Memorandum

To: **Mayor and City Council**

From: **Ken Gibb, Community Development Director**

Date: **June 10, 2013**

Subject: **LUBA Remand of the Creekside Center I & II Approval (PLD09-00004 / CDP09-00003 / SUB09-00002)**

I. Issue

At issue is the Oregon Land Use Board of Appeals (LUBA) remand of a City Council decision to approve the Creekside Center I & II Conceptual and Detailed Development Plan, Conditional Development Permit, and Tentative Subdivision Plat (**Order # 2010-077 – see Exhibit D**). The City Council's decision occurred on December 20, 2010.

II. Background

The site is identified on the Benton County Assessor's Map 12-5-05 DD, as Tax Lots 500 and 600, and is located at the northwest corner of SW 53rd Street and SW Philomath Boulevard (Hwy 20/34). The property is owned by Apple Creek I LLC. The site is 6.64 acres and is currently undeveloped with the exception of a single-family residence located on the southern portion of Tax Lot 600.

The applications for Conceptual and Detailed Development Plan, Conditional Development Permit, and Tentative Subdivision Plat ("application") were submitted on July 10, 2009. The proposed development includes seven buildings intended to contain approximately 43,000 square feet of commercial retail and restaurant uses, and associated parking, landscaping and pedestrian-related improvements, a Shopping Street, multi-use paths, and Tracts set aside for Natural Features protection.

Review History

- September 1, 2010 – The Planning Commission conducted a public hearing for the subject application.
- September 15, 2010 – The Planning Commission deliberated and voted to approve the application, subject to various conditions of approval. A notice of decision was signed on September 16, 2010 (Order # 2010-056).
- September 28, 2010 – The City received two appeals of the Planning Commission's decision. One appeal was filed by the League of Women Voters of Corvallis, and the second appeal was filed by the applicant.
- November 1, 2010 - The City Council conducted a public hearing to consider the appeals of the Planning Commission's decision.

- November 15, 2010 – The City Council deliberated and reached a tentative decision to approve the application, which had the effect of denying one of the appeals by the League of Women Voters of Corvallis, and upholding the appeal submitted by the applicant.

- December 20, 2010 – The City Council adopted Formal Findings in support of its decision. A notice of decision was signed on December 20, 2010 (**see Exhibit D**).

- January 10, 2011 - The City received a Notice of Intent to Appeal the City Council decision to LUBA. The appeal was filed by Corinne Sherton, Attorney, on behalf of Petitioners, League of Women Voters of Corvallis and Elizabeth Frenkel, (League of Women Voters of Corvallis and Elizabeth Frenkel vs City of Corvallis, LUBA No. 2011-002). In the LUBA filing, four assignments of error were outlined by the appellants.

- June 28, 2011 - LUBA issued a Final Order and Opinion that includes a description of the four assignments of error supplied by the appellant, and whether or not the City produced sufficient findings to address the assignments of error (**see Exhibit C**). LUBA determined that the City had not made adequate findings in support of the proposal with respect to three of the four assignments of error raised in opposition. All four assignments of error raised by the appellants concerned the inadequacy of findings produced by the City with regard to decision making criteria associated with Natural Features protections.

- April 5, 2013 - The applicant submitted a letter to the Planning Division asking the City to act on the remand (**see Exhibit A**). Additionally, the applicant submitted a narrative that addresses the issues on remand, as well as revisions to the original application and conditions of approval, intended to address the issues on remand.

- April 15, 2013 - The City Council scheduled a hearing for May 20, 2013, to consider the LUBA remand. The City Council decided to hold the hearing as a de-novo hearing.

- May 6, 2013 – The City Council reviewed its decision to schedule the May 20, 2013, public hearing. The Council decided to modify its decision, to review the case in whole as opposed to de novo, and to re-schedule the public hearing for June 17, 2013.

III. Discussion and Purpose of Public Hearing

In the appeal to LUBA, the appellants identified four assignments of error in regard to City Council's decision to approve the Creekside Center I & II application. All four assignments of error raised by the appellants concerned the inadequacy of findings produced by the City with regard to decision making criteria associated with Natural Features protections. In its Final Opinion and Order, LUBA dismissed one of the assignments of error, but upheld three others either in whole or in part. The specific nature of each assignment of error is discussed below.

The purpose of the remand hearing is twofold:

1. Address assignments of error sustained by LUBA
2. Consider changes to the application that are intended to address the LUBA remand, and ensure that the application and the changes, as a whole, comply with applicable LDC decision making criteria.

The Staff analysis is therefore organized into two main areas of discussion. The discussion begins by first outlining each of the assignments of error sustained by LUBA, along with a discussion of the applicable LDC review criteria and how findings might be developed around those criteria. The second area of discussion will evaluate the changes to the application that were intended to address the issues on remand, and to ensure that the project, as a whole, continues to conform to the applicable LDC decision making criteria.

IV. Assignments of Error Sustained in LUBA Remand

As noted in the Background and Discussion above, the City Council's original decision concerning the Creekside Center application occurred on December 20, 2010. The City Council's decision was appealed to the Oregon Land Use Board of Appeals (LUBA) on January 10, 2011, and on June 28, 2011, LUBA issued a Final Order and Opinion that includes a description of the four assignments of error supplied by the appellant, and whether or not the City produced sufficient findings to address the assignments of error (**see Exhibit C**).

All four assignments of error raised by the appellants concern LDC decision making criteria associated with Natural Features protections and Minimum Assured Development Area (MADA) available to the development under LDC Chapter 4.11.

Minimum Assured Development Area is defined in LDC Chapter 1.6 as follows:

> **Minimum Assured Development Area (MADA)** - Minimum area on a development site that is permitted to be disturbed for development, regardless of the Natural Resources or Natural Hazards Overlay designation(s) on the site. The methodologies for determining the MADA are listed in Chapter 4.11 - Minimum Assured Development Area (MADA).

Although the subject Creekside Center development site contains mapped Natural Resources and Natural Hazards that are required to be protected per LDC standards, the LDC also allows development to occur in portions of those protected areas, through the MADA provisions.

LUBA determined that the City had not made adequate findings in support of the proposal with respect to three of the four assignments of error raised in opposition, and the issues on remand primarily concern the City's original findings related to the LDC MADA provisions.

Overview of Assignments of Error Sustained by LUBA

The topics of the three assignments of error sustained by LUBA are listed below. There are four bulleted items, because they summarize sub-issues raised by LUBA in their remand of the three assignments of error.

- Whether the multi-use path proposed along the north side of Dunawi Creek qualifies for an increase in the Minimum Assured Development Area ("MADA") because it is required by the Corvallis Transportation Plan or the City of Corvallis Park and Recreation Facilities Plan, or is necessary to provide public access to or through designated open space areas, as required by LDC 4.11.50.02.c.4;

- Whether the area of wetland mitigation associated with construction of the multi-use path proposed along the north side of Dunawi Creek qualifies for an increase in the MADA because it is required by the Department of State Lands ("DSL") and/or the U.S. Army Corps of Engineers ("COE"), as required by LDC 4.11.50.02.c.2;

- Whether, based upon the above findings, the City has awarded a sufficiently large number of MADA credits to allow development in protected areas as permitted under LDC 4.13.50.b.6 and LDC 4.13.80.01.c.2; and

- Whether, based upon the above findings, it is necessary to allow a stormwater detention facility to encroach within the riparian easement area on Tax Lot 500 in order to allow utilization of the MADA for the project, as required by LDC 4.13.70.02.d.4.

Minimum Assured Development Area (MADA)

The specific decision making criterion implicated in the LUBA remand is LDC Section 2.5.40.04.a.14, which concerns preservation and/or protection of Significant Natural Features. In order to determine whether a development proposal complies with LDC Section 2.5.40.04.a.14, the development must be evaluated against additional applicable LDC development standards contained in Chapters 4.2 (Landscaping), 4.5 (Natural Hazard Provisions), 4.11 (Minimum Assured Development Area (MADA)), and 4.13 (Riparian Corridor and Wetland Provisions). As noted, this criterion includes a requirement that the application complies with the standards in LDC Chapter 4.11 – Minimum Assured Development Area (MADA). As noted above, it is the MADA provisions and the City's original Findings related to those provisions that are the key concern raised in the LUBA remand.

Base MADA

4.11.50.02 – Calculation of the Base Minimum Assured Development Area (MADA)

b. Nonresidential Sites – The base Minimum Assured Development Area of a nonresidential site shall be calculated by multiplying the acreage of the site by the Minimum Assured Development Area per acre, as shown in Table 4.11-2 – Determining Minimum Assured Development Area (MADA) for Nonresidential Zones, below. Acreage calculations shall be rounded to two decimal points. If a site contains multiple zones, the base Minimum Assured Development Area for each zone shall be determined. The total base Minimum

Assured Development Area shall be the sum of the base Minimum Assured Development Areas of all the zones.

LDC Table 4.11-2
Determining Minimum Assured Development Area (MADA) for Nonresidential Zones

Zone	Base MADA / Acre	Area Credits	Total MADA
Mixed Use Community Shopping	**19,600 sq. ft.**		

In its original decision, the City Council found that the base MADA for the subject site, which is located in the MUCS zoning designation, was as follows (**see Exhibit D – pages 38 and 39**):

Table 1 - Base Minimum Assured Development Area (Base MADA)

Base Minimum Assured Development Area			
Tax Lot	Area of Lot	Base MADA per LDC Table 4.11-2	Base MADA for Creekside Center Lot
Tax Lot 500	4.6412 acres	19,600 sq. ft./acre	90,968 sq. ft.
Tax Lot 600	1.9953 acres	19,600 sq. ft./acre	39,108 sq. ft.
Total Base MADA =			130,076 sq. ft.

The opponents did not appeal the City's base MADA determination to LUBA (only the City's calculation of MADA credits above the base amount). The modifications to the site plan submitted to address the LUBA remand do not affect the calculation of the base MADA, since the development site's acreage and its MUCS zone has not changed since the original application.

Additional MADA Credits Available – Four Types

LDC Section 4.11.50.02

c. Additional Allowances for Determining the Minimum Assured Development Area of Residential and Nonresidential Sites – The Minimum Assured Development Area calculated in Section 4.11.50.02.a and Section 4.11.50.02.b may be increased above the base MADA by adding the areas determined by the provisions below:

In addition to the base MADA provided for in LDC Section 4.11.50.02.b, the Minimum Assured Development Area may be increased above the base amount, depending on whether or not the proposed development qualifies for specific credits outlined in LDC Section 4.11.50.02.c.

There are four possible MADA credits listed in LDC Section 4.11.50.02.c. In the original application, the applicant proposed to utilize all four of the credits, and the City granted all MADA credits as requested (**see Exhibit D – page 75**). The four MADA credits were applied in the original application to 13 specific developed areas of the site (**see Exhibit D – page 37**). In some cases, the proposed development improvements utilized more than one MADA credit type, because the specific improvement qualified for two of the four types of MADA credit.

As noted above, two of the issues in the LUBA remand are the City's Findings related to granting two of the four possible MADA credits. The other two MADA credits are not at issue in the LUBA remand. Since all four of the MADA credits can be added together cumulatively, to obtain a total area associated with MADA credits, the third and fourth issues raised in the LUBA remand can only be sufficiently addressed if the City can find that the development proposal qualifies for all of the subject MADA credits.

The applicant has provided a detailed analysis of the Base MADA and additional MADA credits that they are seeking as part of this development request. The MADA analysis used in the original City decision is illustrated on **Exhibit D – pages 37 through 40** of this staff report. To address the issues on remand, the applicant is proposing revisions to the site plan, which resulted in corresponding changes to the MADA calculations. The revised MADA calculations are included as **Exhibit A – pages 96 through 99** to this staff report.

A description of each of the four MADA credits possible under LDC Section 4.11.50.02.c is provided below, along with a discussion concerning how each MADA credit was utilized in the original application, what Findings the City made relative to that credit, if and how the MADA credit is at issue in the LUBA remand, if the application has been revised to address the particular credit, and whether or not the revised application, as a whole, qualifies for each credit. A summary of the four possible MADA credits relative to this development proposal is included in the table below.

	MADA Credit Description	MADA Credit Associated With:		
		Original Application	Revised Application	Associated With Specific LUBA Remand Issue
MADA Credit 1:	The area of public right-of-way dedications resulting from a required width in excess of the width needed for a local street, provided the required street is identified in the Corvallis Transportation Plan	✓	✓	-
MADA Credit 2:	The area of Wetland mitigation that is required by the Department of State Lands and/or the U.S. Army Corps of Engineers when infrastructure must be extended through a Wetland. The area credited shall be based upon the written requirements of the associated permit approval of the Department of State Lands and/or the U.S. Army Corps of Engineers, whichever is greater	✓	✓	✓
MADA Credit 3:	Above-ground stormwater detention facilities designed and constructed consistent with the Corvallis Design Criteria Manual	✓	✓	-
MADA Credit 4:	Trails required by the Corvallis Transportation Plan or the City of Corvallis Park and Recreation Facilities Plan, or necessary to provide public access to or through designated open space areas	✓	✓	✓

The discussion below includes a detailed description of each of the four types of MADA credits available in LDC Section 4.11.50.02.c, along with a description of the specific site improvements associated with each particular MADA credit.

MADA Credit #1 (Right-of-Way Dedications)

LDC Section 4.11.50.02

c. Additional Allowances for Determining the Minimum Assured Development Area of Residential and Nonresidential Sites – The Minimum Assured Development Area calculated in Section 4.11.50.02.a and Section 4.11.50.02.b may be increased above the base MADA by adding the areas determined by the provisions below:

1. The area of public right-of-way dedications resulting from a required width in excess of the width needed for a local street, provided the required street is identified in the Corvallis Transportation Plan;

In the City Council's original decision, Council made specific findings relative to the calculation of MADA, including specific acknowledgment of the application of available credits under LDC Section 4.11.50.02.c (**see Exhibit D – page 75**), which allowed the proposed development to exceed the base MADA. In the prior decision, the City allowed MADA credits under LDC Section 4.11.50.02.c.1 for the following right-of-way dedications (**see Exhibit D – pages 37 through 39**):

- 1,517 square feet for a five (5)-foot wide dedication for 53rd Street on Tax Lot 500 (Area 3 on SP1.8)
- 5,416 square feet for a twelve (12)-foot wide dedication for Highway 20/34 on Tax Lot 500 (Area 6)
- 2,470 square feet for a seventeen (17)-foot wide dedication for Highway 20/34 on Tax Lot 600 (Area 11)

The opponents did not appeal this aspect of the City Council's decision to LUBA. The proposed revisions submitted as part of the remand review do not modify the size or location of the dedications or the related MADA credits.

Therefore, based on LDC Chapter 4.0, which requires public right-of-way dedications consistent with the City's Transportation Plan to occur with development of the subject site, the original and revised application qualifies for the MADA credits under LDC Section 4.11.50.02.c.1.

MADA Credit #2 (Wetland Mitigation Required by DSL / COE)

2. The area of Wetland mitigation that is required by the Department of State Lands and/or the U.S. Army Corps of Engineers when infrastructure must be extended through a Wetland. The area credited shall be based upon the written requirements of the associated permit approval of the Department of State Lands and/or the U.S. Army Corps of Engineers, whichever is greater;

Multi-Use Paths and Associated MADA Credit Calculations for Wetland Mitigation
As noted above, the original application incorporated all four MADA credits, and the City awarded those credits as part of its decision. With the revised application, the applicant is again requesting all four MADA credits.

In the original application, the applicant proposed two public multi-use paths. One path is proposed along the site frontage on SW 53rd Street, and incorporates an existing multi-use path and proposes improvements to that existing path.

The second proposed multi-use path is to be located along the north side of Dunawi Creek. The path was determined by the City to be a requirement of development of the site, based on the Land Development Code provisions in Chapter 4.0, and based on the City's adopted facilities plans (Park and Recreation Facilities Plan and the Transportation Plan). Because the City determined that the multi-use path was required with development of the site, the development qualified for two MADA credits related specifically to the multi-use path on the north side of Dunawi Creek. The credits associated with the Dunawi Creek multi-use path are identified in the table above as credits # 2 (LDC Section 4.11.50.02.c.2) and # 4 (LDC Section 4.11.50.02.c.4.) As noted above, the City's original decision granted both of the available MADA credits for the Dunawi Creek multi-use path.

The application has been modified so that the MADA credit available under LDC Section 4.11.50.02.c.2 and associated with the proposed public multi-use path that runs along the north side of Dunawi Creek is no longer being requested. As noted in the table above, the area associated with that specific MADA credit is equivalent to the area of Wetland mitigation that is required by the Department of State Lands and/or the U.S. Army Corps of Engineers when infrastructure must be extended through a Wetland. The application has been revised to account for the uncertainty of whether or not the Department of State Lands (DSL) and the US Army Corps of Engineers will grant permits for the trail construction through the Proximate Wetland and Riparian Corridor on the north side of Dunawi Creek (**see Exhibit B**).

To account for the loss of MADA associated with the credit, the applicant has reduced the square footage of two of the proposed buildings, and reduced the area of the overall development encroachments into the south side of the Dunawi Creek Riparian Corridor and Proximate Wetlands. Therefore, at least a portion of the development is no longer reliant on that particular MADA credit.

As noted above, the original and revised application includes a second public multi-use path, located along the west side of SW 53rd Street, which also qualifies for the MADA credit available under LDC Section 4.11.50.02.c.2. The applicant is still requesting the MADA credit for the 53rd Street multi-use path. The applicant obtained a wetland fill permit from DSL for Tax Lot 500, and has completed the requirements for purchase of wetland mitigation credits, associated with that permit. The approved wetland fill permit accounts for the encroachments associated with the 53rd Street multi-use path, but does not account for the proposed multi-use path along the north side of Dunawi Creek.

In the City Council's original decision, Council made specific findings relative to the aware of MADA credits under subsection 2. The following MADA credits were awarded in the original decision (**see Exhibit D – pages 37 through 39**):

- 9,345 square feet for the area associated with potential wetland mitigation related to construction of the multi-use path on the north side of Dunawi Creek on Tax Lot 500 (Area 2 on SP1.8)
- 725 square feet for the area associated with 53rd Street right-of-way constructed through the wetlands on the east side of Tax Lot 500 in the vicinity of the new private driveway (Area 4)
- 6,345 square feet for the wetland mitigation area associated with construction of the private driveway and stream crossing on Tax Lot 500 (Area 8)
- 3,149 square feet for the wetland mitigation associated with construction of the required local street on the west side of Tax Lot 500 (Area 10)
- 3,043 square feet for the area associated with potential wetland mitigation related to construction of the multi-use path on the north side of Dunawi Creek on Tax Lot 600 (Area 14)

LUBA remanded the City's decision to approve the application because, although the decision allowed MADA credits under this criterion, the City's findings did not adequately address whether the area of wetland mitigation for the multi-use path located north of Dunawi Creek (Areas 2 and 14 on Sheet SP1.8) qualifies for an increase in the MADA because that mitigation is required by DSL and/or the USACOE. As noted above, the existing wetland fill permit does not account for construction of the multi-use path on the north side of Dunawi Creek, because at the time that the fill permit application was filed in 2004, the subject public multi-use path was not included in the development plans for the site.

As noted above, the applicant has revised the proposed Conceptual and Detailed Development Plan and the calculation of MADA credits (**see Exhibit A – pages 96 through 99**). The applicant is no longer requesting MADA credits for the area of wetland mitigation that is required by DSL or the USACOE (associated with the multi-use path located north of Dunawi Creek). In its original decision, the City Council applied two MADA credits to the multi-use path. One of the credits was awarded under this criterion (LDC Section 4.11.50.02.c.2), and an additional credit was granted per LDC Section 4.11.50.02.c.4. The credit originally requested under the criterion in LDC Section 4.11.50.02.c.2, associated with DSL / COE required wetland mitigation, and no longer requested would have allowed additional development encroachments that the applicant was applying to private development on the south side of Dunawi Creek. The applicant has chosen to scale back the development plans, to account for this loss in MADA credit, due to the uncertainty of whether or not DSL and the USACOE would permit the multi-use path to be constructed and require associated wetland mitigation.

Although the City's previous decision also allowed MADA credits under this criterion for other identified areas—including Area 4 (mitigation for right-of-way through the wetlands), Area 8 (mitigation for the access drive), and Area 10 (mitigation for required local street), the opponents did not challenge, and LUBA did not remand, these aspects of the City's decision. With the revised application, the applicant is still requesting

MADA credits for Areas 4, 8, and 10. Additionally, it should be noted that the existing, approved DSL fill permit and wetland mitigation plan accounts for the development impacts to the wetlands on Tax Lot 500, associated with the improvements to SW 53rd Street and the site driveway on 53rd Street. Therefore, the wetland mitigation requirements of DSL and associated with those improvements has been verified.

Additionally, with the revised application, the applicant is requesting 1,242 square feet of MADA credit for mitigation for local street public right-of-way through the wetlands on Tax Lot 600 (Area 15 in the revised application – **see Exhibit A – page 97**). This additional MADA credit is now a known quantity in terms of wetland impacts, because since the original approval, the applicant has received concurrence from DSL regarding the boundaries of wetlands on Tax Lot 600 (**see Exhibit B – page 5**).

Based on the revised application, and known wetland mitigation requirements associated with the approved DSL wetland fill permit for Tax Lot 500, the MADA credits available under LDC Section 4.11.50.02.c.2 may be awarded for Areas 4 and 8. While the revised application seeks similar MADA credits outlined in LDC Section 4.11.50.02.c.2 for Tax Lots 500 and 600, associated with construction of the new local public street, there is no guarantee that DSL and/or the US Army Corps of Engineers will grant wetland fill permits and associate required wetland mitigation specifically for construction of the street on Tax Lots 500 and 600. However, the applicants CDP and DDP do not rely on use of this MADA credit for the private components of the development plan. The MADA credit associated with the local public street on Tax Lots 500 and 600 is specifically targeted toward construction of the street, which is a requirement of the Land Development Code. The City's original approval accounted for the possibility that DSL and/or the USACOE might not grant wetland fill permits to allow for construction of the local public street. Condition of Approval #4, included in the original City Council decision, and revised with this remand application, relies on DSL approval for either a new or revised wetland fill permit that accounts for development impacts to wetlands, not anticipated with the existing 2004 wetland fill permit. In the LUBA appeal, the appellants cited use of Condition # 4 as the third assignment of error.

In its decision, LUBA upheld the City's use of Condition of Approval # 4 to account for this uncertainty (**see Exhibit C – pages 14 and 15**), and denied the third assignment of error cited by the appellants.

Therefore, as revised and conditioned, the application qualifies for the MADA credits associated with DSL required wetland mitigation, per LDC Section 4.11.50.02.c.2.

MADA Credit #3

3. Above-ground stormwater detention facilities designed and constructed consistent with the Corvallis Design Criteria Manual; and

In the original decision, the City allowed MADA credits to the development under this subsection for the following above-ground stormwater detention facilities:

- 2,730 square feet for a detention pond on Tax Lot 500 (Area 9)
- 2,007 square feet for a detention pond on Tax Lot 600 (Area 12)

The opponents did not appeal this aspect of the original decision to LUBA. The modifications to the proposed CDP and DDP include relocation of the detention ponds further south, away from Dunawi Creek. The detention facilities are required to be provided on the development site, per LDC Section 4.0.130, and would qualify for this MADA credit, as long as other applicable LDC standards and the standards in the Corvallis Design Criteria Manual are satisfied.

In its original decision, the City Council found that the proposed detention facilities qualified for the MADA credits under this subsection. The rationale for granting these MADA credits has not changed between the original application and the revised application. The proposed revisions to the CDP and DDP relocate the detention facilities further away from Dunawi Creek.

Therefore, because the LDC requires the construction of the stormwater detention facilities, consistent with LDC Chapter 4.0 and the applicant is proposing to construct and provide the stormwater facilities consistent with the Corvallis Design Criteria Manual, the MADA credit available under LDC Section 4.11.50.02.c.3 may be granted.

MADA Credit #4

4. Trails required by the Corvallis Transportation Plan or the City of Corvallis Park and Recreation Facilities Plan, or necessary to provide public access to or through designated open space areas.

In the original decision, the City allowed MADA credits to the development under this subsection for each of the two proposed public trail facilities, as follows:

- 9,345 square feet for a public multi-use path on the north side of Dunawi Creek on Tax Lot 500 (Area 1)
- 1,517 square feet for a public multi-use path along the 53rd Street frontage of the site (Area 5)
- 3,043 square feet for a public multi-use path on the north side of Dunawi Creek on Tax Lot 600 (Area 13)

In the original decision, the City allowed MADA credits under this subsection in the total amount of 12,388 square feet for the multi-use path located north of Dunawi Creek, for its entire distance across the subject site. LUBA remanded the City's decision on this issue, but did not take issue with the same MADA credit as it applied to the multi-use path along SW 53rd Street (Area 5).

In its opinion, LUBA stated that the City's findings "do not contain any adequate explanation by the city why the path qualifies for MADA credit" under this subsection." (**see Exhibit C – page 6**). However, LUBA supported the City's findings relative to the requirement that the path be provided on this development site, in part by its discussion under assignment of error # 2 (**see Exhibit C – pages 12 and 13**). As noted in the

original decision, the City found that the multi-use path is an improvement required with development, based on LDC Chapter 4.0, and the City's Transportation Plan and Park and Recreation Facilities Plan. See discussion below, concerning the multi-use path and its relationship to the Transportation Plan and Park and Recreation Facilities Plan.

On remand, the applicant is proposing to maintain consistency with LDC Sections 4.0.20 and 4.0.30, which requires that the applicant dedicate a fifteen (15)-foot wide right-of-way for the multi-use path across the subject site. The constructed multi-use path would likely be twelve (12) feet in width, but may disturb as much as 15 feet. However, as noted above, there is considerable uncertainty as to whether or not DSL and USACOE would permit the path to be constructed, or if permissible, what the path construction details would be. The multi-use path is proposed to be located within a 45-ft. wide area shown on the plans (**see Exhibit A – page 104**), to allow flexibility in the alignment for maximum protection of the Significant Trees within the forested wetland. The total dedication, based on the maximum 15-ft. disturbance, is 8,281 square feet across Tax Lot 500 and 2,714 square feet across Tax Lot 600, for a total of 10,995 square feet (**see Exhibit A – pages 96 through 99**).

A discussion concerning how the proposed multi-use path located on the north side of Dunawi Creek is consistent with the City's Transportation Plan and Park and Recreation Facilities Plan is included below.

Corvallis Transportation Plan (CTP)
The Corvallis Transportation Plan requires the multi-use path. The CTP incorporates the City's Trails Master Plan, which itself requires the multi-use path. At page 6-1, the CTP incorporates the City's Trails Master Plan ("TMP") by reference and explains that the facilities identified in the TMP are needed:

> *"The Trails Master Plan, adopted by the City Council as an element of the Comprehensive Plan on November 19, 1990, identifies existing and needed pedestrian and multiuse trails within Corvallis and is incorporated with this Transportation Plan by reference."*

A copy of CTP page 6-1 is attached (**see Exhibit A – page 64**). In turn, the TMP at page A-4 includes a map identifying existing and future trails in the City. A copy of this map is attached as **Exhibit A – page 65**. This map depicts a "Future Trail" crossing the subject site in the approximate location where the multi-use path is shown on the modified site plan. The TMP map, as included in the CTP, is not labeled "conceptual" or "draft."

Therefore, to the extent the City's earlier findings found that the TMP map was "conceptual," it is not as set forth in the CTP. Further, the "Future Trail" designation of the Path is contrasted with another, more conceptual designation on the map—"Potential Trail Corridors." In this way, the TMP, as incorporated within the CTP, requires the Path to serve pedestrian and multi-use needs in the City.

Additional support for this conclusion is provided in the City of Corvallis Park and Recreation Facility Plan, which states that the CTP has "adopted" the Path. Second, the

CTP also requires the Path at pages 6-5 and 6-6 under Section 6.40 "Future Conditions." In this section, the CTP requires safe, convenient pedestrian facilities connecting developments and activity centers consistent with the LDC. Then, the CTP explains that developing trails, including the Path, consistent with the TMP will fulfill this requirement:

> *"Implementation of the trails plan through construction of trails along drainageway dedications and other identified trail corridors (see Figure A-4) will also contribute to this system."*

A copy of CTP pages 6-5 and 6-6 is **attached as Exhibit A – pages 66 and 67.** Based on these facts, and LDC Section 4.0.30.c, which states:

> ***Where a development site is traversed by or adjacent to a future trail linkage identified within either the Corvallis Transportation Plan or the Trails Master Plan, improvement of the trail linkage shall occur concurrently with development. Dedication of the trail to the City shall be provided in accordance with Section 4.0.100.d.***

Staff believe that the CTP requires the multi-use path as a condition of approving the proposed development plan.

City of Corvallis Park and Recreation Facilities Plan ("PRFP")
The City's PRFP requires the multi-use path because it is identified as an adopted facility necessary to serve the City's recreation needs. The subject path is identified in the list of projects needed to complete the 20-Year Plan for parks and recreation facilities. See Table 17, a copy of which is attached **(see Exhibit A – page 71 - labeled as "T-13 Squaw Creek Trail (S)").** Additionally, the PRFP Trails Plan Map **(see Exhibit A – page 72),** depicts the subject multi-use path as a proposed facility.

The PRFP Trail Comparison Map **(see Exhibit A – page 73)** identifies the subject multi-use path as an "*Adopted Trail/Multi-Use Path."* According to the legend for this map, the City applied this designation to *"[t]hose [trails] that are shown and have been adopted in the Transportation Plan but are not yet built."*

Trails with this designation are contrasted with facilities designated on this map as "Proposed Trail" and "Potential Trail Corridor," which are more conceptual designations. Although the map is labeled as "Conceptual", this label refers to the routes identified in the map. It does not mean that the need or necessity of the facilities is conceptual in nature. In fact, the PRFP states as much:

> *"This is a conceptual plan intended to guide development. The map is not intended to identify specific affected properties, rather, it represents the needs, standards, and/or aspirations of the community."*

Necessary to Provide Public Access To or Through Designated Open Space Areas

The MADA credit outlined in LDC Section 4.11.50.02.c.4 requires that the City find that the multi-use path "is necessary to provide public access to or through designated open

space areas." The portion of the subject site along both sides of Dunawi Creek— where the applicant proposes to locate the subject multi-use path—is designated "Open Space – Conservation" on the City's Comprehensive Plan Map, a copy of which is attached **(see Exhibit A – page 74).**

> **Applicable Comprehensive Plan Land Use Designations**
> **40.4.3 Open Space - Conservation**
> **All predominantly open spaces reserved for general community use, and/or natural hazards/resource preservation, including parks, preserves, general drainageway corridors, and other natural hazard and natural resource areas. Under the Open Space - Conservation designation, limited development may be permitted on private lands, provided that the development provides access to and through the OS-C areas for public infrastructure and/or enjoyment and does not create a hazard, interfere with the drainage function of the streams, or the functions of other significant natural features.**

The multi-use path is necessary to provide public access through the designated "Open Space-Conservation" area for three (3) reasons:

1. It is required to satisfy the pedestrian connection and block perimeter standards in LDC Section 4.0.60.n, which require a pedestrian-through connection for each block face greater than 400 feet. The block face beginning at the SW 53rd Street driveway and running north is greater than 400 feet. Therefore, an east-west pedestrian-through connection is required on the proposed development site. In light of the extensive natural resource areas north of the creek, the multi-use path must be located in open space areas in order to satisfy the spacing standards.
2. The multi-use path is necessary to implement the "Open Space – Conservation" designation of the Comprehensive Plan. According to Section 40.4.3 (see above) of the City's Comprehensive Plan, a developer impacting Open Space-Conservation lands must provide access across the designated open space for public infrastructure: "Under the Open Space – Conservation designation, limited development may be permitted on private lands, provided that the development provides access to and through the OS-C areas for public infrastructure." In order for the proposal to comply with the Comprehensive Plan, it is necessary for the applicant to provide the multi-use path to or through the designated Open Space – Conservation area on the subject site.
3. In its original decision, the City Council found (**see Exhibit D – pages 63 and 64**) that locating and constructing the multi-use path within Highly Protected Riparian Corridors and Riparian related Areas north of Dunawi Creek is necessary to maintain a functional path system. As noted above, LUBA affirmed the City Council's conclusion and findings on this issue. The City Council may rely upon these findings as additional support for its conclusion that the subject multi-use path is necessary to provide public access to or through designated open space areas.

Based upon this evidence and argument, the application satisfies this subsection, and 10,995 square feet of MADA credits may be granted to the proposed development. City Council findings that affirm these conclusions will address LUBA's remand under this subsection.

Highly Protected Riparian Corridor Protections

4.13.50 – USE LIMITATIONS AND EXCEPTIONS WITHIN HIGHLY PROTECTED RIPARIAN CORRIDORS AND RIPARIAN-RELATED AREAS

b. Building, Paving, and Grading Activities – The placement of structures or impervious surfaces, as well as grading, excavation, and the placement of fill, are prohibited. Exceptions to the drainageway restrictions may be made for the purposes identified in items 1-7 of this Section, provided they are designed and constructed to minimize adverse impacts to Riparian Corridors and Riparian-related Areas.

6. Development associated with the Minimum Assured Development Area that would be allowed in accordance with Chapter 4.11 – Minimum Assured Development Area (MADA); and

The City found in its original decision that the proposed development could occur in Highly Protected Riparian Corridors and Riparian-related Areas on the subject site because the development was associated with MADA and MADA credits allowed by the City. As explained above, LUBA remanded the City's decision for additional findings regarding the City's allowance of MADA credits for the multi-use path under LDC Section 4.11.50.02.c (2) and (4.) LUBA reasoned that until the City properly justified its calculation of MADA credits, the City could not allow development in protected areas under the exception offered by this subsection:

> "...without findings justifying the award of MADA credit under LDC 4.11.50.02(c), the city may not ...allow development in the protected areas."
> (**see Exhibit C – page 13**).

Based upon the discussion above in response to LDC 4.11.50.02, in the revised materials, the applicant has not requested and thus does not qualify for MADA credits for the multi-use path located north of Dunawi Creek, under LDC Section 4.11.50.02.c.2. However, the applicant has demonstrated with evidence and argument that the multi-use path qualifies for 10,995 square feet of MADA credits under LDC 4.11.50.02.c.4, as discussed above. Accordingly, 10,995 square feet of MADA credits under LDC 4.11.50.02.c may be granted.

The Base Minimum Assured Development Area (MADA) for Tax Lot 500 is 90,968 square feet **(see Exhibit A – page 96).** Including the MADA credits for the multi-use path located north of Dunawi Creek, along with all other available MADA credits as discussed above, there are 30,130 square feet of MADA credits on Tax Lot 500, for a total MADA (base plus credits) of 121,098 square feet. 77,745 square feet of Tax Lot 500 is unconstrained (outside of Proximate Wetlands and Riparian Corridor).

The Base MADA for Tax Lot 600 is 39,108 square feet **(see Exhibit A – page 97).** Including the MADA credits for the multi-use path located north of Dunawi Creek, along with all other available MADA credits as discussed above, there are 8,433 MADA credits on Tax Lot 600 for a total MADA (base plus credits) of 47,541 square feet. 44,318 square feet of Tax Lot 600 is unconstrained (outside of Proximate Wetlands and Riparian Corridor).

Total MADA (Base MADA and MADA credits) for the development site is 168,639 square feet. The total amount of unconstrained area on the development site is 122,063 square feet. Since the total MADA exceeds the unconstrained area, MADA applies to the development site, and an additional 46,576 square feet of development may encroach into constrained areas to allow for utilization of the MADA (**see Table 2, below**). These calculations are detailed in the two (2)-page document labeled Attachment O-2, a revised version of which is included with the applicant's remand submittal **(see Exhibit A – pages 96 through 99).**

Table 2 - Summary of MADA / Allowable Encroachment Area

	Unconstrained Area	Base MADA + Credits	Allowed Encroachment per Total MADA
Tax Lot 500	**77,745 sq. ft.**	**121,098 sq. ft.**	**43,353 sq. ft.**
Tax Lot 600	**44,318 sq. ft.**	**47,541 sq. ft.**	**3,223 sq. ft.**
Total	**122,063 sq. ft.**	**168,639 sq. ft.**	**46,576 sq. ft.**

Finally, it should be noted that, although the proposed development qualifies for 10,995 square feet in MADA credits for developing the multi-use path north of Dunawi Creek, the path also counts as part of the gross development area in a total amount of 10,995 square feet.

In effect, development of the multi-use path cancels out the MADA benefit of the path. As such, developing it has a net zero effect on MADA availability for the development of private improvements on the subject site. In other words, from a MADA standpoint, the private portion of the development and the degree to which that private development encroaches on Natural Resources is permitted at the same size regardless of whether the multi-use path is developed.

The calculations on Attachment O-2 illustrate these points. For example, if the multi-use path is not developed on Tax Lot 500, it lowers MADA credits by the path's disturbance area of 8,281 square feet, so the adjusted MADA total for Tax Lot 500 is 112,817 square feet. However, not developing the multi-use path also reduces the gross proposed development area by that same 8,281 square feet to 112,770 square feet, less than the adjusted total MADA. Likewise, if the subject multi-use path is not developed on Tax Lot 600, it lowers MADA credits by the path's disturbance area of 2,714 square feet so the adjusted MADA total for Tax Lot 600 is 44,827 square feet. However, not developing the path also reduces the gross proposed development area by that same 2,714 square feet to 44,595 square feet, less than the adjusted total MADA.

Based upon the above-referenced findings and the figures summarized above, encroachment into the Highly Protected Riparian Corridors and Riparian-related Areas by structures and/or impervious surfaces is necessary for purposes of this subsection. LUBA's remand did not require the City to reconsider whether development in the areas of encroachment was designed and constructed to minimize adverse impacts to Riparian Corridors and Riparian-related Areas. Accordingly, this standard is satisfied and addresses LUBA's remand under this subsection.

Riparian and Drainageway Easement Widths

4.13.70.02 – Easements, Easement Restrictions, Dedications, and Easement Widths

* * * *

d. Easement Widths – When an easement is required, the appropriate width shall be as described in "1," through "5," below. However, in no case shall riparian easements include areas containing existing buildings that are intended to remain, nor shall easements include development area assured under "4," below.

For areas with Riparian Corridors, as designated on the City's Riparian Corridors and Wetlands Map, the associated easement width and requirements shall be as follows:

> **4. If, through the provisions of Chapter 4.11 – Minimum Assured Development Area (MADA), it is determined that encroachment into a Riparian Corridor area is necessary to allow for utilization of the Minimum Assured Development Area, any associated easement requirement shall be relaxed to the extent necessary to allow for the minimum necessary encroachment into the resource area.**

Based on the original decision, the City allowed development of the stormwater detention pond within the riparian easement area on Tax Lot 500 under LDC Section 4.13.70.02.d.4. LUBA remanded the City's decision for additional findings on this issue, concluding that the City Council erred in allowing development within the easement area where the total MADA has not yet been determined.

As explained above, LUBA remanded the City's decision for additional findings regarding allowance of MADA credits for the multi-use path under LDC Section 4.11.50.02.c (2) and (4). According to LUBA, *"without knowing the MADA for the development, the city could not determine under LDC 4.13.70.02.d.2 whether 'encroachment into a Riparian Corridor area is necessary to allow for utilization of' MADA"* **(see EXHIBIT C – pages 16 and 17).**

Based upon the findings set forth above in response to LDC Section 4.11.50.02, on remand, the MADA, including credits, attributed to the application exceeds the unconstrained areas of the subject site. Therefore, per LDC Chapter 4.11, development may encroach into a Riparian Corridor area to allow for utilization of the MADA.

Conclusions Regarding MADA Calculations and Award of MADA Credits

The findings supporting the MADA calculations can be summarized as follows:

1. The applicant is not requesting MADA credits for the multi-use path located on the north side of Dunawi Creek, under LDC Section 4.11.50.02.c.2 (for the area of the multi-use path that relates to wetland mitigation required by DSL and/or the USACOE). Accordingly, the City Council should not allow any MADA credits under this subsection.
2. The applicant has demonstrated with evidence and argument that the subject multi-use path satisfies LDC Section 4.11.50.02.c.4. This section refers to trails that are required by the Corvallis Transportation Plan or the Park and Recreation

Facilities Plan. Accordingly, 10,995 square feet of MADA credits may be granted under this subsection.

3. The Base MADA for Tax Lot 500 is 90,968 square feet. Including the additional allowed MADA credits for the subject multi-use path, there are 30,130 square feet of MADA credits on Tax Lot 500, for a total MADA (base plus credits) of 121,098 square feet. 77,745 square feet of Tax Lot 500 is unconstrained (outside of Proximate Wetlands and the Highly Protected Riparian Corridor).
4. The Base MADA for Tax Lot 600 is 39,108 square feet. Including the additional allowed MADA credits for the subject multi-use path, there are 8,433 MADA credits on Tax Lot 600 for a total MADA (base plus credits) of 47,541 square feet. 44,318 square feet of Tax Lot 600 is unconstrained (outside of Proximate Wetlands and the Highly Protected Riparian Corridor).
5. The development site has an unconstrained area of 122,063 square feet.
6. The development site has a Minimum Assured Development Area (Base MADA plus all available credits) of 168,639 square feet.
7. In total, a minimum of 46,576 square feet of development may encroach into constrained areas to allow for utilization of the MADA.
8. The base MADA and MADA credit calculations are detailed in the application submitted on remand **(see Exhibit A – pages 96 through 99).**
9. Based upon the above-referenced findings and the figures summarized above, encroachment into a Highly Protected Riparian Corridor area is necessary to allow for utilization of the MADA. Accordingly, under this subsection, any associated easement requirement for the stormwater pond on Tax Lot 500 may be relaxed to the extent necessary to allow for the minimum necessary encroachment into the resource area. This standard is satisfied and addresses LUBA's remand under this subsection.

Use Limitations Within Locally Protected Wetlands

4.13.80.01 – Use Limitations and Exceptions Within Locally Protected Wetlands

* * * *

c. Building, Paving, and Grading Activities – Within LPW areas, the placement of structures or impervious surfaces, as well as grading, excavation, and the placement of fill, is prohibited, except as outlined below. Exceptions to the LPW restrictions may be made for the purposes identified in "1" and "2," below, provided they are designed and constructed to minimize adverse impacts to Wetland Functions.

* * * *

2. Activities outlined in sections 4.13.50.b.2, 4.13.50.b.5, and 4.13.50.b.6.

In the original decision, the City Council allowed building, paving, and grading activities within Locally Protected Wetlands under this exception based upon the City Council's determination that development would be allowed in conjunction with the applicant's usage of MADA under LDC Section 4.13.50.b.6. Because LUBA remanded the City's decision with direction that the City make new findings in response to LDC Section 4.13.50.b.6, LUBA effectively remanded the City's justification for allowing development under LDC Section 4.13.80.01.c.2.

Based upon the findings in response to LDC Section 4.13.50.b.6 set forth above, the base MADA plus credits will exceed the unconstrained area of the development site, thus necessitating development in Riparian areas under LDC Section 4.13.50.b.6, and by reference, necessitating development in Wetlands under LDC Section 4.13.80.01.c.2. This addresses LUBA's remand under this subsection.

V. Modifications to Site Plan and Conditions of Approval

Along with the request to proceed with the LUBA remand hearing, the applicant submitted revised drawings and conditions of approval for the application (**see Exhibit A**).

Proposed Site Plan Modifications

The following modifications to the original application are proposed (**see Exhibit A – pages 17 and 18**):

- Located one of two multi-use paths north of Dunawi Creek in a fifteen (15)-foot wide disturbance area that will be located within a forty (40)-foot wide area shown on the plans extending from the SW 53rd Street right-of-way west across the subject site, with the exact location to be determined by the City in the future. The subject multi-use path was included in the original application and its location has not changed. The change associated with the path is that the applicant is not seeking specific private development credits associated with Minimum Assured Development Area (MADA) for the path at this time.
- Eliminated the access sidewalk to the stormwater pond behind Buildings B and C
- Reduced the overall proposed development area by approximately 11,000 square feet
- Reduced Building B to 5,327 square feet from 5,874 square feet and made related modifications to the east elevation to reflect the narrower dimension and to the north elevation to remove service doors
- Reduced Building F to 7,500 square feet from 9,000 square feet and made related modifications to the east and west building elevations to remove two (2) bays
- As described by the applicant, eliminated six (6) vehicular parking spaces from Tax Lot 600 and four (4) vehicular parking spaces from Tax Lot 500 and added one (1) vehicular parking space on Tax Lot 600. The actual reduction, as compared to the original application, is 10 spaces.
- Eliminated sidewalk on west side of SW 53rd Street entry driveway, instead, shifting pedestrian traffic via crosswalk across entry driveway to sidewalk on SW 53rd Street
- Relocated the trash enclosures north of Building C out of the public right-of-way
- Shifted the east/west future public right-of-way to the south to increase the distance from Dunawi Creek; also extended this right-of-way 31 feet into Tax Lot 500 to coordinate with the north/south future public right-of-way
- Reduced the number of trees along the east side of the Shopping Street and along the west side of Building F

- Made minor adjustments in the location of the angled parking spaces and crosswalk between Buildings C and F to accommodate the above modifications in the site plan

The applicant submitted a "Site Comparison / Overlay" illustration which compares the original site plan with the modified version (**see Exhibit A – page 87 and Figure 1, below**). The illustration highlights, in red, the site plan components from the original approval that have been altered or removed. In general, the applicant has scaled back the level of development which has the net effect of lessened impacts to the south side of the Dunawi Creek Riparian Corridor, Wetlands, and Floodplain.

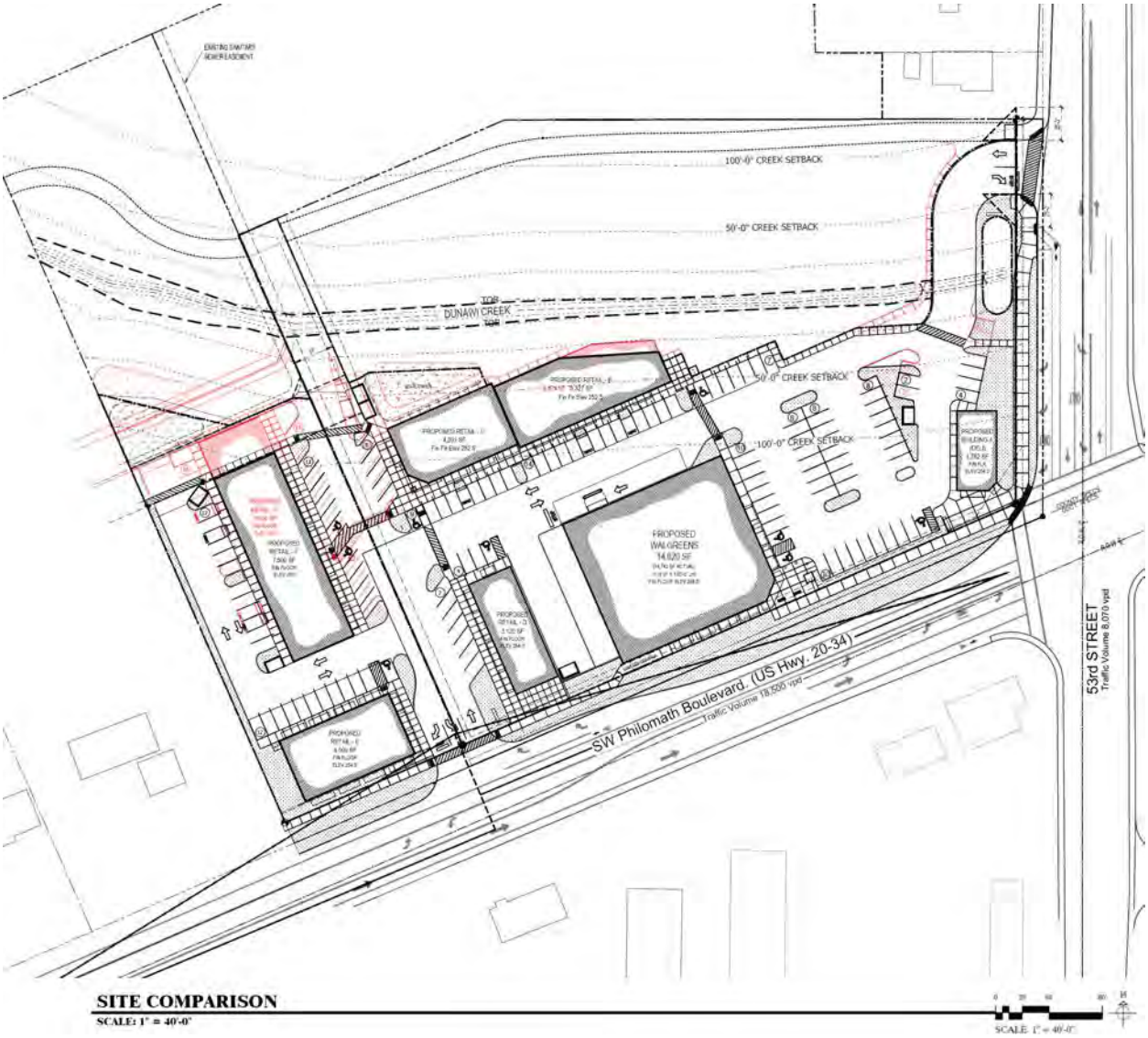

Figure 1 - Site Comparison / Overlay

The discussion below evaluates each of the applicable decision making criteria, the original City Council findings relative to the criteria, if the proposed site plan modifications comply with applicable LDC review criteria, and how the modifications address the issues on remand. Because City Council chose to re-open the public hearing and consider the case in whole, it will be necessary to include a discussion concerning all applicable LDC review criteria for all three land use applications (Conceptual and Detailed Development Plan, Conditional Development Permit, and Tentative Subdivision Plat).

However, for efficiency, this staff report will acknowledge those components of the application that have not changed and will simply provide a cross-reference to that location in the record (**Exhibit D**) where a more detailed discussion and Findings were made by the City Council, indicating that the applicable criterion has been satisfied. For the components of the application that have changed, Staff have provided a more in-depth discussion in this staff report concerning the applicable LDC review criteria, and have highlighted how the change also addresses the remand issues sustained by LUBA.

VI. Conceptual and Detailed Development Plan (Planned Development)

The applicant is requesting approval of a Conceptual and Detailed Development Plan (Planned Development) to consider several requested variations to LDC development standards. Du/admine to the degree of the variations being requested, a Planned Development approval is necessary. The applicable review criteria for a Conceptual and Detailed Development Plan are found in LDC Chapter 2.5. The applicant originally requested, and the City approved, seven (7) variations. The appeal to LUBA did not involve this aspect of the City's decision. However, due to the proposed site plan changes intended to address the issues on remand, one of the requested variations is impacted by the applicable review criteria, and new Findings will need to be made that address the changes and how the application, as modified, complies with the applicable review criteria.

Applicable Review Criteria

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;

A. Original Decision: As mentioned above, the original application included seven requested variations to LDC standards. The City Council found in its original decision, that the application complies with the criterion for compensating

benefits for all seven of the requested variations (**see Exhibit D – pages 76 through 81**). Of the seven requested variations, only the following variation is affected by the site plan changes submitted for the remand:

> LDC Section 4.11.50.04.c: The prescribed order of encroachments into Natural Features, based on Minimum Assured Development Area (MADA) allowances. The site contains several mapped Natural Resources and Natural Hazards. Following the strict order of encroachments would require that a portion of the development occur on the north side of Dunawi Creek. The applicant proposed to alter the order of encroachments, so that the majority of development would occur on the south side of the Dunawi Creek.

B. Issues on Remand: The appellants did not appeal, based on the specific criterion, related to the MADA order of encroachments variation.

C. Modification Requires Supplemental Findings? : Yes. In addressing the issues related to LUBA's remand, the applicant has proposed to reduce the development envelope on the south side of Dunawi Creek, so that there is less encroachment into the protected Natural Hazard and Natural Resource areas. The proposed modification has the effect of altering the original degree of variation requested to the order of encroachments prescribed in LDC Section 4.11.50.04.c. The changes to the application do not alter any of the other previously requested variations.

   The City Council's original decision found that strict adherence to the prescribed order of Natural Feature encroachments in LDC 4.11.50.04.c. would require the applicant to develop on the north side of Dunawi Creek in the area north of the 100- foot Highly Protected Riparian Corridor setback, within the Locally Protected Wetlands and 100-Year Floodplain before developing in the 100-foot Highly Protected Riparian Corridor setback south of Dunawi Creek. This outcome would have caused extensive impacts to the highly valued forested wetland and riparian corridor north of Dunawi Creek. Thus, the City approved Variation #1 to concentrate the impacts of development on the south side of Dunawi Creek and to preserve a greater area of the Highly Protected Riparian Corridor, Locally Significant Wetland, and 100-Year Floodplain on the north side of Dunawi Creek.

   As modified, the proposed development results in less encroachment within the 100-foot Highly Protected Riparian Corridor setback and the 50-foot base Riparian Corridor due to the reduction in the size of Buildings B and F; elimination of the access sidewalk behind Buildings B and C, elimination of (9) vehicle parking spaces, and elimination of the sidewalk west of the access driveway connecting to SW 53rd Street. The modified site plan continues to propose that no private commercial development occur in the forested wetland north of Dunawi Creek, with the exception of the driveway crossing the creek at the northeast corner of the site.

D. Conclusion: The applicant is requesting a lesser variation to the MADA order of encroachments standard (LDC Section 4.11.50.04.c) than requested with the original application, without compromising the compensating benefits of

preserving the resource areas north of the creek. As modified, there are still adequate compensating benefits associated with the requested variation. None of the other six variations requested as part of the original approval are affected by the proposed site plan modifications. The criterion for compensating benefits associated with requested variations is satisfied.

2. Basic site design (the organization of Uses on a site and the Uses' relationship to neighboring properties);

A. Original Decision: In its decision, City Council found that the proposed Conceptual and Detailed Development Plan satisfied the criterion for basic site design (**see Exhibit D – page 81**), subject to conditions of approval.
B. Issues on Remand: The appellants did not cite this criterion in their appeal to LUBA.
C. Modification Requires Supplemental Findings? : Yes. As noted above, the applicant has proposed modifications to the site plan, which are primarily concentrated in the areas north of Buildings B, C, and F. Otherwise the basic site design has not substantially changed from the original design. The modifications do not alter the type and general location of uses, or the type and general location of access, on-site parking and circulation systems, landscaping, buffering, or setbacks. Although the modifications reduce the total commercial floor area of the development, the proposed commercial floor area of the buildings (including the drive-through facility for Walgreen's) is still approximately 43,022 gross square feet, which exceeds the minimum commercial floor area requirement of 42,090 square feet. Further discussion of the Floor Area Ratio calculations is set forth in response to LDC 3.19.40.03.a. below.

Pedestrian Circulation
Although the modifications affect two (2) on-site pedestrian sidewalks (**see Exhibit A – page 87**), one (1) of these sidewalks—the sidewalk behind Buildings B and C connecting to the stormwater retention pond— was not originally provided to meet a LDC requirement. The other sidewalk, located on the west side of the SW 53rd Avenue driveway, has been relocated to the south, approximately half way between the driveway entrance on SW 53rd Street and SW Philomath Boulevard, and continues to provide safe and convenient pedestrian access between the public sidewalk along SW 53rd Street and the internal sidewalk system. Continued provision of this sidewalk complies with LDC Sections 4.0.30.b and 4.10.70.03.a. The modifications associated with the sidewalks reduce the area of development in the 50-foot base Riparian Corridor and the 100-foot Highly Protected Riparian Corridor setback.

Floor Area Ratio Standards
The MUCS zone requires that developments provide a minimum floor area associated with commercial uses. The zone implements this by establishing a minimum Floor Area Ratio (FAR) of 0.25 and a maximum FAR of 1.0.

3.19.40.03 – Commercial Floor Area Ratio
Minimum commercial Floor Area Ratios (FARs) are required for all property with a Mixed Use Community Shopping designation. This requirement ensures that commercial land is preserved for primarily commercial purposes. For an explanation of how to apply/calculate FARs, see the definition of Floor Area Ratio in Chapter 1.6 - Definitions.
All commercial and mixed use developments shall comply with the following standards for commercial floor area:

> **a. For Commercial Use Types, the minimum FAR shall be 0.25 and the maximum FAR shall be 1.0. When a project is composed of two or more phases, development in each phase shall fall within the minimum and maximum FAR requirements or an alternative FAR requirement proposed and approved through a Planned Development Review process.**

In addressing this provision, the applicant references the following LDC definitions for "Area, Net" and "Floor Area Ratio (FAR)" set forth in LDC Chapter 1.6. These definitions provide as follows:

> **Area, Net - Total area of a parcel or site, usually expressed in acres and excluding existing public street rights-of-way and, if a developer desires, excluding public parks, Significant Natural Feature areas dedicated to the public, and/or other areas permanently precluded from development due to development constraints or conservation easements. Planned streets shall not be excluded from the net area.**
>
> **Floor Area Ratio (FAR) - Gross floor area of all buildings on a lot or development site divided by the net area of a lot or development site on which the buildings are located. See Area, Net. In cases where outdoor areas are directly related to the subject land use(s) (e.g., outdoor storage areas; planting areas for nurseries, tree farms, and agricultural businesses; portions of parking lots used for storage and circulation of moving vans associated with moving businesses; etc.), these outdoor areas may be included in the Floor Area Ratio square footage calculation. However, unless specified otherwise, in no case shall standard parking and circulation areas, landscaping, etc., be included in the Floor Area Ratio square footage calculation.**

For purposes of calculating the Floor Area Ratio, the applicant has elected to exclude the Natural Features from the Net Area. The proposed CDP and DDP satisfy the Floor Area Ratio requirements for the Property and for each tax lot, as illustrated in the following table:

Table 3 - Floor Area Ratio Calculations

Area	Site Area	Minimum Building Floor Area (0.25 FAR)	Maximum Building Floor Area (1.0 FAR)	Proposed Building Floor Area (sq. ft.)
Total Area (without subtracting areas protected Natural Features	289,082	72,721	289,082	43,022 (15% FAR - does not comply)
Area, Net (subtracting areas of protected Natural Features)	168,360	42,090	168,360	43,022 (25% FAR - complies)
Tax Lot 500	121,051	30,262	121,051	31,022 (complies)
Tax Lot 600	47,309	11,827	47,309	12,000 (complies)

D. Conclusion: The City Council found, in its original decision, that the proposed CDP and DDP are consistent with the criterion for basic site design. This specific criterion was not cited in the appeal to LUBA. The modifications to the CDP and DDP do not alter the organization of uses on the development site, or the relationship of those uses to neighboring properties. The modifications include a reduction in commercial floor area for the development site that remains consistent with the standard in LDC Section 3.19.40.03. The criterion for basic site design is satisfied.

3. Visual elements (scale, structural design and form, materials, etc.);

A. Original Decision: The City Council found that the application complies with this criterion (**see Exhibit D – pages 81 and 82**), because the building architecture complies with applicable development standards from the MUCS zone (LDC Section 3.19.40) and the commercial Pedestrian Oriented Design Standards in LDC Chapter 4.10 (LDC Section 4.10.70).

B. Issues on Remand: The opponents did not appeal this aspect of the City Council's decision to LUBA.

C. Modification Requires Supplemental Findings? : Yes. The proposed modifications include revisions to two of the seven buildings included in the original approval (**see Exhibit A – pages 107, 110, and 112**). The affected buildings are Building B and Building F. The applicant is proposing to reduce the floor area of Building B from 5,874 sq. ft. to 5,327 sq. ft., and to reduce the floor area of Building F from 9,000 sq. ft., to 7,500 sq. ft., for an overall decrease in building floor area of 2,047 sq. ft. The primary purpose of reducing the building area is to reduce the overall development impacts and encroachments into the south side of the Dunawi Creek Riparian Corridor and Proximate Wetlands. Because the floor area of Buildings B and F changed, a corresponding change in

the floor plans (**see Exhibit A – page 112**) and architectural elevations occurred (**see Exhibit A - pages 107 and 110**).

D. Conclusion: Although the modified application reduces the floor area of two (2) buildings, it does not materially modify or affect the scale, structural design and form or materials associated with the building architecture. Additionally, the changes in the building architecture do not adversely impact compliance with the applicable MUCS (LDC Section 3.19.40) and commercial Pedestrian Oriented Design Standards (LDC Section 4.10.70). In conclusion, building architecture was not a subject of the LUBA appeal, and the original application and modified application complies with the applicable criterion for visual elements.

4. Noise attenuation;

A. Original Decision: The City Council found that the proposed development is consistent with the applicable compatibility criterion for noise in its original, December 20, 2010, decision (**see Exhibit D – page 82**).
B. Issues on Remand: This criterion was not implicated in the assignments of error filed with LUBA.
C. Modification Requires Supplemental Findings? : No.
D. Conclusion: The original development plan was found to be consistent with this criterion and the criterion was not subject to assignments of error filed in the LUBA case. The proposed changes to the development plan will not generate additional noise impacts beyond what was anticipated in the original proposal. This criterion is satisfied.

5. Odors and emissions;

A. Original Decision: The City Council found that the proposed development is consistent with the applicable compatibility criterion for odors and emissions in its original, December 20, 2010, decision (**see Exhibit D – pages 82 and 83**).
B. Issues on Remand: This criterion was not implicated in the assignments of error filed with LUBA.
C. Modification Requires Supplemental Findings? : No.
D. Conclusion: The original development plan was found to be consistent with this criterion and the criterion was not subject to assignments of error filed in the LUBA case. The proposed changes to the development plan will not generate additional impacts associated with odors and emissions beyond what was anticipated in the original proposal. This criterion is satisfied.

6. Lighting;

A. Original Decision: The City Council found that the proposed development is consistent with the applicable compatibility criterion for lighting in its original, December 20, 2010, decision (**see Exhibit D – page 83**), subject to condition of approval # 15 (**see Exhibit D – page 7**).
B. Issues on Remand: This criterion was not implicated in the assignments of error filed with LUBA.

C. Modification Requires Supplemental Findings? : Yes. The proposed changes in the site plan (**see Conceptual Lighting Plan – see Exhibit A – page 95**) result in some of the pole mounted light fixtures moving southward, because the development envelope in the area of Building F has shifted further away from Dunawi Creek. The applicant is not proposing any other changes to the fixture and lighting design. The change in pole location should not have a material change in lighting impacts, as compared to the original approval (**see Exhibit D – page 36**), where City Council found that the criterion for lighting compatibility was satisfied, with the exception that lighting impacts upon the riparian corridor should be lessened.

D. Conclusion: In its decision, City Council found that, subject to a condition of approval, the proposed Conceptual Lighting Plan is consistent with the compatibility criterion for lighting. The lighting criterion was not the subject of the LUBA appeal. The proposed changes in the site plan resulted in the relocation of two of the pole mounted light fixtures, but the overall impact in terms of compatibility is lessened because the lighting has been relocated closer to the center of site, away from the riparian corridor. The original condition # 15 is still applicable, and as conditioned, this criterion has been satisfied.

7. Signage;

A. Original Decision: The City Council found that the proposed development is consistent with the applicable compatibility criterion for signs in its original, December 20, 2010, decision (**see Exhibit D – pages 83 and 84**), subject to condition of approval # 37 (**see Exhibit D – page 18**), because the number, size, location, and height of signs are consistent with LDC standards in Chapter 4.7. The condition of approval requires that the development comply with the City's sign code standards in LDC Chapter 4.7.

B. Issues on Remand: This criterion was not implicated in the assignments of error filed in the appeal to LUBA.

C. Modification Requires Supplemental Findings? : Yes. The applicant's revised sheet SP1.2 (**see Exhibit A – page 86**) includes a revision to the Walgreen's Pylon Sign Elevation. However, the net effect of the change is that the sign is shorter in height, and contains less sign area than the original approval. The proposed sign is consistent with the MUCS sign standards.

D. Conclusion: In it decision, City Council found that, subject to a condition of approval, the proposal is consistent with the compatibility criterion for signs, consistent with the LDC standards in Chapter 4.7. The signage criterion was not the subject of the LUBA appeal. The proposed changes in the application resulted in a change to the Walgreen's Pylon Sign Elevation on Sheet SP1.2, but the overall impact in terms of compatibility is lessened because the sign has been reduced in size. The original condition # 37 is still applicable, and as conditioned, this criterion has been satisfied.

8. Landscaping for buffering and screening;

A. Original Decision: In the original decision, City Council found that the Conceptual Landscape Plan (**see Exhibit D – page 34**) was consistent with LDC standards for landscaping, screening, and buffering (**see Exhibit D – pages 84**

and 85), subject to several conditions of approval (**see Exhibit D – pages 14 through 18**).

B. Issues on Remand: The opponents did not appeal this aspect of the decision to LUBA.

C. Modification Requires Supplemental Findings? : Yes. The applicant has proposed changes to the Conceptual Landscape Plan (**Sheet SP1.4 – see Exhibit A – page 92),** and condition of approval # 36 (**see Exhibit A – page 77**) as a result of the proposed changes to the overall site plan and lessened encroachments into the Riparian Corridor. The changes have the net effect of fewer new trees provided along the east and west facades of Building F, and fewer trees north of Building C near the refuse enclosures. However, the proposed lessened impacts of development on the Riparian Corridor should help to preserve additional existing vegetation within the Riparian Corridor. Additionally, the proposed changes to the Conceptual Landscape Plan, in conjunction with the original conditions of approval, are consistent with the LDC standards in Chapter 4.2, and with the criterion for landscaping. The proposed change to Condition # 36 does not have a material effect on overall landscaping provided, but rather addresses a change in the count for vehicle parking spaces that was noted in the original condition of approval, as it pertains to landscaping that abuts the vehicle parking north of Building A. The requirements for screening and buffering adjacent to these vehicle parking spaces, per LDC Section 4.2.30, 4.2.40 and 4.2.50 remain satisfied.

D. Conclusion: In its original decision, the City Council found that the proposed Conceptual Landscape Plan is consistent with LDC standards for landscaping, buffering and screening, based on additional conditions of approval. The opponents did not appeal the application based on this criterion. The applicant submitted revisions to the Conceptual Landscape Plan to address the issues on remand. The material changes in the landscape plans primarily are a result of the applicant's proposal to lessen impacts on the Riparian Corridor, by reducing the development envelope adjacent to Dunawi Creek. While the changes resulted in a reduction of the amount of provided new trees on site, the changes also will result in removal of less vegetation within the Dunawi Creek Riparian Corridor. As noted above, the applicant has proposed a change to Condition # 36, which does not directly affect the proposal's consistency with the applicable LDC buffering and screening requirements found in LDC Section 4.2.30, 4.2.40, and 4.2.50. As proposed, the revised Conceptual Landscape Plan and related condition of approval # 36 are consistent with this criterion.

9. Transportation facilities;

A. Original Decision: In the original decision, City Council found that the application (**see Exhibit D – page 85**) is consistent with LDC standards that require that developments be adequately served by public transportation infrastructure, to support vehicle, bicycle, and pedestrian circulation. Compliance with the transportation facilities criterion is contingent upon several conditions of approval that require improvements for public and private streets, and pedestrian and bicycle facilities, including multi-use paths.

B. Issues on Remand: The opponents did not appeal the original decision based on this criterion. However, the opponents did appeal based on other applicable LDC

criteria related to provision of one of the two public multi-use paths on the subject site.

Vehicle Circulation / Refuse Enclosure Access
Transportation improvements are proposed along the site frontages of SW 53rd (Benton County jurisdiction) and SW Philomath Blvd./Hwy 20/34 (ODOT jurisdiction) as well as an internal shopping street (private) and a public street which provides for connectivity between adjacent parcels. The proposed modifications to the application associated with the LUBA remand (**see Exhibit A – page 86**) do not substantially change the configuration of any of the transportation facilities. There are no revisions to the proposed improvements on SW 53rd Street, or SW Philomath Blvd. The local street cross-section remains the same, but the location is shifted approximately 30 feet to the south. The shopping street is shortened by 30 feet. These revisions continue to comply with applicable LDC sections listed in the original staff report to the Planning Commission and City Council.

Staff have concerns with the revisions to the site development plans, associated with the refuse enclosures near the intersection of the northern end of the private shopping street and the new public local street, near Building C. Previously the dumpsters were located on-site, abutting the private shopping street. The new location is east of the public sidewalk at the intersection of the two streets, and abutting the new public right-of-way. There are three design concerns which need to be addressed with the construction plans:

1. gates to refuse enclosures should not swing out over the sidewalk;
2. the sidewalk will need to be designed to allow garbage truck access, and
3. the skewed concrete sidewalk / pedestrian crossing across the commercial driveway approach should be parallel to the local street and located within the right of way

Some of these concerns could also be addressed by locating the dumpsters in an appropriate on-site location with pick-up access from the private site vs. a public street (**see Staff Recommended Condition of Approval # 42**).

Pedestrian and Bicycle Circulation -
Public multi-use paths are transportation facilities that are required on this development site, based on LDC Sections 4.0.20, 4.0.30, 4.0.40, and 4.0.60.n. A proposed public multi-use path, located on the north side of Dunawi Creek, is being provided on the development site in order to comply with the applicable LDC Chapter 4.0 standards mentioned above. A more in-depth discussion is included above, regarding the specific assignments of error sustained by LUBA, which concern the multi-use path located on the north side of Dunawi Creek. In its decision concerning the second assignment of error, LUBA did not take issue with the City's findings regarding whether or not the subject multi-use path is required. LUBA supports the City's findings regarding the necessity of the path to maintain a functional transportation system, consistent with LDC Section 4.13.50.b.2 (**see Exhibit C – pages 12 and 13**). Therefore, LUBA supports the City's findings relative to the multi-use path being required with this development.

At issue on remand is LUBA's determination that the City did not provide sufficient findings to address how specific Minimum Assured Development Area (MADA) credits, associated with construction of the multi-use path were applied to the development. The nuance between the findings associated with the requirement for the path, and how MADA credits associated with the path are applied to the development site, is what caused LUBA to sustain the second assignment of error, in part. A detailed discussion of MADA and how the MADA credits associated with the subject multi-use path are applied to the development site is included under the Natural Features criteria below.

C. Modification Requires Supplemental Findings? : No. The modified application includes the multi-use path, and all other transportation facilities proposed in the original application. Refer to the discussion below, concerning the timing and construction of the path, relative to application of Minimum Assured Development Area (MADA) credits.
D. Conclusion: The opponents did not raise compliance with this criterion in their appeal to LUBA. The modified site plan does not change any of Applicant's commitments to provide the transportation facilities identified in the original application, nor does it increase the development's projected impacts to transportation facilities. Therefore, the criterion for transportation facilities is satisfied.

10. Traffic and off-site parking impacts;

A. Original Decision: In the original decision, the City Council found that the proposed CDP and DDP complied with the criterion for traffic and off-site parking impacts (**see Exhibit D – pages 85 and 86**), subject to conditions of approval for improvements to adjacent streets (SW 53rd Street and SW Philomath Boulevard), to mitigate for traffic impacts. The original application included a traffic study, and review by ODOT and Benton County, who have jurisdiction over Hwy 20/34 (SW Philomath Boulevard) and SW 53rd Street, respectively. In the original decision, the Council found that sufficient vehicle parking was provided on site such that the criterion for off-site parking impacts was satisfied.
B. Issues on Remand: This criterion was not cited in the appeal to LUBA.
C. Modification Requires Supplemental Findings? : Yes. The proposed modifications to the application associated with the LUBA remand reduce the square footage associated with Buildings B and F, resulting in a potential for fewer trips, and less impacts to traffic and off-site parking.

In the original decision, City Council found that the development would not cause off-site parking impacts because 141 on-site vehicular parking spaces were proposed, a figure that exceeded the minimum number of spaces specified in the LDC Section 4.1.30 (123) but was less than the maximum number of spaces specified in LDC Section 4.1.20.o (160). The opponents did not appeal this aspect of the Council's decision to LUBA. However, the parking issue is properly before the City Council because the applicant has modified the site plan on

remand to reduce the total square footage of commercial uses and to reduce the number of parking spaces.

As noted above, the modified site plan reduces the total square footage of uses on the site and eliminates (10) vehicle parking spaces. The proposed building area has been reduced to approximately 41,321 square feet of retail uses and approximately 1,782 square feet of restaurant uses (assuming seating area at 40% of total gross floor area), which reduces the range of allowed on-site vehicular parking spaces to between 118 and 152. The following table further illustrates these parking calculations:

Table 4 - Minimum Vehicle Parking Calculations

MINIMUM VEHICLE PARKING REQUIREMENTS				
Building & Use	Floor Area	Parking Req. Per LDC 4.1.30	# of Spaces Required	# of Spaces Provided
Building A (restaurant)	1,782 sq. ft.	1 per 50 sq. ft. (public seating = 40% of gross floor area)	14.26	
Buildings B, C, D, E, and F (retail)	24,648 sq. ft.	1 per 400 sq. ft.	61.62	
Walgreen's (retail)	16,673 sq. ft.	1 per 400 sq. ft.	41.68	
			118	131

The modified site plan depicts 131 on-site vehicular parking spaces, which is within the permitted range of the LDC. Therefore, the modified site plan provides adequate on-site parking, ensuring that the development will not cause any impacts to off-site parking. The modified site plan does not affect the number or location of bicycle parking spaces.

D. Conclusion: In its original decision, the City Council found that the proposal complies with the criterion for traffic and off-site parking impacts. This criterion was not cited in the appeal to LUBA. With the proposed site plan and building area revisions, the vehicle parking provided on site has been altered so that less vehicle parking is provided, when compared to the original approval. As demonstrated in the remand submittal, sufficient vehicle parking has been provided on site to account for the minimum and maximum standards specified in LDC Sections 4.1.20 and 4.1.30. Given that there are not any changes to the level of transportation improvements associated with the modifications, the traffic impacts associated with the proposed changes meet the compatibility criterion. Therefore, the criterion for traffic and off-site parking impacts remains satisfied.

11. Utility infrastructure;

A. Original Decision: In the original decision, City Council found that the application is consistent with the applicable criterion for utility infrastructure (**see Exhibit D – page 86**), subject to several conditions of approval.
B. Issues on Remand: The appellants did not appeal to LUBA based on this criterion.
C. Modification Requires Supplemental Findings? : No. Revisions associated with the LUBA remand do not substantially change the configuration of any of the utility infrastructure. The relocation of the westerly detention pond 30 feet to the south provides an additional buffer area between the site and Dunawi Creek. These revisions continue to comply with applicable LDC sections listed in the original staff report to the Planning Commission and City Council.

   Given there are not any substantial changes to the utility infrastructure associated with the revisions, Staff find the proposed changes meet the compatibility criteria for LDC section 2.5.40.04.a.11.

D. Conclusion: In its decision, the City Council found that the application satisfies this criterion because there exists, or the development was conditioned to provide, adequate utility infrastructure to serve the development site. The opponents did not appeal this aspect of the decision to LUBA. The modified site plan does not alter or affect the demand for, or provision of, utility infrastructure or related conditions. Therefore, the criterion for utility infrastructure is satisfied.

12. Effects on air and water quality (note: a DEQ permit is not sufficient to meet this criterion);

A. Original Decision: In its decision, the City Council found that the proposed CDP and DDP complied with the criterion, based on the development's impacts on air and water quality (**see Exhibit D – page 87**).
B. Issues on Remand: The opponents did not appeal this aspect of the City Council's decision to LUBA.
C. Modification Requires Supplemental Findings? : No.
D. Conclusion: The City Council found that the original application complied with the compatibility criterion for effects on air and water quality. The criterion was not cited in the appeal to LUBA. The application, as modified, continues 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; and

A. Original Decision: The City Council's original decision found that the criterion for Pedestrian Oriented Design Standards was satisfied based on the application submittal and subject to conditions of approval addressing specific Pedestrian Oriented Design Standards (**see Exhibit D – pages 87 and 88**).
B. Issues on Remand: This criterion was not subject to the LUBA appeal.
C. Modification Requires Supplemental Findings? : Yes. As noted above, the applicant has proposed revisions to the CDP and DDP that affect specific pedestrian walkways on the development site. As noted above in the discussion

above under the criterion for Basic Site Design, the walkway originally proposed north of Buildings B and C was not required based on a LDC standard.

As noted in the discussion above, the second walkway affected by the proposed revisions, located halfway between the driveway on 53rd Street and SW Philomath Boulevard, was relocated from its previous alignment along the western edge of the 53rd Street driveway. Although the sidewalk has been relocated, it continues to comply with LDC Sections 4.0.30.b and 4.10.70.03.a. The modified site plan still provides continuous internal sidewalks to all customer entrances and between customer entrances, as required by LDC 4.10.70.03.a.1. The proposal continues to provide sidewalks along the full length of building walls featuring a customer entrance and along all walls parallel to and abutting parking areas larger than eight (8) parking spaces, as required by LDC 4.10.70.03.a.2. Finally, the modified plan continues to provide connections between on-site sidewalks and sidewalks along public streets, as required by LDC 4.10.70.03.a.3. The modified development plan does not impact any of the other applicable Pedestrian Oriented Design Standards associated with the original application.

D. Conclusion: The City Council's original decision concerning the criterion for Pedestrian Oriented Design Standards found that the proposed development is consistent with the criterion, subject to conditions of approval. The applicable Pedestrian Oriented Design Standards from LDC Chapter 4.10 are not cited in the appeal to LUBA. The proposed modifications to the application affect two of the walkways proposed in the original application, and no other Pedestrian Oriented Design Standards are involved in the modifications. As noted in the discussion above, only one of the two walkways affected by the revisions is subject to the design standards in LDC Sections 4.0.30.b and 4.10.70.03.a. The proposed modification is consistent with the stated LDC standards. Therefore, the criterion in LDC Section 2.5.40.04.a.13 is satisfied.

14. Preservation and/or protection of Significant Natural Features, consistent with Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting, Chapter 4.5 - Natural Hazard and Hillside Development Provisions, Chapter 4.11 - Minimum Assured Development Area (MADA), Chapter 4.12 - Significant Vegetation Protection Provisions, and Chapter 4.13 - Riparian Corridor and Wetland 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.

A. Original Decision: The City Council found in its original decision, that the proposed CDP and DDP complies with the applicable LDC review criteria related to preservation and protection of Significant Natural Features (**see Exhibit D – pages 57, 61, 62, 63, 71 through 76, and pages 88 and 89**), with the exception of the requested variation to the allowed order of encroachments standard from LDC Chapter 4.11, as described under the criterion above related to compensating benefits. As noted in the discussion above, City Council found that the requested variation to the order of encroachments standard was satisfied by compensating benefits associated with concentrating development on the south side of Dunawi Creek. Additionally, City Council adopted several conditions in its original approval, to ensure that as site development occurs, that the Natural Features protection standards in LDC Chapters 4.5, 4.11, and 4.13 will be

satisfied. The site contains a Highly Protected Riparian Corridor, Proximate and Locally Protected Wetlands, and Highly Protected 100-Year Floodplain (including 0.2-ft. Floodway). All of these Natural Features are associated with Dunawi Creek.

B. Issues on Remand: This issue is properly before the City Council on remand for two (2) reasons. First, LUBA remanded the Decision for additional findings in response to specific provisions of LDC Chapters 4.11 and 4.13. These provisions are addressed below, and such responses are incorporated herein by reference.

C. Modification Requires Supplemental Findings? : Yes. As noted in the discussion under LDC Section 2.5.40.04.a.1, the issue is also properly before the City Council because modifications to the site plan reduce the degree of Variation #1 (the prescribed order of Natural Feature encroachments in LDC 4.11.50.04.c.)

For the reasons explained above in response to LDC 2.5.40.04.a.1, strict adherence to the prescribed order of encroachments would have caused impacts to the highly valued forested wetland and riparian corridor north of Dunawi Creek, while Variation #1 allows the applicant to preserve a greater portion of this area by concentrating development impacts on the south side of the creek.

With the proposed site plan modifications, the applicant is proposing fewer development encroachments to the south side of Dunawi Creek. Encroachments are permitted in order to utilize the MADA, consistent with the findings set forth below in response to LDC 4.11 and 4.13.

Additionally, as explained in the attached letter from Marquess & Associates, Inc., dated March 29, 2013 (**see Exhibit A – page 100**), the modifications to the site plan do not require a new floodplain study or change the conclusions set forth in the original floodplain study dated June 3, 2010, which is included in the record of the original proceedings for the application. Given there are less encroachments into Natural Features areas than previously approved, Staff find the proposed changes meets the compatibility criteria for LDC section 2.5.40.04.a.14.

Since the original City Council approval in 2010, the developer has received DSL concurrence for a wetland delineation on Tax Lot 600, which revises the wetland boundary data for Tax Lot 600 (**see Exhibit B – page 5**). The change in the wetland boundary does not affect the overall development site in terms of how the application complies with the Minimum Assured Development Area standards and allowable encroachments. Additionally, the developer has received a renewal of a Fill Permit from DSL (Permit #32863-FP Renewal) for the subject site (**see Exhibit A – page 79).** As renewed, this permit is valid through November 22, 2013. The proposed modifications satisfy the criterion for Natural Features protections.

D. Conclusion: As noted above, in its original decision, the City Council found that the criterion for preservation and protection of Natural Features is satisfied. Findings related to this criterion are the primary subject of the appeal to LUBA, and are associated with the remand from LUBA. A specific discussion concerning LUBA's remand and findings related to specific provisions of the Land Development Code related to Natural Features protections and Minimum

Assured Development Area is included below. By reference, the findings noted in the discussion below are incorporated here. As noted in the discussion below, the proposed modifications are consistent with the applicable criteria for Natural Features protections and application of Minimum Assured Development Area. This criterion is satisfied.

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**

A. Original Decision: In its original decision, City Council approved a variation to LDC 4.11.50.04.c, to allow encroachments into the 100-foot Highly Protected Riparian Corridor prior to the Locally Protected Wetland, and by allowing development to occur within the 50-foot base Riparian Corridor prior to using all allowable encroachments into the Locally Protected Wetland and 100-foot Highly Protected Riparian Corridor (**see Exhibit D – pages 76 and 77**). As noted in the original Council findings, Council found that the Natural Resources and Natural Hazards on the north side of Dunawi Creek are better protected, as compared to impacts on Natural Features that would occur had the applicant followed the prescribed order of encroachments.

B. Issues on Remand: The opponents appeal to LUBA did not cite this specific criterion.

C. Modification Requires Supplemental Findings? : Yes. As noted in the discussion above, this issue is properly before the City Council on remand because the modified site plan reduces the degree of the requested variation.

The proposed modification to the CDP and DDP satisfies this criterion because the proposed variation provides protections equal to or better than LDC Section 4.11.50.04.c. Strict adherence to the prescribed order of Natural Feature encroachments in LDC Section 4.11.50.04.c. would require development to occur on the north side of Dunawi Creek in the area north of the 100-foot Highly Protected Riparian Corridor setback, within the Locally Protected Wetlands and 100-Year Floodplain before developing in the 100-foot Highly Protected Riparian Corridor setback south of Dunawi Creek. This outcome would cause impacts to the highly valued forested wetland and riparian corridor north of Dunawi Creek.

By contrast, the proposed modifications and associated variation allows the applicant to concentrate the impacts of development on the south side of Dunawi Creek, which is already impacted by development, and to preserve a greater area of the Highly Protected Riparian Corridor, Locally Significant Wetland, and 100-Year Floodplain on the north side of Dunawi Creek. Preservation of this large area north of the creek without any development provides more benefits to the environment than preserving two separate, smaller areas on either side of the creek, as strict adherence to Chapter 4.11 would have required.

D. Conclusion: As noted above, the City Council found that the proposed CDP and DDP complied with the criterion in LDC Section 2.5.40.04.b1. This specific criterion was not implicated in the appeal to LUBA. However, in order to address the specific issues on remand from LUBA, the applicant's revised development plan triggers the need to review this criterion in light of the changes. The proposed site plan changes reduce the amount of the requested variation. Therefore, consistent with the original findings, the proposed modifications are consistent with the criterion in LDC Section 2.5.40.04.b.1.

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.**

A. Original Decision: The City Council's original decision found that this criterion is satisfied.
B. Issues on Remand: This criterion was not cited in the appeal to LUBA.
C. Modification Requires Supplemental Findings? : Yes. For the reasons explained above in the discussion under LDC Section 2.5.40.04.b.1, the applicant's proposed modifications include a reduction in the amount of variation to the MADA order of encroachments standard. The proposed variation, even as modified, constitutes an alternative development plan, where the intention is to provide protections that meet or exceed applicable standards in LDC Chapters 4.5 and 4.13.
D. Conclusion: The City Council's original decision concluded that this criterion is satisfied. The criterion was not specifically addressed in the appeal to LUBA. The proposed modifications reduce the amount of variation to a standard, where City Council originally found that the criterion was satisfied. This criterion under LDC Section 2.5.40.04.b.2 is satisfied.

2.5.50.04 – Review Criteria for Determining Compliance with Conceptual Development Plan
Request for approval of a Detailed Development Plan shall be reviewed to determine whether it is in compliance with the Conceptual Development Plan. The Detailed Development Plan shall be deemed to be in conformance with the Conceptual Development Plan and may be approved provided it is consistent with the review criteria in Section 2.5.40.04 above, provides a clear and objective set of development standards for residential Detailed Development Plans (considering the Detailed Development Plan proposal, required adherence to this Code, and Conditions of Approval), and does not involve any of the factors that constitute a major change in the Planned Development. See Section 2.5.60.02 – Thresholds that Separate a Minor Planned Development Modification from a Major Planned Development Modification.

A. Original Decision: The City Council found that the proposal complies with this criterion.
B. Issues on Remand: This criterion was not subject to the LUBA appeal.
C. Modification Requires Supplemental Findings? : No.
D. Conclusion: The City Council found that the proposed Detailed Development Plan was consistent with proposed Conceptual Development Plan. The Conceptual Development Plan was found to be consistent with the applicable review criteria in LDC Section 2.5.40.04. The plan does not involve residential development. As proposed, and as modified, the proposal is consistent with this criterion.

VII. Conditions of Approval

In the original decision, City Council approved the Creekside Center application, subject to 41 conditions of approval, some of which had sub-conditions. The application requires related modifications to some of these conditions. The applicant proposes language for the modified conditions (**see Exhibit A – page 75**). The table below includes a list of the conditions that are proposed to be altered, as well as new conditions proposed by Staff to address the modifications to the application. Where alterations to conditions are not needed, the original conditions of approval shall continue to apply.

Table 5 - Applicant's Proposed Modified Conditions of Approval

Applicant's Proposed Modified Conditions of Approval for Creekside Center I & II Proposal modifies 8 of the original 41 conditions of approval from Order 2010-077. Plain text is language from the original conditions, strikethrough text is stricken, and underlined text is new.	
1	**Consistency with Plans** - Development shall comply with the narrative and plans identified in **Attachments G and H** of ~~this~~ the original Staff Report, except as modified by the conditions below and by the narrative and plans submitted on remand, or unless a requested modification otherwise meets the criteria for a Minor Planned Development Modification, Conditional Development Modification, and/or a Subdivision Modification, as applicable. Such changes may be processed in accordance with Chapters 2.3, 2.4 & 2.5 of the Land Development Code.
4	**Department of State Lands (DSL) / Army Corps of Engineers (COE) Approvals Required -** The applicant has obtained a DSL fill permit (Permit No. 32863-FP Renewal) that authorizes development on a portion of Tax Lot 500, and has provided a copy of the renewed permit to the City as part of this land use application on remand ~~(See Attachment H - Pages 153-154 and Attachment L)~~. The active DSL fill permit has an expiration date of November 22, ~~2010~~ 2013. City of Corvallis development permits may be issued for that portion of Tax Lot 500 identified within the scope of

	the active DSL fill permit, as long as the applicable City permits are issued prior to expiration of the active DSL fill permit. Areas of the proposed CDP/DDP that fall within the scope of the active DSL fill permit include Phases 1-A (Walgreen's), 1-B (Building A), and 1-C (Building D), and Phase 1 (associated site improvements), as defined by the dashed lines and phasing labels on the Project Phase Plan (Sheet SP1.11). Also refer to the surveyed wetlands overlay (Sheet SP1.3C), <u>and</u> limits of development identified on the "Wetlands Joint Permit Site Plan," dated June 15, 2004 (active DSL fill permit) as defined by upland areas and wetland impact area. Development of the proposed public multi-use path north of Dunawi Creek, the remainder of Phase 1 (Tax Lot 500 - Phases 1-D (Building C) and 1-E (Building B) and related site improvements), and Phase 2 (Tax Lot 600) is either not authorized under the scope of the active DSL fill permit, or relies on MADA credits associated with DSL-approved wetland mitigation that has not yet been authorized. No development permits shall be issued for work beyond the scope of the active DSL fill permit and/or after expiration of the active DSL fill permit, until supplemental documentation, as required in LDC § 4.13.80.01.e has been provided to the City. Permits for development that is reliant upon DSL-approved wetland mitigation associated with MADA credits under LDC § 4.11.50.02.c.2 shall not be authorized until documentation of the approved mitigation has been provided to the City, consistent with § 4.11.50.02.c.2.
10	**<u>Pre-Payment for Public Multi-Use Path Construction (Dunawi Creek)-</u>** The Applicant shall deposit with the appropriate City official an amount of cash equal to the estimated cost of the construction of the Dunawi Creek multi-use path, prior to issuance of site development permits for Phases 1E, 1D, or 2, whichever occurs first. The estimated cost shall be prepared by the Applicant and approved by the City, and shall be based upon a multi-use path located within the multi-use path easement area shown on Sheet SP1.10, that meets applicable City and DSL standards for construction and alignment, and accounts for necessary excavation and fill and any other reasonably related requirements imposed by the City. The City shall place this money in the appropriate account and shall use it only for construction of the path. In the event that the City determines not to build the path, the City shall refund the money to the Applicant within a reasonable time period. With submittal of the construction cost estimate, the Applicant shall include documentation of an approved fill permit, as required for wetland construction and wetland mitigation by the Oregon Department of State Lands ("DSL") and the United States Army Corps of Engineers ("Corps"), which documents final acceptance by these agencies of the multi-use path construction and alignment. The ~~cost of obtaining~~ <u>application fees for</u> any necessary permits from DSL and the Corps shall be paid by the Applicant. With submittal of the construction cost estimate, the

	~~a~~Applicant shall include construction details for the multi-use path that comply with Parks Department trail construction guidelines and DSL requirements, and includes the bench, as identified on Sheet SP1.4, if permitted by DSL. Path construction shall generally follow the "Design and Development Policies" of the adopted Park and Recreation Facilities Plan (Page 5-2), and final path alignment shall occur so as to minimize impacts to the properly functioning condition of the riparian corridor/drainageway. The City shall make the final determination of when the path is to be constructed, based on Project Implementation guidelines established in City Council Policy 99-7.14.
17	**Pedestrian Crossings at Drive Aisles** - As noted in the application narrative, and with submittal of the site development permit applications (including those required by Benton County and ODOT), the applicant shall clearly indicate that all pedestrian crossings at internal streets (private Shopping Street), drive aisles, parking aisles, and commercial driveway approaches, are constructed of paving materials that contrast with the abutting pavement used for vehicular circulation, in conformance with **LDC § 4.10.70.03.a.5.** This includes one driveway entrance on 53rd Street, one driveway entrance on Philomath Blvd. (at private Shopping Street), and two driveways that intersect with the new local street, the drive aisle crossings between Buildings E and F, the Shopping Street crossing between Buildings F and C, the drive aisle crossing between Buildings C and D, ~~and~~ the drive aisle crossing between the Walgreen's building and Building B/pedestrian plaza, and the new pedestrian crossing at the southern end of the SW 53rd Street access driveway.
19	**Building Setbacks and Conformance to Proposed Grading Plans / Detail "DD"** - Any changes to final grading, noted on the Conceptual Grading Plans, will require a Planned Development Modification, as defined in the Planned Development Modification Criteria in LDC § 2.5.60. Since the limits of grading in areas on the south side of Dunawi Creek will generally follow the required drainageway easement line and in some cases be adjacent to the 0.2 floodway line, Building B shall be setback a minimum of 3 feet from this grading limits/easement line as shown in the applicant's revised attachment DD, in order to ensure that all development and associated construction fencing/erosion control fencing is located outside of the 0.2'-Floodway and drainageway easement area.
36-j	**SW 53rd Street Frontage Landscaping** - As noted in the project narrative, the developer intends to provide enhanced landscaping along the site's SW 53rd Street frontage, in order to compensate for the reduced width parkway. With submittal of the landscape construction documents, the applicant shall include additional shrubs and groundcover within the 6-ft. parkway, and additional trees, shrubs, and groundcover within the landscaped area between the row of ~~seven (7)~~ four (4) vehicle parking spaces north of Building A and the sidewalk/multi-use path on SW 53rd Street. Shrubs within the 6-ft. parkway shall be of a species and size that

	is compliant with the vision clearance standards established by the City Engineer and Benton County.
39-d	**<u>Final Plat Tract and Easement (Drainageway and Natural Features Preservation)</u> -** With submittal of the final plat, the property owner shall include in the plat declarations, a dedication for the proposed Drainageway and Natural Features Tracts ("Lot 550" and "Lot 601"). The declaration language shall specify the purpose, ownership, and party responsible for the maintenance of the Tracts. The declarations shall also grant to the City of Corvallis, a public drainageway easement within the Tracts, as specified per **LDC § 4.13.70.02.d.** A minimum drainage way easement of 50-feet shall be provided along the north side of Dunawi Creek. On the south side of Dunawi Creek the easement will need to follow the grading limits line as shown on sheet SP1.5. Since the limits of grading will be the easement line and in some cases the 0.2 floodway line, Building B shall be setback 3 feet from the grading limits/easement line as shown in the applicant's <u>revised</u> attachment DD. A public drainage easement will also be needed under or through the private creek crossing at the east end of the site up to SW 53rd Street. The easement will need to outline the private maintenance responsibilities of the creek crossing associated with the site access.
40	**<u>Additional Floodplain Study and Revisions to Detailed Development Plan</u> -** With submittal of the site excavation and grading permit application, where grading is proposed within the pre-development floodway fringe, the applicant shall provide a revised floodplain study and site grading plans which demonstrates that the post-development floodplain elevation on adjacent properties is no greater than the pre-development condition. The post-development floodplain boundary shall not expand horizontally beyond the limits of the pre-development floodplain boundary as it currently exists on adjacent properties. The applicant may choose to reduce or eliminate building area associated with Phases 1D (Building C), 1E (Building B), and Phase 2, as well as associated vehicle parking, if it is necessary to accommodate flood water volume and meet this condition of approval. The ~~Planning Commission~~ <u>City Council</u> finds that if building area is reduced in order to comply with this condition, the minimum Floor Area Ratio (FAR) requirement of 0.25, as specified in LDC § 3.19.40.03, may be reduced below 0.25. If this occurs, the ~~Planning Commission~~ <u>City Council</u> finds that a compensating benefit has been provided for the variation to FAR in the form of no net impact upon adjacent properties due to development within the floodway fringe.

Table 6 - Staff Recommended Modified and Added Conditions of Approval

Staff Recommended Conditions of Approval Modifies Applicant's proposed change to Condition # 1, and supplements original 41 conditions of approval from Order 2010-077.	
1 *(modifies Condition #1 both as originally proposed, and as proposed to be modified by the applicant as part of this LUBA remand)*	**Consistency with Plans -** Development shall comply with the narrative and plans identified in **Attachments G and H** of ~~this~~ the original Staff Report, except as modified by the conditions below and by the narrative and plans submitted on remand, which are identified as Attachment A to this June 10, 2013, Staff Report to the City Council, and incorporated as a requirement of this condition as if set out completely herein, or unless a future requested modification otherwise meets the criteria for a Minor Planned Development Modification, Conditional Development Modification, and/or a Subdivision Modification, as applicable. Such changes may be processed in accordance with Chapters 2.3, 2.4 & 2.5 of the Land Development Code. Nothing in this condition precludes development from undergoing a future major modification through a future public process.
42 *(added Condition, based on original 41 conditions)*	**Shopping street and the local street intersection design regarding dumpster location and access** - There are three design concerns associated with the dumpster locations at the north end of the shopping street which need to be addressed with the construction plans. The concerns are: gates for enclosures shall not swing out over the sidewalk, the sidewalk will need to be designed to allow garbage truck access, and the skewed concrete sidewalk across the commercial driveway approach shall be parallel to the local street and located within the ROW. Some of these concerns could be addressed by locating the dumpsters in an appropriate on-site location with pick-up access from the private site vs. a public street. Final design of the intersection and any dumpster access from a public street shall be approved by the City Engineer in conjunction with the PIPC permits.

VIII. Conditional Development Permit (Walgreen's Drive-Through Facility)

The Creekside Center I & II proposal requires approval of a Conditional Development Permit, because the MUCS zone specifies that drive-through facilities are conditionally permitted uses per LDC Section 3.19.30.f.13. The original application included a drive-through pharmacy window along the north façade of the Walgreen's building. In its original decision, the City Council found that the proposed drive-through facility is consistent with the applicable criteria for a Conditional Development Permit (**see Exhibit D – pages 70, 73 and 204 through 210**).

LUBA did not remand any of the City's findings for the Conditional Development Permit. Furthermore, the proposed site plan modifications do not impact the drive-through facility. Therefore, the City Council is not required to adopt any additional findings for the Conditional Development Permit.

IX. Tentative Subdivision Plat

The Creekside Center I & II development requires approval of a Tentative Subdivision Plat, because it includes creation of three buildable lots and four tracts set aside for specific purposes. The purposes of the tracts include Natural Features preservation and a private Shopping Street. In its original decision, the City Council found that the applicable criteria for a Tentative Subdivision Plat were satisfied, as conditioned (**see Exhibit D – pages 96, 97, and 211 through 218**).

LUBA did not remand any of the City's findings for the Tentative Subdivision Plat. The proposed site plan modifications impact the tentative subdivision plat. The applicant submitted a revised Tentative Subdivision Plat (**see Exhibit A – page 104**). The changes to the Tentative Subdivision Plat are as follows:

- Local street public right-of-way in middle of Tax Lot 600 and northwest corner of Tax Lot 500 shifted southward, to lessen impacts of development of local street infrastructure on Dunawi Creek Riparian Corridor. This is associated with the applicant's proposed reduction in the area of Building F and its encroachment toward Dunawi Creek.
- Minor changes to the configuration of the proposed property lines shared between the Natural Features tracts for Dunawi Creek and the buildable lots. This is due to the changes related to reduction of the encroachment of development on the south side of Dunawi Creek.

The following land division standards apply to the proposed changes:

<u>Applicable Land Development Code Standards</u>

4.4.20.02 - Blocks

a. General - Length, width, and shape of blocks shall be based on the provision of adequate lot size, street width, and circulation; and on the limitations of topography.

b. Size - Blocks shall be sized in accordance with the Block Perimeter provisions within Section 4.0.60.n of Chapter 4.0 - Improvements Required with Development.

4.4.20.03 - Lot Requirements

a. Size and Shape - Lot size, width, shape, and orientation shall be appropriate for the location of the Subdivision and for the Use Type contemplated. No lot shall be dimensioned to contain part of an existing or proposed street. All lots shall be buildable, and depth shall generally not exceed 2.5 times the average width. Lot sizes shall not be less than required by this Code for the applicable zone. Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for off-street parking and service facilities

required by the type of use proposed, unless off-site parking is approved per Chapter 4.1 - Parking, Loading, and Access Requirements.

The local street right-of-way at the northwest corner of the subject site and how it relates to the proposed property lines is subject to the City's Block Perimeter Standards. The relocation of the local street right-of-way, as compared to the original application (**see Exhibit A – page 87**) has the net effect of decreasing the block face along the private Shopping Street, and has no effect on the overall Block Perimeter established in the original application. Therefore, the criterion in LDC Section 4.4.20.02.b is satisfied.

Changes to the Natural Features Tract (Lot "550" - see Exhibit A – pages 87 and 104) boundary does not have any net effect on the commercial subdivision lots to the south, in terms of making them unbuildable, or adversely affect the depth of the lots so that they continue to comply with LDC Section 4.4.20.03.a. Therefore, the revised Tentative Subdivision Plat (**see Exhibit A – page 104**) complies with the applicable Land Division Standards in LDC Chapter 4.4.

X. Council Options and Staff Recommendations

The Council has two options with respect to the Creekside Center I & II application and issues on remand. The Council may:

1) Review the record and, if there is sufficient evidence, make new findings that the modified application complies with all applicable LDC criteria and in addition, specifically addresses the assignments of error sustained by LUBA; or

2) Review the record and, if there is sufficient evidence, deny the application for failure to comply with applicable decision making criteria, and for failing to address the assignments of error sustained by LUBA.

Staff recommend the Council pursue the first option and approve the Creekside Center I & II application, as modified by the applicant, with specific revised and new conditions of approval, as proposed by the applicant, and as revised and recommended by Staff.

The previous City Council decision approved the application based on detailed findings (**Exhibit D**) regarding the proposal's compliance with applicable standards and policies. For the most part, LUBA upheld these findings, and sustained the Council's decisions concerning aspects of the Conceptual and Detailed Development Plan, Conditional Development Permit, and Tentative Subdivision Plat. The previous findings include, but are not limited to, applicable LDC development standards contained in the MUCS zone and Article IV, basic site design, visual compatibility, street alignments and connections, pedestrian and bicycle circulation standards, lot configuration, and other compatibility criteria.

The only exceptions are with respect to Council findings regarding application of MADA credits under LDC Sections 4.11.50.02.c (2) and (4).

By approving the application, as conditioned, the Council is approving all aspects of the proposed Conceptual and Detailed Development Plan, Conditional Development Permit and Tentative Subdivision Plat, including the modified site plans and conditions of approval. Application of these conditions of approval will ensure that development is consistent with all applicable LDC review criteria, and will provide opportunity for public participation in the decision making process, thus resolving the issues raised in the three assignments of error sustained by LUBA.

Recommended Motion

If the City Council concurs with the above recommendations the following motion is suggested:

I move to tentatively approve the Creekside Center I & II Conceptual and Detailed Development Plan, Conditional Development Permit, and Tentative Subdivision Plat (PLD09-00004, CDP09-00003, and SUB09-00002), subject to adoption of Formal Findings for the Issues on Remand, to be prepared by Staff and presented at the next City Council meeting.

Exhibits

A. Remand Submittal (Proposed Modifications to original Conceptual and Detailed Development Plan, Conditional Development Permit, and Tentative Subdivision Plat approval; Supplemental Exhibits and Proposed Modifications to original Conditions of Approval)

B. Correspondence from Oregon Department of State Lands and US Army Corps of Engineers concerning on-site wetland delineations and multi-use path construction proposal

C. LUBA Final Order and Opinion, regarding LUBA case # 2011-002

D. Original City Council Decision (includes Order 2010-077 (City Council decision concerning original application for Creekside Center I & II) and original City Council findings / Planning Commission staff report)

Review and Concur

Jim Patterson, City Manager

Scott Fewel, City Attorney

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April 5, 2013

VIA E-MAIL

Mr. Jason Yaich
Corvallis Community Development Department
Planning Division
501 SW Madison Avenue
Corvallis, OR 97333

Re: Creekside Center I and II
City File Nos. PLD09-00004, CDP09-00003, and SUB09-00002
Request to Proceed on Remand

Dear Mr. Yaich:

This office represents the applicant and developers of the proposed Creekside I and II retail project in the City of Corvallis and the subject of City File Nos. PLD09-00004, CDP09-00003, and SUB09-00002 ("Applications"). Pursuant to ORS 227.181(2)(a), the applicant hereby requests that the City proceed with review of the Applications on remand and make a decision within ninety (90) days after the date of this letter, or no later than July 5, 2013.

We have previously provided argument and evidence in support of approval of the Applications on remand. Please let us know if you have any questions as you review these materials.

Please notify me of the City Council hearing date and provide me with a copy of the notice of hearing. As you know, the public hearing must be limited to the remand issues and issues associated with the related modifications to the site plan. Issues that could have been raised, but were not, or issues that were finally resolved but not appealed in LUBA's decision, may not be raised in this matter.

Please place this letter in the official Community Development Department file and before the City Council at the public hearing. Thank you for your cooperation.

Very truly yours,

Michael C. Robinson

MCR/cfr

Cc: Mr. Bret Fox (via email)
Mr. Mark McKechnie (via email)
Mr. Kevin Young (via email)
Mr. Jim Brewer (via email)

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April 22, 2013

Jason Yaich, Associate Planner
City of Corvallis
501 Madison Street
Corvallis, OR 97330

RE: Remand submittal for PLD09-00004/CDP09-00003/SUB09-00002
Creekside Center I & II

Dear Jason;

Enclosed are 16 copies of the Creekside I and II development proposal architectural sheets, revised to address issues raised by the Land Use Board of Appeals, and resubmitted to the City for review and action on the issues raised in remand. All the sheets originally submitted have been included in this resubmittal, as well as a sheet labeled "Overlay" to aid reviewers and the Council in understanding exactly what has changed, in that so little has actually changed. On the "Overlay" sheet the revised plan is in black and the original plan is in red. It has been inserted in the set behind sheet SP1.2.

Besides the architectural package, four sheets of the Narrative package have been revised and are included separately (pages 36, 48, 52 and Attachment DD). Also enclosed is a copy of a letter from the engineer who conducted the original flood study indicating the changes in plan will have no significant impact on the flood study results.

Completing the remand resubmittal is a Remand Narrative, which you will receive under separate cover.

Following is a compendium of the changes to the architectural and graphic exhibits enclosed. Because so little has changed we offer this list as a means of expediting the review of the minimal modifications that actually occurred:

- Sheet SP0.0 – No changes.
- Sheet SP1.0 – No changes.
- Sheet SP1.1 – No changes.
- Sheet SP1.2 – Buildings "B" and "F" have been reduced in size; the pedestrian access to 53rd Street was relocated to minimize the conflict between pedestrians, cyclists and automobiles at the vehicle site entrance on 53rd Street; the width of the access drive across the creek was reduced; the dumpster enclosures north of Building "C" were relocated; the east-west cross street north of Building "F" moved 50 feet to the south; and the number of parking spaces on both lots was reduced a total of 10 spaces. We also added a note indicating the square footage of the Walgreens drive-thru to aid in calculating the FAR. See "Overlay" sheet to identify the location of these revisions.

- Added new sheet “Overlay” to aid in understanding the details of this submission vis a vis the previously approved Council version.
- Sheet SP1.2A – No changes.
- Sheet SP1.3A – Underlying site plan updated.
- Sheet SP1.3B – Underlying site plan updated.
- Sheet SP1.3C – Underlying site plan updated. Also, since initial Council approval of the project, the wetlands on Lot 600 have been surveyed. The results of that survey have been incorporated into this exhibit. We have also added a hatch pattern to the sheet to make the wetlands more discernible.
- Sheet SP1.4 – Reduced the number of trees along the east side of the shopping street by two and the west side of Building “F” by one.
- Sheet SP1.5 – Relocated the “alternate water quality feature” associated with both the public and private ponds. These features are oversized on the drawing (for illustration purposes) and are subsurface. Their current location will have no impact on the size or function of either pond. The drainage around Building “A” was modified slightly to accommodate the reduced size of the parking area around the building.
- Sheet SP1.6 – Underlying site plan updated.
- Sheet SP1.7 – Underlying site plan updated.
- Sheet SP1.8 – Reduced the overall size of the development by nearly 11,000 sf. The MADA credits no longer include any credit for the area requiring wetland mitigation for the construction of the multi-use path. The multi-use path is now a “zero balance” feature, meaning MADA credits are being taken for the path only to the extent necessary for its construction. The size of area 10 was increased and 1/2 decreased based on discussions with City staff about connectivity. Again, this trade is a “zero balance” feature, in that the amount of credit taken is equal only to the area required to construct the feature. Area 15 was added based on the wetland study performed for Lot 600, which shows wetlands extending into the area proposed for the east/west connector street. Sheets O-2 (MADA Calculations) and O-3 (Area Limits of Disturbance) have also been revised and are located with SP1.-8.
- Sheet SP1.9 – No changes. A letter from the Engineer who performed the original study is included with this sheet. The letter indicates the site plan changes will have no impact on the flood study.
- Sheet SP1.10 – Underlying site plan updated. The length of the shopping street has been reduced and the north/south future public right-of-way has been extended from the shopping street to Lot 400 to allow it to coordinate with the future east/west public-right-of-way. Tract 550 has increased slightly to the south as the size of the center development has been reduced.
- Sheet SP1.11 – Underlying site plan updated.
- Sheet SP2.1 – No changes.
- Sheet SP2.2 – Building elevations East and North for Building “B & C” have been modified to reflect the narrower dimension on the east and the removal of the service doors from the north side.
- Sheet SP2.3 – No changes.
- Sheet SP2.4 – No changes.
- Sheet SP2.5 – The East and West Building elevations of Building “F” have been modified to shorten the building by two bays – the reduction in length from 180 feet to 150 feet.
- Sheet SP2.6 – No changes.
- Sheet SP3.1 – The floor plans for Buildings “B & C” and “F” have been modified to reflect the changes in their size.

The revised Narrative sheets show the overall site is still in compliance for parking and there is still enough parking for a proposed restaurant use for Building “A” (page 36), that the reduced frontage for Building “F” is still in compliance for the provision of weather protection (page 48), and that Building “F” still meets the requirements for percentage of building elevation with vision glazing (page 52).

Detail sheet “Attachment DD” has been revised to show more clearly how the intent of Condition 19 is met. Further, the detail is referenced on sheet SP1.2 to show where the two particular conditions are likely to occur.

We look forward to a final resolution of this Development Application. We believe this development, as it is now represented, successfully balances all the competing interests and concerns expressed by the Planning staff and others, is the best development it can possibly be, and will be a much needed and desired addition to Corvallis.

Warm Regards,

Mark McKechnie, AIA
Architect for the Project

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April 19, 2013

Jason Yaich, Associate Planner
City of Corvallis
501 SW Madison Avenue
Corvallis, OR 97339-1083

VIA: e-mail

RE: Review of Remand submittal for PLD09-00004/CDP09-00003/SUB09-00002
Creekside Center I & II

Dear Jason:

City of Corvallis staff have reviewed the remand submittal documents and provided the Applicant with some comments. The following is our response to those comments and how we have addressed the issues:

1. Please correct or explain the following noted inconsistencies in the submitted items:
   a. Area Calculations for the Walgreens Building: Floor area noted for Walgreens varies between page 9 of the Perkins Coie narrative (16,673 sq. ft. and the architectural site plans and revised narrative from Oregon Architecture (14,820 sq. ft.). This also affects FAR calculations (potentially) on page 15 of the Perkins Coie narrative. Please include discussion of inclusion/exclusion of drive-through lane area calculation as a portion of overall building area calculation, where it is appropriate in the context of floor area and FAR, based on LDC allowances. It is also recommended that FAR calculations be removed from Attachment O-2 (MADA calculations worksheet).

      RESPONSE: The Perkins Coie narrative was revised to note that the floor area for Walgreen's includes 1,853 square feet of unenclosed areas needed for automobile circulation, as allowed by LDC 3.19.40.02. The revisions occur in Footnote 1 on page 9 and Footnote 2 on page 15. Based upon this clarification, the remaining Floor Area Ratio calculations in the Perkins Coie narrative were correct in the original remand submittal and remain unchanged.

      Sheet SP1.2 was revised to show the floor area of the Walgreens drive-thru that is included in the FAR calculations. It should now be possible to independently calculate the FAR from information provided on the architectural sheets. FAR calculations were removed from Attachment O-2.

   b. Multi-Use Path Easement Width: There is a discrepancy between the noted width of the proposed multi-use path easement width on the architectural drawings (45 ft.) and the Perkins Coie narrative (15 ft.)

RESPONSE: The Perkins Coie narrative was revised to note that the 15-foot wide disturbance area for the Path would be located within the 45-foot wide area located on the plans.

c. Vehicle Parking Count Labels: The label west of Building F (Tax Lot 600) on some of the architectural sheets appears to conflict with other sheets. The correct parking count for that row should be 12, not 13.

   RESPONSE: Plan backgrounds on a couple of sheets did not get updated. That has been corrected and all SP sheets have the most recent site plan background, which shows 12 spaces on the west side of Building F.

d. ADA Parking: The revised narrative from Oregon Architecture (Page 36) indicates 7 accessible spaces are provided, based on the revised site plan. However, Sheet SP1.2 appears to show 9 accessible spaces.

   RESPONSE: Sheet SP1.2 (and other sheets) has been revised to correctly show 7 proposed accessible spaces. As we all are aware, the final count will depend on Building Permit review.

2. Remand Narrative Discussion: Staff have concerns about the following portions of the Perkins Coie narrative addressing the specific remand items:
   a. Page 16: In the discussion in the last paragraph at the bottom of the page, it is incorrect to state "…Path qualifies for an increase in the MADA because the Path is required by DSL and/or the USACOE." The applicable MADA credit is associated with wetland mitigation required by DSL, not a path. The path is required by the City.

      RESPONSE: The response to LDC 4.11.50.02.c.2 in the Perkins Coie narrative was revised to clarify that the potential MADA credit is associated with wetland mitigation and that the path is required by the City. The revised language is located at the top of page 17.

   b. Page 21: In the discussion involving the MADA credits for DSL/USACOE wetland mitigation requirements and trails required by the City facilities plans(LDC 4.11.50.02.c.2 and LDC 4.11.50.02.c.4), it is confusing I the same paragraph to state both "…the City Council should not allow any MADA credits under this subsection for the Path" and "…the City Council should find that the Path satisfies LDC 4.11.50.02.c.4… the City Council should allow 10,995 square feet of MADA credits under this subsection. Staff believes the intent of the remand submittal and revisions to MADA calculations and the site plan is to separate the private development MADA credits and the MADA credits attributed to the multi-use path construction, so that the private development is not relying on the Dunawi Creek multi-use path for Natural Resource encroachments permitted by MADA. Staff is recommending that this discussion be clarified as such. It may make sense to attribute the specific MADA credits to specific portions of development (private development vs public multi-use path) to help clarify.

RESPONSE: The response to LDC 4.13.50.b.6 in the Perkins Coie narrative was revised in two ways. First, the paragraph below the block quote on page 21 was revised to better explain how the Project qualifies for MADA credits under LDC 4.11.50.02.c.4 but not under LDC 4.11.50.02.c.2. Second, two paragraphs were added on page 22 to explain that the private development is not relying upon the MADA credits associated with the Path to either expand the overall footprint of the private development or to allow the private development to further encroach within natural resource areas.

3. Site Plan Revisions/Architectural Drawings: Staff have some concerns about the following items, due to inconsistencies with Land Development Code standards and other adopted City standards:
   a. Attachment DD: The exhibit has included a maximum distance between the sidewalk/building and limits of disturbance line. This appears to be potentially in conflict with Condition #19, which requires that the setback between Building B and the limits of disturbance be a MINIMUM distance of 3 feet.

      RESPONSE: I believe the intent of Condition #19 is to limit the encroachment of possible development into the 0.2 floodway, so that the closest the building will get is 3 feet from the floodway. In an attempt to make this condition clearer I fear we have made it more confusing. What we are trying to indicate is that is that IN ADDITION to maintaining a minimum of 3 feet between construction and the floodway, the disturbed area will be constrained to be no more than 3 feet from the building line and most probably much more than 3 feet from the 0.2 floodway limit. Since the limit of construction moved to the south along much of the line of the creek, we thought this revision would clarify actual conditions.

   b. MADA Calculations (Sheet SP1.8, Attachments O-2 and O-3):
      i. Multi-Use Path: There is a discrepancy in the illustrated multi-use path alignment between O-3 and SP1.8 (as well as other architectural plans), which would appear to impact the overall area calculation for the path. The assumption is that Attachment O-3 shows the correct alignment and the area calculations on O-2 are based on that alignment.
      ii. RESPONSE: The layout of the multi-use path now coordinates among all the exhibits. It is the alignment shown on O-3.

      iii. Area 8: As discussed on the phone with Oregon Architecture, there appear to be some inconsistencies in plan sheets and the area containing the revisions to the access driveway, as the driveway relates to the MADA credit in 4.11.50.02.c.2.

         RESPONSE: We have re-coordinated Area 8 in sheet SP1.8 with the DSL approval sheet so they now coordinate and area limits describe what has previously been approved by DSL.

      iv. Area 15: As discussed on the phone with Oregon Architecture, this area is a new addition and does not show on SP1.8. Verify against latest

wetland data for Tax Lot 600 and correct illustration on SP1.8 to match area credited.

RESPONSE: The mapped wetlands for Tax Lot 600 have been added to sheet SP1.3C, which has an overlay of the current site plan, and Area 15 has been added to sheet SP1.8. All areas are now graphically represented.

v. Area 10: Shading for this area on SP1.8 matches previous submittal, but area has increased. Should shading be extended? Is shading area consistent with DSL mitigation approval?

RESPONSE: The change for area 10 was in its overlap with Areas 1 and 2 (the multi-use path). Based on joint discussions with DSL and the City, it seems more likely the local north/south street to Lot 400 has a better chance of being constructed first, so MADA credits were added to that area and subtracted from the multi-use path credits. This was a judgment call. The actual awarding of MADA credits has no impact on the private development, as the credits will only cover actual construction on the public infrastructure items.

c. Inclusion of New Wetland Data: Please review all site plans to include the wetland delineation for Tax Lot 600, which has become available after the publication of the original staff reports. Please ensure that the MADA calculation discussion and Sheet SP1.8 and Attachments O-2 and O-3 accurately reflect the new wetland data, as it pertains to associated wetland mitigation credits that you are seeking.

RESPONSE: It seemed the most appropriate location of the new mapped wetland delineation for Lot 600 was on sheet SP1.3C. That ties in directly to sheet SP1.8

d. Trash Enclosures Relocated: The proposed revisions have placed the trash enclosures in locations that will have impacts to routes of travel for pedestrians (conflicts with LDC 4.10.70.05.b.2) and hinder movement into and out of the site at the driveway entrances. Additionally, the driveway west of Building F will be required to have a commercial driveway approach and pedestrian crossing that meets LDC 4.10.70.03.a.5.

RESPONSE: The trash enclosures have been relocated out of future public ROW and behind the public sidewalk going north or west. We added a pedestrian crossing to the driveway on the west side of Building F.

e. SP1.5: The limits of grading depicted on this plan appear to conflict with Attachment O-3 in the area of the “Alternate Location for Water Quality Feature”.

RESPONSE: The Alternate Water Quality Feature is an underground facility, shown larger than actual scale so it can be found on the sheet. We have relocated it to under the edge of the pond and within the calculated area of disturbance. These are relatively small features that will have no impact on the size or functioning of the ponds.

f. SP2.5: It appears that the west elevation of Building F has not been revised to account for the changes to the building architecture.

   RESPONSE: The west elevation of Building F has been revised to match the east elevation of Building F.

4. Conditions of Approval: Staff have concerns about revisions to the following existing conditions of approval:

   a. Condition 17: The previous condition included specific locations that pedestrian crossing standards in LDC 4.10.70.03.a.5 would apply. That language has been removed. Please explain.

      RESPONSE: The language referring to specific locations where the pedestrian crossing standards would apply was inadvertently omitted in the initial remand submittal. The language has been restored at page 28 of the Perkins Coie narrative and page 2 of Exhibit I.

Regards,

Mark McKechnie, AIA

cc: Mike Robinson

Creekside Center I/II

An Application for a Conceptual and Detailed Development Plan, a Conditional Development and a Tentative Subdivision Plat

Submitted to:

The City of Corvallis
501 SW Madison Avenue
Corvallis, OR 97333

CORVALLIS
ENHANCING COMMUNITY LIVABILITY

Submitted by:

ThomasFox Properties, LLC
515 West Pickett Circle, Suite 400
Salt Lake City, Utah 84115

Originally prepared July 9, 2009
FINAL REVISION July 30, 2010
REMAND March 27, 2013

RECEIVED
APR - 3 2013

uses with a larger parking demand ratio (e.g., Medical Services, 1/200sf), the applicant has provided 30 percent more spaces than the minimum number of spaces required for the Walgreens Building and Retail Buildings 'B' through 'F'. A total of 131 vehicular parking spaces are proposed throughout the overall parking area. The applicant notes that a reciprocal access and maintenance agreement will be recorded over portions of Tax Lots 500 and 600 occupied by the parking area. Table 3, below, provides a summary of the minimum number of spaces required and the maximum number of spaces allowed for each building excepting Proposed Building 'A'.

Table 3: MUCS Vehicular Parking Demand Summary

Building	*Gross Floor Area (sf)*	*Parking Demand Ratio*	*Min. Parking Demand*	*Max. Spaces Allowed (130% of Min.)*
Retail Building 'B'	*5,327*	*1/400sf*	*13*	*17*
Retail Building 'C'	*4,201*	*1/400sf*	*11*	*14*
Retail Building 'D'	*3,120*	*1/400sf*	*8*	*10*
Retail Building 'E'	*4,500*	*1/400sf*	*11*	*15*
Retail Building 'F'	*7,500*	*1/400sf*	*19*	*24*
Walgreens Bldg.	*14,820*	*1/400sf*	*37*	*48*
		TOTAL	*99*	*128*

Because the eventual design of the restaurant is not known at this time, it is not possible to determine the number of vehicular parking spaces it will require. However, given that there are 131 parking spaces, including 7 accessible spaces, provided throughout the commercial portion of the project, the dining area of the restaurant could be as large as 1,600 square feet (32 spaces at 1/50sf). In reality, the applicant anticipates that the actual design will result in a dining area square footage and parking demand that is somewhat less this, which will result in a buffer for other commercial uses with a parking demand ratio of greater than 1/400sf. Parking space design is based on standard parking design manuals. A copy of a standard table from the parking design manual is included as Attachment W. It shows a minimum of 60 feet as an acceptable spacing for two stalls and a drive aisle. Even though the manual allows 18-foot stalls and a 24-foot drive aisle (60 feet), parking has been designed to meet the city of Corvallis standard of 18.5 foot stalls and a 26 foot drive aisle (63 feet). The developer proposes to use 24-foot drive aisles within the parking lot where there are no cars backing into aisles.

Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
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to place buildings within proximity of the parking spaces in order to decrease the distance customers have to walk to reach the adjacent buildings, which is why parking spaces are placed in front of Retail Buildings 'B' and 'C'.

4.10.70.05 - Standards and Menus for Pedestrian Features and Design Variety

a. Pedestrian Amenities Standards

1. <u>Weather Protection</u> - Where new commercial and civic development is constructed immediately adjacent to (abutting) street sidewalks or pedestrian plazas, a minimum six-ft.-wide, weather-protected area, protected by such elements as awnings or canopies, shall be provided and maintained along at least 60 percent of any building wall immediately adjacent to the sidewalks and/or pedestrian plazas. An additional requirement shall include a minimum eight-ft. vertical clearance between the sidewalk and the lowest portion of the weather protection. This vertical clearance shall be nine ft. for balconies. These requirements are shown below in Figure 4.10-22 - Weather Protection.

As shown on Attachments 'F', S-1' through 'S-6', each of the buildings that is adjacent to a street sidewalk or a pedestrian plaza will have weather protection along at least 60 percent of the corresponding elevation, as summarized, below, in Table 5.

Table 5: Weather Protection Percentage for Buildings Abutting Public Sidewalks or Plazas

Building	*Building Elevation / Length*	*Weather Protection Length*	*Percentage of Building Elevation*
Retail Building 'F'	*East / 150 feet*	*108 feet*	*72 Percent*
Retail Building 'E'	*South / 90 feet*	*73 feet*	*81 Percent*
Retail Building 'E'	*East / 50 feet*	*30 feet*	*60 Percent*
Retail Building 'D'	*South / 35 feet*	*26 feet*	*74 Percent*
Retail Building 'D'	*West / 90 feet*	*64 feet*	*71 Percent*
Retail Building 'C'	*West / 50 feet*	*36 feet*	*72 Percent*
Walgreens Building	*South / 130 feet*	*101 feet*	*78 Percent*
Proposed Building 'A'	*South, Southeast / 32 feet*	*22 feet*	*69 Percent*

2. <u>Pedestrian Amenity Requirements</u> - All new development and substantial improvements shall provide pedestrian amenities as defined by this

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Table 6: Window and Door Percentage for Street-facing Building Facades

Building	*Building Elevation / Length*	*Window / Door Length / %*	*Percentage of Building Elevation*
Retail Building 'F'	*East/150 feet*	*99 feet / 66%*	*48 percent*
Retail Building 'E'	*South / 90 feet*	*55 feet / 61%*	*47 Percent*
	East/ 50 feet	*30 feet / 60%*	*31 percent*
Retail Building 'D'	*South / 35 feet*	*22 feet / 62%*	*41 percent*
	West/ 90 feet	*54 feet / 60%*	*42 percent*
Walgreens Building	*South / 130 feet*	*78 feet / 60%*	*37 Percent*
Retail Building 'C'	*West/ 50 feel*	*31 feet / 62%*	*33 percent*
Proposed Building 'A'	*South / 24 feet*	*15 feet / 63%*	*30 percent*
	East / 60 feet	*36 feet / 60%*	*38 percent*

It needs to be noted staff and the developer have a disagreement on what is to be counted as "window", with staff analysis being the more restrictive. Elevations meet the more restrictive staff evaluation analysis. The figures cited above represent the amount of glazing on each specific façade. We believe the term "Window" as used in the LDC would also include frames and mullions as part of an overall window system.

7. **Design Variety Menu - Each structure shall incorporate a minimum of three of the following five 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.**

   a) **Building Walls - Building walls in excess of 30 ft. in length shall not exceed a height/width ratio of 1:3 without a change in height of at least four ft., as addressed below in Figures 4.10-25A through C - Building Walls.**

   d) **Base Treatments - A recognizable Base Treatment consisting of at least one of the following:**

      1) **Thicker walls, such as a bulkhead, ledges, or sills as viewed from the exterior of the building;**

      2) **Integrally textured materials such as stone, stucco, or other masonry;**

      3) **Integrally colored and patterned materials such as smooth-**

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BEFORE THE CITY COUNCIL

OF THE CITY OF CORVALLIS, OREGON

In the Matter of Requests for Conceptual and Detailed Development Plan, a Conditional Development Permit for a Drive-Through Facility, a Tentative Subdivision, and Related Variations to Land Development Code Standards to Allow Development of Approximately 43,022 Gross Square Feet of Commercial Floor Area in Creekside Center I and II on Property Located at the Northwest Corner of SW 53rd Street and Philomath Boulevard.	**APPLICANT'S NARRATIVE IN SUPPORT OF THE APPLICATIONS ON REMAND FROM THE LAND USE BOARD OF APPEALS** **CITY FILE NOS. PLD09-00004, CDP09-00003, SUB09-00002**

Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT A (15 of 112)

I. Introduction.

Oregon Architecture ("Applicant") submits this narrative in support of concurrent land use applications for a Conceptual and Detailed Development Plan, a Conditional Development Permit for a drive-through facility, a Tentative Subdivision, and related Variations to Corvallis Land Development Code ("LDC") standards to allow development of approximately 43,022 gross square feet of commercial floor area in Creekside Center I and II ("Project") on property located on approximately 6.64 acres of real property located at the northwest corner of SW 53rd Street and Philomath Boulevard ("Property"). Together, the Conceptual and Detailed Development Plan ("CDP/DDP"), Conditional Development Permit, Tentative Subdivision, and Variation applications shall be referred to herein as the "Applications."

The City Council approved the Applications in a final decision dated December 20, 2010 ("Decision"). After a citizen's group appealed, the State Land Use Board of Appeals ("LUBA") remanded the Decision on June 28, 2011, with direction that the City address specified issues relating only to the CDP/DDP.

The City Council now has jurisdiction over this matter on remand. Applicant has made minor modifications to the CDP/DDP site plan and application to address LUBA's remand. This narrative addresses each of the issues identified by LUBA,

explains how the minor modifications address these issues, and provides additional findings in support of approval of the CDP/DDP and one (1) of the Variations on remand. Applicant requests that the City Council approve the CDP/DDP and this Variation on remand.

II. Summary of Material Facts.

The material facts relating to the Property, the surrounding area, and the nature of the Applications have not generally changed since the earlier proceedings and can be summarized as follows.

The Property is comprised of Tax Lots 500 and 600, which are zoned Mixed Use Community Shopping ("MUCS"). Tax Lot 500 is located at the northwest corner of SW 53rd Street and Philomath Boulevard and Tax Lot 600 is located immediately to the west. A protected wetland, protected riparian corridor, and designated floodplain encompass the northern portions of both Tax Lots 500 and 600.

Applicant filed the Applications requesting approval to develop approximately 43,000 square feet of retail and restaurant uses in seven (7) buildings and related parking, landscaping, a designated Shopping Street, and a twelve (12)-foot wide, public multi-use path ("Path") to be located on the Property.

III. Procedural Status.

The City Council approved the Applications on December 20, 2010. After a citizen's group appealed, LUBA remanded the Decision on June 28, 2011, for adoption of additional findings on the following issues:

- Whether the Path proposed for the project qualifies for an increase in the Minimum Assured Development Area ("MADA") because it is required by the Corvallis Transportation Plan or the City of Corvallis Park and Recreation Facilities Plan, or is necessary to provide public access to or through designated open space areas, as required by LDC 4.11.50.02.c.4;

- Whether the area of wetland mitigation for the Path qualifies for an increase in the MADA because it is required by the Department of State Lands ("DSL") and/or the U.S. Army Corps of Engineers ("COE"), as required by LDC 4.11.50.02.c.2;

- Whether, based upon the above findings, the City has awarded a sufficiently large number of MADA credits to allow development in protected areas as permitted under LDC 4.13.50.b.6 and LDC 4.13.80.01.c.2; and

- Whether, based upon the above findings, it is necessary to allow a stormwater detention facility to encroach within the riparian easement area on Tax Lot 500 in order to allow utilization of the MADA for the project, as required by LDC 4.13.70.02.d.4.

League of Women Voters of Corvallis v. City of Corvallis, 63 Or LUBA 432 (2011). LUBA denied the citizen group's remaining assignments of error, so they are not at issue on remand. A copy of LUBA's opinion is attached as Exhibit A.

This matter is now before the City for consideration of these limited issues on remand. The City is not obligated to address any other aspects of the Applications at this time. Pursuant to LDC 2.0.60, the City Planning Director must present the matter to the City Council to set a hearing date and re-open the public hearing for the limited purpose of addressing the remand issues. The City must provide public notice of the remand hearing consistent with LDC 2.0.50. Upon compliance with these scheduling and notice requirements, the City Council can find that it has complied with the correct procedures.

IV. Modifications to Site Plan

In order to address the issues on remand, Applicant has modified the proposed CDP/DDP site plan and elevations as follows:

- Located the Path north of Dunawi Creek in a fifteen (15)-foot wide disturbance area that will be located within a forty (40)-foot wide area shown on the plans extending from the SW 53rd Street right-of-way west across the Property, with the exact location to be determined by the City in the future

- Eliminated the access sidewalk to the stormwater pond behind Buildings B and C

- Reduced the overall proposed development area by approximately 11,000 square feet

- Reduced Building B to 5,327 square feet from 5,874 square feet and made related modifications to the east elevation to reflect the narrower dimension and to the north elevation to remove service doors

- Reduced Building F to 7,500 square feet from 9,000 square feet and made related modifications to the east and west building elevations to remove two (2) bays

- Eliminated six (6) vehicular parking spaces from Tax Lot 600 and four (4) vehicular parking spaces from Tax Lot 500 and added one (1) vehicular parking space on Tax Lot 600

- Eliminated sidewalk on west side of SW 53rd Street entry driveway, instead, shifting pedestrian traffic via crosswalk across entry driveway to sidewalk on SW 53rd Street

- Relocated the trash enclosures north of Building C out of the public right-of-way

- Shifted the east/west future public right-of-way to the south to increase the distance from Dunawi Creek; also extended this right-of-way 31 feet into Tax Lot 500 to coordinate with the north/south future public right-of-way

- Reduced the number of trees along the east side of the Shopping Street and along the west side of Building F

- Made minor adjustments in the location of the angled parking spaces and crosswalk between Buildings C and F to accommodate the above modifications in the site plan

The modified site plan is included in the remand submittal, together with a rendering comparing the modified and original site plans. The remainder of this narrative explains how the modified site plan satisfies applicable approval criteria and addresses the issues on remand.

V. Findings of Fact and Conclusions of Law.

A. Conceptual and Detailed Development Plan

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;

RESPONSE: Applicant originally requested, and the City approved, seven (7) Variations to the LDC. The opponents did not appeal this aspect of the Decision to LUBA. However, Applicant's site plan modifications reduce the degree of Variation #1, which requested the following:

- Variation to LDC 4.11.50.04.c (MADA/order of encroachments) to allow encroachments into the 100-foot Highly Protected Riparian Corridor prior to the Locally Protected Wetland and by allowing development to occur within the 50-foot base Riparian Corridor prior to using all allowable encroachments into the Locally Protected Wetland and 100-foot Highly Protected Riparian Corridor.

In the Decision, the City Council found that strict adherence to the prescribed order of Natural Feature encroachments in LDC 4.11.50.04.c. would require Applicant to develop on the north side of Dunawi Creek in the area north of the 100-foot Highly Protected Riparian Corridor setback, within the Locally Protected Wetlands and 100-Year Floodplain before developing in the 100-foot Highly Protected Riparian Corridor setback south of Dunawi Creek. This outcome would have caused extensive impacts to the highly valued forested wetland and riparian corridor north of Dunawi Creek. Thus, the City approved Variation #1 to allow Applicant to concentrate the impacts of development on the south side of Dunawi Creek and to preserve a greater area of the Highly Protected Riparian Corridor, Locally Significant Wetland, and 100-Year Floodplain on the north side of Dunawi Creek.

As modified, the proposed development results in less encroachment within the 100-foot Highly Protected Riparian Corridor setback and the 50-foot base Riparian Corridor because Applicant is proposing to reduce the size of Buildings B and F; and to eliminate the access sidewalk behind Buildings B and C, a net nine (9) fewer vehicular parking spaces, and the sidewalk west of the access driveway connecting to SW 53rd Street. The modified site plan continues to preserve the forested wetland north of Dunawi Creek.

Accordingly, Applicant is requesting a less substantial Variation than requested with the original application without compromising the significant compensating benefits of preserving the resource areas north of the creek. Therefore, the City Council should find that as modified, there are still adequate compensating benefits associated with this Variation request, and it should be approved.

None of the other six (6) Variations were at issue before LUBA. Further, the site plan modifications do not affect the nature, type, and degree of these requests. Accordingly, they are not reviewable by the City Council on remand.

2. Basic site design (the organization of Uses on a site and the Uses' relationship to neighboring properties);

RESPONSE: In the Decision, the City Council found that the CDP/DDP satisfied this factor because the buildings were spread evenly throughout the southern half of the Property, the development provided multiple ways for pedestrians to access the various buildings and public sidewalks, there is adequate buffering from existing and potential residential development, and the proposal satisfied applicable development standards for site design. The opponents did not appeal this aspect of the Decision to LUBA.

Although Applicant has proposed minor modifications to the site plan (summarized above), these modifications do not materially alter the basic site design. For example, these modifications do not alter the type and general location of uses, or the type and general location of access, on-site parking and circulation systems, landscaping, buffering, or setbacks. Although the modifications reduce the total commercial floor area of the development, the proposed commercial floor area of the buildings (including the drive-through facility for Walgreen's) is still approximately 43,022 gross square feet, which exceeds the minimum commercial floor area requirement of 42,090 square feet. Further discussion of the Floor Area Ratio calculations is set forth in response to LDC 3.19.40.03.a. below.

Further, although the modifications remove two (2) on-site pedestrian sidewalks, the City Council should find that one (1) of these sidewalks—the sidewalk behind Buildings B and C connecting to the stormwater retention pond—was not necessary because it did not provide connectivity to any building entrances, parking areas, or public sidewalks. The other sidewalk—on the west side of the SW 53rd Avenue driveway—has been adequately replaced with a crosswalk and direct sidewalk connection to the public sidewalk along SW 53rd Street. The removal of these sidewalks reduces the area of development in the 50-foot base Riparian Corridor and the 100-foot Highly Protected Riparian Corridor setback. Further, even without these sidewalks, the proposed development incorporates adequate pedestrian circulation and connectivity. Therefore, the City Council should find that the modifications to the sidewalks do not adversely affect the basic site design of the Project.

In short, the modified site plan does not alter the organization of uses on the Property or the uses' relationship to neighboring properties. Therefore, the City Council should find that, as modified, the CDP/DDP satisfies this factor.

3. Visual elements (scale, structural design and form, materials, etc.);

RESPONSE: In the Decision, the City Council found that the CDP/DDP satisfied this factor because the Project's architectural elevations comply with the architectural standards of the MUCS zone and the commercial Pedestrian Oriented Design Standards that govern building form, materials, and the relationship to the pedestrian environment. The opponents did not appeal this aspect of the Decision to LUBA. Although the modified site plan reduces the area of two (2) buildings, it does not materially modify or affect the scale, structural design and form or materials for the Project. For example, the general height, shape, and design elements of Building F remain the same even though it is reduced in size, and the same is true for Building B. Therefore, the City Council should find that, as modified, the CDP/DDP satisfies this factor.

4. Noise attenuation;

RESPONSE: In the Decision, the City Council found that the CDP/DDP satisfied this standard because the level of noise impacts associated with the development is not expected to swell above the ambient traffic noise generated on Highway 20/34 and other existing commercial activities in the vicinity of the Property. The opponents did not appeal this aspect of the Decision to LUBA. The modified site plan does not materially affect the noise impacts associated with the development. Accordingly, compliance with this factor is not reviewable by the City Council on remand.

5. Odors and emissions;

RESPONSE: In the Decision, the City Council found that no unusual odors were anticipated from the development. The opponents did not appeal this aspect of the Decision to LUBA. The modified site plan does not modify or affect the type or amount of odors and emissions from the Project. Therefore, compliance with this factor is not reviewable by the City Council on remand.

6. Lighting;

RESPONSE: In the Decision, the City Council found that, subject to a condition of approval, Applicant's proposed Conceptual Lighting Plan and exhibits for light fixtures satisfied this factor. The opponents did not appeal this aspect of the Decision to LUBA. The modified site plan does not modify any aspect of the lighting plan or proposed fixtures. Therefore, compliance with this factor is not reviewable by the City Council on remand.

7. Signage;

RESPONSE: In the Decision, the City Council found that the CDP/DDP satisfied this factor because Applicant's proposed number, size, location, and height of signs

satisfied the applicable requirements of the MUCS zoning district. The opponents did not appeal this aspect of the Decision to LUBA. The modified site plan does not modify any aspect of Applicant's original sign proposal. Therefore, compliance with this factor is not reviewable by the City Council on remand.

8. Landscaping for buffering and screening;

RESPONSE: In the Decision, the City Council found that the Conceptual Landscape Plan for the CDP/DDP satisfied this factor, subject to conditions. The opponents did not appeal this aspect of the Decision to LUBA. The modified site plan does not modify any aspect of Applicant's original Conceptual Landscape Plan. Therefore, compliance with this factor is not reviewable by the City Council on remand.

9. Transportation facilities;

RESPONSE: In the Decision, the City Council found that the CDP/DDP satisfied this factor, subject to conditions. The opponents did not appeal this aspect of the Decision to LUBA. The modified site plan does not modify any of Applicant's commitments to provide the transportation facilities identified in the original application nor does it increase the Project's projected impacts to transportation facilities. Therefore, compliance with this factor is not reviewable by the City Council on remand.

10. Traffic and off-site parking impacts;

RESPONSE: In the Decision, the City Council found that, as conditioned, the Project would properly mitigate all off-site traffic impacts. The opponents did not appeal this aspect of the Decision to LUBA. The modified site plan does not modify any of Applicant's commitments to provide the transportation facilities identified in the original application nor does it increase the Project's projected impacts to transportation facilities. Therefore, compliance with this aspect of this factor is not reviewable by the City Council on remand.

In the Decision, the City Council found that the Project would not cause any off-site parking impacts because the Project was proposing to develop 141 on-site vehicular parking spaces, a figure that exceeded the minimum number of spaces specified in the LDC 4.1.30 (123) but was less than the maximum number of spaces specified in LDC 4.1.20.o (160). The opponents did not appeal this aspect of the Decision to LUBA. However, the parking issue is properly before the City Council because Applicant has modified the site plan on remand to reduce the total square footage of commercial uses and to reduce the number of parking spaces. For the reasons explained below, the City Council should find that the site plan, as modified, satisfies the minimum vehicle parking requirements.

The modified site plan reduces the total square footage of uses on the site to approximately 41,321 square feet of retail uses and approximately 1,782 square feet of restaurant uses (assuming seating area at 40% of total gross floor area), which reduces the range of allowed on-site vehicular parking spaces to between 118 and 153. The following chart further illustrates these parking calculations as apportioned across the Project:

MINIMUM VEHICLE PARKING REQUIREMENTS

Building & Use	Floor Area	Parking Ratio per LDC 4.1.30	Number of Spaces Required	Number of Spaces Provided
Building A (Restaurant)	1,782 sq. ft.	1 per 50 sq. ft. (public seating area at 40% of total gross floor area)	14.28	N/A
Buildings B, C, D, E, and F (Retail Sales)	24,648 sq. ft.	1 per 400 sq. ft.	61.62	N/A
Walgreen's	16,673 sq. ft.[1]	1 per 400 sq. ft.	41.69	N/A
TOTAL	43,103 sq. ft.	N/A	118	131

The modified site plan depicts 131 on-site vehicular parking spaces, within the permitted range of the LDC. Therefore, the City Council should find that the modified site plan provides adequate on-site parking, thus ensuring that the Project will not cause any impacts to off-site parking.

The modified site plan does not affect the number or location of bicycle parking spaces. Accordingly, compliance with this aspect of this factor is not reviewable by the City Council on remand.

For the reasons explained above, the City Council should find that the Project provides more than the minimum number of vehicle parking spaces and thus addresses off-site parking impacts. Compliance with the remainder of this factor is not reviewable by the City Council on remand.

11. Utility infrastructure;

RESPONSE: In the Decision, the City Council found that the CDP/DDP satisfied this factor because there exists, or the Project was conditioned to provide, adequate

[1] The Walgreen's floor area includes 14,820 square feet within the building and, as permitted by LDC 3.19.40.02, an additional 1,853 square feet of unenclosed areas (operational use, queuing, and service areas) needed for automobile circulation.

utility infrastructure available to the Property with adequate capacity to accommodate the Project. The opponents did not appeal this aspect of the Decision to LUBA. The modified site plan does not alter or affect the demand for, or provision of, utility infrastructure or related conditions. Therefore, compliance with this factor is not reviewable by the City Council on remand.

12. Effects on air and water quality (note: a DEQ permit is not sufficient to meet this criterion);

RESPONSE: In the Decision, the City Council found that the CDP/DDP satisfied this factor due to the provision of pedestrian connections consistent with the LDC Pedestrian-Oriented Design ("POD") Standards, the inclusion of permeable paving in the area of the drive-through, the plan's general adherence to the City's water quality standards, and the City's previous balancing of competing objectives of water quality and acceptable levels of urban development. The opponents did not appeal this aspect of the Decision to LUBA. The modified site plan does not affect the Project's effects on air and water quality. Accordingly, compliance with this factor is not reviewable by the City Council on remand.

13. Design equal to or in excess of the types of improvements required by the standards in Chapter 4.10 – Pedestrian Oriented Design Standards; and

RESPONSE: In the Decision, the City Council found that the CDP/DDP satisfied this criterion because Applicant's proposed site design complied with standards for building orientation and on-site pedestrian sidewalk improvements and connectivity to and through the site for pedestrians. Further, the site plan provided pedestrian amenities and was consistent with the architectural elements of the POD Standards. The opponents did not appeal this aspect of the Decision to LUBA.

However, the issue of pedestrian circulation is properly before the City Council because Applicant has modified the site plan on remand to remove two (2) on-site pedestrian sidewalks and create a new crosswalk and connection to the public sidewalk on SW 53rd Street. The City Council should find that the modified site plan satisfies the pedestrian circulation standards of LDC 4.10.70.03 for three (3) reasons.

First, although the modifications remove two (2) on-site pedestrian sidewalks (one from behind Buildings B and C connecting to the stormwater retention pond and the other from the west side of the access driveway connecting to SW 53rd Street), the modified site plan still provides continuous internal sidewalks to all customer entrances and between customer entrances, as required by LDC 4.10.70.03.a.1. The City Council should find that the sidewalk Applicant has

removed behind Buildings B and C was not necessary because it did not provide connectivity to or among any building entrances.

Second, the plan provides sidewalks along the full length of building walls featuring a customer entrance and along all walls parallel to and abutting parking areas larger than eight (8) parking spaces, as required by LDC 4.10.70.03.a.2.

Third, the plan provides connections between on-site sidewalks and sidewalks along public streets, as required by LDC 4.10.70.03.a.3. For example, the plan retains all earlier connections and relocates the connection between the sidewalk west of the SW 53rd Avenue access driveway from north of the driveway to south of the driveway.

Therefore, the City Council should find that, as modified, the CDP/DDP satisfies POD Standards and this factor.

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.

RESPONSE: This issue is properly before the City Council on remand for two (2) reasons. First, LUBA remanded the Decision for additional findings in response to specific provisions of LDC Chapters 4.11 and 4.13. These provisions are addressed below, and such responses are incorporated herein by reference.

The issue is also properly before the City Council because Applicant has made minor modifications to the site plan. These modifications reduce the degree of Variation #1 to the prescribed order of Natural Feature encroachments in LDC 4.11.50.04.c. For the reasons explained above in response to LDC 2.5.40.04.a.1, the City Council should find that strict adherence to the prescribed order of encroachments would have caused extensive impacts to the highly valued forested wetland and riparian corridor north of Dunawi Creek, while Variation #1 allows Applicant to preserve a greater portion of this area by concentrating development impacts on the south side of the creek.

Further, Applicant is proposing fewer encroachments on the modified site plan. Additionally, Applicant is permitted to encroach within areas of Significant

Natural Features in order to utilize the MADA, consistent with the findings set forth below in response to LDC 4.11 and 4.13.

Additionally, as explained in the attached letter from Marquess & Associates, Inc. dated March 29, 2013, the modifications to the site plan do not require a new floodplain study or change the conclusions set forth in the original floodplain study dated June 3, 2010, which is included in the record of the original proceedings for the Applications.

Finally, the developer has received a renewal of a Fill Permit from DSL (Permit #32863-FP Renewal) for the Property. As renewed, this permit is valid through November 22, 2013. A copy of the permit is attached as Exhibit J.

The CDP/DDP satisfies this factor.

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

RESPONSE: As explained above, in the Decision, the City Council approved a Variation to LDC 4.11.50.04.c to allow encroachments into the 100-foot Highly Protected Riparian Corridor prior to the Locally Protected Wetland and by allowing development to occur within the 50-foot base Riparian Corridor prior to using all allowable encroachments into the Locally Protected Wetland and 100-foot Highly Protected Riparian Corridor. The opponents did not appeal this aspect of the Decision to LUBA. However, this issue is properly before the City Council on remand because Applicant has modified the site plan to reduce the degree of the Variation.

The City Council should find that the CDP/DDP satisfies this factor because the proposed Variation provides protections equal to or better than LDC 4.11.50.04.c. Strict adherence to the prescribed order of Natural Feature encroachments in LDC 4.11.50.04.c. would require Applicant to develop on the north side of Dunawi Creek in the area north of the 100-foot Highly Protected Riparian Corridor setback, within the Locally Protected Wetlands and 100-Year Floodplain before developing in the 100-foot Highly Protected Riparian Corridor setback south of Dunawi Creek. This outcome would cause extensive impacts to the highly valued forested wetland and riparian corridor north of Dunawi Creek.

By contrast, the Variation allows Applicant to concentrate the impacts of development on the south side of Dunawi Creek, which is already impacted by development, and to preserve a greater area of the Highly Protected Riparian Corridor, Locally Significant Wetland, and 100-Year Floodplain on the north side of Dunawi Creek. Preservation of this large area north of the creek without any development provides more benefits to the environment than preserving two separate, smaller areas on either side of the creek, as strict adherence to Chapter 4.11 would have required.

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.

RESPONSE: For the reasons explained above, Applicant's proposed Variation #1—even as modified—involves an alternative on the Property. The City Council should find that the CDP/DDP satisfies this standard.

2.5.50.04 – Review Criteria for Determining Compliance with Conceptual Development Plan

Request for approval of a Detailed Development Plan shall be reviewed to determine whether it is in compliance with the Conceptual Development Plan. The Detailed Development Plan shall be deemed to be in conformance with the Conceptual Development Plan and may be approved provided it is consistent with the review criteria in Section 2.5.40.04 above, provides a clear and objective set of development standards for residential Detailed Development Plans (considering the Detailed Development Plan proposal, required adherence to this Code, and Conditions of Approval), and does not involve any of the factors that constitute a major change in the Planned Development. See Section 2.5.60.02 – Thresholds that Separate a Minor Planned Development Modification from a Major Planned Development Modification.

RESPONSE: In the Decision, the City Council found that the DDP satisfied this criterion. The opponents did not appeal this aspect of the Decision to LUBA. However, this issue is properly before the City Council on remand because Applicant has modified the CDP/DDP site plan as discussed above. The City Council should find that the DDP satisfies this criterion for three (3) reasons. First, because the CDP and DDP are one (1) in the same, the findings above

demonstrating that the CDP complies with LDC 2.5.40.04 apply equally to the DDP. Second, for the same reason, the DDP, by definition, cannot constitute a major change from the CDP or a major change in the Planned Development. Finally, the City Council can find that the DDP does not need to provide clear and objective development standards because it is not a residential DDP.

3.19.40.03 – Commercial Floor Area Ratio

Minimum commercial Floor Area Ratios (FARs) are required for all property with a Mixed Use Community Shopping designation. This requirement ensures that commercial land is preserved for primarily commercial purposes. For an explanation of how to apply/calculate FARs, see the definition of Floor Area Ratio in Chapter 1.6 - Definitions.

All commercial and mixed use developments shall comply with the following standards for commercial floor area:

a. For Commercial Use Types, the minimum FAR shall be 0.25 and the maximum FAR shall be 1.0. When a project is composed of two or more phases, development in each phase shall fall within the minimum and maximum FAR requirements or an alternative FAR requirement proposed and approved through a Planned Development Review process.

RESPONSE: Addressing this provision requires reference to the LDC definitions for "Area, Net" and "Floor Area Ratio (FAR)" set forth in LDC Chapter 1.6. These definitions provide as follows:

Area, Net - Total area of a parcel or site, usually expressed in acres and excluding existing public street rights-of-way and, if a developer desires, excluding public parks, Significant Natural Feature areas dedicated to the public, and/or other areas permanently precluded from development due to development constraints or conservation easements. Planned streets shall not be excluded from the net area.

Floor Area Ratio (FAR) - Gross floor area of all buildings on a lot or development site divided by the net area of a lot or development site on which the buildings are located. See Area, Net. In cases where outdoor areas are directly related to the subject land use(s) (e.g., outdoor storage areas; planting areas for nurseries, tree farms, and agricultural businesses; portions of parking lots used for storage and circulation of moving vans associated with moving businesses; etc.), these outdoor areas may be included in the Floor Area Ratio square footage calculation. However, unless specified otherwise, in no case shall standard parking

and circulation areas, landscaping, etc., be included in the Floor Area Ratio square footage calculation.

RESPONSE: For purposes of calculating the Floor Area Ratio, Applicant has elected to exclude the Natural Features from the Net Area. The Project satisfies the Floor Area Ratio requirements for the Property and for each tax lot, as illustrated in the following table:

Area	Site Sq. Ft.	Min. Sq. Ft. (0.25 FAR)	Max. Sq. Ft. (1.0 FAR)	Proposed Sq. Ft.[2]
Total	**289,082**	**72,721**	**289,082**	
Net	**168,360**	**42,090**	**168,360**	**43,022**
Tax Lot 500	**121,051**	**30,262.75**	**121,051**	**31,022**
Tax Lot 600	**47,309**	**11,827.25**	**47,309**	**12,000**

The City Council can find that the Project satisfies this criterion.

4.11.50.02 – Calculation of the Base Minimum Assured Development Area (MADA)

*** * * ***

b. Nonresidential Sites – The base Minimum Assured Development Area of a nonresidential site shall be calculated by multiplying the acreage of the site by the Minimum Assured Development Area per acre, as shown in Table 4.11-2 – Determining Minimum Assured Development Area (MADA) for Nonresidential Zones, below. Acreage calculations shall be rounded to two decimal points. If a site contains multiple zones, the base Minimum Assured Development Area for each zone shall be determined. The total base Minimum Assured Development Area shall be the sum of the base Minimum Assured Development Areas of all the zones.

Table 4.11-2
Determining Minimum Assured Development Area (MADA)
for Nonresidential Zones

Zone	Base MADA/Acre	Area Credits (4.11.50.02.c)	Total MADA
Mixed Use Community Shopping	**19,600 sq. ft.**		

[2] The proposed square footage for the Project includes the gross floor area of Buildings A, B, C, D, E, F, and the Walgreen's (including the unenclosed areas needed for automobile circulation for the drive-through).

RESPONSE: In the Decision, the City Council found that the base MADA for the Property, which is located in the MUCS zoning designation, was as follows:

Tax Lot 500 4.6412 acres x 19,600 square feet/acre = 90,968 square feet

Tax Lot 600 1.9953 acres x 19,600 square feet/acre = 39,108 square feet

The opponents did not appeal the City's base MADA determination to LUBA (only the City's calculation of MADA credits above the base amount). The modifications to the site plan do not affect the calculation of the base MADA. Therefore, this issue is not reviewable by the City Council on remand.

c. Additional Allowances for Determining the Minimum Assured Development Area of Residential and Nonresidential Sites – The Minimum Assured Development Area calculated in Section 4.11.50.02.a and Section 4.11.50.02.b may be increased above the base MADA by adding the areas determined by the provisions below:

1. The area of public right-of-way dedications resulting from a required width in excess of the width needed for a local street, provided the required street is identified in the Corvallis Transportation Plan;

RESPONSE: In the Decision, the City allowed MADA credits to the Project under this subsection for the following right-of-way dedications:

- 1,517 square feet for a five (5)-foot wide dedication for 53rd Street on Tax Lot 500 (Area 3 on SP1.8)
- 5,416 square feet for a twelve (12)-foot wide dedication for Highway 20/34 on Tax Lot 500 (Area 6)
- 2,470 square feet for a seventeen (17)-foot wide dedication for Highway 20/34 on Tax Lot 600 (Area 11)

The opponents did not appeal this aspect of the Decision to LUBA. On remand, Applicant does not modify the size or location of the dedications or the related MADA credits. Therefore, the issue of credits under this subsection is not reviewable by the City Council on remand.

2. The area of Wetland mitigation that is required by the Department of State Lands and/or the U.S. Army Corps of Engineers when infrastructure must be extended through a Wetland. The area credited shall be based upon the written requirements of the associated permit approval of the Department of State Lands and/or the U.S. Army Corps of Engineers, whichever is greater;

RESPONSE: LUBA remanded the Decision to approve the Applications because, although the Decision allowed MADA credits to the Project under this criterion, the City's findings did not adequately address whether the area of wetland mitigation for the Path qualifies for an increase in the MADA because that mitigation is required by DSL and/or the USACOE. On remand, Applicant is not requesting any MADA credits for the area of wetland mitigation that is required by DSL or the USACOE when the Path must be extended through a wetland. Therefore, the City Council should find that the area of wetland mitigation for the Path does not qualify for any MADA credits under this subsection.

Although the Decision also allowed MADA credits to the Project under this criterion for other identified areas—including Area 4 (mitigation for right-of-way through the wetlands), Area 8 (mitigation for the access drive), Area 10 (mitigation for required local street), and Area 15 (mitigation for required local street)—the opponents did not challenge, and LUBA did not remand, these aspects of the Decision. Therefore, they are not at issue before the City Council.

The City Council should find that these findings address LUBA's remand under this subsection.

3. Above-ground stormwater detention facilities designed and constructed consistent with the Corvallis Design Criteria Manual; and

RESPONSE: In the Decision, the City allowed MADA credits to the Project under this subsection for the following above-ground stormwater detention facilities designed and constructed consistent with the Corvallis Design Criteria Manual:

- 2,730 square feet for a detention pond on Tax Lot 500 (Area 9)
- 2,007 square feet for a detention pond on Tax Lot 600 (Area 12)

The opponents did not appeal this aspect of the Decision to LUBA. The modifications to the site plan do not alter the size or location of the proposed stormwater ponds or their compliance with the Corvallis Design Criteria Manual. Therefore, the existence or basis for the MADA credit for above-ground stormwater detention facilities is not reviewable by the City on remand.

4. Trails required by the Corvallis Transportation Plan or the City of Corvallis Park and Recreation Facilities Plan, or necessary to provide public access to or through designated open space areas.

RESPONSE: In the Decision, the City allowed MADA credits under this subsection in the amount of 12,388 square feet for the Path for its entire distance across the Property. LUBA remanded the Decision on this issue because the findings in the

Decision "do not contain any adequate explanation by the city why the path qualifies for MADA credit" under this subsection. *League of Women Voters*, 63 Or LUBA at __ (slip op. at 6).

On remand, Applicant is proposing to dedicate a fifteen (15)-foot wide right-of-way for the Path across the Property (although the Path itself will only be twelve (12) feet in width). The Path will be located within a forty (40)-foot wide area shown on the plans. The total dedication is 8,281 square feet across Tax Lot 500 and 2,714 square feet across Tax Lot 600, for a total of 10,995 square feet. The City Council should allow MADA credits under this subsection in the amount of 10,995 square feet for three (3) reasons.

1. Corvallis Transportation Plan ("CTP")

First, the CTP requires the Path. The City Council should reach this conclusion for two (2) reasons. First, the CTP incorporates the City's Trails Master Plan, which itself requires the Path. At page 6-1, the CTP incorporates the City's Trails Master Plan ("TMP") by reference and explains that the facilities identified in the TMP are needed:

> "The Trails Master Plan, adopted by the City Council as an element of the Comprehensive Plan on November 19, 1990, identifies existing and needed pedestrian and multi-use trails within Corvallis and is incorporated with this Transportation Plan by reference."

A copy of CTP page 6-1 is attached as Exhibit B. In turn, the TMP at page A-4 includes a map identifying existing and future trails in the City. A copy of this map is attached as Exhibit C. This map depicts a "Future Trail" crossing the Property in the approximate location where the Path is shown on the modified site plan. The TMP map, as included in the CTP, is not labeled "conceptual" or "draft." Therefore, to the extent the City's earlier findings found that the TMP map was "conceptual," it is not as set forth in the CTP. Further, the "Future Trail" designation of the Path is contrasted with another, more conceptual designation on the map—"Potential Trail Corridors." In this way, the TMP, as incorporated within the CTP, requires the Path to serve pedestrian and multi-use needs in the City. Additional support for this conclusion is provided in the City of Corvallis Park and Recreation Facility Plan, which states that the CTP has "adopted" the Path.

Second, the CTP also requires the Path at pages 6-5 and 6-6 under Section 6.40 "Future Conditions." In this section, the CTP requires safe, convenient pedestrian facilities connecting developments and activity centers consistent with the LDC. Then, the CTP explains that developing trails, including the Path, consistent with the TMP will fulfill this requirement:

> "Implementation of the trails plan through construction of trails along drainageway dedications and other identified trail corridors (see Figure A-4) will also contribute to this system."

A copy of CTP pages 6-5 and 6-6 is attached as Exhibit D. For these reasons, the City Council should find that the CTP requires construction of the Path.

2. City of Corvallis Park and Recreation Facilities Plan ("PRFP")

Second, the City's PRFP requires the Path because it is identified as an adopted facility necessary to serve the City's recreation needs. The Path is identified in the list of projects needed to complete the 20-Year Plan for parks and recreation facilities. *See* Table 17, a copy of which is attached as Exhibit E (Path labeled as "T-13 Squaw Creek Trail (S)"). Additionally, the PRFP Trails Plan Map, a copy of which is attached as Exhibit F, depicts the Path as a proposed facility.

Moreover, the PRFP Trail Comparison Map, a copy of which is attached as Exhibit G, identifies the Path as an "Adopted Trail/Multi-Use Path." According to the legend for this map, the City applied this designation to "[t]hose [trails] that are shown and have been adopted in the Transportation Plan but are not yet built." Trails with this designation are contrasted with facilities designated on this map as "Proposed Trail" and "Potential Trail Corridor," which are more conceptual designations. Further, although the map is labeled as "Conceptual," the City Council should find that this label refers to the routes identified in the map. It does not mean that the need or necessity of the facilities is conceptual in nature. In fact, the PRFP states as much:

> "This is a conceptual plan intended to guide development. The map is not intended to identify specific affected properties, rather, it represents the needs, standards, and/or aspirations of the community."

PRFP Trails Comparison Map (emphasis added). For these reasons, the City Council should find that the PRFP requires the Path.

3. Necessary to Provide Public Access To or Through Designated Open Space Areas

Third, the Path is necessary to provide public access to or through designated open space areas. The portion of the Property along both sides of Dunawi Creek—where Applicant proposes to site the Path—is designated "Open Space –

Conservation" on the City's Comprehensive Plan Map, a copy of which is attached as Exhibit H.

The Path is necessary to provide public access through the designated "Open Space-Conservation" area for three (3) reasons. First, it is necessary in order to satisfy the pedestrian connection and block perimeter standards in the LDC. For example, LDC 4.0.60.n requires Applicant to install a pedestrian-through connection for each block face greater than 400 feet. The block face commencing at the SW 53rd access driveway and running north is greater than 400 feet; therefore, Applicant is required to develop an east-west pedestrian-through connection. In light of the extensive natural resource areas north of the creek, the Path must be located in open space areas in order to satisfy the spacing standards.

Second, the City Council should find that the Path is necessary to implement the "Open Space – Conservation" designation of the Comprehensive Plan. According to Section 40.4.3 of the City's Comprehensive Plan, a developer impacting Open Space-Conservation lands must provide access across the designated open space for public infrastructure:

> "Under the Open Space – Conservation designation, limited development may be permitted on private lands, provided that the development provides access to and through the OS-C areas for public infrastructure * * *."

Comprehensive Plan at 213. Therefore, the City Council should find that, in order for Applicant to comply with the Comprehensive Plan, it is necessary for Applicant to provide the Path to or through the designated Open Space – Conservation area on the Property.

Third, as the City Council found in the Decision at pages 13-14, locating and constructing the Path within Highly Protected Riparian Corridors and Riparian-related Areas is necessary to maintain a functional path system. LUBA affirmed the City Council's conclusion and findings on this issue. The City Council may rely upon these findings as additional support for its conclusion that the Path is necessary to provide public access to or through designated open space areas.

Based upon this evidence and argument, the City Council should: (1) find that the Applications satisfy this subsection; and (2) allow 10,995 square feet of MADA credits for the Path to Applicant. Further, the City Council should find that this addresses LUBA's remand under this subsection.

4.13.50 – USE LIMITATIONS AND EXCEPTIONS WITHIN HIGHLY PROTECTED RIPARIAN CORRIDORS AND RIPARIAN-RELATED AREAS

*** * * ***

b. Building, Paving, and Grading Activities – The placement of structures or impervious surfaces, as well as grading, excavation, and the placement of fill, are prohibited. Exceptions to the drainageway restrictions may be made for the purposes identified in items 1-7 of this Section, provided they are designed and constructed to minimize adverse impacts to Riparian Corridors and Riparian-related Areas.

*** * * ***

6. Development associated with the Minimum Assured Development Area that would be allowed in accordance with Chapter 4.11 – Minimum Assured Development Area (MADA); and

RESPONSE: In the Decision, the City Council found that Applicant was permitted to develop in Highly Protected Riparian Corridors and Riparian-related Areas on the Property because the development was associated with MADA and MADA credits allowed by the City for the Project. As explained above, LUBA remanded the Decision for additional findings regarding the City's allowance of MADA credits for the Path under LDC 4.11.50.02.c.2. and .4. LUBA reasoned that until the City properly justified its calculation of MADA credits, the City could not allow development in protected areas under the exception offered by this subsection:

> "* * *[W]ithout findings justifying the award of MADA credit under LDC 4.11.50.02(c), the city may not * * * allow development in the protected areas."

League of Women Voters, 63 Or LUBA at __ (slip op. at 13).

Based upon the findings set forth above in response to LDC 4.11.50.02, the City Council should find that, on remand, Applicant has not requested and thus does not qualify for MADA credits for the Path under LDC 4.11.50.02.c.2. However, Applicant has demonstrated with evidence and argument that the Path qualifies for 10,995 square feet of MADA credits under LDC 4.11.50.02.c.4. Accordingly, the City Council should allow 10,995 square feet of MADA credits under LDC 4.11.50.02.c.

The base MADA for Tax Lot 500 is 90,968 square feet. Including the MADA credits for the Path, there are 30,130 square feet of MADA credits on Tax Lot 500, for a total MADA (base plus credits) of 121,098 square feet. Only 77,745 square feet of Tax Lot 500 is unencumbered (outside of proximal wetlands or Riparian Corridor). Therefore, there is a minimum of 43,353 square feet of development that

must encroach into constrained areas on Tax Lot 500 to allow for utilization of the MADA.

The base MADA for Tax Lot 600 is 39,108 square feet. Including the MADA credits for the Path, there are 8,433 MADA credits on Tax Lot 600 for a total MADA (base plus credits) of 47,541 square feet. Only 44,318 square feet of Tax Lot 600 is unencumbered (outside of proximal wetlands or Riparian Corridor). Therefore, there is a minimum of 3,223 square feet of development that must encroach into constrained areas on Tax Lot 600 to allow for utilization of the MADA. In total, a minimum of 46,576 square feet of development must encroach into constrained areas to allow for utilization of the MADA. These calculations are detailed in the two (2)-page document labeled Attachment O-2, a revised version of which is included with Applicant's remand submittal.

Finally, it should be noted that, although the Project qualifies for 10,995 square feet in MADA credits for developing the Path, the Project also counts the Path as part of the gross development area in a total amount of 10,995 square feet. In effect, development of the Path cancels out the MADA benefit of the Path. As such, developing the Path has a net zero effect on MADA availability for the development of private improvements on the Property. In other words, from a MADA standpoint, the private portion of the development and the degree to which that private development encroaches on natural resources is permitted at the same size regardless of whether the Path is developed.

The calculations on Attachment O-2 illustrate these points. For example, if the Path is not developed on Tax Lot 500, it lowers MADA credits by the Path disturbance area of 8,281 square feet so the adjusted MADA total for Tax Lot 500 is 112,817 square feet. However, not developing the Path also reduces the gross proposed development area by that same 8,281 square feet to 112,770 square feet, less than the adjusted total MADA. Likewise, if the Path is not developed on Tax Lot 600, it lowers MADA credits by the Path disturbance area of 2,714 square feet so the adjusted MADA total for Tax Lot 600 is 44,827 square feet. However, not developing the Path also reduces the gross proposed development area by that same 2,714 square feet to 44,595 square feet, less than the adjusted total MADA.

Based upon the above-referenced findings and the figures summarized above, the City Council should find that encroachment into the Highly Protected Riparian Corridors and Riparian-related Areas by structures and/or impervious surfaces is necessary for purposes of this subsection. LUBA's remand did not require the City to reconsider whether development in the areas of encroachment was designed and constructed to minimize adverse impacts to Riparian Corridors and Riparian-related Areas. Accordingly, the City Council should find that this standard is satisfied. Further, the City Council should conclude that this addresses LUBA's remand under this subsection.

4.13.70.02 – Easements, Easement Restrictions, Dedications, and Easement Widths

*** * * ***

d. Easement Widths – When an easement is required, the appropriate width shall be as described in "1," through "5," below. However, in no case shall riparian easements include areas containing existing buildings that are intended to remain, nor shall easements include development area assured under "4," below.

For areas with Riparian Corridors, as designated on the City's Riparian Corridors and Wetlands Map, the associated easement width and requirements shall be as follows:

*** * * ***

4. If, through the provisions of Chapter 4.11 – Minimum Assured Development Area (MADA), it is determined that encroachment into a Riparian Corridor area is necessary to allow for utilization of the Minimum Assured Development Area, any associated easement requirement shall be relaxed to the extent necessary to allow for the minimum necessary encroachment into the resource area.

RESPONSE: In the Decision, the City Council allowed development of the stormwater detention pond within the riparian easement area on Tax Lot 500 under LDC 4.13.70.02.d.4. LUBA remanded the Decision for additional findings on this issue, concluding that the City Council erred in allowing development within the easement area where the total MADA has not yet been determined. As explained above, LUBA remanded the Decision for additional findings regarding the City's allowance of MADA credits for the Path under LDC 4.11.50.02.c.2. and .4. LUBA reasoned that "without knowing the MADA for the development, the city could not determine under LDC 4.13.70.02.d.2 whether 'encroachment into a Riparian Corridor area is necessary to allow for utilization of' MADA." *League of Women Voters*, 63 Or LUBA at __ (slip op. at 16-17).

Based upon the findings set forth above in response to LDC 4.11.50.02, the City Council should find that, on remand, the MADA, including credits, exceeds the unencumbered areas of the Property. Therefore, it is necessary for the Project to encroach into a Riparian Corridor area to allow for utilization of the MADA.

The findings supporting the MADA calculations can be summarized as follows:

Applicant is not requesting MADA credits for the Path under LDC 4.11.50.02.c.2. Accordingly, the City Council should not allow any MADA credits under this subsection. Further, based upon the above-referenced findings, the City Council should find that Applicant has demonstrated with evidence and argument that the Path satisfies LDC 4.11.50.02.c.4. Accordingly, the City Council should allow 10,995 square feet of MADA credits under this subsection.

The base MADA for Tax Lot 500 is 90,968 square feet. Including the MADA credits for the Path, there are 30,130 square feet of MADA credits on Tax Lot 500, for a total MADA (base plus credits) of 121,098 square feet. Only 77,745 square feet of Tax Lot 500 is unencumbered (outside of proximal wetlands or Riparian Corridor). Therefore, there is a minimum of 43,353 square feet of development that must encroach into constrained areas on Tax Lot 500 to allow for utilization of the MADA.

The base MADA for Tax Lot 600 is 39,108 square feet. Including the MADA credits for the Path, there are 8,433 MADA credits on Tax Lot 600 for a total MADA (base plus credits) of 47,541 square feet. Only 44,318 square feet of Tax Lot 600 is unencumbered (outside of proximal wetlands or Riparian Corridor). Therefore, there is a minimum of 3,223 square feet of development that must encroach into constrained areas on Tax Lot 600 to allow for utilization of the MADA. In total, a minimum of 46,576 square feet of development that must encroach into constrained areas to allow for utilization of the MADA. These calculations are detailed in the two (2)-page document labeled Attachment O-2, a revised version of which is included with Applicant's remand submittal.

Based upon the above-referenced findings and the figures summarized above, the City Council should find that encroachment into a Riparian Corridor area is necessary to allow for utilization of the MADA. Accordingly, under this subsection, any associated easement requirement for the stormwater pond on Tax Lot 500 is relaxed to the extent necessary to allow for the minimum necessary encroachment into the resource area. The City Council should find that this standard is satisfied. Further, the City Council should conclude that this addresses LUBA's remand under this subsection.

4.13.80.01 – Use Limitations and Exceptions Within Locally Protected Wetlands

*** * * ***

c. Building, Paving, and Grading Activities – Within LPW areas, the placement of structures or impervious surfaces, as well as grading, excavation, and the placement of fill, is prohibited, except as outlined

below. Exceptions to the LPW restrictions may be made for the purposes identified in "1" and "2," below, provided they are designed and constructed to minimize adverse impacts to Wetland Functions.

*** * * ***

2. Activities outlined in sections 4.13.50.b.2, 4.13.50.b.5, and 4.13.50.b.6.

RESPONSE: In the Decision, the City Council allowed building, paving, and grading activities within Locally Protected Wetlands under this exception based upon the City Council's determination that development would be allowed in conjunction with Applicant's usage of MADA under LDC 4.13.50.b.6. Because LUBA remanded the Decision with direction that the City make new findings in response to LDC 4.13.50.b.6, LUBA effectively remanded the City's justification for allowing development under LDC 4.13.80.01.c.2.

Based upon the findings in response to LDC 4.13.50.b.6 set forth above, the City Council should find that the base MADA plus credits will exceed the unencumbered area of the Property, thus necessitating development in riparian areas under LDC 4.13.50.b.6, and by reference, LDC 4.13.80.01.c.2. Further, the City Council should conclude that this addresses LUBA's remand under this subsection.

B. Conditional Development Permit

LUBA did not remand any of the City's findings for the Conditional Development Permit. Furthermore, none of the modifications to the site plan affect the Conditional Development Permit. Therefore, the City Council is not required to adopt any additional findings for the Conditional Development Permit.

C. Tentative Subdivision Plat

LUBA did not remand any of the City's findings for the Tentative Subdivision Plat. Furthermore, none of the modifications to the site plan affect the Tentative Subdivision Plat. Therefore, the City Council is not required to adopt any additional findings for the Tentative Subdivision Plat.

D. Conditions of Approval

In the Decision, the City Council approved the Applications, subject to 41 conditions of approval, some of which had sub-conditions. The modifications to the site plan require related modifications to a few of these conditions. In the space below, Applicant proposes language for the modified conditions. Plain text is language from the original conditions, strikethrough text is stricken, and

underlined text is new. A clean version of the modified conditions is set forth in Exhibit I.

1. Consistency with Plans - Development shall comply with the narrative and plans identified in **Attachments G and H** of ~~this~~ the original Staff Report, except as modified by the conditions below and by the narrative and plans submitted on remand, or unless a requested modification otherwise meets the criteria for a Minor Planned Development Modification, Conditional Development Modification, and/or a Subdivision Modification, as applicable. Such changes may be processed in accordance with Chapters 2.3, 2.4 & 2.5 of the Land Development Code.

2. Adherence to Land Development Code standards - No change.

3. Construction Phasing - No change.

4. Department of State Lands (DSL)/Army Corps of Engineers (COE) Approvals Required - The applicant has obtained a DSL fill permit (Permit No. 32863-FP Renewal) that authorizes development on a portion of Tax Lot 500, and has provided a copy of the renewed permit to the City as part of this land use application on remand ~~(See Attachment H - Pages 153-154 and Attachment L)~~. The active DSL fill permit has an expiration date of November 22, ~~2010~~ 2013. City of Corvallis development permits may be issued for that portion of Tax Lot 500 identified within the scope of the active DSL fill permit, as long as the applicable City permits are issued prior to expiration of the active DSL fill permit. Areas of the proposed CDP/DDP that fall within the scope of the active DSL fill permit include Phases 1-A (Walgreen's), 1-B (Building A), and 1-C (Building D), and Phase 1 (associated site improvements), as defined by the dashed lines and phasing labels on the Project Phase Plan (Sheet SP1.11). Also refer to the surveyed wetlands overlay (Sheet SP1.3C), and limits of development identified on the "Wetlands Joint Permit Site Plan," dated June 15, 2004 (active DSL fill permit) as defined by upland areas and wetland impact area.

Development of the proposed public multi-use path north of Dunawi Creek, the remainder of Phase 1 (Tax Lot 500 - Phases 1-D (Building C) and 1-E (Building B) and related site improvements), and Phase 2 (Tax Lot 600) is either not authorized under the scope of the active DSL fill permit, or relies on MADA credits associated with DSL-approved wetland mitigation that has not yet been authorized. No development permits shall be issued for work beyond the scope of the active DSL fill permit and/or after expiration of the active DSL fill permit, until supplemental documentation, as required in LDC § 4.13.80.01.e has been provided to the City. Permits for development that is reliant upon DSL-approved wetland mitigation associated with MADA credits under LDC § 4.11.50.02.c.2 shall not be authorized until documentation of the approved mitigation has been provided to the City, consistent with § 4.11.50.02.c.2.

5. **Archaeological Resources** - No change.

6. **Vehicle Parking - MADA Calculations** - No change.

7. **MADA Calculations** - No change.

8. **Natural Features Protection Fencing** - No change.

9. **Barricades** - No change.

10. **Pre-Payment for Public Multi-Use Path Construction (Dunawi Creek)** - The Applicant shall deposit with the appropriate City official an amount of cash equal to the estimated cost of the construction of the Dunawi Creek multi-use path, prior to issuance of site development permits for Phases 1E, 1D, or 2, whichever occurs first. The estimated cost shall be prepared by the Applicant and approved by the City, and shall be based upon a multi-use path located within the multi-use path easement area shown on Sheet SP1.10, that meets applicable City and DSL standards for construction and alignment, and accounts for necessary excavation and fill and any other reasonably related requirements imposed by the City. The City shall place this money in the appropriate account and shall use it only for construction of the path. In the event that the City determines not to build the path, the City shall refund the money to the Applicant within a reasonable time period.

With submittal of the construction cost estimate, the Applicant shall include documentation of an approved fill permit, as required for wetland construction and wetland mitigation by the Oregon Department of State Lands ("DSL") and the United States Army Corps of Engineers ("Corps"), which documents final acceptance by these agencies of the multi-use path construction and alignment. The ~~cost of obtaining~~ application fees for any necessary permits from DSL and the Corps shall be paid by the Applicant. With submittal of the construction cost estimate, the ~~a~~Applicant shall include construction details for the multi-use path that comply with Parks Department trail construction guidelines and DSL requirements, and includes the bench, as identified on Sheet SP1.4, if permitted by DSL. Path construction shall generally follow the "Design and Development Policies" of the adopted Park and Recreation Facilities Plan (Page 5-2), and final path alignment shall occur so as to minimize impacts to the properly functioning condition of the riparian corridor/drainageway. The City shall make the final determination of when the path is to be constructed, based on Project Implementation guidelines established in City Council Policy 99-7.14.

11. **Weather Protection** - No change.

12. Fire Code – Addressing - No change.

13. Fire Code -- Water Supply and Construction Timing - No change.

14. Wheelstops for Parking Abutting Landscape Buffers - No change.

15. Exterior Lighting - No change.

16. Commercial Driveway Approaches Required - No change.

17. Pedestrian Crossings at Drive Aisles - As noted in the application narrative, and with submittal of the site development permit applications (including those required by Benton County and ODOT), the applicant shall clearly indicate that all pedestrian crossings at internal streets (private Shopping Street), drive aisles, parking aisles, and commercial driveway approaches, are constructed of paving materials that contrast with the abutting pavement used for vehicular circulation, in conformance with **LDC § 4.10.70.03.a.5.** This includes one driveway entrance on 53rd Street, one driveway entrance on Philomath Blvd. (at private Shopping Street), and two driveways that intersect with the new local street, the drive aisle crossings between Buildings E and F, the Shopping Street crossing between Buildings F and C, the drive aisle crossing between Buildings C and D, ~~and~~ the drive aisle crossing between the Walgreen's building and Building B/pedestrian plaza, and the new pedestrian crossing at the southern end of the SW 53rd Street access driveway.

18. Bicycle Parking - No change.

19. Building Setback and Conformance to Proposed Grading Plans/Detail DD - Any changes to final grading, noted on the Conceptual Grading Plans, will require a Planned Development Modification, as defined in the Planned Development Modification Criteria in LDC § 2.5.60. Since the limits of grading in areas on the south side of Dunawi Creek will generally follow the required drainageway easement line and in some cases be adjacent to the 0.2 floodway line, Building B shall be setback a minimum of 3 feet from this grading limits/easement line as shown in the applicant's revised attachment DD, in order to ensure that all development and associated construction fencing/erosion control fencing is located outside of the 0.2'-Floodway and drainageway easement area.

20. SW 53rd Street Improvements - No change.

21. County Permits - No change.

22. Hwy. 20/34 Improvements - No change.

23. <u>ODOT Permits</u> - No change.

24. <u>Local street improvements across lot 600</u> - No change.

25. <u>Public improvements</u> - No change.

26. <u>Multi-Use Path and Driveway Access to SW 53rd Street</u> - No change.

27. <u>Water Line</u> - No change.

28. <u>Sewer Services</u> - No change.

29. <u>Private Storm Drainage</u> - No change.

30. <u>Private Water Quality Facility Design</u> - No change.

31. <u>Private Stormwater Detention</u> - No change.

32. <u>Public Water Quality Facility Design</u> - No change.

33. <u>Public Stormwater Detention</u> - No change.

34. <u>Floodplain Permits</u> - No change.

35. <u>Franchise Utilities</u> - No change.

36-a. <u>Landscaping Construction and Maintenance</u> - <u>Landscape Construction Documents</u> - No change.

36-b. <u>Significant Vegetation Preservation Plan</u> - No change.

36-c. <u>Special Soil Preparation - Planting Techniques</u> - No change.

36-d. <u>Re-vegetation of Streambanks</u> - No change.

36-e. <u>Residential Landscape Screen along West Property Line</u> - No change.

36-f. <u>Parking Landscape Buffers</u> - No change.

36-g. <u>Planters Along Building Walls</u> - No change.

36-h. <u>Pedestrian Amenities</u> - No change.

36-i. <u>SW Philomath Blvd Frontage Landscaping</u> - No change.

36-j. <u>SW 53rd Street Frontage Landscaping</u> - As noted in the project narrative, the developer intends to provide enhanced landscaping along the site's SW 53rd Street frontage, in order to compensate for the reduced width parkway. With submittal of the landscape construction documents, the applicant shall include additional shrubs and groundcover within the 6-ft. parkway, and additional trees, shrubs, and groundcover within the landscaped area between the row of ~~seven (7)~~ <u>four (4)</u> vehicle parking spaces north of Building A and the sidewalk/multi-use path on SW 53rd Street. Shrubs within the 6-ft. parkway shall be of a species and size that is compliant with the vision clearance standards established by the City Engineer and Benton County.

36-k. <u>Detention Facility Landscaping</u> - No change.

36-l. <u>Inspections and Three Year Maintenance Guarantee</u> - No change.

36-m. <u>Vision Clearance Areas and Plantings</u> - No change.

36-n. <u>Tree Spacing</u> - No change.

36-o. <u>Three-Year Maintenance Guarantee Release</u> - No change.

37. <u>Signs</u> - No change.

38. <u>Vision Clearance</u> - No change.

39-a. <u>Final Plat - ROW Dedication/Easements/Reservation</u> - No change.

39-b. <u>Final Plat Easements - Public Pedestrian and Bicycle Access</u> - No change.

39-c. <u>Final Plat Tract and Easement (Shopping Street)</u> - No change.

39-d. <u>Final Plat Tract and Easement (Drainageway and Natural Features Preservation)</u> - With submittal of the final plat, the property owner shall include in the plat declarations, a dedication for the proposed Drainageway and Natural Features Tracts ("Lot 550" and "Lot 601"). The declaration language shall specify the purpose, ownership, and party responsible for the maintenance of the Tracts. The declarations shall also grant to the City of Corvallis, a public drainageway easement within the Tracts, as specified per **LDC § 4.13.70.02.d.**

A minimum drainage way easement of 50-feet shall be provided along the north side of Dunawi Creek. On the south side of Dunawi Creek the easement will need to follow the grading limits line as shown on sheet SP1.5. Since the limits of grading

will be the easement line and in some cases the 0.2 floodway line, Building B shall be setback 3 feet from the grading limits/easement line as shown in the applicant's revised attachment DD. A public drainage easement will also be needed under or through the private creek crossing at the east end of the site up to SW 53rd Street. The easement will need to outline the private maintenance responsibilities of the creek crossing associated with the site access.

39-e. Final Plat - Franchise Utility Easements - No change.

39-f. Final Plat Reciprocal Access Easement - No change.

39-g. Final Plat - Public Sewer Easement - No change.

39-h. Final Plat - Easements - No change.

39-i. Final Plat - Easement for Public Wet Pond - No change.

39-j. Final Plat - Common Landscape Maintenance Easement - No change.

39-k. Final Plat Submittal Required - No change.

39-l. Final Plat - Electronic Version of Final Plat - No change.

40. Additional Floodplain Study and Revisions to Detailed Development Plan - With submittal of the site excavation and grading permit application, where grading is proposed within the pre-development floodway fringe, the applicant shall provide a revised floodplain study and site grading plans which demonstrates that the post-development floodplain elevation on adjacent properties is no greater than the pre-development condition. The post-development floodplain boundary shall not expand horizontally beyond the limits of the pre-development floodplain boundary as it currently exists on adjacent properties. The applicant may choose to reduce or eliminate building area associated with Phases 1D (Building C), 1E (Building B), and Phase 2, as well as associated vehicle parking, if it is necessary to accommodate flood water volume and meet this condition of approval. The ~~Planning Commission~~ City Council finds that if building area is reduced in order to comply with this condition, the minimum Floor Area Ratio (FAR) requirement of 0.25, as specified in LDC § 3.19.40.03, may be reduced below 0.25. If this occurs, the ~~Planning Commission~~ City Council finds that a compensating benefit has been provided for the variation to FAR in the form of no net impact upon adjacent properties due to development within the floodway fringe.

41. Floodplain Impacts Indemnification - No change to version of this condition modified by City Council in the Decision.

VI. Conclusion.

Subject to adoption of findings consistent with this supplemental narrative, the City Council should approve the CDP/DDP and Variation #1 on remand and determine that no further action is necessary to address the remaining Variations, the Conditional Development Permit, and the Tentative Subdivision Plat.

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

LEAGUE OF WOMEN VOTERS OF CORVALLIS
and ELIZABETH FRENKEL,
Petitioners,

vs.

CITY OF CORVALLIS,
Respondent,

and

BRET FOX and THOMAS FOX
PROPERTIES, LLC,
Intervenors-Respondents.

LUBA No. 2011-002

FINAL OPINION
AND ORDER

Appeal from City of Corvallis.

Corinne C. Sherton, Salem, filed the petition for review and argued on behalf of petitioners. With her on the brief was Corinne C. Sherton PC.

David E. Coulombe, Corvallis, filed a response brief and James Brewer, Corvallis, argued on behalf of respondent. With him on the brief was Fewel, Brewer & Coulombe.

Michael C. Robinson, Portland, filed a response brief and Seth J. King argued on behalf of intervenors-respondents. With him on the brief was Perkins Coie LLP.

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

REMANDED 06/28/2011

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

Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT A (47 of 112)

EXHIBIT A

Opinion by Ryan.

NATURE OF THE DECISION

Petitioners appeal a decision by the city approving a commercial planned development.

REPLY BRIEF

Petitioners move for permission to file a reply brief to respond to new matters raised in the city's response brief. The reply brief is allowed.

FACTS

The subject property is comprised of three tax lots, 400, 500, and 600, that are zoned Mixed Use Community Shopping (MUCS). Tax lot 400 lies immediately to the north of tax lot 500 and to the east of tax lot 600. All of tax lot 400, and approximately the northern half of tax lots 500 and 600 are designated as a protected wetland, protected riparian corridor, and/or a protected floodplain on the city's comprehensive plan maps. Dunawi Creek runs east to west along the northern part of tax lot 600 and along approximately the middle of tax lot 500.

Intervenor applied to develop approximately 179,319 square feet on the 6.64 acres comprising tax lots 500 and 600, including 43,000 square feet of retail and restaurant uses in seven buildings to be located on tax lot 500, and other transportation and stormwater infrastructure to be located on portions of tax lots 500 and 600. As part of the development intervenor also proposed to construct a 12-foot wide path within a 45-foot wide easement running east and west across tax lots 500 and 600, to the north of Dunawi Creek, within the protected wetland/riparian corridor/floodplain. The planning commission approved the applications, and petitioners appealed that decision to the city council. The city council approved the applications, and this appeal followed.

FIRST ASSIGNMENT OF ERROR

For nonresidential properties that are designated as protected wetlands, riparian corridors, or floodplains, Corvallis Land Development Code (LDC) 4.11.50.02.b provides a Minimum Assured Development Area (MADA) that is calculated by multiplying the acreage of the site by the MADA per acre that is shown in LDC 4.11.50.02 Table 4.11-2 – "Determining Minimum Assured Development Area (MADA) for Nonresidential Zones." Under LDC 4.11.50.02.b. and Table 4.11-2, the MADA for the site equaled 90,968 square feet. In addition, LDC 4.11.50.02.c allows the MADA to be increased (MADA credits) in certain circumstances beyond what is calculated according to LDC 4.11.50.02.b, including as relevant here:

> "c. **Additional Allowances for Determining the Minimum Assured Development Area of Residential and Nonresidential Sites** - The Minimum Assured Development Area calculated in Section 4.11.50.02.a and Section 4.11.50.02.b may be increased above the base MADA by adding the areas determined by the provisions below:
>
> " * * * * *
>
> "2. The area of Wetland mitigation that is required by the Department of State Lands and/or the U.S. Army Corps of Engineers when infrastructure must be extended through a Wetland. The area credited shall be based upon the written requirements of the associated permit approval of the Department of State Lands and/or the U.S. Army Corps of Engineers, whichever is greater;
>
> " * * * * *
>
> "4. Trails required by the Corvallis Transportation Plan or the City of Corvallis Park and Recreation Facilities Plan, or necessary to provide public access to or through designated open space areas." (Bold in original.)

The city allowed MADA credits for the development so that the total of developable area (MADA plus MADA credits) of the site equaled 180,728 square feet. The city adopted findings that determined that the proposed path running from east to west along tax lots 500 and 600 was eligible for MADA credits totaling 24,776 square feet: 12,388 square feet for

the path itself, and 12,388 square feet for the area of wetland and riparian area mitigation that the city concluded would be required to offset the effects of the path on the wetlands and riparian areas.[1]

In their first subassignment of error under the first assignment of error, petitioners argue that the city's findings are inadequate to explain why the city determined that the path qualifies for MADA credit under LDC 4.11.50.02.c.4, *i.e.*, either that the path is "required by" the city's transportation plan or Park and Recreation Facilities Plan (PRFP), or that it is "necessary to provide public access to or through designated open space areas." In their second subassignment of error, petitioners argue that the city's findings are inadequate to explain why the city awarded 12,388 square feet of MADA credit under LDC 4.11.50.02.c.2 for a mitigation area for constructing the path.

The city responds initially that petitioners failed to raise the issues presented in the first assignment of error, and under ORS 197.763(1) and ORS 197.835(3) are precluded from raising the issues for the first time at LUBA. In response to petitioners' first assignment of error, the city maintains that no participant below ever raised an issue regarding whether the path met the requirements for an award of MADA credits under LDC 4.11.50.02.c.4 and .2.

---

[1] The city adopted the following findings:

> "[A party] contended that the number and extent of MADA credits associated with the development was 'especially troubling' and not consistent with the intent of the LDC. The Council finds that [intervenor] presented substantial evidence in the Application that the Project qualified for MADA credits. The Council further finds that City staff properly applied the provisions of the LDC in calculating credits. * * *
>
> " * * * * *
>
> "[A]s part of the complete land use applications filed, the applicant has provided calculations which indicate that the base MADA permitted in the underlying * * * zone, as well as the additional MADA credits warranted under LDC 4.11.50.02.c, contribute to a total MADA allowance of 180,728 square feet, and that the proposed development plan impacts approximately 179,319 square feet of the development site. The Council finds that the proposed development area falls within the MADA allowance for the site." Record 80-81, 84.

In their reply brief, petitioners respond that the issue of compliance with LDC 4.11.50.02.c.4 and .2 was raised at Record 270, where a participant stated that MADA credits should not be awarded for the path under "LDC 4.11.50.02.c." In *Lucier v. City of Medford*, 26 Or LUBA 213, 216 (1993), we held that in order to challenge the adequacy of adopted findings, a petitioner must challenge the proposal's compliance with a relevant criterion during the local proceedings. We explained:

> "The references in ORS 197.763(1) and 197.835[3] to 'issues' are references to issues concerning the substantive and procedural requirements that must be satisfied in rendering the challenged decision. Therefore, if a petitioner wishes to argue that a particular approval criterion or procedural requirement is not satisfied by a proposed land use action, the petitioner must raise the 'issue' of compliance with that criterion below. However, contrary to respondent's suggestion, a petitioner is *not* required to anticipate the actual findings a local government ultimately adopts in support of its final decision or question the adequacy of the evidence accepted into the record to support such findings.
>
> "In order to preserve the right to challenge at LUBA the adequacy of the adopted findings to address a relevant criterion or the evidentiary support for such findings, a petitioner must challenge the proposal's compliance with that criterion during the local proceedings. Once that is done, the petitioner may challenge the adequacy of the findings and the supporting evidence to demonstrate the proposal complies with the criterion. The particular findings ultimately adopted or evidence ultimately relied on by the decision maker need not be anticipated and specifically challenged during the local proceedings." (Emphasis in original.)

We agree with petitioners that the issue of whether the path qualifies for an award of MADA credits under LDC 4.11.02.50.c.4 and .2 was raised at Record 270 with sufficient specificity to allow petitioners to argue that the city's findings regarding the proposal's compliance with LDC 4.11.50.02.c.4 and .2 are inadequate. *See also Columbia Riverkeeper v. Clatsop County*, 58 Or LUBA 190, 213 (2009) (where issues regarding compliance with approval criteria were raised below, petitioners may challenge the adequacy of findings adopted regarding those approval criteria).

The city and intervenor next respond by pointing to findings that the city adopted that the path should be allowed to be developed in riparian and wetland areas under LDC

4.13.50.b.2 and LDC 4.13.80.01.c.2, and in order to comply with LDC block perimeter and pedestrian connection standards, and argues that those findings suffice to explain the path qualifies for MADA credits under LDC 4.11.50.02.c.4. Record 72-73. However, LDC 4.11.50.02.c.4 requires the city to address whether MADA credits for the path and for mitigation for the path are justified because the path is "required by" the city's PRFP or transportation plan or "necessary to provide public access to or through dedicated open space," and LDC 4.11.50.02.c.2 requires the city to address whether MADA credits for mitigation for allowing the path are justified because the mitigation area is required by the Department of State Lands (DSL) or Army Corps of Engineers (ACOE). Those criteria involve different considerations than the considerations that are required in order for the city to determine whether the path should be allowed in a riparian and wetland area under LDC 4.13.50.b.2 and LDC 4.13.80.01.c.2, criteria which we discuss below in our resolution of the second assignment of error. The findings at Record 72-73 do not contain any adequate explanation by the city for why the path qualifies for MADA credit under LDC 4.11.50.02.c.

The first assignment of error is sustained.

SECOND ASSIGNMENT OF ERROR

A. Introduction

As noted above, the path crosses both a wetland and a riparian corridor. LDC Chapter 4.13 contains provisions that are intended to preserve and protect riparian corridors and wetlands. LDC 4.13.10. To that end, LDC 4.13.50.b prohibits building, paving, and grading in riparian corridors and riparian-related areas, except for certain specified purposes and only if the building, paving or grading is designed and constructed to minimize adverse impacts to the riparian area:

> "**Building, Paving, and Grading Activities** - The placement of structures or impervious surfaces, as well as grading, excavation, and the placement of fill, are prohibited. Exceptions to the drainageway restrictions may be made for the purposes identified in items 1-7 of this Section, provided they are

designed and constructed to minimize adverse impacts to Riparian Corridors and Riparian-related Areas.

" * * * * *

"2. The location and construction of streets, utilities, bridges, bicycle, and pedestrian facilities within Highly Protected Riparian Corridors and Riparian related Areas must be deemed *necessary to maintain a functional system* by the City Engineer. This Code, City Transportation and Utility Master Plans, and other adopted City plans shall guide this determination. The design standards of Chapter 4.0 - Improvements Required with Development shall be applied to minimize the impact to the subject area[.]" (Bold in original, italics added.)

A similar provision, LDC 4.13.80.01.c prohibits building, grading, and paving activities in wetlands except for specified purposes and only if the building paving or grading is designed and constructed to minimize adverse impacts to the wetlands:

"**Building, Paving, and Grading Activities** - Within LPW areas, the placement of structures or impervious surfaces, as well as grading, excavation, and the placement of fill, is prohibited, except as outlined below. Exceptions to the LPW restrictions may be made for the purposes identified in * * * '2,' below, provided they are designed and constructed to minimize adverse impacts to Wetland Functions.

" * * * * *

"2. Activities outlined in sections 4.13.50.b.2, 4.13.50.b.5, and 4.13.50.b.6." (Bold in original.)

B. Minimize Adverse Impacts

The decision approved construction of a "multi-use path" within the 45-foot wide easement area shown on SP1.10, the plan sheet that was included in intervenor's application, which shows a 12-foot wide path that meanders its location within a 45-foot wide easement that runs east to west across the property. Supplemental Record 1379.[2] The decision also imposed a condition of approval, Condition 10, which in part requires the path to be

[2] The PRFP defines "multi-use path" as a "paved path entirely separated from the roadway and used by pedestrians, roller bladers, joggers and cyclists." PRFP Glossary 2.

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constructed in accordance with the city Parks and Recreation Facilities Plan (PRFP) Design and Development Policies:

> "With submittal of the construction cost estimate, the Applicant shall include documentation of an approved fill permit, as required for wetland construction and wetland mitigation by [DSL] and [ACOE], which documents final acceptance by these agencies of the multi-use path construction and alignment. * * *
>
> "With submittal of the construction cost estimate, the applicant shall include construction details for the multi-use path that comply with Parks Department trail construction guidelines and DSL requirements, and includes the bench, as identified on Sheet SP1.4, if permitted by DSL. Path construction shall generally follow the 'Design and Development Policies' of the adopted [PRFP] (Page 5-2), and final path alignment shall occur so as to minimize removal of significant riparian area and to minimize impacts to the properly functioning condition of the riparian corridor/drainageway. * * *" Record 15.

In the first subassignment of error and in a portion of their second subassignment of error, we understand petitioners to argue that the city erred in approving the path to be located in riparian and wetland areas because there is not substantial evidence in the record to support a determination that the path will be "designed and constructed to minimize adverse impacts" to the riparian areas and wetlands. According to petitioners, the city could not determine that adverse impacts are minimized without knowing what the use of the path will be, its exact location, and its exact design, and according to petitioners those features are not known. In support of their argument, petitioners point out that the development plan that was approved by the final decision contains a notation that the "Exact Path Location TBD." Supplemental Record 1365. Petitioners also point to findings adopted by the city that specifically conclude that the city's decision to approve the proposed planned development that includes the path does not approve the precise design and construction materials for the path. Record 74. Petitioners also argue that in imposing Condition 10, the city improperly deferred finding compliance with LDC 4.13.50.b and 4.13.80.01.c to a later proceeding that does not require notice and an opportunity for hearing.

Respondents respond, and we agree, that there is substantial evidence in the record to support the city's conclusion that as conditioned the path will minimize adverse impacts to the riparian areas and wetlands under LDC 4.13.50.b and 4.13.80.1.c. First, the city approved a planned development that proposes locating a "multi-use path," a term that is defined in the PRFP, within the 45-foot wide easement area shown at Supplemental Record 1379, and required that path to be designed and constructed in conformance with the PRFP design guidelines for multi-use paths. Although petitioners quote some of the guidelines and policies, petitioners do not explain why a multi-use path located within the easement area that is designed and constructed in accordance with those policies will have more than a minimal adverse impact on the protected areas.

We also agree with respondents that in imposing condition 10 the city did not defer making a determination of compliance with LDC 4.13.50.b and 4.13.80.1.c to a future proceeding. Rather, in imposing condition 10, the city approved the path in a location within the 45-foot easement area, but allowed intervenor the flexibility to construct the path in the location within that easement area that minimizes adverse impacts to the protected area.

C. Necessary To Maintain a Functional System

1. Motion to Strike/Motion to Take Official Notice

As explained above, one of the exceptions to the prohibition on development in riparian and wetlands areas is for "[t]he location and construction of * * * bicycle, and pedestrian facilities within Highly Protected Riparian Corridors and Riparian-related Areas" that are "deemed necessary to maintain a functional system by the City Engineer." LDC 4.13.50.1.b.2. The city adopted findings that the path is "necessary to maintain a functional system:"

> "[League of Women Voters of Corvallis] LWVC conceded that both the City's Trails Master Plan and [PRFP] depict a trail in this general location; however, LWVC contends that this trail is conceptual only and was adopted prior to adoption of the [Natural Features Inventory] NFI. As such, LWVC contends that the trail designation did not take into account the wetlands

identified on the Property in the NFI. City staff responded by testifying that another adopted plan, the West Corvallis/North Philomath Plan ('WCNPP') identifies the Trail location inside of the natural features, thus showing a clear intent to route the Trial there notwithstanding the existence of the resources. Further City staff cited to specific WCNPP policies that support the Trail location in stream corridors as follows:

"OS-I-1:

"Work with private landowners to obtain dedications of open space lands for trails and preservation of natural systems.

"OS-I-7

"Where feasible, incorporate trails as part of stream corridors *as identified on the Circulation Plan, Figure VI-1.*

"OS-I-9

"Locate Trails at the edge of riparian buffer zones to minimize impacts on the natural functioning of the stream corridor and to preserve stream capacity.

"The Council concurs with the LWVC that standing alone, the conceptual trails depicted in the Trails Master Plan and the [PRFP] may not justify this location for the trail. However, the Council finds that there is additional substantial evidence in the record that supports the proposed Trail location as set forth in the WCNPP.

"The Council concurs with City staff findings that the Trail is 'necessary' in this location to 'maintain a functional trail system' as depicted in the adopted WCNPP and as further conceptually depicted in the Trails Master Plan and the [PRFP]. The Council further finds that each of the cited plans was approved by the Council through a public process." Record 72-73 (Emphasis added.)

Petitioners attach to the petition for review a copy of Figure VI-1 from the Circulation Plan that is part of the West Corvallis/North Philomath Plan (WCNPP) and that is referenced in the findings quoted above. Petition for Review App. 90. Figure VI-1 is not part of the record. In its response brief, intervenor moves to strike App. 90 and the portions of the petition for review at pages 16-17 that discuss Figure VI-1 and other provisions of the WCNPP that are not a part of the record. After the response brief was filed, petitioners filed a motion for LUBA to take official notice under Oregon Evidence Code (OEC) 202(7) of

1 excerpts from the WCNPP that are attached to petitioners' motion, including Figure VI.[3]
2 Intervenor objects to the motion to take official notice to the extent that petitioners
3 improperly seek to use the attached excerpted provisions of the WCNPP to provide evidence
4 that rebuts the city engineer's conclusion that the path is "necessary to maintain a functional
5 system" under LDC 4.13.50.b.2.[4]

6 Petitioners respond, and we agree, that the WCNPP is a part of the Corvallis
7 Comprehensive Plan (CCP) and under OEC 202(7) is subject to official notice. We disagree
8 with intervenor that petitioners seek to use Figure VI-1 to provide evidence to rebut the city's
9 determination about the necessity of the path to maintain a functional system. As discussed
10 below, petitioners' argument based on Figure VI-1 is essentially a legal argument: in
11 determining whether a path must be located in a riparian corridor in order to maintain a
12 functional trail system, as "guided by" city plans presumably including the WCNPP, what
13 legal significance should be attached to the fact that the relevant plans depict a path in the
14 riparian corridor but describe the depicted path or its location as "conceptual." The answer
15 to that question depends on the city's interpretation of various provisions of the LDC and the
16 CCP, including the WCNPP. The WCNPP has been adopted as part of the CCP and we may
17 take official notice of it. Accordingly, petitioners' motion to take official notice is granted
18 and intervenor's motion to strike portions of the petition for review is denied.

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[3] OEC 202(7) provides that LUBA may take official notice of "[a]n ordinance, comprehensive plan or enactment of any county or incorporated city in this state[.]"

[4] LUBA's review is limited by ORS 197.835(2)(a) to the record of the proceeding below, except in instances where an evidentiary hearing is authorized by ORS 197.835(2)(b). Thus LUBA may not take official notice of facts within documents that are subject to official notice under OEC 202, if notice of those facts is requested for an adjudicative purpose (i.e., to provide evidentiary support or countervailing evidence with respect to an applicable approval criterion that is at issue in the challenged decision). *Friends of Deschutes County v. Deschutes County*, 49 Or LUBA 100, 103-04 (2005); *Tualatin Riverkeepers v. ODEQ*, 55 Or LUBA 688, 692 (2007).

1 **2. Necessary to Maintain a Functional System**

2 As explained above, the city found that the exception to the general prohibition on
3 development in protected areas was allowed because the path is "necessary to maintain a
4 functional system" under LDC4.13.50.b.2 and LDC 4.13.80.01.c.2. In a portion of their
5 second subassignment of error, we understand petitioners to argue that the city misconstrued
6 applicable law in relying on portions of the WCNPP to conclude that the path is "necessary
7 to maintain a functional system."[5] According to petitioners, Figure VI from the circulation
8 plan that is a part of Chapter 6 of the WCNPP states that the trail locations are "conceptual
9 and may vary as more detailed plans are drafted," suggesting that it may not be necessary to
10 locate the trail within the riparian area at all, and therefore it was error for the city to rely in
11 part on those conceptual trail locations to conclude that locating the path in the riparian area
12 is "necessary to maintain a functional system[.]"

13 Intervenor responds that the city's interpretation of its land use regulations, including
14 LDC 4.13.50.b.2 and the WCNPP is required to be affirmed under ORS 197.829(1) because
15 the city's interpretation of the relevant provisions is plausible. *Siporen v. City of Medford*,
16 349 Or 247, 259, 243 P3d 776 (2010). It is not entirely clear to us what the city council
17 understood the label "conceptual" to mean, but it apparently disagreed with petitioners that
18 the "conceptual" label means that the plan maps have no bearing on whether the plan
19 anticipates that the path will be located in the riparian area in order to provide a functional
20 trail system. The city clearly believes that plan maps depicting a path within the area of a
21 riparian corridor support a conclusion that a path must be located somewhere in the corridor
22 in order to provide a functional trail system. We cannot say that view is implausible or
23 inconsistent with any relevant plan or code text. The label "conceptual" could plausibly

[5] The WCNPP has been adopted as a part of the city's comprehensive plan.

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mean that the exact location *within* the riparian corridor has yet to be determined, not that the plans are indifferent as to whether the path is located inside or outside the riparian corridor.

D. Development Associated with MADA

LDC 4.13.50.b.6 provides that one of the seven enumerated purposes that the city may rely on to allow development in a protected area is for "[d]evelopment associated with [MADA] that would be allowed in accordance with [LDC Chapter 4.11] * * *." In a subassignment of error petitioners argue that the city erred in approving MADA credits for the path and for that reason, LDC 4.13.50.b.6 cannot provide a basis for allowing development in protected areas.

It is unclear from the city's decision whether the city relied on LDC 4.13.50.b.6 to allow development in the protected areas, but one of the incorporated findings at Record 756 suggest that the city relied at least in part on that subsection. If that is the case, then we agree with petitioners that without findings justifying the award of MADA credit under LDC 4.11.50.02(c), the city may not rely on LDC 4.13.80.02.b.6 to allow development in the protected areas.

The second assignment of error is sustained, in part.

THIRD ASSIGNMENT OF ERROR

LDC 4.13.80.01.e provides:

> "**Department of State Lands and US Army Corps of Engineers Notification Required** - In addition to the restrictions and requirements of this Section, all proposed development activities within any Wetland are also subject to Oregon Department of State Lands (DSL) and US Army Corps of Engineers standards and approval. Where there is a difference, the more restrictive regulation shall apply. In accordance with ORS 227.350, as amended, the applicant shall be responsible for notifying DSL and the Corps of Engineers whenever any portion of any Wetland is proposed for development.
>
> "No application for development will be accepted as complete until documentation of such notification is provided. Additionally, no site development permits, such as Grading and Excavation Permits, Public Improvements by Private Contract Permits (PIPC), and Building Permits,

shall be issued until the City has received verification of DSL and Corps of Engineers approval for development on the subject site." (Bold in original).

In their third assignment of error, petitioners point to the current DSL fill and removal permit for tax lot 500, which contains the following condition (condition 8):

"**Deed Restriction Recording.** Before disturbance of any wetland areas, deed restrictions, for the avoided wetlands on tax lot 400 in its entirety * * * and the proposed avoided PFO wetlands on tax lot 500 (202,653 square feet) as shown on Sheet 1 of 1 dated November 16, 2004 shall be recorded with the County Assessor's office." Record 350-51 (bold in original.)

According to petitioners, LDC 4.13.80.01.e prohibits the city from approving MADA credits for the path and prohibits the city from approving the path until condition 8 has been satisfied.

Respondents respond, and we agree, that LDC 4.13.80.01.e merely requires intervenor to notify DSL of the development application in order for the city to deem the planned development application complete, but it does not prohibit the city from approving the application for a planned development on tax lot 500 or the location of the path within the wetlands prior to DSL approval of a new fill and removal permit that approves the path, as long as that approval is conditioned on receiving DSL permits prior to the issuance of any site development permits. Here, the city imposed a condition of approval requiring DSL approval of development activities on tax lot 500 prior to the issuance of site development permits.[6] That condition prevents the city from issuing site development permits for the

[6] Condition 4 provides in relevant part:

"Development of the proposed public multi-use path north of Dunawi Creek, the remainder of Phase I * * * and Phase 2 * * * is either not authorized under the scope of the active DSL fill permit or relies on MADA credits associated with DSL approved wetland mitigation that has not yet been authorized. No development permits shall be issued for work beyond the scope of the active DSL fill permit and/or after expiration of the active DSL fill permit, until supplemental documentation, as required in LDC 4.13.80.1.e has been provided to the City. Permits for development that is reliant on DSL-approved wetland mitigation associated with MADA credits under LDC 4.11.50.02.c.2 shall not be authorized until documentation of the approved mitigation has been provided to the City, consistent with LDC 4.11.50.02.c.2." Record 13.

path until DSL has issued a new wetland fill and removal permit for the area of the path and until DSL has approved the mitigation area, if any, that will be required for the path. Petitioners do not challenge condition 4 or otherwise explain why condition 4 is inadequate to ensure that no site development of the path will occur until DSL has approved the development.

The third assignment of error is denied.

FOURTH ASSIGNMENT OF ERROR

Intervenor proposes to locate above-ground stormwater detention facilities on a portion of tax lot 600 that is currently within the 100-year floodplain, and on a portion of tax lot 500 within the riparian easement area.[7] Supplemental Record 1378.

A. 10-Year Floodplain

LDC 4.0.130.b.1 requires in relevant part that stormwater "[d]etention or retention facilities shall be located outside the 10-year Floodplain or the riparian easement area, whichever is greater." In their fourth assignment of error, petitioners argue that the city's findings fail to address petitioners' argument below that the 10-year floodplain has not been mapped, and without that mapping, the city could not determine whether the facilities will be located outside of the 10-year floodplain boundary.

Respondents point to the city's findings that "[t]he Application includes substantial evidence explaining how the proposed stormwater facilities are consistent with applicable provisions of the LDC, including LDC 4.0.130." Record 75. Respondents explain that the application includes an illustration showing that after development, the stormwater detention facility on tax lot 600 will be located outside the boundaries of the 100-year floodplain, and explain that the 100-year floodplain includes the 10-year floodplain. Supplemental Record

[7] LDC 4.13.70.02.d.2 Table 4.13-2 provides that the riparian easement area is 50 feet from the top of the bank of Dunawi Creek.

1378.[8] We agree with respondents that the city's findings are adequate to explain why the city concluded that the stormwater facilities comply with LDC 4.0.130 and that the evidence in the record supports that conclusion. Supplemental Record 1378 shows that the storm water facility to be located on tax lot 600 is entirely outside of the post-development 100-year floodplain, and is therefore necessarily outside of the 10-year floodplain.[9]

B. Riparian Easement Area Encroachment

LDC 4.13.70.02.d.2 Table 4.13-2 provides that the riparian easement area is 50 feet from the top of the bank of Dunawi Creek. LDC 4.13.70.02.d.4 provides:

> "If, through the provisions of Chapter 4.11 - Minimum Assured Development Area (MADA), it is determined that encroachment into a Riparian Corridor area is necessary to allow for utilization of the Minimum Assured Development Area, any associated easement requirement shall be relaxed to the extent necessary to allow for the minimum necessary encroachment into the resource area."

Thus LDC 4.13.70.02.d.4 allows encroachment of development into the 50-foot riparian easement area in order for development to meet allowed MADA.

Some of the incorporated findings suggest that the city may have allowed development of the stormwater detention facility within the riparian easement area on tax lot 500 under LDC 4.13.70.02.d.4. Record 680. In a portion of their fourth assignment of error, we understand petitioners to contend that if their first assignment of error is sustained, the city also erred in relying on LDC 4.13.70.02.d.4 to allow development within the riparian easement area where the total MADA has not yet been determined. We agree with petitioners that without knowing the MADA for the development, the city could not

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[8] According to the plan at Supplemental Record 1378, the detention pond on tax lot 600 will be located outside of the *post-development* 100-year floodplain, which is north of the pre-development 100-year floodplain due to construction of a new culvert.

[9] As the city explains "[a] 100-year Flood Plain indicates the maximum level of flooding expected to occur every hundred years; in other words, there is a 1% chance of maximum level flooding each year. In a 10-year Flood Plain there is a 10% chance every year of maximum level flooding." Response Brief of City 28, n 9.

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1 determine under LDC 4.13.70.02.d.2 whether "encroachment into a Riparian Corridor area is
2 necessary to allow for utilization of" MADA.
3 The fourth assignment of error is sustained, in part.
4 The city's decision is remanded.

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CHAPTER 6.0 PEDESTRIANS

6.10 INTRODUCTION

Corvallis recognizes the value of pedestrian facilities in a successful transportation system. In Corvallis, this is accomplished through a system of public sidewalks, some dating to the early 1900s; maintenance of walkways along improved streets and between neighborhoods; and well-planned trails. Pedestrian signal facilities are installed with new traffic signals at intersections. The quality of this system is made apparent by the 1990 census data showing Corvallis with the fourth highest percentage (13%) of people walking to work among Oregon cities, behind Monmouth, Lincoln City, and Ashland.

Policies supporting safe and convenient pedestrian facilities have been a part of the Comprehensive Plan since its adoption in 1980. The Land Development Code implements these policies through **Section 4.0.40 - Pedestrian Requirements** (included as Appendix A of this section of the Transportation Plan) and others. The **Trails Master Plan**, adopted by the City Council as an element of the Comprehensive Plan on November 19, 1990, identifies existing and needed pedestrian and multi-use trails within Corvallis and is incorporated with this Transportation Plan by reference.

6.20 VISION

The vision for the pedestrian network in Corvallis is to provide safe, convenient access to all parts of the city by foot. The pedestrian network should enable people to get to locations of business, work, or play by a reasonably direct route or to take less direct but more scenic routes if that is their desire.

Achieving this vision will result in reduced reliance on the automobile, ensure neighborhood livability, and preserve the environment by providing open space and reducing air pollution. Encouraging development of a pedestrian-friendly, attractive community will also promote economic vitality.

6.30 EXISTING CONDITIONS

Corvallis' existing pedestrian system comprises 258 miles of sidewalks, with a present dollar value of approximately $34 million, and six miles of developed pedestrian trails. Pedestrians frequently share use of off-street bike paths also. Figure A-4 Trails Master Plan in Appendix A identifies the locations of existing as well as future trails in Corvallis and surrounding areas. Standards for pedestrian and multi-use trails are discussed in detail in the adopted **Trails Master Plan**. The 1990 census showed Corvallis to have the fourth highest rate of commuters who walk to work in Oregon.

Many areas in Corvallis are highly attractive to pedestrians. Many of these areas have a mix of uses that allows pedestrians to accomplish several tasks within a short enough distance that walking is

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FIGURE A - 4

TRAILS MASTER PLAN

CITY OF CORVALLIS
COMMUNITY DEVELOPMENT DEPARTMENT
ENGINEERING DIVISION - MAPPING/GIS SERVICES

DATE 9/1/96
DRAWN BY K. LOSO
FIG. A - 4

TRAILS MASTER PLAN

City of Corvallis

EXHIBIT C

south of Alexander Avenue, and 9th Street between Garfield Avenue and Circle Boulevard are examples. Strategically placed pedestrian-activated signals and/or pedestrian refuge islands may be appropriate remedies in some locations. Multiple auto accesses to parking lots and businesses in such high use areas can cause conflicts for pedestrians, and the large parking lot expanses can also discourage walking.

Discontinuous sidewalks also exist, even in some locations developed to City standards. These are generally not along collector or arterial streets, but in subdivisions where all lots have not been developed. Sidewalks are installed following house construction to avoid damage from heavy construction equipment and the resulting need for replacement.

Other impediments to walking include areas, primarily in subdivisions built in the 1960s and 1970s, where out-of-direction travel is required to get to neighborhood activity centers and shopping centers where little concern was given to pedestrian-friendly design concepts. The Land Development Code provides for walkways connecting cul-de-sacs to other streets or bisecting particularly long blocks, but the process for identifying where they are required is discretionary.

Lack of park strips along some streets can also discourage walking. Park strips provide separation from automobiles that is particularly important along arterials such as 9th Street and Circle Boulevard. Since park strips allow driveway cuts to occur between the roadway and the sidewalk, maintaining a consistent grade and surface for the sidewalk, leaving park strips out of any development can be problematic for elderly or handicapped persons.

Although not a facility need, **land use** can play an important role in the pedestrian system. As indicated above, areas of mixed-use can be very attractive to pedestrians. Existing such areas were generally developed before World War II when the automobile played less of a role in society. These areas frequently have a gridded street network, buildings oriented so that pedestrian access from streets is convenient, and smaller parking areas. Except in areas already nearly fully developed, Corvallis has no zoning designations that allow a mixture of uses, and has no code provisions requiring buildings to be oriented to the street for ease of pedestrian access. Pedestrian facilities and connections are required to be installed, but frequently they must traverse extensive automobile parking areas. An important need is to develop a mixed-use zoning designation that can be applied to undeveloped areas in the City and within the UGB.

6.40 FUTURE CONDITIONS

With the July, 1993 adoption of the Land Development Code, which implements pedestrian requirements of the State Transportation Planning Rule, the pedestrian network in Corvallis should show continued improvement. As development occurs, safe, convenient pedestrian facilities providing connectedness between developments and activity centers throughout the city are required by the code. Examples include sidewalks on arterial, collector, and local streets, and in other locations where direct, convenient access can be provided. Implementation of the trails plan through construction of trails along drainageway dedications and other identified trail corridors (see Figure

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A-4) will also contribute to this system. Reconstruction of substandard arterial and collector streets also requires installation of pedestrian facilities.

An issue that has raised some concern in the community is the timing of sidewalk installation in new developments. The Land Development Code ties their installation to parcel development, generally the issuance of a building permit. This has led to locations where sidewalks are discontinuous, creating problems and sometimes hazards for pedestrians. This issue can be addressed in a number of ways.

First, Corvallis Municipal Code, Section 2.04 - Sidewalk Maintenance, Repair, and Liability requires the City Manager to report to City Council no less than once each year "concerning sidewalks construction, repair, and alteration required within the City for the public convenience and safety." Enforcement, however, is through formation of Local Improvement Districts, with a potential for Bancroft Bonding to spread costs over time. This may no longer be the reasonable means of enforcement, given Measure 5 constraints. Some other mechanism of enforcement may be needed for this section of the Municipal Code to be used successfully to ensure continuity of sidewalks in built areas.

A second method of addressing this issue relates to developing areas. Sidewalks could be considered a part of the public improvements that are required to be installed or secured for acceptance of a final plat. If secured, final installation of all sidewalks could be tied to a time line (two to five years) or completion of a percentage of the subdivision.

The City should consider solidifying its processes for ensuring pedestrian facility installation in a timely manner in new development and in built areas.

As modifications to transportation facilities are made, especially auto and transit facilities, impacts on and the opportunities for coordination with the pedestrian system should receive high scrutiny. Intersection widening beyond four lanes should be evaluated for opportunities to install refuge islands or curb extensions to reduce the distance pedestrians must travel and allow them to judge conflicts separately. Transit pull-outs and/or shelters should also be constructed at appropriate locations when roadway improvements are made.

6.50 SYSTEM ISSUES

6.50.10 STATE TRANSPORTATION PLANNING RULE

The State Transportation Planning Rule, requiring safe, convenient pedestrian facilities within and between new developments, has been implemented to a large extent through the recent adoption of the Land Development Code (July 19, 1993) and through the adopted Trails Master Plan. In addition to these efforts, the City needs to identify opportunities in developed areas to provide more direct, convenient and safer pedestrian access within and between residential areas and neighborhood

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6.6 PROJECT IMPLEMENTATION

Table 17
All Projects to Complete 20 Year Plan
Park and Recreation Facilities Plan

	Facility	Planning	Acquisition	Development	Major Upgrade	Minor Improve.	No Action
	Mini Parks						
M-10	Wildcat Park						X
M-12	Seavey Meadow Area (P)	X		X			
M-28	Franklin Square					X	
M-35	Peanut Park					X	
M-46	Lilly Park					X	
M-47	Tunison Park					X	
M-50	Bell Area (P)	X	X	X			
M-52	Clearwater Park (P)	X	X	X			
	Neighborhood Parks						
N-1	Jackson Area (P)	X	X	X			
N-2	Lewisburg Road Area (P)	X	X	X			
N-4	Mountain View School/Area (P)	X	X	X			
N-5	Harman Area (P)	X	X	X			
N-6	Timberhill School/Area (P)	X	X	X			
N-8	CV Ridge Area (P)	X	X	X			
N-9	Satinwood Area (P)	X	X	X			
N-16	Garfield Park					X	
N-18	Witham Hill Area (P)	X	X	X			
N-20	Cloverland Park					X	
N-21	Porter Park			X		X	
N-22	Oak Park (P)	X	X	X			
N-25	Arnold Park					X	
N-26	Chintimini Park					X	
N-29	Washington Park					X	
N-31	Central Park					X	
N-32	Grand Oaks Area (P)	X	X	X			
N-33	Skyview Area (P)	X	X	X			
N-34	Squaw Creek Area (P)	X	X	X			
N-41	Winding Way Area (P)	X	X	X			
N-45	Brooklane Area (P)	X	X	X			
N-51	Rivergreen Estates Park (P)			X			
N-53	Kiger Area (P)	X	X	X			
N-54	Booneville Area (P)	X	X	X			
N-55	Weltzin Area (P)	X	X	X			

(P) = Proposed

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Table 17 (Continued)

	Facility	Planning	Acquisition	Development	Major Upgrade	Minor Improve.	No Action
	Community Parks						
C-3	Highland Area (P)	X	X	X			
C-11	Village Green Park					X	X
C-17	Walnut Park					X	
C-23	Fairgrounds Area (P)	X	X	X			
C-27	Taylor Area (P)	X					
C-42	Sunset Park		X		X		
	Large Urban Parks						
LU-36	Alan B. Berg Park			X			
LU-40	Avery Park				X		
LU-49	Willamette Park				X		
	Special Use Areas						
SU-7	**Timberhill Park**						X
SU-14	Osborn Aquatic Center						X
SU-15	Highland Mid. School Courts					X	
SU-19	Woodland Meadows Park					X	
SU-37	Morse Bros. Gravel Lake Area (P)	X	X	X			
SU-24	Benton County Fairgrounds						X
SU-39	Pioneer Park					X	
SU-38	Pioneer Boat Basin Park					X	
SU-43	Bruce Starker Arts Park					X	
SU-44	Western Middle School Courts					X	
SU-48	Lincoln Elem. School Courts					X	
SU-56	Rock Creek Park					X	
	Linear Parks						
L-30	**Riverfront Commemorative Park**			X			

(P) = Proposed

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Table 17 (Continued)

	Facility	Planning	Acquisition	Development	Major Upgrade	Minor Improve.	No Action
	Open Space Areas/Greenways						
OS-1	Locke Cemetery Hill (P)	X	X				
OS-2	Frazier Cr. Greenway(P)	X	X				
OS-3	Jackson Cr. Greenway(P)	X	X				
OS-4	McDonald Forest						X
OS-5	Dimple Hill(P)	X	X				
OS-6	Chip Ross Park				X		
OS-7	Owens Farm(P)	X	X				
OS-8	Jackson Frazier Wetlands						X
OS-9	Stewart Slough(P)	X	X				
OS-11	Sequoia Creek(P)	X	X				
OS-12	Crescent Valley Ridge(P)	X	X				
OS-13	Timberhill Ridge(P)	X	X				
OS-14	Timberhill Connector(P)	X	X				
OS-15	Deer Run Ridge(P)	X	X				
OS-16	Butterfly Meadow(P)	X	X				
OS-17	View Ridge Connector(P)	X	X				
OS-18	Oak Hill(P)	X	X				
OS-19	Walnut Creek(P)	X	X				
OS-20	Witham Hill(P)	X	X				
OS-21	Forest Hill Acres(P)	X	X				
OS-22	Dixon Creek (P)	X	X				
OS-23	Willamette River Greenway (N) (P)	X	X				
OS-24	Mulkey Creek(P)	X	X				
OS-25	Bald Hill Park					X	
OS-26	Oak Creek (P)	X	X				
OS-27	MLK Park			X			
OS-28	Squaw Creek (N. Fork) (P)	X	X				
OS-29	West Corvallis-Skyline Hill(P)	X	X				
OS-30	Double Hill(P)	X	X				
OS-31	Newton Cr. Wetlands(P)	X	X				
OS-32	Philomath Corvallis Hill(P)	X	X				
OS-33	Squaw Creek (S. Fork) (P)	X	X				
OS-34	Philomath-Skyline Hill(P)	X	X				
OS-35	Mary's River/Bald Hill Connector(P)	X	X				
OS-36	Country Club Hill(P)	X	X				
OS-37	Millrace(P)	X	X				
OS-38	Ryan Creek (P)	X	X				
OS-39	Marys River Natural Area(P)					X	

(P) = Proposed

Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT A (70 of 112)

Table 17 (Continued)

	Facility	Planning	Acquisition	Development	Major Upgrade	Minor Improve.	No Action
OS-40	Goodnight Creek(P)	X	X				
OS-41	Willamette River Greenway (South) (P)	X	X				
OS-42	Mary's River(P)	X	X				
OS-43	Mary's River /Willamette River Connector(P)	X	X				
OS-44	Booneville Channel & Slough (P)	X	X				
OS-45	Dry Creek(P)	X	X				
	Pathways/Trails						
T-1	Jackson Creek Trail (P)	X	X	X			
T-2	Frazier Creek Trail (P)	X	X	X			
T-3	CV Ridge Trail (P)	X	X	X			
T-4	Sequoia Creek Trail (P)	X	X	X			
T-5	Walnut Park Trail (P)	X	X	X			
T-6	Dixon Creek Trail (P)	X	X	X			
T-7	Highway 99 Trail					X	
T-8	West Corvallis Trail (P)	X	X	X			
T-9	Walnut Boulevard Trail					X	
T-10	Oak Creek Trail (P)	X	X	X			
T-11	OSU Trail/Midge Kramer Trail					X	
T-12	Squaw Creek Trail (N) (P)	X	X	X			
T-13	Squaw Creek Trail (S) (P)	X	X	X			
T-14	Philomath-Corvallils Bike Path						
T-15	Country Club Hill Trail (P)	X	X	X			
T-16	Millrace Trail (P)	X	X	X			
T-17	Ryan Creek Trail (P)	X	X	X			
T-18	Marys River Trail (P)	X	X	X			
T-19	Willamette Trail (W) (P)	X	X	X			
T-20	Willamette Trail (E) (P)	X	X	X			
T-21	Goodnight Creek Trail (P)	X	X	X			
T-22	South Corvallis Trail (P)	X	X	X			
T-23	Airport Trail (P)	X	X	X			

(P) = Proposed

City of Corvallis

Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LOCAL APPEAL HEARING
EXHIBIT A (71 of 112)

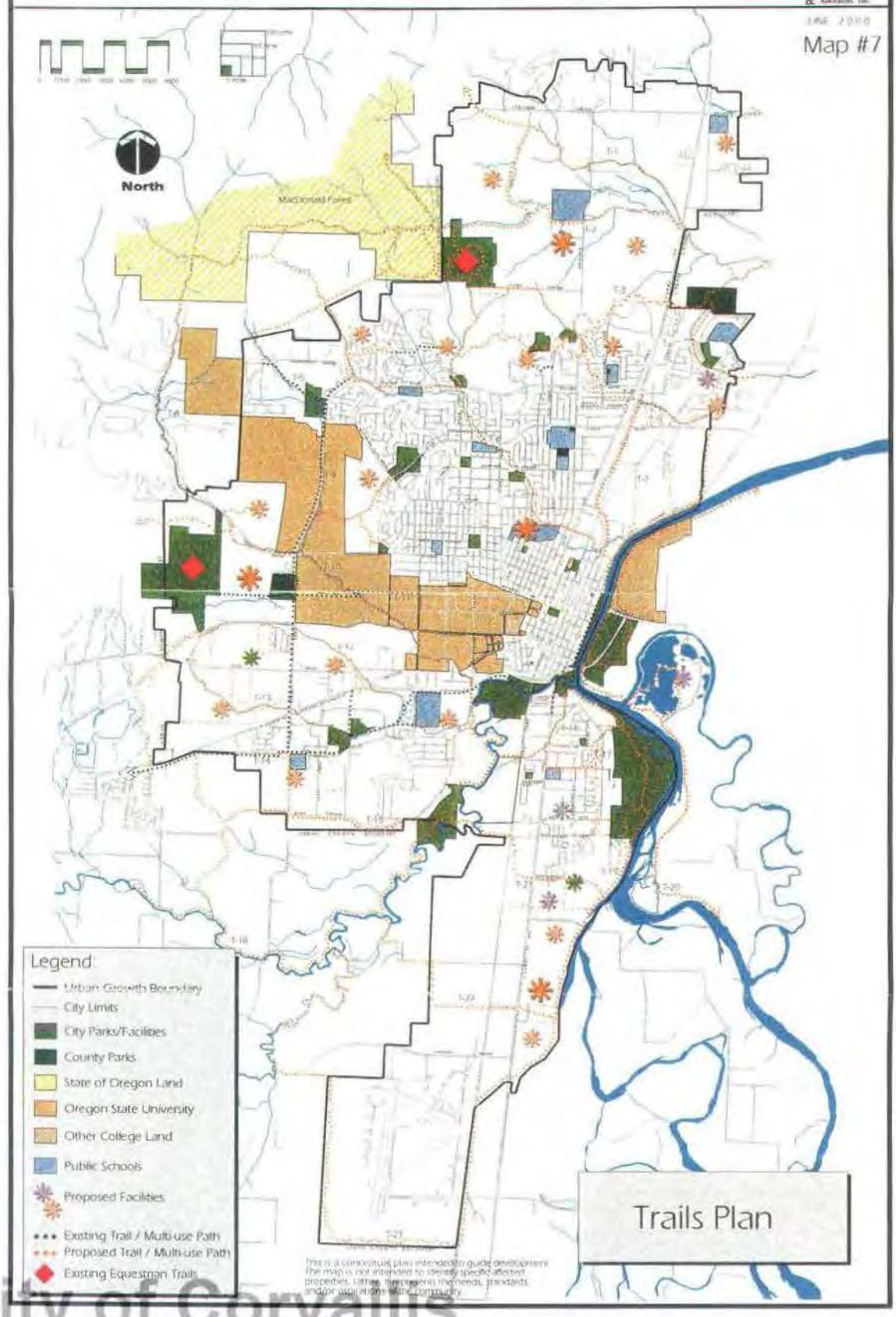
CONCEPTUAL

PARK AND RECREATION FACILITIES PLAN

CITY OF CORVALLIS, OREGON

JC DRAGOO & Associates, Inc.

Map #7



This is a conceptual plan intended to guide development. The map is not intended to identify specific affected properties, zoning, development requirements, standards and/or applications within community.

City of Corvallis

EXHIBIT F

CONCEPTUAL

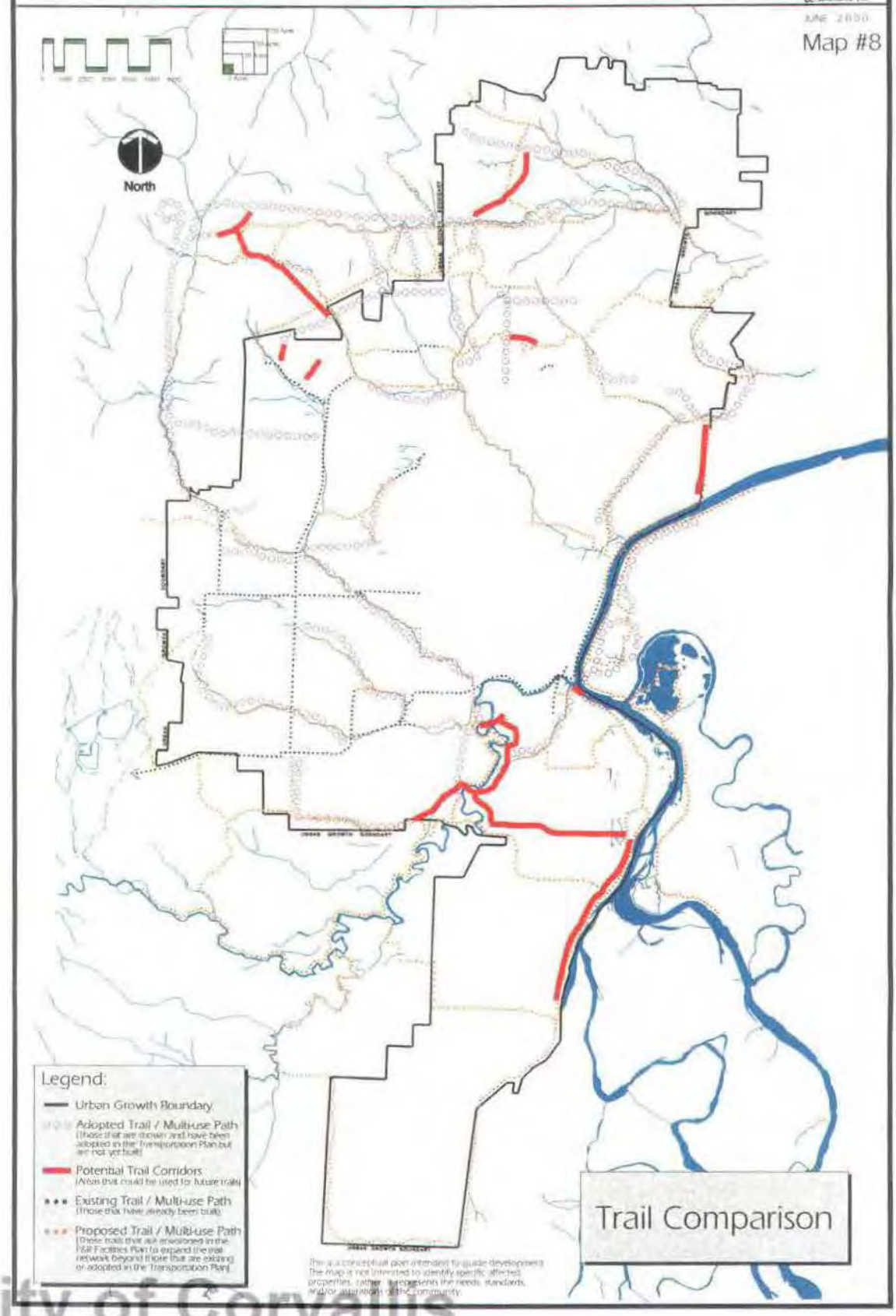
PARK AND RECREATION FACILITIES PLAN

CITY OF CORVALLIS, OREGON

JC D RAGGOO & Associates, Inc.

JUNE 2000

Map #8



This is a conceptual plan intended to guide development. The map is not intended to identify specific affected properties, rather it represents the needs, standards, and/or aspirations of the community.

City of Corvallis

EXHIBIT G

COMPREHENSIVE PLAN

CORVALLIS, OREGON

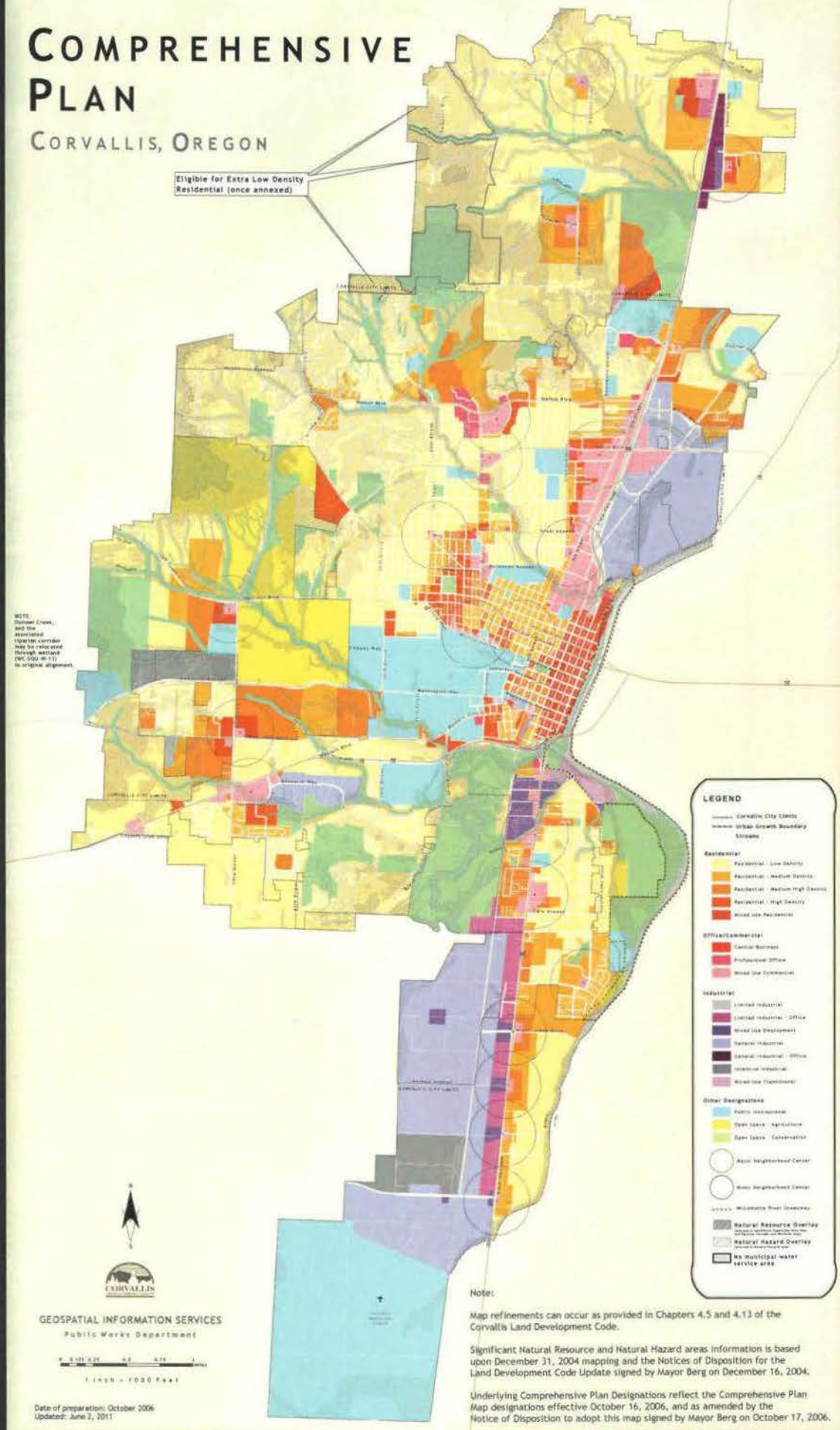


EXHIBIT I

EXHIBIT I: MODIFIED CONDITIONS OF APPROVAL

1. <u>Consistency with Plans</u> - Development shall comply with the narrative and plans identified in **Attachments G and H** of the original Staff Report, except as modified by the conditions below and by the narrative and plans submitted on remand, or unless a requested modification otherwise meets the criteria for a Minor Planned Development Modification, Conditional Development Modification, and/or a Subdivision Modification, as applicable. Such changes may be processed in accordance with Chapters 2.3, 2.4 & 2.5 of the Land Development Code.

4. <u>Department of State Lands (DSL)/Army Corps of Engineers (COE) Approvals Required</u> - The applicant has obtained a DSL fill permit (Permit No. 32863-FP Renewal) that authorizes development on a portion of Tax Lot 500, and has provided a copy of the renewed permit to the City as part of this land use application on remand. The active DSL fill permit has an expiration date of November 22, 2013. City of Corvallis development permits may be issued for that portion of Tax Lot 500 identified within the scope of the active DSL fill permit, as long as the applicable City permits are issued prior to expiration of the active DSL fill permit. Areas of the proposed CDP/DDP that fall within the scope of the active DSL fill permit include Phases 1-A (Walgreen's), 1-B (Building A), and 1-C (Building D), and Phase 1 (associated site improvements), as defined by the dashed lines and phasing labels on the Project Phase Plan (Sheet SP1.11). Also refer to the surveyed wetlands overlay (Sheet SP1.3C), <u>and</u> limits of development identified on the "Wetlands Joint Permit Site Plan," dated June 15, 2004 (active DSL fill permit) as defined by upland areas and wetland impact area.

Development of the proposed public multi-use path north of Dunawi Creek, the remainder of Phase 1 (Tax Lot 500 - Phases 1-D (Building C) and 1-E (Building B) and related site improvements), and Phase 2 (Tax Lot 600) is either not authorized under the scope of the active DSL fill permit, or relies on MADA credits associated with DSL-approved wetland mitigation that has not yet been authorized. No development permits shall be issued for work beyond the scope of the active DSL fill permit and/or after expiration of the active DSL fill permit, until supplemental documentation, as required in LDC § 4.13.80.01.e has been provided to the City. Permits for development that is reliant upon DSL-approved wetland mitigation associated with MADA credits under LDC § 4.11.50.02.c.2 shall not be authorized until documentation of the approved mitigation has been provided to the City, consistent with § 4.11.50.02.c.2.

10. <u>Pre-Payment for Public Multi-Use Path Construction (Dunawi Creek)</u> - The Applicant shall deposit with the appropriate City official an amount of cash equal to the estimated cost of the construction of the Dunawi Creek multi-use path, prior to issuance of site development permits for Phases 1E, 1D, or 2, whichever occurs first. The estimated cost shall be prepared by the Applicant and approved by

the City, and shall be based upon a multi-use path located within the multi-use path easement area shown on Sheet SP1.10, that meets applicable City and DSL standards for construction and alignment, and accounts for necessary excavation and fill and any other reasonably related requirements imposed by the City. The City shall place this money in the appropriate account and shall use it only for construction of the path. In the event that the City determines not to build the path, the City shall refund the money to the Applicant within a reasonable time period.

With submittal of the construction cost estimate, the Applicant shall include documentation of an approved fill permit, as required for wetland construction and wetland mitigation by the Oregon Department of State Lands ("DSL") and the United States Army Corps of Engineers ("Corps"), which documents final acceptance by these agencies of the multi-use path construction and alignment. The application fees for any necessary permits from DSL and the Corps shall be paid by the Applicant. With submittal of the construction cost estimate, the Applicant shall include construction details for the multi-use path that comply with Parks Department trail construction guidelines and DSL requirements, and includes the bench, as identified on Sheet SP1.4, if permitted by DSL. Path construction shall generally follow the "Design and Development Policies" of the adopted Park and Recreation Facilities Plan (Page 5-2), and final path alignment shall occur so as to minimize impacts to the properly functioning condition of the riparian corridor/drainageway. The City shall make the final determination of when the path is to be constructed, based on Project Implementation guidelines established in City Council Policy 99-7.14.

17. <u>Pedestrian Crossings at Drive Aisles</u> - As noted in the application narrative, and with submittal of the site development permit applications (including those required by Benton County and ODOT), the applicant shall clearly indicate that all pedestrian crossings at internal streets (private Shopping Street), drive aisles, parking aisles, and commercial driveway approaches, are constructed of paving materials that contrast with the abutting pavement used for vehicular circulation, in conformance with **LDC § 4.10.70.03.a.5.** This includes one driveway entrance on 53rd Street, one driveway entrance on Philomath Blvd. (at private Shopping Street), and two driveways that intersect with the new local street, the drive aisle crossings between Buildings E and F, the Shopping Street crossing between Buildings F and C, the drive aisle crossing between Buildings C and D, the drive aisle crossing between the Walgreen's building and Building B/pedestrian plaza, and the new pedestrian crossing at the southern end of the SW 53rd Street access driveway.

19. <u>Building Setback and Conformance to Proposed Grading Plans/Detail DD</u> - Any changes to final grading, noted on the Conceptual Grading Plans, will require a Planned Development Modification, as defined in the Planned

Development Modification Criteria in LDC § 2.5.60. Since the limits of grading in areas on the south side of Dunawi Creek will generally follow the required drainageway easement line and in some cases be adjacent to the 0.2 floodway line, Building B shall be setback a minimum of 3 feet from this grading limits/easement line as shown in the applicant's revised attachment DD, in order to ensure that all development and associated construction fencing/erosion control fencing is located outside of the 0.2'-Floodway and drainageway easement area.

36-j. SW 53rd Street Frontage Landscaping - As noted in the project narrative, the developer intends to provide enhanced landscaping along the site's SW 53rd Street frontage, in order to compensate for the reduced width parkway. With submittal of the landscape construction documents, the applicant shall include additional shrubs and groundcover within the 6-ft. parkway, and additional trees, shrubs, and groundcover within the landscaped area between the row of four (4) vehicle parking spaces north of Building A and the sidewalk/multi-use path on SW 53rd Street. Shrubs within the 6-ft. parkway shall be of a species and size that is compliant with the vision clearance standards established by the City Engineer and Benton County.

39-d. Final Plat Tract and Easement (Drainageway and Natural Features Preservation) - With submittal of the final plat, the property owner shall include in the plat declarations, a dedication for the proposed Drainageway and Natural Features Tracts ("Lot 550" and "Lot 601"). The declaration language shall specify the purpose, ownership, and party responsible for the maintenance of the Tracts. The declarations shall also grant to the City of Corvallis, a public drainageway easement within the Tracts, as specified per **LDC § 4.13.70.02.d.**

A minimum drainage way easement of 50-feet shall be provided along the north side of Dunawi Creek. On the south side of Dunawi Creek the easement will need to follow the grading limits line as shown on sheet SP1.5. Since the limits of grading will be the easement line and in some cases the 0.2 floodway line, Building B shall be setback 3 feet from the grading limits/easement line as shown in the applicant's revised attachment DD. A public drainage easement will also be needed under or through the private creek crossing at the east end of the site up to SW 53rd Street. The easement will need to outline the private maintenance responsibilities of the creek crossing associated with the site access.

40. Additional Floodplain Study and Revisions to Detailed Development Plan - With submittal of the site excavation and grading permit application, where grading is proposed within the pre-development floodway fringe, the applicant shall provide a revised floodplain study and site grading plans which demonstrates that the post-development floodplain elevation on adjacent properties is no greater than the pre-development condition. The post-development floodplain boundary shall not expand horizontally beyond the limits of the pre-development floodplain boundary

as it currently exists on adjacent properties. The applicant may choose to reduce or eliminate building area associated with Phases 1D (Building C), 1E (Building B), and Phase 2, as well as associated vehicle parking, if it is necessary to accommodate flood water volume and meet this condition of approval. The City Council finds that if building area is reduced in order to comply with this condition, the minimum Floor Area Ratio (FAR) requirement of 0.25, as specified in LDC § 3.19.40.03, may be reduced below 0.25. If this occurs, the City Council finds that a compensating benefit has been provided for the variation to FAR in the form of no net impact upon adjacent properties due to development within the floodway fringe.

Department of State Lands
775 Summer Street NE, Suite 100
Salem, OR 97301-1279
☎ 503-986-5200

Permit No.:	**32863-FP Renewal**
Permit Type:	**Fill**
Waterway:	**Wetland/Squaw Creek**
County:	**Benton**
Expiration Date:	**November 22, 2013**

JOHN BATZER

IS AUTHORIZED IN ACCORDANCE WITH ORS 196.800 TO 196.990 TO PERFORM THE OPERATIONS DESCRIBED IN THE ATTACHED COPY OF THE APPLICATION, SUBJECT TO THE SPECIAL CONDITIONS LISTED ON ATTACHMENT A AND TO THE FOLLOWING GENERAL CONDITIONS:

1. This permit does not authorize trespass on the lands of others. The permit holder shall obtain all necessary access permits or rights-of-way before entering lands owned by another.
2. This permit does not authorize any work that is not in compliance with local zoning or other local, state, or federal regulation pertaining to the operations authorized by this permit. The permit holder is responsible for obtaining the necessary approvals and permits before proceeding under this permit.
3. All work done under this permit must comply with Oregon Administrative Rules, Chapter 340; Standards of Quality for Public Waters of Oregon. Specific water quality provisions for this project are set forth on Attachment A.
4. Violations of the terms and conditions of this permit are subject to administrative and/or legal action, which may result in revocation of the permit or damages. The permit holder is responsible for the activities of all contractors or other operators involved in work done at the site or under this permit.
5. Employees of the Department of State Lands and all duly authorized representatives of the Director shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this permit.
6. Any permit holder who objects to the conditions of this permit may request a hearing from the Director, in writing, within twenty-one (21) calendar days of the date this permit was issued.
7. In issuing this permit, the Department of State Lands makes no representation regarding the quality or adequacy of the permitted project design, materials, construction, or maintenance, except to approve the project's design and materials, as set forth in the permit application, as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196, 390, and related administrative rules.
8. Permittee shall defend and hold harmless the State of Oregon, and its officers, agents, and employees from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.
9. Authorization from the U.S. Army Corps of Engineers may also be required.

NOTICE: If removal is from state-owned submerged and submersible land, the applicant must comply with leasing and royalty provisions of ORS 274.530. If the project involves creation of new lands by filling on state-owned submerged or submersible lands, you must comply with ORS 274.905 to 274.940. This permit does not relieve the permittee of an obligation to secure appropriate leases from the Department of State Lands, to conduct activities on state-owned submerged or submersible lands. Failure to comply with these requirements may result in civil or criminal liability. For more information about these requirements, please contact the Department of State Lands, 503-986-5200.

Eric Metz, Southern Region Manager
Wetlands & Waterways Conservation Div
Oregon Department of State Lands

Authorized Signature

October 12, 2012
Date Issued

EXHIBIT J

ATTACHMENT A

Permittee: John Batzer

Special Conditions for Fill Permit 32863-FP

PLEASE READ AND BECOME FAMILIAR WITH CONDITIONS OF YOUR PERMIT. This project may be site inspected by the Department of State Lands as part of our monitoring program. The Department has the right to stop or modify the project at any time if you are not in compliance with these conditions. A copy of this permit shall be available at the work site whenever authorized operations are being conducted.

1. **Responsible Party:** By proceeding under this permit, John Batzer agrees to comply with and fulfill all terms and conditions of this permit. John Batzer is responsible for carrying out the terms and conditions of this permit unless the permit is officially transferred to another party as approved by DSL.

2. **Authorization to Conduct Removal and/or Fill:** This permit authorizes the placement of up to 3,000 cubic yards of gravel in 0.766 acres of wetlands, located at T12S, R5W, SE ¼ of Section 04 & 05, Tax Lot 400 & 500, Corvallis, Benton County, as outlined in the permit application, map and drawings, received October 15, 2009.

3. **Changes to the Project or Inconsistent Requirements from Other Permits:** It is the permit holder's responsibility to ensure that all state, federal and local permits are consistent and compatible with the final approved project plans and the project as executed. Any changes made in project design, implementation and/or operating conditions to comply with conditions imposed by other permits must be approved by DSL prior to implementation.

4. **DSL May Halt or Modify:** The Department of State Lands retains the authority to temporarily halt or modify the project in case of unforeseen damage to natural resources.

5. **DSL May Modify Conditions Upon Permit Renewal:** DSL retains the authority to modify conditions upon renewal, as appropriate, pursuant to the applicable rules in effect at the time of the request for renewal or to protect waters of this state.

Pre-Construction

6. **Local Government Approval Required Before Beginning Work:** Issuance of this permit is contingent upon acquisition of the required permits and approvals, including the Development Permit and Consistency with Natural Features Inventory, from the City of Corvallis.

7. **Pre-construction Resource Area Flagging:** Before any site grading, the surveyed boundaries of the avoided wetlands adjacent to development area on tax lot 400 & 500 shall be surrounded by bright orange construction fencing, which shall be maintained during construction of the project. There shall be no heavy equipment within fenced areas.

8. **Deed Restriction Recording**: Before disturbance of any wetland areas, deed restrictions, for the avoided wetlands on tax lot 400 in its entirety (84894 square feet) and the proposed avoided PFO wetlands on tax lot 500 (202,653 square feet) as shown on Sheet 1 of 1 dated November 16, 2004

shall be recorded with the County Assessor's office. A copy of the recorded deed restrictions for each tax lot shall be sent to DSL within 90 days of recording

9. **Water Quality Certification:** The Department of Environmental Quality (DEQ) may evaluate this project for a Clean Water Act Section 401 Water Quality Certification (WQC). If the evaluation results in issuance of a Section 401 WQC, that turbidity condition will govern any allowable turbidity exceedance and monitoring requirements.

10. **Erosion Control Methods:** The following erosion control measures (and others as appropriate) shall be installed prior to construction and maintained during and after construction as appropriate, to prevent erosion and minimize movement of soil into waters of this state.
    a. All exposed soils shall be stabilized during and after construction in order to prevent erosion and sedimentation.
    b. Filter bags, sediment fences, sediment traps or catch basins, leave strips or berms, or other measures shall be used to prevent movement of soil into waterways and wetlands.
    c. To prevent erosion, use of compost berms, impervious materials or other equally effective methods, shall be used to protect soil stockpiled during rain events or when the stockpile site is not moved or reshaped for more than 48 hours.
    d. Unless part of the authorized permanent fill, all construction access points through, and staging areas in, riparian and wetland areas shall use removable pads or mats to prevent soil compaction. However, in some wetland areas under dry summer conditions, this requirement may be waived upon approval by DSL. At project completion, disturbed areas with soil exposed by construction activities shall be stabilized by mulching and native vegetative plantings/seeding. Sterile grass may be used instead of native vegetation for temporary sediment control. If soils are to remain exposed more than seven days after completion of the permitted work, they shall be covered with erosion control pads, mats or similar erosion control devices until vegetative stabilization is installed.
    e. Where vegetation is used for erosion control on slopes steeper than 2:1, a tackified seed mulch shall be used so the seed does not wash away before germination and rooting.
    f. Dredged or other excavated material shall be placed on upland areas having stable slopes and shall be prevented from eroding back into waterways and wetlands.
    g. Erosion control measures shall be inspected and maintained as necessary to ensure their continued effectiveness until soils become stabilized.
    h. All erosion control structures shall be removed when the project is complete and soils are stabilized and vegetated.

11. **Hazardous, Toxic, and Waste Material Handling:** Petroleum products, chemicals, fresh cement, sandblasted material and chipped paint, wood treated with leachable preservatives or other deleterious waste materials shall not be allowed to enter waters of this state. Machinery refueling is to occur at least 150 feet from waters of this state and confined in a designated area to prevent spillage into waters of this state. Barges shall have containment system to effectively prevent petroleum products or other deleterious material from entering waters of this state. Project-related spills into waters of this state or onto land with a potential to enter waters of this state shall be reported to the Oregon Emergency Response System (OERS) at 1-800-452-0311.

12. **Federally Listed Endangered or Threatened Species:** When listed species are present, the authorization holder must comply with the Federal Endangered Species Act. If previously unknown listed species are encountered during construction, all construction activity shall immediately cease and the permit holder must contact DSL.

13. **Archaeological Resources**: If any archaeological resources and/or artifacts are encountered during construction, all construction activity shall immediately cease. The State Historic Preservation Office shall be contacted (phone: 503-986-0674).

14. **Hazards to Recreation, Navigation or Fishing:** The activity shall be timed so as not to interfere with or create a hazard to recreational or commercial navigation or fishing.

15. **Construction Corridor:** There shall be no removal of vegetation or heavy equipment operating or traversing outside the designated construction corridor or footprint (Sheet 1 of 1 dated November 16, 2004).

16. **Work Area Isolation:** The work area shall be isolated from the water during construction according to the Work Area Isolation Plan contained in the application. All structures and materials used to isolate the work area shall be removed immediately following construction.

17. **Stream Diversion Prohibited:** The stream shall not be diverted from the natural bed.

18. **Operation of Equipment in the Water Prohibited:** There shall be no operation of equipment in the water. Work in the waterway shall be conducted from top of the bank.

19. **Fish Passage Required:** The project shall meet Oregon Department of Fish and Wildlife requirements for fish passage for the driveway from 53rd crossing Squaw Creek to access retail development as shown on Sheet 1 of 1 dated November 16, 2004.

Compensatory Wetland Mitigation

20. Wetland mitigation for the unavoidable loss of 0.556 acres of palustrine emergent/flats wetland and 0.21 acres of PFO has been accomplished via purchase of 0.766 credits from the Frazier Creek Wetland Mitigation Bank, per the proof of purchase dated November 16, 2004; preservation of approximately 2 acres (84894 sq ft) of PFO wetlands on Tax lot 400 in its entirety; and preservation of approximately 4.65 acres (202,653 sq ft) of PFO wetlands on Tax lot 500 as shown on Sheet 1 of 1 dated November 16, 2004.

Renewal Issued: October 12, 2012

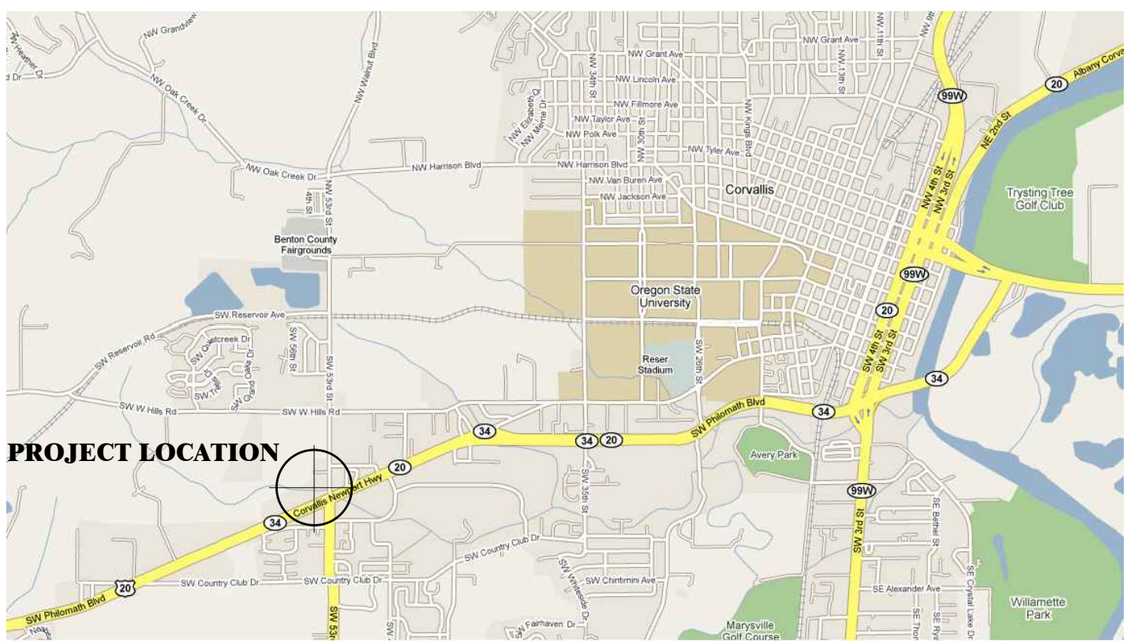
CREEKSIDE CENTER I & II

AN APPLICATION FOR A CONCEPTUAL AND DETAILED DEVELOPMENT PLAN AND A CONDITIONAL DEVELOPMENT

SUBMITTED TO :

THE CITY OF CORVALLIS

CORVALLIS
ENHANCING COMMUNITY LIVABILITY



SUBMITTED BY

OWNER

THOMASFOX PROPERTIES, LLC

Contact: Bret Fox
515 West Pickett Circle - Suite 400
Saltlake City, Utah 84115
Phone: 801-596-7711

ARCHITECT

OREGON ARCHITECTURE INC

Contact: Mark McKechnie, A.I.A.
221 West Tenth Street
Medford, Oregon 97501
Phone: 541-772-4372

Consulting Engineer
(Floodplain Study):

MARQUESS & ASSOCIATES INC

Contact: Robert Gunter, P.E.
1120 East Jackson
Medford, Oregon 97501
Phone: 541-772-7715

Consulting Engineer
(Property Survey):

NEIL HIBBS LAND SURVEYING, INC.

Contact: Neil Hibbs
4739 Lookingglass Road
Roseburg, Oregon 97470
Phone: 541-957-9303

TO VERIFY SCALES 0" 1" ORIGINAL BAR SET MEASURE ONE INCH BY ONE SIXTEENTH INCH

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REGISTERED ARCHITECT
Mark McKechnie
Medford, Oregon
4666
STATE OF OREGON

OREGON ARCHITECTURE INC
221 West Tenth Street
Medford, Oregon 97501
Phone: 541.772.4372 Fax: 541.499.6329

THOMASFOX PROPERTIES, LLC
515 WEST PICKETT CIRCLE - SUITE 400
SALTLAKE CITY, UTAH 84115
PHONE: 801-596-7711 FAX: 801-596-7161

CREEKSIDE CENTER
CORVALLIS

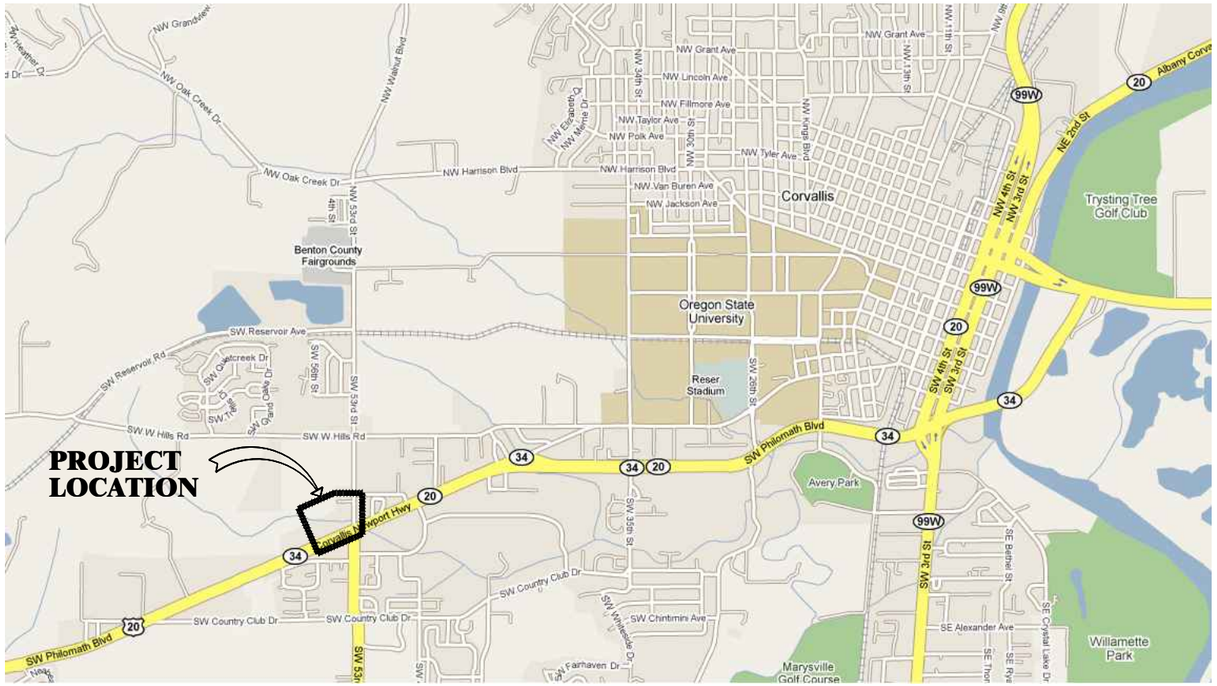
Project Location:
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON

Approved for the Owner By: Date:

REVISIONS	BY
.	.
.	.
.	.
.	.

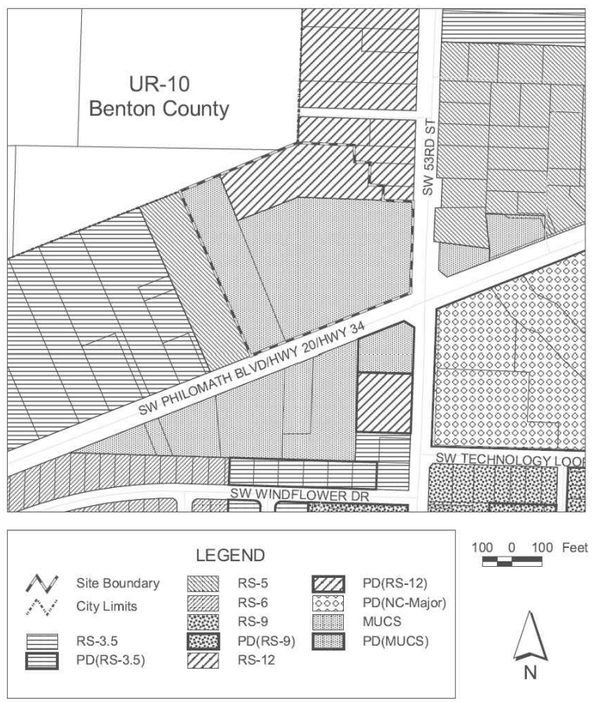
PLOT DATE: 4/15/2013
ISSUE DATE: .
DRAWN BY: T.WHITNEY
JOB NO.: -- .
SHEET
SP0.0
DEVELOPMENT SUBMITTAL
COVER SHEET

Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT A (83 of 112)

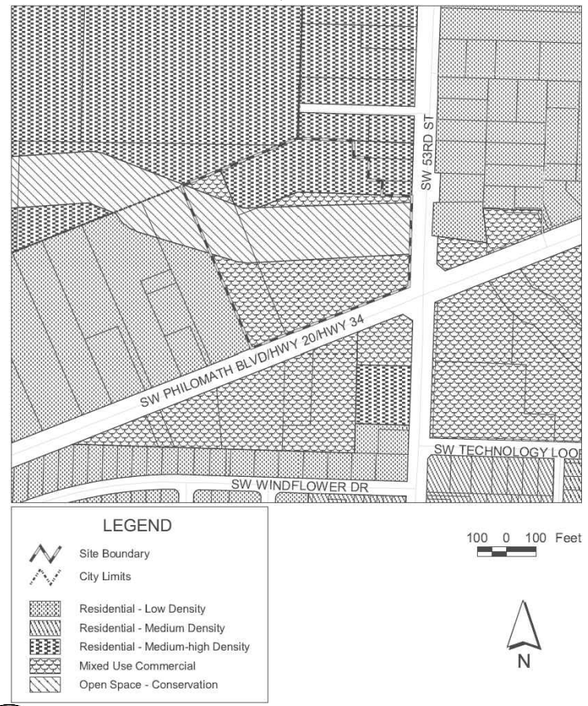


A-1 **VICINITY MAP**
SCALE: N.T.S.

A-2 **SITE AERIAL** **MAP: 12505DD**
SCALE: N.T.S.



D **EXISTING ZONING DESIGNATIONS**
SCALE: N.T.S.



C **COMPREHENSIVE PLAN DESIGNATIONS**
SCALE: N.T.S.

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515 WEST PICKETT CIRCLE - SUITE 400
SALTLAKE CITY, UTAH 84115
PHONE: 801-596-7711 FAX: 801-596-7161

CREEKSIDE CENTER
CORVALLIS

Project Location:
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON

Approved for the Owner By: Date:

REVISIONS	BY
.	.
.	.
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.	.

PLOT DATE: 4/15/2013
ISSUE DATE:
DRAWN BY: T.WHITNEY
JOB NO.: . .
SHEET
SP1.0
DEVELOPMENT SUBMITTAL
EXHIBITS - A,B,C,&D

Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT A (84 of 112)

WEST CORVALLIS ACCESS STRATEGY OVERLAY

09/96 PLAN PROPOSED ALIGNMENT

PROPOSED RIGHT OF WAY

ACTUAL RIGHT OF WAY

E 1000' VICINITY PROPERTIES/ SURROUNDING USES

SCALE: 1" = 150'-0"

0 75' 150' 300'

SCALE: 1" = 150'-0"

PROPERTIES/ FEATURES SHOWN HERE WERE TAKEN FROM BENTON COUNTY'S GIS SYSTEM, AND ARE LIMITED THE ACCURACY CONTAINED THEREIN.

FOR FUTHER INFORMATION ON PARTICULAR SURROUNDING PROPERTIES. VISIT BENTON COUNTY'S WEBSITE AT WWW.CO.BENTON.OR.US

TO VERIFY SCALES 0" 1" ORIGINAL BAR SET MEASURE ONE INCH BY ONE SIXTEENTH INCH

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CREEKSIDE CENTER CORVALLIS

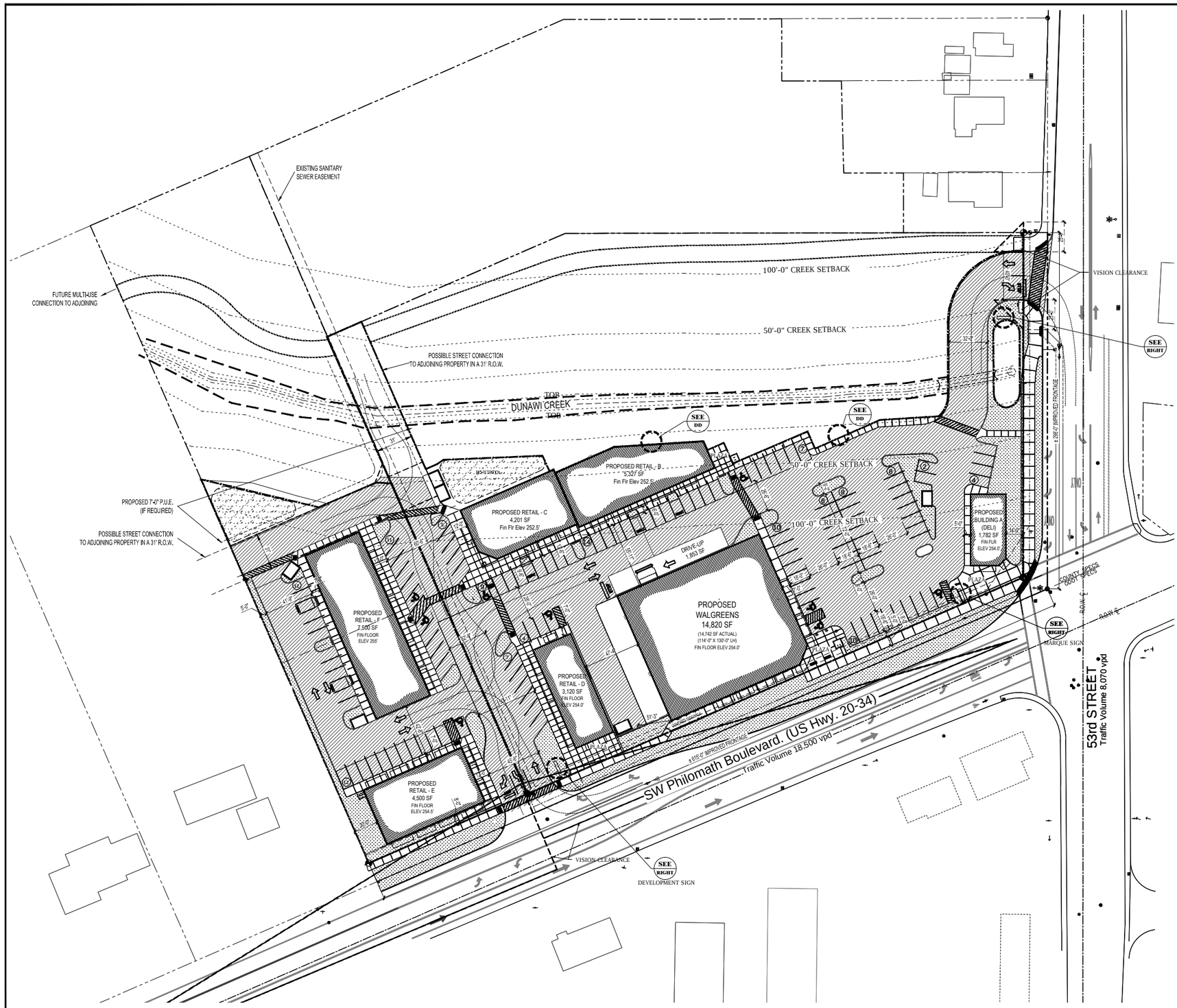
Project Location:
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON

Approved for the Owner By: Date:

REVISIONS	BY

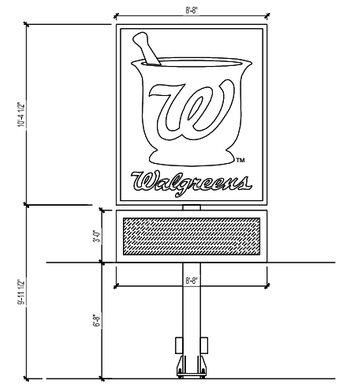
PLOT DATE: 4/15/2013
ISSUE DATE: .
DRAWN BY: T.WHITNEY
JOB NO.: -- .
SHEET
SP1.1
SURROUNDING PROPERTIES
1000' VICINITY

Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT A (85 of 112)



PATTERN LEGEND

- NEW LANDSCAPE/ LAWN AREAS
- NEW ASPHALT PAVING
- AREA OF MINIMAL DISTURBANCE/ RESTORED NATURAL LANDSCAPE

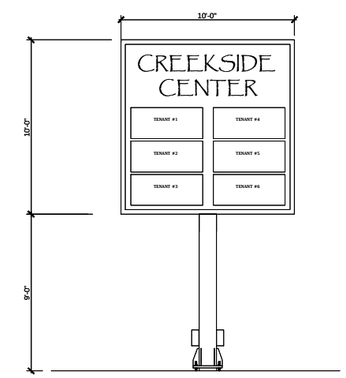


PYLON SIGN ELEVATION

SCALE: 1/4" = 1'-0"

0 2' 4' 8'

SCALE: 1/4" = 1'-0"



DEVELOPMENT SIGN ELEVATION

SCALE: 1/4" = 1'-0"

0 2' 4' 8'

SCALE: 1/4" = 1'-0"

F

DEVELOPMENT PLAN - PHASES 1 & 2

SCALE: 1" = 40'-0"

0 20' 40' 80'

SCALE: 1" = 40'-0"

TO VERIFY SCALES 0" 1" ORIGINAL BAR SET MEASURE ONE INCH BY ONE SIXTEENTH INCH

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CREEKSIDE CENTER
CORVALLIS

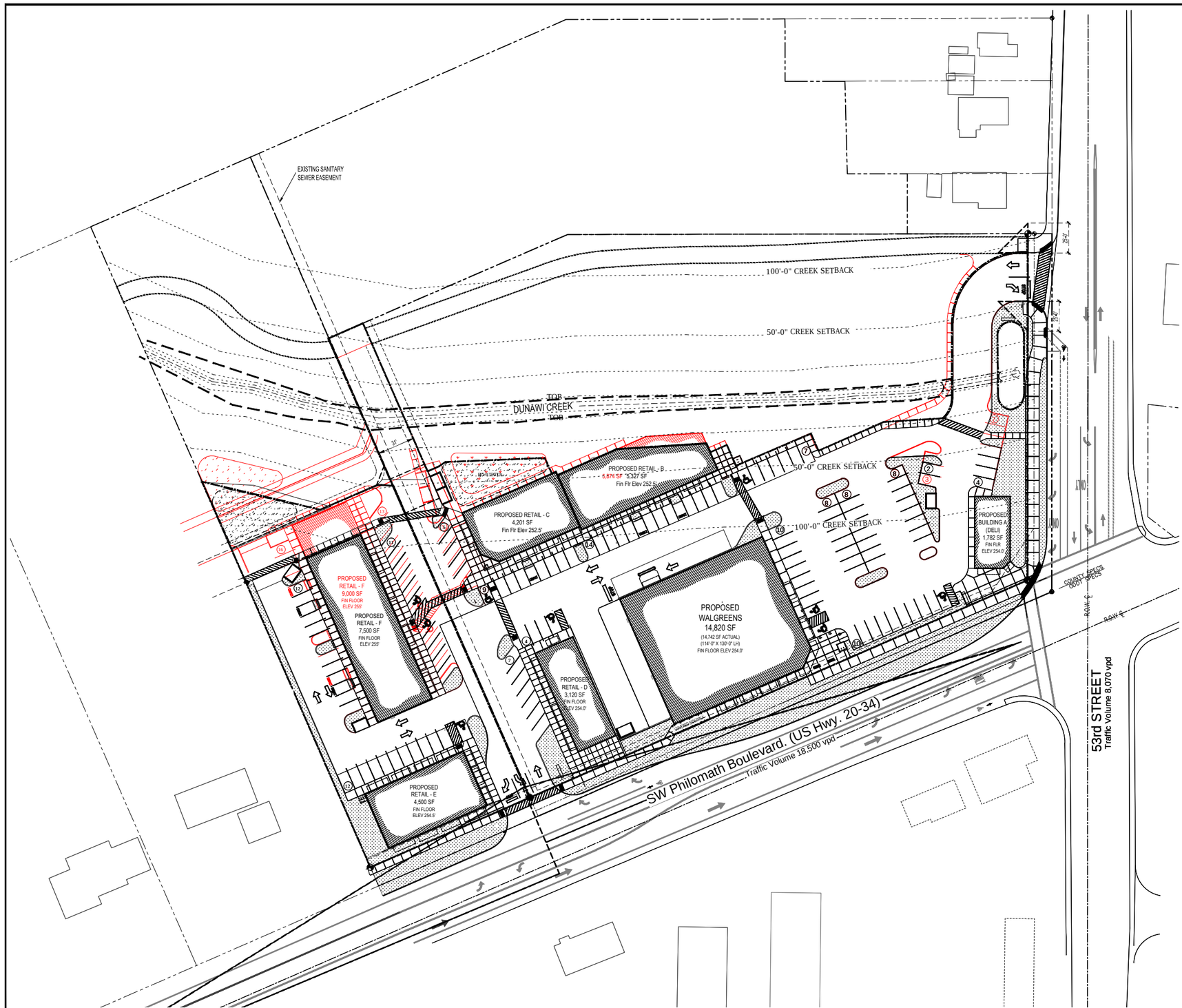
Project Location:
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON

Approved for the Owner By: Date:

REVISIONS	BY

PLOT DATE: 4/15/2013
ISSUE DATE:
DRAWN BY: T.WHITNEY
JOB NO.: --
SHEET
SP1.2

Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT A (86 of 112)



PATTERN LEGEND

PLAN DATED 8-2-2010

PLAN DATED 4-15-2013

SITE COMPARISON

SCALE: 1" = 40'-0"

0 20' 40' 80'

SCALE: 1" = 40'-0"

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CREEKSIDE CENTER CORVALLIS

Project Location:
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON

Approved for the Owner By: Date:

REVISIONS	BY
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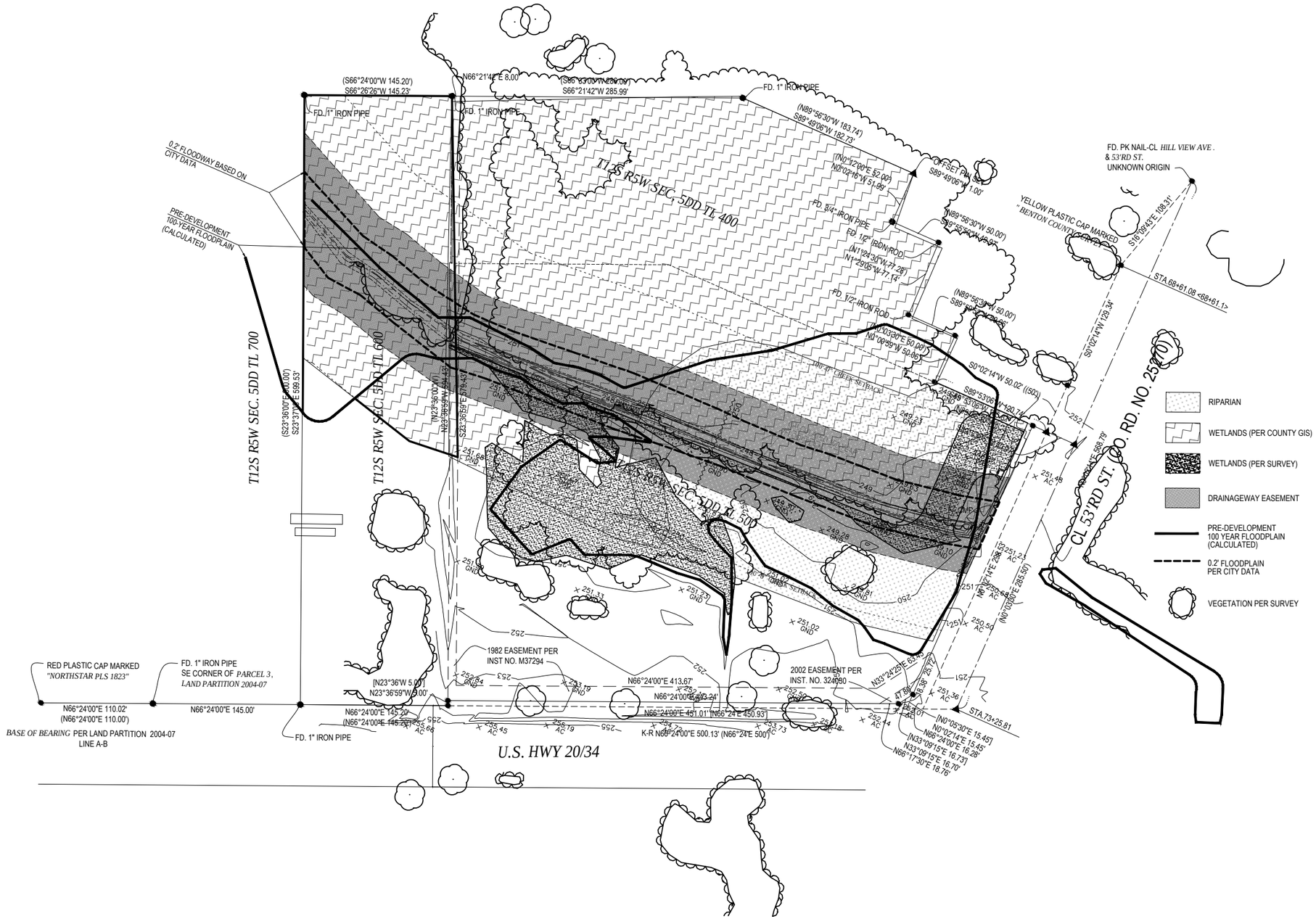
PLOT DATE: 5/8/2013
ISSUE DATE: .
DRAWN BY: T.WHITNEY
JOB NO.: -- .

SHEET
OVERLAY

Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT A (87 of 112)



G **PROPERTY SURVEY W/ TOPO AND FLOODPLAIN OVERLAY**

SCALE: 1" = 50'-0"

0 25' 50' 100'

SCALE: 1" = 50'-0"

TO VERIFY SCALES 0" 1" ORIGINAL BAR SET MEASURE ONE INCH BY ONE SIXTEENTH INCH

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CREEKSIDE CENTER
CORVALLIS

Project Location:
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON

Approved for the Owner By: Date:

REVISIONS	BY
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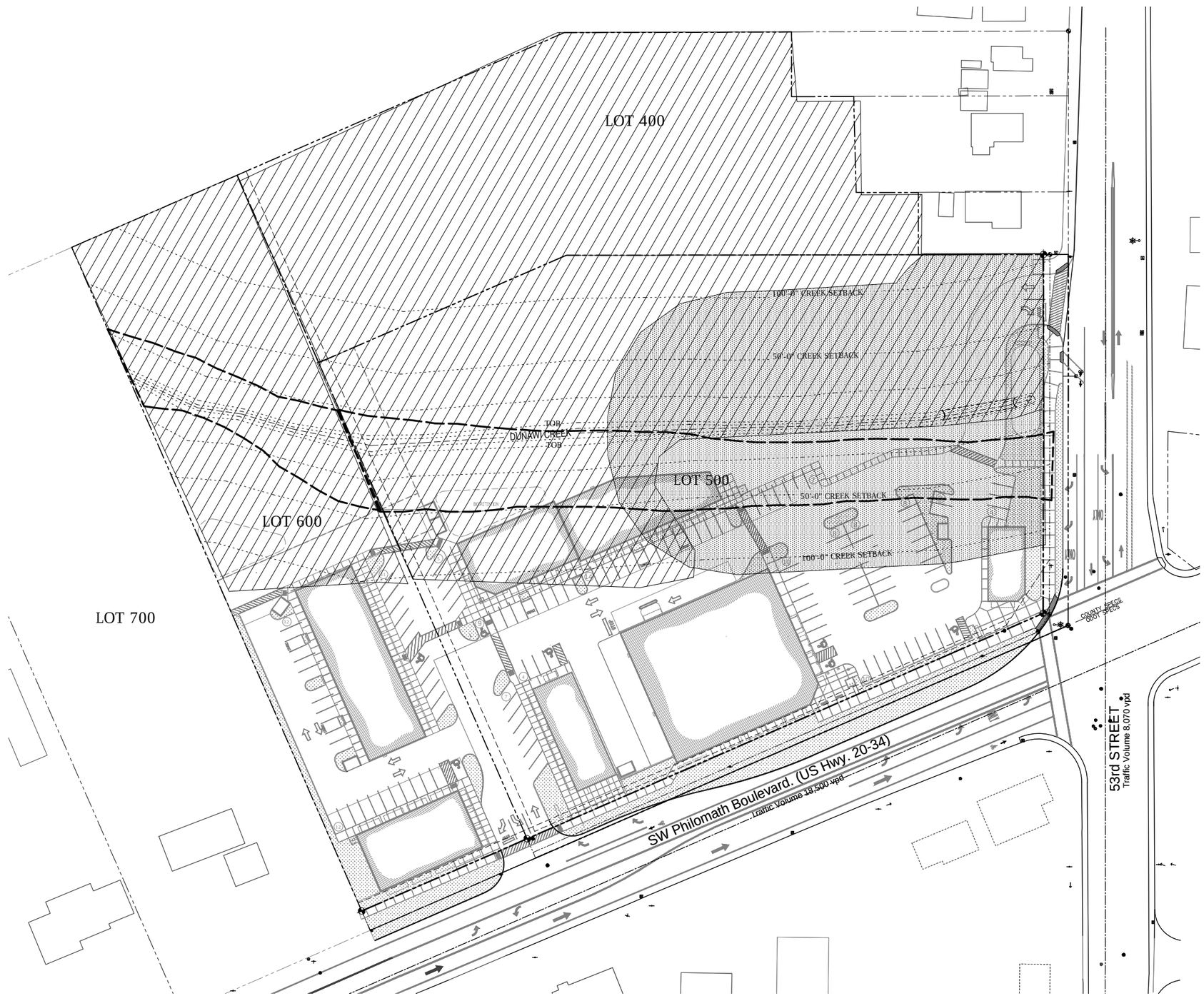
PLOT DATE: 4/15/2013
ISSUE DATE: .
DRAWN BY: T.WHITNEY
JOB NO.: -- .

SHEET
SP1.2A
SURVEY

4 OF 22

Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT A (88 of 112)



PATTERN LEGEND

- RIPARIAN AREA (CORVALLIS GIS OVERLAY)
- PROXIMATE WETLANDS AREA (CORVALLIS GIS OVERLAY)
- TWO TENTHS FLOOD PLANE (CORVALLIS GIS OVERLAY)

H **MAPPED WETLANDS/ HAZARDS OVERLAY**

SCALE: 1" = 40'-0"

0 20' 40' 80'

SCALE: 1" = 40'-0"

TO VERIFY SCALES 0" 1" ORIGINAL BAR SET MEASURE ONE INCH BY ONE SIXTEENTH INCH

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CREEKSIDE CENTER
CORVALLIS

Project Location:
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON

Approved for the Owner By: Date:

REVISIONS	BY
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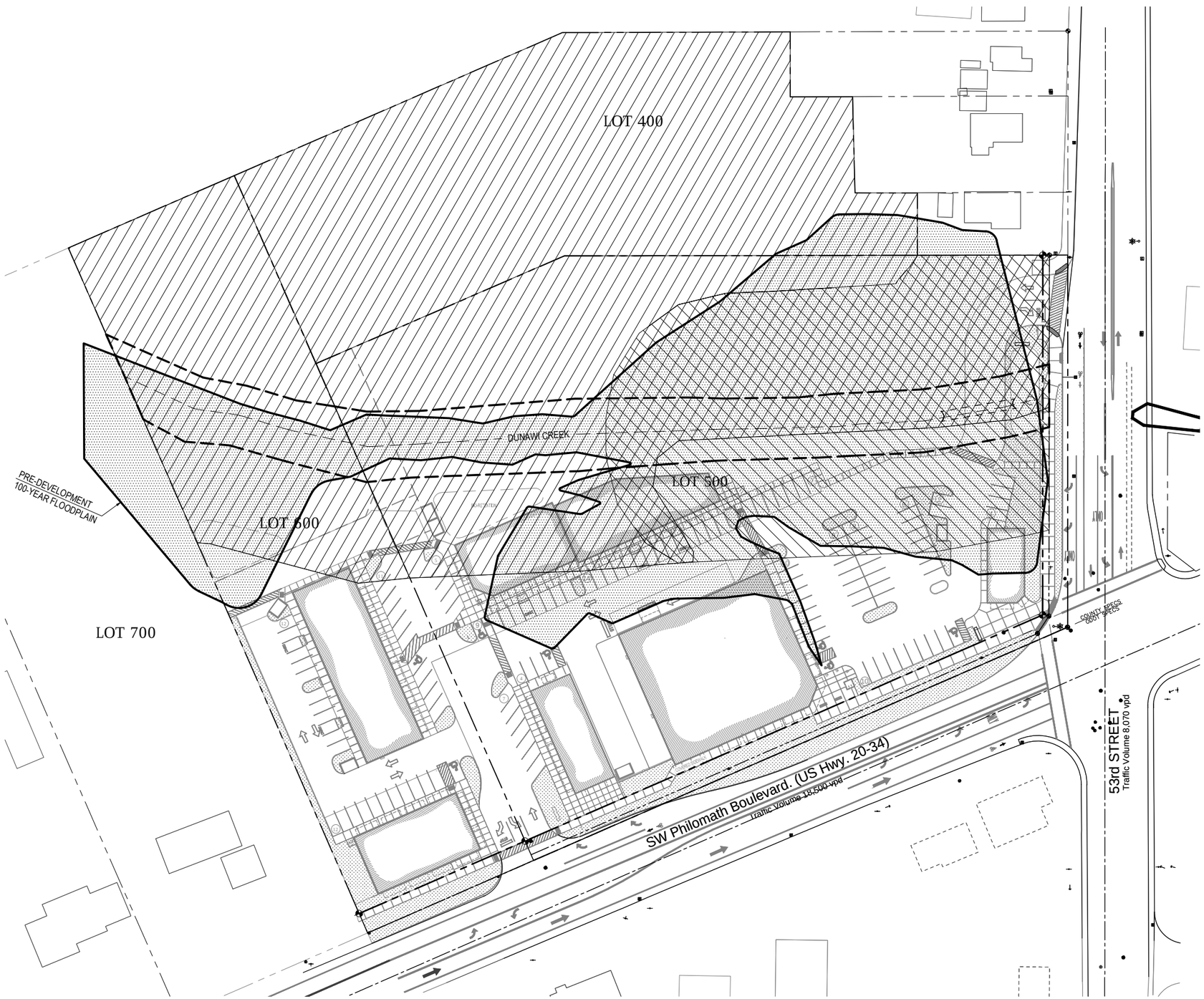
PLOT DATE: 4/15/2013
ISSUE DATE: .
DRAWN BY: **T.WHITNEY**
JOB NO.: **06-29-09**
SHEET
SP1.3A
MAPPED WETLANDS/ HAZARDS OVERLAY

Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT A (89 of 112)



PATTERN LEGEND

- RIPARIAN AREA (COORDINATED)
- PROXIMATE WETLANDS AREA (COORDINATED)
- TWO TENTHS FLOOD PLANE (COORDINATED)
- PRE- DEVELOPMENT 100 YR FLOOD PLANE

I COORDINATED WETLANDS/ HAZARDS OVERLAY

SCALE: 1" = 40'-0"

0 20' 40' 80'

SCALE: 1" = 40'-0"

TO VERIFY SCALES 0" 1" ORIGINAL BAR SET MEASURE ONE INCH BY ONE SIXTEENTH INCH

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CREEKSIDE CENTER
CORVALLIS

Project Location:
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON

Approved for the Owner By: Date:

REVISIONS	BY
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PLOT DATE: 4/15/2013
ISSUE DATE: .
DRAWN BY: T.WHITNEY
JOB NO.: 06-29-09

SHEET
SP1.3B
ADJUSTED WETLANDS OVERLAY

Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT A (90 of 112)

PATTERN LEGEND

- PROXIMATE WETLANDS AREA (SURVEYED)
- EXISTING TREES
- VEGETATION

J SURVEYED WETLANDS OVERLAY + EXISTING TREES

SCALE: 1" = 40'-0"

0 20' 40' 80'

SCALE: 1" = 40'-0"

TO VERIFY SCALES 0" 1" ORIGINAL BAR SET MEASURE ONE INCH BY ONE SIXTEENTH INCH

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CREEKSIDE CENTER CORVALLIS

Project Location:
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON

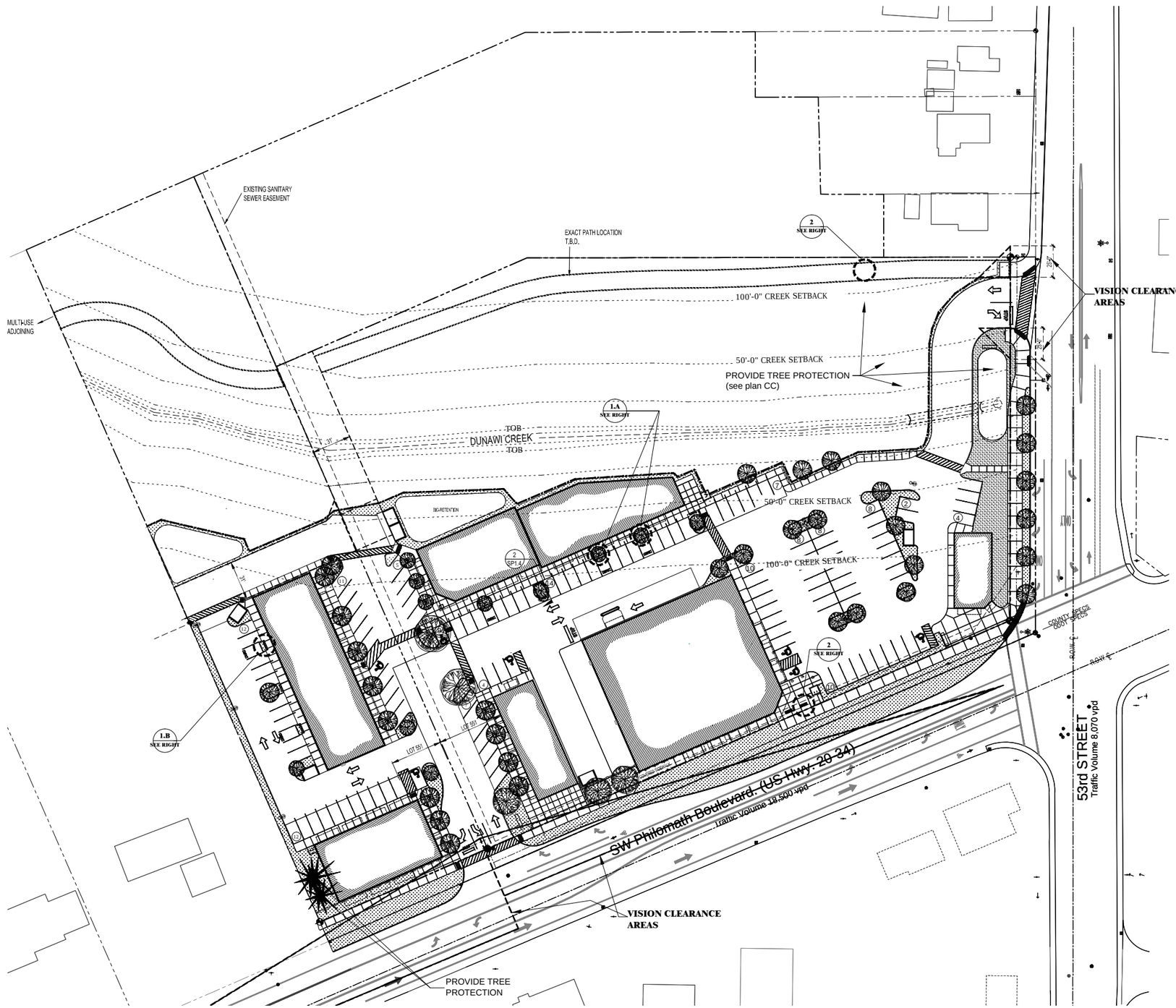
Approved for the Owner By: Date:

REVISIONS	BY

PLOT DATE: 4/15/2013
ISSUE DATE:
DRAWN BY: T.WHITNEY
JOB NO.: 06-29-09

SHEET
SP1.3C
SURVEYED WETLANDS OVERLAY

Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT A (91 of 112)



K OVERALL CONCEPTUAL LANDSCAPE PLAN

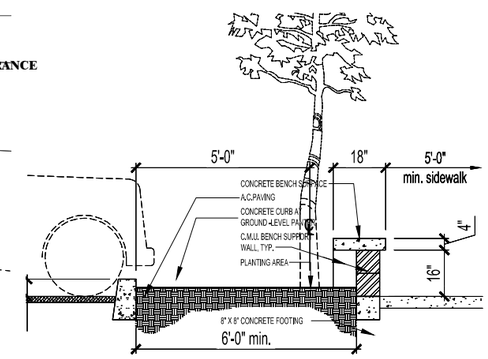
SCALE: 1" = 40'-0"

0 20' 40' 80'

SCALE: 1" = 40'-0"

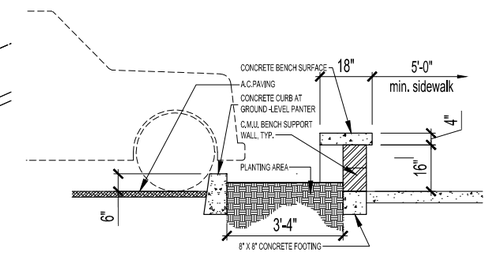
PATTERN LEGEND

- SMALL CANOPY TREES
- MEDIUM TREES (2-1/4" CALIPER MIN.) 30'-0" O.C. UNO
- LARGE TREES (50'-0" O.C. UNO)
- LANDSCAPED/ LAWN AREAS
- AREA OF MINIMAL DISTURBANCE/ RESTORED NATURAL LANDSCAPE
- EXISTING EVERGREEN TO REMAIN PROTECT IN PLACE
- EXISTING DECIDUOUS TO REMAIN PROTECT IN PLACE



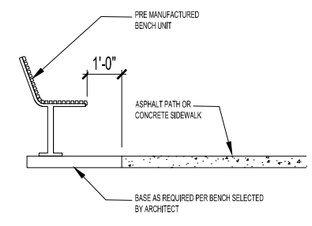
1.A SECTION AT PLANTER W/TREE

SCALE: 1/2" = 1'-0"



1.B SECTION AT PLANTER BENCH

SCALE: 1/2" = 1'-0"



2 SECTION AT STANDARD BENCH

SCALE: 1/2" = 1'-0"

TO VERIFY SCALES 0" 1" ORIGINAL BAR SET MEASURE ONE INCH BY ONE SIXTEENTH INCH

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CREEKSIDE CENTER
CORVALLIS

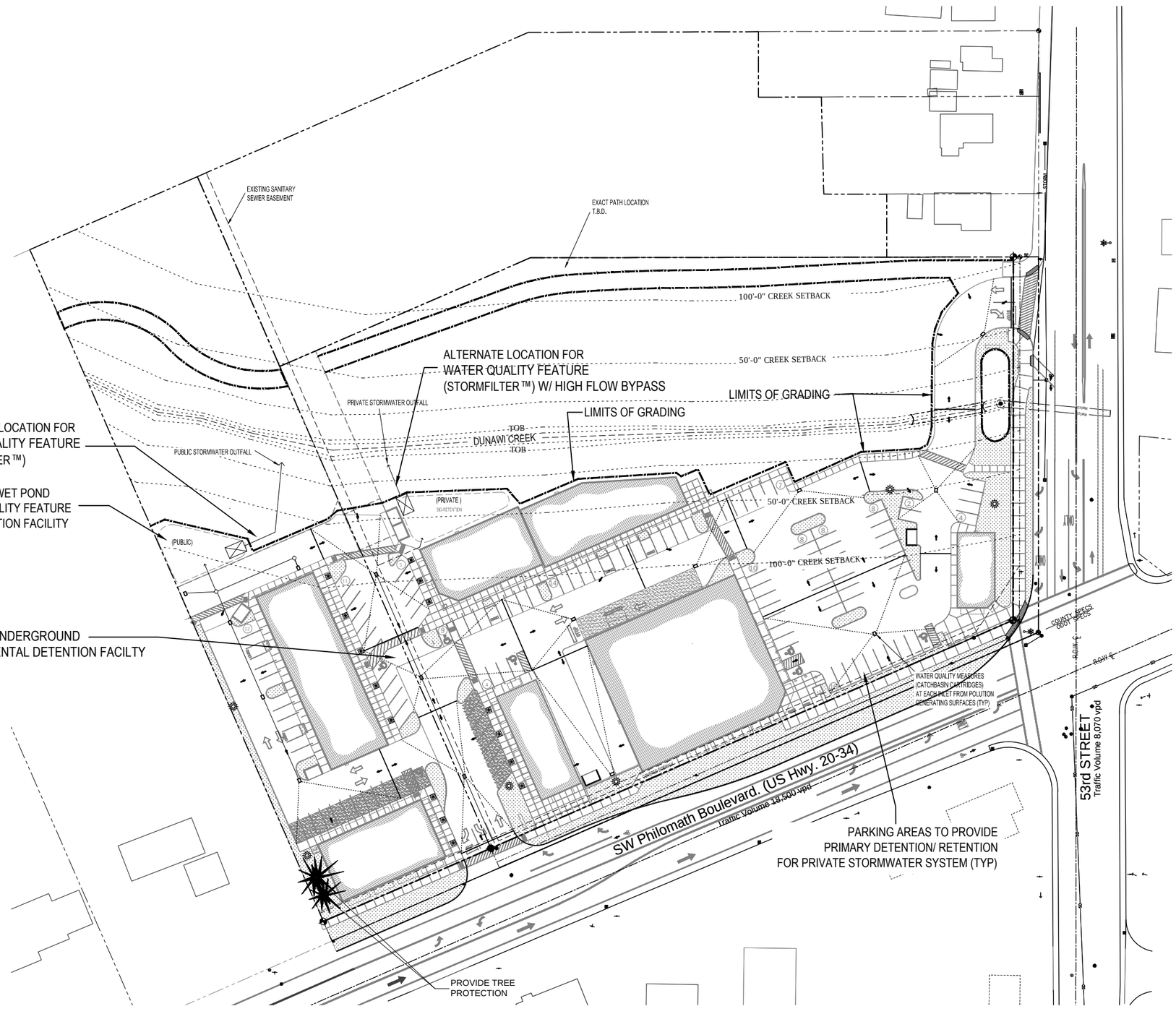
Project Location:
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON

Approved for the Owner By: Date:

REVISIONS	BY

PLOT DATE: 4/15/2013
ISSUE DATE:
DRAWN BY: T.WHITNEY
JOB NO.: 06-29-09
SHEET
SP1.4
CONCEPTUAL LANDSCAPE PLAN

Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT A (92 of 112)



PATTERN LEGEND

- HIGH POINTS
- VALLEYS
- CATCH BASINS
- FLOW DIRECTION
- EXISTING EVERGREEN TO REMAIN PROTECT IN PLACE
- EXISTING DECIDUOUS TO REMAIN PROTECT IN PLACE
- PERMEABLE PAVING
- THESE LOCATIONS MAY BE USED TO SUBSTITUTE OTHER WATER QUALITY FEATURES LISTED IN KING CO. SWDM SECTION 6.1.1 "BASIC WATER QUALITY MENU"

L

OVERALL CONCEPTUAL GRADING/ STORMWATER MANAGEMENT PLAN

SCALE: 1" = 40'-0"

0 20' 40' 80'

SCALE: 1" = 40'-0"

TO VERIFY SCALES 0" 1" ORIGINAL BAR SET MEASURE ONE INCH BY ONE SIXTEENTH INCH

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CREEKSIDE CENTER
CORVALLIS

Project Location:
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON

Approved for the Owner By: Date:

REVISIONS	BY
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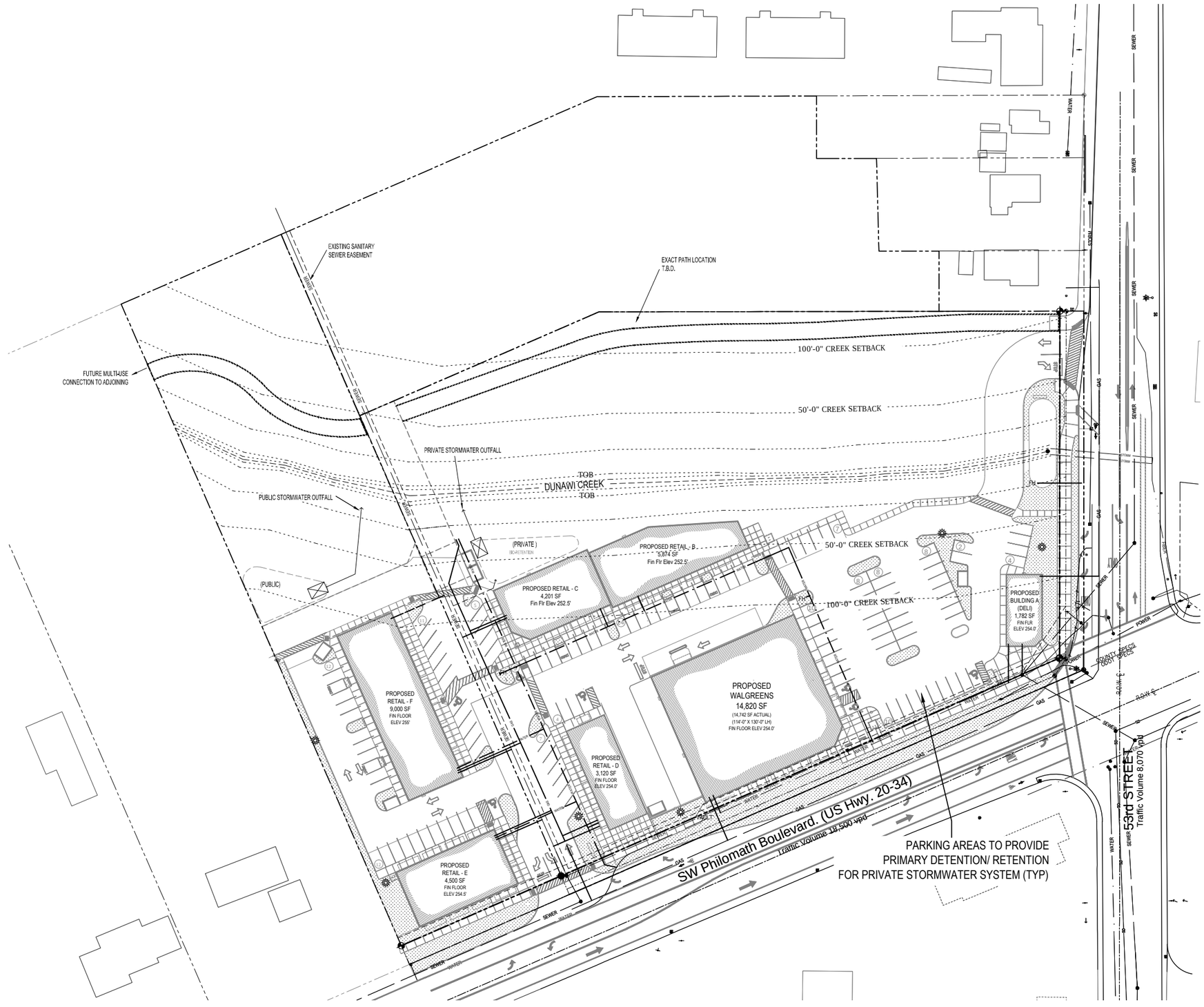
PLOT DATE: 4/15/2013
ISSUE DATE: .
DRAWN BY: T.WHITNEY
JOB NO.: 06-29-09 .

SHEET
SP1.5
CONCEPTUAL GRADING PLAN

Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT A (93 of 112)



LEGEND

EXISTING LINES

NEW LINES

M OVERALL CONCEPTUAL UTILITY PLAN

SCALE: 1" = 40'-0"

TO VERIFY SCALES 0" 1" ORIGINAL BAR SET MEASURE ONE INCH BY ONE SIXTEENTH INCH

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CREEKSIDE CENTER
CORVALLIS

Project Location:
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON

Approved for the Owner By: Date:

REVISIONS	BY

PLOT DATE: 4/15/2013
ISSUE DATE:
DRAWN BY: T.WHITNEY
JOB NO.: 06-29-09
SHEET
SP1.6
CONCEPTUAL UTILITY PLAN

10 OF 22

Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT A (94 of 112)

N

OVERALL CONCEPTUAL LIGHTING OUTFALL PLAN

SCALE: 1" = 40'-0"

0 20' 40' 80'

SCALE: 1" = 40'-0"

TO VERIFY SCALES 0" 1" ORIGINAL BAR SET MEASURE ONE INCH BY ONE SIXTEENTH INCH

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REGISTERED ARCHITECT
Mark McKechnie
Medford, Oregon
4666
STATE OF OREGON

OREGON ARCHITECTURE
221 West Tenth Street
Medford, Oregon 97501
Phone: 541.772.4372 Fax: 541.499.6329

THOMASFOX PROPERTIES, LLC
515 WEST PICKETT CIRCLE - SUITE 400
SALTLAKE CITY, UTAH 84115
PHONE: 801-596-7711 FAX: 801-596-7161

CREEKSIDE CENTER CORVALLIS

Project Location:
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON

Approved for the Owner By: Date:

REVISIONS	BY
.	.
.	.
.	.
.	.

PLOT DATE: 4/15/2013
ISSUE DATE: .
DRAWN BY: T.WHITNEY
JOB NO.: 06-29-09 .

SHEET
SP1.7
CONCEPTUAL LIGHTING PLAN

Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT A (95 of 112)

OREGON ARCHITECTURE INC.
(541) 772-4372
221 WEST 10TH ST • MEDFORD, OR 97501 • FAX: (541) 499-6329 • WWW.OREGONARCHITECTURE.BIZ

ATTACHMENT O-2 (Sheet SP 1.8)

MADA CALCULATIONS FOR THE CREEKSIDE I DEVELOPMENT
FINALIZED June 29, 2010
REVISED June 8, 2012
REMAND 4-15-2013

LOT 500

Site area of lot 4.6412+/- AC x 43,560 sf/AC:	202,170 sf *verified by survey*	
Estimated area of site encumbered with proximal wetlands or Riparian Corridor: (from City of Corvallis and DSL data)	124,425 sf	
Unencumbered land area:		77,745 sf
Minimum Assured Development Area		
4.6412 AC x 19,600 sf/AC	90,968 sf	
Additional MADA Credits		
(Area 1)Multi-Use Path (15' disturbance)	8,281 sf	
(Area 2)Mitigation area for Multi-Use Path	* sf	
(Area 3)5' ROW dedication on 53rd Street	1,517 sf	
(Area 4)Mitigation for ROW through Wetlands	725 sf	
(Area 5)10' wide Multi-Use Path along 53rd Street	1,517 sf	
(Area 6)12' ROW dedication on Highway 34	5,416 sf	
(Area 7)Not Used		
(Area 8)Mitigation area for access drive, as approved by DSL	6,345 sf	
(Area 9)Detention Pond for Lot	2,730 sf	
(Area 10)Mitigation area for required local street	3,599 sf	
Total Credits	30,130 sf	
Total MADA + Credits		121,098 sf
Current gross proposed development area (Site + Multi-use path) 112,770 + 8,281	121,051sf	
Additional Development Allowed		47 sf

* MADA credits are not being taken for pathway mitigation at this time because construction cannot be scheduled until entire path is identified.

OREGON ARCHITECTURE INC.
(541) 772-4372
221 West 10th St • Medford, OR 97501 • Fax: (541) 499-6329 • www.oregonarchitecture.biz

MADA CALCULATIONS FOR THE CREEKSIDE II DEVELOPMENT

FINALIZED July 13, 2010
REVISED June 8, 2012
REMAND 4-15-2013

LOT 600

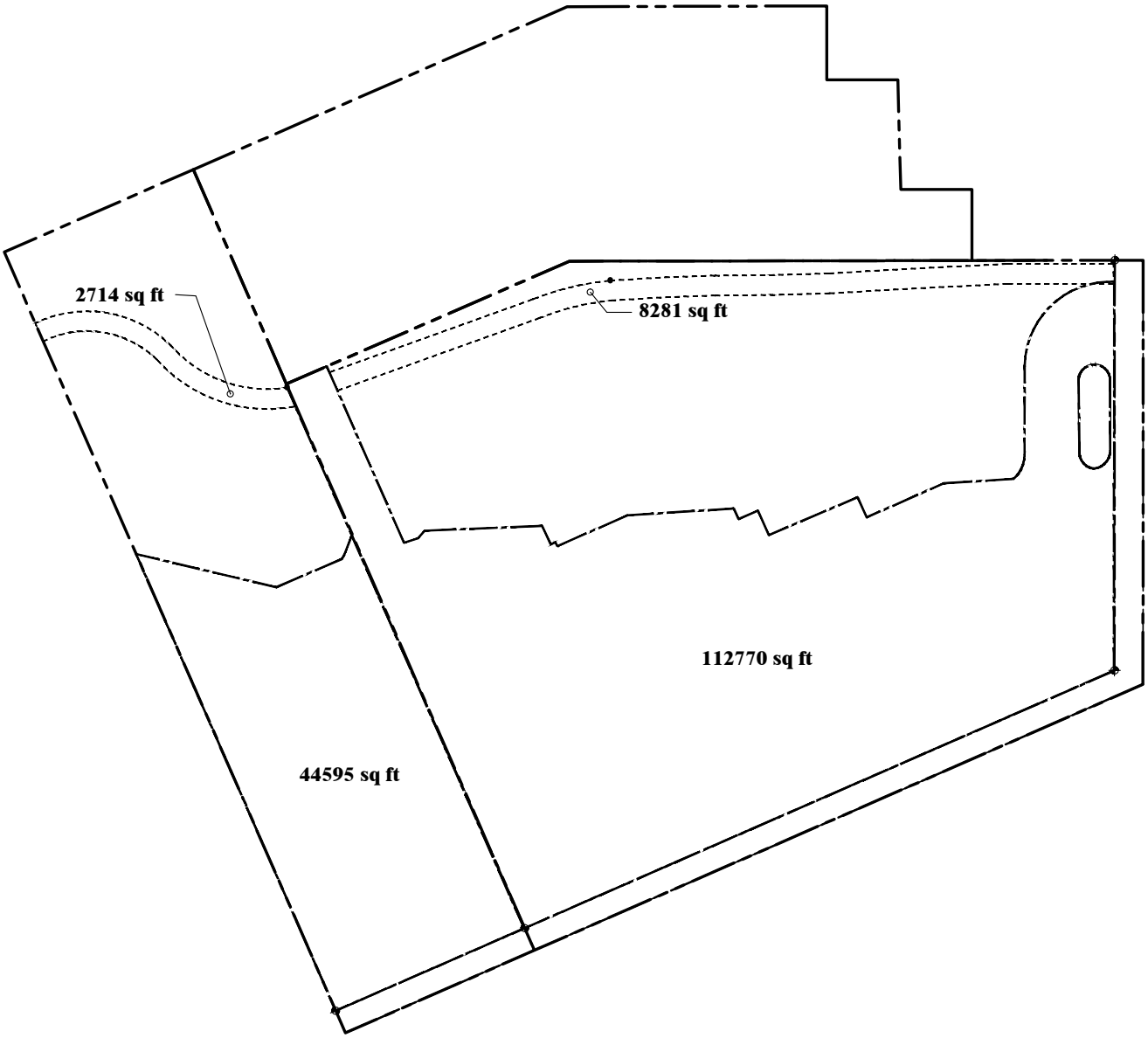
Site area of lot 1.9953+/- AC x 43,560 sf/AC:	86,912 sf *verified by survey*	
Estimated area of site encumbered with proximal wetlands and calculated floodplain: (from wetlands survey of the site)	42,594 sf	
Unencumbered land area:		44,318 sf
Minimum Assured Development Area		
1.9953 AC x 19,600 sf/AC	39,108 sf	

Additional MADA Credits

(Area 11)	17' ROW dedication on Highway 34	2,470 sf
(Area 12)	Detention Pond for future public ROW	2,007 sf
(Area 13)	Multi-Use Path (15' disturbance)	2,714 sf
(Area 14)	Mitigation area for Multi-Use Path	* sf
(Area 15)	Mitigation area for required local street	1,242 sf
Total Credits		8,433 sf

Total MADA + Credits		47,541 sf
Current proposed development area (Site + Multi-use path) 44,595 + 2,714	47,309 sf	
Additional Development Allowed		232 sf

* MADA credits are not being taken for pathway mitigation at this time because construction cannot be scheduled until entire path is identified.



1 Developed Areas

NOT TO SCALE

CREEKSIDE CENTER
CORVALLIS

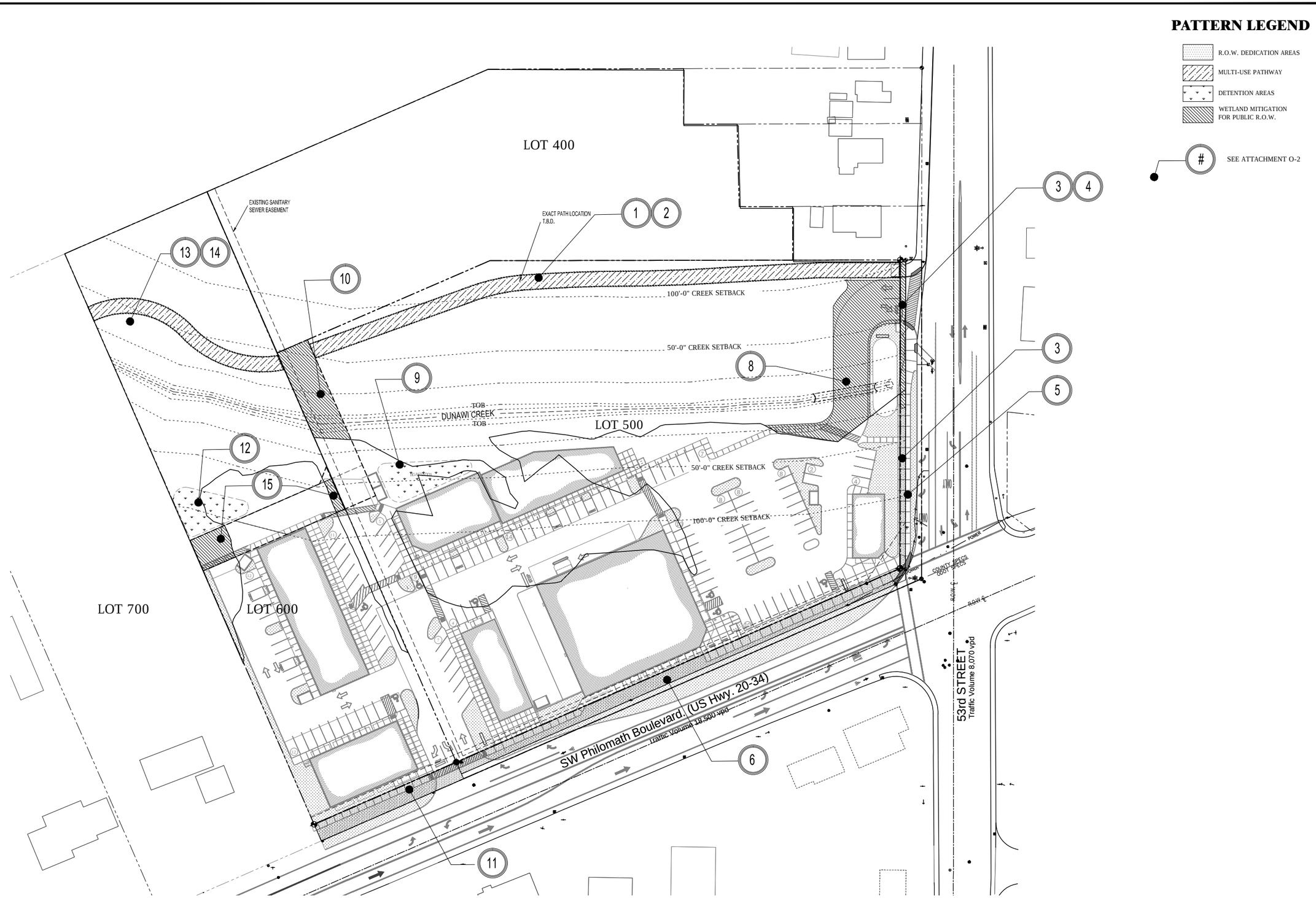
Project Location:
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON

THOMASFOX PROPERTIES, LLC
515 WEST PICKETT CIRCLE - SUITE 400
SALTLAKE CITY, UTAH 84115
PHONE: 801-596-7711 FAX: 801-596-7161

OREGON ARCHITECTURE
221 West Tenth Street
Medford, Oregon 97501
Phone: 541.772.4372 Fax: 541.499.6329

PLOT DATE: 3/25/13
ISSUE DATE:
DRAWN BY:
JOB NO.:
ATTACHMENT:

O-3



O MADA CREDIT AREAS

SCALE: 1" = 40'-0"

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STATE OF OREGON

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CREEKSIDE CENTER CORVALLIS

Project Location:
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON

Approved for the Owner By: Date:

REVISIONS	BY
.	.
.	.
.	.
.	.

PLOT DATE: 4/15/2013
ISSUE DATE: .
DRAWN BY: T.WHITNEY
JOB NO.: 06-29-09
SHEET
SP1.8
MADA CALCULATION AREAS

Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT A (99 of 112)

MARQUESS & ASSOCIATES INC

YOUR PROFESSIONAL ENGINEERING TEAM SINCE 1957

P 541-772-7115 F 541-779-4079 1120 EAST JACKSON PO BOX 490 MEDFORD, OR 97501
EMAIL: info@marquess.com WEB: www.marquess.com

March 29, 2013

John Batzer
C/o Tomas Fox Properties, LLC
515 West Pickett Circle, Suite 400
Salt Lake City, Utah 84115

RE: CREEKSIDE CENTER
FLOOD STUDY
CORVALLIS, OREGON
MAI JOB NUMBER: 09-1126

Dear John:

I have reviewed the changes made to the development plan (updated plan prepared by Oregon Architecture dated 3/25/2013) as they relate to the Flood Study prepared by our office in 2010 (latest revision dated 6/3/2010).

The proposed changes to the development plan will have no significant impact on the results of the Flood Study.

Sincerely,

MARQUESS & ASSOCIATES, INC.

Robert S. Gunter, P.E.

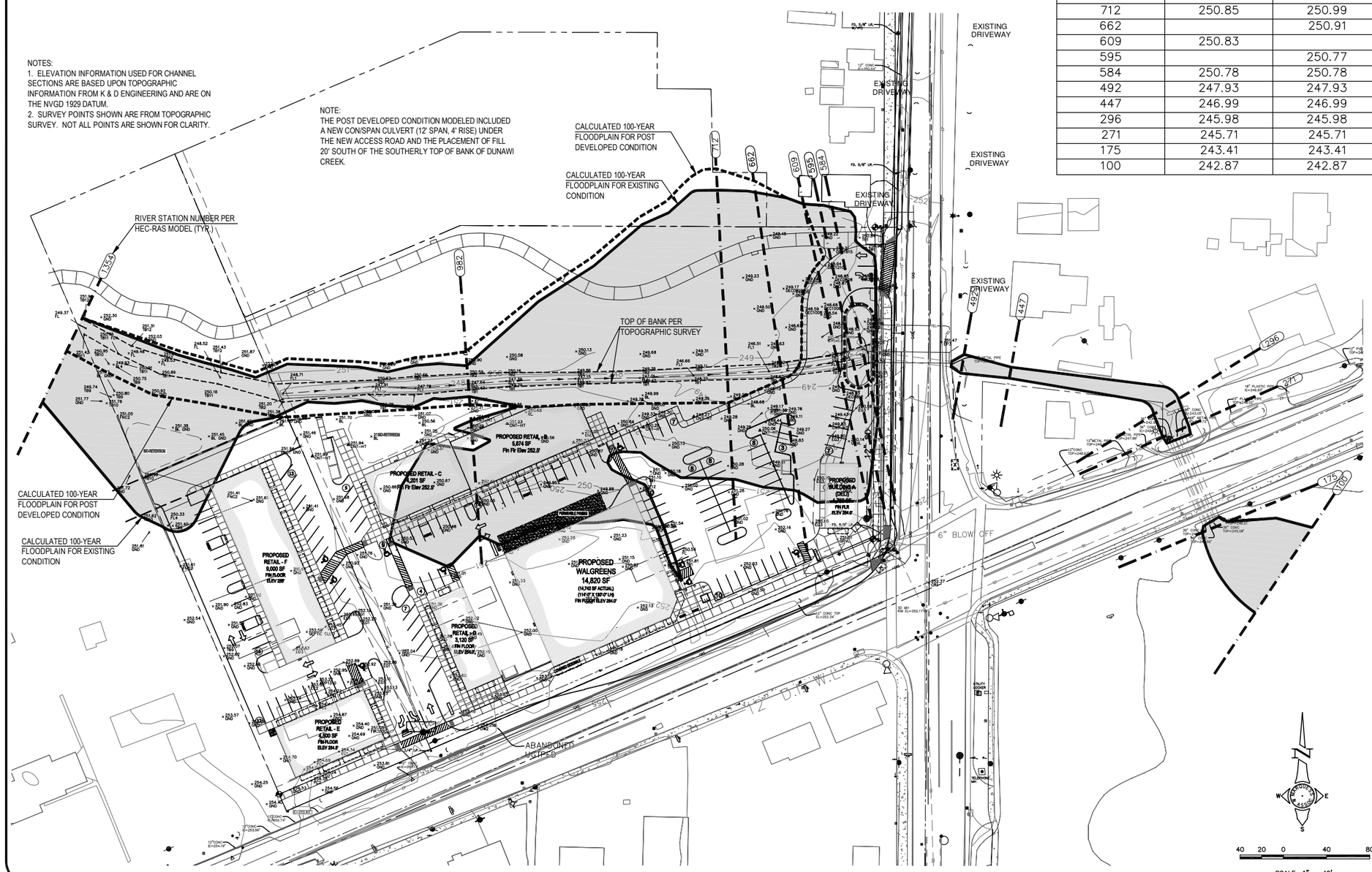
REGISTERED PROFESSIONAL ENGINEER
72363PE
OREGON
MARCH 11, 2005
ROBERT SCOTT GUNTER
RENEW DATE 6-30-2013

RSG/rsg
S:\09-1126\correspond\09-1126 Floodplain letter to John Batzer.doc

CALL BEFORE YOU DIG
1-800-332-2344
48 HOURS BEFORE BEGINNING EXCAVATION
OREGON LAW REQUIRES YOU TO FOLLOW RULES ADOPTED BY THE OREGON UTILITY NOTIFICATION CENTER. THOSE RULES ARE SET FORTH IN OAR 952-001-0010 THROUGH OAR 952-001-0090. YOU MAY OBTAIN COPIES OF THE RULES BY CALLING THE CENTER AT 503-232-1987.

NOTES:
1. ELEVATION INFORMATION USED FOR CHANNEL SECTIONS ARE BASED UPON TOPOGRAPHIC INFORMATION FROM K & D ENGINEERING AND ARE ON THE NVGD 1929 DATUM.
2. SURVEY POINTS SHOWN ARE FROM TOPOGRAPHIC SURVEY. NOT ALL POINTS ARE SHOWN FOR CLARITY.

NOTE:
THE POST DEVELOPED CONDITION MODELED INCLUDED A NEW CON/SPAN CULVERT (12' SPAN, 4' RISE) UNDER THE NEW ACCESS ROAD AND THE PLACEMENT OF FILL 20' SOUTH OF THE SOUTHERLY TOP OF BANK OF DUNAWI CREEK.



100 YEAR WATER SURFACE ELEVATION		
CROSS SECTION	EXISTING	POST DEVELOPED
1354	252.02	252.01
982	250.83	250.98
712	250.85	250.99
662		250.91
609	250.83	
595		250.77
584	250.78	250.78
492	247.93	247.93
447	246.99	246.99
296	245.98	245.98
271	245.71	245.71
175	243.41	243.41
100	242.87	242.87

REGISTERED PROFESSIONAL ENGINEER 72868PE RENEW DATE: 6-30-11 ELECTRONIC COPY OREGON MARCH 11, 2003 ROBERT SCOTT GUNTER

MARQUESS & ASSOCIATES, INC.
YOUR PROFESSIONAL ENGINEERING TEAM SINCE 1975
CIVIL | GEOTECHNICAL | DAM & CONSTRUCTION MONITORING
STRUCTURAL | MECHANICAL | ELECTRICAL | SURVEYING
P 541-772-7158 F 541-772-4877
2228 BIG BANK ROAD TO BOX 1489 MEDFORD, OR 97501
WEB: www.marquess.com

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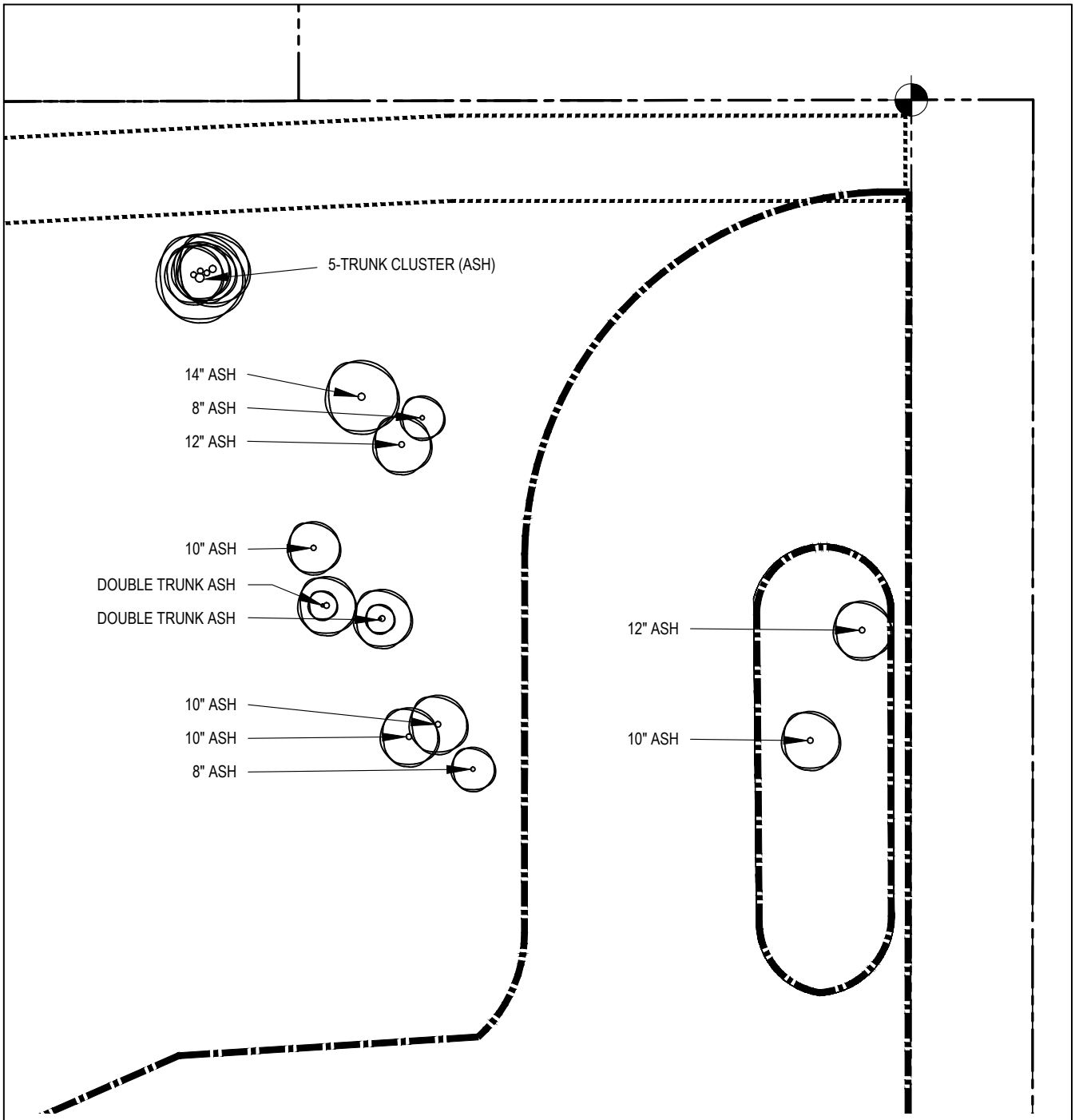
CREEKSIDE CENTER
CORVALLIS OREGON

FLOODPLAIN DELINEATION
DUNAWI CREEK

REVISIONS		
1	ADDED FIELD TOPO INFO	1/13/10
2	CITY COMMENTS	3/24/10
3	CITY COMMENTS	06/02/10
4	CITY COMMENTS	07/29/10

MAS JOB NO. 04-126
FILE NAME CITE
ISSUE DATE 09-30-09
DRAWN BSG
CHECKED BSG

SHEET
SP 1.9
OF SHEETS



1 Tree Survey/Protection Plan

NOT TO SCALE

DATA FROM JUNE, 2010 SURVEY BY:

NEIL HIBBS **LAND SURVEYING, INC.**
4739 Lookingglass Road
Roseburg, Oregon 97470
Phone: 541-957-9303

CREEKSIDE CENTER
CORVALLIS

Project Location:
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON

THOMASFOX PROPERTIES, LLC
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221 West Tenth Street
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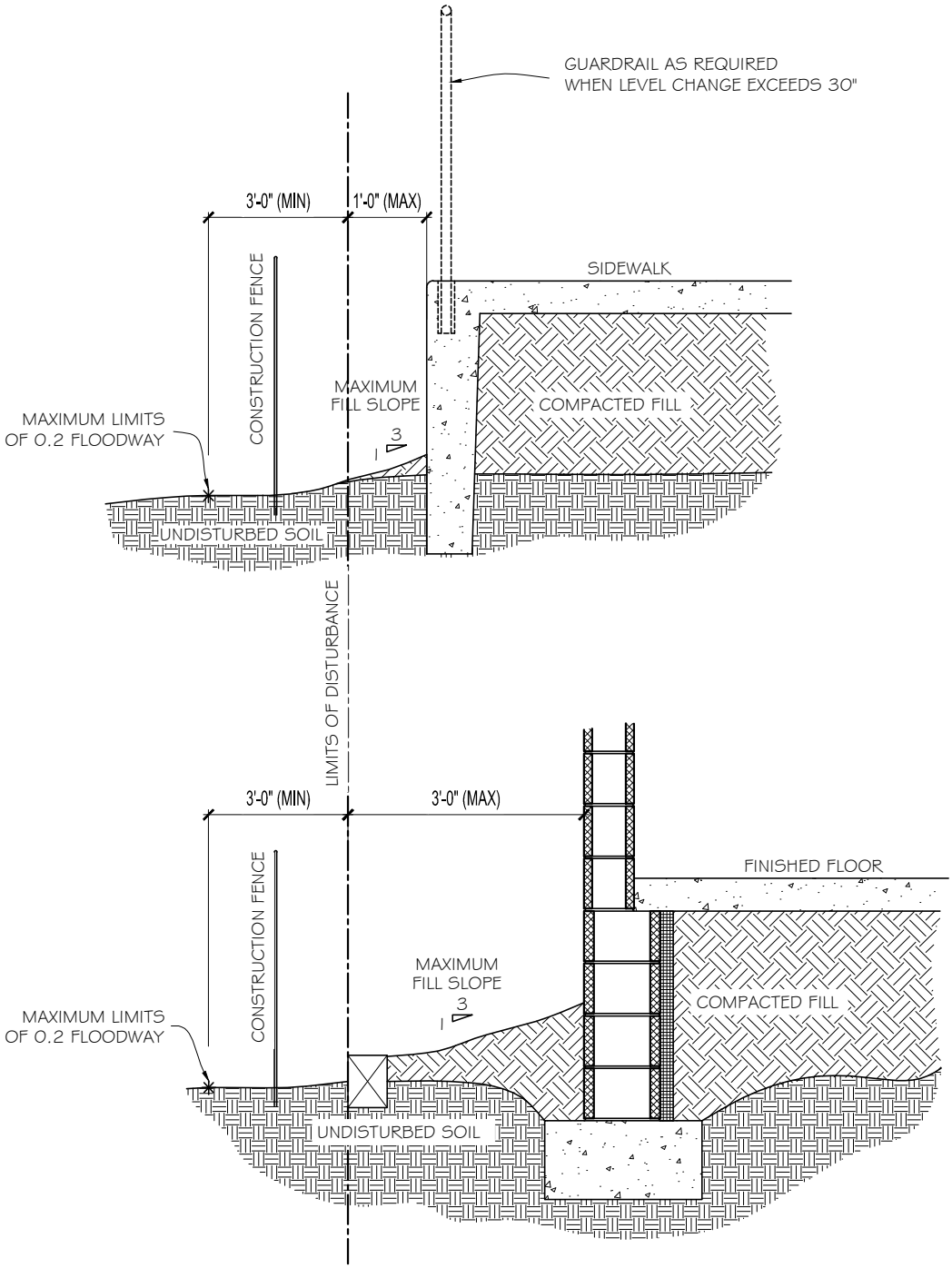
Phone: 541.772.4372 Fax: 541.499.6329

PLOT DATE: 3/25/13
ISSUE DATE:
DRAWN BY:
JOB NO.:
ATTACHMENT:
CC



1 DETAIL @ LIMITS OF DISTURBANCE

CREEKSIDE CENTER
CORVALLIS

Project Location:

INTERSECTION OF HWY 20-34 AND 53rd STREET
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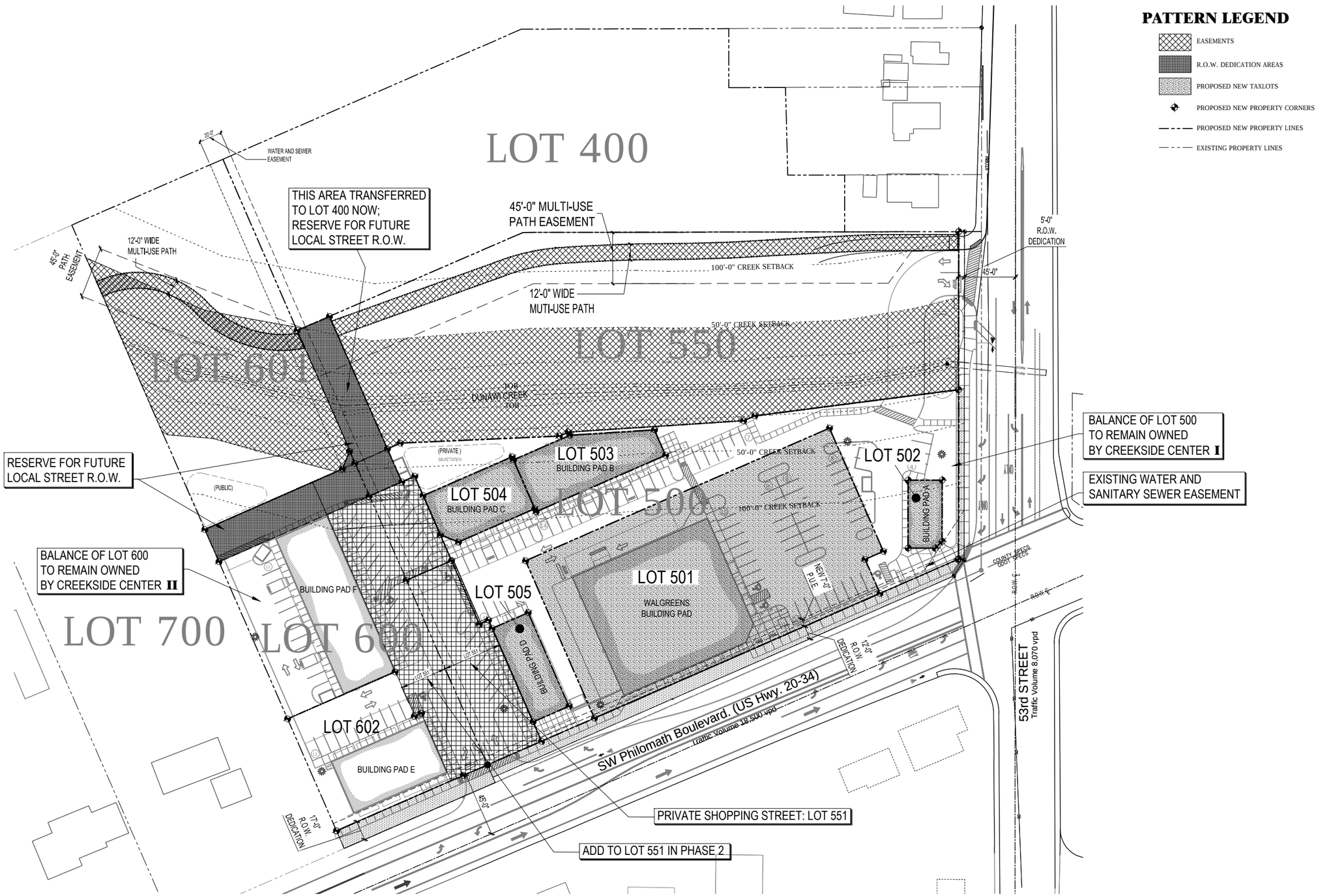

Q **PROPOSED PARCEL PLAT**
SCALE: 1" = 40'-0"

TO VERIFY SCALES 0" 1" ORIGINAL BAR SET MEASURE ONE INCH BY ONE SIXTEENTH INCH

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CREEKSIDE CENTER
CORVALLIS

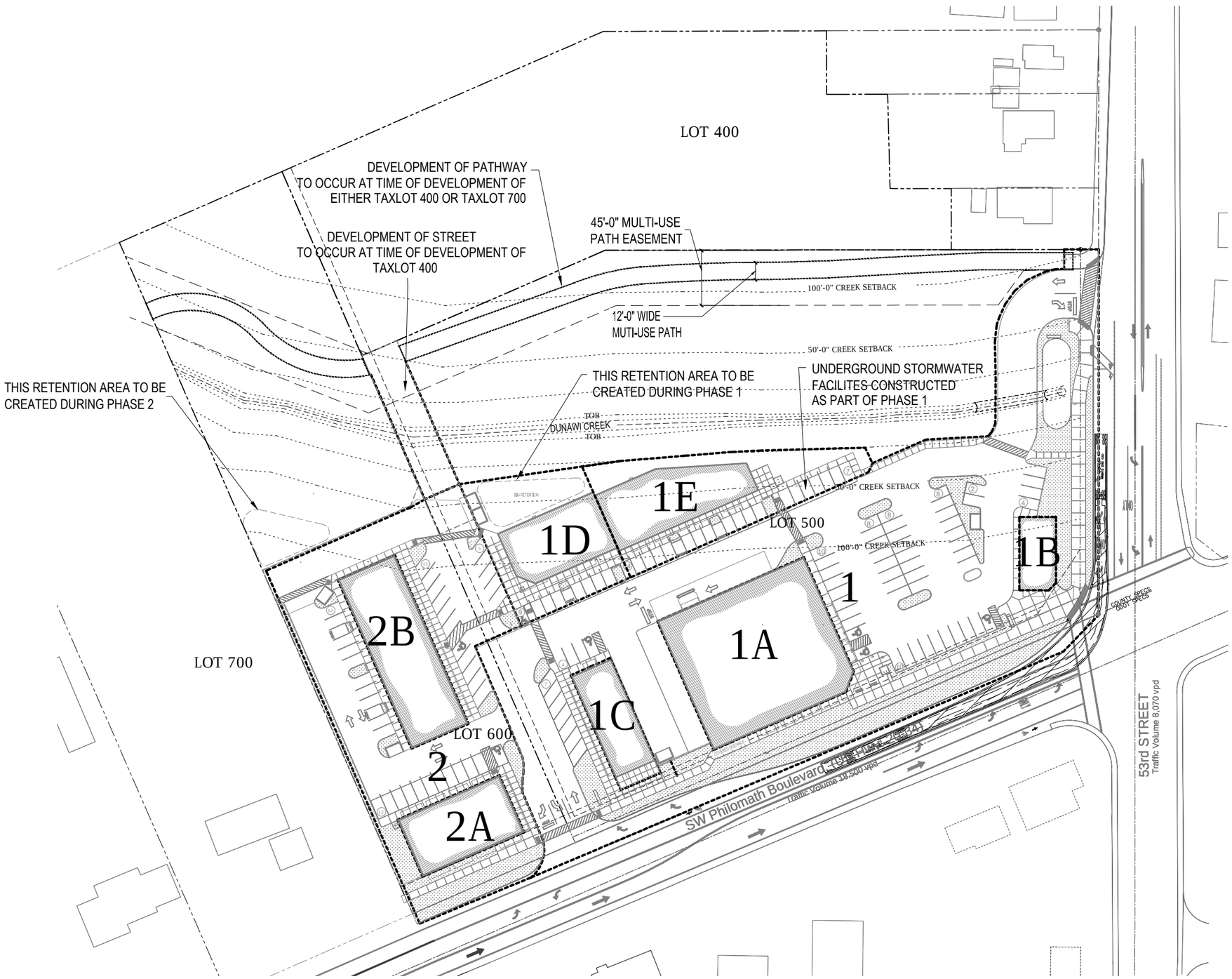
Project Location:
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON

Approved for the Owner By: Date:

REVISIONS	BY

PLOT DATE: 4/15/2013
ISSUE DATE:
DRAWN BY: T.WHITNEY
JOB NO.: 06-29-09
SHEET
SP1.10
PROPOSED PROPERTY PLAN

Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT A (104 of 112)



R **PROPOSED PROJECT PHASE PLAN**
SCALE: 1" = 40'-0"

0 20' 40' 80'
SCALE: 1" = 40'-0"

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CREEKSIDE CENTER CORVALLIS

Project Location:
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON

Approved for the Owner By: Date:

REVISIONS	BY
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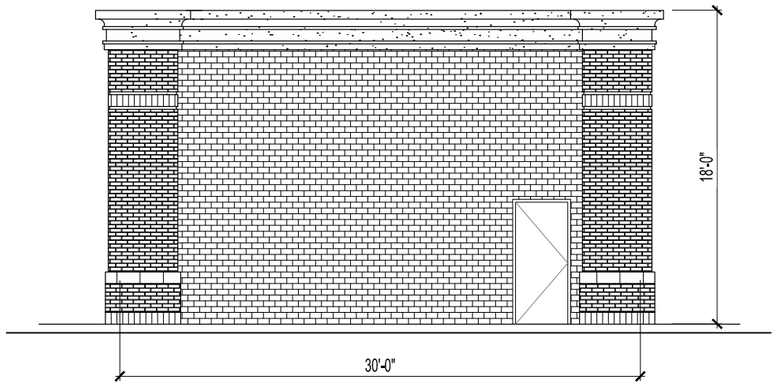
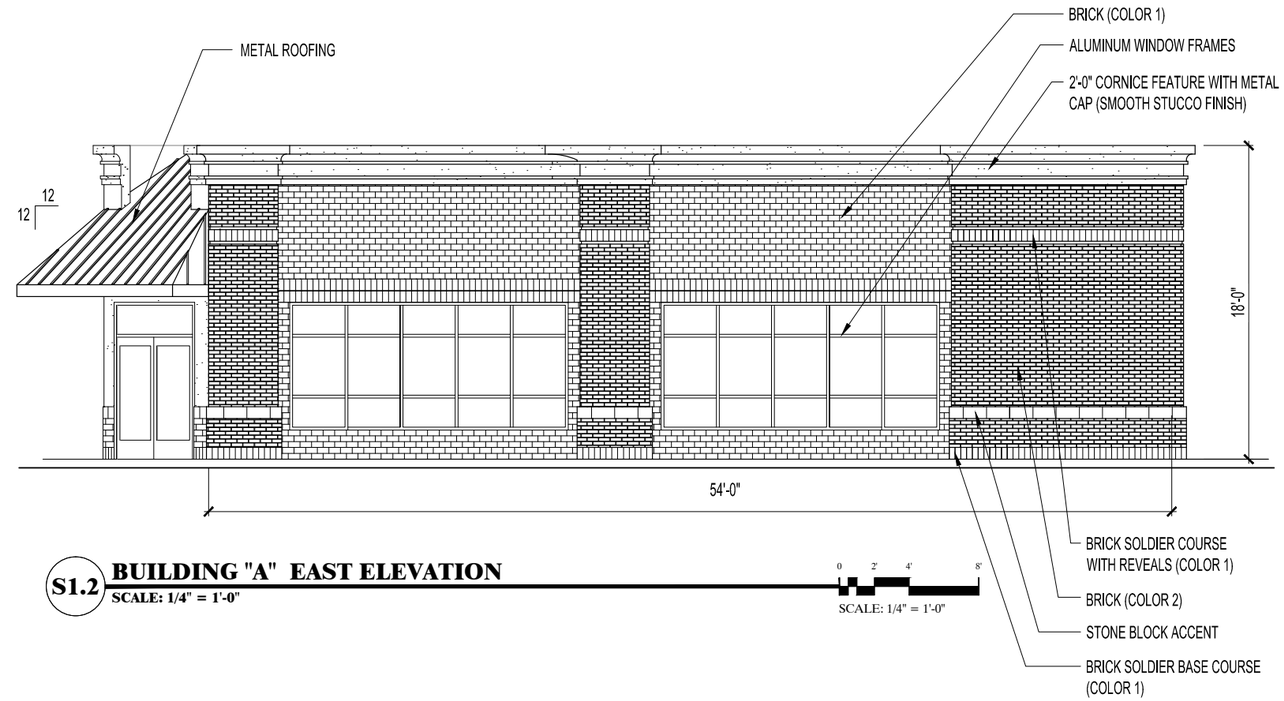
.	.
.	.
.	.

PLOT DATE: 4/15/2013
ISSUE DATE: .
DRAWN BY: T.WHITNEY
JOB NO.: 06-29-09
SHEET
SP1.11
PROPOSED PROJECT PHASE PLAN

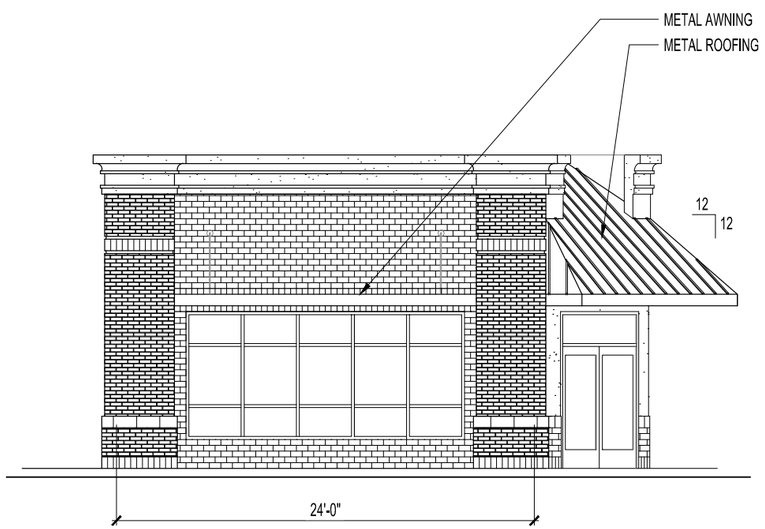
Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT A (105 of 112)



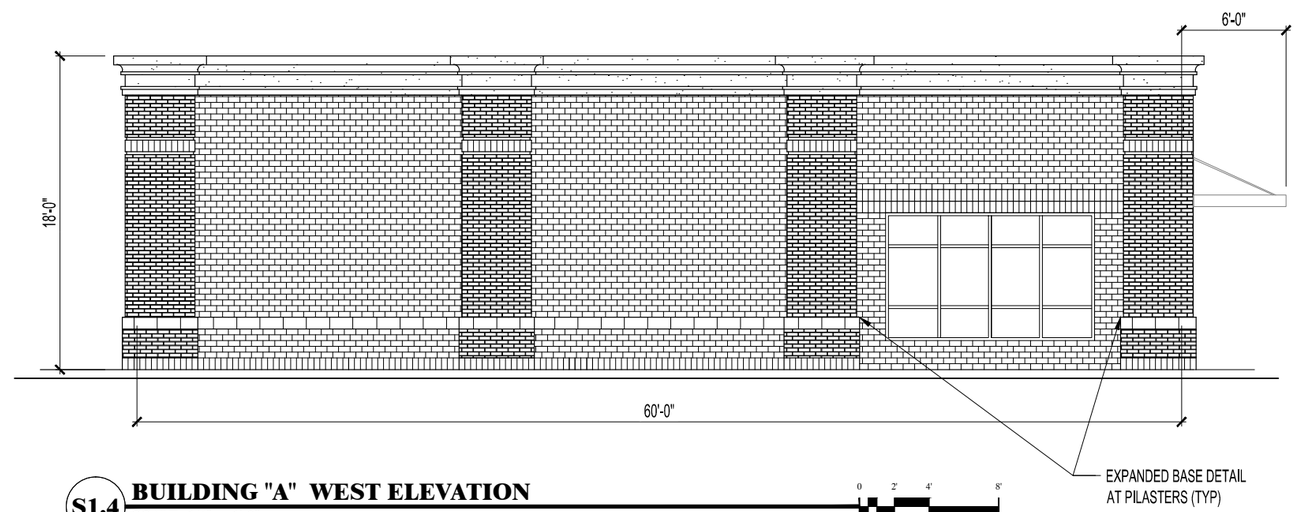
S1.1 BUILDING "A" NORTH ELEVATION
SCALE: 1/4" = 1'-0"



S1.2 BUILDING "A" EAST ELEVATION
SCALE: 1/4" = 1'-0"



S1.3 BUILDING "A" SOUTH ELEVATION
SCALE: 1/4" = 1'-0"



S1.4 BUILDING "A" WEST ELEVATION
SCALE: 1/4" = 1'-0"

TO VERIFY SCALES 0" 1" ORIGINAL BAR SET MEASURE ONE INCH BY ONE SIXTEENTH INCH

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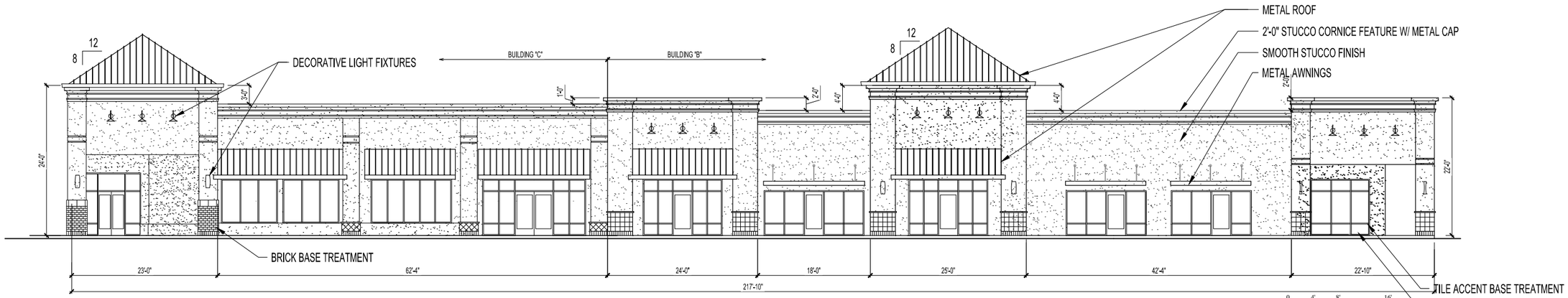
CREEKSIDE CENTER
CORVALLIS

Project Location:
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON

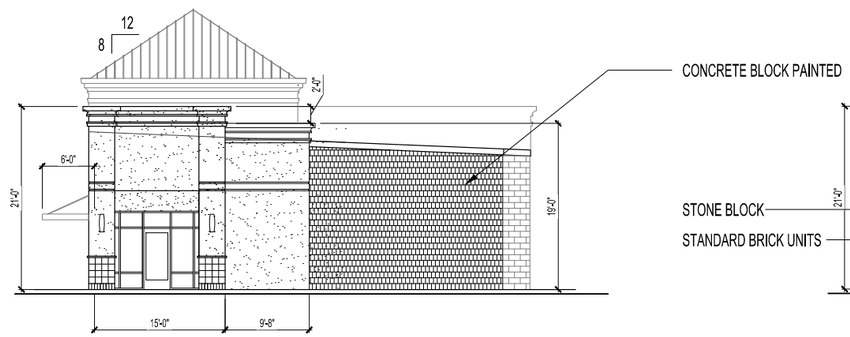
Approved for the Owner By: Date:

REVISIONS	BY

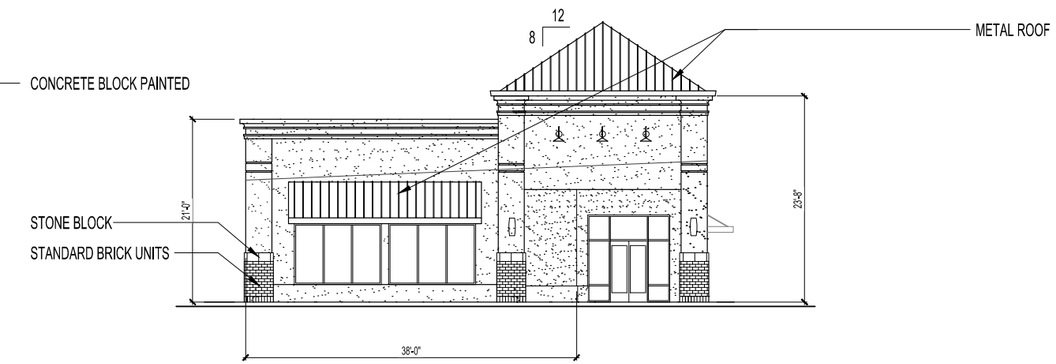
PLOT DATE: 3/25/2013
ISSUE DATE:
DRAWN BY: T.WHITNEY
JOB NO.: 06-29-09
SHEET
SP2.1
BUILDING ELEVATION
BUILDING "A"



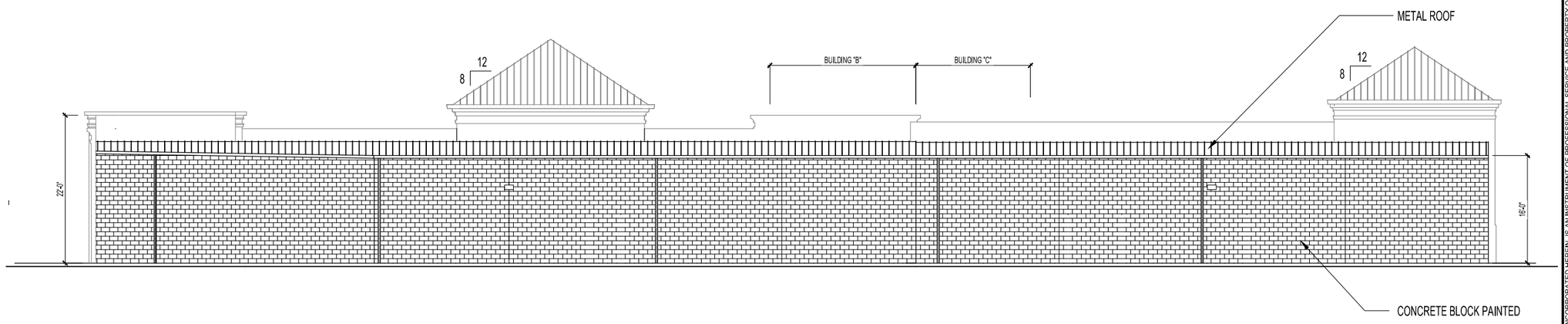
S2.1 **SOUTH ELEVATION - BUILDINGS "B & C"**
SCALE: 1/8" = 1'-0"



S2.2 **EAST ELEVATION - BUILDINGS "B & C"**
SCALE: 1/8" = 1'-0"
0 4' 8' 16'
SCALE: 1/8" = 1'-0"



S2.3 **WEST ELEVATION - BUILDINGS "B & C"**
SCALE: 1/8" = 1'-0"
0 4' 8' 16'
SCALE: 1/8" = 1'-0"



S2.4 **NORTH ELEVATION - BUILDINGS "B & C"**
SCALE: 1/8" = 1'-0"
0 4' 8' 16'
SCALE: 1/8" = 1'-0"

TO VERIFY SCALES 0" 1" ORIGINAL BAR SET MEASURE ONE INCH BY ONE SIXTEENTH INCH

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THOMASFOX PROPERTIES, LLC
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CREEKSIDE CENTER CORVALLIS

Project Location:
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON

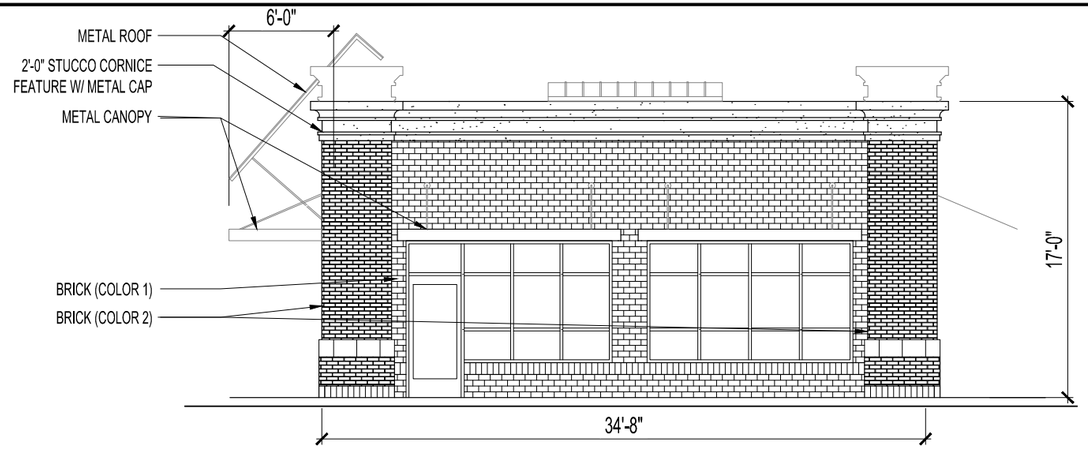
Approved for the Owner By: Date:

REVISIONS	BY
Canopy depth 12-22-09	CL-B

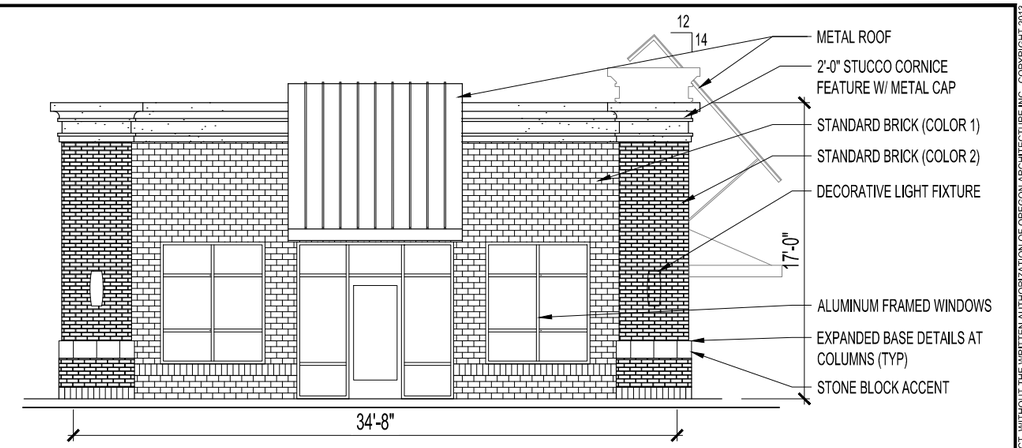
PLOT DATE: 3/27/2013
ISSUE DATE:
DRAWN BY: T.WHITNEY
JOB NO.: 06-29-09

SHEET
SP2.2
BUILDING ELEVATIONS
BUILDINGS "B & C"

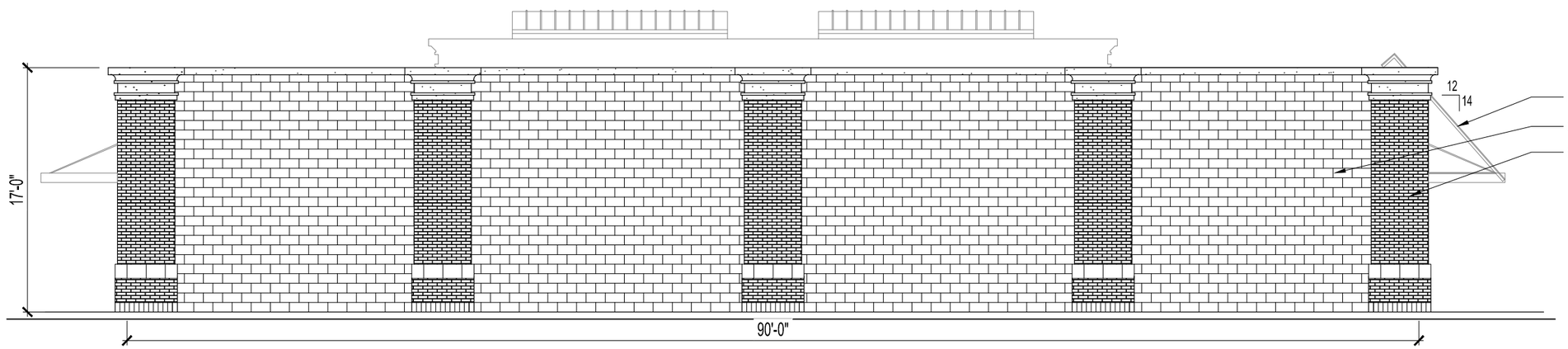
Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT A (107 of 112)



S3.1 SOUTH ELEVATION - BUILDING "D"
SCALE: 1/4" = 1'-0"



S3.2 NORTH ELEVATION - BUILDING "D"
SCALE: 1/4" = 1'-0"



S3.3 EAST ELEVATION - BUILDING "D"
SCALE: 1/4" = 1'-0"

S3.4 WEST ELEVATION - BUILDING "D"
SCALE: 1/4" = 1'-0"

TO VERIFY SCALES 0" 1" ORIGINAL BAR SET MEASURE ONE INCH BY ONE SIXTEENTH INCH

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REGISTERED ARCHITECT
Mark McKechnie
Medford, Oregon
4666
STATE OF OREGON

OREGON ARCHITECTURE
221 West Tenth Street
Medford, Oregon 97501
Phone: 541.772.4372 Fax: 541.499.6329

THOMASFOX PROPERTIES, LLC
515 WEST PICKETT CIRCLE - SUITE 400
SALTLAKE CITY, UTAH 84115
PHONE: 801-596-7711 FAX: 801-596-7161

CREEKSIDE CENTER
CORVALLIS

Project Location:
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON

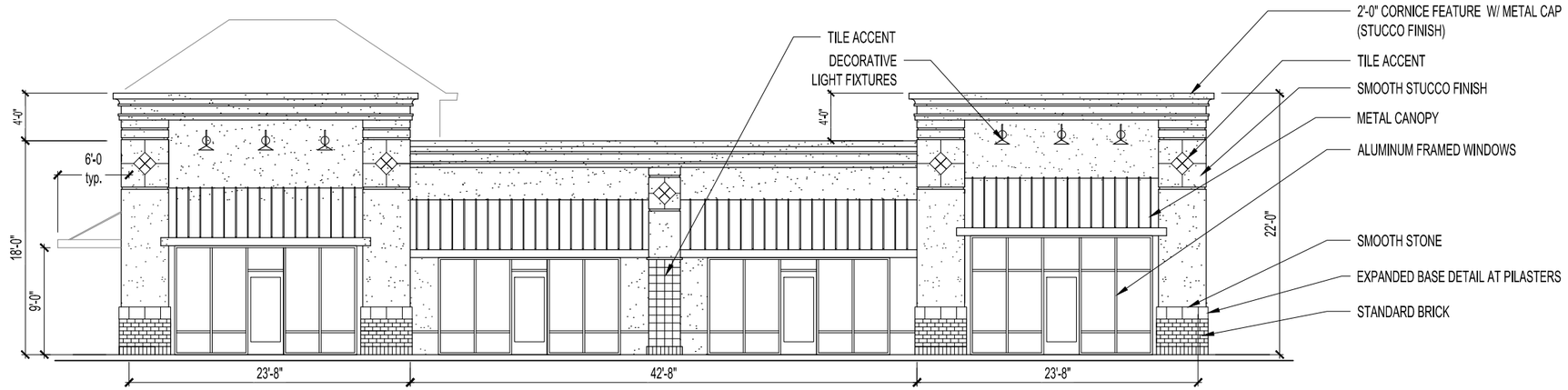
Approved for the Owner By: Date:

REVISIONS	BY

PLOT DATE: 3/25/2013
ISSUE DATE:
DRAWN BY: T.WHITNEY
JOB NO.: --

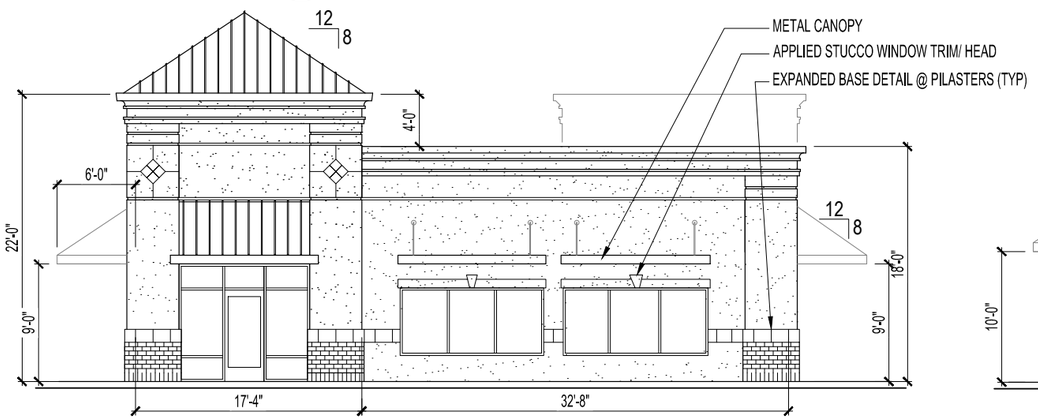
SHEET
SP2.3
BUILDING ELEVATIONS
BUILDING "D"

Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT A (108 of 112)



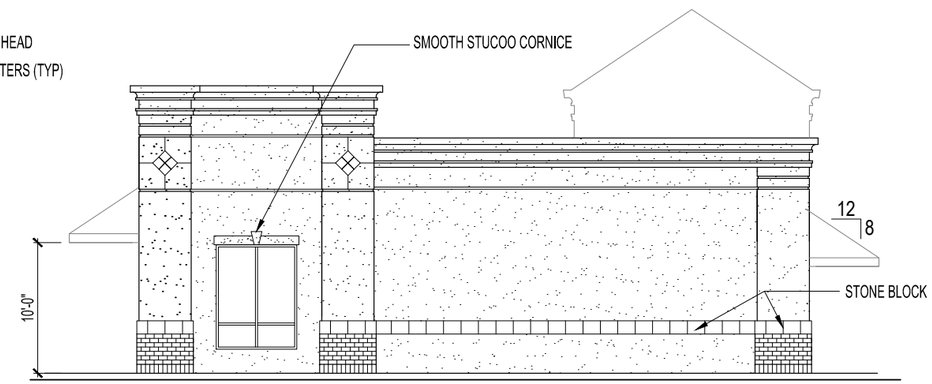
S4.1 NORTH ELEVATION - BUILDING "E"
SCALE: 3/16" = 1'-0"

0 2'-8" 5'-4" 10'-8"
SCALE: 3/16" = 1'-0"



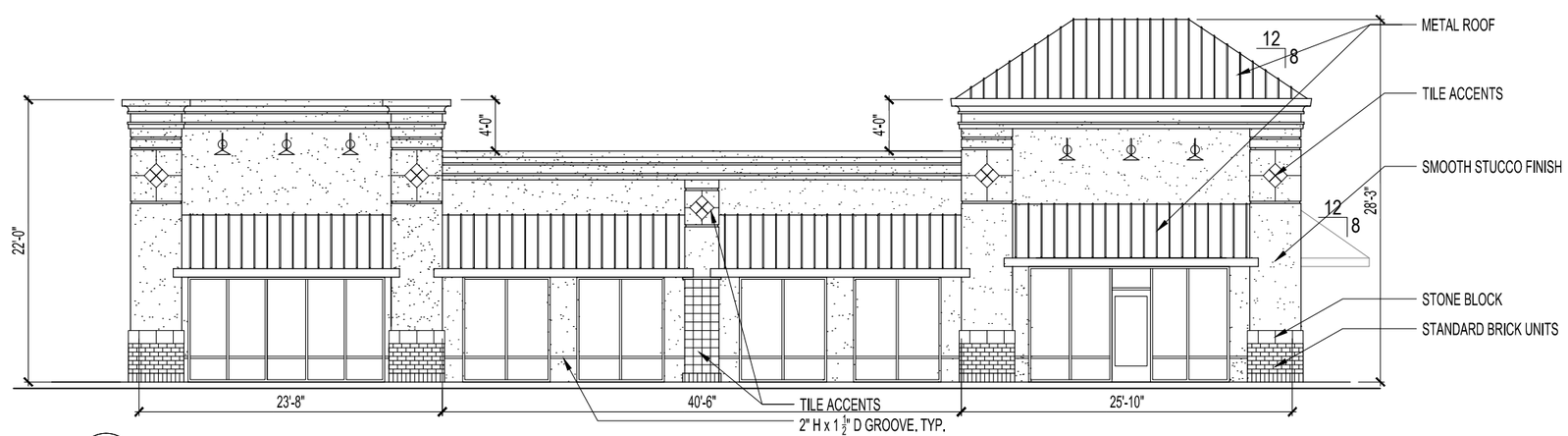
S4.2 EAST ELEVATION - BUILDING "E"
SCALE: 3/16" = 1'-0"

0 2'-8" 5'-4" 10'-8"
SCALE: 3/16" = 1'-0"



S4.3 WEST ELEVATION - BUILDING "E"
SCALE: 3/16" = 1'-0"

0 2'-8" 5'-4" 10'-8"
SCALE: 3/16" = 1'-0"



S4.4 BUILDING "E" ELEVATIONS
SCALE: 3/16" = 1'-0"

0 2'-8" 5'-4" 10'-8"
SCALE: 3/16" = 1'-0"

TO VERIFY SCALES 0" 1" ORIGINAL BAR SET MEASURE ONE INCH BY ONE SIXTEENTH INCH

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SALTLAKE CITY, UTAH 84115
PHONE: 801-596-7711 FAX: 801-596-7161

CREEKSIDE CENTER
CORVALLIS

Project Location:
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON

Approved for the Owner By: Date:

REVISIONS	BY

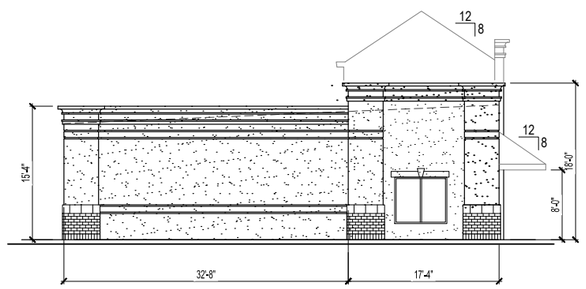
PLOT DATE: 3/25/2013
ISSUE DATE:
DRAWN BY: T.WHITNEY
JOB NO.: 06-29-09
SHEET
SP2.4
BUILDING ELEVATIONS
BUILDING "E"

Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT A (109 of 112)

S5.1 EAST ELEVATION - BUILDING "F"

SCALE: 1/8" = 1'-0

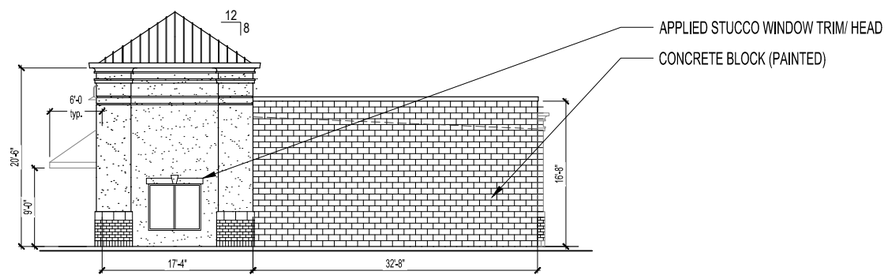
0 4' 8' 16'
SCALE: 1/8" = 1'-0"



S5.2 SOUTH ELEVATION - BUILDING "F"

SCALE: 1/8" = 1'-0

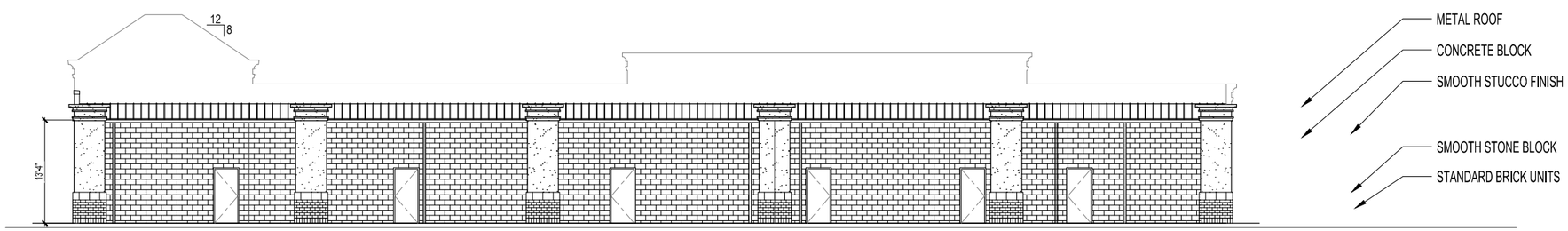
0 4' 8' 16'
SCALE: 1/8" = 1'-0"



S5.3 NORTH ELEVATION - BUILDING "F"

SCALE: 1/8" = 1'-0

0 4' 8' 16'
SCALE: 1/8" = 1'-0"



S5.4 WEST ELEVATION - BUILDING "F"

SCALE: 1/8" = 1'-0

0 4' 8' 16'
SCALE: 1/8" = 1'-0"

TO VERIFY SCALES 0" 1" ORIGINAL BAR SET MEASURE ONE INCH BY ONE SIXTEENTH INCH

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THOMASFOX PROPERTIES, LLC
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PHONE: 801-596-7711 FAX: 801-596-7161

CREEKSIDE CENTER CORVALLIS

Project Location:
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON

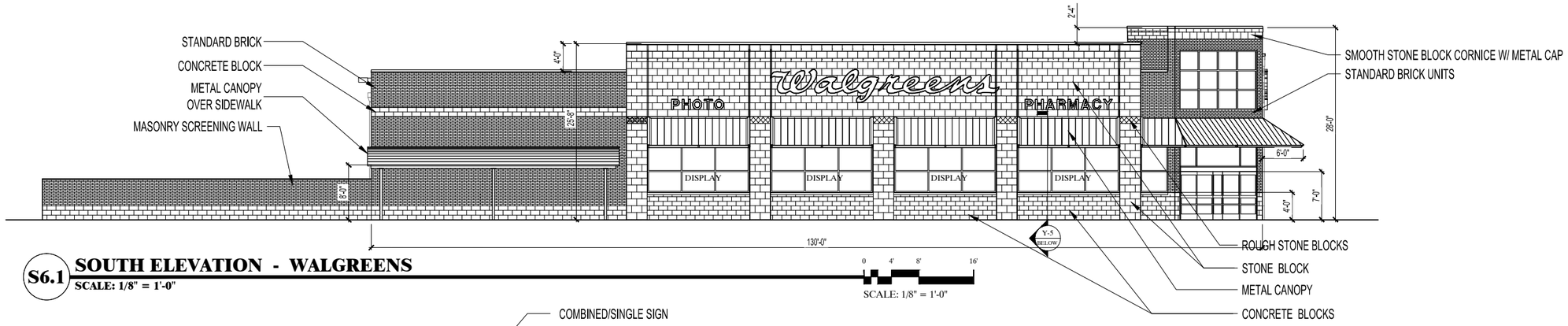
Approved for the Owner By: Date:

REVISIONS	BY

PLOT DATE: 4/15/2013
ISSUE DATE:
DRAWN BY: T.WHITNEY
JOB NO.: 06-29-09

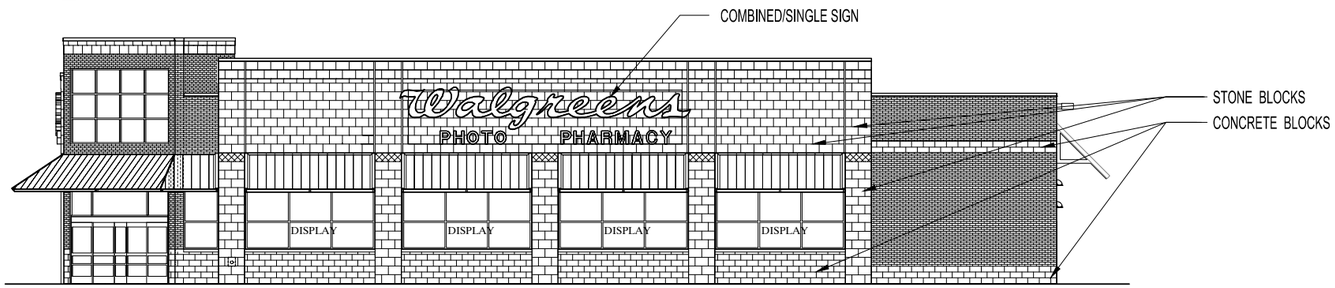
SHEET
SP2.5
BUILDING ELEVATIONS
BUILDING "F"

Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT A (110 of 112)



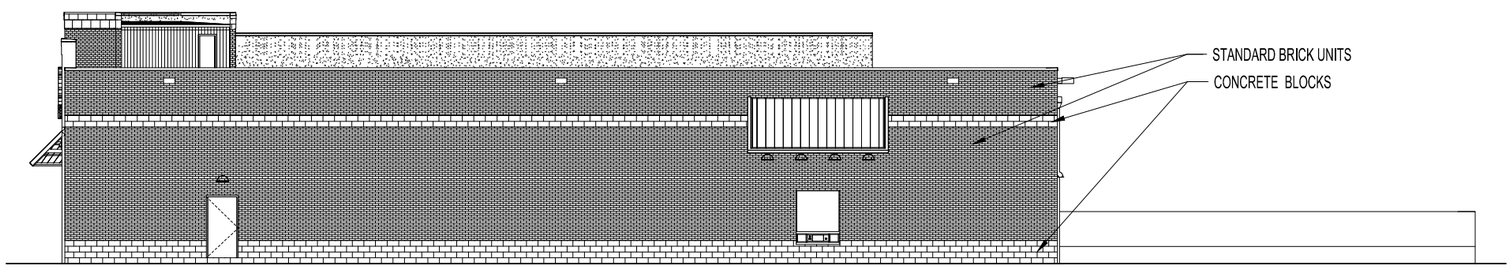
S6.1 **SOUTH ELEVATION - WALGREENS**
SCALE: 1/8" = 1'-0"

0 4' 8' 16'
SCALE: 1/8" = 1'-0"



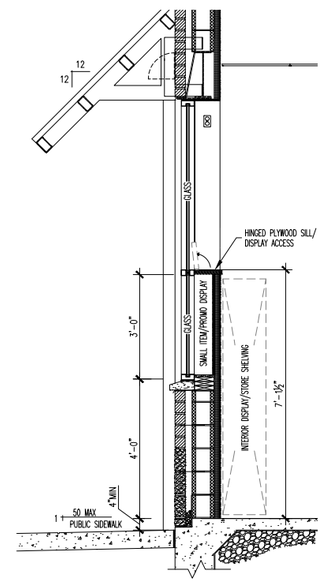
S6.2 **EAST ELEVATION - WALGREENS**
SCALE: 1/8" = 1'-0"

0 4' 8' 16'
SCALE: 1/8" = 1'-0"



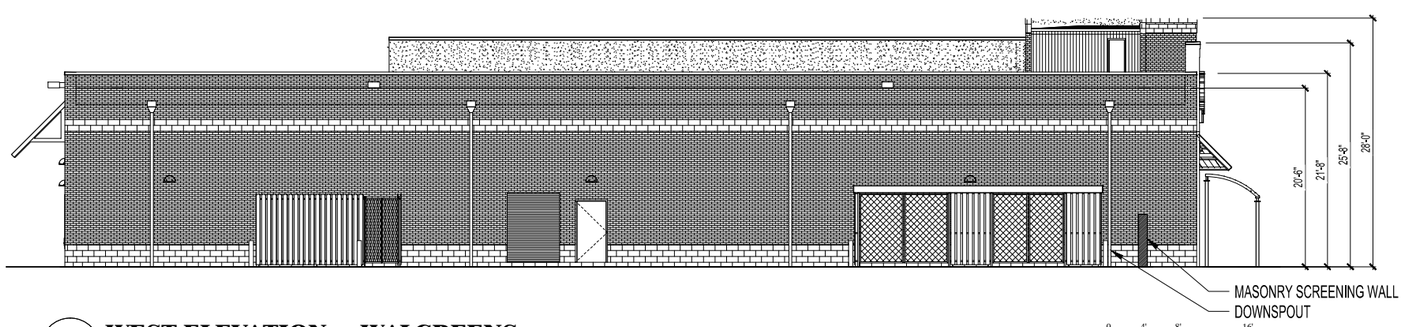
S6.3 **NORTH ELEVATION - WALGREENS**
SCALE: 1/8" = 1'-0"

0 4' 8' 16'
SCALE: 1/8" = 1'-0"



Y-5 **DISPLAY WINDOW**
SCALE: 1/2" = 1'-0"

0 1' 2' 4'
SCALE: 1/2" = 1'-0"



S6.4 **WEST ELEVATION - WALGREENS**
SCALE: 1/8" = 1'-0"

0 4' 8' 16'
SCALE: 1/8" = 1'-0"

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PHONE: 801-596-7711 FAX: 801-596-7161

CREEKSIDE CENTER
CORVALLIS

Project Location:
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON

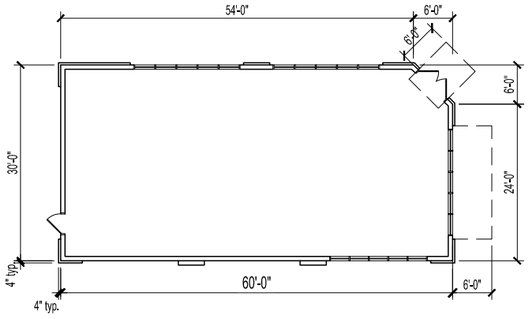
Approved for the Owner By: Date:

REVISIONS	BY

PLOT DATE: 3/25/2013
ISSUE DATE:
DRAWN BY: T.WHITNEY
JOB NO.: 06-29-09

SHEET
SP2.6
BUILDING ELEVATIONS
WALGREENS

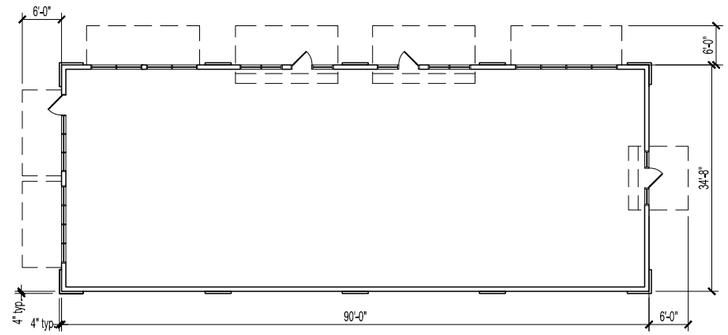
Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT A (111 of 112)



T1.1 RETAIL BUILDING 'A' PLAN

0 5'-4" 10'-8" 21'-4"

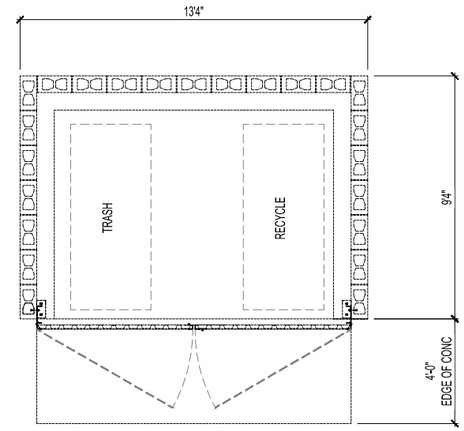
SCALE: 3/32" = 1'-0"



T1.3 RETAIL BUILDING 'D' PLAN

0 5'-4" 10'-8" 21'-4"

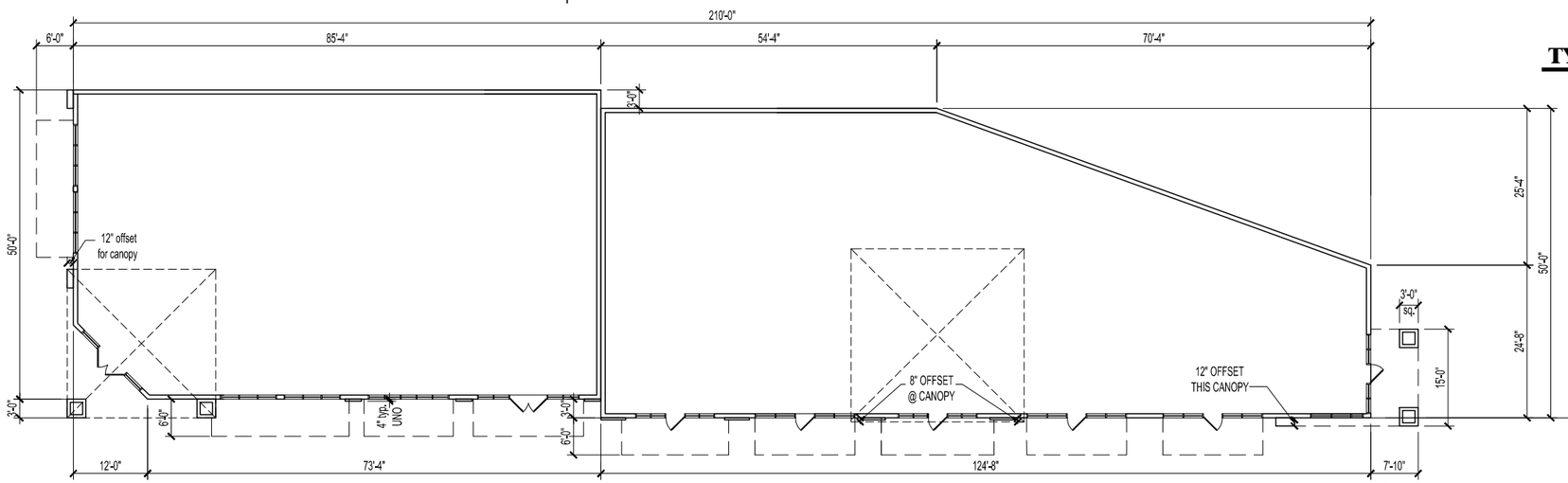
SCALE: 3/32" = 1'-0"



TYPICAL TRASH/ RECYCLE ENCLOSURE

0 1'-4" 2'-8" 5'-4"

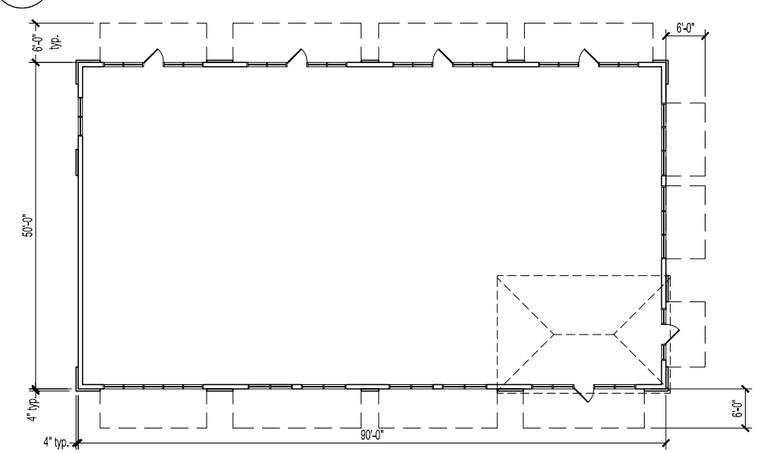
SCALE: 3/8" = 1'-0"



T1.2 RETAIL BUILDING 'B-C' PLAN

0 5'-4" 10'-8" 21'-4"

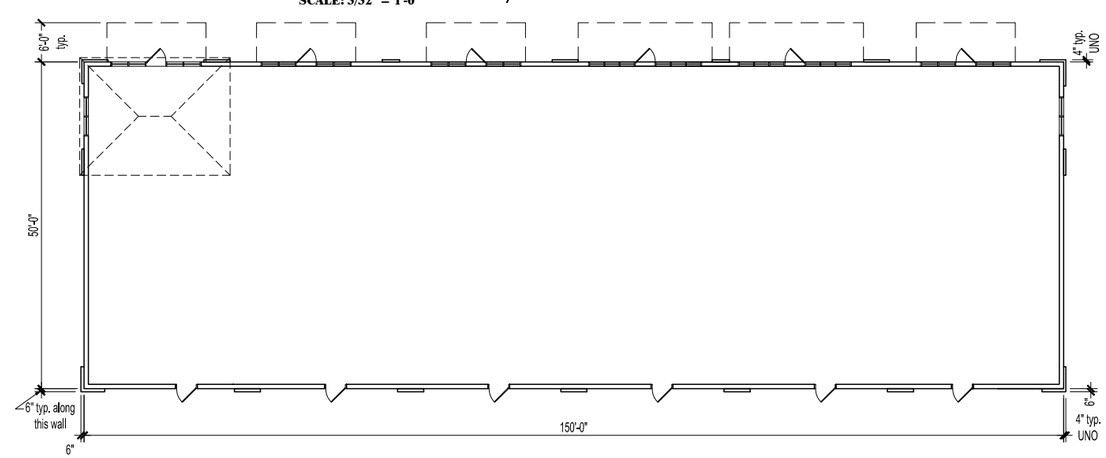
SCALE: 3/32" = 1'-0"



T1.4 RETAIL BUILDING 'E' PLAN

0 5'-4" 10'-8" 21'-4"

SCALE: 3/32" = 1'-0"



T1.5 RETAIL BUILDING 'F' PLAN

0 5'-4" 10'-8" 21'-4"

SCALE: 3/32" = 1'-0"

TO VERIFY SCALES 0" 1" ORIGINAL BAR SET MEASURE ONE INCH BY ONE SIXTEENTH INCH

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SALTLAKE CITY, UTAH 84115
PHONE: 801-596-7711 FAX: 801-596-7161

CREEKSIDE CENTER
CORVALLIS

Project Location:
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON

Approved for the Owner By: Date:

REVISIONS	BY

PLOT DATE: 3/25/2013
ISSUE DATE:
DRAWN BY: T. WHITNEY
JOB NO.: 06-29-09

SHEET
SP3.1
RETAIL BUILDING FLOOR PLANS

Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT A (112 of 112)

Oregon
John A. Kitzhaber, MD, Governor

Department of State Lands
775 Summer Street NE, Suite 100
Salem, OR 97301-1279
(503) 986-5200
FAX (503) 378-4844
www.oregonstatelands.us

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OCT 18 2012
Community Development
Planning Division

State Land Board

John A. Kitzhaber, MD
Governor

Kate Brown
Secretary of State

Ted Wheeler
State Treasurer

October 18, 2012

Bret Fox
515 W. Pickett Cir., Suite #400
Salt Lake City, UT 84115

Re: Reissuance of Wetland Delineation Concurrence for Property at 53rd Street and Hwy. 20/34 in Corvallis, Benton County; T12S R5W Sec. 5DD, Tax Lots 400 & 500; WD #2004-0169

Dear Mr. Fox:

The Department of State Lands considered the request for reissuance of WD2004-0169 by conducting a site visit with Pat Thompson (consultant for the 2004 delineation) and Allen Martin, Geo Resources, at the site referenced above on October 3, 2012. Based upon observations and data collected during the site visit, we concur that the wetland and waterway boundaries as mapped in WD2004-0169 have not changed. The 2004 map approved by this Department therefore still applies at this site and the approval expiration is hereby extended for another 5 years. Within the study area, 4.46 acres of wetlands and Dunawi Creek (formerly Squaw Creek) are state jurisdictional and subject to the permit requirements of the state Removal-Fill law. Under current regulations, a state permit is required for cumulative fill or annual excavation of 50 cubic yards or more in the wetland or below the ordinary high water line (OHWL) of a waterway (or the 2 year recurrence interval flood elevation if OHWL cannot be determined).

This concurrence is for purposes of the state Removal-Fill Law only. Federal or local permit requirements may apply as well. The Army Corps of Engineers will review the request and make their own determination of jurisdiction and applicability of the 2004 map for purposes of the Clean Water Act at the time that a permit application is submitted. We recommend that you attach a copy of this concurrence letter to both copies of any subsequent joint permit application to speed application review.

Please be advised that state law establishes a preference for avoidance of wetland impacts. Because measures to avoid and minimize wetland impacts may include reconfiguring parcel layout and size or development design, we recommend that you work with Department staff on appropriate site design before completing the city or county land use approval process.

This concurrence is based on information provided to the agency. The jurisdictional determination is valid for five years from the date of this letter, unless new information necessitates a revision. Circumstances under which the Department may change a determination are found in OAR 141-090-0045 (available on our web site or upon

request). In addition, laws enacted by the legislature and/or rules adopted by the Department may result in a change in jurisdiction; individuals and applicants are subject to the regulations that are in effect at the time of the removal-fill activity, or complete permit application. The applicant, landowner, or agent may submit a request for reconsideration of this determination in writing within six months of the date of this letter.

Thank you for having the site evaluated. Please phone me at 503-986-5300 if you have any questions.

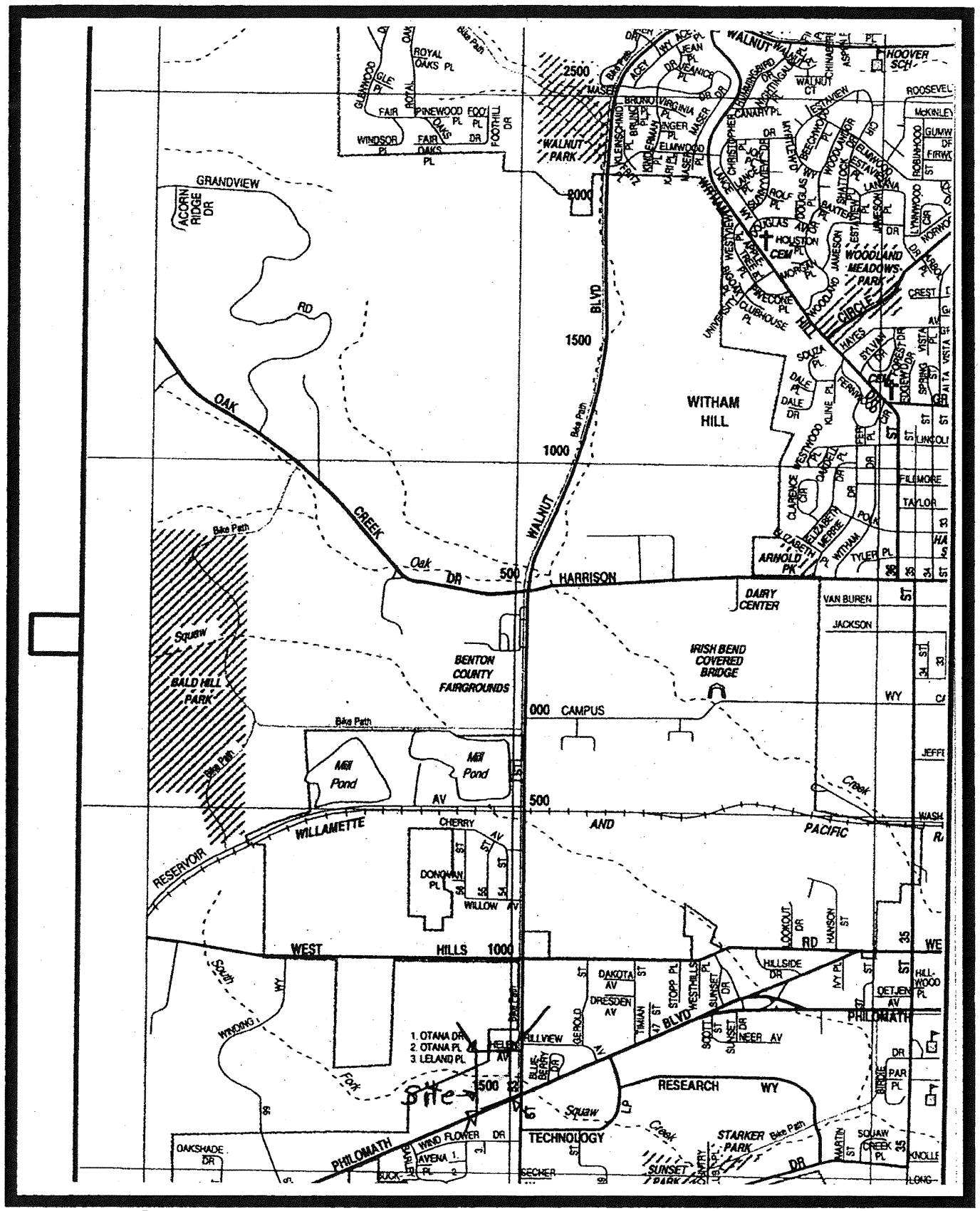
Sincerely,

Lynne McAllister
Wetland Specialist

Approved by
Anna Buckley
Wetlands Program Manager

Enclosures

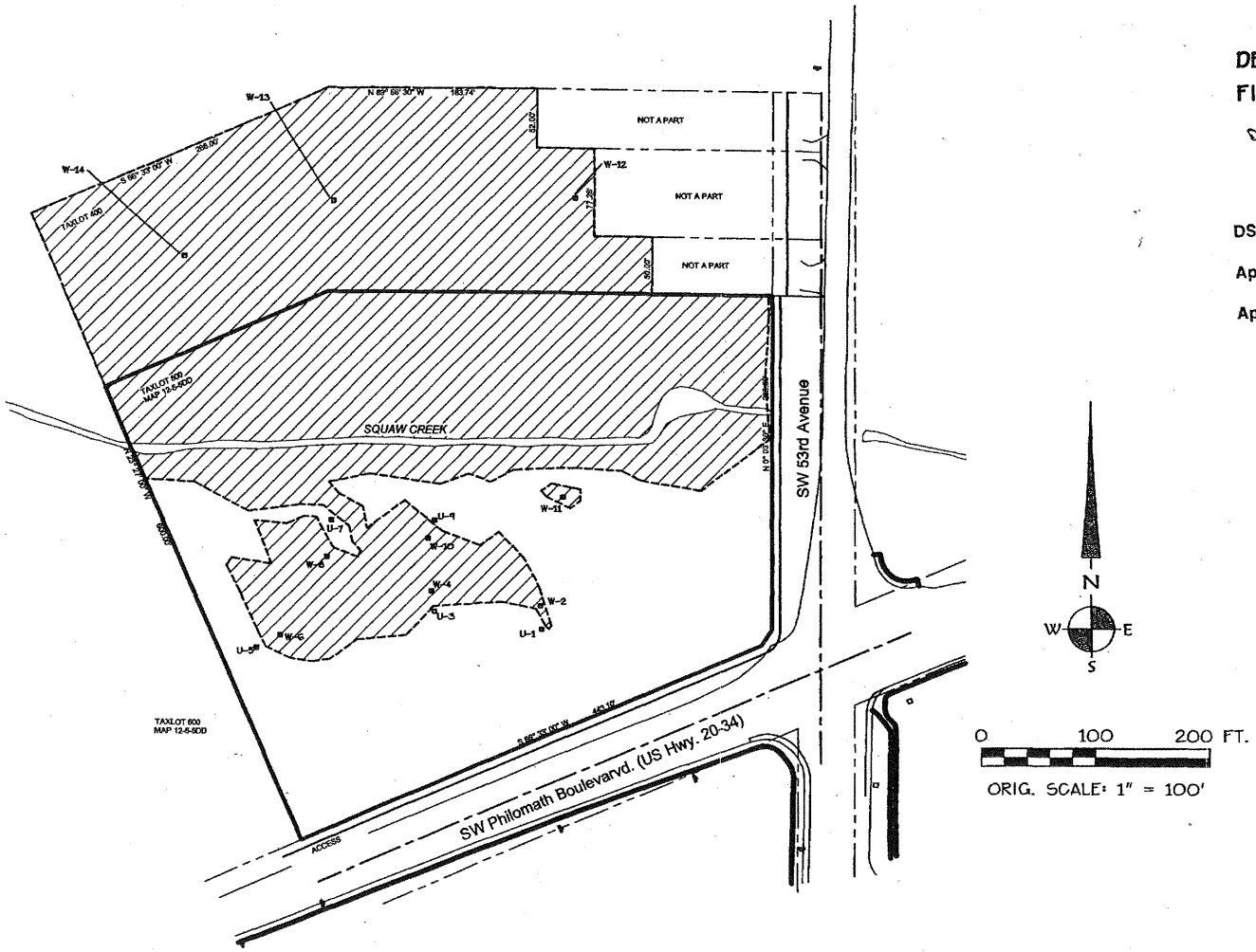
ec: Allen Martin, Geo Resources
City of Corvallis Planning Department
Benny Dean, Corps of Engineers, Eugene office
Gloria Kiryuta, DSL



Patrick S. Thompson
CONSULTING
Phone (541) 933-3318
Fax (541) 933-3319
Email pstcon@aol.com

Site Map
Figure 1

Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT B (3 of 12)



DELINATION MAP
FIGURE 4

DSL # WD 04-0169

DSL WD # 2004-0169
Approval Issued Re- 10/18/12
Approval Expires 10/18/17

N
W E
S

0 100 200 FT.
ORIG. SCALE: 1" = 100'

NOTE:
TOTAL AREA OF WETLANDS:
4.46 ACRES

map accuracy estimated ± 1 foot

Oregon
John A. Kitzhaber, MD, Governor

Department of State Lands
775 Summer Street NE, Suite 100
Salem, OR 97301-1279
(503) 986-5200
FAX (503) 378-4844
www.oregonstatelands.us

State Land Board

John A. Kitzhaber, MD
Governor

Kate Brown
Secretary of State

Ted Wheeler
State Treasurer

December 1, 2011

Bret Fox
515 W. Pickett Circle Suite #400
Salt Lake City, UT 84115

Re: Wetland Delineation Report for Philomath Blvd. Property on Dunawi Creek, Benton County; T12S R5W Sec. 5, Tax Lot 600; WD #2011-0289; Corvallis Local Wetlands Inventory wetland WC-SQU-W-6

Dear Mr. Fox:

The Department of State Lands has reviewed the wetland delineation report prepared by Geo Resources for the site referenced above. Based upon the information presented in the report and additional information submitted upon request, we concur with the wetland and waterway boundaries as mapped in revised Figure 6 of the report. Please replace all copies of the preliminary wetland map with this final Department-approved map. Within the study area, one wetland including 2 ditches (totaling approximately 0.98 acres) and Dunawi Creek were identified. The wetland (including ditches) and waterway are subject to the permit requirements of the state Removal-Fill Law. Under current regulations, a state permit is required for cumulative fill or annual excavation of 50 cubic yards or more in the wetland or below the ordinary high water line (OHWL) of a waterway (or the 2 year recurrence interval flood elevation if OHWL cannot be determined).

This concurrence is for purposes of the state Removal-Fill Law only. Federal or local permit requirements may apply as well. The Army Corps of Engineers will review the report and make a determination of jurisdiction for purposes of the Clean Water Act at the time that a permit application is submitted. We recommend that you attach a copy of this concurrence letter to both copies of any subsequent joint permit application to speed application review.

Please be advised that state law establishes a preference for avoidance of wetland impacts. Because measures to avoid and minimize wetland impacts may include reconfiguring parcel layout and size or development design, we recommend that you work with Department staff on appropriate site design before completing the city or county land use approval process.

This concurrence is based on information provided to the agency. The jurisdictional determination is valid for five years from the date of this letter, unless new information necessitates a revision. Circumstances under which the Department may change a determination are found in OAR 141-090-0045 (available on our web site or upon

Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT B (5 of 12)

request). In addition, laws enacted by the legislature and/or rules adopted by the Department may result in a change in jurisdiction; individuals and applicants are subject to the regulations that are in effect at the time of the removal-fill activity, or complete permit application. The applicant, landowner, or agent may submit a request for reconsideration of this determination in writing within six months of the date of this letter.

Thank you for having the site evaluated. Please phone me at 503-986-5300 if you have any questions.

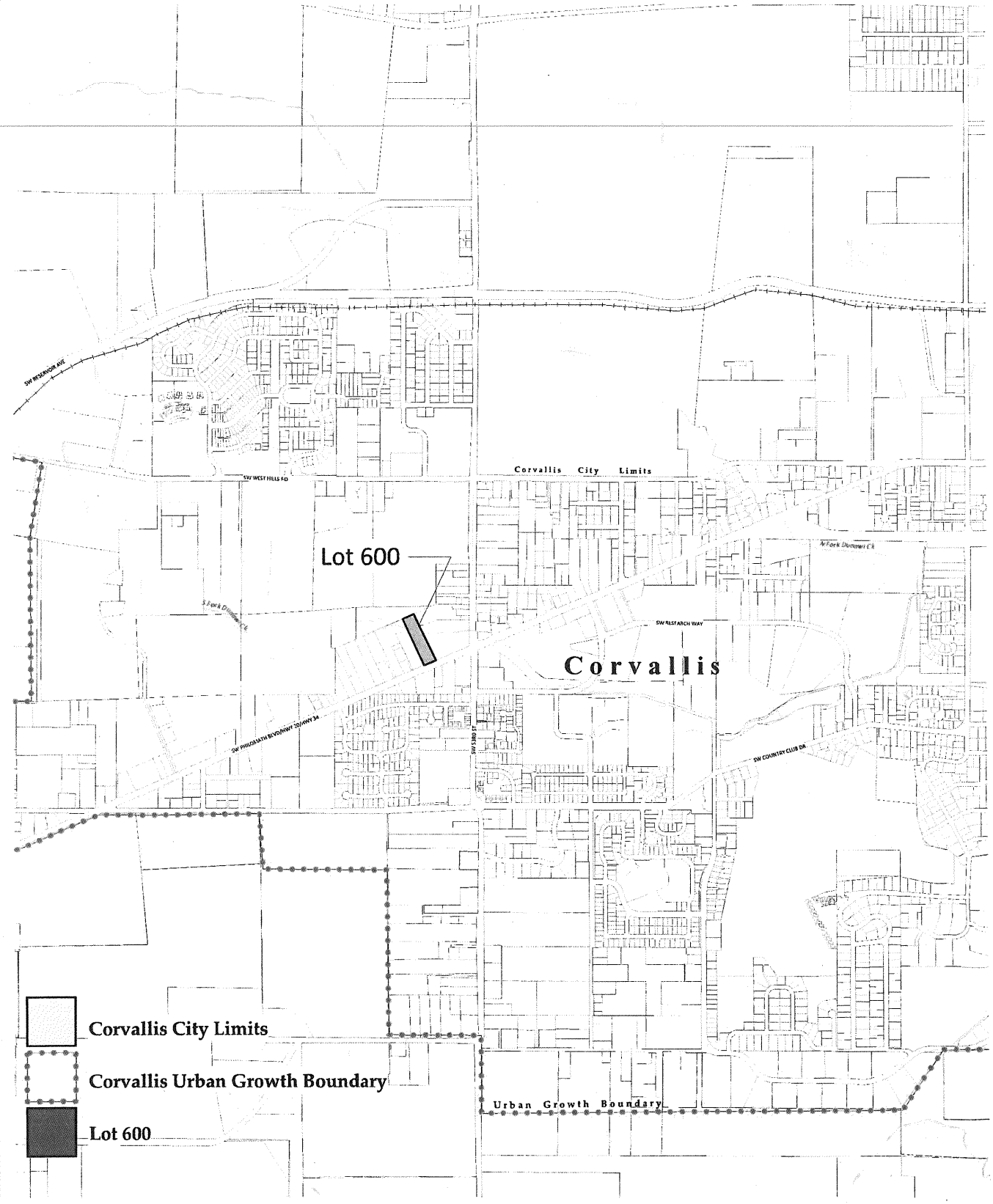
Sincerely,

Lynne McAllister
Wetland Specialist

Approved by
Anna Buckley
Acting Wetlands Program Manager

Enclosures

ec: Allen Martin, Geo Resources
City of Corvallis Planning Department (Maps enclosed for updating LWI)
Brian Wilson, Corps of Engineers Eugene office
Gloria Kiryuta, DSL



Tax Lot 600
Benton County Tax Map 12505DD
5435 SW Philomath Blvd
Corvallis, OR 97333

1200 0 1200 2400
Feet
Scale: 1:19,200

NORTH

FIGURE 1: LOCATION MAP

Scale: 1" = 1,600'
Source: Benton County GIS database
Drafted: 6/22/11

Geo Resources

Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT B (7 of 12)

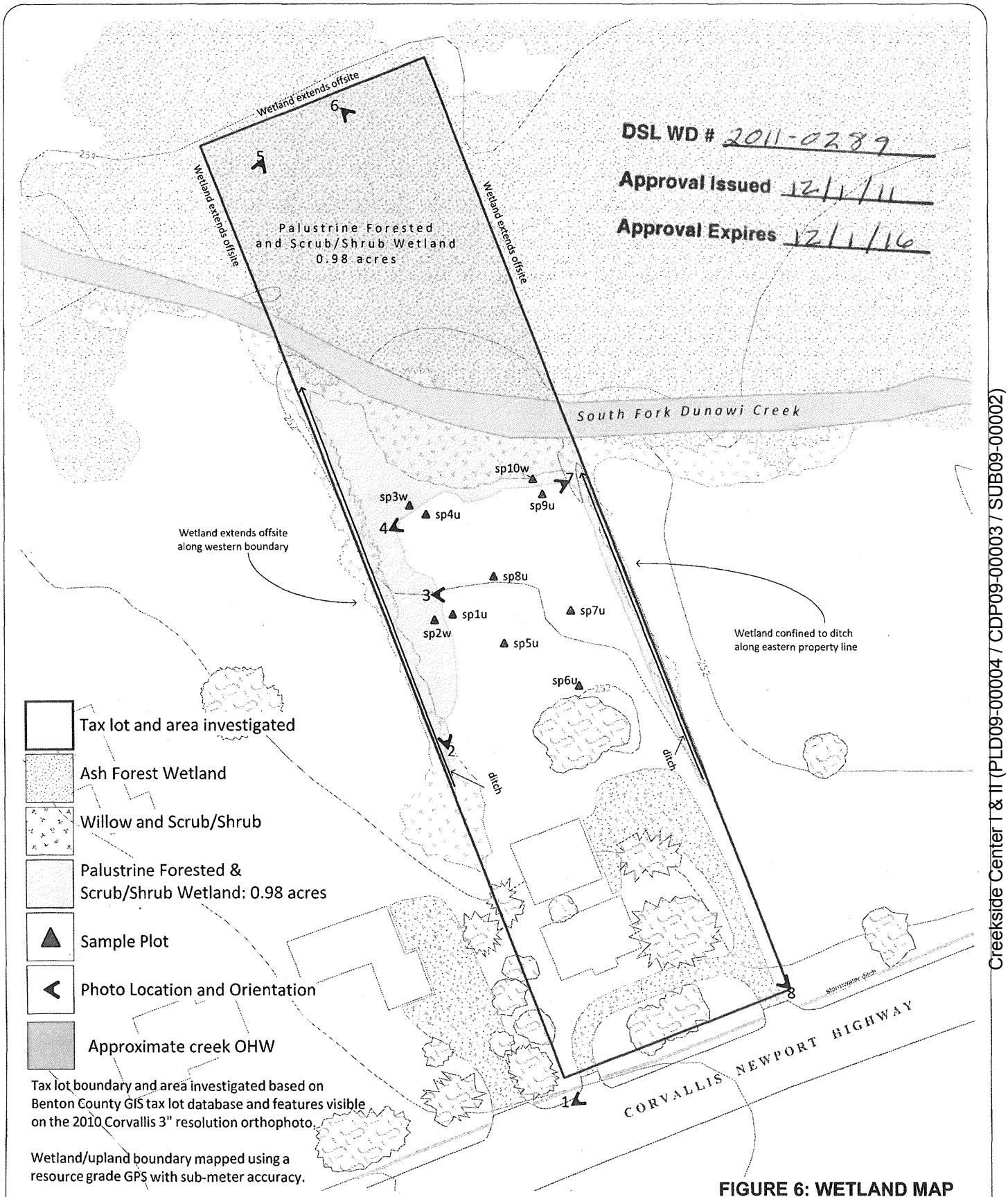


FIGURE 6: WETLAND MAP

Scale: 1" = 80'
Source: Benton County Tax Lot Database,
Corvallis 2010 orthophoto, flown 3/18/10,
Benton County 2-ft Contour database
Drafted: 6/22/11
Revised: 11/30/11

Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT B (8 of 12)

Oregon
John A. Kitzhaber, MD, Governor

Department of State Lands
775 Summer Street NE, Suite 100
Salem, OR 97301-1279
(503) 986-5200
FAX (503) 378-4844
www.oregonstatelands.us

RECEIVED
MAR - 9 2012
Community Development
Planning Division

March 8, 2012

GMK600/32863
CITY OF CORVALLIS COMMUNITY DEVELOPMENT
ATTN JASON YAICH
501 SW MADISON AVE
CORVALLIS OR 97333

State Land Board

John A. Kitzhaber, MD
Governor

Kate Brown
Secretary of State

Ted Wheeler
State Treasurer

Re: PLD 09-00004 /DSL Removal/Fill Permit Application No. 32863-FP
T. 12S, R. 05W, Section 4& 5, Tax Lot 500, Corvallis, Benton County

Dear Mr. Yaich:

Thank you for meeting with Southern Region Manager Eric Metz and myself on February 28, 2012 to discuss the conditions which involve additional decisions by the Department of State Lands on the above referenced file for Creekside Center Phase 1.

The additional impacts provided in the City development permit application by the applicant, were not authorized under the existing Department of State Lands Removal Fill Permit 32863-RF. More specifically, Creekside Phase 2 and an impact to forested wetlands associated with a City of Corvallis Parks Department conceptual path along Dunwai Creek.

Condition #4 and Condition #10 in the above document require additional approvals from the Department of State Lands that would not be granted based on the program requirement for independent utility for the path, while Phase 2 still needs an application and review under the existing state statutes.

On February 28, 2012, the Department was provided with the conceptual plan that includes additional off site wetland impacts associated with construction of this path from 53rd to West hills way. Under the requirement for independent utility, the Department must consider the impacts to wetlands associated with the construction of the path in its entirety from 53rd Street to West Hills Way.

An application for this type of recreational path project would be considered under the regulations for linear facilities. During the application process the Department would look at the delineation of the path, consider the purpose and need for the project, alternative analysis and designs to limit impacts to wetlands and waterways while still providing a complete recreational trail, and the proposed mitigation.

Notwithstanding the inability of the Department to permit the forested wetland impacts associated with partial segment of a path, under this application, nothing in our rules would prevent the applicant from entering into an easement agreement, and providing the City with funding for delineation, construction and wetland mitigation for this linear

footage of the path associated with their tax lot. This would secure for the City of Corvallis future site access and funding at a later date when the City is ready to complete the delineation and submit the application and proposed mitigation for this path.

Please call me at 503-986-5226 if you have any questions.

Sincerely,

Gloria Kiryuta
Southern Region Resource Coordinator
Wetlands and Waterways Conservation Division
Oregon Department of State Lands

Cc: Benny Dean Jr, Eugene Corps of Engineers
Brett Fox

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, PORTLAND DISTRICT
EUGENE FIELD OFFICE
1600 EXECUTIVE PARKWAY, SUITE 210
EUGENE, OREGON 97401-2156

RECEIVED
MAR - 6 2012
Community Development
Planning Division

REPLY TO
ATTENTION OF:

March 1, 2012

Operations Division
Regulatory Branch
Corps No. NWP-2004-519/1

Mr. Bret Fox
Thomas Fox Properties
515 W. Pickett Cir. Suite 400
Salt Lake City, Utah 84115-1978

Dear Mr. Fox:

This letter is in regard to the February 28, 2012, meeting with you, the U.S. Army Corps of Engineers (Corps), the City of Corvallis (City), and the Oregon Department of State Lands (DSL) about a multi-use path, which may require a Department of Army (DA) authorization. The path would be located in a palustrine forested wetland along Squaw Creek, in Corvallis, Benton County, Oregon. The site is in Section 4 & 5 of Township 12 South, Range 5 West. Your project is identified as Corps No. NWP-2004-519/1

The Corps has general permits, which may cover the construction of a multi-use path provided this prospective path has an identifiable purpose and need. The larger path shown in the City's recreational plan would have a clear purpose and need which may be permitable under a general permit if the aquatic impacts are below one-half acre, and the project complies with all federal laws. The path would require evaluation by means of an individual permit review if the aquatic impacts exceeded the one-half acre threshold and/or if the project has more than minimal impacts. The small section of pathway located solely on your property does not have a clear purpose and need, nor is it a necessary component of the development. The construction/placement of the small section of path due to City requirements is an insufficient purpose and need for the Corps.

In planning for the multi-use path, measures to minimize impacts should include avoiding or minimizing vegetation removal (such as trees in a forested wetland), elevating the pathway, reducing the width of the pathway, using pervious materials to allow uninterrupted water flows, reducing fill discharges in aquatic resources, etc. If the City did apply for the entire path, the Corps would need sufficient information about the location of the path, a delineation of aquatic resources present, mitigation bank credits for aquatic impacts, and a calculation of aquatic impacts with an alternatives analysis for the path. Other requirements which may come up during the review process may include a cultural resource survey and a rare/endangered plant survey due to potential impacts to cultural resources and Endangered Species Act (ESA) listed species.

During our review of your proposal to construct the multi-use path, it has come to the attention of the Corps the permit for the Creekside Center project issued to John Batzer, LLC. for this particular location and development expired on January 1, 2012, (General Condition 1). If you are the current permit holder, General Condition 4 of the permit requires transfer the permit if the property is transferred or sold. Attached is a new transfer of permit form (Enclosure). The permittee is also required to request an extension of time for the project a minimum of one month before the permit expires if additional time for project construction is needed (General Condition 1). Since the permit has expired, the Corps may need to reinitiate coordination with all agencies with regard to the Creekside Center project. Please provide the Corps in your request to renew your permit any updated information about your project or its potential impacts so we can begin working on renewing your permit.

If you have any questions regarding the John Batzer, LLC. permit or our permitting process, please contact me at the letterhead address, by telephone at (541) 465-6769, or email Benny.A.Dean@usace.army.mil.

Sincerely,

Benny A. Dean Jr.
Project Manager
Regulatory Branch

Enclosure

Copy Furnished:

Oregon Department of State Lands (Kiryuta)
Oregon Department of Environmental Quality (Anderson)
City of Corvallis Community Development (Yaich)

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

LEAGUE OF WOMEN VOTERS OF CORVALLIS
and ELIZABETH FRENKEL,
Petitioners,

vs.

CITY OF CORVALLIS,
Respondent,

and

BRET FOX and THOMAS FOX
PROPERTIES, LLC,
Intervenors-Respondents.

LUBA No. 2011-002

FINAL OPINION
AND ORDER

Appeal from City of Corvallis.

Corinne C. Sherton, Salem, filed the petition for review and argued on behalf of petitioners. With her on the brief was Corinne C. Sherton PC.

David E. Coulombe, Corvallis, filed a response brief and James Brewer, Corvallis, argued on behalf of respondent. With him on the brief was Fewel, Brewer & Coulombe.

Michael C. Robinson, Portland, filed a response brief and Seth J. King argued on behalf of intervenors-respondents. With him on the brief was Perkins Coie LLP.

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

REMANDED 06/28/2011

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

Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT C (1 of 17)

EXHIBIT A

Opinion by Ryan.

NATURE OF THE DECISION

Petitioners appeal a decision by the city approving a commercial planned development.

REPLY BRIEF

Petitioners move for permission to file a reply brief to respond to new matters raised in the city's response brief. The reply brief is allowed.

FACTS

The subject property is comprised of three tax lots, 400, 500, and 600, that are zoned Mixed Use Community Shopping (MUCS). Tax lot 400 lies immediately to the north of tax lot 500 and to the east of tax lot 600. All of tax lot 400, and approximately the northern half of tax lots 500 and 600 are designated as a protected wetland, protected riparian corridor, and/or a protected floodplain on the city's comprehensive plan maps. Dunawi Creek runs east to west along the northern part of tax lot 600 and along approximately the middle of tax lot 500.

Intervenor applied to develop approximately 179,319 square feet on the 6.64 acres comprising tax lots 500 and 600, including 43,000 square feet of retail and restaurant uses in seven buildings to be located on tax lot 500, and other transportation and stormwater infrastructure to be located on portions of tax lots 500 and 600. As part of the development intervenor also proposed to construct a 12-foot wide path within a 45-foot wide easement running east and west across tax lots 500 and 600, to the north of Dunawi Creek, within the protected wetland/riparian corridor/floodplain. The planning commission approved the applications, and petitioners appealed that decision to the city council. The city council approved the applications, and this appeal followed.

FIRST ASSIGNMENT OF ERROR

For nonresidential properties that are designated as protected wetlands, riparian corridors, or floodplains, Corvallis Land Development Code (LDC) 4.11.50.02.b provides a Minimum Assured Development Area (MADA) that is calculated by multiplying the acreage of the site by the MADA per acre that is shown in LDC 4.11.50.02 Table 4.11-2 – "Determining Minimum Assured Development Area (MADA) for Nonresidential Zones." Under LDC 4.11.50.02.b. and Table 4.11-2, the MADA for the site equaled 90,968 square feet. In addition, LDC 4.11.50.02.c allows the MADA to be increased (MADA credits) in certain circumstances beyond what is calculated according to LDC 4.11.50.02.b, including as relevant here:

> "c. **Additional Allowances for Determining the Minimum Assured Development Area of Residential and Nonresidential Sites** - The Minimum Assured Development Area calculated in Section 4.11.50.02.a and Section 4.11.50.02.b may be increased above the base MADA by adding the areas determined by the provisions below:
>
> " * * * * *
>
> "2. The area of Wetland mitigation that is required by the Department of State Lands and/or the U.S. Army Corps of Engineers when infrastructure must be extended through a Wetland. The area credited shall be based upon the written requirements of the associated permit approval of the Department of State Lands and/or the U.S. Army Corps of Engineers, whichever is greater;
>
> " * * * * *
>
> "4. Trails required by the Corvallis Transportation Plan or the City of Corvallis Park and Recreation Facilities Plan, or necessary to provide public access to or through designated open space areas." (Bold in original.)

The city allowed MADA credits for the development so that the total of developable area (MADA plus MADA credits) of the site equaled 180,728 square feet. The city adopted findings that determined that the proposed path running from east to west along tax lots 500 and 600 was eligible for MADA credits totaling 24,776 square feet: 12,388 square feet for

the path itself, and 12,388 square feet for the area of wetland and riparian area mitigation that the city concluded would be required to offset the effects of the path on the wetlands and riparian areas.[1]

In their first subassignment of error under the first assignment of error, petitioners argue that the city's findings are inadequate to explain why the city determined that the path qualifies for MADA credit under LDC 4.11.50.02.c.4, *i.e.*, either that the path is "required by" the city's transportation plan or Park and Recreation Facilities Plan (PRFP), or that it is "necessary to provide public access to or through designated open space areas." In their second subassignment of error, petitioners argue that the city's findings are inadequate to explain why the city awarded 12,388 square feet of MADA credit under LDC 4.11.50.02.c.2 for a mitigation area for constructing the path.

The city responds initially that petitioners failed to raise the issues presented in the first assignment of error, and under ORS 197.763(1) and ORS 197.835(3) are precluded from raising the issues for the first time at LUBA. In response to petitioners' first assignment of error, the city maintains that no participant below ever raised an issue regarding whether the path met the requirements for an award of MADA credits under LDC 4.11.50.02.c.4 and .2.

---

[1] The city adopted the following findings:

> "[A party] contended that the number and extent of MADA credits associated with the development was 'especially troubling' and not consistent with the intent of the LDC. The Council finds that [intervenor] presented substantial evidence in the Application that the Project qualified for MADA credits. The Council further finds that City staff properly applied the provisions of the LDC in calculating credits. * * *
>
> " * * * * *
>
> "[A]s part of the complete land use applications filed, the applicant has provided calculations which indicate that the base MADA permitted in the underlying * * * zone, as well as the additional MADA credits warranted under LDC 4.11.50.02.c, contribute to a total MADA allowance of 180,728 square feet, and that the proposed development plan impacts approximately 179,319 square feet of the development site. The Council finds that the proposed development area falls within the MADA allowance for the site." Record 80-81, 84.

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EXHIBIT C (4 of 17)

In their reply brief, petitioners respond that the issue of compliance with LDC 4.11.50.02.c.4 and .2 was raised at Record 270, where a participant stated that MADA credits should not be awarded for the path under "LDC 4.11.50.02.c." In *Lucier v. City of Medford*, 26 Or LUBA 213, 216 (1993), we held that in order to challenge the adequacy of adopted findings, a petitioner must challenge the proposal's compliance with a relevant criterion during the local proceedings. We explained:

> "The references in ORS 197.763(1) and 197.835[3] to 'issues' are references to issues concerning the substantive and procedural requirements that must be satisfied in rendering the challenged decision. Therefore, if a petitioner wishes to argue that a particular approval criterion or procedural requirement is not satisfied by a proposed land use action, the petitioner must raise the 'issue' of compliance with that criterion below. However, contrary to respondent's suggestion, a petitioner is *not* required to anticipate the actual findings a local government ultimately adopts in support of its final decision or question the adequacy of the evidence accepted into the record to support such findings.
>
> "In order to preserve the right to challenge at LUBA the adequacy of the adopted findings to address a relevant criterion or the evidentiary support for such findings, a petitioner must challenge the proposal's compliance with that criterion during the local proceedings. Once that is done, the petitioner may challenge the adequacy of the findings and the supporting evidence to demonstrate the proposal complies with the criterion. The particular findings ultimately adopted or evidence ultimately relied on by the decision maker need not be anticipated and specifically challenged during the local proceedings." (Emphasis in original.)

We agree with petitioners that the issue of whether the path qualifies for an award of MADA credits under LDC 4.11.02.50.c.4 and .2 was raised at Record 270 with sufficient specificity to allow petitioners to argue that the city's findings regarding the proposal's compliance with LDC 4.11.50.02.c.4 and .2 are inadequate. *See also Columbia Riverkeeper v. Clatsop County*, 58 Or LUBA 190, 213 (2009) (where issues regarding compliance with approval criteria were raised below, petitioners may challenge the adequacy of findings adopted regarding those approval criteria).

The city and intervenor next respond by pointing to findings that the city adopted that the path should be allowed to be developed in riparian and wetland areas under LDC

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4.13.50.b.2 and LDC 4.13.80.01.c.2, and in order to comply with LDC block perimeter and pedestrian connection standards, and argues that those findings suffice to explain the path qualifies for MADA credits under LDC 4.11.50.02.c.4. Record 72-73. However, LDC 4.11.50.02.c.4 requires the city to address whether MADA credits for the path and for mitigation for the path are justified because the path is "required by" the city's PRFP or transportation plan or "necessary to provide public access to or through dedicated open space," and LDC 4.11.50.02.c.2 requires the city to address whether MADA credits for mitigation for allowing the path are justified because the mitigation area is required by the Department of State Lands (DSL) or Army Corps of Engineers (ACOE). Those criteria involve different considerations than the considerations that are required in order for the city to determine whether the path should be allowed in a riparian and wetland area under LDC 4.13.50.b.2 and LDC 4.13.80.01.c.2, criteria which we discuss below in our resolution of the second assignment of error. The findings at Record 72-73 do not contain any adequate explanation by the city for why the path qualifies for MADA credit under LDC 4.11.50.02.c.

The first assignment of error is sustained.

SECOND ASSIGNMENT OF ERROR

A. Introduction

As noted above, the path crosses both a wetland and a riparian corridor. LDC Chapter 4.13 contains provisions that are intended to preserve and protect riparian corridors and wetlands. LDC 4.13.10. To that end, LDC 4.13.50.b prohibits building, paving, and grading in riparian corridors and riparian-related areas, except for certain specified purposes and only if the building, paving or grading is designed and constructed to minimize adverse impacts to the riparian area:

> "**Building, Paving, and Grading Activities** - The placement of structures or impervious surfaces, as well as grading, excavation, and the placement of fill, are prohibited. Exceptions to the drainageway restrictions may be made for the purposes identified in items 1-7 of this Section, provided they are

designed and constructed to minimize adverse impacts to Riparian Corridors and Riparian-related Areas.

" * * * * *

"2. The location and construction of streets, utilities, bridges, bicycle, and pedestrian facilities within Highly Protected Riparian Corridors and Riparian related Areas must be deemed *necessary to maintain a functional system* by the City Engineer. This Code, City Transportation and Utility Master Plans, and other adopted City plans shall guide this determination. The design standards of Chapter 4.0 - Improvements Required with Development shall be applied to minimize the impact to the subject area[.]" (Bold in original, italics added.)

A similar provision, LDC 4.13.80.01.c prohibits building, grading, and paving activities in wetlands except for specified purposes and only if the building paving or grading is designed and constructed to minimize adverse impacts to the wetlands:

"**Building, Paving, and Grading Activities** - Within LPW areas, the placement of structures or impervious surfaces, as well as grading, excavation, and the placement of fill, is prohibited, except as outlined below. Exceptions to the LPW restrictions may be made for the purposes identified in * * * '2,' below, provided they are designed and constructed to minimize adverse impacts to Wetland Functions.

" * * * * *

"2. Activities outlined in sections 4.13.50.b.2, 4.13.50.b.5, and 4.13.50.b.6." (Bold in original.)

B. Minimize Adverse Impacts

The decision approved construction of a "multi-use path" within the 45-foot wide easement area shown on SP1.10, the plan sheet that was included in intervenor's application, which shows a 12-foot wide path that meanders its location within a 45-foot wide easement that runs east to west across the property. Supplemental Record 1379.[2] The decision also imposed a condition of approval, Condition 10, which in part requires the path to be

[2] The PRFP defines "multi-use path" as a "paved path entirely separated from the roadway and used by pedestrians, roller bladers, joggers and cyclists." PRFP Glossary 2.

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constructed in accordance with the city Parks and Recreation Facilities Plan (PRFP) Design and Development Policies:

> "With submittal of the construction cost estimate, the Applicant shall include documentation of an approved fill permit, as required for wetland construction and wetland mitigation by [DSL] and [ACOE], which documents final acceptance by these agencies of the multi-use path construction and alignment. * * *
>
> "With submittal of the construction cost estimate, the applicant shall include construction details for the multi-use path that comply with Parks Department trail construction guidelines and DSL requirements, and includes the bench, as identified on Sheet SP1.4, if permitted by DSL. Path construction shall generally follow the 'Design and Development Policies' of the adopted [PRFP] (Page 5-2), and final path alignment shall occur so as to minimize removal of significant riparian area and to minimize impacts to the properly functioning condition of the riparian corridor/drainageway. * * *" Record 15.

In the first subassignment of error and in a portion of their second subassignment of error, we understand petitioners to argue that the city erred in approving the path to be located in riparian and wetland areas because there is not substantial evidence in the record to support a determination that the path will be "designed and constructed to minimize adverse impacts" to the riparian areas and wetlands. According to petitioners, the city could not determine that adverse impacts are minimized without knowing what the use of the path will be, its exact location, and its exact design, and according to petitioners those features are not known. In support of their argument, petitioners point out that the development plan that was approved by the final decision contains a notation that the "Exact Path Location TBD." Supplemental Record 1365. Petitioners also point to findings adopted by the city that specifically conclude that the city's decision to approve the proposed planned development that includes the path does not approve the precise design and construction materials for the path. Record 74. Petitioners also argue that in imposing Condition 10, the city improperly deferred finding compliance with LDC 4.13.50.b and 4.13.80.01.c to a later proceeding that does not require notice and an opportunity for hearing.

Respondents respond, and we agree, that there is substantial evidence in the record to support the city's conclusion that as conditioned the path will minimize adverse impacts to the riparian areas and wetlands under LDC 4.13.50.b and 4.13.80.1.c. First, the city approved a planned development that proposes locating a "multi-use path," a term that is defined in the PRFP, within the 45-foot wide easement area shown at Supplemental Record 1379, and required that path to be designed and constructed in conformance with the PRFP design guidelines for multi-use paths. Although petitioners quote some of the guidelines and policies, petitioners do not explain why a multi-use path located within the easement area that is designed and constructed in accordance with those policies will have more than a minimal adverse impact on the protected areas.

We also agree with respondents that in imposing condition 10 the city did not defer making a determination of compliance with LDC 4.13.50.b and 4.13.80.1.c to a future proceeding. Rather, in imposing condition 10, the city approved the path in a location within the 45-foot easement area, but allowed intervenor the flexibility to construct the path in the location within that easement area that minimizes adverse impacts to the protected area.

C. Necessary To Maintain a Functional System

1. Motion to Strike/Motion to Take Official Notice

As explained above, one of the exceptions to the prohibition on development in riparian and wetlands areas is for "[t]he location and construction of * * * bicycle, and pedestrian facilities within Highly Protected Riparian Corridors and Riparian-related Areas" that are "deemed necessary to maintain a functional system by the City Engineer." LDC 4.13.50.1.b.2. The city adopted findings that the path is "necessary to maintain a functional system:"

> "[League of Women Voters of Corvallis] LWVC conceded that both the City's Trails Master Plan and [PRFP] depict a trail in this general location; however, LWVC contends that this trail is conceptual only and was adopted prior to adoption of the [Natural Features Inventory] NFI. As such, LWVC contends that the trail designation did not take into account the wetlands

identified on the Property in the NFI. City staff responded by testifying that another adopted plan, the West Corvallis/North Philomath Plan ('WCNPP') identifies the Trail location inside of the natural features, thus showing a clear intent to route the Trial there notwithstanding the existence of the resources. Further City staff cited to specific WCNPP policies that support the Trail location in stream corridors as follows:

"OS-I-1:

"Work with private landowners to obtain dedications of open space lands for trails and preservation of natural systems.

"OS-I-7

"Where feasible, incorporate trails as part of stream corridors *as identified on the Circulation Plan, Figure VI-1.*

"OS-I-9

"Locate Trails at the edge of riparian buffer zones to minimize impacts on the natural functioning of the stream corridor and to preserve stream capacity.

"The Council concurs with the LWVC that standing alone, the conceptual trails depicted in the Trails Master Plan and the [PRFP] may not justify this location for the trail. However, the Council finds that there is additional substantial evidence in the record that supports the proposed Trail location as set forth in the WCNPP.

"The Council concurs with City staff findings that the Trail is 'necessary' in this location to 'maintain a functional trail system' as depicted in the adopted WCNPP and as further conceptually depicted in the Trails Master Plan and the [PRFP]. The Council further finds that each of the cited plans was approved by the Council through a public process." Record 72-73 (Emphasis added.)

Petitioners attach to the petition for review a copy of Figure VI-1 from the Circulation Plan that is part of the West Corvallis/North Philomath Plan (WCNPP) and that is referenced in the findings quoted above. Petition for Review App. 90. Figure VI-1 is not part of the record. In its response brief, intervenor moves to strike App. 90 and the portions of the petition for review at pages 16-17 that discuss Figure VI-1 and other provisions of the WCNPP that are not a part of the record. After the response brief was filed, petitioners filed a motion for LUBA to take official notice under Oregon Evidence Code (OEC) 202(7) of

1 excerpts from the WCNPP that are attached to petitioners' motion, including Figure VI.[3]
2 Intervenor objects to the motion to take official notice to the extent that petitioners
3 improperly seek to use the attached excerpted provisions of the WCNPP to provide evidence
4 that rebuts the city engineer's conclusion that the path is "necessary to maintain a functional
5 system" under LDC 4.13.50.b.2.[4]

6 Petitioners respond, and we agree, that the WCNPP is a part of the Corvallis
7 Comprehensive Plan (CCP) and under OEC 202(7) is subject to official notice. We disagree
8 with intervenor that petitioners seek to use Figure VI-1 to provide evidence to rebut the city's
9 determination about the necessity of the path to maintain a functional system. As discussed
10 below, petitioners' argument based on Figure VI-1 is essentially a legal argument: in
11 determining whether a path must be located in a riparian corridor in order to maintain a
12 functional trail system, as "guided by" city plans presumably including the WCNPP, what
13 legal significance should be attached to the fact that the relevant plans depict a path in the
14 riparian corridor but describe the depicted path or its location as "conceptual." The answer
15 to that question depends on the city's interpretation of various provisions of the LDC and the
16 CCP, including the WCNPP. The WCNPP has been adopted as part of the CCP and we may
17 take official notice of it. Accordingly, petitioners' motion to take official notice is granted
18 and intervenor's motion to strike portions of the petition for review is denied.

Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LUBA REMAND HEARING
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[3] OEC 202(7) provides that LUBA may take official notice of "[a]n ordinance, comprehensive plan or enactment of any county or incorporated city in this state[.]"

[4] LUBA's review is limited by ORS 197.835(2)(a) to the record of the proceeding below, except in instances where an evidentiary hearing is authorized by ORS 197.835(2)(b). Thus LUBA may not take official notice of facts within documents that are subject to official notice under OEC 202, if notice of those facts is requested for an adjudicative purpose (i.e., to provide evidentiary support or countervailing evidence with respect to an applicable approval criterion that is at issue in the challenged decision). *Friends of Deschutes County v. Deschutes County*, 49 Or LUBA 100, 103-04 (2005); *Tualatin Riverkeepers v. ODEQ*, 55 Or LUBA 688, 692 (2007).

1 **2. Necessary to Maintain a Functional System**

2 As explained above, the city found that the exception to the general prohibition on
3 development in protected areas was allowed because the path is "necessary to maintain a
4 functional system" under LDC4.13.50.b.2 and LDC 4.13.80.01.c.2. In a portion of their
5 second subassignment of error, we understand petitioners to argue that the city misconstrued
6 applicable law in relying on portions of the WCNPP to conclude that the path is "necessary
7 to maintain a functional system."[5] According to petitioners, Figure VI from the circulation
8 plan that is a part of Chapter 6 of the WCNPP states that the trail locations are "conceptual
9 and may vary as more detailed plans are drafted," suggesting that it may not be necessary to
10 locate the trail within the riparian area at all, and therefore it was error for the city to rely in
11 part on those conceptual trail locations to conclude that locating the path in the riparian area
12 is "necessary to maintain a functional system[.]"

13 Intervenor responds that the city's interpretation of its land use regulations, including
14 LDC 4.13.50.b.2 and the WCNPP is required to be affirmed under ORS 197.829(1) because
15 the city's interpretation of the relevant provisions is plausible. *Siporen v. City of Medford*,
16 349 Or 247, 259, 243 P3d 776 (2010). It is not entirely clear to us what the city council
17 understood the label "conceptual" to mean, but it apparently disagreed with petitioners that
18 the "conceptual" label means that the plan maps have no bearing on whether the plan
19 anticipates that the path will be located in the riparian area in order to provide a functional
20 trail system. The city clearly believes that plan maps depicting a path within the area of a
21 riparian corridor support a conclusion that a path must be located somewhere in the corridor
22 in order to provide a functional trail system. We cannot say that view is implausible or
23 inconsistent with any relevant plan or code text. The label "conceptual" could plausibly

[5] The WCNPP has been adopted as a part of the city's comprehensive plan.

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mean that the exact location *within* the riparian corridor has yet to be determined, not that the plans are indifferent as to whether the path is located inside or outside the riparian corridor.

D. Development Associated with MADA

LDC 4.13.50.b.6 provides that one of the seven enumerated purposes that the city may rely on to allow development in a protected area is for "[d]evelopment associated with [MADA] that would be allowed in accordance with [LDC Chapter 4.11] * * *." In a subassignment of error petitioners argue that the city erred in approving MADA credits for the path and for that reason, LDC 4.13.50.b.6 cannot provide a basis for allowing development in protected areas.

It is unclear from the city's decision whether the city relied on LDC 4.13.50.b.6 to allow development in the protected areas, but one of the incorporated findings at Record 756 suggest that the city relied at least in part on that subsection. If that is the case, then we agree with petitioners that without findings justifying the award of MADA credit under LDC 4.11.50.02(c), the city may not rely on LDC 4.13.80.02.b.6 to allow development in the protected areas.

The second assignment of error is sustained, in part.

THIRD ASSIGNMENT OF ERROR

LDC 4.13.80.01.e provides:

> "**Department of State Lands and US Army Corps of Engineers Notification Required** - In addition to the restrictions and requirements of this Section, all proposed development activities within any Wetland are also subject to Oregon Department of State Lands (DSL) and US Army Corps of Engineers standards and approval. Where there is a difference, the more restrictive regulation shall apply. In accordance with ORS 227.350, as amended, the applicant shall be responsible for notifying DSL and the Corps of Engineers whenever any portion of any Wetland is proposed for development.
>
> "No application for development will be accepted as complete until documentation of such notification is provided. Additionally, no site development permits, such as Grading and Excavation Permits, Public Improvements by Private Contract Permits (PIPC), and Building Permits,

shall be issued until the City has received verification of DSL and Corps of Engineers approval for development on the subject site." (Bold in original).

In their third assignment of error, petitioners point to the current DSL fill and removal permit for tax lot 500, which contains the following condition (condition 8):

> "**Deed Restriction Recording.** Before disturbance of any wetland areas, deed restrictions, for the avoided wetlands on tax lot 400 in its entirety * * * and the proposed avoided PFO wetlands on tax lot 500 (202,653 square feet) as shown on Sheet 1 of 1 dated November 16, 2004 shall be recorded with the County Assessor's office." Record 350-51 (bold in original.)

According to petitioners, LDC 4.13.80.01.e prohibits the city from approving MADA credits for the path and prohibits the city from approving the path until condition 8 has been satisfied.

Respondents respond, and we agree, that LDC 4.13.80.01.e merely requires intervenor to notify DSL of the development application in order for the city to deem the planned development application complete, but it does not prohibit the city from approving the application for a planned development on tax lot 500 or the location of the path within the wetlands prior to DSL approval of a new fill and removal permit that approves the path, as long as that approval is conditioned on receiving DSL permits prior to the issuance of any site development permits. Here, the city imposed a condition of approval requiring DSL approval of development activities on tax lot 500 prior to the issuance of site development permits.[6] That condition prevents the city from issuing site development permits for the

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[6] Condition 4 provides in relevant part:

> "Development of the proposed public multi-use path north of Dunawi Creek, the remainder of Phase I * * * and Phase 2 * * * is either not authorized under the scope of the active DSL fill permit or relies on MADA credits associated with DSL approved wetland mitigation that has not yet been authorized. No development permits shall be issued for work beyond the scope of the active DSL fill permit and/or after expiration of the active DSL fill permit, until supplemental documentation, as required in LDC 4.13.80.1.e has been provided to the City. Permits for development that is reliant on DSL-approved wetland mitigation associated with MADA credits under LDC 4.11.50.02.c.2 shall not be authorized until documentation of the approved mitigation has been provided to the City, consistent with LDC 4.11.50.02.c.2." Record 13.

path until DSL has issued a new wetland fill and removal permit for the area of the path and until DSL has approved the mitigation area, if any, that will be required for the path. Petitioners do not challenge condition 4 or otherwise explain why condition 4 is inadequate to ensure that no site development of the path will occur until DSL has approved the development.

The third assignment of error is denied.

FOURTH ASSIGNMENT OF ERROR

Intervenor proposes to locate above-ground stormwater detention facilities on a portion of tax lot 600 that is currently within the 100-year floodplain, and on a portion of tax lot 500 within the riparian easement area.[7] Supplemental Record 1378.

A. 10-Year Floodplain

LDC 4.0.130.b.1 requires in relevant part that stormwater "[d]etention or retention facilities shall be located outside the 10-year Floodplain or the riparian easement area, whichever is greater." In their fourth assignment of error, petitioners argue that the city's findings fail to address petitioners' argument below that the 10-year floodplain has not been mapped, and without that mapping, the city could not determine whether the facilities will be located outside of the 10-year floodplain boundary.

Respondents point to the city's findings that "[t]he Application includes substantial evidence explaining how the proposed stormwater facilities are consistent with applicable provisions of the LDC, including LDC 4.0.130." Record 75. Respondents explain that the application includes an illustration showing that after development, the stormwater detention facility on tax lot 600 will be located outside the boundaries of the 100-year floodplain, and explain that the 100-year floodplain includes the 10-year floodplain. Supplemental Record

[7] LDC 4.13.70.02.d.2 Table 4.13-2 provides that the riparian easement area is 50 feet from the top of the bank of Dunawi Creek.

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1378.[8] We agree with respondents that the city's findings are adequate to explain why the city concluded that the stormwater facilities comply with LDC 4.0.130 and that the evidence in the record supports that conclusion. Supplemental Record 1378 shows that the storm water facility to be located on tax lot 600 is entirely outside of the post-development 100-year floodplain, and is therefore necessarily outside of the 10-year floodplain.[9]

B. Riparian Easement Area Encroachment

LDC 4.13.70.02.d.2 Table 4.13-2 provides that the riparian easement area is 50 feet from the top of the bank of Dunawi Creek. LDC 4.13.70.02.d.4 provides:

> "If, through the provisions of Chapter 4.11 - Minimum Assured Development Area (MADA), it is determined that encroachment into a Riparian Corridor area is necessary to allow for utilization of the Minimum Assured Development Area, any associated easement requirement shall be relaxed to the extent necessary to allow for the minimum necessary encroachment into the resource area."

Thus LDC 4.13.70.02.d.4 allows encroachment of development into the 50-foot riparian easement area in order for development to meet allowed MADA.

Some of the incorporated findings suggest that the city may have allowed development of the stormwater detention facility within the riparian easement area on tax lot 500 under LDC 4.13.70.02.d.4. Record 680. In a portion of their fourth assignment of error, we understand petitioners to contend that if their first assignment of error is sustained, the city also erred in relying on LDC 4.13.70.02.d.4 to allow development within the riparian easement area where the total MADA has not yet been determined. We agree with petitioners that without knowing the MADA for the development, the city could not

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[8] According to the plan at Supplemental Record 1378, the detention pond on tax lot 600 will be located outside of the *post-development* 100-year floodplain, which is north of the pre-development 100-year floodplain due to construction of a new culvert.

[9] As the city explains "[a] 100-year Flood Plain indicates the maximum level of flooding expected to occur every hundred years; in other words, there is a 1% chance of maximum level flooding each year. In a 10-year Flood Plain there is a 10% chance every year of maximum level flooding." Response Brief of City 28, n 9.

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1 determine under LDC 4.13.70.02.d.2 whether "encroachment into a Riparian Corridor area is
2 necessary to allow for utilization of" MADA.
3 The fourth assignment of error is sustained, in part.
4 The city's decision is remanded.

Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
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Community Development
Planning Division
501 SW Madison Avenue
Corvallis, OR 97333

CORVALLIS CITY COUNCIL
NOTICE OF DISPOSITION

ORDER # 2010-077

CASE: **Creekside Center I & II**
(PLD09-00004 / CDP09-00003 / SUB09-00002)

REQUEST: Appeals of a Planning Commission decision to approve a Conceptual and a Detailed Development Plan, a Conditional Development Permit, and a Tentative Subdivision Plat for the Creekside Center I & II development. The Conceptual & Detailed Development Plan is for a commercial (retail and restaurant) development on 6.64 acres. The development plans include approximately 43,000 sq. ft. of commercial floor area divided among seven buildings. The request includes approval of a Conditional Development Permit to allow a drive-through conditional use adjoining one of the buildings. The request also includes a commercial Tentative Subdivision Plat, creating 3 Lots and 4 Tracts. The Planned Development request also includes variations to Land Development Code (LDC) standards. The appeals concern a condition of approval related to floodplain development indemnification, and construction of a public multi-use path and detention facilities within Natural Hazard and Natural Resource areas.

APPLICANT: Oregon Architecture
Attn: Mark McKechnie
221 W 10th Street
Medford, OR 97501

OWNER: Apple Creek I LLC
PO Box 4460
Medford, OR 97501

APPELLANTS: Annette Mills, President
League of Women Voters Corvallis
PO Box 1679
Corvallis, OR 97339-1679

Bret Fox
ThomasFox Properties LLC
515 W Pickett Circle - Suite 400
Salt Lake City, UT 84115

LOCATION: The site is located at the northwest corner of SW 53rd Street and Highway 20/34 (SW Philomath Boulevard). The site is identified on the Benton County Assessor's Map # 12-5-05 DD, as Tax Lots 500 and 600.

DECISION: The City Council held a duly-advertised *de novo* public hearing on the appeals on November 1, 2010. The City Council received a request to hold the record open for seven additional days, in order for the public to submit additional testimony. City Council allowed the record to be held open, and allowed the applicant to submit final written arguments by November 12, 2010. The City Council deliberated and reached a tentative decision on the appeals on November 15, 2010. After consideration of all the testimony and evidence, the City Council voted to uphold the Planning Commission's decision to

approve the request, and consequently, approved the Conceptual and Detailed Development Plan, Conditional Development Permit, and Tentative Subdivision Plat, upheld the appeal filed by ThomasFox Properties LLC, and denied the appeal filed by League of Women Voters Corvallis. On December 20, 2010, the City Council adopted Formal Findings in support of its decision.

If you wish to appeal this decision, an appeal must be filed with the State Land Use Board of Appeals within 21 days from the date of the decision. The proposal, staff report, hearing minutes, memoranda to City Council, and findings and conclusions may be reviewed at the Community Development Department, Planning Division, City Hall, 501 SW Madison Avenue.

Charles C. Tomlinson
Mayor, City of Corvallis

Signed: December 20, 2010
LUBA Appeal Deadline: January 10, 2011

Attachment A: Conditions of Approval
Attachment B: Detailed Development Plan, Conditional Development Permit and Tentative Subdivision Plat

CONCEPTUAL AND DETAILED DEVELOPMENT PLAN
EXPIRATION DATE (IF NOT APPEALED): **January 10, 2016**

If no appeal is filed by the LUBA appeal deadline, the Detailed Development Plan shall be valid for five (5) years. The approval shall expire on January 10, 2016, unless development occurs, an Active Detailed Development Plan is established in accordance with LDC Section 2.5.50.09, or the approval is otherwise extended consistent with the Corvallis Land Development Code.

CONDITIONAL DEVELOPMENT PERMIT
EXPIRATION DATE (IF NOT APPEALED): **January 10, 2013**

If no appeal is filed by the LUBA appeal deadline, the Conditional Development Permit shall be valid for two (2) years. The approval shall expire on January 10, 2013, unless development occurs consistent with the approved Conditional Development Permit, in accordance with LDC Section 2.3.30.09.

TENTATIVE SUBDIVISION PLAT
EXPIRATION DATE (IF NOT APPEALED): **January 10, 2013**

If no appeal is filed by the LUBA appeal deadline, the Tentative Subdivision Plat shall be valid for two (2) years. If the applicant has not submitted a Final Subdivision Plat within the two-year period (with appropriate assurances for improvements, if applicable), or a Tentative Subdivision Plat Modification has not been approved, all approvals shall expire.

EXTENSION OF APPROVALS
Where the Planning Commission finds that conditions have not changed, at its discretion and without a public hearing, the Planning Commission may extend the period of approvals for the Conditional Development Permit and Tentative Subdivision Plat noted above, consistent with LDC provisions in LDC 2.3.30.09 (Conditional Development Permit), and 2.4.30.09 (Tentative Subdivision Plat).

Attachment A - Conditions of Approval and Approved Plans for Creekside Center I & II (cases PLD09-00004, CDP09-00003, SUB09-00002)

Condition #	Condition Language
1	**Consistency with Plans** – Development shall comply with the narrative and plans identified in **Attachments G and H** of this Staff Report, except as modified by the conditions below, or unless a requested modification otherwise meets the criteria for a Minor Planned Development Modification, Conditional Development Modification, and/or a Subdivision Modification, as applicable. Such changes may be processed in accordance with Chapters 2.3, 2.4 & 2.5 of the Land Development Code.
2	**Adherence to Land Development Code standards** - Where variations are not explicitly authorized by approval of this Conceptual and Detailed Development Plan, all development on the Creekside Center site shall comply with applicable Land Development Code standards. Compliance shall be demonstrated at time of building permit submittal.
3	**Construction Phasing**- Except as modified by this condition below, construction phasing shall be consistent with the phase plan identified on Sheet SP1.11 (**see Attachment G - page 18)**. Minor changes to the phase plan may be administratively approved by the Community Development Director, where it can be shown that the Conceptual and Detailed Development Plan will be able to be fully implemented if changes in ownership of one or multiple lots within the development site occur. Phase 1 construction is limited to the extent of improvements identified on the active DSL fill permit. The required public multi-use path on the north side of Dunawi Creek shall be financially secured as indicated in **Condition # 10** below prior to issuance of any site construction or building permits for Buildings B, C, and F, and related site excavation contained within Phases 1D, 1E, and 2B. Documentation shall be provided to the Community Development Director that indicates that DSL and COE have approved associated wetland mitigation credits as described in **LDC § 4.11.50.02.c,** where development relies on those credits. Prior to issuance of any site construction or building permits for Phase 2, dedication of the local street ROW (West Corvallis Access Strategy local street) shall occur.

Condition #	Condition Language
4	**Department of State Lands (DSL) / Army Corps of Engineer (COE) Approvals Required** :The applicant has obtained a DSL fill permit (Permit No. 32863-FP Renewal) that authorizes development on a portion of Tax Lot 500, and has provided a copy of the permit to the City as part of this land use application (**see Attachment H - Pages 153-154** and **Attachment L**). The active DSL fill permit has an expiration date of November 22, 2010. City of Corvallis development permits may be issued for that portion of Tax Lot 500 identified within the scope of the active DSL fill permit, as long as the applicable City permits are issued prior to expiration of the active DSL fill permit. Areas of the proposed CDP/DDP that fall within the scope of the active DSL fill permit include Phases 1-A (Walgreen's), 1-B (Building A), and 1-C (Building D), and Phase 1 (associated site improvements), as defined by the dashed lines and phasing labels on the Project Phase Plan (Sheet SP1.11). Also refer to the surveyed wetlands overlay (Sheet SP1.3C), and limits of development identified on the "Wetlands Joint Permit Site Plan", dated June 15, 2004 (active DSL fill permit) as defined by upland areas and wetland impact area. Development of the proposed public multi-use path north of Dunawi Creek, the remainder of Phase 1 (Tax Lot 500 - Phases 1-D (Building C) and 1-E (Building B) and related site improvements), and Phase 2 (Tax Lot 600) is either not authorized under the scope of the active DSL fill permit, or relies on MADA credits associated with DSL-approved wetland mitigation that has not yet been authorized. No development permits shall be issued for work beyond the scope of the active DSL fill permit and/or after expiration of the active DSL fill permit, until supplemental documentation, as required in **LDC § 4.13.80.01.e** has been provided to the City. Permits for development that is reliant upon DSL-approved wetland mitigation associated with MADA credits under **LDC § 4.11.50.02.c.2** shall not be authorized until documentation of the approved mitigation has been provided to the City, consistent with **LDC § 4.11.50.02.c.2**.
5	**Archaeological Resources** - The developer shall contact the City Planning Division and the State Historic Preservation Office if discovery of archaeological resources occurs during any phase of construction. The developer shall acquire necessary permits before proceeding, if resources are found.

Condition #	Condition Language
6	**Vehicle Parking - MADA Calculations** - With submittal of the site development permit applications, the developer may reduce the amount of required vehicle parking constructed by up to 15%, in accordance with LDC § 4.11.50.03, to achieve the MADA and minimize development encroachments into protected Natural Resource and Natural Hazard areas. If the developer chooses to use this LDC provision, areas originally illustrated as vehicle parking on the CDP/DDP and intended to be eliminated shall abut undisturbed Natural Resource / Natural Hazard areas and shall be added to the area noted as undisturbed and outside the limits of grading, as illustrated on Sheet SP1.5. The development shall otherwise comply with the minimum and maximum parking space requirements specified in LDC Chapter 4.1.
7	**MADA Calculations:** With submittal of site development permit applications, the applicant shall include a complete analysis of Natural Features and Natural Hazards protections and Minimum Assured Development Area (MADA) for Development Services staff review and approval. The MADA analysis shall outline and graphically illustrate the components of the proposed development which encroach into Natural Features and Natural Hazards areas based on a final excavation and grading plan, showing the limits of development and calculating said area. Final MADA calculations shall be provided per LDC Section 4.11.40.f. Supplemental documentation shall be provided which lists MADA credits utilized under LDC Section 4.11.50.02.c, and shall include additional documentation from DSL and COE as necessary to verify mitigation credits received pursuant to LDC Section 4.11.50.02.c.2. Upon final acceptance by the City of MADA calculations, and recordation of a final plat for the development, the City's Official Zoning Map shall be updated to reflect the use of the MADA allowances on the subject development site.
8	**Natural Features Protection Fencing** - Prior to issuance of any site construction or PIPC permits, the applicant shall install construction fencing along the "Limits of Grading" identified on Sheet SP1.5. Silt fencing or other approved erosion control measures shall be installed along the "Limits of Construction" (on the development side of the construction fence) per the City's adopted Erosion Prevention and Sediment Control Manual. Construction fencing shall remain in place throughout all phases of construction.

Condition #	Condition Language
9	**Barricades** - When constructed, the proposed local street and public multi-use path shall have barricades erected at the northern terminus of the street and west end of the multi-use path. Barricade details shall be included with the construction drawings submitted as part of the PIPC application (local street) or for the private improvements associated with the development (multi-use path).
10	**Pre-Payment for Public Multi-Use Path Construction (Dunawi Creek)** - The Applicant shall deposit with the appropriate City official an amount of cash equal to the estimated cost of the construction of the Dunawi Creek multi-use path, prior to issuance of site development permits for Phases 1E, 1D, or 2, whichever occurs first. The estimated cost shall be prepared by the Applicant and approved by the City, and shall be based upon a multi-use path, located within the multi-use path easement area shown on Sheet SP1.10, that meets applicable City and DSL standards for construction and alignment, and accounts for necessary excavation and fill and any other reasonably related requirements imposed by the City. The City shall place this money in the appropriate account and shall use it only for construction of the path. In the event that the City determines not to build the path, the City shall refund the money to the Applicant within a reasonable time period. With submittal of the construction cost estimate, the Applicant shall include documentation of an approved fill permit, as required for wetland construction and wetland mitigation by the Oregon Department of State Lands("DSL") and the United States Army Corps of Engineers("Corps"), which documents final acceptance by these agencies of the multi-use path construction and alignment. The cost of obtaining any necessary permits from DSL and the Corps shall be paid by the Applicant. With submittal of the construction cost estimate, the applicant shall include construction details for the multi-use path that comply with Parks Department trail construction guidelines and DSL requirements, and includes the bench, as identified on Sheet SP1.4, if permitted by DSL. Path construction shall generally follow the "Design and Development Policies" of the adopted Park and Recreation Facilities Plan (Page 5-2), and final path alignment shall occur so as to minimize removal of significant riparian vegetation and to minimize impacts to the properly functioning condition of the riparian corridor / drainageway. The City shall make the final determination of when the path is to be constructed, based on Project Implementation guidelines established in City Council Policy 99-7.14.

Condition #	Condition Language
11	**Weather Protection** – All required weather protection (canopies) along building facades shall be at least 8-ft. above the adjacent sidewalk and extend from the building face a minimum of 6-ft., per **LDC § 4.10.70.05.a.1**.
12	**Fire Code – Addressing** - Prior to issuance of a final certificate of occupancy, address numbers shall be provided that are a minimum of 6 inches in height, contrast with their background, be readable from the access drive, and readily visible at night. Where structures are set back more than 250 feet from the street, larger numbers will be required so that they are distinguishable from the street of address reference. In the event the structure(s) is not visible from the street, the address number(s) shall be posted adjacent to the driveway entrance. Ref: OFC 505.1, 2007 ed, CFD Guideline 11.2.1 (available on the City website).
13	**Fire Code – Water Supply and Construction Timing** - The water supply, including mains and hydrants, shall be in-service PRIOR to building construction proceeding above the level of the foundation. This project will require water mains and fire hydrants to be extended on-site for coverage. Ref: OFC 501.4, 2007 ed.
14	**Wheelstops for Parking Abutting Landscape Buffers -** With submittal of the site development permit applications, the applicant shall clearly indicate that concrete wheel stops are provided for all vehicle parking spaces that abut required landscape buffers, where the landscape buffer is less than 7.5-ft. in depth, in order to ensure a minimum planted area of 5 feet and to prevent damage to the plants from the bumper overhangs, per LDC Section 4.2.40.a. Additionally, wheel stops shall be provided for all vehicle parking spaces that face tree wells in sidewalks (adjacent to Buildings B,C, D, and F) in order to protect against possible damage to the tree trunks and vehicles.
15	**Exterior Lighting** – All exterior light fixtures and appurtenances shall comply with LDC Section 4.2.80. As noted in the narrative and Detailed Development Plan attachments, glare shields and other fixture attachments will be required to ensure that when evaluated from a point four ft. above the ground, bulbs of light fixtures are not visible from adjacent property. Documentation shall be provided to the Development Services Division, for verification of compliance with these standards, prior to issuance of required permits.

Condition #	Condition Language
16	**Commercial Driveway Approaches Required** - With submittal of the site development permit applications (including those required by Benton County and ODOT), the applicant shall provide Corvallis standard commercial driveway approaches for all driveways and the private Shopping Street, where they intersect with adjacent public streets.
17	**Pedestrian Crossings at Drive Aisles:** As noted in the application narrative, and with submittal of the site development permit applications (including those required by Benton County and ODOT), the applicant shall clearly indicate that all pedestrian crossings at internal streets (private Shopping Street), drive aisles, parking aisles, and commercial driveway approaches, are constructed of paving materials that contrast with the abutting pavement used for vehicular circulation, in conformance with **LDC § 4.10.70.03.a.5**. This includes one driveway entrance on 53rd Street, one driveway entrance on Philomath Blvd. (at private Shopping Street), and two driveways that intersect with the new local street, the drive aisle crossings between Buildings E and F, the Shopping Street crossing between Buildings F and C, the drive aisle crossing between Buildings C and D, and the drive aisle crossing between the Walgreen's building and Building B / pedestrian plaza.
18	**Bicycle Parking** - With submittal of the site construction permit applications, the applicant shall provide a minimum of 12 bicycle parking stalls, consistent with LDC Chapter 4.1 and the City's standard detail # 503. Covered bicycle shelters shall be provided as illustrated on Sheet SP1.2 (east of Building B and east of Walgreen's). Each bicycle shelter shall provide weather protection for four bicycles, consistent with LDC § 4.1.70.d as illustrated.
19	**Building Setback and Conformance to Proposed Grading Plans / Detail DD** - Any changes to final grading, noted on the Conceptual Grading Plans, will require a Planned Development Modification, as defined in the Planned Development Modification Criteria in **LDC § 2.5.60**. Since the limits of grading in areas on the south side of Dunawi Creek will generally follow the required drainageway easement line and in some cases be adjacent to the 0.2 floodway line, Building B shall be setback a minimum of 3 feet from this grading limits/easement line as shown in the applicant's attachment DD, in order to ensure that all development and associate construction fencing / erosion control fencing is located outside of the 0.2'-Floodway and drainageway easement area.

Condition #	Condition Language
20	**SW 53rd Street Improvements** - Improvements to SW 53rd Street along the site frontage shall be consistent with the improvements outlined by Benton County in a letter dated February 5, 2009 (**Attachment K**), including a 12-foot left turn lane, 11-foot through lane, 6- foot bicycle lane, 11-foot right turn lane, 6-foot planter strip and 10-foot multi-use path. Transitions, including the bike lane, will be reviewed and approved with the construction plans submitted to Benton County and the City. A median restricting left turn movements to and from the site shall also be installed. A minimum ROW dedication of 50 feet from the original Centerline is necessary to construct these improvements. Improvements shall be installed or secured per **LDC § 4.0.20** prior to approval of the final plat.
21	**County Permits** - Currently SW 53rd Street is under County Jurisdiction. Access and construction plans for SW 53rd Street including storm drainage will be subject to County Review and permitting. If the applicant is unable to obtain approval for the proposed street improvements, and modifications to these improvements are required, a Planned Development Modification approval will be required, consistent with **LDC § 2.5.50.10.**
22	**Hwy. 20/34 Improvements** - Improvements to the Highway shall be consistent with those shown on the applicants sheet SP 1.2 and as permitted by ODOT. These improvements consist of installation of a right turn pocket into the site at the new access point to the shopping street, extending the east bound left turn lane on the Highway at SW 53rd Street to the maximum possible while still accommodating the full movement access, installation of a two-way left turn lane from Hwy. 20/34 into the site, a bike lane, curb and gutter, a planter strip varying in width from 12 feet to 24 feet, and a 6-foot sidewalk. The 6-foot public sidewalk shown in the applicant's plan adjacent to the Walgreen's building will need to be located in the ROW. A minimum ROW dedication of 57 feet from the original Centerline is necessary to construct these improvements. Improvements shall be installed or secured per LDC section 4.0.20 prior to approval of the final plat. If the applicant is unable to obtain approval for the proposed street improvements, and modifications to these improvements are required, a Planned Development Modification approval will be required, consistent with **LDC § 2.5.50.10.**
23	**ODOT Permits** - Currently Hwy. 20/34(Philomath Blvd.) is under ODOT Jurisdiction. Access and construction plans for Hwy. 20/34, including storm drainage, will be subject to ODOT Review and permitting. If ODOT requires the access to move to the west, the applicant will be required to apply for a Planned Development Modification.

Condition #	Condition Language
24	**Local street improvements across lot 600** - The local street across tax lot 600 shall be constructed prior to issuance of any building permits, per City Council Policy CP91-7.04, on tax lot 600 (Phase 2). This street shall consist of a minimum 20 feet of pavement and 5-foot curbside sidewalks on both sides. Curb radii and intersection design shall accommodate Fire Department apparatus. Storm Drainage and other City utilities as required to serve this parcel, and stubbed to adjacent parcels per LDC section 4.0.70.d shall be constructed with the street improvements. A reservation for this ROW shall be shown on the final plat. Dedication of ROW shall occur prior to issuance of any building permits for phase 2.
25	**Public Improvements** - Any plans for public improvements referenced within the application or this staff report shall not be considered final engineered public improvement plans. 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 by private contract (PIPC) 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. Street signs and curb markings will be reviewed and approved with the PIPC plans. 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 Land Development Code Section 4.0.80.
26	**Multi-Use Path and Driveway Access to SW 53rd Street** - The multi-use path across the driveway access on SW 53rd Street shall be constructed of paving materials that contrast with both the commercial driveway approach and existing path. Truncated domes may be located on each side of the driveway approach on the multi-use path. If grades allow, the path should be located in a raised crossing across the commercial driveway approach. Appropriate signing including a stop sign meeting MUTCD requirements for retroreflectivity for vehicles exiting the site shall be located at the crossing. This path is under Benton County jurisdiction. Benton County is responsible for issuing permits associated with the driveway and multi-use path.

Condition #	Condition Language
27	**Water Line** - Per LDC section 4.0.20, prior to approval of the final plat, the applicant shall install an 8-inch minimum waterline from the current location along Hwy. 20/34 through the property to the boundary of tax lot 400. Final design and line sizing shall include engineering calculations addressing flow requirements. Final fire hydrant locations and waterline alignment including clearance from landscaping will be reviewed with the final PIPC permit construction plans. Any easements for future waterlines shall be located outside of the construction limits for a future bridge or culvert that would cross Dunawi Creek.
28	**Sewer Services** - Each lot shall have an individual connection to a public sewer. Sewers, either public or private, are installed by the applicant at the applicant's expense. Installation of individual private sanitary sewer lateral extensions will be subject to permitting through the City's Development Services Division. If these laterals cross property lines, private easements shall be provided. Common private sewers serving more than one parcel/lot are not allowed except as noted in LDC section 4.0670.f.
29	**Private Storm Drainage** - Installation of the private storm drainage system will be subject to permitting through the City's Development Services Division and shall comply with improvements shown on sheet SP1.5. The detention facilities shall be located as shown with one facility under the shopping street and one detention pond. As proposed, the water quality facilities for the site include Stormfilter™ cartridges. A private maintenance agreement with enforcement provisions to ensure maintenance for these facilities shall be established in accordance with LDC sections 4.0.70.f and 4..0.60.d prior to permitting these improvements. As part of the proposed storm water management plan for the site, 5100 sq. ft of pervious pavement in addition to the drive up lane for Walgreens shall be installed with Phase I. Private stormwater facilities shall not be located within any existing or future public street ROW.

Condition #	Condition Language
30	**Private Water Quality Facility Design** - As part of the building plans, the developer shall provide engineered calculations for storm water quality facilities 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. Infiltration facilities are a recommended means of meeting water quality requirements where soil and slope conditions (not more than 10%) permit the use of infiltration facilities and where the facilities will not have an adverse impact on the subject site or adjacent or downhill properties. The water quality analysis shall contain a discussion on the feasibility of implementing infiltration during both wet and dry seasons. The use of pervious pavements may reduce the contributing area used in the treatment volume calculations. A private maintenance agreement with enforcement provisions to ensure maintenance for this facility shall be established in accordance with LDC sections 4.0.70.f and 4.0.60.d.
31	**Private Stormwater Detention** - Concurrent with development, stormwater detention shall be implemented. Infiltration and open storm water facilities should be considered. The storm water detention facilities should be designed consistent 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, and should be designed to capture and release run-off so the run-off rates from the site after development do not exceed the pre-developed conditions, based on the 2-year, 5-year, and 10-year, 24-hour design storms. Installation of the private storm drainage system will be subject to permitting through the City's Development Services Division. The use of pervious pavements may reduce the contributing area used in the detention volume calculations. A private maintenance agreement with enforcement provisions to ensure maintenance for this facility shall be established in accordance with LDC sections 4.0.70.f and 4.0.60.d.

Condition #	Condition Language
32	**Public Water Quality Facility Design** - As part of the PIPC plans for the local street, the developer shall provide engineered calculations for storm water quality facilities demonstrating compliance with design criteria outlined in the LDC, Appendix F of the Storm Water Master Plan, and design criteria outlined in the King County Washington, Surface Water Design Manual(KCWSWDM). Acceptable facilities are listed under section 6.1.1 of the KCWSWDM (2009). Infiltration facilities are a recommended means of meeting water quality requirements where soil and slope conditions (not more than 10%) permit the use of infiltration facilities and where the facilities will not have an adverse impact on the subject site or adjacent or downhill properties. The water quality facilities shall be designed to remove 70 percent of the total suspended solids (TSS) entering the facility during the water quality design storm, 0.9" 24-hr rainfall event with NRCS Type 1A distribution. The facility shall be designed to allow a 100-year storm event to pass through or a separate bypass provided.
33	**Public Stormwater Detention** - Concurrent with development and application for PIPC permits for the local street, stormwater detention shall be implemented. The storm water detention facilities shall be designed consistent with design criteria outlined in Appendix F of the Storm Water Master Plan, and design criteria outlined in the King County, Washington, Surface Water Design Manual, and shall be designed to capture and release run-off so the run-off rates from the site after development do not exceed the pre-developed conditions, based on the 2-year, 5-year, and 10-year, 24-hour design storms. The facility shall be designed to allow a 100-year storm event to pass through. Installation of the public storm drainage system will be subject to the PIPC plans permitting process.
34	**Floodplain Permits** - Per **LDC § 4.5.50.02.e**, All necessary permits from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334, as amended, shall be obtained, or obtaining such permits shall be a Condition of Approval to be satisfied prior to issuance of any construction permit.
35	**Franchise Utilities** - Prior to issuance of public improvement permits, the applicant shall submit, as part of the public improvement plan set, an overall site utility plan that shows existing and proposed franchise utility locations, including vaults, poles and pedestals. Except as specified in **Condition # 39-E**, the proposed franchise utilities shall conform to requirements outlined in the LDC section 4.0.100, including provision of appropriate utility easements. The applicant shall provide confirmation the franchise utilities have reviewed these plans prior to review by the City.

Condition #	Condition Language
36 - a	**<u>Landscaping Construction and Maintenance</u>** – The following landscaping provisions shall apply to overall development of the site: **<u>Landscape Construction Documents</u>** - Concurrent with submittal of public and private site improvement and building permit applications, the applicant shall submit for review and approval by the Development Services Division, landscape construction documents, which contain a specific planting plan (including correct Latin and common plant names), a Significant Vegetation preservation plan, construction plans, irrigation plans, details, and specifications for all required landscaped areas on the site. The irrigation plans shall indicate source of water, pipe location and size, and specifications for backflow prevention. The irrigation system shall utilize 100 percent sprinkler head-to-head coverage or sufficient coverage to ensure 90 percent coverage of plant materials in three years. Plantings shall be provided as shown on Sheet SP1.4 - Conceptual Landscape Plan, except as modified by the additional conditions below. Where a particular plant or irrigation standard is not specifically mentioned below, the plans shall comply with LDC Chapter 4.2. As proposed by the applicant, small, medium (**2.25-inch caliper minimum**), and large canopy trees (along portions of the east side of the proposed Shopping Street) shall be provided as specified. Tree plantings shall match planting standards adopted by the Urban Forester. The landscape construction documents shall include an overlay drawing which illustrates proposed plantings and existing and proposed underground utilities, in order to ensure that plantings and utilities meet the separation requirements outlined in **LDC § 4.2.30.b**.

Condition #	Condition Language
36-b	**Significant Vegetation Preservation Plan** - As specified in the preceding condition, the applicant shall submit a Significant Vegetation preservation plan, for Development Services staff review and approval. The plan shall be consistent with the standards in **LDC § 4.12.60.f** and **LDC § 4.2.20.d.2.b.** Vegetation required to be protected includes all vegetation and associated Circles of Protection completely within Natural Features protection areas (as delineated by the "limits of grading" identified on Sheet SP1.5), specific trees identified for protection on Sheet SP1.4 and Attachment CC, and all Significant Trees where tree trunks are located within the Natural Features protection areas but where the associated Circle of Protection crosses the "limits of grading" boundary. In cases where the Circle of Protection crosses the "limits of grading" boundary, the Significant Vegetation preservation plan shall include a report by the project arborist that describes the health of the subject vegetation and best practices for preservation of the vegetation. Protective fencing shall be provided and all such fencing shall be in place prior issuance of an Excavation and Grading Permit. Fencing shall be maintained throughout all phases of construction, consistent with **LDC § 4.12.60.f.**
36-c	**Special Soil Preparation - Planting Techniques** - With submittal of the landscape construction documents, the applicant shall include construction details that identify special planting techniques and soil preparation to be used in locations where required trees are located within 5 feet of a permanent paved surface such as the parking lot pavement and pedestrian sidewalks. The construction detail shall be reviewed and approved by Development Services staff and the Urban Forester. Soil mixture and sub-base preparation shall be monitored in the field to comply with the special planting techniques.
36-d	**Re-vegetation of Streambanks**- Those portions of the Highly Protected Riparian Corridor where encroachments are allowed to occur per MADA, that have been graded but not occupied by buildings or pavement shall be planted and restored. With submittal of the landscape construction documents, the applicant shall provide supplemental plantings in the subject areas consistent with **LDC § 4.13.50.d**.
36-e	**Residential Landscape Screen along West Property Line** – With submittal of the landscape construction documents, the applicant shall include a mix of trees, shrubs, and groundcover within the planter located along the west property line of Tax Lot 600, to achieve a mix of plant materials, as prescribed in the **LDC § 4.2.40**, and to provide an effective screen consistent with **LDC § 4.2.50.**

Condition #	Condition Language
36-f	**Parking Landscape Buffers**– With submittal of the landscape construction documents, the applicant shall include a mix of trees, shrubs, and groundcover within the planter that abuts the vehicle parking stalls between Walgreen's and Building A, and within the planter that abuts the vehicle parking stalls immediately north of Building A, so that an effective buffer has been provided between the vehicle parking and public right-of-way. Plantings shall be consistent with **LDC § 4.2.40.a.**
36-g	**Planters Along Building Walls**: In order to comply with **LDC § 4.10.70.03.a.1**, planters shall be provided abutting the entire length of applicable building walls in addition to the weather protection canopies that are proposed. Planters need not be provided under the proposed weather protection or where tenant doors interrupt the planters.
36-h	**Pedestrian Amenities** - With submittal of the landscape construction documents, the applicant shall provide benches, planter benches, pedestrian plazas, and tree caliper sizes as proposed and illustrated on Sheets SP1.2 and SP1.4 , and as required per **LDC § 4.10.70.05.a.4**.
36-I	**SW Philomath Blvd Frontage Landscaping**: With submittal of the landscape construction documents, the applicant shall provide street trees along the development site's SW Philomath Boulevard frontage, consistent with **LDC § 4.2.30.** Tree trunks shall be located a minimum of 10 feet from the existing sewer and water mains along the SW Philomath Blvd. frontage, and shall otherwise meet the separation requirements outlined in **LDC § 4.2.30.b**. Trees shall be located as far north as possible within the planter strip, while maintaining the utility spacing noted above, in order to encourage protection of the street trees in the event that SW Philomath Blvd. is widened to four lanes in the future. Street tree species shall be reviewed and approved by the City's Urban Forester and ODOT. The applicant shall include in the required Detailed Planting Plan, additional shrubs and groundcover that provide a visual vertical planting buffer along the entire length of highway frontage, between the south edge of the public sidewalk and the curb on SW Philomath Blvd. All plantings within the SW Philomath Blvd. park strip shall comply with the vision clearance requirements established by ODOT.

Condition #	Condition Language
36-j	**SW 53rd Street Frontage Landscaping** - As noted in the project narrative, the developer intends to provide enhanced landscaping along the site's SW 53rd Street frontage, in order to compensate for the reduced width parkway. With submittal of the landscape construction documents, the applicant shall include additional shrubs and groundcover within the 6-ft. parkway, and additional trees, shrubs, and groundcover within the landscaped area between the row of (7) seven vehicle parking spaces north of Building A and the sidewalk/multi-use path on SW 53rd Street. Shrubs within the 6-ft. parkway shall be of a species and size that is compliant with the vision clearance standards established by the City Engineer and Benton County.
36-k	**Detention Facility Landscaping** - With submittal of the landscape construction documents, the applicant shall include additional plant materials within the bio-retention facilities that provide erosion control and biofiltration, consistent with **LDC § 4.2.50.04.**
36-l	**Inspections and Three Year Maintenance Guarantee** - All landscaping and irrigation associated with Phase I shall be installed, inspected, and approved by the Development Services Division, prior to or concurrent with final inspections for the final building to receive an occupancy permit within Phase I. All landscaping and irrigation associated with Phase II shall be installed, inspected, and approved by the Development Services Division, prior to or concurrent with final inspections for the final building to receive an occupancy permit within Phase II. Prior to final acceptance of the installation of required landscaping by the City for each phase, the applicant shall provide a three year maintenance bond or other financial assurance to the Development Services Division for review and approval. This financial assurance is to cover the required three year landscape maintenance period which begins at the time the landscape installation is approved by the City. This includes achieving the minimum 90 percent coverage specified by Code. Required landscaping is illustrated on the landscape plan submitted to comply with item (a) above and as modified by this Condition. Exceptions to the plantings shown on Attachment G may be administratively approved by the Development Services Division where, due to plant availability or performance issues, minor changes are warranted. Plant substitutions shall meet the LDC performance criteria and maintain at least the minimum plant density and plant size as specified in this Condition and on Attachment G.

Condition #	Condition Language
36-m	**Vision Clearance Areas and Plantings** - With submittal of the landscape construction documents, the applicant shall illustrate the required vision clearance areas for all applicable driveway and street intersections. In addition to the requirement to comply with the City's vision clearance standards, the applicant shall coordinate with ODOT and Benton County to ensure related vision clearance standards are satisfied. All planting located within vision clearance areas shall comply with the height limitations of the applicable jurisdiction's vision clearance standards.
36-n	**Tree Spacing**- The Conceptual Landscape and Utility Plans show potential conflicts between required trees and utilities such as public water lines and fire hydrants. Per **LDC § 4.2.30.b.2**, a minimum 10-ft. separation is required between these public utilities and tree trunks. With submittal of PIPC and site construction permit applications, the applicant shall include an overlay of existing and proposed utilities and all trees, and illustrate that the LDC spacing requirements are satisfied. Proposed utility locations may need to be adjusted in order to accommodate the required landscaping.
36-o	**Three-Year Maintenance Guarantee Release -** The developer and/or POA shall provide a report to the Development Services Division just prior to the end of the three year maintenance period for each individual 3-Year Maintenance Bond initiated by this Detailed Development Plan, as prescribed in **LDC § 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.
37	**Signs** – All signs associated with the Creekside Center I and II shall comply with LDC Chapter 4.7.
38	**Vision Clearance** - Prior to issuance of site construction and PIPC permit applications, the applicant will need to verify with the City's Development Services Division, that all vision clearance standards, as adopted by the City Engineer, Benton County, and ODOT, are maintained at the intersections of all site driveways, the Shopping Street, and the public streets that abut the development site.

Condition #	Condition Language
39-a	**Final Plat - ROW Dedication/Easements/Reservation** - Any easements or ROW dedications shall be shown on the plat. Easements for water, sewer, and storm drainage shall be provided for facilities located outside the ROW. Minimum easement width shall be per LDC section 4.0.100.a. The reservations for future ROW's shall be noted on the plat and shall be dedicated with the appropriate phases. An environmental assessment for all land to be dedicated must be completed in accordance with LDC Section 4.0.100.g and provided to the City concurrent with Final Plat submittal. As proposed, a reservation for the local street ROW (West Corvallis Access Strategy local street) shall be shown on the final plat. Dedication of ROW shall occur prior to issuance of any building permits for Phase 2.
39-b	**Final Plat Easements – Public Pedestrian and Bicycle Access** - With submittal of the final plat, the applicant shall include a declaration for and shall graphically illustrate public access easements for the two proposed public multi-use paths where located on private property, for all sidewalks that are located on private property and which are intended to represent Block Perimeter connections or public street frontage sidewalk, and for the proposed pedestrian plazas (per **LDC § 4.10.70.05.a.4**). The declaration language shall specify the purpose, ownership, and party responsible for maintenance of the improvements located within the easement area(s).
39-c	**Final Plat Tract and Easement (Shopping Street)** - With submittal of the final plat, the property owner shall include in the plat declarations, the proposed private Shopping Street Tract, located at the southwest corner of the site ("Lot 551"). The declaration language shall specify the purpose, ownership, and party responsible for maintenance of the private Shopping Street. The declarations shall include a public access easement over the entirety of the Shopping Street Tract, as specified in **LDC § 4.0.60.m.2.b**. A private maintenance agreement with enforcement provisions to ensure maintenance for this facility shall be established in accordance with **LDC § 4.0.60.d**. The private Shopping Street dimensions are shown on Sheet SP 1.2 of the application. Commercial approaches shall be required at each end to delineate the private street and provide a raised pedestrian crossing with contrasting paving materials, consistent with **LDC § 4.10.70.03.a.5**. Private improvements associated with Phase I as shown on Sheet SP 1.11 shall be installed or secured per **LDC § 4.0.20** prior to approval of the final plat. Private improvements associated with Phase II shall be installed prior to issuance of any Certificates of Occupancy for that phase.

Condition #	Condition Language
39-d	**Final Plat Tract and Easement (Drainageway and Natural Features Preservation)** - With submittal of the final plat, the property owner shall include in the plat declarations, a dedication for the proposed Drainageway and Natural Features Tracts ("Lot 550" and "Lot 601"). The declaration language shall specify the purpose, ownership, and party responsible for maintenance of the Tracts. The declarations shall also grant to the City of Corvallis, a public drainageway easement within the Tracts, as specified per **LDC § 4.13.70.02.d**. A minimum drainage way easement of 50-feet shall be provided along the north side of Dunawi Creek. On the south side of Dunawi Creek the easement will need to follow the grading limits line as shown on sheet SP1.5. Since the limits of grading will be the easement line and in some cases the 0.2 floodway line, Building B shall be setback 3 feet from this grading limits/easement line as shown in the applicant's attachment DD. A public drainage easement will also be needed under or through the private creek crossing at the east end of the site up to SW 53rd Street. The easement will need to outline the private maintenance responsibilities of the creek crossing associated with the site access.
39-e	**Final Plat - Franchise Utility Easements** - According to LDC Section 4.0.100.b, a 7-foot Utility Easement (UE) is required adjacent to all street ROWs. This UE is granted at the time of the plat. In addition, a 7-foot wide UE shall be provided along or under the private shopping street. The applicant may provide A UE on one side of the public local street as proposed if the applicant confirms via letters from the franchise utility companies that this easement is not needed on both sides of the street and the area will be able to be fully served by franchise utilities. If these letters are not provided, the applicant will need to grant a UE consistent with LDC requirements which may require a modification to the land use approvals.
39-f	**Final Plat Reciprocal Access Easement** - With submittal of the final plat, the property owner shall include in the plat declarations, a dedication for a private reciprocal access easement to ensure that vehicle access is maintained within and between all lots that share driveways and parking. The declaration language shall specify the purpose, ownership, and party responsible for maintenance of the reciprocal access easement.

Condition #	Condition Language
39-g	**Final Plat - Public Sewer Easement** - A minimum sewer easement 15 feet wide shall be granted for the existing sewer line through the site. The Easements shall be centered over the utility they are for. The easement for the sewer line extending to tax lot 400 and across Dunawi Creek shall be located outside the Construction limits for a future bridge or culvert across Dunawi Creek. If a bridge were located over City Utilities, the footings could impact the line and it may be difficult to access the sewer line for maintenance. Due to the size of the existing 18-inch sewer line, it is recommended that no building be built within 10 feet of the actual location of the sewer line based on field locates.
39-h	**Final Plat - Easements**- Any easements for future waterlines shall be located outside of the construction limits for a future bridge or culvert that would cross Dunawi Creek. If private sewer laterals cross property lines, private easements shall be provided on the final plat. Common private sewers serving more than one parcel/lot are not allowed except as noted in **LDC § 4.0.70.**
39-l	**Final Plat - Easement for Public Wet Pond** - With Phase 2 of the development and dedication of the future local street ROW, an easement shall be granted for the combined water quality and detention pond shown on Sheet SP1.5
39-j	**Final Plat - Common Landscape Maintenance Easement** - In order to ensure an understanding between all individual lot owners that landscaping maintenance is to be a responsibility of the Property Owner's Association (POA), common landscape maintenance easements, or a "blanket easement" shall be dedicated on the final plat. A dedication statement shall be included on the final plat that describes the purpose of the easement, and specifies that the POA is the grantee and party responsible for maintenance of landscaping within the common easement (the POA).
39-k	**Final Plat Submittal Required** -Except as supplemented by these conditions of approval, a Final Plat shall be submitted as outlined in **LDC § 2.4.40**, to formalize City approval of the Tentative Subdivision Plat. The submittal shall be made to the Planning Division for review and final approval, prior to issuance of any Certificate of Occupancy. The Final Plat may occur in Phases as proposed, as long as all public and private easement and right-of-way dedications (or reservations where proposed), public and private improvement installations, and Tract dedication requirements associated with each Phase are otherwise satisfied. Phasing of the final plat shall be consistent with the Project Phase Plan, identified on Sheet SP1.11 and the Tentative Plat identified on Sheet SP1.10.

Condition #	Condition Language
39-I	**Final Plat - Electronic Version of Final Plat** - Provide an electronic version of the final plat, including all required revisions, at the time that the final version is routed through the City for signatures. The electronic files shall match the City's Geographic Information Systems (GIS) standards for electronic files.
40	**Additional Floodplain Study and Revisions to Detailed Development Plan** - With submittal of the site excavation and grading permit application, where grading is proposed within the pre-development floodway fringe, the applicant shall provide a revised floodplain study and site grading plans which demonstrates that the post-development floodplain elevation on adjacent properties is no greater than the pre-development condition. The post-development floodplain boundary shall not expand horizontally beyond the limits of the pre-development floodplain boundary as it currently exists on adjacent properties. The applicant may choose to reduce or eliminate building area associated with Phases 1D (Building C), 1E (Building B), and Phase 2, as well as associated vehicle parking, if it is necessary to accommodate flood water volume and meet this condition of approval. The Planning Commission finds that if building area is reduced in order to comply with this condition, the minimum Floor Area Ratio (FAR) requirement of 0.25, as specified in LDC § 3.19.40.03, may be reduced below 0.25. If this occurs, the Planning Commission finds that a compensating benefit has been provided for the variation to FAR in the form of no net impact upon adjacent properties due to development within the floodway fringe.
41 *	**Floodplain Impacts Indemnification - Prior to issuance of building permits for structures or grading within floodplain areas, the applicant shall sign an Indemnification and Release Agreement, provided by the City. The Agreement shall indemnify and release the City from potential liability resulting from issuance of this approval and all building permits that result in damage to person or property directly or indirectly related to flooding created, caused, or contributed to by his / her / its development activities adjacent to or within the floodplain. This Indemnity and Release Agreement shall be recorded against the property and shall run with the land.**

**** Condition of Approval # 41 modified by City Council***

DEVELOPMENT RELATED CONCERNS:

A. **FEMA Mapping and Regulations** - As part of the FEMA map modernization process, FEMA is updating the Benton County Flood Insurance Study by digitizing the current paper maps. No new FEMA studies are being done. However, because the digitization is based on topographic maps, some of the floodplain boundaries

are different and more accurate than the boundaries shown on the current paper maps. When the digitized maps are ready for implementation, FEMA will issue a Letter of Final Determination for the Benton County Flood Insurance Study. The most recent FEMA estimate is that this Letter of Determination is likely to be issued in September, 2010. Within six months following that date, the City of Corvallis will be required to process and implement Land Development Code Text Amendments to fully address the National Flood Insurance Program (NFIP) regulations. Failure to accomplish this task will result in the City's exclusion from the National Flood Insurance Program. Additionally, at the conclusion of the six-month period following the FEMA issuance of the Letter of Final Determination for the Benton County Flood Insurance Study, the City will be required to use the new FEMA maps for all activities. These activities include the issuance of Building Permits and Construction permits, irrespective of any prior issued land use permits, and irrespective of when applications were submitted.

The NFIP regulations require a Floodplain Development Permit for all proposed construction and other development in the community, where such construction and/or other development occurs within the 100-yr. floodplain. This includes sites where the 100-yr. floodplain is not currently mapped by FEMA or the City of Corvallis, but where independent floodplain studies have confirmed the presence of the 100-yr. floodplain. As part of the Land Development Code Text Amendment process, the City will be implementing the mandated Floodplain Development Permit process and any other NFIP regulations that are not already addressed by the combination of the City's land use, building permit, and construction permit processes. The purpose of this Development Related Concern is to inform you that Staff anticipate changes to floodplain mapping and regulations in the near future, which affect how buildings and site improvements are constructed on this site. Refer also to the 2005 ASCE - Chapter 24.05.

B. **Excavation and Grading Permit Required** - In order to protect the environment from the impacts of erosion due to ground disturbing activities, excavation and grading plans including erosion control methods shall be submitted to the City's Development Services Division for review and approval prior to undertaking any ground disturbing activity. Upon approval by the Development Services Division, an Excavation (EXC) permit can be issued.

C. **Future Development of Tax lot 400** - Utility service and access including a public street extension across the creek to tax lot 400 will need to be constructed concurrent with development of that lot. Traffic impacts associated with tax lot 400 were not included with this development application. ODOT should be included in any development proposal that provides tax lot 400 access to the highway.

D. **Commercial Approaches** - All private street accesses shall be constructed to City standards for commercial approaches.

E. **SDC Reimbursement** - Public improvements for extra capacity elements may be eligible for SDC reimbursement per Corvallis Municipal Code Chapter 2.13.

F. **Detectable Warnings** - Since the access to the site is provided by a private Shopping Street, the need for detectable warnings on the sidewalks at the commercial approaches should be evaluated.

G. **Transit Facilities** - The need for a transit stop location at the northern end of the site along SW 53rd Street will be reviewed and permitted with the Public Improvements by Private Contract (PIPC) or building permit.

H. **Abandonment of existing service laterals** - With the PIPC plans or building permits, the applicant shall abandon and remove any public service lateral connections which will not be used as required by the City Engineer.

I. **Excavation and Grading Plans** - Prior to issuance of any construction permits, the applicant shall submit an excavation and grading plan, including erosion control methods, to the City's Development Services Department for review and approval.

J. **Infrastructure Cost Recovery** - Where it is determined that there will be Infrastructure Cost Recovery payments from past public improvements the developer should pay their required share of the costs prior to recording of the final plat.

K. **Other Permits** - Prior to issuance of any construction permits, the applicant shall obtain a National Pollutant Discharge Elimination System (NPDES) permit if construction activity will disturb, through clearing, grading, and/or excavation, one acre of the site. Additionally, any permits required by other agencies such as the Division of State Lands; Army Corps of Engineers; Railroads; County; or Oregon Department of Transportation, shall be approved and submitted to the City prior to issuance of any City permits.

L. **Private Lights** - The private lights shall not be located over City utilities. A separation of 10 feet should be provided.

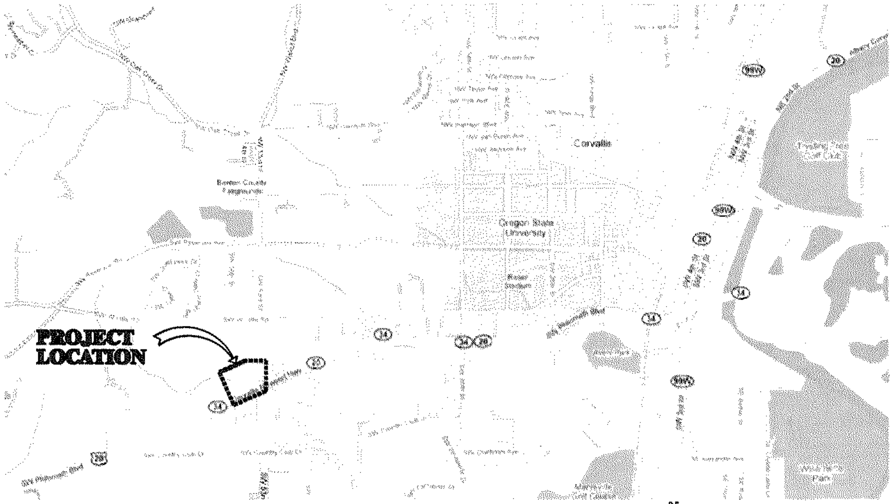
M. **Streetscape Plan** - As part of the public improvement plans, the applicant shall include a "streetscape" plan that incorporates the following features: composite utility plan; street lights; proposed driveway locations; vision clearance triangles for each intersection; street striping and signing (in conformance with the MUTCD); and proposed street tree locations.

N. **Tree Plantings** - When laying out the tree planting locations please be aware of not blocking street signs, or traffic signals. In addition, trees should not be planted in areas outlined in LDC section 4.2.30.b. The 24-foot wide planter strip along the highway will likely be reduced to 12 -feet in the future.

O. **Zone of Benefit Applications (ZOB)** - The applicant may apply for a cost recovery for improvements that benefit other property owners adjacent to the

improvements as outlined in Chapter 2.16 of the Corvallis Municipal Code. The applicant must submit a written request within one year from the acceptance of the public improvements.

P. **Parks SDC Credit** - The developer of Tax Lot 400 may be eligible for a Parks SDC credit, at time of development of Tax Lot 400, as it relates to the Dunawi Creek multi-use path pre-payment. Application of the potential Parks SDC credit should be made at time of pre-payment for the multi-use path, in order to make the appropriate calculations and record the credit against Tax Lot 400 in City records.



A-1 VICINITY MAP
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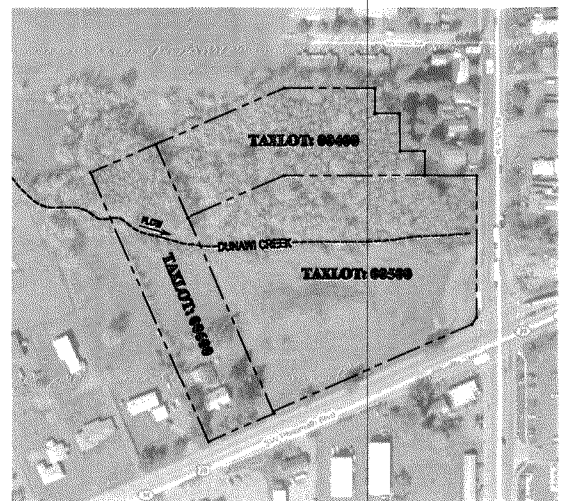

A-2 SITE AERIAL
MAP: 12505DD
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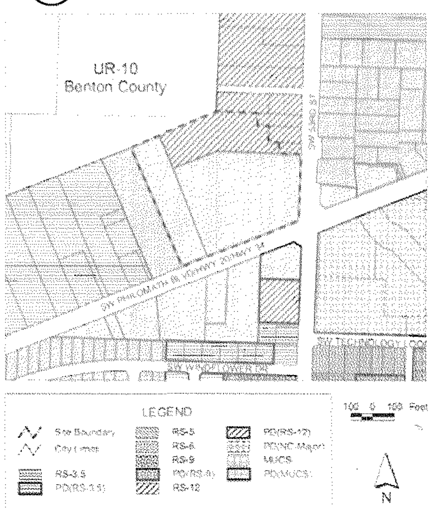
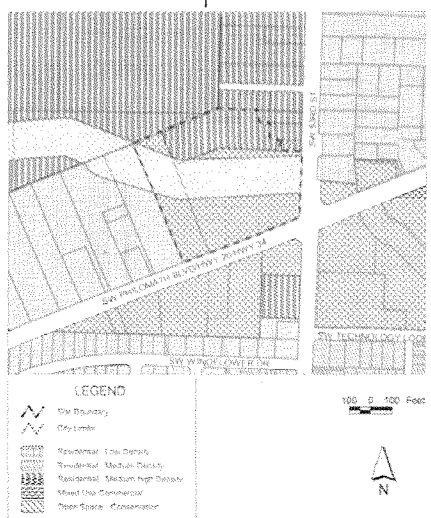


D EXISTING ZONING DESIGNATIONS
SCALE: N.T.S.



C COMPREHENSIVE PLAN DESIGNATIONS
SCALE: N.T.S.

REGISTERED ARCHITECT
Mark McKechnie
Medford, Oregon
4868
STATE OF OREGON

OREGON ARCHITECTURE
221 WEST TENTH STREET
MEDFORD, OREGON 97501
PHONE 541.772.4372 FAX 541.499.6929

THOMASFOX PROPERTIES, LLC

CREEKSIDE CENTER CORVALLIS
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON

PLOT DATE: 7/30/2010

SP1.0

WEST CORVALLIS ACCESS STRATEGY OVERLAY

09/96 PLAN PROPOSED ALIGNMENT

PROPOSED RIGHT OF WAY

ACTUAL RIGHT OF WAY

E **1000' VICINITY PROPERTIES/ SURROUNDING USES**

SCALE: 1" = 150'-0"

SCALE: 1" = 150'-0"

PROPERTIES/ FEATURES SHOWN HERE WERE TAKEN FROM BENTON COUNTY'S GIS SYSTEM, AND ARE LIMITED THE ACCURACY CONTAINED THEREIN.

FOR FUTHER INFORMATION ON PARTICULAR SURROUNDING PROPERTIES, VISIT BENTON COUNTY'S WEBSITE AT WWW.CO.BENTON.OR.US

CREEKSIDE CENTER
CORVALLIS

INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON

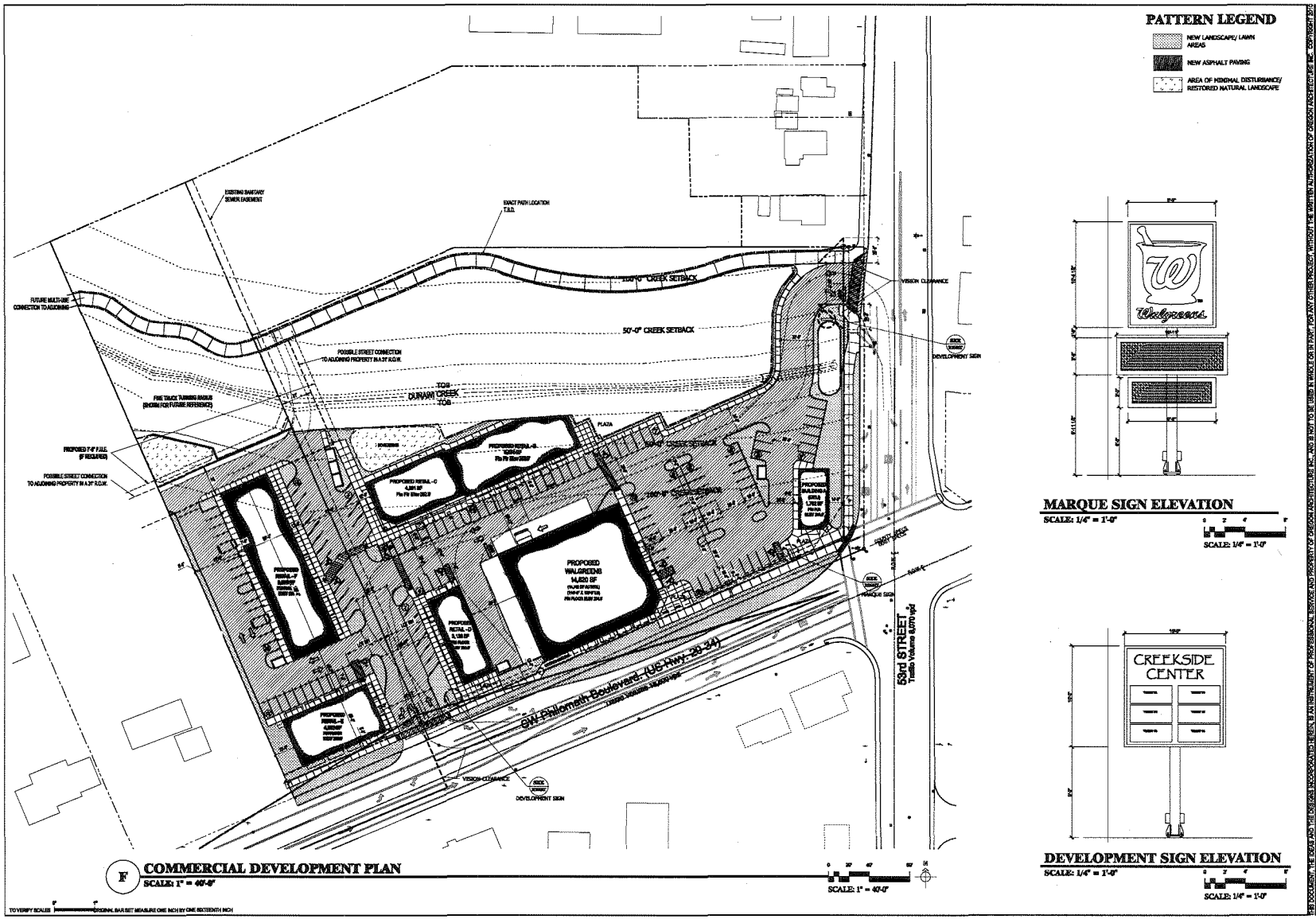
THOMASFOX
PROPERTIES, LLC

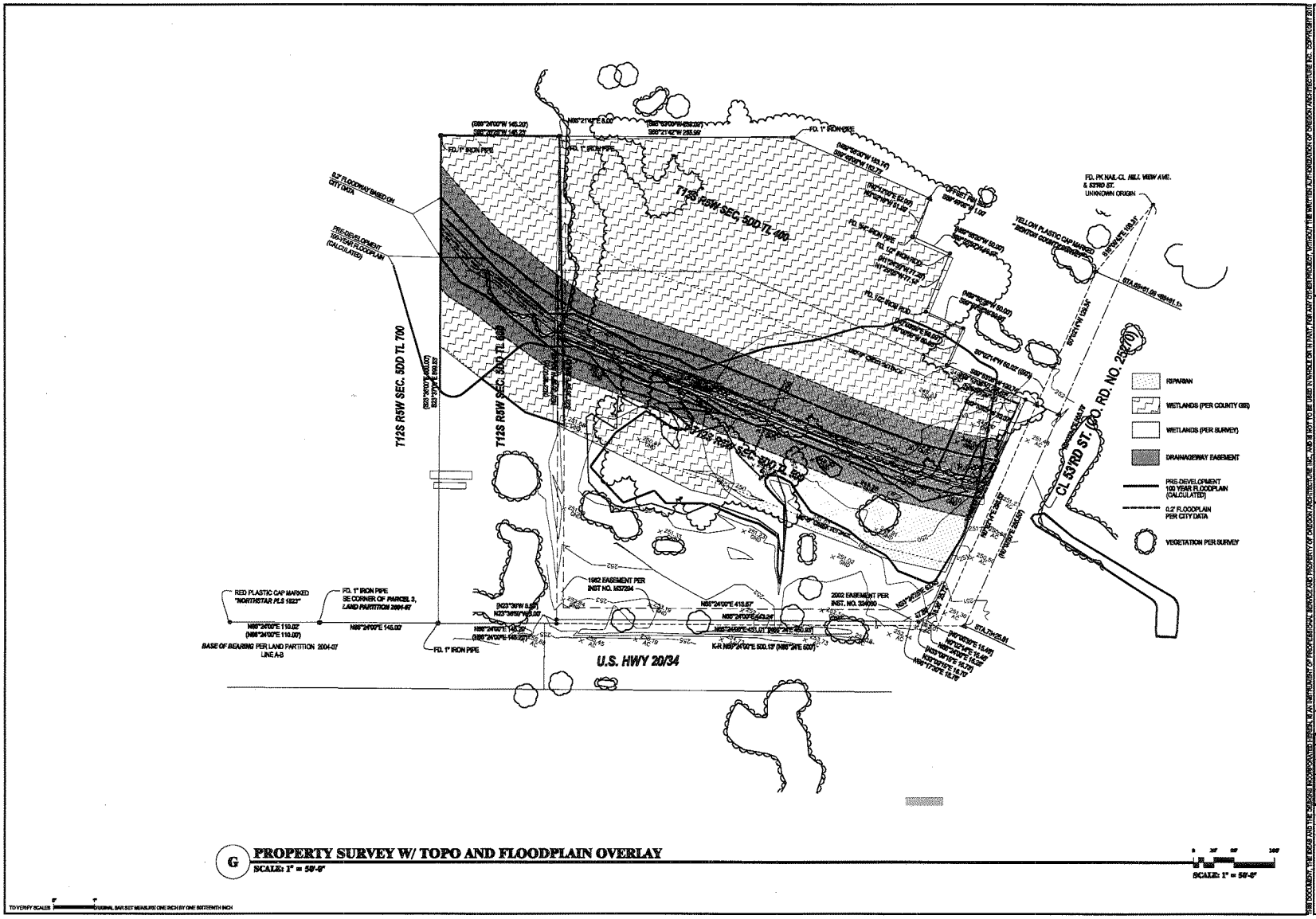
OREGON ARCHITECTURE
221 WEST TENTH STREET
MEDFORD, OREGON 97501
PHONE 541.772.4372 FAX 541.499.6929

PLOT DATE: 7/30/2010

SP1.1

CREEKSIDE CENTER I & II
(PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL NOTICE OF DISPOSITION
ATTACHMENT B - Page 2 of 25


PATTERN LEGEND
NEW LANDSCAPE/ LAWN AREAS
NEW ASPHALT PAVING
AREA OF MINIMAL DISTURBANCE/ RESTORED NATURAL LANDSCAPE
EXISTING SANITARY SEWER EASEMENT
EXACT PATH LOCATION T.B.D.
FUTURE MULTI-USE CONNECTION TO ADJOINING
100'-0" CREEK SETBACK
50'-0" CREEK SETBACK
POSSIBLE STREET CONNECTION TO ADJOINING PROPERTY IN A 37' R.O.W.
TOB
DUNAWI CREEK
TOB
FIRE TRUCK TURNING RADIUS (SHOWN FOR FUTURE REFERENCE)
PROPOSED 7'-0" FULL (IF REQUIRED)
POSSIBLE STREET CONNECTION TO ADJOINING PROPERTY IN A 37' R.O.W.
PLAZA
PROPOSED RETAIL-C 4,200 SF
PROPOSED WALGREENS 14,820 SF
VISION CLEARANCE
DEVELOPMENT SIGN
MARQUE SIGN
53rd STREET
SW Philomath Boulevard (US Hwy. 20-34)
F COMMERCIAL DEVELOPMENT PLAN
SCALE: 1" = 40'-0"
MARQUE SIGN ELEVATION
SCALE: 1/4" = 1'-0"
Walgreens
CREEKSIDE CENTER
DEVELOPMENT SIGN ELEVATION
SCALE: 1/4" = 1'-0"
REGISTERED ARCHITECT
Mark McKechnie
Medford, Oregon
4668
STATE OF OREGON
OREGON ARCHITECTURE
221 WEST TENTH STREET
MEDFORD, OREGON 97501
PHONE: 541.772.4372 FAX: 541.499.6329
THOMASFOX PROPERTIES, LLC
515 WEST PIONEER CIRCLE - SUITE 400
BALTLAKE CITY, UTAH 84115
PHONE: 801-595-7711 FAX: 801-499-7161
CREEKSIDE CENTER
CORVALLIS
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON
PLOT DATE: 8/3/2010
SHEET
SP1.2
CONCEPTUAL DEVELOPMENT PLAN (COMMERCIAL ONLY)



G PROPERTY SURVEY W/ TOPO AND FLOODPLAIN OVERLAY
SCALE: 1" = 50'-0"

TO VERIFY SCALE: ORIGINAL BAR SET MEASURE ONE INCH BY ONE SIXTEENTH INCH

REGISTERED ARCHITECT Mark McKechnie Medford, Oregon 4666 STATE OF OREGON

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SALTLAKE CITY, UTAH 84115
PHONE: 801-666-7711 FAX: 801-666-7161

CREEKSIDE CENTER
CORVALLIS

INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON

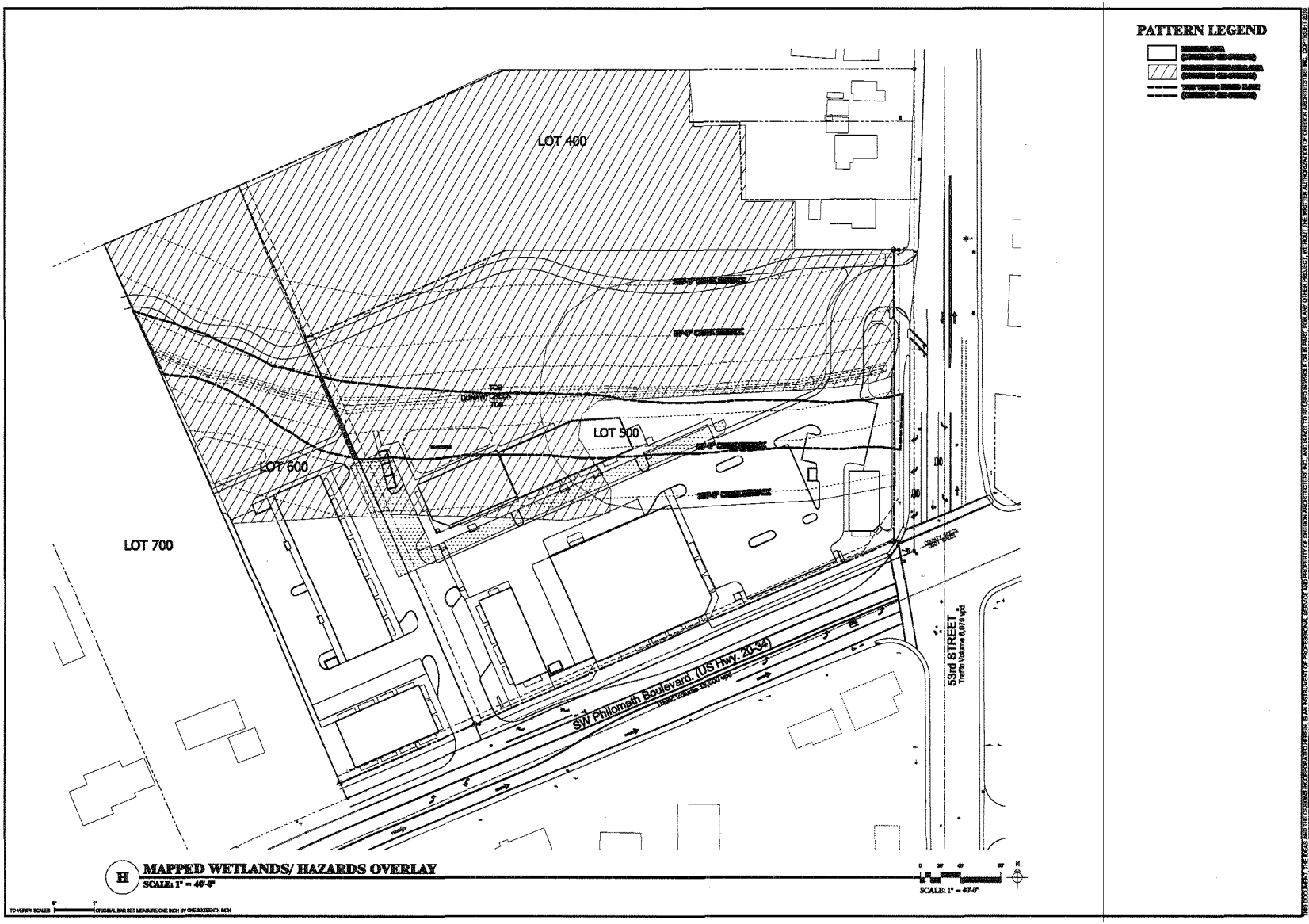
REVISIONS	BY

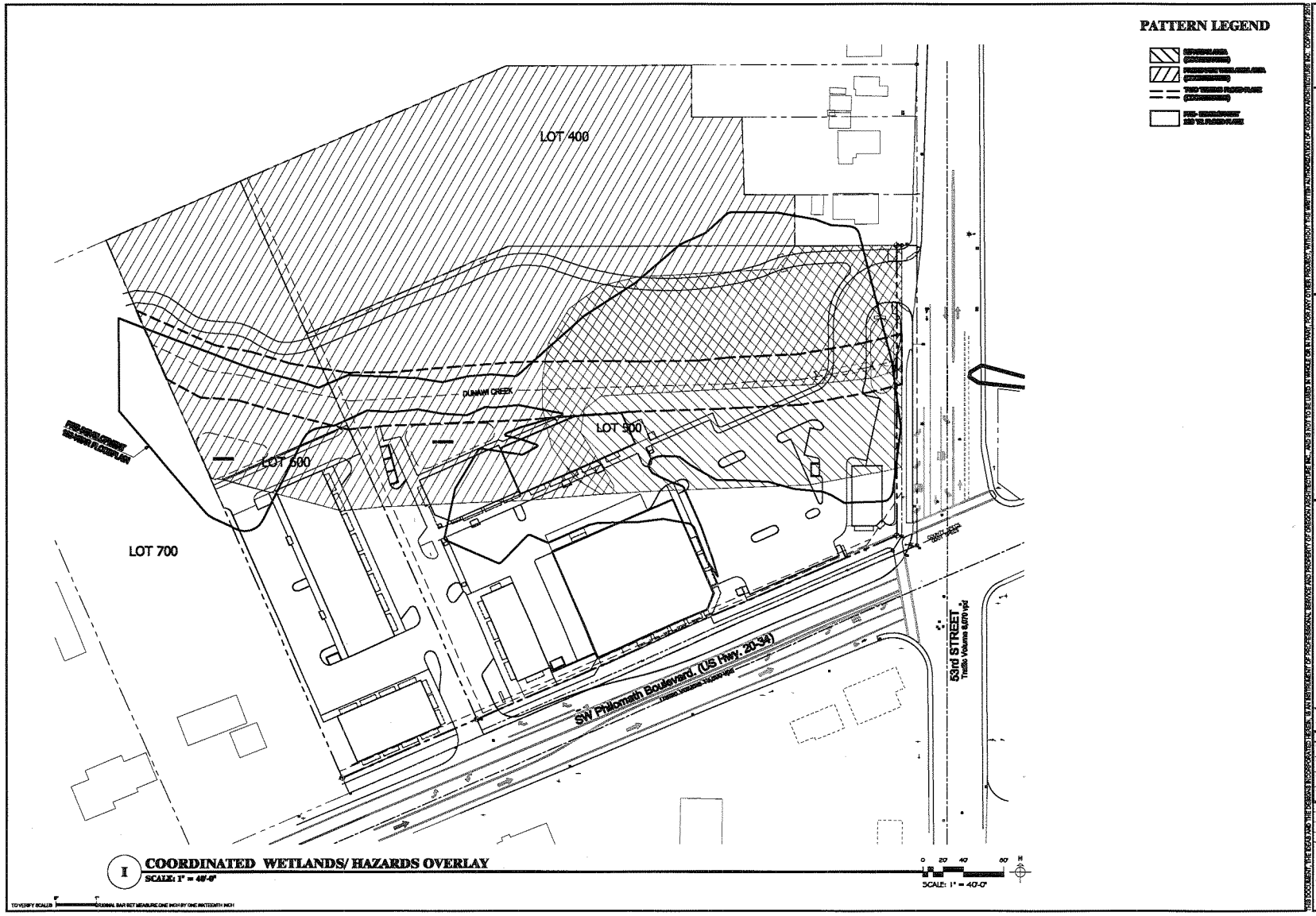
PLOT DATE: 8/2/2010
ISSUE DATE:
DRAWN BY: S.WEIKENEY
JOB NO.:

SHEET
SP1.2A
SURVEY

4 OF 22

THE DESIGNS, IDEAS, THE SCALE AND THE SCALE INCORPORATED IN THIS DRAWING, IN ANY MEDIUM, ARE THE PROPERTY OF OREGON ARCHITECTURE INC. AND MAY NOT BE USED IN WHOLE OR IN PART FOR ANY OTHER PROJECT WITHOUT THE WRITTEN AUTHORIZATION OF OREGON ARCHITECTURE INC. COPYRIGHT 2010


LOT 400
LOT 500
LOT 600
LOT 700
SW Philomath Boulevard (US Hwy. 20-34)
53rd STREET
PATTERN LEGEND
H
MAPPED WETLANDS/ HAZARDS OVERLAY
SCALE: 1" = 40'-0"
CREEKSIDE CENTER
CORVALLIS
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON
THOMASFOX PROPERTIES, LLC
OREGON ARCHITECTURE
221 WEST TENTH STREET
MEDFORD, OREGON 97501
PHONE: 541.772.4372 FAX: 541.499.6329
PLOT DATE: 7/30/2010
SHEET
SP1.3A
MAPPED WETLANDS/ HAZARDS OVERLAY


PATTERN LEGEND
LOT 400
LOT 500
LOT 600
LOT 700
DUNAWAY CREEK
SW Philomath Boulevard (US Hwy. 20-34)
53rd STREET
Traffic Volumes 6,070 vpd
I
COORDINATED WETLANDS/ HAZARDS OVERLAY
SCALE: 1" = 40'-0"
0 20 40 80
SCALE: 1" = 40'-0"
TO VERIFY SCALES
ORIGINAL BAR SET MEASURE ONE INCH BY ONE SIXTEENTH INCH
OREGON ARCHITECTURE
221 WEST TENTH STREET
MEDFORD, OREGON 97501
PHONE: 541.772.4372 FAX: 541.499.6329
THOMAS FOX PROPERTIES, LLC
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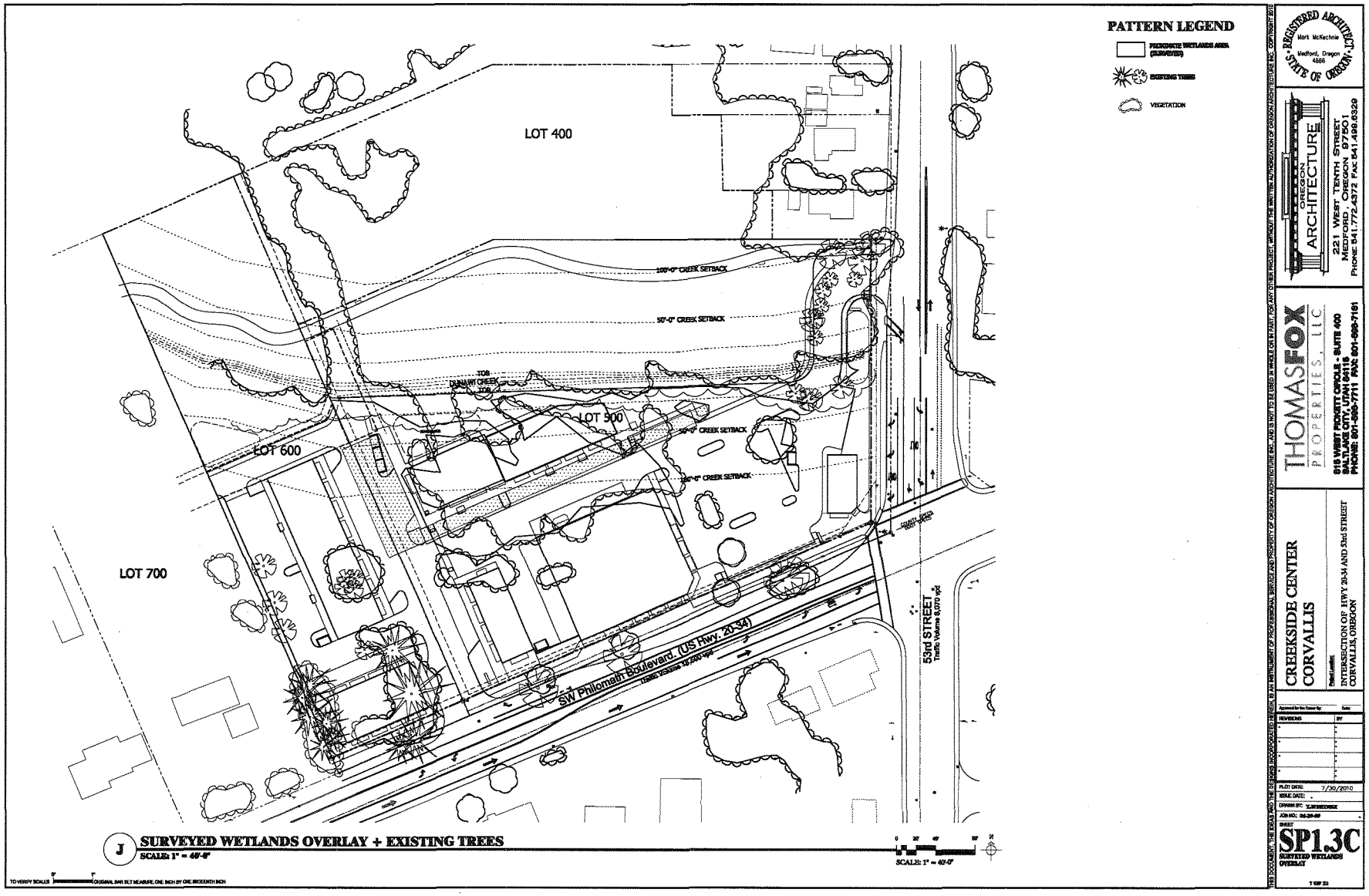
PHONE: 801-566-7711 FAX: 801-566-7161
CREEKSIDE CENTER
CORVALLIS
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON
REVISIONS
BY
PLOT DATE: 7/30/2010
DRAWN BY: T.WHEDONEY
SHEET
SP1.3B
ADJUSTED WETLANDS OVERLAY
5 OF 22


PATTERN LEGEND
PROMINENT WETLANDS AREA (SURVEYED)
EXISTING TREES
VEGETATION
LOT 400
LOT 500
LOT 600
LOT 700
100'-0" CREEK SETBACK
50'-0" CREEK SETBACK
DUNAWAY CREEK
TOB
SW Philomath Boulevard (US Hwy. 20-34)
53rd STREET
J SURVEYED WETLANDS OVERLAY + EXISTING TREES
SCALE: 1" = 40'-0"
REGISTERED ARCHITECT
STATE OF OREGON
Mark McKechnie
Medford, Oregon
4866
OREGON ARCHITECTURE
221 WEST TENTH STREET
MEDFORD, OREGON 97501
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THOMASFOX PROPERTIES, LLC
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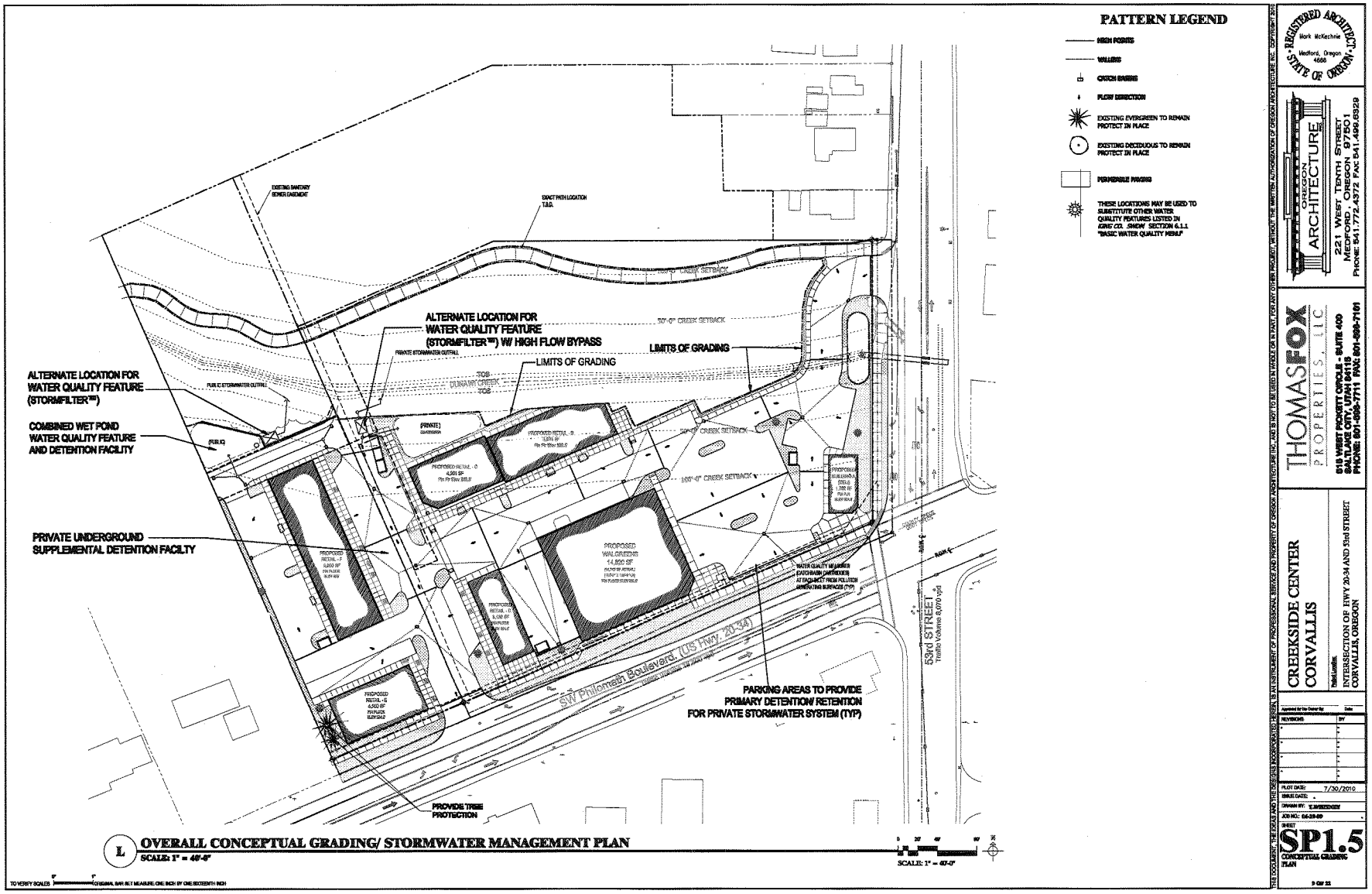
SALTLAKE CITY, UTAH 84115
PHONE: 801-595-7711 FAX: 801-595-7161
CREEKSIDE CENTER
CORVALLIS
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON
PLOT DATE: 7/30/2010
SHEET
SP1.3C
SURVEYED WETLANDS OVERLAY


PATTERN LEGEND
HIGH POINTS
VALLEYS
CATCH BASINS
FLOW DIRECTION
EXISTING EVERGREEN TO REMAIN PROTECT IN PLACE
EXISTING DECIDUOUS TO REMAIN PROTECT IN PLACE
PERMEABLE PAVING
THESE LOCATIONS MAY BE USED TO SUBSTITUTE OTHER WATER QUALITY FEATURES LISTED IN KING CO. SWDM SECTION 6.1.1. "BASIC WATER QUALITY MEAN"
EXISTING SANITARY SEWER EASEMENT
EXACT PATH LOCATION T.B.D.
50'-0" CREEK SETBACK
ALTERNATE LOCATION FOR WATER QUALITY FEATURE (STORMFILTER™) W/ HIGH FLOW BYPASS
LIMITS OF GRADING
PRIVATE STORMWATER OUTFALL
PUBLIC STORMWATER OUTFALL
TOB
DUNAWAY CREEK
ALTERNATE LOCATION FOR WATER QUALITY FEATURE (STORMFILTER™)
COMBINED WET POND WATER QUALITY FEATURE AND DETENTION FACILITY
PUBLIC
PRIVATE
PROPOSED RETAIL - D 4,001 SF
PROPOSED RETAIL - C 3,000 SF
100'-0" CREEK SETBACK
PRIVATE UNDERGROUND SUPPLEMENTAL DETENTION FACILITY
PROPOSED RETAIL - F 6,000 SF
PROPOSED WALGREENS 14,820 SF
PROPOSED RETAIL - E 6,000 SF
PROPOSED RETAIL - G 6,000 SF
WATER QUALITY MEASURES (CATCH BASIN CARTRIDGES AT EGRESS) FROM POLLUTION GENERATING SURFACES (TYP)
PARKING AREAS TO PROVIDE PRIMARY DETENTION/ RETENTION FOR PRIVATE STORMWATER SYSTEM (TYP)
SW Philomath Boulevard, (US Hwy 20-34)
53rd STREET
Traffic Volume 6,070 vpd
PROVIDE TREE PROTECTION
L OVERALL CONCEPTUAL GRADING/ STORMWATER MANAGEMENT PLAN
SCALE: 1" = 40'-0"
SCALE: 1" = 40'-0"
TO VERIFY SCALES (ORIGINAL BAR SHOULD MEASURE ONE INCH BY ONE SIXTEENTH INCH)
REGISTERED ARCHITECT
Mark McKechnie
Medford, Oregon
4666
STATE OF OREGON
OREGON ARCHITECTURE
221 WEST TENTH STREET
MEDFORD, OREGON 97501
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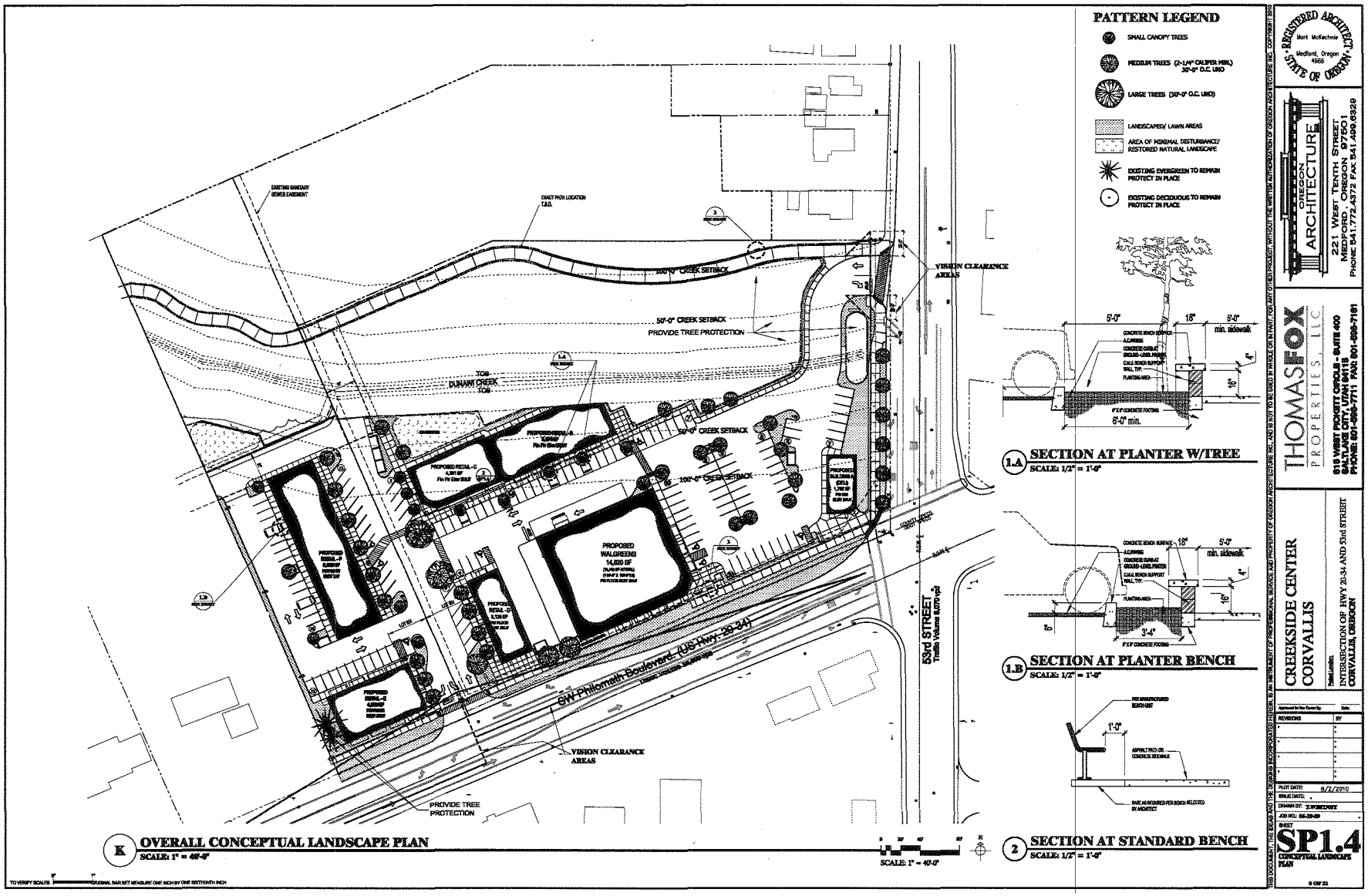
THOMASFOX PROPERTIES, LLC
6519 WEST PERSHITT CIRCLE - SUITE 400
SALT LAKE CITY, UTAH 84118
PHONE: 801-666-7711 FAX: 801-666-7101
CREEKSIDE CENTER CORVALLIS
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON
REVISIONS
BY
PLOT DATE: 7/30/2010
ISSUE DATE:
DRAWN BY:
JOB NO.: 06-39-09
SHEET
SP1.5
CONCEPTUAL GRADING PLAN
9 OF 22


PATTERN LEGEND
SMALL CANOPY TREES
MEDIUM TREES (2-1/4" CALIPER MIN.) 30'-0" O.C. UNO
LARGE TREES (50'-0" O.C. UNO)
LANDSCAPED/ LAWN AREAS
AREA OF MINIMAL DISTURBANCE/ RESTORED NATURAL LANDSCAPE
EXISTING EVERGREEN TO REMAIN PROTECT IN PLACE
EXISTING DECIDUOUS TO REMAIN PROTECT IN PLACE
EXISTING SANITARY SEWER EASEMENT
EXACT PATH LOCATION T.B.D.
100'-0" CREEK SETBACK
50'-0" CREEK SETBACK
PROVIDE TREE PROTECTION
VISION CLEARANCE AREAS
TOB
DUNAWAY CREEK
TOB
PROPOSED WALGREENS 14,820 SF
PROPOSED RETAIL-C 4,391 SF
PROPOSED RETAIL-D 8,125 SF
PROPOSED RETAIL-E 4,000 SF
PROPOSED RETAIL-F 4,000 SF
PROPOSED RETAIL-G 4,000 SF
PROPOSED RETAIL-H 4,000 SF
PROPOSED RETAIL-I 4,000 SF
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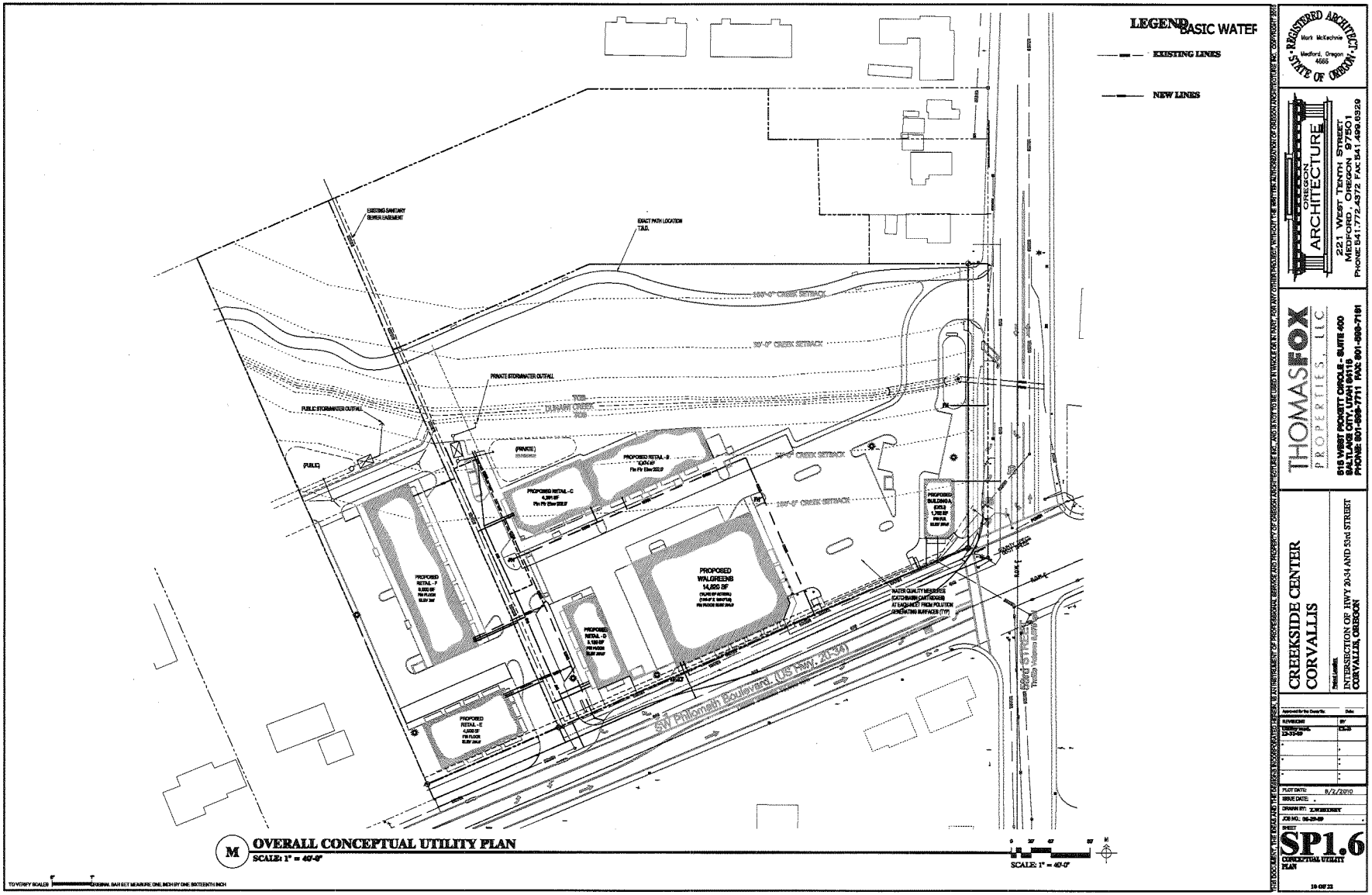

M **OVERALL CONCEPTUAL UTILITY PLAN**
SCALE: 1" = 40'-0"

REGISTERED ARCHITECT
Mark McKechnie
Medford, Oregon
4665
STATE OF OREGON

OREGON ARCHITECTURE
221 West Tenth Street
Medford, Oregon 97501
Phone 541.772.4372 Fax 541.499.6329

THOMAS FOX PROPERTIES, LLC
515 West Progress Circle - Suite 400
Salt Lake City, Utah 84116
Phone 801-596-7711 Fax 801-596-7161

CREEKSIDE CENTER
CORVALLIS

Project Location:
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON

Approved for the Owner by: Date:

REVISIONS	BY
CONCEPTUAL 2-17-09	CKB

PLOT DATE: 8/2/2010
ISSUE DATE:
DRAWN BY: Z.WEBERBY
JOB NO.: 06-29-09

SHEET
SP1.6
CONCEPTUAL UTILITY PLAN
10 OF 22

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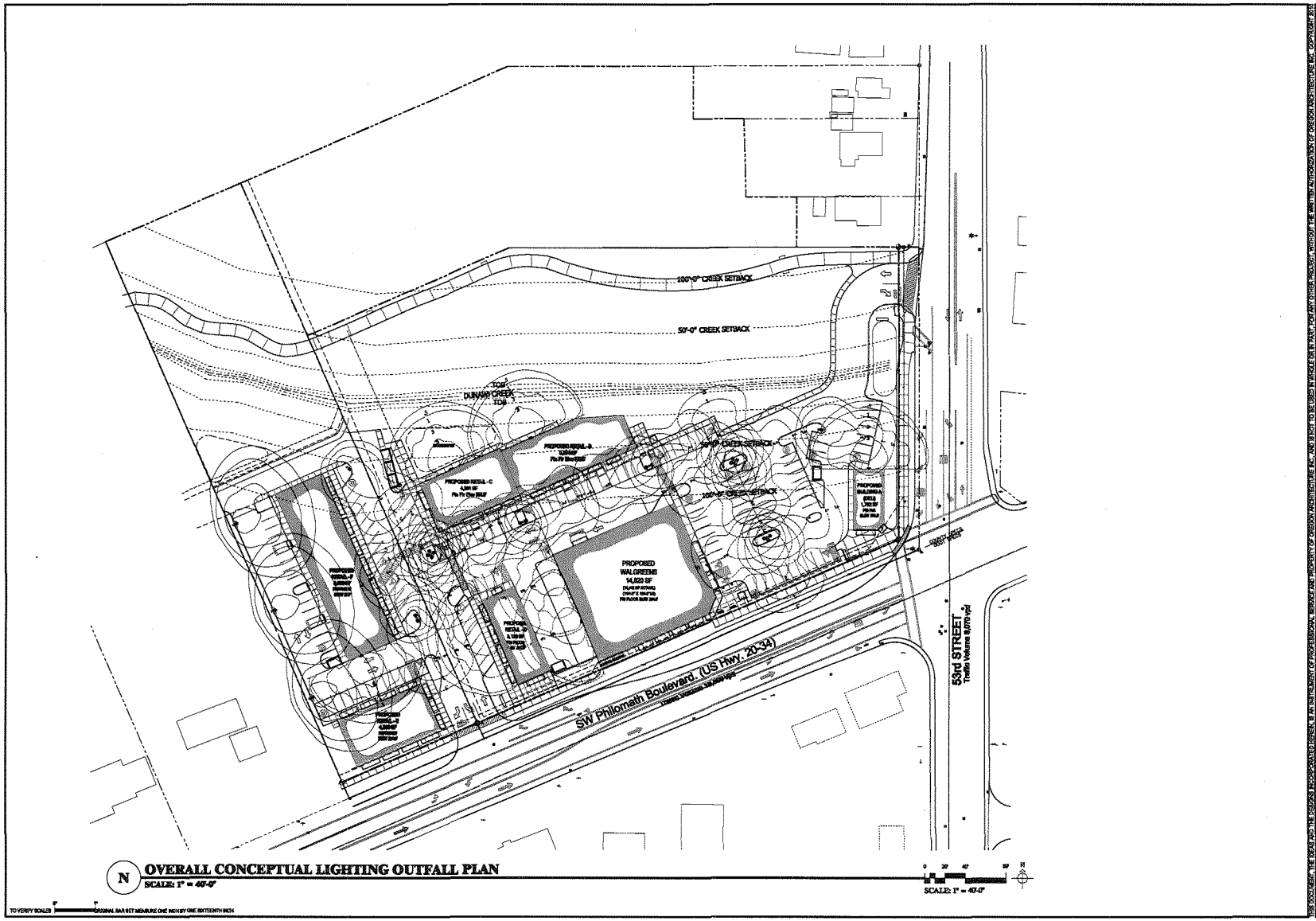

REGISTERED ARCHITECT
Mark McKechnie
Medford, Oregon
4668
STATE OF OREGON

OREGON ARCHITECTURE
221 WEST TENTH STREET
MEDFORD, OREGON 97501
PHONE: 541.772.4372 FAX: 541.499.0329

THOMAS FOX PROPERTIES, LLC
515 WEST PIERPOINT CIRCLE - SUITE 400
SALT LAKE CITY, UTAH 84115
PHONE: 801-595-7711 FAX: 801-595-7161

CREEKSIDE CENTER
CORVALLIS

Project Location:
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON

REVISIONS	BY

PLOT DATE: 8/2/2010
ISSUE DATE:
DRAWN BY:
JOB NO.:

SHEET
SP1.7
CONCEPTUAL LIGHTING PLAN

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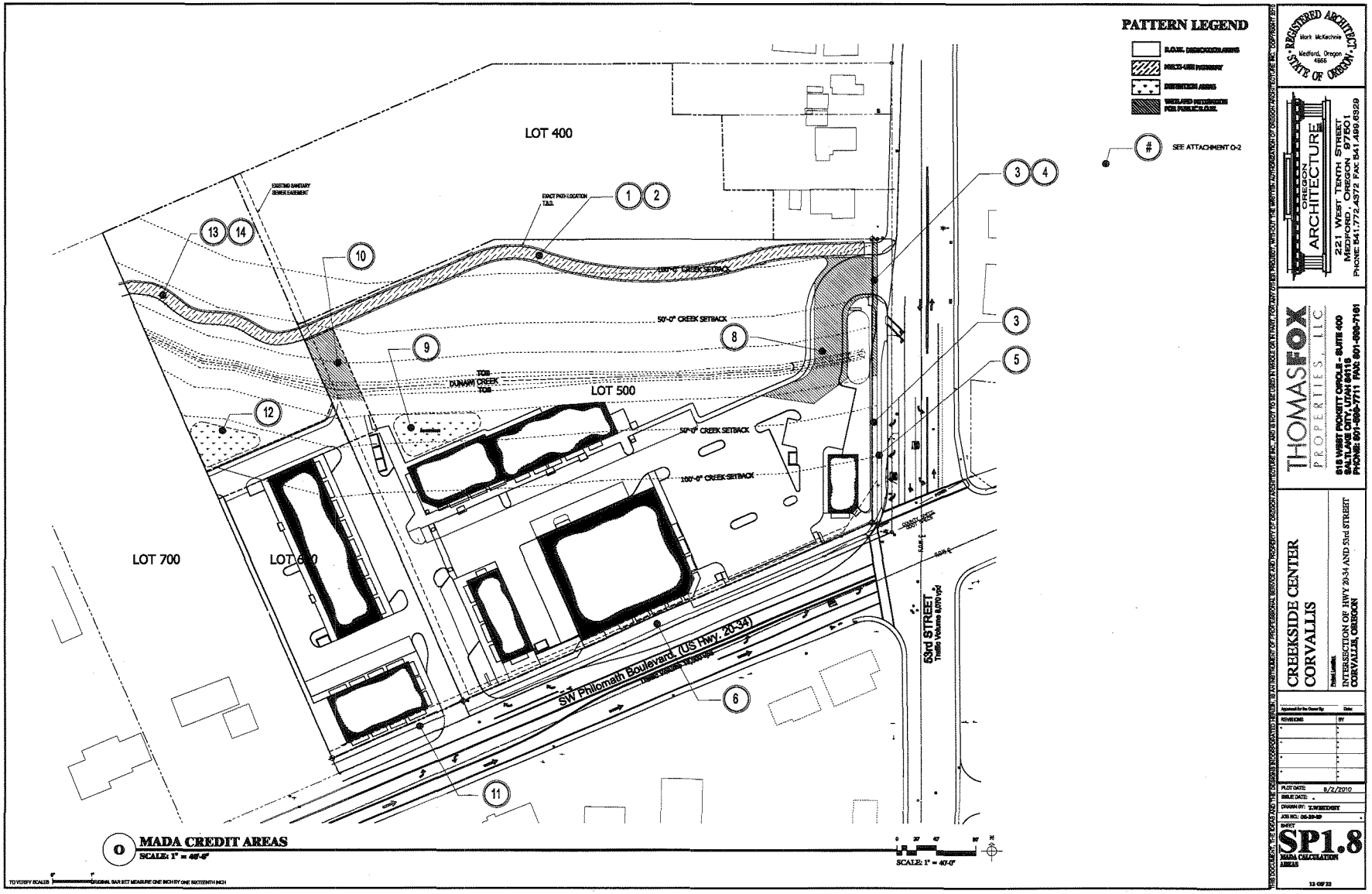
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LOT 500
LOT 600
LOT 700
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EXACT PATH LOCATION T.B.D.
100'-0" CREEK SETBACK
50'-0" CREEK SETBACK
TOB
DUNAWI CREEK
TOB
SW Philomath Boulevard (US Hwy. 20-34)
53rd STREET
Traffic Volume 8,070 vpd
MADA CREDIT AREAS
SCALE: 1" = 40'-0"
SCALE: 1" = 40'-0"
TO VERIFY SCALES ORIGINAL BAR SET MEASURE ONE INCH BY ONE SIXTEENTH INCH
REGISTERED ARCHITECT
Mark McKechnie
Medford, Oregon
4866
STATE OF OREGON
OREGON ARCHITECTURE
221 WEST TENTH STREET
MEDFORD, OREGON 97501
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CREEKSIDE CENTER
CORVALLIS
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON
REVISIONS
BY
PLOT DATE: 8/2/2010
ISSUE DATE:
DRAWN BY: Z.WEIDHEIT
JOB NO.: 06-39-00
SHEET
SP1.8
MADA CALCULATION AREAS
13 OF 22

OREGON ARCHITECTURE INC.
(541) 772-4372
221 WEST 10TH ST • MEDFORD, OR 97501 • FAX: (541) 499-6329 • WWW.OR-ARCHITECTURE.COM

ATTACHMENT O-2 (Sheet SP 1.8)

MADA CALCULATIONS FOR THE CREEKSIDE I DEVELOPMENT
January 5, 2010
Revised April 2, 2010
FINALIZED June 29, 2010

LOT 500

Site area of lot 4.6412+/- AC x 43,560 sf/AC:	202,170 sf *verified by survey*	
Estimated area of site encumbered with proximal wetlands or Riparian Corridor: (from City of Corvallis and DSL data)	124,425 sf	
Unencumbered land area:		77,745 sf
Minimum Assured Development Area		
4.6412 AC x 19,600 sf/AC	90,968 sf	
Additional MADA Credits		
(Area 1) Multi-Use Path (15' ROW)	9,345 sf	
(Area 2) Mitigation area for Multi-Use Path	9,345 sf	
(Area 3) 5' ROW dedication on 53rd Street	1,517 sf	
(Area 4) Mitigation for ROW through Wetlands	725 sf	
(Area 5) 10' wide Multi-Use Path along 53rd Street	1,517 sf	
(Area 6) 12' ROW dedication on Highway 34	5,416 sf	
(Area 7) Not Used		
(Area 8) Mitigation area for access drive, as approved by DSL	6,345 sf	
(Area 9) Detention Ponds for lot	2,730 sf	
(Area 10) Mitigation area for required local street	3,149 sf	
Total Credits	40,089 sf	
Total MADA + Credits		131,057 sf
Current gross proposed development area (Site + Multi-use path)	127,869 sf	
Additional Development Allowed	3,188 sf	

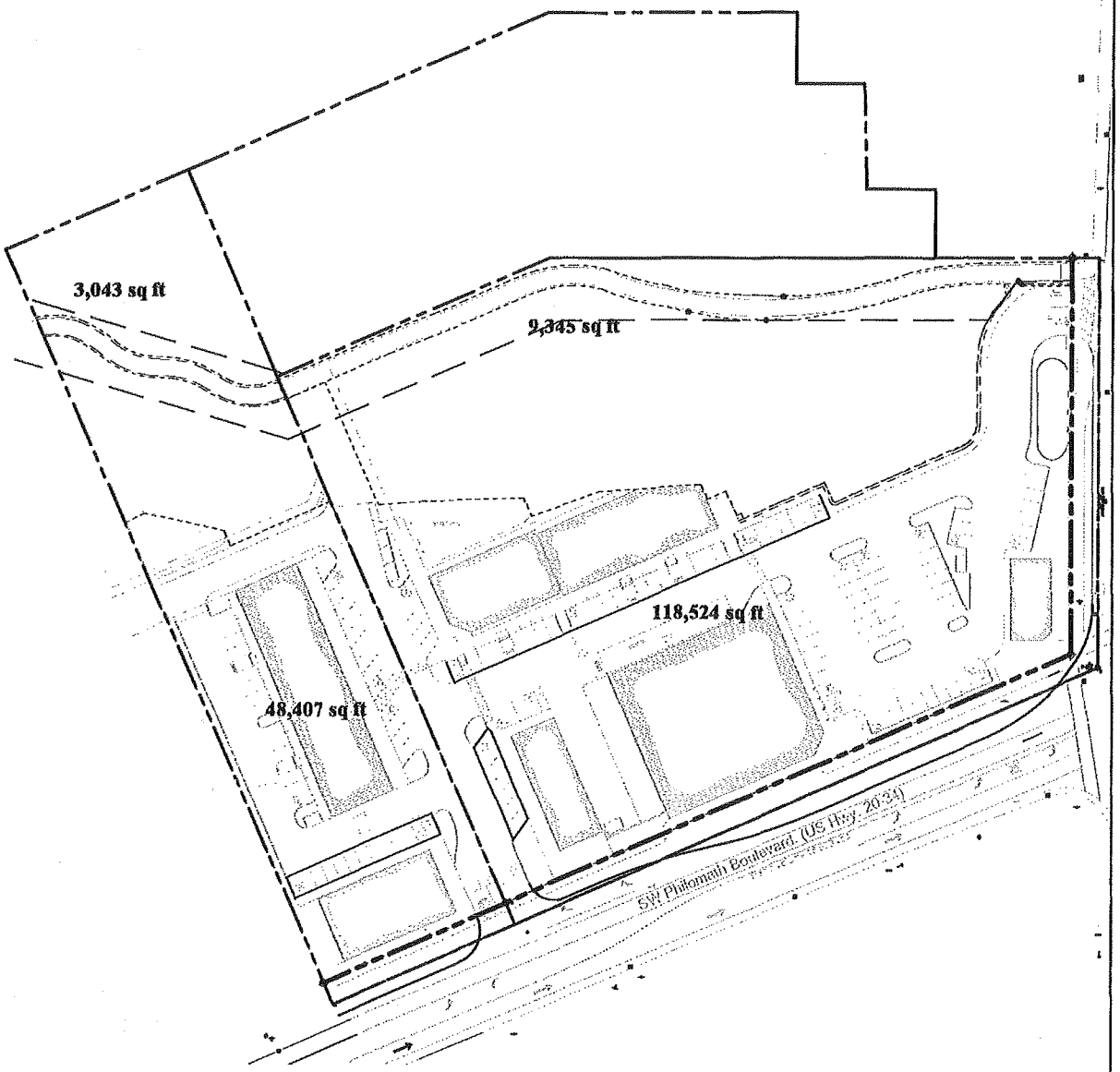
~~Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)~~
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT D (38 of 219)

MADA CALCULATIONS FOR THE CREEKSIDE II DEVELOPMENT
January 5, 2010
Revised February 5, 2010
FINALIZED July 13, 2010

LOT 600

Site area of lot 1.9953+/- AC x 43,560 sf/AC:	86,912 sf *verified by survey*	
Estimated area of site encumbered with proximal wetlands and calculated floodplain: (from City of Corvallis data)	48,393 sf	
Unencumbered land area:		38,519 sf
Minimum Assured Development Area		
1.9953 AC x 19,600 sf/AC	39,108 sf	
Additional MADA Credits		
(Area 11) 17' ROW dedication on Highway 34	2,470 sf	
(Area 12) Detention Pond for lot	2,007 sf	
(Area 13) Multi-Use Path	3,043 sf	
(Area 14) Mitigation area for Multi-Use Path	3,043 sf	
Total Credits	10,563 sf	
Total MADA + Credits		49,671 sf
Current proposed development area (Site + Multi-use path)	51,450 sf	
Additional Development Allowed	(1,779 sf)	

~~Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)~~
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT D (39 of 219)

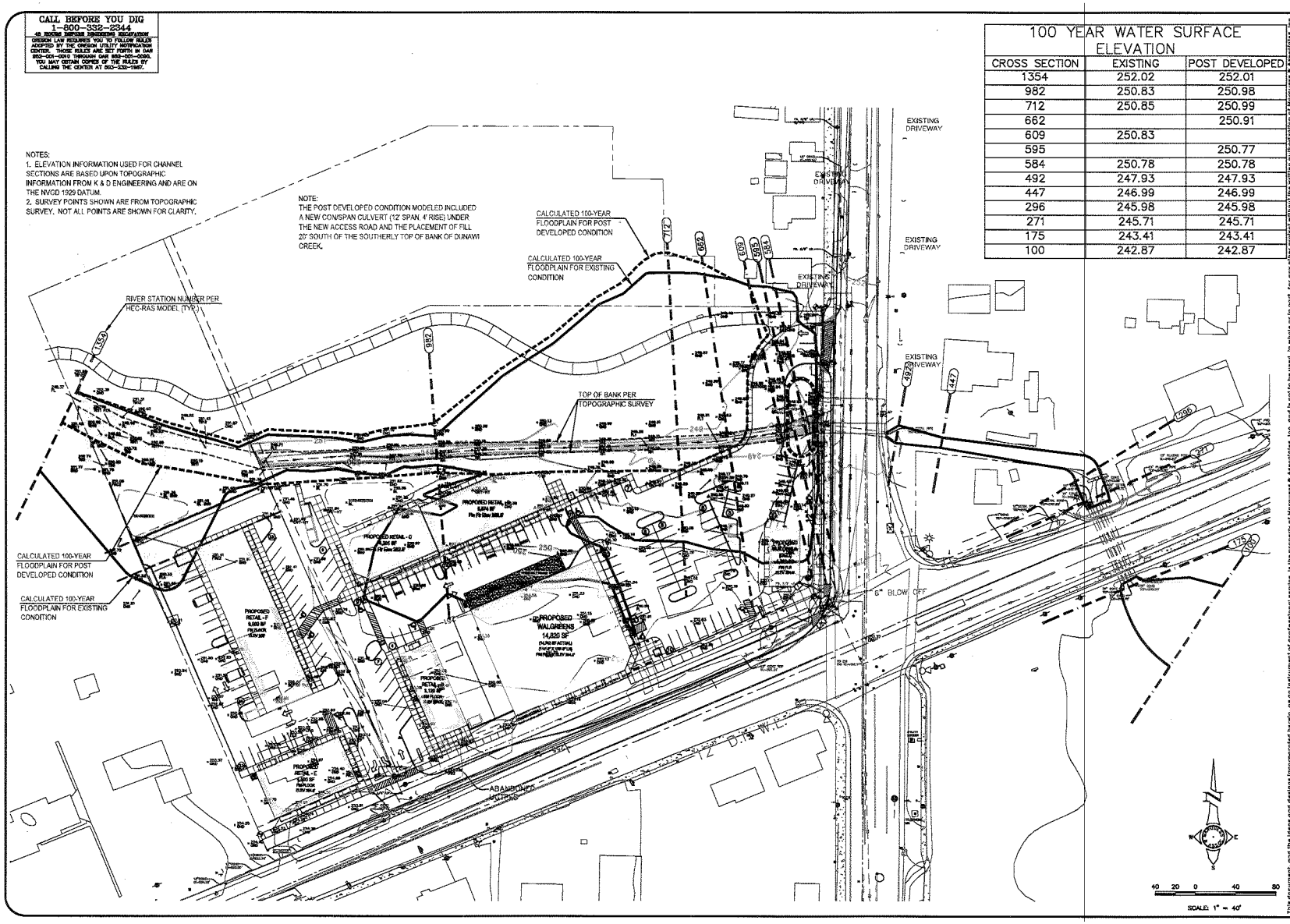


1 Developed Areas

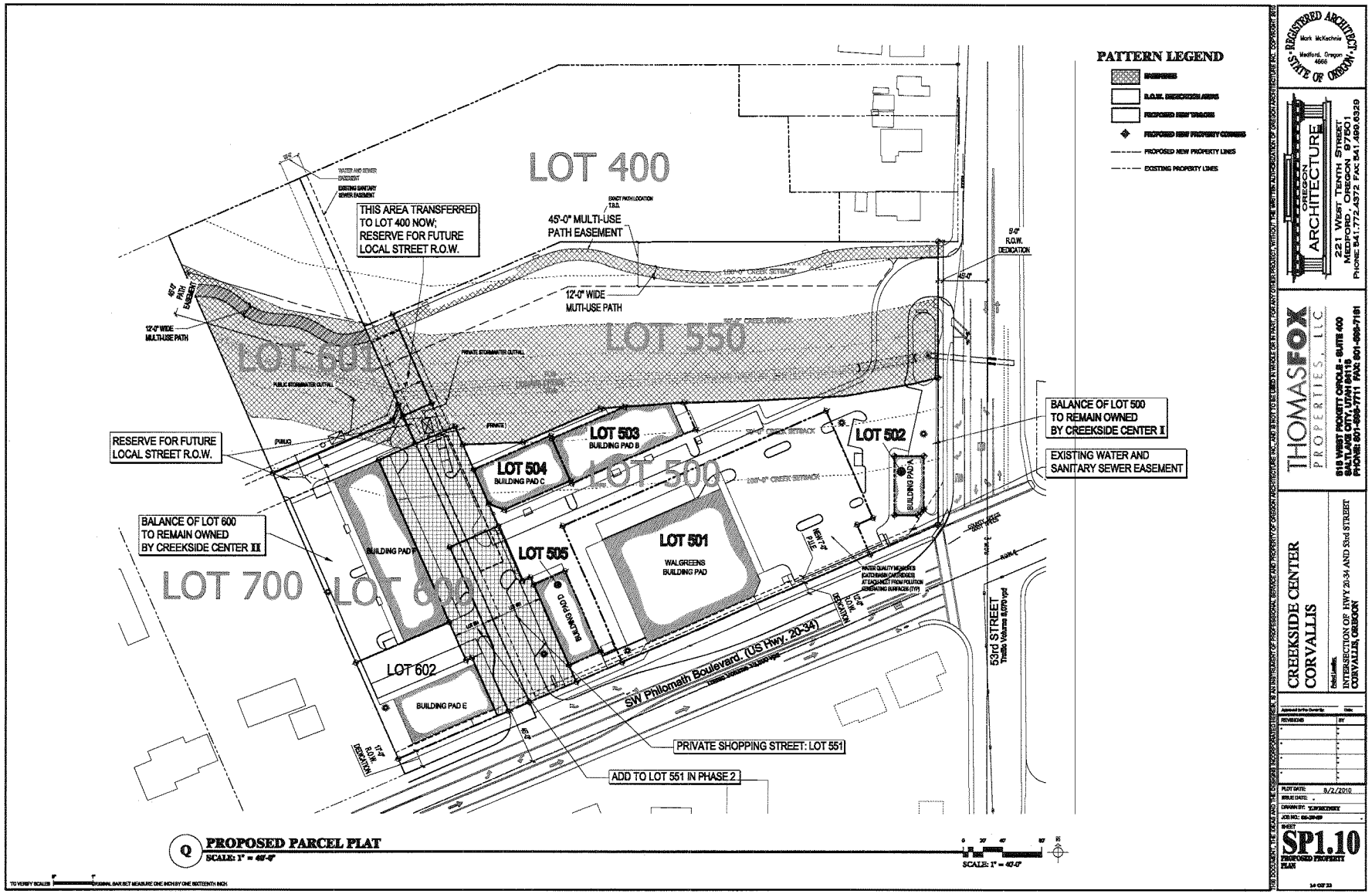
NOT TO SCALE

CREEKSIDE CENTER CORVALLIS Project Location: INTERSECTION OF HWY 20-34 AND 53rd STREET CORVALLIS, OREGON	THOMASFOX PROPERTIES, LLC 515 WEST PICKETT CIRCLE - SUITE 400 SALTLAKE CITY, UTAH 84115 PHONE: 801-596-7711 FAX: 801-596-7161	OREGON ARCHITECTURE 221 WEST TENTH STREET MEDFORD, OREGON 97501 PHONE: 541.772.4372 FAX: 541.499.6329	PLOT DATE 06/07/10 ISSUE DATE: DRAWN BY: JOB NO: ATTACHMENT: O-3

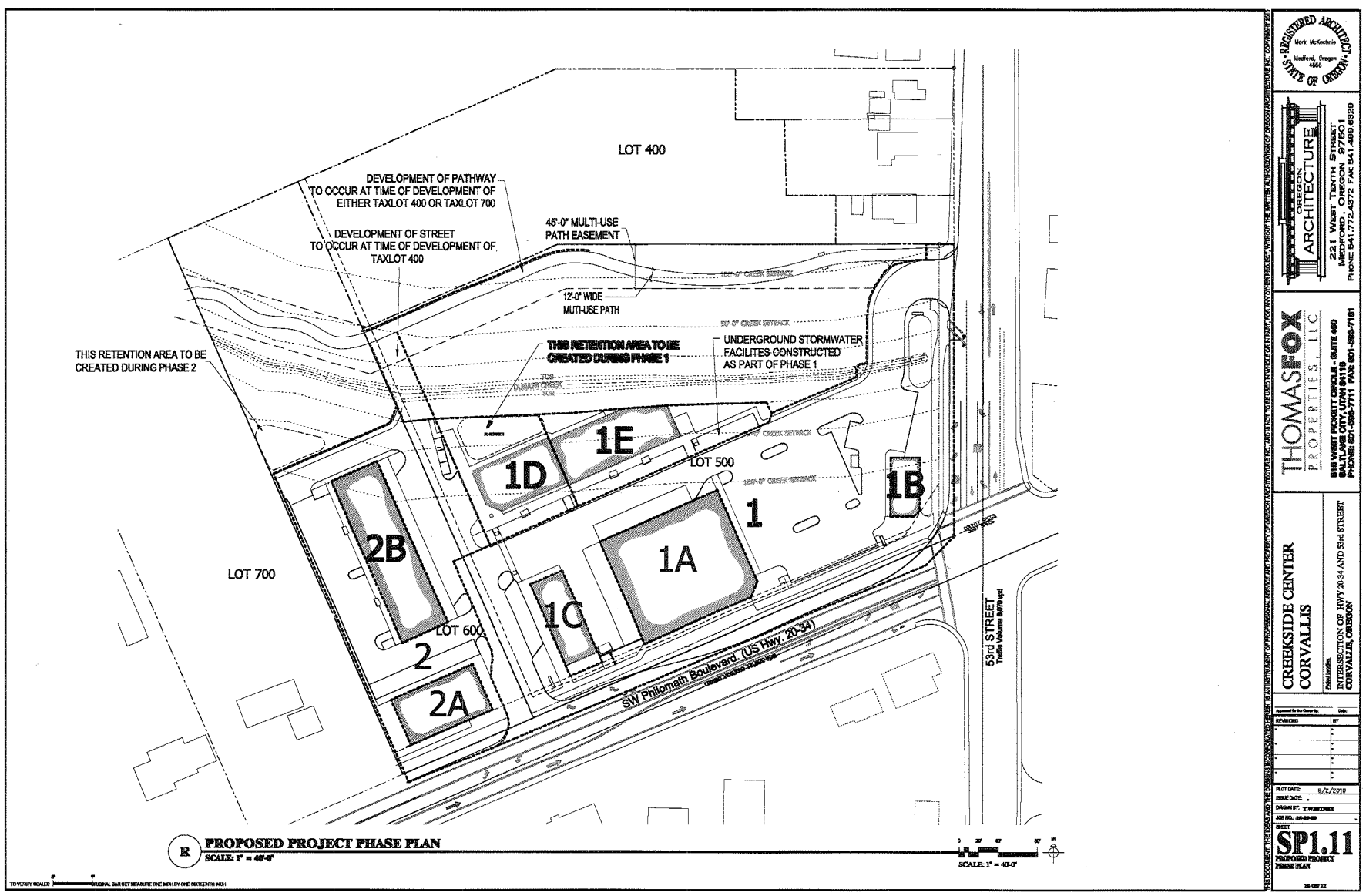
Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT D (40 of 219)



100 YEAR WATER SURFACE ELEVATION		
CROSS SECTION	EXISTING	POST DEVELOPED
1354	252.02	252.01
982	250.83	250.98
712	250.85	250.99
662		250.91
609	250.83	
595		250.77
584	250.78	250.78
492	247.93	247.93
447	246.99	246.99
296	245.98	245.98
271	245.71	245.71
175	243.41	243.41
100	242.87	242.87



CREEKSIDE CENTER I & II
(PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL NOTICE OF DISPOSITION
ATTACHMENT B - Page 17 of 25


LOT 400
DEVELOPMENT OF PATHWAY TO OCCUR AT TIME OF DEVELOPMENT OF EITHER TAXLOT 400 OR TAXLOT 700
DEVELOPMENT OF STREET TO OCCUR AT TIME OF DEVELOPMENT OF TAXLOT 400
45'-0" MULTI-USE PATH EASEMENT
100'-0" CREEK SETBACK
12'-0" WIDE MUTI-USE PATH
50'-0" CREEK SETBACK
THIS RETENTION AREA TO BE CREATED DURING PHASE 1
UNDERGROUND STORMWATER FACILITES CONSTRUCTED AS PART OF PHASE 1
THIS RETENTION AREA TO BE CREATED DURING PHASE 2
TOP
PLANAR CREEK
TOE
1E
1D
LOT 500
1B
1
2B
1A
LOT 700
1C
LOT 600
2
2A
SW Philomath Boulevard (US Hwy. 20-34)
53rd STREET
Traffic Volume 8,070 vpd
PROPOSED PROJECT PHASE PLAN
SCALE: 1" = 40'-0"
SCALE: 1" = 40'-0"
REGISTERED ARCHITECT
STATE OF OREGON
Mark McKechnie
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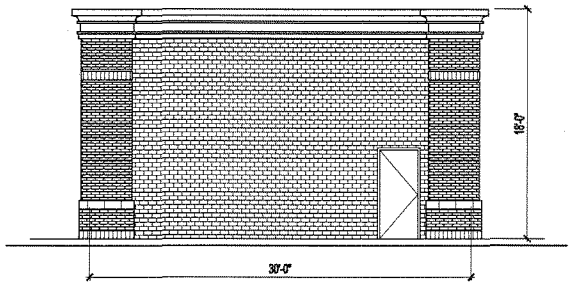
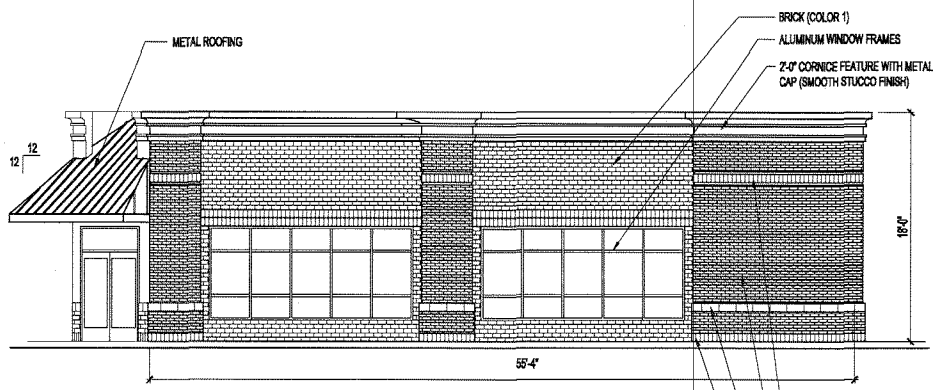
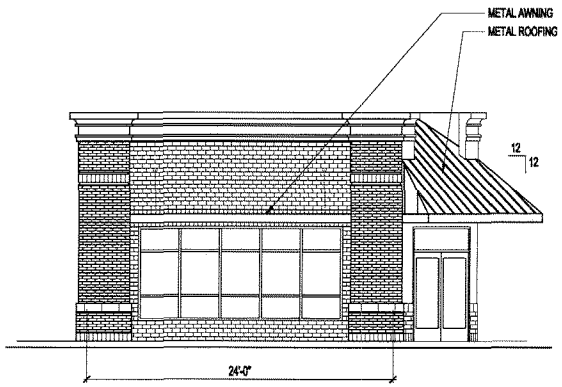
CREEKSIDE CENTER
CORVALLIS
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON
PLOT DATE: 8/2/2010
DRAWN BY: Z.MIKEMEY
SHEET
SP1.11
PROPOSED PROJECT PHASE PLAN
16 OF 22



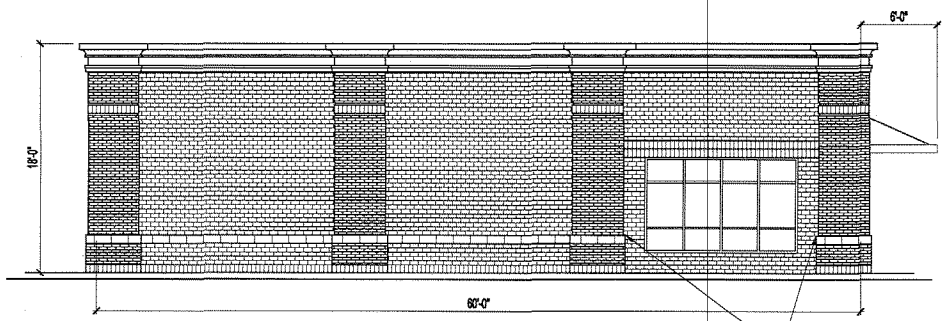
S1.1 BUILDING "A" NORTH ELEVATION
SCALE: 1/4" = 1'-0"



S1.2 BUILDING "A" EAST ELEVATION
SCALE: 1/4" = 1'-0"



S1.3 BUILDING "A" SOUTH ELEVATION
SCALE: 1/4" = 1'-0"



S1.4 BUILDING "A" WEST ELEVATION
SCALE: 1/4" = 1'-0"

TO VERIFY SCALE: ORIGINAL BAR SET MEASURE ONE INCH BY ONE SIXTEENTH INCH

REGISTERED ARCHITECT
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PHONE: 801-868-7711 FAX: 801-868-7161

CREEKSIDE CENTER
CORVALLIS

Site Location:
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON

Approved for Site Ownership: Date:

REVISIONS	BY
Planning Comments 12-22-09	D.L.B.

PLOT DATE: 7/30/2010
ISSUE DATE:
DRAWN BY: D.M/BRZINSKI
JOB NO.: 08-30-09

SHEET
SP2.1
BUILDING ELEVATION
BUILDING "A"

36 OF 33

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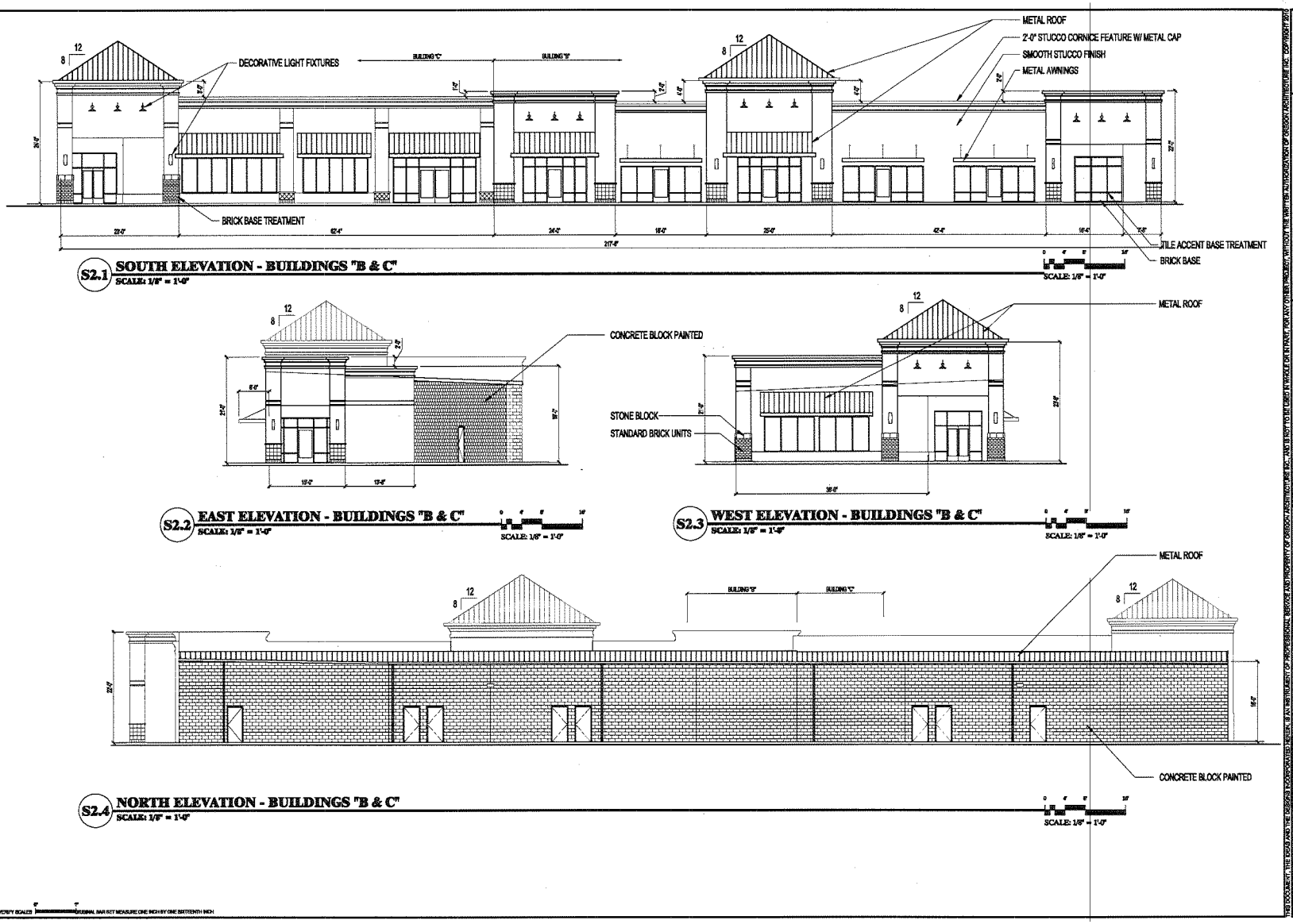
METAL ROOF
2'-0" STUCCO CORNICE FEATURE W/ METAL CAP
SMOOTH STUCCO FINISH
METAL AWNINGS
DECORATIVE LIGHT FIXTURES
BUILDING "C"
BUILDING "B"
BRICK BASE TREATMENT
TILE ACCENT BASE TREATMENT
BRICK BASE
S2.1 SOUTH ELEVATION - BUILDINGS "B & C"
SCALE: 1/8" = 1'-0"
CONCRETE BLOCK PAINTED
S2.2 EAST ELEVATION - BUILDINGS "B & C"
SCALE: 1/8" = 1'-0"
STONE BLOCK
STANDARD BRICK UNITS
S2.3 WEST ELEVATION - BUILDINGS "B & C"
SCALE: 1/8" = 1'-0"
CONCRETE BLOCK PAINTED
S2.4 NORTH ELEVATION - BUILDINGS "B & C"
SCALE: 1/8" = 1'-0"
REGISTERED ARCHITECT
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THOMAS FOX PROPERTIES, LLC
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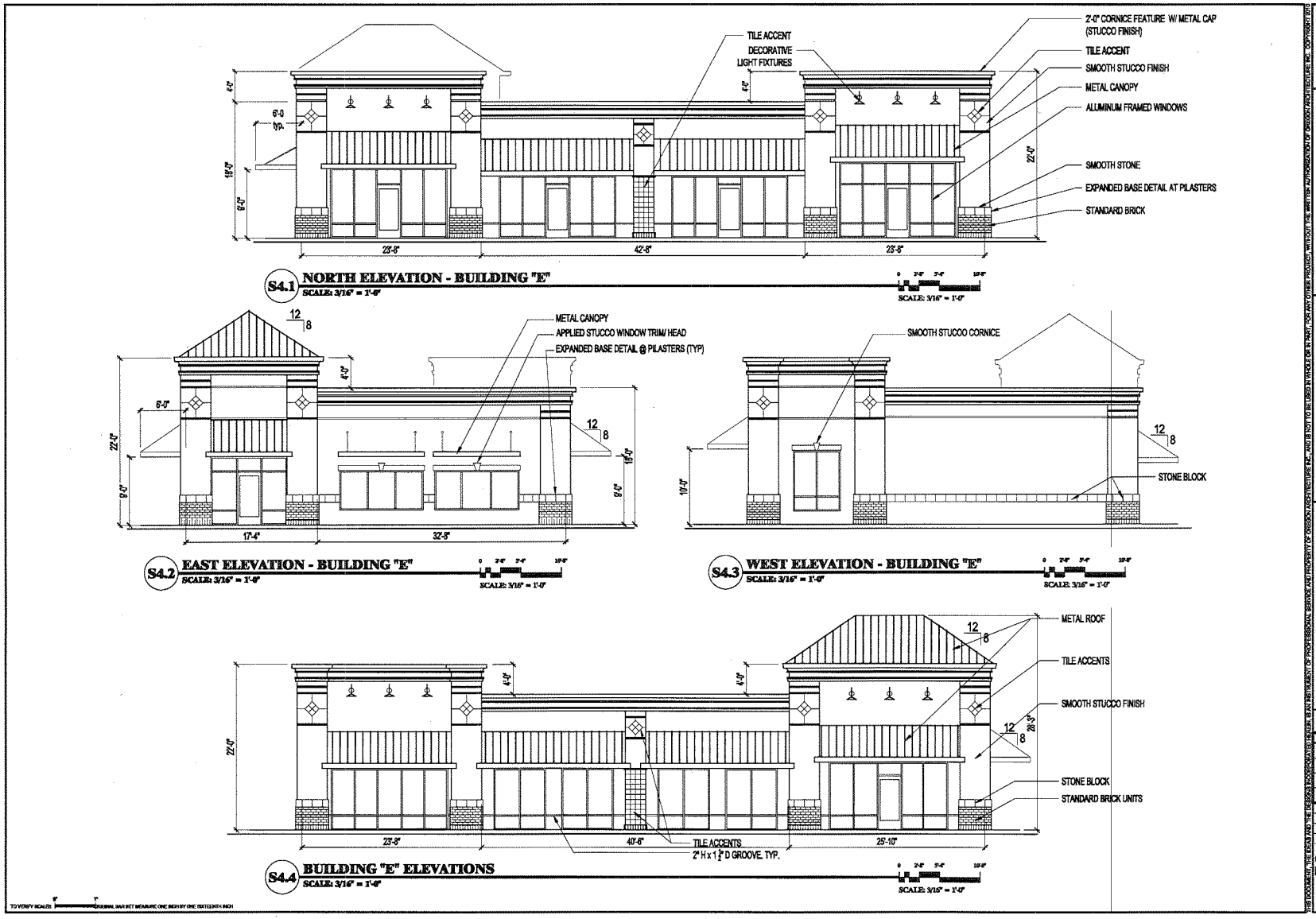
SALT LAKE CITY, UT/841 84115
PHONE: 801-580-7711 FAX: 801-580-7161
CREEKSIDE CENTER
CORVALLIS
Detail Location:
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON
PLOT DATE: 7/30/2010
DRAWN BY: T.W.HERNEY
SP2.2
BUILDING ELEVATIONS
BUILDINGS "B & C"

CREEKSIDE CENTER I & II
(PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL NOTICE OF DISPOSITION
ATTACHMENT B - Page 21 of 25


TILE ACCENT
DECORATIVE LIGHT FIXTURES
2'-0" CORNICE FEATURE W/ METAL CAP (STUCCO FINISH)
TILE ACCENT
SMOOTH STUCCO FINISH
METAL CANOPY
ALUMINUM FRAMED WINDOWS
SMOOTH STONE
EXPANDED BASE DETAIL AT PILASTERS
STANDARD BRICK
S4.1 NORTH ELEVATION - BUILDING "E"
SCALE: 3/16" = 1'-0"
METAL CANOPY
APPLIED STUCCO WINDOW TRIM/ HEAD
EXPANDED BASE DETAIL @ PILASTERS (TYP)
S4.2 EAST ELEVATION - BUILDING "E"
SCALE: 3/16" = 1'-0"
SMOOTH STUCCO CORNICE
STONE BLOCK
S4.3 WEST ELEVATION - BUILDING "E"
SCALE: 3/16" = 1'-0"
METAL ROOF
TILE ACCENTS
SMOOTH STUCCO FINISH
STONE BLOCK
STANDARD BRICK UNITS
TILE ACCENTS
2" H x 1/2" D GROOVE, TYP.
S4.4 BUILDING "E" ELEVATIONS
SCALE: 3/16" = 1'-0"
REGISTERED ARCHITECT
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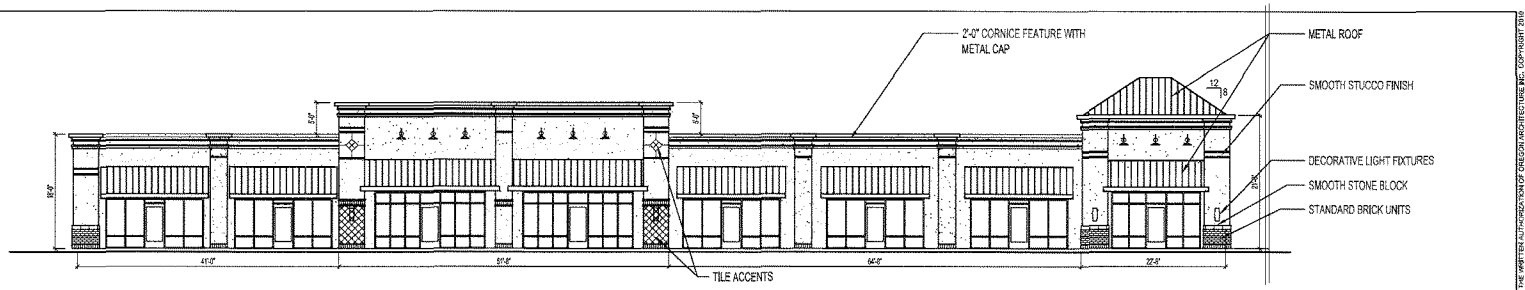
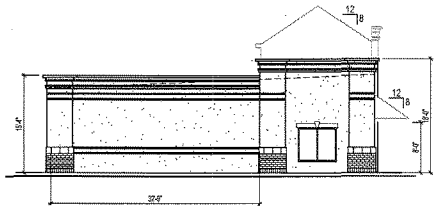
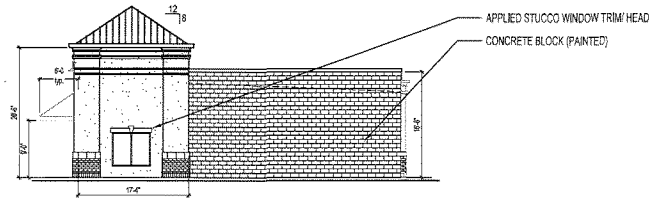
CREEKSIDE CENTER
CORVALLIS
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON
PLOT DATE: 7/30/2010
SHEET
SP2.4
BUILDING ELEVATIONS
BUILDING "E"
19 OF 22



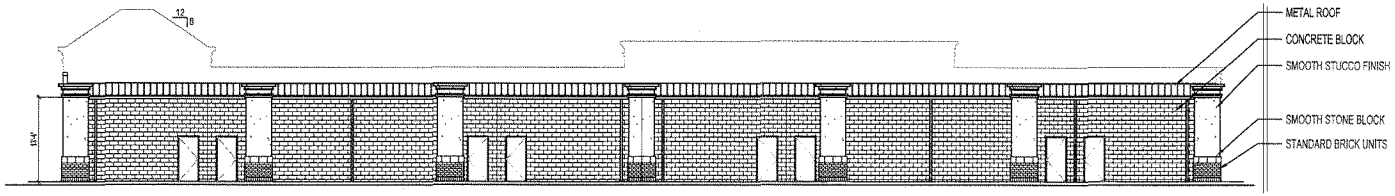
S5.1 EAST ELEVATION - BUILDING "F"
SCALE: 1/8" = 1'-0



S5.2 SOUTH ELEVATION - BUILDING "F"
SCALE: 1/8" = 1'-0



S5.3 NORTH ELEVATION - BUILDING "F"
SCALE: 1/8" = 1'-0



S5.4 WEST ELEVATION - BUILDING "F"
SCALE: 1/8" = 1'-0

TO VERIFY SCALES ORIGINAL BAR SET MEASURE ONE INCH BY ONE SIXTEENTH INCH

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PHONE: 801-599-7711 FAX: 801-596-7161

CREEKSIDE CENTER
CORVALLIS

Project Location:
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON

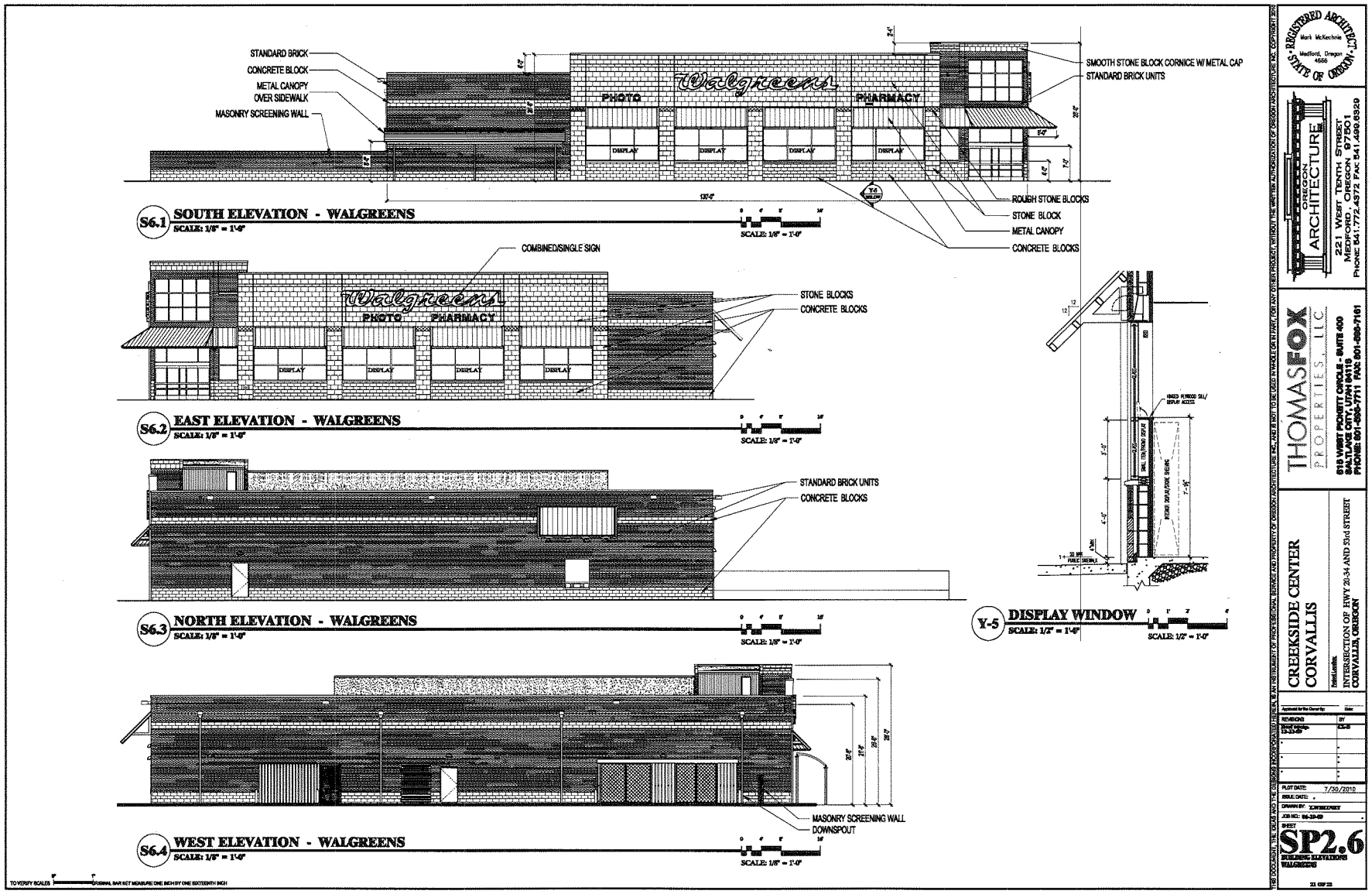
Approved for the Owner By: Date:

REVISIONS	BY

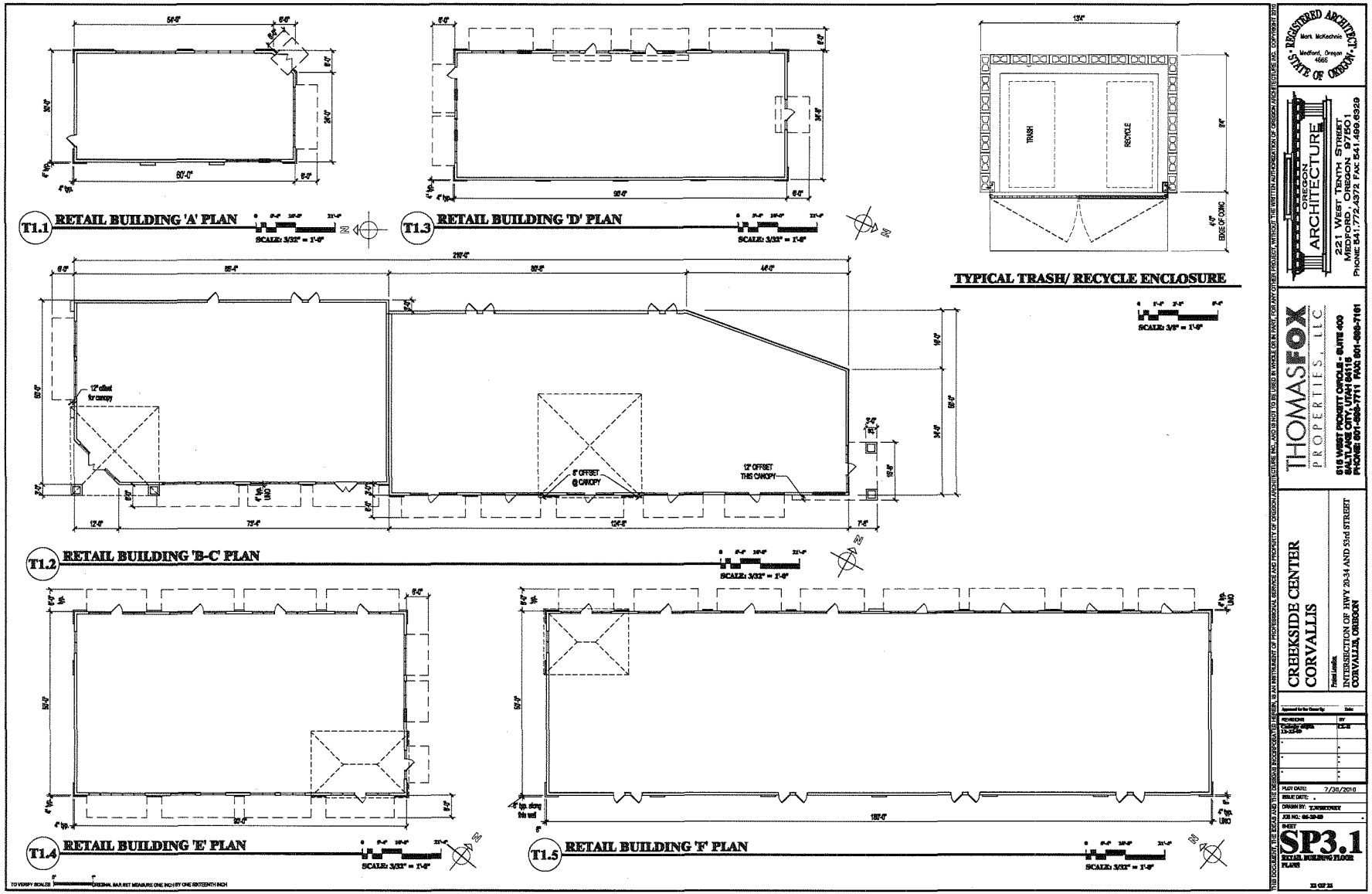
PLOT DATE: 8/10/2010
ISSUE DATE:
DRAWN BY: T.WHITNEY
JOB NO.: 06-29-09

SHEET
SP2.5
BUILDING ELEVATIONS
BUILDING "F"

20 OF 22



CREEKSIDE CENTER I & II
(PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL NOTICE OF DISPOSITION
ATTACHMENT B - Page 24 of 25


T1.1 RETAIL BUILDING 'A' PLAN
SCALE: 3/32" = 1'-0"
T1.3 RETAIL BUILDING 'D' PLAN
SCALE: 3/32" = 1'-0"
TYPICAL TRASH/ RECYCLE ENCLOSURE
TRASH
RECYCLE
SCALE: 3/8" = 1'-0"
T1.2 RETAIL BUILDING 'B-C' PLAN
SCALE: 3/32" = 1'-0"
12' offset for canopy
8' OFFSET @ CANOPY
12' OFFSET THIS CANOPY
T1.4 RETAIL BUILDING 'E' PLAN
SCALE: 3/32" = 1'-0"
T1.5 RETAIL BUILDING 'F' PLAN
SCALE: 3/32" = 1'-0"
TO VERIFY SCALES ORIGINAL BAR MUST MEASURE ONE INCH BY ONE SIXTEENTH INCH
REGISTERED ARCHITECT
Mark McKechnie
Medford, Oregon
4668
STATE OF OREGON
OREGON ARCHITECTURE
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PHONE: 801-486-7711 FAX: 801-486-7161
CREEKSIDE CENTER
CORVALLIS
INTERSECTION OF HWY 20-34 AND 53rd STREET
CORVALLIS, OREGON
PLOT DATE: 7/30/2010
ISSUE DATE:
DRAWN BY:
JOB NO:
SHEET
SP3.1
RETAIL BUILDING FLOOR PLANS
23 OF 25
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BEFORE THE CITY COUNCIL
OF THE CITY OF CORVALLIS

FINDINGS - CREEKSIDE CENTER I AND II
CONCEPTUAL AND DETAILED DEVELOPMENT PLAN / CONDITIONAL DEVELOPMENT PERMIT / TENTATIVE SUBDIVISION PLAT

In the matter of a City Council decision to **approve a Conceptual and Detailed Development Plan / Conditional Development Permit / Tentative Subdivision Plat**; and to uphold the Planning Commission's decision, subject to conditions; to uphold one appeal; and to deny one appeal.	**PLD09-00004** **CDP09-00003** **SUB09-00002**

PREAMBLE

This matter before the Corvallis City Council ("Council") is a decision regarding two appeals of the Planning Commission's approval of a Conceptual and Detailed Development Plan ("PLD"), a Conditional Development Permit ("CDP"), and a Tentative Subdivision Plat ("SUB") to excavate and grade the subject site, construct utility infrastructure, and to construct seven commercial buildings intended to include 43,000 square feet of retail and restaurant uses on three lots (together, "Project").

The proposed PLD includes associated vehicle parking, landscaping, public and private pedestrian connections, building architecture, bicycle parking, and preservation of approximately 2.52 acres of Locally Protected Wetland, Riparian Corridor, and 100-Year Floodplain within dedicated tracts. The PLD also includes variations to Corvallis' Land Development Code (LDC) standards related to Minimum Assured Development Area (MADA) order of encroachments, an increase in the maximum area of retail use, a reduction in planter strip width for SW 53rd Street, an increase in maximum tree spacing along pedestrian walkways, elimination of a required alley, block perimeter standards, and franchise utility easement location requirements. With the exception of these variations, the approval allows the LDC standards themselves to provide the performance standards for the individual building architecture and site plan elements, such as bicycle parking and pedestrian amenities.

The proposed CDP would allow for construction of a drive-through facility to be attached to one of the commercial retail buildings. The proposed SUB would allow for three lots for the commercial buildings and related site improvements and four tracts to be set aside for

a private Shopping Street to be shared among the lot owners and for open space preservation, drainageway, and public access/utility purposes.

The subject 6.64-acre property ("Property") is located at the northwest corner of the intersection of SW 53rd Street and SW Philomath Boulevard (Highway 20/34). The site is currently undeveloped, with the exception of a single-family residence on Tax Lot 600 and limited amounts of fill and gravel that have been lawfully placed on Tax Lot 500 in past years. Tax Lot 500 has been used on occasion as a temporary outdoor market. Dunawi Creek traverses the northern half of the property. The current property owner is Apple Creek I LLC.

The Corvallis Planning Commission conducted a de novo hearing on the PLD, CDP, and SUB (together, "Application") on September 1, 2010. On September 15, 2010, the Planning Commission deliberated and voted to approve the Application, subject to various conditions of approval. The Vice-Chair of the Planning Commission signed a notice of decision on September 16, 2010 (Order # 2010-056).

Two parties appealed the Planning Commission's decision. On September 28, 2010, Bret Fox ("Fox"), the developer of the Project, appealed the Planning Commission's decision on the grounds that Condition of Approval #41 was overly broad. Also on September 28, 2010, the League of Women Voters of Corvallis ("LWVC") appealed the Planning Commission's decision on the grounds that the proposed multi-use path along the north side of Dunawi Creek ("Trail") adversely impacts mapped natural resources. The LDC specifies that the Council hear appeals of Planning Commission decisions regarding these land use applications.

The Council held a duly advertised de novo public hearing on the Application on November 1, 2010. Mayor Charles Tomlinson and Councilors Mark O'Brien, Richard Hervey, Jeanne Raymond, Hal Brauner, David Hamby, Dan Brown, and Mike Beilstein were in attendance. Councilors Joel Hirsch and Patricia Daniels were absent. No members of the Council declared any conflicts of interest. Councilor Brauner declared that he was approached by a citizen wanting to discuss the Application during a recent Government Comment Corner but that he informed the citizen that he could not discuss the Application. Councilor Brauner stated that he could make a fair and impartial decision. Councilors Beilstein, Brown, Hamby, Brauner, Raymond, and Hervey all declared making site visits. No party challenged the impartiality or jurisdiction of the Council or any of its members to hear and decide the case.

At the appeal hearing, representatives of Fox and LWVC appeared and presented oral and written testimony. Jason Yaich, Associate Planner, presented the City staff report. No one from the public appeared in support of the Application or as a neutral party. Andrea Michalek, Sarah Bice, Greg Bennett, Betty Griffiths, David Eckert, Bob Frenkel, and Brad Upton appeared in opposition. At the close of testimony on November 1, 2010, the Council closed the public hearing; however, the written record was held open for seven additional

days until 5:00pm, November 8, 2010, for all parties and until 5:00pm, November 12, 2010, for the applicants to submit their final written argument. Various parties submitted additional testimony into the record consistent with the deadlines established by Council. Prior to the close of the record, the entire Planning Department file was placed before and not rejected by the Council.

On November 15, 2010, the Council deliberated and reached a tentative decision to approve the Application, subject to conditions set forth in the September 16, 2010, Planning Commission Notice of Disposition, adoption of Formal Findings and Conclusions, and modifying Condition of Approval # 41 to limit the scope of the proposed indemnification consistent with Fox's request. The effect of the Council's final decision is to grant Fox's appeal and deny LWVC's appeal.

Applicable Criteria

All applicable legal criteria governing review of the Application are identified in the public notices for the September 1, 2010, and November 1, 2010, public hearings; the Staff Report to the Planning Commission, dated August 20, 2010; the minutes of the Planning Commission hearing and deliberations held on September 1, 2010, and September 15, 2010; the staff memorandum to the City Council dated October 25, 2010, and the minutes of the City Council public hearing and deliberations dated November 1, 2010, and November 15, 2010, respectively. The cited Corvallis Comprehensive Plan ("Plan") policies are fully implemented by the Land Development Code ("LDC"). Where variations to standards have been requested through the Planned Development process, Plan policies have been utilized to provide direction regarding the requested variations to standards. Similarly, where LDC provisions are ambiguous, Plan policies have been utilized to provide context and to clarify the purpose of ambiguous language.

GENERAL FINDINGS AND CONCLUSIONS RELATED TO THE APPEAL OF CREEKSIDE CENTER I AND II CONCEPTUAL AND DETAILED DEVELOPMENT PLAN / CONDITIONAL DEVELOPMENT PERMIT / TENTATIVE SUBDIVISION PLAT (PLD09-00004 / CDP09-00003 / SUB09-00002)

1. As findings supporting approval of the Application, the Council hereby accepts, adopts, and incorporates within this Decision by reference, in their entirety, the Application filed by Fox and his representatives, dated July 9, 2009, as supplemented and revised through November 12, 2010; the staff report to the Planning Commission, dated August 20, 2010 ("Staff Report"), the staff memoranda to the Planning Commission, dated September 1, 2010, September 9, 2010, September 13, 2010, September 14, 2010, and September 15, 2010; and the staff memoranda to the Council, dated October 26, 2010, October 28, 2010, November 1, 2010, November 10, 2010, and November 12, 2010. The Council also adopts as

findings, those portions of the Minutes of the Council meetings dated November 1, 2010, and November 15, 2010, that demonstrate support for approving the Application, as conditioned. The Council specifically accepts and adopts as findings the rationale given during deliberations in the November 15, 2010, meeting by Council members expressing their support for approving the Application, as conditioned. All of the above-referenced documents shall be referred to in these findings as the "Incorporated Findings". The findings below (the "supplemental findings") supplement and elaborate on the findings contained in the materials noted above, all of which are incorporated herein by reference.

2. The Council finds that Exhibit N of the October 25, 2010, staff memorandum to Council presents information on Pages 120 through 142 regarding pages of the August 20, 2010, staff report to the Planning Commission that contain discussions on the need for imposing Conditions of Approval # 1 through 39-I. The Council further finds that Exhibit H of the October 25, 2010, staff memorandum to Council presents information on pages 1 and 2 that explain the need for imposing Conditions of Approval # 40 and 41. The Council specifically modifies Condition of Approval #41 in the manner and for the reasons set forth below. The Council finds that, as modified, each of these conditions is a reasonable condition that is feasible based upon substantial evidence for the applicant to comply with and is necessary to satisfy the applicable criteria presented in the October 25, 2010, staff memorandum to Council and the supplemental findings presented below.

3. The Council finds that the record contains all evidence and argument needed to evaluate the Application for compliance with the relevant criteria.

4. The Council finds that it considered the grounds of the appeals and other issues raised through public testimony.

5. The Incorporated Findings list all of the applicable approval criteria, and demonstrate compliance with these approval criteria. These supplemental findings elaborate upon and clarify the Incorporated Findings, and primarily address issues raised in opposition to the application. These supplemental findings are grouped into issues, with findings included in response to each issue. The issues are organized in traditional outline format and are assigned chronological numbers and alphabetical letters as appropriate.

SUPPLEMENTAL FINDINGS

I. <u>Issues Raised on Appeal</u>

A. <u>Upholding Fox's Appeal; Modification of Condition of Approval #41.</u>

Fox contended that the City's interpretation of Condition of Approval #41, as set forth in the proposed Indemnification & Release Agreement offered by the City Attorney, was overly broad for two reasons. First, Fox contended it was overly broad and unfair because it asked Fox to assume liability for flooding caused by third parties. Second, Fox contended that it was overly broad because it required Fox to subject twelve (12) different categories of unrelated persons, including predecessors, tenants, and guests, to the terms of the indemnification. As a result, it could be impossible for Fox to comply with the proposed agreement since it was dependent upon matters outside of Fox's control.

Fox presented testimony that, under LDC 4.5.70.04, indemnification is only required when developing in a Landslide Hazard Area, but the LDC did not impose a similar requirement when developing in a floodplain. Further, Fox testified that the indemnity was unnecessary due to Fox's willingness to comply with Condition of Approval #40, which requires Fox to provide a revised floodplain study and site grading plans demonstrating that the post-development floodplain elevation is unchanged and that the floodplain boundary has not expanded horizontally. Finally, Fox expressed willingness to comply with Condition of Approval #41 and execute an Indemnification & Release Agreement, provided the language was narrowed to address Fox's concerns.

In a November 8, 2010, Memorandum to the Council, the City Attorney agreed that the Indemnification & Release Agreement could legally be limited in the manner in the manner consistent with the City Attorney's memorandum. No one rebutted this testimony with reference to a provision of the LDC or other law that required the City to obtain a broader indemnification from Fox. Further, although opponents expressed an interest in requiring that Fox be liable for flooding, none of them explained why it was legally defensible to require Fox to assume liability for flooding caused by third parties.

Based upon the testimony presented by Fox and the City Attorney, the balance of the equities, and the additional protection offered by Condition of Approval #40, the Council finds that Condition of Approval #41 is unnecessarily overly broad and can be narrowed while still protecting the interests and property of the City and its citizens, as Council interprets the guidance of LDC 4.5.30 to require. Accordingly, the Council revises Condition of Approval #41 to read as follows:

> **"Floodplain Impacts Indemnification - Prior to issuance of building permits for structures or grading within floodplain areas, the applicant shall sign an Indemnification and Release Agreement, provided by the City. The Agreement shall indemnify and release the City from potential liability resulting from issuance of this approval and all building permits that result in damage to person or property directly or indirectly related**

to flooding created, caused, or contributed to by his / her / its development activities adjacent to or within the floodplain. This Indemnity and Release Agreement shall be recorded against the property and shall run with the land."

The Council finds that the original Indemnification & Release Agreement proffered by the City and included in the record is not consistent with the modified condition. Accordingly, the City finds that the agreement must be modified to be consistent with the modified condition. The modified form of the agreement is attached as **Exhibit A** and is expressly approved by the Council as part of this decision. The Council's modification of Condition of Approval 41, and the Appellant's agreement to comply with its terms, moots this issue

B. Denial of LWVC's Appeal

1. Multi-Use Trail

LWVC contended that the Council should delete the Trail from the Application plans because it is in conflict with Plan policies, LDC standards, and other city plans.

a. Comprehensive Plan Map

LWVC first contends that the Trail is routed through portions of the Property designated on the City's Plan Map as a Locally Significant (and Highly Protected Proximate) Wetland and a Highly Protected Riparian Corridor and a Highly Protected Floodplain. The Council does not dispute the accuracy of these designations; however, the Council finds that these designations do not prohibit development of the Trail, provided the requirements of LDC 4.13.50.b.2 and 4.13.80.01.c.2 are satisfied, including that the Trail must be "designed and constructed to minimize adverse impacts to Riparian Corridors and Riparian-related Areas." In fact, the Council finds that accepting LWVC's interpretation-that these designations on their face preclude development of the Trail--is inconsistent with the plain language of these provisions of the LDC. For the reasons explained in this decision, the Council finds that the Application satisfies these standards. Therefore, the Council denies LWVC's contention.

b. Plan Policy 3.2.1

LWVC contended that Plan Policy 3.2.1 gives clear direction to preserve natural resources. This policy states as follows:

3.2.1 The desired land use pattern within the Corvallis Urban Growth Boundary will emphasize:

A. **Preservation of significant open space and natural features;**
B. **Efficient use of land;**
C. **Efficient use of energy and other resources;**
D. **Compact urban form;**
E. **Efficient provision of transportation and other public services; and**
F. **Neighborhoods with a mix of uses, diversity of housing types, pedestrian scale, a defined center, and shared public areas.**

The Council finds that this policy is a generally applicable planning directive, and it does not establish an approval criterion applicable to quasi-judicial applications such as the Application. As acknowledged by the Department of Land Conservation and Development (DLCD), the Corvallis Land Development Code fully implements Comprehensive Plan policies. The Council further finds that, contrary to LWVC's contention, this policy also establishes other planning objectives beyond simply preservation of natural resources. Even if this policy was applicable to individual applications, in the instant case, the Council finds that LDC 4.13.50.b.2 requires the Council to consider adopted plan provisions as a guide to determining whether the location and construction of a bicycle and pedestrian facility in a riparian corridor is "necessary to maintain a functional system." This Plan policy is not directed at answering this question. For these reasons, the Council finds this policy to be inapplicable. The Council denies LWVC's contention on this issue.

c. Plan Policy 4.2.2

LWVC further contended that the Trail will conflict with Plan Policy 4.2.2, which states as follows:

4.2.2 Natural features and areas determined to be significant shall be preserved, or have their losses mitigated, and/or reclaimed. The City may use conditions placed upon development of such lands, private nonprofit efforts, and City, State, and Federal government programs to achieve this objective.

The Council finds that this policy is a generally applicable planning directive, and it does not establish an approval criterion applicable to quasi-judicial land use applications such as the Application. Moreover, in the instant case, the Council finds that LDC 4.13.50.b.2 requires the Council to consider adopted plan provisions as a guide to determining whether the location and construction of a bicycle and pedestrian facility in a riparian corridor is "necessary to maintain a functional system." This Plan policy is not directed at answering this question. For these reasons, the Council finds this policy to be inapplicable. The Council denies LWVC's contention on this issue.

d. Plan Policy 4.8.2

LWVC further contended that the Trail will conflict with Plan Policy 4.8.2, which

states as follows:

4.8.2 Land designated as 100-year floodplain shall be treated as follows:

A. Development of new buildings on undeveloped lands (where such development does not fall within the definition of infill contained in Article 50) shall be prohibited in the 100-year floodplain of Corvallis streams, with the exception of the Willamette River, the Marys River, and the Millrace. If pre-existing parcels are entirely within the 100- year floodplain or if this policy renders an otherwise buildable parcel unbuildable, exceptions may be considered to allow limited development.

B. Streets, alleys, driveways, and parking lots on undeveloped lands, with the exception of the Willamette River, the Marys River, and the Millrace, should be located outside the 100-year floodplain and wetlands unless it can be demonstrated that they are constructed in a manner that does not restrict or otherwise alter proper floodplain functions, will cause no harm to the properly functioning condition of the stream, and that no other reasonable option is available.

C. Infill and redevelopment in the 100-year floodplain of Corvallis streams , with the exception of the Willamette River, the Marys River, and the Millrace, shall maintain or improve stormwater functions and floodplain functions existing prior to the proposed infill or redevelopment, using techniques such as flow-through designs, more pervious surface area, and reduced building footprints. Development standards shall be created to allow additions to existing structures consistent with those structures' design, provided the additions fall below the threshold of "substantial improvement" contained in the Land Development Code and are constructed consistent with FEMA standards.

D. Area-specific development standards for the 100-year floodplain of the Marys River, the Willamette Rivers, and the Millrace shall be instituted to maintain stormwater functions, be proportional to the impact of the development on the receiving water bodies, and minimize impacts to other properties.

E. New City infrastructure, including streets and sanitary sewers, should be located outside the 100-year floodplain and wetlands unless it can be demonstrated that they will cause no harm to the properly functioning condition of the stream and that no other reasonable option is available.

The Council finds that this policy is not applicable for three reasons. First, it is a generally applicable planning directive, and it does not establish an approval criterion applicable to quasi-judicial applications such as the Application. Second, it is implemented by LDC Chapter 4.5, which does establish applicable approval criteria. As explained in Section 3.K below, the Council finds that there is substantial evidence in the whole record explaining why the Application satisfies the applicable standards of LDC Chapter 4.5. Third, even if this policy was applicable to quasi-judicial applications, in the instant case, the Council finds that LDC 4.13.50.b.2 requires the Council to consider adopted plan provisions as a guide to determining whether the location and construction of a bicycle and pedestrian facility in a riparian corridor is "necessary to maintain a functional system." This Plan policy is not directed at answering this question. For these reasons, the

Council finds that Plan Policy 4.8.2 is inapplicable. The Council denies LWVC's contention on this issue.

e. Plan Policy 4.9.1

LWVC further contended that the Trail will conflict with Plan Policy 4.9.1, which states as follows:

4.9.1 Significant watercourses, lakes, and wetlands shall be preserved, or have their losses mitigated, in order to: maintain clean water, support natural vegetation, protect the aquatic habitat, retain significant public vistas, and provide wildlife habitat and recreation sites. Site-specific buffering and setback requirements may be required, as necessary, to achieve protection.

The Council finds that LWVC has not established that the Property will be developed inconsistent with this policy. The Council finds that Fox will be required to apply for and obtain permits from, as applicable, DSL and the U.S. Army Corps of Engineers, prior to impacting any jurisdictional wetlands. These permits will require mitigation of any impacts as well. Therefore, the Council finds that there is no substantial evidence that, on balance, the Trail will adversely affect wetland features.

In the alternative, the Council finds that this policy is not applicable for three reasons. First, it is a generally applicable planning directive and it does not establish an approval criterion applicable to quasi-judicial applications such as the Application. Second, it is implemented by LDC Chapter 4.13, which does establish approval criteria applicable to the Application. Third, even if this policy was applicable to quasi-judicial applications, in the instant case, the Council finds that LDC 4.13.50.b.2 requires the Council to consider adopted plan provisions as a guide to determining whether the location and construction of a bicycle and pedestrian facility in a riparian corridor is "necessary to maintain a functional system." This Plan policy is not directed at answering this question. For these reasons, the Council finds this policy to be inapplicable. The Council denies LWVC's contention on this issue.

f. Plan Policy 4.10.3

LWVC contended that the Trail will conflict with Plan Policy 4.10.3, which states as follows:

4.10.3 Significant drainageways shall be kept in a natural state to protect tree lines, maintain their natural functions, and enhance native plant species, to the maximum extent practicable.

The Council finds that this policy is not applicable for three reasons. First, it is a

generally applicable planning directive, and it does not establish an approval criterion applicable to quasi-judicial land use applications such as the Application. Second, it is implemented by LDC Chapter 4.13, which does establish applicable approval criteria. Third, even if this policy was applicable to quasi-judicial applications, in the instant case, the Council finds that LDC 4.13.50.b.2 requires the Council to consider adopted plan provisions as a guide to determining whether the location and construction of a bicycle and pedestrian facility in a riparian corridor is "necessary to maintain a functional system." This Plan policy is not directed at answering this question. For these reasons, the Council finds this policy to be inapplicable. The Council denies LWVC's contention on this issue.

g. Plan Policy 4.10.5

LWVC further contends that the Trail will conflict with Plan Policy 4.10.5, which states as follows:

4.10.5 The City shall develop stream corridor width and other standards and programs that preserve the properly functioning condition of streams. These standards can be varied by reach or basin and shall be determined based on functional objectives such as:

- **A. Preservation of the hydrologic conveyance and storage capacity;**
- **B. Allowance for natural channel lateral migration and bank failure;**
- **C. Allowance for channel widening and other channel modification that result from changes in hydrology from future urban development;**
- **D. Proper shading of the stream to maintain or improve water quality;**
- **E. Allowance for a vegetative management strategy that encourages native riparian species;**
- **F. Provision of a pollutant filtering zone for surface runoff;**
- **G. Allowance for natural stream processes to minimize stream channel, bank, and corridor maintenance needs;**
- **H. Buffering of urban uses from stream processes;**
- **I. Provision of a source and delivery of large wood;**
- **J. Preservation of the 0.2-foot floodway; and**
- **K. Preservation or enhancement of habitat."**

The Council finds that this policy is not applicable for four reasons. First, it is a generally applicable planning policy that directs the City to adopt stream corridor standards and programs. The policy does not establish any approval criteria applicable to quasi-judicial land use applications such as the Application. Second, it is implemented by LDC Chapter 4.13, which does establish approval criteria applicable to the Application. Third, even if this policy was applicable to quasi-judicial applications, in the instant case, the Council finds that LDC 4.13.50.b.2 requires the Council to consider adopted plan provisions as a guide to determining whether the location and construction of a bicycle and pedestrian facility in a riparian corridor is "necessary to maintain a functional system." This Plan policy is not directed at answering this question. Fourth, LDC Chapter 4.13 was adopted, in part, per the direction provided by CCP 4.10.5. Therefore, the standards

in LDC Chapter 4.13 implement this Comprehensive Plan policy. For these reasons, the Council finds that Plan Policy 4.10.5 is inapplicable. The Council denies LWVC's contention on this issue.

h. Protection of Proximate Wetlands

LWVC contended that, pursuant to LDC 4.13.40 and 4.13.50, Proximate Wetlands are afforded the same protection as locally Significant Wetlands and Highly Protected Riparian Corridors. The Council finds that, notwithstanding the status of the Proximate Wetlands, LDC 4.13.50.b.2 and 4.13.80.01.c.2 specifically allow development of the Trail in the proposed location, subject to identified standards. For the reasons explained in this decision, the Council finds that the Application satisfies these standards. The Council denies LWVC's contention on this issue.

I. Stormwater Master Plan

LWVC contended that construction of the Trail through the wetland would conflict with the following policies of the Stormwater Master Plan:

"[T]he Corvallis stormwater utility incorporate existing natural features such as streams and wetlands as a means of managing urban run-off." (p. 5-7)

"The City shall place a high level of significance on wetlands that are adjacent to streams." (p. 5-20)

"The public shall only be allowed along stream corridors if they do not impact the properly functioning condition of streams." (p. 5-33)

The Council finds that these are important policies of the Stormwater Master Plan. Moreover, the Council finds that, consistent with these same objectives, it adopted LDC Chapter 4.13 ("Riparian Corridor and Wetland Provisions") to protect and preserve Significant Riparian Corridors and Wetland areas within the City. At the time of adoption, the Council considered whether LDC Chapter 4.13 was consistent with the requirements of the City's adopted plans. In the absence of a code requirement to the contrary, the City is not required to re-apply the policies of individual plans in each and every case. In the instant case, the Council finds that LDC 4.13.50.b.2 requires the Council to consider adopted plan provisions as a guide to determining whether the location and construction of a bicycle and pedestrian facility in a riparian corridor is "necessary to maintain a functional system." The identified Stormwater Master Plan policies are not directed at answering this question. Therefore, the Council finds them to be inapplicable. The Council denies LWVC's contention on this issue.

j. DSL E-mail

LWVC contended that a April 12, 2010 e-mail message from DSL to the City supports its argument. The message in question reads as follows: "[F]orested wetlands are a type of wetland disproportionately lost in the Willamette Valley and should be avoided to the greatest extent possible." The Council finds that the DSL correspondence is not a relevant consideration under the plain language of LDC 4.13.50.b.2, because it is not a provision of the LDC, a Plan, or any other adopted City plan. Therefore, the Council denies this contention.

k. Natural Features Inventory

LWVC contended that a statement from the City's Natural Features Inventory ("NFI") describing the nature of the wetlands located on the Property supports its argument against the Trail. The Council finds that interpreting the NFI to preclude development of the Trail is inconsistent with both the purpose and intent of the LDC. As explained above, LDC 4.13.50.b.2 and 4.13.80.01.c.2 specifically allow development of the Trail in the proposed location, subject to identified standards. For the reasons explained in this decision, the Council finds that the Application satisfies these standards. Finally, the Council finds that it originally adopted the NFI and LDC Chapter 4.13 on the same date (December 13, 2004), providing evidence of the legislative intent that these documents may simultaneously apply and must be construed together. Therefore, the Council denies LWVC's contention.

l. Important Wetland Functions

LWVC offered testimony relating to the functions and values of the Property's wetlands and riparian corridor, including that the wetlands naturally improve water quality and, in turn, save the City infrastructure costs. The Council finds that the portion of LWVC's testimony relating to wetland values and functions is unsubstantiated, not offered by an expert, and apparently not set forth in an adopted City plan or the LDC. As such, the testimony cannot provide a basis for guiding the City's determination under LDC 4.13.50.b.2, which is limited to review of the "Code, Transportation and Utility Master Plans, and other adopted City plans." The Council finds that the portion of LWVC's testimony relating to riparian corridor values does reference the LDC; however, it is not directed at whether the Trail is "necessary to maintain a functional system." Therefore, the Council finds that it is inapplicable. The Council finds that the portion of LWVC's testimony relating to saving City infrastructure costs is speculative. The Council denies this contention.

m. Impacts on Wetland and Riparian Corridor North of Dunawi Creek

LWVC contended that the Trail will adversely impact wetland and riparian corridors north of Dunawi Creek by requiring the removal of several ash trees. The Council finds that Fox will be required to apply for and obtain permits from, as applicable,

DSL and the U.S. Army Corps of Engineers, prior to impacting any jurisdictional wetlands. These permits will require mitigation of any impacts as well. Therefore, the Council finds that there is no evidence that, on balance, the Trail will adversely affect wetland features. Further, the Council finds that LWVC again does not explain how the existence of these natural features prevents routing a Trail through this location under LDC 4.13.50.b.2. The Council denies this contention.

n. Impacts on Riparian Corridor South of Dunawi Creek

LWVC contended that the Trail should be disallowed because its construction will generate MADA credits for Fox, who can then utilize these credits to further develop the Property, theoretically causing additional encroachment into the riparian corridor on the south side of Dunawi Creek. The Council cannot dispute that additional development is a potential consequence of obtaining additional MADA credits; however, the Council finds that it is a product of the MADA credit system itself, which is independent of the question at hand. Furthermore, LWVC has not explained how the City can legally deny Fox an award of MADA credits that otherwise satisfies the applicable LDC prerequisites. The Council further finds that the impact of a trail on MADA credits is not a valid consideration under the LDC for determining whether the trail is "necessary to maintain a functional system." The Council denies LWVC's contention on this issue.

o. Trail Location in City Plans

LWVC contended that the proposed Trail location is not required by any City plans in this specific location, especially not at the expense of the existing natural features. LDC 4.13.50.b.2 allows the location and construction of bicycle and pedestrian facilities within Highly Protected Riparian Corridors and Riparian-related Areas if the City Engineer deems them "necessary to maintain a functional system." Further, this provision states that the LDC, "City Transportation and Utility Master Plans, and other adopted City plans shall guide this determination."

Fox testified in the Application that it was required to provide a trail in this location in order to comply with the block perimeter and pedestrian connection standards of the LDC. LWVC contended that the City could grant a variation to these standards; however, LWVC did not present substantial evidence to establish that these standards could be satisfied. The Council finds that the LDC requirement supports a determination that the Trail is "necessary to maintain a functional system."

LWVC conceded that both the City's Trails Master Plan and Parks & Recreation Facility Plan depict a trail in this general location; however, LWVC contends that this trail is conceptual only and was adopted prior to adoption of the NFI. As such, LWVC contends that the trail designation did not take into account the wetlands identified on the Property in the NFI. City staff responded by testifying that another

adopted plan, the West Corvallis/North Philomath Plan ("WCNPP"), identifies the Trail location inside of the natural features, thus showing a clear intent to route the Trail there notwithstanding the existence of the resources. Further, City staff cited to specific WCNPP policies that support Trail location in stream corridors as follows:

OS-I-1:
Work with private landowners to obtain dedications of open space lands for trails and preservation of natural systems.

OS-I-7:
Where feasible, incorporate trails as part of stream corridors as identified on the Circulation Plan, Figure VI-1.

OS-I-9:
Locate trails at the edge of riparian buffer zones to minimize impacts on the natural functioning of the stream corridor and to preserve stream capacity

The Council concurs with the LWVC that standing alone, the conceptual trails depicted in the Trails Master Plan and the Parks & Recreation Facility Plan may not justify this location for the Trail. However, the Council finds that there is additional substantial evidence in the record that supports the proposed Trail location as set forth in the WCNPP.

The Council concurs with City staff findings that the Trail is "necessary" in this location to "maintain a functional trail system" as depicted in the adopted WCNPP and as further conceptually depicted in the Trails Master Plan and the Parks & Recreation Facility Plan. The Council further finds that each of the cited plans was approved by the Council through a public process.

Notwithstanding the status of the Trail in the plans, LWVC contends that the Trail is not "necessary to maintain a functional trail system" because superior alternative locations are available that do not cause direct impacts to the wetland and riparian corridors. Specifically, LWVC contends that as proposed to the Planning Commission, a proposed trail alignment that would commence at the west end of Helen Avenue (one block north of the Property) and proceed generally south and west along the north side of the riparian corridor will cause fewer adverse effects to natural resources. City staff rejected this alternative because lots along Helen Avenue are substantially developed; thus, there is inadequate right-of-way available to construct a path to City standards. LWVC did not rebut this testimony or offer any other alternatives. Based upon the testimony of City staff, there are no superior alternatives to the proposed Trail route.

Accordingly, the City finds that the Trail location satisfies LDC 4.13.50.b.2.

p. Multi-Modal Nature of Trail

LWVC further contended that the proposed Trail location is inappropriate for multi-modal transportation. Specifically, LWVC contends that the wetland location would likely require a design that would be dysfunctional as a multi-modal path. LWVC suggests that a surface path would be flooded, a path on fill would impede the flow of water, and a boardwalk design would likely be too slick for bicycles in the winter. City staff responded that although "multi-use" paths in the City typically require a 12-wide concrete standard, there are alternative standards available. The Council finds that the precise design and materials for the Trail are not at issue in this Application; therefore, the Council expressly does not approve or deny same in this decision. However, the Council does find that LDC 4.13.50.b.2, which requires that any pedestrian or bicycle facility in a designated riparian area "minimize the impact to the subject area," supports the concept of alternative designs in order to lessen adverse effects on natural resources. For this reason, the Council denies LWVC's contention.

q. Intersection with Shared-Use Sidewalk Near 53rd Street Driveway

LWVC further contended that the proposed intersection of the Trail with the shared-use sidewalk north of the 53rd Street access driveway will increase the amount of bicycle and pedestrian traffic crossing the driveway, which as explained below, opponents contend is already unsafe. For the reasons explained below in response to Section 3.B of these supplemental findings, the Council finds that the driveway crossing, as conditioned, is safe. Moreover, the Council finds that the increased use of the crossing will actually alert more drivers and Trail users alike to the need for caution at this location. The Council denies LWVC"s contention.

2. Above-Ground Stormwater Facilities

LWVC further contended that the Council should delete Fox's two above-ground stormwater facilities from the proposed site plan on the grounds that they were inconsistent with various provisions of the LDC, the Plan, and the Stormwater Master Plan and that they would negatively impact the Highly Protected Riparian Corridor and Highly Protected 100-Year Floodplain. In place of these facilities, LWVC requested that the Council require expanded underground stormwater detention. In support of its contention, LWVC cited various provisions of the Plan and LDC.

Jason Yaich, Associate City Planner, testified that the policies cited by LWVC encouraging protection of natural features must be balanced with the need to provide adequate public facilities. Further, Mr. Yaich stated that the MADA helps implement the balance of allowing development to occur and minimize impacts to natural resource areas. Mr. Gibb submitted additional written testimony elaborating

on this point. He noted that LDC 4.0.130.b requires that detention facilities "be designed to maximize stormwater infiltration." Mark McKechnie, AIA, of Oregon Architecture, testified that the proposed ponds are the best alternative for handling stormwater detention and quality.

The Application includes substantial evidence explaining how the proposed stormwater facilities are consistent with applicable provisions of the LDC, including LDC 4.0.130. At the hearing, Mr. McKechnie testified for the applicant that the above-ground facilities in question would only handle a small portion of the runoff for the Property. According to Mr. McKechnie, the facility on Tax Lot 600 is intended to process water from the public right-of-way on that lot, while the other facility on Tax Lot 500 filters mostly roof water runoff from Buildings B and C. The balance of the stormwater runoff will be collected in underground piping under the parking lot. Thus, the Council finds that the size and use of these facilities will be limited in scope, thus reducing the extent of the impacts associated with same.

The Council denies LWVC's appeal on this issue.

C. Additional Issues Raised Before the Council.

1. Traffic Congestion and Mitigation Measures

Multiple opponents expressed generalized concerns that the proposed development would worsen traffic congestion in the area. The Council finds that these concerns are unsubstantiated, and there is substantial evidence in the record to the contrary.

As required by LDC 4.0.60.a, JRH Transportation Engineering ("JRH"), Fox's traffic consultant, prepared a detailed Traffic Impact Analysis update for the Application dated April 5, 2010 ("TIA"). In the TIA, JRH's professional traffic engineers analyzed existing traffic safety and operational conditions and then applied industry standard models to project the likely traffic conditions in the year of development opening (2012) under a scenario where both the development and related traffic mitigation were built. JRH determined that the intersection of SW 53rd Street and SW Philomath Boulevard will operate in 2012 within applicable ODOT and City standards. In fact, JRH concluded that the intersection would actually operate better under the "build" condition (with mitigation) than under the "no build" condition.

The TIA assumed completion of the following roadway improvements to mitigate the traffic impacts of the development: (1) on SW Philomath Boulevard, extending the eastbound left-turn lane at SW 53rd Street to the maximum length possible while accommodating the full-movement access in the location shown in the site plan and required deceleration distances and associated striping transitions; (2) widening SW Philomath Boulevard to accommodate a right-turn deceleration lane and a two-way

left-turn lane for traffic entering the full movement access to the Property; and (3) widening (and realigning as necessary) SW 53rd Street to accommodate an exclusive southbound right-turn lane at SW Philomath Boulevard and the County's ultimate desired roadway cross section and align through lanes across the intersection.

City staff reviewed the TIA and agency comments and concluded that, as conditioned, "the anticipated development-related trips are expected to be accommodated by the proposed and existing street network."

The Council finds that the mitigation measures in the TIA are consistent with comments made by ODOT and the County, which have jurisdiction over SW Philomath Boulevard and SW 53rd Street, respectively. Conditions of Approval 20-23 require that Fox install or secure these required roadway improvements prior to approval of the final plat for the Property. The Council finds that imposing these conditions will ensure that these roadway facilities will be completed as required.

The Council finds that opponents did not link their traffic congestion concerns to any applicable approval criteria. Moreover, no opponents presented substantial evidence, such as the testimony or report of an expert traffic consultant, to rebut the testimony presented by JRH and City staff on this issue or to explain why the proposed conditions of approval were infeasible or otherwise ineffective to assure compliance with applicable standards. Thus, the Council finds that, as conditioned, development of the Property will satisfy LDC 4.0.60 related to traffic impacts. The Council denies opponents' traffic contentions.

2. Location of Access Driveways; Bicycle and Pedestrian Safety

Various opponents contended that the location, design, and allowed movements for the proposed access driveways were unsafe. The Council finds that these contentions are not supported by substantial evidence and should be denied.

The plans in the Application depict two access driveways to the Property: (1) a right in/right-out private driveway access on SW 53rd Street with a center median to discourage left turns into the Property ("Street Access"); and (2) a full movement access driveway between the Property and SW Philomath Boulevard ("Highway Access"). As stated above, the City does not have roadway jurisdiction over either SW 53rd Street or SW Philomath Boulevard.

First, opponents contended that the Street Access and the Highway Access are too close to the intersection of SW 53rd Street and SW Philomath Boulevard. According to the November 8, 2010 letter from JRH, the Street Access was placed as far north from the intersection of SW 53rd Street and SW Philomath Boulevard as the Property frontage would allow (approximately 235 feet). Both ODOT and the

County reviewed and approved the location of the Street Access. As to the location of the Highway Access, according to JRH, Fox preferred this location for several reasons: (1) ODOT previously requested that the access driveway be placed at this location; (2) no wetlands exist in the location of the Highway Access; (3) the Highway Access would be co-located with an existing sanitary sewer easement (where building a structure would be prohibited); and (4) shifting the Highway Access to be shared between Tax Lot 600 and the off-site lot to the west could create conflicts, as it would require sharing among residential and commercial uses. Further, ODOT (re-)approved the Highway Access in this location as part of its review of the Application. Opponents have not offered any substantial evidence, such as the testimony of a qualified traffic safety expert, to rebut the expert opinions of JRH, ODOT, or the County.

Second, opponents contended that the Street Access would be unsafe for bicyclists, who would be forced to cross the Street Access on a shared use off-street path on the west side of SW 53rd Street. According to opponents, this crossing is unsafe because it will force many bicyclists to travel on a sidewalk and, in many cases, counter to the direction of passing cars. As JRH explained in its November 8, 2010 letter, Fox will be completing frontage improvements that include a traditional bicycle lane in this location. The County has simply required that Fox construct the shared use path in addition to the bike lane in order to maintain existing conditions. The County has recommended that the Street Access be developed with a stop bar and stop sign and that both the Street Access and shared use path include signage warning of the crossing. The Council has incorporated the signage requirements as well as a requirement for contrasting paving materials into Condition of Approval #26. The Council further finds that this condition allows City and County staff to require truncated domes at the Street Access and for the shared use path to maintain a consistent grade through the driveway if such measures are determined to optimize safety at the intersection. Opponents have not submitted substantial evidence, such as testimony from a traffic safety expert that explains why the proposed improvements will be unsafe, as conditioned, or that proposes a superior alternative. The Council denies the opponents' contention on this issue.

Finally, opponent Andrea Michalek objected to the median barrier being installed in conjunction with the Street Access. According to Ms. Michalek, the median will only allow her to make a right turn out of her driveway and will require that she take a completely different route home. According to the Staff Report, there may be some queueing from the SW 53rd Street/SW Philomath Boulevard intersection that extends back to the Street Access. Accordingly, the County and ODOT limited the Street Access to right in/right out only with a median barrier to discourage left turns to and from the Street Access in order to avoid conflicts between turning traffic and queued traffic. Ms. Michalek does not present any substantial evidence rebutting the proposed configuration or proposing a superior alternative. Although the Council finds that this arrangement may create some inconvenience for the traveling

public, the Council finds that it is an appropriate safety measure that has been reviewed and approved by the agencies with jurisdiction over same.

In sum, the Council rejects the opponents' contentions relating to the access driveways.

3. Ongoing Grading Activities

An opponent, Betty Griffiths, complained that there were ongoing excavation and pre-construction activities occurring on the Property. She contended that these activities were either illegal or at least inconsistent with the ongoing review of a development application relating to the Property. Staff explained, in their November 1, 2010, Memorandum to City Council, that the City had issued an excavation permit allowing certain activities on the Property (Permit #EXC09-00086). The City issued the permit because there is no provision in the LDC or elsewhere that directs staff not to issue a permit that otherwise meets applicable requirements simply because there is a pending land use application in process. In addition, the permit was not predicated upon approval of the Application. Further, the City advised the applicant that if he chose to proceed under the permit, he would do so at his own risk. Finally, staff deemed the proposed activities consistent with the MADA encroachment hierarchy, consistent with the applicant's state-issued wetland fill permit, and outside the delineated wetlands on the Property.

The Council rejects Ms. Griffiths' complaint for two reasons. First, it is outside the scope of the Application and is not directed at any applicable approval criteria. Therefore, there is no basis for the Council to deny (or approve or condition) the Application based upon her complaint. Second, the Council finds that, for the reasons set forth in the staff testimony, the City has authorized certain on-site activities by issuing a permit, and to the extent the ongoing activities are consistent with such permit, they are permissible.

4. Developer Payment for Offsite Flood Insurance

Andrea Michalek contended that Dunawi Creek routinely floods and that development of a road on the Property will likely exacerbate flooding concerns. She further contended that the increased risk would require her to obtain flood insurance. She requested that Council require Fox to pay for her flood insurance. Ms. Michalek did not submit evidence, such as a study prepared by an expert, to support her contentions. For the applicant, Mr. McKechnie stated in rebuttal, with reference to attachment G-16 of the Application, that development of the Property would pull the floodway away from Ms. Michael's house. No one presented testimony to challenge this statement.

The Council finds that, based upon the testimony of Mr. McKechnie, Fox will not increase the flooding risk to Ms. Michalek's property. Moreover, the Council finds that in response to the concerns raised by Ms. Michalek and others, the Planning Commission and City staff created Condition of Approval #40. The Council ratifies this action and upholds the Planning Commission's adopted condition, which reads as follows:

> **"40. Additional Floodplain Study and Revisions to Detailed Development Plan - With submittal of the site excavation and grading permit application, where grading is proposed within the pre-development floodway fringe, the applicant shall provide a revised floodplain study and site grading plans which demonstrates that the post-development floodplain elevation on adjacent properties is no greater than the pre-development condition. The post-development floodplain boundary shall not expand horizontally beyond the limits of the pre-development floodplain boundary as it currently exists on adjacent properties. The applicant may choose to reduce or eliminate building area associated with Phases 1D (Building C), 1E (Building B), and Phase 2, as well as associated vehicle parking, if it is necessary to accommodate flood water volume and meet this condition of approval. The Planning Commission finds that if building area is reduced in order to comply with this condition, the minimum Floor Area Ratio (FAR) requirement of 0.25, as specified in LDC § 3.19.40.03, may be reduced below 0.25. If this occurs, the Planning Commission finds that a compensating benefit has been provided for the variation to FAR in the form of no net impact upon adjacent properties due to development within the floodway fringe."**

The Council finds that imposing, and as needed, enforcing, Condition of Approval #40, as modified, fully addresses Ms. Michalek's concern. As a result, the Council finds that there is no basis to require Fox to pay for Ms. Michalek's flood insurance as a condition of developing the Property.

5. Drive-Through Pharmacy

Sarah Bice raised various contentions about the proposed drive-through pharmacy. First, Ms. Bice contended that the existence of the drive-through will pollute the creek with petroleum. Ms. Bice has not offered a more complete explanation of how these facts are causally related. Moreover, Ms. Bice has not offered any substantial evidence, such as testimony from an environmental consultant, that supports this conclusion with a study and/or expert opinion. Ms. Bice has also not directed this contention at any applicable approval criterion.

Second, Ms. Bice contended that a drive-though pharmacy was unnecessary on the Property and would lead to development of three pharmacies at the same intersection. Ms. Bice did not link these contentions to applicable approval criteria. As a result, the Council cannot deny (or approve or condition) the Application based upon these factors. Instead, as set forth in the Staff Report, the drive-through pharmacy is allowed subject to obtaining a Conditional Development Permit. Further, for the reasons explained in the Application and on pages 104-110 of the Staff Report, there is substantial evidence to find that, as conditioned, the CDP Application satisfies all applicable approval criteria. Therefore, the Council denies Ms. Bice's contentions on this issue.

6. Applicant's DSL Permits

Various opponents contended that Fox had not obtained permits from DSL authorizing impacts to natural resources on all areas of the Property. These opponents contended that the City should limit approval to those portions of the Property where Fox has obtained and maintained a DSL permit authorizing impacts to natural resources. City staff testified that Fox has obtained an active fill permit from DSL, which permits development between SW Philomath Boulevard and within 25 feet of the top-of-bank on the south side of Dunawi Creek. The active DSL permit also permits development associated with the eastern stream crossing and the driveway construction on the north side of Dunawi Creek at 53rd Street, near the northeast corner of the Property. The DSL permit does not authorize construction of the Trail or the proposed development of Lot 600, and DSL staff have advised that a second fill permit will be necessary to allow this additional development. LDC 4.13.80.01.e requires DSL concurrence prior to City issuance of site development permits.

The Council finds that Condition of Approval #4 addresses opponents' concerns by limiting the City to issuing development permits for only those portions of the Property that fall within the scope of active DSL fill permits. The Council finds that this condition is consistent with the LDC and balances the interests of the parties. Ms. Griffiths objected that this condition "leaves too much up in the air for both the developer and the community." The Council finds that it does not leave "too much up in the air," as the complete development plan has been subject to a noticed public hearing, and the condition establishes clear and objective standards for when development can proceed. The Council denies the opponents' contention.

7. Whether the Number and Extent of MADA Credits are Consistent with Intent of the LDC

Ms. Griffiths contended that the number and extent of MADA credits associated with the development was "especially troubling" and not consistent with the intent of the LDC. The Council finds that Fox presented substantial evidence in the Application

that the Project qualified for MADA credits. The Council further finds that City staff properly applied the provisions of the LDC in calculating credits. The Council denies Ms. Griffiths' contention on this issue.

8. Salmon Response Plan

Ms. Griffiths contended that the encroachment of the development on the riparian corridor and adjacent wetlands may violate the City's Salmon Response Plan ("SRP") . The Council finds that the SRP was adopted in 2004 to comply with federal regulations following the designation of the Chinook salmon as a threatened species under the Federal Endangered Species Act. The SRP states that as "Next Steps," the City should incorporate relevant provisions of the SRP and/or implementing policies into the Plan or LDC. To the extent the City has done so, City staff considered and applied the applicable incorporated provisions during the review of the Application. To the extent the City has not so incorporated these provisions, the Council finds that the SRP itself does not establish any independent approval criteria that apply to the Application.

9. TMDL Requirements and Temperature Load on River

Ms. Griffiths further contended that, if approved, the Project "may create additional problems in meeting the TMDL requirements of DEQ." Ms. Griffiths does not offer any explanation, justification, or substantial evidence whatsoever in support of this statement. Further, she does not direct this contention at any approval criterion applicable to the Application. Accordingly, the Council denies this contention.

10. Floodplain Development Standards

Ms. Griffiths also contended that the Application violates LDC 4.5.50.02 and 4.5.50.07 regarding development in areas of Special Flood Hazard. Pages 59 and 60 of the Application narrative explain why the Project satisfies the applicable standards of LDC Chapter 4.5. In addition, Marquess & Associates, Inc., a professional engineering firm, submitted a flood study documenting that the proposed improvements would not cause more than a 0.2' rise in the 100-year water surface elevation. At pages 91-103, City staff opined that, as conditioned, the Application would satisfy the applicable floodplain standards. The Council finds that Ms. Griffiths' comments are conclusory and do not adequately explain why the Application fails to meet the applicable standards. The Council denies Ms. Griffiths' contention.

II. Land Uses

1. The City Council notes that the applicant responded to the applicable criteria as part of a complete application submitted for the Conceptual and Detailed Development Plan, Conditional Development Permit, and Tentative Subdivision Plat. The Council notes that the applicant's responses to the applicable criteria cited above are found on Page 192 of Exhibit N of the October 25, 2010, staff memorandum to Council.

2. The City Council notes that the subject site is designated on the Corvallis Comprehensive Map for MUC (Mixed Use Commercial) and C (Open Space - Conservation) land uses, as shown on Page 146 of Exhibit N of the October 25, 2010, staff memorandum to Council. The Council also notes that the site is zoned MUCS (Mixed-Use Community Shopping), consistent with the Comprehensive Plan Map Designation of MUC for the site, as shown on Page 147 of Exhibit N of the October 25, 2010 staff memorandum to Council.

3. The City Council notes that findings in response to the applicable criteria cited above are presented in the October 25, 2010, staff memorandum to Council. The Council adopts the Incorporated Findings, including (but not limited to) the findings and conclusions on Pages 24 through 26 of Exhibit N of the October 25, 2010, staff memorandum to the City Council. The Council finds that the proposed uses are consistent with those listed in LDC Section 3.19.30.

III. Natural Resources and Natural Hazards

A. General

1. The City Council notes that the applicant responded to the applicable criteria cited above as part of a complete application submitted for the Conceptual and Detailed Development Plan, Conditional Development Permit, and Tentative Subdivision Plat. The Council notes that the applicant's responses to the applicable criteria cited above are found on Pages 235 through 247, Page 271, and Page 273 of Exhibit N of the October 25, 2010, staff memorandum to Council.

2. The City Council notes that findings in response to the applicable criteria cited above are presented on Pages 8 through 15, Pages 84 through 103, Pages 109 through 110, and Pages 117 through 118, of Exhibit N of the October 25, 2010, staff memorandum to City Council. The Council adopts the Incorporated Findings, including (but not limited to) the findings and conclusions in the October 25, 2010, staff memorandum to the City Council, the portions of the minutes from the September 15, 2010, Planning

Commission deliberations that demonstrate support for the proposal, and the portions of the minutes from the November 15, 2010, City Council deliberations that demonstrate support for the proposal. The City Council notes that the Incorporated Findings are supplemented by Findings III.A.3 through III.A.4, and all of Findings III.B, III.C, III.D, and III.E below.

3. The Council notes that the LDC provisions for protecting natural resources were completed as directed by the State Department of Land Conservation and Development (DLCD), in compliance with Statewide Goal 5 requirements. The Council notes that Phase III of the Land Development Code Update, which included the relevant natural resource and natural hazard protections, was approved by the DLCD and approved on appeal to the Land Conservation and Development Commission (LCDC). The Council notes that that decision was subsequently upheld on appeal to the Oregon Court of Appeals.

4. The City Council notes that Article IV of the Land Development Code, as amended through the Phase III Update, contains provisions for protection of Natural Hazards and Natural Resources, and that the review criteria for Conceptual and Detailed Development Plans, Conditional Development Permits, and Tentative Subdivision Plats reference these Natural Features protections. The Council notes that the Findings in subsections IV.N and VII below (Findings on Compatibility and Natural Features Factors and Tentative Subdivision Plat) below address all applicable review criteria related to Natural Features protections.

B. Natural Hazards

1. The City Council notes that, as part of a complete application submitted for the Conceptual and Detailed Development Plan, Conditional Development Permit, and Tentative Subdivision Plat, the applicant has provided data which shows that the subject development site is constrained by a Highly-Protected 100-Year Floodplain, including the 0.2-ft. Floodway. As discussed on Pages 8 through 14, and Pages 99 through 100 of Exhibit N of the October 25, 2010, staff memorandum to City Council, the applicable floodplain development criteria have been satisfied. City Council note that Condition # 40, as discussed in Findings I.A and I.C.4, above, has been imposed to ensure that the compatibility criterion specified in LDC 2.5.40.04.a.2 is satisfied, and to ensure that the development permissible within the Highly-Protected 100-Year Floodplain does not exacerbate existing flooding conditions on adjacent properties.

C. Natural Resources

1. The City Council notes that the subject site contains a Highly-Protected Riparian Corridor, and associated Proximate Wetland, which has a Locally Protected status. Council notes that in 2004, the applicant applied for and received approval of a wetland fill permit from the Department of State Lands, as discussed in Finding I.C.6, and that the subject DSL fill permit is still active. Council notes that the active DSL fill permit does not include within its scope, development of the proposed public multi-use path located north of Dunawi Creek nor the development of Tax Lot 600, noted as Phase 2 of the subject Conceptual and Detailed Development Plan. The Council notes that the active DSL fill permit was acquired prior to implementation of Phase III of the Land Development Code Update, and prior to application for a land use approval on the subject site. The Council notes that LDC 4.13.80.01.e requires the applicant to provide supplemental documentation indicating that DSL has approved development not otherwise contained within the scope of the 2004 fill permit, and that this requirement has been captured in Condition # 4. Council finds that the applicable criteria for development within the Natural Resource areas have been satisfied.

D. Minimum Assured Development Area

1. The City Council notes that, as part of a complete application submitted for the Conceptual and Detailed Development Plan, Conditional Development Permit, and Tentative Subdivision Plat, the applicant has provided data which shows that the subject development site is constrained to such a degree by the Natural Features and Natural Hazards identified in Findings III.B and III.C above, that the provisions for Minimum Assured Development Area (MADA) outlined in LDC Chapter 4.11, apply to the site. The Council notes that, as part of the complete land use applications filed, the applicant has provided calculations which indicate that the base MADA permitted in the underlying Mixed-Use Community Shopping zone, as well as the additional MADA credits warranted under LDC 4.11.50.02.c., contribute to a total MADA allowance of approximately 180,728 square feet, and that the proposed development plan impacts approximately 179,319 square feet of the development site. The Council finds that the proposed development area falls within the MADA allowance for the site. The Council notes that calculations for MADA, as provided in the application, are subject to change due to the way that MADA credits are applied based on the scope of impacts inherent in the construction permit drawings, and that Condition # 7 has been imposed to ensure that MADA provisions are satisfied according to the final construction drawings and site work.

E. Conclusion

1. As discussed in the Incorporated Findings and the supplemental findings, the Council finds that the proposal, as conditioned, is consistent with the applicable criteria related to Natural Resources and Natural Hazards category cited above.

IV. Compatibility

A. Compensating Benefits

1. The City Council notes that the applicant responded to the applicable criteria as part of a complete application submitted for the Conceptual and Detailed Development Plan and Conditional Development Permit. The Council notes that the applicant's responses to the applicable criteria cited above are found on Pages 188 through 271 of Exhibit N of the October 25, 2010, staff memorandum to Council.

2. The City Council notes that findings in response to the applicable criteria cited above are presented on Pages 8 through 24 (compensating benefits criteria), of Exhibit N of the October 25, 2010, staff memorandum to City Council. The Council adopts the Incorporated Findings, including (but not limited to) the findings and conclusions in the October 25, 2010, staff memorandum to the City Council, as well as the portions of the minutes from the September 15, 2010, Planning Commission deliberations that demonstrate support for the proposal, and the portions of the minutes from the November 15, 2010, City Council deliberations that demonstrate support for the proposal. The City Council notes that the Incorporated Findings are supplemented by Findings IV.A.3 through IV.A.9, below. The Council finds that the proposal is consistent with the applicable criteria cited above, or is conditioned to that effect.

3. The Council notes that the applicant requested to vary from LDC Section 4.11.50.04.c, which prescribes the allowable and preferred order of encroachments into areas of Natural Features, as discussed on Page 8 and Pages 12 through 15 of Exhibit N of the October 25, 2010, staff memorandum to Council. The Council notes that the applicant proposed to compensate for the noted variations to the order of encroachments by concentrating development on the south side of Dunawi Creek. The Council notes that LDC 4.11.50.04.c would require development to occur on the north side of Dunawi Creek, north of the delineation of the 100-ft. Highly Protected Riparian Corridor, prior to encroaching within the 100-ft. Highly Protected Riparian Corridor on either side of the creek. Therefore, the

Council finds that the Natural Resources and Natural Hazards on the north side of Dunawi Creek are better protected, as compared to impacts on Natural Features that would occur had the applicant followed the prescribed MADA order of encroachments. The Council finds that the proposed compensating benefits are sufficient to achieve the intent of LDC Section 2.5.40.04.a.1. for the following reasons:

a. Concentrating development on the south side of Dunawi Creek makes efficient use of land that has already experienced some development impacts in the form of a single-family development and compacted fill, and better protects areas on the north side of Dunawi Creek that have not experienced similar urban development pressures.

b. Allowing the variation provides the proper balance of preserving significant open space and natural features, and making efficient use of land, which is consistent with CCP Policy 3.2.1.

Given these considerations, the Council finds that it is reasonable to allow the requested variance.

4. The City Council notes that the applicant requested to vary from LDC Section 4.0.60.n.2, to allow an increase in the maximum distance prescribed for block faces from 400 feet to 442 feet, as discussed on Page 9 and Pages 15 through 17 of Exhibit N of the October 25, 2010, staff memorandum to Council. The Council notes that the need for the requested variance is the result of the public street network approved for the subject site through the Comprehensive Plan functional classification system, Corvallis Transportation Plan, and Land Development Code provisions related to access restrictions on Highway 20/34 (LDC § 4.0.60.o), which precludes the extension of a new public street at the prescribed distance of 400 feet. The Council notes that access control provisions on Page 3-80 of the City's adopted Corvallis Transportation Plan discourage creation of driveway access points on Arterial highways. The Council notes that staff analysis of the request to vary from LDC Section 4.0.60.n.2, to increase the spacing between the spacing of the Shopping Street entrance on SW Philomath Boulevard and SW 53rd Street is supported by Transportation Plan Policy 3-80. Additionally, Council notes that strict application of the 400-foot spacing requirement for a pedestrian block perimeter connection would have required the applicant to construct a north-south pedestrian path across Dunawi Creek, in order to connect to the proposed Dunawi Creek multi-use path. The Council notes that the applicant has cited, as one of the compensating benefits of the requested variation to the block face standard, increased protection of the subject site's Natural Features. The Council notes that the applicant could potentially achieve consistency with LDC § 4.0.60.n.2 by

proposing to construct a new public street through the site at the prescribed distance of 400 feet west of the intersection of Highway 20/34 and SW 53rd Street. However, meeting this standard would be inconsistent with LDC 4.0.60.o, which requires new development to have access to a Local street wherever practicable, and which requires new development. The Council notes that the applicant proposed to compensate for the requested variance by noting the following:

a. The proposed network of on-site pedestrian facilities connects most of the building sites to one another via the most efficient routes possible.

b. The proposed network of on-site pedestrian facilities is designed so that multiple points of connection are made with the public sidewalk system abutting the site so that pedestrians may access the buildings and pass through the site via more than one route.

c. The proposed network of on-site pedestrian facilities provides more opportunities for accessing and passing through the site than would have occurred if the referenced criterion were satisfied by extending one or more public streets through the site.

d. The proposed network of on-site pedestrian facilities is designed to facilitate handicapped access through the site and to each of the proposed buildings.

As a result, the Council finds that compensating benefits have been provided for the requested variation, and that it is reasonable to allow the requested variance.

5. The City Council notes that the applicant requested to vary from LDC Section 3.19.30.f.25, to allow an increase in the maximum area of an individual retail sales use, as discussed on Page 9 and Pages 15 through 17 of Exhibit N of the October 25, 2010, staff memorandum to Council. The Council notes that LDC 3.19.40.02 requires that areas set aside for automobile circulation associated with drive-through facilities are to be included the floor area calculation subject to the maximum 15,000 sq. ft. specified in LDC 3.19.30.f.25. The Council also notes that LDC 2.5.10.b.2.c prescribes that variations to the maximum area of an individual retail sales use, in excess of the 15,000 sq. ft. limit, shall be reviewed through the Conceptual and Detailed Development Plan process. The City Council notes that the applicant has proposed, as a compensating benefit, constructing the drive-through queing lane with pervious pavement, and that other than the drive-through facility itself, the subject retail sales use within the walls of the

applicable Walgreen's building has less than 15,000 square feet of floor area. The Council notes the following CCP Policies that support the proposed compensating benefit, and that it is reasonable to allow the requested variation, based on the applicable criteria for compensating benefits:

Applicable Comprehensive Plan Policies

4.10.6 In order to reduce peak runoff from impervious areas and maintain pre-development flow regimes, the City shall work to adopt standards such as the following:

- **C. Use pervious materials and alternative designs where applicable, such as infiltration systems.**
- **H. Pursue the use of retention and infiltration facilities where the soils are suitable to control runoff volume, peak flow and promote dry season base flows in streams.**
- **I. Develop sub-surface storage as well as surface detention facilities.**

4.12.9 The City shall encourage practices that enhance groundwater recharge to maintain or increase stream flow during dry periods. (QN-10)

4.12.10 The City shall encourage parking lots to be constructed of stable pervious surfaces that do not degrade groundwater quality. (QN-18)

14.4.2 Design elements shall provide transitions between various land uses and intensities where necessary to improve compatibility.

6. The City Council notes that the applicant requested to vary from LDC Section 4.0.30.a.2, 4.0.60.e.1, and 4.0.60.k.8, to allow a decrease in the width of the required street tree planter strip along the site's SW 53rd Street frontage. The Council notes that LDC 4.0.30.a.2 requires a planter strip width of 12 feet, and that the applicant proposed a width of 6 feet. The Council also notes that SW 53rd Street is an Arterial street under Benton County jurisdiction. As discussed on Page 18 and Pages 61 through 62 of Exhibit N of the October 25, 2010, staff memorandum to Council, Benton County participated in the review of the development application and has mandated that the park strip width be no more than 6 feet in width, based on right-of-way limitations, and the necessity for street widening improvements along the site's 53rd Street frontage. The Council notes the following compensating benefits provided for in the application:

- enhanced landscaping treatment along the SW 53rd Street frontage; and

- increased width of the pedestrian sidewalk along the SW 53rd Street frontage due to its multi-use path status

The Council finds that Condition # 36-j implements the applicant's proposed compensating benefit of enhanced landscaping. The City Council finds that given the jurisdictional requirements of Benton County, and the proposed compensating benefits, that the proposed variation is justified.

7. The City Council notes that the applicant requested to vary from LDC Section 4.2.40.c, to allow an increase in the maximum distance prescribed for shade trees along a pedestrian walkway, as discussed on Page 10 and Pages 18 through 19 of Exhibit N of the October 25, 2010, staff memorandum to Council. The Council notes that the LDC standard specifies a maximum spacing of 40 feet, and the applicant is proposing 50 feet. The Council also notes that the applicant has cited, as a compensating benefit, provision of large canopy trees. The Council notes that large canopy trees provide additional shade to pedestrians due to the relative size of the mature tree canopy, and trees of medium canopy stature are typically provided along pedestrian walkways. The Council finds that the proposed large canopy trees meet the intent of the LDC 4.2.40.c, and that the compensating benefits criterion has been satisfied.

8. The City Council notes that the applicant requested to vary from LDC Section 3.19.40.06.a, to eliminate a required alley, as discussed on Page 10 and Pages 20 through 22 of Exhibit N of the October 25, 2010, staff memorandum to Council. The Council notes that LDC 3.19.40.06.a restricts vehicle parking along alleys such that parking is only permitted on one side of the alley. The Council notes that a private driveway has been provided through the center of the developed portion of the site that contains many of the features of an alley, as prescribed in LDC 3.19.40.06.a, with the exception that the applicant proposes to construct vehicle parking on both sides of the private driveway, and is not proposing to provide a public access easement over the private driveway. The City Council finds, as a compensating benefit, enhanced protection of Natural Features, since the design makes efficient use of land. The Council finds this to be consistent with CCP 3.2.1.

9. The City Council notes that the applicant requested to vary from LDC Section 4.0.100.b, to eliminate a required 7-foot franchise utility easement along one side of the proposed local street bisecting Tax Lot 600, as discussed on Page 11 and Pages 23 of Exhibit N of the October 25, 2010, staff memorandum to Council. The Council notes, as compensating benefits, enhanced Natural Features protection, by making efficient use of land. The Council also notes that Conditions # 35 and # 39-e require that the applicant

provide franchise utilities to and through the development site, which is otherwise consistent with LDC 4.0.100.b. The Council notes that the proposed variation is justified based on continued provision of franchise utilities.

10. As discussed in the Incorporated Findings and the supplemental findings provided above, with the associated Conditions of Approval, the City Council finds that the proposal is consistent with the compensating benefits criterion.

B. Basic Site Design

1. The City Council notes that the applicant responded to the applicable criteria as part of a complete application submitted for the Conceptual and Detailed Development Plan and Conditional Development Permit. The Council notes that the applicant's responses to the applicable criteria cited above are found on Pages 194 through 200 of Exhibit N of the October 25, 2010, staff memorandum to Council.

2. The City Council notes that findings in response to the applicable criteria cited above are presented on pages 24 through 30, of Exhibit N of the October 25, 2010, staff memorandum to City Council. The Council adopts the Incorporated Findings, including (but not limited to) the findings and conclusions in the October 25, 2010, staff memorandum to the City Council noted above, as well as the portions of the minutes from the September 15, 2010, Planning Commission deliberations that demonstrate support for the proposal, and the portions of the minutes from the November 15, 2010, City Council deliberations that demonstrate support for the proposal. The Council finds that the proposal is consistent with the applicable criteria cited above, or is conditioned to that effect.

3. The City Council notes that Condition of Approval #12 requires street address signage to be posted on certain buildings on the site. Additionally, the Council notes that Condition of Approval #13 specifies that the water supply for the required fire suppression systems shall be in-service prior to building construction proceeding above the level of the foundation. The Council notes that these Conditions were imposed to inform the applicant of these requirements, as set forth in the Oregon Fire Code, specifically sections 501.4 and 505.1. The Council finds that the Condition adequately ensures consistency with the referenced criteria.

C. Visual Elements

1. The City Council notes that the applicant responded to the applicable criteria as part of a complete application submitted for the Conceptual and Detailed

Development Plan and Conditional Development Permit. The Council notes that the applicant's responses to the applicable criteria cited above are found on Pages 194 through 200 of Exhibit N of the October 25, 2010, staff memorandum to Council.

2. The City Council notes that findings in response to the applicable criteria cited above are presented on pages 30 through 35, of Exhibit N of the October 25, 2010, staff memorandum to City Council. The Council adopts the Incorporated Findings, including (but not limited to) the findings and conclusions in the October 25, 2010, staff memorandum to the City Council noted above, as well as the portions of the minutes from the September 15, 2010, Planning Commission deliberations that demonstrate support for the proposal, and the portions of the minutes from the November 15, 2010, City Council deliberations that demonstrate support for the proposal. The Council finds that the proposal is consistent with the applicable criteria cited above.

D. Noise Attenuation

1. The City Council notes that the applicant responded to the applicable criteria as part of a complete application submitted for the Conceptual and Detailed Development Plan and Conditional Development Permit. The Council notes that the applicant's responses to the applicable criteria cited above are found on Pages 200 through 201 of Exhibit N of the October 25, 2010, staff memorandum to Council.

2. The City Council notes that findings in response to the applicable criteria cited above are presented on page 35 of Exhibit N of the October 25, 2010, staff memorandum to City Council. The Council adopts the Incorporated Findings, including (but not limited to) the findings and conclusions in the October 25, 2010, staff memorandum to the City Council noted above, as well as the portions of the minutes from the September 15, 2010, Planning Commission deliberations that demonstrate support for the proposal, and the portions of the minutes from the November 15, 2010, City Council deliberations that demonstrate support for the proposal. The Council finds that the proposal is consistent with the applicable criteria cited above.

E. Odors and Emissions

1. The City Council notes that the applicant responded to the applicable criteria as part of a complete application submitted for the Conceptual and Detailed Development Plan and Conditional Development Permit. The Council notes that the applicant's responses to the applicable criteria cited above are found

on Page 201 of Exhibit N of the October 25, 2010, staff memorandum to Council.

2. The City Council notes that findings in response to the applicable criteria cited above are presented on page 35 of Exhibit N of the October 25, 2010, staff memorandum to City Council. The Council adopts the Incorporated Findings, including (but not limited to) the findings and conclusions in the October 25, 2010, staff memorandum to the City Council noted above, as well as the portions of the minutes from the September 15, 2010, Planning Commission deliberations that demonstrate support for the proposal, and the portions of the minutes from the November 15, 2010, City Council deliberations that demonstrate support for the proposal. The Council finds that the proposal is consistent with the applicable criteria cited above.

F. Lighting

1. The City Council notes that the applicant responded to the applicable criteria as part of a complete application submitted for the Conceptual and Detailed Development Plan and Conditional Development Permit. The Council notes that the applicant's responses to the applicable criteria cited above are found on Pages 201 through 202 of Exhibit N of the October 25, 2010, staff memorandum to Council.

2. The City Council notes that findings in response to the applicable criteria cited above are presented on page 35 of Exhibit N of the October 25, 2010, staff memorandum to City Council. The Council adopts the Incorporated Findings, including (but not limited to) the findings and conclusions in the October 25, 2010, staff memorandum to the City Council noted above, as well as the portions of the minutes from the September 15, 2010, Planning Commission deliberations that demonstrate support for the proposal, and the portions of the minutes from the November 15, 2010, City Council deliberations that demonstrate support for the proposal. The Council finds that the proposal is consistent with the applicable criteria cited above.

G. Signage

1. The City Council notes that the applicant responded to the applicable criteria as part of a complete application submitted for the Conceptual and Detailed Development Plan and Tentative Subdivision Plat. The Council notes that the applicant's responses to the applicable criteria cited above are found on

Pages 203 through 204 of Exhibit N of the October 25, 2010, staff memorandum to Council.

2. The City Council notes that findings in response to the applicable criteria cited above are presented on Page 36 of Exhibit N of the October 25, 2010, staff memorandum to City Council. The Council adopts the Incorporated Findings, including (but not limited to) the findings and conclusions in the October 25, 2010, staff memorandum to the City Council noted above, as well as the portions of the minutes from the September 15, 2010, Planning Commission deliberations that demonstrate support for the proposal, and the portions of the minutes from the November 15, 2010, City Council deliberations that demonstrate support for the proposal. The Council finds that the proposal is consistent with the applicable criteria cited above.

H. Landscaping for Buffering and Screening

1. The City Council notes that the applicant responded to the applicable criteria as part of a complete application submitted for the Conceptual and Detailed Development Plan and Conditional Development Permit. The Council notes that the applicant's responses to the applicable criteria cited above are found on Pages 204 through 212 of Exhibit N of the October 25, 2010, staff memorandum to Council.

2. The City Council notes that findings in response to the applicable criteria cited above are presented on Pages 36 through 46 of Exhibit N of the October 25, 2010, staff memorandum to City Council. The Council adopts the Incorporated Findings, including (but not limited to) the findings and conclusions in the October 25, 2010, staff memorandum to the City Council noted above, as well as the portions of the minutes from the September 15, 2010, Planning Commission deliberations that demonstrate support for the proposal, and the portions of the minutes from the November 15, 2010, City Council deliberations that demonstrate support for the proposal. The Incorporated Findings are supplemented by Findings IV.H.3 and IV.H.4, below. The Council finds that the proposal is consistent with the applicable criteria cited above, or is conditioned to that effect.

3. The City Council notes that the applicant submitted a conceptual landscape plan that generally demonstrates consistency with the applicable LDC criteria cited in the incorporated findings. The Council notes that Condition of Approval #36 was imposed to ensure that the final landscaping plans submitted to the City for review and approval demonstrate consistency with these criteria as well. The Council finds that the Condition of Approval adequately addresses site landscaping requirements and ensures consistency with the referenced LDC criteria.

4. As discussed in the Incorporated Findings and the supplemental findings provided above, with the associated Condition of Approval, the City Council finds that the proposal is consistent with the criteria applicable to the Landscaping for Buffering and Screening subcategory.

I. Transportation Facilities

1. The City Council notes that the applicant responded to the applicable criteria as part of a complete application submitted for the Conceptual and Detailed Development Plan and Conditional Development Permit. The Council notes that the applicant's responses to the applicable criteria cited above are found on Pages 212 through 213 and Pages 247 through 260 of Exhibit N of the October 25, 2010, staff memorandum to Council.

2. The City Council notes that findings in response to the applicable criteria cited above are presented on Pages 47 through 67 of Exhibit N of the October 25, 2010, staff memorandum to City Council. The Council adopts the Incorporated Findings, including (but not limited to) the findings and conclusions in the October 25, 2010, staff memorandum to the City Council noted above, as well as the portions of the minutes from the September 15, 2010, Planning Commission deliberations that demonstrate support for the proposal, and the portions of the minutes from the November 15, 2010, City Council deliberations that demonstrate support for the proposal. The Incorporated Findings are supplemented by Findings IV.I.3 - IV.I.4, below. The Council finds that the proposal is consistent with the applicable criteria cited above, or is conditioned to that effect.

3. Findings V.A.1 through V.A.6 (Vehicular Circulation), V.B.1 through V.B.6 (Pedestrian and Bicycle Circulation), and V.C.1 through V.C.3 (Transit) are incorporated here by reference as findings under the Transportation Facilities subcategory.

4. As discussed in the Incorporated Findings and the supplemental findings provided above, with the associated Conditions of Approval, the City Council finds that the proposal is consistent with the criteria applicable to the Transportation Facilities subcategory.

J. Traffic and Off-site Parking Impacts

1. The City Council notes that the applicant responded to the applicable criteria as part of a complete application submitted for the Conceptual and Detailed Development Plan and Conditional Development Permit. The Council notes that the applicant's responses to the applicable criteria cited above are found

on Pages 213 through 221 of Exhibit N of the October 25, 2010, staff memorandum to Council.

2. The City Council notes that findings in response to the applicable criteria cited above are presented on Pages 67 through 70 of Exhibit N of the October 25, 2010, staff memorandum to City Council. The Council adopts the Incorporated Findings, including (but not limited to) the findings and conclusions in the October 25, 2010, staff memorandum to the City Council noted above, as well as the portions of the minutes from the September 15, 2010, Planning Commission deliberations that demonstrate support for the proposal, and the portions of the minutes from the November 15, 2010, City Council deliberations that demonstrate support for the proposal. The Council finds that the proposal is consistent with the applicable criteria cited above, or is conditioned to that effect.

K. Utility Infrastructure

1. The City Council notes that the applicant responded to the applicable criteria as part of a complete application submitted for the Conceptual and Detailed Development Plan and Conditional Development Permit. The Council notes that the applicant's responses to the applicable criteria cited above are found on Pages 221 through 222 of Exhibit N of the October 25, 2010, staff memorandum to Council.

2. The City Council notes that findings in response to the applicable criteria cited above are presented on Pages 70 through 77 of Exhibit N of the October 25, 2010, staff memorandum to City Council. The Council adopts the Incorporated Findings, including (but not limited to) the findings and conclusions in the October 25, 2010, staff memorandum to the City Council noted above, as well as the portions of the minutes from the September 15, 2010, Planning Commission deliberations that demonstrate support for the proposal, and the portions of the minutes from the November 15, 2010, City Council deliberations that demonstrate support for the proposal. The Incorporated Findings are supplemented by Findings IV.K.3 - IV.K.4, below. The Council finds that the proposal is consistent with the applicable criteria cited above, or is conditioned to that effect.

3. Findings VI.1 through VI.10 (Public Facilities and Services) are incorporated here by reference as findings under the Utility Infrastructure subcategory.

4. As discussed in the Incorporated Findings and the supplemental findings provided above, with the associated Condition of Approval, the City Council finds that the proposal is consistent with the criteria applicable to the Utility Infrastructure subcategory.

L. Effects on Air and Water Quality

1. The City Council notes that the applicant responded to the applicable criteria as part of a complete application submitted for the Conceptual and Detailed Development Plan and Conditional Development Permit. The Council notes that the applicant's responses to the applicable criteria cited above are found on Pages 222 through 223 of Exhibit N of the October 25, 2010, staff memorandum to Council.

2. The City Council notes that findings in response to the applicable criteria cited above are presented on Page 77 of Exhibit N of the October 25, 2010, staff memorandum to City Council. The Council adopts the Incorporated Findings, including (but not limited to) the findings and conclusions in the October 25, 2010, staff memorandum to the City Council noted above, as well as the portions of the minutes from the September 15, 2010, Planning Commission deliberations that demonstrate support for the proposal, and the portions of the minutes from the November 15, 2010, City Council deliberations that demonstrate support for the proposal. The Council finds that the proposal is consistent with the applicable criteria cited above, or is conditioned to that effect.

M. Pedestrian Oriented Design Standards

1. The City Council notes that the applicant responded to the applicable criteria as part of a complete application submitted for the Conceptual and Detailed Development Plan and Conditional Development Permit. The Council notes that the applicant's responses to the applicable criteria cited above are found on pages 223 through 235 and Pages 270 through 271 of Exhibit N of the October 25, 2010, staff memorandum to Council.

2. The City Council notes that findings in response to the applicable criteria cited above are presented on Pages 78 through 83 and Pages 108 through 109 of Exhibit N of the October 25, 2010, staff memorandum to City Council. The Council adopts the Incorporated Findings, including (but not limited to) the findings and conclusions in the October 25, 2010, staff memorandum to the City Council noted above, the portions of the minutes from the September 15, 2010, Planning Commission deliberations that demonstrate support for the proposal, and the portions of the minutes from the November 15, 2010, City Council deliberations that demonstrate support for the proposal. The Incorporated Findings are supplemented by Finding IV.M.3, below. The Council finds that the proposal is consistent with the applicable criteria cited above, or is conditioned to that effect.

3. The City Council notes that the applicant proposes to construct seven buildings on the site, some of which are required to provide weather protection (canopies or awnings) along facades that serve as customer entrance points, consistent with LDC 4.10.70.05.a.1. The LDC specifies that required weather protection be at least 8-feet above the adjacent sidewalk and extend from the building face a minimum of 6 feet. Council recognizes that the applicant has not proposed to vary from these standards. However, Council also notes that the application drawings illustrated on Page 27 and Pages 43 through 49 of Exhibit F of the October 25, 2010, staff memorandum to City Council do not clearly show that these standard will be satisfied. The Council notes that Condition of Approval #11 was imposed to ensure that the ultimate design of the buildings comply with LDC Section 4.10.70.05.a.1. The Council finds that the Condition adequately addresses the weather protection pedestrian design standard and ensures that the design will satisfy criteria referenced herein and cited above.
4. As discussed in the Incorporated Findings and the supplemental findings provided above, with the associated Condition of Approval, the City Council finds that the proposal is consistent with the criteria applicable to the Pedestrian Oriented Design Standards subcategory.

N. Natural Resources and Natural Hazards

1. The City Council notes that the applicant responded to the applicable criteria cited above as part of a complete application submitted for the Conceptual and Detailed Development Plan and Conditional Development Permit. The Council notes that the applicant's responses to the applicable criteria cited above are found on Pages 235 through 247 and Page 271 of Exhibit N of the October 25, 2010, staff memorandum to Council.

2. The City Council notes that findings in response to the applicable criteria cited above are presented on Pages 84 through 103 and Pages 109 through 110 of Exhibit N of the October 25, 2010, staff memorandum to City Council. The Council adopts the Incorporated Findings, including (but not limited to) the findings and conclusions in the October 25, 2010, staff memorandum to the City Council cited above, as well as the portions of the minutes from the September 15, 2010, Planning Commission deliberations that demonstrate support for the proposal, and the portions of the minutes from the November 15, 2010, City Council deliberations that demonstrate support for the proposal. The City Council notes that the Incorporated Findings are supplemented by Findings IV.N.3 through IV.N.5, below.

3. Findings III.A through III.E, and IV.A.3 are incorporated here by reference as findings under the Natural Resources and Natural Hazards subcategory.

4. As discussed in the Incorporated Findings and the supplemental findings provided above, with the associated Conditions of Approval, the City Council finds that the proposal is consistent with the criteria applicable to the Natural Resources and Natural Hazards subcategory.

V. Circulation

A. Vehicular Circulation

1. The City Council notes that the applicant responded to the applicable criteria as part of a complete application submitted for the Conceptual and Detailed Development Plan and Conditional Development Permit. The Council notes that the applicant's responses to the applicable criteria cited above are found on Pages 212 through 213, Pages 247 through 256, and Page 269 of Exhibit N of the October 25, 2010, staff memorandum to Council.

2. The City Council notes that findings in response to the applicable criteria cited above are presented on Pages 58 through 64 of Exhibit N of the October 25, 2010, staff memorandum to City Council. The Council adopts the Incorporated Findings, including (but not limited to) the findings and conclusions in the October 25, 2010, staff memorandum to the City Council noted above, as well as the portions of the minutes from the September 15, 2010, Planning Commission deliberations that demonstrate support for the proposal, and the portions of the minutes from the November 15, 2010, City Council deliberations that demonstrate support for the proposal. The Incorporated Findings are supplemented by Findings V.A.3 - V.A.5, below. The Council finds that the proposal is consistent with the applicable criteria cited above, or is conditioned to that effect.

3. The City Council notes that SW Philomath Boulevard (Highway 20/34) is designated as an Arterial Highway in the Corvallis Transportation Master Plan, as discussed on Page 58 of Exhibit N of the October 25, 2010, staff memorandum to Council. Council notes that SW Philomath Blvd. is a public right-of-way under Oregon Department of Transportation (ODOT) jurisdiction, and that ODOT maintains design and construction standards for highways under its control. The City Council notes that the applicant proposes to improve the SW Philomath Boulevard frontage for the site consistent with design standards for an Arterial Highway, as required by LDC Section 4.0.60.e.1, and as mandated by ODOT through its review of the project's Traffic Impact Analysis. The Council notes that in order for these improvements to be made, additional public right-of-way must be dedicated by the applicant. The Council notes that Condition of Approval #22 was imposed to ensure that the required improvements are constructed or

financially secured prior to recordation of the final plat approved through SUB09-00002, that the appropriate right-of-way is dedicated for public use, and to ensure that an environmental assessment is performed for land dedicated to the City as public right-of-way, consistent with LDC Section 4.0.100.g. The Council also notes that Condition # 23 was imposed to ensure that the development complies with applicable ODOT permit requirements for highway construction and development access. The Council finds that the Conditions adequately address the provision of required street improvements and dedication of public right-of-way, and additional requirements imposed by ODOT, as required by the criteria referenced herein and cited above.

4. The City Council notes that SW 53rd Street is designated as an Arterial street in the Corvallis Transportation Master Plan, as discussed on Page 58 of Exhibit N of the October 25, 2010, staff memorandum to Council. Council notes that SW 53rd Street is a public right-of-way under Benton County jurisdiction, and that Benton County maintains design and construction standards for roadways under its control. The City Council notes that the applicant proposes to improve the SW 53rd Street frontage for the site consistent with design standards for an Arterial street, as required by LDC Section 4.0.60.e.1, and as mandated by Benton County through its review of the project's Traffic Impact Analysis. The Council notes that in order for these improvements to be made, additional public right-of-way must be dedicated by the applicant. The Council notes that Condition of Approval #20 was imposed to ensure that the required improvements are constructed or financially secured prior to recordation of the final plat approved through SUB09-00002, that the appropriate right-of-way is dedicated for public use, and to ensure that an environmental assessment is performed for land dedicated to Benton County as public right-of-way, consistent with LDC Section 4.0.100.g. The Council also notes that Condition # 21 was imposed to ensure that the development complies with applicable Benton County permit requirements for roadway construction and development access. The Council finds that the Conditions adequately address the provision of required street improvements and dedication of public right-of-way, and additional requirements imposed by Benton County, as required by the criteria referenced herein and cited above.

5. The City Council notes that the Corvallis Transportation Master Plan, Figure A-1, provides for a conceptual street network in the West Corvallis area, known as the West Corvallis Access Strategy. Council notes that LDC Section 4.0.60.o implements the conceptual street network illustrated in the Corvallis Transportation Master Plan, by requiring subject development sites to provide local street rights-of-way along the alignments illustrated in Figure A-1, and improve those rights-of-way to local street standards, as discussed

on Page 64 of Exhibit N of the October 25, 2010, staff memorandum to Council. The City Council notes that the applicant proposes to improve the proposed local street attributed to the West Corvallis Access Strategy, consistent with design standards for a local street, as required by LDC Section 4.0.60.g. The Council notes that in order for these improvements to be made, additional public right-of-way must be dedicated by the applicant, on Tax Lots 500 and 600. The Council notes that Condition of Approval #24 was imposed to ensure that the required improvements are constructed or financially secured consistent with the approved phasing plan, that the appropriate right-of-way is dedicated for public use, and to ensure that an environmental assessment is performed for land dedicated to the City as public right-of-way, consistent with LDC Section 4.0.100.g. The Council finds that the Conditions adequately address the provision of required street improvements and dedication of public right-of-way, as required by the criteria referenced herein and cited above.

6. As discussed in the Incorporated Findings and the supplemental findings provided above, with the associated Conditions of Approval, the Council finds that the proposal is consistent with the criteria applicable to the Vehicular Circulation subcategory.

B. Pedestrian and Bicycle Circulation

1. The City Council notes that the applicant responded to the applicable criteria as part of a complete application submitted for the Conceptual and Detailed Development Plan and Conditional Development Permit. The Council notes that the applicant's responses to the applicable criteria cited above are found on Pages 212 through 213 and Pages 257 through 260 of Exhibit N of the October 25, 2010, staff memorandum to Council.

2. The City Council notes that findings in response to the applicable criteria cited above are presented on Pages 64 through 67 of Exhibit N of the October 25, 2010, staff memorandum to City Council. The Council adopts the Incorporated Findings, including (but not limited to) the findings and conclusions in the October 25, 2010, staff memorandum to the City Council noted above, as well as the portions of the minutes from the September 15, 2010, Planning Commission deliberations that demonstrate support for the proposal, and the portions of the minutes from the November 15, 2010, City Council deliberations that demonstrate support for the proposal. The Incorporated Findings are supplemented by Findings V.B.3 through V.B.6, below. The Council finds that the proposal is consistent with the applicable criteria cited above, or is conditioned to that effect.

3. The Council notes that the applicant proposed to re-construct an existing public multi-use path along the development site's SW 53rd Street frontage, to account for roadway improvements to SW 53rd Street, as noted in finding V.A.4, above. Council notes that the subject public multi-use path is part of the City's Trails Master Plan, identified on Figure A-4 of the Corvallis Transportation Plan, and that LDC Section 4.0.40.c specifies improvement standards for the subject multi-use path. The Council notes that Condition of Approval #26 was imposed to ensure that the 53rd Street multi-use path is constructed to standards specified in the LDC and other adopted facilities standards. The Council finds that the Condition adequately addresses the provision of safe and convenient pedestrian and bicycle facilities, consistent with LDC Sections 4.0.30.b and 4.0.40.b.

4. The Council notes that the applicant proposed to comply with Section 4.0.60.n of the LDC (Block Perimeter Standards) by providing pedestrian amenities that will facilitate the circulation of pedestrians through the site, as illustrated on the applicant's site plan (Page 27 of Exhibit F of the October 25, 2010, staff memorandum to Council.) The Council notes that because these facilities are intended for the use of the general public, public access easements must be dedicated for all facilities proposed to function as block perimeter sidewalks, as required per LDC Section 4.10.70.05.a.4. The Council notes that Condition of Approval #39-b was imposed to ensure that the required access easements are secured through recordation of the final plat approved through SUB09-00002. The Council finds that the Condition adequately addresses the provision of the required easements consistent with the criteria referenced herein and cited above.

5. The City Council notes that Finding I.B.1 (Dunawi Creek Multi-Use Path), above, is incorporated, by reference, in this discussion for bicycle and pedestrian circulation.

6. As discussed in the Incorporated Findings and the supplemental findings provided above, with the associated Conditions of Approval, the Council finds that the proposal is consistent with the criteria applicable to the Pedestrian and Bicycle Circulation subcategory.

C. <u>Transit Facilities</u>

1. The City Council notes that the applicant responded to the applicable criteria as part of a complete application submitted for the Conceptual and Detailed Development Plan and Conditional Development Permit. The Council notes that the applicant's responses to the applicable criteria cited above are found on Pages 212 through 213 and Page 260 of Exhibit N of the October 25, 2010, staff memorandum to Council.

2. The City Council notes that findings in response to the applicable criteria cited above are presented on Page 67 of Exhibit N of the October 25, 2010, staff memorandum to City Council. The Council adopts the Incorporated Findings, including (but not limited to) the findings and conclusions in the October 25, 2010, staff memorandum to the City Council noted above, as well as the portions of the minutes from the September 15, 2010, Planning Commission deliberations that demonstrate support for the proposal, and the portions of the minutes from the November 15, 2010, City Council deliberations that demonstrate support for the proposal. The Council finds that the proposal is consistent with the applicable criteria cited above, and that no additional improvements to the Corvallis transit system are required.

3. As discussed in the Incorporated Findings and the supplemental findings provided above, the Council finds that the proposal is consistent with the criteria applicable to the Transit Facilities subcategory.

VI. Public Facilities and Services

1. The City Council notes that the applicant responded to the applicable criteria as part of a complete application submitted for the Conceptual and Detailed Development Plan and Conditional Development Permit. The Council notes that the applicant's responses to the applicable criteria cited above are found on Pages 260 through 263 and Page 270 of Exhibit N of the October 25, 2010, staff memorandum to Council.

2. The City Council notes that findings in response to the applicable criteria cited above are presented on Pages 70 through 77 of Exhibit N of the October 25, 2010, staff memorandum to City Council. The Council adopts the Incorporated Findings, including (but not limited to) the findings and conclusions in the October 25, 2010, staff memorandum to the City Council noted above, as well as the portions of the minutes from the September 15, 2010, Planning Commission deliberations that demonstrate support for the proposal, and the portions of the minutes from the November 15, 2010, City Council deliberations that demonstrate support for the proposal. The Incorporated Findings are supplemented by Findings VI.3 through VI.9, below. The Council finds that the proposal is consistent with the applicable criteria cited above, or is conditioned to that effect.

3. The City Council notes that the applicant proposed to install public waterline to provide water service to each of the future buildings, as well as a new public sanitary sewer line that will allow for private sanitary service connections to each future building, and allow for service to abutting properties that are currently not served by public sewer and water services,

as discussed on Pages 73 through 74 of Exhibit N of the October 25, 2010, staff memorandum to Council. The Council notes that the approved alignment of these public utility lines results in their passage through private property. The Council notes that LDC Section 4.0.100.a requires public water lines installed outside of dedicated public right-of-way to be centered within a dedicated public easement. The Council notes that Conditions of Approval #24 and #27 address the requirements to extend public water services, Condition # 28 addresses the requirements for extension of public sewer services, and Conditions #39-a, #39-e, #39-g and # 39-h address the minimum required widths for public easements dedicated by the applicant to contain public water lines, public sanitary sewer lines, and other public utilities. The Council finds that the Conditions of Approval adequately describes the these minimum required widths and ensures consistency with the applicable criteria cited above.

4. The City Council notes that, under the terms of LDC 4.0.70.e, all public utility installations required with development must conform to the City's adopted facilities master plans. The Council notes that the relevant facility master plan that addresses drainage and storm water is the 2002 Corvallis Storm Water Master Plan. The Council notes that the 2002 Corvallis Storm Water Master Plan was adopted by the City Council as a supporting document for the Comprehensive Plan. The Council notes that the 2002 Corvallis Storm Water Master Plan is referenced in Comprehensive Plan Article 10, Section 10.9 – Supporting Documents. The Council notes that Appendix 'F' of the Storm Water Master Plan is a technical memorandum that updated the City's stormwater development standards and provides the design standards for dealing with stormwater quantity and quality. The Council notes that facilities intended to capture, treat, or transmit stormwater to the public system must meet these design standards. The Council notes that LDC 4.0.130(b) references the Corvallis Design Criteria Manual. The Council notes that, Appendix 'F' specifically modifies the City of Corvallis Design Criteria Manual for Storm Drainage. The Council notes that within the standards, the design professional is also directed to the criteria established in the most recent version of the King County, Washington Surface Water Design Manual. The Council notes that Conditions of Approval #30 through #33 require the applicant to design stormwater detention and treatment facilities consistent with both criteria outlined in Appendix 'F' of the Storm Water Master Plan, and criteria outlined in the most recent version of the King County, Washington, Surface Water Design Manual. The Council finds that the Conditions of Approval adequately addresses the design of stormwater detention and treatment facilities and ensure consistency with the applicable criteria referenced herein and cited above.

5. The City Council notes that the subject proposal will create more than 25,000 square feet of impervious surfaces, as discussed on Page 76 of Exhibit N of the October 25, 2010, staff memorandum to Council. The Council notes that LDC Section 4.1.30.b.1 requires that stormwater detention facilities be provided in any new development that creates 25,000 square feet or more of impervious surfaces, and that the facilities are designed to maximize infiltration of detained stormwater. The Council notes that while open, above ground detention facilities are the preferred alternative for reasons described on Page 76 of Exhibit N of the October 25, 2010, staff memorandum to Council, other types of detention facilities are permitted in order to address site characteristics. The Council notes that the applicant has proposed to construct a combination of subsurface detention facilities and above-ground detention facilities, as described on Page 32 and Pages 401 through 439 of Exhibit N of the October 25, 2010, staff memorandum to Council. The Council finds that, given the characteristics of the subject site, the proposed subsurface and above-ground detention facilities are consistent with the goal of maximizing infiltration while achieving the pre-development stormwater flow rates set forth in Appendix 'F' of the Corvallis Storm Water Master Plan, as discussed at Pages 75 and 76 of the October 25, 2010, staff memorandum to Council.

6. The City Council notes that the proposed development will create more than 5,000 square feet of new pollution generating impervious surface area. The Council notes that the Corvallis Off-street Parking and Access Standards require the implementation of stormwater quality facilities when more than 5,000 square feet of new pollution generating impervious surface area is constructed on a site, as described on Page 76 of Exhibit N of the October 25, 2010, staff memorandum to Council. The Council notes that the Corvallis Off street Parking and Access Standards require that water quality facilities are designed consistent with criteria contained in the most recent version of the King County Washington Surface Water Design Manual. The Council notes that Conditions of Approval #29 and #30 were imposed to address consistency with the Corvallis Off-street Parking and Access Standards and applicable LDC criteria cited above. The Council finds that the Condition of Approval adequately addresses the provision of stormwater quality facilities and ensures consistency with the Corvallis Off-street Parking and Access Standards and applicable LDC criteria.

7. The City Council notes that the subject site has frontage on three public streets; SW Philomath Boulevard, SW 53rd Street, and a new local street constructed in accordance with the West Corvallis Access Strategy. The Council notes that LDC 4.0.60.q and 4.0.70.a requires installation of new street lights where none exist. The Council notes that Condition # 25 addresses provision of street lights, which will be reviewed through the Public

Improvement by Private Contract (PIPC) permit process. The Council finds that the installation of additional street lights along the public street frontage of the subject site is necessary to achieve consistency with the applicable criteria cited above.

8. The City Council notes that existing franchise utilities (e.g., gas, electric, and telephone lines) are located within the immediate vicinity of the subject site. The Council notes that the applicant has proposed to construct public waterlines and storm sewer facilities located within private property. The Council notes that LDC Section 4.0.100.b requires the granting of utility easements when either public utility lines or franchise utility lines will cross private property. The Council notes that Conditions of Approval #39-a and # 39-e require the applicant to dedicate such easements through the proposed Tentative Subdivision Plat. The Council finds that the Condition of Approval adequately addresses the provision of utility easements and ensures consistency with the applicable criteria referenced herein and cited above.

9. Finding IV.A.9 is incorporated here by reference as findings under the Public Facilities and Services subcategory.

10. As discussed in the Incorporated Findings and the supplemental findings provided above, with the associated Conditions of Approval, the City Council finds that the proposal is consistent with the criteria applicable to the Public Facilities and Services category.

VII. Tentative Subdivision Plat

1. The City Council notes that the applicant responded to the applicable criteria as part of a complete application submitted for the Tentative Subdivision Plat. The Council notes that the applicant's responses to the applicable criteria cited above are found on Pages 272 through 274 of Exhibit N of the October 25, 2010, staff memorandum to Council.

2. The City Council notes that findings in response to the applicable criteria cited above are presented on Pages 111 through 118 of Exhibit N of the October 25, 2010, staff memorandum to City Council. The Council adopts the Incorporated Findings, including (but not limited to) the findings and conclusions in the October 25, 2010, staff memorandum to the City Council noted above, as well as the portions of the minutes from the September 15, 2010, Planning Commission deliberations that demonstrate support for the proposal, and the portions of the minutes from the November 15, 2010, City Council deliberations that demonstrate support for the proposal. The

Incorporated Findings are supplemented by Findings VII.3 through VII.5, below. The Council finds that the proposal is consistent with the applicable criteria cited above, or is conditioned to that effect.

3. The City Council notes that the applicant requested to vary from LDC Section 4.0.60.n (Block Perimeter standards), a criterion that is referenced in LDC Section 4.4.20.02, as described on Page 11 and Pages 23 through 23 of Exhibit N of the October 25, 2010, staff memorandum to Council. As noted above in Finding IV.A.4, the inability of the proposed design to comply with block perimeter standards is due to access restrictions imposed by ODOT and the Highway 20/34 access restrictions outlined in LDC 4.0.60.o. The Council notes that the applicant proposed alternate means for satisfying the intent of LDC Section 4.0.60.n through the use of pedestrian walkways and other pedestrian amenities, as described above in Finding IV.A.4, and has noted as a compensating benefit, increased protection of Natural Features by not constructing a north-south pedestrian connection between SW Philomath Boulevard and the multi-use path on the north side of Dunawi Creek. The Council finds that the request to vary from LDC Section 4.0.60.n and, consequently, from LDC Section 4.4.20.02 is warranted for these reasons.

4. The City Council notes that the applicant proposed to create three (3) buildable lots and four (4) tracts through the approved Tentative Subdivision Plat, as shown on Page 41 of Exhibit F of the October 25, 2010, staff memorandum to Council. The Council notes that each of the proposed lots is configured to include at least 25 feet of frontage along at least one public street, as required by LDC Section 4.4.20.03.b. The Council notes that the applicant proposed to establish vehicular access to each of the buildable lots from SW Philomath Boulevard, SW 53rd Street, and the new local street. The Council notes that vehicular access to each lot will be achieved from one of four common driveways that intersect the abutting public streets. The Council notes that Condition of Approval #39-f was imposed to require the applicant to record a private reciprocal access easement in conjunction with the final subdivision plat approved through SUB09-00002 to ensure that vehicular access is maintained within and between all lots that share the common driveways. The Council finds that Condition of Approval adequately addresses the requirement of providing access to each buildable lot and is necessary to achieve consistency with the criteria referenced herein and cited above.

5. As discussed in the Incorporated Findings and the supplemental findings provided above, with the associated Condition of Approval, the City Council finds that the proposal is consistent with the criteria applicable to the Tentative Subdivision Plat category.

SUMMARY AND CONCLUSION

As the body charged with hearing appeals of a PLD, CDP, and SUB decision made by the Planning Commission, the City Council, having reviewed the record associated with Application, considered evidence and argument in the record supporting and opposing the Application and finds that the proposal, as conditioned, adequately addresses the review criteria and is found to be consistent with the Plan, applicable sections of the LDC, and other applicable approval criteria. The City Council finds that Conditions of Approval are necessary to achieve compliance with the applicable criteria, and, as modified by this decision, the feasible conditions adequately address impacts related to the development. Therefore, the City Council denies the LWVC's appeal, upholds Fox's appeal, and approves the Application, subject to the conditions as amended, and findings and conclusions set forth above.

Charles C. Tomlinson

Dated:
Charles C. Tomlinson, MAYOR

Creekside Center I & II (PLD09-00004 / CDP09-00003 / SUB09-00002)
CITY COUNCIL LUBA REMAND HEARING
EXHIBIT D (98 of 219)

AFTER RECORDING RETURN TO:
City Recorder, City of Corvallis
PO Box 1083
Corvallis OR 97339-1083

TAX DOCUMENTS TO:
No change.

INDEMNIFICATION & RELEASE AGREEMENT

This agreement is made this ___th day of ____, 20__, between _____, (Indemnitor), and the City of Corvallis, a municipal corporation, (Indemnitee).

WHEREAS, Indemnitor desires a building permit for a structure or other development within or abutting a floodplain area within the corporate limits of the City; and

WHEREAS, City desires complete protection from any and all potential liability which may arise from granting a permit for development in such area; and

WHEREAS, City is authorized to grant necessary building permits sought by Indemnitor, and

WHEREAS, City's local ordinance and condition of approval _____ requires Indemnitor, prior to permit approval, release and indemnify City from potential liability which may result from damage to life or property resulting from flooding;

THEREFORE, in consideration of City's applicable code, and Indemnitor's acquisition of the permit, Indemnitor its agents, employees, contractors and representatives covenant and agree that he/she/it shall release the City from any and all claims, demands, actions, suits, costs, losses, expenses or proceedings of any kind, whether known or unknown which may arise from or arising out of the issuance of these building permits resulting in damage to person or property directly or indirectly related to flooding created, caused or contributed to by his/her/its development activities adjacent to or within the floodplain.

Further, Indemnitor covenants and agrees to indemnify and defend the City against any and all claims, demands, actions, suits, costs, losses, expenses or proceedings of any kind, whether known or unknown which may directly or indirectly arise from or arise out of the issuance of any building permits and land use approvals alleging or resulting in damage to person or property directly or indirectly related to flooding created, caused or contributed to by Indemnitor.

The undersigned intend for this agreement to run with the land, and it shall have the effect of benefiting the City and burdening Indemnitor, his/her/its agents, associates, guests, invitees, representatives, heirs, predecessors, successors and assigns, tenants, co-tenants of any kind, and partners. This instrument shall be recorded against the property in the land records of Benton County, Oregon providing to any person or entity acquiring any interest in the land notice of the burdens and obligations the covenants and agreements set forth herein provide. The property is commonly known as:

_____, Corvallis, Oregon, and more fully described (legal description) on Exhibit A, which by this reference is incorporated herein.

The undersigned do not intend for this agreement to be or be considered as a "construction agreement" as that term is or may be construed under ORS 30.140.

SEVERABILITY. If any portion, provision or phrase of this agreement is for any reason held invalid, void, unenforceable, unconstitutional or construed against the express language and intent of this agreement, then, the undersigned agree that such holding shall not affect the validity, enforceability, constitutionality or construction of the remaining portions thereof.

IN WITNESS WHEREOF, the undersigned has executed this agreement on the date and year first above written; if a corporate Indemnitor, it has caused its name to be signed and its seal affixed by an officer or other person duly authorized to do so by order of its board of directors.

INDEMNITOR:

_____ _____

STATE OF OREGON)
County of Benton)

This instrument was acknowledged before me on _____, 20__, by _____ as _____ of _____.

_____
Notary Public for Oregon
My Commission Expires:_____

INDEMNITEE

_____
City of Corvallis, by Building Official, or designee

Corvallis Planning Division
Staff Report to the Planning Commission
PC Hearing: September 1, 2010
Report to Copier: August 20, 2010
Staff: Jason Yaich, Associate Planner

TOPIC: **Conceptual & Detailed Development Plan, Conditional Development Permit and Tentative Subdivision Plat**

CASE: **Creekside Center I & II (PLD09-00004, CDP09-00003, SUB09-00002)**

REQUEST: Review and approval of a Conceptual & Detailed Development Plan for a commercial (retail and restaurant) development on 6.64 acres. The development plans include approximately 43,000 sq. ft. of commercial floor area divided among seven buildings. The request includes approval of a Conditional Development Permit to allow a drive-thru conditional use adjoining one of the buildings. The request also includes a commercial Tentative Subdivision Plat, creating 3 Lots and 4 Tracts. The Planned Development request also includes variations to Land Development Code (LDC) standards.

APPLICANT: Oregon Architecture
Attn: Mark McKechnie
221 W 10th St
Medford, OR 97501

OWNER: Apple Creek I LLC
PO Box 4460
Medford, OR 97501

LOCATION: The site is located at the northwest corner of SW 53rd Street and Highway 20/34 (Philomath Boulevard). The site is illustrated on the Benton County Assessor's Map # 12-5-05 DD, as Tax Lots 500 and 600.

LOT SIZES: Seven commercial lots / tracts; range in size from 0.41 acre to 1.77 acres - Total site area: 6.64 acres

COMPREHENSIVE PLAN DESIGNATION: MUC (Mixed Use Commercial) and C (Open Space - Conservation)

ZONE: MUCS (Mixed-Use Community Shopping)

PUBLIC COMMENT: As of August 20, 2010, no public comment has been received.

ATTACHMENTS:

A. Existing Conditions - Aerial Photograph
B. Comprehensive Plan Map
C. Zoning Map
D. Natural Hazards Map
E. Natural Resources Map
F. City of Corvallis Master Plans
   1. Corvallis Transportation Plan - Appendix A
   2. Parks & Recreation Plan - Trails Plan Excerpt
G. Conceptual & Detailed Development Plans, Conditional Development Permit and Tentative Subdivision Plat
H. Project Narrative and Exhibits
   1. Narrative
   2. Traffic Impact Analysis
   3. Active Department of State Lands (DSL) Fill Permit
   4. Supplemental Studies (Vehicle Parking, Light Fixtures, Public Street Cross-sections, Archaeological Research)
   5. Floodplain Study
   6. Corvallis Master Plans
   7. Tree Survey / Protection Plan
   8. Construction Detail Near Limits of Construction
   9. Stormwater Design Study
I. Staff-identified Applicable Review Criteria
J. Correspondence from ODOT
K. Correspondence from Benton County Public Works
L. DSL Fill Permit, Wetland Delineation, Mitigation Credits and Correspondence
M. Corvallis Bicycle and Pedestrian Advisory Committee Minutes

SITE & VICINITY

Existing Conditions

The subject 6.64 acre property (**see Figure 1**) is located at the northwest corner of SW 53rd Street and Highway 20/34 (SW Philomath Boulevard). The site is currently undeveloped, with the exception of a single-family home on Tax Lot 600 and limited amounts of fill and gravel that have been placed on Tax Lot 500 in past years. Tax Lot 500 has been used on occasion as a temporary outdoor market. Dunawi Creek traverses the northern half of the property.

Sunset Shopping Center is located to the southeast across the intersection of 53rd Street and Philomath Boulevard (**see Attachment A**). Single-family residences line 53rd Street to the north of the subject site and the north side of Philomath Blvd., immediately west of the subject site. Properties on the south side of the highway have a mix of commercial land uses.

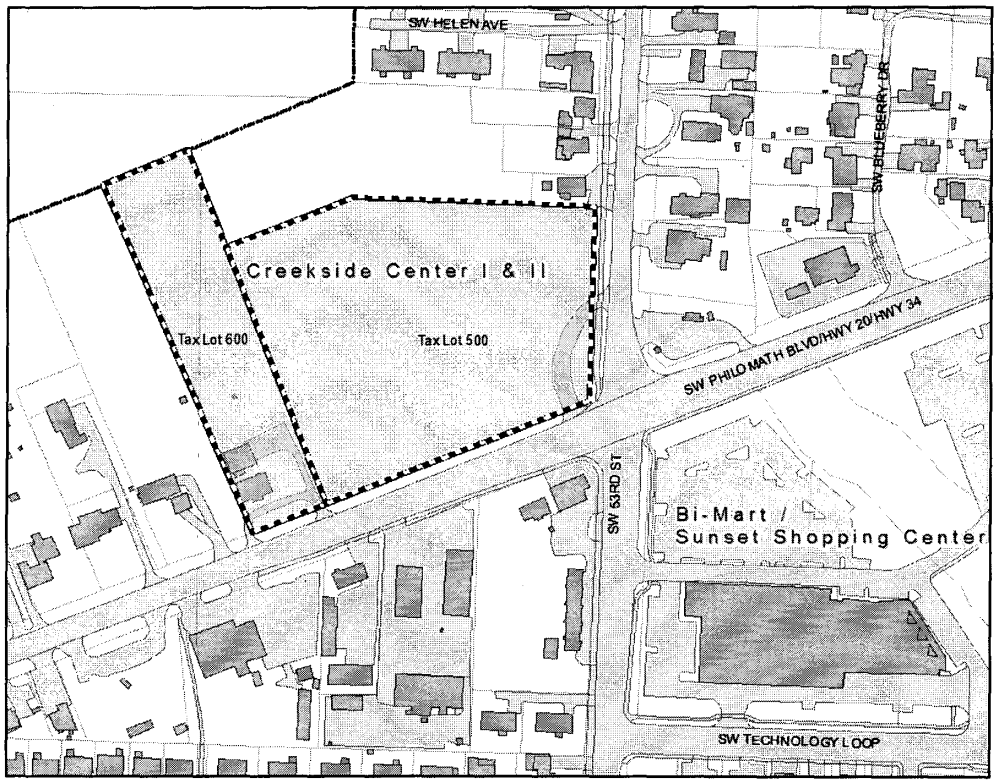


Figure 1 - Vicinity Map

Comprehensive Plan Designations

The subject site is designated as MUC (Mixed Use Commercial) and C (Open Space - Conservation) on the Comprehensive Plan Map (**see Attachment B**). Properties to the west of the site are designated Residential - Low Density (LD). Properties to the north have a

designation of Residential - Medium High Density (MHD). Properties on the east side of SW 53rd Street have a mix of LD and MUC designations.

Zones
The subject site has a MUCS (Mixed-Use Community Shopping) zone (**see Attachment C**). Property immediately to the west is zoned RS-5 (Low Density Residential). Properties to the north are zoned RS-12 (Medium High Density Residential). Properties on the east side of SW 53rd Street have a mix of RS-5 and MUCS zone designations.

Natural Hazards
The subject site is traversed by Dunawi Creek. Dunawi Creek forms a floodplain which includes a mapped 0.2-ft. Rise Floodway, and a 100-Year Floodway Fringe, which is not identified on the City's Natural Hazards Map (**see Attachment D**). The applicant has provided a supplemental floodplain study (**see Attachment H-4**), which identifies the limits of the pre- and post-development floodplain. There are no other mapped Natural Hazards on the subject property.

Natural Resources
The subject site contains mapped Riparian Corridor and Locally-Protected Wetlands, both of which are associated with Dunawi Creek (**see Attachment E**). The Riparian Corridor has a High Protection status. The Wetland is identified as a Proximate Wetland and is Locally Significant. The applicant has provided a copy of an active DSL fill permit for development related activities on Tax Lot 500 (**see Attachment H-2**). A wetland delineation has not been prepared for Tax Lot 600 as of the date of this staff report. There are no other mapped Natural Resources on the property.

PREVIOUS LAND USE APPROVALS

1980 (**A-78-7 / ZM-80-2**) - Southwest Corvallis Health Hazard Annexation. Subject property and additional 147 acres annexed into City limits by Ordinance 80-90. A zone of C-2 (Limited Commercial) was applied to the subject property at that time.

1981 **Ordinance 80-100**: C-2 zone converted to SA (Shopping Area) as part of City-wide zoning ordinance update.

2006 **LDC Phase I Implementation**: The existing SA zone changed to Mixed-Use Community Shopping (MUCS) zone as part of the Land Development Code - Phase I implementation.

PROPOSALS :

The applicant is requesting approval of three land use actions, as follows :

1. **CONCEPTUAL & DETAILED DEVELOPMENT PLAN (PART I)**
The applicant is requesting approval of a Conceptual & Detailed Development Plan (CDP/DDP). The CDP/DDP includes development of approximately 43,000 sq. ft. of commercial tenant space divided among seven buildings, associated vehicle and bicycle parking, service areas, a drive-thru facility (see Part II - Conditional Development Permit), pedestrian amenities, landscaping, stormwater bio-retention facilities, a public multi-use path, and preservation of approximately 2.52 acres (109,763 sq. ft.) of Natural Features-related open space. The DDP also includes proposed improvements to the properties' frontages along SW Philomath Boulevard and SW 53rd Street, as well as a new local public street bisecting Tax Lot 600. The Planned Development request also includes (7) variations to the following Land Development Code (LDC) standards:

- Order of allowed encroachments into Natural Resources and Natural Hazards areas (**LDC § 4.11.50.04.c**)
- Increase in maximum floor area for a retail use associated with the proposed Walgreen's drive-thru facility (**LDC § 3.19.30.f.25**)
- Reduction in required Arterial street planter strip widths for SW 53rd Street (**LDC § 4.0.30.a.2, 4.0.60.e.1, and 4.0.60.k.8**)
- Increase in maximum distance between required trees located along pedestrian walkways (**LDC § 4.2.40.c**)
- Elimination of alleys required in the MUCS zone (**LDC § 3.19.40.06.a**)
- Variation to commercial block face standards (**LDC § 4.0.60.n**)
- Modification to franchise utility easement locations abutting new local public street (**LDC § 4.0.100.b**)

The CDP/DDP includes phasing, landscaping, grading, lighting, and utilities plans, as well as architectural elevations for all seven buildings. Future uses of the buildings are proposed to be consistent with those uses permitted outright in the MUCS zone. Uses in the MUCS zone are primarily oriented toward commercial uses.

2. **CONDITIONAL DEVELOPMENT PERMIT (PART II)**
The applicant is requesting approval of a Conditional Development Permit, to allow for construction of a drive-through facility, to be attached to the Walgreen's building. The MUCS zone requires a Conditional Development Permit approval for drive-through facilities.

3. **TENTATIVE SUBDIVISION PLAT APPROVAL (PART III)**
The subject property consists of two parcels. The applicant is requesting approval to divide the parent parcels into seven Lots or Tracts. Three Lots will be developed with commercial buildings and related site improvements. Four Tracts will be set aside for a private Shopping Street, to be shared among the lot owners, and for open space preservation, drainageway, and public access / utility purposes.

STAFF REPORT FORMAT, ANALYSES, AND REQUIRED ACTION

Creekside Center I & II is a proposed Planned Development and all deviations from Land Development Code standards are subject to applicable LDC chapters, as well as Policies of the Corvallis Comprehensive Plan.

There are three land use actions to consider in this application as described in the Proposals above. **Part I** of this staff report will consider the Conceptual & Detailed Development Plan, including site development plans and requested LDC variations, **Part II** will discuss the proposed Conditional Development Permit request, which is related to the drive-through facility attached to the Walgreen's building, and **Part III** discusses the proposed tentative Subdivision plat.

Discussion will be based on the merits of the application relative to applicable Comprehensive Plan policies and LDC standards. The Planning Commission may decide to approve, modify, or deny the applicant's request regarding any or all of the land use actions proposed in the application. **Part IV** of this staff report lists staff conclusions and recommendations to the Planning Commission.

PART I
PLANNED DEVELOPMENT

A. CONCEPTUAL & DETAILED DEVELOPMENT PLAN REVIEW CRITERIA DISCUSSION

Conceptual and Detailed Development Plan Review Criteria

The Conceptual and Detailed Development Plan (CDP/DDP) request is subject to the review criteria in **LDC § 2.5.40.04** and **LDC § 2.5.50.04.** Where the proposed CDP/DDP is consistent with LDC provisions, discussion is minimized. The applicant is proposing variations to specific LDC standards. Discussion concerning the specific LDC variations is more extensive, and supplemented by information in the table presented below.

Applicable LDC Review Criteria

Section 2.5.40.04 - Conceptual Development Plan 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:

Section 2.5.50.04 - Detailed Development Plan Review Criteria
Request for approval of a Detailed Development Plan shall be reviewed to determine whether it is in compliance with the Conceptual Development Plan. The Detailed Development Plan shall be deemed to be in conformance with the Conceptual Development Plan and may be approved provided it is consistent with the review criteria in Section 2.5.40.04 above, provides a clear and objective set of development standards for residential Detailed Development Plans (considering the Detailed Development Plan proposal, required adherence to this Code, and Conditions of Approval), and does not involve any of the factors that constitute a major change in the Planned Development. See Section 2.5.60.02 - Thresholds that Separate a Minor Planned Development Modification from a Major Planned Development Modification.

Per **LDC § 2.5.20**, the purposes of a Planned Development are listed below. The Creekside Center I & II CDP/DDP does not include proposed residential uses. Therefore, the density requirements of the Comprehensive Plan do not apply to the review of this application. Where applicable to the specific review criteria in **LDC § 2.5.40.04**, additional discussion will be provided concerning how the proposal is or is not consistent with the Purposes of **LDC § 2.5.20** and Policies of the Comprehensive Plan and other City standards.

Section 2.5.20 - PURPOSES
Planned Development review procedures are established in this Chapter for the following purposes:

- **a. Promote flexibility in design and permit diversification in location of structures;**
- **b. Promote efficient use of land and energy, and facilitate a more economical arrangement of buildings, circulation systems, land uses, and utilities;**
- **c. Preserve, to the greatest extent possible, existing Significant Natural Features and landscape features and amenities, and use such features in a harmonious fashion;**
- **d. Provide for more usable and suitably located pedestrian and/or recreational facilities and other public and/or common facilities than would otherwise be provided under conventional land development procedures;**

e. **Combine and coordinate architectural styles, building forms, and building relationships within the Planned Development;**
f. **Provide the applicant with reasonable assurance of ultimate approval before expenditure of complete design monies, while providing the City with assurances that the project will retain the character envisioned at the time of approval;**
g. **Provide greater compatibility with surrounding land uses than would otherwise be provided under conventional land development procedures; and**
h. **Provide benefits within the development site that compensate for the variations from development standards such that the intent of the development standards is still met.**

The CDP/DDP application is required to demonstrate compatibility with the following applicable criteria in LDC § 2.5.40.04.a.

Requested Variations and Compensating Benefits

Applicable LDC Review Criteria - LDC 2.5.40.04.a
1. Compensating benefits for the variations being requested;

The CDP/DDP includes the following proposed variations to LDC standards. A more in depth discussion of each variation is provided following Table A:

TABLE A:
Proposed LDC Variations & Compensating Benefits

LDC Standard	Proposed Variation	Compensating Benefit
# 1: LDC § 4.11.50.04.c - MADA / Order of Encroachments Applicable Order for Creekside Center I & II: 1. Highly Protected 100-Year Floodway Fringe 2. Proximate Wetlands 3. Protected Locally Significant Wetlands 4. 100-ft. Highly Protected Riparian Corridor 5. 50-ft. Riparian Corridor / Drainageway Easement	The applicant requests a variation to the prescribed order of development encroachments, by proposing encroachments into the 100-ft. Highly Protected Riparian Corridor prior to the Locally Protected Wetland, and by allowing development to occur within the 50-ft. base Riparian Corridor (drainageway easement) prior to using all allowable encroachments into the Locally Protected Wetland and 100-ft. Highly Protected Riparian Corridor.	The applicant is proposing a development plan which concentrates development on the south side of Dunawi Creek. Following the prescribed order of encroachments would require that the area in between the 100-ft. Highly Protected Riparian Corridor / Locally Protected Wetland and 50-ft. drainageway easement north of Dunawi Creek be developed first. Development north of Dunawi Creek would degrade a forested wetland of high value, and is inconsistent with a previously approved DSL wetland fill permit.

LDC Standard	Proposed Variation	Compensating Benefit
# 2: LDC § 3.19.30.f.25 - Maximum Area of Individual Retail Sales use is limited to 15,000 sq. ft. Per 3.19.40.02, for the purposes of the MUCS Zone, floor area also includes unenclosed areas needed for automobile circulation for Car Washes; Fuel Sales, and Drive-through Facilities Uses. For these specific Uses, these unenclosed areas include those needed for operational use, queuing, and service areas, with the exception of areas needed for customer and employee parking, as defined in Chapter 3.0 - Use Classifications.	The proposed Walgreen's store is classified as a Retail Sales use. The applicant is proposing a drive-through facility as part of the Walgreen's store. As required per **LDC § 3.19.40.02**, the drive-through and associated vehicle queing lane is required to be included in the calculation of the floor area for the Retail Sales use. The total floor area proposed for the Walgreen's store, including drive-through facility is approximately 16,673 sq. ft.	In support of this variance, the applicant is proposing to construct the drive-through queing lane with permeable pavement, to promote infiltration of rain water. The proposed area of the drive-through permeable pavement is approximately 1,700 sq. ft.
# 3: LDC § 4.0.30.a.2, 4.0.60.e.1, 4.0.60.k.8 Planter Strip Requirements for Arterial Street right-of-way A 12-ft. wide planter strip is required between the curb and sidewalk on the west side of the site's SW 53rd Street frontage.	The applicant is proposing to reduce the planter strip width from 12 feet to 6 feet, as specified by Benton County. The reduced planter strip width is consistent with the adopted Benton County transportation plan and findings from a Corvallis Area Metropolitan Planning Organization (CAMPO) analysis.	The applicant proposes additional shrub and groundcover plantings to compensate for the loss of width of planter strip along the street. Street trees will still be provided, along with the 10-ft. wide multi-use path.

LDC Standard	Proposed Variation	Compensating Benefit
# 4: LDC § 4.2.40.c Tree spacing for connecting walkways through parking lots 1 tree per 40 linear feet	The applicant is proposing to vary this standard by increasing the width of the spacing between Buildings C and D to approximately 50 feet.	The applicant is proposing to compensate for the variation by increasing the size of trees to large canopy species, which when mature, would have similar shading characteristics as compared to the medium canopy trees that would otherwise be required.
LDC § 4.2.30.a.1.a - Street tree requirements along Arterial Highway Street trees are required within the planter strip on the site's SW Philomath Blvd. Frontage (Hwy. 20/34) at a spacing of 30-ft. on-center, or 50-ft. on-center, depending on species selected.	NOTE: The applicant originally proposed not to provide street trees within the ODOT right-of-way, as directed by ODOT. However, just prior to publication of this staff report, ODOT has indicated that the street trees required by LDC provisions would be permissible in the ODOT right-of-way, along the site's Hwy 20/34 frontage. The applicant has indicated they are willing to provide the required street trees, as conditioned in this staff report.	**No variation requested - see Condition of Approval # 36.**
# 5: LDC § 3.19.40.06.a - The MUCS zone requires alleys to be constructed with development.	The applicant proposes to not provide the required alley.	The applicant notes that the functional aspects of an alley have been provided through the private internal driveway. Compensating benefits of not providing the alley include natural features protections, by providing a more compact site design.

LDC Standard	Proposed Variation	Compensating Benefit
# 6: LDC § 4.0.60.n Commercial Block Perimeter Standards Block Perimeter: 1,500 ft. Block Face: 400 ft. LDC § 4.0.60.n.2.a allows Block Perimeter connections to be satisfied by pedestrian connections alone when necessary to minimize impacts to wetlands and other Significant Natural Features.	The proposed CDP/DDP includes Block Perimeter connections for pedestrians that exceed the maximum block face of 400 ft.	A compensating benefit is protection of Natural Features. Pedestrian and vehicle connections that meet block perimeter standards are satisfied by the combination of public multi-use paths, and private vehicle driveways and pedestrian connections.
# 7: LDC § 4.0.100.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.	The applicant is proposing to not provide the required utility easement in certain locations along the newly created local street in the western portion of the development site.	A compensating benefit is minimizing disruptions to adjacent Natural Features.

Since the applicant is proposing variations to specific LDC standards, Comprehensive Plan Policies may assist in the consideration of proposed variations, per **LDC § 2.5.40.04**. Comprehensive Plan Policies that apply generally to all requested variations are noted below. Additional Comprehensive Plan Policies that are specifically related to individual requested variations are noted in the sections below that discuss each requested variation.

Applicable Comprehensive Plan Policies - General Compatibility for all requested variations

3.2.1 The desired land use pattern within the Corvallis Urban Growth Boundary will emphasize:

A. Preservation of significant open space and natural features;
B. Efficient use of land;
C. Efficient use of energy and other resources;
D. Compact urban form;
E. Efficient provision of transportation and other public services; and
F. Neighborhoods with a mix of uses, diversity of housing types, pedestrian scale, a defined center, and shared public areas.

3.2.7 All special developments, lot development options, intensifications, changes or modifications of nonconforming uses, Comprehensive Plan changes, and district changes shall be reviewed to assure compatibility with less intensive uses and

potential uses on surrounding lands. Impacts of the following factors shall be considered:

A. Basic site design (i.e., the organization of uses on a site and its relationship to neighboring properties);
B. Visual elements (i.e., scale, structural design and form, materials, etc.);
C. Noise attenuation;
D. Odors and emissions;
E. Lighting;
F. Signage;
G. Landscaping for buffering and screening;
H. Transportation facilities; and
I. Traffic and off-site parking impacts.

The subject site is zoned MUCS and the proposal does not constitute a residential Detailed Development Plan. The review criteria in Section 2.5.40.04.a.1, and a discussion of the proposal's consistency with the criteria and compensating benefits, are as follows:

Variation #1: LDC § 4.11.50.04.c - MADA / Order of Encroachments-

LDC Chapter 4.11 contains provisions that ensure a minimum level of development on sites that have protected Natural Features, based on the underlying zone and on a priority of encroachments. This is known as Minimum Assured Development Area (MADA). Each zone allows a certain percentage of the site area to be developed, regardless of the percentage of the site that is encumbered by protected Natural Features. In some cases, MADA will not apply to a development site because the unconstrained areas exceed the area of development ensured through MADA.

The Creekside Center site is subject to the MADA provisions, because the area that is considered unconstrained does not exceed the minimum assured development area prescribed for the MUCS zone. Refer to **Attachment G (Pages 12 through 15)** and the discussion below under the Natural Features protections criteria, for a detailed MADA calculation analysis. Out of the 6.64 acre site, approximately 4.15 acres (or 62% of the site area) are considered developable based on MADA allowances and credits.

Chapter 4.11 outlines where and how encroachments may occur within the identified Natural Features. Certain Natural Hazards and Natural Resources have been given a higher protection status than others, and **LDC § 4.11.50.04** outlines this prioritization of encroachment. These provisions also require that all unconstrained lands be developed prior to encroachment into constrained areas.

The following Natural Features have been identified on the subject Creekside Center site, and are listed in the order in which encroachments may occur, according to **LDC § 4.11.50.04**:

Applicable LDC Standards
4.11.50.04 – Priority of Encroachments into Protected Natural Resource and Natural Hazard Areas

c. Order of Encroachments - Encroachments shall occur sequentially into the areas of protected Natural Resources and Protected Natural Hazards based upon the

priorities presented below, with encroachments into areas identified in Section 4.11.50.04.c.1 first, and Section 4.11.50.04.c.2.l last. Encroachments into areas described in each subsection shall also occur in the order presented, starting from the top of each list.

1. Access Encroachments - Encroachments are allowed to provide access to areas that do not contain Natural Resources and Natural Hazards as defined in Chapter 4.5 - Natural Hazard and Hillside Development Provisions, Chapter 4.12 - Significant Vegetation Protection Provisions and Chapter 4.13 - Riparian Corridor and Wetland Provisions, where such areas cannot be accessed and/or served with public utilities without encroaching into or crossing over the protected Natural Resources and Natural Hazards. Such access encroachments shall meet the following standards:

a) The access encroachment area shall be less than 25 percent of the non-constrained area being accessed via the access encroachment, unless "b," below applies;
b) The access encroachment area for an access driveway/roadway may be increased to 35 percent of the non constrained area being accessed, if necessary to meet the maximum slope standards listed in Chapter 4.5 - Natural Hazard and Hillside Development Provisions;
c) Access roadways/driveways shall provide shared access to the lots/parcels being developed; and
d) The access roadway serving four or more residential lots/parcels, six or more dwelling units, and/or any nonresidential sites shall use the minimum allowed street width with sidewalks on both sides, no landscape strips, and no onstreet parking.

2. Development Encroachments -

c) Highly Protected 100-yr. Floodway Fringe areas;
d) Proximate Wetlands - Jurisdictional Wetlands associated with Riparian Corridors, including Wetlands not determined to be Locally Significant;
e) Protected Locally Significant Wetlands;

h) Riparian Corridors of local Streams with a corridor width of 100 ft. from Top-of-bank on each side of the stream, as shown on the Riparian Corridors and Wetlands Map;

LDC 4.13.70.02.d.4

4. If, through the provisions of Chapter 4.11 - Minimum Assured Development Area (MADA), it is determined that encroachment into a Riparian Corridor area is necessary to allow for utilization of the Minimum Assured Development Area, any associated easement requirement shall be relaxed to the extent necessary to allow for the minimum necessary encroachment into the resource area.

The applicant is proposing to vary from the order of encroachments for specific elements of the CDP/DDP. In particular, Buildings B and C, a portion of Building A, and a portion of the parking lot and pedestrian walkways are located within the 100-ft. Highly Protected Riparian Corridor setback (**LDC § 4.11.50.04.c.2.h**), located on the south side of Dunawi Creek. The encroachments occur prior to full utilization of the encroachment allowed into the 100-Year

Floodplain (**LDC § 4.11.50.04.c.2.c**), Proximate Wetlands **(LDC § 4.11.50.04.c.2.d)** and Locally Protected Wetlands **LDC § 4.11.50.04.c.2.e),** on the north side of Dunawi Creek.

Additionally, the applicant is proposing to encroach into the 50-ft. drainageway easement area on the south side of Dunawi Creek. The 50-ft. drainageway easement, which is required to be dedicated by the applicant as part of the land division (**see Condition # 39-d**) requested and discussed in Part III of this staff report, is required to be protected per **LDC § 4.13.70.02.d.** The order of encroachments prescribed in **LDC § 4.11.50.04.c** do not address specifically whether or not the 50-ft. drainageway is a separate area for encroachment, or if it is contained within the encroachments permitted within the entire 100-ft. Highly Protected Riparian Corridor. However, **LDC § 4.13.70.02.d.4** indicates that the 50-ft. drainageway easement is an area that is of concern regarding encroachments, but also that encroachments are permissible under the MADA provisions of Chapter 4.11.

If the applicant were to adhere to the prescribed order of encroachments, and fully utilize MADA, development is required to occur on the north side of Dunawi Creek, in the area north of the 100-ft. Highly Protected Riparian Corridor setback, within the Locally Protected Wetlands and 100-Year Floodplain. The applicant is proposing this variation in order to concentrate the impacts of development on the south side of Dunawi Creek, and to preserve a greater area of the Highly Protected Riparian Corridor, Locally Significant Wetland, and 100-Year Floodplain on the north side of Dunawi Creek. Development north of Dunawi Creek consists of the access driveway on SW 53rd Street, a sidewalk, and public multi-use path.

After full utilization of the 2.67 acres that are considered unconstrained, MADA provides for an additional 1.5 acres of site development. The applicant is proposing to concentrate most of this additional 1.5 acres on the south side of Dunawi Creek, as opposed to developing 1.5 acres north of the 100-ft. Highly Protected Riparian Corridor setback line that lies north of Dunawi Creek.

Applicable Comprehensive Plan Policies

3.2.1 The desired land use pattern within the Corvallis Urban Growth Boundary will emphasize:

- **A. Preservation of significant open space and natural features;**
- **B. Efficient use of land;**
- **C. Efficient use of energy and other resources;**
- **D. Compact urban form;**
- **E. Efficient provision of transportation and other public services;and**
- **F. Neighborhoods with a mix of uses, diversity of housing types, pedestrian scale, a defined center, and shared public areas**

4.2.2 Natural features and areas determined to be significant shall be preserved, or have their losses mitigated, and/or reclaimed. The City may use conditions placed upon development of such lands, private nonprofit efforts, and City, State, and Federal government programs to achieve this objective.

A compensating benefit of applying the requested variation is that development of 1.5 acres north of Dunawi Creek would amount to greater degradation of a highly valued forested wetland

and riparian corridor. By concentrating development on the south side of the creek, these impacts are minimized. Non-development of 1.5 acres on the north side of Dunawi Creek is consistent with the active wetland fill permit issued by the Department of State Lands (DSL), with the exception that the proposed public multi-use path is not identified on the active DSL fill permit. Consistency with the DSL fill permit aligns with Comprehensive Plan policy 4.2.2, because wetland mitigation credits have already been purchased by the developer, thus mitigating the loss of a portion of the wetland. The remaining wetland and riparian corridor will be preserved on-site.

In considering variations to the MADA provisions, it is important to balance the sometimes competing objectives of the Land Development Code and Comprehensive Plan. The MUCS zone requires a minimum level of commercial development (floor area ratio), and the subject site contains Natural Resources and Natural Hazards that are required to be protected. The MADA provisions in LDC Chapter 4.11 provide a means to balance Natural Features protection requirements and objectives of the LDC that encourage a certain minimum level of urbanized development. In the case of the Creekside Center, the minimum floor area ratio (see discussion below under Basic Site Design and MUCS standards) requirement is exceeded by approximately 1,500 square feet. Staff find that the requested variation effectively balances Natural Features protections and provision of commercial land uses consistent with the MUCS zone, while enhancing Natural Resource protection on the north side of Dunawi Creek, where the LDC would otherwise allow for greater impacts to this area. This is consistent with the purposes of a Planned Development, identified in LDC § 2.5.20, in that allowing the variation permits flexibility in design and more efficient use of land.

An additional benefit of concentrating development is that the combined riparian corridor, proximate wetland and 100-Year Floodplain are better preserved as a holistic functioning system, because the development is not encroaching into the natural area from the north. This promotes efficient use of land and resources, and leads to a more compact urban form. These concepts are supported by Comprehensive Plan policy 3.2.1. Based on the cited compensating benefits, the requested variation is supported by the criterion in **LDC § 2.5.40.04.a.1**.

Variation #2: LDC § 3.19.30.f.25 - Maximum Area of Retail Sales use = 15,000 sq. ft.

Applicable LDC Standards
Section 3.19.30 - PERMITTED USES
Land use in the MUCS Zone shall conform to the list of Permitted Use Types in Table 3.19-1 - Permitted Uses. Ministerial Development involving Use Types permitted outright are identified with a P. General Development involving Use Types subject to Chapter 2.13 - Plan Compatibility Review are identified with a PC. Special Development involving Use Types subject to Chapter 2.3 - Conditional Development Review are identified with a CD. Uses identified with an N are not permitted.

Table 3.19-1 Permitted Use Types P = Use Types Permitted Outright PC = Use Types Subject to Chapter 2.13 - Plan Compatibility Review CD = Use Types Subject to Review of Chapter 2.3 - Conditional Development PD = Use Types Subject to Review of Chapter 2.5 - Planned Development N = Not Permitted			
Use Types	*Permit Procedure*		
	No Use Size Limitation	Up to 7,500 sq. ft.	> 7,500 sq. ft.
f. Commercial Use Types - contained within enclosed building4			
25. Retail Sales -15,000 sq. ft. maximum Use size		P	PC (15,000 sq. ft. max. Use size)

4 All Commercial Use Types shall comply with the provisions of Section 3.19.40.02 - Thresholds for Determining the Applicable Review Procedure.

Section 3.19.40 - DEVELOPMENT STANDARDS
3.19.40.01 - Use and Building Size

a. The maximum size of a Use is established in Table 3.19-1 - Permitted Use Types.

3.19.40.02 - Thresholds for Determining the Applicable Review Procedure - Commercial Uses
The permit procedures for Commercial Uses in the MUCS Zone shall be as identified in Table 3.19-1 - Permitted Use Types. The size of each Use is determined based on the total gross floor area of the Use. For the purposes of the MUCS Zone, floor area also includes unenclosed areas needed for automobile circulation for Car Washes, Fuel Sales, and Drive-through Facilities Uses. For these specific Uses, these unenclosed areas include those needed for operational use, queuing, and service areas, with the exception of areas needed for customer and employee parking, as defined in Chapter 3.0 - Use Classifications.

Section 2.5.10 - BACKGROUND
b. Restrictions on Variations -
2. Uses -
c) The Conceptual and Detailed Development Plan process may also be used to modify the Use size limitations contained in Chapter 3.19 - Mixed Use Community Shopping (MUCS) Zone.

The proposed Walgreen's building includes a drive-through facility. Per **LDC § 3.19.40.02**, the MUCS zone specifies that automobile circulation areas associated with drive-through facilities are to be included in the floor area limited by Table 3.19-1 and **LDC § 3.19.40.01.a**. The gross floor area of the building is 14,742 square feet and the drive-through adds approximately 1,854 square feet, for a total floor area of approximately 16,596 square feet. This exceeds the 15,000 square foot maximum use size prescribed in Table 3.19-1 by approximately 1,596 square feet.

The variation in use size can be directly attributed to the drive-through facility and the requirement that this area be included in the floor area calculation.

As specified in the Background statements for a CDP / DDP (**LDC § 2.5.10.b.2.c**), the Planned Development process may be used to modify the 15,000 sq. ft. use size limitation for an individual retail sales use. The applicant has provided compensating benefits in the form of permeable pavement, which covers the entire area associated with the drive-through facility. Where applicable, Comprehensive Plan policies may be weighed in order to provide additional support for requested variations, and in order to evaluate proposed compensating benefits.

Applicable Comprehensive Plan Policies

4.10.6 In order to reduce peak runoff from impervious areas and maintain pre-development flow regimes, the City shall work to adopt standards such as the following:
C. Use pervious materials and alternative designs where applicable, such as infiltration systems.
H. Pursue the use of retention and infiltration facilities where the soils are suitable to control runoff volume, peak flow and promote dry season base flows in streams.
I. Develop sub-surface storage as well as surface detention facilities.

4.12.9 The City shall encourage practices that enhance groundwater recharge to maintain or increase stream flow during dry periods. (QN-10)

4.12.10 The City shall encourage parking lots to be constructed of stable pervious surfaces that do not degrade groundwater quality. (QN-18)

14.4.2 Design elements shall provide transitions between various land uses and intensities where necessary to improve compatibility.

Limitations on the square footage of individual uses or tenants as outlined in LDC Table 3.19-1 have impacts on visual elements (affecting building architecture). In this case, the proposal to exceed the 15,000 square foot limitation for an individual use involves the drive-through facility component of the Walgreen's retail sales use, which is not by itself, a major component of the building architecture. The drive-through lane which has no vertical relief above grade accounts for 11% of the total floor area. The drive-through facility includes a drive-up window and awning, which provides some visual relief to the building's north facade, which is one form of compensating benefit. These architectural elements account for less than 1% of the total floor area.

The proposal to construct the drive-through lane with pervious materials accomplishes the goal set forth in Comprehensive Plan policy 4.10.6, of encouraging pervious materials and infiltration of rainwater. The amount of pervious pavement proposed is approximately 1,700 square feet, which is approximately the same area of retail use attributed to the variation request. Based on the Comprehensive Plan policies noted above and the amount of the square footage increase, compensating benefits have been provided which justify the variation being requested.

Variation #3: LDC § 4.0.30.a.2, 4.0.60.e.1, 4.0.60.k.8 - Planter Strip Width / 53rd Street

Applicable LDC Standards

Section 4.0.30 - PEDESTRIAN REQUIREMENTS
a. Sidewalks shall be required along both sides of all streets, as follows:

> **2. Sidewalks on Arterial, Collector, and Neighborhood Collector Streets - Sidewalks along Arterial, Collector, and Neighborhood Collector Streets shall be separated from curbs by a planted area. The planted area shall be a minimum of 12 ft. wide and landscaped with trees and plant materials approved by the City. The sidewalks shall be a minimum of five ft. wide. An exception to these provisions is 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 4.5 - Natural Hazard and Hillside Development Provisions.**

As specified in **LDC § 4.0.30.a.2**, sidewalks along Arterial Streets are required to be separated from the curb by a minimum 12-ft. wide landscape planter. SW 53rd Street is classified as an Arterial Street, and ownership and maintenance of the right-of-way belongs to Benton County. The applicant is proposing to reduce the planter strip width from 12 feet to 6 feet, to fulfill the requirements of Benton County and the approved cross-section for this portion of SW 53rd Street (**see Attachment H - page 163 and Attachment K**). Refer to the discussion below under Circulation, for greater detail surrounding Benton County's requirements for SW 53rd Street.

Compensating benefits proposed by the applicant include provision of enhanced landscaping within the 6-ft. parkway (**see Condition # 36-j**), as well as a wider than normal sidewalk, attributed to the multi-use path re-construction.

The purposes of planter strips include providing an added level of safety for pedestrians walking adjacent to busy urban streets, by increasing the separation between pedestrians and vehicles, and to allow for aesthetic enhancement to the pedestrian environment adjacent to the roadway by providing a space for tree plantings. Those elements will remain with approval of the requested variation. Given the requirements of Benton County and the noted compensating benefits, the criterion in **LDC § 2.5.40.04.a.1** has been satisfied for this requested variation.

Variation #4: LDC § 4.2.40.c - Increase Spacing Between Trees Along Walkways

Applicable LDC Standards
Section 4.2.40 - BUFFER PLANTINGS
Parking, Loading, and Vehicle Maneuvering Areas -

> **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.**

The applicant is proposing to vary the standard in **LDC § 4.2.40.c**, by increasing the distance

between two trees, which are located along a connecting walkway between Buildings C and D. The LDC standard requires a maximum spacing of 40 feet. The distance between the proposed trees is 50 feet. The applicant has provided a compensating benefit by increasing the size of the tree planter and providing large canopy trees in these planters, as opposed to small or medium canopy trees. The increase in canopy size will offset the increased distance between trees by meeting the intent of shading along the pedestrian path. An additional benefit is that the two large canopy trees form a visual entryway into the east half of the Creekside Center site and provide additional buffering of the hardscape and parking areas. As proposed, the compensating benefits criterion has been satisfied for the requested variation.

Withdrawn Variation: LDC § 4.2.30.a.1.a - Street tree requirements along Arterial Highway

> **Applicable LDC Standards**
> **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.**
>
> > **1. Street Trees -**
> > **a) Along streets, trees shall be planted in designated landscape parkway areas or within areas specified in a City-adopted street tree plan. Where there is no designated landscape parkway area, street trees shall be planted in yard areas adjacent to the street, except as allowed elsewhere by "d," below;**
>
> **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.**

As noted in Table A above, this variation request has been withdrawn. The applicant intends to provide street trees along the site's SW Philomath Boulevard frontage. SW Philomath Boulevard is classified as an Arterial Highway. Street trees are required to be planted within the parkway along the SW Philomath Boulevard frontage per **LDC § 4.2.30.a.1.a**. In response to comments from ODOT (**see Attachment J**), street trees were originally not provided as required. Just prior to publication of this staff report, ODOT has indicated that street trees are permissible within the highway right-of-way.

The applicant has been made aware of ODOT's position on the required street trees, and has agreed to a condition of approval which provides guidance on complying with the LDC

requirements (**see Condition # 36-i**). As proposed and conditioned, the criterion in **LDC § 2.5.40.04.a.1** has been satisfied.

Variation # 5: LDC § 3.19.40.06.a - Alleys Required per MUCS zone

The MUCS zone requires alleys to be constructed with development as follows:

> **Applicable LDC standards**
> **3.19.40.06 - Alleys and Access Consolidation**
>
> **a. Alleys shall be required for all newly created blocks in the MUCS Zone and provided in accordance with the standards in Chapter 4.0 - Improvements Required with Development. This standard is intended to apply to undeveloped sites that can accommodate new blocks developed in accordance with block standards in Chapter 4.0 - Improvements Required with Development. Although adherence to this standard is encouraged, it is not necessarily intended to apply to redevelopment of or intensification of Uses on developed sites.**
>
> **b. With development, access consolidation, particularly along Arterial Streets, shall be required to the maximum extent practicable. Access consolidation shall be accomplished as approved by the City Engineer, and/or as required by applicable access control plans approved by the City Council. Connectivity between adjacent parking and vehicle circulation areas, internal to development sites, shall be implemented where practicable.**

The applicant is proposing to not provide an alley within the Creekside Center. The application narrative notes that the functional aspects of an alley have been provided within the development in the form of an internal access driveway, which separates Buildings B and C from Walgreen's and Building D. Alleys provided consistent with **LDC § 3.19.40.06** require the following construction standards, as outlined in **LDC § 4.0.60(l)** and **(j)**:

> **Applicable LDC Standards for Commercial Alleys:**
> **Section 4.0.60 - PUBLIC AND PRIVATE STREET REQUIREMENTS**
>
> **l. To provide off-street loading and/or access to parking areas, alleys shall be provided in Commercial and Industrial zones to serve abutting properties unless other permanent provisions are approved by the Planning Commission or Director.**
>
> **j. Alley standards shall be as follows -**
>
> **1. Standards for Alleys Serving both Residential and Nonresidential Use Types**
>
> **a) Alleys serving Residential Use Types shall be privately owned, with the exception of existing publicly owned alleys. Alleys serving nonresidential Use Types may be private, but are strongly encouraged to be public;**
>
> **b) Alleys shall be concrete and designed consistent with City Engineering Standards;**
>
> **c) Alleys shall be clearly marked to prohibit parking, unless designed to accommodate it;**
>
> **d) An alley serving six or more dwelling units shall be contained within a separate, privately owned tract of land, and required setbacks shall be measured from the tract property lines of the alley;**

e) **Alleys shall be unobstructed at least to their minimum required width. Service areas provided adjacent to alleys shall not encroach into the alleys;**

f) **Site layouts of alleys may include, but are not limited to, straight alleys, T-shaped alleys, L-shaped alleys, etc.;**

g) **Although emergency access to structures is provided via streets the majority of the time, in cases where an alley provides required emergency access to a structure(s), the alley shall be a minimum of 20 ft. wide and have adequate turning radii on curves, Ts, and Ls, where needed, to accommodate emergency vehicles;**

h) **Developments that intend to have garbage pick-up services and/or loading facilities from alleys shall have adequate turning radii on curves, Ts, and Ls, where needed, to accommodate service vehicles and large trucks;**

l) **Public access easements shall be provided for all private alleys;**

j) **Private alleys shall be maintained by adjacent property owners, a property owners' association, or through a privately administered arrangement instituted by the developer. Maintenance responsibilities for private alleys shall be identified in deed restrictions filed with the Final Plat or prior to the issuance of final occupancy permits in cases where there is no plat to be filed; and**

k) **Utilities within alleys shall be placed underground.**

3. Additional Standards for Alleys Serving Nonresidential Use Types -Unless Specified Differently By the Underlying Zone -

a) **One-way alleys shall have a minimum width of 12 ft., and two-way alleys a minimum width of 20 ft. One-way alleys shall be clearly designed as one-way alleys and shall be signed accordingly;**

b) **Parking may be provided on one side of an alley, but not on both sides. Where parking is provided on one side of a one-way alley, the alley shall be a minimum width of 14 ft., exclusive of parking;**

c) **Where parking is provided, it shall not interfere with service areas, utilities, or pedestrian facilities. Such parking may be 45-degree angled parking, parallel parking, or 90-degree parking, provided the parking stalls and related back-up areas are designed consistent with the City's Off-street Parking and Access Standards, established by and available through the City Engineer and amended over time. Rather than widen alleys to allow for adequate back-up areas for 90- degree parking stalls, applicants are encouraged to provide longer parking stalls; and**

d) **Where alleys provide access to parking lots or parking structures with 15 or more spaces, the alleys shall be a minimum of 20 ft. wide.**

With the exception of the limitation on vehicle parking within the alley per **LDC § 4.0.60.j.3.b,** the requirement that the alley be constructed of concrete per **LDC § 4.0.60.j.1.b,** and the requirement that a public access easement be provided over the alley per **LDC 4.0.60.j.1.i,** the proposed private driveway is otherwise consistent with the alley construction standards outlined above.

The applicant cites, as compensating benefits, that the functional aspects of an alley have otherwise been provided. Additional compensating benefits include the ability to provide off-street parking on both sides of the alley, where it is normally not required, and therefore making

efficient use of space on a site that is heavily constrained by Natural Features. Provision of the private Shopping Street includes many of the functional components that an alley would provide, and includes additional pedestrian benefits. This is consistent with Comprehensive Plan Policies 3.2.1.b (efficient use of land) and 3.2.1.d (compact urban form). The proposed variation has provided benefits to the development, such that the original intent of the alley requirement of **LDC § 3.19.40.06.a** is satisfied. The criterion for compensating benefits has been satisfied.

Variation # 6: LDC § 4.0.60.n - Commercial Block Perimeter Standards

Applicable LDC standards

Section 4.0.60 - PUBLIC AND PRIVATE STREET REQUIREMENTS

n. Block Perimeter Standards - The following Block Perimeter requirements apply to all development projects. Exceptions to these requirements may be approved for development that is smaller than one acre and situated in areas where the street patterns are established and do not require connections to the development.

2. Commercial, Industrial and Civic Standards -

a) Complete Blocks - Commercial developments shall create a series of complete blocks bound by a connecting network of public or private streets with sidewalks. When necessary to minimize impacts to a designated wetland, to slopes greater than 15 percent, to parks dedicated to the public, and/or to Significant Natural Features, blocks may be bound by walkways without streets.

b) Maximum Block Perimeter - The maximum Block Perimeter shall be as follows:

Other Commercial Zones and Limited Industrial-Office Zone	**1,500 ft.**	**Block faces greater than 400 ft. shall have a pedestrian through-connection**

c) Variations Allowed Outright - Variations of up to 30 percent to these block distances may be allowed outright to minimize impacts to a designated wetland, to slopes greater than 15 percent, to parks dedicated to the public, to Significant Natural Features, to existing street patterns, and/or to existing development.

The applicant has provided an exhibit (**see Attachment G - page 2**) which illustrates the Block Perimeter requirements noted in **LDC § 4.0.60.n**, as they relate to the subject development site. The illustration shows the required 1,500-ft. block perimeter. Strict compliance with **LDC § 4.0.60.n** would require either public and/or private streets with associated sidewalks to be constructed along the alignments shown in the applicant's exhibit. The applicant is proposing to utilize the exemption noted in **LDC § 4.0.60.n.2.a,** by not providing a public or private street along the northern leg of the Block Perimeter. The northern leg would be completed by a pedestrian and bike-only connection in the form of a required public multi-use path. This exemption applies due to the need to minimize impacts to the Natural Features located in this portion of the development site.

The requested variation is specific to not providing a pedestrian through-connection as prescribed under **LDC § 4.0.60.n.2.b,** since the east-west dimensions of the proposed Block Perimeter exceed 400 feet. The applicant is proposing a dimension of approximately 442 feet, defined by SW 53rd Street at the east end and the new Shopping Street at the west end. Additionally, due to the shape of the subject property, and proposal to minimize impacts to the Natural Features associated with Dunawi Creek, the Block Perimeter distance completed by SW 53rd Street, SW Philomath Boulevard, the new Shopping Street, and the public multi-use path exceeds the 1,500-ft. maximum distance. The actual distance traveled by a pedestrian or bicyclist completing a loop around the proposed Block Perimeter amounts to approximately 1,700 feet. The 1,700-ft. distance falls within the 30 percent variation to the Block Perimeter distance that is allowed outright per **LDC § 4.0.60.n.2.c.** Therefore, the requested variation is specific to the lack of a pedestrian through-connection where the block face distances exceed 400, as noted above.

Compensating benefits have been provided in the form of added protection for the Natural Features, by not enforcing the strict application of a pedestrian mid-block connection, which could potentially introduce a new Dunawi Creek crossing. An additional benefit to moving the Shopping Street entrance an additional 42 feet to the west is improved vehicle circulation at the intersection of SW 53rd Street and SW Philomath Boulevard. By increasing the distance between the Shopping Street and SW 53rd Street, other LDC standards related to intersection spacing and Hwy 20/34 access are satisfied. Refer to the discussion below under Circulation for a more in-depth analysis of Highway 20/34 access standards. As noted in the compensating benefits discussion, the proposed variation to the Block Perimeter distance is supported and is otherwise consistent with **LDC § 4.0.60.n** and the review criterion in **LDC § 2.5.40.04.a.1.**

Variation # 7: Elimination of Franchise Utility Easement on Portions of Local Street

The applicant is proposing to not provide a 7-ft. wide franchise utility easement along the southern edge of the new local street right-of-way, located north of Building F. **LDC § 4.0.100.b** requires dedication of the franchise utility easement as part of the Tentative Subdivision Plat review process. The applicant has cited as a compensating benefit, minimizing disruptions to the Natural Features. While consistency with the Natural Features protections outlined in LDC Chapter 4.5, 4.11, 4.12, and 4.13 is required regardless of how utility easements and associated utility installations are provided, it should be noted that the LDC provides an outright exemption for certain public facilities such as street tree park strips, in order to minimize disruption to Natural Features. If the intent of the franchise utility provisions is met by ensuring that the applicable services have been provided to and through a development site, then the requested variation can be supported.

The applicant will need to demonstrate that franchise utility services such as electrical power, cable television, and telephone can be provided to and through the site despite the proposed variation to the utility easement standard (**see Conditions # 35 and # 39-e** and discussion below under Utilities). As proposed and conditioned, staff find that the compensating benefits criterion has been met for this requested variation.

Conclusion on Compensating Benefits for Requested Variations Criterion

Except for the variations noted in the review criteria under **LDC § 2.5.40.04.a.1**, the proposal is otherwise consistent with the MUCS zone development standards, and all applicable LDC

requirements in the supplemental LDC Chapters cross-referenced within the MUCS zone, as discussed in the subsequent Site Design portion of this staff report. The applicant has provided compensating benefits for the requested variation to provision of an alley and to the MADA - order of encroachments that results in enhanced Natural Features protections, as compared to what is permissible outright, by relocating development that could occur north of Dunawi Creek and concentrating the same acreage of allowable development on the south side of the creek.

The applicant has provided compensating benefits for requested variations to street tree park strip widths and pedestrian walkway shade tree requirements, through enhanced landscape buffers and trees that are greater in size than what is normally required. As proposed and conditioned, the CDP/DDP has provided compensating benefits that balance the objectives of the underlying LDC requirements. The criterion in **LDC § 2.5.40.04.a.1** is satisfied.

Basic Site Design

Applicable LDC Review Criteria - LDC 2.5.40.04.a

2. Basic site design (the organization of Uses on a site and the Uses' relationships to neighboring properties);

The site is bordered on its south and east sides by public street right-of-way, and is bisected by Dunawi Creek. Tax Lot 500 is bordered on its northern edge by Tax Lot 400, an undeveloped parcel with residential zoning. Tax Lot 600 is bordered on the north by the City limits, and on the west by an existing single-family residence. The proposal includes seven commercial buildings. The buildings range in size between 1,782 and 14,820 sq. ft. The buildings are evenly dispersed throughout the southern half of the site. Vehicle parking, sidewalks, landscaping, stormwater facilities, and pedestrian plazas surround the proposed buildings. The applicant proposes to construct a Shopping Street between Buildings E and F, and Buildings C and D, which includes wide sidewalks, and enhanced landscaping and pedestrian refuge areas. The northern half of the site is primarily set aside as an open space preservation tract, to incorporate the protected Riparian Corridor, Wetlands, and 100-Year Floodplain associated with Dunawi Creek. The applicant proposes to pay for the design, permitting, and cost of construction of a required public multi-use path along the north side of Dunawi Creek within the northern half of the site (**see Condition # 10**), but is deferring actual construction by submitting a pre-payment cash deposit.

Applicable LDC standards (Planned Development Background)

Section 2.5.10 - BACKGROUND

b. Restrictions on Variations -

1. Development Standards -

a) The Conceptual and Detailed Development Plan process permits modifications to the site development standards of the underlying zone;

2. Uses -

a) The Conceptual and Detailed Development Plan process does not permit an expansion of Uses beyond those specified by the underlying zone;

b) In cases where a property's underlying zoning designation was changed prior to December 31, 2006, and a valid (still active) Planned Development existed and was approved before December 31, 2006, the Conceptual and Detailed Development Plan process may be used to allow the Uses permitted by the new underlying zone; and

c) The Conceptual and Detailed Development Plan process may also be used to modify the Use size limitations contained in Chapter 3.19 - Mixed Use Community Shopping (MUCS) Zone.

Applicable LDC standards (MUCS zone)

Section 3.19.30 - PERMITTED USES

Land use in the MUCS Zone shall conform to the list of Permitted Use Types in Table 3.19-1 - Permitted Uses. Ministerial Development involving Use Types permitted outright are identified with a P. General Development involving Use Types subject to Chapter 2.13 - Plan Compatibility Review are identified with a PC. Special Development involving Use Types subject to Chapter 2.3 - Conditional Development Review are identified with a CD. Uses identified with an N are not permitted.

Table 3.19-1
Permitted Use Types

P = Use Types Permitted Outright
PC = Use Types Subject to Chapter 2.13 - Plan Compatibility Review
CD = Use Types Subject to Review of Chapter 2.3 - Conditional Development
PD = Use Types Subject to Review of Chapter 2.5 - Planned Development
N = Not Permitted

Use Types	Permit Procedure		
	No Use Size Limitation	Up to 7,500 sq. ft.	> 7,500 sq. ft.
f. Commercial Use Types - contained within enclosed building4			
13. Drive-through Facilities	CD		
14. Eating and Drinking Establishments - except Drive-through Facilities -10,000 sq. ft. maximum Use size		P	P (10,000 sq. ft. max. Use size)
25. Retail Sales -15,000 sq. ft. maximum Use size		P	PC (15,000 sq. ft. max. Use size)

Section 3.19.40 - DEVELOPMENT STANDARDS

3.19.40.01 - Use and Building Size

a. The maximum size of a Use is established in Table 3.19-1 - Permitted Use Types.

3.19.40.02 - Thresholds for Determining the Applicable Review Procedure - Commercial Uses

The permit procedures for Commercial Uses in the MUCS Zone shall be as identified in Table 3.19-1 - Permitted Use Types. The size of each Use is determined based on the total gross floor area of the Use. For the purposes of the MUCS Zone, floor area also includes unenclosed areas needed for automobile circulation for Car Washes, Fuel Sales, and Drive-through Facilities Uses. For these specific Uses, these unenclosed areas include those needed for operational use, queuing, and service areas, with the exception of areas needed for customer and employee parking, as defined in Chapter 3.0 - Use Classifications.

3.19.40.03 - Commercial Floor Area Ratio
Minimum commercial Floor Area Ratios (FARs) are required for all property with a Mixed Use Community Shopping designation. This requirement ensures that commercial land is preserved for primarily commercial purposes. For an explanation of how to apply/calculate FARs, see the definition of Floor Area Ratio in Chapter 1.6 - Definitions. All commercial and mixed use developments shall comply with the following standards for commercial floor area:

a. For Commercial Use Types, the minimum FAR shall be 0.25 and the maximum FAR shall be 1.0. When a project is composed of two or more phases, development in each phase shall fall within the minimum and maximum FAR requirements or an alternative FAR requirement proposed and approved through a Planned Development Review process.

<u>Applicable LDC Definition (Chapter 1.6)</u>

Area, Net - Total area of a parcel or site, usually expressed in acres and excluding existing public street rights-of-way and, if a developer desires, excluding public parks, Significant Natural Feature areas dedicated to the public, and/or other areas permanently precluded from development due to development constraints or conservation easements. Planned streets shall not be excluded from the net area.

Floor Area Ratio (FAR) - Gross floor area of all buildings on a lot or development site divided by the net area of a lot or development site on which the buildings are located. See Area, Net. In cases where outdoor areas are directly related to the subject land use(s) (e.g., outdoor storage areas; planting areas for nurseries, tree farms, and agricultural businesses; portions of parking lots used for storage and circulation of moving vans associated with moving businesses; etc.), these outdoor areas may be included in the Floor Area Ratio square footage calculation. However, unless specified otherwise, in no case shall standard parking and circulation areas, landscaping, etc., be included in the Floor Area Ratio square footage calculation.

One tenant has been confirmed as part of the CDP/DDP application - a Walgreen's store. Walgreen's is identified as the sole tenant of the largest building on the site. Walgreen's is classified as a Retail Sales use, which is permitted outright in the MUCS zone. However, the zone limits the size of individual uses, and where a Retail Sales use exceeds 7,500 square feet, a Plan Compatibility Review is required per LDC Table 3.19-1. As noted above under the Requested Variations and Compensating Benefits discussion, the proposed Walgreen's requires approval of a Conceptual and Detailed Development Plan because the size of the Retail Sales use exceeds the 15,000 sq. ft. limit specified in Table 3.19-1. Since the Planned Development review criteria include all of the compatibility issues addressed by the Plan Compatibility Review process outlined in LDC Chapter 2.13, it is unnecessary to review the proposal according to both sets of equivalent standards. Therefore, the required Planned Development review supercedes the need to conduct a Plan Compatibility Review. This is consistent with the Planned Development Background use allowances noted in **LDC § 2.5.10.b.2.c.** Additionally, Table

3.19.-1 specifies that a Conditional Development Permit approval is required for the drive-through facility use, which is associated with the Walgreen's store (**see Part II of this staff report**).

The CDP/DDP includes a proposed deli in Building A. This is classified as an Eating and Drinking Establishment. Building A is approximately 1,782 sq. ft. in area, and therefore, the proposed deli is consistent with the use size limitations of **LDC § 3.19.30.f.14.** All proposed uses are consistent with the allowed uses identified in **LDC § 3.19.30.**

The Walgreen's building is centrally located along the SW Philomath Boulevard frontage of Tax Lot 500. The other six buildings are scattered along the SW Philomath Boulevard frontage, along the proposed Shopping Street and/or just south of Dunawi Creek. All development (with the exception of a proposed public multi-use path and a driveway entrance and stream crossing) is located south of Dunawi Creek.

Approximately 60 percent of the total site area is proposed to be developed, and the remaining 40 percent of the site is proposed to be protected through the Natural Features protections in Article IV of the LDC. Refer to the discussion below for an in-depth review of applicable Natural Resources and Natural Hazards protections, as well as how the CDP/DDP intends to utilize the Minimum Assured Development Area (MADA) provisions of the LDC.

Vehicle and bicycle parking, vehicle circulation, and pedestrian sidewalks are interspersed between the buildings, and provide continuous circulation throughout the development site and between each building. The CDP/DDP proposes two points of vehicular access for ingress/egress. One driveway entrance is proposed along SW 53rd Street, and a second driveway is proposed on SW Philomath Blvd. 53rd Street is under Benton County jurisdiction in terms of ownership and maintenance. SW Philomath Boulevard is owned and maintained by ODOT. A stream crossing consisting of a vehicle driveway, sidewalk, and bridge is proposed just west of the project's SW 53rd Street entrance. The applicant also proposes to dedicate additional public right-of-way for construction of a local street, which would bisect Tax Lot 600.

All buildings are proposed to have direct pedestrian access to the abutting public street sidewalk, through a network of on-site pedestrian sidewalks. In some cases, these sidewalks are intended to satisfy the LDC Block Perimeter standards, in other cases, they provide simple pedestrian connections between buildings, and between buildings and parking areas, as required per the Pedestrian Oriented Design Standards of the LDC.

This site is subject to both a floor area ratio minimum for commercial development, which requires a minimum amount of commercial square footage, and the need to satisfy Natural Features protections, which limits the amount of commercial development on the site. The Floor Area Ratio requirements, specified in **LDC § 3.19.40.03.a**, are as follows:

TABLE B:
Floor Area Ratios

Site Area	Floor Area Ratio (Min. - 0.25)	Floor Area Ratio (Max. -1.0)
Total: 6.64 acres (289,082 sq. ft.)	72,271 square feet	289,082 square feet
Total Minus Natural Features Protections: 3.83 acres (166,931 sq. ft.)	41, 733 square feet	166,931 square feet

Without accounting for Natural Features protection requirements and other areas precluded from development, the subject property has a minimum requirement of 72,271 square feet of commercial floor area. Per the definitions of Area, Net and Floor Area Ratio in LDC Chapter 1.6, the applicant has the choice to reduce the minimum Floor Area Ratio by removing those areas of the site that are permanently precluded from development due to development constraints or conservation easements. When factoring in this voluntary reduction in the floor area ratio, the minimum commercial floor area requirement is 41,733 square feet. The applicant is proposing a total of approximately 43,300 square feet of commercial building space, which falls within the acceptable range for floor area ratio. The proposal exceeds the minimum required floor area ratio by approximately 1,500 square feet. The standards specified in **LDC § 3.19.40.03.a** are satisfied

Applicable MUCS zone standards related to basic site design are as follows:

Applicable LDC Standards (MUCS zone)
3.19.40.05 - Setbacks

a. Front Setback - Structures may be built to the property line, but no closer to the street than the width of the standard planting strip and sidewalk for that street classification. A maximum setback of 20 ft. from either the property line or the line marking the outer boundary of the standard planting strip and sidewalk for that street classification shall apply to all building sites, except as provided in "1," through "3," below. However, in no case shall parking facilities or circulation facilities, such as driveways and queues, be allowed between the building front and the street.

1. Exceptions for Improved Pedestrian and Automobile Circulation - The maximum setback may be increased by 50 percent through a Conditional Development approval when the Planning Commission finds that an increased setback will provide for improved pedestrian circulation and safety and improved vehicular access management outside the public rights-of-way. For example, objectives for both pedestrians and vehicles can be met through the provision of shared driveways, connected parking lots, improved pedestrian connections between buildings and the street sidewalk, and internal connections between adjoining buildings.

2. Exceptions Granted through Conditional Development/Planned Development Review - In conformance with Section 3.19.20.01.c, the maximum setback may be increased to provide for the following features:

a) Pedestrian amenities in conformance with Chapter 4.10 - Pedestrian Oriented

Design Standards;

b) An internal Shopping Street consistent with the requirements of Section 4.0.60.m of Chapter 4.0 - Improvements Required with Development;

c) Protection of Significant Natural Features protected by Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting, Chapter 4.5 - Natural Hazard and Hillside Development Provisions, Chapter 4.12 - Significant Vegetation Protection Provisions, and/or Chapter 4.13 - Riparian Corridor and Wetland Provisions; or

d) Compliance with other Sections of this Code.

3. Exceptions for Interior Buildings - Buildings interior to a development site are exempt from this requirement, provided other buildings on the site meet the requirement.

b. Side and Rear Setbacks and Building Separations - The following setbacks shall apply:

1. No minimum setback adjacent to Mixed Use General Commercial (MUGC), Neighborhood Center (NC), and Industrial (GI, II) zones.

2. 20 ft. minimum setback adjacent to Low and Medium Density Residential zones; buffering shall be provided in accordance with Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting.

3. 10 ft. minimum setback adjacent to Medium-high and High Density Residential zones; buffering shall be provided in accordance with Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting.

The development site has frontage on SW Philomath Boulevard and SW 53rd Street. Buildings A, D, E, and the Walgreen's building are proposed to be constructed at between 7 and 20 feet from the new property lines. This is consistent with the standards in **LDC § 3.19.40.05.a.** Building B is exempt from the maximum setback requirement of 20 feet per **LDC § 3.19.40.05.a.3.** The applicant has chosen to provide a Shopping Street (see **LDC § 3.19.40.05.a.2.b**), to be located between Tax Lots 500 and 600. The proposed Shopping Street is one solution that provides compliance with LDC Block Perimeter standards (see discussion below under Circulation). Provision of the Shopping Street also means that Buildings C and F are consistent with the maximum setback requirement noted in **LDC § 3.19.40.05.a,** because both buildings abut the Shopping Street Tract and are built to the property line. All proposed buildings comply with the minimum setback requirement of 10 feet to the adjacent RS-12 zone (Medium-High Density Residential), located north of Dunawi Creek. The building setback criteria in **LDC § 3.19.40.05** are satisfied.

Compatibility issues arise when two dissimilar land uses abut each other. Building setbacks and landscape buffers are often required to mitigate for these potential impacts. In this case, the applicant is proposing two commercial buildings and associated parking areas on Tax Lot 600 that directly abut the residential property to the west. Per **LDC § 3.19.40.05.b.2**, the MUCS zone requires a building setback and landscape buffer along the perimeter of a development site, where it abuts Low Density zones. In this case, the west property line of the development site abuts a property with a Low Density designation. The CDP/DDP illustrates that the buildings adjacent to this property line comply with the minimum building setback of 20 feet and that a minimum 5-ft. wide landscape buffer has been provided along the west property line, consistent with **LDC § 3.19.40.05.b.2**. The CDP/DDP includes a conceptual landscape plan (**see**

Attachment G - page 9). Additional discussion of the landscape buffer requirements noted above, and other applicable landscaping standards from LDC Chapter 4.2, is included below, under the discussion heading of Landscaping /Buffering /Screening.

As discussed in Part I of this staff report under Pedestrian Oriented Design, the proposal is consistent with the pedestrian-related site design requirements of **LDC § 4.10.70**. The applicant has provided a continuous network of on-site pedestrian walkways that link all of the customer entrances for each building to the nearby public sidewalks and multi-use paths. Where applicable, buildings have been oriented to the streets, with parking located to the rear or sides of the buildings.

Conclusion on Basic Site Design

The buildings have been spread relatively evenly throughout the southern half of the site, offering pedestrians multiple ways to access various tenants using the interconnected sidewalks. Existing and potential residential development to the north of the site is well buffered by the open space preservation tracts that contain Dunawi Creek. A landscape buffer has been provided between the westernmost parking area and the existing residential development to the west of the subject site. All buildings have pedestrian and bicycle access from the public transportation network abutting the site's south and east borders. As noted above, the applicable LDC criteria for site design and arrangement of uses on the site have been satisfied. The CDP/DDP compatibility criterion for Basic Site Design outlined in **LDC § 2.5.40.04.a.2** is satisfied.

Visual Elements

Applicable LDC Review Criteria - LDC 2.5.40.04.a
3. Visual elements (scale, structural design and form, materials, etc.);

The CDP/DDP includes architectural building elevations for all seven proposed buildings (**see Attachment G - pages 19 through 24**). Buildings constructed consistent with LDC standards in the MUCS zone and the Pedestrian Oriented Design Standards (PODS) outlined in Chapter 4.10 are considered to be compatible with surrounding uses and in compliance with the visual elements criterion in **LDC § 2.5.40.04.a.3.** The following MUCS and PODS standards apply to the proposed building architecture:

Applicable MUCS architectural standards
Section 3.19.40 - DEVELOPMENT STANDARDS
3.19.40.01 - Use and Building Size
b. The maximum building footprint shall be 25,000 sq. ft., except for Lodging Services Use Types and Residential Use Types, for which no limits are established.

3.19.40.08 - Structure Height
No structure shall exceed 45 ft. in height.

No individual building identified in the CDP/DDP exceeds 17,000 square feet. Therefore, the maximum building footprint standard in **LDC § 3.19.40.01.b** is satisfied. The proposed buildings range in height from 18 feet (Building A) to approximately 34 feet (Buildings B and C). All

buildings are lower in height than the maximum of 45 feet prescribed by **LDC § 3.19.40.08**. The applicable MUCS architectural standards are satisfied.

Applicable PODS architectural standards

Section 4.10.70 - STANDARDS FOR COMMERCIAL, INDUSTRIAL, AND CIVIC DEVELOPMENT

4.10.70.01 - Applicability
a. All new commercial, industrial, and civic building types and associated features, such as parking lots, within all zones that refer to Section 4.10.70 shall comply with Sections 4.10.70.02 through 4.10.70.05.

The CDP/DDP involves new commercial building types. Therefore, the standards in **LDC § 4.10.70.02** through **LDC § 4.10.70.05** are applicable. Buildings constructed consistent with the PODS are considered to meet the compatibility criteria for visual elements.

Applicable PODS architectural standards(cont.)
4.10.70.02 - Building Orientation
All buildings shall be oriented, as outlined in this Section, to existing or proposed public or private streets. See Chapter 4.0 - Improvements Required with Development for public and private street standards. Buildings on corner parcels shall be oriented to both streets bordering the property. Private streets used to meet this standard must include the elements in Chapter 4.0.

The building orientation standard is met when all of the following criteria are met:

a. Street Frontage Setback - At least 50 percent of the building's linear frontage is located within the maximum setback established for the zone for structures that have street frontage, as shown below in Figure 4.10-18 - Percent of Building Frontage Within Maximum Setback Area. An exception to this requirement pertains to provisions elsewhere in this Chapter for development in the Neighborhood Center (NC) Zone. Expansion of a structure existing prior to December 31, 2006, and in conformance with the Code on that date is deemed to meet this criterion, provided the area of expansion is between the street and the existing building frontage.

b. Entrances - All building sides that face an adjacent public or private street include at least one customer entrance. When the site is adjacent to more than one street, corner entrances at an angle of up to 45 degrees, from the largest of the two adjacent streets, may be substituted for separate entrances on adjacent streets. If the building does not have frontage along an adjacent street, direct pedestrian access to the street may be achieved by a sidewalk or courtyard connecting to a street no farther than 100 ft. from the building's pedestrian entrance (distance measured along the centerline of the sidewalk or over the "hard-surfaced" portion of the courtyard from a public street right-of- way or private street tract). Examples of these requirements are shown below in Figure 4.10-19 - Site Development Element Locations. Buildings of less than 3,000 sq. ft. fronting on only one street may provide the customer entrance on the side of the building in lieu of the front, if a sidewalk or courtyard provides a direct, "hard-surfaced" pedestrian connection of less than 50 ft. between the entrance and the street (distance measured along the centerline of the sidewalk or over the "hard-surfaced" portion of the courtyard from a public street right-of-way or private street tract).

c. **Parking and Vehicle Circulation - Off-street parking or vehicular circulation shall not be placed between buildings and streets used to comply with this standard, as shown above in Figure 4.10-19 - Site Development Element Locations. Where allowed by the underlying zone, outdoor vehicle display lots for sale of autos, noncommercial trucks, motorcycles, trailers with less than 10,000 lbs. gross cargo weight, motor homes, and boats may be located adjacent to streets. The parking lot perimeter landscaping requirements of Section 4.2.40 of Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting shall be met.**

Building Orientation

The CDP/DDP includes seven commercial buildings. With the exception of Building B, the other six buildings are oriented to public (SW 53rd Street and SW Philomath Boulevard) or private (Shopping Street) streets. The maximum front setback prescribed in the MUCS zone is 20 feet. For the six buildings that face public or private streets, the entire facade oriented to the adjacent street is located within the maximum 20-ft. setback. Building B is interior to the site, and all other buildings comply with the street frontage setback requirement outlined above. Per **LDC § 3.19.40.05.a.3**, Building B is exempt from street frontage setback requirements. All proposed buildings comply with the criteria in **LDC § 4.10.70.02.a**. As illustrated on the architectural elevations and floor plans for all buildings (**see Attachment G - pages 19 through 25**), a customer entrance has been provided for each building facade that faces a public or private street. The criterion in **LDC § 4.10.70.02.b** is satisfied.

The CDP/DDP does not propose that vehicle parking will be placed in between the building facades and the streets to which those facades are oriented, with the exception of Buildings C, D, and F. Because these three buildings are oriented toward a Shopping Street, which requires vehicle parking along its length, the vehicle parking is permitted between the building and the street. The criterion in **LDC § 4.10.70.02.c** is satisfied.

Additional Pedestrian Oriented Design Standards Affecting Visual Elements

The following PODS affect building architecture. Conformance to these standards also demonstrates consistency with the compatibility criteria for visual elements. The following LDC standards are applicable to the proposed CDP/DDP:

Applicable PODS architectural standards(cont.)

4.10.70.05 - Standards and Menus for Pedestrian Features and Design Variety

a. Pedestrian Amenities Standards

1. **Weather Protection - Where new commercial and civic development is constructed immediately adjacent to (abutting) street sidewalks or pedestrian plazas, a minimum six-ft.-wide, weather-protected area, protected by such elements as awnings or canopies, shall be provided and maintained along at least 60 percent of any building wall immediately adjacent to the sidewalks and/or pedestrian plazas. An additional requirement shall include a minimum eight-ft. vertical clearance between the sidewalk and the lowest portion of the weather protection. This vertical clearance shall be nine ft. for balconies. These requirements are shown below in Figure 4.10-22 - Weather Protection.**

b. Design Standards and Design Variety Menus

3. Roof-mounted Equipment - Roof-mounted equipment, such as heating, ventilation, and air conditioning equipment, shall be screened. Screening features shall be at least equal in height to the equipment, compatible with roof lines, and constructed of materials used in the building's exterior construction. Screening features include such elements as a parapet, wall, or other sight-blocking feature, etc. The roof-mounted equipment shall be painted to match the roof.

6. Windows - The provisions in this Section shall apply to placement and type of windows. Figure 4.10-24 - Windows and Glass Doors on Street-facing Facades is provided for context.

a) Ground Floor Windows and Doors - Except for the Neighborhood Center (NC) Zone, which is addressed in "c," below, a minimum of 60 percent of the length and 25 percent of the first 12 ft. in height from the adjacent grade of any street facing facade shall contain windows and/or glass doors. An exception may be granted if the expansion/enlargement is for space neither adjacent to a street nor open to customers or the public. Additional requirements for windows shall include the following:

1) Ground floor windows shall be framed by bulkheads, piers, and sills such as are used in a recessed window, where applicable. Ground floor windows shall also have a Top Treatment such as a hood, awning, or a storefront cornice separating the ground floor from the second story. Alternatively, all ground floor windows shall provide a minimum three-in.-wide trim or recession. The Base Treatment standards under Section 4.10.70.05.b.7.d, below, and the Top Treatment standards under Section 4.10.70.05.b.7.e, below, shall be used as a guide for providing bulkheads and cornices that meet this standard.

2) Window Type - Ground floor windows used to comply with "a," above, shall meet all of the following standards:
a. Opacity of greater than 60 percent prohibited for any required window; and

b. Ground floor windows shall allow views from adjacent sidewalks into working areas or lobbies, pedestrian entrances, or display windows set into the wall. Display cases attached to the outside wall do not qualify. The bottom of windows shall be no more than four ft. above the adjacent exterior grade.

7. Design Variety Menu - Each structure shall incorporate a minimum of three of the following five 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.

a) Building Walls - Building walls in excess of 30 ft. in length shall not exceed a height/width ratio of 1:3 without a change in height of at least four ft., as addressed below in Figures 4.10-25A through C - Building Walls.

b) **Maximum Wall Segments - All building wall segments on all sides of buildings visible from public areas or adjacent uses shall be a maximum of 30 ft. in length. Building wall segments shall be distinguished by architectural features including at least one of the following: columns, reveals, ribs or pilasters, piers, recesses, or extensions. The segment length may be increased to a maximum of 60 ft. if the segment contains integral planters, public art, or permanent seating such as a seating wall, that conform to the accessibility standards in Section 4.10.70.05.a.4.**

c) **Entrances - Primary building entrances shall be clearly defined by recess or projection, and shall be framed by a sheltering element such as an awning, overhang, arcade, or portico.**

d) **Base Treatments - A recognizable Base Treatment consisting of at least one of the following:**
1) Thicker walls, such as a bulkhead, ledges, or sills as viewed from the exterior of the building;
2) Integrally textured materials such as stone, stucco, or other masonry;
3) Integrally colored and patterned materials such as smooth-finished stone or tile;
4) Lighter or darker colored materials, Mullions, or panels;
5) Detailing such as scoring, ribbing, moldings, or ornamentation; or
6) Planters integral to the building.

e) **Top Treatments - A recognizable Top Treatment consisting of at least one of the following:**
1) Cornice treatments, other than colored stripes or bands that are integral to the building design. Materials such as stone, masonry, brick, wood, galvanized and painted metal, or other colored materials shall be used;
2) Sloping roof (4:12 or greater) with overhangs. Overhangs may be boxed with moldings such as Modillions, Dentils, or other moldings, as applicable; or contain brackets; or
3) Stepped parapets.

The CDP/DDP illustrates awnings attached to the building facades that abut sidewalks located along streets or pedestrian plazas. As illustrated on Sheet SP3.1 (**see Attachment G - page 25**), all buildings include awnings that are at least 6-foot in depth, and extend along each applicable facade's length for at least 60% of the linear distance (**see Condition # 11**). In many cases these standards are exceeded by 10% or more. As proposed, all required awnings comply with the vertical clearance standard of eight feet. The architectural standards in **LDC § 4.10.70.05.a.1** are satisfied.

The application materials do not specify whether roof mounted mechanical equipment will be supplied or not; However, building permit review will ensure compliance with this standard, where applicable. The application narrative does not include an associated variation request for the applicable LDC standards. The standards in **LDC § 4.10.70.05.b.3** are satisfied.

Buildings with street facing facades include buildings A, C, D, E, F, and Walgreen's. Windows have been provided on the applicable facades, as illustrated on the architectural elevations **(see Attachment G - pages 19 through 24)**, and as listed in Table 6 in the application narrative **(see Attachment H - page 52)**. The window percentage criteria in **LDC § 4.10.70.05.b.6.a** are satisfied. As illustrated, the windows have been framed by architectural elements including piers, sills, and awnings, as specified in **LDC § 4.10.70.05.b.6.a.1** . The application narrative and display window cross section **(see Attachment G - page 24)** indicate that the opacity standards in **LDC § 4.10.70.05.b.6.a.2** will be satisfied. The architectural elements specified in the menu in **LDC § 4.10.70.05.b.7** have been provided by provision of vertical breaks in the massing of building walls, well defined building entrances in many cases, and base and top treatments consisting of architectural features like cornice treatments, stepped parapets, changes in wall thickness or materials, and overhanging roofs.

Conclusion on Visual Elements Criterion

As discussed above, the applicant has provided architectural elevations, floor plans, and a site plan which provides a visual description of the proposed development. The applicant is proposing to comply with the architectural standards outlined in the MUCS zone and the commercial Pedestrian Oriented Design Standards that govern building form, materials, and the relationship to the pedestrian environment. Development that is in compliance with these standards is considered to be visually compatible. Therefore, the criterion in **LDC § 2.5.40.04.a.3** is satisfied.

Noise Attenuation

Applicable LDC Review Criteria - LDC 2.5.40.04.a
4. Noise attenuation;

Noise within commercial development typically includes motor vehicle traffic, conversing pedestrians, and service vehicle activities such as garbage collection. The level of noise attributed to these activities is not anticipated to swell above the ambient traffic noise generated on Hwy 20/34 and other existing commercial activities in the vicinity of the subject site. Noise impacts from the proposed commercial development are not anticipated to create negative compatibility impacts. The proposed CDP/DDP illustrates that no service areas or loading docks have been placed in the vicinity of adjacent residential properties, which minimizes the noise impacts that this development will have on residences. This criterion is satisfied.

Odors and Emissions

Applicable LDC Review Criteria - LDC 2.5.40.04.a
5. Odors and emissions;

No unusual odors are anticipated from the proposed development. This criterion is satisfied.

Exterior Lighting

Applicable LDC Review Criteria - LDC 2.5.40.04.a
6. Lighting;

Applicable LDC standard (Section 4.2.80.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.

The applicant has submitted a Conceptual Lighting Plan (**see Attachment G- page 11)** which includes a mixture of pole mounted and building mounted light fixtures. The applicant's narrative includes exhibits for light fixtures (**see Attachment H- pages 159 through 162)** indicating that house side shields will be used where necessary to ensure that the standards in **LDC § 4.2.80.d** will satisfied. As proposed, the plans indicate that the criterion in **LDC § 2.5.40.04.a.6** is satisfied. Compliance with these standards will be verified through the building permit review process (**see Condition # 15**).

Signs

Applicable LDC Review Criteria - LDC 2.5.40.04.a
7. Signage;

The applicant has included conceptual designs for proposed free-standing signs, and has identified the conceptual location of these signs on the site development plans (**see Attachment G - page 3**). Three signs are proposed. One is to be located adjacent to the driveway entrance on SW 53rd Street, a second sign is proposed immediately to the southwest of Building A, and a third free-standing sign is located at the driveway entrance on SW Philomath Blvd. The applicant has also illustrated attached building signs for the Walgreen's building. The applicant is not proposing variations to the LDC sign provisions in Chapter 4.7. The conceptual designs are within the allocation, maximum size and maximum height standards specified for the MUCS zone. Signs will require a sign permit through the City's standard sign permit process, and all applicable standards will be evaluated at that time. This criterion is satisfied.

Landscaping / Buffering / Screening

Applicable LDC Review Criteria - LDC 2.5.40.04.a
8. Landscaping for buffering and screening;

The proposed CDP/DDP includes a Conceptual Landscape Plan (**see Attachment G - page 9**). The Landscape Plan includes parking lot landscaping, screening / buffering landscaping in specific areas, restored natural landscaping abutting Dunawi Creek, pedestrian walkway and Shopping Street landscaping, and except as noted in the discussion above under requested variations, street trees. Applicable landscaping standards include general landscape requirements specified in Chapters 4.1 and 4.2 of the LDC, as well as landscaping specific to Riparian Corridor restoration (Chapter 4.13) and pedestrian areas (Chapter 4.10). The applicable standards are as follows:

Applicable LDC requirements -
Section 4.2.20 - GENERAL PROVISIONS
a. Required Landscaping -

1. **Landscaping and Irrigation Plans - Where a landscape plan is required by this Code, by a particular proposal, and/or by Conditions of Approval, detailed planting plans, irrigation plans and other related plans shall be submitted for review and approval with Building Permit applications and/or prior to the recordation of a Final Plat, as applicable. Building Permits, including Foundation Permits, shall not be issued until the Director has determined that the plans comply with the purposes clause and specific standards in this Chapter, any specific proposal(s), and/or Conditions of Approval that apply to the particular project. On a case by case basis, and where no Significant Natural Features would be impacted, the Director may grant an exception and allow the issuance of permits. Required landscaping shall be reviewed and approved by the Director, and in no case shall landscaping be less than that required by this Chapter. Landscaping shall consist of ground cover, shrubbery, and trees.**

2. **Installation - All required landscaping and related improvements, such as irrigation, etc., shall be completed prior to the issuance of a Certificate of Occupancy. Additionally, all required landscaping and related improvements within the public right-of-way, and/or required by Conditions of Approval in conjunction with recording of the Final Plat, shall be completed or financially guaranteed prior to the recording of a Final Plat. If an applicant chooses to financially secure landscaping and related improvements in order to record a Final Plat, such financial security shall be consistent with the provisions of this Code, shall be reviewed and approved by the Director, and shall be for an amount at least equivalent to 120 percent of the cost of the installation of the landscaping and related improvements.**

3. **Coverage within Three Years - All required landscaping shall provide a minimum 90 percent ground coverage within three years. A financial guarantee shall be provided for new residential development, with the exception of areas within single-family or Duplex lots. A financial guarantee shall also be provided for new nonresidential development, and nonresidential redevelopment that involves a 3,000 sq. ft. or 20 percent expansion, whichever is less, except that 20 percent expansions less than 500 sq. ft. are exempt. The financial guarantee shall cover maintenance for a three-year period from the date that the landscaping was installed by the applicant and accepted by the City. This guarantee shall be established prior to the issuance of a Final Certificate of Occupancy and prior to recording of a Final Plat. Additionally, this guarantee shall be consistent with the provisions of this Code, shall be reviewed and approved by the Director, and shall be for an amount that is at least equivalent to 50 percent of the cost of installation of required landscaping and related improvements, plus 20 percent of the 50 percent figure.**

   To release this guarantee at the end of the three-year period, the developer shall provide a report to the Director. This 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.

b. **Appropriate care and maintenance of landscaping on-site and landscaping in the adjacent right-of-way is the right and responsibility of the property owner, unless City ordinances specify otherwise for general public and safety reasons. A City permit is required to plant, remove, or prune any trees in a public right-of-way. Pruning shall be in accordance with the American National Standards Institute (ANSI) A300 standards for Tree Care Operations. Landscaping, buffering, and screening required by this Code shall be maintained. If street trees or other plant materials do not survive or are removed, materials shall be replaced in kind.**

The plans submitted as part of this CDP/DDP are conceptual in nature, and do not fully illustrate compliance with the 90% coverage standard noted above. A detailed set of planting and irrigation plans will be required at time of building permit, that illustrates compliance with the 90% coverage standard noted in **LDC § 4.2.20.a.3. Condition # 36** implements the requirements of **LDC § 4.2.20.a**, noted above. The applicant has indicated an intent to comply with these standards.

The developer intends to create two property owners' associations (POA), comprised of the individual lot owners. One of the roles of the POA is to maintain the common area landscaping, created through the Subdivision of the property. Because all of the proposed and required landscaping is located in common areas, the two POAs will be responsible for maintenance of the landscape areas, consistent with **LDC § 4.2.20.b (see Condition # 36-l and # 36-o).**

In order to ensure the understanding between individual lot owners that landscaping maintenance is to be a responsibility of the POA, common landscape maintenance easements, or a blanket easement shall be dedicated on the final plat. A dedication statement shall be included on the final plat to this effect (**see Condition # 39-j**).

<u>Applicable LDC requirements - Section 4.2.20 continued :</u>
c. Protection of Shrub, Ground Cover and Tree Specimens in Inventoried Areas of the Adopted Natural Features Inventory Map dated December 20, 2004 -

1. For shrub, groundcover, and tree specimens within the areas inventoried as part of the Natural Features Inventory, preservation requirements shall be in accordance with the provisions of Chapter 4.5 - Natural Hazard and Hillside Development Provisions, Chapter 4.11 - Minimum Assured Development Area (MADA), Chapter 4.12 - Significant Vegetation Protection Provisions, and Chapter 4.13 - Riparian Corridor and Wetland Provisions. See Adopted Natural Features Inventory Map dated December 20, 2004, for information regarding areas inventoried as part of the Natural Features Inventory.

2. Plants to be preserved and methods of protection shall be indicated on the detailed planting plan submitted for approval. Existing trees and shrubs shall be considered preserved if the standards in Section 4.12.60.f are met.

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. Methods of preservation shall be consistent with Section 4.12.60.f.**

Existing Significant Vegetation associated with the Riparian Corridor and Proximate Wetland was inventoried as part of the Natural Features Inventory and no vegetation was identified for protection as part of the Significant Vegetation provisions of LDC Chapter 4.12. However, the Significant Vegetation associated with the Highly Protected Riparian Corridor and Locally Protected Locally Significant Wetlands is subject to specific protections within LDC Chapter 4.13. Significant vegetation within the Riparian Corridor / Proximate Wetland that is located outside of the areas that may be developed according to the MADA provisions of Chapter 4.11 is required to be protected.

The proposed CDP/DDP indicates that this vegetation will be preserved within a separate open space tract. For that Significant Vegetation required to be preserved, procedures outlined in LDC 4.12.60.f are to be followed. This includes installation of construction fencing along the MADA boundary, so that areas required to be protected are clearly delineated and maintained throughout the construction process (**see Conditions # 8 and # 36-b**). The application materials identify specific Significant Trees which are to be removed or preserved in the area of the proposed Dunawi Creek crossing at the northeast corner of the site (**see Attachment H - page 217**), consistent with the provisions of **LDC § 4.2.20.c**. Where not specifically identified in the Detailed Development Plans, the applicant will be required to demonstrate compliance with **LDC § 4.2.20.c** and the Significant Vegetation preservation requirements of Chapter 4.13 during all phases of construction (**see Condition # 36-b**).

The applicant has also identified Significant Trees, located at the southwest corner of the site that are suitable for protection. The proposed CDP/DDP includes plans to install tree protection fencing during construction, in order to preserve some of these trees. Tree fencing shall be installed prior to issuance of any permits authorizing site disturbance, in accordance with **LDC § 4.2.20.d** and **LDC § 4.12.60.f** (**see Condition # 36-b**). As conditioned, the standards in **LDC § 4.2.20(c)** and **(d)** will be satisfied.

Applicable LDC requirements - Section 4.2.20 continued :

e. **Planters and boundary areas used for required plantings shall have a minimum diameter of five ft., or 2.5 ft. radius, inside dimensions. Where the curb or the edge of these areas is used as a tire stop for parking, the planter or boundary plantings shall be a minimum width of 7.5 ft.**

Section 4.2.20(e) of the LDC requires a minimum depth for landscape planters that are intended to buffer vehicle parking from adjacent properties and rights-of-way. The depth required varies depending on whether vehicle bumpers overhang the planter or not. The Conceptual Landscape Plans indicate that the required depth has been provided in most cases. In some locations, vehicle parking stalls are located perpendicular to the required planters, and there is the potential that vehicle bumpers which overhang the curb may damage required plantings. In these cases, the planter depth shall be increased to 7.5 feet to accommodate the vehicle bumper and minimize chances of damaging vegetation (**see Condition # 14**). As proposed and conditioned, this standard is satisfied.

Applicable LDC requirements - continued :

f. **Irrigation Systems - With the exception of individual lots for single-family and Duplex development, irrigation systems shall be required, provided, and maintained for all required landscape areas in all zones, unless waived by the Director. These irrigation systems are for the purpose of ensuring survival of plant materials in required landscape areas. The Director may waive the requirement for irrigation systems in areas containing established trees and shrubs that are more than five years old, and are retained as significant vegetation in common, open space tracts and areas. Irrigation systems needed to establish trees and shrubs in Natural Resource and Natural Hazard areas are required. Where required, a detailed irrigation system plan shall be submitted with Building Permit applications. The plan shall indicate source of water, pipe location and size, and specifications of backflow device. The irrigation system shall utilize 100 percent sprinkler head-to-head coverage or sufficient coverage to ensure 90 percent coverage of plant materials in three years.**

Irrigation systems are typically evaluated at the time of landscape plan review and building permit issuance. **Condition of Approval # 36-a** implements these requirements. The applicant intends to comply with these standards.

Applicable LDC requirements - continued :

g. **In no case shall shrubs, conifer trees, or other screening be permitted within Vision Clearance Areas of street, alley, or driveway intersections, or where the City Engineer otherwise deems such plantings would endanger pedestrians and vehicles.**

The proposed Conceptual Landscape plan illustrates the required Vision Clearance Areas, abutting the driveway entrances on SW Philomath Boulevard and SW 53rd Street. The plan does not include details for shrub plantings that might be planted within the vision clearance areas, and conifer trees are not permitted within public right-of-way. The applicant has not indicated, in the narrative, a request to vary from these standards. With submittal of the final landscape plans, the applicant shall ensure that the City's vision clearance standards are satisfied in all locations on the development site (**see Condition # 36-m**).

Street Trees

Applicable LDC Standards

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.

1. Street Trees -

a) Along streets, trees shall be planted in designated landscape parkway areas or within areas specified in a City-adopted street tree plan. Where there is no designated landscape parkway area, street trees shall be planted in yard areas adjacent to the street, except as allowed elsewhere by "d," below;

b) Along all streets with planting strips in excess of six ft. wide and where power lines are located underground, a minimum of 80 percent of the street trees shall be large canopy trees;

c) Planting strips on Local Connector and Local Streets shall be planted with medium canopy trees; and

d) If planting strips are not provided on Arterial, Collector, and Neighborhood Collector Streets, an equivalent number of the required large and required medium canopy trees shall be provided in other locations within common open space tracts on the site, or within the front yard setback areas of the parcels and lots adjacent to the street. Such plantings in-lieu-of street trees shall be in addition to the mitigation trees required in Section 4.12.60;

Table 4.2-1 - Street Trees

Medium-canopy trees: trees that normally reach 30-50 ft. in height within 30 years	**- Maximum 30 ft. on-center spacing**
Large-canopy trees: trees that normally reach 30-50 ft. in height within 30 years, but exceed 50 ft. in height at maturity	**- Maximum 50 ft. on-center spacing**

Section 4.0.60 - PUBLIC AND PRIVATE STREET REQUIREMENTS

m. Designated Shopping Streets associated with Minor and Major Neighborhood Centers shall adhere to the following standards -

4. The following development and design standards shall apply to streets designated as Shopping Streets:

j) Planting Strips/Street Trees - Planting strips are discouraged along Shopping Streets. Street tree wells shall be provided and placed at a minimum of every 20 ft. in conformance with requirements in Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting. Street trees at maturity shall be pruned to awning height, with tree canopies extending above awnings.

The development site has frontage on two existing streets (SW 53rd Street and SW Philomath Blvd.), and is proposed to have frontage on two new streets (internal private Shopping Street and West Corvallis Access Strategy (WCAS) local street bisecting Tax Lot 600). Each of the applicable four streets is subject to different LDC and jurisdictional standards relating to street trees. These standards are as follows:

TABLE C
Street Trees and Street Frontage

Street Frontage	Jurisdiction	Street Classification	Applicable LDC Standards
SW 53rd Street	Benton County / Corvallis	Arterial	12-ft.parkway (see 6-ft. variation noted above under Compensating Benefits discussion), size and spacing per Table 4.2-1
SW Philomath Boulevard	ODOT / Corvallis	Arterial Hwy	12-ft.parkway, size and spacing per Table 4.2-1
Private Shopping Street	Corvallis	Local	no parkway, tree wells per LDC § 4.0.60.m.4.j
WCAS Local Street	Corvallis	Local	6-ft. parkway, size and spacing per Table 4.2-1

The applicant proposes to plant medium canopy street trees along SW 53rd Street at a 30-ft. on-center spacing, as prescribed by LDC Table 4.2-1. The applicant proposes street trees along the Shopping Street frontage that are consistent with LDC § 4.0.60.m.4.j, by providing rows of tree wells at a 20-ft. on-center spacing.

As discussed above under the criterion for Requested Variations and Compensating Benefits, the applicant is proposing to stagger some of the spacing requirements for street tree wells on the Shopping Street. Compensating benefits have been provided in the form of additional large canopy trees along the Shopping Street (**see Condition # 36-a**). As proposed and conditioned, the street trees identified on the Conceptual Landscape Plan are consistent with the applicable LDC standards.

<u>On-Site Trees and Pedestrian Landscape Buffers</u>

<u>Applicable LDC standards - Section 4.2.30.a -</u>

3. Along sidewalks and multi-use paths not located along streets, a minimum five ft.-wide landscaping buffer is required on either side of the facility. Examples of sidewalks and multi-use paths not located along streets include pedestrian and bicycle connections between Cul-de-sacs or between residential areas and neighborhood centers, etc. Within these buffers, trees shall be planted at least every 30 ft., or as determined by the type of tree used. See Table 4.2-1 - Street Trees and Table 4.2-2 - Parking Lot Trees;

LDC § 4.2.30.a.3 requires a minimum five-foot wide landscaping buffer to be provided along both sides of a multi-use path, where the path is not located along a street. The applicant proposes to construct a multi-use path along the north side of Dunawi Creek, within an existing heavily vegetation Riparian Corridor. Due to the presence of the existing vegetation, the standard in LDC § 4.2.30.a.3 is satisfied.

Applicable LDC standards - Section 4.2.30.a continued -
6. Trees in parking areas shall be dispersed throughout the lot to provide a canopy for shade and visual relief.

Table 4.2-2 - Parking Lot Trees

Medium-canopy trees: trees that normally reach 30-50 ft. in height within 30 years	**- Minimum one tree per eight cars**
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**

4.2.30.b. Areas Where Trees May Not be Planted -

1. Trees may not be planted within five ft. of permanent hard surface paving or walkways, unless special planting techniques and specifications are used and particular species of trees are planted, as outlined in Section 4.2.40.c or approved by the Director. These limitations apply most frequently in areas such as landscape parkways, pedestrian walkways, and plaza areas, where there may be tree grates.

2. Unless approved otherwise by the City Engineer, trees may not be planted:
- **a) Within 10 ft. of fire hydrants and utility poles;**
- **b) Within 20 ft. of street light standards;**
- **c) Within five ft. from an existing curb face, except where required for street trees;**
- **d) Within 10 ft. of a public sanitary sewer, storm drainage, or water line;or**
- **e) Where the Director determines the trees may be a hazard to the public interest or general welfare.**

c. Tree Maintenance Near Sidewalks and Paved Surfaces - Trees shall be pruned to provide a minimum clearance of eight ft. above sidewalks and 12 ft. above street and roadway surfaces; and shall be pruned in accordance with the American National Standards Institute (ANSI) A300 standards for Tree Care Operations.

d. Trees Planted near Weather Protection - Where street trees are required in combination with weather protection features such as awnings, the trees shall be allowed to grow and their canopies shall be trimmed above the weather protection features. Such trimming shall be in accordance with the American National Standards Institute (ANSI) A300 standards for Tree Care Operations.

Section 4.2.40
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.**

The applicant is proposing a mix of small, medium, and large canopy trees within the parking areas. There are approximately 42 trees proposed in the parking areas, at a ratio of approximately 1 tree for every 4 vehicle parking spaces. The proposed Conceptual Landscape Plan exceeds the minimum requirements for trees in parking areas, per **LDC § 4.2.30.a.6.** There are some locations where trees are proposed within five feet of the parking lot pavement or sidewalks. In these cases, the applicant will need to demonstrate compliance with **LDC § 4.2.30.b**, by including special construction details on the landscape construction drawings, and by adjusting the soil mixture in the field to support the growth of the trees in the constrained conditions **(see Condition # 36-c)** . There are also several locations where the proposed trees conflict with the conceptual locations of fire hydrants and public water lines. These utilities will need to be adjusted on the construction drawings so that the trees can be provided as shown, and be in compliance with **LDC § 4.2.30.b.2 (see Condition # 36-n).** As proposed and conditioned, the landscaping is consistent with the standards noted above.

Buffering along West Property Line, Parking and Loading Areas

Applicable LDC standards - Section 4.2.40 -
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.

Decorative walls and fences may be used in conjunction with plantings, but may not be used alone to comply with buffering requirements.

Applicable LDC standards - Section 4.2.50 -
Section 4.2.50 - SCREENING (HEDGES, FENCES, WALLS, AND BERMS)
Screening is required where unsightly views or visual conflicts must be obscured or blocked

and/or where privacy and security are desired. Fences and walls used for screening may be constructed of wood, concrete, stone, brick, wrought iron, or other commonly used fencing/wall materials. Acoustically designed fences and walls shall also be used where noise pollution requires mitigation.

Where landscaping is used for required screening, it shall be at least six ft. in height and be at least 80 percent opaque, as seen from a perpendicular line of sight, within 18 months following establishment of the primary use of the site. A chainlink fence with slats shall qualify for screening only if a landscape buffer is provided in compliance with Section 4.2.40, above.

As noted above, the CDP/DDP includes a Conceptual Landscape Plan. Planting details will be evaluated against LDC criteria at time of construction permit review. With submittal of the site development permits, the applicant will need to demonstrate that landscaping within the 5-ft. wide buffer along the west property line of Tax Lot 600 is consistent with the buffering requirements of **LDC § 4.2.40,** and that an effective screen has been provided consistent with **LDC § 4.2.50** . This includes adding trees, shrubs, and groundcover within this planter to achieve a mix of plant materials and effective screen that is 6-ft. tall and 80% opaque, as prescribed in the LDC standard (**see Condition # 36-e**). As conditioned, this screen will help buffer the development with the adjacent residence to the west. This is consistent with the compatibility criterion for landscape screening.

With the exception of required vehicle parking along the proposed Shopping Street, the Conceptual Landscape Plans illustrate parking lot buffer plantings where parking spaces are adjacent to public rights-of-way. Plantings in these buffer areas shall comply with the standards in **LDC § 4.2.40.a (see Condition # 36-f).**

Applicable LDC standards - Section 4.2.50.02

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.

Applicable PODS site design standards - Section 4.10.70.05
b. Design Standards and Design Variety Menus

2. **Loading/Service Facilities - Loading and service areas such as trash enclosures shall be located to minimize conflicts with public pedestrian areas; screened in accordance with Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting; designed to provide convenient access for trucks; and designed to minimize noise and other impacts with adjoining uses. Service areas shall be located to the back or sides of buildings, or in alleys where available. Loading dock doors are encouraged to be placed in recessed areas or between buildings to minimize impacts to the pedestrian and human-scale aspects of the development.**

Sheet SP1.2 (**see Attachment G - page 3**) illustrates three (3) locations for proposed trash dumpsters. The applicant has indicated, through illustration of a typical refuse enclosure detail (**see Attachment G - page 25**), that all proposed trash dumpsters will comply with the screening requirements of **LDC § 4.2.50.02**. The trash dumpsters have been located away from public pedestrian areas such that they do not conflict with pedestrian passage, and are easily accessible by the local trash service provider. A landscape buffer area and screen wall has been provided between the proposed loading dock for Walgreen's and SW Philomath Blvd., consistent with **LDC § 4.2.50**. No other service facilities have been identified on the CDP/DDP. These standards are satisfied, and compliance will be confirmed through the building permit process.

> **Applicable LDC standards - Section 4.2.50.04**
> **4.2.50.04 - Detention Facilities**
> **Detention facilities, such as ponds, shall be graded so that the sides of the facilities are no steeper than 3:1. Additionally, the facilities shall be landscaped with plant materials that provide erosion control and biofiltration. See also Section 4.0.130 of Chapter 4.0 - Improvements Required with Development.**

There are two bio-retention facilities proposed along the north side of the developed portion of the site, and the application materials indicate that the 3:1 side slope requirement of **LDC § 4.2.50.04** will be satisfied (**see Attachment H - page 221 (Attachment EE from MSS, inc.)**). Supplemental detention is proposed via underground piping. The CDP/DDP does not include details for landscaping of the bio-retention facilities. With submittal of the landscape construction documents, the applicant shall verify that the landscaping standards in **LDC § 4.2.50.04** are satisfied (**see Condition # 36-k**). As proposed and conditioned, these standards are satisfied.

Landscaping Installation Phasing

As illustrated on Sheet SP1.11 (**see Attachment G - page 18**), the applicant proposes to phase construction. Since required landscaping is affected by the proposed phase plan, installation of required plant materials and irrigation should occur consistent with the proposed phase plan (**see Condition # 36-a**). Additional phases of landscaping will occur as each lot develops, and will be installed according to the proposed Master Conceptual Landscape Plan (**see Condition # 36-a**).

Conclusion on Landscaping Requirements

The applicant has proposed a Conceptual Landscape Plan, which illustrates the different site components associated with required landscaping. Street trees have been provided along public and private streets consistent with **LDC § 4.2.30.a.1.** Parking lot trees and buffer landscaping have been provided consistent with **LDC § 4.2.30.a.1** and **LDC Table 4.2-2.** Significant vegetation has been protected consistent with **LDC § 4.2.20(c) and (d).** As proposed and conditioned, the CDP/DDP is consistent with the applicable review criterion for landscape buffering, screening, and protection.

Transportation Facilities

Applicable LDC Review Criteria - LDC 2.5.40.04.a
9. Transportation facilities;

The following discussion addresses criteria related to vehicle, bicycle, pedestrians and transit circulation.

Circulation

Applicable LDC Standards
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:

1. Where a Land Division is proposed, each proposed lot shall have required public and franchise utility improvements installed or secured prior to approval of the Final Plat, in accordance with the provisions of Section 2.4.40.08 of Chapter 2.4 - Subdivisions and Major Replats.

b. Where specific approval for a phasing plan has been granted for a Planned Development and/or Subdivision, improvements shall be phased in accordance with that plan.

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 4.5 - Natural Hazard and Hillside Development Provisions.

2. Sidewalks on Arterial, Collector, and Neighborhood Collector Streets - Sidewalks along Arterial, Collector, and Neighborhood Collector Streets shall be separated from curbs by a planted area. The planted area shall be a minimum of 12 ft. wide and landscaped with trees and plant materials approved by the City. The sidewalks shall be a minimum of five ft. wide. An exception to these provisions is 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 4.5 - Natural Hazard and Hillside Development Provisions.

3. <u>Sidewalk Installation Timing</u> - 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.

c) Where sidewalks on Local, Local Connector, and Cul-de-sac Streets abut common areas, drainageways, or other publicly owned areas, or where off-site Local, Local Connector, and Cul-de-sac Street extensions are required and sufficient right-of-way exists, the sidewalks and planted areas shall be installed with street improvements.

b. Safe and Convenient Pedestrian Facilities - Safe and convenient pedestrian 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 pedestrian facilities that are free from hazards and that provide a direct route of travel between destinations.

2. Pedestrian rights-of-way connecting Cul-de-sacs or passing through unusually long or oddly shaped blocks shall be a minimum of 15 ft. wide. When these connections are less than 220 ft. long, measuring both the on-site and the off-site portions of the path, or when they directly serve 10 or fewer on-site dwellings, the paved improvement shall be no less than five ft. wide. Connections that are either longer than 220 ft. or serve more than 10 on-site dwellings shall have wider paving widths as specified in Section 4.0.40.c. Maintenance of the paved improvement shall be the responsibility of adjacent property owners. Additionally, a minimum of five ft. of landscaping shall be provided on either side of these pedestrian facilities, in accordance with Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting. Maintenance of the landscaping shall also be the responsibility of adjacent property owners.

c. Where a development site is traversed by or adjacent to a future trail linkage identified within either the Corvallis Transportation Plan or the Trails Master Plan, improvement of the trail linkage shall occur concurrently with development. Dedication of the trail to the City shall be provided in accordance with Section 4.0.100.d.

d. To provide for orderly development of an effective pedestrian network, pedestrian facilities installed concurrently with development of a site shall be extended through the site to the edge of adjacent property(ies).

e. To ensure improved access between a development site and an existing developed facility such as a commercial center, school, park, or trail system, the Planning

Commission or Director may require off-site pedestrian facility improvements concurrently with development.

Section 4.0.40 - BICYCLE REQUIREMENTS

a. On-street Bike Lanes - On-street bike lanes shall be required on all Arterial, Collector, and Neighborhood Collector Streets and constructed at the time of street improvements.

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.

2. Bicycle/pedestrian rights-of-way connecting Cul-de-sacs or passing through unusually long or oddly shaped blocks shall be a minimum of 15 ft. wide. Maintenance of the paved improvement shall be the responsibility of adjacent property owners. Additionally, a minimum of five ft. of landscaping shall be provided on either side of these bicycle/pedestrian facilities, in accordance with Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting. Maintenance of the landscaping shall also be the responsibility of adjacent property owners.

c. Widths for Pedestrian/Bicycle Facilities - Adequate widths for pedestrian/bicycle facilities shall be provided in accordance with the following standards:

2. The standard width for two-way multi-use paths shall be 10 ft.

d. To provide for orderly development of an effective bicycle network, bicycle facilities installed concurrently with development of a site shall be extended through the site to the edge of adjacent property(ies).

Section 4.0.60 - PUBLIC AND PRIVATE STREET REQUIREMENTS

a. Traffic evaluations shall be required of all development proposals in accordance with the following:

1. Any proposal generating 30 or more trips per hour shall include Level of Service (LOS) analyses for the affected intersections. A Traffic Impact Analysis (TIA) is required, if required by the City Engineer. The TIA shall be prepared by a registered professional engineer. The City Engineer shall define the scope of the traffic impact study based on established procedures. The TIA shall be submitted for review to the City Engineer. The proposed TIA shall reflect the magnitude of the project in accordance with accepted traffic engineering practices. The applicant shall complete the evaluation and present the results with an overall site development proposal.

d. Private streets, though discouraged in conjunction with Land Divisions, may be considered within a development site provided all the following conditions are met:

1. Extension of a public street through the development site is not needed for continuation of the existing street network or for future service to adjacent properties;

2. **The development site remains in one ownership, or adequate mechanisms are established, such as a homeowners' association with the authority to enforce payment, to ensure that a private street installed with a Land Division will be adequately maintained;**

3. **Where a private street is installed in conjunction with a Land Division, development standards, including paving standards, consistent with City standards for public streets shall be used to protect the interests of future homeowners; and**

4. **The private street is located within a separate tract.**

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.**

3. **To ensure improved access to a development site consistent with policies on orderly urbanization and extension of public facilities, the Planning Commission or Director may require off-site street improvements concurrently with development.**

g. **The Planning Commission or Director may require the extension of public and private street improvements through a development site to provide for the logical extension of an existing street network or to connect a site with a nearby neighborhood activity center, such as a school or park. Where this creates a Land Division incidental to the development, a land partition shall be completed concurrently with the development, in accordance with Chapter 2.14 - Partitions, Minor Replats, and Lot Line Adjustments.**

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 effected. The following standards shall apply:**

2. **Location of streets in a development shall not preclude development of adjacent properties. Streets shall conform to planned street extensions identified in the Corvallis Transportation Plan and/or provide for continuation of the existing street network in the surrounding area.**

9. **Where streets must cross protected Natural Resources or Natural Hazards, 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. Parking bays may be allowed, provided they do not exceed one space per dwelling unit and provided they do not cause the development to exceed the amount of**

development allowed by the provisions of Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting, Chapter 4.5 - Natural Hazard and Hillside Development Provisions, Chapter 4.11 - Minimum Assured Development Area (MADA), Chapter 4.12 - Significant Vegetation Protection Provisions, and Chapter 4.13 - Riparian Corridor and Wetland Provisions.

I. Where standards do not exist to address unusual situations, the Planning Commission or Director may require special design standards recommended by the City Engineer as Conditions of development Approval.

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 bulbed 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.**

m. Designated Shopping Streets associated with Minor and Major Neighborhood Centers shall adhere to the following standards

1. Prior to designation of a Shopping Street, the applicant shall submit a traffic analysis of the proposal in accordance with the requirements of Section 4.0.60.a and the City Engineer.

2. Shopping Streets may include streets falling within the categories in "a," and "b," below. See also Table 4.0-2 - Shopping Street Standards for specific elements required with Shopping Streets.

a) <u>City Streets</u> - Functional classifications as follows:

1)	**Local**	**existing or proposed**
2)	**Local Connector**	**existing or proposed**
3)	**Neighborhood Collector**	**existing or proposed**
4)	**Collector**	**existing or proposed**
5)	**Arterial (for Neighborhood Center Zones developed prior to December 31, 2006)**	**existing**

b) <u>Private Streets</u> - Designed to City street standards for either the Local or Local Connector and for Shopping Streets as provided by this Section. For purposes of other development standards, such as setback requirements, private Shopping Streets shall provide the same features as

required for public streets. However, the City shall not be responsible for maintenance of private Shopping Streets, and the applicant and/or owner shall be responsible for construction of the private Shopping Street and its maintenance in accordance with the standards herein. Private streets as provided by this Section shall have public access easements recorded and shall be platted in a separate tract per Section 4.0.60.d.4 .

3. Street Connectivity - Designated Shopping Streets, whether City streets or private streets, shall provide direct connections to adjacent public and private streets and neighborhoods where practicable.

4. The following development and design standards shall apply to streets designated as Shopping Streets:

   a) Auto Amenities - Auto lane widths shall comply with Table 4.0-1 - Street Functional Classification System and Table 4.0-2 - Shopping Street Standards. Shopping Streets should not include more than two travel lanes, excluding turn lanes as required or consistent with Section 4.0.60. However, applicants or the City may propose Shopping Street designations for streets with more than two travel lanes as part of Master Site Plans for Neighborhood Centers.

   b) Length of Shopping Streets - A Shopping Street should be no more than two blocks in length in accordance with the Block Perimeter requirements in Section 4.0.60.n and Chapter 4.10 - Pedestrian Oriented Design Standards.

   c) Bike Amenities - Shared surface with auto traffic lanes is acceptable on Local and Local Connector Streets. Bike lanes shall be required on new Neighborhood Collector, Collector, and Arterial Streets except on Neighborhood Collectors where angled parking has been allowed.

   d) Transit - Transit amenities consistent with the Corvallis Transit Master Plan are encouraged along Shopping Streets.

   e) Managed Speed - Speeds along Shopping Streets shall be in conformance with Table 4.0-1 - Street Functional Classification System, and generally should be no greater than 25 mph. In situations where limitations of site development warrant, streets with higher established speed limits may be designated as Shopping Streets.

   f) On-street Parking - On-street parking is required along newly constructed Shopping Streets and shall be maintained where already existing. Parallel parking is required where on-street bike lanes are provided or required. Angled parking is typical on Local and Local Connector Streets and allowed on Neighborhood Collector Streets designated as Shopping Streets where bicycle safety is ensured through lower traffic volumes or speeds. On-street handicapped parking spaces may be designed as 90 degree spaces for better accessibility.

   An exception to the requirement for on-street parking along newly constructed Shopping Streets is allowed in specific areas where a pedestrian park or plaza extends into the area that would otherwise be required to be on-street parking, provided the pedestrian park or plaza

meets or exceeds all the thresholds in Sections 4.10.70.05.a.3(a-e) and Section 4.10.70.05.a.4. In this situation, the on-street parking would continue to be located on parts of the Shopping Street where the described pedestrian park or plaza was not present.

g) Curb-to-curb Width - Curb-to-curb widths shall be consistent with Table 4.0-1 - Street Functional Classification System, and shall be determined on a case-by-case basis with an emphasis on the minimum width necessary to accommodate transportation needs and on the creation of a quality pedestrian environment.

h) Traffic Calming - Bulbed intersections on Shopping Streets are required. Other traffic calming measures, including speed humps, raised planted medians, mid-block curb extensions, traffic circles, signage, and varied paving materials are encouraged when shown to be appropriate in a traffic evaluation. Any traffic calming shall be approved by the City Engineer and City Fire Chief.

i) Access Control - Access control shall be required, consistent with Table 4.0-1 - Street Functional Classification System.

j) Planting Strips/Street Trees - Planting strips are discouraged along Shopping Streets. Street tree wells shall be provided and placed at a minimum of every 20 ft. in conformance with requirements in Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting. Street trees at maturity shall be pruned to awning height, with tree canopies extending above awnings.

k) Sidewalk Width - Sidewalks along Shopping Streets shall be a minimum width of 12 ft.

l) Pedestrian Oriented Intersections - Street intersections along Shopping Streets shall contain:

1) Crosswalks that are clearly marked with contrasting paving materials. Raised crosswalks or raised intersections may be required as traffic calming measures, subject to standards specified by the City Engineer;

2) Bulbed intersections; and

3) Other pedestrian amenities approved by the City Engineer.

m) Facades - Ground-floor facades that face Shopping Streets shall comply with Chapter 4.10 - Pedestrian Oriented Design Standards.

5. An exception to the requirements of this Section may be granted if, through a Planned Development process consistent with Chapter 2.5 - Planned Development, or a legislative process consistent with or 2.0 - Public Hearings, a site is determined to appropriately provide mixed use opportunities and services to the affected Comprehensive Neighborhood.

n. Block Perimeter Standards - The following Block Perimeter requirements apply to all development projects. Exceptions to these requirements may be approved for

development that is smaller than one acre and situated in areas where the street patterns are established and do not require connections to the development.

2. **Commercial, Industrial and Civic Standards** -

Table 4.0- 2 - Shopping Street Standards				
		Collector	**Neighborhood Collector**	**Local and Local Connector**
New Development	**On-street Parking**	Required	Required	Required
	Angled Parking	Not allowed	Permissible	Required per Section 4.0.60.m.4(f)
	Bike Lanes	Required	Required, if no angled parking	Shared Street
	Curb Extensions	Required	Required	Required
	Mid-block Crossings	Required	Required	Required
	Other Traffic Calming	Permissible, but not required	Required	Required
	Managed Speed (mph)	25	20-25	15-20
	Pedestrian Facilities	Wide sidewalks	Wide sidewalks	Wide sidewalks
Redevelopment	**On-street Parking**	Allowed	Required	Required
	Angled Parking	Not allowed	Permissible, if no existing bike lanes	Required per Section 4.0.60.m.4(f)
	Bike Lanes	Required	Required, except where angled parking is allowed	Shared street
	Curb Extensions	Required	Required	Required
	Mid-block Crossings	Required	Required	Required
	Other Traffic Calming	Permissible, but not required	Required	Required
	Managed Speed (mph)	25	20-25	15-20
	Pedestrian Facilities	Wide Sidewalks	Wide Sidewalks	Wide Sidewalks

a) Complete Blocks - Commercial developments shall create a series of complete blocks bound by a connecting network of public or private streets with sidewalks. When necessary to minimize impacts to a designated wetland, to slopes greater than 15 percent, to parks dedicated to the public, and/or to Significant Natural Features, blocks may be bound by walkways without streets.

b) Maximum Block Perimeter - The maximum Block Perimeter shall be as follows:

Neighborhood Center and Professional and Administrative Office Zones	1,200 ft.	Block faces greater than 250 ft. shall have a pedestrian through-connection
Other Commercial Zones and Limited Industrial-Office Zone	1,500 ft.	Block faces greater than 400 ft. shall have a pedestrian through-connection
Mixed Use Employment and Mixed Use Transitional Zones	1,800 ft.	Block faces greater than 400 ft. shall have a pedestrian through-connection

c) Variations Allowed Outright - Variations of up to 30 percent to these block distances may be allowed outright to minimize impacts to a designated wetland, to slopes greater than 15 percent, to parks dedicated to the public, to Significant Natural Features, to existing street patterns, and/or to existing development.

o. Direct access to Highway 20/34 shall be restricted to maintain the Highway's carrying capacity and enhance its safety levels. This shall be achieved through the following requirements:

1. New or expanded development shall comply with the City's Transportation and Access Strategy until adoption of the final version of the Oregon Department of Transportation's Highway 20/34 Corridor Plan;

2. New or expanded development on sites within 0.25-mile of Highway 20/34 shall have direct access to a Local, Collector, and/or Neighborhood Collector Street, wherever practicable;

3. Collector and/or Neighborhood Collector Streets, rather than Local Streets or direct access from individual properties, should be used to access Highway 20/34. Access from Local Streets onto Highway 20/34 may be allowed where no connection to a Collector or Neighborhood Collector Street is available;

4. New or existing Local Street access to Highway 20/34 shall be restricted or eliminated where possible;

5. Full-street access points should be consolidated and spaced at no closer than 0.25-mile intervals along Highway 20/34;

6. Roadway connections between West Hills Road and Country Club Drive shall be provided consistent with the West Corvallis Access Strategy, which is outlined in the Corvallis Transportation Plan; and

7. New or expanded development shall comply with state highway access regulations and other accepted traffic engineering standards.

p. Multiple accesses to properties along Highway 20/34 and to related major streets shall be consolidated when:

1. Land uses develop, expand, intensify, and/or change;

2. Properties are consolidated and/or divided; and

3. Lot lines are adjusted.

Section 4.0.100 - LAND FOR PUBLIC PURPOSES

a. Easements for public sanitary sewer, water, storm drain, streetlight, transit, pedestrian and bicycle facilities shall be provided whenever these facilities are located outside a public right-of-way. The minimum easement width for a single utility is 15 ft. The minimum easement width for two adjacent utilities is 20 ft. The easement width shall be centered on the utility to the greatest extent practicable. Wider easements may be required for unusually deep facilities.

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.

e. Where street, trail, utility, or other rights-of-way and/or easements in or adjacent to development sites are nonexistent or of insufficient width, dedications may be required. The need for and widths of those dedications shall be determined by the City Engineer.

f. Easements or dedications required in conjunction with Land Divisions shall be recorded on the Final Plat. For developments not involving a Land Division, easements and/or dedications shall be recorded on standard forms provided by the City Engineer.

g. Environmental assessments shall be provided by the developer (grantor) for all lands to be dedicated to the public or City. An environmental assessment shall include information necessary for the City to evaluate potential liability for environmental hazards, contamination, or required waste cleanups related to the dedicated land. An environmental assessment shall be completed prior to the acceptance of dedicated lands, in accordance with the following:

1. The initial environmental assessment shall detail the history of ownership and general use of the land by past owners. Upon review of this information, as well as any site investigation by the City, the Director will determine if the risks of potential contamination warrant further investigation. If further site investigation is warranted, a Level I Environmental Assessment shall be provided by the grantor, as described in "2," below.

Vehicular Circulation

The site is bordered by SW 53rd Street to the east and Hwy. 20/34 (SW Philomath Blvd.) to the south. There are no other streets bordering the site. Existing access to tax lot 500 is provided by unimproved driveway approaches on SW 53rd Street and Hwy. 20/34. Tax lot 600 has a looped drive with paved residential approaches off Hwy. 20/34. Tax lot 400 does not have any access to an existing public or private street.

SW 53rd Street

Southwest 53rd Street is under Benton County jurisdiction, and classified as an arterial street. It is improved to County standards including 2 travel lanes, a left turn lane, and a 10-foot wide multi-use path on the west side. The existing ROW varies in width along the site frontage.

The 53rd Street Corridor Study (1985) and the 1996 Corvallis Transportation Plan (page 10-22) identify a future five-lane section for SW 53rd Street. According to LDC Table 4.0-1- Street Functional Classification System, current City Standards for an arterial street with five lanes would require five 12-foot vehicle lanes, two 6-foot bike lanes, two 12-foot planter strips, a 10-foot multi-use path (a 5-foot sidewalk is typical) on the west side and a 5-foot sidewalk on the east side for a total ROW of 111 feet (106 feet without multi-use path). The City also lists the intersection of SW 53rd Street and Hwy. 20/34 on page 53 of the Capital Improvement Program, 2011 Update. The CIP listed project consists of right turn lanes on each leg of SW 53rd Street and a right turn lane on the westbound leg of Hwy. 20/34.

Although this is in the City's CIP, it is assumed that improvements would be constructed by Benton County or ODOT with only applicable SDC reimbursement from the City. Benton County has a more recent transportation plan (July 2001) that recommends a two-lane facility with a center turn lane/median (page 3-40). The County had a subsequent traffic analysis conducted in August of 2007 which provided recommendations for intersection improvements along the SW 53rd Street corridor. The recommendation for SW 53rd Street at Hwy. 20/34 was additional lanes. Since SW 53rd is under Benton County's jurisdiction, the City has conferred with Benton County on improvements to SW 53rd Street. Benton County outlined approved lane configurations for SW 53rd Street in a letter dated February 5, 2009 to the applicant's traffic engineer. These intersection improvements include a 12-foot left turn lane, 11-foot through lane, 6- foot bicycle lane, 11-foot right turn lane, 6-foot planter strip and 10-foot multi-use path for southbound approach on SW 53rd Street. The Corvallis Area Metropolitan Planning Organization (CAMPO) analysis and recommendations are consistent with Benton County's requirements.

Highway 20/34 (Philomath Blvd.)

Hwy. 20/34 also known as Philomath Boulevard is classified as an arterial highway in the Corvallis Transportation Plan and is under ODOT jurisdiction. Along the site frontage the highway has 2 travel lanes, a left turn lane at SW 53rd, and paved shoulders. There are no sidewalks or bike lanes. The existing ROW is 80 feet.

According to the 1996 Corvallis Transportation Master Plan Section 10.10.20 (page 10-29), Philomath Boulevard (Hwy. 20/34) is to be widened to 4 travel lanes including accommodations

for bikes and pedestrians. A new five-lane arterial highway built to City/ODOT standards would require a 114-foot ROW (four 12-foot lanes, a 18-foot center lane/median, two 6-foot bike lanes, two 12-foot planting strips, and two 6-foot sidewalks). This would be 57 feet from centerline. Campo's Corvallis Area Metropolitan Transportation Plan: Destination 2030 also recommends roadway system improvement including four travel lanes, a left turn lane and bike lanes in table VII-1 future improvement to Hwy. 20/34 (Year 2020).

Traffic Impact Analysis (TIA or traffic study)

Over the past 6 years several traffic studies have been completed for the Development. The following is a list:

- Traffic Impact Analysis, May 2004
- Supplement to Traffic Impact Analysis, October 2004
- Design Exception Approval (ODOT), April 2007
- Signal Modification Request Form (SMRF), September 2007
- Traffic Impact Study and Signal Modification request, April 2009
- Traffic Impact Analysis Update, April 2010

The Signal Modification Requests were completed for ODOT due to signal modifications required at the intersection of SW 53rd and Hwy. 20/34 associated with widening the pavement for improvements. Per LDC section 4.0.60.a, the City requested an updated Traffic Impact Analysis for the Land Use Application to be consistent with the proposed development as it has evolved over time. While the various studies have useful information in them for the intersection improvements and what needs to be designed, the most applicable document to this City land use approval is the April 2010 study. Since the development's significant impacts are to the intersection of Hwy. 20/34 and SW 53rd Street, ODOT has been the lead reviewer of the traffic studies with the City and Benton County providing comments to ODOT and the applicant.

Concerns over the most recent traffic study were outlined in a letter from ODOT dated April 22, 2010 (**see Attachment J - pages 9 through 12**). Most of these concerns are based on the background traffic and the existing traffic count information. There is also concern over the location of the proposed access to the Highway not being as far west as possible. Existing traffic counts for the traffic study where taken in July of 2009. While ODOT often uses summer months for counts (as in the submitted traffic study), the City requests that counts be taken when OSU is in session. Based on the most recent comments from ODOT, they will not be requiring any further traffic analysis except some refinements to the Traffic Signal Modification Request Form which will be accomplished with the ODOT permit and design process (**see Attachment J - page 1**).

The TIA dated April 5, 2010, included trip generation information for the site and adjacent intersection analysis of SW 53rd Street and Hwy. 20/34. The trip generation study is based on the Institute of Transportation Engineers (ITE) Trip Generation Manual. ITE Specialty Retail Center classification includes a variety of retail shops including quality apparel, hard goods, services such as real estate offices, dance studios, florists and small restaurants. The estimated PM peak hour trip total for the site is shown in the table below. An apartment building proposed on tax lot 400 was removed from the application, but was included in the trip generation for the site.

TABLE D:
Weekday PM Peak Hour Trip Generation of Proposed Development

Land Use	Development Size	Weekday PM Peak Hour Trip Generation		
Specialty Retail	28.9 KSF	91	40	51
Pharmacy w. Drive-Up Window	14.8 KSF	128	63	65
Apartments	38 units	39	25	
Total Trip Generation of Site		257	128	129

Included in the traffic study was an intersection operational analysis. The table below shows the TIA results for the intersection based on the applicant's traffic counts. The table shows V/C which is the volume to capacity ratio (maximum of 1). Also shown is the Level of Service which is based on delay or time waiting. The City uses a level of service D or V/C of 0.80 as the minimum standard. A V/C > 0.80 or a LOS E requires mitigation. ODOT also uses V/C as their mobility standard and depending on the function of the highway there is a minimum mobility standard. For Hwy. 20/34 in this area the minimum mobility standard is a V/C of 0.80 or better.

TABLE E:
Year 2012 (Year of Opening) Operational Analysis Results

		Weekday PM Peak Hour Trip	
Scenario	Intersection	Generation	
		v/c ratio	Level of Service
No-Build Conditions	53rd Street @ Philomath Blvd.	0.79	N/A
Build Conditions	53rd Street @ Philomath Blvd.	0.77	N/A
	Site Access @ 53rd Street	0.01	B
	Site Access @ Philomath Blvd	0.35	C

ODOT's 2008 operational analysis of selected intersections in the Corvallis metropolitan area included an analysis of Hwy. 20/34 and SW 53rd Street. *According to that study, the existing intersection of Hwy. 20/34 is failing with a V/C of 0.94.* As noted above, ODOT has reconciled this discrepancy with the applicant and is not requiring further analysis (**see Attachment J - page 1**). Even with site trips due to the proposed development, the applicant's analysis shows an improvement at the intersection of Hwy. 20/34 and SW 53rd Street with the intersection mitigation including the right turn lane on SW 53rd Street.

Additional information on the location of the accesses and queue length from vehicles backing up waiting for the signal were reviewed as part of the traffic analysis, and will be discussed in more detail under site access below.

Since the facilities the development significantly impacts are ODOT or Benton County facilities, any additional studies will need to be part of the permitting process associated with ODOT and Benton County. If there are required changes to the site plan because of that permitting process, a Planned Development Modification approval is required (**see Conditions # 21 and # 22**).

Proposed improvements

Below is a summary of the proposed street improvements associated with the development application. Improvements are broken into 2 phases. Phase 1 is generally the development of tax lot 500 and most of the shopping street. Phase 2 is generally the development of tax lot 600 including the installation of the local street. Traffic flows through the site between the two access points: one on SW 53rd Street and the other on Hwy. 20/34. A local street is shown across tax lot 600 with the goal of providing a connection between the site and a future local street network identified in the West Corvallis Access Strategy shown on figure A-2 in the 1996 Corvallis Transportation Plan.

According to LDC section 4.0.60.n, block perimeter standards for other commercial zones is 1500 feet, with a maximum block face of 400 feet. The applicant has requested a variance for block perimeter standards which is discussed on pages 72 & 73 of the applicant's narrative. Engineering Staff support the variations to block perimeter based on LDC sections 4.0.60.o and 4.0.60.p. These code sections limit direct access to the Highway based on access management policies and engineering principles that apply to higher function roadways such as collectors, arterials and highways. LDC section 4.0.60.o.5 states "Full street access points should be consolidated and spaced no closer than 0.25 mile (1320 feet) intervals along highway 20/34. Additionally, there are provisions in LDC section 4.0.60.n.2.a that allow these blocks to be bound by walkways where there are significant natural features. The applicant shows a series of sidewalks though the site that address block perimeter standards. Staff reviewed the proposed street network based on LDC standards, Natural Features, The West Corvallis - North Philomath Plan, and the West Corvallis Access Strategy shown on figure A-2 in the appendix of the 1996 Corvallis Transportation Plan, and find that the proposed street network is consistent with the direction in those documents, as conditioned.

SW 53rd Street (Phase 1)

Proposed improvements to SW 53rd Street are shown in the applicant's attachment Y and on sheet SP1.2. The improvements are consistent with the improvements outlined by Benton County in a letter dated February 5, 2009 including a 12-foot left turn lane, 11-foot through lane, 6- foot bicycle lane, 11-foot right turn lane, 6-foot planter strip and 10-foot multi-use path for southbound approach on SW 53rd Street. Besides the street approach improvements, the applicant will be required to move the existing traffic signal pole on the NW corner of the intersection and increase the radius of the curb on the NW corner to accommodate design vehicle turning movements. According to the applicant's traffic study (discussed above), these

improvements should mitigate the development's impacts to the intersection of SW 53rd Street and Hwy. 20/34 and are consistent with LDC section 4.0.60.e requirements. Due to limited ROW on the east side of SW 53rd Street, improvements will only be constructed on the west side of SW 53rd Street adjacent to the applicant's site. To construct these improvements, the applicant will need to dedicate additional ROW to provide 50 feet of ROW from the existing centerline. Prior to final plat, the Developer will need to obtain any access or improvement permits from Benton County and construct improvements for SW 53rd Street along the site frontage **(see Conditions # 20, #21, and #39-a).** These improvements may be eligible for SDC reimbursement (**see Development Related Concern E**).

Highway 20/34 (Philomath Blvd.) (Phase 1)

Proposed improvements to Hwy. 20/34 are shown in the applicant's attachment Y and on sheet SP1.2. The proposed property plan on Sheet SP1.10 shows a ROW dedication of 17 feet along the west end of the site across tax lot 600, and a 12-foot dedication along the tax lot 500. These dedications should provide a ROW width of 57 feet on the north side of the original highway centerline. With 57-feet of ROW, the north side of a five-lane arterial highway could be built to City/ODOT standards. According to **LDC § 4.0.60.k**, Table 4.0-1, the standard for a five lane arterial highway would require a 114-foot ROW (four 12-foot lanes, a 18-foot center lane/median, two 6-foot bike lanes, two 12-foot planting strips, and two 6-foot sidewalks).

Improvements to the Highway shown on the applicant's plan have been through preliminary review by ODOT and include installation of a right turn pocket into the new site access point to the shopping street, extending the east bound left turn lane on the Highway at SW 53rd Street to the maximum possible while still accommodating the full movement access, installation of a two-way left turn lane (center turn lane) on Hwy. 20/34 at the site access, a bike lane, curb and gutter, a planter strip varying in width from 12 feet to 24 feet, and a 6-foot sidewalk. The 6-foot sidewalk shown in the applicant's plan along the Walgreen's building will need to be located in the ROW **(see Conditions #22 and # 39-a)**. The applicant proposes a wider sidewalk with part of it on private property. The portion of the sidewalk located on private property shall include a public access easement on the final plat (**see Condition # 39-b**). Improvements and access permits to the highway will be coordinated and permitted through ODOT **(see Condition #23)**.

Access points (Phase 1)

The plans submitted with the application show a right in and right out private driveway access on SW 53rd Street with a center median to discourage left turns into the site. This is a result of previous review of the traffic study and comments from ODOT, County and City staff. Although this access on SW 53rd Street is located as far north as possible on the site, at approximately 235 feet from the intersection with the highway, the vehicular queuing noted in table 4 of the traffic study at 300 feet from the intersection creates a conflict. The queue would make a left hand turn into the site difficult and would impact the highway by backing up traffic on SW 53rd Street. Therefore, the median is necessary.

Additionally, by limiting movements at this access there are less conflicts with the multi-use path than if there was a full access and additional vehicular movements. Access to SW 53rd Street will be permitted by Benton County and should include paving materials that contrast with both the commercial driveway approach and existing path. Truncated domes may be located on each side of the driveway approach on the multi-use path. If grades allow, the path should be located in a raised crossing across the commercial driveway approach. Appropriate signing including a stop sign meeting MUTCD retroreflectivity requirements for vehicles exiting the site shall be located at the crossing. **(see Condition # 26)**

Access to the Highway is provided by a full movement access from the private shopping street on the west property line of tax lot 500. Based on historical information provided in the April 5, 2010, Traffic Impact Analysis, this access was proposed prior to the applicant owning tax lot 600 and was based on an agreement with the prior owner to sign a reciprocal access agreement. Apparently the prior owner would not sign the access agreement and the applicant subsequently acquired the property. One issue associated with this access is the distance from the intersection of SW 53rd Street and Hwy. 20/34. It has been suggested the access be moved to the west side of tax lot 600, but the applicant has been reluctant to shift the access due to the long history of the project and the site design. Ultimately, ODOT approved locations for Hwy 20/34 access **(see Condition # 23).** If ODOT requires the access to move to the west, the applicant will be required to apply for a Planned Development Modification approval.

Temporary access permits, for fill and grading operations only, have been issued by ODOT and the County. These permits restrict movement of construction traffic to enter only from the highway. Final approach permits as noted above will need to be permitted prior to building construction.

Shopping Street (Phase 1 and Phase 2)

To meet block perimeter standards and pedestrian oriented design standards, a private local shopping street is proposed through the site. This shopping street is also the main and only access to the site from Hwy. 20/34 and is currently shown having full access to the highway (no turning restrictions). The limits of the shopping street end just south of Dunawi Creek.

The applicant discusses the shopping street on page 71 of the narrative and it is shown on sheet SP 1.2. According to the applicant's narrative on page 71, the proposed shopping street is 28 feet wide, has angled parking spaces, 12-foot wide sidewalks, tree wells placed every 20 feet, pedestrian crossing points and curb extensions. These improvements are consistent with LDC table 4.0 -2 - Shopping Street Standards. On sheet SP 1.2 of the application (**see Attachment G - page 3**) the dimensions shown are greater than 28 feet up to the main east-west drive aisle **(see Conditions # 16, # 17, and # 39-c).** According to LDC section 4.0.60.m.4.l, crosswalks should be marked with Contrasting paving materials. This would include continuing the concrete sidewalk through an asphalt pavement parking area as noted in the applicant's narrative.

It is not clear how the shopping street will terminate at the future intersection with the local street across tax lot 600. To distinguish the private street from the local public street, a commercial approach will need to be installed. While it appears that the proposed CDP/DDP can accommodate the required improvements, final design of the intersection and commercial

approach may require a Planned Development Modification, if Modification thresholds identified in LDC Chapter 2.5 are exceeded **(see Condition # 16).** According to the applicant's phasing plan shown on SP1.11 the shopping street would be constructed in two phases. The first phase of the street would be constructed with development of Tax lot 500 and the second phase would be completed with development of tax lot 600 **(see Condition # 39-c)**.

Local Street (Phase 2)

The need for the local street is based on Block Perimeter standards per **LDC § 4.0.60.n**, to comply with the West Corvallis Access Strategy (**see Attachment F - page 2 of 8**), to provide alternative future accesses to the highway, and address street connectivity in **LDC § 4.0.60.g**, and **LDC § 4.0.60.k.2.** These street connections also provide for utility connections for adjacent properties per **LDC § 4.0.70.d.** A street connection to the west provides a logical connection to adjacent properties that would enhance the orderly development in the area. With future development of a local street corridor adjacent to the highway, access issues consistent with **LDC § 4.0.60.o** and **LDC § 4.0.60.n** will be addressed.

The applicant shows a 20-foot wide local street connection located in a 31-foot wide ROW across tax lot 600. This street is intended to connect to a future street that would be constructed with any future development on tax lot 400. The proposed narrow street is based on a reduced street width and curb side sidewalks allowed though a Highly Protected Riparian Corridor and Locally Protected Wetland per **LDC § 4.0.30.a**, and LDC Table 4.0-1 (footnote # 8). Based on the applicant's proposal and the LDC provisions, a 20-foot wide local street with no parking, no planting trips and 5 foot curbside sidewalks would be appropriate. City staff have some concerns about the intersection design, where the local street makes a 90 degree turn. At 31 feet of ROW, it may be difficult to accommodate the larger radius required for trucks and a truck may run over the sidewalk to make the turn. Based on a modeled truck turn, the applicant has shown an increased curb radius and ROW on the NW corner of the future intersection on Sheet SP1.2 **(see Conditions # 24 and # 25).**

Conclusions on Vehicular Circulation

Given the discussion above, and associated Conditions of Approval, the anticipated development-related trips are expected to be accommodated by the proposed and existing street network.

Bicycle and Pedestrian Circulation

Existing bicycle and pedestrian facilities adjacent to the proposed development are provided on the east side of the site by the multi-use path and bike lane along SW 53rd Street. On the south side of the highway for a distance roughly 600 feet west of SW 53rd Street to the old Dairymart site, there is a curbside sidewalk. Along the highway, there are paved shoulders.

Bicycle and pedestrian improvements shown in the proposed CDP/DDP include;

- Relocating the multi-use path to be setback 6 feet from the 53rd street along the site Frontage.
- A future trail identified on Figure A-4 of the 1996 Corvallis Transportation Plan and in table 13 (T-13)on page 5-6 and map#7 of the 2000 Park and Recreation Facilities Plan (**see Attachment F - pages 6 through 8**).
- Installation of a bike lane on the west side of SW 53rd Street along the site frontage.
- Installation of a bike lane along the north side of the Highway across the site frontage.
- 6-foot wide setback sidewalks along Hwy. 20/34.
- Curbside sidewalks along the future local street.
- Wide sidewalks along the private shopping street.
- Private sidewalks throughout the site as shown on sheet SP1.2

53rd Street Multi-Use Path and Public Sidewalk

Due to existing conditions and the 10-foot multi-use path, the planting strip on the west side of SW 53rd Street is proposed to be 6-feet wide. This is noted in the applicant's variance table and included under the Compensating Benefits discussion above. The proposed relocation of the multi-use path and the site access to SW 53rd Street was reviewed by the Bicycle and Pedestrian Advisory Commission (BPAC). BPAC has concerns over conflicts with bicycles, pedestrians and motor vehicle at the multi-use path crossing the site access on SW 53rd Street, and recommended elimination of the driveway on SW 53rd Street until the street is developed to urban standards (**see Attachment M**).

To mitigate some of these concerns, it is possible to increase awareness for bicycles, pedestrians, and vehicle drivers at the crossing point by using paving materials that contrast with both the commercial driveway approach and existing path, by locating truncated domes on each side of the driveway approach on the multi-use path, by providing a raised crossing if grades allow, by installing a concrete commercial driveway approach, and by installing appropriate signs for vehicles exiting the site, including a stop sign meeting MUTCD requirements for retro-reflectivity **(see Condition #26)**. Additionally this approach should be limited to right in and right out access only. This will reduce the number of potential conflicts at the crossing for a full access driveway. Benton County provided a letter dated July 16, 2010 (**see Attachment K**) which addresses some of the concerns expressed by BPAC on the multi-use path and driveway.

Dunawi Creek Multi-Use Path

A public multi-use path is proposed along the north side of Dunawi Creek (**see Attachment G**). The applicant proposes to meander the trail alignment within a 45-foot wide easement to provide flexibility in the alignment, to account for maximum preservation of Significant Vegetation, and to also account for any field adjustments that might be required by both City and DSL construction standards. DSL concurrence is required for construction of the path where it impacts the Locally Protected Wetland (**see Condition # 4**).

The applicant proposes to utilize two MADA credits, outlined in **LDC § 4.11.50.02.c**, that relate specifically to the proposed public multi-use path located on the north side of Dunawi Creek. Use of the MADA credits increases the amount of the site area that can be development beyond the base MADA, allowing an additional 12,388 square feet of commercial development and an

additional 12,388 square feet of Natural Features encroachment allowances for construction of the path itself. Inclusion of the multi-use path is also the applicant's proposed method of complying with Block Perimeter standards, by providing a northerly east/west pedestrian and bicycle connection, and completing the block formed by the existing and proposed street network. The path alignment is consistent with the City's Transportation Plan and Park and Recreation Facilities Plan.

There is concern by both staff and the applicant, over the ability to get permits for this path from DSL. Additionally, staff and the applicant are concerned that construction of the path with development would be an "attractive nuisance" until additional development occurs to the north and west of the subject site. In light of the permitting uncertainty and potential nuisance creation, the applicant has suggested prepaying for this path in meetings with staff as opposed to constructing the path with development. Prepayment is the applicant's proposed method of fulfilling compliance with the MADA and Block Perimeter standards noted above, as well as with **LDC § 4.0.30.c**, which specifies that trail construction or security for construction needs to occur concurrent with review of the site development permit applications **(see Condition #10)**.

Other Proposed Pedestrian Circulation Improvements

A 6-foot sidewalk is proposed along the south side of the Walgreen's building and is outside the public ROW on private property. The required 6-foot public sidewalk needs to be located completely within the ROW. The applicant may choose to construct a wider sidewalk in this location with the portion of the sidewalk wider than 6 feet on private property **(see Conditions # 22 and # 39-b)**.

The requirements of setback sidewalks and planter strips which trigger the ROW dedication/easements are City standards and components of safe public sidewalks that are taken into consideration when determining serviceability. The applicant benefits from additional ROW and setback sidewalks in the form of:

- An enhanced aesthetic experience for pedestrians as the separation from motor vehicle traffic decreases road noise, prevents water from the roadway being splashed on pedestrians and provides an enhanced sense of security.
- An enhanced environment for wheelchair users as the sidewalk can be kept at a constant slope with the steeper slopes for driveway approaches built into the planting strip.
- An area for street trees, sign posts, utility and signal poles, mailboxes, fire hydrants, etc.
- Mature street trees may reduce vehicle speed.
- When wide enough, a place for a motor vehicle to wait out of the stream of traffic while yielding to a pedestrian crossing a driveway.
- A break in hard surfacing with added pervious area.
- Facilitating construction of commercial approaches by allowing adequate ROW to install the minimum radius on the approach of 8 feet or larger to accommodate smooth vehicular and truck turning movements.
- A transit facility, if needed, can be installed in wider planter strips which benefits the adjacent property's employees and customers.

With the retail oriented development, a location on the intersection of an arterial street and arterial highway, and on multiple bus routes, the site is expected to derive particular benefit from enhanced pedestrian and bicycle access facilities. This demand and above benefits support nexus and rough proportionality findings for incremental ROW increases associated with providing park strips and setback sidewalks. Development potential of the site as proposed is maintained. The proposed ROW increase is incremental because provision of standard street ROW and improvements are the minimum necessary to provide safe, functional multi-modal transportation and utility access to a commercial development site located at the intersection of an arterial street and arterial highway. Excess capacity improvements may be eligible for SDC reimbursement (**see Development Related Concern E**).

Given the above-cited benefits, staff find the burden of right-of-way dedication/easements has nexus and is roughly proportional to the benefits received by the development.

Conclusions on Bicycle and Pedestrian Circulation

As proposed and conditioned, no additional improvements to the bicycle and pedestrian system are required to meet applicable Comprehensive Plan policies and Land Development Code criteria for bicycle and pedestrian circulation.

Transit

The Corvallis Transit System currently provides multiple services to this area Via Routes 3, C3, and the Philomath Connection. Route 3 has bus stops on SW 53rd Street just south of Hwy. 20/34. Route C3 has stops at SW 53rd and Helen Avenue and in front of the Sunset Shopping Center. The Philomath Connection has stops at SW 53rd Street and SW Helen, SW 53rd Street and Hwy. 20/34. and SW 53rd Street and SW Technology Loop. There are no transit shelters in the immediate vicinity of the site.

No additional improvements to the transit system are required to meet applicable Comprehensive Plan policies and Land Development Code criteria.

Conclusion on Circulation

Given the preceding discussion, the applicant's proposal and associated Conditions of Approval noted above, the requirements of the Land Development Code will be met.

Traffic and Off-Site Parking Impacts

Applicable LDC Review Criteria - LDC 2.5.40.04.a
10. Traffic and off-site parking impacts;

Refer to the discussion above, regarding the project's Traffic Impact Analysis, for expected neighborhood-level traffic impacts resulting from the proposed development. The conclusion from that analysis, based on existing conditions, is that impacts have been properly mitigated

by the proposed improvements, and as conditioned. The following discussion concerns the proposed CDP/DDP, and related on-site vehicle and bicycle parking requirements.

The following LDC Sections outline the vehicle parking requirements for the Creekside Center, based on the proposed uses permitted outright in the MUCS zone :

Applicable LDC vehicle parking requirements :
Section 4.1.20 - General Provisions

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.

c. Commercial Use Types (for accompanying office and indoor service areas) - Unless noted otherwise, number of spaces refers to vehicle parking requirements, and the number of spaces for bicycle parking shall be 10 percent of required vehicle parking or two bicycle spaces, whichever is greater. However, where fewer than three vehicle spaces are required, then only one bicycle parking space shall be required.

12. Eating or Drinking Establishments - One space per four fixed seats or stools where 24 lineal in. of bench shall be considered one seat, and one space per 50 sq. ft. of dining or drinking area where there are no fixed seats.

25. Retail Sales, General - One space per 400 sq. ft. of gross floor area.

Vehicle Parking

The proposed CDP/DDP includes vehicle parking and access locations. Vehicle parking and access driveways are intended to be constructed in two phases. Phase I includes vehicle parking and access for Buildings A, B,C,D, and Walgreen's, and Phase II includes the remaining parking required for Buildings E and F. Each Phase will stand on its own in terms of meeting the minimum and maximum vehicle parking standards in **LDC § 4.1.30.**

The calculations in Table D below outline the required amount of vehicle parking for Creekside Center I & II. The majority of the buildings are intended to house tenants with a retail sales use classification, which requires 1 vehicle parking space per 400 sq. ft. of gross floor area. Based on this requirement, the number of vehicle parking spaces required for the retail uses on site is approximately 108 spaces. Building A is intended to support an Eating and Drinking Establishment, such as a Deli. The vehicle parking required for this type of use equates to 1 space for every 50 sq. ft. of public seating area. Based on the square footage of Building A, and an estimate that 40% of the gross floor area will be dedicated to public seating, approximately 15 vehicle parking spaces are required. The estimated total of minimum required vehicle parking spaces for all phases is 123 spaces. Per **LDC § 4.1.20.o**, the maximum number of vehicle parking spaces allowed is 160. The CDP/DDP illustrates 141 vehicle parking spaces. This falls within the range of minimum and maximum vehicle parking as specified in the LDC.

Typically, vehicle parking requirements cannot be measured in exact quantities until individual tenant improvements are made, and the exact use and square footage is known. Based on the proposed Retail and Restaurant uses, the applicant has demonstrated that sufficient vehicle parking will be provided to meet the minimum requirements, and that the maximum amount of vehicle parking (130% of the minimum) is not likely to be exceeded. Compliance with LDC standards for off-street parking is considered to be one variable that helps to minimize off-site parking impacts. In terms of vehicle parking and mitigation for off-site parking impacts, the proposal is consistent with the criterion in **LDC § 2.5.40.04.a.10.** Building and tenant improvement permit reviews will ensure that minimum parking requirements for each building are satisfied prior to occupancy.

The following table provides estimates of minimum required vehicle parking:

TABLE F:
Minimum Vehicle Parking Requirements

Building & Use	*Floor Area*	*Parking Ratio per LDC 4.1.30*	*Required #*	*Provided #*
Building A	*1,782 sf*	*1 per 50 (restaurant - public seating area at 40% (714 sq. ft.) of total GFA)*	*14.28*	
Buildings B,C,D,E, and F *(Retail Sales)*	*26,695 sf*	*1 per 400 sf*	*66.74*	
Walgreen's (Retail Sales)	*16,674 sf*	*1 per 400 sf*	*41.69*	
		TOTAL	***123***	***141***

Bicycle Parking

Per **LDC § 4.1.30.c,** bicycle parking is required to be provided at 10% of the minimum required number of vehicle parking spaces, which equates to approximately 12 bicycle parking spaces. Per **LDC § 4.1.70.d**, a minimum of 50% of the required bicycle parking (6 spaces) shall be covered. The CDP/DDP illustrates that a minimum of two bicycle shelters will be provided, covering a total of eight spaces, which is consistent with the requirements of **LDC § 4.1.70.d.** As proposed in the application narrative, additional uncovered bicycle parking spaces will be provided, up to the minimum number required per Chapter 4.1 of the LDC. Compliance with the CDP/DDP and proposed bicycle parking shelters will be ensure through the building permit process (**see Condition # 18**). As proposed and conditioned, the bicycle requirements of **LDC § 4.1.70** are satisfied.

Conclusion on Traffic and Off-Site Parking Impacts

Based on the discussion above, traffic impacts have been mitigated by the proposed infrastructure improvements. The applicant proposes to provide the minimum number of vehicle parking spaces, as required per **LDC § 4.1.30**, and no more than the maximum allowed per **LDC § 4.1.20.o.** The application materials indicate that bicycle parking requirements will be satisfied per **LDC § 4.1.30** and **LDC § 4.1.70.** Based on proposed compliance with vehicle and bicycle parking requirements in Chapter 4.1 of the LDC, no off-site parking impacts are anticipated. The proposal is consistent with the criterion in **LDC § 2.5.40.04.a.10.**

Utility Infrastructure

Applicable LDC Review Criteria - LDC 2.5.40.04.a
11. Utility infrastructure;

The following discussion addresses criteria related to public water, sanitary sewer, storm drainage, street lights and franchise utilities.

Applicable Land Development Code Criteria

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:

1. Where a Land Division is proposed, each proposed lot shall have required public and franchise utility improvements installed or secured prior to approval of the Final Plat, in accordance with the provisions of Section 2.4.40.08 of Chapter 2.4 - Subdivisions and Major Replats.

Section 4.0.60 - PUBLIC AND PRIVATE STREET REQUIREMENTS

q. Development shall include underground electric services, light standards, wiring and lamps for streetlights according to the specifications and standards of the City Engineer. The developer shall be responsible for installation of underground conduit for street lighting along all public streets improved in conjunction with such development in accordance with the following:

1. The developer shall coordinate with the City Engineer to determine the location of future street light poles.

2. The streetlight plan shall be designed to provide illumination meeting standards set by the City Engineer.

3. The standard street light installation is a wood pole.

The developer shall install such facilities and make the necessary arrangements with the serving electric utility for the City-owned and operated street lighting system to be served at the lowest applicable rate available to the City. Upon City's acceptance of such development improvements, the street lighting system, exclusive of utility-owned service lines, shall be and become the property of the City.

Section 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).

f. Private on-site sanitary sewer and storm drainage facilities may be allowed, provided all the following conditions exist:

   1. Extension of a public facility through the site is not necessary for the future orderly development of adjacent properties;

   2. The development site remains in one ownership and Land Division does not occur, with the exception of Land Divisions that may occur under the provisions of Section 4.0.60.d, above; and

   3. The facilities are designed and constructed in accordance with the Uniform Plumbing Code and other applicable codes, and permits are obtained from the Development Assistance Center prior to commencement of work.

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.

Whenever any work is done contrary to the provisions of this Code, the Director may order the work stopped via a written notice served on the persons performing the work or otherwise in charge of the work. The work shall stop until the Director authorizes that it proceed or authorizes corrective action to remedy existing substandard work.

Section 4.0.90 - FRANCHISE UTILITY INSTALLATIONS

These standards are intended to supplement, not replace or supersede, requirements contained within individual franchise agreements that the City has with providers of electrical power, telecommunication, cable television, and natural gas services, hereafter referred to as Franchise Utilities.

a. Where a Land Division is proposed, the developer shall provide Franchise Utilities to the development site. Each lot in a Subdivision shall have an individual service available or

secured prior to approval of the Final Plat, in accordance with Section 2.4.40 of Chapter 2.4 - Subdivisions and Major Replats.

b. Where necessary and in the judgement of the Director, Franchise Utilities shall be extended through the site to the edge of adjacent property(ies) to provide for orderly development of adjacent properties.

Section 4.0.110 - MAIL DELIVERY FACILITIES

d. Installation of mail delivery facilities is the obligation of the developer. These facilities shall be installed concurrently with the public improvements. Where development of a site does not require public improvements, mail delivery facilities shall be installed concurrently with private site improvements.

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.

1. New development projects that create impervious surfaces in excess of 25,000 sq. ft. are required to implement storm water detention and/or retention measures as specified in the Corvallis Design Criteria Manual. Impervious surfaces include such elements as roads, driveways, parking lots, walks, patios, and roofs, etc. Detention facilities shall be designed to maximize storm water infiltration. Detention or retention facilities shall be located outside the 10-year Floodplain or the riparian easement area, whichever is greater. The riparian easement area is identified in Section 4.13.70 of Chapter 4.13 - Riparian Corridor and Wetland Provisions, and this standard shall apply regardless of whether or not an easement has been granted.

2. <u>Expansion and Redevelopment</u> -

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.

b) Detention facilities shall be designed to maximize storm water infiltration. Detention or retention facilities shall be located outside the 10-year Floodplain or the riparian easement area, whichever is greater. The riparian easement area is identified in Section 4.13.70 and this standard shall apply regardless of whether or not an easement has been granted.

c) Pre-developed runoff conditions for redeveloped impervious area shall assume a runoff pattern based on good condition grass and the

corresponding native hydrologic soil group for the site. Detention shall not be required beyond the point at which gravity flow to the existing abutting storm drainage system cannot be feasibly maintained, as determined during development plan review.

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.**

Water

The site is located in the first level service area (elevations of 290' or less). There is a 20-inch first level waterline in SW 53rd Street and a 16-inch first level waterline along Hwy. 20/34. These waterlines were installed as part of the City's West Corvallis 1st Level Waterline Project (No. 657031). With that project, an infrastructure recovery charge was established for tax lots 500 and 600. The Corvallis Water Distribution System Facility Plan does not show any other required system improvements in the area of the development site, although the development will be required to install water system improvements to serve their site and extend a waterline through the site to enable adjacent properties (tax lot 400) to connect to water as require by LDC section 4.0.70.d. According to the applicant's utility plan on Sheet SP1.6 and narrative on page 81, a new waterline will be installed through the site to provide domestic services and fire suppression for the site as well as providing a waterline stub to the new lot line of tax lot 400. Final sizing will need to be determined based on final design and fire flow requirements. The minimum main line size is 8-inches. The final location of the waterlines will also need to account for tree plantings to avoid conflicts. According to LDC section 4.2.30, there needs to be 10 feet of separation between trees and waterlines, including hydrants. Final line sizing and locations will be determined with review of the Public Improvements by Private Contract (PIPC) construction plans for the site **(see Conditions # 25 and # 27**).

Easements for new waterlines will need to be provided for all waterlines outside the public ROW. Per LDC section 4.0.100, the minimum easement width for a single City utility is 15 feet wide and multiple City utilities require a minimum easement width of 20 feet. A waterline easement will need to extend to Tax lot 400 to provide access to City utilities. Final locations of the easements are typically based on the construction plans submitted for PIPC permits. These plans are required to be authorized prior to final plat approval. Easements will need to be shown on the final plat. As shown on Sheet SP1.10, the easement for the future waterline is on the west side of the future ROW, but the waterline stub for tax lot 400 is shown on the east side of the future ROW. The easement for the waterline extending to tax lot 400 and across Dunawi Creek shall be located outside the construction limits for a future bridge across Dunawi Creek and on the same side of the future creek crossing as the waterline. If a bridge were located over City Utilities, the footings could impact the line and it may be difficult to access the waterline for maintenance **(see Condition # 39-h).**

According to LDC section 4.13.50.b.2, the location of utilities within Highly Protected Riparian Corridors and Riparian-related Areas must be deemed necessary to maintain a functional system by the City Engineer. The extension of the waterline to tax lot 400 meets this requirement by enabling tax lot 400 to be served with water and enabling future waterlines on the north side of Dunawi Creek to be connected to a future looped system that provides improved water quality and redundancy when there are maintenance or fire issues.

Given the Conditions of Approval noted above, and the applicant's proposal, no additional improvements to the City water system are required to meet applicable Comprehensive Plan policies and Land Development Code criteria.

Sanitary Sewer

According to the Wastewater Utility Master Plan, the site is located within the Brooklane Service Area and Country Club Sanitary Sewer Basin. There is an existing 18-inch sanitary sewer located along the site frontage on Hwy. 20/34 and there is an 18-inch sewer line that extends through the site between tax lot 500 and tax lot 600 to the north side of tax lot 400. No additional improvements or upgrades to the sewer system are identified in the Wastewater Utility Master Plan to serve the immediate area near the site.

As shown on the applicant's utility plan, sheet SP1.6, service to each of the buildings will be provided with individual sewer service laterals from the existing 18-inch sewer mains adjacent and through the site. Where the main line is located in an easement, the service laterals will be private up to the sewer main. Where any service laterals are located within a public ROW, the service laterals would be public up to a clean-out at the property line **(see Condition #28).**

As shown on Sheet SP1.10, the easement for the existing sewer line is located under the future ROW where there is likely to be a bridge or culvert. The easement and sewer line extending to tax lot 400 and across Dunawi Creek shall be located outside the Construction limits for a future bridge or culvert across Dunawi Creek. If a bridge were located over City utilities, the footings could impact the line and it may be difficult to access the sewer line for maintenance **(see Conditions # 39-g and # 39-h)**. Access to sewer lines and manholes should be considered in the design of the site and final utility plans.

According to **LDC § 4.13.50.b.2**, the location of utilities within Highly Protected Riparian Corridors and Riparian-related Areas must be deemed necessary to maintain a functional system by the City Engineer. To provide necessary sewer service to the north side of the Dunawi Creek, the existing sewer line, is located within the riparian corridor. Gravity sewer lines rely on elevation differences to maintain flow. To optimize the service area without the need for pumps, sewers are located at the lowest elevations, typically areas where the natural drainage flows. Therefore, location of sewers as proposed are necessary to maintain a functional system.

Given the Conditions of Approval noted above and the applicant's proposal, no additional improvements to the City sewer system are required to meet applicable Comprehensive Plan policies and Land Development Code criteria.

Storm Drainage

The site is located within the Dunawi Creek drainage basin (formally Squaw Creek). The west branch of Dunawi Creek runs through the site. There are no existing City storm drain systems in the vicinity of the site.

Chapter 7 of the Stormwater Master Plan (2002) addresses the Dunawi Creek watershed. The segment of creek just upstream of SW 53rd Street is identified as having a good riparian area, but there are concerns over the channel capacity for the ten year storm (page 7-8 and table 7-1). Recommended activity in this area of the creek as stated in SWMP table 7-3, is to develop City wide measures for preventing additional runoff volumes or excessive velocities into the stream, preserve undeveloped area near the channel, and improving the over bank area to provide flow and storage capability while improving the riparian zone. No other improvements were identified for this area of Dunawi Creek in the stormwater master plan.

Proposed site drainage is shown on the conceptual grading plan, Sheet SP1.5, and outlined in the Creekside Center1/II Preliminary Storm Drainage Calculations report as well as a summary in the application narrative beginning on page 81. Most of the site drainage will be private with the exception of the storm drain system for the future local street across tax lot 600 and to tax lot 400. Since jurisdiction of Hwy. 20/34 is under ODOT, and jurisdiction of SW 53rd Street is under Benton County, any new drainage within those street ROW's will be under their jurisdiction and will need to be permitted with applicable street improvement permit documents.

For the private site drainage, the applicant proposes a storm drainage system consisting of catch basins, pipes, water quality facilities, underground detention, detention ponds and outfalls to Dunawi Creek. The applicant has also proposed the use of some pervious pavement to reduce the pollution generating impervious area used in detention and water quality runoff calculations. The area of pervious pavement includes approximately 5100 sq. ft plus the Walgreen's drive-up lane. The detention facilities on sheet SP1.5 are shown with one underground facility under the shopping street and one detention pond. As proposed, the water quality facilities for the site include Stormfilter™ cartridges installed in special catch basins throughout the site or located in a vault that would serve a larger area. Any private storm water facilities will need to be located outside of any current or future street ROW. A private maintenance agreement with enforcement provisions to ensure maintenance for this facility shall be established in accordance with LDC sections 4.0.70.f and 4.0.60.d prior to permitting these improvements. The private site improvements, including storm drainage and pervious pavements, will be reviewed and permitted concurrent with the building permit application **(see Conditions # 29, # 30, and # 31)**.

Storm drainage for the future local street will be collected via catch basins and routed through a main line to a combined water quality/detention pond. A proposed alternate system illustrated on Sheet SP 1.5 includes a separate detention pond and water quality facility such as a Stormfilter™ vault. Stormfilter™ is a system that uses removable cartridges to filter the storm water. The cartridges can be installed in oversized catch basins for treating smaller areas or can be grouped in a vault for larger design flows. Public storm drainage will require a Public Improvements by Private Contract (PIPC) permit through Public Works, Development Review Engineering **(see Conditions # 24, # 32, and # 33)**.

Since this development will be creating more than 5000 ft^2 of new pollution generating impervious surface, water quality facilities are required. Water quality facilities shall be designed in accordance with design standards outlined in Appendix F of the Storm Water Master Plan, and the most recent version of the *King County, Washington, Surface Water Design Manual.* The water quality facilities shall be designed to remove 70 percent of the total suspended solids (TSS) entering the facility during the water quality design storm, 0.9" 24-hr rainfall event with NRCS Type 1A distribution. The facility design will need to safely pass a 100 year, 24-hour storm test. A public storm drainage easement will be required for all public drainage facilities located outside the ROW **(see Conditions # 30, # 32, and # 39-l)**.

In accordance with **LDC § 4.0.130.b**, the requirement for detention (water quantity) is typically triggered when the proposed impervious area is more than 25,000 ft^2. The storm water detention facilities will be required to be designed consistent with design standards outlined in Appendix F of the Storm Water Master Plan, and standards outlined in the King County, Washington, Surface Water Design Manual. Design shall capture storm water run-off so the run-off rates from the site after development do not exceed the pre-developed conditions, based on the 2-year, 5-year, and 10-year, 24-hour design storms. The facility design will need to safely pass a 100 year, 24-hour storm test. A public storm drainage easement will be required for all public drainage facilities located outside the ROW **(see Conditions # 31, # 33, and # 39-l)**.

Street Lights

Per **LDC § 4.0.60.q** and **LDC § 4.0.70.a**, the applicant is required to install street lights with development. There are existing street lights at the intersection of SW 53rd Street and Hwy. 20/34. With the installation of the new local street city street lighting will be required. All public street lighting shall be designed to meet City of Corvallis Standard Construction Specifications. Final design of the street lights will be reviewed with the PIPC construction plans **(see Condition # 25).**

Franchise Utilities

The applicant proposes to grant a 7-foot utility easement adjacent to the new ROW line along SW 53rd Street and Hwy. 20/34 as shown on sheet SP 1.10 (**see Attachment G - page 17**), However, along the future West Corvallis Access Strategy local street, the required Utility Easement (UE) is proposed on one side only. According to **LDC § 4.0.100.b**, a 7-foot UE is required adjacent to all street rights-of-way (both sides). Refer to the discussion above under Compensating Benefits for the proposed variation. The UE is typically granted at the time of the final plat. The applicant shall confirm via letters from the franchise utility companies that the UE is not needed on both sides of the street, and that all lots created through the subdivision plat and those properties abutting the development site will be able to be fully served by franchise utilities, or shall demonstrate there is an existing 7-foot UE adjacent to the ROW, or the applicant will need to grant a UE consistent with LDC requirements. With development of the site, applicable franchise utilities will need to be installed to serve the site **(See Conditions # 35 & # 39-e).**

Nexus and Rough Proportionality

Construction of improvements, as cited above, implement legislatively prescribed standards per the Corvallis Land Development Code. Constructing the prescribed improvements, including, but not limited to dedication of public rights-of-way, setback sidewalks, water lines, sanitary sewers, bicycle lanes, multi-use paths, and storm drainage systems is mutually beneficial to both the public at-large and the property owner, by improving access to and through the development site, and for accommodating water, stormwater, sanitary sewer, and franchise utility service to the site. Staff find that the requirements have nexus and are roughly proportional to the benefits received.

Conclusion on Public Facilities and Services
Given the Conditions of Approval cited above and the applicant's proposal, the requirements of the Land Development Code will be met.

Effects on Air and Water Quality

Applicable LDC Review Criteria - LDC 2.5.40.04.a

12. Effects on air and water quality (note: a DEQ permit is not sufficient to meet this criterion);

The proposal includes provision of pedestrian connections, consistent with the LDC Pedestrian Oriented Design Standards. Provision of pedestrian connections supports walking, a mode of transportation with no impact on air quality.

Increases in impervious surfaces tend to negatively impact water quality, by reducing the amount of permeable surface that allows for proper infiltration of stormwater, and the associated cleansing of water that occurs when it is allowed to percolate into the soil. However, the City maintains water quality standards in relationship to construction of parking lots and streets, and construction permits for these improvements will be required to comply with the applicable standards. Additionally, the applicant is proposing that the drive-through facility will be constructed of permeable paving, which provides an additional level of stormwater filtration, and an overall improvement to the quality of water that leaves the site as compared to impervious solutions. Except as noted in the discussion above under requested variations and compensating benefits, the applicant proposes to adhere to the City's water quality and Engineering standards, which will minimize the development's impacts on water quality. As noted in the discussion above, the stormwater design proposed by the applicant exceeds the City's standards for permeability and meets the water quality standards of the City.

Conclusion on Air and Water Quality Impacts
In considering approval of Land Development Code and City Engineering standards, the City balances impacts to air and water quality with anticipated and acceptable levels of urban development. Balancing of conflicting objectives has already occurred through adoption of the LDC and City Engineering standards, and the proposed CDP/DDP is in conformance with the review criterion in **LDC § 2.5.50.04.a.12**.

Pedestrian Oriented Design Standards

Applicable LDC Review Criteria - LDC 2.5.40.04.a

13. Design equal to or in excess of the types of improvements required by the standards in Chapter 4.10 - Pedestrian Oriented Design Standards; and

The standards in Chapter 4.10 - Section 4.10.70, Pedestrian Oriented Design Standards for Commercial development include a variety of site plan and building architectural standards, and are intended to *"Foster human-scale development that emphasizes pedestrian rather than vehicular features".*

The applicant has included building architectural drawings as part of the CDP/DDP request. As noted in the discussion above under Visual Elements, the proposed building architecture is consistent with the Pedestrian Oriented Design Standards outlined in Chapter 4.10 (**LDC § 4.10.70**).Therefore, the discussion concerning review criterion in **LDC § 2.5.50.04.a.13** will be limited to the standards that apply to site plan design.

Additional PODS applicable to the proposed site development are as follows:

Applicable PODS site design standards

4.10.70.02 - Building Orientation

All buildings shall be oriented, as outlined in this Section, to existing or proposed public or private streets. See Chapter 4.0 - Improvements Required with Development for public and private street standards. Buildings on corner parcels shall be oriented to both streets bordering the property. Private streets used to meet this standard must include the elements in Chapter 4.0. The building orientation standard is met when all of the following criteria are met:

a. Street Frontage Setback - At least 50 percent of the building's linear frontage is located within the maximum setback established for the zone for structures that have street frontage, as shown below in Figure 4.10-18 - Percent of Building Frontage Within Maximum Setback Area.

The CDP/DDP drawings (**see Attachment G - page 3**) indicate that all seven commercial buildings will be oriented to abutting public or private streets, with the exception of Building B, which is exempt from the provisions of **LDC § 4.10.70.02** because it is an internal building, and all other buildings meet the standard (refer to exemption language for Building B in the MUCS zone - **LDC § 3.19.40.05.a.3**, as noted in the discussion under Basic Site Design above).

For all applicable buildings, all of the applicable linear frontage falls within the 20-ft. maximum setback prescribed in the MUCS zone. The standard in **LDC § 4.10.70.02.a** is satisfied .

Applicable PODS site design standards

4.10.70.02 - Building Orientation

b. Entrances - All building sides that face an adjacent public or private street include at least one customer entrance. When the site is adjacent to more than one street, corner entrances at an angle of up to 45 degrees, from the largest of the two adjacent streets, may be substituted for separate entrances on adjacent streets. If the building does not have frontage along an adjacent street, direct pedestrian access to the street may be achieved by a sidewalk or courtyard connecting to a street no farther than 100 ft. from the building's pedestrian entrance (distance measured along the centerline of the sidewalk or over the

"hard-surfaced" portion of the courtyard from a public street right-of- way or private street tract).

As indicated on the architectural and site plan drawings (**see Attachment G**), customer entrances have been provided for all applicable street facing facades. In the case of Building B, a pedestrian connection less than 100 feet has been provided between the westernmost customer entrance and the Shopping Street. As proposed, this standard is satisfied.

Applicable PODS site design standards

4.10.70.02 - Building Orientation

c. Parking and Vehicle Circulation - Off-street parking or vehicular circulation shall not be placed between buildings and streets used to comply with this standard, as shown above in Figure 4.10-19 - Site Development Element Locations. Where allowed by the underlying zone, outdoor vehicle display lots for sale of autos, noncommercial trucks, motorcycles, trailers with less than 10,000 lbs. gross cargo weight, motor homes, and boats may be located adjacent to streets. The parking lot perimeter landscaping requirements of Section 4.2.40 of Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting shall be met.

Based on the proposed orientation of all seven buildings, and where applicable, vehicle parking has not been placed between the building and street identified for orientation purposes. As noted in the discussion above under Landscape Requirements, vehicle parking spaces visible from adjacent rights-of-way have been appropriately screened by providing landscape buffers. This standard is satisfied.

Applicable PODS site design standards(cont.)

4.10.70.03 - Pedestrian Circulation Standards

a. Requirements for New Development and Options for Expansions of a Commercial, Industrial, or Civic Structure, Consistent with Section 4.10.70.01.c -

1. Continuous Internal Sidewalks and Multi-use Paths - A continuous internal sidewalk, including associated necessary sidewalk crossings, no less than five ft. wide, shall be provided from public sidewalks or rights-of-way to all customer entrances, and between customer entrances of all buildings, as shown in Figure 4.10-19 - Site Development Element Locations. Sidewalks shall be direct and convenient and form a network of walking routes. Internal multi-use paths shall be no less than 12 ft. wide.

2. Sidewalks along Building Walls - Sidewalks no less than five ft. wide shall be provided along the full length of building walls featuring a customer entrance and along any wall parallel to and abutting parking areas larger than eight parking spaces, except in situations where the sidewalk would not provide connectivity between an entrance and parking area. Where sidewalks are adjacent to buildings, except along Shopping Streets, a five-ft.-wide foundation landscape strip and/or weather protection with planters shall be provided. These elements are noted in Figure 4.10-19 - Site Development Element Locations.

3. Separation and Distinction from Driving Surfaces - Where any internal sidewalk is parallel to and abuts a vehicular circulation or parking area, the sidewalk shall be raised and separated from the vehicular circulation or parking area by a raised curb at least six in. in height. In addition to this requirement, a landscaping strip at least five ft. wide, or wheel stops with landscaping strips at least four ft. wide, are strongly encouraged to enhance the separation of vehicular from pedestrian facilities.

4. **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 pavers, and shall be at least five ft. wide. Public multi-use paths, such as paths for bicycles, pedestrians, and emergency vehicles, shall be concrete, and shall be at least 12 ft. wide. Private multi-use paths shall be of the same materials as private sidewalks, or asphalt, and shall be at least 12 ft. wide. All materials used for public sidewalks and multi-use paths shall meet City Engineering standards.**

5. **Crossings - Where any internal sidewalk crosses an internal street, driveway, or parking aisle, the sidewalk shall be clearly marked with contrasting paving materials. Additional use of other measures to clearly mark a crossing, such as an elevation change, speed humps, or striping, is encouraged.**

6. **Connection to Adjacent Properties or Streets - In addition to the sidewalk connections required by the block development standards in Chapter 4.0 - Improvements Required with Development, sidewalk connections shall be provided between internal sidewalk networks and all adjacent planned streets, sidewalks, and multi-use paths. Multi-use paths shall be connected with adjacent multi-use paths, sidewalks, and/or bike lanes. Where appropriate, such connections shall also be provided to adjacent residential properties.**

7. **Planting Strips - For lots abutting existing streetside sidewalks, sidewalks shall be reconstructed with a planting strip consistent with the requirements in Chapter 4.0 - Improvements Required with Development.**

Sheet SP1.2 (**see Attachment G - page 3**) illustrates a continuous network of on-site sidewalks, that interconnect all seven buildings with the adjacent public sidewalk system, consistent with **LDC § 4.10.70.03.a.1** and **LDC § 4.10.70.03.a.6**. The usable portions of the sidewalk vary in width between 5 and 12 feet. The applicant proposes a 12-ft. wide internal public multi-use path north of Dunawi Creek. All building facades with customer entrances have a sidewalk along the length of the entire facade that is a minimum of 5 feet in width. All parking areas adjacent to building facades with customer entrances have the required 5-ft. sidewalk connection, per **LDC § 4.10.70.03.a.2**.

The applicant is proposing a combination of weather protection and planters along each building facade with customer entrances, consistent with **LDC § 4.10.70.03.a.2** . In some locations, the applicant has elected to provide additional landscape planters along the building facades, where weather protection or planters are not currently illustrated on the CDP/DDP, by accepting a condition of approval, to be implemented through the building permit review process (**see Condition # 36-g**). All proposed pedestrian connections use a 6-inch raised sidewalk, consistent with **LDC § 4.10.70.03.a.3.** The applicant's narrative states that pedestrian connections that intersect and cross drive aisles will be constructed with contrasting concrete paving materials (**see Condition # 17**), consistent with **LDC § 4.10.70.03.a.5.** As proposed, all of the standards in **LDC § 4.10.70.03.a** are satisfied.

Applicable PODS site design standards(cont.) - Section 4.10.70.03.b

b. **Additional Requirement for New Development and Additional List of Options for Expansions of a Commercial, Industrial, or Civic Structure, Consistent with Section 4.10.70.01.d.1 - New**

development shall comply with one of the following five options. Expansions in accordance with Section 4.10.70.01.c shall add this list of choices to those presented in Section 4.10.70.03.a to obtain a larger list of options to comply with the requirements of Section 4.10.70.01.d.1.

Options:

1. **Driveway Consolidation - Removal of at least one driveway through outright removal or access consolidation, such that the net number of driveways for the site is at least one less than prior existing conditions for the site.**

2. **Landscape Buffer - Construction or expansion of a landscape buffer between the back of a sidewalk and existing vehicle parking or circulation areas. The constructed or expanded landscape buffer shall, when completed, be a minimum of 20 ft. wide.**

3. **Reduced Parking - Establishment of an agreement that shares parking between the subject site and an abutting site and results in a reduction of total parking spaces for the subject site to 90 percent or less of the required minimum. Such shared parking agreements may be used, provided the applicant demonstrates an adequate supply of parking for each use. Identification of surplus parking during peak periods, or surplus capacity provided due to off-peak use, are methods of demonstrating this adequacy.**

4. **Covered Walkways - Installation of weather protection resulting in covered pedestrian walkways between and around all buildings and between the primary building and adjacent public pedestrian facilities.**

5. **Notarized Letter - Where development is proposed on property adjacent to existing five-lane arterial streets or highways, recording a signed and notarized letter with the Benton County Clerk from the owner of the development site agreeing not to oppose construction of a future median or pedestrian refuge.**

The proposal is consistent with the option to consolidate driveway locations, because there are three existing driveway entrances on abutting public streets, and the proposal removes one. The proposal is also consistent with option # 5, because a median is being provided on SW 53rd Street. Based on the proposal, the standards in **LDC § 4.10.70.03.b** are satisfied.

<u>Applicable PODS site design standards(cont.) - Section 4.10.70.04</u>

4.10.70.04 - Vehicle Circulation and Design Standards

a. Parking Lots -

1. **Parking lots shall be placed to the rear of buildings in accordance with Section 4.10.70.02. Administrative exceptions to this standard are allowed based on the following provisions. To the extent that required parking cannot be located to the rear of the building due to other requirements of this Code or unusual site constraints, both of which are defined in the following paragraph, the amount of parking and vehicle circulation that cannot be accommodated to the rear of the building may be provided only to the side of the building.**

2. **Other requirements of this Code may include, but are not necessarily limited to, significant Natural Resource and Natural Hazard provisions in Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting, Chapter 4.5 - Natural Hazard and Hillside Development Provisions. Chapter 4.12 - Significant Vegetation**

Protection Provisions, and Chapter 4.13 - Riparian Corridor and Wetland Provisions; and Chapter 4.1 - Parking, Loading, and Access Requirements. Unusual site constraints may include parcels fronting more than two streets, irregular lot configuration, weak foundation soils, or other physical site factors that constrain development when considered with Building Code requirements.

b. Corner Parcels - Parking areas shall not be located within 30 ft. of a roadway intersection, as measured from the center of the curb radius to the edge of the parking area's curb or wheel stop.

c. Parking Lot Access - Commercial driveway approaches shall be used to access parking lots from public streets. Parking lot approaches shall be located no closer than 50 ft. from local street intersections, as measured from the intersection of two rights-of-way lines. Approaches on collector and arterial streets shall comply with parking lot approach standards provided in Chapter 4.1 - Parking, Loading, and Access Requirements.

As discussed above, under **LDC § 4.10.70.02**, where applicable, vehicle parking areas have been placed to the rear or sides of buildings. This standard is satisfied. As proposed, the CDP/DDP complies with **LDC § 4.10.70.04.b** . The applicant has not indicated that commercial driveway approaches will be provided for the areas where the parking lot accesses the public street north of Building F. In order to comply with **LDC § 4.10.70.04.c** , the applicant is required to illustrate City-standard commercial driveway entrances for all applicable driveway/street intersections, during the site construction permit process **(see Condition # 16).**

Applicable PODS site design standards(cont.) - Section 4.10.70.04

e. Drive-through Facilities

1. Internal driveways are prohibited between buildings and streets to which the building entrances are oriented, except for car washes and fuel sales pursuant to "3," below. Examples of correct and incorrect locations of these facilities are shown on the next page in Figure 4.10- 21 - Drive-through Facilities.

2. Drive-through Facilities Uses are prohibited in the Minor Neighborhood Center (NC) Zone. In other commercial zones, Drive-through Facilities are allowed provided "1," above is met. Pedestrian areas shall be buffered from drive-through vehicles in accordance with Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting.

As illustrated on Sheet SP1.2 (**see Attachment G - page 3**), the proposed Drive-through facility associated with the Walgreen's building does not face the street that Walgreen's is oriented toward (SW Philomath Boulevard). Adjacent pedestrian areas are appropriately buffered from drive-through vehicles due to their proximity to the drive-through lane and through on-site landscape islands. The standards in **LDC § 4.10.70.04.e** are satisfied.

Applicable PODS site design standards(cont.) - Section 4.10.70.05

4.10.70.05 - Standards and Menus for Pedestrian Features and Design Variety

a. Pedestrian Amenities Standards

2. Pedestrian Amenity Requirements - All new development and substantial improvements shall provide pedestrian amenities as defined by this Section. The number of pedestrian amenities provided shall comply with the following sliding scale:

Size of Structure or Substantial Improvement	Number of Amenities
< 5,000 sq. ft.	1
5,001 - 10,000 sq. ft.	2
10,001 - 50,000 sq. ft.	3
> 50,000 sq. ft.	4

3. **Acceptable Pedestrian Amenities - Acceptable pedestrian amenities include the items listed below, some of which are shown in Figure 4.10-23 - Pedestrian Amenities:**
   a) **Sidewalks with ornamental treatments, such as brick pavers, or sidewalks 50 percent wider than required by this Code;**
   b) **Sidewalk planters with benches and public outdoor seating;**
   c) **Significant public art, such as sculpture, fountain, clock, mural, etc.;**
   d) **Mini parks or plazas that provide a minimum usable area of 300 sq. ft.); and**
   e) **Street trees of a caliper 50 percent wider than required by this Code. This approach may include preservation of healthy mature trees adjacent to the street sidewalk.**

4. **Accessibility of Pedestrian Amenities - Pedestrian amenities shall be visible and accessible to the general public from an improved street. Access to mini parks, plazas, and sidewalks shall be provided via a public right-of-way or a public access easement.**

Based on the total proposed gross square footage of commercial space, a minimum of three (3) pedestrian amenities are required with development of Creekside Center I & II. The applicant proposes to incorporate benches with planters, four pedestrian plazas, and street trees with a minimum caliper size of 2.25 inches (City standards require a minimum 1.5" caliper size for new street trees) (**see Condition # 36-h**), in order to comply with **LDC § 4.10.70.05.a.2**. All of the proposed pedestrian amenities are illustrated on the CDP/DDP (**see Attachment G**).

Conclusion on Pedestrian Oriented Design - Site Plan Design

As noted in the above discussion,,the proposed CDP/DDP accommodates building orientation and on-site pedestrian sidewalk connections that meet the requirements of providing on-site pedestrian improvements and connectivity to and through the site for pedestrians. Pedestrian amenities have been provided consistent with **LDC § 4.10.70.05.a.2** . The proposal is consistent with the requirements of **LDC § 4.10.70** and the pedestrian site design review criteria for a CDP/DDP, noted in **LDC § 2.5.40.04.a.13**. As noted in the discussion above under Visual Elements, the proposed CDP/DDP is consistent with the PODS architectural standards of **LDC § 4.10.70** . The criterion for Pedestrian Oriented Design is satisfied.

Natural Features Criteria

Applicable LDC Review Criteria - LDC 2.5.40.04.a

14. **Preservation and/or protection of Significant Natural Features, consistent with Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting, Chapter 4.5 - Natural Hazard and Hillside Development Provisions, Chapter 4.11 - Minimum Assured Development Area (MADA), Chapter 4.12 - Significant Vegetation Protection Provisions, and Chapter 4.13 - Riparian Corridor and Wetland 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.**

Applicable LDC Review Criteria - LDC 2.5.40.04.b

2.5.40.04.b. Natural Resources and Natural Hazards Factors -

1. **Any proposed variation from a standard within Chapter 4.5 - Natural Hazard and Hillside Development Provisions, Chapter 4.11 - Minimum Assured Development Area (MADA), Chapter 4.12 - Significant Vegetation Protection Provisions, or Chapter 4.13 - Riparian Corridor and Wetland 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 4.5 - Natural Hazard and Hillside Development Provisions, Chapter 4.11 - Minimum Assured Development Area (MADA), Chapter 4.12 - Significant Vegetation Protection Provisions, or Chapter 4.13 - Riparian Corridor and Wetland Provisions shall involve an alternative located on the same development site where the specific standard applies.**

Applicable LDC Definitions (Chapter 1.6)

Development Constraints - Conditions that limit or preclude development of an area or site such as location within: a Natural Hazard on the Natural Hazards Map; a Riparian Corridor or Wetlands on the Riparian Corridors and Wetlands Map; an area of Significant Vegetation on the Significant Vegetation Map; a 4th-level water service area (not served by City water); and/or an area that is permanently preserved via a conservation easement or a drainageway easement/dedication.

Development Constraints - Former - Development Constraints that no longer preclude development due to the application of the Minimum Assured Development Area (MADA) provisions. A formerly constrained area is one which would be protected through the Development Constraints in Chapters 4.5, 4.11, 4.12, or 4.13, but can be developed by applying the MADA provisions in Chapter 4.11. Development can occur on the site and the constraining factors such as significant vegetation, etc. may be removed or reduced to accommodate the development. See Formerly Constrained Areas.

Formerly Constrained Areas - Areas that contain areas that would be protected through the Development Constraints in Chapters 4.5, 4.11, 4.12, or 4.13, but can be developed by applying the MADA provisions in Chapter 4.11. Formerly Constrained Areas can be developed, and the constraining factors such as significant vegetation may be removed or reduced to accommodate the development. See Development Constraints - Former.

Mapped Natural Features - Natural Resources
The site contains mapped Natural Resources including a Highly Protected Riparian Corridor and Locally Protected, Locally Significant Wetland (**see Attachment E**). No other Natural Resources identified through the City's Natural Features Inventory are present on the subject site. The subject Wetland was delineated previously in 1998, prior to the Natural Features Inventory. The 1998 delineation was used in defining the boundaries of the Wetland as currently shown on the City's Riparian Corridors and Wetlands map. A portion of the wetland is classified as a Proximate Wetland, due to its contiguity with the Riparian Corridor.

In addition to the Natural Resources identified on the City's Riparian Corridors and Wetlands map, the applicant has provided a supplemental wetland delineation for the Locally Protected Wetland on Tax Lot 500 (**see Attachment L - pages 19 through 21**), which was completed in 2004. The 2004 delineation has been acknowledged by DSL, but has expired (**DSL Determination # 2004-169**). However, an associated wetland fill permit, based on a previous but similar development proposal, has been approved by DSL and is valid through November 22, 2010 (**see Attachment H - page 153 and Attachment L**). The application materials also identify the 100-ft. Highly-Protected Riparian Corridor boundary, based on the top-of-bank of Dunawi Creek, as determined by a topographic survey provided by the applicant. Therefore, the application materials include a combination of City and Applicant-provided data.

Mapped Natural Features - Natural Hazards
The site contains mapped Natural Hazards in the form of a 0.2-ft. Floodway, which is identified on the City's Natural Hazards map (**see Attachment D**). The applicant has provided a supplemental 100-Year Floodplain Delineation (**see Attachment G - page 16**) and Modeling Study (**see Attachment H - pages 165 through 213**), because published data from FEMA and the City of Corvallis does not identify the location of the 100-Year Floodplain on the subject property. The floodplain study was required of the applicant per **LDC § 4.5.50.04**, due to the likely presence of floodplain on the subject property.

Natural Resources Provisions
The following LDC Natural Resources provisions apply to the development site:

Applicable LDC Natural Resources Protections

Section 4.13.50 - USE LIMITATIONS AND EXCEPTIONS WITHIN HIGHLY PROTECTED RIPARIAN CORRIDORS AND RIPARIAN-RELATED AREAS
Highly Protected Riparian Corridors are those which have been identified as warranting a high level of protection due to their environmental importance and Natural Resource quality. Riparian-related Areas are defined as Proximate Wetlands, drainage easements and drainage dedications under the City's jurisdiction, and open space tracts that have been created for Riparian Corridor protection purposes. Additionally, 100-year Floodplain area serves an important Riparian Function. This area is mapped on the City's Natural Hazards Map, and is subject to the protections outlined in Chapter 4.5 - Natural Hazard and Hillside Development Provisions.

In addition to the requirements of the underlying zone, the following limitations and exceptions shall apply to activities within Highly Protected Riparian Corridors and Riparian-related Areas, as mapped on the City's Riparian Corridors and Wetlands Map.

a. Removal of Vegetation - Removal of vegetation from Riparian Corridors and

Riparian-related Areas is prohibited, except for the following purposes:

1. Stream restoration and enhancement programs;
2. Removal of Invasive and/or Noxious Vegetation as defined in Chapter 1.6 - Definitions. If necessary, in conjunction with vegetation removal non-rip-rap erosion control measures shall be utilized;
3. Substitution of local source native plant species for non-native plants. Such local source native plant species shall originate from stock collected from wild plants within 75 miles of planting site;
4. Development of Water-related or Water-dependent Uses as defined in Chapter 1.6 - Definitions, provided such Uses are designed and constructed to minimize impact on existing Riparian Vegetation;
5. Removal of emergent in-channel vegetation likely to cause flooding events that result in structural damage;
6. Perimeter mowing/cutting of vegetation for fire hazard prevention/fuel reduction, provided such mowing/cutting occurs no more than 20 ft. around structures;
7. Continuation of agricultural activities occurring on a property prior to December 31, 2004, such as grazing livestock, growing crops, etc. However, the use of herbicides or other pesticides, the application of synthetic fertilizers, and the storage of toxic materials in these areas is subject to applicable state and federal regulations, as well as the restrictions set forth in the Corvallis Municipal Code.
8. Maintenance and protection of the function of City utilities and transportation facilities located within Riparian Corridors and Wetlands;
9. Allowance of activities under an Oregon Department of Fish and Wildlife approved restoration plan for improving Riparian Function. As a component of this plan, and as a means of controlling the spread of the weeds throughout the Watershed, livestock may be permitted in areas with identified Invasive and/or Noxious Vegetation; and
10. Removal of Hazardous Trees - Requests for removal of Hazardous Trees, except in emergency circumstances, shall be reviewed by the City Urban Forester (or another qualified arborist) and approved, conditionally approved, or denied by the Community Development Director. Any trees removed shall be replaced by like native species or alternative approved native species listed on the City of Corvallis Native Plant List.

b. Building, Paving, and Grading Activities - The placement of structures or impervious surfaces, as well as grading, excavation, and the placement of fill, are prohibited. Exceptions to the drainageway restrictions may be made for the purposes identified in items 1-7 of this Section, provided they are designed and constructed to minimize adverse impacts to Riparian Corridors and Riparian-related Areas.

1. Replacement or Relocation of Existing Buildings - Replacement or relocation of existing buildings, either within the building's original footprint, or with the same or reduced square footage area elsewhere on the site. A relocation of an existing building within the same square footage area, but located elsewhere on the site, is only allowed if the relocation of the building enhances Riparian, Stormwater, and Floodplain Functions. Under no circumstances shall a relocated building be located within 15 ft. of Top-of-bank. The relocation shall be considered to enhance Stormwater, and Floodplain Function if it furthers any of the following goals without worsening any other goal:
   a) Replaces standard construction with Flow-through Design

construction, if the building is within the 100-year Floodplain;

b) Moves the structure to a higher elevation;

c) Moves the structure further from the Top-of-bank of the adjacent water body;

d) Reduces the amount of impervious surface area in the Riparian Corridor; and

e) Does not negatively impact non-noxious Riparian Vegetation. Invasive and/or Noxious Vegetation is defined in Chapter 1.6 - Definitions.

2. The location and construction of streets, utilities, bridges, bicycle, and pedestrian facilities within Highly Protected Riparian Corridors and Riparian-related Areas must be deemed necessary to maintain a functional system by the City Engineer. This Code, City Transportation and Utility Master Plans, and other adopted City plans shall guide this determination. The design standards of Chapter 4.0 - Improvements Required with Development shall be applied to minimize the impact to the subject area;

3. Redevelopment of utility operations existing as of December 31, 2004, is also permitted. Required riparian easement areas shall be re-vegetated consistent with Section 4.13.50.d.1 and Section 4.13.50.d.2;

4. Development of Water-related and Water-dependent Uses, as defined in Chapter 1.6 - Definitions, where no other viable locations exist;

5. Erosion control or flood control measures that have been approved by the Oregon Department of State Lands (DSL), the U.S. Army Corps of Engineers, or other state or federal regulatory agency with jurisdiction in this area. Erosion control or flood control measures shall either utilize bioengineering methods other than rip-rap, or shall utilize rip-rap only to address an imminent hazard to a structure built prior to December 31, 2004. If utilized, the rip-rap installation shall be designed by a Professional Engineer Licensed by the State of Oregon and approved by the Oregon Department of Fish and Wildlife;

6. Development associated with the Minimum Assured Development Area that would be allowed in accordance with Chapter 4.11 - Minimum Assured Development Area (MADA); and

7. Water quality or detention facilities located outside of riparian easement areas, as determined in Section 4.13.70.

d. Re-vegetation of Streambanks - Commensurate with the extent of new development of structures or of impervious surface areas on development sites containing Stream or river frontage as shown on the City's Riparian Corridors and Wetlands Map, the re-vegetation of Stream banks is required. For each 500 sq. ft. of new structure area or impervious surface area, 100 lineal ft. of the development site's Stream frontage shall be re-vegetated according to the following standards, up to the total amount of the development site's Stream frontage:

1. Stream bank vegetation, as outlined in "2," below, shall be provided within the first 30 ft. from Top-of-bank, with the exception of the Willamette River, which shall be addressed as indicated in "3," below;

2. **Re-vegetation Standards -**

a) Streams that already have existing vegetation as outlined in this provision are considered to be compliant with these Stream shading standards. To be considered compliant, at minimum the vegetation within the first 30 ft. from the Top-of-bank, as described in "1" above, shall include:

1) An existing vegetated tree canopy consisting of healthy trees at least four in. caliper, measured at four ft. above Natural Grade, and located at an average spacing of 20 ft. along the Stream bank; and

2) An existing vegetated under story consisting of healthy riparian shrubs over at least 50 percent of the area; and healthy groundcover such that the combination of shrubs and groundcover results in a coverage over at least 90 percent of the area.

b) Streams that do not have the required existing vegetated tree canopy and existing vegetated under story in the area to be shaded are subject to re-vegetation. Such re-vegetation shall either be that required by an Oregon Department of Fish and Wildlife-approved restoration plan for improving Riparian Function, or that required by the provisions outlined below:

1) In areas that do not meet the tree canopy requirement outlined in "a" above, large-canopy riparian trees, such as Acer Macrophyllum, with a minimum caliper size of 3/4 -1 in. shall be planted in a triple row with staggered spacing of 20 ft. oncenter along the length of the Stream bank. All new trees are required to be mulched with four cubic ft. of bark chips and drip irrigated for a period of five years to ensure establishment. All new trees shall be staked and protected by rodent-proof fencing, as specified by the Public Works Department;

2) In areas that do not meet the riparian shrub coverage portion of the under story requirement outlined in "a," above, riparian shrubs shall be planted and maintained to provide the required 50 percent coverage within five years. The minimum planting size for the riparian shrubs shall be one gallon or 18 in. live stakes. All new shrubs shall be mulched with three in. of bark chips, extending one ft. from the drip line of the shrub or around the live stake or live stake bundle. All new shrubs shall also be irrigated and maintained for a period of five years to ensure establishment.

3) In areas that do not meet the groundcover coverage portion of the under story requirement outlined in "a," above, groundcover shall be maintained or planted to provide a minimum of 90 percent total coverage of shrubs and ground covers within five years. The minimum planting size shall be one gallon. Ground covers shall be mulched with three in. of bark chips and irrigated for a period of five years to ensure establishment.

e. **Subdivisions, Land Partitions, and Property Line Adjustments - For properties with Natural Resources or Natural Hazards subject to Chapter 4.5 - Natural Hazard and Hillside Development Provisions, Chapter 4.12 - Significant Vegetation Protection Provisions, or Chapter 4.13 - Riparian Corridor and Wetland Provisions, no Subdivision, Partition, or Lot Line Adjustment shall create new lots or parcels unless:**
   1. **Each new and remaining lot or parcel contains an area unconstrained by Natural Resources or Natural Hazards; and**
   2. **The unconstrained area in "1," above, is equal to or greater than the Minimum Assured Development Area for the zone or zones in which the development site falls.**

   Exceptions to this requirement are lots created for public park purposes and privately- or publicly-owned lots completely contained within land zoned Conservation-Open Space. New Subdivisions and Partitions may contain common open space tracts for the purpose of protecting Natural Resources and/or avoiding Natural Hazards.

g. **Exemptions - When performed under the direction of the City, and in compliance with the provisions of the Stormwater Master Plan, the following activities shall be exempt from the provisions of this Chapter:**
   1. **Response to public emergencies, including emergency repairs to public facilities; and**
   2. **Routine maintenance or replacement of existing public facilities.**

4.13.80.01 - Use Limitations and Exceptions Within Locally Protected Wetlands

a. **In addition to the requirements of the underlying zone, the limitations and exceptions in "b," through "e," below, shall apply to -**
   1. Activities within Locally Protected Wetlands (LPWs) as shown on the City's Riparian Corridors and Wetlands Map; and
   2. The associated 25-ft. setback/buffer area described in Section 4.13.40.b.1.b, unless a delineation results in a different boundary.

b. **Removal of Vegetation - Removal of vegetation from Locally Protected Wetlands is prohibited, except for the following purposes:**
   1. Wetland restoration and enhancement programs approved by the Department of State Lands; and
   2. Activities outlined in sections 4.13.50.a.2, 4.13.50.a.3, 4.13.50.a.5 through 4.13.50.a.8, and 4.13.50.a.10.

c. **Building, Paving, and Grading Activities - Within LPW areas, the placement of structures or impervious surfaces, as well as grading, excavation, and the placement of fill, is prohibited, except as outlined below. Exceptions to the LPW restrictions may be made for the purposes identified in "1," and "2," below, provided they are designed and constructed to minimize adverse impacts to Wetland Functions.**
   1. Replacement of existing buildings with buildings located within the original building footprint, provided replacement does not disturb additional surface area within the Wetland area. Vertical additions may be added to these structures if they do not disturb additional surface area within the Wetland area.
   2. Activities outlined in sections 4.13.50.b.2, 4.13.50.b.5, and 4.13.50.b.6.

d. **Compliance with Some Use Limitations and Exceptions for Highly Protected Riparian Corridors and Riparian-related Areas - Compliance is required with sections 4.13.50.e through 4.13.50.g of Section 4.13.50 - Use Limitations and Exceptions for Highly Protected Riparian Corridors and Riparian-related Areas.**

e. **Department of State Lands and US Army Corps of Engineers Notification Required - In addition to the restrictions and requirements of this Section, all proposed development activities within any Wetland are also subject to Oregon Department of State Lands (DSL) and US Army Corps of Engineers standards and approval. Where there is a difference, the more restrictive regulation shall apply. In accordance with ORS 227.350, as amended, the applicant shall be responsible for notifying DSL and the Corps of Engineers whenever any portion of any Wetland is proposed for development.**

No application for development will be accepted as complete until documentation of such notification is provided. Additionally, no site development permits, such as Grading and Excavation Permits, Public Improvements by Private Contract Permits (PIPC), and Building Permits, shall be issued until the City has received verification of DSL and Corps of Engineers approval for development on the subject site.

Based on the provisions of **LDC § 4.13.50** and **LDC § 4.13.80.01**, development is generally prohibited in areas of a site where Highly Protected Riparian Corridors, Riparian Related Areas, and/or Locally Protected Wetlands have been identified. Approximately 60% of the 6.64 acre Creekside Center site is constrained by a combination of Natural Features and Natural Hazards. Due to the extent of constraints on the development site, the MADA provisions of LDC Chapter 4.11 apply (see MADA discussion below). Therefore, some level of encroachment is permissible into the Natural Resource areas identified above, based on the allowances under **LDC § 4.13.50.b.6** (MADA exemption for Riparian Corridor protections) and **LDC § 4.13.80.01.c.2** (MADA exemption for Wetland protections).

The area of allowable encroachment is re-classified as "Formerly Constrained Areas", and the development restrictions of **LDC § 4.13.50** and **LDC § 4.13.80.01** no longer apply in these specific areas of the site. The remaining area of the development site, where MADA does not allow encroachment and which is still classified as "Constrained" continues to be subject to the protections and allowances of **LDC § 4.13.50** and **LDC § 4.13.80.01**.

After consideration of development permissible in Unconstrained Areas of the subject site and development encroachments allowed through the MADA provisions, the applicant has indicated that the remaining portions of the site, containing the Highly Protected Riparian Corridor, Riparian Related Areas, and Locally Protected Wetlands that are subject to the protections of **LDC § 4.13.50** and **LDC § 4.13.80.01,** will be protected as required. The applicant has identified a "Limits of Construction" line that defines the areas to be protected (**see Attachment G - page 8**). In order to ensure that Natural Resource areas outside of the limits of development are protected, construction fencing and silt fencing will be required to be installed along the perimeter throughout all phases of construction (**see Condition # 8**).

Because the Highly Protected Riparian Corridor is heavily forested, the revegetation standards of **LDC § 4.13.50.d** are currently satisfied. Formerly constrained areas of the site that contain

the Highly Protected Riparian Corridor, where development encroachments are permissible per MADA and where no buildings or pavement are present, may be required to be re-vegetated per the provisions of **LDC § 4.13.50.d** where the standards are otherwise not satisfied. The applicant will be required to demonstrate this at time of construction permit review (**see Condition # 36-d)**.

As noted in the discussion in Part III of this staff report (Tentative Subdivision Plat), the applicant is proposing to create separate Tracts intended to occupy the area set aside for Natural Features protections. After consideration of MADA and Formerly Constrained Areas, each new proposed subdivision lot is unconstrained and may be developed, consistent with **LDC § 4.13.50.e** . Therefore, based on the proposal, exemptions allowed per LDC MADA provisions, and the definition of Formerly Constrained Areas, the CDP/DDP is consistent with the Natural Resources protection requirements of **LDC § 4.13.50** and **LDC § 4.13.80.01**.

Permitting by Other Agencies / Timing of Construction Permit Issuance

A portion of the proposed construction activities that impact the Locally Protected Wetland are permitted by DSL, based on the conditions of the active fill permit (**see Attachment H - page 153**). Since the proposed CDP/DDP includes construction activities that extend outside of the limits of construction activity illustrated on the active DSL fill permit, and the 2004 wetland delineation has expired, it will be necessary for the applicant to obtain a new wetland delineation that evaluates the entirety of Tax Lots 500 and 600, as well as a DSL and COE joint-fill permit that is based on the full extent of the proposed CDP/DDP (**see Condition # 4**).

Because the applicant is choosing to phase construction, it is acceptable for the City of Corvallis to authorize construction permits for the early phases (or portions of phases) that fall within the limits of construction noted on the active DSL fill permit. However, the City cannot issue construction permits for any later phase or portion of the site where DSL has not authorized development, and where the development is reliant upon MADA credits attributed to DSL-approved wetland mitigation (**see Conditions # 3 and # 4**). A detailed tabulation of MADA credits is included in the MADA discussion below and in **Attachment G**.

Natural Hazards Provisions

The following LDC Natural Hazard provisions apply to the development site :

Applicable LDC Natural Hazard Protections

Section 4.5.50 - STANDARDS FOR AREAS OF SPECIAL FLOOD HAZARD - 100 YEAR FLOOD PLAIN

4.5.50.01 - Definitions and Related Standards

a. 100-year Floodplain, 0.2-ft. Floodway, and Floodway Fringe -

1. 100-year Floodplain - The 100-year Floodplain is a land area adjacent to a river, stream or other water body that is subject to a one percent chance of flooding in any given year. The Floodplain is divided into two sections: the Floodway and Floodway Fringe areas. The 100-year Floodplain is mapped by the Federal Emergency Management Agency (FEMA) on Flood Insurance Rate Maps (FIRMs)

and is the area subject to Base Flood regulations. See Figure 4.5-1 - Components of 100-year Floodplain; and Floodway, Floodplain - 100-year, Flood,100-year, Base Flood, Floodway Fringe, and Figure 1.6-16 - Floodplain Cross Section in Chapter 1.6 - Definitions.

2. **<u>0.2-ft. Floodway</u> - The 0.2-ft. Floodway is defined as the river channel or other watercourse and the adjacent land areas that must be reserved in order to discharge the Base Flood (100-year Flood) without cumulatively increasing the water surface elevation more than 0.2 ft. See Figure 4.5 -1 - Components of 100-year Floodplain, and Floodway, 0.2-ft. in Chapter 1.6 - Definitions.**

3. **<u>Floodway Fringe</u> - The Floodway Fringe is defined as the area of the 100-year Floodplain lying outside of the 0.2-ft. Floodway. See Figure 4.5 -1 - Components of 100-year Floodplain; and Floodway Fringe and Floodway, 0.2-ft. in Chapter 1.6 - Definitions.**

b. **Relationship of 0.2-ft. Floodway and Floodway Fringe to Regulated Riparian Corridors - Areas of the 0.2-ft. Floodway and Floodway Fringe that fall within a Regulated Riparian Corridor are also subject to the provisions of Chapter 4.13 - Riparian Corridor and Wetland Provisions. Where regulations are in conflict, the most restrictive shall apply. See Riparian Corridor, Regulated in Chapter 1.6 - Definitions.**

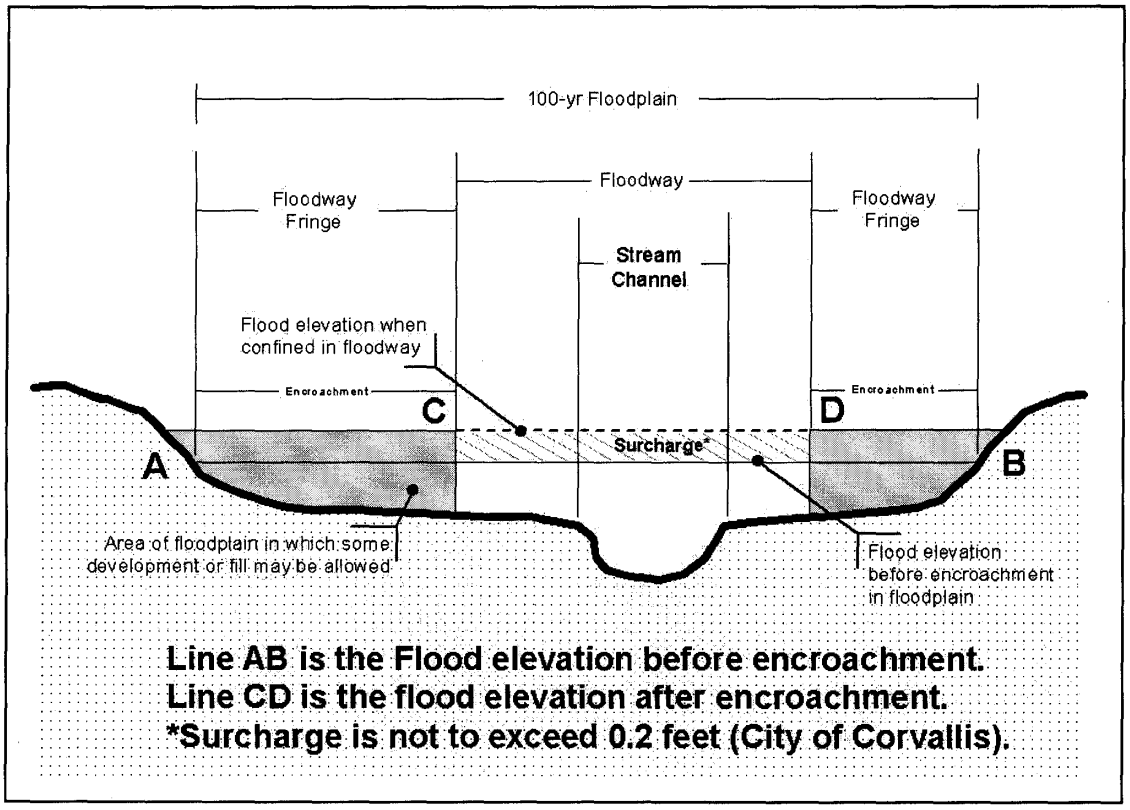


Figure 4.5-1 - Components of 100-year Floodplain

4.5.50.02 - Additional Application Requirements within the 100-year Floodplain

In addition to the application requirements in Section 4.5.40, the following information is required with development applications involving property in the 100-year Floodplain:

a. Elevation - Elevation in relation to the National Geodetic Vertical Datum 1929 (NGVD29), of either the:

1. Lowest finished floor level of all new structures. This includes basements and attached garages, electrical equipment (except utility meters), heating and ventilation equipment, plumbing, air conditioning equipment, and/or other service facilities (including ductwork); or

2. Elevation to which any existing structure has been or is proposed to be flood-proofed; and certification by a registered professional engineer that the flood-proofing methods for any nonresidential structure meet the flood-proofing criteria in Section 4.5.50.08.c.4, below;

b. A description of the extent to which any Floodplain or Watercourse is proposed to be altered or affected as a result of proposed development;

c. Topographic Survey - A topographic survey of the development site, showing existing and proposed topography in two-ft. contour intervals. The survey shall indicate the location of Top-of-bank, consistent with the definition in Chapter 1.6 - Definitions. The survey shall show the 0.2-ft. Floodway boundary and the 100-year Floodway Fringe boundary. The survey shall also show the location of existing and proposed improvements on the site, including structures, landscaping, parking areas, and other impervious surface areas. The survey shall be drawn to scale and shall note the distance from Top-of-bank to the improvements on the site;

d. Base Flood Elevation - The applicable Base Flood elevation;

e. All necessary permits from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334, as amended, shall be obtained, or obtaining such permits shall be a Condition of Approval to be satisfied prior to issuance of any construction permit.

4.5.50.04 - Interpretation of Flood Insurance Rate Map and Other Floodplain Boundaries

When there appears to be a conflict between a mapped boundary and actual field conditions, the City Engineer shall determine the exact location of the boundaries of the Floodplain. Where FEMA Base Flood elevation information is unavailable for flood hazard areas, the City Engineer shall obtain, review, and reasonably utilize any Base Flood elevation and Floodway data as a basis for applying standards in the Floodway Fringe, 1.0-ft. Floodway, and 0.2-ft. Floodway.

4.5.50.06 - Standards in the 0.2-ft. Floodway -

a. Encroachments - No encroachments are allowed within the 0.2-ft. Floodway, with the exception of bridges, infrastructure, utilities, or Water-dependent Uses, for which it may be demonstrated, through hydrologic and hydraulic analyses performed in accordance with standard engineering practices, that the proposed encroachment would not result in any increase in flood levels within the community during the Base Flood discharge. Encroachments include fill, new construction, Substantial Improvements, except as provided in "c.3," below, and other development. Development within the 0.2-ft. Floodway shall comply with all applicable state and federal requirements. Construction of these facilities must be shown to cause minimal harm to the Properly Functioning Condition of the stream. These improvements shall be subject to the City's Engineering Design Standards.

c. Limitations and Exceptions to Activities in the 0.2-ft. Floodway - In addition to the requirements of the underlying zone, the limitations and exceptions in "1," through "3," below, shall apply to activities within the 0.2-ft. Floodway. Where applicable state or federal regulations provide greater restrictions, such regulations shall apply. All necessary local, state, and federal approvals shall be secured prior to the commencement of earth movement or construction in these areas.

1. Removal of Vegetation - Removal of vegetation from the 0.2-ft. Floodway is prohibited, except for the following purposes, as approved by the City Engineer:

a) Stream restoration and enhancement programs;

b) Removal of Invasive and/or Noxious Vegetation as defined in Chapter 1.6 - Definitions. If necessary in conjunction with vegetation removal, non-rip-rap erosion control measures shall be utilized;

c) For the development of Water-related or Water-dependent Uses, provided they are designed and constructed to minimize impact on the existing Riparian Vegetation;

d) Removal of emergent in-channel vegetation likely to cause flooding events that result in structural damage;

e) Mowing/cutting of vegetation in a 20-ft. perimeter around structures for fire hazard prevention;

f) Continuation of agricultural activities occurring on a property prior to December 31, 2004, such as grazing livestock, growing crops, etc. However, the use of herbicides, or other pesticides, the application of synthetic fertilizers, and the storage of toxic materials in these areas is subject to applicable state and federal regulations and is also subject to the restrictions set forth in the Corvallis Municipal Code; and

g) Removal of Hazardous Trees - Requests for removal of Hazardous Trees, except in emergency circumstances, shall be reviewed by the City Urban Forester (or another qualified arborist) and approved, conditionally approved, or denied by the Community Development Director. Any trees removed shall be replaced by like native species or alternative approved native species listed on the City of Corvallis Native Plant List.

2. Maintenance within the 0.2-ft. Floodway -

a) The limitations imposed by this Section do not preclude the routine maintenance of existing structures in the 0.2-ft. Floodway.

b) Maintenance of lawns, non-native riparian planted vegetation, and landscaping shall be kept to a minimum. Additionally, the application of herbicides or other pesticides, and the application of synthetic fertilizers is subject to applicable state and federal regulations and developed properties shall be subject to the restrictions set forth in the Corvallis Municipal Code;

c) Where replanting is done, native species shall be used, with the exception of continuing agricultural uses, as specified in Section 4.5.50.06.c.1.f;

d) Maintenance pruning of existing trees shall be kept to a minimum and shall be in accordance with the American National Standards Institute (ANSI) A300 standards for Tree Care Operations. Under no circumstances shall the maintenance pruning be so severe that it compromises the tree's health, longevity, and resource functions;

e) Vegetation within utility easements shall be kept in a natural state and replanted when necessary with native plant species. However, no trees shall be planted within utility easements; and

f) Disposal of yard waste or other organic materials is prohibited within the Top-of-bank boundary of any Stream, and is regulated by restrictions in the Corvallis Municipal Code.

3. Existing Structures Constructed Prior to December 4, 1984 - Existing structures that were constructed prior to December 4, 1984, and are located in the area between the 1.0-ft. Floodway and the 0.2-ft. Floodway shall not be considered Nonconforming Structures for the purposes of this Chapter. Additionally, Substantial Improvement or replacement within the same footprint is permitted. Such replacements shall comply with the mandatory construction standards in Sections 4.5.50.08.b and 4.5.50.08.c.

4.5.50.07 - Standards in High Protection Floodway Fringe Areas

The following standards shall apply to activities and development in High Protection Floodway Fringe areas, as identified on the Natural Hazards Map. Generally, these areas contain the 100-year Floodplain of local Streams, but not the portions of the Millrace and Willamette and Mary's River 100-year Floodplains within the City Limits boundary, as of December 31, 2004.

In addition to the requirements of the underlying zone, the following limitations and exceptions shall apply to activities within the High Protection Floodway Fringe. Where applicable state or federal regulations provide greater restrictions, such regulations shall apply. All necessary local, state, and federal approvals shall be secured prior to the commencement of earth movement or construction in these areas.

a. Removal of Vegetation - Removal of vegetation from High Protection Floodway Fringe areas is prohibited, except for the following purposes, as approved by the City Engineer:

1. Stream restoration and enhancement programs;

2. Removal of Invasive and/or Noxious Vegetation as defined in Chapter 1.6 - Definitions. If necessary in conjunction with vegetation removal, non-rip-rap erosion control measures shall be utilized;

3. For the development of Water-related or Water-dependent Uses, provided they are designed and constructed to minimize impact on the existing Riparian Vegetation;

4. Removal of emergent in-channel vegetation likely to cause flooding events that result in structural damage;

5. Mowing/cutting of vegetation in a 20-ft. perimeter around structures for fire hazard prevention;

6. Continuation of agricultural activities occurring on a property prior to December 31, 2004, such as grazing livestock, growing crops, etc. However, the use of herbicides, or other pesticides, the application of synthetic fertilizers, and the storage of toxic materials in these areas is subject to applicable state and federal regulations,and is also subject to the restrictions set forth in the Corvallis Municipal Code;

7. Maintenance and protection of the function of City utilities and transportation facilities located within Floodway Fringe areas; and

8. Removal of Hazardous Trees - Requests for removal of Hazardous Trees, except in emergency circumstances, shall be reviewed by the City Urban Forester (or

another qualified arborist) and approved, conditionally approved, or denied by the Community Development Director. Any trees removed shall be replaced by like native species or alternative approved native species listed on the City of Corvallis Native Plant List.

b. Building, Paving, and Grading Activities - Within High Protection Floodway Fringe areas, the placement of structures or impervious surfaces, as well as grading, excavation, and the placement of fill, is prohibited except as stated below. Exceptions to the Floodway Fringe restrictions may be made for the purposes identified in items "1," through "7," of this Section, provided they are designed and constructed to minimize adverse impacts to Stormwater and Floodplain Functions within the Floodway Fringe, and comply with the mandatory construction standards in 4.5.50.08.b and 4.5.50.08.c.

4. Location and construction of streets, utilities, bridges, bicycle, and pedestrian facilities. Location and construction of such facilities within High Protection Floodway Fringe areas must be deemed necessary to maintain a functional system by the City Engineer. This Code, City Transportation and Utility Master Plans, and other adopted City plans shall guide this determination. The design standards of Chapter 4.0 - Improvements Required with Development shall be applied to minimize the impact to the Floodway Fringe area;

5. Redevelopment of utility operations existing as of December 31, 2004, is also permitted. Required riparian easement areas shall be re-vegetated consistent with Section 4.13.50.d.1 and Section 4.13.50.d.2 of Chapter 4.13 - Riparian Corridor and Wetland Provisions;

6. Development of Water-related and Water-dependent Uses, including associated drainage facilities, water and sewer utilities, stormwater detention and retention facilities, flood control projects, and drainage pumps. These improvements shall be subject to the City's Engineering Design Standards;

8. Development associated with a Minimum Assured Development Area that would be allowed in accordance with Chapter 4.11 - Minimum Assured Development Area (MADA).

Section 4.13.70.02 - Easements, Easement Restrictions, Dedications, and Easement Widths

a. Easement - An easement shall be required when:

1. Development is proposed on a vacant parcel or a partially developed parcel, and the amount of impervious surface on the parcel resulting from new development and/or redevelopment occurring after December 31, 2004, would cumulatively equal or exceed 20 percent of the total area of the parcel. The effects of new development and/or redevelopment shall be cumulative from December 31, 2004, and when the net effect of one or more changes results in 20 percent impervious coverage or more, an easement shall be required; or

2. A parcel of land is divided into two or more parcels, whether by Land Partition or Subdivision.

b. Easement Restrictions - The easement shall contain sufficient restrictions on the use of the area to satisfy the purposes cited in Section 4.13.10 above. Restrictions shall apply to structural improvements, regrading, filling, and alteration of existing vegetative cover, as specified on an easement document provided by the City Engineer. Trees that fall

within riparian easement areas are not to be removed, unless they are a hazard, or unless they would create flooding that would cause structural damage.

c. Dedications - The City will strongly consider accepting voluntary drainageway dedications provided:

1. Public maintenance of the drainageway is anticipated or public ownership will enhance protection of the resource or maintenance of Stormwater Functions;

2. Dedication of the drainageway area does not create substandard lot size, substandard building setbacks, or otherwise reduce applicable development standards to the point that would render the existing development Nonconforming;

3. The methodologies for determining width described in subsection "d," are utilized; and

4. The land to be dedicated is placed in a separate tract through the Land Division process.

d. Easement Widths - When an easement is required, the appropriate width shall be as described in "1," through "5," below. However, in no case shall riparian easements include areas containing existing buildings that are intended to remain, nor shall easements include development area assured under "4," below.

For areas with Riparian Corridors, as designated on the City's Riparian Corridors and Wetlands Map, the associated easement width and requirements shall be as follows:

1. Measurement and Separate Tract - Easement areas shall be measured from Top-of-bank, as indicated from a submitted topographic survey, and shall be placed in a separate tract.

2. Easement Width - When an easement is required, the appropriate width shall be as outlined in Table 4.13-2 - Easement Width, except as modified by the provisions in "3," through "5," below.

Table 4.13-2
Easement Width

Riparian Corridor Areas Mapped on the Riparian Corridors and Wetlands Map	Required Easement Area --To be Placed in Separate Tracts
All Partially Protected Stream Corridors	Drainage channel + 25 ft. from Top-of-bank; or The boundary of the 0.2-ft. Floodway, whichever is greater[1]

[1] Exceptions for select existing structures located between the 1.0-ft. Floodway and the 0.2-ft. Floodway are outlined in Chapter 4.5 - Natural Hazard and Hillside Development Provisions.

Highly Protected Riparian Corridors along the Willamette and Mary's Rivers	**Drainage channel + 75 ft. from Top-of-bank; or The boundary of the 0.2- ft. Floodway, whichever is greater[2]**
All other Highly Protected Riparian Corridors	**Drainage channel + 50 ft. from Top-of-bank; or The boundary of the 0.2-ft. Floodway, whichever is greater[2]**
Note: The area between the outer edge of the easement boundary and the outer edge of the Riparian Corridor is regulated by sections 4.13.50 and 4.13.60.	

3. **If the 0.2-ft Floodway boundary, as determined by maps on file with the City Engineer, extends beyond the required width as specified in "2," above, additional easement width shall be provided as needed to encompass the Floodway.**

4. **If, through the provisions of Chapter 4.11 - Minimum Assured Development Area (MADA), it is determined that encroachment into a Riparian Corridor area is necessary to allow for utilization of the Minimum Assured Development Area, any associated easement requirement shall be relaxed to the extent necessary to allow for the minimum necessary encroachment into the resource area.**

5. **Easement widths wider than required in "2," above, may be accepted to cover the full Riparian Corridor, as determined per Section 4.13.40.a.1.**

Flood Plain and 0.2 Floodway Protections

According to the City's Natural Hazards map, the 0.2-foot floodway encroaches onto the property. The subject property is outside of the detailed study area of the 1984 Flood Insurance Study for the City of Corvallis. There are no flood elevations noted on the FEMA maps in this area. According to the May 1981 Corvallis Drainage Plan, Appendix B, sheet 2 of 26, the approximate elevation of the floodplain in this area varies from 250-252.5 from east to west across the site. According to LDC Section 4.11.50.05, no encroachments are allowed in the 0.2-foot floodway.

As part of the application review, and per **LDC § 4.5.50.04**, the City requested that the applicant provide additional studies or information including accurate topographical information for the site to determine the limits of the floodplain in this area. The applicant submitted a Flood Study which is included in the application as attachment AA (**see Attachment H - page 165)**. Results of the Flood Study are shown on Sheet SP 1.9 (**see Attachment G - page 16**).

This sheet includes floodplain elevations at various cross sections through the site. The results of the Flood Plain Study were similar to City data in the 1981 Corvallis Drainage Master Plan Flood Profiles (Sheet 2 of 26). Staff have reviewed the study and concur with its conclusions. Encroachments into the floodplain are allowed per MADA as stated in **LDC § 4.5.50.07.b.8**, and these areas of floodplain encroachment are re-classified as Formerly Constrained Areas, as noted in the discussion above under Natural Resource Protections. Proposed encroachments in the floodplain are shown on **Attachment G - Page 16.** Per **LDC § 4.5.50.02.e**, all necessary

permits from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334, as amended, shall be obtained, or obtaining such permits shall be a Condition of Approval to be satisfied prior to issuance of any construction permit **(see Condition # 34)**. Also see **Development Related Concern A** regarding upcoming FEMA Changes.

The applicant's floodplain study considers pre- and post- development floodplain impacts, including an analysis of potential impacts to the 0.2-ft. floodway. Based on the proposal and analysis, the development is consistent with the 0.2-ft. floodway protections of **LDC § 4.5.50.06.** No private development, other than the proposed Dunawi Creek crossing, is located within the bounds of the mapped 0.2-ft. floodway. The applicant has provided a construction detail for illustrating construction of buildings and site improvements adjacent to the 0.2-ft. floodway, which indicates all construction will be set back from the floodway (**see Condition # 19**). Bridges are allowable encroachments, per **LDC § 4.5.50.06.a,** where it can be demonstrated that the encroachment will not result in an increase in flood levels exceeding the 0.2-ft. standard. The applicant's floodplain study has demonstrated compliance with these standards.

Drainage Easement

Per **LDC § 4.13.70.20.d** and LDC Table 4.13-2, the drainage easement required along the Dunawi Creek should be 50 feet wide, as measured from the top-of-bank on each side of the creek. The area between 50 and 75 feet is part of the base riparian area, but is not required to have a drainage easement. Due to MADA (**LDC § 4.11.50.04.c.2** and **LDC § 4.13.70.02.d.4**), the easement is reduced on the south side of Dunawi Creek and varies in width as shown on the applicant's plan. The reduction in the easement width still maintains the boundary of the 0.2 floodway per **LDC § 4.11.50.05**. The applicant has labeled the 50-foot setback line on the plans which shows what development encroaches in the usual drainage way easement area. The easement will need to follow the grading limits line as shown on sheet SP1.5 on the south side of the creek and 50 feet from the top of bank on the north side of the creek. Since the limits of grading will be the easement line and in some cases the 0.2 floodway line, Building B will need to be setback 3 feet from this line as shown in the applicant's attachment DD. Additionally a public storm drainage easement will be needed under or through the private creek crossing on the east end of the project up to SW 53rd Street **(see Condition # 39-d).**

Given the Conditions of Approval cited above and the applicant's proposal, no additional improvements to the City's storm drainage system are required to meet applicable Land Development Code criteria.

Conclusion on Natural Hazards Provisions

The subject site is constrained by a 100-Year Floodplain, as determined through a combination of City data and a floodplain study provided by the applicant. MADA provisions of LDC Chapter 4.11 allow some level of encroachment into the 100-Year Floodway Fringe, through re-classification of the subject areas as Formerly Constrained. With the exception of the stream crossing located at the northeast corner of the site, all other proposed improvements are required to be located outside of the 0.2-ft. Floodway. As proposed and conditioned, the CDP/DDP is consistent with the Natural Hazards provisions of LDC Chapters 4.5 and 4.11.

Minimum Assured Development Area (MADA)

As noted in **LDC § 4.13.50** (Riparian Corridor protections), **LDC § 4.13.80.01** (Wetland protections), **LDC § 4.5.50.06** (0.2-ft. Floodway protections), and **LDC § 4.5.50.07** (100-Year Floodplain protections), development associated with the proposed CDP/DDP is generally prohibited within identified Natural Resource and Hazard areas. However, the provisions of LDC Chapter 4.11 have been established to ensure a minimum level of permissible development activities, even on sites that are heavily constrained by Natural Features. This is known as Minimum Assured Development Area, or MADA.

In cases where MADA applies, the LDC provides specific exemptions to the protection requirements noted above. Areas that have been determined to be suitable for development, following the MADA provisions, are re-classified as Formerly Constrained Areas, and the protections noted above no longer apply to the areas delineated as Formerly Constrained.

The applicant has provided an in-depth analysis of the amount of Constrained Area on the development site, as well as calculations that represent the MADA allowances (**see Attachment G - pages 12 through 15**). A summary of the MADA allowances are included in the table below:

TABLE G:
Summary of Minimum Assured Development Area Calculations

	Tax Lot 500	Tax Lot 600
Site Area:	202,170 sq. ft (4.64 acres)	86,912 sq. ft. (1.99 acres)
Constrained Area:	124,425 sq. ft. (62% of site)	48,393 sq. ft. (56% of site)
Unconstrained Area:	77,745 sq. ft. (38% of site)	38,519 sq. ft. (44% of site)
Base MADA:	90,968 sq. ft.	39,108 sq. ft.
MADA Credits (**LDC § 4.11.50.02.c**):		
1. Excess Capacity Right-of-Way Dedications	6,933 sq. ft.	2,470 sq. ft.
2. DSL approved wetland mitigation *	19,564 sq. ft.	3,043 sq. ft.
3. Above ground stormwater detention facilities	2,730 sq. ft.	2,007 sq. ft.
4. Trails required by Corvallis Transportation Plan or Park and Recreation Facilities Plan	10,862 sq. ft.	3,043 sq. ft.
Additional MADA Credits:	40,089 sq. ft.	10,563 sq. ft.
Total Allowed MADA *:	131,057 sq. ft.	49,671 sq. ft.

*** subject to DSL approval for wetland mitigation credits**

TABLE H:
Summary of MADA and Proposed Development Area

Total MADA:	180,728 sq. ft.
Proposed Development Area:	179,319 sq. ft.
Remaining MADA:	+ 1,409 sq. ft.

Based on the provisions of **LDC § 4.11.50.02**, the Creekside Center site has a MADA allowance of 180,728 sq. ft. The applicant is proposing to develop 179,319 sq. ft. Therefore, the proposal falls within the allowed development area, with a balance of 1,409 sq. ft. of additional development area possible. Because of the methodology used in determining MADA credits allowed under **LDC § 4.11.50.02.c** (See Table G above), there is some uncertainty regarding the exact calculation of MADA which cannot be alleviated until final construction drawings and supplemental documentation have been provided by the applicant. This uncertainty primarily concerns application of the MADA credit identified in **LDC § 4.11.50.02.c.2**, which involves wetland mitigation credits that have been authorized for purchase by the Department of State Lands. Because a portion of the proposed development involves area outside of the scope of the active DSL fill permit and currently authorized mitigation, MADA credits available under **LDC § 4.11.50.02.c.2** do not become available until the applicant has received a second DSL fill permit and has submitted documentation outlining the actual area credited for wetland mitigation by DSL.

The same holds true for two of the other MADA credits identified under **LDC § 4.11.50.02.c.** Credits are based on the actual area developed after construction drawings have been finalized, in order to account for the above-ground stormwater facilities and the public multi-use paths. The applicant has provided sufficient detail with the CDP/DDP to illustrate construction of the stormwater and public multi-use path facilities consistent with City adopted standards to show that utilization of the MADA credits is feasible, while leaving limited flexibility for the construction phase with an additional 1,409 sq. ft. of development potential. A portion of Phase 1 (Phase 1, 1A, 1B, and 1C) includes development area that is permissible as verified through the MADA calculations noted above, because that portion is not reliant on a secondary DSL mitigation credit verification, since the development activities in this Phase fall within the scope of the activities authorized under the active DSL permit and approved mitigation. However, the remainder of Phase 1 (Phase 1D and 1E), and Phase 2 either is not authorized under the current DSL fill permit, or relies on MADA credits that exceed what can be verified through the active DSL permit. Prior to Phase 2 construction, and with submittal of the site construction permit applications, the applicant is required to re-calculate MADA and additional credits available under **LDC § 4.11.50.02.c**, to verify compliance with LDC Chapter 4.11 **(see Condition # 7).**

<u>Natural Resources and Natural Hazards Variation Criteria</u>

Refer to the discussion under Compensating Benefits related to the proposed variation to the MADA order of encroachments. As noted in the discussion above, the proposal includes compensating benefits which support the requested variation. The criterion in **LDC § 2.5.40.04.b** is met.

Conclusion on Natural Features and MADA

As discussed above, the site is constrained by presence of a Highly Protected Riparian Corridor, Riparian-related Areas, Locally Protected Wetland, 0.2-ft. Floodway, and associated 100-Year Floodplain. Based on MADA provisions and the definition of Formerly Constrained Areas, some level of encroachment is permissible, while the remaining area required to be protected per LDC Chapters 4.5, 4.12, and 4.13 will be protected during construction, as noted in the CDP/DDP.

The MADA development allowances include additional area credits related to public street right-of-way dedications for the site's Arterial Street frontages, for wetland mitigation credits associated with DSL fill-permit approval, for security associated with construction of a public multi-use path located along the north side of Dunawi Creek, and for above-ground stormwater facilities. The portion of the MADA area credits related to Arterial street excess capacity right-of-way dedications and public multi-use path construction can be confirmed at this time. However, portions of the MADA area credits associated with DSL wetland mitigation credits and above-ground stormwater facilities cannot be verified until documentation related to the final site construction drawings has been obtained. The applicant has provided sufficient detail within the CDP/DDP to illustrate that site development components associated with the DSL wetland mitigation credits and above ground stormwater facilities can be reasonably accommodated, and that the MADA credits proposed are feasible and consistent with the MADA provisions in **LDC § 4.11.50.02.c**. As conditioned, all applicable Natural Feature and Natural Hazard requirements will be met. The compatibility criteria in **LDC § 2.5.40.04.a.14** and **LDC § 2.5.40.04.b** are satisfied.

D. CONCLUSION AND RECOMMENDATION - CONCEPTUAL AND DETAILED DEVELOPMENT PLAN

Staff find that the requested CDP/DDP is supported by the compatibility review criteria of **LDC § 2.5.40.04.a**, the Natural Features protection criteria in **LDC § 2.5.40.04.b**, and except where specific variations have been requested, the proposal is consistent will all applicable LDC standards. Staff find that the requested variations are supported by their associated compensating benefits. Based on this analysis, staff recommend **Approval** of the Conceptual and Detailed Development Plan request, as outlined in **Part I** of this staff report.

PART II

CONDITIONAL DEVELOPMENT PERMIT

A. BACKGROUND

As noted in Part I of this staff report and per **LDC § 3.19.30.f.13**, the MUCS zone requires approval of a Conditional Development Permit for drive-through facilities. The proposed Walgreens' store includes a drive-through along the north facade of the building. A discussion of the applicable Review Criteria is provided below.

B. CONDITIONAL DEVELOPMENT PERMIT REVIEW CRITERIA

Applicable LDC Review Criteria
2.3.30.04 - Review Criteria
Requests for Conditional Developments shall be reviewed to ensure consistency with the purposes of this Chapter, policies of the Comprehensive Plan, and any other applicable policies and standards adopted by the City Council. The application shall demonstrate compatibility in the following areas, as applicable:

a. Basic site design (the organization of Uses on a site and the Uses' relationships to neighboring properties);
b. Visual elements (scale, structural design and form, materials, etc.);
c. Noise attenuation;
d. Odors and emissions;
e. Lighting;
f. Signage;
g. Landscaping for buffering and screening;
h. Transportation facilities;
I. Traffic and off-site parking impacts;
j. Utility infrastructure;
k. Effects on air and water quality (note: a DEQ permit is not sufficient to meet this criterion);
l. Consistency with the applicable development standards, including the applicable Pedestrian Oriented Design Standards; and
m. Preservation and/or protection of Significant Natural Features, consistent with Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting, Chapter 4.5 - Natural Hazard and Hillside Development Provisions, Chapter 4.11 - Minimum Assured Development Area (MADA), Chapter 4.12 - Significant Vegetation Protection Provisions, and Chapter 4.13 - Riparian Corridor and Wetland 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.

Any Conditional Development request on residentially designated property shall also result in a clear and objective set of development standards, between the Conditional Development proposal, required adherence to this Code, and Conditions of Approval.

Section 2.3.20 - PURPOSES
Procedures and review criteria for Conditional Developments are established for the following purposes:

a. Permit certain types of public and private development that provide a community service in locations related to their service areas;
b. Permit commercial development in locations related to its service area;
c. Ensure that Conditional Development is compatible with its immediate area and the affected part of the community;
d. Permit Uses when potentially adverse effects can be mitigated; and
e. Permit a mixture of residential development types.

Purposes of a Conditional Development Permit (CDP)

The applicant is proposing a drive-through facility, which includes a window and allows the public to remain in their vehicles while making purchases from the Walgreen's store. This provides a convenient and efficient way for customers to make small purchases such as prescription drugs or photographic orders. In this case, the CDP process permits a certain type of commercial development which can cover a broad service area, given the development site's access to a major State highway and urban Arterial street. The proposal is consistent with the specific purposes of a CDP, as outlined in **LDC § 2.3.20(a) and (b).**

However, there are attributes of drive-through facilities that may cause adverse impacts on neighboring properties, such as noise from the public address system used in most drive-through facilities, the impacts caused by standing and operating motor vehicles, potential conflicts between pedestrians and vehicles, and visual impacts related to the design of the drive-through lane and abutting building facade. The purposes outlined in **LDC § 2.3.20(c) and (d)** address the compatibility issues that may arise with uses that require a CDP, and the criteria in **LDC § 2.3.30.04** are designed to help address and mitigate for potential adverse impacts. A discussion of the applicable CDP compatibility criteria is noted below, for those aspects of the drive-through facility that raise compatibility concerns. Comprehensive Plan policies have been provided where necessary, in order to help clarify the intent of the CDP criteria.

Some of the compatibility criteria noted in **LDC § 2.3.30.04** are intended to address overall site development, and the drive-through facility may not have a direct relationship to these specific criteria. In these cases, as noted below, there are matching compatibility criteria for a Conceptual and Detailed Development Plan, and a more in-depth discussion of these criteria is included in Part I of this staff report. As noted in the discussion above, and as further discussed below, the proposed CDP is consistent with the Purposes identified in **LDC § 2.3.20.**

Basic Site Design

Applicable LDC Criteria - LDC § 2.3.30.04

a. Basic site design (the organization of Uses on a site and the Uses' relationships to neighboring properties);

A thorough discussion of the overall site design is included in Part I of this staff report. For brevity, the discussion of this CDP criterion will focus on the area of the site that immediately abuts the drive-through facility, and how the facility location might impact neighboring properties.

The drive-through facility consists of a vehicle travel lane, constructed of permeable paving, and is approximately 1,854 sq. ft. in area (18-ft.(w) x 103-ft. (l)). The facility includes an awning over the drive-through window, which provides some weather protection for employees that staff the window, as well as customers sitting in their vehicles at the drive-through. The drive-through facility is centrally located on the development site, approximately 300 feet to the nearest residence, which helps to buffer the facility from neighboring properties in terms of visual and noise impacts. The facility is also located such that the remaining commercial buildings on the site obscure the facility from adjacent public rights-of-way.

In terms of vehicle circulation, customers will be required to be heading in a westerly direction to access the facility. The drive-through has a dedicated vehicle queuing lane which allows for continuous two-way vehicle movement north of the facility, and does not interfere with vehicles exiting parking spaces to the north. Drivers entering the facility will be required to cross the lane of eastbound vehicles. However, the entrance to the drive-through is near a pedestrian crosswalk, which provides a visual stopping point for drivers. A painted stop bar has been provided at the northwest corner of the Walgreen's building, at the drive-through exit point, and immediately adjacent to the Walgreen's loading facility, to help avoid potential vehicle collisions at this location. As designed, the facility is placed in an efficient manner on the development site, and is compatible with neighboring properties and consistent with the criterion in **LDC § 2.3.30.04.a.**

Visual Elements

Applicable LDC Criteria - LDC § 2.3.30.04
b. Visual elements (scale, structural design and form, materials, etc.);

As noted in the discussion above, the facility includes an awning over the drive-through window (**see Attachment G - page 24**). The window and awning provide some visual relief to an otherwise blank building facade, and are proportioned well given the length, height, and massing of the building facade. The awning is constructed of materials compatible with the other awnings on the Walgreen's building. This criterion is satisfied.

Noise Attenuation

Applicable LDC Criteria - LDC § 2.3.30.04
c. Noise attenuation;

As noted above, the drive-through facility is located approximately 300 feet from the nearest residence to the west. Additionally, the drive-through is shielded from that residence by Building F. Noise from the drive-through facility's public address system will be directed northward given the facility's orientation, and thus the criterion for noise attenuation is satisfied.

Odors and Emissions

Applicable LDC Criteria - LDC § 2.3.30.04
d. Odors and emissions;

There are no anticipated odors from the drive-through facility. Standing vehicles do emit noxious

gases. However, the level of these emissions is anticipated to be compatible with the level of motor vehicle activities that is expected in a commercial development along a State highway. The criterion in **LDC § 2.3.30.04.d** is satisfied.

Lighting

Applicable LDC Criteria - LDC § 2.3.30.04
e. Lighting;

The application narrative indicates that "downward casting lights" are proposed to illuminate the drive-through facility. The lights are illustrated on the north facade of the Walgreen's building (**see Attachment G - page 24**). As noted in the discussion in Part I of this staff report, all exterior lighting is required to be consistent with the full-cut off and bulb visibility standards of **LDC § 4.2.80.** A condition of approval has been provided to ensure that these standards are satisfied (**see Condition # 15**). As proposed and conditioned, the criterion in **LDC § 2.3.30.04.e** is satisfied.

Signs

Applicable LDC Criteria - LDC § 2.3.30.04
f. Signage;

The proposed Conditional Development Permit application does not indicate that signs are associated with the drive-through facility, although it is anticipated that Walgreen's may request sign permits in the future to advertise for the convenience of the facility. Any proposed signs will need to comply with the standards in LDC Chapter 4.7 (**see Condition # 37**). The application narrative (**see Attachment H - page 19**) indicates that there are no proposed LDC variations associated with signs. As proposed and conditioned, this criterion is satisfied.

Landscaping for Buffering and Screening

Applicable LDC Criteria - LDC § 2.3.30.04
g. Landscaping for buffering and screening;

There is no landscaping proposed specifically to address compatibility issues with the drive-through. However, the Conceptual and Detailed Development Plan (**see Attachment G- page 9**) includes multiple landscape buffers within the development and between the drive-through and adjacent public rights-of-way, which effectively buffers the facility from most view points. This criterion is satisfied.

Transportation Facilities

Applicable LDC Criteria - LDC § 2.3.30.04
h. Transportation facilities;

There is no direct correlation between public transportation facilities and the proposed drive-through. Refer to the discussion below for anticipated immediate impacts to local traffic and off-site parking. This criterion is satisfied.

Traffic and Off-Site Parking Impacts

Applicable LDC Criteria - LDC § 2.3.30.04

l. Traffic and off-site parking impacts;

The exit of the drive-through is approximately 100 feet east of the proposed Shopping Street. The exit is also adjacent to a loading zone for the Walgreen's building, which is anticipated to have intermittent use. Because of the interior, central location of the drive-through facility on private property, and positioning of the entrance and exit to the facility, there are no anticipated impacts to traffic and off-site parking. The criterion in **LDC § 2.3.30.04.l** is satisfied.

Utility Infrastructure

Applicable LDC Criteria - LDC § 2.3.30.04

j. Utility infrastructure;

There are no proposed utilities associated with the drive-through facility (**see Attachment G - page 10**). This criterion is satisfied.

Effects on Air and Water Quality

Applicable LDC Criteria - LDC § 2.3.30.04

k. Effects on air and water quality (note: a DEQ permit is not sufficient to meet this criterion);

It is anticipated that standing vehicles at this drive-through will have negligible impacts to overall air quality in Corvallis. As noted in Part I of this staff report, the applicant proposes to construct the 1,854 sq. ft. queuing lane with permeable pavement. The permeable pavement is expected to help with stormwater management, and infiltration of stormwater into soils provides a limited level of water quality improvement by trapping suspended solids prior to discharge into Dunawi Creek. There are no anticipated impacts to air and water quality from the drive-through facility. Therefore, the criterion in **LDC 2.3.30.04.k** is satisfied.

Applicable Development Standards Including Pedestrian Oriented Design

Applicable LDC Criteria - LDC § 2.3.30.04

l. Consistency with the applicable development standards, including the applicable Pedestrian Oriented Design Standards; and

The MUCS zone does not contain any applicable development standards that apply specifically to the proposed drive-through facility. The associated Walgreen's building and applicable development standards are discussed in Part I of this staff report. As noted in Part I, the Walgreen's building is in compliance with the MUCS zone development standards, other than the requested variation in the size of the Retail Sales use. As discussed in the compensating benefits section of Part I of this staff report, the criteria have been satisfied for the requested

increase in use size, in order to accommodate the proposed drive-through facility. The following Pedestrian Oriented Design Standards from LDC Chapter 4.10 apply to drive-through facilities:

Applicable LDC Standards - 4.10.70.04.e

> **e. Drive-through Facilities**
> **1. Internal driveways are prohibited between buildings and streets to which the building entrances are oriented, except for car washes and fuel sales pursuant to "3," below. Examples of correct and incorrect locations of these facilities are shown on the next page in Figure 4.10-21 - Drive-through Facilities.**
>
> **2. Drive-through Facilities Uses are prohibited in the Minor Neighborhood Center (NC) Zone. In other commercial zones, Drivethrough Facilities are allowed provided "1," above is met. Pedestrian areas shall be buffered from drive-through vehicles in accordance with Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting.**

The proposed drive-through facility is oriented such that there are no direct conflicts between pedestrian walkways and the entrance or exit of the drive-through. The drive-through queuing lane is not located between the Walgreen's building and the street (SW Philomath Blvd.) to which the Walgreen's building entrances are oriented. A landscape buffer has been provided between the nearest pedestrian walkway / driveway crossing, just east of the entrance to the drive-through. It should be noted that this pedestrian connection, which runs along the east facade of Walgreen's, is not the primary pedestrian path associated with the building's street-oriented facade, as it serves as a secondary means of pedestrian access for parking and buildings to the north of the internal drive aisle. The applicable Pedestrian Oriented Design Standards in **LDC § 4.10.70.04.e** are satisfied, and the criterion in **LDC § 2.3.30.04.l** is satisfied.

Natural Features Protections

Applicable LDC Criteria - LDC § 2.3.30.04

> **m. Preservation and/or protection of Significant Natural Features, consistent with Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting, Chapter 4.5 - Natural Hazard and Hillside Development Provisions, Chapter 4.11 - Minimum Assured Development Area (MADA), Chapter 4.12 - Significant Vegetation Protection Provisions, and Chapter 4.13 - Riparian Corridor and Wetland 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.**

The drive-through facility is located outside of the 100-ft. Riparian Corridor setback. However, it is located within the delineated Locally Protected Wetland accepted by DSL, and within the modeled Highly-Protected 100-Year Floodplain. As discussed in Part I of this staff report, the proposed Conceptual and Detailed Development Plan and all site plan elements, including the drive-through facility, are consistent with the Natural Features protections required for the site's 100-Year Floodplain, Highly Protected Riparian Corridor, and Locally Protected Wetland, due to the encroachment allowances provided by MADA. It is not proposed that the development plans will impact the site beyond what is permissible per MADA, and therefore, Significant

Natural Features have been protected consistent with LDC provisions. The proposed drive-through facility is consistent with the Natural Features protection criteria outlined in Article IV of the LDC and with the criterion in **LDC § 2.3.30.04.m**, noted above.

C. CONCLUSION ON CONDITIONAL DEVELOPMENT PERMIT REQUEST

As discussed above, the proposed Drive-through facility is consistent with the compatibility criteria listed in **LDC § 2.3.30.04**. The Drive-through facility has been located in the center of the site and should have minimal impacts on neighboring properties and on-site pedestrian circulation.

Based on this analysis, staff recommend **Approval** of the Conditional Development Permit request, as outlined in **Part II** of this staff report.

PART III

TENTATIVE SUBDIVISION PLAT

A. BACKGROUND

The applicant is proposing to divide the existing parent parcels into seven lots or tracts. The subject parent parcels are illustrated on Benton County Assessor's Map #12-5-05 DD, as tax lots 500 and 600. The proposed Tentative Subdivision Plat is illustrated on Sheet SP1.10 (**see Attachment G - page 17**). Two of the proposed lots are intended to be set aside as private Tracts for purposes of Natural Features protection, public multi-use path access, and drainageway conveyance for Dunawi Creek. Two lots are proposed to be dedicated as Tracts for purposes of encapsulating the proposed private Shopping Street (to be constructed in two phases). The remaining three lots are commercial subdivision lots, encapsulating the building footprints and related site improvements. The applicant has indicated a desire to further subdivide proposed Lot 500 into five separate lots as part of a future commercial condominium, which is not part of this Tentative Subdivision Plat request.

A Subdivision, as defined in Chapter 1.6 of the LDC, is a division of land that creates four or more lots within a calendar year when such lots exist as a unit of land under a single ownership at the beginning of such year. The review criteria used in evaluating the proposed seven lot/tract Tentative Subdivision plat are noted below.

B. REVIEW CRITERIA FOR A TENTATIVE SUBDIVISION PLAT

LDC § 2.4.30.04.a provides review criteria for non-residential Tentative Subdivision Plat applications. The criteria are as follows:

Applicable LDC Review Criteria : LDC Section 2.4.30.04.a :

2.4.30.04 - Review Criteria

a. Nonresidential Subdivisions - Requests for the approval of a nonresidential Tentative Subdivision Plat shall be reviewed to ensure consistency with the purposes of this Chapter and the following: the City's development standards outlined in the applicable underlying Zoning Designation standards in Article III of this Code; the development standards in Article IV of this Code; the standards of all acknowledged City Facility Master Plans; the adopted City Design Criteria Manual; the adopted Oregon Structural Specialty Code; the adopted International Fire Code; the adopted City Standard Construction Specifications; the adopted City Erosion Prevention and Sediment Control Ordinance; the adopted City Off-street Parking Standards; and any other applicable policies and standards adopted by the City Council.

The Purposes of a Tentative Subdivision Plat are noted in **LDC § 2.4.20.**

Applicable LDC Section 2.4.20 : Purposes of Tentative Subdivision Plat
Section 2.4.20 - PURPOSES
Land Division review procedures are established in this Chapter for the following purposes:
a. Ensure that building sites are of sufficient size and appropriate design for their intended uses and that lots to be created are within density ranges permitted by the Comprehensive Plan;
b. Minimize negative effects of development upon the natural environment and incorporate natural features into the proposed development where possible;
c. Ensure economical, safe, and efficient routes for pedestrians, bicycles, and motor vehicles;
d. Create residential living environments that foster a sense of neighborhood identity and that are protected from the adverse effects of heavy traffic and more intensive land uses; and
e. Promote energy efficiency.

The Purposes of the Land Division standards are to ensure that building sites are of sufficient size and appropriate design for their intended uses. In this case, the Tentative Subdivision Plat application is accompanied by a requested Conceptual and Detailed Development Plan, which illustrates a development plan that is consistent with LDC development standards, as discussed in Part I of this staff report. Since the subject site is zoned MUCS and the applicant is proposing commercial uses only, residential density standards do not apply to the requested Tentative Subdivision plat. Refer to the discussion below under Article IV standards to understand the relationship between the proposed Tentative Subdivision Plat and Natural Features protections, and pedestrian, bicycle, and motor vehicle circulation patterns. The purposes identified in **LDC § 2.4.20(d)** are not applicable, since the proposal is for a non-residential Tentative Subdivision Plat. Purposes in **LDC § 2.4.20 (b),(c), & (e)** are discussed in relationship to the general review criteria of **LDC § 2.4.30.04** below, where applicable. As discussed above, and in further detail below, the proposed Tentative Subdivision Plat is consistent with the Purposes of a Tentative Subdivision Plat identified in **LDC § 2.4.20.**

The MUCS zone does not contain minimum lot area or lot width standards. Therefore, the majority of standards that will apply to the proposed Tentative Subdivision Plat are located in Article IV of the LDC. The following standards apply:

Chapter 4.0: Improvements Required with Development

Applicable LDC Standards
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:

1. Where a Land Division is proposed, each proposed lot shall have required public and franchise utility improvements installed or secured prior to approval of the Final Plat, in accordance with the provisions of Section 2.4.40.08 of Chapter 2.4 - Subdivisions and Major Replats.

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.

b. Where specific approval for a phasing plan has been granted for a Planned Development and/or Subdivision, improvements shall be phased in accordance with that plan.

The proposed Tentative Subdivision Plat is a Land Division, and timing of installation of required improvements is outlined in **LDC § 4.0.20.a.1.** This LDC section requires that the improvements be installed or secured prior to approval of the final plat. As mentioned in Part I of this staff report, the applicant has submitted a phasing plan, and has provided a discussion of the intended time lime for construction of associated public and private infrastructure improvements. As proposed and conditioned, the Tentative Subdivision Plat complies with the phasing and timing of improvement requirements outlined in LDC Chapter 4.1.

Shopping Street Tract and Easement

Applicable LDC Standards for Shopping Streets and Land Divisions
Section 4.0.60 - PUBLIC AND PRIVATE STREET REQUIREMENTS
m. Designated Shopping Streets associated with Minor and Major Neighborhood Centers shall adhere to the following standards -

2. Shopping Streets may include streets falling within the categories in "a," and "b," below. See also Table 4.0-2 - Shopping Street Standards for specific elements required with Shopping Streets.

b) Private Streets - Designed to City street standards for either the Local or Local Connector and for Shopping Streets as provided by this Section. For purposes of other development standards, such as setback requirements, private Shopping Streets shall provide the same features as required for public streets. However, the City shall not be responsible for maintenance of private Shopping Streets, and the applicant and/or owner shall be responsible for construction of the private Shopping Street and its maintenance in accordance with the standards herein. Private streets as provided by this Section shall have public access easements recorded and shall be platted in a separate tract per Section 4.0.60.d.4 .

The applicant is proposing to construct a private Shopping Street within the development site, which will provide public access to the site from SW Philomath Boulevard and from the new local public street, which divides Tax Lot 600. While the Shopping Street is typically associated with the Neighborhood Center zone, the MUCS zone does allow the Shopping Street as an alternative design that can be used to satisfy Pedestrian Oriented Design Standards, and Block Perimeter and local street standards, as required per **LDC § 4.0.60.c**. Private Shopping Streets are required to be contained within separate, dedicated Tracts, per **LDC § 4.0.60.d.4** and **LDC § 4.0.60.m.2.b**.

The proposed Tentative Subdivision Plat illustrates that the Shopping Street will be provided within two separately dedicated Tracts ("Lot 551" - Phase I and II). With the final plat, the property owner is required to dedicate the Shopping Street Tract and provide a public access easement over the associated Tract (**see Condition # 39-c**). The standards in **LDC § 4.0.60.d.4** and **LDC § 4.0.60.m.2.b** are satisfied.

Chapter 4.4: Land Division Standards

Applicable LDC Land Division criteria, identified in LDC Chapter 4.4, are as follows :

Applicable LDC Section 4.4.20 : Land Division Standards

Section 4.4.20 - GENERAL PROVISIONS
4.4.20.01 - Applicability
All Land Divisions shall be in compliance with the requirements of the applicable zone and this Chapter, as well as with all other applicable provisions of this Code. Modifications to these requirements may be made through the procedures in Chapter 2.5 - Planned Development.

4.4.20.02 - Blocks
a. General - Length, width, and shape of blocks shall be based on the provision of adequate lot size, street width, and circulation; and on the limitations of topography.
b. Size - Blocks shall be sized in accordance with the Block Perimeter provisions within Section 4.0.60.n of Chapter 4.0 - Improvements Required with Development.

As discussed in Part I of this staff report, the applicant is proposing a variation to the LDC Block Perimeter standards identified in **LDC § 4.0.60.n**. As discussed in Part I, the review criteria for a Conceptual and Detailed Development Plan are considered to be satisfied. Therefore, the proposed Tentative Subdivision plat is consistent with the standards for block size and layout, per **LDC § 4.4.20.02**.

Applicable LDC Section 4.4.20 : Land Division Standards (continued)
4.4.20.03 - Lot Requirements
a. Size and Shape - Lot size, width, shape, and orientation shall be appropriate for the location of the Subdivision and for the Use Type contemplated. No lot shall be dimensioned to contain part of an existing or proposed street. All lots shall be buildable, and depth shall generally not exceed 2.5 times the average width. Lot sizes shall not be less than required by this Code for the applicable zone. Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for off-street parking and service facilities required by the type of use proposed, unless off-site parking is approved per Chapter 4.1 - Parking, Loading, and Access Requirements.

As previously noted, the MUCS zone does not prescribe a minimum lot size or minimum lot area. Based on the proposed Conceptual and Detailed Development Plan, the proposed lots are considered buildable, and sized appropriately to provide for the required off-street parking and service facilities, as demonstrated by the discussion in Part I of this staff report. For the lots that are intended for commercial development, the depth of each lot is generally less than 2.5 times the average width. Therefore the criterion in **LDC § 4.4.20.03.a** is considered to be satisfied.

Applicable LDC Section 4.4.20.03 : Land Division Standards (continued)
b. Access - Each lot shall abut a street other than an alley for a distance of at least 25 ft. unless:

The proposed Tentative Subdivision Plat includes three lots and four Tracts, which all have public or private street frontage of at least 25 feet. Lots 500 and 550 have greater than 25 feet of frontage on public streets. Lots 600 and 602 have more than 25 feet of frontage on the proposed private Shopping Street. Lot 601 (drainageway Tract) has greater than 25 feet of frontage on the proposed local public street. Lot 551 (both Phase I and II) is intended to be a Tract set aside for the proposed private Shopping Street. Therefore, the proposed Tentative Subdivision Plat is consistent with the applicable land division standards in **LDC § 4.4.20.03.b**.

Applicable LDC Section 4.4.20.03 : Land Division Standards (continued)

c. Through Lots - Through Lots shall be avoided except where essential to overcome specific disadvantages of topography and orientation. A planting screen easement at least 20 ft. wide shall be required between Through Lots and adjacent streets, in accordance with Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting. No vehicular rights of access shall be permitted across this planting screen easement. All Through Lots with frontage on parallel or approximately parallel streets shall provide the required front yard on each street, except as specified in Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting.

As illustrated on Sheet SP1.10 (Tentative Subdivision Plat - **see Attachment G - page 17**), none of the proposed lots are Through Lots. The proposed Tentative Subdivision plat is consistent with the Through Lot requirements of **LDC § 4.4.20.03.c**.

Applicable LDC Section 4.4.20.03 : Land Division Standards (continued)

d. Lot Side Lines - Side lines of lots, as much as practicable, shall be at right angles to the street the lots face.

e. Lot Grading - Lot grading shall conform to Chapter 4.12 - Significant Vegetation Protection Provisions; and the City's excavation and fill provisions.

Based on the established and proposed street network, the proposed lot lines are generally consistent with the criterion in **LDC § 4.4.20.03.d** . See Part I of this staff report for a discussion about the proposed Grading Plan. As proposed and conditioned, the Tentative Plat is consistent with these criteria.

Applicable LDC Section 4.4.20.03 : Land Division Standards (continued)

f. Building Lines - Building setback lines may be established in a final plat or included in covenants recorded as a part of a final plat.

g. Large Lots - In dividing land into large lots that have potential for future further Subdivision, a conversion plan shall be required. The conversion plan shall show street extensions, utility extensions, and lot patterns to indicate how the property may be developed to Comprehensive Plan densities and to demonstrate that the proposal will not inhibit development of adjacent lands.

The applicant is not proposing to establish building setback lines on the final plat. However, approval of a Conceptual and Detailed Development Plan formalizes approval of the site plan, and building setbacks will be required to be consistent with these plans. The Planned Development Overlay and associated Conceptual & Detailed Development Plan establishes the

approved development pattern for the subject site. There is no logical reason for the property owner to further divide the subject lots, other than for purposes of establishing a commercial condominium, as discussed in the narrative. However, if the development plans change for the site, the Planned Development Overlay would require approval of a new Conceptual and Detailed Development Plan, and may require approval of a Tentative Subdivision Plat modification. The standards in **LDC § 4.4.20.03.f** and **LDC § 4.4.20.03.g** are satisfied.

Applicable LDC Section 4.4.20 : Land Division Standards (continued)

h. Minimum Assured Development Area - For property with Natural Resources or Natural Hazards subject to Chapter 4.5 - Natural Hazard and Hillside Development Provisions, Chapter 4.12 - Significant Vegetation Protection Provisions, or Chapter 4.13 - Riparian Corridor and Wetland Provisions, lots created through a Subdivision, Partition, or Lot Line Adjustment process shall be consistent with the provisions of Chapter 4.11 - Minimum Assured Development Area (MADA) are met.

As discussed in Part I of this staff report, the proposal is consistent with the Minimum Assured Development Area requirements of LDC Chapter 4.11. The proposed Tentative Plat is consistent with the Purposes in **LDC § 2.4.20.b**, and criteria in **LDC § 4.4.20.03.h**.

Natural Hazards and Natural Resources Protections / Tract Requirements

Applicable LDC Standards

Section 4.13.50 - USE LIMITATIONS AND EXCEPTIONS WITHIN HIGHLY PROTECTED RIPARIAN CORRIDORS AND RIPARIAN-RELATED AREAS
Highly Protected Riparian Corridors are those which have been identified as warranting a high level of protection due to their environmental importance and Natural Resource quality. Riparian-related Areas are defined as Proximate Wetlands, drainage easements and drainage dedications under the City's jurisdiction, and open space tracts that have been created for Riparian Corridor protection purposes. Additionally, 100-year Floodplain area serves an important Riparian Function. This area is mapped on the City's Natural Hazards Map, and is subject to the protections outlined in Chapter 4.5 - Natural Hazard and Hillside Development Provisions.

In addition to the requirements of the underlying zone, the following limitations and exceptions shall apply to activities within Highly Protected Riparian Corridors and Riparian related Areas, as mapped on the City's Riparian Corridors and Wetlands Map.

e. Subdivisions, Land Partitions, and Property Line Adjustments - For properties with Natural Resources or Natural Hazards subject to Chapter 4.5 - Natural Hazard and Hillside Development Provisions, Chapter 4.12 - Significant Vegetation Protection Provisions, or Chapter 4.13 - Riparian Corridor and Wetland Provisions, no Subdivision, Partition, or Lot Line Adjustment shall create new lots or parcels unless:

1. Each new and remaining lot or parcel contains an area unconstrained by Natural Resources or Natural Hazards; and

2. The unconstrained area in "1," above, is equal to or greater than the Minimum Assured Development Area for the zone or zones in which the development site falls.

Exceptions to this requirement are lots created for public park purposes and privately- or publicly-owned lots completely contained within land zoned Conservation-Open Space. New Subdivisions and Partitions may contain common open space tracts for the purpose of protecting Natural Resources and/or avoiding Natural Hazards.

The subject property contains Natural Hazards and Natural Resources. Per **LDC § 4.13.50.e**, the proposed Tentative Subdivision Plat cannot be used to create new lots unless each new lot contains an area unconstrained by Natural Resources or Natural Hazards, and the unconstrained area is equal or greater than the MADA for the zone. The applicant is proposing to create common open space Tracts that will contain the protected portions of the Riparian Corridor and associated proximate wetlands (Lots 550 and 601), and the remaining lots outside of the protected Tracts are no longer constrained due to MADA allowances. Therefore, the standards in **LDC § 4.13.50.e** are satisfied.

Other Applicable Standards Referenced by Review Criterion 2.4.30.04

The proposed Tentative Subdivision Plat is not directly affected by criteria in the adopted Oregon Structural Specialty Code; the adopted International Fire Code; the adopted City Standard Construction Specifications; the adopted City Erosion Prevention and Sediment Control Ordinance; and the adopted City Off-street Parking Standards. However, the adopted Codes and Standards do apply, in many cases, to the proposed Detailed Development Plan, and are discussed in further detail in Part I of this staff report, where applicable. Compliance with these standards is typically determined at time of construction permit issuance.

Criteria in **LDC § 2.4.30.04.a** continues, as follows :

Applicable Comprehensive Plan Policies

Additionally, pursuant to Comprehensive Plan Policy 3.2.7, the application shall also demonstrate compatibility in the areas in "1-13" below, as applicable.

1. Basic site design (the organization of Uses on a site and the Uses' relationships to neighboring properties);
2. Visual elements (scale of potential development, etc.);
3. Noise attenuation;
4. Odors and emissions;
5. Lighting;
6. Signage;
7. Landscaping for buffering and screening;
8. Transportation facilities;
9. Traffic and off-site parking impacts;
10. Utility infrastructure;
11. Effects on air and water quality (note: a DEQ permit is not sufficient to meet this criterion);
12. Consistency with the applicable development standards, including the applicable Pedestrian Oriented Design Standards; and
13. Preservation and/or protection of Significant Natural Features, consistent with Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting, Chapter 4.5 - Natural Hazard and Hillside Development

Provisions, Chapter 4.11 - Minimum Assured Development Area (MADA), Chapter 4.12 - Significant Vegetation Protection Provisions, and Chapter 4.13 - Riparian Corridor and Wetland 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.

The compatibility criteria above have been previously discussed in Part I of this staff report. As noted in that discussion, and as conditioned, the proposed Conceptual and Detailed Development Plan and related Tentative Subdivision Plat are consistent with the applicable compatibility review criteria. The development plans have been reviewed by the City's Fire Department for compliance with the adopted Fire Code. Fire Department staff are satisfied with the proposed development, as illustrated in **Attachments G & H**, and as conditioned. As noted in the discussion above, the proposed Tentative Subdivision plat complies with the criteria in **LDC § 2.4.30.04.a**.

C. CONCLUSION ON CONSISTENCY WITH TENTATIVE SUBDIVISION PLAT REVIEW CRITERIA

The proposed Tentative Subdivision plat request involves creation of three commercial subdivision lots and four Tracts. The proposed lots comply with the applicable LDC standards of the MUCS zone, and the land division standards noted in Chapter 4.4 of the LDC. The proposed tracts comply with the applicable Natural Features protections requirements of Chapters 4.5, 4.11, 4.12, and 4.13, and Shopping Street standards identified in LDC Chapter 4.0. The Tentative Subdivision Plat request complies with all applicable criteria in **LDC § 2.4.30.04.a**.

Based on this analysis, staff recommend **Approval** of the Tentative Subdivision Plat request, as outlined in **Part III** of this staff report.

PART IV

CONCLUSION AND RECOMMENDATIONS

Based on the criteria, findings, and conclusions discussed in Parts I, II, and III above, staff recommend that the Planning Commission **Approve** the request as described in **Attachments G & H**, and as conditioned in this staff report.

RECOMMENDED MOTION FOR APPROVAL OF A CONCEPTUAL & DETAILED DEVELOPMENT PLAN (PLD09-00004)

Motion: **I move to approve the proposed Conceptual and Detailed Development Plan for the Creekside Center I & II development, as conditioned. The request and approval includes proposed variations to specific LDC requirements, as described in Attachments G & H. My motion is based upon the staff recommendation to the Planning Commission.**

RECOMMENDED MOTION FOR APPROVAL OF A CONDITIONAL DEVELOPMENT PERMIT (CDP09-00003)

Motion: **I move to approve the proposed Conditional Development Permit for the proposed drive-through facility, as described in Attachments G & H, and as conditioned. My motion is based upon the staff recommendation to the Planning Commission.**

RECOMMENDED MOTION FOR APPROVAL OF A TENTATIVE SUBDIVISION PLAT (SUB09-00002)

Motion: **I move to approve the proposed seven-lot tentative Subdivision plat, as described in Attachments G & H, and as conditioned. My motion is based upon the staff recommendation to the Planning Commission.**

MEMORANDUM

DATE: June 12, 2013

TO: City Council

FROM: Jason Yaich, Associate Planner

SUBJECT: Additional Written Testimony Submitted Regarding the Creekside Center I & II application - LUBA Remand Hearing (PLD09-00004 / CDP09-00003 / SUB09-00002)

Written testimony, associated with the case referenced above, has been received after publication of the June 10, 2013, Staff Memorandum to the City Council, and is included as an attachment to this memorandum.

June 11, 2013

Mayor and City Council
City of Corvallis
501 SW Madison Avenue
Corvallis, OR 97333

Re: Written Testimony regarding Creekside Center Remand
PLD09-00004, CDP09-00003, SUB09-00002

Dear Mayor Manning and City Councilors:

This letter addresses my objections to portions of the Applicant's Narrative in Support of the Applications on Remand (Narrative), revised 4/19/13, and to the Applicant's Site Plan as submitted on 4/15/13. I may provide additional testimony after the Staff Report is available.

For each area of objection, I will first address points made in the applicant's Narrative on that subject, followed by additional issues.

Location of Multi-Use Path

The 12-foot-wide multi-use path, with a 15-foot-wide "area of disturbance," is proposed to be routed through a Locally Significant and Highly Protected Wetland, a Highly Protected Riparian Corridor, and a Highly Protected Floodplain. The placement of a wide paved path through a rare, highly valued forested wetland, and the damage its construction would cause, is inconsistent with Comprehensive Plan policies and Stormwater Master Plan policies, which were presented in the written testimony of the League of Women Voters dated October 21, 2010, and is included here by reference. The Path does not meet the various exceptions provided in the Land Development Code (LDC) for construction in these protected areas, nor does it meet the locational criteria in the Parks & Recreation Facilities Plan, details of which are provided below.

Placing a 12-foot-wide paved path through a densely forested wetland would require extensive cutting of trees to accommodate a wide, engineered path with gentle turns for users, placement of fill to level the path on the existing slope, and potential placement of extensive fill to raise the path above the typical winter wetland flow level. Cutting trees in a forested wetland allows light intrusion that will result in invasive species (such as blackberry) replacing the existing shade and wetland plants, and a change in the microclimate. In our desire to bring residents in to appreciate a locally rare wetland type, we will destroy what makes it unique.

Applicant's Narrative addressing Multi-Use Path:

1. The applicant's Narrative (p. 17-20) presents three reasons to make the case that a Multi-Use Path is required in this location, in order to have MADA credits approved for the Path under **LDC 4.11.50.02.c.4**, which allows MADA credits for:

> *Trails required by the Corvallis Transportation Plan or City of Corvallis Park and Recreation Facilities Plan, or necessary to provide public access to and through designated open space areas.*

It should be noted that the loss of these MADA credits, if the Path is not allowed, would not affect the remainder of the development. In all three reasons presented, the applicant errs in concluding that a Multi-Use Path in this location is a ”required” trail:

a. A multi-use path is not required in this location by the **Corvallis Transportation Plan** (CTP), contrary to the applicant’s assertion in the Narrative (p. 19). The original Trails Master Plan (incorporated into the CTP by reference), the Park & Recreation Facilities Plan, and the West Corvallis/North Philomath Plan, each have sections that refer to the mapped proposed trail alignments (including this trail) as “conceptual.” The Trails Master Plan (TMP) does include a map showing a “future trail" route from 53rd Street to Bald Hill Park paralleling Dunawi Creek. However, the Goal of the TMP (p. 3 of TMP Excerpts, attached as **Attachment A**), clarifies that the map is **conceptual**. A number of these trails were anticipated to be pedestrian trails, as shown in the attached excerpt with a description of Trail 18 (Squaw Creek from Sunset Park to Bald Hill)—all were not assumed to be paved multi-use paths. The conceptual nature of the TMP can be seen in other developments over time where a mapped trail segment was not implemented, e.g., Waste Water Treatment Plant upgrades (connection between 2nd Street and RR tracks), North Hills Baptist Church (South Dixon Creek trail, and Timberhill (powerline trail). The TMP and other trail plans completed prior to our Natural Features Inventory tended to route trails along stream corridors both for scenic value and because it was assumed at that time that the drainageway dedications then required with development would be adequate for trails, without awareness of the impact on stream health or knowledge of adjacent wetlands. Alternative routes are available with future development to provide a connection between 53rd Street and Bald Hill Park without harming a valuable wetland, as noted below.

b. Contrary to the applicant’s assertion in the Narrative (p. 19), a multi-use path in this specific location is not required by the **Park & Recreation Facilities Plan** (PRFP), but is instead a **conceptual** route for either a trail or multi-use path, as clearly noted on the PRFP Trails Plan map in the applicant’s Narrative Exhibit F. Both that Trails Plan map and the Trails Comparison map in the PFRB include the statement,

> *“This is a conceptual plan intended to guide development. The map is not intended to identify specific affected properties, rather, it represents the needs, standards, and/or aspirations of the community.”*

This statement is applied to both the trails illustrated as “Proposed Trails” and as “Adopted Trails,” with the only distinction being that the “Adopted Trails” are already included as **conceptual** routes in the Transportation Plan (Trails Master Plan). The PRFP (Table 13, p. 5-6) lists the T13 Squaw Creek Trail (South) as “paved/unpaved,” indicating even the conceptual nature of the type and size of

trail. Construction of a paved Multi-Use Path in this location actually conflicts with the design standards in the PRFP, as described in more detail below. As noted in Council Findings (p. 14) from the original Creekside process:

> *"The Council concurs with the LWVC that standing alone, the conceptual trails depicted in the Trails Master Plan and the Parks & Recreation Facilities Plan may not justify this location for the Trail."*

Instead, Council relied on elements of the West Corvallis/North Philomath Plan to justify the trail, which I will address in Section 3 below. However, to earn MADA credits under **LDC 4.11.50.02.c.4**, the Path must be required by the TMP or PRFP.

c. Contrary to the applicant's assertion in the Narrative (p. 20), a multi-modal path in this location is neither required nor "necessary to provide public access to or through designated open space areas," for any of the reasons given by the applicant.

   i. The wetland Path is not needed to satisfy the **block perimeter standard** cited by the applicant, which actually is already better met by the east-west pedestrian sidewalks and crossings connecting 53rd Street and the new Local Street, fronting the northern buildings in the development. Adopted final Findings from the previous Council approval (Formal Findings and Conclusions, p. 42), indicate that this was found to satisfy the block perimeter standard in the previous site plan, and is just as workable in the revised Site Plan.

   ii. Contrary to the applicant's assertion, **Comprehensive Plan 40.4.3** does not require a Path in this location. As part of Article 40, the Comp Plan Map Legend, this section describes the intended uses of the **Open Space-Conservation** designation, which are "reserved for general community use, and/or natural hazards/resource preservation," with the Comp Plan map designation applied in this location for protection of the stream corridor. The description notes that "limited development may be permitted on private lands, provided that the development provides access to and through the OS-C zone areas for public infrastructure." However, this is not directly applicable to this site because a corresponding LDC zoning district has not been applied, and would require a zone change to implement. In any case, the allowed "limited development" in the OS-C area on this site is proposed on the south side of Dunawi Creek, and public infrastructure through this OS-C area has been provided in the form of the north-south Local Street in the site plan. If Council finds that additional public access is required along the stream corridor (in addition to the drainageway easement), it can be provided by an additional public access easement allowing for an unpaved nature trail, rather than a wide paved path that damages the wetland.

   iii. Contrary to the applicant's assertion in the Narrative (p. 20), a Multi-Use Path in this location is not "necessary to maintain a functional [path] system." As noted in more detail below, a Multi-Use Path in this location cannot be constructed in a way that will be functional year-around for all intended users

of a multi-use path. Unless built on a berm that would disrupt wetland flow toward the stream (even with culverts), a paved path will be underwater during the winter. A raised boardwalk cannot safely accommodate many users, including cyclists, skateboarders, and skaters. There are alternative locations that will be described below that can provide a safe and functional multi-use path connection.

CONCLUSION: The Multi-Use Path is not required by the Transportation Plan or Park & Recreation Facilities Plan, nor is it necessary to provide public access to a designated open space area. Therefore, it does not qualify for MADA credits under under LDC 4.11.50.02.c.4. This has ramifications for allowing placement of the trail, as discussed in Section 2 below.

2. **LDC 4.13.50.b** prohibits building, paving, and grading (such as the Multi-Use Path) in a Highly Protected Riparian Corridor and Riparian-Related Area. The applicant's Narrative (pp. 20-22) attempts to justify the placement of a Multi-Use Path as one of the exceptions to this prohibition, based on the Path qualifying for MADA credits under the applicant's justifications given in Section 1 above. The exception cited by the applicant for constructing the Path in this protected area is LDC 4.13.50.b.6:

   b. Building, Paving, Grading Activities – The placement of structures or impervious surfaces, as well as grading, excavation, and the placement of fill, are prohibited. Exceptions to the drainageway restrictions may be made for the purposes identified in items 1-7 of the Section, provided they are designed and constructed to minimize adverse impacts to Riparian Corridors and Riparian-related Areas.

   …

   2. *Development associated with the Minimum Assured Development Area that would be allowed in accordance with Chapter 4.11 – Minimum Assured Development Area (MADA); and …*

   As discussed in Section 1 above, the applicant has failed to justify the awarding of MADA credits under LDC 4.11.50.c.4. Therefore, the proposed Multi-Use Path does not meet this exception criterion for paving and grading in a Highly Protected Riparian Corridor and Riparian-Related Area.

   The applicant's Narrative (p. 22) notes that LUBA did not require the City to reconsider whether the Path complied with the language in 4.13.50.b above, "provided that they are designed and constructed to minimize adverse impacts to Riparian Corridors and Riparian-related Areas," and the applicant does not address this issue further. Compliance with this criterion merits reconsideration, since the application is being reconsidered "in whole," and since the Revised Site Plan refines the description of the Path (p. 18), from that available with the initial application:

   "On remand, Applicant is proposing to dedicate a fifteen (15)-foot wide right-of-way for the Path across the Property (although the Path itself will only be twelve (12) feet in width). The Path will be located within a forty (40)-foot wide area shown on the plans."

   The following are factors that I believe indicate that the location, design, and construction of the Path as proposed will not "minimize adverse impacts" on the wetland and riparian corridor, and the Path needs to located elsewhere:

a. **The Path needs to be 12 feet wide and paved.** The Park & Recreation Facilities Plan (PRFP) Glossary (p. 2) and the Comprehensive Plan (Article 50) both define a Multi-Use Path as a "paved path entirely separated from the roadway and used by pedestrians, roller bladers, joggers, and cyclists." LDC 4.0.40.c.3 specifies that "in areas with projected high bicycle volumes or multiple use by bicyclists, pedestrians, and joggers, multi-use paths shall be 12 ft. wide." The PRFP (p. 5-4) states that "off-street multi-purpose trails may vary in width from 5'-12', with 12' width being optimum because it permits access for maintenance and security vehicles." Given the planned regional purpose of a multi-use path in this general area, connecting 53rd Street with Bald Hill Park, a high volume of many user types can be anticipated, and a 12-foot paved path is needed to fulfill the purpose of this trail segment.

b. **A paved path or a boardwalk along the proposed route are unsafe.** During the original hearing process, substantial testimony by local experts in bicycle and pedestrian transportation indicated that multi-use paths must be paved in order to accommodate many user types. Testimony noted that the siting of high volume multi-use paths should avoid densely forested areas with significant leaf litter or ice in winter. A boardwalk was suggested by staff during the previous hearing process, and substantial testimony noted that boardwalks do not provide a safe or passable surface for cyclists, skateboarders, or rollerbladers. The substitution of a boardwalk through a segment of a long multi-use path would leave some users blocked from completing their trip safely. Substantial testimony was also presented that the convergence of the proposed Path, the 53rd Street multi-use path, and the 53rd Street access drive would make an unsafe bike-ped crossing even more dangerous.

c. **Construction of a 12-foot paved path or a boardwalk in the location proposed cannot avoid damaging the rare, forested wetland.** This remnant ash forest wetland was once common in the Corvallis area, but now exists in only a few places. It generally consists of closely spaced ash trees with low herbaceous plants growing in filtered shade. During the rainy seasons, there is ponding and sheet flow of water that collects in streamlets before flowing into Dunawi Creek. Some annual flooding was reported in testimony by the neighbor to the north. The 15-foot "area of disturbance" to construct either a paved path or a boardwalk will involve significant removal of the closely spaced trees in order to build the gentle curves required for a high volume multi-use path. Tree removal will open the canopy to more direct sun, and increase the presence of invasive non-shade species, such as blackberry. Any paved path will require fill for leveling—a path at ground level will flood in winter and be impassable for extended periods; a path elevated on fill with culverts will significantly change the flow regime in the wetland. The high volume of users will bring noise and high activity that will change the behavior and visibility of wildlife. If it is desirable to give the public access to this area to appreciate this rare wetland type, an unpaved nature trail is more suitable.

d. **The Park & Recreation Facilities Plan design guidelines for multi-use paths are not adequate to protect this wetland.** The PRFP contains well-intended design guidelines for trails (pp. 5-2 to 5-5). One guideline states that:

> *"Trails should be planned, sized, designed and located to minimize their impacts on the ecological functions or stream corridors and to minimize the impacts of unplanned access in and near these drainageways. Where adequate lands are available, multi-purpose trails running parallel to stream corridors should generally be sited at least 50' from top of back and further when near sensitive areas."*

The illustration for Off-Street Multi-Use Trail (Fig. 8, p. 5-4) shows a 50-foot minimum setback "near waterway or sensitive areas." Given that this wetland is both a waterway and a sensitive area, the proposed location of the Path violates this locational criterion. However, if Council approves this location for the Path, the PRFP design guidelines cannot be relied on to adequately protect this site, since the guidelines do not specifically address wetlands. The lack of specificity of the guidelines means that Condition of Approval 10, requiring path design to be consistent with PRFP guidelines, will not be sufficient to protect this highly valued wetland. In addition, the requirement in Condition 10 that "final path alignment shall occur so as to minimize impacts to the properly functioning condition of the riparian corridor / drainageway" does not address the wetland, and so is inadequate to protect the properly functioning condition of the wetland.

CONCLUSION: The proposed Multi-Use Path does not meet the exception criterion for building, paving, and grading in a Highly Protected Riparian Corridor and Riparian-Related Area in **LDC 4.13.50.b.6**, and should not be approved on that basis as a portion of the Revised Site Plan. (Note: A discussion of another exception criterion, LDC 4.13.50.b.2, is presented below.) The 12-foot wide paved path needed to implement a planned regional trail in this general area cannot be constructed in a way that will "minimize adverse impacts" to the rare forested wetland, as required in LDC 4.13.50.b. The Park & Recreation Facilities Plan design guidelines are not adequate to protect the wetland, and Council should decide that this conceptual location for a high volume multi-use path is not appropriate.

Additional Issues Relating to the Multi-Use Path:

3. For the Multi-Use Path to be located in this Highly Protected Riparian Corridor and Riparian-Related Area, it must meet one of the exceptions listed in **LDC 4.13.50.b.** As noted in Section 2 (p. 4) above, it does not meet the exception in LDC 4.13.50.b.6, because it does not meet criteria for MADA credits. Neither does it meet the exception in **LDC 4.13.50.b.2**:

   b. Building, Paving, Grading Activities – The placement of structures or impervious surfaces, as well as grading, excavation, and the placement of fill, are prohibited. Exceptions to the drainageway restrictions may be made for the purposes identified

> *in items 1-7 of the Section, provided they are designed and constructed to minimize adverse impacts to Riparian Corridors and Riparian-related Areas.*
>
> …
>
> 2. *The location and construction of streets, utilities, bridges, bicycle, and pedestrian facilities within Highly Protected Riparian Corridors and Riparian-related Areas* ***must be deemed necessary to maintain a functional system*** *by the City Engineer.* ***This Code, City Transportation and Utility Master Plans, and other adopted City plans shall guide this determination.*** *The design standards of Chapter 4.0 – Improvements Required with Development shall be applied to minimize the impact to the subject area; …* [emphasis added]

To be "necessary to maintain a functional system," it has to be demonstrated that the Path has to be located through this wetland in order for the planned multi-use trail system to be functional. It also has to be demonstrated that a Multi-Use Path in this location will be more functional for all intended users than another location that can implement the system, and that no other location outside the Highly Protected Riparian-related Area is functional.

a. **The Path in this location is not functional.** As noted in Section 2.b (p. 5) above, a paved multi-use path through the wetland will be flooded and unusable in the rainy season, will experience hazardous leaf litter in the Fall (or requiring staff removal), and is routed to the east into an already unsafe convergence of the 53rd Street multi-modal path and the 53rd Street access drive into the development. Construction of a paved path on a berm with culverts will seriously alter the wetland flow regime, and does not "minimize the impact" as required in the Code. Construction as a boardwalk is not functional, because it deprives a large number of users (cyclists, skateboarders, rollerbladers) from a facility that, by this Code standard, has to be critical to the community trails network. And construction as a narrower path would not accommodate the volume of users expected on a major trail, or would put different user types dangerously close together.

b. **The Path is not required to be in this specific location by City Plans.** As noted above in Sections 1.a & b (pp. 3-4), and supported by Council Findings (noted on my p. 4), the Trails Master Plan (incorporated into the Transportation Plan) and the Park & Recreation Facilities Plan present a conceptual routing of a multi-use path through this area. The prior approval relied instead on the West Corvallis / North Philomath Plan (WCNPP), which in Figure V-2 (p. 40) shows a proposed trail paralleling Dunawi Creek, along the same route as the conceptual maps in the TMP and PRFP. This trail route is shown going through a shaded area labeled in the Key as "Riparian corridors, wetlands and fault zone" which was claimed to indicate an intent to route the trail through this wetland. However, another trails map in Figure VI-1 (p. 46) clearly states that, "Locations of trails are **conceptual** and may vary as more detailed plans are drafted." The following WCNPP policies were cited to support of the Path through the stream corridor and wetland:

> *OS-I-1: Work with private landowners to obtain dedications of open space lands for trails and preservation of natural systems.*

> *OS-I-7: Where feasible, incorporate trails as part of stream corridors as identified on the Circulation Plan, Figure VI-1.*
> *OS-I-9: Locate trails at the edge of riparian buffer zones to minimize impacts on the natural functioning of the stream corridor and to preserve stream capacity.*

To me, these policies argue for siting trails along the edge of stream corridors in a manner that protects the properly functioning conditions of the stream. Although wetlands are not directly addressed in the policies, the properly functioning conditions of a proximate wetland is tied to the stream's healthy functioning. The guidance is for protection, while encouraging trail routes near natural features. They clearly do not mandate the placement of a trail where it will damage a rare forested wetland, but instead give guidance to locate trails where they will "minimize impacts."

c. **All of these Plans were adopted before the completion of the Natural Features Inventory.** The placement of conceptual trail routes without the benefit of knowing the specific character, value, or sensitivity of the natural features should not bind decision-makers now that we have designated certain areas for High Protection or as Locally Significant. The process for that designation balanced the economic, social, environmental, and energy costs and benefits of protection on a community-wide scale, so that balancing did not occur property-by-property.

d. **Alternative routes are available that will better implement a "functional system."** Although shown on all the trail maps, it is not likely there will ever be a multi-use path following Dunawi Creek to the east of 53rd Street, since it is fully developed north of the creek and there is no safe crossing at the intersection of the creek with 53rd Street or farther downstream with Philomath Blvd. That means this planned trail route can start from the existing 53rd Street Multi-Use Path anywhere between Philomath Blvd and West Hills Road, and head west and then north toward Bald Hill Park. **Attachment B** shows a potential route that starts north of the existing developed parcels north of the development site, then generally follows (upon development) the south edge of the farmed portions of these large parcels, along the north side of the tree line that generally shows the most critical riparian and wetland habitat. This allows trail users to be close to the riparian corridor and forested wetland without damaging its functioning. (Of course, the route should remain flexible as future wetland delineations in these parcels provide more information to guide the route.)

CONCLUSION: The proposed Multi-Use Path routed through this rare, sensitive forested wetland is neither functional for the intended users, necessary at this location to provide a functional trail system, nor required in this location by City Plans. It therefore does not meet the criterion of **LDC 4.13.50.b.2** allowing construction in the wetland, and cannot be allowed. In addition, since deletion of the trail will in no way impact the remainder of the development, the City Council can use this opportunity to interpret its trails plans in a flexible manner that routes major paved trails where they can view natural features without degrading them.

Stormwater Detention Facilities Encroaching into Riparian Corridor

Although the new plan shows the location of the two above-ground stormwater detention facilities farther from the creek than in the original plan, they are both still located within the Highly Protected Riparian Corridor and Riparian-related Area. Given the overall impacts to the riparian corridor on the south side of the creek, the above-ground facilities should be removed, and replaced with underground detention facilities under the street or parking lot.

Applicant's Narrative addressing stormwater detention facilities:

4. LDC 4.0.130.b.1 requires projects over a certain size to implement stormwater detention and retention consistent with the Corvallis Design Criteria Manual. **LDC 4.0.130.b.2.b** requires that:

   > *"Detention facilities shall be designed to maximize storm water infiltration. Detention or retention facilities shall be located outside the 10-year Floodplain or the riparian easement area, whichever is greater. The riparian easement area is identified in Section 4.13.70 and this standard shall apply regardless of whether or not an easement has been granted."*

   The eastern stormwater facility, within Lot 500, is within the 50-foot Riparian Easement Area. The applicant states in the Narrative (p. 23) that, since MADA credits are now determined, encroachment is now necessary into the Riparian Corridor to allow for utilization of MADA.

   However, the Corvallis Design Manual allows both above-ground and underground stormwater facilities, and each has its strengths. An underground facility is located on Lot 500 to the east.

   CONCLUSION: In order to protect the Riparian Corridor, and especially to protect the Riparian Easement Area, Council has the ability to require the above-ground stormwater facility in Lot 500 to be underground, in a location away from the stream, such as under the Shopping Street or in the drive west of the existing underground facility.

Additional Stormwater Facility issues:

5. The applicant's Revised Plan, Map SP1.3B, shows the pre-development 100-year floodplain (speckled area), and the post-development 100-year floodplain dashed line.

   a. **LDC 4.0.130.b.2.b** (quoted above) requires that detention facilities be located outside the 10-year floodplain. The applicant has never mapped the 10-year floodplain to show that the above-ground stormwater facility in Lot 600 is outside the 10-year floodplain. (Even in its new location, it is within the pre-development 100-year floodplain.) The applicant has claimed that it is not necessary to map the 10-year floodplain, because the facility is outside the **post**-development 100-year (and therefore 10-year) floodplain. However, the original legislative intent of LDC 4.0.130.b.2.b was to avoid the placement of above-ground stormwater facilities in the **pre**-development 10-year floodplain. Otherwise, the Code

language would have been phrased to simply require the facility to be constructed with fill to above the 10-year floodplain level.

b. In the area of the Lot 600 stormwater facility, Map SP1.3B shows a significant change between the boundary of the pre- and post-development 100-foot floodplain. Assuming this is accomplished with fill, there are two issues: 1) The plan does not demonstrate how fill in this area will not adversely change flood flows in the unmodified 100-year floodplain of the property to the west. 2) The area of fill to accomplish the change from pre- to post-development 100-year floodplain in this area must counted as developed acreage and appears to exceed the available acreage of their MADA.

CONCLUSION: Council should find that the Lot 600 stormwater facility does not meet the requirements of **LDC 4.0.b.2.b**, and should be converted to an underground stormwater facility, possibly under the new east-west local street.

MADA Credits for 53rd Street Access Drive

The applicant claims MADA credits for the area of wetland mitigation for the access drive from 53rd Street (see **Attachment C**). This is not a legitimate application of the LDC allowance for MADA credits for mitigation.

LDC 4.11.50.02.c.2 provides additional allowances over the base MADA for:

> *"The area of Wetland mitigation that is required by the Department of State Lands and/or the U.S. Army Corps of Engineers when **infrastructure** must be extended through a Wetland. The area credited shall be based upon the written requirements of the associated permit approval of the Department of State Lands and/or the U.S. Army Corps of Engineers, whichever is greater."* [emphasis added]

"Infrastructure" for this exception was intended to be limited to public infrastructure, such as public roads. The rationale was that the property owner should be compensated with additional MADA credits for wetland mitigation needed for public infrastructure required as part of the development. In this application, wetland mitigation for the new north-south local street is an example. In contrast, in this application, no MADA credits are awarded for other required private infrastructure, such as the areas of the parking lot or internal drives that require mitigation.

It is not sufficient to say that ODOT, County, and City standards require the main access drive to be off 53rd Street rather than Hwy 20/34, or that standards require any access drive to be at least 150 feet from an intersection. These are routine requirements of any development along the highway, or near an intersection, and should not be treated differently than requirements for parking spaces.

CONCLUSION: Council should find that the access drive does not meet the requirements for additional MADA credits in **LDC 4.11.50.02.c.4**.

Thank you for your efforts in working through this very complex application!

Sincerely,

Tony Howell
2030 SE DeBord Street
Corvallis, OR 97333
541-753-9318
howellt@peak.org

Attachments (3)

Attachment A-1

Trails Master Plan Excerpt

Trails Plan
June 1990

Corvallis, through the generosity of its citizens, enjoys a community laced with parks: hillside parks such as Chip Ross and Bald Hill; open meadows such as Walnut, Starker Arts/Sunset Parks; river oriented Avery and Willamette Parks. These parks contain either bicycle, equestrian and/or pedestrian trails.

The Benton County Fairgrounds and OSU Golf Course are adjacent to the city limits. In addition, Oregon State University research and agriculture lands weave through the city. McDonald Forest and the Peavy Arboretum cover about 7,000 acres of forested land to the north of Corvallis (at the closest point only about 500 feet from the city limit). The Forest offers opportunities for trail-related activities such as hiking, walking, jogging, bird watching, horse back riding, and mountain biking.

Corvallis has a strong on-street bikeway system. It also has several off-street bikepaths including the Campus Way, and Corvallis-to-Philomath bikepaths.

Due to Corvallis' scenic setting and gentle terrain, segments of the trails network will have potential for use by both commuters and recreationists.

E. GOAL

To provide a conceptual trail corridor network map and implementation methods which will serve as a "blueprint" to guide future efforts to establish a vital, comprehensive, non-motorized trails system.

F. OBJECTIVES

1. Develop trails that provide for a variety of nonmotorized recreational experiences such as hiking, jogging, walking, bicycling and horse back riding.

2. The Trails Network Plan, as a part of the Transportation Plan, will link existing parks, open space and trails with residences, schools, places of employment and shopping areas.

Trails Master Plan Excerpt

Attachment A-2

system. (Please see description in next section.)

16A -- The first connection would follow Goodnight Avenue east from Willamette Park (#2), cross Highway 99 and follow Wake Robin Road to the Mary's River.

16B -- The second connection trail would cross from east to west between the Willamette and Mary's Rivers roughly following Airport Road.

Anticipated users: pedestrians

17. Main Fork Squaw Creek

This corridor begins at 35th Street across from Adams School and follows the bike path through Bruce Starker Arts Park, leaving the bike path at Sunset Park and crossing the Sunset Shopping and Research Technology Center. The bike path parallels the heavily wooded Squaw Creek drainageway before passing through the landscaped Bruce Starker Arts Park. This trail in conjunction with trail #18 would provide a link between Avery, Starker Arts/Sunset and Bald Hill Parks.

Anticipated users: pedestrians

18. Squaw Creek from Sunset Park to Bald Hill

This trail would travel up the Main Fork of Squaw Creek between 53rd Street and Reservoir Road. Please see description of trail #17 for potential connections.

Anticipated users: pedestrians

19. North Fork Squaw Creek

This section of the North Fork Squaw Creek stretches from the intersection of the Southern Pacific Railroad line and 53rd Street to West Hills Road. Opportunity exists for a connection between 53rd and 35th Streets to form a loop trail with trail #22.

Anticipated users: pedestrians

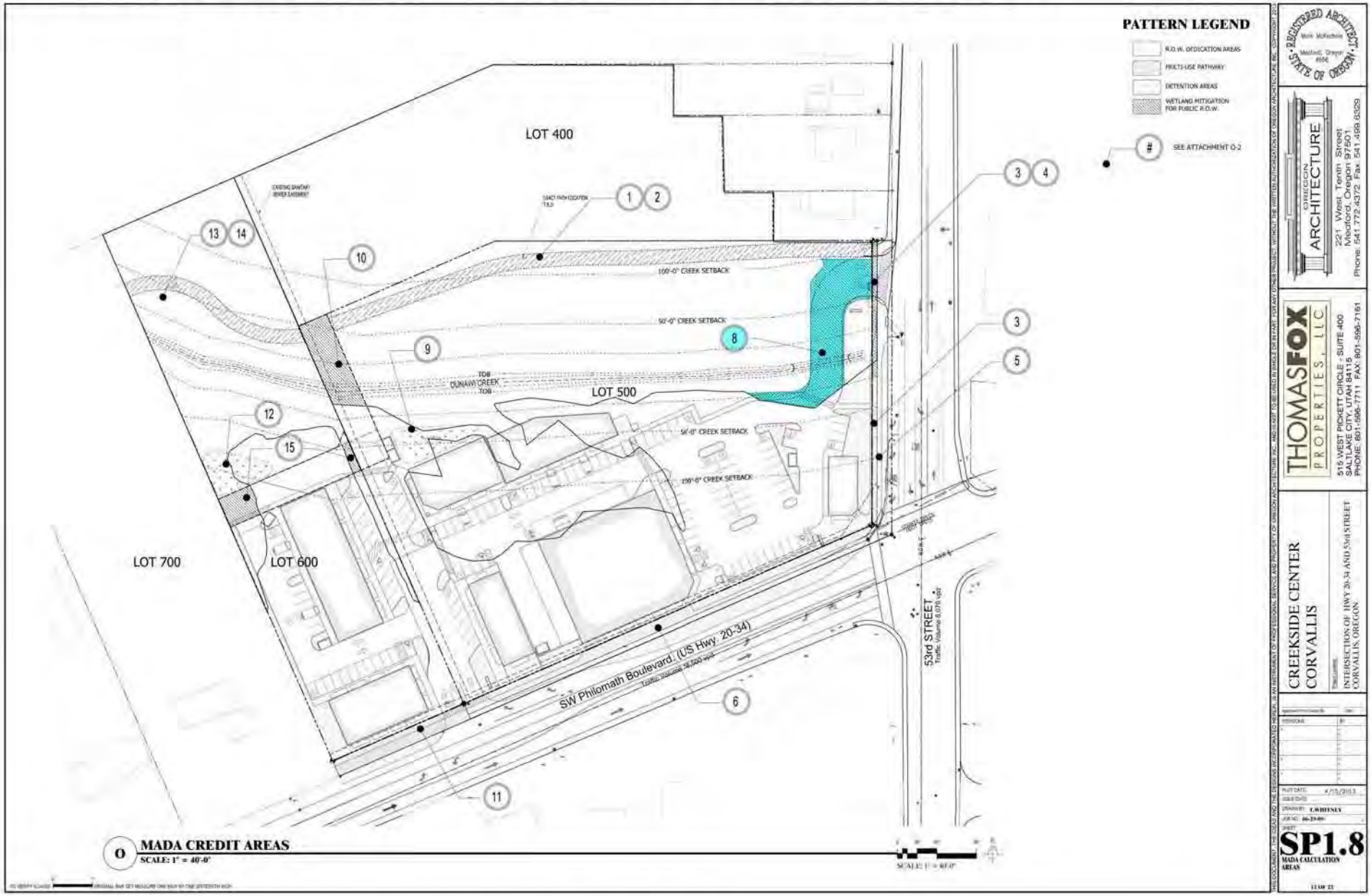
Attachment B

Conceptual Alternative Multi-Use Path Route

Tony Howell: Testimony for Creekside Land Use Hearing, June 17, 2013

Attachment C

MADA Credits for Access Drive off of 53rd Street



RECEIVED
RAR
JUN 12 2013
Community Development
Planning Division

Subject: Creekside Center

Dear Council,

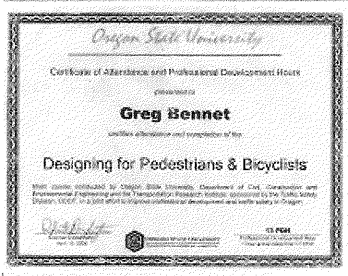
In previous testimony, the dangers and conflicts for all users (bike, ped, auto) of adding an additional curb cut to the existing multi-use path along 53rd Street was expressed through the city's BPAC, myself, and others.

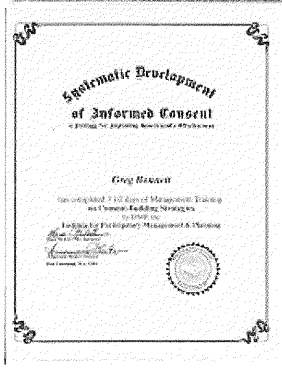
These concerns were dismissed by the proponents as not coming from "experts" and therefore not valid.

Fair enough; by all means please bring on the experts. It is the prudent thing to do, and it has not been done. For example, the council has not consulted the well trained and knowledgeable "Transportation Specialist" at the city's public works department. He is our in-house expert in bike/ped transportation design and safety issues. There are numerous experts for hire in this field who can articulate exactly why this proposed design has major flaws and liabilities. The council owes it to the community to know exactly what they are voting for.

The council can also consult independently the documents the city, county and state use in regards to this type of facility.

Sincerely,
Greg Bennett





RECEIVED

JUN 12 2013

Community Development
Planning Division

To: Mayor and City Council

From: Greg Bennett

Subject: Creekside Center I & II Multi-Use Paths

The Parks Director, Parks Planner, Community Development Department and the developer of Creekside Center have proposed to consider building a Multi-Use Path through the Creekside Center wetlands. They cite the Corvallis Transportation Plan, the Trails Plan in the Parks and Recreation Facilities Plan, and the need to provide a link in the transportation network as rational. Observations as to the unsuitable location have already been made clear in previous testimony.

If the conversation now leads to the idea of providing a pedestrian only nature path such as the boardwalk at Sunset Park instead of a Multi-Use Path, I offer these considerations.
This would provide much less public amenity. How much is hard to quantify. The City's bike-ped mode splits may give some guidance. They do not account for skaters; nor the health and recreation benefits provided. City surveys show that M.U.P.s are the most well used recreational opportunity offered in Corvallis. Observation shows that Multi-Use Paths are much more used than pedestrian only paths. Multi-Use Paths advantage a larger community and accommodate a wide array of abilities and disabilities through a larger geographic area. A pedestrian only nature path in the proposed location would primarily be an amenity to the immediate residential development, increase the desirability of living nearby and be a selling point that will benefit the developer. To a greater degree the same is true for a properly sited M.U.P.

The existing 53rd Street Multi-Use Path crossing the development's proposed access-way will have most of the same impacts and results as the 3rd Street-Chapman Place to Crystal Lake Drive similarly sited Multi-Use Path. To address the numerous crashes and daily conflicts at the 3rd Street facility, many safety refinements have been made in conjunction with O.D.O.T., the land owners and the City over many years. These include modifications to the Multi-Use Path curb cuts, signage, pavement markings, landscape modifications, law enforcement, education and outreach. The conflicts and crashes persist and for many years this has been a perennial agenda item for the City's Bicycle and Pedestrian Commission. The thinking for years has always advocated providing alternatives to this route, which means trying to get fewer people using this very popular but poorly sited Multi-Use Path.

To replicate this situation now at 53rd Street will result in the same outcome—perhaps worse because the 53rd Street path has no feasible alternative route and the completion of the bike lanes on 53rd is a long way off.

Sincerely,

Greg Bennett

June 11, 2013

Mayor and Corvallis City Council
City of Corvallis
501 SW Madison Ave.
Corvallis, OR 97333

Re: Written Testimony regarding the Creekside Center I and II Remand
(PLD09-00004, CDP09-00003, AND SUB09-00002)

Dear Mayor Manning and City Councilors:

I hope that this MADA schematic can help folks understand a part of the MADA concept.

I first drew this schematic for myself to try and understand how MADA works for the "Additional Allowances for Determining the Minimum Assured Development Area."

It illustrates that the MADA "credit" – can be achieved either by:

1. being allowed to place, let's say a required detention pond, within the protected natural feature or floodplain, or;

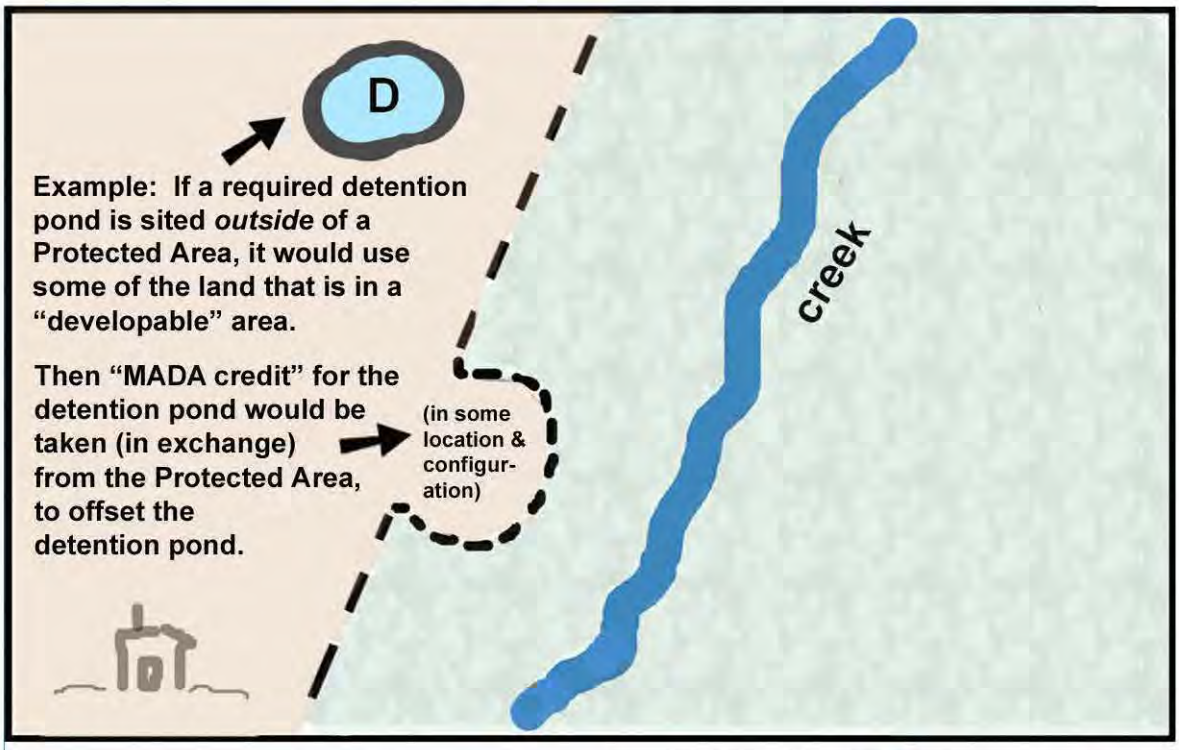
2. being allowed to expand the development footprint by the amount that is the equivalent of the square footage of the detention pond, into the protected natural feature or floodplain. This would be a "trade" for the land that the detention pond used within the developable land. This would be either the developable land that is allowed outright, or a part of a base MADA.

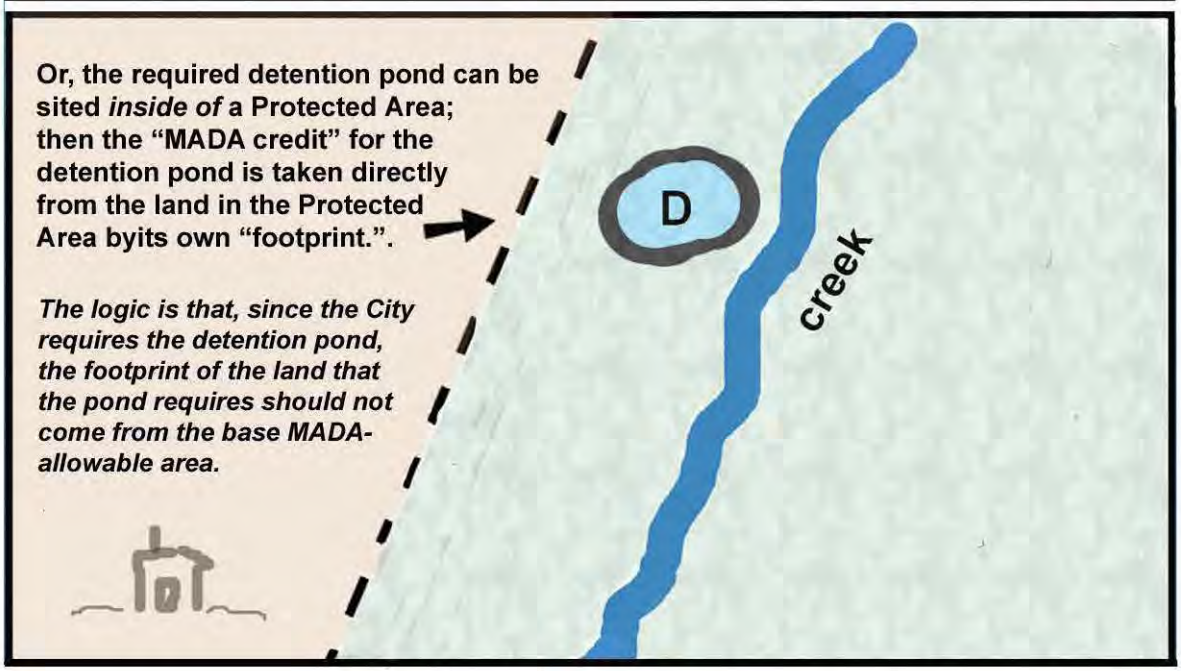
I know that there is much to read for this hearing, and I hope that this schematic might help a little bit. I will submit my other written testimony later.

Sincerely,

Patricia Benner

How "MADA credits" for certain infrastructure are applied at a development site that includes Protected Natural Areas. It is basically an "*exchange*" of land in one of two ways:





The green area in the maps schematically represents a Highly Protected Natural Area (includes floodplain, wetland, and riparian corridor).

The tan area schematically represents the land to be developed (includes formerly protected floodplain, wetland & riparian corridor).