



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150
Salem, OR 97301-2540
(503) 373-0050
Fax (503) 378-5518
www.lcd.state.or.us

AMENDED NOTICE OF ADOPTED AMENDMENT

December 27, 2007



TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Ashland Plan Amendment
DLCD File Number 004-06

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: January 10, 2008

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist
John Renz, DLCD Regional Representative
Maria Harris, City of Ashland

<paa> ya/

FORM 2

DLCD

Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

☐ In person	☐ electronic	☐ mailed
DATE		
DEPT OF		
DEC 24 2007		
LAND CONSERVATION AND DEVELOPMENT		
For DLCD Use Only		

Jurisdiction: **City of Ashland**

Local file number: **2006-01663**

Date of Adoption: **12/18/2007**

Date Mailed: **12/20/2007**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: 8/31/2006

☒ Comprehensive Plan Text Amendment

☒ Comprehensive Plan Map Amendment

☐ Land Use Regulation Amendment

☒ Zoning Map Amendment

☐ New Land Use Regulation

☐ Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Annexation, Comp Plan map and Zoning Map change from Jackson Co. zoning Rural Residential (RR-5) to Single Family Residential (R-1) and Suburban Residential (R-1-3.5), Outline Plan approval under the Performance Standards Options chapter 18.88 to develop the property as a 68-unit residential development. Exceptions to Street Standards were requested, as well as a Physical Constraints Review permit and a Tree Removal permit.

Does the Adoption differ from proposal? No, no explanation is necessary

Plan Map Changed from: **no change**

to:

Zone Map Changed from: **Jackson Co. zone RR-5**

to: **R-1-5 & R-1-3.5**

Location: **87 W. Nevada and 811 Helman Street**

Acres Involved: **11**

Specify Density: Previous: **2.328**

New: **68 units**

Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
☐	☒	☐	☐	☐	☐	☒	☐	☐	☒	☐	☐	☒	☒	☐	☐	☐	☐	☐

Was an Exception Adopted? ☐ YES ☒ NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

☒ Yes ☐ No

If no, do the statewide planning goals apply?

☐ Yes ☐ No

DLCD #004-06 (15520)

If no, did Emergency Circumstances require immediate adoption?

☐ Yes ☐ No

DLCD file No. _____

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Division of State Lands, Jackson County, FEMA

Local Contact: **Maria Harris**

Phone: (541) 552-2045 Extension:

Address: **20 East Main St.**

Fax Number: **541-552-2050**

City: **Ashland**

Zip: **97520-**

E-mail Address: **harrism@ashland.or.us**

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. **Send this Form and TWO Complete Copies** (documents and maps) of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.
3. **Please Note:** Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at **http://www.lcd.state.or.us/**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

ORDINANCE NO. 2945

AN ORDINANCE APPROVING THE "VERDE VILLAGE DEVELOPMENT AGREEMENT," AN AGREEMENT BETWEEN THE CITY OF ASHLAND OREGON AND ASHLAND FLOWER SHOP AND GREENHOUSES, INC., PURSUANT TO ORS CHAPTER 94 AND THE ASHLAND MUNICIPAL CODE

Recitals:

The City of Ashland City Council after consideration of the staff report, the recommendation of the planning commission, and the comments and evidence presented during the public hearings on the requested Verde Village Development Agreement between the City of Ashland, Oregon and Ashland Flower Shop and Greenhouses, Inc., finds and determines that the proposed Verde Village Development Agreement is in the best interest of the public health, safety and welfare of the City of Ashland, meets a public need and provides a public benefit and that said Agreement is consistent with all applicable City of Ashland Laws and Ordinances; and

THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:

Annotated to show deletions and additions to the code sections being modified. Deletions are lined through and additions are <u>underlined</u> .
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Section 1. The above recitations are true and hereby incorporated herein by this reference.

Section 2. The City of Ashland declares the approval and adoption of the Verde Village Development Agreement (together with all Exhibits and documents attached thereto and incorporated therein) said Development Agreement being attached to this Ordinance as **Attachment 1** and made a part hereof by this reference.

Section 3. The adoption of this Ordinance declaring approval of the Verde Village Development Agreement, together with the conditional approval of the requested real property land exchange, and conditional approval of all land use applications contained in File # PA-2006--01663, (including but not limited to annexation, withdrawal from fire district 5, comprehensive plan map change, zoning map change, outline plan approval, two street exceptions, environmental constraints permit and tree removal permit) are fully supported by evidence contained in the whole record, including specifically the evidence and application materials supporting the Findings of Fact, Conclusions of Law and Order on PA-2006-01663, and the Findings of Fact, Conclusions of Law and Order on Real

Property Exchange, attached to this Ordinance as **Attachment 2** and **Attachment 3** respectively, and made a part hereof by this reference.

Section 4. The Ordinance shall be effective after execution of the Verde Village Development Agreement by both the City and the Ashland Flower Shop and Greenhouses, Inc., but not earlier than thirty (30) days after the second reading of this Ordinance and signature by the Mayor. Individual approvals shall be effective upon compliance with all terms and conditions as more fully set forth in the Development Agreement, and Findings of Fact, Conclusions of Law and Orders.

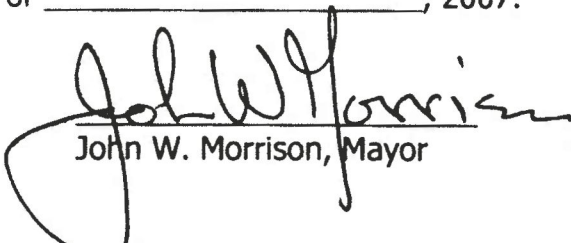
Section 5. Severability. If any section, provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other sections, provisions, clauses or paragraphs of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 6. Codification. Provisions of this Ordinance shall be incorporated in the Ashland Municipal Code and the word "ordinance" may be changed to "code", "article", "section", or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that attachments to the Ordinance, Whereas clauses and boilerplate provisions need not be codified.

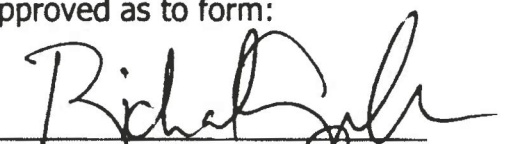
The foregoing ordinance was first read by title only in accordance with Article X, Section 2(C) of the City Charter on the 4 day of December, 2007, and duly PASSED and ADOPTED this 18 day of December, 2007.


Barbara Christensen, City Recorder

SIGNED and APPROVED this _____ day of _____, 2007.


John W. Morrison, Mayor

Approved as to form:


Richard Appicello, Interim City Attorney

**BEFORE THE CITY COUNCIL
CITY OF ASHLAND, JACKSON COUNTY, OREGON
December 18, 2007**

IN THE MATTER OF AN ORDINANCE DECLARING THE APPROVAL OF THE)
VERDE VILLAGE DEVELOPMENT AGREEMENT, INCLUDING A REAL)
PROPERTY EXCHANGE AND APPROVAL OF PLANNING ACTION #2006-01663,)
INCLUDING A REQUEST FOR ANNEXATION OF A TOTAL OF 11.64-ACRE SITE)
(IN THREE PARTS) LOCATED AT 87 W. NEVADA ST AND 811 HELMAN STREET)
REQUEST FOR A COMPREHENSIVE PLAN MAP AND ZONING MAP CHANGE)
JACKSON COUNTY ZONING RR-5 (RURAL RESIDENTIAL) TO R-1 (SINGLE-)
FAMILY RESIDENTIAL) AND R-1-3.5 (SUBURBAN RESIDENTIAL).)
THE PROPOSAL INCLUDES A REQUEST FOR OUTLINE PLAN APPROVAL)
UNDER THE PERFORMANCE STANDARDS OPTIONS CHAPTER 18.88 TO)
DEVELOP THE PROPERTY AS A 68-UNIT RESIDENTIAL DEVELOPMENT.)**FINDINGS OF FACT,**
EXCEPTIONS TO THE STREET STANDARDS ARE REQUESTED FOR)**CONCLUSIONS OF LAW**
NOT LOCATING A STREET ADJACENT TO NATURAL FEATURES AND)**AND ORDER**
TO USE A PRIVATE DRIVE TO ACCESS THE COTTAGES RATHER THAN)
THE REQUIRED PUBLIC STREET. A PHYSICAL CONSTRAINTS REVIEW)
PERMIT IS REQUESTED TO LOCATE A MULTI-USE PATH IN THE ASHLAND)
CREEK RIPARIAN PRESERVATION AREA. A TREE REMOVAL PERMIT IS)
REQUESTED TO REMOVE A 25-INCH DIAMETER AT BREAST HEIGHT OAK)
TREE. APPLICANT: Greg and Valri Williams)

I. NATURE OF PROCEEDINGS

This matter comes before the City Council for the City of Ashland for a *de novo* hearing on a request for an Ordinance declaring the approval of a Development Agreement, land exchange and associated planning actions as identified in PA #2006-01663.

Now, Therefore, the City Council of the City of Ashland makes the following Findings of Fact, Conclusions of Law and Order.

II. FINDINGS OF FACT:

1) Tax lots 700, 800 and 900 of 39 1E 04BB and tax lots 800 and 1100 of 39 1E 04B are located at 87 W. Nevada St. and 811 Helman St. Tax lot 200 of 39 1E 04BB is City of Ashland property and is commonly referred to as the Dog Park. Tax lots 700 and 800 of 39 1E 04BB are located outside of the Ashland city limits and are Jackson County zoning Rural Residential (RR-5). Tax lots 800 and 1100 of 39 1E 04B and tax lot 900 of 39 1E 04BB are partially located in the Ashland city limits. The portions of 39 1E 04B 800 and 1100 and tax lot 900 of 39 1E 04BB in the Ashland city limits are zoned Single Family Residential (R-1-5) and the portions of the same tax lots outside the Ashland city limits is Jackson County zoning Rural Residential (RR-5).

2) The applicant is requesting an Annexation for an 11.64 acre site located at 87 W. Nevada St. and 811 Helman St. The application includes a request for a Comprehensive Plan Map and Zoning Map change from Jackson County zoning RR-5 (Rural Residential) to City of Ashland zoning R-1-3.5 (Suburban Residential) and R-1 (Single-Family Residential). The application includes a request for Outline Plan approval for a 68-unit residential development under the Performance Standards Options Chapter 18.88. The application includes two requests for Exceptions to the Street Standards for not locating a street adjacent to natural features and to use a private drive to access the cottages rather than the required public street. A Physical Constraints Review Permit is requested to locate a multi-use path in the Ashland Creek Riparian Preservation Area. A Tree Removal Permit is requested to remove a 25-inch diameter at breast height Oak tree. The application includes a request for a land exchange with the City of Ashland. Site improvements are outlined on the plans on file at the Department of Community Development.

3) The criteria for an Annexation are described in 18.106.030 as follows:

- A. The land is within the City's Urban Growth Boundary.
- B. The proposed zoning for the annexed area is in conformance with the designation indicated on the Comprehensive Plan Map, and the project, if proposed concurrently with the annexation, is an allowed use within the proposed zoning.
- C. The land is currently contiguous with the present City limits.
- D. Adequate City facilities for the provision of water to the site as determined by the Public Works Department; the transport of sewage from the site to the waste water treatment plant as determined by the Public Works Department; the provision of electricity to the site as determined by the Electric Department; urban storm drainage as determined by the Public Works Department can and will be provided to and through the subject property. Unless the City has declared a moratorium based upon a shortage of water, sewer, or electricity, it is recognized that adequate capacity exists system-wide for these facilities.
- E. Adequate transportation can and will be provided to and through the subject property. For the purposes of this section "adequate transportation" for annexations consists of vehicular, bicycle, pedestrian and transit transportation meeting the following standards:
 - 1. For vehicular transportation a 20' wide paved access exists, or can and will be constructed, along the full frontage of the project site to the nearest fully improved collector or arterial street. All streets adjacent to the annexed area shall be improved, at a minimum, to a half-street standard with a minimum 20' driving surface. The City may, after assessing the impact of the development, require the full improvement of streets adjacent to the annexed area. All streets located within annexed areas shall be fully improved to city standards. Where future street dedications are indicated on the City's Street Dedication Map or required by the City, provisions shall be made for the dedication and improvement of these streets and included with the application for annexation.

2. For bicycle transportation safe and accessible bicycle facilities exist, or can and will be constructed. Should the annexation be adjacent to an arterial street, bike lanes shall be provided on or adjacent to the arterial street. Likely bicycle destinations from the project site shall be determined and safe and accessible bicycle facilities serving those destinations shall be indicated.
 3. For pedestrian transportation safe and accessible pedestrian facilities exist, or can and will be constructed. Full sidewalk improvements shall be provided on one side adjacent to the annexation for all streets adjacent to the proposed annexed area. Sidewalks shall be provided as required by ordinance on all streets within the annexed area. Where the project site is within a quarter of a mile of an existing sidewalk system, the sidewalks from the project site shall be constructed to extend and connect to the existing system. Likely pedestrian destinations from the project site shall be determined and the safe and accessible pedestrian facilities serving those destinations shall be indicated.
 4. For transit transportation, should transit service be available to the site, or be likely to be extended to the site in the future based on information from the local public transit provider, provisions shall be made for the construction of adequate transit facilities, such as bus shelters and bus turn-out lanes. All required transportation improvements shall be constructed and installed prior to the issuance of a certificate of occupancy for any new structures on the annexed property.
- F. For all residential annexations, a plan shall be provided demonstrating that the development of the entire property will ultimately occur at a minimum density of 90% of the base density for the zone, unless reductions in the total number of units is necessary to accommodate significant natural features, topography, access limitations, or similar physical constraints. The owner or owners of the property shall sign an agreement, to be recorded with the county clerk after approval of the annexation, ensuring that future development will occur in accord with the minimum density indicated in the development plan. For purposes of computing maximum density, portions of the annexed area containing undevelopable areas such as wetlands, floodplain corridor lands, or slopes greater than 35%, shall not be included.
- G. For all annexations with a density or potential density of four residential units or greater and involving residential zoned lands, or commercial, employment or industrial lands with a Residential Overlay (R-Overlay):
1. 35% of the base density to qualifying buyers or renters with incomes at or below 120% of median income; or
 2. 25% of the base density to qualifying buyers or renters with incomes at or below 100% of median income; or
 3. 20% of the base density to qualifying buyers or renters with incomes at or below 80% of median income; or

4. 15% of the base density to qualifying buyers or renters with incomes at or below 60% of median income; or
5. Title to a sufficient amount of buildable land for development is transferred to a non-profit (IRC 501(3)(c)) affordable housing developer or comparable Development Corporation for the purpose of complying with subsection 2 above. The land shall be located within the project and all needed public facilities shall be extended to the area or areas proposed for transfer. Ownership of the land shall be transferred to the affordable housing developer or Development Corporation prior to commencement of the project.

The total number of affordable units described in this section G shall be determined by rounding down fractional answers to the nearest whole unit. A deed restriction, or similar legal instrument, shall be used to guarantee compliance with affordable criteria for a period of not less than 60 years. Properties providing affordable units as part of the annexation process shall qualify for a maximum density bonus of 25 percent.

H. One or more of the following standards are met:

1. The proposed area for annexation is to be residentially zoned, and there is less than a five-year supply of vacant and redevelopable land in the proposed land use classification within the current city limits. "Redevelopable land" means land zoned for residential use on which development has already occurred but on which, due to present or expected market forces, there exists the likelihood that existing development will be converted to more intensive residential uses during the planning period. The five- year supply shall be determined from vacant and redevelopable land inventories and by the methodology for land need projections from the Housing Element of the Comprehensive Plan; or
2. The proposed lot or lots will be zoned E-1 or C-1 under the Comprehensive Plan, and that the applicant will obtain Site Review approval for an outright permitted use, or special permitted use concurrent with the annexation request; or
3. A current or probable public health hazard exists due to lack of full City sanitary sewer or water services; or
4. Existing development in the proposed annexation has inadequate water or sanitary sewer service; or the service will become inadequate within one year; or
5. The area proposed for annexation has existing City of Ashland water or sanitary sewer service extended, connected, and in use, and a signed "consent to annexation" agreement has been filed and accepted by the City of Ashland; or
6. The lot or lots proposed for annexation are an "island" completely surrounded by lands within the city limits.

4) The criteria for a Comprehensive Plan Map Change and Zone Change are described in 18.108.060.B as follows:

1. Zone changes, zoning map amendments and comprehensive plan map changes subject to the Type III procedure as described in subsection A of this section may be approved if in compliance with the comprehensive plan and the application demonstrates that:

- a. The change implements a public need, other than the provision of affordable housing, supported by the Comprehensive Plan; or
- b. A substantial change in circumstances has occurred since the existing zoning or Plan designation was proposed, necessitating the need to adjust to the changed circumstances; or
- c. Circumstances relating to the general public welfare exist that require such an action; or
- d. Proposed increases in residential zoning density resulting from a change from one zoning district to another zoning district, will provide one of the following:
 - 1. 35% of the base density to qualifying buyers or renters with incomes at or below 120% of median income; or
 - 2. 25% of the base density to qualifying buyers or renters with incomes at or below 100% of median income; or
 - 3. 20% of the base density to qualifying buyers or renters with incomes at or below 80% of median income; or
 - 4. 15% of the base density to qualifying buyers or renters with incomes at or below 60% of median income; or
 - 5. Title to a sufficient amount of buildable land for development is transferred to a non-profit (IRC 501(3)(c)) affordable housing developer or comparable Development Corporation for the purpose of complying with subsection 2 above. The land shall be located within the project and all needed public facilities shall be extended to the area or areas proposed for transfer. Ownership of the land shall be transferred to the affordable housing developer or Development Corporation prior to commencement of the project; or
- e. Increases in residential zoning density of four units or greater on commercial, employment or industrial zoned lands (i.e. Residential Overlay), will not negatively impact the City of Ashland's commercial and industrial land supply as required in the Comprehensive Plan, and will provide one of the following:
 - 1. 35% of the base density to qualifying buyers or renters with incomes at or below 120% of median income; or
 - 2. 25% of the base density to qualifying buyers or renters with incomes at or below 100% of median income; or
 - 3. 20% of the base density to qualifying buyers or renters with incomes at or below 80% of median income; or
 - 4. 15% of the base density to qualifying buyers or renters with incomes at or below 60% of median income; or
 - 5. Title to a sufficient amount of buildable land for development is transferred to a non-profit (IRC 501(3)(c)) affordable housing developer or comparable Development Corporation for the purpose of complying with

subsection 2 above. The land shall be located within the project and all needed public facilities shall be extended to the area or areas proposed for dedication. Ownership of the land and/or air space shall be transferred to the affordable housing developer or Development Corporation prior to commencement of the project.

The total number of affordable units described in sections D or E shall be determined by rounding down fractional answers to the nearest whole unit. A deed restriction, or similar legal instrument, shall be used to guarantee compliance with affordable criteria for a period of not less than 60 years.

Sections D and E do not apply to council initiated actions.

5) The criteria for Outline Plan approval are described in 18.88.030.A.4 as follows:

The Planning Commission shall approve the outline plan when it finds the following criteria have been met:

- a. That the development meets all applicable ordinance requirements of the City of Ashland.
- b. That adequate key City facilities can be provided including water, sewer, paved access to and through the development, electricity, urban storm drainage, police and fire protection and adequate transportation; and that the development will not cause a City facility to operate beyond capacity.
- c. That the existing and natural features of the land; such as wetlands, floodplain corridors, ponds, large trees, rock outcroppings, etc., have been identified in the plan of the development and significant features have been included in the open space, common areas, and unbuildable areas.
- d. That the development of the land will not prevent adjacent land from being developed for the uses shown in the Comprehensive Plan.
- e. That there are adequate provisions for the maintenance of open space and common areas, if required or provided, and that if developments are done in phases that the early phases have the same or higher ratio of amenities as proposed in the entire project.
- f. That the proposed density meets the base and bonus density standards established under this Chapter.
- g. The development complies with the Street Standards.

6) The criteria for an Exception to the Street Standards are described in 18.88.050.F as follows:

An exception to the Street Standards is not subject to the Variance requirements of section 18.100 and may be granted with respect to the Street Standards in 18.88.050 if all of the following circumstances are found to exist:

- A. There is demonstrable difficulty in meeting the specific requirements of this chapter due to a unique or unusual aspect of the site or proposed use of the site.
- B. The variance will result in equal or superior transportation facilities and connectivity;
- C. The variance is the minimum necessary to alleviate the difficulty; and
- D. The variance is consistent with the stated Purpose and Intent of the Performance Standards Options Chapter.

7) The criteria for a Physical Constraints Review Permit are described in 18.62.040.I as follows:

- 1. Through the application of the development standards of this chapter, the potential impacts to the property and nearby areas have been considered, and adverse impacts have been minimized.
- 2. That the applicant has considered the potential hazards that the development may create and implemented measures to mitigate the potential hazards caused by the development.
- 3. That the applicant has taken all reasonable steps to reduce the adverse impact on the environment. Irreversible actions shall be considered more seriously than reversible actions. The Staff Advisor or Planning Commission shall consider the existing development of the surrounding area, and the maximum permitted development permitted by the Land Use Ordinance.

8) The criteria for a Tree Removal Permit are described in 18.61.080 as follows:

An applicant for a Tree Removal-Staff Permit shall demonstrate that the following criteria are satisfied. The Staff Advisor may require an arborist's report to substantiate the criteria for a permit.

A. Hazard Tree: The Staff Advisor shall issue a tree removal permit for a hazard tree if the applicant demonstrates that a tree is a hazard and warrants removal.

- 1. A hazard tree is a tree that is physically damaged to the degree that it is clear that it is likely to fall and injure persons or property. A hazard tree may also include a tree that is located within public rights of way and is causing damage to existing public or private facilities or services and such facilities or services cannot be relocated or the damage alleviated. The applicant must demonstrate that the condition or location of the tree presents a clear public safety hazard or a foreseeable danger of property damage to an existing structure and such hazard or danger cannot reasonably be alleviated by treatment or pruning.

2. The City may require the applicant to mitigate for the removal of each hazard tree pursuant to AMC 18.61.084. Such mitigation requirements shall be a condition of approval of the permit.

B. Tree that is Not a Hazard: The City shall issue a tree removal permit for a tree that is not a hazard if the applicant demonstrates all of the following:

1. The tree is proposed for removal in order to permit the application to be consistent with other applicable Ashland Land Use Ordinance requirements and standards. (e.g. other applicable Site Design and Use Standards). The Staff Advisor may require the building footprint of the development to be staked to allow for accurate verification of the permit application; and

2. Removal of the tree will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks; and

3. Removal of the tree will not have a significant negative impact on the tree densities, sizes, canopies, and species diversity within 200 feet of the subject property.

The City shall grant an exception to this criterion when alternatives to the tree removal have been considered and no reasonable alternative exists to allow the property to be used as permitted in the zone. Nothing in this section shall require that the residential density be reduced below the permitted density allowed by the zone. In making this determination, the City may consider alternative site plans or placement of structures or alternate landscaping designs that would lessen the impact on trees, so long as the alternatives continue to comply with other provisions of the Ashland Land Use Ordinance.

4. The City shall require the applicant to mitigate for the removal of each tree granted approval pursuant to AMC 18.61.084. Such mitigation requirements shall be a condition of approval of the permit.

9) The City Council, following proper public notice, held public hearings on November 6, 2007 and November 20, 2007 at which time testimony was received and exhibits were presented. The City Council approved the application subject to conditions pertaining to the appropriate development of the site.

Now, Therefore, the City Council of the City of Ashland makes the following Findings of Fact, Conclusions of Law and Order.

III. FINDINGS APPLYING APPLICABLE CODE CRITERIA AND MINIMUM STANDARDS FOR ELIGIBILITY FOR ANNEXATION

3.1 The City Council finds that it has received all information necessary to make a decision based on the Staff Report, public hearing testimony and the exhibits received.

3.2 The City Council finds that the proposal to annex an 11.64 acre site located at 87 W. Nevada St. and 811 Helman St. meets all applicable criteria for an Annexation. The City Council

finds that the proposal to change the Ashland Comprehensive Plan Map from a Single-Family Residential designation to a Suburban Residential designation for the cottage and town home portion of the development meets all applicable criteria for a Comprehensive Plan change. The City Council finds the proposal to develop a 68-unit single-family residential subdivision meets all applicable criteria for an Outline Plan approval described in the Performance Standards Options Chapter 18.88. The City Council finds and that the proposed location the multi-use path adjacent to the natural feature rather than a public street, and the proposed use of a private drive to access the cottages rather than the required public street meet all applicable criteria for Exceptions to the Street Standards. The City Council finds the request to locate a multi-use path in the Ashland Creek Riparian Preservation Area meets all applicable criteria for a Physical Constraints Review Permit. The City Council finds the request to remove a 25-inch diameter at breast height Oak tree meets all applicable criteria for a Tree Removal Permit.

3.3 The City Council finds that the proposal to annex 11.64 acres meets all applicable criteria for an Annexation.

The site is comprised of five parcels and all of the parcels are located in the Ashland Urban Growth Boundary. In addition, the land is currently contiguous with the present city limits. The west part of the development is contiguous to the city limits on all sides. The east part of the development is contiguous to the city limits on the west and south.

The Annexation approval criteria require the proposed zoning for the annexed area to be in conformance with the designation indicated on the Comprehensive Plan Map. The entire site is designated as Single-Family Residential on the Ashland Comprehensive Plan Map. The proposal includes a Comprehensive Plan Map Change for approximately 42 percent of the site, for the cottage and town home portion of the development, to modify the Single-Family Residential (R-1) designation in the Ashland Comprehensive Plan Map to the Suburban Residential (R-1-3.5) designation. The request for the Comprehensive Plan Map Change is discussed in the following section. Therefore, the ability of the cottage and town home portion of the development to meet this criterion is dependent on the approval of the Comprehensive Plan Map Change. The remainder of the site, the single-family portion of the development, would remain in the Single-Family designation. Therefore, the single-family portion of the development is in conformance with the Comprehensive Plan Map, and satisfies this Annexation criterion.

The proposed uses included in the Annexation are required to be allowed uses in the zoning districts. Phase I, or the R-1-3.5 portion of the project to the west of Alameda Dr. and Canine Way includes single-family and multi-family dwellings. Single-family and multi-family dwellings are permitted uses in the R-1.3.5 zoning district. Phase II, or the R-1-5 portion of the project to the east of Alameda Dr. and Canine Way includes single-family dwellings and duplexes. Single-family dwellings, and duplexes on corner lots are permitted uses in the R-1 zoning district.

Adequate city facilities to provide water to the site, to transport sewage from the site, to carry storm drainage to and through the site and to provide electricity to the site are included in the preliminary utility plan and utility power plan. Eight-inch water lines will be installed to serve the development

with connections to the existing system in Nevada and Alameda streets. Two existing 12-inch and 18-inch sanitary sewer lines run through the property and are retained in Alameda Dr. Eight-inch lines will be installed in Sander Way, Canine Way and the cottage driveway to serve the development with connections to the existing lines. Storm drainage is directed to two locations. The southwesterly area of the project is directed to the City's existing demonstration wetlands located north of the project using standard underground pipes. The northeasterly area of the project is directed and treated through a combination of a pipe system and a newly built system of swales and sediment ponds to Ashland Creek. Electric utilities will run through the site from the existing system across Nevada St. The utility power plan delineates the location of new lines, equipment and street lights.

Adequate transportation can and will be provided to and through the subject property. A Traffic Impact Study was prepared for the project and has been included with the application. The study projects that the intersection of Helman, Nevada and Alameda, and the intersection of Oak and Nevada will continue to operate at acceptable levels with build out of the proposed project.

Outside of the Exceptions to the Street Standards requested in the application, the proposed streets meet the requirements of the Street Standards. The new streets are connected to Nevada Street which is a Neighborhood Collector. The Nevada St. frontage of the site will be improved with a parkrow and sidewalk. Sidewalks will be installed on all of the new streets running through the site. The new intersection of Helman St., Alameda Dr. and Nevada St. will be an important pedestrian crossing point for residents of the development and for visitors of the Dog Park and Bear Creek Greenway. Bicycle lanes are not required because none of the adjacent or new streets are classified arterials. The application findings state that transit service is not planned to the site.

The Annexation approval criteria require that where the project site is within a quarter of a mile of an existing sidewalk system, the sidewalks from the project site shall be constructed to extend and connect to the existing system. The Oak St. sidewalk system is approximately 450 feet away or less than 1/10 of a mile away from the project boundary. Sidewalks are in place on Oak St. from Nevada St. to the downtown. As also required by the Annexation approval criteria, the proposal includes the installation of a city standard parkrow and sidewalk on the Nevada St. frontage of the site. This will result in a gap in the sidewalk network on the north side of Nevada St. from the project site to Oak St. The City Council finds installation of the sidewalk on the north side of Nevada St. from the site to Oak St. is required to meet the Annexation approval criteria.

The "Revisions to Area and Density Tables" submittal dated July 20, 2007 included in the application includes a table demonstrating that the 90% density is achieved in each housing type and for the project as a whole.

The application satisfies the annexation affordable housing requirement by providing title to a sufficient amount of buildable land to a non-profit to develop 25% of the base density to buyers or renters at or below 100% of median income (base density of 58 units * .25 = 14.5 units). The application includes 15 affordable housing units in a town home format in the northwest portion of the site. The project description states that the land will be donated to Rogue Valley Community Development Corporation (RVCDC) to develop as 15 affordable units for the range of 80 to 100

percent of median income.

The western portion of the project is an island surrounded by lands within the city limits, and therefore satisfies Section 18.106.030.H.6 of the Annexation approval standards. This part of the annexation shall occur first and shall be reflected in an Ordinance approving the annexation and withdrawal from the Fire District.

The eastern portion of the project must also meet one of the six standards in Section 18.106.030.H. Currently, the eastern portion of the project is adjacent to and in the city limits on two sides, to the south and west. The application states that Phase I of the project will be development of the western portion of the project and the dedication of the property adjacent to Ashland Creek to the city for parks purposes. The second part of the annexation is an annexation of the dedicated City property pursuant to ALUO 18.106.040, including annexation to the boundaries of Ashland Creek as permitted by ORS 222. This annexation shall also be reflected in an Ordinance. Finally, as a result of the land dedication and annexation of the approximately 2.78 acres of new City property contiguous to the dog park and located along Ashland Creek in Phase I, the eastern portion of the property will be an island completely surrounded by lands within the city limits, and therefore "through the imposition of conditions", authorized by ALUO 18.106.030 (concerning timing) also complies with ALUO 18.106.030.H.6. This part of the annexation shall occur third and shall be reflected in an Ordinance approving the annexation and withdrawal from the Fire District.

3.4 The City Council finds that the request for an Ashland Comprehensive Plan Map change from a Single-Family Residential designation to a Suburban Residential designation for the cottage and town home portion of the development meets all applicable criteria for a Comprehensive Plan Map change.

The application includes a request for a Comprehensive Plan Map Change for approximately 4.35 acres or 42 percent of the site to modify the Single-Family Residential (R-1) designation in the Ashland Comprehensive Plan Map to the Suburban Residential (R-1-3.5) designation. The location of the Comprehensive Plan Map Change is for Phase I, or the cottage and town home portion of the project to the west of Alameda Dr. and Canine Way. The remainder of the site would remain in the Single-Family designation.

The approval criteria for a Comprehensive Plan Map Change require that the proposed change meet one of five factors and be in compliance with the Comprehensive Plan. The City Council finds that the change to the Suburban Residential Family designation for Phase I of the project (i.e. cottages and town homes) enables a minimum of 53 of the 68 units in the development to be constructed at an energy and water conserving performance standard. Additionally, the Suburban-Residential designation and subsequent R-1-3.5 zoning allows flexibility with the housing types and site design that is well-suited for the cottage and town home areas of the development. The cottage and town homes include attached dwellings that are grouped in clusters around open space. The flexibility in building placement and site design allows all of the proposed buildings to be located on an east-west axis for a true South building orientation so that the optimum solar efficiency is gained for both solar collection devices and for passive solar gain. Finally, the total number of units in the proposed development is comparable to the site

being developed as a Single-Family Residential development with R-1-5 zoning and the density bonuses permitted in Chapter 18.88 Performance Standard Options. For example, a project could be developed under the R-1-5 zoning and used a density bonus for conservation housing and affordable housing. In this case, the base density of the subject properties developed at a R-1-5 density is 46.67 units ($10.37 \text{ Ac} * 4.5 \text{ du/ac} = 46.67 \text{ units}$). A 40% density bonus with a 15% density bonus for conservation housing and a 25% bonus for affordable housing would allow 65 units ($46.67 \text{ units} * 1.40 = 65.34 \text{ units}$). In comparison, the proposed number of units in the development is 68 units.

The energy and water conservation housing provided by the development will address a public need for energy and water conservation in new homes that is supported by the Ashland Comprehensive Plan. The Ashland Comprehensive Plan includes the following goals and policies concerning energy and water conservation in Chapter XI: Energy.

The City shall strive, in every appropriate way, to reduce energy consumption within the community. Water conservation and air quality enhancement should also be promoted. Programs should emphasize greater efficiency in end use, rather than sacrifices in living standards. In general, policies that effect change through a combination of economic incentives and public education shall be considered more appropriate than policies involving strict legal requirements or mandates. The City shall give due attention to energy and resource conservation and air quality enhancement in all planning actions and all city activities.

Policy 3) New Housing

C) New homes and apartments are being built which do not utilize the latest technological advances in water consuming devices. The City shall use any legal means to insure that only water conserving equipment be installed in new construction. This should be done to accommodate growth with lesser incremental water demand and also to eliminate the need to return to these homes later to retrofit them with water conserving devices.

D) Passive solar design and sun tempering are very cost effective in new home construction. They shall be encourage in new housing development and individual houses.

E) The City shall address overall energy usage of new developments instead of just looking at houses on an individual bases. Areas to be considered could be transportation energy, recycling, composting, communal gardens, water usage and solar access protection.

G) Appliance efficiency shall be encouraged in new housing. This could be done through existing programs (i.e. Super Good Cents), by codes, by education or by incentive programs (i.e. density bonuses). Also of these options shall be considered in trying to achieve this goal.

Policy 8) Future Considerations

B) The future will be quite dynamic and volatile in the energy arena. The City needs to actively keep abreast of new advances in technology and embrace and encourage ones which can benefit water conservation, air quality, energy conservation or production.

The City Council finds that the energy and water conservation performance standard as outline in Exhibit K-3 of Book III: Narrative, July 8, 2007, states that the units in the development will be designed to use 50% less energy than a typical code compliant home. Energy efficiency features included in the project performance standard are solar orientation, roofs designed for solar hot water collection systems, passive solar heating, integrated thermal mass, high efficiency heat source, improved thermal envelope (insulation), heat recovery ventilation, fluorescent or compact fluorescent lighting, energy efficient appliances, photovoltaic electric systems and night flush cooling. In addition, the goal of the development is to use approximately 50% less potable water than a typical code compliant development. Water efficiency features included in the project performance standard are water efficient toilets, showerheads and faucets, rainwater capture, water and energy efficient washers, drought resistant plantings and water efficient irrigation.

In regards to transportation facilities and amendments to an acknowledged comprehensive plan, Oregon Administrative Rule (OAR) 660-012-00060 requires local governments to address amendments that would "significantly affect an existing or planned transportation facility." The original proposal was reviewed by the Oregon Department of Transportation (ODOT) in November 2006 and they commented that "ODOT Development Review is generally satisfied no adverse impacts to state facilities will occur as a result of the proposed land use amendments" (see page 494 of the record). The revised proposal was reviewed by ODOT in October 2007 and they had no comment (see page 17 of the record).

The City Council finds the proposed Ashland Comprehensive Plan Map change from a Single-Family Residential designation to a Suburban Residential designation for the cottage and town home portion of the development will not significantly affect an existing or planned transportation facility as defined in OAR 660-12-0060(1). As stated earlier, the total number of units in the proposed development is comparable to the site being developed under the current Comprehensive Plan designation of Single-Family Residential. Chapter 18.88 Performance Standards Options permits density bonuses for conservation housing, common open space, major recreational facilities and affordable housing. Using the density bonus provision, the subject property could be developed at a density close to the proposed 68 units under the current Single-Family Residential designation. In this case, the base density of the subject properties developed at a R-1-5 density is 46.67 units ($10.37 \text{ Ac} * 4.5 \text{ du/ac} = 46.67 \text{ units}$). A 40% density bonus with a 15% density bonus for conservation housing and a 25% bonus for affordable housing would allow 65 units ($46.67 \text{ units} * 1.40 = 65.34 \text{ units}$). As a result, three additional units result from the Comprehensive Plan Map change from the current Single-Family Residential designation to the proposed Suburban Residential Designation. Three units generate an average of thirty motor vehicle trips per day according to the ITE, Trip Generation Model, 7th addition. Thirty additional trips will not significantly affect the surrounding street network including Nevada St., Helman St.

and Oak St.

The following discussion addresses the requirements of OAR 660-12-0060(1) and *the OAR text is in italics*.

(1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. 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);

According to the Traffic Impact Study submitted with the application, the proposed development will generate 730 trips per day. While the Comprehensive Plan Map change results in a few more residential units as compared to development of the subject site under the current Comprehensive Plan Map designation, even considering the total traffic impact from the proposed development does not change the functional classification of the street network in the vicinity including Nevada St., Helman St. and Oak St.

The streets most likely to be impacted by motor vehicle traffic generated by the development are Nevada St., Helman St., and Oak St. Nevada St is identified in a Neighborhood Collector, and Helman St. and Oak St. are identified as Avenues in the Ashland Transportation System Plan.

The Transportation Element of the Ashland Comprehensive Plan, the Ashland Transportation System Plan and the Ashland Street Standards provide street classification guidelines. The function of a Neighborhood Collector such as Nevada St. is to distribute traffic from Boulevards or Avenues to neighborhood streets and vice versa, and the average traffic volumes of a Neighborhood Collector is 1,500 to 5,000 motor vehicle trips per day. The function of an Avenue such as Helman St. and Oak St. is to provide concentrated pedestrian, bicycle and motor vehicle access from Boulevards to neighborhoods and neighborhood activity centers and vice versa, and the average traffic volumes of an Avenue is 3,000 to 10,000 motor vehicle trips per day.

Traffic counts for Nevada St. are approximately 1,400 trips per day (2002), Helman St. are approximately 1,450 trips per day (2004) and for Oak St. are approximately 3,500 trips per day (2004). The Traffic Impact Study included in the application projects that approximately 47% of the peak PM hour traffic will use Helman St., 38% will go west on Nevada towards Oak St. and 15% of the traffic will go east on Nevada. All of the trips generated by the proposed by the development could be added to Nevada St., Helman St. or Oak St., and all of the streets would be well within the range of average traffic volumes identified in the Ashland street classification guidelines. Additionally, Nevada St. will continue to function as a Neighborhood Collector distributing traffic from the adjacent neighborhoods to the larger Avenue streets in the neighborhood including Helman St. and Oak St. Helman St. and Oak St. will continue to operate

as Avenue streets taking traffic to the Boulevards in the city limits such as N. Main St., Lithia Way and E. Main St.

(b) Change standards implementing a functional classification system; or

The proposed Comprehensive Plan Map change does not include a modification of the Ashland street classification guidelines.

(c) As measured at the end of the planning period identified in the adopted transportation system plan:

(A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

The Comprehensive Plan Map change results in the addition of a few more residential units as compared to development of the subject site under the current Comprehensive Plan Map designation. The approximately 30 additional motor vehicle trips resulting from three additional units allowed by the Comprehensive Plan Map change will be the type of travel and level of travel that is consistent with the functional classification of the surrounding street network including Nevada St., Helman St. and Oak St.

(B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or

The Ashland Transportation System Plan identifies the minimum acceptable performance standard for intersections as a LOS D. The Traffic Impact Study included in the application projects of LOS B for the intersections of Helman St./Alameda Dr./Nevada St. and of Nevada St. and Oak St. in 2010 with build out of the project and incorporating an annual average traffic growth rate.

(C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

The Ashland Transportation System Plan does not identify existing or planned transportation facilities in the vicinity that will have insufficient capacity at the end of the 20-year planning period of 2017.

3.5 The City Council finds the proposal to develop a 68-unit single-family residential subdivision meets all applicable criteria for an Outline Plan approval described in the Performance Standards Options Chapter 18.88.

The site is located at a northernmost section of the Ashland Urban Growth Boundary and there are no other undeveloped parcels located in the immediate vicinity. Therefore, the development of the subject site will not prevent adjacent land from being developed for the uses in the Comprehensive Plan.

Adequate key city facilities and utilities are available and can be provided, and were discussed previously under the Annexation section. Outside of the Exceptions to the Street Standards requested in the application, the proposed streets meet the requirements of the Street Standards.

A multi-use path for pedestrians and bicyclists is proposed in the Ashland Creek riparian corridor connecting Nevada St. to the north end of Canine Way. The proposed multi-use path weaves above and below the biologically determined riparian zone and the top of the uppermost slope grade break. A second multi-use path is proposed between units 64 and 65 in the northwest corner of the project. The path would connect Alameda Dr. directly to the Bear Creek Greenway path connection. The subject section of Ashland Creek Corridor is identified for open space in the Long Term Plan on the Parks, Trails and Open Space Program from 2002-2012. Additionally, the connection from Alameda Dr. to the Bear Creek Greenway path is also identified as a proposed greenway connection on the Parks, Trail and Open Space Program for 2002-2012.

A total of 127 off-street parking spaces and 68 on-street parking spaces are required for the proposed development of 68 units. The proposal meets the parking requirements. There are 114 off-street parking spaces proposed in a combination of garages and surface parking areas. The remaining required 13 off-street parking spaces are satisfied by 17 on-street spaces which is the equivalent to 13 off-street parking credits. There are 85 on-street spaces available which results in the 17 on-street spaces that can be used towards the off-street parking credits.

The proposed density of 68 units meets the base and bonus density standards of the Performance Standards Options Chapter 18.88. The base density of the property is 58.15 units. The project qualifies for a density bonus of 22% for the 15 affordable housing units that are provided ($15 \text{ affordable units} / 68 \text{ units} = .22$). Therefore the permitted density with the affordable housing density bonus is 70 units ($58.15 \text{ units} * 1.22 = 70.94 \text{ units}$).

With one exception, the proposed building setbacks meet the requirements of the Performance Standards Options Chapter 18.88. The front yards of the R-1-5 portion of the development meet the required 15 feet to the building and 20 feet to garages, and the setbacks along the perimeter of the development meet the required side and rear yards. The front yards of the R-1-3.5 portion of the development (cottages and town homes) do not meet the front yard requirements along Alameda Dr. and Canine Way. Fifteen feet is shown and 20 feet is required for front yards in the R-1-3.5 zoning district. As a result, a condition has been added that the buildings delineated in the Final Plan meet the required front yard for the R-1-3.5 zoning district.

The heights of the proposed buildings and minimum width between buildings appear to be met, and will be verified at the Final Plan and building permit submittals. It is not clear the application if the proposed units meet the Solar Setback requirements of Chapter 18.68 as is required in the Performance Standards Options Chapter 18.88.070.E. A condition has been added requiring the Final Plan application address the Solar Setback requirements.

The entire subdivision is required to provide a minimum of five percent of the lot area in open space for Outline Plan approval under the Performance Standards Options. A total of 21,688 square feet is required in open space, and the proposal includes 25,230 square feet identified as common open space areas. With the exception of the four standard single-family lots in the

subdivision, the units also have a private yard space identified for each unit. Since the common open space provides an additional 3,542 square feet in open space beyond the requirements, the application meets the open space acreage requirements.

The Outline Plan approval criteria require that there are adequate provisions for the maintenance of open space and common areas, and that if the development is done in phases that the early phases have the same or higher ratio of amenities as proposed in the entire project. The application findings state that the development will be done as three separate entities for the cottages, town homes and single-family/duplex groups. The proposal is to have a Planned Unit Development for each of the three groups and provide CC&R's detailing specific maintenance responsibilities for each community. Phase I will include the development of the cottages and town homes. Approximately 55% of the open space is included in Phase I. Therefore, the same or higher ratio of common open space would occur in the first phase of the project than in Phase II, and the approval criterion is satisfied.

The City Council finds the significant natural features of the site are the wetland in the northern portion of the site, two trees located outside of the riparian corridor, the Ashland Creek floodplain corridor and Ashland Creek riparian corridor. Three of the significant natural features – the wetland, floodplain corridor and riparian corridor - are located in a separate parcel that is proposed to be dedicated to the city for parks purposes as part of the land exchange. As a result, the City Council finds the wetland, floodplain corridor and riparian corridor are included in open space that is an unbuildable area. The two significant trees are a 19-inch diameter at breast height (dbh) Oregon Ash (tree 20 on the Tree Survey and Protection Plan, T-1, June 8, 2007) and a 39-inch dbh California Black Oak (tree 21 on T-1). The two significant trees are located near units 28 and 31. The City Council finds the trees are included in the common area of the subdivision, and the common area is unbuildable.

3.6 The City Council finds and that the proposed location of the multi-use path adjacent to the natural feature rather than a public street, and the proposed use of a private drive to access the cottages rather than the required public street meet all applicable criteria for an Exception to the Street Standards.

An Exception to the Street Standards is requested to locate a multi-use path in the Ashland Creek riparian corridor rather than locating a street adjacent to natural features as is required. The proposed multi-use path weaves above and below the biologically determined riparian zone and the uppermost top of the slope grade break.

The Preserving Natural Features of the Street Standards is as follows.

“Streets shall be located in a manner which preserves natural features to the greatest extent feasible. Whenever possible, street alignments shall follow natural contours and features so that visual and physical access to the natural feature is possible. Streets shall be situated between natural features, such as creeks, mature trees, drainages, open spaces and individual parcels in order to appropriately incorporate such significant neighborhood features.”

The City Council finds there are several unusual aspects of the site that make it difficult to locate a street adjacent to Ashland Creek. First, there are two existing main sanitary sewer lines that bisect the site (see Exhibit E-E, Preliminary Utility Plan). The application includes a Geotechnical Investigation (see Appendix D, Geotechnical Investigation) which identifies "relatively hard bedrock" comprised of sedimentary rock including siltstone, sandstone and conglomerate at shallow depths throughout the site. As a result, the application identifies the relocation of the main sanitary sewer lines as impractical. The new main street into the development from Nevada St., Alameda Dr., is located over the existing main sanitary sewer lines so the lines can be accessed and do not have to be moved. The second unusual aspect of the site is the location of Ashland Creek is approximately 200 feet east of the existing intersection of Helman St. and Nevada St. The project traffic engineer recommended that the main access to the site be located opposite of the Helman St. and Nevada St. intersection. Locating a secondary street access to the development from Nevada St. and adjacent to Ashland Creek poses safety issues in terms of the close proximity to the Helman St., Nevada St. and Alameda Dr. intersection. The final unusual aspect of the site is the relatively narrow area from the new Alameda Dr. to Ashland Creek. The City Council agrees the existing sanitary sewer lines, the need to align the new street with the existing intersection of Nevada and Helman streets and the narrowness of the area from the new Alameda Dr. to Ashland Creek are significant constraints in the development of the new street network that create a demonstrable difficulty in meeting the Street Standard on Preserving Natural Features.

The City Council finds that the multi-use path achieves a similar buffering effect as a street to the Ashland Creek riparian corridor. The multi-use path will provide visual and physical access to the riparian corridor. Although the multi-use path is largely located in the riparian corridor, it is situated at the western edge of the corridor, and will be located between the individual parcels and the riparian zone. The City Council finds that the multi-use path is an equally valuable transportation facility as compared to a city street because it provides a connection to the existing Bear Creek Greenway, thereby increasing the reach of this pedestrian and bicycle off-road transportation system. The City Council finds that by providing a transportation facility in the form of a multi-use path that the proposed exception is the minimum variance necessary to address the site constraints. The City Council finds that Exception to the Street Standards to use the proposed multi-use path rather than a public street to protect and provide access to the Ashland Creek riparian corridor uses the natural features of the landscape to the greatest advantage and will improve the quality of life of the residents of the development as outlined in the Purpose and Intent of Chapter 18.88 Performance Standards Options.

An Exception to the Street Standards is requested to use a private drive to access the 24 cottages rather than the required public street. The proposed private drive is a looped system that is approximately 300 feet in length and is connected at both ends to Alameda Dr. The proposed private drive is 20 feet in width, includes 26 head-in parking spaces and has a sidewalk system adjacent to the curb. In contrast, a public street would be required to be 22 feet in width with parkrows and sidewalks on both sides. Additionally, a 22-foot wide public street would allow parallel parking on one side of the street.

The City Council finds there is demonstrable difficulty in providing a public street and the

required off-street parking given the geographic layout of the corner of the property that is proposed for the cottages. A public street does not allow head-in parking adjacent to the street, and the proposal is to allow 26 head-in parking spaces adjacent to the private drive. In addition, by consolidating most of the cottage parking adjacent to the private drive, it allows more of the land area to be used as open space for the cottages rather than to be used for surface parking. In addition, fewer parallel parking spaces would fit on one side of the public street of the length proposed compared to the number of spaces that can be achieved with head-in parking. Residents and visitors will have no reason to travel on this short drive other than to visit the cottage development. As a result, motor vehicles, bicyclists and pedestrians traveling through the development will use Alameda Dr. In terms of sidewalks, pedestrians will have little reason to travel on the cottage drive unless visiting one of the cottages because Alameda Dr. provides a more direct route for moving through the neighborhood. The City Council concurs that a private street is a better fit for the cottage development than a public street because the cottages will function as a multi-family development with a shared surface parking area that is accessed by a driveway.

The City Council finds that Exception to the Street Standards to use a private drive to access the 24 cottages rather than the required public street will provide for more efficient land use as outlined in the Purpose and Intent of Chapter 18.88 Performance Standards Options.

3.7 The City Council finds the request to locate a multi-use path in the Ashland Creek Riparian Preservation Area meets all applicable criteria for a Physical Constraints Review Permit with the attached conditions of approval. The applicants propose to construct a multi-use path located in the Ashland Creek riparian corridor that would connect Nevada St. to the Bear Creek Greenway connection located in the Dog Park. The proposed multi-use path weaves above and below the biologically determined riparian zone and the uppermost top of the slope grade break. The multi-use path itself and the disturbance created by the construction is located largely inside of the biologically determined riparian zone.

The City Council finds that the multi-use path in the Ashland Creek riparian corridor itself is a benefit to the general community and that there should be a balance of the environmental resource protection issues and the parks and open space issues.

The City Council finds that the multi-use path is located along the upper edge of the riparian corridor in an effort to minimize adverse impacts to Ashland Creek and in an effort to retain the general topography of the riparian corridor. The proposed multi-use path, is except for the first 50 feet, is located outside of the 100-year flood plain for Ashland Creek. The section of path in the flood plain is at grade and will not create a potential flooding hazard.

The City Council finds the applicant has not addressed the reasonable steps necessary to reduce the adverse impact on the Ashland Creek riparian corridor including the irreversible actions caused by the construction of the multi-use path in the riparian corridor. A mitigation plan is required as a condition of approval at the Final Plan application. The mitigation plan requires an assessment of the Ashland Creek riparian corridor functions, an assessment of the impact of the

path construction on the resource functions and mitigation measures to offset those adverse impacts.

3.8 The City Council finds the request to remove a 25-inch diameter at breast height Oak tree meets all applicable criteria for a Tree Removal Permit.

One of the eight trees identified for removal requires a Tree Removal Permit due to the size of the tree being 18 inches diameter at breast height or greater. A Tree Removal Permit is requested to remove a 25-inch diameter at breast height Oak tree (tree 39, Tree Survey and Protection Plan, T-1, June 8, 2007). The tree is an Oregon White Oak and located between proposed units 33 and 34.

The Oregon White Oak identified for removal is described as stressed because of heavy infestation of mistletoe and as having numerous dead limbs through the crown. Additionally, the arborist predicts that the disruption to the root system due to nearby structures would cause further decline in the tree. The Tree Commission reviewed the proposed tree removal in November 2006, and recommended approval of the plan.

3.9 The proposal includes a real property exchange with the City of Ashland. The proposal is to exchange approximately 2.78 acres adjacent to Ashland Creek to the City for parks purposes in exchange for approximately 1.54 acres of the City Dog Park in the area of the access and to the south of the existing parking area. The Land Exchange is addressed in separate findings attached to the Ordinance approving the Development Agreement.

IV. ORDER

In sum, the City Council concludes that the requested Ordinance declaring the approval of a Development Agreement, and all associated planning actions contained in Planning Action 2006-01663, including the Development Agreement, Annexation, (in three parts), Comprehensive Plan Map and Zoning Map change from Jackson County zoning RR-5 (Rural Residential) to City of Ashland zoning R-1-3.5 (Suburban Residential) and R-1 (Single-Family Residential), request for Outline Plan approval for a 68-unit residential development under the Performance Standards Options Chapter 18.88, requests for Exception to the Street Standards for not locating a street adjacent to natural features and to use a private drive to access the cottages rather than the required public street, request for a Physical Constraints Review Permit to locate a multi-use path in the Ashland Creek Riparian Preservation Area, and request for a Tree Removal Permit to remove a 25-inch diameter at breast height Oak tree are consistent with or comply with applicable criterion and minimum standards in the City's comprehensive Plan and applicable land development code, including minimum requirements for annexation eligibility, and are supported by evidence contained within the whole record

Accordingly, based on the above Findings of Fact and Conclusions of Law, and based upon the evidence in the whole record, the City Council hereby declares approval of the Development Agreement and APPROVES Planning Action #2006-01663 subject to strict compliance with the conditions of approval, set forth herein as well as those requirements conditions and restrictions set forth in the accompanying Verde Village Development Agreement and Land Exchange Order. Further, if any one or more of the conditions below are found to be invalid, for any reason whatsoever, then Planning Action #2006-01663 is denied. The following are the conditions

and they are attached to the approval:

- 1) That all proposals of the applicant are conditions of approval unless otherwise modified here.
- 2) That Site Review approval shall be obtained for the cottages, town homes and duplexes prior to any site work, issuance of an excavation permit or issuance of a building permit.
- 3) That the applicants shall execute a document as consistent with ALUO 18.68.150 agreeing to participate in their fair share costs associated with a future Local Improvement District for improvements to Helman Street and to not remonstrate against such District prior to signature of the final subdivision survey plat. Nothing in this condition is intended to prohibit an owner/developer, their successors or assigns from exercising their rights to freedom of speech and expression by orally objecting or participating in the LID hearing or to take advantage of any protection afforded any party by city ordinances and resolutions.
- 4) That all easement for sewer, water, electric and streets shall be indicated on the Final Plan application as required by the City of Ashland.
- 5) The Final Plan application shall identify the sanitary sewer pressure line easement, and buildings shall not be located in the easement.
- 6) That the preliminary engineering for utility improvements shall be submitted with the Final Plan application. The utility plan shall include the location of connections to all public facilities in and adjacent to the development, including the locations of water lines and meter sizes, fire hydrants, sewer mains and services, manholes and clean-outs, storm drainage pipes and catch basins. Any required private or public utility easements shall be delineated on the utility plan.
- 7) That the preliminary engineering for storm drainage collection and treatment shall be submitted with the Final Plan application. The permanent maintenance of on and off site storm water bio-engineered swales and wetland systems must be addressed through the obligations of the homeowners' association and approved by the Public Works Department and Building Division.
- 8) That the applicants shall submit an electric distribution plan with the Final Plan application including load calculations and locations of all primary and secondary services including transformers, cabinets, meters and all other necessary equipment. This plan shall be reviewed and approved by the Electric Department prior to submission of the Final Plan application. Transformers and cabinets shall be located in areas least visible from streets, while considering the access needs of the Electric Department.
- 9) That the required pedestrian-scaled streetlight shall consist of the City of Ashland's residential streetlight standard, and shall be included in the utility plan and engineered construction drawings for the street improvements.
- 10) The preliminary engineering for proposed street improvements shall be provided at Final Plan

application. Street improvements shall be consistent with City of Ashland Street Standards. The sidewalk improvement on Nevada St. shall be a minimum of six feet in width in accordance with the Ashland Street Standards.

- 11) The preliminary engineering for the Final Plan application shall address the treatment of the pedestrian crossing at the new intersection of Helman St., Alameda Dr. and Nevada St. Pedestrian safety and refuge shall be addressed in the intersection design.
- 12) The Final Plan application shall include revised on-street parking placement so that parking spaces are not counted that are within 20 feet measured along the curb of any corner or intersection of an alley or street in accordance with 18.92.025.D.
- 13) The preliminary engineering shall include details for the multi-use path improvements. The multi-use paths shall be paved with concrete, asphalt or a comparable all-weather surfacing. Two to four foot wide gravel or planted strips are required on both sides of the multi-use paths in accordance with the Ashland Street Standards. Fencing or retaining walls shall be located two to four feet from the improved edges of the path to provide clear distance on both sides of the path for safe operation. The clear distance areas shall be graded to the same slope as the improved path to allow recovery room for pedestrians and bicyclists. The clear distance areas shall be limited to gravel or landscape materials, and vegetation in excess of six inches in height shall not be placed in the clear distance areas.
- 14) The preliminary engineering shall address the transition from Alameda Dr. to the multi-use path, from Canine Way to the multi-use path and from Nevada St. to the multi-use path. Specifically, the preliminary engineering shall address bicycle access from the street grade and provide sufficient turning radius for bicycle navigation.
- 15) The Final Plan application shall include a mitigation plan prepared by a riparian biologist or a natural resource professional with training and experience in biology, ecology or related fields for the impact of the construction of the multi-use path in the riparian corridor and to address the 10-foot wide riparian corridor buffer. The riparian corridor buffer is the setback between the new eastern property line adjacent to the Ashland Creek riparian corridor and the single family homes and yards for units 68, and 25 -39, and is delineated as common area in the application materials. Disturbed areas from the multi-use path construction shall be re-vegetated and an additional area restored and enhanced with local source native plant material including ground cover, shrubs and trees at a 1:1.5 ratio, erosion control material shall be applied (e.g. mulch, hay, jute-netting, or comparable) and temporary irrigation facilities installed. The mitigation plan shall include but not be limited to a statement of objectives, measurable standards of mitigation, an assessment of riparian corridor functions and values, a statement and detail plan of the location, elevation and hydrology of the mitigation area, a planting plan and schedule, a monitoring and maintenance plan, a contingency plan and performance guarantees. The applicants shall install the mitigation measures in the approved mitigation plan in conjunction with the multi-use path installation.
- 16) That the multi-use paths shall be constructed by the applicants as part of the required subdivision improvements.

- 17) That the Final Plan application shall demonstrate that the driveway curb cuts for units 45 and 46 are spaced at least 24-feet apart as measured between the outside edges of the apron wings of the driveway approaches in accordance with the Ashland Street Standards.
- 18) That the Final Plan application shall delineate vision clearance areas at the intersections of streets and alleys throughout the project in accordance with 18.92.070.D. Structures, signs and vegetation in excess of two and one-half feet in height shall not be placed in the vision clearance areas. Building envelopes shall be modified accordingly on the Final Plan submittals.
- 19) That the street names shall be reviewed and approved by Ashland Engineering for compliance with the City's resolution for street naming prior to submission of the Final Plan application.
- 20) That a size and species specific landscaping plan for the parkrows, common areas and open spaces shall be provided at the time of the Final Plan application.
- 21) That a draft copy of the CC&R's for the homeowners association(s) shall be provided at the time of Final Plan application. Lots 65 - 68 shall be included in a homeowners association and subject to all subdivision requirements. CC&R's shall describe responsibility for the maintenance of all common area and open space improvements, parkrows and street trees. CC&R's shall provide reciprocal easements for residents of the various homeowners associations (i.e. cottages, town homes and single-family residential) to access and use all of the project open spaces. CC&R's shall note that any deviation from the Tree Protection Plan must receive written approval from the City of Ashland Planning Department. That the CC&R's identify the units are which are subject to the City's Affordable Housing requirements and terms of affordability.
- 22) That the Final Plan application shall include lot coverage calculations in square footage and percentage for each development area (i.e. cottages, town homes and single-family/duplex areas). Any area other than landscaping such as structures, driveways, patios and pervious paving that does not allow normal water infiltration shall be included as lot coverage.
- 23) The buildings in the R-1-3.5 zoning district (cottages and town homes) shall meet the required front yard for the R-1-3.5 zoning district in the Final Plan application.
- 24) The width between buildings requirement of 18.88.070.D shall be met and identified in the Final Plan application.
- 25) That the Final Plan application shall demonstrate all new structures comply with the Solar Setback A, or that each home shall receive an equivalent certification by the project architects and mechanical engineers that the shadow height on southern facing exposures will not exceed that allowed under Solar Setback A in accordance with Chapter 18.70 of the Ashland Land Use Ordinance.
- 26) That 53 residential units in the subdivision, including the cottages, duplexes and single-family units, shall meet the application "Net Zero Energy" Performance Standard as outlined in Exhibit

K-3 of the Revised Outline Plan, Book III - Narrative revised October 24, 2007. The Final Plan application shall include systems for measuring and monitoring compliance of the development with the Performance Standard that is administered by the applicants and verified by the city.

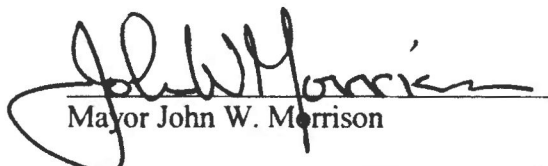
- 27) That a minimum of 53 of the residential units shall qualify in the City of Ashland Earth Advantage program. The applicants shall meet with the Ashland Conservation Division regarding eligible site activities prior to issuance of an excavation permit. The required Earth Advantage documentation shall be submitted with each building permit application.
- 28) That the hydrant placement and fire apparatus access requirements shall be met and addressed in the Final Plan application.
- 29) That the Final Plan application shall address mitigation for the removal of the 25-inch dbh Oak tree (tree 39 on Tree Survey and Protection Plan, T-1, June 8, 2007). Mitigation shall meet the requirements of Ashland Land Use Ordinance 18.61.084.
- 30) That a Verification Permit in accordance with 18.61.042.B shall be applied for and approved by the Ashland Planning Division prior to removal of the approved Oak tree (tree 39 on Tree Survey and Protection Plan, T-1, June 8, 2007) and prior to site work, storage of materials and/or the issuance of an excavation or building permit. The Verification Permit is to inspect the tree to be removed and the installation of the tree protection fencing. The tree protection for the trees to be preserved shall be installed according to the approved Tree Protection Plan prior to site work or storage of materials. Tree protection fencing shall be chain link fencing a minimum of six feet tall and installed in accordance with 18.61.200.B.
- 31) That a grading plan addressing preliminary finished grade (i.e. existing contours and proposed contours) and areas of cut and fill shall be submitted with the Final Plan application.
- 32) That public easements shall be identified on the final survey plat for all multi-use pathways. The project CC&R's shall note that the pathways are for public use and shall not be obstructed or through access restricted unless authorized by the City of Ashland and Ashland Parks Department.
- 33) That a deed restriction shall be recorded for the town home portion of the development specifying the land is required to be developed as affordable units in accordance with 18.06.030.G(5) and in conformance with the approval of PA 2006-01663. The deed restriction shall require the affordable units to remain affordable per Resolution 2006-13 for a 60 year period from initial occupancy. The town home area shall be serviced with all needed public facilities. The deed restricted land shall be dedicated to a non-profit (IRC 501(3)(c)) affordable housing developer or comparable Development Corporation with proof of the dedication and deed restriction being presented to the City of Ashland Housing Program Specialist prior to issuance of a building permit for the development of the first market rate residential unit.
- 34) That the applicant agrees to construct the project in accordance with the approved plan and City ordinances and waives the right to file a claim under Oregon Statewide Measure 37. The signed

waiver shall be submitted to the City of Ashland Legal Department for review and approval prior to signature of the survey plat or adoption of a resolution or ordinance formally annexing the property, whichever is first.

- 35) That a final boundary description and map shall be prepared in accordance with ORS 308.225. A registered land surveyor shall prepare the description and map. The boundaries shall be surveyed and monuments established as required by statute subsequent to Council approval of the proposed annexation.
- 36) That the land dedicated to the city for parks purposes adjacent to Ashland Creek shall be annexed prior to the annexation of the Phase II area of the project (single-family development).
- 37) That the Sander Way sidewalks shall provide public access either by being included in the street right-of-way or having a public pedestrian easement as required by the Ashland Engineering Division. The Final Plan submittals shall be modified accordingly.
- 38) That a minimum of five feet shall be maintained between the northern pavement edge of the multi-use path and the wetland. The Final Plan application shall address the full width of the path improvement including the base materials and methods to protect the wetland during construction (i.e. sediment fencing).
- 39) That a sidewalk meeting the requirements of the Ashland Street Standards shall be installed on the north side of Nevada St. from the eastern project boundary to the intersection of Nevada St. to Oak St. Sidewalk design shall be at the discretion of the Staff Advisor in order to address site constraints such as grade and right-of-way width. These sidewalk improvements shall be included in the preliminary street improvement plan included with the Final Plan application.
- 40) That the Final Plan submittal shall address the usability, including Verde Village community access, of the private open spaces. Usability shall be specifically addressed for the two small open spaces in the town home area (550 sf and 700 sf), one small open space in the cottage area (1,300 sf) and the one small open space adjacent to the alley 1,310 sf). Layout and landscaping of the open spaces as well as any improvements such as play equipment shall be detailed in the Final Plan submittals.
- 41) That adjustments to the width and location of the multi-use path in and adjacent to the Ashland Creek riparian corridor shall not affect the width or location of the 10-foot wide setback or riparian corridor buffer between the new eastern property line adjacent to the Ashland Creek riparian corridor and the single family homes and yards for units 68, and 25-39 that is delineated as common area in the application materials. The 10-foot wide setback or riparian corridor shall be located and sized as shown on plans S-1 dated June 8, 2007, S-4 dated June 8, 2007 and P-2 dated July 17 from the application.
- 42) That the land being dedicated for affordable housing shall be dedicated to the City of Ashland if it is not fully developed as affordable housing in accordance with the approval of PA 2006-01663 within five years of this approval.

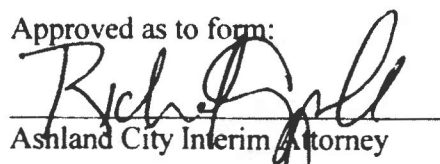
- 43) That the 15 affordable residential units in the subdivision (i.e. town homes) shall meet the application "Net Zero Energy" Performance Standard as outlined in Exhibit K-3 of the Revised Outline Plan, Book III – Narrative revised October 24, 2007, except that the photovoltaic (PV) system is not required to be installed in the affordable units. The affordable unit shall be constructed with the appropriate infrastructure (e.g. wiring, conduit, roof structure) so that a photovoltaic (PV) system can be installed at a later date.
- 44) That "Net Zero Energy" Performance Standard as outlined in Exhibit K-3 of the Revised Outline Plan, Book III-Narrative revised October 24, 2007 shall be revised as follows.
- That all dishwasher and washing machines shall qualify for the State of Oregon tax credit and be selected from the list of qualified machines maintained by the Oregon Department of Energy.
 - That each home that would be built to the standards encompassed in the applicant's Exhibit K shall be provided with a Photovoltaic (PV) system that is either 3kW's in size or produces 1.5 Kwh's/Sq. Ft./Yr. whichever is less, and also be provided with enough available south facing unshaded roof space to double the size of the PV system.
 - That the homes will meet a minimum requirement of R-49 attic insulation for flat ceilings.
 - That the passive solar homes shall meet the State of Oregon's minimum requirements for the passive solar home tax credit.

Ashland City Council Approval


Mayor John W. Morrison
Date _____

Signature authorized and approved by the full Council this 18 day of December, 2007

Approved as to form:


Ashland City Interim Attorney

Date: _____

**BEFORE THE CITY COUNCIL
CITY OF ASHLAND, JACKSON COUNTY, OREGON
December 18, 2007**

—

IN THE MATTER OF A REAL PROPERTY EXCHANGE	)	
SUPPORTIVE OF PLANNING ACTION # 2006-01663, A	)	FINDINGS OF FACT
EXCHANGE OF APPROXIMATELY 1.54 ACRES OF CITY	)	CONCLUSIONS OF LAW
PROPERTY FOR 2.78 ACRES OF PRIVATE PROPERTY	)	AND ORDER
PURSUANT TO ORS 271.310 – 271.350 AND PUBLIC HEARING)		
PROCEDURES IN ORS 221.725	)	
APPLICANT: Greg and Valri Williams	)	

—

I. NATURE OF PROCEEDINGS

This matter comes before the City Council for the City of Ashland for a public hearing concerning a real property exchange pursuant to statutory notice and hearing requirements of ORS 221.725.

On November 6, 2007 and November 20, 2007, the Ashland City Council, at the City Council Chambers at 1175 East Main Street conducted an advertised public hearing on a proposed real property exchange pursuant to ORS 271.310 – ORS 271.350.

The public hearing was conducted together with public hearing on an Ordinance declaring the approval of a proposed Verde Village Development Agreement, and several associated land use actions necessary for the development of the Verde Village project.

The nature of the land exchange, including appraisal and other evidence of market value were fully disclosed in the staff report and supporting documents entered into the record at the public hearing.

At such Public Hearing the City Council received written and oral testimony from interested parties on the question of the land exchange.

Based upon the evidence in the record, the City Council for the City of Ashland makes the following findings of fact and conclusions of law:

II. FINDINGS OF FACT

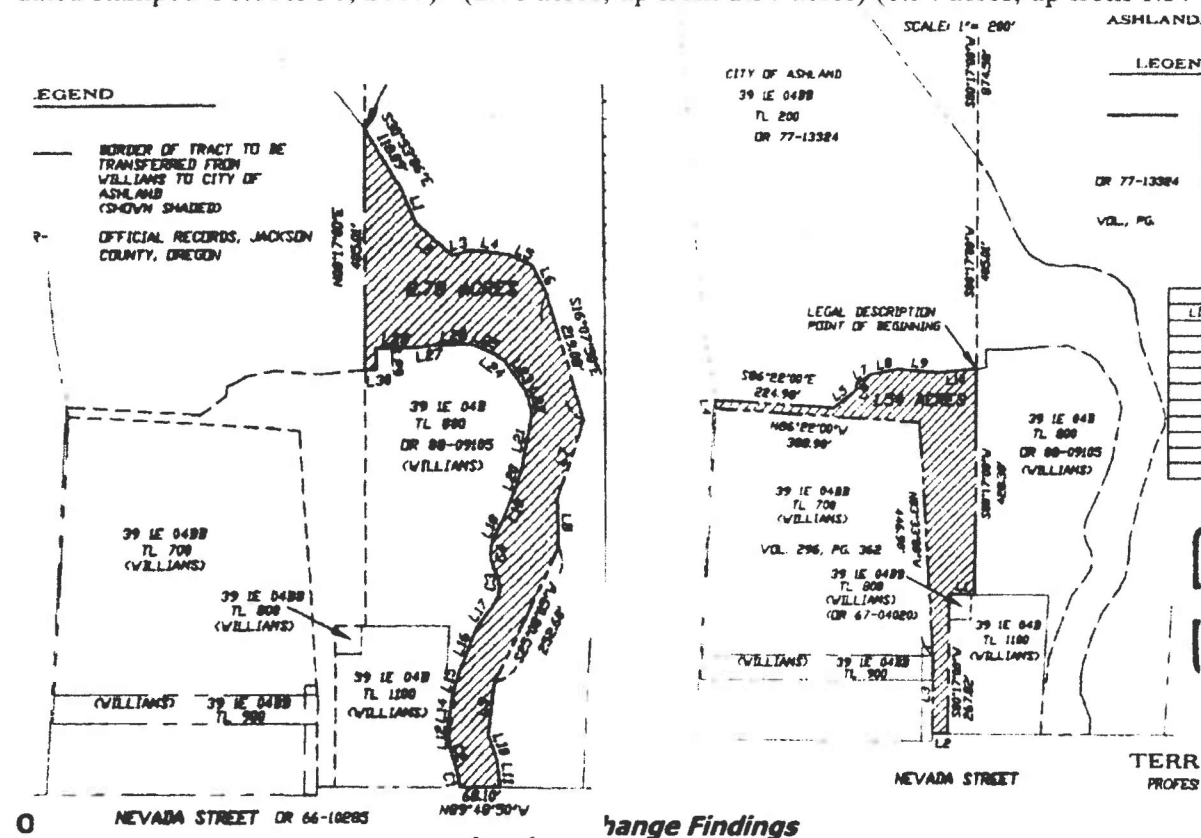
- 1) The Nature of Proceedings set forth above are true and correct and are incorporated herein by this reference.
 - 2) The City property subject to the real property exchange consists of approximately 1.54 acres of the 10 acre City –owned parcel known as the Ashland Dog Park (TL 200 39 1E 04BB). The specific area of exchange
- Ordinance Attachment 3 – Real Property Exchange Findings**

is the entrance road and lawn area associated with the entrance to the dog park. The exchange does not impact the parking lot or actual dog park itself. The exchanged City property will be incorporated into the Verde Village residential development, located generally at 87 W. Nevada St. and 811 Helman St. (Ashland Greenhouses). The legal description and drawings of the City property is more fully set forth in the record of this proceeding and incorporated herein by this reference.

3) The private property subject to the real property exchange consists of approximately 2.78 acres of property contiguous to the dog park and located along Ashland Creek. The owner of the property is Ashland Flower Shop and Greenhouses, Inc. (AFSG) (Greg and Valri Williams). This property appears on City's Parks, Trails and Open Space Master Plan Map (a part of City's Comprehensive Plan) as Long-Term Acquisition Area "10". The legal description and drawings of the AFSG property (a/k/a/ Williams Property) is more fully set forth in the record of this proceeding and incorporated herein by this reference. In addition to this real property, the City will receive as part of a Development Agreement for Verde Village, a new city standard public street entrance to the dog park and an additional 1300 lineal feet of Bear Creek Greenway Trail. These improvements are not included in the valuation of this exchange.

4) The approximately 2.78 acres of property received by the City will be used for public open space and passive recreation, including the greenway trail. The reasons stated for City Council consideration for the exchange include but are not limited to the added value to the City's Parks and Trails system.

5) The acreage for the land exchange as revised and updated based on an October 2007 survey is set forth in the revised Verde Village application materials in the record. (Exhibits N-1 and N-2 in Book III-Narrative, dated stamped October 30, 2007). (2.78 acres, up from 2.57 acres) (1.54 acres, up from 1.37 acres)



III. FINDINGS APPLYING APPLICABLE STATUTORY CRITERIA

- 1) The Council finds and determines that the relevant statutory criteria to find property eligible for a real property exchange involving City property are found in or referenced in ORS 271.310-ORS 271-350 as well as ORS 221.725.
- 2) The Council finds that it has received all information necessary to make a decision based on the Staff Report, public hearing testimony and the exhibits and evidence received.
- 3) The Council finds and determines that this proposal to exchange real property meets all applicable statutory minimum criteria for eligibility to exchange real property, as more fully set forth herein. Further the City Council finds and determines that the proposed disposition of real property in the real property exchange is deemed “**necessary or convenient**” to the City, and furthers the public interest as incorporated into and made part of the negotiated Development Agreement for Verde Village, approved by City Ordinance declaring adoption of the Development Agreement. This finding is supported by competent substantial evidence in the whole record as well as the detailed findings set forth herein, the detailed findings of the Ashland Planning Commission, as well as those submitted by the Applicant, and incorporated herein by this reference.

Minimum Criterion for Eligibility for Real Property Exchange

- 4) [ORS 271.310], [ORS 271.340] & [ORS 271.350]

ORS 271.310. Transfer or lease of real property owned or controlled by political subdivision; procedure in case of qualified title.

(1) Except as provided in subsection (2) of this section, whenever any political subdivision possesses or controls real property not needed for public use, or whenever the public interest may be furthered, a political subdivision may sell, exchange, convey or lease for any period not exceeding 99 years all or any part of their interest in the property to a governmental body or private individual or corporation. The consideration for the transfer or lease may be cash or real property, or both.

(3) Unless the governing body of a political subdivision determines under subsection (1) of this section that the public interest may be furthered, real property needed for public use by any political subdivision owning or controlling the property shall not be sold, exchanged, leased or conveyed under the authority of ORS 271.300 to 271.360, except that it may be exchanged for property which is of equal or superior useful value for public use. Any such property not immediately needed for public use may be leased if, in the discretion of the governing body having control of the property, it will not be needed for public use within the period of the lease.

ORS 271.340. Property valuation in exchange to be equal.
Ordinance Attachment 3 – Real Property Exchange Findings

When property is exchanged under the authority of ORS 271.310 to 271.330, the value of the real property accepted by the political subdivision in exchange for any of its property plus cash, if any, shall not be less than the value of the property relinquished.

ORS 271.350. Determining valuation of property in exchanges.

The value of the respective properties proposed to be exchanged shall be determined by the governing body of the political subdivision. The governing body shall cause it to be appraised by one or more competent and experienced appraisers. The compensation, if any, of the appraisers shall be borne equally by the respective owners of the property. In case the valuation shall not be mutually satisfactory to the respective owners it shall not be binding upon them.

The statutory requirements are summarized herein:

In order to sell, convey or exchange real property, ORS 271.310(1) (3) requires that the Council find either that the property is “not needed for public use” or “that the public interest may be furthered.” ORS 271.310(3) also requires that unless there is a finding the public interest may be furthered, if the property is needed for public use, that property may only be exchanged if the property received is of equal or superior useful value for public use. (also a requirement of Land and Water Conservation). ORS 271.340 clearly established that the monetary value of real property accepted by the City must not have a monetary value less than the value of the property relinquished. The valuation must be established by the City pursuant to ORS 271.350 based on appraisal.

Other approvals required:

County, State and Federal approval of the real property exchange is required. Because the City Property was acquired using Land and Water Conservation Funds, State and Federal Park agencies must approve the exchange. Because the County’s deed to the City reserved to the County a reversionary interest, it must be released by Resolution of the Board of Commissioners under ORS 271.335. Specifically, City’s deed to City’s Parcel (recorded as Doc # 77-13325) reflects that the original conveyance of the City’s Property from Jackson County to City is subject to City’s continued utilization of City Property “for public park and recreation purposes or ... [its maintenance] ... for the benefit of the public as a scenic and open space area. When said property is no longer so used, the interest of the grantee [City], or its assigns, shall automatically terminate and the property shall revert to the grantor (Jackson County).” Accordingly, as a condition of the real property exchange, the Jackson County’s Board of County Commissioners must release (by resolution) the reversionary interest. City can provide County with an identical or similar reversionary interest in the deed to the Williams Property being provided to City by AFSG pursuant to the exchange and Development Agreement. City and AFSG have agreed to cooperate in good faith to secure approval from Jackson County for said exchange of Jackson County’s reversionary interest, such that the same reversionary interest in favor of Jackson County will similarly burden the Williams Property upon transfer of the Williams Property to City pursuant to the real property exchange; and will no longer burden the City Property being transferred to AFSG pursuant to the real property exchange. Jackson County’s approval of the reversionary interest release or exchange concurrent with the actual real property transfer is a material term of this approval and Development Agreement. The Federal, State and County approvals must be addressed as conditions of approval, because the applications cannot be

fully processed until the City approves the exchange under ORS 271.310.

Pursuant to ORS 271.310, the City Council finds and determines that the **public interest will be furthered** by the exchange of the City Property previously and currently utilized as access to City's Dog Park in exchange for the Williams Property owned by AFSG. Verde Village Application Materials *Exhibit 1, Sub-Exhibit N-1 (Map)*. The Williams Property appears on City's Parks, Trails and Open Space Master Plan Map (a part of City's Comprehensive Plan) as Long-Term Acquisition Area "10". The real property exchange allows City to acquire a parcel of property (Williams Property) identified on City's Parks, Trails, and Open Space Master Plan's long term acquisition list since 2002. Acquisition by City of the Williams Parcel also provides City with the opportunity to extend City's multi-use path, which is part of the regional Bear Creek Greenway. The real property exchange also provides the public with additional scenic frontage along Ashland Creek. Further, acquisition of the Williams Property provides City with an opportunity to benefit the community by preserving and enhancing the riparian area along Ashland Creek. In contrast, the City Parcel to be exchanged herein currently serves as a sub-standard access for vehicles, pedestrians, and cyclists from West Nevada Street to City's Dog Park and the Bear Creek Greenway multi-use "bike path". When the Verde Village Project is completed under the Verde Village Development Agreement, access to City's Dog Park will be enhanced via fully improved public streets, approved and constructed to serve the Verde Village Project, while also serving as a safer and more efficient access to the City's Dog Park and the Bear Creek Greenway "bike path". The Bear Creek Greenway "bike path" connects the City of Ashland with the City of Central Point, and promotes the goal of "modal equity", in a time when the financial and environmental costs associated with petroleum resource dependence are under enhanced scrutiny. The real property exchange is also described in Exhibit "1"[Outline Plan Narrative] (at page 6) and Sub-Exhibits M and N-1 appended thereto, incorporated herein by this reference.

Because the City Property to be exchanged currently includes access to the City Dog Park, the City cannot find that the property is not necessary for public use.

Concerning the monetary value of the exchange, the City Council finds and determines that consistent with ORS 271.350, on January 2, 2007, the City's Council after considering public comment, authorized AFSG to proceed with its land use application including City's Property, and concurrently directed its Staff to commission the necessary appraisal reports, without reviewing or considering the merits of the Verde Village Project application, in compliance with law. Thereafter, City commissioned appraisals reports to determine the fair market value of the respective real property proposed for exchange from a qualified licensed appraiser with experience in similar real estate appraisals under the strenuous "Yellow Book" guidelines required by the National Parks Service. After considering a number of licensed appraisers, City engaged Candence E. Robinson, State Certified Appraiser # C000582, Vesta Real Estate Services, Inc., Salem, Oregon. *Exhibit 2-44 and Exhibit 3-44*.

In June 2007, the City of Ashland received Appraisal Reports reflecting the respective value of the Williams Property and City's Dog Park Property. See Verde Village application materials *Exhibit 2 and Exhibit 3 as revised*. These Appraisal Reports were commissioned by City, with the appraisal cost borne equally by City and AGFS. Corrections to the appraisals were made after input from interested citizens were taken into account. The Council finds and determines that appraiser was competent and experienced. The respective Appraisal Reports, as revised, for the Williams Property and the City Property are included in the record and incorporated herein by reference. The Appraisal Reports and supporting documents were made available to the public prior to the public hearings before both the Planning Commission and City Council

The City Council is charged with the determination of the value of the exchanged properties pursuant to ORS 271.350. Based upon the revised appraisal documents, the City Council finds and determines that the City Property to be conveyed to AFSG in connection with the real property exchange authorized by the Verde Village Development Agreement is **less than** the monetary value of the Williams Property to be conveyed to the City in connection with said real property exchange, as reflected in attached Exhibit 2 and Exhibit 3 in the record, incorporated herein by reference. Pursuant to ORS 271.310, ORS 271.340, and ORS 271.350, City finds that the value of the Williams Property to be exchanged is \$284,000. City further finds that the value of the City Property to be exchanged is \$134,000. City finds that the difference in value between the two parcels being exchanged is \$150,000 in favor of City, based on the analysis and conclusions contained in the Appraisal Reports commissioned by City, contained in the record and incorporated herein by this reference. AFSG agrees to “gift” the \$150,000 difference in value to City. The proposed use of the property received by the City shall be parkland, recreation, open space, or similar uses consistent with Jackson County deed restrictions.

Concerning the requirement that the property received have **equal or superior useful value for public use** (in terms of FLWCF equal or superior public recreational value), the City’s Parks and Recreation Commission unanimously endorsed the real property exchange, conceptually, on October 24, 2006 following review of the materials and documents presented. The record of the Parks Commission action is included in the record of this proceeding and incorporated herein by this reference. *See. E.g. Verde Village Application Materials Exhibit 1, Sub-Exhibit M, (Park Commission Endorsement)*. Subsequently, on June 25, 2007, City’s Parks and Recreation Commission again unanimously confirmed their support of the real property exchange, after reviewing revised materials. *See Verde Village Materials Exhibit 1, Sub-Exhibit N-1; Exhibit 2; Exhibit 3, and related submittals.*

IV. ORDER

In sum, the City Council finds and determines that the real property exchange is necessary or convenient, that the exchange furthers the public interest, that the exchange will be for property that is of equal or superior useful value for public use, including recreational use, and that the monetary value of the real property accepted is not less than the monetary value of the property relinquished.

Accordingly, based on the above Findings of Fact and Conclusions of Law, and based upon the evidence in the whole record, the City Council hereby APPROVES as part of the negotiated Verde Village Development Agreement approved by Ordinance, the real property exchange described herein and in the record of Planning Action #2006-1663, subject to compliance with the conditions of approval, set forth herein. The following are the conditions and they are attached to the approval:

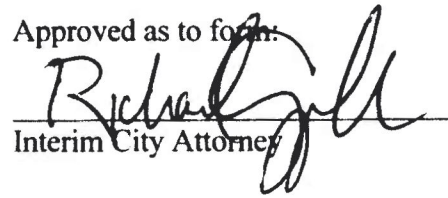
- The real property exchange is subject to County, State and Federal approval of the real property exchange. Receipt of written evidence of such approvals in appropriate legal form triggers the exchange under the terms and conditions of the Development Agreement. City shall record a document restricting use of the exchange parcel for recreational use in accordance with County approval of release on the City property.
-
- The real property exchange is subject to all applicable conditions and requirements of the Development Agreement and associated land use approvals for the Verde Village project.

Ashland City Council Approval


Mayor John W. Morrison

Signature authorized and approved by the full Council this 18 day of December, 2007

Approved as to form:


Interim City Attorney

Date: 12-17-07

VERDE VILLAGE A Sustainable Residential Development

Tax Lots 700, 800 and 900, Assessor Map 39-1E-488
Tax Lots 800 and 1100, Assessor Map 39-1E-48

Owner/Developer:
Greg and Vairi Williams
Bob and Lynn Mayers

Planning:
Alex Forrester
Forrester and Forrester
545 A Street Suite 1
Ashland, Oregon 97520
(541) 488-7633

Kerry KenCalm
KenCalm Sager L.A.
545 A Street
Ashland, Oregon 97520
(541) 488-3184

Architect:
Jan Fillingim, AIA
Galen Ohmart, AIA
Gene Johnson, PE
SOLARC Architecture and Engineering Inc.
233 West 12th Avenue
Eugene, Oregon 97401
(541) 348-0968

Landscape Architect:
Kerry KenCalm, ASLA
KenCalm Sager Landscape Architects Inc.
545 A Street
Ashland, Oregon 97520
(541) 488-3184

Civil Engineer:
Michael Thornton, PE
Thornton Engineering
1236 Oak Drive, Suite 1
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University of Oregon, 5250 U of O
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Sheet Index:
Cover Sheet - Concept Plan
S-1 Site Plan
S-2 Existing Site Conditions
S-3 Bike Path Grading Plan
S-4 Riparian Definition Plan
T-1 Tree Protection and Removal Plan

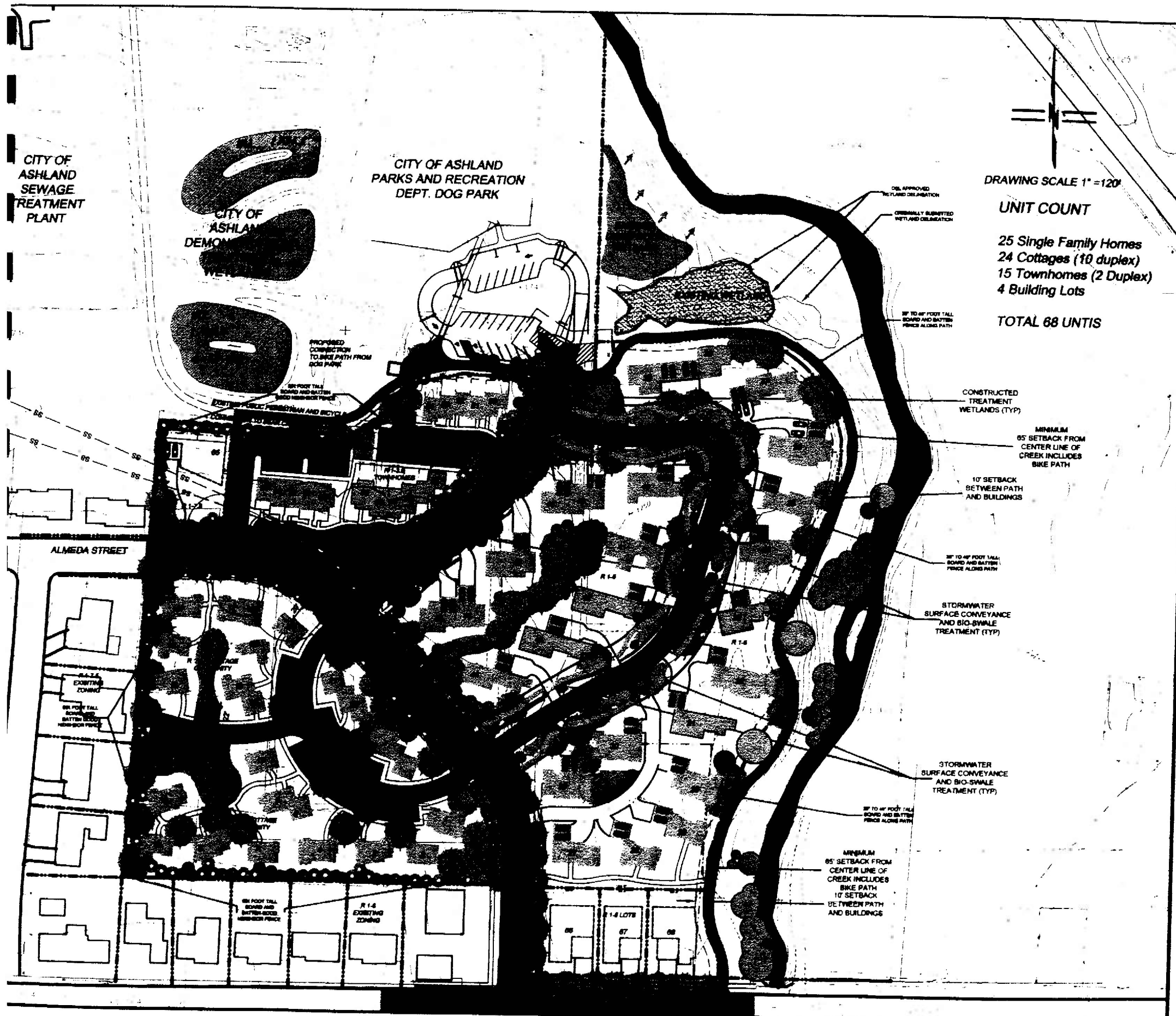
Civil Engineering Plans
Sheet 1 - Preliminary Title Sheet
Sheet 2 - Preliminary Utility Plan
Sheet 3 - Preliminary Grading Plan

DRAWING SCALE 1" = 120'

UNIT COUNT

25 Single Family Homes
24 Cottages (10 duplex)
15 Townhomes (2 Duplex)
4 Building Lots

TOTAL 68 UNITS



FORRESTER & FORRESTER

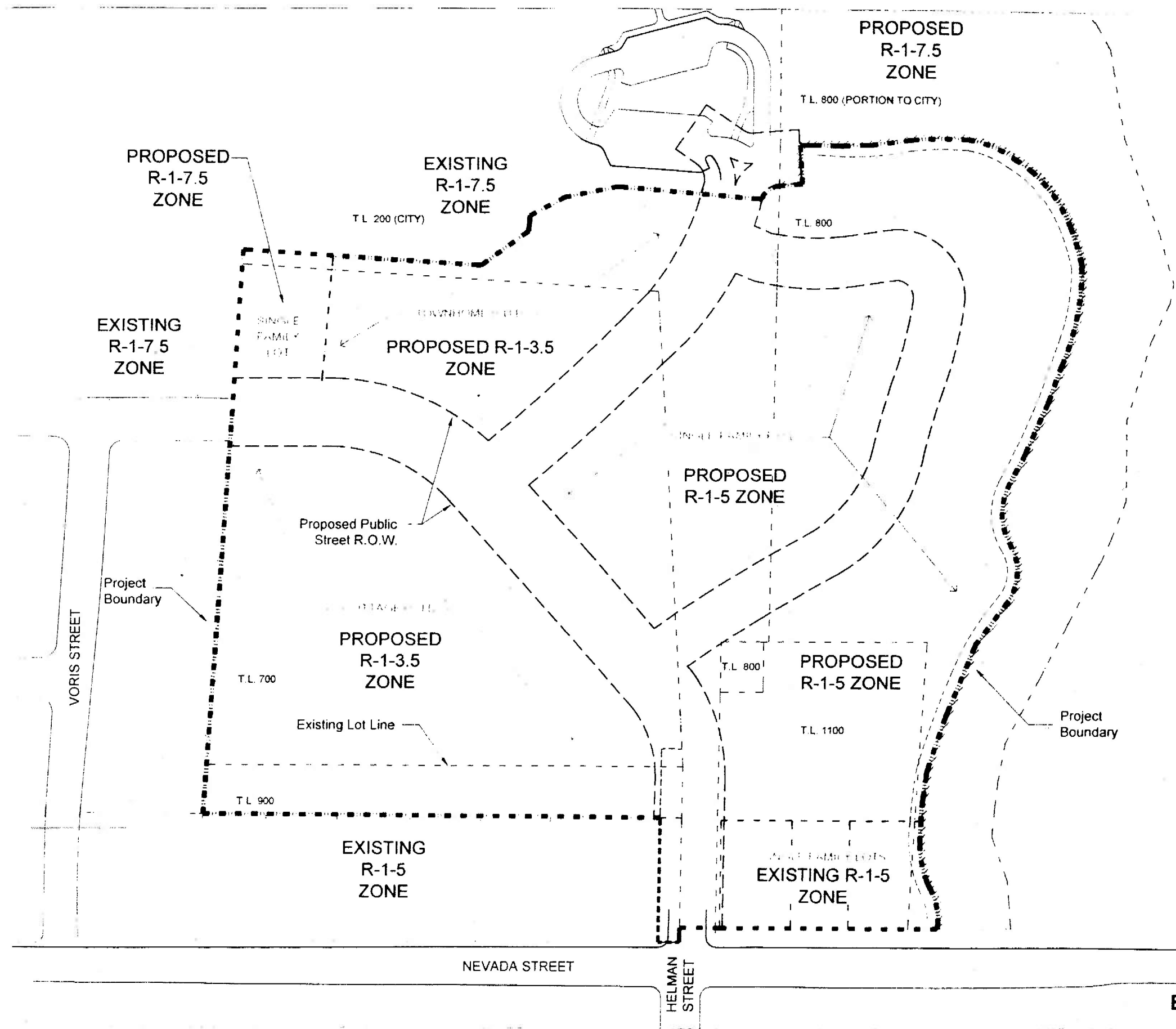
Sustainable Design & Development
Community & Land Use Planning
545 A Street
Ashland, Oregon 97520
Tel: (541) 488-7633 Fax: (541) 552-9512



VERDE VILLAGE A Sustainable Residential Development

October 18, 2007

COVER



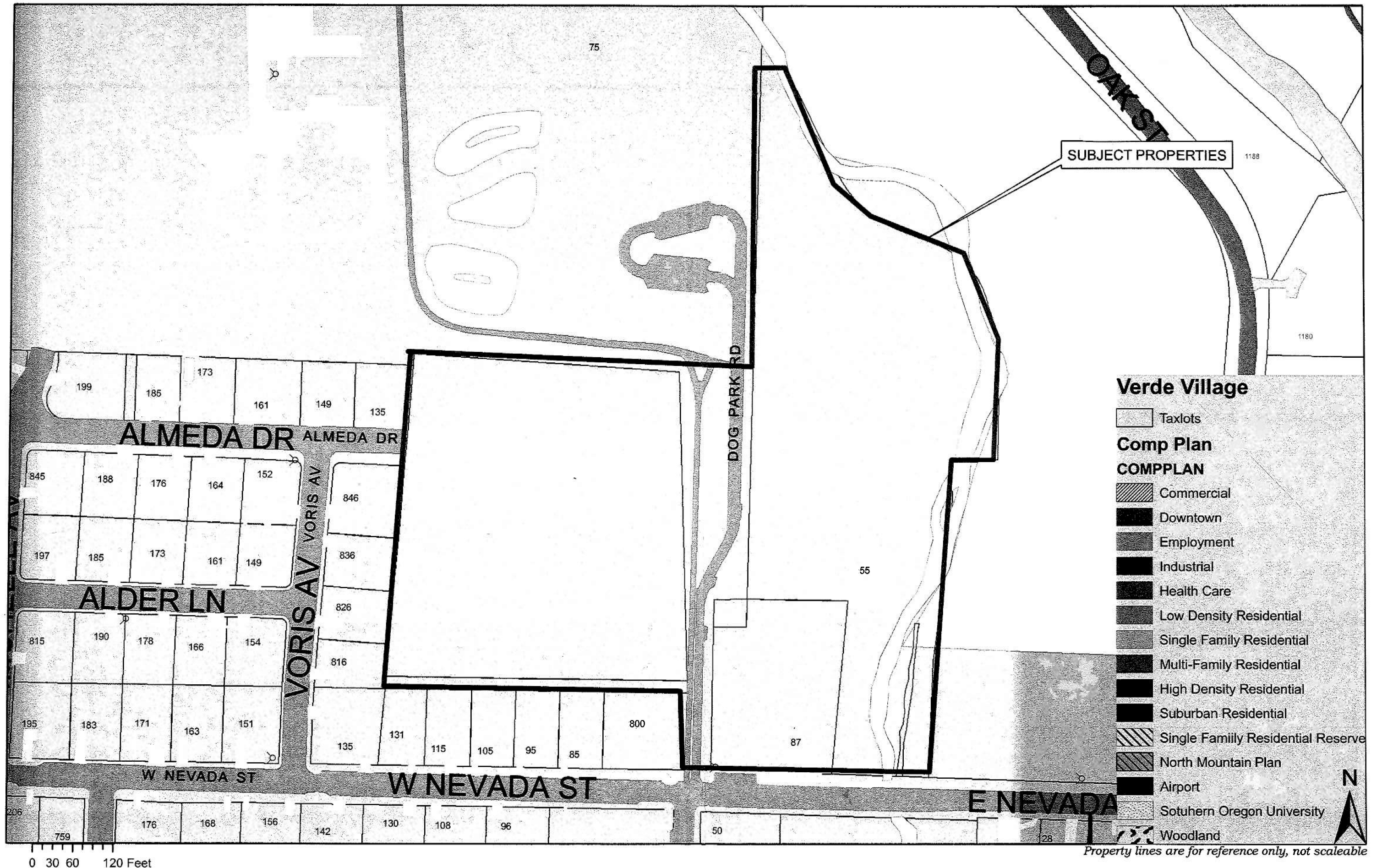
EXISTING / PROPOSED ZONING

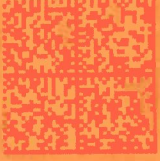
545 'A' STREET, SUITE 3
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KenCairn
Sager
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Attn: Plan Amendment Specialist

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