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CITY COUNCIL FINAL ORDER FOR CUP-21-05

WHEREAS, the John Day/Canyon City Parks and Recreation District (the “Applicant”) filed an application for a Site Design Review and Conditional Use Permit, which was assigned Planning File No. CUP-21-05 (the “Application”); and

WHEREAS, in accordance with John Day Development Code (“JDCC”) Sections 5-4.2 and 5-4.4, the Planning Commission issues decisions on conditional use permits and site plan review applications through a consolidated Type III procedure; and

WHEREAS, a pre-application neighborhood meeting was held by the Parks District staff on August 11, 2021, as required by Section 5-4.1.080 Neighborhood Meetings of the Code; and

WHEREAS, a properly noticed November 9, 2021 public hearing on the Application was held at the John Day Fire Hall, 316 S. Canyon Boulevard; and

WHEREAS, City staff issued a staff report and supplemental staff report containing proposed findings of consistency with applicable approval criteria, which was available in advance of the public hearing; and

WHEREAS, findings contained within the staff report determined that the Application as proposed by the Applicant is consistent with applicable approval criteria; and

WHEREAS, at the November 9, 2021 public hearing, the Planning Commission closed the public hearing to oral testimony and written testimony; and

WHEREAS, after fully deliberating the matter, the Planning Commission voted to approve the proposed site plan and conditional use permit application; and

WHEREAS, a written notice of decision was delivered to each participant in the Planning Commission hearing; and

WHEREAS, a timely notice of intent to appeal was filed by Mr. John Morris; and

WHEREAS, an appeal hearing was held by the John Day City Council on January 5, 2022, during which Mr. Morris, the Applicant and other participants submitted additional argument to the council; and

WHEREAS, on January 11, 2022 Council moved to reopen the record to allow prior participants to submit additional written evidence or testimony to be submitted to the city planning official by 7:30 p.m. on Wednesday, January 19th, which additional information (if any) would be reviewed during the regular session of the city council meeting on January 25, 2022; and

WHEREAS, Council met on January 25, 2022 to review the record as outlined in JDDC 5-4.1.040(F)(4);

NOW, THEREFORE, the John Day City Council orders as follows:

1. Findings. The above-stated findings and those contained in the attached Exhibit A are hereby adopted;
2. Approval of Conditional Use Permit. The City Council hereby approves CUP-21-05 subject to the conditions of approval contained in Exhibit A;
3. Severability; Effective Date. The provisions of this Order for CUP-21-05 (this “Order”) are severable. If any section, subsection, sentence, clause, and/or portion of this Order is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this Order. This Order will be in full force and effect from and after its approval and adoption.

THE FOREGOING ORDER WAS ADOPTED ON JANUARY 25, 2022

Members of the City Council: Lundbom, Adair, Rookstool, Holland, Haberly, Sky

AYES: Haberly, Holland, Rookstool, Sky
NAYES: Haberly, Holland, Rookstool, Sky
ABSENT: None
ABSTAIN: Lundbom, Adair (2)

Signed:

Ron Lundbom, Mayor

Attest:

Nicholas Green, Chief Planning Official

EXHIBIT A
FINDINGS AND CONDITIONS OF APPROVAL

[attached]

DRAFT



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Conditional Use Permit (Type III) CUP-21-05

APPEAL HEARING

CITY COUNCIL FINDINGS

Date Submitted: December 28, 2021
Appeal Hearing: January 5, 2021 6:00 p.m.
Subject: Findings for CUP-21-05
Location: 845 1/2 NW Bridge St, John Day, OR 97845
Map: 13S31E23CA Tax Lot(s): 3300 & 4200
Zoning: Residential General (RG)
Type of Action Requested: Appeal Hearing for Conditional Use Permit

1. BACKGROUND

The John Day/Canyon City Parks and Recreation District applied to erect a new aquatics center at the 7th Street Sports Complex (upper Belshaw Field) located at 845 1/2 NW Bridge St, John Day, OR 97845 in John Day (Map No.13S31E23CA Tax Lots 3300 & 4200). The proposed development consists of an ADA-accessible, six-lane, 25-yard outdoor pool with spectator seating and space available to add a small warm water wading/therapy pool in the future; a lobby/office/mechanical facility with apx. 8,000 sf for Furniture, Fixtures and Equipment (FFE), and primary parking all sited on Tax Lot 4200 (10.89 acres); with overflow parking on Tax Lot 3300 (1 acre).

The application was deemed technically complete (ready for review) on October 18, 2021 (Exhibit A). The City must make a final decision, including a final city council decision on any appeal, within 120 days, or by February 17, 2021.

The John Day Planning Commission through a Type III procedure as outlined in John Day Development Code ("JDCC" or the Code) Section 5-4.4, approved the application as submitted by the Applicant following a public hearing held on November 9, 2021.

Mr. John Morris, 60016 Hwy 26, John Day, a participant in the hearing, timely filed a Notice of Appeal. The submitted notice of appeal specifically alleges prejudice in the conduct of the hearing before the PC as opposed to substantive issues with the application.

A public hearing on the appeal occurred on January 5th, 2022. Following the hearing, the City Council elected to re-open the record to allow Mr. Morris (as Mr. Morris had made the request at the January 5th, 2022 appeal hearing) and others to respond and/or submit additional evidence or testimony in response to anything presented at the appeal hearing (or at any other time during these proceedings). There were no submittals during the open

record period besides (i) an e-mail exchange between Mr. Morris and the applicant regarding the nature of additional evidence and testimony to be submitted during the open record period that was submitted by Mr. Morris and (ii) a request by Mr. Morris to further extend the open record period. As part of his extension request, Mr. Morris argued that any denial of his extension request would violate “ORS 197.763”. To the extent Mr. Morris intended to refer to ORS 197.797(6)(b), and to the extent ORS 197.797(6)(b) even applies to an appeal hearing following an initial evidentiary hearing, the City complied by allowing the record to be open for a period of at least 7 days. Moreover, there was no continuation of the hearing as referenced under ORS 197.797(6)(b). In any event, because there were no submittals by anyone other than Mr. Morris during the open record period, there is nothing for Mr. Morris to respond to, no reason to further extend the open record period, and no prejudice to Mr. Morris in any denial of his request to extend the open record period extension.

2. APPLICABLE CRITERIA

The Code governs the procedure for reviewing Conditional Use Permits. All land use and development permit applications and approvals, except building permits, shall be decided by using the procedures contained in Chapter 5-4 of the Code. The procedure “type” assigned to each application governs the decision-making process for that permit or approval.

An application for a new or modified conditional use shall be processed as a Type III procedure, per Section 5-4.1.040 of the Code. The application shall meet submission requirements in Section 5-4.4.030, and the approval criteria contained in Section 5-4.4.040. The City Council shall hear the matter on the record as outlined in JDDC 5-4.1.040(F)(4).

Applicable Approval Criteria:

- 5-2.2 Residential Land Use Districts
- 5-3 Community Design Standards
- 5-4.2 Land Use Review And Site Design Review
- 5-4.4 Conditional Use Permits

3. OPPONENT TESTIMONY

In general, Council finds that the arguments raised by the opponents to the application were either waived (i.e. not raised in the proceedings before the Planning Commission and/or in the notice of appeal), not supported by substantial evidence, unrelated to applicable approval criteria, and/or insufficiently developed to allow Council to respond. Without limiting or waiving the foregoing, Council has attempted to address specific arguments, as Council understands them, in these findings.

4. PUBLIC NOTIFICATION

A pre-application neighborhood meeting was held by the Parks District staff on August 11, 2021, as required by Section 5-4.1.080 Neighborhood Meetings of the Code. The certification, attendance and minutes of the neighborhood meeting are enclosed (Exhibit B). Mr. Morris raised concerns that this meeting constituted a public meeting for purposes of the Oregon Public Meetings Law and that the meeting failed to meet the requirements of the Oregon Public Meetings Law. Council finds that a land use hearing is not the proper forum for decides matters of the Oregon Public Meetings Law, particularly those levied against another governmental entity. Compliance with Oregon Public Meetings Law is not an applicable approval criterion for the subject application and Council interprets any general

references in the Code to compliance with applicable law to refer those laws related to land use and development. Mr. Morris did not establish any basis as to why he was entitled to notice of the pre-application neighborhood meeting or, if he was entitled to notice, why his lack of notice prejudiced him in these proceedings given that he nonetheless participated in the pre-application neighborhood meeting and further participated in public hearings after the application was actually filed.

The City of John Day mailed public hearing notices of the planning commission hearing to the applicant and property owners within 100-feet of the subject site on October 18, 2021. Notice of the hearing was printed in The Blue Mountain Eagle on October 20, 2021 as required by the Code (Exhibit C).

A notice of the Planning Commission decision was mailed on November 23, 2021 (Exhibit G). Draft (pre-approved) minutes of the Planning Commission hearing are enclosed (Exhibit H). Mr. Morris filed a Notice of Intent to Appeal on December 8, 2021 (Exhibit I). Planning staff published a notice of the appeal hearing in the Blue Mountain Eagle on December 22, 2021 (Exhibit J).

5. CONFLICTS OF INTEREST/BIAS/EX PARTE CONTACTS

Mr. Morris alleged conflicts of interest and bias on behalf of Mayor Lundbom, Councilors Adair, Holland, and Sky, and Planning Official Nick Green.

Council finds that the allegations of conflict of interest against council members presented by Mr. Morris do not constitute a conflict of interest that would preclude a council member from participating in these proceedings as there is no apparent financial or other personal interest involving any of the council members or their family members. In any event, Mr. Morris did not expressly challenge the participation of any council members that decided to participate in these proceedings when expressly presented with the opportunity to lodge a challenge at the January 5th, 2022 public hearing. Council further notes that Planning Official Nick Green is not a decision maker for these proceedings and thus allegations of conflict of interest against Mr. Green, to the extent meritorious, are not relevant.

Mayor Lundbom and Councilor Adair recused themselves from these proceedings, which resolves any allegations of bias levied against them. While Mr. Morris raised bias concerns about Councilors Holland and Sky, his written testimony suggested they could participate in these proceedings (or at least did not expressly call for their recusal) and Mr. Morris did not expressly challenge the participation of any council members that decided to participate in these proceedings when expressly presented with the opportunity at the January 5th, 2022 public hearing. Council further notes that Planning Official Nick Green is not a decision maker for these proceedings and thus allegations of bias against Mr. Green are not relevant. Mr. Morris has not presented any authority that any of the actions allegedly taken by Mr. Green, to the extent substantiated, constitute an error by the Planning Commission in these proceedings or are otherwise material when the ultimate decision on the application is made by an independent hearings body following a public hearing (and additional public hearing on appeal).

Councilors disclosed ex parte communications at the January 5th, 2022 public hearing. Mr. Morris did not challenge the participation of any council members when expressly presented with the opportunity at the January 5th, 2022 public hearing.

6. CONDUCT OF PLANNING COMMISSION HEARING

Council finds that Planning Commissioner Chair Ken Boethin conducted the public hearing before the Planning Commission appropriately. While he did interrupt Mr. Morris, Mr. Boethin has discretion regarding conduct of the public hearing and his interruption could plausibly be interpreted as assisting Mr. Morris. Specifically, Mr. Morris was providing seemingly irrelevant testimony and Chair Boethin's interjection served as a reminder for Mr. Morris to address the applicable approval criteria if he wanted to deliver effective testimony. There is nothing to suggest that Mr. Morris was precluded from delivering additional testimony after Chair Boethin's interjection. Rather, Mr. Morris voluntarily concluded his remarks after acknowledging that he had nothing further to say in regards to the applicable approval criteria. While Council agrees with Mr. Morris that much of the public testimony delivered by proponents to the application also failed to address the applicable approval criteria, there is nothing to suggest that the Planning Commission relied on irrelevant testimony in making its decision. Council finds that striking irrelevant testimony from the record, as suggested by Mr. Morris, is not an appropriate remedy and, in any event, is of no consequence when such testimony was treated as irrelevant for purposes of the final written decision. Council further finds there is nothing that precludes testimony from minors. Mr. Morris has not identified a right to provide a right to present rebuttal testimony at the hearing and made no request (nor did any other party) to keep the record open at the public hearing.

Without having raised any concerns at the Planning Commission hearing, Mr. Morris noted in his notice of appeal that circumstances at the Planning Commission (namely, speaking volumes, remote participation, and nature of the subject matter) did not allow him to adequately participate. In addition to participating himself at the appeal hearing, Mr. Morris appointed a proxy to represent him in these proceeding. Neither Mr. Morris nor the proxy identified any impediments to their participation in the appeal hearing.

7. OWNERSHIP OF PROPERTY

Council finds that no reasonable person would have understood Mr. Morris's testimony before the Planning Commission to relate to ownership of the property. To the extent not waived for purposes of the appeal, Council finds that a land use proceeding is not the proper forum to determine the legality of a property transfer or any other matter regarding governance of the applicant. With respect to the applicant's submittal, the application clearly identifies John Day/Canyon City Parks and Recreation District as the applicant and owner. It was executed by a member of the District's board on behalf of the District. There is no reason to believe the Board member lacks authority to execute the application on behalf of the District as the District was notified of the application and other Board members participated in the proceedings. No concern was raised as to the Board member's authority by anyone representing the District. Council notes that the Code affords the Planning Official some discretion in determining the sufficiency of a submittal and Council finds the Planning Official did not abuse his discretion in accepting the subject application.

8. PUBLIC POLICY/FUNDING PRIORITIES

The bulk of Mr. Morris's testimony and the additional evidence submitted by Mr. Morris can be fairly characterized as questioning whether the proposed new aquatics facility is the best solution for a community pool, whether the proposed new facility is the best use of public funds, and whether there has been sufficient public debate on these matters. These arguments are ultimately not relevant to the subject land use application. Council hopes Mr.

Morris walks away with a better understanding of the decision-making process. As the applicant explained at the appeal hearing, the District was obligated to file a land use application in order to be eligible for various grant funding opportunities. However, the District intends to put the matter of whether to actually pursue the project to a vote of the citizens of the District. Thus, the purpose of these proceedings is to determine whether the proposal would meet applicable land use standards. The ultimate decision as to whether or not to even pursue the project will be conducted in a different forum.

9. APPROVAL CRITERIA AND FINDINGS

5-2.2 Residential Land Use Districts

5-2.2.010 Residential Districts – Purpose. *The Residential Districts are intended to promote the livability, stability and improvement of the City’s neighborhoods. Three districts are provided: 1) The Residential Limited (RL) district is intended to accommodate a wide variety of housing types, including attached and detached housing on small to medium size lots in the neighborhoods close to downtown. The RL district also supports parks, schools, places of worship, and other services at an appropriate neighborhood scale; 2) The Residential General (RG) district is intended to accommodate household living at somewhat lower densities than the RL district because it applies to the hillsides of John Day; and 3) The Residential-Commercial (RC) district is intended to encourage business formation, housing options, and transportation efficiency by combining a variety of housing, like that allowed in the RL district, with public and commercial services at an appropriate neighborhood scale. This chapter provides standards for land use and development in each of the three districts, based on the following principles:*

1. *Promote the orderly expansion and improvement of neighborhoods.*
2. *Make efficient use of land and public services and implement the Comprehensive Plan.*
3. *Designate land for the range of housing types and densities needed by the community, including owner-occupied and rental housing.*
4. *Provide flexible lot standards that encourage compatibility between land uses, efficiency in site design, and environmental compatibility.*
5. *Provide for compatible building and site design at an appropriate neighborhood scale; provide standards that are in character with the landforms and architecture existing in the community.*
6. *Apply the minimum amount of regulation necessary to ensure compatibility with existing residences, schools, parks, transportation facilities, and neighborhood services.*
7. *Reduce reliance on the automobile for neighborhood travel and provide options for walking, bicycling.*
8. *Provide direct and convenient access to schools, parks and neighborhood services.*
9. *Maintain and enhance the City’s historic character and traditional neighborhoods.*

Findings. The foregoing provision described the purpose and intent of this chapter and does not contain any applicable approval criteria.

5-2.2.020 Residential Districts - Allowed Land Uses. *Table 5-2.2.020 identifies the land uses that are allowed in the Residential Districts. The specific land use categories are described and uses are defined in Chapter 5-1.3.*

Findings. The 7th Street Sports Complex is a lawfully established park within the Residential General (RG) zone. When not included in an approved Specific Area Plan, subdivision plan, or master planned development, parks and open space are identified as

a conditional use on Table 5-2.2.020. The aquatics center location was included in the Comprehensive Plan Text Amendments and Development Code Amendments related to the John Day Innovation Gateway Plan, approved previously by the planning commission and approved by the City of John Day City Council via Ordinance No. 19-177-01 adopted November 12, 2019. The aquatics center was also described in detail in the aquatics center feasibility study presented to the John Day City Council following their passage of Resolution No. 19-809-10, A Resolution of City of John Day Authorizing City to Apply for a 2019 Oregon Parks and Recreation Department Planning Grant for Purposes of Development of Facilities Plan for a new Aquatic and Recreation Center in City; and Authorizing the Mayor to Sign the Application on Behalf of City; and in conjunction with the planning commission’s review and city council’s approval of Ordinance No. 21-190-01, An Ordinance Amending the City of John Day Comprehensive Plan to Adopt the Recreation Economy for Rural Communities (RERC) Plan (Type IV Procedure) AMD-21-01, adopted on February 23, 2021. Collectively, these documents constitute a Specific Area Plan for the proposed aquatics center.

However, accessory structures taller than 14 ft. or larger than 1,000 square feet of building footprint also require a Conditional Use Permit. Thus, even if the foregoing plans do not constitute a “Specific Area Plan”, the proposal is nonetheless being reviewed as a conditional use because of the size of the accessory structure.

5-2.2.030 Residential Districts - Development Standards. *The development standards in Table 5-2.2.030 apply to all uses, structures, buildings, and development, and major remodels, in the Residential Districts.*

Standard	Residential General	Finding
<i>Minimum Lot Area* (square feet) for Non-Residential Uses</i>	<i>10,000 sf</i>	Meets. The proposed lot is 10.89 acres and exceeds this requirement.
<i>Minimum Lot Width for Non-Residential Uses</i>	<i>20 ft</i>	Meets. Tax lot 4200 is an irregular lot shape but is >225 ft at its narrowest width.
<i>Minimum Lot Depth</i>	<i>40 ft (2 times min. width)</i>	Meets. Tax lot 4200 is an irregular lot shape but is >500 ft at its narrowest depth.
<i>Building Height- Level Site (slope less than 15%),</i>	<i>35 ft 45 ft with CUP</i>	Meets. Proposed structure is 29 feet high at its peak.
<i>Lot Coverage (two options) 1. Maximum Building Coverage (Foundation plane as % of lot area) ...</i>	<i>60%</i>	Meets. Proposed structure is apx. 8,000 sf. Including the pool deck (apx. 2% lot area coverage)
<i>Min. Landscape Area (% site area), except does not apply to Single Family Dwellings. Landscape area may include plant areas and some non-plant areas as allowed under Section 5-3.2.030.D.</i>	<i>10%</i>	Meets. Existing landscaping and trees will be retained surrounding the pool. Existing buildings will be replaced with parking areas.

<i>Minimum Setbacks (feet): Front/Street Setback; Side for Structure >28' height Rear</i>	<i>15 ft 15 ft 15 ft</i>	Meets. The proposed structures is set apx. 100 feet back from front and rear property lines; 60 feet from side property line.
<i>Build-to-line (New Buildings Only): At least one primary building entrance shall be built no farther from the street right-of-way than the build-to line (See also, Section 5-2.3.090)</i>	<i>Not applicable</i>	Not applicable

5-2.2.040 through 5-2.2.080 apply to residential developments only.

Finding. Not applicable to this application and/or standards are set by Table 5-2.2.030.

5-2.2.090 Residential Districts - Building Orientation.

- A. *Purpose. The following standards are intended to orient building entrances close to streets to promote pedestrian-oriented development where walking is encouraged, and to avoid conflicts between pedestrians and vehicles. Placing residences and other buildings close to the street also encourages crime prevention, natural surveillance or security, and safety by having more “eyes-on-the-street.”*
- B. *Applicability. Section 5-2.2.090 applies to all developments that are subject to Site Design Review, including developments that are reviewed as part of a Master Planned Development or Conditional Use application.*
- C. *Building orientation standards. All developments that are subject to Section 5-2.2.090 shall have buildings that are oriented to a street. This standard is met when all of the following criteria are met:*
 - 1. *Development in the RC zone is required to comply with build-to line standards in Section 5-2.2.030;*
 - 2. *Except as provided in subsections 3 and 4, below, all buildings in the Residential Districts shall have at least one primary building entrance (i.e., dwelling entrance, a tenant space entrance, a lobby entrance, or breezeway/courtyard entrance serving a cluster of units or commercial spaces) facing an adjoining street, or if on a side elevation, not more than 40 feet from a street sidewalk. See Figures 5-2.2.090.C(1);*
 - 3. *Off-street parking, driveways, and other vehicle areas shall not be placed between buildings and the street(s) to which they are oriented, as per subsection 2 and Figure 5-2.2.090C(1); except the following vehicle areas are allowed where the approval body finds that they will not adversely affect pedestrian safety and convenience:*
 - a) *Schools, multiple family buildings, assisted living facilities, and other institutional uses may have one driveway not exceeding 24 feet in width plus one row of parking on one or both sides of the driveway. ADA accessible spaces must be located closest to the primary building entrance, and the building’s primary entrance must be connected to an*

adjacent street by a pedestrian walkway. In addition, the driveway/parking area must be crossed by a clearly defined pedestrian walkway, as required by Section 5-3.1.030. The intent of this exception is to allow driveways between primary building entrances and the street only when necessary and provided such driveways have walkways adjacent to them;

- ...
4. *Where a development contains multiple buildings and there is insufficient street frontage to which buildings can be oriented, a primary entrance may be oriented to common green, open space, plaza, or courtyard. When oriented in this way, the primary entrance(s) and green, plaza, or courtyard shall be connected to the street by a pedestrian walkway meeting the standards in Section 5-3.1.030. See example in Figure 5-2.2.090C(1) “acceptable site plan.” See also, requirements for Cottage Cluster housing in Section 5-2.2.020.*

Finding. The proposed institutional use is subject to exceptions from the requirements of subsection (2) pursuant to subsection (4). The subject property contains multiple buildings. The irregular shape of the parcel results in insufficient frontage on Bridge Street to site the proposed building in a manner compliant with subsection (2). The building entrances are oriented to open spaces in the park and connected to a street by pedestrian walkways meeting City standards. There is intervening private property between the street and the northern parking area. In any event, there is another existing building on the subject property located in a manner compliant with subsection (3) to the extent such subsection applies to the new building. The orientation of the main lot and adjacent parking lot ensure adequate on-site circulation and preserve the transportation system in terms of safety, capacity, and function for both vehicles and pedestrians.

...

5-3 Community Design Standards

...

5-3.0.020 Design Standards – Applicability. *The regulations of Article 5-3 apply only to new development and alterations to existing development. The City of John Day Planning Official, in consultation with the Public Works Director, shall determine which provisions of Article 5-3 apply to a particular project. The Planning Official shall consider the scope of the project proposal as presented by the applicant during pre-application meeting with the City, or as described on the application form(s) required for land use or other permit approvals. Property owners and applicants are advised to contact the City of John Day prior to applying for permits.*

5-3.1 Access And Circulation. *The purpose of this Chapter is to ensure that developments provide safe and efficient access and circulation for pedestrians and vehicles. Section 5-3.1.020 provides standards for vehicular access and circulation. Section 5-3.1.030 provides standards for pedestrian access and circulation. Standards for streets and other transportation system improvements are provided in Section 5-3.4.010.*

5-3.1.020 Vehicular Access And Circulation

A. Intent and Purpose. *The intent of this Section is to manage access to land uses and on-site circulation, and to preserve the transportation system in terms of safety, capacity, and*

function. This Section applies to all public streets within the City of John Day, and to all properties that abut these roadways. This Section implements the transportation policies of the City of John Day Transportation System Plan.

B. Applicability. *This Chapter applies to all public streets within the City and to all properties that abut these streets. The standards apply when lots are created, consolidated, or modified through a land division, partition, lot line adjustment, lot consolidation, or street vacation; and when properties are subject to Land Use Review or Site Design Review.*

Finding. The subject property abuts a public street and the proposal is subject to Site Design Review.

C. Access Permit Required. *Access to a public street (e.g., a new curb cut or driveway approach) requires an Access Permit. An access permit may be in the form of a letter to the applicant, or it may be attached to a land use decision notice as a condition of approval. In either case, approval of an access permit shall follow the procedures and requirements of the applicable roadway authority, as determined through the review procedures in [Article 5-4](#).*

Finding. The subject property already has approved access to Bridge Street at the proposed locations of the driveways. Improvements to the driveways will need to comply with applicable City standards.

D. Traffic Study Requirements. *The City may require a traffic study prepared by a qualified professional to determine access, circulation, and other transportation requirements in conformance with [Section 5-4.1.090, Traffic Impact Study](#).*

Finding. A traffic study is included in the record. A previous staff report suggested that the City staff required the applicant to furnish this transportation study. Council agrees with Mr. Morris that this is an erroneous statement. City staff did not require this or any other transportation study. Rather, staff submitted the transportation study included in the record as part of a supplemental staff report to support staff's conclusion that there is adequate capacity in the transportation system. This criterion is thus not applicable.

E. Conditions of Approval. *The City or other roadway authority, as applicable, may require the closing or consolidation of existing curb cuts or other vehicle access points, recording of reciprocal access easements (i.e., for shared driveways), development of a frontage street, installation of traffic control devices, and/or other mitigation as a condition of granting an access permit, to ensure the safe and efficient operation of the street and highway system.*

Finding. No such conditions of approval are required.

F. Access Spacing. *Driveway accesses shall be separated from other driveways and street intersections in accordance with the following standards:*

...

2. Collector Streets. A minimum of 50 feet separation between driveways (as measured from centerlines of the driveways) is required on collector streets, except that driveways may be consolidated and adjoin each other for more than one dwelling and meet this standard. See also, subsection 5-3.1.020(F)(3) below.

3. *Special Provisions for All Streets.* Direct street access may be restricted for some land uses in order to maintain the safety and function of adjacent roadways, and as required for specific land uses pursuant to Article 5-2. For example, access consolidation, shared access, and/or access separation greater than that specified by this Chapter may be required by the City, Grant County, or ODOT for the purpose of protecting the function, safety and operation of the street for all users. Where no other reasonable alternatives exist, the permitting agency may allow construction of an access connection along the property line farthest from an intersection. In such cases, directional connections (i.e., right in/out, right in only, or right out only) may be required.

Finding. The proposed driveways already exist in some fashion and do not need to be relocated to comply with this section. No special restrictions on access are warranted.

G. Number of Access Points. For single-family (detached and attached), two-family, and three-family housing types, one street access point is permitted per lot, when alley access cannot otherwise be provided; except that two access points may be permitted on corner lots, or for circular driveways, subject to the access spacing standards in subsection 5-3.1.020F above. The number of street access points for multiple family, commercial, industrial, and park & open space developments shall be minimized to protect the function, safety and operation of the street(s) and sidewalk(s) for all users. Shared access may be required in order to maintain the required access spacing and minimize the number of access points.

Finding. The two proposed points of access are permitted and the minimum necessary to protect the safety and operation of the streets and sidewalks for all users. No special restrictions on access are warranted.

H. Shared Driveways. The number of driveway and private street intersections with collector and arterial streets shall be minimized by the use of shared driveways with adjoining lots where feasible. As applicable, the City shall require shared driveways as a condition of land divisions or site design review for traffic safety and access management purposes in accordance with the following standards:

Finding. The two proposed points of access already exist in some fashion and are the minimum necessary to afford adequate circulation within the site. Consolidation of driveways is not appropriate.

J. Joint and Cross Access – Requirement. When necessary for traffic safety and access management purposes, or to access flag lots, the City may require joint access and/or shared driveways in the following situations as follows:

...

Finding. Joint access and/or shared driveways are not appropriate.

...

K. Access Connections and Driveway Design. All driveway connections to a public right-of-way (access) and driveways shall conform to all of the following design standards:

1. *Driveway Width.* Driveways shall meet the following standards:

a. *One-way driveways (one way in or out) shall have a minimum driveway width of 10 feet (single lane) and a maximum width of 12 feet per lane, and shall have appropriate signage designating the driveway as a one-way connection.*

b. *For two-way access, each lane shall have a minimum width of 9 feet and a maximum width of 11 feet.*

c. *Driveway width shall increase (taper out) to provide for required emergency vehicle access and truck/trailer turning radius.*

Finding. The proposed driveways meet the dimensional requirements.

2. *Driveway Approaches. Driveway approaches shall be designed and located to provide exiting vehicles with an unobstructed view of other vehicles and pedestrians, and to prevent vehicles from backing into the flow of traffic on the public street or causing conflicts with on-site circulation. Construction of driveway accesses along acceleration or deceleration lanes or tapers should be avoided due to the potential for vehicular conflicts. Driveways should be located to allow for safe maneuvering in and around loading areas. See also, Chapter 5-3.3, Parking and Loading.*

Finding. The driveway approaches are designed and located to provide unobstructed views to the maximum extent practical, do not allow for backing into the flow of traffic, and do not cause conflicts with on-site circulation. No deceleration lanes or tapers are proposed. The driveways allow for safe and efficient maneuvering in and around loading areas.

3. *Driveway Construction.*

a. *Driveway aprons (when required) shall be constructed of concrete and shall be installed between the street right-of-way and the private drive, as shown in Figure 5-3.1.020K.*

b. *Driveway aprons shall conform to Americans with Disability Act requirements for sidewalks and walkways, which generally require a continuous unobstructed route of travel that is not less than 3 feet in width, with a cross slope not exceeding 2 percent, and providing for landing areas and ramps at intersections.*

c. *Where no sidewalk exists and the Public Works Director determines that sidewalk improvements in the vicinity are unlikely in the future, a paved apron extending 10 feet behind the right-of-way is required.*

d. *Where a drainage ditch exists, a 12-inch minimum culvert extending a minimum of two (2) feet past the edge of the driveway on both sides of the driveway is required.*

Finding. The proposal includes driveway aprons, which must comply with these requirements.

L. Fire Access and Turnarounds. *When required by applicable Fire Codes, fire access lanes with turnarounds shall be provided. Except as waived in writing by the Fire Marshal, a fire equipment access drive shall be provided within 150 feet of all exterior walls of the first story of a building that is located more than 150 feet from an existing public street. The drive shall contain unobstructed adequate aisle width (14-20 feet) and turn-around area for emergency vehicles. The Fire Marshal may require that fire lanes be marked as "No Stopping/No Parking." For requirements related to cul-de-sacs or dead-end streets, please refer to Section 5-3.4.010N.*

Finding. The proposed design of the driveways allows for emergency vehicles to navigate the site on roadways of at least 14 feet in unobstructed width without having to turnaround. The site layout allows for fire vehicles to drive within 150 of all exterior walls.

M. Vertical Clearances. *Driveways, private streets, aisles, turn-around areas and ramps shall have a minimum vertical clearance of 13' 6" for their entire length and width.*

Finding. There are no vertical clearance issues at the site.

N. Vision Clearance. *No visual obstruction (e.g., sign, structure, solid fence, or shrub vegetation) between three (3) feet and eight (8) feet in height shall be placed in "vision clearance areas" at street intersections on streets, driveways, alleys, or mid-block lanes as shown in Figure 5-3.1.020N. The minimum vision clearance area may be modified by the Public Works Director upon finding that more or less sight distance is required (i.e., due to traffic speeds, roadway alignment, etc.). The Public Works Director may allow light standards, utility poles, tree trunks and similar objects within a required clear vision area. See also, Chapter 5-6.2 Methods of Measurement.*

Finding. There are no visual obstructions within vision clearance areas.

O. Conditions and Exceptions.

1. *The City may impose turning restrictions (i.e., right in/out, right in only, or right out only) for safety and to maintain adequate traffic operations where a driveway opens onto a collector or arterial street.*
2. *Access to and from off-street parking areas shall not permit backing onto a public street, except for single-family dwellings.*
3. *The City may reduce required separation distance of access points where they prove impractical due to lot dimensions, existing development, other physical features, or conflicting code requirements, provided all of the following requirements are met:*
 - a. *Joint-use driveways and cross-access easements are provided;*
 - b. *The site plan incorporates a unified access and circulation system in accordance with this Section; and*
 - c. *The property owner(s) enter in a written agreement with the City, recorded with the deed, that pre-existing connections on the site will be closed and eliminated after construction of each side of the joint-use driveway.*

Finding. No turning restrictions are warranted. The design of the site does not require backing into a public street. Reductions in separation distance between access points is warranted because the property already has established access points at the proposed locations.

P. Site Circulation. *New developments shall be required to provide a circulation system that accommodates expected traffic on the site. Pedestrian connections on the site, including connections through large sites, and connections between sites (as applicable) and adjacent sidewalks, must conform to the provisions in Section 5-3.1.030.*

Finding. The proposal includes an appropriate on-site circulation system that is sufficient to accommodate expected traffic on the site. Pedestrian connections comply with the provisions of Section 5-3.1.030 as discussed below.

Q. Construction. *The following development and maintenance standards shall apply to all driveways and private streets, except that the standards do not apply to driveways serving one single-family detached dwelling:*

1. Protection of Public Ways. *Driveways and access roads shall be graveled to prevent tracking of mud onto city streets during site development and construction. The Public Works Director may also require rinsing of vehicles on-site before they are permitted to enter the public right-of-way.*

2. Surface Options. *Driveways, parking areas, aisles, and turnarounds may be paved with asphalt, concrete, or comparable surfacing, including interlocking pavers or other durable paving material. When approved by the Public Works Director, porous paving systems may be used to manage surface water runoff. All paving materials shall be subject to review and approval by the Public Works Director.*

3. Surface Water Management. *All driveways, parking areas, aisles, and turnarounds shall have on-site collection of surface waters to eliminate sheet flow of such waters onto public rights-of-way and abutting property. Surface water facilities shall be constructed in conformance with applicable engineering standards, and shall be subject to review and approval by the Public Works Director.*

4. Driveway Aprons. *When driveway approaches or “aprons” are required to connect driveways to the public right-of-way, they shall be paved with concrete surfacing and conform to the City’s engineering design criteria and standard specifications. (See general illustrations in Section 5-3.1.020K, above.)*

a. Where no sidewalk exists and the Public Works Director determines that sidewalk improvements in the vicinity are unlikely in the future, a paved apron extending 10 feet behind the right-of-way is required.

b. Where a drainage ditch exists, a 12-inch minimum culvert extending a minimum of two (2) feet past the edge of the driveway on both sides of the driveway is required.

Finding. *The applicant will be required to gravel the access roads during construction. The proposal includes paved surfaces for driveways, aprons, and parking areas that must be designed in accordance with Section 5-3.1.020(K). The proposal includes sidewalk improvements. Any drainage ditches must include culverts.*

5-3.1.030 Pedestrian Access And Circulation.

A. Site Layout and Design. *To provide safe, direct, and convenient pedestrian circulation, all developments, except single-family and duplex dwellings shall provide a continuous pedestrian system within the development site that connects to the public right-of-way, regardless of whether a public sidewalk currently exists. The pedestrian system shall be based on the standards in subsections 1-4, below:*

- 1. Continuous Walkway System. The pedestrian walkway system shall extend throughout the development site and connect to all future phases of development, if any, and to existing or planned off-site adjacent trails, public parks, and open space areas to the greatest extent practicable. The developer may also be required to connect or stub walkway(s) to adjacent streets and to private property with a previously reserved public access easement for this purpose, in accordance with the provisions of [Section 5-3.1.020, Vehicular Access and Circulation](#), and [Section 5-3.4.010, Transportation Standards](#).*

2. *Safe, Direct, and Convenient.* Walkways within developments shall provide safe, reasonably direct, and convenient connections between primary building entrances and all adjacent streets, based on the following definitions:
 - a. *Reasonably direct.* A route that does not deviate unnecessarily from a straight line or a route that does not involve a significant amount of out-of-direction travel for likely users.
 - b. *Safe and convenient.* Routes that are reasonably free from hazards and provide a reasonably direct route of travel between destinations.
 - c. *"Primary entrance"* is the main public entrance to the building. In the case where no public entrance exists, street connections shall be provided to the main employee entrance, as applicable.
3. *Connections Within Development.* Connections within developments shall be provided as required in subsections a-c, below:
 - a. Walkways shall connect all building entrances to one another to the extent practicable, as generally shown in Figure 5-3.1.030A(1);
 - b. Walkways shall connect all on-site parking areas, storage areas, recreational facilities and common areas, and shall connect off-site adjacent uses to the site to the extent practicable. Topographic or existing development constraints may be cause for not making certain walkway connections, as generally shown in Figure 5-3.1.030A(1); and
 - c. Parking areas containing twenty four (24) or more parking spaces shall be broken up so that parking bays do not exceed twelve (12) contiguous parking spaces without a break. Parking areas may be broken up with landscape areas (per subsection 5-3.2.030.E), handicap-accessible walkways, plazas, streets, or driveways with street-like features. Street-like features, for the purpose of this section, means a raised sidewalk that is at least four (4) feet wide for residential projects and at least six (6) feet wide in all other projects, with 6-inch raised curbs, accessible curb ramps, street trees in planter strips or tree wells, and pedestrian-oriented lighting.

Finding. The proposal includes a continuous walkway system to connect all proposed and existing features of the park. No street extensions are warranted. The proposed walkways are reasonably direct, safe and convenient, and connect to primary entrances based on the definitions above. There are no parking areas with 12 or more contiguous parking spaces.

5-3.2 Landscaping, Street Trees, Fences And Walls.

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5-3.2.020 Landscape Conservation.

1. **Applicability.** All development sites containing Significant Vegetation, as defined by subsection B, below, shall comply with the standards of this Section. The purpose of this Section is to incorporate significant native vegetation into the landscapes of development to the greatest extent practicable. The retention of mature, native vegetation within developments is a preferred alternative to removal of vegetation and re-planting, particularly on steep slopes and areas prone to landslide or susceptible to soil erosion. Mature landscaping provides summer shade and wind breaks, controls erosion, and allows for water conservation due to larger plants having established root systems.

2. **Significant Vegetation.** "Significant vegetation" means individual trees and shrubs within an Open Space District, any existing or proposed open space area within a development, geological hazard areas, flood plains, and jurisdictional wetlands, as determined by a natural resource agency with jurisdiction, except that protection shall not be required for plants listed as non-native, invasive plants by the Oregon State University (OSU) Extension Service, Grant County, or other government agency, where removal of vegetation is necessary to protect the public health, safety or welfare as determined by the City approval body.
3. **Mapping and Protection Required.** Significant vegetation shall be mapped as required by [Chapter 5-4.2, Site Design Review](#). Significant trees shall be mapped individually and identified by species and diameter or caliper at 4 feet above grade, except where a site contains more than five acres the Planning Official may accept a canopy-level inventory of trees based on an aerial photograph for a preliminary land division application. The City also may require an inventory, survey, or assessment prepared by a qualified professional when necessary to determine construction boundaries, building setbacks, and other protection or mitigation requirements.
4. **Protection Standards.** Significant trees and shrubs identified as meeting the criteria in Section B, above, shall be retained to the extent practicable to minimize the risk of erosion, landslide, and stormwater runoff. Where protection is impracticable because it would prevent reasonable development of public streets, utilities, or land uses permitted by the applicable land use district, the City may allow removal of significant vegetation to provide for a reasonable building envelope (area exclusive of required yard setbacks), and areas for access and utilities. Where other areas must be disturbed to provide for construction staging areas, the applicant shall be required to restore such areas after construction with landscaping to prevent erosion and to protect the public health, safety, and welfare. With the owner's consent, the City may accept a land dedication or become a party to a conservation easement on private property for conservation purposes.
5. **Construction; Erosion and Sediment Control.** An erosion and sediment control plan is required for all new construction. All significant vegetation on a site that is not otherwise designated and approved by the City for removal shall be protected prior to, during, and after construction in accordance with a limit-of-clearing and grading plan approved by the City. The City may limit grading activities and operation of vehicles and heavy equipment in and around significant vegetation areas, streams and other water bodies to prevent erosion, pollution, or landslide hazards.
6. **Exemptions.** The protection standards in "D" and "E" shall not apply to:
 1. Dead or Diseased Vegetation. Dead or diseased vegetation may be removed from an area containing significant vegetation, as defined by subsection B, provided the burden is on the property owner to demonstrate to the Planning Official that said vegetation is in fact diseased or dead before it is removed.
 2. Hazardous Vegetation and Other Emergencies. Significant vegetation may be removed without land use approval pursuant to Article 4-1 when the vegetation poses an immediate threat to life or safety, or the vegetation must be removed for other reasons of emergency (e.g., fallen over road or power line, blocked drainage way, or similar circumstance), as determined by the City Planning Official or emergency service provider.

Finding. Significant vegetation is depicted on the materials submitted by the applicant and appropriately mapped for a site that exceeds five acres. All mature, native vegetation will be retained except the lawn in the immediate area of the building and parking areas, including all significant vegetation. Construction, Erosion, and Sediment Control Plans will be provided by the contractor selected for the development. Vegetation is well clear

of the proposed development zone and no exemptions were requested by the applicant. There are no know wetlands, streams, of wildlife habitat on the site. For the first time in this appeal, Mr. Morris argues that that historical and/or natural resources such as the John Day River, gold mining, history of Chinese settlement in the area, native American resources, a historical ditch, exist on or around the site. To the extent not waived, and to the extent any applicable approval criteria address the cited resources, Council finds that any such requirements only pertain to inventoried resources (i.e. local/state/federal registries or inventories). There is no evidence that the subject property is listed in any such registry or inventory.

5-3.2.030 – Landscaping and Screening.

A. Applicability. *This Section shall apply to all new developments requiring Site Design Review. The landscape standards may be modified in accordance with the Adjustment procedure in Section 5-4.2.060.B. The Planning Official may approve an adjustment to any standard in this section by up to 20%; the Planning Commission reviews larger adjustments.*

B. Landscaping Plan Required. *A landscape plan is required. All landscape plans shall conform to the requirements in subsection 5-4.2.050B.5 (Landscape Plans).*

C. Landscape Area Standards. *The minimum percentage of site area required to be in landscaping varies by zone. See the development standards in Article 5-2.*

Finding. The proposal is subject to Site Design Review. The materials submitted by the applicant contain a landscaping plan acceptable to the Planning Official. The 10% minimum landscaping area requirement is greatly exceeded.

D. Landscape Materials. *Permitted landscape materials include trees, shrubs, ground cover plants, non-plant ground covers, and outdoor hardscape features, as described below. “Coverage” is based on the projected canopy cover of all plants upon maturity, i.e., typically three (3) or more years after planting.*

1. Existing Vegetation. *Existing non-invasive vegetation may be used in meeting landscape requirements. When existing mature trees with a trunk diameter greater than ten (10) inches are protected on a development site (e.g., within or adjacent to parking areas) the decision making body may reduce the number of new trees required by a ratio of one (1) inch caliper of new tree(s) for every one (1) inch caliper of existing tree(s) protected. This provision does not waive the requirement for landscape areas or “breaks” between parking bays under subsections 5-3.1.030 and 5-3.2.030E; it only reduces the number of new trees that may be required where existing mature trees are preserved.*

2. Plant Selection. *A combination of deciduous and evergreen trees, shrubs, and ground covers shall be used for all planted areas, the selection of which shall be based on local climate, exposure, water availability, and drainage conditions. When new vegetation is planted, soils shall be amended, as necessary, to allow for healthy plant growth.*

3. “Non-native, invasive” plants, *as per Section 5-3.2.020.B, shall be removed during site development, to the extent practicable, to prevent the plants from spreading; and the planting of new invasive species is prohibited.*

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5. Ground Cover Standard. *All landscaped area, whether or not required, that is not planted with trees and shrubs, shall have ground cover plants that are sized and spaced as follows: a minimum of one (1) plant per twelve (12) inches on center in triangular*

spacing, or other planting pattern that is designed to achieve at least fifty percent (50%) coverage of all landscape surface areas.

6. Tree Size. Trees shall have a minimum diameter or caliper 4 feet above grade of two 2 inches or greater at time of planting.

7. Shrub Size. Shrubs shall be planted from 5 gallon containers or larger.

8. Non-plant Ground Covers. Bark dust, chips, or similar mulch shall be used to cover all landscape surfaces not otherwise planted or covered with hardscape surfaces. Stone, aggregate and similar materials may be used as ground cover, but shall cover no more than fifty percent (50%) of the area to be landscaped and shall be limited to footpaths, landscape bed borders, or structures providing erosion control or stormwater management. Non-plant ground covers cannot be a substitute for ground cover plants.

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10. Storm Water Facilities. Surface storm water treatment facilities (e.g., detention/retention ponds and swales designed for water quality treatment), when required under Section 5-3.4.040, shall be landscaped with water tolerant, native plants.

Finding. The applicant is proposing permitted landscaping. Together the proposed landscaping and the existing landscaping greatly exceed the amount of required landscaping. Ultimate plant selections must be selected based local climate, exposure, water availability, and drainage conditions and soil amendments and non-plant ground covers must be employed. Ground coverage, tree size, and shrub size must meet the applicable standards. Storm water facilities must be landscaped. These standards will be verified as part of final inspections for certificate of occupancy.

E. Landscape Design Standards. All yards, parking lots, and required street tree planter strips shall be landscaped to achieve the following criteria:

1. Yard Setback Landscaping. Landscaping in yards shall:

- a. Provide visual screening and privacy within side and rear yards; while leaving front yards and building entrances mostly visible for security purposes and maintaining opportunities for solar access and territorial views;
- b. Use shrubs and trees as wind breaks;
- c. Consider the root and canopy growth characteristics of trees and avoid conflicts with utilities;
- d. Retain natural vegetation where it does not conflict with clear vision requirements and utilities;
- e. Define pedestrian pathways and open space areas with landscape materials;
- f. Provide focal points within a development, for example, by preserving large or unique trees or groves, hedges, and flowering plants;
- g. Use trees to provide summer shading within common open space areas and within front yards when street trees cannot be provided;
- h. Use a combination of plants for year-long color and interest;
- i. Use landscaping to screen outdoor storage and mechanical equipment areas, and to enhance graded areas such as berms, swales, and detention/retention ponds.

Finding. The proposal includes vegetative buffers with yard setbacks that meet the foregoing standards.

2. Parking areas. A minimum of ten percent (10%) of the total surface area of all parking areas, as measured around the perimeter of all parking spaces and

maneuvering areas, shall be landscaped. Such landscaping shall consist of “evenly distributed” shade trees with shrubs and/or ground cover plants that conform to the criteria in Section 5-3.2.030.E.1, above. “Evenly distributed” means that the trees and other plants are distributed around the parking lot perimeter and between parking bays to provide a partial canopy. At a minimum, one tree per twelve (12) parking spaces on average shall be planted to create a partial tree canopy over and around the parking area. All parking areas with more than twenty-four (24) spaces shall include landscape islands with trees to break up the parking area into rows of not more than twelve (12) contiguous parking spaces. All parking area landscapes shall have dimensions of not less than 24 square feet of area, or not less than 4 feet in width by 6 feet in length, to ensure adequate soil, water, and space for healthy plant growth. (See Figures in Section 5-3.1.030.)

Finding. The proposal includes significant landscape islands within and around parking areas that exceed the foregoing requirements. The proposed landscaping is “evenly distributed”. The required number of parking lot trees will be verified as part of final inspection for a certificate of occupancy. There are no rows of 12 or more contiguous parking spaces.

3. Buffering and Screening Required. *Buffering and screening are required as follows:*

- a. **Parking/Maneuvering Area Adjacent to Streets and Drives.** Where a parking or maneuvering area abuts a street, a low (2-4 foot high) evergreen hedge, masonry wall (brick, concrete block, stone, poured-in-place concrete, or similar material), arcade, trellis, or similar screen structure shall be established between street and driveway. The required screening shall have breaks, where necessary, to allow pedestrian access to the site and to allow visual surveillance of the site for security. Evergreen hedges used to comply with this standard shall be a minimum of 36 inches in height at maturity, and shall be of such species, number, and spacing to provide the required screening within one (1) year after planting. Any areas between the wall/hedge and the street/driveway line shall be landscaped with plants or other vegetative ground cover.*
- b. **Parking/Maneuvering Area Adjacent to Building.** Where a parking or maneuvering area, or driveway, is adjacent to a building, the area shall be separated from the building by a curb and a raised walkway, plaza, or landscaped buffer not less than five (5) feet in width. Raised curbs, bollards, wheel stops, or other design features shall be used to protect pedestrians, landscaping, and buildings from being damaged by vehicles. Where parking areas are located adjacent to a ground-floor residence, a four (4) foot wide landscape buffer with a curbed edge may fulfill this requirement.*
- c. **Screening of Mechanical Equipment, Outdoor Storage, Service and Delivery Areas, and Other Screening When Required.** All mechanical equipment, outdoor storage and manufacturing, and service and delivery areas, shall be screened from view from all public streets and adjacent Residential districts. Such screening shall be provided by a decorative wall (i.e., masonry, architectural quality vinyl, or similar quality material), and shall be subject to Site Design Review. Walls, fences, and hedges shall comply with the vision clearance requirements and provide for pedestrian circulation, in accordance with Chapter 5-3.1, Access and Circulation. (See Section 5-3.2.050 for standards specific to fences and walls.)*

Finding. The applicant will be required to install a hedge or wall between the southern parking area and the street in compliance with the foregoing standard, which will be verified prior to a final certificate of occupancy. The building is separated from maneuvering areas by significant landscape buffers. Curbs are included in the proposal to protect pedestrians, landscaping, and buildings from vehicular damage. Mechanical equipment is located within the building.

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F. Maintenance and Irrigation. *All yards and landscape areas, regardless of whether such areas are required by this Code, shall be maintained in good health, with sufficient irrigation and care. Irrigation shall be required through Site Design Review for new landscaping; temporary irrigation for a period of two years may be permitted where proposed species are drought tolerant. If the plantings fail to survive, the property owner shall replace them with an equivalent specimen (i.e., evergreen shrub replaces evergreen shrub, deciduous tree replaces deciduous tree, etc.). All plants and non-plant materials, including man-made features, on a site shall be maintained in good condition, or otherwise be replaced by the owner upon being notified by the City of such code violation.*

Finding. This will be an ongoing requirement of the applicant.

5-3.2.040 Street Trees.

Street trees shall be planted for all developments that are subject to Land Division or Site Design Review where landscape park strips exist or are required with the development. Requirements for street tree planting strips are provided in Section 5-3.4.010, Transportation Standards. Planting of street trees shall generally follow construction of curbs and sidewalks, however, the City may defer tree planting until final inspection of completed dwellings to avoid damage to trees during construction. The planting and maintenance of street trees shall conform to the following standards and guidelines, and any applicable road authority requirements:

A. Growth Characteristics. *Trees shall be selected based on climate zone, growth characteristics and site conditions, including available space, overhead clearance, soil conditions, exposure, and desired color and appearance, and in consideration of any list of desirable street trees that may be established from time to time by the City. The following should guide tree selection by developers and approval by the City:*

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B. Tree Size at Planting. *The minimum tree size at planting is two (2) inch caliper measured four (4) feet above ground for deciduous trees, and six (6) foot height for evergreen trees.*

C. Spacing and Location. *Street trees shall be planted within existing or proposed planting strips or in sidewalk tree wells on streets without planting strips, except where root system conflicts with utilities are unavoidable, in which case the City may approve trees planted in front yards of lots. Street tree spacing shall be based upon the type of tree(s) selected and the canopy size at maturity and, at a minimum, the planting area*

shall contain at least sixteen (16) square feet, or typically, four (4) feet by four (4) feet; trees shall be centered in the planter strip between sidewalk and curb. In general, trees should be spaced between thirty (30) feet and sixty (60) feet apart, except where planting a tree would conflict with existing trees, retaining walls, utilities and similar physical barriers. Actual spacing should be based on the trees' growth characteristics and provide for a mostly continuous tree canopy cover over adjacent sidewalks when the trees mature.

D. Soil Preparation, Planting and Care. The developer of subdivision or new site development with street frontage improvements shall be responsible for planting street trees, including soil preparation, ground cover material, staking, and temporary irrigation for two (2) years after planting. The developer shall also be responsible for tree care (pruning, watering, fertilization, and replacement as necessary) during the first two years after planting, after which the adjacent property owners shall maintain the trees.

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E. Tree Maintenance. Maintenance of street trees, whether located in a public right-of-way or private property, is the ongoing responsibility of the adjoining property owner, subject to John Day City Code 3.814.

Finding. The applicant is proposing street trees along the frontage of Bridge Street. Verification of compliance with the requirements of this section will be conducted prior to issuance of a certificate of occupancy.

5-3.2.050 Fences And Walls

A. General Requirements. All fences and walls placed within a required setback yard shall comply with the standards of this Section.

1. The City may require installation of walls and/or fences as a condition of land use or development approval. (See also, [Section 5-3.2.030](#) for screening requirements.)
2. Except as provided under subsection 5-3.2.050(B), below, fences and walls placed within a required setback yard shall not exceed the following height above grade, where grade is measured from the base of the subject fence or wall:
 1. Within front and street-facing yard setbacks, four (4) feet
 2. Within side and rear yard setbacks, six (6) feet
3. The allowable height of a fence or wall may be restricted to less than the dimensions under [subsection 5-3.2.050\(A\)\(2\)](#) to maintain required sight distance at a street intersection or driveway approach, as determined by the Public Works Director.
4. Where a fence or wall is placed atop another fence, wall, berm, or other manmade feature, height is measured from grade at the base of such feature.
5. Walls and fences required by the City for screening or buffering shall comply with [Section 5-3.2.030](#).
6. Walls and fences shall comply with the vision clearance standards of [Section 5-3.1.020](#).

B. Exceptions and Adjustments.

1. *One arbor, gate, or similar fence or wall not exceeding eight (8) feet in height and six (6) feet in width is allowed within a front or street-facing yard provided it does not encroach into a required clear vision area.*
2. *Within a front or street-facing yard in a Residential district, a cyclone fence or similar type of fence is allowed to reach six (6) feet in height, provided such fence shall have openings evenly distributed and comprising at least fifty percent (50%) of the surface area of the fence. Alternatively, a solid fence or wall is allowed within the rear yard of a reverse frontage lot (i.e., where rear yard abuts a street right-of-way), provided such fence or wall shall be setback a minimum of five (5) feet from the right-of-way behind a landscape buffer.*
3. *Within side and rear yard setbacks, including rear yard setbacks on reverse frontage lots, the maximum fence and wall height is seven (7) feet, provided such fences and walls comply with the standards of subsection 5-3.2.050(B)(4) and the permitting requirements of subsection 5-3.2.050(C).*
4. *All portions of a fence or screening wall exceeding six (6) feet in height in a side or rear yard, including rear yard setbacks on reverse frontage lots, as allowed under subsection 5-3.2.050(B)(3), shall provide openings evenly distributed and comprising at least twenty percent (20%) of the surface area of that portion of the fence. For example, a six (6) foot solid cedar fence with one foot of latticework could meet this standard. Similarly, a wall consisting of a solid masonry base with ornamental (e.g., wrought iron) detailing could also meet the standard.*
5. *The Planning Commission, through a Type II Site Design Review, may approve a fence or wall exceeding the height limits of this Chapter. In approving such applications, the Planning Commission must find that the proposed fence or wall is necessary to buffer road noise, to protect the privacy of residents, or to mitigate adverse impacts of adjacent land uses, and does not pose a hazard to public health or safety. The Planning Commission shall also consider whether the proposed fence design (materials, color, detailing, etc.) is compatible with existing structures in the vicinity.*

C. Permitting. *A building permit is required for fences exceeding six (6) feet in height and retaining walls exceeding four (4) feet in height. In addition, walls exceeding four (4) feet require prior approval by the Public Works Director, who may require the applicant to submit plans prepared by a registered engineer.*

D. Maintenance. *For public health and safety, walls and fences shall be maintained in good condition, or otherwise replaced by the property owner.*

E. Materials.

1. *Permitted fence and wall materials include weather-treated wood; untreated cedar and redwood; metal (e.g., chain link, wrought iron, and similar fences); bricks, stone, masonry block, formed-in-place concrete, or similar masonry; vinyl and composite (e.g., recycled) materials designed for use as fencing; and similar materials as determined by the City Planning Official. In addition, non-invasive evergreen hedges kept to a height of not more than eight (8) feet may be considered screening walls for the purpose of this Chapter.*
2. *Prohibited fence and wall materials include straw bales, tarps, barbed or razor wire; scrap lumber, untreated wood, metal (except chain link), scrap materials,*

and tarps; dead, diseased, or dying plants; and materials similar to those listed herein.

Finding. The applicant is proposing fencing around the pool and some retaining/screening walls, but not within required setbacks. No fences or walls in excess of 6 feet are proposed. Maintenance will be an ongoing requirement of the applicant. The selected materials comply with the foregoing requirements.

5-3.3 Parking And Loading.

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5-3.3.020 Applicability

All developments subject to site design review (Chapter 5-4.2), including development of parking facilities, shall comply with the provisions of this Chapter.

5-3.3.030 Automobile Parking Standards

A. Vehicle Parking - Minimum Standards by Use. *The number of required off-street vehicle parking spaces shall be determined in accordance with the standards in Table 5-3.3.030A, or alternatively, through a separate parking demand analysis prepared by the applicant and subject to a Type II Land Use Review (or Type III review if the request is part of an application that is already subject to Type III review). Where a use is not specifically listed in this table, parking requirements are determined by finding that a use is similar to one of those listed in terms of parking needs, or by estimating parking needs individually using the demand analysis option described above. Parking that counts toward the minimum requirement is parking in garages, carports, parking lots, bays along driveways, City-approved shared parking, and designated on-street parking when approved by the City. There is no minimum number of off-street parking required in the CBD district; however, new development and changes in use in the CBD shall be subject to a Downtown Parking District fee upon City adoption of a Downtown Parking District (or similar) ordinance. Where such Parking District applies, parking fees shall be calculated using the minimum parking ratios in Table 5-3.3.030A, below, or as established by City Ordinance.*

Finding. Table 5-3.3.030(A) provides that parks and open space are based on projected parking demand and subject to City approval. The applicant proposed 55 spaces, which Council finds sufficient for the proposed use. A major highlight of this project, as shown in the applicant's submitted materials, is that the site is connected to paths and (now sidewalks), which will encourage non-vehicular travel to the site.

B. Vehicle Parking - Minimum Accessible Parking

- 1. Accessible (ADA) parking shall be provided for all uses in accordance with the standards in Table 5-3.3.030B; parking spaces used to meet the standards in Table 5-3.3.030B shall be counted toward meeting applicable off-street parking requirements;*
- 2. Such parking shall be located in close proximity to building entrances and shall be designed to permit occupants of vehicles to reach the entrance on an unobstructed path or walkway;*
- 3. Accessible spaces shall be grouped in pairs where possible;*

4. Where covered parking is provided, covered accessible spaces shall be provided in the same ratio as covered non-accessible spaces;

Required accessible parking spaces shall be identified with signs and pavement markings identifying them as reserved for persons with disabilities; signs shall be posted directly in front of the parking space at a height of no less than 42 inches and no more than 72 inches above pavement level. Van spaces shall be specifically identified as such.

Finding. The applicant will have to designate the required number of accessible parking spaces in accordance with the foregoing requirements. These standards will be verified as part of final inspections for certificate of occupancy.

...

F. General Parking Standards.

1. Location. *Parking is allowed only on streets, within garages, carports, and other structures, or on driveways or parking lots that have been developed in conformance with this code. Article 2-1, Land Use Districts, prescribes parking location for some land uses (e.g., the requirement that parking for some multiple family and commercial developments be located to side or rear of buildings), and Chapter 5-3.1, Access and Circulation, provides design standards for driveways. Street parking spaces shall not include space in a vehicle travel lane (including emergency or fire access lanes), public right-of-way, pedestrian accessway, landscape, or other undesignated area.*

2. Mixed uses. *If more than one type of land use occupies a single structure or parcel of land, the total requirements for off-street automobile parking shall be the sum of the requirements for all uses, unless it can be shown that the peak parking demands are actually less (i.e., the uses operate on different days or at different times of the day). The City may reduce the total parking required accordingly through Land Use Review.*

3. Availability of facilities. *Owners of off-street parking facilities may post a sign indicating that all parking on the site is available only for residents, customers, and/or employees.*

4. Lighting. *Lighting at levels appropriate for pedestrian safety shall be provided over parking spaces and walkways. Light standards shall be directed downward only and shielded to prevent lighting spillover into any adjacent residential district or use.*

5. Screening of Parking Areas. *Parking spaces shall be located or screened so that headlights do not shine onto adjacent residential uses, per Section 5-3.2.030E.*

6. Maintenance. *All parking lots shall be maintained in good condition and repair.*

Finding. The proposed parking is located within compliant parking areas. No street parking is proposed. The proposed parking on the subject property is sufficient to accommodate the other uses on the subject property, which include open fields, pedestrian paths, and maintenance facilities. Appropriate lighting must be installed to facilities use of the parking areas and walkways. The proposed parking areas are appropriately screened by vegetative buffers. These standards will be verified as part of final inspections for certificate of occupancy.

G. Parking Stall Design and Minimum Dimensions. *All off-street parking spaces shall be improved to conform to City standards for surfacing, stormwater management, and striping. Standard parking spaces shall conform to the following standards and the dimensions in Figures 5-3.3.030F(1) through (3), and Table 5-3.3.030F:*

1. *Parking area dimensions and layout shall conform to the dimensions in Figure 53.3.030F(1) and (2), and Table 5-3.3.030F, below;*
2. *Additional parking dimensions shall be provided in accordance to Americans With Disabilities Act (ADA) standards for required ADA parking spaces (van accessible parking spaces). Parking structure vertical clearance, van accessible parking spaces, should refer to Federal ADA guidelines. See Figure 5-3.3.030F.2; and*

...

Finding. The parking lot must be developed in accordance with City standards. The proposed stalls meet the dimensional requirements of Table 5-3.3.030(F). Compliance with the ADA will be an ongoing requirement of the applicant.

5-3.3.040 Bicycle Parking Standards

All uses that are subject to Site Design Review shall provide bicycle parking, in conformance with the standards in Table 5-3.3.040, and subsections A-G, below.

A. Minimum Required Bicycle Parking Spaces. *Uses shall provide bicycle parking spaces, as designated in Table 5-3.3.040.*

B. Exemptions. *This Section does not apply to single-family and two-family housing (attached, detached, or manufactured housing), home occupations, agriculture and livestock uses.*

C. Location and Design. *At least 20 percent of the required bicycle parking spaces shall be no farther from a primary building entrance than the distance from that entrance to the closest vehicle space, or 100 feet, whichever is less. Covered bicycle parking shall be incorporated wherever practical into building design (e.g., under eaves or stairwells). When allowed within a public right-of-way, bicycle parking should be coordinated with the design of street furniture, as applicable.*

D. Visibility and Security. *Bicycle parking for customers and visitors of a use shall be visible from street sidewalks or building entrances, so that it provides sufficient security from theft and damage.*

E. Lighting. *For security, bicycle parking shall be at least as well lit as vehicle parking.*

F. Reserved Areas. *Areas set aside for bicycle parking shall be clearly marked and reserved for bicycle parking only.*

G. Hazards. *Bicycle parking shall not impede or create a hazard to pedestrians. Parking areas shall be located so as to not conflict with vision clearance standards (Chapter 5-3.1, Access and Circulation).*

Finding. The applicant will provide bicycle parking as required by the code. Verification of compliance will be performed prior to issuing a certificate of occupancy.

...

5-3.4 Public Facilities.

...

5-3.4.010 Transportation Standards

A. Development Standards and Criteria. *Projects shall be required to meet the current standards in effect at the time an application is filed.*

1. Adequate Public Facilities. *No development shall be approved unless adequate transportation facilities are available or improvements will be constructed and operational, as required by this Code, the John Day Transportation System Plan and the John Day Local Street Network Plan. If existing improvements leading to or serving the site are inadequate to handle anticipated loads, improvements are to be constructed and operational prior to the issuance of building permits or in conjunction with construction of the approved lots or parcels pursuant to financial assurance for the improvements or a written agreement with the City prior to final plat approval. Development resulting in increased traffic on a state highway shall meet the traffic operations standards per the current Oregon Highway Plan.*

Finding. The record contains a transportation study demonstrating the adequacy of the existing transportation system. The proposed application meets the access spacing requirements between driveways and the traffic study reveals that adjacent intersections operate well below the volume to capacity ratio (v/c ratio) of these collector streets. No additional improvements are required.

For the first time in these proceedings, Mr. Morris questions the adequacy of the transportation system and the transportation study. To the extent not waived, Council finds that the transportation study shows that there is a tremendous amount of capacity in the existing roadway system and the system is otherwise adequate to handle traffic generated by the proposal.

The transportation study included in the record is a broader transportation study conducted in 2021 related to the Innovation Gateway, future street improvements, and proposed residential developments at Ironwood Estates (Phase 2 and 3) located off Valley View Drive at the north end of the City. This study included traffic counts at the intersection of NW 7th Street and Bridge Street, the main intersection servicing the proposed aquatics center and Ironwood Estates.

Mr. Morris challenged any reliance on proposed transportation improvements for a variety of reasons. However, Mr. Morris's arguments do not acknowledge that the transportation study included two "sensitivity scenarios" that investigated 2025 conditions and "assumed full build-out of the Innovation Gateway Area site [including the proposed recreational facility], both without and with [the transportation improvements highlighted by Mr. Morris]." Under both the with and without transportation improvement scenarios, the transportation system operated well within performance standards after full build out of the Innovation Gateway Area (including the proposed pool).

The transportation study constitutes substantial evidence and demonstrates the sufficiency of the transportation system even if no additional transportation improvements are constructed.

...

3. Street Improvements. *Streets within and adjacent to a development shall be improved in accordance with the City of John Day Transportation System Plan and the provisions of this Chapter. Development of new streets, including sidewalks, curbs, gutters, bicycle lanes, vehicle travel lanes, traffic control devices, and park strips, and additional right-of-way or street width or improvements planned as a portion of an existing street, shall be improved in accordance with this Chapter; and all public streets shall be dedicated to the applicable road authority upon the Public Works Director’s acceptance of said improvements;*

4. Access Improvements. *All new streets, and driveways connecting to streets, shall be paved; driveways and driveway aprons shall be improved as required under Section 5-3.4.030 and subject to approval by the Public Works Director.*

Finding. The applicant is proposing to improve the Bridge Street frontage and the existing driveways in a manner compliant with the Code as discussed above.

...

5-3.4.030 Sanitary Sewer And Water Service Improvements

A. Sewers and Water Mains Required. *Sanitary sewers and water mains shall be installed to serve each new development and to connect developments to existing mains in accordance with the City’s Sanitary Sewer Master Plan, Water System Master Plan, and applicable engineering requirements. When streets are required to be stubbed to the edge of the subdivision, sewer and water system improvements shall also be stubbed with the streets, except as may be waived by the Public Works Director when alternate alignment(s) are provided.*

B. Sewer and Water Plan Approval. *Development permits for sewer and water improvements shall not be issued until the Public Works Director has approved all sanitary sewer and water plans in conformance with City standards.*

C. Over-Sizing. *The City may require as a condition of development approval that sewer, water, and/or storm drainage systems serving new development be sized to accommodate future development within the area as projected by the applicable Water, Sewer, and/or Storm Drainage Master Plan, provided that the City may grant the developer credit toward any required system development charge for the same, or the City may authorize other cost-recovery or cost-sharing methods, in conformance with [Section 5-3.4.010D.](#)*

D. Inadequate Facilities. *Development permits may be restricted or rationed by the City where a deficiency exists in the existing water or sewer system that cannot be rectified by the development and which if not rectified will result in a threat to public health or safety, surcharging of existing mains, or violations of state or federal standards pertaining to operation of domestic water and sewerage treatment systems. The City may require water booster pumps or sanitary sewer lift stations be installed with backup power.*

E. Water Pressure. Above a certain elevation, where the City has limited ability to serve new development, a developer may be required to install a water storage reservoir and related infrastructure for required water flow pressure, consistent with adopted City master plans.

Finding. There is adequate water and sewer capacity to serve the proposed development. No public improvements are required, but the proposed building will need to connect to the City's water and sewer system in a manner compliant with City standards, which will be verified prior to a final certificate of occupancy.

5-3.4.040 Storm Drainage Improvements

A. General Provisions. A development permit may be granted only when adequate provisions for storm water and flood water runoff have been assured (i.e., through plans and assurances approved by the City). See also, [Section 5-3.4.090](#).

B. Accommodation of Upstream Drainage. Culverts and other drainage facilities shall be large enough to accommodate existing and potential future runoff from the entire upstream drainage area, whether inside or outside the development. Such facilities shall be subject to review and approval by the Public Works Director.

C. Effect on Downstream Drainage. The rate of stormwater runoff leaving a development site during and after development (post-development) shall not exceed the rate of stormwater runoff leaving the site before development (pre-development).

D. Storm Drainage Analysis and Mitigation Required. The Public Works Director may require an applicant for development to provide a storm drainage analysis prepared by a qualified professional engineer registered in the State of Oregon to examine pre- and post-development stormwater runoff conditions and any required mitigation consistent with the City of John Day Stormwater Master Plan. Such analysis, at a minimum, shall quantify pre- and post-development runoff volumes and rates and propose mitigation based on stormwater management best practices, as specified by the Public Works Director. Such mitigation shall ensure that post-development runoff rates do not exceed pre-development rates and necessary facilities are provided to protect public health, safety, and welfare. If upon reviewing the applicant's storm drainage analysis, the Public Works Director determines that the stormwater runoff resulting from the development will overload any existing and/or proposed drainage facility, the City shall withhold approval of the development until provisions have been made for improvement of the potential adverse impacts.

E. Over-Sizing. The City may require as a condition of development approval that any public storm drainage system serving new development be sized to accommodate future development upstream, provided that the City may grant the developer credit toward any required system development charge for the same, or the City may authorize other cost-recovery or cost-sharing methods, in conformance with [Section 5-3.4.010D](#).

F. Existing Watercourse. Where a watercourse, drainage way, channel, or stream traverses a proposed development there shall be provided a storm water easement or drainage right-of-way conforming substantially with the lines of such watercourse and such further width as will be adequate for conveyance and maintenance to protect the public health and safety. See also, [Chapter 5-2.9 Flood Plain Overlay Zone](#).

Finding. The applicant is proposing storm drainage facilities to handle run off generated by the proposed development. The sufficiency of the proposal will be further evaluated as part of construction plans. There are no existing watercourses and the proposed building is not located within a floodway. A floodplain development permit shall be required in the event any proposed development impacts a special flood hazard area.

5-3.4.050 Utilities

A. Underground Utilities.

1. *Generally. All new utility lines including, but not limited to, those required for electric, communication, lighting, and cable television services and related facilities shall be placed underground, except for surface mounted transformers, surface mounted connection boxes and meter cabinets which may be placed above ground, temporary utility service facilities during construction, and high capacity electric lines operating at 50,000 volts or above. The City may require screening and buffering of above ground facilities to protect the public health, safety or welfare through Site Development Review.*

Finding. All utility lines will be placed underground except for surface mounted equipment in compliance with this criterion. Verification of compliance with the requirements of this section will be conducted prior to issuance of a certificate of occupancy.

...

5-3.5 Signs.

Finding. No signs are proposed at this time. If the applicant proposed signage, the applicant will be required to comply with this section.

5-4.2 Land Use Review and Site Design Review

...

5-4.2.020 Applicability

Land Use Review or Site Design Review shall be required for all new developments and modifications of existing developments described below. Regular maintenance, repair and replacement of materials (e.g., roof, siding, awnings, etc.), parking resurfacing and similar maintenance and repair shall be exempt from review.

...

B. Site Design Review. *Site Design Review is a discretionary review conducted by the Planning Official (Type II Review) or by the Planning Commission in a public meeting (Type II Review) or a public hearing (Type III Review). Site Design Review applies to all development in the City, except developments specifically listed under “A” above (Land Use Review). Site Design Review ensures compliance with the land use and development standards in [Article 5-2](#), the design standards and public improvement requirements in [Article 5-3](#), and other applicable regulations.*

...

Finding: The subject application was reviewed through a Type III review because of the conditional use requirement. Site Design Review is applicable to the subject application.

5-4.2.050 Site Design Review - Application Submission Requirements

Both Type II and Type III Site Design Review applications shall conform to the application requirements and approval criteria in Sections 5-4.2.050 through 5-4.2.060. For information on Type II and Type III procedures, please refer to Chapter [5-4.1](#). All of the following information is required for Site Design Review application submittal, except where the Planning Official determines that some information is not pertinent and therefore is not required.

Finding: The application was deemed complete based on the determination of the Planning Official as to what information is pertinent.

5-4.2.060 Site Design Review - Approval Criteria; Adjustments

1. **Approval Criteria.** An application for Site Design Review shall be approved if the proposal meets all of the following criteria. The City decision making body may, in approving the application may impose reasonable conditions of approval, consistent with the applicable criteria:
 1. The application is complete, as determined in accordance with [Chapter 5-4.1 - Types of Applications](#) and Section 5-4.2.050, above.
 2. The application complies with all of the applicable provisions of the underlying Land Use District ([Article 5-2](#)), including: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other applicable standards;
 3. The applicant shall be required to upgrade any existing development that does not comply with the applicable land use district standards, in conformance with [Chapter 5-5.2, Non-Conforming Uses and Development](#);
 4. The proposal complies with all of the Design Standards in [Article 5-3](#):
 1. Chapter 5-3.1 - Access and Circulation;
 2. Chapter 5-3.2 - Landscaping, Significant Vegetation, Street Trees, Fences and Walls;
 3. Chapter 5-3.3 - Parking and Loading, for automobiles and bicycles;
 4. Chapter 5-3.4 - Public Facilities and Franchise Utilities;
 5. Chapter 5-3.5 - Signs;
 6. Chapter 5-3.6 - Other Standards.
 5. Adverse impacts to adjacent properties, such as light, glare, noise, odor, vibration, smoke, dust, or visual impact are avoided; or where impacts cannot be avoided, they are minimized.
 6. Existing conditions of approval required as part of a prior land use decision, if any, are met.

Compliance with other City codes and requirements, though not applicable land use criteria, may be required prior to issuance of building permits.

Finding: The application was deemed complete based on the determination of the Planning Official as to what information is pertinent and/or sufficient. Article 5-2 was

addressed above. No upgrades to existing development are required other than paving of existing driveways. Article 5-3 is addressed above. The proposed development is designed in a manner that minimizes the adverse impacts referenced in Section (5) above. There are no prior conditions of approval.

...

5-4.4.040 Conditional Use Permits – Criteria, Standards and Conditions of Approval

The City shall approve, approve with conditions, or deny an application for a conditional use or to enlarge or alter a conditional use based on findings of fact with respect to each of the standards and criteria in A-C.

1. Use Criteria

- 1. The site size, dimensions, location, topography and access are adequate for the needs of the proposed use, considering the proposed building mass, parking, traffic, noise, vibration, exhaust/emissions, light glare, erosion, odor, dust, visibility, safety, and aesthetic considerations.*

Finding: The size of the property is nearly 12 acres. Several design criteria were adjusted based on feedback from the neighborhood meeting, including enhanced setbacks, improved landscape screening for adjacent neighbors, and additional on-site parking for the facility. The proposed development is universally accessible and includes ADA features such as a 2% maximum grade for the building approach, which is finished with concrete and includes ADA loading and unloading areas at the front of the parking lot. See Exhibits C-E for additional detail.

- 2. The negative impacts of the proposed use on adjacent properties and on the public can be mitigated through application of other code standards, or other reasonable conditions of approval.*

Finding: Adjacent property owners were notified of the application, and no public comments were received concerning potential negative impacts of the proposal following the neighborhood meeting. For the first time in these proceedings, Mr. Morris argues that negative impacts including “traffic management and safety, pedestrian safety, parking, overcrowding, lack of 7th street being user friendly, concerns about aesthetics, storage of equipment”, which were raised at neighborhood meeting, are not sufficiently addressed. To the extent not waived, and to the extent the stated concerns are sufficiently developed to afford Council a reasonable opportunity to respond, Council finds that the cited negative impacts are sufficiently mitigated through compliance with the Code and/or conditions of approval. Specifically, the Code requires frontage improvements, parking (which presumably addresses overcrowding), circulation for both vehicles and pedestrians, setbacks and screening. Council relies upon the traffic study submitted into the record and staff recommendations as to the sufficiency of the transportation system. Council finds that the aesthetics of the buildings and landscaping depicted in the submitted materials are appropriate for the character of the neighborhood and broader community.

- 3. All required public facilities have adequate capacity or are to be improved to serve the proposal, consistent with City standards.*

Finding: The site design for the utilities is enclosed as Exhibit C, which shows connections to existing utilities and other site enhancements. The location includes conduit for future utility placement and is adequate to meet the needs of the proposal. There is adequate capacity in the broader city systems to serve the proposed development.

4. *A conditional use permit shall not allow a use that is prohibited or not expressly allowed under Article 5-2; nor shall a conditional use permit grant a variance without a variance application being reviewed with the conditional use application.*

Finding: The proposed structure is consistent with Article 5-2. "Parks and Open Space" is an allowed use in the Residential General (RG) zone subject to approval of a conditional use permit and is permitted outright when designated on an adopted Specific Area Plan. However, as the size of the facility as an Accessory Structure (with a permitted use) is taller than 14 feet and larger than 1,000 sf, therefore, the application requires a CUP-review and approval by the Planning Commission as required by Section 5-2.2.020 Residential Districts - Allowed Land Uses.

B. Site Design Standards. The Site Design Review approval criteria (Section 5-4.2.060) shall be met. The Planning Official may waive the application requirements for the Site Design Review upon determining that the Conditional Use Permit application provides sufficient information to evaluate the proposal.

Finding: The CUP application provides sufficient information to evaluate the proposal and the application requirements for Site Design Review are waived. Compliance with Section 5-4.2.060 was addressed above.

C. Conditions of Approval. The City may impose conditions that are found necessary to ensure that the uses is compatible with other uses in the vicinity, and that the negative impact of the proposed use on the surrounding uses and public facilities is minimized. These conditions include, but are not limited to, the following:

1. *Limiting the hours, days, place and/or manner of operation;*

Finding: The Applicant will determine operating hours for the aquatic center, which are expected to be consistent with the hours of operation of the 7th Street Sports Complex. Their proposal is to construct a seasonal outdoor pool that will operate at least 90 days per year.

2. *Requiring site or architectural design features which minimize environmental impacts such as noise, vibration, exhaust/emissions, light, glare, erosion, odor and/or dust;*

Finding: Not required.

3. *Requiring large setback areas, lot area, and/or lot depth or width;*

Finding: Not required.

4. *Limiting the building or structure height, size, lot coverage, and/or location on the site;*

Finding: Not required.

5. *Designating the size, number, location and/or design of vehicle access points or parking and loading areas;*

Finding: ADA accessible parking and loading is available at the front entrance. Fire and emergency vehicle access is sufficient and the design will allow safety vehicles to drive up to the main entrance. No additional restrictions on access or parking are required.

6. *Requiring street right-of-way to be dedicated and street(s), sidewalks, curbs, planting strips, pathways, or trails to be improved.*

Finding: The Parks District has acquired the adjacent lot for expanded parking. Facilities located on that lot will be removed prior to construction of the parking areas. Overflow parking has already been installed and is currently in use. No additional street dedications or acquisitions are required but the Applicant must install raised and/or marked crosswalks at each parking lot entrance.

7. *Requiring landscaping, screening, drainage, water quality facilities, and/or improvement of parking and loading areas;*

Finding: Existing site conditions and proposed landscaping are enclosed with the application. No additional requirements for parking and loading areas are required.

8. *Limiting the number, size, location, height and/or lighting of signs;*

Finding: The applicant has not applied for any signage. No additional limitations on signage are required.

9. *Limiting or setting standards for the location, design, and /or intensity of outdoor lighting;*

Finding: Typical outdoor landscape lighting and seasonal lighting may be used to accentuate the aquatics center and surrounding landscape improvements, including the trail system. No additional limitations on lighting are required.

10. *Requiring berms, screening or landscaping and the establishment of standard for their installation and maintenance;*

Finding: Screening is included for the neighbors north of the aquatics center and is already in place for the remaining residential properties surrounding the park. No additional screening or landscaping is required.

11. *Requiring and designating the size, height, location and/or materials for fences;*

Finding: Fences proposed are six-foot tall; black vinyl-coated decorative fencing (continuous along the lawn and pool deck). No additional fencing, or conditions on fencing, is required.

12. *Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas, drainage areas, historic resources, cultural resources, and/or sensitive lands.*

Finding: Existing trees, landscaping and paths will be preserved to the greatest extent possible. Additional landscaping is proposed to be added around the facility. For the first time in this appeal, Mr. Morris argues that that historical and/or natural resources such as the John Day River, gold mining, history of Chinese settlement in the area, native American resources, a historical ditch, exist on or around the site. To the extent not waived, and to the extent any applicable approval criteria address these resources, Council finds that any such requirements only pertain to inventoried resources (i.e. local/state/federal registries or inventories) and that the applicant is not obligated to obtain any clearances from SHPO as part of this land use process. There is no evidence that the subject property is listed in any such registry or inventory or sufficient evidence of such resources to require any additional conditions of approval.

13. Requiring dedication of sufficient land to the public, and/or construction of pedestrian/bicycle pathways in accordance with adopted plans, or requiring the recording of a local improvement district non-remonstrance agreement for the same. Dedication of land and construction shall conform to the provisions of Chapter 5-3.1, and Section 5-3.1.030 in particular;

Finding: Not applicable, these parcels are publicly owned lands under the management and ownership of the Applicant. No additional dedications are required.

14. Establish a time table for periodic review and renewal, or expiration, of the conditional use to ensure compliance with conditions of approval; such review may be subject to approval by the Planning Official or Planning Commission through a Type II Administrative Review or Type III Quasi-Judicial process at the discretion of the decision making body.

Finding: The City reserves the right to review the conditional use permit as needed in order to ensure compliance with conditions of approval.

15. Other Conditions of Approval

Finding: None required.

10. CONDITONS OF APPROVAL

- a. Applicant will satisfy the requirements laid out in these findings.
- b. Verification of compliance with the Code and the requirements in these findings will be required prior to issuance of a certificate of occupancy.