



## MEMORANDUM

**To:** The Honorable Mayor and City Commission  
**From:** Carrie Richter, Deputy City Attorney  
Laura Terway, AICP, Community Development Director  
Christina Robertson-Gardiner, AICP, Senior Planner  
**Re:** AP 17-01 and AP 17-02: Appeal of HR 17-04 -Historic Review Board's conditional approval of Construction of a new operations facility for the Oregon City Public Works Department in the McLoughlin Conservation District in the Institutional and R6 Zoning Districts.  
**Date:** February 27, 2018

On June 27, 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 Oregon City Historic Review Board voted to approve the design of Phase I of the proposed Public Works Operations Facility in the McLoughlin Conservation District. This decision was appealed by Mr. Charles Combs (Planning file AP 17-01) as well as the McLoughlin Neighborhood Association (Planning file AP 17-02).

### Procedure

Regarding the merits of the appeals, the City Commission is to review the evidence in the record, including the Historic Review Board's findings, Appellants' grounds for appeal, public testimony, the staff report and memos to determine if the proposal meets the requirements of Administration and Procedures set forth in Chapter 17.50, Historic Overlay District in Chapter 17.40, "R-6" Single Family Dwelling District, and "I" Institutional, Chapter 17.39 of the Oregon City Municipal Code and make a decision.

The City Commission will hold a public hearing where it will consider arguments limited to those issues raised in the notices of appeal by those individuals and entities who participated in the proceeding before the Historic Review Board. All testimony must be limited to facts already contained in the record; no new evidence will be allowed.

### Commission Options:

- If the City Commission agrees with the Historic Review Board's findings and decision, the City Commission should deny the appeals and may provide staff additional findings or conditions, as necessary, to supplement the final order.
- If the City Commission determines that the Historic Review Board erred, it has the following options:
  - It may remand the matter back to the HRB with instructions to take additional evidence and respond to particular Commission concerns; or
  - It may uphold the appeal and deny the application, reversing the HRB decision.

After the City Commission makes a tentative decision, staff will return at the next available City Commission meeting with additional findings and final order for approval.

## Project and Site Context

The summary that follows is taken largely from the staff report presented to the HRB:

The McLoughlin Conservation District is referred to as the “second level,” reflecting its topography and relationship to the original town of Oregon City, which lies just below at the base of a steep basalt cliff. In the 1850’s few people built homes on the second level but as the downtown area became more crowded, and after completion of the Oregon & California railroad in late 1869, more residents moved up the hill, to what is now called the McLoughlin neighborhood. Construction continued from the 1870’s into the first quarter of the 1900’s, and the buildings from this period contribute to McLoughlin’s late 19th - early 20th century ambience. Churches followed their congregants, and the high school, two elementary schools and a parochial school are currently located within the district.

Beginning in 1982 the McLoughlin neighborhood sought designation as an Oregon City Historic Conservation District, which was achieved in 1986. Following a survey of 971 buildings, 305 were identified as architecturally or historically significant properties. In 2002 a resurvey noted approximately 200 more buildings within the district boundaries of lesser significance, but due to their age and form were seen as strengthening the overall historic character of the district. The resurvey found the district eligible for listing as an historic district on National Register of Historic Places. At the same time, historic structures beyond the Conservation District boundaries but within the city limits of Oregon City were surveyed and 72 were designated of historic significance.

There are approximately 153 blocks in the McLoughlin Conservation District of which 121 are from the original plat of Oregon City. The blocks are approximately 200 x 200 feet square, and generally divided into 50x100 foot lots. The exception to the square conformance are the blocks between Center and Van Buren, 10th and 11th streets where they are slightly narrower. Many of the blocks were further divided by alleys. Some of these alleys have been vacated and built upon; others, especially in the two blocks which parallel the main business thoroughfare on 7th Street, continue to be used as alleys.

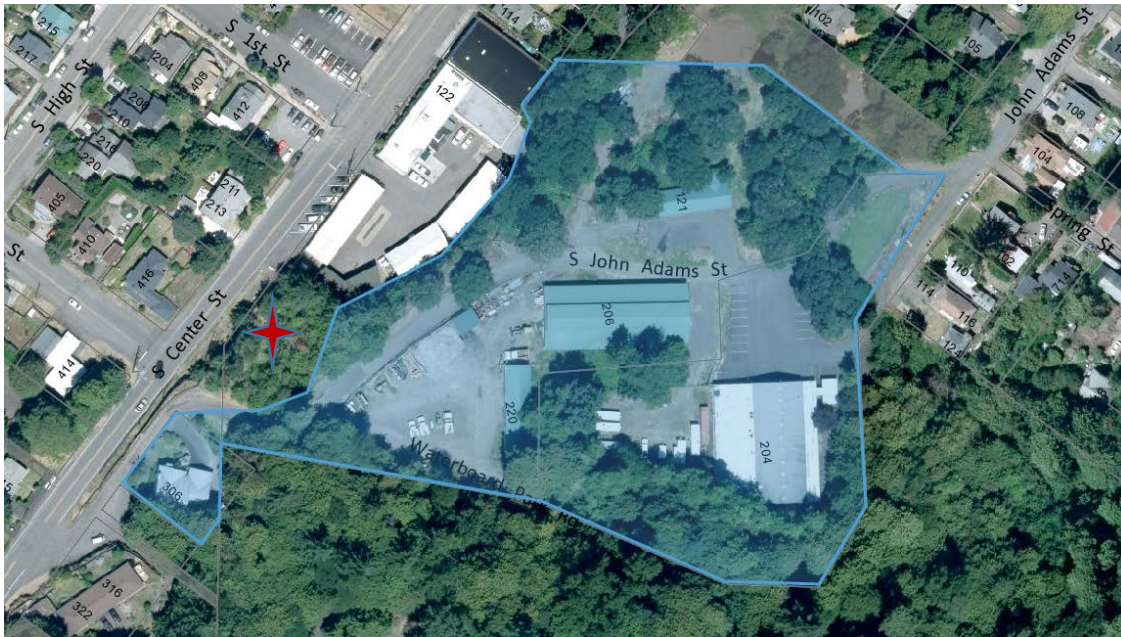
The applicant proposes to construct a new operations facility for the Oregon City Public Works Department in the McLoughlin Conservation District. A majority of the site is currently constructed with such use and is generally referenced as the “upper yard” and the “lower yard”.



The applicant had previously received approval for a Type III Master Plan for the site in 2009, but ultimately did not move forward with construction. In the intervening years, the City revised the existing and acknowledged Master Plan (CP 09-1) and has requested HRB review of Phase 1 prior to returning to the Planning Commission to approve the revisions to CP 09-01 and submission of a concurrent Detailed Development Plan for Phase I.

The Historic Review Board's analysis was based solely on criteria set forth in OCMC 17.40 Historic Overlay and is one step in the development process. Both appellants have brought up some grounds for appeal that seem to be more relevant to the upcoming Master Plan process or future phases that will be subject to HRB review. Staff has provided responses to these grounds to help provide additional clarity to the City Commission.





Upper Yard Highlighted in blue

*\*Note: There is a discrepancy between this map, as presented in the staff report, and the applicant's submittal of the boundary of the upper yard. The area identified in red is included in the application as being part of the upper yard and should be considered part of the description of the upper yard.*



Lower Yard Highlighted in Red



Subject Property: Upper Yard



View into NE Corner of upper site from John Adams Street



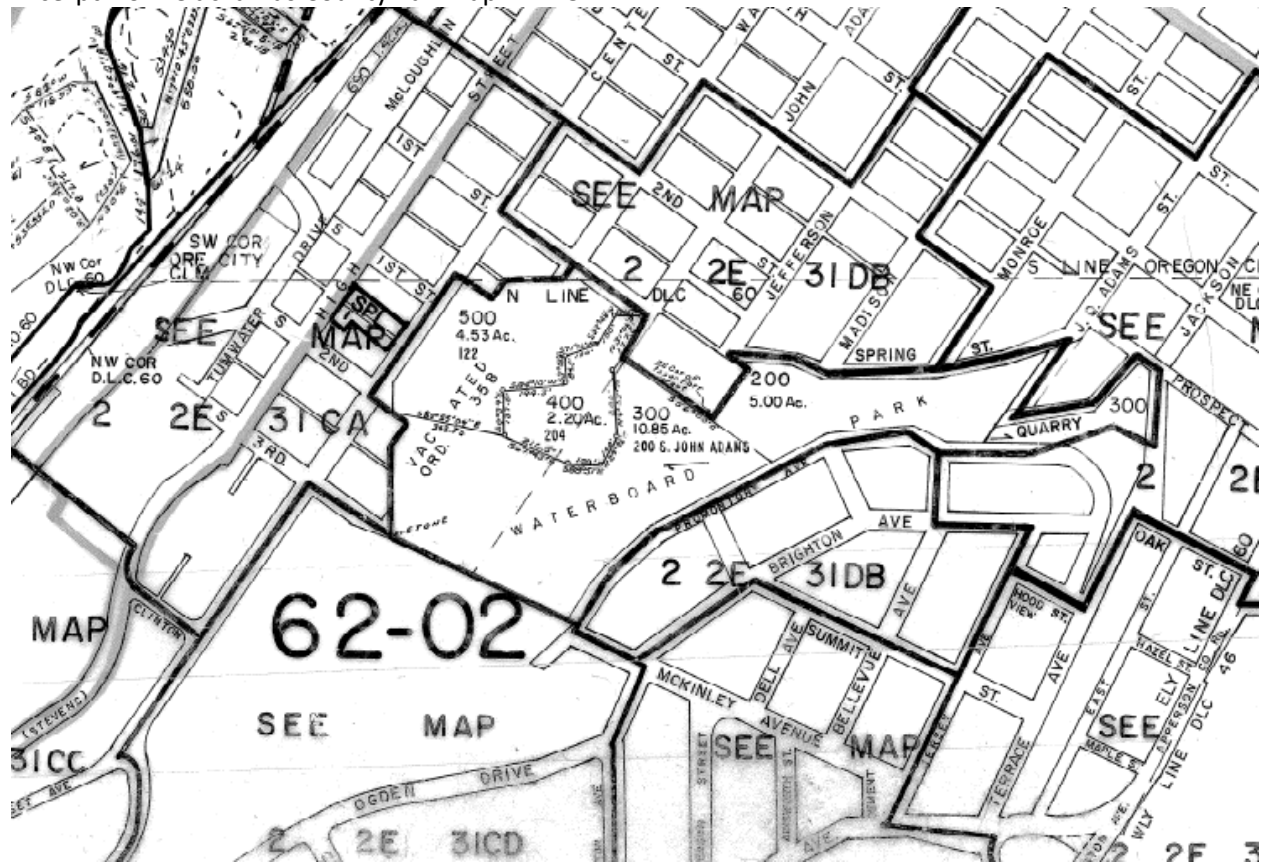
Facility maintenance shelter in the old "Cannery Building"



Existing armory building to remain



Existing facility maintenance building



Though the subject Public Works Operations site contains multiple tax lots, the majority of the development activity proposed for this phase will be limited to the upper yard of the site. As demonstrated on the aerial photos and on the tax map, the upper yard is located near improved and unimproved public right-of-way, residential homes along John Adams to the southwest, and is bordered to the south by Waterboard Park. In the upper yard, this request includes demolition of all of the buildings, except for the armory and the construction of new buildings. In the lower yard, this request includes demolition of two existing parking structure near the cliffs in order to accommodate the elevator, the widening of right-of-way in front of 306 South Center Street and improving parking areas across S. Center Street, but no redevelopment is currently planned for those properties.

The Public Works Operation site property does not contain any structures that have been designated as contributing to the significance of the District or individually listed on the National Register of Historic Places or individually designated historic structures within the McLoughlin Conservation District. There are two historic, designated homes that have been identified that are located directly adjacent to the "lower yard" portion of the subject site, those homes are 114 South Center Street and 409 South 1<sup>st</sup> Street.

Subject Property: Lower Yard



Cameron Warehouse on Center Street



Existing OCPW Offices and Truck Sheds on Center Street



Truck Sheds behind Center Street



Truck canopies in future elevator location



McLoughlin Conservation District: Near Upper Yard



View of homes on John Adams Street NE of site



Home vernacular on John Adams Street



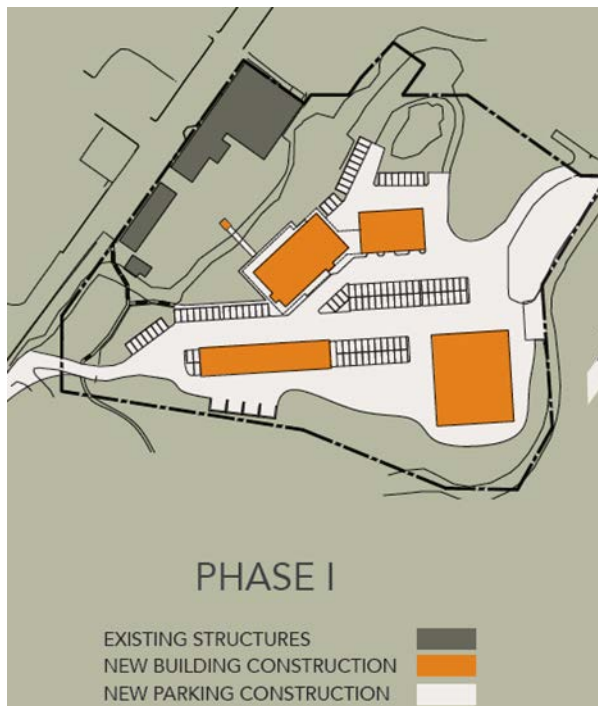
McLoughlin Conservation District: Near Lower Yard



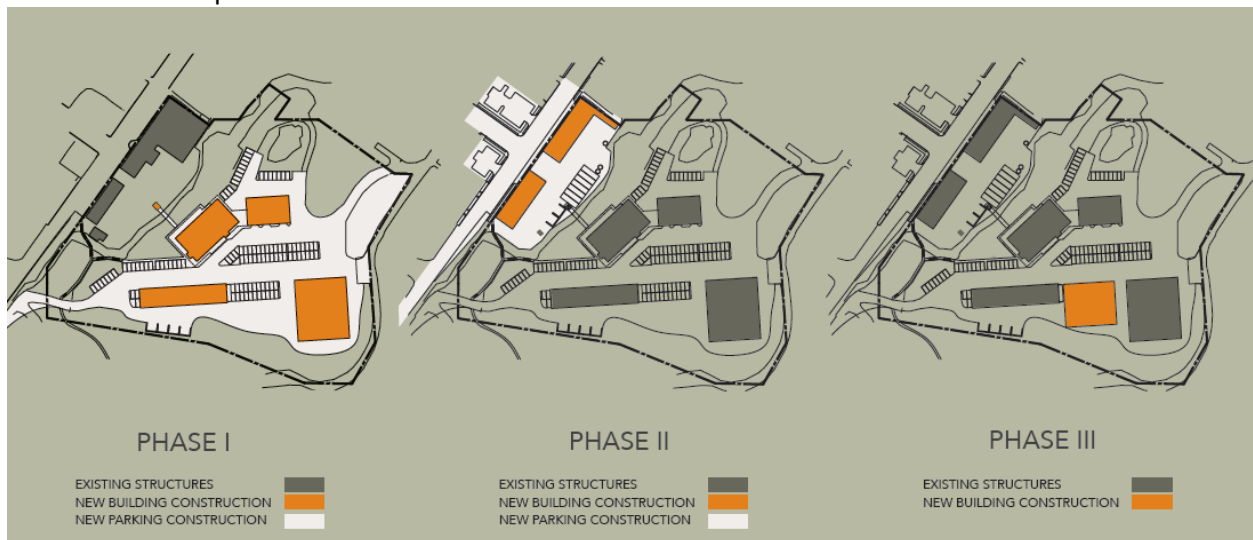
View of homes on Center Street NW of lower site



Home vernacular on Center Street (left) and Washington Street (right)



### Phases of the Proposed Master Plan



### Proposed Master Plan





- Redo parking lots across Center Street
- Provide pedestrian connection to Waterboard Park from Center Street.

### Phase III

- Construct storage building on upper site

*\*Items in Phase 2 and 3 will require review by the Historic Review Board prior to construction. Phase 2 and 3 descriptions are provided for reference only.*

The phasing description is based on the record, and further defined on pages 32-38 of the applicant's submittal. Per OCMC 17.40, the Historic Review Board's scope of review was limited to evaluating a request for a certificate of appropriateness allowing for demolition review and exterior alteration of buildings that have not been designated structures for protection and for new construction within the McLoughlin Conservation District.

Moreover, the HRB found that discussions and comments relating to the consideration of the use of the redeveloped site, such as transportation, trail, parks and general livability should be directed to the Planning Commission during review of any amendments to CP 09-01.

Similarly, the overall multi-phased development or the improvement components proposed for future phases were not considered by the HRB as part of this review. The Historic Review Board will review future construction upon submittal of a development application.

### **Historic Review Boards' Conditions of Approval**

1. The property shall obtain all necessary permits including but not limited to a Master Plan Amendment, Detailed Development Plan, and Geologic Hazards Review by the Planning Division, a right-of-way permit from the Development Services Division, and all necessary permits from the Building Division. (P, DS, B)
2. The applicant shall submit a landscaping plan with the following changes:
  - a. Documentation indicating that a minimum of 20% of the site is landscaped.(P)
  - b. At least four (4) native trees, at least 15 feet in height when mature, and eight (8) shrubs (at least 3 ½ feet in height when mature, shall be planted along the northwest façade of the two story office building facing the South Center Street Right-of-Way.(P)
3. All mechanical equipment shall be screened and out of view from the public right-of-way. All mechanical equipment shall be at least 80% screened by a fence or vegetation. Any fences used for screening mechanical equipment shall not exceed six (6) feet in height.
4. Fences may be placed along the side and rear perimeter of the site and shall not exceed six feet in height. Additionally, in an effort to maintain a contextual appropriateness, any proposed fences along the rear and side perimeter of the site shall not be composed of chain-link, vinyl, split rail, ornate wrought iron, stockade, plywood, or hard panel.
5. The applicant shall coordinate with the City to send out a public notice in the local newspaper for any parties interested in removing and rehabilitating the Camp Adair buildings.
6. The materials on the elevator shall be comprised of the same materials proposed to be used on the building. Those materials include stone and metal exterior façade pieces designed in neutral and soft earth tones colors.

*(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.*

## **Issues Raised on Appeal**

There is some overlap between the various parties' appeal issues and therefore staff has responded together. Further, AP 17-02's appeal notice includes a list of appeal issues along with what appears to be excerpts from its written testimony submitted below. It is not clear whether the AP 17-02 grounds for appeal include only the six items identified as such and whether the materials that follow were intended to support or further articulate those six grounds or whether the additional materials were intended to provide additional grounds for appeal. Staff has assumed the later by responding to both.

### **AP 17-01 Issue #1 and AP 17-02 Issue #3: Failure to Protect Historic Resources**

- 1. The Historic Review Board improperly construed OCMC 17.40.060(F) to require consideration of how the new construction would impact existing buildings within the McLoughlin Conservation District rather than considering all impacts from the development including limitations on access, fencing, and site grading would have on the Conservation District as a whole.*
- 3. The site contains a historic site and is within a conservation district, so all criteria at OCMC 17.40.060 and 17.40.070 apply. This proposal qualifies under both subsections (E) and (F) because a historic landmark, the Overlook at Waterboard, is located on the site.*

*The HRB should have considered all aspects of the proposed project as they relate to the required criteria: Phase I construction includes demolition of existing buildings, re-grading, and adding underground utilities, remodeling the Armory, construction of a storage and an office building, building covered parking, building paving bins, 'etc', and building an elevator. It also includes the closure of John Adams Street to public traffic between the Armory and the residential properties along Center Street, which would be accomplished by construction of security fencing around the upper site with 2 gates; construction of a turnaround and limited parking area at the gate from South Center Street; construction of dewatering / sanitary disposal / wash station and covered van and large truck parking; removal of a rock outcropping on the upper site; and improve landscaping at the upper site to screen new construction.*

#### **Staff Response to Appeal Issue:**

OCMC 17.40.060 applies to exterior alternations and new construction. Since this proposal includes new construction within a conservation district, the HRB found that this section applies and made findings in response. The only exception is with regard to OCMC 17.40.060(E), which applies "to exterior alterations of historic sites in an historic district or conservation district or individual landmark." The HRB concluded that OCMC 17.40.060(E) does not apply to the subject application because the only structure slated for alteration, the armory, has not been designated a "historic site." These findings explain:

No structures within the subject site proposed for demolition or modification are individually designed within the McLoughlin Conservation District or are on the National Resister. "Historic sites" means "a designated structure in a conservation district." The Public Works Operations facility property is not a "Historic site" because none of the structures within the existing Public Works Facility or any of its components (such as rock outcroppings, paving, site grading, access or circulation) are designated structures within

the McLoughlin Conservation District. The only structure proposed for alteration is the armory. Similarly, John Adams Street, as it passes through the subject property or the on-site circulation are not identified within the MCD adopted documents and therefore, are not designated a “historic site.” As a result, fencing the site to prohibit access by the general public does not alter a “historic site” and is not subject to review in this proceeding.

Further, on pages 54-55 of its report, the HRB findings did address fencing, paving, landscaping and utilities explaining that the “redevelopment acknowledges the pedestrian streetscape.” The fencing will be less than six feet tall and the decision restricts the fencing materials to maintain contextual appropriateness. Landscaping will be appropriate and all utilities will be behind structures and out of public view.

Appellants argue that the gating of the site “effectively removes the site from the McLoughlin Historic Conservation District and from public access” and as a result contravenes Historic Overlay purpose statements that require the protection, enhancement and promotion of historic districts and their improvements. The HRB rejected this argument and explained:

The HRB interprets these purpose statements to require inquiry to whether the design and placement of the new structures will achieve the objectives identified in the purpose statements and not a consideration of the use. In other words, this policy focuses on whether the siting location and design of the new structures adequately protect existing resources within the district. The proposed application will facilitate the development of a series of new buildings on the Public Works Operations Facility in the McLoughlin Conservation District in the vernacular style, remaining contextually appropriate with the existing [homes that currently exist] in the subject historic district. The HRB disagrees that property subject to this review is part of a city park but even if it was, its inclusion in a park inventory would have no relevance to the HRB’s scope of review that is limited to considering impacts to historic resources. As demonstrated within this report, the application will comply with the approval criteria with the conditions of approval. Pg 30.

The purpose statements of OCMC 17.40 are directed at protecting and enhancing historic resources, which is defined to include “significant historic resources.” These “significant historic resources” do not include scenic attractions such as views from the Promenade, the Willamette Falls overlook or a viewpoint from the top of Waterboard Park Road. The path or trail connecting Waterboard Park to Center Street or residents use or enjoyment of it are not historic resources qualifying for protection within the purpose statement of OCMC 17.40, directed at protecting historic resources.

Further, the references to “use” in the purpose policy and elsewhere are directed at making decisions that encourage the use of designated historic resources as a means to ensure their viability long-term. Since the proposed Phase I improvements do not involve any designated historic resource, the focus is strictly on whether the demolition of existing structures and the proposed new structures comply with the applicable requirements of OCMC 17.40.060 placement of structures on the site. The propriety of the public facility use of the subject property or whether the site is openly accessible to the public are not components of the McLoughlin Conservation District historic designation and therefore, are not within the scope of HRB’s purview.

Appellants do not identify how closing the access or other non-structure related development activities will compromise or otherwise alter the historic qualities or the historic significance of the district that resulted from its designation in the first instance.



**AP 17-01 Issue #2 and AP 17-02: Violation of Comprehensive Plan Provisions Related to the Transportation System Plan**

*The Historic Review Board decision violates the Oregon City Transportation Plan as it would block an existing publicly-used shared use path over John Adams Street between Waterboard Park Road around the Armory and connecting to South Center Street.*

*The Revised Staff Report repeatedly states that certain Comprehensive Plan provisions are ‘directed at guiding the City in legislative decision-making and has no application to the City’s review of this proposal.’ See e.g. id. at 37. However, OCMC 17.40 requires all applicable Comprehensive Plan provision to be applied by the HRB for this application.*

Staff Response to Appeal Issue

The HRB decision responds to this issue in the following findings:

The criterion requiring consideration of the policies of the comprehensive plan before issuing a certificate of appropriateness to allow new construction within a historic district is limited in a number of important respects. First, the City need consider only those plan policies that are applicable. OCMC 17.50.060 provides that an applicant bears the burden of showing that the “applicable approval criteria” are satisfied. A plan policy can be “applicable” when it falls within the purview of the HRB and the Historic District Overlay purpose, which is the preservation of historic resources and ensuring that new construction is compatible and does not adversely affect significant resources. The Transportation System Plan and the appellants concerns over impacts to a non-historic, non-public trail is beyond the scope of the certificate of appropriateness before the City. Beyond the substance of the comprehensive plan policy, a plan policy may not be applicable because it is not directed at development. For example, many plan policies direct the City to take future action and as a result, these policies would not be “applicable” to this review.

As depicted in the Clackamas County Tax Map earlier in the report, John Adams Road as it crosses the Armory property and Public works Complex is not Public Right-of-Way. As part of this proposal, a new pedestrian path will be added from Center Street that will connect people to Waterboard Park, in front of the upper yard gates. This path can be found in the applicant’s submittal on page A106- lighting plan that shows dual Waterboard park access points from the terminus of John Adams and a new path connecting Center Street to the park.

**AP 17-02 Issues #1 and 2: Notice Issues**

1. *The HRB’s notice of Public Hearing and posting of that Notice were deficient.*
  - a. *The notice failed to explain the nature of the decision in that the “site is designated parkland under the current Oregon City Comprehensive Plan / Parks & Recreation Master Plan and that the proposal would eliminate park uses;*
  - b. *The notice failed to list certain plan policies;*
  - c. *The notice listed the subject property on 122 S Center Street and did not include other property addresses included in the project area;*
  - d. *The notice was not properly posted on all frontage of the property*

Staff Response to Appeal Issue

The HRB findings fully responded to these issues in the following:

The McLoughlin Neighborhood Association raised a number of challenges to the content of the notice along with its posting. The notice summarized the project as: "Construction of a new operations facility for the Oregon City Public Works Department in the McLoughlin Conservation District in the Institutional and R6 zoning districts." The request is limited to determining whether proposed new construction activities, including demolition of a number of existing structures, satisfies the Historic District Overlay standards. The area subject to the proposal is designated on the City's Comprehensive Plan and Zoning Map as "Institutional." Whether or not the proposed site is adjacent to a park has no relevance to HRB's review of this request. The obligation to consider comprehensive plan policies is not an independent obligation. Rather, it is to be considered in determining whether to issue a certificate of appropriateness pursuant to OCMC 17.40.060(F)(2). OCMC 17.40 was identified in the notice as an applicable approval criteria. This reference to the code standard, which includes the comprehensive plan, was sufficient to put the public on notice that comprehensive plan provisions are applicable.

As the staff report and the presentation at the public hearing made clear, the Public Works Operations Facility is located on a single site that includes both a "lower" and "upper" campus. The property legal description references tax lots 500 and 600, the upper campus properties. The property is not designated park land and as a result, did not need to identify or describe the adjacent park property. Notice of the HRB hearing was required to be "posted on each frontage of the subject property." OCMC 17.50.100(B). A "frontage" is defined as "that portion of a parcel of property which abuts a dedicated public street or highway or an approved private way." OCMC 17.04.495. "Notices do not have to be posted adjacent to alleys or unconstructed right-of-way." OCMC 17.50.100(B). "Alley" means "a public or private way not more than twenty feet wide that provides access to a property or properties from a side other than the designed front of the property. These standards establish that the obligation to post property is limited to the side of property that abuts a dedicated public street or approved private way that is the commonly designated front of the property. The "front" of the subject property that abuts a public right-of-way is along S. Center Street. John Adams Street, as it passes through the subject site, is vacated right of way that is posted on both sides to indicate that it is not public right-of-way and can be closed at any time. At best, it is an "alley" providing access to the property other than from the front. Waterboard Park Road is currently unimproved, is less than 20 feet wide and similarly does not provide access to the front of the property. In any event, the HRB finds that the posting of John Adams Street where it enters the facility, near the intersection with Spring Street would be seen by passersby travelling on either John Adams Street or Waterboard Park Road were sufficient to give notice to any person traveling along John Adams or a pedestrian path within Waterboard Park. Pg 67-68

The HRB decision responded to all of the comprehensive plan policies that the Appellant claims should have been included in the notice and these policies are discussed in greater detail below.

#### **AP 17-02 Appeal Issue #2: Lack of Authority to Issue Permit**

##### **2. *The HRB lacked authority to issue the requested permit until August 16, 2017***

#### **Staff Response to Appeal Issue**

Oregon City did not submit for a demolition permit on or before August 16, 2017. ORS 197.772 states that (2) *No permit for the demolition or modification of property removed from consideration for historic property designation under subsection (1) of this section shall be issued during the 120-day period following the date of the property owner's refusal to consent.* Oregon

City agrees with the appellant's assertion that the 120 date begins with City Manager Tony Konkol's letter objecting to local designation. The ORS language stands outside of any HRB review and need not be incorporated into the findings or conditions of approval.

### **AP 17-02 Appeal Issue #3: Failure to Consider All Criteria**

3. *The HRB failed to consider applicable code and Comprehensive Plan criteria and other requirements for this application.*

*The decision fails to do any analysis of compliance with LCDC Goal 5 or to consider Comprehensive Plan Section 5 (open spaces, scenic sites, historic resources, natural resources), Section 8 (parks), and Policy 2.4 (livability) and the 1999 Parks and Recreation Master Plan.*

#### **Staff Response to Appeal Issue**

One of the purposes for the historic overlay district is to "carry out the provisions of LCDC Goal 5." In other words, the designation of historic resources and the protections set forth in OCMC 17.40 implement the City's obligations with regard to Goal 5. Oregon Administrative Rule 660-023-0200 sets forth local government obligations to achieve Goal 5 with regard to historic resources. OAR 660-023-0200(2)(a) provides:

Local governments are not required to amend acknowledged plans or land use regulations in order to provide new or amended inventories, resource lists or programs regarding historic resources, except as specified in section (8).<sup>1</sup> Local governments are encouraged to inventory and designate historic resources and must adopt historic preservation regulations to protect significant historic resources.

The City is not under any obligation pursuant to Goal 5 to designate the Camp Adair buildings or recognize any other non-designated structure or view point in order to comply with Goal 5 or to satisfy the purpose statement. OCMC 17.40 fully complies with and implements Goal 5 with regard to Historic Preservation. Moreover, whether the Camp Adair buildings or any other site are suitable for designation as a local landmark is not germane to this proceeding.

The HRB responded to the Comprehensive Plan policies that AP 17-02 argues were not considered. The HRB's findings provide as follows:

Goal 2.4 Neighborhood Livability - Policy 2.4.1 - Develop local neighborhood plans to strengthen and protect residential neighborhoods and historic areas from infill development; such as development along linear commercial corridors.

Finding: Not Applicable. This provision encourages the adoption of neighborhood plans that protect neighborhood livability. This proposal does not adopt or amend a neighborhood plan. Compliance with OCMC 17.40 requirements will adequately protect historic areas from the proposed infill development.

#### **Policy 2.4.2**

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<sup>1</sup> Subsection 8 deals with mandatory preservation protections placed on resources listed on the National Register of Historic Places. This provision is not applicable in this case.



Strive to establish facilities and land uses in every neighborhood that help give vibrancy, a sense of place, and a feeling of uniqueness; such as activity centers and points of interest.

Finding: To the extent it is applicable, it is satisfied. This provision applies to decisions to establish uses in neighborhoods and since this review is limited solely to building design and siting, this plan policy does not apply. Further, as discussed elsewhere, the proposed new construction is sensitive to the uniqueness of the McLoughlin Historic Conservation District historic character by proposing a design that will complement and be largely invisible from the public right-of-way.

Policy 2.4.4 - Where environmental constraints reduce the amount of buildable land, and/or where adjacent land differs in uses or density, implement Comprehensive Plan and zoning designations that encourage compatible transitional uses.

Finding: Complies as Proposed. The office building and associated structures located at the upper portion of the site are set deep within the site to better integrate with the adjacent residential properties. The main office building will be located near the edge of the bluff and visible from the Center Street right-of-way. The other buildings such as the truck shed and the tool shed will be located behind landscaping and behind the proposed office building. The buildings are placed such that their view from the adjacent properties is mitigated by topography and an existing natural vegetative buffer. The existing buffer will be increased with additional plantings and the preservation of existing trees to the extent possible. All existing trees have been evaluated for preservation. Those to remain will be protected during construction to ensure their preservation. The OCPW is proposing additional plantings well beyond what is required by the Oregon City Municipal Code.

#### Section 5, Open Spaces, Scenic and Historic Areas, and Natural Resources

Canemah. Canemah is an important example of a relatively intact riverboat town with architectural resources dating from the 1860's. Having evolved from a community for the elite of the riverboat industry to a workers' community, Canemah retains essentially the same sense of place it had in the latter half of the 19th Century. Situated above the Falls of the Willamette, it was an important portage town and the major shipbuilding center on the upper Willamette River.

Goal 5.1 Open Space - Establish an open space system that conserves fish and wildlife habitat and provides recreational opportunities, scenic vistas, access to nature and other community benefits.

Finding: Not Applicable. This provision outlines a policy for the provision of recreational opportunities guiding the City in its adoption of comprehensive plan and zoning policy. It has no applicability to the City's review of this proposal, as the purpose of the Historic Review Board review is to review the design in compliance with the applicable standards in OCMC 17.40.

Policy 5.1.2 - Manage open space areas for their value in linking citizens and visitors with the natural environment, providing solace, exercise, scenic views and outdoor education. Built features in open space sites should harmonize with natural surroundings.

Finding: Not Applicable. As used in the plan, "open space" refers to natural or recreation areas and the subject property is not designated as open space. Further, how open space is used is not germane to the HRB's more-limited review of whether the design and siting of structures is compatible with existing historic resources. To the extent it is applicable, access through the site

will be improved with the completion of an improved trail connecting Waterboard Park with downtown in Phase II. This development will have no impact within Waterboard Park or the Overlook at Waterboard Park, which are not designated historic sites.

Goal 5.2 Scenic Views and Scenic Sites: Protect the scenic qualities of Oregon City and scenic views of the surrounding landscape.

Finding: Not Applicable. This plan policy is directed at guiding the City in legislative decision-making and has no application to the City's review of this proposal. The City has not adopted any viewsheds or scenic sites. Further, there is no evidence that the City has impeded any designated view sheds with this proposal.

Policy 5.2.1 Identify and protect significant views of local and distant features such as Mt. Hood, the Cascade Mountains, the Clackamas River Valley, the Willamette River, Willamette Falls, the Tualatin Mountains, Newell Creek Canyon, and the skyline of the city of Portland, as viewed from within the city.

Finding: Not Applicable. This plan policy is directed at guiding the City in legislative decision-making and has no application to the City's review of this proposal. Further, there is no evidence that the City has regulations protecting views of any designated features that are visible or would otherwise be compromised from this proposal.

Policy 5.2.2 Maximize the visual compatibility and minimize the visual distraction of new structures or development within important viewsheds by establishing standards for landscaping, placement, height, mass, color, and window reflectivity.

Finding: Not Applicable. This plan policy is directed at guiding the City in drafting planning policy and has no application to the City's review of this proposal. Further, there is no evidence that the City has impeded any designated viewsheds with this proposal.

Goal 5.3 Historic Resources - Encourage the preservation and rehabilitation of homes and other buildings of historic or architectural significance in Oregon City.

Finding: Complies as Proposed. As part of this master plan development process, the applicant has conducted a study determining the historic eligibility of the buildings on the site, the State Historic Preservation Office (SHPO) has indicated that none of the buildings on the site are eligible to be listed on the National Register of Historic Places.

Policy 5.3.1 - Encourage architectural design of new structures in local Historic Districts, and the central Downtown area to be compatible with the historic character of the surrounding area.

Finding: Complies with Condition. As demonstrated within this report, the structures and context will comply with the applicable criteria with conditions of approval. A further analysis of the design criteria can be found later in the staff report. HRB has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.

Policy 5.3.2 - Evaluate the establishment of Historic and Conservation Districts to preserve neighborhoods with significant examples of historic architecture in residential and business structures.

Finding: Complies with Condition. As demonstrated within this report, the proposal can comply with the applicable sections of the Oregon City Municipal Code as well as the Design Guidelines for New Construction, thus preserving the historic district. No adverse impacts have been identified which cannot be mitigated with a condition of approval. No structures onsite are currently designed on the National Register or locally identified as individually designated structures. The applicant has proposed to retain some of the structures onsite. Please refer to the demolition analysis within this report for further discussion. HRB has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.

Policy 5.3.5 - Support efforts to obtain historic designation at the city, state and national levels for public and private historic sites and districts. Natural and cultural landscapes should also be considered.

Finding: Not Applicable. The application is for the construction of a new buildings and does not include a request for historic designation of any buildings. Further, the evidence in the record shows that none of the buildings are suitable for historic designation.

Policy 5.3.7 - Encourage property owners to preserve historic structures in a state as close to their original construction as possible while allowing the structure to be used in an economically viable manner.

Finding: Not Applicable. No structures onsite are currently designated on the National Register or locally identified as individually designated structures. The State Historic Preservation Office (SHPO) has indicated that none of the buildings on the site are eligible to be listed on the National Register of Historic Places. As a result, Phase 1 includes demolition of all the buildings located within the Upper Yard with the exception of the Armory. The phase one proposal will retain majority of buildings in the lower yard and the Armory within the upper yard will be invested in with some minor alterations. Four new garage doors will be added to the west elevation, and one of the garage doors will be removed and the CMU will be painted a different color. Additional discussion about the demolition is identified within this report.

Policy 5.3.8 - Preserve and accentuate historic resources as part of an urban environment that is being reshaped by new development projects.

Finding: Not Applicable and if applicable, it Complies. No structures onsite are currently designated on the National Register or locally identified as individually designated structures. The State Historic Preservation Office (SHPO) has indicated that none of the buildings on the site are eligible to be listed on the National Register of Historic Places. There will be no adverse effects to Waterboard Park as part of this development and it is not a historic resource, in any event. As discussed elsewhere, the new structures will be compatible with each other as well as the district as whole.

Goal 5.4 Natural Resources - Identify and seek strategies to conserve and restore Oregon City's natural resources, including air, surface and subsurface water, geologic features, soils, vegetation, and fish and wildlife, in order to sustain quality of life for current and future citizens and visitors, and the long-term viability of the ecological systems.



Finding: Not Applicable. This plan policy is directed at guiding the City in legislative decision-making and has no application to the City's review of this proposal. Further, the applicant will be required to comply with applicable overlay districts during future Site Plan and Design Review.

Policy 5.4.1 - Conserve and restore ecological structure, processes and functions within the city to closely approximate natural ecosystem structure, processes, and functions.

Finding: Not Applicable. This plan policy is directed at guiding the City in legislative decision-making and has no application to the City's review of this proposal. Further, the applicant will be required to comply with applicable overlay districts during future Site Plan and Design Review.

Policy 5.4.3 - Identify, initiate and cooperate in partnerships with other jurisdictions, businesses, neighborhoods, schools and organizations to conserve and restore natural resources within and adjacent to Oregon City.

Finding: Not Applicable. This plan policy is directed at guiding the City in legislative decision-making and has no application to the City's review of this proposal. Further, the applicant will be required to comply with applicable overlay districts during future Site Plan and Design Review.

Policy 5.4.4 - Consider natural resources and their contribution to quality of life as a key community value when planning, evaluating and assessing costs of City actions.

Finding: Not Applicable. This plan policy is directed at guiding the City in legislative decision-making and has no application to the City's review of this proposal. Further, the applicant will be required to comply with applicable overlay districts during future Site Plan and Design Review.

Policy 5.4.6 - Support and promote public education, interpretation, and awareness of the city's ecological resources.

Finding: Not Applicable. This plan policy is directed at guiding the City in legislative decision-making and has no application to the City's review of this proposal. Further, the applicant will be required to comply with applicable overlay districts during future Site Plan and Design Review.

Policy 5.4.8 - Conserve natural resources that have significant functions and values related to flood protection, sediment and erosion control, water quality, groundwater recharge and discharge, education, vegetation and fish, and wildlife habitat.

Finding: Not Applicable. This plan policy is directed at guiding the City in legislative decision-making and has no application to the City's review of this proposal. Further, the applicant will be required to comply with applicable overlay districts during future Site Plan and Design Review.

Policy 5.4.12 - Use a watershed-scale assessment when reviewing and planning for the potential effects from development, whether private or public, on water quality and quantity entering streams.

Finding: Not Applicable. This plan policy is directed at guiding the City in legislative decision-making and has no application to the City's review of this proposal. Further, the applicant will be required to comply with applicable standards during future Site Plan and Design Review.

Policy 5.4.17 - Protect and maintain groundwater recharge through conservation and enhancement of wetlands and open space.

Finding: Not Applicable. This plan policy is directed at guiding the City in legislative decision-making and has no application to the City's review of this proposal. Further, the applicant will be required to comply with applicable standards during future Site Plan and Design Review.

Policy 5.4.18 - Encourage use of native and hardy plants such as trees, shrubs and groundcovers to maintain ecological function and reduce maintenance costs and chemical use.

Finding: Not Applicable. This plan policy is directed at guiding the City in legislative decision-making and has no application to the City's review of this proposal. Further, the applicant will be required to comply with applicable standards during future Site Plan and Design Review.

Goal 8.1 Developing Oregon City's Park and Recreation System: Maintain and enhance the existing park and recreation system while planning for future expansion to meet residential growth.

Policy 8.1.1 - Provide an active neighborhood park-type facility and community park-type facility within a reasonable distance from residences, as defined by the Oregon City Park and Recreation Master Plan, to residents of Oregon City.

Policy 8.1.9

Emphasize retaining natural conditions and the natural environment in proposed passive recreation areas.

Policy 8.1.12 Identify and protect land for parks and recreation within the Urban Growth Boundary.

Finding: Not Applicable. These policies are directed at legislative policy making activities and have no application to the city's limited review of a new construction and demolition request. Further, the area that will accommodate the public works operations center is neither a park, nor does it further recreation purposes. These policies do not apply.

#### **AP 17-02 Appeal Issue #5: Need**

*Whether the project will fulfill a stated need.*

Staff Response to Appeal Issue

The HRB findings respond to this issue as follows:

Per OCMC 17.40, the Historic Review Board is tasked with reviewing proposals for New Construction, demolition and exterior alterations to designated structures. Whether the project fulfills a stated need has been previously determined by the City Commission through the previous Master Plan process and current Commission Goals to proceed with development of the site.

Need is not an approval criterion and should not be considered.

#### **AP 17-02 Appeal Issue # 6: Parkland Designation**

*Whether the site has been designated as parkland under the Oregon City Comprehensive Plan.*

Staff Response to Appeal Issue

As pointed out above, the Commission should interpret its obligations to consider the comprehensive plan to those provisions that are “applicable.” The elements of the Comprehensive Plan that are “applicable” to this proposal are the ones that directly relate to the historic preservation objectives set forth in the applicable sections of OCMC 17.40. Historic master plan or comprehensive plan maps are not “applicable” to the matter on review. Further, the HRB rejected any claim that the proposal will remove accessible and level parkland. The proposal entails construction in portions of the site which are already developed and utilized by Public Works Operations.

**AP 17-02 Appeal Issue: Compliance with Design Guidelines**

*The proposed development does not comply with the adopted design guidelines, as explained in the written testimony of Trent Premore.*

*Whether the proposal complies with the adopted design guidelines with regard to complimentary styles and setbacks, work in the right-of-way, vehicle access and garage locations, and design elements and materials.*

Staff Response to Appeal Issue

The McLoughlin Neighborhood Association has incorporated comments submitted by Trent Premore as part of the HRB review of HR 17-04. The applicant has provided a response matrix as part of their comments to the appeal that breaks down Mr. Premore’s concerns. A majority of these concerns relate to the West Truck Shed located below the rock bluff on Center Street is not part of this application and will be submitted to the Historic Review Board for review in a future phase. Therefore, Mr Premore’s comments relating to setbacks, design, materials and driveway location are not pertinent to this application.

The design guidelines indicate that commercial uses outside the 7<sup>th</sup> Street Corridor shall employ a residential style architecture such as Queen Anne, Vernacular and Foursquare. The guidelines suggest that these styles can be utilized for the following uses: retail, office or multifamily residential. It is the applicant’s opinion that the approved development is an institutional use therefore the commercial building styles are more applicable, will be more efficient in terms of construction costs and future maintenance, and will better serve the needs of the Oregon City Public. The design guidelines also indicate that other commercial mixed use zoned areas exist outside the 7<sup>th</sup> Street Corridor such as Seventh Street east of John Q. Adams and north and south along Washington, Center and High. These areas have a mix of newer commercial buildings and historic residential styled structures. The Historic Review Board agreed with this approach and found the design of the upper yard office building to be compatible with the McLoughlin Conservation District.

The applicant proposed a ground face CMU with traditional jointing, color and pattern. The applicant indicated that the proposed ashlar pattern will provide rich texture, traditional color patterns and detailing. The intent of the guidelines is to forbid plain faced CMU in a manner that is typically used with industrial buildings. Historic Review Boards found in this specific instance that the proposed use of CMU is compatible with the McLoughlin Neighborhood Conservation District and is in compliance with the Historic Design Guidelines.

**AP 17-02 Appeal Issue #6: Accepting Evidence After the Close of the Record**

*The HRB erred in accepting new evidence after the record was close denying the Appellant an opportunity for rebuttal.*

#### Staff Response to Appeal Issue

AP 17-02 objects that the HRB's decision included different findings along with new evidence after the record was closed depriving it of an opportunity to respond. A majority of MNA's objections relate to HRB's interpretation or application of various criteria and the appellant will have a full opportunity to present these objections to the City Commission through this appeal.

- The history of designating buildings within the McLoughlin Conservation District including the work of Dave Pinyerd, HRB decision page 26 - Dave Pinyerd's inventory forms are in the record. However, some of the background information for the creation of the District could be deemed new evidence and therefore, staff recommends that it be stricken from the record and not considered by the City Commission:

~~"The McLoughlin Conservation District (MCD), was created during the City's original Comprehensive Plan process in 1980. The Historic Review Board first met on June 19, 1980 and over a six year period reviewed and designated numerous structures in the district through noticed public hearings based on survey forms created from 1982-1986. A few additional structures were added in the 1990s and early 2000s, but the majority of the structures contained within the MCD were designated in the 1980s. These materials make no mention of any Public Works Operations site structures, Waterboard Park or the "Overlook at Waterboard."~~

~~In 2001, the City received a Certified Local Government grant from the State Historic Preservation Office to see if the MCD was eligible for listing as a National Register District and if that boundary should have the same dimension as the local conservation district boundary. Dave Pinyerd of Historic Preservation NW was hired to perform a reconnaissance level survey (RLS) for all lots not previously surveyed to determine if the area was potentially eligible for listing as a district. His work can be found in the record. Mr. Pinyerd concluded that the MCD was eligible for listing as a National Register District with some modified boundaries (he provided a couple of options). The City reached out to the McLoughlin Neighborhood to see if they were interested in pursuing a National Register designation. The neighborhood, at that time, indicated that there was not support to move forward on listing.~~

In 2004, Dave Pinyerd was again hired by the city to provide additional research and information on all buildings related to the upcoming Public Works master plan. He created survey forms for all buildings over 50 years old onsite. These forms are part of the record for the original Master Plan approval (CP 09-01) and are included in this record. With regard to the cannery, the armory and other warehouse buildings located on the upper yard, they were deemed "Not Eligible" as lacking distinction. As the 2009 Master Plan was conceptual and did not include a development application, the Historic Review Board did not hold a hearing on the proposal, but provided comments to the Planning Commission in a memo."

- Notice to tribal representatives - OCMC 17.40.060 requires the applicant to provide notice to SHPO and tribal cultural resource representatives prior to completeness of an application. Oregon city staff provide notice to the above parties during the pre-application conference for the

project (PA 16-60). All notices of a proposed action become part of a local government record, even if they were not distributed to the decision-maker. OAR 661-010-0025. It is city policy to not upload noticing emails, fee receipts, sign affidavits and other administrative documents as part of the HRB agenda. These materials were in the City's file and available for review while the record was open. Therefore, this email notice is properly part of the record.

- HRB decision pages 29-39 – This appears to be directed at the HRB's findings in response to MNA's allegation that certain plan policies were applicable and not considered. MNA has challenged the HRB's findings regarding those plan policies as part of this appeal and eliminating any prejudice.

#### **Conclusion and Recommendation:**

Based on the analysis and findings as described above, Staff recommends that City Commission deny AP 17-01 and AP 17-02 and affirm the Historic Review Board's decision approving Planning File HR 17-04 with conditions.

#### **Exhibits**

1. AP 17-01 Submittal
2. AP 17-02 Submittal
3. Applicant's Response Matrix
4. HR 17-04 Notice of Decision
5. Revised Staff Report
6. City Attorney Letter
7. Items entered into the record on May 23, 2017
  - a. Jerry Herrmann Comments
  - b. Charles Combs Comments
  - c. McLoughlin Neighborhood Association Comments
  - d. Trent Premore revised comments
8. Items entered into the record on April 25, 2017
  - a. Gordon Wilson Comments
  - b. Applicant's presentation
  - c. Staff's presentation
9. Staff Report
  - a. Vicinity Map
  - b. Applicants Submittal
  - c. Public Comments
10. SHPO Tribal email for PA 17-60
11. Design Guidelines for New Construction

The following meeting agendas, videos, staff report and exhibits for this project are available for viewing at <http://oregon-city.legistar.com/Calendar.aspx> and are part of the record.

1. April 25, 2017 Historic Review Board
2. May 23, 2017 Historic Review Board
3. June 26, 2017 Historic Review Board