



**TYPE III SUBDIVISION, NATURAL RESOURCE REVIEW AND PLANNING COMMISSION VARIANCE  
STAFF REPORT AND PROPOSED CONDITIONS OF APPROVAL**

April 12, 2019

**FILE NUMBER:**

GLUA-18-00038- Consolidated File No.

- SUB-18-00001: Subdivision
- NROD-18-00012: Natural Resource Overlay District
- VAR-18-00003: Variance – Planning Commission Type III

**Application Submitted:**

10/30/2018

**Application Complete:**

02/08/2019

**120-Day Decision Deadline:**

06/08/2019

**APPLICANT:** Tom Sisul, Sisul Engendering, 375 Portland Ave, Gladstone OR 97027

**OWNER:** Jerry Lemon, 19043 Sunnyside RD, Damascus OR 97089

**REQUEST:** Approval of a 5- Lot Subdivision located within the Natural Resources Overlay District including a Planning Commission Variance for corner side setback reduction for Lot 1 and modifications to allow an offset intersection and reduced street width.

**LOCATION:** 16362 Hiram Ave, Oregon City OR 97045  
Clackamas County Assessor Parcel Number (APN): 2-2E-28BC-01000

**REVIEWER:** Christina Robertson-Gardiner, AICP Senior Planner  
Sang Pau, Development Engineering Associate

**RECOMMENDATION:** Approval with Conditions.

**PROCESS:** Type III Quasi-Judicial Public Hearing. Pursuant to OCMC 17.50. C. Type III decisions involve the greatest amount of discretion and evaluation of subjective approval standards, yet are not required to be heard by the city commission, except upon appeal. In the event that any decision is not classified, it shall be treated as a Type III decision. The process for these land use decisions is controlled by ORS 197.763. Notice of the application and the planning commission or the historic review board hearing is published and mailed to the applicant, recognized neighborhood association(s) and property owners within three hundred feet. Notice must be issued at least twenty days pre-hearing, and the staff report must be available at least seven days pre-hearing. At the evidentiary hearing held before the planning commission or the historic review board, all issues are addressed. The decision of the planning commission or historic review board is appealable to the city commission, on the record. The city commission decision on appeal from the historic review board or the planning commission is the city's final decision and is appealable to LUBA within twenty-one days of when it becomes final. A city-recognized neighborhood association requesting an appeal fee waiver pursuant to 17.50.290(C) must officially approve the request through a vote of its general membership or board at a duly announced meeting prior to the filing of an appeal. IF YOU HAVE ANY QUESTIONS ABOUT THIS APPLICATION, PLEASE CONTACT THE PLANNING DIVISION OFFICE AT (503) 722-3789.

### **Conditions of Approval**

**Planning Files:** GLUA-18-00038: SUB-18-00001, NROD-18-00012, VAR-18-00003

*(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 meet the following condition(s) prior to issuance of construction permits:**

1. The applicant shall schedule a pre-design meeting with Public Works Development Services staff prior to initial submittal of construction plans. (DS)
2. The applicant shall provide construction plans, stamped and signed by a professional engineer licensed in the State of Oregon, containing street, grading, stormwater, sanitary sewer and water infrastructure improvements that conforms to all current Oregon City Public Works standards, specifications, codes, and policies for review and approval by the City.
3. The development's contractor(s) and engineer(s) shall attend a pre-construction meeting with Oregon City staff prior to beginning construction work associated with the project. (DS)
4. The applicant shall obtain approval from Oregon Department of Environmental Quality (DEQ) for the sanitary sewer main extension into the new road prior to release of any permit from the City and prior to beginning construction work associated with the project. (DS)
5. The applicant shall provide street lights along Hiram Avenue and the new road in conformance with all City standards, specifications, codes, and policies and as approved by Portland General Electric (PGE). The applicant shall submit a photometric plan. (DS)
6. The applicant shall locate a benchmark within the subdivision boundaries using datum plane specified by the city engineer. (DS)
7. The applicant shall provide engineered drainage plan(s), drainage report(s), and design flow calculation report(s) stamped and signed by a licensed engineer addressing all items from the Section 9.4 of the Public Works Stormwater and Grading Design Standards. (DS)
8. The applicant shall provide a Residential Lot Grading Plan adhering to the State of Oregon Structural Specialty Code, Chapter 18 and the Oregon City Public Works Stormwater and Grading Design Standards. (DS)
9. The applicant shall obtain an Erosion and Sediment Control Permit from the City prior to beginning construction work associated with the project. The applicant shall obtain a 1200-C (NPDES) permit from Oregon Department of Environmental Quality (DEQ) prior to release of any permit from the City and prior to beginning construction work associated with the project. (DS)
10. The applicant shall provide an Erosion Prevention and Sedimentation Control Plan which meets the requirements of the City of Oregon City public works standards for erosion and sediment control. (DS)

**The applicant shall meet the following condition(s) during construction of the development:**

11. Workmanship and materials for any work performed under permits issued by the city shall comply with the latest 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. (DS)
12. The development shall comply with all current Oregon City Public Works design standards, specifications, codes, and policies. (DS)
13. All pavement cuts and restoration shall be performed in accordance with the City of Oregon City Pavement Cut Standards. (DS)
14. The applicant shall work with the Development Services to determine if the sidewalk portion of Hiram Avenue that perpetually crosses Stream A can be designed as a bridge element. A culvert can only be utilized in this section if the city determines that a bridge is impracticable. (P,DS)
15. The applicant has prepared an OCMC 17.41 tree mitigation plan that appears to meet the development code for Option 1 and Option 4. Prior to submitting a grading permit, the applicant shall indicate where and how existing trees will be protected. (P)
16. Prior to construction of public utilities, the applicant shall submit a mitigation plan for the disturbed area required by the extension of Hiram Avenue. The mitigation plan shall be implemented/installed prior to platting. The mitigation plan shall include the following information:
  - a) The report shall be prepared by an environmental professional with experience and academic credentials in one or more natural resource areas such as ecology, wildlife biology, botany, hydrology or forestry.
  - b) Written responses to each applicable Mitigation Standard [Section] [17.49.180](#) or [17.49.190](#) indicating how the proposed development complies with the mitigation standards;
  - c) The resources and functional values to be restored, created, or enhanced through the mitigation plan;
  - d) Documentation of coordination, if applicable, with appropriate local, regional, state and federal regulatory/resource agencies such as the Oregon Department of State Lands (DSL) and the United States Army Corps of Engineers (USACE);
  - e) Construction timetables;
  - f) Monitoring and Maintenance practices pursuant to Section 17.49.230.F and a contingency plan for undertaking remedial actions that might be needed to correct unsuccessful mitigation actions during the first five years of the mitigation area establishment.
  - g) Final calculation of disturbance area of the street improvement identified and mitigation area calculation based on the size of the disturbance area within the NROD.
  - h) All mitigation planting shall occur in Tract B.
  - i) Native trees and shrubs are required to be planted at a rate of five trees and twenty-five shrubs per every five hundred square feet of disturbance area or fraction thereof.
  - j) Bare ground must be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.
  - k) Plantings may vary in size dependent on whether they are live cuttings, bare root stock or container stock, however, no initial plantings may be shorter than twelve inches in height.

- l) Trees shall be planted at average intervals of seven feet on center. Shrubs may be planted in single-species groups of no more than four plants, with clusters planted on average between eight and ten feet on center.
- m) Mulching and Irrigation shall be applied in the amounts necessary to ensure eighty percent survival at the end of the required five-year monitoring period.
- n) Shrubs shall consist of at least three different species. If twenty trees or more are planted, no more than one-third of the trees may be of the same genus.
- o) Any invasive species shall be removed from Tract B. (P)

**The applicant shall meet the following condition(s) prior to issuance of an approved plat:**

- 17. The lot containing the existing dwelling shall have a concrete driveway approach with a minimum hard surface for at least ten back into the lot as measured from the edge of street pavement. The hard surface shall be concrete, asphalt, or other surface approved by the city engineer. (DS)
- 18. The applicant shall provide markers at the termination of the proposed local street to indicate the end of the roadway and provide signage that it is planned for future extension. (DS)
- 19. The plat shall include an access control strip across the end of the new street proposed for the development for the purposes of future extension. (DS)
- 20. The applicant shall provide the following along the frontage of Hiram Avenue on the subject property side of the centerline:  
27' of ROW consisting of 16-foot-wide pavement, 0.5-foot-wide curb, 5-foot-wide landscape strip, 5-foot-wide sidewalk and a 0.5-foot-wide buffer strip. (DS)
- 21. The applicant shall establish and protect monuments of the type required by ORS 92.060 in monument boxes with covers at every public street intersection and all points of curvature and points of tangency of their center line, and at such other points as directed by the city engineer. (DS)
- 22. For the proposed dead-end street, the applicant shall provide a turnaround contained in an easement with appropriate no-parking signs or markings for large emergency vehicles and other long vehicles in the form of a hammerhead or other design in accordance with Clackamas Fire District No. 1 and City adopted street standards. (DS)
- 23. The applicant shall provide a 10-foot-wide public utility easement along all property lines fronting an existing or proposed ROW unless it conflicts with the existing dwelling, in which case a smaller easement may be accepted by the city upon review and approval. (DS)
- 24. Overhead utilities along all property frontages, existing and new, shall be placed underground. The applicant shall make all necessary arrangements with utility companies and other affected parties for the installation of underground lines and facilities including but not limited to electric, communication, telephone, fiberoptic, street lighting and cable television. (DS)
- 25. The property owner shall sign a Restrictive Covenant Non-Remonstrance Agreement for the purpose of making storm sewer, sanitary sewer, water or street improvements in the future that benefit the property. The applicant shall pay all fees associated with processing and recording the Non-Remonstrance Agreement. (DS)

26. The development shall extend the storm drainage system within the development for the connection of upgradient developable properties unless it is proven that upgradient developable properties can connect to another storm drainage system and maintain gravity feed. (DS)
27. The applicant shall provide a performance guarantee which is equal to 120% of the estimated cost to construct all public improvements shown in a city approved construction plan submitted by the applicant's engineer. The estimated costs shall be supported by a verified engineering estimate and approved by the city engineer. The guarantee shall be in a form identified in Code 17.50.140.A of the Oregon City Municipal Code. The guarantee shall remain in effect until the construction of all required improvements are completed and accepted by the city. (DS)
28. The applicant shall provide a Maintenance Guarantee in the amount of fifteen percent of the cost to construct all public improvements as shown in a city approved construction plan submitted by the applicant's engineer. The estimated costs shall be supported by a verified engineering estimate approved by the City Engineer. The guarantee shall be in a form identified in Code 17.50.140.A of the Oregon City Municipal Code. The guarantee shall remain in effect for two years from the establishment of the guarantee and until accepted by the City. (DS)
29. Responsibility for maintenance of stormwater facilities including all landscaping, irrigation systems, structures and appurtenances shall remain with the property owner/developer for two years (known as the warranty period). The owner/developer shall provide the city a separate two-year landscaping maintenance bond for one hundred ten percent of the landscaping cost or cash in lieu. (DS)
30. The applicant shall execute a Maintenance Covenant and Access Easement for any private stormwater facilities to be constructed within the development. The Maintenance Covenant and Access Easement shall include an operation and maintenance plan for said stormwater facilities. The Maintenance Covenant and Access Easement shall be recorded by the City as required by the Public Works Stormwater and Grading Design Standards. The applicant shall pay all fees associated with processing and recording the Maintenance Covenant and Access Easement. (DS)
31. The plat, and a document/covenant referenced on the plat, if privately owned, shall identify that Tract B is proposed for NROD protection and clearly state restrictions and purpose of the tract under OCMC 17.49 Natural Resource Overlay District. (P)
32. Prior to Platting, the applicant shall submit a final tree mitigation table that indicates which trees were removed and or protected and identify the mitigation approach for each tree removed. Any fee in lieu payment shall occur at or before the site is platted. (P)
33. Prior to Occupancy of Building Permits for the houses, the applicant shall record a permanent, protective covenant or easement on all properties with new or existing mitigation trees planted on private property in a form acceptable to the City .(P)
34. The applicant has proposed a street layout that requires street trees. The applicant indicated that one tree will be planted for every 30 feet of frontage, but did not submit the calculation to demonstrate compliance with this standard. Prior to issuance of a permit associated with the construction of civil improvements, the applicant shall submit a plan for street trees in compliance with OCMC 12.08. Final review of tree placement will occur during civil plan review and shall comply with the standards in OCMC 12.08. The species will be street trees from the Oregon City Street Tree List (or approved by a certified arborist). If there are remaining trees that cannot be planted for spacing reasons, the applicant shall pay fee in lieu for prior to platting. (P)

35. Prior to plat of the proposed subdivision, the applicant shall demonstrate that all existing structures comply with the permitted uses and dimensional standards of the R-8 Single-Family Dwelling District, notwithstanding the proposed Corner Side yard Variance or have been relocated. (P)
36. The application states that the plans show that there are no impacts below OHW mark for the intermittent stream. However the conditioned street improvement will create some impact. It is up to the applicant to determine if this additional street widening will trigger any additional review from the DSL and/or the Army Corps of Engineers. (P)
37. Prior to final plat approval, ownership of the NROD tract shall be identified to distinguish it from lots intended for sale. The tract may be identified as any one of the following:
- a. Private open space held by the owner or a homeowners association; or
  - b. For residential land divisions, private open space subject to an easement conveying stormwater and surface water management rights to the city and preventing the owner of the tract from activities and uses inconsistent with the purpose of this document; or
  - c. At the owners option, public open space where the tract has been dedicated to the city or other governmental unit; or
  - d. Any other ownership proposed by the owner and approved by the city (P)
38. The mitigation plan shall provide for a five-year monitoring and maintenance plan with annual reports in a form approved by the director of community development. Monitoring of the mitigation site is the on-going responsibility of the property owner, assign, or designee, who shall submit said annual report to the city's planning division, documenting plant survival rates of shrubs and trees on the mitigation site. Photographs shall accompany the report that indicate the progress of the mitigation. A minimum of eighty percent survival of trees and shrubs of those species planted is required at the end of the five-year maintenance and monitoring period. Any invasive species shall be removed and plants that die shall be replaced in kind. Bare spots and areas of invasive vegetation larger than ten square feet that remain at the end the five-year monitoring period shall be replanted or reseeded with native grasses and ground cover species. (P)
39. If Tract B is privately owned, the Applicant shall record a restrictive covenant or conservation easement, in a form provided by the city, requiring the owners and assigns of properties subject to this section to comply with the applicable mitigation requirements of this section and identify allowed and prohibited uses per OCMC 17.49.80 and OCMC 17.100. Said covenant shall run with the land, and permit the city to complete mitigation work in the event of default by the responsible party. Costs borne by the city for such mitigation shall be borne by the owner(s) of Tract B.
40. A financial guarantee for establishment of the mitigation area, in a form approved by the city, shall be submitted before development within the NROD disturbance area commences. The city will release the guarantee at the end of the five-year monitoring period, or before, upon it's determination that the mitigation plan has been satisfactorily implemented pursuant to this section. (P)

41. The Tract B boundary that abut the development lots shall be identified with highly visible flagged surveyor stakes and shall remain onsite until the house on the lot receives its Certificate of Occupancy.

**The applicant shall meet the following condition(s) prior issuance of Certificate of Occupancy:**

42. As-builts conforming to City standards shall be provided within 90 days of completion of the public improvements. (DS)

**I. BACKGROUND:**

**1. Existing Conditions**

The subject site is located east of Hiram Blvd between Rock and Gain Streets. The property is approximately two acres in size and is developed with a single-family residence. The site is generally flat and the northernmost portion of the site resides within the Natural Resource Overlay District (NROD).

The subject site is designated as “LR”, Low Density Residential by the Oregon City Comprehensive Plan and is zoned “R-8” Single-Family Dwelling District. Surrounding properties are residential in nature. Properties to the south are also zoned “R-8” and properties to the north, east, and west are zoned “R-10” Single-Family Dwelling District.

Currently a single family home and outbuilding exist onsite. The applicant is proposing the creation of a new public street, within a five lots subdivision 5 (which includes the existing house). The subject site contains an existing stream and Natural Resource Overlay District ion the northern portions of the site.



Figure 1. Vicinity Map-Zoning

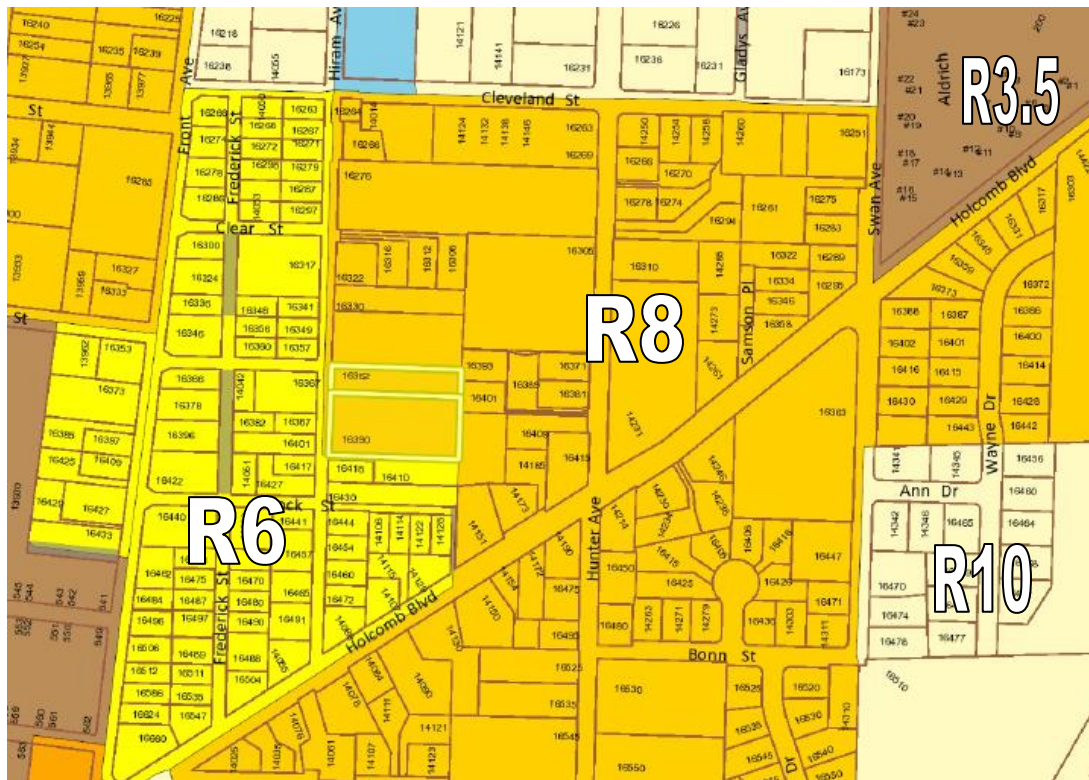


Figure 2: Existing Conditions – Aerial Image





Figure 3: Existing Conditions – Natural Resource Overlay District

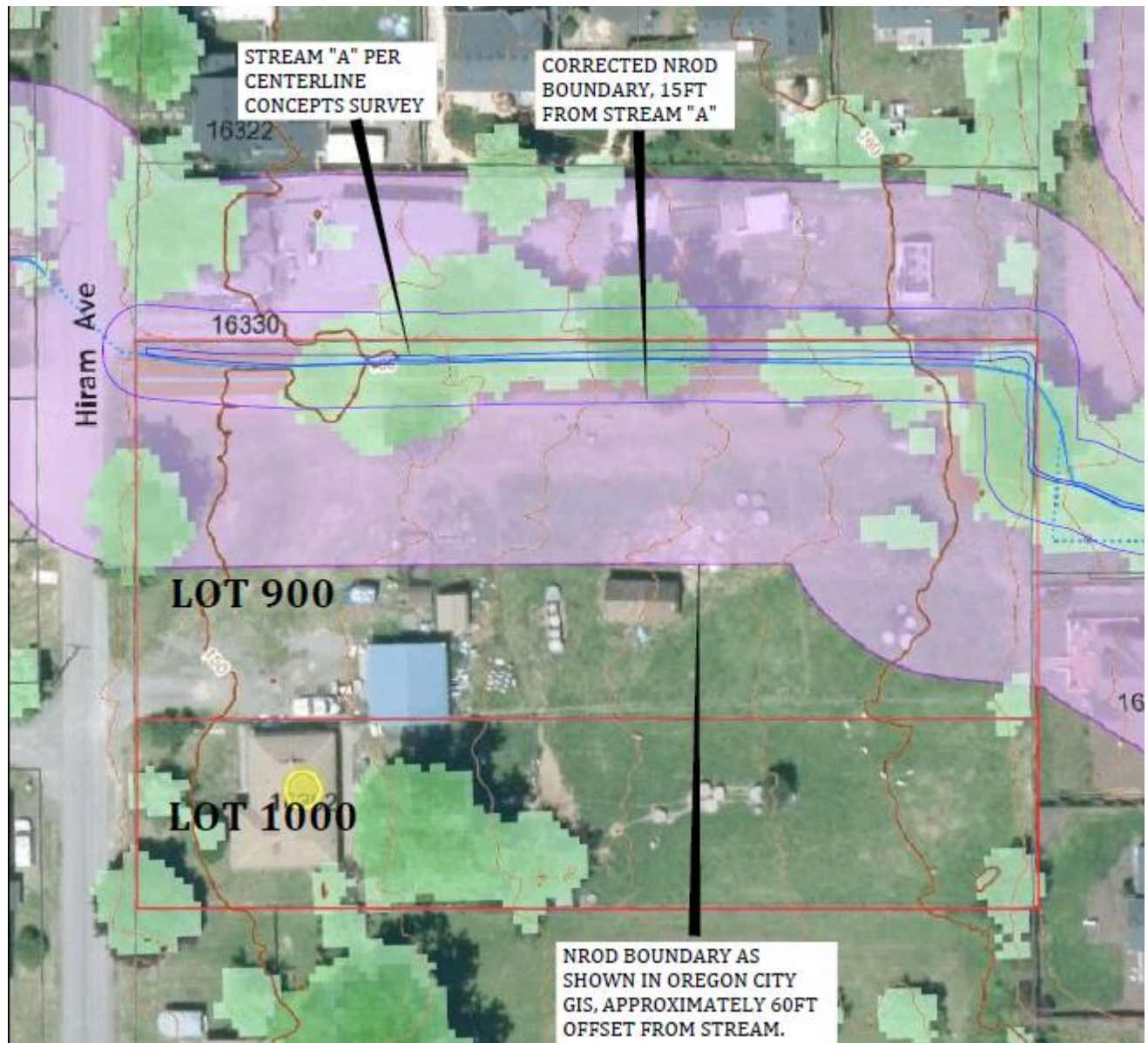


Figure 4: Existing Conditions – Existing house to remain on Lot 1- location of sideyard setback reduction Variance request.



Figure 5: Existing Conditions – Stream “A” outfall to storm drain on Hiram Ave. Required street dedication and sidewalk construction will require a small amount of mitigation in this area that can be met through the proposed Conditions of Approval.



## 2. Project Description

The applicant is requesting to divide the property into five lots, ranging in size from 7,007 square feet to 8,793 square feet along with a 1,835 square foot stormwater tract and 9,360 square foot Natural Resource tract. The applicant has proposed to retain the existing residence. The existing driveway is proposed to be removed and a new driveway off of the new road is proposed for the existing residence. Three existing trees will be lost along Hiram due to street frontage improvements and seven mitigation trees will be planted at the rear of the parcel as replacement trees.

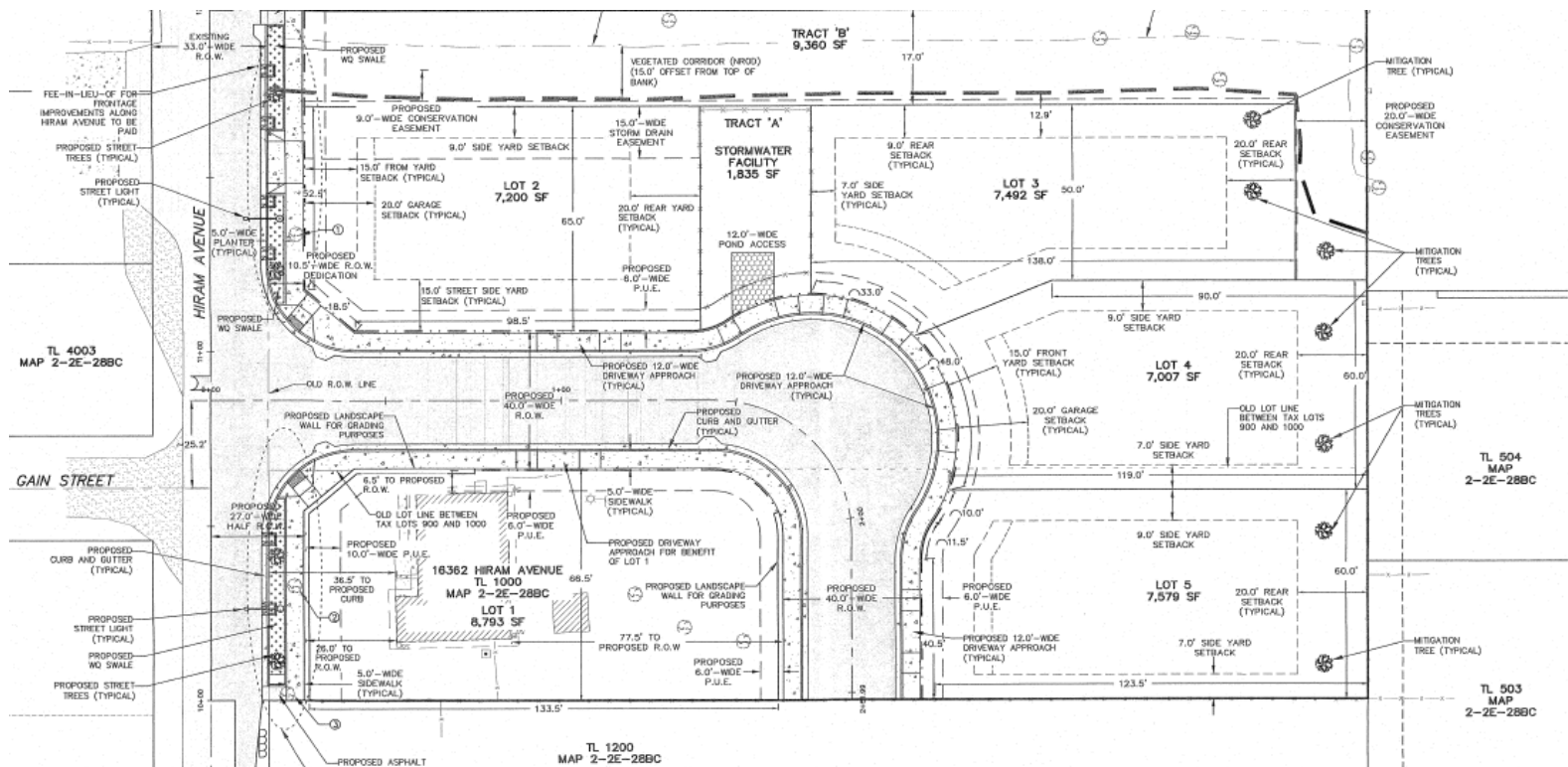
The applicant is utilizing the Type II Natural Resource Overlay District (NROD) density adjustments process to reduce the minimum lot size dimensions as permitted under the NROD regulations to achieve the allowed density onsite by counting a portion of the NROD tract into the subdivision density calculations.



The applicant is proposing to dedicate the NROD buffer area as Tract B in the Subdivision which on its own, does not require a mitigation plan. However, the required dedication and construction of a sidewalk and planter strip will create a small amount of construction into the NROD buffer which will require proportional mitigation through the Option 2 NROD mitigation process. A clear and objective condition has been added to address this proposed encroachment, which is allowed through the Type II NROD review process.

The applicant is additionally applying for a Planning Commission Variance for corner side setback reduction from 15 to 6 feet for the existing house on Lot 1 and a Type II modification requests to allow a constrained street and to increase the intersection centerline offset distance to 24.9 feet to allow an offset intersection and reduced street width.

Figure 5: Proposed Site Plan



**4. Permits and Approvals:** The applicant is responsible for obtaining approval and permits from each applicable governmental agency and department at Oregon City including but not limited to the Engineering and Building Divisions.

#### 5. Notice and Public Comment

Notice of the proposal was sent to various City departments, affected agencies, property owners within 300 feet, and the Neighborhood Association. Additionally, the subject property was posted with signs identifying that a land use action was occurring on the property. No Public Comments have been submitted.

Comments of the Public Works Department and Development Services Division are incorporated into this report and Conditions of Approval.

None of the comments provided indicate that an approval criterion has not been met or cannot be met through the Conditions of Approval attached to this Staff Report.

## II. ANALYSIS AND FINDINGS:

### CHAPTER 17.10 - "R-8" SINGLE-FAMILY DWELLING DISTRICT

*17.10.040. A. Minimum lot area, eight thousand square feet;*

*17.10.040. B. Minimum lot width, sixty feet;*

*17.10.040. C. Minimum lot depth, seventy-five feet;*

**Finding:** ). The minimum lot width of Lot 3 is proposed to be 50 feet wide as is allowed under Table 17.49.240A- Lot Size Reduction of the Natural Resource Overlay District which allows a reduction from the minimum per the base zone requirement. See section 17.49.240A for additional findings. All other lots sizes are met.

*17.10.040.D. Maximum building height: two and one-half stories, not to exceed thirty-five feet.*

**Finding: Not Applicable.** Compliance with building height requirements will be reviewed upon submittal of a building permit application.

*17.10.040.E*

*1. Front yard: fifteen feet minimum depth.*

*2. Front porch, ten feet minimum setback,*

**Finding: Complies as Proposed.** The front setback of the existing home is met. All lots meet the required 50 foot minimum depth requirements. Further compliance with setbacks will be reviewed upon submittal of a building permit application.

*3. Attached and detached garage, twenty feet minimum setback from the public right-of-way where access is taken, except for alleys. Detached garages on an alley shall be setback a minimum of five feet in residential areas.*

**Finding: Complies as Proposed.** The existing garage will be removed as part of this development as it is located within the proposed ROW. A garage is currently not proposed to be added to Lot 1. Any new garage setbacks will be reviewed upon submittal of a building permit application if pursued.

*4. Interior side yard, nine feet minimum setback for at least one side yard; seven feet minimum setback for the other side yard,*

**Finding: Complies as Proposed.** The existing residence on Lot 1 meets the 7 foot side yard setback. Further compliance with setbacks will be reviewed upon submittal of a building permit application.

*5. Corner side yard, fifteen feet minimum setback,*

**Finding: Complies as Conditioned.** The subject site is within the "R-8" Single-Family Dwelling District which has a minimum corner lot setback as 15 feet, as identified in OCMC 17.10.040.B. The applicant has proposed a 5-lot subdivision, and to accommodate an existing home and meet the setbacks for that home, has requested a corner side yard setback variance to Lot 1 of 6.5 feet. OCMC 17.60.020.E.2 allows Variances of corner side setbacks of 25% or 11.25 feet ( $15 \times .2 = 11.25$  feet) to be processed as a Type II Minor Variance. This development application does not meet that threshold and therefore requires a Major Variance review. Further findings can be found in OCMC 17.60- Variances.

6. Rear yard, twenty-foot minimum setback
7. Rear porch, fifteen-foot minimum setback.

**Finding: Complies as Proposed.** Compliance with setbacks will be reviewed upon submittal of a building permit application.

*17.12.040.F. Garage standards: See Chapter 17.21—Residential Design Standards.*

**Finding: Not Applicable.** Compliance with residential design standards in OCCM 17.21 would be reviewed upon submittal of building permit application.

*G. Maximum lot coverage: The footprint of all structures two hundred square feet or greater shall cover a maximum of forty percent of the lot area.*

**Finding: Complies as Proposed.** The footprint of the existing house on Lot 1 is approximately 1,500 SF. Proposed Lot 1 is 8,793 SF in size, therefore, the lot coverage of Lot 1 is approximately 17% ( $1,500/8,793 = 0.17$ ). Compliance with lot coverage for Lots 2-5 would be reviewed upon submittal of a building permit application.

## **CHAPTER 17.60 VARIANCES**

**17.60.020 - Variances—Procedures.**

**17.60.020.A.** *A request for a variance shall be initiated by a property owner or authorized agent by filing an application with the city recorder. The application shall be accompanied by a site plan, drawn to scale, showing the dimensions and arrangement of the proposed development. When relevant to the request, building plans may also be required. The application shall note the zoning requirement and the extent of the variance requested. Procedures shall thereafter be held under Chapter 17.50. In addition, the procedures set forth in subsection D. of this section shall apply when applicable.*

**Finding: Complies as Proposed.** The applicant submitted this Variance request. The application was deemed complete on February 8, 2019

**17.60.020.B.** *A nonrefundable filing fee, as listed in Section 17.50.[0]80, shall accompany the application for a variance to defray the costs.*

**Finding: Complies as Proposed.** The applicant submitted this Variance request. The application was deemed complete on February 8, 2019

**17.60.020.C.** *Before the planning commission may act on a variance, it shall hold a public hearing thereon following procedures as established in Chapter 17.50. A Variance shall address the criteria identified in Section 17.60.030, Variances — Grounds.*

**Finding: Complies as Proposed.** The proposed Variance is for a corner side yard setback greater than 25% as demonstrated in 17.60.020.E.

**17.60.020.D.** *Minor variances, as defined in subsection E. of this section, shall be processed as a Type II decision, shall be reviewed pursuant to the requirements in Section 17.50.030B., and shall address the criteria identified in Section 17.60.030, Variance — Grounds.*

**Finding: Not applicable:** The application was processed as a Type III application.

**17.60.020.E.** *For the purposes of this section, minor variances shall be defined as follows:*

1. *Variances to setback and yard requirements to allow additions to existing buildings so that the additions follow existing building lines;*
2. *Variances to width, depth and frontage requirements of up to twenty percent;*
3. *Variances to residential yard/setback requirements of up to twenty-five percent;*
4. *Variances to nonresidential yard/setback requirements of up to ten percent;*
5. *Variances to lot area requirements of up to five;*

6. Variance to lot coverage requirements of up to twenty-five percent;
7. Variances to the minimum required parking stalls of up to five percent; and
8. Variances to the floor area requirements and minimum required building height in the mixed-use districts.

**Finding: Complies as Proposed.** The subject site is within the “R-8” Single-Family Dwelling District which has a minimum corner lot setback as 15 feet, as identified in OCMC 17.10.040.B. The applicant has proposed a 5-lot subdivision, and to accommodate an existing home and meet the setbacks for that home, has requested a corner side yard setback variance to Lot 1 of 6.5 feet. OCMC 17.60.020.E.2 allows Variances of corner side setbacks of 25% or 11.25 feet ( $15 \times .2 = 11.25$  feet) to be processed as a Type II Minor Variance. This development application does not meet that threshold and therefore requires a Major Variance review.

**17.60.030 - Variance—Grounds.**

*A variance may be granted only in the event that all of the following conditions exist:*

**17.60.030.A.** *That the variance from the requirements is not likely to cause substantial damage to adjacent properties by reducing light, air, safe access or other desirable or necessary qualities otherwise protected by this title;*

**Finding: Complies as Proposed.** The Variance request will not create damage to adjacent properties, by reducing light, air, or safe access or other necessary qualities. The existing home on which this variance is being requested is the only currently built lot in the subdivision and will not affect light, air, safe access or other desirable or necessary qualities of any currently existing abutting properties with existing dwelling units. New development on Lots 2-5 will occur after the platting of the subdivision which would view the house on Lot 1 as an existing condition.

**17.60.030.B.** *That the request is the minimum variance that would alleviate the hardship;*

**Finding: Complies as Proposed.** There at least three competing requirements are at play that necessitated this request. The street extension, if built with no offset runs directly through the existing house. The proposed street design is the closest intersection distance that 1.) allows the existing house to be maintained and 2) allows for Lots 2 and 3 to be designed to meet minimum lot dimensions.

Designing and approving infill subdivisions often require modifications to existing city standards as the lot size and dimensions are very site specific. City code encourages the modification of street dimensions to support the creation of city streets in constrained areas, which reduces the need for flag lots. Flag lots reduce the ability to provide pedestrian connections within a neighborhood and reduce options for vehicular circulation. Therefore, it is in the city’s interest to approach infill with a site specific lens for street design. Findings for the Type II modification to the adopted street standards to adjust the street offset and reduce the street width, have been approved the Development Services Division, can be found in section 12.04.007 *Modifications of the staff report.*

The final, and needed, adjustment is a Planning Commission Variance to the corner side setback on Lot 1. This is the minimum required reduction for the corner side yard setback of Lot 1. Denial of this request would require the applicant to demolish the existing modest house onsite and removal of entry level housing stock from the city’s housing inventory.

**17.60.030.C.** *Granting the variance will equal or exceed the purpose of the regulation to be modified.*

**Finding: Complies as Proposed.** The proposed Variance is a balance of different competing regulations as noted in B above. The proposed Variance will overall provide a reasonable compromise, of competing requirements.

**17.60.030.D.** *Any impacts resulting from the adjustment are mitigated;*

**Finding: Complies as Proposed.** Fencing along the ROW line could be installed, or vegetation screen could be planted although the applicant notes that side of the existing home has no windows or doors. Staff is not

requesting any mitigation with this proposal and will look to the Planning Commission for additional direction on this issue.

**17.60.030.E.** *No practical alternatives have been identified which would accomplish the same purpose and not require a variance; and*

**Finding: Complies as Proposed.** No practical alternatives that would not impact the centerline off-set are possible.

**17.60.030.F.** *The variance conforms to the comprehensive plan and the intent of the ordinance being varied.*

**Finding: Complies as Proposed.** The proposed Major Variance allows the development of the subject site. Approval would result in the creation of an additional lot resulting in greater housing options as well as efficient use of land and public facilities. The variance allows for a reasonable adjustment to allow an infill development in a constrained area, to be served with a public street, as is desired by the City.

## **CHAPTER 16.08 – SUBDIVISIONS PROCESS AND STANDARDS**

### **16.08.025 - Preliminary subdivision plat—Required plans.**

*The preliminary subdivision plat shall specifically and clearly show the following features and information on the maps, drawings, application form or attachments. All maps and site drawings shall be at a minimum scale of one inch to fifty feet.*

**16.08.025.A. Site Plan.** *A detailed site development plan showing the location and dimensions of lots, streets, pedestrian ways, transit stops, common areas, building envelopes and setbacks, all existing and proposed utilities and improvements including sanitary sewer, stormwater and water facilities, total impervious surface created (including streets, sidewalks, etc.) and an indication of existing and proposed land uses for the site. If required by staff at the pre-application conference, a subdivision connectivity analysis shall be prepared by a transportation engineer licensed by the State of Oregon that describes the existing and future vehicular, bicycle and pedestrian connections between the proposed subdivision and existing or planned land uses on adjacent properties. The subdivision connectivity analysis shall include shadow plats of adjacent properties demonstrating how lot and street patterns within the proposed subdivision will extend to and/or from such adjacent properties and can be developed meeting the existing Oregon City Municipal Code design standards.*

**Finding: Complies as Proposed.** The development application included a preliminary site plan displaying the necessary submittal requirements. This standard is met.

**16.08.025.B. Traffic/Transportation Plan.** *The applicant's traffic/transportation information shall include two elements: (1) A detailed site circulation plan showing proposed vehicular, bicycle, transit and pedestrian access points and connections to the existing system, circulation patterns and connectivity to existing rights-of-way or adjacent tracts, parking and loading areas and any other transportation facilities in relation to the features illustrated on the site plan; and (2) a traffic impact study prepared by a qualified professional transportation engineer, licensed in the state of Oregon, that assesses the traffic impacts of the proposed development on the existing transportation system and analyzes the adequacy of the proposed internal transportation network to handle the anticipated traffic and the adequacy of the existing system to accommodate the traffic from the proposed development. The City Engineer may waive any of the foregoing requirements if determined that the requirement is unnecessary in the particular case.*

**Finding: Complies as Proposed.** A transportation analysis letter (TAL) was prepared for this project, dated January 25, 2019, by Michael Ard, P.E. of Ard Engineering. The TAL was reviewed by John Replinger of Replinger and Associates, City transportation consultant. The analysis of the TAL can be found in 16.08.030.B.5. *Traffic and Transportation.*

**16.08.025.C. Natural Features Plan and Topography, Preliminary Grading and Drainage Plan.** *The applicant shall submit a map illustrating all of the natural features and hazards on the subject property and, where practicable, within two hundred fifty feet of the property's boundary. The map shall also illustrate the approximate grade of the site before and after development. Illustrated features must include all proposed streets and cul-de-sacs, the location and estimated volume of all cuts and fills, and all stormwater management features. This plan shall identify the location of drainage patterns and*



*courses on the site and within two hundred fifty feet of the property boundaries where practicable. Features that must be illustrated shall include the following:*

- 1. Proposed and existing street rights-of-way and all other transportation facilities;*
- 2. All proposed lots and tracts;*
- 3. All trees proposed to be removed prior to final plat with a diameter six inches or greater diameter at breast height (d.b.h.);*
- 4. All natural resource areas pursuant to Chapter 17.49, including all jurisdictional wetlands shown in a delineation according to the Corps of Engineers Wetlands Delineation Manual, January, 1987 edition, and approved by the Division of State Lands and wetlands identified in the City of Oregon Local Wetlands inventory, adopted by reference in the City of Oregon City comprehensive plan;*
- 5. All known geologic and flood hazards, landslides or faults, areas with a water table within one foot of the surface and all flood management areas pursuant to Chapter 17.42*
- 6. The location of any known state or federal threatened or endangered species;*
- 7. All historic areas or cultural features acknowledged as such on any federal, state or city inventory;*
- 8. All wildlife habitat or other natural features listed on any of the city's official inventories.*

**Finding: Complies as Proposed.** The development application included a preliminary site plan displaying the necessary submittal requirements. This standard is met.

*16.08.025.D. Archeological Monitoring Recommendation. For all projects that will involve ground disturbance, the applicant shall provide,*

- 1. A letter or email from the Oregon State Historic Preservation Office Archaeological Division indicating the level of recommended archeological monitoring on-site, or demonstrate that the applicant had notified the Oregon State Historic Preservation Office and that the Oregon State Historic Preservation Office had not commented within forty-five days of notification by the applicant; and*
- 2. A letter or email from the applicable tribal cultural resource representative of 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 indicating the level of recommended archeological monitoring on-site, or demonstrate that the applicant had notified the applicable tribal cultural resource representative and that the applicable tribal cultural resource representative had not commented within forty-five days of notification by the applicant.*

*If, after forty-five days notice from the applicant, the Oregon State Historic Preservation Office or the applicable tribal cultural resource representative fails to provide comment, the city will not require the letter or email as part of the completeness review. For the purpose of this section, ground disturbance is defined as the movement of native soils. The community development director may waive any of the foregoing requirements if the community development director determines that the requirement is unnecessary in the particular case and that the intent of this chapter has been met.*

**Finding: Complies as Proposed.** A description of the proposed development was sent to the Oregon State Historic Preservation Office (SHPO) as well as various tribes for review.

*16.08.030.B. Timely Provision of Public Services and Facilities. The applicant shall explain in detail how and when each of the following public services or facilities is, or will be, adequate to serve the proposed development by the time construction begins:*

*16.08.030.B.1. Water*

**Finding: See findings from section 16.12.095.D. of this report**

*16.08.030.B.2. Sanitary Sewer*

**Finding: See findings from section 16.12.095.C. of this report.**

*16.08.030.B.3. Storm Sewer and Storm Water Drainage*

**Finding: See findings from section 13.12. of this report.**

*16.08.030.B.4. Parks and Recreation*

**Finding: Complies as Proposed.** Park System Development Charges will be paid at the time building permits are issued for each lot within the subdivision.

16.08.030.B.5. Traffic and Transportation

**Finding: Complies as Conditioned.** A transportation analysis letter (TAL) was prepared for this project, dated January 25, 2019, by Michael Ard, P.E. of Ard Engineering. The TAL was reviewed by John Replinger of Replinger and Associates, City transportation consultant, who wrote:

An excerpt from his letter to city staff -Exhibit 6 can be found below:

*The engineer provides a detailed discussion of intersection safety of offset intersections. In addition, he provides a detailed explanation of the rationale for this access and the modification of the street standards. He argues that the new street with the offset intersection meets the intent of the code; the modification provides safe and efficient movement for users of all modes; the modification is consistent with an adopted plan; and the modification is complementary to the nearby streets.*

*Though offset intersections are not favored for several reasons, the low speeds, low volumes, and the opportunity this modification provides for serving additional development seem reasonable. I think the engineer provides adequate justification for the proposal. I support the granting of the modification to allow the offset intersection.*

*I find that the TAL meets city requirements and provides an adequate basis upon which impacts of the proposed development can be assessed.*

*I find the engineer's arguments in favor of an offset intersection at Hiram Avenue and Gains Street to be adequate justification for the proposed modification.*

*I find no need for mitigation measures to address transportation impacts associated with this proposal.*

16.08.030.B.6. Schools

**Finding: Complies as Proposed.** The Oregon City School District provides education services for the children of future residents. School funding is provided through a variety of sources including property taxes and surcharges that will be assessed at the time building permits are issued for each lot in the subdivision.

16.08.030.B.7. Fire and Police Services

**Finding: Complies as proposed.** Clackamas County Fire District No. 1 will provide fire services to the subject site. There are no noted concerns about fire services and property taxes will be paid by future property owners to fund fire protection services thereby ensuring funding for protection services. In the event that fire hydrants are required by Clackamas County Fire District No. 1 requirements, staff finds there is adequate area available on the subject property for such installation.

The City of Oregon City Police Department will provide police services to the subject site. Property taxes will be paid by future property owners to fund police protection services, thereby ensuring funding for police services.

*Where adequate capacity for any of these public facilities and services is not demonstrated to be currently available, the Applicant shall describe how adequate capacity in these services and facilities will be financed and constructed before recording of the plat;*

**Finding: Not Applicable.** As described above, all public facilities and services are available. Therefore, this standard does not apply to this application.

16.08.030.C. Approval Criteria and Justification for Variances. The applicant shall explain how the proposed subdivision is consistent with the standards set forth in Chapter 16.12, 12.04 and any other applicable approval standards identified in

the municipal code. For each instance where the applicant proposes a variance from some applicable dimensional or other numeric requirement, the applicant shall address the approval criteria from Chapter 17.60.

**Finding: Not Applicable.** This application includes a Major Variance request for a corner side yard setback. The findings can be found in OCMC 17.60 Variance section of the staff report.

*16.08.030.D. Drafts of the proposed covenants, conditions and restrictions (CC&Rs), maintenance agreements, homeowner association agreements, dedications, deeds easements, or reservations of public open spaces not dedicated to the city, and related documents for the subdivision;*

**Finding: Complies as Proposed.** The applicant submitted a copy of CC&Rs for the subdivision pertaining to the proposed stormwater facility. Staff did not identify any contradictions or conflicts between the proposed CC&Rs and the Oregon City Municipal Code.

*16.08.030.E. A description of any proposed phasing, including for each phase the time, acreage, number of residential units, amount of area for nonresidential use, open space, development of utilities and public facilities;*

**Finding: Complies as Proposed.** The applicant proposed to construct the subdivision in a single phase.

*16.08.030.F. Overall density of the subdivision and the density by dwelling type for each.*

**Finding: Complies as Proposed.** The site is approximately 86,040 square feet in size. However, following the required right-of-way dedications, the total net developable area is approximately 59,511

**16.08.045 - Building site—Frontage width requirement.**

*Each lot in a subdivision shall abut upon a cul-de-sac or street other than an alley for a width of at least twenty feet.*

**Finding: Complies as Proposed.** As shown in the preliminary plans, each proposed lot's street frontage is in excess of twenty feet.

**16.08.050 - Flag lots in subdivisions.**

*Flag lots shall not be permitted within subdivisions except as approved by the community development director and in compliance with the following standards.*

*A. Where the applicant can show that the existing parcel configuration, topographic constraints or where an existing dwelling unit is located so that it precludes a land division that meets the minimum density, lot width and/or depth standards of the underlying zone.*

**Finding: Complies as Proposed.** The applicant has not proposed any flag lots for this subdivision.

## **CHAPTER 16.12 - MINIMUM IMPROVEMENTS AND DESIGN STANDARDS FOR LAND DIVISIONS<sup>[3]</sup>**

**16.12.020 - Blocks—Generally.**

*The length, width and shape of blocks shall take into account the need for adequate building site size, convenient motor vehicle, pedestrian, bicycle and transit access, control of traffic circulation, and limitations imposed by topography and other natural features.*

**Finding: Complies as Proposed..** The proposed street layout provides for improved pedestrian, bicycle and motor vehicular circulation in the area and may be extended with future development of adjacent properties.

**16.12.030 - Blocks—Width.**

*The width of blocks shall ordinarily be sufficient to allow for two tiers of lots with depths consistent with the type of land use proposed.*

**Finding: Complies as Proposed.** The proposed development generally results in the formation of new blocks which provide two tiers of lots, where practicable.

**16.12.040 - Building sites.**

*The size, width, shape and orientation of building sites shall be appropriate for the primary use of the land division, and shall be consistent with the residential lot size provisions of the zoning ordinance with the following exceptions:*

*A. Where property is zoned and planned for commercial or industrial use, the community development director may approve other widths in order to carry out the city's comprehensive plan. Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for the off-street service and parking facilities required by the type of use and development contemplated.*

*B. Minimum lot sizes contained in [Title 17](#) are not affected by those provided herein.*

**Finding: Complies as Proposed.** The buildings sites proposed are appropriate in size, width, shape, and orientation for low-density residential development, exceeding the minimum lot size, lot depth and lot width and similar to other development within the "R-8" Single-Family Dwelling District, except reductions to lot size, depth and width as allowed for tree preservation under OCMC 17.41.080. The applicant is not requesting a variance to any dimensional lot size standards.

**16.12.045 - Building sites—Minimum density.**

*All subdivision layouts shall achieve at least eighty percent of the maximum density of the base zone for the net developable area as defined in [Chapter 17.04](#).*

**Finding:** Please refer to the analysis in Section 16.08.030.F of this report.

**16.12.050 – Lot size reduction**

*A subdivision in the R-10, R-8, R-6, R-5, or R-3.5 dwelling district may include lots that are up to twenty percent less than the required minimum lot area of the applicable zoning designation provided the lots within the entire subdivision on average meets the minimum site area requirement of the underlying zone. Any area within a powerline easement on a lot shall not count towards the lot area for that lot.*

*The average lot area is determined by first calculating the total site area devoted to dwelling units, subtracting the powerline easement areas, and dividing that figure by the proposed number of dwelling lots. Accessory dwelling units are not included in this determination nor are tracts created for non-dwelling unit purposes such as open space, stormwater tracts, or access ways. A lot that was created pursuant to this section may not be further divided unless the average lot size requirements are still met for the entire subdivision. When a lot abuts a public alley, an area equal to the length of the alley frontage along the lot times the width of the alley right-of-way measured from the alley centerline may be added to the area of the abutting lot in order to satisfy the lot area requirement for the abutting lot. It may also be used in calculating the average lot area.*

**Finding: Complies as Proposed.** The parcel is zoned R-8 which required 8,000 SF lots. The minimum lot size for any lot would be 80% of that figure or 6,400 SF. The minimum lot size proposed is 7,007 SF, therefore this standard is met.

**16.12.055 - Building site—Through lots.**

*Through lots and parcels shall be avoided except where they are essential to provide separation of residential development from major arterials or to overcome specific disadvantages of topography of existing development patterns. A reserve strip may be required. A planting screen restrictive covenant may be required to separate residential development from major arterial streets, adjacent nonresidential development, or other incompatible use, where practicable. Where practicable, alleys or shared driveways shall be used for access for lots that have frontage on a collector or minor arterial street, eliminating through lots.*

**Finding: Complies as Proposed.** No through lots are proposed.

**16.12.060 - Building site—Lot and parcel side lines.**

*The lines of lots and parcels, as far as is practicable, shall run at right angles to the street upon which they face, except that on curved streets they shall be radial to the curve.*

**Finding: Complies as Proposed.** As far as practicable, the proposed lot lines and parcels run at right angles to the street upon which they face. This standard is met.

**16.12.065 - Building site—Grading.**

Grading of building sites shall conform to the State of Oregon Structural Specialty Code, Chapter 18, any approved grading plan and any approved residential lot grading plan in accordance with the requirements of [Chapter 15.48](#), [16.12](#) and the Public Works Stormwater and Grading Design Standards, and the erosion control requirements of [Chapter 17.47](#).

**Finding: See findings from Section 15.48 of this report.**

**16.12.070 - Building site—Setbacks and building location.**

*This standard ensures that lots are configured in a way that development can be oriented toward streets to provide a safe, convenient and aesthetically pleasing environment for pedestrians and bicyclists. The objective is for lots located on a neighborhood collector, collector or minor arterial street locate the front yard setback on and design the most architecturally significant elevation of the primary structure to face the neighborhood collector, collector or minor arterial street.*

*A. The front setback of all lots located on a neighborhood collector, collector or minor arterial shall be orientated toward the neighborhood collector, collector or minor arterial street.*

*B. The most architecturally significant elevation of the house shall face the neighborhood collector, collector or minor arterial street.*

*C. On corner lots located on the corner of two local streets, the main façade of the dwelling may be oriented towards either street.*

*D. All lots proposed with a driveway and lot orientation on a collector or minor arterial shall combine driveways into one joint access per two or more lots unless the city engineer determines that:*

*1. No driveway access may be allowed since the driveway(s) would cause a significant traffic safety hazard; or*

*2. Allowing a single driveway access per lot will not cause a significant traffic safety hazard.*

*E. The community development director may approve an alternative design, consistent with the intent of this section, where the applicant can show that existing development patterns preclude the ability to practically meet this standard.*

**Finding: Not Applicable.** All the existing and proposed streets within or adjacent to the subject site are or will be local streets.

**16.12.075 - Building site—Division of lots.**

*Where a tract of land is to be divided into lots or parcels capable of redivision in accordance with this chapter, the community development director shall require an arrangement of lots, parcels and streets which facilitates future redivision. In such a case, building setback lines may be required in order to preserve future right-of-way or building sites.*

**Finding: Complies as Proposed.** No lots within the subdivision have sufficient lot size for further land division.

**16.12.085 - Easements.**

*The following shall govern the location, improvement and layout of easements:*

*A. Utilities. Utility easements shall be required where necessary as determined by the city engineer. Insofar as practicable, easements shall be continuous and aligned from block-to-block within the land division and with adjoining subdivisions or partitions. Specific utility easements for water, sanitary or storm drainage shall be provided based on approved final engineering plans.*

**Finding: Complies as proposed.** Applicant has provided a utility easement which is continuous and aligned from block-to-block within the land division and with adjoining subdivisions or partitions. All utility easements for water, sanitary or storm drainage are provided on an engineering plan.

*16.12.085.B. Unusual Facilities. Easements for unusual facilities such as high voltage electric transmission lines, drainage channels and stormwater detention facilities shall be adequately sized for their intended purpose, including any necessary maintenance roads. These easements shall be shown to scale on the preliminary and final plats or maps. If the easement is for drainage channels, stormwater detention facilities or related purposes, the easement shall comply with the requirements of the Public Works Stormwater and Grading Design Standards.*

**Finding: Complies as Conditioned.** The applicant shall provide a 10-foot-wide public utility easement along all property lines fronting an existing or proposed ROW unless it conflicts with the existing dwelling, in which case a smaller easement may be accepted by the city upon review and approval.

**Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

*C. Watercourses. Where a land division is traversed or bounded by a watercourse, drainageway, channel or stream, a stormwater easement or drainage right-of-way shall be provided which conforms substantially to the line of such watercourse, drainageway, channel or stream and is of a sufficient width to allow construction, maintenance and control for the purpose as required by the responsible agency. For those subdivisions or partitions which are bounded by a stream of established recreational value, setbacks or easements may be required to prevent impacts to the water resource or to accommodate pedestrian or bicycle paths.*

**Finding:** The subject site is bounded by watercourse. Please refer to the findings within Chapter 17.49 of this report.

*D. Access. When easements are used to provide vehicular access to lots within a land division, the construction standards, but not necessarily width standards, for the easement shall meet city specifications. The minimum width of the easement shall be twenty feet. The easements shall be improved and recorded by the applicant and inspected by the city engineer. Access easements may also provide for utility placement.*

**Finding: Not Applicable.** The applicant has not proposed any access easements as part of this development.

*E. Resource Protection. Easements or other protective measures may also be required as the community development director deems necessary to ensure compliance with applicable review criteria protecting any unusual significant natural feature or features of historic significance.*

**Finding:** A portion of the site resides within the Natural Resource Overlay District. Please refer to the findings within Chapter 17.49 of this report.

#### **16.12.090 - Minimum improvements—Procedures.**

*In addition to other requirements, improvements installed by the applicant either as a requirement of these or other regulations, or at the applicant's option, shall conform to the requirements of this title and be designed to city specifications and standards as set out in the city's facility master plan and Public Works Stormwater and Grading Design Standards. The improvements shall be installed in accordance with the following procedure:*

*A. Improvement work shall not commence until construction plans have been reviewed and approved by the city engineer and to the extent that improvements are in county or state right-of-way, they shall be approved by the responsible authority. To the extent necessary for evaluation of the proposal, the plans may be required before approval of the preliminary plat of a subdivision or partition. Expenses incurred thereby shall be borne by the applicant and paid for prior to final plan review.*

*B. Improvements shall be constructed under the inspection and approval of the city engineer. Expenses incurred thereby shall be borne by the applicant and paid prior to final approval. Where required by the city engineer or other city decision-maker, the applicant's project engineer also shall inspect construction.*

*C. Erosion control or resource protection facilities or measures are required to be installed in accordance with the requirements of [Chapter 17.49](#) and the Public Works Erosion and Sediment Control Standards. Underground utilities, waterlines, sanitary sewers and storm drains installed in streets shall be constructed prior to the surfacing of the streets. Stubs for service connections for underground utilities and sanitary sewers shall be placed beyond the public utility easement behind to the lot lines.*

*D. As-built construction plans and digital copies of as-built drawings shall be filed with the city engineer upon completion of the improvements.*

*E. The city engineer may regulate the hours of construction and access routes for construction equipment to minimize impacts on adjoining residences or neighborhoods.*

**Finding: Complies as Conditioned.** The applicant shall schedule a pre-design meeting with Public Works Development Services staff prior to initial submittal of construction plans.

The applicant shall provide construction plans, stamped and signed by a professional engineer licensed in the State of Oregon, containing street, grading, stormwater, sanitary sewer and water infrastructure improvements that conforms to all current Oregon City Public Works standards, specifications, codes, and policies for review and approval by the City.

The development's contractor(s) and engineer(s) shall attend a pre-construction meeting with Oregon City staff prior to beginning construction work associated with the project.



As-builts conforming to City standards shall be provided within 90 days of completion of the public improvements.

The applicant shall provide a Maintenance Guarantee in the amount of fifteen percent of the cost to construct all public improvements as shown in a city approved construction plan submitted by the applicant's engineer. The estimated costs shall be supported by a verified engineering estimate approved by the City Engineer. The guarantee shall be in a form identified in Code 17.50.140.A of the Oregon City Municipal Code. The guarantee shall remain in effect for two years from the establishment of the guarantee and until accepted by the City.

**Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

**16.12.095 - Minimum improvements—Public facilities and services.**

*The following minimum improvements shall be required of all applicants for a land division under [Title 16](#), unless the decision-maker determines that any such improvement is not proportional to the impact imposed on the city's public systems and facilities:*

*A. Transportation System. Applicants and all subsequent lot owners shall be responsible for improving the city's planned level of service on all public streets, including alleys within the land division and those portions of public streets adjacent to but only partially within the land division. All applicants shall execute a binding agreement to not remonstrate against the formation of a local improvement district for street improvements that benefit the applicant's property. Applicants are responsible for designing and providing adequate vehicular, bicycle and pedestrian access to their developments and for accommodating future access to neighboring undeveloped properties that are suitably zoned for future development. Storm drainage facilities shall be installed and connected to off-site natural or man-made drainageways. Upon completion of the street improvement survey, the applicant shall reestablish and protect monuments of the type required by ORS 92.060 in monument boxes with covers at every public street intersection and all points of curvature and points of tangency of their center line, and at such other points as directed by the city engineer.*

**Finding: Complies as Conditioned.** The property owner shall sign a Restrictive Covenant Non-Remonstrance Agreement for the purpose of making storm sewer, sanitary sewer, water or street improvements in the future that benefit the property. The applicant shall pay all fees associated with processing and recording the Non-Remonstrance Agreement. The applicant shall establish and protect monuments of the type required by ORS 92.060 in monument boxes with covers at every public street intersection and all points of curvature and points of tangency of their center line, and at such other points as directed by the city engineer. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

*B. Stormwater Drainage System. Applicants shall design and install drainage facilities within land divisions and shall connect the development's drainage system to the appropriate downstream storm drainage system as a minimum requirement for providing services to the applicant's development. The applicant shall obtain county or state approval when appropriate. All applicants shall execute a binding agreement to not remonstrate against the formation of a local improvement district for stormwater drainage improvements that benefit the applicant's property. Applicants are responsible for extending the appropriate storm drainage system to the development site and for providing for the connection of upgradient properties to that system. The applicant shall design the drainage facilities in accordance with city drainage master plan requirements, [Chapter 13.12](#) and the Public Works Stormwater and Grading Design Standards.*

**Finding: Complies as Conditioned.** The development shall extend the storm drainage system within the development for the connection of upgradient developable properties unless it is proven that upgradient developable properties can connect to another storm drainage system and maintain gravity feed. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

*C. Sanitary Sewer System. The applicant shall design and install a sanitary sewer system to serve all lots or parcels within a land division in accordance with the city's sanitary sewer design standards, and shall connect those lots or parcels to the*



city's sanitary sewer system, except where connection is required to the county sanitary sewer system as approved by the county. All applicants shall execute a binding agreement to not remonstrate against the formation of a local improvement district for sanitary sewer improvements that benefit the applicant's property. Applicants are responsible for extending the city's sanitary sewer system to the development site and through the applicant's property to allow for the future connection of neighboring undeveloped properties that are suitably zoned for future development. The applicant shall obtain all required permits and approvals from all affected jurisdictions prior to final approval and prior to commencement of construction. Design shall be approved by the city engineer before construction begins.

**Finding: Complies as Conditioned.** There is an existing sanitary sewer main in Hiram Avenue. The existing dwelling is connected to this sanitary line. Lots 2 & 3 are proposed to have new sanitary laterals from a sewer main extended from this existing main. Lots 4 & 5 are proposed to have new sanitary laterals from a sewer main running along the east property line of the development site. The applicant shall obtain approval from Oregon Department of Environmental Quality (DEQ) for the sanitary sewer main extension into the new road prior to release of any permit from the City and prior to beginning construction work associated with the project. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

*16.12.095.D. Water System. The applicant shall design and install a water system to serve all lots or parcels within a land division in accordance with the city public works water system design standards, and shall connect those lots or parcels to the city's water system. All applicants shall execute a binding agreement to not remonstrate against the formation of a local improvement district for water improvements that benefit the applicant's property. Applicants are responsible for extending the city's water system to the development site and through the applicant's property to allow for the future connection of neighboring undeveloped properties that are suitably zoned for future development.*

**Finding: Complies as proposed.** An 8-inch water main exists in Hiram Avenue and is a part of a looped system and can provide adequate pressure and water supply. The applicant proposes to extend a new 8-inch line within the ROW of the new public street to serve the new lots.

*16.12.095.E. Sidewalks. The applicant shall provide for sidewalks on both sides of all public streets, on any private street if so required by the decision-maker, and in any special pedestrian way within the land division. Exceptions to this requirement may be allowed in order to accommodate topography, trees or some similar site constraint. In the case of major or minor arterials, the decision-maker may approve a land division without sidewalks where sidewalks are found to be dangerous or otherwise impractical to construct or are not reasonably related to the applicant's development. The decision-maker may require the applicant to provide sidewalks concurrent with the issuance of the initial building permit within the area that is the subject of the land division application. Applicants for partitions may be allowed to meet this requirement by executing a binding agreement to not remonstrate against the formation of a local improvement district for sidewalk improvements that benefit the applicant's property.*

**Finding: Complies as proposed.** Please refer to section 12.040.180 B for a discussion of sidewalks.

*16.12.095.F. Bicycle Routes. If appropriate to the extension of a system of bicycle routes, existing or planned, the decision-maker may require the installation of separate bicycle lanes within streets and separate bicycle paths.*

**Finding: Not applicable.** The City's Transportation System Plan does not indicate an existing or the extension of a system of bicycle routes associated with the development.

*16.12.095.G. Street Name Signs and Traffic Control Devices. The applicant shall install street signs and traffic control devices as directed by the city engineer. Street name signs and traffic control devices shall be in conformance with all applicable city regulations and standards.*

**Finding: Complies as Proposed.** The applicant proposes to provide any required street signs and traffic control devices (stop signs) in conformance with applicable city regulations and standards.

*16.12.095.H. Street Lights. The applicant shall install street lights which shall be served from an underground source of supply. Street lights shall be in conformance with all city regulations.*

**Finding: Complies as Conditioned.** The applicant proposes to install street lights as required by City code. The applicant shall provide street lights along Hiram Avenue and the new road in conformance with all City

standards, specifications, codes, and policies and as approved by Portland General Electric (PGE). The applicant shall submit a photometric plan. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

*16.12.095.I. Street Trees.*

**Finding:** Please refer to the analysis in section 12.08 of this report.

*16.12.095.J. Bench Marks. At least one bench mark shall be located within the subdivision boundaries using datum plane specified by the city engineer.*

**Finding: Complies as Conditioned.** The applicant shall locate a benchmark within the subdivision boundaries using datum plane specified by the city engineer. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

*16.12.095.K. Other. The applicant shall make all necessary arrangements with utility companies or other affected parties for the installation of underground lines and facilities. Electrical lines and other wires, including but not limited to communication, street lighting and cable television, shall be placed underground.*

**Finding: Complies as conditioned.** Overhead utilities along all property frontages, existing and new, shall be placed underground. The applicant shall make all necessary arrangements with utility companies and other affected parties for the installation of underground lines and facilities including but not limited to electric, communication, telephone, fiberoptic, street lighting and cable television. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

*16.12.095.L. Oversizing of Facilities. All facilities and improvements shall be designed to city standards as set out in the city's facility master plan, public works design standards, or other city ordinances or regulations. Compliance with facility design standards shall be addressed during final engineering. The city may require oversizing of facilities to meet standards in the city's facility master plan or to allow for orderly and efficient development. Where oversizing is required, the applicant may request reimbursement from the city for oversizing based on the city's reimbursement policy and funds available, or provide for recovery of costs from intervening properties as they develop.*

**Finding: Not applicable.** Oversizing of facilities is not required for this development.

*16.12.095.M. Erosion Control Plan—Mitigation. The applicant shall be responsible for complying with all applicable provisions of Chapter 17.47 with regard to erosion control.*

**Finding:** Please refer to the analysis in section 17.47 of this report.

*16.12.100 Same—Road standards and requirements.*

*A. The creation of a public street and the resultant separate land parcels shall be in conformance with requirements for subdivisions or partitions and the applicable street design standards of Chapter 12.04. However, the decision-maker may approve the creation of a public street to be established by deed without full compliance with the regulations applicable to subdivisions or partitions where any of the following conditions exist:*

- 1. The establishment of the public street is initiated by the city commission and is declared essential for the purpose of general traffic circulation and the partitioning of land is an incidental effect rather than the primary objective of the street;*
- 2. The tract in which the street is to be dedicated is within an isolated ownership either not over one acre or of such size and characteristics as to make it impossible to develop building sites for more than three dwelling units.*

*B. For any public street created pursuant to subsection A of this section, a copy of a preliminary plan and the proposed deed shall be submitted to the community development director and city engineer at least ten days prior to any public hearing scheduled for the matter. The plan, deed and any additional information the applicant may submit shall be reviewed by the decision-maker and, if not in conflict with the standards of Title 16 and Title 17, may be approved with appropriate conditions.*

**Finding:** Please refer to the findings in chapter 12.04 within this report.

*16.12.105 Same—Timing requirements.*

A. Prior to applying for final plat approval, the applicant shall either complete construction of all public improvements required as part of the preliminary plat approval or guarantee the construction of those improvements. Whichever option the applicant elects shall be in accordance with this section.

B. Construction. The applicant shall construct the public improvements according to approved final engineering plans and all applicable requirements of this Code, and under the supervision of the city engineer. Under this option, the improvement must be complete and accepted by the city engineer prior to final plat approval.

C. Financial Guarantee. The applicant shall provide the city with a financial guarantee in a form acceptable to the city attorney and equal to one hundred ten percent of the cost of constructing the public improvements in accordance with Oregon City Municipal Code Chapter 17.50. Possible forms of guarantee include an irrevocable or standby letter of credit, guaranteed construction loan set-aside, reserve account, or performance guarantee, but the form of guarantee shall be specified by the city engineer and, prior to execution and acceptance by the city, must be reviewed and approved by the city attorney. The amount of the guarantee shall be based upon approved final engineering plans, equal to at least one hundred ten percent of the estimated cost of construction, and shall be supported by a verified engineering estimate and approved by the city engineer.

**Finding: Please see findings from Section 17.50.140 of this report.**

#### 16.12.110 Minimum improvements—Financial guarantee.

When conditions of permit approval require a permittee to construct certain improvements, the city may, in its discretion, allow the permittee to submit a performance guarantee in lieu of actual construction of the improvement. Performance guarantees shall be governed by this section.

A. Form of Guarantee. Performance guarantees shall be in a form approved by the city attorney. Approvable methods of performance guarantee include irrevocable standby letters of credit to the benefit of the city issued by a recognized lending institution, certified checks, dedicated bank accounts or allocations of construction loans held in reserve by the lending institution for the benefit of the city. The form of guarantee shall be specified by the city engineer and, prior to execution and acceptance by the city shall be reviewed and approved by the city attorney. The guarantee shall be filed with the city engineer.

B. Timing of Guarantee. A permittee shall be required to provide a performance guarantee as follows:

1. After Final Approved Design by the City: A permittee may request the option of submitting a performance guarantee when prepared for temporary/final occupancy. The guarantee shall be one hundred twenty percent of the estimated cost of constructing the remaining public improvements as submitted by the permittee's engineer. The engineer's estimated costs shall be supported by a verified engineering estimate and approved by the city engineer.

2. Before Complete Design Approval and Established Engineered Cost Estimate: A permittee may request the option of submitting a performance guarantee before public improvements are designed and completed. The guarantee shall be one hundred fifty percent of the estimated cost of constructing the public improvements as submitted by the permittee's engineer and approved by the city engineer. The engineer's estimated costs shall be supported by a verified engineering estimate and approved by the city engineer. This scenario applies for a fee-in-lieu situation to ensure adequate funds for the future work involved in design, bid, contracting, and construction management and contract closeout. In this case, the fee-in-lieu must be submitted as cash, certified check, or other negotiable instrument as approved to form by the city attorney.

C. Duration of the Guarantee. The guarantee shall remain in effect until the improvement is actually constructed and accepted by the city. Once the city has inspected and accepted the improvement, the city shall release the guarantee to the permittee. If the improvement is not completed to the city's satisfaction within the time limits specified in the permit approval, the city engineer may, at their discretion, draw upon the guarantee and use the proceeds to construct or complete construction of the improvement and for any related administrative and legal costs incurred by the city in completing the construction, including any costs incurred in attempting to have the permittee complete the improvement. Once constructed and approved by the city, any remaining funds shall be refunded to the permittee. The city shall not allow a permittee to defer construction of improvements by using a performance guarantee, unless the permittee agrees to construct those improvements upon written notification by the city, or at some other mutually agreed-to time. If the permittee fails to commence construction of the required improvements within six months of being instructed to do so, the city may, without further notice, undertake the construction of the improvements and draw upon the permittee's performance guarantee to pay those costs.

**Finding: Please see findings from Section 17.50.140 of this report.**

## **CHAPTER 12.04 - STREETS SIDEWALKS AND PUBLIC PLACES**

### **12.04.003 Applicability**

A. Compliance with this chapter is required for all Land Divisions, Site Plan and Design Review, Master Plan, Detailed Development Plan and Conditional Use applications and all public improvements.

B. Compliance with this chapter is also required for new construction or additions which exceed fifty percent of the existing square footage, of all single and two-family dwellings. All applicable single and two-family dwellings shall provide any necessary dedications, easements or agreements as identified in the transportation system plan and this chapter. In addition, the frontage of the site shall comply with the following prioritized standards identified in this chapter:

1. Improve street pavement, construct curbs, gutters, sidewalks and planter strips; and
2. Plant street trees.

The cost of compliance with the standards identified in 12.04.003.B.1 and 12.04.003.B.2 is limited to ten percent of the total construction costs. The value of the alterations and improvements as determined by the community development director is based on the entire project and not individual building permits. It is the responsibility of the applicant to submit to the community development director the value of the required improvements. Additional costs may be required to comply with other applicable requirements associated with the proposal such as access or landscaping requirements.

**Finding: Applicable.** The applicant applied for a subdivision, this chapter is applicable.

### **12.04.005 Jurisdiction and management of the public rights-of-way**

A. The city has jurisdiction and exercises regulatory management over all public rights-of-way within the city under authority of the City Charter and state law by issuing separate public works right-of-way permits or permits as part of issued public infrastructure construction plans. No work in the public right-of-way shall be done without the proper permit. Some public rights-of-way within the city are regulated by the State of Oregon Department of Transportation (ODOT) or Clackamas County and as such, any work in these streets shall conform to their respective permitting requirements.

B. Public rights-of-way include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements and all other public ways or areas, including the subsurface under and air space over these areas.

C. The city has jurisdiction and exercises regulatory management over each public right-of-way whether the city has a fee, easement, or other legal interest in the right-of-way. The city has jurisdiction and regulatory management of each right-of-way whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.

D. No person may occupy or encroach on a public right-of-way without the permission of the city. The city grants permission to use rights-of-way by franchises and permits.

E. The exercise of jurisdiction and regulatory management of a public right-of-way by the city is not official acceptance of the right-of-way, and does not obligate the city to maintain or repair any part of the right-of-way.

**Finding: Complies as Proposed.** By submission of the their application, the applicant has acknowledged the City's jurisdiction and management of the public right-of-way.

### **12.04.007 Modifications.**

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.

**Finding: Complies as proposed.** The applicant has proposed two modifications and provided justification for them as follows:

1. A modification request is being made to allow the use of a constrained street section.

2. A modification request is being made to allow a street centerline off-set of 24.9 feet. (Also see the transportation analysis by Ard Engineering for more detailed explanations.)
- A. The modification meets the intent of the standard;
1. The constrained street request will meet the intent of the standard by provide vehicular and pedestrian access to the proposed subdivision site and will be able to be extended in the future.
  2. The off-set intersections, while generally prohibited between 5 feet and 150 feet, will meet the intent of the standard, as the intersection spacing cannot be placed any closer than 24.9 feet due to an existing house that prevents a straighter alignment. A variance request to street side yard setback is also being requested to allow the 24.9 foot off-set intersection.
- B. The modification provides safe and efficient movement of pedestrians, motor vehicles, bicyclists and freight;
1. Because the proposed constrained street will be a local street, use by freight is not an issue, but the constrained street will not hinder pedestrians, motor vehicles or bicyclists from using the proposed street as intended. While allowing for reasonable size lots and allowing for one additional infill lot than would be otherwise achievable.
  2. All three streets that involved with this design are local streets, (Hiram, Gains and the new proposed street). All three streets are or will be short in length, (Four blocks maximum). The modification request should not have any significant effect of the efficient movement of pedestrians, bicyclists or motor vehicles.
- C. The modification is consistent with an adopted plan; and
1. As a local street the street itself is not specifically noted in the Master Transportation Plan, but the intent of providing connectivity through to underdeveloped adjoining parcels is achieved.
  2. There is no specific adopted plan for the new proposed street.
- D. The modification is complementary with a surrounding street design; or; in the alternative;
- Applicant's Response:
1. The requested modification will allow for a public street extension and for the project as a whole to be financially feasible.
  2. In the Park Place neighborhood, there are a number of intersections off-set by similar distances, such as Gains at Front and Cleveland at Front.

**Finding: Complies as Conditioned.**

The application also included a new road with the following:

A constrained right-of-way with a width of 40-feet and consists of a 28-foot-wide pavement section, (2) 0.5-foot-wide curbs, (2) 5-foot-wide sidewalks and (2) 0.5-foot-wide buffers. **Staff finds that the proposed modifications conform to the criteria outlined in 12.04.007.**

**12.04.010 Construction specifications—Improved streets.**

*All sidewalks hereafter constructed in the city on improved streets shall be constructed to city standards and widths required in the Oregon City Transportation System Plan. The curb shall be constructed at the same time as the construction of the sidewalk and shall be located as provided in the ordinance authorizing the improvement of said street next proceeding unless otherwise ordered by the city commission. Both sidewalks and curbs are to be constructed according to plans and specifications provided by the city engineer.*

**Finding: Complies as Conditioned.** See section 12.040.180 B for findings.

**12.04.020 Construction specifications—Unimproved streets.**

*Sidewalks constructed on unimproved streets shall be constructed of concrete according to lines and grades established by the city engineer and approved by the city commission. On unimproved streets curbs do not have to be constructed at the same time as the sidewalk.*

**Finding: Not Applicable.** The applicant has not proposed to construct any infrastructure within an unimproved street.

**12.04.025 - Street design—Driveway Curb Cuts.**

**12.04.025.A.** *One driveway shall be allowed per frontage. In no case shall more than two driveways be allowed on any single or two-family residential property with multiple frontages.*

**Finding: Complies as proposed.** The applicant has not proposed more than one driveway per lot.

*12.04.025.B. With the exception of the limitations identified in 12.04.025.C, all driveway curb cuts shall be limited to the following dimensions.*

Property Use	Minimum Driveway Width at sidewalk or property line	Maximum Driveway Width at sidewalk or property line
Single or Two-Family Dwelling with one Car Garage/Parking Space	10 feet	12 feet
Single or Two-Family Dwelling with two Car Garage/Parking Space	12 feet	24 feet
Single or Two-Family Dwelling with three or more Car Garages/Parking Space	18 feet	30 feet
Non Residential or Multi-Family Residential Driveway Access	15 feet	40 feet

*The driveway width abutting the street pavement may be extended 3 feet on either side of the driveway to accommodate turn movements. Driveways may be widened onsite in locations other than where the driveway meets sidewalk or property line (for example between the property line and the entrance to a garage).*

**Finding: Complies as proposed.** The applicant has proposed curb cut widths that are no more than 12 feet in width as required by section 12.04.25.B.

*12.04.025.C. The decision maker shall be authorized through a Type II process, unless another procedure applicable to the proposal applies, to minimize the number and size of curb cuts (including driveways) as far as practicable for any of the following purposes:*

- 1. To provide adequate space for on-street parking;*
- 2. To facilitate street tree planting requirements;*
- 3. To assure pedestrian and vehicular safety by limiting vehicular access points; and*
- 4. To assure that adequate sight distance requirements are met.*
  - a. Where the decision maker determines any of these situations exist or may occur due to the approval of a proposed development for non-residential uses or attached or multi-family housing, a shared driveway shall be required and limited to twenty-four feet in width adjacent to the sidewalk or property line and may extend to a maximum of thirty feet abutting the street pavement to facilitate turning movements.*
  - b. Where the decision maker determines any of these situations exist or may occur due to approval of a proposed development for detached housing within the "R-5" Single –Family Dwelling District or "R-3.5" Dwelling District, driveway curb cuts shall be limited to twelve feet in width adjacent to the sidewalk or property line and may extend to a maximum of eighteen feet abutting the street pavement to facilitate turning movements.*

**Finding: Complies as proposed.** The applicant has not proposed more than one driveway per lot and no more than two for corner lots which front more than one road.

*12.04.025.D. For all driveways, the following standards apply.*

- 1. Each new or redeveloped curb cut shall have an approved concrete approach or asphalted street connection where there is no concrete curb and a minimum hard surface for at least ten feet and preferably twenty feet back into the lot as measured from the current edge of street pavement to provide for controlling gravel tracking onto the public street. The hard surface may be concrete, asphalt, or other surface approved by the city engineer.*
- 2. Driving vehicles, trailers, boats, or other wheeled objects across a sidewalk or roadside planter strip at a location other than an approved permanent or city-approved temporary driveway approach is prohibited. Damages caused by such action shall be corrected by the adjoining property owner.*
- 3. Placing soil, gravel, wood, or other material in the gutter or space next to the curb of a public street with the intention of using it as a permanent or temporary driveway is prohibited. Damages caused by such action shall be corrected by the adjoining property owner.*
- 4. Any driveway built within public street or alley right-of-way shall be built and permitted per city requirements as approved by the city engineer.*

**Finding: Complies as conditioned.** The lot containing the existing dwelling shall have a concrete driveway approach with a minimum hard surface for at least ten back into the lot as measured from the edge of street

pavement. The hard surface shall be concrete, asphalt, or other surface approved by the city engineer. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

*12.04.025.E. Exceptions. The public works director reserves the right to waive this standard, if it is determined through a Type II decision including written findings, that it is in the best interest of the public to do so.*

**Finding: Not applicable.** The public works director has not waived this standard.

*12.04.030 Maintenance and repair.*

*The owner of land abutting the street where a sidewalk has been constructed shall be responsible for maintaining said sidewalk and abutting curb, if any, in good repair.*

**Finding: Not applicable.** This is not a criterion for this development. All owners of land abutting a street where a sidewalk has been constructed is responsible for maintaining the sidewalk and curb in good repair.

*12.04.031 Liability for sidewalk injuries.*

*A. The owner or occupant of real property responsible for maintaining the adjacent sidewalk shall be liable to any person injured because of negligence of such owner or occupant in failing to maintain the sidewalk in good condition.*

*B. If the city is required to pay damages for an injury to persons or property caused by the failure of a person to perform the duty that this ordinance imposes, the person shall compensate the city for the amount of the damages paid. The city may maintain an action in a court of competent jurisdiction to enforce this section.*

**Finding: Not Applicable.** This is not a criterion for this development.

*12.04.032 Required sidewalk repair.*

*A. When the public works director determines that repair of a sidewalk is necessary he or she shall issue a notice to the owner of property adjacent to the sidewalk.*

*B. The notice shall require the owner of the property adjacent to the defective sidewalk to complete the repair of the sidewalk within ninety days after the service of notice. The notice shall also state that if the repair is not made by the owner, the city may do the work and the cost of the work shall be assessed against the property adjacent to the sidewalk.*

*C. The public works director shall cause a copy of the notice to be served personally upon the owner of the property adjacent to the defective sidewalk, or the notice may be served by registered or certified mail, return receipt requested. If after diligent search the owner is not discovered, the public works director shall cause a copy of the notice to be posted in a conspicuous place on the property, and such posting shall have the same effect as service of notice by mail or by personal service upon the owner of the property.*

*D. The person serving the notice shall file with the city recorder a statement stating the time, place and manner of service or notice.*

**Finding: Not Applicable.** The applicant has not proposed and is not required to repair a sidewalk.

*12.04.033 City may do work.*

*If repair of the sidewalk is not completed within ninety days after the service of notice, the public works director shall carry out the needed work on the sidewalk. Upon completion of the work, the public works director shall submit an itemized statement of the cost of the work to the finance director. The city may, at its discretion, construct, repair or maintain sidewalks deemed to be in disrepair by the public works director for the health, safety and general welfare of the residents of the city.*

**Finding: Not Applicable.** This is not a criterion for this development because no sidewalk repair is required.

*12.04.034 Assessment of costs.*

*Upon receipt of the report, the finance director shall assess the cost of the sidewalk work against the property adjacent to the sidewalk. The assessment shall be a lien against the property and may be collected in the same manner as is provided for in the collection of street improvement assessment.*

**Finding: Not Applicable.** This is not a criterion for this development because no sidewalk repair is required.

*12.04.040 Streets--Enforcement.*



*Any person whose duty it is to maintain and repair any sidewalk, as provided by this chapter, and who fails to do so shall be subject to the enforcement procedures of Chapters 1.16, 1.20 and 1.24. Failure to comply with the provisions of this chapter shall be deemed a nuisance. Violation of any provision of this chapter is subject to the code enforcement procedures of Chapters 1.16, 1.20 and 1.24.*

**Finding: Not Applicable.** This is not a criterion for this development.

**12.04.050 Retaining walls--Required.**

*Every owner of a lot within the city, abutting upon an improved street, where the surface of the lot or tract of land is above the surface of the improved street and where the soil or earth from the lot, or tract of land is liable to, or does slide or fall into the street or upon the sidewalk, or both, shall build a retaining wall, the outer side of which shall be on the line separating the lot, or tract of land from the improved street, and the wall shall be so constructed as to prevent the soil or earth from the lot or tract of land from falling or sliding into the street or upon the sidewalk, or both, and the owner of any such property shall keep the wall in good repair.*

**Finding: Not Applicable.** Applicant is not proposing construction of a retaining wall.

**12.04.060 Retaining walls--Maintenance.**

*When a retaining wall is necessary to keep the earth from falling or sliding onto the sidewalk or into a public street and the property owner or person in charge of that property fails or refuses to build such a wall, such shall be deemed a nuisance. The violation of any provision of this chapter is subject to the code enforcement procedures of Chapters 1.16, 1.20 and 1.24.*

**Finding: Not Applicable.** Applicant is not proposing construction of a retaining wall.

**12.04.070 Removal of sliding dirt.**

*It shall be the duty of the owner of any property as mentioned in Section 12.04.050, and in case the owner is a nonresident, then the agent or other person in charge of the same, to remove from the street or sidewalk or both as the case may be, any and all earth or dirt falling on or sliding into or upon the same from the property, and to build and maintain in order at all times, the retaining wall as herein required; and upon the failure, neglect or refusal of the land owner, the agent or person in charge of the same to clean away such earth or dirt, falling or sliding from the property into the street or upon the sidewalk, or both, or to build the retaining wall, shall be deemed guilty of a misdemeanor.*

**Finding: Not Applicable.** The applicant has not proposed and is not required to remove sliding dirt with this application.

**12.04.080 Excavations--Permit required.**

*It shall be unlawful for any person to dig up, break, excavate, disturb, dig under or undermine any public street or alley, or any part thereof or any macadam, gravel, or other street pavement or improvement without first applying for and obtaining from the engineer a written permit so to do.*

**Finding: Not applicable.** Applicant will not require permit for excavations beyond what is permitted through Public Works construction plan review.

**12.04.090 Excavations--Permit restrictions.**

*The permit shall designate the portion of the street to be so taken up or disturbed, together with the purpose for making the excavation, the number of days in which the work shall be done, and the trench or excavation to be refilled and such other restrictions as may be deemed of public necessity or benefit.*

**Finding: Not applicable.** Applicant will not require permit for excavations beyond what is permitted through Public Works construction plan review.

**12.04.095 - Street Design—Curb Cuts.**

*To assure public safety, reduce traffic hazards and promote the welfare of pedestrians, bicyclists and residents of the subject area, such as a cul-de-sac or dead-end street, the decision maker shall be authorized to minimize the number and size of curb cuts (including driveways) as far as practicable where any of the following conditions are necessary:*

- A. To provide adequate space for on-street parking;*
- B. To facilitate street tree planting requirements;*

*C. To assure pedestrian and vehicular safety by limiting vehicular access points; and*

*D. To assure that adequate sight distance requirements are met.*

*Where the decision maker determines any of these situations exist or may occur due to approval of a proposed development, single residential driveway curb cuts shall be limited to twelve feet in width adjacent to the sidewalk and property line and may extend to a maximum of eighteen feet abutting the street pavement to facilitate turning movements. Shared residential driveways shall be limited to twenty-four feet in width adjacent to the sidewalk and property line and may extend to a maximum of thirty feet abutting the street pavement to facilitate turning movements. Non-residential development driveway curb cuts in these situations shall be limited to the minimum required widths based on vehicle turning radii based on a professional engineer's design submittal and as approved by the decision maker.*

**Finding: Not applicable.** The decision maker has not exercised the authority to minimize the number and size of curb cuts beyond what has been proposed by the applicant.

#### *12.04.100 Excavations – Restoration of Pavement*

*Whenever any excavation shall have been made in any pavement or other street improvement on any street or alley in the city for any purpose whatsoever under the permit granted by the engineer, it shall be the duty of the person making the excavation to put the street or alley in as good condition as it was before it was so broken, dug up or disturbed, and shall remove all surplus dirt, rubbish, or other material from the street or alley.*

**Finding: Complies as conditioned.** The applicant has proposed work in the public right-of-way that will require pavement restoration. This includes new pipelines. The project All pavement cuts and restoration shall be performed in accordance with the City of Oregon City Pavement Cut Standards. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

#### *12.04.110 Excavations--Nuisance--Penalty.*

*Any excavation in violation of this chapter shall be deemed a nuisance. Violation of any provision of this chapter is subject to the code enforcement procedures of Chapters 1.16, 1.20 and 1.24.*

**Finding: Not applicable.** This is not a criterion for this development.

#### *12.04.120 Obstructions – Permit Required*

**Finding: Not applicable.** This is not a criterion for this development.

#### *12.04.130 Obstructions--Sidewalk sales.*

*A. It is unlawful for any person to use the public sidewalks of the city for the purpose of packing, unpacking or storage of goods or merchandise or for the display of goods or merchandise for sale. It is permissible to use the public sidewalks for the process of expeditiously loading and unloading goods and merchandise.*

*B. The city commission may, in its discretion, designate certain areas of the city to permit the display and sale of goods or merchandise on the public sidewalks under such conditions as may be provided.*

**Finding: Not applicable.** This is not a criterion for this development.

#### *12.04.140 Obstructions--Nuisance--Penalty.*

*Any act or omission in violation of this chapter shall be deemed a nuisance. Violation of any provision of this chapter is subject to the code enforcement procedures of Chapters 1.16, 1.20 and 1.24.*

**Finding: Not applicable.** This is not a criterion for this development.

#### *12.04.150 - Street and alley vacations—Cost.*

*At the time of filing a petition for vacation of a street, alley or any part thereof, a fee as established by city commission resolution shall be paid to the city.*

**Finding: Not Applicable.** The applicant has not proposed a street or alley vacation with this application.

#### *12.04.160 Street vacations--Restrictions.*

*The commission, upon hearing such petition, may grant the same in whole or in part, or may deny the same in whole or in part, or may grant the same with such reservations as would appear to be for the public interest, including reservations pertaining to the maintenance and use of underground public utilities in the portion vacated.*

**Finding: Not Applicable.** The applicant has not proposed a street or alley vacation with this application.

**12.04.170 - Street design—Purpose and general provisions.**

*All development shall be in conformance with the policies and design standards established by this Chapter and with applicable standards in the city's public facility master plan and city design standards and specifications. In reviewing applications for development, the city engineer shall take into consideration any approved development and the remaining development potential of adjacent properties. All street, water, sanitary sewer, storm drainage and utility plans associated with any development must be reviewed and approved by the city engineer prior to construction. All streets, driveways or storm drainage connections to another jurisdiction's facility or right-of-way must be reviewed by the appropriate jurisdiction as a condition of the preliminary plat and when required by law or intergovernmental agreement shall be approved by the appropriate jurisdiction.*

**Finding: Complies as Conditioned.** The development shall comply with all current Oregon City Public Works design standards, specifications, codes, and policies. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

**12.04.175 Street Design--Generally.**

*The location, width and grade of street shall be considered in relation to: existing and planned streets, topographical conditions, public convenience and safety for all modes of travel, existing and identified future transit routes and pedestrian/bicycle accessways, and the proposed use of land to be served by the streets. The street system shall assure an adequate traffic circulation system with intersection angles, grades, tangents and curves appropriate for the traffic to be carried considering the terrain. To the extent possible, proposed streets shall connect to all existing or approved stub streets that abut the development site. The arrangement of streets shall either:*

*A. Provide for the continuation or appropriate projection of existing principal streets in the surrounding area and on adjacent parcels or conform to a plan for the area approved or adopted by the city to meet a particular situation where topographical or other conditions make continuance or conformance to existing streets impractical;*

*B. Where necessary to give access to or permit a satisfactory future development of adjoining land, streets shall be extended to the boundary of the development and the resulting dead-end street (stub) may be approved with a temporary turnaround as approved by the city engineer. Notification that the street is planned for future extension shall be posted on the stub street until the street is extended and shall inform the public that the dead-end street may be extended in the future. Access control in accordance with section 12.04 shall be required to preserve the objectives of street extensions.*

**Finding: Complies as conditioned.** The location, widths, and grades of the proposed street system provide for the continuation or appropriate projection of existing principal streets in the surrounding area and give access for the future development of adjoining land. The development has provided a convenient street system for the safety of all modes of travel, including pedestrian and bicycle to, from, and through the subject site. The applicant shall provide markers at the termination of the proposed local street to indicate the end of the roadway and provide signage that it is planned for future extension. The plat shall include an access control strip across the end of the new street proposed for the development for the purposes of future extension. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

**12.04.180 Street Design.**

*All development regulated by this Chapter shall provide street improvements in compliance with the standards in Figure 12.04.180 depending on the street classification set forth in the Transportation System Plan and the Comprehensive Plan designation of the adjacent property, unless an alternative plan has been adopted. The standards provided below are maximum design standards and may be reduced with an alternative street design which may be approved based on the modification criteria in 12.04.007. The steps for reducing the maximum design below are found in the Transportation System Plan.*

**Table 12.04.180 Street Design**

To read the table below, select the road classification as identified in the Transportation System Plan and the Comprehensive Plan designation of the adjacent properties to find the maximum design standards for the road cross section. If the Comprehensive Plan designation on either side of the street differs, the wider right-of-way standard shall apply.

Road Classification	Comprehensive Plan Designation	Right-of-Way Width	Pavement Width	Public Access	Sidewalk	Landscape Strip	Bike Lane	Street Parking	Travel Lanes	Median
Major Arterial	Mixed Use, Commercial or Public/Quasi Public	116 ft.	94 ft.	0.5 ft.	10.5 ft. sidewalk including 5 ft.x5 ft. tree wells		6 ft.	8 ft.	(5) 12 ft. Lanes	6 ft.
	Industrial	120 ft.	88 ft.	0.5 ft.	5 ft.	10.5 ft.	6 ft.	N/A	(5) 14 ft. Lanes	6 ft.
	Residential	126 ft.	94 ft.	0.5 ft.	5 ft.	10.5 ft.	6 ft.	8 ft.	(5) 12 ft. Lanes	6 ft.

Road Classification	Comprehensive Plan Designation	Right-of-Way Width	Pavement Width	Public Access	Sidewalk	Landscape Strip	Bike Lane	Street Parking	Travel Lanes	Median
Minor Arterial	Mixed Use, Commercial or Public/Quasi Public	116 ft.	94 ft.	0.5 ft.	10.5 ft. sidewalk including 5 ft.x5 ft. tree wells		6 ft.	8 ft.	(5) 12 ft. Lanes	6 ft.
	Industrial	118 ft.	86 ft.	0.5 ft.	5 ft.	10.5 ft.	6 ft.	7 ft.	(5) 12 ft. Lanes	N/A
	Residential	100 ft.	68 ft.	0.5 ft.	5 ft.	10.5 ft.	6 ft.	7 ft.	(3) 12 ft. Lanes	6 ft.

Road Classification	Comprehensive Plan Designation	Right-of-Way Width	Pavement Width	Public Access	Sidewalk	Landscape Strip	Bike Lane	Street Parking	Travel Lanes	Median
Collector	Mixed Use, Commercial or Public/Quasi Public	86 ft.	64 ft.	0.5 ft.	10.5 ft. sidewalk including 5 ft.x5 ft. tree wells		6 ft.	8 ft.	(3) 12 ft. Lanes	N/A
	Industrial	88 ft.	62 ft.	0.5 ft.	5 ft.	7.5 ft.	6 ft.	7 ft.	(3) 12 ft. Lanes	N/A
	Residential	85 ft.	59 ft.	0.5 ft.	5 ft.	7.5 ft.	6 ft.	7 ft.	(3) 11 ft. Lanes	N/A

Road Classification	Comprehensive Plan Designation	Right-of-Way Width	Pavement Width	Public Access	Sidewalk	Landscape Strip	Bike Lane	Street Parking	Travel Lanes	Median
Local	Mixed Use, Commercial or Public/Quasi Public	62 ft.	40 ft.	0.5 ft.	10.5 ft. sidewalk including 5 ft.x5 ft. tree wells		N/A	8 ft.	(2) 12 ft. Lanes	N/A
	Industrial	60 ft.	38 ft.	0.5 ft.	5 ft.	5.5 ft.	(2) 19 ft. Shared Space			N/A
	Residential	54 ft.	32 ft.	0.5 ft.	5 ft.	5.5 ft.	(2) 16 ft. Shared Space			N/A

1. Pavement width includes, bike lane, street parking, travel lanes and median.
2. Public access, sidewalks, landscape strips, bike lanes and on-street parking are required on both sides of the street in all designations. The right-of-way width and pavement widths identified above include the total street section.
3. A 0.5' foot curb is included in landscape strip or sidewalk width.
4. Travel lanes may be through lanes or turn lanes.
5. The 0.5' foot public access provides access to adjacent public improvements.
6. Alleys shall have a minimum right-of-way width of 20 feet and a minimum pavement width of 16 feet. If alleys are provided, garage access shall be provided from the alley.

**Finding: Complies as proposed.** Hiram Avenue is classified as a Local Street in the Oregon City Transportation System Plan (TSP), and should have a maximum right-of-way (ROW) width of 54 feet. The applicant shall provide the following along the frontage of Hiram Avenue on the subject property side of the centerline: 27' of ROW consisting of 16-foot-wide pavement, 0.5-foot-wide curb, 5-foot-wide landscape strip, 5-foot-wide sidewalk and a 0.5-foot-wide buffer strip.

The applicant has requested a modification for the design of a new street which can be found at section 12.04.007 of this report.

**12.04.185 Street Design--Access Control.**

A. A street which is dedicated to end at the boundary of the development or in the case of half-streets dedicated along a boundary shall have an access control granted to the City as a City controlled plat restriction for the purposes of controlling ingress and egress to the property adjacent to the end of the dedicated street. The access control restriction shall exist until such time as a public street is created, by dedication and accepted, extending the street to the adjacent property.

B. The City may grant a permit for the adjoining owner to access through the access control.

C. The plat shall contain the following access control language or similar on the face of the map at the end of each street for which access control is required: "Access Control (See plat restrictions)."

D. Said plats shall also contain the following plat restriction note(s): "Access to (name of street or tract) from adjoining tracts (name of deed document number[s]) shall be controlled by the City of Oregon City by the recording of this plat, as shown. These access controls shall be automatically terminated upon the acceptance of a public road dedication or the recording of a plat extending the street to adjacent property that would access through those Access Controls."

**Finding: Complies as Proposed.** The applicant proposes access control at the end of Moss Lake Way per City requirements.

**12.04.190 Street Design--Alignment.**

The centerline of streets shall be:

A. Aligned with existing streets by continuation of the centerlines; or

B. Offset from the centerline by no more than five (5) feet, provided appropriate mitigation, in the judgment of the City Engineer, is provided to ensure that the offset intersection will not pose a safety hazard.

**Finding: Complies as Proposed.** The proposed street alignments meet the City requirements. This standard is met.

**12.04.194 Traffic Sight Obstructions**

All new streets shall comply with the Traffic Sight Obstructions in Chapter 10.32.

**Finding: Complies as Proposed.** Applicant acknowledges streets will be designed per this standard.

**12.04.195 Spacing Standards.**

12.04.195.A. All new streets shall be designed as local streets unless otherwise designated as arterials and collectors in Figure 8 in the Transportation System Plan. The maximum block spacing between streets is 530 feet and the minimum block spacing between streets is 150 feet as measured between the right-of-way centerlines. If the maximum block size is exceeded, pedestrian accessways must be provided every 330 feet. The spacing standards within this section do not apply to alleys.

**Finding: Complies as proposed.** The proposed distances between intersections does not exceed 530 feet.

12.04.195.B. All new development and redevelopment shall meet the minimum driveway spacing standards identified in Table 12.04.195.B.

Table 12.04.195.B Minimum Driveway Spacing Standards

Table 12.04.195.B Minimum Driveway Spacing Standards		
Street Functional Classification	Minimum Driveway Spacing Standards	Distance
Major Arterial Streets	Minimum distance from a street corner to a driveway for all uses and	175 ft.

<b>Table 12.04.195.B Minimum Driveway Spacing Standards</b>		
<b>Street Functional Classification</b>	<b>Minimum Driveway Spacing Standards</b>	<b>Distance</b>
	<i>Minimum distance between driveways for uses other than single and two-family dwellings</i>	
<i>Minor Arterial Streets</i>	<i>Minimum distance from a street corner to a driveway for all uses and Minimum distance between driveways for uses other than single and two-family dwellings</i>	<i>175 ft.</i>
<i>Collector Streets</i>	<i>Minimum distance from a street corner to a driveway for all uses and Minimum distance between driveways for uses other than single and two-family dwellings</i>	<i>100 ft.</i>
<i>Local Streets</i>	<i>Minimum distance from a street corner to a driveway for all uses and Minimum distance between driveways for uses other than single and two-family dwellings</i>	<i>25 ft.</i>
<i>The distance from a street corner to a driveway is measured along the right-of-way from the edge of the intersection right-of-way to the nearest portion of the driveway and the distance between driveways is measured at the nearest portions of the driveway at the right-of-way.</i>		

**Finding: Complies as proposed.** Driveway locations, as shown on the preliminary plan, meets the minimum driveway spacing standards identified in Table 12.04.195.B.

#### *12.04.199 Pedestrian and Bicycle Accessways*

*Pedestrian/bicycle accessways are intended to provide direct, safe and convenient connections between residential areas, retail and office areas, institutional facilities, industrial parks, transit streets, neighborhood activity centers, rights-of-way, and pedestrian/bicycle accessways which minimize out-of-direction travel, and transit-orientated developments where public street connections for automobiles, bicycles and pedestrians are unavailable. Pedestrian/bicycle accessways are appropriate in areas where public street options are unavailable, impractical or inappropriate. Pedestrian and bicycle accessways are required through private property or as right-of-way connecting development to the right-of-way at intervals not exceeding three-hundred-and-thirty feet of frontage; or where the lack of street continuity creates inconvenient or out of direction travel patterns for local pedestrian or bicycle trips.*

*12.04.199.A. Entry points shall align with pedestrian crossing points along adjacent streets and with adjacent street intersections.*

*12.04.199.B. Accessways shall be free of horizontal obstructions and have a nine-foot, six-inch high vertical clearance to accommodate bicyclists. To safely accommodate both pedestrians and bicycles, accessway right-of-way widths shall be as follows:*

- 1. Accessways shall have a fifteen-foot-wide right-of-way with a seven-foot wide paved surface between a five foot planter strip and a three foot planter strip.*
- 2. If an accessway also provides secondary fire access, the right-of-way width shall be at least twenty-three feet wide with a fifteen-foot paved surface a five foot planter strip and a three foot planter strip.*

*12.04.199.C. Accessways shall be direct with at least one end point of the accessway always visible from any point along the accessway. On-street parking shall be prohibited within fifteen feet of the intersection of the accessway with public streets to preserve safe sight distance and promote safety.*

*2.04.199.D. To enhance pedestrian and bicycle safety, accessways shall be lighted with pedestrian-scale lighting. Accessway lighting shall be to a minimum level of one-half foot-candles, a one and one-half foot-candle average, and a maximum to minimum ratio of seven-to-one and shall be oriented not to shine upon adjacent properties. Street lighting shall be provided at both entrances.*

*12.04.199.E. Accessways shall comply with Americans with Disabilities Act (ADA).*

*12.04.199.F. The planter strips on either side of the accessway shall be landscaped along adjacent property by installation of the following:*

- 1. Within the three foot planter strip, an evergreen hedge screen of thirty to forty-two inches high or shrubs spaced no more than four feet apart on average;*

2. Ground cover covering one hundred percent of the exposed ground. No bark mulch shall be allowed except under the canopy of shrubs and within two feet of the base of trees;
3. Within the five foot planter strip, two-inch minimum caliper trees with a maximum of thirty-five feet of separation between the trees to increase the tree canopy over the accessway;
4. In satisfying the requirements of this section, evergreen plant materials that grow over forty-two inches in height shall be avoided. All plant materials shall be selected from the Oregon City Native Plant List.

12.04.199.G. Accessways shall be designed to prohibit unauthorized motorized traffic. Curbs and removable, lockable bollards are suggested mechanisms to achieve this.

12.04.199.H. Accessway surfaces shall be paved with all-weather materials as approved by the city. Pervious materials are encouraged. Accessway surfaces shall be designed to drain stormwater runoff to the side or sides of the accessway. Minimum cross slope shall be two percent.

12.04.199.I. In parks, greenways or other natural resource areas, accessways may be approved with a five-foot-wide gravel path with wooden, brick or concrete edgings.

12.04.199.J. The Community Development Director may approve an alternative accessway design due to existing site constraints through the modification process set forth in Section 12.04.007.

12.04.199.K. Ownership, liability and maintenance of accessways.

To ensure that all pedestrian/bicycle accessways will be adequately maintained over time, the hearings body shall require one of the following:

1. Dedicate the accessways to the public as public right-of-way prior to the final approval of the development; or
2. The developer incorporates the accessway into a recorded easement or tract that specifically requires the property owner and future property owners to provide for the ownership, liability and maintenance of the accessway.

**Finding: Complies as proposed.** The applicant has provided a shadow plat showing that there is adequate direct, safe and convenient connections between residential areas, retail and office areas, institutional facilities, industrial parks, transit streets, neighborhood activity centers, rights-of-way, and pedestrian/bicycle accessways which minimize out-of-direction travel.

#### 12.04.205 Mobility Standards.

Development shall demonstrate compliance with intersection mobility standards. When evaluating the performance of the transportation system, the City of Oregon City requires all intersections, except for the facilities identified in subsection D below, to be maintained at or below the following mobility standards during the two-hour peak operating conditions. The first hour has the highest weekday traffic volumes and the second hour is the next highest hour before or after the first hour. Except as provided otherwise below, this may require the installation of mobility improvements as set forth in the Transportation System Plan or as otherwise identified by the City Transportation Engineer.

A. For intersections within the Regional Center, the following mobility standards apply:

1. During the first hour, a maximum v/c ratio of 1.10 shall be maintained. For signalized intersections, this standard applies to the intersection as a whole. For unsignalized intersections, this standard applies to movements on the major street. There is no performance standard for the minor street approaches.
2. During the second hour, a maximum v/c ratio of 0.99 shall be maintained at signalized intersections. For signalized intersections, this standard applies to the intersection as a whole. For unsignalized intersections, this standard applies to movements on the major street. There is no performance standard for the minor street approaches.
3. Intersections located on the Regional Center boundary shall be considered within the Regional Center.

B. For intersections outside of the Regional Center but designated on the Arterial and Throughway Network, as defined in the Regional Transportation Plan, the following mobility standards apply:

1. During the first hour, a maximum v/c ratio of 0.99 shall be maintained. For signalized intersections, this standard applies to the intersection as a whole. For unsignalized intersections, this standard applies to movements on the major street. There is no performance standard for the minor street approaches.
2. During the second hour, a maximum v/c ratio of 0.99 shall be maintained at signalized intersections. For signalized intersections, this standard applies to the intersection as a whole. For unsignalized intersections, this standard applies to movements on the major street. There is no performance standard for the minor street approaches.



C. For intersections outside the boundaries of the Regional Center and not designated on the Arterial and Throughway Network, as defined in the Regional Transportation Plan, the following mobility standards apply:

1. For signalized intersections:
  - a. During the first hour, LOS "D" or better will be required for the intersection as a whole and no approach operating at worse than LOS "E" and a v/c ratio not higher than 1.0 for the sum of the critical movements.
  - b. During the second hour, LOS "D" or better will be required for the intersection as a whole and no approach operating at worse than LOS "E" and a v/c ratio not higher than 1.0 for the sum of the critical movements.
2. For unsignalized intersections outside of the boundaries of the Regional Center:
  - a. For unsignalized intersections, during the peak hour, all movements serving more than 20 vehicles shall be maintained at LOS "E" or better. LOS "F" will be tolerated at movements serving no more than 20 vehicles during the peak hour.

D. Until the City adopts new performance measures that identify alternative mobility targets, the City shall exempt proposed development that is permitted, either conditionally, outright, or through detailed development master plan approval, from compliance with the above-referenced mobility standards for the following state-owned facilities:

I-205 / OR 99E Interchange

I-205 / OR 213 Interchange

OR 213 / Beavercreek Road

State intersections located within or on the Regional Center Boundaries

1. In the case of conceptual development approval for a master plan that impacts the above references intersections:
  - a. The form of mitigation will be determined at the time of the detailed development plan review for subsequent phases utilizing the Code in place at the time the detailed development plan is submitted; and
  - b. Only those trips approved by a detailed development plan review are vested.
2. Development which does not comply with the mobility standards for the intersections identified in 12.04.205.D shall provide for the improvements identified in the Transportation System Plan (TSP) in an effort to improve intersection mobility as necessary to offset the impact caused by development. Where required by other provisions of the Code, the applicant shall provide a traffic impact study that includes an assessment of the development's impact on the intersections identified in this exemption and shall construct the intersection improvements listed in the TSP or required by the Code.

**Finding: Complies as proposed.** No offsite mitigation is required for this application as the trip generation of 4 additional lots do not trigger a Traffic Impact Analysis. Please refer to the analysis in 16.08.030.B.5 for additional analysis.

#### 12.04.210 Street design--Intersection Angles.

Except where topography requires a lesser angle, streets shall be laid out to intersect at angles as near as possible to right angles. In no case shall the acute angles be less than eighty degrees unless there is a special intersection design. An arterial or collector street intersecting with another street shall have at least one hundred feet of tangent adjacent to the intersection unless topography requires a lesser distance. Other streets, except alleys, shall have at least fifty feet of tangent adjacent to the intersection unless topography requires a lesser distance. All street intersections shall be provided with a minimum curb return radius of twenty-five feet for local streets. Larger radii shall be required for higher street classifications as determined by the city engineer. Additional right-of-way shall be required to accommodate curb returns and sidewalks at intersections. Ordinarily, intersections should not have more than two streets at any one point.

**Finding: Complies as proposed.** A new street has been proposed and connects to Hiram Avenue to create a right angle. The curb return at the intersection is proposed with a radius of at least 25 feet.

#### 12.04.215 Street design--Off-Site Street Improvements.

During consideration of the preliminary plan for a development, the decision maker shall determine whether existing streets impacted by, adjacent to, or abutting the development meet the city's applicable planned minimum design or dimensional requirements. Where such streets fail to meet these requirements, the decision-maker shall require the applicant to make proportional improvements sufficient to achieve conformance with minimum applicable design standards required to serve the proposed development.

**Finding: Not applicable.** City has not made the determination that impact to existing streets, adjacent to, or abutting the development conflicts with the city's planned minimum design or dimensional requirements. No off-site street improvements are required.

#### 12.04.220 Street Design--Half Street.

*Half streets, while generally not acceptable, may be approved where essential to the development, when in conformance with all other applicable requirements, and where it will not create a safety hazard. When approving half streets, the decision maker must first determine that it will be practical to require the dedication of the other half of the street when the adjoining property is divided or developed. Where the decision maker approves a half street, the applicant must construct an additional ten feet of pavement width so as to make the half street safe and usable until such time as the other half is constructed. Whenever a half street is adjacent to property capable of being divided or developed, the other half of the street shall be provided and improved when that adjacent property divides or develops. Access Control may be required to preserve the objectives of half streets.*

*When the remainder of an existing half-street improvement is made it shall include the following items: dedication of required right-of-way, construction of the remaining portion of the street including pavement, curb and gutter, landscape strip, sidewalk, street trees, lighting and other improvements as required for that particular street. It shall also include at a minimum the pavement replacement to the centerline of the street. Any damage to the existing street shall be repaired in accordance with the City's "Moratorium Pavement Cut Standard" or as approved by the City Engineer.*

**Finding: Not applicable.** No half street designs are proposed.

#### 12.04.225 Street Design--Cul-de-sacs and Dead-End Streets.

*The city discourages the use of cul-de-sacs and permanent dead-end streets except where construction of a through street is found by the decision maker to be impracticable due to topography or some significant physical constraint such as geologic hazards, wetland, natural or historic resource areas, dedicated open space, existing development patterns, arterial access restrictions or similar situation as determined by the Community Development Director. When permitted, access from new cul-de-sacs and permanent dead-end streets shall be limited to a maximum of 25 dwelling units and a maximum street length of two hundred feet, as measured from the right-of-way line of the nearest intersecting street to the back of the cul-de-sac curb face. In addition, cul-de-sacs and dead end roads shall include pedestrian/bicycle accessways as required in this Chapter. This section is not intended to preclude the use of curvilinear eyebrow widening of a street where needed.*

*Where approved, cul-de-sacs shall have sufficient radius to provide adequate turn-around for emergency vehicles in accordance with Fire District and City adopted street standards. Permanent dead-end streets other than cul-de-sacs shall provide public street right-of-way / easements sufficient to provide turn-around space with appropriate no-parking signs or markings for waste disposal, sweepers, and other long vehicles in the form of a hammerhead or other design to be approved by the decision maker. Driveways shall be encouraged off the turnaround to provide for additional on-street parking space.*

**Finding: Complies as Conditioned.** The development has provided a shadow plat showing a temporary dead-end road to be developed in the future to end as a new cul-de-sac. The proposed cul-de-sac will serve no more than 25 dwelling units. The proposed development proposes to dead-end the street until future development provides the cul-de-sac. The length of the proposed dead-end street exceeds 150 feet. For the proposed dead-end street, the applicant shall provide a turnaround contained in an easement with appropriate no-parking signs or markings for large emergency vehicles and other long vehicles in the form of a hammerhead or other design in accordance with Clackamas Fire District No. 1 and City adopted street standards.

#### 12.04.230 Street Design--Street Names.

*Except for extensions of existing streets, no street name shall be used which will duplicate or be confused with the name of an existing street. Street names shall conform to the established standards in the City and shall be subject to the approval of the City.*

**Finding: Complies as Proposed.** Prior to Platting, the applicant shall work with City staff to provide a street name that meet City requirements.

#### 12.04.235 Street Design--Grades and Curves.

*Grades and center line radii shall conform to the standards in the City's street design standards and specifications.*

**Finding: Complies as proposed.** The plans show that the proposed grade for the new road will meet city street design standards and specifications.

*12.04.240 Street Design--Development Abutting Arterial or Collector Street.*

*Where development abuts or contains an existing or proposed arterial or collector street, the decision maker may require: access control; screen planting or wall contained in an easement or otherwise protected by a restrictive covenant in a form acceptable to the decision maker along the rear or side property line; or such other treatment it deems necessary to adequately protect residential properties or afford separation of through and local traffic. Reverse frontage lots with suitable depth may also be considered an option for residential property that has arterial frontage. Where access for development abuts and connects for vehicular access to another jurisdiction's facility then authorization by that jurisdiction may be required.*

**Finding: Complies as proposed.** All lots are proposed to take access from a local road.

*12.04.245 Street Design--Pedestrian and Bicycle Safety.*

*Where deemed necessary to ensure public safety, reduce traffic hazards and promote the welfare of pedestrians, bicyclists and residents of the subject area, the decision maker may require that local streets be so designed as to discourage their use by nonlocal automobile traffic.*

*All crosswalks shall include a large vegetative or sidewalk area which extends into the street pavement as far as practicable to provide safer pedestrian crossing opportunities. These curb extensions can increase the visibility of pedestrians and provide a shorter crosswalk distance as well as encourage motorists to drive slower. The decision maker may approve an alternative design that achieves the same standard for constrained sites or where deemed unnecessary by the City Engineer.*

**Finding: Not applicable.** Curb extensions are not proposed or required at this time.

*12.04.255 Street design--Alleys.*

*Public alleys shall be provided in the following districts R-5, R-3.5, R-2, MUC-1, MUC-2 and NC zones unless other permanent provisions for private access to off-street parking and loading facilities are approved by the decision maker. The corners of alley intersections shall have a radius of not less than ten feet.*

**Finding: Not Applicable.** No alleys are proposed.

*12.04.260 Street Design--Transit.*

*Streets shall be designed and laid out in a manner that promotes pedestrian and bicycle circulation. The applicant shall coordinate with transit agencies where the application impacts transit streets as identified in 17.04.1310.*

*Pedestrian/bicycle access ways shall be provided as necessary in Chapter 12.04 to minimize the travel distance to transit streets and stops and neighborhood activity centers. The decision maker may require provisions, including easements, for transit facilities along transit streets where a need for bus stops, bus pullouts or other transit facilities within or adjacent to the development has been identified.*

**Finding: Complies as proposed.** None of the abutting streets are transit streets. Sidewalks are proposed along all site street frontages for pedestrian circulation.

*12.04.265 Street design--Planter Strips.*

*All development shall include vegetative planter strips that are five feet in width or larger and located adjacent to the curb. This requirement may be waived or modified if the decision maker finds it is not practicable. The decision maker may permit constrained sites to place street trees on the abutting private property within 10 feet of the public right-of-way if a covenant is recorded on the title of the property identifying the tree as a city street tree which is maintained by the property owner. Development proposed along a collector, minor arterial, or major arterial street may use tree wells with root barriers located near the curb within a wider sidewalk in lieu of a planter strip, in which case each tree shall have a protected area to ensure proper root growth and reduce potential damage to sidewalks, curbs and gutters.*

*To promote and maintain the community tree canopy adjacent to public streets, trees shall be selected and planted in planter strips in accordance with Chapter 12.08, Street Trees. Individual abutting lot owners shall be legally responsible for maintaining healthy and attractive trees and vegetation in the planter strip. If a homeowners' association is created as part of the development, the association may assume the maintenance obligation through a legally binding mechanism, e.g., deed restrictions, maintenance agreement, etc., which shall be reviewed and approved by the city attorney. Failure to properly maintain trees and vegetation in a planter strip shall be a violation of this code and enforceable as a civil infraction.*

**Finding: Complies as Conditioned.** Please refer to section 12.08.

*12.04.270 Standard Construction Specifications.*

*The workmanship and materials for any work performed under permits issued per this chapter 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 Street Design Drawings provide other design details, in which case the requirements of this chapter and the Public Works Street Design Drawings shall be complied with. In the case of work within ODOT or Clackamas County rights-of-way, work shall be in conformance with their respective construction standards.*

**Finding: Complies as Conditioned.** Workmanship and materials for any work performed under permits issued by the city shall comply with the latest 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. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

*12.04.280 Violation--Penalty.*

*Any act or omission in violation of this chapter shall be deemed a nuisance. Violation of any provision of this chapter is subject to the code enforcement procedures of Chapters 1.16, 1.20 and 1.24.*

**Finding: Not Applicable.** No violations have been identified.

**CHAPTER 12.08 - PUBLIC AND STREET TREES<sup>[2]</sup>**

*12.08.015 - Street tree planting and maintenance requirements.*

*All new construction or major redevelopment shall provide street trees adjacent to all street frontages. Species of trees shall be selected based upon vision clearance requirements, but shall in all cases be selected from the Oregon City Street Tree List or be approved by a certified arborist. If a setback sidewalk has already been constructed or the Development Services determines that the forthcoming street design shall include a setback sidewalk, then all street trees shall be installed with a planting strip. If existing street design includes a curb-tight sidewalk, then all street trees shall be placed within the front yard setback, exclusive of any utility easement.*

**Finding: Complies as proposed. Complies as Conditioned.** The applicant indicated that one tree will be planted for every 30 feet of frontage, but did not submit the calculation to demonstrate compliance with this standard. Prior to issuance of a permit associated with the proposed development, the applicant shall submit a plan for street trees in compliance with OCMC 12.08. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval**

*A. One street tree shall be planted for every thirty-five feet of property frontage. The tree spacing shall be evenly distributed throughout the total development frontage. The community development director may approve an alternative street tree plan if site or other constraints prevent meeting the placement of one street tree per thirty-five feet of property frontage.*

**Finding: Complies as Conditioned.** The applicant indicated that one tree will be planted for every 30 feet of frontage, but did not submit the calculation to demonstrate compliance with this standard. Prior to issuance of a permit associated with the proposed development, the applicant shall submit a plan for street trees in compliance with OCMC 12.08. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

*B. The following clearance distances shall be maintained when planting trees:*

- 1. Fifteen feet from streetlights;*
- 2. Five feet from fire hydrants;*
- 3. Twenty feet from intersections;*
- 4. A minimum of five feet (at mature height) below power lines.*

**Finding: Complies as Conditioned.** Prior to issuance of a permit associated with the proposed development the applicant shall submit a plan for street trees with street tree locations, location of street lights, fire hydrants or

power lines that demonstrates compliance with OCMC 12.08. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

*C. All trees shall be a minimum of two inches in caliper at six inches above the root crown and installed to city specifications.*

**Finding: Complies as proposed.** The applicant has indicated that they will plant trees which are a minimum of 2" in diameter. This detail is included in the final tree plan to be reviewed by the city prior to platting.

*D. All established trees shall be pruned tight to the trunk to a height that provides adequate clearance for street cleaning equipment and ensures ADA complaint clearance for pedestrians.*

**Finding: Not applicable:** No street trees exist onsite.

*12.08.020 - Street tree species selection.*

*The community development director may specify the species of street trees required to be planted if there is an established planting scheme adjacent to a lot frontage, if there are obstructions in the planting strip, or if overhead power lines are present.*

**Finding: Not applicable:** There are no adopted street tree plans for this site.

*12.08.025 - General tree maintenance.*

*Abutting property owners shall be responsible for the maintenance of street trees and planting strips. Topping of trees is permitted only under recommendation of a certified arborist, or other qualified professional, if required by city staff. Trees shall be trimmed appropriately. Maintenance shall include trimming to remove dead branches, dangerous limbs and to maintain a minimum seven-foot clearance above all sidewalks and ten-foot clearance above the street. Planter strips shall be kept clear of weeds, obstructing vegetation and trash.*

**Finding: Complies as proposed.** The applicant indicated that "maintenance of street trees and planting strips is anticipated to be the responsibility of the property owner and/or the hired management company." (Exhibit 2).

*12.08.035 - Public tree removal.*

*Existing street trees shall be retained and protected during construction unless removal is specified as part of a land use approval or in conjunction with a public facilities construction project, as approved by the community development director. A diseased or hazardous street tree, as determined by a registered arborist and verified by the City, may be removed if replaced. A non-diseased, non-hazardous street tree that is removed shall be replaced in accordance with the Table 12.08.035.*

*All new street trees will have a minimum two-inch caliper trunk measured six inches above the root crown. The community development director may approve off-site installation of replacement trees where necessary due to planting constraints. The community development director may additionally allow a fee in-lieu of planting the tree(s) to be placed into a city fund dedicated to planting trees in Oregon City in accordance with Oregon City Municipal Code 12.08.*

Table 12.08.035

Replacement Schedule for Trees Determined to be Dead, Diseased or Hazardous by a Certified Arborist		Replacement Schedule for Trees Not Determined to be Dead, Diseased or Hazardous by a Certified Arborist	
Diameter of tree to be Removed (Inches of diameter at 4-ft height)	Number of Replacement Trees to be Planted	Diameter of tree to be Removed (Inches of diameter at 4-ft height)	Number of Replacement Trees to be Planted
Any Diameter	1 Tree	Less than 6"	1 Tree
		6" to 12"	2 Trees
		13" to 18"	3 Trees
		19" to 24"	4 Trees

		25" to 30"	5 Trees
		31" and over	8 Trees

**Finding: Not applicable.** No trees are proposed to be removed in the public ROW

12.08.040 - Heritage Trees and Groves.

**Finding: Not applicable.** The applicant did not propose to designate or remove a heritage tree or grove.

## **CHAPTER 13.12 - STORMWATER MANAGEMENT**

13.12.050 - Applicability and exemptions.

*This chapter establishes performance standards for stormwater conveyance, quantity and quality. Additional performance standards for erosion prevention and sediment control are established in OCMC 17.47.*

A. *Stormwater Conveyance. The stormwater conveyance requirements of this chapter shall apply to all stormwater systems constructed with any development activity, except as follows:*

1. *The conveyance facilities are located entirely on one privately owned parcel;*
2. *The conveyance facilities are privately maintained; and*
3. *The conveyance facilities receive no stormwater runoff from outside the parcel's property limits.*

*Those facilities exempted from the stormwater conveyance requirements by the above subsection will remain subject to the requirements of the Oregon Uniform Plumbing Code. Those exempted facilities shall be reviewed by the building official.*

**Finding: Applicable.** Construction of improvements to public stormwater conveyance facilities is required to serve this development.

B. *Water Quality and Flow Control. The water quality and flow control requirements of this chapter shall apply to the following proposed uses or developments, unless exempted under subsection C:*

1. *Activities located wholly or partially within water quality resource areas pursuant to Chapter 17.49 that will result in the creation of more than five hundred square feet of impervious surface within the WQRA or will disturb more than one thousand square feet of existing impervious surface within the WQRA as part of a commercial or industrial redevelopment project. These square footage measurements will be considered cumulative for any given five-year period; or*
2. *Activities that create or replace more than five thousand square feet of impervious surface per parcel or lot, cumulated over any given five-year period.*

**Finding: Applicable.** The proposed development will create or replace more than 5000 sf of impervious area.

C. *Exemptions. The following exemptions to subsection B of this section apply:*

1. *An exemption to the flow control requirements of this chapter will be granted when the development site discharges to the Willamette River, Clackamas River or Abernethy Creek; and either lies within the one hundred-year floodplain or is up to ten feet above the design flood elevation as defined in Chapter 17.42, provided that the following conditions are met:*
  - a. *The project site is drained by a conveyance system that is comprised entirely of manmade elements (e.g. pipes, ditches, culverts outfalls, outfall protection, etc.) and extends to the ordinary high water line of the exempt receiving water; and*
  - b. *The conveyance system between the project site and the exempt receiving water has sufficient hydraulic capacity and erosion stabilization measures to convey discharges from the proposed conditions of the project site and the existing conditions from non-project areas from which runoff is collected.*
2. *Projects in the following categories are generally exempt from the water quality and flow control requirements:*
  - a. *Stream enhancement or restoration projects approved by the city.*
  - b. *Farming practices as defined by ORS 30.960 and farm use as defined in ORS 214.000; except that buildings associated with farm practices and farm use are subject to the requirements of this chapter.*
  - c. *Actions by a public utility or any other governmental agency to remove or alleviate an emergency condition.*

- d. Road and parking area preservation/maintenance projects such as pothole and square cut patching, surface sealing, replacing or overlaying of existing asphalt or concrete pavement, provided the preservation/maintenance activity does not expand the existing area of impervious coverage above the thresholds in subsection B of this section.
- e. Pedestrian and bicycle improvements (sidewalks, trails, pathways, and bicycle paths/lands) where no other impervious surfaces are created or replaced, built to direct stormwater runoff to adjacent vegetated areas.
- f. Underground utility projects that replace the ground surface with in-kind material or materials with similar runoff characteristics.
- g. Maintenance or repair of existing utilities.

**Finding: Not Applicable.** The proposed development does not meet the criteria for exemption.

D. *Uses Requiring Additional Management Practices.* In addition to any other applicable requirements of this chapter, the following uses are subject to additional management practices, as defined in the Public Works Stormwater and Grading Design Standards:

- 1. Bulk petroleum storage facilities;
- 2. Above ground storage of liquid materials;
- 3. Solid waste storage areas, containers, and trash compactors for commercial, industrial, or multi-family uses;
- 4. Exterior storage of bulk construction materials;
- 5. Material transfer areas and loading docks;
- 6. Equipment and/or vehicle washing facilities;
- 7. Development on land with suspected or known contamination;
- 8. Covered vehicle parking for commercial or industrial uses;
- 9. Industrial or commercial uses locating in high traffic areas, defined as average daily count trip of two thousand five hundred or more trips per day; and
- 10. Land uses subject to DEQ 1200-Z Industrial Stormwater Permit Requirements.

**Finding: Not Applicable.** The proposal does not contain elements requiring additional stormwater management practices.

#### 13.12.080 - Submittal requirements.

- A. Applications subject to stormwater conveyance, water quality, and/or flow control requirements of this chapter shall prepare engineered drainage plans, drainage reports, and design flow calculation reports in compliance with the submittal requirements of the Public Works Stormwater and Grading Design Standards.
- B. Each project site, which may be composed of one or more contiguous parcels of land, shall have a separate valid city approved plan and report before proceeding with construction.

**Finding: Complies as Conditioned.** The applicant shall provide engineered drainage plan(s), drainage report(s), and design flow calculation report(s) stamped and signed by a licensed engineer addressing all items from the Section 9.4 of the Public Works Stormwater and Grading Design Standards. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

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

An engineered drainage plan and/or drainage report shall be approved only upon making the following findings:

- A. The plan and report demonstrate how the proposed development and stormwater facilities will accomplish the purpose statements of this chapter.
- B. The plan and report meet the requirements of the Public Works Stormwater and Grading Design Standards adopted by resolution under Section 13.12.020.
- C. The storm drainage design within the proposed development includes provisions to adequately control runoff from all public and private streets and roof, footing, and area drains and ensures future extension of the current drainage system.
- D. Streambank erosion protection is provided where stormwater, directly or indirectly, discharges to open channels or streams.
- E. Specific operation and maintenance measures are proposed that ensure that the proposed stormwater quantity control facilities will be properly operated and maintained.

**Finding: Complies as Proposed.** The applicant shall provide engineered drainage plan(s), drainage report(s), and design flow calculation report(s) stamped and signed by a licensed engineer addressing all items from the

Section 9.4 of the Public Works Stormwater and Grading Design Standards. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

*13.12.100 - Alternative materials, alternative design and methods of construction.*

*The provisions of this chapter are not intended to prevent the use of any material, alternate design or method of construction not specifically prescribed by this chapter or the Public Works Stormwater and Grading Design Standards, provided any alternate has been approved and its use authorized by the city engineer. The city engineer may approve any such alternate, provided that the city engineer finds that the proposed design is satisfactory and complies with the intent of this chapter and that the material, method, or work offered is, for the purpose intended, at least the equivalent of that prescribed by this chapter in effectiveness, suitability, strength, durability and safety. The city engineer shall require that sufficient evidence or proof be submitted to substantiate any claims that may be made regarding its use. The details of any action granting approval of an alternate shall be recorded and entered in the city files.*

**Finding: Not Applicable.** The applicant has not proposed alternative design methods requiring special approval by the City Engineer. However, should the applicant propose such methods with the public facilities construction plan submittal, the proposal will be reviewed and approved by the City Engineer as required.

*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.

*13.12.140 - Maintenance of public stormwater facilities.*

- A. *A stormwater facility that receives stormwater runoff from a public right-of-way shall be a public facility. Upon expiration of the warranty period and acceptance by the city as described below, the city shall be responsible for maintenance of those public stormwater facilities. Access for maintenance of the stormwater facilities shall be provided to the city through the granting of a stormwater easement or other means acceptable to the city.*
- B. *Responsibility for maintenance of stormwater facilities including all landscaping, irrigation systems, structures and appurtenances shall remain with the property owner/developer for two years (known as the warranty period). The owner/developer shall provide the city a separate two-year landscaping maintenance bond for one hundred ten percent of the landscaping cost. Transfer of maintenance of stormwater conveyance systems shall occur when the city accepts the stormwater conveyance system.*
- C. *The city will perform an inspection of the development's entire publicly maintained stormwater system approximately forty-five days before the two-year warranty period expires. The stormwater system must be found to be in a clean, functional condition by the city engineer before acceptance of maintenance responsibility by the city.*

**Finding: Complies as proposed.** Responsibility for maintenance of stormwater facilities including all landscaping, irrigation systems, structures and appurtenances shall remain with the property owner/developer for two years (known as the warranty period). The owner/developer shall provide the city a separate two-year landscaping maintenance bond for one hundred ten percent of the landscaping cost or cash in lieu. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

*13.12.145 - Maintenance of private stormwater facilities.*

- A. *An applicant shall submit an operation and maintenance plan for each proposed stormwater facilities, unless exempted in the Public Works Stormwater and Grading Design Standards. The information in the operation and maintenance plan shall satisfy the requirements of the Public Works Stormwater and Grading Design Standards.*



- B. *Private owners are required to inspect and maintain stormwater facilities on their property in accordance with an approved operation and maintenance plan. A maintenance log is required to document facility inspections and specific maintenance activities. The log shall be available to city inspection staff upon request.*
- C. *Failure to operate or maintain a stormwater facility according to the operation and maintenance plan may result in an enforcement action under Section 13.12.150.*

**Finding: Complies as Conditioned.** The proposed public stormwater facility does not appear to be adequately sized for the addition of single-family dwellings. Therefore, private stormwater facilities may be required of the development. The applicant shall execute a Maintenance Covenant and Access Easement for any private stormwater facilities to be constructed within the development. The Maintenance Covenant and Access Easement shall include an operation and maintenance plan for said stormwater facilities. The Maintenance Covenant and Access Easement shall be recorded by the City as required by the Public Works Stormwater and Grading Design Standards. The applicant shall pay all fees associated with processing and recording the Maintenance Covenant and Access Easement. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

#### **CHAPTER 15.48 - GRADING, FILLING AND EXCAVATING**

##### *15.48.030 Applicability—Grading permit required.*

A. *A city-issued grading permit shall be required before the commencement of any of the following filling or grading activities:*

- 1. Grading activities in excess of ten cubic yards of earth;*
- 2. Grading activities which may result in the diversion of existing drainage courses, both natural and man-made, from their natural point of entry or exit from the grading site;*
- 3. Grading and paving activities resulting in the creation of impervious surfaces greater than two thousand square feet or more in area;*
- 4. Any excavation beyond the limits of a basement or footing excavation, having an unsupported soil height greater than five feet after the completion of such a structure; or*
- 5. Grading activities involving the clearing or disturbance of one-half acres (twenty-one thousand seven hundred eighty square feet) or more of land.*

**Finding: Applicable.** The development proposes grading and paving activities resulting in the creation of impervious surfaces greater than two thousand square feet.

##### *15.48.090 Submittal requirements.*

*An engineered grading plan or an abbreviated grading plan shall be prepared in compliance with the submittal requirements of the Public Works Stormwater and Grading Design Standards whenever a city approved grading permit is required. In addition, a geotechnical engineering report and/or residential lot grading plan may be required pursuant to the criteria listed below.*

A. *Abbreviated Grading Plan. The city shall allow the applicant to submit an abbreviated grading plan in compliance with the submittal requirements of the Public Works Stormwater and Grading Design Standards if the following criteria are met:*

- 1. No portion of the proposed site is within the flood management area overlay district pursuant to [Chapter 17.42](#), the unstable soils and hillside constraints overlay district pursuant to [Chapter 17.44](#), or a water quality resource area pursuant to [Chapter 17.49](#); and*

- 2. The proposed filling or grading activity does not involve more than fifty cubic yards of earth.*

B. *Engineered Grading Plan. The city shall require an engineered grading plan in compliance with the submittal requirements of the Public Works Stormwater and Grading Design Standards to be prepared by a professional engineer if the proposed activities do not qualify for abbreviated grading plan.*

C. *Geotechnical Engineering Report. The city shall require a geotechnical engineering report in compliance with the minimum report requirements of the Public Works Stormwater and Grading Design Standards to be prepared by a professional engineer who specializes in geotechnical work when any of the following site conditions may exist in the development area:*

- 1. When any publicly maintained facility (structure, street, pond, utility, park, etc.) will be supported by any engineered fill;*
- 2. When an embankment for a stormwater pond is created by the placement of fill;*
- 3. When, by excavation, the soils remaining in place are greater than three feet high and less than twenty feet wide.*

*D. Residential Lot Grading Plan. The city shall require a residential lot grading plan in compliance with the minimum report requirements of the Public Works Stormwater and Grading Design Standards to be prepared by a professional engineer for all land divisions creating new residential building lots or where a public improvement project is required to provide access to an existing residential lot.*

**Finding: Complies as Conditioned.** The applicant provided a preliminary engineered grading plan demonstrating general compliance with the City's Public Works requirements for grading standards. The applicant shall provide a Residential Lot Grading Plan adhering to the State of Oregon Structural Specialty Code, Chapter 18 and the Oregon City Public Works Stormwater and Grading Design Standards. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

#### **CHAPTER 17.47 - EROSION AND SEDIMENT CONTROL**

##### **17.47.030 - Applicability.**

*A. This chapter, which may also be referred to as "erosion control" in this Code, applies to development that may cause visible or measurable erosion on any property within the city limits of Oregon City.*

*B. This chapter does not apply to work necessary to protect, repair, maintain or replace existing structures, utility facilities, roadways, driveways, accessory uses and exterior improvements in response to emergencies, provided that after the emergency has passed, adverse impacts are mitigated in accordance with applicable standards.*

**Finding: Applicable.** The applicant has proposed to construct a new subdivision with associated street improvements.

##### **17.47.060 - Permit required.**

*The applicant must obtain an erosion and sediment control permit prior to, or contemporaneous with, the approval of an application for any building, land use or other city-issued permit that may cause visible or measurable erosion.*

**Finding: Complies as Conditioned.** The applicant seeks approval of an application for land use which requires construction that may cause visible or measurable erosion. The applicant shall obtain an Erosion and Sediment Control Permit from the City prior to beginning construction work associated with the project. The applicant shall obtain a 1200-C (NPDES) permit from the Oregon Department of Environmental Quality (DEQ) prior to the release of any permit from the City and prior to beginning construction work associated with the project. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

##### **17.47.070 - Erosion and sediment control plans.**

*A. An application for an erosion and sediment control permit shall include an erosion and sediment control plan, which contains methods and interim measures to be used during and following construction to prevent or control erosion prepared in compliance with City of Oregon City public works standards for erosion and sediment control. These standards are incorporated herein and made a part of this title and are on file in the office of the city recorder.*

*B. Approval Standards. An erosion and sediment control plan shall be approved only upon making the following findings:*

- 1. The erosion and sediment control plan meets the requirements of the City of Oregon City public works standards for erosion and sediment control incorporated by reference as part of this chapter;*
- 2. The erosion and sediment control plan indicates that erosion and sediment control measures will be managed and maintained during and following development. The erosion and sediment control plan indicates that erosion and sediment control measures will remain in place until disturbed soil areas are permanently stabilized by landscaping, grass, approved mulch or other permanent soil stabilizing measures.*

*C. The erosion and sediment control plan shall be reviewed in conjunction with the requested development approval. If the development does not require additional review, the manager may approve or deny the permit with notice of the decision to the applicant.*

*D. The city may inspect the development site to determine compliance with the erosion and sediment control plan and permit.*

*E. Erosion that occurs on a development site that does not have an erosion and sediment control permit, or that results from a failure to comply with the terms of such a permit, constitutes a violation of this chapter.*

*F. If the manager finds that the facilities and techniques approved in an erosion and sediment control plan and permit are not sufficient to prevent erosion, the manager shall notify the owner or his/her designated representative. Upon receiving notice, the owner or his/her designated representative shall immediately install interim erosion and sediment control measures as specified in the City of Oregon City public works standards for erosion and sediment control. Within three days from the date of notice, the owner or his/her designated representative shall submit a revised erosion and sediment control plan to the city. Upon approval of the revised plan and issuance of an amended permit, the owner or his/her designated representative shall immediately implement the revised plan.*

*G. Approval of an erosion and sediment control plan does not constitute an approval of permanent road or drainage design (e.g., size and location of roads, pipes, restrictors, channels, retention facilities, utilities, etc.).*

**Finding: Complies as Conditioned.** The applicant shall provide an Erosion Prevention and Sedimentation Control Plan which meets the requirements of the City of Oregon City public works standards for erosion and sediment control. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

#### **CHAPTER 17.49 NATURAL RESOURCE OVERLAY DISTRICT**

The applicant submitted an assessment of the Natural Resource Overlay District onsite, as prepared by John McConnaughey, PWS of Environmental Technology Consultants dated February 2018.

excerpts from the report are provided below:

Oregon City maps showing a small ditched and straitened stream following the North property boundary are essentially correct. The surveyor's mapping of the stream centerline was close to the position shown on city maps, and ETC determined that it was likely a jurisdictional feature. A survey of the two lots found no additional jurisdictional features.

Further examination of the stream and surrounding topography found that it likely meets the definition of an intermittent stream draining less than 100 acres, and has side slopes of less than 25%. Corroborating information is found in Oregon City Water Resources Report WR 01-08 written for the Dalles subdivision on the west boundary of the subject parcels, (Partition Plat 2005-112). That report also determined the stream was intermittent and drained less than 100 acres.

The width of the vegetated corridor according to Table 17.49.110 is then 15'. City maps show an NROD vegetated buffer of about 60FT. The applicant, therefore, does not accept the mapped boundary and instead proposes the 15FT boundary shown in this report.

Aerial photos from 1999 to the present suggest the vegetation, land and buildings are relatively unchanged in the past 18 years. There is a small older single-family house, four sheds, and a garage. Most of the property is cleared and maintained as a lawn, although it had not been mowed for a while on my visit. There are some scattered fruit trees, some European Hawthorn on the north side along the stream, and a large and two medium size deciduous trees on the south side inside a fenced yard in back of the house.

Lot 2-2E-28BC-00900 is developed with three sheds and most of the garage used by the house on lot 1000. The garage straddles the lot line between lot 900 and 1000, with most of the garage on lot 900, and the south wall on lot 1000. Lot 2-2E-28BC-01000 is developed with an older single family home, a shed, and a portion of the garage.

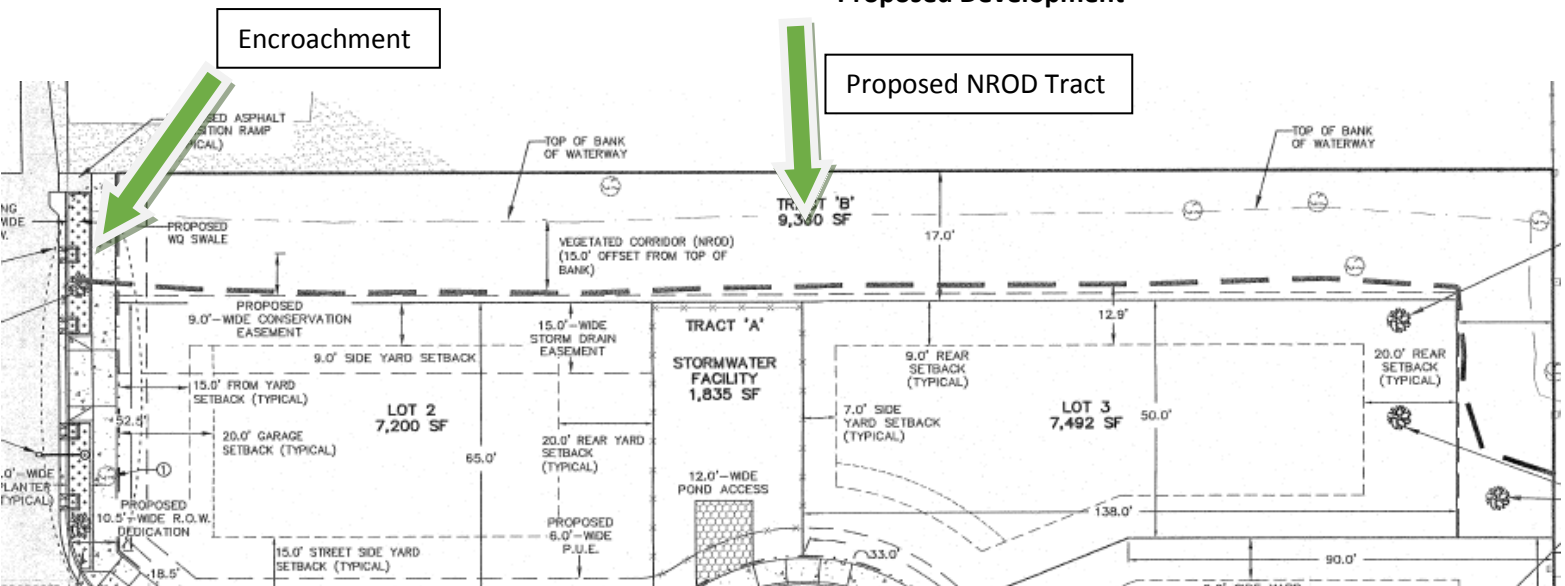
There was a small trickle of water in the stream on my visit in December 2017. Waterman and Bublitz [in 2001] also reported a small trickle of water when they observed the stream in February 2001. They concluded the stream was ephemeral, and I concur with that assessment.

The NROD buffer meets the definition of a degraded vegetated corridor, due to the historic maintenance of the area as a lawn of European grasses and scattered trees. A portion of the west end also has blackberries that overhang from the neighboring properties.

### Existing Conditions



### Proposed Development



The applicant indicates that this project does not directly impact any wetland or stream areas, with the exception that the stormwater detention facility will discharge via a pipe to the same stormwater inlet that Stream "A" drains into. NROD areas will become part of residential lots in order for the subdivision

development to meet the minimum lot size requirements of R8. No ground or vegetation disturbances are proposed within the NROD area.

However, the required dedication and construction of a sidewalk and planter strip on Hiram Avenue will create a small amount of construction into the NROD buffer which will require proportional mitigation through the Option 2 NROD mitigation process. A clear and objective condition has been added to address this proposed encroachment which is allowed through the Type II NROD review process.

#### **17.49.030**

**Finding: Complies as Proposed.** An intermittent or ephemeral stream flows westerly through the eastern portion of the subject site. The stream is mapped as a Title 3 Water Quality Resource on the City's NROD map.

#### **17.49.050** *Emergencies*

*The provisions of this ordinance do not apply to work necessary to protect, repair, maintain, or replace existing structures, utility facilities, roadways, driveways, accessory uses and exterior improvements in response to emergencies. After the emergency has passed, any disturbed native vegetation areas shall be replanted with similar vegetation found in the Oregon City Native Plant List pursuant to the mitigation standards of Section 17.49.180. For purposes of this section emergency shall mean any man-made or natural event or circumstance causing or threatening loss of life, injury to person or property, and includes, but is not limited to fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills or releases of oil or hazardous material, contamination, utility or transportation disruptions, and disease.*

**Finding: Not applicable.** This application is not an emergency.

#### **17.49.060** *Consistency and Relationship to Other Regulations*

*A. Where the provisions of the NROD are less restrictive or conflict with comparable provisions of the Oregon City Municipal Code, other City requirements, regional, state or federal law, the provisions that provide the greater protection of the resource shall govern.*

**Finding: Not applicable.** The application states that the plans show that there are no impacts below OHW mark for the intermittent stream. However, the conditioned street improvement will create some impact. It is up to the applicant to determine if this additional street widening will trigger any additional review from the DSL and/or the Army Corps of Engineers. No conflicts within the Natural Resource Overlay District have arisen.

#### **17.49.060.B.** *Compliance with Federal and State Requirements.*

*a. If the proposed development requires the approval of any other governmental agency, such as the Division of State Lands or the U.S. Army Corps of Engineers, the applicant shall make application for such approval prior to or simultaneously with the submittal of its development application to the City. The planning division shall coordinate City approvals with those of other agencies to the extent necessary and feasible. Any permit issued by the City pursuant to this chapter shall not become valid until other agency approvals have been obtained or those agencies indicate that such approvals are not required.*

*b. The requirements of this chapter apply only to areas within the NROD and to locally significant wetlands that may be added to the boundary during the course of development review pursuant to Section 17.49.035. If, in the course of a development review, evidence suggests that property outside the NROD may contain a wetland or other protected water resource, the provisions of this chapter shall not be applied to that development review. However, the omission shall not excuse the applicant from satisfying any state and federal wetland requirements which are otherwise applicable. Those requirements apply in addition to, and apart from the requirements of the City's comprehensive plan and this code.*

**Finding: Complies as proposed.** No evidence suggests that property outside the NROD may contain a wetland or other protected water resource.

#### **17.49.[0]70** - Prohibited uses.

*The following development and activities are not allowed within the NROD:*

- A. Any new gardens, lawns, structures, development, other than those allowed outright (exempted) by the NROD or that is part of a regulated use that is approved under prescribed conditions. Note: Gardens and lawns within the NROD that existed prior to the time the overlay district was applied to a subject property are allowed to continue but cannot expand further into the overlay district.
- B. New lots that would have their buildable areas for new development within the NROD are prohibited.
- C. The dumping of materials of any kind is prohibited except for placement of fill as provided in (D) below. The outside storage of materials of any kind is prohibited unless they existed before the overlay district was applied to a subject property. Uncontained areas of hazardous materials as defined by the Oregon Department of Environmental Quality (ORS 466.005) are also prohibited.
- D. Grading, the placement of fill in amounts greater than ten cubic yards, or any other activity that results in the removal of more than ten percent of the existing native vegetation on any lot within the NROD is prohibited, unless part of an approved development activity.

**Finding: Not applicable.** The applicant is not proposing any prohibited uses within the NROD boundary and proposed tract.

**17.49.[0]80 –Uses allowed outright (Exempted).**

The following uses are allowed within the NROD and do not require the issuance of an NROD permit:

- A. Stream, wetland, riparian, and upland restoration or enhancement projects as authorized by the City.
- B. Farming practices as defined in ORS 215.203 and farm uses, excluding buildings and structures, as defined in ORS 215.203.
- C. Utility service using a single utility pole.
- D. Boundary and topographic surveys leaving no cut scars greater than three inches in diameter on live parts of native plants listed in the Oregon City Native Plant List.
- E. Soil tests, borings, test pits, monitor well installations, and other minor excavations necessary for geotechnical, geological or environmental investigation, provided that disturbed areas are restored to pre-existing conditions as approved by the Community Development Director.
- F. Trails meeting all of the following:
  - 1. Construction shall take place between May 1 and October 30 with hand held equipment;
  - 2. Widths shall not exceed 48 inches and trail grade shall not exceed 20 percent;
  - 3. Construction shall leave no scars greater than three inches in diameter on live parts of native plants;
  - 4. Located no closer than 25 feet to a wetland or the top of banks of a perennial stream or 10 feet of an intermittent stream;
  - 5. No impervious surfaces; and
  - 6. No native trees greater than one (1) inch in diameter may be removed or cut, unless replaced with an equal number of native trees of at least 2-inch diameter and planted within 10 feet of the trail.
- G. Land divisions provided they meet the following standards, and indicate the following on the final plat:
  - 1. Lots shall have their building sites (or buildable areas) entirely located at least 5 feet from the NROD boundary shown on the City's adopted NROD map. For the purpose of this subparagraph, "building site" means an area of at least 3,500 square feet with minimum dimensions of 40 feet wide by 40 feet deep;
  - 2. All public and private utilities (including water lines, sewer lines or drain fields, and stormwater disposal facilities) are located outside the NROD;
  - 3. Streets, driveways and parking areas where all pavement shall be located at least 10 feet from the NROD; and
  - 4. The NROD portions of all lots are protected by:
    - a. A conservation easement; or
    - b. A lot or tract created and dedicated solely for unimproved open space or conservation purposes.
- H. Site Plan and Design Review applications where all new construction is located outside of the NROD boundary shown on the City's adopted NROD map, and the NROD area is protected by a conservation easement approved in form by the City.
- I. Routine repair and maintenance of existing structures, roadways, driveways and utilities.
- J. Replacement, additions, alterations and rehabilitation of existing structures, roadways, utilities, etc., where the ground level impervious surface area is not increased.
- K. Measures mandated by the City of Oregon City to remove or abate nuisances or hazardous conditions.
- L. Planting of native vegetation and the removal of non-native, invasive vegetation (as identified on the Oregon City Native Plant List), and removal of refuse and fill, provided that:
  - 1. All work is done using hand-held equipment;



2. No existing native vegetation is disturbed or removed; and
3. All work occurs outside of wetlands and the top-of-bank of streams.

M. Activities in which no more than one hundred square feet of ground surface is disturbed outside of the bankfull stage of water bodies and where the disturbed area is restored to the pre-construction conditions, notwithstanding that disturbed areas that are predominantly covered with invasive species shall be required to remove the invasive species from the disturbance area and plant trees and native plants pursuant to this Chapter.

**Finding: Not applicable.** The proposed development includes activities allowed under this section by the creation of an NROD tract. Conditions and Restrictions will be placed on the tract to ensure future compliance with the standards set forth in this chapter additional findings can be found in OCMC 17.49.100.

#### **17.49.090** *Uses Allowed Under Prescribed Conditions*

*The following uses within the NROD are subject to the applicable standards listed in Sections 17.49.100 through 17.49.190 pursuant to a Type II process:*

- A. Alteration to existing structures within the NROD when not exempted by Section 17.49.080, subject to Section 17.49.130.
- B. A residence on a highly constrained vacant lot of record that has less than 3,000 square feet of buildable area, with minimum dimensions of 50 feet by 50 feet, remaining outside the NROD portion of the property, subject to the maximum disturbance allowance prescribed in subsection 17.49.120.A.
- C. A land division that would create a new lot for an existing residence currently within the NROD, subject to Section 17.49.160.
- D. Land divisions when not exempted by Section 17.49.080, subject to the applicable standards of Section 17.49.160.
- E. Trails/pedestrian paths when not exempted by Section 17.49.080, subject to Section 17.49.170 (for trails) or Section 17.49.150 (for paved pedestrian paths).
- F. New roadways, bridges/creek crossings, utilities or alterations to such facilities when not exempted by Section 17.49.080,
- G. Roads, bridges/creek crossings Subject to Section 17.49.150 --
- H. Utility lines subject to Section 17.49.140 (
- I. Stormwater detention or pre-treatment facilities subject to Section 17.49.155 ().
- J. Institutional, Industrial or Commercial development on a vacant lot of record situated in an area designated for such use that has more than 75% of its area covered by the NROD, subject to subsection 17.49.120(B).
- K City, county and state capital improvement projects, including sanitary sewer, water and storm water facilities, water stations, and parks and recreation projects.

**Finding: Complies as proposed.** The applicant indicates that this project does not directly impact any wetland or stream areas, with the exception that the stormwater detention facility will be discharged via a pipe to the same stormwater inlet that Stream "A" drains into. NROD areas will become part of residential lots in order for the subdivision development to meet the minimum lot size requirements of R8. No ground or vegetation disturbances are proposed within the NROD area.

However, the required dedication and construction of a sidewalk and planter strip on Hiram Avenue will create a small amount of construction into the NROD buffer which will require proportional mitigation through the Option 2 NROD mitigation process. A clear and objective condition has been added to address this proposed encroachment which is allowed through the Type II NROD review process.

#### **17.49.100** *General Development Standards*

*The following standards apply to all Uses Allowed under Prescribed Conditions within the NROD with the exception of rights of ways (subject to Section 17.49.150), trails (subject to Section 17.49.170), utility lines (subject to Section 17.49.140), land divisions (subject to Section 17.49.160), and mitigation projects (subject to Section 17.49.180 or 17.49.190):*

- A. Native trees may be removed only if they occur within 10 feet of any proposed structures or within 5 feet of new driveways or if deemed not wind-safe by a certified arborist. Trees listed on the Oregon City Nuisance Plant List or Prohibited Plant List are exempt from this standard and may be removed. A protective covenant shall be required for any native trees that remain;

**Finding: Not applicable.** None of the uses identified above are being proposed in the NROD tract.

**17.49.100.B.** *The Community Development Director may allow the landscaping requirements of the base zone, other than landscaping required for parking lots, to be met by preserving, restoring and permanently protecting habitat on development sites in the Natural Resource Overlay District.*

**Finding: Not applicable.** The applicant is not proposing to meet subdivision required landscaping requirements within the NROD.

**17.49.100.C.** *All vegetation planted in the NROD shall be native and listed on the Oregon City Native Plant List;*

**Finding: Complies as Conditioned.** Prior to issuance of a permit associated with the proposed development the applicant shall submit a planting list which complies with the standards in OCMC 17.49. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

**17.49.100.D.** *Grading is subject to installation of erosion control measures required by the City of Oregon;*

**Finding:** Erosion control measure will be installed and required as part of the Development review process for the street improvement.

**17.49.100.E.** *The minimum front, street, or garage setbacks of the base zone may be reduced to any distance between the base zone minimum and zero in order to minimize the disturbance area within the NROD portion of the lot;*

**Finding: Not applicable.** A reduction in the minimum setback has not been proposed.

**17.49.100.F.** *Any maximum required setback in any zone, such as for multi-family, commercial or institutional development, may be increased to any distance between the maximum and the distance necessary to minimize the disturbance area within the NROD portion of the lot;*

**Finding: Not applicable.** An increase in the maximum setback has not been proposed.

**17.49.100.G.** *Fences are allowed only within the disturbance area;*

**Finding: Not applicable.** The applicant has not proposed a fence within the vegetated corridor. Retaining walls are not subject to this standard.

**17.49.100.H.** *Incandescent lights exceeding 200 watts (or other light types exceeding the brightness of a 200 watt incandescent light) shall be placed or shielded so that they do not shine directly into resource areas;*

**Finding: Complies as proposed.** The NROD tract abuts the rear of Lots 2,3&4 and the stormwater facility. No lighting exceeding 200 watts has been proposed in this area.

**17.49.100.I.** *If development will occur within the 100 yr. floodplain, the FEMA floodplain standards of Chapter 17.42 shall be met; and*

**Finding:** No applicable- the site is not located within the Oregon City Flood Overlay District.

**17.49.100.J.** *Mitigation of impacts to the regulated buffer is required, subject to Section 17.49.180 or 17.49.190.*

**Finding: Complies as conditioned** The applicant indicates that this project does not directly impact any wetland or stream areas, with the exception that the stormwater detention facility will be discharged via a pipe to the same stormwater inlet that Stream "A" drains into. NROD areas will become part of residential lots in order for the subdivision development to meet the minimum lot size requirements of R8. No ground or vegetation disturbances are proposed within the NROD area.

However, the required dedication and construction of a sidewalk and planter strip on Hiram Avenue will create a small amount of construction into the NROD buffer which will require proportional mitigation through the Option 2 NROD mitigation process. A clear and objective condition has been added to address this proposed encroachment which is allowed through the Type II NROD review process.

**17.49.110** *Width of Vegetated Corridor.*



*Calculation of Vegetated Corridor Width within City Limits. The NROD consists of a vegetated corridor measured from the top of bank or edge of a protected habitat or water feature. The minimum required width is the amount of buffer required on each side of a stream, or on all sides of a feature if non-linear. The width of the vegetated corridor necessary to adequately protect the habitat or water feature is specified in Table 17.49.110.*

**Table 17.49.110**

<i>Protected Water Feature Type (see definitions)</i>	<i>Slope Adjacent to Protected Water Feature</i>	<i>Starting Point for Measurements from Water Feature</i>	<i>Width of Vegetated Corridor (see Note 1)</i>
<i>Anadromous fish-bearing streams</i>	<i>Any slope</i>	<ul style="list-style-type: none"> <li>• <i>Edge of bankfull flow</i></li> </ul>	<i>200 feet</i>
<i>Intermittent streams with slopes less than 25 percent and which drain less than 100 acres</i>	<i>&lt; 25 percent</i>	<ul style="list-style-type: none"> <li>• <i>Edge of bankfull flow</i></li> </ul>	<i>15 feet</i>
<i>All other protected water features</i>	<i>&lt; 25 percent</i>	<ul style="list-style-type: none"> <li>• <i>Edge of bankfull flow</i></li> <li>• <i>Delineated edge of Title 3 wetland</i></li> </ul>	<i>50 feet</i>
	<i>≥ 25 percent for 150 feet or more (see Note 2)</i>		<i>200 feet</i>
	<i>≥ 25 percent for less than 150 feet (see Note 2)</i>		<i>Distance from starting point of measurement to top of ravine (break in ≥25 percent slope) (See Note 3) plus 50 feet.</i>

**Notes:**

1. Required width (measured horizontally) of vegetated corridor unless reduced pursuant to the provisions of Section 17.49.050(I).
2. Vegetated corridors in excess of fifty feet apply on steep slopes only in the uphill direction from the protected water feature.
3. Where the protected water feature is confined by a ravine or gully, the top of the ravine is the break in the ≥ 25 percent slope.

*B. Habitat Areas within City Parks. For habitat and water features identified by Metro as regionally significant which are located within city parks, the NROD Boundary shall correspond to the Metro Regionally Significant Habitat Map.*

*C. Habitat Areas outside city limit / within UGB. For habitat and water features identified by Metro as regionally significant which are located outside of the city limits as of the date of adoption of this ordinance, the minimum corridor width from any non-anadromous fish bearing stream or wetland shall be fifty feet (50').*

**Finding: Complies as proposed.** The Natural Resource Overlay District associated with this development has been found to be an intermittent or ephemeral stream. The vegetated corridor associated with Stream A is 15 feet.

**17.49.120 Maximum Disturbance Allowance for Highly Constrained Lots of Record**

*In addition to the General Development Standards of Section 17.49.100, the following standards apply to a vacant lot of record that is highly constrained by the NROD, per subsections 17.49.90(B) and 17.49.90(F):*

- A. *Standard for Residential Development. In the NROD where the underlying zone district is zoned Residential (R-10, R-8, R-6, R-5, R-3.5): the maximum disturbance area allowed for new residential development within the NROD area of the lot is 3,000 square feet.*
- B. *Standard for all developments not located in R-10, R-8, R-6, R-5, and R-3.5. For all other underlying zone districts, including R-2 multifamily, the maximum disturbance area allowed for a vacant, constrained lot of record development within the NROD is that square footage which when added to the square footage of the lot lying outside the NROD portion equals 25% of the total lot area.*

*[1] Lots that are entirely covered by the NROD will be allowed to develop 25% of their area.*

*[1] Note: This can be determined by (1) Multiplying the total square footage of the lot by .25; (2) Subtracting from that amount the square footage of the lot that is located outside the NROD; (3) The result is the maximum square footage of disturbance to be allowed in the NROD portion of the lot. If the result is < or = to 0, no disturbance is permitted and the building shall be located outside of the boundary.*

- C. *In all areas of Oregon City, the disturbance area of a vacant, highly constrained lot of record within the NROD shall be set back at least 50 feet from the top of bank on Abernethy Creek, Newell Creek, or Livesay Creek or 25 feet from the top of bank of any tributary of the afore-mentioned Creeks, other water body, or from the delineated edge of a wetland located within the NROD area.*
- D. *If the highly constrained lot of record cannot comply with the above standards, a maximum 1500 square foot disturbance within the NROD area may be allowed*

**Finding: Not applicable.** The site is not a highly constrained lot of record.

#### **17.49.130 Existing Development Standards**

*In addition to the General Development Standards of Section 17.49.100, the following standards apply to alterations and additions to existing development within the NROD, except for trails, rights of way, utility lines, land divisions and mitigation projects. Replacement, additions, alterations and rehabilitation of existing structures, roadways, utilities, etc., where the ground level impervious surface area is not increased are exempt from review pursuant to Section 17.49.080(J). As of June 1, 2010, applicants for alterations and additions to existing development that are not exempt pursuant to Section 17.49.080(J) shall submit a Type II or Type III application pursuant to this section. The application shall include a site plan which delineates a permanent disturbance area that includes all existing buildings, parking and loading areas, paved or graveled areas, patios and decks. The same delineated disturbance area shall be shown on every subsequent proposal for alterations and additions meeting this standard.*

- A. *The following alterations and additions to existing development are permitted subject to the following standards.*
  - 1. *Alterations or additions that cumulatively total up to a maximum of five-hundred (500) square feet of additional disturbance area after June 1, 2010 shall be processed as a Type II permit pursuant to this Chapter. The new disturbance area shall not encroach closer than 1/2 of the distance of the regulated NROD buffer.*
  - 2. *Alterations or additions that cumulatively exceed five-hundred (500) square feet of additional disturbance area or which propose encroachment closer than 1/2 of the distance of the regulated NROD buffer after June 1, 2010 shall be processed as a Type III permit pursuant to Section 17.49.200, Adjustment from Standards.*

**Finding: Not applicable.** No development is being proposed within the delimited NROD boundary.

#### **17.49.130.B. Mitigation is required, subject to Section 17.49.180 or 17.49.190.**

**Finding: Not applicable.** The applicant indicates that this project does not directly impact any wetland or stream areas, with the exception that the stormwater detention facility will be discharged via a pipe to the same stormwater inlet that Stream "A" drains into. NROD areas will become part of residential lots in order for the subdivision development to meet the minimum lot size requirements of R8. No ground or vegetation disturbances are proposed within the NROD area.

However, the required dedication and construction of a sidewalk and planter strip on Hiram Avenue will create a small amount of construction into the NROD buffer which will require proportional mitigation through the Option 2 NROD mitigation process. A clear and objective condition has been added to address this proposed encroachment which is allowed through the Type II NROD review process.

**17.49.140 Standards for Utility Lines**

*The following standards apply to new utilities, private connections to existing or new utility lines, and upgrades of existing utility lines within the NROD:*

- A. The disturbance area for private connections to utility lines shall be no greater than 10 feet wide;*
- B. The disturbance area for the upgrade of existing utility lines shall be no greater than 15 feet wide;*
- C. New utility lines shall be within the right-of-way, unless reviewed under D.*
- D. New utility lines that cross above or underneath a drainage way, wetland, stream, or ravine within the NROD but outside of a right-of-way shall be processed as a Type III permit pursuant to Section 17.49.200, Adjustment from Standards.*
- E. No fill or excavation is allowed within the ordinary high water mark of a stream without the approval of the Division of State Lands and/or the U.S. Army Corps of Engineers;*
- F. The Division of State Lands must approve any work that requires excavation or fill in a wetland;*
- G. Native trees more than 10 inches in diameter shall not be removed unless it is shown that there are no feasible alternatives; and*
- H. Each 6 to 10-inch diameter native tree cut shall be replaced at a ratio of three trees for each one removed. Each 11-inch or greater diameter native tree shall be replaced at a ratio of five trees for each removed. The replacement trees shall be a minimum one-half inch diameter and selected from the Oregon City Native Plant List. All trees shall be planted on the applicant's site. Where a utility line is approximately parallel with the stream channel, at least half of the replacement trees shall be planted between the utility line and the stream channel.*
- I. Mitigation is required, subject to Section 17.49.180 or 17.49.190.*

**Finding: Complies as Conditioned.** No utility lines are being proposed within the NROD buffer. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

**17.49.150 Standards for Vehicular or Pedestrian Paths and Roads**

*The following standards apply to public rights-of-way and private roads within the NROD, including roads, bridges/stream crossings, driveways and pedestrian paths with impervious surfaces:*

- A. Stream crossings shall be limited to the minimum number and width necessary to ensure safe and convenient pedestrian, bicycle and vehicle connectivity, and shall cross the stream at an angle as close to perpendicular to the stream channel as practicable. Bridges shall be used instead of culverts wherever practicable.*

**Finding: Complies as conditioned.** The applicant shall work with the Development Services to determine if the sidewalk portion of Hiram Avenue that perpetually crosses Stream A can be designed as a bridge element. A culvert can only be utilized in this section if the city determines that a bridge is impracticable.

- 17.49.150.B. Where the right-of-way or private road crosses a stream the crossing shall be by bridge or a bottomless culvert;*

**Finding: Not applicable.** The applicant shall work with the Development Services to determine if the sidewalk portion of Hiram Avenue that perpetually crosses Stream A can be designed as a bridge element. A culvert can only be utilized in this section if the city determines that a bridge is impracticable.

- 17.49.150.C. No fill or excavation shall occur within the ordinary high water mark of a stream without the approval of the Division of State Lands and/or the U.S. Army Corps of Engineers;*

**Finding: Not applicable.** No fill or excavation is proposed to occur within the ordinary high water mark of the stream.

- 17.49.150.D. If the Oregon Department of State Lands (DSL) has jurisdiction over any work that requires excavation or fill in a wetland, required permits or authorization shall be obtained from DSL prior to release of a grading permit;*

**Finding: Not applicable:** No wetlands have been found onsite.

- 17.49.150.E. Any work that will take place within the banks of a stream shall be conducted between June 1 and August 31, or shall be approved by the Oregon Department of Fish and Wildlife; and*

**Finding: Not applicable.** No fill or excavation is proposed to occur within the ordinary high water mark of the stream.

**17.49.150. F.** *Mitigation is required, subject to Section 17.49.180 or 17.49.190.*

**Finding: Complies as Conditioned.** The required dedication and construction of a sidewalk and planter strip on Hiram Avenue will create a small amount of construction/disturbance into the NROD buffer which will require proportional mitigation through the Option 2 NROD mitigation process. A clear and objective condition has been added to this report to address this proposed encroachment which is allowed through the Type II NROD review process.

**17.49.155 Standards for Stormwater Facilities**

*Approved facilities that infiltrate stormwater on-site in accordance with Public Works Low-Impact Development standards, including but not limited to; vegetated swales, rain gardens, vegetated filter strips, and vegetated infiltration basins, and their associated piping, may be placed within the NROD boundary pursuant to the following standards:*

- A. The forest canopy within the driplines of existing trees shall not be disturbed.*
- B. Only vegetation from the Oregon City Native Plant List shall be planted within these facilities.*
- C. Mitigation is required, subject to Section 17.49.180 or 17.49.190.*
- D. The storm water facility may encroach up to 1/2 the distance of the NROD corridor.*
- E. The stormwater facility shall not impact more than 1,000 square feet of the NROD. Impacts greater than 1,000 square feet shall be process as a Type III application.*
- F. The Community Development Director may allow landscaping requirements of the base zone, other than landscaping required for parking lots, to be met by preserving, restoring and permanently protecting habitat on development sites within the Natural Resource Overlay District.*

**Finding: Complies as proposed.** The required dedication and construction of a sidewalk and planter strip on Hiram Avenue will create a small amount of construction/disturbance into the NROD buffer which will require proportional mitigation through the Option 2 NROD mitigation process. A clear and objective condition has been added to this report to address this proposed encroachment which is allowed through the Type II NROD review process.

**17.49.160 Standards for Land Divisions**

*Other than those land divisions exempted by Section 17.49.070 (G), new residential lots created within the NROD shall conform to the following standards.*

- A. For a lot for an existing residence currently within the NROD. This type of lot is allowed within the NROD for a residence that existed before the NROD was applied to a subject property. A new lot for an existing house may be created through a partition or subdivision process when all of the following are met:*
  - 1. There is an existing house on the site that is entirely within the NROD area; and*
  - 2. The existing house will remain; and*
  - 3. The new lot is no larger than required to contain the house, minimum required side setbacks, garage, driveway and a 20-foot deep rear yard, with the remaining NROD area beyond that point protected by a conservation easement, or by dedicating a conservation tract or public open space.*
- B. Subdivisions.*
  - 1. Prior to preliminary plat approval, the NROD area shall be shown either as a separate tract or part of a larger tract that meets the requirements of subsection (3) of this section, which shall not be a part of any parcel used for construction of a dwelling unit.*
  - 2. Prior to final plat approval, ownership of the NROD tract shall be identified to distinguish it from lots intended for sale. The tract may be identified as any one of the following:*
    - a. Private open space held by the owner or a homeowners association; or*
    - b. For residential land divisions, private open space subject to an easement conveying stormwater and surface water management rights to the city and preventing the owner of the tract from activities and uses inconsistent with the purpose of this document; or*
    - c. At the owners option, public open space where the tract has been dedicated to the city or other governmental unit; or*
    - d. Any other ownership proposed by the owner and approved by the city.*
    - e. Tracts shall be exempt from minimum frontage requirements.*

### *C. Partitions*

1. *New partitions shall delineate the NROD area either as a separate tract or conservation easement that meets the requirements of subsection (2) of this section.*
2. *Prior to final plat approval, ownership and maintenance of the NROD area shall be identified to distinguish it from the buildable areas of the development site. The NROD area may be identified as any one of the following:*
  - a. *A tract of private open space held by the owner or homeowners association; or*
  - b. *For residential land divisions, a tract of private open space subject to an easement conveying stormwater and surface water management rights to the city and preventing the owner of the tract from activities and uses inconsistent with the purpose of this document; or*
  - c. *At the owners option, public open space where the tract has been dedicated to the city or other governmental unit;*
  - d. *Conservation easement area pursuant to subsection 17.49.180(G) and approved in form by the Community Development Director*
  - e. *Any other ownership proposed by the owner and approved by the Community Development Director.*
  - f. *Tracts shall be exempt from minimum frontage requirements.*

**Finding: Complies as Conditioned.** Prior to final plat approval, ownership of the NROD tract shall be identified to distinguish it from lots intended for sale. The tract may be identified as any one of the following:

- a. Private open space held by the owner or a homeowners association; or
- b. For residential land divisions, private open space subject to an easement conveying stormwater and surface water management rights to the city and preventing the owner of the tract from activities and uses inconsistent with the purpose of this document; or
- c. At the owners option, public open space where the tract has been dedicated to the city or other governmental unit; or
- d. Any other ownership proposed by the owner and approved by the city

### **17.49.170 Standards for Trails**

*The following standards apply to trails within the NROD:*

- A. *All trails that are not exempt pursuant to Section 17.49.80(F), , except as designated in the Oregon City Parks, Open Space and Trails Master Plans; and*
- B. *Mitigation is required, subject to Section 17.49.180 or 17.49.190.*

**Finding: Not applicable.** No trails are being proposed as part of this application.

### **17.49.180 - Mitigation standards.**

The following standards (or the alternative standards of Section 17.49.190) apply to required mitigation:

- A. Mitigation shall occur at a two-to-one ratio of mitigation area to proposed NROD disturbance area. Mitigation of the removal or encroachment of a wetland or stream shall not be part of this chapter and will be reviewed by the Division of State Lands or the Army Corp of Engineers during a separate review process;
- B. Mitigation shall occur on the site where the disturbance occurs, except as follows:
  1. The mitigation is required for disturbance associated with a right-of-way or utility in the right-of-way;

2. The mitigation shall occur first on the same stream tributary, secondly in the Abernethy, Newell or Livesay Creek or a tributary thereof, or thirdly as close to the impact area as possible within the NROD; and
  3. An easement that allows access to the mitigation site for monitoring and maintenance shall be provided as part of the mitigation plan.
- C. Mitigation shall occur within the NROD area of a site unless it is demonstrated that this is not feasible because of a lack of available and appropriate area. In such cases, the proposed mitigation area shall be contiguous to the existing NROD area so the NROD boundary can be easily extended in the future to include the new resource site.
  - D. Invasive and nuisance vegetation shall be removed within the mitigation area;
  - E. Required Mitigation Planting. An applicant shall meet Mitigation Planting Option 1 or 2 below, whichever option results in more tree plantings, except that where the disturbance area is one acre or more, Mitigation Option 2 shall be required. All trees, shrubs and ground cover shall be selected from the Oregon City Native Plant List.

NOTE: Applications on sites where no trees are present or which are predominantly covered with invasive species shall be required to mitigate the site, remove the invasive species and plant trees and native plants pursuant to Option 2.

**Finding: Complies as Conditioned.** The requirement for mitigation is based on the extension of Hiram Avenue. The mitigation plan, as conditioned, will require planting to be installed with Tract B of the NROD buffer area.

1. Mitigation Planting Option 1.
  - a. Option 1 - Planting Quantity. This option requires mitigation planting based on the number and size of trees that are removed from the site pursuant to Table 17.49.180E.1.a. Conifers shall be replaced with conifers. Bare ground shall be planted or seeded with native grasses and ground cover species.

Table 17.49.180E.1.a.—Required Planting Option 1

Size of Tree to be Removed (DBH)	Number of Trees and Shrubs to be Replanted
6 to 12"	2 trees and 3 shrubs
13 to 18"	3 trees and 6 shrubs
19 to 24"	5 trees and 12 shrubs
25 to 30"	7 trees and 18 shrubs
Over 30"	10 trees and 30 shrubs

- b. Option 1 - Plant Size. Replacement trees shall be at least one-half inch in caliper on average, measured at six inches above the ground level for field grown trees or above the soil line for container grown trees. Oak, madrone, ash or alder may be one gallon size. Conifers shall be a minimum of six feet in height. Shrubs must be in at least one-gallon container size or the equivalent in ball and burlap, and shall be at least twelve inches in height at the time of planting. All other species shall be a minimum of four-inch pots;
- c. Option 1 - Plant Spacing. Except for the outer edges of mitigation areas, trees and shrubs shall be planted in a non-linear fashion. Plant spacing for new species shall be measured from the driplines of existing trees when present. Trees shall be planted on average between eight and twelve feet on center, and shrubs shall be planted on average between four and five feet on center, or clustered in single species groups of no more than four plants, with each cluster planted on average between eight and ten feet on center.
- d. Option 1 - Mulching and Irrigation. Mulch new plantings a minimum of three inches in depth and eighteen inches in diameters. Water new plantings one inch per week from June 30th to September 15th, for the three years following planting.
- e. Option 1 — Plant Diversity. Shrubs shall consist of at least two different species. If ten trees or more are planted, no more than one-half of the trees may be of the same genus.

**Finding: Not Applicable.** The applicant is not removing trees within the NROD buffer as part of this proposal. Option 1 is not an appropriate or applicable mitigation approach.

## 2. Mitigation Planting Option 2.

- a. Option 2 - Planting Quantity. In this option, the mitigation requirement is calculated based on the size of the disturbance area within the NROD. Native trees and shrubs are required to be planted at a rate of five trees and twenty-five shrubs per every five hundred square feet of disturbance area (calculated by dividing the number of square feet of disturbance area by five hundred, and then multiplying that result times five trees and twenty-five shrubs, and rounding all fractions to the nearest whole number of trees and shrubs; for example, if there will be three hundred thirty square feet of disturbance area, then three hundred thirty divided by five hundred equals .66, and .66 times five equals 3.3, so three trees must be planted, and .66 times twenty-five equals 16.5, so seventeen shrubs must be planted). Bare ground must be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.
- b. Option 2 - Plant Size. Plantings may vary in size dependent on whether they are live cuttings, bare root stock or container stock. However, no initial plantings may be shorter than twelve inches in height.
- c. Option 2 - Plant Spacing. Trees shall be planted at average intervals of seven feet on center. Shrubs may be planted in single-species groups of no more than four plants, with clusters planted on average between eight and ten feet on center.
- d. Option 2 — Mulching and Irrigation shall be applied in the amounts necessary to ensure eighty percent survival at the end of the required five-year monitoring period.
- e. Option 2 — Plant Diversity. Shrubs shall consist of at least three different species. If twenty trees or more are planted, no more than one-third of the trees may be of the same genus.

An alternative planting plan using native plants may be approved in order to create a new wetland area, if it is part of a wetlands mitigation plan that has been approved by the DSL or the U.S. Army Corps of Engineers (USACE) in conjunction with a wetland joint removal/fill permit application.

- F. **Monitoring and Maintenance.** The mitigation plan shall provide for a five-year monitoring and maintenance plan with annual reports in a form approved by the director of community development. Monitoring of the mitigation site is the on-going responsibility of the property owner, assign, or designee, who shall submit said annual report to the city's planning division, documenting plant survival rates of shrubs and trees on the mitigation site. Photographs shall accompany the report that indicate the progress of the mitigation. A minimum of eighty percent survival of trees and shrubs of those species planted is required at the end of the five-year maintenance and monitoring period. Any invasive species shall be removed and plants that die shall be replaced in kind. Bare spots and areas of invasive vegetation larger than ten square feet that remain at the end of the five-year monitoring period shall be replanted or reseeded with native grasses and ground cover species.
- G. **Covenant or Conservation Easement.** Applicant shall record a restrictive covenant or conservation easement, in a form provided by the city, requiring the owners and assigns of properties subject to this section to comply with the applicable mitigation requirements of this section. Said covenant shall run with the land, and permit the city to complete mitigation work in the event of default by the responsible party. Costs borne by the city for such mitigation shall be borne by the owner.
- H. **Financial Guarantee.** A financial guarantee for establishment of the mitigation area, in a form approved by the city, shall be submitted before development within the NROD disturbance area commences. The city will release the guarantee at the end of the five-year monitoring period, or before, upon its determination that the mitigation plan has been satisfactorily implemented pursuant to this section.

Finding. **Complies as Conditioned.** The required dedication and construction of a sidewalk and planter strip on Hiram Avenue will create a small amount of construction/disturbance into the NROD buffer which will require proportional mitigation through the Option 2 NROD mitigation process. A clear and objective condition has been added to this report to address this proposed encroachment which is allowed through the Type II NROD review process.

Prior to Platting, the applicant shall submit and implement/install a mitigation plan for the disturbed area required by the extension of Hiram Avenue. The mitigation plan shall include the following information:

- a. Final calculation of disturbance area of the street improvement identified and mitigation area calculation based on the size of the disturbance area within the NROD.
- b. All mitigation planting shall occur in Tract B.
- c. Native trees and shrubs are required to be planted at a rate of five trees and twenty-five shrubs per every five hundred square feet of disturbance area
- d. Bare ground must be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.
- e. Plantings may vary in size dependent on whether they are live cuttings, bare root stock or container stock, however, no initial plantings may be shorter than twelve inches in height.
- f. Trees shall be planted at average intervals of seven feet on center. Shrubs may be planted in single-species groups of no more than four plants, with clusters planted on average between eight and ten feet on center.



- g. Mulching and Irrigation shall be applied in the amounts necessary to ensure eighty percent survival at the end of the required five-year monitoring period.
- h. Shrubs shall consist of at least three different species. If twenty trees or more are planted, no more than one-third of the trees may be of the same genus.
- i. Any invasive species shall be removed from Tract B.

**17.49.190 Alternative Mitigation Standards**

**Finding: Not Applicable.** The applicant is proposing to dedicate the fully delineated NROF buffer into a tract. No additional mitigation is required for this application.

**17.49.200. Adjustment from Standards**

*If a regulated NROD use cannot meet one or more of the applicable NROD standards then an adjustment may be issued if all of the following criteria are met. Compliance with these criteria shall be demonstrated by the applicant in a written report prepared by an environmental professional with experience and academic credentials in one or more natural resource areas such as ecology, wildlife biology, botany, hydrology or forestry. At the applicant's expense, the City may require the report to be reviewed by an environmental consultant. Such requests shall be processed under the Type III development permit procedure. The applicant shall demonstrate:*

**Finding: Not Applicable.** The applicant is proposing to dedicate the fully delineated NROD buffer into a tract. No additional mitigation is required for this application.

**17.49.200.A.** *There are no feasible alternatives for the proposed use or activity to be located outside the NROD area or to be located inside the NROD area and to be designed in a way that will meet all of the applicable NROD development standards;*

**17.49.200.B.** *The proposal has fewer adverse impacts on significant resources and resource functions found in the local NROD area than actions that would meet the applicable environmental development standards;*

**17.49.200.C.** *The proposed use or activity proposes the minimum intrusion into the NROD area that is necessary to meet development objectives;*

**17.49.200.D.** *Fish and wildlife passage will not be impeded;*

**17.49.200.E.** *With the exception of the standard(s) subject to the adjustment request, all other applicable NROD standards can be met; and*

**17.49.200.F.** *The applicant has proposed adequate mitigation to offset the impact of the adjustment.*

**Finding: Not Applicable.** The applicant is proposing to dedicate the fully delineated NROD buffer into a tract. No additional mitigation is required for this application. There are no suitable habitats or known occurrences of ESA-listed species within the project action area. Furthermore, there are no significant wildlife or fish corridors for which passage would be impeded.

**17.49.210 Type II Development Permit Application**

**Finding: Complies as proposed.** The applicant has proposed a Type II application.

**17.49.220 Required Site Plans**

*Site plans showing the following required items shall be part of the application:*

**A.** *For the entire subject property (NROD and non-NROD areas):*

1. *The NROD district boundary. This may be scaled in relation to property lines from the NROD Map;*
2. *100 year floodplain and floodway boundary (if determined by FEMA);*
3. *Creeks and other waterbodies;*
4. *Any wetlands, with the boundary of the wetland that will be adjacent to the proposed development determined in a wetlands delineation report prepared by a professional wetland specialist and following the Oregon Division of State Lands wetlands delineation procedures;*
5. *Topography shown by contour lines of 2 or 1 foot intervals for slopes less than 15% and by 10 foot intervals for slopes 15% or greater;*
6. *Existing improvements such as structures or buildings, utility lines, fences, driveways, parking areas, etc.*

7. Extent of the required Vegetated Corridor required by Table 17.49.110.

**B. Within the NROD area of the subject property:**

1. The distribution outline of shrubs and ground covers, with a list of most abundant species;
2. Trees 6 inches or greater in diameter, identified by species. When trees are located in clusters they may be described by the approximate number of trees, the diameter range, and a listing of dominant species;
3. An outline of the disturbance area that identifies the vegetation that will be removed. All trees to be removed with a diameter of 6 inches or greater shall be specifically identified as to number, trunk diameters and species;
4. If grading will occur within the NROD, a grading plan showing the proposed alteration of the ground at 2 foot vertical contours in areas of slopes less than 15% and at 5 foot vertical contours of slopes 15% or greater.

**C. A construction management plan including:**

1. Location of site access and egress that construction equipment will use;
2. Equipment and material staging and stockpile areas;
3. Erosion control measures that conform to City of Oregon City erosion control standards;
4. Measures to protect trees and other vegetation located outside the disturbance area.

**D. A mitigation site plan demonstrating compliance with Section 17.49.180 or 17.49.190, including:**

1. Dams, weirs or other in-water features;
2. Distribution, species composition, and percent cover of ground covers to be planted or seeded;
3. Distribution, species composition, size, and spacing of shrubs to be planted;
4. Location, species and size of each tree to be planted;
5. Stormwater management features, including retention, infiltration, detention, discharges and outfalls;
6. Water bodies or wetlands to be created, including depth;
7. Water sources to be used for irrigation of plantings or for a water source for a proposed wetland.

**Finding: Complies as proposed.** The applicant's submittal materials were evaluated during the completeness review.

**17.49.230 Mitigation Plan Report**

A mitigation plan report that accompanies the above mitigation site plan is also required. The report shall be prepared by an environmental professional with experience and academic credentials in one or more natural resource areas such as ecology, wildlife biology, botany, hydrology or forestry. The mitigation plan report shall, at a minimum, discuss:

- A. Written responses to each applicable Mitigation Standard 17.49.180 or 17.49.190 indicating how the proposed development complies with the mitigation standards;
- B. The resources and functional values to be restored, created, or enhanced through the mitigation plan;
- C. Documentation of coordination with appropriate local, regional, state and federal regulatory/resource agencies such as the Oregon Department of State Lands (DSL) and the United States Army Corps of Engineers (USACE);
- D. Construction timetables;
- E. Monitoring and Maintenance practices pursuant to Section 17.49.230 (F) and a contingency plan for undertaking remedial actions that might be needed to correct unsuccessful mitigation actions during the first 5 years of the mitigation area establishment.

**Finding: Complies as Conditioned** A mitigation plan is required for this application. See findings in 17.49.180 - Mitigation standards for more information.

**17.49.240 Density Transfer**

The NROD allocates urban densities to the non-NROD portions of properties located partially within the NROD, generally resulting in a substantial increase in net development potential.

For lots of record that are located within the NROD, additional density transfer credits are allowed, subject to the following provisions:

Density may be transferred from the NROD to non-NROD portions of the same property or of contiguous properties within the same development site;

- A. The residential transfer credit shall be as follows: for new residential partitions and subdivisions, 1/3 of the area of the NROD tract or conservation easement area may be added to the net developable area outside of the tract or conservation easement area within the boundary of the development site in order to calculate the allowable number of lots.
- B. Permitted Modifications to Residential Dimensional Standards. In order to allow for a transfer of density pursuant to (B) above, the dimensional standards of the base zone may be modified in order minimize disturbance to the NROD.

The permissible reductions are specified in Tables 17.49.240(C-D).

- C. The applicant shall demonstrate that the minimum lot size of the underlying zone has been met. The area of the NROD in B above that is used to transfer density may be included in the calculation of the average minimum lot size.
- D. The applicant may choose to make the adjustments over as many lots as required. For example, the lot reduction could be spread across all the remaining lots in the proposed subdivision or partition or could be applied to only those needed to incorporate the areas of the NROD Tract.

**Table 17.49.240 A**  
Lot Size Reduction

ZONE	Min. Lot Size (%)	Min. Lot Width	Min. Lot Depth
R-10	5,000 sq. feet	50'	65'
R-8	4,000 sq. feet	45'	60'
R-6	3,500 sq. feet	35'	55'
R-5	3,000 sq. feet	30'	50'
R-3.5	1,800 sq. feet	20'	45'

**Table 17.49.240 B**

*Reduced Dimensional Standards for Detached Single-Family Residential Units*

Size of Reduced Lot	Front Yard Setback	Rear Yard Setback	Side yard Setback	Corner Side	Lot Coverage
8,000-9,999 square feet	15 feet	20 feet	7/9 feet	15 feet	40%
6,000-7,999 square feet	10 feet	15 feet	5/7 feet	15 feet	40%
4,000-5,999 square feet	10 feet	15 feet	5/5 feet	10 feet	40%
1,800-3,999 square feet	5 feet	15 feet	5/5 feet	10 feet	55%

**Table 17.49.240 C**

*Reduced Dimensional Standards for Single-Family Attached or Two-Family Residential Units*

Size of Reduced Lot	Front Yard Setback	Rear Yard Setback	Side yard Setback	Corner Side	Lot Coverage
3,500-7,000 square feet	10 feet	15 feet	5/0* feet	10 feet	40%
1,800-3,499 square feet	5 feet	15 feet	5/0* feet	10 feet	55%

\*0 foot setback is only allowed on single-family attached units

- E. Transfers for properties zoned Commercial, Institutional, Industrial or Multi-Family uses the transfer credit is 10,000 sq. ft. per acre of land within the NROD;
- F. The area of land contained in the NROD area may be excluded from the calculations for determining compliance with minimum density requirements of the land division code.
- G. The owner of the transferring property shall execute a covenant with the City that records the transfer of density. The covenant shall be found to meet the requirements of this section and be recorded before building permits are issued; and
- H. All other applicable development standards, including setbacks, building heights, and maximum lot coverage shall continue to apply when a density transfer occurs.

**Finding: Complies as Proposed:** As allowed under 17.49.240(B) one third of the square footage of the NROD area (975 SF) is being transferred to the non-NROD portion of the site. The modifications to the residential dimensional standards are being met, by allowing the average lot size to be less than 8,000 SF (7614 SF). The minimum lot width of Lot 3 is proposed to be 50 feet wide as is allowed under Table 17.49.240A- Lot Size Reduction, a reduction from the minimum per the base zone requirement.

#### **17.49.250 Verification of NROD Boundary**

The NROD boundary may have to be verified occasionally to determine the true location of a resource and its functional

values on a site. This may through a site specific environmental survey or, in those cases where existing information demonstrates that the NROD significance rating does not apply to a site-specific area. Applications for development on a site located in the NROD area may request a determination that the subject site is not in an NROD area and therefore is not subject to the standards of Section 17.49.100. Verifications shall be processed as either a Type I or Type II process.

**Finding: Complied as proposed.** The development proposal included a Verification of the NROD boundary. The Wetland Consultant requested the following concurrence.

1. We ask for a concurrence that Stream "A" is the only protected feature on or near the property having NROD buffers that would affect the property.
2. We ask for concurrence that the NROD buffer for Stream "A" is 15ft per Oregon City Municipal Code.

Staff has reviewed the report and concurs with its findings and revised delineation which will be placed in a tract as part of the platting of the subdivision.

#### **17.49.260. Type II Verification**

**Finding: complies as submitted.** The development proposal includes a Type II Verification request.

### **CHAPTER 17.41 - TREE PROTECTION STANDARDS**

#### **17.41.020 - Tree protection—Applicability.**

1. Applications for development subject to Chapters 16.08 or 16.12 (Subdivision or Minor Partition) or Chapter 17.62 (Site Plan and Design Review) shall demonstrate compliance with these standards as part of the review proceedings for those developments.
2. For public capital improvement projects, the city engineer shall demonstrate compliance with these standards pursuant to a Type II process.
3. Tree canopy removal greater than twenty-five percent on sites greater than twenty-five percent slope, unless exempted under Section 17.41.040, shall be subject to these standards.
4. A heritage tree or grove which has been designated pursuant to the procedures of Chapter 12.08.050 shall be subject to the standards of this section.

**Finding: Applicable.** The proposed development includes a Subdivision, therefore this section applies.

#### **17.41.030 - Tree protection—Conflicting code provisions.**

Except as otherwise specified in this section, where these standards conflict with adopted city development codes or policies, the provision which provides the greater protection for regulated trees or groves, as defined in Section 17.04, shall govern.

**Finding: Applicable.** The trees within the boundaries of the property or associated with the proposed development onsite are regulated under this section of code and do not fall under any other protections within the City's development codes.

#### **17.41.040 - Same—Exemptions.**

These regulations are not intended to regulate normal cutting, pruning and maintenance of trees on private property except where trees are located on lots that are undergoing development review or are otherwise protected within the Natural Resource Overlay District (NROD) of section 17.49. These standards are not intended to regulate farm and forest practices as those practices are defined under ORS 30.930. Farm or forest resources. An applicant for development may claim exemption from compliance with these standards if the development site containing the regulated grove or trees was a designated farm or forest use, tree farm, Christmas tree plantation, or other approved timber use within one year prior to development application. "Forest practices" and "forestlands" as used in this subsection shall have the meaning as set out in ORS 30.930. The community development director has the authority to modify or waive compliance in this case.

**Finding: Not Applicable.** The applicant has not proposed an exemption in accordance with this provision.

#### **17.41.050 - Same—Compliance options.**

Applicants for review shall comply with these requirements through one or a combination of the following procedures:

A. Option 1—Mitigation. Retention and removal of trees, with subsequent mitigation by replanting pursuant to Sections 17.41.060 or 17.41.070. All replanted and saved trees shall be protected by a permanent restrictive covenant or easement approved in form by the city.

B. Option 2—Dedicated Tract. Protection of trees or groves by placement in a tract within a new subdivision or partition plat pursuant to Sections 17.41.080—17.41.100; or

C. Option 3—Restrictive Covenant. Protection of trees or groves by recordation of a permanent restrictive covenant pursuant to Sections 17.41.110—17.41.120; or

D. Option 4—Cash-in-lieu of planting pursuant to Section 17.41.130.

A regulated tree that has been designated for protection pursuant to this section must be retained or permanently protected unless it has been determined by a certified arborist to be diseased or hazardous, pursuant to the following applicable provisions.

The community development director, pursuant to a Type II procedure, may allow a property owner to cut a specific number of trees within a regulated grove if preserving those trees would:

1. Preclude achieving eighty percent of minimum density with reduction of lot size; or
2. Preclude meeting minimum connectivity requirements for subdivisions.

**Finding: Complies as Conditioned.** Trees located on the project site were inventoried and evaluated by a professional certified arborist. Since all the trees that will be lost will be in the construction zone, along Hiram Avenue, the number of trees required for replacement is 3 for the 20" and 23" diameter trees and 1 for the 8" tree. Therefore, a total of 7 replacement trees are required are planned to be planted per Option 1 or cash-in-lieu of planting paid per Option 4. Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.

#### 17.41.060 - Tree removal and replanting—Mitigation (Option 1).

A. Applicants for development who select this option shall ensure that all healthy trees shall be preserved outside the construction area as defined in Chapter 17.04 to the extent practicable. 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. At the applicant's expense, the city may require the report to be reviewed by a consulting arborist. The number of replacement trees required on a development site shall be calculated separately from, and in addition to, any public or street trees in the public right-of-way required under section 12.08—Community Forest and Street Trees.

B. The applicant shall determine the number of trees to be mitigated on the site by counting all of the trees six inch DBH (minimum four and one-half feet from the ground) or larger on the entire site and either:

1. Trees that are removed outside of the construction area, shall be replanted with the number of trees specified in Column 1 of Table 17.41.060-1. Trees that are removed within the construction area shall be replanted with the number of replacement trees required in Column 2; or
2. Diseased or hazardous trees, when the condition is verified by a certified arborist to be consistent with the definition in Section 17.04.1360, may be removed from the tree replacement calculation. Regulated healthy trees that are removed outside of the construction area, shall be replanted with the number of trees specified in Column 1 of Table 17.41.060-1. Regulated healthy trees that are removed within the construction area shall be replanted with the number of replacement trees required in Column 2.

Table 17.41.060-1

#### Tree Replacement Requirements

All replacement trees shall be either:

Two-inch caliper deciduous, or

Six-foot high conifer

Size of tree removed (DBH)	Column 1  Number of trees to be planted. (If removed Outside of construction area)	Column 2  Number of trees to be planted. (If removed Within the construction area)
6 to 12"	3	1

13 to 18"	6	2
19 to 24"	9	3
25 to 30"	12	4
31 and over"	15	5

*Steps for calculating the number of replacement trees:*

1. Count all trees measuring six inches DBH (minimum four and one-half feet from the ground) or larger on the entire development site.
2. Designate (in certified arborists report) the condition and size (DBH) of all trees pursuant to accepted industry standards.
3. Document any trees that are currently diseased or hazardous.
4. Subtract the number of diseased or hazardous trees in step 3. from the total number of trees on the development site in step 1. The remaining number is the number of healthy trees on the site. Use this number to determine the number of replacement trees in steps 5. through 8.
5. Define the construction area (as defined in [Chapter 17.04](#)).
6. Determine the number and diameter of trees to be removed within the construction area. Based on the size of each tree, use Column 2 to determine the number of replacement trees required.
7. Determine the number and diameter of trees to be removed outside of the construction area. Based on the size of each tree, use Column 1 to determine the number of replacement trees required.
8. Determine the total number of replacement trees from steps 6. and 7.

**Finding: Complies as Conditioned.** Trees located on the project site were inventoried and evaluated by a professional certified arborist. Since all the trees that will be lost will be in the construction zone, along Hiram Avenue, the number of trees required for replacement is 3 for the 20" and 23" diameter trees and 1 for the 8" tree. Therefore, a total of 7 replacement trees are required are planned to be planted per Option 1 or cash-in-lieu of planting paid per Option 4. Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.

*17.41.070 - Planting area priority for mitigation (Option 1).*

*Development applications which opt for removal of trees with subsequent replanting pursuant to section 17.41.050A. shall be required to mitigate for tree cutting by complying with the following priority for replanting standards below:*

*A. First Priority. Replanting on the development site.*

*B. Second Priority. Off-site replacement tree planting locations. If the community development director determines that it is not practicable to plant the total number of replacement trees on-site, a suitable off-site planting location for the remainder of the trees may be approved that will reasonably satisfy the objectives of this section. Such locations may include either publicly owned or private land and must be approved by the community development director.*

**Finding: Complies as Conditioned.** The applicant indicated that the trees will be planted within this subdivision or within other subdivisions being developed by the applicant and the final mitigation plan would be submitted with the construction plans. The applicant shall have an approved mitigation planting plan prior to issuance of a permit associated with the proposed development. The mitigation plan may incorporate any of the options in Chapter 17.41 in addition to planting mitigation trees on private property (with an associated covenant) or increasing the size of trees onsite or within the right-of-way. Prior to issuance of a permit associated with the proposed development, the applicant shall submit a revised tree mitigation plan in accordance with Chapter 17.41. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

*17.41.075 - Alternative mitigation plan.*

*The community development director may, subject to a Type II procedure, approve an alternative mitigation plan that adequately protects habitat pursuant to the standards for the natural resource overlay district alternative mitigation plan, Section 17.49.190.*

**Finding: Not Applicable.** The applicant has not proposed alternative mitigation plan.

*17.41.080 - Tree preservation within subdivisions and partitions—Dedicated tract (Option 2).*

*A. Applicants for new subdivision and partition plats may delineate and show the regulated trees or groves as either a separate tract or part of a larger tract that meets the requirements of subsection D. of this section.*

*B. The standards for land divisions subject to this section shall apply in addition to the requirements of the city land division ordinance and zoning ordinance, provided that the minimum lot area, minimum average lot width, and minimum average lot depth standards of the base zone may be superseded in order to allow for a reduction of dimensional standards pursuant to Section 17.41100 below.*  
*C. Prior to preliminary plat approval, the regulated tree or grove area shall be shown either as a separate tract or part of a larger tract that meets the requirements of subsection D. of this section, which shall not be a part of any parcel used for construction of a structure. The size of the tract shall be the minimum necessary as recommended by a consulting arborist to adequately encompass the dripline of the tree, protect the critical root zone and ensure long term survival of the tree or grove.*

*D. Prior to final plat approval, ownership of the regulated tree or grove tract shall be identified to distinguish it from lots intended for sale. The tract may be identified as any one of the following:*

- 1. Private open space held by the owner or a homeowners association; or*
- 2. For residential land divisions, private open space subject to an easement conveying stormwater and surface water management rights to the city and preventing the owner of the tract from activities and uses inconsistent with the purpose of this document; or*
- 3. At the owners option, public open space where the tract has been dedicated to the city or other governmental unit; or*
- 4. Any other ownership proposed by the owner and approved by the community development director.*

**Finding: Not Applicable.** The applicant has not chosen this option.

*17.41.090 - Density transfers incentive for tree protection tracts (Option 2).*

*A. The purpose of this section is to allow dimensional adjustments within a regulated tree protection tract to be transferred outside said tract to the remainder of the site. This provision applies on-site and density shall not be transferred beyond the boundaries of the development site.*

*B. Development applications for subdivisions and minor partitions that request a density transfer shall:*

- 1. Provide a map showing the net buildable area of the tree protection tract;*
- 2. Provide calculations justifying the requested dimensional adjustments;*
- 3. Demonstrate that the minimum lot size requirements can be met based on an average of all lots created, including the tree protection tract created pursuant to [Section 17.41.080](#);*
- 4. Demonstrate that, with the exception of the tree protection tract created pursuant to [Section 17.41.080](#), no parcels have been created which would be unbuildable in terms of minimum yard setbacks;*
- 5. Meet all other standards of the base zone except as modified in [section 17.41.100](#).*

*C. The area of land contained in a tree protection tract may be excluded from the calculations for determining compliance with minimum density requirements of the zoning code.*

**Finding: Not Applicable.** The applicant has not chosen this option.

*17.41.100 - Permitted modifications to dimensional standards (Option 2 only).*

*A. An applicant proposing to protect trees in a dedicated tract pursuant to [section 17.41.080](#) may request, and the community development director, pursuant to a Type II procedure, may grant a reduction to, the lot size, width, depth, and setbacks of the underlying zone district in approving a subdivision or partition if necessary to retain a regulated tree or grove in a tract, as long as the calculation of average lot size, including tree protection tracts, meet the minimum lot size for the zone. The applicant may choose to make the adjustments over as many lots as required. For example, the lot reduction could be spread across all the remaining lots in the proposed subdivision or partition or could be applied to only those needed to incorporate the area of the tree tract.*



**Finding: Finding: Not Applicable.** The applicant has not chosen this option.

*17.41.110 - Tree protection by restrictive covenant (Option 3).*

*Any regulated tree or grove which cannot be protected in a tract pursuant to [Section 17.41.080](#) above shall be protected with a restrictive covenant in a format to be approved by the community development director. Such covenant shall be recorded against the property deed and shall contain provisions to permanently protect the regulated tree or grove unless such tree or grove, as determined by a certified arborist and approved by the community development director, are determined to be diseased or hazardous.*

**Finding: Not Applicable.** The applicant has not chosen this option.

*17.41.120 - Permitted adjustments (Option 3 Only).*

*A. The community development director, pursuant to a Type II procedure, may grant an adjustment to the side, front and rear yard setback standards by up to 50 percent if necessary to retain a Regulated Tree or Grove through a restrictive covenant pursuant to this section. In no case may the side yard setback be reduce less than three feet. The adjustment shall be the minimum necessary to accomplish preservation of trees on the lot and shall not conflict with other conditions imposed on the property.*

*B. The community development director, pursuant to a Type II procedure, may grant an adjustment to street standards, pursuant to adopted public works standards, in order to preserve a tree. This may include flexibility to redesign sidewalk and planter strip sizes and locations and allow placement of sidewalks and planter strips in an easement within private lots.*

*C. The community development director, pursuant to a Type II procedure, may allow other adjustments in order to preserve any healthy tree that cannot be moved due to its size, but will contribute to the landscape character of the area and will not present a foreseeable hazard if retained.*

**Finding: Not Applicable.** The applicant has not chosen this option.

*17.41.1[25] - Cash-in-lieu of planting (tree bank/fund) (Option 4).*

*The applicant may choose this option in-lieu-of or in addition to Compliance Options 1 through 3. In this case, the community development director may approve the payment of cash-in-lieu into a dedicated fund for the remainder of trees that cannot be replanted in the manner described above.*

*A. The cash-in-lieu payment per tree shall be as listed on the adopted fee schedule and shall be adjusted annually based on the Consumer Price Index (Index). The price shall include the cost of materials, transportation and planting.*

*B. The amount of the cash-in-lieu payment into the tree bank shall be calculated as the difference between the value of the total number of trees an applicant is required to plant, including cost of installation and adjusted for Consumer Price Index, minus the value of the trees actually planted. The value of the trees shall be based on the adopted fee schedule.*

**Finding: Complies as Conditioned.** Mitigation trees are planned to be planted on or off-site and/or cash-in-lieu of planting is to be paid in accordance with this Chapter. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

*17.41.130 - Regulated tree protection procedures during construction.*

*A. No permit for any grading or construction of public or private improvements may be released prior to verification by the community development director that regulated trees designated for protection or conservation have been protected according to the following standards. No trees designated for removal shall be removed without prior written approval from the community development director.*

*B. Tree protection shall be as recommended by a qualified arborist or, as a minimum, to include the following protective measures:*

*1. Except as otherwise determined by the community development director, all required tree protection measures set forth in this section shall be instituted prior to any development activities, including, but not limited to clearing, grading, excavation or demolition work, and such measures shall be removed only after*

completion of all construction activity, including necessary landscaping and irrigation installation, and any required plat, tract, conservation easement or restrictive covenant has been recorded.

2. Approved construction fencing, a minimum of four feet tall with steel posts placed no farther than ten feet apart, shall be installed at the edge of the tree protection zone or dripline, whichever is greater. An alternative may be used with the approval of the community development director.

3. Approved signs shall be attached to the fencing stating that inside the fencing is a tree protection zone, not to be disturbed unless prior approval has been obtained from the community development director.

4. No construction activity shall occur within the tree protection zone, including, but not limited to; dumping or storage of materials such as building supplies, soil, waste items; nor passage or parking of vehicles or equipment.

5. The tree protection zone shall remain free of chemically injurious materials and liquids such as paints, thinners, cleaning solutions, petroleum products, and concrete or dry wall excess, construction debris, or run-off.

6. No excavation, trenching, grading, root pruning or other activity shall occur within the tree protection zone unless directed by an arborist present on site and approved by the community development director.

7. No machinery repair or cleaning shall be performed within ten feet of the dripline of any trees identified for protection.

8. Digging a trench for placement of public or private utilities or other structure within the critical root zone of a tree to be protected is prohibited. Boring under or through the tree protection zone may be permitted if approved by the community development director and pursuant to the approved written recommendations and on-site guidance and supervision of a certified arborist.

9. The city may require that a certified arborist be present during any construction or grading activities that may affect the dripline of trees to be protected.

10. The community development director may impose conditions to avoid disturbance to tree roots from grading activities and to protect trees and other significant vegetation identified for retention from harm. Such conditions may include, if necessary, the advisory expertise of a qualified consulting arborist or horticulturist both during and after site preparation, and a special maintenance/management program to provide protection to the resource as recommended by the arborist or horticulturist.

C. Changes in soil hydrology due to soil compaction and site drainage within tree protection areas shall be avoided. Drainage and grading plans shall include provision to ensure that drainage of the site does not conflict with the standards of this section. Excessive site run-off shall be directed to appropriate storm drainage facilities and away from trees designated for conservation or protection.

**Finding: Complies as Proposed.** Tree protection measures for those trees to remain on the project site have been outlined in the project's Arborist Report and shown on the preliminary plans in accordance with the criteria of this standard. Grading and/or construction activity will not commence prior to the installation of planned tree protection.

## **CHAPTER 17.50 - ADMINISTRATION AND PROCEDURES**

### *17.50.030 Summary of the City's Decision-Making Processes.*

**Finding: Complies as Proposed.** The proposed Subdivision Natural Resource Overlay and Planning Commission Variance application is being reviewed pursuant to the Type II process. Notice was posted onsite, online and mailed to property owners within 300 feet of the proposed development site and posted in the paper.

### *17.50.050 Preapplication Conference*

A. *Preapplication Conference.* Prior to submitting an application for any form of permit, the applicant shall schedule and attend a preapplication conference with City staff to discuss the proposal. To schedule a preapplication conference, the applicant shall contact the Planning Division, submit the required materials, and pay the appropriate conference fee. At a minimum, an applicant should submit a short narrative describing the proposal and a proposed site plan, drawn to a scale acceptable to the City, which identifies the proposed land uses, traffic circulation, and public rights-of-way and all other required plans. The purpose of the preapplication conference is to provide an opportunity for staff to provide the applicant with information on the likely impacts, limitations, requirements, approval standards, fees and other information that may

*affect the proposal. The Planning Division shall provide the applicant(s) with the identity and contact persons for all affected neighborhood associations as well as a written summary of the preapplication conference. Notwithstanding any representations by City staff at a preapplication conference, staff is not authorized to waive any requirements of this code, and any omission or failure by staff to recite to an applicant all relevant applicable land use requirements shall not constitute a waiver by the City of any standard or requirement.*

*B.A preapplication conference shall be valid for a period of six months from the date it is held. If no application is filed within six months of the conference or meeting, the applicant must schedule and attend another conference before the city will accept a permit application. The community development director may waive the preapplication requirement if, in the Director's opinion, the development does not warrant this step. In no case shall a preapplication conference be valid for more than one year.*

**Finding: Complies as Proposed.** The applicant held a pre-application conference (file PA 17-61) on October 30, 2017. The land use application was submitted within 6 months of the pre-application conference on October 30, 2018. The community development director chose waive the preapplication requirement as it was within 1 year. The application was deemed incomplete on November 30, 2018 and after the submittal of additional information the application was deemed complete on February 8, 2019

#### *17.50.055 Neighborhood Association Meeting*

**Finding: Complies as Proposed.** The applicant's representatives attended Park Place Neighborhood Association meeting in January 2019 to present conceptual plans for the proposed office development.

#### *17.50.060 Application Requirements.*

**Finding: Complies as Proposed.** All application materials required are submitted with this narrative. The applicant has provided full-size and two reduced size sets of plans to accompany the submittal items.

#### *17.50.070 Completeness Review and 120-day Rule.*

**Finding: Complies as Proposed.** The application was deemed incomplete on February 8, 2019 . The City has until June 8, 2019 to make a final determination.

#### *17.50.080 Complete Application--Required Information.*

**Finding: Complies as Proposed.** The application was deemed incomplete on February 8, 2019

#### *17.50.090 Public Notices.*

**Finding: Complies as Proposed.** Staff provided public notice within 300' of the site via mail, the site was posted with multiple Land Use Notices, posted on the Oregon City website and in a general circulation newspaper. Staff provided email transmittal of the application and notice to affected agencies and to all Neighborhood Associations requesting comment.

#### *17.50.100 Notice Posting Requirements.*

**Finding: Complies as Proposed.** The site was posted with a sign longer than the minimum requirement.

#### *17.50.140 - Performance guarantees.*

*When conditions of permit approval require a permittee to construct certain improvements, the city may, in its discretion, allow the permittee to submit a performance guarantee in lieu of actual construction of the improvement. Performance guarantees shall be governed by this section.*

*A. Form of Guarantee. Performance guarantees shall be in a form approved by the city attorney. Applicable methods of performance guarantee include irrevocable standby letters of credit to the benefit of the city issued by a recognized lending institution, certified checks, dedicated bank accounts or allocations of construction loans held in reserve by the lending institution for the benefit of the city. The form of guarantee shall be specified by the city engineer and, prior to execution and acceptance by the city shall be reviewed and approved by the city attorney. The guarantee shall be filed with the city engineer.*

*B. Timing of Guarantee. A permittee shall be required to provide a performance guarantee as follows.*

1. *After Final Approved Design by The City:* A permittee may request the option of submitting a performance guarantee when prepared for temporary/final occupancy. The guarantee shall be one hundred twenty percent of the estimated cost of constructing the remaining public improvements as submitted by the permittee's engineer. The engineer's estimated costs shall be supported by a verified engineering estimate and approved by the city engineer.

2. *Before Complete Design Approval And Established Engineered Cost Estimate:* A permittee may request the option of submitting a performance guarantee before public improvements are designed and completed. The guarantee shall be one hundred fifty percent of the estimated cost of constructing the public improvements as submitted by the permittee's engineer and approved by the city engineer. The engineer's estimated costs shall be supported by a verified engineering estimate and approved by the city engineer. This scenario applies for a fee-in-lieu situation to ensure adequate funds for the future work involved in design, bid, contracting, and construction management and contract closeout. In this case, the fee-in-lieu must be submitted as cash, certified check, or other negotiable instrument as approved to form by the city attorney.

*C. Duration of the Guarantee.* The guarantee shall remain in effect until the improvement is actually constructed and accepted by the city. Once the city has inspected and accepted the improvement, the city shall release the guarantee to the permittee. If the improvement is not completed to the city's satisfaction within the time limits specified in the permit approval, the city engineer may, at their discretion, draw upon the guarantee and use the proceeds to construct or complete construction of the improvement and for any related administrative and legal costs incurred by the city in completing the construction, including any costs incurred in attempting to have the permittee complete the improvement. Once constructed and approved by the city, any remaining funds shall be refunded to the permittee. The city shall not allow a permittee to defer construction of improvements by using a performance guarantee, unless the permittee agrees to construct those improvements upon written notification by the city, or at some other mutually agreed-to time. If the permittee fails to commence construction of the required improvements within six months of being instructed to do so, the city may, without further notice, undertake the construction of the improvements and draw upon the permittee's performance guarantee to pay those costs.

**Finding: Complies as Conditioned.** The applicant shall provide a performance guarantee which is equal to 120% of the estimated cost to construct all public improvements shown in a city approved construction plan submitted by the applicant's engineer. The estimated costs shall be supported by a verified engineering estimate and approved by the city engineer. The guarantee shall be in a form identified in Code 17.50.140.A of the Oregon City Municipal Code. The guarantee shall remain in effect until the construction of all required improvements are completed and accepted by the city. **Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

#### **CHAPTER 17.54.100 - FENCES**

**Finding: Not Applicable.** The applicant indicated that no fences or walls are proposed with the private development. Fences built for Tract A must be in compliance with the Oregon City adopted stormwater standards.

### **CONCLUSION AND DECISION:**

Based on the analysis and findings as described above, Staff concludes that the proposed Subdivision located at 16362 Hiram Ave, Oregon City OR 97045 and identified as Clackamas County Assessor Parcel Number (APN): 2-2E-28BC-01000 Staff recommends approval of file GLUA 18-00038 (SUB-18-00001: Subdivision , NROD-18-00012: Natural Resource Overlay District, VAR-18-00003: Variance – Planning Commission Type III with conditions, based upon the findings and exhibits contained in this staff report.

### **EXHIBITS:**

1. Vicinity Map
2. Applicant's Revised Narrative
3. Applicant's Submittal
4. Proposed Plans
5. Traffic Analysis Letter
6. April 9, 2019 Letter from John Replinger