Chinese etc.). This research will be the starting point for identifying reparations that the City can put in place to address the actions of the past and to celebrate good work that has been done.
- Review the recommendations of the DEI Assessment Consultant when the final report is completed.
- Continue the work of the 'Ashland for Everyone' project so that Ashland can move forward in its goal to be authentically welcoming to all people.
- Support activities for SERJ related holidays and community events and help the City to identify which events to participate in and recommend ways the City can participate.
- Support other Committees in their work as it intersects with the goals of the SERJ Advisory Committee.
- Recruit new members

Housing and Human Services Advisory Committee (HHSAC)

2023 Committee goals developed at the annual HHSAC retreat in December 2022.

- Explore impacts and opportunities for the development of more Manufactured Home parks (barriers and inducements) and manufactured home park ownership (this strategy is identified in the Housing Production Strategy document and is identified as a priority action in the implementation schedule).
- Encourage collaboration and communication for emergency shelter. Participate in planning and coordination around sheltering events and community engagement.
- Construction Excise Tax-explore the impacts of instituting a construction excise tax (this is a strategy identified in the Housing Production Strategy document).
- Workforce and Affordable Housing-Explore options to increase the supply of affordable workforce housing to provide for the needs of the City's working households and families. This work could include exploration, community engagement and implementation of strategies identified in the Housing Production Strategy.

ADMINISTRATION
20 East Main Street
Ashland, Oregon 97520
ashland.or.us

Tel: 541.488.6002
Fax: 541.488.5311

joe.lessard@ashland.or.us
sabrina.cotta@ashland.or.us

- Housing Production Strategy Education Events/Affordable Housing Education Events/ Partner with SERJ on Fair Housing and Equity, Diversity, and Inclusion trainings and translation of City of Ashland information and handouts.

At the regular meeting in June 2023, the HHSAC added another goal that they would like to work on in the immediate future.

- The Committee established a workgroup that will explore property management issues in Ashland and suggest potential solutions. The work group would like to research what is already working and functioning in Portland, OR. regarding property management issues and present ideas of how to recreate that system in Ashland to the City Council.

Public Arts Advisory Committee (PAAC)

The PAAC has not conducted a formal goal setting for 2023 yet, but has been working on and discussing the following projects and initiatives:

- Support community-driven effort to fund and create a permanent, public art installation entitled "Ancestor's Future: Crystallizing Our Call" by Micah Blacklight inspired by the Say Their Names Memorial
- Support community-driven effort to fund and create a public mural installation at the Elks Building in Downtown Ashland entitled "Where the Crow Lights" by John Pugh.
- Review and provide recommendations to the City Council regarding a public mural installation on the new fence at the Northwest Nature Shop at 154 Oak Street designed and executed by Vivi Design Company
- Establish a program to promote local artist or community designed artwork upon ODOT Traffic Controller Boxes with funding assistance from the City of Ashland (similar to the Utility Box art project).
- Designation of the Downtown Historic district as the next *Marking Ashland Places (MAP II)* district, in agreement with the Historic Preservation Advisory Committee.
    - Establish a location for a hub sculpture within the district, establish a budget for a public artwork, and request proposals for the design and installation of the selected sculpture.
    - Create and locate medallions relating to areas of historic interest.
- Street Crossing Art installation – potentially in association with University District

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Historic Preservation Advisory Committee (HPAC)

HPAC has considered committee priorities over the last several months beginning with their annual retreat in January. These priorities would be a focus of HPAC meetings when there are not multiple land use actions on their agenda to review, including:

- Implement Residential Site Design Review. With the passage of House Bill 2001, which required cities to allow accessory residential units and duplexes with the same procedural requirements for review as detached single-family homes, HPAC no longer reviews a substantial portion of the new construction in the four National Register-listed historic districts which previously required review. HPAC members would like to see residential Site Design Review requirements implemented so that the designs for new Duplexes, Single Family Residences and Accessory Residential Units in the districts could be reviewed for compliance with Historic District Development Standards.
- Update the city's Historic Preservation Plan. The current Preservation Plan was completed in 2008 using consultant services funded by a Certified Local Government (CLG) grant. The plan speaks to the cities planned preservation activities from 2009-2018, and HPAC members believe it is due for an update. In the absence of available consultant services funds, HPAC has considered revisiting the plan and updating it as a subcommittee project.
- Update Historic Surveys. The documents inventorying the four existing historic districts are decades old, and do not reflect new development within the districts or buildings which were not eligible to be considered historic resources at the time the districts were adopted but may now be considered historic due to their age. In addition, there may be additional areas, such as Quiet Village, which are now qualified for nomination as historic districts.
- Digitize Text & Photos of Existing Historic Surveys/Make Available On-Line. Photos were taken on film originally. This would require obtaining negatives from the consultant who prepared the original historic district survey documents, having them scanned, and then creating a user-friendly, searchable webpage. It might also involve the creation of a "story map" through the city's geographic information system (GIS).
- Updating the HPAC Webpage. Committee members would like to see the committee's webpage updated to be more comprehensive and user friendly and to contain all documents relating to the historic districts and historic preservation in Ashland in a single convenient on-line location.
- Continuing education opportunities for HPAC members.

ADMINISTRATION
20 East Main Street
Ashland, Oregon 97520
ashland.or.us

Tel: 541.488.6002
Fax: 541.488.5311

joe.lessard@ashland.or.us
sabrina.cotta@ashland.or.us

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Joseph L. Lessard, City Manager
Sabrina Cotta, Deputy City Manager

Climate & Environment Policy Advisory Committee (CEPAC)

2023 Goals

- Finalize USDA Energy Efficiency Loan Program.
- Establish "On Bill Financing/ Pay as you save".
- Further Home Energy Score Program.
- Outreach on existing local and Federal incentive programs.
- Reduce fossil fuel consumption in City Facilities and citizens homes.
- Establish new incentive for small engine replacement.
- Attend, participate, and give input in other City committee meetings.
- Improve biking opportunities.

Transportation Committee

The City of Ashland Transportation Committee will be discussing and developing a formal workplan at the July 20th monthly meeting. Staff has developed an outline of work elements to be discussed at the Committees meeting. The bulleted list below represents most work activities anticipated within the 2023-2025 Biennium.

- Transportation System Plan Update
- Traffic Calming Program
- Traffic Crash and Near Miss Review (twice annually)
- Public Education and Outreach Program
- Traffic Safety, Parking, Signage, Striping, etc. – Continuous
- Vision Zero Program
- Parklet Program
- Protected Bike Lane – Major Roadway Rehabilitation Projects
- Transit Support as needed (RVTD)
- Bike Parking Inventory (downtown)
- Bird Scooter Program Review
- B Street Corridor Safety Analysis

Staff expects the Transportation Committee to develop their final workplan at the July 20th meeting.

Forest Lands Advisory Committee

- Using the Council-adopted Climate Change Addendum to the Ashland Forest Plan, address the current epidemic of tree mortality as quickly as possible.
- Educate the community about the importance of adapting our forestlands to the changing climate.

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Ashland, Oregon 97520
ashland.or.us
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Fax: 541.488.5311
joe.lessard@ashland.or.us
sabrina.cotta@ashland.or.us

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- Work with APRC and community partners on plans for sustainable recreation in the Ashland Watershed and adjoining areas.
- Assist in re-writing the Community Wildfire Protection Plan (CWPP), focusing on climate change adaptation in the entirety of the Ashland Watershed.

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Ashland, Oregon 97520
ashland.or.us

Tel: 541.488.6002
Fax: 541.488.5311

joe.lessard@ashland.or.us
sabrina.cotta@ashland.or.us

City Council Liaison Assignments

June 20, 2023

Commissions & Standing Advisory Committees	2023 Primary Assignment	2023 Second Assignment
Parks & Recreation Commission (City Charter)	Hansen	Dahle
Planning Commission	Hyatt	
Climate and Environmental Policy	Kaplan	Dahle
Forest Lands	Bloom	
Historic Preservation	Dahle	
Housing and Human Services	Kaplan	Bloom
Public Arts	DuQuenne	
Social Equity and Racial Justice	DuQuenne	Dahle
Transportation	Hansen	Bloom

City Ad Hoc Committees	2023 Primary Assignment	2023 Second Assignment
Ashland Water Advisory (AWAC)	Kaplan	
Ashland Senior Advisory Committee	Kaplan	
Early Learning Committee	Hyatt	Bloom

Regional Boards & Committees	2023 Primary Assignment	2023 Second Assignment
Chamber of Commerce / Travel Ashland	DuQuenne	Hansen
Continuum of Care (CoC)	Bloom	
Crisis Response Network	DuQuenne	
Rogue Valley Council of Governments (RVCOG)	Kaplan	
Rogue Valley Metropolitan Planning Organization (RVMPO)	Graham	
Rogue Valley Transportation District (RVTD)	Hansen	
Southern Oregon Regional Economic Development Inc.	Hyatt	Dahle

Community Relationships

Aug. 2, 2023

At the recent Strategy Retreat, Council discussed assigning members of the Ashland City Council to serve as Community Liaisons to specific anchor institutions in the Ashland community. Unlike typical Council Liaison assignments where the councilor is expected to regularly attend committee or commission meetings, the Community Liaison would be expected to open a line of communication with the leadership of the organization and check in quarterly to understand how things might be changing for that organization, learn about new activities, and discuss any challenges. The purpose of this structure is to help the City Council as a body understand the current reality of the City's primary community partners as we, and they, navigate this time of great change. As Community Liaisons, Ashland City Council members would share similar information with those community organizations at their request.

Community Organizations	2023 Primary Assignment	2023 Second Assignment
Ashland Community Hospital	Dahle	
Ashland School District	Hyatt	
Mount Ashland	Hansen	
Opportunities for Housing, Resources & Assistance	Bloom	
Oregon Shakespeare Festival (OSF)	Graham	Kaplan
Rogue Valley Mountain Bike Association (RVMBA)	Hansen	
Southern Oregon University (SOU)	Graham	DuQuenne

RESOLUTION NO. 2023-06

A RESOLUTION UPDATING AND CONSOLIDATING RESOLUTIONS 2022-24 AND 2022-32 ESTABLISHING CITY COUNCIL AND MANAGEMENT ADVISORY COMMITTEES

RECITALS:

A. Whereas the citizens of Ashland have a strong history of voluntary service to their community, including on advisory bodies to the City of Ashland (City); and

B. Whereas Ashland citizens have important practical and technical knowledge on issues and topics important to sustaining the quality of life in the city and on the operational effectiveness of the City of Ashland organization; and

C. Whereas the City Council of the City of Ashland has an interest in promoting continued community participation in advising the City Council and City management.

D. Whereas on September 20, 2022, the City Council adopted Resolution 2022-24 establishing the following Standing Advisory Committees:
   - Climate and Environment Advisory Committee (CEAC)
   - Historic Preservation Advisory Committee (HPAC)
   - Housing and Human Services Advisory Committee (HHSAC)
   - Public Arts Advisory Committee (PAAC)
   - Social Equity and Racial Justice Advisory Committee (SERJAC)

E. Whereas on November 1, 2022 the City Council adopted Resolution 2022-32 also establishing the following Standing Advisory Committees:
   - Trasportation Advisory Committee (TAC)
   - Forest Lands Advisory Committee (FLAC)

F. Whereas the City Council wishes to update and consolidate the actions included in Resolutions 2022-24 and 2022-32 establishing Standing Advisory Committees.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ASHLAND, OREGON, RESOLVES AS FOLLOWS:

SECTION 1. The City Council replaces Resolutions 2022-22 and 2022-32 with this resolution updating and consolidating their actions to create City Council Advisory Committees and Management Advisroy Committees.

SECTION 2. Procedure and Guidance for advisory committees to the City Council and City staff include the following:

A. Each advisory committee shall serve solely as an advisory body whose actions or recommendations shall not be considered as City policy or the establishing of City policy or as final decisions of the City and are therefore not subject to administrative or judicial appeal.

Each advisory committee will provide service that does not conflict with the functioning of City departments or other government agency and shall have no executive or administrative powers or civil rights investigatory or enforcement authority. Attendance at an orientation or training session for standing advisory committee members, when offered, is required before they are permitted to further exercise voting rights at committee meetings. The City Manager will provide at least an annual orientation or training session update to all standing advisory committees and will be responsible for assigning City staff support for the work of the advisory committees.

Except as otherwise expressly stated, standing advisory committees shall observe policies and meeting and conduct rules consistent with those set forth for commissions and boards in AMC 2.10, Uniform Policies and Operating Procedures for Advisory Commissions and Boards, including its meeting and attendance, and code of ethics provisions.

B. Advisory committee members shall serve as individuals exercising their own best judgement and not as delegates for their respective organization or groups. Committees and their members are not official representatives of the City of Ashland and may not present their committees recommendations or their personal opinions or points of view as representative of the City's policy or operational perspectives. Prior to speaking publicly on behalf of their respective advisory committee, members must secure the permission of their committee to represent the activities or recommendations of their committee.

C. A quorum of each standing advisory committee shall consist of more than one-half (½) of the total number of its current Council-confirmed voting members, but in no case fewer than three (3) members. Appointed voting and alternative members of a standing advisory committee may not name a substitute or alternate member to attend a meeting of their advisory committee on their behalf. Nonvoting ex-officio members, staff, and liaisons do not count toward the quorum.

Appointed voting and alternate members of a standing advisory committee need not be physically present at a meeting if another means of attendance (e.g., telephonic, internet, etc.) has been established by the membership and public meetings law requirements are met. At least a majority of the quorum is necessary to adopt any motion; some motions may require the affirmative vote of at least two-thirds of the members present.

A voting or alternative member of a standing advisory committee should provide at least a 48-hour notice to both their committee's chairperson and the City Manager appointed

ex-officio committee staff support member regarding any planned absence from a scheduled meeting of the advisory committee. In the event an unexpected or emergency absence, the member should notify their advisory committee's chairperson, or the appointed staff support individual within a reasonable time in advance of the meeting.

If the members in attendance do not constitute a quorum, staff or invitees may make informational presentations provided (1) Notes describing the presentations and discussions are made and posted on the City website; (2) no motion, debate or vote or any other official business other than adjournment takes place; and (3) all topics advertised are automatically added to the agenda for the next regularly scheduled meeting.

D. Standing advisory committees may request voluntary testimony but may not compel an individual or organization to appear before it or respond to questions.

E. Advisory bodies may consult with other city advisory committees on matters of mutual interest in the course of developing recommendations to bring to the City Council or City Management. It will be the responsibility of advisory committee chairpersons to work or meet informally as needed to coordinate the activities or coordination of matters between their committee and other advisory committees.

F. Standing advisory committee members (voting, alternative and non-City staff ex-officio) will be appointed by the Mayor with the consent of the City Council. Council confirmed standing advisory committee appointments shall have three (3) year terms. Members of city commissions with corresponding responsibilities as the standing advisory committees will be invited by the City Recorder to confirm their interest in appointment by the Mayor without the necessity of submitting a formal new appointment application. New applicants must submit formal application with the City Recorder for Committee appointment. All regular terms commence with appointment and shall expire on April 30 of the third year. In the case that a new committee member is appointed to fill the remainder of a recently vacated voting position, the new member will be eligible for re-appointment at the end of the partial term they are completing. The City Manager will appoint all ex-officio City staff support committee members which shall not have a vote on advisory committee matters. The Mayor, with City Council confirmation, will appoint Council liaisons to each of the standing advisory committees. Council liaisons shall be non-voting ex-officio members of the corresponding committees.

G. Standing advisory committees shall be governed by AMC 2.10 – Uniform Policies and Operating Procedures for Advisory Commission and Boards. Council liaisons will be assigned for standing advisory committees per AMC 2.04.100. Standing advisory committees will be reviewed by the City Council approximately every three years as to their assigned responsibilities, level of effectiveness and the need for their continued role and existence.

H. In keeping with the diversity, equity, and inclusion goals of the City of Ashland, efforts will be made to ensure that information regarding standing advisory committee vacancies and the application process is readily available and advisory committees are made up of

residents that represent the diverse populations within the City. All committees shall assist the City of Ashland in ensuring that city programs related to the charge of the committee are equitable for all community members, including low-income, young people, persons of color, the elderly, and those living with disabilities. Standing advisory committees may have up to two additional voting, ex-officio student/youth members who are of high school or college age (see also Section I below).

I. Unless otherwise stipulated below, voting and alternate standing advisory committee members will be comprised of individuals who reside within the City except one (1) member from each advisory committee may be an at-large member living within the City's urban growth boundary. Unless otherwise provided, all nonvoting ex-officio members are not required to be residents within the City or the urban growth boundary. Voting and alternate members must be over eighteen (18) years of age.

J. All standing advisory committees serve at the pleasure of the City Council and shall deliver to the Council an annual report on their activities and accomplishments in the preceding year and provide to the Council for its approval the priorities and workplan for the succeeding year. Standing advisory committees are expected to work with and advise the City Management and City Attorney to insure their committee recommendations are aligned with City Council priorities and can be implemented within the City's resources and legal authority.

   Commissions transitioning under this resolution to become either standing advisory committees, or potentially to MAC status, are requested to complete any current work to develop recommendations for the City Council and advance them for consideration. These recommendations my advance either as a direct final report or presentation to the City Council or may be advance to the corresponding advisory committee or City Manager for reporting to the City Council.

K. The City Attorney is directed to return to the City Council in a timely manner with any updates, changes, or deletions to the Ashland Municipal Code to establish the here identified standing advisory committees as replacements for their corresponding city commissions or boards and to establish them as "Regular" advisory bodies per AMC 2.04.

SECTION 3. Standing Advisory Committees to the City Council are established and responsible for the purposes indicated in the following:

A. Climate and Environment Policy Advisory Committee (CEPAC)
   A Climate and Environment Advisory Committee (CEAC) is established by the City Council. The CEAC should reflect and represent a wide range of community interests and perspectives. Such interests should include, but not be limited to, climate change and environment, public health, energy efficiency and renewable energy, low and moderate-income households needs, economic development, social equity, and sustainable economic development.

The CEAC will consist of up to twelve (12) voting members. The CEAC will strive to include at least two (2) voting members who are 35 years old or younger at the time of appointment. Three of the voting member positions are reserved for one (1) representative of the solid waste franchisee for the City; and one (1) representative from Southern Oregon University (SOU) administration/faculty; one (1) representative from the Ashland School District administration/facility. The City Manager will appoint one (1) nonvoting ex-officio member to provide support to the committee.

The CEAC shall be responsible for assisting the City in the following:

i. Making recommendations on strategies, actions and programs related to the implementation and updating of the Climate and Energy Action Plan in furtherance of its climate mitigation and adaption goals and strategies per AMC 9.40, recognizing that the Council may also request advice on other environmental matters from time to time. The issues the Climate and Environmental Policy Advisory Committee shall advise Council on include, but are not limited to:
    A. Recommendations for the City of Ashland's Climate and Energy Action Plan (CEAP) and any updates to the CEAP.
    B. Modifications to benchmarks, targets, or actions contained in the climate plan as needed to incorporate the best available science and practices to achieve the City of Ashland's climate-related goals and targets.
    C. The process for considering amendments and updates to the CEAP.
    D. Monitoring CEAP implementation progress for the community and for the City operations.
    E. Ensuring that the CEAP incorporates long-term social, economic, and environmental goals.
    F. Climate education
ii. Recommending CEAP implementation steps or improvements on behalf of the community and for City operations
iii. Providing information to staff and the City Council to ensure that benchmarks, targets, or actions develop for, or by the City of Ashland incorporate the best available science and practices to achieve the intended climate or environmental related goals and targets.
iv. Providing recommendations to ensure the City of Ashland's climate and environmental planning incorporates long-term social, economic, and environmental goals, including social equity for low-income households, persons of color, the young and elderly, and those with disabilities.
v. Educating and advocating for Ashland's environmental goals, including its Community Climate Recovery Goals.

B. Forest Land Advisory Committee (FLAC)

The Forest Lands Advisory Committee (FLAC) is established and shall consist of up to nine (9) voting members, including a member of the Ashland Parks Commission, and up

to eight (8) nonvoting ex-officio members who will participate as needed. The ex-officio, non-voting member positions are reserved for representatives from the USDA Forest Service Ashland Ranger District, the Oregon Department of Forestry, the City's Director of Public Works, Director of Community Development, Fire Chief, Police Chief, and Director of Parks and Recreation Department or their designees. The City Manager will also appoint one (1) nonvoting ex-officio member to provide support to the committee.

The FLAC shall be responsible for assisting the City in the following:

i. Supporting the implementation of the Ashland Forest Plan, originally developed and adopted by the City of Ashland in June, 1992, including City adopted updates or revisions.

ii. Recommending integrated, interdisciplinary approaches and programs for the development of forest ecosystem management plans and related activities in the Ashland watershed.

iii. Developing a strong community volunteer program to assist in the implementation of the Ashland Forest Plan.

iv. Recommending forest management practices to the City Council and City staff.

v. Helping to ensure that plans integrate forest management needs and concerns of the City and of private land owners in the wildland urban interface.

vi. Promoting public knowledge and acceptance of the Ashland Forest Plan's programs.

C. Historic Preservation Advisory Committee (HPAC)

An Historic Preservation Advisory Committee (HPAC) is established by the City Council. The HPAC will consist of up to nine (9) voting members, and two nonvoting ex-officio members including the Chairperson of the Planning Commission, and one (1) representative appointed by the City Manager to provide support to the committee from the City's Community Development Department. To qualify the HPAC's as the City of Ashland's Certified Local Government (CLG) Commission, the majority of appointments for voting members of the HPAC, to the extent volunteer members are available in the City, will have direct historic preservation experience or meet the professional qualifications (including archaeology, architectural history, conservation, cultural anthropology, curation, engineering, folklore, historic architecture, historic landscape architecture, historic preservation planning and history) under Oregon State Historic Preservation Office requirements.

The HPAC shall be responsible for assisting the City in the following:

vii. Recommending to the Planning Commission and the City Council, areas or properties of significant historical value and interest for consideration to be designated historical properties.

viii. Recommending ordinances and other measures designed to protect and foster interest in the improvement of designated historical properties.

ix. Reviewing literature and sources of funding concerning the protection and improvement of designated historic properties.

x. Advising City staff and the Planning Commission concerning the improvement of designated historic properties in connection with Type II and Type III Planning Action involving new construction or alterations to existing historic resources.

xi. Advising applicants and staff upon request on sigh permits, building permits and other projects involving new construction or alterations within Ashland's designated Historic Districts.

xii. Advising the Planning Commission, the Ashland Park Commission, other city advisory commissions, boards and committees, and city departments regarding historic components of government projects under consideration within Ashland's designated Historic Districts.

xiii. Advising City staff and the Planning Commission on project applications for funding.

xiv. Assisting in promoting public support for the preservation and recognition of Ashland's historic past.

xv. Advising City staff and the Planning Commission on aesthetic standards for historic areas.

D. Housing and Human Services Advisory Committee (HHSAC)

A Housing and Human Services Advisory Committee (HHSAC) is established by the City Council. The mission of the HHSAC is to assess and make recommendations to the City for addressing the continuum of housing and human services needs for the purpose of enhancing community health and well-being. Members will be from a broad spectrum of citizens including individuals with a background in social services, unhoused and marginal income population services, economic and housing development, universal housing design, and elderly and disabled persons needs.

The HHSAC will consist of nine (9) voting members, one (1) nonvoting ex-officio liaison from Southern Oregon University (SOU), and one (1) nonvoting ex-officio member appointed by the City Manager to provide housing program support.

The HHSAC shall be responsible for assisting the City in the following:

i. Assessing the making recommendations on the continuum of housing and human services needs of the community and funding strategies relating to housing and human services.

ii. Advising the City Council on programs that assist in addressing the unmet utility, medical, transportation, and food needs of seniors, children and families in Ashland, and other related human services programs.

iii. Making recommendations to the City Council on Community Development Block Grant (CDBG), City of Ashland Social Service Grants, and Housing Trust Fund and related allocations.

iv. Assisting in identifying federal, state, county, and private funding for implementation of housing and human services programs.

v. Fostering public knowledge of and support for official city housing and human services Programs.

vi. Enhancing cooperation between the public and private sectors by promoting integrated approaches that provide suitable housing, a healthy living environment, and expanded economic opportunities for low and moderate-income persons.

vii. Evaluate, reviewing, and recommending to the Planning Commission and City Council innovative land use strategies targeted to promote a broad variety of needed housing types.

viii. Monitoring housing discrimination complaints and corrective actions within the City, and advising the City Council on potential measures to be taken to further equal opportunity to all persons to live in suitable housing facilities regardless of race, color, religion, sexual orientation, gender identity, national origin, source of income, or familial status.

E. Public Arts Advisory Committee (PAAC)

A Public Arts Advisory Committee (PAAC) is established by the City Council. The mission of the PAAC is to enhance the cultural and aesthetic quality of life in Ashland by actively supporting the placement of public art in public spaces and serving to preserve and develop public access to the arts. The continued vitality of the arts in the City of Ashland is a vital part of the future of the City as well as of its citizens. The arts are an important part of the cultural and economic life of the entire community of Ashland and enrich the participants in the arts as well as those who observe them.

The PAAC will consist of nine (9) voting members of which six (6) voting members will be from a broad spectrum of citizens including artists and those with a background in the

arts, arts organizations, education, structural and landscape architecture. Up to three (3) of these six (6) voting members of the PACC may reside outside the City limits. The three (3) remaining voting members of the PAAC will be citizens at-large and residents of the City. The City Manager may also appoint two (2) non-voting ex-officio members to the PAAC, one (1) of which will be from the City's Public Works Department, to provide support to the committee.

The PAAC shall adhere to and fill the role of the Public Art Commission as it may be designated in AMC 2.29 – Public Art. The PAAC shall also be responsible for assisting the City in the following:

i. Providing advice to ensure the arts continue to be of value as an integral part of Ashland.

ii. Assisting in promoting the arts in Ashland to enrich the lives of its citizens through education and demonstration.

iii. Advising the City Council and City management on standards and guidelines for selecting, commissioning, placing, maintaining, and removing public art.

iv. Advising the City of Ashland on how best to assist local organizations that provide local leadership on arts related matters to make the arts a more important part of community life.

v. Assisting the City council, the Ashland Parks Commission, Historic Preservation Advisory Committee, and the Planning Commission in using public art to enhance existing development in public parks and other public lands and in public structures.

vi. Advising the Planning Commission, the Ashland Parks Commission, other city advisory commission and committees, and city departments regarding artistic components of all municipal government projects under consideration by the City. The PAAC may also serve as a resource for assessing the artistic components of land use developments.

vii. Advising the City Council on policies and programs to enhance and encourage the planning, placement, and maintenance of public displays of art in locations open to the public within the community.

viii. Encouraging connections with other local, regional, and national organizations working for the benefit of art and preservation of artistic values.

ix. Recognizing and encourage groups and organizations that enrich Ashland life by bringing cultural and artistic values and artifacts to the City.

x. Assist in the pursuit of gifts and grants for support of arts programs and activities and the procurement of public art.

F. Transportation Advisory Committee (TAC)

A Transportation Advisory Committee (TAC) is established by the City Council. The TAC shall provide advice and guidance to the City Council, other Standing Advisory Committees, and City departments on transportation matters.

The TAC will consist of up to nine (9) voting members and ten (10) ex-officio members who will participate as needed. Voting members will all be members of the community at large and will represent a balance of interest in all modes of transportation. The ex-officio, non-voting member positions are reserved for four (4) representatives from the City's Community Development, Police, Fire and Rescue Departments, and Parks and Recreation Departments; one (1) representative from Southern Oregon University (SOU) administration/faculty; one (1) representative from the Ashland School District administration/facility; one (1) representative from the Oregon Transportation Department; one (1) representative from the Rogue Valley Transportation District; one (1) representative from the Jackson County Roads Department; and, the City's Director of Public Works (1), or their designee, to provide support to the committee.

The TAC shall assist the City in by reviewing and advising on issues or topics as they relate to all modes of transportation, including the following:

i. Transportation safety policies and programs

ii. Long range transportation plans and ancillary transportation plans (sidewalk and safe routes to school, transit, traffic, parking, etc.);

iii. Type III Planning Actions during the pre-application process;

iv. The transportation section of the City's Capital Improvements Program (CIP);

v. Multi-modal transportation issues; and

vi. Traffic implementation designs.

The Committee may also advocate to promote all modes of transportation to ensure that modal equity is a reality in Ashland.

The TAC may assign subcommittees to focus on specific transportation topics of concern and report their information to the full TAC for final review and recommendations. Subcommittees will be established for a specified purpose and duration and will consist of at least three voting members appointed by the TAC. The TAC Chair and Director of Public Works shall determine what matters warrant subcommittee involvement, and meetings shall be convened on an as-needed basis.

G. Social Equity and Racial Justice Advisory Committee (SERJAC)

A Social Equity and Racial Justice Advisory Committee (SERJAC) is established by the City Council. The SERJAC will consist of nine (9) voting members and one (1) nonvoting ex-officio member designated by the City Manager to provide support to the committee. Voting members will include members from a broad spectrum of community interests and perspectives, specifically including individuals with backgrounds in race and social equity work and a representative cross section of historically marginalized or underrepresented groups, such as Black, Aboriginal peoples, people of color, LGBTQ+, the elderly and disabled persons.

The SERJAC shall be responsible for assisting the City in the following:

i. Encouraging understanding and celebration of the diversity of the City's population and visitors and promote amicable intergroup relations within the City.

ii. Recommending policies, measures, and practices to bring about social and racial equity and a greater inclusion for all who live, work, or visit in the City, including counter measures to systematic racism, homophobia, sexism, classism, and other racial and social inequities impacting Black, Indigenous, people of color, LGBTQ+, and disabled persons, as well as other marginalized persons in the Ashland community.

iii. Recommending efforts to increase economic opportunities for Black, Indigenous, people of color, LGBTQ+, and disabled persons, as well as other marginalized persons in the Ashland community.

iv. Advising on diversity, equity, and inclusion (DEI) and human rights training for the City of Ashland's staff, commissions/boards, other advisory committees, and the City Council.

v. To seek, at least every two (2) years, a broad spectrum of input from community members on emerging issues and needs of the Ashland community as they relate to diversity, equity, inclusion, human rights, and intergroup relations.

SECTION 4. Management Advisory Committees (MAC) may be established to serve at the request of the City Manager or Department Heads to provide technical advice, and community support and input that can assist in preparing recommendations to enhance City operations or program implementation or for City Council consideration.

MACs are generally intended to be project or program specific but can meet as often and as long as necessary to meet their requested role or functions. Some MACs may meet only occasionally when requested, while others may meet regularly or semi-regularly over extended periods of time per the role assignment or needed term for their assistance. Membership on MACs will be established based on the type of advice sought and availability of potential qualified participants, urgency of issue or program being addressed, timeframe for the committee's role/participation, availability of City staff support resources, and/or other circumstances or considerations

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affecting the ability for effective MAC role participation. The rules of procedure, if necessary, for each MAC will also be established by the City Manager or appointing Department Director at the time of the corresponding MAC's establishment. The City Council may refer issues or tasks to consideration by a MAC by vote of the City Council request to the City Manager. MACs may include project or program topics related, but not limited to the following:

- Airport Operations
- City Band
- System Development Charges
- Transportation
- Trees and Urban Forest
- Wildfire Safety

SECTION 5. This resolution is effective upon adoption.

ADOPTED by the City Council this 16th day of May, 2023.

ATTEST:

DocuSigned by:
Melissa Huhtala
A02A82A0E5F2482...

Melissa Huhtala, City Recorder

SIGNED and APPROVED this 16 day of May, 2023.

Tonya Graham, Mayor

Reviewed as to form:

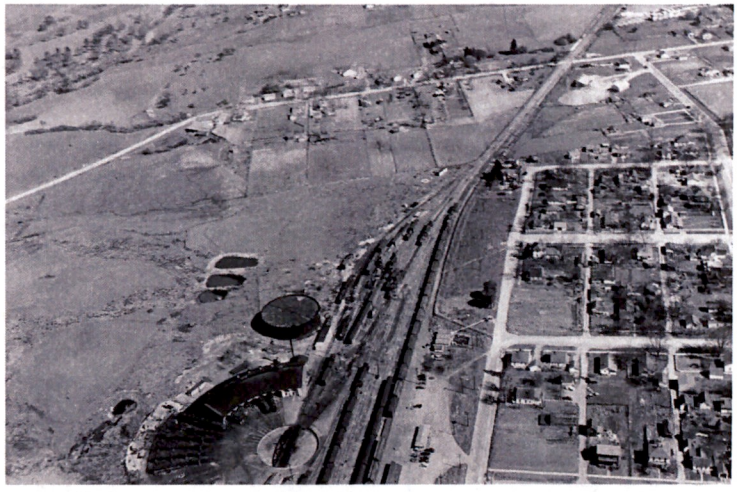
Doug McGeary, Interim City Attorney

Site History and Revised Cleanup Plan

Union Pacific Railroad – Former Ashland Rail Yard

ECSI #1146

Ashland City Council Meeting
Oct. 3, 2023



Outline

- Site background
  - Location
  - Photos
  - History
- New cleanup plan
  - Supplemental Remedial Investigation/Feasibility Study
  - Impacted Areas
  - Cleanup considerations
- Estimated project timeline
- Questions

Site vicinity map





LEGEND
- Previous Identified Property Boundary
- Property Boundary
- Parcels

Total historic Southern Pacific parcel was approximately 21 acres.

Former rail yard parcel is 11.7 acres.

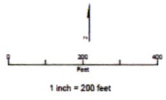


Photo of Site – Facing southeast from Clear Creek Drive



Photo of Clear Creek Drive – Facing east



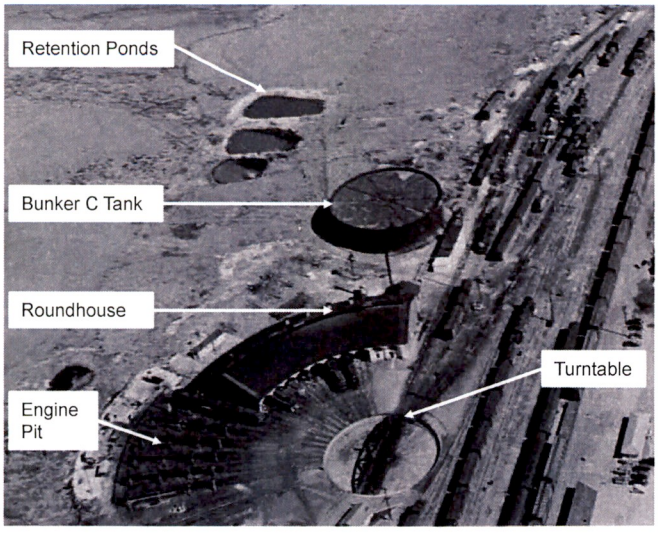
Photo of Williamson Way – Facing west



Photo North of A Street – Facing west-northwest



Site use



- 1887-1986 Locomotive fueling, maintenance, and railcar repair.
  - Petroleum hydrocarbons, polycyclic aromatic hydrocarbons (PAHs), metals
- 1980s Most buildings removed.
- Railroad is currently active but the rail yard is undeveloped and inactive.

DEQ Voluntary Cleanup Program

Releases

- Contaminants released and reported.
- Responsible party works under DEQ oversight.

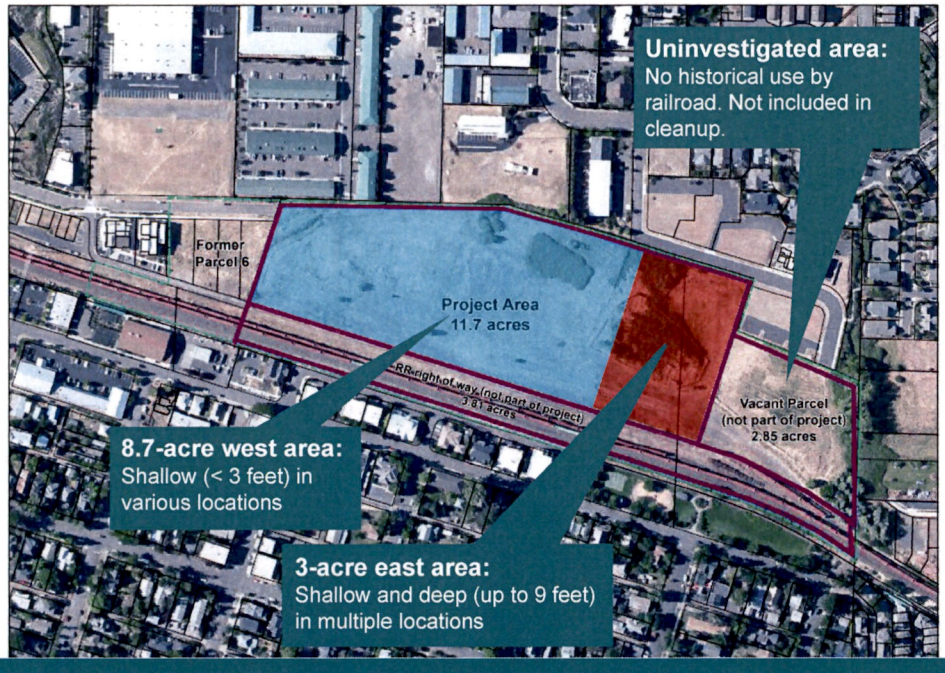
Exposure

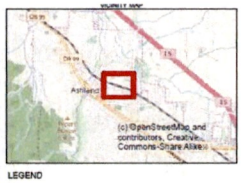
- Extent of contamination is determined.
- Contaminants of concern are identified.
- Risks to human health and environment are evaluated.

Solutions

- Protective cleanup levels are determined.
- Cleanup plans are evaluated and selected.
- DEQ confirms when cleanup is complete.

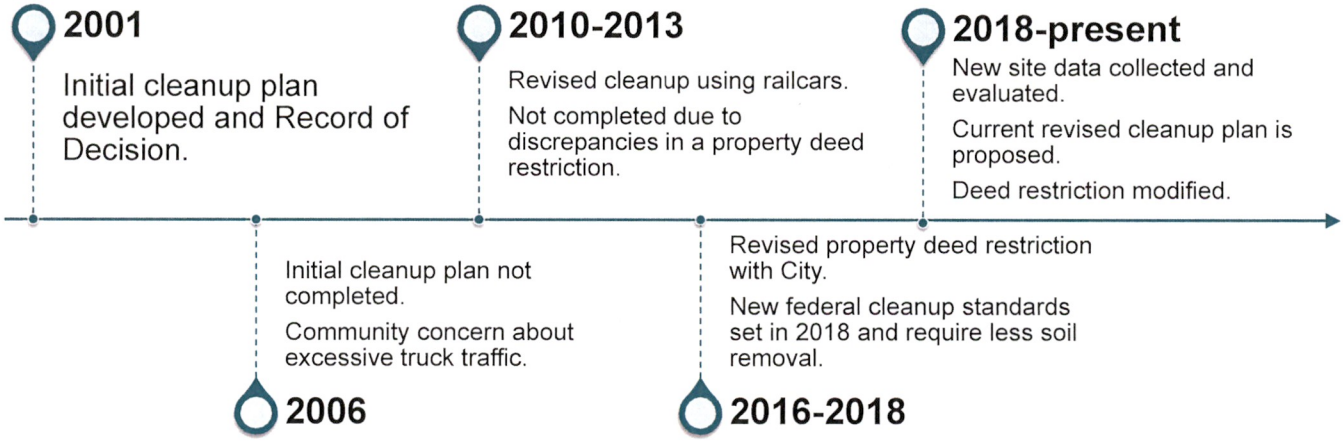
Impacted areas





- Soil
  - Petroleum compounds from bunker C fuel and diesel
  - Lead and arsenic
  - PAHs
- Shallow groundwater
  - Petroleum compounds from bunker C fuel and diesel
  - arsenic

Cleanup history



2021 Supplemental Remedial Investigation/ Feasibility Study (RI/FS)

- Re-evaluated risks based on new site data, current toxicity values, and likely future exposure area settings.
- Defined areas where cleanup is required.
- Established objectives of the clean-up based on likely future use.
- Evaluated cleanup alternatives.
- Recommended a preferred cleanup alternative for the site.

Four cleanup plan options

Alternative 1 – No Action

- Required to consider by rule.
- No action to reduce contaminants.
- Not protective.

Alternative 2 - Excavation and Offsite Disposal of Shallow and Deep Soil

- Excavate and remove soil from entire 11.7 acres exceeding site-specific screening levels.
- Removal by rail car.
- No engineering controls.
- Deed restriction for single-family residential use.

Four cleanup plan options (cont'd)

Alternative 3 – Excavation and Offsite Disposal of Shallow Soil and institutional Controls

- Excavate and remove shallow soil from entire 11.7 acres exceeding site-specific screening levels.
- Deed restriction for site use.
- Deep impacted soil left on eastern 3 acres.
- Additional deed restrictions required on eastern 3 acres.

Alternative 4 – Excavation, Consolidation, Vegetated Soil Cap and Institutional Controls

- Shallow soil exceeding site-specific screening levels excavated from western 8.7 acres.
- Deed restriction for site use.
- Excavated soil placed in low areas on eastern 3 acres.
- Soil and vegetated cap on eastern 3 acres.
- Additional deed restrictions required on eastern 3 acres.

Evaluated 6 balancing factors

1) Effectiveness

- Alt. 2 – Shallow and deep soil removal - most effective at providing protection.
- However, all alternatives adequately manage risks.

2) Long-term reliability

- Alt. 2 is most reliable because less reliance on institutional controls.
- Alt. 4 – Excavation, consolidation, soil cap – relies more on engineering and institutional controls.
- However, these types of controls are common at former commercial sites.

3) Implementability

- Alt. 4 is easiest to implement.
- Requires less soil removal and no export off site.

Evaluation of 6 balancing factors (cont'd)

4) Implementation Risks

- Alt. 2 and Alt. 3 (shallow soil excavation) have more short-term implementation risks than Alt. 4.
- Alt. 2 and Alt. 3 require construction of a new rail spur and transportation off site.
- Alt. 2 would require shoring for deep excavation.

5) Reasonableness of Cost

- Alt. 2 ~ $7,240,000
- Alt. 3 ~ $5,800,000
- Alt. 4 ~ $1,960,000

6) Sustainability/green remediation

- Alt. 4 would have the least amount of greenhouse gas emissions - reduced truck/locomotive exhaust and fuel burned
- No waste generated with Alt. 4.

Cleanup considerations

Single-family residential development is not an option

- Current zoning is mixed commercial-residential.
- Surrounding development is all mixed commercial and high-density residential.
- City has indicated a preference for a mixed-use community.

Soil removal from eastern 3-acre area is not practical

- Large quantities of soil would need to be removed by truck or rail.
- High degree of uncertainty in soil volume and cost.
- Benefits of soil removal don't outweigh cost and implementation downsides.
- Protectiveness can be achieved by consolidation, capping and deed restrictions.

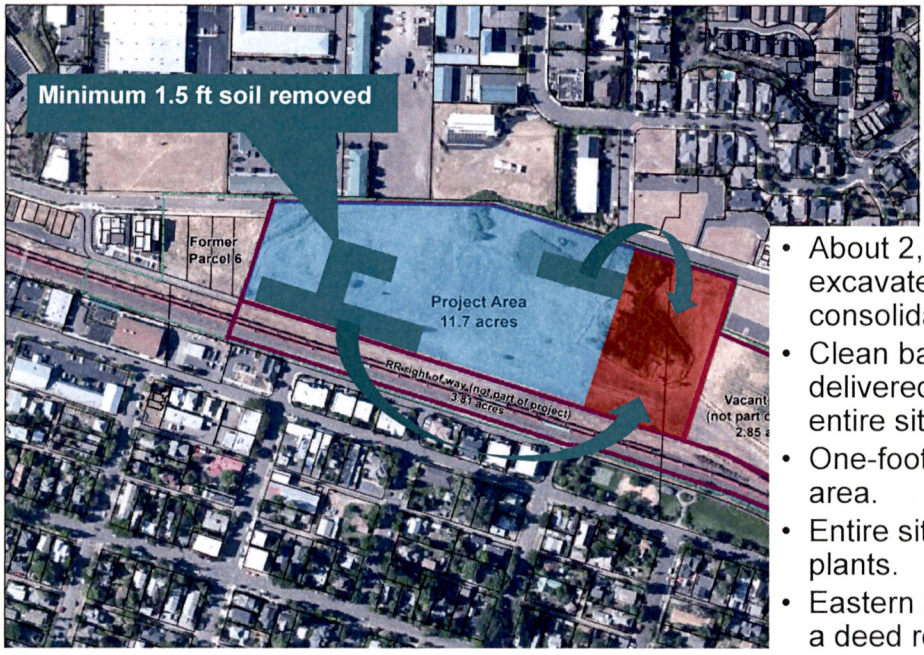
Most practical and focused cleanup scenario:

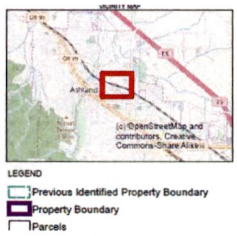
- Two separate exposure areas: **8.7 acres (west) and 3 acres (east).**
- Most likely future exposure scenario: **Urban residential.**
- Both areas cannot be subdivided or change use without DEQ approval.

DEQ review recommended alternative

- DEQ accepted the recommended Alternative 4 (excavation, consolidation and capping) and proposed cleanup plan in 2021.
- In 2022, DEQ prepared a recommendation for the current proposed cleanup plan in the Revised Recommended Remedial Action.
- Revised Recommended Remedial Action went out for public comment in October 2022.

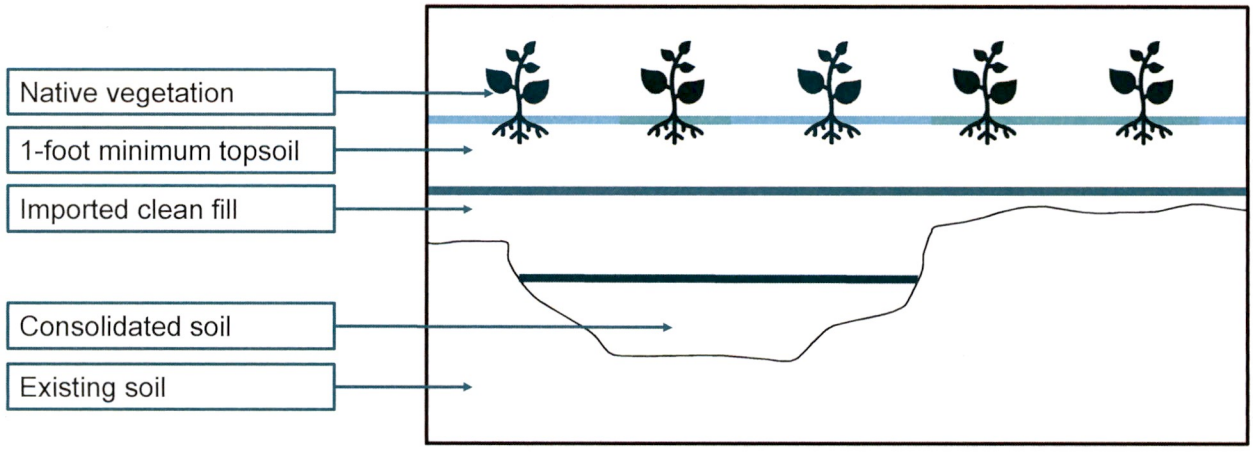
Cleanup plan





- About 2,700 cubic yards of soil excavated from western area and consolidated in eastern area.
- Clean backfill/topsoil for excavations delivered by side-dump railcars for entire site.
- One-foot clean soil cap on eastern area.
- Entire site hydroseeded with native plants.
- Eastern area will be fenced and have a deed restriction.

Conceptual vegetated soil cap



Institutional controls

For the entire 11.7 acres

- DEQ review and approve any request to subdivide or develop either the western 8.7-acres or the eastern 3-acres.
- Allow urban-residential/commercial site use.

For the capped 3 acres

- Site management plan for cap maintenance and guide future development.
- DEQ review and approve of proposed activities that would affect the cap.

Potential site use after cleanup

11.7 acres ready for urban-residential mixed use

- Living spaces may be on ground floor or higher.
- Commercial spaces may be on the ground floor.

More cleanup allowed if change in site use

- DEQ oversight if subdivided.
- More cleanup can happen if site use changes to single-family residential.

Examples of capped sites

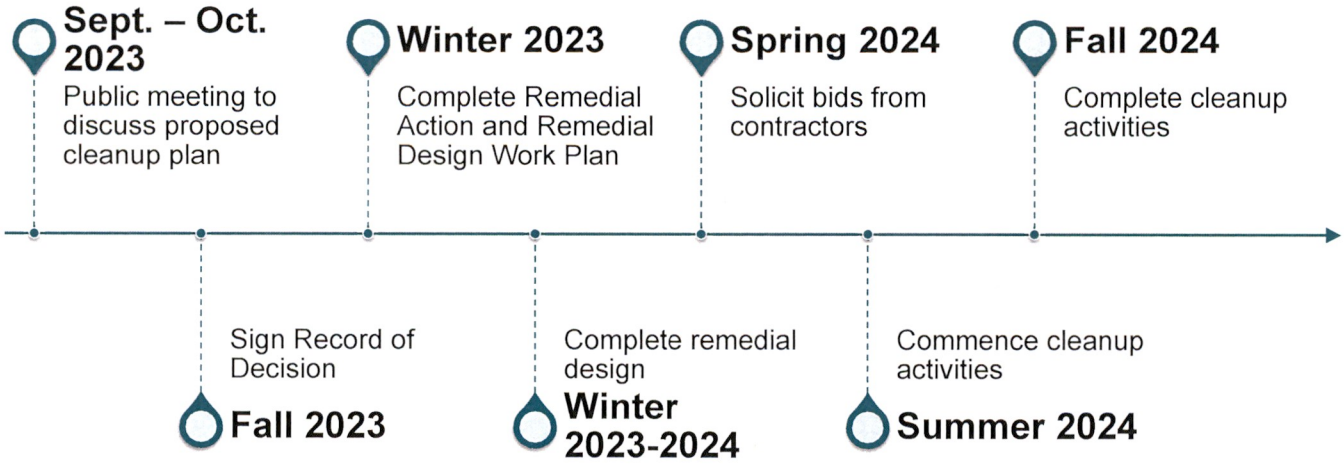
Capped sites in Oregon

- Mill Casino in North Bend along Coos Bay;
- Portions of Riverfront City Park in Salem;
- Suburban park in Tigard;
- Bridgeport Village shopping center in Tigard; and
- A former lumber yard ready for re-development in Sweet Home.

Former UPRR sites with soil caps

- An abandoned right of way into a 74-mile-long bike trail for recreational use in northern Idaho;
- One property redeveloped with a manufacturing site, community visitor center and sheriff's office; and
- A soccer field complex.

Estimated timeline



Questions



Visit the Ashland Railyard page for more information:

ordeq.org/AshlandRailYardInfo

Send questions or comments by 5 p.m. Oct. 31, 2023 to:

margaret.oscilia@deq.oregon.gov

October 3, 2023

Chris Chambers / Wildfire Division Chief
Ashland Fire & Rescue
455 Siskiyou Boulevard
Ashland, OR 97520
hris.chambers@ashland.or.us

bject: Proposal for Extension of Ashland Forest Resiliency Project

Dear Chris,

I am writing to formally submit the proposal for extending the Ashland Forest Resiliency Project Work through 2026 on behalf of Grayback Forestry, Inc. (GFI). We are deeply committed to this project and are excited about the opportunity to continue our partnership in the coming years.

Enclosed with this letter, you will find detailed pricing. Our bid has been meticulously crafted to ensure that we meet your expectations in a cost-effective, safe, and professional manner.

At Grayback Forestry, Inc., we take pride in our long-standing history of excellence in this field. Our extensive experience working with the City of Ashland on numerous successful projects has solidified our reputation as professionals who deliver results. Our Crew Supervisors are experts in their own right, equipped with a wealth of knowledge gained from hands-on experience, classroom and field training, and a strong track record of accomplishments.

Over the past decade, GFI has consistently treated more than 10,000 acres annually, demonstrating our commitment to fuels management. Our scope of work encompasses thinning, hand piling, slashing, lop & scatter, fireline construction, and prescribed burning. Each crew member dedicates over 1000 hours per year to project work in addition to their fire suppression responsibilities.

It is worth noting that all of our fuels management assignments have been completed punctually and to the complete satisfaction of our clients. This success is a result of our unwavering commitment to safety practices, a meticulous adherence to prescription parameters, and the presence of a robust and diligent resource base.

I want to assure you that the crews assigned to this contract will oversee all projects with the utmost care and accountability. We take our responsibilities seriously and are committed to delivering results that meet your expectations, without delegation.

We eagerly anticipate your review of our bid pricing. We are enthusiastic about the prospect of continuing our partnership and working together to ensure the long-term success of the Ashland Forest Resiliency Project.

Thank you for considering our proposal. Please do not hesitate to contact us if you have any questions or require further information.
Sincerely,

Wayde Morrison
Operations
Grayback Forestry, Inc.
wayde@graybackforestry.com

DEFINITIONS

N Modules

- Prescribed Fire Modules may be ordered for a unit when conducting prescribed fire and require assistance in one or more prescribed fire operations. These operations include the following: ignition assistance, holding assistance, burned unit patrol, and mop-up of burned unit and forest Restoration activities. Prescribed Fire Modules can be ordered for any of the above operations, a combination, or all the operations.
- Full Daily Rate applies for 3 to 10 hours of service. Hours under three will be paid at 30% of the Daily Rate. Hours over ten will be an additional 10% of the Daily Rate per additional hour. Time will be kept to the nearest quarter hour. Timekeeping will be documented daily and communicated with the ordering agency to ensure accuracy. Time will begin when resources arrive at a predetermined meeting location and will stop when resource is released.
- Request services via email, text, or phone 6 hours before needs. Services may be canceled four or more hours before need without an adjustment. Cancellation of ordered services in less than 4 hours before reporting for work will result in each Module being paid at 10 % of the Daily Rate.

Full-Service Pile Burning

- Full-service Hand Pile Burning will patrol and mop up for 48 hours from 8:00 a.m. the day following ignitions with up to 5 people per day. Any additional mop-up can be ordered using N modules during or after that point.

Full-Service Burning

- Price for Full-Service Burning will include Fireline, unit prep, burning, and mop up.
- Units less than 10 acres will be mopped up to 100% for the entire unit within 96 hours of ignition.
- Units greater than 10 acres will be mopped up 100% for 100 feet of perimeter within 96 hours of ignition.
- Any additional mop-up can be ordered using N modules at an additional cost
- All units where it is legal to do so will be flown using drone infrared cameras to verify that no heat is registered. This information will be provided to the City.
- All spot fires will immediately be extinguished 100 %
- Grayback will monitor fuels and weather before burning and notify the City no later than 1300 the day before planned ignition. The City will communicate with Grayback if Smoke Clearance is obtained.
- The City will grant final approval to conduct the burn.

B1	The amount of slash to be lopped-and scattered averages less than 20 tons per acre. Slash shall be reduced to the extent that it is within 12 inches of the ground at all points.·- The material to be treated consists of down woody material created from vegetation treatments (such as harvest, thinning, or slashing, etc.) or created through natural process. Lop and scatter all existing slash so that all top and side branches are free of the central stem so that the slash is reduced to within the limit of the ground at all points, as stated for the level of difficulty. Central stem length shall not exceed eight feet.
C	The levels of difficulty for pruning will be identified in the task order. The .levels are based on the expected number of trees per acre (TPA) requiring treatment. Each task order will specify the level of difficulty, access, species to be treated and species to be reserved from treatment, and upper height above ground level to treat. Designated vegetation shall be pruned of live and dead limbs and branches to a designated height measured above ground level. The designated height shall not exceed 12 feet above ground level and will typically be designated to a height above ground level of up to 8 feet. The Agency will designate the height for each individual unit. The pruning height may vary + or - one foot from the designated height. Limbs shall be cut cleanly and to within ½ inch of the bole of the tree. Tree limbs that attach to the bole above the designated pruning height, but have limbs extending into the pruning height area, shall be pruned so that they do not extend below the designated height. Material pruned shall be pulled back 4 feet away from tree bole. Individual species of hardwoods, shrubs, and conifers may be specified as reserved from pruning on individual units.
C1	Less than 100 TPA.
C2	Greater than 100 TPA.
D	Density Management Restoration shall be created to meet management objectives such as: restore conifer stands to sustainable density levels, increase resistance and resiliency to disturbance, limit wildland fire rate of spread, and/or to establish holding areas for use during prescribed burning and fire suppression activities. Treatments required in this Subunit include cutting trees, slashing surplus vegetation, pruning residual trees, and snag felling. Standing dead conifers, hardwoods and shrubs shall be included as surplus when not reserved. Each task order will include level of difficulty, access, written instructions designating spacing width; diameter limit, pruning height; any no-treatment areas; additional reserve vegetation, tree and shrub species order of preference. Spacing widths shall be designated for each project area in written instructions with each task order. Multiple spacing widths for conifers, hardwoods, and shrubs may be designated within the range of 15 to 45 feet. The average spacing may vary + or - 20% of the designated spacing in order to select the best leave vegetation. <u>Criteria for Selecting Leave Vegetation</u> a. The best available trees and shrubs shall be selected as leave vegetation and treated in accordance with spacing requirements. Specific instructions on amounts of hardwoods and shrubs that shall be selected as leave vegetation may be included in the task order.

	Leave Trees > 12" DBH - All conifers and hardwoods 12 inches DBH and larger are reserved from cutting. These trees shall be included in spacing requirements. b. Leave Trees < 12" DBH - The largest, healthiest, best fanned trees shall be selected as leave trees. c. The Agency may identify additional individual species of leave vegetation or leave vegetation areas within each unit. <u>Treatment of Surplus Vegetation</u> a. All live and dead conifers, hardwood trees, and shrubs not selected as leave vegetation or designated as reserved vegetation becomes surplus vegetation. Surplus vegetation to be cut will typically (but not limited to) be less than 8" DBH. Surplus vegetation within the specified spacing of acceptable leave tree shall be severed six inches or less above the ground. No live limbs shall be left on the stump of any cut stem. b. Hardwoods and conifers greater than 12n DBH are reserved vegetation and shall not be cut or girdled. c. Leave and reserved vegetation shall not be damaged while cutting surplus vegetation or buried with slash. No slash cut by the Contractor shall be left on the ground within 25 feet of any road or outside the project area. All slash shall be removed at least 25 feet from the road shoulder on the upper (uphill) side, and 50 feet on the lower (downhill) side. Leave and reserved trees shall be pruned to a height of up to 8 feet above ground level as designated by the task order. Live and dead limbs and branches shall be cut cleanly and as close to the bole of the tree as possible. Tree limbs and branches that are attached to the bole above the designated pruning height but have limbs or branches extending into the pruning height area, shall be pruned so they do not extend below the designated height. The Agency may select individual leave snags and not require felling when snags are deemed necessary for other resource objectives. The levels of difficulty for DMRAs are based on percent cover of material to be treated. Level is identified in the task order.
D1	The percent cover of material to be cut is less than 60 percent.
D2	The percent cover of material to be cut is greater than 60 percent.
E	Density Management Restoration shall be created to meet management objectives such as: restore woodland/shrubland stands to sustainable density levels, restore habitat, increase resistance and resiliency to disturbance, limit wildland fire rate of spread, and/or to establish holding areas for use during prescribed burning and fire suppression activities. Treatments required in this Subunit include cutting of shrubs, trees, slashing of surplus vegetation, pruning of residual trees, and snag felling. Standing dead conifers, hardwoods and shrubs shall be included as surplus when not reserved. Each task order will include level of difficulty, access, written instructions designating spacing width; pruning height; any no treatment areas; reserve areas and vegetation, leave vegetation species order of preference. <u>Reserve Areas and Individual Species of Trees and Shrubs</u>

	a. Areas of trees and shrubs may be reserved from treatment in designated units. The Agency will determine if reserve .areas are included in a project area treatment. Prior to the Contractor commencing work in a unit, the Agency may designate reserve area(s) within each unit, or, the Agency may authorize the Contract r to designate the reserve area(s) within each unit based on written instructions for selection of reserve area(s). Instructions on serve area(s) selection may include size, number, and vegetation condition. Reserve areas shall be considered in the spacing of_adjacent leave vegetation and are excluded from the acreage for payment purposes. b. Individual reserve trees and shrubs may be designated. by the Agency. These will be identified with marking (paint, flagging, or sign), or by written instructions. Reserve trees and shrubs shall not be damaged or cut. <u>Criteria for Selecting Leave Vegetation - Individual Leave Trees and Shrubs, and Groups and Clumps</u>
	a. The Contractor shall select leave vegetation including groups and clumps based on written instructions from the Agency. These instructions may be in the form of a table, or narrative. b. Spacing for leave trees and shrubs, and for leave groups and clumps will be designated for each unit by the task order. Multiple spacing widths for conifers, hardwoods, and shrubs may be designated within the range of 15 to 45 feet. The spacing designated shall be no less than 15 feet and no greater than 45 feet between leave vegetation. The designated spacing may be varied plus or minus 20% in order to choose the best leave vegetation. For spacing purposes, groups and clumps shall be considered as one stem. <u>Treatment of Surplus Vegetation</u> a. All live and dead vegetation not selected as leave or reserved over one foot tall and up to 20" (single stem) at one foot above ground level within the specified spacing of each acceptable leave tree or shrub stem and leave group or clump shall be severed six inches or less above the ground. No live limbs shall be left on the stump of any cut stem. b. Leave trees, shrubs, groups and clumps shall not be damaged while cutting vegetation or buried with slash. All conifer, hardwood and shrub stumps shall be cut within six inches of the ground. Slashed, cut and felled material shall be bucked into the standard length of no more than eight feet unless longer lengths are designated by the task order to meet utilization objectives. The Agency may reserve individual snags from felling requirements when snags are deemed necessary for other resource goals. The levels of difficulty for DMR are based on percent cover of material to be treated. The level of difficulty will be identified in the task order.
E1	The percent cover of material to be cut is less than 60 percent.
E2	The percent cover of material to be cut is greater than 60 percent.
F	The levels of difficulty for hand piling and covering will be identified in the task order. The levels are based on the number of piles per acre expected, based on the amount of slash on the unit. The Agency will designate which specification for size of material to be piled with each task order.

	Ali slash less than 8 inches in diameter and greater than: 2 feet in length shall be piled. Slash less·than2 feet in length shall be left on the ground. Slash left on the ground shall not exceed 6 inches in depth.. The task order or the Agency in writing *may* designate a different size within this range for individual units (example: slash 1-4 or 2 inches only, •instead of the less than 8 inches), but not greater than 8-inch diameter. All piles shall be constructed by laying limbs, stems, cut boles, and other slash in the pile so as to be parallel with each other. Slash that causes large air spaces in piles shall be cut to eliminate air spaces. Each pile shall include an area of small sized slash (small branches less than ¼ to ½ inch in diameter and/or small branches with needles or leaves attached) to provide "kindling" for prompt ignition and to aid in combustion of larger slash. These fuels shall be placed in the center of the pile. Pile size shall be a maximum of 8 feet in diameter by 8 feet in height, and minimum pile size shall be 6 feet in diameter by 5 feet in height at the time of final inspection by the Agency. The Agency may designate smaller maximum, minimum, or both when it determines this is required to meet resource or prescribed fire objectives. All piles shall be covered with 4-mil polyethylene plastic or alternate material approved by the Agency to cover at least 90% of the surface of each pile, maximum plastic size of 10' x 10'. All four corners and the middle of the plastic sheets shall be anchored with slash or other debris. Covering shall be done at the time of piling. Piles shall not be closer than 10 feet to leave or reserved vegetation or 25 feet to a unit boundary, unless approved by the Agency. Slash shall not be piled or placed on logs or stumps, in roadways or drainage ditches, or within channel bottoms or streams unless designated otherwise by the Agency. Slash shall not be piled or placed in buffer zones. Information on locations, widths, and any other information concerning reserve areas will be provided by the Agency. The Contractor shall keep records shall include an accurate description of plot location (bearing and distance between plots) marked on a map. Plot center location shall be flagged with a color as designated by the TO and indicated with a plot number. The following are hand pile and cover levels:
F1	An average of fewer than 20 piles per acre.
F2	An average of 21 to 40 piles per acre.
F3	An average of 41 to 60 piles per acre.
F4	An average of 61 to 80 piles per acre.
F5	An average of 81 to 100 piles per acre.
F6	An average of 101 to 120 piles per acre.
F7	An average of 121 to 140 piles per acre.
FB	An average of 141 or greater piles per acre.
G	All fireline construction shall be performed and maintained in accordance with the following specifications. a. Location - Unless otherwise designated, firelines shall be located adjacent to the unit boundary, within 50 feet outside of actual unit boundary, in locations affording the optimal holding capability, and remain on agency property. The Agency may choose to clearly mark the pre-burn and post-burn fireline location with colored plastic ribbon. The fireline shall be constructed to follow the flagged line as closely as possible. Variations will be permitted if unforeseen obstacles are found. Pacific Yew shall not be cut or damaged. Fireline location

shall avoid necessity of cutting for limbing Pacific Yew. The Agency shall.be notified if cutting or limbing of Pacific Yew is unavoidable prior to cutting any Pacific Yew.

b. Clearing Limits - Hand fireline shall be cleared to a width of 8 feet and a height of 8 feet. The width shall be measured parallel with the ground (slope distance). The height shall be measured from the side of the line away from the unit. A strip at least 1.5-foot-wide to a maximum cif3 feet wide and centered within the cleared area shall be cleared to mineral soil. A strip less than 1.5-foot-wide may be designated by the Agency on some units.

c; Material to be Cleared - Within the 8-foot line, the following material shall be cut and . removed:

1) Ferns, shrubs and other vegetation. Cut to within 18 inches of ground level or as close as possible without damaging tools.

2) Cut live and dead trees at ground level or as close as possible without damaging tools. No trees larger than 8 inches DBH shall be cut. The fireline shall be located to avoid larger green trees.

3) Limbs extending within the fireline shall be cut close to the tree if the point of cutting can be reached from the ground (about 8 feet from the ground). Limbs shall be cut when they enter the fireline clearing limits if they cannot be cut at the tree. Limbs cut close to the tree need not be cut flush but "spike" limbs will not be allowed.

4) Slash and litter shall be removed from the 8-foot (both height and width) fireline clearing strip. Natural ground duff need not be removed except from within the 3-foot strip on the fireline work area.

5) A 3-foot section shall be removed from logs located across the fireline.

d. Disposal of Cleared Material - Material cut from within the fireline shall be placed on the unit side (inside) of the fireline and scattered. Soil berms and piles will not be permitted on top of flammable material. Log sections may be rolled downhill and away from the unit provided that they are left outside the fireline.

e. Snags and High Stumps - Snags or high stumps may be left next to the fireline when designated or approved by the Agency.

f. Side Slopes - On side slopes that are steeper than 30 percent, the 3-foot wide strip shall be cup trenched sufficiently to catch rolling material 6 inches or less in diameter.

g. Water Bars - Water bars shall be constructed in all firelines at the time of initial construction. The water bar shall consist of a diagonal ditch across the three-foot wide mineral soil portion of the fireline, but not in excess of the following guidelines. The water bar shall be approximately 6 inches to 10 inches deep and approximately 5 feet long. Unless otherwise directed, drainage shall allow rolling material and drainage into burn unit.

Percent of Slopes:

00% - 09% - None Required
10% - 29% - 1 Water Bar Every 300'
30%- 59%-1 Water Bar Every 150'
60% +-1 Water Bar Every 100'

The levels of difficulty for fireline construction will be identified in the task order. The levels are based on the following:

G1	Hand fireline renovation where firelines have previously been constructed May include up to 200 feet of new construction when existing fireline location is deemed inadequate for holding by the Contractor.
G2	When new hand firelines are constructed on unit boundaries or through continuous downed slash. Throw back or pull back of slash is necessary.
I	Each task order will include level of difficulty, and written instructions which (1) designate and describe identification or selection of treatment trees and snags; and (2) any -reductions irr amounts or type of fuels for pullback, width of pullback, reduction in clearing height; and any - no-treatment areas. Fuels for pullback shall include both natural and activity generated fuels. All fuels pullback shall be performed in accordance with the following specifications. a. Trees/snags to be treated - Perform fuels pullback on leave trees and snags as designated by the task order. b. Clearing - Each tree/snag designated for pullback shall be cleared around the tree/snag to the following: All surface fuels from the bole of the tree out to the dripline plus 1-foot wide area; aerial fuels from a 2-foot wide area, 8 feet in height. Material greater than 3" diameter within the clearing zone shall be rolled at least 4 feet from the bole. Duff and litter may be removed such that the depth is 6 inches or less. Care shall be taken to maintain the lower duff layer as damage to sub-surface roots could occur. Clearing shall include removing ladder fuels 8 feet up the bole of the tree/snag. This may require some pruning or cutting. c. Removed fuels - Scatter all removed fuels and avoid concentrating the fuel. On sloping ground, fuel shall be scattered uphill or sidehill from the tree/snag. No removed fuel shall be below the tree/snag on a slope. On flat ground, any direction is acceptable. The levels of difficulty for fuels pullback are identified in the task order. The levels are based on the number of trees per acre to be treated, as follows:
I1	Fuels pullback on less than 20 trees or snags per acre.
I2	Fuels pullback on greater than 21 trees or snags per acre.
M	The burning season for hand piles for the interior southwest Oregon normally is during November and December. However, conditions permitting burning may occur at any time from the middle of October through June. Major control problems can occur during a period of frontal passage and strong east wind conditions. Close attention to weather forecasts and securing and patrolling of previously burned units is common practice to eliminate any fire spread from burned piles or escaped fires outside unit boundaries. All prescribed fire operations shall be initiated only when a Prescribed Fire Plan has been approved and signed by the prescribed fire plan preparer, fire management officer, technical reviewer, and agency administrator. All elements of the plan shall be followed unless a deviation has been approved in advance by the Agency. Clearance to Bum - The Contractor shall be responsible for monitoring fuel and weather conditions to determine time periods when units are in the prescription parameters identified in the Prescribed Fire Plan. The Contractor may consult the Agency regarding short, mid, and long-term weather forecast to determine the potential impacts to fuel moisture conditions and the ability to meet Prescribed Fire Plan objectives. The Contractor shall notify the Agency no later than 1300 hours on the day prior to ignition when specific units are within bum prescription parameters and of their request to bum. The Agency will notify the Contractor via telephone or direct communications at or before 0900 hours on the day of the proposed ignition of smoke management conditions and any updated weather forecasts that would cancel the burning. The Agency will grant final approval to conduct burning. Approval is based on the Agency verifying: 1) unit fuel and weather conditions are within Prescribed Fire Plan parameters and prescribed fire and resource objectives are attainable; 2) Prescribed Fire Plan

	parameters: and-objectives for smoke management are attainable based on smoke management instructions and forecast, and weather forecasts for proposed burn date and time and 3) successful completion of the Go/No-Go Checklist and the test fire. During ignition operations, the Contractor's crew supervisor shall maintain .contact with the Agency representative through mutually-agreed-upon communications system at all times, A minimum of 90% of all piles shall be ignited. Stoke each pile until at least 90 percent of _each pile is consumed. Units with a high tree cover and pile density shall be burned in stages to reduce crown scorch. Holding typically is not necessary when piles are burned during winter conditions. Conduct holding operations as necessary in accordance with the prescribed fire plan. Relocation of personnel and equipment may be required as ignition and burnout progresses. The Contractor's crew supervisor shall recognize the need for and make such relocations, dependent upon on-site weather and fire conditions. Extinguish any fire outside the fireline of the unit, or unit boundary, and promptly report this to the Agency at the site. A fireline shall be constructed completely around fire inside the unit, slop-over, and/or spot fires outside the primary unit boundaries. The minimum shall be a fireline scraped to mineral soil 18 inches in width with all overhanging combustible material cleared for 3 feet on either side and 6 feet overhead. Do not fell any reserved trees which may have fire in them without written approval of the Agency. Mop-up shall be performed in accordance with 5.15, Standard Mop-Up and Patrol. The levels of difficulty for Hand Pile Burns will be determined as follows:
M1	An average of fewer than 20 piles per acre.
M2	An average of 21 to 40 piles per acre.
M3	An average of 41 to 60 piles per acre.
M4	An average of 61 to 80 piles per acre.
M5	An average of 81 to 100 piles per acre.
M6	An average of 101 to 120 piles per acre.
M7	An average of 121 to 140 piles per acre.
MB	An average of 141 and greater piles per acre.

City of Ashland Rx Fire Modules and Pricing

Subunit	Level	Complexity		2023	2024	2025*	2026*
Slashing							
A1	Level I		Unit density is estimated to average less than 60 percent cover to be cut	$401.08	$401.08	---	---
A2	Level II		Unit density is estimated to average greater than 60 percent cover to be cut	$563.10	$563.10	---	---
Lop and Scatter							
B1	Level I		Amount of slash to be lopped and scattered averages less than 20 tons per acre	$112.17	$112.17	---	---
Pruning							
C1	Level I		Less than 100 TPA	$243.60	$243.60	---	---
C2	Level II		Greater than 100 TPA	$362.56	$362.56	---	---
Density Management Resource - Conifer Stands							
D1	Level I		The percent cover of material to be cut is less than 60 percent	$480.39	$480.39	---	---
D2	Level II		The percent cover of material to be cut is greater than 60 percent	$667.34	$667.34	---	---
Density Management Resource - Woodland / Shrub							
E1	Level I		The percent cover of material to be cut is less than 60 percent	$661.73	$661.73	---	---
E2	Level II		The percent cover of material to be cut is greater than 60 percent	$905.27	$905.27	---	---
Hand Pile and Cover							
F1	Level I		An average of fewer than 20 piles per acre	$413.55	$413.55	---	---
F2	Level II		An average of 21 to 40 piles per acre	$563.10	$563.10	---	---
F3	Level III		An average of 41 to 60 piles per acre	$803.30	$803.30	---	---
F4	Level IV		An average of 61 to 80 piles per acre	$1,018.57	$1,018.57	---	---
F5	Level V		An average of 81 to 100 piles per acre	$1,221.37	$1,221.37	---	---
F6	Level VI		An average of 101 to 120 piles per acre	$1,580.54	$1,580.54	---	---
F7	Level VII		An average of 121 to 140 piles per acre	$1,919.30	$1,919.30	---	---
F8	Level VIII		An average of 141 or greater piles per acre	$3,393.34	$3,393.34	---	---
Fireline Construction Maintenance							
G1	Level I		Hand fireline renovation, where firelines have previously been constructed	$0.63	$0.63	---	---
G2	Level II		When new hand firelines are constructed on unit boundaries or through continuous downed slash	$1.11	$1.11	---	---
Fuels Pullback							
I1	Level I		Fuels pullback on less than 20 trees or snags per acre	$55.52	$55.52	---	---
I2	Level II		Fuels pullback on greater than 21 trees or snags per acre	$111.03	$111.03	---	---
Prescribed Burn and Mop-Up: Hand Pile Burn							
M1	Level I	Low	An average of fewer than 20 piles per acre.	$123.00	$123.00	---	---
M2	Level II	Low	An average of 21 to 40 piles per acre.	$166.94	$166.94	---	---
M3	Level III	Low	An average of 41 to 60 piles per acre.	$219.66	$219.66	---	---
M4	Level IV	Low	An average of 61 to 80 piles per acre.	$289.95	$289.95	---	---
M5	Level V	Low	An average of 81 to 100 piles per acre.	$351.46	$351.46	---	---
M6	Level VI	Low	An average of 101 to 120 piles per acre.	$439.32	$439.32	---	---
M7	Level VII	Low	An average of 121 to 140 piles per acre.	$527.18	$527.18	---	---
M8	Level VIII	Low	An average of 141 and greater piles per acre.	$615.05	$615.05	---	---
Prescribed Fire Modules							
N1			Two Person Crew Module	$1,213.14	$1,213.14	---	---
N2			Engine Module Type VI, Two-Person Crew	$1,635.04	$1,635.04	---	---
N3			Five Person Crew Module	$2,585.51	$2,585.51	---	---
N4			Engine Module Type VI, with Operator and Crew Member	$2,891.17	$2,891.17	---	---
N5			Engine Module Type VI, with Operator and Crew Member + five-person crew	$4,145.71	$4,145.71	---	---
N6			Engine Module Type VI, with Operator and Crew Member + two-person crew with water delivery system	$3,645.81	$3,645.81	---	---
N7			Engine Module Type VI, with Operator and Crew Member + five-person crew with water delivery system	$5,266.54	$5,266.54	---	---
N8			Water Delivery System witth one Operator and Transportation	$1,354.84	$1,354.84	---	---
N9			Tactical Water Tender Module with one Operator	$1,794.94	$1,794.94	---	---

City of Ashland Rx Fire Modules and Pricing

Subunit	Level	Complexity		2023	2024	2025*	2026*
N10			Snag Felling Module, two-person team (paid hourly)	$179.50	$179.50	---	---
N11			5-Person Chainsaw Crew, five-person crew with chainsaws	$3,258.95	$3,258.95	---	---
N12			Chipper-15" Capacity with operator (paid hourly)	$187.86	$187.86	---	---
N13			Firing or Holding Boss	$888.37	$888.37	---	---
N14			FMC Track Machine (Softtrack) with one operator	$2,435.84	$2,435.84	---	---
N15			UTV Polaris 6x6 Engine (pump and 100 gallon capcity) with one operator	$1,500.00	$1,500.00	---	---
N16			Burn Plan Preparation	$1,500.00	$1,500.00	---	---
N17			Full Service Burning <10 acres	$2,500.00	$2,500.00	---	---
N18			Full Service Burning >10 acres but <20 acres	$2,000.00	$2,000.00	---	---
N19			Full Service Burning >20 acresbut <40 acres	$1,500.00	$1,500.00	---	---
N20			Full Service >40	$1,000.00	$1,000.00	---	---
N21			Skid Steer w/300 gal.	$2,000.00	$2,000.00	---	---

*** - Pricing for years 2025 & 2026 will be based on current years pricing and negotiated up to a maximum of 10% increase.**



Grand Terrace Remand

City Council
Limited Public Hearing
October 10, 2023

Grand Terrace Annexation (1511 Hwy 99N)

Annexation, Outline Plan Subdivision, Site Design Review & Exceptions to Street Standards

Remanded on Two Issues

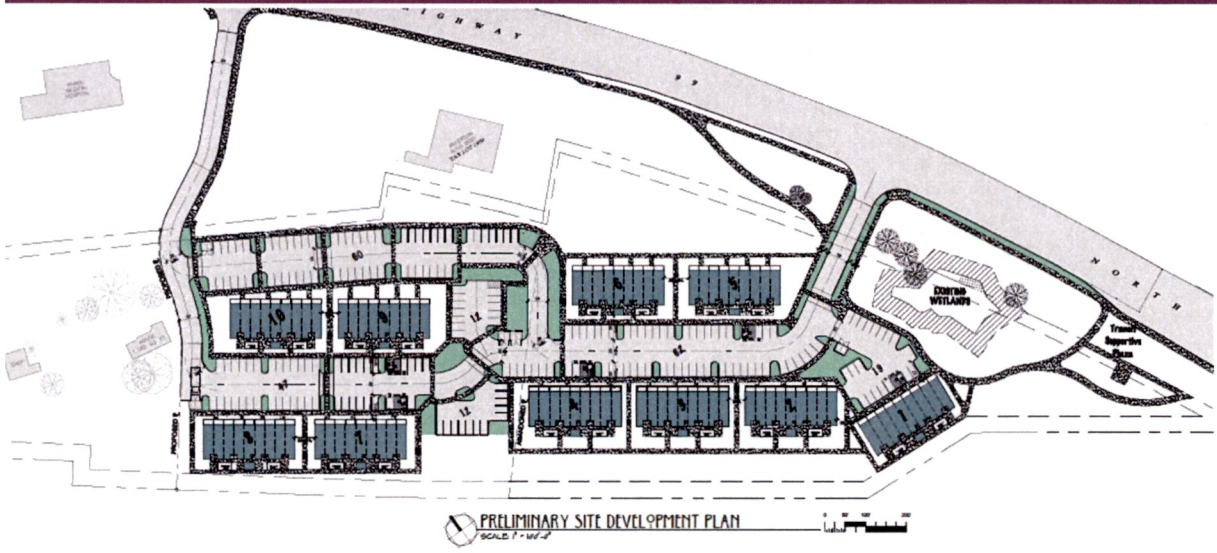
On-Street Parking Exception & Affordable Unit Size Requirements

PA-T3-2019-00001 Annexation	LUBA Appeal 2021-009	PA-T3-2002-00004	LUBA Appeal 2023-007
Approved 12/20	*Reversed 5/21*	*Approved 12/22.*	*Remanded 5/23*

Better Together

1511 Highway 99N
Site Design Review

CITY OF ASHLAND



1511 Highway 99N
Site Design Review – Front/Rear Elevations

CITY OF ASHLAND





1511 Highway 99N

Site Design Review – Front/Rear Elevations

CITY OF ASHLAND



SOUTHWEST EXTERIOR ELEVATION

SCALE: 1/8" = 1'-0"

0 2 4 8

1/8"=1'-0"

NOTE: SEE A2.0 FOR EXTERIOR FINISHES AND FINISH KEY



NORTHEAST EXTERIOR ELEVATION

SCALE: 1/8" = 1'-0"

0 2 4 8

1/8"=1'-0"

NOTE: SEE A2.0 FOR EXTERIOR FINISHES AND FINISH KEY

HVAC COMPRESSOR BANKS CONCEALED BEHIND LANDSCAPING

1511 Highway 99N

Site Design Review – Side Elevations

CITY OF ASHLAND



NOTE: SEE A2.0 FOR EXTERIOR FINISHES AND FINISH KEY

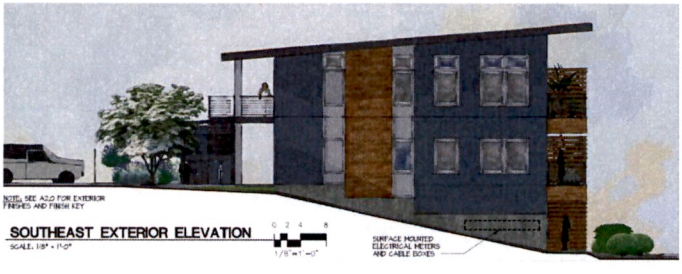
NORTHWEST EXTERIOR ELEVATION

SCALE: 1/8" = 1'-0"

0 2 4 8

1/8"=1'-0"

SURFACE MOUNTED ELECTRICAL METERS AND CABLE BOXES



NOTE: SEE A2.0 FOR EXTERIOR FINISHES AND FINISH KEY

SOUTHEAST EXTERIOR ELEVATION

SCALE: 1/8" = 1'-0"

0 2 4 8

1/8"=1'-0"

SURFACE MOUNTED ELECTRICAL METERS AND CABLE BOXES

1511 Highway 99N

Site Review – Transit Supportive Plaza

CITY OF ASHLAND



Bus pull-out lane, Bus Stop & Transit Supportive Plaza

1511 Highway 99N

Site Design Review – Southern Driveway

CITY OF ASHLAND



Grand Terrace Annexation

LUBA REMAND ISSUES

The city erred in approving an Exception to the on-street parking requirements in AMC 18.3.9.060

- ❑ Performance Standards require one on-street space/unit.
- ❑ Approval granted an Exception to this standard, where a Variance should have been required.

That the affordable unit sizes as approved do not comply with AMC 18.5.8.050.G.3

- ❑ Affordable studio-units are to be at least 350 square feet *(Studios proposed were 250 square feet.)*
- ❑ Affordable one-bedroom units are to be at least 500 square feet. *(One-bedrooms proposed were 499.5 square feet..)*

Better Together

REMAND ISSUE #1

On-Street Parking Exception

AMC 18.3.9.060 *All development under this chapter shall conform to the following parking standards, which are in addition to the requirements of chapter 18.4.3, Parking, Access, and Circulation.*

*A. **On-Street Parking Required.** At least one on-street parking space per dwelling unit shall be provided, in addition to the off-street parking requirements for all developments in an R-1 zone, with the exception of cottage housing developments, and for all developments in R-2 and R-3 zones that create or improve public streets.*

*B. **On-Street Parking Standards.** On-street parking spaces shall be immediately adjacent to the public right-of-way on publicly or association-owned land and be directly accessible from public right-of-way streets. On-street parking spaces shall be located within 200 feet of the dwelling that it is intended to serve. In addition, on-street public* parking may be provided pursuant to minimum criteria established under subsection 18.4.3.060.A.

Better Together

REMAND ISSUE #1

On-Street Parking Exception

- No Variance or Exception to the on-street requirement was requested as part of the application.
- Planning Commission determined that AMC 18.3.9.060 was applicable, that an Exception to the Street Design Standards was the appropriate procedure if on-street parking could not be provided, and that such an Exception was merited.
- New Climate-Friendly and Equitable Communities (CFEC) rules were adopted in July of 2022 by the Land Conservation and Development Commission (LCDC) in response to Executive Order #20-04 by Governor Kate Brown.
- These CFEC rules delineate how cities may regulate a variety of land use and transportation issues, including a number of changes to the ways cities may regulate parking, going forward.

Among the new CFEC rules:

REMAND ISSUE #1

On-Street Parking Exception

- After January 1, 2023, the Climate-Friendly & Equitable Communities rules prevent cities from enforcing existing *off-street* parking mandates within ½-mile of frequent transit.
- Cities may not require more than one parking space (on- or off-street) for multi-family residential units.
- **Cities may not require *parking* for units less than 750 square feet or for affordable units.**
- Cities are to implement the new CFEC parking rules for development applications submitted after December 31, 2022.
- Cities may modify ordinances or implement directly from the new rules. Pending ordinance modifications, Ashland is implementing directly from the new rules.

REMAND ISSUE #1

On-Street Parking Exception

- Grand Terrace application submitted July 8, 2022 but remains in process now, 15 months after submittal and ten months after new rules are in place.
- LUBA remand for further review now, before City decision is final, is occurring after the new regulations were implemented.
- Final Plan approval, the second step in the two-step development application process, is still required before site development occurs. At Final Plan, the applicant could apply to modify the approval by removing all parking, and under the CFEC rules there would be no basis by which the city could require parking.

REMAND ISSUE #1

On-Street Parking Exception

- ORS 197.307(4) requires local governments to adopt & apply only clear and objective standards, conditions *and procedures* in regulating housing, particularly **needed housing**.
- Planning Commission found that the parking rules having changed so that the applicant was subject to parking requirements for one part of a two-part application and no parking requirements for the second-part of the application process for the same needed housing project was not a clear and objective procedure.
- Similarly, the Planning Commission found that a city-imposed on-street parking requirement to install parking on a state facility *(which is outside the city's control)* where the state does not allow on-street parking creates a direct conflict that the applicant could not resolve without unreasonable cost or delay, and as such the on-street parking requirement should not be applied here.

REMAND ISSUE #2

Affordable Unit Size Requirements

- Original application identified each of the 10 identical buildings proposed as containing 20 one-bedroom units of 499.5 square feet each, and three studio units of 250 square feet each.
- Two of these ten buildings were to be relied on in meeting the affordability requirement that a total of 38 deed restricted affordable units be provided (assuming that the applicant either builds the units themselves or does so in cooperation with a non-profit affordable housing provider partner).
- AMC 18.5.8.050.G.3 requires that the minimum square footage for affordable one-bedroom units be 500 square feet, and that the minimum square footage for affordable studios be 350 square feet.

REMAND ISSUE #2

Affordable Unit Size Requirements

- The adopted conditions relating to affordability are:

Condition #7e. *[That prior to final approval and annexation of the property, the applicant shall provide:]* A deed restriction agreement that development of the property **shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G** including that where the required number of affordable units is fractional it shall be rounded up, and that should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI.

Condition #10g. If the applicant opts to dedicate land area to a non-profit affordable housing developer, dedication shall occur in a manner consistent with AMC 18.5.8.050.G.2 and recording of deed restrictions guaranteed affordability described herein shall occur in conjunction with plat signature and recording.

REMAND ISSUE #2

Affordable Unit Size Requirements

The City's approval was remanded by LUBA on the basis "**That the affordable unit sizes as approved do not comply with AMC 18.5.8.050.G.3 which requires that affordable studios be a minimum of 350 square feet and that affordable one-bedroom units be a minimum of 500 square feet."** In response to this issue, the applicant has provided a revised floor plan demonstrating how the one-bedroom units could be modified by reducing their recessed entry depth by 3-inches in order to achieve the required 500 square feet per affordable one-bedroom unit.

- **AS PROPOSED:** 12.5 x 42 = 525 square feet less 25.98 square feet for recessed entry = 499.02 square feet.
- **AS MODIFIED:** 12.5 x 42 = 525 square feet less 24.8975 feet for recessed entry = 500.1025 square feet.

In addition, the applicant notes that affordable basement level studios could be modified to be 499.5 square feet to significantly exceed the required 350 square feet per affordable studio unit requirement.

REMAND ISSUE #2

Affordable Unit Size Requirements

- Staff note that the affordability requirement for this project calls for 38 affordable units to be provided. Each building proposed has 20 one-bedroom units and 3 studios (i.e. 23 units).
- Assuming that two buildings will be developed by an affordable housing provider partner or the applicant themselves, the 38 required affordable units could be accommodated entirely with one-bedroom units, leaving one one-bedroom unit and three studios in each of the two buildings to be rented at market rate or provided as voluntarily affordable *(i.e. not deed-restricted and not subject to the square footage requirements of AMC 18.5.8.050.G.3.).*
- Staff believe that the second remand issue can be fully addressed by increasing the size of the one-bedroom units by a *de minimis* amount to comply with AMC 18.5.8.050.G.3 and making clear that as configured in the original proposal the studio units need not be considered among the required affordable units. If this approach is satisfactory to the Council, the Planning Commission has recommended that Condition #7e be slightly modified as follows:

REMAND ISSUE #2

Affordable Unit Size Requirements

Modified Condition #7e. *[That prior to final approval and annexation of the property, the applicant shall provide:]* A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that**:** **1)** where the required number of affordable units is fractional it shall be rounded up, **2) ~~and~~** that should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI**, and 3) that each of the required affordable units comply with the minimum affordable units size requirements of AMC 18.5.8.050.G.3, with one bedroom affordable units being a minimum of 500 square feet, and affordable studio units being a minimum of 350 square feet.**

If the Council accepts the approaches outlined above for both of the remand issues, the Planning Commission's findings could be adopted as draft findings and bring them back to the September meeting for adoption.

One last note:

The applicant has asked that Council not consider any potential fee waiver at this time, and as such Councilors can disregard that request.

ANY QUESTIONS?



Grand Terrace Remand

City Council
Limited Public Hearing
October 10, 2023

ROGUE ADVOCATES

Advocating for a livable and sustainable
Rogue Valley through responsible land use

October 3, 2023

Ashland City Council
Filed via email: council@ashland.or.us, derek.severson@ashland.or.us

RE: Land Use Board of Appeals (LUBA) Remand of PA-T3-2022-00004, 1511 Highway 99 North "Grand Terrace" Annexation Approval

Dear Ashland City Council,

Rogue Advocates is a land use advocacy organization with members in Ashland. We are supportive of Ashland's goal of increasing the availability of affordable housing as well as Ashland's longstanding efforts to accomplish their housing goals while emphasizing reduced dependency on the automobile and while improving conditions for walking, cycling and transit.

Rogue Advocates, as the petitioner in the appeal of Ashland's approval of Grand Terrace, submits the below comments for your consideration during these remand proceedings. The below comments are intended to supplement earlier comments made before the Planning Commission.

I. First Assignment of Error, Second Subassignment - AMC 18.3.9.060.A

Under petitioner's assignment of error here, LUBA found that:

> *The city does not dispute that the city council erred in approving an exception to the requirement for on-street parking in AMC 18.3.9.060(A). Instead, in the respondent's*

BOARD MEMBERS
Jamie Talarico Jimmy MacLeod Steve Rouse Hugo Hamblin-Agosto Pepper Trail Robin Elliott
RogueAdvocates.org * 541-846-1083 * PO Box 624 Ashland, OR 97520

> *brief the city argues that "under Oregon's Equitable Communities and Climate Friendly Act of 2023, as of January 1, 2023, cities within Oregon's [eight] Metropolitan Planning Organizations (MPOs), including the City of Ashland, can no longer require more tha[n] one parking space per multi-family unit."*

LUBA goes on to conclude that:

> *Because the challenged decision was made in December 2022, we agree with petitioner the legislation does not apply to Casita's application. The city may or may not be correct that the legislation prevents it from requiring more than one parking space per multi-family unit and that, on remand, it will be unable to apply the requirement for on-street parking in AMC 18.3.9.060(A). However, the city does not develop that argument sufficiently for our review in the respondent's brief. We will therefore not conclude that the issue of whether the city council improperly construed AMC 18.3.9.060(A) is moot.*

On remand, the city must show how the Climate-Friendly and Equitable Communities (CFEC) legislation prevents it from requiring more than one parking space per multi-family unit as per AMC 18.3.9.060.A.

The city states that OAR 660-012-0012(5)(e) requires cities and counties to *"implement the requirements of OAR 660-012-0430 and 660-012-0440 when reviewing development applications submitted after December 31, 2022.*" The city then describes the Final Plan review process under the city's Performance Standards Option, asserting that (the December, 2022 Grand Terrace approval) *"remains in process... after these new CFEC rules have taken effect."* The city further asserts that *"prior to the physical development of the site, another development application for Final Plan approval will be required at which time the applicant will not be subject to (AMC 18.3.9.060.A) parking requirements"* and that *"the Planning Commission and Council have the discretion to assess the current request based on the new CFEC rules."*

We believe that the city's above claims are without merit. Firstly, the Grand Terrace annexation is not "in process." Final approval of the application occurred on December 20, 2022. The CFEC rules are applicable to applications submitted after December 31, 2022, not applications that have been approved before that date. Oregon law requires that "*approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.*" [ORS 227.178(3)(a)] The plain language of the CFEC legislation [OAR 660-012-0012(5)(e)] renders the CFEC rules inapplicable to the city's December, 2022 approval.

Secondly, AMC 18.3.9.060.A is not rendered "moot" through the Final Plan approval process, which serves only to verify "substantial conformance with the outline plan." [AMC 18.3.9.040.B.5] There is nothing within the final plan approval criteria that requires a reevaluation of Outline Plan criteria under AMC 18.3.9.060.

The city has failed to show how AMC 18.3.9.060.A is rendered "moot" by legislation that went into effect after the city's approval (as instructed through LUBA's remand) and the city's approval of an exception to the parking standards under AMC 18.3.9.060.A was therefore unlawful.

II. Fourth Assignment of Error, Second Subassignment - AMC 18.5.8.050.G.3

In response to Rogue Advocates argument under this assignment of error, the city argued the following in their response brief:

> *Petitioner argues Applicant failed to meet the minimum square footage required for affordable housing units, as established by the table provided in Respondent's AMC 18.5.8.050.G.3 (500 square feet for one bedroom units; and 350 square feet for studio units).*

> *At the time Applicant submits its Final Plan application for review and approval by Respondent, Applicant will be required to comply with the 500 sq. ft. minimum floor area for one-bedroom units, and the 350 sq. ft. minimum floor area for studio units. In adopting its findings for Planning Action PA-T-3-2022-00004, the Council approved Applicant's initial Outline Plan. Applicant's Final Plan application submitted to Respondent will be required to meet the conditions of approval included in the final decision of Respondent's Council with respect to the minimum square footage required by Respondent's code.*
>
> *Applicant's Final Plan submittal will be required to demonstrate that the affordable housing units meet the units sizes required by 18.5.6.050.G* (sic). *The 499 square foot units proposed in the Application can readily be enlarged to 500 square feet within the proposed building floor areas, and Respondent anticipates Applicant can easily make the required adjustments which, like other relevant conditions will be required to comply with City's code at the time of Final Plan approval.*

The city's above argument was reiterated at oral argument before LUBA; i.e.:

> *"The Final Plan application must comply with the minimum square footage requirements established by the Respondent's AMC 18.5.8.050.G."*

The city's above position with respect to Final Plan approval served as the basis for remand under this assignment of error. LUBA's remand gave the city an opportunity to identify a provision (or a condition of approval) that requires Applicant to demonstrate compliance with AMC 18.5.8.050.G.3 at the Final Plan approval stage. The identification of such a provision is necessary under remand because, as stated by LUBA: "We are aware of none."

The city has identified no such provision or condition of approval. Rather, the city now seeks to impermissibly alter their final approval by approving a different application.

OAR 661-010-0071 requires reversal of a decision that violates a provision of applicable law. The city's December, 2022 final decision - the subject of these remand proceedings - violated AMC 18.5.8.050.G.3 because the Applicant's Outline Plan did not comply with the minimum square footage requirements therein. And, contrary to the city's arguments before LUBA, there are no provisions - within Final Plan approval criteria or otherwise - that force such compliance.

Respectfully submitted,



Craig Anderson
Member, Rogue Advocates

[redacted]

RECEIVED
OCT 03 2023
By

Study Sessions

Speaker Request Form

THIS FORM IS A PUBLIC RECORD
ALL INFORMATION PROVIDED WILL BE MADE AVAILABLE TO THE PUBLIC

THOSE INTERESTED IN GIVING ORAL TESTIMONY AT A COUNCIL MEETING WILL NEED TO:

1) Complete this form, including the topic you want to speak on and send to the City Recorder: mailto:melissa.huhtala@ashland.or.us
2) Begin the oral testimony during the meeting by stating your name for the record.
3) Limit your comments to the amount of time given to you by the Mayor, usually 3 or 5 minutes.
4) If you present written materials, please email a copy of the materials with this form to the City Recorder for the record.
5) Speakers are solely responsible for the content of their public statement.

Meeting Date 10/3/23

Name Janet Bell

[redacted]

Study Session

Agenda topic/item number/Topic new shelter @ 2222 Ashland St

The Public Meeting Law requires that all city meetings are open to the public. Oregon law does not always require that the public be permitted to speak.

Comments and statements by speakers do not represent the opinion of the City Council, City Officers or employees or the City of Ashland.

Speaker Request Form

THIS FORM IS A PUBLIC RECORD
ALL INFORMATION PROVIDED WILL BE MADE AVAILABLE TO THE PUBLIC

1) Complete this form and return it to the City Recorder **prior to the discussion of the item you wish to speak about.**
2) Speak to the City Council from the table podium microphone.
3) State your name and address for the record.
4) Limit your comments to the amount of time given to you by the Mayor, usually 3 or 5 minutes.
5) If you present written materials, please give a copy to the City Recorder for the record.
6) You may give written comments to the City Recorder for the record if you do not wish to speak. (Comments can be added to the back of this sheet if necessary)
7) Speakers are solely responsible for the content of their public statement.

Tonight's Meeting Date 10/3/23

Name Kelly Mariotalli

[redacted]

Regular Meeting

Agenda topic/item number_____ **OR**

Topic for public forum (non agenda item) Telecomm Ordinance

Land Use Public Hearing

Please indicate the following:

For:_____ **Against:**_____

Challenge for Conflict of Interest or Bias

If you are challenging a member (a city councilor or a planning commissioner) with a conflict of interest or bias, please write your allegation complete with supporting facts on this form and deliver it to the clerk immediately. The Presiding Officer will address the written challenge with the member. Please be respectful of the proceeding and do not interrupt. You may also provide testimony about the challenge when you testify during the normal order of proceedings.

Written Comments/Challenge:_____

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7) Speakers are solely responsible for the content of their public statement.

Tonight's Meeting Date 10/3/23

Name PAUL MOZINA

[redacted]

Regular Meeting

Agenda topic/item number_____ **OR**

Topic for public forum (non agenda item) ROW ordinance

Land Use Public Hearing

Please indicate the following:
For:_____ **Against:**_____

Challenge for Conflict of Interest or Bias

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Written Comments/Challenge:_____

_____

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7) Speakers are solely responsible for the content of their public statement.

Tonight's Meeting Date Oct 3

Name Debbie Neiselwander

[redacted]

Regular Meeting

Agenda topic/item number_____ **OR**

Topic for public forum (non agenda item) Dusk to Dawn Site

Land Use Public Hearing

Please indicate the following:
For:_____ **Against:**_____

Challenge for Conflict of Interest or Bias

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7) Speakers are solely responsible for the content of their public statement.

Tonight's Meeting Date Oct 3

Name BARRY THALDEN

[redacted]

Regular Meeting

Agenda topic/item number VI **OR** DEQ Railyard

Topic for public forum (non agenda item) _____

Land Use Public Hearing

Please indicate the following:
For: _____ **Against:** _____

Challenge for Conflict of Interest or Bias

If you are challenging a member (a city councilor or a planning commissioner) with a conflict of interest or bias, please write your allegation complete with supporting facts on this form and deliver it to the clerk immediately. The Presiding Officer will address the written challenge with the member. Please be respectful of the proceeding and do not interrupt. You may also provide testimony about the challenge when you testify during the normal order of proceedings.

Written Comments/Challenge: _____

_____

_____

_____

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CITY OF ASHLAND
Better Together

A PROCLAMATION ON INDIGENOUS PEOPLE'S DAY 2023

WHEREAS, the United States endorsed the Rights of Indigenous Peoples on December 16, 2010 and recognizes that Indigenous People have suffered from historic injustices as a result of their colonization and dispossession of their lands, territories and resources,

WHEREAS, we recognize that Ashland is built on the ancestral homeland of the Ikirakutsum Band of the Shasta Nation, and we honor the Takelma, Athabaskan, and Shasta tribes with ancestral lands in and surrounding the geography of the Ashland watershed and gave bearing to future settlements that would become Ashland and,

WHEREAS, Indigenous people were forcibly removed from ancestral lands, displaced, assimilated, and banned from worshipping or performing many sacred ceremonies and yet they remain some of our greatest environmental stewards,

WHEREAS, we recognize the value of many contributions made to our community through Indigenous Peoples' knowledge, labor, spirituality, philosophy, arts, and cultural contributions and,

WHEREAS, we have responsibility to oppose the systemic racism toward Indigenous Peoples which perpetuates income inequality, disproportionate health, education, and social stability,

WHEREAS, on Indigenous People's Day, we celebrate Indigenous history and honor Native Americans for shaping the contours of this country since time immemorial.

NOW, THEREFORE, I, Tanya Graham, Mayor of the City of Ashland, Oregon, on behalf of the City Council, do hereby proclaim October 9, 2023, as Indigenous Peoples Day and call upon the people of Ashland to observe this day with appropriate reflection and learning and to continue our efforts to create a more just and equitable community. In Ashland we are Better Together.

Dated this 3rd day of October 2023

Tonya Graham

Tonya Graham, Mayor

Dana Smith

Dana Smith, Clerk of the Council Pro Tem

Better Together