

## ORDINANCE NO. NS-2535

### AN ORDINANCE OF THE CITY COUNCIL ADOPTING A STATUTORY DEVELOPMENT AGREEMENT TO MODIFY THE DENSITY, REQUIRED RIGHT-OF-WAY DEDICATIONS, AND STREET STANDARDS FOR BV II AND BV III

#### Findings:

- A. This ordinance adopts a Statutory Development Agreement (the "Development Agreement") between the City of Bend ("City"), Bachelor View LLC, an Oregon limited liability company ("BV"), Bachelor View Properties LLC, an Oregon limited liability company ("BV Properties") and BV1 LLC, an Oregon limited liability company ("BV1"). The Development Agreement was initiated to modify the number and layout of lots and certain street standards for development commonly known as BV II and BV III. As further described below, BV II and BV III are residential subdivisions abutting Bachelor View Road in Bend, Oregon. This Development Agreement application was processed in accordance with Bend Development Code (BDC) Section 4.1.1500 (Development Agreements) and ORS 94.504 *et seq.*
- B. BV is the owner of approximately 8.24 acres of undeveloped real property commonly known as 61120 Bachelor View Road. BV Properties is the owner of approximately 8.67 acres of undeveloped real property commonly known as 61123, 61129, and 61135 Bachelor View Road.
- C. BV1 is the owner of approximately 4.6 acres of undeveloped real property located at 61130 Bachelor View Road. BV1 has approval for a tentative subdivision plan consisting of 26 lots. The specific development standards established by the Development Agreement do not apply to the BV1. BV1 is included in the Development Agreement only to establish a consistent time frame for completion of development.
- D. BV and BV1 (together, the "Developers") properties and those southeast and southwest are accessed by Bachelor View Road that runs south from SW Century Drive. Between 2017 and 2019, about 800 feet of Bachelor View Road from SW Century Drive was dedicated and improved as a local public street.
- E. In 2022 and 2023, Developers obtained tentative subdivision plan approval from the City for two residential subdivisions. The BV property was approved in File No. PLLD 20220119/PLMISC 20220441 (referred to as "BV II"). The BV Properties property was approved in File No. PLLD 20220664 (referred to as "BV III").
- F. In both approvals, the City imposed conditions requiring that Developers dedicate property for and improve Bachelor View Road as a public local street along the frontage of Developers' properties. Among other things, the approvals required that all streets within BV II and BV III be improved to local street standards and allowed Developers to retain/treat the stormwater runoff using Underground Injection Control facilities ("UICs") installed in the public right-of-way.

- G. The Development Agreement modifies aspects of the approved development to establish certain development standards for Developers' subdivisions allowing Developers to leave a segment of Bachelor View Road private that they would otherwise be dedicating under the current approvals to the public, while allowing the development of the needed housing provided in Developers' land use approvals.
- H. The Development Agreement also permits Developers to extend Bachelor View Road as a public local street to point south of the dedication permitted under the original approvals. From that point south, Bachelor View Road shall remain private and will not serve the approved subdivisions as set forth in the Development Agreement.
- I. The Development Agreement permits Developers to develop most of the streets within BV II and BV III using a "rural road" standard similar to Sunrise Village rather than a City standard local street. The internal streets will have an asphalt surface without curb and gutter. Because the subject properties are located in an urban interface zone, the elimination of curbs will facilitate maneuvering of emergency vehicles within the subdivisions in the event of a fire emergency. Stormwater runoff will flow into swales eliminating the use of UICs. Instead of sidewalks, the rural roads in BV II and BV III will have asphalt paths. The number of lots within the BV II development will be reduced from 44 to 39 to create a buffer between the dwellings in BV II and the existing homes to the west, however, both developments will continue to meet the City minimum density.
- J. Finally, the Development Agreement fixes a street alignment issue involving BV III and a residential development to the north known as the Lodges at Bachelor View West to allow for internal streets on each plan to connect rather than dead-end under the current approvals, which will not create the desired connectivity.
- K. Other than the reduction of lots in BV II from 44 to 39, the creation of open space adjacent to Bachelor View Road, and the application of rural road standards within BV II and BV III, both subdivisions will be developed consistent with the prior land use approvals as reflected in Files Nos. PLLD20220119/PLMISC20220441 and PLLD20220664.
- L. The City provided timely and sufficient notice of the public hearing for the Development Agreement in accordance with the Type III application procedures contained in Section 4.1.400 of the Bend Development Code. On May 28, 2025, notice of the June 18, 2025, City Council public hearing was mailed to surrounding residents and owners of record of property within 500 feet of the properties, as shown on the most recent property tax assessment roll. Additionally, Notice of Proposed Development signs were posted on the subject properties along abutting public ways.
- M. The City Council held a public hearing on June 18, 2025, to accept evidence, receive public testimony and consider the staff recommendation. The City Council finds that

the Development Agreement follows the provisions of ORS 94.504 through 94.528, which are specifically addressed within the Development Agreement.

**Based on these findings, THE CITY OF BEND ORDAINS AS FOLLOWS:**

Section 1. The Development Agreement is adopted in the form contained in Attachment A.

Section 2. If any provision, section, phrase, or word of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

First Reading: June 18, 2025

Second reading and adoption by roll call vote: July 16, 2025

YES: Franzosa, Méndez, Norris, Perkins, Platt, Riley

NO:



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Melanie Kebler, Mayor

Attest:



Ashley Bonjye, City Recorder's Office

Approved as to form:



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Ian Leitheiser, City Attorney

## **STATUTORY DEVELOPMENT AGREEMENT**

This Statutory Development Agreement ("Agreement") is between the City of Bend, a municipal corporation of the State of Oregon (the "City"), Bachelor View LLC, an Oregon limited liability company, Bachelor View Properties LLC, an Oregon limited liability company, and BV1 LLC, an Oregon limited liability company (each a "Party" and, collectively, the "Parties"), in accordance with ORS 94.504 through 94.528 and Bend Development Code 4.1.1510, *et seq.* The purpose of this Agreement is to establish the density and street/sidewalk standards that will apply to two residential subdivisions owned by Bachelor View LLC and Bachelor View Properties LLC.

### **RECITALS**

- A. Bachelor View LLC is the owner of approximately 8.24 acres of undeveloped real property commonly known as 61120 Bachelor View Road, and more particularly described and shown in the attached Exhibits A and B. Bachelor View Properties LLC is the owner of approximately 8.67 acres of undeveloped real property commonly known as 61123, 61129, and 61135 Bachelor View Road, more particularly described and shown on Exhibits C and D. Collectively, Bachelor View LLC and Bachelor View Properties LLC will be referred to as the "Developers."
- B. BV1 LLC is the owner of approximately 4.6 acres of undeveloped real property located at 61130 Bachelor View Road. BV1 LLC has approval for a tentative subdivision plan consisting of 26 lots. The specific development standards created in this Agreement do not apply to the BV1 LLC development and it will develop as approved in File No. PLLD 2020-0848/PLMISC 2021-1093. BV1 LLC is being included in this Agreement only to establish a consistent time frame for completion of development and is thus, subject only to the provisions in Section 1 below.
- C. Developers' properties are located south of SW Century Drive and west of Sunrise Village, a residential subdivision approved by Deschutes County and now within the City. From the Developers' properties south and west to the Deschutes River, the area is comprised of undeveloped and underdeveloped land. Developers' properties are zoned Standard Density Residential ("RS") and included in the City's inventory of buildable lands. Developers' properties are in an area that has a more rural setting with many larger properties extending south toward the Deschutes River. Specifically, Sunrise Village is located immediately east of the Developers' properties.
- D. Developers' properties and those southeast and southwest are accessed by Bachelor View Road that runs south from SW Century Drive. Between 2017 and 2019, about 800 feet of Bachelor View Road from SW Century Drive was dedicated and improved as a local public street.
- E. In 2022, Developers obtained tentative subdivision plan approval from the City for two residential subdivisions. The Bachelor View LLC property was approved in File No. PLLD 2022-0119/PLMISC 2022-0441 (referred to as "BV II"). The

Bachelor View Properties LLC property was approved in File No. PLLD 2022-0664 (referred to as “BV III”). In both approvals, the City imposed conditions requiring that Developers dedicate property for and improve Bachelor View Road as a public local street along the frontage of Developers’ properties. The approvals required that all streets within BV II and BV III be improved to local street standards and allowed Developers to retain/treat the stormwater runoff using Underground Injection Control facilities (“UICs”) installed in the public right-of-way.

- F. Where Bachelor View Road runs on and adjacent to Developers’ properties and continuing south it lies within private access easements that benefit and burden Developers’ properties and numerous other properties in the immediate area. Certain owners whose properties benefit from the easements filed a lawsuit alleging that the approvals in BV II and BV III and particularly the conditions requiring dedication and improvements to Bachelor View Road violate their easement rights and that the City lacks the legal right to require improvements making Bachelor View Road a public road. The plaintiffs in the lawsuit sought to enjoin the development and sought damages from the City alleging that the required dedications constituted inverse condemnation of their easement rights. The lawsuit has the potential to delay and frustrate the construction of housing that is needed in Bend on land designated for residential use.
- G. Developers negotiated a resolution to the lawsuit that will avoid delays to the development of needed housing in Bend by eliminating the lawsuit and avoiding the possibility that the City may have to condemn the easement property to make it possible for the provision of needed housing. An essential part of the resolution requires Developers to modify/redesign aspects of their approved developments and apply for a statutory development agreement that will establish certain development standards for Developers’ subdivisions allowing Developers to leave a segment of Bachelor View Road private that they would otherwise be dedicating under the current approvals to the public, while allowing the development of the needed housing provided in Developers’ land use approvals. The modifications/redesign of the Developers’ approvals are depicted in Exhibits E and F to this Agreement.
- H. As part of a resolution of the disputes with property owners in the area, Developers propose to extend Bachelor View Road as a local public street to the point labeled on Exhibit E as “Gated Private Road Access.” From that point south, Bachelor View Road shall remain private and will not serve the approved subdivisions. Developers propose to develop all the streets within BV II and BV III using a “rural road” standard similar to Sunrise Village. The rural road profile is depicted on Exhibit G to this Agreement. The internal street will have an asphalt surface without curb and gutter. Because the subject properties are located in an urban interface zone, the elimination of curbs will facilitate maneuvering of emergency vehicles within the subdivisions in the event of a fire emergency. Stormwater runoff will flow into swales eliminating the use of UICs. Instead of sidewalks, BV II and BV III will have asphalt paths. The number of lots within the BV II development will be reduced to create a buffer between the dwellings in BV II and the existing homes to the west, however, both developments will continue to meet

the City minimum density. The use of rural road standards and the revised configuration allows Developers to avoid some of the dedication for Bachelor View Road eliminating the opposition to the proposed housing and any possible future condemnation of real property partition.

- I. There is also a street alignment issue created by two inconsistent hearings officer's decisions. In File No. PLLD 2022-0664, a city hearings officer approved the tentative plan, including the street layout as proposed by Bachelor View Properties LLC. Subsequently, in File No. PLLD 2022-0612, a different city hearings officer approved a tentative subdivision plan on adjacent property to the north. The street alignment in the tentative plan in File No. PLLD 2022-0612 does not match the street alignment in File No. PLLD 2022-0664. The internal streets in each plan will dead-end into the proposed lots and will not create the desired connectivity. The City lacks the authority to mandate that either of the applicants in those files modify their street layouts. The Developers are proposing, as part of the proposed Development Agreement, to revise their street layout to align with the streets in File No. PLLD 2022-0612 provided the City approves the alternate street design using rural street standards.
- J. Other than the reduction of lots in BV II from 44 to 39, the creation of open space adjacent to Bachelor View Road, and the application of rural road standards within BV II and BV III, both subdivisions will be developed consistent with the prior land use approvals as reflected in Files Nos. 2022-0119/PLMISC 2022-0441 and PLLD 2022-0664.
- K. This Agreement was initiated pursuant to Bend Development Code ("BDC") 4.1.1530 and is subject to the standards of BDC 4.1.1510 to 4.1.1560.

## **AGREEMENT**

In consideration of the mutual promises and performance obligations of each Party set out in this Agreement, the Parties agree to the following terms and conditions.

**1. Effective Date and Term of Agreement (ORS 94.504(2)(a); ORS 94.504(6)).** This Agreement shall be effective upon: (a) adoption of an ordinance by the City approving this Agreement in accordance with ORS 94.508; and (b) execution of this Agreement by the Parties. The effective date of this Agreement shall be the later of (i) the date the Agreement is last signed by a Party or (ii) the effective date of the City's adopting ordinance (as applicable, the "Effective Date"). This Agreement shall continue in effect for a period of 15 years after the Effective Date, or until development of the improvements described in Section 4 are completed, whichever comes first. Nothing in this section precludes the Parties from mutually agreeing to reopen, extend, terminate, or consider amendments to this Agreement at any time, if otherwise allowed by statute. Any amendments shall be made as provided in Section 10 below.

1.1 Following the Effective Date, Developers shall prepare and submit to the City a formal tentative plan and engineering drawings that reflect the infrastructure approved for BV II and BV III that are substantially in conformance with this Agreement,

Exhibits E, F and G, and to the extent not modified by this Agreement, the original findings and conditions of approval for BV II and BV III, attached as Exhibit H (the “Original Decisions”). BV1 LLC has already submitted such drawings for the approval granted in File No. PLLD 2020-0848. If approved by the City and after the infrastructure is constructed and inspected by the City, Developers and BV1 LLC may record the final subdivision plats in substantial conformance with the tentative plan submitted under this paragraph and within the time period provided above. A copy of the final plats must be filed with the City as required by BDC 4.3.400.H.2.

## **2. Description of Development Authorized and Required by this Agreement.**

2.1 Generally (ORS 94.504(2)(b)). This Agreement approves the subdivision of the two properties identified herein, in the configuration shown in the attached Exhibits E and F, and to the extent not modified by this Agreement, subject to the Original Decisions in the attached Exhibit H, and completion of the infrastructure improvements described below in Section 4. Approval is based on the plans submitted in File No. PLRPDA20240565 (File Number for Development Agreement Application), including the number of lots depicted on the lot layouts for BV II and BV III, Exhibits E and F, respectively the “Proposed Density,” and the improvements to the site and public facilities required under this Agreement and in the Original Decisions. Developers intend to develop the BV II property first, followed by the BV III property.

2.2 Density and Intensity (ORS 94.504(2)(c)). Density and intensity of uses on the property are governed by the BDC at the time of subsequent development application submittal, subject to the following limitations:

2.2.1 The property is zoned Standard Density Residential. Development of particular uses of the property will be subject to the standards of the BDC at the time of future development applications, except that BV II shall be limited to 39 lots and BV III will be limited to not more than 44 lots.

2.2.2 This Agreement only approves tentative subdivision plans, subject to the improvements required in this Agreement. No development on the BVII or BV III properties is approved with this Agreement, regardless of any on-site improvements that are shown on drawings submitted with the above file number. On-site uses and improvements will be reviewed by the City with future development applications. By this Agreement, the City does not waive application of any development standard in the BDC for future development of the Parcels unless specifically set forth herein.

2.3 Height and Size of Structures (ORS 94.504(2)(d)). Height and size of structures will be governed by the requirements of the BDC at the time of development application submittal.

2.4 Reservation or Dedication of Land for Public Purposes (ORS 94.504(2)(e)). The only property to be dedicated to the public for right-of-way is 20 feet along the BV III Frontage (Lots 1, 22, 23, and 44) and 40 feet along the frontage of BV II but only to the point labeled on Exhibit E as “Gated Private Road Access”. Provided that the development applications for the Parcels do not exceed the Proposed Density, the City

will not require any further reservation or dedication of additional land for public purposes. If development applications exceed the Proposed Densities, any requirements for reservation or dedication of additional land for public purposes will be determined at the time of development approval for the property in accordance with City regulations in effect at the time of development application submittal.

**2.5 Schedule of Fees and Charges (ORS 94.504(2)(f))**. Fees for this Agreement and related reviews have been paid by the Developers. Except as expressly provided for in this Agreement, fees and charges for subsequent applications will be determined at the time of specific development applications for the property in accordance with the applicable City regulations in effect at the time of application submittal.

**3. Schedule and Procedure for Compliance Review (ORS 94.504(2)(g))**. Developers will submit tentative subdivision plans for BV II and BV III consistent with this Agreement. Except as modified by this Agreement, the developments shall be completed as approved in File Nos. PLLD 2022-0199 and PLLD 2022-0664.

**4. Infrastructure Improvements (ORS 94.504(2)(h))**. The purpose of this Agreement is to set forth the required infrastructure to support the subdivision of the property and the required timing for those improvements. To support the subdivisions approved by this Agreement, construction of at least one of the following improvements must be commenced within five years of the Effective Date.

**4.1. Bachelor View LLC Property-BV II**. The following public and private improvements are required to be completed by the Developers and accepted by the City prior to recording a final subdivision plat for BV II unless otherwise noted:

**4.1.1 Transportation.**

**A.** Beginning where the current public segment of Bachelor View Road terminates to the point labeled on Exhibit E as "Gated Private Road Access," Developers shall improve Bachelor View Road to the City's local street standards with curb and sidewalks on both sides. Because half of the improvements will be in right-of-way dedicated over the BV III property, Bachelor View Properties LLC will cooperate in this part of the transportation improvements.

**B.** All streets within the BV II subdivisions shall be private streets improved to rural street standards as depicted on Exhibit G, with asphalt surfaces 32 feet wide and swales to receive stormwater runoff. The removal of the curbs in this forest interface zone will be beneficial if and when any fire breaks out as curbs create a barrier for fire apparatus to freely move about to combat a fire. All private streets within BV II shall be within a recorded public access and utility easement approved by the City. Within 60 days following tentative plan approval for the adjacent property to the south currently owned by Peter Yonan Trust, Developers will either (a) substantially complete SW Carolyn's Place to the southern edge of the BVII Property, or (b) dedicate a public access and utility easement and temporary construction easement, in a form approved by the City, for third-party construction of any incomplete portion of SW Carolyn's Place to the southern edge of the BVII Property.

C.

D. In lieu of sidewalks within the subdivisions, Developers shall construct hard surface paths of their choice on both sides of each internal street connection to the sidewalks on the public portion of Bachelor View Road as depicted on Exhibit E.

E. Developers shall construct stormwater drainage system improvements utilizing swales for all private streets that meet City of Bend Standards and the Central Oregon Stormwater Manual. All stormwater infrastructure must be done through a Tier 3 Right of Water (Infrastructure) Permit. The Parties will reasonably cooperate and be flexible in the completion of the drainage system improvements within existing construction standards to limit excessive project costs and delays.

4.1.2 Water.

A. Extend a new 8-inch water main from the development approved in File No. PLLD 2021-0848, south within the north/south street within the BV II subdivision. The new main shall extend to the southern boundary of the BV II property to allow for orderly development of the abutting southern properties. The new main must meet City of Bend Standards and be located within a public utility easement approved by the City. Final alignments of the main will be determined with the infrastructure plans based on final review by City Engineering. All main extensions must be done through a Tier 3 Right-of-Way (Infrastructure) Permit approved by the City.

B. Fire hydrants will be required with the installation of any new water mains. The final location of fire hydrants will be determined with the approval of final infrastructure drawings. In addition, consistent with Condition 12 in the final decision approving BV II (PLLD 2022-0119/PLMISC 2022-0441) the dwellings in BV II shall be constructed with automatic fire sprinkler systems that will not have a mechanism allowing owners to manually disable the system.

C. Developers shall extend an 8-inch water main within their property along Bachelor View Road to provide a looped system and redundancy for the current Bachelor View developments and future potential development. The water main shall be in a public utility easement approved by the City.

4.1.3 Sewer.

A. Extend a new sanitary sewer main within the dedicated portion of Bachelor View Road south to the point where the east/west street in BV II, labeled Street B on Exhibit F, intersects with Bachelor View Road.

B. From that point, extend a new sanitary sewer main within BV II to be located as close as practical to the center of the private streets and within a public sewer easement approved by the City. The sewer main located in the north/south street internal to BV II shall extend to the southern boundary of that property to allow for future development of adjacent properties south of BV II.

C. Extend a new sanitary sewer main from Bachelor View Road within BV III to be located as close as practical to the center of the private streets and within a public sewer easement approved by the City. The sewer mains in BV II shall extend west and south to the boundaries of the BV III property to allow for future development of the property located west and south of that property.

D. There shall be no public sewer main extended within Bachelor View Road south of the point where Bachelor View Road no longer is within a dedicated right-of-way.

4.2 Bachelor View Properties LLC's Property-BV III. The following public improvements are required to be completed by the Developer and accepted by the City prior to recording a final subdivision plat for BV III unless otherwise noted:

#### 4.2.1 Transportation.

A. Beginning where the current public segment of Bachelor View Road terminates and extending to the point on Exhibit E labeled "Gated Private Road Access", Developers shall improve Bachelor View Road to the City's local street standards with curb and sidewalks on both sides.

B. All streets within the BV III subdivision shall be private streets improved to rural street standards as depicted on Exhibit G, with asphalt surfaces 32 feet wide and swales to receive stormwater runoff, except that the segments of Last Chance Place and SW Grotto Place north of the street labeled A Street on Exhibit F will be standard local City streets to allow a transition to private street at the intersection with "A Street." The removal of the curbs in this forest interface zone will be beneficial if and when any fire breaks out as curbs create a barrier for fire apparatus to freely move about to combat a fire. All private streets within each subdivision shall be within a recorded public access easement approved by the City.

C. In lieu of sidewalks within the subdivisions, Developers shall construct asphalt paths on both sides of each internal street connection to the sidewalks on the public portion of Bachelor View Road as depicted on Exhibit F.

D. Developers shall construct stormwater drainage system improvements utilizing swales for all private streets that meet City of Bend Standards and the Central Oregon Stormwater Manual. All stormwater infrastructure must be done through a Tier 3 Right of Water (Infrastructure) Permit. The Parties will reasonably cooperate and be flexible in the completion of the drainage system improvements within existing construction standards to limit excessive project costs and delays.

#### 4.2.2 Water.

A. Extend a new 8-inch main from the main in Bachelor View Road west into the subdivision looping within the internal streets. The new main shall be extended to the west and south boundaries of the BV III property to allow for orderly

development of the adjacent properties. The new main must meet City of Bend Standards and be located within a public utility easement approved by the City. Final alignments of the main will be determined with the infrastructure plans based on final review by City Engineering. All main extensions must be done through a Tier 3 Right-of-Way (Infrastructure) Permit.

B. Fire hydrants will be required with the installation of any new water mains. The final location of fire hydrants will be determined with the approval of final infrastructure drawings.

#### 4.2.3 Sewer.

A. Extend a new sanitary sewer main within the dedicated portion of Bachelor View Road south to the point where the most northerly east/west street in BV II intersects Bachelor View Road.

B. Extend a new sanitary sewer main from Bachelor View Road within BV III to be located as close as practical to the center of the private streets and within a public sewer easement approved by the City. The sewer mains in BV II shall extend west and south to the boundaries of the BV III property to allow for future development of the property located west and south of that property.

C. There shall be no public sewer main extended within Bachelor View Road south of the point where Bachelor View Road no longer is within a dedicated public right-of-way.

### 5. Effect of Agreement/Vesting.

5.1 This Agreement serves as approval for the Developers to submit revised tentative subdivision plans reflecting the changes from the approved plans and the construction of the improvements described herein.

5.2 Agreement Binding on the Parties for the Term of the Agreement. This Agreement is binding on the Parties, or any successors-in-interest and future owner(s) of the property for the term of the Agreement, unless final plats for each subdivision is not recorded within the duration of this Agreement. If final plats are not timely recorded as provided in the Original Decisions, this Agreement shall terminate and be of no further effect. The Developers acknowledge that the infrastructure improvements required by this Agreement are imposed as conditions of the subdivision Final Plats.

5.3 Improvements Related to Future Development. Provided that the development applications for the BV II and BV III properties do not exceed the Proposed Density, the City will not require any additional transportation, water, or sewer off-site improvements in addition to those set forth in Section 4 of this Agreement. For any development applications which exceed the Proposed Density, additional improvements, whether on-site or off-site, may be required as a condition of approval to further develop the property if required by the then-applicable provisions of the Bend Comprehensive Plan, BDC, or any other applicable regulation.

**6. Continuing Effect of Agreement (ORS 94.504(2)(i)).** In the case of any change in regional policy or federal or state law or other change in circumstance that renders compliance with this Agreement impossible or unlawful, or inconsistent with such laws, rules, or policies, the Parties will attempt to give effect to the remainder of this Agreement, but only if such effect does not prejudice the substantial rights of any Party under this Agreement. If the substantial rights of any Party are prejudiced by giving effect to the remainder of this Agreement, then the Parties shall negotiate in good faith to revise this Agreement to give effect to its original intent. If, because of a change in policy, law, or circumstance, this Agreement fails its essential purpose—vesting of allowed uses and limitations on development conditions and certain payments—then the Parties shall be placed into their original position to the extent practical.

**7. Assignability of Agreement (ORS 94.504(2)(k)).** This Agreement runs with the land until termination and will bind the Parties and their successors, affiliates, and assigns.

**8. Effect of Annexation (ORS 94.504(2)(k)(L)).** All properties subject to this Agreement are currently within the boundaries of the City. The properties are not subject to future annexation.

**9. Default; Remedy (ORS 94.504(2)(j)).**

9.1 Default/Cure. The following shall constitute defaults by a Party:

9.1.1 A breach of a material provision of this Agreement, whether by action or inaction of a Party that continues and is not remedied within 30 days after the other Party has given notice specifying the breach—provided that if the nonbreaching Party determines that such breach cannot with due diligence be cured within a period of 30 days—the nonbreaching Party may allow the breaching Party a longer period of time to cure the breach and, in such event, the breach shall not constitute a default so long as the breaching Party diligently proceeds to effect a cure, and the cure is accomplished within the longer period of time granted by the nonbreaching Party; or

9.1.2 Any assignment by a Party for the benefit of creditors, or adjudication that a Party is bankrupt, or appointment of a receiver, trustee, or creditor's committee over a Party.

9.2 Remedies. Each Party shall have all available remedies, at law or in equity, to recover damages and compel the performance of the other Party under this Agreement. The rights and remedies afforded under this Agreement are not exclusive and shall be in addition to and cumulative with any and all rights otherwise available at law or in equity. The exercise by any Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different time, of any other such remedy for the same default or breach or of any of its remedies for any other default or breach by any other Party, including, without limitation, the right to compel specific performance.

9.3 **Mediation.** Notwithstanding the forgoing, the Parties agree to try to resolve any dispute or issue arising under this Agreement amicably and at a project level. If the dispute is not settled, the Parties shall participate in mediation as a next alternative step for dispute resolution before commencement of litigation. Such mediation will occur in Bend, Oregon. The Parties shall seek a mediator with experience in land use, real estate, or development. The mediation must commence within 90 days of the date the mediator is retained. The mediator's fees and expenses will be shared equally by all the Parties. All Parties agree to exercise their best efforts in good faith to resolve all disputes through mediation.

**10. Amendment or Termination of Agreement.** This Agreement may only be amended or terminated by the mutual consent of all the Parties or their successors-in-interest in accordance with ORS 94.522.

**11. Miscellaneous Provisions.**

11.1 **Notice.** A notice or communication under this Agreement by any Party shall be in writing and shall be dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by either personal delivery or nationally-recognized overnight courier (such as UPS or FedEx), or by electronic mail, delivered during business hours (i.e., before 5:00 p.m., Pacific Time), with a hard copy of such electronically-delivered notice subsequently delivered personally or by overnight courier, and

11.1.1 In the case of a notice to Developers, addressed as follows:

Bachelor View LLC  
Bachelor View Properties LLC  
250 NW Franklin Avenue, Suite 401  
Bend, OR 97703

*With a copy to:*  
Christopher P. Koback  
Hathaway Larson LLP  
1125 NW Couch Street, Suite 550  
Portland, OR 97209

In the case of a notice to the City, addressed as follows:

City of Bend  
710 NW Wall Street  
Bend, OR 97701

*With a copy to:*  
[legalnotice@bendoregon.gov](mailto:legalnotice@bendoregon.gov)

11.1.2 A Party may from time to time designate other or additional notice parties for the purpose of this Section 11 in writing and delivered as provided in this Section 11.

11.2 Headings. Section headings in this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

11.3 Effect of Recitals (ORS 94.504(6)). The Recitals set forth above are the assumptions of the Parties and are incorporated as part of this Agreement. The Exhibits consist of the following and are incorporated as part of this Agreement:

- A BV II Property Legal Description;
- B BV II Property Boundary Map;
- C BV III Property Legal Description;
- D BV III Property Boundary Map;
- E BV II Modified Plan;
- F BV III Modified Plan;
- G Rural Road Profile; and
- H BV II and BV III Findings and Conditions of Approval.

11.4 Counterparts. This Agreement may be executed digitally and in one or more counterparts, each of which shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.

#### 11.5 Waivers.

11.5.1 No waiver made by any Party with respect to the performance, or the manner or time thereof, of any obligation of any other Party, or any condition inuring to its benefit under this Agreement, shall be considered a waiver of any other rights of the Party making the waiver. No waiver by a Party of any provision of this Agreement or any breach thereof shall be of any force or effect, unless in writing, and no such waiver shall be construed to be a continuing waiver.

11.5.2 The Parties know and understand their rights under *Dolan v. City of Tigard* and its progeny and by entering into this Agreement waive any requirement that the City demonstrate that the public improvements and other obligations of the Parties set forth in this Agreement are roughly proportional to the burden and demands placed on the urban facilities and services as a result of this Agreement. The Parties further acknowledge that the requirements and obligations of the Parties, including, but not limited to, the required public improvements, are roughly proportional to the burden and demands on urban facilities and services that will result from the Proposed Density and the partition of the property approved by this Agreement. The waivers in this Section 11.5 apply only to the improvements contemplated by this Agreement. The Parties expressly reserve their rights to challenge any conditions of approval or requirements imposed by the City in connection with future development of the property in excess of the requirements set forth in this Agreement. This waiver does not apply to public improvements, payments, or other exactions not governed by this Agreement.

11.6 Attorney Fees. In the event of a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under

U.S. Bankruptcy Code, is instituted to interpret or enforce any provision of this Agreement, or with respect to any dispute relating to this Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, the prevailing Party shall be entitled to recover from the losing Party its reasonable attorney, paralegal, accountant, and other expert fees, and all other fees, costs, and reasonably necessary expenses actually incurred, as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by law. This provision shall cover costs and attorney fees related to or with respect to proceedings in federal bankruptcy courts, including those related to issues unique to bankruptcy law. In the event the prevailing Party is represented by "in-house" counsel, the prevailing Party shall nevertheless be entitled to recover reasonable attorney fees based on the reasonable time incurred and the attorney fee rates and charges reasonably and generally accepted in the Bend, Oregon area for the type of legal services performed.

11.7 Time of the Essence. Time is of the essence for this Agreement.

11.8 Choice of Law. This Agreement shall be interpreted under the laws of the State of Oregon.

11.9 Calculation of Time. All periods of time referred to in this Agreement shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday in the State of Oregon, the period shall be extended to include the next day that is not a Saturday, Sunday, or legal holiday.

11.10 Construction. In construing this Agreement, singular pronouns shall be taken to mean and include the plural, and the masculine pronoun shall be taken to mean and include the feminine and the neuter, as the context may require.

11.11 Severability. If any clause, sentence, or any other portion of the terms and conditions of this Agreement becomes illegal, null, or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.

11.12 Merger. This Agreement constitutes the entire agreement between all the Parties and supersedes all prior agreements except as such prior agreements are expressly incorporated by reference.

11.13 Place of Enforcement. Any action or suit to enforce or construe any provision of this Agreement by any of the Parties shall be brought in the Circuit Court of the State of Oregon for Deschutes County or in the United States District Court for the District of Oregon.

11.14 Good Faith and Reasonableness. The Parties intend that the obligations of good faith and fair dealing apply to this Agreement generally, and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as

in the case of a Party being given "sole discretion" or being allowed to make a decision in its "sole judgment."

11.15 Condition of City Obligations (ORS 94.504(5)). All City obligations under this Agreement that require the expenditure of funds are contingent on future appropriations by the City as part of the local budget process. Nothing in this Agreement implies an obligation on the City to appropriate any such monies.

11.16 Cooperation in the Event of Legal Challenge. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Parties agree to cooperate in defending such action.

11.17 Enforced Delay, Extension of Times of Performance. In addition to the specific provisions of this Agreement, delayed performance or nonperformance by any Party shall not be a default when such delayed performance or nonperformance is caused by war, insurrection, strikes, riots, floods, drought, earthquakes, fires, casualties, acts of nature, epidemic or pandemic, governmental restrictions imposed or mandated by governmental entities other than the City, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation or litigation, or similar bases for excused performance that are not within reasonable control of the Party to be excused.

11.18 Other Necessary Acts. Each Party shall execute and deliver to the other all such further instruments and documents and take such additional acts (which, in the case of the City, may require adopting necessary ordinances and resolutions) as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other Parties the full and complete enjoyment of rights and privileges under this Agreement.

11.19 No Partnership. This Agreement does not create a partnership or joint venture among the Parties. Each Party is solely and independently responsible for its obligations under this Agreement, and no Party is responsible for payment or performance by any other Party.

11.20 Recording. The City shall cause this Agreement to be recorded in accordance with ORS 94.528. The Parties shall reimburse the City for the cost of recording this Agreement.

**[Signatures on following pages.]**

## Developers:

Bachelor View LLC  
Bachelor View Properties, LLC  
BV1 LLC

By:

Date: \_\_\_\_\_

Name: Larry Kine  
Title: Member (All LLCs)

STATE OF OREGON )  
 ) ss.  
County of Deschutes )

This record was acknowledged before me on \_\_\_\_\_, 2025, by Larry Kine, as the Member of Bachelor View LLC, Bachelor View Properties LLC, and BV1 LLC.

Notary Public for Oregon  
My Commission expires: \_\_\_\_\_

Approved as to form by:

Name:  
Counsel for Bachelor View LLC, Bachelor View Properties LLC, and BV1 LLC

Date:

**City:**

City of Bend

---

Eric King  
City Manager

Date: \_\_\_\_\_

STATE OF OREGON      )  
                            ) ss.  
County of Deschutes    )

This record was acknowledged before me on \_\_\_\_\_, 2025, by Eric King as  
City Manager of the City of Bend.

---

Notary Public for Oregon  
My Commission expires: \_\_\_\_\_

Approved as to form by:

---

Name:  
Counsel for the City of Bend

Date: \_\_\_\_\_

Exhibit A

LEGAL DESCRIPTION: Real property in the County of Deschutes, State of Oregon, described as follows:

A PARCEL OF LAND LOCATED IN THE NORTHEAST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER OF SECTION 13, TOWNSHIP 18 SOUTH, RANGE 11 EAST, WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 13 BEING A 1 1/2 INCH IRON PIPE WITH A BRASS CAP; THENCE SOUTH 89° 36' 35" EAST, ALONG THE NORTH LINE OF SAID SECTION 13, 1,797.28 FEET TO A 5/8 INCH IRON ROD, THENCE LEAVING SAID SECTION LINE SOUTH 01° 46' 32" WEST 832.03 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION, THENCE CONTINUING SOUTH 01° 46' 32" WEST 1,002.45 FEET, THENCE SOUTH 63° 38' 30" WEST 377.37 FEET TO THE CENTERLINE OF AN EXISTING ACCESS EASEMENT, THENCE ALONG SAID CENTERLINE NORTH 00° 52' 23" EAST 292.02 FEET, THENCE NORTH 33° 08' WEST 42.26 FEET, THENCE NORTH 20° 14' EAST 90.88 FEET, THENCE NORTH 02° 30' WEST 298.44 FEET, THENCE NORTH 02° 25' EAST 165.32 FEET THENCE NORTH 20° 16' WEST 192.29 FEET, THENCE LEAVING SAID ACCESS EASEMENT, NORTH 62° 22' 31" EAST 206.91 FEET, THENCE NORTH 85° 59' 38" EAST 246.35 FEET TO THE POINT OF BEGINNING.

NOTE: This legal description was created prior to January 1, 2008.

## Exhibit B



7/1/2024, 2:46:47 PM

taxlot

CountyLines

mapIndex

1:4,514

0 0.03 0.06 0.11 mi  
0 0.04 0.09 0.17 km

OREGON DOR, GEO, City of Bend, OR, Maxar

Exhibit C

LEGAL DESCRIPTION: Real property in the County of Deschutes, State of Oregon, described as follows:

PARCEL 1:

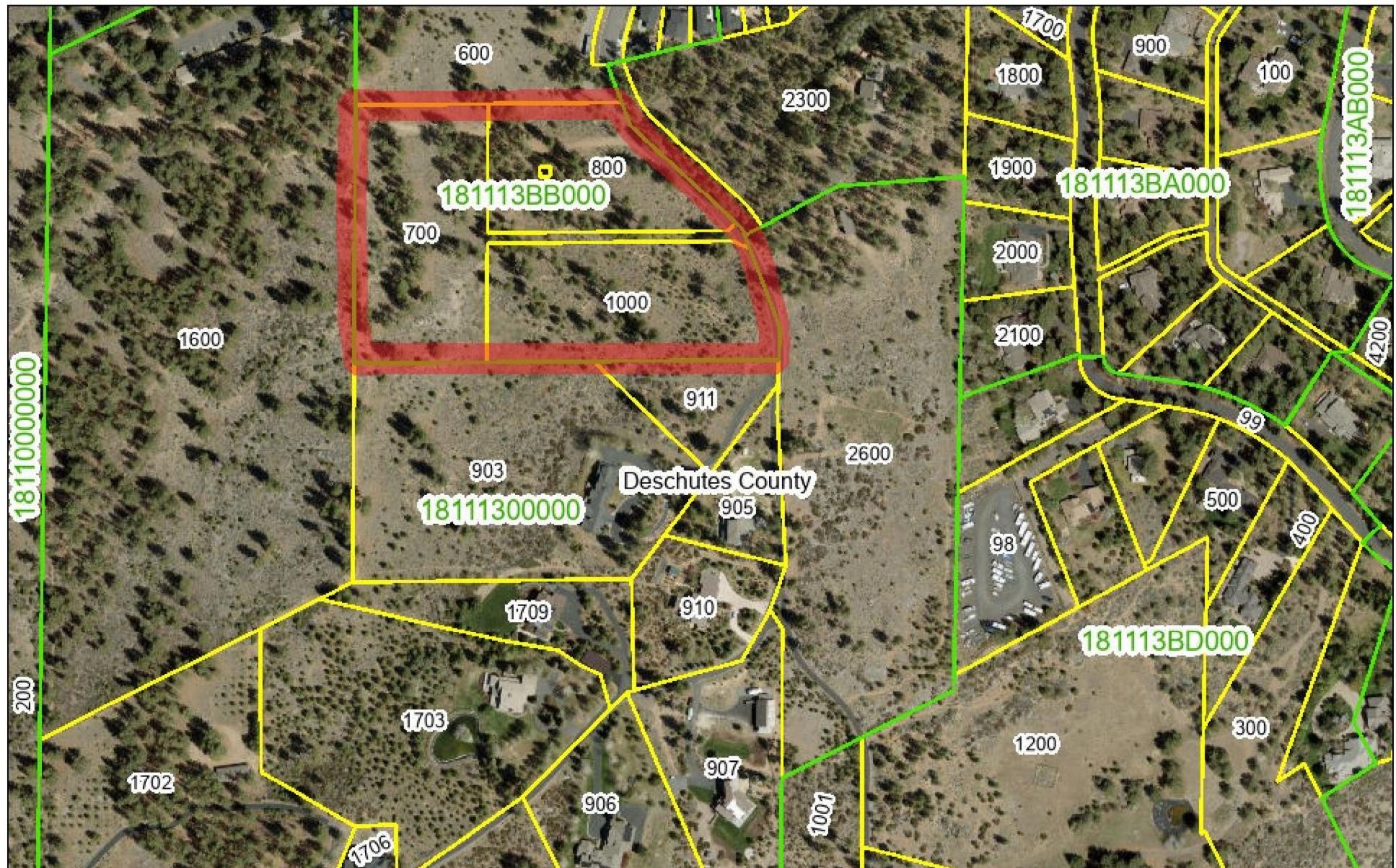
PARCELS 1, 2, AND 3 OF PARTITION PLAT NO. 2003-78, CITY OF BEND, DESCHUTES COUNTY, OREGON.

PARCEL 2:

AN UNDIVIDED 1/4 INTEREST IN A TWENTY FOOT SQUARE TRACT OF LAND WHOSE CENTER IS AN EXISTING WELL, LOCATED IN THE NORTHWEST QUARTER (N.W.1/4) IN SECTION 13, TOWNSHIP 18 SOUTH, RANGE 11 EAST, OF THE WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON; THE AFORESAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF THE BROOKS SCANLON LOGGING ROAD; SAID POINT BEING THE NORTHEASTERLY CORNER OF THAT TRACT OF LAND RECORDED IN BOOK 179, PAGE 505, DEED RECORDS OF DESCHUTES COUNTY, OREGON, SAID POINT BEING SOUTH 309.57 FEET AND EAST 583.05 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 13; THENCE NORTH 63° 38' 30" EAST 395.44 FEET, THENCE DUE SOUTH 687 FEET, TO A POINT 10 FEET NORTH OF SUCH WELL AND BEING THE POINT OF BEGINNING; THENCE WEST 10 FEET; THENCE SOUTH 20 FEET, THENCE EAST 20 FEET, THENCE NORTH 20 FEET, THENCE WEST 10 FEET TO THE POINT OF BEGINNING.

## Exhibit D



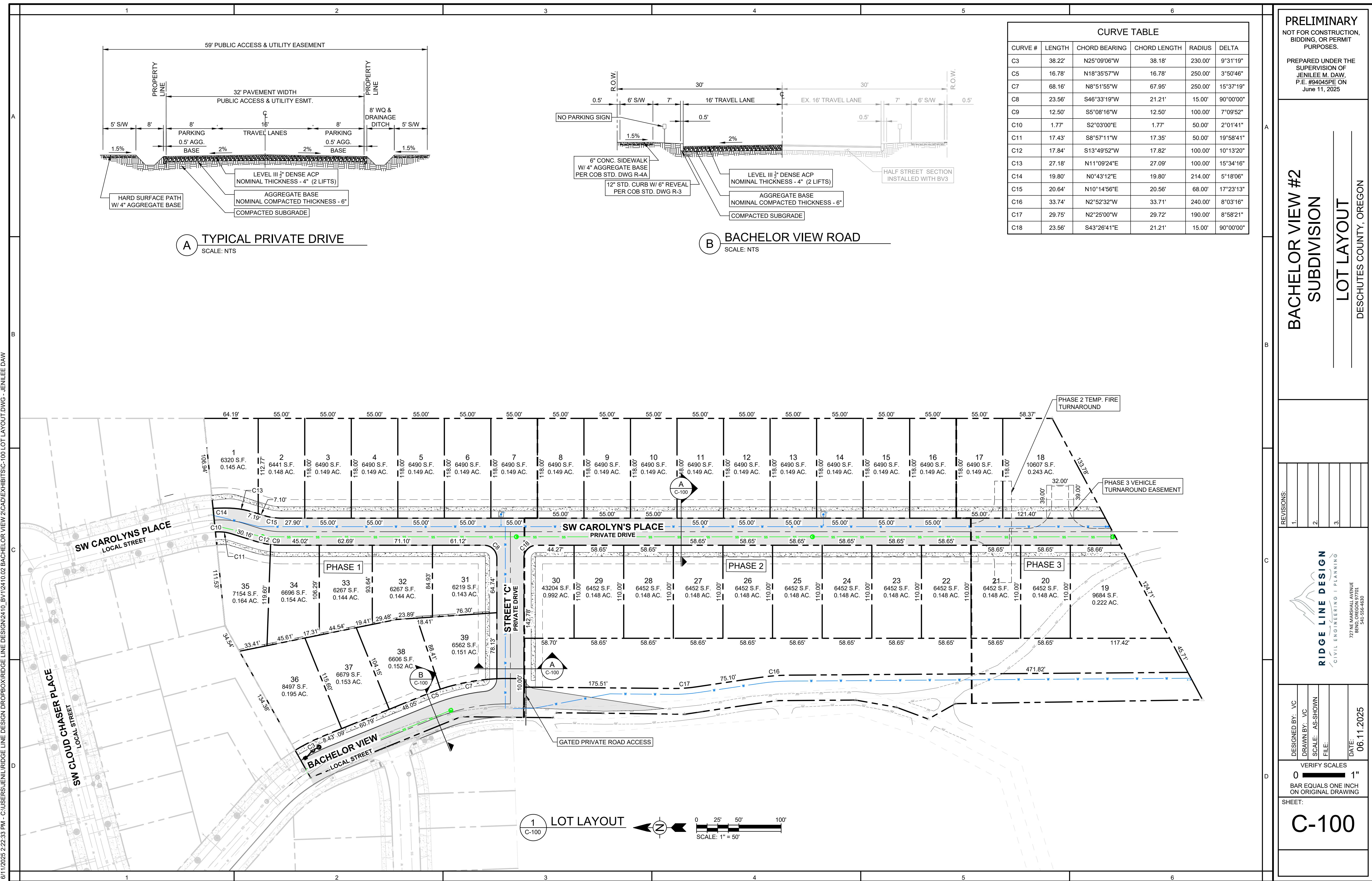
7/1/2024, 2:45:22 PM

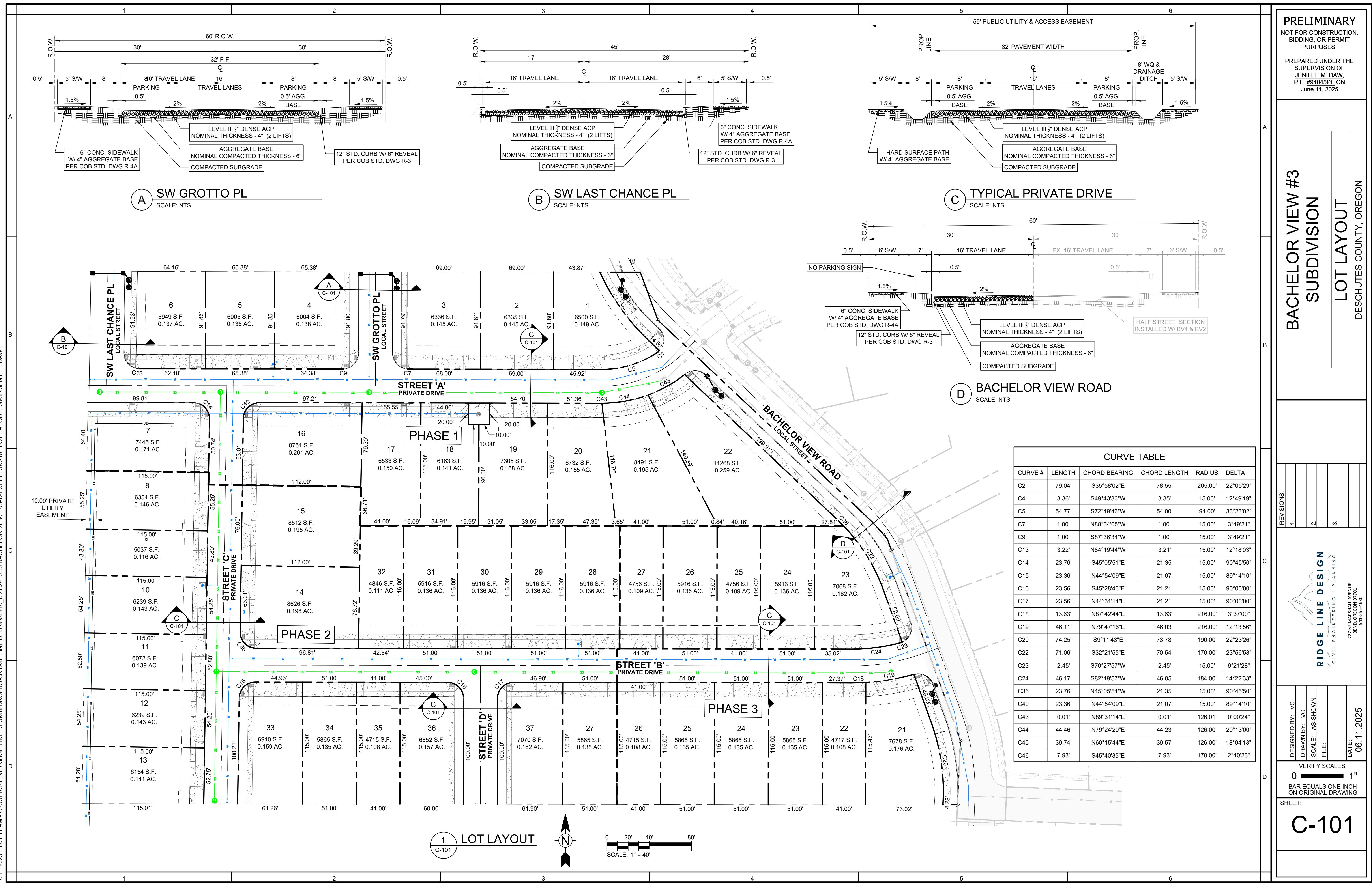
taxlot

## CountyLines

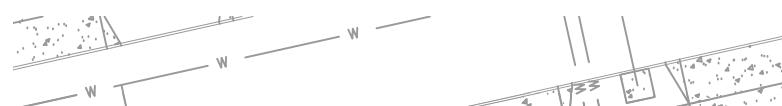
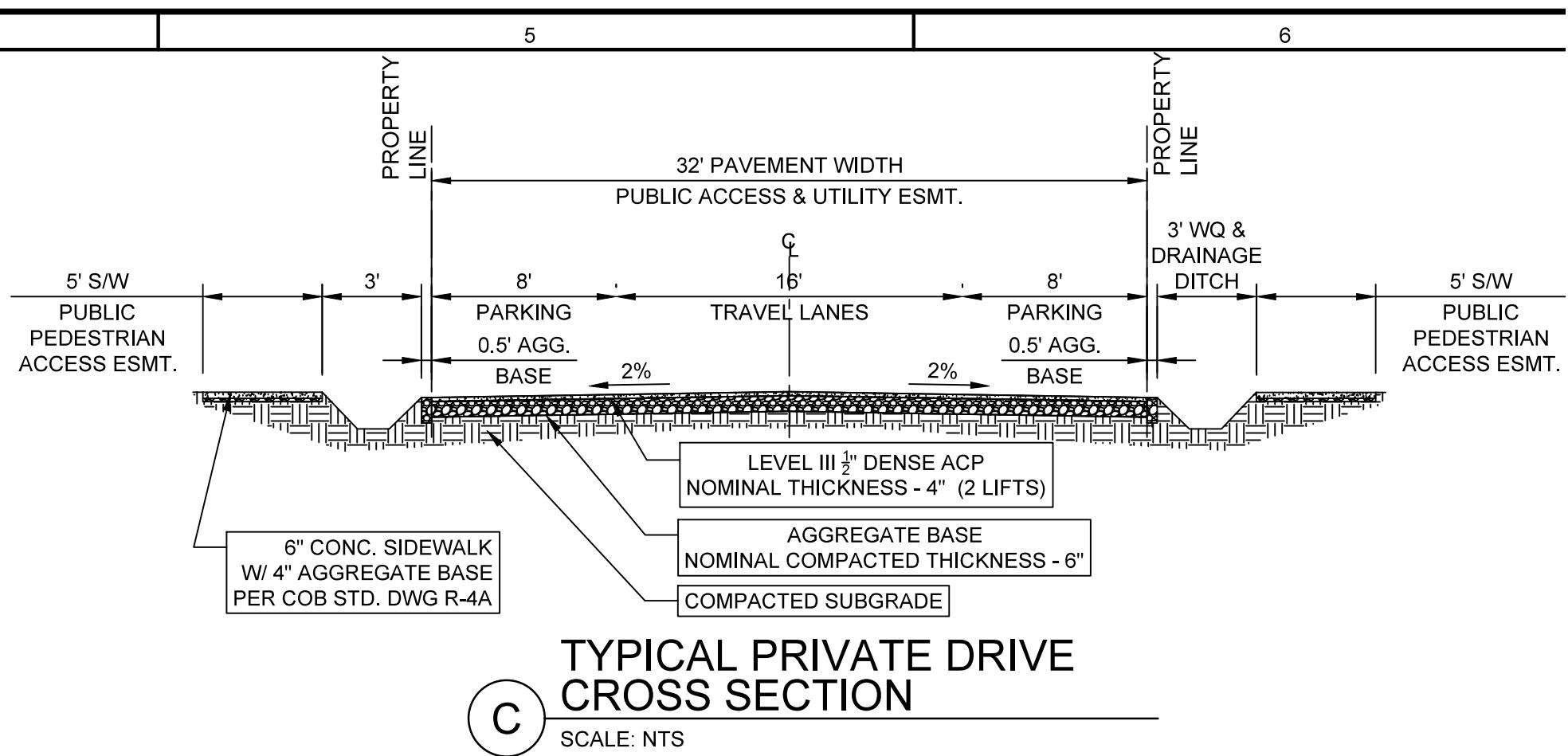
mapIndex

OREGON DOR, GEO, City of Bend, OR, Maxam





## Exhibit G



## EXHIBIT H

### **CORRECTED HEARINGS OFFICER DECISION<sup>1</sup>**

<b>PROJECT NUMBERS:</b>	PLLD20220119 (Subdivision Application) PLMISC20220441 (Waiver to Public Improvements)
<b>HEARING DATES:</b>	Initial Public Hearing - June 15, 2022 Continued Public Hearing - July 11, 2022
<b>HEARINGS OFFICER:</b>	Gregory J. Frank
<b>OWNER:</b>	James E. Darrow 2932 Lincoln Ave SW Bandon, OR 97411-8865
<b>APPLICANT:</b>	Equity Homebuilders c/o Carrie Lollar & Larry Kine 250 NW Franklin Avenue, Suite 401 Bend, OR 97701
<b>ENGINEER:</b>	Tim Weishaupt, PE Sun Country Engineering & Surveying, Inc. 920 SE Armour Road Bend, OR 97702
<b>LAND USE CONSULTANT:</b>	Chris Schmoyer, Principal Planner Schmoyer Land Use Consulting, LLC 60939 Zircon Drive Bend, OR 97702
<b>LAND USE ATTORNEY:</b>	Chris Koback Hathaway Larson, LLP 1331 NW Lovejoy Street, Suite 950 Portland, OR 97209
<b>LOCATION:</b>	The property subject to these decisions is located at 61120 Bachelor View Road; further identified on Deschutes County Assessor's Map 18-11-13 as Tax Lot 2600 (the "Subject Property")
<b>REQUEST:</b>	Type III Tentative Plan application for a 4-phase, 44-lot subdivision located on 8.67 acres in the Residential Standard Density ("RS") zone (This request is referred to throughout this decision as "BV #2")
<b>STAFF REVIEWERS:</b>	Aaron Henson, AICP, Senior Planner; 541-383-4885; <a href="mailto:ahenson@bendoregon.gov">ahenson@bendoregon.gov</a>
	Chris Henningsen, PE, Principal Engineer; 541-388-5571; <a href="mailto:chenningsen@bendoregon.gov">chenningsen@bendoregon.gov</a>

<sup>1</sup> Condition 2 on Page 67 has been revised to correct a typographical error.

## EXHIBIT H

### APPLICABLE CRITERIA:

Bend Development Code

- Chapter 4.3, Subdivisions, Partitions, Replats and Property Line Adjustments

### APPLICABLE STANDARDS:

- Chapter 2.1, Residential Districts
- Chapter 3.1, Lot, Parcel and Block Design, Access and Circulation
- Chapter 3.2, Landscaping, Street Trees, Fences and Walls
- Chapter 3.4, Public Improvement Standards
  - Including: 3.4.150 Waiver and Modification of Public Improvement Standards
- Chapter 3.5, Other Design Standards
- Chapter 4.7, Transportation Analysis

### APPLICABLE PROCEDURES:

- Chapter 4.1, Development Review and Procedures

### FINDINGS OF FACT:

1. **LOCATION:** The Subject Property and site of the proposed subdivision is located to the south of SW Century Drive, at 61120 Bachelor View Road. The Subject Property is further identified as Tax Lot 2600 on Deschutes County Tax Assessor's Map 18-11-13.
2. **EXISTING ZONING & COMPREHENSIVE PLAN DESIGNATION:** The Subject Property is zoned Residential Standard Density ("RS") and designated RS on the Comprehensive Plan.
3. **SITE DESCRIPTION & SURROUNDING USES:** The Subject Property is approximately 8.67 acres in size. Bachelor View Road (private) forms the western boundary. The Subject Property contains a machine shed/shop building which is proposed to be removed or demolished. The Subject Property slopes generally from east to west, with the elevation being higher along the east end of the Subject Property. The Subject Property is sparsely vegetated with Ponderosa Pine trees and native vegetation. Most of the trees are at the north end.

The surrounding properties are also zoned RS, with lots and parcels either vacant or developed with single family dwellings. Directly to the east is an RV and boat storage lot owned by the Sunrise Village Homeowners Association, and a strip of common area. Several lots (roughly 0.75 acres each) containing single family dwellings lie east of this strip of common area.

EXHIBIT H  
VICINITY MAP



4. **PROPOSAL:** The Applicant requested Tentative Plan approval for a 4-phase, 44-lot subdivision (PLLD20220119) and a waiver of (1) public street standards and (2) Bend Standards and Specifications 5.6 requiring a fire flow of 1,500 gallons per minute (PLMISC20220441).
5. **APPLICATION ACCEPTANCE DATE:** A land division application for a 2-phase, 34-lot subdivision was submitted on February 18, 2022, and the application fees were paid on March 3, 2022. On March 17, 2022, the land division application was deemed incomplete. Missing or incomplete items identified in the "Notice of Incomplete Application" included: 1) a preliminary drainage plan showing all proposed stormwater retention areas, catch basins, and storm piping; 2) a utility availability memo (UAM); 3) a shadow plat illustrating the future development pattern for streets and other requirements for adjoining lands; 4) copies of existing or proposed deed restrictions and/or easements; 5) copies of existing or proposed Homeowners Association Agreements and/or Covenants, Conditions and

Bachelor View 2 Subdivision

PLLD20220119

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## EXHIBIT H

Restrictions; and 6) a traffic analysis memo (TAM). On March 17, 2022, the applicant uploaded a utility availability memo (UAM) from the Private Development Engineering Division dated March 3, 2022 for a 45-lot subdivision.

On May 2, 2022, the applicant uploaded a revised Burden of Proof for a 4-phase, 44-lot subdivision, together with: 1) an updated Tentative Plan, 2) an updated Phasing Plan; 3) an updated Preliminary Utility Plan; 4) an updated Preliminary Drainage Plan; 5) an updated Preliminary Grading and Tree Removal Plan; 6) a shadow plat; 7) a traffic analysis memo (TAM) from the Private Development Engineering Division dated March 17, 2022 for the originally proposed 34-lot subdivision, and 8) an updated Transportation Facilities Report (TFR) prepared by Ferguson & Associates, Inc. dated April 29, 2022 for the revised 44-lot subdivision application. The updated plans and supporting documents did not address the "Notice of Incomplete Application" letter's concern that the proposed subdivision needs a looped water main in order to meet the fire flow requirements of the development.

On May 3, 2022, the applicant sent an email to Staff, stating: "We have uploaded everything that we are going to provide for the above application. Please start the 120-day process." Staff understood this email to be the applicant's formal written notice directing the City to deem the application "complete" per ORS 227.178(2)(c). In response, Staff informed the applicant in writing that the City would take final action on this application, including resolution of all appeals, by August 31, 2022. Therefore, as of the date of the initial public hearing on June 15, 2022, there were 77 days remaining in the 120-day review period.

On May 5, 2022, Staff informed the Applicant that the Planning Manager had decided to elevate the City's review to a Type III review by a Hearings Officer, requiring a deposit to cover the cost of the Hearings Officer. The required deposit was paid on May 6, 2022.

Applicant submitted a waiver application (waiver of public improvement standards - street standards and water flow standards) on June 15, 2022. Staff sent a Notice of Complete Application on June 16, 2022. The subdivision and waiver applications were considered together during the hearing process. The City and Applicant agreed that the subdivision application and waiver application would maintain separate and distinct file numbers. The City and Applicant agreed that documents submitted after June 16, 2022 would be included in both case files. The City and Applicant agreed that all hearing testimony would be applicable to both files. The City and Applicant agreed that the Hearings Officer should issue a single decision covering both file numbers.

- 6. PUBLIC NOTICE AND COMMENTS:** Prior to submittal of the required applications, the Applicant mailed a notification to the designated representatives of the Century West and Southwest Bend Neighborhood Associations and to the surrounding property owners within 500 feet of the Subject Property, and held a virtual public meeting on February 10, 2022. Century West Neighborhood Association representative Lisa Mushel did not attend the meeting. According to the Verification of Compliance Form submitted by the Applicant, those in attendance raised concerns related to the proposed "half street" improvement, open space, and the provision of sewer and water services.

A number of written submissions into the record of this case were made by persons in opposition to Applicant's proposal. The issues most frequently raised in the written

## EXHIBIT H

submissions related to fire safety (i.e., Doug Williams, John Cosgrave and Mark Hinkle), Applicant's water flow waiver request (i.e., Doug Williams and John Cosgrave), the applicability of the legal concept of "clear and objective" standards (i.e., Andrew West), roadway safety (i.e., Andrew West), the rights of holders of Bachelor View Road easements related to Applicant's proposed public roadway dedication (i.e., Martin Hansen, Mark Hinkle, Curt Buchholz, Martin Preising, Shelly Dowd, Holly Rosenzweig and Lee Husk), and the relevance of a State of Oregon Wildfire Risk Classification Map (i.e., Mark Hinkle and Timothy Fransen).

Micah Baird, Mark Hinkle and Andrew West testified at the June 15, 2022 hearing in opposition to the Applicant's subdivision application. Baird testified that he is a nearby owner and has a domestic water well located approximately 120 feet from the proposed development. Baird also expressed safety related concerns about the proposed roadway including the proposed roadway's curvature and elevation variations. Baird stated that requiring sprinklers in residences would not protect the exterior of homes (i.e., trees and landscaping) or other homes in the area in the event of a wildfire.

Hinkle testified that the Hearings Officer should delay any decision on these applications until the Oregon Land Use Board of Appeals ("LUBA") appeal of the Bachelor View #1 (PLLD20210848 and PLMISC20211093 - hereafter referred to as "BV #1") is resolved. The City approved a proposed subdivision on property located immediately north of the Subject Property and that approval is currently being appealed to LUBA. Hinkle testified that neither he nor his neighbors intended to release their interest(s) in the easements creating the private roadway (Bachelor View Road) which is adjacent to the Subject Property. Hinkle stated that legal and safety conflicts would result if a public roadway and private roadway were located adjacent to one another. Hinkle stated that the Applicant's and Hearings Officer's reliance upon "needed housing" laws in the BV #1 land use decision was incorrect. Hinkle also referenced the "real" danger of wildfires in the vicinity of the Subject Property.

Andrew West requested that the Hearings Officer conduct a site view in order to appreciate the topography of the area and safety concerns related to the "narrow" Bachelor View Road. West stated that bicycle and pedestrian safety were compromised by approval of BV #1 and would be further negatively impacted by approval of BV #2. West stated that the Hearings Officer's BV #1 decision related to "clear and objective standards" was "incorrect" and the topic should be revisited in this case.

On May 25, 2022, the City sent notice of the applicant's request to all property owners of record and addresses for properties within 500 feet of the subject site, as well as the designated representative for the Century West Neighborhood Association. The applicant also posted a "Notice of Proposed Development" sign on the subject property. As of the date of the Staff Recommendation to the Hearings Officer (June 8, 2022), Staff received one email from a board member of the Elkai Woods Fractional HOA at Widgi Creek, who expressed concerns about the proposed subdivision's impacts on wildfire safety. Transmittals describing the Applicant's proposal were also sent to inter-office departments and other participating agencies for comment. Their comments and responses are available in the Online Permit Center file, and were addressed throughout the Staff Recommendation to the Hearings Officer.

## EXHIBIT H

### 7. SITE VIEW

Andrew West and Staff, at the June 15, 2022 hearing, requested the Hearings Officer conduct a personal site view of the Subject Property and immediate vicinity. Applicant indicated no objection to the Hearings Officer conducting a site view. The Hearings Officer did conduct a site view and made the following statement at the July 11, 2022 continued hearing:

*"Based upon a request made at the June 15, 2022 hearing and consented to by Applicant, I conducted a site view. Here are my observations.*

*On July 6, 2022 at approximately noon I drove to the Subject Property by turning off of Century Drive onto Bachelor View Road. I drove slowly along Bachelor View Road viewing the Lodges development, BV #1 site and the BV #2 site. I drove until reaching what I call a "circle" where I noted the posted address of 60925 Bachelor View Road. I drove back out of the area. I noted the level of development at the Lodges, the improved Lodges roadway and the width of the roadway beyond the Lodges. I noted that the roadway inclines (upward) from the Lodges until approximately the southern boundary of the Subject Property. I noted the tree cover and slope of the Subject Property. I observed rural like housing density along Bachelor View Road beyond, or south of the Subject Property.*

*Those were my general impressions. If you have specific questions related to my site view please ask them during your testimony."*

The Hearings Officer, at the July 11, 2022 continued hearing, asked if anyone present (online, on a telephone or in person) had any questions or concerns about the Hearings Officer's statement quoted above. No person asked any question, requested clarification or objected to the Hearings Officer's site view comments.

### APPLICATION OF THE CRITERIA:

#### Preliminary Findings:

A number of issues were raised either at the public hearings or by written public record submissions that the Hearings Officer finds should be addressed prior to making specific findings for the relevant approval criteria. The issues are summarized by the Hearings Officer as follows:

1. What is the relevance of Bend Development Code ("BDC") 4.3.400 F.2.a to the applications being considered in this decision?
2. What is the relevance of the State Wildfire Classification Map, and related documents, to the applications being considered in this decision?
3. What, if any, precedential effect(s) does/do prior land use decisions (PLLD20210848 & PLMIC20211093) have on the Hearings Officer's decision in these cases (BV #2)?

1. **BDC 4.3.400 F.2.a.** A number of participants (including but not limited to City Planning Staff, Cort Buchholz, Micah Baird, Stosh Thompson, Lee Husk, Jesse Rosenzweig, Martin Hinkle and Shelley Finnigan) asserted that BDC 4.3.400 F.2.a. is a relevant approval

## EXHIBIT H

criterion (should be considered) in this case. The Hearings Officer believes the participants' argument related to BDC 4.3.400 F.2.a. is based primarily upon the following:

- Bachelor View Road is a private roadway created through a series of "easements;" and
- The Bachelor View Road "easements" are "encumbrances;" and
- BDC 4.3.400 F.2.a. requires subdivision dedications to be free of "encumbrances."

The Hearings Officer, in this case, is mandated to apply relevant approval criteria when determining whether the applications should be approved or denied. BDC 4.3.400 is a section of the Bend Development Code labeled/titled "Final Plat." BDC 4.3.400 F.2.a. states in relevant part the following:

***F. Criteria for Final Plat Approval. Upon receipt by the Planning Division, the plat and other data shall be reviewed by the Review Authority to determine that the following criteria have been met:***

***2. That the final plat contains the following elements:***

***a. Streets and roads for public use are dedicated to the public without any reservation or restriction.***

The applications in this case are requesting approval of a *Tentative Plan* and a *waiver to public improvements*; **not** *Final Plat* approval. The Hearings Officer finds no evidence or persuasive legal argument in the record supporting the argument that Final Plat approval criteria (BDC 4.3.400) are applicable or must be satisfied/met as part of a Tentative Plan or a public improvements waiver application. If the Tentative Plan and waiver are approved then the last step will be the Final Plat process. During the Final Plat process, Applicant will need to satisfy all relevant Final Plat approval criteria.

The Hearings Officer finds that BDC 4.3.400 (Final Plat approval criteria) are not relevant approval criteria for the current Tentative Plan and public improvement waiver cases. The Hearings Officer expresses no opinion related to the opposition argument that the private road "easements" is/are "reservations" or "restrictions" as those terms are used in BDC 4.3.F.2.a.

**2. State Fire Map.** Participants (including, but not limited to Mark Hinkle's written submission and the Staff Planner's oral testimony) referenced a recent announcement by the State of Oregon related to a Wildfire Risk Classification Map. The Hearings Officer, at the beginning of the July 11, 2022 continued hearing, stated that the decision in this case (BV #2) shall be based solely upon relevant approval criteria. The Staff Planner testified that the Subject Property has been designated, by the Wildfire Risk Classification Map, as "high risk" for wildfire and that new rules/regulations are expected to be issued in the near future. (See also Sunrise Village Board of Directors July 7, 2022 email, Mark Hinkle July 1, 2022 email and Thornburg/Fransen July 18, 2022 letter.)

The Hearings Officer finds no evidence in the record that would support the conclusion that the State of Oregon Wildfire Risk Classification Map or related documents are themselves relevant approval criteria for this case. However, as suggested by Timothy Fransen (July 18, 2002 record submission), the Hearings Officer finds that the Wildfire Risk Classification Map or

## EXHIBIT H

related documents may be relevant evidence of fire risks associated with the Subject Property in the context of relevant approval criteria.

**3. Prior Decisions.** The Hearings Officer making this decision also presided over the BV #1 subdivision and waiver applications (PLLD20210848 & PLMIC20211093 - hereafter referred to as BV #1). The BV #1 property is located immediately north of the Subject Property. Many of the BV #1 opponents also participated in this case (PLLD20220119 & PLMISC20220441 - hereafter referred to as BV #2).

Hearing testimony and written record submissions indicate that the BV #1 land use decisions were appealed to the Bend City Council which affirmed the Hearings Officer's BV #1 decisions. The record indicates that the BV #1 land use decisions were appealed to the Oregon Land Use Board of Appeals (*Husk v. Bend*, LUBA 2022-052).

The Hearings Officer, at the June 15, 2022 hearing, made the following statement (opening comments):

*"As those of you who participated in the Bachelor View 1 application hearing process are aware, my decision involved many legal opinions. It is reasonable to assume that many of the factual and legal issues raised and decided by me in the Bachelor View 1 decision will be contested again in this Bachelor View 2 hearing process.*

*If not challenged in this hearing process, I will follow the legal analysis and conclusions set forth in the Bachelor View 1 Hearings Officer decision. However, please appreciate that anyone in this hearing process may challenge my Bachelor View 1 legal analyses and conclusions. You do that by presenting facts or evidence or providing me with legal analysis that you believe demonstrates I was incorrect in one or more of my legal conclusions set forth in the Bachelor 1 Hearings Officer decision.*

*My legal decisions and factual analyses in Bachelor View 1 were based on my interpretation of the facts and law in the record of the Bachelor View 1 hearing record. My legal decisions and factual analyses in this case, Bachelor View 2, will be based solely on the record existing in this case. I assure you that I will listen to your testimony and consider all written documents in the record when making a decision in this case."*

Testimony and/or written comments was offered in this case disagreeing with Hearings Officer's BV #1 legal conclusions. The Hearings Officer finds the opposition testimony/written record statements related to the Hearings Officer's evidentiary analysis and legal conclusions was general and conclusory. The Hearings Officer finds that no participant provided new evidence or legal argument into the record of this case, with sufficient specificity, to necessitate a re-examination of any of the findings in BV #1 (PLLD20210848 & PLMIC20211093).

The Hearings Officer finds that the BV #1 decisions (PLLD20210848 & PLMIC20211093) are final City of Bend decisions and shall remain final and determinative decisions unless directed otherwise by LUBA, an appellate court or City Council.

### Conformance with the Bend Development Code

## EXHIBIT H

### Chapter 4.3 Subdivisions, Partitions, Replats and Property Line Adjustments

#### 4.3.300 Tentative Plan.

**E. Criteria for Subdivision, Partition or Replat Approval.** The Review Authority shall not approve a tentative plan for a proposed subdivision, partition or replat unless the Review Authority finds that the subdivision, partition or replat will satisfy the following criteria of approval:

1. The proposal provides for the preservation of natural features and resources such as streams, lakes, natural vegetation, special terrain features, and other natural and historic resources to the maximum degree practicable.

**FINDINGS:** The Hearings Officer finds that the following statements contained in the Staff Report are credible and persuasive with respect to this approval criterion. The Hearings Officer adopts as findings for this decision the following Staff statements:

*"The property does not have any inventoried natural features, special terrain, or historic resources that necessitate preservation to comply with local, state or federal laws.*

*The property does contain varied topography and some significant trees, as shown on the submitted Existing Conditions map. Regarding the site topography and significant trees, the applicant must provide housing densities in conformance with City Comprehensive Plan requirements and provide street frontage for each lot that conforms to the Development Code.*

*The applicant must also manage stormwater in a manner that accommodates the allowed housing density, which limits the potential for tree preservation. In order to provide needed densities, on shovel-ready lots, in accordance with street and stormwater standards, significant tree removal is unavoidable. Therefore, although the proposal includes some site grading and significant tree removal in order to accommodate planned streets and stormwater systems, and to create buildable lots, the applicant's proposal arguably provides for the preservation of natural features and resources to the maximum degree practicable."*

The Hearings Officer finds this criterion can be met.

2. The proposal allows for the development of adjacent property in accordance with the provisions of this Code.

**FINDINGS:** Staff provided, in the Staff Report, the following observations related to this approval criterion:

*"The adjacent land to the east features a 10 ft. wide strip of common area (Footnote 3 of the Staff Report – "Fn3") and an RV and boat storage area, which are owned by the Sunrise Village Homeowners Association. Sunrise Village is fully developed, with no street stubs or public utility easements extending to the subject property. Therefore, the subject property can only be subdivided if the adjacent property to the north is subdivided first, and Staff notes that the City's recent approval of the 26-lot subdivision to the north is currently*

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*under appeal (LUBA No. 2022-052). As shown on the submitted Shadow Plat, the proposed subdivision allows for future street extensions to the west, in addition to the existing southerly extension of private Bachelor View Drive. [footnote 3 from Staff Report omitted] There is an approved replat application (PLLD20210914) to incorporate this narrow strip of common area into the abutting lots in The Outback Section of Sunrise Village.”*

The Hearings Officer adopts as additional findings for this criterion the Preliminary Findings, **Prior Decisions** section. Staff, during the initial public hearing, reiterated concerns related to the LUBA appeal of BV #1 (*Husk v. City of Bend*, LUBA No. 2022-052). Additional comments are included in the record of this case asking the Hearings Officer to take LUBA appeal No. 2022-052 into consideration in this decision (See written comments from John Cosgrove on behalf of the Sunrise Village HOA Board of Directors and oral testimony of Micah Baird). The Hearings Officer finds no participant cited legal authority that would allow the Hearings Officer to deny the applications in this case because a pending LUBA appeal might impact the decision in this case. Staff stated, at the June 15, 2022 initial public hearing, that imposing one or more condition of approval in this case would adequately address the need of BV #1 to receive final City approval.

The Hearings Officer finds no legal authority to deny the application in this case because an adjacent property land use approval is being appealed to LUBA (or other relevant appellate body). The Hearings Officer finds that if this application is approved then conditions of approval can be included to address the necessity of legal development of the adjacent property.

Applicant provided the following recommended findings for this approval criterion:

*“As mentioned above, the adjacent property to the east is a narrow tract about .2 acres in size owned by the Sunrise Village Homeowners Association and given its ownership and configuration, is undevelopable. Furthermore, if the final plat, consistent with the city’s recent approval of a tentative plan, is recorded, that property will become part of existing lots within Sunrise Village. Those lots are approximately .75 of an acre in size, already developed with single-family dwellings with no right-of-way connectivity to the subject property. Property to the north is Tax Lot 2300, 18-11-13BA, a 5-acre parcel containing a single-family dwelling. As noted above, a city hearing’s officer recently approved a similar subdivision application on that parcel in Land Use File No. PLLD20210848. As depicted on submitted plans, Bachelor View Road right-of-way will extend through the proposed subdivision along the west property line, terminating at the south property line of the subject property. This proposal does not inhibit future development of the adjacent properties. This criterion is satisfied.”*

The Hearings Officer finds the above-quoted Applicant statement to be credible and persuasive. The Hearings Officer incorporates Applicant’s above-quoted statement as additional findings for this approval criterion. The Hearings Officer finds this criterion can be met.

### **3. The proposal meets all standards and requirements of this Code.**

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### **Chapter 2.1 Residential Districts.**

#### **2.1.200 Permitted Land Use.**

##### **A. Permitted Uses...**

**FINDINGS:** The Applicant proposed 44 lots to be developed with single-family detached homes, which are permitted outright in the RS zone. Each dwelling unit will be on its own lot. The Hearings Officer finds the application contains “permitted uses.”

#### **2.1.300 Setbacks.**

##### **B. Setback Standards. *The following setback standards apply to all structures, except as otherwise provided by this section.***

##### **C. Front Setbacks.**

- 2. RS, RM-10, RM, and RH Districts. *The minimum front setback is 10 feet. Garages and carports must be accessed from alleys where practical, otherwise garages and carports with street access must be set back a minimum of 20 feet from the front property line. In this instance, the term “practical” means that there is an existing or platted alley that could be used in its current condition or improved to provide access.***
- 3. Where streets with insufficient right-of-way abut the site, special setbacks apply in conformance with BDC 3.4.200(J), Special Setbacks.**

##### **D. Rear Setbacks.**

- 2. RS, RM-10, RM and RH Districts. *The minimum rear setback is five feet. When multifamily residential or nonresidential uses abut a detached single-family dwelling unit in the RS District, the rear setback abutting the RS District must increase one-half foot for each foot by which the building height exceeds 20 feet.***

##### **E. Side Setbacks.**

- 2. RS, RM-10, RM and RH Districts. *The minimum side setback is five feet. When multifamily residential or nonresidential uses abut a detached single-family dwelling unit in the RS District, the side setback abutting the RS District must increase one-half foot for each foot by which the building height exceeds 20 feet.***

**FINDINGS:** The Applicant proposed to remove the existing machine shed/shop building from the Subject Property. Setbacks for new dwellings will be reviewed with the building permit application for each structure. However, the planned lot areas and dimensions are adequate to accommodate siting of future dwellings in compliance with the applicable RS setback standards. The project does not include multifamily residential or nonresidential uses. Therefore, the Hearings Officer finds the setback standards listed above can be met.

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### 2.1.500 Lot Area and Dimensions.

**Table 2.1.500**  
**Lot Areas and Dimensions in the Residential Districts by Housing Type and Zone**

<b>Residential Use</b>	<b>Zone</b>	<b>Minimum Lot Area</b>	<b>Minimum Lot Width/Depth</b>	<b>Exceptions</b>
<b>Single-Unit Detached Dwelling;</b>	<b>RS</b>	<b>4,000 sq. ft.</b>	<b>Width: 40 ft. at front property line</b> <b>Depth: 50 ft.</b>	<b>Bulb of a cul-de-sac minimum width: 30 ft. min. at the front property line except for townhomes and flag lots</b>  <b>Except for townhomes, corner lots or parcels must be at least five feet more in width than the minimum lot width required in the zone</b>

**FINDINGS:** All of the proposed lots exceed 4,000 square feet. As allowed in BDC 3.1.200.C.4, certain types of lots require less than 40 feet of frontage. Lot 40 on the “knuckle” on B Street, which is similar to a cul-de-sac, has over 30 feet of lot frontage. Lots 15, 16, 24, 25, 42, and 43 are all corner lots indented for detached single-family housing. Each of these lots have a minimum lot width that exceeds 45 feet - at least 5 feet more than the minimum 40-foot width. The Hearings Officer finds that all applicable lot area and dimensional standards are met.

### 2.1.600 Residential Density.

**A. Residential Density Standard. The following density standards apply to all new development in all of the Residential Districts, except as specified in subsection B of this section. The density standards shown in Table 2.1.600 are intended to ensure efficient use of buildable lands and provide for a range of needed housing, in conformance with the Bend Comprehensive Plan.**

**Table 2.1.600. Residential Densities**

<b>Residential Zone</b>	<b>Density Range</b>
<b>Standard Density Residential (RS)</b>	<b>4.0 - 7.3 units/gross acre</b>

### C. Density Calculation.

**1. Maximum housing densities are calculated as follows:**

**a. The area subject to maximum housing density is the total site area excluding any land to be developed with or dedicated for neighborhood commercial**

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*uses, public and institutional uses, and miscellaneous uses that do not include a dwelling unit.*

- b. The area for future streets is included in the area subject to maximum housing density.*
- c. Where existing streets abut the proposed development site, the area of up to 30 feet of the abutting street width multiplied by the site frontage shall be added to the area subject to maximum housing density.*
- d. Sensitive lands, fire breaks, and canals and their associated easements on the site are included in the area subject to maximum housing density.*
- e. For purposes of calculating maximum density, fractional units are rounded down to the next whole unit.*
- f. As an illustrative example, if the total site area is five acres, of which a half-acre is sensitive lands, and another acre will be developed with neighborhood commercial uses, and new streets will be created, the area subject to maximum housing density is four acres (total site area minus one acre of neighborhood commercial uses, but including the sensitive lands). If the maximum allowable density is 7.3 dwelling units per acre, then a maximum number of 29 units is allowed on the site.*

**2. Minimum housing densities are calculated as follows:**

- a. The area subject to minimum housing density is the total site area excluding any land to be developed with or dedicated for neighborhood commercial uses, public and institutional uses, and miscellaneous uses that do not include a dwelling unit; sensitive lands; fire breaks; and canals and their associated easements.*
- b. The area for future streets is included in the area subject to minimum housing density.*
- c. For purposes of calculating minimum density, fractional units are rounded up to the next whole unit.*
- d. As an illustrative example, if the total site area is five acres, of which a half-acre is sensitive lands, and another acre will be developed with neighborhood commercial uses, and new streets will be created, the area subject to minimum housing density is three and one-half acres (total site area minus one acre of neighborhood commercial uses, minus a half-acre of sensitive lands). If the minimum density is 4.0 dwelling units per acre, then a minimum number of 14 units is required on the site.*

**FINDINGS:** The 8.67-acre Subject Property is zoned RS, consistent with its Residential Standard Density Comprehensive Plan designation. New streets will be created, so they are

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included in the total site area for density calculation purposes per the density calculation methodology in BDC 2.1.600(C). Therefore, the maximum site density is 63 dwelling units ( $8.67 \times 7.3 = 63.3$ , rounded down) and the minimum site density is 35 units ( $8.67 \times 4.0 = 34.7$ , rounded up). The Tentative Plan shows 44 lots intended for single-family dwelling units. The Hearings Officer finds these standards are met.

### **2.1.1100 Other Design Standards.**

#### **A. *On-site surface water drainage, including roof drainage, must be retained on the lot or parcel of origin and not flow onto the public right-of-way or other private property.***

**FINDINGS:** The Hearings Officer adopts the Preliminary Findings, **Prior Decisions** as additional findings for this criterion.

Staff, in the Staff Report (page 9), provided the following comments related to this criterion:

*"City standards require stormwater to be retained on the lot of origin. As shown on the submitted plans, the Applicants propose to install catch basins, sedimentation manholes, and drywells (UICs). However, as shown in the map on the following page, the proposed subdivision has been identified as being within 500 feet of existing well heads in the vicinity. According to comments submitted by the Private Development Engineering Division, this does not allow the use of UICs per City of Bend standards and Central Oregon Stormwater Manual (COSM) requirements. Therefore, all stormwater runoff must be captured and contained within swales, designed and tested in accordance to COSM and City of Bend standards by a registered professional engineer. The Engineer of Record shall verify all existing wells in the area prior to and concurrently with design."*

Applicant submitted a copy of this Hearings Officer's decisions for BV #1 into the record of this case (submitted on June 15, 2022). The BV #1 decisions approved, with conditions, subdivision and waiver applications for real property located immediately north and adjacent to the Subject Property.

The Hearings Officer, in the initial public hearing for this case, informed participants that he was aware that some persons involved in the BV #1 cases disagreed with the Hearings Officer's BV #1 legal evidentiary and legal findings. The Hearings Officer informed participants, at the initial public hearing in this case (BV #2), that the Hearings Officer would rely upon the findings in BV #1 unless substantial, credible and persuasive evidence and/or argument was presented in this case identifying specific evidence or legal authority to allow the Hearings Officer to modify or reverse one or more BV #1 finding(s).

Staff, in the quoted material above, appears to maintain an argument which Staff made in the BV #1 cases; an argument which was rejected by the Hearings Officer. Specifically, Staff references (see quoted statement above) that a "500 foot" separation from wells is a binding legal requirement that is relevant to this approval criteria.

Applicant provided extensive comments related to Staff's "500 foot" separation argument (See BV #1 decisions, pages 39 – 44). The Hearings Officer concluded, in the BV #1 decisions, that Applicant's evidence and argument was persuasive. The following represents the Hearings

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Officer's conclusions related to the "500-foot" separation argument in the BV #1 decisions (pages 47 & 48):

*"The Hearings Officer finds that if the 500-foot/2-year migration requirements existed and the wells depicted on the included exhibits were known (or should have been known) by Staff then there are two likely explanations for approval of the Lodges Subdivision stormwater plan (including drywells): (1) the Lodges Subdivision stormwater plan was approved in violation of the city's Design Standards, COSM standards and DEQ regulations, or (2) the Lodges Subdivision stormwater plan was approved, including drywells within 500-feet/2-year mitigation area, because the Lodges Subdivision stormwater plan met the two above-quoted conditions (the above-quoted conditions supplanted/overrode the 500-foot/2-year mitigations requirements). The Hearings Officer finds the second explanation to be the most plausible for the reasons set forth in Applicants' above-quoted comments and the findings below.*

*Applicants submitted a water study prepared for the City of Bend related to the movement of water in soils in Bend (RG/GSI Water Solutions, Inc., September 21, 2011). The City of Bend sought data support for an application to the DEQ for a water permit. In short, the RG/GSI study concluded that drywell pollutants attenuate, in most parts of the City of Bend, within a distance well short of the 500 feet referenced by Staff.*

*The city, in the Lodges Subdivision approval, found it appropriate to impose two conditions (quoted above) related to UICs (drywells) even though the UICs would be within 500 feet of one or more drinking water wells. The Hearings Officer finds the city did so because the Lodges Subdivision stormwater proposal would not create health and safety risks to the identified water wells. Further, the Hearings Officer finds that approval of the Lodges Subdivision stormwater plan was consistent with the City Design Standards section 6.3 statement that the city "is subject to Oregon Department of Environmental Quality (DEQ) regulations for...underground injection control (UIC) systems.*

*The Hearings Officer finds Applicants' arguments related to the attenuation of pollutants from stormwater facilities to be relevant and persuasive. The Hearings Officer finds that stormwater pollutants from the Applicants' proposed subdivision will attenuate before reaching any drinking water wells. The Hearings Officer finds condition 16 of this Decision (taken from the Lodges Subdivision approval) requires the Applicants' to provide DEQ documentation for its stormwater plan (including drywells).*

*The Hearings Officer finds that relevant City Design Standards, Central Oregon Stormwater Manual Standards, DEQ conditions can be met by the imposition of conditions embodying the essence of those imposed in the Lodges Subdivision approval."*

The Hearings Officer adopts as findings for this approval criterion the above-quoted section of the BV #1 decisions. The Hearings Officer finds Applicant's proposal, therefore, meets the requirements of BDC 2.1.1100 A.

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### **Chapter 3.1 Lot, Parcel and Block Design, Access and Circulation**

#### **3.1.200      Lot, Parcel and Block Design.**

##### **C. General Requirements for Lots and Parcels.**

- 1. Depth and width of new lots or parcels shall meet the minimum standards specified for the zoning district.**

**FINDINGS:** Based on the submitted plans, the Hearings Officer finds that the proposed lots meet the minimum standards for lot depth and lot width for the RS zone.

- 2. On steep slopes, increased lot or parcel sizes may be required to avoid excessive cuts, fills and steep driveways.**

**FINDINGS:** The Subject Property has significant topographic variation, and the proposed grading is necessary to create a feasible project that meets density and access standards. That said, the Hearings Officer finds that the Subject Property does not appear to contain steep slopes as defined in BDC Chapter 1.2, and increased lot sizes are not required to avoid excessive cuts, fills, or steep driveways.

- 3. On tracts containing watercourses or rock outcroppings, increased lot or parcel sizes may be required to allow adequate room for development and protection of the topographic or natural feature.**

**FINDINGS:** The Subject Property does not contain any watercourses or significant rock outcroppings. Therefore, the Hearings Officer finds that increased lot sizes are not required to allow adequate room for development and protection of significant topographic or natural features.

- 4. Each lot or parcel shall abut upon a street other than an alley for the minimum width required for lots or parcels in the zone, except:**

- a. For lots or parcels fronting on the bulb of a cul-de-sac, the minimum frontage shall be 30 feet;**
- b. For approved flag lots or parcels, the minimum frontage shall be 20 feet;**

**FINDINGS:** As noted in findings above, the Hearings Officer finds that the proposed lot layout allows each lot to abut a street for the minimum width required.

- 5. All side lot or parcel lines shall be at right angles to the street lines or radial to curved streets for at least one-half the lot or parcel depth wherever practical.**

**FINDINGS:** The Hearings Officer finds that the side lot lines of the proposed lots are generally perpendicular to the straight street lines and are generally radial to the curved street lines, wherever practical. The Hearings Officer finds this criterion can be met.

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**6. Corner lots or parcels shall be at least five feet more in width than the minimum lot width required in the zone.**

**FINDINGS:** As noted in findings above, the Hearings Officer finds that all corner lots are at least five feet wider than the minimum lot width required in the RS zone.

**7. All permanent utility service to lots or parcels shall be provided from underground facilities. The developer shall be responsible for complying with requirements of this section, and shall:**

- a. Make all necessary arrangements with the utility companies and other persons or corporations affected by the installation of such underground utilities and facilities in accordance with rules and regulations of the Public Utility Commission of the State of Oregon.**
- b. All underground utilities and public facilities installed in streets shall be constructed prior to the surfacing of such streets.**

**FINDINGS:** The Applicant, as shown by submitted plans, proposed that underground utilities will be constructed to serve the development prior to paving the proposed streets. The Applicant has also provided "will serve" letters from utility providers, stating the service providers' willingness to serve the Subject Property.

**D. Street Connectivity and Formation of Blocks. To promote efficient multi-modal circulation along parallel and connecting streets throughout the City, developments shall produce complete blocks bounded by a connecting network of streets, in accordance with the following standards:**

- 1. New development shall construct and extend planned streets (arterials, collectors and locals) in their proper projection to create continuous through streets and provide the desirable pattern of orderly developed streets and blocks. Streets shall be developed within a framework that is established in the Bend Urban Area Transportation System Plan and any applicable Special Planned District, Refinement Plan, Area Plan or Master Plan or other adopted or approved development plan. Where such plans do not provide specific block length and perimeter standards, the requirements listed below shall apply:**
- 2. Block lengths and perimeters shall not exceed the following standards as measured from centerline to centerline of through intersecting streets.**
  - a. Six hundred sixty feet block length and 2,000 feet block perimeter in all Residential Zones;**
  - d. An exception may be granted to the maximum block length and/or block perimeter by the Review Authority if the applicant can demonstrate that the block length and/or block perimeter cannot be satisfied due to topography, natural features, existing development or other barriers, or it is unreasonable**

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***to meet such standards based on the existing pattern of development, or other relevant factors. When an exception is granted, the Review Authority may require the land division or site plan to provide blocks divided by one or more access corridors in conformance with the provisions of BDC 3.1.300, Multi-Modal Access and Circulation. Access corridors shall be located to minimize out-of-direction travel by pedestrians and bicyclists and shall meet all applicable accessibility standards.***

**FINDINGS:** The proposed BV #2 subdivision provides connectivity through the only means available, Bachelor View Road, which will extend to the Subject Property from Century Drive to the north. The proposed BV #2 subdivision also provides connectivity within the Subject Property (connecting to Bachelor View Road). Bachelor View Road will connect to the Subject Property at the boundary of BV #1.

Bachelor View Road, adjacent to the Subject Property, is currently a private road with a width of 15 ft. As shown on the Tentative Plan, B Street ties back into Bachelor View Road at the south end of the proposed subdivision. C Street connects Bachelor View Road to B Street near the middle of the proposed subdivision. The City of Bend Urban Area Street System Map does not identify any planned streets on or near the subject property, thus (D)(1) above is satisfied.

As shown on the Tentative Plan, the proposed BV #2 subdivision will connect to Bachelor View Road which will be widened as approved in PLLD20210848. Additionally, proposed B Street, having a 60-foot-wide right-of-way, aligns and connects with a north-south oriented street in the proposed subdivision under Land Use File No. PLLD20210848 (BV #1). Together with an east-west oriented street in the proposed subdivision under Land Use File No. PLLD20210848, a block is formed that complies with the block length and perimeter standards of this section. The streets in the south half of the proposed subdivision form a block which also complies with the block length and perimeter standards of this section.

As the surrounding area has been developed without creating gridded streets, it is not feasible for the Applicant to create new intersections other than what is proposed. The current street network and block pattern is not the result of any project impacts. It is a pre-existing condition resulting from topographic conditions and from prior City and County land use approvals, and subsection (D)(2) provides for an exception that may be granted for maximum block length and/or block perimeter by the Review Authority if an applicant can demonstrate that the block length and/or block perimeter cannot be satisfied due to topography, natural features, existing development or other barriers, or it is unreasonable to meet such standards based on the existing pattern of development, or other relevant factors.

The proposed subdivision is an infill project and is surrounded by properties that limit the opportunity for compliance with connectivity, block perimeter and block length standards. Adjacent lands to the east are common area tracts and lots within The Outback Section of Sunrise Village, are already developed with single-family dwellings with no feasible street connectivity to the Subject Property. Due to the development pattern of the existing subdivision to the east, additional connections are not possible at this time, precluding the formation of additional blocks beyond what is proposed by this subdivision. For the reasons stated above, the Hearings Officer finds that an exception under (D)(2) for block length and block perimeter is warranted.

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### Legend

— Expressway	— Minor Arterial	···· Railroad
···· Proposed Expressway	···· Proposed Minor Arterial	—— Deschutes River
— Principal Arterial	— Major Collector	—— Tumalo Creek
···· Proposed Principal Arterial	···· Proposed Major Collector	—— City Limits
— Major Arterial	— Frontage Road	—— UGB - Urban Growth Boundary
···· Proposed Major Arterial	···· Proposed Frontage Road	

Source: Bend Urban Area Street System Map (May 2019)

- 3. New street connections to arterials and collectors shall be governed by BDC 3.1.400, Vehicular Access Management.**

**FINDINGS:** No new street connections to arterials or collectors are proposed.

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4. ***Except as otherwise provided in an approved Master Planned Development, private streets, where allowed by this code, shall be constructed to public standards and shall contain a public access easement along the length and width of the private facility if required to satisfy the block length and perimeter standards.***

**FINDINGS:** Planning Staff, in testimony and in the Staff Report (page 14) noted that the proposed extension of Bachelor View Road would not **create** any new private streets. The Hearings Officer finds this specific approval criterion is directed to the creation/construction of private streets (meeting public standards, etc.). The Hearings Officer finds that since no new private street is proposed to be created or constructed, this approval criterion is not applicable.

In the alternative, the Hearings Officer finds that Staff and a number of opponents to the application in this case expressed concern that the dedication of a public roadway will potentially conflict with an adjacent private roadway easement. The Hearings Officer finds this approval criterion does not make any reference to a public right-of-way being located adjacent to a private roadway easement. The Hearings Officer finds this criterion does not relate to conflicts, whether actual or contemplated, between private streets and public streets. The Hearings Officer finds that the issue of whether the public right-of-way/private roadway easement may cause or creates possible conflicts is not relevant to this approval criterion.

Planning Staff, in the Staff Report (page 14), also referenced BDC 4.3.400 F.2.a. As noted in the Preliminary Findings above, the Hearings Officer finds BDC 4.3.400 F.2.a. is a Final Plat approval criterion and not a Tentative Plan criterion or waiver of public improvement standards approval criterion.

- E. New Lot and Parcel Access. In order to protect the operations and safety of arterial and collector roadways, access management is required during lot and parcel development. New lots and parcels created through land division that have frontage onto an arterial or collector street shall provide alternative options for access as indicated below:***

### ***3.1.300 Multi-Modal Access and Circulation.***

- A. Purpose. The purpose of this section is to ensure safe, accessible, direct and convenient multi-modal circulation by developing an on-street and off-street system of access corridors and public sidewalks throughout the City.***
- B. On-Site Pedestrian Facilities. For all developments except single-unit detached, manufactured dwellings, accessory dwelling units, townhomes, duplexes, triplexes, quadplexes, and shared courts, pedestrian access and connectivity shall meet the following standards...***

**FINDINGS:** Applicant's proposed subdivision will create individual lots for single-unit detached dwellings. Therefore, the standards in BDC 3.1.300(B) do not apply. However, Applicant's Tentative Plan shows 5 ft. wide sidewalks on both sides of the new internal streets, and a 5 ft. sidewalk along the Subject Property frontage on Bachelor View Road. Therefore, the Hearings Officer finds that this standard is met.

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### C. Off-Site Multi-Modal Facilities.

1. *Developments subject to development and having an access corridor alignment shown on the City of Bend Urban Area Bicycle and Pedestrian System Plan shall dedicate either right-of way or an access easement to the public for a primary or connector multi-use as outlined below.*
  - a. *Primary multi-use paths shall be in the alignment shown on the City of Bend Urban Area Bicycle and Pedestrian System Plan to the greatest degree practical unless, with consideration of recommendations from the Bend Park and Recreation District, an alternate alignment is approved by the City through the development review process.*
  - b. *Connector multi-use paths may be required for pedestrians and bicycles at or near mid-block where the block length exceeds the maximum length required by BDC 3.1.200, Lot, Parcel and Block Design. Connector multi-use paths may also be required where cul-de-sacs or dead-end streets are permitted, to connect to other streets, and/or to other developments.*
  - c. *Primary and Connector Multi-Use Path Dedication and Construction. Primary and Connector multi-use path alignments shall be dedicated and constructed in accordance with the City's Design Standards and Construction Specifications.*

**FINDING:** The Bend Urban Area Primary Multi-Use Trail System does not show any existing or planned trails in the vicinity of this subdivision. Therefore, the Hearings Officer finds this section is not applicable.

### 3.1.400 Vehicular Access Management.

### C. Approval of Access Required. *Proposals for new access shall comply with the following procedures:*

1. *Permission to access City streets shall be subject to review and approval by the City based on the standards contained in this chapter and the provisions of BDC Chapter 3.4, Public Improvement Standards. Access will be evaluated and determined as a component of the development review process.*

**FINDINGS:** The Applicant proposed access from all lots onto public streets. As detailed in findings below, the Hearings Officer finds that access has been designed in conformance with BDC Chapter 3.4.

### D. Traffic Study Requirements. *A transportation impact analysis (TIA) may be required under BDC Chapter 4.7, Transportation Analysis, for certain types and intensities of development proposals and to determine access restrictions of driveways onto arterial and collector roadways.*

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**FINDINGS:** The Hearings Officer finds that the Applicant submitted a Transportation Facilities Report (“TFR”) prepared by Ferguson & Associates, Inc in accordance with BDC Chapter 4.7.

**F. Access Management Requirements. Access to the street system must meet the following standards:**

1. *Lots and parcels in all zones and all uses may have one access point, except as authorized in BDC 3.1.400(F)(4). When a property has more than one permitted street access, the City Engineer may require existing accesses to be closed and replaced with curbing, sidewalks/pathways, and landscaping, in accordance with the provisions of this code and the City standards and specifications.*
2. *If a lot or parcel has frontage on two or more streets of different street classifications, the property shall access the street with the lowest classification.*

**FINDINGS:** As shown on the submitted plans, no lots are proposed with double frontage, and all lots will have only one access point. Any ADA ramps and proposed driveway aprons along the property frontage will be in conformance with current City and PROWAG standards. The Hearings Officer finds that these standards are met.

3. *For lots or parcels abutting an alley, access may be required to be taken from the alley. Outside of the Downtown Wall Street/Bond Street couplet, the City may determine that an alley is not an adequate roadway for primary access if both of the following criteria are met:*
  - a. *The alley does not provide adequate or sufficient access to the proposed development; and*
  - b. *Access to the higher classification roadway will be safe.*

**FINDING:** None of the proposed lots abut any existing alleys, and no new alleys are proposed. The Hearings Officer finds these criteria are not relevant to this case.

**4. Additional Access Points...**

**FINDINGS:** Each lot is planned to have only one access point.

5. *Access Spacing Requirements. The maximum distance achievable between two driveways or a driveway and an intersection shall be provided. Access spacing shall accommodate City of Bend Standards and Specifications for curb reveal between driveway apron wings.*

**FINDINGS:** Final driveway locations and spacing will be reviewed with the infrastructure plans or building permit application for each dwelling.

6. *Access Operations Requirements. Backing from an access onto a public street shall not be permitted except for single-unit, duplex, triplex or quadplex dwellings backing onto a local street or for any use when backing into an alley if adequate*

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*backing distance is provided. The design of driveways and on-site maneuvering and loading areas shall include the anticipated storage length for entering and exiting vehicles, in order to prevent vehicles from backing into the flow of traffic on the public street or causing unsafe conflicts with on-site circulation.*

7. *Driveways shall be designed and located to provide a vehicle in the driveway with an unobstructed view of the roadway for a sufficient distance as required by City Standards and Specifications or the American Association of State Highway and Transportation Officials (AASHTO) policy on intersection sight distance requirements as determined by the City.*
8. *Driveway widths, designs, and materials shall comply with City of Bend Standards and Specifications.*

**FINDINGS:** Driveway locations and spacing will be reviewed with the infrastructure plans or building permit application for each dwelling. The Hearings Officer finds that the applicable standards can be met.

- I. *Fire Access and Parking Area Turn-around. A fire equipment access drive shall be provided for any portion of an exterior wall of the first story of a building that is located more than 150 feet from an existing public street or approved fire equipment access drive as measured around the building. Parking areas shall provide adequate aisles or turn-around areas for service and delivery vehicles so that all vehicles may enter the street in a forward manner (except for single-family dwellings and alleys that provide adequate backing width).*

**FINDINGS:** The interior streets shown on the submitted Tentative Plan documentation have been designed to meet the applicable fire equipment access drive and turn-around standards. If the submitted Tentative Plan application is approved, compliance with Fire Code requirements will be further reviewed through the Private Development Engineering Division's infrastructure plan review process.

- L. *Construction. The following development and maintenance standards shall apply to all driveways and private streets. The City of Bend Standards and Specifications document shall prevail in the case of conflicting rules related to the design and construction of public infrastructure.*

1. *Surface Options. Driveways, required parking areas, aisles, and turn-arounds may be paved with asphalt, concrete or comparable surfacing or a durable nonpaving material (e.g., grass-crete, eco-stone) may be used to reduce surface water runoff and to protect water and air quality. Gravel is not allowed.*
2. *Surface Water Management. When an impervious surface is used, all driveways, parking areas, aisles and turn-arounds shall have on-site collection or infiltration of surface waters to prevent the flow of stormwater onto public rights-of-way and abutting property. Surface water facilities shall be constructed in conformance with City specifications. Durable nonpaving materials (e.g., grass-crete, eco-stone) are encouraged to facilitate on-site infiltration of stormwater.*

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**FINDINGS:** As previously discussed, the Hearings Officer finds that the proposed lots can meet all applicable driveway criteria. The final design, layout, and driveway configurations are not required at this time.

Staff, in the Staff Report (PLLD20220119, page18), made the following comments related to stormwater management:

*"As shown on the submitted plans, the Applicant proposed to install new stormwater catch basins, sedimentation manholes, and drywells (UICs). The Bend Engineering Division noted that this subdivision is within 500 feet of several domestic water wells. According to the Engineering Division, this does not allow the use of UICs per City of Bend standards and Central Oregon Stormwater Manual (COSM) requirements. Therefore, all stormwater runoff must be captured and contained within swales, designed and tested in accordance to COSM and City of Bend standards by a registered professional engineer. The Engineer of Record shall verify all existing wells in the area prior to and concurrently with design."*

Staff, at the June 15, 2022 initial public hearing, indicated that the stormwater issues in BV #2 "were the same as" those raised in BV #1.

Applicant, in a July 8, 2022 record submission, provided the following comments related to this approval criterion:

*"Under the above code sections, both in BDC Chapter 3, staff reiterated its comment from BDC 2.1.1100 that UICs may not be located within 500 feet of a domestic well. During the initial hearing, staff commented that the decision in PLLD 2021-0848 may have put this issue to rest.*

*The applicant agreed and provided additional information to further confirm that staff's continued assertion of this restriction is incorrect.*

*As we explained, the 500-foot restriction is a DEQ requirement. However, DEQ has a process pursuant to which local governments can obtain approval to allow UICs within that restricted area if they obtain rule authorization to do so. To obtain that authorization, local governments must demonstrate private well protectiveness using specific guidelines published by the DEQ. Basically, a local jurisdiction can demonstrate, with scientific analysis, that under conditions applicable in the geologic formation in question, UICs within 500 feet of domestic wells have either a horizontal or vertical separation that protects the well water. The analysis depends upon how quickly the recognized contaminants attenuate to an acceptable level after they enter a UIC and how deep the ground water is in the area. The city of Bend paid to have a detailed study completed that concluded with a finding that vertical separation is all that must be evaluated and that a five-foot vertical separation between a UIC and a well provides the required level of protectiveness. Exhibit 4. The applicant presented evidence that the DEQ accepted that study and it can be found on the DEQ website. The DEQ requires a certification that the protectiveness is achieved, and the applicant provide the required certification. Exhibit 6.*

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*Presumably, in the Lodges application, staff relied on its 2011 study and the rule authorization it obtained using that report to approve many UICs within 500 feet of a private well. As the Hearings Officer noted in PLLD 2021-0848, there is no evidence that the regulatory scheme has changed or that the rule authorization is no longer valid. PLLD 2021-0848 Decision, p. 43. There is no basis in the record to support a denial based upon the proposal to use UICs to treat stormwater runoff from the proposed public streets.”*

The Hearings Officer, in the Preliminary Findings, **Prior Decisions**, discussed the legal and evidentiary findings in the BV #1 decisions and the relationship of the BV #1 findings to this BV #2 decision. In summary, the Hearings Officer informed participants in this case that the legal and evidentiary interpretations and findings in BV #1 would be followed in this case **unless** new evidence or argument was included in the record of this case specifically identifying the specific section of BDC involved and the new evidence and/or argument was persuasive to the Hearings Officer.

The Hearings Officer notes that Staff did address some evidence and arguments related to this approval criterion. Specifically, Staff stated that UIC's are not allowed within 500 feet of existing wells. However, the Hearings Officer finds that the Staff's UIC related evidence and argument presented in this case (BV #2) was not new as compared to the evidence and argument offered and considered in the BV #1 decisions. The Hearings Officer finds no other participant provided in this case any substantial and credible new evidence or new legal arguments related to this approval criterion. Therefore, the Hearings Officer finds the findings for BDC 3.1.400 L set forth in the BV #1 decisions remains persuasive to the Hearings Officer in this case. The Hearings Officer finds that Applicant's above quoted statement is a summary of its arguments in BV #1. The Hearings Officer concurs with Applicant's above-quoted statements and adopts them as additional findings for this approval criterion.

Applicant, in a July 11, 2022 record submission (email from Koback to Henson), proposed a condition of approval related to the management of stormwater. Applicant proposed Condition 15 as follows:

*“An entire lot's drainage shall be incorporated into the public storm infrastructure design unless the final drainage report and drainage plans can document that onsite stormwater can be adequately maintained on the individual lots, as determined during Tier III Right of Way (Infrastructure) permit design review.”*

Staff, in a July 18, 2022 record submission (email Henson to Hearings Officer), provided additional comments related to Applicant's proposed stormwater plan. Staff, in the July 18, 2022 submission “recommended denial” of Applicant's 44-lot proposed subdivision; in part because UIC's would be located with 500 feet of one or more domestic well. Staff went on, in the July 18, 2022 record submission to say

*“However, if the Hearings Officer finds that all of the approval criteria have been met, or can be met by imposing conditions of approval, Staff respectfully requests several changes to the applicant's proposed conditions of approval...”*

Staff proposed the following language be added to Applicant's proposed Condition 15:

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*"Stormwater from the lots must be maintained within the platted subdivision, and cannot flow outside the subdivision limits or across adjacent lots. All storm facilities must be constructed in conformance to City of Bend standards and Central Oregon Stormwater Manual (COSM) guidelines. Only roof runoff shall be permitted to flow into the public right of way, with runoff from yards maintained on each private lot. A Stormwater Maintenance Agreement (SWMA), prepared and recorded by the City of Bend, must be recorded against the subdivision and incorporated into the subdivision's CC&Rs for the cross-drainage allowance and maintenance requirements for private to public facilities comingling. The SWMA for each phase must be recorded prior to the final plat for each phase."*

Applicant, in its July 25, 2022 rebuttal testimony submission (Koback letter to the Hearings Officer), provided the following comments in response to Staff's July 18, 2022 submission including Staff's recommended modifications/additions to Applicant's proposed conditions.

*"Although staff recites that it has recommended denial, the applicant believes that staff's proposed additions to the proposed conditions demonstrate that approval is required by state law. Staff states that its recommended changes to Conditions 1, 4, 5, 7, 11, 13, 14, 15, 20, 22, and 24 are necessary to ensure that all of the applicant's conditions of approval are consistent with the Bend Development Code, City of Bend Standards and Specifications, Central Oregon Stormwater Manual, and the Oregon Fire Code.*

*Staff's new memorandum has to be viewed in the context of ORS 197.522(2) and (3). Those provisions state that (1) a local government shall approve an application for needed housing that is consistent with the comprehensive plan and land use regulations, and (2) if the application is inconsistent with the comprehensive plan and applicable land use regulations, the local government shall, before making a final decision, allow the applicant to offer an amendment or propose conditions of approval that would make the application consistent. The current application is for needed housing. Under the relevant case law, where the comprehensive plan recites a need for particular housing, the needed housing elements in ORS Chapter 197 apply. Montgomery v. City of Dunes, 236 Or App 194, 236 P3d 750 (2010) (holding that even the exemption to needed housing requirements in ORS 197.307 for small cities does not apply when the type of housing in issue is stated as being needed in a comprehensive plan). We include excerpts from the Bend Comprehensive Plan demonstrating that the housing proposed is listed among the needed housing in Bend. Staff has never asserted that the housing being proposed is not needed housing in Bend.*

*As provided for in ORS 197.522(3), the applicant proposed conditions that it believes makes the application entirely consistent with the city's comprehensive plan and applicable applications. Specific to the more emphasized issues, conditions address public stormwater and fire flow requirements. Staff recited that its proposed additions to applicant's proposed conditions assure compliance with the development code, the city standards and specifications, the stormwater manual, and the fire code. That is important because under ORS 197.522, as it applies to needed, if conditions will assure that consistency, approval is required."*

The Hearings Officer agrees with Applicant that ORS 197.522 requires the City to allow Applicant to "offer an amendment or to propose conditions of approval that would make the

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application consistent with the plan and application regulations.” The Hearings Officer finds Applicant provided proposed findings into the record of this case consistent with ORS 197.522.

The Hearings Officer interprets the primary focus of the Appellant’s above-quoted comments is an attempt to convince the Hearings Officer that if the Staff’s recommended modifications and additions to Applicant’s proposed conditions are adopted then the application will meet all relevant approval criteria and “approval is required.” The Hearings Officer agrees conceptually with Applicant that if either Applicant’s or Staff’s proposed conditions result in the application meeting all relevant approval criteria the Applicant’s proposal must be approved with conditions.

The only remaining issue, related to this approval criterion, is which version of each proposed condition should be used.<sup>2</sup> The Hearings Officer reviewed Applicant’s record submissions carefully, particularly its July 25, 2022 rebuttal testimony and evidence submission and its August 1, 2022 final written argument.<sup>3</sup> These two documents were submitted into the record following Staff’s July 18, 2022 submission recommending changes to Applicant’s proposed conditions.

The Hearings Officer finds that while Applicant asserted that the Applicant’s proposal could meet all relevant approval criteria if Applicant’s proposed conditions were included, the Applicant did not, with specificity, provide evidence or legal argument why the Staff recommended modifications/additions were not legally justified. In fact, as set forth in Footnote 2, Applicant stated that the “application must be approved with the proposed conditions, as revised by staff.” The Hearings Officer interprets Applicant’s comments as endorsing Staff’s July 18, 2022 modifications/additions (See Condition 15).

The Hearings Officer finds that this approval criterion can be met with conditions as set forth in the findings above.

### **3.1.500      Clear Vision Areas.**

**FINDINGS:** The submitted Tentative Plan does not show clear vision triangles at intersections. The Applicant indicated that no prohibited obstructions are planned within the clear vision triangles. The Hearings Officer finds that City’s clear vision standards can be met through the imposition of the following condition (Condition 9):

*“Clear vision areas and clear sight requirements per City of Bend and AASHTO requirements must be shown on final infrastructure plans and building permit submittals.”*

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<sup>2</sup> Staff did not disagree with or dispute every one of Applicant’s proposed conditions. The Hearings Officer considered Applicant’s and Staff’s proposed condition language in findings for specific approval criteria and in a section of the findings titled: **PROPOSED CONDITIONS OF APPROVAL**.

<sup>3</sup> Applicant, in its August 1, 2022 final written argument stated: “At the July 11, 2022 continued hearing and during the open record period, neither staff nor any opponent articulated an argument demonstrating that applicant’s proposed conditions did not ensure the required consistency under ORS 197.522. In fact, as we pointed out in the applicant’s July 18, 2022 rebuttal, staff submitted supplementation to those proposed conditions stating that its supplemental text was to ensure consistency with the comprehensive plan and applicable land use regulations. The applicant submits that staff’s July 18, 2022 memo and the absence of any contrary argument, establishes that under ORS 197.522, the application must be approved with the proposed conditions, as revised by staff.”

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### Chapter 3.2 Landscaping, Street Trees, Fences and Walls

#### 3.2.200 Landscape Conservation.

**B. Significant Vegetation.** *Significant vegetation means individual trees with a specific trunk diameter as measured four feet above the ground (known as DBH, “diameter at breast height”); shall be inventoried during the site design process and protected during construction unless otherwise approved for removal through the site plan review process. For the purpose of this section, deciduous trees measuring six inches or greater and coniferous trees measuring 10 inches or greater shall be considered significant vegetation.*

**D. Protection Standards.** *Significant trees identified as meeting the criteria in subsection (B) of this section shall be retained unless approved by the City to be removed for development. Preservation shall be considered impracticable when it would prevent development of public streets, public utilities, needed housing or land uses permitted by the applicable land use district. The term “prevent” in this standard means that the development cannot be designed to avoid the significant tree(s). An inability to achieve maximum permitted density by complying with this subsection shall not in itself be considered to prevent development.*

**FINDINGS:** As shown on the submitted Grading/Tree Plan, the Subject Property contains pine trees on the north end and along the east and west property lines, some of which are “significant” trees. In the event significant trees are removed, it will be only those that are necessary to accommodate installation of utility services, roadway improvements, sidewalks or found to be necessary to allow for the development of the subdivision. Lastly, Applicant will show all trees to be retained along on property on the final Grading Plan in the submittal of the Public Infrastructure Plan review. Staff, in the Staff Report, noted that the required public right of way improvements will include new street trees in conformance with City standards. The Hearings Officer finds with conditions (See Conditions 17, 18 and 19) this criterion can be met.

#### 3.2.400 Street Trees.

**B. Street trees shall be planted within existing and proposed planting strips, or in City-approved sidewalk tree wells on streets without planting strips. Small stature trees shall be planted no closer to the curb or sidewalk than three feet, medium trees – three feet and large trees – four feet. Root barriers may be required with street tree planting to protect the City’s curb and sidewalk. Street tree spacing shall be based upon the type of tree(s) selected and the canopy size at maturity. Small canopy trees and columnar shaped trees shall be planted no further than 30 feet apart; medium and large canopy trees shall be planted no further than 40 feet apart, except where planting a tree would conflict with existing trees, retaining walls, utilities and similar physical barriers. A random spacing of street trees may be approved for the equivalent number of trees required for the length of the frontage.**

**FINDINGS:** Street trees must be installed in the proposed landscape strips. The infrastructure plan set must show the location and species of street trees, in compliance with this section. Street trees must be planted prior to Certificate of Occupancy of abutting lots and must be

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shown on the respective building permit submittals. The Hearings Officer finds that with the following Staff approved conditions (See Conditions 18 and 19) this standard can be met.

*"Street trees must be shown on the Tier III Right of Way (infrastructure) permit plan set in compliance with BDC 3.2.400.A. The street trees must not conflict with utility placement nor be located in clear vision areas.*

*Street trees must be planted prior to Certificate of Occupancy of abutting lots and must be shown on the respective building permit submittals."*

### **Chapter 3.4, Public Improvement Standards**

#### **3.4.100 Purpose and Authority.**

**B. Public Improvements Needed for Development. Development shall not occur unless the public improvements serving the development comply with the public facility requirements established or incorporated by this chapter, unless compliance is exempted by this code or unless the applicable standard is modified or waived under BDC 3.4.150.**

**C. Compliance with Standards. All public improvements constructed as part of a development or to comply with a condition of development approval shall comply with all applicable standards, including but not limited to any standards and specifications adopted by the City applicable to public works or public improvements. The provisions of this chapter prevail over any inconsistent standard or specification unless the applicable standard is modified or waived under BDC 3.4.150.**

**D. Conditions of Development Approval. No development shall occur unless required public facilities are in place or guaranteed. Improvements required to be constructed by the developer as a condition of development approval, when not voluntarily accepted by the applicant, shall be roughly proportional to the impact of development on public facilities and services. Findings in the development approval shall indicate how the required improvements are related to and roughly proportional to the impact. The City may deny an application if required public improvements are not in place, or the City may impose conditions of approval tying the timing of construction and/or occupancy of a proposed development to anticipated public improvements without requiring the applicant to construct the public improvements.**

#### **3.4.150 Waiver and Modification of Public Improvement Standards.**

**A. Authority to Grant Waiver or Modification. Waivers and/or modifications of the standards of this chapter and/or the City of Bend Standards and Specifications may be granted as part of a development approval only if the criteria of subsection (B) of this section are met. A waiver for sidewalks for the Woodriver Village subdivision is not permitted under this subsection. See BDC 3.4.160, Payment in Lieu of Sidewalk Construction.**

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**B. Criteria. The Review Authority, after considering the recommendation of the City Engineer, may waive or modify the standards of this title and the City of Bend Standards and Specifications based on a determination that (1) the waiver or modification will not harm or will be beneficial to the public in general; (2) the waiver and modification are not inconsistent with the general purpose of ensuring adequate public facilities; and (3) one or more of the following conditions are met:**

- 1. The modification or waiver is necessary to eliminate or reduce impacts on existing drainage patterns or natural features such as riparian areas, significant trees or vegetation, or steep slopes.**
- 2. An existing structure such as a substantial retaining wall makes widening a street or right-of-way or required placement of lines impractical or undesirable.**
- 3. Street access to an existing lot would be eliminated without the waiver or modification.**
- 4. Building on an existing lot would be infeasible without the waiver or modification.**
- 5. The standard is a street or right-of-way standard and existing structures on the same side of the block make future widening of the remainder of the street or right-of-way unlikely and the additional width on the project site would not be beneficial for sidewalks or parking without the extension for the rest of the block.**
- 6. The modification or waiver is needed to allow development of, or street access to, the property because of topographical constraints.**
- 7. The existing infrastructure (a) does not meet current standards, (b) is and will remain functionally equivalent to current standards, and (c) there is little likelihood that current standards will be met in the area.**
- 8. The installation of the required improvements would likely cause unacceptable significant adverse environmental impacts and the waiver/modification would avoid such impacts.**
- 9. There is insufficient right-of-way to allow a full width street cross-section and additional right-of-way cannot be provided.**
- 10. There is no street or right-of-way adjacent to the property and easement access has been obtained across private property.**
- 11. Required street frontage improvements for individual single-unit dwellings could best be accomplished by planned area-wide improvements at a future date.**
- 12. The City has conflicting or inconsistent standards and the proposal would comply with one set of adopted standards. Standards are conflicting or inconsistent only when it is not possible to comply with both. In most situations, the more recently adopted standard should be followed and the older standard may be waived.**

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***Maximization of the number of lots or parcels in a land division is not a reason to allow a waiver or modification.***

**FINDINGS:** Applicant's waiver request, as set forth in its application file No. PLMISC20220441 June 16, 2022 record submission, stated the following:

*"Applicant requests a waiver of public street standards that require a 60 foot dedication and standard full street improvements for Bachelor View Road to allow for a 40-foot dedication and standard half street improvements for the section of Bachelor View Road where the applicant does not own sufficient property to make full dedication. The waiver request is supported by BDC 3.4.150 1, 2 and 3(9)."*

*Applicant requests a waiver to standards and specifications in Bend Standards and Specifications 5.6 requiring fire flow of 1,500 gpm. The request is supported by BDC 3.4.150 and Part 1, Section 2 of the Standards and specifications and the ability to employ alternative construction methods approved by the fire department."*

Staff, in a July 2, 2022 Memo to the Hearings Officer, provided extensive comments in response to the above-quoted requests for waivers. The July 4, 2022 Staff Memo provided opening comments regarding Applicant's waiver requests as follows:

*"BDC 3.4.150(B) authorizes the Hearings Officer, after considering the recommendation of the City Engineer, to waive or modify the standards of the Bend Development Code and the City's adopted Standards and Specifications if: (1) the waiver or modification will not harm or will be beneficial to the public in general; (2) the waiver and modification are not inconsistent with the general purpose of ensuring adequate public facilities; and (3) one or more of twelve conditions listed in BDC 3.4.150(B)(1)-(12) are met. On June 15, 2022, the applicant submitted PLMISC20220441, an application for 2 waivers: 1) Waiver of public street standards to allow for a 40-foot wide right of way dedication and "half street" improvements on Bachelor View Road; and 2) Waiver to Part II, Section 5.6.1 of the City of Bend Standards and Specifications requiring fire flow of 1,500 gallons per minute."*

The Hearings Officer agrees with Staff's above-quoted summary of the law related to BDC 3.4.150 and its summary of Applicant's waiver requests. For each waiver request the Hearings Officer must:

1. Consider the City Engineer's recommendations; and,
2. Determine whether each waiver request **either** "harms" **or** is "beneficial" to the public in general; and
3. Determine whether each waiver is, or is not, "inconsistent with the general purpose of ensuring adequate public facilities"; and,
4. Determine if each requested waiver meets at least one of the twelve conditions set forth in BDC 3.4.150 B.

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The Hearings Officer shall address separately the above enumerated waiver requirements in the following findings.

### **Street Waiver Request**

#### **City Engineer Recommendation.**

The City Engineer, in a July 11, 2022 record submission, stated the following related to Applicant's street waiver request:

*"The City will approve of the 40 foot right of way provided a local road conforming to the Bend Development Code can be adequately constructed within the right of way. The road must provide continuity and be aligned with the proposed Bachelor View Road, providing ingress/egress from the adjoining roads and driveways. Where available, additional right of way must be dedicated to bring the right of way into conformance to the 60-foot minimum supported by the BDC. Spite strips, or strips of land between the right of way and the adjacent property line, must be avoided to allow for access and connectivity today and in the future as development may occur."*

The Hearings Officer finds that the City Engineer's recommendation is generally supportive of Applicant's proposed half street waiver request. The Hearings Officer believes that the City Engineer's July 11, 2022 comment that "spite strips, or strips of land between the right of way and adjacent property line, must be avoided ..." refers to the extended area of land (strip of land) which would be located adjacent to Applicant's proposed public right-of-way dedication and an extended area of land that will remain subject to a private roadway easement. The Hearings Officer finds that the City Engineer did not identify with specificity any relevant approval criterion that would require the Hearings Officer to avoid "spite strips" or other areas of land located between the proposed public right-of-way and an adjacent property line. The Hearings Officer finds the City Engineer's "spite strip" comments lack sufficient specificity to allow the Hearings Officer to considering denying the application in this case.

In the alternative, the Hearings Officer finds that Applicant's proposed dedication for street purposes extends all of the way to the adjacent property line. The Hearings Officer finds that Applicant retained no ownership of land west of the proposed right of way dedication. What remains is a portion of a private roadway easement that is not on any property owned by Applicant.

If the City Engineer, in his comments quoted above, was referring to BDC 4.3.400 F.2.a., then the Hearings Officer references the Preliminary Findings where the Hearings Officer determined BDC 4.3.400 F.2.a. was not a relevant approval criterion in this case.

#### **Harm/Beneficial.**

The BDC 3.4.150 "not harm" or "be beneficial" issues were raised by participants in BV #1 (PLLD20210848 and PLMISC20211093). Staff and opponents argued that approval of the waivers proposed in BV #1 would result in "harm" to the public in general. The Hearings Officer finds the following BV #1 findings (PLLD20210848 and PLMISC20211093) to be relevant to the "not harm" or "be beneficial" issues raised by participants in this case:

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*"BDC 3.4.150 B requirement (1) requires a showing that approval of a waiver request must either "not harm" or, (in the alternative) "be beneficial" to the public in general. While the Hearings Office appreciates opponent's concerns related to safety (particularly wildfire safety) and access, the Hearings Officer finds approval of Applicants' minimum right-of-way waiver request will result in more (wider) pavement width than currently exists and also will result in the extension of sidewalks, planter strips and curbs. The Hearings Officer finds the wider pavement, more sidewalks, more planter strips and more curbs are general public benefits. The Hearings Officer finds that because the Applicants' Option/Alternative 2 proposal creates benefits for the general public it is unnecessary to also find there is not harm (from approval of the street width waiver request) to the general public." (See BV #1, page 27)*

The Hearings Officer adopts the above-quoted findings from BV #1 as additional findings for this section of the waiver requirements. The Hearings Officer finds that the Applicant's proposed half-street improvement will be beneficial to the public in general.

### **Not Inconsistent.**

The Hearings Officer addressed the "not inconsistent" requirement of BDC 3.4.150 B in the BV #1 decisions (PLLD20210848 and PLMISC20211093). The Hearings Officer believes the following findings from BV #1 are generally relevant to the current applications.

*"The Hearings Officer finds that the Applicants' street width waiver request for Option/Alternative 2 allows, perhaps not optimally, pavement, sidewalks, planter strips, curbs and utilities that are generally satisfactory in quality and quantity. In addition, the Hearings Officer finds that the pavement width will (slightly) exceed the minimum requirement and that the partial street improvement will include a sidewalk on one side, a curb on one side and planter strips for much of the Subject Property frontage. The addition of sidewalks and curbs will improve the quality and quantity of pedestrian services. The increased roadway pavement width will improve the quality and quantity of vehicular access. The increased planter strips area will increase the quality and quantity of separation between the roadway and sidewalks. The Hearings Officer finds Option/Alternative 2 provides adequate quality and quantity for vehicular, bicycle and pedestrian related public facilities. Further, when the west side property owner develops that property a full street improvement will exist."*

The Hearings Officer finds that the "general purposes of ensuring adequate public facilities" relates to the adequacy of transportation facilities, the adequacy of public utilities and overall public safety. The Hearings Officer finds an approval of the street waiver request, with a publicly dedicated half-street improvement (compared to the current narrow private roadway adjacent to the Subject Property) will generally improve transportation access provided by Bachelor View Road. The Hearings Officer finds that utilities will be installed adequately to serve the proposed subdivision as well as future development south of the Subject Property. The Hearings Officer finds that the general purpose of "public safety" will also be improved with the wider roadway that allows safer ingress and egress from the Subject Property and properties along Bachelor View Road to the south of the Subject Property. Overall, the Hearings Officer finds, based upon the evidence in the record, that Applicant's proposed waiver is not inconsistent with the general purpose of ensuring adequate public facilities.

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The Hearings Officer does take note that many participants who expressed opposition to the Applicant's proposal in this case asserted that approval of BV #2 would result in an increase in the number of vehicles using Bachelor View Road and Century Drive. Applicant's traffic study confirms that if BV #2 is approved then additional vehicles will utilize Bachelor View Road and Century Drive. However, the Applicant's traffic study, reviewed by City Staff and the Hearings Officer, did not conclude that the proposed half-street improvement adjacent to the proposed subdivision would increase vehicular or pedestrian danger. The Hearings Officer finds no substantial and persuasive evidence in the record of this case that approval of Applicant's half-street waiver would be inconsistent with the general purpose of ensuring adequate public facilities.

### **BDC 3.150 B Conditions (1-12).**

BDC 3.4.150 B states that a waiver cannot be approved unless at least one of twelve listed conditions are met. Applicant asserted that 3.4.150 B.7 is applicable to the half-street waiver request. Condition 9 states:

*"There is insufficient right-of-way to allow a full width street cross-section and additional right-of-way cannot be provided."*

The Hearings Officer finds that in order to continue the alignment approved in prior cases (i.e., The Lodges and BV #1) a full street cross-section and additional right-of-way cannot be provided. The Hearings Officer finds that the Applicant cannot be legally required to purchase sufficient land to meet the street width requirements from the property owner(s) directly adjacent to the west of the Subject Property. The Hearings Officer finds that Condition 9 applies to the current Applicant half-street waiver application.

**Conclusion: Half-Street Waiver.** The Hearings Officer finds, based upon the specific findings related to the "Engineer's Recommendation," "No Harm/Be Beneficial," "Not Inconsistent" and "BDC 3.4.150 B Conditions" that Applicant's street waiver request does meet the approval criteria for BDC 3.4.150.

### **Water Flow Waiver Request**

**Overview.** Applicant filed a written application to waive Bend Standards and Specifications 5.6 that requires fire water flow of at least 1,500 gpm (Applicant July 11, 2022 record submission)<sup>4</sup>. However, the Hearings Officer takes note that Applicant, through hearing testimony and written submissions, indicated that the water flow waiver was filed as a precautionary measure because Applicant believed that its application for water service could be approved with one or more condition(s).<sup>5</sup> The Hearings Officer briefly addresses the "approvability" of Applicant's water service proposal.

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<sup>4</sup> City of Bend Standards and Specifications, Section 5.6, January 2022 (See Table - 5.6.1) states that the required water flow for a RS zoned property is 1,500 gpm.

<sup>5</sup> Koback July 8, 2022 letter to Hearings Officer states in part (page 15) that "the applicant applied for a waiver to the fire flow requirement out of an abundance of caution. As we discussed above though, given the constitutional requirements and ORS 197.307, the applicant does not believe this presents a waiver situation. The application has to mitigate the fact that it cannot use an 8-inch water line and loop the system." See also Koback August 1, 2022 Final Argument where he states "a waiver to standards is not necessarily required for fire flow."

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Based upon Applicant submissions (Burden of Proof, Sun Country Memo [July 8, 2022], Koback letters [July 8, 2022 & July 25, 2022], Koback final argument [August 1, 2022] and the hearing testimony of Koback and Weishaupt) the Hearings Officer finds that Applicant's water service proposal involves two options. First, Applicant proposed that its water system will be capable of delivering at least 1,500 gallons per minute ("gpm") throughout the proposed subdivision. The second option, if Applicant were unable to demonstrate a 1,500 gpm flow (meet the Section 5.6 threshold), would have Applicant construct all dwellings within the subdivision using approved alternative construction methods to provide adequate fire protection.

It is clear to the Hearings Officer that if Applicant can demonstrate that its proposed water system provides at least 1,500 gpm throughout the entire subdivision then fire related water flow requirements (City Standards and Specifications 5.6) are met and no waiver is necessary. The Hearings Officer finds that City Standards and Specifications Table 5.6.1 does not identify any required pipe size; it just requires that the water flow equal or exceed 1,500 gpm throughout the proposed subdivision. The Hearings Officer finds the size of water line is not identified in Section 5.6 and therefore is not subject to Applicant's waiver request.

The necessity of a Section 5.6 waiver is less clear to the Hearings Officer if Applicant needs to utilize its second option (water flow less than 1,500 gpm and the use of approved alternative construction methods). Based upon Applicant's statements (hearing testimony and written submissions) the second option is only available if Applicant demonstrates a water flow of at least 500 gpm.

Applicant submitted proposed conditions of approval and Staff reviewed/commented on those proposed conditions. Applicant's two water flow options are addressed in its proposed Condition 12. Condition 12, which Staff offered no suggested edits, states:

*"Condition 12: Prior to final plat approval, the applicant shall demonstrate that the water system will provide at least 1,500 gpm flow throughout the proposed subdivision or the applicant (or lot owners) shall be required to construct all dwellings within the proposed subdivision using alternative construction methods approved by the Building Official and Fire Marshal."*

The question then becomes does the alternative construction option (second option) contained in Condition 12 necessitate a waiver of Section 5.6 (as requested by Applicant)?

The Hearings Officer takes note of the following City Engineer comments (July 22, 2022):

*"The Engineering Department does not support the waiver for a reduction in fire flow requirements for the subdivision, but defers to the Fire Department for final comment. The subdivision is creating additional density and additional fire hazards to the area where sufficient fire hydrants do not already exist amongst the existing neighborhood. If a brush fire, construction related fire, vehicle fire, etc. was to occur outside the homes, lack of flow could be an issue for removing the fire danger."*

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The City Engineer stated, in the above-quoted comments, that the Engineering Department “defers to the Fire Department for final comment.” The Fire Department provided at least two comments related to Applicant’s proposed Section 5.6 waiver request. Jeff Bond (“Bond”), a Bend Fire Department representative, provided agency comments (June 7, 2022) which acknowledged that the Oregon Fire Code contemplated alternative construction methods which could be approved by the Bend Fire Department. Bond also, at the July 11, 2022 continued hearing, testified that if a standard 8-inch main does not provide over 1,000 gpm it would automatically trigger a Fire Department requirement that each home within the proposed subdivision would be required to be constructed with an approved sprinkler system. Bond testified that alternative construction methods are frequently approved by the Fire Department.

The Hearings Officer finds that the City Standards and Specifications 5.6 and the Oregon Fire Code are relevant considerations in assessing whether or not Applicant’s proposed Condition 12 (including two separate and distinct options) needs to be processed as a BDC 3.4.150 waiver. The Hearings Officer finds that City Standards and Specifications 5.6 (table 5.6.1) clearly mandates a 1,500 gpm water flow for RS zone property. The Subject Property is zoned RS. Therefore, any deviation from the 1,500 gpm water flow requirement requires the approval of Section 5.6 waiver.

The Hearings Officer finds that, based upon the evidence in the record at the time of the decision and the analysis set forth above, Applicant’s request to utilize two options (See Condition 12) triggers the necessity to receive approval of a water flow waiver. Findings for Applicant’s water flow waiver are addressed below.

### **City Engineer Recommendation.**

As noted above, the first BDC 3.4.150 B requirement is to consider the City Engineer’s recommendation. The City Engineer opposed the granting of the water flow waiver based upon fire safety concerns. The Hearings Officer, as noted above, finds that the City Engineer “deferred” to the Fire Department for “final comment.” The Hearings Officer also notes the Fire Department, through representative Bond, indicated that if 1,000 gpm water flow throughout the subdivision could not be demonstrated then alternative construction methods could be approved (i.e., sprinklers in each house). The Hearings Officer considered the City Engineer’s comments.

### **Harm/Beneficial.**

The Hearings Officer acknowledges Planning Staff’s, Engineering Staff’s and many participant’s concerns about wildfire safety. As noted in the Preliminary Findings, **State Fire Map**, the Subject Property and vicinity is located in an area that is considered high risk for wildfires. The Hearings Officer takes judicial notice that the State Wildfire Classification Map was “withdrawn” or “removed” by the Oregon Department of Forestry on August 4, 2022.

As noted in earlier findings and in the BDC 3.4.150 findings for BV #1, a decision maker must approve a waiver application if the decision maker finds the waiver will not harm the public in general **or** the waiver will be beneficial. The Hearings Officer finds that relevant evidence includes evidence that the “harm” or “benefit” is linked directly to the requested waiver (water flow).

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Many participants argued that granting the water flow waiver will increase risks from wildfire. The Hearings Officer interprets these comments to mean that the general public would suffer “harm” because the risks associated with wildfires will be greater if the waiver is approved. Representative of such testimony is a letter from Brandon L. Thornburg and Timothy Fransen (“Thornburg/Fransen”). In that letter Thornburg/Fransen stated:

*“As such, the Hearings Officer will need to consider whether the waiver ‘will not harm or will be beneficial to the public in general.’ The record makes it clear that one factor to be considered in light of that analysis is whether the waiver will increase or decrease fire safety in light of the proposed significant increase in density for the Bachelor View Road area. This, in turn, makes the state’s current appraisal of fire risk (before such density is added) not only permissible evidence but necessary evidence.”*

The Hearings Officer agrees in part and disagrees in part with the Thornburg/Fransen characterization of the “not harm/be beneficial” criterion. The Hearings Officer agrees that a relevant inquiry when assessing the “not harm/be beneficial” criterion is to ask whether granting the waiver will “increase or decrease” fire safety. Clearly if the fire safety risk level increases as a result of granting the water flow waiver then it is reasonable to conclude that the general public will be “harmed” by granting the waiver.

The Hearings Officer disagrees with Thornburg/Fransen assertion that “increase in density” is relevant to the BDC 3.4.150 harm/benefit consideration. (See also City Engineer “density” comments.) If, per Condition 12 and the Sun Country Engineering Memo (July 8, 2022), the fire flow exceeds 1,500 gpm the Applicant’s proposed subdivision (and added density) would be approved without needing a water flow waiver. Further, the Hearings Officer takes note that the Subject Property and a significant area around the Subject Property are zoned RS (Residential Urban Standard Density). The Subject Property and vicinity are planned to experience urban density development. The increase in density will not occur because of an approval of the water flow waiver but rather because urban density is allowed and expected in the vicinity. The Hearings Officer does not consider “added density” as a possible “harm” created by the water flow waiver request.

Doug Williams, another participant in opposition to the proposed water flow waiver, provided a different perspective on water flow and fire safety. Williams suggested that a 1,500 gpm water flow is the “proper” water flow and that *“without proper fire flows, the safety of people in this proposed subdivision, Bachelor View, Sunrise Village, and other nearby neighborhoods will be seriously threatened.”* Williams also noted that that home sprinkler systems *“do nothing to protect against external fires...in other words, sprinklers do not offset the need for a proper fire flow.”* Williams does not define or provide any guidance to the Hearings Officer as to what is a “proper fire flow.” The Hearings Officer finds that “proper fire flow” is that water flow that meets relevant sections of the Oregon Fire Code and City of Bend Fire Department. The Hearings Officer also agrees with Williams that dwelling sprinkler systems are not designed to fight external fires. However, the Hearings Officer also notes that Applicant has proposed new fire hydrants to be located within/adjacent to the proposed subdivision. The Hearings Officer finds that fire hydrants would be the primary source of water used to fight fires outside of dwellings.

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Applicant (Koback, July 8, 2022, page 15) stated:

*“There is a reason the Oregon and Universal fire codes allow the use of alternative construction methods with flows that exceed 500 gpm. If an applicant can meet the 500-gpm threshold and use approved construction, the state fire code dictates that the public is protected. Thus, a waiver of the 1,500 gpm with a condition requiring alternative construction methods will not harm the general public.”*

The Hearings Officer finds that the fire safety focus needs to be on whether or not granting the water flow waiver will impact the ability to fight fires. The Hearings Officer finds that ultimately that question is answered by the relevant fire codes. The Hearings Officer finds that any approval of a waiver that meets the relevant fire codes will not harm the general public. The Hearings Officer finds the Fire Department representative's testimony and written submission indicated that the fire codes can be met by meeting the fire code's 1,000 gpm threshold **or**, so long as a 500 gpm threshold is reached, the fire code can also be met by using approved alternative construction methods. From the Fire Department's perspective, the fire code and therefore fire safety requirements are met either by a 1,500 gpm water flow or a 500 gpm water flow along with approved alternative construction methods.

The Hearings Officer finds that granting the water flow waiver will result in adequate water flow to meet fire code safety requirements. The Hearings Officer finds that granting the water flow waiver will not harm the public safety. The Hearings Officer also finds that the provision of new hydrants, where none had existed before, will be beneficial to the public in general.

### **Not Inconsistent.**

The Hearings Officer finds that the general purpose of water lines is to provide adequate water for domestic and fire suppression purposes. The Hearings Officer finds that approval of Applicant's water flow waiver request, including Condition 12 as modified by the Hearings Officer, will not be inconsistent with the general purpose of ensuring adequate public facilities. Specifically, the Hearings Officer finds that if the Applicant demonstrates, to the satisfaction of the City of Bend Building Official and the Bend Fire Department, that the subdivision water flow is at least 500 gpm and receives approval of alternate construction methods, the water flow will be adequate to provide domestic water and to generally protect the public from fires.

### **BDC 3.4.150 B Conditions (1-12).**

The Hearings Officer reviewed the record to determine if Applicant identified which, if any, of the BDC 3.4.150 B conditions applied. The Hearings Officer finds, based upon Applicant's written submissions, that BDC 3.4.150 B.7 applies in this instance. BDC 3.4.150 B.7 states:

*“The existing infrastructure (a) does not meet current standards, (b) is and will remain functionally equivalent to current standards, and (c) there is little likelihood that current standards will be met in the area.”*

Based upon the written submissions from the City Engineer, Staff and Applicant the current water line alignments/locations in the vicinity of the Subject Property do not allow for looping of the Applicant's proposed water lines. Staff and Applicant addressed the City infrastructure goal

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of looping the Bachelor View water line with a water line located in the adjacent Sunrise Village. Sunrise Village was not agreeable to granting an easement or constructing a water line on its property that would connect (loop) with the water line proposed by Applicant in this case. No participant in this case proposed any other “looping” option other than the one associated with Sunrise Village. Therefore, the Hearings Officer finds there is little likelihood that a looped water system in the vicinity of the Subject Property will occur in the foreseeable future. Further, if water flow of at least 1,500 gpm cannot be demonstrated for the Subject Property, the Hearings Officer finds that the infrastructure does not meet the Section 5.6 standards and there is no evidence in the record that the infrastructure will be improved to meet the Section 5.6 standards.

The Hearings Officer finds BDC 3.4.150 B.7. is applicable to the Applicant’s water flow waiver request.

**Conclusion: Water Flow Waiver.** The Hearings Officer finds, based upon the specific findings related to the “Engineer’s Recommendation,” “No Harm/Be Beneficial,” “Not Inconsistent” and “BDC 3.4.150 B Conditions” that Applicant’s water flow waiver request does meet the approval criteria for BDC 3.4.150.

**C. Other Requirements Not Waived. Any waivers under this section do not exempt the developer from submitting plans which meet all other applicable specifications.**

**D. Application Requirements. The application for a waiver or modification shall be in writing submitted as part of a development application. The City Council may adopt a fee for a waiver/modification application by resolution. The application shall specify which requirement(s) of this chapter and/or the City of Bend Standards and Specifications are at issue and which of the condition(s) listed above are met. The application shall contain a statement explaining why the deviation from the required standards is necessary and why the waiver or modification sought will not harm or will be beneficial to the general public.**

**FINDINGS:** The Applicant submitted a specific street waiver and water flow waiver application. The Applicant paid the required fee. The Applicant, in its waiver requests document did specify which requirement(s) of the BDC are at issue. The Applicant’s waiver requests met the requirements of criteria D. above.

### **3.4.200 Transportation Improvement Standards.**

**A. Development Requirements. No development shall occur unless the development has frontage or approved access to a public or private street, in conformance with the provisions of BDC Chapter 3.1, Lot, Parcel and Block Design, Access and Circulation, and the following standards are met:**

- 1. Streets within or adjacent to a development shall be improved in accordance with the Bend Urban Area Transportation System Plan (TSP), provisions of this chapter and other pertinent sections of this code.**

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**FINDINGS:** The Hearings Officer incorporates the findings for BDC 3.4.150 as additional findings for this criterion. As previously noted, the Applicant's proposed "half street" improvements to Bachelor View Road require a Waiver to Public Improvement Standards. The Hearings Officer, found that Applicant's proposed "half street" waiver should be approved.

- 2. *Development of new streets, and additional street width or improvements planned as a portion of an existing street, shall be improved in accordance with this section, and public streets shall be dedicated to the applicable City, County or State jurisdiction.***

**FINDINGS:** Staff, in the Staff Report (page 23) stated the following:

*"The Applicant proposed a "half street" improvement to be located within a dedicated public right of way directly abutting a narrow private road. No public access easement was proposed by Applicant, or other person/entity over the remaining section of private roadway. Staff, in the Staff Report and in hearing testimony expressed concern that even if the street waiver is approved, the Applicant will be unable to meet the final plat requirements of BDC 4.3.400(F)(2)(a), which requires that all streets and roads for public use must be dedicated to the public without any reservation or restriction (i.e., new public right-of-way must be free of all encumbrances). Staff was uncertain whether or not the Applicant would, at the final plat application stage, be able to extinguish the portion of the existing private access easement located on the Subject property."*

The Hearings Officer incorporates the Preliminary Findings section titled **BDC 4.3.400 F.2.a.** as additional findings for this criterion. The Hearings Officer finds BDC 4.3.400 F.2.a. is not relevant to this case/application. The Hearings Officer also incorporates the findings for BDC 3.4.150 as additional findings for this criterion. The Hearings Officer, based upon the evidence in the record, finds that with the granted street waiver the requirements of this section shall be met. Further, the Hearings Officer finds Staff provided no citation in support of its claim that a public access easement over the remaining private roadway was required.

- 3. *All new and/or existing streets and alleys shall be paved per the City of Bend Standards and Specifications document.***

**FINDINGS:** The proposed "half street" and the proposed internal streets will be paved with an asphalt surface as indicated on the submitted Tentative Plan application documentation.

- C. *Creation of Rights-of-Way for Streets and Related Purposes. Streets shall be created through the approval and recording of a final subdivision or partition plat; except the City may approve the creation of a Public Right-of-Way by acceptance of a deed, where no plat will be recorded, and provided that the street is deemed essential for the purpose of implementing the Bend Urban Area Transportation System Plan, and the deeded right-of-way conforms to this Code. All deeds of dedication shall be in a form prescribed by the City and shall name "the public" as grantee.***

**FINDINGS:** Staff provided (Staff Report, page 23) the following comments related to this criterion:

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*“All public rights-of-way within the boundaries of the proposed subdivision must be dedicated through the final platting process. If the proposed subdivision is to proceed, all existing easements within the proposed 40 ft. wide public right of way must be extinguished prior to public right of way dedication in order to comply with BDC 4.3.400(F)(2)(a).”*

The Hearings Officer incorporates the Preliminary Findings section titled **BDC 4.3.400 F.2.a.** as additional findings for this criterion.

The Hearings Officer interprets Staff's above-quoted statement that “all existing easements within the proposed 40 ft. wide public right of way must be extinguished...” relates to the BDC 4.3.400 F.2.a. provision requiring “streets and roads for public use are dedicated without any reservation or restriction.” The Hearings Officer believes Staff interprets the BDC 4.3.400 F.2.a. language “Streets and roads for public use are dedicated to the public without any reservation or restriction” to mean street dedications must have no underlying easements.

The Hearings Officer finds BDC 4.3.400 F.2.a. is not relevant to this case/application. Therefore, any interpretation of language/phrases used in BDC 4.3.400 F.2.a. (as offered by Staff above and by Applicant in record submissions) in this Tentative Plan application proceeding is not timely and therefore irrelevant.

**D. Creation of Vehicular Access Easements. The City may require a vehicular access easement established by deed when the easement is necessary to provide for vehicular access and circulation in conformance with BDC Chapter 3.1, Lot, Parcel and Block Design, Access and Circulation. Access easements shall be created and maintained in accordance with the Uniform Fire Code Section 10.207 and City of Bend Standards and Specifications.**

**FINDINGS:** Staff, in the Staff Report (page 24), provided the following comments related to this approval criterion:

*“Staff believes that a public access easement over the western portion of Bachelor View Road is necessary to provide for orderly two-way vehicular access and circulation on the hybrid public-private paved roadway proposed by the applicant. No such easement exists.”*

The Hearings Officer finds that Staff's above-quoted comments are essentially the same as raised in BV #1 (PLLD20210848 and PLMISC202110093). The Hearings Officer incorporates the findings set forth in Preliminary Findings, **Prior Decisions** as additional findings for this criterion. The Hearings Officer finds that no participant in this case raised with specificity any new evidence or argument contesting the Hearings Officer's interpretation of this criterion in the BV #1 (PLLD20210848 and PLMISC202110093) land use decisions.

The Hearings Officer adopts the following BV #1 findings (PLLD20210848 and PLMISC202110093) as additional findings for this criterion:

*“Staff (Staff Recommendation, page 37) stated the following:*

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*'If the proposed subdivision is to proceed, the owners of the abutting vacant properties to the west will need to voluntarily dedicate additional public right of way or a public access easement over their portion of Bachelor View Road in order to rectify the inherent public-private conflicts identified in this report.'*

*The Staff's comment related to "inherent public-private conflicts" is based upon Principal Engineer Henningsen's "Engineering Comments" record submission (page 1). Henningsen states that:*

*'The applicant is not identifying the use of existing private access easement for passage. However, the documents provided show the proposed road being constructed directly to the property line, creating a situation where the proposed road will be constructed directly against the existing road within the private access easement. Though the applicant is indicating that the existing road, under the private access easement, will not be encroached upon or used the development, it is inevitable that by constructing the proposed road directly adjacent to the private road, spill over will occur – creating a trespassing scenario and undue maintenance costs to the private road through the public use. Two roads that abut force traffic onto both, creating an undue burden on the private road owners.'*

*Applicants (Koback, February 22, 2022, pages 15 – 16) responded to Staff (and Henningsen) comments related to the public road being adjacent to a private street issue.*

*'The city engineer and planning staff's reliance on speculation that there may be private disputes over the easement is not a basis in the BDC to deny the waiver request or the application...A potential for private trespass or other private disputes is not a ground upon which the city can deny a waiver.'*

*The Hearings Officer agrees with Applicants to the extent that this approval criterion is not relevant to a potential private street/public street conflict. Literally, this criterion is only relevant when the city determines that a vehicular access easement is necessary to meet BDC 3.1 requirements. The Hearings Officer, in other criteria findings, determined that Applicants' proposed Option/Alternative 2 dedications to the public, with approval of a 3.4.150 waiver, met requirements for vehicular access and circulation. The Hearings Officer finds that either this criterion is met, or in the alternative, this criterion is not relevant to the application in this case.*

*The Hearings Officer agrees with Applicants that resolution of potential disputes between beneficial right holders with respect to the private road easements adjacent to the Subject Property is not within the scope of a land use hearings officer."*

The Hearings Officer finds, based upon the incorporated findings quoted above, that this criterion can be met.

***E. Street Location, Width and Grade. Except as noted below, the location, width and grade of all streets shall conform to the City of Bend Standards and Specifications document, the provisions of this chapter and an approved street plan or subdivision plat. Street location, width and grade shall be determined in relation to existing and***

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**planned streets, topographic conditions, public convenience and safety, and in appropriate relation to the proposed use of the land to be served by such streets.**

1. **Street grades shall be designed and/or constructed as approved by the City Engineer in accordance with the design standards in Tables A through E in this section.**
2. **Where the location of a street is not shown in an existing street plan in conformance with subsection (1) of this section, Future Street Plan and Extension of Streets, the location of streets in a development shall either:**
  - a. **Provide for the continuation and connection of existing streets in the surrounding areas, conforming to the street standards of this chapter; or**
  - b. **Where it is impractical to connect with existing street patterns because of topographical constraints or where the existing built environment precludes future street connections, the applicant shall conform to a street plan approved by the Review Authority. Such a plan shall be based on the type of land use to be served, the volume of traffic, the capacity of adjoining streets and the need for public convenience and safety.**

**FINDINGS:** The submitted plans show the location and proposed right of way dedication for planned internal streets as well as the abutting street. The plans show that required grades for public streets can be met. If the proposed Tentative Plan application is approved, future engineering and construction drawing submittals will be needed to ensure compliance with applicable City Standards and Specifications.

### I. Future Street Plan and Extension of Streets.

2. **When no adopted street plan exists for the site, a future street plan shall be filed by the applicant in conjunction with an application for a subdivision, in order to facilitate orderly development of the street system. The plan shall show the pattern of existing and proposed future streets from the boundaries of the proposed land division and shall include other parcels within not less than 400 feet of the site boundaries, and other developed streets or public rights-of-way or natural barriers surrounding and adjacent to the proposed land division. The street plan is not binding; rather, it is intended to show potential future street extensions with future development.**

**FINDINGS:** The submitted plans show the location and right of way widths for existing streets surrounding the proposed subdivision, and for new streets within the proposed subdivision. The Applicant has also submitted a “future street plan” or Shadow Plat showing how future streets could be extended through the surrounding properties to the west and the south. Therefore, the Hearings Officer finds this standard is met.

3. **Streets shall be extended to the boundary lines of the parcel or tract to be developed, when the Review Authority determines that the extension is necessary to give street access to, or permit a satisfactory future division of,**

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*adjoining land. The point where the streets temporarily end shall conform to subsections (l)(3)(a) through (c) of this section:*

- a. These extended streets or street stubs to adjoining properties are not considered to be cul-de-sacs, since they are intended to continue as through streets when the adjoining property is developed.*
- b. A City-approved barricade shall be constructed at the end of the street by the subdivider and shall not be removed until authorized by the City or other applicable agency with jurisdiction over the street. The Review Authority may also require signs that indicate the location of a future road connection.*
- c. Temporary turnarounds (e.g., hammerhead or bulb-shaped configuration) shall be constructed for stub streets over 150 feet in length.*

**FINDINGS:** Applicant submitted plans showing the proposed location and right of way widths for streets, and the submitted Phasing Plan shows where B Street will temporarily end after each phase. Staff noted, in the Staff Report, that Applicant's Phasing Plan did not comply with all three subsections listed above. Staff noted that the extension of B Street in Phase 1 results in a temporary dead-end over 150 feet in length, without a temporary turnaround. Therefore, if the proposed Tentative Plan application is approved, Staff recommended in the Staff Report, two conditions of approval that would result in the satisfaction of these criteria. Applicant subsequent to the issuance of the Staff Report, submitted proposed conditions related to these criteria and Staff responded by recommending additions be made to Applicant's proposed Conditions 20 and 22. The Hearings Officer sets forth Applicant's proposed Conditions 20 and 22 with Staff's recommended additional language (underlined language represents Staff's recommended additions):

- 20. For Phase 1, the developer shall install a City-approved barricade at the east end of Street "A", and the barricade shall not be removed until authorized by the City. For Phase 1, the developer shall also construct a temporary turnaround in conformance with City of Bend standards and Oregon Fire Code at the east end of Street "A" since it will exceed 150 feet in length. If the turnaround extends outside of the public right of way, an access easement must be dedicated under separate recordable document prepared and recorded by the City of Bend.*
- 22. For Phase 3, the developer shall install a City-approved barricade at the south end of Street "B", and the barricade shall not be removed until authorized by the City. For Phase 3, the developer shall also construct a temporary turnaround at the south end of Street "B" since it will exceed 150 feet in length. If the turnaround extends outside of the public right of way, an access easement must be dedicated under separate recordable document prepared and recorded by the City of Bend.*

The Hearings Officer finds that Applicant did not object to Staff's proposed additions to Conditions 20 and 22. The Hearings Officer finds that these approval criteria can be met by including Conditions 20 and 22 as modified above by Staff.

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**L. Sidewalks, Planter Strips, Bicycle Lanes.** *Sidewalks, planter strips, and bicycle lanes shall be installed in conformance with the applicable provisions of the Bend Urban Area Transportation System Plan, the General Plan, City of Bend Standards and Specifications and the following standards:*

**2. Sidewalks shall be separated from the street by a planter strip and placed at the property line, where practicable, or as otherwise directed by the City Engineer.**

**FINDINGS:** The submitted plans show the typical cross sections for all existing and proposed streets. Sidewalks will be separated from the streets by planter strips and placed at the property line. The Hearings Officer finds this standard will be met.

**M. Intersection Angles.** *Streets shall be laid out so as to intersect at an angle as near to a right angle as practicable, except where topography requires a lesser angle. In no case shall the centerline angle be less than 80 degrees.*

**FINDINGS:** All planned intersections are right angles or as near to right angles as feasible. Therefore, the Hearings Officer finds that this standard will be met.

**N. Existing Rights-of-Way.** *Whenever existing rights-of-way adjacent to or within a property are of less than standard width, additional rights-of-way shall be provided at the time of subdivision or site development, in conformance with Tables A through E in this section.*

**FINDINGS:** Staff provided the following comments, related to this criterion, in the Staff Report (page 26):

*“The Applicant proposes to dedicate 40 feet of right of way for Bachelor View Road, and the applicant requests a Waiver for a “half street” improvement to Bachelor View Road. For the reasons previously identified in this report, Staff does not support granting the requested Waiver.”*

The Hearings Officer incorporates as findings for this criterion the findings for BDC 3.4.150. The Hearings Officer finds that Applicant’s “half street” waiver request met all relevant requirements of BDC 3.4.150.B and therefore this criterion will be met.

**O. Cul-de-Sacs.** *A cul-de-sac street shall only be used when the applicant demonstrates that environmental or topographical constraints, existing development patterns, or compliance with other standards in this code precludes street extension and through circulation.*

**1. All cul-de-sacs shall terminate with a circular turnaround. Circular turnarounds shall have a curb radius of no less than 45 feet. Turnarounds may be larger when they contain a landscaped island or parking bay in their center. When an island or parking bay is provided, there shall be a fire apparatus lane of 20 feet in width.**

**FINDINGS:** The planned “knuckle” on B Street in Phase 3 will function similar to a cul-de-sac. The outside radius of the knuckle is not indicated. If the proposed Tentative Plan is approved, Bachelor View 2 Subdivision PLLD20220119 Page 45 of 70

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future engineering and construction drawing submittals will be needed to ensure compliance with City standards.

**P. Grades and Curves. Grades shall not exceed those shown in Tables A - E in this section, unless approved through a waiver in accordance with BDC 3.4.150.**

- 1. Centerline curve radii and vertical curves shall conform to the American Association of State Highway and Transportation Officials (AASHTO) design criteria.**
- 2. At the intersections of arterial and/or collector streets, the approach grade shall average no more than +/- four percent for 250 feet from the edge of the intersecting roadway at full improvement. Local streets intersecting arterials or collectors shall provide a minimum of 50 feet of approach grade at no more than an average of +/- four percent.**
- 3. Existing conditions may warrant additional design criteria. All streets and intersection designs shall be subject to the approval of the City Engineer.**
- 4. Lesser grades may be required at intersections as per City specifications. Grades in excess of 10 percent are subject to Fire Department approval.**

**FINDINGS:** Staff provided, in the Staff Report, the following comments related to these standards:

*“The submitted plans do not provide enough information for Staff to verify compliance with City standards and AASHTO design criteria for grades and curves. If the proposed Tentative Plan is approved, future engineering and construction drawing submittals will be needed to ensure compliance with City standards.”*

Applicant did not respond to the above-stated standards in its Burden of Proof. No participant in this case, other than through the above-quoted Staff comments raised any concern or objections specifically related to these criteria. The Hearings Officer finds that with the following condition these criteria can be met.

*Prior to final plat approval, engineering and construction drawings shall be submitted that verify compliance with City standards and AASHTO design criteria for grades and curves.*

**Q. Curbs, Curb Cuts, Ramps, and Driveway Approaches. Concrete curbs, curb cuts, curb ramps, bicycle ramps and driveway approaches shall be constructed in accordance with BDC Chapter 3.1, Lot, Parcel and Block Design, Access and Circulation, City of Bend Standards and Specifications and the following standards:**

- 1. Curb exposure shall be per City Standards and Specifications.**
- 2. All public and private streets shall have curbs, except there shall be no curbs on alleys unless otherwise approved by the City Engineer.**

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**FINDINGS:** Curbs, curb cuts, ramps, and driveway approaches are planned to be constructed consistent with City of Bend Standards and Specifications and will be reviewed with final engineering and construction drawings. The Hearings Officer finds that these standards can be met with the following Staff recommended condition:

*The proposed curbs, curb cuts, ramps, and driveway approaches shall be constructed in accordance with City of Bend and PROWAG Standards and Specifications. These proposed right of way improvements will be reviewed under a Tier III right of way (infrastructure) permit for approval prior to construction.*

**V. Street Names.** *All street names shall be approved by Review Authority. No street name shall be used that will duplicate or be confused with the names of existing streets in Deschutes County, except for extensions of existing streets. Street names, signs and numbers shall conform to the established pattern in the surrounding area, except as requested by emergency service providers and shall comply with City of Bend Standards and Specifications.*

**FINDINGS:** Final street names will be reviewed and approved by the appropriate entities prior to the recording of the final plat.

**W. Survey Monuments.** *Upon completion of a street improvement and prior to acceptance by the City, it shall be the responsibility of the developer's registered professional land surveyor to provide certification to the City that all boundary and interior monuments shall be re-established and protected.*

**FINDINGS:** All necessary survey monuments and certifications will be provided.

**X. Street Signs.** *The City, County or State with jurisdiction shall install all signs for traffic control. The cost of signs required for new development, including stop signs and any other roadway signs, shall be the responsibility of the developers and shall be installed as part of the street system developed and approved through the land use process. Street name signs shall be installed by developers at all street intersections per City of Bend Standards and Specifications.*

**FINDINGS:** All necessary street signs will be provided.

### 3.4.400 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 construction specifications as described in the City of Bend Standards and Specifications document and the applicable Bend Comprehensive Plan policies.*

**B. Sewer and Water Plan Approval.** *Construction of sewer and water improvements cannot commence until the City Engineer has approved all sanitary sewer and water plans in conformance with City of Bend Standards and Specifications.*

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- C. Public Facility Plan Improvements.** *Proposed sewer and water systems must be sized to accommodate additional development within the area as projected by the Water and Sewer Public Facility Plans. The developer may be entitled to system development charge credits and reimbursement for the improvements if eligible under the applicable provisions of the Bend Code.*
- D. Inadequate Capacity.** *Development may be restricted 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, or surcharging of existing mains, or violations of State or Federal standards pertaining to operation of domestic water and sanitary sewer treatment systems.*

**FINDINGS:** Staff, in the Staff Report (pages 28 & 29), provided the following comments related to these criteria:

*"A minimum 8-inch diameter sewer main must be installed within all roads to serve all proposed lots in the proposed subdivision in conformance with City of Bend Standards and Specifications. The sewer main must be installed a minimum grade to and through the subdivision. A Right-of-Way permit is required for all work in the right-of-way and the work must be completed by a City approved right-of-way contractor. However, sewer service is not currently available to this property. The project cannot be served until the sewer main in Bachelor View Road, proposed in PLLD20210848 (which currently is under appeal at LUBA), has been constructed to the site within dedicated public right of way or a 20-foot wide City of Bend sewer easement, centered on the pipe, and accepted as a City asset. A water main must also be installed within all proposed streets (B Street, C Street and Bachelor View Road), looping the system whenever possible, to serve the proposed lots in the subdivision in conformance with City of Bend Standards and Specifications. The water main must be extended to and through the property. A Right-of-Way permit is required for all work in the right-of-way and the work must be completed by a City approved right-of-way contractor. However, water service is not currently available to this property. The project cannot be served until the water main in Bachelor View Road, proposed in PLLD20210848 (which is currently under appeal at LUBA), has been constructed to the site and accepted as a City asset.*

*According to a memo from the Fire Department dated June 7, 2022, for one- and two-family dwellings under 3,600 sq. ft., Table B105.1(1) of the Oregon Fire Code requires a minimum fire flow of 1,000 gpm. The modeled system and fire flow in the proposed development yielded estimated flows of 977 gpm (System Example #2) and 966 gpm (Hydrant Example #2). The City recommends denial of the subdivision unless the applicant can show how they can meet fire flow requirements. The project does not meet the requirements of BDC 3.4.400, with the site having insufficient fire flows per the City's water model analysis. Unless the system can be further looped to increase pressures and flows in the system and add redundancy, the project should not be permitted. A City suggestion was provided in the Utility Availability Memo (UAM) to obtain an easement from Sunrise Village Association and extend a water main into the site from River Bluff Trail, but the City cannot require this as the applicant does not have control of the adjacent property in Sunrise Village, and may not be able to obtain an easement.*

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*Since Bachelor View 1 is under appeal at LUBA, has not been built yet, and is owned by a different legal entity, the applicant for Bachelor View 2 cannot rely on the sewer and water main extensions that were proposed with Bachelor View 1. Furthermore, the City's water analysis model identifies that the flows at potential future hydrants in the proposed subdivision are not in compliance with fire flow requirements for residential development. Therefore, the above criteria are not met."*

The Hearings Officer adopts as additional findings for these criteria the Hearings Officer's Preliminary Findings, **Prior Decisions**. The Hearings Officer finds that Staff's LUBA comment is not relevant. If the proposed BV #1 sewer and water main extensions are not completed and approved by the City then the Applicant will not be able to satisfy the required BV #2 connections. The Hearings Officer finds the imposition of Conditions 2, 10, 11 and 12 (proposed by Applicant and modified by Staff) assures that these criteria will be met.

The Hearings Officer takes notice that the City suggested that Applicant obtain an easement from Sunrise Village to facilitate a looped water line. The Hearings Officer also takes notice that Sunrise Village HOA (Cosgrove/Board email/letter, July 7, 2022) would not grant an easement to Applicant for water line extension (looping) purposes. The Hearings Officer finds that if Sunrise Village is not agreeable to granting an easement the Applicant's ability to accomplish the City's suggestion (obtain easement) is foreclosed.

The Hearings Officer adopts the findings for BDC 3.4.150 as additional findings for these standards. The Hearings Officer considered the City Engineer's comments (March 17, 2022 Traffic Analysis Memo and July 11, 2022 Comments). The Hearings Officer finds that the City Engineer's above-referenced comments expressed concern that Applicant's water flow submissions were either inadequate, incomplete or inaccurate. Applicant acknowledged that the water flow submissions were not intended to be "final" numbers to be used for final plat approval. (See Sun Country Engineering July 8, 2022 Memo quoted below.)

The Hearings Officer takes note of the Sun Country Engineering July 8, 2022 Memo to the Hearings Officer.

*"In response to staff testimony that Section 5.6 of the City of Bend Standards and Specs is the governing document that defines the required fire flow for land use approval, and said standard is 1500 gallons per minute, Sun Country Engineering has revised the proposed water system model for the Bachelor View #2 subdivision.*

*Based on the existing hydrant data from the City of Bend PLLD 2022 0119, the Sun Country Model predicts a flow of 1610 gallons per minute at the hydrant on the southern terminus of the Bachelor View Road extension. This model uses a 12" water main extension from the intersection of Beverly Way rather than the standard 8" pipe. The following table reports simplified results of the EPANET model in relation to the reported findings provided in PRSWA 2022 00114 using the oversize pipe extension.*

Location	Elevation	Static Press	Resid. Press	Est. Flow
#5861	3842	69.45	20.00	2632 gpm

*Existing hydrant currently at the terminus of Bachelor View Road.*

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HYD #2 3912 39.11 20.00. 1610 gpm  
*Southernmost proposed hydrant at end of proposed Bachelor View Road."*

The Hearings Officer finds there is no evidence in the record disputing the above-quoted Sun Country Engineering estimates. While City Standards and Specifications 5.6 confers final water flow analysis as the definitive water flow estimate the Hearings Officer finds, for the purposes of making findings for this standard, the Sun Country Engineering estimate can be considered substantial evidence. The Hearings Officer is aware that prior to final plat approval additional water flow analysis will be required.

The Hearings Officer finds no participant identified specific evidence or supported and credible argument that the Applicant's water flow options could not legally meet City requirements. The Hearings Officer finds the City Engineer argued only that the Applicant's water flow numbers submitted into the record were inadequate, incomplete or inaccurate and those numbers did not provide certainty that City water flow requirements could be met. The Hearings Officer finds no participant in this case provided into the record an argument supported by citation or precedent that Applicant's proposed options did not meet these standards.

The Hearings Officer finds Applicant's submissions provided sufficient engineering evidence to conclude that Applicant's proposal may be able to meet the 1,500 gpm City Standard. Further, the Hearings Officer finds that Applicant's water flow options were not limited to the Applicant constructing water lines meeting the 1,500 gpm City Standards and Specifications section 5.6. Applicant's proposed Condition 12, which Staff provided no additional/modified language, addressed water flow issues (i.e., Condition 12). The Hearings Officer finds that Staff's failure to object to or modify Condition 12 is the Staff's acceptance/acknowledgment that Applicant's optional approach meets the relevant criteria/standards.

The Hearings Officer finds that Applicant's water flow waiver proposal (if unable to meet the 1,500 gpm threshold) can meet relevant approval criteria so long as the 500 gpm threshold can be demonstrated to the Fire Department and that approved alternative construction methods are used (including all dwellings having sprinkler systems).

The Hearings Officer finds that these criteria/standards are met by the evidence in the record.

### ***3.4.500 Storm Drainage Improvements.***

**A. Storm Drainage Improvements Required. Storm drainage facilities shall be depicted on City-approved engineered construction drawings and installed to serve each new development in accordance with applicable City construction specifications as described in the City of Bend Standards and Specifications and BC Title 16, Grading, Excavation, and Stormwater Management.**

**FINDINGS:** Staff, in the Staff Report (page 29), provided the following comments related to this criterion:

*"As shown on the submitted plans, the applicants propose to install catch basins, sedimentation manholes, and drywells (UICs). However, the Private Development Engineering Division has pointed out that this subdivision is within 500 feet of several*

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*domestic water wells. According to the Private Development Engineering Division, this does not allow the use of UICs per Bend Code Title 16, City of Bend standards, and Central Oregon Stormwater Manual (COSM) requirements. Therefore, all stormwater runoff must be captured and contained within swales, designed and tested in accordance to COSM and City of Bend standards by a registered professional engineer. The applicant has not demonstrated compliance with the City's storm drainage improvement standards."*

The Hearings Officer incorporates the findings for BDC 2.1.1100 as additional findings for this criterion. Based on the findings set forth in BDC 2.1.1100 the Hearings Officer finds this approval criterion can be met.

### **3.4.600 Utilities.**

**A. Underground Utilities. All 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; temporary utility service facilities during construction; and high capacity electric lines operating at 50,000 volts or above, which may be placed above ground.**

*The following additional standards apply to all development, in order to facilitate underground placement of utilities:*

- 1. The developer shall make all necessary arrangements with the serving utility to provide the underground services. All above-ground equipment shall not obstruct clear vision areas and safe intersection sight distance for vehicular traffic in conformance with BDC Chapter 3.1, Lot, Parcel and Block Design, Access and Circulation.**
- 2. The City reserves the right to approve the location of all surface-mounted facilities.**
- 3. All underground utilities, including sanitary sewers and storm drains installed in streets by the developer, shall be constructed prior to the surfacing of the streets.**
- 4. Stubs for service connections shall be long enough to avoid disturbing the street improvements when service connections are made.**

**FINDINGS:** Staff, in the Staff Report (page 30), made the following comments related to these standards:

*"All utilities, including telephone, cable, natural gas, and electricity must be installed underground prior to surfacing the streets and installing sidewalks. The placement of all underground utilities must be coordinated with each utility, and shown on the public facility improvement plans for the subdivision that will be reviewed and approved by the City of Bend Engineering Division.*

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**Recommended Condition of Approval:** All new utilities, including power, must be installed underground prior to surfacing the streets. Final location of utilities must be reviewed and approved by the City Engineer through the Tier III right of way (infrastructure) plan review process. No franchise utilities may be located within 10 feet of a City water main or sewer line. Surface-mounted transformers, connection boxes and meter cabinets, temporary utility service facilities during construction, and high capacity electric lines operating at 50,000 volts or above, may be placed above ground, so long as they are not located within required clear vision areas.”

The Hearings Officer acknowledges that Applicant submitted proposed conditions and Staff provided a response (modifications/additions). Applicant's proposed Condition 8 addressed these criteria. Staff offered no modifications or additions to Condition 8. Despite the Applicant's submission of Condition 8 and Staff's lack of modification/addition, the Hearings Officer believes that Staff's above-quoted language better addresses these criteria. Specifically, the Hearings Officer finds Staff's above-quoted language better addresses the Code requirements related to the location of franchise utilities and high powered electric lines. The Hearings Officer finds that with the above-quoted Staff recommended condition language these criteria can be met.

***B. Easements. Easements shall be provided and recorded for all underground utility facilities where required by the City.***

**3.4.700      Easements.**

- A. Requirement. Easements for sewer facilities, storm drainage, water facilities, street facilities, electric lines or other public/private utilities shall be dedicated on a final plat, or provided for in the deed restrictions.***
- B. Provision. The developer or applicant shall make arrangements with the City, the applicable district and each utility franchise for the provision and dedication of utility easements necessary to provide full services to the development.***
- C. Standard Width. The City's standard width for exclusive public main line utility easements shall be 20 feet, unless otherwise specified by the utility company, applicable district, or City Engineer.***

**FINDINGS:** Staff provided the following comments related to these standards (Staff Report, page 31):

*“All new City and franchise utilities must be placed underground within the public right of way or within easements. But as previously noted, no sewer and water mains are currently available to serve this property. The project cannot be served until the sewer and water mains in Bachelor View Road, proposed in PLLD20210848 (which currently is under appeal at LUBA), have been constructed to the site and accepted as City assets.”*

The Hearings Officer finds that Staff's above-quoted comments are accurate. The Hearings Officer incorporates the Preliminary Findings, **Prior Decisions** as additional findings for these criteria. The Hearings Officer finds Applicant's proposed conditions along with Staff's

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suggested modifications (where accepted by the Hearings Officer) adequately address Staff's concerns related to BV #1 (PLLD20210848). The Hearings Officer finds these standards can be met.

### **3.4.800 Construction Plan Approval and Assurances.**

- A. Plan Approval and Permit. *Public improvements, including sanitary sewers, storm sewers, streets, sidewalks, curbs, lighting, parks, or other requirements, shall not be undertaken except after the plans have been approved by the City and the developer has signed a Public Facilities Infrastructure Agreement (PFIA), paid permit fees, and received a permit. The amount of the permit fee shall be set by City Council with the annual adoption of a fees resolution.***
- B. Performance Guarantee. *The City may require the developer or subdivider to provide bonding or other performance guarantees to ensure completion of required public improvements in accordance with the provisions of BDC 4.2.500, Bonding and Assurances for All Developments, and 4.3.400, Final Plat.***

### **3.4.900 Installation.**

- A. Conformance Required. *Improvements installed by the developer, either as a requirement of these regulations or at his/her own option, shall conform to the requirements of this chapter, approved construction plans, and to improvement standards and specifications adopted by the City, referenced within the City of Bend Standards and Specifications.***
- B. Commencement. *Work shall not begin until the City has reviewed and approved the construction plans and notified the contractor of the approval.***

**FINDINGS:** Required approvals, inspections, and guarantees must be finalized prior to starting work on the site and within the public right of way.

## **CHAPTER 3.5, OTHER DESIGN STANDARDS**

### **3.5.400 Solar Standards.**

#### **B. Solar Lot Standards.**

- 1. Applicability. *Solar lot standards apply to the creation of lots within subdivisions in RS and RM Zones.***
- 2. Solar Lot Requirements. *In RS and RM Zones, at least 70 percent of the lots in a subdivision shall have a minimum north-south lot dimension of 80 feet or more.***
- 3. Exceptions to the Solar Lot Requirements. *A proposed subdivision shall qualify for an exception to subsection (B)(2) of this section if one or more of the following development constraints are present:***

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- a. **Compliance with applicable street standards or public street plans requires a street configuration that prevents the lot from being oriented for solar access.**
- b. **An existing public easement or right-of-way prevents the lot from being oriented for solar access.**
- c. **There is a significant natural feature on the site that will continue to exist after the site is developed, and that prevents the lot from being oriented for solar access.**

**FINDINGS:** This section requires at least 70% of all lots in new subdivisions located in the RS and RM zones to have a north-south lot dimension of 80 feet or more. The property is zoned RS, therefore, Solar Lot Standards apply. According to the Applicant, only six (6) of the 44 proposed lots (13.6%) meet this requirement. Therefore, the Applicant requested an exception pursuant to subsection (3)(a) above. The Subject Property is an infill project surrounded by an existing road, parcels, and a subdivision containing mostly developed lots. More specifically, the proposed infill project involves property that is long and narrow and abuts Bachelor View Road to the west, developed lots within The Outback Section of Sunrise Village to the east, and relatively small parcels under separate ownership to the south. This severely limits the amount of land available to provide a north-south lot orientation and lot depths of 80 feet or more. This criterion, even if clear and objective, would have the effect of discouraging needed housing by making it prohibitively expensive to construct the needed infrastructure to serve the reduced number of lots.

To meet the City's density standards as well as provide the essential internal street and street connections to City standards, most of the proposed lots need to have an east-west orientation. Widening these lots to 80 feet would reduce density below the City's minimum density requirements. These lots have extra east-west depth to accommodate buildable homesite areas. The design and layout of the subdivision was carefully designed to allow for logical and practicable circulation of vehicular traffic on the internal streets for access to the proposed lots while keeping within the allowed density range. Based on the foregoing reasons, the Hearings Officer finds that the Solar Lot Requirement in subsection (B)(2) above is not practicable or feasible, and an exception to standard 3(a) above is warranted.

### 4.3.300(E) continued...

4. **All required public facilities have adequate capacity, as determined by the City, to serve the proposed subdivision, partition or replat.**

**FINDINGS:** Staff provided, in the Staff Report (pages 33-39), the following comments related to this criterion:

*"Based on the Transportation Analysis Memo (TAM) for this project prepared by the Private Development Engineering Division dated March 17, 2022, and the applicant's updated Traffic Impact Analysis (TIA) dated April 29, 2022, the City's existing transportation facilities have adequate capacity to serve the proposed 44-lot subdivision, subject to the imposition of the following 11 mitigation measures:*

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**Mitigation 1:** Bachelor View Drive must be constructed to City of Bend local street standards, meeting the street structural section and horizontal / vertical curve requirements for a 25- mph local roadway.

- Along the east side of the street, adjacent to the site, a sidewalk must be constructed property tight in conformance to City standards.
- A landscape strip / planter must be not less than 5 feet wide between the curb and the sidewalk, landscaped and irrigation as required by the Bend Development Code.
- Curb will not be required on the west side of the street due to right of way constraints, but may be required if storm drainage cannot be maintained on the street. Curb must be constructed on the east side of the street adjacent to the development.
- The street must be constructed to a width of no less than 28 feet. No parking signs will be installed on one side of the road. The road must be constructed so that in the future, with development to the west, it can be widened to a minimum 32-foot street section.
- These street section requirements require a minimum 40 foot right of way dedication.

Where the street deviates from the site's westerly property line, as [shown] on the south side of the subdivision, the street must be constructed within a full 60-foot right of way, bound by curbs and sidewalks on both sides.

**Mitigation 2:** All local streets (Streets B and C) must be constructed within a minimum 60-foot dedicated public right of way. The local street must be constructed to City of Bend local standards to an asphalt width of not less than 32 feet, matching the street widths approved in land use PLLD20210848, bound by curb on both sides. Sidewalks must be constructed on both sides of the street per City standards.

**Mitigation 3:** All intersections must have directional curb ramp installed on all corners in conformance to City of Bend standards and PROWAG guidelines.

**Mitigation 4:** All work performed in the right of way must be under an approved right of way permit and completed by a City qualified contractor.

**Mitigation 5:** All right of way dedications and public easements, when applicable, must be completed under a survey plat or separate recordable document prepared and recorded by the City of Bend.

**Mitigation 6:** Vehicular access to the right of way from private lots must be constructed to conform to City of Bend concrete driveway aprons standards and PROWAG guidelines.

**Mitigation 7:** All sidewalks must be constructed property tight, permitted to meander to avoid existing utilities, existing trees and steep topography as approved during right of way permit review. All sidewalk construction must conform to City of Bend standards and PROWAG guidelines. Where the sidewalk is designed and/or constructed outside the right of way, a public access easement must be recorded over the encroachment.

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**Mitigation 8:** At all intersections and driveways, clear vision must be shown on a submittal documents for review in conformance to City standards R-2 and Bend Development Code 3.1.500. No new trees, structures (walls, buildings, monument signs, etc.), or other site obstructions will be permitted within these clear vision areas.

**Mitigation 9:** Storm drainage within the right of way must be designed by a registered Engineer and constructed in conformance to City of Bend standards, Central Oregon Stormwater Manual (COSM). No UIC's will be permitted within 500 feet of a well or within the 2-year time of travel from a community water well system.

**Mitigation 10:** The applicant must work with the Bend Fire Department for requirements. The Oregon Fire Code D107 requires multiple points of ingress/egress where number of residential units exceeds 30.

**Mitigation 11:** Subdivision approved under land use PLLD20210848 must be complete prior to platting of this subdivision. Only with the approval of the infrastructure under PLLD20210848 will the site have vehicular, pedestrian, and utility availability.

Staff notes that **Mitigation 10** is problematic – The proposed street layout for this 44-lot subdivision does not meet the Oregon Fire Code requirements for a residential development exceeding 30 dwelling units, and the applicant has not submitted any evidence showing how this project can address this shortcoming. **Mitigation 11** is also problematic – Bachelor View 1 is currently under appeal at LUBA, has not been built yet, and is owned by a different legal entity. Only after construction of the infrastructure approved under PLLD20210848 will this site have adequate vehicular, pedestrian, and utility availability.

As previously noted, the Utility Availability Memo (UAM) also reveals that unless the applicant is able to loop the water system somehow, adequate fire flow is not available for this proposed 44-lot subdivision. Therefore, the record shows that all required public facilities do NOT have adequate capacity to serve the proposed subdivision. This criterion is not met.”

Applicant responded (Koback, July 8, 2022, pages 12 & 13) to Staff's above-quoted comments as follows:

“As to the vast majority of facilities, staff found that with mitigation, the public facilities required to serve the proposal have capacity. Staff agreed that the public streets, including Bachelor View developed to the standards proposed, have capacity. Staff raised two issues that must be discussed under this criterion. First, staff reiterated its position on the use of UICs. The applicant has already addressed that issue above.

Second, staff asserts that the application cannot be approved with only a single access because it has 44 lots. The access requirement is not a BDC requirement. It is purely a state fire code requirement and staff appear to concur. Staff cites the OFC but does not provide the text of any provision that supports a denial based on only a single access. In fact, the relevant section of the OFA that the applicant placed in the record directly refutes staff's position. Section D107 states that where there are more than 30 dwellings on a

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*single access road and the dwellings are constructed with approved fire sprinkler systems, access from two directions is not required. The only requirement in the BDC relevant to this issue is a requirement that the applicant meet the fire code. The applicant can clearly meet the fire code by accepting a condition that all dwellings be equipped with approved sprinkler systems.*

*On a related note, staff refers to the Utility Availability Memo where the city engineer expressed a need to loop the water main to achieve the required fire flow. Initially, this is not an issue that involves the capacity of the public facility. The proposed system, even with an 8-inch line, has the capacity to meet the required flow. The issue is that the city frustrated the ability to tap the capacity by not applying it “to and through policy in PLLD 2021-0914. Regardless, as we explained above, there are two ways the applicant can mitigate for the asserted capacity issue, and both are feasible.”*

The Hearings Officer concurs with Applicant that the UIC issue has been addressed and that the Mitigation 9 statement that “no UIC’s will be permitted within 500 feet of a well or within the 2-year time of travel from a community water well system” is not entirely accurate. The Hearings Officer adopts the findings for BDC 2.1.1100 A as additional findings for this criterion. The Hearings Officer finds that Staff and Applicant agree with Applicant’s proposed Condition 15 as modified by Staff. The Hearings Officer finds, based upon the findings of BDC 2.2.1100, that individual lot drainage can be addressed with Applicant’s proposed Condition 15 which includes Staff’s additional language (Staff Memo, July 15, 2022).

The Hearings Officer finds Staff’s comment that Mitigation 10 is problematic is based upon its narrow reading of Oregon Fire Code D107. The Hearings Officer agrees with Staff that Oregon Fire Code D107 does state that developments with more than 30 residences need “more than one fire access point.” However, as noted by Applicant, State Fire Code D107 does include an exception. The State Fire Code D107 states that “more than one fire access point” requirement does not apply if all of the proposed residences have approved sprinkler systems. Applicant claims that the D107 exception (all residences must have sprinklers) applies in this case.

The Hearings Officer finds that Staff’s D107 argument is conclusory and lacks specific and sufficient evidence or legal argument to persuade the Hearings Officer to disagree with Applicant’s interpretation of D107. The Hearings Officer finds if all residences (in a development proposing more than 30 dwellings where there is only one access road) in the proposed subdivision are equipped with approved sprinkler systems the D107 rule requiring 2 or more fire access points does not apply; the exception applies. Therefore, the Hearings Officer finds it necessary, to meet the exception to D107 (as noted by Applicant in the above-quoted comments), to add language to Applicant’s proposed Condition 12 requiring all residences in the proposed development to be sprinklered.

The Hearings Officer finds the language of Mitigation 11 is reasonable and accurate. However, the Hearings Officer finds Staff’s comment that Mitigation 11 is “problematic” because the final land use decision in PLLD20210848 has been appealed to LUBA is itself “problematic.” The BV #1 (PLLD20210848) City of Bend land use decision is a final decision and controlling unless and until LUBA, other relevant court, or City Council says otherwise. Any approvals of the applications in this case will need to meet the BDC final platting

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requirements including those related to the timing (time limits) imposed on the Applicant or future developer of the Subject Property.

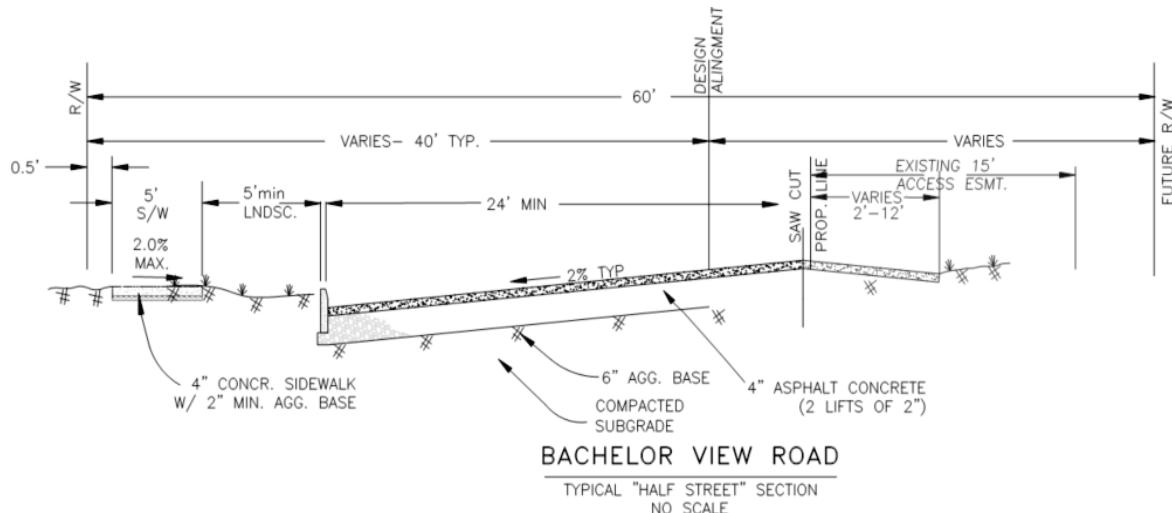
The Hearings Officer incorporates the findings for BDC 3.4.150 and BDC 3.4.400 A-D as additional findings for this criterion. Based upon the findings for BDC 3.4.150 and BDC 3.4.400 A-D the Hearings Officer disagrees with Staff comment that “unless the applicant is able to loop the water system somehow, adequate fire flow is not available...” The Hearings Officer finds that Applicant has proposed two options which potentially will provide adequate fire flow.

In conclusion, the Hearings Officer finds, based upon the evidence in the record, that there has been no credible and persuasive evidence or argument that the required public facilities lack adequate capacity. The Hearings Officer finds all relevant public facilities do have adequate capacity to serve the proposed subdivision.

- 5. The proposal contributes to the orderly development of the Bend area transportation network of roads, bikeways, and pedestrian facilities, and allows for continuation and expansion of existing public access easements within or adjacent to the subdivision, partition or replat.**

**FINDINGS:** Staff, in the Staff Report (pages 34 & 35), provided the following comments related to this criterion:

*“As previously discussed, the proposed “half street” extension of Bachelor View Road does not contribute to the orderly development of the Bend area transportation network. As shown in the cross-section below, the applicant is proposing a 40 ft. public right of way directly abutting the vestiges of a narrow private road without any public access easement, forming a strange “hybrid” street that is “public” on one side, and “private” on the other side.*



*According to the proposed road cross-section shown on the submitted Tentative Plan, the “private” portion of Bachelor View Road that will remain on the west side after the applicant installs 24 feet of new “public” pavement on the east side, is 2 to 12 feet wide. Therefore, the total width of the resulting “hybrid” road will vary greatly – from 26 feet to 32 feet.*

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*Furthermore, the public will have no authority to use the westerly 2 to 12 feet of “private” pavement within the remaining 15-foot wide private access easement abutting the 40-foot wide public right of way. Staff also notes that if the west side of Bachelor View Road is not properly maintained by its private owners, and left to crumble, then the City will have no authority to repair it.*

*Per BDC 3.1.200(D)(4), “private streets, where allowed by this code, shall be constructed to public standards and shall contain a **public access easement along the length and width** of the private facility if required to satisfy the block length and perimeter standards.” As proposed, Bachelor View 2 removes the east side of a private street and ties a new 24-foot wide public “half street” into the vestiges of that private street - without any public access easement along the length and width of the remaining portion of the private street. This does NOT contribute to the orderly development of the Bend area transportation network of roads, bikeways, and pedestrian facilities. Therefore, this criterion is not met.”*

A number of participants (i.e., Andrew West, Martin Hinkle, Cort Buchholz, Jesse Rosenzweig and Lee Husk), mostly individuals who had easement access rights to the private Bachelor View Road, indicated that they were not willing to waive or release their private easement rights if the Applicant were to dedicate a segment of public road adjacent to the Subject Property. Attorney Martin Hansen also provided comments related to the private roadway easement.

Applicant provided numerous responses, both in these cases (BV #2) and as part of the BV #1 hearing and decision-making process, to the above-quoted Staff Comments. The Hearings Officer takes note of one Applicant statement made in Applicant’s Final Argument (Koback, August 1, 2022):

*“While staff briefly alludes to concerns over private disputes, it appears to accept the Hearings Officer’s conclusion from PLLD 2021-0848 that those concerns do not invoke any approval criteria and cannot serve as a basis for denial. Even if that were criteria, it is fraught with subjective evaluation on what is and is not a significant private dispute and would violate the mandate in ORS 197.307.”*

The Hearings Officer finds that Staff’s concerns related to the private roadway strip which will remain after Applicant’s public roadway dedication are similar to those made in BV #1 (PLLD20210848). The Hearings Officer incorporates the Preliminary Findings, **Prior Decisions** as additional findings for this criterion. Further, the Hearings Officer adopts the following BV #1 findings as additional findings for this criterion:

*BDC 4.3.300 E.5 states:*

*“The proposal contributes to the orderly development of the Bend area transportation network of roads, bikeways, and pedestrian facilities, and allows for continuation and expansion of existing public access easements within or adjacent to the subdivision, partition or replat.*

*Applicants argued (Burden of Proof, page 43) that BDC 4.3.300 E.5 is not applicable because is violative of ORS 197.307. Specifically, Applicants said that*

## EXHIBIT H

*“Determining what is orderly development is a subjective, value laden exercise requiring discretion. As a result, it is [does] not a relevant approval criterion for review of this application.”*

*The Hearings Officer finds at least three problems with BDC 4.3.300 E.5 related to meeting the ORS 197.307 clear and objective standards requirement. The first problem relates to the use of the term “allows.” LUBA, in Knoell v. City of Bend, LUBA No. 2021-037, 2021, considered the term “allows” as it is used in BDC 4.3.300 E.2. LUBA, in Knoell, considered the term “allows” in isolation and concluded that it “is unclear and ambiguous because it is subject to multiple interpretations.” LUBA also considered the term “allows” in the context of the purpose of BDC 4.3. LUBA concluded that the purpose statement for BDC 4.3 did not clarify the meaning of “allows” and that such term (“allows”) permitted the City to “exercise significant discretion in choosing which interpretation it prefers to serve one or more unstated purpose.”*

*The second problem relates to the use, in BDC 4.3.300 E.5, of the term “development.” LUBA, in Knoell, found the term “development” did not meet the ORS 197.307 clear and objective standards requirement. The third problem relates to the term “orderly.” The Hearings Officer finds that “orderly” is a subjective, value-laden term that allows the city to exercise significant discretion.*

*The Hearings Officer finds that BDC 34.3.300 E.5 does not meet the clear and objective standards of ORS 197.307 and therefore may not be a basis of denial of an application. In the alternative, if BDC 3.4.150 is sought to be applied to BDC 4.3.300 E.5 then BDC 3.4.150 would need to contain only clear and objective standards (terms/phrases). As noted above, BDC 3.4.150 B requirements (1) and (2) both contain standards that are not clear and objective. Therefore, only BDC 3.4.150 B requirement (3) would apply.”*

The Hearings Officer takes notice that no participant clearly raised/offered any credible evidence or argument disputing the validity of the BV #1 findings quoted above. The Hearings Officer finds BDC 3.4.300 E.5 is violative of ORS 197.307 and may not be the reason or basis for denying this application.

### **6. Each lot, parcel, or designated unit of land is suited for its intended use.**

**FINDINGS:** The proposed lots are adequately sized for dwelling units in the RS zone as addressed in findings above. Therefore, the Hearings Officer finds that this criterion is met.

### **7. That the placement of utilities is in accordance with the adopted city standards.**

**FINDINGS:** Staff, in the Staff Report (page 35), provided the following comments related to this criterion:

*“As previously noted, the proposed placement of utilities is not in full accordance with the adopted City standards because the water system needs to be looped in order to provide the required fire flow. Therefore, this criterion is not met.”*

## EXHIBIT H

The Hearings Officer incorporates the findings for BDC 3.4.150 and BDC 3.4.400 A.-D. as additional findings for this criterion. The Hearings Officer finds that adopted city standards may be met without Applicant “looping” the water lines as asserted above by Staff. The Hearings Officer finds, based upon the incorporated findings, that this criterion can be met.

- 8. The proposal meets the requirements of the Fire Code, adopted flood protection standards, and other adopted standards intended to protect against natural hazards.**

**FINDINGS:** Staff, in the Staff Report (page 36), provided the following comments related to this criterion:

*“The subject property is not located within a flood plain or any other identified natural hazard area. As shown on the submitted plans, fire hydrants will be spaced in accordance with Fire Code requirements. However, the submitted Utility Availability Memo reveals insufficient fire flows per City of Bend water model analysis. According to a Fire Department memo dated June 7, 2022, the Oregon Fire Code also requires two separate and approved access roads for one- or two-family residential developments having more than 30 residential units. The proposed 44-lot subdivision only has one access road, Bachelor View Road. Therefore, this criterion is not met. Staff notes that if the proposed 44-lot subdivision is approved by the Hearings Officer over City staff’s objections, then conformance with all applicable Fire Code requirements will be checked again during the public infrastructure plan review process and the building permit review process.”*

The Hearings Officer incorporates the findings for BDC 3.4.150, BDC 3.4.400 A-D and BDC 4.3.300 E.4 as additional findings for this criterion.

The Hearings Officer concurs with Staff that the Subject Property is not located within a flood plain or any other identified natural hazard area. The Hearings Officer also concurs with Staff that if the application in this case is approved then a condition requiring conformance with applicable Fire Code requirements is necessary. However, as noted in the findings for BDC 3.4.150 and BDC 3.4.400 A-D the Applicant’s proposal can meet relevant approval criteria with the imposition of a condition (Condition 12). The Hearings Officer finds this criterion can be met.

- 9. The proposal is in substantial conformance with any applicable approved master development plan, master facilities plan, refinement plan and/or special area plan.**

**FINDINGS:** There is no master plan, refinement plan, or special area plan for this site. Therefore, the Hearings Officer finds that this criterion does not apply.

- 10. The proposal complies with the standards of the zoning district in which the project is located and the standards of the zoning district that implements the Comprehensive Plan designation of the subject property.**

## EXHIBIT H

**FINDINGS:** As stated in previous findings, the lots in the proposed subdivision comply with the density range, lot area, and other dimensional requirements of the RS zone, which implement the Comprehensive Plan designation of the Subject Property, which is also RS.

### 11. The proposal complies with BDC Chapter 4.7, Transportation Analysis.

#### CHAPTER 4.7, TRANSPORTATION ANALYSIS

##### 4.4.700 Approval Criteria.

*Prior to land use approval, the City must review the applicant's transportation analysis to determine whether or not the proposal will create excessive demand on the public facilities and services required to serve the proposed development. The City will assess the impacts of new development on the transportation system. The key factors used to assess the impacts to the transportation system include, but are not necessarily limited to:*

- *Number of trips by all modes associated with the proposal;*
- *Turning movement demand by vehicles of various types;*
- *Operations analyses results;*
- *Location of the project;*
- *Safety issues, location of the driveways (evaluated for conflict points and location criteria established in BDC Chapter 3.1, Lot, Parcel and Block Design, Access and Circulation).*

*The City Engineer will determine if the development or study area has adequate transportation facilities to support the proposed development based on compliance with the operations standards. The City shall also evaluate the crash histories and crash rates provided to identify any queuing issues. Crash rates greater than 1.0 per million entering vehicles and inadequate queue storage may need to be mitigated. Mitigation shall ensure that the transportation facilities are providing adequate capacity and safety concurrent with the development of the property.*

- A. Transportation System Assessment. This assessment of the transportation system will be used as the basis for requiring mitigation and imposing conditions of approval. Review measures for the transportation system include an evaluation of the existing and proposed transportation system.*
- B. Operations Standards. The intersection analyses provided in the Transportation Impact Study will be evaluated for safety deficiencies, queuing deficiencies, compliance with the Transportation Planning Rule, and the Bend Urban Area Transportation System Plan, any applicable Development Agreements, and regional transportation system plans. Intersections under the jurisdiction of the Oregon Department of Transportation shall also be evaluated for compliance with the Oregon Highway Plan. Intersections that do not comply with the criteria listed in those documents, as well as those criteria listed below, may be required to be mitigated.*

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**FINDINGS:** Staff, in the Staff Report (page 37), provided the following comments related to these criteria:

*“A Transportation Facilities Report (TFR) dated February 18, 2022 for a 34-lot subdivision was prepared by Ferguson & Associates. In response, a Traffic Analysis Memo (TAM) dated March 17, 2022 was issued by the Private Development Engineering Division. The subdivision application was deemed incomplete that same day. The applicant then added 10 more lots to the subdivision, and submitted an updated TFR from Ferguson & Associates dated April 29, 2022 on May 2, 2022. On May 3, 2022, the applicant submitted written notice directing the City to deem the application “complete” per ORS 227.178(2)(c) – without an updated TAM from the Private Development Engineering Division.*

*The proposed subdivision is estimated to generate 415 average daily trips (ADT) and 41 p.m. peak hour trips. The original TFR and the updated TFR did not identify any adverse impacts to the City’s transportation system. Because the estimated new traffic does not impact any intersection by 50 or more p.m. peak hour trips and the ADT is under 700, no additional analysis is required by Chapter 4.7 of the Bend Development Code.”*

The Hearings Officer concurs with the above-quoted Staff comments and finds these criteria are met.

### **12. The proposal complies with BDC Title 15, Sewer.**

**FINDINGS:** Staff provided the following comments related to this criterion (Staff Report, page 37):

*“As previously noted, sewer service is not currently available to this property. The project cannot be served until the sewer main in Bachelor View Road, previously proposed in PLLD20210848 (which currently is under appeal at LUBA), has been constructed to the site within dedicated public right of way or a 20-foot-wide City of Bend sewer easement, centered on the pipe, and accepted as a City asset. Since Bachelor View 1 is under appeal at LUBA, has not been built yet, and is owned by a different legal entity, the applicant for Bachelor View 2 cannot rely on the sewer main extension that was proposed with Bachelor View 1 at this time. Therefore, this criterion is not met.”*

The Hearings Officer incorporates as additional findings for this criterion the findings set forth in the Preliminary Findings, **Prior Decisions** and BDC 3.4.400 A-D. The Hearings Officer agrees with Staff that until the sewer line is constructed up to the Subject Property boundary sewer lines cannot be extended to the Subject Property. However, the Hearings Officer finds that the pending LUBA appeal of PLLD20210848 is not relevant to any approval of Applicant’s proposed development in this case unless and until LUBA, other relevant court or City Council determines that the Hearings Officer’s BV #1 (PLLD20210848) decision is not valid. At the time of the decision in this case LUBA has not issued an opinion related to the BV #1 (PLLD20210848) Hearings Officer decision. The Hearings Officer finds the existence of a LUBA appeal of the Hearings Officer’s BV #1 (PLLD20210848) is not a valid basis of denial in this case.

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The Hearings Officer finds that with the imposition of a condition (Condition 10) this criterion can be met.

### 4.3.400 *Final Plat.*

**A. Filing Time Period Requirements. Except as provided for in this chapter, the applicant shall prepare and submit to the City a final plat that is substantially in conformance with the approved tentative plan. Final plats shall be processed as Type I applications in accordance with BDC 4.1.300.**

- 1. If a tentative plan is approved for a single phased development, the final plat shall be filed with the City within two years of the approval date of the tentative plan. A one-year extension may be approved in accordance with BDC 4.1.1310.**
- 2. If a tentative plan is approved for phased development, the final plat for the first phase shall be filed within two years of the approval date of the tentative plan.**
- 3. The final plats for any subsequent phase shall be filed within three years of the approved date for the tentative plan, unless a longer period of time is allowed through the tentative plan approval process. In no case shall the final plat be recorded more than five years from the date of the tentative approval.**
- 4. If the applicant fails to file a final plat within the specified timelines, the tentative plan for those phases shall become null and void.**

**FINDINGS:** Staff, in the Staff Report (page 38), provided the following comments related to these criteria:

*"If the Hearings Officer approves the applicants' request for approval of a phased subdivision, the final plat for Phase 1 must be filed with the City within two years of the date of the Tentative Plan approval. The final plats for Phases 2, 3 and 4 must be filed within three years of the Tentative Plan approval, unless a longer period of time is allowed by the Hearings Officer. In no case shall the final plat for Phases, 2, 3 or 4 be recorded more than five years from the date of the Tentative Plan approval."*

The Hearings Officer concurs with the above-quoted Staff comments and finds that with the imposition of conditions (24, 25, 26, 27, 28 and 29) these criteria can be met.

## PROPOSED CONDITIONS OF APPROVAL

### **FINDINGS:**

Applicant submitted into the record a set of proposed conditions of approval. Staff responded with a memo to the Hearings Officer recommending some of Applicant's proposed conditions be added to or modified. Applicant, in its final argument (Koback, August 1, 2022, page 2) addressed Staff's recommended additions/modifications (in part) as follows:

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*“At the July 11, 2022 continued hearing and during the open record period, neither staff nor any opponent articulated an argument demonstrating that the applicant’s proposed conditions did not ensure the required consistency under ORS 197.522. In fact, as we pointed out in the applicant’s July 18, 2022 rebuttal, staff submitted supplementation to those proposed conditions stating that its supplemental text was to ensure consistency with the comprehensive plan and applicable land use regulations. The applicant submits that staff’s July 18, 2022 memo and the absence of any contrary argument, establishes that under ORS 197.522, **the application must be approved with the proposed conditions, as revised by staff.**”* [bolding added by Hearings Officer] [See also, Koback Rebuttal, July 25, 2022, pages 1 and 2]

As noted in prior findings the Hearings Officer finds that Applicant did not provide directed and specific evidence or argument that the Staff’s proposed modifications/additions to Applicant’s proposed conditions were objectionable or unlawful. In this section the Hearings Officer addresses specific Applicant proposed conditions and Staff’s response to those conditions.

**Condition 1.** Staff modified Applicant’s proposed condition 1. The Hearings Officer finds Staff’s modification language more accurately reflects the location where plans and supporting materials are to be submitted.

**Condition 4.** Staff recommended additional language be added to Applicant’s proposed Condition 4. As Applicant did not specifically object to Staff’s added Condition 4 language the Hearings Officer retained such additional language.

**Condition 5.** Staff recommended additional language be added. The Hearings Officer found the language to be reasonable. As Applicant did not specifically object to Staff’s added Condition 5 language the Hearings Officer retained such additional language.

**Condition 7.** Staff recommended additional language be added. The Hearings Officer found the language to be reasonable. As Applicant did not specifically object to Staff’s added Condition 7 language the Hearings Officer retained such additional language.

**Condition 8.** Staff, in the Staff Report, recommended language related to “new utilities.” The Hearings Officer concluded, in the findings for BDC 3.4.600 A, that Staff’s proposed language provided better assurances that relevant criteria would be met.

**Condition 10.** Staff recommended additional language be added. The Hearings Officer found the language to be reasonable. The Hearings Officer found Staff’s added language provided clarity to Applicant’s proposed Condition 10. As Applicant did not specifically object to Staff’s added Condition 10 language the Hearings Officer retained Staff’s recommended additional language.

**Condition 11.** Staff provided modified language for Applicant’s proposed Condition 11. The Hearings Officer found the language added clarity and certainty to Applicant’s proposed Condition 11. As Applicant did not specifically object to Staff’s added Condition 11 language the Hearings Officer retained such modified language.

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**Condition 12.** Staff offered no modifications or additions to Applicant's proposed Condition 12. This condition references the proposed subdivision's water system. The Hearings Officer, based on findings in the body of this decision (highlighted by Applicant – See findings for BDC 4.3.300 E.4), found that to meet the exception requirements of Oregon Fire Code D 107 language needed to be added to Condition 12 that all residences/dwellings in the proposed subdivision have sprinkler systems installed. Further, the Hearings Officer found that additional language needed to be added to Condition 12 referencing the of 500 gpm water flow threshold requirement to assure the satisfaction of the BDC 3.4.150 B requirements.

**Condition 13.** Staff recommended additional language be added. The Hearings Officer found the language to be reasonable. The Hearings Officer found Staff's added language provided clarity to Applicant's proposed Condition 13. As Applicant did not specifically object to Staff's added Condition 13 language the Hearings Officer retained such additional language.

**Condition 14.** Staff recommended additional language be added. The Hearings Officer found the language to be reasonable. The Hearings Officer found Staff's added language provided clarity to Applicant's proposed Condition 14. As Applicant did not specifically object to Staff's added Condition 14 language the Hearings Officer retained such additional language.

**Condition 15.** Staff recommended significant additional language be added. The Hearings Officer found the language to be reasonable. As Applicant did not specifically object to Staff's added Condition 15 language the Hearings Officer retained such additional language.

**Condition 20.** Staff recommended additional language be added. The Hearings Officer found the language to be reasonable. The Hearings Officer found Staff's added language provided clarity to Applicant's proposed Condition 20. As Applicant did not specifically object to Staff's added Condition 20 language the Hearings Officer retained such additional language.

**Condition 22.** Staff recommended additional language be added. The Hearings Officer found the language to be reasonable. The Hearings Officer found Staff's added language provided clarity to Applicant's proposed Condition 22. As Applicant did not specifically object to Staff's added Condition 22 language the Hearings Officer retained such additional language.

**Condition 24.** Staff recommended additional language be added. The Hearings Officer found the language to be reasonable. The Hearings Officer found Staff's added language provided needed timing language to alert Applicant to code restrictions related to filing its proposed development phases. As Applicant did not specifically object to Staff's added Condition 24 language the Hearings Officer retained such additional language.

## CONCLUSIONS:

The Hearings Officer considered the Applicant's proposed Tentative Plan and public improvement waiver applications. Based upon the evidence in the record and application of relevant criteria and laws/rules the Hearings Officer concluded that with conditions the tentative plan and waiver applications could be approved.

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### DECISION:

The Hearings Officer approves Applicant's Tentative Plan (PLLD20220119) and public improvement waiver applications (PLMISC20220441) subject to the following conditions:

1. Approval is based on the plans and supporting materials uploaded to CityView and the improvements to the site and public facilities as depicted thereon. Where specific improvements have been proposed and approved as submitted, the construction of those improvements will not be listed as a specific condition of approval except as to the timing of the improvements. Any substantial alterations of the approved plans, other than those that may be required to comply with conditions of this approval, will require a new application.
2. Construction of streets and other public facilities/utilities may not be started until the final plat for the third phase of the development approved in PLLD 2021-0848 is recorded and the public improvements required for recording that plat have been completed, inspected, and accepted by the City.
3. Bachelor View Road must be constructed to a minimum 24-foot-wide asphalt width bound with curb along the property frontage in conformance with the City of Bend standards and specifications. Where 50-foot right-of-way is available, a full 32-foot asphalt width street must be constructed bound by curb on both sides. Five-foot-wide sidewalk must be constructed property tight on one side of the road. Adjacent to Lot 44 and the proposed stormwater easement, a 32-foot-wide roadway bound by curb on both sides must be constructed within a full 60-foot right-of-way with property tight sidewalk constructed on both sides of the street. Final design will be determined with the review of the Tier III Right of Way (Infrastructure) permit.
4. City of Bend right-of-way dedications are required at a minimum of 40 feet for Bachelor View Road, except in the areas where a 50-foot and 60-foot dedication can be made. In those areas, a 50-foot and 60-foot dedication is required. The dedication for Bachelor View Road shall be subject to the same access easement that is under the Bachelor View Road dedicated in the Lodges Subdivision as noticed in the Final Plat recorded as Instrument No. 2019-28197. On Bachelor View Road, dedication must be extended to the westerly boundary of the subject property to avoid the creation of a "spite strip." The proposed internal streets (Streets A and B, shall have 60 feet of right-of-way, provided the road pavement width does not exceed 28 feet). Streets are to be constructed in compliance to City of Bend local street standards and specifications. The interior streets can be dedicated with the final plat.
5. Sidewalk and curb shall be constructed to City of Bend standards and PROWAG guidelines. Sidewalk shall be constructed property tight, except as approved by the City Engineering Division during Right of Way permit review to meander around barriers, such as existing trees or utilities, or where steep terrain exists (hillside standards). Accessible ramps and sidewalk design to be reviewed under the Tier III Right of Way (Infrastructure) permit review for acceptance. Five-foot sidewalk and 12-inch curb shall be installed on all new local streets within the subdivision (Street A and B) and shall have sidewalk and curb constructed on both sides of the street. Bachelor View Road shall have curb constructed on the east side of the street and sidewalk constructed only on the east side.

## EXHIBIT H

6. Accessible curb ramps shall be installed at every intersection in compliance with PROWAG guidelines and City of Bend standards.
7. As required by footnotes 1(a)-(c) of Table A in BDC 3.4.200, "No Parking" signs shall be posted by the applicant along the applicant's side of Bachelor View Road where the street width is less than 32 feet, and one side of the interior streets of the subdivision. Where the street width is less than 28 feet, if applicable, "No Parking" signs shall be posted by the applicant on both sides of the road.
8. All new utilities, including power, must be installed underground prior to surfacing the streets. Final location of utilities must be reviewed and approved by the City Engineer through the Tier III right of way (infrastructure) plan review process. No franchise utilities may be located within 10 feet of a City water main or sewer line. Surface-mounted transformers, connection boxes and meter cabinets, temporary utility service facilities during construction, and high-capacity electric lines operating at 50,000 volts or above, may be placed above ground, so long as they are not located within required clear vision areas.
9. Clear vision areas and clear sight requirements per City of Bend and AASHTO requirements must be shown on final infrastructure plans and building permit submittals.
10. The subdivision must install an eight-inch gravity sewer main running through the subdivision that complies with current City of Bend standards and specifications. Each lot must be served by an individual sewer lateral. One sewer lateral per tax lot is allowed and all unused laterals must be abandoned at the sewer main. If the sewer main cannot be installed fully within the public right of way, a 20-foot-wide City sewer easement must be dedicated centered on the pipe, where applicable.
11. The subdivision must extend the water main to City of Bend standards from the existing eight-inch water main located in Bachelor View Road to service the development. Each lot must have one perpendicular water service off the main that meets City of Bend standards. The water alignment, points of connection, and apparatuses will be reviewed and approved under the Tier III Right of Way (infrastructure) permit review. If the water main cannot be installed fully within the public right of way, a 20-foot-wide City water easement must be centered on the pipe, where applicable.
12. Prior to final plat approval, the applicant shall demonstrate that the water system will provide at least 1,500 gpm flow throughout the proposed subdivision or the applicant (or lot owners) shall be required to demonstrate a 500 gpm water flow throughout the subdivision and construct all dwellings within the proposed subdivision using alternative construction methods approved by the Building Official and Fire Marshal. All residences within the proposed subdivision must be sprinklered to meet the exception requirements of Oregon Fire Code D 107.
13. Fire hydrants are required to be no greater than 400 feet apart unless approved by the City Engineering Division during Right of Way permit review. Final locations and design details will be determined with the Tier III Right of Way (Infrastructure) permit review. Fire hydrant construction and placement shall be in compliance with City of Bend standards and specifications.

## EXHIBIT H

14. Show all existing and proposed easements, including any required slope easements, on the construction plans and the final plat.
15. An entire lot's drainage shall be incorporated into the public storm infrastructure design unless the final drainage report and drainage plans can document that onsite stormwater can be adequately maintained on the individual lots, as determined during Tier III Right of Way (Infrastructure) permit design review. Stormwater from the lots must be maintained within the platted subdivision, and cannot flow outside the subdivision limits or across adjacent lots. All storm facilities must be constructed in conformance to City of Bend standards and Central Oregon Stormwater Manual (COSM) guidelines. Only roof runoff shall be permitted to flow into the public right of way, with runoff from yards maintained on each private lot. A Stormwater Maintenance Agreement (SWMA), prepared and recorded by the City of Bend, must be recorded against the subdivision and incorporated into the subdivision's CC&Rs for the cross-drainage allowance and maintenance requirements for private to public facilities comingling. The SWMA for each phase must be recorded prior to the final plat for each phase.
16. The construction of public improvements shall not begin until the Tier III Right of Way (Infrastructure) plans have been reviewed and approved by the City Engineer and the developer has signed a Public Facilities Improvement Agreement (PFIA), paid permit fees, and received a permit and notice to proceed. Final plat approval will not be granted until all required public improvements have been completed, inspected, and accepted by the City.
17. In conjunction with the Public Facilities Improvement Plan review, the applicant shall submit a grading/clearing and drainage plan for review and approval. The grading plan must clearly show all lots that have more fill than two feet. The plan shall include design assumptions, calculations, erosion control plan, and proposed temporary and permanent slope stabilization measures as outlined in Bend Code Title 16 - Grading Excavation and Stormwater Management and the Central Oregon Stormwater Manual (COSM). The applicant shall provide DEQ Documentation for stormwater management plan, UIC decommissioning, and/or UIC Rule Authorization if applicable.
18. Street trees must be shown on the Tier III Right of Way (infrastructure) permit plan set in compliance with BDC 3.2.400.A. The street trees must not conflict with utility placement nor be located in clear vision areas.
19. Street trees must be planted prior to Certificate of Occupancy of abutting lots and must be shown on the respective building permit submittals.
20. For Phase 1, the developer shall install a City-approved barricade at the east end of Street "A", and the barricade shall not be removed until authorized by the City. For Phase 1, the developer shall also construct a temporary turnaround in conformance with City of Bend standards and Oregon Fire Code at the east end of Street "A" since it will exceed 150 feet in length. If the turnaround extends outside of the public right of way, an access easement must be dedicated under separate recordable document prepared and recorded by the City of Bend.
21. For Phase 2, the developer shall install a City-approved barricade at the south end of Street "B", and the barricade shall not be removed until authorized by the City.

## EXHIBIT H

22. For Phase 3, the developer shall install a City-approved barricade at the south end of Street "B", and the barricade shall not be removed until authorized by the City. For Phase 3, the developer shall also construct a temporary turnaround at the south end of Street "B" since it will exceed 150 feet in length. If the turnaround extends outside of the public right of way, an access easement must be dedicated under separate recordable document prepared and recorded by the City of Bend.
23. The final Tier III Right of Way (Infrastructure) plans shall depict the retention of trees not needing to be disturbed for the construction of the planned street rights of way. Tree removal must comply with City Standards, subject to building permit review on individual lots.
24. The proposed project is for a phased development. The final plat for Phase I shall be filed with the City within two years of the approval date of this decision, Phase II within five years of the approval date of this decision, and Phase III within six years of the approval date of this decision, and Phase IV within seven years of the approval date of this decision.
25. Prepare the final plat in accordance with the Bend Development Code and ORS 92.090.
26. Show individual lot sizes on the final plat.
27. The final plat shall note which lots, if any, include fill material.
28. Provide a recent subdivision guarantee report prior to final plat approval.
29. Submit closure sheets with the final plat
30. Prior to final plat approval engineering and construction drawings shall be submitted that verify compliance with City standards and AASHTO design criteria for grades and curves.

Date: August 19, 2022



\_\_\_\_\_  
Gregory J. Frank, Hearings Officer

**Duration of Approval:** The final plat for each phase of this subdivision must be filed within the timeframes specified in Condition 24, or the tentative plan for those phases shall become null and void.

**THIS DECISION BECOMES FINAL TWELVE (12) DAYS AFTER THE DATE MAILED,  
UNLESS APPEALED BY A PARTY TO THE RECORD.**

## HEARINGS OFFICER DECISION

**PROJECT NUMBERS:** PLLD20220664 ("Applicant's Subdivision Application")

**HEARING DATES:** February 2, 2023 ("Initial Hearing")  
March 1, 2023 ("Continued Hearing #1")  
April 26, 2023 ("Continued Hearing #2")

**HEARINGS OFFICER:** Gregory J Frank

**OWNER:** Bachelor View Properties LLC  
250 NW Franklin Avenue, Suite 401  
Bend, OR 97703

**APPLICANT:** Equity Homebuilders  
c/o Larry Kine & Carrie Lollar  
250 NW Franklin Avenue, Suite 401  
Bend, OR 97703

**ENGINEER:** Jeff Morrison, PE  
Sun Country Engineering & Surveying, Inc.  
920 SE Armour Road  
Bend, OR 97702

**LAND USE CONSULTANT:** Chris Schmoyer, Principal Planner  
Schmoyer Land Use Consulting, LLC  
60939 Zircon Drive  
Bend, OR 97702

**LAND USE ATTORNEY:** Chris Koback  
Hathaway Larson, LLP  
1331 NW Lovejoy Street, Suite 950  
Portland, OR 97209

**LOCATION:** 61123, 61129 & 61135 Bachelor View Road; 181113BB TL 700, 800 & 1000; Parcels 1, 2 & 3, Partition Plat No. 2003-78.

**MODIFIED REQUEST:** Type III tentative plan application for Bachelor View 3, a 3-phase, 44-lot subdivision on 8.24 acres in the Residential Standard Density (RS) zone.

**STAFF REVIEWERS:** Aaron Henson, AICP, Senior Planner  
541-383-4885; [ahenson@bendoregon.gov](mailto:ahenson@bendoregon.gov)

Chris Henningsen, PE, Principal Engineer;  
541-388-5571; [chenningsen@bendoregon.gov](mailto:chenningsen@bendoregon.gov)

## **APPLICABLE CRITERIA:**

Bend Development Code (“BDC”)

- Chapter 4.3, Land Divisions and Property Line Adjustments

### **I. APPLICABLE STANDARDS:**

- Chapter 2.1, Residential Districts
- Chapter 3.1, Lot, Parcel and Block Design, Access and Circulation
- Chapter 3.2, Landscaping, Street Trees, Fences and Walls
- Chapter 3.4, Public Improvement Standards
- Chapter 3.5, Other Design Standards
- Chapter 4.7, Transportation Analysis

### **II. APPLICABLE PROCEDURES:**

- Chapter 4.1, Development Review and Procedures

### **III. FINDINGS OF FACT**

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

- 1. LOCATION:** The proposed subdivision is located to the south of SW Century Drive, at 61123, 61129 & 61135 Bachelor View Road (the “Subject Property”). The Subject Property is further identified as Tax Lots 700, 800 & 1000 on Deschutes County Tax Assessor’s Map 18-11-13BB, and Parcels 1, 2 & 3 of Partition Plat No. 2003-78. It is located on the west side of private Bachelor View Drive and it abuts the tentatively approved Bachelor View 1 PLLD20210848 subdivision (“BV 1”) and Bachelor View 2 PLLD20220119 subdivision (“BV 2”) and the “Lodges at Bachelor View West” PLLD20220612 subdivision (“LBVW”).
- 2. EXISTING ZONING & COMPREHENSIVE PLAN DESIGNATION:** The Subject Property is zoned Residential Standard Density (“RS”) and designated RS on the Bend Comprehensive Plan map.
- 3. SITE DESCRIPTION & SURROUNDING USES:** The Subject Property is 8.24 acres in size. Bachelor View Road forms the eastern boundary. Tax Lot 800 excludes a 400 square foot property (Tax Lot 900) which contains a private well that is not a part of the proposed subdivision. The topography of the Subject Property generally slopes downward from the southeast to the northwest, with an elevation change of approximately 40 feet. The Subject Property contains several dozen Ponderosa Pine trees ranging in size from 6 to 24-inches dbh, and other native vegetation. The surrounding properties are also zoned RS, with lots and parcels either vacant or developed with single family dwellings.

**4. APPLICATION ACCEPTANCE DATE:** A land division application for the proposed subdivision was submitted on September 8, 2022. On October 5, 2022, the land division application was deemed incomplete.

#### VICINITY MAP



City of Bend Planning Staff (“Staff”) identified certain missing or incomplete items identified in the “Notice of Incomplete Application” including: 1) written authorization from the property owner; 2) a utility availability memo (UAM); 3) a shadow plat illustrating the future development pattern for streets and other requirements for adjoining lands; 4) copies of existing or proposed deed restrictions and/or easements; 5) copies of existing or proposed Homeowners Association Agreements and/or Covenants, Conditions and Restrictions; 6) a traffic analysis memo (TAM); 7) information concerning the private well on Tax Lot 900 and its relationship to the proposed 44-lot subdivision; and 8) a Hearings Officer deposit.

On November 4, 2022, the Applicant submitted a utility availability memo (Item #2), a revised Phasing Plan (Sheet 3), a revised Grading Plan (Sheet 4), and a revised Utility Plan (Sheet 5). On November 7, 2022, the Applicant provided additional information and written notice that no other information would be provided, and requested the City to start the 120-day clock per BDC 4.1.412.C. and ORS 227.178(2)(b). Specifically, the Applicant submitted a purchase and sale agreement addressing Staff’s request for written authorization from the property owner (Item #1), a shadow plat (Item #3), limited information concerning the well on Tax Lot 900 (Item #7), and a Hearings Officer deposit (Item #8). The Applicant did not submit Items #4, #5, or #6.

On November 21, 2022, the Engineering Division uploaded a copy of the traffic analysis memo (Item #6). The traffic and utility analysis that was initially performed by the Private Development Engineering Division was for 42 single-family dwellings, based on studies submitted by the Applicant, whereas the subsequent land use submittal was for 44 lots and a different Tentative Plan layout.

On February 1, 2023, the Applicant's attorney submitted 12 pages of written testimony and 17 exhibits in support of the proposed subdivision. On February 2, 2023, the Applicant's attorney submitted an updated traffic report, a list of proposed conditions of approval, and a letter dated July 25, 2022 from the record of PLLD20220119 (BV 2 Subdivision) and PLMSIC20220441 (BV 2 Waiver to Public Improvement Standards). BDC 4.1.445.B states: "The Review Authority shall not consider any evidence submitted by or on behalf of an applicant that would constitute modification of an application (as that term is defined in BDC Chapter 1.2, Definitions), unless the Applicant submits an application for a modification, pays all required modification fees and agrees in writing to restart the 120-day review period as of the date the modification is submitted. The 120-day review period for an application, as modified, may be restarted as many times as there are modifications up to a total of 365 days from the day the application was accepted as complete."

Staff asserted, at the Initial Hearing, that some of the Applicant's new testimony and evidence, including a Revised Phasing Plan, constituted a "modification of application" as defined in BDC Chapter 1.2. The Hearings Officer determined that the applicant's new testimony and evidence was indeed a modification, and directed the Applicant to submit a Modification of Application form. The Hearings Officer also scheduled a new public hearing for March 1, 2023 (Continued Hearing #1). The Applicant submitted a Modification of Pending Application form on February 3, 2023, which included the applicant's written agreement to restart the 120-day review period as of that date.

Based upon a scheduling error by the Hearings Officer, the Continued Hearing #1 scheduled for March 1, 2023 did not occur. However, Staff and the Applicant agreed to reschedule a "new" continued hearing for April 26, 2023, and the Applicant agreed to toll the 120-day clock until then (Continued Hearing #2). A full hearing was conducted on April 26, 2023, including testimony and submission of evidence by Staff, the Applicant and interested parties. Applicant, at Continued Hearing #2, requested the record to remain open for the submission of additional evidence. The Hearings Officer set an open-record as follows:

4:00 pm May 3, 2023	– Submission of new evidence
4:00 pm May 10, 2023	– Submission of evidence in response to evidence submitted during the initial open record period
4:00 pm May 17, 2023	– Applicant submission of final argument

Staff notified the Hearings Officer that the Applicant had submitted its final argument on May 12, 2023 and therefore the record should be considered closed. However, the Hearings Officer is the sole authority to determine when the record is closed. Pursuant to the Open-Record schedule set forth above, the Hearings Officer considered the record closed at 4:01 pm on May 17, 2023. The 120-day clock did not run during the 2-week open record period. Therefore, as of the date that the record closed, there were 87 days remaining in the 120-day review period for this application.

As of the date of this decision, there are 65 days remaining in the 120-day review period.

**5. PUBLIC NOTICE AND COMMENTS:** Prior to submittal of this subdivision application, the Applicant mailed a notification to the designated representatives of the Century West Neighborhood Association and to the surrounding property owners within 500 feet of the Subject Property, and held a virtual public meeting on August 23, 2022. Questions and concerns that were raised at the neighborhood public meeting were summarized by the Applicant and submitted to the City.

On January 12, 2023, the City sent notice of the Applicant's original proposal to all property owners of record and addresses for properties within 500 feet of the Subject Property, as well as the designated representative for the Century West Neighborhood Association. A "Notice of Proposed Development" sign was also posted on the Subject Property. On February 4, 2023, the City mailed a new notice of the Applicant's modified proposal to all property owners of record and addresses for properties within 500 feet of the subject site, as well as the designated representative for the Century West Neighborhood Association. A revised notice was also posted on the Subject Property. A number of responses were received into the record following mailing/posting of notice of the modified proposal. Staff, in the Updated Staff Recommendation, summarized many of the responses. The Hearings Officer addresses many of the public participant record comments, as well as testimony offered at the Initial Hearing and the Continued Hearing #2, in findings below.

## **B. PRELIMINARY FINDINGS**

### **1. Procedure: Conflict of Interest - Bias.**

Lee Husk ("Husk") (January 30, 2023 email) provided the following statements:

*"It's our understanding that it will be the same HO who has ruled on Bachelor View 1&2. If this is the case and Mr. Frank is deciding BVR 3, then we are making a formal request that he be removed and replaced by an objective hearings officer appointed by the city. After two decisions, one going against staff recommendations (BVR1) and another on the remand from LUBA, how can he be objective? He'll look at this application and apply the same reasoning, assuming all three developments by Mr. Kine have the same issues. We as a neighborhood believe this third application should have a fresh set of eyes."*

Husk testified at the February 2, 2023 public hearing ("Initial Hearing") and renewed his request that Greg Frank not act as the hearings officer for this case. The Hearings Officer agreed with Husk that he had heard and issued decisions in two prior land use application cases which were physically located either adjacent or close-by the Subject Property and the prior cases involved similar issues. The Hearings Officer acknowledged that he had approved the two prior applications (BV 1 and BV 2) and that both of those decisions were appealed to the Oregon Land Use Board of Appeals. The Hearings Officer acknowledged that both the BV 1 and BV 2 decisions were remanded by LUBA and that the Hearings Officer held "remand hearings" and issued decisions sustaining approval of the BV 1 and BV 2 applications.

The Hearings Officer announced, at the Initial Hearing and again at Continued Hearing #2, that he believed he had exercised independent and non-biased judgement in making the BV 1 and BV 2 land use decisions and that he would exercise independent and non-biased judgment in making a decision in this land use application case. The Hearings Officer acknowledged that he has a professional services contract with the City of Bend to conduct (including making decisions) for land use cases. The Hearings Officer acknowledged he has had prior contacts with virtually all persons/entities associated with this case (based upon their participation in the BV 1 and BV 2 land use cases). The Hearings Officer acknowledged that he had personal contact (telephone and email) with City Planner Henson related to scheduling and hearing logistics of this case. The Hearings Officer acknowledged that he has had prior land use contact with Applicant's attorney Chris Koback ("Koback") in prior City of Bend, Deschutes County and City of Portland hearings. The Hearings Officer stated, at the Initial Hearing, that he had no personal, financial, business or social relationship with any person or entity associated with this case. The Hearings Officer stated, at the Initial Hearing and Continued Hearing #2, that he believed he had no personal biases or conflicts of interest that would impact his ability to make an objective and lawful decision in this case. The Hearings Officer concluded that he would continue to act as the Hearings Officer in this case.

## **2. Procedure: Open Record Submission.**

Applicant requested, during oral testimony of Applicant's legal counsel (Koback) at the Continued Hearing #2, that the Hearings Officer keep the record open to allow for the submission of additional evidence and argument. The Hearings Officer, at the conclusion of the Continued Hearing #2, announced the following open record schedule:

- New evidence submitted by any interested person/entity by 4:00 pm on May 3, 2023 ("Initial Evidentiary Open-record Period"); and
- Evidence in response to evidence submitted during the Initial Evidentiary Open-record Period by 4:00 pm on May 10, 2023 ("Responsive Evidence Open-Record Period"); and
- Applicant's submittal of final arguments by 4:00 pm on May 17, 2023 ("Final Argument Period").

On May 8, 2023, Tim Phillips ("Phillips") submitted an email into the record, along with an attached letter from Martin Hansen ("Hansen") to Koback dated May 8, 2023 on behalf of legal clients Husk and Goodman. This submission was made during the Responsive Evidence Open-Record Period. The Hearings Officer explained the purpose of the Responsive Open-Record Period at the conclusion of the Continued Hearing #2. The Hearings Officer, during his final comments during the Continued Hearing #2, stated that the only evidence that was proper to submit during the Responsive Evidence Open-Record Period was evidence in response to evidence submitted during the Initial Evidence Open-record period.

Applicant (Koback, May 12, 2023, page 2), in its Final Argument Period submission, presented the following argument:

*"On May 8, 2023, after the initial seven-day period for participants to submit new evidence, Mr. Phillips submitted an email with an attached letter. That material is not permissible rebuttal and*

*must be stricken. The email related to a letter Mr. Phillip's attorney sent to counsel for the applicant addressing a private disagreement over easement rights. The only new evidence submitted during the initial seven-day period was a letter from the applicant with proposed conditions. As it relates to the private well and associated waterline easement, the applicant restricted its testimony to the fact that there are no code provisions that support staff's assertion that consent of private parties is required to relocate the water line. The applicant did not discuss private easement rights at all because private easement disputes are not relevant approval criteria. Mr. Phillips' email and the attached letter do not rebut the applicant's testimony that private easement rights are not approval criteria."*

It appears to the Hearings Officer that Applicant's (Koback, May 12, 2012, page 2) argument (quoted above) is that the Phillips submission would have been proper if submitted during the Initial Evidence Open-Record Period but not proper as a Responsive Evidence Open-Record Period submission. The Hearings Officer takes note of Applicant's May 3, 2023 Initial Evidence Open-Record Period document (page 3) which states, in part, the following:

*"Applicant Proposed Condition 22 addresses the private well issue. First, it removes staff's requirement that the applicant obtain authorization from the other owners of the well to relocate the existing water line running westerly."*

The Hearings Officer finds that Phillips' May 8, 2023 record submission addresses a private well and easement located on the Subject Property. The Hearings Officer finds that Phillips' May 8, 2023 record submission was responsive to Applicant's May 3, 2023 record submission. The Hearings Officer finds that Phillips' May 8, 2023 record submission is proper responsive evidence.

### **3. Master Planning Process.**

Arguments are contained in the record (See Andrew and Gabrielle West, January 25, 2023 email) that the application in this case was required to address the City master planning process. Staff responded (Addendum to Staff Recommendation, February 1, 2023) to the West master planning assertion. The Hearings Officer adopts as findings for this decision the Staff "Master Planning Process" statements contained in the Addendum to Staff Recommendation, February 1, 2023. The Hearings Officer finds the West assertion that the application in this case must address the City master planning process is not persuasive.

### **4. Middle Housing.**

Bill and Ann Lincoln ("Lincoln"), Jesse and Holly Rosenzweig ("Rosenzweig"), Diana Bonny ("Bonny"), Sarah Usher ("Usher"), Jeff Shafer ("Shafer"), William McCool ("McCool"), Christine Dreps ("Dreps") and Jerred Corbell ("Corbell") raised concerns about the potential impacts that middle housing could have on utilities such as water, sewer, park/open space and upon fire services. The Hearings Officer finds that the opponents noted above are generally referencing the Oregon legislative concept commonly called "middle housing." Opponents cited ORS 197.758 and portions of the BDC. Staff, in its City of Bend Planning Division Updated Staff Recommendation to

the Hearings Officer (“Updated Staff Recommendation”) and February 1, 2023 Addendum to Staff Recommendation (“Staff Addendum”) address the “middle housing” issue.

The Hearings Officer finds that the Oregon “middle housing” laws/regulations apply generally to this application. The Hearings Officer also finds that the City of Bend adopted new land use regulations related to “middle housing” that became effective on November 5, 2021. The BV 3 application that is subject to this decision was submitted to the City of Bend on September 8, 2022. Oregon “middle housing” laws/regulations and City of Bend code provisions were in effect on September 8, 2022 and apply to Applicant’s proposal.

The Hearings Officer notes that the Oregon Land Conservation and Development Department (“LCDC”) filed (effective date after the BV 3 application submitted) an amendment to OAR 660-046-0205 that relates to the Lincoln, et al concerns. OAR 660-046-0205 Rule 5 would be relevant if it had become effective prior to the date of this application. In summary, Rule 5 allows large cities (such as Bend) to assess public service needs of a proposed subdivision upon the number of lots/parcels proposed by an applicant. However, if additional lots/parcels/units are proposed in the future the governmental entity may “withhold issuance of building permits until the public facility deficiency is remediated.” The Hearings Officer interprets Rule 5 as allowing a governmental entity to assess public service needs upon the number of lots/parcels proposed in an application. While OAR 660-046-0205 Rule 5 is not absolutely controlling in this case the Hearings Officer finds it represents a reasonable approach that can be taken by City where the City has no directly relevant code or regulation.

The Hearings Officer believes that the City assessed public service needs (including water, sewer, park/open space and wildfire risks) upon the Applicant’s proposal for 44 lots (See, Updated Staff Recommendation findings for BDC 3.4.400 [pages 32 & 33] and the Staff Addendum [February 1, 2023, pages 2 & 3]).

The Hearings Officer believes the Applicant relies upon OAR 660-046-0205 Rule 5 as support for its position that public service needs for a proposed subdivision are to be measured against the number of lots proposed in an application (Koback, May 12, 2023, page 6). Applicant (Koback, May 12, 2023, page 6) also argues that “no opponent articulated how that theoretical density implicated any mandatory criterion for a tentative plan.” Applicant’s reference to “theoretical density” refers to the possible density that would result if “middle housing” duplexes, triplexes, quadplexes, cottage clusters or townhouses are proposed, in the future, for the BV 3 lots.

The Hearings Officer concurs with Applicant’s statement that no opponent clearly set forth a legal argument supporting the proposition that the City, in this case, must assess public facility needs based upon the theoretical maximum number of lots/parcels/units that could possibly be approved under relevant “middle housing” laws/regulations. The Hearings Officer, in opening comments to the Initial Hearing, stated that testimony and arguments must be directed towards relevant approval criteria and such arguments must be presented and supported with sufficient specificity as to allow case participants, including the Hearings Officer, to knowledgeably and authoritatively respond.

The Hearings Officer agrees with Lincoln, et al, that “middle housing” laws/regulations, in effect on the date the application in this case was submitted, are relevant. The Hearings Officer also agrees with Lincoln, et al, that generally the “middle housing” laws/regulations do allow, at the Subject Property location, more lots/parcels/units to be permitted than the 44 proposed by the Applicant. However, no participant (Lincoln, et al) provided the Hearings Officer specific legal authority, either Oregon statutory or regulatory or the City of Bend code or regulations that would require/mandate the Hearings Officer to consider more than the actual number of proposed lots/parcels/units when assessing public facility needs. The Hearings Officer finds that no participant making the “middle housing” argument identified credible and authoritative legal authority, with sufficient specificity, to allow the Hearings Officer to make a reasoned and authoritative determination.

In the alternative, the Hearings Officer finds that the City and Applicant both concluded that only the actual proposed number of lots for BV 3 must be considered when assessing public facility needs for this application. The Hearings Officer finds the City and Applicant’s approach (use the number of lots/parcels/units proposed by an applicant) is conceptually supported by OAR 660-046-0205 Rule 5. The Hearings Officer finds that in the event additional lots/parcels or units are proposed, in excess of the 44 lots in the BV 3 application, the City is obligated to assess public facility needs and capacity for the additional lots/parcels or units.

The Hearings Officer finds the City’s and Applicant’s “middle housing” approach (only consider the actual number of proposed lots) to public facilities needs and capacity is reasonable and appropriate. The Hearings Officer finds that the City’s and Applicant’s “middle housing” approach for BV 3 is consistent with the Hearings Officer’s approach in BV 1 and BV 2. The Hearings Officer also finds that the City’s and Applicant’s “middle housing” approach is consistent with a recent land use hearing officer’s decision on property adjacent to the Subject Property.<sup>1</sup>

The Hearings Officer finds that considering only the number of lots proposed by the Applicant, when assessing public facility needs and capacity, is legally supportable.

## **5. Private Roadway.**

The private road issue, in the opinion of the Hearings Officer, is most succinctly stated by Laird Goodman (“Goodman”) (January 22, 2023 email to Aaron Henson). In his email Goodman, in part, provided the following comment:

*“I would like it stated for the record that I have a private easement over Bachelor View Road, and I have no intention of giving it up, or having it illegally violated, or taken, by the City. City Code 4.3.400 F2(a) clearly states: ‘streets and roads for public use shall be dedicated to the public without any reservation or restriction.’ Bachelor View Rd is a private road and the City of Bend has already accepted a false dedication of part of Bachelor View Road when the Lodges at*

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<sup>1</sup> PLLD20220612 Subdivision application for the Lodges Bachelor View West. Hearings Officer findings for BDC 2.1.600 B... “*Testimony and written comments express concern that each proposed lot could be developed with up to a quadplex, but the applicant’s traffic study and water, sewer and utility capacity studies are based on a single-unit detached dwelling on each lot. While it is theoretically possible that some of the proposed lots could be developed with ADUs, duplexes, triples, townhomes, or quadplexes, those housing types are exempt from the City’s maximum density standards and, therefore, would not be counted in determining compliance with this standard.*”

*Bachelor View was dedicated without notice, or due process, to the owners of the easements. I consider this a dereliction of duty by the City of Bend and a violation of my property rights and I, along with my neighbors, will not allow this to occur again, nor should City officials."*

Similar statements are included in the record from Hinkle, Phillips, Weller, Mastalir, Hibble, Baird, Orman, Lilly, Oakey, Cammack, Preising, Bruce, Thompson, Wilhelm, Su, Wemberly, Bucholz, West, Rosenzweig, Bonny, Usher, Shafer, McCool, Drips, Corbell, Buettel, Robardey, Butler, Payne, and others. The BDC 4.3.400 F2 and private road easement issues raised by these opponents has been addressed by this Hearings Officer in decisions for BV 1 and BV 2 as well as the hearings officer in the PLLD20220612 Subdivision decision for the Lodges Bachelor View West.

It is clear to the Hearings Officer that a private roadway easement exists along most, if not all of Bachelor View Road. It is also clear to the Hearings Officer that most, if not all, of the current owners of properties along Bachelor View Road have no desire to release or otherwise give up their Bachelor View Road private roadway easement rights. It has been brought to the attention of the Hearings Officer that a number of the Bachelor View Road property owners have initiated a Deschutes County Circuit Court lawsuit related to the Bachelor View Road private roadway easement (Phillips email attachment, 2/27/2023). Many of the Bachelor View Road property owners contend that a public road dedication over the private roadway easement creates a "tort claim" (See Hinkle email, February 27, 2023) situation or may constitute an unlawful "taking" of property rights.

In the BV 2 decision this Hearings Office addressed the BDC 3.4.400 issue. In BV 2 this Hearings Officer concluded that BDC 3.4.400 is a "final plat" criterion and not a "preliminary plat" approval criterion. The Hearings Officer, in BV 2, concluded that BDC 3.4.400 was not a relevant approval criterion for a preliminary plat application decision. The Hearings Officer finds no argument in this case that counters the Hearings Officer's BV 2 conclusion that BDC 3.4.400 is related to "final plat" review and not to a "preliminary plat" review.

In this case the Hearings Officer was asked to consider a recent revision to BDC 3.4.400. The Hearings Officer finds that the revision to BDC 3.4.400 became effective after the application in this case was submitted. The Hearings Officer finds that even if BDC 3.4.400 was a relevant approval criterion for this case the current revision would not apply; rather, the version of BDC 3.4.400 in effect on the date of the application would need to be considered.

As alternative findings for the private road easement issue the Hearings Officer adopts as additional findings for the private roadway issue the following statements by Applicant (Koback, May 12, 2023, page 4):

*"There are two issues with the required dedication for public street improvements. First, opponents allude to a recent (March 2023 effective date) amendment to BDC 3.4.200 that purports to require that dedication be free of encumbrances and easements. It did not appear that staff was applying that to this application, however, the engineering department's comments are not entirely clear on that point. In any event, the law is clear. The same standard that applied in BV I and BV II apply to this application. ORS 227.178 provides that the city may*

*not apply the amendment from March 2023, that purports to require removal of encumbrances and easements. As with UICs, you included a condition requiring dedication for Bachelor View Road in BV I. The dedication had to be accomplished by the applicant recording a dedication deed before the Tier III infrastructure permit was issued. That same standard can be applied here. In BV II, you approved dedication that is subject to the same private access easement that was involved in the Lodges and BV I. There is no legal basis to deviate from those decisions. Again, staff did not submit rebuttal to the applicant's proposed condition allowing dedication through a deed at the time of the Tier III permit. Opponents cannot claim that an existing easement is a restriction or reservation on the dedication. Case law explains what constitutes a restriction or reservation on the dedication. Darling v. Christian, 166 Or 17 (1941). A restriction or reservation is when the dedicator attempts to limit the use of the dedication, not allowing full public use. The applicant has never proposed that. Moreover, applying the rules of construction to ORS 92.090(3) informs that the legislature intended to exclude private easements and encumbrances from the terms "restriction and reservation". ORS 92.090(3) provides that dedications on subdivision plats be free of restrictions or reservations but can be subject to reversionary rights and private easements. Clearly, the legislature differentiated between restriction/reservations and encumbrances/easements. If private easements were either a restriction or reservation on dedication, there would have been no need to separately address easements in ORS 92.090(3). The text would be surplusage."*

Finally, the Hearings Officer takes note that the Hearings Officer in the PLLD20220612 Subdivision application for the Lodges Bachelor View West provided comments related to the private roadway issue. The Hearings Officer, in PLLD20220612 Subdivision application for the Lodges Bachelor View West (pages 16 & 17), stated the following:

*"Public testimony and written comments contend that private easements over Bachelor View Road restrict the ability to dedicate the land to the city needed for the road. Arguments include that this dedication would result in an unlawful taking of property rights – the easement owners' rights in the recorded easements. The applicant contends, among other things, that the easement owners' rights remain intact regardless of the dedication because the easement owners retain the right of ingress and egress, the only difference will be that the access right will be in association with a public road. No easement rights are or can be terminated as a result of this decision and the dedication does not otherwise abrogate the rights conveyed by the easements. While the hearings officer is sensitive to the fact that the final decision here may implicate these private easement rights, the determination of whether the owner of the servient estate (the applicant/landowner here) is doing something that exceeds the scope of the dominant owners' (the easement owners) rights is beyond the hearings officer's authority. In other words, the hearings officer would not have the authority to deny the application based on finding that the street dedication is an unreasonable interference with the rights of easement owners. Nor does the hearings officer intend this decision to be any sort of adjudication of the rights of the owners of the dominant estate (the owners of the easement(s)). [footnote omitted] Rather, the hearings officer has no authority here other than to find that this criterion is met [3.1.200.D.3]."*

The Hearings Officer finds no relevant approval criteria that would give the Hearings Officer authority to deny a tentative plat/plan application on the basis that a proposed public right-of-way dedication overlaps a private roadway easement. The Hearings Officer concurs with the above-quoted LBWW hearings officer conclusion that it is inappropriate to make findings, in a land use case, as to the legal impacts of a public dedication of land for a public roadway upon a private road easement.

## **6. Private Well.**

Applicant provided the following description of a domestic water well and associated easement located within the perimeter of the Subject Property:

*“...the site has an existing well that is in a 20 x 20-foot parcel that was created in 1977 for a well site. That 20 x 20-foot parcel is not included in the subdivision, although the owner of the subject property owns at least a 2/8 interest in the well site. Exhibit 8 is a copy of that deed. There is an existing private easement for a water line that runs from the well site ‘westerly from such well for water service to other properties.’ The easement has no specific description and no diagram of the easement area. Exhibit 9 is a copy of the deed that created the easement.”*

Goodman, one of the co-owners of the domestic well site and a well line easement holder, submitted the following comments (Goodman, January 23, 2023 email):

*“I have a well located within the planned subdivision on property owned by myself and Dave Husk. This well, providing our family’s source of drinking water, has an easement associated with it. The developer(s), and their agents, have made no attempt in the planning or engineering phases to reach out to address or discuss the issues associated with mitigations (3) and (18) itemized in the attached Traffic Analysis Review (PRTFR202205653) prepared by Scott Ferguson. Perhaps this is not unusual, but for the record, and as stated in my previous email regarding my road easement, I have no intention of giving up this easement, or having it illegally violated, or taken, by the City.”*

Staff, in the Updated Staff Recommendation (page 27), addressed the private well and easement issue. Staff’s page 27 statement appears, to the Hearings Officer, to identify two separate issues. First, Staff expresses logistical issues (per code and regulations) related to the location/placement of the water lines servicing the residences. Second, Staff noted that the “pump owners have [not] granted permission to manipulate or alter the private facilities that provide water to their off-site residences.”

The Hearings Officer will address the code/regulation related logistical issues raised by Staff in relevant findings below. The Hearings Officer addresses the “permission” issue in these preliminary findings.

Two owners of the domestic water well site and associated transmission line easement stated they objected to any relocation of water lines (Hansen, May 8, 2023). Applicant appears to desire and/or need to relocate the private water transmission lines (Kine, April 28, 2023 email).

Similar to the private roadway easement findings set forth above the Hearings Officer finds it would be inappropriate to engage in private property rights disputes. The Hearings Officer finds the “relocation within an easement” of a water line is a private property right dispute.

## **7. Modification of Application.**

Applicant, prior to or contemporaneously with the Initial Hearing, submitted additional documentation that changed the number of lots and/or impacted phasing. Staff, at the Initial Hearing indicated that the Applicant’s proposed changes constituted a modification of application per BDC 4.1.445. Following Initial Hearing testimony/comments from Staff and Applicant (Koback) the Applicant agreed to request a continuance to allow for Staff and interested parties to consider the Applicant’s proposed changes to its application. Staff agreed to waive any application fees for Applicant’s submission of its modification of application. Applicant agreed to extend the 120-day time clock to reflect the additional time between the Initial Hearing and the Continued Hearing.

## **8. UICs.**

Applicant, in this case, proposed to utilize drywells (“UICs”) for stormwater purposes. Staff and numerous opponents objected to the use of UICs because of the close proximity of the proposed UICs to one or more domestic water well. The Hearings Officer takes note that the use of stormwater UICs, despite relatively close proximity to domestic water wells, was approved in adjacent and nearby tentative plat applications (BV 1, BV 2, LBVW and the Lodges at Bachelor View). Staff and opponents raised City Code, City Standards and Specifications, Central Oregon Stormwater Manual and Water Pollution Control Permit issues in support of their position in the prior cases and once again in this case.

Property owners in the vicinity of the Subject Property objected, in the prior cases, because they were generally concerned about stormwater contamination seeping/traveling from the dry wells (UICs) to domestic wells. In this case there is a domestic water well located within the perimeter boundaries of the Subject Property that serves at least two neighboring residences (Goodman and Husk).<sup>2</sup>

Staff, in the Updated Staff Recommendation (pages 13 – 16; findings for BDC 2.1.1100<sup>3</sup>), proffered arguments why the use of UICs in the current proposal should not be allowed. Staff stated (cited code/standards/COSM/WPCF sections omitted):

*“The above standard requires stormwater to be retained on the lot or parcel of origin. As shown on the submitted plans, the applicant proposes to install catch basins, sedimentation manholes, and drywells (UICs). However, the proposed subdivision is located within 500 feet of several existing well heads in the vicinity – including one well on a 400 square foot site located directly*

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<sup>2</sup> The domestic water well site referenced in this case is not part of the application for tentative plan approval. The site is a 20’ x 20’ parcel. The domestic water well site serves nearby properties with the conveyance lines being located within an easement over the Subject Property.

<sup>3</sup> BDC 2.1.1100 A. On-site surface water drainage, including roof drainage, must be retained on the lot or parcel of origin and not flow onto the public right-of-way or other private property.

adjacent to Street "A". According to comments from PDED, this prohibits the use of UICs per City of Bend standards and Central Oregon Stormwater Manual (COSM) requirements. Therefore, in order to meet this standard, all stormwater runoff must be captured and contained within swales that are designed and tested by a registered professional engineer in accordance with the COSM and City of Bend standards. This would require the proposed 44-lot subdivision to be redesigned. Therefore, the above standard is not met.

...citations omitted...

*Based on the above code references, any effort to install UICs within 500 feet of a domestic well or within the 2-year time of travel zone is out of conformance with City standards and the City's requirements under its WPCF permit with DEQ, issued May 14, 2013. Where there are existing UICs within these areas, additional safety measures are required for the City and DEQ reporting purposes. The applicant has pointed out that in some other areas of the City, UICs have been constructed within these non-conforming areas. The two main reasons why some UICs exist within 500 feet of a well or the 2-year time of travel zone are: 1) the UICs were constructed prior to the City's WPCF permit and related standards being in place, or 2) inadequate reporting of private domestic water systems by the developer's engineer in their required COSM reports, with the City not becoming aware of these private water systems until after the UICs were approved and constructed.*

*The City has been doing additional research on well locations over the last few years, and has created maps to identify these well locations to provide additional information to City reviewers. However, the maps are incomplete as the existing well located on Tax Lot 900 is not identified. Regardless, City staff relies on the developer's engineer to research and identify these wells per City and COSM requirements, otherwise they may be missed. That was the case with the original Lodges at Bachelor View subdivision, northeast of the subject site – the developer's engineer failed to identify existing wells located less than 500 feet from proposed UICs.*

*Engineering studies have been performed and submitted to the Oregon Department of Environmental Quality (DEQ) in the past, which show that Bend's aquifer is, in most areas, substantially deep enough that UICs are not adversely affecting domestic water supplies. However, the City's requirements and safety protocols still apply to protect the City and other private parties' domestic water systems. The standards are in place to provide future protection to drinking water by not adding additional UICs within these well protection zones, and in recognition that events such as spills or illicit discharges have the potential to adversely impact drinking water wells. The groundwater protection report referenced by the applicant is a Technical Memorandum from consulting firm GSI Water Solutions, Inc. dated 2011 (excerpt below). This report was conducted on behalf of the City to address DEQ's concerns of having existing UICs within a 2-year time of travel zone or within 500 feet of a domestic well system, and was not a study to justify or allow the installation of new UICs within a 2-year time of travel zone or within 500 feet of a well.*

*The UIC WPCF Municipal Stormwater Permit Template (June 2011) requires that UICs be constructed and operated in a manner that protects groundwater quality. Horizontal setbacks*

*between UICs and public water wells that are considered to be protective of groundwater are specified in the permit [template]. Specifically, the UIC WPCF Municipal Stormwater Permit Template requires that UICs be outside of the two-year Time-of-Travel and/or a 500 feet setback radius from private or public wells. The City has UICs that are either within the 500 feet setback distance to a water well and/or are within the two-year Time-of-Travel. As such, the City is required to retrofit the UICs, close the UICs, or show that the UICs are protective of groundwater under Schedule A.8 of the UIC WPCF Permit Template. (GSI Water Solutions, Inc, 4.0 Groundwater Protectiveness Demonstration for UICs within Water Well Setbacks)*

*The GSI Water Solutions groundwater protection report was not intended to contradict the requirements of the WPCF permit held by the City of Bend or to change the requirements of the City's policies or codes for the design and construction of new UICs. It was written to respond to DEQ's concerns with the City's older, non-conforming UICs and to meet the City's WPCF permit requirements."*

The Hearings Officer notes that Staff provided supplementary comments in its April 19, 2023 record submission. The Hearings Officer summarizes the Staff supplementary comments as being focused on City standards being more restrictive than State/DEQ standards and also that the 2011 Groundwater Protectiveness Study does not apply to chemical spills.

Applicant, in its final argument, provided lengthy comments in response to Staff's and opponents' concerns with Applicant's proposed inclusion of UICs. The Hearings Officer finds that Applicant's final argument comments comprehensively addressed each of the Staff's and opponents' UIC issues. The Hearings Officer sets forth the Applicant's UICs final argument comments below:

*"Although at the hearing staff appeared to be opposed to using UICs within the horizontal setback from private wells, it now appears staff agrees that the city standards allow the applicant to use them with the required demonstration of well protection. One of the original staff conditions (Staff Condition 12) expressly allow UICs in the proposed development. Staff did not request that you remove or modify that condition during the hearing or the open record period.*

*Indeed, there is ample support in the record for what appears to be staff's final position that UICs are allowed with the required demonstration. On two prior occasions, you agreed with the applicant that under the applicable DEQ regulations and the city's wastewater discharge permit, the city can allow the use of UICs within 500 feet of domestic wells if the applicant can demonstrate the level of protection set forth in the 2011 GIS Technical Memorandum. We provided the certification for that DEQ provided for making that demonstration. We provided the required certification from an engineer that follows closely to the DEQ required format. No participant has demonstrated any legitimate basis for you to deviate from those prior decisions.*

*In the initial staff report, staff asserted that approving UICs within the restricted area-500 feet from domestic wells-will violate its DEQ Water Pollution Control Facilities Permit (WPCFP"). That claim is simply not true. As we illustrated at the public hearing, the complete WPCFP is in the record. We attached to this argument a page from the permit that expressly allows the city to*

*approve UICs within the restricted area with a demonstration of well protection. The permit unequivocally provides:*

*c. New System within Horizontal Setbacks. You may construct and operate new injection systems inside a horizontal setback if you are able to provide a groundwater protectiveness demonstration for the new injection system.*

*Staff further claimed that the 2011 comprehensive study it paid for was only to assess the protection of existing UICs. The chronology of events proves that claim inaccurate.*

*The Central Oregon Stormwater Manual, to which staff cites for the statement that UICs in the 500-foot restricted area are not permitted, was adopted in 2010. The city completed its study through GIS in 2011. That study is in the record. The study is clear. It was to support the city's application for its permit that was ultimately issued in 2013.*

*The City has applied for a UIC Water Pollution Control Facilities (WPCF) permit with the Department of Environmental Quality (DEQ) and wants to use fate and transport modeling to proactively demonstrate ground water protectiveness of the City's UICs through the DEQ's risk evaluation process ... GIS Water Solutions, Inc. (GIS) developed a fate and transport model to support the City's application for an UIC WPCF permit and risk evaluation goals.*

*Without question, the GIS Memorandum was for the purpose of obtaining the WPCF permit that expressly allows the future use of UICs. It was not limited to evaluating existing UICs. As we noted, the city's permit in 2013, expressly allows it to approve and install new UICs within the restricted area. In 2016, in the Lodges, the city approved UICs within the restricted area.*

*To make sure we address all of the issues that were raised at the hearing, even though staff's position seems to have changed, at one point staff asserts that it should be able to apply a more restrictive standard now taking back the authorization for UICs in the restricted area that it previously applied. The applicant does not agree. ORS 92.097 is clear. When a city requires an applicant to construct public improvements, the applicant's engineer is allowed to design and oversee the construction of such facilities. The city may review plans and inspect the work to ensure compliance with the standards. The WPCF permit establishes the standard that applies to UICs whether the city is constructing them, or whether a private engineer under ORS 92.097 is engineering and overseeing the construction. The standard expressly allows new UICs. Furthermore, ORS 197.307 provides that the standards the city may consider in its review must be clear and objective. As we noted, the city's permit expressly allows an applicant's engineer to design UICs within the restricted area if there is a demonstration of well protection. Any attempt by staff to impress its subjective desire to not have UICs because it wants to be more restrictive cannot be invoked in a residential application."*

The Hearings Officer finds that many of the above-quoted Staff and Applicant issues and comments were raised, in some form, in BV 1 and BV 2 cases. The Hearings Officer finds that Applicant's above-quoted comments are credible and generally consistent with the Hearings Officer's findings in BV 1 and BV 2 decisions. The Hearings Officer is persuaded by Applicant's comments related to the WPCF permit allowing the use of UICs within 500 feet of a domestic well if an applicant

provides “a groundwater protectiveness demonstration” for the proposed UICs. The Hearings Officer does take note that the section of the WPCF relied upon by Applicant was also included in the supportive citations provided by Staff (Updated Staff Recommendation, page 15). The Hearings Officer finds that UICs can be approved for the Applicant’s tentative plan application in this case if a condition is included that requires a WPCF groundwater protectiveness demonstration is provided.

## **9. Wildfire.**

Fire safety issues related to specific relevant approval criteria will be addressed in findings below. However, the Hearings Officer takes note in these Preliminary Findings of one issue that was raised by a number of participants dealing with in-progress legislative/regulatory actions dealing with wildfire risks and the wilderness/urban interface. The Hearings Officer, based upon evidence in the record (i.e., Baird 4/25/2023 email, Cree 1/24/2023 email and Butler 2/2/2023 email), is aware of an Oregon effort to identify, catalog, analyze, report and perhaps create regulations related to wildfire risks. The Hearings Officer finds that there is no evidence in the record that Oregon or any jurisdiction, as of the date of the application in this case, had passed a wildfire related law or promulgated a regulation that would be a relevant approval criterion in this case.

## **10. Phasing.**

Staff (Updated Staff Recommendation, see Condition 30) recommended that the Hearings Officer adopt the following condition of approval:

*“30. Phase 3 of this subdivision must occur concurrently with, or after, the construction and dedication of Bachelor View Road associated with the Bachelor View 2 subdivision to provide public and emergency access to Street ‘C’.”*

The Applicant (Koback, May 12, 2023, page 5) *“proposed a condition that requires the city to allow the recording of the final plat for Phases 1 and 2, upon the submission of the engineered plans for improvements and upon provision of financial security for the completion of the improvements.”* Applicant noted (Koback, May 12, 2023, page 6) that *“staff had the opportunity to oppose this condition during the rebuttal period but did not oppose the applicant’s proposed condition allowing the use of financial security, thus the City must agree with the condition.”*

The Hearings Officer reviewed carefully ORS 92.090 and BDC 4.3.400 J (citations made by Koback, May 12, 2023). The Hearings Officer agrees with Applicant that granting the City unfettered discretion to determine whether or not to allow financial assurances (bond) would be violative of ORS 197.307 (middle housing statute). However, the Hearings Officer’s decision in this case is simply that Staff did not disagree with Applicant’s proposed condition allowing the use of financial assurances (bonds) to satisfy BDC 4.3.400 J and therefore Staff concurred with Applicant’s proposed condition (Koback, May 3, 2023, Condition 6). The Hearings Officer finds no participant offered any substantial evidence or credible/persuasive evidence related to the use of financial assurances (bonds) as proposed by Applicant in Condition 6.

#### IV. APPLICATION OF THE CRITERIA:

##### Conformance with the Bend Development Code

###### Chapter 4.3 Land Divisions and Property Line Adjustments

###### 4.3.300 Tentative Plan.

**E. Criteria for Subdivision, Partition or Replat Approval.** The Review Authority shall not approve a tentative plan for a proposed subdivision, partition or replat unless the Review Authority finds that the subdivision, partition or replat will satisfy the following criteria of approval:

1. The proposal provides for the preservation of natural features and resources such as streams, lakes, natural vegetation, special terrain features, and other natural and historic resources to the maximum degree practicable.

**FINDING:** The Subject Property does not have any inventoried natural features, special terrain, or historic resources that necessitate preservation to comply with local, state, or federal laws.

The Subject Property does contain varied topography and significant trees (6" dbh or greater for deciduous trees and 10" dbh or greater for coniferous trees). BDC 3.2.200(D) states that significant trees shall be retained unless approved by the City to be removed for development, and that preservation shall be considered impracticable when it would prevent development of public streets, public utilities, needed housing or land uses permitted by the applicable land use district. As shown on the submitted Grading/Tree Plan, there are some significant trees on the Subject Property, many of which must be removed in order to accommodate public streets, utilities, and needed housing. Existing trees will be retained to the extent practicable as part of development of the lots and public infrastructure. The Hearings Officer finds this criterion can be met.

2. The proposal allows for the development of adjacent property in accordance with the provisions of this code.

**FINDING:** Applicant (Koback, February 1, 2023, page 3) noted that in this Hearings Officer's BV 1 decision this Hearings Officer found that this BDC 4.3.300 E.(2) did not contain clear and objective standards and therefore, under ORS 197.307, the Hearings Officer cannot use BDC 4.3.300 E.(2) as a basis for denial of a subdivision application.<sup>4</sup> The Hearings Officer finds no participant in this case provided any argument or evidence disputing this Hearings Officer's BV 1 interpretation of BDC 4.3.300 E.(2). Therefore, the Hearings Officer finds that BDC 4.3.300 E.(2) cannot be considered a basis of denial in this case.

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<sup>4</sup> Hearings Officer finding in BV 1: "LUBA, in *Knoell v. City of Bend*, LUBA No. 2021-037, 2021, considered the term 'allows' as it is used in BDC 4.3.300 E.2. LUBA, in *Knoell*, considered the term 'allows' in isolation and concluded that it 'is unclear and ambiguous because it is subject to multiple interpretations.' LUBA also considered the term 'allows' in the context of the purpose of BDC 4.3. LUBA concluded that the purpose statement for BDC 4.3 did not clarify the meaning of 'allows' and that such term ('allows') permitted the City to 'exercise significant discretion in choosing which interpretation it prefers to serve one or more unstated purpose.'"

3. The proposal meets all standards and requirements of this Code.

**Chapter 2.1 Residential Districts.**

**2.1.200 Permitted and Conditional Uses.**

**A. Permitted Uses.** *The land uses listed in Table 2.1.200 are permitted in the Residential Districts, subject to the provisions of this chapter. Only land uses that are specifically listed in Table 2.1.200, land uses that are incidental and subordinate to a permitted use and land uses that are approved as “similar” to those in Table 2.1.200 may be permitted. The land uses identified with a “C” in Table 2.1.200 require conditional use permit approval prior to development, in accordance with BDC Chapter 4.4, Conditional Use Permits.*

**FINDING:** The Hearings Officer incorporates as additional findings for this criterion the Preliminary Findings for Middle Housing (Section IV.B.4.).

The Applicant is proposing 44 small to moderate-sized residential lots, ranging from approximately 4,108 to 9,032 square feet in size, in three phases, to be developed with uses permitted in the RS zone. A variety of residential uses are permitted outright in the RS zone on lots in this size range, but the application only proposes and the analyses performed by the City only reviewed the construction of single-unit detached dwellings on each lot. The Hearings Officer finds public improvement analyses are properly based solely upon the number of lots/units proposed by the Applicant.

**2.1.300 Setbacks.**

**B. Setback Standards.** *The following setback standards apply to all structures, except as otherwise provided by this section or specified in this code. See also special setbacks permitted in BDC 3.6.200, Special Standards for Residential Uses, and BDC Chapter 3.8, Development Alternatives.*

**C. Front Setbacks.**

- 2. RS, RM-10, RM, and RH Districts.** *The minimum front setback is 10 feet. Garages and carports must be accessed from alleys where practical, otherwise garages and carports with street access must be set back a minimum of 20 feet from the front property line. In this instance, the term “practical” means that there is an existing or platted alley that could be used in its current condition or improved to provide access.*
- 3. Where streets with insufficient right-of-way abut the site, special setbacks apply in conformance with BDC 3.4.200(J), Special Setbacks.**

**D. Rear Setbacks.**

- 2. RS, RM-10, RM and RH Districts.** *The minimum rear setback is five feet. When multi-unit residential or nonresidential uses abut a single-unit dwelling in the RS District, the rear*

***setback abutting the RS District must increase one-half foot for each foot by which the building height exceeds 20 feet.***

**E. Side Setbacks.**

**2. RS, RM-10, RM and RH Districts. The minimum side setback is five feet. When multi-unit residential or nonresidential uses abut a single-unit detached dwelling in the RS District, the side setback abutting the RS District must increase one-half foot for each foot by which the building height exceeds 20 feet.**

**FINDING:** The Subject Property is currently vacant. No structures are proposed at this time. The Hearings Officer finds that the proposed lots are of sufficient size and shape to accommodate residential development in compliance with the required yards and setbacks. Setbacks for new dwellings will be reviewed with the building permit application for each structure. The Applicant's proposal in this case does not include multi-unit residential or nonresidential uses. Therefore, the Hearings Officer finds that the setback standards listed above can be met.

**2.1.500 Lot Area and Dimensions.**

***Lot areas and lot dimension standards for residential uses are listed in Table 2.1.500. For other residential uses listed in Table 2.1.200, the lot area and dimensions are subject to the type of residential structure being occupied. Lot development must be in conformance with BDC 2.1.600, Residential Density. Lot area and dimensions exceptions for affordable housing, see BDC 3.6.200(C).***

**Table 2.1.500**  
**Lot Areas and Dimensions in the Residential Districts by Housing Type and Zone**

<b>Residential Use</b>	<b>Zone</b>	<b>Minimum Lot Area</b>	<b>Minimum Lot Width/Depth</b>	<b>Exceptions</b>
<i>Single-Unit Detached Dwelling; Manufactured Homes on Lots (See BDC 3.6.200(E));</i>	RS	4,000 sq. ft.	<i>Width: 40 ft. at front property line</i>  <i>Depth: 50 ft.</i>	<i>Bulb of a cul-de-sac minimum width: 30 ft. min. at the front property line except for townhomes and flag lots</i>
<i>Duplex, Triplex, and Quadplex. See BDC 3.6.200(H)</i>	RS	<i>Duplex: 4,000 sq. ft.</i>  <i>Triplex: 4,000 sq. ft.</i>  <i>Quadplex: 4,000 sq. ft.</i>	<i>Width: 40 ft. at front property line</i>  <i>Depth: 50 ft.</i>	<i>Except for townhomes, corner lots or parcels must be at least five feet more in width than the minimum lot width required in the zone</i>
<i>Townhomes</i>	RS	<i>Average minimum lot</i>	<i>Width: 20 ft. at front</i>	

<b>Residential Use</b>	<b>Zone</b>	<b>Minimum Lot Area</b>	<b>Minimum Lot Width/Depth</b>	<b>Exceptions</b>
See BDC 3.6.200(D)		or parcel size: 1,500 sq. ft. for each unit	property line Depth: 50 ft.	

**FINDING:** Staff, in the Updated Staff Recommendation (page 11), stated the following:

*"All of the proposed lots exceed 4,000 square feet. Lots 1, 5, 11, 12, 15, 16, 19, 25, 26, 35, 37, and 44 are all corner lots. In the original Staff Recommendation to the Hearings Officer, Staff pointed out that each of these lots has a minimum lot width that exceeds 45 feet (at least 5 feet more than the minimum 40-foot width) except for Lot 25, which only has 41.3 feet of frontage on Street 'C', and Lot 44, which only has 20 feet of frontage on Street 'A'. In Exhibit 4, the applicant's engineer states that these two lots are "irregular," and explains that they comply with the applicable standards based on the definitions of **lot depth** and **lot width** in BDC Chapter 1.2:*

**Lot depth** means the horizontal distance between the front and the rear lot or parcel lines. In the case of a corner lot the depth shall be the length of the longest front lot or parcel line.

**Lot width** means the average distance between the side property lines (the two property lines most perpendicular to the front property line). In the case of corner lots that include two or more front property lines, "lot width" shall mean the average distance between the longest front property line and the farthest opposite property line. In the case of irregularly shaped lots or parcels having four or more sides, "average lot width" is the sum of the shortest and longest property lines divided by two.

*Lot 25 fronts Street 'C' for a distance of 41.3 feet and Bachelor View Road for 113.66 feet, the longest front property line. The sum of the shortest and longest property lines is  $41.3 + 66.1 = 107.4$ , divided by 2 results in a width of 53.7 feet, in compliance with this section. Lot 44 fronts Street 'A' for a distance of 20 feet and Bachelor View Road 174.1 feet, the longest front property line. The sum of the shortest and longest property lines is  $20.0 + 174.1 = 194.1$ , divided by 2 results in a width of 97.5 feet, in compliance with this section. Staff accepts the applicant's reading of the City's minimum width requirements for corner lots intended for development with single-unit detached dwellings. Therefore, this standard is met."*

The Hearings Officer finds no participant in this case provided substantial evidence or argument disputing the Staff quoted comments above. The Hearings Officer adopts the above-quoted Updated Staff Recommendation comments as the Hearings Officer's findings for this criterion. The Hearings Officer finds this standard is met.

## **2.1.600      Residential Density.**

### **A. Residential Density Standard. The following density standards apply to all new development in all of the Residential Districts, except as specified in subsection B of this section. The density**

standards shown in Table 2.1.600 are intended to ensure efficient use of buildable lands and provide for a range of needed housing, in conformance with the Bend Comprehensive Plan.

**Table 2.1.600. Residential Densities**

Residential Zone	Density Range
Standard Density Residential (RS)	4.0 - 7.3 units/gross acre

**B. Exemptions.**

2. The following are exempt from the maximum density standards in subsection (A) of this section:
  - a. Accessory dwelling units (ADUs).
  - b. Manufactured home parks within the RS Zone; provided, that the standards of BDC 3.6.200(G) are met.
  - c. Duplexes, triplexes, quadplexes, townhomes and cottage cluster developments.
  - d. Multi-unit affordable dwellings. See BDC 3.6.200(C).

**C. Density Calculation.**

1. Maximum housing densities are calculated as follows:
  - a. The area subject to maximum housing density is the total site area excluding any land to be developed with or dedicated for neighborhood commercial uses, public and institutional uses, and miscellaneous uses that do not include a dwelling unit.
  - b. The area for future streets is included in the area subject to maximum housing density.
  - c. Where existing streets abut the proposed development site, the area of up to 30 feet of the abutting street width multiplied by the site frontage shall be added to the area subject to maximum housing density.
  - d. Sensitive lands, fire breaks, and canals and their associated easements on the site are included in the area subject to maximum housing density.
  - e. For purposes of calculating maximum density, fractional units are rounded down to the next whole unit.
  - f. As an illustrative example, if the total site area is five acres, of which a half-acre is sensitive lands, and another acre will be developed with neighborhood commercial uses, and new streets will be created, the area subject to maximum housing density is four acres (total site area minus one acre of neighborhood commercial uses, but including the

*sensitive lands). If the maximum allowable density is 7.3 dwelling units per acre, then a maximum number of 29 units is allowed on the site.*

**2. Minimum housing densities are calculated as follows:**

- a. The area subject to minimum housing density is the total site area excluding any land to be developed with or dedicated for neighborhood commercial uses, public and institutional uses, and miscellaneous uses that do not include a dwelling unit; sensitive lands; fire breaks; and canals and their associated easements.*
- b. The area for future streets is included in the area subject to minimum housing density.*
- c. For purposes of calculating minimum density, fractional units are rounded up to the next whole unit.*
- d. As an illustrative example, if the total site area is five acres, of which a half-acre is sensitive lands, and another acre will be developed with neighborhood commercial uses, and new streets will be created, the area subject to minimum housing density is three and one-half acres (total site area minus one acre of neighborhood commercial uses, minus a half-acre of sensitive lands). If the minimum density is 4.0 dwelling units per acre, then a minimum number of 14 units is required on the site.*

**FINDING:** The Hearings Officer adopts as additional findings for these criteria the Preliminary Findings for Middle Housing (Section IV.B.4).

The 8.24-acre Subject Property is zoned RS, consistent with its Residential Standard Density Comprehensive Plan designation. New streets will be created, so they are included in the total site area for density calculation purposes per the density calculation methodology in BDC 2.1.600(C). Therefore, the maximum site density is 60 dwelling units ( $8.24 \times 7.3 = 60.15$ , rounded down) and the minimum site density is 33 units ( $8.24 \times 4.0 = 32.96$ , rounded up). The Tentative Plan shows 44 lots – a density of 5.3 dwelling units per acre if each lot is developed with a single-unit detached dwelling. Therefore, the Hearings Officer finds that these criteria are met.

Several neighbors noted that each proposed lot can be developed with up to a quadplex, and that the Applicant's traffic study and the water, sewer, and utility capacity studies are based on a single-unit detached dwelling on each lot and fail to take this permitted higher density into account. While it is theoretically possible that the proposed lots could be developed with ADUs, duplexes, triplexes, townhomes, or quadplexes, those housing types are exempt from the City's maximum density standards and, therefore, would not be counted in determining compliance with this standard. The Hearings Officer finds that the number of lots/units proposed by Applicant is relevant to determining if these criteria are met.

**2.1.1100      *Other Design Standards.***

**A. On-site surface water drainage, including roof drainage, must be retained on the lot or parcel of origin and not flow onto the public right-of-way or other private property.**

**FINDING:** The Hearings Officer adopts as additional findings for this criterion the Preliminary Findings for UICs (Section IV.B.8.). In the Preliminary Findings for UICs the Hearings Officer concluded that UICs may be allowed as part of the Applicant's tentative plan proposal with a condition that required an engineer's certification of groundwater protectiveness. The Hearings Officer finds that the use of UICs by Applicant, in this application, will retain surface water and roof drainage on each lot/parcel of origin.

### ***Chapter 3.1 Lot, Parcel and Block Design, Access and Circulation***

#### ***3.1.200 Lot, Parcel and Block Design.***

##### ***C. General Requirements for Lots and Parcels.***

- 1. Depth and width of new lots or parcels shall meet the minimum standards specified for the zoning district. Where no minimum standards are specified, the depth and width must be adequate to provide for the off-street service and parking facilities required by the type of use and development contemplated.***

**FINDING:** Based on the submitted plans, the Hearings Officer finds that the proposed lots meet the minimum standards for lot depth and lot width for the RS zone.

- 2. On steep slopes, increased lot or parcel sizes may be required to avoid excessive cuts, fills and steep driveways.***

**FINDING:** The topography of the proposed subdivision is moderately sloping, and the proposed grading is necessary to create a project that meets density and access standards. The Subject Property does not appear to contain steep slopes as defined in BDC Chapter 1.2, and increased lot sizes are not required to avoid excessive cuts, fills, or steep driveways.

- 3. On tracts containing watercourses or rock outcroppings, increased lot or parcel sizes may be required to allow adequate room for development and protection of the topographic or natural feature.***

**FINDING:** The Subject Property does not contain any watercourses or significant rock outcroppings. Therefore, increased lot sizes are not required to allow adequate room for development and protection of significant topographic or natural features.

- 5. All side lot or parcel lines shall be at right angles to the street lines or radial to curved streets for at least one-half the lot or parcel depth wherever practical.***

**FINDING:** The side lot lines of the proposed lots are generally perpendicular to the straight street lines or radial to the curved street lines, wherever practical.

6. *Corner lots or parcels shall be at least five feet more in width than the minimum lot width required in the zone, except for townhomes.*

**FINDING:** As previously noted in other findings, all corner lots will comply with this standard.

7. *All permanent utility service to lots or parcels shall be provided from underground facilities. The developer shall be responsible for complying with requirements of this section, and shall:*
  - a. *Make all necessary arrangements with the utility companies and other persons or corporations affected by the installation of such underground utilities and facilities in accordance with rules and regulations of the Public Utility Commission of the State of Oregon.*
  - b. *All underground utilities and public facilities installed in streets shall be constructed prior to the surfacing of such streets.*

**FINDING:** As shown in the submitted plans, the Applicant will provide underground utilities to serve the development prior to paving the proposed streets. The Applicant has also provided "will serve" letters from utility providers, stating their willingness to serve the property.

**D. Street Connectivity and Formation of Blocks.** *To promote efficient multi-modal circulation along parallel and connecting streets throughout the City, developments shall produce complete blocks bounded by a connecting network of streets, in accordance with the following standards:*

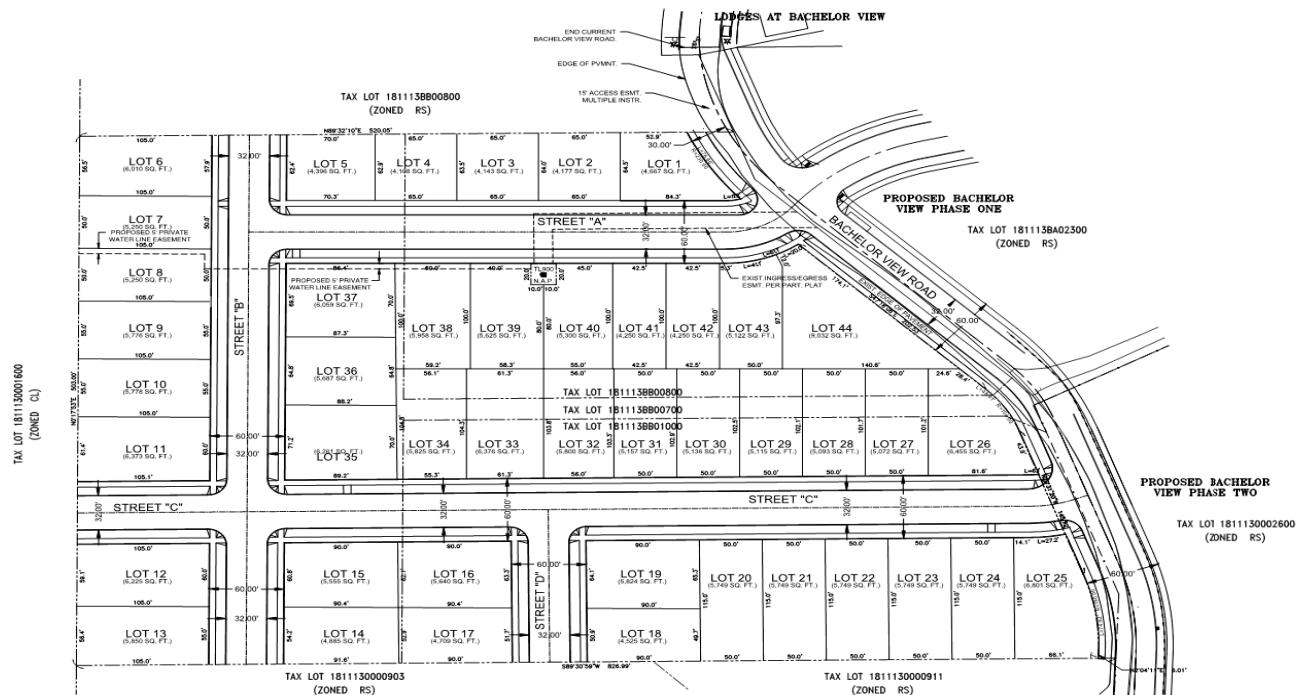
1. *New development shall construct and extend planned streets (arterials, collectors and locals) in their proper projection to create continuous through streets and provide the desirable pattern of orderly developed streets and blocks. Streets shall be developed within a framework that is established in the Bend Urban Area Transportation System Plan and any applicable Special Planned District, Refinement Plan, Area Plan or Master Plan or other adopted or approved development plan. Where such plans do not provide specific block length and perimeter standards, the requirements listed below shall apply:*
2. *Block lengths and perimeters shall not exceed the following standards as measured from centerline to centerline of through intersecting streets.*
  - a. *Six hundred sixty feet block length and 2,000 feet block perimeter in all Residential Zones;*
  - d. *An exception may be granted to the maximum block length and/or block perimeter by the Review Authority if the applicant can demonstrate that the block length and/or block perimeter cannot be satisfied due to topography, natural features, existing development or other barriers, or it is unreasonable to meet such standards based on the existing pattern of development, or other relevant factors. When an exception is granted, the Review Authority may require the land division or site plan to provide blocks divided by one or more access corridors in conformance with the provisions of BDC 3.1.300, Multi-Modal Access and Circulation. Access corridors shall be located to minimize out-of-*

***direction travel by pedestrians and bicyclists and shall meet all applicable accessibility standards.***

**FINDING:** The proposed subdivision provides connectivity through the only means available, Bachelor View Road, which extends to the Subject Property from Century Drive to the north where it borders the east side of the Subject Property. Bachelor View Road, adjacent to the Subject Property, is currently a private road. The proposed subdivision allows for the expansion of and improvements to the public right of way planned for Bachelor View Road in conjunction with two proposed subdivisions on the abutting properties to the east: BV 1 and BV 2.

As shown on the Tentative Plan, Applicant's subdivision plan proposes an east-west street near the southern end of the development (Street "C") that will extend from Bachelor View Road to the western boundary of the development, creating a block with the northernmost east-west street (Street "A") and Bachelor View Road and the westernmost north-south street proposed within the subdivision (Street "B"). This block surrounds Lots 26 through 44. A block is defined in the development code to be a parcel of land or group of lots bounded by intersecting streets. The block that includes the group of lots numbered 26 through 44 is not regular in shape. The distance along the northern street, Street "A", is approximately 437 feet, under the 600-foot standard. However, the distance along the southern east-west oriented street (Street "C") where it intersects with Street "B" is approximately 670 feet. This is due to the historic location of Bachelor View Road that bends to the east at that point. The proposed block perimeter is approximately 1,750 feet, which complies with the 2,000-foot standard. In this context, the Applicant asserts that an average length is appropriate to use, and the average lengths of Streets "A" and "B" are approximately 553 feet, which complies with the 600-foot standard.

### Tentative Plan for Bachelor View 3



Alternatively, the Applicant asserts that this situation warrants an exception to the maximum residential block length requirement for Street "C." Given the irregular shape of the block, Staff concluded (Updated Staff Recommendation, page 19) that allowing a layout where the average length of the north and south blocks is under 600 feet is acceptable. The Hearings Officer concurs with the Applicant's explanation and Staff's conclusion related to these approval criteria.

**3. *New street connections to arterials and collectors shall be governed by BDC 3.1.400, Vehicular Access Management.***

**FINDING:** No new street connections to arterials or collectors are proposed.

**4. *Except as otherwise provided in an approved Master Planned Development, private streets, where allowed by this code, shall be constructed to public standards and shall contain a public access easement along the length and width of the private facility if required to satisfy the block length and perimeter standards.***

**FINDING:** The proposed subdivision does not propose any new private streets. Therefore, the above criteria are not applicable.

**E. *New Lot and Parcel Access. In order to protect the operations and safety of arterial and collector roadways, access management is required during lot and parcel development. New lots and parcels created through land division that have frontage onto an arterial or collector street shall provide alternative options for access as indicated below...***

**FINDING:** This criterion is not applicable as no lots front an arterial or collector street.

**3.1.300            *Multi-Modal Access and Circulation.***

**A. *Purpose. The purpose of this section is to ensure safe, accessible, direct and convenient multi-modal circulation by developing an on-street and off-street system of access corridors and public sidewalks throughout the City.***

**B. *On-Site Pedestrian Facilities. For all developments except single-unit detached, manufactured dwellings, accessory dwelling units, townhomes, duplexes, triplexes, quadplexes, and shared courts, pedestrian access and connectivity shall meet the following standards...***

**FINDING:** The Applicant's proposed subdivision will create individual lots for single-unit detached dwellings. Therefore, the standards in BDC 3.1.300(B) do not apply. However, the Applicant's proposed tentative plan shows sidewalks on both sides of the new internal streets, and a sidewalk along the Applicant's frontage on Bachelor View Road. Therefore, the Hearings Officer finds these criteria are met.

**C. *Off-Site Multi-Modal Facilities.***

**1. *Developments subject to development and having an access corridor alignment shown on the***

***City of Bend Urban Area Bicycle and Pedestrian System Plan shall dedicate either right-of way or an access easement to the public for a primary or connector multi-use as outlined below.***

- a. Primary multi-use paths shall be in the alignment shown on the City of Bend Urban Area Bicycle and Pedestrian System Plan to the greatest degree practical unless, with consideration of recommendations from the Bend Park and Recreation District, an alternate alignment is approved by the City through the development review process.***
- b. Connector multi-use paths may be required for pedestrians and bicycles at or near mid-block where the block length exceeds the maximum length required by BDC 3.1.200, Lot, Parcel and Block Design. Connector multi-use paths may also be required where cul-de-sacs or dead-end streets are permitted, to connect to other streets, and/or to other developments.***
- c. Primary and Connector Multi-Use Path Dedication and Construction. Primary and Connector multi-use path alignments shall be dedicated and constructed in accordance with the City's Design Standards and Construction Specifications.***

**FINDING:** The Bend Urban Area Primary Multi-Use Trail System does not show any existing or planned trails in the vicinity of this subdivision. Therefore, this section is not applicable.

**3.1.400        Vehicular Access Management.**

- C. Approval of Access Required. Proposals for new access shall comply with the following procedures:***
  - 1. Permission to access City streets shall be subject to review and approval by the City based on the standards contained in this chapter and the provisions of BDC Chapter 3.4, Public Improvement Standards. Access will be evaluated and determined as a component of the development review process.***
- FINDING:* The Applicant proposed access from all lots onto public streets. As detailed in findings below, access has been designed in conformance with BDC Chapter 3.4.**
- D. Traffic Study Requirements. A transportation impact analysis (TIA) may be required under BDC Chapter 4.7, Transportation Analysis, for certain types and intensities of development proposals and to determine access restrictions of driveways onto arterial and collector roadways.***

**FINDING:** The Applicant submitted a Transportation Facilities Report ("TFR") prepared by Ferguson & Associates, Inc. in accordance with BDC Chapter 4.7.

***F. Access Management Requirements. Access to the street system must meet the following standards:***

- 1. Lots and parcels in all zones and all uses may have one access point, except***

*as authorized in BDC 3.1.400(F)(4). When a property has more than one permitted street access, the City Engineer may require existing accesses to be closed and replaced with curbing, sidewalks/pathways, and landscaping, in accordance with the provisions of this code and the City standards and specifications.*

- 2. If a lot or parcel has frontage on two or more streets of different street classifications, the property shall access the street with the lowest classification.*

**FINDING:** As shown on the submitted plans, no lots are proposed with double frontage, and all lots will have only one access point. Any sidewalk ramps and proposed driveway aprons along the property frontage will be in conformance with current City and Public Rights-of-Way Accessibility Guidelines (PROWAG) standards. The Hearings Officer finds these criteria are met.

- 3. For lots or parcels abutting an alley, access may be required to be taken from the alley. Outside of the Downtown Wall Street/Bond Street couplet, the City may determine that an alley is not an adequate roadway for primary access if both of the following criteria are met:  
a. The alley does not provide adequate or sufficient access to the proposed development; and  
b. Access to the higher classification roadway will be safe.*

**FINDING:** None of the proposed lots abut any existing alleys, and no new alleys are proposed.

- 4. Additional Access Points...*

**FINDING:** Each lot is planned to have only one access point.

- 5. Access Spacing Requirements. The maximum distance achievable between two driveways or a driveway and an intersection shall be provided. Access spacing shall accommodate City of Bend Standards and Specifications for curb reveal between driveway apron wings.*

**FINDING:** Final driveway locations and spacing will be reviewed with the future infrastructure plans and building permit applications for development of each lot.

- 6. Access Operations Requirements. Backing from an access onto a public street shall not be permitted except for single-unit, duplex, triplex or quadplex dwellings backing onto a local street or for any use when backing into an alley if adequate backing distance is provided. The design of driveways and on-site maneuvering and loading areas shall include the anticipated storage length for entering and exiting vehicles, in order to prevent vehicles from backing into the flow of traffic on the public street or causing unsafe conflicts with on-site circulation.*
- 7. Driveways shall be designed and located to provide a vehicle in the driveway with an unobstructed view of the roadway for a sufficient distance as required by City Standards and Specifications or the American Association of State Highway and Transportation Officials (AASHTO) policy on intersection sight distance requirements as determined by the City.*

**8. Driveway widths, designs, and materials shall comply with City of Bend Standards and Specifications.**

**FINDING:** Driveway locations, designs, and spacing will be reviewed with the future infrastructure plans and building permit applications for development of each lot. The applicable standards are, or can be, met.

**I. Fire Access and Parking Area Turn-around.** *A fire equipment access drive shall be provided for any portion of an exterior wall of the first story of a building that is located more than 150 feet from an existing public street or approved fire equipment access drive as measured around the building. Parking areas shall provide adequate aisles or turn-around areas for service and delivery vehicles so that all vehicles may enter the street in a forward manner (except for single-family dwellings and alleys that provide adequate backing width).*

**FINDING:** The Subject Property does not currently abut any public right of way. As proposed, the BV 3 subdivision will not have adequate public or emergency access from Bachelor View Road without construction of the BV 1 subdivision and its required public street improvements to the east. This standard cannot be met for BV 3 without reliance on other projects occurring first and making required improvements to Bachelor View Road. Therefore, compliance with Fire Code requirements will be further reviewed through the Private Development Engineering Division's infrastructure plan review process.

**L. Construction.** *The following development and maintenance standards shall apply to all driveways and private streets. The City of Bend Standards and Specifications document shall prevail in the case of conflicting rules related to the design and construction of public infrastructure.*

- 1. Surface Options.** *Driveways, required parking areas, aisles, and turn-arounds may be paved with asphalt, concrete or comparable surfacing or a durable nonpaving material (e.g., grass-crete, eco-stone) may be used to reduce surface water runoff and to protect water and air quality. Gravel is not allowed.*
- 2. Surface Water Management.** *When an impervious surface is used, all driveways, parking areas, aisles and turn-arounds shall have on-site collection or infiltration of surface waters to prevent the flow of stormwater onto public rights-of-way and abutting property. Surface water facilities shall be constructed in conformance with City specifications. Durable nonpaving materials (e.g., grass-crete, eco-stone) are encouraged to facilitate on-site infiltration of stormwater.*

**FINDING:** The Hearings Officer incorporates as additional findings for these criteria the Preliminary Findings for UICs (Section IV.B.8.). As previously discussed, the proposed lots can meet all applicable driveway criteria. The final design, layout, and driveway configurations are not required at this time.

As shown on the submitted plans, the Applicant proposes to install stormwater catch basins, sedimentation manholes, and drywells (UICs) to capture and treat stormwater. The Hearings Officer finds these criteria can be met.

**3.1.500        Clear Vision Areas.**

**A. Purpose.** *Clear vision areas are established to ensure that obstructions do not infringe on the sight lines needed by motorists, pedestrians, bicyclists and others approaching potential conflict points at intersections.*

**FINDING:** The submitted Tentative Plan does not show clear vision triangles at intersections. The Applicant has indicated that no prohibited obstructions are planned within the clear vision triangles. Staff, in the Updated Staff Recommendation (page 22), recommended the following condition of approval be added if Applicant's proposal is approved. The Hearings Officer finds that Staff's recommended condition, as set forth below, is necessary to assure the City's clear vision standards are met. If conditioned as recommended below, the City's clear vision standards can be met. The Hearings Officer finds that with Staff's recommended condition this criterion can be met.

**Recommended Condition of Approval:** *All required clear vision areas must be shown on the final plan set. All landscaping and site improvements must comply with the clear vision requirements of BDC 3.1.500 and City of Bend Standards and Specifications Drawing R-2. There must be no fence, wall, parking, landscaping, structure, or any other obstructions to vision other than a street sign post, pole or existing tree trunk (clear of branches or foliage) within the clear vision areas on the subject property between the height of 2 feet and 8 feet.*

**Chapter 3.2 Landscaping, Street Trees, Fences and Walls**

**3.2.200        Landscape Conservation.**

**B. Significant Vegetation.** *Significant vegetation means individual trees with a specific trunk diameter as measured four feet above the ground (known as DBH, "diameter at breast height"); shall be inventoried during the site design process and protected during construction unless otherwise approved for removal through the site plan review process. For the purpose of this section, deciduous trees measuring six inches or greater and coniferous trees measuring 10 inches or greater shall be considered significant vegetation.*

**D. Protection Standards.** *Significant trees identified as meeting the criteria in subsection (B) of this section shall be retained unless approved by the City to be removed for development. Preservation shall be considered impracticable when it would prevent development of public streets, public utilities, needed housing or land uses permitted by the applicable land use district. The term "prevent" in this standard means that the development cannot be designed to avoid the significant tree(s). An inability to achieve maximum permitted density by complying with this subsection shall not in itself be considered to prevent development.*

**FINDING:** As shown on the submitted Grading Plan, the Subject Property contains a large number of significant pine trees. The only significant trees proposed to be removed will be those that are necessary to accommodate installation of utility services, roadway improvements, sidewalks or found to be necessary to allow for the development of the subdivision. Existing trees will be retained to the extent practicable as part of development of the lots. The Applicant will be required to show all

trees to be retained on the property on the final Grading Plan submitted for the Public Infrastructure plan review. In addition, the required public right of way improvements will include new street trees in conformance with City standards. Therefore, the Hearings Officer finds that these criteria can be met.

### **3.2.400 Street Trees.**

**D. Spacing and Location.** *Street trees must be planted within existing and proposed planting strips or in City-approved sidewalk tree wells on streets without planting strips. Where the landscape strip and/or sidewalk is not wide enough to accommodate street trees the Planning Director may allow the street trees to be planted within five feet from the back of the sidewalk. Where practical, small stature trees must be planted no closer to the curb or sidewalk than three feet, medium trees – three feet and large trees – four feet. Root barriers may be required with street tree planting to protect the City's curb and sidewalk. Street tree spacing must be based upon the type of tree(s) selected and the canopy size at maturity. Small canopy trees and columnar shaped trees must be planted no further than 25 feet apart; medium and large canopy trees must be planted no further than 35 feet apart, except where planting a tree would conflict with existing trees, retaining walls, utilities and similar physical barriers. A random spacing of street trees may be approved for the equivalent number of trees required for the length of the frontage. Street trees must be planted no closer than 35 feet from a stop sign.*

**FINDING:** Street trees must be installed in the proposed landscape strips. The infrastructure plan set must show the location and species of street trees, in compliance with this section. Street trees must be planted prior to Certificate of Occupancy of abutting lots and must be shown on the respective building permit submittals. Staff, in the Updated Staff Recommendation (page 25), recommended conditions to be required if the Applicant's proposal is approved. The Hearings Officer finds that by including the Staff's recommended conditions, as set forth below, the Applicant's proposal meets this approval criterion.

**Recommended Condition of Approval:** *Street trees must be shown on the Tier III right of way permit (infrastructure) plan set in compliance with BDC 3.2.400.D. The street trees must not conflict with utility placement nor be located in clear vision areas.*

**Recommended Condition of Approval:** *Street trees must be planted prior to Certificate of Occupancy of abutting lots and must be shown on the respective building permit submittals.*

## **Chapter 3.4, Public Improvement Standards**

### **3.4.100 Purpose and Authority.**

**B. Public Improvements Needed for Development.** *Development shall not occur unless the public improvements serving the development comply with the public facility requirements established or incorporated by this chapter, unless compliance is exempted by this code or unless the applicable standard is modified or waived under BDC 3.4.150.*

C. **Compliance with Standards.** All public improvements constructed as part of a development or to comply with a condition of development approval shall comply with all applicable standards, including but not limited to any standards and specifications adopted by the City applicable to public works or public improvements. The provisions of this chapter prevail over any inconsistent standard or specification unless the applicable standard is modified or waived under BDC 3.4.150.

D. **Conditions of Development Approval.** No development shall occur unless required public facilities are in place or guaranteed. Improvements required to be constructed by the developer as a condition of development approval, when not voluntarily accepted by the applicant, shall be roughly proportional to the impact of development on public facilities and services. Findings in the development approval shall indicate how the required improvements are related to and roughly proportional to the impact. The City may deny an application if required public improvements are not in place, or the City may impose conditions of approval tying the timing of construction and/or occupancy of a proposed development to anticipated public improvements without requiring the applicant to construct the public improvements.

#### 3.4.200 Transportation Improvement Standards.

A. **Development Requirements.** No development shall occur unless the development has frontage or approved access to a public or private street, in conformance with the provisions of BDC Chapter 3.1, Lot, Parcel and Block Design, Access and Circulation, and the following standards are met:

1. *Streets within or adjacent to a development shall be improved in accordance with the Bend Urban Area Transportation System Plan (TSP), provisions of this chapter and other pertinent sections of this code.*
2. *Development of new streets, and additional street width or improvements planned as a portion of an existing street, shall be improved in accordance with this section, and public streets shall be dedicated to the applicable City, County or State jurisdiction.*
3. *All new and/or existing streets and alleys shall be paved per the City of Bend Standards and Specifications document.*

**FINDING:** The above standards require that all streets within or adjacent to a development be improved in accordance with the TSP and City Standards and Specifications. As shown on the submitted Tentative Plan, internal streets will have 60-foot-wide rights-of-way, will be dedicated to the public, and will be improved to City Standards and Specifications having 32 feet of paved street with curbs, sidewalks, and landscape strips on each side.

The developer of the adjacent properties to the east of the Subject Property has proposed to dedicate 40 feet of public right of way along Bachelor View Road for partial street improvements as part of the BV 1 and BV 2 subdivisions. That dedication and those improvements must be constructed prior to or concurrently with construction on the Subject Property to comply with the above criteria. With the additional 20-feet of public right-of-way dedication along the Subject Property, the Applicant will be able to complete standard local street improvements for Bachelor View Road. The previously granted

waiver to public improvement standards which allowed less than 40-feet of public right-of-way dedication at the northwest corner of BV 1 (PLMISC220211093) is further to the north, and will not prevent standard improvements along the Subject Property's frontage. All proposed streets will be paved per the City of Bend Standards and Specification document. Any warranted improvements would be performed in accordance with City of Bend Standards and Specifications. Street improvements are discussed further below in Section 3.4.200(E). The Hearings Officer finds these criteria can be met.

**C. Creation of Rights-of-Way for Streets and Related Purposes.** *Streets shall be created through the approval and recording of a final subdivision or partition plat; except the City may approve the creation of a Public Right-of-Way by acceptance of a deed, where no plat will be recorded, and provided that the street is deemed essential for the purpose of implementing the Bend Urban Area Transportation System Plan, and the deeded right-of-way conforms to this Code. All deeds of dedication shall be in a form prescribed by the City and shall name "the public" as grantee.*

**FINDING:** The Hearings Officer incorporates as additional findings for this criterion the Preliminary Findings for Private Roadway (Section IV.B.5.) and Private Well (Section IV.B.6.). All public rights-of-way within the boundaries of the proposed subdivision must be dedicated through the final platting process. Applicant will be required to comply with the version of BDC 4.3.400 (F)(2)(a) in existence at the time of Applicant's submission of its application. The Hearings Officer finds that this criterion can be met.

**D. Creation of Vehicular Access and Public Utility Easements.** *The City may require a vehicular access and public utility easement established by deed when the easement is necessary to provide for vehicular access and circulation and/or provision of public utilities in conformance with BDC Chapter 3.1, Lot, Parcel and Block Design, Access and Circulation. Access easements shall be created and maintained in accordance with the Uniform Fire Code Section 10.207 and City of Bend Standards and Specifications.*

**FINDING:** Currently, a "pinch point" exists on Bachelor View Road directly north of the proposed subdivision, where the road transitions from a public road to a private road. The Subject Property does not abut the existing public road and, therefore, cannot independently provide for an extension of the public road to the south. If a vehicular access and public utility easement could be obtained from LBV, LLC then the "pinch point" could be fixed. To date, the "pinch point" remains. However, the approved Tentative Plan for BV 1 features planned improvements along the east side of the road that will widen it to 25.3 feet, with a curb-tight sidewalk on the east side.

The approved Tentative Plan for BV 1 also provides for an extension of public water and sewer mains. Since the development of BV 1 will extend vehicular access and public utilities within a public right of way to the site of proposed BV 3, no other vehicular access or public utility easement will be needed to provide for vehicular access and circulation and/or the provision of public utilities in conformance with BDC Chapter 3.1, Lot, Parcel and Block Design, Access and Circulation. The Hearings Officer finds this criterion can be met.

**E. Street Location, Width and Grade.** Except as noted below, the location, width and grade of all streets shall conform to the City of Bend Standards and Specifications document, the provisions of this chapter and an approved street plan or subdivision plat. Street location, width and grade shall be determined in relation to existing and planned streets, topographic conditions, public convenience and safety, and in appropriate relation to the proposed use of the land to be served by such streets.

1. Street grades shall be designed and/or constructed as approved by the City Engineer in accordance with the design standards in Tables A through E in this section.
2. Where the location of a street is not shown in an existing street plan in conformance with subsection (I) of this section, Future Street Plan and Extension of Streets, the location of streets in a development shall either:
  - a. Provide for the continuation and connection of existing streets in the surrounding areas, conforming to the street standards of this chapter; or
  - b. Where it is impractical to connect with existing street patterns because of topographical constraints or where the existing built environment precludes future street connections, the applicant shall conform to a street plan approved by the Review Authority. Such a plan shall be based on the type of land use to be served, the volume of traffic, the capacity of adjoining streets and the need for public convenience and safety.

**FINDING:** The Hearings Officer incorporates as additional findings for these criteria the Preliminary Findings for Private Roadway (Section IV.B.5.). The submitted plans show the location and proposed right of way dedication for planned internal streets as well as the abutting Bachelor View Road. The plans appear to show that required grades for public streets can be met. Future engineering and construction drawing submittals will be needed to ensure compliance with applicable City Standards and Specifications.

**I. Future Street Plan and Extension of Streets.**

2. When no adopted street plan exists for the site, a future street plan shall be filed by the applicant in conjunction with an application for a subdivision, in order to facilitate orderly development of the street system. The plan shall show the pattern of existing and proposed future streets from the boundaries of the proposed land division and shall include other parcels within not less than 400 feet of the site boundaries, and other developed streets or public rights-of-way or natural barriers surrounding and adjacent to the proposed land division. The street plan is not binding; rather, it is intended to show potential future street extensions with future development.

**FINDING:** Applicant submitted a future street plan (aka, a “shadow plan”). Applicant’s future street plan does show the pattern of existing and proposed future streets from the boundaries of the proposed land division and includes parcels within 400 feet of the Subject Property boundaries. Applicant’s future street plan does show the location and right of way widths for existing streets

surrounding the proposed subdivision, and for new streets within the proposed subdivision. Per this approval criterion the future street plan is not binding; rather it is intended to show potential future street extensions within future development. The Hearings Officer finds this criterion is met.

**3. *Streets shall be extended to the boundary lines of the parcel or tract to be developed, when the Review Authority determines that the extension is necessary to give street access to, or permit a satisfactory future division of, adjoining land. The point where the streets temporarily end shall conform to subsections (I)(3)(a) through (c) of this section:***

- a. *These extended streets or street stubs to adjoining properties are not considered to be cul-de-sacs, since they are intended to continue as through streets when the adjoining property is developed.***
- b. *A City-approved barricade shall be constructed at the end of the street by the subdivider and shall not be removed until authorized by the City or other applicable agency with jurisdiction over the street. The Review Authority may also require signs that indicate the location of a future road connection.***
- c. *Temporary turnarounds (e.g., hammerhead or bulb-shaped configuration) shall be constructed for stub streets over 150 feet in length.***

**FINDING:** The Hearings Officer incorporates as additional findings for these criteria the Preliminary Findings for Phasing (Section IV.B.10.).

Applicant's submitted plans show the planned location and right of way widths for streets, and the submitted Phasing Plan shows where internal streets will temporarily end after each phase. The Applicant's original Phasing Plan did not comply with all three subsections listed above. The extension of Street "A" in Phase 1 resulted in a temporary dead-end over 150 feet in length, without a temporary turnaround. The other three phases appeared to be out of order; Phase 2 could not logically be constructed without first constructing either Phase 3 or Phase 4. The Applicant submitted a Revised Phasing Plan on February 1, 2023 which reduced the number of phases from four to three.

Staff concluded, in the Updated Staff Recommendation (page 29), that if Applicant's proposed tentative plan is approved conditions of approval would be necessary to meet these criteria. The Hearings Officer concurs with the Staff's recommended conditions except for the last proposed condition set forth below which requires "phase 3 of this subdivision must occur concurrently, or after the ***construction and dedication...***" The Hearings Officer finds that such conditional language is not reasonable and appropriate in this instance (See Preliminary Findings Phasing [Section IV.B.10.]).

**Recommended Condition of Approval:** *For Phase 1, City-approved barricades must be installed at both ends (north and south) of Street "B", and the barricades shall not be removed until authorized by the City.*

**Recommended Condition of Approval:** For Phase 2, City-approved barricades must be installed at both ends (west and east) of Street "C" and the south end of Street "B", and the barricades shall not be removed until authorized by the City.

**Recommended Condition of Approval:** For Phase 3, a City-approved barricade must be installed at the south end of Street "D", and the barricade shall not be removed until authorized by the City.

**Recommended Condition of Approval:** Phase 1 of this subdivision must occur concurrently with, or after, the construction and dedication of Bachelor View Road associated with the Bachelor View 1 subdivision to provide public and emergency access to Street "A".

**Recommended Condition of Approval:** Phase 3 of this subdivision must occur concurrently with, or after, the construction and dedication of Bachelor View Road associated with the Bachelor View 2 subdivision to provide public and emergency access to Street "C".

- L. ***Sidewalks, Planter Strips, Bicycle Lanes.*** Sidewalks, planter strips, and bicycle lanes shall be installed in conformance with the applicable provisions of the Bend Urban Area Transportation System Plan, the General Plan, City of Bend Standards and Specifications and the following standards:
  2. ***Sidewalks shall be separated from the street by a planter strip and placed at the property line, where practicable, or as otherwise directed by the City Engineer.***

**FINDING:** The submitted plans show the typical cross sections for all existing and proposed streets. Sidewalks will be separated from the streets by planter strips and placed at the property line. The Hearings Officer finds these criteria can be met.

***M. Intersection Angles. Streets shall be laid out so as to intersect at an angle as near to a right angle as practicable, except where topography requires a lesser angle. In no case shall the centerline angle be less than 80 degrees.***

**FINDING:** All planned intersections are right angles or as near to right angles as feasible. The Hearings Officer finds this criterion will be met.

***N. Existing Rights-of-Way. Whenever existing rights-of-way adjacent to or within a property are of less than standard width, additional rights-of-way shall be provided at the time of subdivision or site development, in conformance with Tables A through E in this section.***

**FINDING:** The Applicant proposes to dedicate 20 to 30 feet of right of way with this subdivision for abutting Bachelor View Road so that a total of 60 feet of right of way will exist after BV 1, BV 2, and BV 3 subdivisions have all been constructed. The Hearings Officer finds this criterion will be met.

***O. Cul-de-Sacs. A cul-de-sac street shall only be used when the applicant demonstrates that environmental or topographical constraints, existing development patterns, or compliance with other standards in this code precludes street extension and through circulation.***

**FINDING:** No cul-de-sacs are proposed within this subdivision.

**P. Grades and Curves.** *Grades shall not exceed those shown in Tables A - E in this section, unless approved through a waiver in accordance with BDC 3.4.150.*

- 1. Centerline curve radii and vertical curves shall conform to the American Association of State Highway and Transportation Officials (AASHTO) design criteria.**
- 2. At the intersections of arterial and/or collector streets, the approach grade shall average no more than +/- four percent for 250 feet from the edge of the intersecting roadway at full improvement. Local streets intersecting arterials or collectors shall provide a minimum of 50 feet of approach grade at no more than an average of +/- four percent.**
- 3. Existing conditions may warrant additional design criteria. All streets and intersection designs shall be subject to the approval of the City Engineer.**
- 4. Lesser grades may be required at intersections as per City specifications. Grades in excess of 10 percent are subject to Fire Department approval.**

**FINDING:** Staff concluded (Updated Staff Recommendation, page 31), based upon its review of Applicant's submittals, that the Applicant's plans did not provide enough information for Staff to verify compliance with City standards and AASHTO design criteria for grades and curves. Staff noted that if the proposed Tentative Plan is approved, future engineering and construction drawing submittals will be needed to ensure compliance with City standards. Staff (Updated Staff Recommendation, page 45, Condition 36) proposed the following condition to be included if Applicant's proposal is approved:

**Proposed Condition 36:** *Prior to final plat approval, engineering and construction drawings shall be submitted that verify compliance with City standards and AASHTO design criteria for grades and curves.*

The Hearings Officer finds that if Staff's recommended Condition 36 is included in an approval of Applicant's proposal then these criteria can be met.

**Q. Curbs, Curb Cuts, Ramps, and Driveway Approaches.** *Concrete curbs, curb cuts, curb ramps, bicycle ramps and driveway approaches shall be constructed in accordance with BDC Chapter 3.1, Lot, Parcel and Block Design, Access and Circulation, City of Bend Standards and Specifications and the following standards:*

- 1. Curb exposure shall be per City Standards and Specifications.**
- 2. All public and private streets shall have curbs, except there shall be no curbs on alleys unless otherwise approved by the City Engineer.**

**FINDING:** Curbs, curb cuts, ramps, and driveway approaches are planned to be constructed consistent with City of Bend Standards and Specifications and will be reviewed with final engineering and construction drawings. Staff recommended the following condition to be included if Applicant's proposal is approved:

**Recommended Condition of Approval:** *The proposed curbs, curb cuts, ramps, and driveway approaches shall be constructed in accordance with City of Bend and PROWAG Standards and Specifications. These proposed right of way improvements will be reviewed under a Tier III right of way (infrastructure) permit for approval prior to construction.*

The Hearings Officer finds that if the above-quoted Staff recommended condition is included this approval criterion can be met.

**V. Street Names.** *All street names shall be approved by Review Authority. No street name shall be used that will duplicate or be confused with the names of existing streets in Deschutes County, except for extensions of existing streets. Street names, signs and numbers shall conform to the established pattern in the surrounding area, except as requested by emergency service providers and shall comply with City of Bend Standards and Specifications.*

**FINDING:** Final street names will be reviewed and approved by the appropriate entities prior to the recording of the final plat.

**W. Survey Monuments.** *Upon completion of a street improvement and prior to acceptance by the City, it shall be the responsibility of the developer's registered professional land surveyor to provide certification to the City that all boundary and interior monuments shall be re-established and protected.*

**FINDING:** All necessary survey monuments and certifications will be provided.

**X. Street Signs.** *The City, County or State with jurisdiction shall install all signs for traffic control. The cost of signs required for new development, including stop signs and any other roadway signs, shall be the responsibility of the developers and shall be installed as part of the street system developed and approved through the land use process. Street name signs shall be installed by developers at all street intersections per City of Bend Standards and Specifications.*

**FINDING:** All necessary street signs will be provided.

#### **3.4.400 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 construction specifications as described in the City of Bend Standards and Specifications document and the applicable Bend Comprehensive Plan policies.*

**B. Sewer and Water Plan Approval.** *Construction of sewer and water improvements cannot commence until the City Engineer has approved all sanitary sewer and water plans in conformance with City of Bend Standards and Specifications.*

**C. Public Facility Plan Improvements.** *Proposed sewer and water systems must be sized to accommodate additional development within the area as projected by the Water and Sewer Public Facility Plans. The developer may be entitled to system development charge credits and reimbursement for the improvements if eligible under the applicable provisions of the Bend Code.*

**D. Inadequate Capacity.** *Development may be restricted 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, or surcharging of existing mains, or violations of State or Federal standards pertaining to operation of domestic water and sanitary sewer treatment systems.*

**FINDING:** A minimum 8-inch diameter sewer main must be installed within all roads to serve all proposed lots in the proposed subdivision in conformance with City of Bend Standards and Specifications. The sewer main must be installed at minimum grade to and through the subdivision. A Right-of-Way permit is required for all work in the right-of-way and the work must be completed by a City approved right-of-way contractor. However, sewer service is not currently available to this property. The project cannot be served until the sewer mains in Bachelor View Road, proposed in the BV 1 and BV 2 subdivisions, PLLD20210848 and PLLD20220119, have been constructed to the Subject Property within dedicated public right of way and accepted as a City asset.

A water main must also be installed within all proposed streets (Streets "A", "B", "C", "D", and Bachelor View Road), looping the system whenever possible, to serve the proposed lots in the subdivision in conformance with City of Bend Standards and Specifications. The sewer and water mains must be extended to and through the property. A Right-of-Way permit is required for all work in the right-of-way and the work must be completed by a City approved right-of-way contractor. However, City water service is not currently available to this property. The project cannot be served until the water mains in Bachelor View Road, proposed in BV 1 and BV 2, have been constructed to the Subject Property and accepted as City assets.

According to the Bend Fire Department, for one- and two-family dwellings under 3,600 sq. ft., Table B105.1(1) of the Oregon Fire Code requires a minimum fire flow of 1,000 gpm. The modeled system and fire flow in the proposed development yielded estimated flows of over 2,000 gpm. However, there is only one point of ingress/egress serving the BV 1, BV 2, and Bachelor View 3 subdivisions, and the other existing residences located off private Bachelor View Road to the south. Oregon Fire Code, D107, requires two separate and approved fire apparatus access roads if a development of one- or two-family dwellings has more than 30 dwelling units, unless all of the dwelling units are equipped with automatic fire sprinklers. Since BV 3 will contain more than 30 one- or two-family dwellings, and does not currently have a secondary fire apparatus access road, the Applicant has proposed the following condition of approval:

*Pursuant to the [Oregon] Fire Code, [Section] D107, because the proposed residential development has over 30 lots and does not currently have a secondary [emergency vehicle] access, alternative construction methods approved by the Fire Marshal will be required if a secondary [emergency vehicle] access is not available at the time of building permits for dwellings in the development.*

Staff, the Updated Staff Recommendation (page 33) recommended that this condition be included in any tentative plan approval decision. The Hearings Officer concurs.

Applicant's initial submission of a sewer and Water Analysis ("SWA") and a Utility Availability Memo ("UAM") only analyzed the sewer and water impacts of a 42-lot subdivision, whereas the proposed subdivision contains 44 lots. Exhibit 4 from the Applicant's engineer documents indicates that the increase from 42 to 44 lots only results in about a 4% increase in the daily water and sewer usage of the proposed subdivision. Applicant's engineer and Staff agreed that the increase from 42 lots to 44 lots and a 4% increase in the daily water and sewer usage was "insignificant." The Hearings Officer agrees with Applicant's and Staff's conclusion that a 4% increase in daily water and sewer usage is insignificant. The Hearings Officer finds no evidence in the record to support a finding that increasing the number of lots from 42 to 44 will result in a water or sewer system deficiency. The Hearings Officer finds that with conditions related to the construction of water and sewer lines meeting City code and standard requirements these criteria can be met.

### **3.4.500        *Storm Drainage Improvements.***

**A. *Storm Drainage Improvements Required. Storm drainage facilities shall be depicted on City-approved engineered construction drawings and installed to serve each new development in accordance with applicable City construction specifications as described in the City of Bend Standards and Specifications and BC Title 16, Grading, Excavation, and Stormwater Management.***

**FINDING:** The Hearings Officer incorporates as additional findings for this criterion the Preliminary Findings for UICs (Section IV.B.8.). Applicant proposal includes the use of drywells/UICs to address stormwater drainage. The Hearings Officer finds the record in this case includes construction drawings depicting storm water improvements. The Hearings Officer finds, by including the following Staff proposed conditions (Updated Staff Recommendation, page 43, Conditions 12 and 13), this criterion can be met.

**Condition 12:** *Prior to the issuance of any permits, the applicant must submit a Final Drainage Report and Grading/Clearing/Erosion Control Plan for review by the Private Development Engineering Division (PDED) which complies with Bend Code Title 16, Grading, Excavation, and Stormwater Management and the Central Oregon Stormwater Manual (COSM). The applicant has the right to utilize UICs provided the applicant has a certification from a registered professional engineer that the level of protectiveness required by the rule authorization the City obtained from DEQ is satisfied.*

**Condition 13:** *All surface water drainage from new impervious surfaces must be captured and contained on-site and must not flow into the right of way or onto neighboring properties.*

*Stormwater retention areas must be at least 10 feet from structure foundations where feasible, but not less than 5 feet, and must not be located within a public utility easement.*

**3.4.600 Utilities.**

**A. Underground Utilities.** *All 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; temporary utility service facilities during construction; and high capacity electric lines operating at 50,000 volts or above, which may be placed above ground.*

*The following additional standards apply to all development, in order to facilitate underground placement of utilities:*

- 1. The developer shall make all necessary arrangements with the serving utility to provide the underground services. All above-ground equipment shall not obstruct clear vision areas and safe intersection sight distance for vehicular traffic in conformance with BDC Chapter 3.1, Lot, Parcel and Block Design, Access and Circulation.*
- 2. The City reserves the right to approve the location of all surface-mounted facilities.*
- 3. All underground utilities, including sanitary sewers and storm drains installed in streets by the developer, shall be constructed prior to the surfacing of the streets.*
- 4. Stubs for service connections shall be long enough to avoid disturbing the street improvements when service connections are made.*

**FINDING:** All utilities, including telephone, cable, natural gas, and electricity must be installed underground prior to surfacing the streets and installing sidewalks. The placement of all underground utilities must be coordinated with each utility, and shown on the public facility improvement plans for the subdivision that will be reviewed and approved by the City of Bend Engineering Division. Staff, in the Updated Staff Recommendation (page 34), indicated that these criteria could be met with the imposition of the following condition:

**Recommended Condition of Approval:** *All new utilities, including power, must be installed underground prior to surfacing the streets. Final location of utilities must be reviewed and approved by the City Engineer through the Tier III right of way (infrastructure) plan review process. No franchise utilities may be located within 10 feet of a City water main or sewer line. Surface-mounted transformers, connection boxes and meter cabinets, temporary utility service facilities during construction, and high capacity electric lines operating at 50,000 volts or above, may be placed above ground, so long as they are not located within required clear vision areas.*

The Hearings Officer concurs with Staff's Updated Staff Recommendation statements and Staff's conclusion that a condition of approval is necessary to satisfy these criteria. The Hearings Officer finds

that if the Staff recommended condition of approval is included in any approval of Applicant's proposal then these criteria can be met.

**B. Easements. Easements shall be provided and recorded for all underground utility facilities where required by the City.**

**3.4.700 Easements.**

**A. Requirement. Easements for sewer facilities, storm drainage, water facilities, street facilities, electric lines or other public/private utilities shall be dedicated on a final plat, or provided for in the deed restrictions.**

**B. Provision. The developer or applicant shall make arrangements with the City, the applicable district and each utility franchise for the provision and dedication of utility easements necessary to provide full services to the development.**

**C. Standard Width. The City's standard width for exclusive public main line utility easements shall be 20 feet, unless otherwise specified by the utility company, applicable district, or City Engineer.**

**FINDING:** All new City and franchise utilities must be placed underground within the public right of way or within easements. But as previously noted, no sewer and water mains are available to serve this property yet. The project cannot be served until the sewer and water mains in Bachelor View Road, proposed in PLLD20210848 and PLLD20220119, have been constructed to the Subject Property and accepted as City assets.

**3.4.800 Construction Plan Approval and Assurances.**

**A. Plan Approval and Permit. Public improvements, including sanitary sewers, storm sewers, streets, sidewalks, curbs, lighting, parks, or other requirements, shall not be undertaken except after the plans have been approved by the City and the developer has signed a Public Facilities Infrastructure Agreement (PFIA), paid permit fees, and received a permit. The amount of the permit fee shall be set by City Council with the annual adoption of a fees resolution.**

**B. Performance Guarantee. The City may require the developer or subdivider to provide bonding or other performance guarantees to ensure completion of required public improvements in accordance with the provisions of BDC 4.2.500, Bonding and Assurances for All Developments, and 4.3.400, Final Plat.**

**3.4.900 Installation.**

**A. Conformance Required. Improvements installed by the developer, either as a requirement of these regulations or at his/her own option, shall conform to the requirements of this chapter, approved construction plans, and to improvement standards and specifications adopted by the City, referenced within the City of Bend Standards and Specifications.**

**B. Commencement. Work shall not begin until the City has reviewed and approved the construction plans and notified the contractor of the approval.**

**FINDING:** Required approvals, inspections, and guarantees must be finalized prior to starting work on the Subject Property and within the public right of way.

**CHAPTER 3.5, OTHER DESIGN STANDARDS**

**3.5.400 Solar Standards.**

**B. Solar Lot Standards.**

- 1. Applicability.** *Solar lot standards apply to the creation of lots within subdivisions in RS and RM Zones.*
- 2. Solar Lot Requirements.** *In RS and RM Zones, at least 70 percent of the lots in a subdivision shall have a minimum north-south lot dimension of 80 feet or more.*
- 3. Exceptions to the Solar Lot Requirements.** *A proposed subdivision shall qualify for an exception to subsection (B)(2) of this section if one or more of the following development constraints are present:*
  - a. Compliance with applicable street standards or public street plans requires a street configuration that prevents the lot from being oriented for solar access.**
  - b. An existing public easement or right-of-way prevents the lot from being oriented for solar access.**
  - c. There is a significant natural feature on the site that will continue to exist after the site is developed, and that prevents the lot from being oriented for solar access.**

**FINDING:** This section requires at least 70% of all lots in new subdivisions located in the RS and RM zones to have a north-south lot dimension of 80 feet or more. The Subject Property is zoned RS, therefore, Solar Lot Standards apply. According to the Applicant, only 20 of the 44 proposed lots (48%) meet this requirement. Therefore, the Applicant requests an exception pursuant to subsection (3)(a) above. The Subject Property is an infill property surrounded by an existing road, mostly developed parcels, commercially zoned property to the west, and other proposed subdivisions to the north and the east. More specifically, the proposed infill project involves property that is much wider east-west than it is north-south, and abuts Bachelor View Road to the east. The existing development on parcels surrounding the Subject Property, the need to provide street connectivity to and through the proposed development, and the configuration of the Subject Property severely limits the amount of land available to provide a north-south lot orientation with lot depths of 80 feet or more.

To meet the City's density standards as well as provide the essential internal street and street connections to City standards, most of the proposed lots need to have an east-west orientation. Increasing the north-south dimension of these lots to 80 feet would likely reduce the density below the City's minimum density requirements. These lots have extra east-west depth to accommodate buildable homesite areas. The Hearings Officer finds that the layout of the subdivision was designed to allow for circulation of vehicular traffic on the internal streets for access to the proposed lots while keeping within the allowed density range. Based on the foregoing reasons, the Hearings Officer finds that the Solar Lot Requirement in subsection (B)(2) above is not practicable, nor feasible, and an exception to standard 3(a) above is warranted.

#### **4.3.300(E) continued...**

##### **4. All required public facilities have adequate capacity, as determined by the City, to serve the proposed subdivision, partition or replat.**

**FINDING:** Staff noted (Updated Staff Recommendation, page 37) that the Applicant had submitted a Transportation Facilities Report ("TFR") dated July 26, 2022 prepared by Ferguson & Associates, Inc. Staff also noted that the Applicant submitted a Tentative Plan application in September 2022 for a subdivision with an entirely different street layout. Finally, Staff noted that the Applicant's Sewer and Water Analysis ("SWA") and the Applicant's TFR only analyzed impacts of a 42-lot subdivision, but the proposed subdivision application contains 44 lots.

The Applicant responded to the above-stated Staff concerns and submitted a supplemental traffic study (Exhibit 15) and a supplemental water and sewer study (Exhibit 4) documenting the increase from 42 lots to 44 lots. Applicant's supplemental submissions concluded that the increase in lots from 42 to 44 is statistically insignificant and does not cause the proposed subdivision to exceed the capacity of the City's transportation system, or the capacity of the City's water and sewer facilities. Although the proposed subdivision depends upon the adjacent BV 1 and BV 2 subdivisions for right-of-way dedication, road improvements, and utility installations, Staff concluded that these issues could be handled through conditions of approval. The Hearings Officer concurs with Staff's analysis of the Applicant's supplemental submissions. The Hearings Officer finds that all public facilities have adequate capacity if this application is approved with conditions. Therefore, the Hearings Officer finds that this criterion can be met.

##### **5. The proposal contributes to the orderly development of the Bend area transportation network of roads, bikeways, and pedestrian facilities, and allows for continuation and expansion of existing public access easements within or adjacent to the subdivision, partition or replat.**

**FINDING:** Staff noted (Updated Staff Recommendation, page 37) that this Hearings Officer, in BV 1, reviewed BDC 4.3.300 E 5. and concluded that "BDC 34.3.300 (E) 5. does not meet the clear and objective standards of ORS 197.307 and therefore may not be a basis of denial of an application." Therefore, BDC 4.3.300 (E) 5. cannot be used as a basis of denial of this application.

In the alternative, the Hearings Officer finds that while a “pinch point” currently exists on Bachelor View Road directly north of the Subject Property, where the road transitions from a public road to a private road, that situation will be remedied through future road dedications/features approved as part of BV 1. The Hearings Officer finds, upon the development of BV 1, the Applicant’s proposal in this case will contribute to the orderly development of the City’s transportation network.

**6. Each lot, parcel, or designated unit of land is suited for its intended use.**

**FINDING:** The proposed lots are adequately sized for dwelling units in the RS zone as addressed in findings above.

**7. That the placement of utilities is in accordance with the adopted city standards.**

**FINDING:** The Hearings Officer adopts as additional findings for this criterion the Preliminary Findings for Private Roadway (Section IV.B.5.), Private Well (Section IV.B.6.) and UICs (Section IV.B.8.). The Hearings Officer takes note of Staff’s and several opponents’ argument related to BDC 4.3.400 (F)(2)(a). One of the opponents’ arguments was that a “current version” of BDC 4.3.400 (F)(2) should apply. The Hearings Officer finds that the “current version” of BDC 4.3.400 (F)(2) is not the version of code in effect at the time the application in this case was submitted. In short, the current version of BDC 4.3.400 (F)(2) is not relevant nor does it apply in this case.

Another argument forwarded by Staff and some opponents is that BDC 4.3.400 (F)(2) is relevant to a tentative plan application. The Hearings Officer addressed that issue in the BV 2 decision and concluded by stating:

*“The Hearings Officer finds that BDC 4.3.400 (Final Plat approval criteria) are not relevant approval criteria for the current Tentative Plan and public improvement waiver cases. The Hearings Officer expresses no opinion related to the opposition argument that the private road “easements” is/are “reservations” or “restrictions” as those terms are used in BDC 4.3.300 F.2.a.”*

No participant in this case offered any new evidence or argument related to the Hearings Officer’s above-stated holding in BV 2. The Hearings Officer finds that the analysis of BDC 4.3.400 (F)(2)(a) remains reasonable and legally supportable.

The Hearings Officer finds that the BDC 4.3.400 (F)(2)(a) holding in BV 2 is relevant to both Staff’s/opponent’s “private road easement” and “private well easement” assertions.

Staff also suggested (Updated Staff Recommendation, page 38) that Applicant should be required to obtain “permission” from holders of water line easement rights. The Hearings Officer finds neither Staff nor any participant in this case cited the Hearings Officer to a specific approval criterion or criteria relevant to the Applicant’s tentative plat application in this case that requires permission of an easement right holder as a condition of approval. The Hearings Officer considers the relationship between the Applicant and other easement right holders to be a private legal matter and not relevant to any specific approval criterion/criteria.

The Hearings Officer finds Staff, in the Updated Staff Recommendation, did not identify any specific section of the BDC that would apply to an analysis of this criterion.

- 8. The proposal meets the requirements of the Fire Code, adopted flood protection standards, and other adopted standards intended to protect against natural hazards.**

**FINDING:** The Subject Property is not located within a flood plain or any other identified natural hazard area. As shown on the submitted plans, fire hydrants will be spaced in accordance with Fire Code requirements. However, the Fire Code also requires two separate and approved access roads for one- or two-family residential developments having more than 30 residential units. The proposed 44-lot subdivision only has one access road, Bachelor View Road. Therefore, the Applicant has proposed the following condition of approval:

*Pursuant to [Oregon] Fire Code, [Section] D107, because the proposed residential development has over 30 lots and does not currently have a secondary [emergency vehicle] access, alternative construction methods approved by the Fire Marshal will be required if a secondary [emergency vehicle] access is not available at the time of building permits for dwellings in the development.*

Staff, in the Updated Staff Recommendation, recommended that Applicant's proposed condition be included in any tentative plan approval decision. The Hearings Officer agrees and finds that with Applicant's proposed condition of approval quoted above this criterion can be met.

- 9. The proposal is in substantial conformance with any applicable approved master development plan, master facilities plan, refinement plan and/or special area plan.**

**FINDING:** There is no master plan, refinement plan, or special area plan for this site. Therefore, this criterion does not apply. The Hearings Officer incorporates as additional findings for this criterion the Preliminary Findings for Master Planning Process (Section IV.B.3.).

- 10. The proposal complies with the standards of the zoning district in which the project is located and the standards of the zoning district that implements the Comprehensive Plan designation of the subject property.**

**FINDING:** As previously determined, the lots in the proposed subdivision comply with the density range, lot area, and other dimensional requirements of the RS zone, which implement the Comprehensive Plan designation of the subject property, which is also RS.

- 11. The proposal complies with BDC Chapter 4.7, Transportation Analysis.**

## **CHAPTER 4.7, TRANSPORTATION ANALYSIS**

### **4.7.300      Process.**

#### **A. The following steps describe the process for assessing the transportation system:**

***Step 1. The applicant must submit a Transportation Facilities Report in accordance to BDC 4.7.400. If the proposed development includes needed housing, the Transportation Facilities Report must clearly state whether the applicant is electing to use a review process for the transportation analysis with clear and objective standards (Clear and Objective Track) or is electing to allow the City Engineer to modify or waive the required information (Discretionary Track). All other proposed developments must use the Discretionary Track.***

***Step 2. The City Engineer will review and evaluate the Transportation Facilities Report in accordance to BDC 4.7.400(C) to determine if a Transportation Impact Analysis is required. If a Transportation Impact Analysis is not required, the applicant may submit a development application including the Transportation Facilities Report. If a Transportation Impact Analysis is required, Step 3 is triggered. Step 1 and Step 3 may be combined.***

***Step 3. If required, the applicant must submit a Transportation Impact Analysis in accordance with BDC 4.7.500.***

***Step 4. If no significant impacts are identified, the applicant may submit a development application including the Transportation Impact Analysis and must pay a proportionate share contribution required under BDC 4.7.700, Proportionate Share Contribution. Proposed developments with significant impacts will be required to propose mitigation in compliance with BDC 4.7.600, Significant Impacts and Mitigation Measures, as part of the development application and pay a proportionate share contribution required under BDC 4.7.700, Proportionate Share Contribution. If mitigation measures have been determined for any significant impacts, then the applicant must include the Transportation Impact Analysis with the mitigation measures identified as part of a development application.***

**FINDING:** Applicant submitted a TFR dated July 26, 2022 for a 42-lot subdivision and received by the City on August 4, 2022. In response, a Traffic Analysis Memo (“TAM”) dated August 22, 2022 was issued by the City of Bend PDED. The Applicant, in September 2022, submitted a Tentative Plan application for a 44-lot subdivision with an entirely different street layout. On November 7, 2022 the Applicant submitted written notice directing the City to deem the application “complete” per ORS 227.178(2)(c) – without an updated TFR or a TAM reflecting the increased number or lots or revised layout.

The original Staff Recommendation to the Hearings Officer noted the discrepancy between the completed studies and the subsequent submittal of a 44-lot subdivision. The Applicant subsequently submitted a supplemental traffic study (Exhibit 15) and also comments related to the water and sewer study (Exhibit 4). Applicant’s engineer, in Exhibit 4, opined that an increase from 42 lots to 44 lots is statistically insignificant and does not cause the proposed subdivision to exceed the capacity of the City’s transportation system.

Concerns were expressed (i.e., Bonny email, 1/30/1023) that Applicant’s traffic study did not consider code required elements. The Hearings Officer finds, based upon the Applicant’s submissions, Staff’s reviews and the evidence in the record, that Applicant’s traffic study/analysis met the minimum requirements of the BDC and relevant regulations/standards.

The Hearings Officer finds the submission requirements of BDC Chapter 4.7 have been met.

**12. The proposal complies with BDC Title 15, Sewer.**

**FINDING:** Sewer service is not currently available to this Subject Property. Therefore, the Applicant's proposed project cannot physically be served until the sewer main in Bachelor View Road, previously approved in PLLD20210848 and PLLD20220119, has been constructed to the Subject Property within dedicated public right of way and accepted as a City asset. The Hearings Officer finds that even though the BV 1 and BV 2 projects have not been built yet, this issue can be adequately addressed through conditions of approval.

**4.3.400      Final Plat.**

**A. Filing Time Period Requirements. Except as provided for in this chapter, the applicant shall prepare and submit to the City a final plat that is substantially in conformance with the approved tentative plan. Final plats shall be processed as Type I applications in accordance with BDC 4.1.300.**

- 1. If a tentative plan is approved for a single phased development, the final plat shall be filed with the City within two years of the approval date of the tentative plan. A one-year extension may be approved in accordance with BDC 4.1.1310.**
- 2. If a tentative plan is approved for phased development, the final plat for the first phase shall be filed within two years of the approval date of the tentative plan.**
- 3. The final plats for any subsequent phase shall be filed within three years of the approved date for the tentative plan, unless a longer period of time is allowed through the tentative plan approval process. In no case shall the final plat be recorded more than five years from the date of the tentative approval.**
- 4. If the applicant fails to file a final plat within the specified timelines, the tentative plan for those phases shall become null and void.**

**FINDING:** The Applicant proposed three alternative time periods for recording the final plats for Bachelor View 3, Phases 1, 2 & 3. Staff (Updated Staff Recommendation, page 41) indicated that any of the three Applicant proposed alternatives was acceptable to the City. Applicant, in its May 3, 2023 record submission (Koback, May, 3, 2023, page 4), requested the Hearings Officer impose its original Option II condition which states:

*"Alternative II (Consistent with prior approvals and contingent on Proposed Condition 3 being included) - The final plat for Phase 1 shall be filed with the City within two years of the recordation of Phase 1 in PLLD20210848, Phase 2 within five years of the recordation of Phase 1 in PLLD20210848 and Phase 3 within seven years of the recordation of Phase 1 in City file number PLLD 20210848."*

No participant provided any evidence or argument disputing the legality of the above-quoted language. The Hearings Officer finds that the above-quoted language is reasonable and appropriate and should be included as a condition of approval.

## **V. CONCLUSIONS:**

Applicant proposed to construct a 44-lot subdivision (Bachelor View 3) south of Century Drive along the west side of Bachelor View Road. The general area of the proposed subdivision has been the subject of multiple subdivision proposals including projects generally referred to as The Lodges, The Lodges at Bachelor View West, Bachelor View 1 and Bachelor View 2. These proposed subdivisions are in various stages of approval.

All of the referenced proposed subdivisions are adjacent to Bachelor View Road which is a private road easement benefitting numerous residential properties south of Century Drive. A consistent objection made in all of the above-referenced subdivision applications/hearings related to the validity of dedicating public right-of-way "over" or "along with" the Bachelor View Road private easement. Many of the Bachelor View Road property owners assert that they will not "release" or otherwise "give-up" their private roadway easement rights and therefore Applicant's current proposal to dedicate Bachelor View Road right-of-way is legally flawed. The Hearings Officer in this case concluded, as well as in the Bachelor View 1 and Bachelor View 2 land use decisions, that the "private road easement" argument was not persuasive. The Hearings Officer found that there was no new credible substantial evidence or argument presented in this case sufficient to alter or reverse the Bachelor View 1 and Bachelor View 2 "private road easement" decisions.

Another issue raised in prior Bachelor View Road subdivision proposals involved the use of drywells (UICs) as part of the applicants' subdivision proposals. Staff and opponents noted that a domestic water well is located within the perimeter boundaries of the Subject Property which serves more than one nearby residence. Staff and opponents expressed concerns related to the possibility of contamination of the drinking water well could occur from stormwater collected in the drywells (UICs). The Hearings Officer reviewed State law, Bend Code and regulatory law identified by Staff, opposition and Applicant and concluded that if a condition of approval requiring Applicant to submit a registered engineer's certification (level of protectiveness) addressing the relevant laws/rules then drywells (UICs) could be used.

Additional issues were raised by Staff and opponents of the Applicant's Bachelor View 3 subdivision application proposal (i.e., hearings officer bias/conflict of interest, master planning process, relocation of domestic water line transmission lines, and modification of the application). These issues are addressed in the Preliminary Findings section of this decision or the findings for identified approval criteria.

After review of the application and all testimony and evidence in the record of this case the Hearings Officer determined that the application should be approved with conditions.

## V. DECISION:

**Approval**, subject to the following conditions:

1. Approval is based on the plans and supporting materials uploaded to the Online Permit Center, and the improvements to the site and public facilities as depicted thereon. Where specific improvements have been proposed and approved as submitted, the construction of those improvements will not be listed as a specific condition of approval except as to the timing of the improvements. Any substantial alterations of the approved plans, other than those that may be required to comply with the conditions of this approval, will require a new application.
2. The development shall be completed consistent with the revised phasing plan (Exhibit 14) submitted by the applicant on February 1, 2023.
3. Construction of streets and other public facilities/utilities in Bachelor View 3 may not be started until the public improvements in Bachelor View 1, Phase 1 (PLLD20210848) have been completed, inspected, and accepted by the City. Although construction cannot commence until Phase 1 of PLLD20210848 is completed, the City's Private Development Engineering Division (PDED) shall review the construction drawings for Bachelor View 3 when submitted by the Applicant to the City.
4. The Applicant must dedicate 60 feet of right-of-way for all public streets per the requirements of BDC 3.4.200(F) [the version effective on the date the application in this case was submitted], Transportation Improvement Standards, except for Bachelor View Road. All streets must be constructed centered within the right of way unless otherwise approved by the City Engineer during right of way permit review. The dedication must be recorded on the final plat or by a separate recordable document prepared and recorded by the City of Bend.
5. The Applicant must dedicate 20 to 30 feet of right-of-way for Bachelor View Road to complete the required 60-foot width when joined with the dedication for Bachelor View Road in PLLD20210848 (BV 1) and PLLD20220119 (BV 2). The Bachelor View Road dedication shall be by deed and shall be recorded prior to the Tier III right-of-way permit approval.
6. To promote orderly, efficient development, and to avoid unreasonable delay that discourages needed housing, the applicant shall be allowed to record the Plat for Phases 1 and 2 in PLLD20220664 (BV 3) upon the recording of the final plat for Phase 3 in PLLD 20210848 (BV 1), upon the submission of engineering plans along with an engineer's estimate for the public improvements and upon providing a performance bond or other financial assurance that meets the requirements in BDC 4.3.400(J). The applicant shall be allowed to record the final plat for Phase 3 in PLLD20220664 (BV 3) upon the recording of the final plat for Phase 2 in PLLD 20210119 (BV 2).
7. The Applicant must install property tight sidewalks on both sides of the street, with the exception of Bachelor View Road where sidewalk will only be required on the west side of the street, per City of Bend Standards and Specifications. Sidewalks will only be permitted to meander from Bachelor View 3 Subdivision

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property tight to curb tight when existing utilities, trees, or when steep terrain exists (meeting hillside standards). Water meter boxes, manholes, and valves are not permitted in hardscape. A Right-of-Way permit is required for all work in the right-of-way and the work must be completed by a City approved right-of-way contractor.

8. ADA Ramps. The Applicant must install two-directional ADA curb ramps at each corner of an intersection per City of Bend Standards and Specifications and PROWAG guidelines. A Right-of-Way permit is required for all work in the right-of-way and the work must be completed by a City approved right-of-way contractor.
9. All streets must intersect at right angles (BDC 3.4.200.M) and meet the minimum horizontal curve requirements for 25 mph per City of Bend standards and specifications (City Design Standard 3.3.3).
10. All required clear vision areas must be shown on the final plan set. All landscaping and site improvements must comply with the clear vision requirements of BDC 3.1.500 and City of Bend Standards and Specifications and Drawing R-2. There must be no fence, wall, parking, landscaping, structure, or any other obstructions to vision other than a street sign post, pole, or tree trunk (clear of branches or foliage) within the clear vision areas on the subject property between the height of two feet and eight feet.
11. The Applicant must install a driveway approach at the property frontage for each lot per City of Bend Standards and Specifications. The proposed curbs, curb cuts, ramps, and driveway approaches shall be constructed in accordance with the city of Bend and PROWAG Standards and Specifications. The proposed right-of-way improvements will be reviewed under a Tier III right-of-way (infrastructure) permit for approval prior to construction.
12. Prior to the issuance of any permits, the applicant must submit a Final Drainage Report and Grading/Clearing/Erosion Control Plan for review by the Private Development Engineering Division (PDED) which complies with Bend Code Title 16, Grading, Excavation, and Stormwater Management and the Central Oregon Stormwater Manual (COSM). The applicant has the right to utilize UICs provided the applicant submits a certification from a registered professional engineer that the level of protectiveness required by the rule authorization the City obtained from DEQ is satisfied.
13. All surface water drainage from new impervious surfaces must be captured and contained on-site and must not flow into the right-of-way or onto neighboring properties. Stormwater retention areas must be at least 10 feet from structure foundations where feasible, but not less than five feet, and must not be located within a public utility easement.
14. A sewer main must be brought to the site within Bachelor View Road as part of the BV 1 subdivision (PLLD20210848), or a sewer main brought to the site from the development to the north, prior to issuance of the BV 3 right-of-way permit.

15. A sewer main must be installed within all proposed rights of way in conformance with City of Bend Standards and Specifications. All sewer mains must be installed at minimum grade, installed to and through the development. Construction of sewer main outside of the right-of-way is not proposed and will not be permitted unless otherwise approved by the City Engineer during right-of-way permit review. A right-of-way permit is required for all work in the right-of-way and the work must be completed by a City approved right-of-way contractor.
16. A water main must be brought to the Subject Property within Bachelor View Road as part of the BV 1 subdivision in PLLD20210848, or a water main brought to the site from the development to the north, prior to issuance of the BV 3 right-of-way permit.
17. A minimum 8-inch water main must be installed within all proposed rights of way in conformance with City of Bend Standards and Specifications. All water mains must be installed to and through the development. A right-of-way permit is required for all work in the right-of-way and the work must be completed by a City approved right-of-way contractor.
18. A sewer and water lateral must be installed to serve each parcel in conformance with City of Bend Standards and Specifications. Only one water and one sewer service will be permitted to each lot. Water and sewer laterals will not be permitted to cross multiple property lines. A right-of-way permit is required for all work in the right-of-way and the work must be completed by a City approved right-of-way contractor.
19. All new utilities, including power, must be installed underground prior to surfacing the streets. Final location of utilities must be reviewed and approved by the City Engineer through the Tier III right-of-way (infrastructure) plan review process. No franchise utilities may be located within 10 feet of a City water main or sewer line. Surface-mounted transformers, connection boxes and meter cabinets, temporary utility service facilities during construction, and high-capacity electric lines operating at 50,000 volts or above, may be placed above ground, so long as they are not located within required clear vision areas.
20. Public utility improvements are required for this project. All proposed water and sewer improvements are conceptual at this time. These improvements must conform to the City of Bend Standards and Specifications and will be reviewed by the City of Bend Private Development Engineering Department via a right-of-way (ROW) permit. Work in the ROW must be completed by a City-approved ROW contractor.
21. Where roadways dead end in a length of 150 feet or more, where applicable, an emergency turnaround must be constructed in conformance to City of Bend standards and Oregon Fire Code. Where the turnaround cannot be constructed within right-of-way, it must be recorded under a public access easement, recorded under a separate recordable document prepared and recorded by the City of Bend.
22. The Applicant has agreed to and will construct a new private water main of equal size, within a 10-foot private water easement benefiting the served properties, complying to State Plumbing Code. Only perpendicular crossings shall be permitted within the right-of-way, with the location

of crossings to be reviewed and approved by the City Engineer during right-of-way permit review as shown on the Tentative Plan. The review and approval of the private water crossing is only subject to conflicts of public improvements. The existing private water main located within the dedicated public right-of-way shall be removed from the ground. Connection to the existing water main shall be made at the property limits – the private water main construction not continuing beyond the site. Private power shall be removed and brought to the water pump as required by the local franchise power authority.

23. Pursuant to the Oregon Fire Code, Section D107, because the proposed residential development contains over 30 lots and does not currently have a secondary emergency vehicle access, alternative construction methods approved by the Fire Marshal will be required if a secondary emergency vehicle access is not available at the time of building permits for dwellings in the development.
24. The final Tier III right-of-way (Infrastructure) plans shall depict the retention of trees not needing to be disturbed for the construction of the planned street rights of way and/or grading permit. Tree removal must comply with City Standards, subject to building permit review on individual lots.
25. Street trees must be shown on the Tier III right-of-way permit (infrastructure) plan set in compliance with BDC 3.2.400.D. The street trees must not conflict with utility placement nor be located in clear vision areas.
26. For Phase 1, City-approved barricades must be installed at both ends (north and south) of Street "B", and the barricades shall not be removed until authorized by the City.
27. For Phase 2, City-approved barricades must be installed at both ends (west and east) of Street "C" and the south end of Street "B", and the barricades shall not be removed until authorized by the City.
28. For Phase 3, a City-approved barricade must be installed at the south end of Street "D", and the barricade shall not be removed until authorized by the City.
29. Phase 1 of this subdivision must occur concurrently with, or after, the construction and dedication of Bachelor View Road associated with PLLD20210841 (BV 1) to provide public and emergency access to Street "A".
30. Prepare the final plat for each phase in accordance with the Bend Development Code and ORS 92.090. Dedications of right-of-way shall be consistent with Conditions 4 and 5.
31. Show individual lot sizes on the final plat.
32. The final plat shall note which lots, if any, include fill material.
33. Provide a recent subdivision guarantee report prior to final plat approval.

34. Submit closure sheets with the final plat.
35. Prior to final plat approval, engineering and construction drawings shall be submitted that verify compliance with City standards and AASHTO design criteria for grades and curves.
36. Street trees must be planted prior to Certificate of Occupancy of abutting lots and must be shown on the respective building permit submittals.

**The Hearings Officer's decision will become final twelve days after the date mailed, unless appealed by a party of interest.**

**DURATION OF APPROVAL:** The final plat for Phase 1 shall be filed with the City within two years of the recordation of Phase 1 in PLLD20210848 (BV 1), Phase 2 within five years of the recordation of Phase 1 in PLLD20210848 (BV 1) and Phase 3 within seven years of the recordation of Phase 1 in PLLD 20210848 (BV 1).

Date: June 1, 2023



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Gregory J Frank, Hearings Officer