



Addendum

June 23, 2022

To: Planning Commission (June 23, 2022)

From: Colin Cortes, AICP, CNU-A, Senior Planner

Cc: McKenzie Granum, Assistant City Attorney
Chris Kerr, Community Development Director *CK*
Rand Waltz, AKS Engineering & Forestry, LLC, applicant
Garrett H. Stephenson, applicant's attorney

Subject: Addendum to Agenda Item 6b: Annexation ANX 22-02 Marion Pointe

Summary:

Staff received the attached June 23, 2022 letter of testimony from the applicant's attorney. This cover memo provides context and addresses the first of the two objections to the recommended conditions of approval: references to the new WDO.

A number of conditions reference conformance with the WDO as newly amended up to and through Ordinance No. 2603 (Legislative Amendment LA 21-02) adopted June 13 and effective June 30, 2022.

The applicant's team is concerned not having looked at the ordinance online to see the referenced WDO provisions. Per the Assistant City Attorney, staff proposes strikethrough-and-underline edits to several conditions to:

1. Remove all such references, and
2. Copy and paste the referenced provisions themselves from the newly amended WDO into the conditions of approval.

The new WDO doesn't interfere with the proposed development, and staff believes that the strikethrough-and-underline conditions will reassure the applicant and applicant's attorney and lead them to drop the objection.

Recommendation:

To approve with conditions including those edited through this addendum memo.

Attachment(s):

- Public testimony by Garrett H. Stephenson, applicant's attorney, June 23, 2022 (7 pages)
- 104D. ANX 22-02 Strikethrough-and-underline conditions of approval revised from June 23, 2022 Planning Commission staff report (7 pages)

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 conditions¹ 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

¹ 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 5th 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.

Mr. Charles Piper
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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)*
Ms. MacKenzie Davis *(via email) (w/enclosure)*
Mr. Rand Waltz *(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

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.

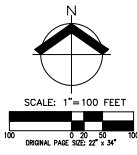
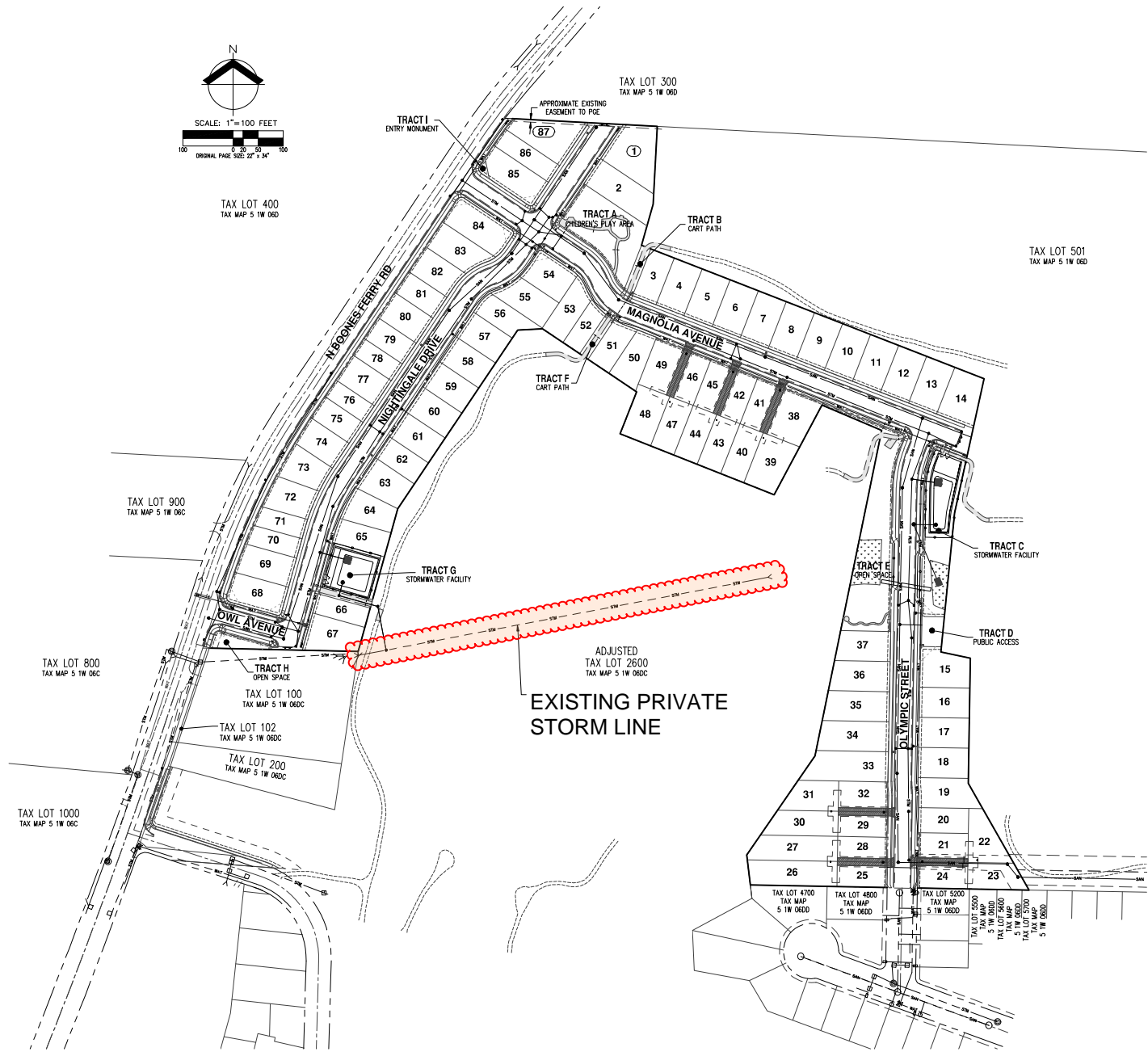
Since this project meets the City's Storm Drainage Master Plan detention and conveyance standards and because of the proposed Olympic Street culvert replacement, there are no downstream conveyance deficiencies. Because of this, condition of approval PUD-PW should not be applied to this project.



**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



Recommended Conditions of Approval

Staff recommends approval of the consolidated applications based on the findings in the staff report and attachments, which are incorporated by this reference, as well as applying the following conditions of approval:

General

G1. By and as part of building permit application, the applicant shall submit revised site plans meeting the conditions of approval and obtain Planning Division approval through sign-off on permit issuance by the Building Division.

G2. The applicant or successors and assigns shall develop the property in substantial conformance with the final plans submitted and approved with these applications, except as modified by these conditions of approval. Were the applicant to revise plans other than to meet conditions of approval or meet building code, even if Planning Division staff does not notice and signs off on building permit issuance, Division staff retains the right to obtain restoration of improvements as shown on an earlier land use review plan set in service of substantial conformance.

G3. References: Attachment 201 serves as a dictionary or glossary defining certain abbreviations, acronyms, phrases, terms, and words in the context of the conditions of approval. The 200 series of attachments are as binding as the conditions of approval in the main body of the final decision.

G4. Due dates / public improvements:

- a. When public street improvements, and any fees in lieu of public improvements, are due shall be per WDO 3.01.02 E & F and 4.02.12 ~~through Ordinance No. 2603 (LA 21-02)~~ unless if and where a condition of approval has more restrictive timing:-

(1) The construction of all public improvements, their passing City inspections, and acceptance by the City are due no later than by either 5.01.06B in the context of land division final plat application to the City or by building permit issuance, except if (a) the developer applies to the City through the Public Works Department for deferral and (b) the City Administrator or designee issues a document approving and describing a bond or performance guarantee pursuant to Section 4.02.08. Administration of bonding and performance guarantees for improvements that are public defaults to the Public Works Department, and the department shall notify the Community Development Director of deferral applications and any approvals and conditions of approval.

(2) Fees in lieu of public improvements: Per Condition G6.

- b. Where changes to street addresses are necessary, the developer shall apply through the Planning Division for and obtain approval of an [Address Assignment Request](#). This is due

prior to building permit application, and if property line adjustment or lot consolidation were to become relevant, then also after recordation with County.

G5. Recordation due dates: The applicant shall apply to the County for recordations of items that the City requires no later than six (6) months prior to expiration of the land use approval as WDO 4.02.04B establishes, and shall complete recordations no later than three years past the land use “final decision” date. The due date to complete recordations shall not supersede when recordations are due relative to the building permit stage.

G6. Fees: The developer shall pay fees per Attachment 205, and fees in-lieu shall be per WDO 4.02.12 ~~through Ordinance No. 2603 (LA 21-02) adopted June 13, 2022:~~

a. Fees in-lieu are permissible if the Director allows, whether wholly in-lieu for one, some, or all of the kinds of required improvements or for some or all of a kind.

a.b. Fees in lieu of public improvements are due before either building permit application or, when and where any of Partition or Subdivision Final Plat is involved, completion of recordation with the County, specifically no later than before a City official signs a plat or re-plat Mylar per Section 5.01.06C.1. A developer may request in writing to pay later, specifically by issuance of building permit, or if the Director allows, across issuance of two or more structural building permits for the subject development.

G7. Demolition: Because the City through the Building Division now requires [demolition permits](#), upon annexation and before beginning to demolish buildings or structures or demolishing more of them, consult the Permit Technician and apply for and obtain a permit or permits as applicable.

~~G8. WDO version: Upon annexation, conformance to the Woodburn Development Ordinance (WDO) and conditions of approval references to the WDO shall be to the WDO as amended by Ordinance No. 2603 (Legislative Amendment LA 21-02) adopted June 13, 2022.~~

G-PW. Public Works: Follow the appended PW comments (June 16, 2022); Attachment 102A).

Preliminary Subdivision 22-03

SUB-1. Expiration: Based on ORS 92.040(3), development per the Council land use final decision may continue 3 years past the decision date, the 3-year approval period being established ~~by WDO 4.02.04 through Ordinance No. 2603 (LA 21-02) adopted June 13, 2022,~~ ~~and~~ as follows:

- a. Final Plat: The developer shall apply to the City prior to applying to Marion County for recordation. Owl extending east across BFR from Dove Landing PUD to Nightingale shall continue its name.
- b. Recordation with Marion County: Same as WDO 5.01.06C.1. (within 30 calendar days of the Director's signature on the plat Mylar).
- c. Vesting: The decision is vested unless:
 - (1) ~~The developer fails to meet subdivision and PUD requirements, resulting in the City being unable to authorize staff to sign a final plat Mylar by July 1, 2027~~Regarding WDO 4.02.04B.1, if by 10 years past the final decision date there is no substantial construction as Section 1.02 defines following issuance of a building permit, the final decision shall expire and fail to vest.; or
 - (2) ~~There is no substantial construction — as defined in 1.02 through Ordinance No. 2603 (LA 21-02) — by July 1, 2032~~Regarding subsection WDO 4.02.04B.2 as applies to Property Line Adjustment and Subdivision Final Plat Approval applications, the developer shall complete recordation no later than the land use expiration date.

SUB-2. Documents:

- a. Geotech report: Prior to final plat approval by the City, the developer shall submit to the Director a geotechnical report documenting that, whether or not the developer spreads any fill or spoil dirt across lots and tracts, soil is compacted and ready to accommodate the construction of buildings on lots and tracts proposed for development.
- b. Easements: ~~Per WDO 2.01.05A through Ordinance No. 2603 (LA 21-02) adopted June 13, 2022 shall be applicable, and, where any of extinguished, altered, or additional public easements are involved, the developer shall not apply for building permit until having completed recordations with the County and provided electronic copies of the recorded easement documents and drawings to the Director and the Public Works Director when and as any of them direct. The developer shall also~~ follow Attachments 102A (Public Works) and 203, Part D.
- c. Plat: Upon recordation, the developer shall submit to PW and cc the Director copies of recorded documents per WDO 2.01.05 ~~through Ordinance No. 2603 (LA 21-02) adopted June 13, 2022.~~

Planned Unit Development 22-02

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.

PUD-1. Mods: The City approves PUD modifications only as written in conditions of approval and the 200 series of attachments, particularly Attachment 202. Other modifications that site plans imply are subject to later administrative approval or denial by the Director.

PUD-2.

- a. ROWs: For BFR and the proposed local class streets, the developer shall dedicate ROWs that meet or exceed the min widths necessary to conform to WDO Figures 3.01C & G.
- b. PUEs: ~~The developer shall grant streetside PUEs that meet or exceed the min width and do not exceed the max p~~Per WDO 3.02.01 ~~through Ordinance No. 2603 (LA 21-02) adopted June 13, 2022,~~ a PUE shall be dedicated along each lot line or tract boundary abutting a public street at minimum width 5 feet and maximum width 8 ft.

PUD-3. Frontage/street improvements: These shall be as follows and due per Condition G4a:

- a. BFR: Per WDO Fig. 3.01C except that planter strip shall be min 6½ ft wide inc. curb width.
- b. Olympic: Bridge or culvert crossing over Mill Creek tributary: Per WDO 3.01.03H ~~through Ordinance No. 2603 (LA 21-02) adopted June 13, 2022,~~ and:
 - (1) ROW: Required ROW shall remain such regardless of the physical width of the crossing.
 - (2) Parking: Any parking lane(s) required by the applicable cross section shall remain required.
 - (3) Sidewalk widths: A developer may omit from a bridge or culvert the street landscape strips, thereby resulting in curb-tight sidewalk, the minimum width of which shall be either 8 ft where there is to be no adjacent on-street parking or 9 ft

where there is to be. Wider width shall apply where ADA per WDO 3.01.03G applies such that it is required.

(4) Fence/railings: Where (a) a street segment is a bridge or culvert crossing, and (b) the public works construction code requires any pedestrian guardrail, handrail, fall protection railing, or safety railing, then it shall be decorative or ornamental (as examples, having an artistic pattern or resembling wrought iron), and a color other than black or charcoal. Any required fence at each end of railings shall be the same color(s).

(5) Bridge sides: If the bridge sides are concrete, the surface shall be stamped or treated to resemble either cut stone or rough stone.

~~(4)~~(6) Elevation: Shall be such that the travel way and parking lanes wouldn't flood during the 100-year flood.

~~(2) Sidewalks: min width 9 ft inc. curbing.~~

~~(3) Fencing/railings: Permissible colors are blue, bronze, brown, green, teal, metal, and rust color. (Black prohibited.)~~

~~(4)~~(7) Design details are deferred to PUD Final Plan Approval process; refer to Condition PUD-11.

- c. Tract D: The developer shall grant to the City over the entire tract a public street easement. The easement shall allow for all purposes permitted by what would have been ROW dedication including construction of street improvements. One or more legal instruments that dedicates the easement shall contain text that the easement is revocable only with the written concurrence of both the Community Development Director and Public Works Director and by City Council action. (The objective is to have maintenance responsibility remain with a party other than the City.)
- d. Hazelnut: Per WDO Fig. 3.01G, except that the territory contiguous with Tax Lots 051W06DC00201 & 300, which is occupied by Hazelnut, shall be dedicated to the City as ROW. (Note: To not meet this condition part would require modification of condition [MOC] application and approval per WDO 4.02.07.)
- e. Planter strip remainder: ~~Landscape the remainder area—the area remaining after street tree plantings—p~~Per WDO 3.01.04B through Ordinance No. 2603 (LA 21-02) adopted June 13, 2022, landscape strips shall have area remaining after street tree plantings landscaped with lawn grass or, if the Public Works Director in writing allows, a species of groundcover. Cobblestones, gravel, pebbles, and rocks are prohibited. Bark dust, mulch, or wood chips are permissible only within the immediate vicinity of a street tree trunk. The developer shall install landscape strip irrigation, and shall provide temporary irrigation during construction, per the public works construction code.
- f. Sidewalks: Min 6 ft wide except wider as Exhibit PUD-3f supersedes. BFR sidewalk southerly and two northerly dead-ends shall have ADA-compliant transitions spanning between sidewalk and road shoulder as the applicable public works authority specifies. The segment extending north from Hazelnut sidewalk may meander, including PUE

overlap, and taper to 6 ft through RPZs to save most of the loose row of trees along the road.

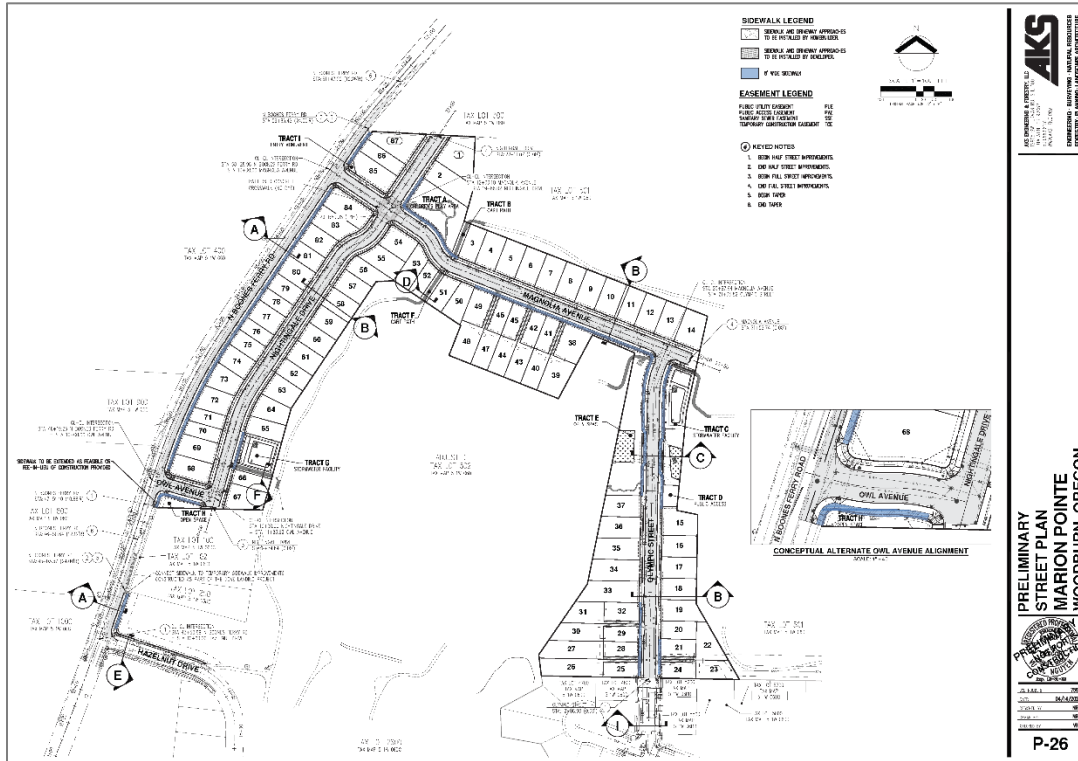


Exhibit PUD-3f: Site Plan Sheet P-26 Sidewalks (blue: min 8 ft wide); see Attachment 103 for full size

- g. **Overlap:** The extra width of planter strip and sidewalk shall either (1) overlap outside ROW into streetside PUE and come with a recorded legal instrument granting public access to the overlap to the satisfaction of the Public Works Director, or (2) come with additional ROW to accommodate them. Wider sidewalks shall not narrow planter strips.
- h. **Street trees:**
 - (1) Min numbers equal to block frontage ratios per Exhibit PUD-3h:



Exhibit PUD-3h: Site Plan Sheet P-31 Street Tree Min No. (green: equal to 1 tree per 30 ft of block frontage)

(2) Along Magnolia, revise street trees from Capital pear to *Magnolia grandiflora* “Victoria” cultivar.

(3) Fee in-lieu shall be per Attachment 205.

~~(4) Landscape strips and street trees shall conform to WDO 3.01.04B (landscaping, irrigation) and 3.06.03A.3 (root barriers) through Ordinance 2603.~~

i. Electric power lines: Electric power lines, whether in or beyond ROW, shall be buried.

j. Traffic calming: A min number of pedestrian crossings along intersection legs shall be patterned poured concrete each min 8 ft wide:

(1) Magnolia & Nightingale, 3 legs: N/NE, E/SE, & S/SW; and

(2) Magnolia & Olympic: 2-3 legs: S/SW & whichever one or both of the E/SE or W/NW legs that would have a curb ramp along the top of the “T” of the T-intersection.

PUD-4. Streets, dead-end: Barricades/Signage: Based on WDO 3.01.05A.2b & c, the developer shall place:

a. A barricade with sign at the south end of Nightingale; and

b. A barricade at each of the north end of Nightingale the east end of Magnolia.

Consult PW for a barricade detail, and no later than CEP show both it and a modified version with a sign in conformance with 3.01.05A.2c.