

# Adjustment Applications

## Cottages United – United Way

Submittal Date: March 17, 2022

Submitted To: City of Salem Planning

Project Location: Market Street NE  
Salem, OR

Applicant(s): United Way of the Mid-Willamette  
Valley; Rhonda Wolf, CEO

Applicant's  
Representative: Britany Randall of BRAND Land Use  
Britany@brandlanduse.com



# BRAND

FEASABILITY | PLANNING | LAND USE

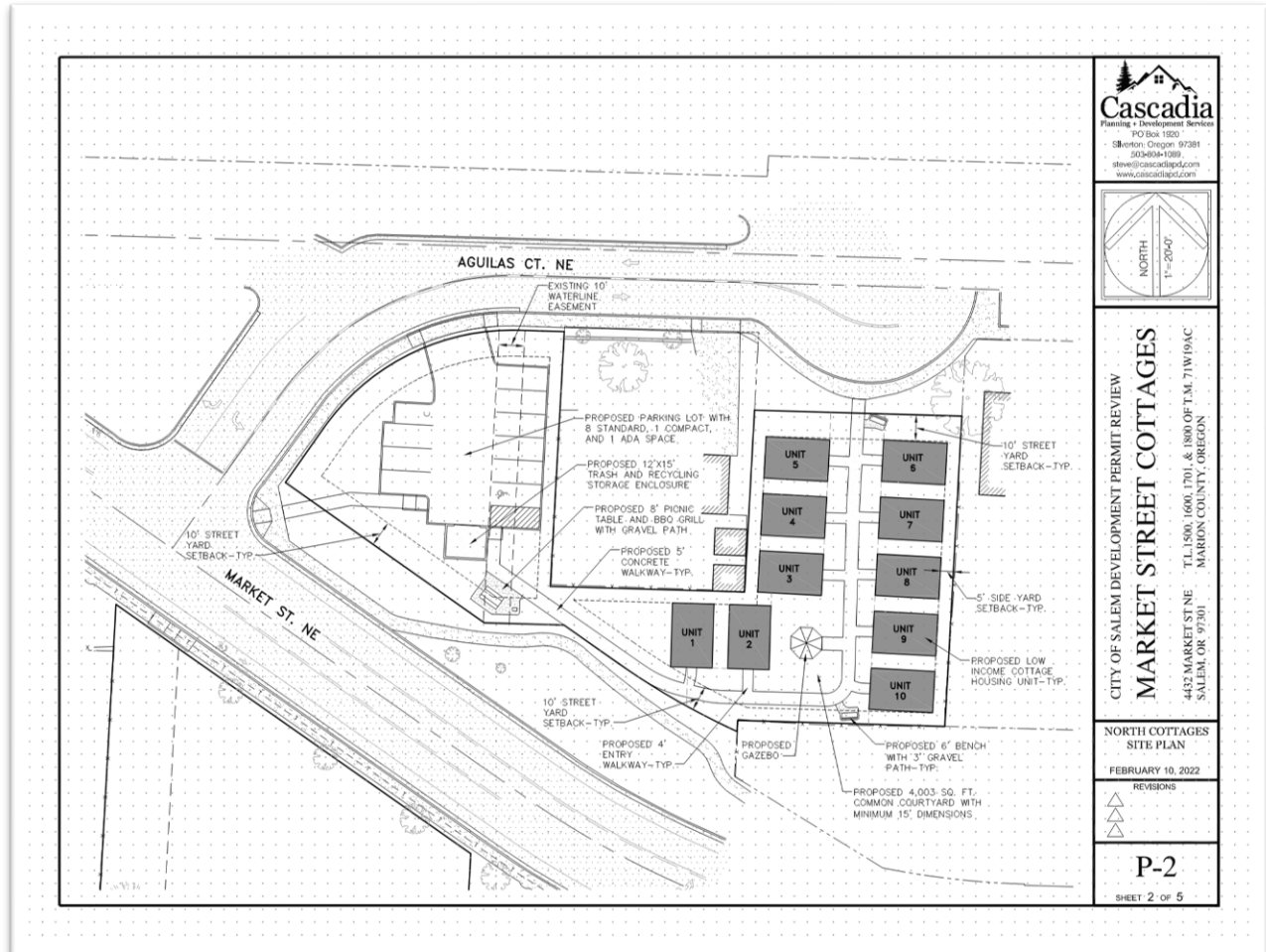
BRANDLANDUSE.COM

503.680.0949

## Table of Contents

Section 1: Property Background and Request .....	3
Section 2: Existing Conditions .....	3
Section 3: Applicable Zoning Codes .....	4
Section 4: Findings Applicable to Administrative Procedures .....	5
Chapter 300 – Procedures for Land Use Applications and Legislative Land Use Proposals .....	5
Section 5: Findings Applicable to Adjustments.....	32
Chapter 250 – Adjustments .....	32
Section 6: Conclusion .....	35
Section 7: Exhibits .....	36
Exhibit A – Existing Conditions Plan .....	37
Exhibit B – Site Plan.....	38

## North Cottages at Aguilas Ct. NE and Market St. NE



## Section 1: Property Background and Request

United Way of the Mid-Willamette Valley is presenting an application for Class 2 Adjustments to accommodate their newly proposed Cottages United project. United Way has been working on this project closely with city staff and city council. The subject property was purchased from the City of Salem after remnant pieces were left behind with the realignment of Market Street NE. United Way envisions cottage style housing on the properties that can be focused to serve seniors in Salem, providing much needed low-income housing.

On March 16<sup>th</sup>, the City of Salem adopted code revisions to be in compliance with House Bill 2001 which focuses on the missing middle housing and allows a more diverse and flexible housing type to be placed in single family zones throughout the city. The code section which allows the cottage clusters is Salem Revised Code Chapter 700.011. Because the subject properties are remnants, they are oddly shaped, triggering the need for some adjustments to standards to accommodate the needed and required elements for a successful cottage housing development.

There are three subject properties which make up the development site. However, in accordance with Salem's definition of a development site, "Development site means an individual lot or multiple contiguous lots accommodating a single development or a complex. For purposes of off-street parking proximity requirements under SRC 806.010, development site also includes a lot or multiple contiguous lots located directly across a street or alley right-of-way." United Way is submitting three separate applications because each of the three properties will be reviewed individually, with the exception of the number of allowable parking spaces since the sites can be considered contiguous as they are directly across Market Street from each other.

This application submittal is for the North Cottages site, as shown on the site plan above and included with this application submittal.

## Section 2: Existing Conditions

The site is located within corporate City limits of the City of Salem. The Salem Area Comprehensive Plan (SACP) map designates the subject property as "Single Family Residential". Additionally, the property is located within the City's Urban Service Area (USA) making an Urban Growth Area Development Permit unnecessary.

The Comprehensive Plan designations of surrounding properties include:

North: Across Aguilas Ct. NE, CSE "Community Service Education"

South: Across Market Street NE, SF “Single Family Residential” and RM “Multiple Family Residential”

East: SF “Single Family Residential”

West: Across Aguilas Ct. NE, SF “Single Family Residential”

The subject property is zoned RS (Single-Family Residential). Surrounding properties are zoned as follows:

North: Across Aguilas Ct. NE, PE (Public Education)

South: Across Market St NE, RM (Multiple-Family Residential), RS (Single-Family Residential), and RA (Residential Agriculture)

East: RS (Single-Family Residential)

West: Across Market St NE, RS (Single-Family Residential)

## Section 3: Applicable Zoning Codes

### **Salem Revised Code Chapter 250 – Adjustments**

*250.005 Adjustments*

*250.010 Modification of Adjustment Approval*

### **Salem Revised Code Chapter 300 – Procedures for Land Use Applications and Legislative Land Use Proposals**

*300.010 Scope and Applicability*

*300.100 Procedure Types*

*300.110 Review Authorities*

*300.120 Procedures for Review of Multiple Applications*

*300.200 Initiation of Applications*

*300.210 Application Submittal*

*300.220 Completeness Review*

*300.230 Withdrawal of Application*

*300.300 Pre-Application Conference*

*300.510 Type II Applications*

300.250 Type II Procedure

300.800 Public Notice Compliance; Waiver of Notice

300.810 State Mandated Decision Date

300.820 Conditions of Approval

300.830 Amended Decisions

## Section 4: Findings Applicable to Administrative Procedures

Chapter 300 – Procedures for Land Use Applications and Legislative Land Use Proposals

Section 300.100 – Procedure Types

- a) Unless otherwise provided in the UDC, land use actions required under the UDC are classified as one of four procedure types set forth in Table 300-1. The procedure type governs the decision-making process for the specific land use application.

**Applicant's Findings:** *The applicant understands Table 300-1 sets forth the four procedure types for land use actions within the City of Salem. This application will be reviewed using Type II procedures. Type II applications are administrative, and the decision authority is the planning administrator. "Type II procedure is used when the standards and criteria require limited discretion or legal judgment in their application. Decisions on Type II applications are made by staff. Public notice and opportunity to comment prior to issuance of a decision is provided. A public hearing is not required unless the decision is appealed."*

- b) The specific procedure type assigned to a land use application is specified in Table 300-2.

**Applicant's Findings:** *This is an application for Class 2 Adjustments. In accordance with Table 300-1, a Class 2 Adjustment is a Type II decision.*

- c) When the procedure type for a land use application is not identified in Table 300-2, specified elsewhere in the UDC, or otherwise required by law, the Planning Administrator shall determine the applicable procedure based on the guidelines in this subsection. Questions as to the appropriate procedure shall be resolved in favor of the procedure type providing the greatest notice and opportunity to participate by the public.
  - (1) Type I procedures shall be used when the land use action will be based on standards and criteria that do not require interpretation or the exercise of policy or legal judgment.
  - (2) Type II procedures shall be used when the land use action will be based on standards or criteria that require only limited discretion or legal judgment.

- (3) Type III procedures shall be used when the land use action will be based on standards and criteria that require the exercise of discretion or legal judgment.
- (4) Type IV procedures shall be used when the land use action will be based on standards and criteria that require the exercise of discretion or legal judgment, and where the land use application must first be referred to an advisory body for review and recommendation to the Council, which then makes the decision.

**Applicant's Findings:** *The review type for the application submitted is identified in Table 300-2, this criterion is not applicable.*

#### Section 300.110 – Review Authorities

- a) Review authorities, generally. Review authorities are those designated individuals or bodies that make recommendations or decisions regarding land use actions. The applicable Review Authorities for specific land use actions are identified under Table 300-2. The Review Authority shall review an application following the applicable procedure type for the application and according to the applicable approval standards and criteria.

**Applicant's Findings:** *The applicant understands the review authority in this case to be city staff as the application will be reviewed using the Type II process.*

- b) Review Authority hierarchy. Review authorities are organized under the following hierarchy, from lowest to highest:
  - (1) Staff, including, but not limited to, the Planning Administrator, Community Development Director, Public Works Director, and Building Official;
  - (2) Historic Landmarks Commission;
  - (3) Hearings Officer;
  - (4) Planning Commission;
  - (5) Council.

**Applicant's Findings:** *The applicant understands the hierarchy of review authorities.*

- c) Historic Landmarks Commission jurisdiction over certain applications. Notwithstanding any other provision of this section, the Historic Landmarks Commission shall have exclusive jurisdiction over those land use applications under SRC chapter 230 requiring Historic Landmarks Commission review.

**Applicant's Findings:** *The subject property is not historic, and the Historic Landmarks Commission (HLC) does not have review authority in this case.*

## Section 300.120 – Procedures for Review of Multiple Applications

When multiple land use actions are required or proposed by an applicant, the applications may be processed individually in sequence, concurrently, or through the consolidated procedure provided in this section. The applicant shall elect how the land use applications are to be processed, except where a specific review process or sequence is otherwise required or where the land use applications are subject to the same procedure type and decided upon by the same Review Authority. When multiple land use applications are subject to the same procedure type and decided upon by the same Review Authority, the land use applications shall be consolidated.

- a) Applications processed individually in sequence. Multiple applications processed individually require the filing of separate applications for each land use action. Each application shall be reviewed separately according to the applicable procedure type and processed sequentially, as follows:
  - (1) Applications with the highest numbered procedure type must be processed first;
  - (2) Notwithstanding any other provision in this subsection, where a particular sequence for the review of land use applications is established by another section of the UDC, the applications shall be processed in that sequence; and
  - (3) Notwithstanding any other provision in this subsection, where one land use application is dependent upon the approval of another land use application (e.g., conditional use permit is subject to prior approval of a zone change), the land use application upon which the other is dependent shall be processed first.

**Applicant's Findings:** *The applicant is seeking more than one adjustment, but not more than one application type. Therefore, this criterion is not applicable to the proposal.*

- b) Applications processed concurrently. Multiple applications processed concurrently require the filing of separate applications for each land use action. Each application shall be reviewed separately according to the applicable procedure type and processed simultaneously.

**Applicant's Findings:** *The subject property is being reviewed under a concurrent property line adjustment application. The applicant has filed separate land use actions for the PLA and this adjustment request meeting the standard set forth in this criterion.*

- c) Consolidated applications. When multiple applications are consolidated, a single application is filed for all land use actions. The application shall be accompanied by the information and supporting documentation required for each individual land use action. Review of the application shall be according to the highest numbered procedure type required for any of the land use applications. The Review Authority shall be the highest applicable Review Authority under the highest numbered procedure type required for



any of the land use applications. Notwithstanding the provisions of this subsection, where multiple applications that are proposed to be consolidated include an application subject to review by the Historic Landmarks Commission, the application that is subject to Historic Landmarks Commission review shall be processed individually or concurrently.

**Applicant's Findings:** *The applicant is seeking more than one adjustment but not more than one application type. Therefore, this criterion is not applicable to the proposal.*

#### Section 300.200 – Initiation of Applications

- a) Type I, Type II, Type III, and Type IV land use applications may be submitted by one or more of the following persons:
  - (1) The owner of the subject property;
  - (2) The contract purchaser of the subject property, when the application is accompanied by proof of the purchaser's status as such and by the seller's written consent;
  - (3) A lessee in possession of the property, when the application is accompanied by the owners' written consent; or
  - (4) The agent of any of the foregoing, when the application is duly authorized in writing by a person authorized to submit an application by subsection (a)(1), (2) or (3) of this section and accompanied by proof of the agent's authority.

**Applicant's Findings:** *The applicant in this case is the owner of the subject property.*

- b) Type IV applications may be initiated by the City.

**Applicant's Findings:** *This section is not applicable to this application.*

#### Section 300.210 – Application Submittal

- a) Land use applications shall be submitted on forms prescribed by the Planning Administrator. A land use application shall not be accepted in partial submittals. All of the following must be submitted to initiate completeness review under SRC 300.220. All information supplied on the application form and accompanying the application shall be complete and correct as to the applicable facts.
  - (1) A completed application form. The application form shall contain, at a minimum, the following information:
    - A. The names and addresses of the applicant(s), the owner(s) of the subject property, and any authorized representative(s) thereof;
    - B. The address or location of the subject property and its assessor's map and tax lot number;
    - C. The size of the subject property;

- D. The comprehensive plan designation and zoning of the subject property;
- E. The type of application(s);
- F. A brief description of the proposal; and
- G. Signatures of the applicant(s), owner(s) of the subject property, and/or the duly authorized representative(s) thereof authorizing the filing of the application(s).

***Applicant's Findings:*** All of the submittal requirements for this application are provided in the application package. This criterion is met.

- (2) Recorded deed/land sales contract with legal description;

***Applicant's Findings:*** The property deeds are currently being revised by the City of Salem Public Works department and their consultant through the PLA process. Those deeds should be utilized for this application submittal and are available to planning staff by request from the public works department.

- (3) Any information that would give rise to an actual or potential conflict of interest under state or local ethics laws for any member of a Review Authority that will or could make a decision on the application;

***Applicant's Findings:*** The applicant sees no reason city staff would have a conflict of interest under any state or local ethics laws. This section is not applicable.

- (4) Pre-application conference written summary, if a pre-application conference was required under SRC 300.310(a) and Table 300-2; or copy of the approved pre-application conference waiver, if such approval was granted pursuant to SRC 300.310(b);

***Applicant's Findings:*** Class 2 Adjustment applications do not require a pre-application conference and one was not held. This criterion is not applicable to the request.

- (5) A statement as to whether any City-recognized neighborhood associations whose boundaries include, or are adjacent to, the subject property were contacted in advance of filing the application and, if so, a summary of the contact. The summary shall include the date when contact was made, the form of the contact and who it was with (e.g., phone conversation with neighborhood association chairperson, meeting with land use committee, presentation at neighborhood association meeting), and the result;

***Applicant's Findings:*** Neighborhood Association contact is not required for Class 2 Adjustment applications. However, United Way has worked closely with the East Lancaster Neighborhood Association (ELNA) and has presented at their meetings multiple times to request feedback on the proposed layout and design. ELNA has been an essential part of the success of this project thus far.

- (6) For applications requiring neighborhood association contact under SRC 300.310 a copy of the required e-mail or letter to the neighborhood association, and a list of the e-mail or postal addresses to which the e-mail or letter was sent;

***Applicant's Findings:*** *Neighborhood Association contact is not required for Class 2 Adjustment applications. However, United Way has worked closely with the East Lancaster Neighborhood Association (ELNA) and has presented at their meetings multiple times to request feedback on the proposed layout and design. ELNA has been an essential part of the success of this project thus far.*

- (7) For applications requiring an open house under SRC 300.320:
- A. A copy of the sign-in sheet for the open house and a summary of the comments provided; or
  - B. When a neighborhood association meeting has been substituted for a required open house, a summary of the comments provided at the neighborhood association meeting;

***Applicant's Findings:*** *Pursuant to SRC 300.320, an open house is not required for the application included in this submittal.*

- (8) A statement as to whether the Salem-Keizer Transit District was contacted in advance of filing the application; and if so, a summary of the contact. The summary shall include the date when contact was made, the form of the contact, who it was with, and the result;

***Applicant's Findings:*** *Salem-Keizer Transit District was not contacted in advance of filing the application.*

- (9) A written statement addressing each applicable approval criterion and standard;

***Applicant's Findings:*** *This narrative includes findings and responses to each applicable approval criterion and standard.*

- (10) For Type II, Type III, and applicant-initiated Type IV applications involving property subject to an active and duly incorporated Homeowner's Association (HOA) registered with the Oregon Secretary of State which includes an identified registered agent, the HOA name and mailing address for the registered agent.

***Applicant's Findings:*** *The subject property is not incorporated into an HOA that is registered with the Oregon Secretary of State. This section is not applicable.*

- (11) For applications for affordable multiple family housing where a 100-day state mandated decision date is sought, a draft copy of the covenant required under ORS 197.311 restricting the owner, and each successive owner, of the development or a

residential unit within the development from selling or renting any of the identified affordable residential units as housing that is not affordable housing for a period of 60 years from the date of the certificate of occupancy.

***Applicant's Findings:*** *This application is not for affordable multiple family housing. This section is not applicable.*

- (12) Any additional information required under the UDC for the specific land use action sought;

***Applicant's Findings:*** *The applicant believes with the submittal of this information no additional information will be required to be submitted and staff will be able to move forward and make a favorable decision.*

- (13) Any additional information, as determined by the Planning Administrator, which may be required by another provision, or for any other permit elsewhere, in the UDC, and any other information that may be required to adequately review and analyze the proposed development plan as to its conformance to the applicable criteria;

***Applicant's Findings:*** *The applicant believes with the submittal of this information no additional information will be required to be submitted and staff will be able to move forward and make a favorable decision.*

- (14) Payment of the applicable application fee(s) pursuant to SRC 110.090.

***Applicant's Findings:*** *Once populated into the applicant's PAC portal, all applicable fees will be paid.*

- b) The Planning Administrator may waive any submittal requirement if the Planning Administrator determines that the specific requirement would not provide evidence needed to satisfy any of the applicable criteria.

***Applicant's Findings:*** *The applicant understands the planning administrator has the authority to waive any submittal requirement. However, a thorough and complete application is being submitted to city staff for review and it is not anticipated any requirement will be waived.*

- c) Each application, when received, shall be date-stamped with the date the application was received, and designated with a receipt number and a notation of the staff person who received the application.

***Applicant's Findings:*** *The applicant understands this requirement of city staff for processing applications.*

## Section 300.220 – Completeness Review

- a) Except as otherwise provided under ORS 227.178, the Planning Administrator shall review an application for completeness within 30 days of its receipt.

***Applicant's Findings:*** *The applicant understands the 30-day completeness review rule pursuant to ORS 227.178. The applicant anticipates having satisfied all of the code requirements for the proposal and doesn't anticipate the full 30-day review will be required for this application.*

- b) Determination of completeness shall be based upon the information required under SRC 300.210 and shall not be based on opinions as to quality or accuracy. A determination that an application is complete indicates only that the application is ready for review on its merits, not that the City will make a favorable decision on the application.

***Applicant's Findings:*** *The applicant understands the provisions for determining completeness of this application. The applicant believes with this submittal the application is able to be deemed complete and a favorable decision will be rendered.*

- c) If an application is determined to be complete, review of the application shall commence.

***Applicant's Findings:*** *The applicant anticipates the application submitted is complete and review of the application can commence with notice being sent as required.*

- d) If an application is determined to be incomplete, written notice shall be provided to the applicant identifying the specific information that is missing and allowing the applicant the opportunity to submit the missing information. An application which has been determined to be incomplete upon initial filing shall be deemed complete for purposes of this section upon receipt of:
  - (1) All of the missing information;
  - (2) Some of the missing information and written notice from the applicant that no other information will be provided; or
  - (3) Written notice from the applicant that none of the missing information will be provided.

***Applicant's Findings:*** *The applicant understands the process if their application is deemed complete, as outlined in the above criterion.*

- e) If an application was complete at the time, it was first submitted, or if the applicant submits additional required information within 180 days of the date the application was first submitted, approval or denial of the application shall be based upon the standards and criteria that were in effect at the time the application was first submitted.

***Applicant's Findings:*** *The applicant understands the 180-day rule.*

- f) An application shall be deemed void if the application has been on file with the City for more than 180 days and the applicant has not provided the missing information or otherwise responded, as provided in subsection (d) of this section.

***Applicant's Findings:*** *The applicant understands if a response is not provided within 180 days of the submission of the application, it will be void.*

#### Section 300.300 – Pre-application Conference

- a) Purpose. Pre-application conferences are intended to familiarize applicants with the requirements of the UDC; to provide applicants with an opportunity to meet with city staff to discuss proposed projects in detail; and to identify approval criteria, standards, and procedures prior to filing a land use application. The pre-application conference is intended to be a tool to orient applicants and assist them in navigating the land use process but is not intended to be an exhaustive review that identifies or resolves all potential issues and does not bind or preclude the City from enforcing all applicable regulations or from applying regulations in a manner differently than may have been indicated at the time of the pre-application conference.

***Applicant's Findings:*** *The applicant understands the purpose of requiring a pre-application conference. A pre-application conference is not required for the requested application type.*

#### Section 300.310 – Neighborhood Association Contact

- a) Purpose. The purpose of neighborhood association contact is to provide an opportunity for neighborhood associations to learn of upcoming land use applications involving land within or adjacent to their boundaries in advance of applications being submitted. This encourages dialogue and provides opportunities for feedback and resolution of potential issues prior to filing.

***Applicant's Findings:*** *As stated previously, neighborhood association contact is not required for the application type. However, the applicant has presented at two neighborhood association meetings and continues to discuss the project with ELNA.*

#### Section 300.510 – Type II Applications

The following land use actions are Type II applications:

- a) Those identified in Table 300-2 as Type II applications;

***Applicant's Findings:*** *The review type for the application submitted is identified in Table 300-2. As listed, Type II application procedures will be used to review the application.*

- b) Those identified in the UDC as Type II applications; or

***Applicant's Findings:*** *The review type for the application submitted is identified in Table 300-2. As listed, Type II application procedures will be used to review the application.*

- c) Those identified by the Planning Administrator as Type II applications based upon the guidelines for classification of applications under SRC

***Applicant's Findings:*** *The review type for the application submitted is identified in Table 300-2. As listed, Type II application procedures will be used to review the application.*

#### Section 300.510 – Type II Procedure

- a) Application requirements.

- (1) Application form. Type II applications shall be made on forms provided by the Planning Administrator.
- (2) Submittal requirements. Type II applications shall include the information required under SRC 300.210.

***Applicant's Findings:*** *This submittal includes the required application forms provided by the city. Each submittal requirement is provided, and the applicant has demonstrated how the proposal meets each criterion.*

- b) Public notice and comment. Public notice is required for Type II applications. Public notice shall be by first class mail. Posted notice on the subject property is required for subdivisions, Class 2 wireless communications facilities siting, manufactured dwelling park permits, and Class 1 greenway development permits. All Type II applications include a comment period of 14 days from the date notice is mailed.

- (1) Mailed notice. Mailed notice shall be provided as follows:

- A. The City shall mail notice of the application within ten days after the application is deemed complete. An affidavit of mailing shall be prepared and made part of the file.
- B. Notice of the application shall be mailed to:
  - i. The applicant(s) and/or the applicant's authorized representative(s);
  - ii. The owner(s) or contract purchaser(s) of record of the subject property;
  - iii. The address of the subject property, based on the City's current addressing records;
  - iv. Any active and duly incorporated Homeowner's Association (HOA) involving the subject property that is registered with the Oregon Secretary of State and which includes an identified registered agent. For purposes of this subsection, the HOA shall be the HOA as identified by the applicant. Notice requirements to the HOA shall be deemed to have been met when notice is

provided to the registered agent of the HOA utilizing the contact information provided by the applicant;

- v. Any City-recognized neighborhood association whose boundaries include, or are adjacent to, the subject property;
- vi. Property owners of record, as shown on the most recent property tax assessment roll, of properties located within 250 feet of the subject property;
- vii. Addresses, based on the City's current addressing records, within 250 feet of the subject property.
- viii. Any governmental agency which is entitled to notice by law or under an intergovernmental agreement with the City; and
- ix. Any community organizations, public utilities, agencies, or individuals who have submitted written requests for notification to the City.

C. Mailed notice shall include:

- i. The names of the applicant(s), any representative(s) thereof, and the owner(s) of the subject property;
- ii. The type of application and a concise description of the nature of the land use action;
- iii. The proposed site plan;
- iv. The street address, or other easily understood geographical reference, for the subject property;
- v. A vicinity map identifying the subject property with relation to nearby major streets or other landmarks;
- vi. A list of the approval criteria by name and code section;
- vii. A statement that the application and all documents and evidence submitted by the applicant are available for review and that copies can be obtained at a reasonable cost;
- viii. A brief summary of the decision-making process for the application;
- ix. The place, date, and time that written comments are due, and the person to whom the comments should be addressed;
- x. A statement that comments received after the close of the public comment period will not be considered;
- xi. A statement that issues which may provide the basis for an appeal to the Oregon Land Use Board of Appeals must be raised in writing prior to the expiration of the comment period and with sufficient specificity to enable the applicant and Review Authority to respond to the issue;
- xii. A statement that subsequent to the closing of the public comment period a decision will be issued and mailed to the applicant, property owner, everyone entitled to the initial notice of the application, anyone who



submitted written comments on the application, and to any other persons otherwise legally entitled to notice of the decision; and

xiii. The name and contact information for the staff case manager.

(2) Posted notice. Posted notice shall be provided, when required, as follows:

- A. The applicant shall post notice on the subject property no earlier than 14 and no later than ten days prior to the end of the 14-day comment period. The notice shall remain in place throughout the comment period. The applicant shall file an affidavit of posting with the City no later than five days after the date of original posting. The affidavit shall be made a part of the file.
- B. Notice shall be posted on each street frontage of the subject property, in a conspicuous place that is visible from the public right-of-way. If no street abuts the subject property, the notice shall be placed as near as possible to the subject property in a conspicuous place that can be readily seen by the public.
- C. Posted notice shall be provided on signs as prescribed by the Planning Administrator.
- D. The applicant shall remove the signs from the subject property within seven days after the date the decision is issued.

***Applicant's Findings:*** *The applicant understands the noticing procedures required under this section. Posting notice on the subject property is not required for the requested applications.*

- c) Application review. The Review Authority shall review the application, all written comments submitted during the public comment period, and the applicant's response to the comments, if any. Written comments received after the expiration of the public comment period shall not be considered by the Review Authority.

***Applicant's Findings:*** *The applicant's representative, BRAND Land Use, will respond to any written comments received during the comment period. No comments received after the close of the comment period should be included in the official record or responded to.*

- d) Decision. The Review Authority shall approve, conditionally approve, or deny the application based upon the facts contained within the record and according to the applicable standards and criteria. The decision of the Review Authority shall be a written order containing findings that explain the criteria and standards applicable to the decision, stating the facts relied upon in rendering the decision, and explaining the justification for the decision.

***Applicant's Findings:*** *The applicant understands the review authority's options to approve, conditionally approve, or deny the application. Based on the information submitted, it is anticipated the decision will be approved with minimal conditions as the applicant is offering mitigation, where possible.*

e) Notice of decision. Notice of the decision shall be mailed within five days after the decision is signed. An affidavit of mailing shall be prepared and made part of the file.

(1) Notice of the decision shall be mailed to:

- A. The applicant(s) and/or authorized representative(s);
- B. The owner(s) or contract purchaser(s) of record of the subject property;
- C. The address of the subject property, based on the City's current addressing records;
- D. Any active and duly incorporated Homeowner's Association (HOA) involving the subject property that is registered with the Oregon Secretary of State and which includes an identified registered agent. For purposes of this subsection, the HOA shall be the HOA as identified by the applicant. Notice requirements to the HOA shall be deemed to have been met when notice is provided to the registered agent of the HOA utilizing the contact information provided by the applicant;
- E. Any City-recognized neighborhood association whose boundaries include, or are adjacent to, the subject property;
- F. Any group or individual who submitted written comments during the comment period;
- G. Property owners of record, as shown on the most recent property tax assessment roll, of properties located within 250 feet of the subject property;
- H. Addresses, based on the City's current addressing records, within 250 feet of the subject property.
- I. Any governmental agency which is entitled to notice by law or under an intergovernmental agreement with the City, and any governmental agency which submitted written comments during the comment period; and

***Applicant's Findings:*** *The applicant understands the procedures surrounding notice of decision.*

f) Any community organizations, agencies, or individuals who have submitted written requests to the City for notice of the decision.

(1) Notice of the decision shall include:

- A. A brief description of the application;
- B. A description of the site sufficient to inform the reader of its location, including site address, if available, map and tax lot number, and its comprehensive plan designation and zoning;
- C. A brief summary of the decision, and conditions of approval, if any;
- D. A statement of the facts relied upon;
- E. The date the Review Authority's decision becomes effective, unless appealed;
- F. The date and time by which an appeal must be filed, a brief statement explaining how to file an appeal, and where further information may be obtained concerning the appeal process;

- G. A statement that all persons entitled to notice of the decision may appeal the decision; and
- H. A statement that the complete case file, including findings, conclusions, and conditions of approval, if any, is available for review. The notice shall state where the case file is available and the name and telephone number of the staff case manager to contact about reviewing the case file.

***Applicant's Findings:*** *The applicant understands the information that is required to be contained within the notice of decision and that any community organizations, agencies, or individuals who have submitted written requests to the city for notice of the decision will receive a copy.*

g) Appeal and review.

- (1) Unless appealed pursuant to SRC 300.1010, or review is initiated by the Council pursuant to SRC 300 1050 the decision of the Review Authority on a Type II application shall be the final decision of the City.
- (2) Only the applicant, persons who provided comments during the public comment period, and persons entitled to notice of the decision have standing to appeal the decision.
- (3) The Review Authorities for appeals are identified under Table 300-2. Except as otherwise provided in subsections (f)(3)(A) and (B) of this section, the decision of the Review Authority on appeal, or, if review is initiated by the Council, the Council on review, shall be the final decision of the City.
  - A. Upon receipt of an appeal of a decision on a Class 3 site plan review, modification of a Class 3 Site Plan Review, Class 2 adjustment, or modification of a Class 2 Adjustment, notice of the appeal shall be provided to the Council at its next regular meeting. The Council may, pursuant to SRC 300.1050, assume jurisdiction for review pursuant to SRC 300.1040. If the Council does not assume jurisdiction, then the decision of the Review Authority on the appeal is the final decision of the City.
  - B. The decision on a Class 1 adjustment, modification of a Class 1 adjustment, Class 2 design review, modification of a Class 2 design review, Class 2 driveway approach permit, Class 2 minor historic design review, Class 2 temporary use permit, PUD final plan, modification of a PUD final plan, or sign adjustment is not subject to Council review. The decision of the Review Authority is the final decision of the City.
- (4) Appeal of the City's final decision is to the Oregon Land Use Board of Appeals.

***Applicant's Findings:*** *The applicant is aware of the rules surrounding and appeal and review of an appeal.*

- h) Expiration of approval. Approval of a Type II application expires automatically as provided by SRC 300.850(a).

***Applicant's Findings:*** *In accordance with Table 300-3, the Class 2 Adjustment applications will expire after two years but two extensions of two years each are permissible.*

#### Section 300.800 – Public Notice Compliance; Waiver of Notice

Notice of land use approval under the procedures of this chapter shall be deemed to have been satisfied as follows:

- a) Compliance. The requirements for notice shall be deemed satisfied for any person who, prior to the public hearing and in any manner, obtains actual knowledge of the date, time, place, and subject matter of the hearing. Requirements for the provision of mailed, posted or published public hearing notice shall be deemed satisfied as follows:
  - (1) Mailed notice. Mailed notice shall be deemed to have been provided upon the date the notice is deposited in the mail. Failure of the addressee to receive such notice shall not invalidate the proceedings if it can be demonstrated by affidavit that such notice was deposited in the mail.
  - (2) Posted notice. Posted notice shall be deemed to have been provided upon the date when the sign is first posted. Subsequent removal of or damage to the sign by anyone other than the applicant or an officer of the City shall not invalidate the proceeding.
  - (3) Published notice. Published notice shall be deemed to have been provided upon the date when the notice appears within a newspaper of general circulation within the City.

***Applicant's Findings:*** *The applicant understands the public notice requirements including mailed, posted, and published notice.*

- b) Waiver of notice. The appearance or provision of testimony or comments on an application by any person subsequent to the initiation of the application or prior to the close of the record after a public hearing shall be deemed a waiver of such person to any claim of defect in the provision of notice.

***Applicant's Findings:*** *The applicant understands the provisions of waiver of notice in accordance with this section.*

#### Section 300.810 – State Mandated Decision Date

- a) Except as otherwise provided in this section, the City shall take final action on land use applications subject to ORS 227.178, including resolution of all local appeals, within 120 days after the application has been deemed complete pursuant to SRC 300.220 unless

the applicant provides written request or consent to an extension of such period pursuant to ORS 227.178(5).

***Applicant's Findings:*** *The applicant understands the city must take final action on land use actions subject to ORS 227.178, including the resolution of appeals, within 120 days after the application has been deemed complete. The applicant understands they have the right to grant an extension to the 120-day rule.*

- b) The City shall take final action on an application for affordable multiple family housing, including resolution of all local appeals, within 100 days after the application has been deemed complete pursuant to SRC 300.220 unless the applicant provides a written request or consent to an extension pursuant to ORS 227.178(5).

***Applicant's Findings:*** *This application is not for affordable multiple family housing and therefore does not apply.*

#### Section 300.820 – Conditions of Approval

- a) Imposition of conditions, generally. The Review Authority may impose conditions on land use actions to the extent allowed by law in order to protect the public and adjacent property owners from adverse impacts resulting from the proposed development, to fulfill an identified need for public services or infrastructure caused by or required for the proposed development, or to ensure conformance with the applicable development standards and criteria in the UDC. A condition of approval shall be valid and enforceable from and after the date the decision becomes effective.
  - (1) Conditions of approval should be stated in clear and unambiguous terms; be reasonably related to the public health, safety, and welfare; and be designed to reasonably effectuate the intended purpose.

***Applicant's Findings:*** *The applicant understands the review authority may impose conditions on the land use applications included in this submittal. However, the conditions of approval should be clear, unambiguous, and related to the public health, safety, and welfare and designed in a manner to effectuate the intended purpose.*

- (2) The Review Authority shall not impose any permanent condition which would limit use of the subject property to one particular owner, tenant, or business. Permanent conditions may limit the subject property as to use but shall not be so restrictive that other occupants who might devote the property to the same or substantially similar use would be unable to reasonably comply with the conditions.

***Applicant's Findings:*** *The applicant understands the limits imposed on permanent conditions.*

- b) Effect of conditions. Conditions of approval shall be construed and enforced, in all respects, as provisions of the UDC relating to the use and development of land.

***Applicant's Findings:*** *The applicant understands the effect of conditions in accordance with this section.*

- c) Imposition of conditions on applications for housing developments.
  - (1) Except as otherwise provided in this subsection, the Review Authority may impose conditions on applications for housing developments. The Review Authority may not, however:
    - A. Impose a condition on an application for a housing development reducing its density if:
      - i. The density applied for is at or below the maximum density allowed; and
      - ii. At least 75 percent of the floor area applied for is reserved for housing.
    - B. Impose a condition on an application for a housing development reducing its height if:
      - i. The height applied for is at or below the maximum height allowed;
      - ii. At least 75 percent of the floor area applied for is reserved for housing; and
      - iii. Reducing the height would have the effect of reducing the proposed density.
  - (2) Notwithstanding paragraph (1) of this subsection, the Review Authority may impose a condition on an application for a housing development reducing its density or height if the reduction is necessary to resolve a health, safety, or habitability issue or to comply with a protective measure adopted pursuant to a statewide land use planning goal.

***Applicant's Findings:*** *The application is not for a housing development and the provisions of this section are not applicable to this submittal.*

#### Section 300.830 – Amended Decisions

- a) After notice of a decision on a land use action has been provided, an amended decision may be issued correcting typographical errors, rectifying inadvertent omissions, and/or making other minor changes that do not materially alter the decision if the amended decision is issued prior to the expiration of the appeal period of the original decision, but in no event beyond the state mandated decision date set forth under ORS 227.178 unless the applicant otherwise agrees to and requests an extension pursuant to ORS 227.178(5).

***Applicant's Findings:*** *The applicant understands an amended decision may be issued within the appeal period in accordance with the limitations listed in this section.*

- b) Notice of an amended decision shall be given using the same mailing and distribution list as for the original notice of the decision.

***Applicant's Findings:*** *If an amended decision is issued, it is understood it will be distributed to the same interested parties the original decision was distributed to.*

- c) A new appeal period equal to that of the original decision shall be provided from the date of mailing the amended decision.

***Applicant's Findings:*** *The applicant understands with an amended decision a new appeal period would be required.*

#### Section 300.840 – Issuance; Effective Date

- a) Each decision shall be specific as to the approval granted and shall be subject to the standards and conditions set forth in UDC, including any variances or conditions authorized pursuant to the UDC.

***Applicant's Findings:*** *The applicant understands each application, when granted, is subject to its own conditions and standards listed within the UDC.*

- b) Decisions on land use actions become effective on:
  - (1) The day the decision is issued, if no appeal is allowed;
  - (2) The day after the appeal period expires, if an appeal is allowed, but no notice of appeal is timely filed;
  - (3) The day the decision is issued by the final appeal body, if an appeal is allowed and notice of appeal is timely filed; or
  - (4) The day the decision is issued by the Council, if the decision is called up for review by the Council pursuant to SRC 300.1050.

***Applicant's Findings:*** *The applicant understands the provisions related to when the land use action becomes effective.*

#### Section 300.850 – Expiration and Extensions

- a) Approval expiration and termination.
  - (1) Unless a different period of time is established in the UDC or in the decision, all approvals of land use actions shall expire automatically upon the dates set forth in Table 300-3 unless one of the following has occurred:
    - A. Development has commenced in compliance with the land use approval;
    - B. An extension has been granted pursuant to SRC 300.850(b); or
    - C. The land use approval has been revoked as provided under SRC 300.860 or is otherwise invalidated by an administrative board or court of competent jurisdiction.
  - (2) Where the decision involves work for which a building permit is required, no exercise of the rights granted under the land use action shall be deemed to have commenced until a building permit has been issued. Unless otherwise extended, the

approval of the land use action shall automatically expire if the approval has expired as set forth in Table 300-3, and all required building permits issued for the land use action have expired.

***Applicant's Findings:*** *In accordance with Table 300-3, the Class 2 Adjustment applications will expire after two years but two extensions of two years each are permissible.*

b) Extensions.

- (1) Whenever the decision requires exercise of approval rights or satisfaction of conditions of approval within a particular period of time, the approval period may be extended for the times set forth in Table 300-3 through filing an application for extension prior to the expiration date.
- (2) Classes.
  - A. Class 1 extension. A Class 1 extension is an extension that applies when there have been no changes to the standards and criteria used to approve the original application.
  - B. Class 2 extension. A Class 2 extension is an extension that applies when there have been changes to the standards and criteria used to approve the original application, but such changes to the standards and criteria would not require modification of the original approval.
- (3) Procedure type.
  - A. A Class 1 extension is processed as a Type I procedure under SRC chapter 300.
  - B. A Class 2 extension is processed as a Type II procedure under SRC chapter 300.
- (4) Criteria.
  - A. A Class 1 extension shall be granted if there have been no changes to the standards and criteria used to approve the original application.
  - B. A Class 2 extension shall be granted if there have been no changes to the standards and criteria used to approve the original application that would require modification of the original approval.
- (5) Appeal and review.
  - C. The decision on a Class 1 extension may not be appealed and is not subject to Council review.
  - D. The decision on a Class 2 extension may be appealed and is subject to Council review pursuant to SRC 300.1050. The Review Authority for an appeal of a Class 2 extension shall be the Hearings Officer.
- (6) While an application for extension is pending, no further action to develop the subject property or expand any use dependent upon the approval shall be taken subsequent to the expiration of the approval period; but existing established uses may continue during the time the extension request is pending.



- (7) The decision granting an extension shall revive all rights under the original approval as they existed prior to the expiration of the original approval period.

***Applicant's Findings:*** *As expressed previously under the administrative procedures, the applicant understands both the expiration and extension provisions of the application type for which they are applying.*

#### Section 300.860 – Revocation of Approval

- a) Unless otherwise provided under the UDC, the Director may revoke a permit or approval issued pursuant to the UDC when:
- (1) The permit or approval was issued on the basis erroneous or misleading information, or a material misrepresentation;
  - (2) The development authorized under the permit or approval violates other applicable law;
  - (3) The development violates the permit or approval, the UDC, or other applicable law;
  - (4) The permittee failed to pay an administrative penalty for violations relating to the development authorized under the permit or approval;
  - (5) The work is, or threatens to become, an imminent hazard to property or public safety; or
  - (6) Prior to the development obtaining vested rights or nonconforming status, a change in the UDC, or the Salem Area Comprehensive Plan, has made the approved development unlawful or not permitted.

***Applicant's Findings:*** *The applicant understands the Director may revoke a permit or approval if such instances as those listed above exist to warrant a revocation.*

- b) Revocation of a permit or approval shall follow a Type I procedure

***Applicant's Findings:*** *It is understood a revocation would follow a Type I procedure.*

- c) Notice of revocation shall be given, in writing, to the applicant or the applicant's assigns or successors in interest, stating the grounds for revocation, the date upon which the revocation becomes effective, and the right to appeal.

***Applicant's Findings:*** *The applicant understands the notice procedure required in conjunction with a revocation.*

- d) Any person entitled to notice under subsection (c) of this section may appeal the revocation to the Hearings Officer by filing written notice of appeal with the Planning Administrator within ten days of the date the notice of revocation was mailed.

***Applicant's Findings:*** *The applicant understands any person entitled to notice, as provided under subsection (c), would have the right to appeal any revocation of decision within ten days of the date of mailing the notice.*

- e) Revocation shall be effective immediately upon the mailing of notice. Unless otherwise provided in the notice, revocation terminates all rights to continue the use or development under the approval of the land use action. It is unlawful to continue any use or development for which approval has been revoked.

***Applicant's Findings:*** *The applicant understands the effective date of a revocation is immediately upon the mailing of notice and that a revocation terminates rights to continue the use or development.*

- f) Revocation of approval of a land use action on the basis of false, inaccurate, or incomplete statements of material fact in the application shall not bar, nor otherwise prejudice the right of the applicant to resubmit a new application containing accurate and complete statements of material fact. Revocation on any other grounds shall be treated as a basis for denial of the application on its merits and resubmission of application shall be made as provided in SRC 300.870.

***Applicant's Findings:*** *The applicant understands they may resubmit an application following a revocation with a revised set of information.*

- g) Revocation is in addition to, and not in lieu of, any other remedy provided by law or equity, and is not a condition precedent to any such remedy.

***Applicant's Findings:*** *The applicant understands the provisions of this section and that a revocation is in addition to, and not in lieu of, any other remedy provided by law or equity, and is not a condition precedent to any such remedy in regard to applications involving false or inaccurate information.*

#### **Section 300.870 – Resubmission Following Denial**

Denial of an application shall bar refiling of the same or substantially similar application for a period of one year from the date of the decision. An exception may be granted by the original Review Authority if, upon a showing of good cause, the application is so amended that the substantive basis for denial no longer exists; the proposal has been so mitigated that a new application should be given consideration; or there has been a substantial change in the facts or a change in City policy which would change the outcome.

***Applicant's Findings:*** *The applicant understands if their application is denied, they may not resubmit a substantially similar application within a period of one year. It is also understood, in some cases, exceptions could be made.*

### Section 300.1010 – Appeal Filing

A decision on a land use action may be appealed by a person or entity with standing to appeal by filing a notice of appeal with the Planning Administrator within 15 days of the date notice of the decision is mailed.

***Applicant's Findings:*** *The applicant understands the provisions related to filing a notice of appeal with the planning administrator.*

### Section 300.1020 – Notice of Appeal

Notice of appeal shall be made on forms provided by the Planning Administrator and shall be accompanied by the appeal fee. The notice of appeal shall contain:

- a) Identification of the decision sought to be appealed, including its assigned case number, the title or caption of the decision, and the decision date.

***Applicant's Findings:*** *The applicant understands notice of appeal must be made on forms provided by the planning administrator and must also include the appeal fee. The forms are available to the public on the city's website. It is also understood case specific information must be included.*

- b) The name and mailing address of the appellant and a statement establishing the appellant's standing to appeal the decision as provided under SRC 300.1010

***Applicant's Findings:*** *The applicant understands the appellant's information and a statement must be included with any notice of appeal.*

### Section 300.1030 – Proper Filing of Notice of Appeal to be Jurisdictional

The timely and complete filing of the notice of appeal and payment of the appeal fee are jurisdictional, and the Planning Administrator shall not accept a notice of appeal that does not comply with this section. The planning administrator's determination that an appellant has failed to comply with this section shall be final.

***Applicant's Findings:*** *The applicant understands the appeal must be submitted timely and must be a complete notice of appeal including all elements required by these sections in order to be accepted by the planning administrator or a designee.*

### Section 300.1040 – Appeal Procedures; Scope

Appeals shall be conducted in accordance with the procedures set forth in this section.

- a) Appeal hearing. Appeals shall be de novo. In a de novo review, all issues of law and fact are heard anew, and no issue of law or fact decided by the lower-level Review Authority is binding on the parties in the hearing. New parties may participate, and any party may

present new evidence and legal argument by written or oral testimony. The record of the initial proceeding shall be made a part of the record. For purposes of this subsection, the record consists of:

- (1) All staff reports, exhibits, materials, pleading, memoranda, stipulations, and motions submitted by any party and reviewed or considered in reaching the original decision that is being appealed.
- (2) An electronic recording or transcript of the original hearing.

***Applicant's Findings:*** *The applicant is aware of and understands appeal hearings are de novo.*

b) Public notice.

- (1) Mailed notice. The City shall mail notice of a public hearing to all persons who had standing to appeal the decision not less than 20 days prior to the hearing. An affidavit of mailing shall be prepared and made part of the file. Mailed notice shall include:
  - A. The names of the applicant(s), any representative(s) thereof, and the owner(s) of the subject property;
  - B. The type of land use action, and concise description of the nature of the land use action;
  - C. The proposed site plan, if any;
  - D. The street address or other easily understood geographical reference to the subject property;
  - E. A vicinity map identifying the subject property with relation to nearby major streets or other landmarks;
  - F. A list of the approval criteria by name and code section;
  - G. The specific issues raised by the appellant;
  - H. The date, time, and place of the hearing;
  - I. A statement that the application and all documents and evidence submitted as part of the original proceeding, and any new documents and evidence, are available for review, and that copies can be obtained at a reasonable cost;
  - J. A brief summary of the decision-making process for the appeal;
  - K. A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings;
  - L. A statement that all interested persons may appear either in person or with representation by an attorney and provide testimony and that only those participating at the appeal hearing, or in writing, shall be entitled to appeal the decision to the Oregon Land Use Board of Appeals;
  - M. A statement that failure to raise an issue prior to the close of the public hearing, in person or in writing, or failure to provide statements or evidence with sufficient specificity to afford the applicant and Review Authority to respond to

the issue precludes an appeal to the Oregon Land Use Board of Appeals on that issue;

- N. A statement that a copy of the staff report with recommendation to the Review Authority will be available for inspection at no cost at least seven days prior to the hearing, and that copies will be provided at a reasonable cost;
  - O. A statement that subsequent to the close of the public hearing a copy of the decision will be mailed to the appellant, the applicant, if other than the appellant, the property owner, affected neighborhood associations, anyone who participated in the appeal hearing, either in person or in writing, and anyone who requested to receive notice of the decision; and
  - P. The name and contact information for the staff case manager.
- (2) Posted notice. The City shall post notice of the appeal hearing on the subject property no earlier than 14 days, but not later than ten days, prior to the public hearing. The notice shall remain in place through the day of the public hearing. An affidavit of posting shall be made part of the file. Posted notice shall:
- A. Be posted on each street frontage of the subject property in a conspicuous place so as to be visible from the public right-of-way. If no street abuts the subject property, the notice shall be placed as near as possible to the subject property in such a manner to be readily seen by the public.
  - B. Be provided on signs prepared by the Planning Administrator.

***Applicant's Findings:*** *The applicant understands the city will send and post notice of the appeal and the notices will contain all of the information included in this section.*

- c) Staff report. The Planning Administrator shall prepare a staff report and make it available a minimum of seven days prior to the appeal hearing.

***Applicant's Findings:*** *The applicant understands the planning administrator, or a designee, will prepare a new staff report regarding an appeal and make it available a minimum of seven days prior to the appeal hearing.*

- d) Continuances. The appeal body may continue the hearing to a date, time, and location certain. Additional notice of a continued hearing is not required, unless the hearing is continued without announcing a date, time, and location certain, in which case notice of the continued hearing shall be given as though it was the initial hearing. Actions by the appeal body holding the record open or continuing the hearing shall be consistent with ORS 197.763.

***Applicant's Findings:*** *The applicant understands the appeal hearing may be continued by the review authority and the procedures in place when continued to a date, time, and location certain as well as procedures when the information for the continued hearing is not provided.*

e) Decision.

- (1) The appeal body may affirm the decision, affirm the decision with additional conditions or modifications, remand the decision to the lower-level Review Authority for further action, or reverse the decision.
- (2) The appeal body shall adopt a written order, which shall be signed, dated, and mailed to the appellant, the applicant, if other than the appellant, the property owner, affected neighborhood associations, anyone who appeared either orally or in writing before the close of the public record on the appeal, and anyone who requested to receive notice of the decision. The order shall contain:
  - A. A statement of facts relied upon by the appeal body in reaching its decision.
  - B. Conclusions of how the standards or criteria are satisfied based on the statement of facts.
  - C. An order affirming, modifying, remanding or reversing the decision of the lower body.
- (3) The appeal body may direct the party whose position prevails in the appeal to prepare the order, or any part thereof, for its consideration and adoption.
- (4) The decision upon appeal shall become final on the date when written notice of the decision is mailed to persons entitled to notice of the decision. Any further appeal shall be to the Oregon Land Use Board of Appeals.

***Applicant's Findings:*** *The applicant understands the rights of the review authority in regard to issuance of a decision on an appeal case.*

#### Section 300.1045 – Withdrawal of Appeal

- a) An appeal may be withdrawn by the appellant at any time prior to the issuance of the City's final written decision on the appeal.

***Applicant's Findings:*** *The applicant understands the appellant has the right to withdraw an appeal prior to the city issuing a final written decision.*

- b) A request to withdraw an appeal shall be in writing.

***Applicant's Findings:*** *The applicant understands that any request to withdraw an appeal shall be made in writing.*

- c) Upon receipt of a request to withdraw an appeal, the appeal shall be deemed dismissed without further action by the appeal body and the decision of the lower-level Review Authority shall stand.

***Applicant's Findings:*** *It is understood that once the city receives a written request to withdraw an appeal, the appeal will be dismissed without any further action and the prior decision will stand.*

- d) If an appeal is withdrawn after the mailing of public notice, the Planning Administrator shall send written notice stating the appeal has been withdrawn to all persons who were provided mailed notice of the appeal hearing.

***Applicant's Findings:*** *The applicant understands if an appeal is withdrawn after the public hearing notice is mailed, the planning administrator will have to provide written notice to anyone who was mailed the notice of appeal hearing.*

#### Section 300.1050 – Review by the Council

- a) Whether or not an appeal is filed pursuant to SRC 300.1010 and unless otherwise provided in this chapter, the Council may, by majority vote, initiate the review of a Type II application or a Type III application, or any other land use application where Council review pursuant to this section is specifically authorized.

***Applicant's Findings:*** *The applicant understands the rights of city council and their review authority.*

- b) Council review shall be de novo and shall follow the procedures set forth in SRC 300.1040 and 300.1050. In de novo review before the Council, all issues of law and fact are heard anew, and no issue of law or fact decided by the lower-level Review Authority is binding on the parties in the hearing. New parties may participate, and any party may present new evidence and legal argument by written or oral testimony.

***Applicant's Findings:*** *The applicant understands the council's review shall be de novo and understands the hearing procedures for a de novo hearing.*

- c) Council review shall be initiated prior to the adjournment of the first regular Council meeting following Council notification of the land use approval.

***Applicant's Findings:*** *The applicant understands the process for initiation of council review.*

- d) Unless subsequently discontinued by majority vote, Council review pursuant to this section shall replace any appeal filed under SRC 300.1010.

***Applicant's Findings:*** *The applicant understands that unless a there is a majority vote to discontinue, a council review would replace any appeal filed for the case.*

- e) The decision upon Council review shall become final on the date when written notice of the decision is mailed to persons entitled to notice of the decision. Any further appeal shall be to the Oregon Land Use Board of Appeals.

***Applicant's Findings:*** *The applicant understands the decision of city council becomes final when written notice is mailed. It is also understood city council is the highest review authority within*

*the city hierarchy and any appeal of council's decision would be to the Oregon Land Use Board of Appeals (LUBA).*

#### Section 300.1060 – Effect of Appeal or Review by Council

The filing of a notice of appeal under SRC 300.1010 or initiation of review by the Council under SRC 300.1050 shall stay the decision until the decision on appeal or review has become final. No right or benefit accorded by the original decision may be exercised until the decision on appeal or review has become final.

***Applicant's Findings:*** *The applicant understands the filing of a notice of appeal or an initiation of review by the city council will stay the decision and no right granted by the original decision can be exercised prior to the decision on appeal or the review becomes final.*

#### Section 300.1070 – Effect of Judicial or Administrative Review

Except as provided by law or order of a court or administrative tribunal having jurisdiction, a decision of the City shall remain valid and effective notwithstanding the initiation of judicial or administrative review of such decision; provided, however, that any building permit dependent upon such decision shall be issued only with the applicant's written acknowledgement in a form approved by the City Attorney, that such review has been initiated and may result in the reversal of the decision, in which event the permit shall be revoked, as well as any temporary occupancy permit, and the premises shall thereafter be brought into conformity with the applicable standards and criteria by appropriate means. No permanent occupancy certificate shall be issued by the building official until such review has concluded through the adoption of a decision making such occupancy in all respects lawful.

***Applicant's Findings:*** *The applicant understands in the event described in this provision, a memorandum of understanding (MOU) could be signed by the applicant and city's legal department to certify the applicant understands the rights granted by the application may be reversed.*

#### Section 300.1080 – Remand from the Land Use Board of Appeals

The City shall take final action on quasi-judicial decisions remanded by the Oregon Land Use Board of Appeals within 120 days of the effective date of the final order, pursuant to ORS 227.181.

***Applicant's Findings:*** *The applicant understands if a decision is remanded back to the city by LUBA, final action must be taken within 120 days of the day the original decision became effective.*



## Section 5: Findings Applicable to Adjustments

### Chapter 250 – Adjustments

#### Section 250.005 – Adjustments

(a) *Applicability.*

(1) *Classes.*

- (A) A Class 1 adjustment is an adjustment to any numerical development standard in the UDC that increases or decreases the standard by not more than 20 percent.
- (B) A Class 2 adjustment is an adjustment to any development standard in the UDC other than a Class 1 adjustment, including an adjustment to any numerical development standard in the UDC that increases or decreases the standard by more than 20 percent.

***Applicant's Findings:*** For the North Cottage site, the applicant is seeking two adjustments to standards. The first adjustment they are seeking is an adjustment to reduce the interior front setback (abutting cottages 1 and 2) by 50 percent from the required 10-foot setback down to a 5-foot setback. The second adjustment the applicant is seeking is to reduce the vehicle use area setback to the easterly side property line by 45 percent from the required 10-foot setback to 5-foot 6-inches. Because both requests are to adjust the numerical standard by more than 20 percent, the Class 2 Adjustment is required.

(2) *Prohibition.* Notwithstanding subsection (a)(1) of this section, an adjustment shall not be granted to:

- (A) Allow a use or activity not allowed under the UDC;
- (B) Change the status of a use or activity under the UDC;
- (C) Modify a definition or use classification;
- (D) Modify a use standard;
- (E) Modify the applicability of any requirement under the UDC;
- (F) Modify a development standard specifically identified as non-adjustable;
- (G) Modify a development standard that contains the word "prohibited";
- (H) Modify a procedural requirement under the UDC;
- (I) Modify a condition of approval placed on property through a previous planning action;
- (J) A design review guideline or design review standard, except Multiple Family Design Review Standards in SRC Chapter 702, which may be adjusted; or

- (K) The required landscaping in the Industrial Business Campus (IBC) Zone.

***Applicant's Findings:*** For the North Cottage site, the applicant is seeking two adjustments to standards. The first adjustment they are seeking is an adjustment to reduce the interior front setback (abutting cottages 1 and 2) by 50 percent from the required 10-foot setback down to a 5-foot setback. The second adjustment the applicant is seeking is to reduce the vehicle use area setback to the easterly side property line by 45 percent from the required 10-foot setback to 5-feet 6-inches. Neither of the requested adjustments are prohibited by this section.

- (b) *Procedure type.* Class 1 and Class 2 adjustments are processed as a Type II Procedure under SRC chapter 300.

***Applicant's Findings:*** As noted in the administrative procedures above, the applicant is aware the application will be processed using Type II procedures.

- (c) *Submittal requirements.* In addition to the submittal requirements for a Type II application under SRC chapter 300, an application for a Class 1 or Class 2 adjustment shall include the following:

- (1) A site plan, of a size and form and in the number of copies meeting the standards established by the Planning Administrator, containing all information necessary to establish satisfaction with the approval criteria. By way of example, but not of limitation, such information may include the following:
  - (A) The total site area, dimensions, and orientation relative to north;
  - (B) The location of all proposed primary and accessory structures and other improvements, including fences, walls, and driveway locations, indicating distance to such structures from all property lines and adjacent on-site structures;
  - (C) All proposed landscape areas on the site, with an indication of square footage and as a percentage of site area;
  - (D) The location, height, and material of fences, berms, walls, and other proposed screening as they relate to landscaping and screening required by SRC chapter 807;
  - (E) The location of all trees and vegetation required to be protected pursuant to SRC chapter 808; and
  - (F) Identification of vehicle, pedestrian, and bicycle parking and circulation areas, including handicapped parking stalls, disembarking areas, accessible routes of travel, and proposed ramps.

***Applicant's Findings:*** Each of the required submittals has been provided with this application package. This criterion is met.

(2) An existing conditions plan, of a size and form and in the number of copies meeting the standards established by the Planning Administrator, containing the following information:

- (A) The total site area, dimensions, and orientation relative to north;
- (B) The location of existing structures and other improvements on the site, including accessory structures, fences, walls, and driveways, noting their distance from property lines;
- (C) The location of the 100-year floodplain, if applicable; and
- (D) The location of drainage patterns and drainage courses, if applicable.

***Applicant's Findings:*** *An existing conditions plan, prepared by the applicant's surveyor, is provided with this application package.*

(d) *Criteria.*

(2) An application for a Class 2 adjustment shall be granted if all of the following criteria are met:

- (A) The purpose underlying the specific development standard proposed for adjustment is:
  - (i) Clearly inapplicable to the proposed development;
  - or
  - (ii) Equally or better met by the proposed development.

***Applicant's Findings:*** *For the North Cottage site, the applicant is seeking two adjustments to standards. The first adjustment they are seeking is an adjustment to reduce the interior front setback (abutting cottages 1 and 2) by 50 percent from the required 10-foot setback down to a 5-foot setback. The second adjustment the applicant is seeking is to reduce the vehicle use area setback to the easterly side property line by 45 percent from the required 10-foot setback to 5-feet 6-inches.*

*Adjustment 1 – Reduce the interior front setback by 50 percent.* *The purpose of the interior front setback is to allow for light, air, and privacy between structures within the RS zone. The North Cottage site, as shown on the site plan included with the application, is irregularly shaped. In an effort to maximize the site to its highest and best use, we have placed cottages 1 and 2 at a 5-foot setback for the interior front property line. Due to the small stature of the cottages, the 6-foot-tall sight obscuring fence, and the fact that United Way of the Mid-Willamette Valley purchased the single-family home that sits in the center of the cottage site, we believe the reduced setbacks will still meet the intent of the code allowing light, air, and privacy between the residences. This request satisfies subsection (ii), above.*

**Adjustment 2 – Reduce the vehicle use area setback from an interior property line by 45 percent.**

*The purpose of the vehicle use area setback is to reduce the impact of motor vehicles on neighboring uses. The applicant is seeking to reduce the setback to their own property, which could be considered part of the development site. The applicant will install additional landscaping, if conditioned to do so, in an effort to mitigate any impacts of parking vehicles closer to the property line. Additionally, a site obscuring fence will be installed and maintained along the property line abutting the vehicle use area. The fence and landscape together will block any light from the vehicles utilizing the parking spaces. This request satisfies subsection (ii), above.*

- (B) If located within a residential zone, the proposed development will not detract from the livability or appearance of the residential area.

**Applicant's Findings:** *The development site is located within a residential area. Because the applicant owns the property in the center of the North Cottage site, and they are offering mitigation, the proposed adjustments will not detract from the livability of the residential area. The appearance of the area will be greatly improved with the approval of the proposed development. The subject properties have been covered with trash and noxious weeds. The development and use of the cottage development will drastically improve the appearance of the area. This criterion is met.*

- (C) If more than one adjustment has been requested, the cumulative effect of all the adjustments result in a project which is still consistent with the overall purpose of the zone.

**Applicant's Findings:** *The applicant is seeking two adjustments. Both adjustments being sought are to reduce required setbacks. The cumulative effect of the adjustments will still result in a project which is consistent with the overall purpose of the zone. The adjustments being sought are the minimum required to efficiently develop the subject site. This criterion is met.*

- (e) *Transfer of adjustments.* Unless otherwise provided in the final decision granting the adjustment, an adjustment shall run with the land.

**Applicant's Findings:** *The applicant understands adjustments will run with the land and will transfer if ownership of the property transfers.*

## **Section 6: Conclusion**

Based on the facts and findings presented by the applicant within this detailed written narrative, the applicant believes they have satisfied the burden of proof and demonstrated how the proposed adjustments meet the applicable criteria. Approval of this project means

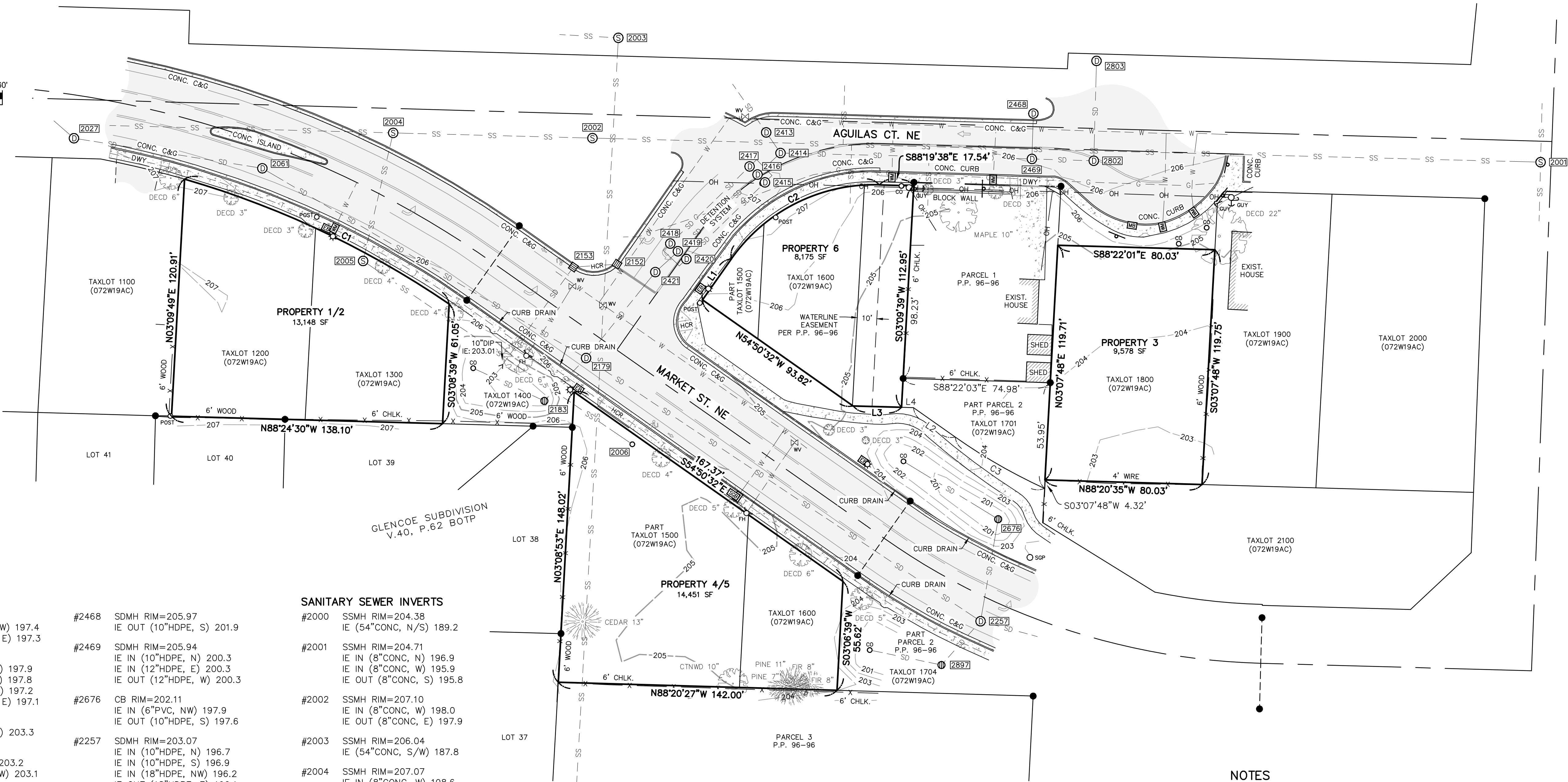
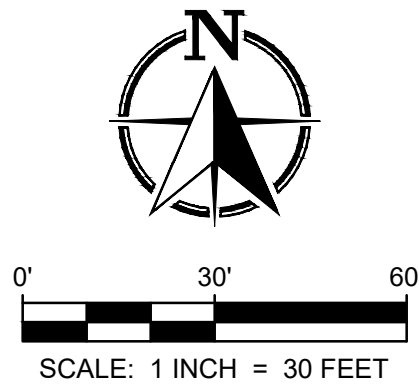
affordable cottage housing for seniors and the construction of a project the City of Salem and United Way of the Mid-Willamette Valley have worked tirelessly to achieve.

## Section 7: Exhibits

Exhibit A – Existing Conditions Plan

Exhibit B – Site Plan

## Exhibit A – Existing Conditions Plan



STORM DRAIN INVERTS

#2027	SDMH RIM=206.89 IE IN (12"HDPE, NW) 197.4 IE OUT (18"HDPE, E) 197.3
#2061	SDMH RIM=206.66 IE IN (12"HDPE, N) 197.9 IE IN (10"HDPE, S) 197.8 IE IN (18"HDPE, W) 197.2 IE OUT (18"HDPE, E) 197.1
#2152	CB RIM=204.99 IE OUT (10"DIP, W) 203.3
#2153	CB RIM=205.49 IE IN (10"DIP, E) 203.2 IE OUT (10"DIP, SW) 203.1
#2179	SDMH RIM=205.66 IE IN (12"HDPE, NE) 197.2 IE IN (10"HDPE, SW) 197.4 IE IN (18"HDPE, NW) 196.6 IE OUT (18"HDPE, SE) 196.6
#2183	CB RIM=204.41 IE IN (6"PVC, NW) 198.6 IE OUT (10"HDPE, NE) 198.0
#2413	SDMH RIM=206.71 IE IN (10"DIP, NW) 202.3 IE OUT SE NOT ACCESSIBLE
#2414	SDMH RIM=206.89 IE IN (10"DIP, NW) 199.9 IE IN (12"HDPE, E) 200.0 IE OUT (12"HDPE, SW) 199.8
#2415	SDMH RIM=207.14 IE (36"HDPE, NE/SW) 197.7
#2416	SDMH RIM=207.17 IE (36"HDPE, NE/SW) 197.7
#2417	SDMH RIM=207.22 IE (36"HDPE, NE/SW) 197.7

#2468	SDMH RIM=205.97 IE OUT (10"HDPE, S) 201.9
#2469	SDMH RIM=205.94 IE IN (10"HDPE, N) 200.3 IE IN (12"HDPE, E) 200.3 IE OUT (12"HDPE, W) 200.3
#2676	CB RIM=202.11 IE IN (6"PVC, NW) 197.9 IE OUT (10"HDPE, S) 197.6
#2257	SDMH RIM=203.07 IE IN (10"HDPE, N) 196.7 IE IN (10"HDPE, S) 196.9 IE IN (18"HDPE, NW) 196.2 IE OUT (18"HDPE, E) 196.1
#2897	CB RIM=201.97 IE IN (6"PVC, NW) 197.9 IE OUT (10"HDPE, NE) 197.7
#2418	SDMH RIM=205.85 IE (36"HDPE, NE/SW) 197.6
#2419	SDMH RIM=205.86 IE (36"HDPE, NE/SW) 197.6
#2420	SDMH RIM=205.84 IE (36"HDPE, NE/SW) 197.6
#2421	SDMH RIM=205.42 IE IN (12"HDPE, NE) 197.6 IE OUT (12"PVC, SW) 197.4
#2802	SDMH RIM=205.79 IE IN (10"HDPE, N) 200.6 IE OUT (12"HDPE, W) 200.5
#2803	SDMH RIM=205.09 IE OUT (10"HDPE, S) 201.0

SANITARY SEWER INVERTS

#2000	SSMH RIM=204.38 IE (54"CONC, N/S) 189.2
#2001	SSMH RIM=204.71 IE IN (8"CONC, N) 196.9 IE IN (8"CONC, W) 195.9 IE OUT (8"CONC, S) 195.8
#2002	SSMH RIM=207.10 IE IN (8"CONC, W) 198.0 IE OUT (8"CONC, E) 197.9
#2003	SSMH RIM=206.04 IE (54"CONC, S/W) 187.8
#2004	SSMH RIM=207.07 IE IN (8"CONC, W) 198.6 IE IN (8"PVC, S) 198.8 IE OUT (8"CONC, E) 198.5
#2005	SSMH RIM=206.37 IE IN (8"PVC, SE) 199.3 IE OUT (8"PVC, N) 199.1
#2006	SSCO RIM=205.67 IE OUT (8"PVC, NW) 199.9

CURVE TABLE					
CURVE #	LENGTH	RADIUS	DELTA	CH. BEARING	CH. LEN.
C1	149.61'	470.00'	18°14'17"	S64°43'37"E	148.98'
C2	87.79'	89.00'	56°30'54"	N63°24'55"E	84.27'
C3	52.55'	287.00'	10°29'26"	S60°05'15"E	52.47'

LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	N35°09'28"E	25.53'
L2	N54°50'32"W	26.00'
L3	N88°24'30"W	24.67'
L4	N88°24'30"W	6.08'

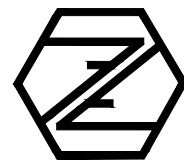
LEGEND

●	FOUND MONUMENT	CONC	CONCRETE
⊙	STORM DRAIN MANHOLE	SF	SQUARE FEET
■	CATCH BASIN	BOTP	BOOK OF TOWN PLATS
⊙	CATCH BASIN ROUND	C&G	CURB & GUTTER
>	CULVERT		
⊙	SANITARY SEWER MANHOLE		
CO	CLEANOUT		
WM	WATER METER		
WV	WATER VALVE		
FH	FIRE HYDRANT		
EB	ELECTRICAL BOX		
✱	LIGHT POLE		
U	UTILITY POLE		
GUY	GUY WIRE		
TSB	TRAFFIC SIGNAL BOX		
SP	TRAFFIC SIGNAL POLE		
—	SIGN		
POST	MISC. POST		
MB	MAILBOX		
---	SS ---	SEWER LINE UNDERGROUND	
---	SD ---	STORM LINE UNDERGROUND	
---	W ---	WATERLINE UNDERGROUND	
---	G ---	GAS LINE UNDERGROUND	
---	T ---	COMMUNICATION LINE UNDERGROUND	
---	OH ---	OVERHEAD POWER LINE	
---	X ---	FENCE LINE	

NOTES

- BASIS OF BEARINGS AND COORDINATE SYSTEM IS BASED ON THE OREGON STATE PLANE NORTH ZONE, NAD83(2011), EPOCH 2010.00. ALL DISTANCES SHOWN HEREON ARE GROUND DISTANCES.
- ALL BOUNDARY LINES SHOWN HEREON ARE PRELIMINARY IN NATURE AND SUBJECT TO CHANGE. THE CITY OF SALEM IS CURRENTLY IN THE PROCESS OF ADJUSTING PROPERTY LINES AND DEDICATING RIGHT OF WAY TO CONSOLIDATE AND CREATE PROPERTY CONFIGURATIONS AS SHOWN. BOUNDARY LINES SHOWN WERE RESOLVED BY A COMBINATION OF SURVEY RECORDS ALONG WITH DATA OBTAINED BY THE CITY OF SALEM'S CONSULTANT CONTRACTED TO COMPLETE SAID ADJUSTMENTS AND DEDICATIONS.
- ELEVATIONS WERE ESTABLISHED BY RTK GPS OBSERVATIONS TO CITY OF SALEM BENCHMARK "6030". MARK IS AN ALUMINUM DISK IN THE CURB AT THE SOUTHWEST CORNER OF LANCASTER DRIVE NE AND SUNNYVIEW ROAD NE. ELEVATION = 203.97' (NGVD29, CITY OF SALEM DATUM)
- THE LOCATION OF UTILITIES SHOWN HEREON ARE FROM OBSERVED VISIBLE EVIDENCE OF ABOVE GROUND APPURTENANCES ALONG WITH SURFACE UTILITY MARKINGS BY OTHERS. ALL UNDERGROUND UTILITIES SHOWN WERE MARKED ON THE SURFACE BY AN "OREGON ONE-CALL NOTIFICATION CENTER" REQUEST. SURVEYOR MAKES NO GUARANTEE AS TO THE ACCURACY OF SAID MARKINGS, HOWEVER, THEY ARE LOCATED AS ACCURATELY AS THEY ARE MARKED ON THE GROUND.
- PER ORS 209.150, ANY SURVEY MONUMENT REMOVED, DISTURBED OR DESTROYED SHALL BE REPLACED BY A PROFESSIONAL LAND SURVEYOR WITHIN 90 DAYS AT THE EXPENSE OF THE PERSON OR PUBLIC AGENCY RESPONSIBLE FOR SAID REMOVAL, DISTURBANCE OR DESTRUCTION.
- FIELD SURVEYED OCTOBER, 2021.

FORTY FIVE NORTH  
SURVEYING, LLC



7230 3rd Street SE #145, Turner, OR 97392  
P: (503) 558-3330 E: info@fmsurveying.com

TOPOGRAPHIC SURVEY  
FOR: UNITED WAY

IN THE NE 1/4 OF SECTION 19, T.7S., R.2W., W.M.  
CITY OF SALEM, MARION COUNTY, OREGON

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
SEPTEMBER 12, 2017  
STEVEN J. HOWELL  
91569

RENEWS: 6-30-2023

REVISIONS

INITIAL RELEASE

DATE

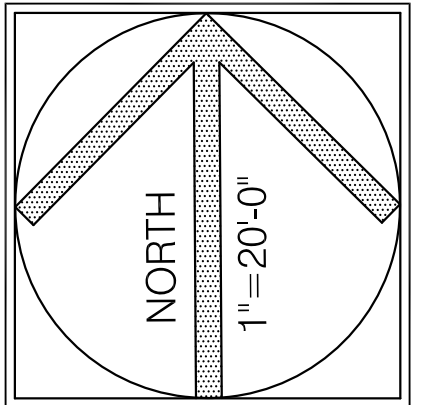
DESCRIPTION

JOB NO. 21-303

SHEET 1/1

## Exhibit B – Site Plan





CITY OF SALEM DEVELOPMENT PERMIT REVIEW

# MARKET STREET COTTAGES

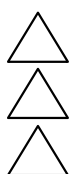
4432 MARKET ST NE  
SALEM, OR 97301

T.L.L1500, 1600, 1701, & 1800 OF T.M. 71W19AC  
MARION COUNTY, OREGON

## NORTH COTTAGES SITE PLAN

FEBRUARY 10, 2022

REVISIONS



# P-2

SHEET 2 OF 5

