



OFFICE OF THE CITY ATTORNEY
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June 17, 2019

To: Scott Hill, Mayor
City Council

From: David Koch, City Attorney

Re: Supplemental Findings for Oak Ridge Meadows (PDA 3-18, PDA 4-18, and S 3-18)

Following the decision by the Planning Commission to recommend that the Council approve the proposed Planned Development Amendment (PDA) and Subdivision applications, the applicant prepared Supplemental Findings for consideration by the Council to address evidence, argument and testimony considered by the Planning Commission prior to their making their decision.

The purpose of the Supplemental Findings is to document the City's treatment of matters raised after the preparation of the final staff report and findings document, but prior to the close of the public hearing. The Supplemental Findings are not intended to present any new evidence, argument or testimony, and are simply intended to meet the City's obligation to provide written findings to support the City's decision.

If the Council chooses to follow the Planning Commission's recommendation to approve the PDA and Subdivision applications, the Council may elect to:

- Adopt the findings of the Planning Commission standing alone;
- Adopt the findings of the Planning Commission together with the Supplemental Findings prepared by the applicant; or
- Adopt new findings prepared by staff and/or the applicant following its decision and presented to the Council at a subsequent meeting."

Supplemental Findings

- I. PDA 3-18 (Amending Ord 4722 by removing the undeveloped 11.47 acres from its scope).
1. The Council has reviewed the record and concludes that all but one of the parties are in agreement that the 11.47 acres should be removed from Ord 4722. Specifically, the attorney for opponents Friends of Baker Creek (FOBC) urged the City to approve PDA 3-18. Kabeiseman May 16, 2019 Letter, page 1. The testimony of the Yamhill Soil & Water District and Friends of Yamhill County are not inconsistent with FOBC's request. Accordingly, the Council understands that these opponents' objections to relate only to PDA 4-18 and S 3-18.
 2. The testimony of the Fair Housing Council and Housing Land Advocates (April 17, 2019 letter) argues that Statewide Planning Goal 10 (Housing) applies to the "proposed amendments and subdivision plan" and that findings for all of those decisions "must demonstrate that the proposed development plan and amendments do not leave the City with less than adequate residential land supplies of the types, locations and affordability ranges affected." The Council disagrees that Goal 10 applies to any of the proposals. Goal 10 applies to amendments to the City's Comprehensive Plan. Neither the PDAs nor the subdivision application seek to amend any comprehensive plan. The objection of these organizations is surprising to say the least. Regardless of the fact that Goal 10 does not apply, the Council notes that the proposal does not remove any developable residential land to serve the residential land uses that it is zoned to serve. In fact, it improves the City's ability to achieve the type and density of housing contemplated for the subject property. PDA 3-18 removes 11.47 acres of land from one PDA and puts it into another PDA so that the entire 35.47 acre property (including the 11.47 acres) can be residentially developed. As explained in the minutes of the Planning Commission's April 18, 2019 hearing, at Planning Commission May 16, 2019 Packet, page 616, the current development situation for the subject 35.47 acre property makes its development with housing very difficult. The proposal removes barriers to the appropriate development of the subject property to deliver the residential uses that its zoning contemplates. There is nothing about the proposal that leaves the City with less than adequate residential land supplies in any respect.
 3. Three applications were filed concurrently – two PDA amendment applications (3-18 and 4-18) and one subdivision application (S 3-18). The Planning Commission approved S 3-18 and recommended approval of PDA 3-18 and 4-18. McMinnville Zoning Ordinance (MZO) 17.72.070 provides "When a proposal involves more than one application for the same property, the Applicant may submit concurrent applications *which shall be processed simultaneously*. In so doing, the applications shall be subject to the hearing procedure that affords the most opportunity for public hearing and notice." (Emphasis added). Staff understands the italicized language to mean that the Planning Commission's approval of S 3-18 (subdivision) had to be processed simultaneously with the PDA's through Council decision, and that meant that the subdivision decision could not become final after its Planning Commission approval. Rather, the subdivision approval too had to be processed as a recommendation so it could secure Council review

and approval. The Council agrees with staff's interpretation that in the situation here, where the three applications were filed concurrently and are interdependent upon one another and two of those concurrent applications require Council approval, that they all then must be processed simultaneously through Council approval, without a party being required to bring the subdivision before the Council by filing an appeal.

4. MZO 17.72.120 lists planned developments and planned development amendment applications as subject to quasi-judicial processes and MZO 17.72.130(5) makes Planning Commission decisions on the same, recommendations for Council decision. MCZO 17.72.130(6) requires the Council to either approve the applications and to adopt findings of approval based upon the Planning Commission record, or to call for a public hearing. The Council has reviewed the Planning Commission record and finds that its professional planning staff did a thorough and commendable job in its review and analysis of the proposals, that the City Planning Commission did a good and thoughtful job in conducting two separate public hearings, considering all of the evidence and arguments of the parties in reaching its decision and the parties presented exhaustive testimony and evidence regarding their positions. In such circumstances, the Council finds that no purpose is served in conducting yet another public hearing. The Council will decide the matter on the record. It adopts these supplemental findings in deference to LUBA's rule that requires where a relevant issue is raised in the local land use proceedings, that the findings supporting the final decision must address the issue and where the findings do not do so, remand is required. *Space Age Fuel, Inc. v. Umatilla County*, 72 Or LUBA 92 (2015). The Council finds that its code does not prevent it from responding to this LUBA command in its final decision. Adopting findings responsive to this LUBA requirement, does not require that parties have a right to rebut those findings. *Rawson v. Hood River Co.* 77 Or LUBA 571, 574-75 (2018).

The Council finds that the proposal complies with all relevant standards and is approved.

- II. PDA 4-18 (Amending Oak Ridge Meadows Planned Development by repealing and replacing ORD 4822 to include the 11.47 acres removed from ORD 4722 and the terms of this approval decision PDA 4-18). In addition to the other findings supporting the proposal the following findings are also adopted.
 1. Three applications were filed concurrently – two PDA amendment applications (3-18 and 4-18) and one subdivision application (S 3-18). The Planning Commission approved S 3-18 and recommended approval of PDA 3-18 and 4-18. McMinnville Zoning Ordinance (MZO) 17.72.070 provides “When a proposal involves more than one application for the same property, the Applicant may submit concurrent applications *which shall be processed simultaneously*. In so doing, the applications shall be subject to the hearing procedure that affords the most opportunity for public hearing and notice.” (Emphasis added). Staff understands the italicized language to mean that the Planning Commission's approval of S 3-18 (subdivision) had to be processed simultaneously with the PDA's through Council decision, and that meant that the subdivision decision could

not become final after its Planning Commission approval. Rather, the subdivision approval too had to be processed as a recommendation so it could secure Council review and approval. The Council agrees with staff's interpretation that in the situation here, where the three applications were filed concurrently and are interdependent upon one another and two of those concurrent applications require Council approval, that they all then must be processed simultaneously through Council approval, without a party being required to bring the subdivision before the Council by filing an appeal.

2. MZO 17.72.120 lists planned developments and planned development amendment applications as subject to quasi-judicial processes and MZO 17.72.130(5) makes Planning Commission decisions on the same, recommendations for Council decision. MCZO 17.72.130(6) requires the Council to either approve the applications and to adopt findings of approval based upon the Planning Commission record, or to call for a public hearing. The Council has reviewed the Planning Commission record and finds that its professional planning staff did a thorough and commendable job in its review and analysis of the proposals, that the City Planning Commission did a good and thoughtful job in conducting two separate public hearings, considering all of the evidence and arguments of the parties in reaching its decision and the parties presented exhaustive testimony and evidence regarding their positions. In such circumstances, the Council finds that no purpose is served in conducting yet another public hearing. The Council will decide the matter on the record. It adopts these supplemental findings in deference to LUBA's rule that requires where a relevant issue is raised in the local land use proceedings, that the findings supporting the final decision must address the issue and where the findings do not do so, remand is required. *Space Age Fuel, Inc. v. Umatilla County*, 72 Or LUBA 92 (2015). The Council finds that its code does not prevent it from responding to this LUBA command in its final decision. Adopting findings responsive to this LUBA requirement, does not require that parties have a right to rebut those findings. *Rawson v. Hood River Co.* 77 Or LUBA 571, 574-75 (2018).
3. Opponents argue that Ord 4845, which amended the findings for Ord 4822, has continuing relevance when Ord 4822 is repealed. Council finds opponents are mistaken. As recommended by the McMinnville Planning Commission, PDA 4-18 repeals Ord 4822 in its entirety, which includes repeal of all of its supportive findings. Ord 4845 is nothing more than supportive findings for Ord 4822 and has no relevance when Ord 4822 is repealed as herein approved. To the extent that is unclear, the McMinnville City Council hereby repeals Ord 4845.
4. Related to the above, opponents argue that the Ord 4822 limitation on the development to only 76 lots unless and until NW Shadden Drive is established as a permanent public street connection from the proposed planned development to Baker Creek Road, should be retained. The Council finds that the previously imposed 76-lot limitation was imposed to comply with fire department requirements at the time. Since that time the fire department has determined that, so long as the temporary NW Shadden Drive emergency access is in place, that the 76 lot limitation is unnecessary. Moreover, the Oregon Fire Code now imposes sprinkling requirements that will be applied as necessary until such time that the temporary NW Shadden Drive connection is established, further establishing

that the 76-lot limit can be removed as unnecessary. A condition of approval is added to ensure that this limitation is observed until such time as the permanent public right-of-way connection to NW Shadden Drive is established.

5. Opponents contend that the proposal may not be approved without the Department of State Land (DSL)'s concurrence in the wetland delineation that the Applicant submitted to that agency. The Council finds that no approval standard requires DSL's concurrence in the wetland delineation for the property before City approval may be given. DSL must eventually concur in the Applicant's delineation and DSL required mitigation as a matter of state law and so Condition 11 to this approval requires such DSL approval to occur. Relatedly, some opponents object to the proposal which will fill 1.06 acres of wetland. The Council finds that no approval standard is violated by the proposal to fill a portion of the wetlands on the site and to mitigate that fill consistent with DSL requirements and subject to DSL approval. The City leaves wetland regulation including fill and mitigation to the expertise of the Oregon DSL. The City lacks expertise in such matters. Where the proposal to fill wetland potentially bears on a relevant City standard, it is addressed under that standard.
6. Opponents request that an environmental impact study (EIS) be completed for the proposal. No City standard requires an EIS be completed for this proposal. An EIS is required when a major federal action is to be taken that affects natural resources. No federal action of any type is at issue here. This objection provides no basis for denial or any condition of approval.
7. Opponents ask the City to designate the 11.47 acres as a "nature preserve" that would be set aside for public enjoyment. The Council declines to do so. The entire proposal consists of only 35.47 acres. Requiring the Applicant to either dedicate to the public or make undevelopable as a set aside for public enjoyment 32.3% of the developable R-2 zoned area cannot pass the United States Constitution's Fifth Amendment unconstitutional conditions tests of *Nollan v. California Coastal Commission* 483 US 825 (1987) or *Dolan v. City of Tigard*, 512 US 374 (1994). Such would not pass *Nollan* because there is no legislatively adopted standard that requires such a dedication or set aside for public enjoyment. Such would not comply with *Dolan* because it is not possible to make adequate findings that such a taking of private property for public use is roughly proportional to the impacts of the proposed development.
8. Opponents argue that the City's recently adopted "Great Neighborhoods Principles" should be applied. The Council declines to apply these principles because they were adopted by the Council on April 9, 2019, effective on May 9, 2019, and were not in effect until after the date that this application was submitted to the City. As a matter of law under ORS 227.178(3), those provisions cannot be applied.
9. Opponents argue that the proposal is contrary to Statewide Planning Goal 10 (Housing). First, the Council finds that Goal 10 does not apply. The proposal is not one for a comprehensive plan amendment and Goal 10 applies only to comprehensive plan amendments. Regardless, the Council finds that there is nothing about the proposal that adversely affects the City's housing inventory. Rather, the proposal increases the chances that the entire 35.47 acres will be developed for housing consistent with its

residential zoning. As explained in other findings, the current land use approval situation that applies to the entire 35.47 acres creates barriers that has made the development of these properties difficult. The Council does not understand how the proposal could impact or violate Goal 10 in any respect. Goal 10, the City's Comprehensive Plan, the needed housing statute, and caselaw interpreting these authorities, all encourage the development of housing on land planned and zoned for housing, as is the case here. The totality of the subject 35.47 acre property is planned residential, is zoned R-2, the R-2 zone implements the City's comprehensive plan and existing housing needs analysis and existing buildable lands analysis as a part of the City's existing acknowledged strategy to provide needed housing. The City's R-2 zone in general, and as applied to the subject property, is acknowledged to comply with Goal 10. There is nothing about the proposal that undermines any housing policy or state rule; in fact precisely the opposite is true. There is no need or purpose served in re-justifying the subject property as R-2 land. The demand to do so is not warranted by Goal 10 or any other applicable standard.

10. Opponents argue that the proposal must comply with McMinnville Zoning Ordinance (MZO) 17.48.005 and fails to do so. MZO 17.48.005 states "Purpose. The purpose of a floodplain is to establish and regulate land uses in those areas designated as hazardous due to periodic flooding in order to protect the community from financial burdens through flood damage losses. Further, this zone is intended to protect natural floodways and drainage ways from encroachment by uses and/or indiscriminate land filling or diking which may adversely affect the overall stream and downstream flood levels. Finally, the floodplain zone shall set aside an area which shall, for the most part, be preserved in its natural state or farmed to provide open spaces, natural habitats, and recreational places." This zoning requirement is inapplicable because it applies only to the City designated floodplain. No part of the proposed development is located in the City designated floodplains, which are designated consistent with FEMA mapping – that is other than a small amount of the 5.06 acre greenway park which the code allows to be in the floodplain as explained below.
11. Opponents contend that the 11.47 acres that is being removed from ORD 4722 is subject to Oak Ridge subdivision CC&Rs. They are mistaken. The evidence in the record is that the CC&Rs cover only the developed portions of the Oak Ridge phased subdivision and not the 11.47 acres.
12. Opponents argue that the proposal does not comply with McMinnville Zoning Ordinance (MZO) 17.74.070(B), which provides: "Resulting development will not be inconsistent with the Comprehensive Plan objectives of the area." They contend that the proposal is inconsistent with several provisions in the City's comprehensive plan. The Council finds that they are mistaken and that the proposal complies with MZO 17.74.070(B), because it is consistent with the plan objectives for the area.

The Plan policies about which opponents' express concern, and Council's specific responses to those concerns, are below:

- a. Opponents argue that the proposal is inconsistent with Plan Policy 2.00 which provides “The City of McMinnville shall continue to enforce appropriate development controls on lands with identified building constraints including, but not limited to, excessive slope, limiting soil characteristics and natural hazards.” They contend that the “Baker Creek Hydrologic Analysis” (BCHA) they submitted to the Planning Commission for its May 16, 2019 continued public hearing, demonstrates this standard and other standards are not met. This is incorrect. Relatedly, opponents argue that the City should change its designated 100-year floodplain to designate some part of the subject property as 100-year floodplain. The Council declines to do so in part because the record does not support that such is appropriate and also because this application is subject to ORS 227.178(3) which locks in the standards that apply to those in effect at the time the application was filed. At the time the application was filed, the proposed development (other than a small part of the 5.06 acre park) was not in the designated 100-year floodplain.

Accordingly, first, the Council adopts the Applicant’s response and Staff Findings regarding PDA 4-18 contained within the May 16, 2018 Planning Commission packet at page 86 regarding this plan policy.

Second, the Council specifically finds that plan Policy 2.00 requires enforcement of *adopted* City code standards and is not a moving target. Policy 2.00 contemplates that the City will enforce *adopted* City code standards imposing building constraints inclusive of building code requirements and restrictions, the City’s adopted standards regulating development in the 100-year floodplain and prohibiting development in the floodway and other standards in the City’s code identified by the City’s professional staff or in others the public hearings processes. The proposal does not include development within the City’s adopted 100-year floodplain, or the Baker Creek floodway, and is not contrary to any other code adopted development constraint that has been identified in the record or that the Council is aware of. Development will occur only in a manner that is consistent with all applicable requirements and development controls.

Moreover, the following findings are relevant to Policy 2.00 and other Plan Policies and standards that opponents’ claim should prohibit or restrict the proposal based upon the 100-year floodplain or flooding generally, and their BCHA which purports to show that if an application for a Letter of Map Amendment or “LOMA” were submitted to FEMA at some point in the future, that the 100-year flood plain might be differently mapped. As explained above, even if their BCHA showed this, approval of PDA 4-18 is not inconsistent with Policy 2.00 because Policy 2.00 speaks only to enforcement of existing adopted code standards (e.g., “shall continue to enforce”) – including the existing mapped 100-year floodplain, not the 100-year floodplain as it might be mapped in the future.

Further, the Council disagrees that the opponents’ BCHA shows that the proposal will cause downstream flooding and harm. To the contrary, opponents’ BCHA

demonstrates that the proposal shows *a decrease* in downstream flood impacts if the proposal is approved. Opponents' BCHA at Page 26, Table 16 shows that the maximum water surface elevation at Cross Section 11843 for *existing* conditions is 127.42 ft., while water surface elevations for *future* conditions is shown at 127.41 ft.

While opponents BCHA concludes at page 29, second paragraph: "the potential downstream impact of the blockage for the proposed development amounts to less than one hundredth of a foot of *increase* adjacent to existing residences", the math is plain that this is a **decrease** of 0.01 ft. The Council further notes that, as pointed out by the Applicant's attorney's May 15, 2019 letter to the Planning Commission, opponents' BCHA contains other methodological errors that make it unreliable and the Council therefore does not rely upon the opponents' BCHA. While opponents' attorney asserts that only an engineer can point out faults in the opponents' BCHA, he is mistaken. The errors in the BCHA are plain on their face and also evident from a review of the other evidence in the record. And, regardless, BCHA errors were confirmed at the May 16, 2019 Planning Commission public hearing by the Applicant's engineer, Mr. Wells.

Opponents also contend that the proposal to place a portion of NW Pinehurst Drive in a location partially identified as containing wetland area will cause water pollution and downstream flooding. The proposal to place part of NW Pinehurst Drive in a filled wetland does not cause water pollution or downstream flooding. Rather, the Council agrees with the Applicant, the City's professional staff and the Planning Commission, that the drainage and water quality effects of the development of NW Pinehurst Drive will be adequately managed in compliance with adopted City standards by an appropriately sized detention pond, water treatment and water discharged to Baker Creek, at a controlled rate of flow, as authorized and governed by the City's Storm Water Management Standards. The Council finds that the proposal is consistent with Plan Policy 2.00.

b. Opponents assert that the proposal is inconsistent with Plan Policy 74.00 which provides "Distinctive natural, topographic, and aesthetic features within planned developments shall be retained in all development designs." They contend that the wetlands situated on the property are all "distinctive" natural features and as a result all of the wetlands must be retained to be consistent with this plan policy. The Council disagrees. First, the Council adopts the Applicant's findings and the staff response at PDA 4-18, within the May 16, 2018 Planning Commission packet at pages 90-92. These make clear that the distinctive natural features protected by this policy are those that the City has adopted as protected Statewide Planning Goal 5 (Goal 5) resources. No City identified Goal 5 resources are impacted by the proposal. Second, even if the policy protected other natural features not identified as protected natural resources on the City's Goal 5 inventory, the Council interprets this plan policy to require retention of distinctive natural features, but not all distinctive natural features within a development site. While the proposal results in fill and mitigation for 1.06 acres of wetlands, the proposal retains 2.03 acres of wetlands, and includes viewing areas set aside for residents to enjoy the aesthetics of said wetlands. *See*

Condition 10. The proposal preserves steep slopes. The proposal includes parks and pathways and trees within such park and pathway areas for aesthetic enjoyment. Trees are preserved per PDA 4-18 Condition 13. The Council finds that the proposal is consistent with this plan policy.

c. Opponents assert that the proposal is inconsistent with Plan Policy 80.00 which provides “In proposed residential developments, distinctive or unique natural features such as wooded areas, isolated preservable trees, and drainage swales shall be preserved wherever feasible.” Opponents contend that the proposal should be re-designed to preserve all of the site’s wetlands. The Council incorporates its discussion in the previous findings regarding the meaning of “distinctive” natural areas referring to City inventoried Goal 5 resources and that there are no inventoried Goal 5 resources on the subject property. Moreover, the wetlands on the subject property are not “unique” but rather are typical of wetlands scattered throughout the City. Similarly, there are no other “unique” natural features on the subject 35.47 acre property within the meaning of this Plan Policy. Further, the Council adopts the Applicant’s response and Staff Findings regarding PDA 4-18 contained within the May 16, 2018 Planning Commission packet at pages 93-95 regarding this plan policy. The Council also finds that this plan policy requires preservation of identified natural features where feasible. The use of the term *feasible* in this plan policy recognizes that there are other competing values that are also expressed as plan policies and code standards that must be considered. Further, the use of the term “preservable trees” means those trees that can be preserved while still allowing the proposed development to move forward. This objective is achieved through the imposition of Condition 13.

Policy 80.00 is written as a balance to require distinctive or unique natural features be preserved when it is reasonably feasible to do so, while also approving housing contemplated by the zoning designation to enable the City to comply with its housing policies and Statewide Planning Goal 10 (Housing). See McMinnville Goal V2 and Policies 68.00-71.00. ORS 197.307(3) similarly requires that needed housing “shall be permitted.” The proposal is for a type of City recognized needed housing. Here the subject property is zoned R-2 and the City has obligations to allow that zone to deliver the intended residential density of that zone as much as is reasonably possible, to avoid the need to expand the urban growth boundary in the future. The proposal is already slightly under the density contemplated for the R-2 zone. Additional density reductions would be required for any redesign having no impact on wetlands, trees or steep slopes, and the Council does not wish to see any further residential density reductions in the proposal. Further, in this case, it must be recognized that in the absence of the proposal, the existing approved Planned Development Ordinances for the project area, which is comprised of 35.47 acres, which includes the 11.47 acres from the Oak Ridge Planned Development and the entire area of the Oak Ridge Meadows Planned Development, authorize the development of 129 lots versus the proposed 108 proposed lots at issue in this case. The reduced number of lots proposed here, is a direct response to the Applicant, in part, adjusting the alignment of the eastern portion of NW Pinehurst Drive to be located further to the west thereby

preserving more natural features, and incorporating public and private parks and walking path amenities which do not exist as a part of the previously approved Planned Development Ordinances that this proposal supersedes. The Council finds that in these circumstances, in any event the proposal preserves natural features – whether distinctive or unique or neither of those - “wherever feasible” and is consistent with this plan policy.

d. Opponents assert that the proposal is inconsistent with Plan Policy 118.00 which provides “The City of McMinnville shall encourage development of roads that include the following design factors:

“1. Minimal adverse impacts on, and advantageous utilization of, natural features of the land.”

Opponents contend that because the easternmost portion of NW Pinehurst Drive (the portion within the 11.47 acres to be removed from ORD 4722), will be developed in a wetland area requiring some of the wetland to be filled, the proposal is necessarily inconsistent with this plan policy. The Council disagrees. First, Council hereby adopts the Applicant’s response and Staff Findings regarding PDA 4-18 contained within the May 16, 2018 Planning Commission packet at page 96, regarding this plan policy. Second, the terminus of this portion of NW Pinehurst Drive stubbing to the Toth property is now reflected in the City’s Transportation System Plan (TSP), as is explained in other findings. It would not be reasonably possible to establish this segment of NW Pinehurst Drive in any location and avoid wetlands and still stub to the Toth property as is contemplated and reflected in the City’s acknowledged TSP. The location of NW Pinehurst Drive within the 11.47 acre area, is directly responsive to the Applicant minimizing adverse impacts on area wetlands, avoiding cutting into steep slopes and stubbing NW Pinehurst in the location that the City’s TSP shows the connecting stub to be located. This demonstrates that the proposal is consistent with Plan Policy 118.00, because it advantageously utilizes natural features, but at the same time minimizes adverse impacts upon them and does so within the acknowledged framework of the City’s TSP location of the existing NW Pinehurst Drive stub at the Toth property.

Finally, the Council expressly interprets this plan policy to be aspirational and to encourage, but not require, minimizing adverse impacts and advantageous utilization of natural features in any event. It is not an approval standard. Minimizing adverse impacts to and the advantageous utilization of natural features has been sufficiently encouraged by the approval of the proposal. The proposal is consistent with this plan policy.

e. Opponents argue that the proposal is inconsistent with Plan Policy 132.029.00 which provides “The construction of transportation facilities in the McMinnville planning area shall be timed to coincide with community needs and shall be implemented so as to minimize impacts on existing development.” They argue that to “minimize impacts on existing development”, that the existing traffic outlets onto

Baker Creek Road of NW Merlot Drive and NW Oak Ridge Drive, which the proposal will use, must be supplemented by public dedication and completion of a NW Shadden Drive right-of-way connection between the subject site and NW Baker Creek Road across property owned by another (Stafford Land) that is not owned or controlled by the Applicant.

The Council disagrees. This plan provision has two parts: (1) that transportation facilities be constructed coincidentally at the time when the community needs them, and (2) when such transportation facilities are constructed, that they are implemented in a way that minimizes impacts to existing development. The proposal is consistent with this plan policy.

With one exception, there is no dispute that the construction of the proposed extensions of NW Pinehurst Drive and NW Pinot Noir Drive to serve the proposal will be timely to meet community needs. The exception is that the opponents argue that the proposal is inconsistent with this plan provision because they contend that there is no “community need” to stub out NW Pinehurst Drive to the neighboring property to the east owned by Mr. Toth. They are mistaken. The stubbed connection of NW Pinehurst Drive to the Toth property already exists in City planning documents and is shown on Exhibit 2-3 (Street Functional Classification) the City’s adopted and acknowledged Transportation System Plan (TSP).



Below is an enlarged portion of the above graphic showing the NW Pinehurst Drive street stub in more detail.



Accordingly, a connection stubbed at the Toth property must be presumed to be a community need because it has been legislatively adopted as such in the City's TSP. It is well-established that it is improper to collaterally attack the city's acknowledged planning instruments including the City's TSP.

As to the second prong of the plan provision, the Council finds that impacts of the proposal on existing development are minimized within the meaning of this plan provision by PDA 4-18 Condition 15, limiting the number of lots to 108 lots in the development unless NW Shadden Drive is constructed. This ensures that the number of traffic trips associated with the proposal is consistent with the design capacity of the affected streets as explained by the Applicant's transportation engineer in her TIA and supplemental report in the record.

Moreover, the proposal will involve widening a particularly narrow section of NW Pinot Noir Drive from its intersection with NW Blake Street to improve NW Pinot Noir Drive to current standards, within the existing right-of-way, improving mobility and thus livability in this part of the existing Oak Ridge Subdivision development. Further, the Applicant's Transportation Impact Analysis (TIA) and TIA supplement both demonstrate that all intersections and traffic volumes will function well within applicable city standards as proposed without NW Shadden Drive.

The Council finds that this standard does not require that the Applicant construct a street connection (NW Shadden Drive) on property that is neither owned nor controlled by the Applicant, where such is otherwise not required by applicable standards, as is the case here. As demonstrated in the Applicant's traffic report and supplemental traffic report, traffic is expected to move in and out of the existing development and move around inside of the existing development, well within the limits of all applicable City standards. The Council further notes that the fire department has determined that a temporary emergency-only vehicular connection between the western temporary terminus of NW Pinehurst Drive to NW Baker Creek

Road for emergency access is adequate to serve emergency needs, as explained in other findings.

Finally opponents requested that the NW Shadden Drive emergency access be used for construction vehicles for the proposal so that construction vehicles are not using the public road system within the existing Oak Ridge subdivision development. The Council finds that this standard does not require that construction vehicles for the proposed planned development be prohibited from using the public road system and be required to use instead only the temporary emergency-only access to be constructed across adjacent land to the west in the approximate alignment of the future extension of NW Shadden Drive. The Council declines to impose such a condition because it is not required by this or any other standard and also the owner of the land under the temporary NW Shadden Drive emergency access has not consented to such use, which would unnecessarily and unfairly burden his property. Further, such use may be inconsistent with applicable standards that will be applied to that neighboring property (which is owned by Stafford Land) where the proposed temporary emergency vehicle access is to be situated. That property owner has submitted an application for a tentative plat approval for the property. While opponents state otherwise, they are mistaken. Such application has been submitted to the City and is currently under consideration.

A permanent NW Shadden Drive connection between the proposed planned development and NW Baker Creek Road will be a required part of that adjacent subdivision (owned by Stafford Land) on which the NW Shadden Drive connection will be located. However, reserving the NW Shadden Drive connection as the exclusive construction access for the proposed planned development, which can be developed over a period of five (5) years, is unreasonable and foreseeably could adversely affect the timing and development of such other property (owned by Stafford land) as well as could improperly limit the City's approval options for that development. Imposition of such a condition also establishes a precedent for other residential developments that they must obtain approval to provide construction access from unowned neighboring undeveloped properties and such a precedent is untenable. The Council declines to impose such a condition. The proposal is consistent with this Plan Policy.

f. Opponents argue that the proposal is inconsistent with Policy 132.35.00 which provides "Transportation facilities in the McMinnville Planning area shall be, to the degree possible, designed and constructed to mitigate noise, energy consumption, and neighborhood disruption, and to encourage the use of public transit, bikeways, sidewalks and walkways." Similar to their arguments under Plan Policy 132.29.00, opponents argue that developing the proposed planned development without the construction of the permanent NW Shadden Drive connection is inconsistent with this standard because it does not mitigate noise and neighborhood disruption and also that the required NW Pinehurst Drive street stub to the Toth property to the east will be disruptive by virtue of its very existence. The Council disagrees and finds that the proposal is consistent with this policy.

First, Council hereby adopts the Applicant's response and Staff Findings regarding PDA 4-18 contained within the May 16, 2018 Planning Commission packet at pages 100-101 regarding this plan policy.

Second, the Council specifically interprets the use of the terms "to the degree possible" in this plan provision to be meaningful. The plan provision is not absolute; it does not require that there be no neighborhood disruption or no noise associated with transportation facilities for a development proposal. Rather, this standard requires that roadways be designed consistently with their functional classifications and meet City level of service and other standards. All McMinnville citizens must expect that vacant land to which they are proximate will develop consistently with its zoning including to have the transportation facilities that would be required by the City code and plan. The proposal is consistent with the functional classifications of affected streets and meets all level of service and other transportation related standards. Moreover, this plan provision focuses on ensuring that residents within planned developments have a variety of transportation options available to them. The proposal includes generous opportunities for walking, and biking, as well as being situated within one mile of planned transit, thus ensuring that there will be adequate vehicle transportation opportunities. Regarding transit, such is located within one-mile of the site as a "Conceptual Bus Route" on the City's adopted "Transit Feasibility Study" and as articulated within the May 16, 2019 Planning Commission packet at pages 88-89.

Finally, the Council notes that neighborhood disruption is not per se established by the Applicant providing a required public street stub to the Toth property at the eastern temporary terminus of NW Pinehurst Drive consistent with the City's adopted TSP. Rather, stubbing to the Toth property as contemplated by the City's TSP demonstrates compliance with this plan policy. The proposal is consistent with this plan policy.

- g. Opponents contend that the proposal is inconsistent with Plan Policy 142.00, which provides "The City of McMinnville shall insure that adequate storm water drainage is provided in urban developments through review and approval of storm drainage systems, and through requirements for connection to the municipal storm drainage system, or to natural drainage ways, where required." The Council finds that the proposal is consistent with this Plan Policy as it is properly interpreted. Specifically, this policy does not apply directly to development proposals but rather it is implemented by an Applicant's compliance with the City's Storm Water Management Standards. The Applicant has established that the proposal will comply with the City's Storm Water Management Standards. Accordingly, the proposal is consistent with this Plan Policy.
- h. Opponents contend that the proposal is inconsistent with Policy 143.00, which provides "The City of McMinnville shall encourage the retention of natural drainage ways for storm water drainage." They assert that the filling of any wetlands is

inconsistent with this policy. They also contend that development within a 100-year floodplain is inconsistent with this policy. The Council disagrees that the proposal to fill a portion of the wetlands located on the property is inconsistent with the plan policy and also disagrees as explained above that the proposal includes unauthorized development within the City's mapped 100-year floodplain.

The Council begins by noting that opponents' interpretation of this plan policy is absolute; but the plan policy is aspirational and not mandatory (e.g., "The City of McMinnville shall encourage.."). As such, it is not an approval standard for the proposal.

Second, the Council adopts the Applicant's response and Staff Findings regarding PDA 4-18 contained within the May 16, 2018 Planning Commission packet at page 106, regarding this plan policy.

Third, the Council finds that the wetlands proposed to be filled subject to the approval of the Department of State Lands (DSL), are not "drainage ways" within the meaning of this plan policy, in any event. The "drainage way" is Baker Creek. The proposal is not inconsistent with this plan policy.

i. Opponents argue that the proposal is inconsistent with Plan Policies relating to parks. Generally, they argue that there are no funds to maintain the public 5.06 acre park. The Council disagrees. A condition of approval requiring a homeowner's association with maintenance responsibilities for common open space as well as the public open space (the 5.06 acre park) until 2032 has been included in the subdivision approval adopted concurrently herewith as S 3-18. Moreover, the Council finds that by 2032 the City will have adequate funds to maintain this 5.06 acre greenway park. While City Parks Department recommended a condition limiting transfer of maintenance responsibility "until such time as resources are available to maintain and operate it as public open space", the Council declines to impose such an open ended condition. Rather, the County finds that by 2032 the City shall have the means to maintain the 5.06 acre park. Failing to do so means the City fails its citizens and the obligations imposed upon the City in its plan and the Council declines to be so pessimistic. The Council finds that the park will be adequately maintained by the City in 2032 and thereafter.

Specifically with regard to parks, opponents express concerns about the proposal's consistency with the following plan policies.

- A. Opponents argue that the proposal is inconsistent with Plan Policy 160.00, which provides "The City of McMinnville shall encourage the improvement of existing parks and recreation facilities as a priority consideration." The Council finds that this plan policy does not apply to this proposal. No existing parks and recreation facilities exist within or are affected by the proposed planned development.

- B. Opponents argue that the proposal is inconsistent with Plan Policy 161.00 which provides “The City of McMinnville shall encourage cooperation between public and private recreation agencies and groups to provide a full complement of recreational and leisure time activities, to share existing facilities, and to discourage duplication of expenditures and programs.” The Council finds that this plan policy does not apply here and, even if it did, that there is nothing about the proposal that is inconsistent with this plan policy.
- C. Opponents argue that the proposal is inconsistent with Plan Policy 163.00, which provides “The City of McMinnville shall continue to require land, or money in lieu of land, from new residential developments for the acquisition and/or development of parklands, natural areas, and open spaces.” The Council finds that the proposal is consistent with this plan policy because it provides two park amenities and a natural trail walking/jogging pathway system.
- D. Opponents argue that the proposal is inconsistent with Plan Policy 163.05, which provides “The City of McMinnville shall locate future community and neighborhood parks above the boundary of the 100-year floodplain. Linear parks, greenways, open space, trails, and special use parks are appropriate recreational uses of floodplain land to connect community and other park types to each other, to neighborhoods, and services, provided that the design and location of such uses can occur with minimum impacts on such environmentally sensitive lands.”

First, the Council adopts the Applicant’s response and Staff Findings regarding PDA 4-18 contained within the May 16, 2018 Planning Commission packet at pages 108-109 regarding this standard.

Second, the Council finds that the adopted McMinnville Parks, Recreation, and Open Space Master Plan defines seven park types. Two of those park types are required by Comprehensive Plan Policy 163.05 to be located outside of the 100-year floodplain. Those two park types are Community parks and Neighborhood parks.

Of the two parks proposed as part of the Oak Ridge Meadows Planned Development (PDA 4-18), only one park, the public Greenway Park contains some portion of land identified as being located within the 100-year floodplain. Policy 163.05 states that Greenways are appropriate recreational uses of land in floodplains. The Council finds that the Greenway Park is a greenway within the meaning of this plan policy and that is it not a neighborhood or community park. The Council further finds that the small portion of the Greenway Park that is within the 100-

year floodplain is allowed to be located in the floodplain under this policy. Accordingly, the proposal is consistent with this plan policy.

- E. Opponents argue that the proposal is inconsistent with Plan Policy 164.00 which provides “The City of McMinnville shall continue to acquire floodplain lands through the provisions of Chapter 17.53 (Land Division Standards) of the zoning ordinance and other available means, for future use as natural areas, open spaces, and/or parks.” The Council recognizes that the McMinnville Parks and Recreation Department determined that the proposal met this plan standard. *See* Planning Commission May 16, 2019 packet at p 76. Regardless, the Council finds that this plan policy does not apply to this application for a planned development, because the City does not acquire floodplain land as a goal of approving a residential development application. Regardless, the Council concurs that the proposal is consistent with this plan policy in the sense that a small amount of the 100-year floodplain is situated within the 5.06 acre park which will be dedicated to the public.
- F. Opponents argue that the proposal is inconsistent with Plan Policy 166.00 which provides “The City of McMinnville shall recognize open space and natural areas, in addition to developed park sites, as necessary elements of the urban area.” The Council finds that the proposal is consistent with this plan policy. The proposal includes generous amounts of open space and natural areas amenities reflecting both the Applicant’s and the City’s recognition of the importance of the same to a pleasant living experience in the urban area.
- G. Opponents argue that the proposal is inconsistent with Plan Policy 167.00, which provides “The City of McMinnville shall encourage the retention of open space and scenic areas throughout the community, especially at the entrances to the City.” The Council disagrees that the proposal is inconsistent with this Plan Policy.

First, this plan policy is not a mandatory standard, but rather is aspirational. Accordingly, it is not an approval standard for the proposal.

Second, it largely does not apply to the proposal at all. The proposed project is not at the entrance to the City. There are no existing “open space” areas on the subject property. Rather, the subject property is entirely composed of privately owned property designated as R-2, which has long been subject to planned developments and subdivision approvals that simply never materialized for a variety of reasons. The undeveloped R-2 zoned land at issue in this proposal does provide scenic areas that the developed subdivision in the sense that the wetlands are visually appealing. The Applicant has been encouraged to retain and has

retained many of those scenic wetland areas and has provided specific viewing areas for the enjoyment of all neighbors – new and existing ones. The proposal is consistent with this plan policy.

- H. Opponents argue that the proposal is inconsistent with Plan Policy 168.00, which provides “Distinctive natural features and areas shall be retained, wherever possible, in future urban developments.” The Council finds that the proposal is consistent with this policy, as properly interpreted. First, the Council adopts herein the Applicant’s Response and Staff Findings contained within the May 16, 2019 Planning Commission packet at page 108-109. Second, the Council herein adopts its findings concerning Plan Policies 74.0 and 80.0 as they relate to distinctive natural features. Third, the Council specifically finds that this plan policy is not absolute, but rather contemplates retention of distinctive natural features where it is possible to do so and still achieve other goals and standards in the City’s Plan and zoning ordinance. This means that even if there were distinctive natural features on the subject property, they are retained as much as reasonably possible by the generous provision of park and recreation opportunities, a majority of the wetlands being retained, and the tree protection provisions in Conditions 12 and 13, while still achieving the density of housing contemplated by the R-2 zoning district.

I Opponents argue that the proposal is inconsistent with Plan Policy 169.00 which provides “Drainage ways in the City shall be preserved, where possible, for natural areas and open spaces and to provide natural storm run-off”. The Council finds that the proposal is consistent with this Plan Policy. First, the Council adopts the Applicant’s Response and the Staff Findings at the May 16, 2019 Planning Commission Packet at pages 108-09. Second, the Council incorporates herein its findings of consistency with Policy 143.00. Third, the Council finds that this standard contemplates that drainage ways in the City (here, Baker Creek), will be preserved for natural areas and open spaces and to provide a means to accept natural storm water run-off. Baker Creek is untouched under the proposal and will retain its role as a natural area and open space and to accept natural storm water run-off. The proposal is consistent with this plan policy.

- J. Opponents argue that the proposal is inconsistent with Plan Policy 187.050(1)(a) which provides “Neighborhood shall be designed to preserve significant natural features including, but not limited to, watercourses, sensitive lands, steep slopes, wetlands, wooded areas and landmark trees.” Plan policy 187.50 expresses “Great Neighborhood

Principles.” This policy was adopted by the Council on April 9, 2019, effective on May 9, 2019, and was not in effect at the time the application was first submitted to the City and therefore as a matter of law under ORS 227.178(3) cannot be applied to the proposal. However, even if this plan policy applied, the proposal is not inconsistent with it. The policy requires the preservation of certain described features but not all such certain described natural features. The “neighborhood” created by the proposal preserves many natural features – far more than were approved under the original approvals that would cover the subject property if the proposal were not approved. This plan policy is inapplicable and even if it applied, the proposal is not inconsistent with it.

- j. Opponents argue the proposal is inconsistent with Plan Policy Proposal 29.00 which provides “The City of McMinnville should continue to monitor the location and size of lands acquired through the parkland (subdivision) ordinance. Methods of developing and maintaining the smaller parks in a manner less expensive to the City should be encouraged and explored.” First, the Council finds that this policy is merely “proposed” in the Plan but is not adopted. Further, regardless, the Council also finds that the McMinnville Parks and Recreation Department monitors the location and size of parkland acquired by the City. Additionally, the smaller of the two proposed parks will be privately owned and maintained by a Homeowner’s Association and will not be maintained by the City. Even if the City adopts this policy in the future, this proposal is not inconsistent with this Plan Policy proposal.
11. As an overarching matter, the Council finds that the evidence in the record establishes that the proposal does not develop homes or roads within the City’s adopted 100-year floodplain and is unlikely to cause flooding or other harms to harm to downstream properties.
12. Opponents argue that the proposal does not meet MZO 17.74.070(C) which provides “The development shall be designed so as to provide for adequate access to and efficient provision of services to adjoining parcels.” First, Council hereby adopts the Applicant’s response and Staff Findings regarding PDA 4-18 contained within the May 16, 2018 Planning Commission packet at pages 121-123 regarding this standard.

Additionally, the Council finds that the supplemental traffic evaluation performed by DKS Associates and the resulting summary memo dated May 7, 2019, submitted into the record for the May 16, 2019 Planning Commission public hearing on this proposal states: “Neither the analysis reported in the TIA nor the subsequent field observations support the claim of significant vehicle delays while accessing Baker Creek Road from the Oak Ridge neighborhood. These findings (combined with the City’s planned improvements to Baker Creek Road and the anticipated phasing of the Oak Ridge Meadows development) confirm that the traffic impacts related to the Oak Ridge Meadows development will be limited and all facilities will continue to meet the City’s operating and design standards.” The Council finds that this conclusion in the DKS supplemental traffic evaluation is

credible and persuasive. The Council determines that the proposal complies with MCC 17.74.070(C).

Opponents argue that the proposal does not meet MZO 17.74.070(F), which provides the Applicant must demonstrate that “Proposed utility and drainage facilities are adequate for the population densities and type of development proposed.” They are mistaken. First, Council hereby adopts the Applicant’s response and Staff Findings regarding PDA 4-18 contained within the May 16, 2018 Planning Commission packet at page 125 regarding this plan policy. Second, the Council finds that the property is already planned and zoned for the population densities proposed and the type of residential development that is proposed. Public utility and drainage facilities currently exist adjacent to the site and have the capacity to adequately be extended to and sufficiently serve the proposed population density and single-family detached residential development represented by this proposal.

13. Opponents argue that the proposal does not comply with MZO 17.74.0070(D), which requires a finding that “The plan can be completed within a reasonable period of time.” The Council disagrees. Opponents argue that The Council does not agree. As City Associate Planner Fleckenstein explained at the April 18, 2019 public hearing before the Planning Commission (see Minutes at Planning Commission May 16, 2019 Packet, page 616):

“The current zoning of the site for PDA 3-18 was R-2 PD, single family residential. The Oak Ridge Planned Development had approved 107 lots which were reallocated from 3 phases to 4 phases. Phase 4 had 30 lots that were yet to be developed. In the original Planned Development there would be an intersection at Pinot Noir Drive and Pinehurst Drive, and that intersection was moved north into the Oak Ridge Meadows Planned Development. That created a situation where both Oak Ridge Phase 4 and Oak Ridge Meadows would have to be developed at the same time. This became problematic during the recession and neither subdivision was built. The request was to remove the 11.47 acres of undeveloped property that had been planned to be Phase 4 of the Oak Ridge Planned Development and to keep the R-2 PD zoning on the parcel until it was rezoned. Staff noted this request met the Comprehensive Plan policies and code criteria for a Planned Development Amendment. The first 3 phases of Oak Ridge that had been built out met the intent and covenants of the Comprehensive Plan and code requirements. If this land was successfully removed, but not successfully added to the Oak Ridge Meadows, the land would be rezoned from R-2 PD to R-2 and future development would need to be compliant with the R-2 zone. He then discussed the approval criteria for PDA 3-18. The special physical condition was that previously approved plans for Oak Ridge and Oak Ridge Meadows made the simultaneous development necessary and co-dependent on each other. This became problematic in the execution and timing of the build out for both subdivisions. The special objective was to bring the adjacent undeveloped parcels together into one master planned development.”

The Council agrees that this history makes the development posture of the subject properties unique and that coupled with the interposition of the Great Recession explains why the subject property has not developed previously. Joining the undeveloped parts into a single planned development eliminates the “chicken and egg” problem that otherwise plagued the properties and the economic climate is satisfactory for the development of the proposal. Accordingly, the Council agrees with the Applicant’s Response and Staff Findings for PDA 3-18, May 16, 2019 Planning Commission packet at 58, and adopts the Applicant’s Response and Staff Finding at May 16, 2019 Planning Commission packet, page 123, that the evidence establishes that the plan for the proposed planned development can be completed within a reasonable period of time.

12. Opponents argue that the proposal does not meet MCC 17.74.070(G) which provides the Applicant must demonstrate that “The noise, air and water pollutants caused by the development do not have an adverse effect upon surrounding areas, public utilities or the city as a whole.” First, Council hereby adopts the Applicant’s response and Staff Findings regarding PDA 4-18 contained within the May 16, 2018 Planning Commission packet at pages 125-126, regarding this plan policy, with one exception. The staff findings state “the loss of adjacent wetlands would detract from the water quality function of the wetland.” While this is true, Council notes that mitigation required for such losses are proposed which will replace the functionality of the wetlands to be filled. Specifically, the current function of the wetland is to retain and filter storm water into nearby Baker Creek or percolate the water into the ground. Similarly here, the proposal includes a detention pond that will detain and percolate water, treat it to provide water quality and release storm water to Baker Creek at levels required by the City’s Stormwater Management Plan.

The Council finds that the proposal complies with all relevant standards and is approved.

13. New Language is added to CONDITION 14 in PDA 4-18:

At no point will occupancy permits be issued for the approved 108 homes in the planned development approved by this ordinance, unless such homes are constructed in compliance with the requirements of the Oregon Fire Code.

Supplemental Findings

- III. S 3-18. In addition to the other findings supporting the proposal, the following supplemental findings are adopted.

14. Three applications were filed concurrently – two PDA amendment applications (3-18 and 4-18) and one subdivision application (S 3-18). The Planning Commission approved S 3-18 and recommended approval of PDA 3-18 and 4-18. McMinnville Zoning Ordinance (MZO) 17.72.070 provides “When a proposal involves more than one application for the same property, the Applicant may submit concurrent applications *which shall be processed simultaneously*. In so doing, the applications shall be subject to the hearing procedure that affords the most opportunity for public hearing and notice.” (Emphasis

added). Staff understands the italicized language to mean that the Planning Commission's approval of S 3-18 (subdivision) had to be processed simultaneously with the PDA's through Council decision, and that meant that the subdivision decision could not become final after its Planning Commission approval. Rather, the subdivision approval too had to be processed as a recommendation so it could secure Council review and approval. The Council agrees with staff's interpretation that in the situation here, where the three applications were filed concurrently and are interdependent upon one another and two of those concurrent applications require Council approval, that they all then must be processed simultaneously through Council approval, without a party being required to bring the subdivision before the Council by filing an appeal.

15. MZO 17.72.120 lists planned developments and planned development amendment applications as subject to quasi-judicial processes and MZO 17.72.130(5) makes Planning Commission decisions on the same, recommendations for Council decision. MCZO 17.72.130(6) requires the Council to either approve the applications and to adopt findings of approval based upon the Planning Commission record, or to call for a public hearing. The Council has reviewed the Planning Commission record and finds that its professional planning staff did a thorough and commendable job in its review and analysis of the proposals, that the City Planning Commission did a good and thoughtful job in conducting two separate public hearings, considering all of the evidence and arguments of the parties in reaching its decision and the parties presented exhaustive testimony and evidence regarding their positions. In such circumstances, the Council finds that no purpose is served in conducting yet another public hearing. The Council will decide the matter on the record. It adopts these supplemental findings in deference to LUBA's rule that requires where a relevant issue is raised in the local land use proceedings, that the findings supporting the final decision must address the issue and where the findings do not do so, remand is required. *Space Age Fuel, Inc. v. Umatilla County*, 72 Or LUBA 92 (2015). The Council finds that its code does not prevent it from responding to this LUBA command in its final decision. Adopting findings responsive to this LUBA requirement, does not require that parties have a right to rebut those findings. *Rawson v. Hood River Co.* 77 Or LUBA 571, 574-75 (2018).
16. Opponents contend that the subdivision may not be approved without the Department of State Land (DSL)'s concurrence in the wetland delineation that the Applicant submitted to that agency. The Council finds that no approval standard requires DSL's concurrence in the wetland delineation for the property before City approval may be given. DSL must eventually concur in the Applicant's delineation and DSL required mitigation as a matter of state law and so Condition 22 to this subdivision approval requires all required DSL permits to be in place and PDA 4-18 Condition 11 also specifically requires such DSL approval to occur. Relatedly, opponents object to the proposal which will fill 1.06 acres of wetland. The Council finds that no approval standard is violated by the proposal to fill a portion of the wetlands on the site and to mitigate that fill consistent with DSL requirements and subject to DSL approval. The City leaves wetland regulation including fill and mitigation to the expertise of the Oregon DSL. The City lacks expertise in such

matters. Where the proposal to fill wetland potentially bears on a relevant City standard, it is addressed under that standard.

17. Opponents request that an environmental impact study (EIS) be completed for the proposal. No City standard requires an EIS be completed for this proposal. An EIS is required when a major federal action is to be taken that affects natural resources. No federal action of any type is at issue here. This objection provides no basis for denial or any condition of approval.
18. Opponents ask the City to designate the 11.47 acres as a “nature preserve” that would be set aside for public enjoyment. The Council declines to do so. The entire proposal consists of only 35.47 acres. Requiring the Applicant to either dedicate to the public or make undevelopable as a set aside for public enjoyment 32.3% of the developable R-2 zoned area cannot pass the United States Constitution’s Fifth Amendment unconstitutional conditions tests of *Nollan v. California Coastal Commission* 483 US 825 (1987) or *Dolan v. City of Tigard*, 512 US 374 (1994). Such would not pass *Nollan* because there is no legislatively adopted standard that requires such a dedication or set aside for public enjoyment. Such would not comply with *Dolan* because it is not possible to make adequate findings that such a taking of private property for public use is roughly proportional to the impacts of the proposed development.
19. Opponents argue that the City’s recently adopted “Great Neighborhoods Principles” should be applied. The Council declines to apply these principles because they were adopted by the Council on April 9, 2019, effective on May 9, 2019, and were not in effect until after the date that this application was submitted to the city. As a matter of law under ORS 227.178(3), those provisions cannot be applied.
20. Opponents argue that the proposal is contrary to Statewide Planning Goal 10 (Housing). First, the Council finds that Goal 10 does not apply. The proposal is a subdivision and is not one for a comprehensive plan amendment and Goal 10 applies only to comprehensive plan amendments. Regardless, the Council finds that there is nothing about the proposal that adversely affects the City’s housing inventory. Rather, the approval of this subdivision increases the chances that the entire 35.47 acres will be developed for housing consistent with its residential zoning. As explained in other findings, the current land use approval situation that applies to the entire 35.47 acres creates barriers that has made the development of these properties difficult. The Council does not understand how the proposed subdivision could impact or violate Goal 10 in any respect. Goal 10, the City’s Comprehensive Plan, the needed housing statute, and caselaw interpreting these authorities, all encourage the development of housing on land planned and zoned for housing, as is the case here. The totality of the subject 35.47 acre property is planned residential, is zoned R-2, the R-2 zone implements the City’s comprehensive plan and existing housing needs analysis and existing buildable lands analysis as a part of the City’s existing acknowledged strategy to provide needed housing. The City’s R-2 zone in general, and as applied to the subject property, is acknowledged to comply with Goal 10. There is nothing about the proposal that undermines any housing policy or state rule; in fact precisely the opposite is true. There is no need or purpose served in re-justifying

the subject property as R-2 land. The demand to do so is not warranted by Goal 10 or any other applicable standard.

21. Opponents argue that the proposal must comply with McMinnville Zoning Ordinance (MZO) 17.48.005 and fails to do so. MZO 17.48.005 states “Purpose. The purpose of a floodplain is to establish and regulate land uses in those areas designated as hazardous due to periodic flooding in order to protect the community from financial burdens through flood damage losses. Further, this zone is intended to protect natural floodways and drainage ways from encroachment by uses and/or indiscriminate land filling or diking which may adversely affect the overall stream and downstream flood levels. Finally, the floodplain zone shall set aside an area which shall, for the most part, be preserved in its natural state or farmed to provide open spaces, natural habitats, and recreational places.” This zoning requirement is inapplicable because it applies only to the City designated floodplain. No part of the proposed development is located in the City designated floodplain, which is designated consistent with FEMA mapping – that is other than a small amount of the 5.06 acre greenway park which the code allows to be in the floodplain as explained below.
22. Opponents contend that the 11.47 acres that is being removed from ORD 4722 is subject to Oak Ridge subdivision CC&Rs. They are mistaken. The evidence in the record is that the CC&Rs cover only the developed portions of the Oak Ridge phased subdivision, and not the 11.47 acres.
23. Opponents argue that the proposal does not comply with various plan policies. At the outset the Council finds that the proposal is for a subdivision within the UGB which is specifically defined in state law as a limited land use decision. ORS 197.015(12)(a). That means that the City comprehensive plan is inapplicable to the proposed subdivision unless the plan contains individual provisions which are specifically incorporated into the zoning ordinance. ORS 197.195. There are no such plan policies. The McMinnville Comp Plan Volume II, page 1 states “Volume II, Goals and Policies, contains the goal, policy, and proposal statements which shall be applied to all *land use decisions*.” By its express terms it does not apply to limited land use decisions. Regardless, in an abundance of caution, the Council reviews plan policies about which the opponents take issue, but do so without waiver of the fact that these plan standards do not apply.
 - a. Opponents argue that the proposal is inconsistent with Policy 2.00 which provides “The City of McMinnville shall continue to enforce appropriate development controls on lands with identified building constraints including, but not limited to, excessive slope, limiting soil characteristics and natural hazards.” They contend that the “Baker Creek Hydrologic Analysis” (BCHA) they submitted to the Planning Commission for its May 16, 2019 continued public hearing, demonstrates this standard and other standards are not met. This is incorrect.

First, the Council adopts the Applicant’s response and Staff Findings regarding PDA 4-18 contained within the May 16, 2018 Planning Commission packet at page 86 regarding this plan policy.

Second, the Council specifically finds that plan Policy 2.00 requires enforcement of *adopted* City code standards and is not a moving target. Policy 2.00 contemplates that the City will enforce *adopted* City code standards imposing building constraints inclusive of building code requirements and restrictions, the City's adopted standards regulating development in the 100-year floodplain and prohibiting development in the floodway and other standards in the City's code identified by the City's professional staff or in others the public hearings processes. The proposal does not include development within the City's adopted 100-year floodplain, or the Baker Creek floodway, and is not contrary to any other code adopted development constraint that has been identified in the record or that the Council is aware of. Development will occur only in a manner that is consistent with all applicable requirements and development controls.

Moreover, the following findings are relevant to Policy 2.0 and other Plan Policies and standards that opponents' claim should prohibit or restrict the proposal based upon the 100-year floodplain or flooding generally, and their BCHA which purports to show that if an application for a Letter of Map Amendment or "LOMA" were submitted to FEMA at some point in the future, that the 100-year flood plain might be differently mapped. Even if their BCHA showed this, approval of PDA 4-18 is not inconsistent with Policy 2.00 because Policy 2.00 speaks only to enforcement of existing adopted code standards (e.g., "shall continue to enforce") – including the existing mapped 100-year floodplain, not the 100-year floodplain as it might be mapped in the future. Further, the Council notes that the opponents' claim their BCHA shows that the proposal will cause downstream flooding and harm. The Council disagrees that opponents' BCHA demonstrates that the proposal will result in downstream flooding or harms. To the contrary, opponents' BCHA demonstrates that the proposal shows a *decrease* in downstream flood impacts if the proposal is approved. Opponents' BCHA at Page 26, Table 16 shows that the maximum water surface elevation at Cross Section 11843 for existing conditions is 127.42 ft., while water surface elevations for *future* conditions is shown at 127.41 ft.

While opponents BCHA concludes at page 29, second paragraph: "the potential downstream impact of the blockage for the proposed development amounts to less than one hundredth of a foot of *increase* adjacent to existing residences", the math is plain that this is a **decrease** of 0.01 ft. The Council further notes that, as pointed out by the Applicant's attorney's May 15, 2019 letter to the Planning Commission, opponents' BCHA contains other methodological errors that make it unreliable and the Council does not rely upon it. While opponents' attorney asserts that only an engineer can point out faults in the opponents' BCHA, he is mistaken. The errors in the BCHA are plain on their face and also evident from a review of the other evidence in the record. And, regardless, BCHA errors were confirmed at the May 16, 2019 Planning Commission public hearing by the Applicant's engineer, Mr. Wells.

Opponents also contend that the proposal to place a portion of NW Pinehurst Drive in a location partially identified as containing wetland area will cause water pollution and downstream flooding. The proposal to place part of NW Pinehurst Drive in a

filled wetland does not cause water pollution or downstream flooding. Rather, the Council agrees with the Applicant, the City's professional staff and the Planning Commission, that the drainage and water quality effects of the development of NW Pinehurst Drive will be adequately managed in compliance with adopted City standards by an appropriately sized detention pond, water treatment and water discharged to Baker Creek, at a controlled rate of flow, as authorized and governed by the City's Storm Water Management Standards. The Council finds that the proposal complies with Plan Policy 2.00.

b. Opponents assert that the proposal is inconsistent with Plan Policy 74.00 which provides "Distinctive natural, topographic, and aesthetic features within planned developments shall be retained in all development designs." The Council finds that this Plan Policy does not apply to the subdivision proposal but rather only to the planned development proposal approved by PDA 4-18.

c. Opponents assert that the proposal is inconsistent with Plan Policy 80.00 which provides "In proposed residential developments, distinctive or unique natural features such as wooded areas, isolated preservable trees, and drainage swales shall be preserved wherever feasible." Opponents contend that the proposal should be re-designed to preserve all of the site's wetlands. The Council incorporates its discussion in the previous findings regarding the meaning of "distinctive" natural areas referring to City inventoried Goal 5 resources and that there are no inventoried Goal 5 resources on the subject property. Moreover, the wetlands on the subject property are not "unique" but rather are typical of wetlands scattered throughout the City. Similarly, there are no other "unique" natural features on the subject 35.47 acre property within the meaning of this Plan Policy. Further, the Council adopts the Applicant's response and Staff Findings regarding S 3-18 contained within the May 16, 2018 Planning Commission packet at pages 155-57 regarding this plan policy. The Council also finds that this plan policy requires preservation of identified natural features where feasible. The use of the term *feasible* in this plan policy recognizes that there are other competing values that are also expressed as plan policies and code standards that must be considered. Further, the use of the term "preservable trees" means those trees that can be preserved while still allowing the proposed development to move forward.

Policy 80.00 is written as a balance to require distinctive or unique natural features be preserved when it is reasonably feasible to do so, while also approving housing contemplated by the zoning designation to enable the City to comply with its housing policies and Statewide Planning Goal 10 (Housing). See McMinnville Goal V2 and Policies 68.00-71.00. ORS 197.307(3) similarly requires that needed housing "shall be permitted." The proposal is for a type of City recognized needed housing. Here the subject property is zoned R-2 and the City has obligations to allow that zone to deliver the intended residential density of that zone as much as is reasonably possible to avoid the need to expand the urban growth boundary in the future. The proposal is already slightly under the density contemplated for the R-2 zone. Additional density reductions would be required for any redesign had no impact on wetlands, trees or steep slopes, and the Council does not wish to see any

further residential density reductions. Further, in this case, it must be recognized that in the absence of the proposal, the existing approved Planned Development Ordinances for the project area, which is comprised of 11.47 acres from the Oak Ridge Planned Development and the entire area of the Oak Ridge Meadows Planned Development, authorize the development of 129 lots versus the proposed 108 proposed lots at issue in this case. The reduced number of lots proposed here, is a direct response to the Applicant, in part, adjusting the alignment of the eastern portion of NW Pinehurst Drive to be located further to the west thereby preserving more natural features, and incorporating public and private parks and walking path amenities which do not exist as a part of the previously approved Planned Development Ordinances that this proposal supersedes. The Council finds that in these circumstances, the proposal preserves natural features – whether distinctive or unique - “wherever feasible” and is consistent with this plan policy.

d. Opponents assert that the proposal is inconsistent with Plan Policy 118.00 which provides “The City of McMinnville shall encourage development of roads that include the following design factors:

“1. Minimal adverse impacts on, and advantageous utilization of, natural features of the land.”

Opponents contend that because the easternmost portion of NW Pinehurst Drive (the portion within the 11.47 acres to be removed from ORD 4722), will be developed in a wetland area requiring some of the wetland to be filled, the proposal is necessarily inconsistent with this plan policy. First, Council hereby adopts the Applicant’s response and Staff Findings regarding PDA 4-18 contained within the May 16, 2018 Planning Commission packet at pages 158-59 regarding this plan policy. Second, the terminus of this portion of NW Pinehurst Drive stubbing to the Toth property is now reflected in the City’s TSP as is explained in later findings. It would not be possible to establish this segment of NW Pinehurst Drive in any location and avoid wetlands and still stub to the Toth property as is contemplated and reflected in the City’s acknowledged TSP. The location of NW Pinehurst Drive within the 11.47 acre area, is directly responsive to the Applicant minimizing adverse impacts on area wetlands, avoiding cutting into steep slopes and stubbing NW Pinehurst in the location that the City’s TSP shows the connecting stub to be located. This demonstrates that the proposal is consistent with Plan Policy 118.00, because it advantageously utilizes natural resources but at the same time minimizes adverse impacts upon them and does so within the acknowledged framework of the City’s TSP location of the existing NW Pinehurst Drive stub at the Toth property.

Finally, the Council expressly interprets this plan policy to be aspirational and to encourage, but not require, minimizing adverse impacts and advantageous utilization of natural features in any event. It is not an approval standard. Minimizing adverse impacts to and the advantageous utilization of natural features has been sufficiently encouraged by the approval of the proposal. The proposal is consistent with this plan policy.

e. Opponents argue that the proposal is inconsistent with Plan Policy 132.029.00 which provides “The construction of transportation facilities in the McMinnville planning area shall be timed to coincide with community needs and shall be implemented so as to minimize impacts on existing development.” They argue that to “minimize impacts on existing development”, that the existing traffic outlets onto Baker Creek Road of NW Merlot Drive and NW Oak Ridge Drive, which the proposal will use, must be supplemented by the public dedication and completion of a NW Shadden Drive right-of-way connection between the subject site and NW Baker Creek Road across property that is not a part of the development proposal and is not owned or controlled by the Applicant.

The Council disagrees. This plan provision has two parts: (1) that transportation facilities be constructed coincidentally at the time when the community needs them, and (2) when such transportation facilities are constructed, that they are implemented in a way that minimizes impacts to existing development. The proposal is consistent with this plan policy.

With one exception, there is no dispute that the construction of the proposed extensions of NW Pinehurst Drive and NW Pinot Noir Drive to serve the proposal will be timely to meet community needs. The exception is that the opponents argue that the proposal is inconsistent with this plan provision because they contend that there is no “community need” to stub out NW Pinehurst Drive to the neighboring property to the east owned by Mr. Toth. They are mistaken. The stubbed connection of NW Pinehurst Drive to the Toth property already exists in City planning documents and is shown on Exhibit 2-3 (Street Functional Classification) the City’s adopted and acknowledged Transportation System Plan (TSP).



Below is an enlarged portion of the above graphic showing the NW Pinehurst Drive street stub in more detail.



Accordingly, a connection stubbed at the Toth property must be presumed to be a community need because it has been legislatively adopted as such in the City's TSP. It is well-established that it is improper to collaterally attack the city's acknowledged planning instruments including the City's TSP.

As to the second prong of the plan provision, the Council finds that impacts of the proposal on existing development are minimized within the meaning of this plan provision by PDA 4-18 Condition 15, limiting the number of lots to 108 lots in the development unless NW Shadden Drive is constructed. This ensures that the number of traffic trips associated with the proposal is consistent with the design capacity of the affected streets as explained by the Applicant's transportation engineer in her TIA and supplemental report in the record.

Moreover, the proposal will involve widening a particularly narrow section of NW Pinot Noir Drive from its intersection with NW Blake Street to improve NW Pinot Noir Drive to current standards, within the existing right-of-way, improving mobility and thus livability in this part of the existing Oak Ridge Subdivision development. Further, the Applicant's Transportation Impact Analysis (TIA) and TIA supplement both demonstrate that all intersections and traffic volumes will function well within applicable city standards as proposed without NW Shadden Drive.

The Council finds that this standard does not require that the Applicant to construct an additional permanent public street connection (NW Shadden Drive) on property that is neither owned nor controlled by the Applicant, where such is otherwise not required by applicable standards, as is the case here. As demonstrated in the Applicant's traffic report and supplemental traffic report, traffic is expected to move in and out of the existing development and move around inside of the existing development, well within the limits of all applicable city standards. The Council further notes that the fire department has determined that a temporary emergency-only vehicular connection between the western temporary terminus of NW Pinehurst

Drive to NW Baker Creek Road for emergency access is adequate to serve emergency needs, as explained in other findings.

Finally opponents requested that the NW Shadden Drive emergency access be used for construction vehicles for the proposal so that construction vehicles are not using the public road system within the existing Oak Ridge subdivision development. The Council finds that this standard does not require that construction vehicles for the proposed planned development be prohibited from using the public road system and be required to use instead only the temporary emergency-only access to be constructed across adjacent land to the west in the approximate alignment of the future extension of NW Shadden Drive. The Council declines to impose such a condition because it is not required by this or any other standard and also the owner of the land (Stafford Land) under the temporary NW Shadden Drive emergency access has not consented to such use. Further, such use of the Stafford Land property may be inconsistent with applicable standards that will be applied to that neighboring property for its residential subdivision development (it too is zoned R-2), where the proposed temporary emergency vehicle access is to be situated. That Stafford Land property owner has submitted an application for a tentative plat approval for that property. While opponents state otherwise, they are mistaken. Such application has been submitted to the city for approval of a residential subdivision and is currently under City consideration.

A permanent NW Shadden Drive public road connection between the proposed planned development and NW Baker Creek Road will be a required part of that adjacent subdivision on which the NW Shadden Drive connection will be located. However, reserving the NW Shadden Drive connection as the exclusive construction access for the proposed planned development, which can be developed over a period of five (5) years, is unreasonable and foreseeably could adversely affect the timing and development of such other property as well as could improperly limit the City's approval options for that development. Imposition of such a condition also establishes a precedent for other residential developments that they must obtain approval to provide construction access from unowned neighboring undeveloped properties and such a precedent is untenable. The Council declines to impose such a condition. The proposal is consistent with this Plan Policy.

f. Opponents argue that the proposal is inconsistent with Policy 132.35.00 which provides "Transportation facilities in the McMinnville Planning area shall be, to the degree possible, designed and constructed to mitigate noise, energy consumption, and neighborhood disruption, and to encourage the use of public transit, bikeways, sidewalks and walkways." Similar to their arguments under Plan Policy 132.29.00, opponents argue that developing the proposed planned development without the construction of the permanent NW Shadden Drive connection is inconsistent with this standard because it does not mitigate noise and neighborhood disruption and also that the required NW Pinehurst Drive street stub to the Toth property to the east will be disruptive by virtue of its very existence. The Council disagrees and finds that the proposal is consistent with this policy.

First, Council hereby adopts the Applicant's response and Staff Findings regarding S 3-18 contained within the May 16, 2018 Planning Commission packet at pages 162-163 regarding this plan policy.

Second, the Council specifically interprets the use of the terms "to the degree possible" in this plan provision to be meaningful. The plan provision is not absolute; it does not require that there be no neighborhood disruption or no noise associated with transportation facilities for a development proposal. Rather, this standard requires that roadways be designed consistently with their functional classifications and meet city level of service and other standards. All McMinnville citizens must expect that vacant land to which they are proximate will develop consistently with its zoning including to have the transportation facilities that would be required by the city code and plan. The proposal is consistent with the functional classifications of affected streets and meets all level of service and other transportation related standards. Moreover, this plan provision focuses on ensuring that residents within planned developments have a variety of transportation options available to them. The proposal includes generous opportunities for walking, and biking, as well as being situated within one mile of planned transit, thus ensuring that there will be adequate vehicle transportation opportunities. Regarding transit, such is located within one-mile of the site as a "Conceptual Bus Route" on the city's adopted "Transit Feasibility Study" and as articulated within the May 16, 2019 Planning Commission packet at pages 88-89.

Finally, the Council notes that neighborhood disruption is not per se established by the Applicant providing a required public street stub to the Toth property at the eastern temporary terminus of NW Pinehurst Drive consistent with the City's adopted TSP. Rather, stubbing to the Toth property as contemplated by the City's TSP demonstrates compliance with this plan policy. The proposal is consistent with this plan policy.

- g. Opponents contend that the proposal is inconsistent with Plan Policy 142.00, which provides "The City of McMinnville shall insure that adequate storm water drainage is provided in urban developments through review and approval of storm drainage systems, and through requirements for connection to the municipal storm drainage system, or to natural drainage ways, where required." First, the Council adopts the Applicant's Response and Staff Finding at p 168. Second, the Council finds that the proposal is consistent with this Plan Policy as it is properly interpreted. Specifically, this policy does not apply directly to development proposals but rather it is implemented by an Applicant's compliance with the City's Storm Water Management Standards. The Applicant has established that the proposal will comply with the City's Storm Water Management Standards. Accordingly, the proposal is consistent with this Plan Policy.
- h. Opponents contend that the proposal is inconsistent with Policy 143.00, which provides "The City of McMinnville shall encourage the retention of natural drainage

ways for storm water drainage.” They assert that the filling of any wetlands is inconsistent with this policy. They also contend that development within a 100-year floodplain is inconsistent with this policy. The Council disagrees that the proposal to fill a portion of the wetlands located on the property is inconsistent with the plan policy and also disagrees as explained above that the proposal includes unauthorized development within the City’s mapped 100-year floodplain.

The Council begins by noting that opponents’ interpretation of this plan policy is absolute; but the plan policy is aspirational and not mandatory (e.g., “The City of McMinnville shall encourage..”). As such, it is not an approval standard for the proposal.

Second, the Council adopts the Applicant’s response and Staff Findings regarding S 3-18 contained within the May 16, 2018 Planning Commission packet at page 168 regarding this plan policy.

Third, the Council finds that the wetlands proposed to be filled subject to the approval of the Department of State Lands (DSL), are not “drainage ways” within the meaning of this plan policy, in any event. The “drainage way” is Baker Creek. The proposal is not inconsistent with this plan policy.

- i. Opponents argue that the proposal is inconsistent with Plan Policies relating to parks. Generally, they argue that there are no funds to maintain the public 5.06 acre park. The Council disagrees. A condition of approval requiring a homeowner’s association with maintenance responsibilities for common open space as well as the public open space (the 5.06 acre park) until 2032 has been included at Condition 5. Moreover, the Council finds that by 2032 the City will have adequate funds to maintain this 5.06 acre greenway park. While City Parks Department recommended a condition limiting transfer of maintenance responsibility “until such time as resources are available to maintain and operate it as public open space”, the Council declines to impose such an open ended condition. Rather, the County finds that by 2032 the City shall have the means to maintain the 5.06 acre park. Failing to do so means the City fails its citizens and the obligations imposed upon the City in its plan and the Council declines to be so pessimistic. The Council finds that the park will be adequately maintained by the City in 2032 and thereafter.

Specifically with regard to parks, opponents express concerns about the proposal’s consistency with the following plan policies.

- A. Opponents argue that the proposal is inconsistent with Plan Policy 160.00, which provides “The City of McMinnville shall encourage the improvement of existing parks and recreation facilities as a priority consideration.” The Council finds that this plan policy does not apply to this proposal. No existing parks and recreation facilities exist within or are affected by the proposed planned development.

- B. Opponents argue that the proposal is inconsistent with Plan Policy 161.00 which provides “The City of McMinnville shall encourage cooperation between public and private recreation agencies and groups to provide a full complement of recreational and leisure time activities, to share existing facilities, and to discourage duplication of expenditures and programs.” The Council finds that this plan policy does not apply here and, even if it did, that there is nothing about the proposal that is inconsistent with this plan policy.
- C. Opponents argue that the proposal is inconsistent with Plan Policy 163.00, which provides “The City of McMinnville shall continue to require land, or money in lieu of land, from new residential developments for the acquisition and/or development of parklands, natural areas, and open spaces.” The Council finds that the proposal is consistent with this plan policy because it provides two park amenities and a natural trail walking/jogging pathway system.
- D. Opponents argue that the proposal is inconsistent with Plan Policy 163.05, which provides “The City of McMinnville shall locate future community and neighborhood parks above the boundary of the 100-year floodplain. Linear parks, greenways, open space, trails, and special use parks are appropriate recreational uses of floodplain land to connect community and other park types to each other, to neighborhoods, and services, provided that the design and location of such uses can occur with minimum impacts on such environmentally sensitive lands.”

First, the Council adopts the Applicant’s response and Staff Findings regarding S 3-18 contained within the May 16, 2018 Planning Commission packet at pages 170-71 regarding this standard.

Second, the Council finds that the adopted McMinnville Parks, Recreation, and Open Space Master Plan defines seven park types. Two of those park types are required by Comprehensive Plan Policy 163.05 to be located outside of the 100-year floodplain. Those two park types are Community parks and Neighborhood parks.

Of the two parks proposed as part of the Oak Ridge Meadows Planned Development (PDA 4-18), only one park, the public Greenway Park contains some portion of land identified as being located within the 100-year floodplain. Policy 163.05 states that Greenways are appropriate recreational uses of land in floodplains. The Council finds that the Greenway Park is a greenway within the meaning of this plan policy and that is it not a neighborhood or community park. The Council further finds that the small portion of the Greenway Park that is within the 100-

year floodplain is allowed to be located in the floodplain under this policy. Accordingly, the proposal is consistent with this plan policy.

- E. Opponents argue that the proposal is inconsistent with Plan Policy 164.00 which provides “The City of McMinnville shall continue to acquire floodplain lands through the provisions of Chapter 17.53 (Land Division Standards) of the zoning ordinance and other available means, for future use as natural areas, open spaces, and/or parks.” The Council recognizes that the McMinnville Parks and Recreation Department determined that the proposal met this plan standard. *See* Planning Commission May 16, 2019 packet at p 140. Regardless, the Council finds that this plan policy does not apply to this application for a planned development, because the City does not acquire floodplain land as a goal of approving a residential development application. Regardless, the Council concurs that the proposal is consistent with this plan policy in the sense that a small amount of the 100-year floodplain is situated within the 5.06 acre park which will be dedicated to the public.
- F. Opponents argue that the proposal is inconsistent with Plan Policy 166.00 which provides “The City of McMinnville shall recognize open space and natural areas, in addition to developed park sites, as necessary elements of the urban area.” The Council finds that the proposal is consistent with this plan policy. The proposal includes generous amounts of open space and natural areas amenities reflecting both the Applicant’s and the City’s recognition of the importance of the same to a pleasant living experience in the urban area.
- G. Opponents argue that the proposal is inconsistent with Plan Policy 167.00, which provides “The City of McMinnville shall encourage the retention of open space and scenic areas throughout the community, especially at the entrances to the City.” The Council disagrees that the proposal is inconsistent with this Plan Policy.

First, this plan policy is not a mandatory standard, but rather is aspirational. First, this plan policy is not a mandatory standard, but rather is aspirational. Accordingly, it is not an approval standard for the proposal.

Second, it largely does not apply to the proposal at all. The proposed project is not at the entrance to the City. There are no existing “open space” areas on the subject property. Rather, the subject property is entirely composed of privately owned property designated as R-2, which has long been subject to planned developments and subdivision approvals that simply never materialized for a variety of reasons. The undeveloped R-2 zoned land at issue in this proposal does provide scenic areas that the developed subdivision in the sense that the wetlands are

visually appealing. The Applicant has been encouraged to retain and has retained many of those scenic wetland areas and has provided specific viewing areas for the enjoyment of all neighbors – new and existing ones. The proposal is consistent with this plan policy.

- H. Opponents argue that the proposal is inconsistent with Plan Policy 168.00, which provides “Distinctive natural features and areas shall be retained, wherever possible, in future urban developments.” The Council finds that the proposal is consistent with this policy, as properly interpreted. First, the Council adopts herein the Applicant’s Response and Staff Findings contained within the May 16, 2019 Planning Commission packet at page 170-71. Second, the Council herein adopts its findings concerning Plan Policies 74.0 and 80.0 as they relate to distinctive natural features. Third, the Council specifically finds that this plan policy is not absolute, but rather contemplates retention of distinctive natural features where it is possible to do so and still achieve other goals and standards in the City’s Plan and zoning ordinance. This means that even if there were distinctive natural features on the subject property, they are retained as much as reasonably possible by the generous provision of park and recreation opportunities, a majority of the wetlands being retained, and the tree protection provisions in Condition 2, while still achieving the density of housing contemplated by the R-2 zoning district.
- I. Opponents argue that the proposal is inconsistent with Plan Policy 169.00 which provides “Drainage ways in the City shall be preserved, where possible, for natural areas and open spaces and to provide natural storm run-off”. The Council finds that the proposal is consistent with this Plan Policy. First, the Council adopts the Applicant’s Response and the Staff Findings at the May 16, 2019 Planning Commission Packet at pages 170-71. Second, the Council incorporates herein its findings of consistency with Policy 143.00. Third, the Council finds that this standard contemplates that drainage ways in the City (here, Baker Creek), will be preserved for natural areas and open spaces and to provide a means to accept natural storm water run-off. Baker Creek is untouched under the proposal and will retain its role as a natural area and open space and to accept natural storm water run-off. The proposal is consistent with this plan policy.
- j. Opponents argue that the proposal is inconsistent with Plan Policy 187.050(1)(a) which provides “Neighborhood shall be designed to preserve significant natural features including, but not limited to, watercourses, sensitive lands, steep slopes, wetlands, wooded areas and landmark trees.” Plan policy 187.50 expresses “Great Neighborhood Principles.” This policy was adopted by the Council on April 9, 2019, effective on May 9, 2019, and was not in effect at the time the application was first

submitted to the City and therefore as a matter of law under ORS 227.178(3) cannot be applied to the proposal. However, even if this plan policy applied, the proposal is not inconsistent with it. The policy requires the preservation of certain described features but not all such certain described natural features. The “neighborhood” created by the proposal preserves many natural features – far more than were approved under the original approvals that would cover the subject property if the proposal were not approved. This plan policy is inapplicable and even if it applied, the proposal is not inconsistent with it.

k. Opponents argue the proposal is inconsistent with Plan Policy Proposal 29.00 which provides “The City of McMinnville should continue to monitor the location and size of lands acquired through the parkland (subdivision) ordinance. Methods of developing and maintaining the smaller parks in a manner less expensive to the City should be encouraged and explored.” First, the Council finds that this policy is merely “proposed” in the Plan, but is not adopted. Unadopted plan provisions cannot be applied to development proposals. ORS 227.178(3). Further, regardless, the Council also finds that the McMinnville Parks and Recreation Department monitors the location and size of parkland acquired by the City. Additionally, the smaller of the two proposed parks will be privately owned and maintained by a Homeowner’s Association and will not be maintained by the City. Even if the City adopts this policy in the future, this proposal is not inconsistent with this Plan Policy proposal.

24. As an overarching matter, the Council finds that the evidence in the record establishes that the proposal does not develop homes or roads within the City’s adopted 100-year floodplain and is unlikely to cause flooding or other harms to harm to downstream properties.

The Council finds that S 3-18 complies with all relevant standards and is therefore approved.