



# **CITY OF OREGON CITY**

## **CITY COMMISSION SPECIAL MEETING - REVISED AGENDA**

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**Commission Chambers, Libke Public Safety Facility, 1234 Linn Ave, Oregon City**  
**Monday, October 17, 2022 at 7:00 PM**

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### **SPECIAL MEETING OF THE CITY COMMISSION**

*Ways to participate in this public meeting:*

- *Attend in person, location listed above*
- *Register to provide electronic testimony (email [recorderteam@orcity.org](mailto:recorderteam@orcity.org) or call 503-496-1509 by 3:00 PM on the day of the meeting to register)*
- *Email [recorderteam@orcity.org](mailto:recorderteam@orcity.org) (deadline to submit written testimony via email is 3:00 PM on the day of the meeting)*
- *Mail to City of Oregon City, Attn: City Recorder, P.O. Box 3040, Oregon City, OR 97045*

#### **1. CONVENE MEETING AND ROLL CALL**

#### **2. FLAG SALUTE**

#### **3. CEREMONIES AND PROCLAMATIONS**

[3a.](#) Oregon City - West Linn Rivalry Day Proclamation

[3b.](#) Extra Mile Day Proclamation

#### **4. CITIZEN COMMENTS**

*Citizens are allowed up to 3 minutes to present information relevant to the City but not listed as an item on the agenda. Prior to speaking, citizens shall complete a comment form and deliver it to the City Recorder. The City Commission does not generally engage in dialog with those making comments but may refer the issue to the City Manager. Complaints shall first be addressed at the department level prior to addressing the City Commission.*

#### **5. PRESENTATIONS**

#### **6. ADOPTION OF THE AGENDA**

#### **7. CONSENT AGENDA**

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*This section allows the City Commission to consider routine items that require no discussion and can be approved in one comprehensive motion. An item may only be discussed if it is pulled from the consent agenda.*

[7a.](#) Oregon Patrol Service Amendment

[7b.](#) Minutes of the August 9, 2022 Special Meeting

[7c.](#) Minutes of the August 17, 2022 Regular Meeting

[7d.](#) Minutes of the September 13, 2022 Work Session

[7e.](#) Minutes of the September 27, 2022 Special Meeting

## **8. PUBLIC HEARINGS**

[8a.](#) Appeal of the Park Place Crossing General Development Plan (AP-22-00003; GLUA-21-00045; MAS-21-00006; VAR-22-00001)

## **9. GENERAL BUSINESS**

## **10. COMMUNICATIONS**

**City Manager**

**Commissioners**

**Mayor**

## **11. ADJOURNMENT**

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### **PUBLIC COMMENT GUIDELINES**

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*Complete a Comment Card prior to the meeting and submit it to the City Recorder. When the Mayor/Chair calls your name, proceed to the speaker table, and state your name and city of residence into the microphone. Each speaker is given three (3) minutes to speak. To assist in tracking your speaking time, refer to the timer on the table.*

*As a general practice, the City Commission does not engage in discussion with those making comments.*

*Electronic presentations are permitted but shall be delivered to the City Recorder 48 hours in advance of the meeting.*

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### **ADA NOTICE**

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*The location is ADA accessible. Hearing devices may be requested from the City Recorder prior to the meeting. Individuals requiring other assistance must make their request known 48 hours preceding the meeting by contacting the City Recorder's Office at 503-657-0891.*

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***Agenda Posted at City Hall, Pioneer Community Center, Library, City Website.***

***Video Streaming & Broadcasts: The meeting is streamed live on the Oregon City's website at [www.orcity.org](http://www.orcity.org) and available on demand following the meeting. The meeting can be viewed on Willamette Falls Television channel 28 for Oregon City area residents as a rebroadcast. Please contact WFMC at 503-650-0275 for a programming schedule.***

# P R O C L A M A T I O N

## “Oregon City - West Linn Rivalry Day”

**Whereas**, the Cities of Oregon City and West Linn wish to recognize the efforts of their citizens to create and maintain a positive family environment where children can learn the value of constructive competition; and

**Whereas**, the Cities of Oregon City and West Linn value tradition and history as essential parts of their communities; and

**Whereas**, Oregon City High School and West Linn High School, formerly known as Union High School, have competed valiantly in the sport of football continuously since 1921 (except during the pandemic of 2020); and

**Whereas**, on October 28, 2022, the teams representing these schools will renew their annual rivalry for the 102nd time; and

**Whereas**, this is the longest continuously-played rivalry west of the Mississippi and therefore worthy of recognition; and

**Whereas**, the City Commission of Oregon City desires that the Pioneers again defeat the Lions and the City Council of West Linn desires that the Lions again defeat the Pioneers.

**Now Therefore**, we, the City Commission of Oregon City and the City Council of West Linn, hereby recognize and commend all citizens who have participated in this annual gridiron classic, and support the efforts of the current teams by proclaiming October 28, 2022, to be “Oregon City-West Linn Rivalry Day.” We further recommend, in the spirit of the day, that all citizens wear clothing of the appropriate colors, and refrain from crossing the river, unless business requires, until game time.

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The Honorable Denyse McGriff, Mayor  
City of Oregon City

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The Honorable Jules Walters, Mayor  
City of West Linn

October 2022



# PROCLAMATION

**Whereas,** Oregon City, Oregon is a community which acknowledges that a special vibrancy exists within the entire community when its individual citizens collectively “go the extra mile” in personal effort, volunteerism, and service; and

**Whereas,** Oregon City, Oregon is a community which encourages its citizens to maximize their personal contribution to the community by giving of themselves wholeheartedly and with total effort, commitment, and conviction to their individual ambitions, family, friends, and community; and

**Whereas,** Oregon City, Oregon is a community which chooses to shine a light on and celebrate individuals and organizations within its community who “go the extra mile” in order to make a difference and lift up fellow members of their community; and

**Whereas,** Oregon City, Oregon acknowledges the mission of the Extra Mile America to create 550 Extra Mile cities in America and is proud to support “Extra Mile Day” on November 1, 2022.

**Now, Therefore,** I, Denyse C. McGriff, Mayor of Oregon City, do hereby proclaim

November 1, 2022

as

Extra Mile Day

**And** encourage Oregon City citizens to take time on this day to not only “go the extra mile” in his or her own life, but to also acknowledge all those who are inspirational in their efforts and commitment to make their organizations, families, community, country, or world a better place.

**In Witness Whereof,** I have hereunto set my hand this 17<sup>th</sup> day of October 2022.

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DENYSE C. MCGRIFF, Mayor



# CITY OF OREGON CITY

## Staff Report

625 Center Street  
Oregon City, OR 97045  
503-657-0891

**To:** City Commission  
**From:** Parks and Recreation Director, Kendall Reid

**Agenda Date:** 10/17/2022

### SUBJECT:

Oregon Patrol Service Amendment

### STAFF RECOMMENDATION:

Staff recommend City Commission approve amendment to add End of the Oregon Trail and Library to existing patrol and extend agreement through the end of the fiscal year.

### BACKGROUND:

In Winter of 2022, the city identified the need to have patrols throughout several park locations to help minimize problems happening in the parks after hours. Through the City's current contract, additional facilities have been identified as needed service patrol as well as extension of contract. The current patrol has resulted in a decrease in park vandalism and unwarranted after-hours park use. Therefore, the positive result of security patrol warrants an extension of the existing contract.

### OPTIONS:

1. Approve Oregon Service Patrol amendment as presented
2. Approve Oregon Service Patrol amendment with specific modifications
3. Deny amendment. If Commission chooses to deny contract, staff request direction on how to proceed.

### BUDGET IMPACT:

Amount: \$50,562.00

FY(s): 2022-2023

Funding Source(s): Professional Services

**CITY OF OREGON CITY**  
**Amendment No. 1 to Personal Services Agreement**

**SECURITY PATROL**

This is an Amendment to the Personal Services Agreement by and between the City of Oregon City (hereinafter City), and **Oregon Patrol Service**, hereinafter called "PS Contractor," which was previously entered into on **May 18, 2022** ("Contract") for **SECURITY PATROL – OREGON CITY PARKS** and Whereas, the parties wish to amend the Contract as set forth below:

**WITNESSETH:**

1. The **Scope of Work** is hereby amended as follows:

The Scope of Work under this agreement shall include additional services as detailed in the Oregon Patrol Agreement for Security Services, attached hereto and by this reference incorporated herein.

2. The **Duration of Contract** is hereby amended as follows:

The expiration of this contract is extended from September 30, 2022 to June 30, 2023.

3. The **Payment Provisions** are hereby amended as follows:

For provision of revision of fee schedule described above, the contract price shall be increased by an amount not to exceed **fifty thousand, five hundred sixty-two and 00/100 dollars (\$50,562.00)**. The total not to exceed amount of the Agreement shall be **sixty-eight thousand, five hundred twenty-two and 00/100 dollars (\$68,522.00)**.

All other provisions of the Personal Services Agreement referenced above shall remain in full force and effect.

**CITY OF OREGON CITY**

**OREGON PATROL SERVICE**

By: \_\_\_\_\_

Kendall Reid

Title: Parks and Recreation Director

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

By: \_\_\_\_\_

Anthony J. Konkol, III

Title: City Manager

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

Date Authorized by Commission, if applicable:

\_\_\_\_\_

Document1



## *Agreement for Security Services*

*Presented to*

**Jonathan Waverly**  
*Parks and Cemetery Maintenance Manager*

**City of Oregon City**  
625 Center Street  
Oregon City, OR 97045



*Respectfully Submitted by:*

**Laurie Sutherby**  
President, Director of Security Operations

**OREGONPATROL SERVICE**

County Patrol Service OR, LLC.

5/18/2022

Dear Jonathan,

Please find our Service Agreement which follows below, for your request to service your specified parks in Oregon City, Oregon. This document is to be included in the Agreement packet as it specifies the Park's locations and scope of service provided for each.

We look forward to starting this new support service with the City of Oregon City and expect to have a very successful service season starting 6/1/22. Please sign and return to me and I will return the signature page for both our files.

Laurie M. Sutherby  
President, *Director of Security Operations*



***A NEW Standard...A BETTTER Choic***





## AGREEMENT FOR SECURITY SERVICES

This Agreement for *Professional Security Services* (the "Agreement"), entered into October 1st, 2022 is by and between County Patrol Service Oregon, LLC, dba **Oregon Patrol Service**, a domestic limited liability company, licensed by the Secretary of State of Oregon Corporation Division as a **Security Guards & Patrol Services Provider**, with its principal office at 4120 SE International Way, Ste. A-110, Milwaukie, OR 97222 (hereinafter "OREGON PATROL SERVICE" or "OPS"), and **City of Oregon City, Oregon** (hereinafter "the CLIENT") located at 625 Center St. Oregon City, OR 97045.

### 1 SERVICES

**1.a** General Services to Client: OREGON PATROL SERVICE shall provide the following service to the Client: Nightly Patrol, Lockup & Unlock Service to restroom facilities at City of Oregon City Parks, specifically located at:

1. **Jon Strom Park**  
1801 Clackamette Dr. Oregon City, OR 97045
2. **Clackamette Park**  
1955 Clackamette Dr. Oregon City, OR 97045
3. **VFW Parking lot**  
104 Tumwater Dr. Oregon City, OR 97045
4. **Old Canemah Park**  
300 3<sup>rd</sup> Ave. Oregon City, OR 97045
5. **Canemah Children's Park**  
815 4<sup>th</sup> Ave. Oregon City, OR 97045
6. **Rivercrest Park**  
131 Park Dr. Oregon City, OR 97045
7. **Chapin Park**  
340 Warner Parrott Rd. Oregon City, OR 97045
8. **Hillendale Park**  
19260 Clairmont Way Oregon City, OR 97045
9. **Wesley Lynn Park**  
12901 Frontier Pkwy Oregon City, OR 97045
10. **Tyrone Woods Memorial Park**  
14520 Meyers Rd. Oregon City, OR 97045

and is to include restroom structure "out-buildings", "Porta-potties", constructed restroom buildings and rented or city-owned facilities under the care and control of the Client at the above address(es), but not including *Public Property* such as sidewalks, streets, public wooded areas, private residences, non-client commercial establishments, or any other areas prohibited by law and/or not under legal control of the Client.

Specifics of services provided are as follows:

- Provide security check, restroom lockup and unlock of the above-described park locations, **2x Nightly** between the hours of 2000-2200 for lock up and unlock of the restrooms between the hours of 0400-0600 from 6/1/2022 - 9/30/2022 for the prevention of property crimes and other crimes against the Client, which may include criminal mischief, making graffiti, larceny, burglary, criminal tampering, loitering/trespass, criminal trespass, and misapplication of property. The terms are limited to both real property and city-owned or rented property of the Client, so long as the property is located within the geographical areas listed in 1.a
- Alert/Liaison with law enforcement authorities of incidents as appropriate, per industry standard and company *Best Practices*.
- Transient, Homeless/Squatter, and Drug User dispersal as found, including Verbal/Written Trespass Warning notification if, and when necessary.
- Provide Client with patrol anomaly and incident reporting, upon incident occurrence via e-mail (“PAR”).
- Install Silvertrac QR data tracking codes at property for service verification and Client review.

**1.b.** General Services to Client: OREGON PATROL SERVICE shall provide the following service to the Client starting Monday, October 17, 2022:

**The patrol & protection of the Client properties located at End of Trail Interpretative Center (1726 Washington St., Oregon City, OR 97045) & Oregon City Public Library (606 John Adams St., Oregon City, OR 97045) facilities, landscaping & lawns, lots & fences and personal property under the care and control of the Client at the above addresses. The Agreement does not include service to or action upon *Public Property* such as sidewalks, streets, public wooded areas, nearby private residences, non-client commercial establishments & businesses, or any other area with private jurisdiction limited by statute, prohibition, common practice, and/or not under legal control of the Client.**

**1.c** Specifics of services provided are as follows:

- \* Provide a visible, random security patrol deterrent **2x Nightly Service** between the hours of 2000 – 0600, for property crimes and other crimes against the Client, which may include criminal mischief, making graffiti, larceny, burglary, criminal tampering, loitering/trespass, criminal trespass, and misapplication of property. The terms are limited to both real property and personal property of the Client, so long as the properties is located within the geographical area listed in Section 1.b.
- \* Full perimeter vehicle patrol, inspection of property border integrity, trash/recycling areas, landscaping, lots & greenspace, client-owned vehicles, porches/steps and walkways to all building entrances.
- \* Transient, Homeless/Squatter, and Drug User dispersal as found, including Verbal/Written Trespass Warning notification if, and when necessary.
- \* Alert/Liaison with law enforcement authorities of incidents as appropriate, per industry standard and company best practices.
- \* Provide Client with patrol anomaly and incident reporting, upon incident occurrence via e-mail (“PAR”).
- \* Install Silvertrac QR data tracking codes at property for service verification and Client review.
- \* Provide no-cost signage and window decals at service address for visual deterrence, at client request.

**Nothing shall be construed to suggest that OREGON PATROL SERVICE, its employees, agents, or security patrol officers are compelled, required, contracted, or willing to protect the life or property of other persons not specifically listed in this agreement.**



## 2 **PAYMENT, RETAINER, INVOICING TERMS AND COMMENCEMENT OF SERVICE**

**2.1 PAYMENT OF SERVICE:** OREGON PATROL SERVICE will be paid as follows:  
Client will receive an email invoice monthly from OREGON PATROL SERVICE, with payment made by business check to OREGON PATROL SERVICE. Mail to **4120 SE International Way A-110, Milwaukie, OR 97222**. Invoice is due upon receipt with Net 30, with payment in-full.

**2.2 OREGON PATROL SERVICE** will invoice the Client at a rate of:

Parks - \$4,490.00 per calendar month,  
EOT - \$659 per calendar month,  
Library - \$469 per calendar month,

as agreed by the client and OREGON PATROL SERVICE. Service is planned through June 30, 2023.

### **2.3 INVOICING & LATE PAYMENT POLICY**

Client will be invoiced monthly, on (or about) the first of the month, with payment due net 30 as specified above. If Client account has an unpaid invoice and no effort to remedy has been made, the client will be notified, and OREGON PATROL SERVICE may opt to suspend or discontinue service. Service Suspension and /or Non-payment of any invoice does not release the Client from any amount due at the time of termination.

### **2.4 COMMENCEMENT & TERMINATION OF SERVICE**

Parks services will continue from original Agreement, ending 10/1/22, through 6/30/23. Services for EOT and Library will commence on October 17, 2022 at 2000 and extend through June 30, 2023 at 0600, after which service may continue by mutual agreement pending service review at that time. Client agrees, in *Good Faith*, to notify OREGON PATROL SERVICE 14 days in advance of intent to continue service.

## 3 **CHANGES**

Client may request changes/modification to duties, within the general scope of Security Services, so long as such requests ("Change Order") are in writing. Some changes may be considered "additional work" (i.e., Patrol frequency) and outside the agreed upon initial scope of work agreed to herein and if accepted, may result in additional costs to the Client. Client acknowledges that such changes could affect the monthly cost of service to a new rate determined at the time of the change request, or for the period of time such change is requested.

#### 4 STANDARD OF CARE

OREGON PATROL SERVICE warrants that its services shall be performed by personnel possessing competency consistent with applicable industry standards, who are certified by the Department of Public Safety Standards & Training, State of Oregon, and have prior to appointment for employment at OREGON PATROL SERVICE, been subject to a comprehensive character & background investigation.

#### MISCELLANEOUS.

- 4.1** Independent Contractor: OREGONPATROLSERVICE is an independent contractor of Client.
- 4.2** Force Majeure: OREGONPATROLSERVICE shall not be responsible for delays or failures if such delay arises out of causes beyond its control. Such causes may include, but are not restricted to, acts of God, of the public enemy, fires, floods, epidemics, riots, quarantine restrictions, strikes, freight embargoes, electrical outages, computer or communications failures, and severe weather, and acts or omissions of subcontractors or third parties.
- 4.3** Final Invoice: A final invoice may be produced, if necessary, to itemize additional client-requested service, if applicable.
- 4.4** Commencement/Discontinuation of Service: Service will commence as follows: 2000 on October 17, 2022 and will continue as stated in this Agreement through June 30, 2023.

IN WITNESS whereof, the parties below have executed this Agreement, as of the day and year below:

**City of Oregon City, Oregon**

**OREGONPATROLSERVICE**

By: \_\_\_\_\_

By: \_\_\_\_\_

**Jonathan Waverly**  
Parks and Cemetery Maintenance Manager  
October 10, 2022

**Laurie Sutherby**  
President & Director of Security Operations  
October 10, 2022





# CITY OF OREGON CITY

## CITY COMMISSION SPECIAL MEETING

### DRAFT MINUTES

Commission Chambers, Libke Public Safety Facility, 1234 Linn Ave, Oregon City  
Tuesday, August 09, 2022 at 7:00 PM

#### SPECIAL MEETING OF THE CITY COMMISSION

#### 1. CONVENE MEETING AND ROLL CALL

*Commission President Denyse McGriff called the meeting to order at 7:07 PM.*

**PRESENT: 4 -** Commissioner Rocky Smith, Commissioner Adam Marl, Commissioner Denyse McGriff

**EXCUSED: 1 -** Commissioner Frank O'Donnell

**STAFFERS: 11 -** City Recorder Jakob Wiley, Community Development Director Aquilla Hurd-Ravich, Parks and Rec. Director Kendall Reid, Economic Development Director James Graham, Executive Asst. to the City Manager Lisa Oreskovich, Finance Director Matt Zook, Public Works Director John Lewis, Human Resources Director Patrick Foiles, Senior Planner Christina Robertson-Gardiner, Assistant City Engineer Josh Wheeler, Assistant City Recorder Angelique Nomie

#### 2. PUBLIC HEARINGS

- 2a. First Reading of Ordinance 22-1004, Amendments to Chapter 17.04 Definitions and Chapter 17.42 Flood Management Overlay District of the Oregon City Municipal Code (LEG 22-00002)

*Christina Robertson-Gardiner, Senior Planner, discussed the amendments to the code. The amendments were requested by FEMA as part of the city's Community Rating System (CRS) Program review. If the city did not approve and implement these code changes, the city would lose its status as a CRS community and insurance discounts would no longer be available. No public comments had been received.*

*Josh Wheeler, Assistant City Engineer, explained the CRS and reviewed the proposed code changes, floodplain overlay zone, rating and property owner discount, and impact.*

**Motion made by Commissioner Marl, seconded by Commissioner Smith, to approve the first reading of Ordinance 22-1004, Amendments to Chapter 17.04 Definitions and Chapter 17.42 Flood Management Overlay District of the Oregon City Municipal Code (LEG 22-00002). The motion carried by the following vote:**

**Voting Yea: Commissioner Marl, Commissioner McGriff, and Commissioner Smith**

**3. ADJOURNMENT**

*The meeting was adjourned at 7:18 PM.*

Respectfully submitted,

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Jakob S. Wiley, City Recorder



# CITY OF OREGON CITY

## CITY COMMISSION REGULAR MEETING

### DRAFT MINUTES

Commission Chambers, Libke Public Safety Facility, 1234 Linn Ave, Oregon City  
Wednesday, August 17, 2022 at 7:00 PM

#### REGULAR MEETING OF THE CITY COMMISSION

#### 1. CONVENE MEETING AND ROLL CALL

*Commission President McGriff called the meeting to order at 7:03 PM.*

**PRESENT: 3 -** Commissioner Denyse McGriff, Commissioner Rocky Smith, Commissioner Adam Marl

**EXCUSED: 1 -** Commissioner Frank O'Donnell

**STAFFERS: 10 -** City Manager Tony Konkol, City Recorder Jakob Wiley, Community Development Director Aquilla Hurd-Ravich, Asst. to the City Manager Lisa Oreskovich, Police Chief Jim Band, Finance Director Matt Zook, Library Director Greg Williams, Parks and Recreation Director Kendall Reid, Public Works Director John Lewis, Assistant City Recorder Angelique Nomie

#### 2. FLAG SALUTE

#### 3. CEREMONIES AND PROCLAMATIONS

#### 4. CITIZEN COMMENTS

*No citizen comments were provided.*

#### 5. PRESENTATIONS

##### 5a. Three Rivers VFW Post #1324 donation to the Oregon City Police Department

*Greg Arnold, Commander Veterans of Foreign War (VFW) Post #1324, discussed the donation for homeless veterans. He presented a check for \$5,000 to Police Chief Band.*

*Chief Band explained how the VFW had helped the city.*

#### 6. ADOPTION OF THE AGENDA

*The agenda was adopted as presented.*

#### 7. CONSENT AGENDA

**Motion made by Commissioner Smith, seconded by Commissioner Marl, to approve the consent agenda. The motion carried by the following vote:**

**Voting Yea: Commissioner Marl, Commissioner McGriff, and Commissioner Smith**

## City Commission Regular Meeting Minutes

August 17, 2022

- 7a. Website Design and Development Contract with CivicPlus
- 7b. Public Works Wastewater Division Property Acquisition Proposal
- 7c. Amendment to IT Managed Services Contract with Polar Systems
- 7d. Public Improvement Contract with T Bailey, Inc. for the Henrici Reservoir Rehabilitation Project (CI 21-017)
- 7e. Mayor's Monarch Butterfly Pledge
- 7f. Minutes of the July 25, 2016 Joint Work Session with the Planning Commission
- 7g. Minutes of the January 19, 2022 Regular Meeting
- 7h. Minutes for the May 4, 2022 Regular Meeting
- 7i. Minutes of the May 18, 2022 Regular Meeting

**8. PUBLIC HEARINGS**

- 8a. Resolution No. 22-29, Rescinding Resolution No. 13-27 and Adopting a New Oregon City Street Tree Species List

*Aquilla Hurd-Ravich, Community Development Director, gave a background on the resolution. The Natural Resources Committee (NRC) researched and reviewed the current street tree list. They recommended revising the list as well as making code changes. She then explained the recommendations and code change work plan.*

*There was consensus to review the list again in three years and to proceed with the proposed work plan to implement the recommended code changes.*

**Motion made by Commissioner Marl, seconded by Commissioner Smith, to approve Resolution No. 22-29, rescinding Resolution No. 13-27 and adopting a new Oregon City Street Tree Species List. The motion carried by the following vote:**

**Voting Yea: Commissioner Marl, Commissioner McGriff, and Commissioner Smith**

**9. GENERAL BUSINESS**

- 9a. Request for Leave of Absence by Commissioner O'Donnell

**Motion made by Commissioner Smith, seconded by Commissioner Marl, to approve the request for leave of absence by Commissioner O'Donnell up to 60 days. The motion carried by the following vote:**

**Voting Yea: Commissioner Marl, Commissioner McGriff, and Commissioner Smith**

- 9b. Clackamette Park Master Plan

*Kendall Reid, Parks and Recreation Director, introduced the consultants.*

## City Commission Regular Meeting Minutes

August 17, 2022

*Kurt Lango and Brian Martin from Lango Hansen Landscape Architects presented the Master Plan and answered questions raised at the previous work session.*

*There was discussion regarding queuing for the RV dump station, reducing the size of the current RV park, width of the pathways and access for large vehicles, using a different City-owned property for the dump station, and other options besides concrete.*

*There was consensus to remove the dump station from the plan. Staff would look into another site for the dump station, but it would be separate from this plan.*

**Motion made by Commissioner Marl, seconded by Commissioner McGriff, to approve the Clackamette Park Master Plan. The motion passed by the following vote:**

**Voting Yea: Commissioner Marl and Commissioner McGriff**

**Voting Nay: Commissioner Smith**

- 9c. Second Reading of Ordinance No. 21-1013, An Ordinance Withdrawing Territory from the Clackamas River Water District

*Commissioner Smith asked who collected the SDCs on the areas to be withdrawn.*

*Bill Kabeiseman, City Attorney, said if the property developed after annexation, the city would have collected the system development charges (SDCs). If it was developed prior to annexation, it was likely the SDCs went to Clackamas River Water.*

**Motion made by Commissioner Marl, seconded by Commissioner Smith, to approve the second reading and final adoption of Ordinance No. 21-1013, an ordinance withdrawing territory from the Clackamas River Water District. The motion carried by the following vote:**

**Voting Yea: Commissioner Marl, Commissioner McGriff, and Commissioner Smith**

- 9d. Second Reading of Ordinance 22-1004, Amendments to Chapter 17.04 Definitions and Chapter 17.42 Flood Management Overlay District of the Oregon City Municipal Code (LEG 22-00002)

**Motion made by Commissioner Smith, seconded by Commissioner Marl, to approve the second reading and final adoption of Ordinance 22-1004, Amendments to Chapter 17.04 Definitions and Chapter 17.42 Flood Management Overlay District of the Oregon City Municipal Code (LEG 22-00002). The motion carried by the following vote:**

**Voting Yea: Commissioner Marl, Commissioner McGriff, and Commissioner Smith**

## 10. COMMUNICATIONS

### 11. City Manager

*There were no communications from the City Manager.*

### 12. Commissioners

*There were no communications from City Commissioners.*

### 13. Mayor

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**14. ADJOURNMENT**

*Commission President McGriff adjourned the meeting at 8:02 PM.*

Respectfully submitted,

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Jakob S. Wiley, City Recorder





# CITY OF OREGON CITY

## CITY COMMISSION WORK SESSION

### DRAFT MINUTES

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**Commission Chambers, Libke Public Safety Facility, 1234 Linn Ave, Oregon City**  
**Tuesday, September 13, 2022 at 6:00 PM**

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#### CONVENE WORK SESSION AND ROLL CALL

*Commissioner McGriff convened the meeting at 6:08 PM.*

**PRESENT: 3 -** Commissioner Rocky Smith, Commissioner Adam Marl, Commissioner Denyse McGriff

**ABSENT: 1 -** Commissioner Frank O'Donnell

**STAFFERS: 13 -** City Manager Tony Konkol, City Recorder Jakob Wiley, Community Development Director Aquilla Hurd-Ravich, Police Chief James Band, Finance Director Matt Zook, Library Director Greg Williams, Public Works Director John Lewis, Human Resources Director Patrick Foiles, Economic Development Coordinator Ann Griffin, Senior Project Engineer Patty Nelson, Assistant City Recorder Angelique Nomie, Assistant Planner Jude Thaddaeus, Assistant Planner Molly Gaughran

*Aquilla Hurd-Ravich, Community Development Director, introduced Jude Thaddaeus and Molly Gaughran, new Assistant City Planners.*

#### FUTURE AGENDA ITEMS

##### 1. List of Future Work Session Agenda Items

*Tony Konkol, City Manager, discussed moving the October 19, 2022 City Commission meeting to October 17, 2022 due to two upcoming land use appeals.*

*Commissioner McGriff asked about the ODOT Diversion Traffic Report. John Lewis, Public Works Director, said it was not yet ready.*

*Commissioner McGriff suggested moving up the discussion about railroad quiet zone funding.*

*Commissioner McGriff suggested adding the component of employee-only parking to the discussion on parking rate issues.*

*Commissioner Marl asked about hiring an Assistant City Manager and City Arborist. Mr. Konkol confirmed this discussion was upcoming.*

*Commissioner McGriff asked about succession planning for her soon-to-be-vacant commission seat. Mr. Konkol suggested waiting for Clackamas County's election certification before adding this discussion item to the next available commission meeting.*

*Commissioner McGriff mentioned that she reached out to Oregon City's Economic Development Department with a suggestion regarding the spending plan for 2021 American Rescue Plan Act (ARPA) funding.*

*Tom Geil, resident of Oregon City, provided a brief public comment and suggested the events that transpired at the September 12, 2022 Planning Commission work session be discussed as soon as possible. Commissioner McGriff said the events would be discussed at the next City Commission meeting, since decisions could not be made at tonight's work session.*

## DISCUSSION ITEMS

### 2. Spending Plan for American Rescue Plan Act of 2021 (ARPA) Funding

*Matt Zook, Finance Director, presented updates to the spending plan for the ARPA of 2021. He mentioned that a contract to spend the funds must be in place by 2024 and that the funds must be spent by 2026.*

*Commissioner McGriff asked if items on the spending plan could be prioritized, specifically the Quiet Zone.*

*Commissioner Rocky Smith mentioned that elevator security enhancements only cover some of the security risks associated with city parks. He cited vandalism and suggested that other sites might need security enhancement.*

*Mr. Konkol clarified that elevator security enhancements included replacing the gate on the top of the elevator by McLoughlin Promenade.*

*Commissioner McGriff asked about updated security cameras near the elevator. Mr. Konkol said IT staff are working with Public Works to upgrade the cameras.*

*Mr. Konkol mentioned that the figures for city-wide essential employee pay were still in union negotiations.*

*Mr. Konkol highlighted the hold for unanticipated future opportunity line and proposed it remain in place until overruns for the recently implemented region-wide radio program are reconciled.*

*Commissioner Marl asked if the Broadband Feasibility Study was underway. Mr. Konkol said it was. He confirmed that the first four lines of the Spending Plan have already been allocated to the current biennial budget.*

*Commissioner Marl asked about updates to the Clackamette Park boat ramp and Cayuse Five tribute. Mr. Konkol replied that implementation to construct the boat ramp would take a while. He said there has been less pressure to fund the Cayuse Five Tribute due to partnership with other tribes and added that potential funding gaps between projection and actual cost should be easy to rectify.*

*Commissioner Marl asked about updates to the city website. Mr. Konkol said he believes the city is working on an RFP and that delays in the project are due to the resignation of the Communications Coordinator and the project falling on the IT department. He estimated a year for completion of the project.*

*Commissioner Marl asked about post-Covid reconfigurations to the library. Greg Williams, Library Director, confirmed that the \$75,000 allocated had not yet been spent but would be used for final post-Covid reconfigurations.*

*Commissioner McGriff recommended that approximately \$60,000 be allocated to work on the new Clackamas County Courthouse. She suggested that it was an opportunity for the city to gain some control over the old courthouse. She said the county is likely open to discussions about Oregon City's involvement in the courthouse.*

*Commissioner McGriff asked that railroad quiet zone funding be prioritized due to prior delays she has experienced working with Union Pacific Railroad Company. She suggested that downtown parking kiosks also be prioritized.*

*There was consensus that one community meeting space should be considered for the upcoming budget. Mr. Konkol suggested the Community Development building or City Hall were options.*

### 3. Oregon City Parklet Program

*John Lewis, Public Works Director, requested Commission feedback on making the Oregon City Parklet program permanent under Resolution No. 22-30.*

*Commissioner Marl asked that the amount of parking revenue lost due to parklets be considered when discussing the resolution. Commissioner Marl asked about numerical limits to parklets on each block. Commissioner McGriff suggested that no more than two parklets per block would be reasonable. Commissioner Smith recommended two parklets per block face.*

*There was consensus to bring the resolution back for discussion during general consensus to decide the number of parklets per block.*

### 4. Review Oregon City Private Property Outdoor Dining and Retail Site Plan and Design Review Application

*Aquilla Hurd-Ravich, Community Development Director, gave a presentation on a new application for outdoor dining and retail on private property. She confirmed there would be no resolution required for this application as the process falls within City Code.*

### 5. Updates on the United States Environmental Protection Agency's Water Infrastructure Finance and Innovation Act (WIFIA) Loan Package Proposal

*Patty Nelson, Senior Project Engineer, presented the WIFIA Loan Package Proposal.*

*Commissioner McGriff asked how this project coordinates with the master plan of the South Fork Water Board. Mr. Lewis said the South Fork Water Board master plan is concerned with water treatment whereas this project is concerned with water transmission.*

*Commissioner Marl asked what the planned rehabilitation efforts were for the Barlow Crest and Boynton Reservoir project. Ms. Nelson confirmed that the project was for seismic retrofits.*

*Ms. Nelson said an assessment was recently done on the Boynton Reservoir and that the cost to rehabilitate it is almost equivalent to the cost of replacing it. She said that because of its design, two thirds of the reservoir is currently not usable.*

### 6. Creation of the Oregon City Youth Advisory Commission

*Mr. Konkol reviewed the creation of the Oregon City Youth Advisory Commission.*

*Commissioner McGriff said she supports the Youth Advisory Commission but is concerned about its budgetary impact. Mr. Konkol said funding for the commission would come from department savings and be included as a priority line item in future budgets.*

*Commissioner McGriff said she was meeting tomorrow with Superintendent Spitzer of the Oregon City School District in the spirit of cooperation and partnership. She would also like to talk with members of student council at schools and reduce the number of students on the Youth Advisory Commission to 7.*

*Commissioner Marl suggested that the commission would be an enterprise separate from student government and would represent a cross section of students for which 9 members was a good number.*

*Commissioner McGriff asked for clarification on which students qualified for the commission. Mr. Konkol confirmed that members should be in high school and reside within the limits of Oregon City.*

*Commissioner Smith asked if the Youth Advisory Commission would have a City Commission liaison. Commissioner Marl confirmed it would. Commissioner Smith suggested bringing input from the Youth Advisory Commission to City Commission work groups.*

## CITY MANAGER'S REPORT

*There was no report from the City Manager.*

*Commissioner McGriff thanked West Linn and Oregon City staff for their assistance with the 100th Anniversary of the Arch Bridge.*

## COMMISSION COMMITTEE REPORTS

- A. **Beavercreek Employment Area Blue Ribbon Committee** - Commissioner Frank O'Donnell

- B. **Citizen Involvement Committee Liaison** - Commissioner Adam Marl

*There was no meeting due to Labor Day.*

- C. **Clackamas County Coordinating Committee (C4)** - Appointed: Commissioner Adam Marl

*Bob Van Brocklin, Chair of the Oregon Transportation Commission (OTC) attended the meeting. Commissioner Marl expressed appreciation for Chair Van Brocklin's attendance, as it demonstrated support from the Oregon Department of Transportation (ODOT) and OTC. The committee approved a letter to OTC requesting collaboration between local elected officials and local staff. Members of the committee will attend an affordable housing field trip in Eugene on October 14, 2022.*

- D. **Clackamas County Coordinating Committee (C4) – Metro Subcommittee**  
- Appointed: Commissioner O'Donnell

- E. **Clackamas County I-205 Tolling Diversion Committee** - Appointed: Commissioner Adam Marl Alternate: Commissioner Frank O'Donnell

- F. **Clackamas Heritage Partners** - Commissioner Rocky Smith, Jr.

*The meeting scheduled for August 26, 2022 was postponed. End of the Oregon Trail (EOT) is now open 7 days a week from 9:00 AM – 5:00 PM Monday – Saturday and 10:00 AM – 5:00 PM Sunday.*

- G. **Clackamas Water Environment Services Policy Committee** -  
Appointed: Commissioner Denyse McGriff

- H. **Downtown Oregon City Association Board** - Commissioner Denyse McGriff

*Several improvements have been made to the Municipal Elevator. The board will hold a retreat on September 23, 2022 to discuss upcoming fall events.*

- I. **Metro Policy Advisory Committee (MPAC)** - Appointed: *Commissioner Denyse McGriff*

*Metro's parks and nature bond will be on the November election ballot.*

- J. **OC 2040 Project Advisory Team** - Appointed: *Commissioners Adam Marl and Denyse McGriff*

- K. **Oregon City Tourism Stakeholder's Group** - Appointed: *Commissioners Frank O'Donnell and Rocky Smith, Jr.*

- L. **Oregon City/West Linn Pedestrian and Bicycle Bridge Concept Plan Project Advisory Committee** - Appointed: *Commissioner Denyse McGriff*

*Commissioner McGriff would like to discuss this project, tolling, and homelessness with the City of West Linn at their next quarterly meeting. She suggested reaching out to Clackamas County for funding to assist with homelessness.*

- M. **South Fork Water Board (SFWB)** – *Commissioner Denyse McGriff, Commissioners Frank O'Donnell, and Rocky Smith, Jr.*

*The committee provided updates to the Chemical Feed Building plan and gave manager evaluations. They also discussed security.*

- N. **Willamette Falls and Landings Heritage Area** - Appointed: *Commissioner Denyse McGriff* Alternate: *Commissioner Frank O'Donnell*

*Commissioner McGriff mentioned ongoing disputes resulting from the notice of condemnation filed by Portland General Electric (PGE) for this area.*

- O. **Willamette Falls Legacy Project Liaisons** - *Commissioner Frank O'Donnell*

## ADJOURNMENT

*Commissioner McGriff adjourned the meeting at 8:40 PM.*

Respectfully submitted,

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Jakob S. Wiley, City Recorder



# CITY OF OREGON CITY

## CITY COMMISSION SPECIAL MEETING

### DRAFT MINUTES

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**Commission Chambers, Libke Public Safety Facility, 1234 Linn Ave, Oregon City**  
**Tuesday, September 27, 2022 at 6:00 PM**

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#### 1. CONVENE MEETING AND ROLL CALL

*Mayor McGriff convened the meeting at 6:04 PM.*

**PRESENT: 4 –** Commissioner Frank O'Donnell, Mayor Denyse McGriff, Commissioner Rocky Smith, Commissioner Adam Marl

**STAFFERS: 2 -** City Manager Tony Konkol, City Recorder Jakob Wiley

#### 2. CITIZEN COMMENTS

*No citizen comments were made.*

#### 3. GENERAL BUSINESS

##### 3a. Discussion of Appointment Process for the Vacant City Commissioner Position

*Tony Konkol, City Manager, provided a brief review of the proposed timelines for appointing the vacant position on the City Commission.*

*Commissioner Marl supported option #1 in the suggested timelines. Commissioner O'Donnell wanted to speed up the timeline, since he believed that critical issues would be arising soon and having a full commission would be important. Commissioner Smith expressed concerns with the timeline and conflicts with other obligations. Mayor McGriff expressed concern with acting too quickly and wanted to be sure that the application form worked well.*

**Motion made by Commissioner O'Donnell, seconded by Commissioner Marl to adopt option #1 with the amendment to conduct interviews from October 18, 2022 to October 28, 2022. The motion carried the following vote:**

**Voting Yea: Commissioner Marl, Commissioner O'Donnell, Commissioner Smith, and Mayor McGriff**

#### 4. ADJOURNMENT

*Mayor McGriff adjourned the meeting at 6:40 PM.*

Respectfully submitted,

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Jakob S. Wiley, City Recorder



# CITY OF OREGON CITY

## Staff Report

625 Center Street  
Oregon City, OR 97045  
503-657-0891

**To:** City Commission **Agenda Date:** 10/17/2022  
**From:** Aquilla Hurd-Ravich, Community Development Director

### SUBJECT:

Appeal of the Park Place Crossing General Development Plan (AP-22-00003; GLUA-21-00045; MAS-21-00006; VAR-22-00001)

### STAFF RECOMMENDATION:

Staff recommends that the City Commission choose one of the options identified in the supplemental staff report, restated in the options section below.

### EXECUTIVE SUMMARY:

At the appeal hearing on Tuesday 10/11/2022 the City Commission heard testimony from the appellants, applicant, staff and the City Attorneys on procedural matters. The Commission closed the Public Hearing and continued the decision to 10/17/2022 for deliberation.

Staff has prepared the following items attached to this report that are intended to serve as a decision framework for the Commission on both the procedural and substantive appeal issues raised:

- Memorandum from City Attorney Bill Kabeiseman
- Park Place Crossing Appeal Issue Matrix with Preserved or New Issues
- A compilation of Park Place Crossing Maps

The City received nine (9) appeals of a Type III decision approving the Park Place Crossing Master Plan General Development Plan and associated approval.

A tenth appeal filed by Richard Guerrero was evaluated to determine whether the appellant has legal standing. Staff cannot find prior testimony before the Planning Commission for Richard Guerrero and recommends that their appeal be rejected.

As amended during the Planning Commission proceedings, the Applicant, Icon Development, requested approval for 426 residential units to be provided in six residential phases on 91.7 acres of land. The project also includes a community park, open space,



on-site stormwater management facility, an area to accommodate retail/civic uses, and trails components.

On September 12, 2022 the Planning Commission voted 4-3 to approve GLUA-21-00045 / MAS-21-00006 / VAR-22-00001 with revised findings and conditions of approval.

The appellants are:

- Park Place Neighborhood Association – Tom Geil
- Linda Smith
- Jackie Hammond-Williams
- Roya Mansouri
- Jackie Dalseme
- Elizabeth and Jed Peterson
- Enoch Huang
- Christine Kosinski
- James Nicita

This appeal is governed by the procedures set out in OCMC 17.50.190, including the following limitations:

- The appeal is "on the record," meaning no new evidence may be introduced on appeal – only the evidence placed before the Planning Commission may be considered by the appellants, applicant, and City Commission. 17.50.190(F).
- The issues on appeal are limited to those listed in the notice of appeal. The appellant may not raise any new issues as part of this appeal. 17.50.190(F).
- Only those persons who submitted comments during the notice and opportunity to comment will be allowed to participate in the appeal hearing. OCMC 17.50.120(E)(6).

## **BACKGROUND:**

Staff has prepared the following items attached to this report that are intended to serve as a decision framework for the Commission on both the procedural and substantive appeal issues raised:

- Memorandum from City Attorney Bill Kabeiseman
- Park Place Crossing Appeal Issue Matrix with Preserved or New Issues
- A compilation of Park Place Crossing Maps



**OPTIONS:**

The options before the City Commission include:

1. Uphold the appeal(s) and make a tentative decision to deny the consolidated applications.
2. Uphold in part and deny in part the appeal(s) and make a tentative decision to modify the conditions of approval and approve the consolidated applications.
3. Deny the appeals and make a tentative decision to approve the application with no change to the Planning Commission's conditions of approval.



## MEMORANDUM

TO: Mayor McGriff and City of Oregon City Commission  
FROM: Bill Kabeiseman, City Attorney  
DATE: October 13, 2022  
RE: Park Place Crossing – Procedural Issues  
FILE NO.: 61231-001

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### INTRODUCTION

This memorandum is intended to address the procedures that the Commission will use to review the appeal of the Park Place Crossing General Development Plan (the “PPC GDP”). The Staff Report dated October 4, 2022, identified and addressed most of the substantive issues that were included in the 10 appeals before the Commission in this matter. Planning staff is working on a comprehensive listing of those issues that will, hopefully, help the Commission find a path through the significant number of issues that it will face. However, there are some additional concerns that merit additional attention and this memorandum is intended to address those concerns.

### DISCUSSION

#### Procedural Concerns.

The first subset of concerns involves the process that the Commission will follow in its deliberations at its meeting on Monday October 17<sup>th</sup>. To assist the Commission in making its decision in a timely fashion, we suggest the following ground rules:

- State law requires the City to make its final decision within 120 days of when the application is complete (plus any extensions granted by the applicant). In order to ensure that the City meets that deadline, the City needs to adopt a final written decision and have that decision mailed to the parties no later than Friday October 21<sup>st</sup>. Accordingly, we recommend that the Commission work to at least reach a tentative decision to approve or deny the application on Monday October 17<sup>th</sup>, provide clear direction to staff regarding the issues, and then decide whether and how to review the written findings.
  - Historically, the Commission reaches a tentative decision, provides direction to staff on the key issues, staff brings back a draft final decision, the Commission reviews the decision and either adopts that decision or makes changes to it. If the Commission wishes to follow its typical course, the Commission will have to schedule a public meeting (possibly virtual) later in the week to review the draft findings.

October 13, 2022

- Alternatively, other jurisdictions delegate the writing of the decision to one or more persons. The Commission could delegate the findings to staff, or they could appoint one or two Commission members to work with staff to issue the findings.
- Whatever course the Commission chooses, the final written findings must be issued no later than Friday October 21<sup>st</sup>.
- OCMC 17.50.190 limits the evidence before the Commission to the evidence produced before the Planning Commission. Planning staff is working on a memo that identifies the new information that was not part of the record developed before the Planning Commission. Whatever decision the Commission reaches, we recommend that the motion include a specific rejection of the evidence identified in that staff memorandum.<sup>1</sup>

### Appeal Issues.

In addition to the procedural issues addressed above, there were two requests made in the last few days prior to the hearing that the Commission should address, and those requests were intertwined. In particular, the Applicant moved to dismiss the various appeals because of the fee waiver adopted by the Commission and one of the appellants, Jim Nicita, suggested that the Commission should adopt findings regarding its fee waivers. Staff agrees that adopting findings is appropriate and this memorandum will briefly lay out the arguments made by the Applicant, as well as responses.

- First, regarding the appeal filed by the Park Place Neighborhood Association (“PPNA”), OCMC 17.50.290(C) specifically states that no appeal fee will be charged for a city recognized neighborhood association “so long as the appeal has been officially approved by the general membership or board of the neighborhood association at a duly announced meeting.” The Applicant argues that, in this case the neighborhood association’s meeting was not “duly announced,” because notice of the meeting was sent 5 days prior to the meeting, rather than the 7 days required by the bylaws. However, the neighborhood association was held at its regularly scheduled meeting on the third Monday of the month and, because those dates are announced far in advance, the meeting was, in fact, duly announced and the neighborhood association’s appeal was valid. The Applicant goes on to argue that the Commission failed to or improperly considered the “fairness to the applicant.” However, that consideration only applies to discretionary fee waiver requests, not the automatic fee waiver given to neighborhood associations.

<sup>1</sup> OAR 661-010-0025(1)(a) provides that the LUBA Record consists of:

“All written testimony and all exhibits, maps, documents or other **materials specifically incorporated into the record or placed before, and not rejected by, the final decision maker**, during the course of the proceedings before the final decision maker.” (Bold emphasis added.)

Because the rule requires that all testimony “not rejected by” the City Commission be included in the Record, we are asking that the Commission explicitly reject the new evidence.

October 13, 2022

- Second, regarding the other appeals, OCMC 17.50.290(C) provides that the Commission may waive appeal fees if the Commission finds that “considering fairness to the applicant and to opposing parties, a full or partial waiver of the appeal fee is warranted.” The Applicant argues that the Commission failed to or improperly weighed the fairness to the parties and, moreover, that this requirement is not “clear and objective,” and so cannot be applied to this application for housing. One of the appellants, Jim Nicita, suggests that the Commission adopt findings regarding this issue as part of the Commission’s final decision. Staff concurs with Mr. Nicita’s suggestion and suggests that the fee waiver was proper in the first instance. There are several reasons to conclude that the fee waiver was fair to the applicant and opposing parties, perhaps most prominently because the neighborhood association did not have to pay a fee and, therefore, the Applicant would be involved in the appeal regardless of whether the fee waiver was granted or not. As LUBA has held in other circumstances, due process and fairness relates to the ability to have a full and fair opportunity to present its case, not to avoid issues. Finally, as far as the requirement for “clear and objective” standards, ORS 197.307(4) requires clarity and objectivity only when standards are “regulating the development of housing.” In this case, OCMC 17.50.290 does not “regulate” housing in any way. The clear and objective requirement does not apply to the Commission’s decision.

## CONCLUSION

As noted above, staff recommends that the Commission consider the various issues raised in the multiple appeals filed challenging the Planning Commission’s decision approving the PPC GDP with the goal of reaching a tentative decision on Monday October 17<sup>th</sup>. The options available to the Commission include making a motion to either:

1. Uphold the appeal(s) and make a tentative decision to deny the consolidated applications;
2. Uphold in part and deny in part the appeal(s), and make a tentative decision to modify the conditions of approval and approve the consolidated applications; or
3. Deny the appeals and make a tentative decision to approve the application with no change to the Planning Commission’s conditions of approval.

Once the Commission reaches a tentative decision, the Commission should then provide direction to staff to allow staff to develop a written set of findings for adoption and issuance later that week.

PARK PLACE CROSSING APPEAL ISSUE MATRIX  
 Compiled by the City Attorney's Office  
 Dated Oct. 13, 2022

APPEAL ISSUE	REGULATORY CITATIONS IDENTIFIED DURING THE PROCEEDINGS*	STAFF REPORT PAGE #	PLANNING COMMISSION FINDINGS PAGE #
<b>Transportation</b>			
North/South Connection – Connectivity – Need both Holly and Swan – Emergency Access	OCMC 16.12.095A; PPCP 67, 1, 5, 33, 36; Plan Policy 7.1.13	13-15	37-43, 74-76, 92, 105-107,; Conditions 9, 10, 34,
Condition development on City building the Holly Lane connector through condemnation	ORS 223.930; Att C to Ord 07-1007 allocating \$17.4 mill.	13-15	Condition 9c
Compromise success of transit and retail village	PPCP 43, 18	13-15	New issue
Traffic Count Inaccuracies	OCMC 16.08.25B;	16	55-57, 60-62, Conditions 6, 7,
COVID closures impacting counts	OCMC 16.08.025	16	60
Redland/OR 213 lacks capacity w/out development	OCMC 16.08.025	17	60-62, Condition 7
Error in calculating average trips per day – Use Metro Study	OCMC 16.08.025B	14	60-62
Livability / Traffic through neighborhood	OCMC 17.65.050; PPCP 66	17-18	70-73
Adequate ROW and pavement width at “pinch point” – Modification of the street width standards	OCMC 12.04.025 and TSP figures; OCMC 16.12.013	15	134-138,
<b>Residential Urban Design</b>			
Density along Holly Lane should be low-density clusters	PPCP 3	10-13	20, 27-28, Conditions 18, 19
Lot sizes as small as 1,800 sq ft; should have rezoned some to R-3.5 or not have so much density in the North Village	Adjustment 20% reduction to lot dimension and to 1,800 sq ft for attached units	10-13	32-37, 118, 120-121, 162,190-195 Conditions 5a, 59
Green buffer for Phase 1	PPCP 1, 69	10-13	147, Condition 32

PARK PLACE CROSSING APPEAL ISSUE MATRIX  
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Alley access for SFR and townhomes	OCMC 17.21.090.A; OCMC 17.16.040; Adjustment authorization for only topographically constrained lots	18-19	118, 121-122, 124-126 Conditions 5b, 5c
Integrated, on-site stormwater management	PPCP 23;	20-21	59-60, Conditions 55
<b>Commercial Urban Design</b>			
Location of Main Street Village	PPCP Map 2, 24	20-21	80-82
Two story-buildings w/ dwellings above	PPCP 25	21	80-82
Need for Main Street design standards	PPCP 25	21	80-82
<b>Resource Overlay Issues</b>			
NROD verification for areas outside the City's existing wetland area – Advocates for PC conditions 16, 17 & 21	No party seeks to change these conditions	28	67-70, 179-190
Geologic Hazards- GDP puts public at risk - Inadequate geologic hazards review	OCMC 17.44.010 and .050; Goals 1, 7, 12, 13, ORS 105.465	24-28	43-45 , 139, 169-179, Conditions 42, 56, 57
<b>Parks &amp; Trails</b>			
No extensive off-street / on-street trails	PPCP 1	22-24	24 Condition 28
Community park is only 4.3 acres and encroaches in NC area	PPCP 1	22-24	64-67, 116
No accessible park land for Phase 1	PPCP 1	22-24	Conditions 11, 12, 13
<b>Other Issues</b>			
GDP deviates to such a degree that it requires a PPCP amendment	Ord 07-1007; ORS 227.178(3)(a)	9-10	New Issue
<b>Procedural Issues</b>			
Completeness determination flawed	ORS 227.178(2)(c)	8-9	
Sept 12 PC resolution of a tie vote	OCMC 2.24.080; OC Rules of Procedure Sec VIIA; Roberts Rules of Order Section II.H	6-8	

	and 36; ORS 227.180(3); OCMC 17.50.120(5) and 17.50.160; City Charter Section 21(c)(2) and OCMC 2.08.010		
Fee Waiver Challenges	OCMC 17.50.290(C)		
Clear and Objective Standards; No Reduction in Density	ORS 197.307(4); ORS 197.306(6)		

\*These citations are those set forth by participants and staff during this appeal and do not reflect any legal or planning analysis of whether or the degree to which they are applicable.

The following table of the issues raised in testimony on 10/11/2022 and was compiled by Planning Staff.

Testimony at City Commission 10.11.22	Were the issues preserved (i.e. raised before Planning Commission)?	New Issues
<b>Enoch Huang, Appellant, Appellant</b> <ul style="list-style-type: none"> <li>Procedural Issue: Clackamas County Ordinance 07-1007</li> <li>Pre-emptive rebuttal of anticipated applicant appeal of NROD-related conditions of approval 16, 17, and 21</li> <li>Key components of PPCP</li> <li>Wetland and stream delineations</li> </ul>	Yes, oral and written testimony provided	
<b>Roya Mansouri, Appellant</b> <ul style="list-style-type: none"> <li>Procedural issues</li> </ul>	Yes, oral and written testimony provided	
<b>Jed Peterson, Appellant</b> <ul style="list-style-type: none"> <li>Completeness issues</li> <li>Revisions not in compliance with PPCP</li> <li>Procedural issues</li> <li>Emergency evacuation, geologic hazards, flooding</li> <li>Profit motives of developer</li> <li>Traffic congestion</li> <li>Traffic study</li> </ul>	Yes, oral and written testimony provided	

<b>James Nicita, Appellant</b> <ul style="list-style-type: none"> <li>Citing a Yamhill County LUBA case, city may require developer to construct Redland Road connection in County land outside of city limits and comply with state land use law.</li> </ul>	<p>Yes, oral and written testimony provided</p> <p>Yamhill County LUBA case is in the record</p>	
<b>Linda Smith, Appellant</b> Testified regarding transportation impacts, traffic study and trip counts, travel demand.	Yes, oral testimony provided.	
<b>Jackie Hammond-Williams, Appellant</b> Placemaking – creating a mini-village, Live-work, neighborhood commercial / parks, road capacity and connectivity, Serres development, Street of Dreams, access for emergency, SERA architects, Swan Avenue connection, 2008 OC News article quoting staff	Yes, written and oral testimony provided	Staff could not find prior testimony about Street of Dreams on Serres property
<b>Applicant Comments regarding Appellants Issues not being preserved</b>		
1. “The ‘main street’ standards required by the Park Place Concept Plan have never been adopted. The City Commission should include a condition of approval that no building permit should issue for detailed development plans until such main street design standards are adopted.” (Nicita Appeal p. 4).	<p>Yes, written and oral testimony provided</p> <p>Nicita raised 5.9, 5.11, 7.11, 8.20. Placed PPCP Appendix in record 5.22.22</p>	
2. “The GDP allows the civic center to be on the north side of the Livesay main street. The plan places it at the east end of Livesay.” (Nicita Appeal p. 4).	<p>Yes, written and oral testimony provided</p> <p>Nicita raised 5.9, 5.11, 7.11, 8.20. Placed PPCP Appendix in record 5.22.22</p>	



PARK PLACE CROSSING APPEAL ISSUE MATRIX  
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 Dated Oct. 13, 2022

3. "The GDP allows the village green to be on the north side of Livesay Main Street. It also goes on the east end." (Nicita Appeal p. 4).	Yes, written and oral testimony provided  Nicita raised 5.9, 5.11, 7.11, 8.20. Placed PPCP Appendix in record 5.22.22	
4. "The GDP wrongfully allows the applicant to count already-designated open space as part of its acreage requirement for community park adopted by Ordinance 07-1007, Attachment C, and the Park Place concept plan." (Nicita Appeal p. 4).		Staff could not find prior testimony about counting open space as park.
5. "The GDP does not include residential on the second and/or third floors of the buildings along the Livesay main street. The GDP does not include the required upper floor residential units in the overall density calculation for the GDP. If it did, then some of the lots to the north could be removed to allow the community park to be located in the area that the Park Place concept plan says it should be." (Nicita Appeal p. 4).	Yes, written and oral testimony provided  Nicita raised 5.9, 5.11, 7.11, 8.20. Placed PPCP Appendix in record 5.22.22	
6. "In the approved current plan there is NO 'network of streets' as intended in the PPCP." (Hammond-Williams Appeal p. 4).	Yes, written and oral testimony provided 5/9	
7. "Without the proposed N/S Connector streets built how can any retail along the Livesay be viable? In a development that is a deep pocket on a slop with very limited access at the north end be attractive to retail business?" (Hammond-Williams Appeal p. 4).	Yes, written and oral testimony provided 5/9	
8. The Application does not meet requirements of Goal 13. (Kosinski Appeal p. 1).		Staff could not find prior testimony regarding Goal 13 from Kosinski.
9. The Application does not meet the disclosure statement requirements of ORS 105.465. (Kosinski Appeal p. 1)		Staff could not find prior testimony regarding ORS 105.465 from Kosinski.
10. "Ordinance 07-1007 requires that an amendment to the Park Place Concept Plan (CP) be made if there are changes to the Concept Plan. These changes need to be reviewed by the public and accepted before the Concept Plan can be changed. The GDP varies considerably from the CP, and therefore	James Nicita submitted Ord. 07-1010 as part of public comment on May 23, 2022 to Planning Commission	Staff could not find prior testimony on Ord. 07-1007 for these appellants.

## PARK PLACE CROSSING APPEAL ISSUE MATRIX

Compiled by the City Attorney's Office

Dated Oct. 13, 2022

Ordinance 07-1007 requires that the CP be amended and reviewed before a Development Plan is accepted." (Peterson, Mansouri, & Huang Appeal pp. 3-4).		
11. "There is no extensive system of off-street and on-street trails." (Peterson, Mansouri & Huang Appeal p. 6)	Raised by Mansouri 5/9	
12. "The community park is only 4.3 acres instead of the 8-10 acres in the concept plan." (Peterson, Mansouri & Huang Appeal p. 6)	Raised by Mansouri 5/9	
13. "The density along Holly Lane is in direct contrast to the Concept Plan (excerpt from page 3 of Executive Summary)." (Peterson, Mansouri & Huang Appeal p. 6).	Raised by Mansouri 5/9	
14. "It is important to note that the City anticipated further rezoning of at least some of the land to achieve the required Concept Plan densities, expecting that some of the R-5 zone would need to be rezoned to R-3.5, and some of the R-10 zone to R-8 or R-6. The applicant has not proposed such a zone change, but has instead included attached single-family uses in the R-5 zone, which have a higher maximum density standard, along with a variance to reduce the minimum lot size allowing for more attached units to fit within the proposed attached dwelling area. Again, this is significantly different from the original Concept Plan and would require an amendment and a vote by all Oregon City citizens." (Peterson, Mansouri & Huang Appeal p. 7).	Raised by Mansouri 5/9	
15. "However, is it necessary to have so many units in the North Village? The Park Place Concept Plan does not break down the units according to geographical location, but according to the included plan below, it appears that the residential southern region of the North Village is larger and flatter with likely more usable acreage which would potentially mean it could sustain more housing than the current Park Place Crossing. There should be more evaluation of the percentage of buildable acreage of each area of the North Village as it may directly	Raised by Mansouri 5/9	

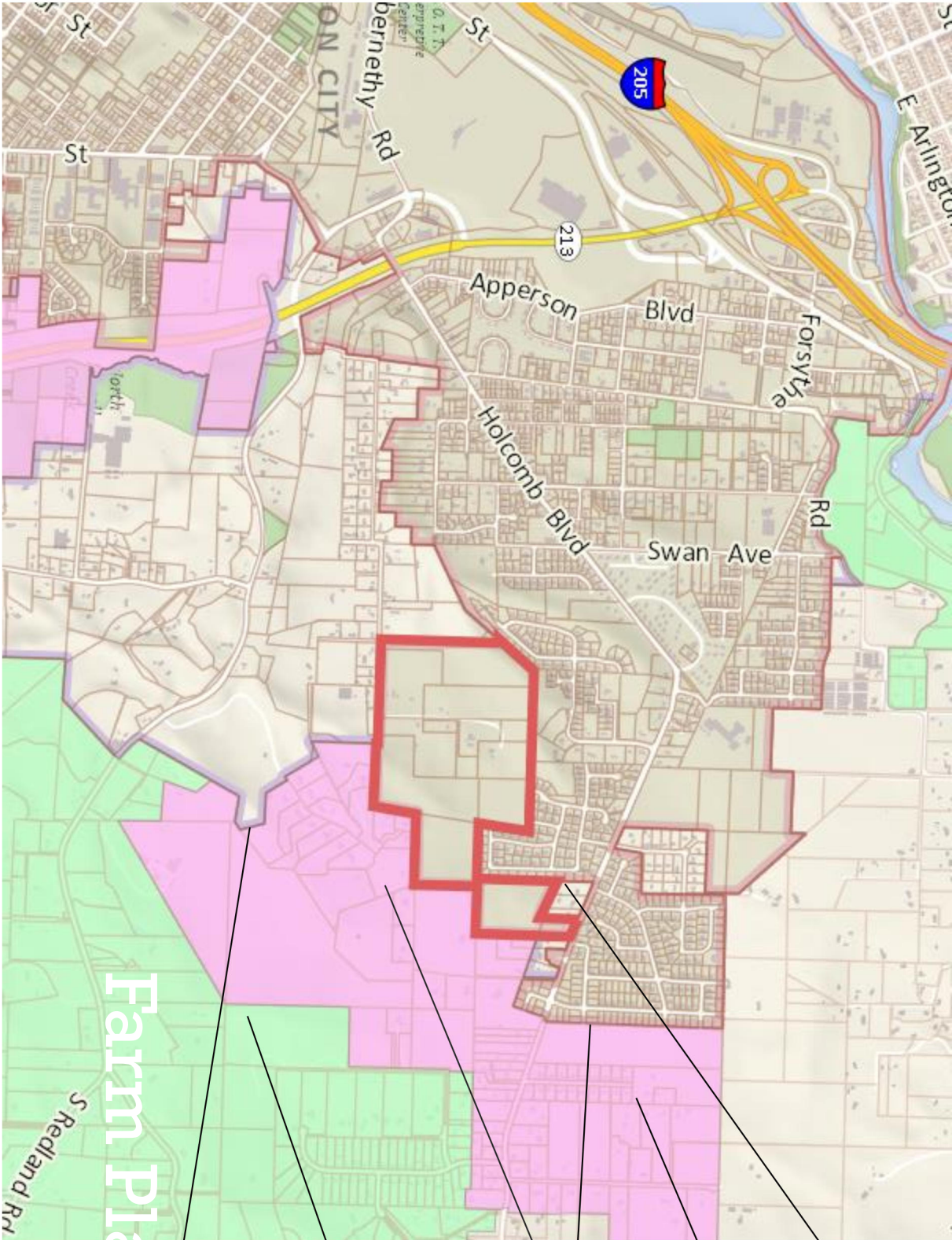
impact the developer's explanation for the increased density it proposes." (Peterson, Mansouri & Huang Appeal p. 7).		
16. "This requirement [in OCMC 12.04.025] is essential for making the streets safe for pedestrians, bicyclists, cars, emergency vehicles, etc. Furthermore, the required park is not in phase 1 and to travel to the park from phase 1 housing will require traversing a minor arterial street that does not meet the Municipal Code. As such, this proposal fails to address on multiple levels the needs and requirements of the Park Place Plan and the Municipal Code." (Peterson, Mansouri Appeal & Huang pp. 12-13).	Raised by Mansouri 5/9	
17. The plan goes against the intent and purpose provisions in OCMC 17.44.010. "The plan clearly puts the public and the new development at risk with a variety of known geologic hazards including but not limited to: flooding, fires, and landslides." (Peterson, Mansouri & Huang Appeal p. 16).	Raised by Mansouri 5/9	
<b>Public Comments (Non-Appellant)</b>		
<b>Richard Guerrero</b> <ul style="list-style-type: none"> <li>Developer leaving a mess behind and not cleaning it up</li> <li>Street of Dreams at Serres Farm</li> <li>Remarks about developer's integrity</li> </ul>	No	Staff could not find prior testimony.
<b>Brenda Marks</b> <ul style="list-style-type: none"> <li>Holcomb Blvd</li> <li>Fire evacuation</li> <li>Significant deviation from PPCP</li> <li>Safety and liveability of our neighborhood</li> </ul>	Testified orally to Planning Commission on these topics at the May 23, 2022 Planning Commission meeting.	
<b>Karla Laws</b> <ul style="list-style-type: none"> <li>Livability</li> <li>Safety</li> <li>Concerns about my neighborhood (Elyville)</li> </ul>	Yes, written and oral testimony submitted to Planning Commission on May 9, 2022 on most of the issues raised.	<ul style="list-style-type: none"> <li>Staff could not find prior testimony for Anchor Way and Bottlenecks at I-205 / 213</li> </ul>

PARK PLACE CROSSING APPEAL ISSUE MATRIX  
 Compiled by the City Attorney's Office  
 Dated Oct. 13, 2022

Item 8a.

<ul style="list-style-type: none"> <li>Holcomb School</li> <li>Safety of school children</li> </ul>		
<b>Linda Van Haverbeke</b> <ul style="list-style-type: none"> <li>Will grow park place neighborhood by 30%</li> <li>No left turn lanes</li> <li>No stop signs / stop lights</li> <li>Cant see cars as they come down the hill</li> <li>Speeding</li> <li>"No evacuation plan"</li> </ul>	Yes, testified orally to Planning Commission on May 9 <sup>th</sup> ; Steve testified	Staff could not find prior testimony about Street of Dreams on Serres property or regarding Holcomb Market running out of food.
<b>Steve Van Haverbeke –</b> <ul style="list-style-type: none"> <li>Safe, equitable development</li> <li>Many of the revisions have been good</li> <li>Lack of turn lanes on Holcomb</li> <li>Need for a connection to Redland Road</li> </ul>	Yes, written and oral testimony provided on behalf of PPNA. Testified orally to Planning Commission on July 11, 2022	
<b>Tom Geil – PPNA</b> <ul style="list-style-type: none"> <li>See written comments on multiple issues</li> <li>Ord. 07-1010 requires further revisions to PPNA</li> </ul>	Yes, written and oral testimony provided on behalf of PPNA and individually.  James Nicita submitted Ord. 07-1010 as part of public comment on May 23, 2022 to Planning Commission	

# Subject Site Location



Subject site

Urban Reserve

City Limit/UGB

Rural Reserve

Farm Plot



1.

## Final Concept Plan



- Park Place Concept Plan final conceptual drawing
- The subject site is in the North Village located north of Livesay Rd

Holcomb Rd

Livesay Rd

Redland Rd & future Holly Ln

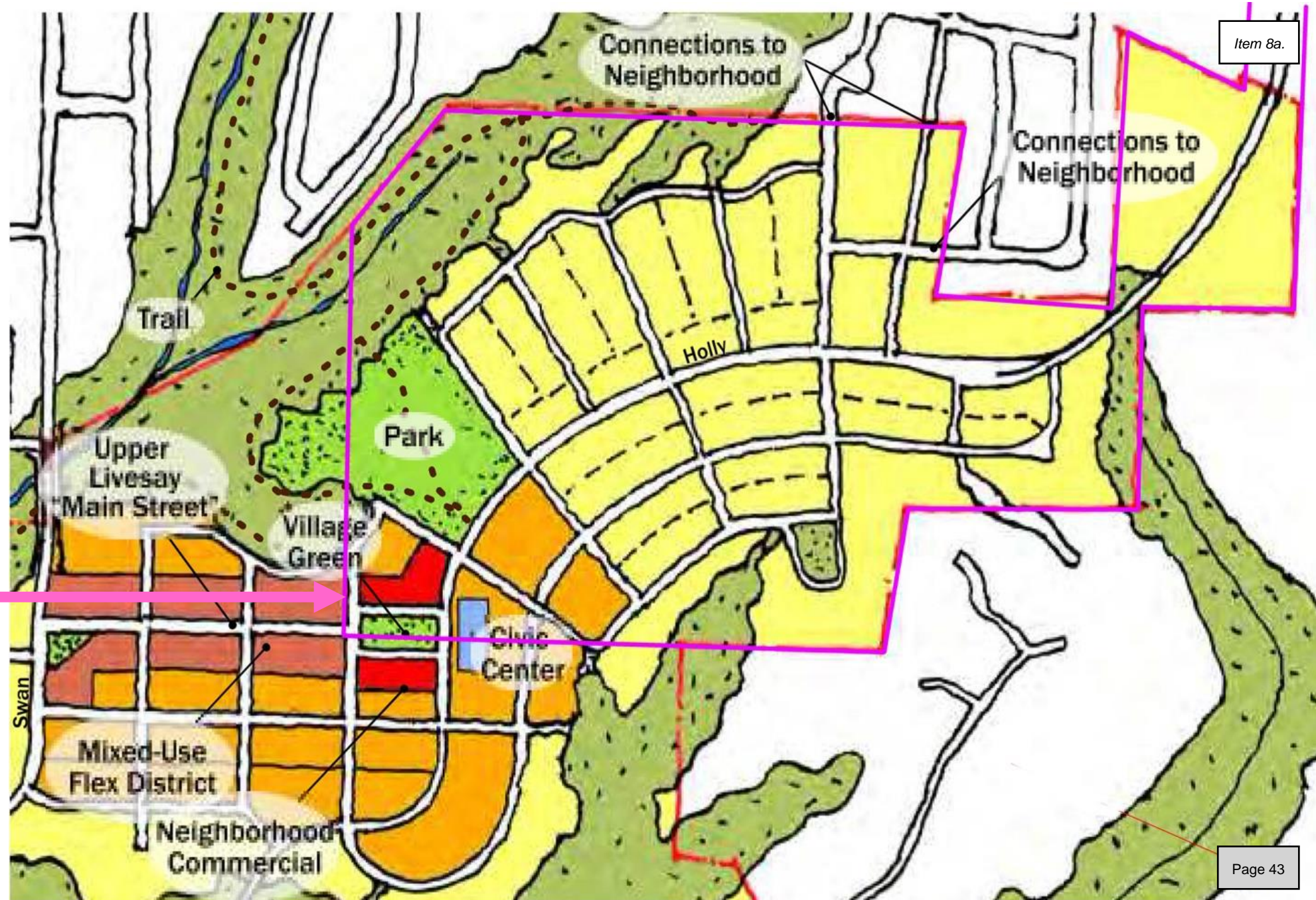
Redland Rd & future Swan Ln

Item 8a.



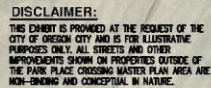
2.

Park Place  
Concept Plan  
with the  
subject site  
outlined in  
purple





P:\US DRAWING FILE: 7404 COLOR OFFSITE VENTILITY.DWG | LAYOUT: DDA-2



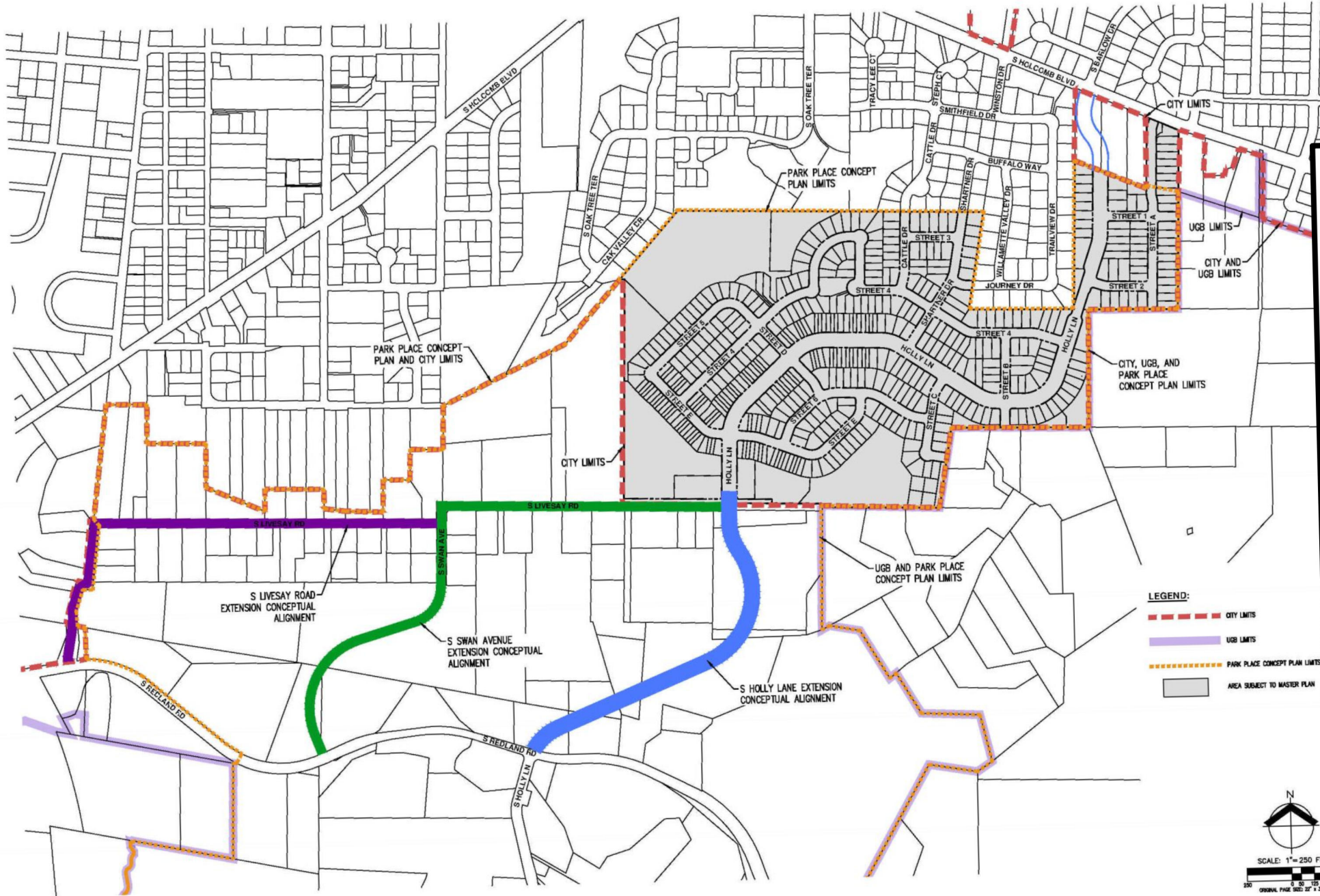
SCALE: 1" = 100'

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Page 44



4.



- This map shows the subject site in orange/ red dotted lines
- Extension of Holly Lane shown in blue
- Extension of Swan Ave shown in green.
- Livesay Rd is an existing County road shown in green and purple.

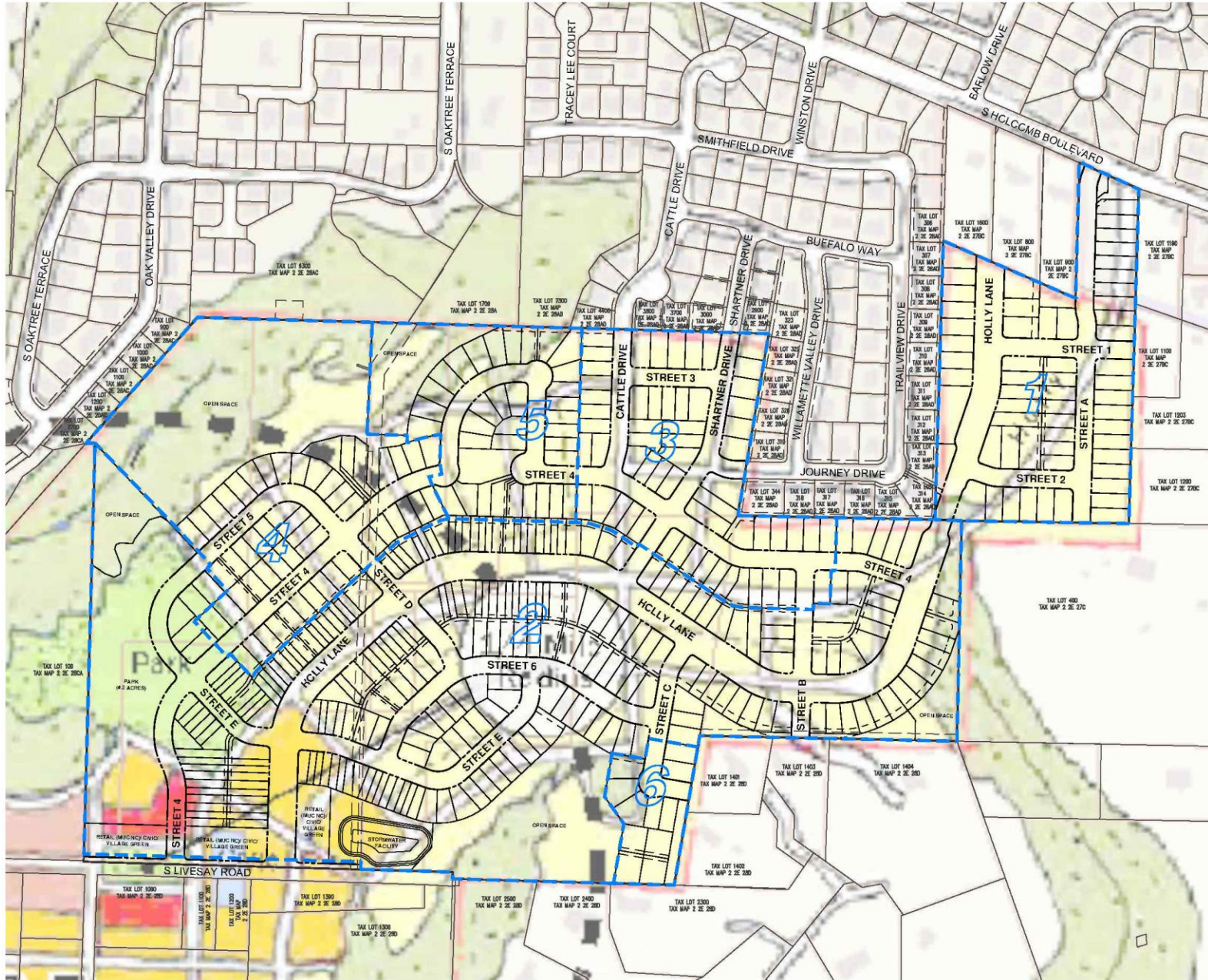
**AKS**  
AKS ENGINEERING & FORESTRY, LLC  
17065 SW HERMAN RD, STE 100  
SOLIS, OR 97130  
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Item 8a.

PRELIMINARY  
NCT FOR  
CONSTRUCTION  
JOB NUMBER: 7404  
DATE: 06/29/2022  
DRAWN BY: CME  
CHECKED BY: MEA  
DATE: 06/29/22  
EXH-8



5.



**NOTE:**

CONCEPT PLAN OVERLAY IS PER OREGON CITY NEZMAPS.

**OREGON CITY PARK PLACE  
CONCEPT PLAN OVERLAY LEGEND:**

- LOW/MEDIUM DENSITY RESIDENTIAL
- MEDIUM/HIGH DENSITY RESIDENTIAL
- COMMUNITY PARK
- CONSTRAINED LAND (OPEN SPACE)
- RETAIL (MUC/MC)
- CIVIC

**PARK PLACE CROSSING MASTER  
PLAN AREA BREAKDOWN (ACRES):**

TOTAL SITE AREA:	±81.7
OPEN SPACE:	±14.6
STORM FACILITY:	±1.2
RETAIL (MUC/MC)/ CIVIC/VILLAGE GREEN:	±1.7
COMMUNITY PARK:	±4.3*
REMAINING AREA:	±69.9

**OREGON CITY PARK PLACE CONCEPT  
PLAN AREA BREAKDOWN (ACRES):**

TOTAL SITE AREA:	±81.7
OPEN SPACE:	±11.4
RETAIL (MUC/MC)/ CIVIC/VILLAGE GREEN:	±1.3
COMMUNITY PARK:	±4.0*
REMAINING AREA:	±74.9

**NOTE:**

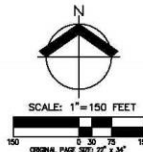
\*PER DISCUSSIONS WITH CITY STAFF, THE PARK PLACE CROSSING MASTER PLAN IS EXPECTED TO PROVIDE A PROPORTIONATE PERCENTAGE OF PARK LAND FOR ITS RESIDENTS. APPROXIMATELY 40 PERCENT OF THE PLANNED DWELLING UNITS FOR THE PARK PLACE CONCEPT PLAN AREA NORTH VILLAGE ARE INCLUDED WITHIN THIS MASTER PLAN (4433 PLANNED PARK PLACE CROSSING UNITS/337 TOTAL NORTH VILLAGE UNITS). THE NEIGHBORHOOD PARK REPRESENTS 45.0 ACRES ON THE PARK PLACE CONCEPT PLAN. THEREFORE, PARK PLACE CROSSING WOULD BE EXPECTED TO CONTRIBUTE PROPORTIONALLY 4.40 PERCENT OF THE NEEDED AREA, OR 34.0 ACRES. THIS APPLICATION ANTICIPATES THAT 34.0 ACRES WITHIN THE PARK PLACE CROSSING MASTER PLAN AREA WILL BE DEDICATED FOR THE PARK LAND. TECHNICAL DETAILS FOR HOW THE PARK LAND WILL BE REQUIRED/TRANSFERRED ARE BEING COORDINATED WITH THE CITY OF OREGON CITY PARKS DEPARTMENT.

**LAYOUT SUMMARY:**

SINGLE-FAMILY ATTACHED DWELLING UNITS:	121
SINGLE-FAMILY DETACHED DWELLING UNITS:	342
TOTAL DWELLING UNITS:	463

PROPORTIONAL SHARE =  $463/337 = 1.37 = 40\%$

\*337 IS THE ANTICIPATED TOTAL DWELLING UNITS IN THE NORTH VILLAGE PER THE PARK PLACE CONCEPT PLAN

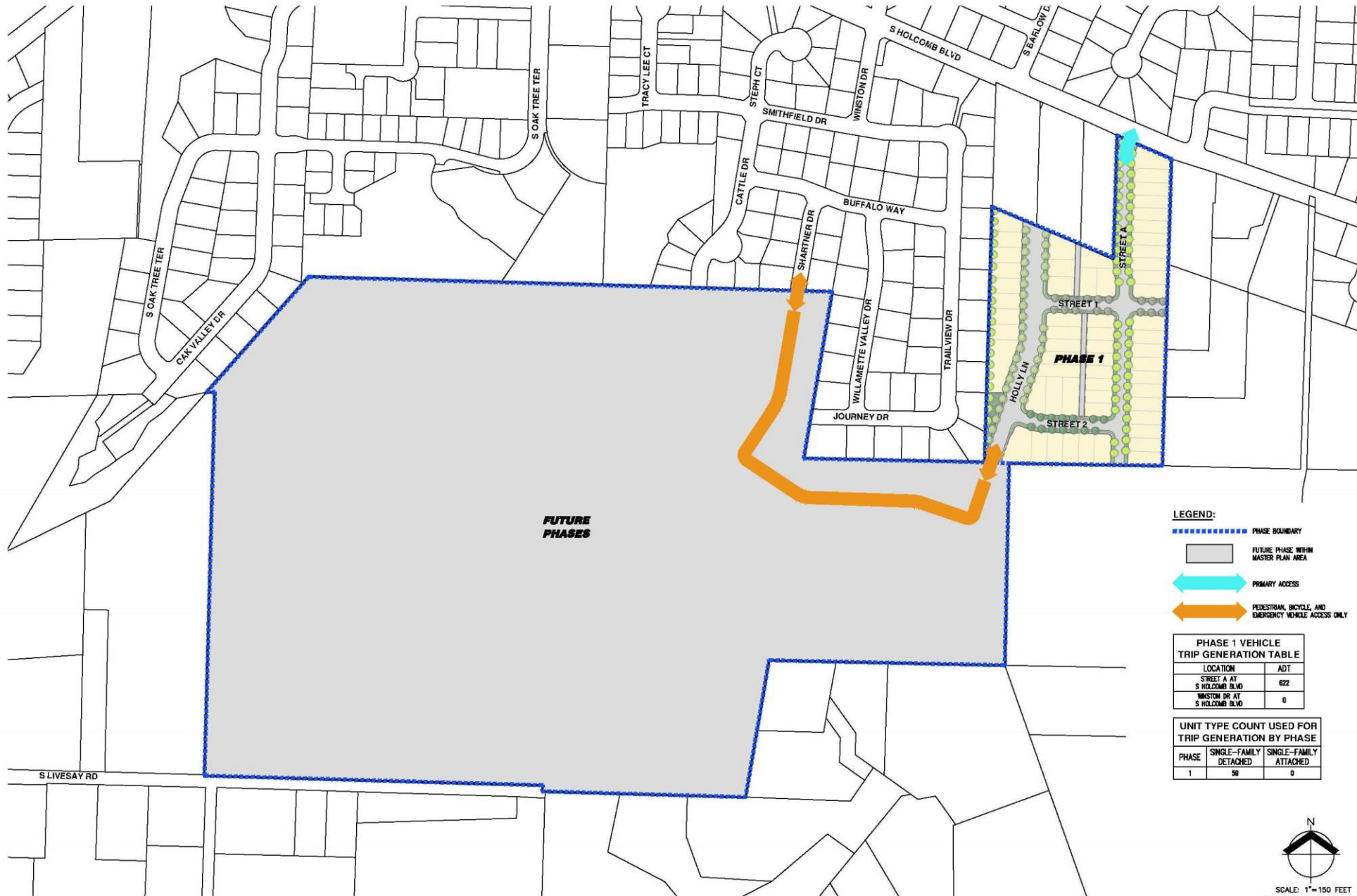


Item 8a.

- This map shows the subject site and layout overlaid on top of the Park Place Concept Plan conceptual drawing.
- The legend on the map identifies conceptual land uses from the Concept Plan.
- Blue numbers indicate the development phase.



6.

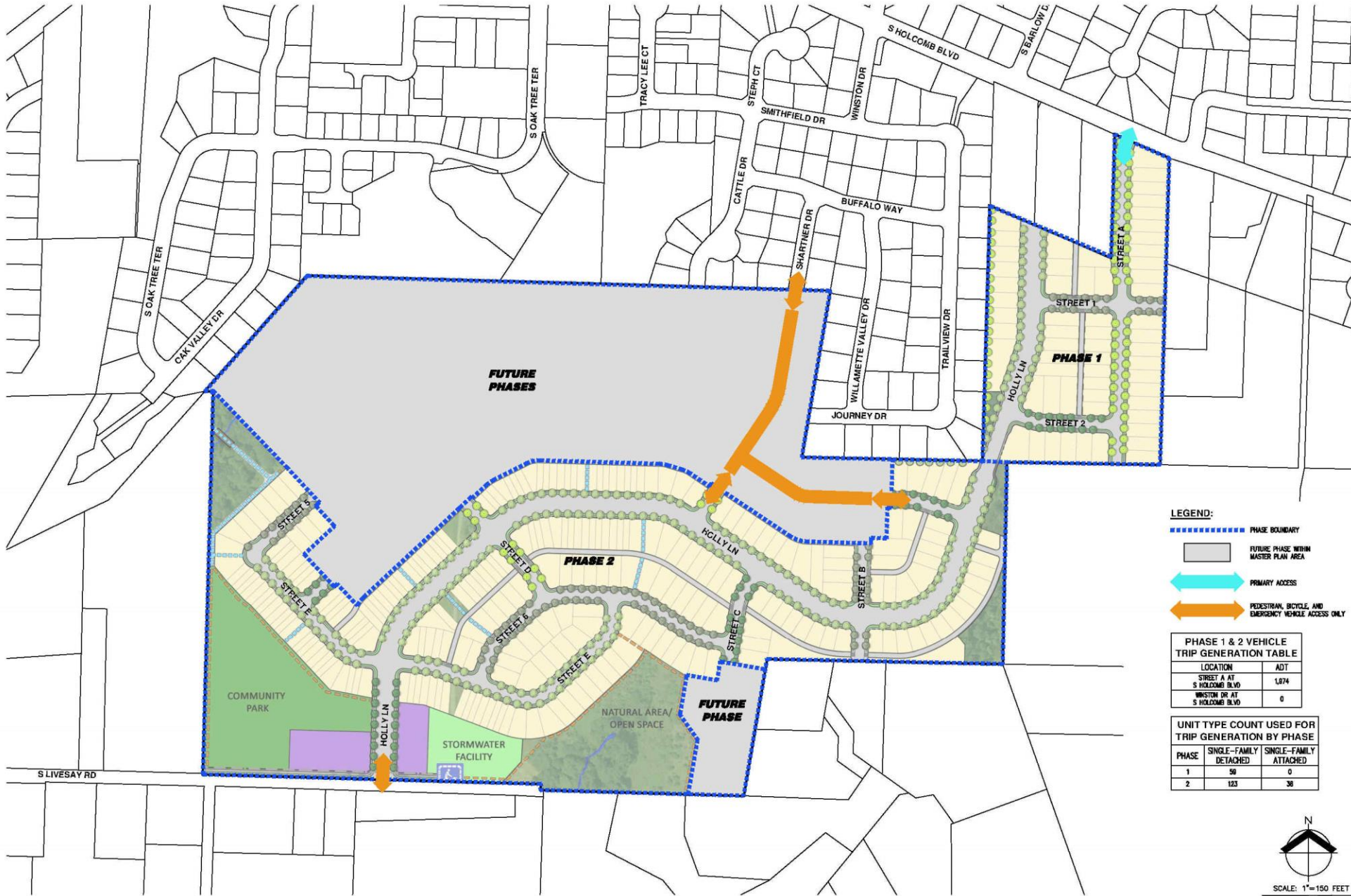


- Phased vehicular access
- **Phase 1** primary access at Street A to Holcomb (blue arrow)
- Emergency access to Shartner Dr. (orange arrow and line)
- Redesigned layout indicates 49 lots in Phase 1 (see page 13)

PRELIMINARY  
 NOT FOR  
 CONSTRUCTION

JOB NUMBER: 7404  
 DATE: 09/29/2022  
 DESIGNED BY: QMS  
 DRAWN BY: NEA  
 CHECKED BY: QMS

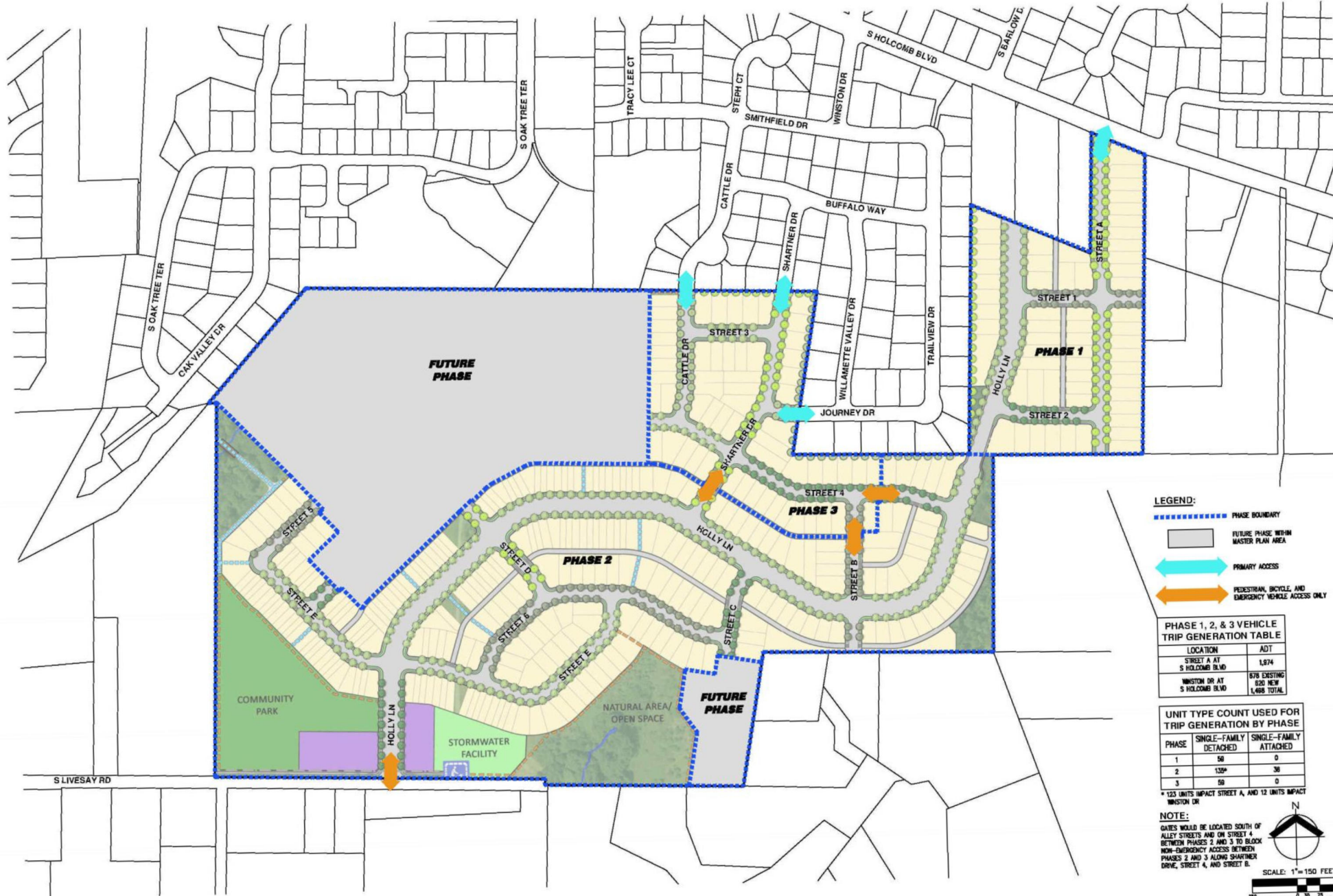
EXH-1



- Phased vehicular access
- **Phase 2** primary access at Street A to Holcomb (blue arrow)
- Emergency access to Shartner Dr. and Livesay via Holly Ln (orange arrow and line)
- Redesigned layout indicates 249 lots/ units in Phase 2 (see page 13)



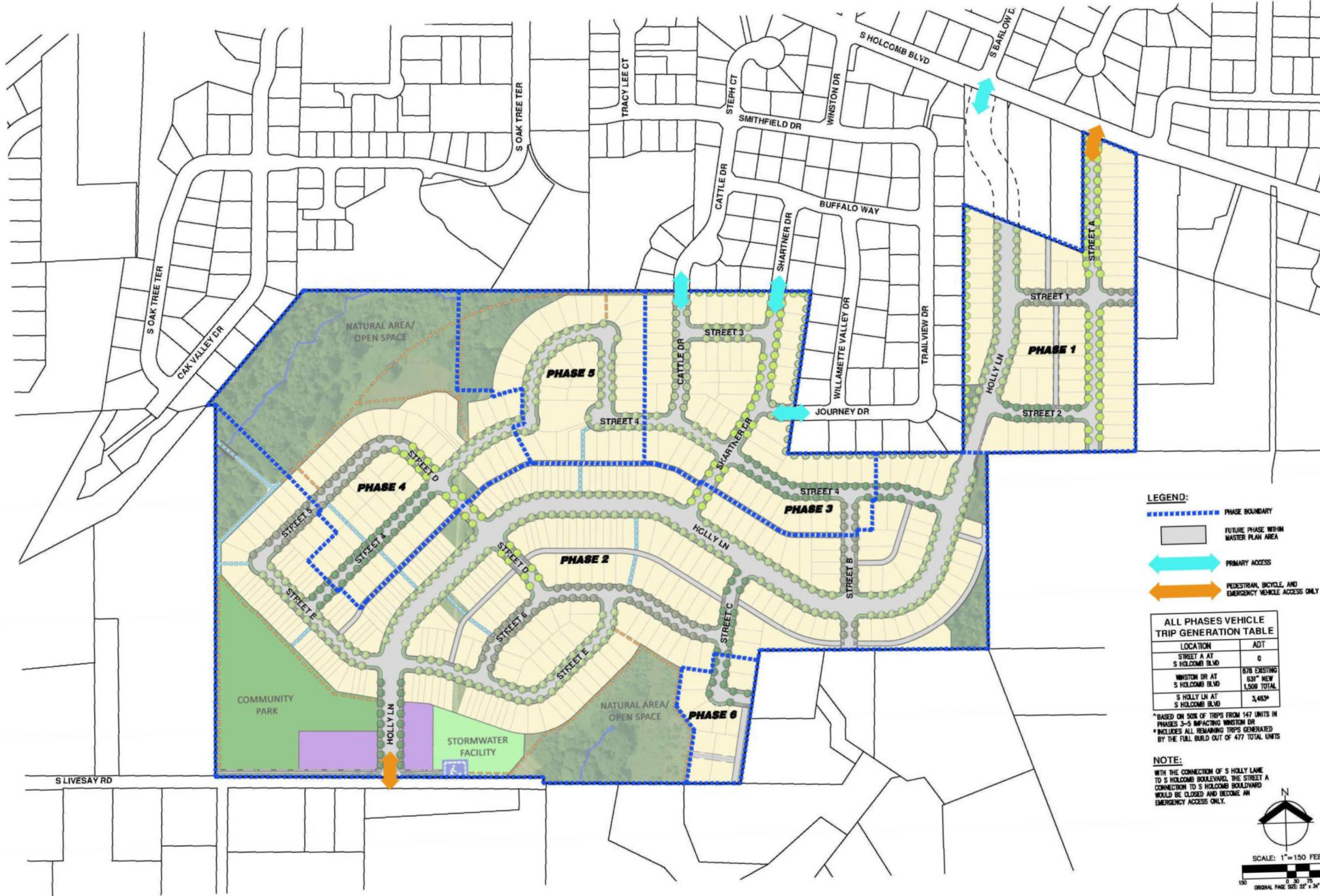
8.



- Phased vehicular access
- **Phase 3** primary access at Cattle Dr., Shartner Dr., and Journey Drive to Holcomb. (blue arrows)
- Emergency access only connects Phase 3 to Phase 2 and Phase 1. (orange arrow and line)
- Redesigned layout indicates 52 lots in Phase 2 (see map 13)



9.



**Phase 4,5,6 primary access to Holcomb via Holly Ln. (blue arrows)**  
**Primary access at Cattle Dr., Shartner Dr., and Journey Dr.**

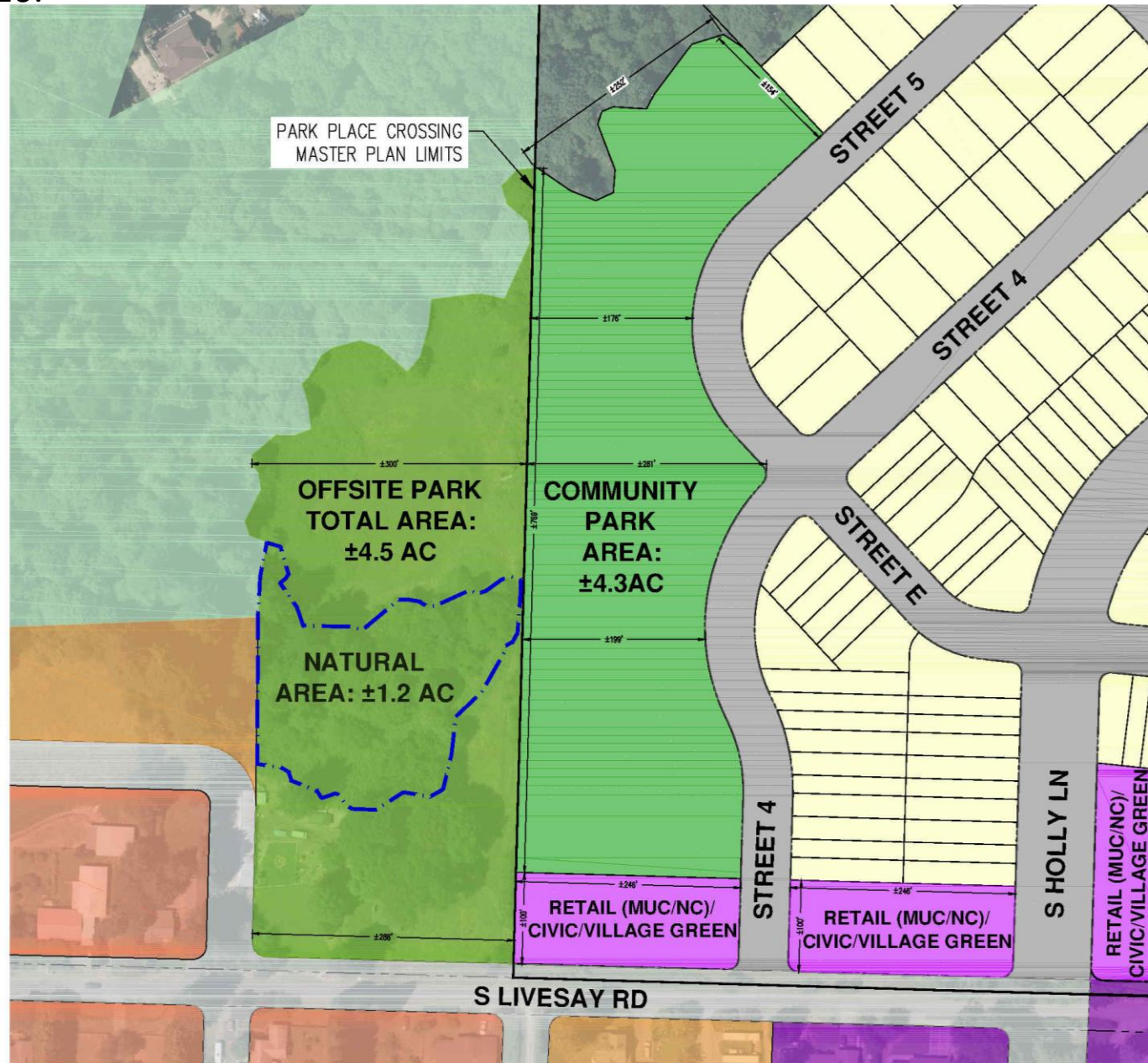
Emergency access via Holly Ln to Livesay Rd. (orange arrow and line)

Condition of approval #9(c)(i) addresses when a secondary connection to the south shall be open.

Condition #10 requires a timeline and plan to complete the Holly Lane connection to Redland Rd with submittal of Phases 4-6



10.

**NOTE:**

THIS EXHIBIT IS PROVIDED FOR ILLUSTRATIVE PURPOSES ONLY. ALL STREETS AND OTHER IMPROVEMENTS SHOWN ON PROPERTIES OUTSIDE OF THE PARK PLACE MASTER PLAN AREA ARE NON-BINDING AND CONCEPTUAL IN NATURE.

**OREGON CITY PARK PLACE CONCEPT PLAN LEGEND:**

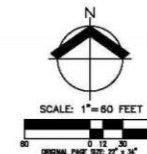
- LOW/MEDIUM DENSITY RESIDENTIAL
- MEDIUM/HIGH DENSITY RESIDENTIAL
- RETAIL (MUC/NC)/CIVIC/VILLAGE GREEN
- COMMUNITY PARK
- CONSTRUCTED LAND (OPEN SPACE)
- MIXED-USE COMMERCIAL
- NATURAL AREA (25%+ SLOPE)
- PARK PLACE CROSSING MASTER PLAN LIMITS

**PARK PLACE CROSSING MASTER PLAN OPEN SPACE LEGEND:**

- LOW/MEDIUM DENSITY RESIDENTIAL
- RETAIL (MUC/NC)/CIVIC/VILLAGE GREEN
- COMMUNITY PARK

**PARK PLACE CROSSING MASTER PLAN COMMUNITY PARK AREA**

TOTAL PARK AREA	ON SITE: ±4.3 AC	OFF SITE: ±4.5 AC	TOTAL: ±8.8 AC
NATURAL AREA (25%+ SLOPE):	±0.0 AC	±1.2 AC	±1.2 AC



**CONCEPTUAL ALTERNATE PARK AREA EXHIBIT**

**PARK PLACE CROSSING MASTER PLAN**

OREGON CITY, OR

REVIEW  
CCFY ONLY

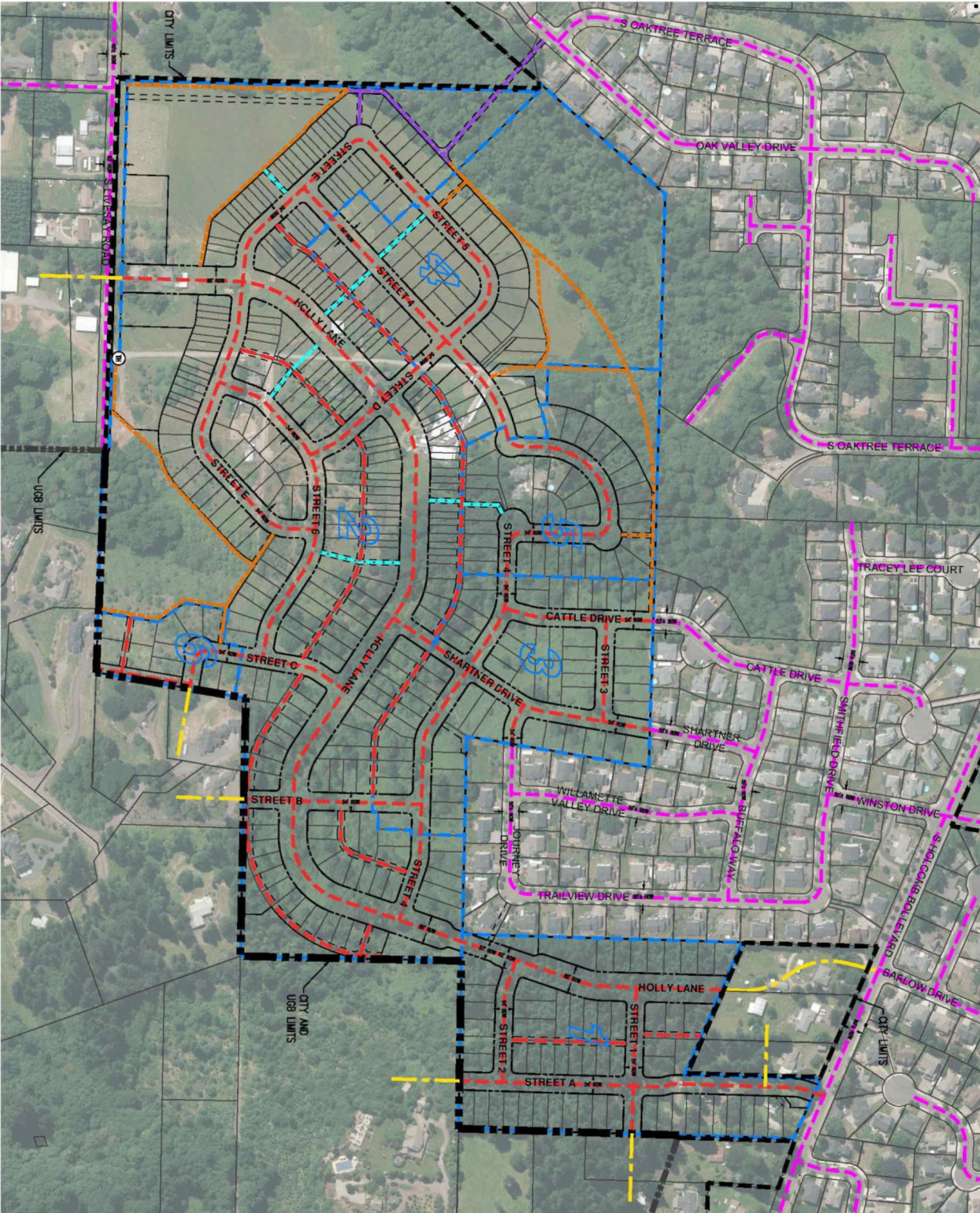
JOB NUMBER	7404
DATE	08/28/2022
DESIGNED BY	CMS
DRAWN BY	NBA
CHECKED BY	CMS

EXH-14

Item 8a.

- This map is a detail close up of the revised park layout.
- 4.3 acres are included on the subject site. The applicant has indicated how the total 8 acres can be achieved with future annexations and master plan land use applications.
- Land along Livesay Rd is identified for commercial use as indicated in the Concept Plan.

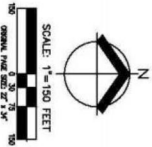




**LEGEND:**

- VEHICULAR, PEDESTRIAN, AND BICYCLE ACCESS, STREETS, PRIVATE STREETS, AND ALLEYS
- PAVED PEDESTRIAN ACCESSWAY
- SOFT SURFACE TRAIL
- PAVED TRAIL
- EXISTING OFF-SITE STREETS
- POTENTIAL OFF-SITE STREETS
- TO BE DETERMINED, SEE SHEET P-11

- NOTES:**
1. POTENTIAL OFF-SITE FUTURE STREETS ARE FOR ILLUSTRATIVE PURPOSES ONLY. THESE AREAS ARE NOT INCLUDED IN THE CURRENT DEVELOPMENT PLAN AND WILL BE DETERMINED BY THE CITY OF OREGON CITY IN THE FUTURE.
  2. STREETS AS SHOWN ARE NOT BOUND ON OFF-SITE PROPERTIES.
  3. TRAIL AND PEDESTRIAN CROSSING ALTERNATES ARE PRELIMINARY AND MAY BE ADJUSTED WITH FUTURE DETAILED DEVELOPMENT PLANS.



# PRELIMINARY NEIGHBORHOOD CIRCULATION PLAN PARK PLACE CROSSING MASTER PLAN

OREGON CITY, OR

• This sheet shows potential pedestrian circulation through the subject site.

Item 8a.

**AKS**  
AKS ENGINEERING & FORESTRY, LLC  
12965 SW HERMAN RD, STE 100  
TUALATIN, OR 97062  
503.563.6151  
WWW.AKS-ENG.COM  
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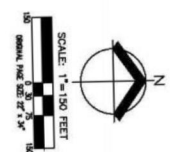


DATE	7/20/24
DATE	05/17/2022
DESIGNED BY	CMS
DRAWN BY	MSA
CHECKED BY	CMS



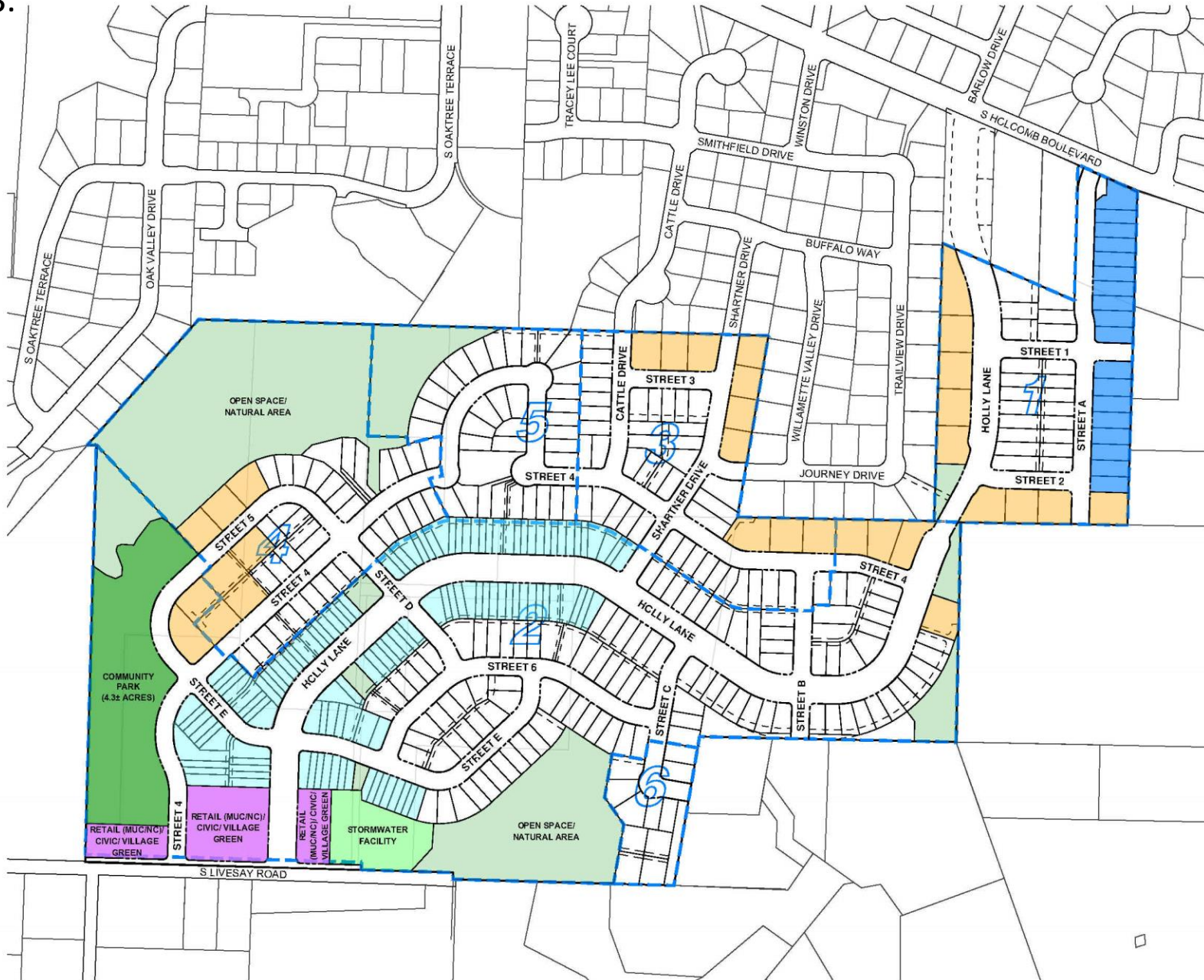
LLC

- load lots.





13.



## UNIT TYPE LEGEND:



PARK PLACE CROSSING RESIDENTIAL UNITS	
UNIT TYPE	UNITS
PAIRED TOWNHOMES	18
TOWNHOMES	121
4-5K SQ FT DETACHED	255
>5K SQ FT DETACHED	32
MIXED-USE (APARTMENT)	14
TOTAL	440

PARK PLACE CROSSING PROPORTIONALITY TO PARK PLACE CONCEPT PLAN NORTH VILLAGE	
PPCP NORTH VILLAGE TOTAL UNITS	937
PPC TOTAL UNITS	440
PERCENTAGE OF PPCP NORTH VILLAGE	47.0%
TOTAL PPCP NORTH VILLAGE PARK (ACRES)	8
PPC PROPORTIONAL PARK REQUIRED (ACRES)	3.8
*PPC DEDICATED PARK (ACRES)	4.3
REIMBURSED PARK (ACRES)	0.5

\* IN ADDITION TO 15.3 ACRES OF OPEN SPACE

PHASED UNIT TYPE AND  
OPEN SPACE SUMMARY:

PHASE 1:

- SINGLE FAMILY DETACHED: 31
- SINGLE FAMILY ATTACHED: 18
- MIXED-USE (APARTMENTS): 0
- OPEN SPACE: 0.24 ACRE

PHASE 2:

- SINGLE FAMILY DETACHED: 114
- SINGLE FAMILY ATTACHED: 121
- MIXED-USE (APARTMENTS): 14
- OPEN SPACE: 6.12 ACRE

PHASE 3:

- SINGLE FAMILY DETACHED: 52
- SINGLE FAMILY ATTACHED: 0
- MIXED-USE (APARTMENTS): 0
- OPEN SPACE: 0.04 ACRE

PHASE 4:

- SINGLE FAMILY DETACHED: 44
- SINGLE FAMILY ATTACHED: 0
- MIXED-USE (APARTMENTS): 0
- OPEN SPACE: 7.88 ACRE

PHASE 5:

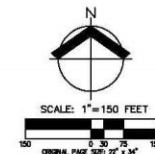
- SINGLE FAMILY DETACHED: 35
- SINGLE FAMILY ATTACHED: 0
- MIXED-USE (APARTMENTS): 0
- OPEN SPACE: 1.54 ACRE

PHASE 6:

- SINGLE FAMILY DETACHED: 11
- SINGLE FAMILY ATTACHED: 0
- MIXED-USE (APARTMENTS): 0
- OPEN SPACE: 0.04 ACRE

TOTAL:

- SINGLE FAMILY LOTS: 436
- RESIDENTIAL UNITS: 440
- SINGLE FAMILY DETACHED UNITS: 297 (67%)
- SINGLE FAMILY ATTACHED UNITS: 139 (33%)
- MIXED-USE (APARTMENT) UNITS: 14 (3%)
- OPEN SPACE: 15.36 ACRE

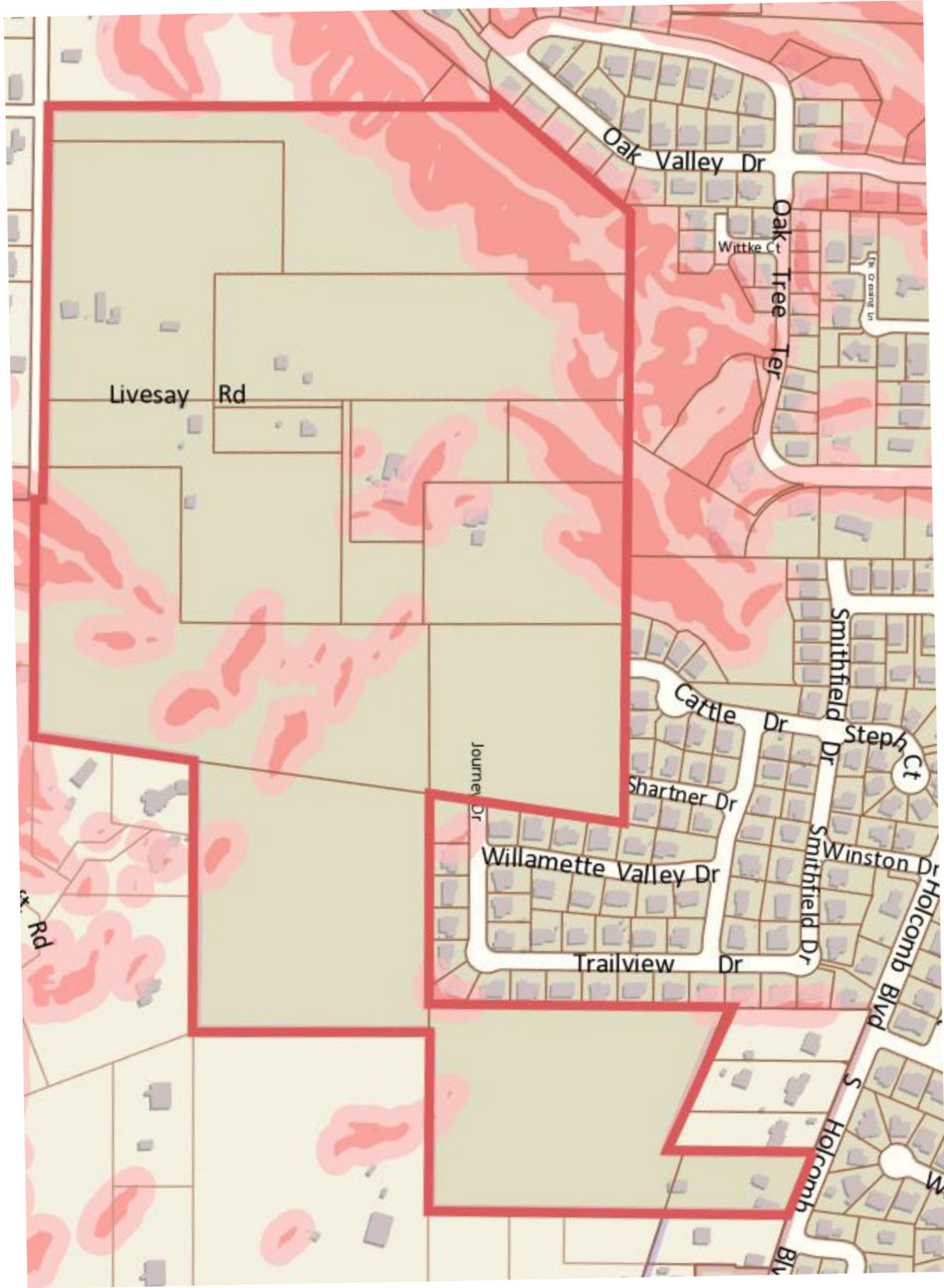


- Final revised layout presented by Item 8a. applicant.
- 426 lots reduced from 476
- Lots adjacent to existing homes and in R-10 are now 10,000 square feet to match existing development (shown in tan)
- Lots on Street A (shown in blue) are paired townhomes which visually appear as duplexes
- Townhomes (light blue) in Phase 2 are closest to the mixed-use commercial area

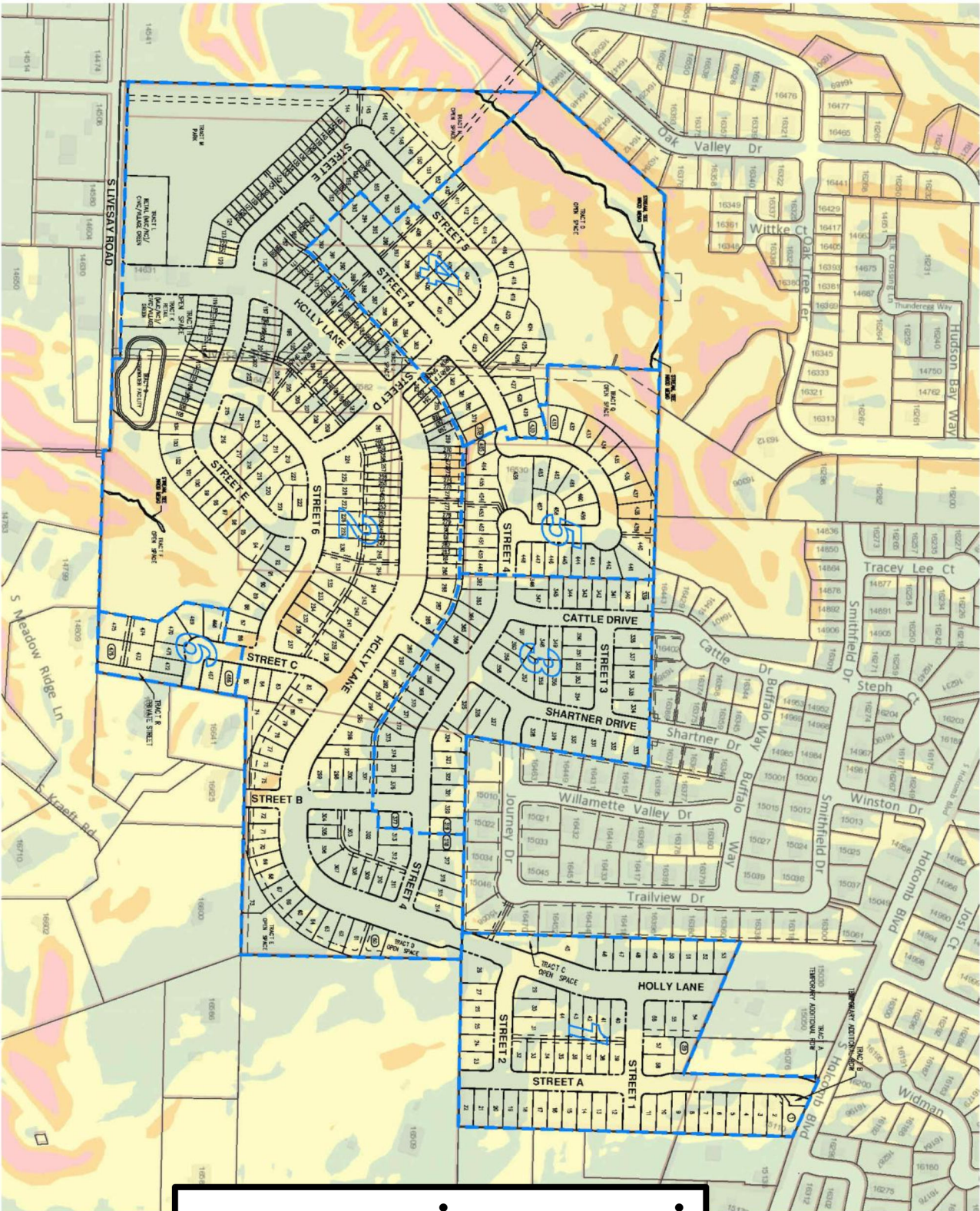
DATE: 07/10/2022  
DESIGNED BY: CMS  
DRAWN BY: NRA  
CHECKED BY: CMS

EXH-1

Geologic Hazard Areas  
of Slopes over 25% and  
buffer areas







- Original proposal (not revised) overlaid on slope categories.
- Areas in orange/marigold and pink/salmon color are considered steep slopes over 25%

NOTE:  
1. GEOLOGIC HAZARD OVERLAY IS FOR OREGON CITY RESIDENTS.  
2. GEOLOGIC HAZARDS WILL BE ASSESSED AT THE TIME OF LAND DEVELOPMENT PERMIT APPLICATION.  
3. NO GEOLOGIC HAZARD REVIEW APPLICATION OR CHECKLIST IS REQUIRED AT THIS TIME.  
4. PORTIONS OF THE AVERAGE GEOLOGIC HAZARD - STEEP SLOPE AREAS WITHIN THE PARK PLACE CROSSING MASTER PLAN AREA ARE SHOWN IN THE MAP AS A RESULT OF LAND-USE ACTIVITIES (E.G. HOUSES, GREENHOUSES, POOLS, ETC.).

SLOPE CATEGORIES LEGEND:  
SLOPES 0-10%  
SLOPES 10-25%  
SLOPES 25-35%  
SLOPES 35% AND STEEPER

PRELIMINARY GEOLOGIC HAZARD SLOPE ANALYSIS  
PARK PLACE CROSSING MASTER PLAN  
OREGON CITY, OR

**AKS**  
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**CLATSOP COUNTY**  
CLATSOP COUNTY ENGINEER  
JAN LAMBERT  
7404  
DATE: 05/17/2022  
DRAWN BY: JNL  
CHECKED BY: JNL  
SCALE: 1" = 150 FEET  
50' ORIGINAL SCALE 20' OF 1"



**October 4, 2022**

---

**To:** Honorable Mayor McGriff and City Commission

**From:** Aquilla Hurd-Ravich, Community Development Director  
Pete Walter, Planning Manager  
Bill Kabeiseman, City Attorney  
Carrie Richter, Deputy City Attorney

**Re:** Park Place Crossing General Development Plan Appeals

**File #s:** GLUA-21-00045 / MAS-21-00006 / VAR-22-00001

**Request:** Nine appeals challenging the Planning Commission's approval of the Park Place Crossing Master Plan General Development Plan and associated approval. As amended during the Planning Commission proceedings, the Applicant, Icon Development, requested approval for 426 residential units to be provided in six residential phases on 91.7 acres of land. The project also includes a community park, open space, on-site stormwater management facility, an area to accommodate retail/civic uses, and trails components. Those areas where the applicant sought, and received permission, to alter the otherwise applicable standards include:

1. A modification to street width standards for a limited segment of Holly Lane:  
16.12.013 – Modifications at PC decision p 134
2. Adjustments to the following development standards:
  - a. OCMC Chapter 17.08.040 and 17.10.040 - reduction in the lot dimensional standards- p 162
  - b. OCMC Chapter 17.21.090.A – changes to garage placement and design – p 125
3. Variance: Request to reduce the minimum lot size for attached single family lots to 1800 square feet – p 190.

The Planning Commission approved the request subject to conditions to ensure compliance with applicable standards. The appeals challenge that approval and seek to have the City Commission overturn the Planning Commission's decision.

**120-Day Deadline:** October 23, 2022

### EXECUTIVE SUMMARY

This General Development Plan (GDP) application sought to advance the efforts to urbanize an area that was brought into the Metro Urban Growth Boundary in 2002. Since the area was brought into the UGB, the City has adopted policies to guide eventual development of this area including:

- adoption of the Park Place Concept Plan (PPCP) in 2008,
- adopting Comprehensive Plan and Zoning designations and policies to implement PPCP policies in 2008 and 2010, and



- annexation and rezoning of the subject 92 acres with conditions requiring master plan review in 2018.

When the property was annexed, the annexation required that property in the Park Place area must be developed pursuant to the City's Master Plan review process and the proposed General Development Plan (GDP) is the first step in obtaining that Master Plan review and the Planning Commission's approval would govern the development of the site over time. No specific development is authorized as part of this application; instead, development would occur only after a detailed development plan is approved.

The Applicant sought to develop primarily housing – 426 units including both attached and detached units – that is generally consistent with the PPCP map designating this area for low to medium residential uses. By a 4-3 vote on September 12, 2022, the Planning Commission approved this application finding that the proposal meets the applicable Park Place Concept Plan policies, the Comprehensive Plan goals and policies, and the provisions of the Oregon City Municipal Code including those related to the modification, adjustments and variance requests. The Planning Commission's decision includes a lengthy series of conditions that identified proportional mitigation and development obligations, particularly as part of the subsequent DDP review, that would enable the project to meet or exceed those standards and goals.

The September 12, 2022, decision followed an August 22, 2022, meeting at which the Planning Commission tentatively approved the application, leaving the only question before the Planning Commission on September 12 whether the written findings reflected the tentative decision of approval. After an initial tie vote, participation by a late-arriving Commissioner resulted in a vote of 4-3. Providing a no-cost right to appeal, appellants now have an opportunity to present their case anew to the City Commission, curing any alleged procedural defects occurring during this final vote.

This issues raised by Appellants focus on adverse impacts that they believe will result from the proposed density and overall layout. With respect to traffic, Appellants argue that the GDP fails to provide the Holly Lane north/south road connection to Redland Road before development which, they assert, is critical to ensure the safety of existing and future residents as well as avoiding pass-thru traffic that they believe will negatively impact the adjacent Trail View neighborhood directly to the north. Appellants also challenge the applicant's expert traffic count assumptions, demand projections, and findings that other critical intersections will be adequate to accommodate the impacts from this development. Appellants also question the proposed level of density, arguing that it sacrifices an existing or future green buffer and results in front-entry garages for some of the homes. Appellants also raise concerns about the degree to which the GDP fulfills the PPCP obligations with respect to the uses and layout of the North Village Main Street area and the area available for a community park. Appellants posit that the GDP fails to sufficiently analyze the risk of landslide, which they believe is significant, and design a project that avoids those risks. Appellants also raise procedural objections over the events that occurred at the final Planning Commission hearing on Sept. 12, 2022.

This GDP review represents the first opportunity for the City (and the public) to review a specific proposal for the eventual development within Park Place. Up to this point, all of the planning and annexations effort has been conceptual – without any site-specific evaluation or expert consultation of density, use, layout, infrastructure demands and impacts. Transitioning from long-term planning policies to a fully functional development requires a balancing of interests that is both exacting as well as highly discretionary. Although it may be possible to interpret the criteria and weigh the evidence differently, the Planning Commission's decision represents a reasonable approach. That said, the concerns raised over the need for a greater degree of Phase 1 green buffering and additional Main Street design obligations could be addressed through the use of additional conditions of approval.

## BACKGROUND FACTS

### The Proposed Development

The subject 92 acres proposed for development is within the northernmost portion of the Park Place Concept Plan (PPCP) area, also known as the “North Village.” Through an applicant-initiated process, the property was annexed and assigned zoning in 2018 through AN-17-04 and ZC 17-05. One of the conditions of approval imposed on the annexation request was that the applicant obtain General Development Plan (GDP) approval for the 92-acre area prior to any urban development on the site. This application for a GDP is thus necessary to comply with the condition and is the next step in the development of this site. Once approved, the GDP would guide future development within the master plan area to assure long-term regulatory certainty and a high level of predictability for existing homeowners and developers within the master plan area as well as the rest of the Oregon City community. The GDP provides a framework for development within the master plan area over the next 20 years, although the applicant anticipates completing development authorized by this GDP approval by 2030 and the Planning Commission conditions required completion of all phases within 12 years.

Although it was modified a number of times during the proceedings before the Planning Commission, the approved development proposal includes the following components:

- 426 residential units<sup>1</sup> to be developed over 6 phases including 342 detached single family residential units and 121 attached townhomes with an overall net density of 9.2 units per acre;
- A 4.3 acre community park and 14.6 acres of open space including trails;
- Transportation connections designed and restricted in order to prevent pass-through traffic within the existing Trail View neighborhood with the construction of Holly Lane from Holcomb Boulevard to Redland Road conditioned to occur during Phase 3; and
- 2.43 acres of land available in separate tracts to provide a continuous corridor for the Livesay Main Street Area that may include neighborhood commercial, retail or mixed use development and civic space.

Graphic depictions of the approved proposal are best illustrated in a series of Exhibits attached to the applicant’s letter dated June 29, 2022<sup>2</sup>. A link to these exhibits is available [here](#) and they are referenced in support of this Staff Report.

### Planning for Urbanization including the Park Place Concept Plan

In 2002, the subject property, along with 400+/- acres throughout the region, were added to the Metro Urban Growth Boundary. At that point, these areas were anticipated for urbanization within the 30-year planning horizon – in other words, when the property was brought into the UGB in 2002, it was

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<sup>1</sup> This number does not include the construction of any multi-family units that could be accommodated within the North Village Main Street area. In a memorandum dated August 11, 2022, the applicant indicated that this area could accommodate 14 additional units.

<sup>2</sup> The revised layout was presented to the Planning Commission at the July 11, 2022 public hearing which may be viewed at the following link: <https://www.orcity.org/bc-pc/planning-commission-32>

anticipated that the property would be developed by 2032. To acknowledge prospective urbanization, these lands were zoned Future Urban – FU-10 by Clackamas County.

In order to ensure an orderly transition from rural to urban uses, Metro has adopted rules requiring the adoption of a concept plan for the area prior to its development. Title 11 of the Metro Urban Growth Functional Management Plan (Sections 3.07.1105 – 3.07.1140) – *Planning for New Urban Areas*. After an extensive and interactive public process, guided by a Project Advisory Committee comprised of neighbors, stakeholders, business owners and City residents, as well as hearings before the Planning Commission and City Commission, in 2008, the City Council adopted the Park Place Concept Plan.

Quoting the relevant parts from the Plan introduction:

“Concept plans describe how an area is expected to develop over time. In general, they identify the *general location and intensity* of land uses, including a variety of housing types (affordable and market-rate), commercial and industrial land uses, parks, open spaces, and schools.” (emphasis added) P 7.

And elsewhere:

## “2. Concept Plan

The vision for the Park Place Concept Plan is to provide a framework for growth that respects and augments the area’s context, history, and natural systems. The Park Place Concept Plan emphasizes good urban design, connectivity, opportunities for place-making and cultivating community, diversity, and, above all, a way to provide for future growth in a sustainable manner.” P 21.

The PPCP consists of a variety of materials that guided plan drafting, the plan, and chapters dealing with implementation and possible financing. The PPCP also includes a Technical Appendix “which provides comprehensive descriptions and details of the Plan elements” and, as such, provides context for interpreting the PPCP plan. P 7. The Plan itself consists of an area site plan followed by a narrative series of chapters. The Plan map - “North Village Neighborhood”, Figure 3-2, bears a note stating:

“This map is for concept planning purposes only. *The specific locations of natural resource boundaries, open space, parks, land uses, roads, trail, infrastructure and related improvements may change and is subject to on-site verification and design at the time of development.*” (Emphasis added) P 24.

These purpose statements and disclaimers suggest that the Concept Plan was designed at a high-level without any site-specific assessment of topography or other natural resource or health and safety overlay obligations. The term “framework” is defined by *Merriam Webster’s 3<sup>rd</sup> International Dictionary* as the “a basic conceptional structure (as of ideas).” It is the skeleton or a generalized idea that is intended to subsequently be developed as more detail is available. As such, it would be reasonable to assume that the PPCP does contemplate some variability with respect to uses, their location, and their design.

The proposed 92-acres are within the PPCP North Village which, in summary, includes:

- The primary land use is residential. Of the approximately 408 net buildable acres in the study area, approximately 360 acres are proposed for residential use. The majority of the new residential growth (a total of approximately 936 units) is proposed to be accommodated in the



North Village neighborhood, north of Redland Road. A wide range of housing types from very low density single family development to high density multi-family uses that will “attract a mixture of ages, incomes, family structures and lifestyles;”

- A new main street along Upper Livesay Road between the Holly Lane and Swan Avenue Extensions, called “Livesay Main Street,” surrounded by a mix of small-scale commercial and residential uses, served by wide sidewalks, that would terminate with a Village Green and civic building, serving as “the heart of the North Village;”
- Transportation demand accommodated by two north-south collectors: the extension of Holly Lane from Redland Road to Holcomb Boulevard and the Swan Avenue extension from Forsyth Road to points south of Donovan Road;
- “An 8-10 acre community park” along with an “extensive system of off-street and on-street trails and pedestrian/bicycle connections” that are integrated into neighborhoods and that define and buffer different neighborhoods;
- Sustainability values that include innovative, green on-site stormwater treatment methods, the protection of sensitive areas, including drainages and steep slopes;
- “Land uses along Livesay Main Street are envisioned to be a mix of residential and commercial uses (e.g. ground-floor, neighborhood-oriented commercial with housing or offices above),” providing “area residents with opportunities to shop and work,” with pedestrian-focused design elements to be implemented by “main street” standards to be adopted in the future.

Concurrent with the adoption of the PPCP, the City designated the subject property on the comprehensive plan map for low density residential (LR), medium density residential (MR), and mixed use corridor (MUC). In 2008 and 2010, the City adopted zoning amendments to implement the PPCP addressing allowed land uses, residential, commercial and mixed use design standards, provisions for protection of natural resources and geologic hazards, public improvements, tree removal and replacement, and other standards.

The owner initiated an application for annexation and concurrent rezoning in 2017. A small portion of the property was rezoned to R-10, a majority of the site was rezoned R-5 and the southern portion was rezoned Neighborhood Commercial. The annexation and rezoning of the property in 2017 was conditioned upon submittal of a Type III master plan.

#### **Proceedings Before the Planning Commission**

The initial public hearing on this application was held on April 25, 2022, with continuances to May 9, 2022, May 23, 2022, July 11, 2022, July 25, 2022 and August 22, 2022. Taken together the Planning Commission heard 10 hours of public testimony, not including presentations from city staff or the applicant, including from representatives of the Park Place Neighborhood and 72 individuals, many testifying at multiple hearings.

On August 22, 2022, after closing the public record to all new testimony and lengthy deliberation where all Planning Commissioners were heard, the Planning Commission voted 5-2 to tentatively approve the application with modified findings and conditions. The matter was

then continued to September 12 where the Planning Commission would adopt the final written decision confirming that it was consistent with its previous decision.

At the continued hearing on September 12, the meeting began with only six members of the Planning Commission present. The Chair called for any ex parte contacts and commenced deliberations on the final written decision. The Planning Commission initially split evenly on whether to approve the application; however, after the initial vote was taken, the seventh commissioner joined the meeting and the application was approved 4-3.

## **ANALYSIS OF ISSUES RAISED ON APPEAL**

The City received nine notices of appeal from project opponents, including one from the Park Place Neighborhood Association and the others from individual neighboring residents or concerned citizens. All entities / individuals participated during the proceedings before the Planning Commission and have standing to participate. Since there is some overlap between the issues raised by the various parties, this Report is organized by topic area rather than by discrete appeal issue.

### **New Appeal Issues and Evidence Raised for the First Time on Appeal**

In appeals of Type III decisions from the Planning Commission, OCMC 17.50.190.D.2 provides that: (1) “appeals are limited to those issues raised either orally or in writing before the close of the public record;” and (2) “no new evidence shall be allowed.” A number of appeal statements include new issues that were not raised before the Planning Commission or include new evidence. Each of these issues are discussed in greater detail below:

- 1) Bias Challenge against Planning Commissioners Daphene Wuest and Mike Mitchell – At the start of each Planning Commission hearing, each commissioner was asked to disclose any conflict of interest, bias or ex parte contacts. At each of those hearings Commissioners Wuest and Mitchell explained their historic involvement with the applicant. Although the public was given the opportunity to challenge any commissioner for bias based on these disclosures, no bias challenge was raised. Appellant Dalseme cannot raise this new issue now. Moreover, as discussed further below in relation to a different issue, to the extent any planning commissioner was biased, the hearing before the City Commission resolves that issue.
- 2) Impropriety of conversations between the applicant and staff relating to changes to the Geologic Hazards Code – This is a new issue that was not raised before the Planning Commission below. Although it is not relevant to any of the substantive considerations of this issue, this appeal issue raised by Appellant Dalseme, along with the newspaper articles substantiating the same, should be rejected from the record and not considered further by the City Commission.

## **PROCEDURAL CHALLENGES**

### **Planning Commission Final Vote – Raised by Nicita, Huang, Mansouri and the Petersons**

A number of appellants raised concerns over the way in the which the final vote occurred before the Planning Commission on September 12. As noted above, on August 22, the 7-member Commission voted to tentatively approve the applications by a vote of 5 to 2. The September 12 Planning Commission meeting was anticipated to include a review of findings to confirm the Planning

Commission's tentative vote. No Appellant raised any objection to the procedures leading up to the tentative approval.

The September 12 meeting began with only six of the seven members of the Planning Commission present – five in the Commission chambers, and one present electronically. Before turning to the proposed findings, the Planning Commission disclosed any ex parte contacts and then began discussing an issue that had not been discussed previously, namely, whether a particular clause in the prefatory portion of Ordinance No. 07-1007 required some further action before action could be taken. After a short discussion, one member of the Planning Commission present in the chamber moved to approve the findings, and that motion was seconded. A vote was held and the result was a tie vote at 3-3. The Planning Commission turned to the City Attorney to ask what should occur with a tie vote. The City Attorney provided several options, including the possibility of locating the seventh member and having that member participate in the vote. Subsequently, a member of the audience who was not participating in this matter called the missing Planning Commission member and provided his phone to the Community Development Director. The motion to approve was made again and it was approved 4 to 3.

Several Appellants have raised various issues related to the Planning Commission's meeting and how the vote occurred, including that the Planning Commission was not presented all available options, that the seventh commissioner was called by someone who had a bias, that the seventh commissioner was not informed regarding the issues before the Commission, that the seventh commissioner did not disclose any ex parte contacts, that the vote was a "nullity" because no one on the prevailing side of the previous vote moved to reconsider, and various other procedural concerns.

As an initial matter, it is important to note that, while several of the appeal issues raise the specter of improper actions by the seventh commissioner, there is no allegation, nor identification, of actual improper conduct. In other words, there is no allegation that the person on the phone was not the actual seventh commissioner, only that the Commission could not be certain. There is no allegation that there were ex parte contacts, only that there could have been. Similarly, none of the appeals explain how it was improper for the commissioner to use one particular phone instead of a different phone. For whatever reason, the seventh commissioner was not present when the Planning Commission meeting began, but joined the meeting later. There is nothing improper about late arrival at a meeting and there was no reason for either planning staff or the planning commission to prevent his participation as a result. The City acts through its elected and appointed representatives on various boards and commissions; to the extent a member of one of those commissions is present, they are entitled to participate (barring other disqualifying attributes).

Turning to the procedure used by the Planning Commission, the appeal filed by Mr. Nicita correctly notes that, under the Commission's rules of procedure and Robert's Rules, only a member of the Commission who voted with the prevailing side on a motion can seek reconsideration of the motion. However, the fact that the motion was made by someone who was not on the prevailing side did not make the vote "illegal" or otherwise render it a nullity. As noted in Section 23 of Robert's Rules, if a breach of procedural rules occurs, a member of the body may raise a point of order, but the point of order must be raised in a timely fashion. Because no member raised a point of order, the vote was taken and the result announced, making it a final decision.

The Planning Commission, as well as other boards and commissions in the City, often do not act in strict accordance with Robert's Rules and the otherwise applicable rules of order. This is typically done because those rules are not intended to be a straitjacket requiring strict compliance but rather to facilitate making decisions of the majority of the commission, while respecting the rights of the minority. If the city attorney were to require strict adherence to each precept of Roberts Rules, most meetings would end up being run by the city attorney and community decision-making would be diminished, rather than enhanced. In short, while the Planning Commission's decision was procedurally flawed, it was not a nullity, nor was it illegal.

Stepping beyond the merits of those challenges for a moment, review of this matter on appeal by the City Commission offers a de novo (or new) opportunity to interpret the applicable approval criteria and make a decision based solely on the City Commission's evaluation of volumes of evidence collected over a 4-month period. The Commission owes no deference to any of the Planning Commission's interpretations or weight given to any of the evidence. As a result, allowing all parties with standing an opportunity to appeal raising their concerns, coupled with unrestricted review of the record by the City Commissioners will cure any prejudice due to a planning commissioner's allegedly improper participation in or vote taken during the planning commission proceedings. *See Murphy v. City of Ashland*, 19 Or LUBA 182, 189 n 7 (1990).

To ensure that the City Commissioners will make a decision based on the criteria, limited to the record, before each public hearing on appeal, the City Commission will be asked to disclose all ex parte contacts or if they have any conflicts of interest or bias concerns to declare. The public will be given an opportunity to question the Commissioners further with respect to these disclosures. Then the City Commission will have an unfettered opportunity to consider the evidence, ask questions and make an entirely new decision.

#### **Planning Commissioner Bias – Raised by Dalseme**

Appellant Dalseme raises concerns that Commissions Wuest and Mitchell were biased. Any allegation of bias or other impropriety that might otherwise compromise the validity of the Planning Commission's decision is eliminated by the City Commission's review.

#### **The Planning Commission Review Process was Rushed – Raised by Dalseme**

The public hearing for this application first opened on April 25, 2022, with continuances to May 9, 2022, May 23, 2022, July 11, 2022, July 25, 2022 and August 22, 2022. The hearings on May 23 and July 11 lasted over 4 hours in length. In total, the Planning Commission heard testimony from 72 individuals and many on multiple evenings. Over the course of that time, the applicant revised its project three times to respond to concerns raised by Oregon City staff and concerned neighbors. These facts do not support a finding that this matter was in any way rushed, participation compromised or that the Planning Commission did not make a deliberate decision.

#### **Incomplete Application – Raised by Huang, Mansouri and the Petersons**

Appellants argue that as originally submitted, the application contained "factual errors and omissions" and therefore, it should not have been deemed complete. On August 19, 2021, City staff sent a letter to the applicant identifying a list of items that were missing from the application, deeming it incomplete. In its response, dated January 14, 2022, the applicant provided some additional information and

requested that the application be deemed complete. Under ORS 227.178(2)(c), once an applicant asks for a completeness determination, the city has no choice but to proceed with processing. Further, as LUBA has explained in numerous cases, the purpose for a completeness check is to determine if the applicant has provided enough information to conduct a review. It does not offer any determination whether the approval standards are satisfied, nor does it prohibit an applicant for revising or supplementing an application in order to demonstrate compliance with the applicable standards. *Frewing v. City of Tigard*, 59 Or LUBA 23 (2009); *Sperber v. Coos County*, 56 Or LUBA 763 (2008).

## SUBSTANTIVE CHALLENGES

Master plan approval in Oregon City is a two-step process. First, an applicant must secure a General Development Plan (GDP) approval identifying “the long-term buildout” proposal for the site including proposed land uses, densities and infrastructure necessary to serve those uses, subject to a Type III review. OCMC 17.64.040.B. Once a GDP is in place, an applicant must obtain a detailed development plan (DDP) approval to ensure that development complies with the approved GDP, which is processed through a Type II procedure. OCMC 17.64.040.C. Where changes to a proposal exceed certain code-identified thresholds, an applicant must return and amend their GDP before proceeding with development. OCMC 17.65.080.

The City Commission’s evaluation of this application must be “based on standards and criteria which shall be set forth in the development ordinance and to the comprehensive plan \* \* \*.” ORS 227.173(1). The “standards and criteria” applicable to this General Development Plan are set forth in OCMC 17.65.050.C. In addition to specific criteria relating to evaluating transportation, infrastructure and resource impacts, OCMC 17.65.050.C(6) requires that the City determine whether: “The proposed general development plan is consistent with the Oregon City Comprehensive Plan.” Adequate “criteria and standards” are those that have been codified as sufficient to inform interested parties of the basis on which an application will be approved or denied. ORS 227.173(1). *Waveseer of Oregon, LLC v. Deschutes County* \_\_\_ Or LUBA \_\_\_ (LUBA No. 2020-038, 2020), *aff’d* 308 Or App 494 (2021); *See also Lee v. City of Portland*, 57 Or App 798, 802-03, 646 P2d 662 (1982).

### **Need for Future Concept Plan or OCMC Implementation Amendments – Raised by Park Place Neighborhood Association, Nicita, Huang, Mansouri, the Petersons**

Appellants have pointed out that one of the prefatory provisions set forth in Ordinance 07-1007 (the ordinance adopting the PPCP) provides that “further amendments to the Oregon City Comprehensive Plan and Map and Zoning Code and Map will be necessary in order to implement the Park Place Concept Plan.” Some argue that this provision indicates that further PPCP amendments were necessary before any development within the Plan area could be permitted. In a related but more specific argument, Appellant Nicita argues that the City must adopt additional design guidelines before allowing development within the Neighborhood Commercial zone in order to achieve the Main Street Village objectives set forth in the PPCP. The Technical Appendix includes some proposed draft design standards. The main idea behind these appeal issues is that the PPCP was not fully formed or fully implemented in zoning and, for that reason, future development must be delayed.

First, with respect to Ordinance 07-1007, only codified and adopted regulatory thresholds may serve as “standards and criteria” subject to development. Even when looking for additional context to inform the meaning of a codified standard, that context must come from things that are codified. Nothing in

the OCMC indicates that an applicant must consider or otherwise comply with the prefatory ordinance provisions that affected an amendment to the comprehensive plan. *Waveseer supra.*; *Zirker v. City of Bend*, 233 Or. App. 601, 610, 227 P.3d 1174, rev. den., 348 Or. 415, 233 P.3d 818 (2010).

Second, the OCMC was amended in 2008 and 2010 to implement the PPCP addressing allowed land uses, residential, commercial and mixed use design standards, provisions for protection of natural resources and geologic hazards, public improvements, tree removal and replacement, and other standards. It is likely that these amendments satisfied the implementation obligations discussed in Ordinance 07-1007.

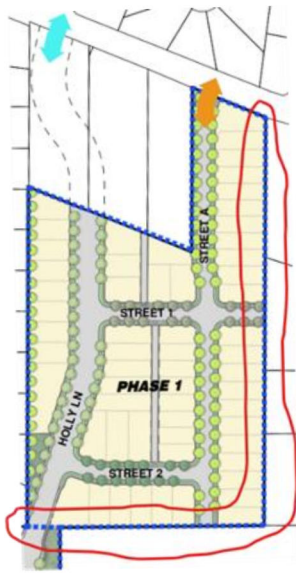
Finally, the fixed goal post rule, ORS 227.178(3)(a) provides that “approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.” Assuming that additional zoning code amendments implementing the PPCP have yet to occur, that fact alone does not allow the City to deny a development request. Rather, the City must evaluate requests against the “standards and criteria” set forth in the adopted OCMC and the comprehensive plan, including the PPCP and cannot deny a proposal because some implementing standards are not in place. That said, the whole of the PPCP, including the Technical Appendix, have been adopted as part of the City’s Comprehensive Plan and are applicable to this proposal in their own right pursuant to the GDP criterion OCMC 17.56.050.C.6. Therefore, whether additional amendments are necessary to implement the PPCP or not, the PPCP applies directly to this development through the master plan. Additional zoning provisions fulfilling the PPCP objectives would not have any impact on this development, presuming that it otherwise complies with the PPCP. The substantive PPCP requirements with respect to the Main Street Village provisions are discussed in greater detail below.

**Overall Residential Density and Green Edge Buffers in Phase 1– Raised by Huang, Mansouri, the Petersons**

Appellants argue that the application proposes too much residential density as areas within the South Village are more suitable to accommodating greater densities and reducing the density would have the result of preserving or planting trees as a buffer. Appellants believe that amendment of the PPCP is needed before this level or arrangement of density with lack of additional landscape buffering can be permitted. In support of their position, Appellants point to a “key component” of the PPCP which

provides: “The use of green edges to define neighborhood and buffer developments”<sup>3</sup> and a PPCP provision talking about low-density clusters along lower Livesay Road and Holly Lane in the near term.<sup>4</sup>

First, the PPCP provisions related to low-density clusters are directed to the areas of Holly Lane within the South Village and areas of Livesay located to the west of the North Village. Other provisions make clear that this provision is not directed at areas north of Livesay. For example, when describing the location of one of the mixed use centers, the PPCP states that it will be “surrounded by medium and higher density.” P 3. The PPCP map identifies all of the area north of the area near the Main Street Village to be suitable for low to medium density residential. Finally, this provision describes a current condition that is expected to remain until it transitions to greater density over time. With PPCP adopted in 2008, it may be that the time for that transition has come.



With respect to buffering and existing trees, the application included an existing conditions plan that identifies all trees over 6" diameter. These trees will be regulated through OCMC 17.41, which discourages tree removal through robust mitigation and replanting standards. All future DDP applications will be required to show compliance with these standards. The PPCP provision talks about using the plan-identified natural areas as the buffer between developments, which the applicant has done by retaining a natural area along the north and west sides of the development. The applicant has also identified the planting of a landscape buffer between the proposed Phase 1 lots and Trail View estates to the west. It may be that the City Commission would like to impose a condition requiring additional trees buffering between the east and south boundaries of the Phase 1 development within the 20' rear yard setback that will be required for the single family and paired townhouses proposed for these abutting lots.

Moving beyond specific PPCP provisions, Appellants suggest that the Planning Commission should have required a density less than 9.1 dwelling units per acre or allocated it differently, made possible by

<sup>3</sup> The introductory provisions of the PPCP offers additional information about the scope of the “green edges” requirement where it states:

“Identifiable centers and green edges: The preferred alternative includes two discrete mixed-use/commercial centers, one on Livesay Road and another in the southern portion of the study area near Donovan Road supported by the enhanced transportation system. Each center provides for a mix of civic and commercial uses and spaces to serve the planning area. Edges around and between residential areas and existing neighborhoods are defined by open spaced (primarily corresponding to natural areas) and larger rear setbacks for new lots that border existing neighborhoods.” P 2-3.

<sup>4</sup> More specifically, the statement set forth in the PPCP provides:

“Existing low-density clusters: Properties along Lower Livesay Road and Holly Lane are expected to remain as low-density clusters in the foreseeable future. They will have the potential to transition to medium-density residential uses over time. However, in the near term they are expected to retain the lowest densities within the planning area.”

rezoning some of the existing R-5 area to R-3.5 and the R-10 area to R-6 or R-8. As noted above, the only criteria that the City can apply are those that are adopted. Whether the zoning could be modified to allocate the density differently does not provide a basis to deny or impose additional conditions of approval.

That said, overall development density was a significant concern to the Planning Commission. The applicant originally proposed 476 units. That number was revised to 426 units as part of this process with the number of lots within Phase 1 reduced from 59 units to 49 units with lot lines that correspond with adjacent development and paired duplexes that better match the aesthetics of the existing neighborhood.

There were a couple of principles that drove the Planning Commission's analysis of this issue. First, the PPCP calls for the provision of 936 units within the North Village. The land area proposed for development comprises approximately 50% of the total North Village acreage and therefore, an equitable allocation of density would assume the provision of 468 units. Since the PPCP does not provide additional guidance about how the densities should be allocated, the Planning Commission findings focus on the maximum and minimum densities authorized within the R-5 and R-10 zones. As explained in detail on pp 36-38 of the Planning Commission's decision, in summary:

"The minimum composite density (calculated based on the net developable area and base zone density standards) permitted by the base zoning for the area is 6.8 dwelling units per acre (347 dwelling units with the NROD density transfer). The maximum composite density permitted by the base zoning for the area is 9.2 dwelling units an acre. Park Place Crossing is within the minimum/maximum density range established by the base zoning for the area, not including permitted density transfers and bonus density processes described below." P 34.

The Planning Commission's decision goes on to identify the pros and cons of a further reduction in density including potentially violating another comprehensive plan policy that talks about maximizing density as a means to efficiently utilize public utilities, placing unrealistic or unfair density demands on PPCP areas further to the south and a concomitant reduction in land available for a park. On the other hand, a reduction in density would allow for larger lots, a greater degree of buffering or transitions between the existing neighborhoods. This would eliminate the need for the lot size and dimensional standards adjustments as authorized through Master Plan review.

In closing on the density point, Appellants argue that, if the on-the-ground development realities do not reflect the conditions set forth in the PPCP, the only alternative to allow development is to amend the PPCP. Although this would be true if there were a codified standard in the OCMC or comprehensive plan (or PPCP) that could not be met by the GDP. As pointed out above, the PPCP is, by its nature, "conceptual."<sup>5</sup> Further, the Court of Appeals has held that where comprehensive plan policies must be

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<sup>5</sup> The following language from the concept plan supports a finding that the number of dwelling units and their allocation throughout the plan area is conceptual:

"Table 3-2 identifies the potential number of housing units of different types that could be developed within the concept planning area based on proposed zoning. The low/medium-density zone is more likely to be the site of manufactured homes and



applied and are somewhat conflicting, a balancing process of some sort is not only permissible, it may well be required. *Waker Associates, Inc. v. Clackamas County*, 111 Or App 189, 194, 826 P2d 20.

### Transportation Concerns

#### The PPCP identified North-South Connection and Transportation Connectivity – Raised by Park Place Neighborhood Assn, Huang, Mansouri, Peterson, Nicita, Hammond-Williams and Dalseme

The Appellants point out that the one of the “key components” identified in the PPCP includes: “two primary north-south connections between Holcomb Boulevard and Redland Road (Swan Avenue and Holly Lane).” P 1. Appellants argue that this application must be denied for the failure to provide one (or both) of these connections or otherwise conditioned to require the extension of Holly Lane using the City’s condemnation power, if the applicant does not otherwise own the land. Appellants believe that the failure to require two north-south connections not only violates the PPCP principles, it will result in a development that violates Comprehensive Plan Policy 7.1.13 – “Minimize the risk of loss of life and damage to property from wildfires within the city and the Urban Growth Boundary” and will not result in sufficient transportation redundancy to provide for egress in the case of an emergency.

Responding to this issue first requires understanding the transportation scheme that the Planning Commission approved. The Planning Commission interpreted this provision to require that the development include at least two emergency access locations at all times to serve this development. *See PC Findings in Response to Policy 7.1.13*, p 96. In order to do this in a way that minimized and dispersed the transportation impact to the north, the applicant proposed a phased development that expands the number of emergency egress options as the development phases occur. The first phase of development - 49 including a mix of detached and paired duplex single-family homes, will have access to Holcomb Boulevard via Street A and will include an emergency vehicle only access through a new street connection to Shartner Drive. Full buildout of Phase 1 and Phase 2 - a total of 182 detached single-family homes and 36 attached single-family homes will have primary access onto Holcomb through Street A with emergency access points through Shartner Drive and Holly Lane and Livesay Road. Construction of Phase 3 units will create additional connections to Holcomb Road through Cattle Drive and Journey Drive but they will be available to Phases 1 and 2 for emergency use only. Phases 1, 2 and 3 will have emergency access at Shartner Drive, Street B, and Street 4. See Exh-1 through Exh-4 of Applicants June 29, 2022 submittal.

Before any home occupancy that would result in total development trip generation in excess of 2,000 vehicle trips,<sup>6</sup> a condition of approval requires the provision of vehicular connection to the south.

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ADUs than the medium/high-density zone. The distribution of housing types in Table 3-2 however, represents only one scenario for accommodating needed housing within zones proposed for Park Place. It is possible that housing types may develop in different ratios, including development of attached single-family housing in the low/medium density residential zone.” P 28.

<sup>6</sup> As pointed out during the proceedings below and explained in the Planning Commission’s decision, according to Metro’s 2018 Regional Transportation Plan, “Local streets primarily provide direct access to adjacent land uses, and usually between 200- 2,000 vehicles per day, with volumes varying by

Condition 9.c. The applicant projects that this threshold will be met sometime during the middle of the development of Phase 3. Appellant Smith argues that this 2,000 vehicle trip per day threshold will be met much sooner because the average daily residential trips should be 82% of 9.2 per household.

The city's Guidelines for Transportation Impact Analyses specify use of the ITE Trip Generation Manual (latest edition) or an alternative "subject to approval by the City Engineer prior to their inclusion in the transportation impact analysis." The ITE Trip Generation Manual's (11th Ed) daily trip rate (simple arithmetic function) value is 9.43 average daily trips per dwelling unit. As it appears that the Appellant is arguing for a rate of 7.54 trips per household (assuming 82% of 9.2), that would mean that the applicant could build more dwelling before triggering the 2,000 trip per day limitation.

Further, pursuant to Condition of Approval 9c, the applicant will have to perform new studies for each phase to demonstrate that the threshold value will not be exceeded by existing traffic plus the trips generated by the existing dwellings (plus prior phases). If it turns out that the applicant undertakes a count on a local street in 2025 that shows 1250 vehicles per day, they could add 750 trips without exceeding 2000.

Some Appellants raise OCMC 16.12.095.A<sup>7</sup> as providing a need for greater transportation capacity. As this provision provides, the City's ability to obligate an applicant to expend funds necessary for public

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jurisdiction." The City does not have an adopted standard for traffic volume on local streets. However, a street with 2,000 or more trips per day will feel, to the adjacent resident, more like a collector street. The level of traffic would have noise impacts as well as effects on the ability of children to play in or near the street. Local streets in Park Place are generally quiet and conducive to activities like walking, bicycling, sports, and other non-automotive uses. With the traffic levels at 2,000 trips per day or more, the livability of the neighborhood and enjoyment of these activities, as well as overall safety, would be significantly affected.

For comparison purposes, Average Daily traffic (ADT) on other local city streets based on 2021 volume studies are as follows:

- 16th St – West of Division ADT: 517 trips
- Front Street (in Park Place) near Forsythe ADT: 449 trips
- Apperson north of Holcomb ADT: 692 trips

<sup>7</sup> OCMC 16.12.095.A provides, in relevant part:

"The following minimum improvements shall be required of all applicants for a development, unless the decision-maker determines that any such improvement is not proportional to the impact imposed on the City's public systems and facilities:

A. Transportation System. Applicants and all subsequent lot owners shall be responsible for improving the City's planned level of service on all public streets, including alleys within the development and those portions of public streets adjacent to but only partially within development. Applicants are responsible for designing and providing adequate vehicular, bicycle and pedestrian access to their developments and for accommodating future access to neighboring undeveloped properties that are suitably zoned for future development."

improvements, like roads and utilities, is constrained to those that are “roughly proportional” to the impacts of development under the Takings Clause of the US Constitution and Article I, section 18 of the Oregon Constitution. As a result, the City cannot condition an applicant to fund the dedication and/or construction of an additional road unless it also concludes that the existing roadways are inadequate and new roadways are necessary. Here, the applicant’s licensed transportation engineer determined that compliance with transportation mobility standards set forth in OCMC 16.12.033 and the 2,000 trip per day limitations can be achieved without the connection from Holly Lane to Redland Road. The City’s licensed and independent transportation engineer concurred with these findings. Certainly, the City could decide to use its authority to condemn land pursuant to ORS 223.930 and it could independently or share the cost with the applicant, assuming that supportable rough proportionality findings can be identified. This is a policy determination for the City Commission.

The Concept Plan, including all of its “key priorities,” identifies a vision for development of a total of 480 acres of land and the area subject to this application includes +/- 91.7 acres, less than ¼ of the total acreage. Unless a master plan for development of the total 480 acres is proposed, some smaller proportion of connectivity may be provided to serve a smaller level of development. Some appellants have argued that the concept plan must be amended in order to approve an application that fails to realize all of the improvements set forth in the PPCP. A comprehensive zoning plan only establishes long range maximum limit on possible intensity of land use, it does not simultaneously establish immediate minimum limit on possible intensity of land use. Unless a code specifies otherwise, questions of timing for realizing the full buildout may evolve over time. *Marracci v. City of Scappoose*, 26 Or App 131, 552 P2d 552, *rev den*, 276 Or 133 (1976).

The applicant will be required to complete the Holly Lane connector when pass-thru traffic on neighborhood streets exceeds local street levels. In the meantime, the Planning Commission’s decision requires that at least two routes for emergency access to serve future residents are maintained, providing a sufficient plan to minimize the evacuation risk and to provide redundancy for emergency access. Finally, the Planning Commission’s decision does identify upcoming efforts by the Clackamas County disaster management division including evacuation route planning efforts that will occur in the near future.

Adequate Street Width at the Pinch Point – Raised by Huang, Mansouri and the Petersons

The Appellants claim that the road width between Taxlot 314 Tax Map 2-2E-28AD and Taxlot 400 Tax Map 2-2E-27C, often called the “pinch point” does not meet the TSP requirements for street design and a variance should not have been permitted. OCMC 16.12.013 allows for the City to approve a modification to the required road standards where it is found that doing so will provide safe and efficient movement of pedestrians, motor vehicles, bicyclists and is not inconsistent with the TSP. As discussed in the Planning Commission findings on pp 135-142, the proposed modification will include a vehicle travel lane, bicycle lane and sidewalk at the full width provided elsewhere, along with green space on either side. There is no evidence to suggest that constraining the street in this way will compromise safety for pedestrian, bicyclists, cars or emergency vehicles.

Adequacy of the Transportation Impact Analysis – Raised by Park Place Neighborhood Assn, Huang, Mansouri, the Petersons, Hammond-Williams and Smith

### *Baseline Traffic Counts*

several of the Appellants argue that the traffic impact analysis underestimated the existing baseline traffic because it was performed during the COVID closures when many businesses and schools were not in session. The applicant's traffic analysis goes into a fairly deep explanation of how it used the existing traffic counts from April 2021, during the COVID closure, but compared them with historic counts from 2017 and 2019 and where appropriate applied adjustment factors accordingly. See pp 20-21. The City's traffic engineering, John Replinger reviewed this analysis and found that it was reasonable.

### *Congestion Impacts on Livability*

Appellants argue that the applicant's transportation impact analysis failed to acknowledge the failure of the Redland/ OR 213 intersection failure without development or to evaluate how the existing transportation system, particularly the intersections of Holcomb / Abernethy / Redland and Redland and Hwy 213 would impact livability on adjoining neighborhoods.

OCMC 16.08.025.B sets forth the submittal requirements for processing a preliminary subdivision request and provides, in relevant part:

"...a traffic impact study prepared by a qualified professional transportation engineer, licensed in the state of Oregon, that assesses the traffic impacts of the proposed development on the existing transportation system and analyzes the adequacy of the proposed internal transportation network to handle the anticipated traffic and the adequacy of the existing system to accommodate the traffic from the proposed development."

The applicant's traffic impact study (TIS) was prepared by Todd Mobley of Lancaster Mobley, an Oregon licensed transportation engineer. Because this application precedes the construction of the S Holly Lane connection, the applicant's TIS assumes all site-generated traffic uses S Holcomb Boulevard and the intersections of Redland Road at OR-213 and Redland Road at Holcomb Boulevard/Abernethy Road. The applicant's transportation study makes the following conclusion:

"All intersections are shown to meet applicable mobility standards over the proposed Master Plan development period except for #4: OR Highway 213 and Redland Rd. The engineer concludes in the TIS: "Based on the results of the operational analysis, the intersection of Redland Road at OR-213 is projected to operate in excess of acceptable per jurisdictional standards during the 2nd evening peak hour under 2026 buildout conditions (Phase 1) and for all succeeding analysis scenarios through year 2030." During second highest hour of the PM peak, the calculated v/c is predicted to degrade from 0.982 under existing conditions to 1.032 in 2030 with the development. The standard for this intersection for the second peak hour found in OCMC 16.12.033.A.2 is "During the second hour, a maximum v/c ratio of 0.99 shall be maintained at signalized intersections. For signalized intersections, this standard applies to the intersection as a whole."

These findings were reviewed by Mr. John Replinger, the City's traffic engineering consultant, who provided an independent 3<sup>rd</sup> party evaluation of the applicant's traffic study. Based on Mr. Replinger's review, he concludes that,

“The TIS provides sufficient information and documentation to satisfy the requirements of OCMC 17.65.050 C 3 with respect to adequacy of the transportation system for Phase 1 of the proposed development. For Phase 1, all intersections operate acceptably. However, the TIS indicates that the intersection of OR-213 and Redland Road fails to meet the applicable v/c standard for the second hour of the PM peak hour. In addition, queues that exceed available storage distance are predicted at the intersection of OR-213 and Redland Road and at the intersection of Redland Road/Abernethy Road/Holcomb Boulevard.

A detailed development plan for Phase 1 will not need additional transportation analysis beyond that provided in this TIS.

Detailed development plans for any phase beyond Phase 1 will require additional analysis and implementation of mitigation measures that demonstrate that the transportation system is “capable of serving the proposed development, or will be made capable by the time each phase of the development is completed” in accordance with OCMC 17.65.050 C 3. Specifically, the applicant will need to implement improvements at the intersection of OR-213 and Redland Road and at the intersection of Redland Road/Abernethy Road/Holcomb Boulevard such that v/c standards are met and adequate queue storage is provided. The burden is on the applicant to coordinate with and meet the requirements of the agencies with jurisdiction over the subject intersections and roadways (i.e. the Oregon Department of Transportation, Clackamas County and the City of Oregon City).”

The fact that the transportation study was independently reviewed and findings confirmed, suggests that it is not “skewed in favor of the developer.” Traffic system adequacy is not evaluated on whether it will have an “impact on livability” but rather whether an affected intersection meets the applicable volume-to-capacity ratio of .99 for the second peak hour found in OCMC 16.12.033.A.2. Detailed development plans for any phase beyond Phase 1, or 60 units, will require additional analysis and implementation of mitigation measures that demonstrate that the transportation system is “capable of serving the proposed development, or will be made capable by the time each phase of the development is completed” in accordance with OCMC 17.65.050 C 3. Specifically, the applicant shall show that improvements have been made to OR-213 and Redland Road and at the intersection of Redland Road/Abernethy Road/Holcomb Boulevard such that v/c standards are met and adequate queue storage is provided before building permits are approved for half the units in Phase 2. See Conditions of Approval 6 and 7. These conditions of approval are sufficient to ensure monitoring and updating of traffic assumptions at the time that new development is proposed. For example, if it turns out that the baseline traffic assumptions do not resume to pre-COVID levels or they exceed those levels, assumed mitigation levels can be revisited. If it turns out that the background levels coupled with 60 units exceeds the congestion levels, no further development will be allowed without mitigation.

#### General Livability Impacts – Raised by Park Place Neighborhood Assn and Smith

Appellant Park Place Neighborhood Association identifies a violation of OCMC 17.65.050 as it relates to livability. OCMC 17.65.050 contains a singular reference to “livability.” Subsection B sets forth a list of “development submittal requirements” which includes a “narrative statement” including an analysis of the impacts of the proposed development including, among other things, “livability impacts.” OCMC 17.65.050.B.1.f. This is a submittal standard rather than an approval criterion. The approval criteria applicable to a GDP, as set forth in OCMC 17.65.050.C makes no specific reference to “livability.”

However, at least one criterion, OCMC 17.65.050.C.5, requires an evaluation that impacts livability, it provides:

“The proposed general development plan, including development standards and impact mitigation thresholds and improvements, adequately mitigates identified impacts from each phase of development. For needed housing, as defined in ORS 197.303(1), the development standards and mitigation thresholds shall contain clear and objective standards.”

As explained above, mitigation for vehicular impacts are addressed through conditions restricting access to the Trail View Neighborhood by preventing pass-through trips and requiring construction of the Holly Lane extension as soon as trip generation on any of the local street exceeds 2,000 trips per day. With respect to pedestrian and bike safety on Holcomb Blvd, which will be exacerbated by added traffic volumes from this development, the conditions of approval from AN 17-04 require the applicant to pay its proportional share for related TSP projects, including several sidewalks and bike lane improvements on Holcomb Blvd. The applicant will be required by a condition of approval to pay proportional share at each phase; for phase 1 the amount is approximately \$160,000. The City will use the funds to supplement other funding sources to implement sidewalk infill and other safety improvements along Holcomb Blvd.

With respect to the adequacy of the transportation impact study, Appellant Smith argues that the additional trip generation will reduce livability for those on adjoining streets. None of the approval criteria prohibit development that reduces livability in the abstract. Rather, the City’s ability to impose mitigation obligations pursuant to this criterion is constrained by those development standards that are “clear and objective,” as this proposal is for needed housing, as that term is defined under ORS 197.303(1).<sup>8</sup> This limitation makes it difficult to evaluate subjective terms like “livability” in the abstract, beyond what the TSP or other PPCP supported policies might require.

### **Garage Location and Orientation – Raised by Huang, Mansouri, and the Petersons**

#### Location of garages for Single Family Structures

Appellants argue that the code section requiring the use of “detached, side entry or rear entry garages” and where side entry garages are used: “The garage area shall not be located in front of the living area” are not satisfied. OCMC 17.21.090.A.<sup>9</sup> Appellants acknowledge that the revisions to the lot layout come

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<sup>8</sup> “Needed housing” as defined by ORS 197.303(1)(a) includes: “Attached and detached single-family housing and multiple family housing for both owner and renter occupancy.”

<sup>9</sup> There is an exemption to the detached, side or rear entry garage requirement that offers important additional context. OCMC 17.21.090.B provides:

“B. Exemption: An exemption may be granted by the community development director from the garage requirement of subsection A above if topographic or pre-existing lot layout prevents the construction of detached, rear entry or side entry garages on-site or if the applicant proposes a design that mitigates the impact a front entry attached garage has on the pedestrian environment. Any alternative attached



closer to meeting this standard but that the applicant must make further revisions to be “entirely compliant.”

OCMC 17.65.070 allows for an adjustment, of certain types of criteria, including the criteria identified by these appeals, as opposed to the more strict variance process pursuant to OCMC Chapter 17.60. Changes to the residential design standards are included in the list of provisions that can be altered through an OCMC 17.65.070 adjustment review. OCMC 17.65.070.C3. Appellants do not acknowledge that an adjustment to these standards is allowed, was requested by the applicant, and granted by the Planning Commission.

Although the code authorization resolves this issue on appeal, it is worthwhile to understand how the Planning Commission evaluated this adjustment request. Although there are four criteria for granting an adjustment, there was one in particular that was critical to the Planning Commission’s analysis. OCMC 17.65.070.E.1 requires a finding that: “Granting the adjustment will equally or better meet the purpose of the regulation to be modified.” This means that an applicant must identify a reasonable approach to balancing the objectives that the criterion is meant to accomplish considering the project as a whole. *Michaelson v. City of Portland*, 77 Or LUBA 504 (2018), *aff’d*, 296 Or App 248, 437 P3d 1215 (2019)

Initially, the proposal did not include any rear or alley access lots and staff recommended denial of the adjustment for failure to further the PPCP-identified purpose of fostering a sense of community and encouraging “eyes on the street.” As part of its amended proposal submitted in July 2020, the applicant reconfigured its proposal to include alley loaded garages on all of the lots that are interior to the development. Perimeter lots, because they abut either natural areas or existing homes, and lots in areas with topographic constraints have not been planned with alley access. The Planning Commission concluded that the provision of alleys on 65% of the proposed lots was sufficient to meet the purpose of reducing pedestrian / vehicular conflicts, particularly when the remaining lots likely fall within the OCMC 17.21.090.B exemption due to topographic challenges or the existing adjacent lot pattern. See Applicant’s Aug. 17, 2022 submittal Ex 7. The Planning Commission went further by including the additional qualifications to Condition of Approval 5 dealing with adjustments:

- “b. The requested adjustment to the garage orientation standards in OCMC 17.21.090.A is only approved for the lots indicated as topographically constrained on Exhibit 7, “Revised Alley-loaded and Topo Constrained Lot Exhibit” dated 8/17/2022. Corner lots shall use sideloaded garages wherever feasible. Since lot layouts and garage locations will be subject to further refinement with subsequent DDP submittals, the applicant shall provide narrative justification for granting the exception to the garage orientation standard to be reviewed with each DDP submittal.
- c. Item (b) above notwithstanding, no more front-loaded lots shall be permitted on Holly Lane for any subsequent phases.”

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garage design shall not project farther than the living area and shall be limited to garage door widths of ten feet or less.”

Although the Appellants do not question or otherwise challenge this analysis or conditions, the City Commission should affirm the Planning Commission decision on this basis.

#### Driveway and Off-Street Parking for Attached Structures

Appellants have also argued that the rear driveway or parking area requirements with respect to attached structures as set forth in OCMC 17.16.040.B have not been satisfied. Although it is not clear whether this issue was raised before the Planning Commission, it does not apply. OCMC 17.21.090 sets forth the design standards that are directly applicable to “all new detached single-family and two-family homes, accessory dwelling units, and cluster housing located within the Park Place Concept Plan areas.” OCMC 17.21.020. Where there are two otherwise applicable code provisions, the more specific controls. 17.50.230. As explained above, the applicant sought an adjustment to the design standards that would allow the topographically constrained lots to retain front access. Second, if OCMC 17.16.040 did apply, it allows garages on the front façade and parking areas in the front yard. OCMC 17.16.040.A.

#### **Neighborhood Commercial Obligations – Raised by Nicita**

Appellant Nicita argues that the PPCP requires that the Main Street Village – the area zoned Neighborhood Commercial (NC), must be reserved for mixed uses including commercial / retail on the ground floor and housing above, consistent with design guidelines that have yet to be adopted. He argues that this area cannot be used to accommodate a stormwater facility or any of the proposed community park. Relying on the PPCP map as the controlling document, Appellant points out that the civic center to be placed on the east side of Livesay, where the applicant’s stormwater facility is proposed. The PPCP does provide: “Integrate stormwater management. By treating or detaining stormwater on site, there is less need for costly infrastructure,” and Appellant Nicita argues that this obligation is not met by the singular treatment facility P 23.

Below is an excerpt taken from the Applicant’s June 29 submittal, Exhibit 13 showing how the proposed development and the PPCP map align. The color coding for the PPCP map shows red as retail, dark yellow as medium / high density residential, green as park or village green and blue as civic.



What this plan shows is that the stormwater facility is not located on any plan area mapped to accommodate non-residential uses. The acreage breakdown also on Exhibit 13 provides that the PPCP

maps 1.3 acres for retail, civic and village green uses. The proposed GDP provides 1.7 acres within separate development tracts as available to commercial / retail uses as well as a civic uses. As noted above, the Concept Plan Map on p 24 includes the following disclaimer: "The specific locations of natural resource boundaries, open space, parks, land uses, roads, trail, infrastructure and related improvements may change and is subject to on-site verification and design at the time of development." With respect to the layout of the various uses, Nicita fails to identify any PPCP standard or other criteria that is not satisfied with this proposal.

Appellant Nicita's claims that development of the NC zoned area will not include the type of two story, mixed use densities contemplated in the PPCP may have been addressed in 2014 when the City amended its Neighborhood Commercial standards.<sup>10</sup> More specifically, the Neighborhood Commercial zone imposes a maximum front setback of 5 feet and the existing design standards call for locating parking in the rear, orienting building entrances to the main street, and 60% window glazing on the ground floor primary façade – all recommendations set forth in the PPCP Technical Appendix. Second, no actual commercial development is proposed as part of this review. Questions about building height, transparency, materials and streetscape design will be determined in the future as part of the detailed development plan review. If there are particular design elements that the City Commission believes the PPCP requires in order to realize the vision identified for the North Village, it may be appropriate to include them as conditions of approval.<sup>11</sup> One such condition might be to require that: except for a proposed civic space, all development within the 2.8 acre NC- zoned area be at least two stories in height with a ground floor retail / commercial component with residential above.

The PPCP calls for a tiered approach to stormwater management that mimics natural hydrological conditions to the extent practicable (PPCP pp 51-55). The stormwater management hierarchy uses three separate scales: (1) site specific, (2) green streets, and (3) regional or neighborhood facilities. Per the PPCP, regional facilities manage large flow and volumes that may be passed through Tier 1 and Tier 2 facilities. The plan does not require only one approach to managing stormwater. As the plan states, "Moreover, they [i.e. regional ponds] provide additional water quality benefits prior to discharging stormwater to existing creeks. These stormwater facilities are typically to be located adjacent to the existing streams and should take on a more naturalistic form such as a wetland pond ..."

With respect to the approach to stormwater generally, roadside planters are proposed for stormwater management on most of the streets in the development and all stormwater facilities will be designed for management, detention, and treatment of stormwater to remove sediment and other pollutants in compliance with the stormwater standards and the manual at the time of future DDP review, as required by the conditions of approval. Regarding the location of the stormwater facility, the applicant argued that the steep sloping topography required locating a single, on-site stormwater facility on the southeast corner of the GDP plan area, the lowest point on the property. Appellant Nicita does not

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<sup>10</sup> It is not clear why these amendments did not serve as the amendments contemplated within this PPCP that would result in the creation of a "vibrant neighborhood center."

<sup>11</sup> It is important to point out that in addition to retail / commercial, the PPCP map does include a designation for "mixed use commercial" that runs the full length of Livesay Road to the west but none of that land is within the GDP boundary.

explain why he believes that what is proposed does not qualify as “on-site treatment,” nor why these approaches are not sufficiently “integrated” with the development to improve water quality.

The Applicant’s preliminary stormwater report provided a high-level stormwater treatment plan for the site which is consistent with the City’s Stormwater and Grading Design Standards. As each DDP is further refined a more detailed stormwater management plan will be required with each phase. The Applicant noted that the site’s preliminary soil tests showed that infiltration rates are poor within the area. However, each DDP will be required to further review the Hydrology of the site. The feasibility of additional stormwater treatment (i.e. raingardens or additional ponds) shall be reviewed with each DDP’s stormwater plan.

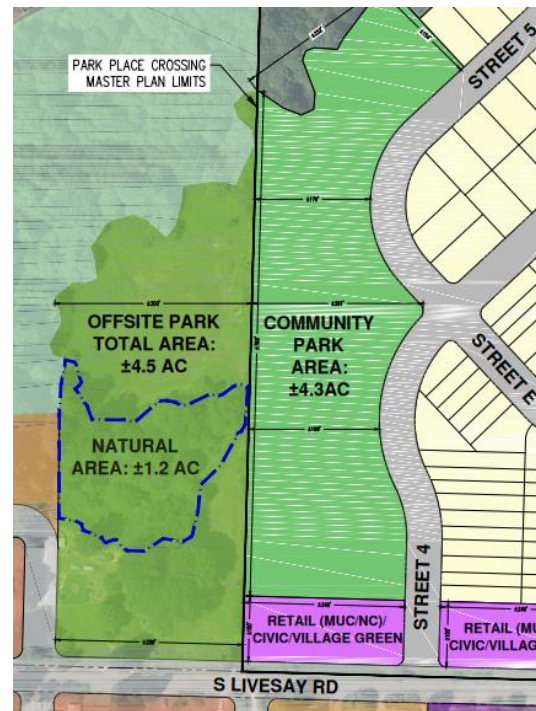
### **Community Parks and Trails – Raised by Nicita, Huang, Mansouri, and the Petersons**

Appellant Nicita argues that “the GDP wrongfully allows the applicant to count already-designated open space as part of its acreage requirements for community park adopted by Ordinance 07-1007, Attachment C, and the Park Place concept plan.” The PPCP map legend identifies 8 acres of park land within the North Village. Attachment C and the “key priorities” listed within the PPCP identify a community park in the North Village that is “8 to 10” acres in size.

The GDP proposes to dedicate 4.3 acres of land within the GDP to accommodate a community park. As explained above with respect to the overall development density, in order to ensure proportionality between amenities and development impacts, the rough calculation was that the applicant proposed approximately 50 percent of the residential density, which triggered a requirement to dedicate half of the land necessary to accommodate the park. 4.3 acres of land dedicated from within the GDP boundaries coupled with a dedication of nearly the same amount outside of the boundaries, as shown on the shadow plan provided by the applicant would result is a community park that satisfied the PPCP required 8-10 acre community park land requirements.

It is not clear what Appellant means by the “already-designated open space” that he claims is being double counted. All of the land that is subject to the 4.3 acre park dedication is zoned R-5. None of this land is “designated open space.” If Appellant’s concern is that some of these lands may also be subject to the Natural Resource Overlay District, parks are a allowed subject to certain development standards under OCMC 17.49.090 and as such an NROD designation does not preclude the use of land for park purposes.

Continuing the theme set forth in his other objections, Mr. Nicita may be concerned that the location of the park in the GDP does not match the same location as the PPCP map. Instead, the applicant has shifted the park further to the west. The effect is that the park is located on land mapped for open space outside of the GDP boundaries. This is best illustrated from excerpts taken from the applicant’s plan set dated June 29, 2022. The image on the left shows the proposed development overlaid on top of the PPCP map. See Ex 13. The image on the right shows the proposed park land with some portion of the park extended beyond the PPCP mapped park area. See Ex 15.



Again, it bears repeating that the PPCP map disclaimer provides: “The specific locations of natural resource boundaries, open space, parks... may change.” This change is exactly what the applicant proposed. With respect to the raw numbers of acreage, the table in Exhibit 13 indicates that the GDP proposal includes 15.7 acres of open space and the same area under the PPCP plan map includes 11.4 acres of open space. This is evidence the Commission could rely on to conclude that the proposed park will not result in loss of open space and that certainly a 4.3 excess of open space would make up for any loss of open space in the area beyond the GDP boundaries.

There is also a more practical problem with the Appellant’s concern. The City cannot obligate the applicant to dedicate any more park land than the demands triggered by its residential development. Moving the community park further to the southeast to more closely match what is depicted on the PPCP map would require elimination of housing units thereby reducing the amount of park land directly needed to serve future residents. Although this loss could be made up by reducing the lot sizes elsewhere, the maximum amount of land the City can exact as necessary to serve 426 units is 4.3 acres, based on the rough 50% of land / housing / park demand as set forth in the PPCP. Assuming without calculating that the PPCP map shows the park on 6 or 7 acres of land within the GDP boundaries, in order for the City to locate the park there, it would need to buy the excess 1.7 or 2.7 acres from the applicant. In essence, the extent to which the applicant can be required to provide park land, regardless of what the plan says, is the extent to which the development impacts demand and/or the City is willing to pay to acquire it. Here the applicant has identified a proposal whereby the size of the park is roughly proportional to the impact of the development. The City’s Parks Director Kendall Reid has reviewed and agreed with this approach.



Also with respect to recreation facilities, Appellants Huang et al have identified another PPCP “key component” provision that they believe has been violated. The PPCP identifies “an extensive system of off-street and on-street trails and pedestrian/bicycle connections.” In the slide presentation prepared by AKS Engineering dated May 9, 2022, the Applicant’s planning consultant, including the following image:



It is not clear in what ways the Appellants believe that these trails and connections are insufficient.

#### **Landslide Concerns – Raised by Kosinski, Huang, Mansouri, the Petersons and Dalseme**

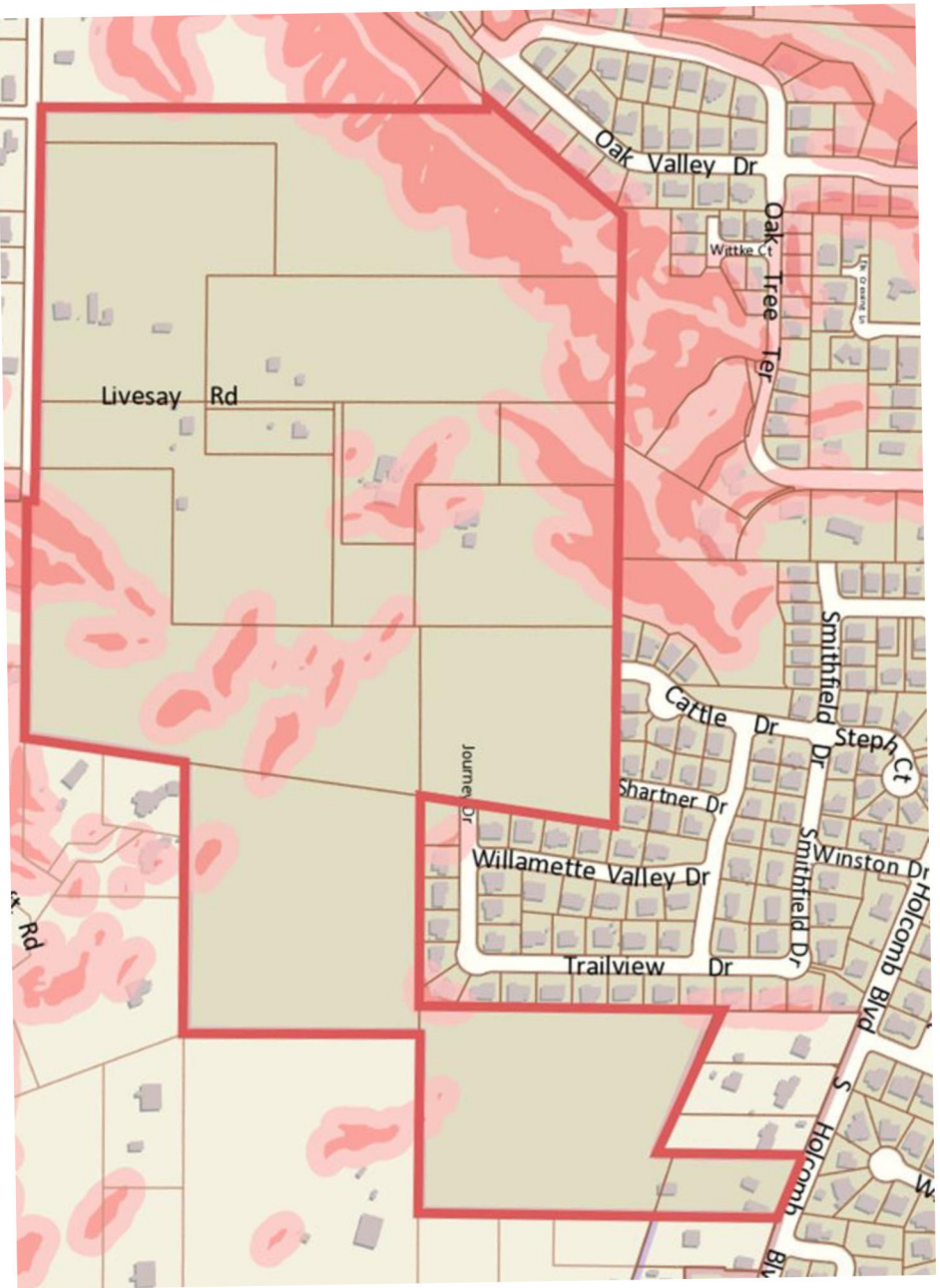
Appellants have raised concerns that the proposed development authorized through the GDP will increase the risk of landslides. The appeals note that the Comprehensive Plan references that adding fill material to a slope, removing vegetation, altering drainage or runoff patterns, and undercutting of slopes, heavy rains, ground shaking from earthquakes and heavy traffic can trigger landslides. They argue that approval of this GDP will violate Statewide Land Use Goals 1, 7, 12 and 13 & ORS 105.465, relating to a seller’s obligation to disclose the existence of landslides or geologic hazard zone designations. They claim that the GDP fails to meet the requirements of FEMA’s National Hazards Mitigation Plan pp 46-58, the DLCD – DOGAM Landslide Hazard Guidelines pp 68-79 and pp 43,44. Finally, they challenge the assertions set forth in the Applicant’s Geotechnical Engineer’s Report. Appellants argue that the increased landslide risk fails to “reduce the risk of private and public losses” and “to prevent undue hazards to property, the environment and public health, welfare, and safety,” as those policies are set forth in OCMC 17.44.010.

Appellants begin by arguing that the GDP application did not include evidence sufficient to satisfy the application requirements for a geologic hazards overlay review under OCMC 17.44.050. These submittal requirements include information and data evaluating the existing geology, soils, groundwater, and what effect development will have on these conditions, based on the list of sources identified in OCMC 17.44.050.A.1. In addition, an application must include an evaluation of the impact development will have on overall slope stability of the lot and adjacent lots coupled with scaled drawings calculating the net increase or loss of soil. These geological assessments and drawings are to be reviewed by an

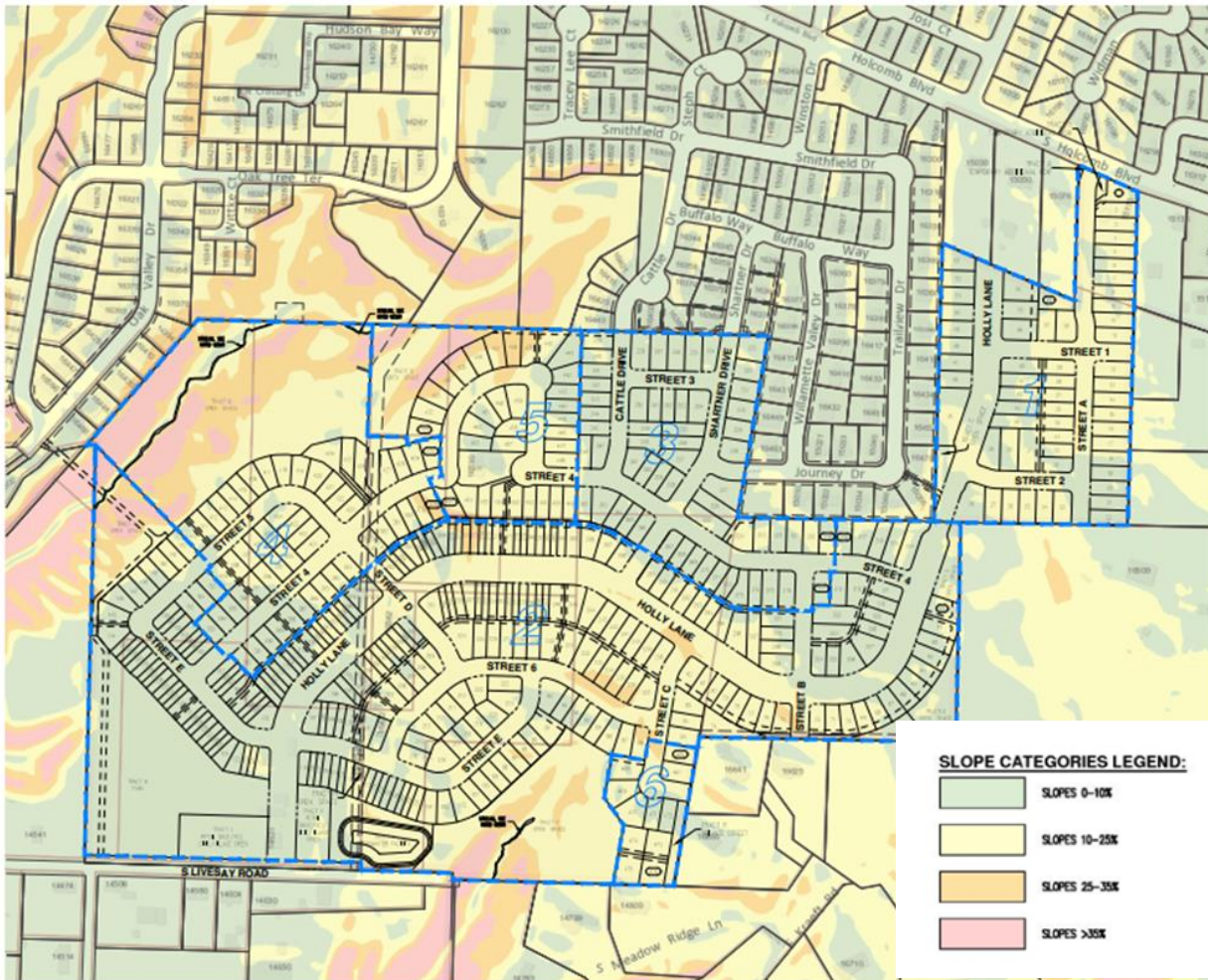


independent, qualified geologic engineering consultant. Appellants argue that the applicant's submittals fail to meet this identified level of detail and include factual errors and inconsistencies with other geologic boundary maps.

The Planning Commission's decision includes two maps dealing with the Geologic Hazards. The first one set forth below appears to match the one offered by Appellants, but it shows only the slopes which exceed 25% with the GDP boundaries outlined in red. OCMC 17.44.060 does not regulate slopes of less than 25%.



The second map depicts the proposed development overlaid on top of the City's steep slope map. This is the map of the development before it was revised in June 2022 reducing the number of lots. The outside development boundaries were not changed by these revisions.



The Planning Commission findings address the geologic hazards issues as follows:

“Portions in the northwest corner of the property contain both steep slopes and landslide deposits. Most of the northwest area is not proposed for development but instead for greenspace to avoid the geohazards and landslide materials. No other existing landslide deposit areas are currently identified in the City’s mapping system.

The proposed preliminary layout has streets (Holly Lane, Street C, Street 6 and Street 4) running through geologic hazard areas within the site (steep slopes). Per the City’s code (OCMC 17.44) these geological hazard areas are to be avoided. The applicant has provided preliminary alternatives for shifting the alignment of Holly Lane away from the geohazard areas, but they state that these alternatives would create view tunnels, streetscapes inconsistent with the Park Place Master Plan, walkability, aesthetic, and cost concerns.

The applicant has submitted a preliminary geologic assessment for the General Development Plan per OCMC 17.4. A Detailed Development Plan has not been submitted yet. When the applicant applies for a DDP, additional review for compliance

with OCMC 17.44 shall be required that includes a detailed description of the impacts of the proposed street layout, any traffic safety concerns and conflicts regarding view tunnels, alternative road locations, street design modifications and other concerns associated with the specific road designs shall be identified.

The applicant will need to show that constructing streets within Geologic Hazard areas is unavoidable and that the design of the roads will comply with OCMC 17.44. The street layouts and alternatives shall be further reviewed with each DDP as more detailed plans and geotechnical analyses are provided and plans are revised to comply with the City's steep slope requirements.

The GDP has also identified several lots within geological hazard areas that could exceed the City's density requirements within the hazard areas. As a result, the total number of buildable lots may need to be reduced. See City's comments on OCMC 17.44.060.H later in this staff report." Pp 48-49. Additional findings address OCMC 17.44.060 at pp 178-184.

The applicant has consistently maintained that it has made every effort to direct development away from steep slopes and to avoid natural hazards where possible. It is true that there are some isolated steep slopes that appear near the middle of the GDP plan area that, as evidence in the second map, appear to have been removed rather than avoided. However, there is no geologic hazard review included as part of this GDP proposal. Rather, the conditions of approval provide:

"42. Street layouts and public improvements shall be re-reviewed with each phase of development during DDP review and shall follow the standards of OCMC 16.12 and 17.44 avoiding Geologic Hazard areas where necessary, creating a grid system, provide future connection points to neighboring properties, and providing a street layout acceptable to the City Engineer. (DS)

55. The applicant shall provide a hydrology report that addresses the effect of the stormwater outfall upon the local watershed with each DDP. The hydrology report must address the discharges, erosion and landslide effect on the downhill slope, the stabilization of the uphill slope, and the environmental impact on the downhill slope, as well as how the infiltration rates before and after development would affect groundwater supply. (DS)

56. The final alignment of the proposed streets and the number of buildable lots located in the geological hazard areas shall be further reviewed as part each phase's DDP to ensure minimal impact to the geological hazard areas. (DS)

57. As part the DDP review, the applicant shall further refine the number of lots proposed within the geologic hazard areas to meet the City's density requirements. This may include identifying lots as unbuildable as green space or modifying the size of the lots to reduce the density. (DS)" pp 13.

Appellants do not identify how these conditions of approval are defective in failing to adequately protect against landslide risks. Rather, instead of explaining how the decision erred, the appellants

direct their focus at geologic hazard purpose statements and submittal requirements for an application that is not part of this request.

With respect to narrative portions of the Comprehensive Plan, various Statewide Land Use Goals, statutes governing real property transactions, FEMA mitigation plans and DLCD DOGAMI Landslide Hazard guidelines, these materials do not contain “standards and criteria” codified within the City’s code or Comprehensive Plan that are applicable to this review. The list of 3rd party references to be consulted when identifying geologic conditions in OCMC 17.44.050.A.1, does include the “Landslide Hazards Land Use Guide for Oregon Communities” (October 2019), prepared by DLCD and DOGAMI but this list of third-party reference materials was not codified as part of OCMC 17.44 until the passage of new code amendments effective July 21, 2021 by Ord. 21-1012, after the subject application was filed.<sup>12</sup> Therefore, it is inapplicable for this reason as well.

### **Conditions Related to Natural Resources – Raised by Huang, Mansouri and the Petersons**

Appellants have included an anticipatory defense in favor of conditions relating to natural resource-related protections that they anticipated the applicant would challenge. Since the applicant did not appeal the decision further, Conditions of Approval 16, 17 and 21 were not identified as a basis for challenge and they should not be considered by the City Commission on review.

### **CONCLUSION**

Over the past six months, the applicant, the opponents, City staff and the Planning Commission have engaged in a constructive dialogue about how to move urbanization of this area from the written planning page and onto the ground. Those discussions resulted in a reduction in and rearrangement of lots providing greater diversity and better cohesion with adjacent existing development, phased and coordinated access routes that limited impacts from pass-through trips, and largely internally served by alley access. Road intersection adequacy study and mitigation, and geologic hazard review that will avoid and protect against landslides will be reviewed anew as part of the DDP review for each of every phase, allowing for a cumulative and real time evaluation. Additional conditions that the Commission might consider responsive to the Appellants’ concerns:

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<sup>12</sup> A copy of OCMC 17.44 that was applicable when this application was filed and could control subsequent DDP reviews, at the applicant so chooses, is attached. For ease of reference, the following items were included as part of the 2021 amendments to served to:

- The 2021 code update simplified Section 17.44.25 Permit & Approval Requirements from a list of specific types of projects (i.e. accessory structures, building expansions, building or land use permits, tree removal thresholds, etc.) to any kind of land disturbance within the mapped geological hazard overlay zone.
- Section 17.44.35 identified additional exemptions
- Retaining wall standards were further refined
- Density requirements for existing landslide areas was limited to not exceed 2 dwelling units per acre.
- Infiltration within geohazard areas was further regulated.

- Prior to issuance of building permits for any lots abutting the south and east edge of Phase 1 of the development, the applicant shall provide landscaping plans for review by the Planning Division that indicate screening with trees and shrubs along the rear of the properties to provide a buffer between Phase 1 and adjacent properties. A restrictive covenant shall be recorded with the final plat for Phase 1 that runs with the land to preserve the landscaping buffer and require replacement with appropriate plantings in the event that plantings are removed by the property owner.
- The applicant shall assure that any development along the north side of Livesay Road or along Holly Lane be no less than two stories tall.

With or without these additional conditions, the City Commission could find that the approval criteria necessary to grant a GDP approval, including consideration of the PPCP and other Comprehensive Plan policies, as well as the adjustment, modification and variance criteria are satisfied.

The options before the City Commission include:

- 1) Uphold the appeal(s) and make a tentative decision to deny the consolidated applications.
- 2) Uphold in part and deny in part the appeal(s), and make a tentative decision to modify the conditions of approval and approve the consolidated applications.
- 3) Deny the appeals and make a tentative decision to approve the application with no change to the Planning Commission's conditions of approval.

City staff will revise the written decision consistent with the City Commission's deliberation and present it for City Commission adoption on October 17<sup>th</sup>, 2021.



# AP-22-00003: Appeals of the Park Place Crossing General Development Plan:

GLUA-21-000045:

MAS-21-00006 – General Development Plan (GDP)

VAR-22-00001 – Variance

Deliberations on Appeal of the Planning Commission Decision of September 12, 2022

City Commission

October 17, 2022





# **Deliberations**

1. Procedural memo from City Attorney
2. Address / dismiss new items in the record
3. Refer to staff report of October 4, 2022 which addressed substantive issues
4. Appeal issue matrix with regulatory citations and page numbers from October 4, 2022 staff report, Planning Commission findings of September 12, 2022, and conditions of approval
5. Discussion / Questions of Staff
6. City Commission Decision options

## **New Items:**

- Any evaluation of the Serres property development and the Street of Dreams
- Food shortages at Holcomb market
- Concerns over impacts to Anchor Way and bottleneck traffic at I-205 / Hwy 213
- Counting open space areas as park land
- Statewide Land Use Goal 13
- ORS 105.465 – landslide disclosures in real estate arrangements
- Obligations imposed by Ordinance
- Guerrero appeal

# City Commission Options

1. Uphold the appeal(s) and make a tentative decision to deny the consolidated applications.
2. Uphold in part and deny in part the appeal(s), and make a tentative decision to modify the conditions of approval and approve the consolidated applications.
3. Deny the appeals and make a tentative decision to approve the application with no change to the Planning Commission's conditions of approval.

The Commission should then provide direction to staff to allow staff to develop a written set of findings for adoption and issuance later this week.

Staff must mail Notice of Decision by Friday October 21<sup>st</sup>, 2022.

## Jakob Wiley

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**From:** James Nicita <james.nicita@gmail.com>  
**Sent:** Monday, October 17, 2022 5:04 PM  
**To:** Adam Marl; Denyse McGriff; Frank O'Donnell; Rocky Smith, Jr.  
**Cc:** Bill Kabeiseman; Carrie Richter; Jakob Wiley; Pete Walter; Tony Konkol; Aquilla Hurd-Ravich  
**Subject:** Objection to Procedure: Park Place Crossing Appeal - AP-22-00003/5

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Greetings:

I will be voicing an objection to procedure at this evenings Commission meeting on the above referenced appeal.

As a reminder, OCMC 17.50.180 allows me to make such an objection at any time prior to the Commission's final decision.

James Nicita  
Oregon City

On Tue, Oct 11, 2022 at 3:18 PM James Nicita <[james.nicita@gmail.com](mailto:james.nicita@gmail.com)> wrote:  
Madame Mayor and Commissioners:

I appreciate Mr. Wiley's sharing the barrage of materials submitted by the applicant Icon Development this morning in the above referenced matter. I thought a response to some of the points raised by Icon might be appropriate.

First, regarding the appeal fee waivers. Icon objects to the fact that it was not present at the City Commission meeting during which the fees were waived.

Now that Icon has submitted its concerns, and will be present this evening, I wonder if it would be possible simply to re-vote on the fee waivers, taking into account Icon's concerns, and making appropriate findings. I think fairness towards the citizens could certainly be established, and LUBA and the appellate courts would grant the City Commission deference under the *Siporen* case.

In addition, I wonder if it would be possible to vote at the outset of the meeting to vote to also make the appeal a Commission call-up under ORS 227.180(1)(a), discussed at the same meeting at the fee waivers. This law states, "The appellate authority on its own motion may review the action." The law prescribes no specific time at which the City Commission must make such a motion. So it could be done tonight, it appears. There does not seem to be any authority precluding a fee waiver and a Commission call-up simultaneously.

A call up would remove the procedures for the fee waivers as an issue altogether.

Furthermore, such a motion would address another of the attacks in Icon's barrage. Icon goes to an extreme to allege that the appellants did not raise many of their appeal issues before the Planning Commission. A Commission call-up would obviate such attacks, because there would be no raise-it-or-waive-it limitations to begin with.

Thank you for your consideration.

James Nicita, Appellant  
Oregon City

# COMMENT FORM



\*\*\*PLEASE PRINT CLEARLY\*\*\*

- SPEAK INTO THE MICROPHONE AND STATE YOUR NAME AND RESIDING CITY
- Limit Comments to **3 MINUTES**.
- Give to the Clerk in Chambers **prior** to the meeting.

Date of Meeting

10/17/22

Item Number From Agenda

Citizen Comments

NAME:

Jackie Hammond-Williams

ADDRESS:

Street: 16303 Wayne Dr.

City, State, Zip: OC. 97045

PHONE NUMBER:

503-753-5321

E-MAIL ADDRESS:

jackiespurnia@gmail.com

SIGNATURE:

Jackie Hammond-Williams



































