

RESOLUTION NO. 2023 - 09

A Resolution authorizing the City Manager to sign an Annexation Agreement with Anders Johansen, property owner, for the future annexation of Tax Lots R4421 00900 and 01200.

RECITALS:

WHEREAS, on December 8, 2020, the McMinnville City Council adopted Ordinance No. 5098 adopting the *McMinnville Growth Management and Urbanization Plan*; and

WHEREAS, on July 21, 2021, city staff hosted a work session with the McMinnville City Council to review draft amendments to the McMinnville City Code to bring the City's governing codes in compliance with state laws and the *McMinnville Growth Management and Urbanization Plan* relative to annexations; and

WHEREAS, on September 16, 2021, the Planning Commission held a duly noticed public hearing to consider the proposed amendments and the Planning Commission recommended approval of the proposed amendments; and

WHEREAS, on October 26, 2021, the City Council, being fully informed about said request, found that the requested amendments conformed to the applicable Comprehensive Plan goals and policies, as well as the McMinnville Municipal Code based on the material submitted by the Planning Department and the findings of fact and conclusionary findings for approval, adopting Ordinance No. 5106; and

WHEREAS, on June 22, 2022, Anders Johansen applied for the annexation of his property (Tax Lots R4421 00900 and 01200) to be annexed into the City of McMinnville; and

WHEREAS, on June 22, 2022, the City leadership team reviewed the annexation application and drafted an annexation agreement for the McMinnville City Council and Anders Johansen;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MCMINNVILLE, OREGON as follows:

1. That the City Council would like to enter into an agreement with Anders Johansen for the annexation of his property into the City of McMinnville (Tax Lots R4421 00900 and 01200).
2. That the City Manager is authorized to sign the attached Annexation Agreement (Exhibit A) on behalf of the City of McMinnville. Passed by the Council this 26th day of October 2021, by the following votes:
3. This Resolution will take effect immediately upon passage.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 14th day of February, 2023, by the following votes:

Ayes: _____ Geary, Menke, Chenoweth, Payne, Peralta, Garvin _____

Nays: _____

Approved this 14th day of February, 2023.

MAYOR

Approved as to form:

City Attorney

Attest:

City Recorder

After Recording Return To:

**City of McMinnville
220 NE Second Street
McMinnville, OR 97128**

ANNEXATION AGREEMENT

This Annexation Agreement is made and entered into this ____ day of _____, _____, by and between the City of McMinnville, Oregon, an Oregon municipal corporation (hereinafter "City") and Anders Johansen (hereinafter "Owner").

W I T N E S S E T H

WHEREAS, Owner is the record owner of the property legally described on Exhibit 1 attached hereto and incorporated herein (hereinafter referred to as the "Property"); and

WHEREAS, the Property is within the City's urban growth boundary, contiguous to the currently existing City limits, and is proposed to be annexed to the City; and

WHEREAS, Owner desires to have the Property annexed to the City; and

WHEREAS, Owner will submit a petition for annexation and provide the City with all required consents for annexation; and

WHEREAS, the City is willing to consider annexation of the Property on the terms and conditions, and subject to the provisions, of this Agreement; and

WHEREAS, the City will apply urban zoning upon the successful completion and approval of a land use application for a Zone Map Amendment; and

WHEREAS, the City and Owner desire to enter into this Agreement to regulate the annexation, zoning, use and development of the Property; and

WHEREAS, should a property owner who chooses not to execute the Annexation Agreement, refuses to grant a right-of-way and/or easement across his or her property in accordance with the City's Public Facilities Plans, the City may institute condemnation proceedings to effectuate such right-of-way and/or easement, or modify the Public Facilities Plans to bypass the property, in order to accommodate the orderly construction of the public infrastructure; and

WHEREAS, Council will consider this annexation agreement on February 14, 2023.

NOW, THEREFORE, in consideration of the representations, promises and mutual covenants contained herein, the City and Owner agree as follows:

- 1. RECITALS:** The foregoing recitals are incorporated herein as is fully set forth in this Section.

2. ANNEXATION

a. City agrees that it will initiate an ordinance annexing the Property into the City once the following conditions are met:

1. All required consents have been received by the City. (See McMinnville Municipal Code (MMC) 16.20.020 for a list of required consents.)
2. A signed Annexation Agreement has been received by the City.
3. The Owner has received a final unappealed land-use approval for city zoning on the property.

b. This agreement is void if the Property is not annexed to the City of McMinnville within five years after the effective date of this Agreement and after the City's receipt of all required consents.

c. Owner may terminate this Agreement by serving written notice to the City no less than 60 days prior to the effective date of the termination. The notice must be received by the City at least 60 days prior to the public hearings for council consideration of the annexation. If the City receives such notice, this Agreement terminates as of the effective date of the notice. After the annexation ordinance is adopted by the City, this Agreement may only be terminated or amended by written consent of the Owner and City. Pursuant to this Agreement, the City agrees that an annexation ordinance will be considered by the McMinnville City Council; however, the City cannot guarantee that the annexation ordinance will be adopted by the City Council.

3. COMPREHENSIVE PLAN/ZONING: Prior to the development and annexation of the property, the Owner is required to complete a land-use application for a zoning map amendment for the property in compliance with the McMinnville Comprehensive Plan and McMinnville Zoning Ordinance. Upon successful annexation and a Zone Map Amendment adoption, the City will apply the Zoning designation identified in the land-use application to the property.

4. DEVELOPMENT: Owner agrees as follows:

a. Owner shall waive and shall not assert any claim against the City that may now exist or that may accrue through the date of annexation of the Property that it may claim due to its ownership of the Property. This includes any claim arising out of any land use regulation or under Measure 37 (ORS 197.352), Measure 49, and Measure 56 (ORS 227.186).

b. Owner agrees that any development of the property will comply with the City's Zoning Ordinance as it exists now or is later amended. In addition, the development of the Property shall comply with the applicable approved land-use decisions for the property and will incorporate and follow the City's Great Neighborhood Principles as found in the McMinnville Comprehensive Plan and McMinnville Zoning Ordinance as applicable. The Community Development

Director or Hearings Body shall determine the applicability of the Great Neighborhood Principles to the subject property as necessary. All development must also comply with federal, state and city regulations.

- c. Owner agrees that it will, without any cost to the City, dedicate the necessary rights-of-way or easements for all Planned Improvements identified in the City's Public Facilities Plan. The Public Facilities Plan includes the Wastewater Conveyance Plan, Water Master Plan, Transportation System Plan and Parks and Recreation Plan.

The City's Parks, Recreation, and Open Space Master Plan identifies a future multi-purpose trail along the Yamhill River. When the City is ready to move forward with the construction of the trail, the property owner will dedicate the land for the trail for free, and the dedication will be from the center of the river to the outside edge of the trail section furthest from the river, based on the city's specifications for a multi-purpose trail along the river.

- d. Owner shall remove all water rights from Property, unless partial use is otherwise approved by the McMinnville City Council.
- e. Owner agrees to not remonstrate against the formation of a local improvement district or reimbursement district created for the purpose of funding public improvements that will serve the Property. This waiver applies to the Property until all utility service and all required infrastructure that will service or benefit the Property is completed and accepted by City. If the property is developed in phases, the waiver may be removed on a phase-by-phase basis provided that all utility service and all required infrastructure that will service or benefit the Property is completed and accepted by City.

5. AMENDMENT: This Agreement and any exhibits attached hereto may be amended only by the mutual written consent of both parties.

6. SEVERABILITY: If any provision, covenant or portion of this Agreement or its application to any person, entity, property or portion of property is held invalid, or if any ordinance or resolution adopted pursuant to this Agreement or its application to any person, entity, property or portion of property is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this Agreement or other ordinances or resolutions passed pursuant hereto, and to that end, all provisions, covenants, and portions of this Agreement and of the ordinances and resolutions adopted pursuant hereto are declared to be severable.

7. NO WAIVER OF RIGHT TO ENFORCE AGREEMENT: Failure of any party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

8. ENTIRE AGREEMENT: This Agreement supersedes all prior agreements, negotiations and exhibits and is a full integration of the entire agreement of the

parties relating to the subject matter hereof. The parties shall have no obligations other than specifically stated in this Agreement except those of general applicability.

9. **SURVIVAL:** The provisions contained in this Agreement shall survive the annexation of the property and shall not be merged or expunged by the annexation of the property or any part thereof to the City.
10. **SUCCESSORS AND ASSIGNS:** This Agreement shall run with the land described on Exhibit B and inure to the benefit of, and be binding upon, the successors in title of the Owners and their respective successors, grantees, lessees, and assigns, and upon successor corporate authorities of the City and successor municipalities.
11. **TERM OF AGREEMENT:** This Agreement shall be binding upon the parties and their respective successors and assigns for the full statutory term of twenty (20) years, commencing as of the date of this Agreement
12. **ENFORCEMENT:** Owner agrees that if it fails to perform as required under this Agreement, the City Council may, at the City Council's option, refuse to process any development application submitted for the Property or include as conditions of approval any requirement of this Agreement. Owner hereby waives any claim regarding such conditions of approval, whether to LUBA or to any state or federal court.
13. **ATTORNEY FEES:** In any proceeding to enforce, apply or interpret this Agreement, each party shall bear its own attorneys' fees and costs.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the date first above written.

CITY

OWNER

Jeff Towery, City Manager

Anders Johansen

ATTEST:

Claudia Cisneros, City Recorder

STATE OF OREGON)

) ss.

County of Yamhill)

This instrument was acknowledged before me this ____ day of _____, _____ by Jeff Towery, City Manager, on behalf of the City of McMinnville, who acknowledged that he had authority to sign on behalf of the City of McMinnville and this instrument to be the City's voluntary act and deed.

Notary Public for Oregon

STATE OF OREGON)

) ss.

County of Yamhill)

This instrument was acknowledged before me this ____ day of _____, _____ by Anders Johansen, owner of the property at R4421 00900 and R4421 01200, , who acknowledged this instrument to be his/her voluntary act and deed.

Notary Public for Oregon

EXHIBIT 1:

Legal Description of the Property to Be Annexed:

LEGAL DESCRIPTION
for
Anders Johansen Annexation
April 14, 2022

A portion of those certain tracts of land as conveyed to Anders Johansen as Parcel 3 and Parcel 4 per deed Document No 2015-18740, Yamhill County Records, a part of the Nehemiah Martin Donation Land Claim No. 83 located in Section 21, Township 4 South, Range 4 West, Willamette Meridian, Yamhill County, Oregon, being more particularly described as follows:

Beginning at a point in the centerline of SE Nehemiah Lane, said point being S 22°27'58" W 1713.51 feet from the most Northerly corner of the Nehemiah Martin Donation Land Claim No. 83,

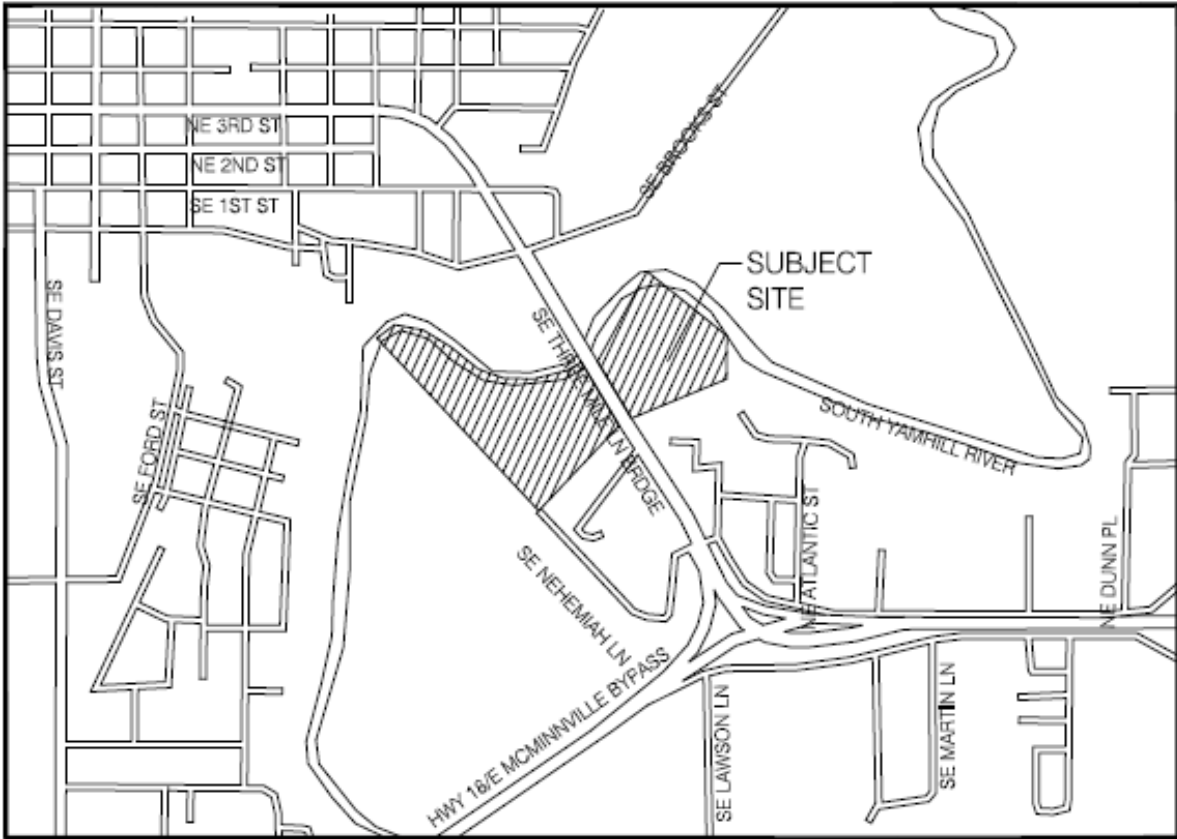
- (COURSE 1) Thence N 42°32'24" E 754.18 feet to the Westerly Right-of-Way line of 3 Mile Lane;
- (COURSE 2) Thence along said Right-of-Way line N 29°46'24" W 82.55 feet;
- (COURSE 3) Thence leaving said Westerly Right-of-Way line N 56°28'47" E 186.49 feet to a 5/8" iron rod on the Easterly Right-of-way line of 3 Mile Lane;
- (COURSE 4) Thence along said Easterly Right-of-Way line S 24°29'10" E 59.79 feet to a 5/8" iron rod;
- (COURSE 5) Thence continuing along said Right-of-Way line, S 00°24'45" W 76.02 feet to a 5/8" iron rod at the Northwest corner of Lot 6, Quail Ridge Subdivision, a Subdivision in said County and State;
- (COURSE 6) Thence leaving said Easterly Right-of-Way line, along the North line of said Quail Ridge Subdivision, S 88°36'09" E 496.99 feet to a 5/8" iron rod;
- (COURSE 7) Thence leaving said North line, N 01°57'06" E 324.55 feet to a 5/8" iron rod;
- (COURSE 8) Thence N 02°01'19" E 371.33 feet, more or less, to a point on the Northeasterly line of said Donation Land Claim No. 83;
- (COURSE 9) Thence along said Claim line, N 59°47'12" W 597.44 feet to the most Northerly Corner of said Claim No. 83;
- (COURSE 10) Thence leaving said Claim line, S 23°17'42" W 98.00 feet, more or less to a point on the centerline of the South Yamhill River;
- (COURSE 11) Thence upstream and Westerly along said centerline to a point that is N 42°40'19" W 1401.40 feet from the Point of Beginning;
- (COURSE) 12 Thence leaving said centerline, S 42°40'19" E 1401.40 feet to the Point of Beginning.

Containing 46.2 acres, more or less.

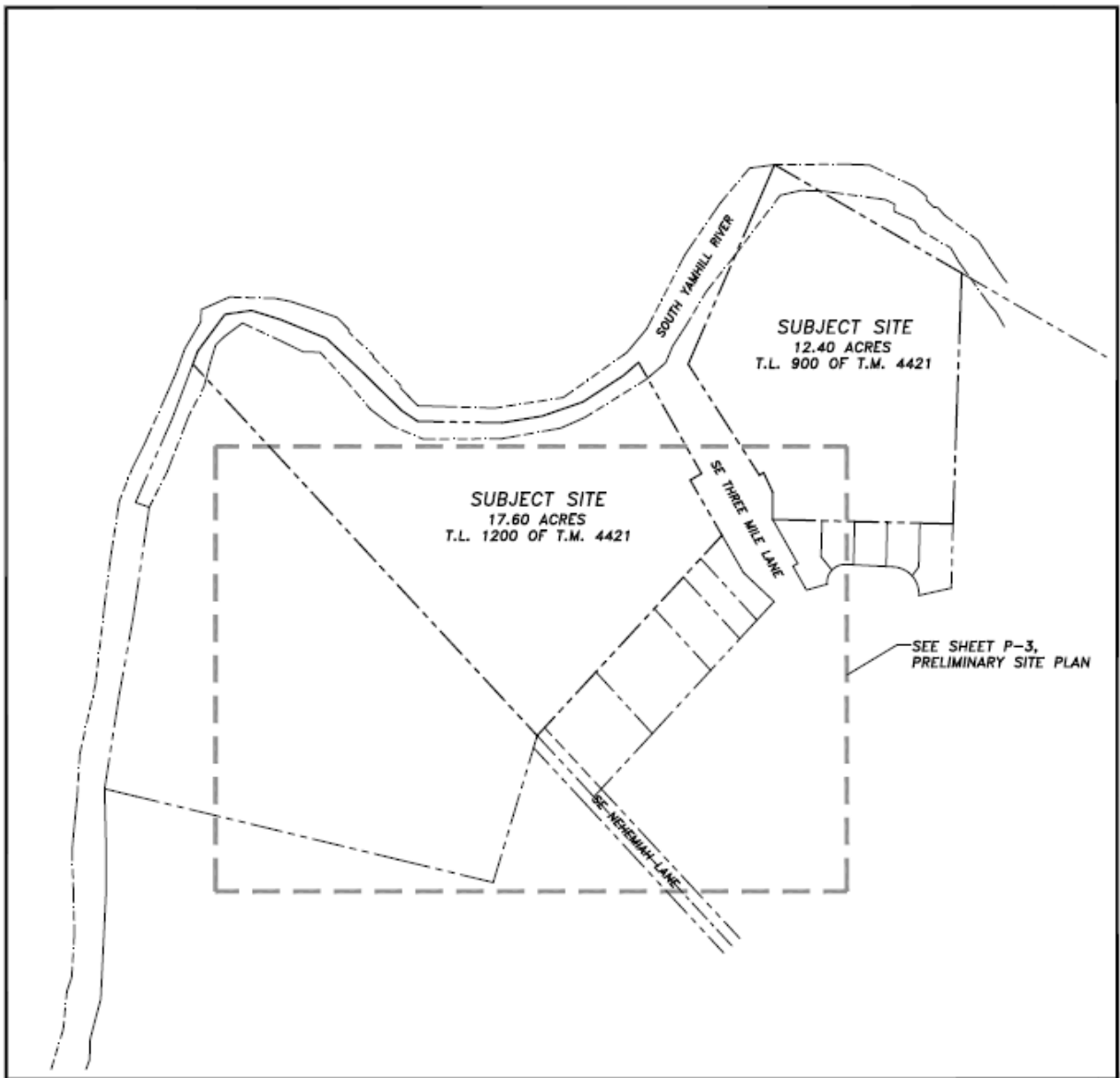
Note: The Basis of Bearings for this description is the State Plane Coordinate System.



RENEWS 06/30/2022



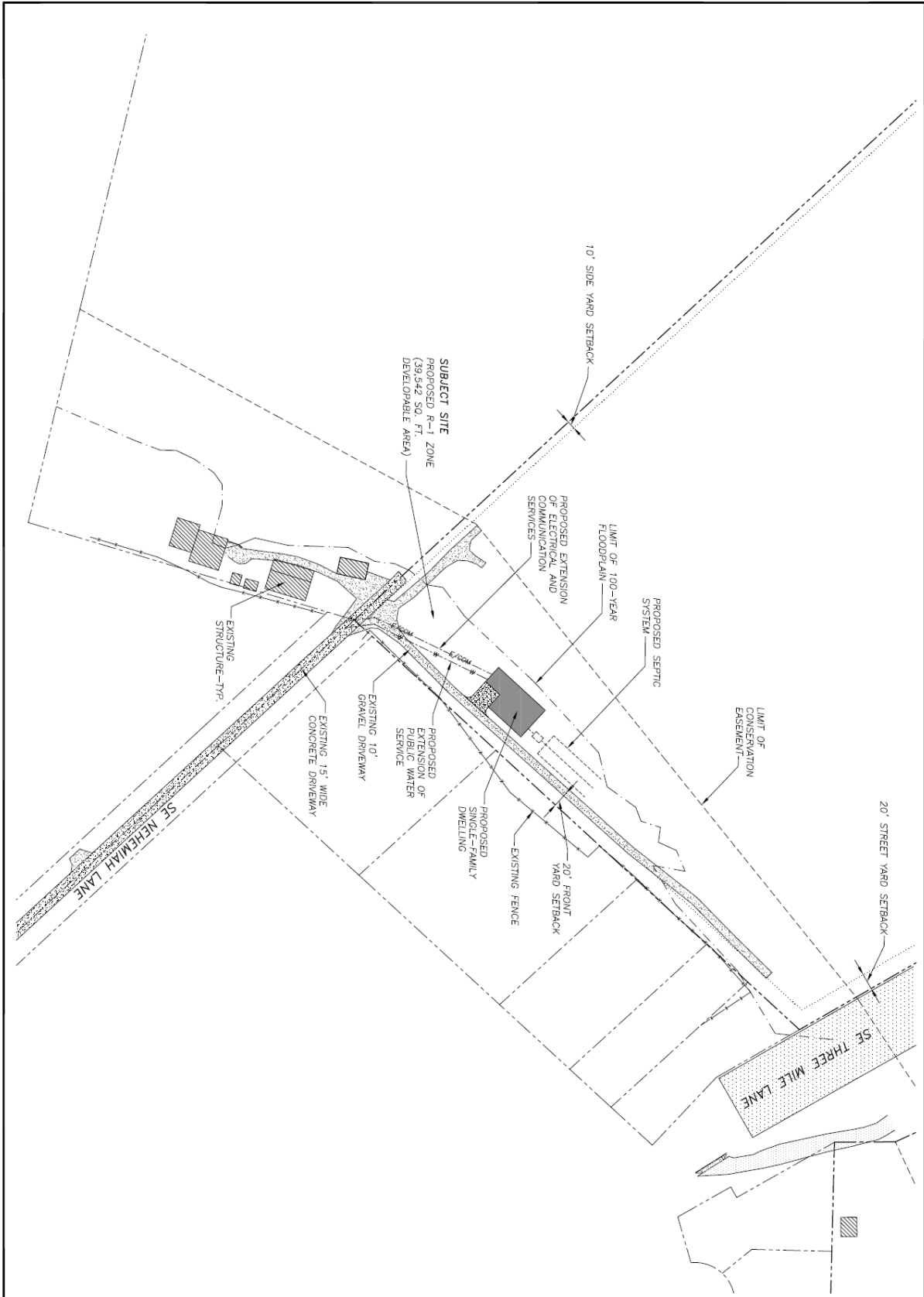
VICINITY MAP




SITE MAP

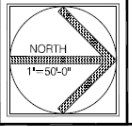


 P-2 <small>SHEET 2 OF 3</small>	EXISTING GENERAL LAND USE PLAN <small>JULY 22, 2020</small>	CITY OF MCMINNVILLE LAND USE APPLICATION THREE MILE LANE MAP AMENDMENTS <small>SE THREE MILE LANE MCMINNVILLE, OR 97128</small>	 <small>North</small>
<small>SEATTLE, WA</small>		<small>T.L. 900 AND 1200 OF T.M. 4421 YAMHILL COUNTY, OR</small>	 <small>Planning & Development Services 31000 NE Oregon Street Portland, Oregon 97219 503.281.1000 www.cascadiaonline.com</small>




 JUNE 22, 2022
 REVISIONS
PRELIMINARY SITE PLAN
P-3
 SHEET 2 OF 3

CITY OF MCMINNVILLE LAND USE APPLICATION
THREE MILE LANE MAP AMENDMENTS
 SE THREE MILE LANE
 MCMINNVILLE, OR 97128
 T.L. 900 AND 1200 OF T.M. 4421
 YAMHILL COUNTY, OR



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