



## AGENDA PLANNING COMMISSION

July 28, 2025

at 7:00 p.m.

Stayton Community Center  
400 W. Virginia Street  
Stayton, Oregon 97383

### HYBRID MEETING

The Stayton Planning Commission will be holding a hybrid meeting utilizing Zoom video conferencing software. The meeting will be in-person but can also be attended virtually. If you would like to virtually participate in the meeting, please contact Susan Bender at [sbender@staytonoregon.gov](mailto:sbender@staytonoregon.gov) to receive an invitation to the online meeting.

#### 1. CALL TO ORDER

#### 2. MEETING MINUTES

- a. Approval of November 25, 2024, Minutes
- b. Approval of January 27, 2025, Minutes
- c. Approval of March 31, 2025, Minutes
- d. Approval of May 27, 2025, Minutes

#### 3. PUBLIC HEARING

**LAND USE FILE # #11-07/24 -PUBLIC HEARING – Application to Concept Plan application for a Master Planned Development at 1601 Oriole Street**

- a. Staff Introduction and Report
- b. Applicant Presentation
- c. Questions from the Commission
- d. Questions and Testimony from the Public
- e. Applicant Summary
- f. Staff Summary
- g. Close of Public Hearing
- h. Commission Deliberation
- i. Commission Decision

#### 4. ADJOURN

*The meeting location is accessible to people with disabilities. A request for an interpreter for the hearing impaired or other accommodations for persons with disabilities should be made at least 48 hours prior to the meeting. If you require special accommodation, contact the Community and Economic Development Department at (503) 769-2998.*

# STAYTON PLANNING COMMISSION MEETING MINUTES

Monday, November 25, 2024

**COMMISSIONERS:** Larry McKinley  
Peter Bellas  
Richard Lewis  
Amy Watts

**STAFF MEMBER:** Jennifer Siciliano, Community & Economic Development Director  
Windy Cudd, Planning Assistant, City of Stayton

**OTHERS PRESENT:** Laura LaRoque (virtually) and Brian Vandetta; Udell Engineering and Land Surveying, LLC

1. **CALL TO ORDER:** Chair McKinley called the meeting to order at 7:00 pm
2. **APPROVAL OF MINUTES:** Watts moved, and Bellas seconded to approved version of the minutes from October 28, 2024, as presented. Passed 4:0.
3. **LAND USE FILE #10-06/24 – PUBLIC HEARING (Continuation) - Application for a Site Plan Review to develop a vacant lot at 101 Whitney Street in an Interchange Development (ID) zone into a 10,640 sq. ft. commercial building for a proposed Dollar General, including parking, access, and landscaping.**

**Commencement of Public Hearing-** Chair McKinley read the opening statement and opened the hearing. No objections were made by the audience to the notice in this case or the jurisdiction of this body to hear the case. There were no declarations of conflict of interest, *ex parte* contact, or bias by members of the Planning Commission.

**a. Staff Introduction and Report-** The City Council held a Public Hearing on November 4, 2024, and they voted to not move forward with amending text with the Stayton Land Use Development Code to allow for general merchandize use in the Interchange Development (ID) zone. Beuse of this the site plan review application for LU #10-06/24 is not consistent with current zoning.

**b. Applicant Presentation-** No applicant was present at the meeting.

**c. Questions from the Commission-** None

**d. Questions and Testimony from the Public-** None

**e. Applicant Summary-** None

**f. Staff Summary-** Ms. Siciliano provided a draft order of denial which includes findings of fact that it is not consistent with the ID zone.

**g. Close of Hearing-** Chair McKinley closed the hearing.

**h. Commission Deliberation-** Planning Commissioners clarified what use was not allowed in the ID zone.

**i. Commission Decision -** Bellas moved to deny the application for a Site Plan Review for 6S DG Stayton OR, LLC/ Sam Moore at 101 Whitney Street (Land Use File #10-06/24) and adopt the draft order presented by Staff. Watts seconded the motion. Approved 4:0.

4. **LAND USE FILE #2-01/24 – PUBLIC HEARING - Application for Modification Site Plan Review to build a 3,440 square foot warehouse storage building at 1840 Pacific Court a currently developed industrial site in a Light Industrial (IL) zone.**

**Commencement of Public Hearing-** Chair McKinley read the opening statement and opened the hearing at 7:01 pm. No objections were made by the audience to the notice in this case or the

jurisdiction of this body to hear the case. There were no declarations of conflict of interest, *ex parte* contact, or bias by members of the Planning Commission.

- a. Staff Introduction and Report-** The applicant proposes to construct a 3,440-square-foot industrial building (40 feet by 40 feet) for warehouse storage. The site currently contains an existing 2,400-square-foot shop and office building, as well as a 960-square-foot warehouse. The proposed warehousing use is permitted in the Light Industrial zone. The property is surrounded by other industrial uses and is consistent with surrounding development patterns. This site plan represents the third phase of a master plan originally approved in 1991. The requirement for a Traffic Analysis Letter (TAL) was waived by the City Manager, acting in place of the Public Works Director, due to the current vacancy in that position. The project does not increase impervious surface area. However, should the development result in additional impervious area, the applicant will coordinate with Public Works to determine how any additional stormwater will be managed.
- b. Applicant Presentation-** Applicant was available for questions.
- c. Questions from the Commission-** None
- d. Questions and Testimony from the Public-** None
- e. Applicant Summary-** None
- f. Staff Summary-** No additional information.
- g. Close of Hearing-** Chair McKinley continued the hearing.
- h. Commission Deliberation-** Planning Commissioner discussed application.
- i. Commission Decision -** Bellas moved to approve the application for a Site Plan Review of Roberts Industries, LLC, (Land Use File #2-01/24) and adopt the draft order presented by Staff. Watts seconded the motion. Approved 4:0.

**5. ADJOURN –** Chair McKinley adjourned the meeting.

**STAYTON PLANNING COMMISSION**  
**MEETING MINUTES**  
**Monday, January 27, 2025**

**COMMISSIONERS:** Larry McKinley - Chair  
Dixie Ellard  
Peter Bellas  
Amy Watts

**STAFF MEMBER:** Jennifer Siciliano, Community & Economic Development Director  
Melanie Raba, Administrative Special Projects, City of Stayton

**OTHERS PRESENT:** Randy Cranston, 372 SE Church Street, Sublimity, OR 97385  
Corey and Liza Zehner, 42039 Mount Pleasant Drive, Scio, OR 97374

1. **CALL TO ORDER:** Chairman Larry McKinley called the meeting to order at 7:00 pm.
2. **APPROVAL OF MINUTES:** No approval of minutes, put off until the February meeting.
3. **DISCUSSION OF LAND USE FILE #15-10/24 – PUBLIC HEARING** - Application for a Conditional Use to allow the addition of an automobile dealership to an existing developed site at 333 N 1st Avenue in a Commercial Retail (CR) Zone.

**Commencement of Public Hearing-** Chair McKinley read the opening statement and opened the hearing at 7:00 pm. No objections were made by the audience to the notice in this case or the jurisdiction of this body to hear the case. There were no declarations of conflict of interest, *ex parte* contact, or bias by members of the Planning Commission.

**a. Staff Introduction and Report-** Staff mentioned that this address has a long history of land use changes over the years. Will not involve any new building construction. Traffic impacts to be minimal, as mentioned by Traffic Construction Engineer in memo. Changes to existing access driveways, despite not meeting current standards, will not be required. One key issue raised in analysis pertains to parking. The applicant submitted a parking plan including those of existing business already in that location which includes each business having 4 each of the current 8 parking spaces, one to be designated as handicapped. Staff received feedback from Marion County acknowledged it is not a full site plan change, just a conditional use permit. It was pointed out to not park cars very close to site distance for blocking view. This came after comments were to be made. Options are to accept application as is, or as Ms. Siciliano recommends, that they revise plan to include 8 spots from Master's Touch.

**b. Applicant Presentation-** They are Corey and Liza Zehners and live in this community approximately nine years. They established Dale Auto about 1 and a half years ago.

**c. Questions from the Commission-** The applicant operates a home-based dealership. They plan to share parking with Master's Touch, but they may go mobile and do not need a spot. Concerns were raised about the unclear parking layout and crowding. A particular safety issue was noted at the nearby corner where drivers often run the stop sign, and a blocked sight line could worsen the problem. Access is only via Ida Street, not 1st Avenue. One member requested a realistic parking plan. The applicant agreed to adjust the layout to improve visibility and work with the city.

**d. Questions and Testimony from the Public-** None

**e. Applicant Summary-** None

**f. Staff Summary-** Staff stated the spot directly in front of building will be where the applicant will need to designate as the handicapped spot.

**g. Close of Hearing-** Chair McKinley closed the hearing at 7:19 pm.



**h. Commission Deliberation** - None

**i. Commission Decision** - Commissioner Watts moved and Commissioner Ellard seconded for the Stayton Planning Commission approve the application for a Conditional Use to allow the addition of an automobile dealership to an existing developed site at 333 N 1st Avenue in a Commercial Retail (CR) Zone with conditions of modifications to plan regarding sight line and parking spaces. The vote was unanimous.

**4. OTHER BUSINESS** –None

**5. ADJOURN** –Chair McKinley adjourned the meeting at 7:20 pm.

DRAFT

**STAYTON PLANNING COMMISSION**  
**MEETING MINUTES**  
**Monday, March 31, 2025**

**COMMISSIONERS:** Larry McKinley - Chair  
Peter Bellas (absent)  
Amy Watts (via Zoom)  
Melissa Satowski

**STAFF MEMBERS:** Jennifer Siciliano, Community & Economic Development Director  
Pauly Norby, Public Works Office Specialist, City of Stayton

**OTHERS PRESENT:** None

1. **CALL TO ORDER:** Chairman Larry McKinley called the meeting to order at 7:00 pm. He welcomed new commission member Melissa Satowski.
2. **APPROVAL OF MINUTES:** No approval of minutes, put off until the February meeting.
3. **LAND USE FILE #17-12/24 - Application for Site Plan Review and Variances to expand an Orthopedic Clinic owned by Santiam Hospital by 820 square feet with variances to reduce vehicle, bicycle parking, and minimum landscaping requirements at 1377 N 10th Avenue in a Commercial General (CG) zone.**

**Commencement of Public Hearing-** Chair McKinley read the opening statement and opened the hearing at 7:00 pm. No objections were made by the audience to the notice in this case or the jurisdiction of this body to hear the case. There were no declarations of conflict of interest, *ex parte* contact, or bias by members of the Planning Commission

**a. Staff Introduction and Report** – Ms. Siciliano discussed the application for a site plan and variance for an 820 square foot expansion of the orthopedic clinic at Santiam Hospital, considering variances based on the hospital's ability to demonstrate sufficient parking spaces, the practicality of bicycle parking for orthopedic patients, and overall landscaping compliance across the hospital campus.

**b. Applicant Presentation** - The applicant, Paul Hartman from Santiam Hospital, states that strict adherence to regulations presents a significant hardship due to unique site conditions and that the expansion will improve patient experience by offering medical services and X-rays in the same building.

**c. Questions from the Commission-** Ms. Siciliano discussed the need for stormwater mitigation for the hospital complex, including the addition of 800 square feet. The women's clinic part demolition would reduce impervious surface.

**d. Questions and Testimony from the Public-** None

**e. Applicant Summary-** The landscaping and parking calculations were updated, showing a need for 202 parking spots and 48% landscaping coverage for the whole Santiam Hospital Campus.

**f. Staff Summary-** Nothing more to add.

**g. Close of Hearing-** Chair McKinley closed the hearing at 7:00 pm.

**h. Commission Deliberation-** None.

**i. Commission Decision -** Commissioner Watts moved and Commissioner Sutkowski seconded for the Stayton Planning Commission to approve the application for variances for the orthopedic clinic at Santiam Hospital. The vote was unanimous.

**4. ADJOURN** –Chair McKinley adjourned the meeting at 7:20 pm.

DRAFT

# STAYTON PLANNING COMMISSION MEETING MINUTES

Tuesday, May 27, 2025

**COMMISSIONERS:** Larry McKinley – Chair (present)  
Peter Bellas (present)  
Amy Watts (via Zoom)  
Melissa Sutkowski (present)

**STAFF MEMBERS:** Jennifer Siciliano, Community & Economic Development Director  
Susan Bender Public Works Office Specialist

**OTHERS PRESENT:** Steve Sims, City Councilor, 2110 E Santiam St, Stayton, OR 97383  
James Baxter, 1435 N Second Avenue, Stayton, OR 97383  
Evelyn Bertoli, P.O. Box 5, Stayton, OR 97383

1. **CALL TO ORDER:** Chairman Larry McKinley called the meeting to order at 7:00 pm. All Planning Commissioners are present.
2. **APPROVAL OF MINUTES:** No minutes available. This agenda item was tabled.
3. **LAND USE FILE #5-02/25 PUBLIC HEARING:** Application to Vacate the Alleyway between N First Ave and N Second Ave, running from E Pine to E Fir Streets.

**Commencement of Public Hearing-** Chair McKinley read the opening statement and opened the hearing at 7:00 pm. No objections were made by the audience to the notice in this case or the jurisdiction of this body to hear the case. There were no declarations of conflict of interest, *ex-parte* contact, or bias by members of the Planning Commission. Vacation of streets and alleys is the subject of Oregon Revised Statute. The statute establishes criteria for determining that the vacation would not prejudice the public interest. All evidence, arguments, and testimony must be directed towards this approval criteria, or to such other rules, laws, regulations, or policies.

**a. Staff Introduction and Report** – Ms. Siciliano discussed that there are no Stayton municipal codes for such vacation, so State of Oregon regulations apply. Requirements met by applicant. Staff sent out public notices to abutters and all pertinent interested organizations. SCTC indicated they have service in the area of concern, so they will require an easement. Staff suggested that upon recommendation, allow for utility easement in the alleyway. Staff outlined Planning Commission recommendations and the next step with the City Council. Chair McKinley reiterates the role of this body to hear testimony and makes recommendation vs the City Council which has approval authority.

**b. Applicant Presentation** - The applicant James Baxter outlined the impetus for the application including chronic issues with people parking and using the area as a campsite and trash dump. These activities impede traffic through the alley. The camping activity triggers dogs which then disturbs the neighborhood. Vacation would allow possible construction of fencing to deter parking and camping.

**c. Questions from the Commission-** The Planning Commission discussed how abutting properties currently access the alley and how a future utility easement would be identified. The applicant indicated plans to install a fence along surveyed property lines and acknowledged neighbor impacts. Staff suggested a gate be added for utility access if the alley is vacated. Concerns about illegal camping and related trash issues were also discussed, with confirmation that code enforcement was involved.

**d. Questions and Testimony from the Public-** None

**e. Applicant Summary-** Nothing more to add.

**f. Staff Summary-** Nothing more to add.

**g. Close of Hearing-** Chair McKinley closed the hearing at 7:19 pm.

**h. Commission Deliberation-** The Planning Commission discussed the proposed alley vacation, noting that the need for the alley has diminished with increased activity on First Street and that notices were sent to all adjacent property owners.

**i. Commission Decision -** Commissioner Sutkowski moved and Commissioner Bellas seconded for the Stayton Planning Commission to recommend the vacation of the alley between N First Avenue and N Second Avenue, running from E Pine to E Fir Streets, with a Public Utility Easement for maintenance and access. The vote was unanimous.

**4. ADJOURN** –Chair McKinley adjourned the meeting at 7:23 pm.

# City of Stayton

## MEMORANDUM

**TO:** Chairperson Larry McKinley and Planning Commission Members  
**FROM:** Jennifer Siciliano, Director of Community and Economic Development  
**DATE:** July 21, 2025  
**SUBJECT:** Phillips Estates III Conceptual Master Planned Development Plan for 1601 Oriole Street  
**120 DAYS ENDS:** October 3, 2025.

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### ISSUE

The issue before the Planning Commission is a public hearing on an application for a Conceptual Master Planned Development Plan to subdivide 1601 Oriole Street a 7.11-acre property in Low Density Residential (LD) zone into 22 single-family lots with another parcel for open space.



### ENCLOSURES

Application  
Narrative  
Concept Plans  
Comments  
Final Award City of Stayton v JCNW Family

### BACKGROUND

The application before the Planning Commission is a request for concept plan approval for the Phillips Estates III Master Planned Development. Under Stayton Municipal Code (SMC) 17.24.090, the review of a Master Planned Development is a two-step process. First, the applicant must submit a concept plan, which is reviewed for general layout, compatibility with surrounding uses, and consistency with the Comprehensive Plan. If the concept plan is approved, a detailed development

# City of Stayton

plan must be submitted within one year, unless an extension is granted under specific conditions outlined in the Code.

The subject parcel abuts the Phillips Estates I and II subdivisions, which were part of an earlier phased development. That prior development remains subject to a Final Arbitration Award issued on August 12, 2015, in *City of Stayton v. JCNW Family LLC*. The award found the developer in breach of key provisions of the Development Agreement due to the improper design and construction of a stormwater detention facility (Tract A), and imposed a multi-step remedial plan, including the requirement that “Respondent may not submit plans for Phase III of the development until the issues involved in Phase II have been resolved” Interpretation of the language was determined to be as ambiguous regarding which types of plans are restricted. Specifically, the clause does not clearly distinguish whether it applies to construction plans, land use applications, or both. Based on this interpretation, the application for the Phillips Estates III subdivision was accepted and deemed complete

As far as the City can determine, the terms of the Final Award have not yet been fully satisfied. It remains unclear how much of the subject property will ultimately be required for public ownership to accommodate stormwater drainage, as the facility is intended to manage runoff from not only Phillips Estates I, II, and III, but also other areas of the city. This uncertainty significantly affects the ability to determine whether the application meets the minimum 25% open space requirement required under SMC 17.24.100.2.d. The Code specifies that this open space must be preserved and integrated into the plan, and land dedicated for public utility purposes may not meet that standard.

In addition to the unresolved stormwater and open space issues, the proposed lot sizes in Phillips Estates III are not reasonably compatible with the surrounding neighborhood. Most of the lots in Phillips Estates I and II are approximately 8,276 square feet (0.19 acres), consistent with the minimum 8,000-square-foot lot size in the Low Density Residential (LD) zone. The current proposal introduces smaller lots without a meaningful transition or buffering, particularly along Pheasant Avenue, where some existing homes would back onto two new lots, rather than a one-to-one lot interface. This pattern raises legitimate concerns about impacts to neighborhood character and resident privacy.

Until the full extent of the public stormwater facility is defined and the open space requirements are met in accordance with the Land Use and Development Code, and until the lot size transition is better addressed, the proposed concept plan does not meet the approval criteria outlined in SMC 17.24.090.5, including compatibility with the surrounding neighborhood and compliance with applicable Comprehensive Plan policies.

For these reasons, staff recommends denial of the concept plan at this time. The applicant may resubmit once the unresolved issues have been addressed and the project can be evaluated against the full set of required findings.

## **ANALYSIS**

This report and the draft order presents the Planning Staffs summary and analysis concerning this application. It was developed with the input of other City departments and agencies.

The attached draft order provides findings and analysis of each approval criteria for Concept Plan for a Master Planned Development.

## **RECOMMENDATION**

The staff recommends option one to deny the application and pass the draft order of denial as presented.

# City of Stayton

## OPTIONS AND SUGGESTED MOTIONS

Staff has provided the Planning Commission with a number of options, each with an appropriate motion. The Planning Department recommends the first option.

**1. Deny the application, adopting the draft order as presented.**

I move the Stayton Planning Commission deny the application for a Conceptual Master Planned Development Plan for Brandie Dalton, Multi-Tech Engineering, at 1601 Oriole Street (Land Use File #11-07/24) and adopt the draft order presented by Staff.

**2. Approve the application, directing staff to modify the draft order.**

I move the Stayton Planning Commission approve the application for a Conceptual Master Planned Development Plan for Brandie Dalton, Multi-Tech Engineering, at 1601 Oriole Street (Land Use File #11-07/24) and direct staff to modify the draft order to reflect the Planning Commission's discussion and bring a revised draft order for Planning Commission approval at the August 25, 2025, meeting.

**3. Continue the hearing until August 25, 2025.**

I move the Stayton Planning Commission continue the public hearing on the application for a Conceptual Master Planned Development Plan for Brandie Dalton, Multi-Tech Engineering, at 1601 Oriole Street (Land Use File #11-07/24) until August 25, 2025.

**4. Close the hearing but keep the record open for submission of written testimony.**

I move the Stayton Planning Commission close the hearing on the application for a Conceptual Master Planned Development Plan for Brandie Dalton, Multi-Tech Engineering, at 1601 Oriole Street (Land Use File #11-07/24) but maintain the record open to submissions by the applicant until September 1, allowing 7 days for review and rebuttal and then an additional 7 days for the applicant to reply, with final closure of the record on August 25, 2025.

**5. Close the hearing and record and continue the deliberation to the next meeting.**

I move the Stayton Planning Commission continue the deliberation on the application for a Conceptual Master Planned Development Plan for Brandie Dalton, Multi-Tech Engineering, at 1601 Oriole Street (Land Use File #11-07/24) until August 25, 2025.





Submit Via Email

CITY OF STAYTON  
APPLICATION FOR PRELIMINARY APPROVAL OF A  
MASTER PLANNED DEVELOPMENT

PROPERTY OWNER: JCNW Family, LLC  
Address: 15556 Coon Hollow  
City/State/Zip: Stayton, OR 97383  
Phone: ( ) - - Email:

APPLICANT: Bill Martinak  
Address:   
City/State/Zip:   
Phone: ( ) - - Email: billm@stettlersupply.com

APPLICANT'S REPRESENTATIVE: Brandie Dalton, Land-Use Consultant  
Address: Multi/Tech Engineering, 1155 SE 13<sup>th</sup> Street  
City/State/Zip: Salem, OR 97302  
Phone: (503) 363-9227 Email: bdalton@mtengineering.net

PROFESSIONAL DESIGN TEAM: A professional design team is required for all master planned developments. Please list below the consultants on the design team.

ARCHITECT/ PROFESSIONAL DESIGNER  
Name: Pete Melin  
Address: 1155 SE 13<sup>th</sup> Street  
City/State/Zip: Salem, OR 97302  
Phone: (503) 363-9227  
Email: pmelin@msn.com

ENGINEER  
Name: Mark Grenz, P.E.  
Address: 1155 SE 13<sup>th</sup> Street  
City/State/Zip: Salem, OR 97302  
Phone: ( ) 503-363-9227  
Email: mgrenz@mtengineering.net

LANDSCAPE ARCHITECT/LANDSCAPE DESIGNER  
Name: Erin Holsonback  
Address: 3933 South Kelly Ave  
Suite B Portland, OR 97239  
City/State/Zip: Portland, OR 97239  
Phone: (503) 449-8317  
Email: erin@ottenla.com

PLANNING CONSULTANT  
Name: Brandie Dalton  
Address: 1155 SE 13<sup>th</sup> Street  
City/State/Zip: Salem, OR 97302  
Phone: ( ) 503-363-9227  
Email: bdalton@mtengineering.net

Select one of the above as the principal contact to whom correspondence from the Planning Department should be addressed:

- ☐ owner ☒ applicant ☒ applicant's representative ☐ architect/professional designer ☒ engineer  
☐ landscape architect/landscape designer ☒ planning consultant

LOCATION:

Street Address: 1601 Oriole Street

Assessor's Tax Lot Number and Tax Map Number: 091W04DB/Tax Lot 3300

Closest Intersecting Streets: Kindle WAY

DESCRIPTION OF PROPOSAL: Total Acreage: 7.11 No. of Lots 22 Average Residential Density \_\_\_\_\_

ZONING DISTRICT: LD

NAME OF PROPOSED MASTER PLANNED DEVELOPMENT: Phillips Estate Phase III

LIST PUBLIC SERVICES CURRENTLY AVAILABLE TO THE SITE:

Water Supply: 8 - inch line available in Bobwhite Street.

Sanitary Sewer: 8 - inch line available in Oriole Street. + Bobwhite

Storm Sewer: \_\_\_\_\_ - inch line available in Oriole Street.

Natural Gas: \_\_\_\_\_ - inch line available in Bobwhite Street. + Oriole

Telephone: ☐ is (or) ☐ is not available in \_\_\_\_\_ Street.

Cable TV: ☐ is (or) ☐ is not available in \_\_\_\_\_ Street.

Electrical: ☐ is (or) ☐ is not available in \_\_\_\_\_ Street.

IS ANY PORTION OF THE PROPERTY LOCATED IN A FLOOD PLAIN? ☐ YES ☒ NO

IS ANY PORTION OF THE PROPERTY LOCATED ADJACENT TO A WATERWAY? ☐ YES ☒ NO

ARE THERE ANY WETLANDS ON THE SITE? ☒ YES ☐ NO

ARE THERE ANY SLOPES OF 15% OR GREATER ON THE SITE? ☐ YES ☒ NO

ARE THERE ANY OTHER IMPORTANT NATURAL FEATURES ON THE SITE? ☐ YES ☒ NO

IF YES, IDENTIFY \_\_\_\_\_

ARE THERE ANY HISTORIC SITES OR STRUCTURES LISTED ON THE CITY OF STAYTON COMPREHENSIVE PLAN HISTORIC LANDMARKS INVENTORY ON OR ADJACENT TO THE PROPERTY? ☐ YES ☒ NO

IF YES, IDENTIFY \_\_\_\_\_

SIGNATURE OF APPLICANT: William J Martinak

DO NOT WRITE BELOW THIS LINE

Application received by: \_\_\_\_\_ Date: \_\_\_\_\_ Fee Paid: \$ \_\_\_\_\_ Receipt No. \_\_\_\_\_

Land Use File# \_\_\_\_\_

# Philips Estates Phase 3

## Master Planned Development

April 21, 2025

**Applicant:**

Bill Martinak

**Applicant's Representative:**

Brandie Dalton, Land-Use Consultant  
Multi/Tech Engineering  
1155 SE 13th Street  
Salem, Oregon 97306  
(503) 363-9227  
[bdalton@mtengineering.net](mailto:bdalton@mtengineering.net)

Mark Grenz, P.E.  
Multi/Tech Engineering  
1155 SE 13th Street  
Salem, Oregon 97306  
(503) 363-9227  
[MGrenz@mtengineering.net](mailto:MGrenz@mtengineering.net)

**Site:**

1601 Oriole Street  
7.11 Acres  
LD (Low-Density Residential) Zoned  
091W04DB/Tax Lot 3300

**BACKGROUND:**

On August 15, 2024, a Pre-Application Conference was held with the applicants and City staff. The purpose of the pre-app was to discuss the potential development of the property.

**PROPOSAL:**

The applicant is proposing a 22 lot PUD with 2.49 acres of open space on property zoned LD and about 7.11 acres in size.

Lot 1: 6,040sq.ft.	Lot 2: 6,001sq.ft.
Lot 3: 6,001sq.ft.	Lot 4: 6,001sq.ft.
Lot 5: 6,001sq.ft.	Lot 6: 6,001sq.ft.
Lot 7: 5,987sq.ft.	Lot 8: 7,999sq.ft.
Lot 9: 7,103sq.ft.	Lot 10: 7,185sq.ft.
Lot 11: 6,535sq.ft.	Lot 12: 6,394sq.ft.
Lot 13: 6,393sq.ft.	Lot 14: 6,392sq.ft.
Lot 15: 6,391sq.ft.	Lot 16: 6,008sq.ft.

Lot 17: 6,000sq.ft.                      Lot 18: 6,000sq.ft.  
 Lot 19: 6,000sq.ft.                    Lot 20: 6,000sq.ft.  
 Lot 21: 6,046sq.ft.                   Lot 22: 5,991sq.ft.  
 Open Space: 2.49 Acres

**SITE VICINITY AND CHARACTERISTICS:**

The subject property contains approximately 7.11 acres and is zoned LD (Low Density Residential).

The subject property is vacant. Topography, property configuration and dimensions area illustrated on the tentative plan. The proposal includes 2.49 acres of open space the will include the water quality area.

The surrounding properties are zoned and used as follows:

North: Located outside the City Limits; existing single-family dwellings  
 East: LD (Low Density Residential) zone; existing single-family dwellings  
 South: LD (Low Density Residential) zone; existing single-family dwellings  
 West: Located outside the City Limits; existing single-family dwellings

**LD (Low Density Residential) Requirements:**

The subject property contains approximately 7.11 acres and is zoned LD (Low Density Residential).

Table 17.16.070.2 Minimum Dimensional Requirements for Lots

	LD	MD	HD	DMD	CR	CG	ID	CP	CCMU	DCMU	DRMU	IC	IL	IA	P
Lot Area (square feet) <sup>1</sup>	8,000 <sup>2</sup>	7,000 <sup>3</sup>	6,000	7,000	0	0	0	0	0	0	0	0	0	5 acres	0
Lot Width (feet)	80 <sup>4</sup>	70 <sup>4</sup>	60 <sup>4</sup>	40	0	0	0	0	0	0	0	0	0	0	0
Average Width (feet)	80	70	60	40	0	0	0	0	0	0	0	0	0	0	0

Lot Size: The minimum lot size requirement for LD zoned property is 8,000 square feet. The proposal provides lots that range in size from 5,987 square feet to 7,185 square feet in size. In order to provide more needed housing in this area, the lots size are smaller then the minimum. Therefore, the applicant is applying for a Master Planned Development, which will allow smaller lots sizes and a large open space area within the development.

Lot Width: The minimum lot width requirement is 80 feet. The proposed lots are all 58 to 70 feet in width. The reduced lot wide is needed in order to provide more density on the site and provide a large open space area.

**SECTIONS 17.24.040(5) CRITERIA:**

Applicant Findings: All required plans and documents have been provided as required under the Code.

## **SECTION 17.24.090(5) CRITERIA:**

### **1. COMPREHENSIVE PLAN CONFORMANCE: How does the proposed master planned development meet the applicable goals of the Comprehensive Plan?**

Applicant Findings: The subject property is identified as Residential on the Comprehensive Plan.

The request is in conformance with intent of the Residential designation. Development of the subject property will provide a needed type of housing while facilitating a development that is creative and pedestrian friendly.

#### Chapter 6 Housing:

Per the Comprehensive Plan, Page 70):

*“The housing needs projection in Table 6-10 presents existing units, units needed by 2030, and units to be built, for four housing types. The number of units needed is based upon an assumption that by 2030 the percentage of single-family dwellings will have increased from 63% to 65% and multiple family dwellings and mobile homes will have decreased to 32% and 3% respectively. The number of “Additional Units Needed” in Table 6-10 is the difference between needed and existing units. This information will be used in Chapter 8 in determining the needed acreage that should be included in each of the residential zones.”*

Table 6-10. Housing Needs Projection

Housing Type	Existing Units	Units Needed by 2030	Additional Units Needed
Single-Family detached	1,930	2,819	889
Single-Family attached and duplexes	371	564	193
Multi-family	607	781	174
Mobile Homes	148	173	25
<b>Total</b>	<b>3,056</b>	<b>4,337</b>	<b>1,281</b>

The proposed 22 lots PUD will help in meeting housing needs for the City of Stayton.

#### Chapter 8 Land Use:

Per the Comprehensive Plan, Page 89:

*“Residential-To provide areas for residential development. The Residential area may be further divided into zones that provide for single family residences only, allow mix of single family, duplex and triplex development, and provide adequate opportunities for higher density multifamily development. The overall goal for residential development shall be to provide a mix of housing opportunities in the City and provide an overall gross density of residential development of approximately 6 units per acre.”*

The proposal will provide housing that is needed and consistent with this area, while protecting designated open space areas. The applicant is proposing the development of 22 single-family lot PUD within 4.62 acres. Master Planned Developments do not have density requirements.

The subject property will not only be a site that will contribute to the housing needs, but it is also a site that can help improve the transportation circulation in the area. The subject property when developed has the potential to provide street connections to the properties to the north, east, west, and south for proposed and existing development.

The subject property is within a developed and developing area of the City and does not convert the urban areas beyond the City limits. Specific development triggers specific facilities that are required to be connected to existing systems for looped service. Police, fire and applicable government services can be provided via the increase in property taxes as a result of new development. The proposal permits efficient, compact development to contain sprawl and preserves the land by developing under the requirements of the Code.

The City's adopted Comprehensive Plan Growth Management, Residential Goal, Transportation Goal and Policies, along with adopted Stormwater and Water Master Plans implement the Statewide Public Facilities and Services Goal by requiring development to be served by public services. The proposal is for revitalized urban development in an area where future extensions of those services can be provided in the most feasible, efficient and economical manner. All necessary and appropriate public services and facilities essential for development will be provided to this property at levels that are adequate to serve the proposed use.

The subject property is located within the Urban Growth Boundary and in the corporate City limits.

The proposal will promote infill development with the development of a property that is already served by City Services and all transportation to be developed with housing that is needed in Stayton. Therefore, meeting the Residential Goals and code requirements for the City of Stayton.

## **2. COMPATIBILITY WITH SURROUNDING AREA: How are the uses proposed for the master planned development compatible with the surrounding neighborhood?**

### Applicant Findings:

The surrounding properties are zoned LD and are developed with existing single-family dwellings. The proposed 22 lots PUD is compatible with the existing surrounding neighborhoods.

North:	Located outside the City Limits; existing single-family dwellings
East:	LD (Low Density Residential) zone; existing single-family dwellings
South:	LD (Low Density Residential) zone; existing single-family dwellings
West:	Located outside the City Limits; existing single-family dwellings

The proposal will provide housing that is needed and consistent with this area, while protecting designated open space areas.

The subject property will not only be a site that will contribute to the housing needs, but it is also a site that can help improve the transportation circulation in the area. The subject property when developed has the potential to provide street connections to the properties to the north, east, west, and south for proposed and existing development.

**3. PUBLIC SERVICES: All master planned developments are required to have all public improvements installed as part of any land division process. Therefore, the applicant must be prepared to install the required street, water, sewer, and storm drainage and other improvements.**

- a. How will the applicant assure there are adequate water, sewer, street, and storm drainage facilities available to serve the proposed master planned development?
- b. Will existing City public services need to be replaced or upgraded to accommodate the demands created by the master planned development? Explain.

Applicant Findings: The City has identified the process through which water; sewer and storm drainage will be supplied to the site. Storm water runoff will be collected and removed by the City storm drainage system, in a manner determined by the City to be appropriate prior to development.

The City maintains an infrastructure of public services that includes sewer, water, and storm drainage facilities. The City will specify any needed changes to the existing service levels at the time building permits are requested.

Sidewalks are or will be provided (at the time of development) throughout the site to connect to the public sidewalk system.

The subject property will not only be a site that will contribute to the housing needs, but it is also a site that can help improve the transportation circulation in the area. The subject property when developed has the potential to provide street connections to the properties to the north, east, west, and south for proposed and existing development.

**4. DESIGN LAYOUT/PATTERN OF DEVELOPMENT: How does the design layout of the proposed parcels, lots, and roads fit with the existing pattern of development in the area?**

Applicant Findings: The layout of the site has been designed to connect to the existing streets within Philips Estates Phase 2 and the subdivision to the south. Oriole Street stubs to the property along the east property line and Quail Run Avenue stubs to the property along the south property. These connections provide an efficient circulation pattern to and from the development.

## **5. NATURAL, PHYSICAL AND GEOGRAPHIC FEATURES:**

### **a. Flood Hazards:**

**If any portion of the parcel is in the flood plain or adjacent to a water body, how will the proposed master planned development comply with all standards for riparian setbacks, flood hazard protection, or the Natural Resources Overlay District?**

Applicant Findings: There are no floodplains identified on the site.

### **b. Wetlands:**

**If any portion of the parcel contains wetlands, are any of these wetlands identified in the Stayton Comprehensive Plan? How will the proposed development comply with all wetland development requirements?**

Applicant Findings: There are wetlands located on the west portion of the site. The wetlands will not be developed and are designated as Open Space as shown on the site plan.

### **c. Steep Slopes:**

**If there are any slopes of 15% or greater on the site, how will the proposed development address the potential impacts of the steep slopes?**

Applicant Findings: A grading plan has been provided to show slopes. Any slopes 15% or greater on the site will be dealt with in a manner that meets code requirements and does not have any negative impacts.

### **d. Natural Features:**

**If there are other important natural, cultural, or historic features on the site, how will the proposed master planned development address potential impacts to those features?**

Applicant Findings: As stated above, there are wetlands located on the west portion of the site. The wetlands will not be developed and are designated as Open Space as shown on the site plan. There are no other natural, cultural, or historic features on the site.

**How do the above physical or geographic conditions warrant a departure from the standard requirements of the zoning district where the master planned development is located?**

Applicant Findings: The location and size of the wetlands area on the western portion of the site warrant departure from the standards. The wetlands area makes it difficult to utilize the whole site for development. Therefore, the applicant is proposing 22 smaller lots than the minimum, along with 2.49 acres of Open Space area.

## **6. HISTORIC SITES OR STRUCTURES:**

**If any historic sites or structures exist on or adjacent the property, how will the proposed master planned development comply with all historic preservation standards?**



Applicant Findings: This property is not designated as a historic site or any adjacent properties.

**7. PHASED DEVELOPMENT: If the master planned development is a phased development, how will those phases comply with the standards for phasing?**

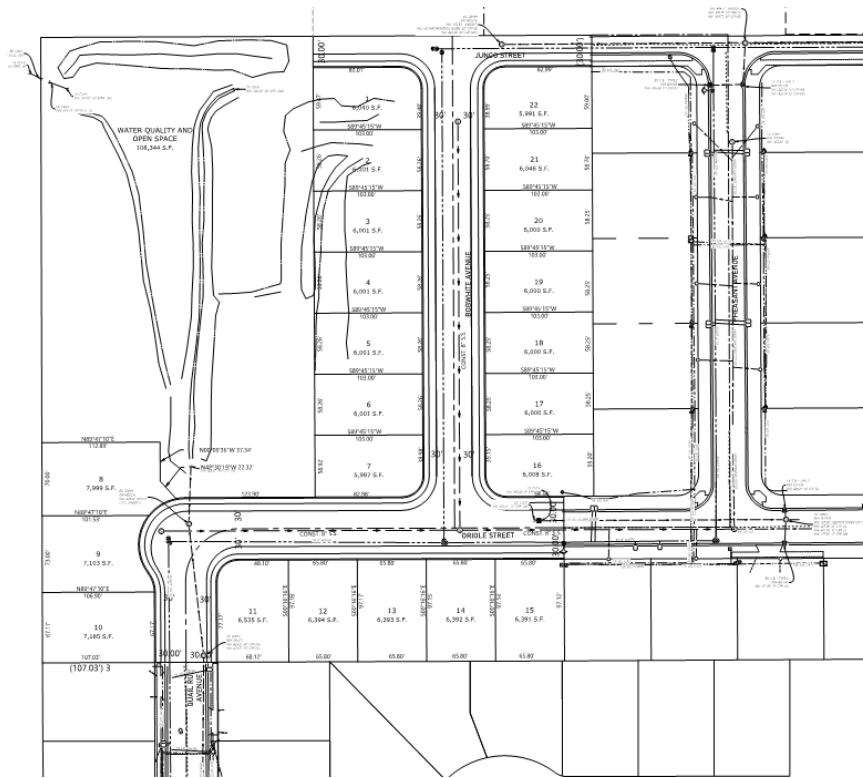
Applicant Findings: This is not a phased development.

**8. DEED COVENANTS AND RESTRICTIONS: Will any deed covenants or deed restrictions apply to the proposed master planned development? If yes, attach as Exhibit C**

Applicant Findings: At this time there are no deed covenants and restrictions that will apply to the proposal.

**SECTION 17.26.050 (TRANSPORTATION IMPACT ANALYSIS REQUIREMENTS)**

Applicant Findings: The applicant is proposing a 22 lot PUD with 2.49 acres of open space on property zoned LD and about 7.11 acres in size. The size of the development does not warrant the need for a TIA (Transportation Impact Analysis).



**17.24.100:**

2) Design Standards a-c: The required design standards will be reviewed for compliance at the time of building permit submittal.

d: Open Space: There is about 2.49 acres of open space designed on the site. Therefore, providing 35% opens space for the PUD. The open space area is identified on the site plan.

There are wetlands on the site that will be part of the open space area and will not be developed.

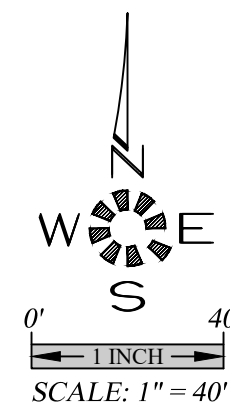
There are no identified pedestrian trails in the area. However, paved sidewalks are provided which connect to the existing and proposed sidewalk system.

e: Streets: All the street surrounding the subject property will be developed to City standards. The existing street system is all ready in place, and any new streets as shown on the site plan will be in compliance with design standards.

As shown on the site plan there are no long blocks. Street connections and sidewalks provide adequate pedestrian and vehicular access.

g) Density: There is 4.62 acres of developable land with 22-lots proposed. Density on the site does not exceed the requirements of the Code.

The applicant is not requesting a density bonus.



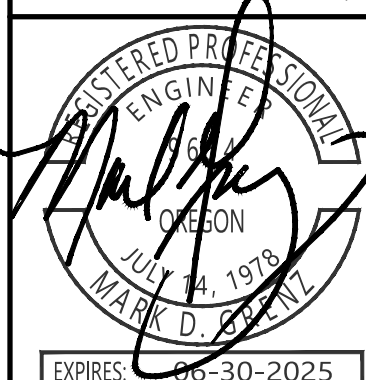
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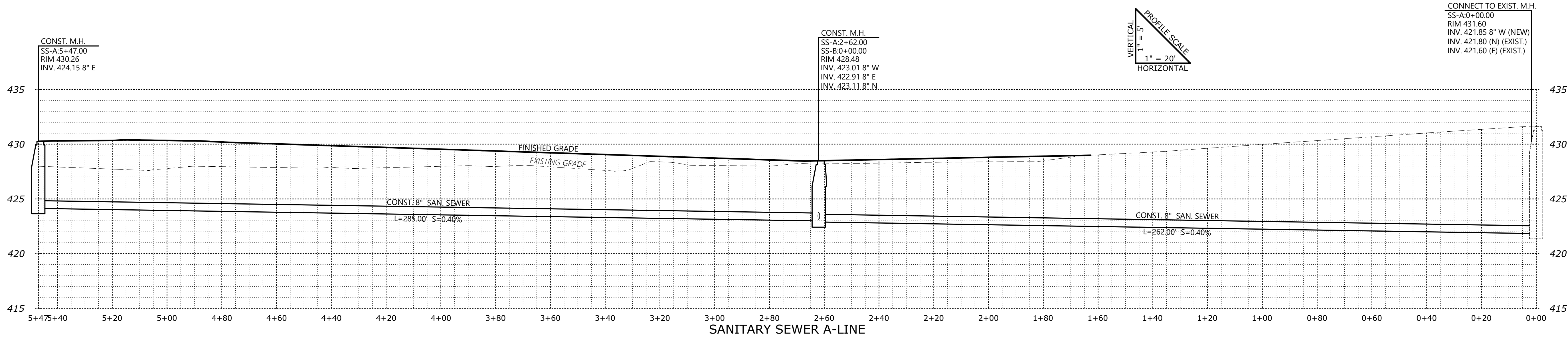
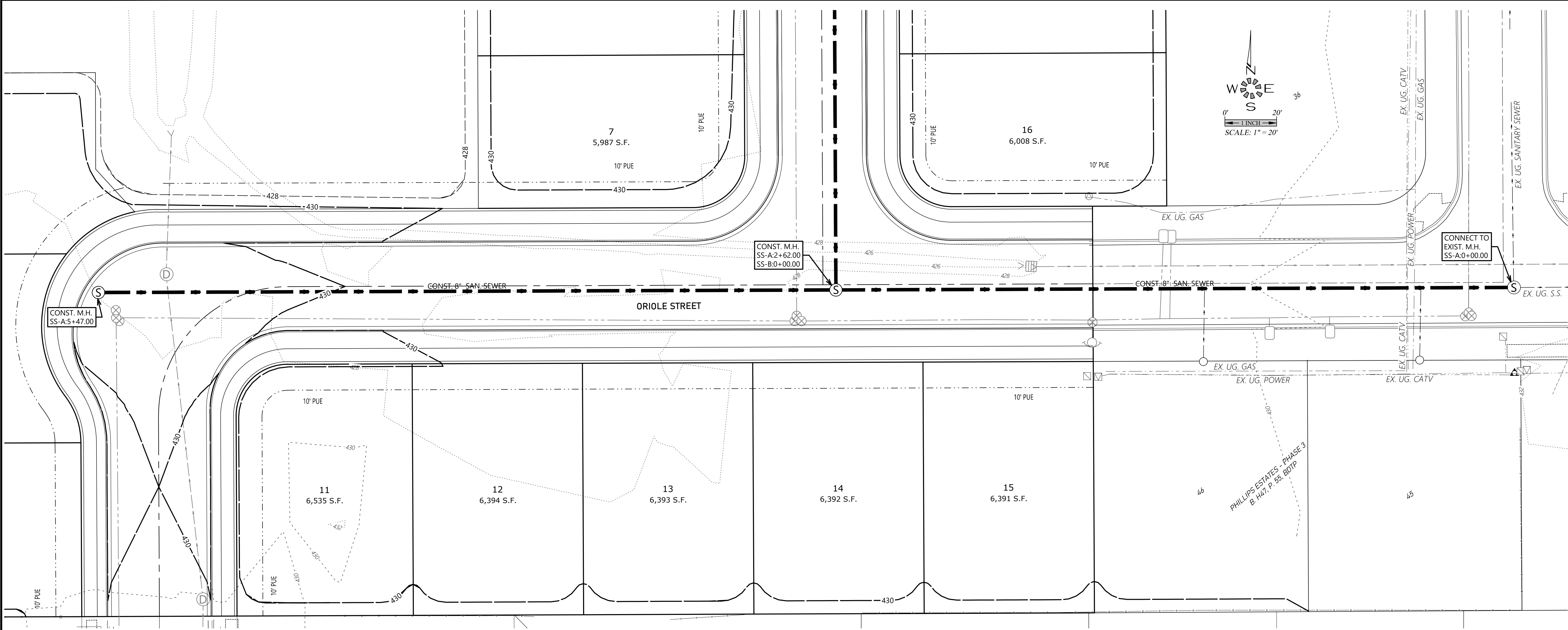
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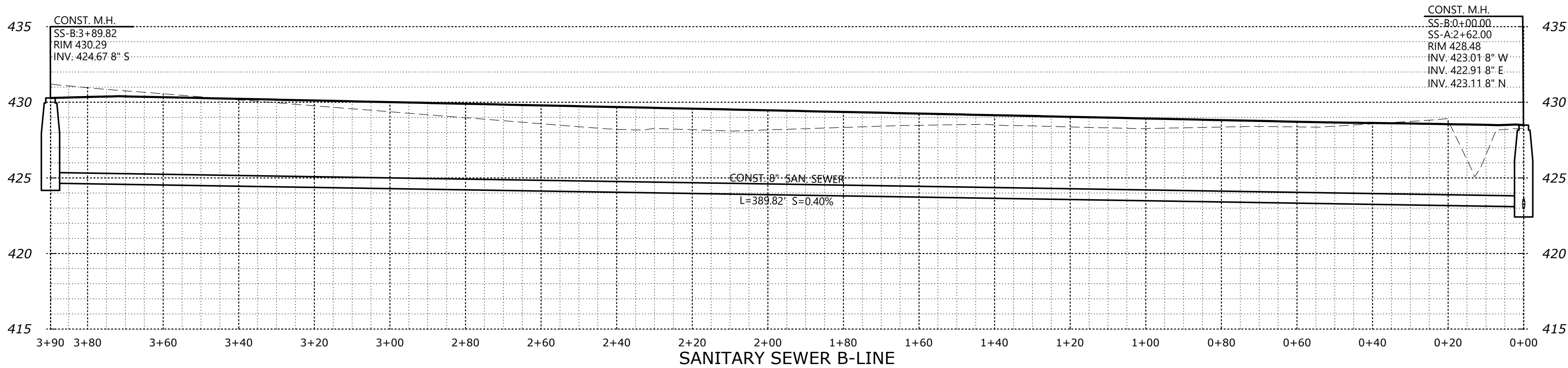
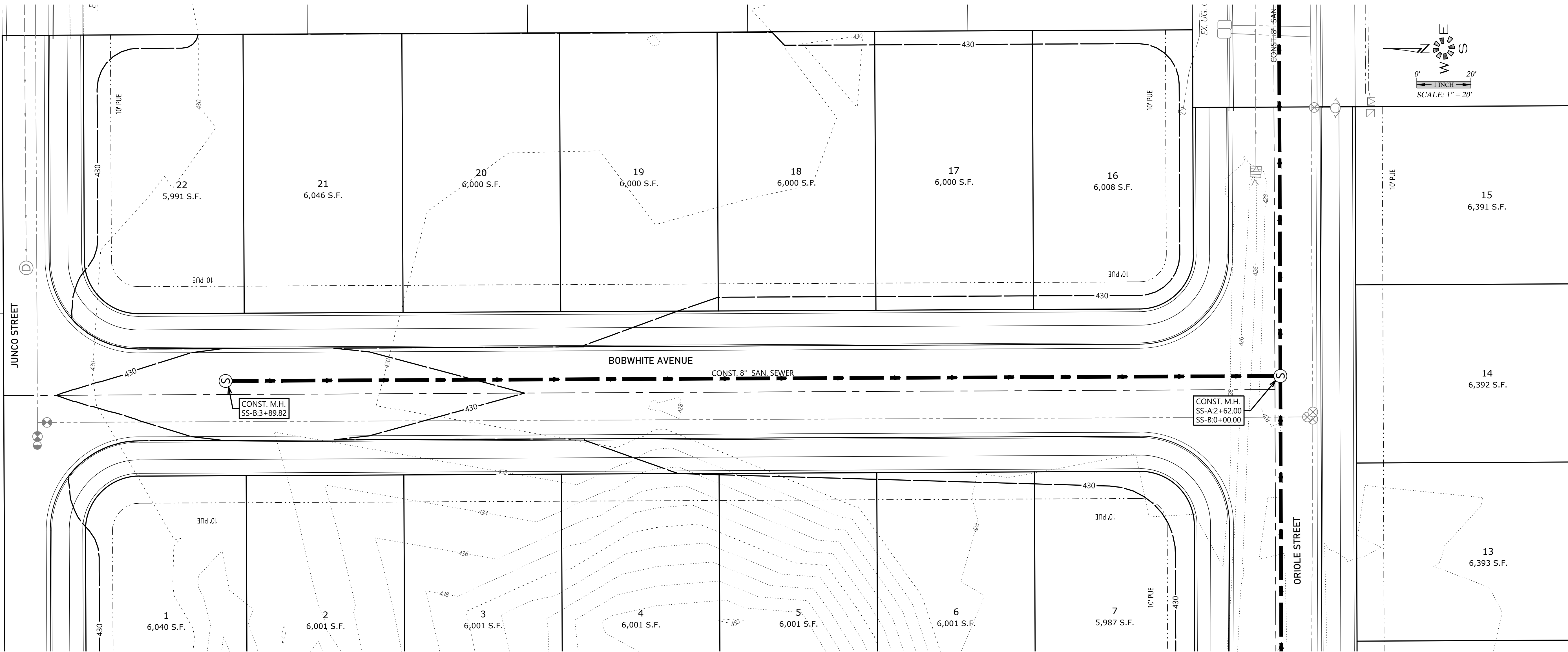
# SITE



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VERTICAL  
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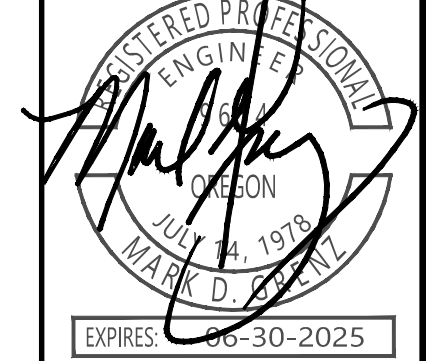
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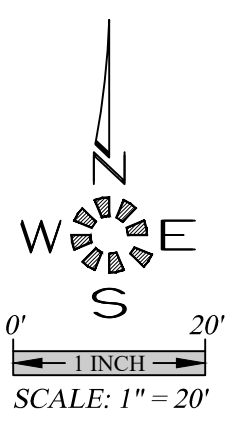
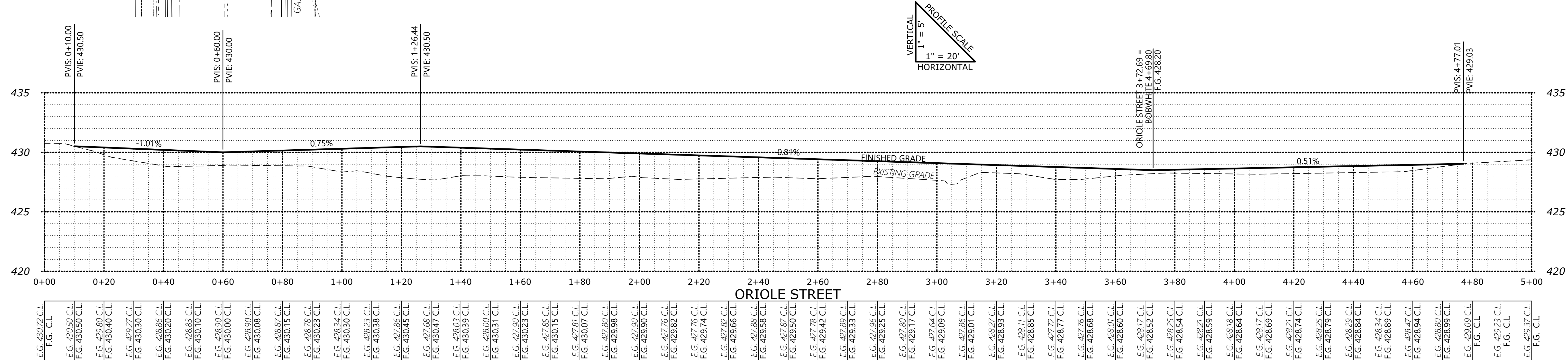
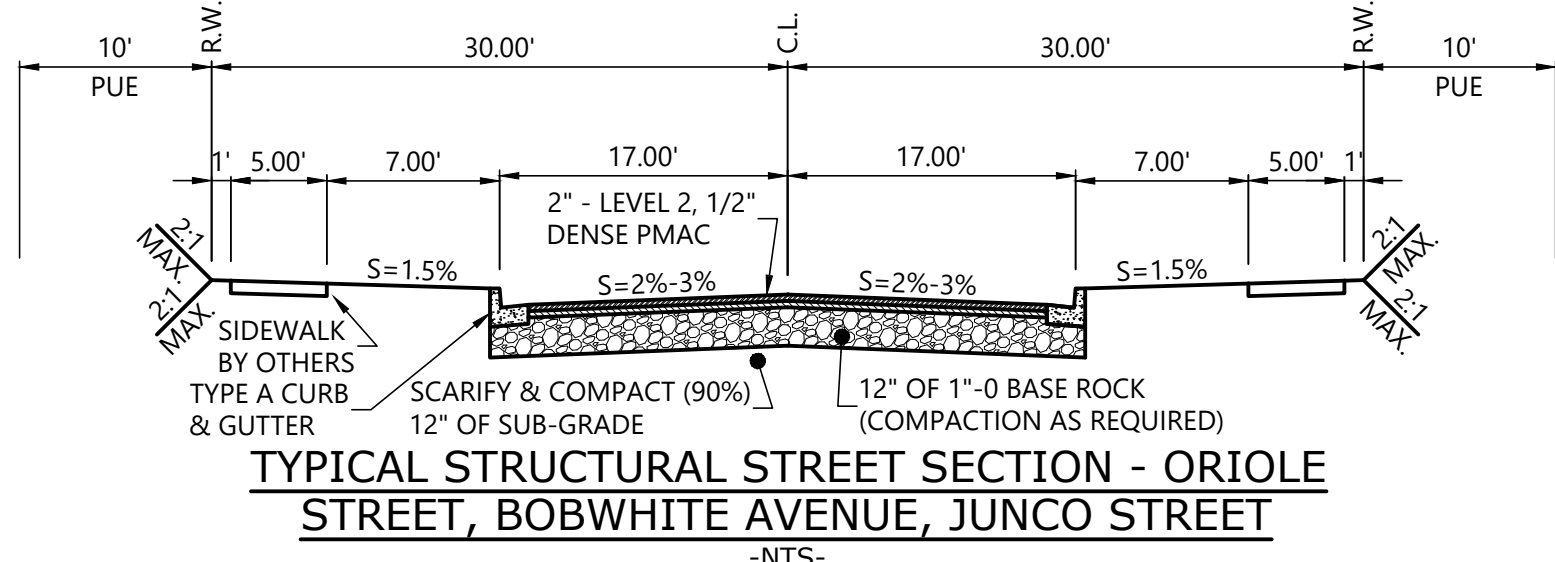
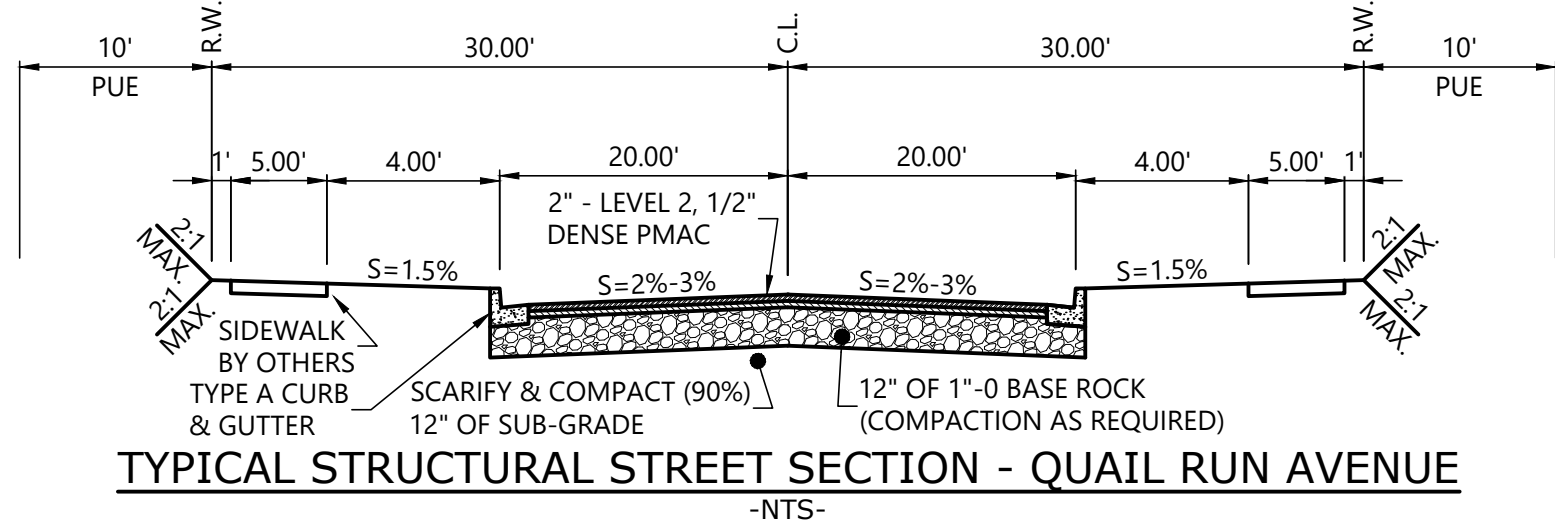
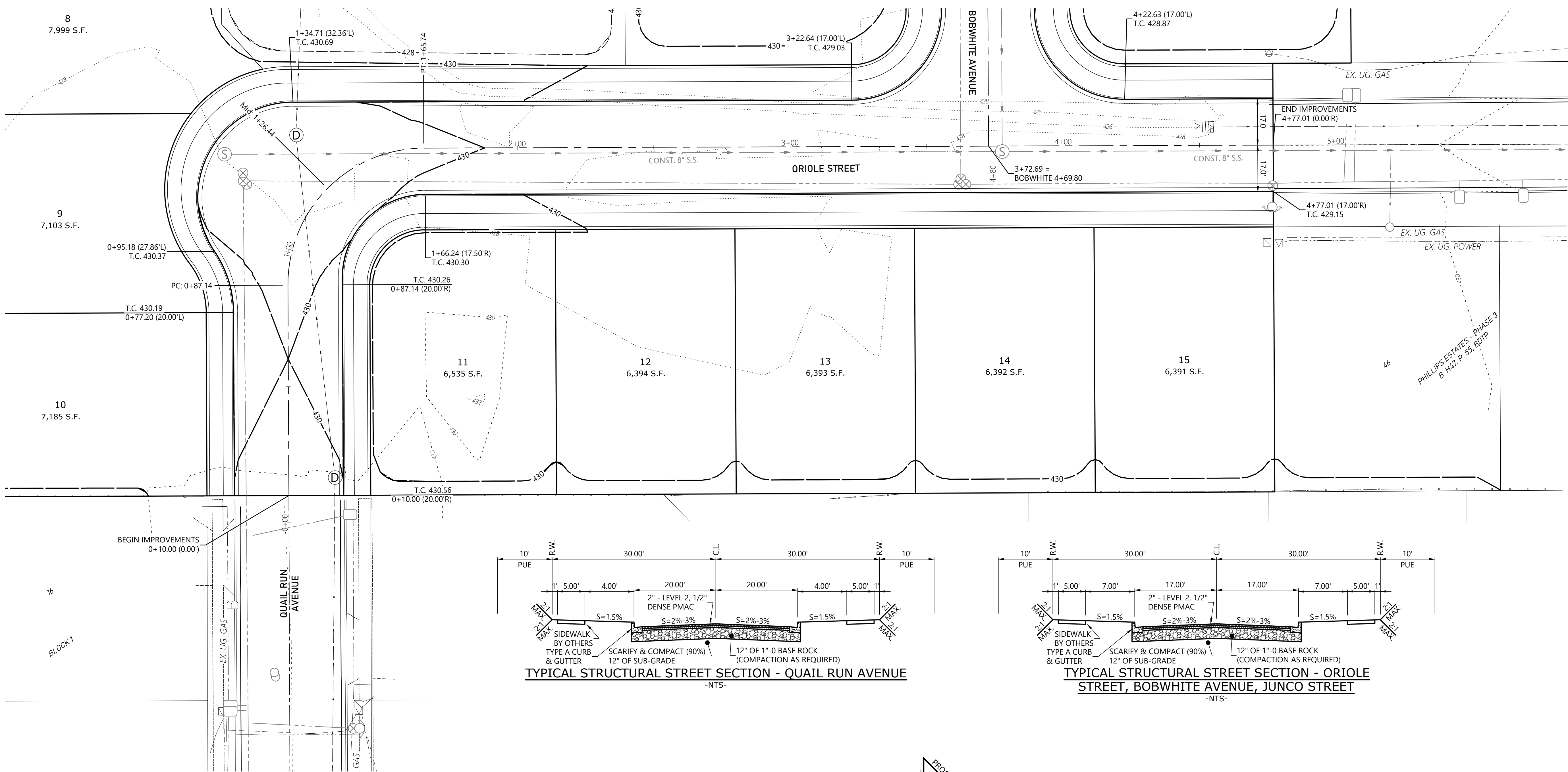
# SANITARY SEWER PLAN

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STREET PLAN

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REGISTERED PROFESSIONAL ENGINEER  
OREGON  
JULY 1, 1970  
MARK D. GARDNER

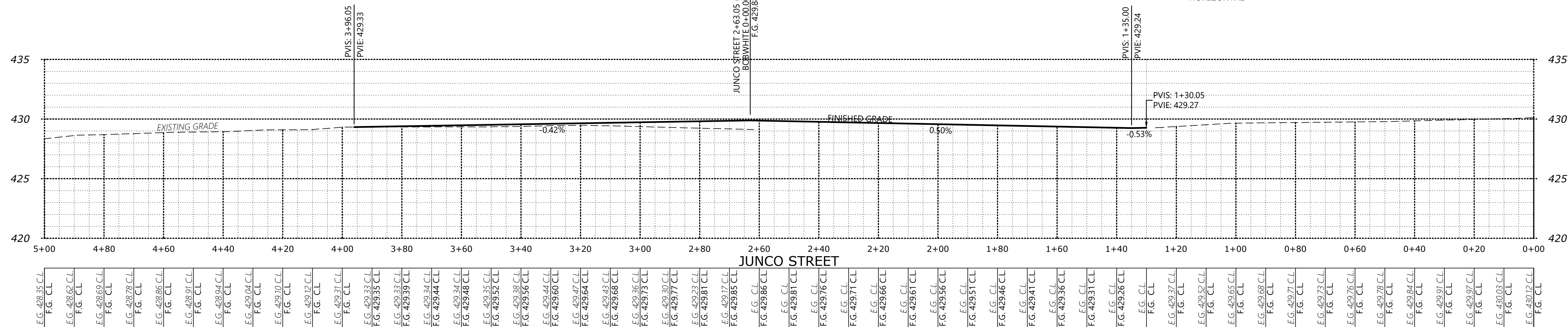
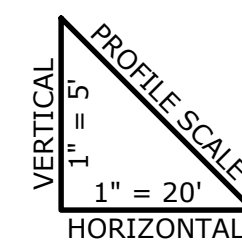
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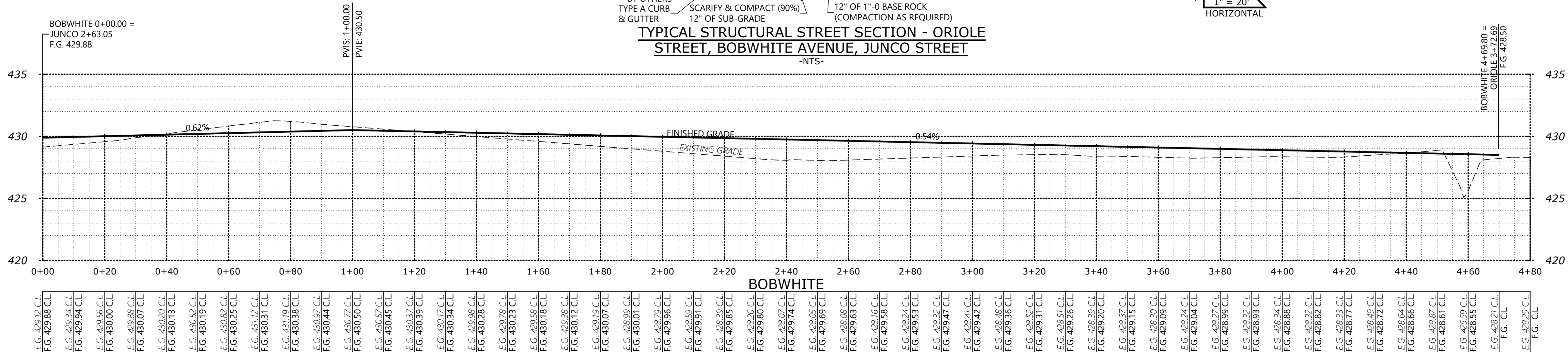
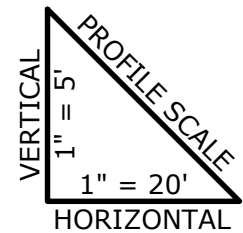
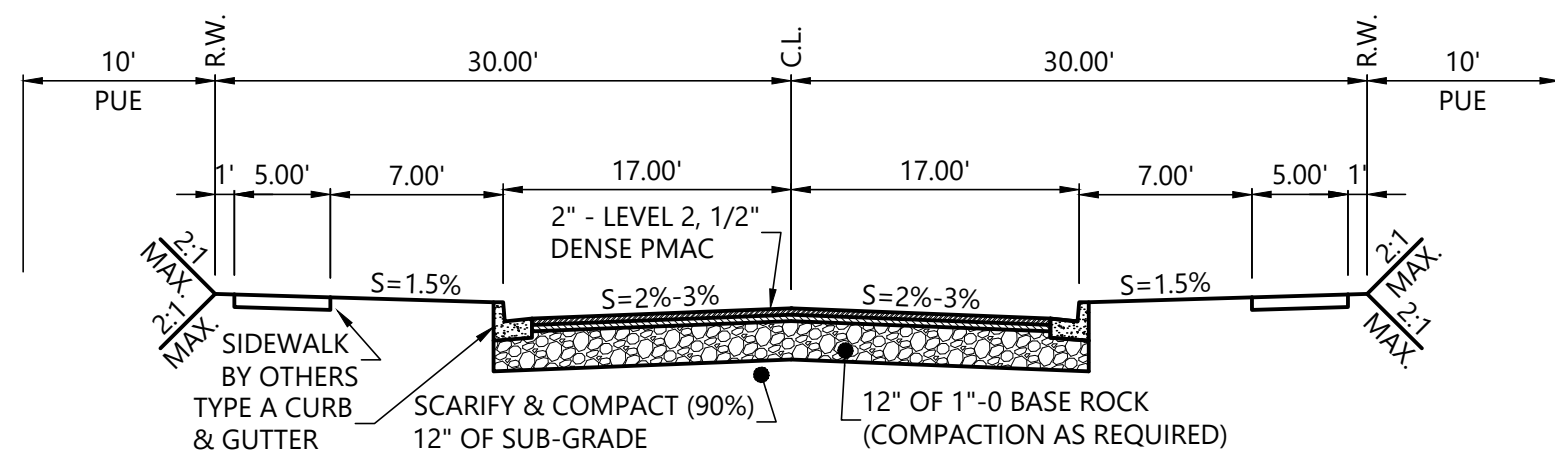
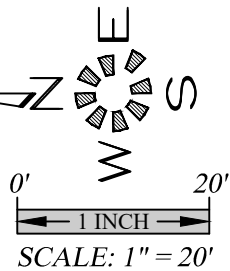
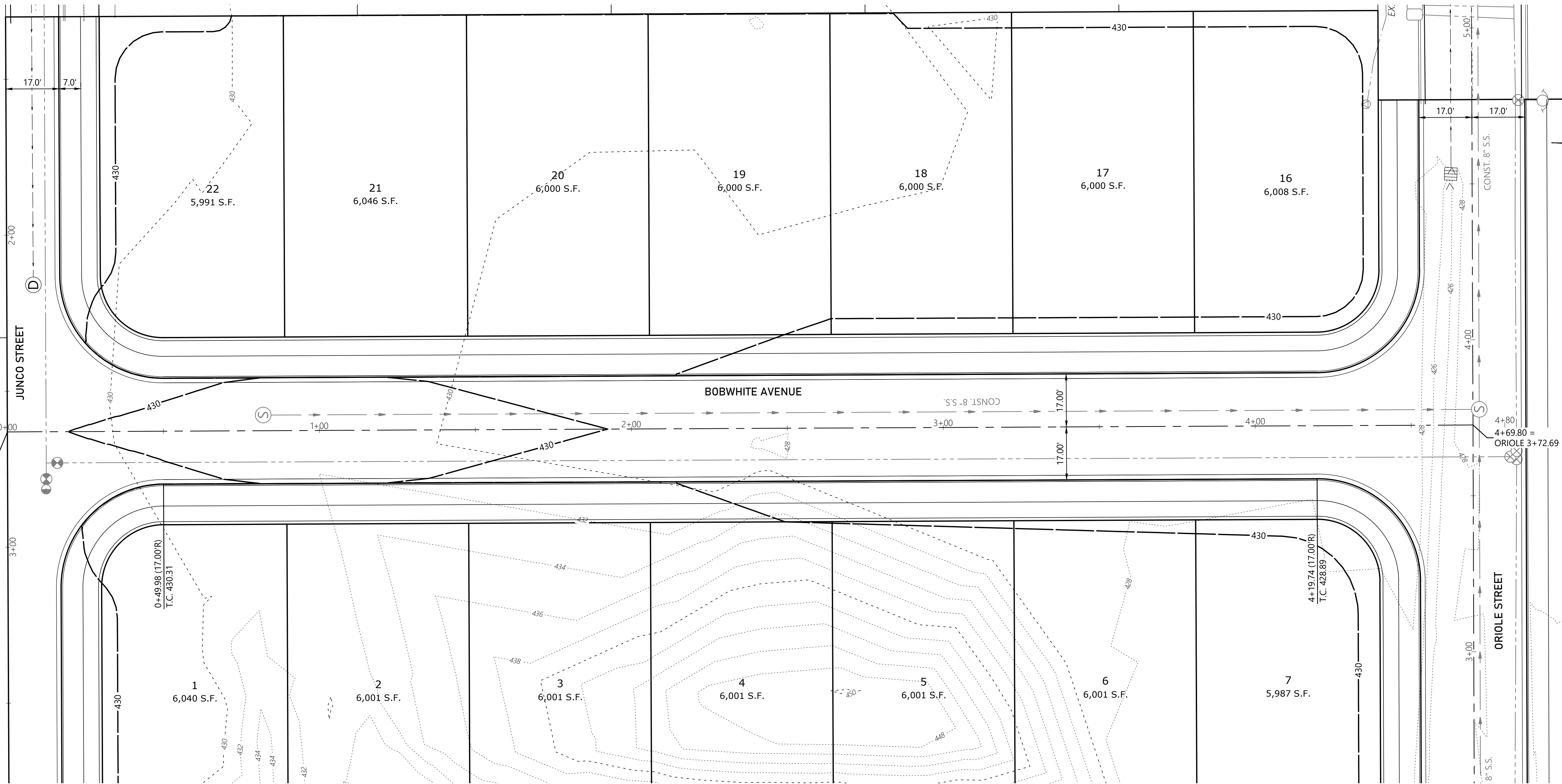
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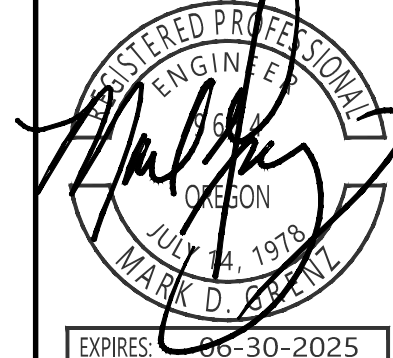


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## STREET PLAN

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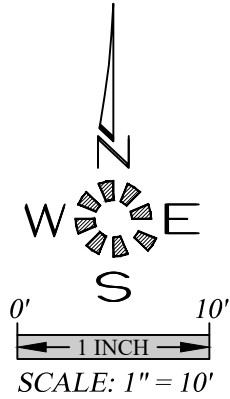
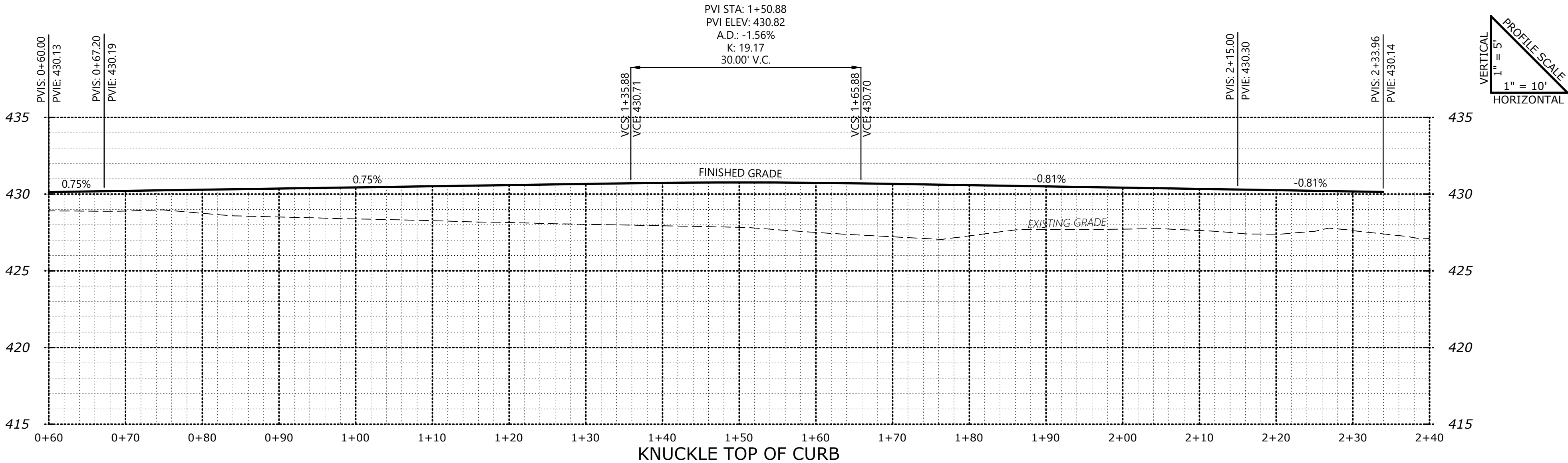
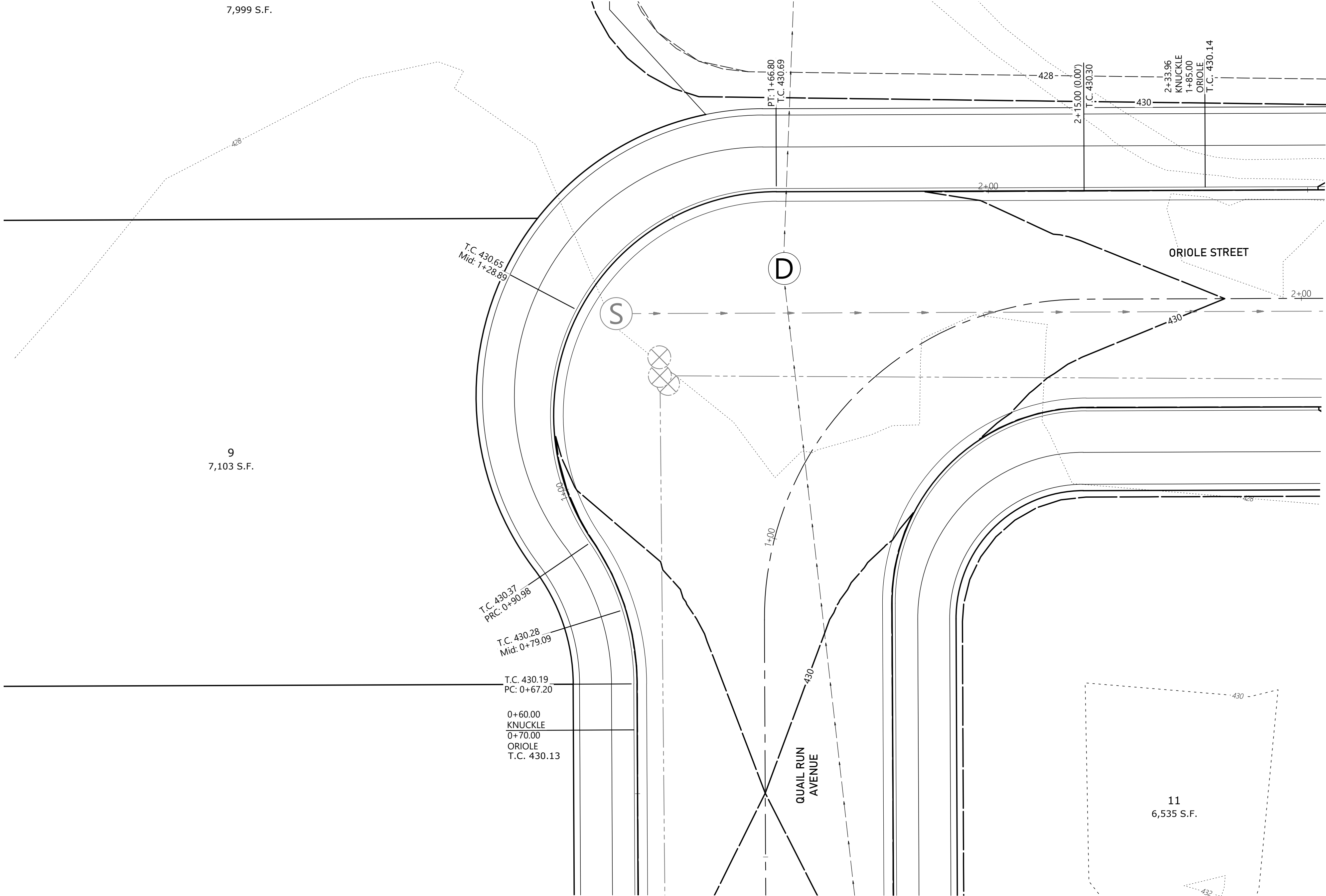
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STREET PLAN

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# PRELIMINARY EXISTING CONDITIONS PLAN

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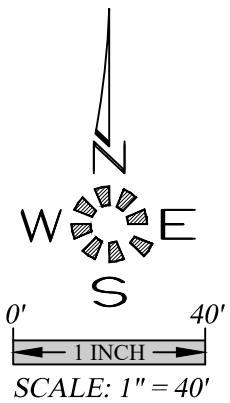
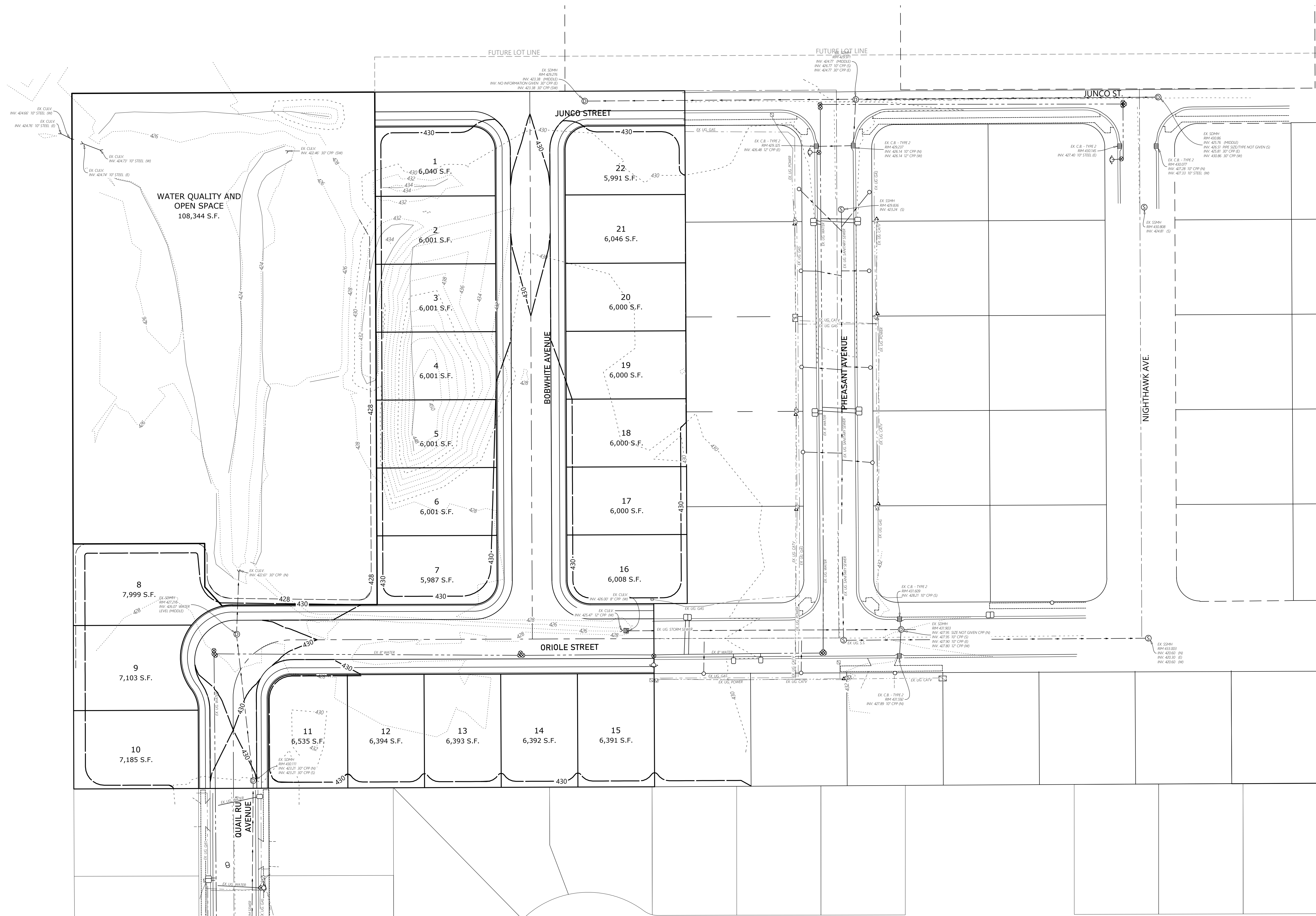
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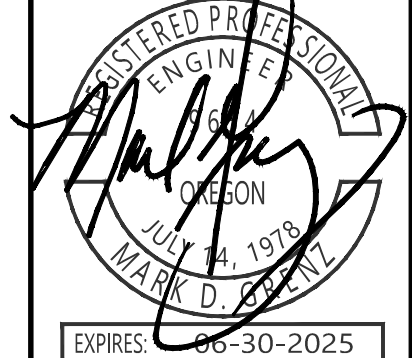
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**LOT GRADING PLAN**

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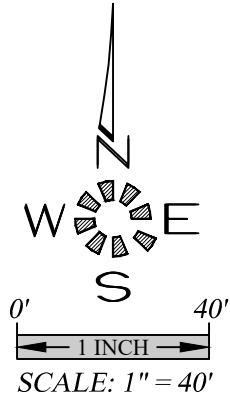
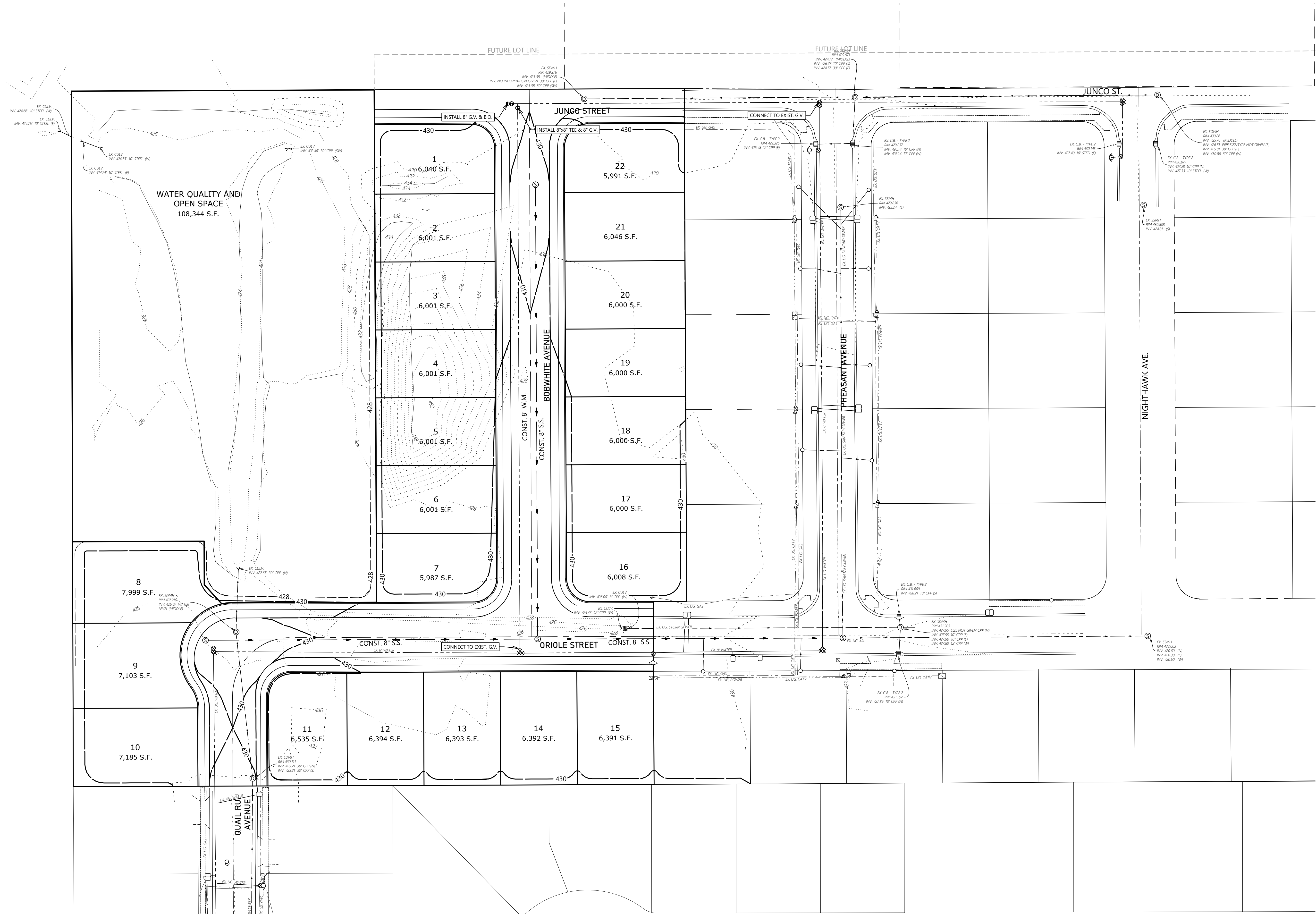
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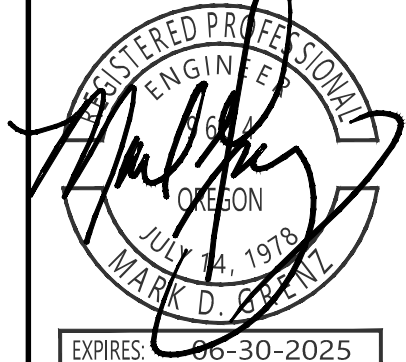
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PRELIMINARY UTILITY  
PLAN

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UT



**From:** [Gwen Johns](#)  
**To:** [Jennifer Siciliano](#)  
**Subject:** RE: Request for Comments on Application for Conceptual Master Planned Development Plan - LU # 11-07/24  
**Date:** Thursday, June 5, 2025 6:10:22 PM

---

Honestly, I don't have the knowledge to look at the plans and know what it all means.

My concern is always parking. Some of these new subdivisions skimp on street parking and put in super short driveways so two cars or just a big car won't fit and then there is not enough street parking. 6 ft of curb between driveways will create long term livability issues. Honestly, I haven't looked close enough to the plans to know but that would be my input. Ample parking. I've been in neighborhoods where people can't have visitors park in front of their home and have to walk a block to their house.

---

**From:** Jennifer Siciliano <[jsiciliano@staytonoregon.gov](mailto:jsiciliano@staytonoregon.gov)>  
**Sent:** Thursday, June 5, 2025 11:52 AM  
**To:** Barry Buchanan <[bbuchanan@staytonoregon.gov](mailto:bbuchanan@staytonoregon.gov)>; Adam Kohler <[Adam.Kohler@PacifiCorp.com](mailto:Adam.Kohler@PacifiCorp.com)>; breich@co.marion.or.us; Brent Stevenson <[brents.swcd@wvi.com](mailto:brents.swcd@wvi.com)>; brian.kelley@nwnatural.com; Caleb Cox <[ccox@kittelerson.com](mailto:ccox@kittelerson.com)>; Christopher Clark <[Christopher.clark@pacificorp.com](mailto:Christopher.clark@pacificorp.com)>; dfreitag@santiamhospital.org; Doug Kintz <[doug.kintz@staytonfire.org](mailto:doug.kintz@staytonfire.org)>; Erik Hoefer <[erik@sctcweb.com](mailto:erik@sctcweb.com)>; Gwen Johns <[gjohns@staytonoregon.gov](mailto:gjohns@staytonoregon.gov)>; Janelle Shanahan <[jshanahan@co.marion.or.us](mailto:jshanahan@co.marion.or.us)>; Jay Alley <[jay.alley@staytonfire.org](mailto:jay.alley@staytonfire.org)>; John Eckis <[johneckis@sctcweb.com](mailto:johneckis@sctcweb.com)>; John Rasmussen <[jrasmussen@co.marion.or.us](mailto:jrasmussen@co.marion.or.us)>; Kendall Smith <[ksmith@staytonoregon.gov](mailto:ksmith@staytonoregon.gov)>; kinman@co.marion.or.us; Lee Loving <[lee.loving@nsantiam.k12.or.us](mailto:lee.loving@nsantiam.k12.or.us)>; Max Heller <[mheller@kittelerson.com](mailto:mheller@kittelerson.com)>; Max Hepburn <[mhepburn@co.marion.or.us](mailto:mhepburn@co.marion.or.us)>; MCPW Engineering <[mcldep@co.marion.or.us](mailto:mcldep@co.marion.or.us)>; Michael Schmidt <[mschmidt@staytonoregon.gov](mailto:mschmidt@staytonoregon.gov)>; Nicole Willis <[nicole.willis@pacificorp.com](mailto:nicole.willis@pacificorp.com)>; oregonconstruction@wavebroadband.com; planning@co.marion.or.us; Richard Walker (<[richardw@aks-eng.com](mailto:richardw@aks-eng.com)> <[richardw@aks-eng.com](mailto:richardw@aks-eng.com)>); rlee@waveboardband.com; Salem Development Services <[developmentsservices@cityofsalem.net](mailto:developmentsservices@cityofsalem.net)>; Susan Wright <[swright@kittelerson.com](mailto:swright@kittelerson.com)>; Troy Wheeler <[twheeler@co.marion.or.us](mailto:twheeler@co.marion.or.us)>; Wayne.clevenger@pacificorp.com  
**Cc:** Susan Bender <[sbender@staytonoregon.gov](mailto:sbender@staytonoregon.gov)>  
**Subject:** Request for Comments on Application for Conceptual Master Planned Development Plan - LU # 11-07/24

The City of Stayton has received an application for Conceptual Master Planned Development Plan at 1601 Oriole Street a 7.11-acre property.

The application materials include the applicant's form, narrative, and conceptual plans. I have attached our usual request for comments form.

**Please send responses by June 27, 2025.**

Thank you for your assistance.

Jennifer Siciliano  
Stayton Community and Economic Development Director

**From:** [Caleb Cox](#)  
**To:** [Jennifer Siciliano](#)  
**Cc:** [Max Heller](#); [Susan Wright](#)  
**Subject:** Re: Request for Comments on Application for Conceptual Master Planned Development Plan - LU # 11-07/24  
**Date:** Tuesday, June 10, 2025 2:39:53 PM  
**Attachments:** [RE Pre-Application for Subdivision for Philips Estates - 1601 Oriole Street.msg](#)

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**CAUTION:** This email originated from **Outside Your Organization**. Exercise caution when opening attachments or on clicking links from unknown senders. Please contact Information Technology for assistance.

Hi Jennifer,

It appears the applicant did not include a TIA in their materials. Page 7 of their narrative says the development does not warrant the need for a TIA, but provides no justification for this.

In July, 2024 we reviewed the Pre-app for this project and requested a TIA (See attached email). If the applicant feels a TIA is not warranted, then they'll need to prepare a transportation assessment letter to document the trip generating characteristics of the development per 17.26.050.2 and clearly show that the triggers for a TIA are not met.

Feel free to give me a call if you want to discuss further.

Thanks,

**Caleb Cox, PE**  
Senior Engineer

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**Kittelson & Associates, Inc.**  
Transportation Engineering & Planning  
503.228.5230  
503.535.7453 (direct)

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**From:** Jennifer Siciliano <[jsiciliano@staytonoregon.gov](mailto:jsiciliano@staytonoregon.gov)>  
**Sent:** Thursday, June 5, 2025 11:57 AM  
**To:** Caleb Cox <[ccox@kittelson.com](mailto:ccox@kittelson.com)>  
**Cc:** Max Heller <[mheller@kittelson.com](mailto:mheller@kittelson.com)>; Susan Wright <[swright@kittelson.com](mailto:swright@kittelson.com)>  
**Subject:** FW: Request for Comments on Application for Conceptual Master Planned Development Plan - LU # 11-07/24

**[External Sender]**

Please review, provide feedback, and create memorandum from your findings.

Thank you,

Jennifer

---

**From:** Jennifer Siciliano  
**Sent:** Thursday, June 5, 2025 11:52 AM  
**To:**  
**Cc:** Susan Bender <[sbender@staytonoregon.gov](mailto:sbender@staytonoregon.gov)>  
**Subject:** Request for Comments on Application for Conceptual Master Planned Development Plan - LU # 11-07/24

The City of Stayton has received an application for Conceptual Master Planned Development Plan at 1601 Oriole Street a 7.11-acre property.

The application materials include the applicant's form, narrative, and conceptual plans. I have attached our usual

Daniel L. Harris, Arbitrator  
P O Box 51444  
Eugene, OR 97405  
Telephone: 541-324-1329  
Fax: 541-686-6564  
Email: harrismediator@gmail.com

ARBITRATION SERVICE OF PORTLAND

**City of Stayton,**

**Claimant,**

vs.

**JCNW Family LLC,**

**Respondent.**

ASP No. 141222

**FINAL AWARD**

An arbitration hearing was held in the above matter on May 11-14, 2015, in Salem, Oregon, before the undersigned arbitrator. This arbitration was conducted under the rules and process of the Arbitration Service of Portland (ASP), pursuant to paragraph 22 of the Development Agreement entered into between the parties. Claimant was represented by Wallace W. Lien and Richard J. Kuhn; Respondent was represented by Darien Loiselle and Stephanie Holmberg. A Preliminary Award was rendered following the guidelines set forth in ASP Rule 31. The Final Award (1) incorporates the additional evidence, information and argument received from the parties as part of the process of developing a workable remedial plan, and (2) includes an award to Claimant of its costs, disbursements and reasonable attorney fees.

The facts recounted below constitute the arbitrator's essential findings of fact, drawn from the evidence produced from the arbitration hearing.

## **FACTS**

1. In 1979, the eastern 10 acres of what is referred to as the Phillips' property, was annexed into the City of Stayton, Oregon. About twenty years after this initial annexation, a contract for agreement to annex the western 10 acres of the Phillips' property was approved by the City of Stayton and the owners of the property. This annexation agreement was extended by the parties until October 7, 2008.

2. Respondent purchased the Phillips' property in 2006. On August 14, 2006, the planning commission for the City of Stayton approved a subdivision for 68 lots on approximately 19.48 acres (Ex #2). A preliminary plat of the proposal was submitted as part of the development process (Ex #8). This approval included a condition requiring the stormwater drainage to be routed to Mill Creek. Thereafter, construction plans were submitted to the City showing a proposed subdivision divided into three phases. In August of 2008, the City approved construction plans for Phase 1. In April of 2009, the subdivision plat for Phase 1 was recorded for the first 20 lots on 5.3 acres.

3. A Stormwater Master Plan for the City (R Ex # 7) was developed over a number of years, with the final plan being adopted in April 2009. The preliminary drafts of this plan guided development in and around the City. The plan describes the Phillips' property as being situated within the Mill Creek drainage basin, which is characterized as having a high groundwater table, poorly drained soils and relatively open flat lands. The plan describes the anticipated need for improvements to expand the City's stormwater facilities to the Phillips' property. The expansion was to be of a size and design sufficient to convey and accommodate existing runoff from the Quail Run Subdivision area.

4. In January of 2010, the City adopted a requirement that the voters of the City must approve any annexations larger than one acre. In June of 2012, the City Council initiated the annexation process for the subject property and referred said annexation to the voters on August 20, 2012. The voters approved the annexation on November 6, 2012. The Santiam Water Control District (SWCD) appealed this annexation to the Oregon Land Use Board of



Appeals. In January of 2013, the Respondent and the SWCD entered into an agreement (Ex #1) resulting in the withdrawal of the LUBA appeal. Thereafter, the City Council finalized the annexation.

5. The settlement agreement entered into between Respondent and the SWCD includes a provision that prohibits Respondent from undertaking “any future development” on the Phillips’ property that would “materially increase the amount of impervious surfaces” on the Phillips’ property “without constructing a City approved stormwater system that would convey the stormwater from the Property to Mill Creek before such development or concurrently with such development.” (Ex #1)

6. During the first six months of 2013, the City worked with the “managing member” for JCNW Family, LLC, Bill Martinak, to negotiate the terms of a development agreement for the area annexed. As part of these negotiations, the City and Respondent had been discussing development of a mechanism for funding the improvements required to address stormwater drainage requirements on the Phillips’ property. In time, it became clear that the City was not in a position to adopt any of the funding sources or mechanisms under consideration (system development charges, development fees on utility charges, or grant proceeds) in time to accommodate Respondent’s timeline for development. Respondent, nevertheless, elected to proceed with the understanding that Respondent would be paying for most, if not all, of the costs associated with the development and construction of a stormwater drainage system. Once this fact was established, Respondent came up with an alternative plan for addressing stormwater runoff on the Phillips’ property, which involved the construction of a detention/infiltration basin in the northwest corner of the Phillips’ property.

7. On June 6, 2013, JCNW Family, LLC and the City of Stayton entered into a Development Agreement (Ex #3) addressing development of Phases I and II. The northwest corner of the property was identified in the Development Agreement as Tract A; the development of Tract A was to be addressed in a separate agreement to be negotiated at the time Tract A “is proposed to be replatted into Phase III.” The Development Agreement (at paragraph 10) grants

to the City an easement across Tract A “for the discharge, retention, detention and accumulation of stormwater from all City sources.” This provision required the developer to manage all stormwater coming onto Tract A from all City sources, at its sole expense. Management of said stormwater was to be conducted by Respondent “in accordance with City standards and regulations, and with City approval of such management systems.” (Ex #3)

8. In June and July of 2013, Respondent’s engineer hired a company to perform infiltration tests (see Ex #s 6 and 7). The first three tests were performed on June 14. From those tests it was observed by the testers that they “did not observe discernible infiltration into the subsurface materials,” and recommended that “the infiltration designer consult the appropriate design manual prior to proceeding with infiltration system design.” (Ex #6). The initial test results were referred to by Respondent’s engineer as “extremely damaging to our cause.” (Page 1 of Ex #6). A follow up test was performed on July 10, which provided the information relied upon in the design drawings prepared in August of 2013 (Ex #9). The test results were not shared with City personnel. The City Engineer testified that upon a later review of the test results (provided in discovery) he concluded that had the results of the tests been provided to him at the time the tests were conducted, he would have rejected the Respondent’s infiltration basin plan because of the limited number of tests performed, the time of year they were performed, and the failure to account for the high water table in the area.

9. The City Engineer reviewed the construction plans a number of times from July through September 2013 (see Ex #s 30-33). In the final review, a number of redline mark ups were included, which Respondent was directed to address before construction began. Construction was commenced without addressing most of the issues set forth in the redline mark ups prepared by the City Engineer.

10. On July 9, 2013, the Phase 2 construction plans were submitted to the City for review. During July and August of 2013, the construction plans went through various revisions. Construction for Phase II began on August 19, 2013. Construction of the retention pond began in early October 2013. At the time, the City Engineer expressed concern that the construction of

the pond was proceeding before the final design had been reviewed and approved by the City (Ex #42)

11. The detention/infiltration basin design is described in detail in Ex #s 9 and #10. The design anticipates a 4.1 inch/hour infiltration rate based on the test performed in the area. The design also anticipates receiving water from the Quail Run subdivision at the rate of 13.3 CFS on a ten-year event (which it was observed is slightly higher than the rate provided for in the master plan). The system was designed to allow for “zero runoff” (referred to as 0 CFS discharge), except in a 50-year storm event.

12. An aerial photo was taken of the retention pond on March 12, 2014 (Ex #19). In mid to late April, the City Planner and the Public Works Director testified that they reviewed the photo and immediately realized that the system wasn’t working right: more water was in the pond than should have been the case if the system was working correctly. They came to the initial conclusion that a hydrological analysis would need to be performed before Phase III could be considered.

13. “As-built” drawings (Ex #29) were prepared in November of 2013. These drawings included a description of a 10” pipe, installed at the base of the weir located at the northwest corner of the retention pond (see Ex #s 5 and 29). The pipe drained water from the pond onto the properties to the north and west of the pond. The 10” drainage pipe was not included in any design drawings prior to its installation and was not installed with the City’s knowledge or approval. The City Engineer first learned about the presence of the pipe in September 2014. Other City personnel became aware of the inclusion of the pipe in the spring of 2014 but did not view the presence of the pipe as significant. Respondent was ordered to plug the pipe in the fall of 2014.

14. The plat for Phase II (lots 21-26 on 7 acres) was approved by the City on April 29, 2014. On May 8, 2014, Mr. Martinak met with City officials for the purpose of discussing the development of Phase III. At that meeting, the City raised concerns with Mr. Martinak about the design and construction of the drainage basin and the need for further analysis and study before

considering the development of an agreement relating to Phase III. The concerns and directives from the City relating to the drainage basin were outlined by e-mail from the City Engineer, John Ashley, to Martinak and Ward, dated May 9, 2014 (Ex #15). In this email, Ashley asks the developer to prepare a more detailed study and analysis, and makes it clear that the analysis would have to be “completed before you prepare and submit plans for the next phase.” Between May and September, for various reasons explained by Martinak and Ward at the hearing, very little was done towards the development of a more thorough analysis.

15. On September 23, 2014, Mr. Martinak and Mr. Ward (representing Respondent) met with the City Administrator and City Engineer, among others. Respondent wanted to know if they could finish Phase IIB of the development. Martinak and Ward were informed by City personnel present that there would be no further development until a satisfactory analysis of the detention basin had been completed. At this meetings, the City Engineer informed the Respondent in detail exactly what additional testing and analysis would have to be performed. Ward and Martinak requested of the City proof that the retention basin was not working as designed. In this meeting, Mr. Ward shared with Mr. Ashley for the first time a set of “as-built” plans, prepared on November 4, 2013 (Ex #29). Shortly after this meeting, Campbell and Ashley reviewed the “as-built” plans; in that review they discovered for the first time the presence of the 10” pipe built into the base of the weir. To Campbell and Ashley, the undisclosed inclusion of the pipe in the weir was a “game changer” because it defeated the stated goal of the retention pond to accomplish “zero discharge.”

16. In September and October of 2014, Mr. Martinak met with City officials to discuss the design and function of the retention pond. On October 17, 2014, Mr. Martinak met with Keith Campbell for the purpose of addressing concerns over the design of the retention pond. It was acknowledged by all parties at that time that the retention pond could not appropriately address the storm drainage demands being placed upon it. Mr. Martinak indicted at the time that he didn’t believe there was a cost-effective solution.

17. On October 20, 2014, the City Council went into executive session where the

Council discussed with the City Administrator a proposal for issuing a stop work order until the deficiencies in the retention pond could be properly addressed. The next day, City Administrator, Keith Campbell, issued a stop work order (Ex #35). Thereafter, two revisions were approved to the stop work order to allow construction to continue on those properties where the City had issued building permits. The last revision was approved and issued by the City Council on November 12, 2014 (Ex #37).

18. In November of 2014, Mr. Martinak submitted to the City the plans for Phase III. These plans were resubmitted two additional times to the City. Each time, the City rejected receipt of the plans on the basis that no further development could take place until the retention pond issues had been properly addressed.

19. On November 28, 2014, water was observed flowing over the top of the weir. The record (Ex #41) reveals the fact that, during the winter of 2014-2015, water spilled over the weir on numerous occasions. The retention pond was designed to only allow water to spill over the weir in a 50-year storm event. The parties acknowledged that nothing close to a 50 year storm event had occurred during this time and that the retention pond, as designed and built, was inadequate to ensure a “zero discharge” standard.

20. The water that spilled over the weir from the pond passes onto neighboring property to the northwest and eventually makes its way to the Salem Ditch, which is controlled and maintained by the SWCD (see Ex #20). Allowing water to pass onto neighboring properties from the Phillips’ property raises trespass issues in addition to potential violations of the settlement agreement between Respondent and SWCD (Ex #1) and the Memorandum of Understanding between the SWCD and the City (Ex #34).

21. The Quail Run subdivision included a stormwater drainage system that pumped the water to the south for ultimate diversion into the Salem Ditch. This system was developed because the owners of the Phillips’ property refused to allow the water from the Quail Run storm drainage system to run onto their property. In 2009, Mr. Martinak was approached by City officials with a request that Respondent allow the water from the Quail Run storm drainage

system to run onto the Phillips' property, due to ongoing issues with the existing pump based system (see R Ex #6). Mr. Martinak consented to this request with the understanding that the cost of addressing the stormwater needs of the basin would be substantially shared by the City and others (see Ex #s 24 and 25 email exchanges). The Quail Run line was extended to Tract A of Respondent's property, pursuant to an easement granted to the City by Respondent (Ex #4). The City paid for the improvements to accomplish this project but did not compensate the Respondent for the future cost of managing the water from the Quail Run subdivision. Mr. Martinak estimated that the cost of addressing the Quail Run water runoff equals approximately \$20,000 per year. There was no evidence offered in support of this opinion.

22. Respondent's project engineer, Steve Ward, testified that the 13.3 CFS for a ten year event was the estimate he used to determine the amount of water passing from the Quail Run subdivision onto the Phillips' property. This estimate was based on a calculation relating to the likely amount of impervious surfaces in the Quail Run subdivision and not on actual measurements. He testified that he did not consider the fairly constant flow of groundwater that flows from the Quail Run storm drainage system onto the Phillips' property. Further, Mr. Ward testified that he did not perform adequate infiltration tests but tried to go forward with the limited testing that was performed because the developers were under pressure to resolve the drainage issue so the project could move ahead. He agreed that the retention pond, as designed and built, was inadequate to address existing water drainage issues and that he expects that water will continue to flow through the pond onto neighboring properties and beyond during the winter months.

23. Pursuant to Section 22 of the Development Agreement, the parties agreed to attempt to mediate disputes relating to the provisions of the Agreement. While the parties continued to, with limited success, meet to attempt to address the on going issues with the stormwater drainage system, no formal mediation session was requested by either party before adoption of the stop work order. The parties did negotiate minor changes to the stop work order. In November of 2014, the parties agreed to schedule a mediation session for the purpose of

addressing issues relating to alleged breaches of the provisions of the Development Agreement.

24. In late November of 2014, City officials observed water overtopping the weir in the retention pond, which heightened the sense of urgency from the City's perspective to take action to timely address the fact that the retention pond was not going to properly address the stormwater demands. Respondent did not share this same sense of urgency while indicating to Claimants that a mediation session could be scheduled in January 2015. Under these circumstances, in the context of a history of what the City perceived to be Respondent's failure to promptly address the stormwater drainage issues, the City decided to assert its right to demand arbitration, which it did just before Christmas 2014. Neither party attempted thereafter to initiate a formal mediation process.

25. In its cost bill, the City is asking for reimbursement of the attorney fees incurred by attorneys Wallace Lien and Richard Kuhn in the prosecution of its claims and in the defense of the claims asserted against the City. The City seeks an award under the cost bill in the sum of \$145,223.80 through June 18, 2015. In March of 2015 Mr. Kuhn became counsel for the City for the purpose of defending the City against the tort claims asserted in Respondent's responsive pleading. The City has a contractual relationship with its insurer to provide a defense for such claims. Since March of 2015, both attorneys have represented the interests of the City in this action, including participation in the depositions conducted in discovery and in the arbitration hearing.

### **CONTENTIONS OF THE PARTIES**

The City of Stayton contends that JCNW Family, LLC breached seven specific provisions of the Development Agreement entered into between the parties. The alleged breaches essentially maintain that the Respondent failed to properly design a storm detention/retention basin and outfall structure on Tract A, that construction of said basin was not in accordance with the original plans and that changes were made to the plans during construction that were not approved by the City. The City asks that Respondent be found in breach of the agreement as alleged, that the stop work order be declared valid and be allowed to

continue until each of the breaches are addressed and that Respondent pay the City's reasonable attorney's fees.

JCNW Family, LLC contends that the design and construction of the retention basin is a work in progress and will be finally and appropriately addressed as part of the development of Phase III. Further, Respondent alleges three counterclaims against the City, as follows: (a) breach of contract alleging that the City has failed to pay its proportional share for the storm drainage system planned for construction in Phase III and that the City has breached the requirement in the Development Agreement that the parties enter into a separate agreement regarding Phase III; (b) intentional interference with economic relations, alleging that the City interfered with Respondent's prospective commercial relationships with home builders by issuing a stop work order and by failing to follow through with a Development Agreement for Phase III; and (c) trespass alleging that the City has intentionally permitted stormwater discharge to pass onto Respondent's property. Respondent seeks damages from the counterclaims alleged, including an award of attorney's fees.

### **DISCUSSION**

This action primarily turns on the reasonable interpretation of the terms of the Development Agreement entered into between the parties, as viewed in the context of events that preceded and followed the Agreement's execution on June 6, 2013.

Before this Agreement was entered into, the Planning Commission had granted initial approval of the Phillips Estate Subdivision in August of 2006 and a Stormwater Master Plan had finally been developed in April of 2009. The decisions by the City represented in these documents establish the general parameters for the terms included in the Development Agreement.

In the summer of 2009, the City and Respondent entered into an agreement for the extension of a pipe from the Quail Run Subdivision to divert stormwater from that subdivision onto the northwest portion of the developers' property. The City paid for the construction of the extension of the Quail Run outlet pipe but did not compensate the Respondents for any future



expenses relating to the management of the additional stormwater being brought to the developers' property.

During the years leading up to the signing of the June 2013 Development Agreement, the City and Respondent had extensive discussions about how the planned stormwater drainage system for diversion of the water to Mill Creek would be paid for. It was anticipated by all concerned that the ultimate expense would be shared between the City, Respondents and others who would benefit. It was hoped that the sharing of the cost would be accomplished through a mechanism that required participation by all benefited by the system.

In the spring of 2013, it became apparent that a funding mechanism could not be developed in time to accommodate the timeline the developers were working with. Rather than wait for the City to develop a funding mechanism, the representatives for the developer initiated a discussion around the development of a solution in the form of a retention basin to be constructed on what was designated as Tract A. This solution would allow the development to go forward in a timely manner.

The general requirements for this solution were set forth in the Development Agreement. The Development Agreement requires, in pertinent part, that (1) Respondent will manage stormwater coming onto Tract A from all City and Phillips' property sources at the developer's expense and in accordance with City standards and regulations and with the City approval of such management systems (see Ex #3), (2) Respondent would install on Tract A, an "on-site storm detention/retention basin and outfall structure," and (3) the agreement was binding on any assigns or successors in interest of the development. The retention basin solution was further guided by the agreement Respondent had entered into with the Santiam Water Control District and a Memorandum of Understanding the City had entered into with said District – both of which restricted the diversion of water from the Phillips' property across property where the water ultimately ended up in a ditch controlled by the SWCD.

As recounted in the findings set forth above, the retention basin was constructed in October and November of 2013. The design of this pond was based upon (1) infiltration tests

conducted the previous summer and (2) a very rough estimate of the amount of water that would come into the basin from the Quail Run Subdivision. As discussed above, the design of the pond was flawed because the infiltration testing was inadequate and the estimates relied upon for water flowing into the basin from the Quail Run Subdivision were not based upon the collection of actual data from the site. Because the design was flawed, the retention basin failed to accomplish the ultimate objective of accommodating the infiltration of all water flowing into the pond except under the circumstances of a 50 year storm event. Finally, the retention pond was constructed based on a final design that was not approved by the City.

There is no question that the City has a right to enforce its ordinances and agreements. That authority may be reasonably delegated to the City Administrator (Ex #s 27 and 45). The issuance of a stop work order is justified under circumstances that warrant the reasonable use of this enforcement tool. With respect to the issuance of the stop work order by the City, the evidence supports the following conclusions:

(1) At the May 8, 2014 meeting, Respondent was put on notice that the issues with the retention basin would have to be addressed if further development was to be permitted by the City.

(2) Four and a half months later, the parties met to discuss all pending development issues. Respondent had done nothing at that time to address the issues raised in the May meeting. At the September 23 meeting, Respondent was informed that there would be no further development until a satisfactory analysis of the detention basin had been completed.

(3) Additional meetings between the parties took place before October 20, when the City Council convened in executive session to hear from the City Administrator the history and rationale supporting the proposal to issue a stop work order. The City Council took no action to stop the City Administrator from issuing the stop work order the next day (Ex #35).

(4) The stop work order was modified by the City Administrator on November 3 (Ex #36) and was further modified by the City Council on November 12 (Ex #37). This last stop work order is presently in effect.

The reasonable use of the stop work order as an enforcement tool may require the City to articulate a detailed, clear and reasonable road map leading to the lifting of said order, within a reasonable time frame.

The Respondent maintains that the City is obligated by agreement to “pay its proportionate share for the storm drainage system planned for construction in Phase III.” The Development Agreement entered into between the parties (Ex # 3) includes the following provisions:

What was originally proposed as Phase III, is a future phase of the development, which will be identified in bulk as Tract A on the plat for Phase II. . . . The terms and conditions for development of Tract A will be under a separate Development Agreement to be negotiated at the time Tract A is proposed to be replatted into Phase III. (See page 2 of the Development Agreement)

Any work towards developing a final agreement for Phase III of the subdivision was to be memorialized in a separate Development Agreement. There is no credible evidence in the record to the contrary. Further, as referred to in the findings above, the parties did enter into preliminary discussions for sharing the cost of building a stormwater drainage system from the Phillips’ property to Mill Creek, as contemplated in the planning commission approval and the Stormwater Master Plan. However, once it became clear that a funding mechanism was not going to be developed in a timely manner, the parties abandoned the original Stormwater Drainage Plan for stormwater management from the Phillips’ property and replaced it with the retention basin proposal for addressing this stormwater need. An agreement was never entered into between the parties regarding the cost sharing for building the drainage facility to Mill Creek other than the understanding reached that the cost for constructing the stormwater detention basin would be borne by Respondent. For the reasons stated, no obligation arose that would require the City to pay a proportional share of the storm drainage system construction costs; the first count for breach of contract fails.

In Count 2, Respondent alleges that the City breached provisions of the Development Agreement by requiring Respondent to perform obligations associated with Phase III. There is

no evidence in the record that Phase III would involve the construction of a stormwater drainage facility different from the retention basin that was constructed relating to Phase II. Further, it is observed that there is no deadline set forth in the Development Agreement for Phase II for the parties to enter into a Development Agreement for Phase III. It is implied from the language of the Development Agreement that an agreement for Phase III would be negotiated and initiated after Phase II had been substantially completed in accord with City standards, directives and guidelines. For these reasons, Respondent's second count for breach of contract fails.

Respondent alleges in the second counterclaim that the City intentionally interfered with Respondent's prospective commercial relationships with builders for homes in Phase III by issuing a stop work order and by failing to proceed to negotiate a Development Agreement for Phase III. The Oregon Supreme Court has clearly stated that the tort of intentional interference with economic relations requires the satisfaction of six essential elements (*See McGanty v. Staudenraus*, 321 Or 532 (1995)), and that the third of said six elements requires that a "third party" initiate such interference. The evidence at the hearing established that Respondent was the sole owner of Tract A. There was no credible evidence that Respondent had negotiated contracts or understandings with third parties relating to development in Phase III.

Further, this arbitrator has found that the stop work order was valid and that the City appropriately asserted its right to resolve issues by arbitration as provided for in the Development Agreement at issue herein. There is no evidence that would satisfy the fourth element required for this cause of action, which requires that the interference be accomplished through improper means or for an improper purpose. Finally, any assertion of damages on this claim is entirely speculative.

With respect to Respondent's final counterclaim, a trespass requires credible evidence that would establish the unauthorized entry onto land owned by the party asserting this claim. In this case, the diversion of water from City sources to Respondent's property, Tract A, was authorized and agreed to between the parties. As a condition of allowing the Respondent to go forward with development plans, the Respondent agreed to allow the City to divert water from

the Quail Run Subdivision onto Tract A. The critical language is found in the Development Agreement (paragraph 10) where the Respondent grants to the City an easement over the entirety of Tract A for “the discharge, retention, detention and accumulation of stormwater from all City sources.” Said provision requires Respondent to manage this stormwater “at its expense in accordance with City standards and regulations.” The easement was formally adopted facilitating this understanding (Ex #4).

This issue turns on the fact that Respondent agreed to accept the water from the Quail Run Subdivision onto his property and to appropriately manage said stormwater in the context of the contractual obligations then existing; specifically, the Stormwater Master Plan (R Ex #7), the settlement agreement between SWCD and Respondent (Ex #1), the planning commission approval of the subdivision (Ex #2) and the memorandum of understanding entered into between the SWCD and the City (Ex #34). While the City did pay for the extension of the water line to Tract A, the City did not specifically compensate Respondent for the future cost of managing the stormwater that was being placed on Tract A. Because there was no negotiated and enforceable agreement between the parties regarding this obligation being placed on the Respondent, it can only be assumed that Respondent was willing to accept this anticipated obligation as part of the effort to keep the development process moving ahead. From all indications, the development process would have successfully moved forward with the development of an agreement regarding Phase III and the approval of a plat relating to this final phase had Respondent complied with its obligations to properly manage the stormwater coming onto Tract A.

Respondent raises objections to the cost bill submitted by Claimant. Respondent’s objections to Claimant’s cost bill, with respect to the award for reasonable attorney fees, are well taken. When the City decided, in late December 2014, to assert its right to arbitration, the parties were in the middle of scheduling a mediation session to discuss the issues that have now – some nine months later – been resolved through arbitration. Given the history of foot-dragging on the Respondent’s part, as addressed above, one can appreciate the City’s frustration and desire to more assertively address the issues with the Development Agreement, by taking action to

establish a final resolution through arbitration. However, it is reasonable to assume that had the mediation been initiated in January 2015, it is likely that a workable remedy could have been worked out between the parties by the end of the winter months, saving both sides the significantly greater cost of proceeding to arbitration.

While the Development Agreement does not make mediation mandatory, the standards applicable to an assessment of reasonable attorney fees invites an inquiry into the efforts made to settle the dispute short of incurring the costs associated with litigation. (See ASP Rule 34C, which mirrors the statutory standard set forth at ORS 20.075 (1) (f)). Of course, there is no guarantee that mediation would have resulted in a final resolution of the issues; however, the City was obligated to make a good faith effort to follow through with the scheduling of a formal mediation session and then to work within that process to develop a workable plan.

Further, the City chose to use two attorneys to represent its interests in this action. The City did not need two experienced attorneys to represent its interests in this action. With respect to this objection, the points made by Mr. Kraemer in argument are well taken: (a) for the most part, the two attorneys handled separate issues relating to the claims and defenses asserted, and (b) if Mr. Lien would have handled all of the issues relating to Claimant's interests, the City would have been charged \$300/hour (Mr. Lien's hourly rate) and not \$185/hour (Mr. Kuhn's hourly rate). An examination of the record produced on this issue reveals that there were times in the prosecution of claims and in the defense of the counterclaims when one attorney could have reasonably handled the interests of the City – most notably during the taking of depositions and during the arbitration hearing. The arguments relating to how many attorneys Respondent used and what they were paid is not directly relevant to a determination of the reasonable attorney fees Claimant is entitled to recover.

Based on the above-stated findings and discussion, the attorney fees claim is addressed as follows: All attorney and staff fees are reduced by 25% based on the finding that the opportunity for resolving the dispute through mediation was not adequately explored by the City. This

percentage would have been higher but for the fact that the Claimant prevailed on all claims. Further, from a review of the fees generated by Mr. Kuhn's office, there were 70.3 hours devoted to work that duplicated the work performed by Mr. Lien. The fee is, therefore, further reduced for that reason – adjusted to account for the difference between Mr. Lien's hourly rate and Mr. Kuhn's hourly rate. Using this formula, the adjustment of attorney fees looks like this:

Lien attorney fees (\$88,680) reduced by $\frac{1}{4}$ =	\$66,510.00
Lien staff fees (\$580) reduced by $\frac{1}{4}$ =	\$435.00
Lien office costs	\$1,054.94
Kuhn attorney fees (\$42,827.50) reduced by $\frac{1}{4}$ = \$32,120.63	
Reduced by duplicate work (70.3 hours x \$185/hr. adjusted as stated above) = \$4,921.00	
Total Kuhn fees after adjustments =	\$27,199.63
Kuhn staff (\$212.50) reduced by $\frac{1}{4}$ =	\$159.38
Kuhn office costs =	\$6,018.88
Total costs, disbursements and attorney fees award =	\$101,377.83

### **RULING**

1. Based on the previously stated findings of fact and discussion, the Respondent is hereby found to be in breach of sections 1, 3 and 10 of the Development Agreement in the following particulars:

a. The storm detention/retention basin and outfall structure, provided for in section 12 d (3) of said Agreement, was constructed using a design not approved by the City, as required by sections 1 and 10 of said Agreement. The evidence supports the conclusion that said basin was built using a design not approved by the City.

b. The storm detention/retention basin and outfall structure was not constructed in conformance with City standards and directives, as required by section 3 of said Agreement. The evidence supports the conclusion that said basin was not built in accordance with the standards and conditions of approval clearly articulated by the City engineer during the plan review process (see Ex #31, pages 3 and 4 of 8; Ex #32, page 3 of

4; and Ex #33).

2. Based on the stated findings of fact and discussion, the arbitrator concludes that the stop work order issued by the City Administrator, and later reissued by the City Council, as articulated above, is valid and may be reasonably enforced.

3. Pursuant to Section 22 of the Development Agreement, Claimant, as the prevailing party, is awarded its costs and disbursements, including attorney fees. The amount of said costs and disbursements has been determined herein based on the guidelines set forth in Rule 34 of the ASP Procedural Rules for Arbitration, as discussed above.

4. There has been no violation of the obligation under Section 22 to consider the option of mediation. The facts relating to this issue have been considered in the development of the award of reasonable attorney fees.

5. Respondent's claims for Breach of Contract, Intentional Interference with Economic Relations, and Trespass all fail for the reasons articulated above.

6. Any claim not expressly addressed in this award is denied.

#### **FINAL AWARD**

1. While the parties were addressing the cost bill presented by Claimant (ASP Rule 34 (A) (1)), the arbitrator requested the submission of supplemental briefing to address the following questions and issues: (a) the specific requirements Respondent must satisfy for the stop work order to be lifted and (b) the conditions under which the stop work order could be lifted while the specific requirements are being addressed. Said supplemental briefing was provided by the parties, followed by a hearing; the parties provided additional briefing after the hearing to summarize their respective proposals.

2. Based on the findings and rulings of this Arbitrator, as set forth above, the following remedial plan is adopted:

a. **Development of a Stormwater Drainage Report:** Respondent will perform a Stormwater Drainage Analysis; the testing, findings and conclusions of this analysis will be contained in a Stormwater Drainage Report. Said analysis will include an investigation of the



hydrologic, hydraulic and geotechnical issues presented by the proposed drainage development plan together with appropriate solutions to those issues. This report will provide the basis upon which the stormwater drainage project will be designed. The report will include a provision addressing any anticipated issues the project will create relating to wetlands.

b. **Development of Engineered Design and Construction Plans.** The Respondent will prepare an engineered design and construction plan based on the Stormwater Drainage Report.

c. **Resolve of Outstanding Issues.** The issues remaining from the implementation of Phase II of the Development Plan will be resolved, those being: (1) completion of necessary punch list items; (2) resolving issues relating to reimbursements; and (3) providing the operation and maintenance materials required by the SWMM. The stop work order will not restrict the Respondent from addressing these issues.

d. **Reasonable Bonding Requirements.** Respondent will obtain a performance bond in an amount not less than 125% of the final approved construction estimate for the stormwater drainage system, in accordance with the City of Stayton Public Works Design Standards.

e. **Development of a Functional Temporary Stormwater Drainage System.** Respondent will develop a functional temporary stormwater drainage plan designed to prevent the escape of stormwater from the Phillips property on to private property to the northwest of said property during the time the permanent stormwater drainage system is being studied, planned, designed and constructed. It is anticipated that this temporary stormwater drainage system will be approved and constructed to prevent the escape of stormwater from the Phillips property on to private property.

f. **The Interim Issuance of Building Permits.** The gradual lifting of the stop work order in phases, as the remedial plan is developed and constructed, is a reasonable exercise of the City's regulatory authority to address stormwater drainage issues while taking into account legitimate private interests impacted by this regulation. At present, 25 legal lots are situated in

Phase I (four lots) and Phase II (21 lots) of the Phillips Property Development. The stop work order in place prohibits the issuance of building permits on all of these lots. As the above-stated remedial plan progresses, the stop work order will be lifted, and building permits may be applied for and issued, under the following schedule:

**Step One:** Upon the approval of a satisfactory temporary drainage system, the stop work order will be lifted as to four building permits.

**Step Two:** Upon the approval of the Stormwater Drainage Report, the stop work order will be lifted for three more building permits.

**Step Three:** Upon the approval of the easements for the final routing of the stormwater drainage system, the stop work order will be lifted for three additional building permits.

**Step Four:** Upon the approval of the final design and construction plans for the stormwater drainage system, the stop work order will be lifted for three additional building permits.

**Step Five:** The stop work order will be terminated in its entirety upon completion of the stormwater drainage facility

g. The design and construction of the temporary and permanent stormwater drainage systems included in this remedial plan will conform to all applicable legal standards.

h. Respondent may not submit plans for Phase III of the development until the issues involved in Phase II have been resolved.

i. By stipulation of the parties, a mechanism is hereby adopted for addressing impasses that may arise with the implementation of the above-stated remedial plan. The undersigned Arbitrator will retain jurisdiction over the issues raised in this arbitration action and has authority hereby to resolve any and all impasses or disputes between the parties that may arise relating to the implementation of the remedial plan set forth in the Final Award and related supplemental awards.

3. Award of costs and disbursements. A hearing was conducted on August 3, 2015

for the purpose of receiving evidence and argument from the parties regarding the Claimant's cost bill and Respondent's objections thereto. Based on the findings and discussion set forth herein, an award for costs, disbursements and reasonable attorney fees is granted in favor of Claimant and against Respondent in the sum of \$101,377.83. Counsel for Claimants may submit a request for entry of a supplemental award for reasonable attorney fees and cost incurred between June 18, 2015 and the entry of the supplemental award.

4. In accord with the Development Agreement (section 22) and ASP Rule 36, once a Final Award is adopted, a judgment may be entered in Marion County, Oregon, upon the Final Award.

### **MONEY AWARD**

Award Creditor:

City of Stayton  
362 N. 3<sup>rd</sup> Ave.  
Stayton, Or 97383

Attorneys for Award Creditor

Wallace W. Lien PC  
P O Box 5730  
Salem, OR 97304

Steven Kraemer  
Hart Wagner  
1000 S W Broadway, Ste 2000  
Portland, OR 97205

Award Debtor

JCNW Family LLC

Attorneys for Award Debtor

Darien Loiselle  
Stephanie Holmberg  
Schwabe, Williamson & Wyatt PC  
1211 S W Fifth Ave. Ste 1900  
Portland, OR 97204

Total Amount of the Award

Attorney & Staff Fees	\$94,304.01	
Costs	\$7,073.82	
Total		\$101,377.83

Pre-Award Interest

None

Post-Award Interest

Simple interest at the rate of 9% per annum,  
from the date of the Final Award

DATED this 12<sup>th</sup> day of August 2015.

----- Signed -----

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Daniel L. Harris, Arbitrator

## **SBEFORE THE STAYTON PLANNING DEPARTMENT**

In the matter of  
The application of  
Brandie Dalton, Multi-Tech Engineering, Applicant

) Conceptual Master Planned  
) Development Plan  
) File # 11-07/24

### **ORDER OF DENIAL**

#### **I. NATURE OF APPLICATION**

The application is for a Conceptual Master Planned Development Plan to subdivide 1601 Oriole Street a 7.11-acre property in Low Density Residential (LD) zone into 22 single-family lots.

#### **II. FINDINGS OF FACT**

##### **A. GENERAL FINDINGS**

1. The owner is JCNW Family LLC, 15556 Coon Hollow Road SE, Stayton, OR 97383.
2. The applicant is Brandie Dalton, Multi-Tech Engineering, 1155 SE 13th Street, Salem, OR 97302.
3. The properties can be described on Marion County Assessors Map as 1601 Oriole Street (tax lot 091W04DB03300).
4. The property has access from Junco and Oriole Streets. The property is approximately 7.11 acres.
5. The property is zoned Low Density (LD) Residential.
6. The neighboring properties to the north are located outside the city limits but within the Urban Growth Boundary. To the east are Low Density Residential (LD) parcels that are part of the Phillips Estates subdivision. The parcels to the south are also zoned LD. To the west, the adjacent properties are zoned Light Industrial (IL).
7. The parcel was previously included in a subdivision application, the approvals for which have since expired. It is now being developed as a stormwater detention facility intended to manage runoff not only from the Phillips Estates I and II subdivisions but also from other surrounding areas within the city. In accordance with the Stayton Public Works Design Standards, stormwater detention facilities that serve multiple areas outside of a specific subdivision must be publicly owned. As such, upon completion, ownership of the detention facility will be transferred to the City.
8. Phillips Estates III is directly tied to the June 6, 2013, Development Agreement between the City of Stayton and JCNW Family LLC, which was the subject of a final arbitration decision issued on August 12, 2015. The arbitrator found that development of Phase III could not proceed until stormwater issues stemming from Phase II were adequately addressed, including the design and function of the detention basin on Tract A - being the parcel in this order. The Final Award established a remedial plan requiring a new stormwater drainage report and system before any Phase III plans could be submitted.
9. Although the Final Award issued on August 12, 2015, in City of Stayton v. JCNW Family LLC states that "Respondent may not submit plans for Phase III of the development until the issues involved in Phase II have been resolved," the city interpreted the language as ambiguous regarding which types of plans are restricted. Specifically, the clause does not clearly distinguish whether it

applies to construction plans, land use applications, or both. Based on this interpretation, the application for the Phillips Estates III subdivision was accepted and deemed complete.

#### B. EXISTING CONDITIONS

The subject property is vacant with a potential stormwater dentition area.

#### C. PROPOSAL

The proposal is for a Conceptual Master Planned Development to divide the parcel into 22 single-family homes with undersized lots and one larger 108,344 square foot water quality and open space parcel. The following are the lot proposed square footages: Lot 1 6,040, Lot 2 6,001, Lot 3 6,001, Lot 4 6,001, Lot 5 6,001, Lot 6 6,001, Lot 7 5,987, Lot 8 7,999, Lot 9 7,103, Lot 10 7,158, Lot 11 6,535, Lot 12 6,394, Lot 13 6,393, Lot 14 6,392, Lot 15 6,391, Lot 16 6,008, Lot 17 6,000, Lot 18 6,000, Lot 19 6,000, Lot 20 6,000, Lot 21 6,046 and Lot 22 5,991.

#### D. AGENCY COMMENTS

The following agencies were notified of the proposal: City of Stayton Public Works, Marion County Public Works and Building Inspection, WAVE Broadband, Stayton Cooperative Telephone Company (SCTC), Pacific Power, Northwest Natural Gas, Santiam Water Control District, Stayton Fire District, Stayton Police Department, Salem Development Services, and Santiam Hospital.

Responses were received from Stayton's Public Works, City of Stayton's Transportation and Engineering Consultants, and Stayton Police Department whose comments are reflected in the findings below.

#### E. PUBLIC COMMENTS

The Community and Economic Development Department received no public comments on this application prior to the hearing.

#### F. APPROVAL CRITERIA

Concept Plans for Master Planned Development applications are required to satisfy approval criteria contained within the Stayton Municipal Code (SMC) 17. 24.090.5 Concept Plan Approval Criteria.

Pursuant to SMC 17.24.090.5 the following criteria must be demonstrated as being satisfied by the application:

*a. All relevant provisions of the Comprehensive Plan are met.*

Analysis: The parcel included in the proposed development contains identified significant wetlands. The City's Comprehensive Plan, under Natural & Historic Resource Goals and Policies, establishes the goal that "Identified Significant Wetlands Will Continue Their Functions Unimpaired by Development Activity," and states under Policy NR-8 that "all development on properties containing significant wetlands be processed as a master planned development." The application has been submitted and is being processed as a master planned development, consistent with this policy, allowing for consideration of potential impacts to the wetlands through the review process.

According to Stayton Municipal Code (SMC) 17.24.100.2.d – Master Planned Development Design Standards, a minimum of 25% of the development area must be preserved as open space. It is currently unclear whether the proposed development meets this requirement, as a portion of

the parcel is proposed to be used for public stormwater detention. While the application satisfies the requirement to be reviewed as a master planned development, further clarification is needed to determine whether the minimum open space requirement will be met.

Finding: Does not meet clearly meet all relevant provisions of the Comprehensive Plan.

Condition: The applicant shall resubmit a revised conceptual site plan that clearly identifies an appropriate open space area of at least 25% of the parcel, excluding any portion of the site that is proposed for future public ownership as a stormwater detention facility.

- b. *The proposed Master Planned Development will be reasonably compatible with the surrounding neighborhood.*

Analysis: The proposed Master Planned Development is not reasonably compatible with the surrounding neighborhood. Although the area is zoned for Low Density Residential use, the adjoining Phillips Estates I and II subdivisions are characterized by lots that average approximately 0.19 acres (8,276 square feet). The proposed development includes significantly smaller lots without a clear transitional buffer, resulting in an abrupt change in development pattern.

Several existing homes along Pheasant Avenue would back onto two new lots rather than the typical one-to-one lot interface, which would negatively impact privacy and the existing neighborhood character. This departure from the established development pattern is inconsistent with the intent of a master planned development to integrate harmoniously with surrounding uses.

Further, the proposal includes land designated for a publicly owned stormwater detention facility. Until it is determined how this area will be treated in relation to the required 25% open space under SMC 17.24.100.2.d, it remains unclear whether the open space standards are being met, further complicating compatibility with the surrounding neighborhood.

Finding: Does not meet approval criteria to be reasonably compatible with the surrounding neighborhood.

Condition: The applicant shall resubmit a revised conceptual site plan that clearly identifies an appropriate open space area, excluding any portion of the site that is proposed for future public ownership as a stormwater detention facility. The revised plan shall also include a transition in lot sizes adjacent to existing abutting lots to better reflect the surrounding neighborhood character.

- c. *There are special physical or geographic conditions or objectives of development which warrant a departure from the standard ordinance requirements.*

Analysis: There are special physical conditions present on the site that warrant a departure from standard ordinance requirements. Specifically, the presence of significant wetlands and the need to accommodate a publicly owned stormwater detention facility create constraints that limit the usable area for residential development.

However, while these physical features may justify some flexibility in the application of standard requirements, they do not fully explain or justify the extent of the proposed departure from the surrounding lot pattern or open space provisions. The proposed density and lack of transitional lot sizes are not clearly necessitated by the site's physical constraints. Furthermore, it remains unclear whether the 25% open space requirement under SMC 17.24.100.2.d is being met, particularly if portions of the site are to be dedicated for stormwater infrastructure.

Therefore, while the site does present legitimate physical conditions warranting consideration, the extent of the proposed departures raises concerns that are not entirely addressed by those conditions alone.

Finding: While there are special conditions that warrant departure from standard ordinance requirements, it is unclear how much open space of the parcel will be dedicated to the city for management of public stormwater, which would ascertain how much of the reminding parcel will be set aside of the required 25% open space.

Conditions: Follow through on developing a functioning stormwater drainage facility for Phillip Estate I and II as layout of in Development Agreement between the City of Stayton and JCNW Family LLC issued on August 12, 2015.

- d. *If there are proposed uses that are not allowed in the underlying zone, those uses shall be compatible with the proposed development and the surrounding neighborhoods and viable in that location.*

Analysis: There are no uses proposed in the development that are not allowed in the underlying Low Density Residential zone.

Finding: This approval criteria has been met.

### **III. CONCLUSION**

Based on the facts above, the Planning Commission determines that the application does not meet the requirements for Sections 17.24.090.5. Concept Plan Approval Criteria a., b., and c.

### **IV. ORDER**

Based on the conclusions above, the Planning Commission denies the Concept Plan application for a Master Planned Development as shown on Site Plan dated 04/01/2025, Sanitary Sewer Plans, Street Plans, Lot Grading Plan, Preliminary Existing Conditions and Utility plans all dated 3/31/2025 prepared by Multi/Tech Engineering, with submitted narrative dated 4/21/2025, and application from Bill Martinak and the accompanying materials due to not meeting all approval criteria for SMC 17.24.090.5.



## V. APPEAL DATES

The Planning Commission's action may be appealed to the Stayton City Council pursuant to Stayton Municipal Code Section 17.12.110 APPEALS within 14 days of the notice of decision.

\_\_\_\_\_  
Planning Commission Chairperson

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jennifer Siciliano,  
Director of Community and Economic Development

\_\_\_\_\_  
Date

DRAFT

## Standard Conditions of Approval for Land Use Applications

1. Minor variations to the approved plan shall be permitted provided the development substantially conforms to the submitted plans, conditions of approval, and all applicable standards contained in the Stayton Land Use and Development Code.
2. **Permit Approval:** The applicant shall obtain all necessary permits and approvals from the City of Stayton prior to construction of the project.
3. **Change in Use** - Any change in the use of the premises from that identified in the application shall require the City Planner to determine that the proposed use is an allowed use and that adequate parking is provided on the parcel.
4. **Landscaping** - The applicant shall remain in substantial conformance to the approved landscaping plan and follow the criteria established in SMC 17.20.090 for maintenance and irrigation. Dead plants shall be replaced within six months with a specimen of the same species and similar size class.
5. **Utilities** - Utility companies shall be notified early in the design process and in advance of construction to coordinate all parties impacted by the construction.
6. **Agency Approval** - The Developer shall be responsible for all costs relating to the required public improvements identified in the approved plan and the specific conditions of approval and within the City Ordinances and Standard Specifications. The developer is also responsible for securing design approval from all City, State and Federal agencies having jurisdiction over the work proposed. This includes, but is not limited to, the City of Stayton, the Fire District, Marion County, DEQ, ODHS (water design), DSL, 1200C (state excavation permit), etc.
7. **Construction Bonding** - Bonding shall be required if there are any public improvements. Prior to start of construction of any public improvement, the developer shall provide a construction bond in the amount of 100% of the total project costs, plus added City costs associated with public construction. The bond shall be in a form acceptable to the Director of Public Works.
8. **Inspection** - At least five days prior to commencing construction of any public improvements, the Developer shall notify the Director of Public Works in writing of the date when (s)he proposes to commence construction of the improvements, so that the City can arrange for inspection. The written notification shall include the name and phone number of the contracting company and the responsible contact person. City inspection will not relieve the developer or his engineer of providing sufficient inspection to enforce the approved plans and specifications.
9. **Public Works Standards** - Where public improvements are required, all public and private public works facilities within the development will be designed to the City of Stayton, Standard Specifications, Design Standards & Drawings (PW Standards) plus the requirements of the Stayton Municipal Code (SMC). (SMC 12.08.310.1)
10. **Engineered Plans** - Where public improvements are required, the applicant's engineer shall submit design plans for approval of all public improvements identified on the approved plan or as specified in conditions of approval. All design plans must meet the Stayton PW Standards. Engineered construction plans and specifications shall be reviewed by the City

Engineer and signed approved by the City Engineer, or Stayton Public Works Department, prior to construction.

11. **Street Acceptance** - Where public improvements are required, acceptance of completed public street improvements associated with the project shall be in accordance with SMC 12.04.210.
12. **Construction Approval** - All public improvements and public utilities shall be fully constructed and a letter of substantial completion provided by the City Engineer prior to any building permit applications being accepted or issued unless the required improvements are deferred under a non-remonstrance or other agreement approved and signed by the City. Construction items must be completed within a specified period of time provided in the approval letter or the approval of any additional building permits will be withdrawn by the City.
13. **Maintenance Bond** - After completion and acceptance of a public improvement by the City, the developer shall provide a 1-year maintenance bond in the amount of 30% of the construction bond amount. The bond shall be in a form acceptable to the Director of Public Works.
14. **As-Builts** - Where public improvements are required, the developer shall submit to the City, reproducible as-built drawings and an electronic file of all public improvements constructed during and in conjunction with this project. Field changes made during construction shall be drafted to the drawings in the same manner as the original plans with clear indication of all modifications (strike out old with new added beside). As-built drawings shall be submitted prior to final acceptance of the construction, initiating the one-year maintenance period.
15. **Drainage Permit** – A 1200C permit will be secured by the developer if required under the rules of the Oregon State DEQ.
16. **SDC** - Systems Development Charges are applied to the project at the time of issuance of a building permit.