

April 14, 2022

Via E-mail Only

City of Salem City Council

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Re: East Park Apartments - Appeal of Hearings Officer Decision

Dear Mayor and City Councilors:

Introduction

This office represents East Park, LLC, the applicant and developer of the East Park Planned Unit Development. Since the PUD was approved in 2019, much infrastructure has been constructed to serve the project and the surrounding area, including one mile of 24 inch diameter water main, and a sanitary sewer pump station with capacity that far exceeds what is necessary to serve this project. Construction of the new houses has begun. The project will be constructed in many phases, and this appeal hearing regards denial of the Design Review for 291 apartments. Please note the denial is not based on any problem with design of the buildings or the site improvements; rather, it is based on subjective conditional use criteria.

This is a Quasi-Judicial Decision

We begin with the nature of the decision before the City Council, which is a Type 3 quasi-judicial decision under SRC Section 300.100 and ORS 227.175(2). This procedure is important because, unlike when the City Council is determining policy, such as during a legislative amendment of the zoning code, here the City Council is acting in a quasi-judicial capacity to review this application for compliance with state and local law. That means there is “little room for unguided policy choice” and “that the decision is confined by preexisting criteria rather than a wide discretionary choice of

action or inaction.” *Strawberry Hill 4 Wheelers v. Benton County Commissioners*, 287 Or 591, 601 P2d 769 (1979). So whichever criteria are applicable becomes very important. In determining that, the City Council must act as “a tribunal which is impartial in the matter[.]” *Fasano v. Board of County Commissioners of Washington County*, 264 Or 574, 507 P2d 23 (1973)

The decision must comply with state laws that prioritize the development of housing over other land use objectives. These laws supersede the City’s zoning code provisions that, in the Hearings Officer’s mistaken view, preclude apartments at this site. State laws prohibit the application of subjective criteria to housing, as will be described in more detail below. ORS 227.178(3)(a). If the City Council acts contrary to those laws, legal liabilities for the City could ensue under ORS 197.307(4), and 197.835(10)(b).¹

The applicant is entitled to the equal protection of the state laws as they exist. *David Hill Development, LLC v. City of Forest Grove, et al*, Civ. No. 08-266-AC, United States District Court, D. Oregon, Portland Division; 688 F Supp 2d 1193 (D Or 2010), 2012 WL 5381555, 2012 WL 712271.

Of course the City is welcome to revisit the zoning of the subject property in the future. The procedure for doing so is found in SRC Chapter 265, ORS 197.610 *et seq*, and ORS 227.175(1). That procedure is different from the current quasi-judicial procedure, and not relevant to this appeal.²

Oregon Land Use Laws Prioritize Housing

We appreciate that the staff memo of February 9th acknowledged that the proposed apartments are “needed housing” within the statutory definition (See ORS 197.303(1)), and that the clear and objective criteria are satisfied, with two small exceptions that qualify for adjustments. However, we are surprised that the Hearings Officer concluded, without citation to the text of ORS 197.303(1), that the needed housing statutes only apply to mixed use zones which permit residential uses outright. The special exemption the Hearings Officer conjured—that the site is not zoned for mixed residential and commercial use because multifamily housing is not an outright permitted use, and a conditional use permit is required—is illusory.

In *Rogue Valley Association of Realtors v. City of Ashland*, LUBA listed several “examples of discretionary criteria that are not to be applied to ‘needed housing’.” The prohibitions include criteria that require a conditional use to:

“have a minimal adverse impact on the livability, value and appropriate development of abutting properties and the surrounding area compared with the impact of development that is permitted outright[.]”

¹ “If the board [LUBA] does reverse the decision and orders the local government to grant approval of the application, the board *shall award attorney fees to the applicant and against the local government.*” (Emphasis added) (“shall” means LUBA has no discretion).

² But, at least two decisions cited below apply the “needed housing” statutes in legislative actions.

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35 Or LUBA 139, 158 n 27, *aff'd*, 158 Or App 1, 970 P2d 685, *rev den*, 328 Or 594 (1999).

In other words, the Hearings Officer's conclusion that the application is exempt from the needed housing statute because multifamily is a conditional use in the CR zone, instead of a permitted use, is clearly wrong. As set forth below, multifamily housing is "allowed" in the zone under the CR zoning, so the needed housing statutes apply.

The City can apply subjective conditional use criteria to commercial and other nonresidential uses in the CR zone, but it cannot apply subjective criteria to residential uses.

The exemption asserted by the Hearings Officer misunderstands how ORS 197.307(4) operates. The statute clearly states that the city "may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing." ORS 197.307(4). In the 2017 legislature, Senate Bill 1051 revised ORS 197.307(4) to clarify that it applied to *all* housing. The attached legislative history, from the floor of the Oregon House, confirms the bill was intended to: "Define 'needed housing' as all housing."

The Court of Appeals also recently confirmed this in December.

"In 2017, the legislature extended the 'clear and objective' requirement to the development of all housing. See Or Laws 2017, ch 754, § 5; see also *Warren v. Washington County*, 296 Or App 595, 598, 439 P3d 581, *rev den*, 365 Or 502 (2019) (after the 2017 amendments, ORS 197.307(4) 'provides that local government can regulate the development of housing only through clear and objective standards, conditions, and procedures'). The legislature accomplished that change by simply amending the provision that formerly addressed only needed housing to apply to 'housing, including needed housing.' Or Laws 2017, ch 745, § 5 ('[A] local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of **housing, including** needed housing * * *.' (Additions in bold.)). In our view, that change was meant to expand application of the existing 'clear and objective' standard to all housing[.]"

Roberts v. City of Cannon Beach, 316 Or App 305, 311 (2021) (emphasis original).

The court applied ORS 197.307(4) which requires that all "standards, conditions and procedures" be clear and objective. That statute applies, by its own words, to all ordinances that apply conditions, including conditional use ordinances. The Court of Appeals, LCDRC, and LUBA have interpreted the statute consistent with that meaning. Note that the court states that ORS 197.307(4) requires clear and objective standards and procedures; however, the standards and procedures for multifamily housing in the CR zone are not clear and objective.

Last September, LUBA went further. "The applicability of ORS 197.307(4) is not confined to areas within a UGB by the definition of needed housing in ORS 197.303(1)." *Community Participation Organization 4M v. Washington County*, ___ Or LUBA ___ (LUBA No. 2020-110, September 29, 2021) (slip op at 17). Many types of housing outside the UGB are conditional uses. For example, in

Marion County's Exclusive Farm Use zone, the following types of housing are conditional uses: a single-family dwelling or manufactured home not in conjunction with farm use; a temporary residence for hardship purposes; a replacement dwelling to be used in conjunction with farm use; and a residential home or adult foster home in an existing dwelling. MCRZC 17.136.050. *Community Participation Organization 4M* demonstrates that subjective criteria cannot be applied to any type of housing, including housing types that are conditional uses.

That LUBA decision also cites OAR 660-023-0050(2) which says:

"When a local government has decided to protect a resource site under OAR 660-23-0040(5)(b), implementing measures applied to conflicting uses ...shall contain clear and objective standards...[A] standard shall be considered clear and objective if ...(c) it is a performance standard that describes the outcome to be achieved....and specifies the objective criteria to be used in evaluating outcome or performance... If performance standards are adopted, the local government shall at the same time adopt a process for their application (such as **conditional use**, or design review...)." *Id*, slip op at 7-8, fn 4. (emphasis added)

This rule contemplates that both conditional use and design review requirements must contain only clear and objective standards when applied to housing.

Therefore, regardless of whether this project is "needed housing" as defined in ORS 197.303(1), the prohibition on subjective criteria applies, because subjective criteria "cannot operate concurrently" with the legislative mandate that only clear and objective criteria may be applied. *Housing Land Advocates v. LCDL*, 311 Or App 326, 346 n 9, 492 P3d 765, review denied, 368 Or 702 (2021), quoting *City of Portland v. Dollarhide*, 300 Or 490, 501, 714 P2d 220 (1986). The City of Salem's subjective conditional use criteria are preempted by the state housing laws. The revised ORS 197.307(4) has been upheld by LUBA and in the Court of Appeals on many occasions, and we urge you to overturn the Hearings Officer's alleged exemption because all of the reasons for the denial rely on criteria that are not clear and objective.

LUBA has emphasized that the needed housing statute was derived from LCDL's use of the St. Helens' Housing Policy, which explains:

"A third type of conditional use is where approval is discretionary and dependent upon vague criteria such as '*no adverse impact on the neighborhood*,' or '*compatible with surrounding development*.' Such criteria are inappropriate as a means for providing for a needed housing type. Discretionary criteria [under the prior, more limited version of the statute] would be permissible only upon assurance that there is adequate buildable land to accommodate the need for a particular housing type in other zones in which discretionary criteria do not apply." St. Helens Housing Policy 3 (Discussion of Discretionary Criteria) (emphases added)."

Rogue Valley Association of Realtors v. City of Ashland, 35 Or LUBA 139, 156-57, *aff'd*, 158 Or App 1, 970 P2d 685, *rev den*, 328 Or 594 (1999). LUBA expressly held that "*no adverse impact on the neighborhood*," and "*compatible with surrounding development*" are "two explicit examples of

standards that are not clear and objective.” *Id.*, at 157. As described below, Salem’s conditional use criteria are similar to those identified by LCDL and LUBA as not clear and objective.

Moreover, the exceptions to the statute are expressly listed in ORS 197.307(5). There is no listed exception that allows the City to adopt or apply conditional use criteria for housing that are not clear and objective. The same reasoning applies with equal force to the SRC 260.090 subjective criteria regarding consistency with the former annexation concept plan. There is no exception in ORS 197.307(5) for consistency with old and outdated annexation plans. The express listing of the exceptions to the ORS 197.307(4) mandate means that there are no other exceptions. *Vaughn v. Langmack*, 236 Or 542, 547 (1964) (when one or more things of a class are expressly mentioned, others of the same class are excluded).

All local governments must recognize that the state law requiring clear and objective local standards and criteria for housing means what it says, and that many local zoning codes, including Salem’s, have not yet been amended to comply with the new law. This law firm represents many cities, and we recognize that all local governments are burdened by this requirement.

The Conditional Use Criteria Are Not Clear and Objective

The conditional use criteria in SRC Section 240.005(d) have not been updated since 2013. While we understand that many local zoning codes have not kept pace with recent changes in state law, that does not justify the Hearings Officer’s decision to declare an exemption which does not appear in either the text of the laws or in any of the subsequent LUBA and Court of Appeals cases that have upheld the laws.

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

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

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

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

These are not clear and objective criteria because they require subjective and value-laden analyses of what is a “likely adverse impact”, what is the “immediate neighborhood”, whether the impacts are “minimized”, what is “reasonably compatible”, what is a “minimal impact on the livability” and what is the “appropriate development of surrounding property”. *Legacy Development Group, Inc. v. City of The Dalles*, ___ Or LUBA ___, ___ (LUBA No. 2020-099, Feb. 24, 2020) (slip op at 7) (quoting *Rogue Valley Assoc. of Realtors v. City of Ashland*, 35 Or LUBA 139, 158 (1998), *aff’d*, 158 Or App 1, 970 P2d 685, *rev den*, 328 Or 594 (1999)).

The Hearings Officer concluded these criteria are clear and objective because they “are bound by the standards within the SRC.” Findings of Fact, Conclusions and Decision, page 5. That is conclusory

reasoning that fails to address the actual issue. A general reference to unidentified city code standards does not mean that criteria such as “reasonably likely adverse impacts” and “reasonably compatible” are clear and objective. LUBA and the Court of Appeals have ruled otherwise.

In addition, because the needed housing statutes apply, ORS 227.173(2) also applies. It provides that:

“When an ordinance establishing approval standards is required under ORS 197.307 to provide only clear and objective standards, the standards must be clear and objective on the face of the ordinance.”

We note that the Hearings Officer’s decision made no attempt to demonstrate the criteria at issue are facially clear and objective (and they are not). Finally, one more statute applies, and mandates that an appeal to LUBA,

“that involves an ordinance required to contain clear and objective approval standards, conditions and procedures for needed housing, the local government imposing the provisions of the ordinance shall demonstrate that the approval standards, conditions and procedures are capable of being imposed only in a clear and objective manner.”

ORS 197.831. The Hearings Officer has not demonstrated that the conditional use criteria can be imposed only in a clear and objective manner.

All of these statutes work together to prohibit cities from applying subjective criteria to the development of housing, which is what the Hearings Officer erroneously did.

To qualify as clear and objective, a reference must be to a clear and objective standard. For example, in *Roberts v. City of Cannon Beach*, LUBA and the Court of Appeals upheld a reference to the Oregon Coordinate Line, because that is a surveyed line, and therefore objective. *Roberts*, 316 Or App at 316. But, the mere fact that criteria refer to other standards in the zoning code does not mean that the criteria are clear and objective. The referenced standards must also be clear and objective.

The conclusion in the decision errs because the fact is that the CR (Retail Commercial) zone allows residential as a conditional use. That does not mean the subject property is not zoned for residential use. ORS 197.303(1) (defining needed housing as “all housing on land zoned for residential use or mixed residential and commercial use.”) In this regard, the hearings officer determined 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.” Thus, the housing in this matter, and the city’s decision, fall squarely within the “needed housing” statutes as well as the OARs, and LUBA and Court of Appeals decisions that implement them.

The balance of this letter will review each of criterion the Hearings Officer found were not satisfied and thus provided a basis for denial of the application, and explain both why they are not clear and objective, and why they are satisfied, nonetheless. That is, each reason for the denial is unlawful.

Criteria That Were The Basis for the Hearings Officer Denial

SRC 240.005(d) Criterion 2: The reasonably likely adverse impacts of the use on the immediate neighborhood can be minimized through the imposition of conditions.

This criterion is not clear and objective, because a criterion that regards mitigating a potential adverse impact on the neighborhood is not clear and objective, and violates ORS 197.307(4). *Legacy Development Group, Inc. v. City of the Dalles*, ___ Or LUBA ___ (LUBA No. 2020-099, February 24, 2021) (slip op at 15-16); *Rogue Valley Assoc. of Realtors v. City of Ashland*, 35 Or LUBA 139, 159-60, *aff'd*, 158 Or App 1, 970 P2d 685, *rev den*, 328 Or 594 (1999) (a standard requiring an applicant to "mitigate any potential negative impact caused by the development" is not "clear and objective"); see also *Parkview Terrace Development LLC v. City of Grants Pass*, 70 Or LUBA 37, 50 (2014).

Again, LUBA has listed examples of discretionary criteria "that are not to be applied." *Rogue Valley Association of Realtors v. City of Ashland*, 35 Or LUBA 139, 158 n 27, *aff'd*, 158 Or App 1, 970 P2d 685, *rev den*, 328 Or 594 (1999). The full list of criteria not to be applied are those that require a housing development to:

- "-be in harmony with the surrounding neighborhood;
- "-preserve and stabilize the value of adjacent properties;
- "-encourage the most appropriate use of the land;
- "-have a minimal adverse impact on the livability, value and appropriate development of abutting properties and the surrounding area compared with the impact of development that is permitted outright;
- "-preserve assets of particular interest to the community;
- "-not be detrimental or injurious to property and improvement in the neighborhood or to the general welfare of the community;
- "-will not unduly impair traffic flow or safety in the neighborhood."

Id. Clearly, SRC 240.005(d) Criterion 2's requirement that the "reasonably likely adverse impacts of the use on the immediate neighborhood can be minimized" is consistent with the first and fourth bullet points, and, therefore, cannot be applied to this application.

Substantively, the apartments are residential, like the other existing and approved developments in the immediate neighborhood, and will provide customers for the intended convenience store, there are no likely adverse impacts on the surrounding residential uses in the immediate neighborhood. The immediate neighborhood will include a public park to the north; identical apartments and small scale commercial to the west, with single family residential behind; single family residential to the south, and rural land to the east. The proposed apartments will not adversely impact any of these uses, and the Hearings Officer failed to cite a specific example of how the apartments would do so.

Instead, she concluded the proposed apartments "would result in an immediate reduction in available land for commercial uses to serve the immediate neighboring area" which she concludes is a negative impact. The Hearings Officer provided no evidence of the negative impact.

The Hearings Officer examined the wrong question. The question is not whether a different use that is allowed in the comprehensive plan may benefit the immediate neighborhood more than the proposed apartments. Rather, the question is whether the proposed apartments will present “reasonably likely adverse impacts of the use on the immediate neighborhood.” That question was never addressed, assuming it is clear and objective. Thus, the decision fails to address the criterion.

The application included substantial evidence of numerous commercial vacancies nearby, and the utter lack of demand for commercial land in this location. That evidence clearly demonstrates that development of this site with non-commercial uses will not adversely impact the immediate neighborhood.

SRC 240.005(d) Criterion 3:

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

This criterion is also not clear and objective, because a criterion that regards compatibility and livability is not clear and objective, because it imposes a subjective and value-laden analysis, and therefore and violates ORS 197.307(4). *Legacy Development Group, Inc. v. City of the Dalles*, ___ Or LUBA ___ (LUBA No. 2020-099, February 24, 2021) (slip op at 14); see also *Parkview Terrace Development LLC v. City of Grants Pass*, 70 Or LUBA 37, 50 (2014). A criterion that requires an “appropriate use of the land” is a discretionary criterion that is not clear and objective. *Rogue Valley Association of Realtors v. City of Ashland*, 35 Or LUBA 139, 158 n 27, *aff’d*, 158 Or App 1, 970 P2d 685, *rev den*, 328 Or 594 (1999).

Furthermore, the criterion is satisfied (assuming it is clear and objective) because the proposed apartments “will be reasonably compatible with and have minimal impact on the livability or appropriate development of surrounding property.” The applicant provided evidence that the proposed residential uses are compatible with the other surrounding residential uses. However, the Hearings Officer ignored that evidence and never explained why the proposed residential use is incompatible with surrounding residential uses.

Instead, the Hearings Officer again wrongly focused on the purported loss of land for commercial uses which are permitted outright, the comprehensive plan, and the prior annexation concept plan. The potential for commercial uses is not relevant because the criterion to be addressed only regards the proposed use, and it does not measure the proposed use against a theoretical different use. The comprehensive plan is similarly not relevant, because the criterion does not measure the proposed use against the comprehensive plan. By relying on irrelevant factors, the Hearings Officer unsurprisingly reached the wrong conclusion.

As noted above, LUBA previously determined in a case affirmed by the Court of Appeals and denied review by the Supreme Court, that a criterion which compares the livability impact of a proposed development to the impact of a different development that is permitted outright is prohibited. *Rogue*

Valley Assoc. of Realtors v. City of Ashland, 35 Or LUBA 139, 158 n 27, *aff'd*, 158 Or App 1, 970 P2d 685, *rev den*, 328 Or 594 (1999).

Finally, the underlying annexation conceptual plan and SRC 260.090(a) are not relevant to this criterion. Even 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.” Yet the decision erroneously applied that criterion, and “cannot find that the proposed application complies with the criteria set forth in SRC 260.090(a), which would prohibit this residential development.” Therefore, the Hearings Officer decision denies the application based on a criterion that the decision admits does not apply.

Ancillary Topics and Conditions of Approval

The Hearings Officer decision raised several ancillary issues that it found could be satisfied with conditions. Those issues have all been addressed in the revised plans attached with this letter, in order to demonstrate compliance at this time.

The first issue is the finding 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.” The adjusted property line shown on the plans will be created through platting of future phases. At that time, an easement will be provided for access and utilities from Greencrest to serve the apartments’ parcel. While the applicant is agreeable to a condition of approval on this topic, it is not required at this time.

The second issue is the specific design of the solid waste enclosure. The Hearings Officer decision noted the waste enclosure shown on the plans, but highlighted a few standards in the code that were not shown on the plans, and indicated that conformance with the development standards can be addressed at the time of building permit review. Rather than postpone that compliance, the applicant drafted fully detailed plans to demonstrate full compliance in this land use review.

The attached plans now include specifications for the concrete pad area consistent with SRC 800.055(b)(1); for minimum separation between receptacles and the side walls of the enclosure, and between the receptacles and building walls, eaves and openings consistent with SRC 800.055(b)(2); and for minimum vertical clearance consistent with SRC 800.055(b)(3).

The requirements for the permanent drop box and compactor are found in SRC 800.055(c). The attached plans demonstrate the specifications for the minimum concrete pad thickness and maximum slope of one percent consistent with SRC 800.055(c)(1); for an engineered design of the slab for the compactor with a maximum slope of three percent consistent with SRC 800.055(c)(2); and for minimum pad width of twelve feet that extends five feet beyond the rear of a drop box or compactor consistent with SRC 800.055(c)(3); and for a minimum separation of five feet between the drop box or compactor and building walls, roof eaves, or openings consistent with SRC 800.055(c)(4).

The requirements for the waste area screening are found in SRC 800.055(d). The attached plans satisfy the specifications for screening by using a waste enclosure consistent with SRC 800.055(d)(1). In turn, the requirements for the waste enclosure screening are found in SRC 800.055(e). The attached plans illustrate the minimum front opening width of twelve feet consistent with SRC 800.055(e)(1). The attached plans the interior bumper curb to prevent wall damage consistent with SRC 800.055(e)(2). The attached plans show the door swing is at least 120 degrees, and show the gate restrainers in the open and closed positions consistent with SRC 800.055(e)(3). Vehicle access to the waste enclosure is governed by SRC 800.055(f). The revised plans show the minimum length and width of the vehicle area consistent with SRC 800.055(f)(1).

The third issue is the tree planting. SRC 702.020(b)(1) requires 235 trees based on the site area. The attached landscape plan shows the location of those trees.

The fourth and final ancillary topic to clarify is the Hearings Officer's finding on rooftop mechanical equipment under SRC 702.020(e)(7). The project does not include any roof-mounted mechanical equipment, so this provision does not apply.

Conclusion

This application proposes multifamily housing which is an allowed use in the CR zone. As housing, it is protected by state laws which prohibit the use of subjective criteria to justify denial of the application. The applicant reserves all rights to the equal protection of those laws, including the right to pursue economic damages and attorney fees. The Hearings Officer's decision is contrary to those laws, apparently because the staff prefers commercial development on this site, while the evidence in the record shows no need for commercial development.

For the foregoing reasons, we ask the City Council to approve this appeal. Thank you for your assistance.

Sincerely,

JORDAN RAMIS PC



Edward H. Trompke
Admitted in Oregon

Attachments

cc: East Park, LLC
Aaron Panko, City of Salem
Dan Atchison, City of Salem



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Vote YES on SB 1051A for good housing policy

Oregon needs more abundant, diverse, and affordable housing options – in every neighborhood - to meet the needs of Oregonians today and in the future. SB 1051A takes significant steps to help move Oregon forward in providing housing for all with a particular focus on affordable housing.

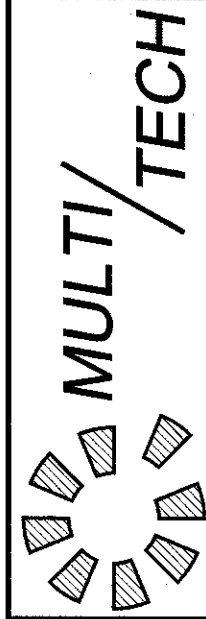
Senate Bill 1051A will:

- Expedite affordable housing permits
- Strengthen requirements for clear & objective review standards for housing developments.
- Streamline local government procedures to make it easier to provide more housing, and especially affordable housing, in all Oregon communities.
- Allow additional dwelling units (ADUs) in single-family neighborhoods.
- Allow religious institutions to use their property to develop affordable housing.
- Define “needed housing” as all housing.

Oregon’s state economist estimates that across the state, 111,000 market rate units would need to be built this year to make up the deficit of the past 10 years and keep up with the demand of new residents. That’s six times the number of units that were built in 2016. In addition, Oregon Housing and Community Services estimates that Oregon has a shortage of another 100,000 units affordable to extremely low-income households. **SB 1051A will help Oregon meet the housing needs of all Oregonians.**

From THE DESK OF
REP. ALISSA KENY-GUYER

A handwritten signature in black ink, appearing to read "Alissa Keny-Guyer", written over a horizontal line.



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LANDSCAPE PLAN

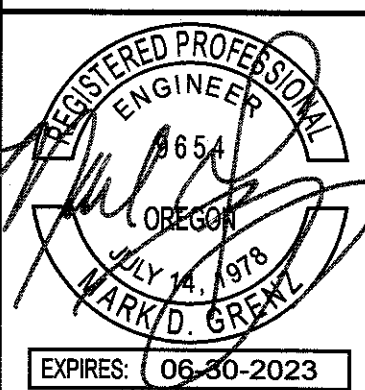
EAST PARK APARTMENTS

NO CHANGES, MODIFICATIONS
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DIMENSIONS & NOTES TAKE
PRECEDENCE OVER
GRAPHICAL REPRESENTATION.

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Checked:	J.J.G.
Date:	JULY 2021
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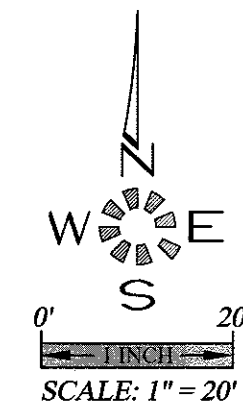
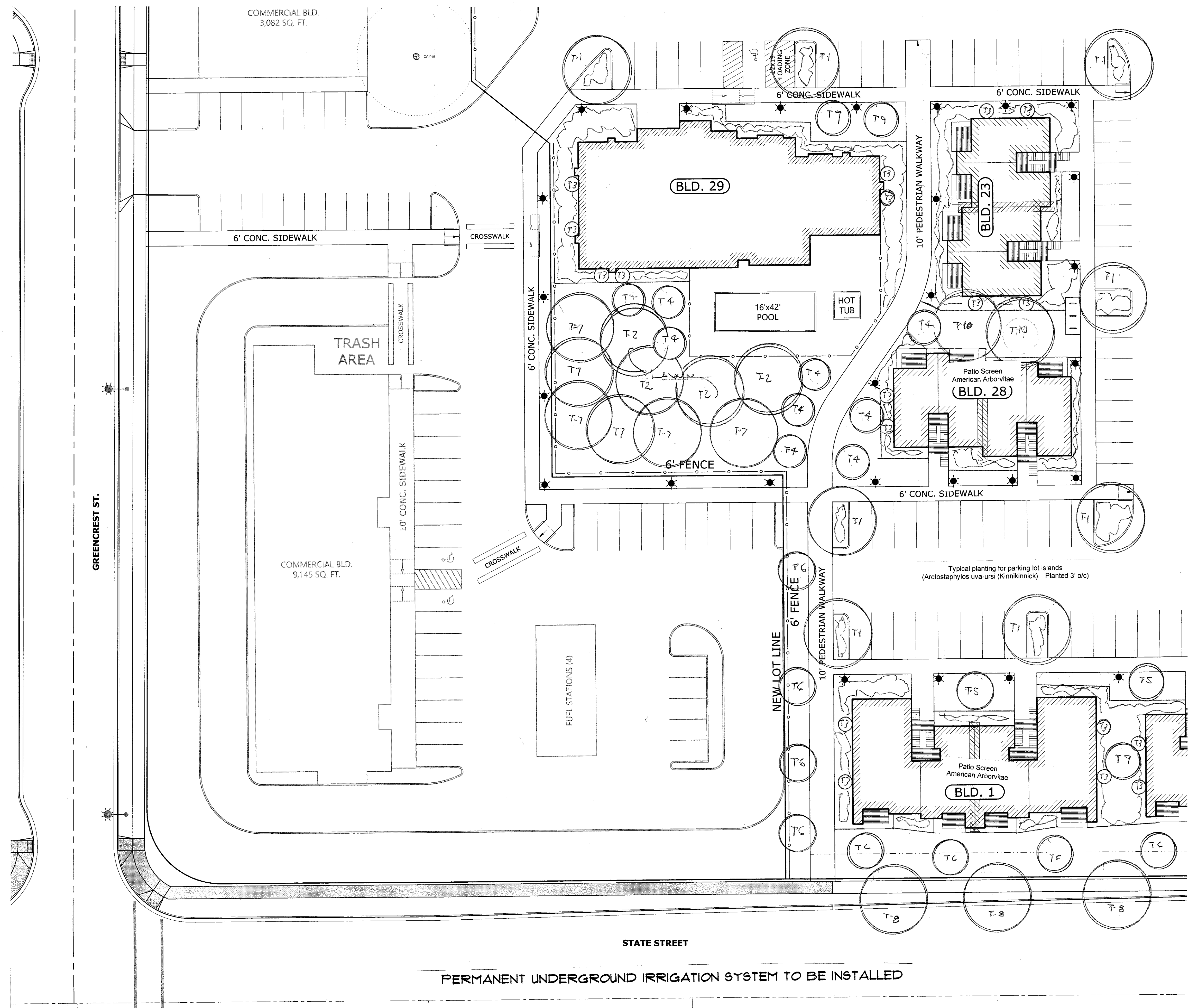
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&
CONSULTANTS LLC**

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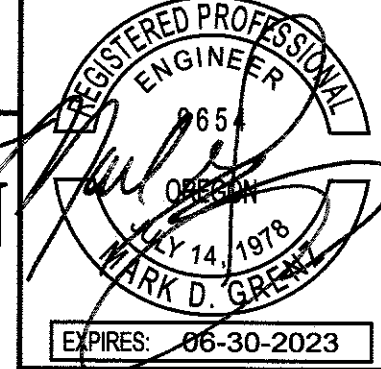
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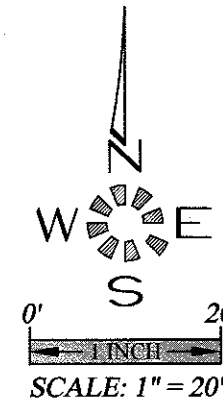
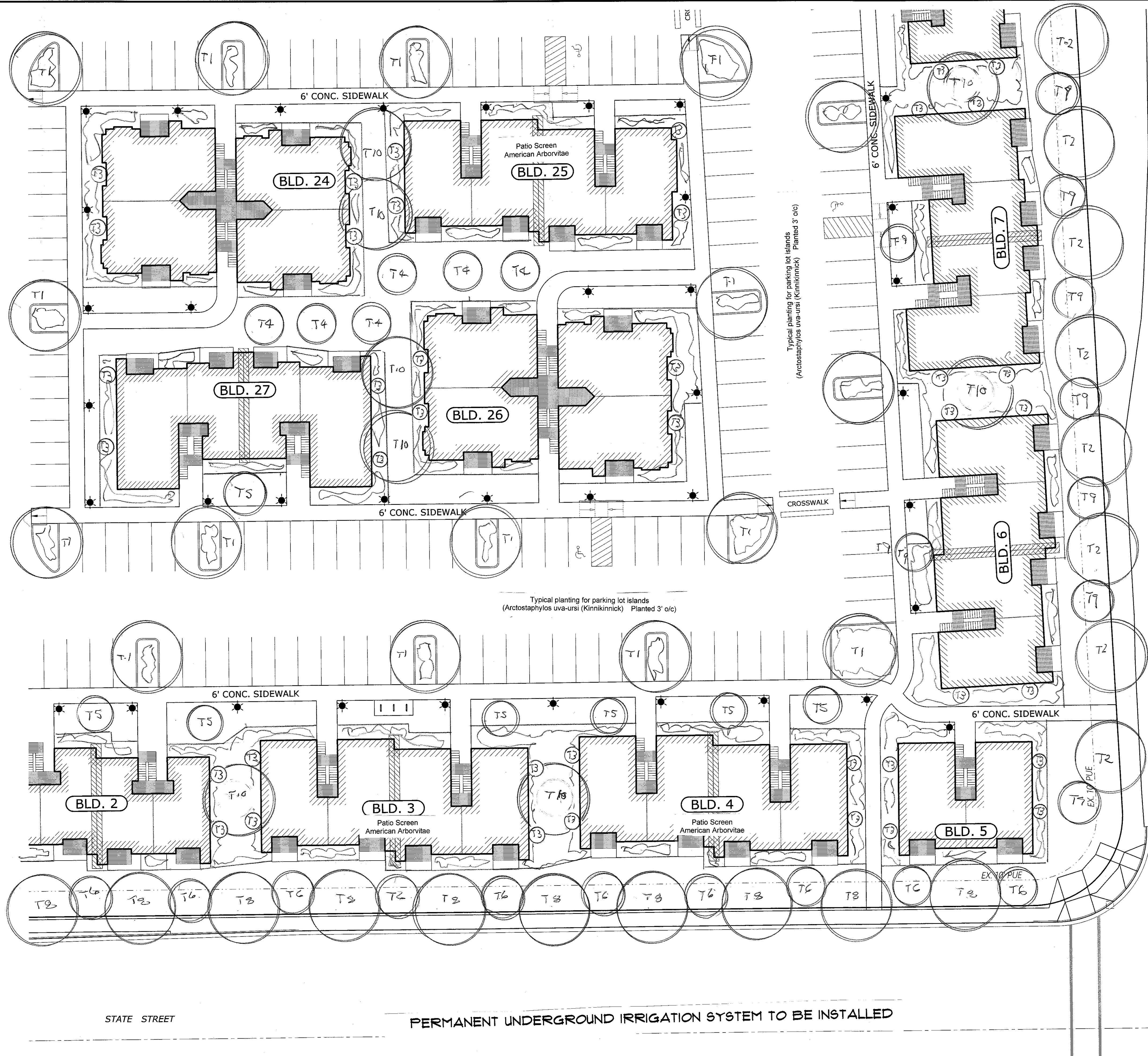
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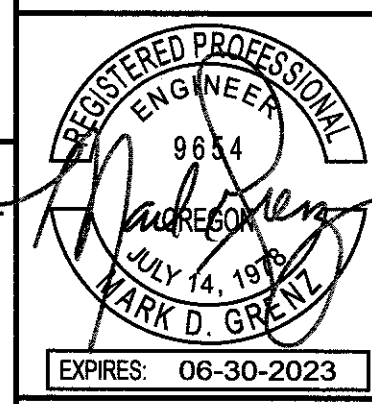
MULTI/TECH
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LANDSCAPE PLAN

EAST PARK APARTMENTS

NO CHANGES, MODIFICATIONS
OR REPRODUCTIONS TO BE
MADE WITHOUT THE WRITTEN
AUTHORIZATION FROM THE
DESIGN ENGINEER.
DIMENSIONS & NOTES TAKE
PRECEDENCE OVER
GRAPHICAL REPRESENTATION.

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



JOB # 6789

L1.4

LANDSCAPE & IRRIGATION DESIGN BY:
**LANDSCAPE DESIGN
&
CONSULTANTS LLC**
Doing business since 1985
620 WORMWOOD ST. S.E. SALEM, OR 97306 PHONE: (503) 551-8590

GENERAL LANDSCAPE NOTES:

General:

1. All local, municipal, state, and federal laws regarding uses, regulations, governing or relating to any portion of the work depicted on these plans are hereby incorporated into and made part of these specifications and their provision shall be carried out by the Contractor. The Contractor shall at all times protect the public throughout the construction process.
2. The Contractor shall carefully correlate construction activities with earthwork contractor and other site development.
3. The Contractor shall verify drawing dimensions with actual field conditions and inspect related work and adjacent surfaces. Contractor shall verify the accuracy of all finish grades within the work area. The Contractor shall report to the Landscape Design & Consultants LLC (LDC) or Owner all conditions which prevent proper execution of this work.
4. The exact location of all existing utilities structures and underground utilities, which may not be indicated on the drawings, shall be determined by the Contractor. The Contractor shall protect existing structures and utility services and is responsible for their replacement if damaged.
5. The Contractor shall keep the premises free from rubbish and debris at all times and shall arrange material storage to not interfere with the operation of the project. All unused material, rubbish, and debris shall be removed from the site.
6. The Contractor shall keep the premises free from rubbish and debris at all times and shall arrange material storage to not interfere with the operation of the project. All unused material, rubbish, and debris shall be removed from the site.
7. All plant material and planting supplies shall be warranted for a period of not less than one year from the completion date of installation. All replacement stock shall be subjected to the same warranty requirement as the original stock. Any damage due to replacement operations shall be repaired by the Contractor. At the end of the warranty period, inspections shall be made by LDC, Owner/General Contractor. All plant and lawn areas not in a healthy growing condition shall be removed and replaced with plants and turf cover of a like kind and size before the close of the next planting season.

Grading / Erosion Control:

1. The design and placement of the building on the site lends itself to minimal slope conditions with positive drainage being maintained around the entire building. In this case standard landscaping procedures of topsoil, lawn, and a two inch layer of bark mulch on all planting beds will be sufficient to control erosion.
2. Seed recommendation is Pro Time 700 Low Profile or approved equal over the jute netting at a rate of 2 lbs. per 1000 sq. feet. The address of Pro Time is 1712 SE Ankeny, Portland OR 97214. Phone 503-239-7518. There email is info@protimeinc.com
3. The work limits shown on this plan shall clearly be marked in the field prior to construction. No disturbance beyond the work limits shall be permitted.
4. Grading shall be performed during optimal weather conditions.
5. Erosion control measures shall be constructed in conjunction with all clearing and grading activities, and in such a manner as to ensure that sediment and sediment-laden water does not enter the drainage system or violate applicable water standards.
6. Prior to the commencement of construction activities, Contractor shall place orange construction fencing around perimeters of construction impact areas, and sediment fencing at downhill portions of the site. Contractor is responsible for proper installation, maintenance, replacement, and upgrading of all erosion and sediment control measures, in accordance with local, state, and federal regulations.

Plant Material:

1. Contractor shall verify all plant & tree quantities with LDC or Owner prior to construction.
2. In the event of a discrepancy between plants materials listed on the drawings, the drawings shall govern the plant species and quantities required.
3. Plant material shall be first quality stock and shall conform to the code of standards set forth in the current edition of the American Standards for Nursery Stock sponsored by the American Association of Nurserymen, Inc. (AAN)
4. Species and variety as specified on the drawings and delivered to the site shall be certified true to there genus, species and variety and as defined within the current edition International Code of Nomenclature for Cultivated Plants.
5. Obtain freshly dug, healthy, vigorous plants nursery-grown under climatic conditions similar to those in the locality for the project for a minimum of two years. Plants shall have been lined out in rows, annually cultivated, sprayed, pruned, and fertilized in accordance with good horticultural practice. All container plants shall have been transplanted or root pruned at least once in the past three years. Balled-and burlapped (B&B) plants must come from soil which will hold a firm root ball. Heeled in plants and plants from cold storage are not acceptable.
6. Planting stock shall be well-branched and well-formed, sound, vigorous, healthy, free from disease, sun-scaled, windburn, abrasion, and harmful insects or insect eggs, and shall have healthy, normal, unbroken root systems. Deciduous trees and shrubs shall be symmetrically developed, uniform habit of growth, with straight trunks or stems, and free from objectionable disfigurements. Evergreen trees and shrubs shall have well-developed symmetrical tops with typical spread of branches for each particular species or variety. Only vines and ground cover plants well-established shall be used. Plants budding into leaf or having soft growth shall be sprayed with an anti-desiccant at the nursery before digging.
7. Contractor shall not make substitutions of plant materials. If required landscape material is not obtainable, submit proof of non-availability and proposal for use of equivalent material. When authorized, adjustments of contract amount (if any) will be made by change order.
8. Plant sizes and grading shall conform to the latest edition of American Standard for Nursery Stock as sponsored by the American Association of Nurserymen Inc. (AAN)

9. All vegetation shown on this plan shall be maintained in a healthy and vigorous growing condition throughout the duration of the proposed use. All vegetation not so maintained shall be replaced with new vegetation at the beginning of the next growing season.

Planting:

1. Planting shall be installed between March 1st to April 30th or between October 1st to November 30th. If planting is installed outside these times frames, additional measures may be needed to ensure survival and shall be pre-approved by the owner.
2. Plant material shall be transported to the sit in a timely manner to minimize on-site storage. Where storage is required, all plants shall be kept moist and shaded.
3. Plant stock shall be handled in a manner that will not break, scrape, or twist any portion of the plant. Protect plants at all times from conditions that can damage the plant (e.g., sun, wind, freezing conditions).
4. Provide the following clearance for planting of trees where applicable:
Maintain 30 feet vision triangles at all intersections and corners
5 feet from all street/parking lot light standards
10 feet from fire hydrants
5 feet from all utility vaults, meter boxes, water meters, etc.
5. No trees or shrubs shall be planted on existing or proposed utility lines.
6. All shrub beds shall receive a minimum 2" layer of bark mulch evenly applied immediately after panting is completed. All plant beds shall drain away from buildings.
7. Excavate plant pits for shrubs and trees as follows:
Container stock: width = 2 times the container diameter, depth = container depth.
Bare root stock: width = 2 times the widest diameter of the root, depth = of root system.
B & B: width = 2 times ball diameter, depth = ball depth.
Scarify sides and bottom of plant pits to roughen surfaces.
8. Place plants plumb in the pit. Backfill with native soil or top soil mixture to the original plant soil line, and tap solidly around the ball and roots. Water plants immediately after planting if soil is not saturated to the surface.

Lawn Areas /Hydro-Seeding/Sod:

1. All lawn area shall be seeded unless otherwise directed by Owner to install Sod. Seed or Sod shall be procured through Kuenzi Turf Nursery. Seed or Sod shall be Rhizomatous Tall Fescue (RTF). Seed mix shall be applied at a rate of 10 lbs. per 1000 sq. feet. Contact Kuenzi Turf Nursery at (503)585-8337 or approved equal.
2. All areas shown on the plan shall be seeded between March 1st and May 1st, or between September 1st and October 15th.
3. Scarify soil surface to a depth of 3 inches, to ensure adequate seed contact with soil.
4. Prior to seeding, clearly delineate seeding limits using flags or non-toxic paint.
5. Hydro-seed application rate shall be 60 lbs. per 100 gallons of hose work or 75 lbs. per 100 gallons of tower work.
6. If, at the end of one complete growing season, the planted and seeded area fail to exhibit well-established plant communities, or exhibit patchiness in the patterns of vegetative cover, supplemental seeding and planting shall occur.
7. Seeding of slopes greater than 30% shall be done by Hydro Seeding using a seed mix of Pro Time 700 Low Profile or approved equal at a rate of 2 lbs. per 1000 sq. feet.

Top Soil Mixture:

1. A 2" to 4" layer of garden care compost, mushroom compost or similar material sterilized at 105 degrees Fahrenheit shall be incorporated into the existing soil prior to planting and seedings/sod lawns.
2. Incorporate into existing soil prior to planting the following fertilizers at a rate specified per 1000 sq. ft. of planting area.
20 lbs. 10-6-4 50% Slow Release
30 lbs. 38-0-0 Nitroform
10 lbs. Iron Sulfate 21%
20 lbs. 0-18-0 Super Phosphate
25 lbs. Dolomite Lime
10 lbs. 13-0-11 Potassium Nitrate

Bark Mulch:

1. All shrub beds shall receive a minimum 2" layer of fine hemlock or fir bark mulch evenly applied immediately after panting is completed. All plant beds shall drain away from buildings.

Bio Swales/Detention Ponds/Vegetated Swales/Rain Gardens:

1. Bark Mulch shall not be applied to Bio Swales/Detention Ponds/ Vegetated Swales or Rain Gardens.

Weed Control Agent:

1. Apply caseon as a weed control agent after planting as per manufactures specified recommendations around building or approved equal.

Non-Native Plant Species:

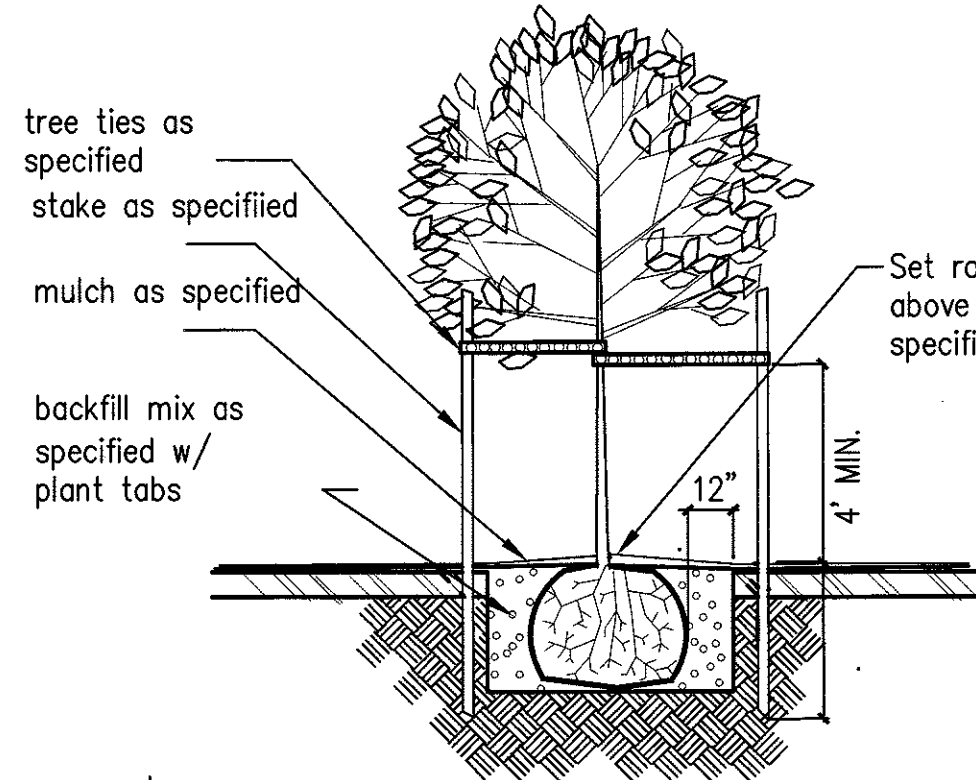
1. All non-native, invasive plant species shall be removed from the site.

Poly Jute Netting:

1. Tight net Poly Jute Netting shall be installed on Bio Swales/Detention Ponds/Vegetated Swale and Rain Gardens as a soil stabilizer and erosion control agent. Jute Netting shall be installed with anchoring pins as per manufactures recommendations prior to planting. Recommend DeWitt PJN4216 Erosion Control Poly Jute Netting and DeWitt anchor pins or approved equal.

Growing Medium for Stormwater Bio Swales/Vegetated Swales/Rain/Gardens/Planter Boxes:

1. Growing Medium shall comply with City of Salem Department of Public Works Administrative Rules, Chapter 9, and Division 004 Appendix G-Key Material Specifications for Storm Water Quality Facilities.

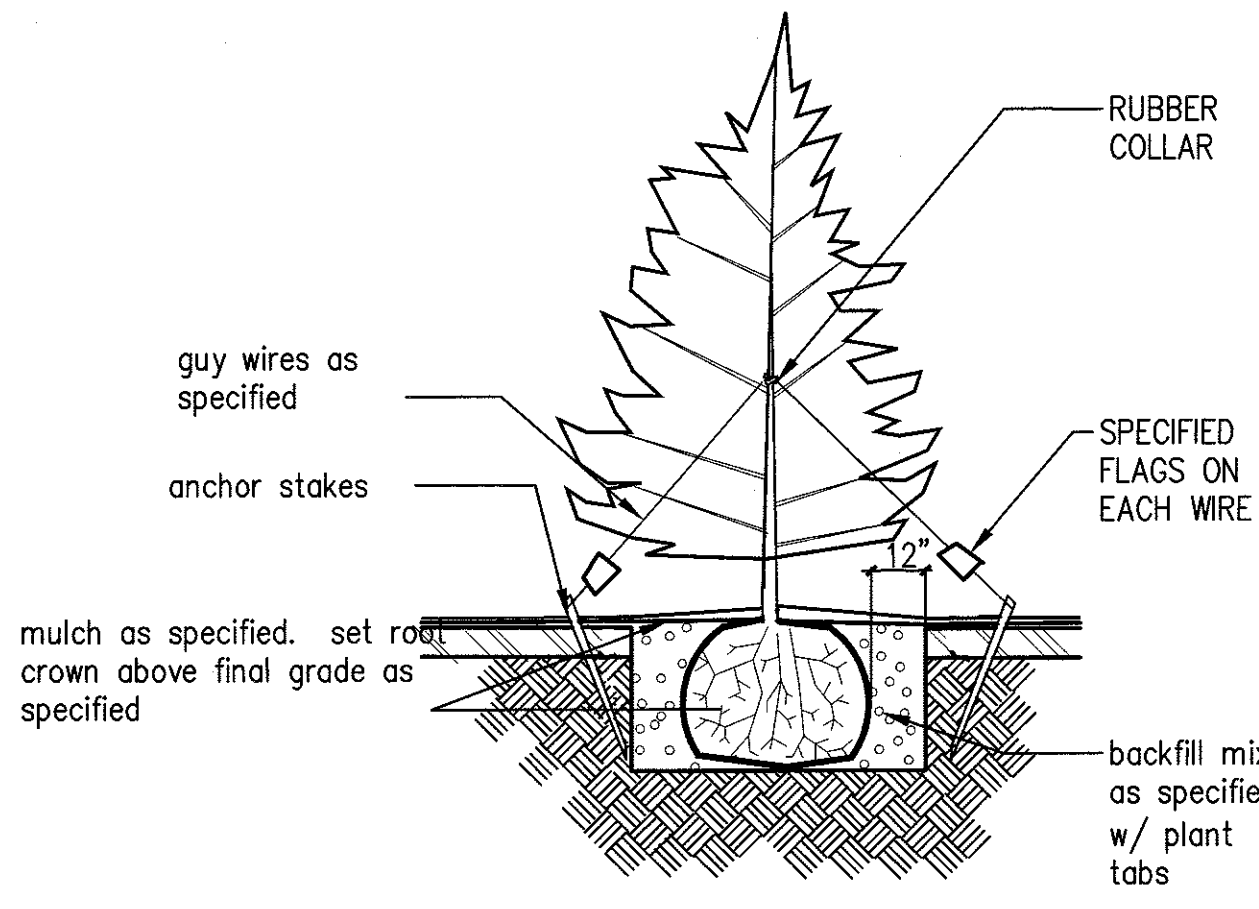


notes:

1. cut and remove all bindings from the top and sides of the root ball prior to backfilling
2. remove stakes and ties one year after planting

DECIDUOUS TREE PLANTING DETAIL

NOT TO SCALE

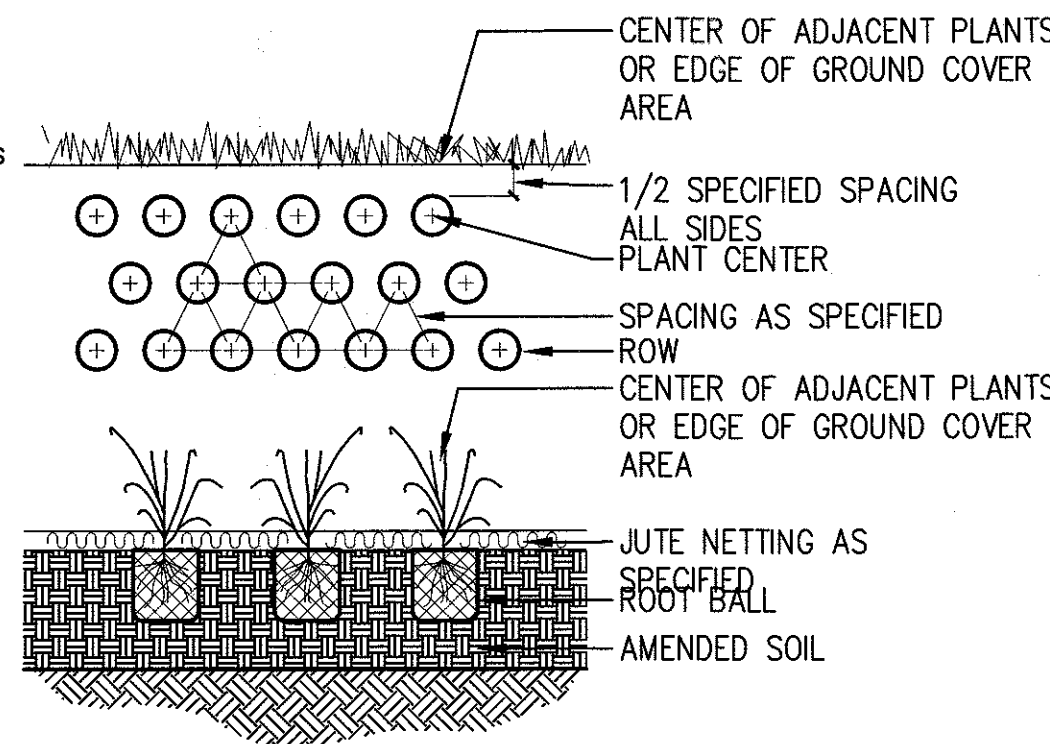


notes:

1. cut and remove all bindings from the top and sides of the root ball prior to backfilling
2. remove stakes and ties one year after planting

CONIFEROUS TREE PLANTING DETAIL

NOT TO SCALE



PLANTING plugs and 4" pots

NOT TO SCALE

APARTMENTS PLANT PALETTE

QTY.	SYM	BOTANICAL NAME	COMMON NAME	SIZE	CONDITION	REMARKS
TREES						
76	T-1	Acer rubrum 'Armstrong'	Armstrong Red Maple	1 1/2" - 2" cal.	B & B	6' Standard
19	T-2	Ginkgo biloba 'Princeton Sentry'	Princeton Sentry Ginkgo	1 1/2" - 2" cal.	B & B	6' Standard
114	T-3	Chamaecyparis obtusa 'Gracilis'	Slender Hinoki Cypress	6'-8' Tall	B & B	Full/Natural
23	T-4	Magnolia Grandiflora 'Little Gem'	Little Gem Magnolia	1 1/2" - 2" cal.	B & B	3' Standard
10	T-5	Pyrus calleryana 'Capital'	Capital Flowering Pear	1 1/2" - 2" cal.	B & B	6' Standard
12	T-6	Cercis occidentalis	Western Redbud	1 1/2" - 2" cal.	B & B	6' Standard
09	T-7	Acer rubrum 'Bowhall'	Bowhall Red Maple	1 1/2" - 2" cal.	B & B	6' Standard
20	T-8	Acer platanoides 'Globosum'	Globe Norway Maple	1 1/2" - 2" cal.	B & B	6' Standard
21	T-9	Ginkgo biloba 'Goldspire'	Goldspire Ginkgo	1 1/2" - 2" cal.	B & B	6' Standard
55	T-10	Carpinus betulus 'Fastigiate'	Columnar European Hornbeam	1 1/2" - 2" cal.	B & B	6' Standard
100	T-11	Thuja occidentalis 'Emerald Green'	Emerald Green American Arborvitae	4'-5' Tall	B & B	Full
SHRUBS						
S-1		Abelia grandiflora 'Ed Goucher'	Edward Goucher Abelia	3 gal.	cont.	Full
S-2		Arctostaphylos uva-ursi (Kinnikinnick)	Kinnikinnick	2 gal.	cont.	Planted 3' o/c
S-3		Cornus stolonifera 'Kelsey'	Kelsey Dwarf Redwig Dogwood	2 gal.	cont.	Full
S-4		Daphne odora	Winter Daphne	2 gal.	cont.	Full
S-5		Deschampsia cespitosa Northern Lights	Northern Lights Tufted Hair Grass	3 gal.	cont.	Full
S-6		Euonymus alatus 'Compacta'	Burning Bush Winged Euonymus	2 gal.	cont.	Full
S-7		Euonymus japonica Golden	Golden Euonymus	3 gal.	cont.	Full
S-8		Festuca glauca Elijah Blue	Elijah Blue Festuca Grass	1 gal.	cont.	Full
S-9		Ligustrum japonicum Texanum	Texas Wax-Leaf Privet	5 gal.	cont.	Full
S-10		Pennisetum alopecuroides Hameln	Dwarf Fountain Grass	3 gal.	cont.	Full
S-11		Pennisetum setaceum 'Purpureum'	Purple Fountain Grass	3 gal.	cont.	Full
S-12		Pieris japonica 'Astrid' Compacta	Astrid Japanese Andromeda Compacta	5 gal.	cont.	Full
S-13		Prunus laurocerasus 'Mount Vernon'	Mount Vernon Laural	3 gal.	cont.	Full
S-14		Rhododendron 'PJM'	PJM Rhododendron	18"-24"	w/buds	Full
S-15		Rhododendron 'Daphnoides'	Daphnoides Rhododendron	18"-24"	w/buds	Full
S-16		Spiraea japonica 'Magic Carpet'	Magic Carpet Spirea	3 gal.	cont.	Full
S-17		Spiraea japonica 'Double Pink'	Double Pink Spirea	3 gal.	cont.	Full

CONTRACTOR TO VERIFY ALL QUANTITIES OF PLANT MATERIALS WITH LANDSCAPE DESIGN & CONSULTANTS PRIOR TO INSTALLATION. PLANT MATERIAL SUBSTITUTIONS MAY BE MADE BY THE OWNER FOR PLANT MATERIALS OF SIMILAR HABIT, FLOWERING CHARACTERISTIC AND/OR STRUCTURE OF GROWTH DUE TO AVAILABILITY, WATER, SOIL, AND SUN REQUIREMENTS.

East Park Apartments

Tree plant units required for new landscaping 2,777

Plant Materials & Minimum Plant Unit Values			
ITEM	QUANTITY	PLANT UNIT VALUE	TOTAL
Shade Trees	180	10	1800
Evergreen/Conifer Trees	110	5	505
Ornamental Trees	71	2	162
Emerald Green American Arborvitae 4'-5' Tall	100	2	320
TOTAL PLANT UNITS			2,787

Trees outside the property lines have not been counted in the plant units

