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CITY ATTORNEY'S OFFICE MEMORANDUM

TO: Mayor, City Council & City Manager
FROM: David Coulombe, Deputy City Attorney *DC*
DATE: August 10, 2016
SUBJECT: Limited Public Meeting for the Coronado Tract B Apartments
(PLD14-5)

Action Requested:

Based on LUBA's August 25, 2015, reversal of the City Council's decision to deny the application for PLD 14-5, the Revised Staff Report presented with this Memorandum provides analysis of the clear and objective criteria and recommendations for the Council's reconsideration of the application. Based on the record, Council should review the staff analysis and recommendations and make a new decision consistent with LUBA's direction.

Discussion:

A. Background.

This land use application is returning to the City Council for decision. On 8/25/15 LUBA reversed the Council's decision denying the application for a 10-unit apartment complex. The Council's decision to deny the application was based largely on subjective review criteria that are generally applicable to a proposed modification of a Planned Development's approved Detailed Development Plan. The Council denied the application based upon: 1) the failure of the application to comply with Condition 12 from the 1981 approved Detailed Development Plan; 2) the failure of the application to comply with a Land Development Code (LDC) cul-de-sac standard; and 3) the failure of the application to meet several compatibility criteria set out in LDC 2.5.40.04. The Applicant alleged, and LUBA agreed, that the application should be considered a "needed housing" application, subject only to clear and objective

criteria; that Condition 12 was not clear and objective; that the cul-de-sac standard was not clear and objective; and that the LDC 2.5.40.04 compatibility criteria were not clear and objective. The City appealed LUBA's decision to the Court of Appeals, which affirmed LUBA's decision without providing a written opinion. The City petitioned the Oregon Supreme Court to review the decisions. The Court declined. LUBA's decision became final, and jurisdiction has returned to the City. Attached to this memorandum is our June 21, 2016, memorandum discussing the next steps.

B. Decision Criteria.

Based on LUBA's Final Opinion and Order, which is attached for your convenience, the applicable criteria for your consideration have been significantly reduced. In particular, LUBA's decision means the City cannot consider Condition 12, the cul-de-sac criterion, LDC 3.6.30, LDC 4.10.60.01.b or the compatibility criteria set out in LDC 2.5.40.04. All remaining clear and objective criteria remain applicable. The Staff Report is organized to identify the remaining clear and objective criteria, the evidence in the record that relates to the criteria, and staff's analysis and proposed conclusion.

Recommendation:

The City Attorney's Office recommends that the Council consider all clear and objective applicable criteria and determine whether the Council is persuaded that the evidence in the record demonstrates that the application satisfies these criteria. If so, then the Council should approve the application. If not, then the Council should consider whether it is possible to condition the application to meet the approval criteria. If the Council is unable to find applicable criteria satisfied, and unable to impose conditions of approval to satisfy any of the clear and objective criteria, then the Council should deny the application.

Budget Impact:

None.

Attachments:

- A. Revised Staff Report
- B. LUBA No. 2015-019 Final Opinion and Order, dated 8/25/2015
- C. June 21, 2016 CAO Memorandum to Council



		Corvallis Planning Division
		Report to the City Council
	City Council Meeting:	August 15, 2016
	Staff Report Prepared:	August 9, 2016
		Planning@CorvallisOregon.gov

TOPIC	REVIEW OF A MAJOR MODIFICATION TO A PLANNED DEVELOPMENT FOLLOWING REVERSAL OF THE CITY COUNCIL DECISION BY THE LAND USE BOARD OF APPEALS	
CASE	CORONADO TRACT B APARTMENTS (PLD14-00005)	
REQUEST	<p>The applicant seeks approval of a Major Planned Development Modification to construct a 10-unit apartment building on the Regent Retirement Residence Planned Development site.</p> <p>The application was denied by City Council on April 6, 2015. On August 25, 2015, the Land Use Board of Appeals (“LUBA”) reversed City Council’s decision.</p>	
OWNER/APPLICANT	Group B, LLC 202 NW 6 th St Corvallis, OR 97330	
SITE LOCATION	The 0.81 acre subject site is located approximately 600 feet south of NW Elks Drive and east of NW Satinwood Street, at the east end of NW Mirador Place. It is identified on Benton County Assessor’s Map 11-5-23 AD as Tax Lot 6400.	
COMPREHENSIVE PLAN DESIGNATION	Residential – Medium High Density (MHD) and Residential – Low Density (LD)	
ZONE DESIGNATION	PD Medium-High Density Residential (RS-12) and Low Density Residential (RS-5)	
PUBLIC COMMENT	Public notice was sent to all applicable neighborhood associations, interested parties, and groups per standard Planning Commission and City Council public hearing procedures. All submitted written and oral testimony is contained in the full public record and was considered by City Council in its March 16, 2015 deliberations.	
PUBLIC RECORD:	All public record materials related to this case are available at the Planning Division offices (City Hall, Main Level, 501 SW Madison Avenue, Corvallis, OR, 97339) and online at: http://archive.corvallisoregon.gov/Browse.aspx?dbid=0&startid=478507 .	

ATTACHMENTS

ATTACHMENT A. Detailed Development Plan Graphics

- Attachment “M” – Tree Management Plan
- Attachment “N” – Site Plan
- Attachments Z and Z-1 – Building Elevations

CASE HISTORY

The sequence of events related to the review of this application thus far is as follows:

Planning Commission

January 14, 2015 – Publication of the Planning Commission Staff Report (“PC Staff Report”). In summary, Staff found that the proposal does not comply with the Basic Site Design, Landscaping for Buffering and Screening, Transportation Facilities, Traffic, and Design equal to or in excess of Pedestrian Oriented Design improvements compatibility criteria found in LDC § 2.5.40.04.a.2, 8, 9, 10 and 13. Staff also concluded that the request did not comply with LDC § 4.0.60.c as the proposed 10-unit apartment building would result in as many 27 units taking access from the Mirador Place cul-de-sac. Additionally, Staff found that the proposed driveway on the north side of the building was a vehicle maneuvering area needed for refuse collection service, and did not comply with the minimum width requirement (20 feet) for a commercial access per the City’s Off-Street Parking and Access Standards, that the buffer between the driveway and the adjacent property to the north did not comply with LDC § 4.2.40.a, and that the sidewalks proposed on the north side of the building did not comply with LDC § 4.10.60.06 (d) and (f).

January 16, 2015 – The applicant provided additional information related to the collection of trash that affected the City’s classification of the proposed drive along the northern portion of the subject site (Exhibit IV, Attachment B to the February 23, 2015 Memorandum to the Mayor and City Council from the Planning Division Manager).

January 21, 2015 – The Planning Commission conducted a public hearing on the application. The Planning Commission granted a request to hold the record open for seven additional days.

January 28, 2015 – The public record was closed. On this date, the applicant provided supplemental materials (Exhibit IV, Attachment B to the February 23, 2015 Memorandum to the Mayor and City Council from the Planning Division Manager). These materials included a revised site plan (Attachment “N”; see **Attachment A-2**) showing a slightly different sidewalk and planter strip configuration than was previously presented. This iteration of Attachment “N”, included below, is the current site plan proposed. It is the subject of all subsequent Staff analysis.

February 4, 2015 – The Planning Commission deliberated and denied the application on three grounds: (1) inconsistency with Condition 12 of the 1981 DDP, which the planning commission understood to prohibit any building in the 135-foot area between The Regent building and Tract B’s southern property line, (2) inconsistency with planned development standards at Corvallis Land Development Code (LDC) § 2.5.40.04 that require that proposed development

be compatible with surrounding development, under a number of different factors, and (3) inconsistency with cul-de-sac standards adopted after 2006 that the Planning Commission understood to prohibit NW Mirador Place from providing access to more than 18 dwelling units (Order 2015-004). The applicant subsequently appealed the Planning Commission decision to the City Council.

City Council

March 2, 2015 – City Council conducted a *de novo* public hearing on the application.

March 16, 2015 – City Council deliberated and denied the application.

April 6, 2015 – City Council adopted Formal Findings in support of its denial (Order 2015-017). In these findings, Council states that the application is inconsistent with and fails to satisfy a number of the review criteria established by LDC § 2.5.40.04. The applicant subsequently appealed the City Council decision to the Land Use Board of Appeals (“LUBA”).

LUBA

August 25, 2015 – LUBA issued its Final Opinion and Order (LUBA No. 2015-019) reversing the City Council’s decision. This decision is described in the memorandum from the Deputy City Attorney to the Mayor and City Council that is included in Council’s August 15, 2016 packet, and cited throughout the staff analysis below. In summary, LUBA found that the application constitutes “needed housing” as defined at ORS 197.303(1)(a); that the City may only apply “clear and objective” criteria to needed housing applications; and that Council’s bases for denial were not “clear and objective.” LUBA’s decision was subsequently affirmed by the Court of Appeals. In May 2016, the Oregon Supreme Court declined to review the Court of Appeals decision to affirm, effectively upholding LUBA’s reversal.

RELATIONSHIP BETWEEN THE CURRENT ANALYSIS AND PREVIOUS STAFF ANALYSES

This staff report is intended to replace all previous analyses of the application. Consistent with LUBA’s decision on appeal, this staff report addresses the proposal’s compliance with only clear and objective criteria. Description of the subject site and vicinity, descriptions of previous land use decisions related to the site, and justification for the Major Modification as the appropriate process required for the applicant’s proposal are found in the Staff Report to the Planning Commission (“**PC Staff Report**”; Exhibit X to the February 23, 2015 Memorandum to the Mayor and City Council from the Planning Division Manager) and incorporated herein.

All public record materials related to this case are available at the Planning Division offices (City Hall, Main Level, 501 SW Madison Avenue, Corvallis, OR, 97339) and online at:

<http://archive.corvallisoregon.gov/Browse.aspx?dbid=0&startid=478507>.

Frequently cited documents include:

Full LUBA record containing the official public record and LUBA decision (LUBA 2015-019):

<http://archive.corvallisoregon.gov/Browse.aspx?dbid=0&startid=666191>

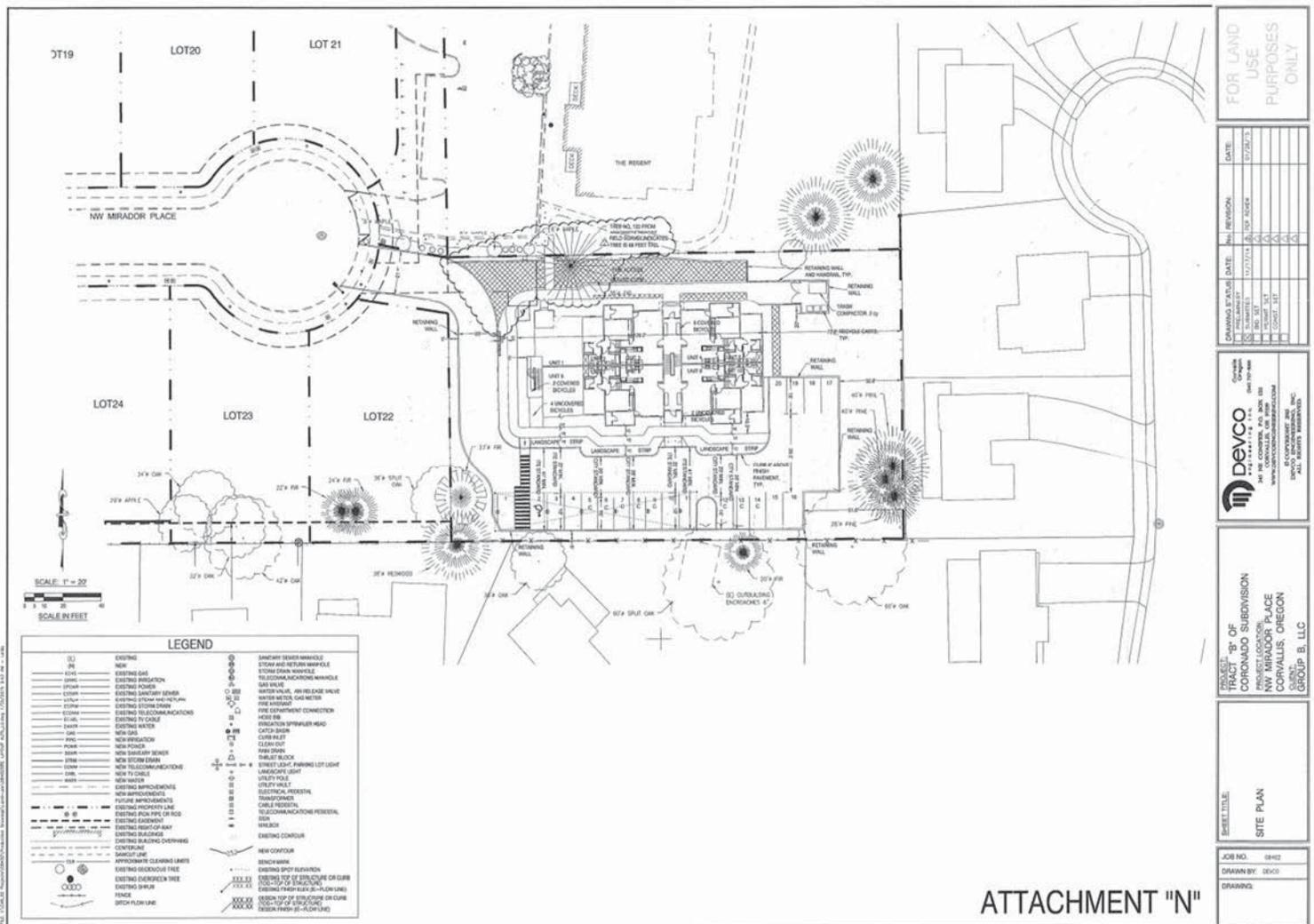
Staff Report for the January 21, 2015 Planning Commission public hearing containing application materials and initial staff analysis:

<http://archive.corvallisoregon.gov/0/edoc/513056/PC%20STAFF%20REPORT%2001.21.15.pdf>

February 23, 2015 memo from the Planning Division Manager to the Mayor and City Council containing additional staff analysis and supplemental application materials, including a revised site plan:

[http://archive.corvallisoregon.gov/0/edoc/533254/STAFF%20REPORT%20\(COMPILED%20W%20EXHIBITS\).pdf](http://archive.corvallisoregon.gov/0/edoc/533254/STAFF%20REPORT%20(COMPILED%20W%20EXHIBITS).pdf)

Figure 1 – Proposed Site Plan (Submitted January 28, 2015)



APPLICABLE LDC REVIEW CRITERIA

The PC Staff Report evaluated the application and determined that it meets the LDC § 2.5.60 thresholds for requiring review as a Major Planned Development Modification. The applicable criteria for a Major Planned Development modification are identified below.

2.5.40.04 - Review Criteria

Requests for the approval of a Conceptual Development Plan shall be reviewed to ensure consistency with the purposes of this Chapter, policies and density requirements of the Comprehensive Plan, and any other applicable policies and standards adopted by the City Council. The application shall demonstrate compatibility in the areas in “a,” below, as applicable, and shall meet the Natural Resource and Natural Hazard criteria in “b,” below:

a. Compatibility Factors –

1. Compensating benefits for the variations being requested;
2. Basic site design (the organization of Uses on a site and the Uses’ relationships to neighboring properties)
3. Visual elements (scale, structural design and form, materials, etc.);
4. Noise attenuation;
5. Odors and emissions;
6. Lighting;
7. Signage;
8. Landscaping for buffering and screening;
9. Transportation facilities
10. Traffic and off-site parking impacts
11. Utility infrastructure
12. Effects on air and water quality (note: a DEQ permit is not sufficient to meet this criterion)
13. Design equal to or in excess of the types of improvements required by the standards in Chapter 4.10 - Pedestrian Oriented Design Standards 14. Preservation and/or protection of Significant Natural Features, consistent with Chapter 2.11 - Floodplain Development Permit, Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting, Chapter 4.5 - Floodplain Provisions, Chapter 4.11 - Minimum Assured Development Area (MADA), Chapter 4.12 - Significant Vegetation Protection Provisions, Chapter 4.13 - Riparian Corridor and Wetland Provisions, and Chapter 4.14 - Landslide Hazard and Hillside Development Provisions. Streets shall also be designed along contours, and structures shall be designed to fit the topography of the site to ensure compliance with these Code standards.
14. Preservation and/or protection of Significant Natural Features, consistent with Chapter 2.11 - Floodplain Development Permit, Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting, Chapter 4.5 - Floodplain Provisions, Chapter 4.11 - Minimum Assured Development Area (MADA), Chapter 4.12 - Significant Vegetation Protection Provisions, Chapter 4.13 - Riparian Corridor and Wetland Provisions, and Chapter 4.14 - Landslide Hazard and Hillside Development Provisions. Streets shall also be designed along contours, and structures shall be designed to fit the topography of the site to ensure compliance with these Code standards

b. Natural Resources and Natural Hazards Factors -

1. Any proposed variation from a standard within Chapter 2.11 - Floodplain Development Permit, Chapter 4.5 - Floodplain Provisions, Chapter 4.11 - Minimum Assured Development Area (MADA), Chapter 4.12 - Significant Vegetation Protection Provisions, Chapter 4.13 - Riparian Corridor and Wetland Provisions, or Chapter 4.14 - Landslide Hazard and Hillside Development Provisions shall provide protections equal to or better than the specific standard requested for variation; and
2. Any proposed variation from a standard within Chapter 2.11 - Floodplain Development Permit, Chapter 4.5 - Floodplain Provisions, Chapter 4.11 - Minimum Assured Development Area (MADA), Chapter 4.12 - Significant Vegetation Protection Provisions, Chapter 4.13 - Riparian Corridor and

Wetland Provisions, or Chapter 4.14 - Landslide Hazard and Hillside Development Provisions shall involve an alternative located on the same development site where the specific standard applies.

3. Any proposed Floodplain Development Permit variation that exceeds the scope of Section 2.11.60.01.a shall also meet the Floodplain Development Permit Variance review criteria in Section 2.11.60.06 and, to the extent feasible, the base Floodplain Development Permit review criteria in Section 2.11.50.04

In LUBA No. 2015-019 (**Exhibit A**), LUBA determined that “the proposed multi-family development constitutes ‘needed housing’ as that term is defined at ORS 197.303(1)(a), and that Tract B constitutes ‘buildable land’ as that term is used in ORS 197.307.” LUBA further determined that “there is no possible dispute that the planned development standards at LDC § 2.5.40.04 requiring ‘compatibility’ with surrounding development, based on 14 factors, are not ‘clear and objective’ approval standards,” and that “such standards generally cannot be applied to needed housing.” Consequently, the Compatibility Factors listed in LDC § 2.5.40.04 cannot be used as a basis to deny the application. (Staff note that the variance criteria established in subsection “b,” above, are not applicable in this instance.) Analysis of the application must instead focus on clear and objective development standards adopted by the City Council, particularly the City’s Land Development Code. Compliance with these standards is reviewed below. As the application was received on July 29, 2014, it is subject to the 2006 Land Development Code amended through February 28, 2014.

APPLICABLE CLEAR AND OBJECTIVE STANDARDS

LDC CHAPTER 3.6 – MEDIUM-HIGH DENSITY (RS-12) ZONE

Section 3.6.20 - PERMITTED USES

3.6.20.01 – Ministerial Development

- a. Primary Uses Permitted Outright
 - 1. Residential Use Types –
 - a) Family
 - 2. Residential Building Types –
 - f) Multi-dwelling
- b. Accessory Uses Permitted Outright
 - 8. Other development customarily incidental to the Primary Uses in accordance with Chapter 4.3 – Accessory Development Regulations
 - 9. Required off-street parking for Uses permitted in the zone in accordance with Chapter 4.1 – Parking, Loading, and Access Requirements

Section 3.6.30 - RS-12 DEVELOPMENT STANDARDS

Table 3.6-1

a. Minimum Density	12 units per acre. Applies to the creation of Land Divisions.
b. Maximum Density	20 units per acre. Applies to the creation of Land Divisions.
c. Minimum Lot Area	2,200 sq. ft. per dwelling unit
d. Minimum Lot Width	25 ft.
e. Setbacks	
1. Front yard	10 ft. minimum; 25 ft. maximum
2. Rear yard and Side yards	5 ft. minimum

c) Duplex and Multi-Dwelling	10 ft. minimum each side
d) Abutting a more restrictive zone	10 ft. minimum
h. Maximum Structure Height	35 ft., not to exceed a solar envelope approved under Chapter 2.18 - Solar Access Permits or Chapter 4.6 - Solar Access
i. Maximum Lot/Site Coverage	70 percent of lot area maximum; interior attached townhouses exempt from this provision. Green area is calculated per lot.

Section 3.6.50 - GREEN AREA, OUTDOOR SPACE, LANDSCAPING, AND SCREENING

3.6.50.01 - Green Area

- a. A minimum of 30 percent of the gross lot area and a minimum of 20 percent for center-unit townhouses on interior lots, shall be retained and improved or maintained as permanent Green Area to ensure that the 70 percent maximum lot/site coverage standard of Section 3.6.30 is met. A minimum of 10 percent of the gross lot area shall consist of vegetation consisting of landscaping or naturally preserved vegetation.
- b. Landscaping within the required Green Area shall be permanently maintained in accordance with Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting. Landscaping shall primarily consist of ground cover, ferns, trees, shrubs, or other living plants and with sufficient irrigation to properly maintain all vegetation. Drought-tolerant plant materials are encouraged. Design elements such as internal sidewalks, pedestrian seating areas, fountains, pools, sculptures, planters, and similar amenities may also be placed within the permanent Green Areas.
- c. The required Green Area shall be designed and arranged to offer the maximum benefits to the occupants of the development and provide visual appeal and building separation. These provisions shall apply to all new development sites and to an addition or remodeling of existing structures that creates new dwelling units.

3.6.50.02 - Private Outdoor Space Per Dwelling Unit

- a. Private Outdoor Space shall be required at a ratio of 48 sq. ft. per dwelling unit. This Private Outdoor Space requirement may be met by providing patios and balconies for some or all dwelling units, or by combining Private Outdoor Space and Common Outdoor Space as allowed by Section 3.6.50.04.
- b. Private Outdoor Space, such as a patio or balcony, shall have minimum dimensions of six-by-eight ft.
- c. Private Outdoor Space shall be directly accessible by door from the interior of the individual dwelling unit served by the space.
- d. Private Outdoor Space shall be screened or designed to provide privacy for the users of the space.
- e. Private Outdoor Space may be considered as part of the 30 percent Green Area required under Section 3.6.50.01, if it is located on the ground. Upperstory balconies cannot be counted.

3.6.50.06 - Location of Green Area

In determining where Green Areas should be placed on a development site, consideration shall be given to the following:

- a. Preserving otherwise unprotected natural resources and wildlife habitat on

- the site, especially as large areas rather than as isolated smaller areas, where there is an opportunity to provide a recreational or relaxation use in conjunction with the natural resource site;
- b. Protecting lands where development more intensive than a Green Area use may have a downstream impact on the ecosystem of the vicinity. The ecosystem in the vicinity could include stands of mixed species and conifer trees, natural hydrological features, wildlife feeding areas, etc.;
 - c. Enhancing park sites adjacent to the convergence of sidewalks and/or multiuse paths;
 - d. Enhancing recreational opportunities near neighborhood commercial activity centers; and
 - e. Enhancing opportunities for passive relaxation and recreation for residents, employees, and/or visitors within a development site.

Section 3.6.90 - COMPLIANCE WITH CHAPTER 4.10 - PEDESTRIAN ORIENTED DESIGN STANDARDS

The requirements in Chapter 4.10 - Pedestrian Oriented Design Standards shall apply to the following types of development in the RS-12 Zone:

- a. All new buildings or structures for which a valid permit application has been submitted after December 31, 2006;

FINDINGS OF FACT – RS-12 DEVELOPMENT STANDARDS

1. Per LDC § 1.2.90.02.e, where a lot or parcel is less than one (1) acre in size and is divided by a zone boundary, the applicable uses and development standards shall be of the zone that contains the majority of the site. The site has a base zone of RS-5 and RS-12. Since the majority of the subject site is zoned RS-12 and only a portion of the northwest corner of the site is zoned RS-5, the development is subject to LDC Chapter 3.6 standards.
2. The proposed land use is classified as Family Residential per LDC § 3.0.30 and the 10-unit apartment building is defined as a Multi-dwelling residential building type per LDC § 1.6.30. Per LDC § 3.6.20.01.a, the proposed 10-unit apartment building and its associated site improvements are permitted outright uses in the RS-12 zone.
3. The RS-12 zone implements the Medium-high Density Residential Comprehensive Plan designation, which allows 12 to 20 dwelling units per acre. Under the criteria for a Conceptual Development Plan, the proposed Major Modification is required to be consistent with the density requirements of the Comprehensive Plan. Additionally, as discussed above, it is noted that the Comprehensive Plan designation for the site is Residential - Medium Density, which is inconsistent with the purposes of the RS-12 zone - implementing the Medium-high Density Residential Comprehensive Plan designation.
4. The RS-12 portion of the subject site is approximately 0.78 acres. The RS-5 portion of the site is approximately 0.03 acres. Based on the density ranges of 2-6 units per acre (RS-5) and 12-20 units per acre (RS-12), between 9 and 16 units are permissible on the site. The proposed 10 units fall within the density range permitted by the underlying zones.
5. The minimum lot area requirements in LDC § 3.6.30.c specify 2,200 square feet per dwelling unit. The DDP proposes 10 units, which requires a total lot area of 22,000 square feet. The subject site is approximately 35,223 square feet, which meets the lot area standard.
6. Based on the standards in LDC Table 3.6-1, the minimum front yard setback in the RS-12 zone is 10 feet. The minimum side yard setback for a Multi-Dwelling structure is 10 feet for each side. The minimum rear yard setback is 5 feet. The proposed building has a front yard of approximately 90.8 feet; and side yards of approximately 40 feet (west), 25 feet (north), and 56.5 feet (south); and a rear yard (east) of approximately 72.8 feet. The proposed building exceeds the minimum setback requirements adjacent to all yards.

7. Per LDC § 3.6.30.h, the maximum structure height in the RS-12 zone is 35 feet. The DDP illustrates that the building is mostly two stories in height and has a hip roof that is approximately 30 feet in height from reference datum to the midpoint of roof pitches (i.e. the midpoint from eave to roof peak).
8. The RS-12 zone has a maximum lot coverage standard of 70%. The proposed lot coverage is approximately 52%, including the area of structures and paving. This standard is satisfied.
9. LDC § 3.6.50.01.a requires that a minimum of 30 percent of the lot area be retained / improved as permanent Green Area. As noted in the discussion above, the proposed lot coverage including structures and paving is approximately 52%. The remaining 48% of the development site includes landscaped buffers along all property lines, that extend into landscaped and usable yard areas on the north and east sides of the development site. The applicant states in the narrative that a total area of improved landscaping or preserved vegetation is approximately 12,853 square feet (see **Attachment B, page 81 of the PC Staff Report**). This equals approximately 36% of the site, which exceeds the minimum 10% requirement for landscaping or naturally preserved vegetation. The standards in LDC § 3.6.50.01 are satisfied.
10. The RS-12 zone requires a minimum of 48 sq. ft. of Private Outdoor Space per dwelling unit. The proposed DDP indicates that each apartment unit will have a Private Outdoor Space in the form of a porch or balcony, with minimum dimensions of 7 feet by 11.5 feet or 9 feet by 10.5 feet, and a minimum area of approximately 80 square feet. The proposed balconies and porches comply with the standards in LDC § 3.6.50.02.

CONCLUSIONS

As discussed above, the proposal is consistent with applicable development standards in the RS-5 and RS-12 zones. The proposed 10-unit apartment building is consistent with the required density range of between 9 and 16 units. Staff find that the proposal meets applicable RS-5 and RS-12 development standards.

LDC CHAPTER 4.0 – IMPROVEMENTS REQUIRED WITH DEVELOPMENT

Section 4.0.20 - TIMING OF IMPROVEMENTS

a. All improvements required by the standards in this Chapter shall be installed concurrently with development, as follows:

- 2. Where a Land Division is not proposed, the site shall have required public and franchise utility improvements installed or secured prior to occupancy of structures, in accordance with the provisions of Section 2.4.40.12 of Chapter 2.4 - Subdivisions and Major Replats.**

FINDINGS OF FACT – TIMING OF IMPROVEMENTS

1. In general, public improvements necessary to serve the site were installed with previous development of the Coronado Subdivision, and in the case of storm drainage, public improvements on NW Autumn Street.
2. There is an existing 8-inch public water main located in NW Mirador Place which was installed with the Coronado Subdivision improvements. This line loops to the north through the Regent site. An existing 3/4 inch water service is located on the site frontage.
3. There is an existing 8-inch public sewer main terminating in a manhole at the end of NW Mirador Place which was installed with the Coronado Subdivision improvements. A 4-inch sewer lateral was stubbed to the site.
4. There is an existing 12-inch public storm drain in NW Mirador Place which was installed with the Coronado Subdivision improvements, and there is an existing public 10-inch storm drain located in NW Autumn Street with a 10-inch lateral located in an easement between 3080 and

3098 NW Autumn Street. The 10-inch storm drain in the easement terminates in a field inlet at the SE corner of Tract B.

5. The proposed on-site storm drainage system is private.
6. With additional development of the site, public improvements are required as identified in the application and on the utility plan dated 11/17/14 (**Attachment B, page 11 of the PC Staff Report**) including water services and a fire hydrant on the existing 8-inch water main (**Condition #7**). The existing sewer lateral will need to be evaluated based on the pumping characteristic of the proposed private sanitary sewer lift station (**Condition #10**).

CONCLUSIONS

The applicant is proposing public improvements for the additional site development consistent with the above LDC standards. As noted, infrastructure with sufficient capacity is available to serve the site. The applicant shall connect to existing City services and proposed connections will be reviewed through Public Improvement by Private Contract Permits (PIPC) and building permit reviews (**see Condition #7**). Staff find that the proposal, as conditioned, will meet clear and objective standards regarding the timing of improvements.

Section 4.0.30 - PEDESTRIAN REQUIREMENTS

a. **Sidewalks shall be required along both sides of all streets, as follows:**

1. **Sidewalks on Local, Local Connector, and Cul-de-sac Streets - Sidewalks shall be a minimum of five ft. wide on Local, Local Connector, and Cul-de-sac Streets. The sidewalks shall be separated from curbs by a tree planting area that provides at least six ft. of separation between the sidewalk and curb, except that this separated tree planting area shall not be provided adjacent to sidewalks where they are allowed to be located within Natural Resource areas governed by Chapter 4.12 - Significant Vegetation Protection Provisions and Chapter 4.13 - Riparian Corridor and Wetland Provisions. This separated tree planting area shall also not be provided adjacent to sidewalks where they are allowed to be located within drainageway areas governed by regulations in Chapter 2.11 - Floodplain Development Permit and Chapter 4.5 - Floodplain Provisions.**

3. **Sidewalk Installation Timing - The timing of the installation of sidewalks shall be as follows:**
 - b) **Except as noted in "c," below, construction of sidewalks along Local, Local Connector, and Cul-de-sac Streets may be deferred until development of the site and reviewed as a component of the Building Permit. However, in no case shall construction of the sidewalks be completed later than three years from the recording of the Final Plat. The obligation to complete sidewalk construction within three years will be outlined in a deed restriction on affected parcels and recorded concurrently with the Final Plat.**

FINDINGS OF FACT – PEDESTRIAN REQUIREMENTS

1. With development of the site, sidewalks will need to be installed prior to occupancy of the first structure (**see Condition #8**).
2. The plat for Coronado Subdivision shows a 49-foot radius for cul-de-sac ROW, which allows for 6-foot planter strips and 5-foot sidewalks.

CONCLUSIONS

Provisions exist to install City standard landscaping strips and sidewalks. Per **Condition #8**, this code standard will be addressed per LDC standards at the time of building permit. Staff find that the proposal, as conditioned, will meet clear and objective pedestrian requirements.

Section 4.0.40 - BICYCLE REQUIREMENTS

- b. **Safe and Convenient Bicycle Facilities** - Safe and convenient bicycle facilities that minimize travel distance to the greatest extent practicable shall be provided in conjunction with new development within and between new Subdivisions, Planned Developments, commercial developments, industrial areas, residential areas, transit stops, and neighborhood activity centers such as schools and parks, as follows:
 - 1. For the purposes of this Section, safe and convenient means bicycle facilities that are free from hazards and provide a direct route of travel between destinations.

FINDINGS OF FACT – BICYCLE REQUIREMENTS

- 1. The subject site fronts a local street which provides for a shared vehicular and bicycle area.

CONCLUSIONS

Staff find that the existing conditions meet clear and objective bicycle requirements.

Section 4.0.50 - TRANSIT REQUIREMENTS

- b. **Development sites at or near existing or planned transit stops shall provide safe, convenient access to the transit system, as follows:**
 - 2. All developments shall provide safe, convenient pedestrian walkways between the buildings and the transit stop, in accordance with the provisions of Section 4.0.30.b.

FINDINGS OF FACT – TRANSIT REQUIREMENTS

- 1. The subject site is served by transit routes 2, 7 and 4 on NW Elks Drive, and Route 7 on NW Satinwood Drive.
- 2. With build out of the Coronado Subdivision, the site will be connected via sidewalks to these transit routes.

CONCLUSIONS

Staff find that the existing conditions meet clear and objective transit requirements.

LDC § 4.0.60 - PUBLIC AND PRIVATE STREET REQUIREMENTS

- c. **Although through-traffic movement on new Local Connector and Local Streets usually is discouraged, this may not be practical for particular neighborhoods. Local Connector or Local Street designations shall be applied in newly developing areas based on review of a street network plan and, in some cases, a traffic study provided with the development application. The decision regarding which of these designations will be applied is based on a number of factors, including density of development, anticipated traffic volumes, and the potential for through traffic.**

Street network plans must provide for connectivity within the transportation system to the extent that, generally, both Local Connector and Local Streets will be created within a development. Identified traffic calming techniques, such as bulbed intersections, etc., can reduce traffic speeds and, where included, are to be constructed at the time of development. To further address traffic speeds and volumes on Local Connector and Local Streets, the following street designs, along with other designs intended to reduce traffic speeds and volumes, shall be considered:

- 1. **Straight segments of Local Connector and Local Streets should be less than .25 mile in length, and include design features such as curves and T intersections.**

2. Cul-de-sacs should not exceed 600 ft. nor serve more than 18 dwelling units.
 3. Street designs that include traffic calming, where appropriate, are encouraged.
- e. Development sites shall be provided with access from a public street or a private street that meets the criteria in “d,” above, both improved to City standards in accordance with the following:
1. Where a development site abuts an existing public street not improved to City standards, the abutting street shall be improved to City standards along the full frontage of the property concurrently with development. Where a development site abuts an existing private street not improved to City standards, and the private street is allowed per the criteria in “d”, above, the abutting street shall meet all the criteria in “d”, above and be improved to City standards along the full frontage of the property concurrently with development.
- k. Location, grades, alignments, and widths for all public and private streets shall be considered in relation to existing and planned streets, topographical conditions, public convenience and safety, and proposed land use. Where topographical conditions present special circumstances, exceptions to these standards may be granted by the City Engineer provided that the safety and capacity of the street network is not adversely affected. The following standards shall apply:
8. Right-of-way and improvement widths shall be as specified in the Transportation Plan and Table 4.0-1 - Street Functional Classification System.

Table 4.0-1- Street Functional Classification System ¹						
	Arterial Highway	Arterial	Collector	Neighborhood Collector	Local Connector	Local
Auto amenities (lane widths) ²	2-5 Lanes (11 - 14 ft.)	2-5 Lanes (12 ft.)	2-3 Lanes (11 ft.)	2 Lanes (10 ft.)	2 Lanes (10 ft.)	Shared Surface
Bike amenities ³	2 Lanes (6 ft.)	2 Lanes (6 ft.)	2 Lanes (6 ft.)	2 Lanes (6 ft.)	Shared Surface	Shared Surface
Pedestrian amenities	2 Sidewalks (6 ft.) Ped. Islands	2 Sidewalks (5 ft.) Ped. Islands	2 Sidewalks (5 ft.)	2 Sidewalks (5 ft.)	2 Sidewalks (5 ft.)	2 Sidewalks (5 ft.)
Transit	Typical	Typical	Typical	Typical	Permissible/not typical	Permissible/not typical
Managed speed ⁴	20 mph - 55 mph	25 mph - 45 mph	25 mph - 35 mph	25 mph	25 mph	15-20 mph
Curb-to-curb width ⁵ (two way)						
No on-street parking	34 ft - 84 ft.*	34 ft.-72 ft.	34 ft.-45 ft.	32 ft.	20 ft.*	20 ft.*
Parking one side	42 ft. - 84 ft.	NA	NA	40 ft.	28 ft.	25 ft.*
Parking both sides	50 ft. - 84 ft.	NA	NA	48 ft.	28-34 ft.	28 ft.
Traffic calming ⁶		No	Permissible/ not typical	Typical	Permissible	Permissible
Preferred adjacent land use	High Intensity	High Intensity	Med. to High Intensity	Medium Intensity	Med. to Low Intensity	Low Intensity
Access control	Yes	Yes	Some	No	No	No
Turn lanes		Continuous and/or medians with ped. islands	Typical at intersections with Arterials or Collectors	Not typical	Not typical	Not typical
Planting strips ^{7,8}	Two - 12 ft. Except across areas of Natural Features	Two - 12 ft. Except across areas of Natural Features	Two - 12 ft. Except across areas of Natural Features	Two - 12 ft. Except across areas of Natural Features	Two - 6 ft. Except across areas of Natural Features	Two - 6 ft. ⁷ Except across areas of Natural Features ^{7,8}
Through-traffic connectivity		Primary function	Typical function	Typical function	Permissible function	Permissible function

1. These standards do not preclude the flexibility currently allowed through the Planned Development process in Chapter 2.5 - Planned Development.
2. Lane widths shown are the preferred construction standards that apply to existing routes adjacent to areas of new development, and to newly constructed routes. On Arterial and Collector roadways, an absolute minimum for safety concerns is 10 ft. Such minimums are expected to occur only in locations where existing development along an established sub-standard route or other severe physical constraints preclude construction of the preferred facility width.
3. An absolute minimum width for safety concerns is five ft., which is expected to occur only in locations where existing development along an established sub-standard route or other severe physical constraints preclude construction of the preferred facility width. Parallel multi-use paths in lieu of bike lanes are not appropriate along the Arterial-Collector system due to the multiple conflicts created for bicycles at driveway and sidewalk intersections. In rare instances, separated (but not adjacent) facilities may provide a proper function.
4. Arterial Highway speeds in the Central Business or other Commercial zones in urban areas may be 20-25 mph. Traffic calming techniques, signal timing, and other efforts will be used to keep traffic within the desired managed speed ranges. Design of a corridor's vertical and horizontal alignment will focus on providing an enhanced degree of safety for the managed speed.
5. Street design for each development shall provide for emergency and fire vehicle access. Street widths of less than 28 ft. shall be applied as a development condition through the Subdivision process in Chapter 2.4 - Subdivisions and Major Replats and/or the Planned Development process in Chapter 2.5 - Planned Development. The condition may require the developer to choose between improving the street to the 28-ft. standard or constructing the narrower streets with parking bays placed intermittently along the street length. The condition may require fire-suppressive sprinkler systems for any dwelling unit more than 150 ft. from a secondary access point. * To be applied in RS-9 and lesser zones.
6. Traffic calming includes such measures as bulb ed intersections, speed humps, raised planted medians, mid-block curb extensions, traffic circles, signage, and varied paving materials and is addressed in the Transportation Plan.
7. Through the Planned Development Review Process, the planting strip along Local Streets and around the bulbs of Cul-de-sacs may be reduced or eliminated.
8. Where streets must cross protected Natural Features, street widths shall be minimized by providing no on-street parking and no planting strips between the curb and the sidewalk on either side of the street.

FINDINGS OF FACT– PUBLIC STREET DESIGN

1. The proposed planned development is for a ten-unit multi-family development (Apartments), on a 35,223 sq. ft. (0.81 acre) tract.
2. The estimated trips for the site based on Institute of Transportation Engineers, Trip Generation Manual, is 5.69 trips in the a.m. peak hour and 6.51 trips in the p.m. peak hour. The number of trips generated by this site is below the 30 trips per hour threshold to require a full traffic study per LDC § 4.0.60.a. Daily trips based on ITE Standards is 66.5 trips per day for the site.
3. Due to existing development in the area, there is no feasible solution to extend the end of NW Mirador Place to connect with another street and provide connectivity.

4. Local streets are described in the Corvallis Transportation Plan on Page 3-8. Table 3-4 calls out volumes of less than 2000 vehicles per day and speed of 15-20 mph for local streets. Estimated daily trips on the cul-de-sac portion of NW Mirador Place are 229.
5. City Council Policy CP 9.07 addresses neighborhood traffic calming. The policy identifies volumes must typically exceed 300 vehicles per day and exceed the posted speed limit by 5 mph to qualify for evaluation of neighborhood traffic calming. Estimated daily trips for the cul-de-sac are 229, which is below the 300 trips per day threshold.
6. An emergency access easement is provided through the adjacent Regent retirement center parking lot, and connects to the end of the cul-de-sac.
7. All traffic on a cul-de-sac has one way out and one way in, and all trips will take that route.
8. The Fire Department did not have any comments in regard to the cul-de-sac configuration.
9. The building is required to contain a fire suppression / sprinkler system, based on Fire Department comments (**see Condition #14**).
10. The application shows installing planting strips and a setback sidewalk with development (**Condition #8**).
11. The proposed development includes a commercial driveway approach that will need to transition to adjacent driveways and the existing setback sidewalks along the cul-de-sac (**see Condition #8**).

CONCLUSIONS

The existing street fronting the site is improved to City local street standards with the exception of sidewalk transitions to the existing setback sidewalk, which will be required as a condition with the development of the site (**Condition #8**). It has the ability to serve the proposed development's transportation needs. Staff find that the proposal, as conditioned, will meet clear and objective public street standards.

LDC § 4.0.70 - PUBLIC UTILITY REQUIREMENTS (OR INSTALLATIONS)

- a. **All development sites shall be provided with public water, sanitary sewer, storm drainage, and street lights.**
- b. **Where necessary to serve property as specified in "a" above, required public utility installations shall be constructed concurrently with development.**
- c. **Off-site public utility extensions necessary to fully serve a development site and adjacent properties shall be constructed concurrently with development.**
- d. **To provide for orderly development of adjacent properties, public utilities installed concurrently with development of a site shall be extended through the site to the edge of adjacent property(ies).**
- e. **All required public utility installations shall conform to the City's adopted facilities master plans.**

FINDINGS OF FACT (PUBLIC WATER UTILITY)

1. There are existing City utilities in the vicinity of the site.
2. There is an existing 8-inch public water main located in NW Mirador Place which was installed with the Coronado Subdivision improvements. This line loops to the north through the Regent site. An existing 3/4 inch water service is located on the site frontage.
3. The applicant provided a Utility Plan (Attachment "U") dated 11/17/14 (see **Attachment B, page 11 of the PC Staff Report**).

4. There is an existing 8-inch public water main located in NW Mirador Place, which was installed with the Coronado Subdivision improvements. This line loops to the north through the Regent site. An existing 3/4 inch water service is located on the site frontage.
5. New water services and a hydrant will be installed on the existing 8-inch line at the NW corner of the site.
6. The Developer will be responsible for the cost of installing any services.
7. The applicant will be required to obtain necessary PIPC permits (**Condition #7**) and building permits to install services required for the development. Final locations of the water meters, fire service and hydrant will be determined as part of the PIPC plan review process.

CONCLUSIONS:

With **Condition #7**, the development will meet applicable Land Development Code criteria for City water requirements. Staff find that the proposal, as conditioned, will meet clear and objective public water utility standards.

FINDINGS OF FACT (PUBLIC SANITARY SEWER UTILITY)

1. There is an existing 8-inch public sewer main terminating in a manhole at the end of NW Mirador Place which was installed with the Coronado Subdivision improvements. A 4-inch sewer lateral was stubbed to the site.
2. To provide sanitary service for the proposed site plan, a private lift station will need to be installed by the developer which connects to the existing public sewer in NW Mirador Place.
3. With development of the site and building permits the applicant will need to design a private sanitary sewer lift station for the site and provide verification of the existing service lateral sizing (**see Condition #10**).

CONCLUSIONS:

An existing public sanitary sewer service is provided to the site and meets applicable Land Development Code criteria for City sewer requirements. The private sewer connection to the public service will need to be permitted by the City, and a private sanitary sewer lift station will be provided by the developer due to topography (**see Condition #10**). Staff find that the proposal, as conditioned, will meet clear and objective public sanitary sewer utility standards.

Section 4.0.80 - PUBLIC IMPROVEMENT PROCEDURES

It is in the best interests of the community to ensure that public improvements installed in conjunction with development are constructed in accordance with all applicable City policies, standards, procedures, and ordinances. Therefore, before installing public water, sanitary sewer, storm drainage, streetlights, street, transit, bicycle, or pedestrian improvements, developers shall contact the City Engineer for information regarding adopted procedures governing plan submittal, plan review and approval, permit requirements, inspection and testing requirements, progress of the work, and provision of easements, dedications, and as-built drawings for installation of public improvements.

FINDINGS OF FACT – PUBLIC IMPROVEMENT PROCEDURES

1. A permit for public improvements is required for work within the ROW. Typically these permits are issued by the Engineering Division. For minor public improvements the permits may be issued in conjunction with the building permits through Development Services.
2. Installation of the new fire hydrant and fire service will require a public improvement by private contract (PIPC) permit (**see Condition #7**).

CONCLUSIONS:

Staff find that the proposal, as conditioned, will meet requirements regarding public improvement procedures.

Section 4.0.90 – FRANCHISE UTILITY INSTALLATIONS

- f. The developer shall be responsible for making necessary arrangements with Franchise Utility providers for provision of plans, timing of installation, and payment for services installed. Plans for Franchise Utility installations and plans for public improvements shall be submitted together to facilitate review by the City Engineer.**

FINDINGS OF FACT (FRANCHISE UTILITIES)

- 1. Existing franchise utilities are located in the vicinity of the subject site.
- 2. The applicant will need to obtain the franchise utility services they need through the franchise utility companies concurrent with the building permits.

CONCLUSIONS:

Staff find that the proposal meets franchise utility standards.

Section 4.0.100 - PUBLIC LAND FOR PUBLIC PURPOSES

- b. Utility easements with a minimum width of seven ft. shall be granted to the public adjacent to all street rights-of-way for franchise utility installations.**

FINDINGS OF FACT- UTILITY EASEMENTS

- 1. Consistent with the above LDC requirements and to facilitate future underground installation of franchise utilities, a 7-foot utility easement was granted adjacent to the dedicated ROW, on the Coronado Subdivision plat.

CONCLUSIONS:

Staff find that the proposal meets utility easement requirements.

LDC § 4.0.130 - STORM WATER MANAGEMENT MEASURES

- a. To reduce the risk of causing downstream properties to become flooded and to help maintain or restore the Properly Functioning Conditions of receiving waters, new development, expansions to existing development, or redevelopment shall be required to provide storm water detention and retention in accordance with “b,” of this Section.**
 - b. When Detention and/or Retention are Required - See also Section 4.2.50.04 of Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting.**
- 2. Expansion and Redevelopment -**
- a) Development projects that create new or redeveloped impervious area totaling at least 10,000 sq. ft. and resulting in at least 25,000 sq. ft. of post-development impervious area are required to implement storm water detention and/or retention measures for the new and redeveloped impervious area as specified in the Corvallis Design Criteria Manual. Redeveloped impervious area consists of roof area and replaced**

impervious area, minus any reduction in overall impervious area, associated with substantial improvement or replacement of structures.

- c. Use of water quality features shall be consistent with the Corvallis Design Criteria Manual. Water quality features within the regulated Riparian Corridor shall be located outside of the applicable riparian easement area. The riparian easement shall be re-vegetated consistent with Sections 4.13.50.d.1 and 4.13.50.d.2 of Chapter 4.13 - Riparian Corridor and Wetland Provisions.
- d. Use of infiltration systems is allowed consistent with the Corvallis Design Criteria Manual.

FINDINGS OF FACT – STORMWATER MANAGEMENT MEASURES

1. The property east of the development site has expressed concerns over private Stormwater runoff from the site based on historical drainage issues.
2. The applicant is proposing private drainage improvements with site development as part of the development. The applicant addresses these facilities in the letter dated November 17, 2014 (see **Attachment B, pages 40-42 of the PC Staff Report**), in the applicant's narrative (see **Attachment B, pages 92-93 of the PC Staff Report**), and with Attachment "V" Storm Water Quality Plan (see **Attachment B, page 12 of the PC Staff Report**), and in the appendix of the application (see **Attachment B, page 158 of the PC Staff Report**). Site drainage will be collected through a private storm drainage system consisting of catch basins and pipes and will be detained and treated for water quality. Stormwater detention and stormwater quality facilities will connect to the existing storm drain line at the SE corner of the site which flows to Autumn Street. Due to slopes, the detention will be in an enclosed private underground pipe system and water quality will be provided by a private stormwater filter system (**see Condition #6**).

CONCLUSIONS

Staff find that the proposal, as conditioned, will meet private stormwater detention and water quality standards.

LDC CHAPTER 4.1 – PARKING, LOADING, AND ACCESS REQUIREMENTS

Section 4.1.20 - GENERAL PROVISIONS

- a. **Provision and Maintenance - The provision of required off-street parking for vehicles and bicycles, and loading facilities for vehicles, is a continuing obligation of the property owner. Building or other Permits will only be issued after receipt of site plans drawn to a suitable scale and showing the location of permanent parking and loading facilities. New vehicle and bicycle parking spaces shall be provided in accordance with the provisions of this Code.**
- k. **Unassigned Parking in Residential Zones -**
 1. **Vehicles - Multi-dwelling units with more than 10 required vehicle parking spaces shall provide unassigned parking. The unassigned parking shall consist of at least 15 percent of the total required parking spaces and be located such that they are available for shared use by all occupants within the development.**
 2. **Bicycles - Multi-dwelling units with more than 10 required bicycle parking spaces shall provide bicycle shared parking. The shared parking shall consist of at least 15 percent of the total required parking spaces, to be located such that they are available for shared use by all occupants within the development.**
- m. **Fractions - When the calculated sum of the required vehicle and/or bicycle parking spaces includes a fraction equal to or greater than one half of a space (0.5 or more), a full space shall be required. If the fraction is less than 0.5, an additional space shall not be required.**

- o. **Maximum Parking Allowed - No site shall be permitted to provide more than 30 percent in excess of the minimum off-street vehicle parking required by Section 4.1.30, below, except as provided in “p,” below, and in Section 4.1.30.g.3.b.**

Section 4.1.30 - OFF-STREET PARKING REQUIREMENTS

Minimum parking requirements for Use Types in all areas of the City, with the exception of the Central Business (CB) Zone and the Riverfront (RF) Zone, are described in Sections 4.1.30.a through 4.1.30.f. Minimum parking requirements for the Central Business (CB) Zone are described in Section 4.1.30.g.

- a. **Residential Uses Per Building Type –**
 - 2. **Duplex, Attached, and Multi-dwelling –**
 - a) **Vehicles –**
 - 3) **Two-bedroom Unit – 1.5 spaces per unit**
 - b) **Bicycles –**
 - 3) **Two-bedroom Unit – 1.5 spaces per unit**

LDC § 4.1.40 - STANDARDS FOR OFF-STREET PARKING AND ACCESS

All off-street parking facilities, vehicle maneuvering areas, driveways, loading facilities, accessways, and private streets shall be designed, paved, curbed, drained, striped, and constructed to the standards set forth in this Section and the City’s Off-street Parking and Access Standards, established by the City Engineer and as amended over time. A permit from the Development Services Division shall be required to construct parking, loading, and access facilities, except for Single Detached, Duplex, Single Attached, and Attached Building Types; and Manufactured Dwellings.

FINDINGS OF FACT – OFF-SITE PARKING AND ACCESS

1. Site access is provided at the end of NW Mirador Place, a local street.
2. The applicant proposes an off-street parking lot, as shown on the DDP. The proposed parking lot contains 20 vehicle parking spaces. Based on the proposed 10 dwelling units, each having two bedrooms, 15 vehicle parking spaces are the minimum number required per LDC § 4.1.30.a.2.a. The proposal includes sufficient vehicle parking to meet the LDC required minimum of 15 spaces.
3. The maximum parking allowed is 30% of minimum off-street vehicle parking, which equals 19.5 vehicle parking spaces for the subject site. Consistent with LDC standards, when a vehicle and/or bicycle parking calculation results in a fraction greater than 0.5, a full space shall be required. Therefore, the maximum number of parking spaces permitted is 20. The number of off-street parking spaces proposed is consistent with the maximum number allowed.
4. The applicant has provided a Site Plan (Attachment “N”) that references use of ITE standards for drive aisle dimensions and a portion of standard-size parking stalls. In the memorandum dated 12/31/14 (**Attachment B, page 3 of the PC Staff Report**), the applicant requests use of ITE standards for full size parking spaces and provides excerpts from Chapter 7, *Parking Geometrics*, from the Urban Land Institute’s “The Dimensions of Parking.” ITE standards have been used in lieu of the City’s standard parking lot dimensions on a number of development applications. Staff have reviewed the applicant’s proposal, as well as the proposed use and anticipated frequency of parking lot turnover (low), and find the proposed ITE standards will be sufficient as shown on the proposed Site Plan (Attachment “N”), except that the ADA accessible stall will need to meet the City’s parking dimension standard. Staff note that further reduction of parking space and drive aisle portions dimensioned to ITE standards would not sufficiently address the City’s Off-Street Parking and Access Standards. **Condition #9** requires that all parking spaces be dimensioned to the City’s Off-Street Parking and Access Standards, except where ITE standards have been accepted.
5. A portion of the retaining wall encroaches into parking stall #1. Parking stall #1 shall meet either City or ITE standards for parking dimensions.

6. A parking stall required for ADA accessibility must meet the City's standard parking stall dimensions.
7. The applicant will be required to obtain necessary building permits for construction of the parking lot consistent with the City's Off-Street Parking and Access Standards and where depicted on the applicant's Site Plan and accepted by staff as described above, ITE dimensional standards (**Condition #9**).
8. Initially, the fire lane was proposed to double as access for commercial garbage collection. However, according to information provided by the applicant on January 16, 2015 (Exhibit IV, Attachment B to the February 23, 2015 Memorandum to the Mayor and City Council from the Planning Division Manager), a trash compactor and recycle carts will be provided and apartment staff would be responsible for rolling these receptacles to the street curbside at designated trash and recycle collection times. Therefore, because it is not a commercial access lane, the fire lane does not need to be 20 feet wide per the City's Off-Street Parking and Access Standards. However, per fire code, the aerial fire access on the north side of the building shall be at least 20 feet in width and marked as emergency vehicle access only (**Condition #16**).
9. The development provides 16 bicycle parking spaces, which exceeds the minimum required of 15. **Condition #15** requires directional signage to bicycle parking.

CONCLUSIONS

The DDP provides more than the minimum required vehicle parking for the proposed use. Where depicted on the applicant's Site Plan, parking stalls and the adjacent drive aisle may be dimensioned to the proposed ITE dimensions. The ADA accessible parking space shall comply with the City's Off-Street Parking and Access Standards for a standard parking space. Staff find that the proposal, as conditioned, will meet off-site parking and access requirements.

LDC CHAPTER 4.2 – LANDSCAPING, BUFFERING, SCREENING AND LIGHTING

Section 4.2.20 – GENERAL PROVISIONS

d. Protection of Significant Tree and Significant Shrub Specimens Outside of Inventoried Areas of the Adopted Natural Features Inventory Map dated December 20, 2004 –

1. Significant Tree and Significant Shrub specimens outside of the areas inventoried as part of the Natural Features Inventory should be preserved to the greatest extent practicable and integrated into the design of a development. See Adopted Natural Features Inventory Map dated December 20, 2004, for information regarding areas inventoried as part of the Natural Features Inventory. See also the definitions for Significant Shrub and Significant Tree in Chapter 1.6 - Definitions.

2. Preservation -

a) Significant Trees and Significant Shrubs to be preserved and methods of protection shall be indicated on the detailed planting plan submitted for approval. Existing Significant Trees and Significant Shrubs shall be considered preserved if the standards in Section 4.12.60.f are met.

b) Where the preservation of Significant Trees or Significant Shrubs is required by this Code, by a particular proposal, and/or by Conditions of Approval, no development permits shall be issued until a preservation plan has been reviewed and approved by the Director. The preservation plan shall be developed by a certified arborist and shall comply with the purposes clause and specific standards in this Chapter and any proposal(s) and/or Conditions of Approval that apply to the particular project. Additionally, Significant Trees and Significant Shrubs to be saved and methods of protection shall be indicated on the preservation plan submitted for approval.

Section 4.2.30 - REQUIRED TREE PLANTINGS AND MAINTENANCE

a. Tree Plantings -

Tree plantings in accordance with this Section are required for all landscape areas, including but not limited to parking lots for four or more cars, public street frontages, private streets, multi-use paths, sidewalks that are not located along streets, alleys, and along private drives more than 150 ft. long.

4. Conditions of Approval for individual development projects may require additional tree plantings to mitigate removal of other trees, or as part of landscape buffering or screening efforts;

6. Trees in parking areas shall be dispersed throughout the lot to provide a canopy for shade and visual relief.

Large-canopy trees: trees that normally reach 30-50 ft. in height within 30 years, but exceed 50 ft. in height at maturity	Minimum one tree per 12 cars
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Section 4.2.40 - BUFFER PLANTINGS

Buffer plantings are used to reduce apparent building scale, provide a transition between contrasting architectural styles, and generally mitigate incompatible or undesirable views.

They are used to soften rather than block viewing. Where required, a mix of plant materials shall be used to achieve the desired buffering effect. At minimum, this mix shall consist of trees, shrubs, and ground cover, and may also consist of existing vegetation, such as natural areas that will be preserved.

At minimum, buffering is required in areas identified through Conditions of Approval, in areas required by other provisions within this Code, and in Through Lot areas, and as required below.

Parking, Loading, and Vehicle Maneuvering Areas –

a. Buffering is required for parking areas containing four or more spaces, loading areas, and vehicle maneuvering areas. Boundary plantings shall be used to buffer these uses from adjacent properties and the public right-of-way. A minimum five-ft.-wide perimeter landscaping buffer shall be provided around parking areas; and a minimum 10 ft.-wide perimeter landscaping buffer shall be provided around trees. Additionally, where parking abuts this perimeter landscape buffer, either parking stops shall be used or planters shall be increased in width by 2.5 ft. On-site plantings shall be used between parking bays, as well as between parking bays and vehicle maneuvering areas. Low-lying ground cover and shrubs, balanced with vertical shrubs and trees, shall be used to buffer the view of these facilities.

b. In addition to any pedestrian refuge areas, each landscaped island within and around parking lot areas shall

1. Include one or more shade canopy trees;
2. Be a minimum length of eight ft. at its smallest dimension;
3. Include at least 80 sq. ft. of ground area per tree to allow for root aeration; and
4. Include raised concrete curbs around the perimeter.

c. Connecting walkways through parking lots shall have one or more canopy shade tree per 40 linear ft. Driveways to or through parking lots shall have one or more canopy shade

tree per 40 linear ft. on each side. These trees shall be planted in landscape areas within five ft. of the walkways and driveways, respectively.

4.2.50.02 - Service Facilities and Outdoor Storage Areas

Trash dumpsters, gas meters, ground-level air conditioning units and other mechanical equipment, other service facilities, and outdoor storage areas shall be appropriately screened with a fence, wall, or plantings, consistent with the landscape screening provisions in this Section. When located adjacent to a residential zone, outdoor components associated with heat pumps, ground-level air conditioning units and similar kinds of equipment that create noise shall not be placed within any required setback area. Additionally, if such equipment is located adjacent to a residential zone and between five - 10 ft. of a property line, it shall be screened with a solid fence or wall at least one ft. higher than the equipment. When such equipment is located adjacent to a residential zone and outside a required setback line, and is greater than 10 ft. from a property line, standard screening requirements in this Section shall apply.

FINDINGS OF FACT – LANDSCAPING, BUFFERING, AND SCREENING STANDARDS

1. The site contains Significant Trees (trees outside areas inventoried in the City's Natural Features Inventory and with a trunk size that is eight inches or greater in caliper size). The applicant has identified the Significant Trees on Attachment "M" (**see Attachment A-1**). Of the 29 trees identified (including a row of four fig trees and five trees adjacent to the site), 26 are considered "Significant."
2. A total of 17 trees are proposed for removal. Of the 26 significant trees identified within the subject site, 15 are proposed for removal.
3. The applicant has provided an Arborist's Report which identifies trees to be removed and trees to be preserved, along with methods necessary to ensure the survival of the preserved trees, and a letter from the arborist stating that the relocation of the stormwater line will have a low level of impact to existing trees (**see Attachment B, page 187 of the PC Staff Report**).
4. Per LDC § 4.2.20.d, existing Significant Trees should be preserved to the greatest extent practicable. The applicant is proposing to preserve a portion of the identified Significant Trees.
5. In order to ensure preservation of the existing Significant Trees, per LDC § 4.2.20.d.2 and § 4.12.60.f, the applicant would be required to include a preservation plan as part of the construction permit applications, and to install protection fencing consistent with the standards in LDC § 4.12.60.f, and as identified on the applicant's Tree Management Plan (**see Condition #11**).
6. Based on site constraints, the requirement to develop the site at minimum density, and other applicable LDC standards related to vehicle parking allocation and design, the applicant has preserved the existing Significant Trees to the greatest extent practicable.
7. The applicant has provided a Conceptual Landscape Plan Attachment "W" (**see Attachment B, page 13 of the PC Staff Report**).
8. The applicant is proposing a large canopy tree in the parking lot island on the south row of parking, consistent with the standards in LDC § 4.2.30.a. Through the provision of the proposed large canopy tree and preservation of trees #100 and #101, adequate parking lot trees are provided.
9. Landscape buffers are required between parking areas and adjacent properties, per LDC § 4.2.40.a. Provision of a minimum 5-foot landscape buffer and screen between the parking lot and the west, south, east property lines is consistent with LDC § 4.2.40.a. The proposed DDP complies with this standard where required between parking areas and adjacent properties.
10. Initially, the fire lane was proposed to double as access for commercial garbage collection. However, according to information provided by the applicant on January 16, 2015 (Exhibit IV, Attachment B to the February 23, 2015 Memorandum to the Mayor and City Council from the Planning Division Manager), a trash compactor and recycle carts will be provided and apartment staff would be responsible for rolling these receptacles to the street curbside at

designated trash and recycle collection times. Therefore, the fire lane is not a commercial access lane and does not need to comply with LDC § 4.2.40.a requiring buffering along vehicle maneuvering areas.

11. The proposed landscaping along each side of the driveway to the beginning of the parking lot includes one (1) canopy tree. Driveways to parking lots shall have one or more canopy shade trees per 40 linear feet on each site. As conditioned, the development will comply with LDC § 4.2.40.c (**see Condition #12**).

CONCLUSIONS

Staff find that the proposal, as conditioned, will comply with applicable private accessory development standards.

Section 4.2.80 - SITE AND STREET LIGHTING

Pursuant to City Council Policy 91-9.04, "The City of Corvallis is interested in well shielded, energy efficient street lighting sources that direct the light source downward where it is needed, not up or sideways where it is wasted and causes glare, light trespass, and bright skies."

All developers shall submit a proposed lighting plan for approval that meets the functional security needs of the proposed land use without adversely affecting adjacent properties or the community. This criteria is satisfied upon compliance with the provisions listed below and shall be substantiated by the applicant's submittal of the necessary information to demonstrate compliance, such as information including but not limited to manufacturers' specifications:

- a. For safety purposes, lighting shall be provided in all areas designed to include pedestrian activities, such as streets, sidewalks, multi-use paths, parking lots, buildings, and plazas.
- b. With the exception of lighting for public streets, which is maintained by the City through a contract with an electric company, all other lighting used to illuminate streets, buildings, sidewalks, multi-use paths, parking lots, plazas, or the landscape, shall be evaluated during the plan review process associated with requests for permits.
- c. Site lighting that may be confused with warning, emergency, or traffic signals is prohibited.
- d. Light sources shall be concealed or shielded to the maximum extent feasible to minimize the potential for glare and unnecessary diffusion on adjacent property. Compliance with this provision shall be demonstrated by ensuring that, when evaluated from a point four ft. above the ground, bulbs of light fixtures are not visible from adjacent property.
- e. All new Subdivision street lights and future street-light luminaire replacements within the existing street-light system shall be flat-lens fully shielded luminaires.
- f. Standard placement of street lights shall be at intersections, in the middle of long blocks, and in dead end streets and long Cul-de-sacs.
- g. Background spaces such as parking lots shall be illuminated as unobtrusively as possible to meet the functional needs of safe circulation and of protecting people and property. Foreground spaces, such as building entrances and plaza seating areas, shall use local lighting that defines the space without glare.

FINDINGS OF FACT – LIGHTING STANDARDS

1. The applicant's narrative (**see Attachment B, page 91 of the PC Staff Report**) states that "All new exterior lighting for the project will be shielded so as not to produce glare onto adjacent properties." Additionally, the applicant has provided a site lighting plan (**see Attachment B, page 14 of the PC Staff Report**).

2. Exterior lighting is required to be consistent with LDC § 4.2.80. The proposed choices for light fixtures include 42” high bollard lights, pole mounted lights on 20-ft. high poles with “house side shield”, and canopy light fixtures underneath the proposed carport. Staff is proposing **Condition #3**, which will ensure that lighting design and fixture details submitted as part of the building permit applications are consistent with the provisions in LDC § 4.2.80.

CONCLUSIONS

Staff find that the proposal, as conditioned, will comply with applicable lighting standards.

LDC CHAPTER 4.3 – ACCESSORY DEVELOPMENT REGULATIONS

Section 4.3.30 - ACCESSORY DEVELOPMENTS SUBJECT TO CONTROLS

- e. **An Accessory Structure shall not exceed a height of 14 ft. nor occupy more than 35 percent of a required yard**

FINDINGS OF FACT– ACCESSORY DEVELOPMENT REGULATIONS

1. The DDP proposes an accessory carport structure. The applicant indicates that the structure will have a maximum height of 14 feet, consistent with LDC § 4.3.30.e. However, the application does not include architectural elevations illustrating whether the carport structure will meet the 14-ft. height limit. **Condition #5** ensures consistency with LDC § 4.3.30.e.

CONCLUSIONS

Staff find that the proposal, as conditioned, will meet private accessory development standards.

LDC CHAPTER 4.7 – SIGN REGULATIONS

FINDINGS OF FACT – SIGN REGULATIONS

1. The applicant’s narrative states that any future signs will comply with LDC Chapter 4.7 (**see Attachment B, page 91 of the PC Staff Report**).
2. As discussed below, regarding the existing 1981 Planned Development approval for the Regent, a condition of development requires that signs be presented to the Planning Commission for review and approval. Staff note that this condition was typical of Planned Development approvals of that era, and that signs approved as part of Planned Developments in more recent times are typically considered to be compatible with adjacent development, as long as the signs are consistent with the standards in LDC Chapter 4.7. As proposed, the application is consistent with this criterion.
3. Staff recommends a condition of approval (**Condition #13**), that modifies the existing 1981 condition of approval such that signs are to be consistent with LDC Chapter 4.7, and do not require approval by the Planning Commission.

CONCLUSIONS

Staff find that the proposal complies with applicable sign regulations. In addition, Staff is proposing to modify that condition of approval so that Planning Commission approval is not necessary for construction of signs on Tract B, as long as the signs are consistent with the clear and objective standards in LDC Chapter 4.7.

LDC CHAPTER 4.10 – PEDESTRIAN ORIENTED DESIGN STANDARDS

Section 3.6.90 - COMPLIANCE WITH CHAPTER 4.10 - PEDESTRIAN ORIENTED DESIGN STANDARDS

The requirements in Chapter 4.10 - Pedestrian Oriented Design Standards shall apply to the following types of development in the RS-12 Zone:

- a. All new buildings or structures for which a valid permit application has been submitted after December 31, 2006;

Section 4.10.60 - STANDARDS FOR ATTACHED SINGLE-FAMILY DWELLINGS THREE UNITS OR GREATER, TOWNHOME, TRIPLEX, FOURPLEX, AND APARTMENT RESIDENTIAL BUILDING TYPES

4.10.60.01 - Building Orientation, Entrances, and Facades Adjacent to Pedestrian Areas

a. Orientation of Buildings

1. Primary building entrances shall face the streets or be directly accessed from a public street right-of-way or private street tract by a sidewalk or multi-use path less than 200 ft. long (distance measured along the centerline of the path from a public street right-of-way or private street tract), as shown in Figure 4.10-13 - Primary Building Entrances Within 200 Ft. of the Street, below. Primary entrances may provide access to individual units, clusters of units, courtyard dwellings, or common lobbies. Entrances shall open directly to the outside and shall not require passage through a garage or carport to gain access to the doorway. This provision shall apply to development of attached single-family dwelling units (three or more) and to development of three or more units on a single lot in any configuration of building types as allowed by the associated zone.
3. Off-street parking and vehicular circulation shall not be placed between buildings and the streets to which those buildings are primarily oriented, except for driveway parking associated with single family development.

4.10.60.02 - Parking Location

a. Standards

1. Parking lots shall be placed to the rear of buildings.

FINDINGS OF FACT – BUILDING ORIENTATION:

1. The applicant provided a Circulation Plan (Attachment “O”) showing the distance of the sidewalk from the public right-of-way to primary building entrances (see **Attachment B, page 4 of the PC Staff Report**).
2. The proposed vehicle parking is located on the south side of the property, behind the building in relationship to the street to which the building is oriented, satisfying LDC § 4.10.60.01.a.3 and 4.10.60.02.a.1 requirements.
3. The maximum distance of the sidewalk from the public right-of-way to a primary building entrance is 182 feet, which is consistent with LDC § 4.10.60.01.a.

CONCLUSIONS:

Staff find that the proposal meets applicable building orientation standards.

Section 4.10.60.01 - Building Orientation, Entrances, and Facades Adjacent to Pedestrian Areas

c. Windows and Doors –

Any facade facing streets, sidewalks, and multi-use paths shall contain a minimum area of 15 percent windows and/or doors. This provision includes garage facades. Gabled areas need not be included in the base wall calculation when determining this minimum 15 percent requirement.

FINDINGS OF FACT – WINDOWS AND DOORS

- 1. The proposed architectural elevations (see Attachment B, pages 19 and 20 of the PC Staff Report) indicate that the facades on all four sides of the building will have a minimum of 15% windows, consistent with LDC § 4.10.60.c.**

CONCLUSIONS:

Staff find that the proposal meets window and door standards.

Section 4.10.60.04- Menus for Pedestrian Features and Design Variety

b. Design Variety Menu - Roof forms shall be at least a 4:12 pitch with at least a six-in. overhang. Mixed use buildings may provide flat roofs with a decorative cap, such as a parapet or cornice, that is a distinctive element from the main wall of the building. Additionally, each structure shall incorporate a minimum of four of the following eight building design features. The applicant shall indicate proposed options on plans submitted for building permits. While not all of the design features are required, the inclusion of as many as possible is strongly encouraged.

1. Trim - A minimum of 2.25-in. trim or recess around windows and doors that face the street. Although not required, wider trim is strongly encouraged.

2. Building and Roof Articulation - Exterior building elevations that incorporate design features such as off-sets, balconies, projections, window reveals, or similar elements to preclude large expanses of uninterrupted building surfaces. Along the vertical face of a structure, such features shall be designed to occur on each floor and at a minimum of every 45 ft. To satisfy this requirement, at least two of the following three choices shall be incorporated into the development:

a) Off-sets or breaks in roof elevation of three ft. or more in height, cornices two ft. or more in height, or at least two-ft. eaves;

b) Recesses, such as decks, patios, courtyards, entrances, etc., with a minimum depth of two ft. and minimum length of four ft.; and/or

c) Extensions/projections, such as floor area, porches, bay windows, decks, entrances, etc., that have a minimum depth of two ft. and minimum length of four ft.

3. Building Materials - Buildings shall have a minimum of two different types of building materials on facades facing streets, including but not limited to stucco and wood, brick and stone, etc. Alternatively, they shall have a minimum of two different patterns of the same building material, such as scalloped wood and lap siding, etc. on facades facing streets. These requirements are exclusive of foundations and roofs, and pertain only to the walls of a structure.

4. Increased Eaves Width - Eaves with a minimum 18-in. overhang.

5. Increased Windows - A minimum area of 20 percent windows and/or dwelling doors on facades facing streets, sidewalks, and multi-use paths. This provision includes garage facades. Gabled areas need not be included in the base wall calculation when determining this minimum 20 percent calculation.

6. Increased Roof Pitch - A minimum 6:12 roof pitch with at least a six-in. overhang.

7. Architectural Features - At least one architectural feature included on dwelling facades that face the street. Architectural features are defined as bay windows, oriels, covered porches greater than 60 sq. ft. in size, balconies above the first floor, dormers related to living space, or habitable cupolas. If a dwelling is oriented such that its front facade, which includes the front door, is oriented to a sidewalk and no facades of the dwelling face a street, then the architectural feature may be counted if it is located on the front facade.

8. Architectural Details - Architectural details used consistently on dwelling facades that face streets. Architectural details are defined as exposed rafter or beam ends, eave brackets, windows with grids or true divided lights, or pergolas integrated into building facades. If a dwelling is oriented such that its front facade, which includes the front door, is oriented to a sidewalk and no facades of the dwelling face a street, then the architectural feature may be counted if it is located on the front facade.

FINDINGS OF FACT – ARCHITECTURAL DESIGN VARIETY

1. The proposed roof exceeds the 4:12 roof pitch standard, with a proposed pitch of 7:12.
2. The proposed building architecture includes window and door trim that is 3.5-inches wide, building and roof articulation that includes 2-foot roof eaves, porches or balconies that will be a minimum of 7 feet by 10.5 feet or 9 feet by 10.5 feet in dimension, a stepped foundation that helps to break up the façade and provides roof offsets, additional windows on the north and south facades that exceed 20% of the area of those facades, a mix of horizontal lap and shingle siding, a roof with an increased roof pitch of 7:12, and exposed beam-ends on roof overhangs on the front façade, consistent with the design variety standards in LDC § 4.10.60.04.b. In total, eight out of eight menu options have been utilized. Thus, the architectural design variety standard is satisfied.

4.10.60.06- Pedestrian Circulation

b. Standards

1. Continuous Internal Sidewalks - Continuous internal sidewalks shall be provided throughout the site. Discontinuous internal sidewalks shall be permitted only where stubbed to a future internal sidewalk on abutting properties, future phases on the property, or abutting recreation areas and pedestrian connections.

2. Separation from Buildings - Internal sidewalks shall be separated a minimum of five ft. from dwellings, measured from the sidewalk edge closest to any dwelling unit.

c. Connectivity - The internal sidewalk system shall connect all abutting streets to primary building entrances. The internal sidewalk system shall connect all buildings on the site and shall connect the dwelling units to parking areas, bicycle parking, storage areas, all recreational facility and common areas, and abutting public sidewalks and multi-use paths.

d. Sidewalk and Multi-use Path Surface Treatment - Public internal sidewalks shall be concrete and shall be at least five ft. wide. Private internal sidewalks shall be concrete, or masonry; and shall be at least five ft. wide.

f. Safety Adjacent to Vehicular Areas - Where internal sidewalks parallel and abut a vehicular circulation area, sidewalks shall be raised a minimum of six in., or shall be separated from the vehicular circulation area by a minimum six-in. raised curb. In addition to this requirement, a landscaping strip at least five ft. wide, or wheel stops with landscaping strips at least four ft. wide, shall be provided to enhance the separation of vehicular from pedestrian facilities.

FINDINGS OF FACT – PEDESTRIAN CIRCULATION

1. The proposed development includes a continuous internal sidewalk, constructed of concrete that serves all primary entrances for each dwelling unit, and connects to the public sidewalk on NW Mirador Place. This is consistent with LDC § 4.10.60.06(b) and (c).
2. The proposed internal sidewalk is located a minimum of five feet from the building facades, except where connections are made to the primary building entrances. This is consistent with LDC § 4.10.60.06.b.2.
3. The sidewalk along the south side of the building provides a pedestrian connection from parking spaces in the eastern portion of the site to building entrances.
4. In compliance with LDC § 4.10.60.06.d, all private sidewalks within the site are five feet in width.
5. The landscape strip buffering vehicular circulation in the parking area from the internal sidewalk south of the building meets the five foot requirement.
6. Initially, the fire lane was proposed to double as access for commercial garbage collection. However, according to information provided by the applicant on January 16, 2015 (Exhibit IV, Attachment B to the February 23, 2015 Memorandum to the Mayor and City Council from the Planning Division Manager), a trash compactor and recycle carts will be provided and apartment staff would be responsible for rolling these receptacles to the street curbside at designated trash and recycle collection times. Therefore, the fire lane is not a commercial access lane, and a six inch curb is not required per LDC § 4.10.60.06.f.
7. The proposed internal sidewalk network appears to connect to the existing Regent sidewalk to the north. **Condition #4** ensures that a connection to the Regent sidewalk is established.
8. Building code accessibility requirements are typically evaluated at the time of building permits. At this time, sufficient information has not been provided to determine whether the proposed apartment building and sidewalks will comply with accessibility requirements. As conditioned (see **Condition #17**), the DDP will need to meet accessibility requirements at the time of building permits.

CONCLUSIONS

Staff find that the proposal, as conditioned, meets pedestrian circulation standards.

LDC CHAPTER 4.14 – LANDSLIDE HAZARD AND HILLSIDE DEVELOPMENT STANDARDS

Section 4.14.70 - HILLSIDE DEVELOPMENT STANDARDS

4.14.70.04 – Grading Regulations

c. Mass Grading Standards - The following standards shall apply to development throughout the City of Corvallis:

1. Maximum Allowed Cut Depth and Fill Height - The following standards govern the maximum cut depth and fill height:

Site Characteristics	
No Extenuating Conditions	Eight-ft. Standard

3. Grading Area Limitations - The following requirements apply to Mass Grading in areas with slopes equal to or greater than 10 percent, as mapped on the Natural Hazards Map:

b) Medium-high and High Density Residential Development Zones –

Medium-high and High Density Residential Development Zones	Mass Grading Regulations:
RS-12, RS-12U, RS-20, and MUR Zones	For development sites greater than 6,500 sq. ft. in size - Graded area shall not exceed 75 percent. The Eight-ft. Standard shall apply, unless extenuating conditions are present.

d. **Individual Lot Grading Standards** - These standards are in addition to Section 4.14.70.04.c, above, and apply to lots which contain slopes equal to or greater than 10 percent, as mapped on the Natural Hazards Map.

1. **Maximum Allowed Cut Depth and Fill Height** - The following standards govern the maximum cut depth and fill height:

Extenuating Conditions	Maximum Cut and Fill Height
No Extenuating Conditions	Eight-ft. Standard

2. **Gradable Area** - In no case shall the cumulative impact of Mass Grading and Individual Lot Grading impact more site area on an individual lot than is allowed under the following standards:

Medium-high and High Density Residential Development Zones	Mass Grading Regulations:
RS-12, RS-12U, and RS-20 Zones	For development sites greater than 6,500 square ft. in size - Graded area shall not exceed 75 percent. The Eight-ft. Standard shall apply, unless extenuating conditions are present. Grading must also comply with adopted Building Code standards.

FINDINGS OF FACT – HILLSIDE DEVELOPMENT STANDARDS

1. The site contains slopes in the 10-15% and 15-25% categories. Therefore, development on the site is subject to the Hillside Development Standards in LDC § 4.14.70.
2. The applicant has designed the apartment building to have a stepped foundation, which helps the structure to fit the topography of the site.
3. The application is consistent with the eight-ft. cut and fill standard, as shown on the Site Cut/Fill Plan Attachment “S” (**see Attachment B, page 9 of the PC Staff Report**).
4. The proposed grading area within Hillside Areas (slopes greater than 10%) does not exceed the 75% maximum, as demonstrated in correspondence from the applicant (**see Attachments B, pages 44-45 of the PC Staff Report**).
5. Other than the slopes and Significant Trees on the site, there are no additional Significant Natural Features mapped on the subject site.

CONCLUSIONS

Staff find that the proposal complies with applicable hillside development standards.

PREVIOUS CONDITIONS OF APPROVAL

The original 1981 DDP included 14 conditions of approval (**see Attachment C, pages 17 and 18 of the PC Staff Report**) associated with development of the congregate care facility. Staff have identified 8 conditions out of 14 that are applicable to the portion of the site that is associated with the current Major Modification request. In 2006, the City approved the tentative subdivision plat for the Coronado subdivision, which included 21 conditions (**see Attachment C, pages 84-93 of the PC Staff Report**). Staff have identified 3 conditions from that approval that are applicable to Tract B. Additionally, a 2007 Major Modification approval included supplemental conditions (**see Attachment C, pages 137-141 of the PC Staff Report**). With the exception Conditions 3 and 12 of PD-81-1, which are discussed in more detail below, these conditions of approval are clear and objective standards that apply to development on the Tract B site. The applicable conditions are discussed below.

CONDITIONS OF APPROVAL (PD-81-1)

- 1: *“A detailed landscape plan showing the size and type of all plant materials and all existing trees over 12 inches in diameter, shall be submitted prior to building permit approval. Mature trees 4 inches or larger in diameter and shrubs 3 feet or larger in height shall be planted initially to achieve the applicant’s landscaping proposal.”*
- 3: *“Any signs proposed for use during any phase of development and/or future identification shall be approved by Planning Commission prior to issuance of any building permit.”*
- 5: *“Parking lot, accessway and walkway design and construction, including site drainage and grading, shall meet the approval of the City Engineer.”*
- 6: *“A storm drain extension shall be required from the southeast corner of the property to drain the proposed public road, and to provide for a future extension to serve the remainder of the property. The design and construction of this line shall meet the approval of the City Engineer and shall occur concurrently with the congregate care project.”*
- 10: *“Adequate access for fire protection equipment shall be provided as required by the Fire Marshall.”*
- 11: *“If within one year after occupancy of the congregate care facility it is shown that the proposed 51 parking spaces are inadequate, the applicant/owner of the congregate care facility shall supply additional parking immediately adjacent and south of the proposed lot to meet Land Development Code parking requirements for group care dwelling facilities and the approval of the City Engineer. Prior to building permit approval for the congregate care facility, the applicant shall submit a written statement outlining the process for monitoring on-site parking demand. This process shall be reviewed and approved by the City Engineer and the Planning Director.”*
- 14: *“Retaining walls shall be constructed where required by the City Engineer.”*

FINDINGS OF FACT – PD-81-1 CONDITIONS OF APPROVAL

1. Condition 1, associated with landscaping for the Regent facility, was implemented during the building construction phase of development.

2. Condition 3 requires that the Planning Commission approve any signs proposed to be constructed on the Planned Development site. As noted earlier in this staff report, Staff find that the current Land Development Code sign standards for residential development in Chapter 4.7 sufficiently address compatibility concerns. The applicant is proposing to be consistent with the standards in LDC Chapter 4.7.
3. Condition 5 requires that parking lots, accessways, and walkways be designed and constructed according to the approval of the City Engineer. The City Engineer has reviewed the applicant's request to use ITE dimensions as shown on Site Plan (Attachment "N") and supports the request, except for the accessible parking stall, which will need to meet the City's standard parking stall dimensions. As discussed above earlier in this staff report, **Condition #9** will ensure that the proposed parking lot complies with the applicable LDC and Off-Street Parking and Access standards.
4. Condition 6 requires a stormwater drainage facility be constructed to serve "the proposed public road" and the site in general. The proposed public road, internal to the Planned Development site was never constructed according to the conceptual alignment shown in the 1981 approval. During development of the Regent facility, a stormwater line was constructed near the southern end of the development site that ties into a public stormwater manhole and pipe at the southeast corner of Tract B. The applicant is proposing to re-route this facility around the new building (underground). The reconstructed stormwater facility complies with the applicable LDC compatibility and design criteria. The proposal is consistent with Condition 6.
5. Condition 10 addresses fire protection requirements for the development site. As previously noted, the proposed development includes an emergency access lane located along the north side of the apartment building. The Fire Department has reviewed the application, and finds that the design meets the applicable Fire Code criteria. This condition is satisfied.
6. Condition 11 requires that the vehicle parking use be evaluated after occupancy has been granted to the Regent, in order to ensure an adequate supply exists. In 2007, the owners of the Regent facility applied for a Major Modification to add additional vehicle parking near the southwest corner of the tax lot associated with the Regent development. The additional vehicle parking was approved by the City, and constructed in 2009 (per case BLD08-01196). This condition is satisfied.
7. Condition 14 requires that retaining walls be provided on the development site, "where required by the City Engineer". The applicant is proposing a retaining wall along the south and east sides of the parking lot, so that the finished grade of the parking lot complies with the City Engineer's grading and slope standards for a private parking facility (refer to the City's *Off-Street Parking and Access Standards – Grading*, page 18). Compliance with the City Engineer's grading and slope standards for a private parking facility will need to be met at the time of grading, building, and/or parking lot permit (see **DRC E**).

CONDITIONS OF APPROVAL (SUB05-00005 – Coronado Subdivision)

- 2: *Tree preservation condition requires preservation of 13 specific trees. As discussed previously in this staff report, two of the subject 13 trees appear to be potentially impacted by development on Tract B. As noted in that discussion, the two subject trees are proposed to be retained.*
- 3: *Requires installation of landscaping in the planter strip abutting Tract B, and discussed maintenance responsibilities for that landscaping, which are assigned to the homeowners' association, through the required CC&Rs.*

- 4: *Requires City review and approval of the CC&Rs for the subdivision.*

FINDINGS OF FACT – SUB05-00005 CONDITIONS OF APPROVAL

1. Condition 2 from the Coronado subdivision approval requires protection of 13 existing Significant Trees on the Coronado development site.
2. Staff note that the Coronado subdivision approval contains a discrepancy between Condition 2 and the drawing referred to as “Attachment G-46” (**Attachment C, page 99**), which appears to illustrate four existing Significant Trees on Tract B and identifies in the legend those trees as “Existing Trees To Be Saved”. It is not clear in looking at Attachment G-46, whether two of these four trees were intended to be preserved, other than their illustration appears to match the legend item. After a detailed review of the record for the Coronado subdivision approval including discussion in the staff report (**Attachment C, page 110**) and application materials for that approval (**Attachment C, page 126**), Staff find that it was intended that only two of the four Significant Trees identified on Tract B are affected by Condition 2. This is primarily based on a description in the staff report that states “...a total of 13 significant trees will be preserved, all of which are located along the boundaries of the site.” Staff find that the two additional trees located in the north side of Tract B (Trees 119 (Plum) and 122 (Douglas Fir) in this application) and illustrated on Attachment G-46 are not intended to be preserved.
3. The Significant Trees that Staff finds are required to be preserved by Condition 2 are identified in the current application (**see Attachment B, page 2 of the PC Staff Report**) as trees 100 (Douglas Fir with 15” caliper trunk on Tract B) and 101 (Garryana Oak with multi-stem trunk on abutting Lot 22 to the west). The proposed **Condition 13** ensures the protection of these two specific trees in compliance with the previous condition of approval.
4. Conditions 3 and 4 from the Coronado subdivision approval address landscape installation and maintenance requirements for the Coronado subdivision. The required landscaping includes street trees potentially associated with the frontage improvements for Tract B, and for any internal landscaping installed as part of the subdivision approval. The final landscape plans for the Coronado subdivision do not include landscaping internal to Tract B. Additional discussion is provided below concerning Condition 4, which addresses the subdivision’s CC&Rs. As discussed below, and noted above, the proposal is consistent with these previous conditions of approval.

CONDITIONS OF APPROVAL (PLD07-00010)

Staff determined that none of the conditions of approval from 2007 Major Modification (**see Attachment C, pages 137-141 of the PC Staff Report**) are applicable to the current Major Modification request. That application approved an expansion of parking, and clarified emergency access for the Regent development.

CONCLUSIONS

Staff have identified applicable conditions of approval from previous land use actions on the subject site. As noted in the discussion above, and as conditioned, the proposed Major Modification is consistent with these conditions of approval.

CC&Rs

Based on the City's tentative subdivision plat approval, the final plat, and the subdivision's CC&Rs, it does not appear that Tract B would be subject to any special use restrictions, when considering the current definition of "Tract" per LDC Chapter 1.6:

Tract - A piece of land created and designated as part of a land division that is not a lot, lot of record, or parcel. Tracts are created and designed for a specific purpose. Land uses within a tract are restricted to those uses consistent with the stated purpose as described on the plat, or in the maintenance agreements, or through Conditions, Covenants and Restrictions (CC&Rs). Examples include stormwater management tracts, private access tracts, private street or alley tracts, tree preservation tracts, landscaping or common area tracts, environmental resource tracts, and open space tracts, etc.

However, there is some concern that the CC&Rs for the subdivision require that the homeowner's association be responsible for any landscape maintenance on Tract B per the current language in the CC&Rs. The City does not have the ability or legal authority to amend the subdivision's CC&Rs. To address this concern, which could be decided by the voting members of the association, the CC&Rs could be amended so that the current owner of Tract B (or its future owner(s)) becomes the party responsible for maintenance of landscaping on Tract B.

OVERALL CONCLUSION and RECOMMENDATION

Staff conclude that, in consideration of LUBA No. 2015-019, the proposed Major Planned Development Modification request, as conditioned, is consistent with all applicable clear and objective standards. Based on the findings, discussion, and conclusions in this analysis, Staff recommend that the City Council approve the request described in **Attachment B of the PC Staff Report**, and shown in the site plan (**Attachment A** of this staff report). Staff have provided the following recommended motion:

RECOMMENDED MOTION

Motion: I move to **approve** the Major Planned Development Modification request, based on City Council's findings in deliberation on the Planned Development request, subject to adopted of Formal Findings at a subsequent City Council meeting.

This motion is based on the evidence submitted during these proceedings, including but not limited to the August 10, 2016 Memorandum to the Mayor and the City Council from the City Attorney's Office; and the reasons given by the City Council, as reflected in the meeting minutes, during their August 15, 2016 deliberations on this matter.

RECOMMENDED CONDITIONS OF APPROVAL FOR PLD14-00005
(CORONADO TRACT B)

In the event that the Planning Commission should approve the application, staff recommend the following Conditions of Approval:

Conditions of Approval for PLD14-00005 (Coronado Tract B)		
Page #	Condition #	Condition Language
All	1.	<u>Consistency with Plans and Previous Approvals:</u> This approval modifies the 1981 Detailed Development Plan site plan approval to allow for construction of a 10-unit apartment building and associated site improvements within the subject site. Construction shall occur consistent with the site plan, floor plans, architectural building elevations, and applicant’s narrative, as described in Attachment B of the January 14, 2015 Staff Report to the Planning Commission. Unless specifically modified below, all applicable conditions from cases PD-81-1 and PLD07-00010 shall continue to apply. The site shall be developed according to the site plan as depicted on the applicant’s Attachment “N” (see Attachment A-2).
	2.	<u>Adherence to Land Development Code standards:</u> As illustrated on the proposed Site Plan (Attachment A-2), and consistent with LUBA No. 2015-019, compliance with the following LDC standards is not required: <ul style="list-style-type: none"> A. Maximum front yard setback per LDC § 3.6.30.e.1. B. Percentage of building within front yard setback per LDC § 4.10.60.01.b. Other than those standards listed above, all development shall comply with applicable clear and objective Land Development Code standards. Compliance shall be demonstrated at time of submittal for Excavation and Grading, site development, and building permits.
23	3.	<u>Exterior Lighting:</u> All exterior lighting shall comply with LDC § 4.2.80 and the lighting plan submitted as part of this application (applicant’s Attachment “Z-A”). All light fixtures shall be designed, and supplemented with shielding, where necessary to comply with LDC § 4.2.80.

Conditions of Approval for PLD14-00005 (Coronado Tract B)

Page #	Condition #	Condition Language
	4.	<p><u>Private Pedestrian / Bicycle Access Easement</u> – The proposed new sidewalk will need to be aligned so that it connects to the precise location at which the existing easement abuts Tract B, consistent with Site Plan (Attachment A-2).</p> <p>Alternatively, if it is determined that the location of the sidewalk as depicted on Site Plan “N” does not exactly align with the existing access easement, the existing private access easement located on the Regent site will need to be modified to account for the exact location at which the new sidewalk near the northwest corner of the apartment building and existing sidewalk along the south property line of the Regent property meet. Prior to issuance of any site development permits, the applicant shall provide a copy of the new, recorded easement to Development Services staff, to verify that access permissions have been granted to residents of the apartments.</p>
23	5.	<p><u>Accessory Structure (Carport)</u> – The proposed carport is subject to the height and setback requirements specified in LDC § 4.3.30. As proposed, the structure meets the minimum setback requirement of 3 feet to the adjacent property line. With submittal of building permit applications, the applicant shall demonstrate that the carport complies with all applicable standards in LDC § 4.3.30.</p>
17	6.	<p><u>Private Water Quality and Detention Facilities</u> - Site drainage will be collected through a private storm drainage system consisting of catch basins and pipes and will be detained and treated for water quality per LDC § 4.0.130. Projects that cumulatively create more than 5,000 square feet of pollution generating impervious surface (pavement accessible to motor vehicles) are required to provide water quality facilities. The Planned Development shows detention facilities to mitigate impacts from site development. As part of the building plans the developer shall provide engineered calculations for applicable storm water quality and detention facilities, consistent with the proposed utility plan in the application, demonstrating compliance with both criteria outlined in Appendix F of the Storm Water Master Plan, and criteria outlined in the King County, Washington Surface Water Design Manual. Due to existing slopes on-site and downstream property drainage concerns, infiltration facilities are not recommended.</p>

Conditions of Approval for PLD14-00005 (Coronado Tract B)

Page #	Condition #	Condition Language
10, 15	7.	<u>Public Improvements</u> - Any plans for public improvements referenced within the application or this staff report shall not be considered final engineered public improvement plans. Public improvements include but are not limited to a new hydrant lateral and water services. Prior to issuance of any structural or site utility construction permits, the applicant shall obtain approval of, and permits for, engineered plans for public improvements from the City's Engineering Division. The applicant shall submit necessary engineered plans and studies for public utility and transportation systems to ensure that adequate street, water, sewer, storm drainage and street lighting improvements are provided. Final utility alignments that maximize separation from adjacent utilities and street trees shall be engineered with the plans for public improvements in accordance with all applicable LDC criteria and City, DEQ and Oregon Health Division requirements for utility separations. Public improvement plan submittals will be reviewed and approved by the City Engineer under the procedures outlined in LDC § 4.0.80.
10, 14	8.	<u>Setback Sidewalks</u> - In accordance with LDC § 4.0.30, setback sidewalks shall be installed with development of the site.
18, 19, 30	9.	<u>Parking Lot Improvements</u> - The applicant will be required to obtain necessary building permits and install the parking lot consistent with the City's Off-Street Parking and Access Standards. All parking spaces and drive aisles shall be dimensioned to be consistent with the City's Off-Street Parking and Access Standards or ITE dimensions where shown on the applicant's Site Plan (Attachment "N"), except that the ADA accessible space shall meet City standards. Further reduction of the dimensions of parking spaces meeting ITE dimensions would be inconsistent with the City's Off-Street Parking and Access Standards.
10	10.	<u>Sanitary Sewer Service</u> - With development of the site and building permits, the applicant will need to design a private sanitary sewer lift station for the site and provide verification of the existing service lateral sizing.
21	11.	<u>Significant Tree Protection:</u> With submittal of the building and site work permit applications, the applicant shall demonstrate that existing significant trees in the vicinity of construction will be preserved, as described in the applicant's Tree Management Plan (Attachment M) and per the arborist's report submitted with this application. Prior to issuance of building and site work permits, the applicant shall install tree protection fencing consistent with the standards in LDC § 4.2.20.d and 4.12.60.f, and consistent with the arborist's recommendations.

Conditions of Approval for PLD14-00005 (Coronado Tract B)

Page #	Condition #	Condition Language
22	12.	<p><u>Landscaping Construction and Maintenance:</u> The following landscaping provisions shall apply to overall development of the site:</p> <p>Landscape and Irrigation Plans – Prior to issuance of building permits, and concurrent with site improvements (excavation, grading, utilities, and PIPC plans, as applicable), the applicant shall submit landscape construction documents for this site to the Development Services Division, which contain a specific planting plan (including correct Latin and common plant names), construction plans, irrigation plans, details, and specifications for all required landscaped areas on the site. Required landscaping shall be consistent with the Conceptual Landscape Plan submitted with this application (applicant’s Attachment W), except that additional canopy trees shall be provided along both sides of the driveway up to the parking lot every 40 linear feet to comply with LDC § 4.2.40.c.</p> <p>Significant Trees to be preserved, as discussed in Condition #11 above, and methods of protection shall be indicated on the detailed planting plan submitted for approval. Where a particular plant or irrigation standard is not specifically mentioned below, the plans shall comply with LDC Chapter 4.2.</p> <p>Installation – All required landscaping and related improvements shall be installed as illustrated on the approved Landscape and Irrigation Permit, and shall be completed prior to issuance of a final Certificate of Occupancy. The installation will be inspected and approved by the Development Services Division, and shall occur prior to or concurrent with final inspections for site construction permits.</p> <p>Three-Year Maintenance Guarantee – Prior to final acceptance of the installation, the developer shall provide a financial guarantee to the City, as specified in LDC § 4.2.20.</p> <p>Coverage within Three Years - All required landscaping shall provide a minimum 90 percent ground coverage within three years.</p> <p>Three-Year Maintenance Guarantee Release - The developer shall provide a report to the Development Services Division just prior to the end of the three year maintenance period, as prescribed in Section 4.2.20.a.3 of the LDC. The report shall be prepared by a licensed arborist or licensed landscape contractor and shall verify that 90 percent ground coverage has been achieved, either by successful plantings or by the installation of replacement plantings. The Director shall approve the report prior to release of the guarantee.</p>

Conditions of Approval for PLD14-00005 (Coronado Tract B)

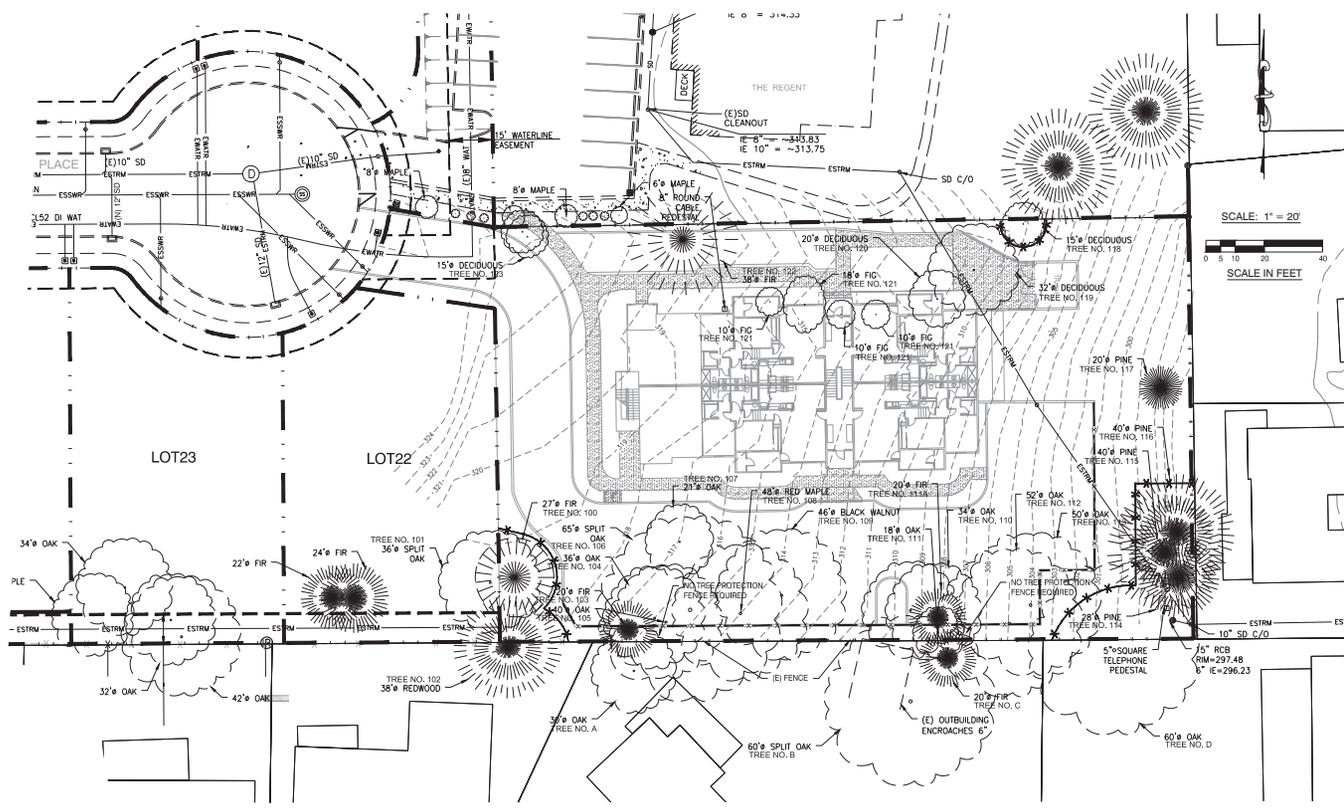
Page #	Condition #	Condition Language
23, 31	13.	<p>Signs – This condition satisfies Condition #3 from case PD-81-1, and is specific to the Tract B portion of the original 1981 DDP. All signs located on Tract B shall comply with the standards in LDC Chapter 4.7, and shall be approved by the Development Services Division as part of a sign permit application. Planning Commission approval for signs located on Tract B is not required.</p>
14	14.	<p>Fire Sprinklers for Building - The apartment building is required to have a fire suppression / sprinkler system. Plans submitted for building permit applications shall comply with the City’s adopted Fire Code.</p>
19	15.	<p>Bicycle Signage - Required “unassigned” (LDC § 4.1.20.k) bicycle parking spaces may be located within a common room, provided entry or directional signage is provided in accordance with LDC § 4.1.70.a.4. The bicycle parking shown within the apartment building to meet the required minimum bicycle parking spaces (LDC § 4.1.20.k) shall be located and maintained in common areas. Entry and directional signage shall be provided to direct bicyclists to parking within common areas of the building to comply with LDC § 4.1.70.a.4.</p>
19	16.	<p>Changes to Access, Buffering, and Sidewalk on North Side of Building – The aerial fire access on the north side of the building shall be at least 20 feet in width. The aerial fire access is intended for emergency vehicle access only, and shall not be used as a maneuvering area for other vehicles such as garbage and recycle trucks. Fire lane signage shall be provided that identifies the use of the aerial fire access located on the north side of the building as emergency vehicle access only. Additionally, the proposed paving materials and the presence of curb on the north side of the building will need to be reviewed by the Fire Department at the time of building permits.</p> <p>All internal sidewalks shall be at least five feet in width to comply with LDC § 4.10.60.06.f.</p> <p>Approval of the revised site plan provided on January 28, 2015 is contingent upon compliance with the applicable clear and objective standards of the Land Development Code (e.g. Pedestrian Oriented Design Standards and RS-12 zone standards such as building height, setbacks, lot coverage, and Green Area).</p>
27	17.	<p>Accessibility - Compliance with Building Code accessibility requirements shall be satisfied with building permit(s). If compliance with accessibility requirements necessitates modifications to aspects of the Detailed Development Plan, a Planned Development Modification application may be required in accordance with LDC Chapter 2.5.</p>

DEVELOPMENT RELATED CONCERNS

- A. Excavation and Grading Plans - Prior to issuance of any construction permits, the applicant shall submit an excavation and grading plan, including erosion control methods and tree preservation measures, to the City's Development Services Department for review and approval. Erosion control BMPs are required during all ground disturbing activity until permanent site ground cover is in place. Certain erosion control BMPs are required for construction sites at all times of the year, and additional cover or BMPs are required during the wet weather season (October 1st through April 30th).
- B. Infrastructure Cost Recovery - Where it is determined that there will be Infrastructure Cost Recovery payments from past public improvements, the developer shall pay their required share of the costs prior to receiving any building permits in accordance with Corvallis Municipal Code 2.18.040.
- C. Coronado subdivision Covenants, Codes & Restrictions – As evidenced in Attachment B – Pages 210 through 249, the current, adopted CC&Rs for the Coronado subdivision indicate that the homeowners' association is responsible for maintenance of Tract B. The Homeowners within the Coronado subdivision may wish to modify the CC&Rs to transfer maintenance to the Tract B owners, so that owners of the lots within the Coronado subdivision are no longer responsible for maintenance of Tract B.
- D. Retaining Wall Drainage - The weep holes for the retaining walls need to be designed to avoid point discharges to adjacent properties.
- E. Compliance with the City Engineer's grading and slope standards for a private parking facility will need to be met at the time of plan review for grading, building, and/or parking lot permits.

TREE IDENTIFICATION NUMBER AND SPECIES	TREE TRUNK Ø	TREE CANOPY Ø	TO BE RETAINED	TO BE REMOVED
NO. 100 DOUGLAS FIR	15"	27'	X	
NO. 101 GARRY OAK	10"/10"/6" TRIPLE STEM	36'	X	
NO. 102 COAST REDWOOD	32" EST.	38'	X	
NO. 103 DOUGLAS FIR	10"	30'		X
NO. 104 GARRY OAK	12"	36'	X	
NO. 105 GARRY OAK	12"	40'	X	
NO. 106 GARRY OAK	36" - 42" EST. DOUBLE STEM	65'	X	
NO. 107 GARRY OAK	12" / 10.8" DOUBLE STEM	21'	X	
NO. 108 RED MAPLE	15" EST.	48'	X	
NO. 109 BLACK WALNUT	10"	46'	X	
NO. 110 GARRY OAK	22"	34'	X	
NO. 111 GARRY OAK	16"/16"/16" TRIPLE STEM	18'	X	
NO. 111A DOUGLAS FIR	20"	20'	X	
NO. 112 GARRY OAK	36"	52'	X	
NO. 113 GARRY OAK	19" EST.	50'	X	
NO. 114 PINE	11.5"	28'	X	
NO. 115 PINE	16" / 11" DOUBLE STEM	40'	X	
NO. 116 PINE	19"	40'	X	
NO. 117 PINE	4"/5"/9"/6" QUADRUPLE STEM	20'	X	
NO. 118 GOLDEN CHAIN	10" / 10" DOUBLE STEM	15'	X	
NO. 119 PLUM SP.	12.5"	32'	X	
NO. 120 MT. ASH	9.5"	20'	X	
NO. 121 ROW OF 4 FIG SMALL TREES	10" - 18"	38'	X	
NO. 122 DOUGLAS FIR	32"	38'	X	
NO. 123 HAWTHORNE	MULTI-STEM	15'	X	
NO. A GARRY OAK	24"	20'	X	
NO. B GARRY OAK	28"/26"	10"-18"	X	
NO. C DOUGLAS FIR	12"	38'	X	
NO. D GARRY OAK	22"	15'	X	

EXISTING TREE CANOPY COVERAGE = 10,310 SQ.FT. (29.3% OF PROJECT SITE)



FOR LAND USE PURPOSES ONLY

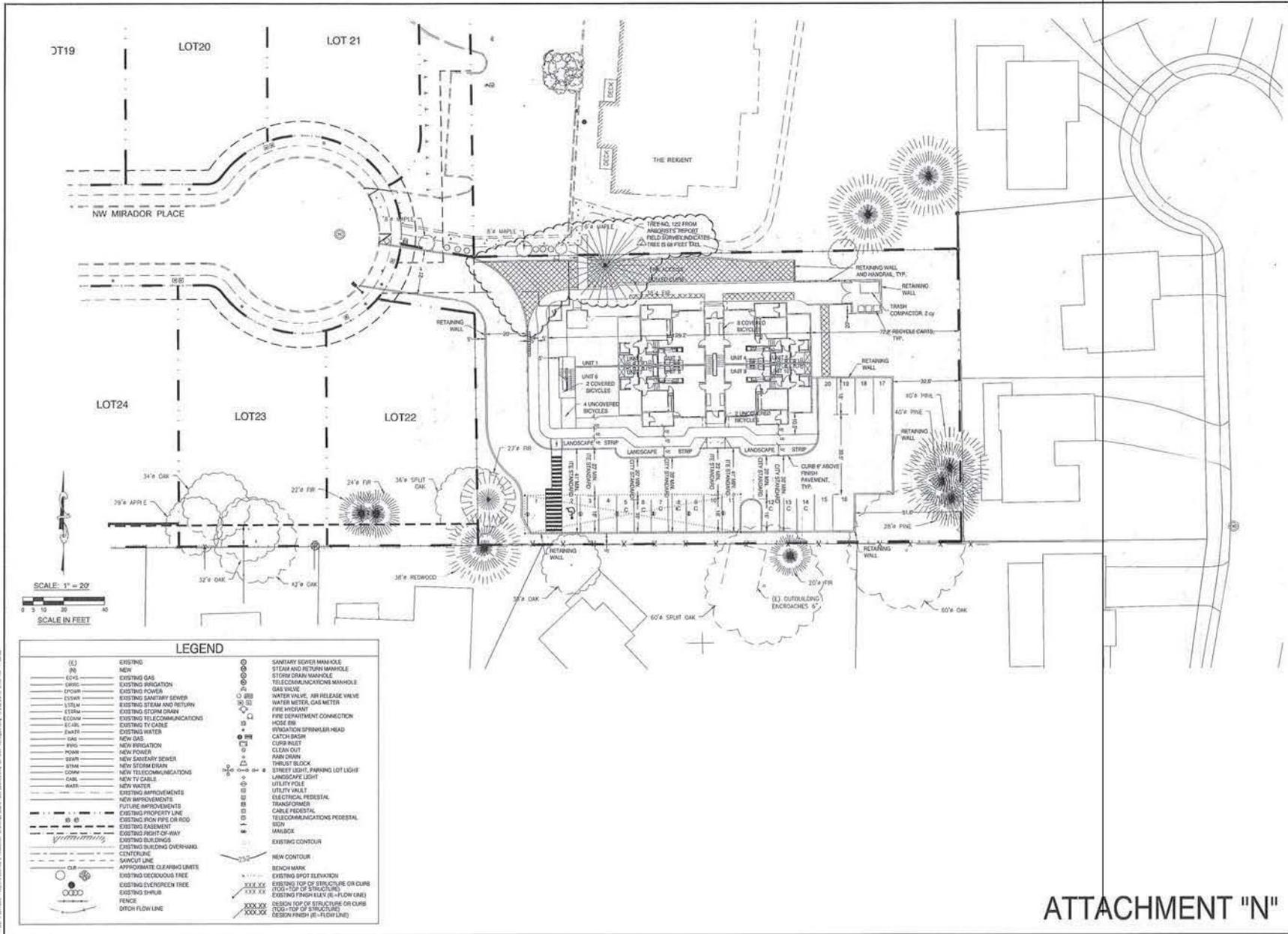
DATE:	REVISION:
11/17/14	NO. 1
	NO. 2
	NO. 3
	NO. 4
	NO. 5
	NO. 6
	NO. 7
	NO. 8
	NO. 9
	NO. 10

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PROJECT: TRACT 'B' OF CORONADO SUBDIVISION
 PROJECT LOCATION: NW MIRADOR PLACE CORVALLIS, OREGON
 SHEET: TREE MANAGEMENT PLAN
 GROUP: B, LLC

LEGEND	
(E)	EXISTING
(N)	NEW
---	EXISTING GAS
---	EXISTING IRRIGATION
---	EXISTING POWER
---	EXISTING SANITARY SEWER
---	EXISTING STEAM AND RETURN
---	EXISTING STORM DRAIN
---	EXISTING TELECOMMUNICATIONS
---	EXISTING TV CABLE
---	EXISTING WATER
---	NEW GAS
---	NEW IRRIGATION
---	NEW POWER
---	NEW SANITARY SEWER
---	NEW STORM DRAIN
---	NEW TELECOMMUNICATIONS
---	NEW TV CABLE
---	NEW WATER
---	EXISTING IMPROVEMENTS
---	NEW IMPROVEMENTS
---	EXISTING PROPERTY LINE
---	EXISTING IRON FENCE OR ROD
---	EXISTING EASEMENT
---	EXISTING RIGHT-OF-WAY
---	EXISTING BUILDINGS
---	EXISTING BUILDING OVERHANG
---	CENTERSHINE
---	SAWCUT LINE
---	APPROPRIATE CLEARING LIMITS
---	EXISTING DECIDUOUS TREE
---	EXISTING EVERGREEN TREE
---	EXISTING SHRUB
---	FENCE
---	DITCH FLOW LINE
---	SANITARY SEWER MANHOLE
---	STEAM AND RETURN MANHOLE
---	STORM DRAIN MANHOLE
---	TELECOMMUNICATIONS MANHOLE
---	GAS VALVE
---	WATER VALVE, AIR RELEASE VALVE
---	WATER METER, GAS METER
---	FIRE HYDRANT
---	FIRE DEPARTMENT CONNECTION
---	HOSE BIB
---	IRRIGATION SPRINKLER HEAD
---	CATCH BASIN
---	CURB INLET
---	CLEAN OUT
---	RAIN DRAIN
---	THRUST BLOCK
---	STREET LIGHT, PARKING LOT LIGHT
---	UTILITY POLE
---	UTILITY WALL
---	ELECTRICAL PEDESTAL
---	CABLE PEDESTAL
---	TELECOMMUNICATIONS PEDESTAL
---	SKIN
---	MALIBOX
---	EXISTING CONTOUR
---	NEW CONTOUR
---	BENCH MARK
---	EXISTING SPOT ELEVATION
---	EXISTING TOP OF STRUCTURE OR CURB (TOO=TOP OF STRUCTURE)
---	EXISTING FINISH ELEV.(FE=FLOW LINE)
---	DESIGN TOP OF STRUCTURE OR CURB (TOO=TOP OF STRUCTURE)
---	DESIGN FINISH ELEV.(FE=FLOW LINE)
---	TREE PROTECTION FENCE PER PROJECT AGREEMENT

ATTACHMENT "M"



FOR LAND
USE
PURPOSES
ONLY

DRAWING STATUS	DATE	NO.	REVISION
DESIGNED	11/17/14	1	DESIGN
CHECKED			
APPROVED			
CONTRACT SET			
PRINT SET			
CONTRACT SET			

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 CORVALLIS, OREGON 97330
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PROJECT: "B" OF
 CORONADO SUBDIVISION
 PROJECT LOCATION:
 NW MIRADOR PLACE
 CORVALLIS, OREGON
 CLIENT:
 GROUP B, LLC

SHEET TITLE:
SITE PLAN

JOB NO.: 08102
 DRAWN BY: DEVCO
 DRAWING:

ATTACHMENT "N"



1 FRONT (NORTH) ELEVATION
3/16" = 1'-0"

WINDOW-DOOR AREA CALCULATION
WALL AREA: 2,197 SF, (1,976) = 221 SF REQUIRED
602 SF PROVIDED



WINDOW-DOOR AREA CALCULATION
WALL AREA: 2,128 SF, (1,137) = 991 SF REQUIRED
488 SF PROVIDED

2 REAR (SOUTH) ELEVATION
3/16" = 1'-0"



RDG
RATER DESIGN GROUP
ARCHITECTS, INC.

7945 SW CROSS DRIVE BEAVERTON, OREGON 97008 (503) 574-3026

TRACT 'B', CORONADO SUBDIVISION
NW MIRADOR PLACE, CORVALLIS, OREGON

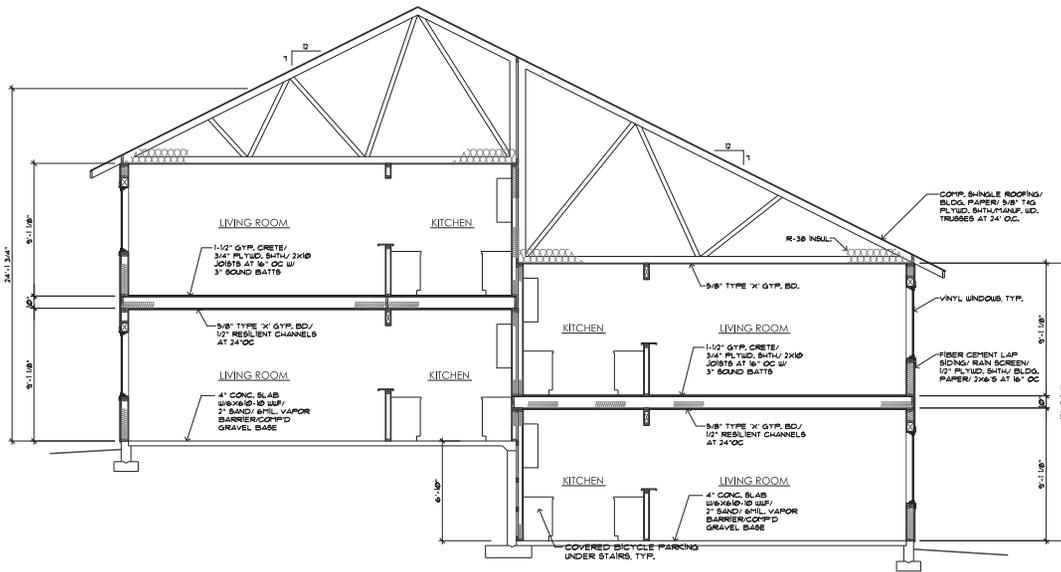
OWNER:
GROUP B LLC
202 NW SIXTH ST., CORVALLIS, OREGON 97330

FRONT AND REAR ELEVATIONS

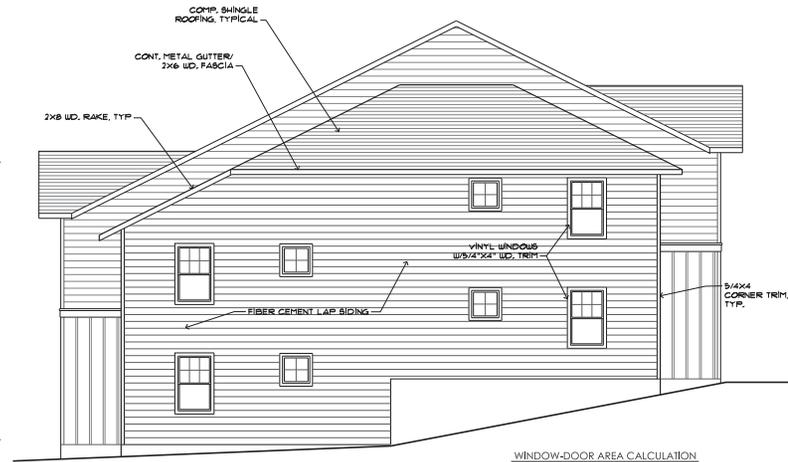
DATE:	DECEMBER 18, 2012	REVISION:	
SCALE:	AS NOTED	DRAWN BY:	SAR
PROJECT NO.:	1022		

ATTACHMENT Z

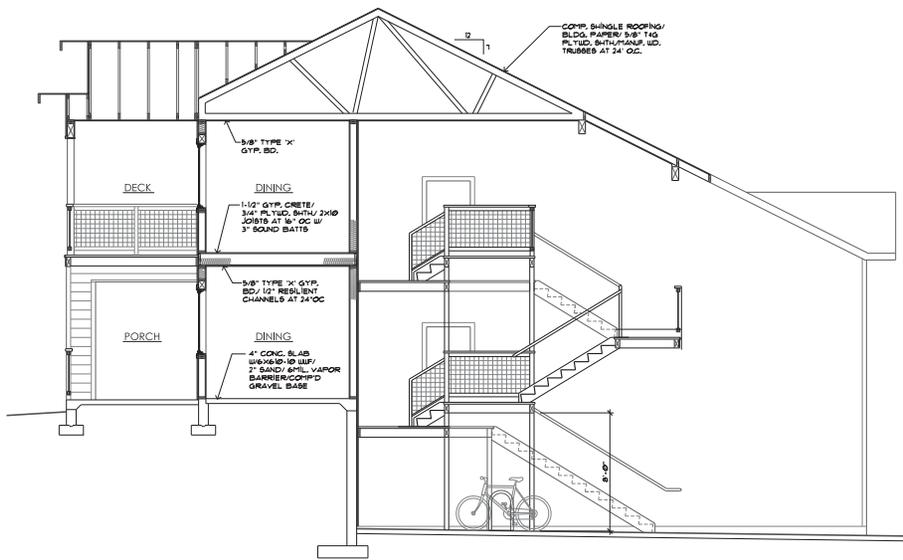
A
6.1



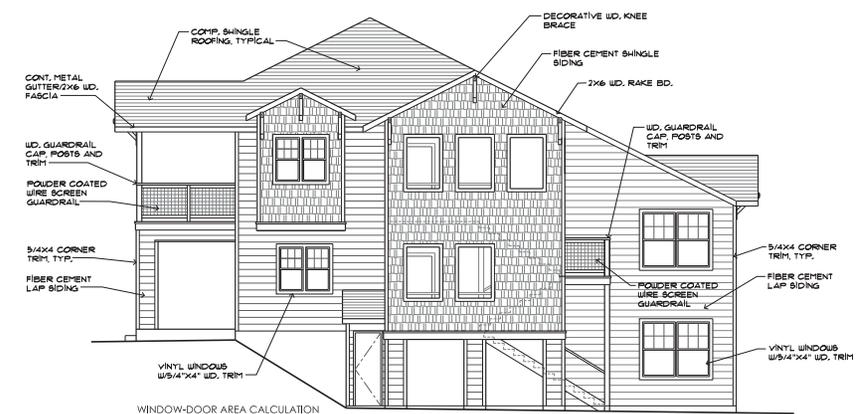
2 TYPICAL BUILDING SECTION
1/4" = 1'-0"



1 SIDE (EAST) ELEVATION
3/16" = 1'-0"



2 BUILDING SECTION AT STAIR
1/4" = 1'-0"



2 SIDE (WEST) ELEVATION
3/16" = 1'-0"

ATTACHMENT Z-1



RDG
RATER DESIGN GROUP
ARCHITECTS INC.

7945 SW CROSS DRIVE BEAVERTON, OREGON 97008 (503) 574-3036

TRACT 'B', CORONADO SUBDIVISION
NW MIRADOR PLACE, CORVALLIS, OREGON

OWNER:
GROUP B LLC
202 NW SIXTH ST., CORVALLIS, OREGON 97330

EAST AND WEST ELEVATIONS
TYPICAL BUILDING SECTIONS

DATE: NOVEMBER 09, 2012
SCALE: AS NOTED
DRAWN: SAR
JOB NO: 1002

A
6.2

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 GROUP B, LLC,
5 *Petitioner,*

6
7 vs.

8
9 CITY OF CORVALLIS,
10 *Respondent.*

11
12 LUBA No. 2015-019

13
14 FINAL OPINION
15 AND ORDER

16
17 Appeal from City of Corvallis.

18
19 Bill Kloos, Eugene, filed a petition for review and argued on behalf of
20 petitioner.

21
22 David E. Coulombe, City Attorney, Corvallis, filed the response brief
23 and argued on behalf of respondent. With him on the brief was Fewel, Brewer
24 & Coulombe.

25
26 BASSHAM, Board Chair; HOLSTUN, Board Member; RYAN Board
27 Member, participated in the decision.

28
29 REVERSED 08/25/2015

30
31 You are entitled to judicial review of this Order. Judicial review is
32 governed by the provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioner appeals a city council decision that denies its application for planned development approval for a 10-unit apartment building.

REPLY BRIEF

Petitioner moves to file a reply brief to two alleged new matters raised in the response brief: (1) waiver of an issue, and (2) the city’s argument for why the city is not required to adopt findings addressing a code provision petitioner argued is dispositive and in need of findings. The city objects to the reply brief, arguing that it is not limited to new matters within the meaning of OAR 661-010-0039. The objection is not well-founded, and the reply brief is allowed.

FACTS

A key issue in this appeal is whether the needed housing statute at ORS 197.307 applies to the proposed multi-family development.

The subject property is a vacant 0.81-acre lot created in 2006 as part of the Coronado residential subdivision, known as “Tract B.” At all relevant times since 1981, the majority of the area that consists of Tract B has been and remains zoned Planned Development (PD) RS-12 (Medium High-Density with a Planned Development Overlay). A multi-family dwelling is a primary permitted use in the (PD) RS-12 zone. Under the comprehensive plan designation that applies to Tract B, the minimum density is five dwelling units and the maximum density is ten units.

The planning and development history of the subject property and the surrounding properties is complex. In the beginning was a 17-acre parcel (the parent parcel) owned by the Elks Lodge. The area of Tract B is located in the southeast corner of that parent parcel. In 1981, the Elks obtained a zone

1 change from a low-density residential zone to PD (RS-12), and also obtained
2 Detailed Development Plan (DDP) approval to construct a congregate care
3 facility (a type of assisted living facility), known as The Regent Retirement
4 Residence (The Regent), on the eastern third of the parent parcel. The area of
5 the parent parcel subject to the 1981 DDP included what would later become
6 Tract B. In part to address concerns regarding conflicts between The Regent
7 facility and nearby residential development, the 1981 DDP included Condition
8 12, which limits the location of the congregate facility:

9 “The building shall be set back from Elks Drive no less than 30
10 feet, no less than 135 feet from the south property line, and no less
11 than 55 feet from the east property line. Other applicable setbacks
12 are included on the site plan.”

13 The requirement that The Regent building be set back “no less than 135 feet
14 from the south property line” effectively prohibited The Regent building from
15 being constructed within the area that now consists of Tract B.

16 In 1992, the parent parcel was partitioned into three parcels: Parcel 1
17 (7.76 acres) included the existing Elks Lodge, Parcel 3 (3.12 acres) included
18 The Regent facility, and Parcel 2 (5.69 acres) included the vacant remainder of
19 the parent parcel, including what later became Tract B. The 1992 partition
20 effectively severed The Regent facility from the area that became Tract B.
21 However, the majority of the Tract B area remained subject to the 1981 DDP,
22 including Condition 12.

23 In 1998, as part of periodic review, Parcel 2 including the Tract B area
24 was included in the city’s inventory of buildable lands, pursuant to Statewide
25 Planning Goal 10 (Housing).

26 In 2006, Parcel 2 of the 1992 partition was subdivided into the Coronado
27 subdivision, which created 57 lots and Tract B. The 2006 subdivision created

1 NW Mirador Place, a cul-de-sac that ends adjacent to Tract B and provides
2 access to Tract B, via a short flagpole. The decision also approved sanitary and
3 water connections to serve Tract B. The 2006 decision removed the PD
4 overlay from the 57 residential lots, but did not remove the PD overlay from
5 Tract B. No development was proposed for Tract B. The staff report for the
6 2006 subdivision explains:

7 “It is important to note that Tract ‘B’ contains the entire area of
8 Tax Lot 200 [Parcel 2] that is zoned PD (RS-12). The applicant
9 has chosen not to subdivide this portion of the parcel in order to
10 avoid having to apply for a Major Modification to a Detailed
11 Development Plan. The Detailed Development Plan that was
12 approved for The Regent Congregate Care Facility (DC-81-2, PD-
13 81-1), which was constructed on the parcel immediately north of
14 the PD (RS-12) portion of Tax Lot 200, also applied to that
15 portion of Tax Lot 200. Therefore, any development on this
16 portion of Tax Lot 200 would require a land use approval through
17 the Planned Development process.” Record 2200.

18 The Coronado subdivision became final, and NW Mirador Place was
19 constructed as approved.

20 At some point thereafter, petitioner acquired Tract B. In 2012, petitioner
21 applied to the city for planned development approval for a two-story, 10-unit
22 apartment building, similar to the building currently proposed. The planning
23 commission denied that application.

24 In 2014, petitioner submitted the present application, with revisions to
25 address the bases for the denial of the 2012 application. Petitioner argued in its
26 application that, pursuant to ORS 197.307(4), the city cannot apply any
27 standards or conditions that are not clear and objective. *See* n 1. The planning
28 commission conducted a hearing and, on February 4, 2015, denied the present
29 application on three grounds: (1) inconsistency with Condition 12 of the 1981

1 DDP, which the planning commission apparently understood to prohibit any
2 building in the 135-foot area between The Regent building and Tract B’s
3 southern property line, (2) inconsistency with planned development standards
4 at Corvallis Land Development Code (LDC) 2.5.40.04 that require that
5 proposed development be compatible with surrounding development, under a
6 number of different factors, and (3) inconsistency with cul-de-sac standards
7 adopted after 2006 that the planning commission understood to prohibit NW
8 Mirador Place from providing access to more than 18 dwelling units.

9 Petitioner appealed the planning commission decision to the city council,
10 which conducted a *de novo* hearing. On April 6, 2015, the city council issued
11 its decision denying the application. This appeal followed.

12 **FIRST AND SECOND ASSIGNMENTS OF ERROR**

13 Under these assignments of error, petitioner argues that the city erred in
14 denying the proposed multi-family development based on standards and
15 conditions that are not clear and objective, contrary to ORS 197.307(4). For
16 the following reasons, we generally agree with petitioner.

17 ORS 197.307(4) provides that, with one exception, “a local government
18 may adopt and apply only clear and objective standards, conditions and
19 procedures regulating the development of needed housing on buildable
20 land[.]”¹ The sole exception is where a local government adopts an alternative

¹ ORS 197.307 provides, in relevant part:

“(3) When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing shall be permitted in one or more zoning districts or in zones described by some comprehensive plans

as overlay zones with sufficient buildable land to satisfy that need.

- “(4) Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of needed housing on buildable land described in subsection (3) of this section. The standards, conditions and procedures may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

“* * * * *

- “(6) In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in subsection (4) of this section, a local government may adopt and apply an alternative approval process for applications and permits for residential development based on approval criteria regulating, in whole or in part, appearance or aesthetics that are not clear and objective if:

“(a) The applicant retains the option of proceeding under the approval process that meets the requirements of subsection (4) of this section;

“(b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and

“(c) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in subsection (4) of this section.

- “(7) Subject to subsection (4) of this section, this section does not infringe on a local government’s prerogative to:

1 approval process regulating, in whole or in part, appearance or aesthetics that
2 are not clear and objective, if the applicant retains the option of proceeding
3 under clear and objective standards.

4 Generally, approval standards are clear and objective if they do not
5 impose “subjective, value-laden analyses that are designed to balance or
6 mitigate impacts[.]” *Rogue Valley Assoc. of Realtors v. City of Ashland*, 35 Or
7 LUBA 139, 158 (1998), *aff’d* 158 Or App 1, 970 P2d 685 (1999). Relatedly,
8 ORS 227.173(2) provides that:

9 “When an ordinance establishing approval standards is required
10 under ORS 197.307 to provide only clear and objective standards,
11 the standards must be clear and objective on the face of the
12 ordinance.”

13 Further, ORS 197.831 places the burden on the local government to
14 demonstrate, before LUBA, that standards and conditions imposed on needed
15 housing that are required to be clear and objective “are capable of being
16 imposed only in a clear and objective manner.”²

“(a) Set approval standards under which a particular
housing type is permitted outright;

“(b) Impose special conditions upon approval of a specific
development proposal; or

“(c) Establish approval procedures.”

² ORS 197.831 provides:

“In a proceeding before [LUBA] or an appellate court that
involves an ordinance required to contain clear and objective
approval standards, conditions and procedures for needed housing,
the local government imposing the provisions of the ordinance
shall demonstrate that the approval standards, conditions and

1 **A. The Proposed Multi-Family Development is Needed Housing**

2 The city’s decision does not take a clear position on whether the
3 proposed development constitutes “needed housing” for purposes of ORS
4 197.307, but on appeal the city does not contend otherwise. Petitioner argues,
5 and we agree, that the proposed multi-family development constitutes “needed
6 housing” as that term is defined at ORS 197.303(1)(a),³ and Tract B constitutes
7 “buildable land” as that term is used in ORS 197.307.

8 Nonetheless, the city’s decision articulates several reasons, amplified in
9 the response brief, why the city believes that ORS 197.307(4) does not
10 preclude the city from applying Condition 12 of the 1981 DDP and the planned
11 development standards at LDC 2.5.40.04 requiring “compatibility.”

12 We note, initially, that there is no possible dispute that the planned
13 development standards at LDC 2.5.40.04 requiring “compatibility” with
14 surrounding development, based on 14 factors, are not “clear and objective”
15 approval standards. The LDC 2.5.40.04 compatibility standard requires
16 “subjective, value-laden analyses that are designed to balance or mitigate
17 impacts.” *Rogue Valley Assoc. of Realtors*, 35 Or LUBA at 158. Under ORS
18 197.307(4), such standards generally cannot be applied to needed housing. As
19 we understand the city’s decision, the city believes that LDC 2.5.40.04
20 compatibility standard can be applied to proposed development of needed

procedures are capable of being imposed only in a clear and objective manner.”

³ ORS 197.303(1) defines “needed housing” in relevant part as “housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels, including at least * * * [a]ttached and detached single-family housing and multiple family housing for both owner and renter occupancy[.]”

1 housing on Tract B, notwithstanding ORS 197.307(4), because Tract B is
2 subject to the 1981 DDP and Condition 12.

3 **B. Condition 12**

4 As noted, Condition 12 of the 1981 DDP provides:

5 “The [Regent] building shall be set back from Elks Drive no less
6 than 30 feet, no less than 135 feet from the south property line,
7 and no less than 55 feet from the east property line. Other
8 applicable setbacks are included on the site plan.”

9 The city council found that Condition 12 is an approval standard for the
10 proposed development, and that the applicant must either satisfy Condition 12
11 or demonstrate that a modification of Condition 12 is warranted under the
12 compatibility standards at LDC 2.5.40.04. Record 21. The city council further
13 interpreted Condition 12, implicitly, to effectively preclude construction of the
14 proposed apartment building within the 135-foot “setback” described in
15 Condition 12. The city council ultimately denied the application because
16 petitioner could not satisfy Condition 12, and had not demonstrated that a
17 modification to Condition 12 would satisfy the compatibility standards at LDC
18 2.5.40.04.

19 Petitioner argues that Condition 12 is not a “clear and objective”
20 standard or condition within the meaning of ORS 197.307(4). Petitioner
21 contends that, while it is clear that Condition 12 prohibits the location of The
22 Regent building within 135 feet of the south property line, petitioner argues
23 that it is far less clear that Condition 12 has the effect of prohibiting other
24 development between The Regent building and the south property line of what
25 is now Tract B, or that Condition 12 effectively converts the area between The
26 Regent building and the south property line into an open space or buffer area in
27 which no buildings may be constructed, as the city apparently interpreted

1 Condition 12. Petitioner argues that because Condition 12 is ambiguous on
2 that point, and requires interpretation to apply it as the city has in the present
3 case, the condition is not “clear and objective” and therefore cannot be applied
4 as a basis to deny the proposed needed housing.

5 The city responds that the city council correctly interpreted Condition 12
6 to impose a setback area between The Regent building and the south property
7 line of what is now Tract B, which effectively limits future use of Tract B to a
8 buffer area, and therefore precludes construction of the proposed apartment
9 building. The city argues that, under the city council’s interpretation of
10 Condition 12, approval and construction of the proposed apartment building
11 would necessarily require a modification of Condition 12 and the 1981 DDP, or
12 a nullification of the 1981 DDP as it applies to Tract B.

13 ORS 197.307(4) mandates that local governments apply only clear and
14 objective “conditions” to needed housing on buildable land. The statute does
15 not limit the scope of “conditions” to conditions that are imposed in the
16 decision that approves needed housing. Neither does the statute exempt
17 conditions that are imposed by earlier land use approvals that do not approve
18 needed housing, such as the 1981 DDP. In addition, the city council
19 interpreted the city development code to the effect that Condition 12
20 constitutes not only a condition, but an approval “standard.” ORS 197.307(4)
21 therefore governs the city’s application of Condition 12, either as a condition
22 or as an approval standard. Consequently, the city may apply Condition 12 to
23 approve or deny the proposed needed housing only if and to the extent that
24 Condition 12 is “clear and objective.”

25 We agree with petitioner that Condition 12 is ambiguous and requires
26 interpretation as applied to the proposed development. Condition 12

1 unambiguously prohibits the location of The Regent building within 135 feet of
2 the south property line of what is now Tract B. However, Condition 12 is
3 ambiguous regarding whether other development is similarly precluded within
4 the area that is now Tract B. Condition 12 mentions no other development or
5 buildings, and does not state, or necessarily imply, that no other building is
6 allowed within 135 feet of the south property line. On the other hand,
7 Condition 12 also does not state, or suggest, that other buildings can be
8 constructed within that 135-foot wide area consistent with the apparent purpose
9 of the condition, to buffer nearby single-family residences from The Regent
10 building. Condition 12 is sufficiently ambiguous on these points that it can be
11 interpreted to support either of two diametrically opposed conclusions, one
12 where needed housing is allowed and one where it is prohibited. A condition
13 that requires such interpretation, to determine whether proposed needed
14 housing is allowed at all, is not a “clear and objective” standard or condition
15 within the meaning of ORS 197.307(4). *See Tirumali v. City of Portland*, 169
16 Or App 241, 246, 7 P3d 761 (2000) (a standard that is ambiguous, *i.e.*, capable
17 of more than one plausible interpretation, is “unclear” and hence not a “clear
18 and objective land use standard” for purposes of the exclusion to LUBA’s
19 jurisdiction at ORS 197.015(10)(b)(B)).

20 The city argues, nonetheless, that ORS 197.307(4) does not preclude the
21 city from applying Condition 12, as interpreted, as a basis to require petitioner
22 to obtain a modification or nullification of the 1981 DDP, pursuant to the
23 discretionary standards at LDC 2.5.40.04. We understand the city to argue that
24 because petitioner proposes a new building in an area where the 1981 DDP
25 approves no building, petitioner is necessarily seeking to redesign or modify
26 the 1981 DDP. As noted, a request to modify the 1981 DDP is governed by the

1 discretionary planned development standards, at LDC 2.5.40.04, which require
2 a determination that the modification is “compatible” with surrounding
3 development with respect to 14 factors. Application of those discretionary
4 standards is consistent with ORS 197.307(4), we understand the city to argue,
5 because petitioner has essentially “opted” to pursue an alternative development
6 process subject to discretionary standards, as authorized by ORS 197.307(6).
7 *See* n 1. According to the city, petitioner has the option of either proceeding
8 under the “clear and objective” 1981 DDP “standards,” including Condition 12
9 as interpreted by the city council, or proceeding under the discretionary
10 standards to modify the 1981 DDP, which are not clear and objective. Because
11 petitioner has elected to proceed under the discretionary standards to modify
12 the 1981 DDP, the city argues that application of those discretionary standards
13 to approve or deny the proposed needed housing is authorized by ORS
14 197.307(6) and does not offend ORS 197.307(4).

15 Petitioner argues, and we agree, that at no relevant time since 1981,
16 when Condition 12 and the PD overlay were first applied, has the city’s land
17 use legislation offered a “clear and objective” path for approval of needed
18 housing on the area that is now Tract B. Petitioner’s filing of an application for
19 a Planned Development Major Modification was required by the city code to
20 develop Tract B with the proposed needed housing, which is a permitted use in
21 the PD (RS-12) zone, not an “option” that petitioner voluntarily exercised for
22 purposes of ORS 197.307(6). Under ORS 197.307(6), a local government may
23 impose unclear, subjective or discretionary standards and conditions on needed
24 housing only if it offers a path that allows needed housing subject only to clear
25 and objective standards and conditions. We understand the city to argue that
26 the 1981 DDP (as interpreted) is itself clear and objective and that development

1 under the clear and objective 1981 DDP was thus an available option for
2 purposes of ORS 197.307(6). We reject the argument. As discussed,
3 Condition 12, the most salient aspect of the 1981 DDP, is ambiguous regarding
4 whether the area of Tract B is developable at all, and is thus not a clear and
5 objective standard or condition. Moreover, even if Condition 12 or the 1981
6 DDP explicitly and unambiguously prohibited any building in the area now
7 comprising Tract B, we do not see that the 1981 DDP would constitute a “clear
8 and objective” alternative “approval process” for needed housing within the
9 meaning of ORS 197.307(6). Because the city has identified no clear and
10 objective approval process for needed housing on Tract B that an applicant
11 could choose, the city cannot rely on ORS 197.307(6) to authorize imposition
12 of the subjective standards for modifying the DDP at LDC 2.5.40.04.

13 The city also suggests that petitioner is bound by the choices of its
14 predecessor-in-interest in 1981, who chose to seek rezoning to PD (RS-12) and
15 development of the eastern third of the parent parcel under the planned
16 development process, in order to develop The Regent facility. Because the
17 predecessor-in-interest chose to take advantage of the flexibility offered by the
18 planned development process rather than pursue other options to develop The
19 Regent facility, the city argues that it is consistent with ORS 197.307(4) and
20 (6) to require petitioner to modify the 1981 DDP pursuant to the subjective
21 criteria at LDC 2.5.40.04.

22 We disagree with the city. We might agree with the city if the 1981 DDP
23 proposal had involved *needed housing*, and the applicant chose the Planned
24 Development process to gain approval of that needed housing, in lieu of a clear
25 and objective path to develop needed housing. Even though ORS 197.307(6)
26 had not yet been adopted in 1981, we see no reason why the two-track

1 framework it embodies could not govern, and bind, current proposals for
2 needed housing that seek to modify a prior approval for needed housing under
3 a discretionary approval track that is otherwise consistent with ORS
4 197.307(6). However, the 1981 DDP did not propose or approve needed
5 housing, and the choices the 1981 applicant made in gaining approval for The
6 Regent do not force petitioner to accept a subjective approval track for needed
7 housing, or otherwise provide a basis for the city to avoid its obligation under
8 ORS 197.307(4) to apply only clear and objective standards and conditions to
9 proposed needed housing on buildable land.

10 Finally, the city notes that ORS 197.307(7) authorizes the city to
11 “[i]mpose special conditions upon approval of a specific development
12 proposal” and “[e]stablish approval procedures.” *See* n 1. We understand the
13 city to argue that Condition 12 represents a “special condition” that was
14 imposed on the 1981 DDP approval, and the city can thus apply Condition 12
15 as a means to effectively force petitioner to seek approval under the
16 discretionary standards at LDC 2.5.40.04. However, as noted the 1981 DDP
17 was not a “specific development proposal” for needed housing, so ORS
18 197.307(7) has no applicability in the present case. Further, ORS 197.307(7)
19 does not purport to modify the terms of ORS 197.307(4), or authorize the city
20 to impose unclear or subjective standards, conditions or procedures. Read in
21 context, ORS 197.307(7) simply clarifies that local governments retain the
22 authority to craft individualized conditions for specific needed housing
23 proposals. However, such special conditions are still subject to overarching
24 requirement at ORS 197.307(4) that conditions imposed must be “clear and
25 objective.” As discussed above, Condition 12 is not clear and objective.

1 In sum, Tract B is zoned PD (RS-12) and subject to the 1981 DDP, the
2 city may apply any clear and objective planned development standards or
3 conditions to the proposed needed housing. However, because the proposal is
4 needed housing located on inventoried buildable lands, ORS 197.307(4)
5 prohibits the city from applying any unclear or subjective standards or
6 conditions to approve or deny the proposed needed housing. Because
7 Condition 12 is ambiguous regarding whether any development (including
8 needed housing) of Tract B is allowed at all, and is not clear and objective, the
9 city cannot apply Condition 12 to prohibit the proposed needed housing, or as a
10 vehicle to subject the proposal to subjective approval standards at LDC
11 2.5.40.04.

12 The first and second assignments of error are sustained.

13 **THIRD ASSIGNMENT OF ERROR**

14 As noted, NW Mirador Place was approved as part of the 2006
15 subdivision. As approved and constructed, NW Mirador Place is a cul-de-sac
16 that terminates adjacent to Tract B, provides access to Tract B and to
17 approximately 17 other lots in the Coronado subdivision, and also includes
18 utilities stubbed to Tract B. One basis for denial in the city council's decision
19 is noncompliance with LDC 4.0.60.c, which provides in relevant part:

20 "Street network plans must provide for connectivity within the
21 transportation system to the extent that, generally, both Local
22 Connector and Local Streets will be created within a development.
23 Identified traffic calming techniques, such as bulbed intersections,
24 etc., can reduce traffic speeds and, where included, are to be
25 constructed at the time of development. To further address traffic
26 speeds and volumes on Local Connector and Local Streets, the
27 *following street designs*, along with other designs intended to
28 reduce traffic speeds and volumes, *shall be considered*:

- 1 “1. Straight segments of Local Connector and Local Streets
2 should be less than .25 mile in length, and include design
3 features such as curves and T intersections.
- 4 “2. *Cul-de-sacs should not exceed 600 ft. nor serve more than*
5 *18 dwelling units.*
- 6 “3. Street designs that include traffic calming, where
7 appropriate, are encouraged.” (Emphasis added.)

8 The city council interpreted LDC 4.0.60.c.2 as a mandatory applicable approval
9 criterion for the proposed housing, and concluded:

10 “[T]he Council finds that the proposal does not comply with LDC
11 Section 4.0.60.c as it would result in as many as 27 dwellings
12 taking access from the NW Mirador Place cul-de-sac. Therefore,
13 the Council concludes that the proposal is inconsistent with and
14 fails to satisfy the criteria relating to traffic and off-site facilities.”
15 Record 17.

16 Petitioner argues under the third assignment of error that the city erred in
17 applying LDC 4.0.60.c.2 to deny the proposed needed housing, because LDC
18 4.0.60.c.2 is not clear and objective. According to petitioner, LDC 4.0.60.c.2 is
19 a highly discretionary standard that by its terms applies to the *design* of local
20 streets, not to approval of development that is served by already designed,
21 approved and constructed streets. Further, petitioner argues that LDC 4.0.60.c.2
22 is framed in inherently discretionary terms: it requires that the city “consider[]”
23 street designs in at least three particulars. Street designs that include traffic
24 calming are “encouraged.” Straight streets “should” be no more than .25 mile in
25 length, and “should” include curves and T intersections. Cul-de-sacs “should”
26 not exceed 600 feet nor serve more than 18 dwelling units. Petitioner notes
27 that LDC 1.6.30 defines the term “should” to mean “[e]xpressing what is
28 desired, but not mandatory.” When the code intends to express a mandatory

1 obligation, petitioner argues, it uses the word “shall,” which LDC 1.6.30
2 defines as “[e]xpressing what is mandatory.”

3 We agree with petitioner that LDC 4.0.60.c.2 is not a “clear and
4 objective” standard, and therefore cannot be applied to deny needed housing,
5 consistent with ORS 197.307(4). In order to apply LDC 4.0.60.c.2 to the
6 proposal, the city council had to interpret that code provision in at least two
7 ways. First, the city (implicitly) determined that LDC 4.0.60.c.2 applies not
8 just to the design of proposed streets, but also to proposed development served
9 by already designed, approved and constructed streets. Second, the city
10 concluded that the terms of LDC 4.0.60.c.2 are *mandatory* approval standards
11 that must be satisfied to approve development, not merely design features that
12 “should” be considered (but need not be imposed). Record 22. The merits of
13 the latter interpretation are somewhat dubious. Even with full deference
14 accorded a governing body’s interpretation of code provisions pursuant to ORS
15 197.829(1) and *Siporen v. City of Medford*, 349 Or 247, 243 P3d 776 (2010), it
16 is a tall order to interpret “should” as that term is defined at LDC 1.6.30 to
17 mean a *mandatory* obligation, because LDC 1.6.30 expressly defines it as non-
18 mandatory. In its response brief, the city argues that the modal auxiliary verb
19 “should” modifies only the first clause of LDC 4.0.60.c.2 (“should not exceed
20 600 ft”) and does not modify the second clause (“nor serve more than 18
21 dwelling units”). However, that reading does violence to the grammatical and
22 semantic structure of LDC 4.0.60.c.2. “Should,” as a modal auxiliary, clearly
23 modifies the main verbs in both clauses (“exceed” and “serve”). As defined by
24 LDC 1.6.30, “should” means “expressing what is desired.” Read in light of
25 that definition, LDC 4.0.60.c.2 expresses the desire that a cul-de-sac serve no

1 more than 18 dwelling units. As petitioner argues, such code language grants
2 the city a considerable degree of discretion.

3 However, regardless of how LDC 4.0.60.c.2 is correctly interpreted, or
4 what interpretations might survive review under ORS 197.829(1), the fact that
5 the city had to interpret LDC 4.0.60.c.2 in order to determine (1) whether it
6 applies at all to the proposed needed housing, and (2) whether it imposes
7 mandatory approval standards, means that LDC 4.0.60.c.2 is not a clear
8 standard for purposes of ORS 197.307(4). It is the city's burden to demonstrate
9 that LDC 4.0.60.c.2 is a clear and objective approval standard. ORS 197.831.
10 The city has not met that burden.

11 The third assignment of error is sustained.

12 **FOURTH ASSIGNMENT OF ERROR**

13 As noted, Tract B was created in 2006 with a 27-foot wide, 40-foot long
14 flagpole connecting the interior of Tract B to NW Mirador Place. After the
15 2006 subdivision was approved, the city adopted LDC 3.6.30, which requires a
16 maximum 25-foot front yard setback. As applied to Tract B, LDC 3.6.30
17 would require that any proposed building be located in the 27-foot wide
18 flagpole. Further, after 2006 the city also adopted LDC 4.10.60.01.b, which
19 requires 40 percent of the street frontage to be occupied by a building. Again,
20 as applied to Tract B, this would require that any proposed building be
21 constructed in the flagpole. A staff report incorporated as findings concluded
22 that residential development of any density on the site would be “nearly
23 impossible” under LDC 3.6.30 and LDC 4.10.60.01.b, and recommended that a
24 variance to those standards be allowed. Record 1552. Although it is not clear,
25 the planning commission apparently did not approve a variance to LDC 3.6.30
26 and LDC 4.10.60.01.b.

1 Petitioner argued to the city council that because LDC 3.6.30 and
2 4.10.60.01.b. were adopted after the 2006 Coronado subdivision that created
3 Tract B and NW Mirador Place, those standards do not apply to development
4 of Tract B, pursuant to ORS 92.040(2), which provides that only laws in effect
5 at the time an application is made for a subdivision inside an urban growth
6 boundary “shall govern subsequent construction on the property” unless the
7 applicant elects otherwise.⁴

⁴ ORS 92.040 provides, in relevant part:

“(1) Before a plat of any subdivision or partition subject to review under ORS 92.044 may be made and recorded, the person proposing the subdivision or partition or authorized agent or representative of the person shall make an application in writing to the county or city having jurisdiction under ORS 92.042 for approval of the proposed subdivision or partition in accordance with procedures established by the applicable ordinance or regulation adopted under ORS 92.044. Each such application shall be accompanied by a tentative plan showing the general design of the proposed subdivision or partition. * * * [A]pproval by a city or county of [a tentative subdivision plan] shall be binding upon the city or county for the purposes of the preparation of the subdivision or partition plat, and the city or county may require only such changes in the subdivision or partition plat as are necessary for compliance with the terms of its approval of the tentative plan for the proposed subdivision or partition.

“(2) After September 9, 1995, when a local government makes a decision on a land use application for a subdivision inside an urban growth boundary, only those local government laws implemented under an acknowledged comprehensive plan that are in effect at the time of application shall govern

1 The city council rejected that argument, concluding that ORS 92.040(2)
2 did not preclude the city from applying post-2006 approval standards to the
3 proposed construction on Tract B.⁵

4 On appeal, petitioner argues, and we agree, that the city erred in applying
5 LDC 3.6.30 and 4.10.60.01.b to deny the proposed development of Tract B. As
6 the Court of Appeals has explained, ORS 92.040(2) is intended “to ensure that
7 the local government laws on which subdivision applications were predicated
8 would be applied to subsequent development on subdivision lots unless
9 developers elected otherwise.” *Athletic Club of Bend, Inc. v. City of Bend*, 239

subsequent construction on the property unless the applicant elects otherwise.

“(3) A local government may establish a time period during which decisions on land use applications under subsection (2) of this section apply. However, in no event shall the time period exceed 10 years, whether or not a time period is established by the local government.”

⁵ The city council findings state, in relevant part:

“* * * [T]he City Council finds that ORS 92.040 does not apply in this case because the applicant in [the 2006 subdivision] did not propose development on the subject site within the general design of the proposed development, the tentative plat decision did not create a ‘lot’ on the subject site and the approval of the subdivision did not therefore include consideration of development-related criteria on the site, traffic impacts associated with development, or any other applicable criteria. The Council finds the labeling of the subject site as a ‘tract’ to be consistent with the owner’s express intent not to develop the site as part of the subdivision, but at a later time, as may be approved consistent with the standards and conditions of the Planned Development overlay or as a modification to the Planned Development * * *.”
Record 12.

1 Or App 89, 97, 243 P3d 824 (2010). In the present case, the 2006 subdivision
2 created Tract B in its current configuration, with a short, narrow flagpole
3 accessing NW Mirador Place. That configuration presumably complied with
4 whatever maximum building setback and frontage requirements, if any, which
5 were in effect in 2006. Under that configuration, it is clear that future
6 development of Tract B, if any, would occur in the flag portion of Tract B.
7 Although the 2006 subdivision applicant did not propose specific development
8 of Tract B, Tract B was provided access, utilities and a configuration
9 predicated on locating future development, if any, in the flag portion of the
10 property.

11 Application of the post-2006 maximum building setback and frontage
12 requirements at LDC 3.6.30 and 4.10.60.01.b would radically change the
13 ballgame. As we understand it, application of LDC 3.6.30 and 4.10.60.01.b
14 would compel any proposed building to be located in the narrow pole portion
15 of the property (where a driveway and utilities must also be located), which the
16 city's own findings state would make residential development of any density on
17 the site "nearly impossible." Record 1552. A site that was configured and
18 provided access and utilities in a manner that would allow the site to be
19 developed in the future, presumably with the medium-density residential use
20 for which it is planned and zoned, would become unbuildable for any
21 residential use. In our view, the present case is one of the circumstances in
22 which the legislature intended ORS 92.040(2) to operate, at least to the extent
23 necessary to preserve the potential for future development of Tract B embodied
24 in the configuration approved in the 2006 subdivision.

25 The city's arguments to the contrary are not persuasive. The city
26 contends that petitioner fails to establish the conditions precedent for

1 application of ORS 92.040(2). According to the city, a developer can invoke
2 ORS 92.040(2) only if (1) at the time of subdivision approval it complied with
3 the ORS 92.040(1) requirement to provide a “tentative plan showing the
4 general design of the proposed subdivision or partition[,]” (2) the tentative plan
5 provides information on proposed development of the lots created, and (3) the
6 subdivision approval evaluates proposed development of lots against the
7 applicable criteria, in this case the planned development and other standards
8 that applied to the 2006 subdivision application. However, the city argues, the
9 2006 subdivision applicant submitted a tentative plan that proposed no
10 development of Tract B, and no development of Tract B was evaluated against
11 the applicable criteria or approved in the 2006 decision.⁶ Therefore, the city
12 argues, ORS 92.040(2) does not apply to preclude application of post-2006
13 standards such as LDC 3.6.30 and 4.10.60.01.b.

14 We partially agree with the city. Because the 2006 subdivision applicant
15 did not propose development of Tract B, and the city did not evaluate any
16 development of Tract B against whatever criteria would be applied to proposed
17 development of lots at the tentative plat stage, ORS 92.040(2) would not
18 generally operate to shield future development of Tract B from application of
19 new development standards adopted after 2006 that regulate development of
20 Tract B. However, as explained above, the 2006 subdivision decision did make
21 a significant decision regarding the general *location* of future development on

⁶ The city also emphasizes that the 2006 plat did not label Tract B as a “lot,” and argues that Tract B is not a “lot.” We do not see that labels matter in the present case. As a matter of law, a unit of land created by a subdivision is a “lot,” no matter what the unit of land is labeled on the plat. *See* ORS 92.010(4) and (16) (definitions of “lot” and “subdivide land”). For what it is worth, Tract B is technically a “lot.”

1 Tract B, namely, that any future development would occur in the *flag* portion of
2 the site, consistent with whatever maximum building setbacks and frontage
3 standards, if any, which were in effect in 2006. Tract B was clearly not
4 configured with the expectation that future development would occur in the
5 *pole* portion of the site. On the contrary, the pole portion of the site was
6 presumably sized and configured to allow a driveway and utilities to access the
7 interior of the site, where future development would occur. Because the 2006
8 decision accomplished that much, ORS 92.040(2) operates to preclude
9 application of different or conflicting post-2006 development standards,
10 specifically the new maximum building setback and frontage standards at LDC
11 3.6.30 and 4.10.60.01.b, because those standards would effectively compel
12 development to be located in the pole portion of the site. Accordingly, we
13 agree with petitioner that the city erred to the extent it denied petitioner’s
14 application for noncompliance with LDC 3.6.30 and 4.10.60.01.b.

15 The fourth assignment of error is sustained.

16 **FIFTH ASSIGNMENT OF ERROR**

17 The fifth assignment of error is framed as an alternative challenge, if
18 LUBA concludes that the city is not limited by ORS 197.307(4) or that LUBA
19 agrees with the city that petitioner “opted” for application of discretionary
20 standards for purposes of ORS 197.307(6). Because we did not reach the
21 predicate conclusions, there is no need to address the alternative fifth
22 assignment of error.

23 **DISPOSITION**

24 We have sustained petitioner’s challenges to the city’s bases for denial.
25 Petitioner seeks reversal of the decision. The city does not argue that remand is
26 the appropriate disposition if petitioner’s assignments of error are sustained.

1 OAR 661-010-0071(1)(c) provides that LUBA shall reverse a land use decision
2 if the decision violates a provision of applicable law and is prohibited as a
3 matter of law. OAR 661-010-0071(2)(d) provides that LUBA shall remand a
4 land use decision for further proceedings when the decision misconstrues the
5 applicable law, but is not prohibited as a matter of law. As we understand the
6 current posture of this case, the city has identified no valid basis to deny
7 petitioner’s application for needed housing. Accordingly, we believe that the
8 city’s decision to deny the application is “prohibited as a matter of law,” and
9 that reversal rather than remand is the appropriate disposition.

10 The city’s decision is reversed.

TO: City Council for June 21, 2016
FROM: Jim Brewer, City Attorney
DATE: June 10, 2016
THROUGH: Mark W. Shepard, P.E., City Manager
SUBJECT: Coronado Tract B Next Steps



Action Requested:

LUBA reversed the City Council's denial of the application for Coronado Tract B. We were not successful appealing LUBA's decision. The Corvallis Land Development Code does not include procedures on reversal from LUBA. The Council needs to make a new decision, consistent with LUBA's decision. Staff requests the Council schedule the manner and date for this decision.

Discussion:

A number of issues brought up in this case are now concluded. Much of the factual information in the record cannot be reexamined. Generally, LUBA found that the proposed apartments were needed housing and that consequently the City could only apply standards or conditions that are clear and objective. LUBA decided that Condition 12 (the 135 foot setback) was ambiguous regarding what building the condition applied to. LUBA decided the City could only apply clear and objective Land Development Code standards or conditions.

Similarly, LUBA found that the cul de sac standard in LDC 4.0.60.c.2 was not clear and objective (and that if the City needed to interpret the standard it could not be clear and objective). Consequently, the City could not deny the application based on the cul de sac standard.

Finally, LUBA found that the City could not apply LDC 3.6.30 or 4.10.60.01.b (regarding maximum setback and street frontage requirements to Tract B).

In other decisions, both LUBA and the Court of Appeals have found that a reversal without a remand is not an approval. The application for the apartment building on Tract B has not yet been approved. The City Council needs to review the application to determine if it meets the clear and objective standards from the Land Development Code for the underlying zone. The Corvallis Land Development Code does not include procedures for the Council to review an application where LUBA has reversed the Council decision without remanding it for further action.

Practically speaking, the City Council does not have a large number of options. While review of the application considering only clear and objective standards and criteria is necessary, the record for this case likely contains all the information that is required to make a decision. Staff will need to prepare a new or amended staff report considering only clear and objective standards, and draft findings for the Council's consideration.

Recommendation:

The Council should schedule a limited public hearing on either July 18 or August 1, to review the record and consider only the clear and objective standards that may be applied. Then the Council may adopt new findings and any necessary conditions of approval required for the application to comply with the relevant criteria.