

NOTICE OF DECISION

PLANNING DIVISION
555 LIBERTY ST. SE, RM 305
SALEM, OREGON 97301
PHONE: 503-588-6173
FAX: 503-588-6005



*Si necesita ayuda para comprender esta informacion, por favor llame
503-588-6173*

DECISION OF THE HEARINGS OFFICER

**CONDITIONAL USE / CLASS 3 SITE PLAN REVIEW / CLASS 2 ADJUSTMENT /
CLASS 2 DRIVEWAY APPROACH PERMIT / CLASS 1 DESIGN REVIEW CASE
NO.: CU-SPR-ADJ-DAP-DR21-05**

APPLICATION NO.: 21-117429-ZO, 21-117432-RP, 21-117435-ZO, 21-117433-ZO,
21-121189-DR

NOTICE OF DECISION DATE: March 9, 2022

SUMMARY: Development of a new twenty-six building apartment complex with 291 dwelling units.

REQUEST: A Conditional Use Permit request to allow a new multi-family residential use, and Class 3 Site Plan Review, Class 2 Driveway Approach Permit, and Class 1 Design Review for development of a new twenty-six building apartment complex containing a total of 291 dwelling units, with a Class 2 Adjustment request to:

- 1) Allow an off-street parking area near Greencrest Street NE to be located in front of adjacent buildings, instead of behind or beside buildings as required by SRC 702.020(d)(2);
- 2) To allow buildings to be placed at a 20-foot setback along State Street and Cordon Road NE instead of five-ten feet as required by 702.020(e)(4), and to allow no buildings at the minimum setback on Greencrest Street NE; and
- 3) To eliminate the direct pedestrian access to adjacent sidewalk requirement for ground level units adjacent to State Street and Cordon Road NE as required by 702.020(e)(5).

For a portion of property approximately 10.7 acres in size, zoned CR (Retail Commercial), and located at the 4900 Block of State Street - 97301 (Marion County Assessor Map and Tax Lot numbers: 072W29C / 00100 and 00101).

APPLICANT: Brandie Dalton, Multi-tech Engineering, on behalf of East Park LLC

LOCATION: 4900 Block of State St, Salem OR 97301

CRITERIA: Salem Revised Code (SRC) Chapters 240.005(d) – Conditional Use, 220.005(f)(3) – Class 3 Site Plan Review, 250.005(d)(2) – Class 2 Adjustment, 804.025(d) – Class 2 Driveway Approach Permit, and 225.005(e)(1) – Class 1 Design Review

FINDINGS: The findings are in the attached Decision dated March 4, 2022.

DECISION: The **Hearings Officer DENIED** Conditional Use / Class 3 Site Plan Review / Class 2 Adjustment / Class 2 Driveway Approach Permit / Class 1 Design Review Case No. CU-SPR-ADJ-DAP-DR21-05 based upon the application materials deemed complete on December 1, 2021, the Facts and Findings contained in the staff report, the evidence presented in oral testimony, and the evidence submitted into the record.

Application Deemed Complete:	<u>December 1, 2021</u>
Public Hearing Date:	<u>December 22, 2021</u>
Notice of Decision Mailing Date:	<u>March 9, 2022</u>
Decision Effective Date:	<u>March 29, 2022</u>
State Mandate Date:	<u>May 26, 2022</u>

Case Manager: Aaron Panko, APanko@cityofsalem.net, 503-540-2356

This decision is final unless written appeal and associated fee (if applicable) from an aggrieved party is filed with the City of Salem Planning Division, Room 320, 555 Liberty Street SE, Salem OR 97301, or by email at planning@cityofsalem.net, no later than 5:00 p.m. Thursday, March 24, 2022. Any person who presented evidence or testimony at the hearing may appeal the decision. The notice of appeal must contain the information required by SRC 300.1020 and must state where the decision failed to conform to the provisions of the applicable code section, SRC Chapter(s) 240, 220, 250, 804, or 225. The appeal fee must be paid at the time of filing. If the appeal is untimely and/or lacks the proper fee, the appeal will be rejected. The Planning Commission will review the appeal at a public hearing. After the hearing, the Planning Commission may amend, rescind, or affirm the action, or refer the matter to staff for additional information.

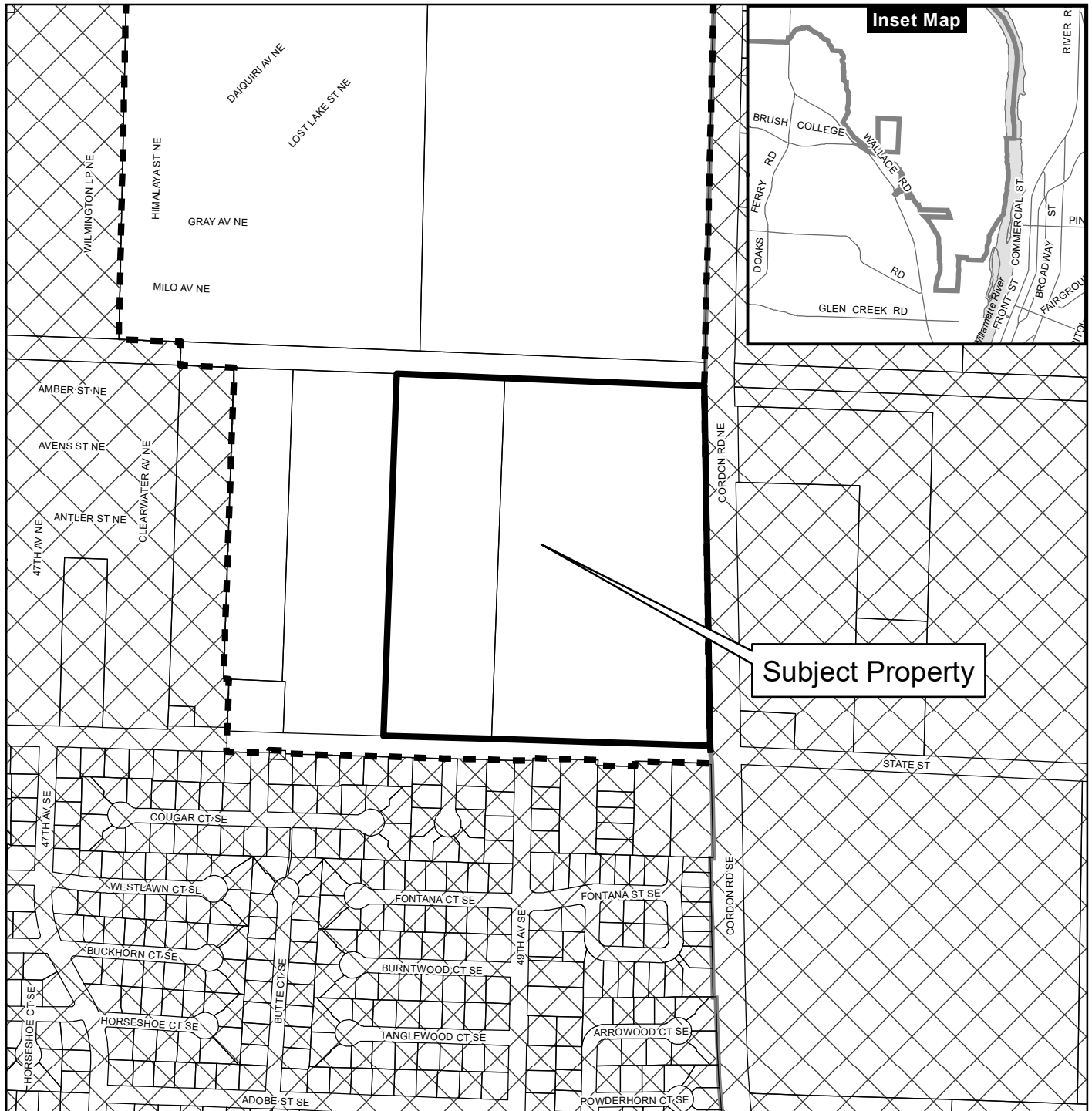
The complete case file, including findings, conclusions and conditions of approval, if any, is available for review by contacting the case manager, or at the Planning Desk in the Permit Application Center, Room 305, City Hall, 555 Liberty Street SE, during regular business hours.

<http://www.cityofsalem.net/planning>

Vicinity Map

4900 Block of State Street

(Taxlots 072W29C / 00100 and 00101)



Legend

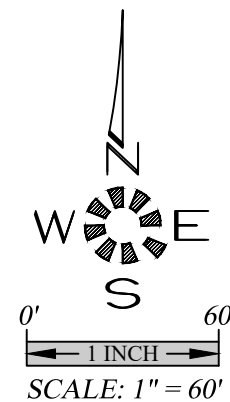
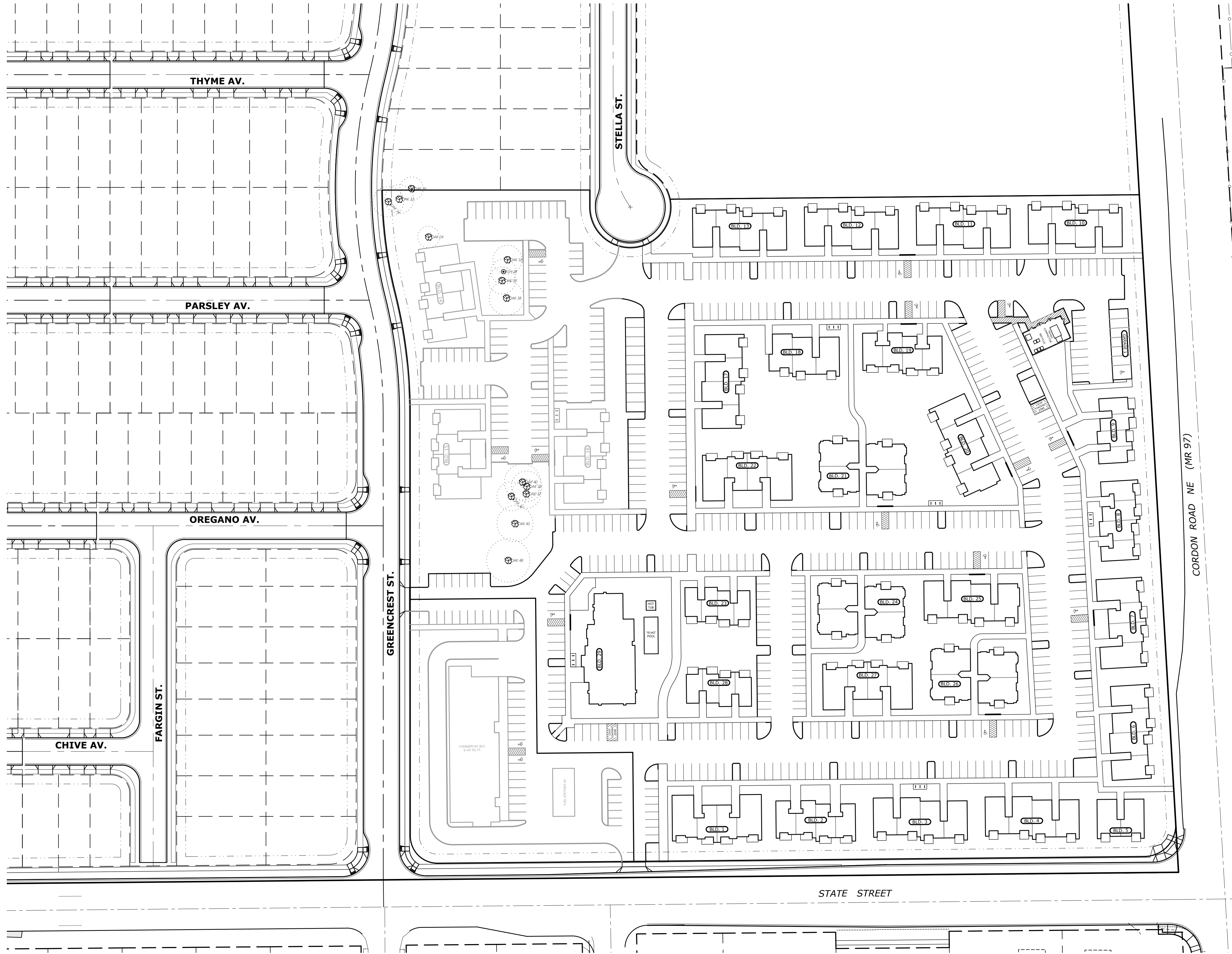
- Taxlots
- Urban Growth Boundary
- City Limits
- Outside Salem City Limits
- Historic District
- Schools
- Parks

0 100 200 400 Feet



CITY OF Salem
AT YOUR SERVICE
Community Development Dept.

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EAST PARK APARTMENTS

SEC. 29, T. 7 S., R. 2 W., W.M.
CITY OF SALEM
MARION COUNTY, OREGON

Owner / Developer:
EAST PARK LLC
9550 SE CLACKAMAS RD.
CLACKAMAS, OREGON 97015

B.M. 215.21
A 3 INCH BRASS DISK DESIGNATED 7052
LOCATED IN THE TOP OF CURB AT THE S.E.
CORNER OF STATE STREET & 49TH AV.

SHEET INDEX

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BUILDING 5 (TYPE "A" UNITS)

- A1.3 LOWER FLOOR PLAN
- A1.4 MIDDLE FLOOR PLAN
- A1.5 UPPER FLOOR PLAN
- A1.9 BUILDING ELEVATIONS

BUILDING 18 (TYPE "A" UNITS)

- A2.3 LOWER FLOOR PLAN
- A2.4 MIDDLE FLOOR PLAN
- A2.5 UPPER FLOOR PLAN
- A2.9 BUILDING ELEVATIONS

BUILDING 3,4,6,10-14,16,17,20,& 25 (TYPE "A" UNITS)

- A3.3 LOWER FLOOR PLAN
- A3.4 MIDDLE FLOOR PLAN
- A3.5 UPPER FLOOR PLAN
- A3.9 BUILDING ELEVATIONS

BUILDING 9,26,& 28 (TYPES "B" UNITS)

- A4.3 LOWER FLOOR PLAN
- A4.4 MIDDLE FLOOR PLAN
- A4.5 UPPER FLOOR PLAN
- A4.9 BUILDING ELEVATIONS

BUILDING 2,8,& 19 (TYPES "C" UNITS)

- A5.3 LOWER FLOOR PLAN
- A5.4 MIDDLE FLOOR PLAN
- A5.5 UPPER FLOOR PLAN
- A5.9 BUILDING ELEVATIONS

BUILDING 1,17,15,22,& 27 (TYPES "C" & "D" UNITS)

- A6.3 LOWER FLOOR PLAN
- A6.4 MIDDLE & UPPER FLOOR PLAN
- A6.9 BUILDING ELEVATIONS

BUILDING 21,24,& 26 (TYPES "E" UNITS)

- A7.3 LOWER FLOOR PLAN
- A7.4 MIDDLE FLOOR PLAN
- A7.5 UPPER FLOOR PLAN
- A7.8 BUILDING ELEVATIONS

BUILDING 29 (RECREATION BUILDING)

- A8.3 LOWER FLOOR PLAN
- A8.8 BUILDING ELEVATIONS

SYMBOLS

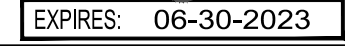
EXIST. / PROP.		EXIST. / PROP.	
○	BLOW OFF ASSY.	○	MANHOLE SAN. SEWER
■	CATCH BASIN	○	MANHOLE STORM DRAIN
■	CATCH BASIN CLEANOUT	○	2' DIA. C.O. / M.H.
■	CATCH BASIN INLET	○	MANHOLE TELEPHONE
▲	CATV PED. / BOX	○	MANHOLE WATER
○	CLEANOUT	▽	REDUCER / INCREASER
■	ELEC. PED. / BOX	■	TEL. PED. / BOX
◆	FIRE HYDRANT	■	TRAFFIC PED. / BOX
○	GAS LOCATION MARKER	■	UTILITY / POWER POLE
⊗	GAS VALVE	■	WATER METER
■	MAIL BOX	⊗	WATER VALVE
---	CABLE TELEVISION	---	SANITARY SEWER EXIST.
---	CENTERLINE	---	SANITARY SEWER PROP.
---	DITCH C.L.	---	STORM DRAIN EXIST.
---	ELECTRICAL LINE	---	STORM DRAIN PROP.
---	GAS MAIN	---	WATER MAIN EXIST.
---	TELEPHONE LINE	---	WATER MAIN PROP.

ABBREVIATIONS

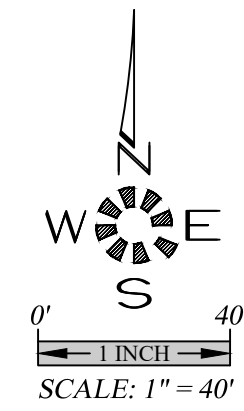
A.C.	ASPHALTIC CONCRETE	L.P.	LIGHT POLE
ACMP	ALUMINIZED CMP	M	METER, MAIN
ASSY.	ASSEMBLY	M.H.	MANHOLE
B.O.	BLOW OFF	MTL	METAL
B.V.	BUTTERFLY VALVE	O.H.	OVERHEAD
C & G	CURB & GUTTER	PC	POINT OF CURVE
CATV	CABLE TELEVISION	PCC	POINT OF CONTINUING CURVE
C.B.	CATCH BASIN	PE	PEDESTAL
C.B.C.O.	CATCH BASIN CLEANOUT	PRC	POINT OF REVERSE CURVE
C.B.I.	CATCH BASIN INLET	PROP.	PROPOSED
C.L.	CENTERLINE	PT	POINT OF TANGENCY
CMP	CORRUGATED METAL PIPE	PUB.	PUBLIC
C.O.	CLEANOUT	PUE	PUBLIC UTILITY EASMT.
CONC.	CONCRETE	PVC	POLYVINYL CHLORIDE
CONST.	CONSTRUCT	PVT.	PRIVATE
D.I.	DUCTILE IRON	P.P.	POWER POLE
DIA.	DIAMETER	P.L.	PROPERTY LINE
DWG.	DRAWING	R	RADIUS
EASMT.	EASEMENT	R	RIM
E.G.	EXIST. GRADE / GROUND	RD	ROAD DRAIN
EOP, E.P.	EDGE OF PAVEMENT	R.O.W.	RIGHT-OF-WAY
ELEC.	ELECTRIC	SAN.S. or S.S.	SANITARY SEWER
ELEV. or EL.	ELEVATION	S	SLOPE
EX. or EXIST.	EXISTING	STA	STATION
FT.	FEET	STD.	STANDARD
F.F.	FINISH FLOOR	STL.	STEEL
F.G.	FINISH GRADE	STM.DRN. or S.D.	STORM DRAIN
F.H.	FIRE HYDRANT	SVC	SERVICE
F.M.	FORCE MAIN	SW	SIDEWALK
GUT. or GTR.	GUTTER	T.C.	TOP OF CURB
G.V.	GATE VALVE	TEL.	TELEPHONE
IMP.	IMPROVEMENT	TYCL	TYPICAL
INST.	INSERT	U.G.	UNDERGROUND
INV. or I-	INVERT	VL.	VAULT
L	LENGTH, LINE	W.M.	WATER MAIN

6/896 SOR3-SITE

Design:	M.D.G.
Drawn:	T.N.S.
Checked:	J.J.G.
Date:	JULY 2021
Scale:	AS SHOWN



SDR3



36	TOTAL APARTMENT UNITS
24	TYPE "A" 2-BD, 3-BA (952 S.F.) UNITS
6	TYPE "C" 1-BD, 1-BA (728 S.F.) UNITS
6	TYPE "D" 3-BD, 2-BA (1204 S.F.) UNITS

291	TOTAL APARTMENT UNITS
135	TYPE "A" 2-Bd, 3-Ba (952 S.F.) UNITS
36	TYPE "B" STUDIO (549 S.F.) UNITS
60	TYPE "C" 1-Bd, 1-Ba (728 S.F.) UNITS
24	TYPE "D" 3-Bd, 2-Ba (1204 S.F.) UNITS
36	TYPE "E" 2-BD, 2-BA (1162 S.F.) UNITS

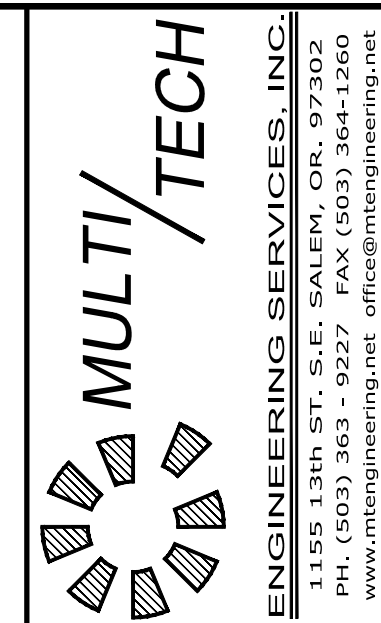
80	TOAL PARKING STALLS
38	STANDARD STALLS
39	COMPACT STALLS
3	HADICAP STALLS
6	BICYCLE SPACES (1 RACK)

447	TOTAL PARKING STALLS
378	STANDARD STALLS
51	COMPACT STALLS
11	HANDICAP STALLS*
7	GARAGES (1 HANDICAP)
30	BICYCLE SPACES (5 RACKS)

- 3 **LOADING ZONES**
9 **STORAGE UNITS**
1 **COMMUNITY BUILDING**
1 **TRASH COMPACTOR / RECYCLE**
1 **SWIMMING POOL (42'x16')**
1 **U.S. MAIL BOX AREA**

(* 1-MARKED "WHEELCHAIR USE ONLY")

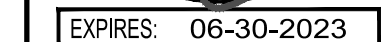
1. ALL ON-SITE WALKWAYS, PEDESTRIAN CONNECTIONS TO THE PUBLIC SIDEWALK AND ROUTES TO BUILDING ENTRANCES ARE ACCESSIBLE WITH RUNNING SLOPES LESS THAN 5% AND CROSS SLOPE LESS THAN 2% MAX. LANDINGS AT BOTTOM OF STAIRS AND EXT. FACE OF ENTRANCE DOORS SHALL HAVE A SLOPE IN THE DIRECTION OF TRAVEL NOT TO EXCEED 2%.
2. HANDICAP PARKING STALLS AND ACCESS AISLES ARE TO HAVE SLOPES IN ANY DIRECTION OF LESS THAN 2% MAX. GRAPHIC MARKINGS & SIGNAGE FOR HANDICAP AND VAN ACCESSIBLE STALLS WILL BE PER OSCC 2010 CHPTR. 11 AND ORS. REQUIREMENTS.
3. HANDICAP ACCESSIBLE CURB RAMPS SHALL HAVE A RUNNING SLOPE NOT TO EXCEED 1:12 MAX. AND A CROSS SLOPE NOT TO EXCEED 1%.
4. THE COMMUNITY BUILDING & ON-SITE LAUNDRY FACILITIES WILL BE FULLY HANDICAP ACCESSIBLE IN ACCORDANCE WITH ANSI A117.1 AND CHAPTER 11 OF THE 2010 OSCC.
5. 2% OF THE LIVING UNITS OR (3) UNITS WILL BE TYPE 'A' HANDICAP ACCESSIBLE. THESE INCLUDE A 1, 2 AND 3 BEDROOM UNIT AS INDICATED ON THIS SITE PLAN. THE BALANCE OF THE GROUND FLOOR LIVING UNITS WILL BE TYPE 'B' ADAPTABLE UNITS IN ACCORDANCE WITH ANSI A117.1.



EAST PARK APARTMENTS

6789b SDR4-ZONE

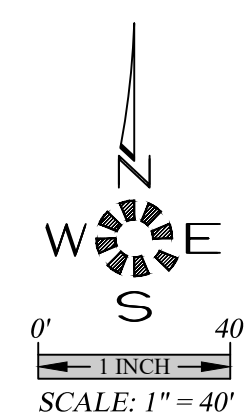
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Checked:	J.J.G.
Date:	JULY 2021
Scale:	AS SHOWN



JOB # 6789

SDR4

ZONE KEY
RM2 - MULTI FAMILY RESIDENTIAL
CR - RETAIL COMMERCIAL





EAST PARK APARTMENTS

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DIMENSIONS & NOTES TAKE
PRECEDENCE OVER
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6/789a SOR10-FIRE

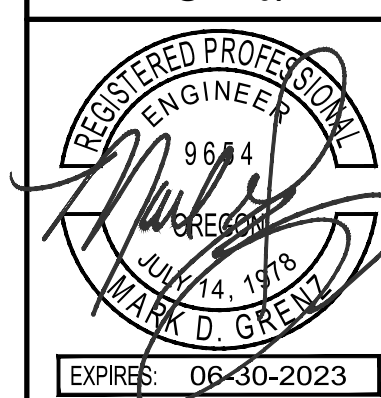
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Drawn: T.N.S.

Checked: J.J.G.

Date: JULY 2021

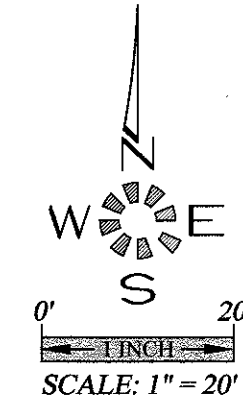
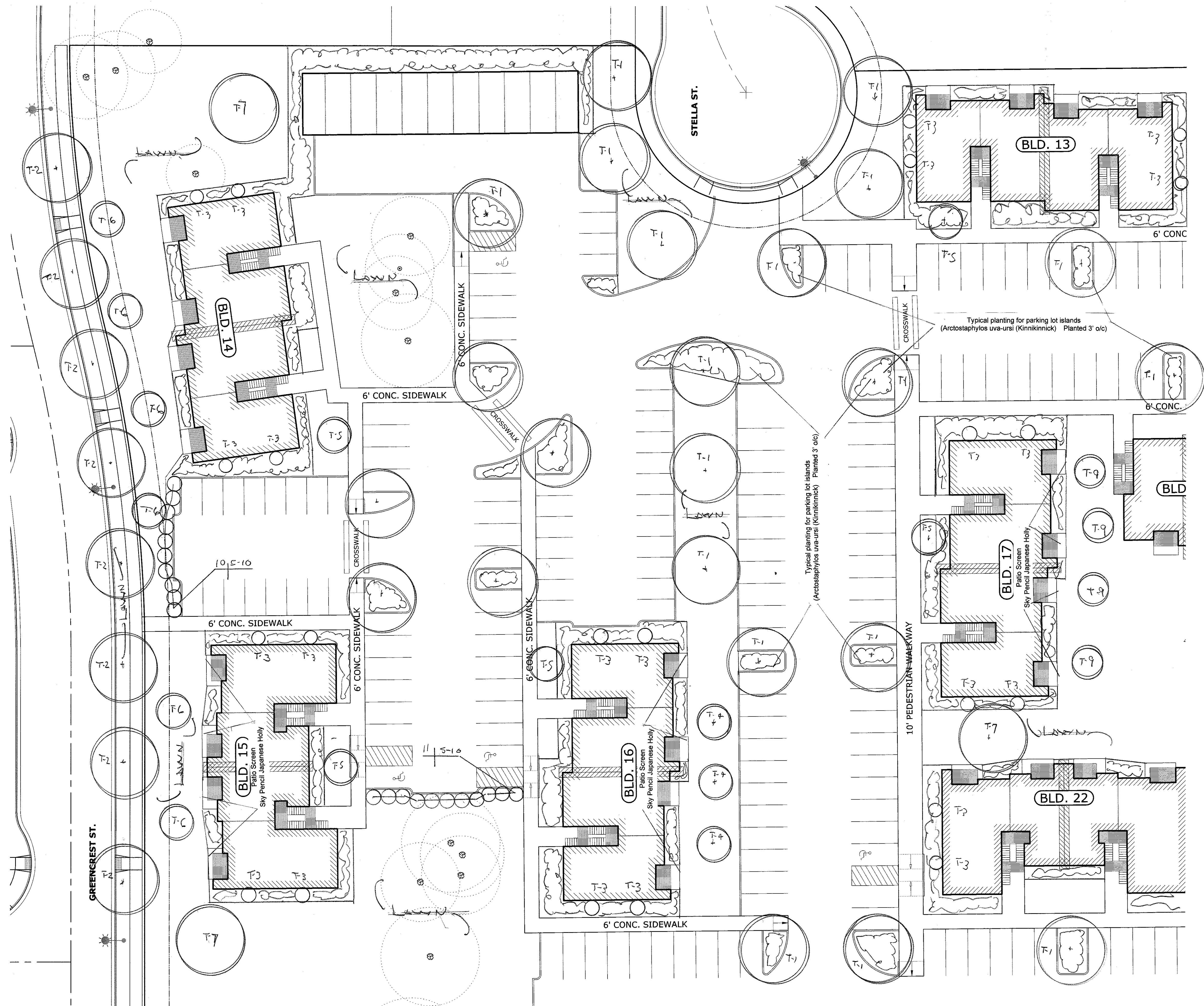
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EXPIRES: 06-30-2023
JOB # 6789

SDR10

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MULTI/TECH

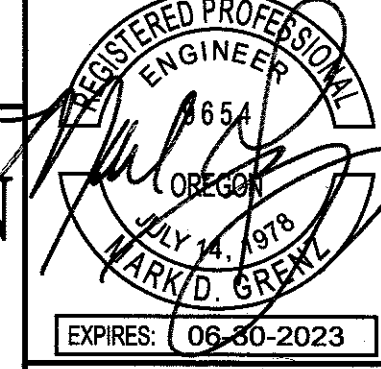
ENGINEERING SERVICES, INC.
1155 13TH ST. S.E. SALEM, OR. 97302
PH. (503) 363 - 9227 FAX (503) 364-1260
www.mtengineering.net office@mtengineering.net

LANDSCAPE PLAN

EAST PARK APARTMENTS

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Date: JULY 2021
Scale: AS SHOWN

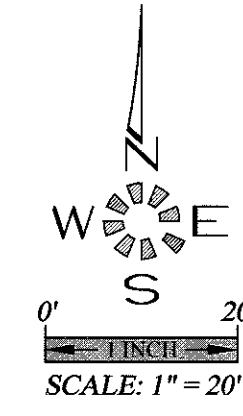
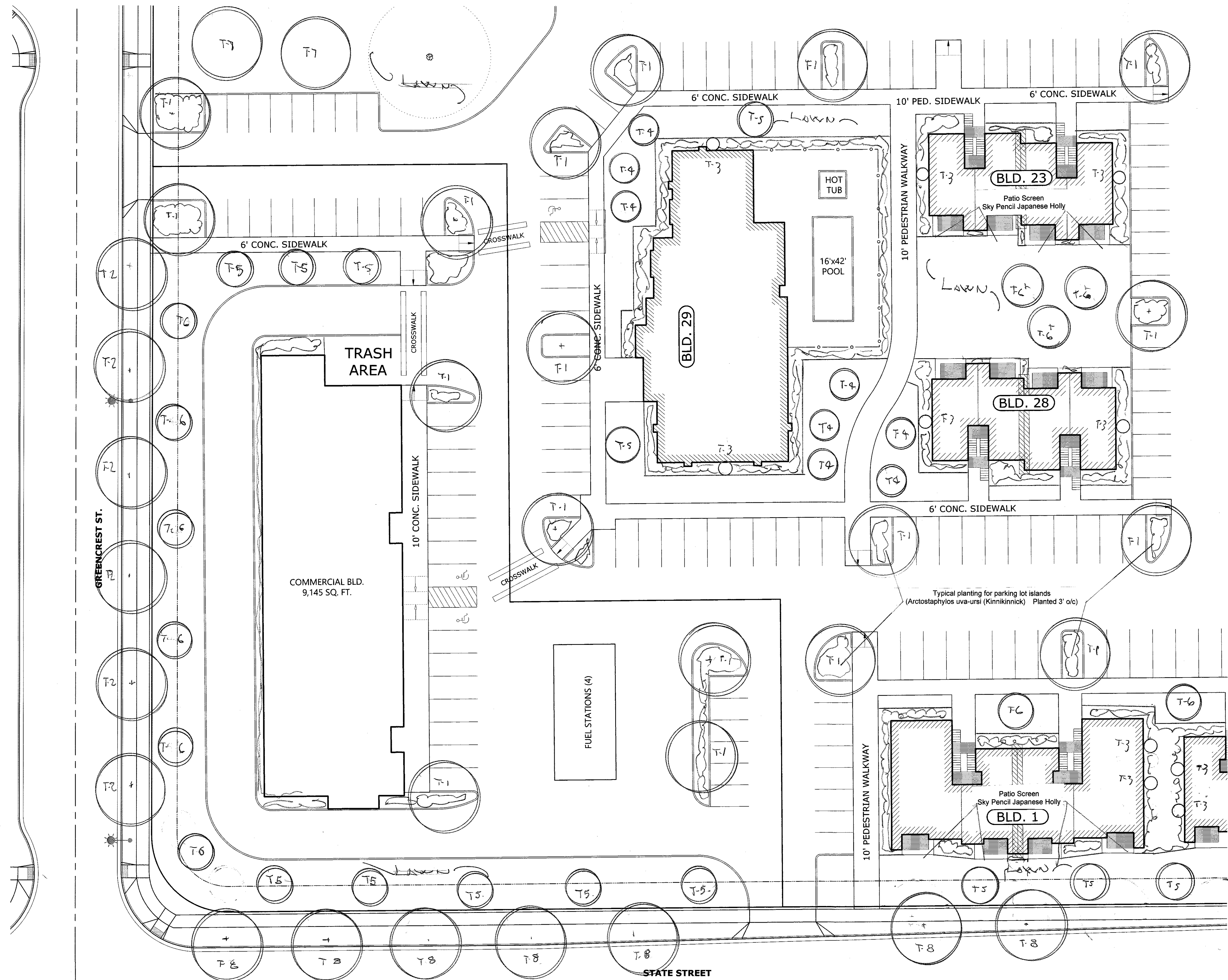


LANDSCAPE & IRRIGATION DESIGN BY:
**LANDSCAPE DESIGN
&
CONSULTANTS LLC**
Doing business since 1985
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JOB # 6789

L1.1

J:\8700-8793\8793-Carport\dwg\8793.dwg, L1.2, 9/1/2021 1:51:12 PM, TShull



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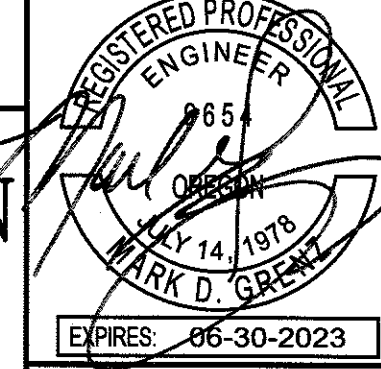
ENGINEERING SERVICES, INC.
1155 13th ST. S.E. SALEM, OR. 97302
PH. (503) 363 - 9227 FAX (503) 364-1260
www.mteceengineering.net office@mteceengineering.net

LANDSCAPE PLAN

EAST PARK APARTMENTS

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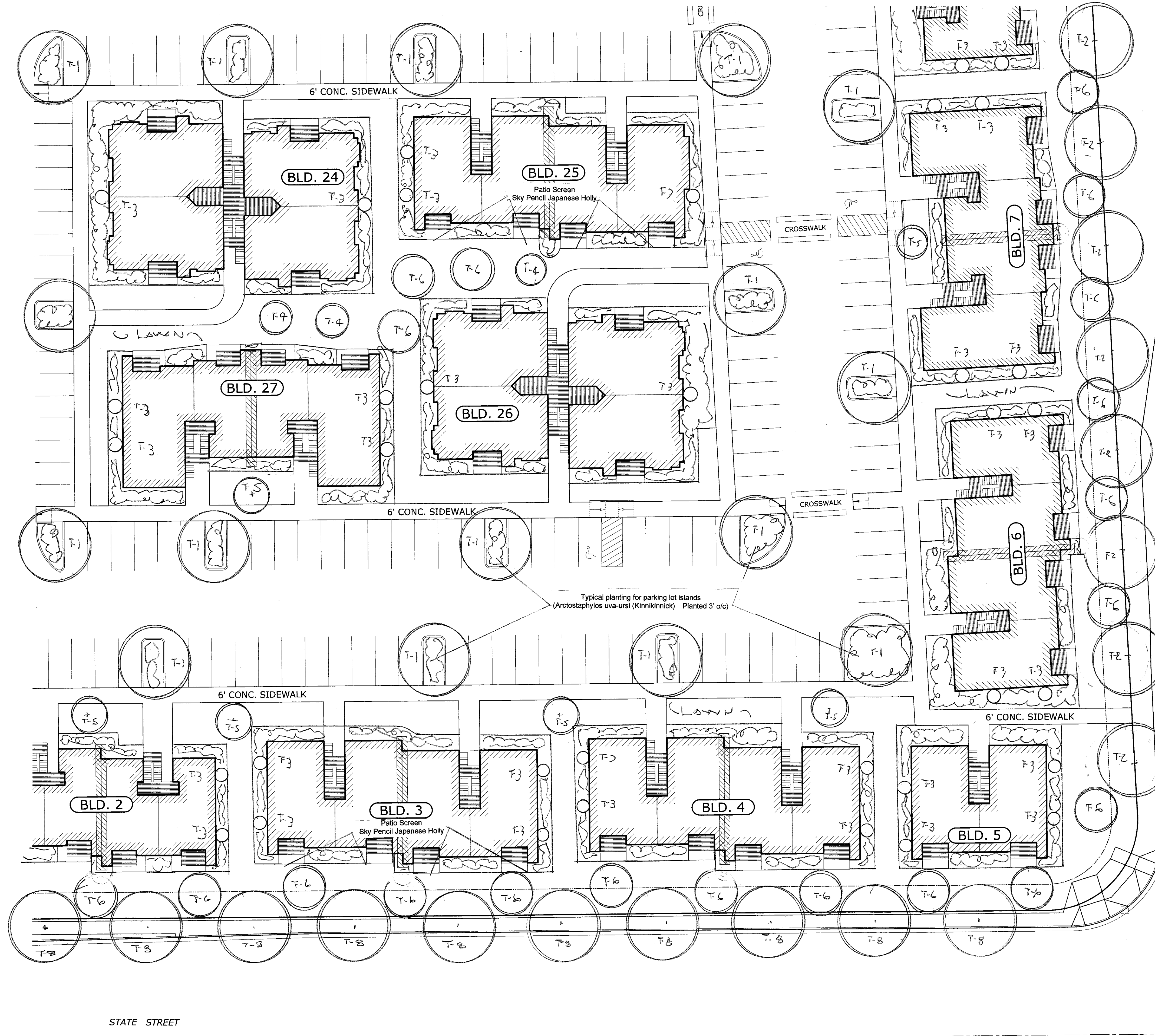
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&
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PERMANENT UNDERGROUND IRRIGATION SYSTEM TO BE INSTALLED

JOB # 6789

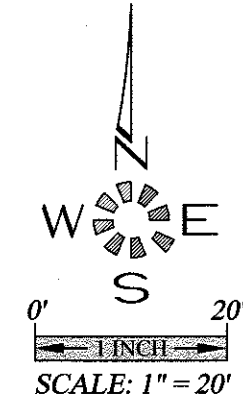
L1.2



STATE STREET

CORDON ROAD NE (MR 97)

PERMANENT UNDERGROUND IRRIGATION SYSTEM TO BE INSTALLED



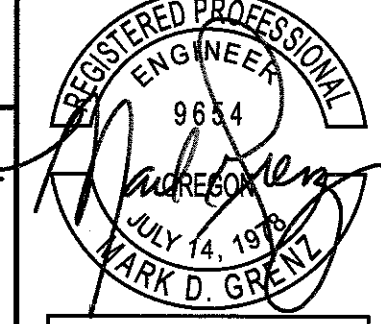
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1155 13th ST. S.E. SALEM, OR. 97302
(503) 551-8590
www.mttechengineering.net officemanager@mttech.net

LANDSCAPE PLAN

EAST PARK APARTMENTS

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Checked: J.J.G.
Date: JULY 2021
Scale: AS SHOWN



EXPIRES: 06-30-2023
JOB # 6789

L1.4

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**CITY OF SALEM
BEFORE THE HEARINGS OFFICER**

CONDITIONAL USE / CLASS 3 SITE PLAN REVIEW / CLASS 2 ADJUSTMENT / CLASS 2 DRIVEWAY APPROACH PERMIT / CLASS 1 DESIGN REVIEW CASE NO. CU-SPR-ADJ- DAP-DR21-05 4900 BLOCK OF STATE STREET - 97301 AMANDA NO. 21-117429-ZO, 21-117432- RP, 21-117433-ZO, 21-117435-ZO & 21- 121189-DR	} } } } } } } } }	<u>CASE NO. CU-SPR-ADJ-DAP-DR21-05</u> FINDINGS OF FACT, CONCLUSIONS, AND DECISION
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DATE AND PLACE OF HEARING:

The public hearing before the City of Salem Hearings Officer was scheduled for December 22, 2021 and was held remotely due to social distancing measures put in place to slow the spread of the COVID-19 virus. The Hearing on December 22, 2021 was continued to January 26, 2022. The Continued Hearing before the City of Salem Hearings Officer on January 26, 2022 was held remotely due to social distancing measures put in place to slow the spread of the COVID-19 virus

APPEARANCES:

Staff: Aaron Panko, Planner III

Neighborhood Association: Susann Kaltwasser, East Lancaster Neighborhood Association (ELNA)

Proponents: Mark Grenz; Joseph Schaefer; and Ed Tromsky

Opponents: None

SUMMARY OF THE APPLICATION AND HEARING

BACKGROUND

On September 22, 2021, the City accepted Conditional Use Permit, Class 3 Site Plan Review, Class 2 Adjustment, Class 2 Driveway Approach Permit, and Class 1 Design Review

applications for processing. After receiving additional information, the City Staff deemed the collective applications complete for processing on December 1, 2021. The original 120-day state mandated decision deadline for the collective application was March 31, 2022. The Hearing Officer held the initial hearing on this matter on December 22, 2021. During this hearing, after the City Staff presented their presentation of the application, the Applicant requested a continuance. The Hearings Officer granted this request. City Staff and the Applicant agreed that the hearing would reconvene for a continuance on January 26, 2022. The Applicant agreed to allow for the 120-day period to be extended by 35 days to accommodate the gap between the original hearing and the continued hearing.

On January 26, 2022 the applicant submitted updated development plans and written response included as Attachment A to the Supplemental Staff Report. During the January 26, 2022 hearing, there was a request to leave the record open, and the Applicant did not waive their 7-day final argument period. At the close of the hearing, the Hearings Officer set forth the following deadlines: February 2, 2022 at 5:00 p.m. was the deadline for any new testimony to be submitted by any party; February 9, 2022 at 5:00 p.m. was the deadline for rebuttal testimony; and February 16, 2022 at 5:00 p.m. was the deadline for the applicant's final argument. During the January 26, 2022 hearing, the Applicant again agreed to extend the state-mandated 120-day period, this time by 21 days.

PROPOSAL

The Applicant has submitted Conditional Use Permit, Class 3 Site Plan Review, Class 2 Adjustment, Class 2 Driveway Approach Permit and Class 1 Design Review applications for development of a proposed twenty-six building apartment complex with a total of 291 dwelling units with associated site improvements for property located at the 4900 Block of State Street.

FINDINGS OF FACT AND CONCLUSIONS

1. Salem Area Comprehensive Plan (SACP) designation

The Salem Area Comprehensive Plan (SACP) map designation for the subject property is "Commercial." The subject property is located within the Urban Growth Boundary; however, the property is outside of the Urban Service Area.

An Urban Growth Area Preliminary Declaration has been previously approved for the subject property (UGA09-07 and UGA 09-07MOD1) to determine the public facilities required to serve the East Park Estates Planned Unit Development/Subdivision, including the subject property located at the 4900 Block of State Street.

2. Zoning and Surrounding Land Uses

The subject property is zoned CR (Retail Commercial). The zoning of surrounding properties is as follows:

- North: CR (Retail Commercial); Proposed Lot 349 from Phase 3, East Park Estates Planned Unit Development/Subdivision
- South: State Street
- East: Cordon Road NE, Urban Growth Boundary
- West: Greencrest Street NE, CR (Retail Commercial) zone

3. **Site Analysis**

The subject property is proposed Lot 350 from Phase 3 of the East Park Estates Planned Unit Development/Subdivision (CPC-ZC-PUD-SUB-ADJ19-08MOD2) and is approximately 12.77 acres in size and has approximately 566 feet of frontage on State Street to the south, 697 feet of frontage on Cordon Road NE to the east and approximately 456 feet of frontage along Greencrest Street NE to the west.

Proposed Lot 350 is split zoned RM-II (Multi-Family Residential) and CR (Retail Commercial). The RM-II zoned portion of the lot is approximately 2 acres in size; CPC-ZC-PUD-SUB-ADJ19-08 previously approved a 36-unit multi-family apartment complex for this portion of the lot. This 36-unit apartment complex on the RM-II portion of the property is shown on the applicant's site plan but is not part of this land use request.

The proposed twenty-six building apartment complex containing 291-units subject to this application occurs on the CR zoned portion of proposed Lot 350, which is approximately 10.77 acres in size.

4. **Neighborhood and Citizen Comments**

The subject property is located within the East Lancaster Neighborhood Association (ELNA). Pursuant to SRC Chapter 300, the applicant is required to contact the Neighborhood Association prior to submittal of this consolidated application. On June 15, 2021 the applicant contacted ELNA meeting the requirements of SRC 300.310(c). Notice was provided to ELNA and to surrounding addresses, property owners, and tenants within 250 feet of the subject property. At the time of the staff report on December 22, 2021, no neighborhood association or public comments had been received other than an email comment indicating that ELNA intended to oppose the application.

A representative of ELNA appeared at the January 26, 2022 hearing but needed to leave the hearing before she had the opportunity to address the Hearings Officer. On February 9, 2022, ELNA submitted a memo to the record for consideration by the Hearings Officer, in which ELNA expressed opposition to the application. ELNA expressed concern that there were not enough barriers to separate vehicles and pedestrian traffic nor to separate commercial from residential uses. This concern

was heightened when considering potential interactions that school children may have with vehicular traffic while the children walk to and from school.

5. City Department and Public Agency Comments

The Public Works Department reviewed the proposal and provided a memo which was included as Attachment D of the staff report.

The Salem Building and Safety Division reviewed the proposal and indicated no concerns.

The Salem Fire Department reviewed the proposal and indicated no concerns.

Salem-Keizer Public Schools reviewed the proposal and provided a memo which was included as Attachment E of the staff report. Of note, only Houck Middle School is within the Walk Zone, while Eyre Elementary and South Salem High School are eligible for school transportation.

Oregon Department of Aviation reviewed the proposal and indicated no concerns.

6. Conditional Use Permit

SRC Chapter 240.005(a)(1) provides that no building, structure, or land shall be used or developed for any use which is designated as a conditional use in the UDC unless a conditional use permit has been granted pursuant to this Chapter.

SRC Chapter 240.005(d) establishes the following approval criteria for a conditional use permit:

- (1) The proposed use is allowed as a conditional use in the zone;
- (2) The reasonably likely adverse impacts of the use on the immediate neighborhood can be minimized through the imposition of conditions; and
- (3) The proposed use will be reasonably compatible with and have minimal impact on the livability or appropriate development of surrounding property.

As explained below, the Hearings Officer does not find that the application meets the approval criteria for a conditional use permit.

As a preliminary matter, the Applicant argues that this application is for the development of needed housing as defined in ORS 197.303, which is exempt from criteria that are not “clear and objective,” as set forth in ORS 197.307(4). The Applicant asserts that the Conditional Use Permit Criteria set out in SRC 240.005(d) are not clear and objective, and therefore are not enforceable against this application. The Hearings Officer disagrees for two reasons.

First, as stated above, the subject property is designated commercial under the Salem Area Comprehensive Plan and is zoned CR (Retail Commercial). This zone does not allow residential use as an outright permitted use. ORS 197.303(1) defines needed housing as “all housing on land zoned for residential use or mixed residential and commercial use.” The subject property is not zoned for residential use or mixed residential and commercial use, and the zoning would not permit residential uses unless and until the Conditional Use Permit at issue was granted. The Hearings Officer does not find that LUBA’s decision in *Legacy Development v. City of the Dalles*, OR LUBA (LUBA 2020-099, February 24, 2021) is persuasive in this situation. In *Legacy Development*, LUBA dealt with a property that was zoned in a way that permitted residential uses outright. Here, residential uses are not permitted outright. Furthermore, if the state legislature intended to forbid conditional use permits for construction of needed housing in zones that do not allow residential uses outright, then they would have so stated in the language of the statute. See ORS 197.308 (where the legislature prohibited municipalities from requiring conditional use permits for certain applicants applying for affordable housing developments on commercially zoned land). Lastly, there was no evidence presented to the Hearings Officer to show that this application falls under the specific ORS 197.308 exceptions for affordable housing.

Second, even if ORS 197.307(4) applied in this situation, the Hearings Officer finds that the applicable criteria are clear and objective because the criteria set forth in SRC 240.005(d) are bound by the standards within the SRC. As such, the Hearings Officer will apply the criteria set forth in SRC 240.005(d) to this application.

Criterion 1:

The proposed use is allowed as a conditional use in the zone.

The Hearings Officer notes that SRC Chapter 522, Table 522-1 provides that multi-family uses are allowed in the CR (Retail Commercial) zone with a conditional use permit.

The Hearings Officer finds that the proposal satisfies this criterion.

Criterion 2:

The reasonably likely adverse impacts of the use on the immediate neighborhood can be minimized through the imposition of conditions.

The Hearings Officer notes that the development standards of the SRC , including setbacks, building height, and landscaping, are intended to address the difference in compatibility between different uses. The application at issue proposes to build a 291-unit apartment complex in a Commercial Retail zoned area, subject to a Conditional Use permit. The Salem Area Comprehensive Plan shows the subject property designation as commercial. Staff indicated that the subject property was rezoned to Commercial Retail

with surrounding properties rezoned to a combination of residential zones in conjunction with a voter-approved annexation in 2011 (ANXC-689). Staff also referenced the Salem Area Comprehensive Plan policies and the City's documented deficit of commercial land. Staff showed that this property was approved for annexation and rezoning by the voters as a commercial area in order to serve the existing residential area and the new residential developments in the adjacent East Park development. At the time of annexation, the proposal was for approximately 19 acres of commercial zoning in order to address the deficit of commercial services in the surrounding area. A future City Park will occur on approximately 6.25 acres of commercially zoned land, and this proposed multi-family use would occupy approximately 10.77 acres, leaving only 1.23 acres (less than 7 percent) of the land originally envisioned for providing commercial services to a largely residential area actually available for commercial development.

The Hearings Officer notes that the Applicant states that the proposed development is compatible with the surrounding land uses. The Applicant points to the residential zoning and uses surrounding the property to the south, west, and north. The Applicant also puts forth the argument that the subject property is poorly suited to its designated zone and cites the lack of development since its annexation, as well as the multiple commercial real estate properties that are available for sale, lease, or rent in the surrounding area, as support for this assertion.

This criterion requires an analysis of the impacts of the proposed apartments on the uses of the immediate surrounding neighborhood, not the impacts of the surrounding uses on the proposed apartments. As such, the Hearings Officer will not address the impacts that other commercial uses in the immediate area could have on the proposed development.

The Hearings Officer finds that the nearest commercially zoned property is approximately 4,900-5,000 feet to the west, located at Lancaster Drive NE. There are no other commercially zoned properties located within roughly one mile of the subject property to serve the surrounding residentially zoned area. The staff report indicated that the Conceptual Plan from Annexation ANXC-689 shows that the subject property was in an area that was intended to be developed for commercial uses. As addressed in more detail below, the Hearings Officer does not find that the proposed development is in substantial conformance with the underlying conceptual plan. The Hearings Officer notes that approving this proposed development would result in an immediate reduction in available land for commercial uses to serve the immediate neighboring area. The Hearings Officer finds that there are no conditions that could be placed on this development to mitigate this negative impact.

The Hearings Officer also finds that there has not been any evidence presented to suggest that the existing proposed commercial uses satisfy the needs of the immediate neighborhood for commercial uses and developments (i.e. the gas station and unidentified commercial use identified in Application's third proposed site plan). The

Hearings Officer is not persuaded that the lack of commercial development on the proposed property has any impact on the analysis of this criteria. The same reasoning applies to the Applicant's presentation of other available commercial real estate. There are only 12 acres of commercial land available to serve the immediate neighborhood as intended in the annexation conceptual plan. The Applicant is requesting a conditional use permit that will have the effect of reducing available commercial land to less than 1.25 acres. The Hearings Officer finds that no conditions could be placed on the development that would mitigate the adverse impact of decreased commercially zoned land to the immediate neighborhood.

The Hearings Officer finds that the application does not satisfy Criterion 2.

Criterion 3:

The proposed use will be reasonably compatible with and have minimal impact on the livability or appropriate development of surrounding property.

To determine the compatibility and impacts on livability of the proposed use on the surrounding area, the Hearings Officer is evaluating the proposal based on the following factors: first, the compatibility of the proposed residential use with the surrounding property; and second, the impact on the livability of the surrounding area with the loss of 10.77 acres of commercially zoned land; third, the compatibility of the project with the appropriate development of the surrounding property; and fourth, the impact of the project on the appropriate development of the surrounding property.

The Hearings Officer notes that to assist in considering the above factors, the Hearings Officer will consider the goals and policies of the Salem Area Comprehensive Plan for residential development and siting, general development and siting, and commercial development and siting. The Hearings officer will also review the City's argument about the applicability of SRC 260.090 and well as both the City and Applicant's arguments about the projected deficit of commercial and residential uses respectively.

1. The compatibility of the proposed residential use with the surrounding property.

The Salem Area Comprehensive Plan provides the following guidance on the Salem Urban Area Goals and Policies for general development and residential development.

General Development (SACP IV Section B)

Development Compatibility

Screening of Storage

Lighting

The Hearings Officer finds that Applicant's third proposed site plan from January 26, 2022, addressed most, but not all, of the general development goals and policies. The proposed lot line of the residential development no longer bisects the drive aisle that provided access to the proposed apartment development from Greencrest St. The Applicant also addressed the setback issue by moving the property line to match the proposed fence line and providing the full 10-foot-wide building and vehicle use area setback measured from the property line.

However, the Hearings Officer finds that the application does not meet the general development goal of compatible development. The Hearings Officer incorporates the Applicant's findings found in the review of the Residential Development, Protection of Residential Areas goal, which finds that there is a lack of evidence to suggest that the future second and third-floor residents of Building 1 will be adequately separated from the abutting commercial land to allow for a finding that the proposed project will be compatible with the abutting commercial use.

Residential Development (SACP IV Section E)

Establishing Residential Uses.

The Hearings Officer finds that the proposed development meets or is compatible with the factors under this portion of the SACP.

Facilities and Services Location

The Hearings Officer finds that the proposed development generally meets or is compatible with most of the factors under this portion of the SACP. As indicated in Applicant's third proposed site plan, vehicular access to the subject property is provided by Stella Street and Greencrest Street NE. This site plan also shows that public sidewalks along the parameter of the property are planned. However, there are not fully developed pedestrian sidewalks or bike paths along the main routes to the nearest existing employment, shopping, or public services. This will be further explored below.

Multi-Family Housing.

As indicated in Applicant's third proposed site plan, vehicular access to the subject property is provided by Stella Street and Greencrest Street NE. There is not a complete public sidewalk network along State Street to connect the subject property to Lancaster Drive NE, which is where the nearest existing employment, shopping, or public services are located, leaving the proposed development largely auto dependent. Transit service is not provided in the area currently. However, as the area develops and grows in the future, public sidewalks and transit service will likely extend to the subject property.

Cordon Road NE provides vehicle access north towards arterial streets such as Center Street NE and Silverton Road NE, and provides vehicle access to the south towards Macleay Road SE, Highway 22 and eventually Kuebler Boulevard SE.

The nearest public parks to the subject property are Royal Oaks Park, which is classified as a Neighborhood Park, and Geer Community Park, which is classified as a Community Park. Royal Oaks Park is located approximately 1.5 miles to the north of the subject property, accessed by Center Street NE, Royalty Drive NE and Regal Drive NE. Geer Community Park is located approximately 1.9 miles to the west, accessed by State Street and Hawthorne Avenue NE. A future city park is planned and abuts the subject property to the north.

Mary Eyre Elementary School, Houck Middle School, and South Salem High School will serve students in this area. Students residing at the proposed development and attending Mary Eyre Elementary School and South Salem High School are outside of the walk zone and will be eligible for school transportation, the subject property is within the walk zone for Houck Middle School.

The Hearings Officer finds that the proposed development generally meets or is compatible with most of the factors under this portion of the SACP.

Protection of Residential Areas

Staff indicated that there was concern about the impact of the gas station that is to be developed on the proposed apartment development. During oral testimony, the Staff indicated that there is generally a physical barrier or buffer condition imposed on commercial developments that abut other uses in order to adequately separate the uses and protect the uses from negative impacts of the other use. Staff specifically noted that the absence of the physical barrier combined with the requested setback variances left the proposed apartment development vulnerable to the negative impacts of the abutting commercial uses. In the Applicant's third proposed site plan from January 26, 2022, the Applicant testified that a 6' tall fence would be built between the proposed gas station and the apartment complex. This fence would run along the west side of Building 1 and Building 29. There would also be a 10-foot landscaped set back on the apartment side of the fence.

Staff indicated that the proposed fencing and landscaping along Buildings 1 and 29 were sufficient to comply with screening and landscaping requirements to buffer the two different uses. However, the Hearings Officer does not find that there is sufficient evidence to support a finding of sufficient protection for the residents on floors above the height of the fence. Above the fence, there are no barriers that prevent or impede the lights, smells, or sounds that are generated from a commercial gas station use from interfering with the residential use of residents on the second and third floors of Building 1. There is nothing in the landscape set back plan to indicate that large trees or

other vegetation would be placed in order to screen the residents of the apartment from the neighboring commercial use within a three-year time period.

The Hearings Officer finds that there is insufficient evidence in the record to suggest that the inclusion of a fence and landscape buffering will be sufficient to separate the residential use from the commercial uses. Therefore, the Hearings Officer does not find that the proposal protects residential areas as specified in this goal.

With respect to the first factor of this criterion, the Hearings Officer finds that the proposed residential use of the development is generally compatible with the surrounding properties based on a review of the Salem Urban Area Goals and Policies for general development and residential development, with the exception of the goal of protection of residential uses.

2. Impact on the Livability of the Surrounding Properties.

The open record contains previous applications explaining the historic evolution of this property. The subject property is on the edge of the Urban Growth Boundary and was annexed into the City in 2011 (ANXC-689). The subject property was part of a larger development site containing approximately 120 acres. The surrounding area between Cordon Road NE and Lancaster Drive NE is largely in the jurisdiction of Marion County and is developed with a mix of residential housing types and residential zoning designations. The East Park Estates Planned Unit Development expected to add approximately 685 new dwelling units to the area. The underlying conceptual plan indicated that the subject property was to be zoned and designated for commercial uses in order to service the new dwelling units. The nearest commercially zoned property is approximately 4,900-5,000 feet to the west, located at Lancaster Drive NE. As stated previously, there is not a fully developed pedestrian walkway to reach this area without detours. There are no other commercially zoned properties located within approximately one mile of the subject property available to serve the surrounding residentially zoned area.

The 2011 application for the rezoning of the property and the annexation was approved by the voters. At the time of annexation, the commercial zoning designation was added to approximately 19 acres of the property in order to address the deficit of commercial services in the surrounding area. However, the future City Park will occur on approximately 6.25 acres of commercially zoned land, and this proposed multi-family use would occupy approximately 10.77 acres, leaving only 1.23 acres (less than 7 percent) of the land originally envisioned for providing commercial services in a largely residential area available for actual commercial development.

Should this Conditional Use Permit be approved, approximately 1.23 acres of commercial land would be left to serve existing developed residential uses as well as the newly approved project's residential use.

The Salem Economic Opportunities Analysis 2015-2035 examined Salem's need for industrial and commercial land through 2035 and concluded that Salem has a projected commercial land shortage of 271 acres and highlighted as need for providing zoning designations that allow for retail uses in or near residential neighborhoods to provide easy access to shopping and services.

The Hearings Officer finds that a residential use would negatively impact the livability of the neighboring residential properties by increasing the amount of residential development that in turn increases the need for services from commercial development and simultaneously reducing land available to meet the commercial needs of these properties.

3. Compatibility and Impact of the proposed with the appropriate development of the surrounding property.

The Hearings Officer reviews the Salem Area Comprehensive Plan Goals and Policies for Commercial Development for analysis on the compatibility of development with and the impact of the development on the surrounding property.

Commercial Development (SACP IV Section G)

Neighborhood and Community Shopping and Service Facilities

The Hearings Officer finds that there is insufficient evidence to determine that the remaining 1.23 acres of commercial property meets the goals of Community and Neighborhood Shopping and Service Facilities. No evidence was put forth to suggest that the remaining commercial development in the immediate vicinity is "scaled and consistent with the character of surrounding and nearby residential development."

The proposed multi-family use for the subject property is not consistent with the goals and policies of the Salem Area Comprehensive Plan for commercial development and is not consistent with goals and policies recommended by the adopted Economic Opportunities Analysis. The subject property was intended to be developed as commercial uses to benefit the immediate neighboring uses and developments. By reducing the availability of commercially zoned land while simultaneously increasing the residential use of the area, it intensifies the need for commercial development while reducing the space available to provide for that need.

The Hearings Officer finds that the proposed development would negatively impact the surrounding residential property by reducing the land available for commercial uses and leave insufficient commercial uses to adequately serve the surrounding and nearby residential development.

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Compatibility with the Underlying Conceptual Plan

The Hearings Officer will also consider the compatibility of the proposed development in light of the underlying conceptual plan.

The Applicant argues that consideration of the underlying conceptual plan constitutes a collateral attack on the underlying PUD. The Hearings Officer recognizes that conformance with the conceptual plan is not a criterion that the Applicant must meet to receive a Conditional Use Permit. However, the language of the Salem Revised Code is particularly relevant when considering this factor of Criterion 3 because SRC 260.090 involves the ability to develop a property that does not otherwise conform to the underlying conceptual plan.

SRC 260.090(a) states:

Development of the property shall be in substantial conformance with any conceptual plan approved under SRC 260.035. For the purposes of this section, development is in substantial conformance with a conceptual plan if the development:

- (1) Is consistent with the character and intent of the conceptual plan;
- (2) The impacts from the development, including, but not limited to, noise, vibration, dust, odor, or fumes, detectable at the property line will not exceed the maximums typical for the categories of uses proposed in the conceptual plan;
- (3) The number and types of vehicular trips to and from the site will not exceed the maximums typical for the categories of uses proposed in the conceptual plan; and
- (4) That the amount and types of outside storage, loading, and parking will not exceed the maximums typical for the categories of uses proposed in the conceptual plan.”

The 2011 annexation (ANXC-689) and concurrent rezoning was subject to a conceptual plan. The Staff submitted the conceptual plan from the annexation as Attachment F to the memo submitted by staff as contained in the record as supplemented by written testimony during the open record period.

The conceptual plan from annexation ANXC-689 shows the designation for commercial uses for the subject property. The land was subsequently rezoned to CR to conform with the conceptual plan. The Applicant’s proposed development is for multi-family use. The proposed use of the subject property is not consistent with the character or intent of the conceptual plan, which intended the subject property to maintain its commercial use. Though there are proposed commercial developments on the land from ANXC-689, these proposed commercial uses represent a mere fraction of the original land intended for commercial development. If the Hearings Officer were to grant the proposed application, the application, along with the development of a future park, would leave only 7% of the original land meant for commercial development for that purpose. This

outcome cannot be seen as “substantial conformance” with the conceptual plan. The Hearings Officer cannot find that the proposed application complies with the criteria set forth in SRC 260.090(a), which would prohibit this residential development.

The Hearings Officer does not find that the lack of commercial development testified to by the Applicant exempts this proposed application from the criteria set forth in SRC 260.090(a).

SRC 260.090(d) sets forth that a Director's decision to approve or deny a modified or alternative conceptual plan can be appealed to the Hearings Officer. The Staff made representations about how a Director decision under SRC 260.090(b) would result in this situation and asked the Hearings Officer to affirm this theoretical finding. Because the Hearings Officer is not aware of an application to change the conceptual plan, the consideration of SRC 260.090(b) by the Hearings Officer is improper, and the Hearings Officer will not consider arguments made in relation to that provision of the SRC.

The combination of the conceptual plan's intent for this land to be developed for commercial uses in order to serve the needs of the residential uses that were to be developed in the immediate vicinity of the land, along with the proposal resulting in only 1.23 acres of commercial land remaining from 15 acres of commercial land uses weighs heavily against the development when the Hearings Officer considers the compatibility with and impact on future development of the immediate property. The Hearings Officer finds that the development is not compatible with the development of the surrounding property. The Hearings Officer also finds that the proposed development will have a negative impact of future development of the area because it leaves only 1.23 acres of commercial land to serve a large amount of surrounding residential developments. As a result, the Hearings officer finds that this criterion is not met.

The Hearings officer denies the application for a Conditional Use Permit because the application fails to meet the three criteria required to issue such a permit under SRC 240.005(d).

7. Analysis of Class 3 Site Plan Review Approval Criteria

Because the Hearings Officer is denying the Conditional Use Permit, the Hearings Officer must also deny the Class 3 Site Plan Review. However, in case the denial of the Conditional Use Permit is reversed on appeal, the Hearings Officer will evaluate the Class 3 Site Plan Review.

SRC 220.005(f)(3) establishes the following approval criteria for a Class 3 Site Plan Review:

Criterion 1:

The application meets all applicable standards of the UDC.

The Applicant is requesting approval to develop a new twenty-six building multi-family residential apartment complex with a total of 291 dwelling units. If the Conditional Use Permit were appealed and the Hearings Officer's finding reversed, the proposed site plan would comply with all applicable development standards of the Unified Development Code (UDC).

a. Use and Development Standards – CR (Retail Commercial) Zone:

i. SRC 522.005(a) – Uses:

Permitted, special and conditional uses for the CR zone are found in SRC Chapter 522, Table 522-1. Multiple family residential uses require a conditional use permit in the CR zone per Table 522-1.

The Hearings Officer denies the requested Conditional Use Permit for the proposed 291-unit multi-family residential use. However, if the finding was reversed on appeal and the Conditional Use Permit granted, then the Multi-family residential use would be permissible.

ii. SRC 522.010(a) – Lot Standards:

There are no minimum lot area or dimension requirements in the CR zone. All uses are required to have a minimum of 16 feet of street frontage.

The subject property is proposed Lot 350 from Phase 3 of the East Park Estates Planned Unit Development/Subdivision (CPC-ZC-PUD-SUB-ADJ19-08MOD2). Phase 3 has not yet been recorded.

Condition 1: The applicant must record a plat consistent with this standard prior to petitioning or applying for any civil site work or building permits.

iii. SRC 522.010(b) – Setbacks:

North: Adjacent to the north is property zoned CR (Commercial Retail) that is the site for a future City park (proposed Lot 349, CPC-ZC-PUD-SUB-ADJ19-08MOD2). Multi-family buildings, structures, and vehicle use areas require a minimum 10-foot setback adjacent to a CR zone.

The Hearings Officer finds that the amended site plan from January 26, 2022 indicates that Buildings 10–13 are setback 10 feet and the nearest vehicle use area is setback approximately 70 feet from the property line to the north in compliance with the setback standard of the CR zone.

South: Adjacent to the south is right-of-way for State Street. Per Table 522-3, there is a minimum five-foot building setback required adjacent to a street, vehicle use areas shall be setback a minimum 6-10 feet per SRC Chapter 806.

The Hearings Officer finds that amended site plan from January 26, 2022 indicates that Buildings 1–5 are setback 20 feet and the nearest vehicle use area is setback approximately 88 feet from State Street in compliance with the setback standard of the CR zone.

East: Adjacent to the east is right-of-way for Cordon Road NE. Per Table 522-3, there is a minimum five-foot building setback required adjacent to a street, vehicle use areas shall be setback a minimum 6-10 feet per SRC Chapter 806.

The Hearings Officer finds that the amended site plan from January 26, 2022 indicates that Buildings 6–10 are setback 20 feet and the nearest vehicle use area is setback approximately 20 feet from Cordon Road NE in compliance with the setback standard of the CR zone.

West (Greencrest): Adjacent to the west is right-of-way for Greencrest Street NE. Per Table 522-3, there is a minimum five-foot building setback required adjacent to a street, vehicle use areas shall be setback a minimum 6–10 feet per SRC Chapter 806.

The Hearings Officer finds that the amended site plan from January 26, 2022 indicates the nearest building, proposed building 29, is setback approximately 190 feet and the vehicle use area is setback 20 feet from Greencrest Street NE, in compliance with the setback requirement.

West (Commercial Use/Zone): Adjacent to the west is property zoned CR (proposed Lot 351, CPC-ZC-PUD-SUB-ADJ19-08MOD2). Multi-family buildings, structures, and vehicle use areas require a minimum 10-foot setback adjacent to a CR zone.

The Hearings Officer finds that the amended site plan from January 26, 2022 indicates that proposed Lot 351 could be developed with a gasoline service station and future retail uses. This amended site plan indicates there will be 6' fence and 10 feet of landscape buffering on the apartment side of the fence. The Hearings Officer finds that the amended site plan meets the minimum 10-foot setback.

iv. SRC 522.010(c) – Lot Coverage, Height:

There is no maximum lot coverage standard in the CR zone, the maximum height allowance for all buildings and structures is 50 feet.

The Hearings Officer finds that the proposed multi-family buildings range in height from 37–40.5 feet. The proposed clubhouse is approximately 25 feet in height and a garage/storage building to be used exclusively by residents of the complex is approximately 23 feet in height. Proposed garage and maintenance buildings are less than 15 feet in height, in compliance with the maximum height allowance of the CR zone.

v. SRC 522.010(d) – Landscaping:

- (1) Setbacks. Required setbacks shall be landscaped. Landscaping shall conform to the standards set forth in SRC Chapter 807.
- (2) Vehicle Use Areas. Vehicle use areas shall be landscaped as provided under SRC Chapter 806 and SRC Chapter 807.
- (3) Development Site. A minimum of 15 percent of the development site shall be landscaped. Landscaping shall meet the Type A standard set forth in SRC Chapter 807. Other required landscaping under the UDC, such as landscaping required for setbacks or vehicle use areas, may count towards meeting this requirement.

The total area of the subject property is approximately 10.77 acres (469,311 square feet) requiring a minimum of 70,397 square feet of landscape area ($469,311 \times 0.15 = 70,396.7$). The Hearings Officer finds that the site plan indicates that approximately 138,830 square feet (29.6%) of the development site will be landscaped, exceeding the minimum requirement.

vi. SRC 522.015(a) – Design Review:

Multiple family development shall be subject to design review according to the multiple family design review standards set forth in SRC Chapter 702.

The applicant has applied for Class 1 Design Review, demonstrating that the proposed multi-family development is consistent with the multiple family design review standards set forth in SRC Chapter 702. The Hearings Officer's in-depth findings are addressed in Section 10 below.

b. General Development Standards SRC 800

i. SRC 800.055(a) – Applicability.

Solid waste service area design standards shall apply to all new solid waste, recycling, and compostable services areas, where use of a solid waste, recycling, and compostable receptacle of 1 cubic yard or larger is proposed.

The Hearings Officer finds that the 3rd amended site plan indicates that one solid waste and recycling service area with a trash compactor is provided at the northeast corner of the site. The following is a summary of applicable design standards for the solid waste service area.

ii. SRC 800.055(b) – Solid Waste Receptacle Placement Standards.

All solid waste receptacles shall be placed at grade on a concrete pad that is a minimum of 4 inches thick, or on an asphalt pad that is a minimum of 6 inches thick. The pad shall have a slope of no more than 3 percent and shall be designed to discharge stormwater runoff.

- 1) Pad area. In determining the total concrete pad area for any solid waste service area:*

- a. *The pad area shall extend a minimum of 1-foot beyond the sides and rear of the receptacle.*
- b. *The pad area shall extend a minimum 3 feet beyond the front of the receptacle.*
- c. *In situations where receptacles face each other, a minimum four feet of pad area shall be required between the fronts of the facing receptacles.*

The design and materials for the slab is not indicated in the proposed plans but will be reviewed for conformance with this development standard at the time of building permit review. The proposed enclosure is large enough that the receptacles may face each other with four feet or more of separation provided.

Condition: The applicant must provide plans indicating compliance with all applicable solid waste service area development standards of SRC Chapter 800 prior to applying or petitioning for a building permit.

2) Minimum Separation.

- a. *A minimum separation of 1.5 feet shall be provided between the receptacle and the side wall of the enclosure.*
- b. *A minimum separation of 5 feet shall be provided between the receptacle and any combustible walls, combustible roof eave lines, or building or structure openings.*

Applicant's proposed enclosure is large enough to provide adequate separation distance of the receptacles.

Condition: Receptacles will not be placed within 5 feet of a building or structure.

3) Vertical Clearance.

- a. *Receptacles 2 cubic yards or less in size shall be provided with a minimum of 8 feet of unobstructed overhead or vertical clearance for servicing.*
- b. *Receptacles greater than 2 cubic yards in size shall be provided with a minimum of 14 feet of unobstructed overhead or vertical clearance for serving.*

The Hearing's Officer was not provided with enough information to determine if a roof is proposed for the solid waste enclosure.

Condition: If the Applicant decides to include a roof over the solid waste area, the Applicant must provide plans indicating compliance with the vertical clearance standard prior to applying or petitioning for a building permit, or the Applicant will be prohibited from installing a roof without a subsequent land use application.

- iii. *SRC 800.055(c) – Permanent Drop Box and Compactor Placement Standards.*
- 1) *All permanent drop boxes shall be placed on a concrete pad that is a minimum of six inches thick. The pad shall have a slope of no more than one percent and shall be designed to discharge stormwater runoff consistent with the overall stormwater management plan for the site approved by the Director.*
 - 2) *All permanent compactors shall be placed on a concrete pad that is structurally engineered or in compliance with the manufacturer specifications. The pad shall have a slope of no more than three percent and shall be designed to discharge stormwater runoff consistent with the overall stormwater management plan for the site approved by the Director.*
 - 3) *Pad area. The pad area shall be a minimum of 12 feet in width. The pad area shall extend a minimum of five feet beyond the rear of the permanent drop box or compactor.*
 - 4) *Minimum separation. A minimum separation of five feet shall be provided between the permanent drop box or compactor and any combustible walls, combustible roof eave lines, or building or structure openings.*

The design and materials for the slab where the compactor will be placed is not indicated in the proposed plans but will be reviewed for conformance with this development standard at the time of building permit review.

Condition: The applicant must provide plans indicating compliance with all applicable solid waste service area development standards of SRC Chapter 800 prior to applying or petitioning for a building permit.

- iv. *SRC 800.055(d) – Solid Waste Service Area Screening Standards.*
- 1) *Solid waste, recycling, and compostable service areas shall be screened from all streets abutting the property and from all abutting residentially zoned property by a minimum six-foot-tall sight-obscuring fence or wall; provided, however, where receptacles, drop boxes, and compactors are located within an enclosure, screening is not required. For the purpose of this standard, abutting property shall also include any residentially zoned property located across an alley from the property.*
 - 2) *Existing screening at the property line shall satisfy screening requirements if it includes a six-foot-tall sight-obscuring fence or wall.*

The Hearings Officer finds that the Applicant's plans indicate that the solid waste service area is completely enclosed and screened from view from surrounding streets and abutting property.

- v. *SRC 800.055(e) – Solid Waste Service Area Enclosure Standards.*

When enclosures are used for required screening or aesthetics, such enclosure shall conform to the following standards:

- 1) *Front Opening of Enclosure. The front opening of the enclosure shall be unobstructed and shall be a minimum of 12 feet in width.*

The Hearings Officer is unable to determine the exact width of the front opening of the enclosure area.

Condition: At the time of building permit review the applicant shall provide construction details verifying the front openings are a minimum of 12 feet in width in compliance with this provision.

- 2) *Measures to Prevent Damage to Enclosure. Enclosures constructed of concrete, brick, masonry block, or similar types of material shall contain a minimum four-inch nominal high bumper curb at ground level located 12 inches inside the perimeter of the outside walls of the enclosure, or a fixed bumper rail to prevent damage from receptacle impacts.*

There is insufficient information in the record for the Hearings Officer to determine if the design and materials for the enclosure walls, or measures of preventing damage to the enclosure meet this standard.

Condition: At the time of building permit review the applicant shall provide construction details verifying that the design and materials for the enclosure walls, and/or damage prevention measures are in compliance with this standard.

- 3) *Enclosure Gates. Any gate across the front opening of an enclosure shall swing freely without obstructions. For any enclosure opening with an unobstructed width of less than 15 feet, the gates shall open a minimum of 120 degrees. All gates shall have restrainers in the open and closed positions.*

The Hearings Officer finds that the enclosure gates are less than 15 feet in length. There is insufficient evidence in the record to determine the angle of the swing of the gates.

Condition: At the time of building permit review the applicant shall provide construction details verifying that the gates open a minimum of 120 degrees and have restrainers in the open and closed positions in compliance with this standard.

vi. *SRC 800.055(f) – Solid Waste Service Area Vehicle Access.*

- 1) *Vehicle Operation Area. A vehicle operation area shall be provided for solid waste collection service vehicles that are free of obstructions and no less than 45 feet in length and 15 feet in width. Vehicle operation areas shall be made available in front of every receptacle.*

The Hearings Officer finds that the proposed vehicle operation area meets the minimum dimensional requirements for service vehicle access.

c. Streets and Right-of-Way Improvements, Connectivity SRC 803

- i. SRC 803.030(a) and SRC 803.035(a) – Street Spacing.*
Streets shall have a maximum spacing of 600 feet from right-of-way line to right-of-way line along one axis, and not less than 120 feet and not more than 400 feet from the right-of-way line to right-of-way line along the other axis.

Street connectivity for the subject property was addressed with the tentative subdivision approval (CPC-ZC-PUD-SUB-ADJ19-08MOD2). The Hearings Officer finds that, due to access limits on Cordon Road NE and State Street, internal streets through the subject property connecting to Cordon Road NE and State Street are not required.

d. Off-Street Parking, Loading, and Driveways SRC 806

- i. SRC 806.005 - Off-Street Parking; When Required.*
Off-street parking shall be provided and maintained for each proposed new use or activity.
- ii. SRC 806.010 - Proximity of Off-Street Parking to Use or Activity Served.*
Required off-street parking shall be located on the same development site as the use or activity it serves.
- iii. SRC 806.015 - Amount of Off-Street Parking.*
 - a) Minimum Required Off-Street Parking. For multi-family residential uses containing 13 or more dwelling units, a minimum of one space is required per studio unit or dwelling unit with one bedroom. A minimum of 1.5 spaces are required per dwelling unit with 2 or more bedrooms.*
 - b) Compact Parking. Up to 75 percent of the minimum off-street parking spaces required under this Chapter may be compact parking spaces.*
 - c) Carpool and Vanpool Parking. New developments with 60 or more required off-street parking spaces, and falling within the public services and industrial use classifications, and the business and professional services use category, shall designate a minimum of five percent of their total off-street parking spaces for carpool or vanpool parking.*
 - d) Maximum Off-Street Parking. The maximum number of off-street parking spaces shall not exceed 1.75 times the minimum number of spaces required.*

The proposed multi-family use contains a total of 291 dwelling units, 96 of the proposed units are studio or single bedroom, and the remaining 195 units are two and three-bedroom units. A minimum of 300 off-street parking spaces are required for the proposed use $((96 \times 1) + (195 \times 1.5) = 389)$. The maximum off-street parking allowance is 1.75 times the minimum requirement, or 681 spaces $(389 \times 1.75 = 680.75)$. The January 26, 2022 site

plan indicates that 447 spaces are proposed, with 51 of the spaces proposed to be compact. Carpool/vanpool parking spaces are not required for multi-family uses. The proposal complies with the parking requirements of this section.

iv. *SRC 806.035 - Off-Street Parking and Vehicle Use Area Development Standards.*

- a) *General Applicability. The off-street parking and vehicle use area development standards set forth in this section apply to the development of new off-street parking and vehicle use areas.*
- b) *Location. Off-street parking and vehicle use areas shall not be located within required setbacks.*
- c) *Perimeter Setbacks and Landscaping. Perimeter setbacks shall be required for off-street parking and vehicle use areas abutting streets, abutting interior front, side, and rear property lines, and adjacent to buildings and structures.*

Adjacent to Buildings and Structures: The off-street parking or vehicle use area shall be setback from the exterior wall of the building or structure by a minimum 5-foot-wide landscape strip or by a minimum 5-foot-wide paved pedestrian walkway.

The Hearings Officer finds that the January 26, 2022 site plan brought the development into compliance with the CR set back requirements. As a result, this standard is now also met.

e. *Interior Landscaping.*

Interior landscaping shall be provided in amounts not less than those set forth in Table 806-5. For parking areas less than 50,000 square feet in size, a minimum of 5 percent of the interior parking area shall be landscaped.

A minimum of 1 deciduous shade tree shall be planted for every 12 parking spaces within the off-street parking area. Landscape islands and planter bays shall have a minimum planting area of 25 square feet and shall have a minimum width of 5 feet.

Pursuant to SRC 702.020(b)(8), multiple family developments with 13 or more units are exempt from the landscaping requirements in SRC Chapter 806; therefore, the Hearings Officer finds that this standard is not applicable.

f. *Off-Street Parking Area Dimensions. Off-street parking areas shall conform to the minimum dimensions set forth in Table 806-6.*

The Hearings Officer finds that the proposed parking spaces, driveway and drive aisle for the off-street parking area meet the minimum dimensional requirements of SRC Chapter 806.

g. Additional Off-Street Parking Development Standards 806.035(f)-(m).

The Hearings Officer finds that the proposed off-street parking area is developed consistent with the additional development standards for grade, surfacing, and drainage as well as bumper guards and wheel barriers. The parking area striping, marking, signage and lighting shall be consistent with SRC Chapter 806, required compact parking spaces shall be marked and signed per SRC 806.035(k)(2). The CR zoned portion of the subject property does not abut residentially zoned property.

SRC 806.040 – Driveway Development Standards for Uses or Activities Other Than Single Family, Two Family, Three Family, or Four Family.

(b) location. Driveways shall not be located within required setbacks except where:

(1) The driveway provides direct access to the street, alley, or abutting property.

(2) The driveway is a shared driveway located over the common lot line and providing access to two or more uses.

Based on the Applicant's site plan from January 26, 2022, the Hearings Officer finds that the access point from Greencrest is no longer a shared drive aisle located across a common property line. See the Hearings Officer's conditions on the Greencrest driveway permit below for conditions relating to this access point. The Hearings Officer finds that this standard is met.

Bicycle Parking

SRC 806.045 - General Applicability.

Bicycle parking shall be provided and maintained for each proposed new use or activity.

SRC 806.050 – Proximity of Bicycle Parking to use or Activity Served.

Bicycle parking shall be located on the same development site as the use or activity it serves.

SRC 806.055 - Amount of Bicycle Parking.

Per SRC Chapter 806, Table 806-8, multi-family residential uses are required to provide the greater of four spaces or one space per 10 dwelling units.

The proposed 291-unit multi-family residential apartment complex requires a minimum of 29 bicycle parking spaces. The site plan indicates that 30 bicycle parking spaces are provided throughout the complex. The Hearings Officer finds that the minimum bicycle parking requirements are met.

SRC 806.060 – Bicycle Parking Development Standards.

(a) Location. Except as otherwise provided in this section, bicycle parking shall be located outside a building.

(1) Bicycle parking located outside a building shall be located within a convenient distance of, and be clearly visible from, the primary building entrance. In no

event shall bicycle parking be located more than 50 feet from the primary building entrance, as measured along a direct pedestrian access route.

- (2) Where bicycle parking cannot be located outside a building, it may be located inside a building within a convenient distance of, and accessible from, the primary building entrance.*

(b) Access. Bicycle parking areas shall have direct and accessible access to the public right-of-way and the primary building entrance that is free of obstructions and any barriers, such as curbs or stairs, which would require users to lift their bikes in order to access the bicycle parking area.

(c) Dimensions. Except as provided in subsection (f) of this section, bicycle parking areas shall meet the following dimension requirements:

- (1) Bicycle parking spaces. Bicycle parking spaces shall be a minimum of six feet in length and two feet in width with the bicycle rack centered along the long edge of the bicycle parking space. Bicycle parking space width may be reduced, however, to a minimum of three feet between racks where the racks are located side-by-side.*
- (2) Access aisles. Bicycle parking spaces shall be served by a minimum four-foot-wide access aisle. Access aisles serving bicycle parking spaces may be located within the public right-of-way.*

(d) Surfacing. Where bicycle parking is located outside a building, the bicycle parking area shall consist of a hard surface material, such as concrete, asphalt pavement, pavers, or similar material, meeting the Public Works Design Standards.

(e) Bicycle racks. Where bicycle parking is provided in racks, the racks may be floor, wall, or ceiling racks. Bicycle racks shall meet the following standards.

- (1) Racks must support the bicycle frame in a stable position, in two or more places a minimum of six inches horizontally apart, without damage to wheels, frame, or components.*
- (2) Racks must allow the bicycle frame and at least one wheel to be locked to the rack with a high security, U-shaped shackle lock;*
- (3) Racks shall be of a material that resists cutting, rusting, and bending or deformation; and*
- (4) Racks shall be securely anchored.*
- (5) Examples of types of bicycle racks that do, and do not, meet these standards are shown in Figure 806-10.*

The site plan shows five individual bicycle parking pads, each with three staple racks, which provide two bicycle parking spaces each, for a total of thirty bicycle parking spaces. The site plan provided for the December 22, 2021 hearing showed required bicycle parking spaces between buildings 20 and 21 to be in a location that was further than 50 feet from a primary building entrance, and therefore not in compliance with the bicycle parking location standards in SRC 806.060(a)(1). However, the Applicant's updated site plan shifted the location of the bicycle parking space near Building 21 in a location within 50 feet of a primary building entrance consistent with the standards in SRC 806.060(a)(1). As a result, The Hearings Officer finds the standards in SRC 806.060 are met.

Off-Street Loading Areas

SRC 806.065 - General Applicability.

Off-street loading areas shall be provided and maintained for each proposed new use or activity.

SRC 806.075 - Amount of Off-Street Loading.

For multi-family residential uses containing 200 or more dwelling units, a minimum of three loading spaces are required. If a recreation building is provided, at least one of the required loading spaces shall be located in conjunction with the recreation building. Loading spaces shall be a minimum 12 feet in width, 19 feet in length and 12 feet of unobstructed vertical clearance.

The proposed 291-unit apartment complex requires a minimum of three off-street loading spaces. The proposed site plan indicates that three loading spaces are provided, and one of the loading spaces is located in conjunction with the recreation building in compliance with all applicable off-street loading development standards of SRC Chapter 806.

Landscaping

All required setbacks shall be landscaped with a minimum of 1 plant unit per 20 square feet of landscaped area. A minimum of 40 percent of the required number of plant units shall be a combination of mature trees, shade trees, evergreen/conifer trees, or ornamental trees. Plant materials and minimum plant unit values are defined in SRC Chapter 807, Table 807-2.

All building permit applications for development subject to landscaping requirements shall include landscape and irrigation plans meeting the requirements of SRC Chapter 807.

The proposed site plan indicates that 138,830 square feet of landscaping will be provided for the development site requiring a minimum of 6,942 plant units ($138,830 / 20 = 6,941.5$).

Condition: Of the required plant units, a minimum of 2,777 plant units ($6,942 \times 0.4 = 2,776.8$) shall be a combination of mature trees, shade trees, evergreen/conifer trees, or ornamental trees.

Condition: Landscape and irrigation plans must be conformance with the requirements of SRC Chapter 807 at the time of building permit application review.

Natural Resources

SRC 808 - Preservation of Trees and Vegetation: The City's tree preservation ordinance, under SRC Chapter 808, provides that no person shall remove a significant tree (Oregon

White Oak greater than 24 inches in diameter at breast height) (SRC 808.015) or a tree or native vegetation in a riparian corridor (SRC 808.020), unless the removal is excepted under SRC 808.030(a)(2), undertaken pursuant to a permit issued under SRC 808.030(d), undertaken pursuant to a tree conservation plan approved under SRC 808.035, or permitted by a variance granted under SRC 808.045.

There are no riparian areas located on the subject property. There are ten significant trees located on the RM-II zoned portion of the property containing the previously approved 36-unit multi-family use, each of the ten significant trees will be protected and preserved during construction. There are two significant trees approximately 40 and 48 inches dbh located on the CR zoned portion of the property subject to this application that are proposed to be preserved.

Condition: All trees designated for preservation shall be marked and protected during construction. Any tree designated for preservation shall require that at least 70 percent of a circular area beneath the tree measuring one foot in radius for every one inch of dbh be protected by an above ground silt fence, or its equivalent. Protection measures shall continue until the issuance of a certificate of final occupancy.

SRC 809 - Wetlands: Grading and construction activities within wetlands are regulated by the Oregon Department of State Lands (DSL) and US Army Corps of Engineers. State and Federal wetland laws are also administered by the DSL and Army Corps, and potential impacts to jurisdictional wetlands are addressed through application and enforcement of appropriate mitigation measures.

The Salem-Keizer Local Wetland Inventory shows that there are hydric soils mapped on the property. The applicant should contact the Oregon Department of State Lands to verify if any permits are required for development or construction in the vicinity of the mapped wetland area(s). Wetland notice was sent to the Oregon Department of State Lands pursuant to SRC 809.025.

Condition: The Applicant must apply for and receive any and all required permits from the Department of State Lands prior to the time of building permit application review.

SRC 810 - Landslide Hazards: A geological assessment or report is required when regulated activity is proposed in a mapped landslide hazard area. There are no areas of mapped landslide hazards identified on the subject property. Multi-family residential development is assigned two activity points. Per Table 810-1E, a total of two points indicates a low landslide hazard risk, a geological assessment of the property is not required for the proposed development.

Pursuant to SRC 220.005(f)(3)(A), because the proposal does not comply with applicable development standards of the UDC, specifically SRC 522.005(a) (use of the property), SRC

522.010(b) (setbacks adjacent to Commercial zoned property), SRC 522.010(c) (height of accessory structure), and SRC 806.060(a) (bicycle parking location), the Class 3 Site Plan Review application cannot be approved.

Criterion 2:

The transportation system provides for the safe, orderly, and efficient circulation of traffic into and out of the proposed development, and negative impacts to the transportation system are mitigated adequately.

The existing condition of State Street does not meet current standards for its classification of street per the Salem Transportation System Plan.

Condition: The applicant must convey for dedication a half-width right-of-way up to 48 feet to major arterial street standards as specified in the Public Works Design Standards and based on a rational nexus calculation.

Condition: The applicant must construct a half-street improvement to Major Arterial street standards as specified in the Public Works Design Standards and consistent with the provisions of SRC Chapter 803.

Greencrest Street NE is specified as a collector street in the Salem TSP and is planned to run along the western lot line of the subject property.

Condition: The applicant must construct a half-street improvement along the frontage of Greencrest Street NE to collector street standards as specified in the City Street Design Standards and consistent with the provisions of SRC Chapter 803.

The applicant submitted a traffic impact analysis for the proposed multi-family development that includes all six phases of the East Park development site. The recommended mitigation measures as specified in the TIA were incorporated into the conditions of development for CPC-ZC-PUD-SUB-ADJ19-08MOD2. Because the connection of Greencrest Street NE to State Street is required as a condition of this proposed multi-family development phase, the mitigation measure from the TIA applicable to the proposed development shall apply.

Condition: The Applicant must comply with the mitigation measure from the TIA applicable to the proposed development.

Criterion 3:

Parking areas and driveways are designed to facilitate safe and efficient movement of vehicles, bicycles, and pedestrians.

The applicant's original site plan proposed access onto State Street along the southern lot line, Greencrest Street NE along the western lot line, and Stella Street NE along the

northern lot line. The driveway access onto Greencrest Street NE and Stella Street provides for safe turning movements into and out of the property.

The site plan provided for the December 22, 2021 hearing included a driveway approach with direct access to State Street. State Street is classified as a major arterial in the Salem Transportation System Plan, and the minimum driveway spacing standard between driveway approaches or intersection is 370 feet per SRC 804.035, the proposed driveway was approximately 275-feet from the intersection of Greencrest Street NE and did not comply with minimum standards. The driveway has been removed. Primary access for the proposed multi-family use is now from Greencrest Street NE and secondary access is provided by Stella Street NE, however Stella Street NE will not be constructed until Phased 5 of the East Park Estates Planned Unit Development.

The Fire Department will require a minimum of two approved points of access for the apartment complex. Greencrest Street NE is scheduled to be complete with Phase 3 of the East Park Estates Planned Unit Development and Stella Street NE is scheduled to be complete with Phase 5.

Condition: The Applicant must comply with Oregon Fire Code section D106 regarding standards for emergency vehicle access to residential developments and must seek approval of compliance measures from the Salem Fire Chief or their designee.

Criterion 4:

The proposed development will be adequately served with City water, sewer, stormwater facilities, and other utilities appropriate to the nature of the development.

The Public Works Department has reviewed the applicant's preliminary plan for this site. The water, sewer, and storm infrastructure are available within surrounding streets/areas and are adequate to serve the proposed development.

As a condition of CPC-ZC-PUD-SUB-ADJ19-08MOD2, the applicant constructed a 24-inch water main along Cordon Road to serve the proposed development as specified in the Water System Master Plan. The Water System Master Plan specifies a 12-inch loop to be connected to the Cordon Road main along Auburn Road NE, Greencrest Street NE, and State Street.

Pursuant to PWDS and the Water System Master Plan, the applicant shall be required to extend the 12-inch public main from the intersection of Cordon Road NE and State Street to Greencrest Street. Additionally, the applicant shall construct a 12-inch public main within Greencrest Street NE from the intersection of State Street and Greencrest Street NE to the north line of the subject property.

The applicant's engineer submitted a statement demonstrating compliance with Stormwater PWDS Appendix 004-E(4) and SRC Chapter 71 based on the regulations in effect at the time of original submittal of the East Park development. The preliminary stormwater design demonstrates the use of green stormwater infrastructure to the maximum extent feasible.

Condition: The applicant must design and construct all utilities (sewer, water, and storm drainage) according to the PWDS and the Water System Master Plan.

The Hearings Officer finds that, by virtue of the fact that the Hearings Officer has denied the conditional use permit to allow a residential use in a CR zone, SRC 522.005(a) is not met and the Class 3 Site Plan criteria are not met. Thus, the Hearings Officer must deny the application. However, had the Hearings Officer approved the Conditional Use Permit, the Hearings Officer finds that the criteria for the Class 3 Site Plan are met as conditioned above.

8. Analysis of Class 2 Adjustment Criteria

Because the Hearings Officer is denying the Conditional Use Permit, the Hearings Officer must also deny the Class 2 Adjustment Application. However, in case the denial of the Conditional Use Permit is reversed on appeal, the Hearings Officer will evaluate the Class 2 Adjustment Application.

SRC Chapter 250.005(d)(2) provides that an applicant for a Class 2 Adjustment shall be granted if all of the following criteria are met:

Criterion 1:

The purpose underlying the specific development standard proposed for adjustment is:

- (i) Clearly inapplicable to the proposed development; or
- (ii) Equally or better met by the proposed development.

The applicant is requesting three Class 2 Adjustments to:

- 1) To allow buildings to be placed at a 20-foot setback along State Street and Cordon Road NE instead of five-ten feet as required by 702.020(e)(4), and to allow no buildings at the minimum setback on Greencrest Street NE; and
- 2) To eliminate the direct pedestrian access to adjacent sidewalk requirement for ground level units adjacent to State Street and Cordon Road NE as required by 702.020(e)(5).

The Applicant originally had three Class 2 Adjustment requests. However, due to revisions in the site plan, the adjustment request to allow an off-street parking area near Greencrest Street NE to be located in front of adjacent buildings, instead of behind or beside buildings as required by SRC 702.020(d)(2), is no longer needed as the revised site plan removes the parking area between the proposed multi-family

buildings and Greencrest Street NE.

The Applicant is requesting an adjustment from the standard in 702.020(e)(4). The minimum building setback requirement in the CR zone is 5 feet adjacent to a street. Pursuant to SRC 702.020(e)(4), a minimum of 40 percent of the buildable width shall be occupied by buildings placed at the minimum setback line. The applicant is requesting a Class 2 Adjustment to place buildings at a 20-foot setback adjacent to all streets and to eliminate the requirement for a minimum of 40 percent of the buildable width to be occupied by buildings placed at the minimum setback.

The applicant indicates that proposed Buildings 1-5 will have a setback of approximately 20 feet adjacent to State Street, and that proposed Buildings 6-10 and a garage building will be setback approximately 20 feet from Cordon Road NE. Locating buildings at the minimum 5-foot setback line is not feasible for this development because it would conflict with the required 10-foot public utility easements along the streets. In addition, the minimum setback for multi-family developments in multi-family residential zoning designations where this design standard would typically be found is 20 feet. The proposed setback increase would allow for a multi-family development that is similar in appearance from the street to other complexes in the City, the applicant further indicates the larger setback will provide more room for landscaping.

The proposal otherwise complies with the 40 percent buildable width standard applied to the greater setback and will be landscaped. The Hearings Officer finds the proposal equally or better meets the intent of this provision and is therefore in compliance with this criterion.

The Applicant is also requesting an adjustment from the standard in 702.020(e)(5), which requires ground-level unit, cluster of units, interior lobbies, or portions thereof, located within 25 feet of the property line abutting a street to have a building entrance facing that street, with direct pedestrian access to adjacent sidewalks in order to orient buildings to the street.

The applicant is requesting to eliminate the requirement to orient buildings to the street and provide direct pedestrian pathways from the public sidewalk to ground floor units. The applicant explains that the buildings are oriented inwards towards the site, but will be visually appealing including windows, offsets and architectural features where facing the street, and that adequate pedestrian access will be provided from the surrounding public sidewalks into the development site.

The purpose of the standard is to provide a pedestrian friendly development with buildings oriented outward towards the street, and with direct pedestrian access from ground floor units to the abutting sidewalk. In this case, State Street is designated as a Major Arterial Street and Cordon Road NE is designated as a Parkway, both streets carry a significant amount of traffic. If the Hearings Officer approves the Conditional Use Permit with the alternative condition requiring construction of a solid wall a

minimum of 6-feet in height along the Cordon Road NE frontage, then it would not be possible to provide individual pedestrian access points for ground level units to the future sidewalk on Cordon Road NE. The applicant is proposing common pedestrian connections at two points along Cordon Road NE and two points along State Street. These connections help ensure adequate pedestrian access is provided along both street frontages.

The Hearings Officer finds that the proposal equally or better meets the intent of this provision and is therefore in compliance with this criterion.

Criterion 2:

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

The Hearings Officer finds that the criterion is not applicable because, even though the subject property abuts residential zoning and uses, and the proposal is for multi-family residential development, the subject property is located within the CR (Retail Commercial) zone.

Criterion 3:

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

Two separate Class 2 Adjustments have been requested with this development. Both of the adjustments have been evaluated separately for conformance with the Adjustment approval criteria.

The Hearings Officer finds that the cumulative impact of the adjustments results in an overall project which is inconsistent with the intent and purpose of the zoning code by virtue of the fact that the Hearings Officer has denied to conditional use permit to allow a residential use in a CR zone. However, had the Hearings Officer approved the Conditional Use Permit and Site Plan Review applications, the cumulative impact of the adjustments results in an overall project would be consistent with the intent and purpose of the zoning code. If the Hearings Officer had approved the Conditional Use Permit and Site Plan Review applications, the Hearings Officer would approve the two Class II Adjustments with the following condition:

Condition: Any future development, beyond what is shown in the Applicant's proposed plans, must conform to all applicable development standards of the UDC, unless adjusted through a future land use action.

9. Analysis of Class 2 Driveway Approach Permit Criteria

Because the Hearings Officer is denying the Conditional Use Permit, the Hearings Officer must also deny the Class 2 Driveway Approach Permit Applications. However, in case the

denial of the Conditional Review Permit is appealed and reversed, the Hearings Officer will evaluate the Class 2 Driveway Approach Permit Applications.

Salem Revised Code (SRC) 804.025(d) sets forth the following criteria that must be met before approval can be granted to an application for a Driveway Approach Permit.

Driveway Approach Permit – State Street

Based on the Applicant's 3rd proposed site plan from January 26, 2022, which eliminated the State Street access, this permit is no longer necessary.

Driveway Approach Permit – Greencrest Street NE

Criterion 1:

The proposed driveway approach meets the standards of this Chapter and the Public Works Design Standards.

The Hearings Officer Finds that the proposed driveway meets the standards for SRC Chapter 804 and Public Works Design Standards (PWDS).

Criterion 2:

No site conditions prevent placing the driveway approach in the required location.

The Hearings Officer finds that the adjusted lot line as shown in the January 26, 2022 indicate that an easement must be obtained to have access off of Greencrest.

Criterion 3:

The number of driveways onto an arterial is minimized.

The Hearings Officer finds that the proposed driveway is not accessing onto an arterial street.

Criterion 4:

The proposed driveway approach, where possible:

- a) Is shared with an adjacent property; or
- b) Takes access from the lowest classification of street abutting the property.

The subject property abuts a Parkway, Major Arterial, Collector and Local street. A shared driveway approach is not feasible because the proposed multi-family development abuts residential lots. It is not possible to serve the approximately 10-acre development with all driveway accesses to the lowest classification of street because access is not permitted to the Parkway (Cordon Rd) or Major Arterial (State St) frontages. The Hearings Officer finds that the proposed driveway to the future Collector street (Greencrest Street NE) is required to serve the proposed development.

Criterion 5:

The proposed driveway approach meets vision clearance standards.

The Hearings Officer finds that the proposed driveway meets the PWDS vision clearance standards set forth in SRC Chapter 805.

Criterion 6:

The proposed driveway approach does not create traffic hazards and provides for safe turning movements and access.

No evidence has been submitted to indicate that the proposed driveway will create traffic hazards or unsafe turning movements. Additionally, submitted analysis of the proposed driveway indicates that it will not create a traffic hazard and will provide for safe turning movements for access to the subject property.

Criterion 7:

The proposed driveway approach does not result in significant adverse impacts in the vicinity.

Submitted analysis of the proposed driveway indicates that the location of the proposed driveway will not have any adverse impacts to the adjacent properties or streets.

Criterion 8:

The proposed driveway approach minimizes impact to the functionality of adjacent streets and intersections.

The Hearings Officer finds that the proposed driveway approach is located on a future collector street and does not create a significant impact to adjacent streets and intersections.

Criterion 9:

The proposed driveway approach balances the adverse impacts to residentially zoned property and the functionality of adjacent streets.

The proposed development is surrounded by residentially zoned property. The proposed development abuts a Parkway, Arterial, Collector and Local street. The proposed driveway is taken from of the lower street classifications abutting the subject property. The Hearings Officer finds that the driveway balances the adverse impacts to residentially zoned property and will not have an adverse effect on the functionality of the adjacent streets.

The Hearings Officer finds that the application for a Driveway Approach Permit from Greencrest Street meets the applicable criteria.

Driveway Approach Permit – Stella Street NE

Criterion 1:

The proposed driveway approach meets the standards of this Chapter and the Public Works Design Standards.

The Hearings Officer finds that the proposed driveway meets the standards for SRC Chapter 804 and Public Works Design Standards (PWDS).

Criterion 2:

No site conditions prevent placing the driveway approach in the required location.

The Hearings Officer finds that there are no site conditions prohibiting the location of the proposed driveway.

Criterion 3:

The number of driveways onto an arterial is minimized.

The Hearings Officer finds that the proposed driveway is not accessing onto an arterial street.

Criterion 4:

The proposed driveway approach, where possible:

- a) Is shared with an adjacent property; or
- b) Takes access from the lowest classification of street abutting the property.

The Hearings Officer finds that the proposed driveway is currently located with access to the lowest classification of street abutting the subject property.

Criterion 5:

The proposed driveway approach meets vision clearance standards.

The Hearings Officer finds that the proposed driveway meets the PWDS vision clearance standards set forth in SRC Chapter 805.

Criterion 6:

The proposed driveway approach does not create traffic hazards and provides for safe turning movements and access.

The Hearings Officer finds that no evidence has been submitted to indicate that the proposed driveway will create traffic hazards or unsafe turning movements. Additionally, submitted analysis of the proposed driveway indicates that it will not create a traffic hazard and will provide for safe turning movements for access to the subject property.

Criterion 7:

The proposed driveway approach does not result in significant adverse impacts in the vicinity.

The Hearings Officer finds that the submitted analysis of the proposed driveway indicate the location of the proposed driveway will not have any adverse impacts to the adjacent properties or streets.

Criterion 8:

The proposed driveway approach minimizes impact to the functionality of adjacent streets and intersections.

The Hearings Officer finds that the proposed driveway approach is located on a future local street and does not create a significant impact to adjacent streets and intersections.

Criterion 9:

The proposed driveway approach balances the adverse impacts to residentially zoned property and the functionality of adjacent streets.

The Hearings Officer finds that the proposed development is surrounded by residentially zoned property. The proposed driveway is taken from of the lowest street classification abutting the subject property. The driveway balances the adverse impacts to residentially zoned property and will not have an adverse effect on the functionality of the adjacent streets.

The Hearings Officer finds that the application for a Driveway Approach Permit from Stella Street meets the applicable criteria.

The Hearings Officer finds that the Class 2 Driveway Approach Permit Applications for Stella Street and Greencrest Street meet all the applicable criteria. Because the Hearings Officer denies the Conditional Use Permit, so must these permits also be denied. If the Hearings Officer had approved the Conditional Use Permit, Site Plan Review applications, and Class 2 Adjustments, the Hearings Officer would approve the Class 2 Driveway approach permits for Stella Street and Greencrest Street with the following conditions:

Condition: The Applicant may not construct a driveway approach from State Street.

Condition: The Applicant must successfully adjust the property lines to conform with the proposed site plan from January 26, 2022.

Condition: The Applicant must receive an easement to permit access from the CR zoned property that borders the subject property to the West in order to have access to the subject property from Greencrest St.

10. Analysis of Class 1 Design Review Criteria

Because the Hearings Officer is denying the Conditional Use Permit, the Hearings Officer must also deny the Class 1 Design Review Application. However, in case the denial of the Conditional Use Permit is reversed on appeal, the Hearings Officer will evaluate the Class 1 Design Review Application.

Salem Revised Code (SRC) 225.005(e)(1) provides that a Class 1 Design Review application shall be approved if all of the applicable design review standards are met.

Development Standards – Multiple Family Design Review Standards SRC 702

SRC 702.020 - Design review standards for multiple family development with thirteen or more units.

(a) Open space standards.

(1) To encourage the preservation of natural open space qualities that may exist on a site and to provide opportunities for active and passive recreation, all newly constructed multiple family developments shall provide a minimum 30 percent of the gross site area as designated and permanently reserved open space. For the purposes of this subsection, the term "newly constructed multiple family developments" shall not include multiple family developments created through only construction or improvements to the interior of an existing building(s). Indoor or covered recreation space may count toward this open space requirement.

The proposed development occurs on a portion of the subject property that is approximately 10.77 acres in size (469,311 square feet). The standard requires a minimum of 140,793 square feet ($469,311 \times 0.3 = 140,793.3$) of common open space, including indoor or covered recreation space. The site plan indicates that 159,913 square feet (approximately 34.1 percent of the site area) of open space, including landscaped areas, a recreation building, and a pool is provided for this development site, exceeding the minimum open space requirement. The Hearings Officer finds that the application meets this requirement.

(A) To ensure usable open space, at least one common open space area shall be provided within the development that is at least 1,000 square feet in size, plus an additional 250 square feet for every 20 units, or portion thereof, over 20 units and has a minimum dimension of 25 feet for all sides.

The proposed multi-family development contains 291 dwelling units; per Table 702-3 the 291-unit development requires a minimum open space area that is 4,500 square feet in size with no dimension less than 25 feet. The Hearings Officer finds that the site plan indicates a large open space area is provided between Buildings 17, 18, 19, 20, 21, and 22 that is 12,367 square feet in size with a minimum dimension of 65 feet, exceeding the minimum standard.

(B) To ensure the provided open space is usable, a maximum of 15 percent of the common open space shall be located on land with slopes greater than 25 percent.

The existing conditions plan indicates that there are no slopes greater than 25 percent on the subject property. Therefore, the Hearings Officer finds the application meets this requirement.

(C) To allow for a mix of different types of open space areas and flexibility in site design, private open space, meeting the size and dimension standards set forth in Table 702-4, may count toward the open space requirement. All private open space must meet the size and dimension standards set forth in Table 702-4.

The Hearings Officer finds that the applicant has met the minimum open space requirement by providing common open space. Therefore, the applicant does not need to use the reductions offer by this section to meet the common open space requirement.

(D) To ensure a mix of private and common open space in larger developments, private open space, meeting the size and dimension standards set forth in Table 702-4, shall be provided for a minimum of 20 percent of the dwelling units in all newly constructed multiple family developments with 20 or more dwelling units. Private open space shall be located contiguous to the dwelling unit, with direct access to the private open space provided through a doorway.

The Hearings Officer finds that the Applicant is providing private open space for each unit. Ground floor units will have patios at least 96 square feet in size, with no dimension less than six feet. The second and third story units will have decks that are a minimum of 60 square feet in size. The private open space areas comply with the minimum size requirements of Table 702-4.

(E) To encourage active recreational opportunities for residents, the square footage of an improved open space area may be counted twice toward the total amount of required open space, provided each such area meets the standards set forth in this subsection. Example: a 750-square-foot improved open space area may count as 1,500 square feet toward the open space requirement.

- (i) Be a minimum 750 square feet in size with a minimum dimension of 25 feet for all sides; and*
- (ii) Include at least one of the following types of features:*
 - a. Covered pavilion.*
 - b. Ornamental or food garden.*
 - c. Developed and equipped children's play area, with a minimum 30-inch-tall fence to separate the children's play area from any parking lot, drive aisle, or street.*
 - d. Sports area or court (e.g., tennis, handball, volleyball, basketball, soccer).*
 - e. Swimming pool or wading pool.*

The Hearings Officer finds that this standard is not applicable because the applicant has met the minimum open space requirement without using the reduction offered in this section.

(F) To encourage proximity to and use of public parks, the total amount of required open space may be reduced by 50 percent for developments that are located within one-quarter mile of a publicly owned urban, community, or neighborhood park as measured along a route utilizing public or private streets that are existing or will be constructed with the development.

The Hearings Officer finds that this standard is not applicable because the applicant has met the minimum open space requirement without using the reduction offered in this section.

(b) Landscaping standards.

(1) To encourage the preservation of trees and maintain or increase tree canopy, a minimum of one tree shall be planted or preserved for every 2,000 square feet of gross site area.

The proposed development occurs on a portion of the subject property that is approximately 10.77 acres in size (469,311 square feet) requiring a minimum of 235 trees ($469,311 / 2,000 = 234.7$). The applicant's written statement and landscape plan does not indicate a total number of trees provided for the development site but will be reviewed for conformance with this development standard at the time of building permit/landscape plan review.

Condition: Prior to or at the time of building permit/landscape plan review, the Applicant must provide a written statement and landscape plan indicating how the Applicant intends to preserve or plant at least 235 trees on the development site.

(2) Where a development site abuts property that is zoned Residential Agricultural (RA) or Single Family Residential (RS), a combination of landscaping and screening shall be provided to buffer between the multiple family development and the abutting RA or RS zoned property. The landscaping and screening shall include the following:

(A) A minimum of one tree, not less than 1.5 inches in caliper, for every 30 linear feet of abutting property width; and

(B) A minimum six-foot tall, decorative, sight-obscuring fence or wall. The fence or wall shall be constructed of materials commonly used in the construction of fences and walls, such as wood, stone, rock, brick, or other durable materials. Chain-link fencing with slats shall not be allowed to satisfy this standard.

The Hearings Officer does not find that this standard is not applicable because the subject property does not abut property zoned RA or RS.

(3) To define and accentuate primary entryways, a minimum of two plant units, shall be provided adjacent to the primary entryway of each dwelling unit, or combination of dwelling units.

The Hearings Officer finds that the landscaping plan provided indicates at least two plant units will be installed at each shared entrance.

(4) To soften the visual impact of buildings and create residential character, new trees shall be planted, or existing trees shall be preserved, at a minimum density of ten plant units per 60 linear feet of exterior building wall. Such trees shall be located not more than 25 feet from the edge of the building footprint.

The Hearings Officer finds that the landscaping plan provided indicates at least ten plant units of trees per 60 linear feet of exterior building wall are to be planted within 25 feet on each side of the proposed buildings.

(5) Shrubs shall be distributed around the perimeter of buildings at a minimum density of one plant unit per 15 linear feet of exterior building wall.

The Hearings Officer finds that the landscaping plan provided indicates at least one plant unit of shrubs per 15 linear feet are to be planted on each side of the proposed buildings.

(6) To ensure the privacy of dwelling units, ground level private open space shall be physically and visually separated from common open space with perimeter landscaping or perimeter fencing.

The Hearings Officer finds that the applicant's written statement and landscape plan indicate that all private open space located contiguous to the dwelling unit will be screened with five-foot tall landscaping ensuring privacy for private open space areas.

(7) To provide protection from winter wind and summer sun and to ensure trees are distributed throughout a site and along parking areas, a minimum of one canopy tree shall be planted along every 50 feet of the perimeter of parking areas. Trunks of the trees shall be located within ten feet of the edge of the parking area (see Figure 702-3).

(A) A minimum of one canopy tree shall be planted within each planter bay.

(B) A landscaped planter bay a minimum of nine feet in width shall be provided at a minimum spacing of one for every 12 spaces. (see Figure 702-3).

The Applicant's January 26, 2022 site plan indicates that the parking area contained 419 parking spaces, requiring 34 planter bays at least nine feet in width. The landscaping plan indicates at least 46 planter bays, nine feet in width and each with a canopy tree, will be provided. The original site plan was in compliance with this

standard by showing a minimum of one canopy tree is provided every 50 feet around the perimeter of the parking areas. The Hearings Officer finds that the application meets this standard.

(8) Multiple family developments with 13 or more units are exempt from the landscaping requirements in SRC Chapter 806.

The proposal includes more than thirteen units; therefore, The Hearings Officer finds that this development is exempt from the landscaping requirements of SRC Chapter 806.

(c) Site safety and security.

- (1) Windows shall be provided in all habitable rooms, other than bathrooms, on each wall that faces common open space, parking areas, and pedestrian paths to encourage visual surveillance of such areas and minimize the appearance of building bulk.*
- (2) Lighting shall be provided that illuminates all exterior dwelling unit entrances, parking areas, and pedestrian paths within the development.*
- (3) Fences, walls, and plant materials shall not be installed between street-facing dwelling units and public or private streets in locations that obstruct the visibility of dwelling unit entrances from the street. For purposes of this standard, the term "obstructed visibility" means the entry is not in view from the street along one-half or more of the dwelling unit's frontage.*
- (4) Landscaping and fencing adjacent to common open space, parking areas, and dwelling unit entryways shall be limited to a maximum height of three feet to encourage visual surveillance of such areas.*

The Hearings Officer finds that the January 26, 2022 site plan indicates that exterior lighting (pole lights a maximum of 14 feet tall, and post lights a maximum of 5 feet tall) will be provided along pedestrian paths and adjacent to vehicle use areas, lighting will also be provided on building exteriors. According to the site plan and landscaping plan, there are no fences near the entryways or common open space.

The original floor plans and elevations provided by the Applicant indicated that windows were not provided in habitable rooms at the end elevations for Buildings 1-8, 10, 14-20, 22, 25, and 27. However, the January 22, 2022 elevation plans were modified to address this concern. The Hearings Officer finds this standard is met.

(d) Parking and site design.

- (1) To minimize large expanses of continuous pavement, parking areas greater than 6,700 square feet in area shall be physically and visually separated with landscaped planter bays that are a minimum of nine feet in width. Individual parking areas may be connected by an aisle or driveway (see Figure 702-3).*

The Hearings Officer finds that the applicant indicated that there are no parking areas greater than 6,700 square feet in size. Planter bays a minimum of nine feet in width, and each planted with a canopy tree, have been provided throughout the development site to minimize large expanses of continuous pavement, in compliance with this standard.

(2) To minimize the visual impact of on-site parking and to enhance the pedestrian experience, off-street surface parking areas and vehicle maneuvering areas shall be located behind or beside buildings and structures. Off-street surface parking areas and vehicle maneuvering areas shall not be located between a building or structure and a street.

Based on the Applicant's January 26, 2022 site plan, the Hearings Officer finds that this standard is satisfied.

(3) Where a development site abuts, and is located uphill from, property zoned Residential Agriculture (RA) or Single Family Residential (RS), and the slope of the development site within 40 feet of the abutting RA or RS zoned property is 15 percent or greater, parking areas shall be set back not less than 20 feet from the property line of the abutting RA or RS zoned property to ensure parking areas are designed to consider site topography and minimize visual impacts on abutting residential properties.

The Hearings Officer finds that the subject property does not abut RA or RS zoned property; therefore, this standard is not applicable.

(4) To ensure safe pedestrian access to and throughout a development site, pedestrian pathways shall be provided that connect to and between buildings, common open space, and parking areas, and that connect the development to the public sidewalks.

Sidewalks are shown connecting the development site to existing/proposed public sidewalk along Greencrest Street NE, State Street and Cordon Road NE, between buildings, and connecting to the common open space. The original site plan did not propose a sidewalk on east side of Buildings 23 and 28 connecting the adjacent parking spaces to the rest of the development site. However, the revised site plan from January 26, 2022 has addressed this issue, so the Hearings Officer finds that this standard is met.

(e) Façade and building design.

(1) To preclude long monotonous exterior walls, buildings shall have no dimension greater than 150 feet.

The Hearings Officer finds that there are no buildings within the proposed development that exceed 150 feet in length, and that the application is in compliance with this standard.

(2) Where a development site abuts property zoned Residential Agricultural (RA) or Single Family Residential (RS), buildings shall be setback from the abutting RA or RS zoned property as set forth in Table 702-5 to provide appropriate transitions between new buildings and structures on-site and existing buildings and structures on abutting sites.

(A) A 5-foot reduction is permitted to each required setback in Table 702-5 provided that the height of the required fence in Sec. 702.015(b)(1)(B) is increased to eight feet tall.

The Hearings Officer finds that the subject property does not abut property zoned RA or RS; therefore, this standard is not applicable.

(3) To enhance compatibility between new buildings on site and abutting residential sites, balconies located on building facades that face RA or RS zoned properties, unless separated by a street, shall have fully sight-obscuring railings.

The Hearings Officer finds that the subject property does not abut property zoned RA or RS; therefore, this standard is not applicable.

(4) On sites with 75 feet or more of buildable width, a minimum of 40 percent of the buildable width shall be occupied by building placed at the setback line to enhance visual interest and activity along the street. Accessory structures shall not apply towards meeting the required percentage.

The applicant has requested an adjustment to eliminate the requirement for buildings to be placed at the minimum 5-10-foot setback line, rather the applicant is proposing to set the buildings back approximately 20 feet adjacent to State Street and Cordon Road NE, and further along Greencrest Street NE. The Hearings Officer's findings for the Adjustment can be found in Section 8 of this report.

(5) To orient buildings to the street, any ground-level unit, cluster of units, or interior lobbies, or portions thereof, located within 25 feet of the property line abutting a street shall have a building entrance facing the street, with direct pedestrian access to the adjacent sidewalk.

The applicant has requested an adjustment to eliminate the requirement for ground floor units within 25 feet of the property line abutting a street to have direct pedestrian access to the adjacent sidewalk. The Hearings Officer's findings for the Adjustment can be found in Section 8 of this report.

(6) A porch or architecturally defined entry area shall be provided for each ground level dwelling unit. Shared porches or entry areas shall be provided to not more than four dwelling units. Individual and common entryways shall be articulated with a differentiated roof, awning, stoop, forecourt, arcade or portico.

The Hearings Officer finds that covered entry areas are provided at each of the primary entrances for the dwelling units in compliance with this standard.

(7) Roof-mounted mechanical equipment, other than vents or ventilators, shall be screened from ground level view. Screening shall be as high as the top of the mechanical equipment and shall be integrated with exterior building design.

The Hearings Officer finds that the applicant has indicated that roof mounted equipment will be screened and integrated into the building design in compliance with this standard.

(8) To reinforce the residential character of the neighborhood, flat roofs, and the roof ridges of sloping roofs, shall not exceed a horizontal length of 100 feet without providing differences in elevation of at least four feet in height. In lieu of providing differences in elevation, a cross gable or dormer that is a minimum of four feet in length may be provided.

The Hearings Officer finds that for each of the buildings with a roof line exceeding 100 feet in length without a change in elevation of at least four feet, the building design instead includes cross gables and/or dormers greater than four feet in length, in compliance with this standard.

(9) To minimize the appearance of building bulk, each floor of each building's vertical face that is 80 feet in length or longer shall incorporate one or more of the design elements below (see examples in Figure 702-5). Design elements shall vary from other wall surfaces by a minimum of four feet and such changes in plane shall have a minimum width of six feet.

(A) Offsets (recesses and extensions).

(B) Covered deck.

(C) Covered balcony.

(D) Cantilevered balcony provided at least half of its depth is recessed.

(E) Covered entrance.

According to the applicant's written statement and proposed building elevation plans; building offsets, covered decks, recessed balconies and covered entrances will be incorporated into the design for each building in compliance with this standard.

(10) To visually break up the building's vertical mass, the first floor of each building, except for single-story buildings, shall be distinguished from its upper floors by at least one of the following (see examples in Figure 702-6):

(A) Change in materials.

(B) Change in color.

(C) Molding or other horizontally distinguishing transition piece.

According to the applicant's written statement and January 24, 2022 Building Elevation Plans, the third floor of each building will have contrasting building materials and colors, as well as using horizontally distinguishing transition pieces to visually break up the mass of each building. The applicant's written statement and building elevation plans also show a horizontal transitional piece separating the first floor from the second floor. The Hearings Officer finds that this standard is met as set forth in the January 24, 2022 Building Elevation Plans with the following condition:

Condition: The Applicant must develop their residential dwelling buildings as detailed in the Applicant's Building Elevation Plans submitted to the City on January 24, 2022, which were attached as Exhibit A to the CU-SPR-DAP-DR21-05 Supplemental Staff Report and as indicated in the Site Plan from January 26, 2022. The elevation plan of each different type of unit (Type A-D) must maintain the distinguishing horizontal strip between the first and second floor and this strip must be of a different color or material than the neighboring siding.

Pursuant to SRC 225.005(e)(1), because the Building Elevations from January 24, 2022 and the site plans from January 26, 2022 comply with applicable standards of SRC Chapter 702, the Class 1 Design Review application would be approved. Because the Hearings Officer denies the Conditional Use Permit, so must this application also be denied. If the Hearings Officer had approved the Conditional Use Permit, Site Plan Review applications, Class 2 Driveway Access Permits, and Class 2 Adjustments, the Hearings Officer would approve the Class 1 Design Review, as conditioned above.

DECISION

Based upon the Facts and Findings contained in this staff report, the evidence presented in oral testimony, and the evidence submitted into the record, the Hearings Officer DENIES the request for a conditional use permit. As a result of the denial of the conditional use permit, the Hearings Officer also DENIES the site plan review, adjustments, driveway approach permit, and design review collective applications for the proposed development of a 291-unit multi-family residential apartment complex for property approximately 10.77 acres in size and located at the 4900 Block of State Street.

DATED: March 4, 2022


Catherine M. Pratt, Hearings Officer