



**APPEAL TO THE CITY COMMISSION OF A PLANNING COMMISSION DECISION
STAFF REPORT: February 7, 2018**

APPEAL FILE: AP-17-0006

FILES APPEALED: CP-17-0002: General Development (Concept) Plan
DP-17-0003: Detailed Development Plan for Phase 1
NR-17-0004: Natural Resource Overlay District Verification

PROJECT

DESCRIPTION: General Development Plan and Detailed Development Plan in two phases located close to the intersection of 17th Street and Washington Street directly across from the End of the Oregon Trail Interpretive Center. Phase 1 which is the subject of the Detailed Development Plan consists of a 5-story hotel with approximately 99 rooms with associated parking lot, site improvements and street frontage improvements. Phase 2 consists of 131 apartment units, 9,500 square-feet of retail space, a 2,500 coffee shop and associated parking and site improvements. The project proposal includes preservation and retention of the Hackett House, a designated historic landmark which is currently used for offices. The application requested six adjustments to the development code pursuant to OCMC 17.65.070.

PC DECISION: On November 13, 2017, after reviewing all of the evidence in the record and considering all of the arguments made by the applicant, opposing and interested parties, the Planning Commission voted 5-0 to approve with conditions the aforementioned application.

RECOMMENDATION: Deny the appeal and uphold the Planning Commission decision.

APPELLANT: James Nicita, 302 Bluff St, Oregon City, OR 97045

APPLICANT: Hill Architects
1750 Blankenship Rd, Ste. 400
West Linn, OR 97068

OWNER: Hackett Hospitality Group, LLC
1419 W. Main Street
Battleground, WA 98604

GROUND

FOR APPEAL:

The appellant is appealing the Planning Commission’s approval with conditions of the project on the grounds that applicant has not complied with the following requirements:

- (1) Oregon City Municipal Code (OCMC) 17.50.055;
- (2) OCMC 17.62.050(A)(3)(a));
- (3) OCMC 17.34.060;
- (4) End of the Oregon Trail Design Guidelines (1991);
- (5) OCMC 12.04.195;
- (6) OCMC 12.04.199;
- (7) OCMC 13.12.050(C);
- (8) ORS 468B.025, ORS 468B.050, Oregon City NPDES MS4 Discharge Permit, OAR 340-41-035(3)(d), OAR 340-41-0350(7)(a).;
- (9) OCMC 17.65.050(B)(l)(c).;
- (10) OCMC 17 .62.050(A)(2)(k).;
- (11) OCMC 17 .62.015.A.;
- (12) OCMC 17.62.055.D.3.;
- (13) OCMC 17 .62.040(H)(2).;
- (14) Oregon City Comprehensive Plan Policy 5.4.12.; and
- (15) OCMC 17 .50.260.

LOCATION:

415 17th Street + no address on Washington Street
Map number 2-2E-29CA, Tax Lots 601, 900, 1000, 1100, 1200, 1300, 1301

REVIEWERS:

Pete Walter, AICP, Planner
Laura Terway, AICP, Community Development Director
Carrie Richter, City Attorney
Wendy Marshall, PE, Public Works Development Services Manager

PROCESS: The appeal and all documents submitted by or on behalf of the appellant and other parties are available for inspection at no cost at the Oregon City Planning Division, 221 Molalla Avenue, Suite 200, Monday through Friday during regular business hours. Copies of these materials may be obtained for a reasonable cost in advance of the hearing. A staff report will also be available for inspection seven days prior to the hearing. The appeal hearing will be confined to the issues raised in the Grounds for Appeal above. Only the applicant and those persons who participated in writing or orally during the proceeding before the Planning Commission will be allowed to participate either orally or in writing in this appeal. No new evidence will be considered. Written comments must be received by the Planning Division by 3:30pm on October 25, 2017 to be included in the staff report. Written comments received after October 25, 2017 will be forwarded to the City Commission for consideration. The City Commission’s decision is the City’s final decision and is appealable to the Land Use Board of Appeals (LUBA) within twenty-one days of when it becomes final by those with standing. The procedures that govern the hearing will be posted at the hearing and are found in OCMC 17.50. NOTE: FOR SPECIAL ASSISTANCE DUE TO DISABILITY, PLEASE CALL CITY HALL, 657-0891, 48 HOURS PRIOR TO MEETING DATE.

The entire record for this decision is available for review at the Planning Division, 8:30 AM – 3:30 PM, Monday – Friday.

BACKGROUND

The appellant, James Nicita, is appealing the Planning Commission's unanimous decision on November 22, 2017 to approve Planning Files CP-17-0002, DP-17-0003 and NR-17-0004.

The notice of appeal of the Planning Commission decision filed by Mr. Nicita identifies 15 grounds for appeal. These grounds for appeal are nearly identical to the issues raised to the Planning Commission, with no further explanation of how the Planning Commission erred.

None of the issues raised below is new and all of the issues raised were responded to during the public hearing before the Planning Commission. Subsequently staff's responses to the 15 issues raised below are essentially summaries of the appeal issue, followed by an excerpt of the Planning Commission findings responding to that issue.

PROJECT DESCRIPTION

In this matter, the Planning Commission of the City of Oregon City ("Planning Commission") approved the following related applications ("Applications" or "Project"): (1) General Development Plan for Abernethy Place, a mixed-use project including hotel, multi-family, retail/commercial, and office use, and (2) Detailed Development Plan for Phase 1 of the development, which includes construction of a hotel and surface parking, including six adjustments to City standards, and (3) a Natural Resources Overlay District Review (verification), all on approximately four acres of real property zoned Mixed Use Downtown and generally located north of 17th Street and west of Washington Street (Map Nos. 2 2E 29CA Tax Lots 601, 900, 1000, 1100, 1200, 1300, and 1301) ("Property"). OCMC 17.65.070 allows for adjustments to development standards as a means to foster large-scale development, while identifying and mitigating their impacts on surrounding properties and public infrastructure, an applicant may request one or more adjustments to the applicable development regulations as part of the master planning process. The applicant requested the following six adjustments:

- (1) 17.34.060.D.2 - Adjustment to Maximum building height of 45' within 500 feet of the End of the Oregon Trail Interpretive Center. The applicant requested an adjustment to allow a building height of 66' 1" as measured from street grade.
- (2) 17.62.055.F - Adjustment to minimum ceiling height of fourteen feet for first floor of commercial Building. The applicant requested a minimum ceiling height of 12 feet.
- (3) 17.54.100.B.4 - Adjustment to maximum combined height of fence and retaining wall of eight feet. The applicant has requested a combined height of 15 feet.
- (4) 17.62.057.L.2 - Adjustment to window projection / recess requirement for the main hotel windows.
- (5) 17.62.055.H.2 - Adjustment to minimum wall articulation to reduce the depth of required wall plane projections or recesses from 3 percent to 2.8 percent for floors 2-5.
- (6) 17.62.055.D.3 - Adjustment to side orient the main facade with a primary vehicular entry Porte Cochere on the side of the building for Phase 1 and to allow an enhanced façade and pedestrian entry facing Washington Street.

In support of this approval, the Planning Commission adopted findings of fact and conclusions of law which are part of the record for the approval.

PROCEDURAL STATUS:

Appellant filed separately to appeal the City’s adopted appeal fee for processing an appeal of a Planning Commission decision, which is \$3,488 plus actual attorney costs pursuant to the 2017 Planning Division Fee Schedule. That appeal for a fee waiver is addressed in a separate report.

The notice of appeal filed by James Nicita identifies 15 appeal issues. OCMC 17.50.190 provides that only those issues raised in the notice of appeal may be considered before the City Commission on appeal. Therefore, no issues, beyond those raised in the notice of appeal may be considered. Mr. Nicita submitted written and oral testimony as an individual and as a result, has standing to appeal. This matter is to be considered by the Commission on the record; no new evidence is allowed. The City Commission’s decision on appeal from the Planning Commission is the city's final decision and is appealable to the Land Use Board of Appeals (LUBA) within twenty-one days of when it becomes final.

SUBSTANTIVE FINDINGS:

The notice of appeal provides a list of fifteen appeal issues, mirroring the issues raised by the Appellants before the Planning Commission, with no further analysis or explanation. The Planning Commission findings fully responded to each of these issues and therefore, staff’s responses to each appeal issue raised below are excerpts of the Planning Commission findings responding to that issue.

(1) Failure to comply with the neighborhood association meeting requirement - Oregon City Municipal Code (OCMC) 17.50.055;

Appellant: 1. *OCMC 17.50.055. The Applicant failed to comply with this neighborhood association meeting requirement. The Applicant did not place into the record evidence that it had sent a certified letter to the chair of the Citizen Involvement Committee (CIC) pursuant to OCMC 17 .50.055(2). The Applicant with one individual member of the Two Rivers Neighborhood Association TRNA, which does not constitute a meeting with the Association but rather with an individual , and indicates that the TRNA either is inactive or does not exist (indeed the letter submitted to satisfy this requirement was headed "Two Rivers Homeowners Association"); therefore the Applicant was required to request a meeting with the CIC pursuant to OCMC 17.50.055(4), but did not, even though City staff specifically recommended a meeting with the CIC at the pre-application conference on this matter.*

Finding: Mr. Nicita asserts that the applicant failed to comply with the code requirement to meet with the Two River’s Neighborhood Association because the applicant did not place into the record evidence that it had sent a certified letter to the chair of the Citizen Involvement Committee pursuant to OCMC 17.50.055(2). The appellant further asserts that the applicant only met with one member of the Neighborhood Association and that this indicates that the neighborhood association is inactive or does not exist, and does not constitute a meeting with the association.

The applicant met with the Two Rivers Homeowners Association on January 25, 2017, and with the McLoughlin Neighborhood Association on February 2, 2017. Although not mentioned by the applicant, OCMC 17.50.055(2) also provides that "Other communication methods may be used if approved by the neighborhood association." An applicant may communicate with a neighborhood association through other means rather than with a certified letter, such as through email, phone call or other means, if the neighborhood association agrees. Staff is aware that more often than not communication via email or phone is far easier and convenient for the purposes of making contact with the various neighborhood associations.

In the record is a letter from Bryon Boyce, Chair of the Two River's Neighborhood Association, from which the following pertinent details are excerpted:

On Jan. 25th of this year, the Chair of Two Rivers Neighborhood met with Mark Foley of Hackett House Hospitality Group and Lloyd Hill of Lloyd Hill Architects, who had requested that meeting. This was our normal quarterly meeting date. Details of that meeting are included in the attached document "20170125-signed.doc". In accordance with the below code, the Two Rivers Neighborhood Association accepted emails to communicate with Mark Foley in setting up the meeting. Communications were initiated with an email by Dan Fowler on December 9th, 2016 and continued by Mark Foley.

The Two Rivers NA President approved "other communication" besides a certified letter, return receipt requested, as allowed by OCMC 17.50.055.A.2.: "The applicant shall send, by certified mail, return receipt requested letter to the chairperson of the neighborhood association and the citizen involvement committee describing the proposed project. Other communication methods may be used if approved by the neighborhood association."

The OCMC 17.50.055(2) code requirement is clearly met. This code section neither requires nor provides guidance as to how many people in a neighborhood association are required to attend a particular meeting. Mr. Boyce's letter which is in the record indicated that he communicated the details about the project to several members of the neighborhood association, and that the neighborhood association is indeed active.

The Planning Commission found that OCMC 17.50.055 is met. This appeal issue should be denied.

(2) Failure to "utilize materials and a design" that matches the Hackett House - OCMC 17.62.050(A)(3)(a);

Appellant: *OCMC 17.62.050(A)(3)(a). The proposed Abernethy Place Hotel abuts the historic landmark Hackett House, but does not "utilize materials and a design that incorporates the architecture of the subject building as well as the surrounding district or abutting Historic Landmark," as required by this provision. The Hackett House is in the Eastlake architectural style.*

Finding: This code section does not require materials that match the Hackett House, although the applicant has proposed similar materials, as documented in the record. The specific standard requires "materials and a design that incorporate the architecture of the subject building". The standard does not read "materials that match the subject building".

Alterations, additions and new construction located within the McLoughlin Conservation District, Canemah National Register District, and the Downtown Design District and when abutting a designated Historic Landmark shall utilize materials and a design that incorporates the architecture of the subject building as well as the surrounding district or abutting Historic Landmark.

The Historic Review Board (HRB) found, separately, prior to, and independent of the Planning Commission, that the proposed site of the hotel and requested reduction in size of the original landmark parcel to accommodate the hotel as would not impact the historic importance of the Hackett House pursuant to OCMC 17.40. The HRB did not require the use of specific matching materials as a condition of approval. The Planning Commission, in turn, found that (Excerpt from Final Findings adopted November 13, 2017):

3. With the proposed conditions of approval, the proposal will be compatible with the Hackett House and the End of the Oregon Trail.

Given that the Hackett House is a designated historic landmark and the End of the Oregon Trail are identified as a recreational resource providing tourism opportunities within the Comprehensive Plan, the Planning Commission feels that it is important to consider whether the hotel proposal will detract from the tourist benefits realized by these resources. First, the Planning Commission finds the testimony submitted by the End of the Oregon Trail Board of Director's compelling in noticing that siting the hotel perpendicular to Washington Street leaves a critical view corridor from Hwy 217 to the "wagon hoops." With regard to historic compatibility, the Planning Commission appreciated the fairly simple, and understated hotel design rather than an approach that mimicked the Eastlake style of the Hackett House.

The use of a traditional architectural form with a clearly delineated base, shaft and top, incorporating natural materials, wood siding, and simple rectangular, symmetrical punched windows are all reminiscent of historic structures in downtown Oregon City.

The planting of large deciduous and evergreen trees in the area between the Hackett House and the rear of the hotel will emphasize and frame the Hackett House, as well as mitigate for aesthetic impacts resulting from the adjustment for additional building height. To ensure this result, the Commission amended condition 32 to require the planting of large caliper deciduous and evergreen trees. The Planning Commission urges the selection of trees that will provide a dense screen within six months of planting.

The above final finding was adopted following extensive supplemental testimony from the applicant's architect Lloyd Hill, which included numerous graphic renderings of all of the hotel facades, a table indicating the specific square footage and percentages of the various building materials used in each façade, and a detailed memorandum addressing OCMC 17.62.050.A.3 as that standard relates to the Hackett House. The Applicant's substantial evidence demonstrates that it has gone to great lengths to satisfy relevant approval criteria minimizing

the impact of the hotel on Hackett House through materials on the hotel, modifications to the hotel architecture and additional landscaping between the Hackett House and the hotel. Mr. Hill's memoranda explain how the Hackett House is not affected. Additionally, the Planning Commission heard testimony in support of the project design from members the End of the Oregon Trail Board, and the Oregon City Historic Review Board, and the general public in support of the design.

Consequently, the Planning Commission found that OCMC 17.62.050(A)(3)(a) is met. This appeal issue should be denied.

(3) Failure to require a variance rather than an adjustment to the building height requirement - OCMC 17.34.060;

Appellant: *OCMC 17.34.060. The proposed hotel will exceed the 45-foot height limitation for property within 500 feet of the End of the Trail Interpretive Center. The hotel is not eligible for an adjustment. It must go through the variance process of OCMC 17.60.020.*

Finding: The master plan process in OCMC 17.50.070 clearly allows for the use of the Master Plan adjustment from dimensional standards. OCMC ____ is within the Section of the Mixed Use Downtown zone entitled "Dimensional Standards". The adjustment process clearly states that adjustments within the Master Plan process may be requested from "dimensional standards of the underlying zone,..."

17.65.070 - Adjustments to development standards.

*A. Purpose. In order to implement the purpose of the city's master plan process, which is to foster the growth of major institutions and other large-scale development, while identifying and mitigating their impacts on surrounding properties and public infrastructure, **an applicant may request one or more adjustments to the applicable development regulations as part of the master planning process. These include, but are not limited to, items such as: dimensional standards of the underlying zone, site plan and design review criteria, residential design standards, and standards for land division approval.***

B. Procedure. Requests for adjustments shall be processed concurrently with a general development plan. An adjustment request at the detailed development plan review shall cause the detailed development plan to be reviewed as a Type III application.

The adjustment process, like a variance, is processed in the same manner as a Type III discretionary process with a decision from the Planning Commission, and the criteria for a Master Plan adjustment are very similar to a variance, in as much as both require that the modification to deviate from the code equally or better meets the purpose or intent of the regulation being modified, complies with the comprehensive plan, and most importantly, provides mitigation for the impact of the modification.

The height adjustment was one of six requested adjustments that was thoroughly discussed at the Planning Commission before being approved.

The applicant requested an adjustment (Adjustment #1) to the following dimensional standard of the Mixed Use Downtown Zone, based on the criteria in OCMC 17.65.070, as documented in the Staff Report findings of August 14, 2017, portions of which are excerpted below:

1. Granting the adjustment will equally or better meet the purpose of the regulation to be modified;

(P. 52) “...As discussed below, development of this site with a hotel meets the intent of several Comprehensive Plan goals and policies for redevelopment within the north end of Downtown, the Regional Center, and tourism and economic development in and around the End of the Oregon Trail Interpretive Center. Based on the above, staff finds that the adjustment will equally or better meet the purpose of the MUD Zone.”

2. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project that is still consistent with the overall purpose of the zone;

(p.53) “The cumulative effect of the requested adjustments results in a project consistent with the overall purpose of the Mixed Use Downtown zone. The adjustments enhance security, increase buildability, and promote project feasibility, allowing for a mixed-use project appropriate to the MUD zone.”

3. City-designated Goal 5 resources are protected to the extent otherwise required by Title 17;

(P. 53) “Approval of the adjustments will not affect the protection of Goal 5 natural resources. The development will have no effect on the stream corridor of Abernethy Creek as determined under Section 17.49. The Historic Review Board reviewed and approved landmark size reduction for the Hackett House. The historic Hackett House will remain in its original site location without modification. Development of a hotel serving the needs of visitors to the End of the Oregon Trail Interpretive Center across the street supports economic development in the area. Redevelopment of underutilized property within the MUD zone relieves development pressure on existing open space, while protecting natural resources, conserving scenic and historic areas.”

4. Any impacts resulting from the adjustment are mitigated; and

“Mitigation proposed: The proposed design incorporates a series of roof parapets that step down in height as they near Washington Street, reducing the overall building scale. Horizontal banding and material changes reduce the visual impact of the building height. With respect to the Hackett House, larger screening trees are proposed between hotel and the existing building. Staff finds that the applicant can mitigate for the proposed adjustments through the Conditions of Approval. It is reasonable, practicable and likely that this standard can be met through the conditions of approval.”

5. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable.

The project was determined to be exempt from further review from the Natural Resources Overlay District, OCMC 17.49 based on substantial evidence in the record.

6. *The proposed adjustment is consistent with the Oregon City Comprehensive Plan and ancillary documents.*

As discussed in the staff report, the proposed adjustments for the proposed general development plan are consistent with the Oregon City Comprehensive Plan and ancillary documents.

The Planning Commission found that the criteria for adjustment of the adjustment were met. This appeal issue should be denied.

(4) Failure to comply with the height limit and material requirements prescribed by the End of the Oregon Trail Design Guidelines (1991);

Appellant: *End of the Oregon Trail Master Plan Design Guidelines 1991. The proposed hotel does not comply with these guidelines that have been incorporated by reference into the Downtown Community Plan, an ancillary plan of the Oregon City Comprehensive Plan and which implement the 1990 End of the Oregon Trail Master Plan, adopted by the City in 1990. The proposed hotel includes, but is not limited to, a 2.5 story height limitation and the requirement for an exterior of natural wood, as prescribed by the mandatory building standards of the Primary Historic Area.*

Finding: The Planning Commission found that neither the Oregon City Downtown Plan nor the End of the Oregon Trail Master Plan contain approval criteria that are relevant and applicable to the Applications. The End of the Oregon Trail Master Plan Design Guidelines were never adopted as approval criteria for a land use decision, as is clearly indicated in the record. The following argument was adopted by the Planning Commission in the final findings.

“The City must approve or deny the applications based upon approval criteria set forth in the OCMC. ORS 197.763(5)(a); ORS 227.173(1). The City has not set forth the Master Plan and Design Guidelines in the OCMC, either directly or by incorporation.

Although a number of citizens argued that the City Commission “effectively” or “constructively” adopted the Master Plan and Design Guidelines on December 19, 1990, the Planning Commission denies this contention for two reasons. First, the law does not recognize “effective” or “constructive” adoption; the City Commission must follow specific procedures to adopt a document, and if that does not occur, the City Commission has not adopted the document. The citizens do not contend that the City Commission followed its formal procedures to adopt the Master Plan or Design Guidelines. Second, the meeting minutes for the December 19, 1990 City Commission meeting have not been submitted into the record. The minutes were not submitted from the public and the City Recorder also did not locate any record that the City Commission has adopted these items. Therefore, there is no basis to conclude that the City Commission adopted the Master Plan and Design Guidelines.”

As stated in an October 2, 2011 email from Senior Planner Christina Robertson-Gardiner to Planner Pete Walter which was entered into the record;

“...As the planner involved with historic preservation issues with the City for many years, I was asked to look back through the City’s files to provide greater context for the End of the Oregon Trail. I have gone back through the historic land use planning files, during the period from 1988-1995, searching for additional information relating to the End of the Oregon Trail as a National or local historic district. In 1988, the County completed a historic survey for the Barlow Road, which was further refined in 1992 and 1993 with additional context statements. The City adopted a view corridor for the Barlow Road in the Park Place area in the mid-1990s. The Oregon Trail-Barlow Road Historic Corridor OCMC 17.40.060(H) is a 30 foot wide view corridor which terminates near the intersection of Highway 213 and Holcomb Blvd.

It may be the 1991 End of the National Historic Oregon Trail Historic District Design Guidelines were created as part of that effort but there is no indication that these Guidelines were ever adopted by the City Commission. In the 16 years I have been with the City, we have never reviewed an application for compliance with these 1991 Design Guidelines.”

Additional evidence in the record, including Planning Commission and City Commission meeting minutes, does not indicate that the guidelines were ever adopted by the City Commission. This appeal issue should be denied.

(5) Failure to obtain a variance rather than a modification in cases where the block length is exceeded under OCMC 12.04.195;

Appellant: *OCMC 12.04.195. The block upon which the proposed hotel would be built runs from 17th Street all the way to Highway 213, and from Washington Street to Main Street. Therefore, the Applicant must provide bicycle and pedestrian connectivity. The Applicant has not shown justification for the requested modification pursuant to OCMC 12.04.007. It must go through the variance process of OCMC 17 .60.020.*

Finding: OCMC 12.04 – *Streets, Sidewalks and Public Places*, implements the City Transportation System Plan and applies specific standards for public streets to all development - residential, commercial, etc. Since the Chapter may be applied to any land use process requiring public street improvements, the chapter also provides a specific set of criteria for a modification 12.04.007. Modifications. The code does not require an applicant to seek a variance from Chapter 12.04 in this situation. The public street standard modification criteria are more specific than the typical variance criteria since they pertain to transportation standards, therefore it is appropriate that the application addressed those criteria rather than the variance criteria.

The criteria read:

The review body may consider modification of this standard resulting from constitutional limitations restricting the city's ability to require the dedication of property or for any other reason, based upon the criteria listed below and other criteria identified in the standard to be modified. All modifications shall be processed through a Type II Land Use application and may require additional evidence from a transportation engineer or others to verify compliance. Compliance with the following criteria is required:

A. The modification meets the intent of the standard;

- B. The modification provides safe and efficient movement of pedestrians, motor vehicles, bicyclists and freight;*
- C. The modification is consistent with an adopted plan; and*
- D. The modification is complementary with a surrounding street design; or, in the alternative;*
- E. If a modification is requested for constitutional reasons, the applicant shall demonstrate the constitutional provision or provisions to be avoided by the modification and propose a modification that complies with the state or federal constitution. The city shall be under no obligation to grant a modification in excess of that which is necessary to meet its constitutional obligations.*

The following findings in the Staff Report and Recommendation responded to the criteria for modification as follows:

The block length along Washington Street is exceeded. The applicant has stated that the existing railroad right-of-way justifies modification to the block length standards, as there are no opportunities to provide connection to the street system west of the tracks. The proposed on-site circulation provides vehicular, bicycle, and pedestrian access between Washington Street and 17th Street for Phase 1 and for Phase 2. The proposed on-site circulation therefore meets the intent of the standard, provide safe and efficient movement of vehicles, freight, pedestrians and bicycles, and are consistent with surrounding street patterns. The modifications were not sought due to constitutional reasons. To ensure adequate public access in accordance with the intent of this standard, a public access easement shall be recorded over the existing access road serving the adjacent parcel to the northeast.

Staff found that the applicant had met the criteria for approval of a modification.

On September 25, 2017 the applicant's architect provided additional evidence in the form of a memorandum and responding to Mr. Nicita's statements regarding bicycle and bicycle access through the site. The Planning Commission discussed the issue at length and determined that the proposal for pedestrian and bicycle access through the site was adequate provided that Condition of Approval #45 was modified to clearly stipulate that the public access easement for pedestrian and bicycle connection would provide access between all of the properties onsite as well as with the adjacent train station and 17th Street. The modified condition was adopted on November 13, 2017. This appeal issue should be denied.

(6) Failure to provide pedestrian / bicycle accessways where the block length and depth are exceeded under OCMC 12.04.199;

Appellant: *OCMC 12.04.199. The Applicant has not provided pedestrian /bicycle accessways pursuant to this standard, even though the block width and depth exceed 330 feet.*

Finding: For the reasons set out the response applicant's appeal issue 5, this appeal issue should be denied.

- (7) Failure to Comply with OCMC 13.12.050(C) – Stormwater Management Applicability and exemptions; and**
- (8) Failure to comply with the state water quality standards including ORS 468B.025, ORS 468B.050, Oregon City NPDES MS4 Discharge Permit, OAR 340-41-035(3)(d), OAR 340-41-0350(7)(a).;**

Appellant:

(7) OCMC 13.12.050(C). *The Applicant has not demonstrated compliance with this provision, or the Public Works Stormwater Grading and Design Standards or Three Basin Rule referenced therein.*

(8) ORS 468B.025, ORS 468B.050, Oregon City NPDES MS4 Discharge Permit, OAR 340-41-035(3)(d), OAR 340-41-0350(7)(a). *Neither the Applicant nor the City has demonstrated that they are discharging in compliance with state water quality standards, including the standard for toxics, or have instituted a monitoring and water quality evaluation program for the new discharges from the hotel site, into the City's storm water system, and thence into Clackamette Cove and the Clackamas River.*

Finding: As the Planning Commission determined based on the findings and record, Stormwater contentions do not provide a basis to deny the Applications. Mr. Nicita contends that the Applicant must demonstrate that there will be no toxic discharges from parking lot stormwater runoff. In response, Applicant's civil engineer, Tom Sisul, P.E., submitted a letter explaining that the City has adopted Stormwater and Grading Design Standards, that compliance with these standards will ensure that the project will not release toxic discharges, and that it is feasible for the project to comply with the Stormwater and Grading Design Standards. A copy of this letter is included in the record. The applicant's letter also explains that Mr. Sisul has over 30 years of experience designing stormwater drainage systems, so he is well-qualified to address this issue.

Also, city engineering staff reviewed the preliminary drainage plans for the development proposal and determined that compliance with the standards in Chapter 13.12 – *Stormwater Management* are feasible in the staff report.

(P. 105):

"13.12.080 - Submittal requirements...

...Finding: Complies as Proposed. The applicant has submitted preliminary drainage plans, drainage reports, and design flow calculation reports demonstrating compliance with this section."

"13.12.090 - Approval criteria for engineered drainage plans and drainage report.

...Finding: Complies as Proposed. The applicant has submitted preliminary drainage plans, drainage reports, and design flow calculation reports demonstrating that this criteria will be met with engineered plans to be submitted with construction plans."

(p. 106):

"13.12.120 - Standard construction specifications.

The workmanship and materials shall be in accordance with the edition of the "Standard Specifications for Public Works Construction," as prepared by the Oregon Chapter of American Public Works Association (APWA) and as modified and adopted by the city, in effect at the time of application. The exception to this requirement is where this chapter and the Public Works Stormwater and Grading Design Standards

provide other design details, in which case the requirements of this chapter and the Public Works Stormwater and Grading Design Standards shall be complied with.

Finding: Complies as Proposed. The proposal appears to be in accordance with the Stormwater and Grading Design Standards adopted August 18, 2015, which are in effect at time of application, and all other applicable standards.”

Review of a final stormwater report in compliance with Chapter 13.12 is a standard requirement of Public Works Department engineering review following land use approval.

Mr. Nicita also contended that the applicant must obtain a waste discharge permit for construction of its stormwater system pursuant to ORS 468B.050. This statute requires a developer to obtain a water quality permit before discharging any waste into waters of the State. *Id.* There are several potential exceptions to the statute. ORS 468B.053. The City has not incorporated these statutes into its local approval criteria, and the statutes themselves do not state that they must be addressed as a prerequisite to issuing a local land use permit. Therefore, they are not mandatory approval criteria that the City must address with this review. Because these permit standards are a matter of state law, they will apply (or not apply) based upon their own terms. A City determination that they will apply or not apply is not required and will not override state law. Accordingly, the City is not required to adopt findings of compliance or non-compliance with these statutes in its decision. These appeal issues should be denied.

(9) Failure to identify Phase 2 of the development as a Festival Market Place on the site under OCMC 17.65.050(B)(1)(c).;

Appellant: *OCMC 17.65.050(B)(1)(c). The development proposal Phase 2 conflicts with the 1990 End of the Oregon Trail Master Plan, which shows the Plan's Festival Market Place on the site of Phase 2 of the proposed Master Plan.*

Finding: Mr. Nicita’s reference to OCMC 17.65.050(B)(1)(c) refers to a submittal requirement for preparation of a Master Plan application narrative statement that includes “A description, approximate location, and timing of each proposed phase of development, and a statement specifying the phase or phases for which approval is sought under the current application. May also reference submitted maps or diagrams.” Submittal requirements are not approval criteria.

As has been established previously, the Planning Commission found that neither the Oregon City Downtown Plan nor the End of the Oregon Trail Master Plan contain approval criteria that are relevant and applicable to the Applications. The End of the Oregon Trail Master Plan Design Guidelines were never adopted as approval criteria for a land use decision, as is clearly indicated in the record. This appeal issue should be denied.

(10) Failure to dedicate lands for the Abernethy Road Realignment as set out in the 1990 End of the Oregon Trail Master Plan under OCMC 17.62.050(A)(2)(k).;

Appellant: *OCMC 17 .62.050(A)(2)(k). The proposed development does not provide a dedication for the Abernethy Road Realignment as envisioned in the 1990 End of the Oregon Trail Master Plan, and for which the City has already expended substantial taxpayer funds.*

Finding: As has been established previously, the Planning Commission found that neither the Oregon City Downtown Plan nor the End of the Oregon Trail Master Plan contain approval criteria that are relevant and applicable to the Applications. The End of the Oregon Trail Master Plan Design Guidelines were never adopted as approval criteria for a land use decision, as is clearly indicated in the record. This appeal issue should be denied.

(11) Failure to consider whether the proposed adjustments “better meet” the 1991 End of the Oregon Trail Master Plan Guidelines under OCMC 17 .62.015.A.;

Appellant: *OCMC 17 .62.015A. None of the proposed adjustments/modifications have been evaluated as to whether they “better meet” the applicable 1991 End of the Oregon Trail Master Plan Design Guidelines.*

Finding: As has been established previously, the Planning Commission found that neither the Oregon City Downtown Plan nor the End of the Oregon Trail Master Plan contain approval criteria that are relevant and applicable to the Applications. The End of the Oregon Trail Master Plan Design Guidelines were never adopted as approval criteria for a land use decision, as is clearly indicated in the record. This appeal issue should be denied.

(12) Failure to require a variance, rather than an adjustment, for relocation of the primary entrance under OCMC 17.62.055.D.3.;

Appellant: *OCMC 17.62.055.D.3. The primary entrance does not face Washington Street. The proposed hotel does not qualify for an adjustment. It must go through the variance process of OCMC 17 .60 .020.*

Finding: As has been established previously in response to the appellants third ground for appeal above, the master plan process clearly allows for the use of the Master Plan adjustment process instead of a variance for a large variety of development criteria, including but not limited to design standards, which includes OCMC 17.62.055.D.(3). The adjustment process clearly states that adjustments within the Master Plan process may be requested from “site plan and design review criteria,…”

17.65.070 - Adjustments to development standards.

*A. Purpose. In order to implement the purpose of the city's master plan process, which is to foster the growth of major institutions and other large-scale development, while identifying and mitigating their impacts on surrounding properties and public infrastructure, an applicant may request one or more adjustments to the applicable development regulations as part of the master planning process. These include, but are not limited to, items such as: dimensional standards of the underlying zone, **site plan and design review criteria**, residential design standards, and standards for land division approval.*

B. Procedure. Requests for adjustments shall be processed concurrently with a general development plan. An adjustment request at the detailed development plan review shall cause the detailed development plan to be reviewed as a Type III application.

The adjustment process, like a variance, is processed in the same manner as a Type III discretionary process with a decision from the Planning Commission, and the criteria for a Master Plan adjustment are very similar to a variance, in as much as both require that the modification to deviate from the code equally or better meets the purpose or intent of the regulation being modified, complies with the comprehensive plan, and most importantly, provides mitigation for the impact of the modification.

The applicant amended the request to include the adjustment from 17.62.055.D.3 with a revised narrative which is part of the record, and the Planning Commission found that the adjustment met the criteria for adjustment. This appeal issue should be denied.

(13) Failure to give notice to the applicable tribal representative under OCMC 17 .62.040(H)(2).;

Appellant: *OCMC 17 .62.040(H)(2). Neither the Applicant nor the City has demonstrated adequate notification to the applicable tribal cultural resource representative of the Confederated Tribes of the Siletz, Confederated Tribes of the Umatilla, Confederated Tribes of the Warm Springs or the Confederated Tribes of the Yakama Indian Nation.*

Finding: The submittal requirements meet this standard and the application was deemed complete. The Community Development Director has not waived any submittal requirements. A copy of the pre-application proposal was forwarded to SHPO, the Confederated Tribes of the Grand Ronde, Confederated Tribes of the Siletz, Confederated Tribes of the Umatilla, Confederated Tribes of the Warm Springs and the Confederated Tribes of the Yakama Nation requesting comments. Comments were received from the Confederated Tribes of the Grand Ronde recommending that subsurface archeological investigations be conducted prior to ground disturbance. A standard comment letter from SHPO was received advising the applicant of applicable state laws protecting cultural resources under ORS 358.905 and ORS 97.74. A copy of the planning staff transmittal email to all of the tribes listed above was provided in the record on September 25, 2017. The applicant shall coordinate as needed to complete the necessary investigations prior to any ground disturbance. This appeal issue should be denied.

(14) Failure to utilize a watershed scale assessment under Oregon City Comprehensive Plan Policy 5.4.12 and there is no Goal 5 analysis of storm water impacts to Clackamette Cove; and

Appellant: *Oregon City Comprehensive Plan Policy 5.4.12. The City and the Applicant have not utilized a watershed-scale assessment in reviewing the plan for this development. The proposed hotel will be discharging storm water into Clackamette Cove, which is a Goal 5 resource. There is no Goal 5 analysis of impacts of storm water discharges into Clackamette Cove.*

Finding: As mentioned previously, stormwater contentions do not provide a basis to deny the Applications. Mr. Nicita contends that the Applicant must demonstrate that there will be no toxic discharges from parking lot stormwater runoff. In response, Applicant's civil engineer, Tom Sisul, P.E., submitted a letter explaining that the City has adopted Stormwater and Grading Design Standards, that compliance with these standards will ensure that the project will not release toxic discharges, and that it is feasible for the project to comply with the Stormwater and Grading Design Standards. A copy of this letter is included in the record. City Engineering staff

has reviewed the letter and determined that compliance with these standards is feasible. Review of a final stormwater report in compliance with Chapter 13.12 is a standard requirement of Public Works Department engineering review following land use approval. The letter also explains that Mr. Sisul has over 30 years of experience designing stormwater drainage systems, so he is well-qualified to address this issue.

The City's stormwater master plan and stormwater design standards are already determined to be in compliance with Goal 5 through their status as ancillary documents to the adopted and acknowledged Oregon City Comprehensive Plan. No further Goal 5 analysis is necessary provided that the City has in place standards and procedures to apply the Stormwater Master Plan through the standards in accordance with Chapter 13.12 – *Stormwater Management*, as is the case with any development proposal.

Mr. Nicita also contended that the applicant must obtain a waste discharge permit for construction of its stormwater system pursuant to ORS 468B.050. This statute requires a developer to obtain a water quality permit before discharging any waste into waters of the State. *Id.* There are several potential exceptions to the statute. ORS 468B.053. The City has not incorporated these statutes into its local approval criteria, and the statutes themselves do not state that they must be addressed as a prerequisite to issuing a local land use permit. Therefore, they are not mandatory approval criteria that the City must address with this review. Because these permit standards are a matter of state law, they will apply (or not apply) based upon their own terms. A City determination that they will apply or not apply is not required and will not override state law. Accordingly, the City is not required to adopt findings of compliance or non-compliance with these statutes in its decision. This appeal issue should be denied.

(15) Failure of the Planning Commission to consider the request for reconsideration under OCMC 17 .50.260.

Appellant: *OCMC 17 .50.260. The Planning Commission erred in denying Appellant's request for reconsideration as untimely.*

Finding: The Planning Commission tentatively approved this application on October 23, 2017. The findings in support of this decision were adopted on November 13, 2017 and staff mailed notice of the decision on November 15, 2017. At the Planning Commission hearing on November 27, 2017, the Appellant requested that the Planning Commission reconsider the approval under OCMC 17.50.260. The Appellant cited concerns that staff inappropriately influenced the Planning Commission's decision-making process. OCMC 17.50.260 provides as follows:

Under this section, parties with standing may seek reconsideration of a final decision rendered pursuant to a Type II, Type III, or Type IV process. Reconsideration is warranted where the city's decision indicates the decision-maker failed to understand or consider certain relevant facts in the record or misinterpreted the application in some material way. Any request for reconsideration must be received by the planning division within ten days of when the decision in question was rendered and must specifically describe the alleged misunderstanding or misinterpretation. A

request for reconsideration shall not stay the effectiveness of the city's final decision, nor shall it affect any applicable appeal deadlines to the land use board of appeals. If the request is granted, the community development director shall notify all affected parties that the decision will be reconsidered. Any request for reconsideration by the applicant shall be deemed a waiver of the one hundred-twenty-day deadline under Section 17.50.070.

The Planning Commission concluded that the reconsideration request was untimely because the request was made more than 10 days from when the decision was rendered, as well as mailed. The Appellant argued that this deadline should be calculated based on a state statute governing how time is counted with regard to "civil and criminal procedure statutes" rather than calendar days. The Planning Commission rejected this approach noting that land use regulations are not "statutes" and noting that in all cases dealing with land use, deadlines are calculated in calendar days.

Moreover, the City Commission is being asked, through this appeal, to review the Planning Commission's decision on the issues that are of concern to the Appellant. Any procedural error resulting from the actions of staff with regard to the Planning Commission's decision or its failure to reconsider this decision will be resolved through the City Commission's review. This appeal issue should be denied.

CONCLUSION AND RECOMMENDATION:

Based on the analysis and findings as described above, Staff recommends that City Commission make deny the appeal (AP-17-0006) and affirm the Planning Commission decision approving Planning Files CP-17-0002, DP-17-0003 and NR-17-0004 with conditions.

**PLANNING COMMISSION
CONDITIONS OF APPROVAL
November 13, 2017**

Planning Files: CP-17-0002, DP-17-0003, NR-17-0004

(P) = Verify that condition of approval has been met with the Planning Division.

(DS) = Verify that condition of approval has been met with the Development Services Division.

(B) = Verify that condition of approval has been met with the Building Division.

(F) = Verify that condition of approval has been met with Clackamas Fire Department.

The applicant shall include the following information with submittal of a public improvement and/or grading permit associated with the proposed development. The information shall be approved prior to issuance.

1. Existing service connection to the 48-inch sewer pipe on site shall be usable and meet the minimum inside diameter requirement of 6" for serving commercial buildings. Any new connection to the Tri-City Service District (TCSD) main will require permission from TCSD with all approved permits provided to the City. (DS)
2. Extension of the 8-inch sanitary sewer main within Washington Street, to and through the site frontage will be required. (DS)
3. The applicant shall confirm that no buildings have sewer service running within the subject site. If other buildings have a sewer service running through the subject site, the applicant shall provide a new service line from the required 8-inch sanitary sewer main extension within its frontage. (DS)
4. The existing 6-inch water main in 17TH Street shall be upsized to the City's standard 8-inch diameter ductile iron water main. A fee-in-lieu of construction of the new 8-inch water main will be considered if upsizing of 6-inch pipe is shown to not be feasible. An adequate easement shall be provided for the water main along the frontage of 17th Street. (DS)
5. Overhead utilities along the site frontage shall be relocated underground. (DS)
6. The applicant will need to submit a photometric plan with the construction plan submittal to facilitate design of the streetlights by PGE. Streetlights shall be decorative and match the style of existing decorative streetlights found along Washington Street. (DS)
7. The applicant shall perform all cuts and restoration to pavement within the right-of-way in accordance with the City's Pavement Cut Standards. (DS)
8. All development shall be in conformance with the policies and design standards established by the Oregon City Municipal Code and with applicable standards in the city's public facility master plans and city design standards and specifications. (DS)
9. The applicant shall dedicate sufficient right-of-way (ROW) to provide, at minimum, a ROW width 43 feet north of the centerline for Washington Street. Improvements required north of the centerline along the frontage of Washington Street are: a 6-foot-wide half center lane, a 12-foot-wide travel lane, a 6-foot-wide bike lane, 8-foot-wide on-street parking, 0.5-foot-wide curb, 4-foot-wide furnishing zone/planter strip, 6-foot-wide sidewalk and 0.5-foot public access. (DS)
10. 17th Street shall have a 24-foot wide street section, as can be accommodated without extending street pavement towards Abernethy Creek. The improvements required along 17th Street are 0.5-foot-wide curb with gutter, 5-foot-wide curb-tight sidewalk and 0.5-foot public access. Portions of the sidewalk will be allowed to meander around the existing tree but shall be provided a public sidewalk easement. (DS)
11. The project shall meet water quality standards of Oregon City Stormwater and Grading Design Standards but is not required to meet flow control standards. (DS)
12. Applicant shall submit engineering calculation of cut and fill for the development for review and approval based on criteria outlined in Section 17.42.160.D of Oregon City Municipal Code. (DS)

13. Regarding construction standards within flood management areas, applicant shall adhere to Section 17.42.160.E of Oregon City Municipal Code. (DS)
14. Applicant shall obtain Erosion Control permit from the City and a 1200-C permit from Oregon Department of Environmental Services prior to commencing construction activities. (DS)
15. The applicant shall submit an engineered grading plan and geotechnical report for review and approval prior to approval of public improvement plans.(DS)
16. The applicant shall provide a memo or exhibit to demonstrate exemption from OCMC chapter 17.44, for excavation or fill within the Geologic Hazard overlay zone. However, should the applicant propose any work which is not exempt, requiring excavation or fill which is more than two feet in depth, or which involves more than twenty-five cubic yards of volume within the Geologic Hazard overlay Zone the project will be subject to Geologic Hazard review as outlined in OCMC Chapter 17.44. (DS)
17. The applicant shall construct Washington Street along the site frontage including a center turn lane to provide for left turns into the site. Applicant shall provide additional traffic engineering analysis relating to the location of the site access that shows the location of proposed access will not have a significant adverse impact with queuing or traffic operations at adjacent traffic signals. (DS)
18. With the exception of recommendations that conflict with Oregon City emergency egress requirements, the applicant shall comply with the Oregon Department of Transportation's comments and recommendations in the memorandum provided on July 14, 2017. (P)
19. The applicant shall submit documentation demonstrating compliance with one or more of the options for Tree Removal and Mitigation in Chapter 17.41. Compliance with these standards shall be demonstrated in a tree mitigation plan report prepared by a certified arborist, horticulturalist or forester or other environmental professional with experience and academic credentials in forestry or arboriculture. The project arborist preparing the tree mitigation plan shall coordinate with the project landscape architect to ensure that any trees to be preserved are indicated on the revised landscaping plans for the site and that all protective measures are properly installed pursuant to OCMC 17.41.130 - Regulated tree protection procedures during construction. The applicant shall provide a revised arborist report indicating recommendations for tree protection procedures during construction or as a minimum show compliance with protective measures in OCMC 17.41.130 B(1-9). (P)
20. The applicant shall provide a clear schedule for timing of all public improvements related to mitigation thresholds, including transportation, sewer, water, stormwater facilities for approval by the Public Works Department prior to issuance of a grading or construction permit for public improvements.(DS)

The applicant shall include the following information prior to issuance of the grading permit associated with the proposed development.

21. The applicant shall coordinate with the Confederated Tribes of the Grande Ronde as needed to confirm the measures that will be taken to address the Tribes concerns regarding disturbance of possible archaeological sites.(P)

The applicant shall include the following information with submittal of a Building Permit associated with the proposed development. The information shall be approved prior to issuance.

22. For any multi-family building which would be subject to OCM 17.52.057 multi-family design standards, when the Detailed Development Plan for Phase II of the development is proposed the applicant shall provide additional mitigation for adjustment #4 (window design) such as increased minimum transparency, trim details, higher quality materials, greater articulation or modulation, or landscaping. (P)
23. The applicant shall provide revised plans that include signs at the north main entrance to the hotel that indicate the location of the covered bicycle parking at the south entrance. (P)
24. The applicant shall comply with conditions of the Historic Review Board approval for file HR-17-002. (P)

25. The applicant shall demonstrate compliance with the minimum of 10% landscaping for phase 1 on all revised landscaping plans. The applicant shall provide landscaping percentage calculations for the parking lot interior and all other landscaped areas on the site prior to issuance of a building permit. (P)
26. The applicant shall provide a revised landscaping plan indicating that within three years the landscaping will cover one hundred percent of the Landscaped areas including landscaping within the parking lot, and that no mulch, bark chips, or similar materials shall be allowed at the time of landscape installation except under the canopy of shrubs and within two feet of the base of trees. (P)
27. The applicant shall provide a revised landscaping plan in conformance with OCMC 17.52.060.B with an evergreen hedge or shrubs at the parking lot entryway on 17th Street. (P)
28. The applicant shall provide revised plans that indicate the use of a change in textural material or height of the pedestrian accessway within the parking lot drive aisle adjacent to the hotel to alert the driver of the pedestrian crossing area. (P)
29. The applicant's photometric engineer shall provide revised lighting plans in compliance with OCMC 17.62.065.D.2., which indicate the use of full-cut-off style lighting fixtures or approved alternatives. The revised lighting plans shall include the min./max. Foot-candle ratio required to be shown in Table 1-17.62.065. (P)
30. No lighting pole taller than 20 feet shall be permitted for Phase 2 without an adjustment through the Type III Master Plan or a Variance.(P)
31. The applicant shall provide revised landscaping plans to show a seven-foot sidewalk with shade trees spaced a maximum of thirty-five feet apart in three-foot by five-foot tree wells at the sidewalk between the Hackett House and the adjacent parking lot. (P)
32. The applicant shall provide revised landscaping plans that add a tree at the landscape island between the trash enclosure and the adjacent parking space at the rear of the hotel. Furthermore the applicant shall utilize large caliper deciduous and evergreen trees to provide a dense screen within six months of planting between the Hackett House and the hotel. (P)
33. Street trees will be selected from the Oregon City Street Tree List or otherwise approved as appropriate for use along the street frontages. Street trees along Washington Street will be in tree wells, trees along 17th Street will be planted behind the curb tight sidewalk. (P)
34. If street trees are planted within an easement along 17th Street the applicant shall provide a protective covenant that allows the city to enforce the public street tree requirements in this area. (P)
35. The applicant shall submit adequate documentation to the Building Official to demonstrate compliance with the Flood Management Overlay District in OCMC 17.42.110, 17.42.160, and 17.42.190. (P)
36. The applicant shall submit a revised Traffic Impact Study when the Detailed Development Plan for Phase II of the development is proposed. (P)
37. Except as outlined below, any fence proposal for the property shall comply with the applicable provisions of OCMC 17.54.100 – Fences and OCMC 17.62.050.A.21 Building Materials and shall be reviewed through a Type I or Type II Site Plan Review process, as applicable. The applicant is permitted a combined fence/retailing wall height of 15 feet. The applicant is permitted to install an eight foot tall fence consistent with ODOT standards along the railroad ROW. (P)
38. The proposed adjustment to building height for Phase 1 is approved. The adjustment does not apply to Phase 2. (P)
39. Adjustment #5 to Section 17.62.055.H.2 – Minimum Wall Articulation, is approved. This adjustment applies to Phase 1.
40. Adjustment #6 to Section 17.62.055.D.3 – Relationship of Buildings to Streets and Parking, is approved. This adjustment applies to Phase 1.

The applicant shall submit the information confirming the following prior to issuance of a Building Permit associated with the proposed development.

41. The applicant shall have completed any Lot Line Abandonments or Adjustments necessary to comply with applicable building code requirements pursuant to OCMC 16.20 – Property Line Adjustments and Abandonment Process and Standards. (P)

The applicant shall include the following information prior to issuance of an occupancy permit associated with the proposed development. The information shall be approved prior to issuance.

42. The applicant shall participate in the funding of improvements for the I-205/OR-99E ramp terminal projects (TSP Projects D75 and D76) in proportion to the development's traffic volumes as a percentage of total year 2035 intersection volumes from the TSP. Based on this methodology, the developer is responsible for 0.42% of the \$3 million cost for Project D75 and for 0.49% of the project cost for Project D76, resulting in a contribution from the applicant of \$12,600 + \$14,700 prorated between Phase 1 and Phase 2 based on projected traffic impact. (DS)
43. The applicant shall participate in the funding of improvements for the Main Street/14th Street improvements (TSP Projects D7 and D8) in proportion to the development's traffic volume as a percentage of the predicted 2035 traffic volume at the intersection calculated in the TSP. Based on the applicant's predicted site traffic, the applicant's responsibility is 1.66% of the project's cost. The higher cost option in the TSP is listed at \$670,000, resulting in a contribution from the applicant of \$11,122 prorated between Phase 1 and Phase 2 based on projected traffic impact (DS).
44. The Applicant shall install Artwork related to the end of the Oregon Trail with a minimum of eight square feet in surface area at the stone wall adjacent to the sidewalk at the landing for the building entrance facing Washington Street.(P)
45. The Applicant shall provide a public cross-access easement between the parcels to ensure pedestrian, bicycle and vehicle access is maintained. The easement shall provide mutual access between all of the properties onsite as well as with the adjacent train station and 17th Street.(P)
46. The duration of approval of this General Development Plan is five years unless amended prior to expiration. (P)
47. Per OCMC 17.41, if tree mitigation option #1 is chosen, the applicant shall recorded a protective covenant for all trees to be preserved and planted on-site prior to issuance of a certificate of occupancy for phase 1 or 2.(P)