



# Planning Division Development Permit Application

Final action on development application or zone change is required within 120 days per ORS 227.175 or as otherwise required by state or federal law for specific application types.

A pre application conference may be required.

The City will not accept applications for wireless communication facilities or similar facilities without a completed copy of a Wireless Facility Review Worksheet.

The City will not schedule incomplete applications for public hearing or send administrative public notice until all of the required materials are submitted.

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Web: [www.ci.wilsonville.or.us](http://www.ci.wilsonville.or.us)

### Applicant:

Name: Brian Matteoni - Mgr Partner  
Company: Sullivan Homes LLC  
Mailing Address: 5832 Firestone Ct  
City, State, Zip: San Jose, CA 95138  
Phone: Please contact the Applicant's Consultant Fax: \_\_\_\_\_  
E-mail: Please contact the Applicant's consultant

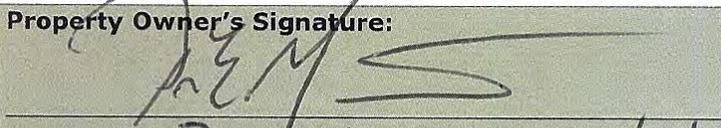
### Authorized Representative:

Name: Consultant: Glen Southerland, AICP  
Company: AKS Engineering & Forestry, LLC  
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### Property Owner:

Name: Brian Matteoni  
Company: Sullivan Homes LLC  
Mailing Address: 5832 Firestone Ct  
City, State, Zip: San Jose, CA 95138  
Phone: Please contact the Appli Fax: \_\_\_\_\_  
E-mail: Please contact the Applicant's Consultant

### Property Owner's Signature:

  
Printed Name: Brian Matteoni Date: 4/24/23

### Applicant's Signature: (if different from Property Owner)

Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_

### Site Location and Description:

Project Address if Available: 7252 SW Frog Pond Lane Suite/Unit \_\_\_\_\_  
Project Location: Frog Pond West Planning Area  
Tax Map #(s): 3 1W 12D Tax Lot #(s): 1200 and 1300 County:  Washington  Clackamas

### Request:

Annexation, Zoning Map Amendment, Planned Development (Stage I Master Plan, Stage II Final Plan), Site Design Review of Open Space, Tentative Subdivision Plat, Middle Housing Land Division, street frontage Waiver, and Type C Tree Removal Plan

### Project Type: Class I Class II Class III

Residential  Commercial  Industrial  Other: \_\_\_\_\_

### Application Type(s):

- |  |   |  |  |
|--|---|--|--|
| <input checked="" type="checkbox"/> Annexation               | <input type="checkbox"/> Appeal                         | <input type="checkbox"/> Comp Plan Map Amend         | <input type="checkbox"/> Parks Plan Review             |
| <input type="checkbox"/> Final Plat                          | <input type="checkbox"/> Major Partition                | <input type="checkbox"/> Minor Partition             | <input type="checkbox"/> Request to Modify Conditions  |
| <input type="checkbox"/> Plan Amendment                      | <input checked="" type="checkbox"/> Planned Development | <input checked="" type="checkbox"/> Preliminary Plat | <input checked="" type="checkbox"/> Site Design Review |
| <input type="checkbox"/> Request for Special Meeting         | <input type="checkbox"/> Request for Time Extension     | <input type="checkbox"/> Signs                       | <input type="checkbox"/> Stage II Final Plan           |
| <input type="checkbox"/> SROZ/SRIR Review                    | <input type="checkbox"/> Staff Interpretation           | <input type="checkbox"/> Stage I Master Plan         | <input type="checkbox"/> Variance                      |
| <input checked="" type="checkbox"/> Type C Tree Removal Plan | <input type="checkbox"/> Tree Permit (B or C)           | <input type="checkbox"/> Temporary Use               | <input type="checkbox"/> Other (describe)              |
| <input type="checkbox"/> Villebois SAP                       | <input type="checkbox"/> Villebois PDP                  | <input type="checkbox"/> Villebois FDP               |  |
| <input checked="" type="checkbox"/> Zone Map Amendment       | <input checked="" type="checkbox"/> Waiver(s)           | <input type="checkbox"/> Conditional Use             |  |

# Frog Pond West Cottage Park Place

## Annexation, Zoning Map Amendment, Tentative Subdivision Plat, Stage I & II Planned Development Review, Site Design Review, Type C Tree Removal Plan

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**Date:** May 2023  
Updated November 2023

**Submitted to:** City of Wilsonville  
29799 SW Town Center Loop East  
Wilsonville, OR 97070

**Applicant:** Sullivan Homes LLC  
5832 Firestone Court  
San Jose, CA 95138

**AKS Job Number:** 6175



12965 SW Herman Road, Suite 100  
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## **Exhibits**

**Exhibit A:** Preliminary Plans (Updated Nov 2023)

**Exhibit B:** Land Use Application Forms & Annexation Petitions (Updated Nov 2023)

**Exhibit C:** Title Report

**Exhibit D:** Clackamas County Assessor's Map

**Exhibit E:** Traffic Impact Study

**Exhibit F:** USACE & DSL Wetland Concurrences

**Exhibit G:** Preliminary Stormwater Report (Updated Nov 2023)

**Exhibit H:** Geotechnical Report (Updated Nov 2023)

**Exhibit I:** Draft CC&Rs

**Exhibit J:** Annexation Legal Description and Exhibit (Updated Nov 2023)

**Exhibit K:** Annexation County Certifications

**Exhibit L:** Zoning Change Legal Description and Exhibit

**Exhibit M:** Preliminary Conceptual Elevations (Updated Nov 2023)

**Exhibit N:** 250-Foot Radius Notification Labels

**Exhibit O:** Service Provider Letters (Updated Nov 2023)

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# Frog Pond West Cottage Park Place

<b>Submitted to:</b>	City of Wilsonville 29799 SW Town Center Loop East Wilsonville, OR 97070
<b>Applicant:</b>	Sullivan Homes LLC 5832 Firestone Court San Jose, CA 95138
<b>Property Owners:</b>	Sullivan Homes LLC 5832 Firestone Court San Jose, CA 95138
<b>Applicant's Consultant:</b>	AKS Engineering & Forestry, LLC 12965 SW Herman Road, Suite 100 Tualatin, OR 97062  Contact(s): Glen Southerland, AICP Email: SoutherlandG@aks-eng.com Phone: (503) 563-6151
<b>Site Location:</b>	7252 SW Frog Pond Lane
<b>Clackamas County Assessor's Map:</b>	3 1W 12D; Tax Lots 1200 and 1300
<b>Site Size:</b>	One subdivision affecting two lots at ±5.00 total acres: ±1.24 acres (Lot 1200) ±3.75 acres (Lot 1300)
<b>Land Use Districts:</b>	Clackamas County Rural Residential Farm Forest 5-Acre (RRFF5) (Current) Residential Neighborhood (RN) (Upon Annexation)

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## I. Executive Summary

Sullivan Homes LLC (Applicant) is submitting this application to accommodate an attached middle housing single-family residential neighborhood within the Frog Pond West master planned community. The project requires the following approvals:

1. Annexation to the City of Wilsonville
2. Annexation to Metro
3. Zoning Map Amendment
4. Planned Development – Stage I Preliminary Plan
5. Planned Development – Stage II Final Plan
6. Site Design Review of Open Space
7. Tentative Subdivision Plat
8. Type C Tree Plan
9. Waiver for Street Frontage for 6 Lots in R4 and R7 Subdistricts
10. Waiver for curb tight sidewalk adjacent to SW Frog Pond Lane

This property is located within the Frog Pond West planning area, which Metro Regional Services (Metro) included in its Urban Growth Boundary (UGB) in 2002 to accommodate projected residential growth. The City of Wilsonville (City) undertook extensive planning of Frog Pond West over several years, ultimately adopting the *Frog Pond Area Plan* in 2015 and *Frog Pond West Master Plan* (Master Plan) in 2017. Annexation of the project site into the City of Wilsonville is the next step in the progression from the thorough planning process and helps implement the City’s vision for this area.

This application involves the development of land for housing. Oregon Revised Statutes (ORS) 197.307(4) states that a local government may apply only clear and objective standards, conditions, and procedures regulating the provision of housing, and that such standards, conditions, and procedures cannot have the effect, either in themselves or cumulatively, of discouraging housing through unreasonable cost or delay. This application involves a “limited land use application,” as that term is defined in ORS 197.015 (12), as it involves a tentative subdivision plan for property within an urban growth boundary.

Oregon Courts and the Land Use Board of Appeals (LUBA) have generally held that an approval standard is not clear and objective if it imposes on an applicant “subjective, value-laden analyses that are designed to balance or mitigate impacts of the development” (*Rogue Valley Association of Realtors v. City of Ashland*, 35 Or LUBA 139, 158 [1998] *aff’d*, 158 Or App 1 [1999]). ORS 197.831 places the burden on local governments to demonstrate that the standards and conditions placed on housing applications can be imposed only in a clear and objective manner. While this application addresses all standards and conditions, the Applicant reserves the right to object to the enforcement of standards or conditions that are not clear and objective and does not waive its right to assert that the housing statutes apply to this application. Exceptions in ORS 197.307(4)(a) and 197.307(5) do not apply to this application; ORS 197.307(7)(a) is controlled by ORS 197.307(4).

ORS 197.195(1) describes how certain standards can be applied as part of a limited land use application. The applicable land use regulations for this application are found in the City of Wilsonville Development Code. Pursuant to ORS 197.195(1) Comprehensive Plan provisions (as well as goals, policies, etc. from within the adopted elements of the Comprehensive Plan) may not be used as a basis for a decision or an appeal of a decision unless they are specifically incorporated into the land use regulations. While this

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application may respond to Comprehensive Plan and/or related documents, such a response does not imply or concede that said provisions are applicable approval criteria. Similarly, the Applicant does not waive its right to object to the attempted implementation of these provisions unless they are specifically listed in the applicable land use regulations, as is required by ORS 197.195(1).

Pursuant to ORS 197.522, if this application is found to be inconsistent with the applicable land use regulations, the Applicant may offer an amendment or propose conditions of approval to make the application consistent with applicable regulations. In fact, the local government is obligated to consider and impose any conditions of approval proposed by the Applicant if such conditions would allow the local government to approve an application that would not otherwise meet applicable approval criteria.

## **II. Site Description/Setting**

### **Project Location**

The site is ±5.00 gross acres with frontage on SW Frog Pond Lane. The property is in unincorporated Clackamas County, within the City of Wilsonville Urban Growth Boundary (UGB) and within the Frog Pond West subarea of the City. The properties are within the Frog Pond West Subdistrict 4, zoned R-7, and Subdistrict 7, zoned R-10.

### **Surrounding Land Use**

The properties are within the UGB and abut the existing City limits and undeveloped rural residential land in Clackamas County to the west and north. Surrounding properties will eventually be built out as the Frog Pond master planned community. The adjacent property to the south is within Frog Pond West Subdistrict 13 and is zoned Public Facility (PF) for use as a future school site. The adjacent undeveloped properties to the east and west are within the same Frog Pond West Subdistricts 4 and 7 as the project site and will share its R-7 and R-10 zoning designations. These properties will also be annexed to the City and rezoned from Clackamas County Rural Residential Farm Forest 5-Acre (RRFF5) to Residential Neighborhood (RN) with R-7 and R-10 *Frog Pond Area Plan* Designations. Properties across SW Frog Pond Lane opposite the project site are part of Subdistrict 8 with a zoning designation of R-10.

### **Existing Site Condition**

The site consists of Tax Lots 1200 and 1300 of Clackamas County Assessor's Map 3 1W 12D and has Clackamas County zoning designation RRFF5. Tax Lot 1200 has an existing single-family residence, an unpaved driveway, and a barn. Tax Lot 1300 features an existing accessory structure and unpaved driveway.

### **Proposed Project**

This project proposes to annex the site to the City of Wilsonville and apply the designated RN zone. Per Figure 6 of the *Frog Pond West Master Plan*, ±1.81 gross acres of the site are within Frog Pond West Subdistrict 7, which is designated R-10 (Small Size Lots; 4,000- to 6,000-square-foot lots) and are planned for five lots. Approximately 3.24 gross acres of the site are within Subdistrict 4, which is designated R-7 (Medium Size Lots; 6,000- to 8,000-square-foot lots), and are planned for 12 lots.

The project plans to provide 34 single-family homes, open space tracts with pedestrian trails, and a stormwater facility. Open spaces have been planned with the purpose of providing recreational areas for the residents of Cottage Park Place and to preserving priority Oregon White Oak trees and adjacent groves where feasible. Associated site improvements include grading, construction of a local street network, and

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open space tracts to be privately maintained by a homeowners' association (HOA). The project dedicates 9.5 feet of right-of-way width for the expansion of SW Frog Pond Lane and 15 feet of right-of-way width for the planned future expansion of SW Brisband Street.

### **Transportation & Circulation**

The subdivision accesses SW Frog Pond Lane to SW Brisband Street to the south, both classified as framework streets. The new local streets are 28 feet wide with one travel lane in each direction and parking on both sides.

### **Tree Preservation**

The site was largely designed around continuing the conceptual Frog Pond West layout while accommodating the preservation of existing trees onsite. Reconnaissance of the site in 2017 by Morgan Hollen & Associates identified several priority Oregon White Oak trees and groves for preservation. Many of these trees have been identified to be preserved within open space tracts that would have otherwise accommodated street rights-of-way per the *Frog Pond West Master Plan*. Some of these oak trees were determined to be infested with Mediterranean Oak Borer beetle and will need to be removed and destroyed on-site in order to slow the spread of this invasive insect. Further tree removals may be needed on the site in the future to facilitate this objective.

Significant effort was made to reconfigure the site around these stands of trees. The layout for the project, determined prior to the Pre-Application conference, recognized the City's desire to retain the trees, and included an open space tract for the purpose of preserving four high priority Oregon White Oaks. A similar layout was submitted to the City as part of this application. Working with City Staff through several iterations of the project and meetings – in-person, virtual, and on-site, the submitted layout was found to provide sufficient tree preservation with the density desired for the area.

## **III. Applicable Review Criteria**

### **OREGON REVISED STATUTES (ORS)**

#### **GENERAL PROVISIONS**

ORS 222.111 Authority and procedure for annexation; specifying tax rate in annexed territory.

- (1) When a proposal containing the terms of annexation is approved in the manner provided by the charter of the annexing city or by ORS 222.111 to 222.180 or 222.840 to 222.915, the boundaries of any city may be extended by the annexation of territory that is not within a city and that is contiguous to the city or separated from it only by a public right of way or a stream, bay, lake or other body of water. Such territory may lie either wholly or partially within or without the same county in which the city lies.

**Response:** The property is within unincorporated Clackamas County and is contiguous to the Wilsonville City Limits.

- (2) A proposal for annexation of territory to a city may be initiated by the legislative body of the city, on its own motion, or by a petition to the legislative body of the city by owners of real property in the territory to be annexed.

**Response:** The proposal for annexation is initiated by the property owners of the land proposed for annexation and has been signed by all property owners and electors residing on the property. The signed petition for annexation to City of Wilsonville is included in Exhibit B.

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- (5) The legislative body of the city shall submit, except when not required under ORS 222.120 (Procedure for annexation without election), 222.170 (Annexation by consent before public hearing or order for election) and 222.840 (Short title) to 222.915 (Application of ORS 222.840 to 222.915) to do so, the proposal for annexation to the electors of the territory proposed for annexation and, except when permitted under ORS 222.120 (Procedure for annexation without election) or 222.840 (Short title) to 222.915 (Application of ORS 222.840 to 222.915) to dispense with submitting the proposal for annexation to the electors of the city, the legislative body of the city shall submit such proposal to the electors of the city. The proposal for annexation may be voted upon at a general election or at a special election to be held for that purpose.
  - (6) The proposal for annexation may be voted upon by the electors of the city and of the territory simultaneously or at different times not more than 12 months apart.
  - (7) Two or more proposals for annexation of territory may be voted upon simultaneously; however, in the city each proposal shall be stated separately on the ballot and voted on separately, and in the territory proposed for annexation no proposal for annexing other territory shall appear on the ballot.

**Response:** Pursuant to ORS 222.120(1), the legislative body of the City of Wilsonville is not required to submit a proposal for annexation of territory to the electors of the City for their approval or rejection. The above criteria are not applicable.

ORS 222.120 Procedure for annexation without election; hearing; ordinance subject to referendum.

- (1) Except when expressly required to do so by the city charter, the legislative body of a city is not required to submit a proposal for annexation of territory to the electors of the city for their approval or rejection.

**Response:** The City of Wilsonville Charter does not require a vote of the electors of the City for annexation. The property owners and electors of the subject site consent in writing to the annexation, and upon submittal of this application a public hearing will be scheduled. The annexation will follow the process defined within the Development Code. The above criterion is met.

ORS 222.125 Annexation by consent of all owners of land and majority of electors; proclamation of annexation.

The legislative body of a city need not call or hold an election in the city or in any contiguous territory proposed to be annexed or hold the hearing otherwise required under ORS 222.120 when all of the owners of land in that territory and not less than 50 percent of the electors, if any, residing in the territory consent in writing to the annexation of the land in the territory and file a statement of their consent with the legislative body. Upon receiving written consent to annexation by owners and electors under this section, the legislative body of the city, by resolution or ordinance, may set the final boundaries of the area to be annexed by a legal description and proclaim the annexation.

Note: 222.125 was added to and made a part of ORS chapter 222 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**Response:** The property owners and electors residing within the area proposed for annexation have provided their consent in writing. The City does not require a vote of the electors of the

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City to approve an annexation and instead will follow a public hearing process as defined within the City's Development Code. This criterion is met.

**ORS 222.170** Annexation by consent before public hearing or order for election; proclamation of annexation.

- (1) If the city legislative body has not dispensed with submitting the question to the electors of the city and a majority of the votes cast on the proposition within the city favor annexation, or if the city legislative body has previously dispensed with submitting the question to the electors of the city as provided in ORS 222.120 (Procedure for annexation without election), the legislative body, by resolution or ordinance, shall set the final boundaries of the area to be annexed by a legal description and proclaim the annexation.

**Response:** The draft legal description and exhibit map for annexation are included within Exhibit J. The criterion above is understood.

- (4) Real property that is publicly owned, is the right of way for a public utility, telecommunications carrier as defined in ORS 133.721 (Definitions for ORS 41.910 and 133.721 to 133.739) or railroad or is exempt from ad valorem taxation shall not be considered when determining the number of owners, the area of land or the assessed valuation required to grant consent to annexation under this section unless the owner of such property files a statement consenting to or opposing annexation with the legislative body of the city on or before a day described in subsection (1) of this section.

**Response:** The above standard is understood.

### OREGON STATEWIDE PLANNING GOALS

The following Oregon Statewide Planning Goals are applicable to this action:

- Goal 1 – Citizen Involvement
- Goal 2 – Land Use Planning
- Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces
- Goal 6 – Air, Land, and Water Resources Quality
- Goal 8 – Recreational Needs
- Goal 9 – Economic Development
- Goal 10 – Housing
- Goal 11 – Public Facilities and Services
- Goal 12 – Transportation

Goal 3 (Agricultural Lands) and Goal 4 (Forest Lands) are not applicable to lands within the UGB and have been omitted for brevity.

Goal 7 (Areas Subject to Natural Hazards) is not applicable because the subject site does not contain mapped areas of steep slopes 25 percent or greater or other known hazard areas.

Goal 13 (Energy Conservation) is not applicable because the amendment does not affect the City or County goals or policies governing energy conservation.

Goal 14 (Urbanization) is not applicable because this application does not involve expansion of the Wilsonville UGB and thus analysis of the transition of rural to urban land uses is not relevant.

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Goals 15 (Willamette River Greenway), 16 (Estuarine Resources), 17 (Coastal Shorelands), 18 (Beaches and Dunes), and 19 (Ocean Resources) are not applicable because the subject site does not contain lands described in those goals.

**Goal 1: Citizen Involvement**

To develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process.

**Response:** The City of Wilsonville has an established public notice and hearing process for quasi-judicial applications. Once this annexation request is accepted as complete, the City will begin this public notification and citizen involvement process. Therefore, this request is consistent with Goal 1.

**Goal 2: Land Use Planning**

To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

**Response:** The Oregon Land Conservation and Development Commission (LCDC) has acknowledged the City of Wilsonville Comprehensive Plan to be in compliance with the Statewide Planning Goals. This narrative demonstrates that the proposed amendment is in compliance with the goals and policies of the City of Wilsonville Comprehensive Plan, as applicable to the proposed annexation.

This application provides an adequate factual basis for the City and County to approve the application because it describes the current and planned future site characteristics and applies the relevant approval criteria to those characteristics. Therefore, following the application process will ensure consistency with Statewide Planning Goal 2.

**Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces**

To protect natural resources and conserve scenic and historic areas and open spaces.

**Response:** The subject property is not designated as an open space or scenic area, and there are no protected natural resources or historic areas present on the site. The project provides ±22,539 square feet of open space for the preservation of several mature trees. The proposal conforms to this statewide planning goal.

**Goal 6: Air, Water and Land Resources Quality**

To maintain and improve the quality of the air, water and land resources of the state.

**Response:** Land located within the Urban Growth Boundary is considered urbanizable and is intended to be developed to meet the needs of the City. The effects of urban development on air, water, and land resources are anticipated. Development of the property is subject to tree preservation, stormwater, and wastewater requirements of the City of Wilsonville Development Code, which are intended to minimize the impact of development on the state's natural resources. The proposal is consistent with Goal 6.

**Goal 8: Recreational Needs**

To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

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**Response:** Goal 8 is implemented through the City of Wilsonville 2018 Parks and Recreation Comprehensive Master Plan. Together with the Metro Plan, the provisions identify future needs for parks, a natural area, and recreation facilities. The amendments will not negatively affect the City's Comprehensive Plan with respect to Goal 8 and its development regulations governing recreational needs (e.g. open space, park dedication, fee in-lieu-of requirements, etc.). An increase in residential land supply will increase the number of residents and visitors and in turn System Development Charges (SDC) and the demand for recreational facilities will increase. Therefore, this application is consistent with Goal 8.

**Goal 9: Economic Development**

To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

**Response:** This area has been identified in the City of Wilsonville Comprehensive Plan as appropriate for residential use. The Zone Map Amendment to change the zoning from unincorporated Clackamas County Rural Residential Farm Forest 5-Acre (RRFF5) to Residential Neighborhood (RN) is consistent with the intent of the *Frog Pond West Master Plan*. The proposed project will create the needed housing for the City of Wilsonville's workforce, which indirectly promotes economic activities in the region. In addition, a thoughtfully designed community with active-use open space and pedestrian trail system enhances the City's appeal, stimulating its business and industry and contributing to the health and vitality of the overall community. Therefore, this application is consistent with Goal 9.

**Goal 10: Housing**

To provide for the housing needs of citizens of the state.

**Response:** The 2014 Wilsonville Residential Land Study, which serves as the City's state-acknowledged Housing Needs Analysis, anticipates that the City will need to accommodate 3,794 new households by 2034. The Frog Pond West master planned community has been planned with a strategy to meet state-required supply for residential land and housing. The project provides 17 residential parent lots at allowable residential density for 34 medium- and small-lot single-family homes. Therefore, this application is consistent with Goal 10.

**Goal 11: Public Facilities and Services**

To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

**Response:** The City of Wilsonville Comprehensive Plan and the *Frog Pond West Master Plan* include implementation measures to ensure site development complies with the City's Wastewater Collections System Master plan, Stormwater Master Plan, Water System Master Plan, and Transportation System Plan. Therefore, the proposed annexation implements the Comprehensive Plan and master plans and is consistent with Goal 11.

**Goal 12: Transportation**

To provide and encourage a safe, convenient and economic transportation system.

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**Response:** Goal 12 is implemented by the Transportation Planning Rule (TPR), which requires local governments to adopt Transportation System Plans (TSPs) and consider transportation impacts resulting from land use decisions and development. This application includes a Transportation Impact Study (TIS) prepared by DKS (Exhibit E). It demonstrates that the project will not have a “significant effect” on the surrounding transportation system. Therefore, the application is consistent with Goal 12.

#### FINDINGS FOR TRANSPORTATION PLANNING RULE COMPLIANCE

**Response:** The key provision of the TPR related to local land use decisions is Oregon Administrative Rule (OAR) 660-012-0060. OAR 660-012-0060(1) and (2) apply to amendments to acknowledged maps, as is the case with this application.

The TPR requires a two-step analysis. First, under OAR 660-012-0060(1), the Applicant must determine if the application has a “significant effect,” as that term is defined in OAR 660-012-0060(1). The City may rely on transportation improvements found in Transportation System Plans (TSPs), as allowed by OAR 660-012-0060(3)(a), (b), and (c), to show that failing intersections will not be made worse or intersections not now failing will not fail. If there is a “significant effect,” then the Applicant must demonstrate appropriate mitigation under OAR 660-012-0060(2), et seq.

#### OAR 660-012-0060 Plan and Land Use Regulation Amendments

- (1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:
  - (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
  - (b) Change standards implementing a functional classification system; or
  - (c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.
    - (A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
    - (B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or
    - (C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.

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**Response:** The TIS prepared by the City’s traffic engineer, DKS Associates, contains a detailed discussion of the traffic impacts associated with the proposed project and any potential mitigation for the project as it relates to the Oregon Transportation Planning Rule (TPR) found in OAR 660-012-0060. As described in the study, this project and the associated traffic improvements will comply with OAR 660-012-0060 (1) and (2). Compliance with the TPR is included within the *Frog Pond Area Plan*, which assumed full development of the Frog Pond area. Please refer to the TIS (Exhibit E) for further information.

These criteria are met.

[...]

- (4) Determinations under sections (1)–(3) of this rule shall be coordinated with affected transportation facility and service providers and other affected local governments.
  - (a) In determining whether an amendment has a significant effect on an existing or planned transportation facility under subsection (1)(c) of this rule, local governments shall rely on existing transportation facilities and services and on the planned transportation facilities, improvements and services set forth in subsections (b) and (c) below.
  - (b) Outside of interstate interchange areas, the following are considered planned facilities, improvements and services:
    - (A) Transportation facilities, improvements or services that are funded for construction or implementation in the Statewide Transportation Improvement Program or a locally or regionally adopted transportation improvement program or capital improvement plan or program of a transportation service provider.
    - (B) Transportation facilities, improvements or services that are authorized in a local transportation system plan and for which a funding plan or mechanism is in place or approved. These include, but are not limited to, transportation facilities, improvements or services for which: transportation systems development charge revenues are being collected; a local improvement district or reimbursement district has been established or will be established prior to development; a development agreement has been adopted; or conditions of approval to fund the improvement have been adopted.
    - (C) Transportation facilities, improvements or services in a metropolitan planning organization (MPO) area that are part of the area's federally-approved, financially constrained regional transportation system plan.
    - (D) Improvements to state highways that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when ODOT provides a written statement that the improvements are reasonably likely to be provided by the end of the planning period.
    - (E) Improvements to regional and local roads, streets or other transportation facilities or services that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when the local government(s) or transportation service provider(s) responsible for the facility, improvement or service provides a written statement that the facility, improvement or

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service is reasonably likely to be provided by the end of the planning period.

- (c) Within interstate interchange areas, the improvements included in (b)(A)–(C) are considered planned facilities, improvements and services, except where:
  - (A) ODOT provides a written statement that the proposed funding and timing of mitigation measures are sufficient to avoid a significant adverse impact on the Interstate Highway system, then local governments may also rely on the improvements identified in paragraphs (b)(D) and (E) of this section; or
  - (B) There is an adopted interchange area management plan, then local governments may also rely on the improvements identified in that plan and which are also identified in paragraphs (b)(D) and (E) of this section.
- (d) As used in this section and section (3):
  - (A) Planned interchange means new interchanges and relocation of existing interchanges that are authorized in an adopted transportation system plan or comprehensive plan;
  - (B) Interstate highway means Interstates 5, 82, 84, 105, 205 and 405; and
  - (C) Interstate interchange area means:
    - (i) Property within one-quarter mile of the ramp terminal intersection of an existing or planned interchange on an Interstate Highway; or
    - (ii) The interchange area as defined in the Interchange Area Management Plan adopted as an amendment to the Oregon Highway Plan.
    - (e) For purposes of this section, a written statement provided pursuant to paragraphs (b)(D), (b)(E) or (c)(A) provided by ODOT, a local government or transportation facility provider, as appropriate, shall be conclusive in determining whether a transportation facility, improvement or service is a planned transportation facility, improvement or service. In the absence of a written statement, a local government can only rely upon planned transportation facilities, improvements and services identified in paragraphs (b)(A)–(C) to determine whether there is a significant effect that requires application of the remedies in section (2).

**Response:** This section of the Transportation Planning Rule requires coordination with affected transportations service providers. The City provides the roads that serve the subject property. The adjacent section of Frog Pond Lane is designated as a local road in the City TSP, and both streets are under City jurisdiction. The City has a duty to coordinate with transportation facility and service providers and other affected agencies, as applicable. Therefore, the criteria of OAR 660-012-0060 (4) are met.

### METRO FUNCTIONAL PLAN COMPLIANCE

Metro Code 3.07.810(c) requires compliance with applicable provisions of the Functional Plan when a City amends its acknowledged comprehensive plan and land use regulations. In this case, the City’s acknowledged Land Use Zoning Map and Land Development Code are consistent with the Functional Plan. This application does not amend the City’s acknowledged Land Use Zoning Map or Land Development

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Code in a way that is inconsistent with the Functional Plan. Therefore, the City can find that the Functional Plan is satisfied.

Additionally, Metro Code 3.07.810(f) requires that the City give notice to the Metro Chief Operating Officer of the map amendments 35 days before the first Planning Commission hearing. If the City provides such notice, the Land Use Zoning Map Amendment will comply with the Functional Plan upon final approval by the City.

#### Chapter 3.09 – Local Government Boundary Changes

##### 3.09.040

##### Requirements for Petitions

- A. A petition for a boundary change must contain the following information:
1. The jurisdiction of the reviewing entity to act on the petition;
  2. A map and a legal description of the affected territory in the form prescribed by the reviewing entity;
  3. For minor boundary changes, the names and mailing addresses of all persons owning property and all electors within the affected territory as shown in the records of the tax assessor and county clerk; and
  4. For boundary changes under ORS 198.855(3), 198.857, 222.125 or 222.170, statements of consent to the annexation signed by the requisite number of owners or electors.
- B. A city, county and Metro may charge a fee to recover its reasonable costs to carry out its duties and responsibilities under this chapter.

**Response:** The City is the reviewing entity that will act on this petition. Necessary application forms and exhibits, as well as associated review fees, have been submitted with this application. A map and legal description of the affected territory are included in Exhibit J. The names and mailing addresses of persons owning property in the affected territory, per County Tax Assessor and County Clerk records, are included in Exhibit C. Finally, a statement of consent from the requisite owners and electors is included in Exhibit B. Therefore, the criteria are met.

##### 3.09.045 Expedited Decisions

- D. To approve a boundary change through an expedited process, the city shall:
1. Find that the change is consistent with expressly applicable provisions in:  
[...]

**Response:** The applicable provisions have been addressed within this written narrative. The proposed annexation is consistent with the City of Wilsonville Comprehensive Plan, *Frog Pond West Master Plan*, and other applicable plans and agreements. These criteria are met.

2. Consider whether the boundary change would:
  - a. Promote the timely, orderly and economic provision of public facilities and services;
  - b. Affect the quality and quantity of urban services; and
  - c. Eliminate or avoid unnecessary duplication of facilities or services.

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**Response:** The annexation of this property is part of the orderly and timely development of the Frog Pond West master planned area, adding necessary housing and infrastructure to this planned area of urban development. The utility and service capacity and availability necessary to serve this new area of the City have been determined to be sufficient per the applicable City master plans. These criteria are met.

E. A city may not annex territory that lies outside the UGB, except it may annex a lot or parcel that lies partially within and partially outside the UGB.

**Response:** The territory proposed for annexation is wholly within the UGB and eligible for annexation. This criterion is met.

### 3.09.050 Hearing and Decision Requirements [...] Other Than Expedited Decisions

A. The following requirements for hearings on petitions operate in addition to requirements for boundary changes in ORS Chapters 198, 221 and 222 and the reviewing entity’s charter, ordinances or resolutions.

**Response:** This narrative and accompanying exhibits respond to applicable State and local requirements pertaining to boundary changes. Additionally, Metro Code Section 3.09 and Wilsonville Development Code implement the applicable annexation provisions from Oregon Revised Statutes (ORS) Chapters 198, 221, and 222. This narrative demonstrates that applicable boundary change requirements have been satisfied. The criterion is met.

B. Not later than 15 days prior to the date set for a hearing the reviewing entity shall make available to the public a report that addresses the criteria identified in subsection (D) and includes the following information:

1. The extent to which urban services are available to serve the affected territory, including any extra territorial extensions of service;

**Response:** Urban services are or will be made available to serve the affected territory to a level consistent with City and CWS standards.

2. Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party; and

**Response:** Metro Code Section 3.09.020 defines the following terms: “affected territory” means a territory described in a petition; “necessary party” means any county, city, or district whose jurisdictional boundary or adopted urban service area includes any part of the affected territory, or who provides any urban service to any portion of the affected territory, including Metro, or any other unit of local government, as defined in ORS 190.003, that is a party to any agreement for provision of an urban service to the affected territory. The annexation will add ±5.00 acres of land to the City of Wilsonville for the provision of urban services but will not withdraw the affected territory from the legal boundary of any party. The legal description of the area is included in Exhibit J.

3. The proposed effective date of the boundary change.

**Response:** The Applicant anticipates approval of the Annexation application by roughly January 2024.

C. The person or entity proposing the boundary change has the burden to demonstrate that the proposed boundary change meets the applicable criteria.

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**Response:** This application includes responses demonstrating compliance to applicable boundary change criteria.

D. To approve a boundary change, the reviewing entity shall apply the criteria and consider the factors set forth in subsections (D) and (E) of section 3.09.045.

**Response:** Responses to Metro Code Sections 3.09.045 (D) and (E) are included above.

## CITY OF WILSONVILLE COMPREHENSIVE PLAN

### URBAN GROWTH MANAGEMENT

#### Urban Growth Boundaries

Goal 2.1 To allow for urban growth while maintaining community livability, consistent with the economics of development, City administration, and the provision of public facilities and services.

Policy 2.2.1 The City of Wilsonville shall support the development of all land within the City, other than designated open space lands, consistent with the land use designations of the Comprehensive Plan.

#### Implementation Measure 2.2.1.a

Allow annexation when it is consistent with future planned public services and when a need is clearly demonstrated for immediate urban growth.

**Response:** The proposed project is located within the West Neighborhood of the Frog Pond planning area. The *Frog Pond Area Plan* was adopted in 2015 and the *Frog Pond West Master Plan* was adopted in 2017 as a sub-element of the Comprehensive Plan. It provides for single-family residential uses to meet the housing needs of Wilsonville’s growing population. The City’s Housing Needs Analysis validates the need for inclusion of the Frog Pond West subarea to meet state-required supply for residential land. The *Frog Pond Area Plan* includes a transportation network, parks and open space framework, and infrastructure funding plan to support development within the Frog Pond area and assure adequate public services.

#### Implementation Measure 2.2.1.e

Changes in the City boundary will require adherence to the annexation procedures prescribed by State law and Metro standards. Amendments to the City limits shall be based on consideration of:

1. Orderly, economic provision of public facilities and services, i.e., primary urban services are available and adequate to serve additional development or improvements are scheduled through the City’s approved Capital Improvements Plan.

**Response:** The *Frog Pond Area Plan* includes implementation measures to ensure the orderly and economic provision of public facilities and services for the Frog Pond Area, including Frog Pond West master planned community. The Applicant has submitted concurrent applications for Stage I and Stage II Planned Development Review, Site Design Review, and Tentative Subdivision Plat, which propose the extension of public facilities and services to the Cottage Park Place neighborhood. These proposed services are generally consistent with the *Frog Pond Area Plan*, *Frog Pond West Master Plan*, and the City’s

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Finance Plan and Capital Improvements Plan. Applicable State and Metro regulations have been evaluated within this narrative.

2. Availability of sufficient land for the various uses to ensure choices in the marketplace for a 3 to 5 year period.

**Response:** The proposed project implements the uses envisioned in the adopted *Frog Pond West Master Plan*, on the land with zoned Residential Neighborhood (RN). The inclusion of the Frog Pond area within the UGB and the adoption of the *Frog Pond Area Plan* demonstrate the need for residential development in the Frog Pond Area.

3. Statewide Planning Goals.

**Response:** A separate section in this narrative demonstrates compliance with applicable Statewide Planning Goals.

4. Applicable Metro Plans;

**Response:** A separate section in this narrative demonstrates compliance with the applicable provisions of the Metro Urban Growth Management Functional Plan.

5. Encouragement of development within the City limits before conversion of urbanizable (UGB) areas.

**Response:** The subject site was brought into the UGB in 2002 but has not yet been annexed to the City limits. However, the City began the planning process for the development of the Frog Pond Area in 2014. Annexation of the project site is the next stage of the process and will allow the City of Wilsonville to implement the vision of the *Frog Pond West Master Plan*.

## LAND USE AND DEVELOPMENT

### Residential Development

**GOAL 4.1** To have an attractive, functional, economically vital community with a balance of different types of land uses.

#### Policy 4.1.4

The City of Wilsonville shall provide opportunities for a wide range of housing types, sizes, and densities at prices and rent levels to accommodate people who are employed in Wilsonville.

#### Implementation Measure 4.1.4.b

Plan for and permit a variety of housing types consistent with the objectives and policies set forth under this section of the Comprehensive Plan, while maintaining a reasonable balance between the economics of building and the cost of supplying public services. It is the City's desire to provide a variety of housing types needed to meet a wide range of personal preferences and income levels. The City also recognizes the fact that adequate public facilities and services must be available in order to build and maintain a decent, safe, and healthful living environment.

**Response:** The proposed annexation of the property and zone change to Residential Neighborhood (RN) implement the Comprehensive Plan to provide new single-family homes, consistent with the residential densities and housing types established in the *Frog Pond West Master Plan*. The proposed project will provide adequate public facilities and services for the new dwellings.

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#### Implementation Measure 4.1.4.c

Establish residential areas that are safe, convenient, healthful, and attractive places to live while encouraging variety through the use of planned developments and clusters and legislative Master Plans.

**Response:** The proposed Planned Development is consistent with the legislatively adopted *Frog Pond West Master Plan*. The project proposes development within the RN zoning district and consistent with the City’s Development Code standards to ensure a residential area that is safe, convenient, healthful, and attractive.

#### Implementation Measure 4.1.4.d

Encourage the construction and development of diverse housing types, but maintain a general balance according to housing type and geographic distribution, both presently and in the future. Such housing types may include, but shall not be limited to: Apartments, single-family detached, single-family common wall, manufactured homes, mobile homes, modular homes, and condominiums in various structural forms.

**Response:** The project provides attached single-family housing on parent lots ranging from ±6,500 square feet to ±9,900 square feet, as allowed by the R-7 and R-10 district regulations established in the *Frog Pond West Master Plan*.

#### Implementation Measure 4.1.4.e

Targets are to be set in order to meet the City’s Goals for housing and assure compliance with State and regional standards.

**Response:** The *Frog Pond Area Plan* and *Frog Pond West Master Plan* establish minimum and maximum residential densities for this area in compliance with State and regional standards. The proposed zone change will allow development of the subject site in conformance with those targets.

#### Implementation Measure 4.1.4.r

All development, except as indicated in the lowest density districts, will coincide with the provision of adequate streets, water, and sanitary sewerage and storm drainage facilities, as specified in the Public Facilities and Services Section of the Plan. These facilities shall be (a) capable of adequately serving all intervening properties as well as the proposed development and (b) designed to meet City standards.

**Response:** Cottage Park Place follows the sequential development pattern of the Frog Pond West master planned community and extends public facilities from previously approved surrounding Frog Pond subdivisions.

### Residential Neighborhood Development

#### Policy 4.1.7.a

New neighborhoods in residential urban growth expansion areas may be designated “Residential Neighborhood” on the Comprehensive Plan Map.

#### Implementation Measure 4.1.7.a

Area Plans (also called Concept Plans) shall be prepared to guide the overall framework of land use, multi-modal transportation, natural

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resources, parks and open space, public facilities, and infrastructure funding. Master Plans shall direct more detailed planning. The City may at its discretion combine Area Planning and Master Planning.

Implementation Measure 4.1.7.c

The “Residential Neighborhood” Zone District shall be applied in all areas that carry the Residential Neighborhood Plan map designation, unless otherwise directed by an area plan or master plan.

**Response:** The project site has been designated “Residential Neighborhood” on the City’s Comprehensive Plan Map and is part of the Frog Pond West Master Plan area. The subject area has been proposed to receive the planned designation of Residential Neighborhood (RN) as required for the area. The proposed development is consistent with the purpose of the Residential Neighborhood designation and the *Frog Pond West Master Plan*.

**CITY OF WILSONVILLE DEVELOPMENT CODE**

**CHAPTER 4. PLANNING AND LAND DEVELOPMENT**

**ZONING**

**Section 4.113 STANDARDS APPLYING TO RESIDENTIAL DEVELOPMENTS IN ANY ZONE**

**(.01) *Open Space***

**Response:** The *Frog Pond West Master Plan* controls open space standards for the area. The project involves land within the R-7 and R-10 sub-districts, which do not require open space. The proposed development contains open space tracts for the primary purposes of providing for tree preservation and stormwater facilities; however, these areas are also planned to provide pedestrian connectivity and amenities. Please refer to response under Wilsonville Development Code (WDC) Section 4.127(.09).

**(.02) *Building Setbacks***

**Response:** The *Frog Pond West Master Plan* controls development standards for the area. The setbacks in the proposed project are consistent with the Frog Pond West Master Plan. Please refer to response under WDC Section 4.127(.08).

**(.03) *Height Guidelines***

**Response:** This application involves a preliminary subdivision plat; therefore, only lot dimensional standards are reviewed with this application. Site development standards (setbacks, height, etc.) are applied at the time of building permit review.

**(.05) *Off Street Parking:* Off-street parking shall be provided as specified in Section 4.155.**

**Response:** Please refer to response under WDC Section 4.155.

**(.06) *Signs:* Signs shall be governed by the provisions of Sections 4.156.01 – 4.156.11.**

**Response:** Signs are not included as part of this application. These standards do not apply at this time.

**(.07) *Fences:***

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- A. The maximum height of a sight-obscuring fence located in the required front yard of a residential development shall not exceed four (4) feet.
  - B. The maximum height of a sight-obscuring fence located in the side yard of a residential lot shall not exceed four (4) feet forward of the building line and shall not exceed six (6) feet in height in the rear yard, except as approved by the Development Review Board. Except, however, that a fence in the side yard of residential corner lot may be up to six (6) feet in height, unless a greater restriction is imposed by the Development Review Board acting on an application. A fence of up to six (6) feet in height may be constructed with no setback along the side, the rear, and in the front yard of a residential lot adjoining the rear of a corner lot as shown in the attached Figure.
  - C. Notwithstanding the provisions of Section 4.122(10)(a) and (b), the Development Review Board may require such fencing as shall be deemed necessary to promote and provide traffic safety, noise mitigation, and nuisance abatement, and the compatibility of different uses permitted on adjacent lots of the same zone and on adjacent lots of different zones.
  - D. Fences in residential zones shall not include barbed wire, razor wire, electrically charged wire, or be constructed of sheathing material such as plywood or flakeboard.

**Response:** Fences in residential lots will be reviewed at the time of building permit. This application includes fences around the stormwater facility. Please refer to responses to WDC Section 4.176 Landscaping, Screening, and Buffering elsewhere within this written narrative.

(.08) *Corner Vision:* Vision clearance shall be provided as specified in Section 4.177, or such additional requirements as specified by the City Engineer.

**Response:** Please refer to response under WDC Section 4.177.

(.09) *Prohibited Uses:*

- A. Uses of structures and land not specifically permitted in the applicable zoning districts.
- B. The use of a trailer, travel trailer or mobile coach as a residence, except as specifically permitted in an approved RV park.
- C. Outdoor advertising displays, advertising signs, or advertising structures except as provided in Sections 4.156.05, 4.156.07, 4.156.09, and 4.156.10.

**Response:** The project does not include prohibited uses.

(.10) *Accessory Dwelling Units:*

- A. Accessory Dwelling Units are permitted subject to standards and requirements of this Subsection.

**Response:** This application does not include accessory units. These standards are not applicable.

(.11) *Reduced Setback Agreements.* The following procedure has been created to allow the owners of contiguous residential properties to reduce the building setbacks that would typically be required between those properties, or to allow for neighbors to voluntarily waive the solar access provisions of Section 4.137. Setbacks can be reduced to zero through the procedures outlined in this subsection.

[...]

**Response:** Please refer to response under WDC Section 4.127(.08). Reduced setbacks have not been requested. These standards do not apply.

(.12) *Bed and Breakfasts:*

**Response:** Bed and breakfasts have not been proposed as part of this application. These standards do not apply.

(.13) The Planning Director and Development Review Board shall, in making their determination of compliance in attaching conditions, consider the effects of this action on the availability and cost of needed housing. The provisions of this section shall not be used in such a manner that additional conditions, either singularly or cumulatively, have the effect of unnecessarily increasing the cost of housing or effectively excluding a needed housing type. However, consideration of these factors shall not prevent the Board or Planning Director from imposing conditions of approval necessary to meet the minimum requirements of the Comprehensive Plan and Code.

**Response:** This standard is understood.

(.14) Design Standards for Detached Single-family and Middle Housing.

A. The standards in this subsection apply in all zones, except as indicated in 1.—2. below:

1. The Façade Variety standards in Subsection C.1. do not apply in the Village Zone or Residential Neighborhood Zones, as these zones have their own variety standards, except that the standards do apply within middle housing development with multiple detached units on a single lot which the standards of these zones do not address;
2. The entry orientation and window standards for triplexes, quadplexes, and townhouses in Subsections D.1-2. and E. 2-3. do not apply in the Village Zone or Residential Neighborhood Zone as these zones have their own related standards applicable to all single-family and middle housing.

[...]

**Response:** The project is located within the Residential Neighborhood zone; therefore, the listed standards do not apply. The applicable standards of Section 4.127 are addressed later within this written narrative or will be addressed with future applications for each home.

Section 4.118 STANDARDS APPLYING IN ALL PLANNED DEVELOPMENT ZONES

(.01) *Height Guidelines:* In “S” overlay zones, the solar access provisions of Section 4.137 shall be used to determine maximum building heights. In cases that are subject to review by the Development Review Board, the Board may further regulate heights as follows: [...]

**Response:** The subject site is not located within the “S” overlay zone.

(.02) Underground Utilities shall be governed by Sections 4.300 to 4.320. All utilities above ground shall be located so as to minimize adverse impacts on the site and neighboring properties.

**Response:** Please refer to response under Sections 4.300 to 4.320 in this narrative.

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(.03) Notwithstanding the provisions of Section 4.140 to the contrary, the Development Review Board, in order to implement the purposes and objectives of Section 4.140, and based on findings of fact supported by the record may:

A. Waive the following typical development standards:

1. Minimum lot area;
2. Lot width and frontage;
3. Height and yard requirements;
4. Lot coverage;
5. Lot depth;
6. Street widths;
7. Sidewalk requirements;
8. Height of buildings other than signs;
9. Parking space configuration and drive aisle design;
10. Minimum number of parking or loading spaces;
11. Shade tree islands in parking lots, provided that alternative shading is provided;
12. Fence height;
13. Architectural design standards;
14. Transit facilities; and
15. On-site pedestrian access and circulation standards; and
16. Solar access standards, as provided in section 4.137.
17. Open space in the Residential Neighborhood zone; and
18. Lot orientation.

**Response:** A waiver is requested for lot frontage requirements. Lots 3 through 9 front a tree preservation open space with pedestrian access rather than a street right-of-way. This waiver will allow the greater preservation of trees on the project site through the avoidance of additional street construction. Tracts B and D are provided as pedestrian access to protect existing mature trees in lieu of an extension of the Frog Pond West street network.

Additionally, a waiver is requested for sidewalk requirements. An Oregon White Oak identified for preservation is located adjacent to the SW Frog Pond Lane right-of-way on Lot 2. Preservation of this tree requires removal of the required planter strip along this section of SW Frog Pond Lane. The sidewalk surface can maintain the required width through this area.

The project can be adequately served by the proposed walkways and sidewalks for pedestrian access and proposed alleys for vehicular access.

B. The following shall not be waived by the Board, unless there is substantial evidence in the whole record to support a finding that the intent and purpose of the standards will be met in alternative ways:

- 
1. Open space requirements in residential areas, except that the Board may waive or reduce open space requirements in the Residential Neighborhood zone. Waivers in compliance with [Section] 4.127(.08)(B)(2)(d);

**Response:** Per Section 4.127(.09)B.1, properties within the R-10 and R-7 subdistricts are exempt from the requirements of the Residential Neighborhood Open Space standards. Open space tracts will be established to preserve notable Oregon White Oak trees and establish pedestrian pathways for enjoyment of the natural area.

2. Minimum density standards of residential zones. The required minimum density may be reduced by the Board in the Residential Neighborhood zone in compliance with [Section] 4.127(.06) B; and

**Response:** The project meets the minimum density standards.

3. Minimum landscape, buffering, and screening standards.

**Response:** The project meets the minimum landscape, buffering, and screening standards.

- C. The following shall not be waived by the Board, unless there is substantial evidence in the whole record to support a finding that the intent and purpose of the standards will be met in alternative ways, and the action taken will not violate any applicable federal, state, or regional standards:

1. Maximum number of parking spaces;
2. Standards for mitigation of trees that are removed;
3. Standards for mitigation of wetlands that are filled or damaged; and
4. Trails or pathways shown in the Parks and Recreation Master Plan.

**Response:** The project meets the above standards; no waivers are requested for these listed items.

[...]

- (.07) *Density Transfers.* In order to protect significant open space or resource areas, the Development Review Board may authorize the transfer of development densities from one portion of a proposed development to another. Such transfers may go to adjoining properties, provided that those properties are considered to be part of the total development under consideration as a unit.

**Response:** The Applicant is requesting a density transfer from the portion of the site designated as Subdistrict 4 to the portion designated as part of Subdistrict 7. Layout of the Cottage Park Place project considered the need to retain high-priority trees as well as the dimensional characteristics of the relatively narrow site. As such, placement of an open space tract within the street grid layout envisioned for this portion of the Frog Pond West plan area requires structuring residential blocks as proposed. The number of residential lots provided is appropriate for the designated zoning and lot areas and dimensions planned. Transfer of density equal to one residential lot from Subdistrict 4 to Subdistrict 7 will allow the project to retain a greater number of high-priority tree specimens and provide the desired street layout within the project area.

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- (.08) *Wetland Mitigation and other mitigation for lost or damaged resources.* The Development Review Board may, after considering the testimony of experts in the field, allow for the replacement of resource areas with newly created or enhanced resource areas. The Board may specify the ratio of lost to created and/or enhanced areas after making findings based on information in the record. As much as possible, mitigation areas shall replicate the beneficial values of the lost or damaged resource areas.

**Response:** The southern portion of the project site features ±1.02 acres of wetland. Wetland delineation concurrence determinations by the Department of State Lands and US Army Corps of Engineers are included with this application as part of Exhibit F.

- (.09) *Habitat-Friendly Development Practices.* To the extent practicable, development and construction activities of any lot shall consider the use of habitat-friendly development practices, which include:
- A. Minimizing grading, removal of native vegetation, disturbance and removal of native soils, and impervious area;
  - B. Minimizing adverse hydrological impacts on water resources, such as using the practices described in Part (a) of Table NR-2 in Section 4.139.03, unless their use is prohibited by an applicable and required state or federal permit, such as a permit required under the federal Clean Water Act, 33 U.S.C. §§1251 et seq., or the federal Safe Drinking Water Act, 42 U.S.C. §§300f et seq., and including conditions or plans required by such permit;
  - C. Minimizing impacts on wildlife corridors and fish passage, such as by using the practices described in Part (b) of Table NR-2 in Section 4.139.03; and
  - D. Using the practices described in Part (c) of Table NR-2 in Section 4.139.03.

**Response:** This project is designed to minimize impacts to natural habitat through the use of habitat-friendly development practices, including limiting grading to the minimum necessary for installing site improvements and building homes and providing ±45,472 square feet of open space/landscape coverage area. Water, sewer, and stormwater infrastructure was designed and will be installed in accordance with the applicable City requirements in order to minimize adverse impacts on the site and to adjacent properties and surrounding resources.

In accordance with the intent of the *Frog Pond West Master Plan*, the layout of residential lots, streets, and open space tracts was designed to protect the maximum number of trees and tree groves. The project preserves 97 existing on-site, line, and off-site trees, including Oregon White Oaks within the proposed open space tracts and on future lots, where applicable. These criteria are met.

**Section 4.124 Standards Applying to all Planned Development Residential Zones.**

- (.01) *Permitted Uses:*
- A. Open Space.
  - B. Single-Family Dwelling Units.
  - C. Duplexes, triplexes, quadplexes, townhouses.

**Response:** Each of the uses proposed within Cottage Park Place is permitted.

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(.09) Block and access standards:

1. Maximum block perimeter in new land divisions: 1,800 feet.

**Response:** As shown on the Preliminary Plans (Exhibit A), the project meets maximum block perimeter standards. This criterion is met.

2. Maximum spacing between streets or private drives for local access: 530 feet, unless waived by the Development Review Board upon finding that barriers such as railroads, freeways, existing buildings, topographic variations, or designated Significant Resource Overlay Zone areas will prevent street extensions meeting this standard.

**Response:** The spacing between SW Brisband Street and “J Street” meets this standard. An additional street connection was not included in order to preserve a stand of Oregon White Oak trees within the open space tracts. Site planning to preserve trees such as those within open space areas is included as an intention of the *Frog Pond West Master Plan*.

3. Maximum block length without pedestrian and bicycle crossing: 330 feet, unless waived by the Development Review Board upon finding that barriers such as railroads, freeways, existing buildings, topographic variations, or designated Significant Resource Overlay Zone areas will prevent pedestrian and bicycle facility extensions meeting this standard.

**Response:** Blocks which exceed 530 feet in length provide pedestrian and bicycle crossings within the planned open space tracts, meeting this criterion.

Section 4.127 RESIDENTIAL NEIGHBORHOOD (RN) ZONE.

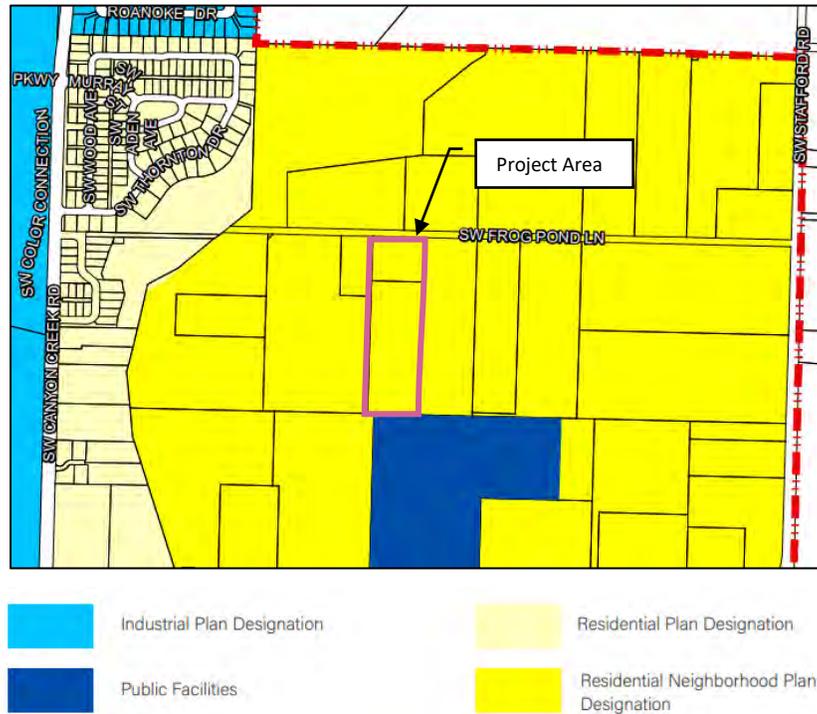
(.01) *Purpose.* The Residential Neighborhood (RN) zone applies to lands within Residential Neighborhood Comprehensive Plan Map designation. The RN zone is a Planned Development zone, subject to applicable Planned Development regulations, except as superseded by this section or in legislative master plans. The purposes of the RN Zone are to:

- A. Implement the Residential Neighborhood policies and implementation measures of the Comprehensive Plan.
- B. Implement legislative master plans for areas within the Residential Neighborhood Comprehensive Plan Map designation.
- C. Create attractive and connected neighborhoods in Wilsonville.
- D. Regulate and coordinate development to result in cohesive neighborhoods that include: walkable and active streets; a variety of housing appropriate to each neighborhood; connected paths and open spaces; parks and other non-residential uses that are focal points for the community; and, connections to and integration with the larger Wilsonville community.
- E. Encourage and require quality architectural and community design as defined by the Comprehensive Plan and applicable legislative master plans.
- F. Provide transportation choices, including active transportation options.
- G. Preserve and enhance natural resources so that they are an asset to the neighborhoods, and there is visual and physical access to nature.

- H. Create housing opportunities for a variety of households, including housing types that implement the Wilsonville Equitable Housing Strategic Plan and housing affordability provisions of legislative master plans.

**Response:** Per Figure 5 of the *Frog Pond West Master Plan* (below), the Cottage Park Place site is located within the RN Comprehensive Plan Map designation and is subject to these provisions and to applicable Planned Development (PD) regulations.

**Frog Pond West Master Plan Figure 5 excerpt: Comprehensive Plan Designations**



(.02) *Permitted uses:*

- A. Open Space.
- B. Single-Family Dwelling Unit.
- C. Townhouses. During initial development in the Frog Pond West Neighborhood, a maximum of two townhouses may be attached, except on corners, a maximum of three townhouses may be attached.
- D. Duplex.
- E. Triplex and quadplex. During initial development in the Frog Pond West Neighborhood, triplexes are permitted only on corner lots and quadplexes are not permitted.
- F. Cluster housing. During initial development in the Frog Pond West Neighborhood, only two-unit cluster housing is permitted except on corner lots where three-unit cluster housing is permitted.
- G. Multiple-Family Dwelling Units, except when not permitted in a legislative master plan, subject to the density standards of the zone. Multi-family dwelling units are not permitted within the Frog Pond West Master Plan area.

- H. Cohousing.
- I. Cluster Housing (Frog Pond West Master Plan).
- J. Public or private parks, playgrounds, recreational and community buildings and grounds, tennis courts, and similar recreational uses, all of a non-commercial nature, provided that any principal building or public swimming pool shall be located not less than 45 feet from any other lot.
- K. Manufactured homes.

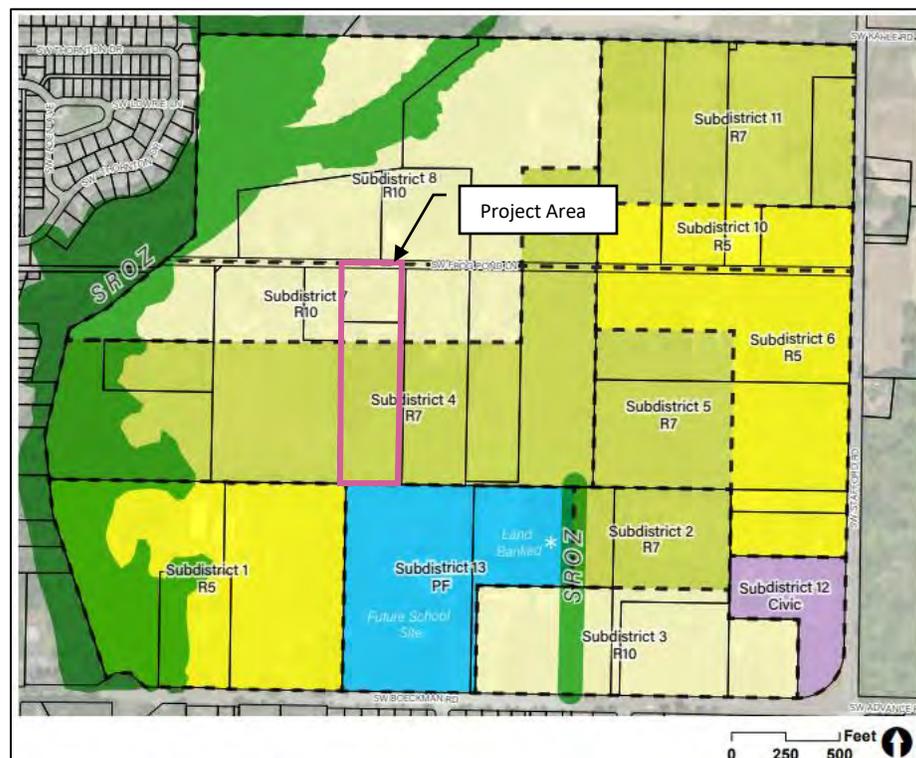
**Response:** The project includes 17 parent duplex lots and open space, which are permitted uses in the RN zone.

*(.05) Residential Neighborhood Zone Sub-districts:*

- A. RN Zone sub-districts may be established to provide area-specific regulations that implement legislative master plans.
  - 1. For the Frog Pond West Neighborhood, the sub-districts are listed in Table 1 of this Code and mapped on Figure 6 of the Frog Pond West Master Plan. The Frog Pond West Master Plan Sub-District Map serves as the official sub-district map for the Frog Pond West Neighborhood.

**Response:** Approximately 1.77 acres of the project site are within Subdistrict 7, which is designated Large Lot Single Family (R-10), and ±3.23 acres of the site lie within Subdistrict 4, which is designated Medium Lot Single Family (R-7).

**Frog Pond West Master Plan Figure 6: Frog Pond West Land Use and Subdistricts**





**(.06) Minimum and Maximum Residential Units:**

- A. The minimum and maximum number of residential units approved shall be consistent with this code and applicable provisions of an approved legislative master plan.
  - 1. For initial development of the Frog Pond West Neighborhood, Table 1 in this Code and Frog Pond West Master Plan Table 1 establish the minimum and maximum number of residential lots for the sub-districts.
  - 2. For areas that are a portion of a sub-district, the minimum and maximum number of residential lots are established by determining the proportional gross acreage and applying that proportion to the minimums and maximums listed in Table 1. The maximum density of the area may be increased, up to a maximum of ten percent of what would otherwise be permitted, based on an adjustment to an SROZ boundary that is consistent with 4.139.06.

**Response:** The project area encompasses ±5.00 gross acres of the *Frog Pond West Master Plan* area. Approximately 1.77 acres are within Subdistrict 7, with the remainder, ±3.23 acres within neighboring Subdistrict 4. The following table summarizes how the proposed residential units in each subdistrict are consistent with the density range envisioned by the *Frog Pond West Master Plan*. Middle Housing units are not included within the density range calculations for the Frog Pond West area; therefore, calculations have been based on the number of parent lots rather than dwelling units.

**Table 1. Proposed Residential Units**

Subdistrict	Zoning Designation	Gross Subdistrict Area (acres)	Site % of Gross Subdistrict	Established Dwelling Unit Range for Subdistrict		Proportional Lot Range for Site		Maximum Lot Range with Density Transfer	Proposed Parent Lots
				Min	Max	Min	Max		
Subdistrict 4	R-7 (Medium Lot)	30.1	11%	86	107	10	12	11	11
Subdistrict 7	R-10 (Large Lot)	11.7	15%	24	30	4	5	6	6

- B. The City may allow a reduction in the minimum density for a sub-district when it is demonstrated that the reduction is necessary due to topography, protection of trees, wetlands and other natural resources, constraints posed by existing development, infrastructure needs, provision of nonresidential uses and similar physical conditions.

Area Plan Designation	Frog Pond West Sub-district	Minimum Lots in Sub-district <sup>a, b</sup>	Maximum Lots in Sub-district <sup>a, b</sup>
R-10 Large Lot	7	24	30
R-7 Medium Lot	4	86	107

- <sup>a.</sup> Each lot must contain at least one dwelling unit but may contain additional units consistent with the allowance for ADUs and middle housing.
- <sup>b.</sup> For townhouses, the combined lots of the townhouse project shall be considered a single lot for the purposes of the minimum and maximum of this table. In no case shall the density of a townhouse project exceed 25 dwelling units per net acre.
- <sup>c.</sup> These metrics apply to infill housing within the Community of Hope Church property, should they choose to develop housing on the site. Housing in the Civic sub-district is subject to the R-7 Medium Lot Single Family regulations.

**Response:** The Applicant is not requesting a reduction in minimum density.

(.07) Development Standards Generally:

- A. Unless otherwise specified by this the regulations in this Residential Development Zone chapter, all development must comply with Section 4.113, Standards Applying to Residential Development in Any Zone.

**Response:** Compliance with applicable regulations of Section 4.113 is addressed earlier in this written narrative. Some regulations of Section 4.127 supersede those of Section 4.113.

(.08) Lot Development Standards:

- A. Lot development shall be consistent with this Code and applicable provisions of an approved legislative master plan.
- B. Lot Standards Generally. For the Frog Pond West Neighborhood, Table 2 establishes the lot development standards unless superseded or supplemented by other provisions of the Development Code.
- C. Lot Standards for Small Lot Sub-districts. [...]

**Response:** The project is not within a Small Lot Sub-District. The applicable lot standards are outlined below.

Neighborhood Zone Sub-District	Min. Lot Size (sq.ft.) A, B	Min. Lot Dept (ft.)	Max. Lot Coverage (%)	Min. Lot Width h I, J, N (ft.)	Max. Bldg. Height t H (ft.)	Setbacks K, L, M				
						Front Min. (ft.)	Rear Min. (ft.)	Side Min. (note )	Garage Min Setback k from Alley (ft.)	Garage Min Setback from Street O, P (ft.)
R-10 Large Lot	8,000	60'	40%E	40	35	20 F	20	M	18D	20
R-7 Medium Lot C	6,000	60'	45%E	35	35	15 F	15	M	18D	20

Notes:

- A. Minimum lot size may be reduced to 80% of minimum lot size for any of the following three reasons: (1) where necessary to preserve natural resources (e.g. trees, wetlands) and/or provide active open space, (2) lots designated for cluster housing (Frog Pond West Master Plan), (3) to increase the number of lots up to the maximum number allowed so long as for each lot reduced in size a lot meeting the minimum lot size is designated for development of a duplex or triplex.
- B. For townhouses the minimum lot size in all sub-districts is 1,500 square feet.
- C. In R-5 and R-7 sub-districts the minimum lot size for quadplexes and cottage clusters is 7,000 square feet.

- D. In R-5 sub-districts the minimum lot size for triplexes is 5,000 square feet.
- E. On lots where detached accessory buildings are built, maximum lot coverage may be increased by 10%. Cottage clusters are exempt from maximum lot coverage standards.
- F. Front porches may extend 5 feet into the front setback.
- G. The garage setback from alley shall be minimum of 18 feet to a garage door facing the alley in order to provide a parking apron. Otherwise, the rear or side setback shall be between 3 and 5 feet.
- H. Vertical encroachments are allowed up to ten additional feet, for up to 10% of the building footprint; vertical encroachments shall not be habitable space.
- I. For townhouses in all sub-districts minimum lot width is 20 feet.
- J. May be reduced to 24' when the lot fronts a cul-de-sac. No street frontage is required when the lot fronts on an approved, platted private drive or a public pedestrian access in a cluster housing (Frog Pond West Master Plan) development.
- K. Front Setback is measured as the offset of the front lot line or a vehicular or pedestrian access easement line. On lots with alleys, Rear Setback shall be measured from the rear lot line abutting the alley.
- L. For cottage clusters all setbacks otherwise greater than 10 feet for other housing types is reduced to 10 feet
- M. On lots greater than 10,000 SF with frontage 70 ft. or wider, the minimum combined side yard setbacks shall total 20 ft. with a minimum of 10 ft. On other lots, minimum side setback shall be 5 ft. On a corner lot, minimum side setbacks are 10 feet.
- N. For cluster housing (Frog Pond West Master Plan) with lots arranged on a courtyard, frontage shall be measured at the front door face of the building adjacent to a public right-of-way or a public pedestrian access easement linking the courtyard with the Public Way.
- O. All lots with front-loaded garages are limited to one shared standard-sized driveway/apron per street regardless of the number of units on the lot.
- P. The garage shall be setback a minimum of 18 feet from any sidewalk easements that parallels the street.

**Response:** WDC Section 4.127, Table 2 (above) establishes the lot development standards for the Frog Pond West neighborhood. These standards supersede the setback standards of 4.113(.03). The table below demonstrates that the proposed project meets the lot dimensional standards, which are applied at the time of subdivision approval.

**Table 2. Parent Lot Compliance with Neighborhood Zone Lot Development Standards**

Standard	R-7 Designation		R-10 Designation	
	Required	Proposed	Required	Proposed
Min. Lot Size (sq. ft.)	6,000 square feet  4,800 square feet using 80% reduction <sup>A</sup>	6,000 square feet	8,000 square feet  6,400 square feet using 80% reduction <sup>A</sup>	8,000 square feet
Min. Lot Depth (ft.)	60 feet	60 feet	60 feet	60 feet
Min. Lot Width (ft.)	35 feet	35 feet	40 feet	40 feet
Front Setback	15 feet	15 feet	20 feet	20 feet
Rear Setback	15 feet	15 feet	20 feet	20 feet
Side Setback – Interior	5 feet	5 feet	5 feet	5 feet
Side Setback – Corner Lot	10 feet	10 feet	10 feet	10 feet
Garage Setback from street	20 feet	20 feet	20 feet	20 feet
Garage Setback from Alley	18 feet	18 feet	18 feet	18 feet
<sup>A</sup> May be reduced to 80% of minimum lot size where necessary to preserve natural resources (e.g. trees, wetlands) and/or provide active open space, per WDC 4.127 Table 2, Note A.				

The Applicant initially studied an alternative site layout with a public street connection as envisioned by the Street Demonstration Plan (Figure 1 below), but that alternative would generate adverse impacts to natural resources. That layout was submitted to City staff for

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review prior to the pre-application conference. As shown on Figure 1, an alternative site layout meeting minimum lot sizes would require the removal of three additional mature oak trees, which the proposed layout manages to preserve. Therefore, the Applicant has selected the site layout which best considered the environmental aspects of the project.

Note G of WDC Section 4.127 Table 2, above, allows lots not to have street frontage when they front on a public pedestrian access in a Cluster Housing development. Although not a cluster development, the proposed project is a Planned Development (PUD), which encourages flexibility in location and design of the neighborhood with the intent of preserving existing landscape features and natural resources and better integrating them into site design. By using common open space area with pedestrian pathway as lot frontage for six lots, the project can accommodate preservation of an existing grove of mature Oregon White Oaks. The *Frog Pond West Master Plan* prioritizes preservation of existing trees and encourages site design that maximizes front-yard orientation to natural areas and provides enhanced elevations adjacent to publicly accessible open space.

As shown on the Preliminary Plans (Exhibit A), Lots 4 through 9 have vehicular access via a private alley (North and Central Alleys). Front lot lines meet the 35-foot minimum width and abut natural resource areas. Lots 4 through 9 overlook an oak tree grove, a valuable open space for wildlife and the residents' aesthetic enjoyment. The City can make a finding that the waiver of street frontage will result in greater public benefit gained from natural resource conservation and higher quality of the community than strict adherence to the Code.

Site development standards, including lot coverage, setbacks, and heights, will be reviewed at the time of building permit approval. The preliminary conceptual building elevations included in Exhibit M demonstrate that setback, height, and lot coverage standards can be met.

- D. Lot Standards Specific to the Frog Pond West Neighborhood.
  - 2. Lots adjacent to the collector-designated portions of Willow Creek Drive and Frog Pond Lane shall not have driveways accessing lots from these streets, unless no practical alternative exists for access. Lots in Large Lot Sub-districts are exempt from this standard.

**Response:** The site includes a portion of Frog Pond Lane. No driveways are proposed to access the lots from that street. This standard does not apply to the project.

- (.09) Open Space:
  - A. *Purpose.* The purposes of these standards for the Residential Neighborhood Zone are to:
    - 1. Provide light, air, open space, and useable recreation facilities to occupants of each residential development.
    - 2. Retain and incorporate natural resources and trees as part of developments.
    - 3. Provide access and connections to trails and adjacent open space areas.

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For Neighborhood Zones which are subject to adopted legislative master plans, the standards work in combination with, and as a supplement to, the park and open space recommendations of those legislative master plans. These standards supersede the Open Space requirements in WC Section 4.113(.01).

- B. *Within the Frog Pond West Neighborhood, the following standards apply:*
1. Properties within the R-10 Large Lot sub-districts and R-7 Medium Lot sub-districts are exempt from the requirements of this section. If the Development Review Board finds, based upon substantial evidence in the record, that there is a need for open space, they may waive this exemption and require open space proportional to the need.

[...]

**Response:** The proposed project includes properties within R-7 Medium Lot Single Family designation and R-10 Large Lot Single Family designation, which are exempt from the Open Space requirements. These criteria do not apply to the project.

(.10) *Block, access and connectivity standards:*

- A. *Purpose.* These standards are intended to regulate and guide development to create: a cohesive and connected pattern of streets, pedestrian connections and bicycle routes; safe, direct and convenient routes to schools and other community destinations; and, neighborhoods that support active transportation and Safe Routes to Schools.
- B. *Blocks, access and connectivity shall comply with adopted legislative master plans:*
1. Within the Frog Pond West Neighborhood, streets shall be consistent with Figure 18, Street Demonstration Plan, in the Frog Pond West Master Plan. The Street Demonstration Plan is intended to be guiding, not binding. Variations from the Street Demonstration Plan may be approved by the Development Review Board, upon finding that one or more of the following justify the variation: barriers such as existing buildings and topography; designated Significant Resource Overlay Zone areas; tree groves, wetlands or other natural resources; existing or planned parks and other active open space that will serve as pedestrian connections for the public; alignment with property lines and ownerships that result in efficient use of land while providing substantially equivalent connectivity for the public; and/or site design that provides substantially equivalent connectivity for the public.
  2. If a legislative master plan does not provide sufficient guidance for a specific development or situation, the Development Review Board shall use the block and access standards in Section 4.124(.06) as the applicable standards.

**Response:** The proposed streets are generally consistent with the Frog Pond Master Plan. As shown on Figure 18, the Street Demonstration Plan envisions a grid street plan and the opportunity for pedestrian connections within the project site. This plan is merely a “guideline” pursuant to WDC Section 4.127(.10)(A). The proposed street network

generally follows the pattern intended by the Master Plan with some minor modifications. The project intends to preserve a number of mature oak trees and a partial grove on the northern portion of Tax Lot 1300. In order to avoid impact to the greatest number of priority trees, the envisioned street was removed from the eastern edge of the property.

Please refer to the Preliminary Street Plan in Exhibit A, which illustrates the proposed blocks, access, and connectivity for Cottage Park Place project. The modified grid pattern maintains the planned pedestrian connectivity through the area, provides the same number of tiers of residential lots, and preserves trees within designated open spaces.

The City can make a finding that the proposed subdivision street plan provides for a substantially equivalent level of pedestrian connectivity. Further, the proposed street layout does not require out-of-direction pedestrian travel and does not result in greater distances for pedestrian access to the proposed subdivision from SW Brisband Road than would otherwise be the case if the Street Demonstration Plan were adhered to.

**Comparison of Frog Pond Master Plan Figure 18: Street Demonstration Plan & Proposed Connections**

***Master Plan Concept:***



***Proposed Project:***



(.11) *Signs.* Per the requirements of Sections 4.156.01 through 4.156.11 and applicable provisions from adopted legislative master plans.

**Response:** Compliance with Sections 4.156.01 through 4.156.11 is addressed further in the narrative.

(.12) *Parking.* Per the requirements of Section 4.155 and applicable provisions from adopted legislative master plans.

**Response:** Project meets parking Code requirements. Compliance with Section 4.155 is addressed further in the narrative.

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(.13) *Corner Vision Clearance.* Per the requirements of Section 4.177.

**Response:** Compliance with Section 4.177 is addressed further in the narrative.

(.14) *Main Entrance Standards*

[...]

(.15) *Garage Standards:*

[...]

(.16) *Residential Design Standards:*

[...]

**Response:** The design of individual homes will be reviewed at the time of building permit submittal. The application includes conceptual building elevations (Exhibit M) that demonstrate the standards of subsections 4.127(.14), (.15), and (.16) can be met.

(.17) *Fences:*

A. Within Frog Pond West, fences shall comply with standards in 4.113 (.07) except as follows:

1. Columns for the brick wall along Boeckman Road and Stafford Road shall be placed at lot corners where possible.
2. A solid fence taller than four feet in height is not permitted within eight feet of the brick wall along Boeckman Road and Stafford Road, except for fences placed on the side lot line that are perpendicular to the brick wall and end at a column of the brick wall.
3. Height transitions for fences shall occur at fence posts.

**Response:** The project site is not adjacent to Boeckman or Stafford Roads. Fences are not proposed as part of this application; therefore, these standards do not apply to this application.

(.18) *Residential Structures Adjacent to Schools, Parks and Public Open Spaces.*

A. *Purpose.* The purpose of these standards is to ensure that development adjacent to schools and parks is designed to enhance those public spaces with quality design that emphasizes active and safe use by people and is not dominated by driveways, fences, garages, and parking.

B. *Applicability.* These standards apply to development that is adjacent to or faces schools and parks. As used here, the term adjacent includes development that is across a street or pedestrian connection from a school or park.

C. *Development must utilize one or more of the following design elements:*

1. Alley loaded garage access.
2. On corner lots, placement of the garage and driveway on the side street that does not face the school, park, or public open space.
3. Recess of the garage a minimum of four feet from the front façade of the home. A second story above the garage, with windows, is encouraged for this option.

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- D. Development must be oriented so that the fronts or sides of residential structures face adjacent schools or parks. Rear yards and rear fences may generally not face the schools or parks, unless approved through the waiver process of 4.118 upon a finding that there is no practicable alternative due to the size, shape or other physical constraint of the subject property.

**Response:** A portion of the project site is adjacent to the planned Frog Pond school site. The school is proposed to be situated south of SW Brisband Street opposite (facing) Lots 16 and 17. These lots are proposed to be constructed with the with alley-loaded garages, meeting the above standards. Front yards are planned to face SW Brisband Street without rear yards or rear fences facing the planned school. Please see the Preliminary Plans (Exhibit A) for further details. These criteria are met.

**Section 4.139.00. SIGNIFICANT RESOURCE OVERLAY ZONE (SROZ) ORDINANCE.**

**Response:** The proposed project is not within a Significant Resource Overlay Zone (SROZ). The Applicant has completed a delineation of the wetland present on-site and has determined that it does not meet the criteria to be added to the SROZ map. As indicated in the Natural Resource Assessment attached as Exhibit F, the Applicant, Department of State Lands, and US Army Corps of Engineers concur with the accuracy of the SROZ map of the subject property.

**Section 4.140 PLANNED DEVELOPMENT REGULATIONS.**

**(.02) Lot Qualification:**

- A. Planned Development may be established on lots which are suitable for and of a size to be planned and developed in a manner consistent with the purposes and objectives of Section 4.140.
- B. Any site designated for development in the Comprehensive Plan may be developed as a Planned Development, provided that it is zoned "PD" or specifically defined as a PD zone by this Code. All sites which are greater than two acres in size, and designated in the Comprehensive Plan for commercial, residential, or industrial use shall be developed as Planned Developments, unless approved for other uses permitted by the Development Code. Smaller sites may also be developed through the City's PD procedures, provided that the location, size, lot configuration, topography, open space and natural vegetation of the site warrant such development.

**Response:** The subject site is ±5.00 acres and is suitable for Planned Development. The project accommodates 17 residential lots (34 with future Middle Housing Land Divisions), provides an efficient circulation system, and provides active and passive open space consistent with the purpose of Section 4.140. The application requests to rezone the property to RN (Residential Neighborhood). Pursuant to the *Frog Pond West Master Plan*, development in the RN zone follows the same Planned Development procedure as Planned Development (PD) zones.

**(.03) Ownership:**

- A. The tract or tracts of land included in a proposed Planned Development must be in one (1) ownership or control or the subject of a joint application by the owners of all the property included. The holder of a written option to purchase, with written authorization by

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the owner to make applications, shall be deemed the owner of such land for the purposes of Section 4.140.

- B. Unless otherwise provided as a condition for approval of a Planned Development permit, the permittee may divide and transfer units or parcels of any development. The transferee shall use and maintain each such unit or parcel in strict conformance with the approval permit and development plan.

**Response:** The proposed project consists of two lots which are under one ownership. The land use application has been signed by the property owners.

(.04) Professional Design:

- A. The applicant for all proposed Planned Developments shall certify that the professional services of the appropriate professionals have been utilized in the planning process for development.
- B. Appropriate professionals shall include, but not be limited to the following to provide the elements of the planning process set out in Section 4.139:
1. An architect licensed by the State of Oregon;
  2. A landscape architect registered by the State of Oregon;
  3. An urban planner holding full membership in the American Institute of Certified Planners, or a professional planner with prior experience representing clients before the Development Review Board, Planning Commission, or City Council; or
  4. A registered engineer or a land surveyor licensed by the State of Oregon.
- C. One of the professional consultants chosen by the applicant from either 1, 2, or 3, above, shall be designated to be responsible for conferring with the planning staff with respect to the concept and details of the plan.
- D. The selection of the professional coordinator of the design team will not limit the owner or the developer in consulting with the planning staff.

**Response:** The Applicant has selected a professional design team, AKS Engineering & Forestry, LLC, which includes registered civil engineers, certified planners, registered land surveyors, and licensed landscape architects. Each member of the professional design team has been certified or licensed by their corresponding professional board or agency. Glen Southerland, AICP, is the point of contact for planning staff with respect to the concept and details of the plan. These criteria are met.

(.05) Planned Development Permit Process:

- A. All parcels of land exceeding two acres in size that are to be used for residential, commercial or industrial development, shall, prior to the issuance of any building permit:
1. Be zoned for planned development;
  2. Obtain a planned development permit; and
  3. Obtain Development Review Board, or, on appeal, City Council approval.

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**Response:** The subject site is ±5.0 acres in size and is proposed for residential development. This application includes a Zoning Map Amendment to apply RN zoning to the site, Planned Development Stage I application, and Planned Development Stage II application. This criterion is met.

- B. Zone change and amendment to the zoning map are governed by the applicable provisions of the Zoning Sections, inclusive of Section 4.197.

**Response:** The requested Zoning Map Amendment is subject to the applicable provisions of the Zoning Sections and 4.197. These provisions are addressed further in the narrative. This criterion is met.

- C. Development Review Board approval is governed by Sections 4.400 to 4.450

- D. All planned developments require a planned development permit. The planned development permit review and approval process consists of the following multiple stages, the last two or three of which can be combined at the request of the applicant:

1. Pre-application conference with Planning Department;
2. Preliminary (Stage I) review by the Development Review Board or the Planning Director for properties within the Coffee Creek Industrial Design Overlay District. When a zone change is necessary, application for such change shall be made simultaneously with an application for preliminary approval; and
3. Final (Stage II) review by the Development Review Board or the Planning Director for properties within the Coffee Creek Industrial Design Overlay District.
4. In the case of a zone change and zone boundary amendment, City Council approval is required to authorize a Stage I preliminary plan except for properties within the Coffee Creek Industrial Design Overlay District, which may receive separate zone map amendment approvals.

**Response:** A pre-application conference was held with the Planning Department on April 14, 2022. Concurrent Zoning Map Amendment, and Stage I and Stage II Planned Development permit applications (and a number of additional concurrent applications) have been submitted for review by the Development Review Board. These criteria are met.

[...]

(.07) *Preliminary Approval (Stage One):*

- A. Applications for preliminary approval for planned developments shall:

1. Be made by the owner of all affected property or the owner's authorized agent; and
2. Be filed on a form prescribed by the City Planning Department and filed with said Department.
3. Set forth the professional coordinator and professional design team as provided in subsection (.04), above.

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4. State whether the development will include mixed land uses, and if so, what uses and in what proportions and locations.

**Response:** This submittal includes all of the above information.

- B. The application shall include conceptual and quantitatively accurate representations of the entire development sufficient to judge the scope, size, and impact of the development on the community; and, in addition to the requirements set forth in Section 4.035, shall be accompanied by the following information:
  1. A boundary survey or a certified boundary description by a registered engineer or licensed surveyor.
  2. Topographic information as set forth in Section 4.035.
  3. A tabulation of the land area to be devoted to various uses, and a calculation of the average residential density per net acre. Developments within the RN zone shall show how the proposed number of units complies with the applicable maximum and minimum provisions of the RN zone.
  4. A stage development schedule demonstrating that the developer intends receive Stage II approval within two years of receiving Stage I approval, and to commence construction within two years after the approval of the final development plan, and will proceed diligently to completion; unless a phased development schedule has been approved; in which case adherence to that schedule shall be considered to constitute diligent pursuit of project completion.
  5. A commitment by the applicant to provide in the Final Approval (Stage II) a performance bond or other acceptable security for the capital improvements required by the project.
  6. If it is proposed that the final development plan will be executed in stages, a schedule thereof shall be provided.
  7. Statement of anticipated waivers from any of the applicable site development standards.

**Response:** A boundary survey including topographic information is provided in the Preliminary Existing Conditions Plan (Exhibit A). A tabulation of land area and residential density is included in Table 1 within this written narrative. Stage I and Stage II approvals are being requested concurrently, and a stage development schedule is not proposed.

[...]

(.09) *Final Approval (Stage Two):*

- A. Unless an extension has been granted by the Development Review Board or Planning Director, as applicable, within two years after the approval or modified approval of a preliminary development plan (Stage I), the applicant shall file with the City Planning Department a final plan for the entire development or when submission in stages has been authorized pursuant to Section 4.035 for the first unit of the development, a public hearing shall be held on each such application as provided in Section 4.013. As provided in Section 4.134, an application for a Stage II approval within the Coffee Creek Industrial Design Overlay District may be considered by the Planning Director

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without a public hearing as a Class II Administrative Review as provided in Section 4.035(.03).

**Response:** A Stage II application has been submitted concurrently with the Stage I application.

- B. The Development Review Board or Planning Director, as applicable, shall determine whether the proposal conforms to the permit criteria set forth in this Code, and shall approve, conditionally approve, or disapprove the application.
- C. The final plan shall conform in all major respects with the approved preliminary development plan, and shall include all information included in the preliminary plan plus the following:
  - 1. The location of water, sewerage and drainage facilities;
  - 2. Preliminary building and landscaping plans and elevations, sufficient to indicate the general character of the development;
  - 3. The general type and location of signs;
  - 4. Topographic information as set forth in Section 4.035;
  - 5. A map indicating the types and locations of all proposed uses; and
  - 6. A grading plan.

**Response:** The required information is included as follows in the Cottage Park Place PUD Preliminary Plans (Exhibit A):

- 1. Preliminary Composite Utility Plan
- 2. Preliminary Landscape Plan
- 3. Preliminary Grading and Erosion Control Measures

Preliminary conceptual building elevations are included as Exhibit M. Sign locations are not included as part of this application.

- D. The final plan shall be sufficiently detailed to indicate fully the ultimate operation and appearance of the development or phase of development. However, Site Design Review is a separate and more detailed review of proposed design features, subject to the standards of Section 4.400.

**Response:** A concurrent Site Design Review of Open Space application has been submitted. Section 4.400 Site Design Review criteria are addressed in the narrative.

- E. Copies of legal documents required by the Development Review Board or Planning Director, as applicable, for dedication or reservation of public facilities, or for the creation of a non-profit homeowner's association, shall also be submitted.

**Response:** Draft covenants, conditions, & restrictions (CC&Rs) are included as Exhibit I.

[...]

- J. A planned development permit may be granted by the Development Review Board or Planning Director, as applicable, only if it is found that the development conforms to all the following criteria, as well as to the Planned Development Regulations in Section 4.140:

- 1. The location, design, size and uses, both separately and as a whole, are consistent with the Comprehensive Plan, and

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with any other applicable plan, development map or Ordinance adopted by the City Council.

**Response:** The site is located within the Frog Pond West master planned area of the Frog Pond community. The *Frog Pond West Master Plan* has been incorporated into the Comprehensive Plan and designates the site for single-family residential use. Consistency with the Comprehensive Plan is addressed earlier in the narrative. The RN zone is identified as the implementing zone for the Residential Neighborhood (RN) Comprehensive Plan designation; this zone requires that all development within it be approved as a Planned Development.

2. That the location, design, size and uses are such that traffic generated by the development at the most probable used intersection(s) can be accommodated safely and without congestion in excess of Level of Service D, as defined in the Highway Capacity Manual published by the National Highway Research Board, on existing or immediately planned arterial or collector streets and will, in the case of commercial or industrial developments, avoid traversing local streets. Immediately planned arterial and collector streets are those listed in the City's adopted Capital Improvement Program, for which funding has been approved or committed, and that are scheduled for completion within two years of occupancy of the development or four year if they are an associated crossing, interchange, or approach street improvement to Interstate 5.
  - a. In determining levels of Service D, the City shall hire a traffic engineer at the applicant's expense who shall prepare a written report containing the following minimum information for consideration by the Development Review Board:
    - i. An estimate of the amount of traffic generated by the proposed development, the likely routes of travel of the estimated generated traffic, and the source(s) of information of the estimate of the traffic generated and the likely routes of travel;
    - ii. What impact the estimate generated traffic will have on existing level of service including traffic generated by (1) the development itself, (2) all existing developments, (3) Stage II developments approved but not yet built, and (4) all developments that have vested traffic generation rights under section 4.140(.10), through the most probable used intersection(s), including state and county intersections, at the time of peak level of traffic. This analysis shall be conducted for each direction of travel if backup from other intersections will interfere with intersection operations.
  - b. The following are exempt from meeting the Level of Service D criteria standard:
    - i. A planned development or expansion thereof which generates three new p.m. peak hour traffic trips or less;

- ii. A planned development or expansion thereof which provides an essential governmental service.
- c. Traffic generated by development exempted under this subsection on or after Ordinance No. 463 was enacted shall not be counted in determining levels of service for any future applicant.
- d. Exemptions under 'b' of this subsection shall not exempt the development or expansion from payment of system development charges or other applicable regulations.
- e. In no case will development be permitted that creates an aggregate level of traffic at LOS "F".

**Response:** DKS Associates has conducted a Transportation Impact Study (TIS) to evaluate traffic impacts from the proposed project. It addresses the provisions above. Please refer to TIS for additional detail demonstrating that the project meets the above criteria. These criteria are met.

- 3. That the location, design, size and uses are such that the residents or establishments to be accommodated will be adequately served by existing or immediately planned facilities and services.

**Response:** The site will be adequately served by public facilities and services, including utilities. The project will construct transportation infrastructure with site development and will dedicate 9.5 feet of public right-of-way width to SW Frog Pond Lane for the future widening and improvement. Therefore, this criterion is met.

(.10) Adherence to Approved Plans, Modification.

- A. Adherence to Approved Plan and Modification Thereof: The applicant shall agree in writing to be bound, for her/himself and her/his successors in interest, by the conditions prescribed for approval of a development. The approved final plan and stage development schedule shall control the issuance of all building permits and shall restrict the nature, location and design of all uses. Minor changes in an approved preliminary or final development plan may be approved by the Director of Planning if such changes are consistent with the purposes and general character of the development plan. All other modifications, including extension or revision of the stage development schedule, shall be processed in the same manner as the original application and shall be subject to the same procedural requirements.
- B. In the event of a failure to comply with the approved plan or any prescribed condition of approval, including failure to comply with the stage development schedule, the Development Review Board may, after notice and hearing, revoke a Planned Development permit. General economic conditions that affect all in a similar manner may be considered as a basis for an extension of a development schedule. The determination of the Board shall become final 30 days after the date of decision unless appealed to the City Council.
- C. Approved plans and non-conforming status with updated zoning and development standards.

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1. Approved plans are the basis of legal conforming status of development except where one of the following occurs, at which point, the approved planned development becomes legally non-conforming:
    - a. the zoning of land within the plan area has been changed since adoption of the plan; or
    - b. the zoning standards for the zone under which it was approved have been substantially modified (50 percent or more of the regulatory standards have been modified as determined by the Planning Director); or
    - c. the City Council declared all planned developments in a certain zone or zones to be legal non-conforming as part of an ordinance to update or replace zoning standards; or
    - d. the City Council declared, by a stand-alone ordinance, planned developments in a certain zone not complying with current standards to be legal non-conforming. The City Council may, in an ordinance establishing non-conforming status of a planned development, declare the entire planned development to be non-conforming or declare certain standards established in the planned development to be non-conforming (i.e., lot coverage, setbacks, stormwater standards).
  2. If one of the conditions of subsection 1. is met, development that is consistent with the approved plan, but not complying with current zoning standards, shall be considered legal non-conforming and subject to the standards of Sections 4.189 thru 4.192.
  3. In no case shall a planned development approved within the previous 24 months, or under a time-extension under WC Section 4.023, be considered non-conforming; but automatically will become non-conforming after 24-months, and the end of any extensions, if it otherwise would qualify as legally non-conforming or is so declared pursuant to this subsection.

- D. The following are exempt from established residential density requirements beyond one unit per lot.
  1. Accessory Dwelling Units.
  2. Duplexes.
  3. Triplexes.
  4. Quadplexes.
  5. Cluster housing.
- E. For new townhouses in existing residential planned developments in residential zones, the allowed density shall be the lesser of: (1) Four times the maximum net density for the lot(s) or parcel(s) established in the approved plan, or (2) 25 units per acre.
- F. Notwithstanding Subsection C. above, single-family residential development built consistent with an approved master plan in the

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Planned Development Commercial or Planned Development Industrial zones prior to November 18, 2021 shall continue to be legal conforming uses. However, all lots within these master plans that allow for detached single-family must also allow all middle housing types with density exemptions and allowances consistent with D. and E. above. In addition, any lot coverage maximums established in the master plans less than those listed in Table 2 of Subsection 4.124(.07) are superseded by lot coverage standards in that table.

**Response:** These standards are understood.

- (.11) *Early Vesting of Traffic Generation.* Applicants with Stage I or Master Plan approvals occurring after June 2, 2003 may apply to vest the right to use available transportation capacity at the intersections of Wilsonville Road with Boone's Ferry Road and with Town Center Loop West, and/or the I-5 interchange. Vesting for properties with such approvals shall occur upon execution of a vesting agreement satisfactory to the City, which agreement shall include a proposed development schedule or phasing plan and either provide for the payment of any and all Supplemental Street SDCs or provide other means of financing public improvements. Vesting for properties pending such approvals shall occur upon such agreement and the date the approvals are final.

The number of trips vested is subject to modification based upon updated traffic analysis associated with subsequent development approvals for the property. A reduction in vested trips shall attend repayment of vesting fees by the City. An increase in available vested trips shall occur upon payment of necessary vesting fees.

Vesting shall remain valid and run with the property, unless an approval that is necessary for vesting to occur is terminated or a vesting agreement is terminated. If the vested right to use certain trips is lost or terminated, as determined by the Community Development Director with the concurrence of City Council, such trips shall be made available to other development upon City repayment, without interest, of associated vesting fees.

**Response:** No early vesting of traffic generation is requested. This standard is not applicable.

## GENERAL DEVELOPMENT REGULATIONS

### Section 4.154 ON-SITE PEDESTRIAN ACCESS AND CIRCULATION

#### (.01) On-site Pedestrian Access and Circulation

- A. The purpose of this section is to implement the pedestrian access and connectivity policies of the Transportation System Plan. It is intended to provide for safe, reasonably direct, and convenient pedestrian access and circulation.
- B. Standards. Development shall conform to all of the following standards:
1. *Continuous Pathway System.* A pedestrian pathway system shall extend throughout the development site and connect to adjacent sidewalks, and to all future phases of the development, as applicable.

**Response:** The project design proposes sidewalks along the frontages of all lots providing a continuous pathway system throughout the community. In addition to the sidewalks, pedestrian pathways are proposed within Tracts A through D providing convenient connections and recreational opportunities in the open space areas. These pathways and

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sidewalks provide easy connection to adjacent development, planned schools, planned parks and other local streets. These criteria are met.

2. *Safe, Direct, and Convenient.* Pathways within developments shall provide safe, reasonably direct, and convenient connections between primary building entrances and all adjacent parking areas, recreational areas/playgrounds, and public rights-of-way and crosswalks based on all of the following criteria:
  - a. Pedestrian pathways are designed primarily for pedestrian safety and convenience, meaning they are free from hazards and provide a reasonably smooth and consistent surface.
  - b. The pathway is reasonably direct. A pathway is reasonably direct when it follows a route between destinations that does not involve a significant amount of unnecessary out-of-direction travel.
  - c. The pathway connects to all primary building entrances and is consistent with the Americans with Disabilities Act (ADA) requirements.
  - d. All parking lots larger than three acres in size shall provide an internal bicycle and pedestrian pathway pursuant to Section 4.155(.03)B.3.d.

**Response:** The on-site pedestrian access and circulation system is generally consistent with *Frog Pond West Master Plan* Figure 18, Street Demonstration Plan. It provides safe, direct, and convenient connections both internally and to the surrounding street network.

3. *Vehicle/Pathway Separation.* Except as required for crosswalks, per subsection 4, below, where a pathway abuts a driveway or street it shall be vertically or horizontally separated from the vehicular lane. For example, a pathway may be vertically raised six inches above the abutting travel lane, or horizontally separated by a row of bollards.

**Response:** The proposed design vertically and/or horizontally separates all sidewalks and pathways from vehicle travel lanes except for private driveways and crosswalks.

4. *Crosswalks.* Where a pathway crosses a parking area or driveway, it shall be clearly marked with contrasting paint or paving materials (e.g., pavers, light-color concrete inlay between asphalt, or similar contrast).

**Response:** Proposed pathways do not cross a parking area or driveway. This standard is not applicable.

5. *Pathway Width and Surface.* Primary pathways shall be constructed of concrete, asphalt, brick/masonry pavers, or other durable surface, and not less than five feet wide. Secondary pathways and pedestrian trails may have an alternative surface except as otherwise required by the ADA.

**Response:** As shown on the Preliminary Street Plan (Exhibit A), the pedestrian pathways are planned to be paved and are each 5 feet wide. This criterion is met.

6. All pathways shall be clearly marked with appropriate standard signs.

**Response:** The pedestrian pathways will be signed as required.

Section 4.155 GENERAL REGULATIONS - PARKING, LOADING AND BICYCLE PARKING

[...]

(.02) General Provisions:

[...]

(.03) Minimum and Maximum Off-Street Parking Requirements:

- G. Tables 5 shall be used to determine the minimum and maximum parking standards for various land uses. The minimum number of required parking spaces shown on Tables 5 shall be determined by rounding to the nearest whole parking space. For example, a use containing 500 square feet, in an area where the standard is one space for each 400 square feet of floor area, is required to provide one off-street parking space. If the same use contained more than 600 square feet, a second parking space would be required. Structured parking and on-street parking are exempted from the parking maximums in Table 5.

(.04) Bicycle Parking:

A. Required Bicycle Parking - General Provisions.

1. The required minimum number of bicycle parking spaces for each use category is shown in Table 5, Parking Standards.

[...]

Table 5: Parking Standards			
USE	PARKING MINIMUMS	PARKING MAXIMUMS	BICYCLE MINIMUMS
a. Residential			
1. Single-family dwelling units, middle housing, as well as multiple-family dwelling units of nine or fewer units	1 per dwelling unit. <sup>1,2</sup> 2 spaces are encouraged for dwelling units over 1000 square feet <sup>3</sup>	No Limit	Multiple-family dwelling units Min. of 2

NOTES:

- <sup>1</sup> No additional off-street parking is required for a triplex or quadplex created through the addition to, or conversion of, an existing single-family detached dwelling.
- <sup>2</sup> Garages (except for parking structures in the Town Center) do not count towards minimum parking unless all the requirements of Subsection 4.155 (.02) Q. are met.
- <sup>3</sup> No permit for single-family dwelling units, middle housing, or multiple-family dwelling units of nine or fewer units shall be denied based on only providing one parking space per unit.

**Response:** Table 5 requires that single-family units provide one parking space per dwelling unit. There is no maximum number listed. Each lot will accommodate a single-family home with a two-car garage and a driveway. Dimensional standards will be reviewed during building permit submittal.

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Table 5 states that there is no minimum bicycle parking requirement for single-family homes. These criteria are met.

**Section 4.167 GENERAL REGULATIONS - ACCESS, INGRESS AND EGRESS**

- (.01) Each access onto streets or private drives shall be at defined points as approved by the City and shall be consistent with the public's health, safety and general welfare. Such defined points of access shall be approved at the time of issuance of a building permit if not previously determined in the development permit.

**Response:** Driveways will be shown on construction drawings and will be approved at the time of building permit issuance.

**Section 4.171 PROTECTION OF NATURAL FEATURES AND OTHER RESOURCES**

(.02) General Terrain Preparation:

- A. All developments shall be planned, designed, constructed and maintained with maximum regard to natural terrain features and topography, especially hillside areas, floodplains, and other significant landforms.
- B. All grading, filling and excavating done in connection with any development shall be in accordance with the Uniform Building Code
- C. In addition to any permits required under the Uniform Building Code, all developments shall be planned, designed, constructed and maintained so as to:
  - 1. Limit the extent of disturbance of soils and site by grading, excavation and other land alterations.
  - 2. Avoid substantial probabilities of: (1) accelerated erosion; (2) pollution, contamination, or siltation of lakes, rivers, streams and wetlands; (3) damage to vegetation; (4) injury to wildlife and fish habitats.
  - 3. Minimize the removal of trees and other native vegetation that stabilize hillsides, retain moisture, reduce erosion, siltation and nutrient runoff, and preserve the natural scenic character.

**Response:** The site has been planned and designed to avoid the natural features on the site such as the trees contained within Tracts A and B. As demonstrated within the Preliminary Plans (Exhibit A), grading, filling, and excavating will be conducted in accordance with the Uniform Building Code. The site will be protected with erosion control measures. Where removal of trees is necessary for the construction of homes and public streets, replacement trees will be planted per the provisions of this Code. These criteria are met.

- (.03) Hillsides: All developments proposed on slopes greater than 25% shall be limited to the extent that:

[...]

**Response:** The project site does not contain slopes greater than 25 percent. These standards do not apply.

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(.04) Trees and Wooded Areas.

- A. All developments shall be planned, designed, constructed and maintained so that:
1. Existing vegetation is not disturbed, injured, or removed prior to site development and prior to an approved plan for circulation, parking and structure location.
  2. Existing wooded areas, significant clumps/groves of trees and vegetation, and all trees with a diameter at breast height of six inches or greater shall be incorporated into the development plan and protected wherever feasible.
  3. Existing trees are preserved within any right-of-way when such trees are suitably located, healthy, and when approved grading allows.
- B. Trees and woodland areas to be retained shall be protected during site preparation and construction according to City Public Works design specifications, by:
1. Avoiding disturbance of the roots by grading and/or compacting activity.
  2. Providing for drainage and water and air filtration to the roots of trees which will be covered with impermeable surfaces.
  3. Requiring, if necessary, the advisory expertise of a registered arborist/horticulturist both during and after site preparation.
  4. Requiring, if necessary, a special maintenance, management program to insure survival of specific woodland areas of specimen trees or individual heritage status trees.

**Response:** Existing vegetation will not be disturbed, injured, or removed prior to land use and permit approvals. Existing trees have been retained wherever possible; however, some trees will need to be removed to provide area for construction of rights-of-way and homes. Existing tree groves have been identified for protection and incorporated into the planned open spaces. The finished pathway will be built on grade according to the construction plan specified in the Preliminary Tree Preservation and Removal Plan and its location within the grove will be somewhat flexible to allow the project arborist and construction crew to preserve large roots that may be encountered. Trees identified to be retained will be protected during site preparation and construction according to the City Public Works design specifications as outlined in the Preliminary Tree Preservation and Removal Plan and Conditions of Approval.

(.07) Standards for Earth Movement Hazard Areas:

- A. No development or grading shall be allowed in areas of land movement, slump or earth flow, and mud or debris flow, except under one of the following conditions:
1. Stabilization of the identified hazardous condition based on established and proven engineering techniques which ensure protection of public and private property.

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Appropriate conditions of approval may be attached by the City.

2. An engineering geologic study approved by the City establishing that the site is stable for the proposed use and development. The study shall include the following:
  - a. Index map.
  - b. Project description, to include: location; topography, drainage, vegetation; discussion of previous work; and discussion of field exploration methods.
  - c. Site geology, to include: site geologic map; description of bedrock and superficial materials including artificial fill; location of any faults, folds, etc.; and structural data including bedding, jointing, and shear zones.
  - d. Discussion and analysis of any slope stability problems.
  - e. Discussion of any off-site geologic conditions that may pose a potential hazard to the site or that may be affected by on-site development.
  - f. Suitability of site for proposed development from geologic standpoint.
  - g. Specific recommendations for cut slope stability, seepage and drainage control, or other design criteria to mitigate geologic hazards.
  - h. Supportive data, to include: cross sections showing subsurface structure; graphic logs of subsurface explorations; results of laboratory tests; and references.
  - i. Signature and certification number of engineering geologist registered in the State of Oregon.
  - j. Additional information or analyses as necessary to evaluate the site.
- B. Vegetative cover shall be maintained or established for stability and erosion control purposes.
- C. Diversion of storm water into these areas shall be prohibited.
- D. The principal source of information for determining earth movement hazards is the State Department of Geology and Mineral Industries (DOGAMI) Bulletin 99 and any subsequent bulletins and accompanying maps. Approved site specific engineering geologic studies shall be used to identify the extent and severity of the hazardous conditions on the site, and to update the earth movement hazards database.

**Response:** Geotechnical investigation has been completed for the subject property, and no earth movement hazards have been identified. See Exhibit H for the geotechnical report. These standards do not apply to this application.

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(.08) Standards for Soil Hazard Areas:

- A. Appropriate siting and design safeguards shall insure structural stability and proper drainage of foundation and crawl space areas for development on land with any of the following soil conditions: wet or high water table; high shrink-swell capability; compressible or organic; and shallow depth-to-bedrock.
- B. The principal source of information for determining soil hazards is the State DOGAMI Bulletin 99 and any subsequent bulletins and accompanying maps. Approved site-specific soil studies shall be used to identify the extent and severity of the hazardous conditions on the site, and to update the soil hazards database accordingly.

**Response:** A geotechnical investigation has been completed for the subject property, and no soil hazard areas have been identified. See Exhibit H for the geotechnical report. These criteria are met.

(.09) Historic Protection: Purpose:

- A. To preserve structures, sites, objects, and areas within the City of Wilsonville having historic, cultural, or archaeological significance.

**Response:** No historic, cultural, or archaeological items have been identified on the site.

Section 4.175 PUBLIC SAFETY AND CRIME PREVENTION.

- (.01) All developments shall be designed to deter crime and ensure public safety.
- (.02) Addressing and directional signing shall be designed to assure identification of all buildings and structures by emergency response personnel, as well as the general public.
- (.03) Areas vulnerable to crime shall be designed to allow surveillance. Parking and loading areas shall be designed for access by police in the course of routine patrol duties.
- (.04) Exterior lighting shall be designed and oriented to discourage crime.

**Response:** The Cottage Park Place community has been designed to deter crime and ensure public safety. Streets and pedestrian connections will be lit for visibility and safety. Homes will be oriented toward these streets or open spaces to provide visibility that will deter crime. All dwellings will be addressed per building and Fire Department requirements to allow identification for emergency response personnel. No parking and loading areas are proposed. Dwellings will have exterior porch lighting, which will support public streetlights to provide safety and visibility. These criteria are met.

Section 4.176 LANDSCAPING, SCREENING, AND BUFFERING

(.02) Landscaping and Screening Standards.

[...]

C. General Landscaping Standard.

- 1. Intent. The General Landscaping Standard is a landscape treatment for areas that are generally open. It is intended to be applied in situations where distance is used as the principal means of separating uses or developments and landscaping is required to enhance the intervening space. Landscaping may include a mixture of ground cover,

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evergreen and deciduous shrubs, and coniferous and deciduous trees.

2. Required materials. Shrubs and trees, other than street trees, may be grouped. Ground cover plants must fully cover the remainder of the landscaped area (see Figure 21: General Landscaping). The General Landscaping Standard has two different requirements for trees and shrubs:
  - a. Where the landscaped area is less than 30 feet deep, one tree is required for every 30 linear feet.
  - b. Where the landscaped area is 30 feet deep or greater, one tree is required for every 800 square feet and two high shrubs or three low shrubs are required for every 400 square feet.

**Response:** This project consists of a single-family residential neighborhood subject to the General Landscaping Standard. Landscaping meeting these standards will be provided at the time of building permit submittal; these criteria will be met at such time.

**D. Low Screen Landscaping Standard.**

[...]

2. Required materials. The Low Screen Landscaping Standard requires sufficient low shrubs to form a continuous screen three (3) feet high and 95% opaque, year-round. In addition, one tree is required for every 30 linear feet of landscaped area, or as otherwise required to provide a tree canopy over the landscaped area. Ground cover plants must fully cover the remainder of the landscaped area. A three (3) foot high masonry wall or a berm may be substituted for the shrubs, but the trees and ground cover plants are still required. When applied along street lot lines, the screen or wall is to be placed along the interior side of the landscaped area. (See Figure 22: Low Screen Landscaping).

**Response:** The proposed residential development is adjacent to other planned residential developments. Screening is not required, nor has it been proposed.

- (.03) Landscape Area. Not less than fifteen percent (15%) of the total lot area, shall be landscaped with vegetative plant materials. The ten percent (10%) parking area landscaping required by section 4.155.03(B)(1) is included in the fifteen percent (15%) total lot landscaping requirement. Landscaping shall be located in at least three separate and distinct areas of the lot, one of which must be in the contiguous frontage area. Planting areas shall be encouraged adjacent to structures. Landscaping shall be used to define, soften or screen the appearance of buildings and off-street parking areas. Materials to be installed shall achieve a balance between various plant forms, textures, and heights. The installation of native plant materials shall be used whenever practicable. (For recommendations refer to the Native Plant List maintained by the City of Wilsonville).

**Response:** Landscaping on individual private lots will be reviewed at the time of building permit submittal. The Preliminary Landscape Plan included in Exhibit A illustrates the location and type of landscaping within public rights-of-way and open space tracts. This criterion is met.

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(.06) Plant Materials.

- A. Shrubs and Ground Cover. All required ground cover plants and shrubs must be of sufficient size and number to meet these standards within three (3) years of planting. Non-horticultural plastic sheeting or other impermeable surface shall not be placed under mulch. Native topsoil shall be preserved and reused to the extent feasible. Surface mulch or bark dust are to be fully raked into soil of appropriate depth, sufficient to control erosion, and are confined to areas around plantings. Areas exhibiting only surface mulch, compost or barkdust are not to be used as substitutes for plant areas.
1. Shrubs. All shrubs shall be well branched and typical of their type as described in current AAN Standards and shall be equal to or better than 2-gallon containers and 10" to 12" spread.
  2. Ground cover. Shall be equal to or better than the following depending on the type of plant materials used: gallon containers spaced at 4 feet on center minimum, 4" pot spaced 2 feet on center minimum, 2-1/4" pots spaced at 18 inch on center minimum. No bare root planting shall be permitted. Ground cover shall be sufficient to cover at least 80% of the bare soil in required landscape areas within three (3) years of planting. Where wildflower seeds are designated for use as a ground cover, the City may require annual re-seeding as necessary.
  3. Turf or lawn in non-residential developments. Shall not be used to cover more than ten percent (10%) of the landscaped area, unless specifically approved based on a finding that, due to site conditions and availability of water, a larger percentage of turf or lawn area is appropriate. Use of lawn fertilizer shall be discouraged. Irrigation drainage runoff from lawns shall be retained within lawn areas.
  4. Plant materials under trees or large shrubs. Appropriate plant materials shall be installed beneath the canopies of trees and large shrubs to avoid the appearance of bare ground in those locations.
  5. Integrate compost-amended topsoil in all areas to be landscaped, including lawns, to help detain runoff, reduce irrigation and fertilizer needs, and create a sustainable, low-maintenance landscape.

**Response:** The Preliminary Landscape Plan (Exhibit A) demonstrates compliance with these requirements. These criteria are met.

- B. Trees. All trees shall be well-branched and typical of their type as described in current American Association of Nurserymen (AAN) Standards and shall be balled and burlapped. The trees shall be grouped as follows:
1. Primary trees which define, outline or enclose major spaces, such as Oak, Maple, Linden, and Seedless Ash, shall be a minimum of 2" caliper.
  2. Secondary trees which define, outline or enclose interior areas, such as Columnar Red Maple, Flowering Pear, Flame

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Ash, and Honeylocust, shall be a minimum of 1-3/4" to 2" caliper.

3. Accent trees which, are used to add color, variation and accent to architectural features, such as Flowering Pear and Kousa Dogwood, shall be 1-3/4" minimum caliper.
4. Large conifer trees such as Douglas Fir or Deodar Cedar shall be installed at a minimum height of eight (8) feet.
5. Medium-sized conifers such as Shore Pine, Western Red Cedar or Mountain Hemlock shall be installed at a minimum height of five to six (5 to 6) feet.

**Response:** The Preliminary Landscape Plan (Exhibit A) addresses these requirements, as applicable. These criteria are met.

D. Street Trees. In order to provide a diversity of species, the Development Review Board may require a mix of street trees throughout a development. Unless the Board waives the requirement for reasons supported by a finding in the record, different types of street trees shall be required for adjoining blocks in a development.

1. All trees shall be standard base grafted, well branched and typical of their type as described in current AAN Standards and shall be balled and burlapped (b&b). Street trees shall be planted at sizes in accordance with the following standards:
  - a. Arterial streets - 3" minimum caliper
  - b. Collector streets - 2" minimum caliper.
  - c. Local streets or residential private access drives - 1-3/4" minimum caliper.
  - d. Accent or median tree -1-3/4" minimum caliper.

**Response:** The project has frontage on SW Frog Pond Lane, which is classified as a local street west of Willow Creek Drive. SW Sherman Drive, "J Street," and SW Brisband Street are also planned as local streets. As shown on the Preliminary Landscape Plan (Exhibit A), the project complies with the above street tree requirements. These criteria are met.

2. The following trees and varieties thereof are considered satisfactory street trees in most circumstances; however, other varieties and species are encouraged and will be considered:
  - a. Trees over 50 feet mature height: Quercus garryana (Native Oregon White Oak), Quercus rubra borealis (Red Oak), Acer Macrophyllum (Native Big Leaf Maple), Acer nigrum (Green Column Black Maple), Fraxinus americanus (White Ash), Fraxinus pennsylvannica 'Marshall' (Marshall Seedless Green Ash), Quercus coccinea (Scarlet Oak), Quercus pulustris (Pin Oak), Tilia americana (American Linden).
  - b. Trees under 50 feet mature height: Acer rubrum (Red Sunset Maple), Cornus nuttallii (Native Pacific Dogwood), Gleditsia triacanthos (Honey Locust), Pyrus calleryana 'Bradford' (Bradford Pear), Tilia cordata (Little Leaf Linden), Fraxinus oxycarpa (Flame Ash).

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- c. Other street tree species. Other species may be specified for use in certain situations. For instance, evergreen species may be specified where year-round color is desirable and no adverse effect on solar access is anticipated. Water-loving species may be specified in low locations where wet soil conditions are anticipated.

**Response:** Street trees have been selected in accordance with Figure 43, Street Tree Plan, and Table 2, Street Tree List of the *Frog Pond West Master Plan*. These criteria are met.

E. Types of Plant Species.

1. Existing landscaping or native vegetation may be used to meet these standards, if protected and maintained during the construction phase of the development and if the plant species do not include any that have been listed by the City as prohibited. The existing native and nonnative vegetation to be incorporated into the landscaping shall be identified.
2. Selection of plant materials. Landscape materials shall be selected and sited to produce hardy and drought-tolerant landscaping. Selection shall be based on soil characteristics, maintenance requirements, exposure to sun and wind, slope and contours of the site, and compatibility with other vegetation that will remain on the site. Suggested species lists for street trees, shrubs and groundcovers shall be provided by the City of Wilsonville.
3. Prohibited plant materials. The City may establish a list of plants that are prohibited in landscaped areas. Plants may be prohibited because they are potentially damaging to sidewalks, roads, underground utilities, drainage improvements, or foundations, or because they are known to be invasive to native vegetation.

**Response:** As shown the Preliminary Landscape Plan (Exhibit A), the proposed landscape materials include a mix of native trees, shrubs, and groundcovers. No prohibited plant materials are proposed. These criteria are met.

(.07) Installation and Maintenance.

- A. Installation. Plant materials shall be installed to current industry standards and shall be properly staked to assure survival. Support devices (guy wires, etc.) shall not be allowed to interfere with normal pedestrian or vehicular movement.
- B. Maintenance. Maintenance of landscaped areas is the on-going responsibility of the property owner. Any landscaping installed to meet the requirements of this Code, or any condition of approval established by a City decision-making body acting on an application, shall be continuously maintained in a healthy, vital and acceptable manner. Plants that die are to be replaced in kind, within one growing season, unless appropriate substitute species are approved by the City. Failure to maintain landscaping as required in this Section shall constitute a violation of this Code for which appropriate legal remedies, including the revocation of any applicable land development permits, may result.

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- C. Irrigation. The intent of this standard is to assure that plants will survive the critical establishment period when they are most vulnerable due to a lack of watering and also to assure that water is not wasted through unnecessary or inefficient irrigation. Approved irrigation system plans shall specify one of the following:
1. A permanent, built-in, irrigation system with an automatic controller. Either a spray or drip irrigation system, or a combination of the two, may be specified.
  2. A permanent or temporary system designed by a landscape architect licensed to practice in the State of Oregon, sufficient to assure that the plants will become established and drought-tolerant.
  3. Other irrigation system specified by a licensed professional in the field of landscape architecture or irrigation system design.
  4. A temporary permit issued for a period of one year, after which an inspection shall be conducted to assure that the plants have become established. Any plants that have died, or that appear to the Planning Director to not be thriving, shall be appropriately replaced within one growing season. An inspection fee and a maintenance bond or other security sufficient to cover all costs of replacing the plant materials shall be provided, to the satisfaction of the Community Development Director. Additionally, the applicant shall provide the City with a written license or easement to enter the property and cause any failing plant materials to be replaced.
- D. Protection. All required landscape areas, including all trees and shrubs, shall be protected from potential damage by conflicting uses or activities including vehicle parking and the storage of materials.

**Response:** As detailed in Note 6 of the Preliminary Landscape Plan (Exhibit A), all landscape areas will be watered by a fully automatic underground irrigation system. These criteria are met.

- (.09) Landscape Plans. Landscape plans shall be submitted showing all existing and proposed landscape areas. Plans must be drawn to scale and show the type, installation size, number and placement of materials. Plans shall include a plant material list. Plants are to be identified by both their scientific and common names. The condition of any existing plants and the proposed method of irrigation are also to be indicated. Landscape plans shall divide all landscape areas into the following categories based on projected water consumption for irrigation:
- A. High water usage areas (+/- two (2) inches per week): small convoluted lawns, lawns under existing trees, annual and perennial flower beds, and temperamental shrubs;
  - B. Moderate water usage areas (+/- one (1) inch per week): large lawn areas, average water-using shrubs, and trees;
  - C. Low water usage areas (Less than one (1) inch per week, or gallons per hour): seeded fieldgrass, swales, native plantings, drought-tolerant shrubs, and ornamental grasses or drip irrigated areas.

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- D. Interim or unique water usage areas: areas with temporary seeding, aquatic plants, erosion control areas, areas with temporary irrigation systems, and areas with special water-saving features or water harvesting irrigation capabilities. These categories shall be noted in general on the plan and on the plant material list.

**Response:** A Preliminary Landscape Plan is included within the Frog Pond Cottage Park Place PUD Preliminary Plans (Exhibit A). Individual lot landscaping will be proposed at the time of building permit submittal. These criteria are met.

- (.10) Completion of Landscaping. The installation of plant materials may be deferred for a period of time specified by the Board or Planning Director acting on an application, in order to avoid hot summer or cold winter periods, or in response to water shortages. In these cases, a temporary permit shall be issued, following the same procedures specified in subsection (.07)(C)(3), above, regarding temporary irrigation systems. No final Certificate of Occupancy shall be granted until an adequate bond or other security is posted for the completion of the landscaping, and the City is given written authorization to enter the property and install the required landscaping, in the event that the required landscaping has not been installed. The form of such written authorization shall be submitted to the City Attorney for review.

**Response:** No deferral is requested at this time but may be requested in the future subject to the scenarios above. This requirement is understood.

- (.11) Street Trees Not Typically Part of Site Landscaping. Street trees are not subject to the requirements of this Section and are not counted toward the required standards of this Section. Except, however, that the Development Review Board may, by granting a waiver or variance, allow for special landscaping within the right-of-way to compensate for a lack of appropriate on-site locations for landscaping. See subsection (.06), above, regarding street trees.

**Response:** No waiver or variance for on-site landscaping is requested. This standard is not applicable.

- (.12) Mitigation and Restoration Plantings. A mitigation plan is to be approved by the City's Development Review Board before the destruction, damage, or removal of any existing native plants. Plantings intended to mitigate the loss of native vegetation are subject to the following standards. Where these standards conflict with other requirements of this Code, the standards of this Section shall take precedence. The desired effect of this section is to preserve existing native vegetation.
  - A. Plant Sources. Plant materials are to be native and are subject to approval by the City. They are to be non-clonal in origin; seed source is to be as local as possible, and plants must be nursery propagated or taken from a pre-approved transplantation area. All of these requirements are to be addressed in any proposed mitigation plan.
  - B. Plant Materials. The mitigation plan shall specify the types and installation sizes of plant materials to be used for restoration. Practices such as the use of pesticides, fungicides, and fertilizers shall not be employed in mitigation areas unless specifically authorized and approved.
  - C. Installation. Install native plants in suitable soil conditions. Plant materials are to be supported only when necessary because of extreme winds at the site. Where support is necessary, all stakes, guy wires or other measures are to be removed as soon as the plants can

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support themselves. Protect from animal and fowl predation and foraging until establishment.

- D. Irrigation. Permanent irrigation systems are generally not appropriate in restoration situations, and manual or temporary watering of new plantings is often necessary. The mitigation plan shall specify the method and frequency of manual watering, including any that may be necessary after the first growing season.
- E. Monitoring and Reporting. Monitoring of native landscape areas is the on-going responsibility of the property owner. Plants that die are to be replaced in kind and quantity within one year. Written proof of the survival of all plants shall be required to be submitted to the City's Planning Department one year after the planting is completed.

**Response:** The site is currently in residential and agricultural use, and site plantings consist primarily of grass and clustered trees. The existing grass and some of the trees will be removed for site development, specifically to accommodate the planned street network and desired lot pattern. Tree removal will be mitigated as detailed in the response to Section 4.610.40. These criteria are met.

**Section 4.177 STREET IMPROVEMENT STANDARDS**

- (.01) Development and related public facility improvements shall comply with the standards in this section, the Wilsonville Public Works Standards, and the Transportation System Plan, in rough proportion to the potential impacts of the development. Such improvements shall be constructed at the time of development or as provided by Section 4.140, except as modified or waived by the City Engineer for reasons of safety or traffic operations.

**Response:** The proposed public facility improvements are designed to comply with the standards in this section, the Wilsonville Public Works Standards, and the Transportation System Plan as modified by the *Frog Pond West Master Plan* and as approved by the City Engineer. Final approval will occur with review and issuance of the Public Works construction permit.

The development will construct the remaining width of Frog Pond Lane and the bicycle/pedestrian facilities associated with it. Local streets within the project will be constructed as part of the public improvements of the project and will meet the City's public improvement standards. Please refer to the Preliminary Street Plan (Exhibit A) for the proposed street improvements. The project will provide payment of required in-lieu fees for transportation impacts on specified off-site transportation improvements. This criterion is met.

- (.02) Street Design Standards.

- A. All street improvements and intersections shall provide for the continuation of streets through specific developments to adjoining properties or subdivisions.
  - 1. Development shall be required to provide existing or future connections to adjacent sites through the use of access easements where applicable. Such easements shall be required in addition to required public street dedications as required in Section 4.236(.04).

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**Response:** The street network has been designed in substantial compliance with the Frog Pond West Street Demonstration Plan. Some streets have been relocated to maximize the number of preserved trees on the site. Future connections to adjacent sites are anticipated to the east and south. This criterion is met.

- B. The City Engineer shall make the final determination regarding right-of-way and street element widths using the ranges provided in Chapter 3 of the Transportation System Plan and the additional street design standards in the Public Works Standards.

**Response:** The proposed streets are designed to the standards of the *Frog Pond West Master Plan* and meet the requirements of the TSP and Public Works Standards. This criterion is met.

- C. Rights-of-way.
1. Prior to issuance of a Certificate of Occupancy Building permits or as a part of the recordation of a final plat, the City shall require dedication of rights-of-way in accordance with the Transportation System Plan. All dedications shall be recorded with the County Assessor's Office.
  2. The City shall also require a waiver of remonstrance against formation of a local improvement district, and all non-remonstrances shall be recorded in the County Recorder's Office as well as the City's Lien Docket, prior to issuance of a Certificate of Occupancy Building Permit or as a part of the recordation of a final plat.
  3. In order to allow for potential future widening, a special setback requirement shall be maintained adjacent to all arterial streets. The minimum setback shall be 55 feet from the centerline or 25 feet from the right-of-way designated on the Master Plan, whichever is greater.

**Response:** The site abuts SW Frog Pond Lane, a local street, to the north. The project will dedicate 9.5 feet of right-of-way to the southern edge of SW Frog Pond Lane right-of-way, which will increase the right-of-way to 42.5 feet and 52 feet with development and dedication of the north side of SW Frog Pond Lane. The tentative subdivision plat shows right-of-way dedication.

A waiver of remonstrance will be issued prior to the recordation of a final plat. The project is not adjacent to arterial streets; therefore, a special setback requirement is not required.

These criteria are met.

- D. Dead-end Streets. New dead-end streets or cul-de-sacs shall not exceed 200 feet in length, unless the adjoining land contains barriers such as existing buildings, railroads or freeways, or environmental constraints such as steep slopes, or major streams or rivers, that prevent future street extension and connection. A central landscaped island with rainwater management and infiltration are encouraged in cul-de-sac design. No more than 25 dwelling units shall take access to a new dead-end or cul-de-sac street unless it is determined that the traffic impacts on adjacent streets will not exceed those from a development of 25 or fewer units. All other dimensional standards of dead-end streets shall be governed by the Public Works Standards.

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Notification that the street is planned for future extension shall be posted on the dead-end street.

**Response:** The street network has been designed per the *Frog Pond West Master Plan* Street Demonstration Plan. Permanent dead-end streets have not been proposed by the Applicant; therefore, this standard does not apply.

E. Corner or clear vision area.

1. A clear vision area which meets the Public Works Standards shall be maintained on each corner of property at the intersection of any two streets, a street and a railroad or a street and a driveway. However, the following items shall be exempt from meeting this requirement:
  - a. Light and utility poles with a diameter less than 12 inches.
  - b. Trees less than 6" d.b.h., approved as a part of the Stage II Site Design, or administrative review.
  - c. Except as allowed by b., above, an existing tree, trimmed to the trunk, 10 feet above the curb.
  - d. Official warning or street sign.
  - e. Natural contours where the natural elevations are such that there can be no crossvisibility at the intersection and necessary excavation would result in an unreasonable hardship on the property owner or deteriorate the quality of the site.

**Response:** Clear vision areas will be maintained at the corner of each property. These criteria are met.

F. Vertical clearance - a minimum clearance of 12 feet above the pavement surface shall be maintained over all streets and access drives.

**Response:** Vertical clearances will be maintained at all streets and access drives. This criterion is met.

G. Interim improvement standard. It is anticipated that all existing streets, except those in new subdivisions, will require complete reconstruction to support urban level traffic volumes. However, in most cases, existing and short-term projected traffic volumes do not warrant improvements to full Master Plan standards. Therefore, unless otherwise specified by the Development Review Board, the following interim standards shall apply.

1. Arterials - 24 foot paved, with standard sub-base. Asphalt overlays are generally considered unacceptable, but may be considered as an interim improvement based on the recommendations of the City Engineer, regarding adequate structural quality to support an overlay.
2. Half-streets are generally considered unacceptable. However, where the Development Review Board finds it essential to allow for reasonable development, a half-street may be approved. Whenever a half-street improvement is approved, it shall conform to the requirements in the Public Works Standards:
3. When considered appropriate in conjunction with other anticipated or scheduled street improvements, the City

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Engineer may approve street improvements with a single asphalt lift. However, adequate provision must be made for interim storm drainage, pavement transitions at seams and the scheduling of the second lift through the Capital Improvements Plan.

**Response:** This project is a new subdivision. SW Brisband Street will be improved to the property line. Future development south of the project will dedicate and construct SW Brisband Street beyond the adjacent sidewalk, vegetated swale, and curb and gutter. SW Sherman Drive will be constructed to include the entire paved width for the majority of the street, including sidewalks and planter strips/swales along the eastern edge of the right-of-way. Future development west of Cottage Park Place will construct the western edge of the SW Sherman Drive right-of-way. In some locations, where off-site trees are expected to be preserved, some of the paved width of the street (up to 8 feet) will be constructed by future development to the west. The applicable criteria are met.

- (.03) **Sidewalks.** Sidewalks shall be provided on the public street frontage of all development. Sidewalks shall generally be constructed within the dedicated public right-of-way, but may be located outside of the right-of-way within a public easement with the approval of the City Engineer.
  - A. Sidewalk widths shall include a minimum through zone of at least five feet. The through zone may be reduced pursuant to variance procedures in Section 4.196, a waiver pursuant to Section 4.118, or by authority of the City Engineer for reasons of traffic operations, efficiency, or safety.
  - B. Within a Planned Development, the Development Review Board may approve a sidewalk on only one side. If the sidewalk is permitted on just one side of the street, the owners will be required to sign an agreement to an assessment in the future to construct the other sidewalk if the City Council decides it is necessary.

**Response:** As shown on the Preliminary Street Plan (Exhibit A), all sidewalks within the proposed development are at least 5 feet wide. In those instances where they are located outside of the right-of-way in order to accommodate stormwater swales, a public sidewalk easement is proposed, as shown on the Preliminary Dimensioned PUD Plan and Preliminary Street Cross Sections within Exhibit A. Sidewalks are proposed on both sides of all streets where development has been planned. No adjustments are requested; therefore, these criteria are met.

- (.04) **Bicycle Facilities.** Bicycle facilities shall be provided to implement the Transportation System Plan, and may include on-street and off-street bike lanes, shared lanes, bike boulevards, and cycle tracks. The design of on-street bicycle facilities will vary according to the functional classification and the average daily traffic of the facility.

**Response:** As shown on the Preliminary Street Plan (Exhibit A), the proposed street cross sections comply with the street classifications and cross sections identified in the *Frog Pond West Master Plan*. The SW Frog Pond Lane cross section includes buffered bike lanes; bikes will share the vehicular lane with vehicles on local streets. Therefore, these criteria are met.

- (.05) **Multiuse Pathways.** Pathways may be in addition to, or in lieu of, a public street. Paths that are in addition to a public street shall generally run parallel to that street, and shall be designed in accordance with the Public Works

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Standards or as specified by the City Engineer. Paths that are in lieu of a public street shall be considered in areas only where no other public street connection options are feasible and are subject to the following standards.

- A. Paths shall be located to provide a reasonably direct connection between likely pedestrian and bicyclist destinations. Additional standards relating to entry points, maximum length, visibility, and path lighting are provided in the Public Works Standards.
- B. To ensure ongoing access to and maintenance of pedestrian/bicycle paths, the City Engineer will require dedication of the path to the public and acceptance of the path by the City as public right-of-way; or creation of a public access easement over the path.

**Response:** Please see responses to WDC Section 4.127(.10), above, for more details.

(.06) Transit Improvements

Development on sites that are adjacent to or incorporate major transit streets shall provide improvements as described in this section to any bus stop located along the site's frontage, unless waived by the City Engineer for reasons of safety or traffic operations. Transit facilities include bus stops, shelters, and related facilities. Required transit facility improvements may include the dedication of land or the provision of a public easement.[...]

**Response:** The site is not adjacent to transit routes. These standards are not applicable.

(.07) Residential Private Access Drives. Residential Private Access Drives shall meet the following standards:

- A. Residential Private Access Drives shall provide primary vehicular access to no more than four (4) dwelling units, excluding accessory dwelling units.

**Response:** Private access drives providing primary vehicular access to more than four dwelling units are not proposed. Each dwelling unit will gain street access via private alleys. This standard does not apply.

(.08) Access Drive and Driveway Approach Development Standards.

- A. An access drive to any proposed development shall be designed to provide a clear travel lane free from any obstructions.
- B. Access drive travel lanes shall be constructed with a hard surface capable of carrying a 23-ton load.
- C. Where emergency vehicle access is required, approaches and driveways shall be designed and constructed to accommodate emergency vehicle apparatus and shall conform to applicable fire protection requirements. The City may restrict parking, require signage, or require other public safety improvements pursuant to the recommendations of an emergency service provider.
- D. Secondary or emergency access lanes may be improved to a minimum 12 feet with an all-weather surface as approved by the Fire District. All fire lanes shall be dedicated easements.
- E. Minimum access requirements shall be adjusted commensurate with the intended function of the site based on vehicle types and traffic generation.

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- F. The number of approaches on higher classification streets (e.g., collector and arterial streets) shall be minimized; where practicable, access shall be taken first from a lower classification street.
  - G. The City may limit the number or location of connections to a street, or impose access restrictions where the roadway authority requires mitigation to alleviate safety or traffic operations concerns.
  - H. The City may require a driveway to extend to one or more edges of a parcel and be designed to allow for future extension and inter-parcel circulation as adjacent properties develop. The City may also require the owner(s) of the subject site to record an access easement for future joint use of the approach and driveway as the adjacent property(ies) develop(s).
  - I. Driveways shall accommodate all projected vehicular traffic on-site without vehicles stacking or backing up onto a street.
  - J. Driveways shall be designed so that vehicle areas, including but not limited to drive-up and drive-through facilities and vehicle storage and service areas, do not obstruct any public right-of-way.
  - K. Approaches and driveways shall not be wider than necessary to safely accommodate projected peak hour trips and turning movements, and shall be designed to minimize crossing distances for pedestrians.
  - L. As it deems necessary for pedestrian safety, the City, in consultation with the roadway authority, may require traffic-calming features, such as speed tables, textured driveway surfaces, curb extensions, signage or traffic control devices, or other features, be installed on or in the vicinity of a site.
  - M. Approaches and driveways shall be located and designed to allow for safe maneuvering in and around loading areas, while avoiding conflicts with pedestrians, parking, landscaping, and buildings.
  - N. Where a proposed driveway crosses a culvert or drainage ditch, the City may require the developer to install a culvert extending under and beyond the edges of the driveway on both sides of it, pursuant applicable Public Works standards.
  - O. Except as otherwise required by the applicable roadway authority or waived by the City Engineer, temporary driveways providing access to a construction site or staging area shall be paved or graveled to prevent tracking of mud onto adjacent paved streets.

**Response:** As shown on the Preliminary Street Plan (Exhibit A), the project meets the above Code requirements, as applicable.

- P. Unless constrained by topography, natural resources, rail lines, freeways, existing or planned or approved development, or easements or covenants, driveways proposed as part of a residential or mixed-use development shall meet local street spacing standards and shall be constructed to align with existing or planned streets, if the driveway.
  - 1. Intersects with a public street that is controlled, or is to be controlled in the planning period, by a traffic signal;
  - 2. Intersects with an existing or planned arterial or collector street; or

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3. Would be an extension of an existing or planned local street, or of another major driveway.

**Response:** As shown on the Preliminary Street Plan (Exhibit A), project streets are designed to meet local spacing standards. These criteria are met.

(.09) Minimum street intersection spacing standards.

- A. New streets shall intersect at existing street intersections so that centerlines are not offset. Where existing streets adjacent to a proposed development do not align properly, conditions shall be imposed on the development to provide for proper alignment.
- B. Minimum intersection spacing standards are provided in Transportation System Plan Table 3-2.

**Response:** All streets within the proposed project other than SW Frog Pond Lane are Local Streets. Centerlines are not planned to be offset and are properly aligned.

Per Table 3-2 of the Transportation System Plan, there are no minimum access spacing standards along Local Streets. Access is permitted to each individual lot fronting a Local Street; however, shared access via private alleys has been proposed. No individual lot accesses are proposed on SW Frog Pond Lane, SW Sherman Drive, "J Street", or SW Brisband Street. These criteria are met.

- (.10) Exceptions and Adjustments. The City may approve adjustments to the spacing standards of subsections (.08) and (.09) above through a Class II process, or as a waiver per Section 4.118(.03)(A.), where an existing connection to a City street does not meet the standards of the roadway authority, the proposed development moves in the direction of code compliance, and mitigation measures alleviate all traffic operations and safety concerns. Mitigation measures may include consolidated access (removal of one access), joint use driveways (more than one property uses same access), directional limitations (e.g., one-way), turning restrictions (e.g., right in/out only), or other mitigation.

**Response:** No exceptions or adjustments are requested. This standard does not apply.

Section 4.180 EXCEPTIONS AND MODIFICATIONS - PROJECTIONS INTO REQUIRED YARDS

- (.01) Certain non-structural architectural features are permitted to project into required yards or courts, without requiring the approval of a Variance or Reduced Setback Agreement, as follows:

- A. Into any required yard:
  1. Architectural features may project into the required yard not more than two (2) inches for each foot of required setback.
  2. Architectural features on buildings within the Coffee Creek Industrial Design Overlay District shall be subject to the applicable requirements in Section 4.134. :
  3. Open, unenclosed fire escapes may project a distance not exceeding forty-eight (48) inches.
- B. Into any required yard, adjoining a street or tract with a private drive:
  1. Architectural features may project a distance not exceeding forty (40) inches.

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2. An uncovered porch, terrace, or patio extending no more than two and one-half (2 1/2) feet above the finished elevation may extend within three (3) feet of an interior side lot line, or within ten (10) feet of a front lot line or of an exterior side lot line.

**Response:** No buildings are proposed with this application. Compliance with this section will be reviewed during a subsequent permit submittal; therefore, these standards are not applicable at this time.

Section 4.181 EXCEPTIONS & MODIFICATIONS - HEIGHT LIMITS.

Except as stipulated in Sections 4.800 through 4.804, height limitations specified elsewhere in this Code shall not apply to barns, silos or other farm buildings or structures on farms; to church spires; belfries; cupolas; and domes; monuments; water towers; windmills; chimneys; smokestacks; fire and hose towers; flag poles; above-ground electric transmission, distribution, communication and signal lines, towers and poles; and properly screened mechanical and elevator structures.

**Response:** No listed structures are proposed at this time. Architectural features of the proposed dwellings are shown within Exhibit M. Compliance with this section will be reviewed during a subsequent permit submittal. At this time, this standard does not apply.

Section 4.182 EXCEPTIONS AND MODIFICATIONS - SETBACK MODIFICATIONS

In any residential zone where the average depth of at least two (2) existing front yards on adjoining lots or within one hundred fifty (150) feet of the lot in question and within the same block front is less or greater than the minimum or maximum front yard depth prescribed elsewhere in this Code, the required depth of the front yard on such lot shall be modified. In such case, the front yard depth shall not be less than the average depth, nor more than the greater depth, of existing front yards on at least two (2) adjoining lots within one hundred and fifty (150) feet. In the case of a corner lot, the depth of the front yard may be reduced to that of the lot immediately adjoining, provided, however, that the depth of a front yard on any corner lot shall be at least ten (10) feet.

**Response:** No setback modifications are requested. Compliance with this section will be reviewed during a subsequent permit submittal. This standard does not apply.

[...]

Section 4.197 ZONE CHANGES AND AMENDMENTS TO THIS CODE – PROCEDURES

- (.01) The following procedure shall be followed in applying for an amendment to the text of this Chapter: [...]

**Response:** No zoning text amendments are proposed. This procedure is not applicable.

- B. All other quasi-judicial zone map amendments shall be reviewed by the Development Review Board to make a recommendation to City Council and all legislative zone map amendments shall be reviewed by the Planning Commission to make a recommendation to City Council.
- C. In recommending approval or denial of a proposed zone map amendment, the Planning Commission or Development Review Board shall at a minimum, adopt findings addressing the following criteria:

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1. That the application before the Commission or Board was submitted in accordance with the procedures set forth in Section 4.008, Section 4.125 (.18)(B)(2) or, in the case of a Planned Development, Section 4.140; and

**Response:** The Zone Map Amendment is being requested concurrent with a Planned Development. The application has been submitted in accordance with the procedures set forth in Section 4.140. This criterion is met.

2. That the proposed amendment is consistent with the Comprehensive Plan map designation and substantially complies with the applicable goals, policies and objectives, set forth in the Comprehensive Plan text; and

**Response:** Concurrent with the adoption of the *Frog Pond West Master Plan*, the City added a new zoning district, Residential Neighborhood (RN), intended for application to the Master Plan area. The Applicant is requesting ±5.00 acres of unincorporated land be annexed to the City of Wilsonville and the RN zone applied to that territory. The applicable goals, policies, and objectives of the Comprehensive Plan text are addressed earlier in the narrative. This criterion is met.

3. In the event that the subject property, or any portion thereof, is designated as "Residential" on the City's Comprehensive Plan Map; specific findings shall be made addressing substantial compliance with Implementation Measures 4.1.4.b, d, e, q, and x of Wilsonville's Comprehensive Plan text; and

**Response:** Compliance with the applicable Implementation Measures is addressed earlier within this written narrative. This criterion is met.

4. That the existing primary public facilities, i.e., roads and sidewalks, water, sewer and storm sewer are available and are of adequate size to serve the proposed development; or, that adequate facilities can be provided in conjunction with project development. The Planning Commission and Development Review Board shall utilize any and all means to ensure that all primary facilities are available and are adequately sized; and

**Response:** As addressed elsewhere in this written narrative, the project will extend roads and sidewalks, water, sewer, and storm drain to serve residents of the project. This criterion is met.

5. That the proposed development does not have a significant adverse effect upon Significant Resource Overlay Zone areas, an identified natural hazard, or an identified geologic hazard. When Significant Resource Overlay Zone areas or natural hazard, and/or geologic hazard are located on or abut the proposed development, the Planning Commission or Development Review Board shall use appropriate measures to mitigate and significantly reduce conflicts between the development and identified hazard or Significant Resource Overlay Zone and

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**Response:** The subject site does not contain SROZ areas, identified natural hazards, or identified geologic hazards. This standard does not apply.

6. That the applicant is committed to a development schedule demonstrating that development of the property is reasonably expected to commence within two (2) years of the initial approval of the zone change; and

**Response:** The zone change request is being submitted concurrently with a Planned Development, Subdivision, and Site Plan Review application. The Applicant plans to develop the property in a timely manner within two years of the initial approval of the zone change as feasible. Therefore, this criterion is met.

7. That the proposed development and use(s) can be developed in compliance with the applicable development standards or appropriate conditions are attached that ensure that the project development substantially conforms to the applicable development standards.

**Response:** This project is a single-family neighborhood, in accordance with the *Frog Pond West Master Plan*. Compliance with the applicable development standards of the RN zone is addressed earlier narrative. This criterion is met.

8. Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property. The applicant shall demonstrate compliance with the Transportation Planning Rule, specifically by addressing whether the proposed amendment has a significant effect on the transportation system pursuant to OAR 660012-0060. A Traffic Impact Analysis (TIA) shall be prepared pursuant to the requirements in Section 4.133.05.(01).

**Response:** Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the construction of the project. The Applicant will extend sewer and water infrastructure and will provide storm drainage facilities to serve the project.

A Traffic Impact Analysis (TIA) was prepared by DKS Associates at the direction of the City of Wilsonville. Compliance with the Transportation Planning Rule (TPR) is included in the *Frog Pond Area Plan* and assumes full development of the Frog Pond area. The *Frog Pond Area Plan* determined that the anticipated development within Frog Pond would comply with the TPR. This criterion is met.

- (.05) In cases where a property owner or other applicant has requested a change in zoning and the City Council has approved the change subject to conditions, the owner or applicant shall sign a statement accepting, and agreeing to complete the conditions of approval before the zoning shall be changed.

[...]

**Response:** This project meets the applicable criteria as described above. The Applicant will sign the statement accepting and agreeing to complete the conditions of approval, as required by this section.

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## LAND DIVISIONS

### Section 4.210 APPLICATION PROCEDURE

- (.01) Pre-application conference. Prior to submission of a tentative condominium, partition, or subdivision plat, a person proposing to divide land in the City shall contact the Planning Department to arrange a pre-application conference as set forth in Section 4.010.

**Response:** The Applicant held a pre-application conference with City staff on April 14, 2022. This criterion is met.

B. Tentative Plat Submission. The purpose of the Tentative Plat is to present a study of the proposed subdivision to the Planning Department and Development Review Board and to receive approval or recommendations for revisions before preparation of a final Plat. The design and layout of this plan plat shall meet the guidelines and requirements set forth in this Code. The Tentative Plat shall be submitted to the Planning Department with the following information:

1. Site development application form completed and signed by the owner of the land or a letter of authorization signed by the owner. A preliminary title report or other proof of ownership is to be included with the application form.
2. Application fees as established by resolution of the City Council.
3. Ten (10) copies and one (1) sepia or suitable reproducible tracing of the Tentative Plat shall be submitted with the application. Paper size shall be eighteen inch (18") by twenty-four inch (24"), or such other size as may be specified by the City Engineer.
4. Name of the subdivision. No subdivision name shall duplicate or resemble the name of any other subdivision in Clackamas or Washington County. Names may be checked through the county offices.
5. Names, addresses, and telephone numbers of the owners and applicants, and engineer or surveyor.
6. Date, north point and scale of drawing.
7. Location of the subject property by Section, Township, and Range.
8. Legal road access to subject property shall be indicated as City, County, or other public roads.
9. Vicinity map showing the relationship to the nearest major highway or street.
10. Lots: Dimensions of all lots, minimum lot size, average lot size, and proposed lot and block numbers.
11. Gross acreage in proposed plat.
12. Proposed uses of the property, including sites, if any, for multi-family dwellings, shopping centers, churches, industries, parks, and playgrounds or other public or semi-public uses.

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13. Improvements: Statement of the improvements to be made or installed including streets, private drives, sidewalks, lighting, tree planting, and times such improvements are to be made or completed.
  14. Trees. Locations, types, sizes, and general conditions of all existing trees, as required in Section 4.600.
  15. Utilities such as electrical, gas, telephone, on and abutting the tract.
  16. Easements: Approximate width, location, and purpose of all existing and proposed easements on, and known easements abutting the tract.
  17. Deed Restrictions: Outline of proposed deed restrictions, if any.
  18. Written Statement: Information which is not practical to be shown on the maps may be shown in separate statements accompanying the Tentative Plat.
  19. If the subdivision is to be a "Planned Development," a copy of the proposed Home Owners Association By-Laws must be submitted at the time of submission of the application. The Tentative Plat shall be considered as the Stage I Preliminary Plan. The proposed By-Laws must address the maintenance of any parks, common areas, or facilities.
  20. Any plat bordering a stream or river shall indicate areas subject to flooding and shall comply with the provisions of Section 4.172.
  21. Proposed use or treatment of any property designated as open space by the City of Wilsonville.
  22. A list of the names and addresses of the owners of all properties within 250 feet of the subject property, printed on self-adhesive mailing labels. The list shall be taken from the latest available property ownership records of the Assessor's office of the affected county.
  23. A completed "liens and assessments" form, provided by the City Finance Department.
  24. Locations of all areas designated as a Significant Resource Overlay Zone by the City, as well as any wetlands shall be shown on the tentative plat.
  25. Locations of all existing and proposed utilities, including but not limited to domestic water, sanitary sewer, storm drainage, and any private utilities crossing or intended to serve the site. Any plans to phase the construction or use of utilities shall be indicated. [Amended by Ord. 682, 9/9/10]
  26. A traffic study, prepared under contract with the City, shall be submitted as part of the tentative plat application process, unless specifically waived by the Community Development Director.

**Response:** The application materials include all of the information required in subsection 4.210(.01)B. These criteria are met.

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- D. Land division phases to be shown. Where the applicant intends to develop the land in phases, the schedule of such phasing shall be presented for review at the time of the tentative plat. In acting on an application for tentative plat approval, the Planning Director or Development Review Board may set time limits for the completion of the phasing schedule which, if not met, shall result in an expiration of the tentative plat approval.

**Response:** The proposed land division phases are shown on the submitted Preliminary Dimensioned Subdivision Plan. This criterion is met.

- E. Remainder tracts to be shown as lots or parcels. Tentative plats shall clearly show all affected property as part of the application for land division. All remainder tracts, regardless of size, shall be shown and counted among the parcels or lots of the division.

**Response:** The proposed subdivision does not create remainder tracts. The tentative plat accounts for all land within the plat area as lots, tracts, or right-of-way. This standard does not apply.

Section 4.232 EXPEDITED LAND DIVISIONS AND MIDDLE HOUSING LAND DIVISIONS.

- (.01) Applicants for subdivisions or land partitions may request that their applications be processed as expedited land divisions, pursuant to ORS 197. In order to be processed as an expedited land division, each such request must be filed in writing at the time that the application is filed.
- (.02) Additional to the relevant standards and criteria applying to partitions and subdivisions, applications for expedited land divisions shall only be approved where the subject property is in a residential zone and the application includes no requests for waivers or variances from the standards applying to land divisions in the zone.

**Response:** These standards related to expedited land divisions are understood, but not applicable due to the need for other concurrent land use decisions.

- (.03) An applicant for a land division may process the land division as a Middle Housing land division if all the following are met:
  - A. The proposed land division is occupied by Middle Housing or an Accessory Dwelling Unit and the associated primary dwelling;

**Response:** Each Middle Housing Land Division involves a parent lot with duplex to be divided into two child lots. This criterion is met.

- B. Separate utilities are provided for each dwelling unit within the land division;

**Response:** The Cottage Park Place project envisions 17 paired, attached and detached single-family residences for a total of 34 dwelling units. Each dwelling unit will be provided with separate utilities per the Preliminary Composite Utility Plans (Sheet P-09) contained within Exhibit A. This criterion is met.

- C. Easements are provided for each dwelling unit for:
  1. Locating, accessing, replacing and servicing all utilities;
  2. Pedestrian access from each dwelling unit to a street or private drive;

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3. Any common areas or shared building elements;
  4. Any dedicated driveways or parking; and
  5. Any dedicated common area.

**Response:** Each dwelling unit has been planned with any necessary easements to provide for the listed residential functions. These criteria are met.

- D. Evidence demonstrates how buildings or structures on a resulting middle housing land division unit will comply with applicable building codes provisions relating to new property lines and, notwithstanding the creation of new middle housing land division units, how structures or buildings located on the newly created middle housing land division units will comply with the Oregon residential specialty code.

**Response:** The proposed project will comply with the applicable building code provisions related to new dwelling units and property lines. This criterion is met.

- E. Notes are added to the final plat indicating the following:
  1. Further division of the resulting middle housing land division units is prohibited;
  2. The approval of the middle housing land division is pursuant to ORS 92.010 to 92.192, as applicable.

**Response:** The final plat will contain language indicating that further division of the Middle Housing units is prohibited and that the Middle Housing Land Division complies with the applicable provisions of ORS 92.010 to 92.192. Therefore, these criteria are met.

- F. The Middle Housing Land Division is not used to create separate units of land for a two, three, or four-Unit Cluster Housing development on either of the following:
  1. On land otherwise divisible through a partition or subdivision to create lots for detached single-family homes; or
  2. On lots in subdivisions or partitions recorded in the prior 24 month period unless the average size of the resulting land division units, determined by adding the areas of land division units and dividing by the number of land division units, is 60 percent or less of the minimum lot size in the zone.

**Response:** Cluster Housing units have not been planned as part of this application. These standards do not apply.

(.04) Provisions of Middle Housing Land Divisions:

1. A Middle Housing Land Division creates separate units of land for each dwelling unit in a Middle Housing development that could otherwise be built on the lot without a land division or to create a separate unit of land for an Accessory Dwelling Unit.

**Response:** The proposed Middle Housing Land Division creates separate units of land for each dwelling unit. In this case, a duplex on a legal parent lot is divided into two separate dwelling units on two separate units of land. This criterion is met.

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2. Following a Middle Housing Land Division, the units of land resulting from a Middle Housing Land Division shall collectively be considered a single lot, along with the parent lot, for all but platting and property transfer purposes under City code and state rules and statutes, including, but not limited to, the following purposes:

A. Lot standards such as size, setback, lot coverage, and lot width and depth;

**Response:** Each proposed parent lot meets the applicable lot standards including lot size, setbacks, lot coverage, and lot width and depth, as explained within the written narrative responses related to Section 4.127. This criterion is met.

B. Definition of unit types (e.g., a two-Unit Cluster Housing development where each unit is on its own land division unit through a Middle Housing Land Division would still be considered two-Unit Cluster Housing rather than single-family units; a duplex would still be considered a duplex rather than townhouses);

**Response:** The proposed duplexes will still be considered duplexes following Middle Housing Land Division. This criterion is met.

C. Allowance of number of Middle Housing units and Accessory Dwelling Units;

**Response:** The proposed number of dwelling units is acceptable by the standards of the City of Wilsonville Development Code and *Frog Pond West Master Plan*. This criterion is met.

D. Compliance with Middle Housing rules and statutes in ORS 197 and OAR 660-046.

**Response:** The proposed Middle Housing Land Divisions comply with the applicable rules and statutes of ORS 197 and OAR 660-046. This criterion is met.

3. Middle Housing Land Division Units, the units of land resulting from a Middle Housing Division, shall:

A. Have exactly one dwelling unit (except for tracts for common space), and

B. Not be further divisible.

**Response:** Following the proposed Middle Housing Land Divisions, each child lot will contain exactly one dwelling unit and will be noted as ineligible for further division on the final plat. These criteria are met.

(.05) Procedures and Requirements for Expedited Land Divisions and Middle Housing Land Divisions.

A. Expedited Land Divisions and Middle Housing Land Divisions for new middle housing, shall be subject to the same procedures and requirements as conventional land divisions, with the following exceptions:

1. The Planning Director shall have the authority to approve, conditionally approve, or deny tentative plat applications through the Administrative Review procedures of Section 4.035. The Director shall not refer an application for an expedited land division to the Development Review Board

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for hearing and the Board shall not have the authority to call up the decision of the Director for review.

2. The Director shall render a decision on an expedited land division within 30 days of a complete filing, unless a time extension has been requested by the applicant.
3. Appeals of the decisions of the Director on expedited land divisions shall be heard by a referee who has been retained by the City for the purpose of considering such appeals. Decisions of the referee shall be final and the City Council shall not have the authority to call up such decisions for review.
4. The referee shall render a decision on an expedited land division or middle housing land division appeal within 63 days of a complete filing, unless a time extension has been requested by the applicant.

- B. Middle Housing Land Division occupied by existing middle housing or an Accessory Dwelling Unit and the associated primary dwelling shall be subject to the same procedures and requirements as partitions.
- C. For either process described in A. and B., an applicant may submit multiple tentative middle housing land divisions within the same recorded subdivision or partition plat as a single application.
- D. Notwithstanding Subsections A. and B. above, an applicant may elect to have one or more tentative middle housing land divisions reviewed concurrently with the tentative plat of a subdivision subject to review by the Development Review Board. Such tentative middle housing land divisions shall be shown on separate sheet(s) than the tentative subdivision plat and be clearly identified as being created from one or more lots created by the subdivision.

**Response:** These standards are understood. The proposed Middle Housing Land Divisions meet the applicable requirements and are submitted concurrently with the subdivision tentative plat. Middle Housing Land Divisions are shown on Sheet P-07 of the Preliminary Plans (Exhibit A), separate of the tentative subdivision plat. These criteria, as applicable, are met.

Section 4.236 GENERAL REQUIREMENTS – STREETS.

- (.01) Conformity to the Transportation System Plan. Land divisions shall conform to and be in harmony with the Transportation Systems Plan, the Bicycle and Pedestrian Master Plan, and the Parks and Recreation Master Plan.

**Response:** As confirmed by the TIS, the proposed street plan conforms to the Transportation System Plan and the *Frog Pond West Master Plan*. Per Figure 17 of the *Frog Pond West Master Plan*, the site is bound to the north and south by Framework Streets (SW Frog Pond Lane and SW Brisband Street). The plans comply with the applicable master plans for the area.

- (.02) Relation to Adjoining Street System.

- A. A land division shall provide for the continuation of the principal streets existing in the adjoining area, or of their proper projection when adjoining property is not developed, and shall be of a width not less than the minimum requirements for streets set forth in these regulations. Where, in the opinion of the Planning Director or

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Development Review Board, topographic conditions make such continuation or conformity impractical, an exception may be made. In cases where the Board or Planning Commission has adopted a plan or plat of a neighborhood or area of which the proposed land division is a part, the subdivision shall conform to such adopted neighborhood or area plan.

**Response:** As shown on the Preliminary Street Plan (Exhibit A), the proposed street network is designed for future continuation and is generally consistent with the *Frog Pond West Master Plan*. Therefore, this criterion is met.

B. Where the plat submitted covers only a part of the applicant's tract, a sketch of the prospective future street system of the unsubmitted part shall be furnished and the street system of the part submitted shall be considered in the light of adjustments and connections with the street system of the part not submitted.

**Response:** The submitted tentative plat covers the entirety of the Applicant's tracts. This standard does not apply.

C. At any time when an applicant proposes a land division and the Comprehensive Plan would allow for the proposed lots to be further divided, the city may require an arrangement of lots and streets such as to permit a later resubdivision in conformity to the street plans and other requirements specified in these regulations.

**Response:** The proposed lots follow the minimum lot size standards for R-7 and R-10 designations. Conformity with street plans and other requirements is addressed within this written narrative. This criterion is met.

(.03) All streets shall conform to the standards set forth in Section 4.177 and the block size requirements of the zone.

**Response:** Compliance with the standards of Section 4.177 is addressed earlier in the narrative. This criterion is met.

(.04) Creation of Easements: The Planning Director or Development Review Board may approve an easement to be established without full compliance with these regulations, provided such an easement is the only reasonable method by which a portion of a lot large enough to allow partitioning into two (2) parcels may be provided with vehicular access and adequate utilities. If the proposed lot is large enough to divide into more than two (2) parcels, a street dedication may be required.

**Response:** The Applicant is not requesting street easements; therefore, this standard does not apply.

(.05) Topography: The layout of streets shall give suitable recognition to surrounding topographical conditions in accordance with the purpose of these regulations.

**Response:** The street layout recognizes topographical conditions. This criterion is met.

(.06) Reserve Strips: The Planning Director or Development Review Board may require the applicant to create a reserve strip controlling the access to a street. Said strip is to be placed under the jurisdiction of the City Council, when the Director or Board determine that a strip is necessary:

- A. To prevent access to abutting land at the end of a street in order to assure the proper extension of the street pattern and the orderly development of land lying beyond the street; or
- B. To prevent access to the side of a street on the side where additional width is required to meet the right-of-way standards established by the City; or
- C. To prevent access to land abutting a street of the land division but not within the tract or parcel of land being divided; or
- D. To prevent access to land unsuitable for building development.

**Response:** The project does not include reserve strips. If required, reserve strips will be required in order to prevent access to adjacent lands. At this time, this standard does not apply to the application.

(.07) **Future Expansion of Street:** When necessary to give access to, or permit a satisfactory future division of, adjoining land, streets shall be extended to the boundary of the land division and the resulting dead-end street may be approved without a turn-around. Reserve strips and street plugs shall be required to preserve the objective of street extension. Notification that the street is planned for future extension shall be posted on the stub street.

**Response:** Local “J Street” is designed to extend to the boundary of the site and is intended for future extension. For that reason, no turnarounds are proposed for this street. The Applicant will comply with any requirements related to signage street extension objectives. This standard is met.

(.08) **Existing Streets:** Whenever existing streets adjacent to or within a tract are of inadequate width, additional right-of-way shall conform to the designated width in this Code or in the Transportation Systems Plan.

**Response:** The project will dedicate 9.5 feet of right-of-way to Frog Pond Lane as well as 15 feet for the expansion of SW Brisband Street and SW Sherman Drive at their intersection. The resulting streets are of adequate width and are anticipated to meet City standards. This criterion is met.

(.09) **Street Names:** No street names will be used which will duplicate or be confused with the names of existing streets, except for extensions of existing streets. Street names and numbers shall conform to the established name system in the City, and shall be subject to the approval of the City Engineer.

**Response:** Subject to approval by the City Engineer, the street currently identified as “J Street” will conform to the City’s established name system. Other streets adjacent to the project area have established street names. This criterion is met.

Section 4.237 **GENERAL REQUIREMENTS – OTHER.**

(.01) **Blocks:**

- A. The length, width, and shape of blocks shall be designed with due regard to providing adequate building sites for the use contemplated, consideration of needs for convenient access, circulation, control, and safety of pedestrian, bicycle, and motor vehicle traffic, and recognition of limitations and opportunities of topography.
- B. **Sizes:** Blocks shall not exceed the sizes and lengths specified for the zone in which they are located unless topographical conditions or

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other physical constraints necessitate larger blocks. Larger blocks shall only be approved where specific findings are made justifying the size, shape, and configuration.

**Response:** The length, width, and shape of blocks have been designed to accommodate the development established by the *Frog Pond West Master Plan*, accommodate natural resources designated for preservation, and to comply with the standards of Section 4.177. These standards are addressed above. The site is located within the RN zone and is also subject to the block, access, and connectivity standards of Section 4.127(.10). Those standards are addressed above. The placement of streets within the Cottage Park Place development and the blocks formed allow for the creation of lots which meet the standards of the pertinent sub-districts. These criteria are met.

(.02) Easements:

- A. Utility lines. Easements for sanitary or storm sewers, drainage, water mains, electrical lines or other public utilities shall be dedicated wherever necessary. Easements shall be provided consistent with the City's Public Works Standards, as specified by the City Engineer or Planning Director. All of the public utility lines within and adjacent to the site shall be installed within the public right-of-way or easement; with underground services extending to the private parcel constructed in conformance to the City's Public Works Standards. All franchise utilities shall be installed within a public utility easement. All utilities shall have appropriate easements for construction and maintenance purposes.
- B. Water courses. Where a land division is traversed by a water course, drainage way, channel or stream, there shall be provided a storm water easement or drainage right-of-way conforming substantially with the lines of the water course, and such further width as will be adequate for the purposes of conveying storm water and allowing for maintenance of the facility or channel. Streets or parkways parallel to water courses may be required.

**Response:** Public utilities are placed within public rights-of-way or within public utility easements (PUE) adjacent to the public streets. The tentative plat shows a public access and utility easement (PAUE) over the private alleys and tracts. Public and private utilities are expected to be constructed within public rights-of-way or within the provided utility easements. Qualifying existing overhead utilities are planned to be installed underground as feasible. Water courses are not located on the subject properties. Therefore, the applicable criteria are met.

(.03) Pedestrian and bicycle pathways. An improved public pathway shall be required to transverse the block near its middle if that block exceeds the length standards of the zone in which it is located.

- A. Pathways shall be required to connect to cul-de-sacs or to pass through unusually shaped blocks.
- B. Pathways required by this subsection shall have a minimum width of ten (10) feet unless they are found to be unnecessary for bicycle traffic, in which case they are to have a minimum width of six (6) feet.

**Response:** Due to existing tree groves slated for preservation and the layout Frog Pond Estates, currently undergoing development, the street layout originally envisioned (Figure 13 of

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the *Frog Pond West Master Plan*) must be slightly modified. The pathway shown along the western boundary of the subject site is provided as a pedestrian path through a tree preservation tract and an extension of a public street, SW Sherman Drive. The layout change is compatible with the right-of-way network created by previously approved subdivisions.

Pathways are provided within the Tract A and C Open Spaces and connecting SW Frog Pond Lane to SW Sherman Drive. The primary purposes of Tracts A and C are to preserve an existing stand of trees as well as to provide pedestrian connectivity. The primary purposes of Tracts B and D are to preserve existing tree stands and provide pedestrian connection. As such, a 10-foot-wide pathway may cause greater root disturbance than desired for the preserved trees. Alternatively, two five-foot-wide pathways are provided at the north and south edges of Tracts B and D. Tracts A and C provide for a 10-foot-wide pathway from the SW Frog Pond Lane right-of-way to SW Sherman Drive right-of-way. Heavy or sustained bicycle traffic is not expected for these pathways through Tracts B and D, as other opportunities for bicycle traffic are provided by “J Street” and SW Frog Pond Lane.

- (.04) **Tree planting.** Tree planting plans for a land division must be submitted to the Planning Director and receive the approval of the Director or Development Review Board before the planting is begun. Easements or other documents shall be provided, guaranteeing the City the right to enter the site and plant, remove, or maintain approved street trees that are located on private property.

**Response:** Proposed tree planting is shown on the Preliminary Landscape Plan (Exhibit A). Proposed street trees are located within public right-of-way planter strips and additional easements are not required.

- (.05) **Lot Size and shape.** The lot size, width, shape and orientation shall be appropriate for the location of the land division and for the type of development and use contemplated. Lots shall meet the requirements of the zone where they are located.
  - A. In areas that are not served by public sewer, an on-site sewage disposal permit is required from the City. If the soil structure is adverse to on-site sewage disposal, no development shall be permitted until sewer service can be provided.
  - B. Where property is zoned or deeded for business or industrial use, other lot widths and areas may be permitted at the discretion of the Development Review Board. Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for the off-street service and parking facilities required by the type of use and development contemplated.
  - C. In approving an application for a Planned Development, the Development Review Board may waive the requirements of this section and lot size, shape, and density shall conform to the Planned Development conditions of approval.

**Response:** The site is served by public sewer, and no on-site sewage disposal is proposed. The property is zoned for residential use and is subject to an application for a Planned Development. The site is designated RN and is subject to the standards of that zone upon

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annexation. The proposed lots meet the dimensional standards of the RN zone and the R-7 and R-10 designations as well as the general expectations of the *Frog Pond West Master Plan*. Please refer to response under WDC Section 4.127(.08). These criteria are met.

- (.06) Access. The division of land shall be such that each lot shall have a minimum frontage on a street or private drive, as specified in the standards of the relative zoning districts. This minimum frontage requirement shall apply with the following exceptions:
  - A. A lot on the outer radius of a curved street or tract with a private drive, or facing the circular end of a cul-de-sac shall have frontage of not less than twenty-five (25) feet upon a street or tract with a private drive, measured on the arc.
  - B. The Development Review Board may waive lot frontage requirements where in its judgment the waiver of frontage requirements will not have the effect of nullifying the intent and purpose of this regulation or if the Board determines that another standard is appropriate because of the characteristics of the overall development.

**Response:** The minimum lot width in the Neighborhood (RN) Zone R-7 Subdistrict is 35 feet. Within the R-10 Subdistrict, the minimum lot width is 40 feet. As shown on the Preliminary Subdivision Plan (Exhibit A), the parent lots meet the dimensional standards. Please refer to the response to Section 4.127, addressing the standards of the Residential Neighborhood zone, previously within the narrative.

The Applicant is requesting a waiver for public street frontage for Lots 4 through 9 in order to accommodate preservation of mature Oregon White Oak tree groves within Tracts A through D. Six single-family lots will have frontage on common open space with pedestrian pathways and legal lot access via private alleys. This project is a Planned Development, which allows certain flexibility with design in order to encourage preservation of natural resources. The Development Review Board can make a finding that the lot frontage requirement can be waived in the interest of a greater public benefit and an asset to the community in the form of additional usable open space, additional pedestrian connections, and additional preserved mature trees, without nullifying the intent of the regulation.

These criteria are met.

- (.07) Through lots. Through lots shall be avoided except where essential to provide separation of residential development from major traffic arteries or adjacent non-residential activity or to overcome specific disadvantages of topography and orientation. A planting screen easement of at least ten (10) feet, across which there shall be no access, may be required along the line of lots abutting such a traffic artery or other disadvantageous use. Through lots with planting screens shall have a minimum average depth of one hundred (100) feet. The Development Review Board may require assurance that such screened areas be maintained as specified in Section 4.176.

**Response:** No through lots are proposed. This standard is not applicable.

- (.08) Lot side lines. The side lines of lots, as far as practicable for the purpose of the proposed development, shall run at right angles to the street or tract with a private drive upon which the lots face.

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**Response:** Planned side lot lines run at right angles to the street or the tract upon which they face. This criterion is met.

(.09) Large lot land divisions. In dividing tracts which at some future time are likely to be re-divided, the location of lot lines and other details of the layout shall be such that re-division may readily take place without violating the requirements of these regulations and without interfering with the orderly development of streets. Restriction of buildings within future street locations shall be made a matter of record if the Development Review Board considers it necessary.

**Response:** No future development tracts are proposed in this application; therefore, this standard does not apply.

(.10) Building line. The Planning Director or Development Review Board may establish special building setbacks to allow for the future redivision or other development of the property or for other reasons specified in the findings supporting the decision. If special building setback lines are established for the land division, they shall be shown on the final plat.

**Response:** No special building setbacks are proposed; therefore, this standard does not apply.

(.11) Build-to line. The Planning Director or Development Review Board may establish special build-to lines for the development, as specified in the findings and conditions of approval for the decision. If special build-to lines are established for the land division, they shall be shown on the final plat.

**Response:** There are no maximum setbacks or build-to lines required or proposed; therefore, this standard does not apply.

(.12) Land for public purposes. The Planning Director or Development Review Board may require property to be reserved for public acquisition, or irrevocably offered for dedication, for a specified period of time.

**Response:** The City has not identified any requirements for property to be reserved for public acquisition. The development will dedicate right-of-way for the public street network. This criterion is met.

(.13) Corner lots. Lots on street intersections shall have a corner radius of not less than ten (10) feet.

**Response:** As shown on the Preliminary Street Plan (Exhibit A), lots on street intersections are planned to have corner radii of at least 10 feet. This criterion is met.

**Section 4.250 LOTS OF RECORD**

All lots of record that have been legally created prior to the adoption of this ordinance shall be considered to be legal lots. Tax lots created by the County Assessor are not necessarily legal lots of record.

**Response:** The application contains documents confirming that the properties are legal lots of record. This criterion is met.

**Section 4.262 IMPROVEMENTS - REQUIREMENTS**

(.01) Streets. Streets within or partially within the development shall be graded for the entire right-of-way width, constructed and surfaced in accordance with the Transportation Systems Plan and City Public Works Standards. Existing streets which abut the development shall be graded, constructed, reconstructed, surfaced or repaired as determined by the City Engineer.

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- (.02) Curbs. Curbs shall be constructed in accordance with standards adopted by the City.
  - (.03) Sidewalks. Sidewalks shall be constructed in accordance with standards adopted by the City.

**Response:** As shown on the Preliminary Street Plan (Exhibit A), streets will be graded, constructed, and surfaced according to the TSP, the cross sections incorporated into the *Frog Pond West Master Plan*, and the City's Public Works Standards as modified by the City Engineer. These criteria are met.

- (.04) Sanitary sewers. When the development is within two hundred (200) feet of an existing public sewer main, sanitary sewers shall be installed to serve each lot or parcel in accordance with standards adopted by the City. When the development is more than two hundred (200) feet from an existing public sewer main, the City Engineer may approve an alternate sewage disposal system.

**Response:** As shown on the Preliminary Composite Utility Plan (Exhibit A), the project connects to existing public sanitary sewer main adjacent to the site at the intersection of SW Brisband Street and SW Sherman Drive. The proposed sanitary sewer serves each lot in accordance with standards adopted by the City; therefore, this criterion is met.

- (.05) Drainage. Storm drainage, including detention or retention systems, shall be provided as determined by the City Engineer.

**Response:** Per the Preliminary Stormwater Report (Exhibit G) and as demonstrated within the Preliminary Plans (Exhibit A), storm drainage systems are being provided as outlined in the City's Public Works Standards. This criterion is met.

- (.06) Underground utility and service facilities. All new utilities shall be subject to the standards of Section 4.300 (Underground Utilities). The developer shall make all necessary arrangements with the serving utility to provide the underground services in conformance with the City's Public Works Standards.

**Response:** The standards of Section 4.300 are addressed earlier in the narrative. This criterion is met.

- (.07) Streetlight standards. Streetlight standards shall be installed in accordance with regulations adopted by the City.

**Response:** Proposed streetlight locations are shown on the Preliminary Composite Utility Plan sheet (P-09) within the Preliminary Plans (Exhibit A). Streetlights will be installed per the *Frog Pond West Master Plan* and regulations adopted by the City. This criterion will be met during construction.

- (.08) Street signs. Street name signs shall be installed at all street intersections and dead-end signs at the entrance to all dead-end streets and cul-de-sacs in accordance with standards adopted by the City. Other signs may be required by the City Engineer.

**Response:** Street signs will be installed per City standards. This criterion will be met upon sign installation.

- (.09) Monuments. Monuments shall be placed at all lot and block corners, angle points, points of curves in streets, at intermediate points and shall be of such material, size and length as required by State Law. Any monuments that are disturbed before all improvements are completed by the developer and

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accepted by the City shall be replaced to conform to the requirements of State Law.

**Response:** Monuments will be placed per State, Clackamas County, and City requirements. This criterion will be met.

(.10) Water. Water mains and fire hydrants shall be installed to serve each lot in accordance with City standards.

**Response:** Water mains and fire hydrants are proposed to serve each lot in accordance with City and Fire Department standards. Please refer to the Preliminary Composite Utility Plan (Exhibit A) for more information. This criterion will be met upon the installation of water mains and fire hydrants.

#### UNDERGROUND UTILITIES.

##### Section 4.300 GENERAL

(.02) After the effective date of this Code, the approval of any development of land within the City will be upon the express condition that all new utility lines, including but not limited to those required for power, communication, street lighting, gas, cable television services and related facilities, shall be placed underground.

(.03) The construction of underground utilities shall be subject to the City's Public Works Standards and shall meet applicable requirements for erosion control and other environmental protection.

**Response:** The project is subject to the requirements of this section.

##### Section 4.320 REQUIREMENTS

(.01) The developer or subdivider shall be responsible for and make all necessary arrangements with the serving utility to provide the underground services (including cost of rearranging any existing overhead facilities). All such underground facilities as described shall be constructed in compliance with the rules and regulations of the Public Utility Commission of the State of Oregon relating to the installation and safety of underground lines, plant, system, equipment and apparatus.

(.02) The location of the buried facilities shall conform to standards supplied to the subdivider by the City. The City also reserves the right to approve location of all surface-mounted transformers.

(.03) Interior easements (back lot lines) will only be used for storm or sanitary sewers, and front easements will be used for other utilities unless different locations are approved by the City Engineer. Easements satisfactory to the serving utilities shall be provided by the developer and shall be set forth on the plat.

**Response:** As demonstrated within the Preliminary Plans (Exhibit A), new utilities will be installed underground in accordance with City and other agency requirements. New interior utility easements are not proposed. These criteria are met.

#### SITE DESIGN REVIEW

##### Section 4.421 CRITERIA AND APPLICATION OF DESIGN STANDARDS

(.01) The following standards shall be utilized by the Board in reviewing the plans, drawings, sketches and other documents required for Site Design Review. These standards are intended to provide a frame of reference for the applicant

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in the development of site and building plans as well as a method of review for the Board. These standards shall not be regarded as inflexible requirements. They are not intended to discourage creativity, invention and innovation. The specifications of one or more particular architectural styles is not included in these standards. (Even in the Boones Ferry Overlay Zone, a range of architectural styles will be encouraged.)

A. Preservation of Landscape. The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soils removal, and any grade changes shall be in keeping with the general appearance of neighboring developed areas.

**Response:** Tracts A through D include open spaces which contain mature Oregon White Oak and evergreen trees. The site design incorporates preservation of natural landscape to the greatest degree practicable and minimizes tree removal so that healthy tree groves may be retained. This criterion is met.

B. Relation of Proposed Buildings to Environment. Proposed structures shall be located and designed to assure harmony with the natural environment, including protection of steep slopes, vegetation and other naturally sensitive areas for wildlife habitat and shall provide proper buffering from less intensive uses in accordance with Sections 4.171 and 4.139 and 4.139.5. The achievement of such relationship may include the enclosure of space in conjunction with other existing buildings or other proposed buildings and the creation of focal points with respect to avenues of approach, street access or relationships to natural features such as vegetation or topography.

**Response:** The project layout is considerate to the natural features of the site. Homes were located on the site to avoid a grove of mature Oregon White Oak trees and groves of mature evergreen trees along the western edge of the property. A pedestrian path is placed along the north and south edges of the tree grove for residents to enjoy this natural feature. This requirement is met.

C. Drives, Parking and Circulation. With respect to vehicular and pedestrian circulation, including walkways, interior drives and parking, special attention shall be given to location and number of access points, general interior circulation, separation of pedestrian and vehicular traffic, and arrangement of parking areas that are safe and convenient and, insofar as practicable, do not detract from the design of proposed buildings and structures and the neighboring properties.

**Response:** The drives, parking, and circulation within the development are subject to the requirements of the RN Zone, the Planned Development overlay, and Land Division requirements and are not subject to Site Design Review. This standard is not applicable.

D. Surface Water Drainage. Special attention shall be given to proper site surface drainage so that removal of surface waters will not adversely affect neighboring properties of the public storm drainage system.

**Response:** Please refer to Exhibit G for the Preliminary Stormwater Report. The Preliminary Street Plan (Exhibit A) shows the location of Low Impact Development Approaches (LIDA) facilities within the planter strips of the public streets, on-lot facilities, and the stormwater facility within Tract E. This criterion is met.

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- E. Utility Service. Any utility installations above ground shall be located so as to have a harmonious relation to neighboring properties and site. The proposed method of sanitary and storm sewage disposal from all buildings shall be indicated.

**Response:** As shown on the Preliminary Composite Utility Plan (Exhibit A), each lot will be served by a sanitary sewer line. Storm sewage disposal is provided by a storm drain system connecting to each on-site stormwater facility. This criterion is met.

- (.02) The standards of review outlined in Sections (a) through (g) above shall also apply to all accessory buildings, structures, exterior signs and other site features, however related to the major buildings or structures.

**Response:** This application does not include accessory buildings or exterior signs. This standard does not apply.

- (.04) Conditional application. The Planning Director, Planning Commission, Development Review Board or City Council may, as a Condition of Approval for a zone change, subdivision, land partition, variance, conditional use, or other land use action, require conformance to the site development standards set forth in this Section.

**Response:** This application includes a Zone Change and Planned Development, among other applications, and includes responses to the site development standards of those sections. Per City staff, the project elements subject to Site Design Review and the standards of this chapter are tracts and their landscaping as well as landscaping within the public right-of-way. Conformance with the applicable standards is shown; therefore, this criterion is met.

- (.05) The Board may attach certain development or use conditions in granting an approval that are determined necessary to insure the proper and efficient functioning of the development, consistent with the intent of the Comprehensive Plan, allowed densities and the requirements of this Code. In making this determination of compliance and attaching conditions, the Board shall, however, consider the effects of this action on the availability and cost of needed housing. The provisions of this section shall not be used in such a manner that additional conditions either singularly or accumulatively have the effect of unnecessarily increasing the cost of housing or effectively excluding a needed housing type.

**Response:** This single-family community has been designed in accordance with the *Frog Pond West Master Plan*, which is part of, and consistent with, the Comprehensive Plan. The site plan is consistent with allowable number of homes and other requirements established by the *Frog Pond West Master Plan* and the implementing RN zone. No additional conditions are needed to ensure that the project remains consistent with the City's adopted policies. This criterion is met.

- (.06) The Board or Planning Director may require that certain paints or colors of materials be used in approving applications. Such requirements shall only be applied when site development or other land use applications are being reviewed by the City.

- A. Where the conditions of approval for a development permit specify that certain paints or colors of materials be used, the use of those paints or colors shall be binding upon the applicant. No Certificate of Occupancy shall be granted until compliance with such conditions has been verified.

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- B. Subsequent changes to the color of a structure shall not be subject to City review unless the conditions of approval under which the original colors were set included a condition requiring a subsequent review before the colors could be changed.

**Response:** This project is an attached single-family community. Colors and materials have not been identified in the design standards of the *Frog Pond West Master Plan*. It is anticipated that building elevations, including paint and material colors, will be evaluated at the time of building permit review; however, example home elevations and floor plans have been provided as part of Exhibit M. As applicable, these criteria are met.

Section 4.440 PROCEDURE

(.01) Submission of Documents. A prospective applicant for a building or other permit who is subject to site design review shall submit to the Planning Department, in addition to the requirements of Section 4.035, the following:

- A. A site plan, drawn to scale, showing the proposed layout of all structures and other improvements including, where appropriate, driveways, pedestrian walks, landscaped areas, fences, walls, offstreet parking and loading areas, and railroad tracks. The site plan shall indicate the location of entrances and exits and direction of traffic flow into and out of off-street parking and loading areas, the location of each parking space and each loading berth and areas of turning and maneuvering vehicles. The site plan shall indicate how utility service and drainage are to be provided.

**Response:** The Preliminary Plans (Exhibit A) provide the information listed above, as applicable. This criterion is met.

- B. A Landscape Plan, drawn to scale, showing the location and design of landscaped areas, the variety and sizes of trees and plant materials to be planted on the site, the location and design of landscaped areas, the varieties, by scientific and common name, and sizes of trees and plant materials to be retained or planted on the site, other pertinent landscape features, and irrigation systems required to maintain trees and plant materials. An inventory, drawn at the same scale as the Site Plan, of existing trees of 4" caliper or more is required. However, when large areas of trees are proposed to be retained undisturbed, only a survey identifying the location and size of all perimeter trees in the mass is necessary.

**Response:** The Preliminary Landscape Plan and Preliminary Tree Preservation and Removal Plan (Exhibit A) are included with this application. The plans provide the information required; therefore, this criterion is met.

- C. Architectural drawings or sketches, drawn to scale, including floor plans, in sufficient detail to permit computation of yard requirements and showing all elevations of the proposed structures and other improvements as they will appear on completion of construction. Floor plans shall also be provided in sufficient detail to permit computation of yard requirements based on the relationship of indoor versus outdoor living area, and to evaluate the floor plan's effect on the exterior design of the building through the placement and configuration of windows and doors.

**Response:** Example building elevations and floor plans are included as Exhibit M. This criterion is met.

- D. A Color Board displaying specifications as to type, color, and texture of exterior surfaces of proposed structures. Also, a phased development schedule if the development is constructed in stages.
- E. A sign Plan, drawn to scale, showing the location, size, design, material, color and methods of illumination of all exterior signs.
- F. The required application fee.

**Response:** A color board is not included, as exterior dwelling design will be evaluated at the time of building permit review. No signs are proposed at this time. The required application fee has been submitted with this application. Phasing of the development is planned to occur as follows:

Phase 1: 2024-2026

Phase 2: 2025-2027

These criteria are met.

### TREE PRESERVATION AND PROTECTION

#### Section 4.600.30 TREE REMOVAL PERMIT REQUIRED

- (.01) Requirement Established. No person shall remove any tree without first obtaining a Tree Removal Permit (TRP) as required by this subchapter.
- (.02) Tree Removal Permits will be reviewed according to the standards provided for in this subchapter, in addition to all other applicable requirements of Chapter 4.
- (.03) Although tree activities in the Willamette River Greenway are governed by WC 4.500 - 4.514, the application materials required to apply for a conditional use shall be the same as those required for a Type B or C permit under this subchapter, along with any additional materials that may be required by the Planning Department. An application for a Tree Removal Permit under this section shall be reviewed by the Development Review Board.

**Response:** As shown on the Preliminary Tree Preservation and Removal Plan included in Exhibit A, the development will remove trees and a Tree Removal Permit is required.

#### Section 4.600.50 APPLICATION FOR TREE REMOVAL PERMIT

- (.01) Application for Permit. A person seeking to remove one or more trees shall apply to the Director for a Tree Removal Permit for a Type A, B, C, or D permit, depending on the applicable standards as provided in this subchapter.
  - A. An application for a tree removal permit that does not meet the requirements of Type A may be submitted as a Type B application.
- (.02) Time of Application. Application for a Tree Removal Permit shall be made before removing or transplanting trees, except in emergency situations as provided in WC 4.600.40 (1)(B) above. Where the site is proposed for development necessitating site plan or plat review, application for a Tree Removal Permit shall be made as part of the site development application as specified in this subchapter.
- (.03) Fees. A person applying for a Tree Removal Permit shall pay a non-refundable application fee; as established by resolution of the City Council.
  - A. By submission of an application, the applicant shall be deemed to have authorized City representatives to have access to applicant's property as may be needed to verify the information provided, to

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observe site conditions, and if a permit is granted, to verify that terms and conditions of the permit are followed.

**Response:** The project application includes a Type C Removal Plan for Design Review Board review and approval. The necessary Tree Removal Permit application forms, information, and fees have been submitted for review. These criteria are met.

Section 4.610.00 APPLICATION REVIEW PROCEDURE

- (.01) The permit applicant shall provide complete information as required by this subchapter in order for the City to review the application.
- (.02) Departmental Review. All applications for Tree Removal Permits must be deemed complete by the City Planning Department before being accepted for review. When all required information has been supplied, the Planning Department will verify whether the application is complete. Upon request of either the applicant or the City, the City may conduct a field inspection or review meeting. City departments involved in the review shall submit their report and recommendations to the Planning Director who shall forward them to the appropriate reviewing authority.
- (.03) Reviewing Authority.
  - A. Type A or B. Where site plan review or plat approval by the Development Review Board is not required by City ordinance, the grant or denial of the Tree Removal Permit application shall be the responsibility of the Planning Director. The Planning Director has the authority to refer a Type B permit application to the DRB under the Class II administrative review procedures of this Chapter. The decision to grant or deny a permit shall be governed by the applicable review standards enumerated in WC 4.610.10
  - B. Type C. Where the site is proposed for development necessitating site plan review or plat approval by the Development Review Board, the Development Review Board shall be responsible for granting or denying the application for a Tree Removal Permit, and that decision may be subject to affirmance, reversal or modification by the City Council, if subsequently reviewed by the Council.
  - C. Type D. Type D permit applications shall be subject to the standards and procedures of Class I administrative review and shall be reviewed for compliance with the Oregon Forest Practice Rules and Statutes. The Planning Director shall make the decision to grant or deny an application for a Type D permit.
  - D. Review period for complete applications. Type A permit applications shall be reviewed within 10 (ten) working days. Type B permit applications shall be reviewed by the Planning Director within thirty (30) calendar days, except that the DRB shall review any referred application within sixty (60) calendar days. Type C permit applications shall be reviewed within the time frame established by this Chapter. Type D permit applications shall be reviewed within 15 calendar days.

**Response:** It is understood that the application is for a Type C Tree Removal Plan and is subject to review and approval by the Design Review Board.

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Section 4.610.10 STANDARDS FOR TREE REMOVAL, RELOCATION OR REPLACEMENT

(.01) Except where an application is exempt, or where otherwise noted, the following standards shall govern the review of an application for a Type A, B, C or D Tree Removal Permit:

[...]

B. Preservation and Conservation. No development application shall be denied solely because trees grow on the site. Nevertheless, tree preservation and conservation as a design principle shall be equal in concern and importance to other design principles.

C. Developmental Alternatives. Preservation and conservation of wooded areas and trees shall be given careful consideration when there are feasible and reasonable location alternatives and design options on-site for proposed buildings, structures or other site improvements.

**Response:** The site layout is based on and limited by factors such as allowable residential densities, lot dimensional standards, and circulation network established in the *Frog Pond West Master Plan*. The existing trees are planned to be preserved to the greatest extent practicable while meeting the objectives of the project and meeting the Development Code requirements. These preservation areas follow the guidance provided by Figure 15 of the *Frog Pond West Master Plan*. Therefore, this criterion is met.

D. Land Clearing. Where the proposed activity requires land clearing, the clearing shall be limited to designated street rights-of-way and areas necessary for the construction of buildings, structures or other site improvements.

**Response:** The proposed land clearing is limited to designated street rights-of-way and areas necessary for the construction of single-family homes. This criterion is met.

E. Residential Development. Where the proposed activity involves residential development, residential units shall, to the extent reasonably feasible, be designed and constructed to blend into the natural setting of the landscape.

**Response:** This project is a single-family residential neighborhood. The homes will be designed and constructed, as much as possible, to blend into the natural areas on the site. This criterion is met.

F. Compliance with Statutes and Ordinances. The proposed activity shall comply with all applicable statutes and ordinances.

**Response:** Applicable statutes and ordinances include the City's Development Code. The proposed activity will comply with this Code and any other applicable statutes and ordinances. This criterion is met.

G. Relocation or Replacement. The proposed activity shall include necessary provisions for tree relocation or replacement, in accordance with WC 4.620.00, and the protection of those trees that are not to be removed, in accordance with WC 4.620.10.

**Response:** As shown on the Preliminary Tree Preservation and Removal Plan, trees to be retained will be protected per the provisions of 4.620.10 and trees will be replaced in accordance

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with 4.620.00. Those provisions are addressed in the responses to WDC Section 4.620 later in this narrative. Therefore, this criterion is met.

H. **Limitation.** Tree removal or transplanting shall be limited to instances where the applicant has provided completed information as required by this Chapter and the reviewing authority determines that removal or transplanting is necessary based on the criteria of this subsection.

1. **Necessary For Construction.** Where the applicant has shown to the satisfaction of the reviewing authority that removal or transplanting is necessary for the construction of a building, structure or other site improvement, and that there is no feasible and reasonable location alternative or design option on-site for a proposed building, structure or other site improvement; or a tree is located too close to existing or proposed buildings or structures, or creates unsafe vision clearance.

**Response:** As shown on the Preliminary Tree Preservation and Removal Plan (Exhibit A) and the associated Preliminary Tree Preservation and Removal Table included in the Preliminary Plans (Exhibit A), there are 99 existing trees on-site, four line trees, and 49 off-site trees. Of those trees, five are in poor or declining condition. Removal of 53 on-site trees and two off-site trees is necessary for construction of site improvements, including utilities, stormwater pond, public streets, and single-family homes. The location of public streets and connections, as well as minimum and maximum residential density and dimensional standards of residential lots, are determined by the requirements of the *Frog Pond West Master Plan*. The construction of this project is anticipated by the *Frog Pond West Master Plan*. The trees will be replaced on-site with a variety of native trees that will be planted in the open space tract. Additionally, street trees in the right-of-way planter strips will serve to soften the urban environment, contribute to stormwater management, and provide shade and protection for pedestrians. These criteria are met.

2. **Disease, Damage, or Nuisance, or Hazard.** Where the tree is diseased, damaged, or in danger of falling, or presents a hazard as defined in WC 6.208, or is a nuisance as defined in WC 6.200 et seq., or creates unsafe vision clearance as defined in this Code.

(a) As a condition of approval of Stage II development, filbert trees must be removed if they are no longer commercially grown or maintained.

3. **Interference.** Where the tree interferes with the healthy growth of other trees, existing utility service or drainage, or utility work in a previously dedicated right-of-way, and it is not feasible to preserve the tree on site.

4. **Other.** Where the applicant shows that tree removal or transplanting is reasonable under the circumstances.

I. **Additional Standards for Type C Permits.**

1. **Tree survey.** For all site development applications reviewed under the provisions of Chapter 4 Planning and Zoning, the developer shall provide a Tree Survey before site development as required by WC 4.610.40, and provide a Tree

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Maintenance and Protection plan, unless specifically exempted by the Planning Director or DRB, prior to initiating site development.

**Response:** A tree survey has been completed and incorporated into the Tree Preservation and Removal Plan (Exhibit A). Therefore, this criterion is met.

2. **Platted Subdivisions.** The recording of a final subdivision plat whose preliminary plat has been reviewed and approved after the effective date of Ordinance 464 by the City and that conforms with this subchapter shall include a Tree Survey and Maintenance and Protection Plan, as required by this subchapter, along with all other conditions of approval.

**Response:** This application includes a preliminary plat (Exhibit A). Following the approval of this application, the Applicant will submit a final subdivision plat, which will include a Tree Survey and Maintenance Protection Plan, pursuant to the Code requirements. This criterion is met.

3. **Utilities.** The City Engineer shall cause utilities to be located and placed wherever reasonably possible to avoid adverse environmental consequences given the circumstances of existing locations, costs of placement and extensions, the public welfare, terrain, and preservation of natural resources. Mitigation and/or replacement of any removed trees shall be in accordance with the standards of this subchapter.

**Response:** The utilities will be located and placed within rights-of-way or adjacent PUEs whenever possible. Existing overhead utilities will be installed underground as necessary and feasible to meet City requirements. Trees removed from the site will be mitigated and/or replaced per the provisions of 4.620.00. This criterion is met.

[...]

Section 4.610.40 TYPE C PERMIT

- (.01) Approval to remove any trees on property as part of a site development application may be granted in a Type C permit. A Type C permit application shall be reviewed by the standards of this subchapter and all applicable review criteria of Chapter 4. Application of the standards of this section shall not result in a reduction of square footage or loss of density, but may require an applicant to modify plans to allow for buildings of greater height. If an applicant proposes to remove trees and submits a landscaping plan as part of a site development application, an application for a Tree Removal Permit shall be included. The Tree Removal Permit application will be reviewed in the Stage II development review process, and any plan changes made that affect trees after Stage II review of a development application shall be subject to review by DRB. Where mitigation is required for tree removal, such mitigation may be considered as part of the landscaping requirements as set forth in this Chapter. Tree removal shall not commence until approval of the required Stage II application and the expiration of the appeal period following that decision. If a decision approving a Type C permit is appealed, no trees shall be removed until the appeal has been settled.

**Response:** As described above, removal of 53 onsite trees is necessary for construction associated with this site development application. A Preliminary Landscape Plan and an application

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for a Tree Removal Permit are included in this application. The Preliminary Landscape Plan (Exhibit A) indicates mitigation trees will be planted in the open space tract, in addition to street trees in the public rights-of-way. These criteria are met.

(.02) The applicant must provide ten copies of a Tree Maintenance and Protection Plan completed by an arborist that contains the following information:

A. A plan, including a topographical survey bearing the stamp and signature of a qualified, registered professional containing all the following information:

1. Property Dimensions. The shape and dimensions of the property, and the location of any existing and proposed structure or improvement.

2. Tree survey. The survey must include:

a. An accurate drawing of the site based on accurate survey techniques at a minimum scale of one inch (1") equals one hundred feet (100') and which provides a) the location of all trees having six inches (6") or greater d.b.h. likely to be impacted, b) the spread of canopy of those trees, (c) the common and botanical name of those trees, and d) the approximate location and name of any other trees on the property.

b. A description of the health and condition of all trees likely to be impacted on the site property. In addition, for trees in a present or proposed public street or road right-of-way that are described as unhealthy, the description shall include recommended actions to restore such trees to full health. Trees proposed to remain, to be transplanted or to be removed shall be so designated. All trees to remain on the site are to be designated with metal tags that are to remain in place throughout the development. Those tags shall be numbered, with the numbers keyed to the tree survey map that is provided with the application.

c. Where a stand of twenty (20) or more contiguous trees exist on a site and the applicant does not propose to remove any of those trees, the required tree survey may be simplified to accurately show only the perimeter area of that stand of trees, including its drip line. Only those trees on the perimeter of the stand shall be tagged, as provided in "b," above.

d. All Oregon white oaks, native yews, and any species listed by either the state or federal government as rare or endangered shall be shown in the tree survey.

3. Tree Protection. A statement describing how trees intended to remain will be protected during development, and where protective barriers are necessary, that they will be erected before work starts. Barriers shall be sufficiently substantial

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to withstand nearby construction activities. Plastic tape or similar forms of markers do not constitute "barriers."

4. Easements and Setbacks. Location and dimension of existing and proposed easements, as well as all setbacks required by existing zoning requirements.
5. Grade Changes. Designation of grade changes proposed for the property that may impact trees.
6. Cost of Replacement. A cost estimate for the proposed tree replacement program with a detailed explanation including the number, size and species.
7. Tree Identification. A statement that all trees being retained will be identified by numbered metal tags, as specified in subsection "A," above in addition to clear identification on construction documents.

**Response:** A Preliminary Tree Preservation and Removal Plan is included in the Preliminary Plans (Exhibit A). It includes a tree survey indicating the location of trees greater than 6-inch diameter at breast height (DBH), information about the condition of the trees, crown diameter, and proposed action for each tree. The plan also includes a statement identifying the purpose of the tree tags. Please refer to the Preliminary Existing Conditions Plan (Exhibit A) prepared by a professional surveyor for the location of existing structures and improvements. Please refer to the Preliminary Dimensioned Subdivision Site Plan and Preliminary Dimensioned Subdivision Middle Housing Plan (Exhibit A) for the location of proposed improvements and setbacks. Since tree replacement requirement is proposed to be fully satisfied on-site, payment into the tree replacement fund is not proposed; therefore, the cost estimate requirement is not applicable. Should tree replacement onsite prove infeasible, a cost estimate will be provided for payment into the tree replacement fund. The other listed applicable criteria are met.

#### Section 4.620.00 TREE RELOCATION, MITIGATION, OR REPLACEMENT

- (.01) Requirement Established. A Type B or C Tree Removal Permit grantee shall replace or relocate each removed tree having six (6) inches or greater d.b.h. within one year of removal.
- (.02) Basis for Determining Replacement. The permit grantee shall replace removed trees on a basis of one (1) tree replanted for each tree removed. All replacement trees must measure two inches (2") or more in diameter. Alternatively, the Planning Director or Development Review Board may require the permit grantee to replace removed trees on a per caliper inch basis, based on a finding that the large size of the trees being removed justifies an increase in the replacement trees required. Except, however, that the Planning Director or Development Review Board may allow the use of replacement Oregon white oaks and other uniquely valuable trees with a smaller diameter.

**Response:** The Preliminary Landscape Plan (Exhibit A) includes replacement trees at a 1:1 ratio. Project construction requires removal of 53 onsite trees. Replacement trees proposed to be planted in the planned open space tracts, in addition to street trees. All replacement trees are planned to measure a minimum of 2 inches in diameter. This criterion is met.

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- (.03) Replacement Tree Requirements. A mitigation or replacement tree plan shall be reviewed by the City prior to planting and according to the standards of this subsection.
- A. Replacement trees shall have shade potential or other characteristics comparable to the removed trees, shall be appropriately chosen for the site from an approved tree species list supplied by the City, and shall be state Department of Agriculture Nursery Grade No. 1 or better.
  - B. Replacement trees must be staked, fertilized and mulched, and shall be guaranteed by the permit grantee or the grantee's successors-in-interest for two (2) years after the planting date.
  - C. A "guaranteed" tree that dies or becomes diseased during that time shall be replaced.
  - D. Diversity of tree species shall be encouraged where trees will be replaced, and diversity of species shall also be maintained where essential to preserving a wooded area or habitat.

**Response:** The replacement trees have been selected by a professional landscape architect to meet the above requirements. Mitigation trees have been chosen from the approved tree list to provide comparable shade potential and other characteristics where the trees will be planted. These criteria are met.

(.04) All trees to be planted shall consist of nursery stock that meets requirements of the American Association of Nurserymen (AAN) American Standards for Nursery Stock (ANSI Z60.1) for top grade.

(.05) Replacement Tree Location.

- A. City Review Required. The City shall review tree relocation or replacement plans in order to provide optimum enhancement, preservation and protection of wooded areas. To the extent feasible and desirable, trees shall be relocated or replaced on-site and within the same general area as trees removed.
- B. Relocation or Replacement Off-Site. When it is not feasible or desirable to relocate or replace trees on-site, relocation or replacement may be made at another location approved by the City.

**Response:** Replacement tree locations are shown on the Preliminary Landscape Plan (Exhibit A). Therefore, these criteria are met.

(.06) City Tree Fund. Where it is not feasible to relocate or replace trees on site or at another approved location in the City, the Tree Removal Permit grantee shall pay into the City Tree Fund, which fund is hereby created, an amount of money approximately the value as defined by this subchapter, of the replacement trees that would otherwise be required by this subchapter. The City shall use the City Tree Fund for the purpose of producing, maintaining and preserving wooded areas and heritage trees, and for planting trees within the City.

- A. The City Tree Fund shall be used to offer trees at low cost on a first-come, first-serve basis to any Type A Permit grantee who requests a tree and registers with the City Tree Fund.
- B. In addition, and as funds allow, the City Tree Fund shall provide educational materials to assist with tree planting, mitigation, and relocation.

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**Response:** The Applicant intends to replace the trees on-site, where feasible. Where trees cannot be replaced on-site or at an approved off-site location, a contribution to the City Tree Fund will be provided.

- (.07) Exception. Tree replacement may not be required for applicants in circumstances where the Director determines that there is good cause to not so require. Good cause shall be based on a consideration of preservation of natural resources, including preservation of mature trees and diversity of ages of trees. Other criteria shall include consideration of terrain, difficulty of replacement and impact on adjacent property.

**Response:** The Applicant is not requesting an exception to the tree replacement requirement. As such, this standard does not apply to the application.

**Section 4.620.10 TREE PROTECTION DURING CONSTRUCTION**

- (.01) Where tree protection is required by a condition of development under Chapter 4 or by a Tree Maintenance and Protection Plan approved under this subchapter, the following standards apply:
- A. All trees required to be protected must be clearly labeled as such.
  - B. **Placing Construction Materials Near Tree.** No person may conduct any construction activity likely to be injurious to a tree designated to remain, including, but not limited to, placing solvents, building material, construction equipment, or depositing soil, or placing irrigated landscaping, within the drip line, unless a plan for such construction activity has been approved by the Planning Director or Development Review Board based upon the recommendations of an arborist.
  - C. **Attachments to Trees During Construction.** Notwithstanding the requirement of WC 4.620.10(1)(A), no person shall attach any device or wire to any protected tree unless needed for tree protection.
  - D. **Protective Barrier.** Before development, land clearing, filling or any land alteration for which a Tree Removal Permit is required, the developer shall erect and maintain suitable barriers as identified by an arborist to protect remaining trees. Protective barriers shall remain in place until the City authorizes their removal or issues a final certificate of occupancy, whichever occurs first. Barriers shall be sufficiently substantial to withstand nearby construction activities. Plastic tape or similar forms of markers do not constitute "barriers." The most appropriate and protective barrier shall be utilized. Barriers are required for all trees designated to remain, except in the following cases:
    - 1. **Right-of-Ways and Easements.** Street right-of-way and utility easements may be cordoned by placing stakes a minimum of fifty (50) feet apart and tying ribbon, plastic tape, rope, etc., from stake to stake along the outside perimeters of areas to be cleared.
    - 2. Any property area separate from the construction or land clearing area onto which no equipment will venture may also be cordoned off as described in paragraph (D) of this subsection, or by other reasonable means as approved by the reviewing authority.

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**Response:** The Preliminary Tree Preservation and Removal Plan (Exhibit A) provides direction regarding the protection of trees on the site. The applicable standards will be included on the construction documents as well. These criteria are met.

#### ANNEXATIONS AND URBAN GROWTH BOUNDARY AMENDMENTS

##### Section 4.700 PROCEDURES RELATING TO THE PROCESSING OF REQUESTS FOR ANNEXATION AND URBAN GROWTH BOUNDARY AMENDMENTS.

(.01) The City of Wilsonville is located within the Portland Metropolitan Area, and is therefore subject to regional government requirements affecting changes to the city limits and changes to the Urban Growth Boundary (UGB) around Wilsonville. The City has the authority to annex properties as prescribed in State law, but the City's role in determining the UGB is primarily advisory to Metro, as provided in Oregon Revised Statutes. The following procedures will be used to aid the City Council in formulating recommendations to those regional entities.

A. Proponents of such changes shall provide the Planning Director with all necessary maps and written information to allow for review by city decision-makers. The Planning Director, after consultation with the City Attorney, will determine whether each given request is quasi-judicial or legislative in nature and will make the necessary arrangements for review based upon that determination.

**Response:** The Applicant has provided the required information. The Planning Director has determined that the annexation request is subject to quasi-judicial review. This criterion is met.

B. Written information submitted with each request shall include an analysis of the relationship between the proposal and the City's Comprehensive Plan, applicable statutes, as well as the Statewide Planning Goals and any officially adopted regional plan that may be applicable.

**Response:** Please refer to the responses addressing compliance with the relevant Statewide Planning Goals, City of Wilsonville Comprehensive Plan goals, *Frog Pond West Master Plan*, and applicable sections of the City of Wilsonville Development Code. This criterion is met.

#### IV. Conclusion

The required findings have been made and this written narrative and accompanying documentation demonstrate that the application is consistent with the applicable standards of the City of Wilsonville. The evidence in the record is substantial and supports approval of the application. Therefore, the Applicant respectfully requests that the City approve this Consolidated Land Use Application.

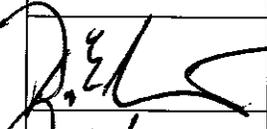
## **Exhibit B: Land Use Application Forms & Annexation Petitions (Updated Nov 2023)**

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## PETITION FOR ANNEXATION

We, the undersigned owner(s) of the property described in **Exhibit A** and/or elector(s) residing at the referenced location(s), hereby petition for, and give consent to, Annexation of said property to the City of Wilsonville:

**NOTE: This petition may be signed by any qualified persons even though they may not know their property description or precinct number.**

SIGNATURE	PRINTED NAME	I AM A: *			PROPERTY ADDRESS	PROPERTY DESCRIPTION				PRECINCT #	DATE
		PO	RV	OV		LOT #	¼ SEC	T	R		
	BRIAN MATTEONI				7252 SW Frog Pond Lane Wilsonville, OR 97070	1200	12	3S	1W	323	
	BRIAN MATTEONI				No Situs	1300	12	3S	1W	323	

- \* PO - Property Owner
- RV - Registered Voter
- OV - Property Owner & Registered Voter

## **Exhibit C: Title Report**

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Clackamas County Official Records **2021-041768**  
 Sherry Hall, County Clerk 04/22/2021 03:57:01 PM  
 D-D Cnt=1 Str=74 MELISSA  
 \$15.00 \$16.00 \$10.00 \$62.00 \$103.00

RECORDING REQUESTED BY:



9200 SE Sunnybrook Blvd., Ste 130  
 Clackamas, OR 97015

**GRANTOR'S NAME:**  
 Brian E. Matteoni, Kristi Matteoni and Norman E. Matteoni

**GRANTEE'S NAME:**  
 Sullivan Homes, LLC, a California limited liability company

**AFTER RECORDING RETURN TO:**  
 Sullivan Homes, LLC, a California limited liability company  
 6832 Firestone Court  
 San Jose, CA 95138

**SEND TAX STATEMENTS TO:**  
 Sullivan Homes, LLC, a California limited liability company  
 6832 Firestone Court  
 San Jose, CA 95138

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**BARGAIN AND SALE DEED - STATUTORY FORM**  
 (INDIVIDUAL or CORPORATION)

Brian E. Matteoni and Kristi Matteoni and Norman E. Matteoni, Grantor conveys to Sullivan Homes, LLC, a California limited liability company Grantee, the following described real property, situated in the County of Clackamas, State of Oregon,

See attached Exhibit "A"

The true consideration for this conveyance is (\$-0-). (See ORS 93.030).

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

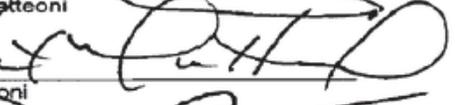
TT ACC 2104-12  
 TICOR TITLE  
 Courtesy Only-Not Examined

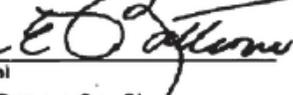
**BARGAIN AND SALE DEED - STATUTORY FORM**  
(continued)

IN WITNESS WHEREOF, the undersigned have executed this document on the date(s) set forth below.

Dated: 4/9/2024

  
Brian E. Matteoni

  
Kristi Matteoni

  
Norman E. Matteoni

State of California  
County of Santa Clara

This instrument was acknowledged before me on 4/9/2021 by Brian E. Matteoni and Kristi Matteoni and Norman E. Matteoni.

  
Notary Public - State of ~~Oregon~~ California

My Commission Expires: 1/5/2024



**LEGAL DESCRIPTION**

**PARCEL I**

Part of Section 12, Township 3 South, Range 1 West, of the Willamette Meridian, in the County of Clackamas and State of Oregon, more particularly described as follows:

That land bounded by a line beginning 858 feet North and 1553.10 feet West of the Southeast corner of said Section 12; thence South 89°46'52" West 254.08 feet to the Southwest corner of the land conveyed to Robert C. Moritz and Robin L. Moritz by Deed recorded January 24, 1989, Fee No. 89-03381; thence North 00°02'40" East along the West line of the Moritz land 858.00 feet to the Northwest corner thereof and the true point of beginning; thence West parallel to the South line of said Section 12, a distance of 253.62 feet to the Northwest corner of the land conveyed to First Federal Savings and Loan Association of Vancouver, Vancouver, Washington by Deed recorded July 11, 1962 in Book 606, Page 578; thence South along the West line of First Federal Savings and Loan Association's land 214.5 feet; thence East parallel to the South line of said Section 12, a distance of 253.62 feet to the West line of the aforementioned Moritz tract; thence North 00°02'40" East along said West line 214.5 feet to the true point of beginning.

**PARCEL II:**

Part of Section 12, Township 3 South, Range 1 West, of the Willamette Meridian, in the County of Clackamas and State of Oregon, more particularly described as follows: That land bounded by a line beginning 858 feet North and 1553.10 feet West of the Southeast corner of said Section 12; thence South 89°46'52" West 254.08 feet to the true point of beginning, said point also being the Southwest corner of the land conveyed to Robert C. Moritz and Robin L. Moritz by Deed recorded January 24, 1989, Fee No. 89-03381; thence North 00°02'40" East along the East line of the Moritz land 858.00 feet to the Northwest corner thereof; thence West parallel to the South line of said Section 12, 253.62 feet to the Northwest corner of the land conveyed to First Federal Savings and Loan Association of Vancouver, Vancouver, Washington by Deed recorded July 11, 1962 in Book 606, Page 578; thence South along the West line of First Federal Savings and Loan Association's land 858 feet to the Southwest corner thereof; thence East parallel to the South line of said Section 12, 253.62 feet to the true point of beginning.

EXCEPT the following described tract:

Part of Section 12, Township 3 South, Range 1 West, of the Willamette Meridian, in the County of Clackamas and State of Oregon, more particularly described as follows:

That land bounded by a line beginning 858 feet North and 1553.10 feet West of the Southeast corner of said Section 12; thence South 89°46'52" West 254.08 feet to the Southwest corner of the land conveyed to Robert C. Moritz and Robin L. Moritz by Deed recorded January 24, 1989, Fee No. 89-03381; thence North 00°02'40" East along the West line of the Moritz land 858.00 feet to the Northwest corner thereof and the true point of beginning; thence West parallel to the South line of said Section 12, a distance of 253.62 feet to the Northwest corner of the land conveyed to First Federal Savings and Loan Association of Vancouver, Vancouver, Washington by Deed recorded July 11, 1962 in Book 606, Page 578; thence South along the West line of First Federal Savings and Loan Association's land 214.5 feet; thence East parallel to the South line of said Section 12, a distance of 253.62 feet to the West line of the aforementioned Moritz tract; thence North 00°02'40" East along said West line 214.5 feet to the true point of beginning.

## **Exhibit D: Clackamas County Assessor's Map**

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## **Exhibit E: Traffic Impact Study**

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# TECHNICAL MEMORANDUM

DATE: September 16, 2022

TO: Amy Pepper, PE | City of Wilsonville

FROM: Scott Mansur, PE, PTOE | DKS Associates  
 Jenna Bogert, PE | DKS Associates  
 Travis Larson, EI | DKS Associates



SUBJECT: Frog Pond West Matteoni Subdivision – Trip Generation Evaluation P21123-007

## INTRODUCTION

This memorandum evaluates the trip generation associated with the proposed Frog Pond West Matteoni housing development to be located near 7252 Frog Pond Lane in Wilsonville, Oregon. The developer desires to construct 34 single-family attached homes as part of the Frog Pond West Master Plan.<sup>1</sup> The property is in unincorporated Clackamas County but within the City’s Urban Growth Boundary (UGB) and will be annexed to the City of Wilsonville as part of the project.

The purpose of this memorandum is to provide the estimated vehicle trip generation for the proposed development, to identify potential operational impacts to the primary gateway intersection to the property, and to evaluate the proposed site plan for potential safety issues and consistency with City planning documents. The study intersection, Stafford Road/Frog Pond Lane, is shown in Figure 1.

While traffic operations analysis is not required for a trip generation evaluation, the Stafford Road/Frog Pond Lane intersection was selected for analysis as it is the intersection most impacted by the increase in vehicle trips from the development and is the only gateway intersection to Frog Pond West that has been documented to operate close to the City operating standard in the near future. Other gateway intersections, such as Boeckman Road/Sherman Drive, were not included in this analysis as the trips through those intersections would be insignificant and located at non-critical gateways.



**FIGURE 1: STUDY AREA**

<sup>1</sup> Frog Pond West Master Plan, City of Wilsonville, Adopted July 2017.

## TRIP GENERATION

The Institute of Transportation Engineers (ITE) trip generation rates for Single-Family Detached Housing (210) and Single-Family Attached Housing (215) were used to estimate the site's trip generation, which is based on the number of lots in the development.<sup>2</sup> As one home will be removed from the site during construction, the trips from that home have been subtracted from the total trips. As shown in Table 1, the proposed development is expected to generate a net total 15 PM peak hour trips (8 in, 7 out).

**TABLE 1: VEHICLE TRIP GENERATION**

LAND USE	ITE DESCRIPTION (CODE)	UNITS	PM PEAK TRIP RATE <sup>A</sup>	PM PEAK TRIPS			WEEKDAY
				IN	OUT	TOTAL	
NEW HOMES	SINGLE-FAMILY ATTACHED HOUSING (215)	34 Lots	0.47 trips/lot	9	7	16	209
EXISTING HOME REMOVED	SINGLE-FAMILY DETACHED HOUSING (210)	1 Lot	1.00 trips/lot	-1	-0	-1	-15
<b>TOTAL NET NEW TRIPS</b>				<b>8</b>	<b>7</b>	<b>15</b>	<b>194</b>

<sup>A</sup> PM peak trip rate is back-calculated from the fitted curve equation

## PROJECT TRIP DISTRIBUTION

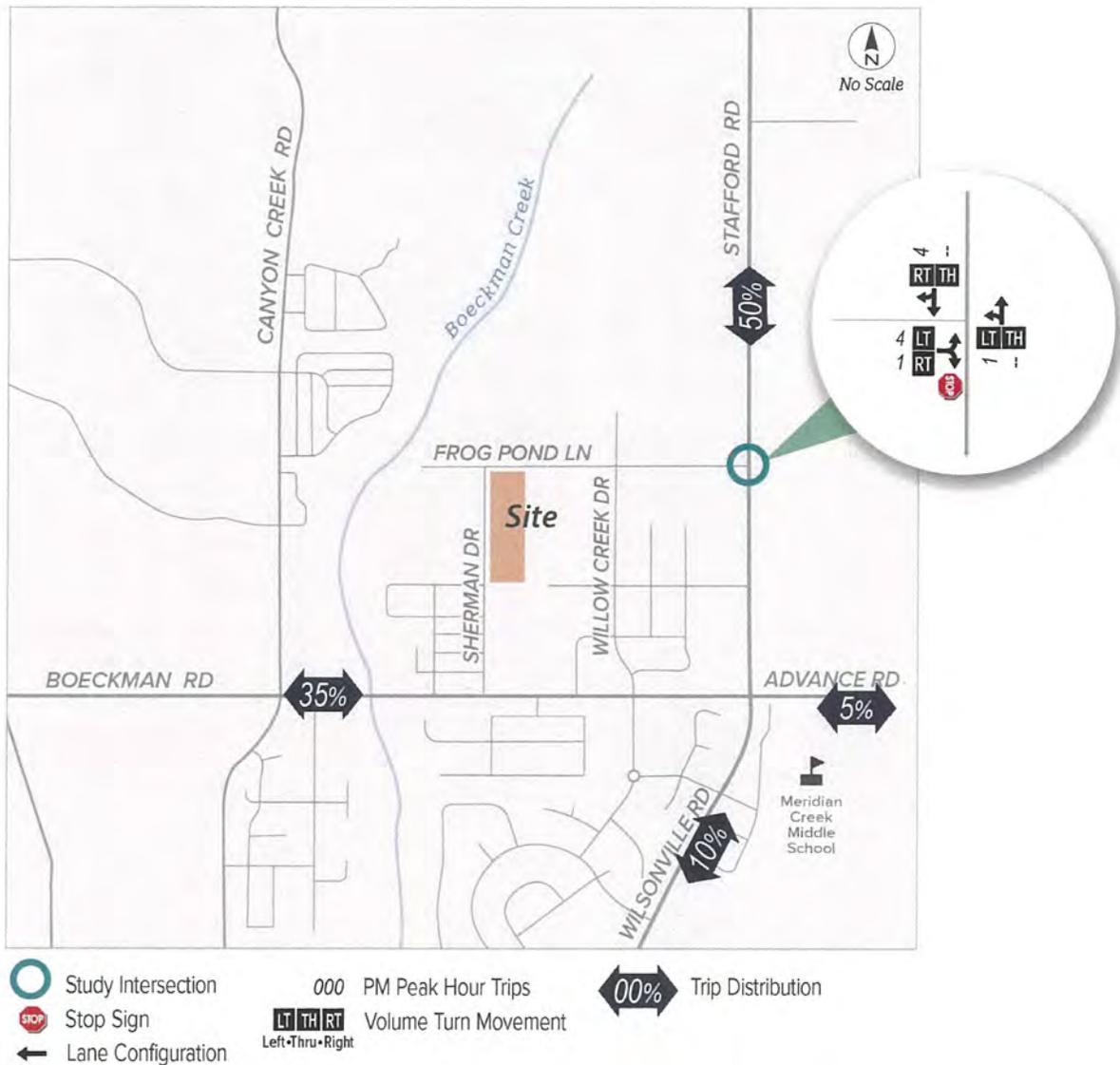
The project trips were distributed based on data from the Wilsonville Travel Demand Model and previous Frog Pond traffic analyses.<sup>3</sup> It is estimated that 50% of trips utilize Stafford Road to/from the north, 35% of trips utilize Boeckman Road to/from the west, 10% of trips utilize Wilsonville Road to/from the south, and 5% of trips utilize Advance Road to/from the east. The project trips and distribution are shown in Figure 2.

## PROJECT TRIPS THROUGH CITY OF WILSONVILLE INTERCHANGE AREAS

The project trips through the two City of Wilsonville I-5 interchange areas were estimated based on the trip generation and distribution assumptions. Approximately 5% (1 PM trip) of the project trips are expected to travel through the I-5/Wilsonville Road interchange area and 5% (1 PM trip) are expected to travel through the I-5/Elligsen Road interchange area.

<sup>2</sup> Trip Generation Manual, 11th Edition, Institute of Transportation Engineers, 2021.

<sup>3</sup> Wilsonville Frog Pond West Oaks Subdivision, Transportation Impact Analysis, DKS Associates, November 2021.



**FIGURE 2: PROJECT TRIPS AND DISTRIBUTION**

## INTERSECTION ANALYSIS

This section contains the intersection analysis at the identified study intersection and includes a discussion of the volume development. Intersection operations were determined for the analysis scenario *Existing + Project + Stage II*.

## EXISTING TRAFFIC VOLUMES

Historical PM peak period (4:00-6:00 pm) turning movement count data from September 30<sup>th</sup>, 2021, was utilized for the study intersection. The intersection counts were then factored up to 2022 conditions by assuming a yearly growth rate of 2%. This yearly growth rate is a typical growth rate used in Wilsonville traffic impact analyses and has previously been calculated using the Wilsonville Travel Demand model.

## STAGE II TRAFFIC VOLUMES

Stage II development trips were included in the intersection analysis. Stage II trips represent approved developments that have not yet been constructed. The list of these developments was provided by City staff and is included in the appendix.<sup>4</sup> For this analysis, the Stage II trips also included the Frog Pond West Overlook and Terrace housing developments that are still waiting for approval. A list of all these developments is also included in the appendix.



**FIGURE 3: EXISTING + PROJECT + STAGE II PM PEAK HOUR TRAFFIC VOLUMES**

<sup>4</sup> Email from Daniel Pauly, City of Wilsonville, July 22, 2022.

## INTERSECTION OPERATIONS

Intersection operations were analyzed for the PM peak hour during the Existing + Project + Stage II scenario. The traffic volumes are shown in Figure 3. The operations were determined based on the Highway Capacity Manual (HCM) 6th Edition methodology.<sup>5</sup> The volume to capacity (v/c) ratio, delay, and level of service (LOS) of the study intersection is listed in Table 2.

**TABLE 2: EXISTING + PROJECT + STAGE II INTERSECTION OPERATIONS – PM PEAK**

INTERSECTION	OPERATING STANDARD	PM PEAK HOUR		
		V/C	DELAY	LOS
<b>TWO-WAY STOP CONTROLLED</b>				
STAFFORD RD/FROG POND LN	LOS D	0.33	34.9	A/D

**TWO-WAY STOP CONTROLLED INTERSECTION:**

Delay = Critical Movement Delay (secs)  
v/c = Critical Movement Volume-to-Capacity Ratio  
LOS = Critical Levels of Service (Major/Minor Road)

As shown, the study intersection meets the City of Wilsonville’s operating standard for the Existing + Project + Stage II PM peak hour condition. However, the intersection is nearly at the City’s level of service (LOS) operating standard. It is expected that any subsequent developments in the area will push the intersection’s LOS to above the City’s standards.

<sup>5</sup> Highway Capacity Manual, 6th Edition, Transportation Research Board, 2017.

## SITE REVIEW

This section reviews the provided site plan to determine consistency with the Frog Pond West Master Plan and alignment with the Wilsonville Development Code and Construction Standards.

### FROG POND WEST MASTER PLAN CONSISTENCY

The proposed street layout generally matches the framework plan as laid out in the Frog Pond West Master Plan.<sup>6</sup> The primary north-south street of the development (Sherman Drive) is connected to Frog Pond Lane to the north and Brisband Street to the south. The development also includes an east-west connection that will facilitate a future connection the plot east of this development.

### STREETS

The Frog Pond West Master Plan provides the street type plan and required cross sections for all streets in the Frog Pond West neighborhood.<sup>7</sup> All proposed streets within and fronting this development are classified as local streets and the developer will be responsible for building all streets up to standards. Local streets include on-street parking, sidewalks, planter strips, and a public utility easement. No dedicated bicycle facilities are required.

### ACCESS SPACING

The proposed project is required to comply with access spacing requirements as laid out in the City Transportation System Plan.<sup>8</sup> The access points for the new development are all on local streets, for which there is no spacing requirements prescribed by the City.

### SIGHT DISTANCE

Adequate sight distance should be provided at the proposed alleys and internal streets. Objects (e.g., buildings, fences, walls, or vegetation) located near the intersections may inhibit sight distance for drivers attempting to turn out of a minor street onto the major street. Prior to occupancy, sight distance at any proposed access point or local street connection will need to be verified, documented, and stamped by a registered professional Civil or Traffic Engineer licensed in the State of Oregon to assure that buildings, signs, or landscaping does not restrict sight distance.

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<sup>6</sup> Figure 19, Frog Pond West Master Plan, City of Wilsonville, July 17, 2017.

<sup>7</sup> Figures 19-28, Frog Pond West Master Plan, City of Wilsonville, July 17, 2017.

<sup>8</sup> Table 3-2, Wilsonville Transportation System Plan, Amended November 2020.

## SUMMARY OF PROJECT IMPACTS

The key findings of the trip generation memo for the Frog Pond West Matteoni development are summarized below.

- The project will consist of 34 single-family attached home lots as part of the Frog Pond West Master Plan. The parcel currently contains one single-family home on it that will be removed.
- The proposed development is expected to generate a net total of 15 PM peak hour trips (8 in, 7 out).
- Approximately one (5%) trip is expected to travel through the I-5/Wilsonville Road interchange area and one (5%) trip is expected to travel through the I-5/Elligsen Road interchange area.
- The study intersection will meet the City's peak hour operating standard under Existing + Project + Stage II PM peak hour conditions. However, it is expected that any subsequent developments in the area may push the intersection's LOS to above the City's standards.
- The development's site plan is consistent with the Frog Pond West Master Plan and meets applicable City of Wilsonville standards.
- Prior to occupancy, sight distance at any proposed access point or local street connection will need to be verified, documented, and stamped by a registered professional Civil or Traffic Engineer licensed in the State of Oregon to assure that buildings, signs, or landscaping does not restrict sight distance.

### Attachments:

- A. Traffic Count Data
- B. Stage II List
- C. HCM Reports – Existing + Project + Stage II
- D. Site Plan

## A. TRAFFIC COUNT DATA

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ALL TRAFFIC DATA SERVICES

(303) 216-2439

www.alltrafficdata.net

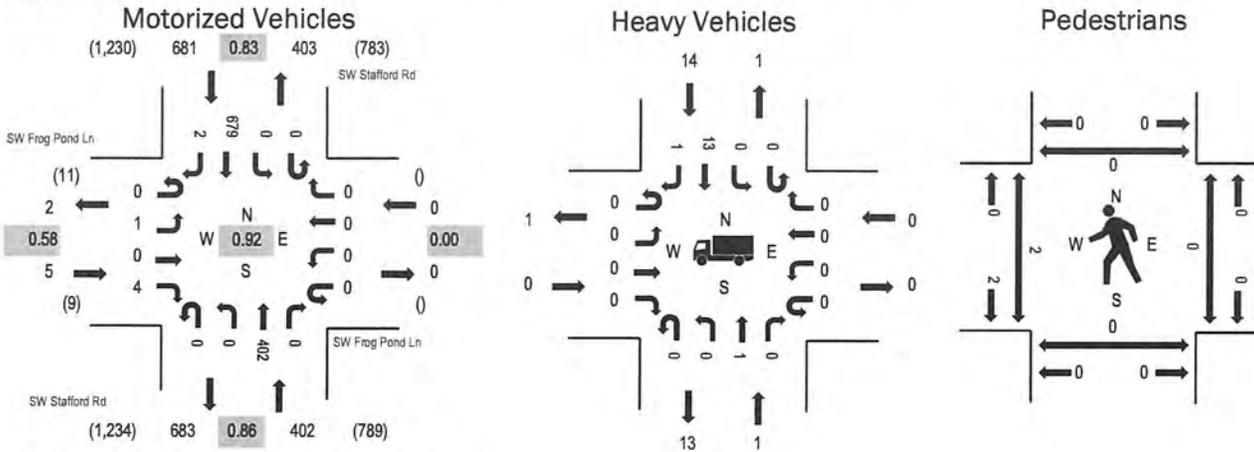
Location: 6 SW Stafford Rd & SW Frog Pond Ln PM

Date: Thursday, September 30, 2021

Peak Hour: 04:45 PM - 05:45 PM

Peak 15-Minutes: 05:20 PM - 05:35 PM

Peak Hour



Note: Total study counts contained in parentheses.

	HV%	PHF
EB	0.0%	0.58
WB	0.0%	0.00
NB	0.2%	0.86
SB	2.1%	0.83
All	1.4%	0.92

Traffic Counts - Motorized Vehicles

Interval Start Time	SW Frog Pond Ln Eastbound				SW Frog Pond Ln Westbound				SW Stafford Rd Northbound				SW Stafford Rd Southbound				Total	Rolling Hour
	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right	U-Turn	Left	Thru	Right		
4:00 PM	0	0	0	1	0	0	0	0	0	1	38	0	0	0	47	0	87	971
4:05 PM	0	0	0	0	0	0	0	0	0	0	39	0	0	0	31	0	70	965
4:10 PM	0	0	0	0	0	0	0	0	0	1	33	0	0	0	48	0	82	983
4:15 PM	0	0	0	0	0	0	0	0	0	1	28	0	0	0	41	0	70	988
4:20 PM	0	0	0	0	0	0	0	0	0	1	39	0	0	0	52	0	92	1,004
4:25 PM	0	0	0	1	0	0	0	0	0	0	36	0	0	0	43	0	80	1,011
4:30 PM	0	0	0	1	0	0	0	0	0	2	19	0	0	0	44	1	67	1,036
4:35 PM	0	0	0	0	0	0	0	0	0	0	36	0	0	0	47	1	84	1,060
4:40 PM	0	0	0	0	0	0	0	0	0	0	33	0	0	0	44	0	77	1,064
4:45 PM	0	0	0	0	0	0	0	0	0	0	29	0	0	0	59	0	88	1,088
4:50 PM	0	0	0	2	0	0	0	0	0	0	34	0	0	0	57	0	93	1,084
4:55 PM	0	0	0	1	0	0	0	0	0	0	31	0	0	0	49	0	81	1,066
5:00 PM	0	0	0	0	0	0	0	0	0	0	38	0	0	0	43	0	81	1,057
5:05 PM	0	0	0	1	0	0	0	0	0	0	36	0	0	0	50	1	88	
5:10 PM	0	0	0	0	0	0	0	0	0	0	46	0	0	0	41	0	87	
5:15 PM	0	0	0	0	0	0	0	0	0	0	32	0	0	0	53	1	86	
5:20 PM	0	1	0	0	0	0	0	0	0	0	28	0	0	0	70	0	99	
5:25 PM	0	0	0	0	0	0	0	0	0	0	29	0	0	0	76	0	105	
5:30 PM	0	0	0	0	0	0	0	0	0	0	31	0	0	0	60	0	91	
5:35 PM	0	0	0	0	0	0	0	0	0	0	32	0	0	0	56	0	88	
5:40 PM	0	0	0	0	0	0	0	0	0	0	36	0	0	0	65	0	101	
5:45 PM	0	0	0	0	0	0	0	0	0	1	33	0	0	0	50	0	84	
5:50 PM	0	0	0	1	0	0	0	0	0	0	24	0	0	0	50	0	75	
5:55 PM	0	0	0	0	0	0	0	0	0	0	22	0	0	0	50	0	72	
Count Total	0	1	0	8	0	0	0	0	0	7	782	0	0	0	1,226	4	2,028	
Peak Hour	0	1	0	4	0	0	0	0	0	0	402	0	0	0	679	2	1,088	

### Traffic Counts - Heavy Vehicles, Bicycles on Road, and Pedestrians/Bicycles on Crosswalk

Interval Start Time	Heavy Vehicles					Interval Start Time	Bicycles on Roadway					Interval Start Time	Pedestrians/Bicycles on Crosswalk				
	EB	NB	WB	SB	Total		EB	NB	WB	SB	Total		EB	NB	WB	SB	Total
4:00 PM	0	2	0	1	3	4:00 PM	0	0	0	0	0	4:00 PM	0	0	0	0	0
4:05 PM	0	0	0	1	1	4:05 PM	0	0	0	0	0	4:05 PM	0	0	0	0	0
4:10 PM	0	2	0	1	3	4:10 PM	0	0	0	0	0	4:10 PM	0	0	0	0	0
4:15 PM	0	2	0	1	3	4:15 PM	0	0	0	0	0	4:15 PM	0	0	0	0	0
4:20 PM	0	2	0	2	4	4:20 PM	0	0	0	0	0	4:20 PM	0	0	0	0	0
4:25 PM	1	0	0	0	1	4:25 PM	0	0	0	0	0	4:25 PM	0	0	0	0	0
4:30 PM	1	0	0	1	2	4:30 PM	0	0	0	0	0	4:30 PM	0	0	0	0	0
4:35 PM	0	0	0	0	0	4:35 PM	0	0	0	0	0	4:35 PM	0	0	0	0	0
4:40 PM	0	0	0	1	1	4:40 PM	0	0	0	0	0	4:40 PM	0	0	0	0	0
4:45 PM	0	0	0	2	2	4:45 PM	0	0	0	0	0	4:45 PM	0	0	0	0	0
4:50 PM	0	0	0	1	1	4:50 PM	0	0	0	0	0	4:50 PM	0	0	0	0	0
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5:00 PM	0	0	0	0	0	5:00 PM	0	0	0	0	0	5:00 PM	0	0	0	0	0
5:05 PM	0	0	0	2	2	5:05 PM	0	0	0	0	0	5:05 PM	0	0	0	0	0
5:10 PM	0	1	0	2	3	5:10 PM	0	0	0	0	0	5:10 PM	0	0	0	0	0
5:15 PM	0	0	0	1	1	5:15 PM	0	0	0	0	0	5:15 PM	0	0	0	0	0
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5:25 PM	0	0	0	0	0	5:25 PM	0	0	0	0	0	5:25 PM	0	0	0	0	0
5:30 PM	0	0	0	2	2	5:30 PM	0	0	0	0	0	5:30 PM	0	0	0	0	0
5:35 PM	0	0	0	1	1	5:35 PM	0	0	0	0	0	5:35 PM	0	0	0	0	0
5:40 PM	0	0	0	1	1	5:40 PM	0	0	0	0	0	5:40 PM	2	0	0	0	2
5:45 PM	0	0	0	0	0	5:45 PM	0	0	0	0	0	5:45 PM	2	0	0	0	2
5:50 PM	0	0	0	0	0	5:50 PM	0	0	0	0	0	5:50 PM	0	0	0	0	0
5:55 PM	0	0	0	0	0	5:55 PM	0	0	0	0	0	5:55 PM	0	0	0	0	0
Count Total	2	9	0	22	33	Count Total	0	0	0	0	0	Count Total	4	0	0	0	4
Peak Hour	0	1	0	14	15	Peak Hour	0	0	0	0	0	Peak Hour	2	0	0	0	2

**B. STAGE II LIST**

---



Stage II Approved										
Project	Land Use	Status	Size	Total PM Peak Trips	Trip Allocation Percentage		Net New (Primary + Diverted) PM Peak Hour Trips not yet active			
					Internal	Pass-By	In	Out	Total	
Hydro-Temp: Recent agreement with the City, the project is vested and so are the traffic trips	Office/Flex-Space	Not built	60.8 KSF					44	46	90
Mercedes Benz (Phase 2)	Auto Dealership	Not built						20	26	46
Shredding Systems (SQFT does not including paint canopy and another canopy)	Industrial/Commercial	Under construction	66.8 KSF					20	46	66
Town Center Ph III and trip dedication to Miller Paint store Uses marked with *** have not been built and PM peak hr trip sum exceeds remaining vested trip level by 2 trips. It has yet to be determined how to allocate trips between remaining buildings.	*High Turnover Restaurant (Pad 1)	Not built	7.5 KSF					24	17	47*
	Remaining Approved Total									47
Wilsonville Road Business Park Phase II	Phase 2 - office (2-story building on west parcel)	Partially Built	21.7 KSF					15	71	86
Frog Pond-Stafford Meadows (Phase 2 and 3a of 10/18 study)	Residential	Partially Built, 34 homes built and occupied	44 units					6	4	10
Frog Pond-Frog Pond Meadows (Phase 3B, 4A, 4B of 10/18 Study)	Residential	Partially Built, 52 homes built and occupied	74 units					13	9	22
Frog Pond Ridge	Residential	Under construction, no homes built	71 units					43	28	71
Frog Pond-Morgan Farm	Residential	Partially Built, 69 homes built and occupied	78 units					5	4	9
Frog Pond Crossing	Residential	Approved	29 units					19	9	28
Frog Pond Estates	Residential	Approved	17 units					11	7	18
Frog Pond Oaks	Residential	Approved	41 units					27	14	41
Frog Pond Vista	Residential	Approved	38 units					27	17	44
Magnolia Townhomes	Residential	Under construction	6 units					3	2	5
Canyon Creek III	Residential	Approved	5 units (traffic study was for 11)					2	3	5
Coffee Creek Logistics	Industrial/Commercial	Complete	115K					16	41	57
PW Complex on Boberg	Public	Approved	15,800 office, 17,900 warehouse					11	39	50
DAS North Valley Complex	Public/Industrial	Under Construction	174,700 sf					5	15	20
Black Creek Group-Garden Acres	Industrial	Approved	148,500 sf warehouse	178				69	109	178

Stage II Approved - Villebois													
Project	Phase	Status	Land Use					Total PM Peak Trips	Trip Allocation Percentage		Net New (Primary + Diverted) PM Peak Hour Trips not yet active		
			SF	Town.	Apt.	Retail	School		Internal	Pass-By	In	Out	Total
North (Entirety)	Residential	Partially built, 364 homes sold and occupied	451								53	34	87
Central	Residential	Partially Built, 991 homes (102 single family, 319 condo/row homes, 365 apartments) occupied	102	391	510						60	30	90
FOR REFERENCE SAP EAST			537	42									
FOR REFERENCE SAP SOUTH (Includes PDP 7 Grande Pointe)			560										

Pending Projects for Which Traffic Analysis has been completed										
Project	Land Use	Status	Size	Total PM Peak	Trip Allocation Percentage			Net New (Primary) PM Peak Hour Trips		
					Internal	Pass-By	Diverted	In	Out	Total
Boones Ferry Gas Station/Convenience	Commercial	under review	3,460 sf store, 12 gas pumps	240		134		53	53	106
Delta Logistics	Industrial	under review	56,100 sf warehouse	33				9	24	33
Building WS Boeckman and Kins	Industrial	under review	80,000 sf manufacturing	54				17	37	54
Frog Pond Overlook	Residential	under review	12 lots	13				8	5	13
Frog Pond Terrace	Residential	under review	19 lots	20				12	8	20
Boones Ferry Construction Storage	Industrial	under review	1.25 acres	5				1	4	5

**C. HCM REPORTS – EXISTING + PROJECT + STAGE II**

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Intersection						
Int Delay, s/veh	1.5					
Movement	EBL	EBR	NBL	NBT	SBT	SBR
Lane Configurations	FF			FF	FF	
Traffic Vol, veh/h	44	9	12	461	734	73
Future Vol, veh/h	44	9	12	461	734	73
Conflicting Peds, #/hr	0	0	2	0	0	2
Sign Control	Stop	Stop	Free	Free	Free	Free
RT Channelized	-	None	-	None	-	None
Storage Length	0	-	-	-	-	-
Veh in Median Storage, #	0	-	-	0	0	-
Grade, %	0	-	-	0	0	-
Peak Hour Factor	92	92	92	92	92	92
Heavy Vehicles, %	0	0	0	0	2	10
Mvmt Flow	48	10	13	501	798	79

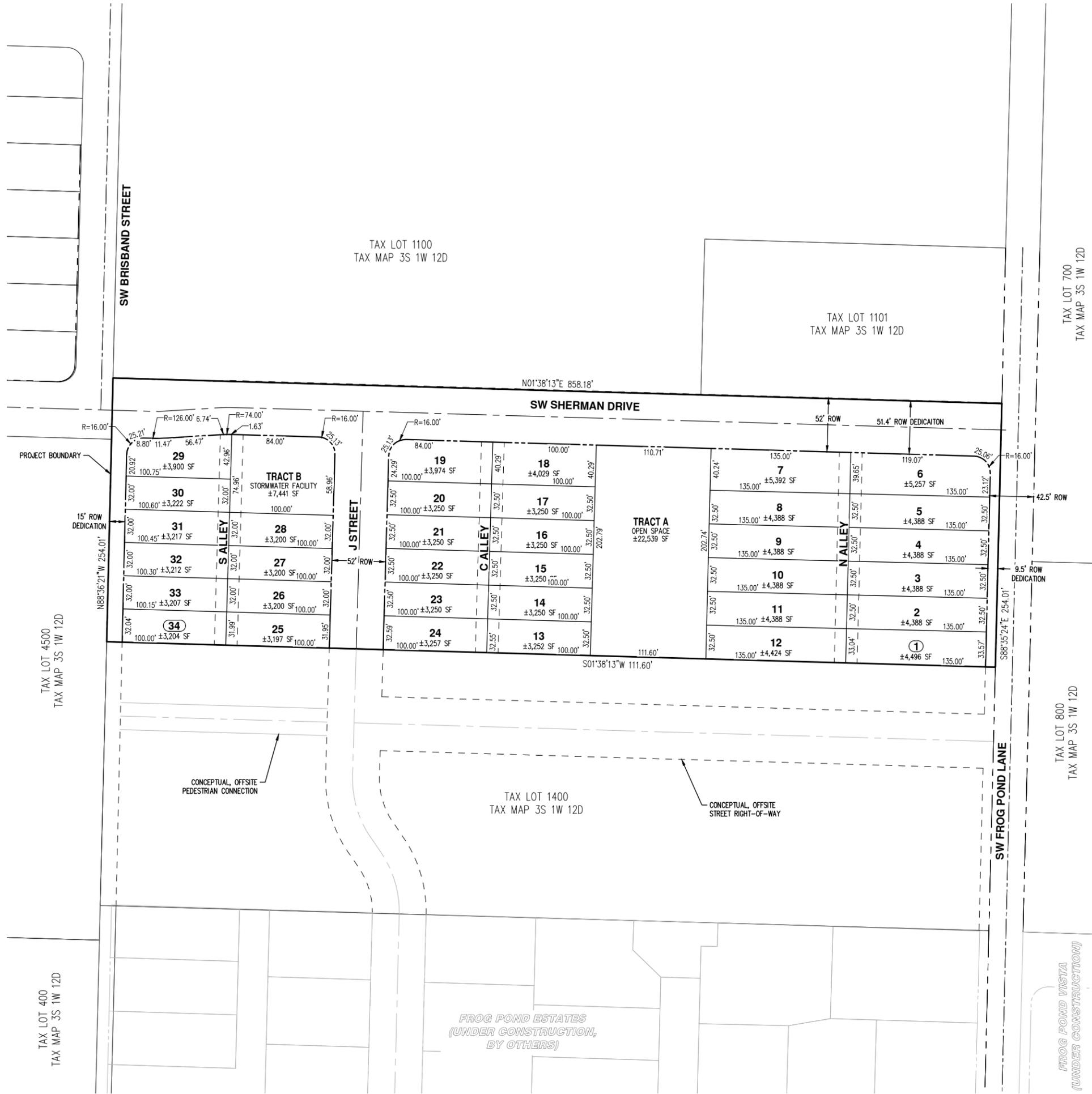
Major/Minor	Minor2	Major1	Major2			
Conflicting Flow All	1367	840	879	0	-	0
Stage 1	840	-	-	-	-	-
Stage 2	527	-	-	-	-	-
Critical Hdwy	6.4	6.2	4.1	-	-	-
Critical Hdwy Stg 1	5.4	-	-	-	-	-
Critical Hdwy Stg 2	5.4	-	-	-	-	-
Follow-up Hdwy	3.5	3.3	2.2	-	-	-
Pot Cap-1 Maneuver	164	368	777	-	-	-
Stage 1	427	-	-	-	-	-
Stage 2	596	-	-	-	-	-
Platoon blocked, %				-	-	-
Mov Cap-1 Maneuver	160	367	776	-	-	-
Mov Cap-2 Maneuver	160	-	-	-	-	-
Stage 1	416	-	-	-	-	-
Stage 2	595	-	-	-	-	-

Approach	EB	NB	SB
HCM Control Delay, s	34.9	0.2	0
HCM LOS	D		

Minor Lane/Major Mvmt	NBL	NBT	EBLn1	SBT	SBR
Capacity (veh/h)	776	-	177	-	-
HCM Lane V/C Ratio	0.017	-	0.325	-	-
HCM Control Delay (s)	9.7	0	34.9	-	-
HCM Lane LOS	A	A	D	-	-
HCM 95th %tile Q(veh)	0.1	-	1.3	-	-

## D. SITE PLAN

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LOT SIZE SUMMARY		
	SUBDISTRICT 9 R-7	SUBDISTRICT 8 R-10
MIN. LOT SIZE	6,000 SF	8,000 SF
MIN. REDUCED LOT SIZE*	-	6,400 SF

\*MINIMUM REDUCED LOT AREA FOR TREE PRESERVATION

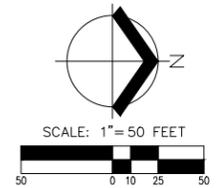
SUMMARY OF LAND USES		
LAND USE	SF	PERCENTAGE OF PROPERTY
1. GROSS AREA IN PLAT	217,971	-
2. LANDSCAPE COVERAGE AREA/OPEN SPACE	22,539	10%
3. ROW	60,050	28%
4. LOT AREA	127,941	59%
5. STORMWATER TREATMENT FACILITY	7,441	3%

**PRELIMINARY SITE PLAN  
 FROG POND MATTEONI  
 SULLIVAN HOMES, LLC.  
 WILSONVILLE, OREGON**

**PRELIMINARY  
 NOT FOR  
 CONSTRUCTION**

JOB NUMBER: 6175  
 DATE: 6/28/2022  
 DESIGNED BY: CMS  
 DRAWN BY: JNW  
 CHECKED BY: CMS

**EXH-1**



## **Exhibit F: USACE & DSL Wetland Concurrences**

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# Oregon

Kate Brown, Governor

## Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

[www.oregon.gov/dsl](http://www.oregon.gov/dsl)

### State Land Board

September 15, 2022

Brian Matteoni  
5832 Firestone Court  
San Jose, CA 95138

Kate Brown  
Governor

Re: WD # 2022-0382 **Approved**  
Wetland Delineation Report for 7252 Frog Pond Lane  
Clackamas County; T3S R1W S12D TLs 1200 and 1300

Shemia Fagan  
Secretary of State

Tobias Read  
State Treasurer

Dear Brian Matteoni:

The Department of State Lands has reviewed the wetland delineation report prepared by AKS Engineering and Forestry, LLC for the site referenced above. Based upon the information presented in the report, we concur with the wetland boundaries as mapped in Figure 5 of the report. Please replace all copies of the preliminary wetland map with this final Department-approved map.

Within the study area, one wetland, totaling approximately 1.02 acres was identified. The wetland is 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 wetlands or below the ordinary high-water line (OHWL) of the 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. We recommend that you attach a copy of this concurrence letter to any subsequent state permit application to speed application review. Federal, other state agencies or local permit requirements may apply as well. The U.S. Army Corps of Engineers will determine jurisdiction under the Clean Water Act, which may require submittal of a complete Wetland Delineation Report.

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. If you have any questions, please contact Chris Stevenson, PWS, the Jurisdiction Coordinator for Clackamas County at (503) 986-5248.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Ryan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Peter Ryan, SPWS  
Aquatic Resource Specialist

Enclosures

ec: Julie Wirth-McGee, PWS, AKS Engineering & Forestry, LLC  
City of Wilsonville Planning Department  
Danielle Erb, Corps of Engineers  
Katie Blauvelt, DSL

## WETLAND DELINEATION / DETERMINATION REPORT COVER FORM

A complete report and signed report cover form, along with applicable review fee, are required before a report review timeline can be initiated by the Department of State Lands. All applicants will receive an emailed confirmation that includes the report's unique file number and other information.

**Ways to submit report:**

- ❖ **Under 50MB** - A single unlocked PDF can be emailed to: [wetland.delineation@dsl.oregon.gov](mailto:wetland.delineation@dsl.oregon.gov).
- ❖ **50MB or larger** - A single unlocked PDF can be uploaded to DSL's [Box.com](http://Box.com) website. After upload notify DSL by email at: [wetland.delineation@dsl.oregon.gov](mailto:wetland.delineation@dsl.oregon.gov).
- ❖ **OR** a hard copy of the unbound report and signed cover form can be mailed to: Oregon Department of State Lands, 775 Summer Street NE, Suite 100, Salem, OR 97301-1279.

**Ways to pay review fee:**

- ❖ By credit card on DSL's [epayment portal](#) after receiving the unique file number from DSL's emailed confirmation.
- ❖ By check payable to the Oregon Department of State Lands attached to the unbound mailed **hardcopy OR** attached to the complete signed cover form if report submitted electronically.

**Contact and Authorization Information**

<input checked="" type="checkbox"/> Applicant <input checked="" type="checkbox"/> Owner Name, Firm and Address: Brian Matteoni 5832 Firestone Ct San Jose, CA 95138	Business phone # (408) 453-7407 Mobile phone # (optional) (408) 568-9579 E-mail: Brian.Matteoni@cbre.com
--	--

<input type="checkbox"/> Authorized Legal Agent, Name and Address (if different):	Business phone # Mobile phone # (optional) E-mail:
---	--

I either own the property described below or I have legal authority to allow access to the property. I authorize the Department to access the property for the purpose of confirming the information in the report, after prior notification to the primary contact.

Typed/Printed Name: Brian Matteoni Signature:

Date: \_\_\_\_\_ Special instructions regarding site access: \_\_\_\_\_

**Project and Site Information**

Project Name: 7252 Frog Pond Lane	Latitude: 45.320972° Longitude: -122.751182° <b>decimal degree</b> - centroid of site or start & end points of linear project
Proposed Use: Residential development	Tax Map # 31W12D Tax Lot(s) 1200 & 1300
Project Street Address (or other descriptive location): 7252 SW Frog Pond Lane	Tax Map # Tax Lot(s)
City: Wilsonville County: Clackamas	Township 3S Range 1W Section 12 QQ D Use separate sheet for additional tax and location information
	Waterway: NA River Mile:

**Wetland Delineation Information**

Wetland Consultant Name, Firm and Address: Julie Wirth-McGee AKS Engineering and Forestry, LLC 3700 River Road, Suite 1 Keizer, OR 97303	Phone # (503) 400-6028 Mobile phone # (if applicable) E-mail: <a href="mailto:wirthmcgee@aks-eng.com">wirthmcgee@aks-eng.com</a>
--	--

The information and conclusions on this form and in the attached report are true and correct to the best of my knowledge.

Consultant Signature: Date: 07/06/2022

Primary Contact for report review and site access is  Consultant  Applicant/Owner  Authorized Agent

Wetland/Waters Present?  Yes  No Study Area size: 4.99 acres Total Wetland Acreage: 1.0200

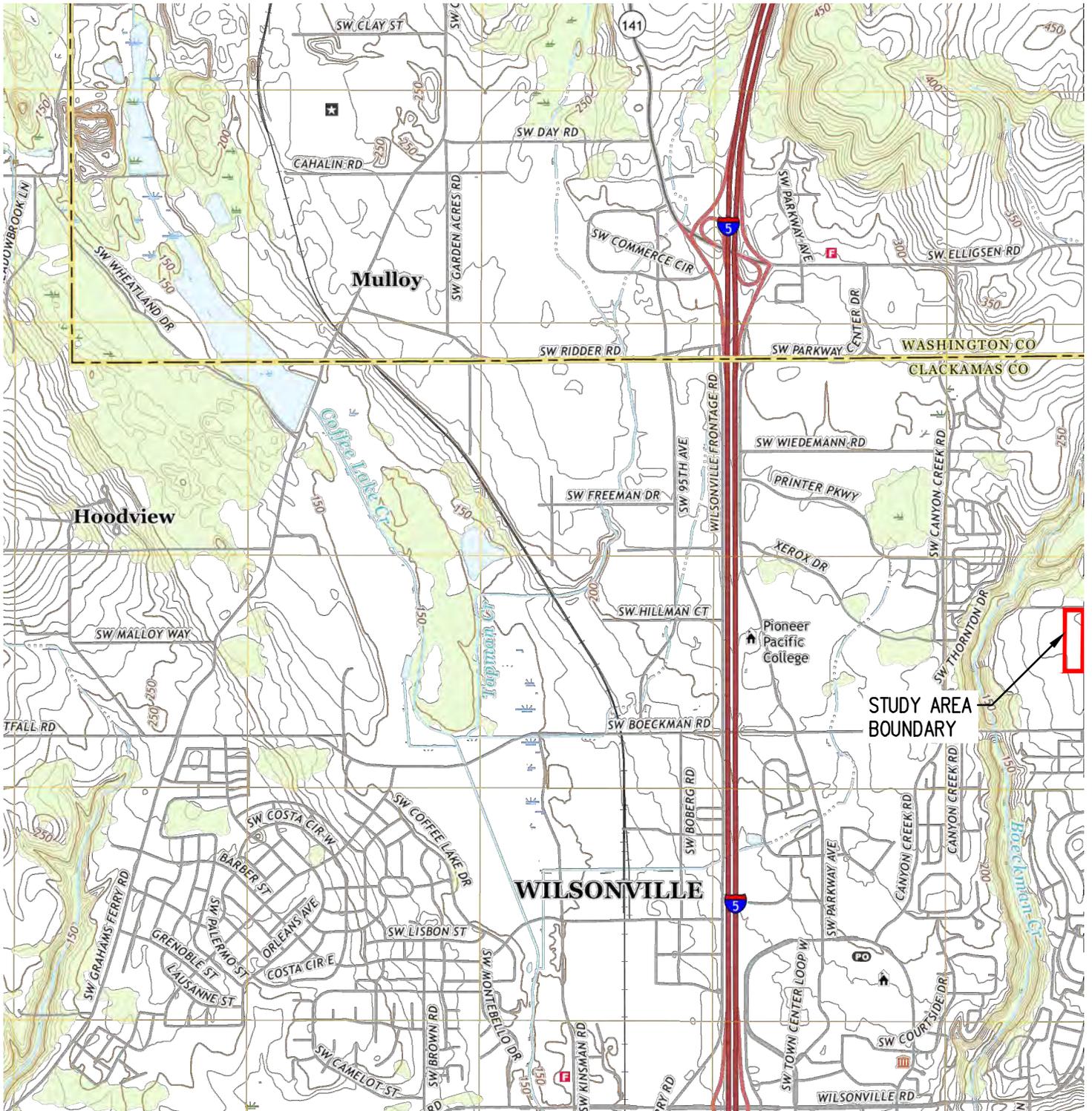
**Check Applicable Boxes Below**

<input type="checkbox"/> R-F permit application submitted	<input checked="" type="checkbox"/> Fee payment submitted \$ <u>500</u>
<input type="checkbox"/> Mitigation bank site	<input type="checkbox"/> Resubmittal of rejected report (\$100)
<input type="checkbox"/> EFSC/ODOE Proj. Mgr: _____	<input type="checkbox"/> Request for Reissuance. See eligibility criteria. (no fee)
<input type="checkbox"/> Wetland restoration/enhancement project (not mitigation)	DSL # _____ Expiration date _____
<input type="checkbox"/> Previous delineation/application on parcel If known, previous DSL # _____	<input type="checkbox"/> LWI shows wetlands or waters on parcel Wetland ID code _____

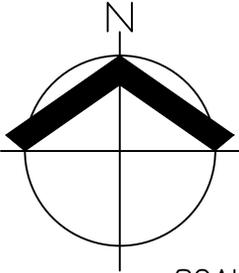
**For Office Use Only**

DSL Reviewer: CS Fee Paid Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_ DSL WD # 2022-0382

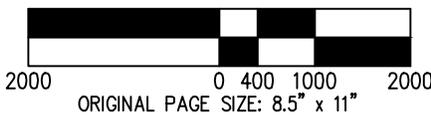
Date Delineation Received: 7 / 12 / 22 DSL App.# \_\_\_\_\_



USGS 7.5' TOPOGRAPHIC SERIES  
 QUADRANGLE: SHERWOOD, OR (2020)



SCALE: 1" = 2000 FEET



ORIGINAL PAGE SIZE: 8.5" x 11"

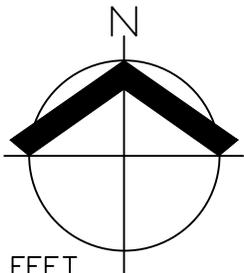
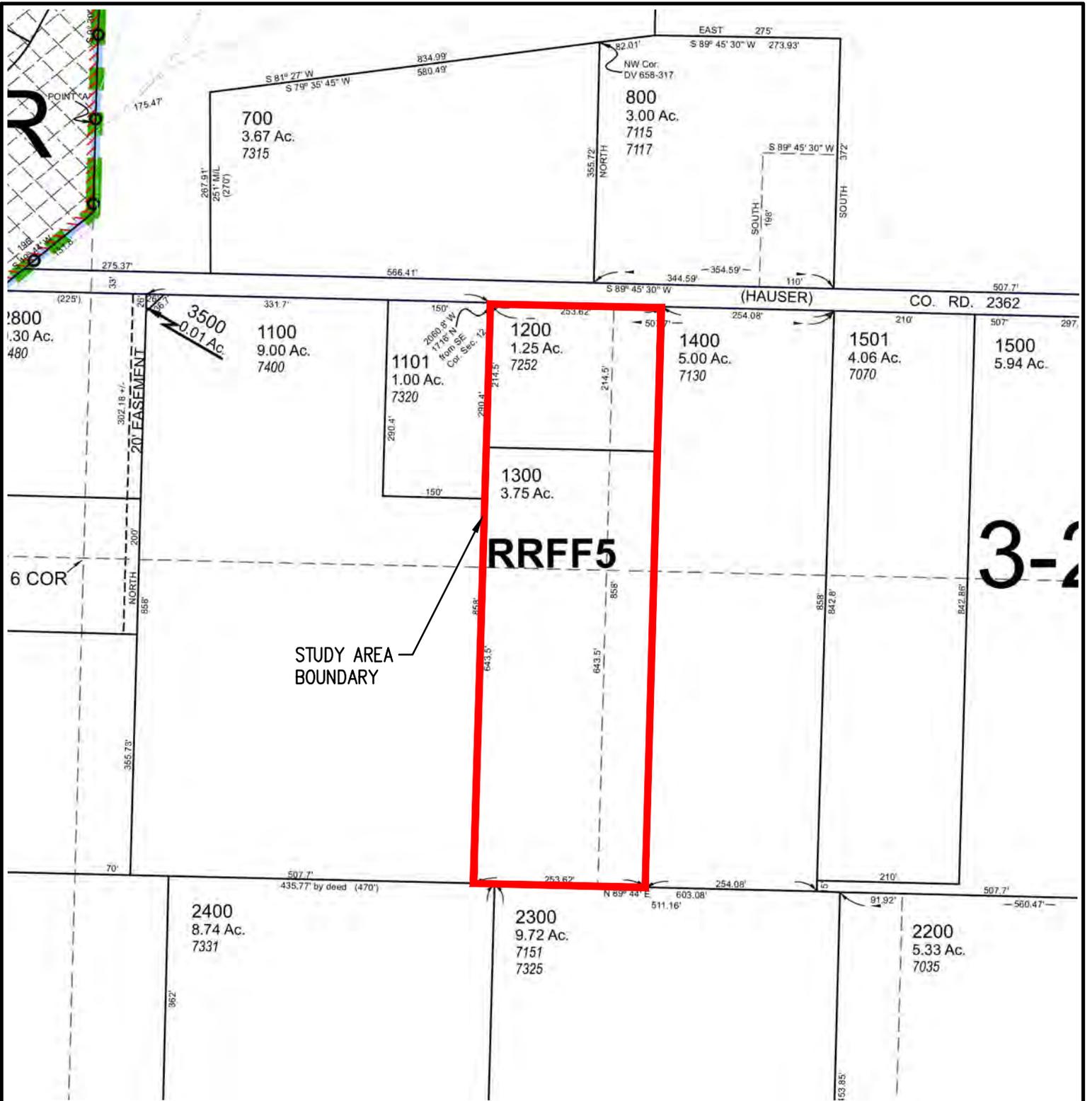
DATE: 06/06/2022

**USGS VICINITY MAP**  
**7252 SW FROG POND LANE WETLAND DELINEATION REPORT**

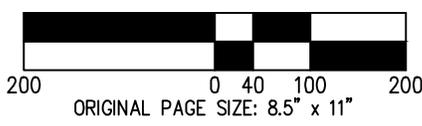
AKS ENGINEERING & FORESTRY, LLC  
 12965 SW HERMAN RD, STE 100  
 TUALATIN, OR 97062  
 503.563.6151 WWW.AKS-ENG.COM



FIGURE  
**1**  
 DRWN: RAS  
 CHKD: SKT  
 AKS JOB:  
 6175



SCALE: 1" = 200 FEET

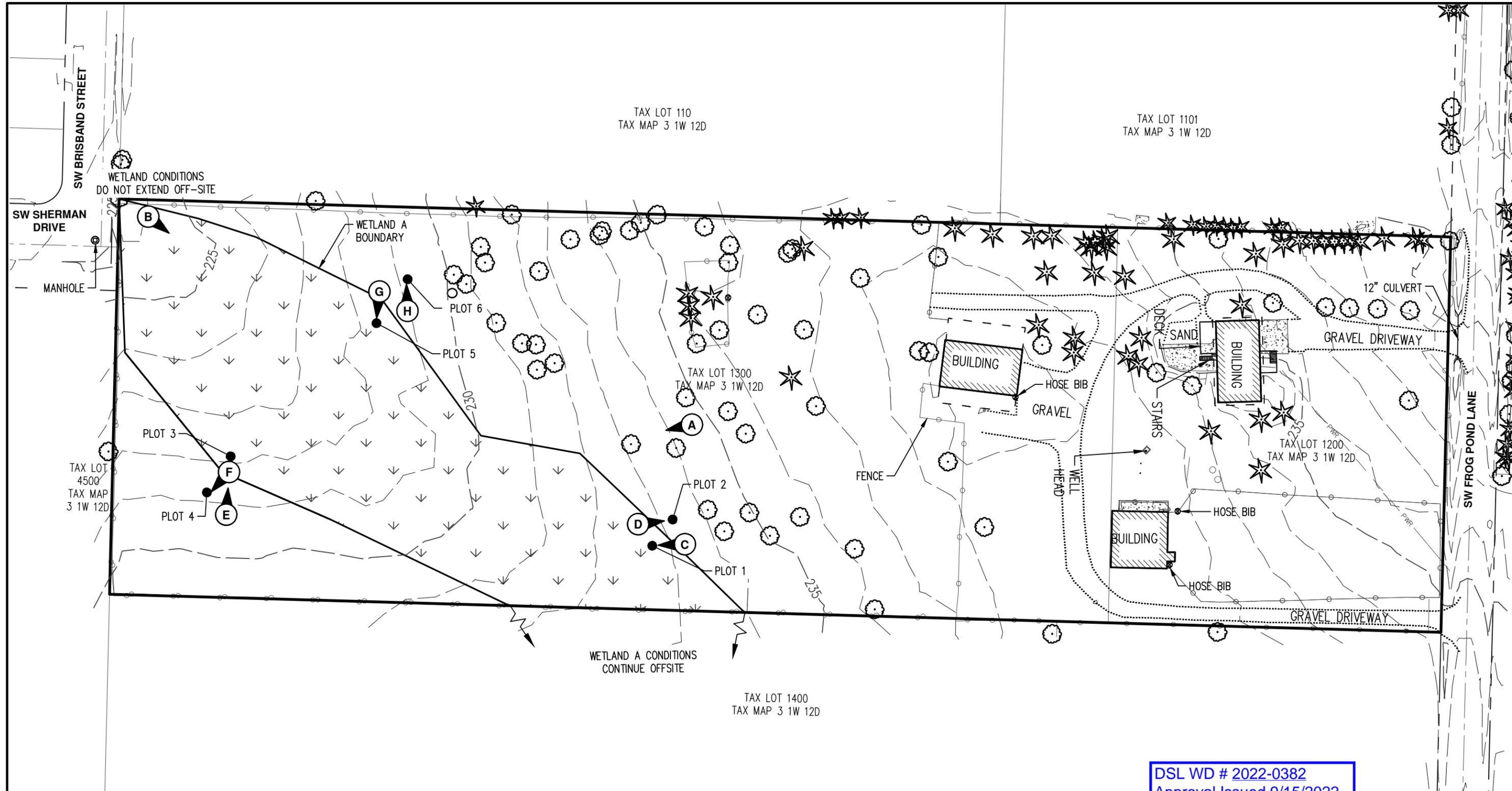


CLACKAMAS COUNTY  
TAX LOTS 1200 AND 1300  
TAX MAP 3 1W 12D

DATE: 06/06/2022

<b>TAX MAP (MAP 3 1W 12D)</b>		<b>FIGURE</b>
<b>7252 SW FROG POND LANE WETLAND DELINEATION REPORT</b>		<b>2</b>
AKS ENGINEERING & FORESTRY, LLC 12965 SW HERMAN RD, STE 100 TUALATIN, OR 97062 503.563.6151    WWW.AKS-ENG.COM		DRWN: RAS CHKD: SKT AKS JOB: 6175





WETLAND CONDITIONS DO NOT EXTEND OFF-SITE

TAX LOT 110  
TAX MAP 3 1W 12D

TAX LOT 1101  
TAX MAP 3 1W 12D

SW SHERMAN DRIVE

MANHOLE

WETLAND A BOUNDARY

PLOT 6

PLOT 5

TAX LOT 1300  
TAX MAP 3 1W 12D

PLOT 3

TAX LOT 4500  
TAX MAP 3 1W 12D

PLOT 4

PLOT 2

PLOT 1

FENCE

WELL

BUILDING

HOSE BIB

GRAVEL

SAND

BUILDING

DECK

STAIRS

GRAVEL DRIVEWAY

12" CULVERT

TAX LOT 1200  
TAX MAP 3 1W 12D

HOSE BIB

BUILDING

HOSE BIB

GRAVEL DRIVEWAY

SW FROG POND LANE

WETLAND A CONDITIONS CONTINUE OFFSITE

TAX LOT 1400  
TAX MAP 3 1W 12D

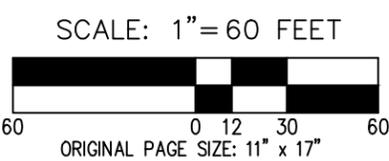
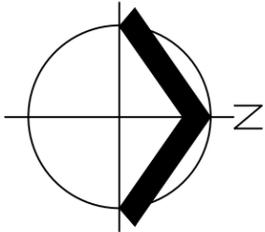
### LEGEND

 TOTAL ON-SITE PEM/SLOPE WETLAND AREA  
44,573 SF± (1.02 ACRES)

 PHOTO POINT LOCATION AND ORIENTATION

WETLAND BOUNDARY SHOWN WAS DELINEATED BY AKS ENGINEERING & FORESTRY, LLC ON APRIL 1, 2022. WETLAND BOUNDARY AND PLOT LOCATIONS WERE PROFESSIONALLY LAND SURVEYED BY AKS ON APRIL 5, 2022 WITH SUBMETER ACCURACY.

1-FOOT INTERVAL GROUND CONTOURS, EXISTING CONDITIONS. TREES >6" DBH AND STUDY AREA BOUNDARY DERIVED FROM AKS PROFESSIONAL LAND SURVEY.



DSL WD # 2022-0382  
Approval Issued 9/15/2022  
Approval Expires 9/15/2027

DATE: 06/30/2022

<b>WETLAND DELINEATION MAP</b>		FIGURE
<b>7252 SW FROG POND LANE WETLAND DELINEATION REPORT</b>		<b>5</b>
AKS ENGINEERING & FORESTRY, LLC 12965 SW HERMAN RD, STE 100 TUALATIN, OR 97062 503.563.6151 WWW.AKS-ENG.COM		DRWN: RAS CHKD: SKT AKS JOB: 6175





DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, PORTLAND DISTRICT  
P.O. BOX 2946  
PORTLAND, OR 97208-2946

November 23, 2022

Regulatory Branch  
Corps No. NWP-2022-360

Ms. Julie Wirth-McGee  
AKS Engineering and Forestry, LLC  
3700 River Road, Suite 1  
Kaizer, Oregon 97303  
wirthmcgee@aks-eng.com

Dear Ms. Wirth-McGee:

The U.S. Army Corps of Engineers (Corps) received your request for an Approved Jurisdictional Determination (AJD) of the aquatic resources, including wetlands, within the review area on the property located at 7252 SW Frog Pond Lane, Wilsonville, Clackamas County, Oregon at Latitude/Longitude: 45.320972°, -122.751182°. Other aquatic resources, including wetlands, that may occur on this property or on adjacent properties outside the review area are not the subject of this determination.

The Corps has determined Wetland A within the review area are not waters of the U.S. The enclosed *Approved Jurisdictional Determination Form* (Enclosure 1) provides the size, criteria and rationale for jurisdiction for all aquatic resources within the review area. The perimeter of the review area and the boundaries of the delineated waters of the U.S. subject to this AJD are identified on the enclosed drawings (Enclosure 2). A copy of the AJD Form can also be found on our website (<https://www.nwp.usace.army.mil/Missions/Regulatory/Determinations/>).

If you object to the enclosed AJD, you may request an administrative appeal under 33 CFR Part 331 as described in the enclosed *Notification of Administrative Appeal Options and Process and Request for Appeal (RFA)* form (Enclosure 3). To appeal this AJD, you must submit a completed *RFA* form to the Corps Northwestern Division (NWD) office at the address listed on the form. In order for the request for appeal to be accepted, the Corps must determine that the form is complete, that the request meets the criteria for appeal under 33 CFR § 331.5, and the form must be received by the NWD office within 60 days from the date on the form. It is not necessary to submit the form to the NWD office if you do not object to the enclosed AJD.

The delineation included herein has been conducted to identify the location and extent of the aquatic resource boundaries and/or the jurisdictional status of aquatic resources for purposes of the Clean Water Act for the particular site identified in this request. This delineation and/or jurisdictional determination may not be valid for the

Wetland Conservation Provisions of the Food Security Act of 1985, as amended. If you or your tenant are U.S. Department of Agriculture (USDA) program participants, or anticipate participation in USDA programs, you should discuss the applicability of a certified wetland determination with the local USDA service center, prior to starting work.

This AJD is valid for a period of five years from the date of this letter unless new information warrants revisions of the determination.

We would like to hear about your experience working with the Portland District, Regulatory Branch. Please complete a customer service survey form available on our website (<https://regulatory.ops.usace.army.mil/customer-service-survey/>).

If you have any questions regarding our Regulatory Program or permit requirements for work in waters of the U.S., please contact Ms. Danielle Erb by telephone at (503) 808-4368 or by email at [danielle.h.erb@usace.army.mil](mailto:danielle.h.erb@usace.army.mil).

Sincerely,

*Brielle Cummings*

For: William D. Abadie  
Chief, Regulatory Branch

Enclosures

cc with drawings:

Oregon Department of State Lands (Katie Blauvelt, [Katie.BLAUVELT@dsl.oregon.gov](mailto:Katie.BLAUVELT@dsl.oregon.gov))

Oregon Department of Environmental Quality ([401applications@deq.oregon.gov](mailto:401applications@deq.oregon.gov))

**APPROVED JURISDICTIONAL DETERMINATION FORM**  
**U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): November 7, 2022**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: CENWP-ODG NWP-2022-360 Sullivan Homes-7252 Frog Pond Lane**

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Oregon County/parish/borough: Clackamas City: Wilsonville  
Center coordinates of site (lat/long in degree decimal format): Lat. 45.320972° **N**, Long. 122.751182° **W**.  
Universal Transverse Mercator:

Name of nearest waterbody: Boeckman Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Willamette River

Name of watershed or Hydrologic Unit Code (HUC): 170900070402

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

**D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

Office (Desk) Determination. Date: October 31, 2022

Field Determination. Date(s):

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There **Are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Explain: .

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There **Are no** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

**1. Waters of the U.S.**

**a. Indicate presence of waters of U.S. in review area (check all that apply):<sup>1</sup>**

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs
- Non-RPWs that flow directly or indirectly into TNWs
- Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- Impoundments of jurisdictional waters
- Isolated (interstate or intrastate) waters, including isolated wetlands

**b. Identify (estimate) size of waters of the U.S. in the review area:**

Non-wetland waters: linear feet: width (ft) and/or acres.

Wetlands: acres.

**c. Limits (boundaries) of jurisdiction based on: Pick List**

Elevation of established OHWM (if known): .

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.

Explain: **Within the study area one palustrine emergent wetland (PEM) was identified (Wetland A). Wetland A lacks a direct surface and/or subsurface connect to a Relatively Permanent Water (RPW) or Traditional Navigable Water (TNW). The nearest RPW is located approximately 0.2 mile west of the Review Area. See Section III. F. for more information.**

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

<sup>3</sup> Supporting documentation is presented in Section III.F.

**SECTION III: CWA ANALYSIS**

**A. TNWs AND WETLANDS ADJACENT TO TNWs**

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

**1. TNW**

Identify TNW: .

Summarize rationale supporting determination: .

**2. Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is “adjacent”:

**B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):**

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody<sup>4</sup> is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

**1. Characteristics of non-TNWs that flow directly or indirectly into TNW**

**(i) General Area Conditions:**

Watershed size: **Pick List**

Drainage area: **Pick List**

Average annual rainfall: inches

Average annual snowfall: inches

**(ii) Physical Characteristics:**

**(a) Relationship with TNW:**

Tributary flows directly into TNW.

Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.

Project waters are **Pick List** river miles from RPW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Project waters are **Pick List** aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW<sup>5</sup>:

Tributary stream order, if known:

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

<sup>5</sup> Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b) General Tributary Characteristics (check all that apply):

- Tributary is:**  Natural  
 Artificial (man-made). Explain: .  
 Manipulated (man-altered). Explain: .

**Tributary properties with respect to top of bank (estimate):**

Average width: feet  
Average depth: feet  
Average side slopes: **Pick List**.

**Primary tributary substrate composition (check all that apply):**

- |  |  |                                   |
|--|--|-----------------------------------|
| <input type="checkbox"/> Silts             | <input type="checkbox"/> Sands                     | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles           | <input type="checkbox"/> Gravel                    | <input type="checkbox"/> Muck     |
| <input type="checkbox"/> Bedrock           | <input type="checkbox"/> Vegetation. Type/% cover: |                                   |
| <input type="checkbox"/> Other. Explain: . |  |                                   |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: .

Presence of run/riffle/pool complexes. Explain: .

Tributary geometry: **Pick List**

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Pick List**

Estimate average number of flow events in review area/year: **Pick List**

Describe flow regime: .

Other information on duration and volume: .

Surface flow is: **Pick List**. Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .

Dye (or other) test performed: .

**Tributary has (check all that apply):**

- |   |   |
|---|---|
| <input type="checkbox"/> Bed and banks  |   |
| <input type="checkbox"/> OHWM <sup>6</sup> (check all indicators that apply): |   |
| <input type="checkbox"/> clear, natural line impressed on the bank            | <input type="checkbox"/> the presence of litter and debris          |
| <input type="checkbox"/> changes in the character of soil                     | <input type="checkbox"/> destruction of terrestrial vegetation      |
| <input type="checkbox"/> shelving   | <input type="checkbox"/> the presence of wrack line                 |
| <input type="checkbox"/> vegetation matted down, bent, or absent              | <input type="checkbox"/> sediment sorting                           |
| <input type="checkbox"/> leaf litter disturbed or washed away                 | <input type="checkbox"/> scour                                      |
| <input type="checkbox"/> sediment deposition                                  | <input type="checkbox"/> multiple observed or predicted flow events |
| <input type="checkbox"/> water staining                                       | <input type="checkbox"/> abrupt change in plant community           |
| <input type="checkbox"/> other (list):  |   |
| <input type="checkbox"/> Discontinuous OHWM. <sup>7</sup> Explain: .          |   |

**If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):**

- |  |  |
|--|--|
| <input type="checkbox"/> High Tide Line indicated by:              | <input type="checkbox"/> Mean High Water Mark indicated by:            |
| <input type="checkbox"/> oil or scum line along shore objects      | <input type="checkbox"/> survey to available datum;                    |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings;                            |
| <input type="checkbox"/> physical markings/characteristics         | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges                              |  |
| <input type="checkbox"/> other (list):                             |  |

**(iii) Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: .

Identify specific pollutants, if known: .

<sup>6</sup>A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

<sup>7</sup>Ibid.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics:
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings:
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings:

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: \_\_\_\_\_ acres

Wetland type. Explain: \_\_\_\_\_

Wetland quality. Explain: \_\_\_\_\_

Project wetlands cross or serve as state boundaries. Explain: \_\_\_\_\_

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain: \_\_\_\_\_

Surface flow is: **Pick List**

Characteristics: \_\_\_\_\_

Subsurface flow: **Pick List**. Explain findings: \_\_\_\_\_

Dye (or other) test performed: \_\_\_\_\_

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: \_\_\_\_\_

Ecological connection. Explain: \_\_\_\_\_

Separated by berm/barrier. Explain: \_\_\_\_\_

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List**.

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: \_\_\_\_\_

Identify specific pollutants, if known: \_\_\_\_\_

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

- Riparian buffer. Characteristics (type, average width):
- Vegetation type/percent cover. Explain: \_\_\_\_\_
- Habitat for:
  - Federally Listed species. Explain findings: \_\_\_\_\_
  - Fish/spawn areas. Explain findings: \_\_\_\_\_
  - Other environmentally-sensitive species. Explain findings: \_\_\_\_\_
  - Aquatic/wildlife diversity. Explain findings: \_\_\_\_\_

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately ( \_\_\_\_\_ ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)      Size (in acres)      Directly abuts? (Y/N)      Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

### C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

**Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:**

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

### D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:  
 TNWs:      linear feet      width (ft), Or,      acres.  
 Wetlands adjacent to TNWs:      acres.
2. **RPWs that flow directly or indirectly into TNWs.**  
 Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:  
 Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet width (ft).
- Other non-wetland waters: acres.
- Identify type(s) of waters: .

**3. Non-RPWs<sup>8</sup> that flow directly or indirectly into TNWs.**

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: linear feet width (ft).
- Other non-wetland waters: acres.
- Identify type(s) of waters: .

**4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
- Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .
- Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

**5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

**6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

**7. Impoundments of jurisdictional waters.<sup>9</sup>**

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from "waters of the U.S.," or
- Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- Demonstrate that water is isolated with a nexus to commerce (see E below).

**E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):<sup>10</sup>**

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- which are or could be used for industrial purposes by industries in interstate commerce.
- Interstate isolated waters. Explain: .
- Other factors. Explain: .

**Identify water body and summarize rationale supporting determination:** .

<sup>8</sup>See Footnote # 3.

<sup>9</sup> To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

<sup>10</sup> Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters:        linear feet        width (ft).
- Other non-wetland waters:        acres.
- Identify type(s) of waters:        .
- Wetlands:        acres.

**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
  - Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
  - Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:        .
  - Other: (explain, if not covered above): **Wetland A does not have direct surface or subsurface hydrologic connection to a RPW or TNW. The closest known waterway is Boeckman Creek, which is located approximately 0.20 mile west of the Review Area. There is an approximate 5-foot drop in elevation from Wetland A to the creek over the course of that distance. A search of wetlands in the nearby vicinity of Boeckman Creek did not identify any similarly situated wetlands that would indicate the potential for a significant nexus to an RPW or TNW. The wetland originates from hillside seeps that are upslope and off-site to the east. The main hydrology sources are a seasonally high groundwater table and overland low from the adjacent hillside. Any occasional surface water discharge is interrupted by an existing paved road associated with the subdivision immediately off-site to the south of the Review Area. Vegetation within the wetland consist of grasses such as a bentgrass species (Agrostis spp.; assumed facultative (FAC)) with lesser amounts of false tall rye grass (Schedonorus arundinaceous; FAC), and field meadow-foxtail (Alopecurus pratensis; FAC). Soils in the wetland are low chroma (chroma of 2 or less) displaying faint to distinct redox features in the upper 6 to 9 inches, underlain by a depleted layer meeting indicators A11 (Depleted Below Dark Surface) and F3 (Depleted Matrix). Change in vegetation between the upland and wetland plot was nearly indistinguishable. The wetland is within a broad, concave swale landform. The abutting upland is approximately 6 to 12 inches higher in elevation and has a slight slope toward the wetland. Upland vegetation at the wetland boundary is similarly dominated by grasses (Agrostis spp., S. arundinaceous, A. pratensis), but also includes subdominant species such as curly dock (Rumex crispus; FAC), and a vetch species (Vicia spp.; assumed FAC). Oregon white oak (Quercus garryana; FACU) is present at the northern boundary of the wetland. Upland soils consisted of dark brown (10YR 3/2) silt loam completely lacking redox features in some plots, to a depth of 16 inches. Soils at other upland plots were dark brown (10YR 3/2) silt loam displaying 2 percent or less redox features to a depth of 13 inches, and a depleted matrix at 13+ inches, failing to meet any hydric soil indicators. No wetland hydrology indicators were observed in upland plots.**

**or TNW. The closest known waterway is Boeckman Creek, which is located approximately 0.20 mile west of the Review Area. There is an approximate 5-foot drop in elevation from Wetland A to the creek over the course of that distance. A search of wetlands in the nearby vicinity of Boeckman Creek did not identify any similarly situated wetlands that would indicate the potential for a significant nexus to an RPW or TNW. The wetland originates from hillside seeps that are upslope and off-site to the east. The main hydrology sources are a seasonally high groundwater table and overland low from the adjacent hillside. Any occasional surface water discharge is interrupted by an existing paved road associated with the subdivision immediately off-site to the south of the Review Area. Vegetation within the wetland consist of grasses such as a bentgrass species (Agrostis spp.; assumed facultative (FAC)) with lesser amounts of false tall rye grass (Schedonorus arundinaceous; FAC), and field meadow-foxtail (Alopecurus pratensis; FAC). Soils in the wetland are low chroma (chroma of 2 or less) displaying faint to distinct redox features in the upper 6 to 9 inches, underlain by a depleted layer meeting indicators A11 (Depleted Below Dark Surface) and F3 (Depleted Matrix). Change in vegetation between the upland and wetland plot was nearly indistinguishable. The wetland is within a broad, concave swale landform. The abutting upland is approximately 6 to 12 inches higher in elevation and has a slight slope toward the wetland. Upland vegetation at the wetland boundary is similarly dominated by grasses (Agrostis spp., S. arundinaceous, A. pratensis), but also includes subdominant species such as curly dock (Rumex crispus; FAC), and a vetch species (Vicia spp.; assumed FAC). Oregon white oak (Quercus garryana; FACU) is present at the northern boundary of the wetland. Upland soils consisted of dark brown (10YR 3/2) silt loam completely lacking redox features in some plots, to a depth of 16 inches. Soils at other upland plots were dark brown (10YR 3/2) silt loam displaying 2 percent or less redox features to a depth of 13 inches, and a depleted matrix at 13+ inches, failing to meet any hydric soil indicators. No wetland hydrology indicators were observed in upland plots.**

An 8-inch diameter concrete pipe exists near the southwest property corner, under the paved road; however, its discharge point is unknown. The stormwater system for the Morgan Farms subdivision directly south of the site discharges to the east to Boeckman Creek after flowing through stormwater treatment facilities. The stormwater as-built for Morgan Farms (Corps No. NWP-2018-162) did not show a connection to the culvert. Wetland A does not exhibit a defined channel or relatively permanent surface water. Only during extreme precipitation events would Wetland A exhibit sheet flow toward the culvert located at the southwest property corner. Under normal conditions, surface water within Wetland A infiltrates the soil before reaching the culvert. The soils downslope of the Wetland A are non-hydric, making shallow subsurface connection to Boeckman Creek unlikely. Because Wetland A does not contribute a hydrologic connection to a RPW or TNW, it does not significantly affect the chemical, physical, or biological integrity of navigable waters, interstate waterways, or the territorial seas. Wetland A is located near a recently developed residential area to the southwest (Corps No. NWP-2018-162), and another new residential development 0.10 mile to the southwest. The land upslope of Wetland A to the southeast and northeast is former farmland, where located directly east of the wetland is a residence. Wetland A does not possess an interstate commerce connection. There is no interstate use by interstate and/or foreign travelers for recreational purposes since there are no resources of special significance at this location. There are no bird or wildlife species that would attract interstate or foreign travelers; there are no fish or shellfish which could be taken or sold in interstate or foreign commerce; and there are no industrial, agriculture and silviculture purposes which could be sold in interstate/foreign commerce at this location.

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams):        linear feet        width (ft).
- Lakes/ponds:        acres.
- Other non-wetland waters:        acres. List type of aquatic resource:        .
- Wetlands: 1.02 acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams):        linear feet,        width (ft).
- Lakes/ponds:        acres.
- Other non-wetland waters:        acres. List type of aquatic resource:        .

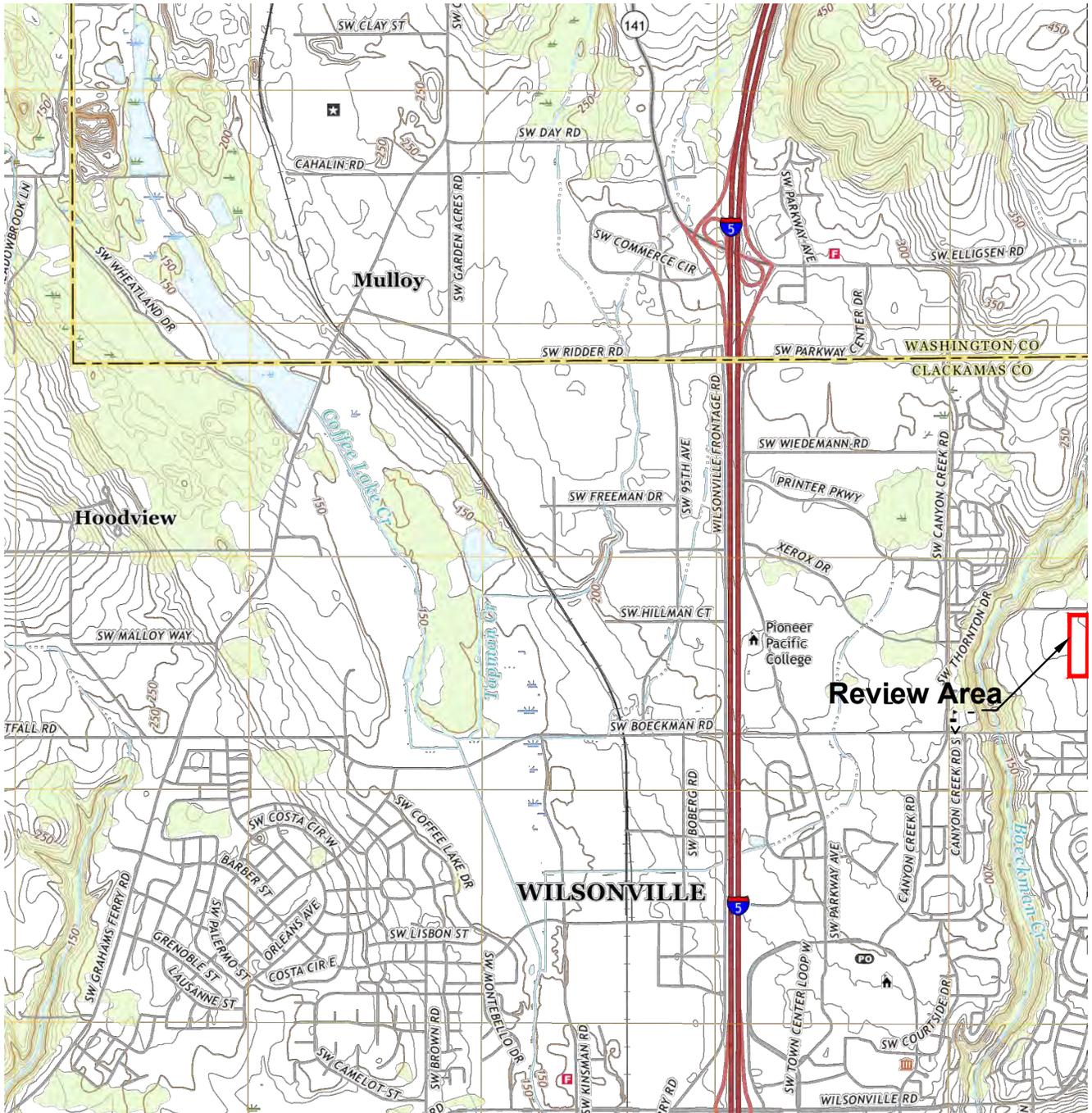
- Wetlands:

**SECTION IV: DATA SOURCES.**

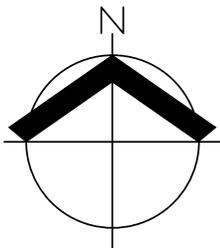
**A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):**

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: 7252 Frog Pond Lane Wilsonville, Clackamas County, Oregon, Wetland Delineation Report dated July, 2022.
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - Office concurs with data sheets/delineation report.
  - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps:
  - Corps navigable waters' study:
- U.S. Geological Survey Hydrologic Atlas:
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 7.5' Topographic Series Quadrangle, Sherwood, OR (2020).
- USDA Natural Resources Conservation Service Soil Survey. Citation: NRCS Web Soil Survey for Clackamas County.
- National wetlands inventory map(s). Cite name: National Wetland Inventory layer, Oct. 2022, National Regulatory Viewer.
- State/Local wetland inventory map(s): Local Wetland Inventory layer, Oct. 2022, National Regulatory Viewer.
- FEMA/FIRM maps: #41005C0234D, effective 06/17/2008.
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): G-EGD 7/21/2018 and 10/1/2021.  
or  Other (Name & Date):
- Previous determination(s). File no. and date of response letter:
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify): Corps No. NWP-2018-162.

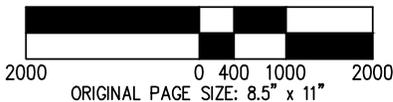
**B. ADDITIONAL COMMENTS TO SUPPORT JD:** On October 31, 2022, the Corps coordinated this JD with the U.S. Environmental Protection Agency (EPA) Region 10 and Corps Headquarters (HQ). On November 3, 2022, the EPA responded, concurring with the Corps' conclusion that Wetland A is not a water of the U.S. On November 7, 2022, HQ responded stating they have no comments and that coordination is complete.



USGS 7.5' TOPOGRAPHIC SERIES  
 QUADRANGLE: SHERWOOD, OR (2020)



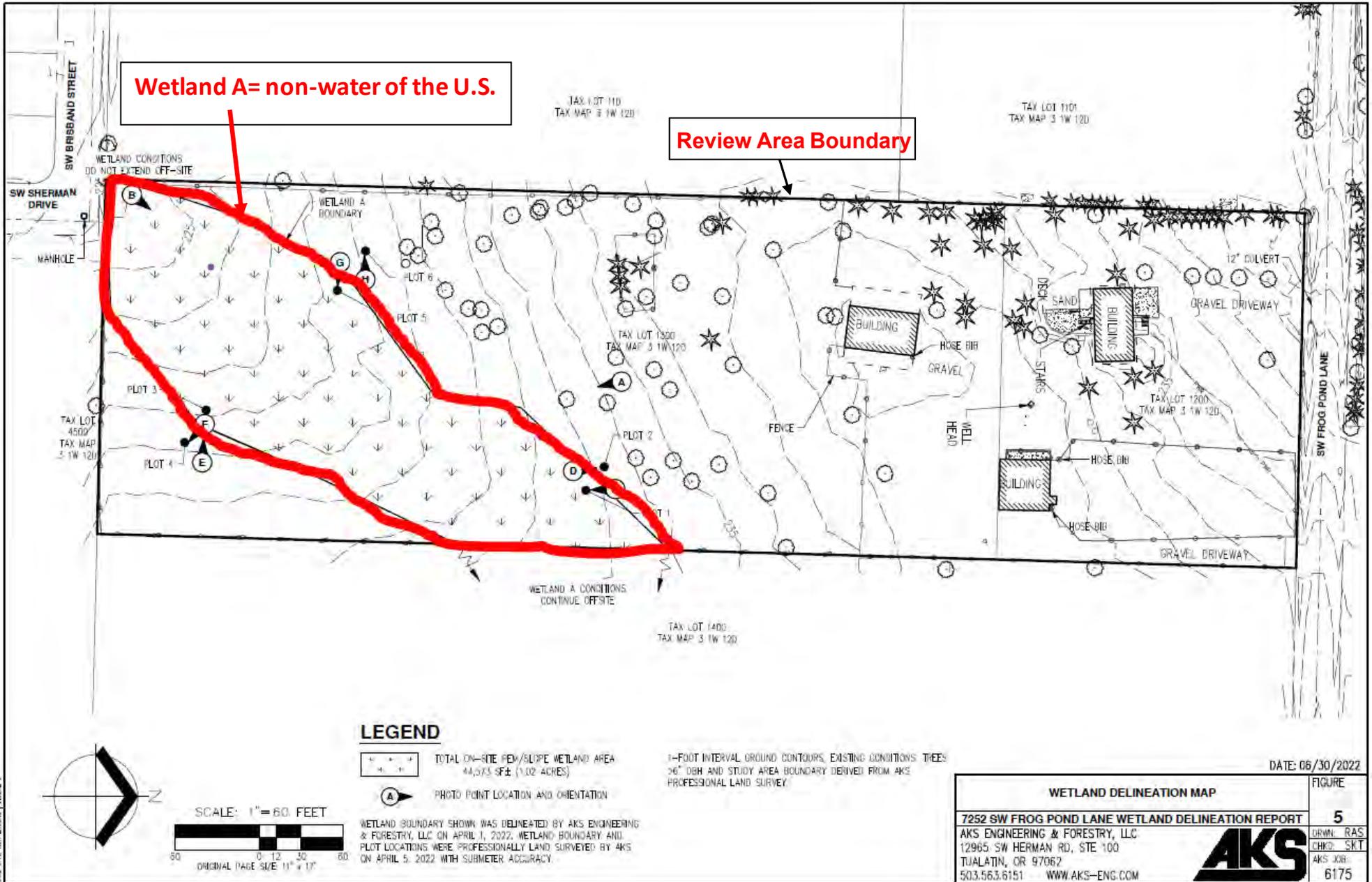
SCALE: 1" = 2000 FEET



DATE: 06/06/2022

<b>USGS VICINITY MAP</b>		FIGURE
<b>7252 SW FROG POND LANE WETLAND DELINEATION REPORT</b>		<b>1</b>
AKS ENGINEERING & FORESTRY, LLC 12965 SW HERMAN RD, STE 100 TUALATIN, OR 97062 503.563.6151 WWW.AKS-ENG.COM		DRWN: RAS CHKD: SKT AKS JOB: 6175

DWG: 6175 BACKGROUND FIGURES | FIGURE 1



**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND  
REQUEST FOR APPEAL**

Applicant: Julie Wirth-McGee, AKS Engineering and Forestry, LLC	File Number: NWP-2022-360	Date: November 23, 2022
Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
X	APPROVED JURISDICTIONAL DETERMINATION	D
	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found in Corps regulations at 33 CFR Part 331, or at <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/FederalRegulation.aspx>

**A: INITIAL PROFFERED PERMIT:** You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT:** You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

**SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

**ADDITIONAL INFORMATION:** The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

If you have questions regarding this decision and/or the appeal process you may contact:  
William D. Abadie, Chief Regulatory Branch  
U.S. Army Corps of Engineers, Portland District Office  
PO Box 2946  
Portland, OR 97208-2946  
Telephone: (503)808-4373  
Email: William.D.Abadie@usace.army.mil

If you only have questions regarding the appeal process you may also contact:  
Melinda M. Larsen, Regulatory Appeals Review Officer  
U.S. Army Corps of Engineers, Northwestern Division  
1201 NE Lloyd Blvd., Suite 400  
Portland, OR 97232  
Telephone: (503)808-3888  
Email: Melinda.M.Larsen@usace.army.mil

**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

<hr/> Signature of appellant or agent.	Date:	Telephone number:
---	-------	-------------------

## Exhibit I: Draft CC&Rs

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**AFTER RECORDING, RETURN TO:**

Cottage Park Place Owners Association  
c/o Sullivan Homes, LLC.  
5832 Firestone Ct  
San Jose, CA 95138

**DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS FOR  
COTTAGE PARK PLACE**

**(Plat of Cottage Park Place)**

Clackamas County, Oregon

By:

Sullivan Homes, LLC.

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**DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR COTTAGE CREEK**

**THIS DECLARATION** is made this \_\_\_\_ day of September , 2022 by **Sullivan Homes, LLC.**, an California corporation.

**RECITALS**

A. **SULLIVAN HOMES, LLC.** (“**Declarant**”) owns all the real property in the plat of **COTTAGE PARK PLACE** which is located within the City of Wilsonville, Clackamas County, Oregon.

B. Declarant, desires to subject a portion of such property as described in Article 2 below to the conditions, restrictions and charges set forth in this instrument for the benefit of such property, and its present and subsequent owners, and to establish such property under the Oregon Planned Community Act, ORS 94.550 to 94.783 (as the same may be amended or added to in the future, the “**Planned Community Act**”), for a one or two phase Class I planned development to be known as “**Cottage Park Place.**”

**NOW, THEREFORE,** Declarant, hereby declares that the property described in Section 2.1 below will be held, sold and conveyed subject to the following easements, covenants, restrictions and charges, and each such declarant, as to the real property owned by each such declarant, and does hereby grant the easements set forth in this Declaration that are located on, over and through the real property owned by each such declarant, runs with such property and is binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and inures to the benefit of each owner thereof.

**Article 1  
DEFINITIONS**

As used in this Declaration, the terms set forth below have the following meanings:

1.1 “**Accessory Dwelling Unit**” means a portion of a Living Unit capable of being occupied as a separate residence and which includes its own kitchen and bath facilities.

1.2 “**Additional Property**” means any land, whether or not owned by Declarant, which is made subject to this Declaration as provided in Section 2.2 below.

1.3 “**Architectural Review Committee**” or “**The Committee**” means the committee appointed pursuant to Article 7 below.

1.4 “**Articles of Incorporation**” means the Articles of Incorporation of the Association.

1.5 “**Assessments**” means all assessments and other charges, fines and fees imposed by the Association on an Owner in accordance with this Declaration or the Bylaws of the Association or provisions of the Oregon Planned Community Act, including, without limitation, General

Assessments, Special Assessments, Emergency Assessments, Limited Common Area Assessments, Project Assessments, and Individual Assessments as described in Article 10 below.

1.6 “**Association**” means the nonprofit corporation to be formed to serve as the owners association as provided in Article 8 below, and its successors and assigns.

1.7 “**Board of Directors**” or “**the Board**” means the duly appointed or elected board of directors of the Association, which is invested with the authority to operate the Association and to appoint the officers of the Association. Prior to the Turnover Meeting, Declarant will appoint the Board of Directors. After the Turnover Meeting, the Owners will elect the Board of Directors.

1.8 “**Bylaws**” means the duly adopted bylaws of the Association recorded the same day as this Declaration, as the same may hereafter be amended or replaced.

1.9 “**Common Areas**” means those lots or tracts designated as such on any plat of the Property, or in this Declaration or any declaration annexing Additional Property to Cottage Park Place, including any Improvements thereon, and also includes Common Easement Areas, Limited Common Easement Areas and any Lots converted to Common Areas as provided in Section 3.2 below.

1.10 “**Common Easement Areas**” means those easements established for the benefit of all property within Cottage Park Place pursuant to this Declaration or any plat or declaration annexing Additional Property to Cottage Park Place.

1.11 “**Common Maintenance Areas**” means the Common Areas and any other areas designated as such in Section 9.1 of this Declaration or in any declaration annexing Additional Property to Cottage Park Place as being maintained by the Association.

1.12 “**Declarant**” means Sullivan Homes, LLC.

1.13 “**Development Period**” means the period of time between the date this Declaration is recorded and the earliest of (a) when all of the property within the Master Plan has been developed and all of the Lots in the last area to be annexed to this Declaration have been conveyed to Persons other than a successor declarant to Declarant, a developer or a home builder of multiple Lots; or an entity (Declarant) who retains a portion of developed homes for rental purposes (b) when, in its discretion, Declarant so determines, as evidenced by a recorded document to that effect executed by Declarant.

1.14 “**Emergency Assessments**” means the Assessments described in Section 10.6.

1.15 “**Front Yard**” means the area between the predominant wall plane of the Living Unit toward any street and including any side yard adjoining the street. The Front Yard also includes any portion of the street right of way between the curb and the Lot line and the landscaping and trees located in that area.

1.16 “**General Assessments**” means the Assessments described in Section 10.4.

1.17 “**General Common Areas**” means those tracts or areas designated as such on the Plat of the Initial Development or any plat of Additional Property, which the Association owns or will own as set forth in any plat of the Property.

1.18 “**Governmental Authority**” means City of Wilsonville, Clackamas County, the State of Oregon, the United States of America, or other governmental entity or agency that has or acquires jurisdiction over the Property or any portion thereof, or over sales of the Property, from time to time.

1.19 “**Improvement**” means every structure or improvement of any kind, including but not limited to a fence, retaining wall, driveway, storage shelter, landscaping or other product of construction efforts on or in respect to the Property.

1.20 “**Individual Assessments**” means the Assessments described in Section 10.8.

1.21 “**Initial Development**” means the real property referred to in Section 2.1 below.

1.22 “**Limited Common Areas**” means those Common Areas established for the exclusive use or enjoyment of certain Lots as designated in this Declaration or any declaration annexing property to Cottage Creek, including Limited Common Easement Areas.

1.23 “**Limited Common Area Assessments**” means those Assessments as described in Section 10.7.

1.24 “**Limited Common Easement Areas**” means those easements established for the exclusive use or enjoyment of certain Lots as designated in this Declaration or any declaration annexing property to Cottage Creek.

1.25 “**Living Unit**” means a building or a portion of a building located upon a Lot within the Property and designated for separate residential occupancy, together with any permitted Accessory Dwelling Unit.

1.26 “**Lot**” means a platted lot, partitioned parcel, or condominium unit within the Property, with the exception of any lot marked on a plat of the Property as being common or open space or so designated in this Declaration or an annexation declaration annexing such property to Cottage Creek. Lots do not include Common Areas or common tracts that any plat of the Property indicates will be owned and maintained by the Association.

1.27 “**Master Plan**” means the Development Plan of Cottage Park Place approved by the City of Wilsonville, Oregon, as the same may hereafter be amended.

1.28 “**Cottage Park Place**” means the Initial Development and any Additional Property annexed to this Declaration.

1.29 “**Mortgage**” means a mortgage or a trust deed; “**mortgagee**” means a mortgagee or a beneficiary of a trust deed; and “**mortgagor**” means a mortgagor or a grantor of a trust deed.

1.30 “**Owner**” means the person or persons, including Declarant, owning any Lot in the Property including the holder of a life estate, but does not include a tenant or holder of a leasehold

interest or a person holding only a security interest in a Lot. If a Lot is Sold under a recorded real estate installment sale contract, the purchaser (rather than the seller) will be considered the Owner unless the contract specifically provides to the contrary. The rights, obligations and other status of being an Owner commence upon acquisition of the ownership of a Lot and terminate upon disposition of such ownership, but termination of ownership does not discharge an Owner from obligations incurred prior to termination.

1.31 “**Person**” means a human being, a corporation, partnership, limited liability company, trustee, or other legal entity.

1.32 “**Project**” means any separately designated and developed portion of the Property and comprised of discrete types of development or use, including, without limitation, duplexes, townhomes or other attached dwellings. Any such Project will be designated as a Project in the Project Declaration, this Declaration or the declaration annexing such portion of the Property to Cottage Creek.

1.33 “**Project Assessments**” means assessments levied pursuant to a specific Project Declaration.

1.34 “**Project Association**” means any association established for a specific Project pursuant to a Project Declaration.

1.35 “**Project Common Area**” means the area within a Project restricted in whole or in part to common use primarily by or for the benefit of the Owners within the Project and their families, tenants, employees, guests and invitees.

1.36 “**Project Declaration**” means a declaration of easements, covenants, conditions and restrictions imposing a unified development scheme on a particular Project, which declaration will have been executed by or bear the written approval of Declarant.

1.37 “**Project Parcel**” means the portion of the Property upon which a Project is located, as indicated, if appropriate, on the plat relating to the Project and as designated in the Project Declaration.

1.38 “**Public Areas**” means areas dedicated to the public or established for public use in any plat of the Property, or so designated in this Declaration or the declaration annexing such property to Morgan Farm.

1.39 “**Rules and Regulations**” means the rules and regulations duly adopted by the Board of Directors pursuant to Section 6.31.

1.40 “**Sold**” means that legal title has been conveyed or that a contract of sale has been executed and recorded under which the purchaser has obtained the right to possession.

1.41 “**Special Assessments**” means the Assessments described in Section 10.5.

1.42 “**Supplemental Declaration**” means an instrument recorded pursuant to Section 1.2 that subjects Additional Property to this Declaration, designates Neighborhoods, and/or imposes,

expressly or by reference, additional or different restrictions and obligations on the Additional Property described in such instrument. The term also refers to an instrument recorded by Declarant to establish Voting Groups.

1.43 “**the Property**” means Cottage Park Place.

1.44 “**this Declaration**” means all of the easements, covenants, restrictions and charges set forth in this instrument as the same may be amended or supplemented from time to time in accordance with the provisions hereof, including by the provisions of any Supplemental Declaration or Project Declaration.

1.45 “**Turnover Meeting**” means the meeting called by Declarant pursuant to Section 8.8 below, at which Declarant will turnover administrative responsibility for the Property to the Association.

## **Article 2 PROPERTY SUBJECT TO THIS DECLARATION**

2.1 **Initial Development.** Declarant hereby declares that all of the real property described below is owned and will be owned, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration:

Lots 1 through 32 inclusive, and Tracts A ( Open Space) and B (Stormwater), within that certain plat entitled “**Cottage Park Place**” filed in the plat records of Clackamas County, Oregon, on \_\_\_\_\_ as Plat No. \_\_\_\_\_.

2.2 **Annexation of Additional Property.** Declarant may from time to time, in its sole discretion, annex to Cottage Park Place as Additional Property any real property now or hereafter acquired by Declarant. The annexation of such Additional Property will be accomplished as follows:

(a) The Declarant as owner of the real property will record a declaration that will be executed by or bear the approval of Declarant and will, among other things, describe the real property to be annexed, designate the Project of which such property is a part, establish land classifications for the Additional Property, establish any additional limitations, uses, restrictions, covenants and conditions which are intended to be applicable to such Additional Property, and declare that such property is held and will be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration.

(b) The Additional Property included in any such annexation will thereby become a part of Cottage Park Place and this Declaration, and the Declarant and the Association will accept and exercise administration of this Declaration with respect to such property.

(c) Notwithstanding any provision apparently to the contrary, a declaration with respect to any Additional Property may, with the consent of Declarant:

(1) Establish such new land classifications and such limitations, uses, restrictions, covenants and conditions with respect to such Additional Property as Declarant may deem to be appropriate for the development of the Additional Property.

(2) With respect to existing land classifications, establish additional or different limitations, uses, restrictions, covenants and conditions with respect to such property as Declarant may deem to be appropriate for the development of such Additional Property.

(d) There is no limitation on the number of Lots or Living Units, that Declarant may create or annex to Cottage Park Place, except as may be established by applicable ordinances of the City of Wilsonville. Similarly, there is no limitation on the right of Declarant to annex common property, except as may be established by the City of Wilsonville.

(e) Declarant does not have any obligation to build any specific future Improvement, but nothing in this Declaration limits its right to add additional Improvements. Nothing in this Declaration will establish any duty or obligation on Declarant to annex any property to this Declaration, and no owner of property excluded from this Declaration will have any right to have any such property annexed to this Declaration or Cottage Creek.

(f) Upon annexation to Cottage Park Place, additional Lots so annexed will be entitled to voting rights as set forth in Section 8.3 below.

(g) The formula to be used for reallocating the common expenses if additional Lots are annexed and the manner of reapportioning the common expenses if additional Lots are annexed during a fiscal year are set forth in Section 10.9 below.

2.3 **Improvements.** Declarant does not agree to build any other Improvements on the Property other than as required by the City of Wilsonville, but may elect, at its option, to build additional Improvements.

2.4 **Withdrawal of Property.** Declarant may withdraw property it owns from Cottage Park Place only by duly adopted amendment to this Declaration, except that Declarant may withdraw all or a portion of the Initial Development or any Additional Property annexed pursuant to a declaration described in Section 2.2 above at any time prior to the sale of the first Lot in the respective plat of the Initial Development, or in the case of Additional property, prior to the sale of the first Lot in the property annexed by the supplemental declaration, subject to the prior approval of the City of Wilsonville. Such withdrawal will be by a declaration executed by the withdrawing declarant and recorded in the deed records of Clackamas County, Oregon. If a portion of the Property is so withdrawn, all voting rights otherwise allocated to Lots being withdrawn will also be eliminated, and the common expenses will be reallocated as provided in Section 10.9 below. Such right of withdrawal will not expire except upon sale of the first Lot within the applicable phase of the Property as described above.

2.5 **Subdivisions.** Declarant hereby reserves the right to subdivide any Lots then owned by it upon receiving all required approvals from City of Wilsonville. If any two or more Lots are so subdivided, they will be deemed separate Lots for the purposes of allocating Assessments under this Declaration. No other Owner of any Lot in the Property may subdivide any Lot without the prior written approval of the Declarant during the Development Period and thereafter by the Board of

Directors, which consent may be granted or denied at the sole discretion of the Declarant or the Committee, as applicable.

2.6 **Consolidations.** Declarant has the right to consolidate any two or more Lots then owned by it upon receipt of any required approvals from City of Wilsonville. No other Owner may consolidate any Lots without the prior written approval of the Declarant during the Development Period and thereafter by the Board of Directors, which may be granted or denied at the sole discretion of the Declarant or Committee, as applicable. An approved consolidation will be effected by the recording of a supplemental declaration stating that the affected Lots are consolidated, which declaration will be executed by the Owner(s) of the affected Lots and by the president of the Association. Once so consolidated, the consolidated Lot may not thereafter be partitioned, nor may the consolidation be revoked except as provided in Section 2.5. Any Lots consolidated pursuant to this section will be considered one Lot thereafter for the purposes of this Declaration, including voting rights and allocation of Assessments.

2.7 **Dedications.** Declarant has the right to dedicate any portions of the Property then owned by it respectively to any Governmental Authority, quasi-governmental entity or entity qualifying under Section 501(c)(3) of the Internal Revenue Code or similar provisions, from time to time, for such purposes as it may deem to be appropriate, including, without limitation, for utility stations, equipment, fixtures and lines; streets and roads; sidewalks; trails; open space; recreational facilities; schools; fire, police, security, medical and similar services; and such other purposes as they and such Governmental Authority or quasi-governmental entity determine to be appropriate from time to time. Any consideration received by it because of such dedication or reason of any condemnation or any conveyance in lieu of condemnation will belong solely to Declarant.

### **Article 3 LAND CLASSIFICATIONS**

3.1 **Land Classifications within Initial Development.** All land within the Initial Development is included in one or another of the following classifications:

- (a) **Lots**, which consist of Lots 1 through 34 of the plat of the Initial Development.
- (b) **General Common Areas**, which are the areas designated as Tracts A on the plat of the Initial Development.
- (c) **Limited Common Areas**, which are Tracts B on the plat of the Initial Development
- (d) **Public Areas**, which are SW Sherman Drive, and Street "A", within the Initial Development.
- (e) **Common Easement Areas** and **Limited Common Easement Areas**, as shown or noted on the plat of the Initial Development.

3.2 **Conversion of Lots to Common Areas.** Declarant may elect to build common facilities on one or more Lots and designate such Lots as Common Areas by a declaration recorded in the deed records of Clackamas County, Oregon. Declarant, as owner of the Lots being converted, will execute such declaration.

3.3 **Condominium Conversions.** Declarant reserves the right to convert any Living Units then owned by Declarant into a condominium or other form of ownership in any manner permitted by Oregon law and to otherwise create and terminate any condominium containing Living Units owned solely by Declarant.

3.4 **Re-Zoning and Other Governmental Actions.** Declarant reserves the right, from time to time, to petition for and obtain re-zonings of its property; exchanges of properties; amendments to the Master Plan; and such licenses, permits and approvals from any Governmental Authority as Declarant may deem to be appropriate from time to time in connection with the then or anticipated use of such portion of the Property.

3.5 **Creation of Projects.** The Property may contain one or more Projects, each of which may contain areas that have common uses, have access to certain Project Common Areas, be treated similarly for Assessment or voting purposes, or share other common characteristics as determined by Declarant. Declarant reserves the right to designate which portions of the Property constitute a Project. Projects need not comprise the entirety of the Property, nor must all Lots be part of a Project. A Project may be composed of more than one housing type. Projects may include noncontiguous parcels of the Property.

3.6 **Project Declarations.** Declarant reserves the right to record a Supplemental or Project Declaration against a Project Parcel containing additional covenants, conditions, restrictions and reservations governing, expanding or confining the use of any such Project, reserving additional easements therein, and imposing Project Assessments upon the Owners of Lots in such Project for the ongoing operation, maintenance and repair of Project Common Areas or other portions of the Project.

3.7 **Project Associations.** The establishment of a Project may be accompanied by the formation of a Project Association. Project Associations will be nonprofit corporations with memberships composed of the Owners of the Lots within such Projects. Declarant may elect to cause any such Project Association to be formed for such purposes at any time after the Project Declaration is recorded and before any Lots therein are conveyed to Owners. Following the Development Period, the Owners of Lots within a Project, by majority vote and with the written consent of the Board of Directors, may elect to establish a Project Association. At the time a Project Association is formed, or at any time thereafter, Declarant or the Board may delegate to the Project Association certain of their respective rights and obligations with respect to the portion of the Property located within the Project and other Common Areas to which members of such Project have access. Such rights and duties may include, without limitation, the obligation to maintain Project Common Areas within the Project, establish and enforce Rules and Regulations, and hold title to and administer, manage, operate and insure property and/or easements located within such Project. Certain obligations and rights with respect to matters affecting more than one Project may be delegated by the respective declarant or the Board to two or more of such Projects.

3.8 **Project Committees.** With respect to any Project that does not have a Project Association, the Board of Directors may appoint a Project Committee composed of three to five Owners of Lots within such Project, which committee will be responsible for recommending to the Board any Rules and Regulations pertaining to Project Common Areas; for decisions pertaining to the operation, use, maintenance, repair, replacement or improvement of such Project Common Areas; and for such other matters pertaining to the Project as the Board may elect to delegate to the Project Committee.

3.9 **Conversion to Different Uses.** Declarant reserves the right to withdraw portions of the Property from any Project and its related Supplemental or Project Declaration and may also include the portion so withdrawn in a different Project pursuant to the provisions of a different Supplemental or Project Declaration. Such withdrawal is accomplished by and effective upon recording an amendment to the applicable Supplemental or Project Declaration or Declarations.

#### **Article 4 PROPERTY RIGHTS IN COMMON AREAS**

4.1 **Owners Easements of Enjoyment.** Subject to provisions of this Section, every Owner and his invitees has a right and easement of enjoyment in and to the Common Areas, which easement is appurtenant to and passes with the title to every Lot. The use of any Limited Common Areas, however, is limited to the Owners and invitees of the Lots designated in the declaration establishing the Limited Common Area.

4.2 **Common Easement Areas.** Common Easement Areas are to be maintained by the Association and no changes in landscaping will be permitted within such areas without written authorization by the Architectural Review Committee. No building, wall, paving, or construction of any type may be erected or maintained by any Owner so as to trespass or encroach upon the Common Easement Areas, nor may any such areas be used by the Owner for storm water treatment purposes. No fence or landscaping may be erected or maintained by any Owner within a Common Easement Area without the prior written approval of the Architectural Review Committee

4.3 **Title to Common Areas.** Title to the Common Areas, except Common Easement Areas, will be conveyed to the Association by Declarant, respectively, AS IS but free and clear of monetary liens, before the Turnover Meeting. If Declarant erroneously conveys to the Association any property that is not Common Area, upon request the Association will promptly reconvey the property to Declarant or its designee. Title to Common Easement Areas, subject to the easements set forth in this Declaration or the supplemental declaration creating such areas, rests and will rest in the Owners of the respective Lots within which Common Easement Areas are located, or to the public if part of dedicated street rights of way.

4.4 **Extent of Owners' Rights.** The rights and easements of enjoyment in the Common Areas created hereby are subject to the following and to all other provisions of this Declaration:

(a) **Association Easements.** Declarant grants to the Association for the benefit of the Association and all Owners of Lots within the Property the following easements over, under, and upon the General Common Areas and Limited Common Areas, and Common Easement Areas:

(1) An easement for underground installation and maintenance of power, gas, electric, water and other utility and communication lines and services installed by Declarant or with the approval of the Board of Directors of the Association and any such easement shown on any plat of the Property.

(2) An easement for construction, maintenance, repair and use of Common Areas, including common facilities thereon.

(3) An easement for making repairs or replacements to any existing structures on Common Areas to carry out the Association's maintenance obligations as set forth herein.

**(b) Public and Utility Easements.** The Common Areas are subject to such public and utility easements that are established in any plat of the Property. Additionally, the public is hereby granted access easements over all the pedestrian and bicycle accesses, pathways and trails within the Initial Development General Common Areas as indicated on the plat of the Initial Development. Declarant or the Association, may (and, to the extent required by law, must) grant or assign such easements to municipalities or other utilities performing utility services and to communication companies, and the Association may grant free access thereon to police, fire and other public officials and to employees of utility companies and communications companies serving the Property.

**(c) Use of the Common Areas.** The Common Areas may not be partitioned or otherwise divided into parcels for residential use, and no private structure of any type may be constructed on the Common Areas. Except as otherwise provided in this Declaration, the Common Areas are reserved for the use and enjoyment of all Owners and no private use by Owners or occupants of Lots may be made of the Common Areas, including Common Easement Areas, except as otherwise provided in this Declaration. No Owner may locate or cause to be located on the Common Areas any trash, fencing, structure, equipment, furniture, package or object of any kind. Nothing in this Article prevents the placing of a sign or signs by the Association upon the Common Areas identifying the Property or any Project or identifying pathways or items of interest, signs restricting certain uses or warning signs, provided such signs are approved by the Architectural Review Committee, are consistent with the City of Wilsonville Sign Code and meet vision clearance standards contained in the City of Wilsonville Land Development code. Lighting for the Common Areas must be shielded such that it does not shine on adjacent properties, and must be consistent with the City of Wilsonville Community Development Code and the lighting plan approved by the City of Wilsonville. The Board of Directors of the Association has authority to abate any trespass or encroachment upon the Common Area at any time, by any reasonable means and with or without having to bring legal proceedings. A Supplemental Declaration annexing Additional Property may provide that the Owners of such Additional Property do not have the right to use a particular Common Area or facility located on such Common Area, in which event such Common Area automatically becomes a Limited Common Area assigned to the Lots that have access thereto and the excluded Owners will not be required to share in the costs of maintaining the facility or newly characterized Limited Common Area, as is more particularly described in Section 10.7.

(d) **Alienation of the Common Areas.** The Association may not by act or omission seek to abandon, partition, subdivide, encumber as security for a debt, sell or transfer the Common Areas owned directly or indirectly by the Association for the benefit of the Lots unless the holders of at least 80 percent of the Class A Association voting rights and the Class B member (as defined in Section 8.3 below), if any, have given their prior written approval and unless approved by the City of Wilsonville. Such approvals, however, are not required for dedications under Section 2.7. This provision does not apply to the easements described in Section 4.4(b) above. The Association, upon approval in writing of at least 50 percent of the Class A Member voting rights and the Class B Member, if any, and if approved by order or resolution of the City of Wilsonville, may dedicate or convey any portion of the Common Areas to a park district or other public body. Any sale, transfer, conveyance or encumbrance permitted by this Declaration may provide that the Common Areas may be released from the restrictions imposed by this Declaration if the ballot or vote for the approval of the action also includes approval of the release; given such inclusion, the effect of the release will be the same as withdrawal of such property from this Declaration.

(e) **Leases, Easements, Rights-of-Way, Licenses and Similar Interests and Vacations of Roadways.** Notwithstanding the provisions of Section 4.4(d), the Association may execute, acknowledge and deliver leases, easements, rights-of-way, licenses and other similar interests affecting the Common Areas and consent to vacation of roadways within and adjacent to the Common Areas, subject to the approvals required by ORS 94.665(4) and (5).

(f) **Limitations on Use.** Use of the Common Areas by the Owners is subject to the provisions of this Declaration and to the following:

(1) The provisions of this Declaration and any applicable Supplemental of Project Declaration;

(2) Any restrictions or limitations contained in any deed or other instrument conveying such property to the Association;

(3) Easements reserved or granted in this Declaration or any Supplemental or Project Declaration;

(4) The Board's right to:

(A) adopt Rules and Regulations regulating use and enjoyment of the Common Areas, including rules limiting the number of guests who may use the Common Areas;

(B) suspend the right of an Owner to use the Common Areas as provided in this Declaration

(C) dedicate or transfer all or any part of the Common Areas, subject to such approval requirements as may be set forth in this Declaration;

(D) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Areas;

(E) permit use of any recreational facilities situated on the Common Areas by Persons other than Owners, their families, lessees and guests with or without payment of use fees established by the Board;

(F) designate areas and facilities of Common Areas as Public Areas and;

(G) provide certain Owners the rights to the exclusive use of those portions of the Common Areas designated as Limited Common Areas.

4.5 **Delegation of Use.** Any Owner may delegate, in accordance with the Bylaws of the Association, his right of enjoyment of the Common Areas to the family members, tenants, invitees and guests, whose use is subject to this Declaration and Rules and Regulations adopted under this Declaration.

4.6 **Easements Reserved by Declarant.** So long as Declarant owns any Lot, Declarant reserves and is hereby granted an easement over, under and across the Common Areas to carry out sales and rental activities necessary or convenient for the sale or rental of Lots, including, without limitation, advertising and “For Sale” signs. In addition, Declarant hereby reserves to itself and for the owners of Lots in all future phases of Morgan Farm a perpetual easement and right-of-way for access over, upon and across the Common Areas for construction, utilities, communication lines, drainage, and ingress and egress over, in, upon, under and across the Common Areas and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on the Property or other real property owned by Declarant; provided, however, that no such rights may be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment or access to an Owner’s Lot by that Owner or the Owner’s family, tenants, employees, guests, or invitees.

4.7 **Easement to Serve Other Property.** Declarant reserves for itself and its duly authorized agents, successors, assigns and Mortgagees, and the developers of Improvements in all future phases of Cottage Park Place, a perpetual easement over the Common Areas for the purposes of enjoyment, use, access and development of the property subject to the Master Plan, even if such property is never made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Areas for construction, utilities, water and sanitary sewer lines, communication lines, drainage facilities, irrigation systems and signs, and ingress and egress for the benefit of other portions of Cottage Park Place and any Additional Property that becomes subject to this Declaration or any property in the vicinity of the Property or Additional Property that is then owned by Declarant, or an affiliate thereof. Declarant agrees that such users are responsible for any damage caused to the Common Areas as a result of their actions in connection with development of such property. If the easement is exercised for permanent use by such property and such property or any portion thereof benefiting from such easement is not made subject to this Declaration, Declarant, and their respective successors or assigns, will enter into a reasonable agreement with the Association to share the cost of any maintenance of such facilities. The allocation of costs in any such agreement will be based on the relative extent of use of such facilities.

4.8 **Future Development.** Owners of Lots in Cottage Park Place by virtue of purchasing their Lot(s) consent to the Master Plan for Cottage Park Place approved by the City of Wilsonville, as the same may be subsequently modified or amended by Declarant or otherwise. By adoption of the

Master Plan and this Declaration, Declarant is not committing itself to take any action that this Declaration or the Bylaws does not make an obligation. Any Person who acquires property in Cottage Park Place will have the advantage of any future development of Cottage Park Place, but does not have any legal right to insist that there be any future development of the Property or any claim against such declarants for failure to develop Cottage Park Place.

#### 4.9 **Limited Common Areas.**

(a) **Purpose.** Certain portions of the Common Areas may be designated by Declarant or by the Master Association as Limited Common Areas reserved for the exclusive use or primary benefit of Owners and occupants of specified Lots. By way of illustration and not limitation, Limited Common Areas may include private access roads serving certain Lots. All costs associated with maintenance, repair, replacement and insurance (if insured separately from other Common Areas) of Limited Common Areas will be allocated among the Owners of the Lots to which the Limited Common Areas are assigned.

(b) **Initial Designation.** Limited Common Areas may be designated as such in this Declaration, the instrument by which they are conveyed to the Master Association or in any Supplemental Declaration, but any such assignment will not preclude the Declarant as to the Lot(s) or portion(s) thereof it owns, from later assigning use of the same Limited Common Areas to additional Lots.

(c) **Subsequent Assignments.** Limited Common Areas may be converted to General Common Areas and Limited Common Areas may be reassigned for the benefit of different Lots and Owners upon (1) approval by the Board of Directors and (2) the vote of two-thirds of the voting rights of Lots to whom any of such Limited Common Areas are then assigned. Any such conversion or reassignment also requires the written consent of the declarant, or its successor, who annexed such Limited Common Area to Cottage Park Place.

(d) **Use by Others.** Upon approval of a majority of the voting rights of Owners of Lots to which any Limited Common Area is assigned, the Association may permit other Owners to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees will be used to offset the expenses attributable to such Limited Common Area.

#### 4.10 **Project Common Areas.**

(a) **Purpose.** Certain portions of the Common Areas may be designated by Declarant or the Association as Project Common Areas and reserved for the exclusive use or primary benefit of Owners and occupants within a particular Project or Projects. By way of illustration and not limitation, Project Common Areas may include entry features, recreational facilities, private roads, landscaped medians and cul-de-sacs, community gardens, trails, dog parks, tot lots, or open space. All costs associated with maintenance, repair, replacement and insurance of Project Common Areas will be a Project Expense allocated among the Owners in the Project to which the Project Common Areas are assigned.

(b) **Initial Designation.** Any Project Common Area will be designated as such in this Declaration, the instrument by which they are conveyed to the Master Association or in any applicable Supplemental Declaration or Project Declaration, but any such assignment will not preclude the Declarant from later assigning use of the same Project Common Areas to additional Projects.

(c) **Subsequent Assignments.** A portion of the Common Areas may be assigned as Project Common Areas and Project Common Areas may be reassigned upon (1) approval by the Board of Directors, (2) the vote of a majority of the voting rights in the Project or Projects in which such Common Areas are and will be located, if any, and (3) for reassignments of Project Common Areas or conversion of Project Common Areas to Common Areas, the vote of two-thirds of the voting rights of Lots to whom any of such Project Common Areas are then assigned. Any such assignment or reassignment also requires Declarant's written consent if made during the Development Period.

(d) **Use by Others.** Upon approval of a majority of the voting rights of Owners of Lots within the Project to which any Project Common Areas is assigned, the Master Association may permit Owners of Lots in other Projects to use all or a portion of such Project Common Areas upon payment of reasonable user fees, which fees will be used to offset the Project Expenses attributable to such Project Common Areas.

## **Article 5 PROPERTY RIGHTS IN LOTS**

5.1 **Use and Occupancy.** The Owner of a Lot in the Property is entitled to the exclusive use and benefit of such Lot, except as otherwise expressly provided in this Declaration, including but not limited to the restrictions contained in Article 6 below, and all other provisions of this Declaration and the provisions of any supplement or amendment to this Declaration and any applicable Project Declaration.

5.2 **Easements Reserved.** In addition to any utility and drainage easements shown on any recorded plat of the Property, Declarant hereby reserves the following easements for the benefit of Declarant and the Association:

(a) **Maintenance Easements.** The Owner of any Lot that includes a Common Maintenance Area, or adjoins or blends together visually with any Common Area must, if the Association so requires, permit the Association to enter upon the Lot to perform the maintenance of such Common Area. The Owner and occupant of each Lot is responsible for controlling the Owner's or occupant's pets so they do not harm or otherwise disturb Persons performing such maintenance on behalf of the Association.

(b) **Adjacent Common Area.** The Owner of any Lot which blends together visually with any Common Area must, if the Association elects from time to time to so require, permit the Association to enter upon the Lot to perform the maintenance of such Common Area.

(c) **Right of Entry; Easements for Maintenance, Emergency and Enforcement.** Declarant, the Architectural Review Committee, and any representative of the Association authorized by it may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for determining if the use and/or Improvements of such Lot are then in

compliance with this Declaration, the Bylaws and the Rules and Regulations of the Association. No such entry may be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot. Upon request given to the Owner and any occupant, any Person authorized by the Association may enter a Lot to perform necessary maintenance, repair or replacement of any property for which the Association has maintenance, repair or replacement responsibility under this Declaration, to make emergency repairs to a Lot that are necessary for the public safety or to prevent damage to Common Areas or to another Lot or Living Unit, or to enforce this Declaration or the Rules and Regulations. Requests for entry must be made in advance and for a reasonable time, except in the case of any emergency, when the right of entry is immediate. An emergency entry does not constitute a trespass or otherwise create a right of action in the Owner of the Lot.

(d) **Utility Easements.** Easement for installation and maintenance of utilities and drainage facilities may be reserved over portions of certain Lots, as shown on any recorded plat of the Property. Within such utility easements, the Architectural Review Committee will not permit any structure, planting or other material to be placed or permitted to remain on the easement area that may damage or interfere with the installation or maintenance of utilities, or that may change the direction or flow of drainage channels in the easements, or that will limit or impede access to the utility and appurtenant equipment for repair, maintenance and replacement. The utility easement area of each Lot and all permitted Improvements in it will be maintained continuously by the Owner of the Lot, except for those Improvements for which a public authority or utility company is responsible, and except for Common Maintenance Areas, which will be maintained by the Association.

(e) **Construction on Adjoining Lot.** Declarant hereby reserves for the benefit of Declarant and its assigns a temporary easement over each Lot for access to the adjoining Lot for construction purposes, including temporary placement of ladders or scaffolding. Declarant will restore the Lot to its condition as it existed prior to such access and is responsible for any damage to the Lot.

(f) **Easements for Encroachments.** Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Areas and between adjacent Lots due to the unintentional placement or settling or shifting of the Improvements constructed, reconstructed or altered thereon (in accordance with the terms of this Declaration and the Design Guidelines) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event does an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

5.3 **Future Easements.** Declarant reserves the nonexclusive right and power to grant and record such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the development of any of the Property owned by Declarant. The location of any such easement will be subject to the written approval of the Owner of the burdened Lot, which approval will not unreasonably be withheld, delayed or conditioned.

**Article 6**  
**GENERAL USE RESTRICTIONS**

6.1 **Structures Permitted.** No structures may be erected or permitted to remain on any Lot except structures containing Living Units which are permitted by applicable governmental regulations, and structures normally accessory to a residential home, all of which must have been first approved by the Architectural Review Committee pursuant to Article 7. Prohibited Structures include, but are not limited to, an Accessory Dwelling Unit, construction of a private greenhouse, storage unit, private swimming pool or structure for the storage of a boat and/or camping trailer for personal use.

6.2 **Residential Use.** Lots may only be used for residential purposes. Except with the consent of the Board of Directors of the Association, no trade, craft, business, profession, commercial or similar activity of any kind may be conducted on any Lot, nor may any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any such Lot. The mere parking on a Lot of a vehicle bearing the name of a business will not, in itself, constitute a violation of this provision. Nothing in this paragraph will be deemed to prohibit (a) activities relating to the rental or sale of Living Units, (b) the right of Declarant or any contractor or homebuilder to construct Living Units on any Lot, to store construction materials and equipment on such Lots in the normal course of construction, and to use any Living Unit as a sales or rental office or model home for purposes of sales or rental in Cottage Creek Place, and (c) the right of the Owner of a Lot to maintain his professional personal library, keep his personal business or professional records or accounts, handle his personal business or professional telephone calls or confer with business or professional associates, clients or customers, in his Living Unit to the extent allowed for home occupations by the local jurisdiction. The Board of Directors will not approve commercial activities otherwise prohibited by this paragraph unless the Board of Directors determines that only normal residential activities would be observable outside of the Living Unit and that the activities would not be in violation of applicable governmental ordinances.

6.3 **Leasing and Rental of Living Units.** An Owner may rent or lease such Owners Home or a portion thereof, however; no Owner may lease or rent his or her Living Unit for an initial period of less than thirty (30) days. All leases or rentals must be by written lease agreement, which must provide that the terms of the lease are subject in all respects to the provisions of this Declaration and Bylaws of the Association, and Rules and Regulations adopted by the Association thereunder, and that any failure by the lessee or tenant to comply with the terms of such documents will be a default under the lease. If the Board of Directors finds that a lessee or tenant has violated any provision of such documents or Rules and Regulations, the Board may require the Owner to terminate such lease or rental agreement. Other than the foregoing, there is no restriction on the right of any Owner to lease or rent his living unit.

6.4 **Offensive or Unlawful Activities.** No noxious or offensive activities will be carried out upon the Property, nor will anything be done or placed on the Property which interferes with or jeopardizes the enjoyment of the Property, or which is a source of annoyance to Owners or occupants. Occupants and Owners of Duets, and Shared Walled Living Units must use extreme care about creating disturbances, making noises or using musical instruments, radios, televisions, amplifiers or audio equipment that may disturb other occupants or Owners. No unlawful use may be made of the Property nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the Property must be observed. Owners and other occupants will not engage in any abusive or harassing behavior, either verbal or physical, or any form of intimidation or

aggression directed at owner Owners, occupants, guests, family members, invitees, or directed at the managing agent of the Association, its agents, employees, or vendors.

**6.5 Animals.** No animals, livestock or poultry of any kind may be raised, bred or kept or permitted within any Lot other than a reasonable number of ordinary household pets which are not kept, bred or raised for commercial purposes and which are reasonably controlled so as not to be a nuisance. The Board of Directors has the authority to determine what is an “ordinary household pet.” Any hostile, overly aggressive, unrestrained, oversized or unattended barking dog, constitutes a nuisance. Any inconvenience, damage or unpleasantness caused by such pets is the responsibility of their respective owners. No animal is permitted to roam the Property unattended, and all dogs must be kept on a leash while outside a Lot. An Owner or occupant may be required to remove a pet upon receipt of the third written notice from the Association Board of Directors of violations of any Rule or Regulation or restriction governing pets within the Property. Dog runs and doghouses must be fully screened or fenced from view from any other Lot and must not be visible from the street. The design and construction of such screening, enclosure or doghouse is subject to guidelines adopted by the Architectural Review Committee.

**6.6 Maintenance of Improvements on Lots.** Each Owner shall maintain the Improvements on the Owner’s Lot, including but not limited to, exterior painting or staining and repair, replacement and regular care for roofs, gutters, downspouts, exterior building surfaces, lights, perimeter fences and other exterior Improvements and glass surfaces, retaining walls, decks, porches, walkways and driveways, and sidewalks over the Owner’s Lot or between the street and the Owner’s Lot, in a clean and attractive condition, in good repair to conform to the general standards of maintenance and care as determined by the Architectural Review Committee and in such fashion as not to create a fire or other hazard, including keep the Improvements and adjacent sidewalks reasonably free of leaves, ice, and snow. All repainting or re-staining, any change in type of roof or roof color and any exterior remodeling or changes are subject to prior review and approval by the Architectural Review Committee. Any change in appearance to a Living Unit or other Improvements on a Lot must first be approved by the Committee as set forth in Article 7.

If all or any portion of a Lot or Home is damaged by fire, flood, storm, earthquake, riot, vandalism or other casualty, the Owner shall either (i) restore the damaged improvements or (ii) remove all damaged improvements, including foundations, and the leave the Lot is a clean and safe condition. Any restoration proceeding under (i) the above must be performed so that the improvements are in substantially the same condition in which they existed prior to the damage. The Owner must commence such work within ninety (90) days after the damage occurs and must complete the work within nine ( 9) months thereafter.

If an Owner fails to perform maintenance and / or repair that such Owner is obligated to perform pursuant to this Declaration, and if the Board determines, after notice, that such maintenance and/or repair is necessary to preserve the attractiveness, quality, nature and/or value of Cottage Creek, the Board may cause such maintenance and /or repair to be performed and may enter any such Lot whenever entry is necessary in connection with the performance thereof. An owner may request in writing, and the Board may conduct a hearing on the matter, not less than five days after receipt of notice nor more than twenty days after the request for a hearing from Owner is received. Entry shall be made with as little inconvenience to an Owner as practicable and only after advance written notice of not less than forty eight (48) hours, except in Emergency situations. The cost of such maintenance

and/or repair shall be chargeable to the Owner of the Lot as an Assessment, which may be collected and enforced as any other assessment authorized hereunder.

**6.7 Recreational and Commercial Vehicles.** Except as may otherwise be provided in the Rules and Regulations of the Association, parking of boats, trailers, campers or other recreational or commercial vehicles or equipment, regardless of weight, and parking of any other vehicles with a gross vehicle weight in excess of 9,000 pounds is not allowed on any part of the Property or on public streets within the Property, except only within areas that may be designated for such purposes by the Board of Directors, or within the confines of an enclosed garage or screened area the plans for which must have been reviewed and approved by the Architectural Review Committee prior to construction and no portion of the same may project beyond the screened area. If there is no rear fencing and the vehicle could be seen from outside the Lot other than from the Front Yard, the vehicle must also be screened from view from that direction. Vehicles may not be used for storage of materials for more than forty-eight (48) hours without approval from the Architectural Review Committee. Any vehicle in violation of this Section can be towed or impounded as provided in Section 11.1(c) below.

**6.8 Vehicles in Disrepair.** No Owner will permit any vehicle that is in an extreme state of disrepair to be abandoned or to remain parked on the Owner's Lot unless screened from view, on the Common Area or on any street for a period in excess of forty-eight (48) hours. A vehicle will be deemed in an "extreme state of disrepair" when the Board of Directors reasonably determines that its presence offends the occupants of the area due to its appearance or continued inoperability. Should any Owner fail to remove such vehicle within five (5) days following the date on which the Association mails notice to him or her, the Association may have the vehicle removed from the property and charge the expense of such removal to the Owner. Any vehicle parked in violation of this Section can be towed or impounded as provided in Section 11.1(c) below.

**6.9 Noisy and Hazardous Vehicles.** The Board of Directors may restrict access to the Property of any vehicle, which, in the reasonable determination of the Board of Directors, is too noisy or constitutes a safety hazard.

**6.10 Parking.** Parking of vehicles by Owner is restricted to the Owner's garage or driveway. Parking in the street by Owner is prohibited, except for any parking areas, if any, so designated by the Board of Directors. Excluding Sherman Rd, Board of Directors may allow visitor parking ( non overnight parking) on one side each of the two unnamed street's which annex the two adjacent properties.

**6.11 Signs.** No signs may be erected or maintained on any Lot except that not more than one "For Sale" sign temporarily displayed on a Lot by the Owner, Declarant, or by a licensed real estate agent, which may not exceed twenty-four (24) inches high and thirty-six (36) inches long, except that two such signs may be placed on a Lot during the course of initial construction of a dwelling on such Lot. "For Rent" and "For Lease" signs are prohibited. The restrictions contained in this paragraph do not prohibit the temporary placement of "political" signs on any Lot by the Owner, subject to reasonable regulations adopted by the Architectural Review Committee relating to size and length of display.

**6.12 Rubbish and Trash.** Trash, garbage and other waste must be kept in sanitary containers, screened from public view. No part of the Property may be used as a dumping ground for trash, garbage, waste, debris or rubbish of any kind. Yard raking, dirt and other material resulting

from landscaping work may not be dumped onto Lots, streets, or Common Areas. Should any Owner or occupant responsible for its generation fail to remove any trash, rubbish, garbage, yard rakings or any such materials from any streets or the Property where deposited by such person within ten (10) days following the date on which notice is mailed to the Owner or occupant by the Board of Directors of the Association, the Association may have such materials removed and charge the expense of such removal to the Owner. Owners must comply with trash container placement requirements for garbage and recycling collection, based upon direction from the applicable garbage/recycling collection service.

**6.13 Maintenance of Landscaping.** Each Owner is responsible for installing and maintaining the landscaping on any portion of the Lot not maintained by the Association neatly trimmed, properly cultivated, and free of trash, weeds and other unsightly material. An Owner may not remove street trees, materially change the Front Yard landscaping, or install additional Front Yard landscaping other than annual flowers without the prior written approval of the Architectural Review Committee. Vegetation around structures must be maintained or modified for a minimum distance of thirty (30) feet around structures to prevent the rapid spread of fire to or from the building site. Such clearance will be established prior to framing and maintained upon completion consistent with the Uniform Building Code, Appendix A, Article 16. This provision does not preclude the establishment of typical residential landscaping such as trees, shrubs, bulbs, perennials and other groundcover generally associated with residential development, but is intended to prevent the overgrowth of grasses and shrubs which exist unmaintained on a site and which could contribute to the rapid spread of fire. No weeds, noxious plants, or unmaintained vegetation may be planted or allowed to grow on a Lot. No tree over six inches (6") in diameter measured four feet (4") above adjacent grade may be removed without the prior approval of the Architectural Review Committee and prior approval of the City of Wilsonville, when applicable.

**6.14 Installation of Landscaping.** All landscaping (Front Yard, Side Yard and Back Yard) must be completed within six (6) months from the date of occupancy of the Living Unit constructed thereon. Landscaping must include at least grass and bark dust unless the Architectural Review Committee approved by the Board of Directors adopts a formal Xeriscape plan by resolution, and must be maintained in harmony with surrounding landscaping. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval of the Architectural Review Committee.

**6.15 Temporary Structures.** No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings may be used on any Lot at any time as a residence either temporarily or permanently, except during the period of initial construction of a Living Unit on the Lot. No structure may be occupied prior to connection to power, water and sewer and issuance of a certificate of occupancy by the City of Wilsonville.

**6.16 Fences and Hedges.** No fences or boundary hedges may be installed without prior approval of the Architectural Review Committee consistent with Design Guidelines adopted by the Architectural Review Committee. Fences may not exceed six (6) feet in height. Fences must be well constructed of suitable materials and may not detract from the appearance of the adjacent structures and buildings.

6.17 **Service Facilities.** Service facilities (garbage cans, fuel tanks, clotheslines, clothesline poles and other outside drying of clothes, linens and such, firewood, gardening tools, and equipment, etc.) must be screened such that the elements screened are not visible at any time from the street or a neighboring property. Appliances may not be stored outside. All heat pumps and condenser units (or other utilities and devices commonly placed out of doors) must be placed or screened to reduce visual impact and noise to surrounding Lots or Common Areas. All telephone, power, natural gas, cable television, and other communication lines must be placed underground, except as otherwise mandated by a Governing Authority or public utility companies affecting the Property.

6.18 **Outside Furniture and Hot Tubs.** Furniture permitted to be left outside a Living Unit is limited to items commonly accepted as outdoor or patio furniture. Hot tubs are allowed with the prior written permission of the Architectural Review Committee. The hot tub must be installed out of sight of the main traffic patterns. Locking covers are required and must remain locked when not in use.

6.19 **Window Coverings.** Window coverings visible from the outside of the Living Unit must be: (a) in good working order; (b) a neutral color compatible with the home/trim color; and (c) of a design and materials standard in the window dressing industry such as drapes, mini-blinds, etc. Sheets, blankets, plastic paper, foil, etc. are not allowed.

6.20 **Air Conditioning Units.** Window air conditioning units are prohibited.

6.21 **Firearms and Fireworks.** No firearms may be discharged within Cottage Creek at any time. Firearms are to be unloaded at all times while in Cottage. Weapons including “BB” guns, pellet guns, dart guns, paint-ball guns and any other weapon capable of firing a projectile are considered firearms. Oregon statutory law prohibits the use of certain types of fireworks. Only fireworks considered legal will be allowed. Discharge of firearms or fireworks of any type toward any Common Area is prohibited. Owners and their guests must promptly clean up any fireworks discharged in Morgan Farm.

6.22 **Nonbiodegradable Substances.** No motor oil, paint or other caustic or nonbiodegradable substance may be deposited in any street drain, sewer system or on the grounds within Cottage Creek. Any fine and/or costs associated with the cleanup of any nonbiodegradable substance that is caused by any Owner or their guests is responsibility of the offending Owner.

6.23 **Antennas and Satellite Dishes.** Exterior antennas, satellite receiver and transmission dishes and other communication devices are not permitted to be placed upon any Lot except in accordance with rules established by the Architectural Review Committee in accordance with Section 7.3.

6.24 **Exterior Lighting or Noisemaking Devices.** Except with the consent of the Architectural Review Committee, no exterior lighting or noise making devices may be installed or maintained on any Lot, other than as originally installed by the builder of the home and security and fire alarms. Outside lighting must be designed to prevent unnecessary light spillage onto adjoining Lots, Common Areas, or public streets, and no high output exterior lighting, including, but not limited to mercury vapor and halide lights, may be installed without the specific approval of the Architectural Review Committee. The size and design of light standards and fixtures will be considered by the Architectural Review Committee in its review of plans. Seasonal holiday lighting and decorations are

permissible if consistent with any applicable Rules and Regulations and if removed within thirty (30) days after the celebrated holiday.

6.25 **Pest Control.** No Owner will permit any thing or condition to exist upon any portion of the Property, which could induce, breed or harbor infectious plant or animal diseases or noxious insects or vermin.

6.26 **Grades, Slopes and Drainage.** Each Owner of a Lot accepts the burden of, and will not in any manner alter, modify or interfere with the established drainage pattern and grades, slopes and courses related thereto over any Lot or Common Area without the express written permission of the Architectural Review Committee, and then only to the extent and in the manner specifically approved. No structure, plantings or other materials may be placed or permitted to remain on or within any grades, slopes, or courses, nor may any other activities be undertaken, which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow, or obstruct or retard the flow of water through drainage channels.

6.27 **Additional Restrictions.** Each Owner of a Lot, and such Owner's family, tenants, employees, guests and invitees, must also comply with any additional use restrictions contained in any Supplemental Declaration annexing such Lot to Cottage Creek and in any Project Declaration applicable to such Lot.

6.28 **Building Materials.** All building materials to be incorporated into and visible as a part of the external structure of any building or other structure may be regulated by the Architectural Review Committee as provided in Article 7.

6.29 **Subdividing and Partitioning Lots.** Except as otherwise provided in this Declaration, no Lot may be subdivided or partitioned, nor may Lot lines be adjusted, without the consent of the Declarant before the Turnover Meeting, and after the Turnover Meeting without the approval of the City of Wilsonville and the Architectural Review Committee.

6.30 **Completion of Improvements.** All structures (including flat work) constructed within the Property must be erected and completed within one year after the commencement of construction. All remodeling, reconstruction or enhancement of structures must be completed within one year of the commencement of construction. Commencement of construction will be deemed to be the date upon which a building permit was first issued for the construction, or, if no building permit was obtained, the date on which lot clearing, demolition or remodeling commenced.

6.31 **Association Rules and Regulations.** In addition, the Association from time to time may adopt, modify or revoke such nondiscriminatory Rules and Regulations governing the conduct of persons and the operation and use of the Property (including, without limitation, use of playground and parking areas) as it may deem necessary or appropriate to assure the peaceful and orderly use and enjoyment of the Property. The Association Board of Directors thereof, will deliver a copy of the Rules and Regulations, upon adoption, and a copy of each amendment, modification or revocation promptly to each Owner. The Board of Directors will be the body to adopt the Rules and Regulations on behalf of the Association, except as may be otherwise provided in the Bylaws.

**Article 7**  
**ARCHITECTURAL COMMITTEE**

7.1 **Architectural Review.** No Improvement may be commenced, erected, placed or altered on any Lot until the construction plans and specifications showing the nature, shape, heights, materials, colors and proposed location of the Improvement have been submitted to and approved in writing by the Architectural Review Committee. It is the intent and purpose of this Declaration to assure quality of workmanship and materials and to assure harmony of external design with the existing Improvements and as to location with respect to topography and finished grade elevations and compliance with the setback requirements contained in applicable governmental development code standards. The building plans to be submitted will consist of one complete set of plans and specifications in the usual form showing insofar as appropriate, (i) the size and dimensions of the Improvements, (ii) the exterior design, (iii) approximate exterior color scheme, (iv) location of Improvements on the Lot, including setbacks, driveway and parking areas, and (v) location of existing trees to be removed. These plans and specifications will be left with the Committee until sixty (60) days after the Committee has received notice of completion. This is for the purpose of determining whether, after inspection by the Committee, the Improvement complies substantially with the plans and specifications submitted and approved. The Committee is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or any other governmental regulations, all of which are the responsibility of the applicant. The procedure and specific requirements for review and approval of construction may be set forth in Design Guidelines adopted from time to time by the Architectural Review Committee. The Committee may charge a reasonable fee to cover the cost of processing the application. In all cases in which the Architectural Review Committee consent is required by this Declaration, or any Project Declaration, the provisions of this Section apply, except that this Section does not apply to construction by Declarant.

7.2 **Committee Decision.** The Architectural Review Committee must render its decision with respect to the construction proposal within thirty (30) working days after it has received all material required by it with respect to the application. If the Committee fails to render its approval or disapproval within forty-five (45) working days after the Committee has received all material required by it with respect to the proposal, or if no suit to enforce this Declaration has been commenced within one year after completion thereof, approval will not be required and the related provisions of this Declaration will be deemed to have been fully complied with.

7.3 **Committee Discretion.** The Architectural Review Committee may, at its sole discretion, withhold consent to any proposed work if the Committee finds the proposed work would be inappropriate for the particular Lot or incompatible with the design standards that the Committee intends for Cottage Creek Place. Considerations of the Committee may include, but are not limited to the following: siting, shape, size, color, design, materials, height, solar access, screening, impairment of the view from other Lots or other effects on the enjoyment of other Lots, disturbance of existing terrain and vegetation, and any other factors that the Committee reasonably believes to be relevant. The Committee may take all such things into account in determining whether or not to consent to any proposed work. Regulations on siting of television antennas and satellite receiving dishes must be in conformance with any applicable Federal Communications Commission rules.

7.4 **Membership: Appointment and Removal.** The Architectural Review Committee can consist of as many persons, but not less than one, as the Declarant may from time to time appoint. The Declarant reserves the right to appoint all members of the Architectural Review Committee and all replacements thereto until Cottage Creek Place is one hundred percent (100%) built out. Declarant may remove any member of the Committee from office at its discretion at any time and may appoint new or additional members at any time. The Association will keep on file at its principal office a list of the names and addresses of the members of the Committee. Declarant may at any time delegate to the Board of Directors of the Association the right to appoint or remove members of the Architectural Review Committee. In such event, or if Declarant fails to appoint an Architectural Review Committee, the Board of Directors will assume responsibility for appointment and removal of members of the Architectural Review Committee, or if it fails to do so, the Board of Directors will serve as the Architectural Review Committee.

7.5 **Majority Action.** Except as otherwise provided in this Declaration, a majority of the members of the Architectural Review Committee have the power to act on behalf of the Committee, without the necessity of a meeting and without the necessity of consulting the remaining members of the Committee. The Committee may render its decision only by written instrument setting forth the action taken by the consenting members.

7.6 **Liability.** Neither the Architectural Review Committee nor any member thereof will be liable to any Owner, occupant, builder or developer for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Committee or a member of the Committee, and the Association will indemnify the Committee and its members therefrom, provided only that the member has, in accordance with the actual knowledge possessed by him, acted in good faith.

7.7 **Nonwaiver.** Consent by the Architectural Review Committee to any matter proposed to it or within its jurisdiction will not be deemed to constitute a precedent or waiver impairing its right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

7.8 **Appeal.** At any time after Declarant has delegated appointment of the members of the Architectural Review Committee to the Board of Directors of the Association pursuant to Section 7.4, any Owner adversely affected by action of the Architectural Review Committee may appeal such action to the Board of Directors of the Association. Appeals must be made in writing within ten (10) days of the Committee's action and contain specific objections or mitigating circumstances justifying the appeal. A final, conclusive decision will be made by the Board of Directors of the Association within fifteen (15) working days after receipt of such notification.

7.9 **Effective Period of Consent.** The Architectural Review Committee's consent to any proposed work will automatically be revoked one year after issuance unless construction of the work has been substantially commenced in the judgment of the Architectural Review Committee and thereafter diligently pursued, unless the Owner has applied for and received an extension of time from the Committee.

7.10 **Estoppel Certificate.** Within fifteen (15) working days after written request is delivered to the Architectural Review Committee by any Owner, and upon payment to the Committee of a reasonable fee fixed by the Committee to cover costs, the Committee will provide such Owner with an estoppel certificate executed by a member of the Committee and acknowledged, certifying with respect to any Lot owned by the Owner, that as of the date thereof, either: (a) all Improvements

made or done upon or within such Lot by the Owner comply with this Declaration, or (b) such Improvements do not so comply, in which event the certificate will also identify the noncomplying Improvements and set forth with particularity the nature of such noncompliance. Any purchaser from the Owner, and any mortgagee or other encumbrancer, will be entitled to rely on such certificate with respect to the matters set forth therein, such matters being conclusive as between Declarant, the Architectural Review Committee, the Association and all Owners, and such purchaser or mortgagee.

7.11 **Enforcement.** If during or after the construction, the Architectural Review Committee finds that construction does not comply with the approved plans, the Committee may require conforming changes to be made or that construction be stopped. The cost of any required changes will be borne by the Owner. The Committee has the power and authority to order any manner of changes or complete removal of any Improvement, alteration, or other change to a Lot or the Improvements thereon for which prior written approval from the Committee is required but has not been obtained or waived in writing. The cost of the remediation that the Committee orders will be at the Owner's expense. If an Owner fails to comply with an order of the Committee, then, subject to the Owner's right of appeal under Section 7.8, either the Architectural Review Committee or the Association may enforce compliance in accordance with the procedures set forth in Section 11.1 below.

## **Article 8 ASSOCIATION**

Declarant will organize an association of the Owners within Cottage Park Place. Such Association, its successors and assigns, will be organized as an Oregon nonprofit corporation under the name "**Cottage Park Place Owners Association**" or such similar name as Declarant will designate, and will have such property, powers, and obligations as are set forth in this Declaration and the Bylaws for the benefit of the Property and all Owners of Lots located therein.

8.1 **Organization.** Declarant will organize the Association. The Articles of Incorporation of the Association will provide for its perpetual existence, but if the Association is at any time dissolved, whether inadvertently or deliberately, an unincorporated association of the same name will automatically succeed it. In that event, the assets of the Association will be dedicated to a public body, or all of the property, powers and obligations of the incorporated association existing immediately prior to its dissolution will thereupon automatically vest in the successor unincorporated association, and such vesting will thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated association. To the greatest extent possible, the Articles of Incorporation and Bylaws of the Association will govern any successor-unincorporated association as if they had been made to constitute the governing documents of the unincorporated association.

8.2 **Membership.** Every Owner of one or more Lots within the Property will, immediately upon creation of the Association and thereafter during the entire period of such Owner's ownership of one or more Lots within the Property, be a member of the Association. Such membership commences, exists and continues simply by virtue of such ownership, expires

automatically upon termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership.

8.3 **Voting Rights.** The Association has two classes of voting membership:

(a) **Class A.** Class A Members are all Owners, with the exception of the Class B member, each of whom is entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons are members. The vote for such Lot will be exercised as they among themselves determine, but in no event may more than one vote be cast with respect to any Lot.

(b) **Class B.** The Class B Member is Declarant who is entitled to three votes for each Lot owned by Declarant. The Class B membership will cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(1) When all of the Lots of the last phase of Cottage Creek have been sold and conveyed to Owners other than a successor Declarant; or

(2) At such earlier time as Declarant may elect in writing to terminate Class B membership.

8.4 **General Powers and Obligations.** The Association will have, exercise and perform all of the following powers, duties and obligations:

(a) The powers, duties and obligations granted to the Association by this Declaration.

(b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Oregon.

(c) The powers, duties and obligations of a homeowners association pursuant to the Oregon Planned Community Act.

(d) Any additional or different powers, duties and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the Property.

The powers and obligations of the Association may from time to time be amended, repealed, enlarged or restricted by changes in this Declaration made in accordance with its provisions, accompanied by changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and with the nonprofit corporation laws of the State of Oregon.

8.5 **Specific Powers and Duties.** The powers and duties of the Association will include, without limitation, the following:

(a) **Maintenance and Services.** The Association will provide maintenance and services for the Property as provided in Article 9 and other provisions of this Declaration.

(b) **Insurance.** The Association will obtain and maintain in force policies of insurance as provided in this Declaration or the Bylaws of the Association.

(c) **Rulemaking.** The Association will make, establish, promulgate, amend and repeal Rules and Regulations as provided in Section 6.31 of this Declaration.

(d) **Assessments.** The Association will adopt budgets and impose and collect Assessments as provided in Article 10 of this Declaration.

(e) **Enforcement.** The Association will perform such acts, even if they are not expressly authorized by this Declaration, which may be reasonably necessary to enforce the provisions of this Declaration and the Rules and Regulations adopted by the Association, including without limitation, enforcement of the decisions of the Architectural Review Committee.

(f) **Employment of Agents, Advisors and Contractors.** The Association through its Board of Directors, may employ the services of any person or corporation as managers, hire employees to manage, conduct and perform the business, obligations and duties of the Association, employ professional counsel and obtain advice from such person or firms or corporations such as, but not limited to, landscape architects, architects, planners, lawyers and accountants, and contract for or otherwise provide for all services necessary or convenient for the managements, maintenance and operation of the Property; provided, however, the Association may not incur or commit to incur legal fees in excess of \$5,000 for any specific matter unless the Owners have enacted a resolution authorizing the incurring of such fees by a vote of seventy-five percent (75%) of the voting rights present in person or by absentee ballot or proxy at a meeting at which a quorum is constituted. This limitation is not applicable to legal fees incurred in defending the Association or the Board of Directors from claims or litigation brought against them. The limitation set forth in this paragraph will increase by \$500 on each fifth anniversary of the recording of this Declaration.

(g) **Borrow Money, Hold Title and Make Conveyances.** The Association may borrow and repay moneys for the purpose of performing its duties under this Declaration, and subject to Section 4.4(d) above, encumber the Common Areas as security for the repayment of such borrowed money. The Association may acquire, hold title to and convey, with or without consideration, real and personal property and interest therein, including but not limited to easements across all or any portion of the Common Area, and will accept any real or personal property, leasehold or other property interests within Morgan Farm conveyed to the Association by Declarant.

(h) **Transfer, Dedication and Encumbrance of Common Area.** Except as otherwise provided in Section 4.4(d) above, the Association may sell, transfer or encumber all or any portion of the Common Area to a person, firm or entity, whether public or private, and dedicate or transfer all or any portion of the Common Area to any public agency, authority, or utility for public purposes.

(i) **Create Classes of Service and Make Appropriate Charges.** The Association may, in its sole discretion, create various classes of service and make appropriate Individual Assessments or charges therefor to the users of such services, including but not limited to reasonable admission and other fees for the use of any and all recreational facilities situated on the Common Areas, without being required to render such services to those of its members who do not assent to such charges and to such other Rules and Regulations as the Board of Directors deems

proper. In addition, the Board of Directors will have the right to discontinue any service upon nonpayment of Assessments or to eliminate such service for which there is no demand or adequate funds to maintain the same.

(j) **Implied Rights and Obligations.** The Association may exercise any other right or privilege reasonably to be implied from the existence of any right or privilege expressly given to the Association under this Declaration or reasonably necessary to effectuate any such right or privilege.

**8.6 Voting Groups.** In connection with the election of those directors to be elected by the Class A Members, Declarant may, from time to time, in its discretion, designate Voting Groups consisting of one or more Projects (or the Lots outside any Projects) for the purpose of electing directors to the Board of Directors, in addition to any at-large directors elected by all Class A Members. Voting Groups may be designated to ensure groups with dissimilar interests are represented on the Board and to avoid allowing Owners representing similar Projects to elect the entire Board, due to the number of Lots in such Projects, thereby excluding the representation of others. The number of Voting Groups within the Property may not exceed the total number of directors to be elected by the Class A Members. The Owners in Projects within each Voting Group will vote on a separate slate of candidates for election to the Board. Declarant will establish Voting Groups, if at all, not later than the termination of Class B Membership by filing with the Association and recording a Supplemental Declaration identifying each Voting Group by legal description or other means such that the Lots within each Voting Group can easily be determined. Such designation may be amended from time to time by Declarant, acting alone, at any time prior to termination of the Class B Membership. After termination of the Class B Membership, the Board will have the right to record a Supplemental Declaration changing the Voting Groups upon the vote of a majority of the total number of directors and approval of a majority of the voting rights in the Association. Neither recordation nor amendment of such Supplemental Declaration by Declarant will constitute an amendment to this Declaration and no consent or approval of the Owners will be required, except as stated in this section. Until Declarant establishes Voting Groups, if ever, all of the members will constitute a single Voting Group. After a Supplemental Declaration establishing Voting Groups has been recorded, any and all portions of the Property that are not assigned to a specific Voting Group will constitute a single Voting Group.

**8.7 Liability.** A member of the Board of Directors or an officer of the Association will not be liable to the Association or any member thereof for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his duties, except for acts of gross negligence or intentional acts. If any member of the Board of Directors or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association will indemnify such individual against liability and expenses incurred to the maximum extent permitted by law. The managing agent of the Association, and its officers and employees, will not be liable to the Owners or any third parties on account of any action or failure to act in the performance of its duties as managing agent, except for acts of gross negligence or intentional acts, and the Association will indemnify the managing agent and its officers and employees from any such claims, other than for gross negligence or intentional misconduct.

**8.8 Interim Board; Turnover Meeting.** Declarant has the right to appoint an interim board of directors as set forth in the Bylaws. Declarant will call a meeting of the Association for the purpose of turning over administrative responsibility for the Property to the Association not later than

ninety (90) days after termination of the Class B membership in accordance with Section 8.3 above. At the Turnover Meeting the interim directors will resign and their successors will be elected by the Owners as provided in the Bylaws of the Association. If Declarant fails to call the Turnover Meeting required by this Section, any Owner or mortgagee of a Lot may call the meeting by giving notice as provided in the Bylaws.

**8.9 Contracts Entered into by Declarant or Prior to Turnover Meeting.**

Notwithstanding any other provision of this Declaration, any management contracts, service contracts or employment contracts entered into by the Declarant or the Board of Directors on behalf of the Association prior to the Turnover Meeting will have a term not in excess of three (3) years. In addition, any such contract will provide that it may be terminated without cause or penalty by the Association or Board of Directors upon not less than thirty (30) days' notice to the other party given not later than sixty (60) days after the Turnover Meeting.

**8.10 Bylaws.** The Bylaws of the Association and any amendment or modification of the Bylaws will be recorded in the Deed Records of Clackamas County, Oregon. Declarant hereby adopts, on behalf of the Association, the initial Bylaws recorded the same day as this Declaration.

**8.11 Project Associations.** Nothing in this Declaration may be construed as prohibiting the formation of Project Associations within Cottage Creek. The Board of Directors of the Association may assist the Project Associations in the performance of their duties and obligations under their respective Project Declarations, if any, and the Association will cooperate with each Project Association so that each of those entities can most efficiently and economically provide their respective services to Owners. It is contemplated that from time to time either the Association or a Project Association may use the services of the other in the furtherance of their respective obligations, and they may contract with each other to better provide for such cooperation. The payment for such contract services or a variance in services provided may be reflected in an increased Assessment by the Association for the particular Project or by an item in the Project Association's budget which will be collected through Project Assessments and remitted to the Association. If a Project Association fails or is unable to perform a duty or obligation required by its Project Declaration, then the Association at its option may, after reasonable notice and an opportunity to cure given to the Project Association, perform such duties or obligations until such time as the Project Association is able to resume such functions, and the Association may charge the Project Association or the Owners within the Project a reasonable fee for the performance of such functions.

**Article 9  
MAINTENANCE, UTILITIES AND SERVICES**

**9.1 Association Maintenance of Common Areas.** The Common Maintenance Areas of the Property include the General and Limited Common Areas and the Limited Common Easement Areas. The Association will perform all maintenance upon the General Common Areas and Limited Common Areas, including but not limited to landscaping, irrigation systems, walks, private roads, entrance monuments and gates, fences, walls, and signs, parking areas, walkways and trails, unless the maintenance thereof is assumed by a public body or assigned to a Project Association pursuant to any Supplemental Declaration. The Association will maintain all landscaping within the Common Areas (including perimeter fences and retaining walls for the Common Areas that are not on boundaries with Lots) and will perform or cause to be performed lawn care, irrigation, plant pruning, and bark mulch application. The Common Maintenance Areas will be maintained by the Association in an

attractive condition and in a good and workmanlike manner so as to carry out the purpose for which such areas and elements of the Property are intended. Such maintenance by the Association also includes maintenance, care and replacement for the street trees between the General Common Areas and the public right of way. Fences and walls located on boundaries between General or Limited Common Areas and Lots will be deemed 'Boundary Fences' subject to the provisions of Section 9.5 below.

**9.2 Owner's Responsibility.** Except for maintenance, repair and replacement expressly assigned to the Association or to be shared by adjacent Lot Owners as set forth in this Declaration, in applicable Project Declarations, or by written agreement with the Association, all maintenance of the Lots and Improvements, including street trees, driveways, adjacent sidewalks, retaining walls, and fencing thereon is the responsibility of the Owner thereof, with shared fencing subject to the provisions of Section 9.5 below. Lot Owners must maintain their Lots and Improvements in a neat and attractive condition in accordance with the community-wide standard of Cottage Creek. The Association will, in the discretion of the Board of Directors, assume the maintenance responsibilities of such Owner if, in the opinion of the Board of Directors, the level and quality of maintenance being provided by such Owner does not satisfy such standard, and the Project Association or the Project in which the Lot is located has failed to adequately provide such maintenance. Before assuming the maintenance responsibilities, the Board of Directors will notify the Owner and any applicable Project Association in writing of its intention to do so, and if such Owner or the Project Association has not commenced and diligently pursued remedial action within fifteen (15) days after mailing of such written notice, then the Association will proceed. The expenses of such maintenance by the Association will be reimbursed to the Association by the Owner, together with interest as provided in Section 11.5 below. Such charges will be an Individual Assessment and lien on the Lot as provided in Sections 10.8 and 11.2 below.

**9.3 Maintenance of Utilities.** The Association will perform or contract to perform maintenance of all utilities within Common Areas, such as sanitary sewer service lines, domestic water service lines, storm drainage lines and water detention facilities, except to the extent such maintenance is performed by the utilities furnishing such services or is assigned to the Lot Owner in this Declaration. The Association is not liable for any interruption or failure of such services. Each Owner is responsible for maintaining utility lines within his or her Lot, including those located in any Common Easement Area on the Lot, if the utility lines serve the Owner's Lot and no other.

**9.4 Limited Common Areas.** Such areas will be operated, maintained, replaced and improved by the Association, but the entire cost thereof will be assessed equally to the owners of the Lots to which such Limited Common Area pertains.

**9.5 Boundary Fences.** The responsibility for and cost of maintenance, repair and replacement of fencing on boundary lines between Lots will be shared by the Owners on either side of the fence in accordance with ORS Chapter 96, including sharing equally the cost of the installation of any new fence or replacement fence as necessary for the Lot and Improvements to remain in good repair and condition. Fences enclosing a Lot are the owner's responsibility, including any fence located in the Front Yard. Fences on boundary lines between Lots and Common Areas will be the sole responsibility of the Lot Owner, except as otherwise provided in this Declaration.

**9.6 Security.** The Association may, but is not obligated to, maintain or support certain activities within the Property designed to make the Property safer than it otherwise might be,

including, without limitation, exterior lighting for Common Areas. Neither the Association, Declarant, nor any successor Declarant may in any way be considered insurers or guarantors of security within the Property, nor will any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants that the Association, its Board of Directors and committees, the Declarant, and any successor declarant are not insurers and that each person using the Property assumes all risks for loss or damage to person, to property and to the contents of Lots resulting from acts of third parties and each such person releases the Association, the Board and committees, the Declarant, and any successor declarant from any liability therefor.

9.7 **Services.** The Association will provide or contract for such services as the Board may reasonably deem to be of benefit to the Property, including, without limitation, landscape services, garbage and trash removal for Common Areas. The cost of any such service or benefit that is available to some but not all Lots in Cottage Park Place will be assessed as Individual Assessments to the benefitted Lots.

9.8 **Project Maintenance.** The Association may at its option, in the discretion of the Board of Directors, assume the maintenance responsibilities set out in any Project Declaration for any Project located on the Property, after giving the responsible Project Owner or Association reasonable notice and an opportunity to correct its deficient maintenance. In such event, all costs of such maintenance will be assessed only against the Owner or Owners of Lots in the Project to which the services are provided and will be Individual Assessments for purposes of this Declaration. The assumption of this responsibility may take place either by contract or because, in the opinion of the Association Board of Directors, the level and quality of service than being provided is not consistent with the community-wide standard of Cottage Park Place.

9.9 **Damage or Destruction by Casualty to Common Areas.** In the event of damage or destruction by casualty of any structures erected on the Common Areas, the damage or destruction must be repaired, reconstructed, or rebuilt unless, within fourteen (14) days of such damage or destruction, the Board of Directors or more than ten (10) percent of the Owners have requested a special meeting of the Association. Such special meeting must be held within 30 days of the date of damage or destruction. At the time of such meeting, unless seventy-five (75) percent of the Owners, whether in person, by writing or by proxy, with the approval of seventy-five (75) percent or more of the mortgagees if and as required by this Declaration, vote not to repair, reconstruct or rebuild the damaged property, the damage or destruction is repaired, reconstructed or rebuilt, with the work commencing as soon as reasonably possible. In the event any portion of the insurance proceeds paid to the Association are not used to repair, reconstruct, or rebuild the damaged or destroyed Common Areas the proceeds attributable to Common Areas will be deposited in the Operations Fund or applied to such capital improvements as authorized pursuant to Section 10.5 of this Declaration. If the insurance proceeds are not sufficient to pay the entire cost, the Board of Directors, if necessary, may assess the Owner of each Lot such additional amounts as required to pay the cost of restoration. The responsibility for payment of the amount of the deductible in the Association's insurance policy is the responsibility of the Owners, who must maintain the insurance policies set forth in Article 7 of the Bylaws.

9.10 **Owner Liability for Damage.** If due to any act, omission, or neglect of an Owner or a member of his or her family or his or her household pet or of a guest or other Occupant or visitor of such Owner, damage is caused to the Common Areas or any Common Maintenance Areas, or any maintenance, repairs or replacements are required that would otherwise be a common expense assessed to some or all of the members of the Association, then such Owner must pay for such damage and such maintenance, repairs or replacements as may be determined by the Association, to the extent not covered by the Association's insurance (including any deductible), as an Individual Assessment.

## **Article 10 ASSESSMENTS**

10.1 **Purpose of Assessments.** The Assessments levied by the Association will be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the Owners and occupants of Cottage Creek and for the improvement, operation and maintenance of the Common Areas.

10.2 **Types and Allocation of Assessments.** The Association may levy General Assessments, Special Assessments, Emergency Assessments, Limited Common Area Assessments and Individual Assessments, all as more particularly described below. Except as may otherwise be provided with Declarant's written consent in an applicable Supplemental Declaration annexing Additional Property to this Declaration, all Lots subject to assessment will pay an equal share of the General Assessments, Special Assessments, and Emergency Assessments, except for Lots owned by Declarant as provided in Section 10.3 below.

10.3 **Commencement of Assessments** Lots owned by Declarant, or any of their affiliates, are not subject to General Assessments (including Assessments for reserves), Special Assessments, Limited Common Area Assessments or Emergency Assessments unless and until an occupancy certificate is issued for the Living Unit located on the Lot. Declarant may, however, defer payment of the accrued reserve Assessments for a Lot from the time a Lot becomes subject to assessment until the date the Lot is conveyed, but not beyond the date of the Turnover Meeting or, if no Turnover Meeting is held, the date the Owners assume administrative control of the Association. The books and records of the Association will reflect the amount owing from Declarant, for all reserve Assessments. Except as may otherwise be provided in an applicable supplemental declaration annexing Additional Property to this Declaration, all Lots subject to assessment will pay an equal share of the General Assessments, Special Assessments and Emergency Assessments. Notwithstanding the provisions of this Section, however, a Supplemental Declaration annexing a specific Common Area facility may specify a special allocation of assessing the costs of operating and maintaining the facility on such Common Area to more fairly allocate such cost, taking into account the extent of use or other factors. Declarant may elect to delay collection of General Assessments against their Lots, but in that case, Declarant will pay the common expenses of the Association otherwise allocable to such Lots until such Assessments commence. No Owner by the Owner's own action may claim exemption from liability for contribution towards common expenses of the Association by waiver by the Owner of use or enjoyment of any of the Common Area or by abandonment by the Owner of the Owner's Lot. An Owner may not claim an offset against an Assessment for failure of the Association to perform its obligations, and no Owner may offset amounts owing or claimed to be owing to the Owner by the Association, or Declarant.

**10.4 General Assessments.** The Board of Directors of the Association will from time to time and at least annually prepare an operating budget for the Association, taking into account the current costs of maintenance and services and future needs of the Association, any previous over assessment and any common profits of the Association. The budget will take into account the numbers of Lots subject to assessment as of the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated becoming subject to assessment during the fiscal year. The budget will provide for such reserve or contingency funds as the Board deems necessary or as may be required by law, but not less than the reserves required by Section 10.10 below. General Assessments for such operating expenses and reserves will then be apportioned among the Lots as provided in Section 10.3 above. Within thirty (30) days after adopting the annual budget, the Board of Directors will provide a summary for the Budget to all Owners. If the Board of Directors fails to adopt an annual budget, the last adopted budget will continue in effect. The manner of billing and collection of Assessments will be as provided in the Bylaws.

**10.5 Special Assessments.** In addition to the General Assessment authorized above, the Board of Directors may levy during any fiscal year a Special Assessment, applicable to that year only, for the purpose of deferring all or any part of the cost of any construction or reconstruction, unexpected repair, or acquisition or replacement of a described capital improvement, or for any other one-time expenditure not to be paid for out of General Assessments. Special Assessments which in the aggregate in any fiscal year exceed an amount equal to fifteen percent (15%) of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by a majority of the voting rights voting on such matter, together with the written consent of the Class B member, if any. Before the Turnover Meeting, any Special Assessment for acquisition or construction of new capital improvements or additions must be approved by not less than fifty percent (50%) of the Class A voting rights, together with the written consent of the Class B member. Special Assessments will be apportioned as provided in Section 10.3 above and may be payable in lump sum or in installments, with or without interest or discount, as determined by the Board of Directors. Notwithstanding anything to the contrary herein, the Association's ability to levy Special Assessments that will cover expenses that otherwise benefit some but not all of the Lots in Cottage Park Place, and which in the aggregate in any fiscal year exceed an amount equal to fifteen percent (15%) of the budgeted gross expenses attributable to that particular sub-set of the Lots at Cottage Park Place for the fiscal year, is subject to approval by a majority of the voting rights for those particular Lots, together with the written consent of the Class B Member, if any, and no further consent from the remainder of the voting rights for other un-benefitted Lots at Cottage Park Place will be required.

**10.6 Emergency Assessments.** If the General Assessments levied at any time are, or will become, inadequate to meet all expenses incurred under this Declaration for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board of Directors of the Association will immediately determine the approximate amount of such inadequacy and issue a supplemental budget, noting the reason therefor, and levy an Emergency Assessment for the amount required to meet all such expenses on a current basis. Any Emergency Assessment which in the aggregate in any fiscal year would exceed an amount equal to five percent (5%) of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by not less than a majority of the voting rights voting on such matter, together with the written consent of the Class B member, if any. Prior to the Turnover Meeting described in Section 8.8, and the Special Assessment must be approved by not less than fifty percent (50%) of the Class A voting rights, together with the written consent of the Class B member. Emergency Assessments will be apportioned as set forth in Section 10.3 above and payable as determined by the Board of Directors.

**10.7 Limited Common Area Assessments.** General Assessments, Special Assessments and Emergency Assessments relating to maintenance, upkeep, repair, replacement or improvements to Limited Common Areas will be assessed exclusively to the Lots having the right to use such Association Limited Common Areas, which Assessments will be allocated equally among such Lots.

**10.8 Individual Assessments.** Any expense of the Association or, except as otherwise provided in this Declaration, any part of a common expense benefiting fewer than all of the Lots may be assessed exclusively against the Lots benefited. Such Individual Assessments may include any common expense that is incurred by the Association because of the fault of the Owner and that is not paid by insurance. Individual Assessments will also include default assessments levied against any Lot to reimburse the Association for costs incurred in bringing such Lot or its Owner into compliance with the provisions of this Declaration or the Rules and Regulations of the Association and for fines or other charges imposed pursuant to this Declaration for violation thereof. Unless otherwise provided by the Board of Directors, Individual Assessments will be due thirty (30) days after the Board of Directors has given written notice thereof to the Owner(s) subject to the Individual Assessments.

**10.9 Annexation of Additional Property.** When Additional Properties are annexed to Cottage Park Place, the Lots included therein become subject to Assessments from the date of such annexation to the extent provided in Section 10.3. The Board of Directors of the Association, however, at its option may elect to re-compute the budget based upon the additional Lots subject to assessment and additional Common Areas and recomputed General Assessments for all Lots, including the new Lots, for the balance of the fiscal year. Notwithstanding any provision of this Declaration apparently to the contrary, a declaration annexing Additional Property may provide that such Additional Property does not have the right to use a particular Common Area or facility located thereon, or that such Additional Property will not receive certain services by the Association that other Lots receive, in which case such Additional Property will not be assessed for the costs of operating, maintaining, repairing, replacing or improving such Common Area or facility.

**10.10 Operations Fund.** The Association will keep all funds received by it as Assessments, other than reserves described in Section 10.11, separate and apart from its other funds, in a United States bank account in the name of the Association to be known as the "Operations Fund." All expenses of the Association will be paid from the Operations Fund or the Reserve Fund referred to in Section 10.11. The Association will use such funds exclusively for promoting the recreation, health, safety and welfare of the residents within the Property and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas and of the Lots situated upon the Property, including but not limited to:

- (a) Payment of the cost of maintenance, utilities and services as described in Article 9.
- (b) Payment of the cost of insurance as described in the Bylaws of the Association.
- (c) Payment of taxes assessed against the Common Areas and any improvements thereon, if any.
- (d) Payment of the cost of other services that the Association deems to be of general benefit to the Owners, including but not limited to accounting, legal, and secretarial services.

## 10.11 Reserve Fund.

(a) **Establishment of Account.** Declarant will conduct a reserve study as described in paragraph (c) of this section and establish a United States bank account in the name of the Association (the “**Reserve Fund**”) for replacement of common properties that will normally require replacement in whole or in part in more than one (1) and less than thirty (30) years, for exterior painting if the Common Areas or other property to be maintained by the Association include exterior painted surfaces, and for other items, whether or not involving Common Areas, if the Association has responsibility to maintain the items. The Reserve Fund need not include those items that could reasonably be funded from operating Assessments or for those items for which one or more Owners are responsible for maintenance and replacement under the provisions of this Declaration or the Bylaws.

(b) **Funding of Reserve Fund.** The Reserve Fund will be funded by Assessments against the individual Lots assessed for maintenance of the items for which the Reserve Fund is being established, which sums will be included in the regular Annual Assessment for such Lots. The Reserve Fund will be established in the name of the Association. The Association is responsible for administering the Reserve Fund and making periodic payments into it.

(c) **Reserve Studies.** The reserve portion of the initial Assessment determined by Declarant will be based on a reserve study described in paragraph (c) or other sources of information. The Board of Directors annually will conduct a reserve study, or review and update an existing study, to determine the Reserve Fund requirements and may adjust the amount of payments as indicated by the study or update and provide other reserve items that the Board of Directors, in its discretion, may deem appropriate. The reserve study will include:

- (1) Identification of all items for which reserves are to be established;
- (2) The estimated remaining useful life of each item as of the date of the reserve study;
- (3) An estimated cost of maintenance, repair or replacement of each item at the end of its useful life; and
- (4) A thirty (30) year plan with regular and adequate contributions, adjusted by estimated inflation and interest earned on reserves, to meet the maintenance, repair and replacement schedule.

(d) **Use of Reserve Fund.** The Reserve Fund may be used only for the purposes for which the reserves have been established and will be kept separate from other funds. Reserves for Common Areas will be separately accounted for but need not be held in separate bank accounts. After the Turnover Meeting, however, the Board of Directors may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet unexpected increases in expenses if the Board of Directors has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds. Funds so borrowed from the Reserve Fund must be repaid from Assessments. Not later than the adoption of the budget for the following year, the Board of Directors will adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period. Nothing in this section prohibits prudent investment of the Reserve

Fund. In addition to the authority of the Board of Directors under paragraph (c) of this section, following the second year after the Turnover Meeting, the Association may elect to reduce or increase future Assessments for the Reserve Fund by an affirmative vote of not less than seventy-five percent (75%) of the voting power of the Association and may, on an annual basis by a unanimous vote, elect not to fund the Reserve Fund. Assessments paid into the Reserve Fund are the property of the Association and are not refundable to sellers or Owners of Lots. Sellers of the Lots, however, may treat their outstanding share of the Reserve Fund as a separate item in any sales agreement.

**10.12 Creation of Lien and Personal Obligation of Assessments.** Declarant, for each Lot owned by it within the Property, does hereby covenant, and each Owner of any lot by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, will be deemed to covenant to pay to the Association all assessments or other charges as may be fixed, established and collected from time to time in the manner provided in this Declaration or the Association Bylaws. Such assessments and charges, together with any interest, expenses or attorneys' fees imposed pursuant to Section 11.5, are a charge on the land and will be a continuing lien upon the Lot against which each such Assessment or charge is made. Such Assessments, charges and other costs are also the personal obligation of the person who was the Owner of such Lot at the time when the Assessment or charge fell due. Such liens and personal obligations will be enforced in the manner set forth in Article 11 below.

**10.13 Voluntary Conveyance.** In a voluntary conveyance of a Lot the grantee will be jointly and severally liable with the grantor for all unpaid assessments against the grantor of the Lot up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, upon request of a prospective purchaser, the Board of Directors of the Association will make and deliver a statement of the unpaid Assessments against the prospective grantor or the Lot, and the grantee in that case will not be liable for, nor will the Lot when conveyed be subject to, a lien filed thereafter for any unpaid Assessments against the grantor in excess of the amount set for the in the statement.

## **Article 11 ENFORCEMENT**

**11.1 Violation of General Protective Covenants.** In the event any Owner constructs or permits to be constructed on his Lot an Improvement contrary to the provisions of this Declaration, or violates any provisions of this Declaration, the Bylaws of the Association or the Rules and Regulations, then the Association acting through its Board of Directors will notify the Owner in writing of any such specific violations. If the Owner is unable, unwilling or refuses to comply with the Association's specific directives for remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, after notice and opportunity to be heard and within fifteen (15) days of written notice to the Owner, then the Association acting through its Board of Directors, will have the right to do any or all of the following:

(a) Assess reasonable fines against such Owner, based upon a resolution adopted by the Board of Directors that is delivered to each Lot, mailed to the mailing address of each Lot or mailed to the mailing address designated by the Owner of each Lot in writing, which fines will constitute Individual Assessments for purposes of this Declaration;

(b) Enter the offending Lot and remove the cause of such violation, or alter, repair or change the item which is in violation of this Declaration in such a manner as to make it conform thereto, in which case the Association may assess such Owner for the entire cost of the work done, which amount will be payable to the Association as an Assessment, provided that no items of construction will be altered or demolished in the absence of judicial proceedings;

(c) Cause any vehicle parked in violation of this Declaration or the Rules and Regulations to be towed and impounded at the Owners' expense;

(d) Suspend the voting rights for the period that the violations remain unabated, provided that the Association will not deprive any Owner of access to and from his Living Unit; and

(e) Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration.

**11.2 Default in Payment of Assessments; Enforcement of Lien.** If an Assessment or other charge levied under this Declaration is not paid within thirty (30) days of its due date, such Assessment or charge will become delinquent and bear interest from the due date at the rate set forth below. In such event the Association may exercise any or all of the following remedies:

(a) The Association may suspend the defaulting Owner's voting rights, any utility services paid for out of Assessments and right to use the Common Areas until such amounts, plus other charges under this Declaration, are paid in full and may declare all remaining periodic installments of any Annual Assessment immediately due and payable. In no event, however, may the Association deprive any Owner of access to and from his Lot.

(b) The Association will have a lien in accordance with ORS 94.709 against each Lot for any Assessment levied against the Lot, including any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot.

(c) The Association may bring an action to recover a money judgment for unpaid Assessments, fines and charges under this Declaration without foreclosing or waiving the lien described in paragraph (b) above. Recovery on any such action, however, will operate to satisfy the lien, or the portion thereof, for which recovery is made.

(d) The Association will have any other remedy available to it by law or in equity.

**11.3 Reports to First Mortgagees.** In response to a written request of any first mortgagee of a Lot, the Association will report to such mortgagee whether such Lot is current or past due with respect to Assessments.

**11.4 Subordination of Lien to Mortgages.** The lien of the Assessments or charges provided for in this Declaration will be subordinate to the lien of any mortgage or deed of trust on such Lot which was made in good faith and for value and which was recorded prior to the recordation of the notice of lien. Sale or transfer of any Lot will not affect the Assessment lien, but the sale or transfer of any Lot which is subject to any mortgage or deed of trust pursuant to a decree of foreclosure thereunder or any deed or proceeding, deed or assignment in lieu of foreclosure will extinguish any lien of an Assessment notice of which was recorded after the recording of the mortgage

or trust deed. The unpaid Assessments from such foreclosure or sale will become a common expense of all Owners, including the mortgagee or purchaser, and such sale or transfer will not release the Lot from liability for any Assessments or charges thereafter becoming due or from the lien of such Assessments or charges.

**11.5 Interest, Late Charges and Expenses.** Any amount not paid to the Association when due in accordance with this Declaration will bear interest from the due date until paid at the rate of eighteen percent (18%) per annum, or such other rate as may be established by the Board of Directors, but not to exceed the lawful rate of interest under the laws of the State of Oregon. A late charge may be charged for each delinquent Assessment in an amount established from time to time by resolution of the Board of Directors, which resolution is delivered to each Lot, mailed to the mailing address of each Lot or mailed to the mailing address designated by the Owner in writing, together with all expenses incurred by the Association in collecting such unpaid assessments, including attorneys' fees (even if suit is not instituted). In the event the Association will file a notice of lien, the lien amount will also include the recording fees associated with filing the notice, and a fee for preparing the notice of lien established from time to time by resolution of the Board of Directors of the Association.

**11.6 Costs and Attorneys' Fees.** In the event the Association brings any suit or action to enforce this Declaration, the Bylaws of the Association or the Rules and Regulations, or to collect any money due hereunder or to foreclose a lien, the Owner-defendant will pay to the Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action will recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof or in connection with any bankruptcy proceedings or special bankruptcy remedies.

**11.7 Nonexclusiveness and Accumulation of Remedies.** An election by the Association to pursue any remedy provided for violation of this Declaration will not prevent concurrent or subsequent exercise of another remedy permitted under this Declaration. The remedies provided in this Declaration are not exclusive but will be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law to the Association. In addition, any aggrieved Owner may bring an action against another Owner or the Association to recover damages or to enjoin, abate or remedy any violation of this Declaration by appropriate legal proceedings.

**11.8 Enforcement by City of Wilsonville.** The provisions of this Declaration relating to preservation and maintenance of Common Areas will be deemed to be for the benefit of the City of Wilsonville as well as the Association and Owners of Lots, and the City may enforce such provisions by appropriate proceedings at law or in equity, or may cause such maintenance to be performed, the costs of which will become a lien upon the Property.

## **Article 12 DISPUTE RESOLUTION**

### **12.1 Mediation.**

(a) Except as otherwise provided in this section, before initiating litigation, arbitration or an administrative proceeding in which the Association and an Owner have an adversarial

relationship, the party that intends to initiate litigation, arbitration or an administrative proceeding will offer to use any dispute resolution program available within Clackamas County, Oregon, that is in substantial compliance with the standards and guidelines adopted under ORS 36.175. The written offer must be hand delivered or mailed by certified mail, return receipt requested, to the address, contained in the records of the Association, for the other party.

(b) If the party receiving the offer does not accept the offer within ten (10) days after receipt of the offer, such acceptance to be made by written notice, hand delivered or mailed by certified mail, return receipt requested, to the address, contained in the records of the Association, for the other party, the initiating party may commence the litigation, arbitration or administrative proceeding. The notice of acceptance of the offer to participate in the program must contain the name, address and telephone number of the body administering the dispute resolution program.

(c) If a qualified dispute resolution program exists within Clackamas County, Oregon, and an offer to use the program is not made as required under paragraph (a) of this section, then litigation, arbitration or an administrative proceeding may be stayed for thirty (30) days upon a motion of the noninitiating party. If the litigation, arbitration or administrative action is stayed under this paragraph, both parties will participate in the dispute resolution process.

(d) Unless a stay has been granted under paragraph (c) of this section, if the dispute resolution process is not completed within thirty (30) days after receipt of the initial offer, the initiating party may commence litigation, arbitration or an administrative proceeding without regard to whether the dispute resolution is completed.

(e) Once made, the decision of the court, arbitrator or administrative body arising from litigation, arbitration or an administrative proceeding may not be set aside on the grounds that an offer to use a dispute resolution program was not made.

(f) The requirements of this section do not apply to circumstances in which irreparable harm to a party will occur due to delay or to litigation, arbitration or an administrative proceeding initiated to collect Assessments, other than Assessments attributable to fines.

**12.2 Arbitration.** Any claim, controversy or dispute by or among Declarant, Association, the Architectural Control Committee or one or more Owners, or any of them, arising out of or related to this Declaration, the Bylaws of the Association, the Rules and Regulations or the Property will be first subject to mediation as described in Section 12.1 above, or otherwise, and if not timely settled by mediation, resolved by arbitration in accordance with this Article 12. The decisions and award of the arbitrator will be final, binding and nonappealable. The arbitration will be conducted in Wilsonville, Oregon, pursuant to the arbitration statutes of the State of Oregon, and any arbitration award may be enforced by any court with jurisdiction. Filing for arbitration will be treated the same as filing in court for purposes of filing a notice of pending action (“**lis pendens**”).

**12.3 Selection of Arbitrator.** A single arbitrator selected by mutual agreement of the parties will conduct the arbitration. The arbitrator selected will be neutral and unbiased, except to the extent the arbitrator’s prior relationship with any party is fully disclosed and consented to by the other party or parties. If the parties are unable to agree upon the arbitrator within ten (10) days after a party’s demand for arbitration, upon application of any party, the Presiding Judge of the Circuit Court of Clackamas County, Oregon will designate the arbitrator.

12.4 **Consolidated Arbitration.** Upon demand by any party, claims between or among the parties and third parties will be submitted in a single, consolidated arbitration.

12.5 **Discovery.** The parties to the arbitration will be entitled to such discovery as would be available to them in an action in Clackamas County Circuit Court. The arbitrator will have all of the authority of the Court incidental to such discovery, including without limitation authority to issue orders to produce documents or other materials, to issue orders to appear and submit to deposition, and to impose appropriate sanctions including without limitation award against a party for failure to comply with any order.

12.6 **Evidence.** The parties to the arbitration may offer such evidence as they desire and will produce such additional evidence, as the arbitrator may deem necessary for an understanding and determination of the dispute. The arbitrator will determine the admissibility of the evidence offered. All evidence will be taken in the presence of the arbitrator and all of the parties, except where any of the parties is absent in default or has waived its right to be present.

12.7 **Excluded Matters.** Notwithstanding the foregoing, the following matters will not be subject to mediation or arbitration under this Article 12 (but will be subject to the applicable provisions of Section 12.8 below): (a) actions relating to the collection of fees, assessments, fines and other charges imposed or levied by the Association (other than disputes as to the validity or amount of such fees, assessments, fines or charges, which disputes will be subject to mediation/arbitration as provided above), and (b) actions to enforce any order, decision or award rendered by arbitration pursuant to this Article 12. The filing of a lis pendens or the application to any court for the issuance of any provisional process or similar remedy described in the Oregon or Federal Rules of Civil Procedure will not constitute a waiver of the right or duty to utilize the procedures specified in this Article 12.

12.8 **Costs and Attorneys' Fees.** The fees of any mediator and the costs of mediation shall be divided and paid equally by the parties. Each party shall pay its own attorneys' fees and costs in connection with any mediation. Should any suit, action or arbitration be commenced in connection with any dispute related to or arising out of this Declaration, the Bylaws or Rules and Regulations, to obtain a judicial construction of any provision of this Declaration, the Bylaws or the Rules and Regulations, to rescind this Declaration or to enforce or collect any judgment or decree of any court or any award obtained during arbitration, each party shall pay its own attorneys' fees and costs in connection therewith. However, the Association shall be entitled to recover attorneys' fees associated with the collection of assessments, in accordance with ORS 94.630.

12.9 **Survival.** The mediation and arbitration agreement set forth in this Article 12 will survive the transfer by any part of its interest or involvement in the Property and any Lot therein and the termination of this Declaration.

## **Article 13 MORTGAGES**

13.1 **Reimbursement of First Mortgages.** First mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy, for such Common Area. First mortgagees making such

payments will be owed immediate reimbursement therefor from the Association to the extent the same was the responsibility of the Association.

13.2 **Right of First Mortgagees Relating to Maintenance.** At any time that the Common Areas are not maintained or repaired by the Association to the extent reasonably necessary to protect and preserve the value of the Property for security interest purposes, then the record mortgagee, upon giving written notice as provided in this paragraph, will be entitled to exercise the rights of the Owner of a Lot as a member of the Association to vote at all regular and special meetings of the members of the Association for a period of one year following the date of such notice. During this one-year period, the Association will give notice of all regular and special meetings to both the Owner and the mortgagee, and the Owner may attend such meetings as an observer. Notice from the mortgagee under this Section will quote this Section 13.2 and will be sent postage prepaid by certified United States mail, return receipt requested, to the Owner with a copy sent by regular mail to the Association at the last known address of each.

## **Article 14 AMENDMENT AND REPEAL**

14.1 **How Proposed.** Amendments to or repeal of this Declaration must be proposed by either a majority of the Board of Directors or by Owners holding thirty percent (30%) or more of the Association's voting rights. The proposed amendment or repeal must be reduced to writing and will be included in the notice of any meeting at which action is to be taken thereon or attached to any request for consent to the amendment or repeal.

14.2 **Approval Required.** This Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of the Property, may be amended or repealed by the vote or written consent of Owners representing not less than seventy-five percent (75%) of the voting rights of the Lots, together with the written consent of the Class B member, if such Class B membership has not been terminated as provided in this Declaration. In no event may an amendment under this Section create, limit or diminish special declarant rights without Declarant's written consent, or change the boundaries of any Lot or any uses to which any Lot is restricted unless the Owners of the affected Lots unanimously consent to the amendment. Declarant may not amend this Declaration to increase the scope of special declarant rights reserved in this Declaration after the sale of the first Lot unless owners representing seventy-five percent (75%) of the total vote, other than Declarant, agree to the amendment. To the extent any amendment relates to the preservation or maintenance of the Common Areas or private utility lines, or the existence of an entity responsible for accomplishing the same, such amendment will be approved by the Zoning Administrator of the City of Wilsonville.

14.3 **Recordation.** Any such amendment or repeal becomes effective only upon recordation in the Deed Records of Clackamas County, Oregon of a certificate of the president and secretary of the Association setting forth in full the amendment, amendments or repeal so approved and certifying that such amendment, amendments or repeal have been approved in the manner required by this Declaration and ORS 94.590, and acknowledged in the manner provided for acknowledgment of deeds.

14.4 **Regulatory Amendments.** Notwithstanding the provisions of Section 14.1 above, until the Turnover Meeting has occurred, Declarant will have the right to amend this Declaration or the Bylaws of the Association to comply with the requirements of any applicable statute, ordinance or

regulation or of the Federal Housing Administration, the United States Department of Veterans Affairs, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon which insures, guarantees or provides financing for a planned community or lots in a planned community. After the Turnover Meeting, any such amendment will require the approval of a majority of the voting rights of the Association voting in person, by proxy or by ballot at a meeting or ballot meeting of the Association at which a quorum is represented.

## **Article 15 MISCELLANEOUS PROVISIONS**

15.1 **Lessees and Other Invitees.** Lessees, employees, invitees, contractors, family members and other persons entering the Property under rights derived from an Owner will comply with all of the provisions of this Declaration restricting or regulating the Owner's use, improvement or enjoyment of his or her Lot and other areas within the Property. The Owner is responsible for obtaining such compliance and will be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner himself or herself.

15.2 **Nonwaiver.** Failure by the Association or by any Owner to enforce any covenant or restriction contained in this Declaration will in no event be deemed a waiver of the right to do so thereafter.

15.3 **Construction; Severability; Number; Captions.** This Declaration will be liberally construed as an entire document to accomplish the purposes thereof as stated in the introductory paragraphs hereof. Nevertheless, each provision of this Declaration will be deemed independent and severable, and the invalidity or partial invalidity of any provision will not affect the validity or enforceability of the remaining part of that or any other provision.

As used in this Declaration, the singular includes the plural and the plural the singular, and the masculine and neuter each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and in no way limit any of the provisions of this Declaration.

15.4 **Notices and Other Documents.** Any notice or other document permitted or required by this Declaration may be delivered personally, by electronic mail, or by United States mail. Delivery by United States mail will be deemed made twenty-four (24) hours after having been deposited in the United States mail as certified or registered mail, with postage prepaid, addressed as follows: if to Declarant or the Association, to the property manager or the registered address of the Association; if to an Owner, at the address given at the time of the Owner's purchase of a Lot, or at the Lot. The address of a party may be changed at any time by notice in writing delivered as provided herein.

**IN WITNESS WHEREOF**, Declarant has executed this Declaration on the date set forth above.

**DECLARANT:** **Sullivan Homes, LLC** , an California corporation

By: \_\_\_\_\_  
Name: Brian Matteoni  
Title: Managing Member

State of Oregon                    )  
  ) ss.  
County of Clackamas            )

The foregoing instrument was acknowledged before this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by Brian Matteoni, the Managing Member of Sullivan Homes, Inc., an California corporation, on its behalf.

\_\_\_\_\_  
Notary Public  
My appointment expires: \_\_\_\_\_

(Seal or stamp)

# **Exhibit J: Annexation Legal Description and Exhibit** **(Updated Nov 2023)**

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## EXHIBIT A

### City of Wilsonville Annexation Description

A tract of land located in the Southeast One-Quarter of Section 12, Township 3 South, Range 1 West, Willamette Meridian, Clackamas County, Oregon, and being more particularly described as follows:

Beginning at the northeast corner of the plat "Morgan Farm No. 2", Plat No. 4610, Clackamas County Plat Records, also being on the north right-of-way line of SW Brisband Street (11.00 feet from centerline) and the City of Wilsonville city limits line; thence along said north right-of-way line and said city limits line, North  $88^{\circ}36'03''$  West 30.96 feet to the southwest corner of Document Number 2021-041768, Clackamas County Deed Records; thence leaving said city limits line along the west line of said Deed, North  $01^{\circ}38'13''$  East 858.15 feet to the northwest corner of said Deed, also being on the south right-of-way line of SW Frog Pond Lane (16.50 feet from centerline) and said city limits line; thence along said south right-of-way line and said city limits line, South  $88^{\circ}35'24''$  East 254.01 feet to the northeast corner of said Deed; thence leaving said city limits line along the east line of said Deed, South  $01^{\circ}38'13''$  West 858.11 feet to the south line of said Deed and said city limits line; thence along said south line and said city limits line, North  $88^{\circ}36'03''$  West 223.05 feet to the Point of Beginning.

The above described tract of land contains 5.00 acres, more or less.

The Basis of Bearings for this description are based on Survey Number 2022-119, Clackamas County Survey Records.

6/26/2023

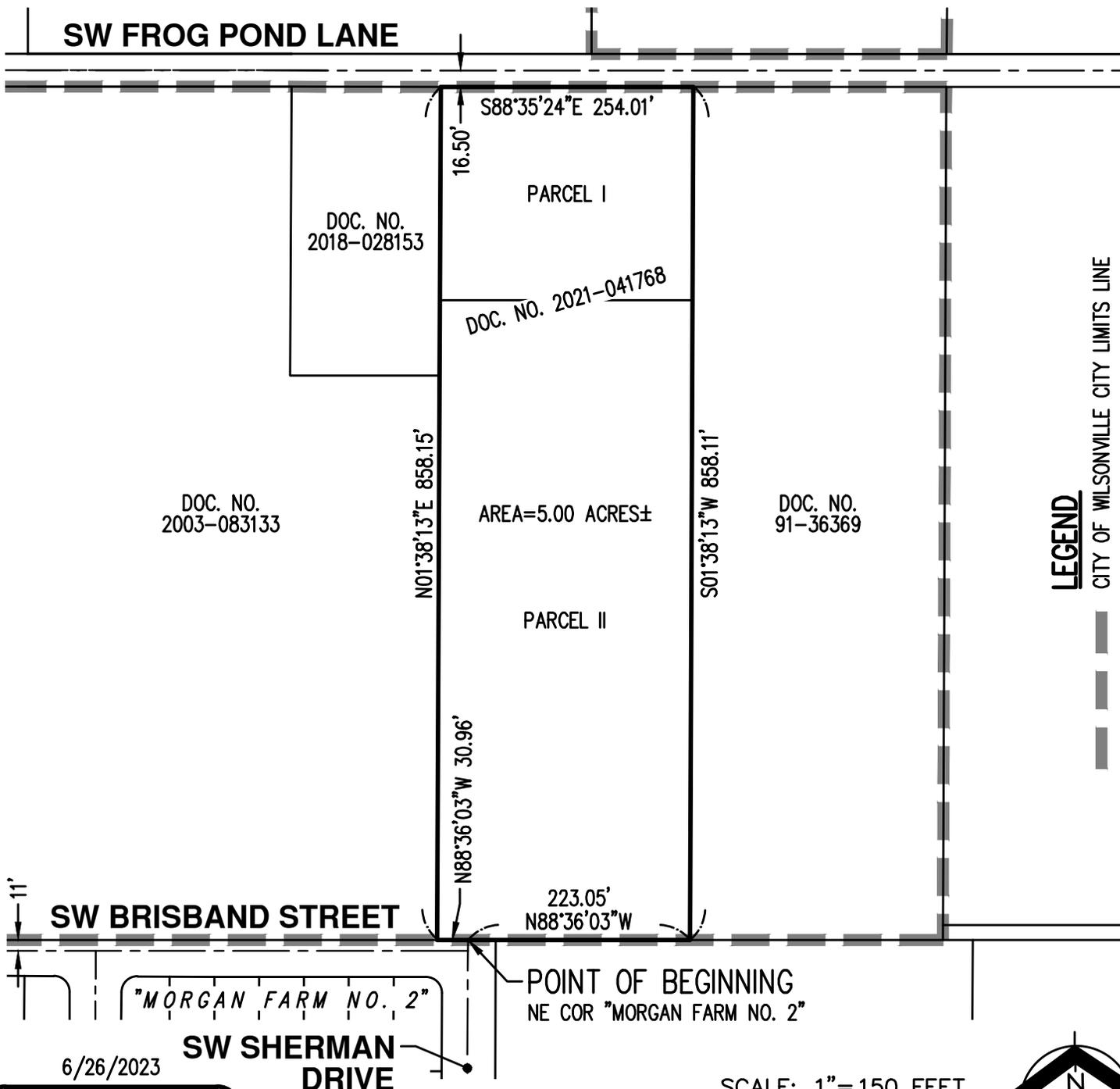
REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
JANUARY 12, 2016  
MICHAEL S. KALINA  
89558PLS

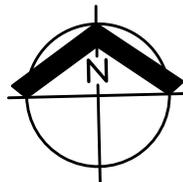
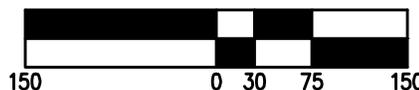
RENEWS: 6/30/23

# EXHIBIT B

A TRACT OF LAND LOCATED IN THE SOUTHEAST 1/4 OF SECTION 12,  
TOWNSHIP 3 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN,  
CLACKAMAS COUNTY, OREGON



SCALE: 1" = 150 FEET



**REGISTERED  
PROFESSIONAL  
LAND SURVEYOR**

*Michael S. Kalina*

**OREGON  
JANUARY 12, 2016  
MICHAEL S. KALINA  
89558PLS  
RENEWS: 6/30/25**

<b>CITY OF WILSONVILLE ANNEXATION MAP</b>		<b>EXHIBIT B</b>
AKS ENGINEERING & FORESTRY, LLC 12965 SW HERMAN RD, STE 100 TUALATIN, OR 97062 503.563.6151 WWW.AKS-ENG.COM		DRWN: WCB CHKD: MSK AKS JOB: 6175



## **Exhibit K: Annexation County Certifications**

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## Boundary Change Preliminary Review

DOR 3-P691-2022



Cadastral Information Systems Unit  
PO Box 14380  
Salem, OR 97309-5075  
fax 503-945-8737  
boundary.changes@dor.oregon.gov

City of Wilsonville  
Planning Dept.  
City of Wilsonville  
29799 SW Town Center Loop E  
Wilsonville OR 97070

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September 26, 2022

Documents received: 9/2/2022  
From: Glen Southerland

This letter is to inform you that the Description and Map for your planned --City of Wilsonville & Metro ((Frog Pond Ln & Brisband St)(3S1W-12D & R/W)) in Clackamas County have been reviewed per your request. They DO NOT MEET the requirements for use with an Order, Ordinance, or Resolution in accordance with ORS 308.225.

--The yellow boundary on the 3 1 W 12D assessor map does not match the legal description. It does not include the portion in the road.

--Label SW Sherman Drive on the city annexation map.

--Send a copy of Document No. 2021-041768.

--Please put a Revised date on the revised documents.

If you have any questions please contact Elise Bruch, [Elise.A.Bruch@dor.oregon.gov](mailto:Elise.A.Bruch@dor.oregon.gov)

## Boundary Change Preliminary Review

DOR 3-P691-2022



Cadastral Information Systems Unit  
PO Box 14380  
Salem, OR 97309-5075  
fax 503-945-8737  
boundary.changes@dor.oregon.gov

City of Wilsonville  
Planning Dept.  
City of Wilsonville  
29799 SW Town Center Loop E  
Wilsonville OR 97070

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October 21, 2022

Documents received: 9/2/2022, 10/3/2022  
From: Glen Southerland

This letter is to inform you that the Description and Map for your planned --City of Wilsonville & Metro ((Frog Pond Ln & Brisband St)(3S1W-12D & R/W) ) in Clackamas County have been reviewed per your request. They MEET the requirements of ORS 308.225 for use with an Order, Ordinance, or Resolution which must be submitted to the Clackamas County Assessor and the Department of Revenue in final approved form before March 31 of the year in which the change will become effective.

Please use the Revised maps and descriptions dated 9-27-22 in the Final packet.  
Use the revised assessor map 3 1 W 12D in the Final packet.

If you have any questions please contact Elise Bruch, [Elise.A.Bruch@dor.oregon.gov](mailto:Elise.A.Bruch@dor.oregon.gov)



## EXHIBIT A

### City of Wilsonville Annexation Description

A tract of land located in the Southeast One-Quarter of Section 12, Township 3 South, Range 1 West, Willamette Meridian, Clackamas County, Oregon, and being more particularly described as follows:

Beginning at the northeast corner of the plat "Morgan Farm No. 2", Plat No. 4610, Clackamas County Plat Records, also being on the north right-of-way line of SW Brisband Street (11.00 feet from centerline) and the City of Wilsonville city limits line; thence along said north right-of-way line and said city limits line, North  $88^{\circ}36'03''$  West 30.96 feet to the southwest corner of Document Number 2021-041768, Clackamas County Deed Records; thence leaving said city limits line along the west line of said Deed and the northerly extension thereof, North  $01^{\circ}38'13''$  East 891.15 feet to the north right-of-way line of SW Frog Pond Lane (16.50 feet from centerline); thence along said north right-of-way line, South  $88^{\circ}35'24''$  East 508.29 feet to the southeast corner of Document Number 2001-040160, Clackamas County Deed Records, and said city limits line; thence along the southerly extension of the east line of said Deed and said city limits line, South  $01^{\circ}42'33''$  West 33.00 feet to the south right-of-way line of SW Frog Pond Lane (16.50 feet from centerline); thence leaving said city limits line along said south right-of-way line, North  $88^{\circ}35'24''$  West 254.24 feet to the northeast corner of said Document Number 2021-041768; thence along the east line of said Deed, South  $01^{\circ}38'13''$  West 858.11 feet to the south line of said Deed and said city limits line; thence along said south line and said city limits line, North  $88^{\circ}36'03''$  West 223.05 feet to the Point of Beginning.

The above described tract of land contains 5.39 acres, more or less.

The Basis of Bearings for this description are based on Survey Number 2022-119, Clackamas County Survey Records.

8/25/2022

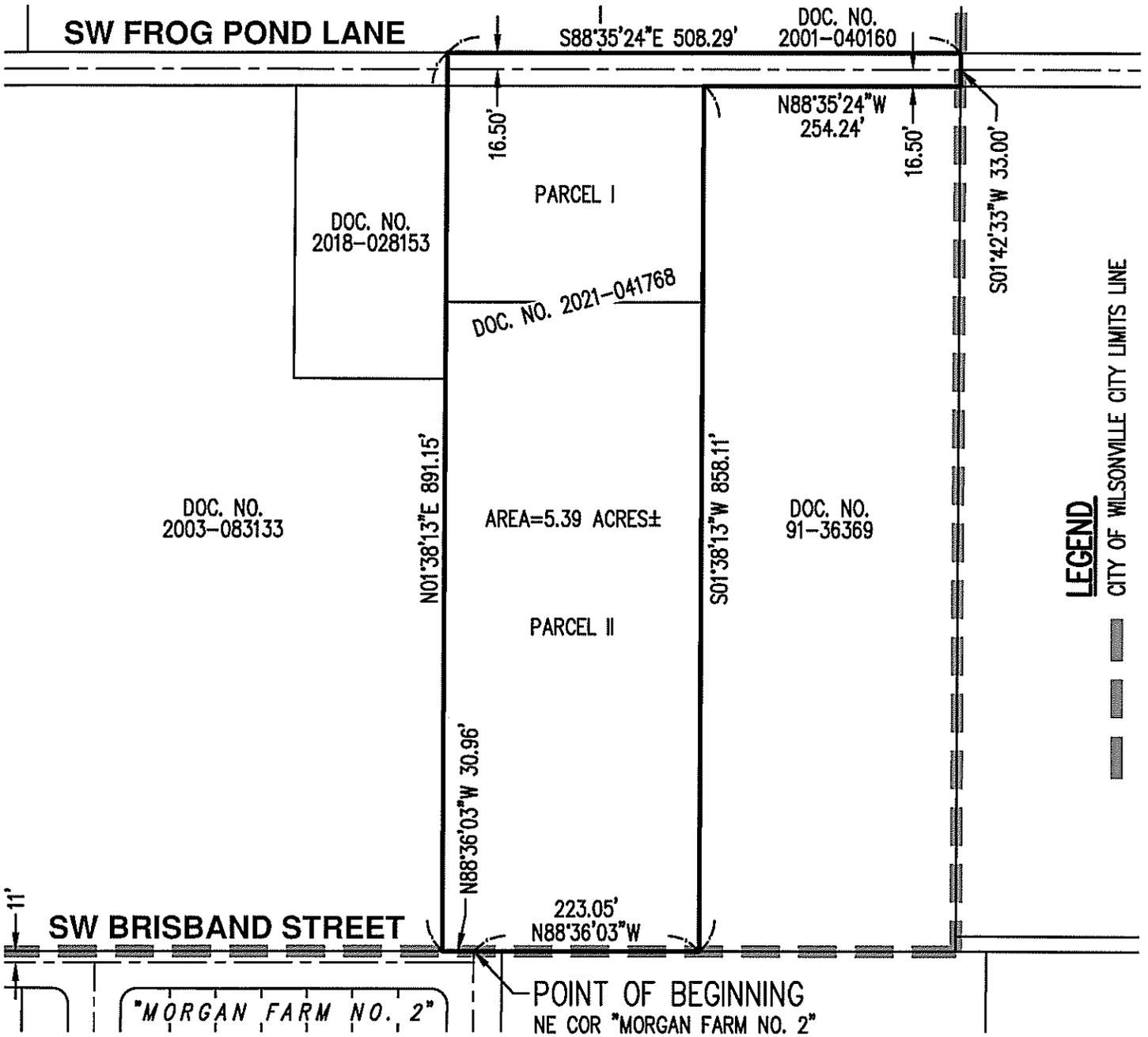
REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
JANUARY 12, 2016  
MICHAEL S. KALINA  
89558PLS

RENEWS: 6/30/23

# EXHIBIT B

A TRACT OF LAND LOCATED IN THE SOUTHEAST 1/4 OF SECTION 12,  
TOWNSHIP 3 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN,  
CLACKAMAS COUNTY, OREGON



8/25/2022

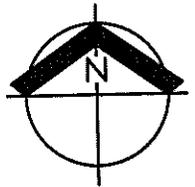
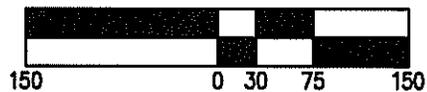
REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Michael S. Kalina*

OREGON  
JANUARY 12, 2016  
MICHAEL S. KALINA  
89558PLS

RENEWS: 6/30/23

SCALE: 1" = 150 FEET



CITY OF WILSONVILLE ANNEXATION MAP

AKS ENGINEERING & FORESTRY, LLC  
12965 SW HERMAN RD, STE 100  
TUALATIN, OR 97062  
503.563.6151 WWW.AKS-ENG.COM



EXHIBIT  
**B**

DRWN: WCB

CHKD: MSK

AKS JOB:

6175

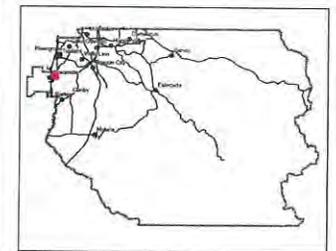
3 1W 12D  
WILSONVILLE

S.E.1/4 SEC.12 T.3S. R.1W. W. M.  
CLACKAMAS COUNTY  
1" = 200'

Cancelled	Cancelled
900	2902
3201	604
1901	2900
1600	3200E3
400	1902
1900	1903
3400	2000
625	2901
622	2100
623	2201
2900S1	2202
2000E1	2200
3100	2300
1000	2400
600	2600
2500	2700
3300E1	2300
3200E1	1800
201	1700
301	1500



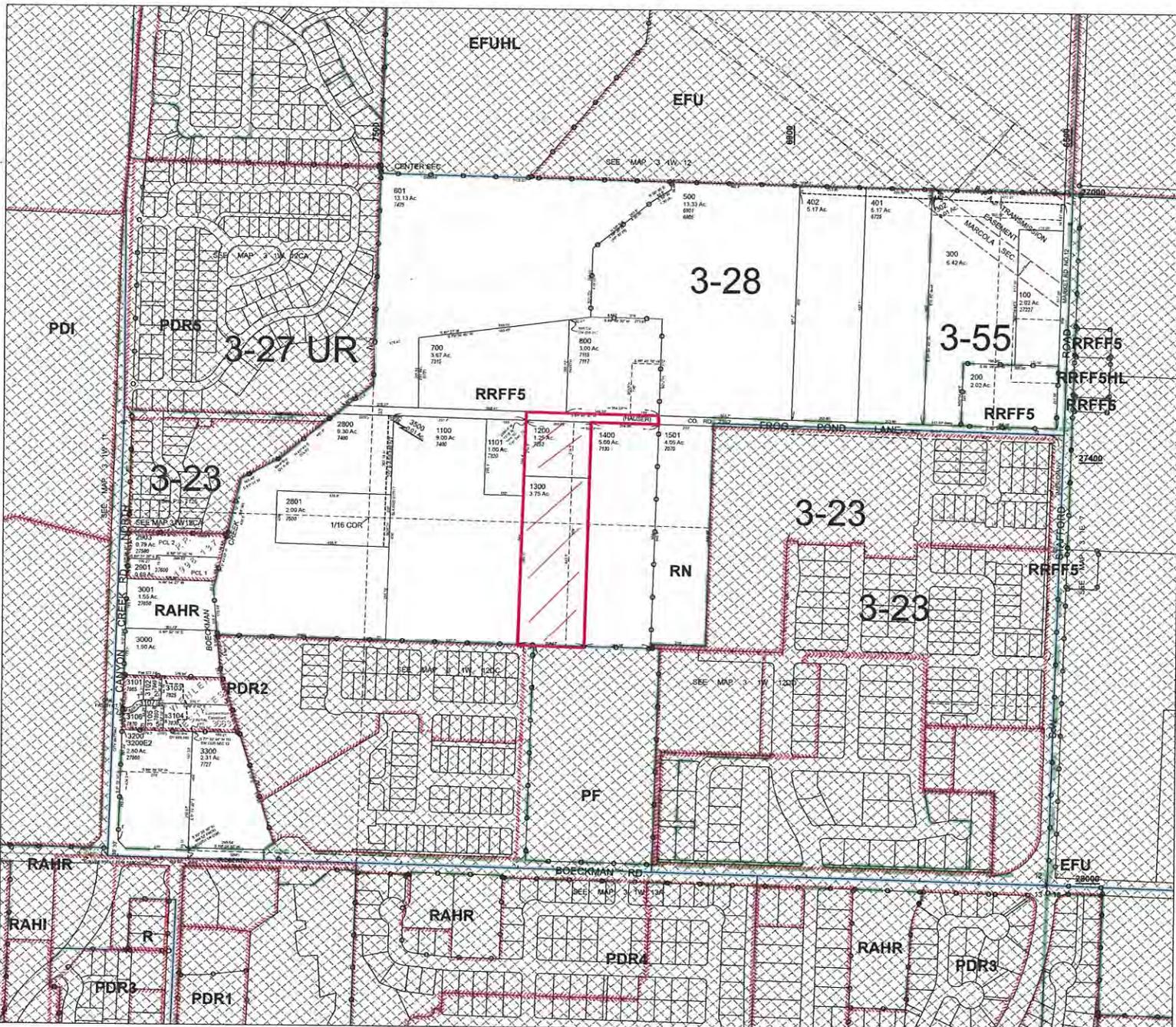
- Parcel Boundary
- Private Road ROW
- Historical Boundary
- Railroad Centerline
- Tax Code Lines
- Map Index
- Water Lines
- Land Use Zoning
- Plats
- Water
- Corner
- Section Corner
- 1/16th Line
- Govt Lot Line
- DLC Line
- Meander Line
- PLSS Section Line
- Historic Corridor 40'
- Historic Corridor 20'



THIS MAP IS FOR ASSESSMENT  
PURPOSES ONLY

3 1W 12D  
WILSONVILLE

Print Date: 10/24/2022





**Metro District Annexation  
Certification of Property Ownership of at Least  
One-half of the Land Area**

I hereby certify that the proposed petition for inclusion within the **Metro District Boundary** contains the names of property owners<sup>1</sup> of at least one-half of the land area within the annexation area, as shown on the last complete assessment roll.

Name: TERRY DONOVAN  
Title: GIS CARTOGRAPHER 2  
Department: A&T  
County: CLACKAMAS  
Date: 12/1/22



<sup>1</sup> A landowner means any person shown as the owner of land on the last available assessment roll. However, where such person no longer holds the title of the property, then the term refers to any person entitled to be shown as the owner of that land on the next assessment roll. This could also include a written agreement of sale, which specifies a purchaser to the exclusion of the seller or a public agency owning land.

# CERTIFICATION OF PROPERTY OWNERSHIP

I hereby certify that the attached petition for annexation contains the names of the owners<sup>1</sup> (as shown on the last available complete assessment roll) of 100% of the land area of the territory proposed for annexation as described in the attached petition.

NAME: TERRY DONOVAN  
TITLE: GIS CARTOGRAPHER 2  
DEPARTMENT: ~~CLACKAMAS~~ ART  
COUNTY OF: CLACKAMAS  
DATE: 12/1/22



<sup>1</sup> "Owner" means the legal owner of record or, where there is a recorded land contract which is in force, the purchaser thereunder. If there is a multiple ownership in a parcel of land each consenting owner shall be counted as a fraction to the same extent as the interest of the owner in the land bears in relation to the interest of the other owners and the same fraction shall be applied to the parcel's land mass and assessed value for purposes the consent petition. If a corporation owns land in territory proposed to be annexed, the corporation shall be considered the individual owner of that land.



Metro District Annexation  
**Certification of Legal Description and Map**

I hereby certify that the description of the property included within the attached petition has been checked by me and it is a true and exact description of the property under consideration, and the description corresponds to the attached map.

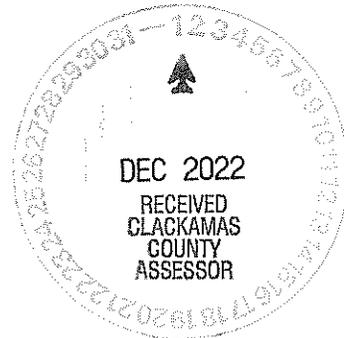
Name: TERY DONOVAN

Title: GIS CARTOGRAPHER 2

Department: ART

County: CLACKAMAS

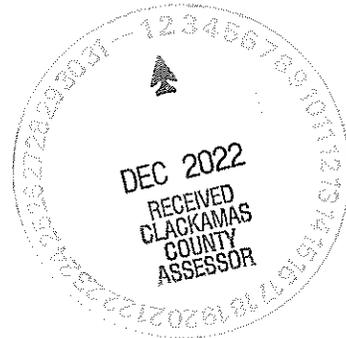
Date: 12/1/22



# CERTIFICATION OF LEGAL DESCRIPTION AND MAP

I hereby certify that the description of the property included within the attached petition (located on Assessor's Map 31W12D) has been checked by me and it is a true and exact description of the property under consideration, and the description corresponds to the attached map indicating the property under consideration.

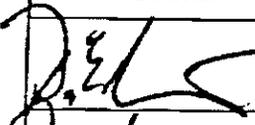
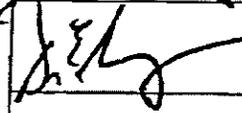
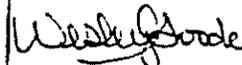
NAME: TERRY DONOVAN  
TITLE: GIS CARTOGRAPHER 2  
DEPARTMENT: A&T  
COUNTY OF: CLACKAMAS  
DATE: 12/1/22



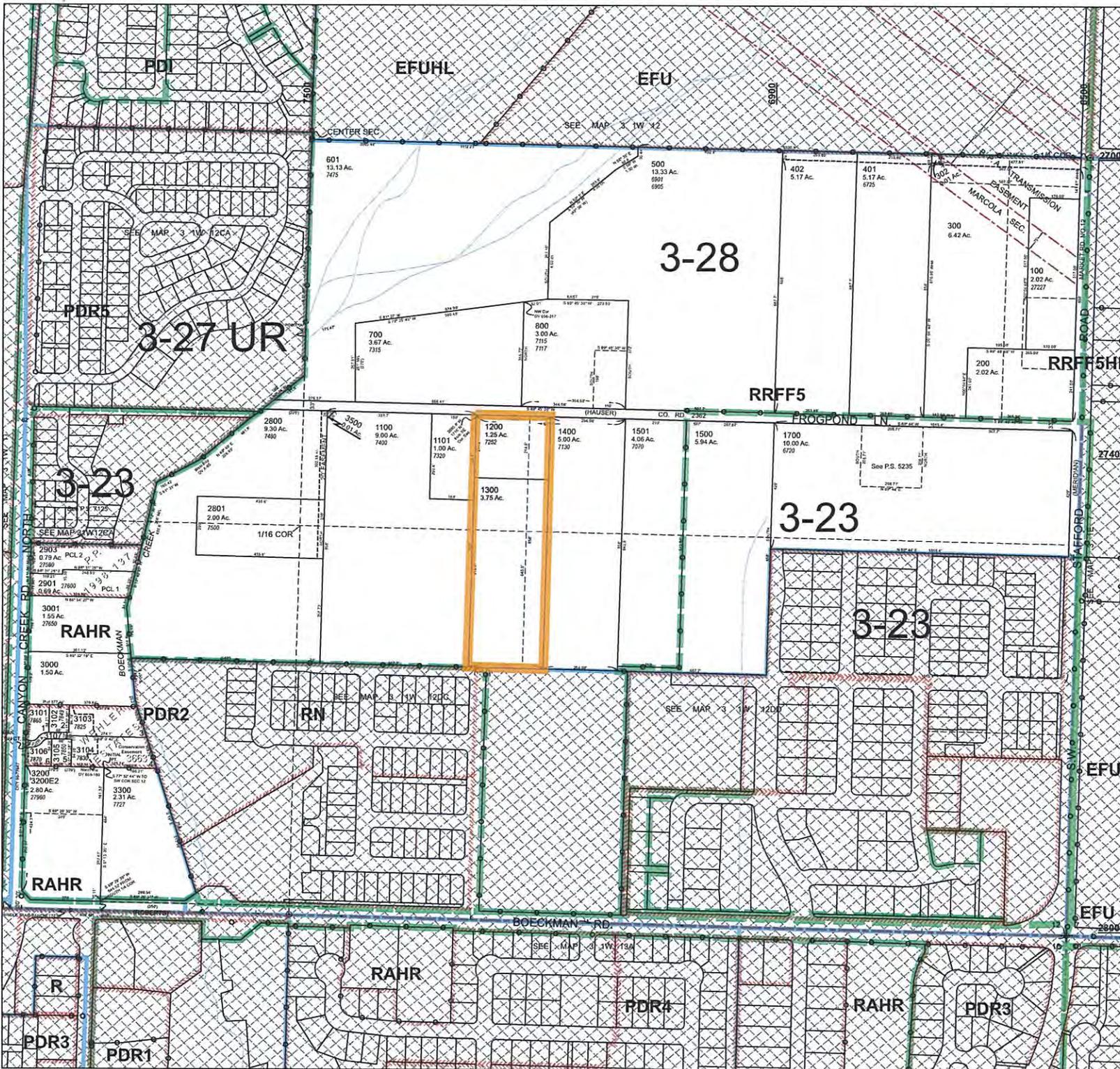
## PETITION FOR ANNEXATION

We, the undersigned owner(s) of the property described in **Exhibit A** and/or elector(s) residing at the referenced location(s), hereby petition for, and give consent to, Annexation of said property to the City of Wilsonville:

**NOTE:** This petition may be signed by any qualified persons even though they may not know their property description or precinct number.

SIGNATURE	PRINTED NAME	I AM A:*			PROPERTY ADDRESS	PROPERTY DESCRIPTION				PRECINCT #	DATE
		PO	RV	OV		LOT #	1/4 SEC	T	R		
	BRIAN MATTIONI	X			7252 SW Frog Pond Lane Wilsonville, OR 97070	1200	12	3S	1W	323	
	BRIAN MATTIONI	X			No Situs	1300	12	3S	1W	323	
	WESLEY GOODE		X		7252 SW Frog Pond Lane Wilsonville, OR 97070	1200	12	3S	1W	323	08/31/22

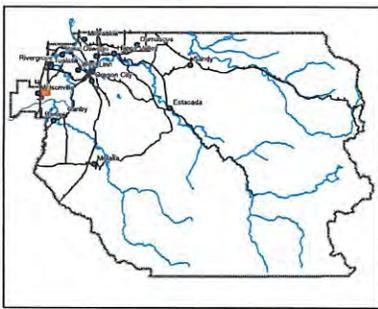
- \* PO - Property Owner
- RV - Registered Voter
- OV - Property Owner & Registered Voter



Cancelled Taxlots

- 2300
- 2300
- 3300E3
- 1902
- 1903
- 2000
- 2001
- 2100
- 2201
- 2202
- 2200
- 2400
- 2500
- 2700
- 201
- 301
- 400
- 600
- 602
- 603
- 604
- 605
- 900
- 1000
- 1000
- 1500
- 1500
- 2000E1
- 2500
- 2900
- 2900E1
- 2902
- 3100
- 3200E1
- 3201
- 3300E1
- 3400
- 1800

- Parcel Boundary
- Private Road ROW
- Historical Boundary
- Railroad Centerline
- TaxCodeLines
- Map Index
- WaterLines
- Land Use Zoning
- Plats
- Water
- Corner
- Section Corner
- 1/16th Line
- Govt Lot Line
- DLC Line
- Meander Line
- PLSS Section Line
- Historic Corridor 40'
- Historic Corridor 20'



THIS MAP IS FOR ASSESSMENT  
PURPOSES ONLY

7/14/2021



STATE OF CALIFORNIA  
ACTING SECRETARY OF STATE  
TONY MILLER

LIMITED LIABILITY COMPANY  
ARTICLES OF ORGANIZATION

**IMPORTANT** - Read instructions before completing the form.

This document is presented for filing pursuant to Section 17050 of the California Corporations Code.

1. Limited liability company name: Sullivan Homes LLC

(End the name with "LLC" or "Limited Liability Company". No periods between the letters in "LLC". "Limited" and "Company" may be abbreviated to "Ltd." and "Co.")

2. Latest date on which the limited liability company is to dissolve:  
December 31, 2040

3. The purpose of the limited liability company is to engage in any lawful act or activity for which a limited liability company may be organized under the Beverly-Killea Limited Liability Company Act.

4. Enter the name of initial agent for service of process and check the appropriate provision below:

Dean R. Westly

, which is

an individual residing in California. Proceed to Item 5.

a corporation which has filed a certificate pursuant to Section 1505 of the California Corporations Code. Skip Item 5 and proceed to Item 6.

5. If the initial agent for service of process is an individual, enter a business or residential street address in California:

Street address: 1740 Technology Drive #250

City: San Jose

State: CALIFORNIA

Zip Code: 95110

6. The limited liability company will be managed by: (check one)

one manager

more than one manager

limited liability company members

7. If other matters are to be included in the articles of organization attach one or more separate pages.

Number of pages attached, if any: -0-

8. It is hereby declared that I am the person who executed this instrument, which execution is my act and deed.

*Dean R. Westly*

Signature of organizer

DEAN R. WESTLY.

Type or print name of organizer

Date: APRIL 3, 19 96



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SULLIVAN HOMES LLC  
OPERATING AGREEMENT  
DATED: March 20, 1996

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OPERATING AGREEMENT OF SULLIVAN HOMES LLC

This Limited Liability Company Operating Agreement (this "Agreement") is made and entered into as of \_\_\_\_\_, 1996 by and between Brian E. Matteoni and Norman E. Matteoni, (collectively the "Members").

RECITALS

Brian E. Matteoni and Norman E. Matteoni have agreed to form a limited liability company in accordance with the California Limited Liability Company Act under the name "Sullivan Homes LLC" (the "Company"). Brian E. Matteoni and Norman E. Matteoni desire to enter into this Limited Liability Company Operating Agreement in order to set forth their understanding with respect to the management, operation and other matters of the Company.

NOW, THEREFORE, the members hereby agree as follows:

ARTICLE 1

DEFINITIONS

When used in this Agreement, the following terms shall have the meanings set forth below:

1.1 "Act" shall mean the California Limited Liability Company Act, California Corporations Code, Section 17101, et seq., as the same may be amended from time to time.

1.2 "Adjusted Capital Account Deficit" shall mean, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(a) Decreasing such deficit by any amounts which such Member is deemed to be obligated to restore pursuant to the penultimate sentence of each of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(b) Increasing such deficit by the items described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

1.3 "Affiliate" shall mean (i) any individual, partnership, corporation, limited liability company, trust, or other entity or association, directly or indirectly, through one or more

intermediaries, controlling, controlled by, or under common control with the Member and (ii) any family relation of a Member or a Member's spouse. The term "control," as used in the immediately preceding sentence, means, with respect to a corporation or limited liability company the right to exercise, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity. An individual's family shall include his spouse, parents, children, grandchildren and siblings.

1.4 "Agreement" shall mean this Operating Agreement, as originally executed and as amended from time to time.

1.5 "Articles" shall mean the Articles of Organization for the Company originally filed with the California Secretary of State and as amended from time to time.

1.6 "Bankruptcy" shall mean: (a) the filing of an application by a Member, for his consent to, the appointment of a trustee, receiver, or custodian of his other assets; (b) the entry of an order for relief with respect to a Member in proceedings under the United States Bankruptcy Code, as amended or superseded from time to time; (c) the making by a Member of a general assignment for the benefit of creditors; (d) the entry of an order, judgment, or decree by any court of competent jurisdiction appointing a trustee, receiver, or custodian of the assets of a Member unless the proceedings and the person appointed are dismissed within ninety (90) days; (e) the failure by a Member generally to pay his debts as the debts become due within the meaning of Section 303(h)(1) of the United States Bankruptcy Code, as determined by the Bankruptcy Court, or the admission in writing of his inability to pay his debts as they become due; or (f) suffering or permitting a Member's Percentage Interest to become subject to the enforcement of any rights of a creditor of the Member, whether arising out of an attempted charge upon that

Member's Percentage Interest by judicial process or otherwise, if that Member fails to effectuate the release of those enforcement rights, whether by legal process, bonding, or otherwise, within ninety (90) days after actual notice of that creditor's action.

1.7 "Capital Account" shall mean an account established and maintained for each Member in accordance with Regulations Section 1.704, the balance of which shall be (a) increased by (i) the amount of any cash and fair market value of any property contributed (or deemed to be contributed) to the Company by such Member, and (ii) the amount of any allocations to such Member of Net Profit, and (b) decreased by (i) the amount of any cash and the fair market value of any property distributed to such Member by the Company and (ii) the amount of any allocations to such Member of Net Loss.

1.8 "Capital Contributions" shall mean the total value of cash and fair market value of property (including promissory notes) contributed to the Company by Members, as shown in the Company's books and records. The Members' Capital Contributions are set forth in Section 3.1 hereof.

1.9 "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, the provisions of succeeding law, and to the extent applicable, the Regulations.

1.10 "Company" shall mean Sullivan Homes LLC, as such Company may be constituted from time to time.

1.11 "Fiscal Year" shall mean the Company's fiscal year, which shall be the calendar year.

1.12 "Majority in Interest" shall mean one or more Percentage Interests of Members which taken together exceed fifty percent (50%) of the aggregate of all Percentage Interests.

1.13 "Manager" shall mean Brian E. Matteoni or his successor appointed in accordance with Section 4.4 of this Agreement.

1.14 "Member" shall mean each Person (other than any person who has withdrawn, died, resigned, become bankrupt or dissolved) who is an initial signatory to this Agreement and any other person who may subsequently be a signatory to this Agreement.

1.15 "Member Nonrecourse Debt" shall have the meaning set forth in Section 1.704 of the Regulations.

1.16 "Member Nonrecourse Debt Minimum Gain" means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Regulations.

1.17 "Member Nonrecourse Deductions" has the meaning set forth in Section 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations.

1.18 "Minimum Gain" shall mean that amount of gain which would be recognized for federal income tax purposes if, as of the close of the Fiscal Year with respect to which the calculation is being made, the Company's assets were sold for an amount equal to the total principal amount of all nonrecourse indebtedness of the Company then secured by such assets. It is the intention of the Members that the concept of Minimum Gain, as used in this Agreement, has the same meaning as it does in Section 1.704 of the Regulations.

1.19 "Net Profit" and "Net Loss" shall mean the income, gain, loss, deductions, and credits of the Company in the aggregate or separately stated, as appropriate, determined in accordance with generally accepted accounting principles employed under the method of accounting at the close of each fiscal year on the Company's information tax return filed for federal income tax purposes together with all tax items described in Section 702(a) of the Code that are not included in the Company's taxable income or loss.

1.20 "Percentage Interest" shall mean a Member's entire interest in the Company including the Member's right to vote on or participate in the management, and the right to receive information concerning the business and affairs, of the Company.

1.21 "Person" shall mean an individual, general partnership, limited partnership, limited liability company, corporation, trust, estate, real estate investment trust association or any other entity.

1.22 "Regulations" shall, unless the context clearly indicates otherwise, mean the regulations currently in force as final or temporary that have been issued by the U.S. Department of Treasury pursuant to its authority under the Code.

## ARTICLE 2

### ORGANIZATION

2.1 Formation; Name. The Members have caused the Company to be formed as a California limited liability company by filing Articles of Organization in accordance with the Act with the Secretary of State of the State of California, a copy of which is attached hereto as Exhibit "A". The name of the Company is "Sullivan Homes LLC." The Company may operate its business under one or more assumed names.

2.2 Registered Office; Registered Agent; Principal Office. The registered agent and office of the Company in the State of California shall be as set forth in the Articles of Organization. The Members may from time to time change the registered agent or office through appropriate filings with the Secretary of State. The principal office of the Company shall be at 16380 Oleander Avenue, Los Gatos, California 95032, or such other place as the Manager may designate from time to time, which need not be in the State of California. The Company may have such other offices as the Manager may designate from time to time.

2.3 Purposes. The purposes of, and the business to be carried on by, the Company shall be:

(a) to acquire, own, manage and hold real estate for investment;

(b) to engage in the management and development of real estate;

(c) to engage in any lawful business permitted by the Act or the laws of any jurisdiction in which the Company may do business.

The Company shall have authority to do all things necessary or convenient to accomplish such purposes and operate its business as described in this Section 2.3, but shall not conduct any other

business. The authority of the Members to bind the Company is, accordingly so limited.

2.4 Qualification To Do Business. The Company shall qualify to do business in each jurisdiction in which the conduct of its business requires such qualification.

2.5 Intention Of Members. The Members have formed the Company as a limited liability company under and pursuant to the Act and expressly do not intend hereby to form a general partnership, a limited partnership or any other venture under the laws of California. No Member shall be construed to be a partner in or of the Company or a partner of any other Member or person and the Articles of Organization, this Agreement and the relationships created thereby and arising therefrom shall not be construed to suggest otherwise.

### ARTICLE 3

#### CAPITAL

3.1 Members' Contributions. Each Member shall make the Capital Contribution described for that Member on Exhibit "B" at the time and on the terms specified on Exhibit "B". If no time for any contribution is specified, the Capital Contributions shall be made upon the filing of the Articles of Organization with the Secretary of State. Each Member shall make such additional Capital Contributions in cash as are necessary to meet the administrative costs of the Company, and such Capital Contributions shall be made by each Member in proportion to the Percentage Interest owned by him. No interest shall be paid by the Company to any Member on any Capital Contribution.

3.2 Percentage Interest. In consideration for their Capital Contributions, the Company shall grant to the Members the Percentage Interest set forth after their names in Exhibit "B" hereto. Exhibit "B" shall be amended from time to time to indicate any changes in the Percentage Interest held by a Member arising from the transfer of Percentage Interest to or by such Member and any change in the amounts contributed or agreed to be contributed

by any Member (other than Capital Contributions made pursuant to Section 3.1.

3.3 Additional Capital Contributions. No Member shall be required to make any Capital Contributions to the Company except as provided in Section 3.1, to return all or any portion of any Capital Contributions or to lend any funds to the Company. Except as otherwise provided in this paragraph 3.3, if at any time or times the Manager determines that additional Capital Contributions (by way of the contribution of cash, property or services to the Company) are necessary or desirable to further the business purposes of the Company, the Manager may request such additional Capital Contributions from current Members, and in exchange for such Capital Contributions may issue to contributing Members such additional Percentage Interests as the Manager shall determine. Except as otherwise provided in this paragraph 3.3, the Company may also receive additional Capital Contributions from other persons in exchange for Percentage Interests if such new Members are admitted as Members of the Company in accordance with Section 4.2 of this Agreement.

Notwithstanding the preceding provisions of this Section 3.3, if any new Percentage Interests in the Company are proposed to be issued in exchange for cash or cash equivalents the Manager shall cause each Member to receive twenty (20) business days' prior notice of the terms and conditions of such issuance and each Member shall have the right to purchase on such terms and conditions (exercisable by notice and appropriate payment delivered within ten (10) business days of such Member's receipt of such notice of the issuance) a portion of such new Percentage Interest equal to his pro rata share of all Percentage Interest outstanding prior to the issuance of the new Percentage Interest.

3.4 Return of Capital to Members. Except as may be specifically provided in this Agreement, no Member shall have the right to withdraw from the Company all or any part of his Capital Contribution. Except as provided in this Agreement, no Member shall be entitled to a return of any cash or property contributed

to the Company until the full and complete winding-up and liquidation of the business and affairs of the Company; provided, however, in the event of sale by the Company of less than all of the Company property, or the refinancing of any obligations encumbering the Company property, the Manager is authorized and may, distribute the net proceeds derived therefrom, to the extent available, to the Members in accordance with the manner in which distributions are made to the Members under Section 6.1 below. No Member shall be personally liable for the return to any other Member of any portion of his Capital Contributions, but on the contrary, any such return shall be made solely from Company assets.

3.5 Loans to Company. If any Member, with the prior consent of the Manager shall make any loan or loans to the Company or shall advance money on its behalf ("Lending Member"), the amount of any such loan or advance shall not be an increase in the Capital Account (as defined herein) of the Lending Member or entitle such Lending Member to an increase in his Percentage Interest or subject him to any greater proportion of the losses which the Company may sustain. The amount of such loan or advance shall be a debt owing from the Company to such Lending Member repayable upon such terms and conditions and bearing interest at such rate as shall be mutually agreed upon by the Lending Member and the Manager.

3.6 No Personal Liability. No Member shall be liable for any debts, liabilities, contracts, or obligations of the Company except as otherwise required by the Act. The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under this Agreement or the Act shall not be grounds for imposing personal liability on the Members for any such debts, obligations or liabilities of the Company.

3.7 Capital Accounts. A separate Capital Account will be maintained for each Member. The provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulation Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Treasury

Regulations. No Member shall be required to make a contribution to the Company by reason of any negative balance in his Capital Account, nor shall any negative balance in a Member's Capital Account create any liability on the part of a Member to a third party.

#### ARTICLE 4

##### MEMBERS AND MANAGEMENT

4.1 Members. The Company shall initially have two Members consisting of Brian E. Matteoni and Norman E. Matteoni.

4.2 Admission of New Members. A person may be admitted as a new Member upon the prior consent of all Members and on such terms and conditions, including Capital Contributions and the Percentage Interest to be received in exchange therefor, as are agreed upon by all Members. On the admission of any person as a Member, the person shall make such Capital Contribution. As a condition precedent to admission as a Member, any new Member shall become a party to this Agreement by agreeing in writing to be bound by the terms and provisions hereof. Any new Member shall also execute and acknowledge such other instrument or instruments as Management may deem necessary or desirable to effectuate the admission of the new Member. Upon admission of a new Member, this Agreement shall be amended as necessary to reflect any changes in the management and operation of the Company.

4.3 Management. Except as otherwise provided in this Agreement or in non-waivable provisions of applicable law, management of the Company shall be vested in one manager (the "Manager"). The Manager must be and remain a Member. Except as delegated to the Company's employees by the decision of the Manager, all decisions and determinations under this Agreement affecting the management and conduct of the Company's business shall be made only by the Manager. The Manager shall devote the time, effort and skill as may be reasonably necessary or appropriate to conduct the Company's business.

4.4 Appointment of Manager. Brian E. Matteoni is hereby appointed as the initial Manager of the Company. In the event of

removal, death, incapacity, resignation, or inability to act as Manager, another Member or another person may be designated as successor to such position by the affirmative vote of a majority of the Percentage Interest then outstanding and entitled to vote. Brian E. Matteoni shall be and is hereby designated as the "tax matters partner" for purposes of Section 6231(a)(7)(A) of the Internal Revenue Code of 1986, as amended (the "Code").

4.5 Powers of Management. Subject to Section 4.7, the Manager shall have the power, on behalf of the Company, to do all things necessary or convenient to carry out the business and affairs of the Company, including, without limitation, the powers to:

(a) manage, oversee and operate the business of the Company.

(b) pay or reimburse any and all fees and expenses incurred or expended in the organization of the Company, including all legal, accounting and other fees and expenses incurred;

(c) entering into, making and performing contracts, agreements and other undertakings binding the Company (including agreements to buy, manage, sell, lease, mortgage, pledge or otherwise acquire or dispose of all or any portion of the Company property) that may be necessary, appropriate, or advisable in furtherance of the purposes of the Company and making all decisions and labors thereunder;

(d) employ and dismiss employees, including entering into employment agreements and fixing compensation;

(e) engage and enter into agreements with independent contractors, agents and consultants, including accountants, engineers and attorneys;

(f) open and maintain depository and other accounts with commercial banks or other financial institutions in the name of the Company and designate authorized signatories therefor; and invest Company funds in interest bearing, money market and similar accounts;

(g) to apply for and procure letters of credit and other financial instruments;

(h) acquire property or interests in property, tangible or intangible, real or personal;

(i) incur trade and other indebtedness, whether through borrowings, with or without recourse, contingent or otherwise, including guaranteeing or indemnifying obligations of others; and, in connection therewith, to issue notes, bonds or other securities; and, as security therefor, pledge, mortgage, encumber and grant security interests in the Company's property;

(j) lend or advance Company funds to other persons and take security therefor; and

(k) cause Federal and State income tax and other returns to be prepared and timely filed and, in connection therewith, make such tax elections for the Company as they deem appropriate.

4.6 Record of Decisions. Each decision by the Manager shall be recorded in a writing and signed by the Manager, and kept with the Company's records. Copies thereof shall be provided to each Member.

4.7 Restrictions on Management. The Manager shall not:

(a) do any act in contravention of this Agreement in its present form or as amended;

(b) do any act which would make it impossible to carry on the ordinary business of the Company;

(c) confess a judgement against the Company; or

(d) possess Company property in his name, or assign the Company's right in specific Company property, for other than a Company purpose.

4.8 Removal. Upon an affirmative vote of a majority of the Percentage Interest of the Company then outstanding and entitled to vote, the Manager may be removed from his position as Manager and a successor Manager may be selected pursuant to Section 4.4 of this Agreement. Written notice of removal of the Manager shall be given to him at least 20 days prior to the effective date of such removal. Upon removal, the Manager so removed shall retain his

Percentage Interest and shall remain a Member, without any further rights, duties or obligations of a Manager.

ARTICLE 5

MEETINGS OF MEMBERS

5.1 Voting. All Members shall be entitled to vote on any matter submitted to a vote of the Members. Each Member shall be entitled to vote the Percentage Interest owned by him or for which he holds a proxy to vote on such matter. Any Transferee or Permitted Transferee (as defined herein) of a Member's Percentage Interest shall not be entitled to vote or participate on any matter of any meeting unless and until such person is admitted as a Member.

5.2 Actions to be Taken by Members. The Company shall take any of the following actions only pursuant to a vote of the Members:

(a) the dissolution of the Company pursuant to Section 8.2(a) of this Agreement;

(b) the continuation to the business of the Company pursuant to Section 9.2(c) of this Agreement;

(c) the merger of the Company into or with another entity;

(d) a transaction involving an actual or potential conflict of interest between a Manager and the Company;

(e) an amendment to the Articles of Organization;

(f) the sale, exchange, lease or other transfer of all of substantially all of the assets of the Company other than in the ordinary course of business; or

(g) any matter submitted to a vote of the Members by the Manager.

Unless otherwise required by the Act or this Agreement, the Members may act upon matters submitted to them for decision by the affirmative vote of a majority of the Percentage Interest of the Company then outstanding and entitled to vote.

5.3 Meetings. An annual meeting of Members for the transaction of such business as may properly come before the meeting

shall be held at such place, on such date and at such time as the Manager shall determine. Special meetings of Members for any proper purpose or purposes may be called at any time by the Manager or the holders of at least twenty-five percent (25%) of the outstanding Percentage Interest entitled to vote. The Company shall deliver or mail written notice stating the date, time, place and purposes of any meeting to each Member entitled to vote at the meeting. Such notice shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting. All meetings of Members shall be presided over by a Chairman who shall be a Manager.

5.4 Consent. Any action required or permitted to be taken at an annual or special meeting of the Members may be taken without a meeting, without prior notice, and without a vote, if consents in writing, setting forth the action so taken, are signed by the Members having not less than the minimum number of votes that would be necessary to authorize or take action at a meeting of which all Percentage Interests entitled to vote on the action were present and voted. Every written consent shall bear the date and signature of each Member who signs the consent. Prompt notice of the taking of action without a meeting by less than unanimous written consent shall be given to all Members who have not consented in writing to such action.

5.5 Waiver. Any Member may waive notice of any meeting, before or after the date of the meeting, by delivering a signed waiver to the Company for inclusion in the minutes of the Company. The attendance of a Member at any meeting, in person or by proxy: (a) waives objection to lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, and (b) waives objection to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, unless the Member objects to considering the matter when it is presented.

5.6 Record Date. The record date for the purpose of determining the Members entitled to notice of a Member's meeting, for demanding a special meeting, for voting, or for taking any other action shall be the tenth (10th) day prior to the date of the meeting or other action.

5.7 Proxies. Any Member may appoint a proxy to vote or otherwise act for the Member pursuant to a written appointment form executed by the Member or the Member's duly authorized attorney-in-fact. An appointment of a proxy is effective when received by any Manager of the Company. A proxy appointment is valid for eleven (11) months unless otherwise expressly stated in the appointment form.

5.8 Adjournment. At any meeting of the Members of the Company, if less than a quorum is present, a majority of the Members entitled to vote at the meeting, present in person or by proxy, shall have the power to adjourn the meeting to another time, place and date without notice other than by announcement at the meeting so adjourned. Any business may be transacted at any adjourned meeting that could have been transacted at the meeting originally noticed, but only those Members entitled to vote at the meeting originally noticed shall be entitled to vote at any adjourned meeting. If the adjournment is for more than thirty (30) days from the date of the meeting originally noticed, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the adjourned meeting.

## ARTICLE 6

### ALLOCATIONS AND DISTRIBUTIONS

6.1 Distributions and Allocation of Net Profits and Net Losses.

(a) Distributions. Except as otherwise provided by Section 6.3(b), distributions shall be made, at such times and in such amounts as the Manager may determine, to the Members pro rata according to their respective Percentage Interests.

(b) Allocation of Net Profit and Net Loss. All Net Profit and Net Loss shall be allocated among the Members pro rata according to their respective Percentage Interests.

6.2 Section 704(c) Allocations. In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss and deductions with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Member so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its fair market value.

6.3 Overriding Allocation Provisions. Notwithstanding anything contained herein to the contrary, the following allocations shall be made:

(a) Minimum Gain Chargeback. Except as otherwise provided in Section 1.704 of the Regulations, notwithstanding any other provision of this Agreement, if there is a net decrease in Company Minimum Gain during any Fiscal Year, the Members shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Section 1.704 of the Regulations. Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Section 1.704 of the Regulations. This Subsection 6.3(a) is intended to comply with the minimum gain chargeback requirement in Section 1.704 of the Regulations and shall be interpreted consistently therewith.

(b) Member Minimum Gain Chargeback. Except as otherwise provided in Section 1.704 of the Regulations, notwithstanding any other provision of this Agreement except Section 6.3(a), if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Company Fiscal Year, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt,

determined in accordance with Section 1.704 of the Regulations, shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Section 1.704 of the Regulations. Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Section 1.704 of the Regulations. This Subsection 6.3(b) is intended to comply with the minimum gain chargeback requirement in Section 1.704 of the Regulations and shall be interpreted consistently therewith.

(c) Qualified Income Offset. Notwithstanding any other provision of this Agreement except Sections 6.3(a) and (b), in the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Section 1.704-1 of the Regulations, items of income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this Subsection 6.3(c) shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for this Section 6.3 have been tentatively made as if this Subsection 6.3(c) were not in this Agreement. This qualified income offset is intended to comply with Regulation Sections 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(d) Net Loss Limitation. No Member shall be allocated Net Losses to the extent that the allocation would cause the Member to have an Adjusted Capital Account Deficit.

(e) Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member

Nonrecourse Deductions are attributable in accordance with Section 1.704 of the Regulations.

(f) Section 754 Adjustments. In the event an election under Section 754 of the Code is in effect with respect to the Company, to the extent an adjustment to the adjusted tax basis of any Company asset is required, such adjustment shall be made pursuant to all applicable Regulations.

## ARTICLE 7

### BOOKS, RECORDS AND ACCOUNTING

7.1 Books and Records. The Company shall maintain complete and accurate books and records of the Company's business and affairs as required by the Act.

7.2 Location of Books and Records. The Company's books of account and other records, including, without limitation, copies of all documents filed with the Secretary of State or other Federal or State officers, income tax returns and reports and financial statements shall be maintained at the Company's principal office.

7.3 Accounting Methods. The Company's financial statements and books of account shall be kept and maintained in accordance with generally accepted accounting principles, consistently applied.

7.4 Fiscal Year. Subject to any requirements imposed under the Code, the Company's fiscal year shall be the calendar year.

7.5 Financial Statements. As soon as practicable and, in any event within 120 days after the end of each fiscal year, the Company's audited financial statements for such fiscal year shall be completed and delivered to each Member. The financial statements shall be accompanied by a report and opinion of independent public accountants selected by the Members.

7.6 Distributions. Distributions from the Members' Capital Accounts may be made in cash to the Members, pro rata in accordance with each Member's Percentage Interest, at such times and in such amounts as Management shall determine, provided that no distributions shall be made if, after any such distribution, the assets of the Company are not in excess of all its liabilities.

## ARTICLE 8

### RESTRICTIONS ON TRANSFER OF MEMBERS' PERCENTAGE INTERESTS

8.1 Prohibition on Transfers. Except as otherwise specifically permitted hereunder, no Member may sell, assign, transfer, pledge, hypothecate, encumber or otherwise dispose of (any of which is a "Transfer") his Percentage Interest, in whole or in part, or enter into any agreement or grant any options or rights with respect thereto, whether by action of such Member or by operation of law, without the prior consent of the Manager. The Manager may withhold his consent to a Transfer in his sole and absolute discretion.

The Manager may consent to a Transfer without consenting to the admission of the transferee under such Transfer (a "Transferee") as a Member of the Company. A Transferee may only be admitted as a Member if and when (i) the Manager has consented to such admission, which consent may be withheld in his sole and absolute discretion and (ii) such Transferee shall become a party to this Agreement by agreeing in writing to be bound by the terms and provisions hereof. Any Transferee shall execute and acknowledge such other instrument or instruments as the Manager may deem necessary or desirable to effectuate the admission of the Transferee as a Member. Upon admission of a Transferee as a Member, this Agreement shall be amended as necessary to reflect any changes in the management and operation of the Company. Any Transferee not admitted as a Member of the Company shall hold the Percentage Interest acquired by Transfer and shall receive the Economic Interest of such Percentage Interest, but shall not be entitled to vote such Percentage Interest or to exercise or enjoy any of the other rights of a Member, unless and until such Transferee is admitted as a new Member.

8.2 Permitted Transfers. The Trustee, on behalf of the Trust, may Transfer the Trust's entire Percentage Interest, without the consent of the Manager, to a Permitted Transferee. For the purposes hereof, the term "Permitted Transferee" means a Trustee or

Trustees of a revocable living trust the beneficiaries of which are the transferring Member and his descendants.

The term Permitted Transferee, as used in this Agreement, does not limit the class of potential Members; rather, it defines a class of potential Members to whom the Trust may Transfer its Percentage Interest without the prior consent required in a Section 8.1. A Permitted Transferee shall be admitted as a Member if and when such Permitted Transferee shall become a party to this Agreement by agreeing in writing to be bound by the terms and provisions hereof. Any Permitted Transferee shall also execute and acknowledge such other instrument or instruments as the Manager may deem necessary or desirable to effectuate the admission of the Permitted Transferee. Upon admission of a Permitted Transferee as a Member, this Agreement shall be amended as necessary to reflect any changes in the management and operation of the Company.

8.3 Void Transfers. Any attempted Transfer of any Percentage Interests otherwise than in compliance with Section 8.1 or 8.2 is void and ineffective.

8.4 Withdrawal Prohibited. No Member may withdraw or resign from the Company until there has been a dissolution and a full and complete winding up of the Company in accordance with this Agreement and the Act.

8.5 Admission of Additional Members. Subject to the provisions of Section 3.3, the Manager may permit the admission of Members in addition to the original signatories to this Agreement (each, an "Additional Member") and the Manager shall determine the Capital Contribution to be made by any such Additional Member. An Additional Member shall be admitted as a Member if and when such Additional Member (i) shall become a party to this Agreement by agreeing in writing to be bound by the terms and provisions hereof and (ii) makes his, his or its Capital Contribution to the Company. Any Additional Member shall execute such other instrument or instruments as the Manager may deem necessary or desirable to effectuate the admission of the Additional Member as a Member. Upon admission of an Additional Member, this Agreement shall be

amended as necessary to reflect any changes in the management and operation of the Company.

ARTICLE 9

DISSOLUTION AND WINDING-UP

9.1 Term. The Company shall continue in existence for the period fixed in the Articles of Organization and shall be dissolved and its affairs wound up in accordance with the Act and this Agreement, unless extended by amendment to the Articles of Organization and this Agreement, or unless the Company is sooner dissolved and its affairs wound up in accordance with the Act or this Agreement.

9.2 Events Causing Dissolution. The Company shall be dissolved and its affairs wound up in accordance with the Act and this Agreement upon occurrence of any of the following (each, an "Event of Dissolution"):

- (a) the unanimous consent of the Members;
- (b) the sale of all or substantially all of the assets of the Company; or
- (c) the death, incapacity, bankruptcy or dissolution of a Member, unless the Company is continued by the unanimous vote of all of the remaining Members; provided, however, that the Company may not be continued unless there are at least two (2) remaining Members. Nothing in this Agreement shall restrict or limit the rights of the Members, or a surviving Member or Members, to consent to continue the business of the Company, or to consent to the admission of one (1) or more Members, as necessary to continue the business of the Company, in accordance with the provisions of the Act.

For the purposes of Section 9.2(c), the "bankruptcy" of a Member shall occur when such Member: (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudged a bankrupt or insolvent, or has entered against his an order for relief, in any bankruptcy or insolvency proceeding; (iv) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment,

liquidation, dissolution or similar relief under any statute, law or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature; or (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of all or any substantial part of his properties.

9.3 Winding Up of the Company. Upon the dissolution of the Company, the Manager, or if there is no Manager and a Trustee is appointed, the Trustee, shall proceed to the winding up of the affairs of the Company. The assets shall be liquidated as promptly as is consistent with obtaining a fair market value therefor, and the proceeds therefrom, to the extent available, shall be applied and distributed by the Company.

(a) the distribution shall occur in the following order:

(1) to creditors, including Members who shall have loaned funds to the Company, in the order of priority as provided by law; and

(2) to the Members in the manner set forth in Section 6.1 of this Agreement.

(b) upon the completion of the winding up and liquidation of the Company, a final statement with respect thereto shall be prepared by the Manager or the Trustee and submitted to each party in interest. All liquidating distributions shall be made, in all cases, in accordance with the provisions of Article 6.

Upon completion of the liquidation, the Company shall be deemed completely dissolved and terminated.

9.4 Completion of Winding-Up. The winding up of the Company shall be completed when all its liabilities and obligations have been paid and discharged or an adequate reserve has been set aside therefor and all the remaining assets have been distributed to the Members. Upon completion of the winding up of the Company, Articles of Dissolution shall be filed with the Secretary of State in accordance with of the Act.



transferee of Percentage Interest pursuant to the terms hereof, have any right to enforce any of the provisions of this Agreement.

10.4 Indemnification. The Manager and any employee or agent of the Company (each, an "Indemnitee"), shall be indemnified by the Company against any and all liability, loss, cost, damage or expense which such Indemnitee may sustain or incur as a result of any claim or legal proceeding arising out of such Indemnitee's actions in behalf of the Company, except where such action constitutes willful misconduct or gross negligence, to the fullest extent permitted by the Act, as it may be amended from time to time.

10.5 Specific Enforcement. Each party hereto agrees that this Agreement, and each of the provisions hereof, shall be specifically enforceable against such party by the remaining parties hereto in a court of equity by a decree of specific performance and appropriate injunctive relief may be applied for and granted in conjunction therewith, and such remedy provided for in this Agreement shall be cumulative and not exclusive and shall be available in addition to any other remedies which any party may have under this Agreement or otherwise.

10.6 Governing Law. Except to the extent that the Company and provisions of this Agreement are governed by the Act, this Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to its conflicts or choice of law rules.

10.7 Section Headings. The Article and Section headings used in this Agreement are for reference purposes only, and should not be used in construing this Agreement.

10.8 Gender and Number. As used in this Agreement, the masculine gender shall include the feminine and the neuter, and the singular number shall include the plural, and vice versa.

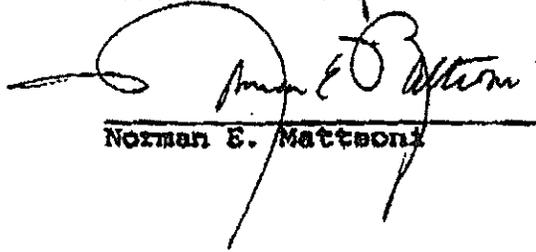
10.9 Counterparts and Execution. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original Agreement, and all of which shall constitute one Agreement.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this document as of the date first above written.

"Members"



Brian E. Matteoni

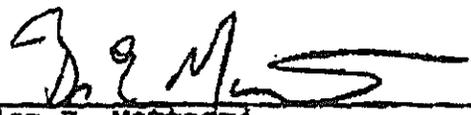


Norman E. Mattson

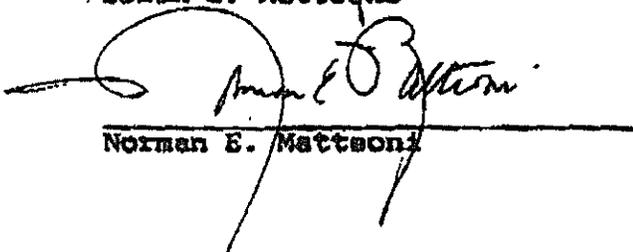
10.9 Counterparts and Execution. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original Agreement, and all of which shall constitute one Agreement.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this document as of the date first above written.

"Members"



Brian E. Matteoni



Norman E. Matteoni

EXHIBIT "A"

[INSERT ARTICLES OF ORGANIZATION]

EXHIBIT "B"

NAMES, ADDRESSES AND CONTRIBUTIONS OF MEMBERS

<u>Members</u>	<u>Initial Capital Contribution</u>	<u>Percentage Interest</u>
Brian E. Matteoni		
Norman E. Matteoni		

o:\users\norma\agreemen\a-oper.sullivan

**Exhibit L:**  
**Zoning Change Legal Description and Exhibit**

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## EXHIBIT A

### Zoning Change Description

A tract of land located in the Southeast One-Quarter of Section 12, Township 3 South, Range 1 West, Willamette Meridian, Clackamas County, Oregon, and being more particularly described as follows:

Beginning at the northeast corner of the plat "Morgan Farm No. 2", Plat No. 4610, Clackamas County Plat Records, also being on the north right-of-way line of SW Brisband Street (11.00 feet from centerline) and the City of Wilsonville city limits line; thence along said north right-of-way line and said city limits line, North  $88^{\circ}36'21''$  West 30.96 feet to the southwest corner of Document Number 2021-041768, Clackamas County Deed Records; thence leaving said city limits line along the west line of said Deed, North  $01^{\circ}38'13''$  East 858.18 feet to the south right-of-way line of SW Frog Pond Lane (16.50 feet from centerline); thence along said south right-of-way line, South  $88^{\circ}35'24''$  East 254.01 feet to the northeast corner of said Deed; thence along the east line of said Deed, South  $01^{\circ}38'13''$  West 858.11 feet to the south line of said Deed and said city limits line; thence along said south line and said city limits line, North  $88^{\circ}36'21''$  West 223.05 feet to the Point of Beginning.

The above described tract of land contains 5.00 acres, more or less.

The Basis of Bearings for this description are based on Survey Number 2022-119, Clackamas County Survey Records.

1/6/2023

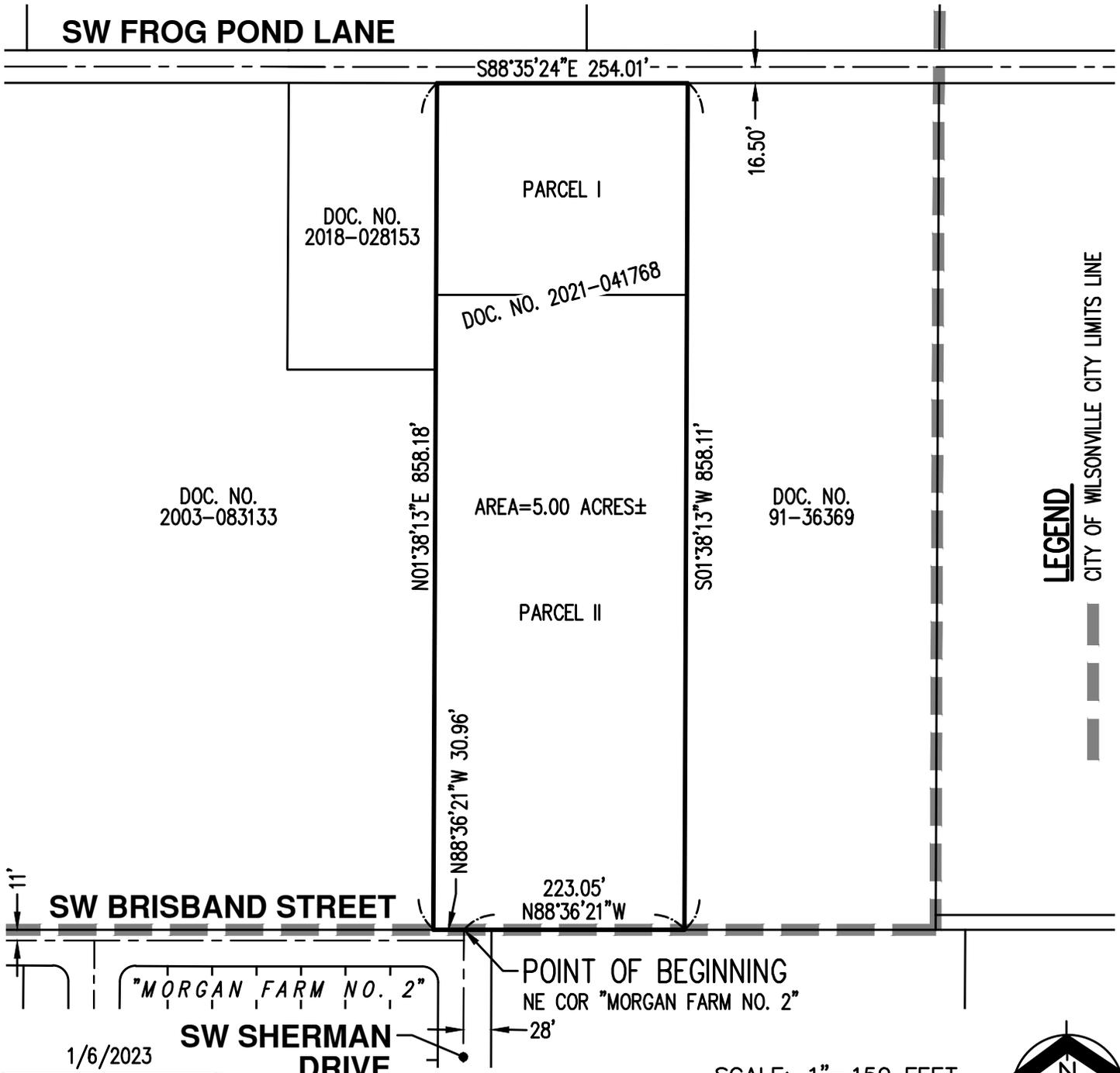
REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
JANUARY 12, 2016  
MICHAEL S. KALINA  
89558PLS

RENEWS: 6/30/23

# EXHIBIT B

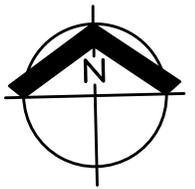
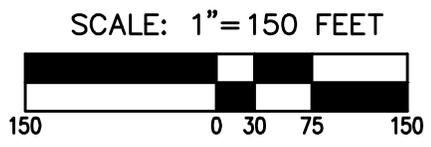
A TRACT OF LAND LOCATED IN THE SOUTHEAST 1/4 OF SECTION 12,  
TOWNSHIP 3 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN,  
CLACKAMAS COUNTY, OREGON



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Michael S. Kalina*

OREGON  
JANUARY 12, 2016  
MICHAEL S. KALINA  
89558PLS  
RENEWS: 6/30/23



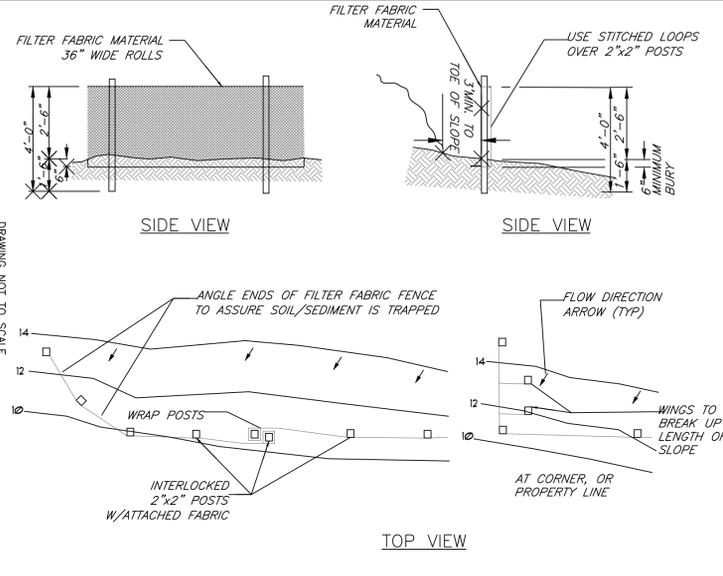
<b>ZONING CHANGE MAP</b>		<b>EXHIBIT B</b>
AKS ENGINEERING & FORESTRY, LLC 12965 SW HERMAN RD, STE 100 TUALATIN, OR 97062 503.563.6151 WWW.AKS-ENG.COM		DRWN: WCB CHKD: MSK AKS JOB: 6175



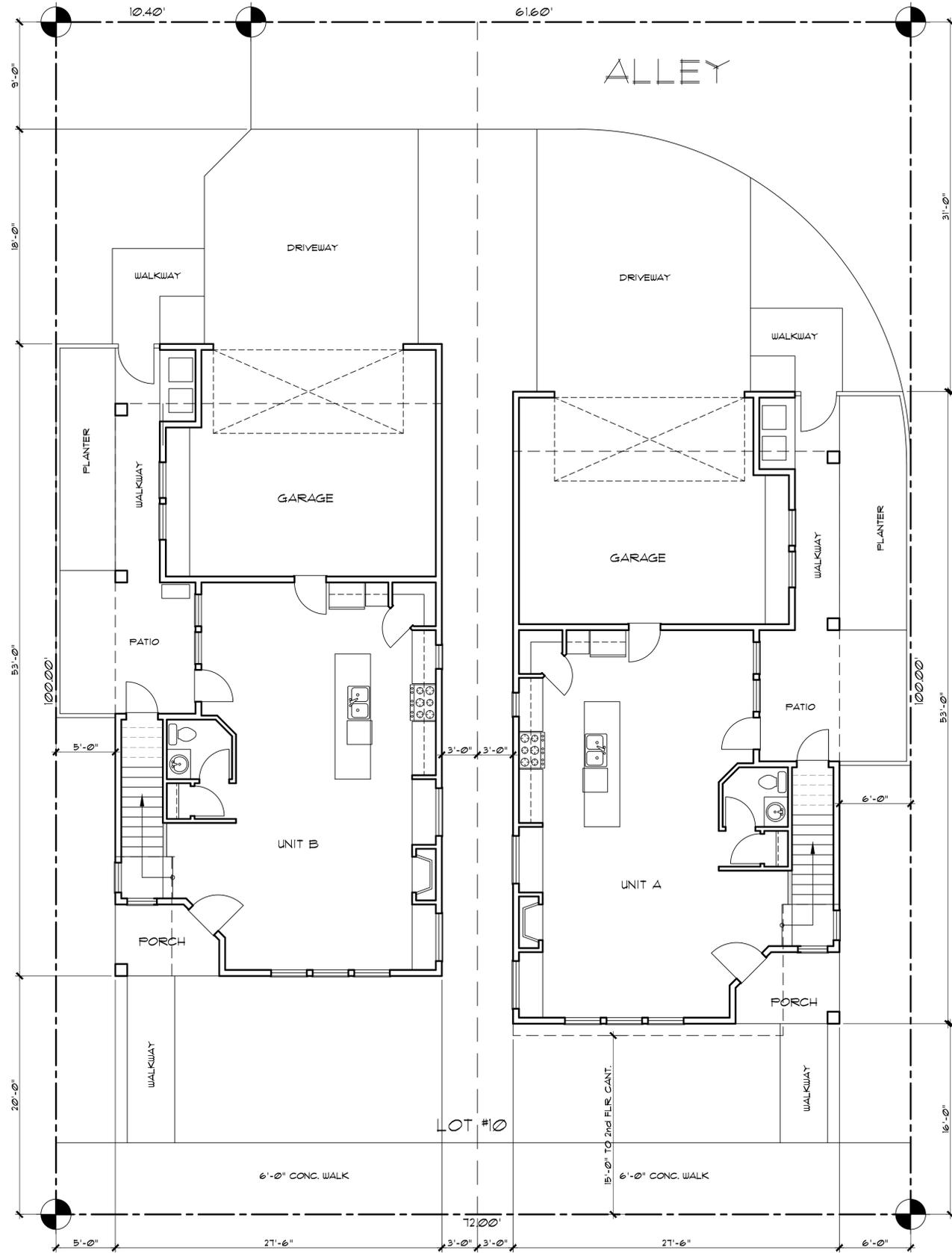
# Exhibit M: Preliminary Conceptual Elevations (Updated Nov 2023)

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**1 SEDIMENT FENCE DETAIL**  
 SCALE: N.T.S.



**SITE PLAN**  
 SCALE: 3/16" = 1'-0"  
 WILSONVILLE, OREGON



LOT #10 LOT COVERAGE CALC.  
 LOT SIZE = 1200 SQ. FT.  
 HOUSE + COVERED AREAS = 1,462 SQ. FT. UNIT A + 1438  
 SQ. FT. UNIT B = 2900 SQ. FT. TOTAL = 4028% LOT  
 COVERAGE

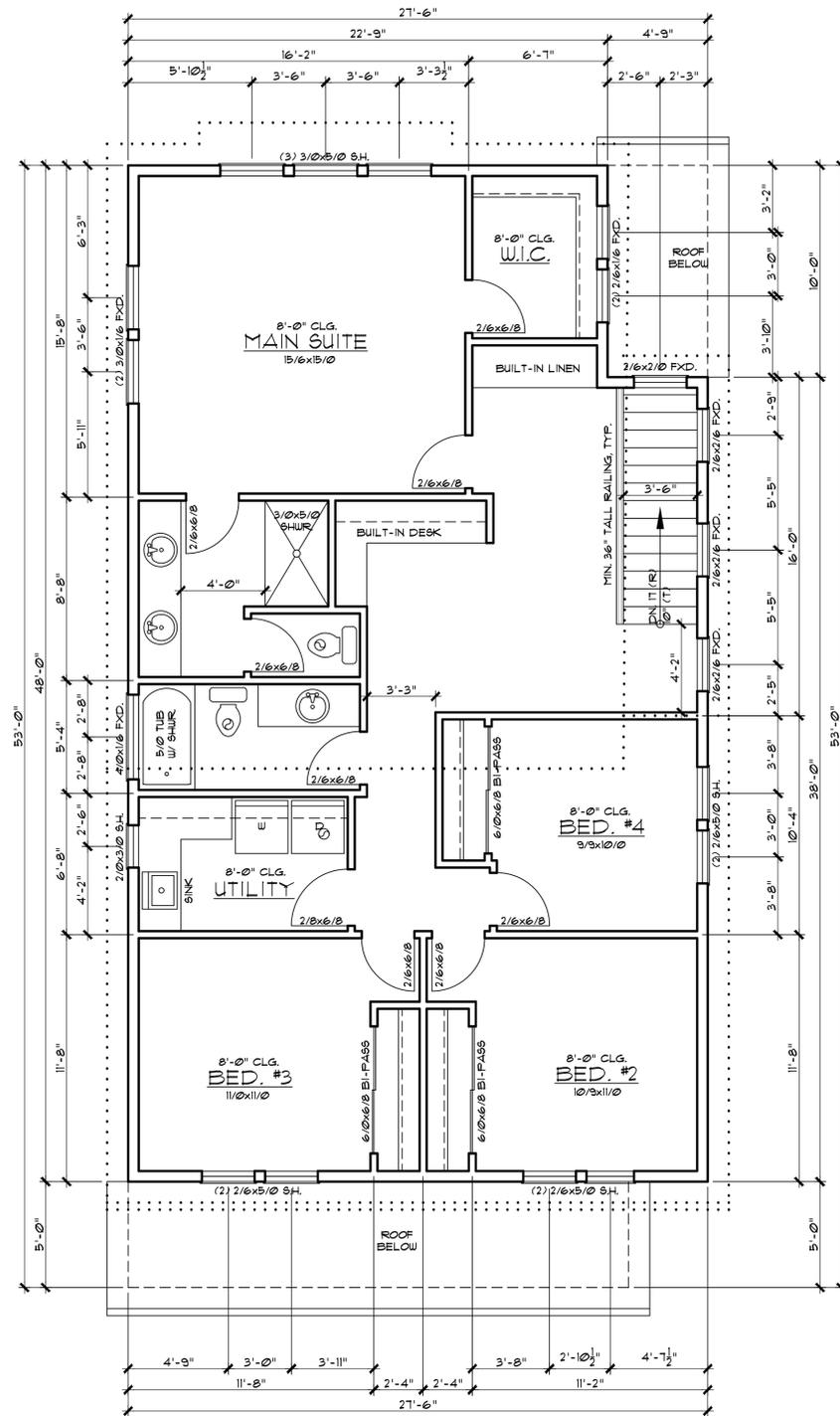
REVISIONS	BY

**PETER MAGARO**  
 Architecture  
 A PROFESSIONAL CORPORATION  
 10570 S.W. Citation Drive  
 Beaverton, Oregon 97008  
 (503) 579-2421  
**Peter Magaro**  
 Architect, A.I.A.

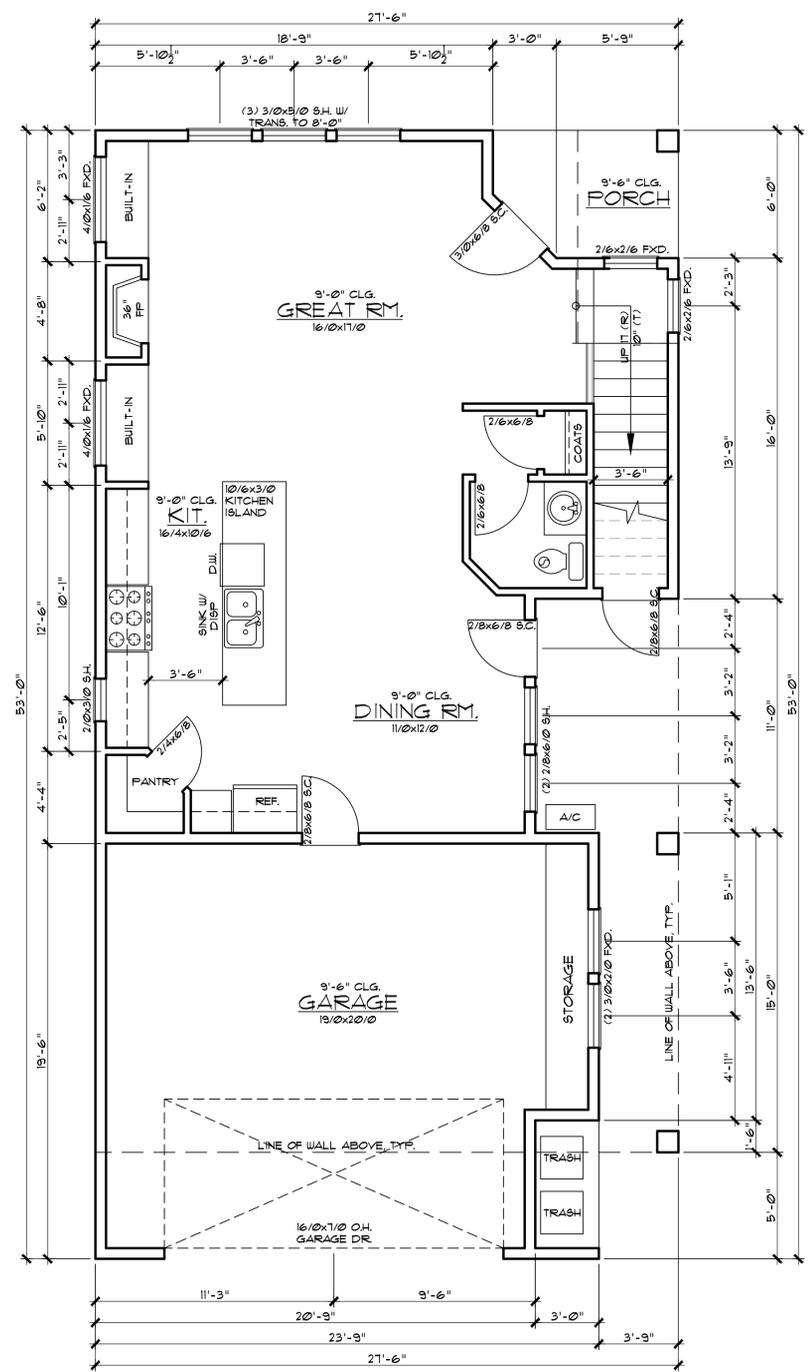
NEW CONSTRUCTION:  
 FROG POND ESTATES  
 SULLIVAN HOMES, LLC  
 JOB SITE: WILSONVILLE, OREGON

SITE PLAN  
 LOT 10 DETACHED  
 UNIT A & B

DRAWN: FEW
CHECKED
11-14-2023
SCALE
JOB. NO.
SHEET
<b>1</b>



**UPPER FLOOR PLAN**  
 SCALE : 1/4" = 1'-0" UNIT B UPPER FLR. = 1,226 SQ. FT.



**MAIN FLR. FLOOR PLAN**  
 SCALE : 1/4" = 1'-0" UNIT B MAIN FLR. = 1,96 SQ. FT.

**GENERAL NOTES:**

- ALL EXTERIOR WALLS & LIVING SPACE SHALL BE 2 X 6 STUDS @ 16" O.C. (UNO.)
- ALL INTERIOR WALLS & GARAGE EXT. WALLS SHALL BE 2 X 4 STUDS @ 16" O.C. (UNO.)
- $\odot_{SD}$  = 110V. SMOKE DETECTOR INTERCONNECTED W/ BATTERY BACKUP.
- $\odot$  = VENT FAN. MIN. 80 CFM IN BATHS WITH BATHING FACILITIES MIN. 50 CFM IN BATHS WITH NO BATHING FACILITIES
- $\boxtimes$  = BEARING POINT (FULL BEARING).
- $\square_{CM}$  CARBON MONOXIDE DETECTOR

• **STRUCTURAL DETAILS**  
 REFER TO SHEET 02 FOR STRUCTURAL DETAILS

REVISIONS	BY

**PETER MAGARO**  
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 10570 S.W. Citation Drive  
 Beaverton, Oregon 97008  
 (503) 579-2421  
**Peter Magaro**  
 Architect, A.I.A.

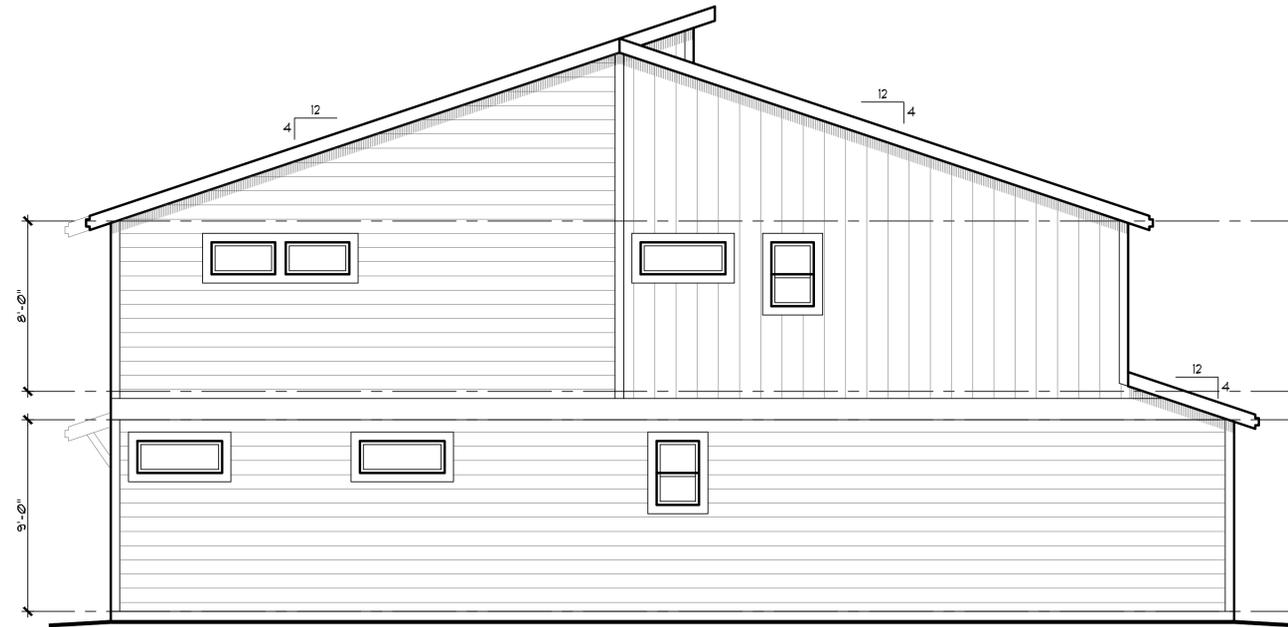
NEW CONSTRUCTION:  
 FROG POND ESTATES  
 PLAN B  
 SULLIVAN HOMES, LLC  
 JOB SITE: WILSONVILLE, OREGON

MAIN FLOOR PLAN  
 LOT 10 DETACHED PLAN B

DRAWN: PFW
CHECKED: 11-14-2023
SCALE
JOB. NO.
SHEET
<b>2</b>



**FRONT ELEVATION**  
SCALE : 1/4" = 1'-0"



**RIGHT SIDE ELEVATION**  
SCALE : 1/4" = 1'-0"



**REAR ELEVATION**  
SCALE : 1/4" = 1'-0"



**LEFT SIDE ELEVATION**  
SCALE : 1/4" = 1'-0"

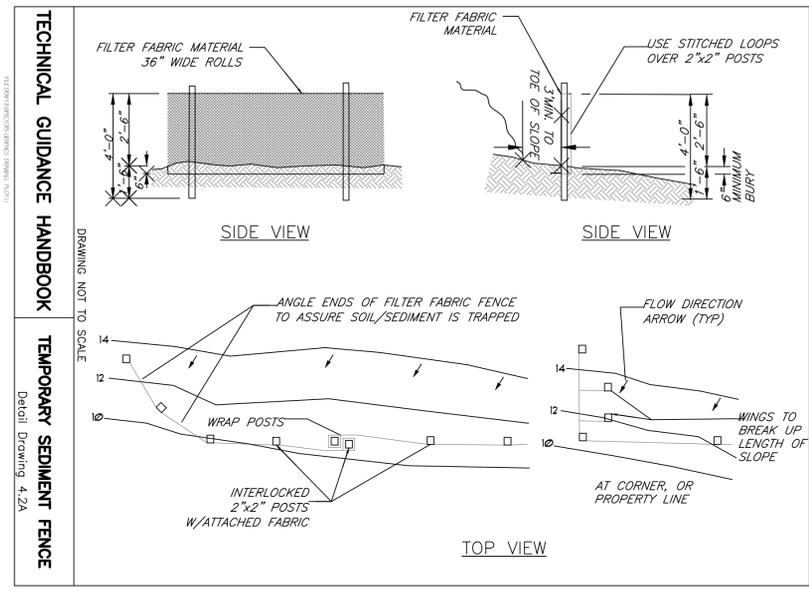
REVISIONS	BY

**PETER MAGARO**  
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A PROFESSIONAL CORPORATION  
10570 S.W. Citation Drive  
Beaverton, Oregon 97008  
(503) 579-2421  
**Peter Magaro**  
Architect, A.I.A.

NEW CONSTRUCTION:  
FROG POND ESTATES  
PLAN B  
SULLIVAN HOMES, LLC  
JOB SITE: WILSONVILLE, OREGON

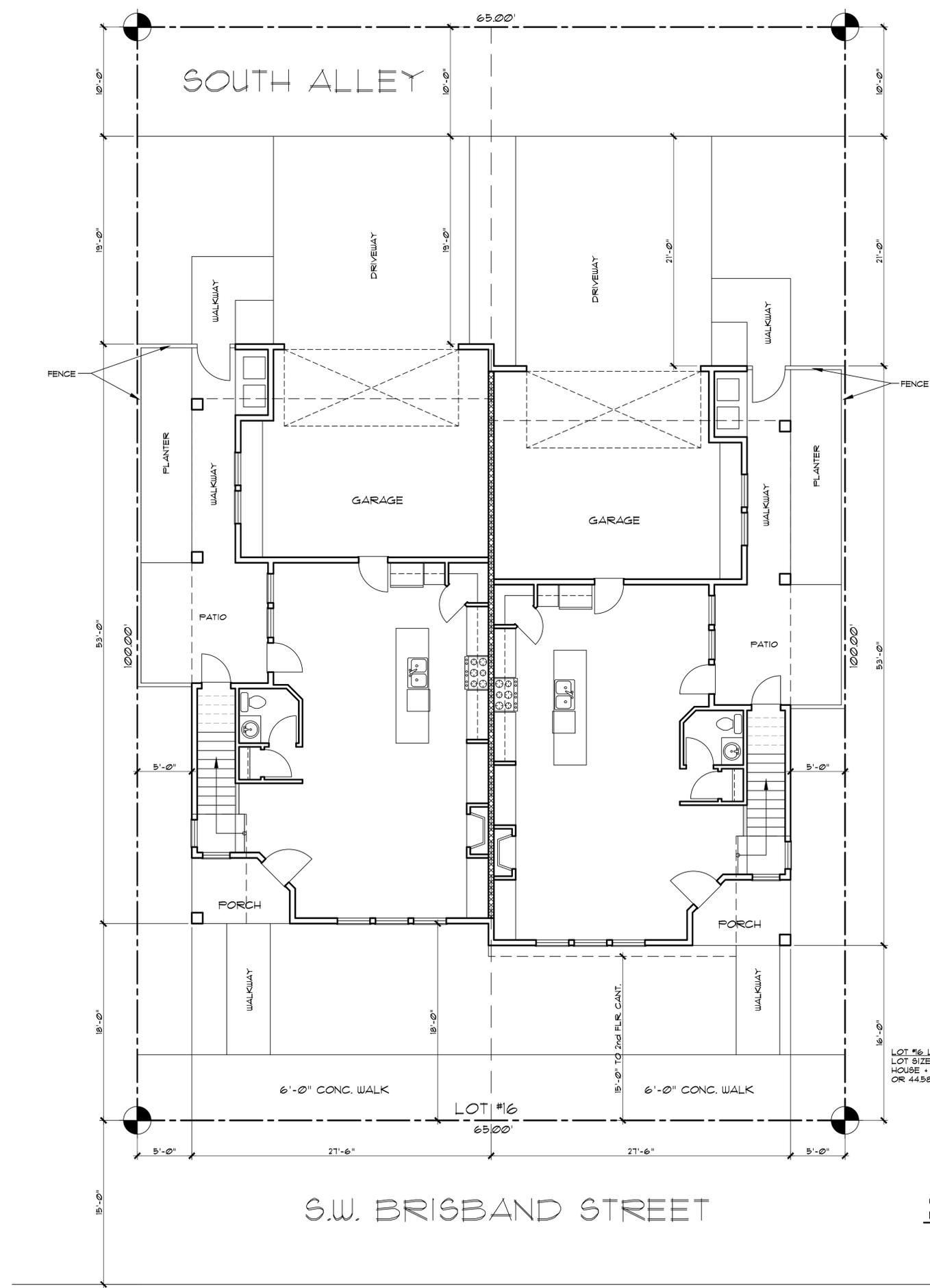
ELEVATIONS  
LOT 10 DETACHED PLAN B

DRAWN:  
PFW  
CHECKED  
11-14-2023  
SCALE  
JOB. NO.  
SHEET



TECHNICAL GUIDANCE HANDBOOK  
 TEMPORARY SEDIMENT FENCE  
 Detail Drawing 4.2A

**1 SEDIMENT FENCE DETAIL**  
 SCALE: N.T.S.



LOT #16 LOT COVERAGE CALC.  
 LOT SIZE = 6,500 SQ. FT.  
 HOUSE + COVERED AREAS = 2,898 SQ. FT.  
 OR 44.58% LOT COVERAGE



**SITE PLAN**  
 SCALE: 3/16" = 1'-0"  
 LOT 16 FROG POND ESTATES  
 WILSONVILLE, OREGON

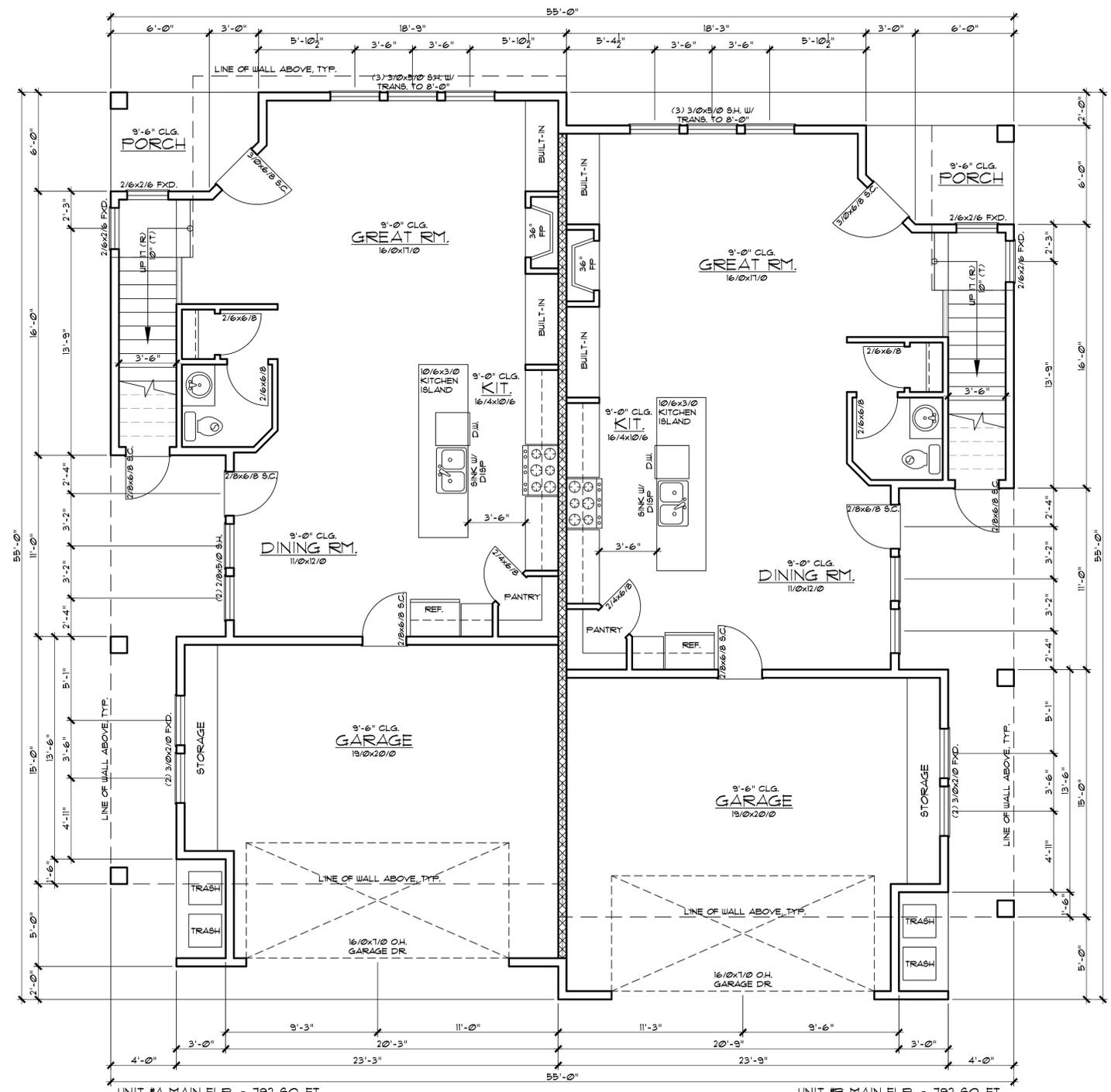
REVISIONS	BY

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 Beaverton, Oregon 97008  
 (503) 579-2421  
**Peter Magaro**  
 Architect, A.I.A.

NEW CONSTRUCTION:  
 FROG POND ESTATES  
 SULLIVAN HOMES, LLC  
 JOB SITE: WILSONVILLE, OREGON

SITE PLAN  
 LOT 16 DUPLEX

DRAWN: FEW
CHECKED
11-13-2023
SCALE
JOB. NO.
SHEET



UNIT #A MAIN FLR. = 792 SQ. FT.      UNIT #B MAIN FLR. = 792 SQ. FT.

**MAIN FLR. FLOOR PLAN**  
SCALE: 1/4" = 1'-0"

**GENERAL NOTES:**

- ALL EXTERIOR WALLS & LIVING SPACE SHALL BE 2 x 6 STUDS @ 16" O.C. (UNO.)
- ALL INTERIOR WALLS & GARAGE EXT. WALLS SHALL BE 2 x 4 STUDS @ 16" O.C. (UNO.)
- Q<sub>sp</sub> = 110V. SMOKE DETECTOR INTERCONNECTED W/ BATTERY BACKUP.
- ∅ = VENT FAN. MIN. 80 CFM IN BATHS WITH BATHING FACILITIES MIN. 50 CFM IN BATHS WITH NO BATHING FACILITIES
- ☒ = BEARING POINT (FULL BEARING).
- ☐ CM = CARBON MONOXIDE DETECTOR
- **STRUCTURAL DETAILS**  
REFER TO SHEET S2 FOR STRUCTURAL DETAILS

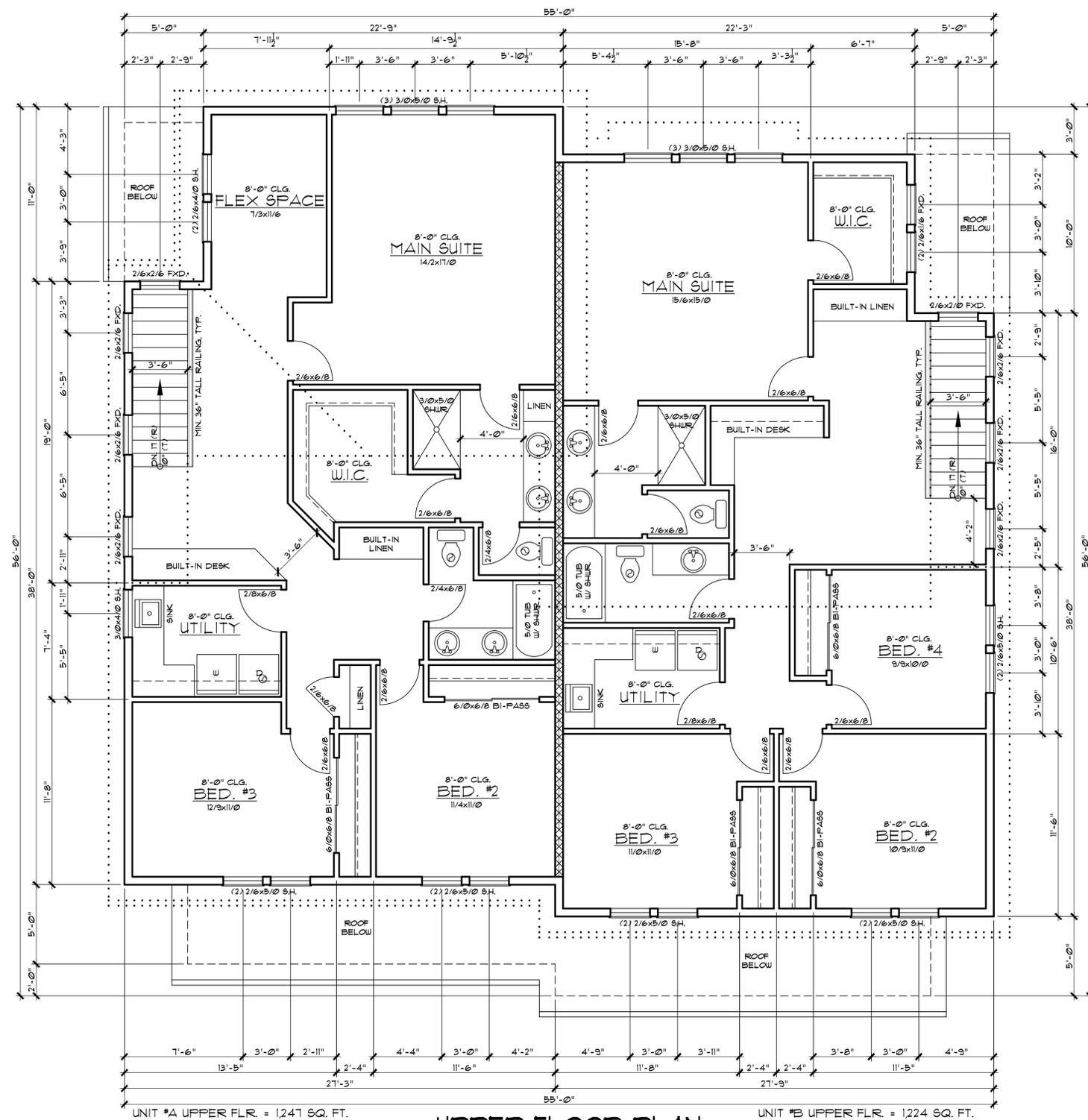
REVISIONS	BY

**PETER MAGARO**  
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A PROFESSIONAL CORPORATION  
10570 S.W. Citation Drive  
Beverly Hills, Oregon 97008  
(503) 579-2421  
**Peter Magaro**  
Architect, A.I.A.

NEW CONSTRUCTION:  
FROG POND ESTATES  
SULLIVAN HOMES, LLC  
JOB SITE: WILSONVILLE, OREGON

MAIN FLOOR PLAN  
LOT 16 DUPLEX

DRAWN: PFW
CHECKED: 11-13-2023
SCALE
JOB. NO.
SHEET
<b>2</b>



UNIT #A UPPER FLR. = 1,241 SQ. FT.

UNIT #B UPPER FLR. = 1,224 SQ. FT.

**UPPER FLOOR PLAN**  
SCALE: 1/4" = 1'-0"

**GENERAL NOTES:**

- ALL EXTERIOR WALLS @ LIVING SPACE SHALL BE 2 x 6 STUDS @ 16" O.C. (UN.O.)
- ALL INTERIOR WALLS & GARAGE EXT. WALLS SHALL BE 2 x 4 STUDS @ 16" O.C. (UN.O.)
- $\odot_{SD}$  = 110V. SMOKE DETECTOR INTERCONNECTED W/ BATTERY BACKUP.
- $\odot$  = VENT FAN. MIN. 80 CFM IN BATHS WITH BATHING FACILITIES MIN. 50 CFM IN BATHS WITH NO BATHING FACILITIES
- $\boxtimes$  = BEARING POINT (FULL BEARING).
- $\square_{CM}$  CARBON MONOXIDE DETECTOR

**STRUCTURAL DETAILS**  
REFER TO SHEET S2 FOR STRUCTURAL DETAILS

REVISIONS	BY

**PETER MAGARO**  
*Architecture*  
A PROFESSIONAL CORPORATION

10570 S.W. Citation Drive  
Beaverton, Oregon 97008  
(503) 579-2421

**Peter Magaro**  
Architect, A.I.A.

NEW CONSTRUCTION:  
FROG POND ESTATES  
SULLIVAN HOMES, LLC  
JOB SITE: WILSONVILLE, OREGON

UPPER FLOOR PLAN  
LOT 16 DUPLEX

DRAWN: PFW
CHECKED: 11-13-2023
SCALE
JOB. NO.
SHEET



**FRONT ELEVATION**  
SCALE : 1/4" = 1'-0"



**RIGHT SIDE ELEVATION**  
SCALE : 1/4" = 1'-0"



**REAR ELEVATION**  
SCALE : 1/4" = 1'-0"



**LEFT SIDE ELEVATION**  
SCALE : 1/4" = 1'-0"

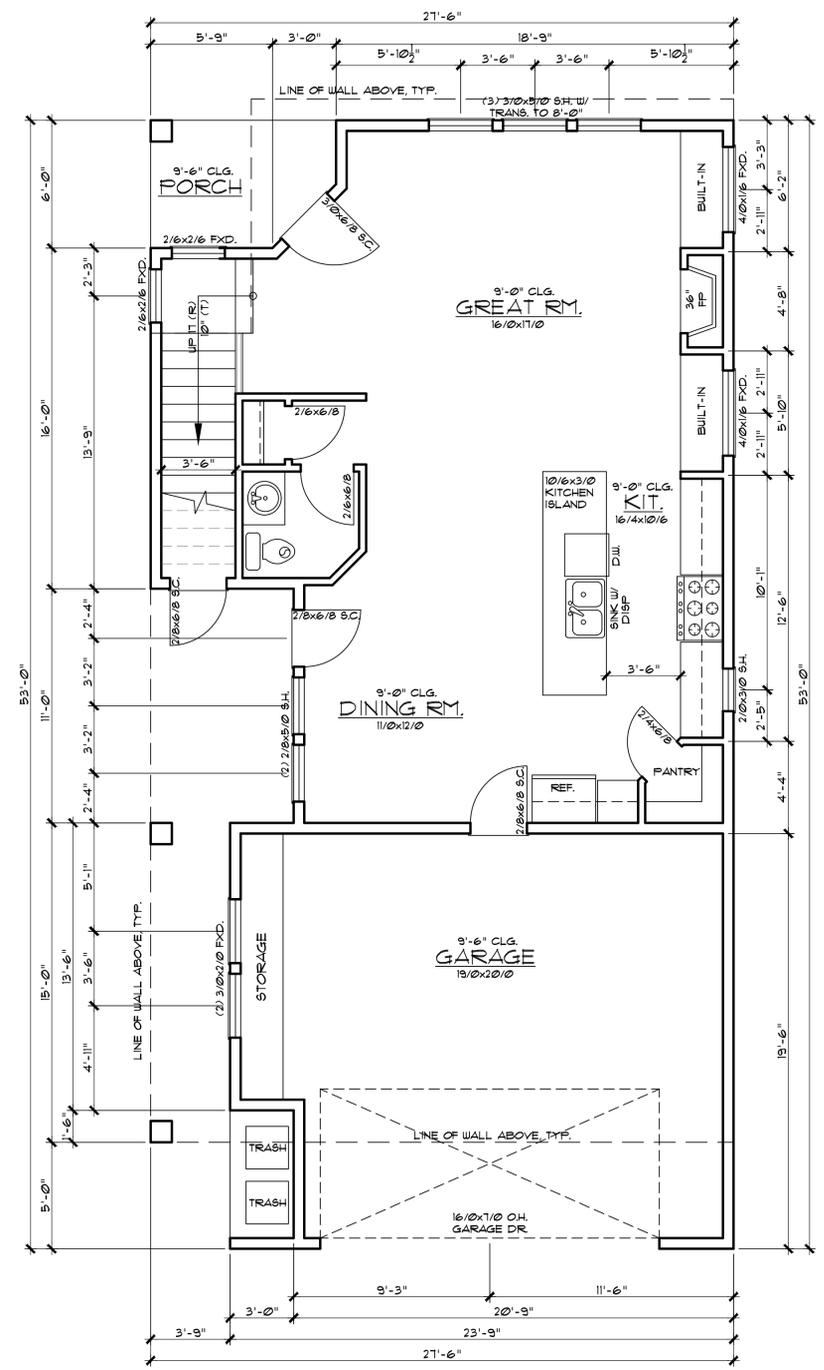
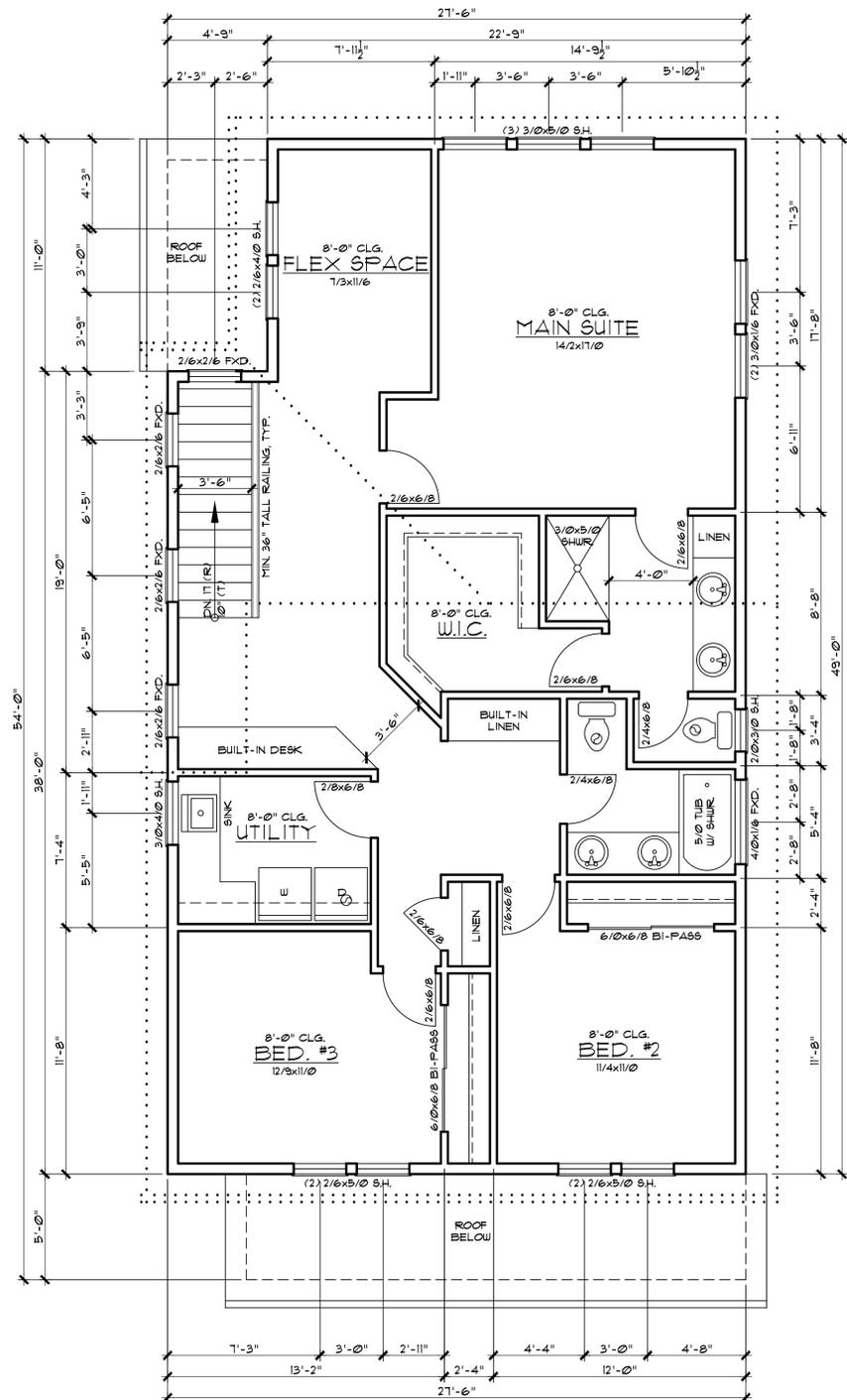
REVISIONS	BY

**PETER MAGARO**  
*Architecture*  
A PROFESSIONAL CORPORATION  
10570 S.W. Citation Drive  
Beaverton, Oregon 97008  
(503) 579-2421  
**Peter Magaro**  
Architect, A.I.A.

NEW CONSTRUCTION:  
FROG POND ESTATES  
SULLIVAN HOMES, LLC  
JOB SITE: WILSONVILLE, OREGON

ELEVATIONS  
LOT 16 DUPLEX

DRAWN: PFW
CHECKED:
11-13-2023
SCALE:
JOB. NO.:
SHEET
<b>4</b>



**GENERAL NOTES:**

- ALL EXTERIOR WALLS @ LIVING SPACE SHALL BE 2 X 6 STUDS @ 16" O.C. (UNO.)
- ALL INTERIOR WALLS & GARAGE EXT. WALLS SHALL BE 2 X 4 STUDS @ 16" O.C. (UNO.)
- $\odot_{SD}$  = 110V. SMOKE DETECTOR INTERCONNECTED W/ BATTERY BACKUP.
- $\odot$  = VENT FAN. MIN. 80 CFM IN BATHS WITH BATHING FACILITIES MIN. 50 CFM IN BATHS WITH NO BATHING FACILITIES
- $\boxtimes$  = BEARING POINT (FULL BEARING).
- $\square_{CM}$  CARBON MONOXIDE DETECTOR
- **STRUCTURAL DETAILS**  
 REFER TO SHEET S2 FOR STRUCTURAL DETAILS

REVISIONS	BY

**PETER MAGARO**  
 Architecture  
 A PROFESSIONAL CORPORATION  
 10570 S.W. Citation Drive  
 Beaverton, Oregon 97008  
 (503) 579-2421

**Peter Magaro**  
 Architect, A.I.A.

NEW CONSTRUCTION:  
 FROG POND ESTATES  
 PLAN A  
 SULLIVAN HOMES, LLC  
 JOB SITE: WILSONVILLE, OREGON

MAIN FLOOR PLAN  
 DETACHED PLAN A

DRAWN: PFW
CHECKED: 11-13-2023
SCALE
JOB. NO.
SHEET
<b>1</b>

REVISIONS	BY

**PETER MAGARO**  
*Architecture*  
 A PROFESSIONAL CORPORATION  
 10570 S.W. Citation Drive  
 Beaverton, Oregon 97008  
 (503) 579-2421  
**Peter Magaro**  
 Architect, A.I.A.

NEW CONSTRUCTION:  
 FROG POND ESTATES  
 PLAN A  
 SULLIVAN HOMES, LLC  
 JOB SITE: WILSONVILLE, OREGON

ELEVATIONS  
 DETACHED PLAN A

DRAWN: PFW
CHECKED
11-13-2023
SCALE
JOB. NO.
SHEET
<b>2</b>



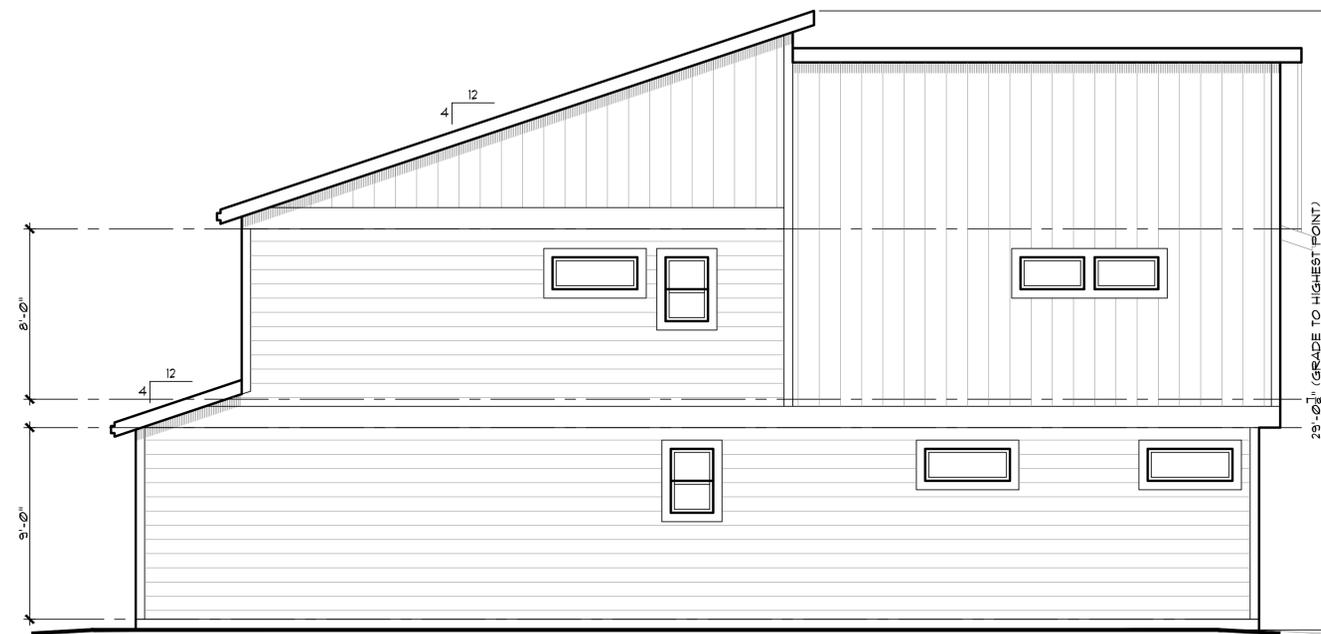
**FRONT ELEVATION**  
 SCALE : 1/4" = 1'-0"



**RIGHT SIDE ELEVATION**  
 SCALE : 1/4" = 1'-0"



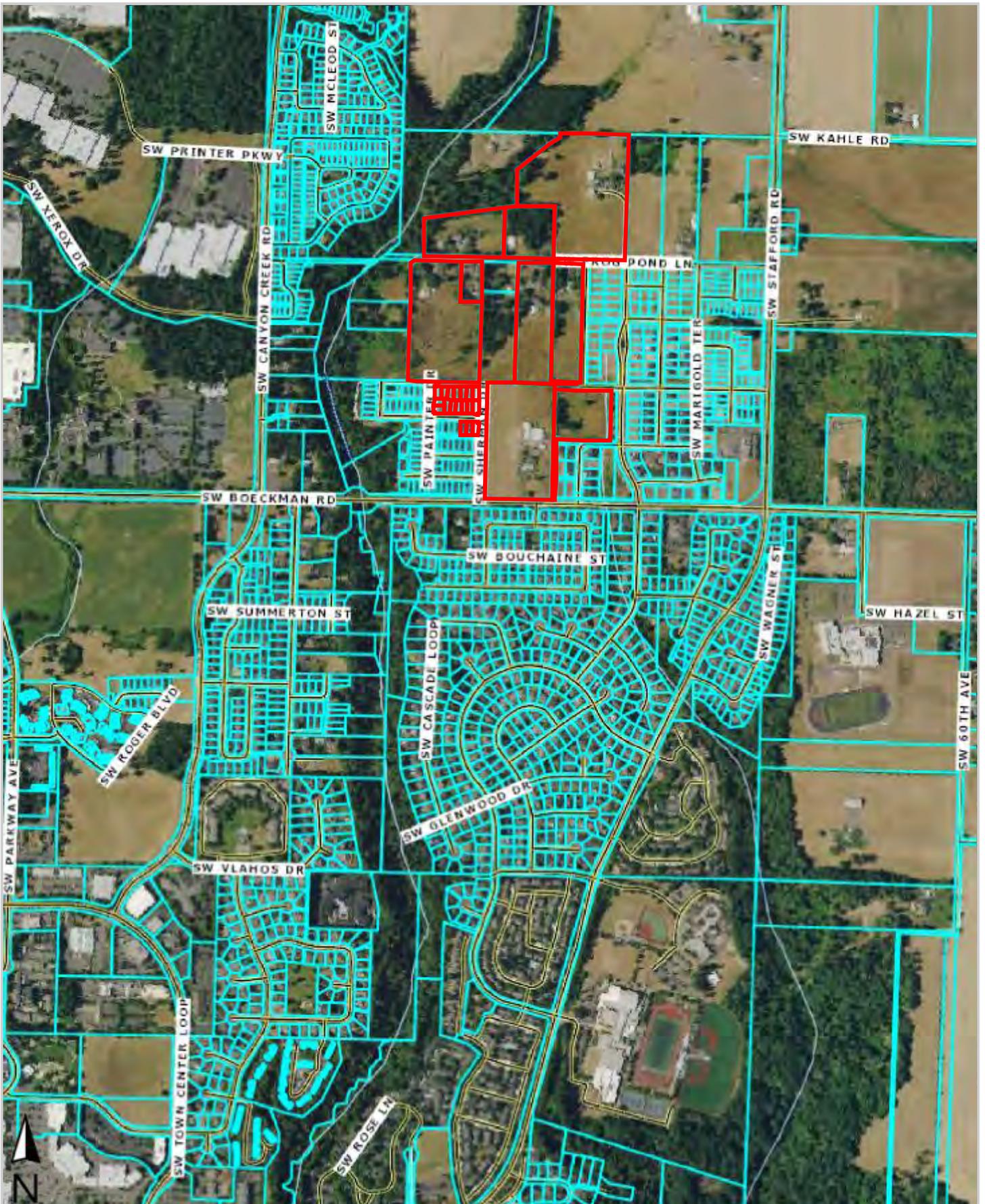
**REAR ELEVATION**  
 SCALE : 1/4" = 1'-0"



**LEFT SIDE ELEVATION**  
 SCALE : 1/4" = 1'-0"

## **Exhibit N: 250-Foot Radius Notification Labels**

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This map/plat is being furnished as an aid in locating the herein described land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the company does not insure dimensions, distances, location of easements, acreage or other matters shown thereon.

31W12D 00500  
Darrell Lauer  
6901 SW Frog Pond Ln  
Wilsonville, OR 97070

31W12D 01100  
Ohogan P J Trustee  
7400 SW Frog Pond Ln  
Wilsonville, OR 97070

31W12D 01501  
West Hills Land Development LLC  
3330 NW Yeon Ste 200  
Portland, OR 97210

31W12DC05100  
Kristin McCallum  
7230 SW Woodbury Loop  
Wilsonville, OR 97070

31W12DC05400  
Austin Hanlon  
27752 SW Painter Dr  
Wilsonville, OR 97070

31W12DC05700  
Sudhir Isharwal  
7247 SW Woodbury Loop  
Wilsonville, OR 97070

31W12DC06000  
Erica Dephillips  
7223 SW Woodbury Loop  
Wilsonville, OR 97070

31W12DC06300  
Ding William & Na Li  
7224 SW Brisband St  
Wilsonville, OR 97070

31W12DC06600  
Kameron Beeks  
7248 SW Brisband St  
Wilsonville, OR 97070

31W12DD22700  
Venture Properties Inc  
4230 Galewood St #100  
Lake Oswego, OR 97035

31W12D 00700  
West Hills Land Development LLC  
3330 NW Yeon Ste 200  
Portland, OR 97210

31W12D 01101  
Victor Foksha  
28576 SW Cascade Loop  
Wilsonville, OR 97070

31W12DD00400  
West Linn-Wils Sch Dist #3  
22210 SW Stafford Rd  
Tualatin, OR 97062

31W12DC05200  
Donald Olson  
7222 SW Woodbury Loop  
Wilsonville, OR 97070

31W12DC05500  
Thunyarak Katikavongkhachorn  
27740 SW Painter Dr  
Wilsonville, OR 97070

31W12DC05800  
Stephanie Saito  
7239 SW Woodbury Loop  
Wilsonville, OR 97070

31W12DC06100  
Mary Darm  
16755 Graef Cir  
Lake Oswego, OR 97035

31W12DC06400  
Rory Morgan  
7232 SW Brisband St  
Wilsonville, OR 97070

31W12DC06700  
Michael Vu  
7256 SW Brisband St  
Wilsonville, OR 97070

31W12D 00800  
Robb Crocker  
7115 SW Frog Pond Ln  
Wilsonville, OR 97070

31W12D 01400  
Paul Woebkenberg Jr  
7130 SW Frog Pond Ln  
Wilsonville, OR 97070

31W12DC04500  
West Linn-Wils Sch Dist #3  
22210 SW Stafford Rd  
Tualatin, OR 97062

31W12DC05300  
Imran Haider  
7214 SW Woodbury Loop  
Wilsonville, OR 97070

31W12DC05600  
Taylor Collins  
7255 SW Woodbury Loop  
Wilsonville, OR 97070

31W12DC05900  
Claudia Gonzales  
7231 SW Woodbury Loop  
Wilsonville, OR 97070

31W12DC06200  
Julie Shelton-Egan  
7216 SW Brisband Loop  
Wilsonville, OR 97070

31W12DC06500  
Rachel Obrien  
7240 SW Brisband St  
Wilsonville, OR 97070

31W12DC06800  
Lauren Mclver  
7264 SW Brisband St  
Wilsonville, OR 97070

## **Exhibit O: Service Provider Letters (Updated Nov 2023)**

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November 17, 2023

Nathan Ahrend  
AKS Engineering & Forestry, LLC

Re: Cottage Park Place  
Frog Pond Residential  
Wilsonville, OR 97070

Dear Nathan,

Thank you, for sending us the preliminary site plans for this proposed development in Wilsonville OR.

My Company: Republic Services of Clackamas and Washington Counties has the franchise agreement to service this area with the City of Wilsonville. We will provide complete commercial waste removal and recycling services as needed on a weekly basis for this location.

Upon final completion of public streets, residential trash and recycle collection for all lots identified in this project will occur utilizing our automated residential collection vehicles. Residential collection receptacles will be serviced curbside on primary roadways, SW Brisband St., SW Sherman Dr., SW J St., and SW Frog Pond Ln.

Interim Specific receptacle placement:  
Lots 1-6 placed at curb on SW Frog Pond Ln.  
Lots 7-17 placed at curb on SW Brisband St.

Following completion of SW J Street, when collection trucks have clear passage to connecting street(s) lots 7 – 17 placements and service will occur curbside on SW Brisband St., SW Sherman Dr., or SW J St.

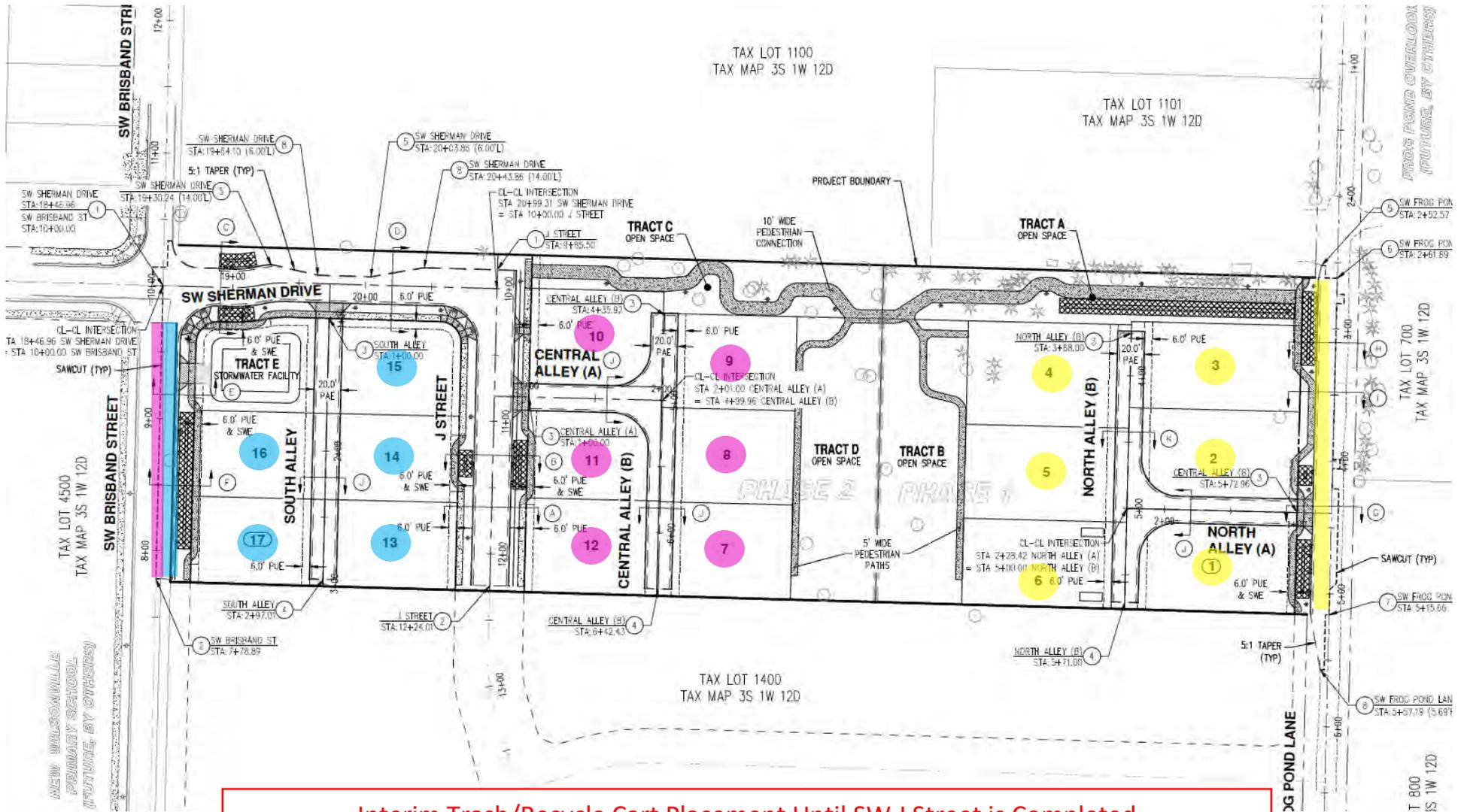
We request that residential collection receptacle placement requirements be addressed with specific recorded CC&Rs against the lots with compliance and enforcement by the HOA. Any future changes to service is to be approved by Republic Services (e.g. SW J street is extended east to create full passage).

Thanks Nathan, for your help and concerns for our services prior to this project being developed.

Sincerely,



Kelly Herrod  
Operations Supervisor  
Republic Services Inc.



Interim Trash/Recycle Cart Placement Until SW J Street is Completed  
 and Collection Trucks Have Clear Passage to Connecting Street(s)  
 Units 1 thru 6 Must Place Carts at SW Frog Pond Ln.  
 Units 7 thru 17 Must Place Carts at SW Brisband St.  
 Carts Should Be Curbside by 6:00AM Collection Day or The Night Before

**FIRE CODE / LAND USE / BUILDING REVIEW  
APPLICATION**



**North Operating Center**  
11945 SW 70<sup>th</sup> Avenue  
Tigard, OR 97223  
Phone: 503-649-8577

**South Operating Center**  
8445 SW Elligsen Rd  
Wilsonville, OR 97070  
Phone: 503-649-8577

REV 6-30-20

**Project Information**

Applicant Name: AKS Engineering & Forestry, LLC  
Glen Southerland, AICP  
Address: 12965 SW Herman Road, Suite 100, Tualatin  
Phone: (503) 563-6151  
Email: SoutherlandG@aks-eng.com  
Site Address: 7252 SW Frog Pond Lane  
City: Wilsonville  
Map & Tax Lot #: Map 31W12D; Tax Lots 1200 and 1300  
Business Name: Sullivan Homes, LLC  
Land Use/Building Jurisdiction: Wilsonville  
Land Use/ Building Permit # \_\_\_\_\_

Choose from: Beaverton, Tigard, Newberg, Tualatin, North Plains, West Linn, Wilsonville, Sherwood, Rivergrove, Durham, King City, Washington County, Clackamas County, Multnomah County, Yamhill County

**Project Description**

34-lot single-family attached subdivision on ±5-acre site

**Permit/Review Type (check one):**

- Land Use / Building Review - Service Provider Permit
- Emergency Radio Responder Coverage Install/Test
- LPG Tank (Greater than 2,000 gallons)
- Flammable or Combustible Liquid Tank Installation (Greater than 1,000 gallons)
  - \* Exception: Underground Storage Tanks (UST) are deferred to DEQ for regulation.
- Explosives Blasting (Blasting plan is required)
- Exterior Toxic, Pyrophoric or Corrosive Gas Installation (in excess of 810 cu.ft.)
- Tents or Temporary Membrane Structures (in excess of 10,000 square feet)
- Temporary Haunted House or similar
- OLCC Cannabis Extraction License Review
- Ceremonial Fire or Bonfire (For gathering, ceremony or other assembly)

**For Fire Marshal's Office Use Only**

TVFR Permit # 2023-0023  
Permit Type: SPP - Wilsonville  
Submittal Date: 3/2/2023  
Assigned To: McGladrey  
Due Date: 3/7/2023  
Fees Due: N/A  
Fees Paid: 0

**Approval/Inspection Conditions**  
(For Fire Marshal's Office Use Only)

**This section is for application approval only**

McGladrey 3/7/2023  
Fire Marshal or Designee Date

Conditions:

See Attached Conditions:  Yes  No

Site Inspection Required:  Yes  No

**This section used when site inspection is required**

Inspection Comments:

Final TVFR Approval Signature & Emp ID Date

- NOTES:**
- TRACT A IS INTENDED TO BE OWNED AND MAINTAINED BY THE HOMEOWNERS ASSOCIATION AS OPEN SPACE AND IS SUBJECT TO A PUBLIC ACCESS EASEMENT OVER ITS ENTIRETY.
  - TRACT B IS FOR STORMWATER TREATMENT AND LANDSCAPE PURPOSES. IT IS SUBJECT TO A STORM DRAINAGE EASEMENT OVER ITS ENTIRETY TO BENEFIT THE CITY OF WILSONVILLE.
  - TRACT C IS INTENDED TO EITHER BE OWNED AND MAINTAINED BY THE HOMEOWNERS ASSOCIATION AS OPEN SPACE OR DEDICATED TO THE CITY OF WILSONVILLE, AND IS SUBJECT TO A PUBLIC UTILITY EASEMENT OVER ITS ENTIRETY.
  - THE APPROVAL OF THE MIDDLE HOUSING LAND DIVISION IS PURSUANT TO ORS 92.010 TO 92.192, AS APPLICABLE.

**EASEMENT LEGEND**

PAE	PUBLIC ACCESS AND UTILITY EASEMENT
PSTE	PUBLIC STREET TREE EASEMENT
PUE	PUBLIC UTILITY EASEMENT

**LOT SIZE SUMMARY**

	SUBDISTRICT 4 R-7	SUBDISTRICT 7 R-10
MIN. LOT SIZE	6,000 SF	8,000 SF

**SUMMARY OF LAND USES**

LAND USE	SF	PERCENTAGE OF PROPERTY
1. GROSS AREA IN PLAT	217,971	—
2. LANDSCAPE COVERAGE AREA/OPEN SPACE	22,777	10%
3. ROW	59,811	28%
4. LOT AREA	128,266	59%
5. STORMWATER FACILITY	7,117	3%

**SETBACKS**

	R-7	R-10
FRONT	15 FT	20 FT
REAR	15 FT	20 FT
SIDE - INTERNAL	5 FT	5 FT
SIDE - CORNER	10 FT	10 FT
GARAGE - FROM STREET	20 FT	20 FT
GARAGE - FROM ALLEY	18 FT	18 FT
FRONT PORCH	10 FT	15 FT



APPROVAL OF PLANS IS NOT AN APPROVAL OF OMISSIONS OR OVERSIGHTS.

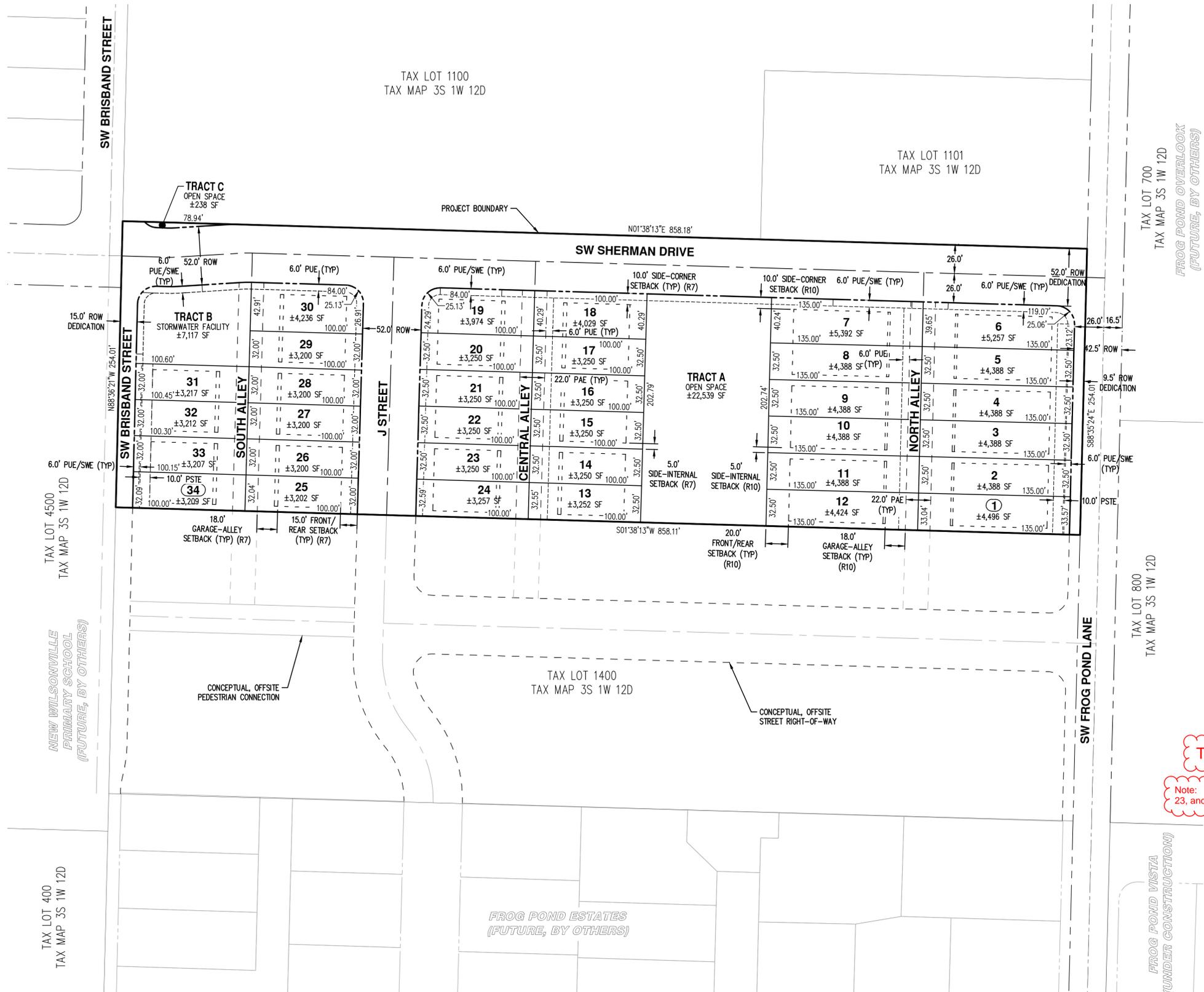
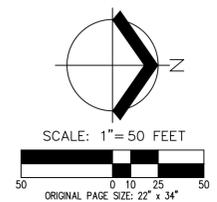
*Ally McElh*  
 Deputy Fire Marshal II

**TVFR & Permit #2023-0023**

Note: Removed temporary turnarounds on lots 1, 2, 23, and 24.

**NOTE:**  
 THESE PLANS ASSUME THE NEARBY FROG POND OVERLOOK SUBDIVISION AND ADJACENT NEW WILSONVILLE PRIMARY SCHOOL WILL BE CONSTRUCTED PRIOR TO OR CONCURRENT WITH THIS SUBDIVISION.

**DISCLAIMER:**  
 THE PURPOSE OF THIS PRELIMINARY DIMENSIONED PLAN IS TO SHOW LOT DIMENSIONS AND AREAS FOR PLANNING PURPOSES. THIS IS NOT AN OFFICIAL RECORDED FINAL PLAT AND IS NOT TO BE USED FOR SURVEY PURPOSES. ALL DIMENSIONS ARE SUBJECT TO CHANGE.



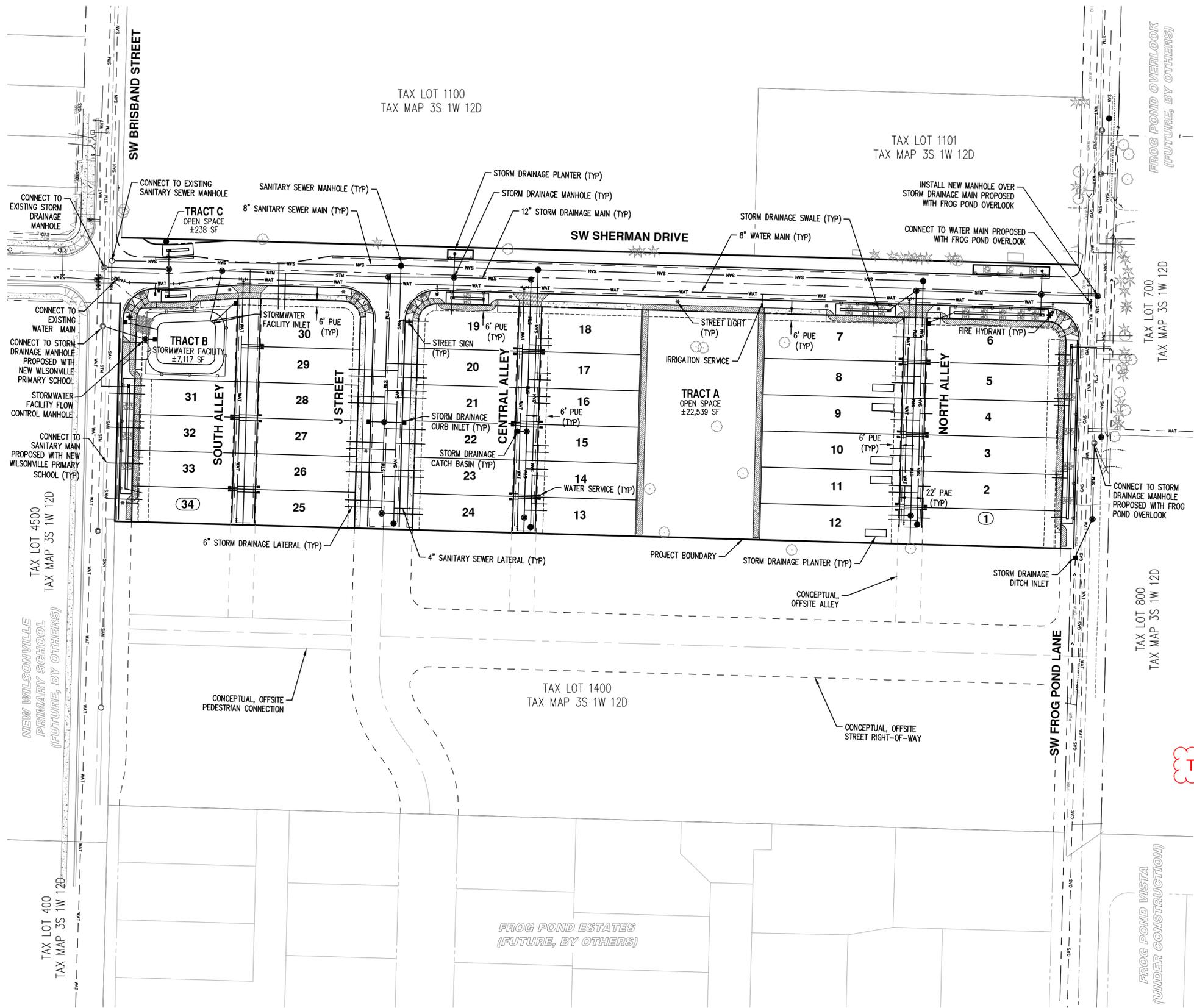
**PRELIMINARY DIMENSIONED SUBDIVISION PLAN  
 FROG POND COTTAGE PARK PLACE  
 SULLIVAN HOMES, LLC.  
 WILSONVILLE, OREGON**

**PRELIMINARY  
 NOT FOR  
 CONSTRUCTION**

JOB NUMBER:	6175
DATE:	04/27/2023
DESIGNED BY:	NRA
DRAWN BY:	JJA
CHECKED BY:	CMS

EASEMENT LEGEND	
P&E	PUBLIC ACCESS AND UTILITY EASEMENT
P&ST	PUBLIC STREET TREE EASEMENT
P&UE	PUBLIC UTILITY EASEMENT

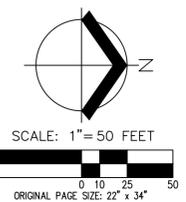
**NOTE:**  
 STORM, SANITARY, AND WATER MAINS SHOWN ON TAX LOT 4500 AND WITHIN FROG POND LANE ADJACENT TO THE SITE ARE SCHEMATIC IN NATURE AND ASSUMED TO BE INSTALLED WITH THE NEARBY FROG POND OVERLOOK SUBDIVISION AND ADJACENT NEW WILSONVILLE PRIMARY SCHOOL PRIOR TO OR CONCURRENT WITH THIS SUBDIVISION.



APPROVAL OF PLANS IS NOT AN APPROVAL OF OMISSIONS OR OVERSIGHTS.

*Alex McElh...*  
 Deputy Fire Marshal II

**TVFR & Permit #2023-0023**



**PRELIMINARY COMPOSITE UTILITY PLAN  
 FROG POND COTTAGE PARK PLACE  
 SULLIVAN HOMES, LLC.  
 WILSONVILLE, OREGON**

**PRELIMINARY  
 NOT FOR  
 CONSTRUCTION**

JOB NUMBER:	6175
DATE:	04/27/2023
DESIGNED BY:	NRA
DRAWN BY:	JJA
CHECKED BY:	CMS

- NOTES:**
- TRACTS A, B, C, AND D ARE INTENDED TO BE OWNED AND MAINTAINED BY THE HOMEOWNERS ASSOCIATION AS OPEN SPACE AND ARE SUBJECT TO A PUBLIC ACCESS EASEMENT OVER THEIR ENTIRETY.
  - TRACT E IS FOR STORMWATER TREATMENT AND LANDSCAPE PURPOSES. IT IS SUBJECT TO A STORM DRAINAGE EASEMENT OVER ITS ENTIRETY TO BENEFIT THE CITY OF WILSONVILLE.

EASEMENT LEGEND		
PAE	PUBLIC ACCESS AND UTILITY EASEMENT	
PUE	PUBLIC UTILITY EASEMENT	
SWE	SIDEWALK EASEMENT	

LOT COVERAGE SUMMARY		
	SUBDISTRICT 9 R-7	SUBDISTRICT 8 R-10
MAX. LOT COVERAGE*	45%	40%

\*LOT COVERAGE INCLUDES BUILDINGS ONLY.

LOT SIZE SUMMARY		
	SUBDISTRICT 4 R-7	SUBDISTRICT 7 R-10
MIN. LOT SIZE	6,000 SF	8,000 SF

SUMMARY OF LAND USES		
LAND USE	SF	PERCENTAGE OF PROPERTY
1. GROSS AREA IN PLAT	217,971	—
2. LANDSCAPE COVERAGE AREA/OPEN SPACE	49,034	22.5%
3. ROW	30,185	13.8%
4. LOT AREA	131,872	60.5%
5. STORMWATER FACILITY	6,880	3.2%

SETBACKS		
	R-7	R-10
FRONT	15 FT	20 FT
REAR	15 FT	20 FT
SIDE - INTERNAL	5 FT	5 FT
SIDE - CORNER	10 FT	10 FT
GARAGE - FROM STREET	20 FT	20 FT
GARAGE - FROM ALLEY	18 FT	18 FT
FRONT PORCH	10 FT	15 FT

**TVF&R**  
 Tualatin Valley  
 Fire & Rescue

APPROVED PLANS

APPROVAL OF PLANS IS NOT AN APPROVAL OF OMISSIONS OR OVERSIGHTS.

*Ally McEll*  
 Deputy Fire Marshal II

**TVF&R Permit #2023-0023**

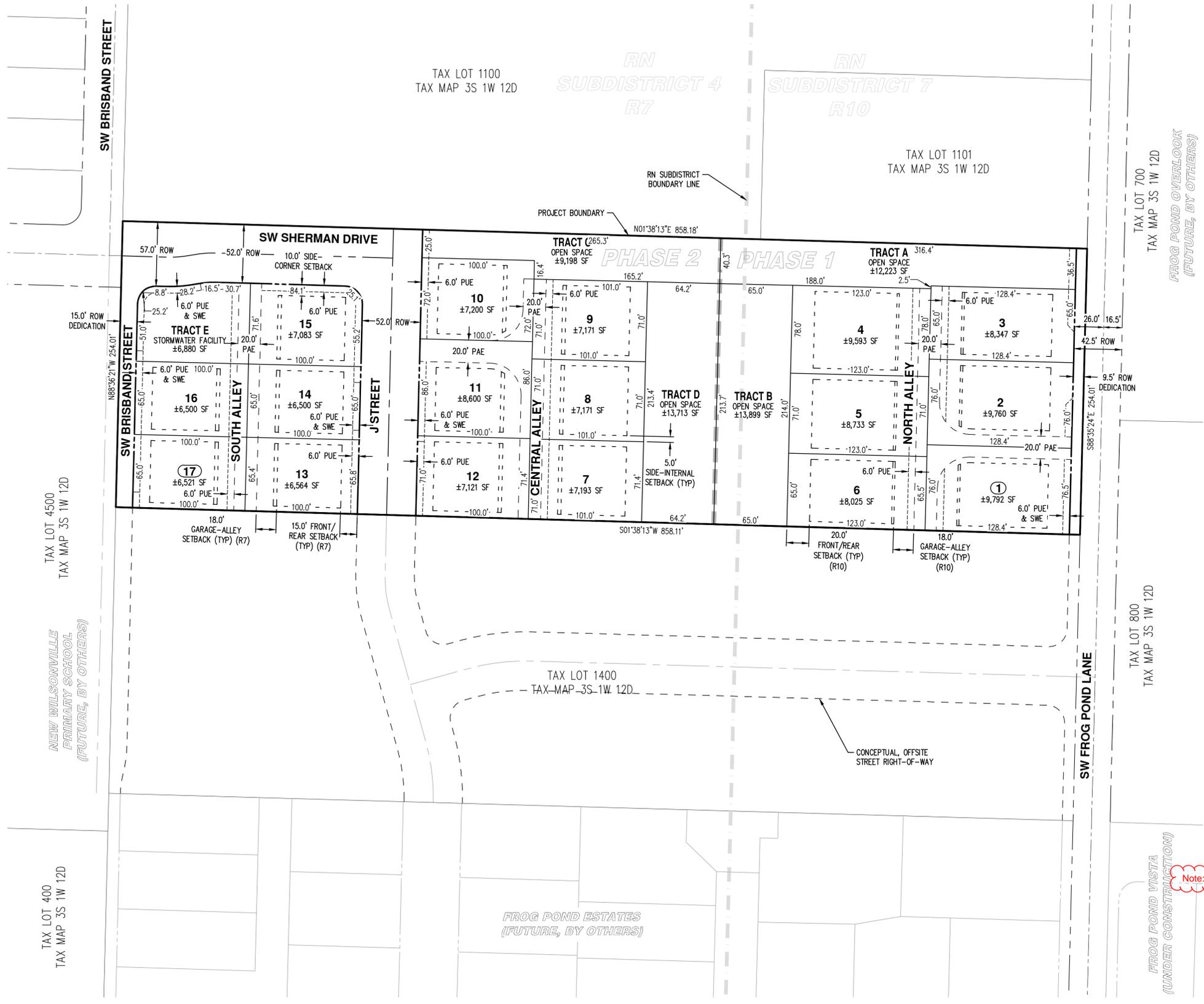
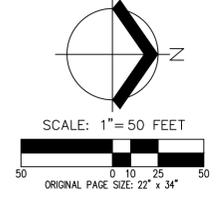
Note: Changed access layout and hydrant placement.

**DISCLAIMER.**

THE PURPOSE OF THIS PRELIMINARY DIMENSIONED PLAN IS TO SHOW LOT DIMENSIONS AND AREAS FOR PLANNING PURPOSES. THIS IS NOT AN OFFICIAL RECORDED FINAL PLAT AND IS NOT TO BE USED FOR SURVEY PURPOSES. ALL DIMENSIONS ARE SUBJECT TO CHANGE.

**NOTE:**

THESE PLANS ASSUME THE NEARBY FROG POND OVERLOOK SUBDIVISION AND ADJACENT NEW WILSONVILLE PRIMARY SCHOOL WILL BE CONSTRUCTED PRIOR TO OR CONCURRENT WITH THIS DEVELOPMENT.



**PRELIMINARY DIMENSIONED SUBDIVISION PLAN**  
**FROG POND COTTAGE PARK PLACE**  
**SULLIVAN HOMES, LLC.**  
**WILSONVILLE, OREGON**



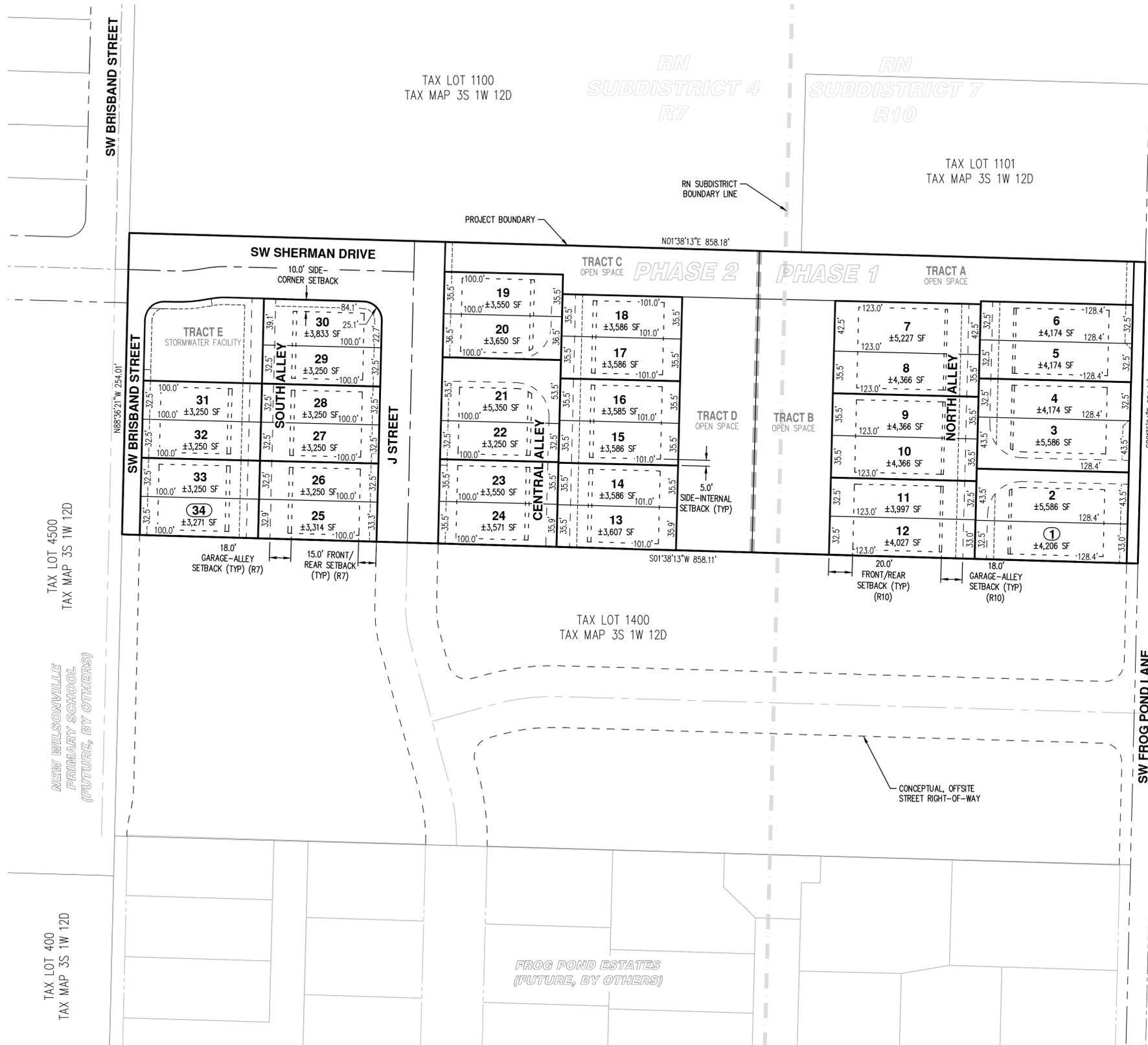
RENEWAL DATE:	6/30/25
JOB NUMBER:	6175
DATE:	11/06/2023
DESIGNED BY:	NRA
DRAWN BY:	NRA
CHECKED BY:	CMS

- NOTES:**
- FURTHER DIVISION OF THE RESULTING MIDDLE HOUSING LAND DIVISION UNITS IS PROHIBITED.
  - THE APPROVAL OF THE MIDDLE HOUSING LAND DIVISION IS PURSUANT TO ORS 92.010 TO 92.192, AS APPLICABLE.

LOT COVERAGE SUMMARY		
	SUBDISTRICT 9 R-7	SUBDISTRICT 8 R-10
MAX. LOT COVERAGE*	45%	40%

\*LOT COVERAGE INCLUDES BUILDINGS ONLY.

SETBACKS		
	R-7	R-10
FRONT	15 FT	20 FT
REAR	15 FT	20 FT
SIDE - INTERNAL	5 FT	5 FT
SIDE - CORNER	10 FT	10 FT
GARAGE - FROM STREET	20 FT	20 FT
GARAGE - FROM ALLEY	18 FT	18 FT
FRONT PORCH	10 FT	15 FT



TAX LOT 700  
 TAX MAP 3S 1W 12D  
 FROG POND OVERLOOK  
 (FUTURE, BY OTHERS)

TAX LOT 800  
 TAX MAP 3S 1W 12D

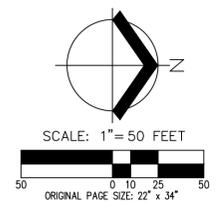
FROG POND VISTA  
 (UNDER CONSTRUCTION)



**TVF&R Permit #2023-0023**

**DISCLAIMER:**  
 THE PURPOSE OF THIS PRELIMINARY DIMENSIONED PLAN IS TO SHOW LOT DIMENSIONS AND AREAS FOR PLANNING PURPOSES. THIS IS NOT AN OFFICIAL RECORDED FINAL PLAT AND IS NOT TO BE USED FOR SURVEY PURPOSES. ALL DIMENSIONS ARE SUBJECT TO CHANGE.

**NOTE:**  
 THESE PLANS ASSUME THE NEARBY FROG POND OVERLOOK SUBDIVISION AND ADJACENT NEW WILSONVILLE PRIMARY SCHOOL WILL BE CONSTRUCTED PRIOR TO OR CONCURRENT WITH THIS DEVELOPMENT.



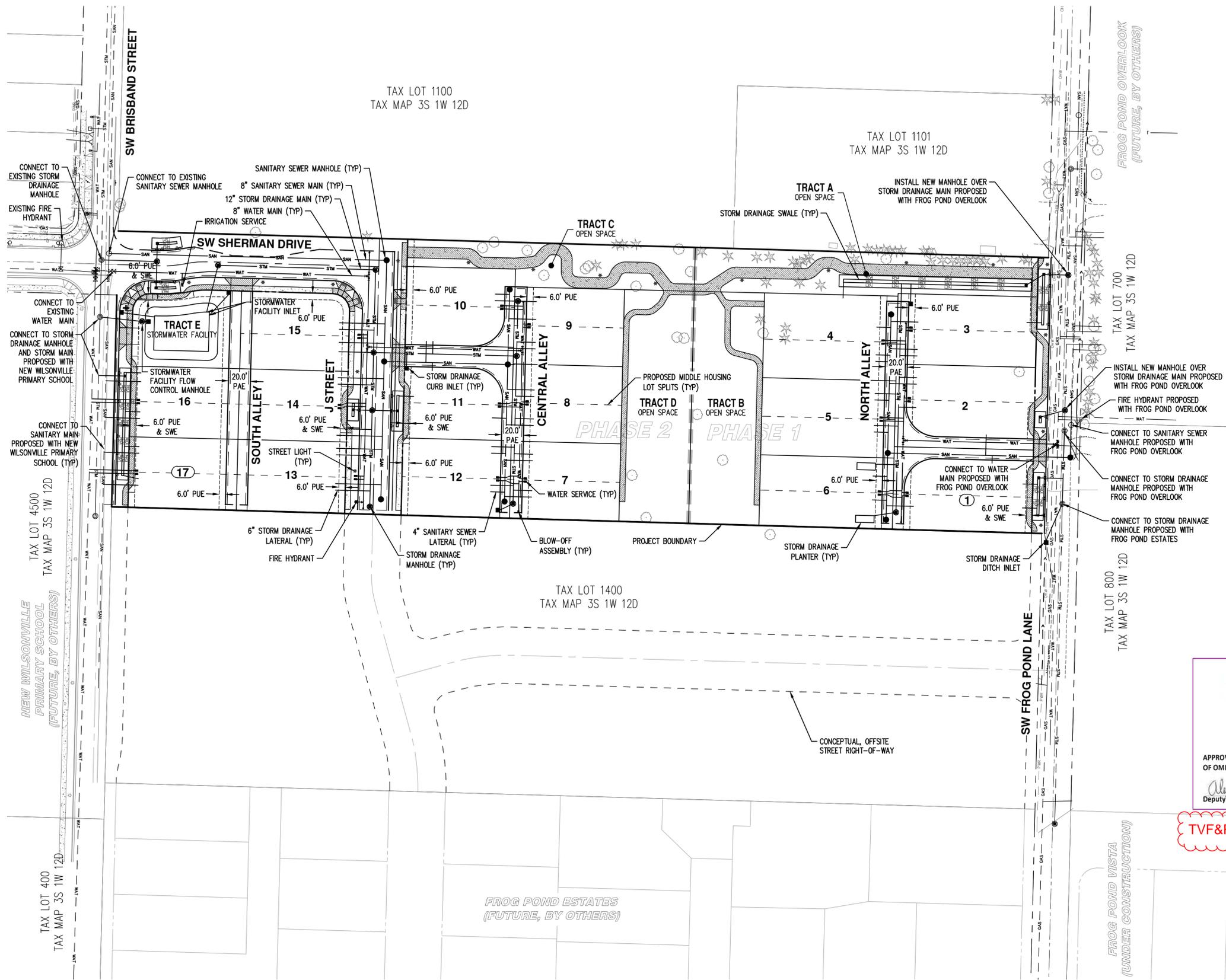
**PRELIMINARY MIDDLE HOUSING LAND DIVISION PLAT**  
**FROG POND COTTAGE PARK PLACE**  
**SULLIVAN HOMES, LLC.**  
**WILSONVILLE, OREGON**



RENEWAL DATE:	6/30/25
JOB NUMBER:	6175
DATE:	11/06/2023
DESIGNED BY:	NRA
DRAWN BY:	NRA
CHECKED BY:	CMS

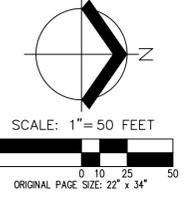
EASEMENT LEGEND	
PAE	PUBLIC ACCESS AND UTILITY EASEMENT
PUE	PUBLIC UTILITY EASEMENT
SWE	SIDEWALK EASEMENT

**NOTE:**  
 STORM, SANITARY, AND WATER MAINS SHOWN ON TAX LOT 4500 AND WITHIN FROG POND LANE ADJACENT TO THE SITE ARE SCHEMATIC IN NATURE AND ASSUMED TO BE INSTALLED WITH THE NEARBY FROG POND OVERLOOK SUBDIVISION, FROG POND ESTATES SUBDIVISION, AND ADJACENT NEW WILSONVILLE PRIMARY SCHOOL PRIOR TO OR CONCURRENT WITH THIS SUBDIVISION.



**TVF&R**  
 Tualatin Valley  
 Fire & Rescue  
 APPROVED PLANS  
 APPROVAL OF PLANS IS NOT AN APPROVAL  
 OF OMISSIONS OR OVERSIGHTS.  
 [Signature]  
 Deputy Fire Marshal II

**TVF&R Permit #2023-0023**



**PRELIMINARY COMPOSITE UTILITY PLAN  
 FROG POND COTTAGE PARK PLACE  
 SULLIVAN HOMES, LLC.  
 WILSONVILLE, OREGON**

**REGISTERED PROFESSIONAL ENGINEER**  
**PRELIMINARY**  
**NOT FOR CONSTRUCTION**  
 [Signature]  
 RENEWAL DATE: 6/30/25  
 JOB NUMBER: 6175  
 DATE: 11/13/2023  
 DESIGNED BY: NRA  
 DRAWN BY: NRA  
 CHECKED BY: CMS