

June 23, 2022

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**VIA E-MAIL**

Mr. Charles Piper  
Woodburn Planning Commission  
Woodburn City Hall Council Chambers  
270 Montgomery Street  
Woodburn, OR 97071

RECEIVED

JUN 23 2022

COMMUNITY DEVELOPMENT  
DEPARTMENT

RE: Marion Pointe Application, Woodburn Case Files ANX 22-02, ZC 22-02, PLA 22-02, PUD 22-02, RCWOD 22-01, SUB 22-03 (the "Application")

Dear Mr. Piper:

This office represents Holt Homes (the "Applicant") in the Marion Pointe Application (ANX 22-02, ZC 22-02, PLA 22-02, PUD 22-02, RCWOD 22-01, SUB 22-03) (together, the "Application"). The Application includes a proposed annexation, subdivision, and planned unit development (including concept development and detailed development plans). The Application is the result of a substantial amount of effort on the part of the Applicant and City staff, and the Applicant appreciates staff's thorough review of the Application. On the whole, the Applicant agrees and accepts the conditions of approval. However, the Applicant has two concerns regarding the proposed conditions of approval in the June 15, 2022 Staff Report, which are discussed below.

### **1. Applicability of Codes adopted after February 14, 2022**

The Staff Report includes a number of conditions<sup>1</sup> requiring the Application to comply with certain provisions of the Woodburn Development Ordinance adopted after the Application was prepared and submitted, the most recent of which were only adopted on June 13, 2022. This presents a practical problem for the Applicant because it is not clear how these new standards would alter the Application or how much additional cost might be necessary to comply with them.

Land development projects depend in large part on the ability to understand the City's approval criteria and development standards before an application is submitted, so applicants can accommodate the City's design requirements during the project design phase. To that end, Oregon law provides that most land use applications, including subdivisions and planned unit

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<sup>1</sup> These include but are not limited to proposed conditions G4, G6, G8, SUB-1, SUB-2, PUD-2, and PUD-3.

developments, are protected by the “Fixed Goal-Post” rule, which is set forth in ORS 227.178(3):

“If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted and the city has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.”

Similarly, ORS 92.040 provides that:

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

The Application was submitted on February 14, 2022. The Application was deemed complete on May 12, 2022, within 180 days of application submittal. Therefore, the criteria and development standards in effect on February 14, 2022 are the standards that apply to the Application and subsequent development of the subject property.

For these reasons, the Applicant respectfully requests that the Planning Commission remove from the final conditions and findings any references to versions of the WDO which became effective after February 14, 2022. In the alternative, if the Planning Commission wishes to specify which version of the WDO governs the Application, it can replace references to “through Ordinance No. 2603” with “WDO standards in effect on February 14, 2022.” This change would provide the Applicant with predictability about how the Project will ultimately be developed and add clarity for City staff construing the decision in the future.

## **2. Upsizing of the Private Stormwater System beneath the OGA Golf Course**

Proposed condition PUD-PW provides as follows:

“PUD-PW. Stormwater management: Prior to civil engineering plan approval through CEP review, the applicant shall provide an Engineer Stamped Storm Drainage Hydraulic Analysis Report that existing private storm drainage systems have capacity to handle the additional flow from the Marion Pointe and ANX 2020-03 Dove Landing Planned Unit Developments (PUDs), and that the culvert/pipe under Olympic Street has capacity to handle a 100 year base flood event, and to provide a final 100 year floodway, floodplain, and wetland delineation for this development. The applicant is responsible for correcting any

capacity deficiencies, including installing new or additional drainage systems, and/or attaining the right to increase stormwater flows into neighboring private stormwater systems.”

As an initial matter, there are elements of the above condition which the Applicant accepts, including the requirement to up-size the culvert/pipe beneath Olympic Street to accommodate a 100-year base flood event. The project’s proposed stormwater system (including a connection to the existing private line) is designed to meet the City’s current 25-year storm requirement, as described in **Exhibit 1**. However, the final sentence likely obligates the Applicant to substantially upsize the existing private stormwater line to meet a 100-year capacity not in the City’s stormwater design standards, and do so at least partially to accommodate offsite stormwater flow from a different project, Dove Landing. There are both practical and legal problems with this requirement.

The practical problem is that this would require a major trenching within the OGA Golf Course and construction of the replacement pipe would entail substantial expense. This would not only disrupt golf course operations, but would also require the Applicant to obtain an additional easement to make such improvements, which the OGA Golf Course may not wish to grant.

The legal problem is that, as explained in **Exhibit 1** from the Applicant’s project engineer, such an upsizing is not necessary to serve the Marion Point project. Under the 5<sup>th</sup> Amendment of the U.S. Constitution, requiring a landowner to dedicate its private property rights or pay money for public improvements in exchange for development approval is a taking requiring just compensation, unless there is an “essential nexus” between the condition and the project’s impacts on the local government’s public infrastructure. *Nollan v. California Coastal Com.*, 483 U.S. 825, 836–37 (1987); *Koontz v. St. Johns River Water Management District*, 570 U.S. 595, 613–14 (2013); *Hill v. City of Portland*, 293 Or App 283, 290 (2018). The project’s stormwater system is already designed to meet the City’s applicable stormwater requirements without up-sizing the private storm line beneath the golf course. Moreover, the requirement for up-sizing is at least partially a consequence of the Dove Landing project, not the Marion Pointe Project. Therefore, condition PUD-PW lacks the required nexus to the impacts of Marion Pointe.

Additionally, public improvement requirements must be “roughly proportional” to the expected impacts caused by the proposed development, and the City carries the burden of proof to show how proposed conditions meet the proportionality requirement. *Dolan v. City of Tigard*, 512 U.S. 374, 391-395 (1994). In this instance, **Exhibit 1** demonstrates that the potential up-sizing of existing private stormwater facilities is not roughly proportional to the impacts of Marion Pointe. This is because the proposed stormwater design is sufficient to serve the Marion Pointe project without upsizing the existing private line. Thus, the substantial payment of money required to construct that improvement is in excess (and likely *far* in excess) of the cost of improvements necessary to meet stormwater standards and offset the project’s impacts on the public stormwater system.

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For the above reasons, the Applicant respectfully requests that Condition PUD-PW be either eliminated or revised as follows:

“Stormwater management: Prior to civil engineering plan approval through CEP review, the applicant shall provide an Engineer Stamped Storm Drainage Hydraulic Analysis Report to determine whether the culvert/pipe under Olympic Street has capacity to handle a 100 year base flood event.”

### **Conclusion**

As noted above, the Applicant appreciates staff’s hard work on this project and accepts the vast majority of proposed conditions. With the two changes recommended above, the Applicant fully supports staff’s findings and proposed conditions. The applicant respectfully requests that the Planning Commission make these two changes and otherwise approve the Application as recommended in the staff report.

Best regards,



Garrett H. Stephenson

GST:jmhi  
Enclosure

Cc: Mr. Colin Cortes (*via email*) (*w/enclosure*)  
Mr. Chris Kerr (*via email*) (*w/enclosure*)  
Ms. McKenzie Granum (*via email*) (*w/enclosure*)  
Mr. Mike Loomis (*via email*) (*w/enclosure*)  
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**Date:** 6/23/2022  
**To:** Colin Cortes, AICP, CNU-A, Senior Planner – City of Woodburn  
**From:** Rand Waltz/Vu Nguyen, PE  
**Project Name:** Marion Pointe PUD  
**AKS Job No.:** 7564  
**Subject:** Condition of Approval – PUD-PW

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Condition of approval PUD-PW states:

*Stormwater management: Prior to civil engineering plan approval through CEP review, the applicant shall provide an Engineer Stamped Storm Drainage Hydraulic Analysis Report that existing private storm drainage systems have capacity to handle the additional flow from the Marion Pointe and ANX 2020-03 Dove Landing Planned Unit Developments (PUDs), and that the culvert/pipe under Olympic Street has capacity to handle a 100 year base flood event, and to provide a final 100 year floodway, floodplain, and wetland delineation for this development. The applicant is responsible for correcting any capacity deficiencies, including installing new or additional drainage systems, and/or attaining the right to increase stormwater flows into neighboring private stormwater systems.*

This condition of approval requests that the Marion Pointe project increase the capacity of an existing offsite private stormwater main pipe to accommodate flows beyond normal City standards for this project and an offsite residential development project (Dove Landing). Additionally, construction of this main pipe will require a public storm drainage and temporary grading and construction easement on private property that is not owned or controlled by the applicant. There is no certainty that the easement required for construction will be granted by the offsite property owner.

The City's Storm Drainage Master Plan requires the following regarding stormwater runoff conveyance:

- The 25-year post-developed storm event runoff be detained to the pre-developed 5-year storm event. This means that after the site is developed, stormwater from a 25-year event (an event that statistically happens once every 25 years) leaving the subject site can only be released at rate less than or equal to a 5-year storm event prior to development. This project meets this requirement.

The existing 24-inch culvert under the future Olympic Street will be replaced with a 72-inch diameter culvert. This new culvert will be sized to accommodate stormwater runoff from this site and the upstream basins (including Dove Landing under fully developed conditions) based on peak flows for the 100-year storm event.

In larger storm events, stormwater could back up out of offsite private stormwater main pipe and sheet flow across the golf course property; however, this is the historical route of the stormwater runoff, and there are no structures in this flow path.

Since this project meets the City's Storm Drainage Master Plan detention and conveyance standards and because of the proposed Olympic Street culvert replacement, there are no downstream conveyance deficiencies. Because of this, condition of approval PUD-PW should not be applied to this project.



**PRELIMINARY OVERALL  
 COMPOSITE UTILITY PLAN  
 MARION POINTE  
 WOODBURN, OREGON**



JOB NUMBER: 7564  
 DATE: 04/14/2022  
 DESIGNED BY: NRA  
 DRAWN BY: NRA  
 CHECKED BY: VHN

