AGENDA
Aurora Planning Commission Meeting
Tuesday, September 6, 2016, at 7:00 P.M.
City Council Chambers, Aurora City Hall
21420 Main Street NE, Aurora, OR 97002

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1. **CALL TO ORDER OF THE AURORA PLANNING COMMISSION MEETING**

2. **CITY RECORDER DOES ROLL CALL**

3. **CONSENT AGENDA**
   a) Planning Commission – July, 2016
   b) City Council Minutes – July, 2016
   c) Historic Review Board Meeting Minutes – July, 2016

4. **CORRESPONDENCE –**
   a) UGB Training Opportunity how the newly adopted population forecasting administrative rules could affect our city.
   b) Planning Commissioner Training 101.

5. **VISITORS**

   Anyone wishing to address the Aurora Planning Commission concerning items not already on the meeting agenda may do so in this section. No decision or action will be made, but the Aurora Planning Commission could look into the matter and provide some response in the future.

6. **PUBLIC HEARING**

   a) Discussion and or Action on Site Development Review Application for Aurora Historical Society New Building SDR-16-01.

7. **NEW BUSINESS**

   a) Discussion and or Action on Code Revisions List.

8. **OLD BUSINESS**

   a) Discussion Regarding Zoning Practices for Tiny Houses.
   b) Discussion Regarding additional information from FEMA Notice of Federal Land Use Change for Biological Opinion

9. Commission Action/Discussion

a) City Planning Activity (In Your Packets) Status of Development Projects within the City.

10. ADJOURN

Minutes
Aurora Planning Commission Meeting
Tuesday, July 5, 2016, at 7:00 P.M.
City Council Chambers, Aurora City Hall
21420 Main Street NE, Aurora, OR 97002

STAFF PRESENT Kelly Richardson, City Recorder
Renata Wakeley, City Planner

STAFF ABSENT:

VISITORS PRESENT: Tom Heitmanek, Aurora
J Guy, Aurora
Max Miller
Marilyn Weik, Aurora
Mathew Anderson, Aurora
Rick Schaefer, Aurora
Nathan Ellitot, Milwaukie
John Smets, Aurora
Larry Fritzie
Mary Hellake, Aurora

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1. **CALL TO ORDER OF THE CITY COUNCIL MEETING**

   Meeting was called to order by Chairman Schaefer at 7:01 pm

2. **CITY RECORDER DOES ROLL CALL**
   Chair Joseph Schaefer - Present
   Commissioner Craig McNamara- Absent
   Commissioner Bud Fawcett - Present
   Commissioner Jonathan Gibson - Present
   Commissioner Mercedes Rhoden-Feely - Present
   Commissioner Tara Weidman - Absent
   Commissioner Open

3. **CONSENT AGENDA**
   a) Planning Commission Minutes – June, 2016
   b) City Council Meeting Minutes – May, 2016
   c) Historic Review Board Minutes – May, 2016

   Motion to approve the consent agenda as presented was made by Commissioner Gibson and is seconded by Commissioner Fawcett. Motion approved by all.

4. **CORRESPONDENCE –**

a) NA

5. **VISITORS**

Anyone wishing to address the Aurora Planning Commission concerning items not already on the meeting agenda may do so in this section. No decision or action will be made, but the Aurora Planning Commission could look into the matter and provide some response in the future.

No one Speaks at this time.

6. **PUBLIC HEARING, Opens at 7:06 PM**

a) Discussion and or Action on CUP-2016-01 Building B 14643 Ottaway Rd. No ex-parte contact is declared by any of the Commissioners.

CITY OF AURORA
PLANNING COMMISSION

STAFF REPORT:	Conditional Use Permit 2016-01 [CUP-16-01]
DATE:	June 28, 2016 (for the July 5th Planning Commission meeting)

APPLICANT:	Fortune Farms, Inc., c/o Todd Boren 220 NW 8th Ave. 1st Floor, Portland OR 97209
OWNER:	Stems Property LLC, c/o Bob Smets P.O. Box 560, Aurora OR 97002
REQUEST:	Conditional Use Permit approval for a marijuana grow site and processing site on the subject property for 'Building B' only, measuring approx. 6,000 square feet in size.
SITE LOCATION:	Map 041.W.13B Tax Lot 1700, commonly known as 14633 Ottaway Road NE, Aurora, OR 97002
SITE SIZE:	72,310 square feet, or approx. 1.66 acres
DESIGNATION:	Zoning: Industrial (I)
CRITERIA:	Aurora Municipal Code (AMC) Chapters 16.16 Industrial and 16.60 Conditional Uses
ENCLOSURES:	Exhibit A: Assessor Map Exhibit B: Applicant's Variance Application Exhibit C: Request for Comments Responses Exhibit D: Structural permit approval for storage facility only

I. REQUEST

Conditional Use Permit approval for a marijuana grow site and processing site on the subject property for 'Building B' only, measuring approx. 6,000 square feet in size.

II. PROCEDURE

Conditional Uses are processed as Quasi-Judicial Decisions. Quasi-Judicial Decisions are conducted as stated in Chapter 16.76 of the AMC. Section 16.60 provides the criteria for processing Conditional Uses.

The application was received and fees paid on March 31, 2016. The application was initially determined incomplete by staff but the applicant submitted the additional information required on May 11, 2016 and the application was determined complete. Notice was mailed to property owners within 200 feet of the subject property on June 8, 2016. Notice of the Planning Commission hearing was published in the Canby Herald on June 15, 2016 (at least 10 days prior) in compliance with AMC 16.76. The City has until **September 8, 2016**, or 120 days from acceptance of the application to approve, modify and approve, or deny this proposal.

III. APPEAL

Appeals are governed by AMC 16.76.260. An appeal of the Commission's decision shall be made, in writing, to the City Council within 15 days of the Planning Commission's final written decision.

IV. CRITERIA AND FINDINGS

The applicable review criteria for Conditional Use Permits are found in AMC Chapter 16.60-Conditional Uses.

16.60 Conditional Uses

A. The planning commission may approve a conditional use permit only when the applicant has shown that all of the following conditions exist:

1. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography and natural features;

FINDING: The subject property is a flat site measuring approx. 72,310 square feet. The site has an existing flag pole connection to Ottaway Road NE on the southern property line. The subject property is zoned Industrial with Industrial zoned property to the north and west and a mix of Industrial and Commercially zoned property to the south and east. The site includes three storage buildings (see Exhibit D) which were approved for use as storage facilities related to the property/business to the west under the same ownership. No other structural, electrical, or plumbing permits have been approved or issued by the City of Aurora for the storage buildings. Staff finds the site meets the size, shape, and topography for Industrial uses as zoned in the AMC.

2. All required public facilities have adequate capacity to serve the proposal and are improved to the standards in Chapter 16.34;

FINDING: Request for Comments were submitted to and are included under Exhibit C. AMC section 16.34 addresses the following criteria:

Where public improvements are required, all public works facilities shall be designed to the City of Aurora Public Works Construction Standards (PWCS) plus the requirements of the Aurora Municipal Code (AMC). Where the PWCS are silent, the Marion County Public Works Standards shall apply, followed by the Oregon APWA/ODOT Standards.

Streets (16.34.030-060)

The subject property fronts/accesses Ottaway Rd NE via the southern property line and has 49 feet of frontage along Ottaway. According to the applicant, vehicular access to "Building B' will be via Lot 1702 of Map 041W13B. There is currently no access easement recorded across Lot 1702 to benefit Lot 1700. The existing access on Lot 1702 is not constructed to city standards and must be redeveloped to those standards prior to approval of future development or occupancy permits for the subject 'Building B'. The applicant shall show a recorded reciprocal access and maintenance easement from Lot 1702 to benefit Lot 1700 prior to any future development permit or occupancy permit approvals for 'Building B'. Prior to recording, the easement shall be reviewed and approved by the City of Aurora. These access requirements are included as recommended conditions of approval.

Ottaway Road has a right-of-way width of 60 feet along the frontage of the subject property. According to the Aurora TSP (2009), Ottaway is designated as a Collector Street west of Highway 99E. Collector Streets require 65 feet of right-of-way, 6 foot sidewalks on both sides of the street, 7.5 feet planter strips, and 36 feet of pavement width. Staff has determined that the proposed change of use/conditional use permit is subject to a Site Development Review (SDR) application and this is included as a condition of approval. Frontage improvements will be reviewed as part of the SDR application. The applicant requested that the Conditional Use Permit application and Site Development Review application be processed as separate applications. An SDR application has yet to be submitted to the City.

The Aurora TSP also identifies a new Collector Street to be located between Lots 1700 and 1702 of Map 041W13B traveling to the north and back east toward highway 99E (see Aurora TSP, Figure 3). At the time of future development or division of these lands, additional right-of-way dedication may be required, or the applicant shall obtain approval for an amendment to the Aurora Transportation System Plan to eliminate the planned new street.

As the subject conditional use permit application applies to a new development/change of use and occupancy of 'Building B', staff has determined that the proposed use is subject to Site Development Review approval in compliance with AMC 16.58. This is included as a condition of approval. Strcutural permit applications shall not be accepted until the requirements of the Site Development Review application and approval and the requirements of AMC 16.58 are met for the subject property- such as additional right-of-way dedication, frontage improvements, etc. Based upon Site Development Review criteria, the applicant will likely be required to improve the Ottaway Road frontage and right-of-way to city standards prior to future development permit application or approval.

Sewer (16.34.080)

According to the Aurora Public Works, the sewer line is not correctly placed (see Exhibit C). Engineered drawings for the connection/provision of sewer service to 'Building B' from existing mains in accordance with the provisions set forth by the City's public works design standards shall be submitted for review and approval by the City. In accordance with 16.34.080.B., the applicant shall submit to the City an engineered sanitary sewer plan conforming to the public works design standards prior to issuance of development permits.

Storm Water (16.34.090)

The Aurora Public Works has concerns with the lack of pervious surface. However, the applicant has shown that landscaping will be installed on site in their application which meets the minimum landscaping requirement for the zone. Landscaping shall be installed prior to occupancy permit approvals in order to bring the subject property into compliance with the zone and the conditional use permit. Public Works also expressed concern regarding maintaining storm water from flowing off site. In compliance with AMC section 16.34.090.A., the Planning Director, City Engineer and Public Works Director shall issue permits only where adequate provisions for storm water and floodwater runoff have been made. Prior to approval of any future development permits related to "Building B', applicant shall submit to City for review and approval a storm water management and drainage study.

Water (16.34.100)

According to the Aurora Public Works, new water line connections from Ottaway Road and each building will need to have their own water meters (see Exhibit C). The City Engineer notes that City utility mapping indicate an 8" water line runs through the property and a public water easement for the water main and hydrant are required, if not already in place. This will be reviewed as part of the SDR application.

Prior to any future development permit approvals related to 'Building B', the applicant shall submit for Public Works Director and City Engineer review and approval engineered plans for water extension/connections in compliance with the public works design standards. As part of SDR, the applicant will be required to provide the City with a site utility map that reflects all existing utilities on site and needed system improvements. Prior to structural permit approvals, applicant shall submit to City for review and approval engineer water system plans conforming to public works design standards, as well as backflow prevention devices in compliance with Oregon Health Authority- Drinking Water Program (OHA-DWP) requirements.

3. The requirements of the zoning district are met;

FINDING: The property is zoned Industrial (I). Medical marijuana grow sites and processing sites are listed as a permitted use under AMC 16.16.030.F, contingent upon conditional use permit approval. Conditional use permit approval is contingent upon the Planning Commission determining the following zone code criteria are met:

AMC 16.16.040 Development standards.

A. There is no minimum size for lots or parcels served by municipal sewer. Minimum sizes for lots or parcels without municipal sewer shall be as determined by the county sanitarian.

B. There is no minimum lot width or depth.

C. Unless otherwise specified, the minimum setback requirements are as follows:

1. There is no minimum front yard setback except as required for buffering of off street parking in accordance with Section 16.38.050.

2. On corner lots, the minimum setback for the side facing the street shall be ten (10) feet.

3. No additional side or rear yard setback shall be required except fifty (50) feet screened and buffered in accordance with Chapter 16.38 shall be required where abutting a residential zoning district.

D. No building shall exceed fifty (50) feet in height. Within one hundred (100) feet of a residential zone, no building shall exceed thirty-five (35) feet in height. All buildings greater than thirty-five (35) feet in height are subject to Chapter 16.24.

E. Landscaping shall be in accordance with Chapter 16.38. All outside storage areas require buffering and screening as defined in Chapter 16.38.

F. Parking shall be in accordance with Chapter 16.42.

AMC 16.16.030.F.

1. Buffers which shall only be measured at the initial land use application and not subsequent annual renewals:

a. Elementary, middle or high school, public or private: 1000 feet
b. Day care: 1000 feet
c. Other marijuana businesses: 1000 feet
d. May not be adjacent to a residential zone, a public park, or a church.

2. The use must be located within a permanent, enclosed structure.
3. The use may not be allowed as a home occupation.
4. Applicant and all employees must pass a criminal background check.
5. The term of a conditional use approval may not exceed one year.
6. Waste materials containing any amount of marijuana or by products must be locked in a secure container on-site.
7. Hours of operation are limited to 10 am to 5 pm.
8. Drive through windows are prohibited.

FINDING: The use is proposed to be within a permanent enclosed structure. However, previous structural permit approvals for the structure were for an ST-2 type (storage) building based upon previous information submitted by the applicant/property owner (see Exhibit D). City of Aurora structural permit reviews for the proposed change of use shall be required after all site plan approval conditions are satisfied and prior to occupancy permit approval. This is included as a recommended condition of approval.

Staff finds the application meets the minimum lot size, width of depth of the zone. No minimum front, side or rear yard setbacks apply as the subject property does not abut a residential zone and staff finds setback requirements are met. Landscaping and parking requirements are addressed in criteria 16.60.A.5 and 16.60.A.6 below. The existing structure is less than 50 feet in height and staff finds this criterion is met.

If approved, conditional use permit approval shall start the one-year timeline from the date of mailing of final decision of the conditional use permit approval. Suggested conditions of approval include limitations on hours of operation in conformance with zone code requirements and submission of background check approvals at the time of business license application for all on-site employees are included below.

The applicant has stated that the proposed site and use meet all criteria under 16.16.030.F. Staff finds the application/subject property meet the buffering requirements outlined under 16.16.030.F.1 for schools; daycares; residential zones, parks or churches; or any known/other marijuana businesses approved/licensed by the City of Aurora.

Evidence of applicant and employee background checks shall be submitted to the City of Aurora at the time of business license application.

Hours of operation shall be limited to 10 am to 5 pm and drive through windows are prohibited. The applicant confirmed in their application that hours of operation shall be limited to between 10 am and 5 pm. Retail sales of marijuana and marijuana products are prohibited in the Industrial zone.

Staff finds this criteria can be met, with conditions.

4. The use is compatible with surrounding properties or will be made compatible by imposing conditions;

FINDING: Property to the north and east are zoned Industrial. Properties to the south and west are a mix of Industrial and Commercial. Staff finds the proposed use is compatible with surrounding property zones and uses, pending conditional use permit approval and the recommended conditions of approval.

5. All parking and loading areas are designed and improved in accordance with the requirements set forth in Chapter 16.42;

FINDING: The application shows ten (10) parking spaces along the northern structural wall of 'Building B', one of which is an ADA parking space. For 'Building B', measuring 6,000 square feet (120' x 50'), In compliance with AMC 16.42.030.D, one (1) space per employee on two largest shifts is required for industrial manufacturing and warehousing. According to the applicant, page SP1.1, 1 shift with a maximum of ten (10) employees is proposed. Loading areas for industrial uses less than 25,000 square feet in size are not required. Staff finds this criteria is met.

16.42.050 requires all parking to have a durable hard surface, with bumper rails or curbing at least four (4) inches in height. The applicant has provided measurements and curbing on page A.1.1 of the application. These shall be installed prior to occupancy permit approval. Any exterior lighting shall conform to AMC 16.42 and shall be submitted to the City for review and approval.

6. All landscaping is designed and improved in accordance with the requirements set forth in Chapter 16.38;

FINDING: AMC 16.38.020.C.2, requires properties larger than twenty thousand (20,000) square feet to have at least ten (10) percent of the total area landscaped. The applicant shows 30% landscaping on site on application page SP1.1. Landscaping shall be installed prior to occupancy permit approvals. Additional buffering or screening is not required as the property does not abut residential zones. The applicant proposes a 5' chain link fence along the east property line. Staff finds chain link fencing up to 6' in height is permitted on Industrial zoned properties. Staff finds this criteria is met.

7. All public improvements are designed and constructed in accordance with the requirements set forth in Chapter 16.34;

FINDING: This criterion is addressed under section 16.60.AS.2, above.

8. All facilities for the handicapped are designed in accordance with the requirements set forth in the ADA requirements;

FINDING: The applicant shows the provision of one (1) ADA parking space on page A1.1 of the application. Structural permit review and approval by the City of Aurora shall be required prior to occupancy of "Building B'. This is included as a recommended condition of approval. Staff finds this criterion can be met, with conditions.

9. The provisions of all applicable chapters of this title are satisfied; and

FINDING: The applicant is able to meet the setback requirements of the base zone as submitted. The criteria for 16.13-Accessory Buildings are discussed below.

10. Properties located in the historic commercial or historic residential overlay comply with the requirements set forth in Title 17 of the Aurora Municipal Code. A certificate of appropriateness approved by the historic review board shall satisfy this requirement.

FINDING: The subject property is not located within the historic commercial or historic residential overlay zone. Staff finds this criterion does not apply.

B. In reviewing an application for a conditional use, the commission shall consider the most appropriate use of the land and the general welfare of the people residing or working in the neighborhood. In addition to the general requirements of this title, the commission may impose any other reasonable conditions deemed necessary. Such conditions may include, but are not limited to:

1. Limiting the manner in which the use is to be conducted, including restrictions on the hours of operation;

2. Establishing additional setbacks or open areas;

3. Designating the size, number, location and nature of vehicle access points;

4. Limiting or otherwise designating the number, size, location, height and lighting of signs;

5. Requiring fences, sight-obscuring hedges or other screening and landscaping to protect adjacent properties;

6. Protecting and preserving existing soils, vegetation, wildlife habitat or other natural resources.

FINDING: As included in the subject application, hours of operation shall be limited to between the hours of 10 am and 5 pm. In addition, the applicant has stated a limitation of ten (10) employees on site at any one time.

A business license application and fee shall be required prior to approval of occupancy permits. In addition, there are a number of documented structural and plumbing permit violations that have not been

resolved on site at the time of processing of this application. Due to the documented violations on site, Staff recommends the Planning Commission condition approval of the conditional use permit as follows:

Occupancy permit cannot be issued until the business license fees and approval have been issued.

A certificate of occupancy cannot be issued until structural, electric, mechanical and plumbing permit applications, fees, inspections and final approvals have been issued for 'Building B'.

Structural permit applications cannot be accepted for review or issued until review and approval of a Site Development Review application for 'Building B', and/or the entire Lot 1700 of Map 041W13B, in compliance with AMC 16.58, and satisfaction of all conditions of approval for same.

V. CONCLUSIONS AND RECOMMENDATIONS

Based on the findings in the staff report, staff recommends that the Planning Commission **approve** the application for a Conditional Use Permit (file no. CUP-16-01) based upon the following:

1) Develop the subject property in accordance with plans approved by the city.

2) Comply with all City of Aurora and State of Oregon development, building and fire codes. Where public improvements are required, all public works facilities shall be designed to the City of Aurora Public Works Construction Standards (PWCS) plus the requirements of the Aurora Municipal Code (AMC). Where the PWCS are silent, the Marion County Public Works Standards shall apply, followed by the Oregon APWA/ODOT Standards.

3) In compliance with AMC 16.16.030.F., all uses must be located within a permanent, enclosed structure; applicant and all employees must pass a criminal background check; waste materials containing any amount of marijuana or by products must be locked in a secure container on-site; hours of operation are limited to 10 am to 5 pm; and drive through windows are prohibited.

   Evidence of applicant and employee background checks shall be submitted to the City with the application for a business license. Retail sales are prohibited in the Industrial zone.

   As the subject conditional use permit application applies to a new development/change of use and occupancy of 'Building B', staff has determined that the proposed use is subject to Site Development Review approval in compliance with AMC 16.58. Structural permit or other development permit applications shall not be accepted until the requirements of the Site Development Review application and approval and the requirements of AMC 16.58 are met for the subject property, including satisfaction of all conditions of approval.

4) Parking as shown in the application and in compliance with AMC 16.42.050 shall be installed prior to acceptance of structural permit applications. Any exterior lighting shall conform to AMC 16.42 and shall be submitted to the City for review and approval.

5) The applicant shall improve the existing drive access to City standards and show a recorded reciprocal access and maintenance easement from Lot 1702 to benefit Lot 1700 prior to any future development permit or occupancy permit approvals for 'Building B'. Prior to recording, the easement shall be reviewed and approved by the City of Aurora.

6) Engineered drawings for the connection/provision of sewer service to 'Building B' from existing sewer mains in accordance with the provisions set forth by the City's public works design standards shall be submitted for review and approval by the City. In accordance with 16.34.080.B., the applicant shall submit to the City an engineered sanitary sewer plan conforming to the public works design standards prior to issuance of development permits.

7) Prior to approval of any future development permits related to 'Building B', applicant shall submit to City for review and approval a storm water management and drainage study. Landscaping shall be installed prior to occupancy permit approvals in order to bring the subject property into compliance with the zone and the conditional use permit.

8) Prior to any future development permit approvals related to 'Building B', the applicant shall submit for City review and approval engineered plans for water extension/connection in compliance with the City public works design standards. Prior to structural permit approvals, applicant shall submit to City for review and approval engineer water system plans conforming to public works design standards, as well as backflow prevention devices in compliance with Oregon Health Authority- Drinking Water Program (OHA-DWP) requirements.

9) In compliance with 16.16.030.F. and 16.76.360 for expirations, the term of a conditional use approval may not exceed one year. The expiration of the CUP-2016-01 shall be one year from the date of mailing of the final decision (if approved). The applicant should apply for renewal of the conditional use approval at least 90 days prior to expiration of the one year period in order to allow for notification requirements for hearings.

VI. PLANNING COMMISSION ACTION

A. Approve the conditional use permit for a marijuana grow site and marijuana processing site on the subject property (CUP-2016-01):

1. As recommended by staff, or

2. As determined by the Planning Commission stating how the application satisfies all the required criteria, and any revisions to the recommended conditions of approval, or

B. Deny the request for a conditional use permit for a marijuana grow site and processing site on the subject property (CUP-2016-01) stating how the application does not meet the applicable approval criteria.

C. Continue the hearing to a time certain or indefinitely (considering the 120-day limit on applications).

Applicant, Jay Guy General Manager with Fortune Farms, states that they had purchased an existing marijuana business. We are currently licensed through the state. We realize now that the existing business was not permitted properly and so we are now trying to get everything correctly permitted with the City. Since plants grow 24/7 our hours of operation are continual we are not proposing drive through or retail.

Larry Fritzie, Architect we are currently working with Fortune Farms to get everything corrected and in compliance with the City code.

Max Miller, Council for the applicant as stated in exhibit B 1-12 it is stated that SDR was not applicable and or needed however as the applicant now states we will not contest it either.

NO one spoke in favor at this time and no one opposed either.
Rick Schaefer 14653 Ottaway Rd, I have concerns regarding the odor and security cameras. Applicant states we are strictly regulated and have to meet Federal and State guidelines. We don't want to speak to security directly as it will appear in a public document but just know it will be very secure.
Marilyn White 14603 Ottaway Rd thanked everyone for their efforts in this endeavor. Also had a concern that a stop sign would be needed with added site visits. City Planner Wakeley said that would be addressed in the SDR.

No more people spoke at this time, hearing no questions from the Commission Chair Schaefer closed the public hearing at 8:16 pm.

Commissioner Fawcett confirms that that this is in the industrial zone.
Commissioner Gibson comments that this is going to be difficult since the existing business was not allowed and in violation of the zone how do we approve this? Chair Schaefer very carefully.
Commissioner Feely had no comment at this time.

City Planner Wakeley states that this is an application just like any other that we need to look at as a separate matter from the property owner's violations and issues with the city. We can condition it to reflect some of those issues.

Chair Schaefer makes motion to adopt findings in the staff report and approve the CUP application as recommended by staff with the following amendments:

a) Amend findings on page 5 of staff report and reference to Aurora Municipal Code (AMC) section 16.16.030.F(1)(7) for hours of operation and remove limitation on hours of operation from 10 am to 5 pm from condition of approval #3 as hours of operation should not apply to a grow operation in the industrial zone, and
b) Planning Commission concurs with staff and finds that a Site Development Review land use application is necessary for the site, and
c) Planning Commission finds and the applicant and the applicants attorney have agreed to waive AMC section 16.58.020(G) and not to assert that approval of a Conditional Use Permit exempts an applicant from a Site Development Review application, and
d) Planning Commission finds that, in the absence of the completion of a SDR land use application and review, CUP criteria 1, 2, and 3 could not be found to be satisfied and therefore the CUP could not be approved.

Motion is seconded by Fawcett. All passed.

7. NEW BUSINESS
None

8. OLD BUSINESS

a) Discussion Regarding additional information from FEMA Notice of Federal Land Use Change for Biological Opinion. Chair Schaefer circulated a memo from the Attorney General and would like to get everyone's opinion at the August meeting. There are varied opinions on whether FEMA have the authority of what you can do to be in compliance or not towards the Endangered Species Act and until a Judge renders a decision nobody knows.

9. COMMISSION/DISCUSSION

a) City Planning Activity (in your packets) Status of Development Projects within the City.

10. ADJOURN

Chair Schaefer adjourned the July 5, 2016 Aurora Planning Commission Meeting at 8:45 P.M.

_____
Chair Schaefer

ATTEST:

_____
Kelly Richardson, CMC
City Recorder

Minutes
Aurora City Council Meeting
Tuesday, July 12, 2016, at 7:00 P.M.
City Council Chambers, Aurora City Hall
21420 Main Street NE, Aurora, OR 97002

STAFF PRESENT: Kelly Richardson, City Recorder
Mary Lambert, Finance Officer
Darrel Lockard, Public Works Superintendent
Officer Bell, Marion County
Dennis Koho, City Attorney
Linda Kendrick, Koho & Beatty

STAFF ABSENT:

VISITORS PRESENT: Byron Schreiver, Aurora
Angie Reed, Aurora
Joseph Schaefer, Aurora

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1. **CALL TO ORDER OF THE CITY COUNCIL MEETING**

   Meeting was called to order by Mayor Bill Graupp at 7:02 pm

2. **CITY RECORDER DOES ROLL CALL**
   Mayor William Graupp- Present
   Councilor Jason Sahlin - Present
   Councilor Kris Sallee-Present
   Councilor Robert Southard-Present
   Councilor Tom Heitmanek - Absent

3. **CONSENT AGENDA**
   a) City Council Meeting Minutes – June, 2016, Councilor Sallee wanted staff to review action items to make sure they are getting completed.
   b) Planning Commission – June, 2016
   c) Historic Review Board Meeting – May, 2016

   ACTION ITEM: NA

   Motion to approve the consent agenda as presented was made by Councilor Sallee and is seconded by Councilor Sahlin. Motion approved by all.

4. CORRESPONDENCE – NA

5. VISITORS

Anyone wishing to address the Aurora City Council concerning items not already on the meeting agenda may do so in this section. No decision or action will be made, but the Aurora City Council could look into the matter and provide some response in the future.

- Byron Schreiver, 14980 Seal Rock residents updates the council regarding his water filter status of 4 months he felt it looked fairly good this time even though it is brown. Mayor Graupp states that he has a similar filter and he felt his looked better this last time as well. On a scale of 1-10 Schreiver rates it a 9.

- Angie Reed, 21393 Liberty Street ask council what they plan to do with the water leak on the property next to her21383 Liberty. It has been going on for 8-9 years now and I demand something be done. Public Works Superintendent Lockard states that it has been determined to be the residence leak and we have shown him where it is however we will look into the matter again. Reed also asks why is the city wasting water on the park.

6. REPORTS

a) Mayor Bill Graupp
   - Donald Hazelnut Festival was a success and I am hopeful Colony Days goes as well.
   - County Fair Veterans Memorial was very nice and a good turnout.
   - Councilor Sallee asks Mayor Graupp about his involvement with Planning Chair Schaefer meetings with the Friends of French Prairie. Mayor Graupp no I have not met with them in over 4 years. Friends of French Prairie came to the hearing during the Planning Commission meeting. Sallee so have you had any other meetings with other groups regarding the Airport? Mayor Graupp, Schaefer met with the Aurora Airport Owners Association regarding the economic opportunity analysis in there region as a courtesy that the city had approved this and to raise dollars for it. Sallee it was my understanding you were at a meeting and you were giving the city stance on the airport. Mayor the only other monthly meeting I attend is the French Prairie Forum Sallee that is probably the one I am thinking about. The group asked about it and we simply said that the city was moving forward with the economic needs analysis. Sallee if we could just be aware of meetings when they take place and if they could be noted somewhere.

   Council discussed. NA

   ACTION ITEM: NA

b) Planning, we did not attend in fact I asked Councilor Heitmanek to leave the meeting since there was a public hearing and the matter could come before council regarding Smetco hearing.

Council asks Planning Chair Schaefer the outcome and Schaefer states the Fortune Farms Conditional Use Application for marijuana grow was approved with conditions and the notice went out today.

ACTION ITEM: NA

c) Public Safety,

- Sergeant Sherburn introduces Senior Deputy Mike Bell to the group as the successful candidate as chosen by the city and the sheriff's office. Today is the first day. Mike introduces himself and states he has 17-18 years of experience.
- Sallee, updates council that she attended the Emergency Management Advisory Council Meeting in Marion County. They are continuing to update the Master Plan and they are working on drills and fine tuning the emergency response protocols. Sallee states that all the vehicles should have a copy of the response plan in them so if there is an issue they are aware of the protocol.
- Sallee wanted to know who or if anyone response to emails regarding Aurora speed trap issues ect. Mayor Graupp no. Sallee how do we respond. Sahlin states well you're the public safety liaison. Sallee well I guess I failed. City Recorder Richardson asks that if you do respond to cc the Admin Office so we have a record of the correspondence.
- July will be the last meeting I believe.

Council discussed, NA

ACTION ITEM: NA

d) Finance,

- This report is for May at this point and that is why the percentages are high however everything is going well.
- Sallee, is this a new email or something Finance no it is standard every year.

Council discussed, NA

ACTION ITEM: NA

e) Public Works

- Water leak on Yukon has been fixed and is scheduled for repaving in the next week or so.
- 14 hours ad day making sure council is aware of it and I think Council needs to begin thinking of updating as we are nearing our capacity as construction continues long term. Because water use is increased from last year. The leak on Yukon was about 50,000. Citizen Reed asks about the need for watering the park.
- About 70% done or so. Graupp states there was miss communication on which yearend fiscal or year end.
- Rate study discussion on if it should be staff or 3rd party as Darrel is qualified. Sahlin do you have time? Lockard I think so sometimes it takes longer to hire out. The discussion has been if citizens will perceive with staff doing it as accurate. Sallee do we go out for

bid for that. Graupp states that we met every matrix that was set from the last study done. It is the consensus of the council to have a 3rd party do the study.

Council discussed, NA

ACTION ITEM:

f) Parks Committee

- Sahlin wanted to know if anyone had new info on soccer goals Mayor Graupp I am sorry I forgot. Sallee asks about the tennis nets. We are working on it because it is not just the nets the poles are bad too. Sahlin well if this is important to the community we just need to budget for it and get these fixed.
- What is the plan for the upcoming events we are working on those. Sallee what about the can that is covered Lockard those are expensive and so were looking into it. We will remove the can before Colony Days. What staff is going to be here Lockard.
- Next week we will bring deputy Bell up to date. The reserves will be here as well.

ACTION ITEM: Web payment portal.

g) City Recorder,

- Report is standard I know Council has been waiting for some of the action items such as the IGA list and the Council Procedures however we have not had time and I apologize for that. Councilor Sallee asked to have violations letters added to my report and aprox 6 letters went in June and 3 pending to go out this month. Sallee to clarify are those letters or tickets. Richardson they are letters that happens first.
- Richardson very frustrated with the company providing the web-payments they have asked me to fill out paperwork for a 3rd time. I think we have success and a call scheduled for the 25th of this month for water bills.
- On- going violations that are happening at the Smetco property I need clarification on where Council wants to go with them, Richardson states that Smetco filed for permits for storage units and they were not used for that in building A- there is a boat business and they don't have a business license and in building B- is Fortune Farms which is the conditional use app that just went before the Planning Commission that was heavily conditioned since the property is so out of compliance. Building C- has marijuana grow that has not been properly permitted. Smetco tapped into the water and sewer system without proper permits and SDC charges paid. There is no time limit stated on the conditional use permit on the Fortune Farms business. Sahlin I think there has been some perception that city has not been business friendly and so we need to look at timelines. Richardson states that If Wakeley finds the application complete they could make September. It is the consensus of the council to allow the business in building A- to have a temporary stay until August 15th and building C must vacate. Letters need to go out. Completed application within 90 days for the Smetco SDR application.
- Sahlin did anyone contact Cam regarding paving I did verbally and they stated verbally that it was scheduled for this summer. Councilor Sallee asked for something in writing and I am not sure if we can hold him to it with the development agreement. Richardson I will email them and ask about a schedule.

- Sahlin asked for an update on the Ranuae property Richardson it is in the August meeting. Richardson will send letter.
- Koho what is the deadline for the petitions August 22nd states Richardson and verified by that date.
- Sallee thanks Richardson for putting recordings up on the website. I thought it might be nice for Planning to go up there. Consensus is to have Planning up there as well.
- Do we still have the old computers asks Councilor Sallee and I was wondering if we could make that computer available to the public to documents.
- Sallee do we need a resolution for the Heitmanek appointment. Yes we do sorry I think I just forgot.

h) City Attorney

- City Attorney report, I do have the current employee manuals I can distribute.
- I just want to say that it's easy to criticize staff but every time I call here they fall all over themselves to get what I need and to do it right.

Council discussed, NA

ACTION ITEM: NA

7. ORDINANCES, RESOLUTIONS AND PROCLAMATIONS

a) NA

8. NEW BUSINESS

a) Discussion on Colony Days Events, The Marion County Cadets will be here again this year. The concerts series schedule is going well and bands have confirmed. Very good turnout for the street faire the run registration is also going good. Republic has delivered a month early since they didn't last year. Patty Jones is doing the run. Mayor Graupp there will be a reduction in time for road closures. Main Street will have larger barricades and it will be a tow zone. Mike Brynes property will have a Farmers Market there and this is a new addition this year.

- Councilor Sahlin states that the cadets need to be more respectful to the citizens and offer them a solution.
- Councilor Sallee asks about the water line in the park to repair the line. Lockard it is hopefully going to be done before Colony Days.
- Mayor Graupp all sponsor banners are up.

9. OLD BUSINESS

a) Discussion and or Action on Webber Contract, Councilor Sallee wants to go out for bid. Sahlin thinks it's a burden to do this every 6 months I am thinking every other year. Graupp my thing is that we just spent over 20,000 dollars with them and we should stay to make sure everything is completed. Richardson states that they came in the lowest in 2010 and also they have not increased their prices since then. Sallee well I have never seen those bids so I don't know what they are.

Motion to review current contracts to determine if we want to go out for bids and compare before the budget time each year is made by Councilor Sallee and seconded by Councilor. City Attorney Koho states that we should do a resolution.

Richardson ask council that staff would have input on the contracts as staff works close with them contract agencies.

Orchard view is on hold because home owners have begun cleaning it up so far.

10. FUTURE TOPICS,

a) IGA list

11. ADJOPURN

Mayor Graupp adjourned the July 12, 2016 Council Meeting at 8:32 PM.

Bill Graupp, Mayor

ATTEST:

Kelly Richardson, CMC
City Recorder

Minutes
Aurora Historic Review Board Meeting
Thursday, July 28, 2016, at 7:00 P.M.
City Council Chambers, Aurora City Hall
21420 Main Street NE, Aurora, OR 97002

STAFF PRESENT Kelly Richardson, CMC City Recorder

STAFF ABSENT: None

VISITORS PRESENT: Tim Corcoran, 21283 Liberty
Aaron Randels & Steve Reimer Architects Historical Society
Spud Sperb, 21261 Main

1. **CALL TO ORDER OF THE HISTORIC REVIEW BOARD MEETING**

   The meeting of July 28, 2016 was called to order by Vice Chair Townsend at 7:01 pm

2. **CITY RECORDER DOES ROLL CALL**
   Chair Gayle Abernathy – Absent
   Member John Berard - Present
   Member Mera Frochen – Present
   Member Mella Dee Fraser – Present
   Member Karen Townsend - Present

3. **CONSENT AGENDA**
   a) Historic Review Board Meeting Minutes – June, 2016,
   b) City Council Minutes – None
   c) Planning Commission – None

   A motion to approve the Historic Review Board minutes of June 23, 2016 as presented was made by Member Berard and is seconded by Member Frochen. Passed by all.

4. **CORRESPONDENCE –**
   a) **Goal 5 State Administrative Rules Update.** Vice Chair Townsend suggest to the rest of the group that they read these changes as it could affect everyone in the future.

5. **VISITORS**

   Anyone wishing to address the Historic Review Board concerning items not already on the meeting agenda may do so in this section. No decision or action will be made, but the Historic Review Board could look into the matter and provide some response in the future.
   No comments were made during this section.

   There were no visitors that spoke during this time.

6. **NEW BUSINESS**

a) Discussion and or Action on Sign Application for The Leathers Gas Station 21687 Hwy 99E. There is a discussion with members as signs are presented Member Townsend states that there are circumstances out of the applicants control regarding the Shell station logo. Townsend also informs the group that the original service station had a back lit sign so in order to keep it original, I believe this could come under relief from sign standards 17.24.130. The Board has worked long and hard with shell so I think there is a compromise that can be met. Other members of the board agree with the circumstances.

Motion to approve and accept the recommendation and granting a relief from sign standards 17.24130, find this is in keeping with the original service station which did have back lit signs and logo so therefore allowing back lit signage is made by Member Berard and is seconded by Member Frochen. Passed by All.

Just as the applicant was leaving they asked for an additional sign on the north side of canopy along Ehlen Rd as it is hard to see the Shell station. Member Townsend agrees that it is hard to see when approaching from Ehlen Rd. So Member Townsend asks for a compromise and the applicant agrees to keep the temporary banners and signage very little if any to obtain there Ehlen Rd pecton on the canopy.

A motion is made by Member Berard to allow an additional pecton sign on the north facing side of the canopy along Ehlen Rd and is seconded by Member Frochen.

b) Discussion and or Action on Project Application for New Roof Cover Over Porch and New Sign Application for Aurora Family Health 21348 Hwy 99E. Tim Corcoran the applicant presents his concept to the Board he states the porch cover will have the same reveal as the main building and the siding will match the George Miller House for style and trim. Member Townsend discussed with the applicant that he didn't come before the board for his railing and states that it doesn't really match. Mr. Corcoran again apologizes to the board for not making application and states we turned the railing to match the George Miller House. Townsend well it doesn't really match the proposed porch cover. Townsend asks him to take a closer look.

A motion is made to approve the porch as presented by Member Berard and is seconded by Member Fraser citing code for approval 17.40.120, 17.40.130 and 17.40.170. Approved by all.

A motion is made by Member Berard to approve the sign as presented and is seconded by Member Frochen and citing code for approval 17.24.170 and 17.24.100 F. Approved by All.

c) Discussion and or Action/Presentation for Aurora Colony Historical Society at 21561 Main Street. (Member Berard states a possible conflict as his wife sits on the Historical Society Board)Guy Sperb, Vice President Aurora Colony Historical Society presents the application to the board. Also in attendance is Ken Hartly and Jessica Island the Architect. This is for new construction of a 5700 square foot research and preservation facility. We have attempted

to layer the new construction as to not be to obtrusive. We are trying to minimize the appearance of the building along Main Street as this building will not be open to the public. The traffic impacts should be minimal as only staff will be at this location.
Member Townsend has a few concerns regarding the windows as the reset of the project meets code. Townsend asks about a landscaping plan since the South side will be exposed. Townsend states the colors are certainly acceptable per code without landscaping could collect a lot of dust. Townsend asks about the barn door and the applicant states it was for aesthetics to break up a large space. They briefly discuss the tubular stair railing really we are used to seeing either wood or wrought iron. There is a concern with the south side looking too modern so the applicant agrees to make it simpler.

There is discussion regarding the barn that is on site and the need for it to be dated and documented prior to a demo permit being given.

The applicant is fine with all of the comments and suggestions however we don't need a lot of flash simple is better and we have to keep the windows to a minimum and higher to avoid UV Rays damaging effects on the artifacts.

The applicant is asked to bring any changes back to the board and the board requests to see landscaping plan and roof samples.

It is consensus of the board to accept and recommend the application to the Planning Commission as presented and to ask for a landscaping plan and roofing samples at a later date and to make comments regarding railing and the barn as part of the recommendation.

7. OLD BUSINESS

a) Discussion and or Action on the CLG Grant, City Recorder Richardson states that the document has been sent for review. Ian Johnson with the State Historic Preservations office requests a change in the inventory to include NP (not in period) instead of noncontributing. The Board accepts the changes as suggested and request staff to make the changes. Member Townsend suggests purchasing some books with the additional funds left over to start a library and the rest of the group agree.

Action: Purchase books and send letter to Colony Pub regarding their banners.

8. ADJOURN

Vice Chairman Townsend adjourned the meeting of July 28, 2016 at 8:45 pm.

Karen Townsend

Karen Townsend, Vice Chairman

ATTEST:

Kelly A Richardson

Kelly Richardson, CMC
City Recorder

Marion County
OREGON

PUBLIC WORKS

RECEIVED
AUG 25 2016
CITY OF AURORA

BOARD OF COMMISSIONERS
Sam Brentano
Kevin Cameron
Janet Carlson

DIRECTOR
Alan Haley

ADMINISTRATION

BUILDING INSPECTION

EMERGENCY MANAGEMENT

ENGINEERING

ENVIRONMENTAL SERVICES

OPERATIONS

PARKS

PLANNING

SURVEY

PLEASE RSVP

to Brandon Reich at breich@co.marion.or.us or 503-566-4175

Population Forecasting and UGB Workshop
Wednesday, October 5, 2016
9 am—Noon
5155 Silverton Road NE, Salem

Are you interested in knowing how the new urban growth boundary and population forecasting administrative rules adopted by the Department of Land Conservation and Development apply to your city? What are the changes and what new possibilities may exist for your city in managing its urban growth boundary?

Come for a presentation on the new rules presented by Gordon Howard, Urban Planning Specialist, and Tom Hogue, Economic Development Planning Specialist, from Department of Land Conservation and Development and Mia Nelson, 1000 Friends.

I encourage cities to attend with a group of people that would work on their urban growth boundary analysis: elected officials, planning commission members, city staff, city volunteers, and planners.

Parking on Silverton Road Public Works campus is free and no permit is required. Pastries and coffee will be provided. And if there is anything you'd like to workshop to be sure to cover, please let me know!

If you have any questions, ideas or suggestions, please contact me, Brandon Reich, by phone at (503) 566-4175 or by electronic mail to breich@co.marion.or.us.

AGENDA
Population Forecasting and UGB Workshop
Wednesday, October 5, 2016
9 am—Noon

5155 Silverton Road NE, Salem (County Shops Building #1)
(No cost to park; no parking permit required)

Why the New Method? (Gordon/Mia) **9:00-9:30**

From Population to Homes **9:30-10:15**

- **Population Forecasting (Gordon)**
- **Land Inventory (Gordon)**
- **Residential Lands/Goal 10-Housing (Gordon/Mia)**

Break **10:15-10:30**

Employment, Serviceability and Study Area **10:30-11:15**

- **Employment Lands (Tom)**
- **Serviceability (Gordon)**
- **Study Area/Locational Analysis (Gordon)**

Questions and Answers **11:15-11:45**

Presenters:

Mia Nelson, 1000 Friends

Gordon Howard, Department of Land Conservation and Development

Tom Hogue, Department of Land Conservation and Development

~ Pastries and Coffee Provided ~

PLANNING COMMISSIONER TRAINING REGISTRATION

One form per person (duplicate as needed)

Name:_____

Title:_____

Organization:_____

Address:_____

City/ Zip:_____

Phone:_____

E-mail:_____

Registration Fee:

- OCPDA Member City—$50/person
- Non-OCPDA Member City—$75/ person
- See reverse side for cancellation policy.

Registration Deadline:
Wednesday, September 14th, 2016

Payment:
Make Checks Payable to OCPDA

Mail Checks and Registration to:

OCPDA
C/O League of Oregon Cities
1201 Court St. NE, Suite 200
Salem, OR 97301

Oregon City Planning Directors Association

League of Oregon Cities
1201Court St. NE, Suite 200
Salem, Oregon 97301

Planning Commissioner Training

Sponsored by

Oregon City Planning Directors Association

September 29, 2016

1:00 pm to 4:30 pm

The Grand Hotel in Salem,
Marion Room
201 Liberty Street SE
Salem, Oregon 97301
(503) 540-7800

The Oregon City Planning Directors Association is pleased to offer its annual Planning Commissioner Training to City and County Commissioners and staff. This training is offered in coordination with the Annual Conference of the League of Oregon Cities.

The OCPDA is committed to offering affordable educational opportunities to elected and appointed officials. Join fellow citizen planners for this exciting opportunity to discuss planning issues from around the state.

Register now to reserve your seat.

TRAINING TOPICS

1:00 - 2:00
Public Meetings, Ethics, and Carrie's Rules of Order
Learn how to run an effective public meeting, filter public testimony, and avoid common legal pitfalls associated with open meetings, ethics, and conflicts of interest.

Session led by Carrie Richter, Land Use Attorney and Adjunct Professor, Land Use Law, Lewis & Clark Law School and PSU Center for Urban Studies.

2:15 - 3:15
Why can't we get more people involved in the planning process?
Discuss successful ways to engage your citizens, communicate with the public, and how to work effectively with your elected officials.

Session led by Kirstin Greene, Managing Principal of Cogan Owens Greene.

3:30 - 4:30
Accomplish the right things with ease.
In this roundtable discussion, hear from a panel of seasoned planning commissioners and professional planners about their successes and failures over the past year. We will discuss current trends in planning, dealing with difficult people, and the issues that have made us pull our hair out.

Session led by Aquilla Hurd-Ravich, City of Tualatin Planning Manager; President, OCPDA.

OCPDA
Oregon City Planning Directors Association

Cancellations and Refunds:
A 50% refund will be issued for cancellations after the registration deadline of September 14, 2016. Full refunds will be issued for cancellations prior to the deadline.

Questions:

Brian Davis
OCPDA Secretary
541-492-6750
bdavis@cityofroseburg.org

Or

Bob Richardson
(541) 917-7555
bob.richardson@cityofalbany.net

CITY OF AURORA
PLANNING COMMISSION

STAFF REPORT:	Site Development Review 2016-03 [SDR-16-03]
DATE:	August 30, 2016 (for September 6, 2016 Planning Commission meeting)

APPLICANT/OWNER:	Aurora Colony Historical Society/Ken Hartley 15018 2nd Street, Aurora OR 97002
REQUEST:	Site Development Review approval for construction of an approx. 5,773 sq. ft. two-story structure to be located to the rear of the existing structure; on-site improvements include paved walkways and a secondary access/driveway off of Martin Street.
SITE LOCATION:	21561 Main Street, Aurora, OR Map 41.W.12CD Tax Lot 5700
SITE SIZE:	10,890 square feet or 0.25 acres
DESIGNATION:	Zoning: Commercial (C) with Historic Commercial Overlay (HCO)
CRITERIA:	Aurora Municipal Code (AMC) Chapters 16.22 Historic Commercial Overlay and 16.58 Site Development Review
ENCLOSURES:	Exhibit A: Assessor Map Exhibit B: Application and site plan Exhibit C: Historic District Inventory #89 Exhibit D: Historic Review Board Notice of Decision (July 28, 2016) Exhibit E: Request for Comments (RFC) responses

I. REQUEST

Site Development Review approval for construction of an approx. 5,773 sq. ft. two-story structure to be located to the rear of the existing structure; on-site improvements include paved walkways and a secondary access/driveway off of Martin Street.

II. PROCEDURE

The application was submitted to the City on July 25, 2016. Notice to property owners within 200 feet of the subject property was mailed on August 18th and published in the Canby Herald on August 24th in compliance with AMC 16.76.

The City has until **November 21, 2016**, or 120 days from acceptance of the application to approve, modify and approve, or deny this proposal.

III. APPEAL

Appeals are governed by AMC 16.76.240. An appeal of the Planning Commission's decision shall be made, in writing, to the City Council within 15 days of the Commission's final written decision.

IV. CRITERIA AND FINDINGS

The applicable review criteria for Site Development Review are found in AMC 16.58.

16.58.100 Approval Standards

The review of a Site Plan shall be based upon consideration of the following:

A. *Provisions of all applicable chapters;*

FINDINGS: The subject parcel is zoned Commercial (C) with a Historic Commercial Overlay (HCO). According to the applicant, the currently structure houses an antique store which is a permitted use. The applicant states the addition/new structure will contain a new preservation and research facility for the Aurora Colony Historical Society used to consolidate and improve ongoing work for collecting, analyzing and repairing historical artifacts. Staff finds the proposed use meets AMC 16.22.020.E. "cultural exhibits and library services" and is a permitted use in the zone.

According to the Marion County assessor, the existing structure was built in 1910 and includes an approx. 1599 sq. ft. of main floor and 1,000 sq. ft. of unfinished basement (the applicant also provides existing total square footage similar to the Assessor's office in Exhibit B). The applicant proposes an approx. 5,773 sq. ft. two-story addition to the rear (west) of the existing structure with on-site improvements to include paved walkways and a secondary access/driveway off of Martin Street.

Staff finds the property and proposal meet the HCO zone requirements for lot depth, width, and height. AMC 16.22.040.D. states, "no front setbacks shall be permitted, except as necessary to maintain visual clearance areas. The existing structure is setback approximately 20 feet from the front property line and is considered a pre-existing non-conforming structure to the zero front setback requirement. No rear or side setbacks are required in the zone.

The existing structure is also identified in the Aurora Historic Building Inventory as Resource #89 (Exhibit C) and has a Secondary Significant classification.

AMC section 17.040.020.A. governs additions to contributing commercial structures (which applies to the existing structure/subject property as follows:

1. New additions may only be placed on the rear elevation. Architectural detailing including roofing, siding, trim, doors, and windows shall match the existing structure in design and materials unless supported by evidence in the historic inventory.
2. Previous additions to the original structure that were added prior to 1921 shall be subject to the same standards and criteria as the original portion of the structure; however, in the event that the addition does not match the original, the exterior features of the addition may be altered to match the original.

3. Additions to contributing structures that were built in 1921 or later may be removed, and following removal, the exterior materials on that portion of the structure must match the remainder of the structure.

4. Additions to commercial structures are exempt from the parking requirements in Title 16.

Staff believes requiring new construction be placed in front of the historic structure or parallel to the existing would be in conflict with AMC 17.040.020 and staff finds the proposed addition to the rear of the historic structure satisfies both AMC section 16 and 17.

AMC 16.22.040.I states all properties, uses, and structures in the historic commercial overlay shall be subject to the requirements of Title 17, Historic Preservation. The Aurora Historic Review Board (HRB) reviewing the application at a July 28, 2016 meeting and comments from the HRB are included under Exhibit D. Recommended conditions of approval from the HRB are included as recommended conditions of approval in this report.

Staff finds the proposed addition and site improvements can meet the requirements of AMC Title 16 and Title 17- Historic Preservation, with conditions.

B. *Buildings shall be located to preserve topography and natural drainage and shall be located outside areas subject to ground slumping or sliding;*

FINDINGS: Exhibit B provides a contour map of the property, as well as the location of the existing structure and proposed new construction. The contour map shows a slope change of approx. 12 feet from the east to west portions of the proposed new construction. The proposed construction does not propose grading and is proposed to be built into the existing grading/slope. Storm water and drainage are addressed under criteria N. below for public improvements in compliance with public works standards.

Staff finds this criterion is met.

C. *Privacy and noise;*

1. *Buildings shall be oriented in a manner which protects private spaces on adjoining residential properties from view and noise;*

2. *On site uses which create noise, lights, or glare shall be buffered from adjoining residential uses;*

FINDINGS: The subject property abuts the Historic Commercial Overlay (HCO) property to the north, south and Main Street to the east and abuts Martin Street and the urban growth boundary and city limits to the west. Staff finds this criterion does not apply.

D*. Residential private outdoor areas:*

FINDINGS: Staff finds this criterion does not apply.

E*. Residential shared outdoor recreation areas:*

FINDINGS: Staff finds this criterion does not apply.

F*. Shared outdoor recreation space shall be readily observable for reasons of crime prevention and safety;*

FINDINGS: The applicant proposes new sidewalks/pathways to connect the existing structure to the new construction and a propose connection to the property to the north. No other recreation/outdoor space is proposed. Staff finds this criterion does not apply.

H. *Demarcation of public, semipublic, and private spaces;*

FINDINGS: Staff finds this criterion does not apply as the space is private, commercial property.

I. *Crime prevention and safety:*

1. In residential developments, interior laundry and service areas shall be located in a way that they can be observed by others;

2. Mail boxes shall be located in lighted areas having vehicular or pedestrian traffic;

3. Exterior lighting levels shall be selected and the angles shall be oriented towards areas vulnerable to crime;

4. Light fixtures shall be provided in areas having heavy pedestrian or vehicular traffic and in potentially dangerous areas such as parking lots, stairs, ramps and abrupt grade changes. Fixtures shall be places at a height so that light patterns overlap at a height of seven feet which is sufficient to illuminate a person.

FINDINGS: Criteria I.1 and I.2 are related to residential development and found not to apply. 16.42.050.B. requires any lighting used to illuminate off-street parking areas to be arranged so as not to project light rays directly upon any adjoining residential property. While the property does not abut residential property, staff recommends a lighting plan in conformance with the above criteria be submitted for City review and approval prior to final occupancy permit approval. The lighting plan must also show that lighting shall not reflect onto surrounding properties. This is included as a recommended conditional of approval.

J. *Access and circulation;*

1. *The number of allowed access points for a development shall be as determined by the City Engineer in accordance with standard engineering practices for city rights-of-way, as determined by Marion County for county rights-of-way, and as determined by the Oregon Department of Transportation for access to Highway 99E.*

2. *All circulation patterns within a development shall be design to accommodate emergency vehicles.*

FINDINGS: At the time of this staff report, comments from the Aurora Rural Fire District had not been received. The property fronts on Main Street and a secondary access is proposed off of Martin Street, which is currently graveled. The Aurora Transportation System Plan (TSP) identifies Martin Street as a local street, requiring a pavement width of 34 feet. According to the applicant, the new structure will house two full-time employees who currently have office space at another location.

The proposed expansion is not expected to generate 25 or more peak hour trips or 250 or more daily trips and a Traffic Impact Analysis (TIA) was not required by the City Engineer.

A recommended condition of approval requires Aurora Rural Fire District review and approval of the structural permit application and access prior to final City of Aurora permit approval.

Staff finds this criterion can be met, with conditions.

K. *Public transit;*

FINDINGS: Access to the property is via Main Street. No transit stops abut or are adjacent to the subject property nor or any identified as needed. Staff finds this criterion does not apply.

L. *All parking and loading requirements shall be design in accordance with the requirements set forth in Chapter 16.42.*

FINDINGS: Parking shall be in conformance with the AMC 16.22 for the historic commercial overlay zone and Title 17-Historic Preservation. AMC 16.22.040.F. states, "Parking shall be in accordance with Chapter 16.42 except as specifically exempted by Chapter 16.28 and Title 17, and should be located to the rear of the building. AMC 17.40.020.A.4. and 17.40.110 states, "Additions to commercial structures are exempt from the parking requirements in Title 16". Staff finds parking is not required and the applicant does not provide for additional parking on-site.

No ADA parking is shown on the proposed site plan. Staff recommends the Planning Commission defer to the building inspector to determine whether ADA parking is required on site. If ADA parking is provided or required, it shall be constructed in accordance with the Oregon Structural Specialty Code, in conformance with AMC 16.42.100. This is included as a recommended condition of approval.

16.42.050.A. states, "All parking and maneuvering surfaces shall have a durable, hard and dustless surface such as asphalt, concrete, cobblestone, unit masonry, scored and colored concrete, grasscrete, compacted gravel, or combinations of the above". The applicant does provide a driveway access to the rear of the new structure, to provide access off of Martin Street to the open storage area via a garage door. In accordance with AMC 16.42.050.D., the proposed driveway access to the rear shall be required to receive review and approval by the City Engineer and Public Works prior to occupancy permit approval. This is included as a recommended condition of approval.

Criteria under 16.42.050.B-I. contain requirements for service drives and/or residential developments and are found not to apply to the subject property and application.

Staff finds this criterion can be met, with conditions.

M. *All landscaping shall be designed in accordance with the requirements set forth in Chapter 16.38.*

FINDINGS: The Historic Commercial Overlay (HCO) zone requires compliance with 16.38 and Title 17. AMC 16.38.020.C.1 requires commercially zoned properties up to twenty thousand (20,000) square feet to have at least fifteen (15) percent of the total lot area landscaped. According to the site plan and application, the subject property shows approx. 3,650 sq. ft. or 34% landscaping upon completion of the proposed improvements. Staff finds this criterion is met.

AMC 16.38.50.D. requires refuse containers or disposal area and service facilities such as gas meters and air conditioners which would otherwise be visible from a public street, customer or resident parking area, any public facility or any residential area, shall be screened from view by placement of a solid wood fence, masonry wall or evergreen hedge between five and eight feet in height. According to the applicant, the HVAC equipment will be screened with an evergreen hedge between 5'-8' at maturity. The applicant states garbage and recycling will be housed within the lower level building. Staff recommends inclusion of screening of refuse containers, disposal areas and service facilities be screened in compliance with 16.38.050.D be included as a condition of approval.

If landscaping improvements exceed $2,500, review and approval by the Historic Review Board (HRB) is also required in conformance with AMC 17.04.050.B.2. This is included as a recommended condition of approval.

> ***N.*** *All public improvements shall be designed in accordance with the requirements of Chapter 16.34.*

FINDINGS: The subject property is generally considered developed. Extension/sizing of water, sewer, or storm drainage improvements are required to comply with Chapter 16.34 and the City of Aurora public works design standards and City of Aurora and State of Oregon development, building and fire codes. This is included as a recommended condition of approval.

<u>At the time of this staff report, staff did not have comments from the city engineer or city public works.</u>

The Aurora Transportation System Plan (TSP) identifies Martin Street as a local street requiring 34 feet of paving. Due to the use of the proposed structure predominately for storage, staff does not recommend half-street improvement requirements for Martin Street along the rear frontage.

Rather, AMC section 16.34.030.A.2. states subject to approval by the Planning Commission, "the City may accept and record a non-remonstrance agreement in lieu of street improvements if the following conditions exist:

a. A partial improvement creates a potential safety hazard to motorists or pedestrians; or

b. Due to the nature of existing development on adjacent properties it is unlikely that street improvements would be extended in the foreseeable future and the improvement associated with the project under review does not, by itself, provide a significant improvement to street safety or capacity".

Staff finds that Martin Street, running one block in total length and serving 6 or fewer properties, would not serve a significant improvement to the safety, capacity or service to the subject property were half-street improvements required.

However, AMC section 16.34.030.A.3. states, subject to approval by the Planning Commission, "the City may accept a payment in lieu of street improvements. To propose a payment in lieu of street improvements, the applicant shall prepare an engineering estimate for the costs of engineer, design and construction of the required frontage improvements. City staff will review and approve the engineering cost estimate and calculate the payment in lieu of street improvements. The payment in lieu of street improvements will generally be set at two-thirds of the estimated cost. Payment in lieu of street

improvement funds collected by the City will be used to pay for improvements within public rights of way within the Aurora city limits".

As it is unlikely that a non-remonstrance agreement will ever be called upon by the City or in the creation of a local improvement district for Martin Street, staff recommends the Planning Commission require payment in lieu of half street improvements as permitted under AMC 16.34.030.3. This is included as a recommended condition of approval.

Additional right-of-way dedication is not required by the TSP.

Staff does not believe the subject Site Development Review application will require completion of a Traffic Impact Analysis (TIA) as the proposed application is not determined by staff to result in more than 25 peak hour trips or 250 or more vehicle trips per day as specified in the TSP. At the time of writing of this staff report, the City did not have comments from the city engineer on the subject application. The subject property is exempt from parking requirements in compliance with AMC 17.40.020.A.4. and 17.40.110.

Staff finds this criterion can be met, with conditions.

In compliance with 16.34.080.A and B., sanitary sewers shall be installed to serve each new development and to connect developments to existing mains in accordance with the provisions set forth by the City's public works design standards and the adopted policies of the comprehensive plan. The City Engineer shall approve all sanitary sewer plans and proposed systems prior to issuance of development permits involving sewer service. This is included as a recommended condition of approval.

In compliance with 16.34.090.A., the City Engineer and Public Works Director shall issue permits only where adequate provisions for storm water and floodwater runoff have been made. All storm water analysis and calculations shall be submitted for review and approval prior to structural permit approval. This is included as a recommended condition of approval.

In compliance with 16.34.100, the City Engineer and Public Works Director shall issue permits only where provisions for municipal water system extensions have been made. Any water system extension shall be designed in compliance with the comprehensive plan existing water system plans. This is included as a recommended condition of approval.

In compliance with 16.34.140, prior to beginning any construction, the applicant shall assure the completion and maintenance of improvements by securing a bond, or placing cash in escrow, an amount equal to one hundred twenty-five (125) percent of the estimated cost of the improvements. Further, the applicant shall execute an agreement with the City Attorney regarding the repair, at the applicant's expense, of any public facilities damaged during development.

> ***O****. All facilities for handicapped shall be designed in accordance with the requirements set forth in the ADA requirements;*

FINDINGS: The subject application includes new construction which will be subject to Oregon Structural Specialty Code and all City of Aurora and State of Oregon ADA requirements. This is included as a recommended condition of approval. Staff finds this criterion can be met, with conditions.

***P**. All of the provisions and regulations of the underlying zone shall apply.*

FINDINGS: Staff finds the applicant can meet the zone criteria under the HCO and can meet the criteria for Site Development Review approval, with recommended conditions of approval. The application meets the side and rear yard setbacks and meets the height limitation of 35 feet. While the application does not meet the zero front yard setback, the applicant is proposing new construction to be complementary and subordinate to the existing historic structure. Staff finds the uses proposed are listed as permitted uses in the zone.

Staff finds this criterion is met.

V. CONCLUSIONS AND RECOMMENDATIONS

Based on the findings in the staff report, staff recommends that the Planning Commission ***APPROVE*** the for Site Development Review (SDR-2016-03) with the following conditions:

1) Develop the subject property in accordance with plans approved by the city.

2) Comply with City of Aurora and State of Oregon development, building and fire codes in effect at the time of *building permit application*, including AMC 16.34 for extension/sizing of water, sewer, or storm drainage improvements.

3) As recommended by the Aurora Historic Review Board, railings for the proposed development shall be made of wood or wrought iron; roofing materials shall be review and approved by the HRB prior to structural permit application; a landscape plan shall be reviewed and approved by the HRB prior to occupancy permit approvals; and prior to any demolition permit approvals, structures proposed for demolition shall be dated and documented in writing and submitted to the HRB for records retention.

4) A lighting plan in conformance with AMC 16.58.100.C.2. and 16.58.100.I.3-4. shall be submitted for City review and approval prior to building permit approval. The lighting plan shall also show that lighting will not reflect onto surrounding properties. The approved lighting plan shall be installed *prior to final occupancy permit approval*.

5) Aurora Rural Fire District review and approval of the structural permit application and access shall be required *prior to final City of Aurora structural permit approval.*

6) If ADA parking is provided or required, it shall be constructed in accordance with the Oregon Structural Specialty Code, in conformance with AMC 16.42.100.

7) In accordance with AMC 16.42.050.D., the proposed driveway access to the rear shall be required to receive review and approval by the City Engineer and Public Works *prior to occupancy permit approval.*

8) Screening of refuse containers, disposal areas and service facilities shall be screened in compliance with 16.38.050.D., *prior to occupancy permit approval*.

9) If landscaping improvements exceed $2,500, review and approval by the Historic Review Board

(HRB) is also required in conformance with AMC 17.04.050.B.2.

10) In compliance with AMC 16.34.030.A.3, the City shall require payment in lieu of half street improvements to Martin Street along the frontage of the subject property.

11) In compliance with 16.34.080.A and B., sanitary sewers shall be installed to serve each new development and to connect developments to existing mains in accordance with the provisions set forth by the City's public works design standards and the adopted policies of the comprehensive plan. The City Engineer shall approve all sanitary sewer plans and proposed systems *prior to issuance of development permits* involving sewer service.

12) In compliance with 16.34.090.A., the City Engineer and Public Works Director shall issue permits only where adequate provisions for storm water and floodwater runoff have been made. All storm water analysis and calculations shall be submitted for review and approval *prior to structural permit approval*.

13) In compliance with 16.34.100, the City Engineer and Public Works Director shall issue permits only where provisions for municipal water system extensions have been made. Any water system extension shall be designed in compliance with the comprehensive plan existing water system plans.

14) In compliance with 16.34.140, *prior to beginning any construction*, the applicant shall assure the completion and maintenance of improvements by securing a bond, or placing cash in escrow, an amount equal to one hundred twenty-five (125) percent of the estimated cost of the improvements. Further, the applicant shall execute an agreement with the City Attorney regarding the repair, at the applicant's expense, of any public facilities damaged during development.

VI. PLANNING COMMISSION ACTION

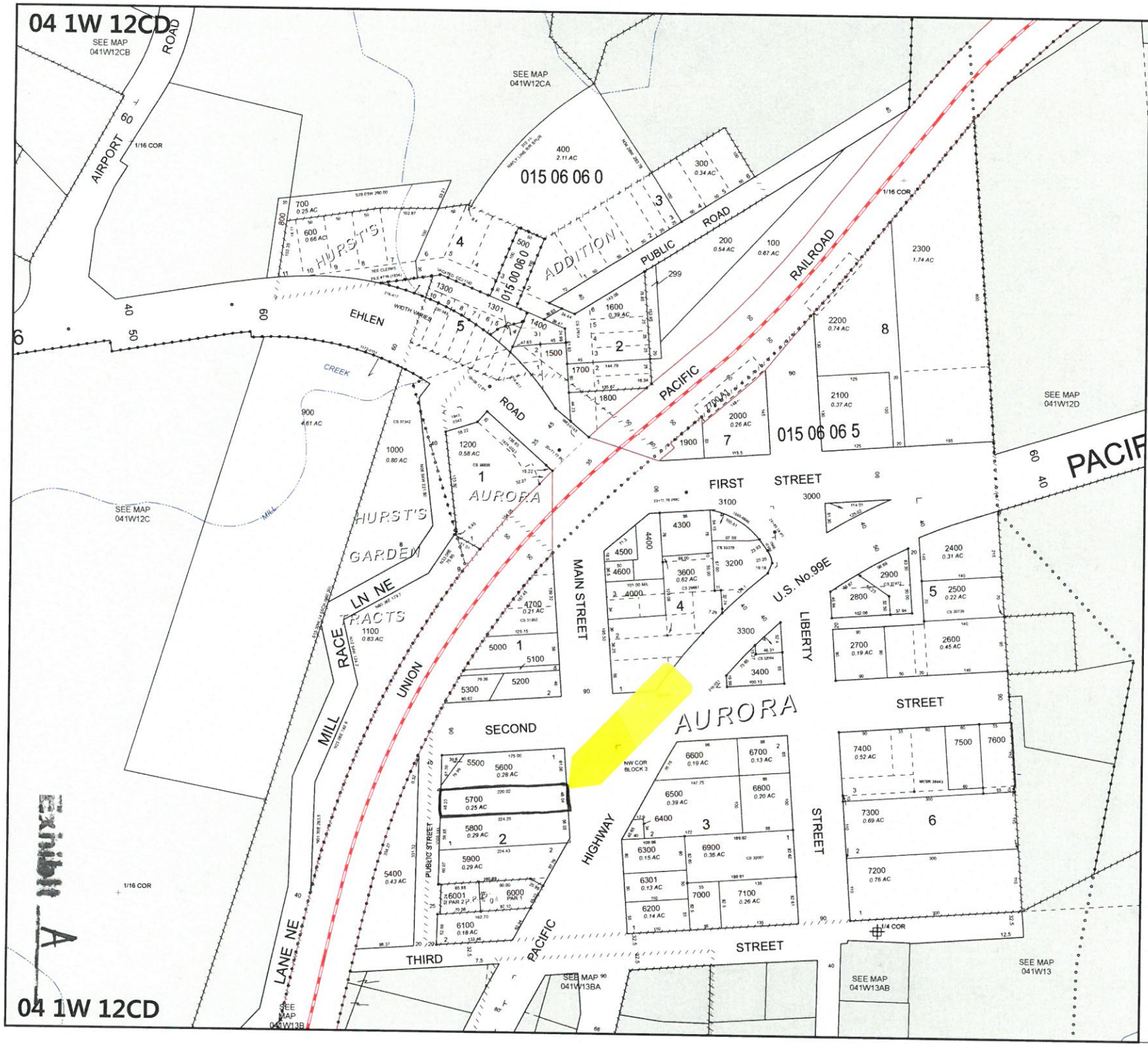
A. Approve the site development review application (SDR 2016-03) for new construction of an approx. 5,773 sq. ft. two-story structure to the rear of the existing structure and on-site improvements including paved walkways and a secondary access/driveway off of Martin Street:

1. As recommended by staff, or

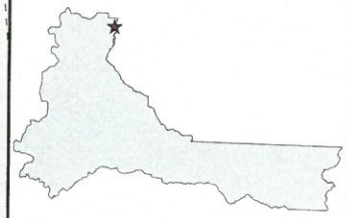
2. As determined by the Planning Commission stating how the application satisfies all the required criteria, and any revisions to the recommended conditions of approval, or

B. Deny the request for site development review approval for SDR 2016-03 stating how the application does not meet the applicable approval criteria.

C. Continue the hearing to a time certain or indefinitely (considering the 120-day limit on applications).



04 1W 12CD
AURORA



MARION COUNTY, OREGON
SE1/4 SW1/4 SEC12 T4S R1W W.M.
SCALE 1" = 100'

LEGEND

LINE TYPES

- Taxlot Boundary
- Historical Boundary
- Road Right-of-Way
- Easement
- Railroad Right-of-Way
- Railroad Centerline
- Private Road ROW
- Taxcode Line
- Subdivision/Plat Bndry
- Map Boundary
- Waterline - Taxlot Bndry
- Waterline - Non Bndry

SYMBOL TYPES

- Survey Monument
- 1/16TH Section Cor.
- Road Station
- 1/4 Section Cor.
- DLC Corner
- Section Corner

NUMBERS

Tax Code Number
000 00 00 0

Acreage
0.25 AC

All acres listed are Net Acres, excluding any portions of the taxlot within public ROWs

NOTES

Tick Marks: If a tick mark is indicated on the end of a line, then the dimension goes to the tick mark. This is used when dimensions extend into public right-of-ways.

CANCELLED NUMBERS

901
1001
3500
3700
3800
3900
4100
4200
4800
4900
7100A1

DISCLAIMER: THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY

Marion County OREGON — Assessors Office Cartography Dept

FOR ADDITIONAL MAPS VISIT OUR WEBSITE AT www.co.marion.or.us

PLOT DATE: 10/8/2015

AURORA
04 1W 12CD

Exhibit A

City of Aurora
Planning/Development Application
(Check appropriate box)

- ☒ SITE DEVELOPMENT REVIEW (AMC 16.58)
- ☐ FLOOD PLAN DEV. PERMIT (AMC 16.18)
- ☐ HISTORIC OVERLAY DISTRICT (AMC 16.20-16.22)
  - ☐ Certificate of Appropriateness
  - ☐ Demolition Permit
  - ☐ Sign Review
- ☐ MANUFACTURED HOME PARK (AMC 16.36)
- ☐ COMPREHENSIVE PLAN AMENDMENT (AMC 16.80)
  ☐ Text ☐ Map
- ☐ ZONING ORDINANCE AMENDMENT (AMC 16.80)
  ☐ Text ☐ Map
- ☐ CONDITIONAL USE (AMC 16.60)
- ☐ VARIANCE (AMC 16.64)
- ☐ HOME OCCUPATION (AMC 16.46)
  ☐ Type I ☐ Type II
- ☐ NON-CONFORMING USE (AMC 16.62)
- ☐ LAND DIVISION
  - ☐ Subdivision (AMC 16.72)
  - ☐ Partition (AMC 16.70)
  - ☐ Property Line Adjustment (AMC 16.68)
- ☐ APPEAL TO _____ (AMC 16.74-16.78)
- ☐ OTHER _____

APPLICANT GENERAL INFORMATION

Applicant Iselin Architects, P.C. Jessica Iselin, Project Architect Phone 503-656-1942

Mailing Address 1307 7th Street Oregon City, OR 97045

Property Owner Aurora Colony Historical Society Phone 503-678-5754

Mailing Address 15018 Second St. Aurora, OR

Contact person if different than applicant Guy Sperb Phone 503-504-3523

Mailing Address 21261 Main St NE Aurora, OR

PROPERTY DESCRIPTION

Address 21561 Main Street Aurora, OR 97002 Tax Map # 4-1W-12CD Tax Lot # 5700

Legal Description (attach add'l sheet if necessary) _____

Total Acres or Sq. Ft. 19,750 sf Existing Land Use Historic Residence / Retail Use

Existing Zoning Commercial, Historic Commercial, Parking District Proposed Zoning (if applicable) _____

Proposed use New preservation and research facility

ACTION REQUESTED: (use additional sheets as needed)

Applicant requests Site Development Review approval

ATTACHMENTS:

A. Plot plan of subject property- show scale, north arrow, location of all existing and proposed structures, road access to property, names of owners of each property, etc. Plot plans can be submitted on tax assessor maps which can be obtained from the tax assessor's office in the Marion County Courthouse, Salem OR.

B. Legal description of the property as it appears on the deed (metes and bounds). This can be obtained at the Marion County Clerk's office in the Marion County Courthouse, Salem OR.

ADDITIONAL INFORMATION

In order to expedite and complete the processing of this application, the City of Aurora requires that all pertinent material required for review of this application be submitted at the time application is made. If the application is found to be incomplete, review and processing of the application will not begin until the application is made complete. The submittal requirement relative to this application may be obtained from the specific sections of the Aurora Municipal Code pertaining to this application. If there are any questions as to submittal requirements, contact the City Hall prior to formal submission of the application.

In submitting this application, the applicant should be prepared to give evidence and information which will justify the request and satisfy all the required applicable criteria. The filing fee deposit must be paid at the time of submission. This fee in no way assures approval of the application and is refundable to the extent that the fee is not used to cover all actual costs of processing the application.

I certify that the statements made in this application are complete and true to the best of my knowledge. I understand that any false statements may result in denial of this application. I understand that the original fee paid is only a deposit and I agree to pay all additional actual costs of processing this application, including, but not limited to, all planning, engineering, City attorney and City administration fees & costs. I understand that no final development approval shall be given and/or building permit shall be issued until all actual costs for processing this application are paid in full.

Signature of Applicant _____ Date 7-14-16

Signature of Property Owner _____ Date 7/25/16

Office Use Only: Received By: _____ Date: _____ Fee Paid $ _____

Receipt # _____ Case File # _____ Planning Director Review Date:

Last updated 6-14-2010

Exhibit B1

City of Aurora
HISTORIC REVIEW BOARD
Application for Certificate of Appropriateness

PROJECT INFORMATION SHEET

IMPORTANT: In order for your application to proceed in a timely basis, this form and the required attachments MUST be completed in full. If your application is incomplete, no decision will be made and your request will be delayed. Please turn the complete application in at least ONE WEEK prior to the meeting (4th Thursday of each month) so that board members can become familiar with your property and project. It is helpful, but not required, if you can attend the meeting.

You will need to refer to the ***City of Aurora Guidelines for Historic District Properties,*** which may be obtained from City Hall.

Name Guy Sperb Date 7/25/16
Business name (if applicable) Aurora Colony Historical Society
Physical address 21501 Main St, Aurora, OR
Mailing address 15018 Second St Aurora
Phone 503 504 3523 email spudsperb@gmail.com
Type of project(s) List all Preservation + Research Facility

Zoning: ☐ Residential ☒ Commercial
Type structure: ☐ House ☐ Commercial ☐ Church
Style: ☐ Colony ☐ Victorian ☐ Craftsman
☐ Ranch ☐ Contemporary
☐ Other (describe)

Project specifics:
☐ **Painting:** base color mfg/number
trim color mfg/number
trim color mfg/number
Guidelines used. Item/page(s) Info in Submittal Packet
Please bring samples of colors you propose to use.

☐ **Fencing:** ☐ Picket ☐ Stock ☐ Privacy
☐ Other (describe)
Dimensions: Height Length
Color
Material
Location (as shown on site plan)
Guidelines used: Item/page(s) Info in Submittal Packet

Exhibit B2

ISELIN ARCHITECTS, P.C.
1307 Seventh Street Oregon City, OR 97045 p: 503-656-1942 f: 503-656-0658

Site Development Review Application

Date: July 15, 2016

Project: ACHS Preservation and Research Building

Property Owner:
Aurora Colony Historical Society
15018 2nd Street
Aurora, OR 97002
Contact: Ken Hartley, President
503-678-5754

Architect:
Iselin Architects, P.C.
1307 Seventh Street
Oregon City, OR 97045
Jessica Iselin, Project Architect
503-656-1942 phone 503-656-0658 fax
jessica@iselinarch.com

Civil Engineer:
Sisul Engineering Inc.
375 Portland Avenue
Gladstone, OR 97027
Tom Sisul, Project Engineer
503-657-0188
tomsisul@sisulengineering.com

Site Address:
21561 Main Street
4-1W-12CD TL5700

Site Area: +/- 10,750 sf (.25 acre)

Zone:
C - Commercial
HC – Historic Commercial Overlay
PD – Parking District Overlay

Building Area:

New:	Main Level:	2,029 sf
	Lower Level:	3,744 sf
	Total Area:	5,773 sf

Exhibit B3

AURORA COLONY HISTORICAL SOCIETY

VICINITY MAP

DRAWING INDEX

A0 COVER
A1.0 SITE PLAN
A1.1 MAIN LEVEL FLOOR PLAN
A1.2 LOWER LEVEL FLOOR PLAN
A2.1 BUILDING ELEVATIONS
A2.2 BUILDING ELEVATIONS

TOPOGRAPHIC SURVEY

C1 PRELIMINARY UTILITIES PLAN
C2 PRELIMINARY GRADING PLAN

PROJECT INFORMATION

PROJECT DESCRIPTION	ADDITION TO EXISTING PRESERVATION AND RESEARCH FACILITY TO BE LOCATED ON THE ADJACENT LOT AS ON THE TWO NEXT TO THE HOME. BUILT BEFORE OR AFTER ADJACENT TO EXISTING BRICK
PROPERTY LOCATION	[illegible]
ADDRESS	21561 MAIN STREET AURORA, OR 97002
COUNTY	MARION
ZONE	C - COMMERCIAL HC - HISTORIC COMMERCIAL OVERLAY PD - PARKING DISTRICT OVERLAY
SITE AREA	+/- 10,760 SF (.25 AC)

EXISTING BUILDING FLOOR AREA		
LOWER LEVEL (UNCOVERED)	2,609 SF	
MAIN LEVEL (COVERED)	3,164 SF	
TOTAL	5,773 SF	
BUILDING COVERAGE		
MAIN STRUCTURE	13%	(1,444 SF W/ PORCH, STAIRS)
NEW ADDITION	26%	(2,755 SF W/ PORCH)
LANDSCAPING	39%	

CONTACT INFORMATION

OWNER
AURORA COLONY HISTORICAL SOCIETY
18946 SHAGBARK ST
AURORA, OR 97002
CONTACT: JOHN HARTLEY, PRESIDENT
P. (503) 982-9788

ARCHITECT
ISELIN ARCHITECTS, PC
1307 7TH ST
OREGON CITY, OR 97045
CONTACT: JEREMY ISELIN
P. (503) 656-1942
F. (503) 656-0505

CIVIL ENGINEER
BINK, SCHNEIDER INC.
315 PORTLAND AVE
GLADSTONE, OR 97027
CONTACT: TODD BENJ. / TOM CONTRERAS
P. (503) 657-0188

ISELIN ARCHITECTS P.O.
1307 Seventh Street
Oregon City, OR 97045
503-656-1942 ph
503-656-0505 fax
www.iselinarchitects.com

NOT FOR CONSTRUCTION
PRELIMINARY

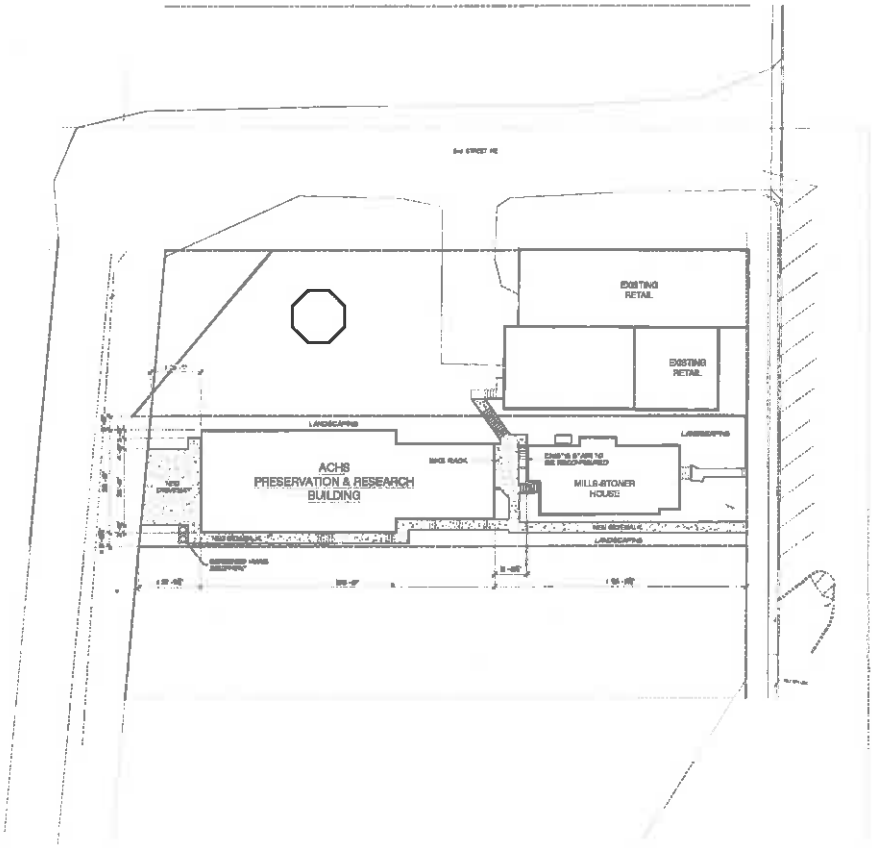
Aurora Colony Historical Society
Preservation & Research Facility
21561 Main Street Aurora, OR 97002

PROJ. NO.: 1459
FILE: A-COV
DATE: 07/15/16

SHEET #
A0

COVER SHEET & GENERAL NOTES

Exhibit B4



SITE PLAN

ISELIN ARCHITECTS P.C.

NOT FOR PRELIMINARY CONSTRUCTION

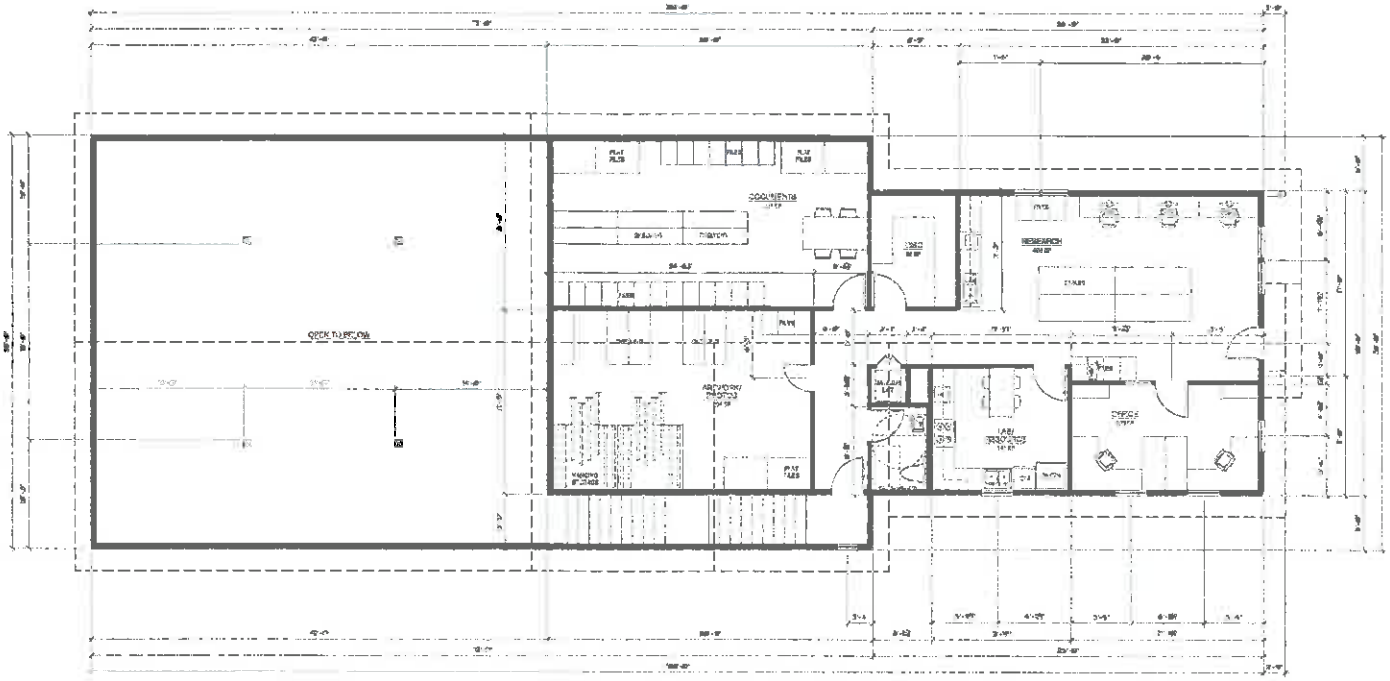
Aurora Colony Historical Society
Preservation & Research Facility
21561 Main Street Aurora, OR 97002

PROJ. NO.: 1459
FILE: A-001
DATE: 07/15/16

SHEET #
A1.0

SITE PLAN

Exhibit B5



MAIN LEVEL FLOOR PLAN

ISELIN ARCHITECTS P.O.

NOT FOR PRELIMINARY CONSTRUCTION

Aurora Colony Historical Society

Preservation & Research Facility

21561 Main Street Aurora, OR 97002

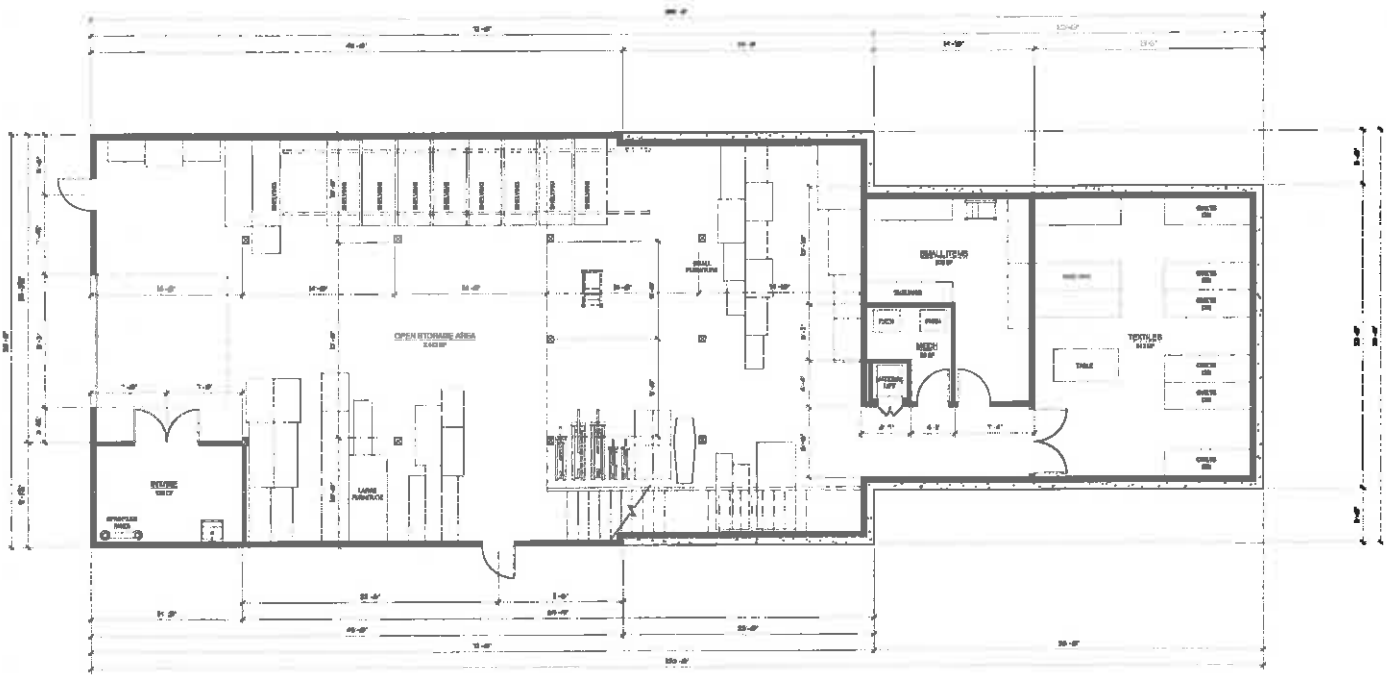
PROJ. NO.: 1456
FILE: A-FP
DATE: 07/10/18

SHEET #

A1.1

MAIN LEVEL FLOOR PLAN

Exhibit B6



LOWER LEVEL FLOOR PLAN

ISELIN ARCHITECTS P.C.

NOT FOR CONSTRUCTION
PRELIMINARY

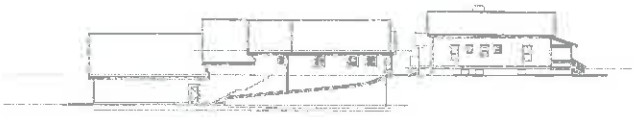
Aurora Colony Historical Society
Preservation & Research Facility
21561 Main Street Aurora, OR 97002

PROJ. NO.: 1499
FILE: A-FP
DATE: 07/15/19

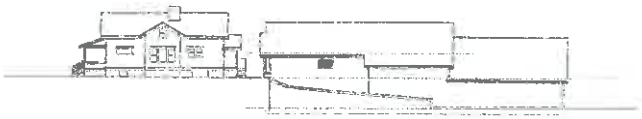
SHEET #
A1.2

LOWER LEVEL FLOOR PLAN

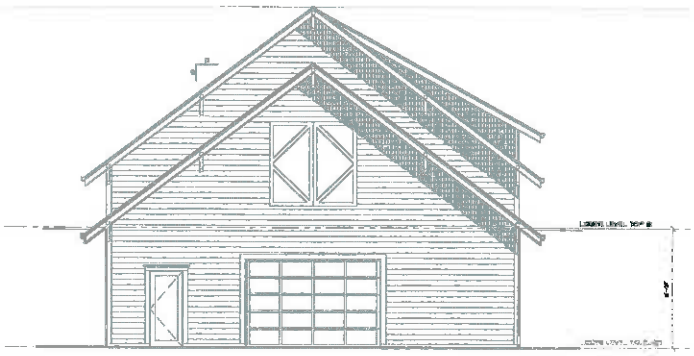
EXHIBIT B7



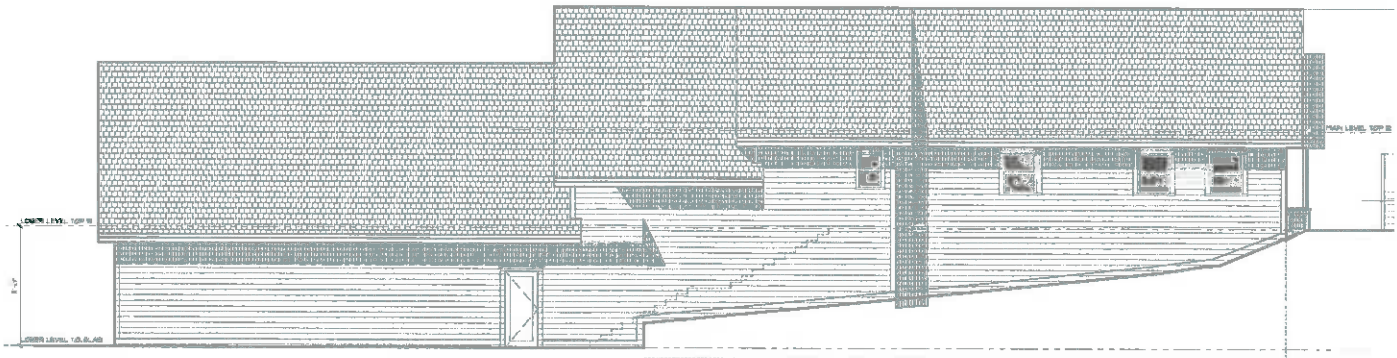
SOUTH SITE REFERENCE ELEVATIONS



NORTH SITE REFERENCE ELEVATIONS



WEST ELEVATION



SOUTH ELEVATION

ISELIN ARCHITECTS P.C.

NOT FOR PRELIMINARY CONSTRUCTION

Aurora Colony Historical Society

Preservation & Research Facility

21561 Main Street Aurora, OR 97002

PROJ. NO.: [illegible]
FILE: A-EL7
DATE: [illegible]

SHEET #

A2.1

BUILDING ELEVATIONS

Exhibit B8

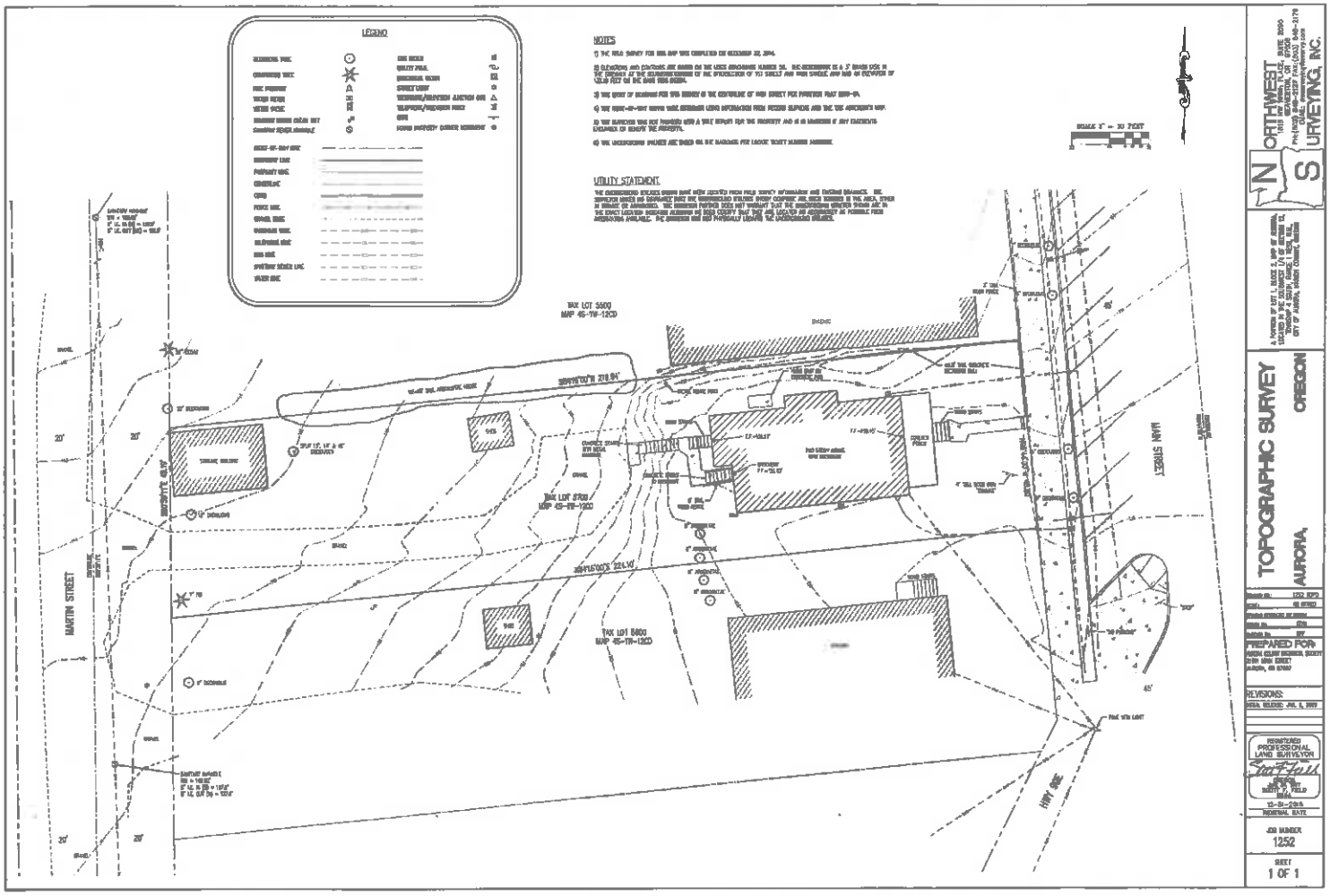
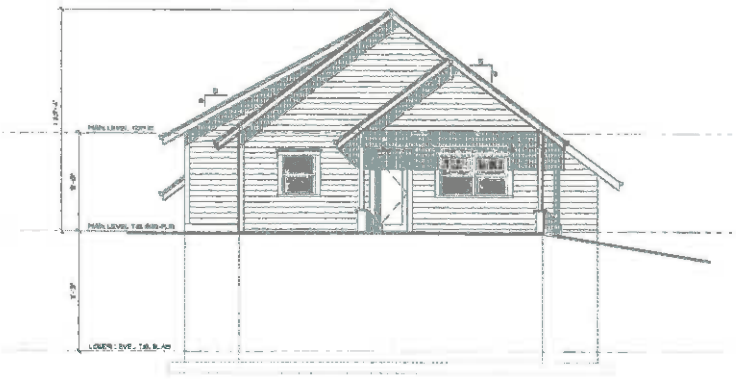
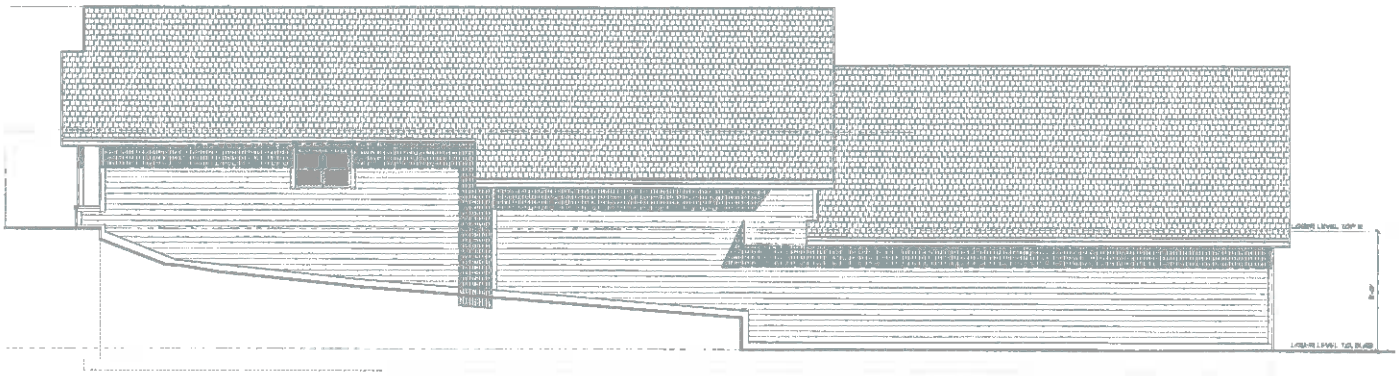

LEGEND
NOTES
UTILITY STATEMENT
SCALE 1" = 30 FEET
TAX LOT 5500
MAP 45-1W-12CD
TAX LOT 5700
MAP 45-1W-12CD
TAX LOT 5600
MAP 45-1W-12CD
MARTIN STREET
MAIN STREET
NORTHWEST
SURVEYING, INC.
TOPOGRAPHIC SURVEY
OREGON
AURORA,
PREPARED FOR:
REVISIONS:
REGISTERED
PROFESSIONAL
LAND SURVEYOR
12-9-2015
RENEWAL DATE
JOB NUMBER
1252
SHEET
1 OF 1

EXHIBIT B9



EAST ELEVATION



NORTH ELEVATION

ISELIN ARCHITECTS P.C.

NOT FOR PRELIMINARY CONSTRUCTION

Aurora Colony Historical Society

Preservation & Research Facility

21561 Main Street Aurora, OR 97002

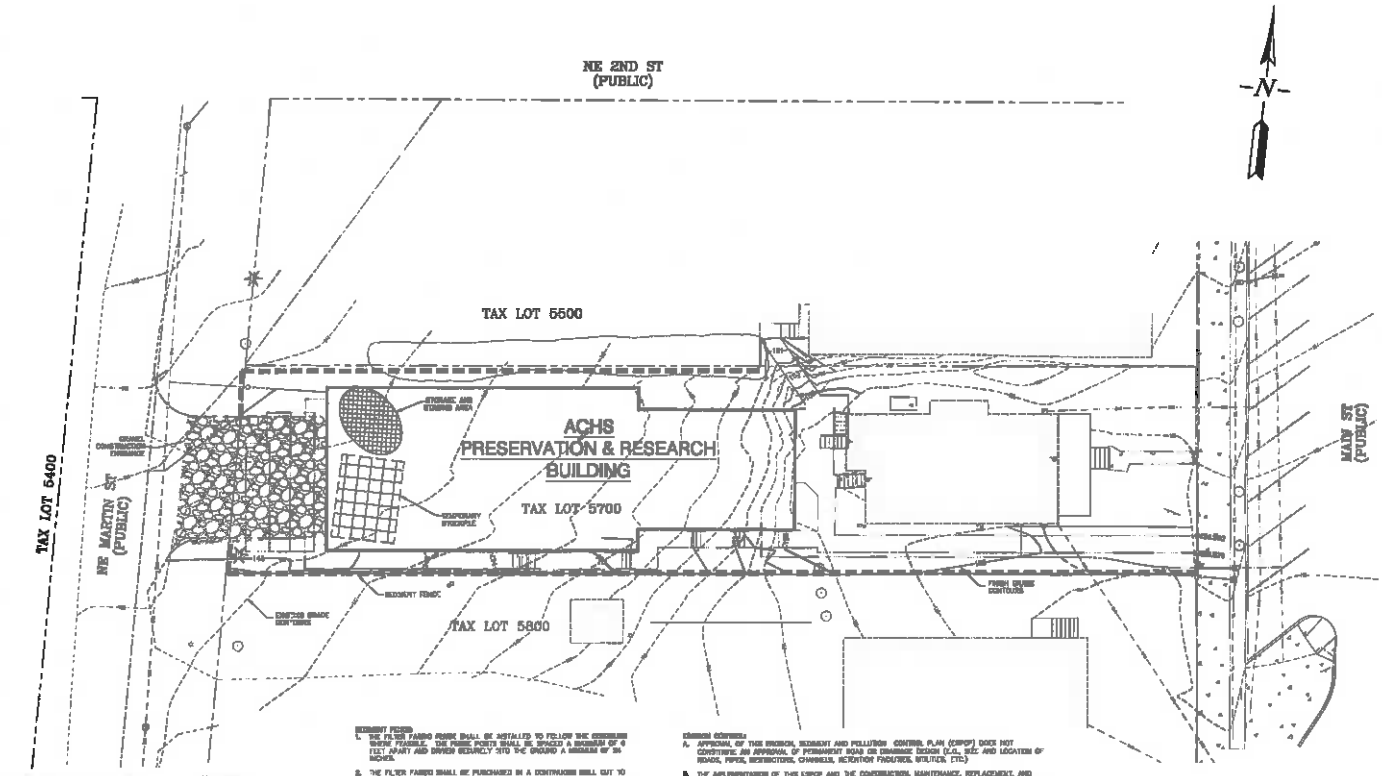
PROJ. NO.: 1466
FILE: A-ELV
DATE: 07/15/16

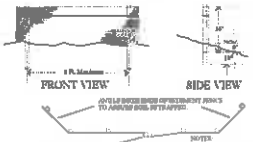
SHEET #

A2.2

BUILDING ELEVATIONS

EXHIBIT B10





Sediment Fence

NTS

SEDIMENT FENCE

1. THE FILTER FABRIC FENCE SHALL BE INSTALLED TO FOLLOW THE CONTOURS WHERE FEASIBLE. THE FENCE POSTS SHALL BE SPACED A MAXIMUM OF 6 FEET APART AND DRIVEN SECURELY INTO THE GROUND A MINIMUM OF 36 INCHES.
2. THE FILTER FABRIC SHALL BE PURCHASED IN A CONTINUOUS ROLL CUT TO THE LENGTH OF THE BARRIER TO AVOID USE OF JOINTS. WHEN JOINTS ARE NECESSARY, FILTER CLOTH SHALL BE SPLICED TOGETHER ONLY AT A SUPPORT POST, WITH A MINIMUM 6-INCH OVERLAP, AND BOTH ENDS SECURELY FASTENED TO THE POST, OR OVERLAP 2 INCH x 2 INCH POSTS AND ATTACH AS SHOWN ON DETAIL SHEET 6-3A OF THE EROSION CONTROL MANUAL.
3. THE FILTER FABRIC SHALL HAVE A MINIMUM VERTICAL BURIAL OF 8 INCHES. ALL EXCAVATED MATERIAL FROM FILTER FABRIC FENCE INSTALLATION SHALL BE BACKFILLED AND COMPACTED ALONG THE ENTIRE DISTURBED AREA.
4. STANDARD OR HEAVY DUTY FILTER FABRIC FENCE SHALL HAVE MANUFACTURED STITCHED LOOPS FOR 2 INCH x 2 INCH POST INSTALLATION. STITCHED LOOPS SHALL BE INSTALLED ON THE UP HILL SIDE OF THE SLOPED AREA.
5. FILTER FABRIC FENCES SHALL BE REMOVED WHEN THEY HAVE SERVED THEIR USEFUL PURPOSE, BUT NOT BEFORE THE UPHILL AREA HAS BEEN PERMANENTLY PROTECTED AND STABILIZED.
6. FILTER FABRIC FENCES SHALL BE INSPECTED BY APPLICANT/CONTRACTOR IMMEDIATELY AFTER EACH RAINFALL AND AT LEAST DAILY DURING PROLONGED RAINFALL. ANY DEFECTIVE SECTIONS SHALL BE MADE IMMEDIATELY.
7. AT NO TIME SHALL MORE THAN 1" OF SEDIMENT BE ALLOWED TO ACCUMULATE BEHIND SILT FENCING.

EROSION CONTROL:

A. APPROVAL OF THIS EROSION, SEDIMENT AND POLLUTION CONTROL PLAN (ESPCP) DOES NOT CONSTITUTE AN APPROVAL OF PERMANENT ROAD OR DRAINAGE DESIGN (I.E., SIZE AND LOCATION OF ROADS, PIPES, RESTRICTORS, CHANNELS, RETENTION FACILITIES, UTILITIES, ETC.)
B. THE IMPLEMENTATION OF THIS ESPCP AND THE CONSTRUCTION, MAINTENANCE, REPLACEMENT, AND UPGRADING OF THESE ESPCP FACILITIES IS THE RESPONSIBILITY OF THE APPLICANT/CONTRACTOR UNTIL ALL CONSTRUCTION IS COMPLETED AND APPROVED AND VEGETATION/LANDSCAPING IS ESTABLISHED.
C. THE BOUNDARIES OF THE CLEARING LIMITS SHOWN ON THIS PLAN SHALL BE CLEARLY FLAGGED IN THE FIELD PRIOR TO CONSTRUCTION. DURING THE CONSTRUCTION PERIOD, NO DISTURBANCE BEYOND THE FLAGGED CLEARING LIMITS SHALL BE PERMITTED. THE FLAGGING SHALL BE MAINTAINED BY THE APPLICANT/CONTRACTOR FOR THE DURATION OF CONSTRUCTION.
D. THE ESPCP FACILITIES SHOWN ON THIS PLAN MUST BE CONSTRUCTED IN CONJUNCTION WITH ALL CLEARING AND GRADING ACTIVITIES, AND IN SUCH A MANNER AS TO ENSURE THAT SEDIMENT AND SEDIMENT LADEN WATER DO NOT ENTER THE DRAINAGE SYSTEM, WATERWAYS, OR VIOLATE APPLICABLE WATER STANDARDS.
E. THE ESPCP FACILITIES SHOWN ON THIS PLAN ARE THE MINIMUM REQUIREMENTS FOR THE ANTICIPATED SITE CONDITIONS. DURING THE CONSTRUCTION PERIOD, THESE ESPCP FACILITIES SHALL BE UPGRADED AS NEEDED FOR UNANTICIPATED STORM EVENTS AND TO ENSURE THAT SEDIMENT AND SEDIMENT LADEN WATER DO NOT LEAVE THE SITE.
F. THE ESPCP FACILITIES SHALL BE INSPECTED DAILY BY THE APPLICANT/CONTRACTOR AND MAINTAINED AS NECESSARY TO ENSURE THEIR CONTINUED FUNCTIONING.
G. THE ESPCP FACILITIES ON INACTIVE SITES SHALL BE INSPECTED AND MAINTAINED A MINIMUM OF ONCE A WEEK OR WITHIN THE 24 HOURS FOLLOWING A STORM EVENT.
H. APPLICANT/CONTRACTOR TO PUT UP ALL REQUIRED EROSION CONTROL SIGNAGE PRIOR TO GROUND DISTURBANCE. A CD WITH ALL REQUIRED EROSION CONTROL PLANS WILL BE PROVIDED AT THE PRE-CONSTRUCTION MEETING.

SISUL ENGINEERING
375 PORTLAND AVENUE
GLADSTONE, OREGON 97027
(503) 657-0188

Date: 7-3-11

ISELIN ARCHITECTS P.C.
1527 Seventh Street
Oregon City, OR 97045
503-656-1948 P
503-656-2868 F
www.iselinarchitects.com

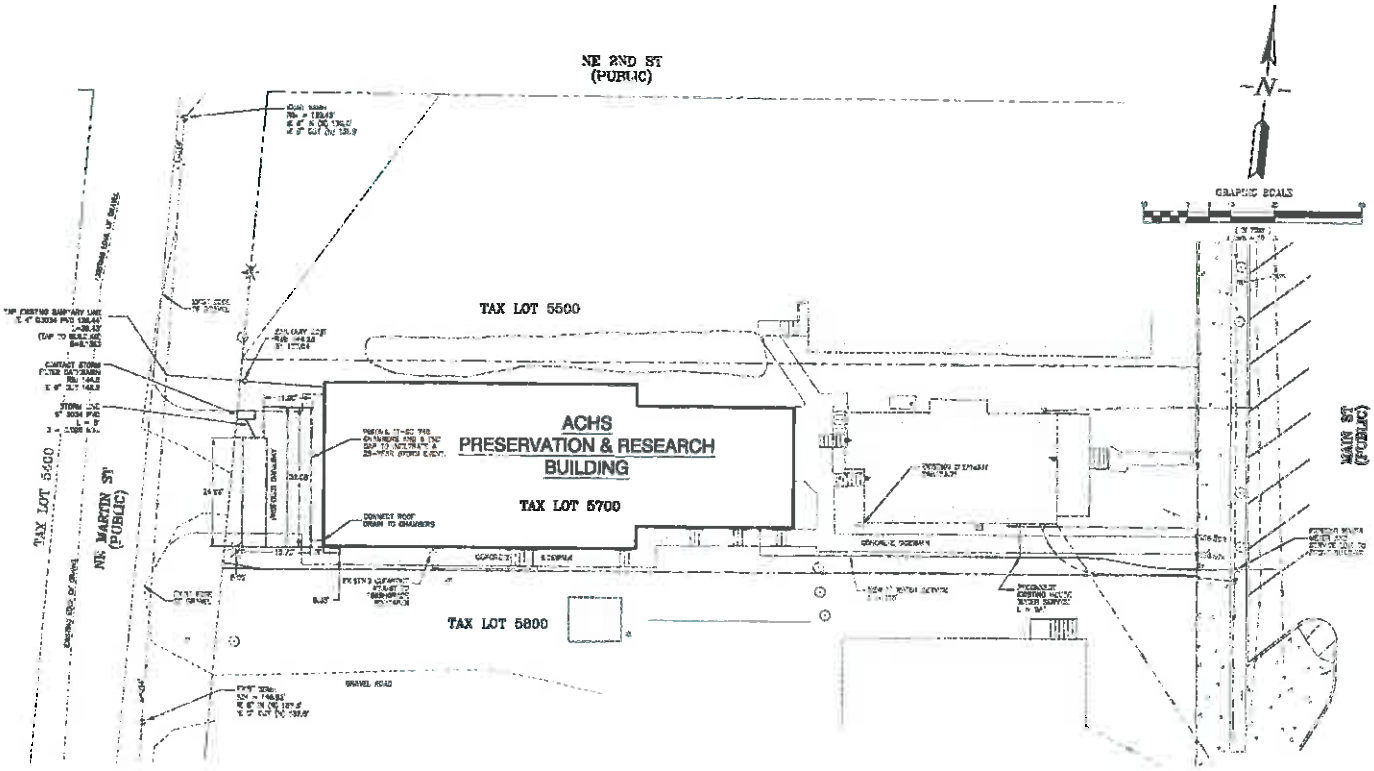
NOT FOR CONSTRUCTION
PRELIMINARY

Aurora Colony Historical Society
Preservation & Research Facility
21561 Main Street Aurora, OR 97002

PROJ. NO.: 1489
FILE:
DATE: 06/30/11

SHEET #
C2.0
GRADING PLAN

EXHIBIT B11



PRIVATE STORM DRAIN NOTES

PRIVATE WATERLINE NOTES

PRIVATE SANITARY SEWER NOTES

SOUL ENGINEERING

ISELIN ARCHITECTS P.C.

NOT FOR PRELIMINARY CONSTRUCTION

Aurora Colony Historical Society
Preservation & Research Facility
21561 Main Street Aurora, OR 97002

PROJ. NO.: 1456
FILE:
DATE: 08/20/16

SHEET #
C1.0

UTILITY PLAN

EXHIBIT B12

Existing Mills-Stoner:	Main Level:		1,219 sf
	Upper Level:		443 sf
	Basement:		1,107 sf
	Total:		2,769 sf
Building Coverage:	Mills Stoner:	13%	(1,444 sf w/ porch, stairs)
	New Building:	35%	(3,778 sf w/ porch)
	Total:	48%	
Landscape Coverage:	36%		

Project Summary

The proposed project consists of the development of a new preservation and research facility for the Aurora Colony Historical Society. This facility will be used to consolidate and improve their ongoing work including collecting, analyzing, repairing and preserving a wide variety of historical artifacts. It is anticipated that the proposed facility would house two full time employees, who currently have office space at the ACHS Museum on 2nd Street.

The new building will sit on the same lot as the Mills-Stoner House, which currently houses an antique store. The new building will be a two story, comprised of a main level and a full basement. Primary access to the new building will be a grade level entrance to the main level office area on the east side of the building. A new walkway will extend from this entry past the Mills-Stoner House to the public sidewalk on Main Street. A secondary entrance and overhead door will provide access to the lower level of the building on Martin Street. An additional site sidewalk and stair will provide access from the east side of the new building to the adjacent Giesy Store property. The rear entrance stair to the Mills-Stoner house will be reconstructed and reconfigured as part of this project.

Site Development Review Criteria

- Chapter 16.14 C Commercial Zone
- Chapter 16.22 HC Historic Commercial Overlay
- Chapter 16.28 PD Parking District Overlay
- Chapter 16.38 Landscaping, Screening and Fencing
- Chapter 16.42 Off-Street Parking and Loading Requirements
- Chapter 17.40 Design Standards
- Chapter 17.44 Landscaping

Chapter 16.14 C Commercial Zone

16.14.010 Purpose.
The commercial zone (C) is intended to provide areas for retail and service commercial uses.

16.14.020 Permitted uses.
In the commercial zone, except as specifically stated in Section 16.14.050 activities shall be conducted within an enclosed building or structure and are subject to site development review, Chapter 16.58. Only the following uses and their accessory uses are permitted outright:
1. Auction house, auditorium, exhibit hall, community building, club, lodge hall, fraternal organization or church;
2. Bed and breakfast inn, hotel or motel;
3. Bicycle sales or repair;
4. Cultural exhibits and library services;
5. Day care facility licensed by state;
6. Dwelling units located on the second floor of the commercial structure;
7. Eating and drinking establishments;
8. Financial, insurance and real estate offices;
9. General retail and convenience sales, except adult bookstores;
10. Indoor and outdoor recreation and entertainment facilities, except adult entertainment or adult motion picture theaters;
11. Laundry or dry cleaning establishments;
12. Medical or dental services including labs;
13. Mini storage, with or without a caretaker dwelling;
14. Minor impact utilities;
15. Motor vehicle, farm implement, boat or trailer rental, sales or services including body repairs when repairs are conducted wholly within an enclosed structure;
16. Mortuary, funeral home, crematorium or taxidermy;
17. Nurseries, greenhouses, and landscaping supplies not requiring outside storage for items other than plant materials including wholesale or retail, excluding uses related to medical or recreational marijuana.
18. Parking structure or lot or storage garage;
19. Printing or publishing plant;
20. Professional and administrative offices;
21. Public safety and support facilities;
22. Public transportation passenger terminal or taxi stand;
23. Repair services for household and personal items, excluding motorized vehicles;
24. Sales, grooming and veterinary offices or animal hospitals without outside pens or noise beyond property line;
25. Schools;
26. Service station, retail vehicle fuel sales or car wash when not located adjacent to a residential zone.
27. Single-family residence, provided it is an accessory use and cannot be sold separately;
28. Studios, including art, photography, dance, and music.

The proposed Preservation and Research Facility would be most closely classified as "Cultural exhibits and library services", which is a permitted use.

16.14.030 Conditional uses.
The following uses and their accessory uses may be permitted when authorized by the Planning Commission in

accordance with the requirements of Chapter 16.60, other relevant sections of this title and any conditions imposed by the Planning Commission:
A. Adult bookstore, adult entertainment or adult motion picture theaters, provided no sales area or activity is ever visible from the building exterior, all building setbacks shall be a minimum of thirty-five (35) feet from any property line and shall be screened and buffered in accordance with Section 16.38.040. In addition, location shall be at least one thousand five hundred (1,500) feet, measured in a straight line, from any of the following:
1. Residential district,
2. Public or private nursery, preschool, elementary, junior, middle or high school,
3. Day care facility, nursery school, convalescent home, home for the aged, resident care facility or hospital,
4. Public library,
5. Community recreation,
6. Church,
7. Historic district or historic structure;
B. Home occupations (Type II) subject to Chapter 16.46;
C. Major impact utilities, including telecommunications facilities subject to Chapter 16.50, provided that a ten (10) foot perimeter setback containing both externally visible landscaping meeting buffering standards and solid screening surrounds the property;
D. Retail or wholesale business with not more than fifty (50) percent of the floor area used for the manufacturing, processing or compounding of products in a manner which is clearly associate to the primary business conducted on the premises, excluding products related to medical or recreational marijuana:
E. On lots that do not abut a residential zone, retail or wholesale business with not more than seventy-five (75) percent of the floor area used for the manufacturing, processing or compounding of products in a manner which is clearly associated with the retail business conducted on the premises;
F. Wholesaling, storage and distribution.
G. Medical Marijuana Dispensaries (MMD) and commercial marijuana retail stores, subject to the following standards:
1. Buffers which shall only be measured at the initial land use application and not subsequent annual renewals:
a. Elementary, middle or high school, public or private: 1000 feet
b. Day care: 1000 feet
c. Other marijuana businesses: 1000 feet
d. May not be adjacent to a residential zone, a public park, or a church.2. The use must be located within a permanent, enclosed structure.
e. The use may not be allowed as a home occupation.
f. Applicant and all employees must pass a criminal background check.
g. The term of a conditional use approval may not exceed one year.
h. Waste materials containing any amount of marijuana or by products must be locked in a secure container on-site.
i. Hours of operation are limited to 10 am to 5 pm.
j. Drives through windows are prohibited.

16.14.040 Development Standards
A. There is no minimum size for lots or parcels served by municipal sewer. Minimum lot sizes for lots or parcels without municipal sewer shall be as determined by the county sanitarian.

The site is served by public sewer line in Martin Street.

B. There is no minimum lot width or depth.
C. Unless otherwise specified, the minimum setback requirements are as follows:
1. There is no minimum front yard setback except as required for buffering of off street parking in accordance with Section 16.38.050;
2. On corner lots and the rear of through lots the minimum setback for the side facing the street shall be ten (10) feet;
3. No side or rear yard setback shall be required except twenty (20) feet screened and buffered in accordance with Chapter 16.38 shall be required where abutting a residential zoning district;

There is no onsite parking, the lot is not a corner lot and the adjacent lots are zoned Commercial, therefore, there are no setback requirements.

D. No building shall exceed forty-five (45) feet in height. Within one hundred (100) feet of a residential zone, no building shall exceed thirty-five (35) feet in height. All buildings greater than thirty-five (35) feet in height are subject to Chapter 16.24.

The maximum height of the building is approximately 31'.

E. Parking shall be in accordance with Chapter 16.42.

Refer to Chapter 16.42.

F. Landscaping shall be in accordance with Chapter 16.38.

Refer to Chapter 16.38.

G. Doors and windows may not be covered with security grates.

No security grates are proposed.

H. All properties located outside the designated historic commercial overlay and the historic residential overlay and adjacent to Highway 99 or Ehlen Road shall be collectively referenced as "gateway properties." The standards of Chapter 16.56 shall apply to all aspects of the site including, but not limited to, structural facade, yard and landscaping that are immediately adjacent to and visible from Highway 99 or Ehlen Road.

Not applicable.

I. Additional requirements shall include any applicable section of this title.
J. Additions and/or accessory structures not located in the rear yard shall be consistent in appearance with the other structures on the property with regard to color, setbacks, architectural style, and overall proportions, unless fully screened with a minimum six (6) foot fence or landscaping. (ORD 482 2016)

The proposed new building is located behind the existing building on the lot. It is similar in style, materials and detailing to the existing building. The main level, which is visible from the front of the lot, is consistent in scale to the existing building.

Chapter16.22 HC Historic Commercial Overlay

16.22.010 Purpose.

The purpose of the historic commercial overlay is to implement the City of Aurora Design Guidelines for Historic Properties while providing for a concentrated, central commercial, office and retail goods and services area with opportunities for employment and business and professional services in close proximity to residential services. (Ord. 415 § 7.74.010, 2002)

16.22.020 Permitted uses.

In the historic commercial zone, activities shall be conducted within an enclosed structure or building and are subject to Chapter 16.58, and shall require approval under Title 17 as applicable. Only the following uses and their accessory uses are permitted outright:

A. Auditorium, exhibit hall, community building, club, lodge hall, fraternal organization or church;
B. Bed and breakfast inn, hotel or motel;
C. Bicycle sales or repair;
D. Community recreation facilities;
E. Cultural exhibits and library services;
F. Day care facility licensed by state;
G. Dwelling units located on the second floor of the commercial structure;
H. Eating and drinking establishments;
I. Financial, insurance and real estate offices;
J. General retail and convenience sales, except adult bookstores;
K. Medical or dental services including labs;
L. Parking structure or lot;
M. Professional and administrative offices;

N. Public safety and support facilities;
O. Public transportation passenger terminal or taxi stand;
P. Repair services for household and personal items, excluding motorized vehicles;
Q. Sales, grooming and veterinary offices or animal hospitals without outside pens or noise beyond property line;
R. Schools;
S. Single-family residence, provided it is an accessory use and cannot be sold separately;
T. Studios, including art, photography, dance, and music;
U. Vehicle fuel sales. (Ord. 415 § 7.74.020, 2002)

The proposed Preservation and Research Facility would be most closely classified as "Cultural exhibits and library services", which is a permitted use.

16.22.030 Conditional uses.

The following uses and their accessory uses may be permitted when authorized by the Planning Commission in accordance with the requirements of Chapter 16.60, a certificate of appropriateness approved by the historic review board, other relevant sections of this title and any conditions imposed by the planning commission:

A. Home occupations (Type II) subject to Chapter 16.46;

B. Retail or wholesale business with not more than fifty (50) percent of the floor area used for the manufacturing, processing or compounding of products in a manner which is clearly incidental to the primary business conducted on the premises. (Ord. 415 § 7.74.030, 2002)

C. Food carts located on the same property/lot and accessory to an established indoor eating and drinking establishment.

1. No structures, product display, or storage shall be located within yard setback or buffering and screening areas.

2. Drive-through units are prohibited.

3. Signage shall comply with AMC 16.44 and Title 17, as applicable, and shall be calculated as a portion of total signage as permitted for the site.

4. Shall be limited to one accessory unit per site/primary business.

5. Food Carts shall not have any internal floor space available to customers.

6. Food Carts shall not exceed 15 -20 feet in length.

7. Sewer or grey water disposal hookups are not permitted.

16.22.040 Development standards.

A. There is no minimum lot size for lots served by municipal sewer. Minimum lot sizes for lots without municipal sewer shall be as determined by the county sanitarian.

The site is served by public sewer line in Martin Street.

B. There is no minimum lot depth.

C. Minimum lot width shall be fifty (50) feet.

The existing lot is 48' wide, with no proposed revisions.

D. No front setbacks shall be permitted, except as necessary to maintain visual clearance areas at unsignalized intersections. No rear or side setbacks are required.

The proposed building sits 12' behind the existing historic structure to remain. The main level side yard setbacks are approximately 10', consistent with those of the existing building. The lower level side yard setbacks are 5'.

E. No building shall exceed thirty-five (35) feet in height.

The maximum height of the building is approximately 31'.

F. Parking shall be in accordance with Chapter 16.42 except as specifically exempted by Chapter 16.28 and Title 17, and should be located to the rear of the building. The

planning commission may approve parking to the side of the building where parking to the rear is not feasible.

Refer to Chapter 16.28 and 16.42.

G. Signs shall be in accordance with the requirements of Chapter 16.44, and the City of Aurora Design Guidelines for Historic Properties.

No signage is proposed.

H. Landscaping shall be in accordance with the requirements of the City of Aurora Design Guidelines for Historic Properties, Chapter 16.38, and the Aurora Downtown Improvement Plan.

Refer to Chapter 16.38 and 17.44.

I. All properties, uses and structures in the historic commercial overlay shall be subject to the requirements of Title 17, Historic Preservation, and any applicable section of this title.

Refer to Chapters 17.40 and 17.44.

Chapter 16.28 PD Parking District Overlay

16.28.010 Purpose.
The purpose of the parking district overlay is to preserve the historic character of the commercial core and implement the recommendations of the Aurora downtown improvement plan. The parking district overlay shall apply to properties located in the historic commercial overlay.

16.28.020 Provisions.
The same spatial requirements in Chapter 16.42, shall apply in the parking district overlay, except that:
A. On-street parking shall be counted to meet the required off-street space requirement. Such on-street parking shall be located adjacent to the subject property, or adjacent to a contiguous property under the same ownership, as long as all the property is in the parking district.

New commercial structures are exempt from parking requirements per 17.40.110.

B. Required off-street parking spaces may be located on other parcels within the parking district not further then seven hundred fifty (750) feet from the building, or use they are intended to serve, measured in a straight line from the building. Any proposal to provide off-street parking spaces under this subsection is subject to the approval of the Planning Commission and shall be in accordance with the Aurora Downtown Improvement Plan.

Not applicable.

C. If the developer or building owner so elects, he or she may pay a fee in lieu of providing parking, as designated by City Council. Provided, however, the developer or building owner must provide a minimum of fifty (50) percent of the required parking spaces.

Not applicable.

D. Where the city has used in-lieu parking fees received under this section for parking improvements or otherwise constructed city-owned parking improvements, including, but not limited to, paving, striping and catch basins. The cost of those improvements may be recovered by the city from the developer of property adjacent to such parking at the time the property is developed. The recovery costs shall reflect the costs of those improvements at the time the property is developed and is payable prior to issuance of a building permit.

Not applicable.

E. The in-lieu parking fee shall be paid prior to issuance of a building permit.

Not applicable.

Chapter 16.38 Landscaping, Screening and Fencing

16.38.010 Purpose.
The purpose of this chapter is to establish standards for landscaping, buffering and screening in order to enhance the environment of the city through the use of plant materials as a unifying element and by using trees and other landscaping materials to mitigate the effects of the sun, wind, noise and lack of privacy.

16.38.020 Applicability and approval process.
A. Section 16.38.060 shall apply to all properties in the city. All other sections of this chapter shall apply to all development except single-family residences, duplexes and accessory buildings including accessory dwelling units.
B. In residential zones, at least ten (10) percent of the total area shall be landscaped.
C. In the commercial and industrial zones, landscaping shall be as follows:
1. Properties up to twenty thousand (20,000) square feet in size shall have at least fifteen (15) percent of the total lot area landscaped.

The property size is 10,750 sf. The proposed development would include 3,650 sf of landscape area, roughly 34% of the total site area.

2. Properties larger than twenty thousand (20,000) square feet in size shall have at least ten (10) percent of the total lot area landscaped.

16.38.030 General provisions.
A. Unless otherwise provided by the lease agreement, the owner, tenant and their agent, if any, shall be jointly and severably responsible for the maintenance of all landscaping which shall be maintained in good condition so as to present a healthy, neat and orderly appearance and shall be kept free from refuse and debris.

ACHS will continue to maintain the existing and new landscape areas to be developed or modified as part of the proposed development.

B. All plant growth in landscaped areas of developments shall be controlled by pruning, trimming or otherwise so that:
1. Public utilities can be maintained or repaired;
2. Pedestrian or vehicular access is unrestricted;
3. Visual clearance provisions are met. (See Chapter 16.40.)

ACHS will continue to maintain the site to protect clearances and access ways and to provide a clean and attractive property.

C. Certificates of occupancy shall not be issued unless the landscaping requirements have been met or a bond has been posted with the city to insure the completion of landscaping requirements.
D. Existing plant materials may be used to meet landscaping requirements if no cutting or filling takes place within the dripline of the plantings.

Existing plant materials will be retained to the extent feasible, beyond the area of construction for the new building.

E. Plant materials are to be watered at intervals sufficient to ensure survival and growth.

New planting areas will be watered by ACHS members as required to establish strong, healthy roots.

F. The use of native plant materials is encouraged to reduce irrigation and maintenance demands.

New planting areas have been designed with a mix of hearty and/or native species that will require limited maintenance once established.

16.38.040 Buffering and screening requirements.
A. Buffering and screening a minimum width of twenty (20) feet shall be required between any nonresidential use in a nonresidential zone which abuts a residential use in a residential zone.

Not applicable. Abutting zones are commercial.

B. A buffer shall consist of an area within a required interior setback adjacent to a property line, having a width of ten (10) feet or greater and a length equal to the length of the property line.

Not applicable. No buffers required.

C. Occupancy of a buffer area shall be limited to utilities, screening, and landscaping. No buildings, access-ways or parking areas shall be allowed in a buffer area.

Not applicable. No buffers required.

D. The minimum improvements within a buffer area shall include:
1. One row of trees, or groupings of trees equivalent to one row of trees. At the time of planting, these trees shall not be less than ten (10) feet high for deciduous trees and five feet high for evergreen trees measured from the ground to the top of the tree after planting. Spacing for trees shall be as follows:
a. Small or narrow stature trees, under twenty-five (25) feet tall or less than sixteen (16) feet wide at maturity shall be spaced no further than fifteen (15) feet apart;
b. Medium sized trees between twentyfive (25) feet to forty (40) feet tall and with sixteen (16) feet to thirty-five (35) feet wide branching at maturity shall be spaced no greater than twenty-five (25) feet apart;
c. Large trees, over forty (40) feet tall and with more than thirty-five (35) feet wide branching at maturity, shall be spaced no greater than thirty (30) feet apart.
2. In addition, at least one shrub shall be planted for each one hundred (100) square feet of required buffer area.
3. The remaining area shall be planted in groundcover, or spread with bark mulch.

Not applicable. No buffers required.

E. Where screening is required, the following improvements are required in addition to subsection D of this section:
1. A hedge of narrow or broadleaf evergreen shrubs shall be planted which will form a four-foot continuous screen within two years of planting; or
2. An earthen berm planted with evergreen plant materials which will form a continuous screen six feet in height within two years. The unplanted portion of the berm shall be planted in lawn, ground cover or bark mulched; or
3. A six-foot fence or wall providing a continuous sight-obscuring screen. Fences and walls shall be constructed of materials commonly used in the construction of fences and walls such as wood or brick, or otherwise acceptable by the Planning Director. Corrugated metal is not considered to be acceptable fencing material. Chain link fences with slats may qualify as screening when combined with a planting of a continuous evergreen hedge;

Screening will occur at the anticipated exterior HVAC units. This screening will consist of a continuous evergreen hedge that will reach between 5'-8' at maturity.

F. Buffering and screening provisions shall be superseded by the vision clearance requirements as set forth in Chapter 16.40.

Not applicable. No vision clearance requirements.

G. When the use to be screened is downhill from the adjoining property, the prescribed heights of required fences, walls or landscape screening shall be measured from the actual grade of the adjoining property.

The adjacent property and Martin Street are level with or below the proposed location of the mechanical units to be screened.

16.38.050 Screening—Special provisions.
A. If four or more off-street parking spaces are required under this title, off-street parking adjacent to a public street shall provide a minimum of four square feet of landscaping for each lineal foot of street frontage. The minimum standard for such landscaping shall consist of shrubbery at least two feet in height located adjacent to the street as much as practical and one tree for each fifty (50) lineal feet of street frontage or fraction thereof.

Not applicable. No off-street parking provided.

B. Landscaped parking areas may include special design features which effectively screen the parking lot areas from view. These design features may include the use of landscaped berms, decorative walls, and raised planters. Landscape planters may be used to define or screen the appearance of off-street parking areas from the public right-of-way. Materials to be installed shall achieve a balance between low lying and vertical shrubbery and trees.

Not applicable. No off-street parking provided.

C. Screening of loading areas and outside storage is required according to specification in Section 16.38.040(E).

Not applicable. No loading or outside storage space is proposed.

D. Except for one-family and two-family dwellings, any refuse container or disposal area and service facilities such as gas meters and air conditioners which would otherwise be visible from a public street, customer or resident parking area, any public facility or any residential area, shall be screened from view by placement of a solid wood fence, masonry wall or evergreen hedge between five and eight feet in height. All refuse materials shall be contained within the screened area.

Garbage and recycling facility storage will be housed within the building, on the lower level. The bins will be wheeled out of the building on collection days.

An area will be provided for locating anticipated HVAC units to serve the new building. This area will be located on the lower level, near the overhead door accessed off of Martin Street. The area will be screened with an evergreen hedge that will be between 5' – 8' in height at maturity.

16.38.060 Fences or walls.
A. Fences or walls up to forty-two (42) inches in height may be constructed in required front yards. Rear and side yard fences, or berm/fence combinations behind the required front yard setback may be up to six feet in height without any additional permits. Any fence or fence/berm combination greater than six feet in height shall require variance approval by the Planning Commission and may require a building permit. The prescribed heights of required fences, walls or landscaping shall be measured from the lowest of the adjoining levels of finished grade.

Not applicable. No fences or walls are proposed as part of this development.

C. Fences and walls shall be constructed of any materials commonly used in the construction of fences and walls such as wood or brick, or otherwise acceptable by the Planning Director. Except in industrially zoned property, chain link fencing is not permitted in the area from the front building line to the front of the property line. PVC coated chain link fencing may be used only behind the required front yard setback or in rear yards. Corrugated metal is not considered to be acceptable fencing material

Not applicable. No fences or walls are proposed as part of this development.

Chapter 16.42 Off-Street Parking and Loading Requirements

Not applicable for new commercial structures in the Commercial overlay zone per 17.40.110.

Chapter 17.40 Design Standards

17.40.010 Purpose

The purpose of these design standards is to protect the historic scale, form, appearance, and integrity of the Aurora Colony National Historic District. (Ord. 473, 2013)

17.40.020 Additions to Structures

A. Contributing Structures – Commercial Overlay

1. New additions may only be placed on the rear elevation. Architectural detailing including roofing, siding, trim, doors, and windows shall match the existing structure in design and materials unless supported by evidence in the historic inventory.

2. Previous additions to the original structure that were added prior to 1921 shall be subject to the same standards and criteria as the original portion of the structure; however, in the event that the addition does not match the original, the exterior features of the addition may be altered to match the original.

3. Additions to contributing structures that were built in 1921 or later may be removed, and following removal, the exterior materials on that portion of the structure must match the remainder of the structure.

4. Additions to commercial structures are exempt from the parking requirements in Title 16. (Ord. 473, 2013)

B. Contributing Structures – Residential Overlay

1. New additions may only be placed on the rear elevation. Architectural detailing including roofing, siding, trim, doors, and windows shall be compatible with the existing structure in design and materials.

2. Previous additions to the original structure that were added prior to 1921 shall be subject to the same standards and criteria as the original portion of the structure; however, in the event that the addition does not match the original, the exterior features of the addition may be altered to match the original.

3. Additions to contributing structures that were built in 1921 or later may be removed, and following removal, the exterior materials on that portion of the structure must match the remainder of the structure. (Ord. 473, 2013)

C. Non-contributing Structures – Commercial Overlay

1. Additions to commercial structures are exempt from the parking requirements in Title 16. (Ord. 473, 2013)

D. Non-contributing Structures – Residential Overlay

N/A (Ord. 473, 2013)

Not applicable.

17.40.030 Awnings

A. Contributing Structures – Commercial Overlay

1. Awning styles must be in character with historic buildings. Brightly colored and curvilinear patterns or shapes are prohibited. Examples of permitted awnings are included under Appendix A.

2. Backlighting of awnings is prohibited.

3. Text on awnings is limited to border areas.

4. Awnings are prohibited on residential structures that have been converted to commercial uses. (Ord. 473, 2013)

B. Contributing Structures – Residential Overlay

1. Awning styles must be in character with historic buildings. Brightly colored and curvilinear patterns or shapes are prohibited. Examples of permitted awning are included under Appendix A.

2. Backlighting of awnings is prohibited.

3. Text on awnings is prohibited.

4. Awnings are prohibited on residential structures that have been converted to commercial use.

5. Awnings shall be limited to rear elevations. (Ord. 473, 2013)

C. Non-Contributing Structures – Commercial Overlay

1. Awning styles must be in character with historic buildings. Brightly colored and curvilinear patterns or shapes are prohibited. Examples of permitted awnings are included under Appendix A.

2. Backlighting of awnings is prohibited.

3. Text on awnings is limited to border areas.

4. Awnings are prohibited on residential structures that have been converted to commercial use. (Ord. 473, 2013)

D. Non-Contributing Structures – Residential Overlay

1. Awnings are prohibited on residential structures that have been converted to commercial use.
2. Awning styles must be in character with historic buildings. Brightly colored and curvilinear patterns or shapes are prohibited. Examples of permitted awnings are included under Appendix A.
3. Backlighting of awnings is prohibited.
4. Awnings shall be limited to rear elevations. (Ord. 473, 2013)

Not applicable. No awnings are proposed.

17.40.040 Chimneys

A. Contributing Structures – Commercial Overlay

1. Masonry chimneys shall be faced with traditional red clay brick.
2. Masonry chimneys shall be preserved, or replaced with traditional red clay brick if preservation is not feasible. (Ord. 473, 2013)

B. Contributing Structures – Residential Overlay

1. Chimneys shall be masonry faced with traditional red clay brick.
2. Masonry chimneys shall be preserved, or replaced with traditional red clay brick if preservation is not feasible. (Ord. 473, 2013)

C. Non-contributing Structures – Commercial Overlay

1. Non-masonry materials may be used. (Ord. 473, 2013)

D. Non-contributing Structures – Residential Overlay

1. Non-masonry materials may be used. (Ord. 473, 2013)

Not applicable. No chimneys are proposed.

17.40.050 Doors

A. Contributing Structures – Commercial Overlay

1. The original location, materials, size, and decorative features of doors shall be preserved, and when doors are being replaced, all those elements shall be replaced in kind. Restoration of original door features is permitted.
2. New door openings may only be located on the rear elevation.
3. Doors shall be made of wood; fiberglass and metal doors are prohibited. (Ord. 473, 2013)

B. Contributing Structures – Residential Overlay

1. The original location, materials, size, and decorative features of doors shall be preserved, and when doors are being replaced, all those elements shall be replaced in kind. Restoration of original door features is permitted.
2. New door openings may only be located on the rear elevation.
3. Doors shall be made of wood; fiberglass and metal doors are prohibited. (Ord. 473, 2013)

C. Non-contributing Structures – Commercial Overlay

1. Door design and materials are not regulated on these structures. (Ord. 473, 2013)

Not applicable.

D. Non-contributing Structures – Residential

1. Door design and materials are not regulated on these structures. (Ord. 473, 2013)

17.40.060 Drive-In and Drive Thru Structures

A. All Structures within Historic District

1. Drive-in and drive-thru commercial structures and businesses are prohibited within the Historic District. (Ord. 473, 2013)

Not applicable. No Drive-thru structures are proposed.

17.40.070 Fences

A. Contributing Structures – Commercial Overlay

1. Fences shall be wood picket fences, three (3) to four (4) feet high, painted white or with a natural protective finish.
2. Chain link, wire, stock fencing, rail or split rail, plastic or vinyl, lattice and fences taller than four feet are only permitted on rear property lines when they are screened with landscaping from the right-of-way. However, these

types of fences are not permitted adjacent to, or along a common boundary with, a property that includes a contributing structure.

3. Fences not expressly permitted are prohibited unless there is evidence of a different fence type in the historic inventory. (Ord. 473, 2013)

B. Contributing Structures – Residential Overlay

1. Fences in the Historic Commercial overlay and fences for contributing structures throughout the Historic district shall be wood picket fences, three (3) to four (4) feet high, painted white or with a natural protective finish.

2. Chain link, wire, stock fencing, rail or split rail, plastic or vinyl, lattice and fences taller than four (4) feet are only permitted on rear property lines when they are screened with landscaping from the right-of-way. However, these types of fences are not permitted adjacent to, or along a common boundary with, a property that includes a contributing structure.

3. Fences not expressly permitted are prohibited unless there is evidence of a different fence type in the historic inventory. (Ord. 473, 2013)

C. Non-contributing Structures – Commercial Overlay

1. Fences shall be wood picket fences, three (3) to (4) four feet high, painted white or with a natural protective finish.

2. Chain link, wire, stock fencing, rail or split rail, plastic or vinyl, lattice and fences taller than four feet are only permitted on rear property lines when they are screened with landscaping from the right-of-way. However, these types of fences are not permitted adjacent to, or along a common boundary with, a property that includes a contributing structure. (Ord. 473, 2013)

3. Fences not expressly permitted are prohibited. (Ord. 473, 2013)

D. Non-contributing Structures –Residential Overlay

1. Fences shall be wood picket fences, three (3) to four (4) feet high, painted white or with a natural protective finish.

2. Chain link, wire, stock fencing, rail or split rail, plastic or vinyl, lattice and fences taller than four (4) feet are only permitted on rear property lines or side property lines in rear yards only (back of house) when they are screened with landscaping from the right-of-way. However, these types of fencing are not permitted adjacent to, or along a common boundary with, a property that includes a contributing structure.

3. Fences not expressly permitted are prohibited. (Ord. 473, 2013)

Not applicable. No fencing is proposed.

17.40.080 Foundations

A. All Structures within Historic District

1. Concrete block, brick, and poured concrete foundations are permitted.

2. Textured paint and thin coat stucco may be applied on foundations.

3. The height of replacement foundations may be altered to improve accessibility.

4. Rusticated and decorative concrete block are prohibited.

5. On contributing structures with vertically oriented wood skirting, the wood skirting shall be replaced after a foundation is repaired or replaced. (Ord. 473, 2013)

The new building will have a poured concrete foundation.

17.40.090 Garage Doors

A. Contributing Structures – Commercial Overlay

1. Commercial garage doors may not exceed twelve (12) feet in width.

2. Multiple garage doors shall be separated by a minimum of two (2) feet.

3. On contributing structures and detached garages serving them, visible garage door finish materials must be painted wood.

4. Windows are permitted in garage doors. (Ord. 473, 2013)

B. Contributing Structures – Residential Overlay

1. Front facing garage doors shall be set back a minimum of four (4) feet from the front façade of residential structures.

2. Residential garage doors may not exceed eight (8) feet in width.

3. Multiple garage doors shall be separated by a minimum of two (2) feet.

4. On contributing structures and detached garages serving them, visible garage door finish materials must be painted wood.

5. Windows are permitted on garage doors. (Ord. 473, 2013)

C. Non-Contributing Structures – Commercial Overlay

1. Commercial garage doors may not exceed twelve (12) feet in width.

2. Multiple garage doors shall be separated by a minimum of two (2) feet.

3. *Windows are permitted in garage doors. (Ord. 473, 2013)*

The proposed overhead door will be a single unit, 12' wide x 8' high. There will be no windows in the door.

D. *Non-Contributing Structures – Residential Overlay*
1. *Front facing garage doors shall be set back a minimum of four (4) feet from the front façade of residential structures.*
2. *Residential garage doors may not exceed eight (8) feet in width.*
3. *Multiple garage doors shall be separated by a minimum of two (2) feet.*
4. *Windows are permitted in garage doors. (Ord. 473, 2013)*

17.40.100 Height

A. *All Structures within Historic District*
1. *The maximum height of structures is thirty-five (35) feet. (Ord. 473, 2013)*

The maximum building height is 31'.

17.40.110 New Construction in the Historic District

A. *Non-contributing Structures – Commercial Overlay*
1. *New structures shall be subject to the design standards in Section 17.40.*
2. *New commercial structures are exempt from the parking requirements in Title 16. (Ord. 473, 2013)*

B. *Non-contributing Structures – Residential Overlay*

No parking required.

1. *New structures shall be subject to the design standards in Section 17.40. (Ord. 473, 2013)*

17.40.120 Paint

A. *Contributing Structures – Commercial Overlay*
1. *Contributing Structures shall be painted with colors selected from the list in Appendix A for contributing structures. (Ord. 473, 2013)*

B. *Contributing Structures – Residential Overlay*
1. *Contributing Structures shall be painted with colors selected from the list in Appendix A for contributing structures. (Ord. 473, 2013)*

C. *Non-contributing Structures – Commercial Overlay*
1. *Non-Contributing commercial Structures shall be painted with colors selected from the list in Appendix A for non-contributing structures. (Ord. 473, 2013)*

The new building will be painted from colors selected from the city of Aurora approved painting list. It is anticipated that the building will be a cream color with white trim.

D. *Non-contributing Structures- Residential Overlay*
1. *Paint color for noncontributing structures are not regulated by this title. (Ord. 473, 2013)*

17.40.130 Porches

A. *Contributing Structures – Commercial Overlay*
1. *Porches shall be painted.*
2. *Porches shall be preserved in their original design, and repair or replacement shall match the original in both materials and design, except that modern foundations, which are not visible, may be installed.*
3. *Front porches shall not be enclosed by walls, screens, or windows. (Ord. 473, 2013)*

B. *Contributing Structures – Residential Overlay*
1. *Porches shall be painted.*
2. *Porches shall be preserved in their original design, and repair or replacement shall match the original in both materials and design, except that modern foundations, which are not visible, may be installed.*
3. *One porch entrance shall be located on the front elevation and have a direct pedestrian path from the porch to the sidewalk.*
4. *Front porches shall not be enclosed by walls, screens, or windows. (Ord. 473, 2013)*

C. *Non-contributing Structures – Commercial Overlay*
1. *Front porches shall not be enclosed by walls, screens, or windows.*

2. *Porches on front elevations shall be painted. (Ord. 473, 2013)*

A small front patio is incorporated into the new building design. The porch will be 17' wide with a gabled roof projection of 3'-6". The porch will be open with 2' high x 2' long partial walls at either end.

D. Non-contributing Structures – Residential Overlay

1. One porch entrance shall be located on the front elevation and have a direct pedestrian path from the porch to the sidewalk.

2. Porches on front elevations shall be painted.

3. Front porches shall not be enclosed by walls, screens, or windows. (Ord. 473, 2013)

17.40.130 Public Right-of-Way

A. Commercial Overlay

1. Sidewalks shall be concrete without coloring. The finish shall be broom finished and scored perpendicular to the path, in traditional squares of twenty-four (24) to thirty six (36) inches. Troweled edges are required.

Sidewalks currently exist on Main Street in front of the property. These sidewalks will not be impacted by the proposed development.

2. *Streetlights in the Historic Commercial Overlay shall be lamp style only.*

Main Street is currently illuminated by light fixtures mounted on public utility poles. No new street lighting is proposed.

3. *Curb cuts for residential properties may not exceed twenty (20) feet in width. (Ord. 473, 2013)*

Not applicable.

B. Residential Overlay

1. Sidewalks shall be concrete without coloring. The finish shall be broom finished and scored perpendicular to the path, in traditional squares of twenty-four (24) to thirty six (36) inches. Troweled edges are required.

2. Streetlights in the Historic Commercial Overlay shall be lamp style only.

3. Curb cuts for residential properties may not exceed twenty (20) feet in width. (Ord. 473, 2013)

17.40.150 Roofs

A. Contributing Structures – Commercial Overlay

1. The repair and alteration of roofs shall match the original style and pitch.

2. The addition of new roof elements such as vents, chimneys, and dormers shall not be readily visible from the right-of-way, unless the property has frontage on more than one right-of-way, in which case new elements shall be on a side elevation and screened from view.

3. New decorative features such as cupolas or cresting shall be permitted only when historic evidence demonstrates those features were included in the original structure.

4. For residential structures, the roof pitch shall be 8:12 (equal to 34°) or steeper. On mansard roofs, the upper areas of the roof may have a shallower pitch so long as the lowest roof planes are steeper than 12:12 (equal to 45°).

5. For all structures, roofing materials on all sloped roofs shall be black composition shingles or wood shingles. Metal roofing on sloped roofs is prohibited.

6. Flat roofs are permitted on commercial structures when the roof and all mechanical equipment on the roof, including railings, are screened by a parapet. The materials used for flat roofs are not regulated by this section.

7. Skylights are prohibited. (Ord. 473, 2013)

B. Contributing Structures – Residential Overlay

1. The repair and alteration of roofs shall match the original style and pitch.

2. The addition of new roof elements such as vents, chimneys, and dormers shall not be readily visible from the right-of-way, unless the property has frontage on more than one right-of-way, in which case new elements shall be on a side elevation and screened from view.

3. New decorative features such as cupolas or cresting shall be permitted only when historic evidence demonstrates those features were included in the original structure.

4. For residential structures, the roof pitch shall be 8:12 (equal to 34°) or steeper. On mansard roofs, the upper areas of the roof may have a shallower pitch so long as the lowest roof planes are steeper than 12:12 (equal to 45°).

5. For all structures, roofing materials on all sloped roofs shall be black composition shingles or wood shingles. Metal roofing on sloped roofs is prohibited.

6. Skylights are prohibited. (Ord. 473, 2013)

C. Non-contributing Structures – Commercial Overlay

1. For residential structures the roof pitch shall be 8:12 (equal to 34°) or steeper. On mansard roofs, the upper areas of the roof may have a shallower pitch so long as the lowest roof planes are steeper than 12:12 (equal to 45°).

Not applicable.

2. For all structures, roofing materials on all sloped roofs shall be black composition shingles or wood shingles. Metal roofing on sloped roofs is prohibited.

The new roof will be covered with black composition shingles.

3. Flat roofs are permitted on commercial structures when the roof and all mechanical equipment on the roof, including railings, are screened by a parapet. The materials used for flat roofs are not regulated by this section. (Ord. 473, 2013)

Not applicable. No flat roofs are proposed.

D. Non-contributing Structures – Residential Overlay

1. For residential structures, the roof pitch shall be 8:12 (equal to 34°) or steeper. On mansard roofs, the upper areas of the roof may have a shallower pitch so long as the lowest roof planes are steeper than 12:12 (equal to 45°).

2. For all structures, roofing materials on all sloped roofs shall be black composition shingles or wood shingles. Metal roofing on sloped roofs is prohibited. (Ord. 473, 2013)

17.40.160 Setbacks

A. All Structures within Historic District

1. Residential structures shall be set back a minimum of ten (10) feet from side lot lines, and minimum of twenty (20) feet from rear lot lines.

Not applicable.

2. Commercial and mixed-use structures shall be set back a minimum of ten (10) feet from rear lot lines, and a maximum of ten (10) feet from front lot lines. There is no minimum setback from front lot lines.

The proposed building is set back between 18' – 23' from the rear property line. The existing Mills-Stoner house sits approximately 24' back from the front property line and will see no modifications.

3. For new structures or additions to structures, including porches, the front setback shall not exceed four (4) feet more or less than the average front setback of the adjacent structures. (Ord. 473, 2013)

Not applicable.

17.40.170 Siding

A. Contributing Structures – Commercial Overlay

1. Horizontal lap wood siding is required and historic siding patterns shall be matched when repairing or replacing siding.

2. Siding shall be painted; unpainted and stained wood is prohibited.

3. Decorative shingle patterns are prohibited on contributing structures, unless originally used as documented in the Historic Resources Inventory.

4. The paint color of siding shall be uniform on all sides of a structure. (Ord. 473, 2013)

B. Contributing Structures – Residential Overlay

1. Horizontal lap wood siding is required and historic siding patterns shall be matched when repairing or replacing siding.

2. Siding shall be painted; unpainted and stained wood is prohibited.

3. Decorative shingle patterns are prohibited on contributing structures, unless originally used as documented in the Historic Resources Inventory.

4. The paint color of siding shall be uniform on all sides of a structure. (Ord. 473, 2013)

C. Non-contributing Structures – Commercial Overlay

1. Wood horizontal lap siding shall have a reveal not exceeding six (6) inches, with the exception of board and batten siding comprised of solid sawn wood.

2. Masonry is permitted.

No masonry will be incorporated into the new building.

3. Composite smooth surface materials are permitted.

The new building will be sided with James Hardie Artisan V-rustic siding with a 7" exposure, which is similar in appearance to the WP-11 v-groove siding on the Mills-Stoner house.

4. Siding shall be painted; unpainted and stained wood is prohibited.

All siding and trim will be painted.

5. The paint color of siding shall be uniform on all sides of a structure. (Ord. 473, 2013)

The building will be uniformly painted on all sides with one color for siding and a second color for trim. Colors will be as selected from the city's list of colors approved for non-contributing structures in the historic zone.

D. Non-contributing Structures – Residential Overlay

1. Siding shall be masonry or horizontal lap siding with a reveal not exceeding six (6) inches is required, with the exception of board and batten siding comprised of solid sawn wood.

2. Siding shall be painted; unpainted and stained wood is prohibited.

3. The paint color of siding shall be uniform on all sides of a structure. (Ord. 473, 2013)

17.40.180 Facades

A. All Contributing Structures in the Historic District

1. The design of the front and side elevations shall be preserved. (Ord. 473, 2013)

17.40.190 Windows

A. Contributing Structures – Commercial Overlay

1. Windows shall be trimmed with wood, and wood framed storm windows are permitted.

2. Window frames and sashes shall be made of wood.

3. New window openings are only permitted where they are not visible from the right-of-way. New windows and window openings on rear elevations shall match the materials, style, colors, and trim of other windows on the structure.

4. Transom and clerestory windows are permitted above doors. (Ord. 473, 2013)

B. Contributing Structures – Residential Overlay

1. Windows visible from the right-of-way shall be vertically oriented.

2. Window frames and sashes shall be made of wood.

3. New window openings are only permitted where they are not visible from the right-of-way. New windows and window openings on rear elevations shall match the materials, style, colors, and trim of other windows on the structure.

4. Transom and clerestory windows are permitted above doors. (Ord. 473, 2013)

C. Non-contributing Structures – Commercial Overlay

1. Windows shall be trimmed with wood, and wood framed storm windows are permitted. Storefront windows manufactured with metal frames shall have wood trim covering the exterior of the metal frames.

All windows in the new building will be wood with a powder coated fiberglass exterior. Typical window trim shall consist of a 2" sill, 1x6 jamb trim and a 1x4 head trim with crown molding.

2. Transom and clerestory windows are permitted above doors. (Ord. 473, 2013)

No transom or clerestory windows are proposed.

D. Non-contributing Structures – Residential Overlay
1. Windows visible from the right-of-way shall be vertically oriented.
2. Transom and clerestory windows are permitted above doors. (Ord. 473, 2013)

Chapter 17.44 Landscaping

17.44.010 Purpose

The purpose of this chapter is to establish standards for landscaping, buffering and screening to enhance the appearance of the Historic District using trees and other landscaping materials to mitigate the effects of sun, wind, noise and the lack of privacy.

17.44.020 Applicability

This section shall apply to all new construction in the Historic District.

17.44.030 General Provisions

A. In the Historic Residential Overlay at least ten (10) percent of the total area shall be landscaped.
B. In the Historic Commercial Overlay, landscaping shall be as follows:
1. Properties up to twenty thousand (20,000) square feet in size shall have at least fifteen (15) percent of the total lot area landscaped.

The property size is 10,750 sf. The proposed development would include 3,650 sf of landscape area, roughly 34% of the total site area.

2. Properties larger than twenty thousand (20,000) square feet in size shall have at least ten (10) percent of the total lot area landscaped.
C. Unless otherwise provided by the lease agreement, the owner, tenant and their agent, if any, shall be jointly and severally responsible for the maintenance of all landscaping which shall be maintained in good condition so as to present a healthy, neat and orderly appearance and shall be kept free from refuse and debris.

ACHS will continue to maintain the existing and new landscape areas to be developed or modified as part of the proposed development.

D. All plant growth in landscaped areas of developments shall be controlled by pruning, trimming of otherwise so that:
1. Public utilities can be maintained or repaired;
2. Pedestrian or vehicular access is unrestricted;
3. Visual clearance provisions are met (See Chapter 16.40).

ACHS will continue to maintain the site to protect clearances and access ways and to provide a clean and attractive property.

E. Certificates of occupancy shall not be issued unless the landscaping requirements have been met or a bond has been posted with the city to ensure the completion of the landscaping requirements.
F. Existing plant materials may be used to meet landscaping requirements if no cutting or filling takes place within the dripline of the plantings.

Existing plant materials will be retained to the extent feasible, beyond the area of construction for the new building.

G. Plant materials are to be watered at intervals sufficient to ensure survival and growth.

New planting areas will be watered by ACHS members as required to establish strong, healthy roots.

H. Synthetic plant materials are not permitted.

No synthetic plant materials are proposed.

I. Berms and excavations are prohibited in the commercial overlay.

No berms will be created and excavation shall be limited to that which will be required for the new building construction.

J. Berms and excavations are prohibited in front yards of residential overlay. (Ord. 473, 2013)

Not applicable.

17.44.040 Buffering and Screening Requirements

A. A minimum landscape buffer width of twenty (20) feet shall be required between any nonresidential use in a non-residential zone which abuts a residential zone.

Not applicable. Abutting zones are commercial.

B. A buffer shall consist of an area within an interior setback adjacent to a property line, having a width of ten (10) feet or greater and a length equal to the length of the property line.

Not applicable. No buffers required.

C. Occupancy of a buffer area shall be limited to utilities, screening, and landscaping. No buildings, access ways or parking areas shall be allowed in a buffer area.

Not applicable. No buffers required.

D. The minimum improvements within a buffer area shall include:

1. One row of trees, or groupings of trees equivalent to one row of trees. At the time of planting, these trees shall not be less than ten (10) feet high for deciduous trees and five feet high for evergreen trees measured from the ground to the top of the tree after planting.

a. Small or narrow stature trees, under twenty-five (25) feet tall or less than sixteen (16) feet wide at maturity shall be spaced no further than fifteen (15) feet apart.

b. Medium sized trees between twenty-five (25) feet to forty (40) feet tall and with sixteen (16) feet to thirty-five (35) feet wide branching at maturity shall be spaced no greater than twenty-five (25) feet apart;

c. Large trees, over forty (40) feet tall and with more than thirty-five (35) feet wide branching at maturity, shall be spaced no greater than thirty (30) feet apart.

2. In addition, at least one shrub shall be planted for each one hundred (100) square feet of required buffer area.

3. The remaining area shall be planted in groundcover, or spread with bark mulch.

Not applicable. No buffers required.

E. Where screening is required a hedge of narrow or broadleaf evergreen shrubs shall be planted which will form a four-foot continuous screen within two years of planting; or

Screening will occur at the anticipated exterior HVAC units. This screening will consist of a continuous evergreen hedge that will reach between 5'-8' at maturity.

F. Buffering and screening provisions shall be superseded by the vision clearance requirements as set forth in Chapter 16.40.

Not applicable. No vision clearance requirements.

G. When the use to be screened is downhill from the adjoining property, the prescribed heights of required fences, walls or landscape screening shall be measured from the actual grade of the adjoining property. (Ord. 473, 2013)

The adjacent property and Martin Street are level with or below the proposed location of the mechanical units to be screened.

17.44.050 Screening

A. If four or more off-street parking spaces are provided, off-street parking adjacent to a public street shall provide a minimum of four square feet of landscape screening for each lineal foot of street frontage. The screening shall consist of shrubbery at least two feet in height located as close to the street as practical and one tree for each fifty (50) lineal feet of street frontage or fraction thereof.

Not applicable. No off-street parking provided.

B. Landscaped screening shall achieve a balance between low lying and vertical shrubbery and trees.

Not applicable. No off-street parking provided.

C. Screening of loading areas and outside storage is required according to the standards of Section 17.44.040(E).

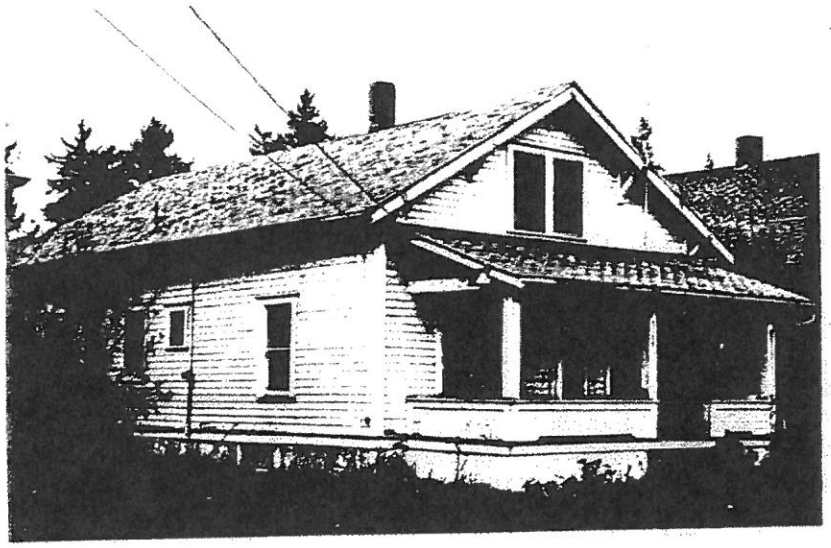
Not applicable. No loading or outside storage space is proposed.

D. Except for one-family and two-family dwellings, any refuse container or disposal area and service facilities such as gas meters and air conditioners which would otherwise be visible from a public street, customer or resident parking area, any public facility or any residential area, shall be screened from view by placement of a solid wood fence, masonry wall not exceeding six (6) feet in height, or evergreen hedge between five and eight feet in height. All refuse materials shall be contained within the screened area. (Ord. 473, 2013)

Garbage and recycling facility storage will be housed within the building, on the lower level. The bins will be wheeled out of the building on collection days.

An area will be provided for locating anticipated HVAC units to serve the new building. This area will be located on the lower level, near the overhead door accessed off of Martin Street. The area will be screened with an evergreen hedge that will be between 5' – 8' in height at maturity.

AURORA COLONY HISTORIC DISTRICT INVENTORY



RESOURCE #: 89

COUNTY: Marion

ADDRESS: 21561 Main Street NE
(204 Main Street)
Aurora, OR 97002

T4S R1W S12

ADDITION: Aurora

TAX LOT #: 90160-100

OWNER: Forest Mills

ADDRESS: P.O. Box 87
Aurora, OR 97002

THEME: 19th Century Communal Religious Colony

CLASSIFICATION: Secondary Significant

HISTORIC NAME: Unknown

YEAR BUILT: C. 1910

ORIGINAL/PRESENT USE: Residential/Residential

RECORDERS: Philip Dole & Judith Rees

DATE: January 1984

The 10,560-square foot property is developed with a simply detailed bungalow, built in about 1910. The gable end of the gable roof house faces east onto Main Street. The one-story house with an attic is rectangular in shape, with an attached shed roof porch across the front. It has a concrete foundation and is sided with horizontal beveled tongue-and-groove. The eaves are open with the rafter tails exposed on the eave ends, and simple brackets at the gable ends. The windows are generally one-over-one, double-hung wood sash with lambs tongues. However, the first story front facade windows are ornamented with unequal sash and small panes. The front porch is detailed with a solid rail and three boxed posts. A small shed, similar to the house in design, and a barn with dirt floor and metal roof and siding, are sited to the rear of the house. The site is planted with old fashioned, fountain-shaped shrubs and a large Persian walnut at the rear of the lot. It is not known who constructed or originally resided in the house.

Exhibit C

NOTICE OF FINAL DECISION
APPLICATION APPROVED BY THE HISTORIC REVIEW BOARD
CITY OF AURORA, OREGON

Date application was heard by HRB: July 28, 2016

Date this Notice is mailed: August 11, 2016

Name of Applicant: Aurora Colony Historical Society

Applicant's Mailing Address: 15018 Second Street Aurora

Project Description: Is for a new construction building an receive recommendation to Planning Commission. This project is a new building to house artifacts for the museum. Building, paint, fencing, roofing and landscaping.

Subject Property Address: 21561 Main Street NE

Findings: The Board approves the application as presented and makes recommendation to Planning Commission with the following conditions; Railings to be made of wood or wrought Iron and not of tubular material, to see a landscaping plan at application along with roofing samples. Also to have the outbuildings dated and documented before any demolition permits are given.

This application is approved per the Aurora Municipal Code: Title 17 recommendation to Planning for new construction.

Comments/Recommendation:

Please bring in landscaping and roof samples at the appropriate time prior to installation to City Hall and application made for railing as well.

The findings and conclusions on which this decision is based are contained in the minutes for the HRB meeting at which this decision was made and audio-tape record of the HRB's meeting and deliberations. The minutes and audio-taped record are available at Aurora City Hall, 503.678.13283, 21420 Main Street, Aurora, Oregon.

The Historic Review Board's decision is final on the date that this notice is mailed. Any party with standing may appeal this decision with the City of Aurora Municipal Code which provides that a written appeal, together with the required fee, shall be filed with the City Recorder within fifteen (15) calendar days of the date the Notice of Decision was mailed. The appeal fee schedule and forms are available from the City Recorder at City Hall, 214209 Main Street NE, Aurora, Oregon 97002.

Exhibit D1

This decision is approved and this Notice of Decision serves as the Certificate of Appropriateness subject to the conditions set forth above.

Karen Townsend 8/11/16

Karen Townsend Co chair, Chair, Aurora Historic Review Board Date of Signature

Exhibit D2

Wakeley, Renata

From: John Rasmussen <jrasmussen@co.marion.or.us>
Sent: Thursday, September 1, 2016 8:19 AM
To: Wakeley, Renata
Subject: Re: Request for Comments, City of Aurora SDR-2016-03

Renata,

MCPW Engineering has no comment for this proposal.....John
>>> "Wakeley, Renata" <renatac@mwvcog.org> 8/23/2016 4:13 PM >>>
See attached.

Feel free to contact me with questions or concerns or if you need additional information.

Renata Wakeley, Community Development Director
Mid-Willamette Valley Council of Governments
100 High Street SE, Suite 200
Salem, OR 97301
(ph) 503-540-1618
(fx) 503-588-6094

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Exhibit E1

ASHLEY ENGINEERING DESIGN

MEMORANDUM

Application – Commercial Site Development Review

City of Aurora – File No. SDR-16-03

TO:	Renata Wakeley/*City Planner*
FROM:	John Ashley, P.E./*City Engineer*
COPIES:	Darrel Lockard/*Public Works*
	Kelly Richardson/*City Recorder*
PROJECT:	**Commercial Site Development Review – Aurora Colony Historical Society Building at 21561 Main Street**
DATE:	August 31, 2016

Background

I received a copy of the application for site plan review provided by Owner/Developer Aurora Colony Historical Society with a request by the City of Aurora to review and respond. The application is for a new building located next to the existing house located at 21561 Main Street.

This application was reviewed for general conformance with applicable public works portions of the City of Aurora Municipal Code (AMC) and the Public Works Standards (PWS) and does not include a review of any other agencies requirements or any building, architectural, structural, or other specialty code designs covered under such building, plumbing, mechanical, electrical, fire, or any other applicable permits, codes, and regulations that may be required for the project. Where the AMC and PWS are silent, the Marion County Public Works Standards followed by the Oregon APWA/ODOT Standard Construction Specifications were reviewed. The Owner/Developer is required to obtain any and all required reviews and permits required by the Planning Conditions of Approval, AMC, PWS, Marion County, ODOT, DEQ, Fire District, Building Official, and any other agencies having jurisdiction over the work. The Owner shall coordinate with the Building Official and other agencies as necessary.

It is recommended that City Staff and Planning Commission review this memorandum in conjunction with their review of this application.

Exhibit E2

Project Overview

Project Site and Access

The application shows the location of the proposed development to be within Township 4 South, Range 1 West, Section 12CD, Tax Lot 05700. Proposed vehicular access to the development is from an existing gravel driveway approach that is shown to be improved along Martin Street.

Existing Site Topography and Utilities

Existing site topography was provided with the application. The application site plan shows that the site is generally sloping westerly. The application site plan also shows that there is an existing sanitary sewer system located within Martin Street along with water service and some franchise utilities located along the west side of Main Street.

Findings

Transportation

- **Right of Way (R/W) –**
  - ***Main Street*** – The City's TSP classifies Main Street as a Collector Street under City jurisdiction. Table 3-1 of the City's TSP and AMC 16.34.030 recommends a 65' R/W for Collector Streets. Tax assessor mapping shows that the R/W is currently 90' along the frontage of Main Street; therefore, dedication of additional R/W does not appear to be necessary in order to comply with the AMC.
  - ***Martin Street*** – The City's TSP classifies Martin Street as a Local Residential Street under City jurisdiction. Table 3-1 of the City's TSP and AMC 16.34.030 recommends a 54' R/W for Local Residential Streets. Tax assessor mapping shows that the R/W is currently 40' along the frontage of Martin Street; therefore, additional R/W dedication does appear to be necessary in order to comply with the AMC.
- ***Street Improvements –***
  - ***Main Street*** – Main Street along the frontage is considered to be fully developed; therefore, additional street improvements are not necessary with the exception of any needed sidewalk or pavement repair. The condition of the existing sidewalk and pavement shall be reviewed with Public Works and any damaged areas shall be replaced or repaired as necessary to comply with the AMC. It is recommended that the Owner/Developer meet with Public Works to determine the type and extent of any needed repairs.
  - ***Martin Street*** – Martin Street is not considered to be fully developed. As such, a half-street improvement consisting of a widened pavement section, curb and gutters, sidewalks, and storm drainage is required to be installed along the frontage

in accordance with AMC 16.34, unless the City grants a deferral of the street improvements per AMC 16.34.030.A.2.

- ***Driveway Approach/Access Spacing*** – The application site plan shows that there is an existing gravel driveway approach shown to be improved that currently serves this property along Martin Street. As such, the new driveway approach shall comply with the AMC and PWS.
- ***Clear Vision Areas*** – Adequate sight distances shall be provided in accordance with the AMC and PWS. Landscaping shall be designed to prevent future obstruction of the clear vision areas.
- **Engineered Plans** – It is recommended that prior to City permit issuance, the Owner/Developer shall submit to the City for review and approval an engineered street improvement plan conforming to the AMC and PWS, unless deferral of the improvements is granted by the City through a Deferred Improvement/Non-Remonstrance Agreement.

Water

- **Domestic Water Service and Backflow Prevention** – The application site plan shows that there is an existing water service that is proposed to be improved which currently serves this property from Main Street. As such, the proposed water service improvements shall comply with the AMC and PWS. In addition, an appropriate backflow prevention device shall be provided if necessary to comply with Oregon Health Authority – Drinking Water Program (OHA-DWP) requirements. Any backflow prevention device details will need to be reviewed and approved by the Building Official and only OHA-DWP approved backflow devices shall be used.
- **Fire Protection** – Unless otherwise approved by the Fire District, fire hydrant(s) are generally required to be installed within 250' of any new structure. As such, the Owner/Developer shall review existing fire hydrant locations and comply with the fire protection requirements of the Fire District. It is recommended that prior to City permit issuance, the Owner/Developer shall provide written documentation to the City that the Fire District has reviewed and approved the fire access and any necessary fire water supply improvements.
- **Engineered Plans** – It is recommended that prior to City permit issuance, the Owner/Developer shall submit to the City for review and approval an engineered water system plan conforming to the AMC, PWS and meeting the requirements of the Building Official and Fire District. A utility easement shall be provided if a public water main and/or fire hydrant is extended outside the public right-of-way.

Sanitary Sewer

- **Sanitary Sewer** – A new sanitary sewer service connection is shown to be installed within Martin Street to serve the new development. However, the location of the

existing sanitary sewer service that currently serves the existing house is not shown. Generally, only one sanitary sewer service connection to the sewer main is allowed to serve a single lot. As such, the existing and new sanitary sewer service requirements will need to be reviewed by the Design Engineer and the sanitary sewer service shall be improved as necessary to comply with the PWS and Building Official's requirements.

- **Engineered Plans** – It is recommended that prior to City permit issuance, the Owner/Developer shall submit to the City for review and approval an engineered sanitary sewer system plan conforming to the AMC, PWS and meeting the requirements of the Building Official.

Stormwater

- **Stormwater Drainage Study/Calculations** – A stormwater drainage study and supporting documentation shall be provided by the Design Engineer to the City for review and approval for the stormwater drainage improvements and the stormwater facility. Existing site topography, off-site contributing areas, existing infiltration rates, and any anticipated groundwater issues will need to be considered and included in the stormwater design.
- **Stormwater Quality and Quantity** – It is recommended that best management practices be used to minimize any degradation of stormwater quality caused by the development and that stormwater detention be provided which complies with Marion County Public Works Standards. The application site plans show that an onsite underground chambered infiltration stormwater facility is currently being proposed to address the stormwater needs of the development which will store and infiltrate up to the 25-yr storm event. As such, it is recommended that prior to City permit issuance that the Owner/Developer provide written documentation to the City that UIC approval and necessary permit(s) have been obtained from DEQ for any proposed underground infiltration system or that the proposed system is not considered to be a UIC by DEQ. The proposed stormwater facility design shall comply with DEQ and Public Works Standards, including necessary setbacks.
- **Acceptable Point of Discharge** – It shall be the responsibility of the Owner/Developer to provide a suitable discharge location for stormwater from the development which will not harm or inconvenience any adjacent or downstream properties. An acceptable point of discharge is to be designed by the Design Engineer and shown on the stormwater plans. It should be noted that a new storm drainage system may need to be extended offsite in order to provide for an acceptable point of discharge.
- **Stormwater O&M Plan and Agreement** – Stormwater operation and maintenance of the private stormwater facility will be the obligation of the property owner. If deemed necessary by the City, a maintenance agreement may be required from the Owner/Developer, as approved by the City Attorney, to ensure future operation and maintenance of the private stormwater facility.

Exhibit E5

- **Engineered Plans** – It is recommended that prior to City permit issuance, the Owner/Developer shall submit to the City for review and approval engineered stormwater drainage study/calculations and stormwater plans conforming to the AMC, PWS, and meeting the requirements of DEQ, as applicable.

Erosion and Sediment Control

- **Erosion Control** – An erosion and sediment control plan shall be submitted for review and approval prior to any site grading or earth disturbing activities. The application site plans include a preliminary erosion control plan.

Franchise Utilities

- **Franchise Utility Improvements** – All franchise utility improvements, including but not limited to, telephone, electrical power, gas and cable TV shall meet the current standards of the appropriate agency as well as the AMC and PWS.

General Public Works Requirements

Prior to Submittal of Engineered Plans

- **Funding** – The Owner/Developer shall be responsible for all costs relating to the required public improvements identified for the project within the AMC, PWS, and the Conditions of Approval.
- **Design Standards** – Where public improvements are required, the public improvements shall be designed to the AMC and PWS. Where the AMC and PWS are silent, the Design Engineer shall coordinate with the City Engineer on appropriate standards to be used.
- **Surveys** – Surveys for public improvements shall be performed under the direction of a Professional Land Surveyor registered in the State of Oregon. Vertical benchmark locations shall be coordinated with the City.
- **Engineered Plans** – Engineered plans for public improvements shall be prepared under the direction of a Professional Engineer registered in the State of Oregon. Engineered plans shall be reviewed and approved by the City prior to construction.
- **Utility Coordination** – It is recommended that all utility companies and public agencies be notified early in the design process and in advance of construction, to coordinate all parties impacted by the construction.
- **SDC** – Systems Development Charges will be applied at the time of City permit issuance.

Prior to Final Approval of Engineered Plans

- **Plan Revisions and Review Memo Responses** – Any noted revisions to the engineered plans shall be made and the revised plans shall be submitted to the City for review and approval. A minimum of 3 sets of plans shall be submitted for review. Included with

any re-submitted plans shall be a copy of the review comments with the appropriate hand written responses or a typed memo addressing each review comment.

- **Conditions of Approval** – The conditions of approval stated for the project shall be reviewed and incorporated prior to plan submittal. All conditions of approval will need to be met to the satisfaction of the City Planner and Public Works Superintendent.
- **Agency Approvals** – Documentation shall be provided to the City that the plans and specifications have been approved by all applicable local, State and Federal agencies having jurisdiction over the work. This may include, but is not limited to, the City of Aurora, Fire District, ODOT, DHS-DWP, DEQ, etc.

Prior to Construction

- **Construction Specifications** – Where public improvements are required, the public improvements shall be constructed to the AMC and PWS. Where the AMC and PWS are silent, the most current edition of the ODOT/APWA Standard Specifications for Construction shall be used.
- **Design Engineer's Estimate** – An estimate performed by the Design Engineer of the proposed costs for construction of any public improvements shall be provided to the City for review and acceptance. This is necessary to determine the amount of bonding required for the project.
- **Construction Bond** – Where public improvements are required, a performance guarantee is required to be in place, prior to construction in accordance with AMC 16.34.140. The Owner/Developer shall provide a construction bond, or other form of performance guarantee acceptable to the City Attorney, in the amount of 125% of the estimated cost of construction. In addition, the Owner/Developer shall execute an agreement with the City Attorney regarding the repair, at the applicant's expense, of any public facilities damaged during development.
- **Permits, Insurance, and Indemnification** – All required permits, insurance, and indemnification shall be obtained and provided to the City before construction may begin.
- **Pre-Construction Conference** – A pre-construction conference shall be held prior to construction.

During Construction and Project Completion

- **Construction Inspection** – Periodic inspection by the Design Engineer will be required to assure construction of the public improvements is following the approved plans and specifications. Any supplemental construction observation by the City does not relieve the Design Engineer of providing any needed inspections.
- **Project Completion** – The Design Engineer shall provide a completion report that certifies to the City that the project was constructed in accordance with the approved plans and specifications in accordance with AMC 16.34.200.

- **Record "As-Built" Drawings** – The Design Engineer shall submit to the City reproducible as-built drawings of all public improvements constructed during and in conjunction with the project. Field changes made during construction shall be drafted on the plans in the same manner as the original plans with clear indication of all modifications (strike out old with new added beside). As-built drawings shall be submitted prior to the initiation of the one-year warranty period.

Final Acceptance of the Project

- **Warranty Release and Final Acceptance** – Where public improvements are required, acceptance of completed public street improvements associated with the project shall be in accordance with AMC 16.34.190.

Recommended Public Works Conditions of Approval

1. It is recommended that prior to City permit issuance, the following engineered plans and supporting documentation be submitted by the Owner/Developer to the City for review and approval.
    a. Street improvement plans conforming to the AMC and PWS for any work within public right-of-way. If deferral is granted by the City, a Deferred Improvement/Non-Remonstrance Agreement for the street improvements shall be executed with the City.
    b. Water system and sanitary sewer system plans conforming to the AMC, PWS, and meeting the requirements of the Building Official for any work in public right-of-way.
    c. Stormwater drainage study/calculations and stormwater plans conforming to the AMC, PWS, DEQ, and meeting the requirements of the Building Official.
    d. An erosion and sediment control plan for the site grading or earth disturbing activities.
2. It is recommended that prior to City permit issuance, the Owner/Developer shall provide written documentation to the City that UIC approval and necessary permit(s) have been obtained from DEQ for any proposed UICs or that the proposed system is not considered to be a UIC by DEQ.
3. It is recommended that prior to City permit issuance, the Owner/Developer shall provide written documentation to the City that the Fire District has reviewed and approved the fire access and any necessary fire water supply improvements.

Proposed Code Update Discussion – 2016

- Airport Overlay Concerns- Remove definitions of what the airport overlay and how to define it; 16.24.050.B.

- Discussion on vacation of portions of 2nd Street near Christ Lutheran Church- ROW is approximately 90 feet wide, no longer complies with TSP, and is wider than will be developed in the future.

- Storm water (AMC 16.34) – Discussion on storm water ponds and PC concerns regarding ongoing maintenance. Feedback from public works and city engineer required to update public works design standards as well. Require underground storm water detention and/or city owned larger ponds?

- AMC 16.82.010 Enforcement**.** It shall be the duty of the City Recorder, or other designee of the City Council, to enforce this title. All city and county staff vested with the duty or authority to issue permits shall conform to the provisions of this title and shall issue no permit, certificate or license for any use, building, property or purpose (unless you apply for everything to bring the property into compliance), which violates or fails to comply with conditions or standards imposed by this title or conditions of approval adopted in compliance with this title. Any permit, certificate or license issued in conflict with the provisions of this title, intentionally or otherwise, shall be void.

OR

require an application completeness provision in code sections: Application submission requirements- for SDR, SUB, etc. add, "If there are any unauthorized activities occurring on the property, any land use application must be accompanied by all land use applications necessary to bring property into compliance for all existing and proposed uses on the property."

- AMC 16.72.060 "Application submission requirements--Final plat. Unless otherwise provided in Section 16.72.020, the applicant shall submit final plat and two copies to the planning director within two years which complies with the approved tentative plan". Make sure this means conditions of approval of the tentative subdivision plat approval need to be met within those two years. 16.78.150B. states, "The approval for a property line adjustment, partition or subdivision shall lapse if:1. A property line adjustment map or final plat has not been signed and recorded with the County within a two-year period"

- AMC 16.62.050.A. Discontinuance states, "Except for single-family residential uses which shall be continued by right, if a nonconforming use involving a structure is discontinued from active use for a period of one year, further use of the property or structure shall be a conforming use, except as provided in subsection C of this section".

- Add language on expedited land divisions in partition and subdivision sections in compliance with new Oregon Revised Statute 197.360.

- AMC 16.44 – remove references to "off-premise" signage in compliance Oregon LUBA cases.

- AMC 16.58.020.G. remove reference to, “Any proposed development which has a valid conditional use approved through the conditional use permit application process” shall not be required to under Site Development Review.

ZONING PRACTICE NOVEMBER 2015

AMERICAN PLANNING ASSOCIATION

ISSUE NUMBER 11

PRACTICE TINY HOUSES

11

Tiny Houses, and the Not-So-Tiny Questions They Raise

By Donald L. Elliott, FAICP, and Peter Sullivan, AICP

Where did they come from—those cute little "cabins-on-wheels" that you see being pulled down the road or sitting on a lot?

With wood siding, a pitched roof, gable windows . . . and even a porch with a railing. All that's missing is the dog in the yard (presumably a small dog in a small yard).

Tiny houses are the latest vehicle/structures to join the small house movement, and are now trending due to television programs like *Tiny House Nation*. Many individuals and couples seem proud to say they live a small but sophisticated lifestyle in less than 500 square feet. Often their stated motivation is to declutter and live a simpler life—maybe even a life "off the grid."

Cuteness aside, tiny houses raise some interesting questions for planners. Questions like . . .

"Is this a house, or a trailer, or . . . just what is it?"

"Would this qualify as an accessory dwelling unit?"

"Does this meet the residential building code?"

"Where should we allow this to be parked . . . or occupied . . . and for how long?"

This article attempts to answer some of those questions for the types of small, trailer-mounted units described above. The sections below review how these units fit into the general U.S. system of land-use control through building codes, zoning ordinances, subdivision regulations, and private restrictive covenants. In addition to addressing individual tiny homes, we also address how small communities of tiny homes might be created.

"Tiny house, Portland" by Tammy (Weekend with Dee), Wikimedia (CC-by-2.0)

Most localities have no specific provisions in their subdivision or zoning codes to accommodate small trailer-mounted homes outside of recreational vehicle parks.

WHAT ARE THEY?

What are tiny houses? The answer is simpler than you think. They're recreational vehicles (RVs), and a careful read of the manufacturers' websites makes that clear. One manufacturer, Tumbleweed Tiny House Company, states that their product is "an RV like you've never seen before."

For planners, this makes things simpler. The question then becomes, "Where do we allow RVs to be occupied?" Traditionally, the answer has been campgrounds (for temporary living) and RV parks (for longer-term living). Most communities typically limit temporary RV occupancy (in a campground or elsewhere) to 30 days, and the logic behind this is that RVs are not permanent dwellings. They have electric systems and water tanks and sewage tanks (or composting toilets) that can only operate for a while before they need to be hooked up to support systems or emptied.

But this answer doesn't satisfy everyone, especially tiny-house proponents and anyone else interested in living smaller, more simply, and (presumably) more affordably (more on that later).

Donald L. Elliott, FAICP, is a director in the Denver office of Clarion Associates, a former chapter president of APA Colorado, and a former chair of the APA Planning and Law Division. As a planner and lawyer he has assisted more than 40 North American cities and counties reform and update their zoning, subdivision, housing, and land-use regulations. He has also consulted in Russia, India, Lebanon, and Indonesia, and served as USAID Democracy and Governance Advisor in Uganda for two years. Elliott is a member of the Denver Planning Board.

Peter Sullivan, AICP, is a senior associate in the Chapel Hill, North Carolina, office of Clarion Associates. His specializations include zoning and comprehensive planning. A Pacific Northwest native, his professional background includes policy and environmental planning and development review. Sullivan is a former officer with Toastmasters International and former member of the University of Washington's Urban Design and Planning Professionals Council. He is currently a correspondent for Planetizen.com and enjoys speaking as academic guest lecturer, webinar host, and conference presenter. Sullivan's project work has been recognized by the Washington State Governor's Office, Puget Sound Regional Council, and the Washington Chapter of APA.

"Tiny House Giant Journey in the Petrified Forest and an RV" by Guillaume Dutilh, Wikipedia (CC-by-SA-4.0)

This tiny house is the star of its own YouTube channel, Tiny House Giant Journey.

Here's why tiny houses are so tricky. Although tiny houses are not generally designed for permanent occupancy, some of them are being purchased by people who intend to use them that way. Most zoning ordinances don't resolve this tension, because they don't address where or how tiny houses can be used for long-term or permanent occupancy.

BUILDING AND OCCUPANCY CODES

With the exception of some very rural communities, most cities and counties require that long-term or permanent residential units meet either the locally or state-adopted residential building code (usually some version of the International Residential Code), or the U.S. Department of Housing and Urban Development (HUD) national standards for manufactured housing safety. Since manufactured homes are obviously not constructed like stick-built housing—and since (unlike stick-built housing) they can be moved across state lines in interstate commerce—back in 1974 HUD adopted national safety standards for this type of housing. As a general rule, residential units for long-term occupancy need to meet one of these two sets of standards.

Unfortunately for many purchasers, some tiny houses do not meet these requirements. While tiny houses might meet the Recreational Vehicle Industry Association (RVIA) safety standard for highway travel and temporary living, these standards are not the same as the HUD manufactured housing standards for permanent living. In fact, the website for CAVCO (a manufacturer of "park model" recreational vehicles—which are similar to and sometimes include tiny houses)—states that these vehicles "are not intended for, nor should they be used for, anything other than recreational camping or seasonal use. They are not permanent residences and should not be used as such."

For those intending to live in their tiny house full time, the trick is to find a tiny house that not only meets the RVIA standards but also the residential building code or manufactured housing standards.

For those intending to live in their tiny house full time, the trick is to find a tiny house that not only meets the RVIA standards but also the residential building code or manufactured housing standards. Or to look for a community that has adopted a building code allowing long-term occupancy of tiny houses. Some communities have done this, and in many communities the ability to use a tiny house for long-term occupancy turns on whether it will be mounted on a permanent foundation and connected to utilities.

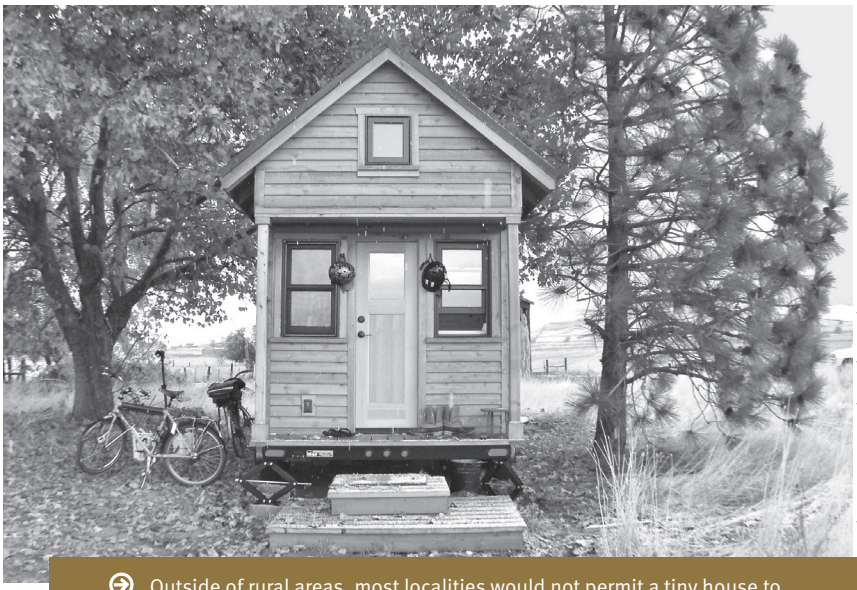
FOUNDATIONS MATTER

Let's assume a potential buyer doesn't want to install a tiny house in a campground or RV park, but rather a traditional residential lot. Some communities allow this if the owner removes the wheels (and sometimes the axles); installs the unit on a permanent foundation (or at a minimum uses secure tie-downs); and connects the unit to public water, sewer, and electric systems.

The logic behind these requirements is that they convert a mobile housing unit into a stationary unit, protect against "blowovers" and other wind-related damage (to the occupants and to neighboring property owners), and make the utility systems safe for long-term operation.

As an example, the small community of Spur, Texas, (population 1,245) has marketed itself as the "First Tiny House Friendly City." Spur permits tiny houses to be used as permanent, primary dwellings by creating an exception to the general building code/manufactured home standard compliance requirement. However, even in this deliberately welcoming community, wheels must be removed, a foundation must be constructed, and the unit tied to the foundation with "hurricane straps," and the unit must be hooked up to local sewer, water, and electric systems. In one well-documented case the cost of the foundation and connections came to about $5,700 (Mccann 2015). In some Spur zoning districts, tiny houses are permitted by right, but in others a variance is required.

Again, there are exceptions. A tiny-house owner might be successful living an off-the-grid lifestyle in areas that are literally far from the grid. In some very rural communities, stick-built



"Fall and winter, side by side" by Tammy Strobel, Flickr (CC-by-2.0)

Outside of rural areas, most localities would not permit a tiny house to serve as a primary dwelling unit unless it was mounted on a permanent foundation and connected to local utilities.

homes do not need to connect to water and sewer systems (i.e., they permit well and septic systems) or electric systems (i.e., they allow off-the-grid power), and those communities would presumably allow the same exceptions for tiny houses.

NOW, ABOUT THOSE ZONING RULES

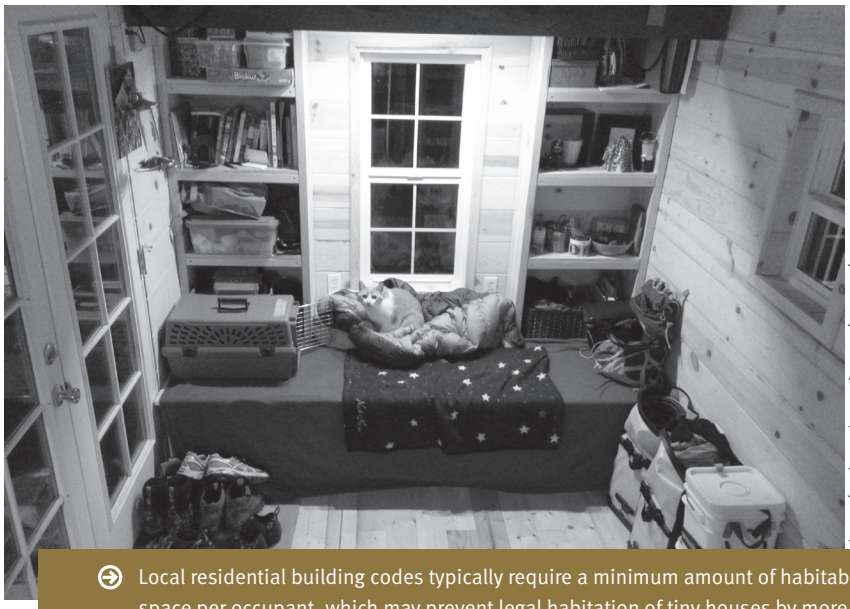
So, if a buyer doesn't want to live in an RV park, *and* is willing to remove the wheels, install a foundation, and connect to utilities, *and* the local government allows long-term occupancy of tiny houses under those conditions, where can the unit be located? The answer depends on local zoning regulations. Most zoning ordinances do not list tiny houses by name; they simply treat them like other housing uses.

For a tiny house to be used as a primary dwelling unit (i.e., there is no other house or primary use on the property), the question is whether the lot is zoned for single-family homes and whether the tiny house meets any minimum size requirements for houses in that zone. Most zoning codes across the U.S. do not include minimum floor space requirements for single-family homes. But some do, and that can be a barrier to installing tiny houses. Generally this occurs when a residential neighborhood has been developed for—or with—large homes, and some of the lots already have large homes on them. In those circumstances, the local government or neighborhood residents may want to protect against the remaining lots being occupied by smaller homes that they fear will reduce the neighborhood quality or character. Some communities, for example, have adopted minimum width or length-to-width requirements for single-family homes in an attempt to keep "single-wide" manufactured homes out of neighborhoods where the housing stock is of a different character. Those requirements would likely prohibit the installation of a tiny house, despite their charming appearance.

Whether this is fair to the tiny-house (or manufactured home) buyer, and whether it represents sound land-use policy, are emerging issues for debate. Minimum residential size limits are already in poor repute these days because they tend to drive housing prices up; however, these types of requirements are generally not illegal.

One work-around for the eager tiny-house buyer may be to install a tiny house as an accessory dwelling unit (ADU) (i.e., a second housing unit on a lot that already has a primary housing unit or another primary use of land). While ADUs are a fairly recent development, an increasing number of zoning ordinances now address where and under what conditions an ADU can be installed. Again, since most zoning ordinances do not address tiny houses by name, the question is whether your tiny house meets the requirements applicable to other forms of ADUs. One threshold question is whether the community allows detached ADUs or only allows internal ADUs constructed within the building envelope of an existing home. If the latter is true, a tiny house ADU will not be allowed. If the community allows detached ADUs, they often attach conditions like the following:

- Either the primary housing unit or the ADU must be occupied by the owner of the land.
- The ADU must not exceed a maximum size (generally 400 or 600 or 800 square feet).
- An extra on-site parking space for the ADU occupant may be required.



"Tiny house" by Tomas Quinones, Flickr (CC-by-SA-2.0)

Local residential building codes typically require a minimum amount of habitable space per occupant, which may prevent legal habitation of tiny houses by more than one person.

- The ADU may not be allowed to have its entrance door facing the street.
- The part of the lot containing the ADU cannot be carved off and sold as a separate lot.
- If the tiny house can meet these requirements, it may be acceptable as an ADU, even if it would not be approved as a primary home on the same lot. In some cases, however, ordinances that allow detached ADUs limit them to existing structures like carriage houses, garages, or barns, which would prohibit tiny-house ADUs.

Finally, it is important to realize that most communities apply the same building, foundation, and utility requirements to ADUs that they do to primary structures. So if the question is, "can I park my tiny house in my parents' backyard and live in it without installing a foundation or hooking up to utilities?" the answer is probably *no*. Long-term occupancy of a recreational vehicle in a residential zone district (say, for more than 30 days) is usually illegal regardless of whether you have the property owner's consent or you are related to them.

So tiny-house owners need to be thoughtful about where they intend to install the unit, and need to read the zoning ordinance carefully to ensure it is allowed in the area where they want to live. The good news (for planners) is that it is fairly easy to review the existing zoning code and see whether the code permits tiny houses as primary units or ADUs in those locations where the community wants to allow them. Planners might also want to promote more permissive regulations if the community is ready to remove a potential housing barrier.

"Tiny house" by littlenemo, Flickr (CC-by-NC-SA 2.0)

This tiny house, with a bathroom and a sleeping loft, serves as an accessory dwelling unit.

Tiny-house owners need to be thoughtful about where they intend to install the unit, and need to read the zoning ordinance carefully to ensure it is allowed in the area where they want to live.

OTHER POTENTIAL BARRIERS

OK. So you have decided that your community wants to allow long-term occupancy of a tiny house, and you have modified the zoning ordinance to clarify where they are allowed. There are still three other potential barriers to think about.

First, unless you want to install the tiny house in a very rural area, the parcel of land where the tiny house will be located generally needs to be a subdivided lot. Subdivision regulations ensure that each parcel of land that will be developed with something other than open space or agriculture has access to a street and has utilities in place (if utilities are required in that location). This could be an issue if the tiny-house owner wants to buy 1,000 square feet of land from a property owner—just enough to accommodate the tiny house and a "livin' small" lifestyle—but the subdivision regulations require a minimum lot size of 5,000 square feet. Or it could be an issue if the tiny house must be connected to utilities but the land in question does not yet have utilities in place to connect to.

Second, the community should probably advise the tiny-house owner to check that private restrictive covenants attached to the land do not prohibit tiny houses in that area. Again, *tiny house* will probably not be listed by name, but it is not uncommon to find private covenants that contain minimum house size requirements even if the zoning ordinance does not. While it is generally not the city or county planner's job to check on the existence of private covenants when issuing a zoning approval or a building/installation permit, and local governments are generally not responsible for enforcing those covenants, advising the tiny-house owner to check on this is just good customer service. In the end, the fact that the city or county issues a permit to install a tiny house with a foundation does not protect the owner against a suit from other property owners pointing out that the tiny house does not meet restrictive covenant minimum-size requirements.

Third, even if neither the zoning ordinance nor private restrictive covenants prohibit the tiny house because of its size, many communities have residential occupancy codes to prevent overcrowding. While occupancy codes vary, it is not uncommon to find a requirement that the unit contain 125 square feet of living area per occupant, or that it not contain more than two occupants per bedroom. That could be a problem if the owner intends to house his or her family of four in a 400-square-foot tiny house, no matter how well they get along. Since occupancy of the unit may change in the future (the owner's out-of-work cousin may move in), it is hard to ensure against overcrowding when the installation permit is issued, but making the owner aware of these requirements is good customer service.

WHAT ABOUT A TINY HOUSE COMMUNITY?

What about a whole group of folks (or a developer) who want to create an entire neighbor-

hood of tiny houses as a source of affordable housing, or just to accommodate a different lifestyle?

That is a bit tougher. While the Internet has many stories of individuals or property owners intending to create tiny house communities, it seems that few if any have been created to date. And some of the existing communities have been created for unique reasons and through "one-off" procedures.

For example, places like Opportunity Village in Eugene, Oregon, or Quixote Village in Olympia, Washington, have been created as alternatives to homeless camps in or near the same location. In both cases, it appears that the local government adopted a contract or resolution approving the use of land for tiny houses without requiring it to comply with some standard utility or construction requirements precisely because it would house very low-income households under better living conditions than the occupants had previously. While inspiring as initiatives to address the challenges of housing affordability and homelessness, both of these examples required individualized negotiations and agreements to vary from normally applicable public health and safety standards—flexibility that might not have been approved for a market-rate housing development.

However, there are at least three different ways in which a tiny-house community for the general public could be created—each modeled on an existing form of land-use approval. The choice of an appropriate tool turns heavily on the question of whether you intend the occupants to be able to sell the house and the piece of land it occupies to someone else in the future.

Andrew Heben

Quixote Village in Olympia, Washington, provides housing for 30 previously homeless adults. Photo from *Tent City Urbanism: From Self-Organized Camps to Tiny House Villages* by Andrew Heben.

A Tailored Zoning and Subdivision of Land

If tiny-house owners are going to be able to sell their lots and homes to others, then the community will need to be subdivided into individual lots, and those lots will need to meet the minimum size and dimension requirements of the zone district where they are located. If you want to allow tiny house community developers to create very small lots (say 1,000 to 2,000 square feet), it is likely that your city or county does not have a residential zone district allowing lots of that size. So the local government will have to create a zone district allowing that type of lot. If the roads within the community are going to be narrower or more lightly constructed than those in stick-built subdivisions, then the community will have to adopt subdivision standards (or exceptions to the current standards) allowing those types of construction. In many cases, the local government is only willing to allow "lower-than-normal-standard" infrastructure if the property owners agree to own and maintain it over time (i.e., the city or county will not accept it as dedicated infrastructure for public maintenance), so the developer will likely have to create a home owners association to do so. These types of specialized standards have been adopted before, however, for unique forms of housing like manufactured home subdivisions or cottage home subdivisions, and those types of standards are good places to look for guidance.

> A PUD for a tiny-house community should be drafted assuming that conditions will change in the future, and to avoid locking in an overly specific development plan.

A Planned Unit Development

If the community expects that there will be only one of these communities or it does not want to create a new zone district or subdivision regulations to address tiny houses in general, the tailoring of zoning and subdivision standards described above could be accomplished through a planned unit development (PUD) tailored to a single development and a single developer. While single-project PUDs are relatively easy to adopt, they often reflect a very specific picture of the approved development that is hard to amend over time as conditions change. A PUD for a tiny-house community should be drafted assuming that conditions will change in the future, and to avoid locking in an overly specific development plan. For example, it may not be wise to require a community building of a certain size, or a park or storage area of a specific design in a specific location, because those items may need to be moved or resized in the future.

Similarly, if the home owners association is responsible for roads and utilities, it may be wise to offer some flexibility to relocate or resize those facilities in the future as needs change. The Greater Bemidji Area of Minnesota has thought through these issues and adopted a PUD approach for tiny-home subdivisions (§1101.F).

A Condominium or Cohousing Development

If the occupants of tiny houses in the community do not need to have the right to sell individual lots to others in the future, then a tiny house community could be structured as a condominium or cohousing development. Under this model, the land remains unsubdivided. Instead, a development plan is approved allowing many tiny houses, and perhaps support facilities like community buildings or shared parking areas, to occupy a single parcel of land. Instead of owning individual lots, residents own shares in the development as a whole. If structured as a condominium, each resident's share includes the exclusive rights to occupy their individual tiny house and a parking space, and also a proportionate share in the land, community buildings, roads, and infrastructure serving the area. As with a nontraditional subdivision described above, the local government may well require that the roads and utilities be owned and maintained by the condominium association. Under this approach, residents who decide to sell their tiny house in the future are actually selling their package of rights in the development (and the maintenance obligations that go along with them)—they are not selling the land. Again, it is usually wise to avoid overregulating or "zoning to a picture" in ways that may require additional governing body approval for minor changes in the future.

CONCLUSION

At this point, most city and county zoning and subdivision ordinances are unprepared for tiny houses. Answers to questions about what tiny houses are, where they can be installed, and under what conditions can be found if you search hard enough—but they are not clear or obvious. The good news is that there are several examples of how land-use controls can be developed or modified to accommodate new and creative forms of housing and land development. RV park, manufactured home park, and subdivision, cohousing, and cottage development standards provide a deep pool of content from which tiny-house regulations can be tailored and developed.

As with most land-use questions, however, the appropriate tools cannot be crafted until some policy questions have been answered. To prepare for the arrival of tiny-house owners and community developers in the future, local governments should be prepared to answer these questions:

- Do we want to allow the installation of tiny houses for long-term occupancy, and if so, in what parts of our community?
- Do we want to accommodate only those tiny houses that meet our current building code or the federal manufactured home standards, or do we want to create exceptions for other tiny houses that can be made safe for long-term occupancy in other ways?
- Do all tiny houses need to be installed on foundations and with connections to our electric, water, and sewer systems, or are there some areas (maybe rural areas) where we would allow them under other circumstances?
- Are there areas of the community where they should be permitted as primary dwelling units?
- Are there areas of the community where they should not be permitted as primary dwelling units, but would be acceptable as accessory dwelling units?
- What changes to our building code, zoning ordinance, and subdivision regulations need to be made to achieve those results?
- With a little forethought, you can be prepared for the day a tiny-house owner shows up with some or all of the questions discussed above—and avoid that "deer-in-the-headlights" look that so annoys the town council.

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Opinion

Robert W. Ferguson | Attorney General of Washington

DEPARTMENT OF FISH AND WILDLIFE—PERMIT—WATER—RIVER—TIDELANDS—Regulatory Authority Under The Hydraulic Project Approval Process Related To Activities Above The Ordinary High Water Line

The regulatory authority of the Department of Fish and Wildlife to require hydraulic project approval is not limited to activities conducted at or below the ordinary high water line. It includes authority over work "that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state." Fixing a precise limit to the Department's authority above the ordinary high water line is impossible in the abstract; whether a particular project is subject to hydraulic project approval will depend on the facts in the given situation.

June 3, 2016

James Unsworth, Ph.D.
Director, Department of Fish and Wildlife
600 Capitol Way N
Olympia, WA 98501-1091

Cite As:
AGO 2016 No. 6

Dear Dr. Unsworth:

By letter previously acknowledged, you requested our opinion on two questions we paraphrase as follows:

1. Does RCW 77.55 limit the regulatory authority of the Washington Department of Fish and Wildlife (WDFW) under the Hydraulic Project Approval (HPA) process to activities conducted at or below the ordinary high water line?

2. If the answer to the first question is no, then what conditions must be present to justify WDFW's exercise of HPA authority on activities conducted above the ordinary high water line?

BRIEF ANSWERS

No. RCW 77.55's plain language does not limit WDFW's HPA authority solely to activities at or below the ordinary high water line.

With some statutory exceptions, WDFW is justified in exercising HPA authority on any activity that meets RCW 77.55.011(11)'s definition of a "hydraulic project," regardless of

whether the activity is above or below ordinary high water lines. The activity must be construction or performance of work that *affects* state waters below the ordinary high water line by using, diverting, obstructing, or changing the *natural flow* or *bed* of the state water. This authority clearly extends to hydraulic projects landward of the ordinary high water line, though exactly how far beyond the ordinary high water line the authority extends will depend on the facts of any given circumstance.

BACKGROUND

Your questions concern RCW 77.55, which sets forth WDFW's regulatory authority over "hydraulic projects," a term that refers to certain construction and work affecting state waters. RCW 77.55.021(1) states:

> Except as provided in RCW 77.55.031, 77.55.051, 77.55.041, and 77.55.361, in the event that any person or government agency desires to undertake a hydraulic project, the person or government agency shall, before commencing work thereon, secure the approval of the department in the form of a permit as to the adequacy of the means proposed for the protection of fish life.

The specified statutory exceptions are driving across an established ford (RCW 77.55.031); removing or controlling certain invasive plants (RCW 77.55.051); removing derelict fish, crab, and shellfish gear (RCW 77.55.041); and permitting under the forest practices act (RCW 77.55.361).

RCW 77.55.011 defines three terms used in RCW 77.55.021(1):

- "Department" is WDFW. RCW 77.55.011(5).
- "Permit" is "a hydraulic project approval permit issued under [RCW 77.55]." RCW 77.55.011(18). Such permits are commonly referred to as "HPA permits."
- "'Hydraulic project' means the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state." RCW 77.55.011(11).

RCW 77.55 does not define "hydraulic" as a term independent of "project." Nor does it define "flow," natural or otherwise. RCW 77.55.011, however, does define two terms used in the meaning of "hydraulic project":

- "'Waters of the state'[1] and 'state waters' means all salt and freshwaters waterward of the ordinary high water line and within the territorial boundary of the state." RCW 77.55.011(25).

- "'Bed' means the land below the ordinary high water lines of state waters" excluding all artificial watercourses but for those located where a natural watercourse previously existed. RCW 77.55.011(1).

RCW 77.55.011 further defines "ordinary high water line," used in both the definitions of "state waters" and "bed":

- An "ordinary high water line" is "the mark on the shores of all water that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in ordinary years as to mark upon the soil or vegetation a character distinct from the abutting upland. Provided, that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater is the line of mean higher high water and the ordinary high water line adjoining freshwater is the elevation of the mean annual flood." RCW 77.55.011(16).

The statute also describes a process for obtaining WDFW's approval before starting a hydraulic project. Specifically, RCW 77.55.021(2) requires proponents of a hydraulic project to submit an application. Among other things, the application must include "[g]eneral plans for the overall project," "[c]omplete plans and specifications of the proposed construction or work within the mean higher high water line in saltwater or within the ordinary high water line in freshwater," and "[c]omplete plans and specifications for the proper protection of fish life[.]" RCW 77.55.021(2)(a)-(c).

Finally, RCW 77.55.021(1) describes the purpose of WDFW's review of an application as the evaluation of "the adequacy of the means proposed for the protection of fish life." RCW 77.55.021(7)(a) further provides that "[p]rotection of fish life is the only ground upon which approval of a permit may be denied or conditioned." Under RCW 77.55.231(1), any conditions imposed by WDFW on an HPA permit "must be reasonably related to the project."

With this statutory background in mind, we turn to the analysis of the activities subject to an HPA permit.

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[1] Though the definition of hydraulic project uses "salt or freshwaters of the state" instead of "waters of the state," the reference to "salt and freshwaters" in the definition of "waters of the state" indicates its applicability to the term used in the definition of hydraulic project.

ANALYSIS

1. Does RCW 77.55 limit the regulatory authority of the Washington Department of Fish and Wildlife (WDFW) under the Hydraulic Project Approval (HPA) process to activities conducted at or below the ordinary high water line?

RCW 77.55.021(1) establishes WDFW's HPA permitting authority. The statute imposes the obligation to obtain an HPA permit on persons or government agencies wanting to undertake a hydraulic project. Thus, the definition of "hydraulic project," as RCW 77.55 uses that term, is key to determining the extent of WDFW's HPA authority. If a statute defines a term, that definition is the basis of interpreting the statute. *United States v. Hoffman*, 154 Wn.2d 730, 741, 116 P.3d 999 (2005). If a term is undefined, we look to its plain meaning. *Id.* If a statute's meaning is unambiguous, statutory construction ends with the plain-meaning analysis. *See Citizens All. for Prop. Rights Legal Fund v. San Juan County*, 184 Wn.2d 428, 435-36, 359 P.3d 753 (2015). If, however, a statute retains more than one reasonable meaning, other matters such as legislative history are considered. *Id.*

RCW 77.55.011(11) defines a "hydraulic project" as "the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state." Nothing in the plain language of this definition requires that the work take place below the ordinary high water line to qualify as a hydraulic project. Under the basic rules of grammar, the main object in the definition—construction or performance of work—is modified *not* by its location *in* state waters, but by *its effect* on state waters. Moreover, some types of work done above the ordinary high water line clearly can divert, obstruct, or change the "natural flow or bed" of state waters. For example, bulldozing a steep bank directly above a river could change the river bed and divert, obstruct, or change the river flow if the work is undertaken without proper protections and significant waste material falls into the river. Similarly, placement of structures in a floodway above the ordinary high water line can redirect flood flows causing catastrophic change to fish habitat in river beds. To give a final example, a structure above the ordinary high water line can change tidal beds (destroying forage fish habitat) by diverting wave action at extreme high tide, causing scour erosion and blocking the sloughing of sands that nourish beaches.

Despite this plain language, commenters have offered three main arguments as to why they believe that HPA authority ends at the ordinary high water line. We explain in turn why we reject each one.

First, some have argued that WDFW's HPA authority is limited to work performed below the ordinary high water line because the statute defines "bed" as "the land below the ordinary high water lines of state waters." RCW 77.55.011(1). But the statute does not define hydraulic projects as work performed *on* the bed of state waters, but rather as "work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state." RCW 77.55.011(11). As noted previously, work above the ordinary high water line can

obstruct or change the bed of state waters. And in any case, the statute also covers "work that will use, divert, obstruct, or change the natural *flow*" of state waters. RCW 77.55.011(11) (emphasis added).

Second, some have argued that the first three verbs in the definition of "hydraulic project"— "use, divert, [and] obstruct"— make sense only if the regulated activity itself is taking place *in* the water. As we note above, however, upland activities can divert or obstruct the flow and beds of water bodies. In any event, we cannot ignore the final verb—"change"—just because it is arguably broader than the other three. While courts attempt to give meaning to every word in a statute (*McGinnis v. State*, 152 Wn.2d 639, 645, 99 P.3d 1240 (2004)), there is no rule of statutory construction that every word in a statute must be relevant to *every* application of the statute.

Third, some have argued that a project must take place below the ordinary high water line to be a "hydraulic project," because the dictionary meaning of "hydraulic" is "of or relating to water." *Webster's Third New International Dictionary* 1107 (2002). This reasoning is mistaken because RCW 77.55.011(11) provides a statutory definition of a "hydraulic project." Therefore, we rely on the statutory definition. *Hoffman*, 154 Wn.2d at 741. In the context of this statute, "hydraulic project" is a term of art, the meaning of which would be lost if we simply characterized a project as a hydraulic project because it is in or uses the water.

The statutory context as a whole confirms our plain language interpretation. *See, e.g.*, *Diaz v. State*, 175 Wn.2d 457, 466, 285 P.3d 873 (2012) (Statutes relating to the same subject are interpreted in light of each other, "considering all statutes on the same subject, taking into account all that the legislature has said on the subject, and attempting to create a unified whole." (citing *Hallauer v. Spectrum Props., Inc.*, 143 Wn.2d 126, 146, 18 P.3d 540 (2001))). Several provisions in RCW 77.55 refer to the ordinary high water line in ways that would be unnecessary if WDFW had no authority beyond that point. *See, e.g.*, *McGinnis v. State*, 152 Wn.2d 639, 645, 99 P.3d 1240 (2004) ("The legislature is presumed not to include unnecessary language when it enacts legislation."). For example, RCW 77.55.161(3)(c) prohibits WDFW from requiring changes to storm water outfalls above the ordinary high water line, which would be unnecessary if WDFW had no authority above the ordinary high water line. Similarly, RCW 77.55.321(1) allows WDFW to charge an application fee only where the project is located at or below the ordinary high water line, a limitation that would be unnecessary if WDFW had no authority to issue permits for projects above the ordinary high water line.

Finally, RCW 77.55 references projects that could occur, at least in part, above the line of ordinary high water and are subject to an HPA permit. For example, "stream bank stabilization" is subject to permits under RCW 77.55.021(9)-(15). RCW 77.55.011(23) defines "stream bank stabilization" as projects that include "bank resloping," "planting of woody vegetation," and "bank protection," which would necessarily include the area above the ordinary high water line. Other examples are dikes in RCW 77.55.131, bulkheads in RCW 77.55.141, and shoreline armoring, riparian habitat, and boat ramps in connection with marinas under RCW 77.55.151.

For these reasons, we conclude that RCW 77.55's plain language does not limit WDFW's HPA authority solely to activities at or below the ordinary high water line. Because the statute is unambiguous, other means of statutory construction are unnecessary. Nonetheless, because some commenters have raised alternative—albeit incorrect—interpretations of the statute and its legislative history, we address means of statutory construction necessary only if a statute is ambiguous.

Where a statute is ambiguous, courts defer to reasonable interpretations offered by the agency charged with implementing the statute. *See, e.g.*, *Cornelius v. Dep't of Ecology*, 182 Wn.2d 574, 585, 344 P.3d 199 (2015) ("[W]e give the agency's interpretation of the law great weight where the statute is within the agency's special expertise."). For decades, WDFW has construed its authority over hydraulic projects as extending to work above the ordinary high water line. For example, in *In re Denial of an Hydraulic Project Approval to Young*,[2] a 1997 administrative case concerning a replacement bulkhead built inland from an existing bulkhead, the administrative law judge concluded "[c]learly a project which is located within the ordinary high water mark would fall within the jurisdiction of the department. This is not the exclusive criteria, however, to determine whether an HPA is required." Initial Order at 8. "[T]he pivotal question is . . . whether the construction of the bulkhead did use, divert, obstruct or change the natural flow or bed of the lake." *Id.* WDFW's director formally adopted the conclusions as his own. Modifying Order at 1; *see also* Letter from Gary Locke, Governor, State of Washington, to Ivan Urnovitz & Vernon Young, Northwest Mining Ass'n (Sept. 6, 2000) (attached).

WDFW's prior decisions also underscore the potentially absurd result that could ensue if HPA authority ended abruptly at the ordinary high water mark. We should avoid a reading of a statute resulting in absurd or strained consequences subverting legislative intent. *See Bowie v. Dep't of Revenue*, 171 Wn.2d 1, 14-15, 248 P.3d 504 (2011). That the legislature intended the HPA review to protect fish life is clear from RCW 77.55.231, which identifies the purpose of the review as evaluation of whether the means to protect fish life are adequate. Further, RCW 77.55.021(7)(a) limits the reasons for denial or conditioning an HPA permit to protection of fish life. If the facts of a case show that a project above the ordinary high water line impacts fish life—as in the case of *In re Denial of an Hydraulic Project Approval to Young*—WDFW would be unable to protect fish life merely because the project is just above the ordinary high water mark. *See* Initial Order at 3 (the WDFW biologist agrees the high water mark is waterward of the existing bulkhead), 5, 10 (a concrete bulkhead has a detrimental effect on fish life though above the ordinary high water line). This would be an absurd consequence subverting legislative intent. Thus, the better reading is that HPA review is not limited to projects solely below the ordinary high water line.

We look finally at RCW 77.55's legislative history to determine legislative intent. *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 527, 243 P.3d 1283 (2010). We find nothing in

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[2] *In re Denial of an Hydraulic Project Approval to Young*, No. AH-97-106 (Wash. Dep't of Fish and Wildlife Apr. 30, 1997) (Initial Order) (attached). Also attached as part of this document is the September 11, 1997, Decision Modifying Initial Order (Modifying Order).

the legislative history of RCW 77.55 to reach a conclusion different from that we reached through plain meaning analysis.

The state first enacted a statutory obligation for hydraulic project approval in 1943. Laws of 1943, ch. 40. The requirement for a permit applied to a person, firm, corporation, or government agency desiring to

> construct any form of hydraulic project or other project that will use, divert, obstruct or change the natural flow or bed of any river or stream or that will utilize any of the waters of the state or materials from the stream beds[.]

Laws of 1943, ch. 40, § 1.

In 1949, the legislature retained the 1943 act when enacting a comprehensive fisheries code. Laws of 1949, ch. 112. With a few exceptions, the substance of this provision remained unchanged from 1943 to 1983. Laws of 1949, ch. 112, § 48. One exception was a change in 1967 whereby "any form of hydraulic project or other *project*" (Laws of 1955, ch. 12, 75.20.100 (emphasis added)) became "any form of hydraulic project or other *work*" (Laws of 1967, ch. 48, § 1 (emphasis added)). Another change in 1975 added the definition for "bed" as meaning "that portion of a river or stream and the shorelands within the ordinary high water lines." Laws of 1975, 1st Ex. Sess., ch. 29, § 1.

In 1983, the legislature overhauled the fisheries code, including the provisions concerning hydraulic project approval. Laws of 1983, 1st Ex. Sess., ch. 46. The provision currently codified as RCW 77.55.021(1) received only the addition of "salt or fresh" to describe the "waters of the state." Laws of 1983, 1st Ex. Sess., ch. 46, § 75.

In 1986, the legislature made additional changes. Laws of 1986, ch. 173. With the changes, the obligation to obtain a permit applied to any person or government agency desiring to

> construct any form of hydraulic project or perform other work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state[.]

Laws of 1986, ch. 173, § 1.

An attachment to your request letter noted that the legislature entertained two bills in the 1990s that would have statutorily limited WDFW's hydraulic project approval to work at or below the ordinary high water line. The first was Senate Bill 5085 in 1993, which the legislature did not pass. The second was Senate Bill 5632 in 1995, which did pass (as E2SSB 5632) but without the provision that would have limited WDFW's hydraulic project approval to work at or below the ordinary high water line. The courts "are loathe to ascribe any meaning to the Legislature's failure to pass a bill into law." *State v. Cronin*, 130 Wn.2d 392, 400, 923 P.2d 694

(1996). Therefore, we do not believe the fact that the provisions did not pass is informative about the extent of WDFW's HPA authority. We nonetheless note that the passage of the 1995 bill without the express language indicates that the legislature considered changing, but did not, the longstanding statutory language.

The next significant reenactment occurred in 2005. Laws of 2005, ch. 146. The legislation repealed the prior version of the provision currently codified as RCW 77.55.021(1), replacing it with the current version. Laws of 2005, ch. 146, § 201. The new definition of "hydraulic project" was the same as currently codified at RCW 77.55.011(11), described above. Laws of 2005, ch. 146, § 101. The new definitions section provided by the 2005 legislation also added definitions for "waters of the state," "state waters," "bed," and "ordinary high water line."

The legislative history of RCW 77.55 shows consistency of language throughout the 73 years since its first enactment. The legislature did not alter or modify the language at any point in a manner that would signal an intention different from the plain meaning of the current version. Regardless of whether identified as a "hydraulic project or . . . other work" or a "hydraulic project" under the new statutory definition, the obligation to obtain an HPA permit has been for any work affecting the flow or bed of state waters regardless of the activity's location relative to the ordinary high water line. Whether under plain meaning analysis or other means of statutory construction, RCW 77.55 does not limit WDFW's authority to activities at or below the ordinary high water line. We turn now to your second question.

2. If the answer to the first question is no, then what conditions must be present to justify WDFW's exercise of HPA authority on activities conducted above the ordinary high water line?

For WDFW's HPA authority to extend to any activity, regardless of whether it is above or below the ordinary high water line, the following conditions must be present:

- The activity must be *construction or performance of work*; and
- The activity must either:
  - (1) Use, divert, obstruct, or change the *natural flow* of the state water or
  - (2) Use, divert, obstruct, or change the *bed* of the state water.

RCW 77.55.011(11) (definition of "hydraulic project").[3]

[3] RCW 77.55.021(1) exempts four activities that meet the definition of a hydraulic project from the necessity of obtaining an HPA permit. Generally, each of the four activities—driving across an established ford; removing or controlling certain invasive plants; removing derelict fish, crab, and shellfish gear; and permitting under the forest practices act—must comply with certain separate statutory requirements in order to qualify for the exemption. *See* RCW 77.55.021(1), .031, .051, .041, .361.

Some commenters claim that the lack of a boundary to HPA authority leads to an absurd result. In their view, if WDFW's HPA authority is not limited to the ordinary high water line, there is no limit to the extent of WDFW's authority because all work within a floodplain or watershed affecting runoff has the potential (theoretically) to "change" the natural flow. We see two flaws in this concern.

First, WDFW has not historically interpreted its authority so broadly, instead requiring permits only for activities that meet the definition of "hydraulic project" and are in or near state waters. *See, e.g.*, http://wdfw.wa.gov/licensing/hpa (last visited May 31, 2016) (HPA website) ("Since 1943, anyone planning certain construction projects or activities in or near state waters has been required to obtain . . . an HPA."); Unsworth Opinion Request Letter at 1 (explaining that "WDFW has required project proponents to apply for an HPA for . . . those projects that will be located landward of the [ordinary high water line] and immediately adjacent to waters of the state").

Second, a project is less likely to meet the statutory criteria of a "hydraulic project" the farther it is from a water body. This is so for at least three reasons:

(1) Impacts generally diminish over distance, so a project is less likely to "use, divert, obstruct, or change the natural flow or bed of" a water body the farther the project is from the water. RCW 77.55.011(11).

(2) For the same reason, a project far from the water is also less likely to affect fish life, which is the concern motivating HPA review; protection of fish life is the sole basis on which WDFW can condition or deny a permit. *See* RCW 77.55.231, .021(7)(a).

(3) The statutory examples of work above the ordinary high water line that WDFW explicitly regulates are generally very near a water body. *See, e.g.*, RCW 77.55.021(9)-(15) ("stream bank stabilization"); RCW 77.55.131 (dikes); RCW 77.55.141 (bulkheads); RCW 77.55.151 (marinas and boat ramps); s*ee also, e.g.*, *In re Bankruptcy Petition of Wieber*, 182 Wn.2d 919, 926, 347 P.3d 41 (2015) (looking to a statutory scheme as a whole in order to determine the reach of a statute).

Thus, it would be very difficult for WDFW to assert authority over a project far removed from state waters.

Such limits to WDFW's authority, however, give no basis to draw an arbitrary line beyond which WDFW lacks authority. Whether a given type of project is too far from a waterway to be subject to HPA review depends on the facts of the particular situation. The question of whether a particular project can change the bed or flow to the extent of affecting fish life involves technical expertise. A court accords an agency's interpretation of law great weight

where the statute is within the agency's special expertise. *Cornelius*, 182 Wn.2d at 585. WDFW has such expertise: it is the agency charged with enforcement of an HPA permit; its review is limited to protection of fish life; and the conditions WDFW imposes on the permit must be reasonably related to the project. RCW 77.55.021(1), .021(7)(a), .231. Accordingly, we believe that courts would be somewhat deferential to WDFW's conclusions as to whether a particular project or type of project meets the statutory standard for requiring an HPA permit. We note that WDFW has provided notice in WAC 220-660 about certain work that is subject to an HPA requirement.[4]

In summary, we conclude that WDFW's HPA authority is not limited to activities at or below the ordinary high water line. WDFW is justified in exercising HPA authority on any activity that complies with the statutory definition of a "hydraulic project," regardless of whether the activity is above or below ordinary high water lines. While drawing a fixed upland boundary to WDFW's HPA authority is impossible, that authority clearly diminishes the farther a project is from the water.

We trust that the foregoing will be useful to you.

ROBERT W. FERGUSON
Attorney General

JANIS SNOEY
Assistant Attorney General
360-753-6215

wros
attachments

[4] Whether deference to WDFW's expertise is appropriate in any particular case would depend on the circumstances. Deference to WDFW's interpretation of this statute would be particularly strong where it acts by rule to address particular categories of work. *See, e.g.*, WAC 220-660-190 (addressing water crossing structures), -270 (utility crossings in freshwater). Adopted rules are presumed valid (RCW 34.05.570(1)) and, in this context, those rules both provide notice to the regulated public that the project requires an HPA permit and memorialize the agency's technical expertise in applying the HPA statute to the particular subject.

RECEIVED
SEP 12 1997
OFFICE OF ATTORNEY GENERAL
FISH & WILDLIFE DIV. OLYMPIA

State of Washington
DEPARTMENT OF FISH AND WILDLIFE
Mailing Address: 600 Capitol Way N, Olympia, WA 98501-1091 - (206) 902-2200; TDD (206) 902-2207
Main Office Location: Natural Resources Building, 1111 Washington Street SE, Olympia, WA

September 10, 1997

Mr. Dana Young
2920 24th Avenue SE
Olympia, Washington 98512

Dear Mr. Young:

Enclosed is the final Decision Modifying Initial Order in connection with the denial of your 1996 Hydraulic Permit Approval (HPA).

Your rights to seek administrative reconsideration are set out in the order. Additionally, you have thirty (30) days from the mailing date of this final Order to seek judicial review of the Director's decision. The appeal may be made to Thurston County Superior Court, the superior court of your county of residence, or the superior court of any Washington county in which you have property affected by the decision.

The required contents of the petition are set out in RCW 34.05.546, and additional service requirements in RCW 34.05.542.

Sincerely,

Evan S. Jacoby, Counsel
Fish and Wildlife Legal Services

cc: Gordy Zillges, WDFW Habitat
K. McLeod, AAG
Allen Miller, Attorney

STATE OF WASHINGTON)
COUNTY OF THURSTON)

I hereby certify that I have this day served a copy of this document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding and to that parties' attorney or authorized agent.

Dated at Olympia, Washington this 17th day of September, 1997.

Robin Ayers, Representative - Department of Fish and Wildlife

BEFORE THE WASHINGTON STATE DEPARTMENT OF FISH AND WILDLIFE

In the Matter of the Denial of an Hydraulic Project Approval to: DANA YOUNG	)	No. AH 97-016 DECISION MODIFYING INITIAL ORDER

A hearing was held on this matter on April 30, 1997, pursuant to notice duly given, before Administrative Law Judge Jane Habegger. Subsequently the Administrative Law Judge issued an Initial Order on May 16, 1997, and caused the Initial Order to be served on all parties of record herein. On June 5, 1997, Assistant Attorney General Kathryn McLeod filed a Petition for Administrative Review of Initial Order. On June 12, 1997, the appellant filed a Reply to State's Petition for Review of Initial Order. The Petition and Reply were timely. WAC 10-08-211.

Bern Shanks, Director of Fish and Wildlife, has reviewed the record, including the Findings of Fact, Conclusions of Law, Initial Order, Petition for Administrative Review and Reply, and does now adopt the Findings of Fact as his own with the following exceptions: in the Statement of the Case and Finding of Fact 5, the issue date of the citation is May 24, 1996; in Finding of Fact 4, the appellant's name appeared on a burn permit, not a building permit; in Finding of Fact 13, the appellant has a Masters Degree in Business Administration and a Bachelor's Degree in Fish Management.

The Director adopts Conclusions of Law 1 through 5 as his own. The Director rejects Conclusion of Law 6, and instead concludes:

> (6) RCW 75.20.100 requires hydraulic project approval, "before commencing construction or work." The statute is unambiguous. Any person who, "desires to construct any form of hydraulic project or perform other work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state" is required to have written approval prior to taking action. The appellant is asking for ex post facto hydraulic project approval of the concrete bulkhead. Not only does issuance of an after-the-fact HPA negate the ability of the Department to assess the pre-construction habitat, it decriminalizes an offense the Legislature has specified as a crime. RCW 75.20.100 also provides, "If any person or government agency commences construction on any hydraulic works or projects subject to this section without first having obtained written approval of the department as to the adequacy of the means proposed for the protection of fish life...the person or director of the agency is guilty of a gross misdemeanor." Thus, criminal culpability lies at the time the work is commenced without a permit. This is not to say that a

subsequent permit may not be issued for previously permitted work in progress. For example, a preliminary permit for culvert installation may need modification if unexpected groundwater conditions are encountered. In such an instance, amendment of the initial permit or issuance of a second permit is appropriate.

The Director adopts Conclusions of Law 7 and 8 as his own.

Having adopted the Findings of Fact and Conclusions of Law as modified herein, the Director makes the following:

ORDER

IT IS HEREBY ORDERED That the application of Dana Young for an Hydraulic Project Approval to construct a concrete bulkhead at Long Lake is denied.

DATED at Olympia, Washington this 11 day of September, 1997.

Bern Shanks, Ph.D., Director

NOTICE OF ADMINISTRATIVE RELIEF

Under RCW 34.05.470, you have ten (10) days after the mailing date of this Final Order to file a Petition for Reconsideration. Such Petition must state the specific grounds upon which relief is requested, and should be filed with the Office of the Director of Fish and Wildlife at the letterhead address.

BEFORE THE WASHINGTON STATE OFFICE OF ADMINISTRATIVE HEARINGS

In Re: The Denial of the Hydraulic Project Approval of: Dana Young Appellant.	DOCKET NO. AH-97-016 INITIAL ORDER

MAILED
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Jane L. Habegger, Administrative Law Judge, conducted an administrative hearing on April 30, 1997 on this matter. The Appellant appeared and was represented by Allen Miller, Attorney at Law. Kathryn McLeod, Assistant Attorney General, represented the Washington State Department of Fish and Wildlife (department).

STATEMENT OF THE CASE

The Appellant owns waterfront property on Long Lake. The street address of the property is 2433 Mayes Road S.E. In May 1996, the Appellant replaced a wooden bulkhead with a concrete bulkhead. The department issued a citation on June 12, 1996 to the Appellant for failure to receive an hydraulic project approval (HPA) prior to the construction of the new concrete bulkhead. On July 10, 1996 the Appellant signed a Joint Aquatic Resources Permit Application (JARPA) requesting an HPA from the department. The application for bulkhead repair was denied by the department in a letter dated July 29, 1996. The Appellant filed an informal appeal. In a letter dated October 28, 1996 the department affirmed the denial of the HPA and requested that the Appellant complete an application for an

Exhibit 1

HPA for the removal of the concrete bulkhead and fill before December 1, 1996. The Appellant filed the instant appeal on November 22, 1996.

FINDINGS OF FACT

1. Long Lake is an urban lake located within the boundaries of the city of Lacey, Washington. The department has designated the lake as lacustrine, limnetic, with an unconsolidated bottom, permanently flooded and excavated. This means that the lake is an open body of water with deepwater habitats and relatively steep shorelines. The lake bottom is dominated by small rocks, gravel, sand and silt, and at least thirty percent of the bottom has rooted vegetation. Long Lake has approximately seven miles of shoreline. It is inhabited by the following fish species: rainbow trout, brown bullhead, black croppy, pumpkin seed sunfish, rock bass, war mouth bass, yellow perch and possibly others. Rainbow trout are planted in the lake. Long Lake is managed heavily by the department to maintain trout and also for the production of bass. Approximately seventy percent of the shoreline of Long Lake is developed.

2. The Appellant owns approximately 65 feet of waterfront property on Long Lake. He purchased the property in December, 1996. In May 1996 prior to purchasing the property, the Appellant replaced an older wood bulkhead on the property with a concrete bulkhead. The subject property was surveyed in April 1994 and again in April 1997 by James A. Pantier and Associates. In the 1997 survey, the surveyor overlaid the 1994 survey over the new survey of the property. This showed an original wood bulkhead located on the waterward side of the newer concrete bulkhead which replaced it. The 1994 survey also showed that the

original wood bulkhead ran nearly the entire length of the Appellant's shoreline while the concrete bulkhead runs thirteen feet short of the southerly property line. The thirteen feet of property which lacks a bulkhead is designed to be used as a boat launch. The 1994 survey shows the ordinary high water mark as appearing on the westerly side of the wood bulkhead. The westerly side of the property is also the waterward side of the property. An area habitat wildlife biologist employed by the department agreed that the ordinary high water mark was waterward of the wood bulkhead.

3. The Appellant maintains that he constructed the new concrete bulkhead to the landward side of the older wood bulkhead and then removed the wood bulkhead after the concrete bulkhead was in place. This testimony is corroborated by the 1997 survey which shows the original wood bulkhead to the water side of the new bulkhead.

4. On May 15, 1996 an enforcement officer employed by the department went to the subject property after receiving a referral from another department agent. The Appellant's name appeared on a building permit. The agent took a number of photographs of a concrete bulkhead in the process of being constructed on the property. He observed water from the lake approximately four inches deep touching the concrete bulkhead. The agent telephoned the Appellant to speak to him about the project.

5. On June 12, 1996 a non-traffic citation was issued to the Appellant by a department employed enforcement officer. The citation provides that the Appellant violated RCW 75.20.100 by *"performing work within state waters (Long*

Lake) without obtaining a hydraulic projects approval." The citation was from Thurston County District Court. The Appellant pled guilty and on June 12, 1996 the District Court entered a one-year deferred sentence against him and fined the Appellant $100.00.

6. On June 27, 1996 an area habitat biologist employed by the department met with the Appellant on his property. She maintains that she found the ordinary high water mark to be located on the concrete bulkhead. She further maintains that the bulkhead is located within the ordinary high water mark. She normally determines the location of the ordinary high water mark by observing the soil and type of vegetation present. She determined that the concrete bulkhead should be removed in order to not cause damage to fish life in the lake and restore a portion of the habitat.

7. The department's preferred method to prevent erosion of a shoreline and to limit an adverse impact on fish life is to use bioengineering. If that does not prevent erosion, then a wood bulkhead may be permitted. The last choice of the department to prevent erosion is the construction of a concrete bulkhead.

8. A bioengineering plan for a piece of property similar to the Appellant's could call for half of the property to be used for fish habitat and half for swimming and recreation. The property would be graded with a slope and a beach is created. In the area created for fish habitat, there would be emergent plant species such as bulrushes, cattails and reeds in the area between the underwater and above water portions of the property. This emergent vegetation provides a food source for fish. It also provides a protected area for fish, especially

small and young fish, and also helps to keep the water cooler. Niches in the shoreline also provide a place for spawning to occur. It is not common to see emergent vegetation in front of a concrete bulkhead.

9. The habitat biologist assigned to Long Lake has seen minimal erosion of the shoreline at Long Lake. She has been in her position for eight years. For between six and one-half and seven years, Long Lake has been within her jurisdiction.

10. A concrete bulkhead has the following detrimental effects to fish life: (1) it hardens the bank; (2) it reduces the amount of vegetation; and (3) it eliminates an irregular shoreline.

11. Immature fish benefit from having an irregular shoreline with nooks and crannies which they can use to hide from predators. These areas also support plant life which the fish may consume. Vegetation near and over the shoreline also acts to lower the water temperature by creating shade.

12. The department takes the absolute position that they do not have the authority to issue an HPA after a project has been constructed. They maintain that the statute only allows for the issuance of permits **prior** to the construction of an hydraulic project.

13. The Appellant hired a consultant to analyze his shoreline property. The consultant has a masters degree in Fisheries Management as well as a masters degree in Business Administration. He summarized that the impact of the Appellant's construction of a concrete bulkhead was relatively insignificant since the lake was already overdeveloped. It is his opinion that the impact of the

Appellant's bulkhead on the fishery is minuscule in relation to the degree of development on the lake. He proposed that if the Appellant's concrete bulkhead were left in place, to mitigate any adverse impact upon fish life, a large rootwad and bolders could be placed in the water at the north end of the property and riparian vegetation such as western red cedar, western hemlock, hazelnut and oceanspray could be planted on the north end of the bank, and that a couple of conifers could be planted to the south of the middle of the bulkhead.

14. Since 1992 there has been one concrete bulkhead approved by the department on Long Lake. It replaced an existing bulkhead. There have also been two bulkheads removed and not replaced, and one removed and replaced with bioengineering.

15. Certain species of plants can tolerate living submerged in water. Some plant species cannot. Others can tolerate their roots being submerged during part of the year and not during other parts of the year. The latter are known as emergent vegetation.

16. A photograph of a portion of the old wooden bulkhead on the Appellant's property taken by a neighbor several years ago shows a single log bulkhead with vegetation coming right up to the bulkhead.

17. In the JARPA application filed by the Appellant on July 10, 1996 he answered *yes* to question 10a. which asked *"Will any structures be placed waterward of the Ordinary High Water Mark or Line for fresh or tidal waters?"*.

18. Concrete cinder block bulkheads are present on the shoreline of Long Lake to the north and south of the Appellant's property.

19. The primary reason that the Appellant replaced the old bulkhead on his property is that it was in disrepair, was slippery and he was concerned that his children might be injured on it.

CONCLUSIONS OF LAW

1. The undersigned has jurisdiction over the persons and subject matter herein pursuant to RCW 75.20.100 and WAC 220-110-350.

2. RCW 75.20.100 provides in pertinent part:

> "In the event that any person or government agency desires to construct any form of hydraulic project or perform other work that will use, divert, obstruct, or change the natural flow or bed of any salt or fresh waters of the state, such person or government agency shall, before commencing construction or work thereon and to ensure the proper protection of fish life secure the written approval of the department as to adequacy of the means proposed for the protection of fish life."
>
> Later the statute continues:
> "...A complete application for approval shall contain general plans for the overall project, complete plans and specifications of the proposed construction or work within the mean higher high water line for salt water or within the ordinary high water line in fresh water and complete plans and specifications for the proper protection of fish life."

3. The first issue which must be addressed in this decision is whether the department is limited to jurisdiction over hydraulic projects which are located within the ordinary high water mark. The answer to the question is that they are not so limited. The department has jurisdiction over any hydraulic project which, *"will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state."* The question posed in this case is does the project already completed by the Appellant use, divert, obstruct, or change the

natural flow or bed of Long Lake? If so, an HPA is required. Clearly a project which is located within the ordinary high water mark would fall within the jurisdiction of the department. This is not the exclusive criteria, however, to determine whether an HPA is required.

4. To further define the department's jurisdiction we look to the department's regulations. WAC 220-110-030 (1) provides that a person shall obtain an HPA before conducting an hydraulic project. "Hydraulic project" is defined in WAC 220-110-020 (22) as follows:

> "Construction or performance of other work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state. Hydraulic projects include forest practice activities, conducted pursuant to the forest practices rules (Title 222 WAC), that involve construction or performance of other work in or across the ordinary high water line of: ..."

5. Thus, the pivotal question is not whether the Appellant's bulkhead is within the ordinary high water line, but whether the construction of the bulkhead did use, divert, obstruct or change the natural flow or bed of the lake. Although there is clearly a factual dispute as to the location of the ordinary high water mark on the Appellant's property, the Appellant's own expert witness recognized that the concrete bulkhead would cause some, albeit minimal, impact upon fish life in the lake. The undersigned concludes that the Appellant's concrete bulkhead will cause a change in the natural flow or bed of the lake. Therefore, the department has jurisdiction over this matter. This conclusion is supported by

the fact that when water hits a solid concrete wall, it is likely to cause a stronger wave bouncing off the wall than if the water were hitting an older wood bulkhead such as was present prior to the construction of the concrete bulkhead. It is not necessary to be an expert in the field to reach this conclusion.

6. We disagree with the department's narrow view of their authority to issue permits only prior to the construction of a hydraulic project. In doing so, we recognize that RCW 75.20.100 provides that a permit is required *"before commencing construction or work"*. However, it is possible that a construction project could meet the requirements of the department, even though an application for a permit was not filed prior to construction. It is also possible that it could be appropriate for the department to issue a post-construction permit with conditions in some cases. Obviously, it is desirable for the department to have the opportunity to view the site prior to the construction occurring. However, we think that a post-construction application should be approved or denied on the merits of the situation and not solely on the basis that the application was not timely filed.

7. In this case, the possible adverse effects on fish life must be measured against the habitat which existed immediately prior to the construction of the concrete bulkhead by the Appellant. Previously, the Appellant had an older wood bulkhead. One photograph of a part of that bulkhead was submitted into the record in this proceeding. Even to this untrained eye, the wood bulkhead appears to provide better habitat for fish. It appears closer to a natural setting than the bold and stark concrete bulkhead which the Appellant constructed. The fact that

the Appellant constructed the new bulkhead thirteen feet shorter than the old bulkhead does not mitigate the effects of the project. That portion of the property which now lacks a bulkhead is designed for use as a boat launch. This means that an automobile will be driven, at least on occasion, to the shoreline. This is not an activity which will assist in the development of fish habitat. Moreover, there would be no motivation to use the principles of bioengineering in this location (e.g. large rocks, vegetation, trees and shrubs on the bank) since these things would interfere with the launching of a boat. Thus, we agree with the department that the Appellant's concrete bulkhead has an adverse impact upon fish in Long Lake. The adverse impact is the loss of habitat, vegetation, shading and the like especially valuable to young fish and to reproduction of fish.

8. In addition, the Appellant's argument that he should be issued an HPA fails because he has not proven that the new concrete bulkhead which he constructed was needed to prevent further erosion on an eroding bank. He did not even assert that the bank was eroding prior to the construction of the new bulkhead. On the contrary, he testified that the reason that he wanted to replace the old wood bulkhead was that it was in disrepair, was slippery and he was concerned that his children might be injured on it. The undersigned concludes that there is no evidence that significant erosion of the bank motivated the Appellant to construct the concrete bulkhead. This conclusion is bolstered by the testimony of the habitat biologist assigned to Long Lake. She has seen minimal erosion of the shoreline at Long Lake in the past six and one-half to seven years. WAC 220-110-050(1) clearly provides that bank protection work is restricted to work

necessary to protect eroding banks. This same rule also provides that bio-engineering is the preferred method to use to protect an eroding bank where practicable.

9. For the above stated reasons the department's denial of the request to issue an HPA to the Appellant for a concrete bulkhead is affirmed.

ORDER

The department's decision in this matter is ORDERED AFFIRMED.

NOTICE TO PARTIES:

WAC 220-110-340 (6) provides that the director or the director's designee shall review this initial order and enter a final order as provided in RCW 34.05.464.

ENTERED at Olympia, Washington on the date of mailing.

Jane L. Habegger

Jane L. Habegger
Administrative Law Judge
Office of Administrative Hearings

cc: Appellant
Allen Miller, Attorney
Kathryn McLeod, AAG
Jim Felber, Deputy Chief ALJ

RECEIVED
SEP 7 2000
OFFICE OF ATTORNEY GENERAL
FISH & WILDLIFE DIVISION

GARY LOCKE
Governor

STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 753-6780 • TTY/TDD (360) 753-6466

2000 SEP -7 AM 9:51

September 6, 2000

Mr. Ivan Urnovitz and Mr. Vernon Young
Northwest Mining Association
10 North Post Street, Suite 414
Spokane, Washington 99201-0772

Re: RCW 34.05.330(3) appeal of the June 26, 2000 denial by the Washington Fish and Wildlife Commission ("Commission") of that certain Petition for Reconsideration to Amend or Repeal Provisions of the "Gold & Fish Rule" to Deregulate Gold Panning Activities and Other Purposes ("Petition"), dated May 12, 2000

Dear Mr. Urnovitz and Mr. Young:

Thank you for your letter dated July 25, 2000 and received by my office on July 26, 2000, appealing the Commission's decision to deny the Petition.

Pursuant to RCW 34.05.330(3), I have fully reviewed your appeal of the Petition and the relevant statutes and regulations, and have affirmed the Commission's decision.

It is my policy to intervene in matters presented to me under RCW 34.05.330(3) only when I believe the agency or commission whose decision is at issue has abused its discretion or acted arbitrarily or capriciously. It is also my policy not to second-guess the thoughtful and deliberate decisions of a state agency or commission, so long as those decisions are well founded and proper under the law. This is an extremely high standard of review.

The Commission had a proper basis for its decision to deny the Petition for the reasons described below. I have responded to each of your arguments in turn:

1. Hand-held pan exemption: You argued that the Commission failed respond to your point that hand-held pans are not regulated by the states of Idaho or Oregon. Whether or not these states regulate this form of prospecting is immaterial to the Commission's or the Washington Department of Fish and Wildlife's ("WDFW") authority to do so, and therefore that objection is not relevant.

I understand that individual gold pans must each have a very small impact on the environment. However, I am not in a position to judge the cumulative effect of all small scale panning in a particular stream. Because RCW 75.20.330 explicitly includes pans in its definition of methods used for "small scale prospecting and mining," WDFW is authorized to regulate their use.

2. Authority to regulate activities above the ordinary high water line: WDFW is authorized by the former RCW 75.20.100(1) (recently recodified in Chapter 77 RCW) to review and approve or deny "any form of hydraulic project or ... other work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state." The statute does not limit this authority to areas below ordinary high water or any other water/land boundary. Accordingly, WDFW is clearly authorized to regulate activity outside the ordinary high water line. WDFW is to base its regulatory decisions on "the proper protection of fish life." It appears from the quoted language in your letter that you misread the statute.

As with gold panning, applying common sense, I understand your point that it is difficult to see how one individual working with a shovel more than 200 feet beyond the ordinary high water line might affect the natural flow or bed of a stream. Similarly applying common sense, however, it is also easy to understand how the cumulative effect of one or several people working along a stream, over time, could materially affect the flow of sediment into a stream and affect fish life.

Please note that the Gold and Fish pamphlet allows exceptions to its restrictions if parties seek a standard Hydraulic Project Approval; thus, activities in the 200 feet beyond the ordinary high water line are not precluded but simply require additional consideration. I urge you to seek an exception if you have an appropriate project in mind.

3. Adequacy of Small Business Economic Impact Statement ("SBEIS"): The statute requiring an SBEIS, RCW 19.85.040, does not require agencies to address secondary impacts of regulations. The SBEIS prepared by WDFW deals with the impacts of the Gold and Fish rule on small commercial prospecting and mining businesses and compares those impacts to effects on large prospecting and mining businesses. The document does not, nor is the agency required to, address the effects of the rule on those who might supply equipment to the parties directly affected. The SBEIS appears to meet the department's legal obligations.

4. Lack of access to documentation justifying rule content: It is my understanding that WDFW has maintained a complete rule-making file, as required by RCW 34.05.370, that includes all materials used or submitted in the course of developing the Gold and Fish pamphlet. This file is available for public review upon request.

5. Applicability of rule to activities above ordinary high water line: As noted above, WDFW is not statutorily limited to applying the Hydraulic Code only to activities within the ordinary high water line. WDFW is authorized by the former RCW 75.20.100(1) (recently recodified in Chapter 77 RCW) to review and approve or deny "any form of hydraulic project or ... other work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state." WDFW is to base its decisions on "the proper protection of fish life." The statute does not limit this authority to areas below ordinary high water or any other water/land boundary. In its efforts to "preserve, protect, perpetuate and manage the food fish and shellfish in state waters and offshore waters" (former RCW 75.08.012) WDFW must exercise judgment in determining whether excavation activity (which could include situations where groups are prospecting together and thereby exceed "any individual using a regular shovel") could affect

water flow into a streambed or watercourse that could change the natural flow or bed. This is fully within WDFW's jurisdiction.

Thank you for your extensive efforts and profound commitment to preserving micro-scale mining opportunities for Washington's citizens. I urge you to pursue mining methods that can be granted permits or exceptions as provided in the Gold and Fish pamphlet.

Sincerely,

Gary Locke
Governor

cc: Dennis W. Cooper, Code Reviser
Tim Martin, Co-Chief Clerk, House of Representatives
Cindy Zehnder, Co-Chief Clerk, House of Representatives
Tony Cook, Secretary of the Senate
Kelly D. White, Chairman, Washington Fish and Wildlife Commission
Jeff Koenings, Director, WDFW

EXPEDITED LAND DIVISIONS

197.360 "Expedited land division" defined; applicability. (1) As used in this section:

(a) "Expedited land division" means a division of land under ORS 92.010 to 92.192, 92.205 to 92.245 or 92.830 to 92.845 by a local government that:

(A) Includes only land that is zoned for residential uses and is within an urban growth boundary.

(B) Is solely for the purposes of residential use, including recreational or open space uses accessory to residential use.

(C) Does not provide for dwellings or accessory buildings to be located on land that is specifically mapped and designated in the comprehensive plan and land use regulations for full or partial protection of natural features under the statewide planning goals that protect:

(i) Open spaces, scenic and historic areas and natural resources;

(ii) The Willamette River Greenway;

(iii) Estuarine resources;

(iv) Coastal shorelands; and

(v) Beaches and dunes.

(D) Satisfies minimum street or other right-of-way connectivity standards established by acknowledged land use regulations or, if such standards are not contained in the applicable regulations, as required by statewide planning goals or rules.

(E) Will result in development that either:

(i) Creates enough lots or parcels to allow building residential units at 80 percent or more of the maximum net density permitted by the zoning designation of the site; or

(ii) Will be sold or rented to households with incomes below 120 percent of the median family income for the county in which the project is built.

(b) "Expedited land division" includes land divisions that create three or fewer parcels under ORS 92.010 to 92.192 and meet the criteria set forth in paragraph (a) of this subsection.

(2) An expedited land division as described in this section is not a land use decision or a limited land use decision under ORS 197.015 or a permit under ORS 215.402 or 227.160.

(3) The provisions of ORS 197.360 to 197.380 apply to all elements of a local government comprehensive plan and land use regulations applicable to a land division, including any planned unit development standards and any procedures designed to regulate:

(a) The physical characteristics of permitted uses;

(b) The dimensions of the lots or parcels to be created; or

(c) Transportation, sewer, water, drainage and other facilities or services necessary for the proposed development, including but not limited to right-of-way standards, facility dimensions and on-site and off-site improvements.

(4) An application for an expedited land division submitted to a local government shall describe the manner in which the proposed division complies with each of the provisions of subsection (1) of this section. [1995 c.595 §7; 2015 c.260 §1]