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July 10, 2023

VIA E-MAIL – laman@ci.manzanita.or.us

Manzanita City Council
PO Box 129
167 S. 5th Street
Manzanita, OR 97130

Re: 698 Dorcas Lane - Hotel Application

Dear Councilors:

On June 20, 2023, the Manzanita Planning Commission issued an Order and Notice of Decision on Remand denying this application following remand from the Land Use Board of Appeals ("LUBA"). The applicant appeals that order pursuant to Manzanita Zoning Ordinance ("MZO") 10.150(B). The City's appeal form is enclosed as Exhibit A. It is our understanding that the City will invoice the applicant for the appeal fee.

Following is the applicant's statement in support of the appeal, as required by MZO 10.160:

A. An identification of the decision sought to be reviewed, and the date of the decision.

City of Manzanita Planning Commission Order and Notice of Decision on Remand, dated June 20, 2023 with respect to 698 Dorcas Lane (Tax Lot Nos. 31029D 02100 and 31029DA 02600) (the "Order"). A copy of the Order is enclosed as Exhibit B.

B. A statement of the interest of the person seeking review and that he/she was a party to the initial proceedings.

The appellant is the applicant, Vito Cerelli, who participated in the Planning Commission proceedings.

C. The specific grounds relied upon for review, including a statement that the criteria against which review is being requested were addressed at the Planning Commission.

For each of the specific grounds listed below, the criteria against which review is being requested were addressed by the Planning Commission at its hearing and in the Order. The specific grounds are as follows:

- 1. The Planning Commission erred by finding that hotel units are "dwelling units" as defined in MZO 1.030 and applying the density standard for dwelling units in MZO 3.030(4)(a) to the proposed use.**

MZO 3.030(4)(a) provides:

"Overall density for the SR-R zone is 6.5 dwelling units per gross acre. Dwellings may be clustered on one portion of a site within the SR-R zone and achieve a maximum density of 13 dwellings per acre where at least 40% of the total lot or parcel area is reserved or dedicated as permanent open space as a public or private park area or golf course. The open space shall be so indicated on the Plan and zoning map, and deed restrictions to that effect shall be filed with the City."

The Planning Commission erroneously concluded that the proposed hotel rooms would be dwelling units and therefore MZO 3.030(4)(a) applies to the application. In reaching this conclusion, the Commission relied on the definition of dwelling unit found in MZO 1.030:

"Dwelling Unit. Means one or more rooms occupied, designed or intended for occupancy as separate living quarters, and containing four (4) or more of the following:

- Refrigeration
- Cooking facility (including cooking stove, hot plate, range hood, microwave, or similar facility) or wiring or venting to support same
- Dishwashing machine
- Sink intended for meal preparation (not including a wet bar)
- Garbage disposal
- Toilet
- Shower or bathtub."

The Planning Commission's error was to focus exclusively on the fact that the proposed hotel rooms have four of the minimum required amenities listed in the definition of "dwelling unit" under MZO 1.030. However, having four of the listed amenities is not sufficient by itself to render a hotel a dwelling unit – if it were,



nearly every hotel room would be deemed a dwelling unit as almost all hotel rooms have at least a toilet, shower, microwave and refrigerator.

The Commission failed to also consider the additional language in MZO 1.030 that a dwelling unit must also be "designed or intended for occupancy as separate **living quarters**" (emphasis added). Merriam-Webster defines "living quarters" as "the rooms where a person lives."¹ Likewise, Merriam-Webster defines "dwelling" as "a shelter (such as a house) in which people live."² In contrast, a "hotel" is "an establishment that provides lodging and usually meals, entertainment and various personal services for the public."³

Accordingly, in addition to having the minimum four amenities, to be a "dwelling unit" under MZO 1.030 the accommodation also must be designed or intended as a place to live, not as an establishment that provides lodging, meals, entertainment, and various personal services for the public. As a matter of plain language, hotel rooms are not dwellings. They are two different things.

This distinction is also clear under Oregon law. ORS 699.005(2) regarding regulation of innkeepers defines a "hotel" as "a property . . . in which rooms or suites of rooms generally are rented as transient lodgings and **not as principal residences**." "Transient lodging" is defined as "a room or suite of rooms **that is not occupied as a principal residence**." ORS 699.005(4). Compare this to the definition of "dwelling unit" under ORS 90.100(12): "a structure or the part of a structure that is used as **a home, residence or sleeping place by one person who maintains a household** or by two or more persons who maintain a common household." It is patently unreasonable to equate a residence in which one maintains a household with a hotel room.⁴

Most critically, the Oregon Court of Appeals has explicitly held that a dwelling must be a home. In *Friends of Yamhill County v. Yamhill County*, 325 Or App 282, 292, 529 P3d 1007, 1012 (2023), the court affirmed a LUBA decision in which the definition of "dwelling" was at question. Quoting its earlier decision in *1000 Friends of Oregon*

¹ *Living quarters*, Merriam-Webster (www.merriam-webster.com/dictionary/living%20quarters).

² *Dwelling*, Merriam-Webster (<https://www.merriam-webster.com/dictionary/dwelling>).

³ *Hotel*, Merriam-Webster (<https://www.merriam-webster.com/dictionary/hotel>).

⁴ Emphases added. There are numerous other examples where state and local regulations define a dwelling unit as a home, residence, or place where someone lives. For example: OAR 150-308-0700(1)(b) ("Dwelling unit" means a structure or the part of a structure that is used as a home or residence); Multnomah County Code 39.200 ("Dwelling unit" means a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation); Clackamas Zoning Code 202 ("Dwelling unit" means a building, or portion thereof, with one or more rooms designed for residential occupancy by one family.).



v. Clackamas County, 320 Or App 444, 514 P3d 553 (2022), the *Friends of Yamhill County* court held that:

"a 'dwelling' or 'residence' requires use as a home. A home is occupied by a group of people sharing a household—not by individuals and groups who share no social or legal relationship—on a long-term or permanent basis—not in a transitory way."

In reaching this conclusion, the Court relied favorably on the *1000 Friends* case, in which it held that:

"the term 'residence' refers to a building used as a home, and 'home' is defined not only as a private dwelling house but also as the house and grounds with their appurtenances habitually occupied by a family; one's principal place of residence; domicile. ***The various terms connote a distinction between a building used as a home and a building used as something other than a home, for example, a hotel.***" *1000 Friends*, 320 Or App at 451 (emphasis added, internal quotations and citation omitted).

Finally, the MZO itself recognizes the difference between dwelling units and hotels. Dwelling units and hotels are each listed separately in MZO 3.030(2) as permitted uses in the SR-R zone. If hotel rooms are dwelling units, then there would be no reason to separately list both dwelling units and hotels as permitted uses. And conversely, if hotel rooms are dwelling units, then hotels would be permitted uses in residential zones that do not list hotels separately as a permitted use, but allow dwelling units. It seems doubtful that in enacting the MZO, the City Council intended hotels to be allowed in all residential zones given that hotels are businesses that are commonly considered commercial, not residential uses. To the contrary, by treating hotels and dwelling units separately, the City Council clearly understood and intended them to be different uses. That distinction should be upheld in consideration of this application.

2. The Planning Commission also erred by finding that the applicant's proposed site plan failed to meet the requirements of MZO 3.030(4)(a).

a. The applicant's proposed site plan meets MZO 3.030(4)(a).

After erroneously deciding that the dwelling unit density standard of MZO 3.030(4)(a) applied, the Planning Commission further erred by finding that the applicant's proposed site plan (copy enclosed as Exhibit C) does not meet the standard. In fact, the proposed site plan complies with MZO 3.030(4)(a) by proposing



a reservation of open space in excess of 40% of the total lot area as a private park, thereby authorizing a maximum density of 13 units per acre. Since the site is 3.81 acres, this would authorize a maximum density of 50 units, well in excess of the 34 units proposed.⁵

Mathematically, the applicant's site plan clearly meets the 40% threshold. The proposed open space is a contiguous area of 79,042.9 square feet, which is 47.6% of the total site area of 165,963.6 square feet. None of the proposed open space area is underneath or between the footprints of any proposed buildings. Most of the open space is at the south end of the site, consistent with the directive of MZO 3.030(4)(a) to "cluster" the units on one portion of the site (in this case, the north end).

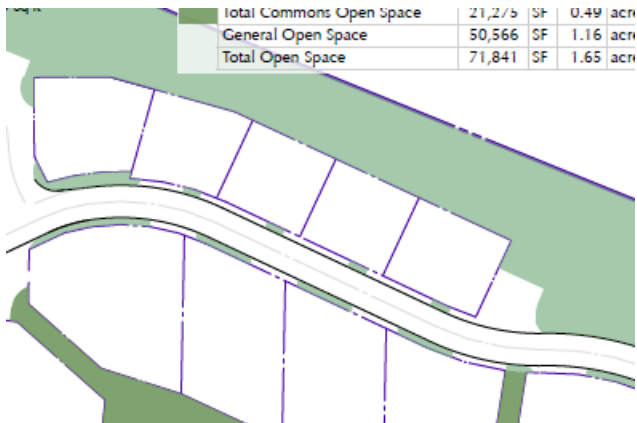
As required by MZO 3.030(4)(a), the open space is proposed for reservation as a private park. The MZO does not define a "park" or "private park," so the City Council should look to examples of other parks throughout the state to define the terms. Many parks, both public and private, include open space that is maintained in its natural state with few if any improvements. In fact, the vast majority of the land within many Oregon state parks fit this description, as do many municipal parks. At a minimum, in the absence of a code definition, "park" should be given its ordinary, broadly applicable meaning where the size or layout of the park does not bear on whether or not it is a park. Compare Forest Park in Portland, the largest municipal park in the nation, with Mill Ends Park in Portland, which is also a park despite consisting of just one tree in a small, two-foot circle.

Furthermore, in connection with the Classic Street Cottages development ("CSC"), the City has previously determined that small, fractured and non-contiguous parcels of open space can in the aggregate meet the requirements of MZO 3.030(4)(a) as a private park. Here is an image of part of the final CSC open space plan:⁶

⁵ The applicant's proposal to dedicate 40% of the site as open space is not inconsistent with its argument that hotel rooms are not dwelling units. The applicant voluntarily offered the open space dedication to moot the question of whether or not MZO 3.030(4)(a) applied, since even if it did apply it was met. The Planning Commission, however, chose to ignore this good faith concession by finding both that MZO 3.030(4)(a) applied and was not met, thereby necessitating separate arguments on appeal that MZO 3.030(4)(a) does not apply or, in the alternative, is met by the proposal.

⁶ See City Ordinance 12-01, which is the PUD ordinance for CSC. It is our understanding that the City subsequently approved a modified open space plan for CSC that is not shown in the ordinance; a copy of the final open space plan is enclosed as Exhibit D.





As you can see, non-contiguous areas as small as one or two trees planted in a street-side planter strip counted toward the overall open space calculation under MZO 3.030(4)(a). If the small, fractured open spaces in CSC in the aggregate met the "private park" requirement of MZO 3.030(4)(a), then surely the contiguous 1.7 acres of open space proposed by the applicant also meets the requirement. Accordingly, the Planning Commission was obligated to find that with the open space dedication proposed by the applicant, MZO 3.030(4)(a) was met.

- b. *The Planning Commission's application of MZO 3.030(4)(a) violates state law regarding approval of housing.*

By determining that hotels are dwelling units, the Planning Commission obligated itself under ORS 197.307(4) and ORS 227.175(4)(b)(A) to apply only "clear and objective standards, conditions and procedures" to the application. Clear and objective standards must have "objective benchmarks" for measuring compliance. *Warren v. Washington County*, 78 Or LUBA 375, 388-89, *aff'd* 296 Or App 595, 439 P3d 581 (2019). Conversely, standards that require a "subjective analysis ... to determine [their] meaning" violate the statutes. *Legacy Dev. Grp. Inc. v City of The Dalles*, __ Or LUBA __ (LUBA No. 2020-099, slip op at 12) (Feb. 24, 2021).

On its face, MZO 3.030(4)(a) appears to be clear and objective. The maximum permitted density is 6.5 units per gross acre unless an open space dedication of 40% or more of the site is made, in which case the maximum permitted density is 13 units per acre. These are simple, objective mathematical calculations. However, the Planning Commission has impermissibly made the criterion subjective by applying the Commissioners' personal interpretation of what is or is not a "park." Specifically, the Commission found that "the section of the site plan marked for park uses between Classic Street and the hotel's driveway and parking lots is a thin strip of land and is too close to the Classic Street roadway to be suitable for recreation or maintaining in a natural space."

This newly-created definition of a park is nowhere to be found in the MZO. Also, it is neither clear nor objective. The Commission provided no "objective benchmarks" to establish how thin is too thin, or how close is too close, or what is or is not "suitable for recreation or maintaining in a natural space." All the Commission really found is that, in their opinion, the open space as proposed by the applicant is not a park. This is clearly the kind of subjective, case-by-case, standard-less decision-making that ORS 197.307(4) and ORS 227.175(4)(b)(A) prohibit when evaluating development proposals for dwelling units.

Fortunately, the Commission's error can easily be rectified. The City Council can and should adopt a less value-laden interpretation of the open space requirement in ORS 3.030(4)(a) by concluding that any dedication of open space that meets the 40% threshold triggers the maximum density of 13 dwelling units per acre. Such an interpretation would be consistent with the MZO, the City's prior practice as shown by the CSC open space plan and the requirements of ORS 197.307(4) and ORS 227.175(4)(b)(A).

- c. The applicant is willing to consider reasonable adjustments to its site plan to conform to the Council's preferences.*

While the proposed site plan meets all the required criteria, the applicant remains willing to be flexible in its project design. For example, the narrow open space strip along Classic Street was proposed by the applicant to facilitate a pedestrian trail along the Classic Street frontage, in response to certain Planning Commissioners' concerns about pedestrian and bicycle traffic along Classic Street. The trail is not required to meet any applicable criteria and would in fact have no appreciable benefit to traffic on Classic Street, but the applicant nonetheless proposed it in an attempt to find common ground with the Commission. If the City is not interested in the trail, then the applicant would be willing to utilize an alternative site plan that eliminates the open space strip and concentrates all of the open space at the south end of the site. A copy of such an alternative site plan is enclosed as Exhibit E.

3. The Planning Commission erred by concluding that surrounding streets are inadequate to support the traffic anticipated from the project.

MZO 4.136(3)(c)(5) requires a finding that "the streets are adequate to support the anticipated traffic generated by a proposed development and that the development will not overload the streets outside the planned area." In response to this criterion, and without reliance on any evidence whatsoever, the Planning Commission made the circular and conclusory finding that "the traffic expected to be generated by this development at peak times will overload the adjoining roadways." (Order, p. 8.)



The Planning Commission's finding is not supported by substantial evidence in the record; in fact it is supported by no actual evidence whatsoever. LUBA will overturn factual findings not based on substantial evidence in the record. "Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding." *Neighbors For Smart Growth and Jake Mintz v. Washington County*, 2019 WL 497320, at *5.

Enclosed as Exhibit F is a letter from the applicant's traffic engineer summarizing the traffic-related evidence in the record of this case. Notably, the City's own traffic consultant, Lancaster Mobley, agrees in full with both the scope of the applicant's traffic study and its conclusions. Opponents have produced no contrary evidence; even the June 2022 traffic study from Greenlight Engineering does not dispute the applicant's evidence, it only disputes the conclusions reached. Those conclusions and those of the Planning Commission, however, are mere speculation and conjecture and are not reasonable in light of the evidence in the record. To the contrary, all of the evidence in the record leads to only one reasonable conclusion: that MZO 4.136(3)(c)(5) is met.

Lastly, the City Council should carefully consider the consequences that will result if the City concludes that the minimal traffic impacts of this proposal truly overload the City's streets. This conclusion would effectively stop all development in the City that would impact these streets, including future phases of the Highlands development and planned improvements at Nehalem Bay State Park. Among other things, this would create significant problems for the City in meeting its statewide obligations to accommodate future growth. For these reasons, the City Council should reverse the Planning Commission's finding regarding traffic impacts.

D. If de novo review or review by additional testimony and other evidence is requested, a statement relating the request to the factors listed in Section 10.190.

The appellant does not seek de novo review.

Additionally, MZO 10.150(B) requires an appeal to "contain the information outlined in Section 10.030." We do not understand this requirement, since MZO 10.030 lists the information required for a notice of hearing, and the appellant is not in control of scheduling the appeal hearing. Regardless, most of the information listed in MZO 10.030 can be found in the appeal form and the Order.



Please contact Mick Harris or me if you have any questions or concerns regarding this appeal. Thank you.

Best regards,



David J. Petersen

DJP/rkb

Enclosures:

Exhibit A – City Appeal Form

Exhibit B – Copy of the Order

Exhibit C – Proposed Site Plan

Exhibit D – Classic Street Cottages Final Open Space Plan

Exhibit E – Alternative Site Plan

Exhibit F – Letter from Brent Ahrend

cc (via e-mail, w/enc):

Vito Cerelli

Scott Gebhart

Brent Ahrend

Mick Harris

Souvanny Miller

Sean Malone

EXHIBIT A



City of Manzanita

P.O. Box 129
Manzanita, OR 97130-0129
Phone (503) 368-5343
Fax (503) 368-4145
building@ci.manzanita.or.us

LAND USE APPLICATION DEPARTMENT USE ONLY

Permit No:

Date Issued:

By:

SITE LOCATION:

ADDRESS:	
698 Dorcas Lane	
MAP AND TAX LOT:	
31029D - 2100; 31029DA - 2600	
ZONE:	
<input type="checkbox"/> R-2 <input type="checkbox"/> R-3 <input type="checkbox"/> R-4 <input checked="" type="checkbox"/> SR-R <input type="checkbox"/> C-1 <input type="checkbox"/> LC <input type="checkbox"/> RMD	
TYPE OF WORK:	
<input type="checkbox"/> Accessory Structure <input type="checkbox"/> House or Mobile Home <input type="checkbox"/> Multi-family dwellings <input checked="" type="checkbox"/> Commercial, Industrial <input type="checkbox"/> Tree Removal: No Charge	
TYPE OF APPLICATION:	BASE FEE:
<input type="checkbox"/> Administrative Review	\$75.00
<input type="checkbox"/> Accessory Structure, Minor Review	\$100.00
<input type="checkbox"/> House or Mobile Home	\$250.00
<input type="checkbox"/> Multi-Family Dwelling	\$250 + \$25/Unit
<input type="checkbox"/> Commercial, Industrial, Other Projects	\$650.00
<input type="checkbox"/> Variance	\$450.00
<input type="checkbox"/> Partitions	\$500.00
<input type="checkbox"/> Planned Unit Development	\$1,400.00
<input type="checkbox"/> Subdivision	\$1,200.00
<input type="checkbox"/> Lot Line Adjustment	\$125.00
<input type="checkbox"/> Signs	\$75 + \$2 SQ/ FT
<input type="checkbox"/> Conditional Use	\$625.00
<input type="checkbox"/> Site Plan Review	\$625.00
<input type="checkbox"/> Zone Change	\$625.00
<input type="checkbox"/> Comprehensive Plan Amendment	\$1,000.00
<input type="checkbox"/> Vacations	\$600.00
<input type="checkbox"/> Temporary Permit	\$300.00
<input type="checkbox"/> Annexation	\$1,000.00
<input type="checkbox"/> Amendment to Urban Growth Boundary	\$1,000.00
<input type="checkbox"/> Pre-Application Conference	\$225.00
Total: \$472.50	
+ 5% Tech. Fee:	
Total Due: \$472.50	

X -- Appeal

REQUIRED INFORMATION:

APPLICANT:		
Name: Vito Cerelli		
Full Mailing Address: 31987 Maxwell Ln		
City: Arch Cape	State: OR	Zip: 97102
Phone: (503) 440-5766		
Email: vito.cerelli@gmail.com		
PROPERTY OWNER:		
Same as applicant? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Name: Manzanita Lofts LLC		
Full Mailing Address: 11251 SE 232nd Ave.		
City: Damascus	State: OR	Zip: 97089
Phone: (503) 440-5766		
Email: vito.cerelli@gmail.com		
LICENSED PROFESSIONAL:		
Same as applicant? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Business Name: Tonkon Torp LLP		
Address: 888 SW 5th Avenue, Suite 1600		
City/State/Zip: Portland, OR 97204		
Phone: (503) 889-6636	Fax: (503) 274-8779	
E-mail: mick.harris@tonkon.com		
license no.: Bar No. 194984	City Lic. No.:	
Contact Name: Mick Harris	Phone #: 503-802-5765	
REQUIRED DOCUMENTS FOR APPLICATION		
Required documentation to be determined by Staff.		

EXHIBIT B



City of Manzanita

P.O. Box 129, Manzanita, OR, 97130-0129
Phone (503) 368-5343 Fax (503) 368-4145

BEFORE THE PLANNING COMMISSION OF THE CITY OF MANZANITA ORDER AND NOTICE OF DECISION ON REMAND

APPLICANT: Vito Cerelli
LOCATION: 698 Dorcas Lane (31029D - 2100; 31029DA- 2600).
ZONING: Special Residential/Recreation Zone (SR-R).
REQUEST: Planned Unit Development Application to create a 34-unit Hotel.

The above-named applicant SUBMITTED a remand for a Planned Unit Development application to the City to establish a 34-unit hotel. Public hearings on the above request were held before the Planning Commission on May 30, 2023, and June 16, 2023.

THE PLANNING COMMISSION OF THE CITY OF MANZANITA HEREBY ORDERS that the application request be DENIED and adopts the findings of fact and conclusions in the ORDER, attached hereto and by this reference incorporated herein, in support of the decision.

This ORDER may be appealed to the City Council by an affected party by filing an appeal with the City Manager within 20 days of the date specified below. A request for appeal, either as a de novo review or review on the record, must contain the items listed in City Ordinance 95-4, Section 10.160 and may only be filed concerning criteria that were addressed during the remand hearings. The complete case is available for review at the office of the City Recorder, 543 Laneda Avenue, Manzanita, Oregon, or online at [Planning Commission – City Of Manzanita](#)

Date: 06-20-2023

City of Manzanita Planning Commission

Karen Reddick-Yurka, Chair

In the Matter of the)
Application of) Order on Remand re Manzanita Lofts
Vito Cerelli) Planned Unit Development

I. NATURE OF THE APPLICATION

II. GENERAL INFORMATION

- 1

- I. REMAND ISSUES: The Planning Commission will review the application in accordance with the Oregon Land Use Board of Appeals' Final Opinion and Order dated February 27, 2023, and the City's Notice of a Public Hearing on the Remand of a Land Use Board of Appeals Decision published on February 27, 2023, issued May 8, 2023, which noticed the Planning Commission Hearing for May 30, 2023.

III. APPLICATION SUMMARY

- A. The applicant wishes to create a 34 Unit hotel complex on the subject property that will feature a combination of loft units and large and small cabins. The project will be developed over three phases:
 1. Phase 1 is located at the north end of the site and will total 19 studio hotel rooms. There will be a total of 11 buildings with eight designed to contain two units and three single units. Each unit will be approximately 350 square feet in area. This Phase also includes a gathering space with a kitchen. This building will not contain a restaurant.
 2. Phase 2 will be located to the south of Phase 1, containing 9 hotel cabins, each approximately 1,000 square feet in area. These will be unattached and run perpendicular to the adjacent roadway.
 3. Phase 3 will be at the south end of the site and contain 6 small cottages, each approximately 350 square feet in area.
 4. A private roadway will run along the east side of the site, serving all three Phases. Required public facilities will also be located within this roadway. Appropriate levels of parking will be included for each Phase for a total of 53 parking spaces.
- B. Section 3.030(2)(h) permits a "motel, hotels, including an eating and drinking establishment therewith" in the Special Residential/Recreation Zone. In addition, Subsection (4)(c) requires the Planning Commission to use the Planned Development procedures in Section 4.136 when evaluating an application.
- C. This application and review are only considering the planned development layout, and not the individual buildings. While the applicant submitted photos and schematics identifying potential designs, this application does not include a design review for any

structure. However, the layout does contain proposed building locations, and if approved, the Commission has the authority to condition their decision on the final layout substantially conforming to the proposal, including the relative size, position and design of the buildings.

D. Two items for clarification:

1. The zoning map on the City's website identifies a right-of-way where the subject property is located. This is in error. The County Assessor maps clearly show the two tax lots without an intervening right-of-way.
2. Phase 2 includes the 1,000 square foot cottages. The submitted plan partitioning of the property is not under consideration with the current proposal. Again, the request is to develop the site for a hotel complex.

IV. PROCEDURAL HISTORY

On March 21, 2022, the Planning Commission conducted a hearing on the application. The Commissioners were familiar with the site's location. Otherwise, no *ex parte* contacts, bias or conflicts of interest were declared. At the conclusion of the meeting, the Commission voted to continue the matter until the April 18, 2022, meeting, allowing the applicant to provide additional information regarding, traffic, wetlands and open space.

The Commission reconvened on April 18, 2022. The applicant was unable to submit the requested information to City staff to meet the April hearing deadline. To ensure a complete and proper review of the material, the applicant requested the Commission continue the matter to the May 16, 2022, Commission meeting. The Commission approved the continuation.

The Commission reconvened on May 16, 2022. At the May 16 meeting, the Commission reviewed the additional material, including traffic reports from the applicant and the City's review of said report, additional building details and landscaping information. At the conclusion of the meeting the Commission voted to continue the matter until the June 20 hearing to address the hotel's operations and vehicle parking.

The Commission reconvened on June 20, 2022. Prior to the June hearing, area property owners submitted written comments to the City and Planning Commission. Although the record was left open at that time only to review materials submitted by the applicant, the City agreed to comprehensively reopen the record to allow additional evidence, argument, and testimony. As a result, a new notice was mailed prior to the June 20 meeting indicating that public testimony will be accepted.

At their conclusion of the June 20 hearing, the Planning Commission voted to deny the application based on previous testimony and the submitted comments. The Commission found the proposal failed to comply with all applicable decision criteria for a Planned Unit Development contained in Manzanita Ordinance 95-4. Further, the Commission directed staff to prepare an Order for the

Chair's signature. Notice of the decision was provided, and the applicant submitted a timely appeal to the City Council.

The City Council elected to conduct the appeal review on the record, and held a hearing on July 19, 2022. After the July 19, 2022, hearing, during which the City Council heard argument from the applicant and those opposed to the application, the City Council adopted the Planning Commission's findings, and denied the application.

The applicant then submitted a timely petition for review to the Oregon Land Use Board of Appeals ("LUBA") on August 8, 2022. Before LUBA, the applicant asserted eight assignments of error against the City's denial. LUBA resolved the petition in a Final Opinion and Order dated February 27, 2023 (the "Remand Order"), remanding the decision to the City for further consideration with respect to three of the assignments of error. Specifically, LUBA agreed with the applicant's arguments that:

1. "[T]he [C]ity erred in relying on [Manzanita Comprehensive Plan] provisions as a basis for the limited land use decision, and in particular as a basis to deny the application for failure to satisfy MZO 4.136(3)(c)(2)." Remand Order at p. 23.
2. "[R]emand is appropriate for the city council to adopt a reviewable interpretation of all of the relevant MZO provisions" MZO 1.030 and MZO 3.030(4)(a), and to determine "whether the Density Standard applies to the proposal." Remand Order at p. 25.
3. The City's decision was not supported by substantial evidence in the record with respect to MZO 4.136(3)(c)(5) in that the record did not support the Planning Commission's conclusions that "the project will generate 'more than 309 vehicle trips'" and that "many of the trips would be directed to downtown." Remand Order at p. 28.

On March 30, 2023, the applicant requested that the City begin remand proceedings to address the three issues on remand. This request started a 120-day time clock for the City to issue its final decision.

The City Council held a special meeting on April 12, 2023 at which it remanded these proceedings to the Planning Commission.

On April 14, 2023 the City issued a Notice of Remand Hearing in accordance with the City Council's decision outlining the remand issues to be resolved at a public hearing before the Planning Commission on May 15, 2023. On May 8, 2023, the City issued a new Notice of Remand Hearing postponing the Remand Hearing to May 30, 2023. On May 22, 2023, the City issued a Staff Report for the May 30, 2023 hearing.

On May 30, 2023, the Planning Commission met to consider evidence, testimony, and argument regarding the remand issues. The materials on review before the Planning Commission included the existing record as was submitted to LUBA, including previous Staff Reports dated March 10, 2022 and June 10, 2022, finding that applicant's proposal complied with the applicable Planned Development criteria and recommending that the Planning Commission approve the application. The record also includes the Remand Order, applicant's request for a remand hearing, Notices of Remand Hearing, and Applicant's letter dated May 5, 2023, public comments received prior to the May 30, 2023 hearing and during the open record period from May 31, 2023 to June 7, 2023. The record is available at <https://ci.manzanita.or.us/planning-c>

[ommission/](#). After considering comments and submitted materials from the applicant, the Oregon Coast Alliance, which was the intervenor in the LUBA proceedings, and members of the public, the Planning Commission made preliminary findings with respect to the remand issues relating to MZO 4.136(c)(2), (3), and (5) as discussed in the June 9, 2023 Staff Report. The Planning Commission then continued the hearing to June 16, 2023 to address the remand issue relating to MZO 3.030(4)(a). The Planning Commission left the record open for a period of seven days for the parties to present new evidence and argument as described in the City's Notice continuing the hearing to June 16, 2023.

On June 16, 2023, the Planning Commission reconvened to consider evidence and testimony raised during the open record period, written responses received before the hearing, and additional oral argument regarding the remand issues as described in the City's Notice continuing the hearing to June 16, 2023. As a result of this hearing, the Planning Commission issues a written decision below.

The City's remand decision must be made in writing, with no further appeals available within the City's process, on or before July 28, 2023. The Commission Decision may be appealed to the City Council and the Council must render a final decision, in writing, by July 28, 2023. A decision after review by the Council may again be appealed to LUBA.

V. PLANNED UNIT DEVELOPMENT PROVISIONS AT ISSUE ON REMAND

As reflected in the City's Notices of Remand Hearing of May 8, 2023 and May 31, 2023, the following issues were remanded for the Planning Commission's review and decision.

The Planning Commission adopts the findings of the Staff Report dated June 9, 2023, with respect to MZO 4.136(3)(c)(2) and (3), and further makes its findings of fact and conclusions as follows.

A. MZO 3.030(4) addresses density standards for development in the Special Residential/Recreational Zone, SR-R. In the SR-R zone the following standards shall apply:

MZO 3.030(4)(a) Overall density for the SR-R zone is 6.5 dwelling units per gross acre. Dwellings may be clustered on one portion of a site within the SR-R zone and achieve a maximum density of 13 dwellings per acre where at least 40% of the total lot or parcel area is reserved or dedicated as permanent open space as a public or private park area or golf course. The open space shall be so indicated on the Plan and zoning map, and deed restrictions to that effect shall be filed with the City.

DISCUSSION: LUBA accepted that the proposed use is a "hotel" and that the proposed use is therefore a permitted use in the City's SR-R zone.

LUBA found that the City's initial denial of the application "adopted an equivocal finding that [this] Density Standard could apply *if* the [hotel's] units are 'dwelling units' as defined in MZO 1.030, without deciding whether the units are in fact dwelling units." LUBA remanded this portion of the decision to the City to provide further interpretation, and determine whether the Density Standard in MZO 3.030(4)(a) applies to the application.

In his request for a remand hearing, applicant noted that he disagrees that the Density Standard applies to the hotel project. The applicant was willing however, to accept a condition of approval requiring the development to meet the Density standard by reserving or dedicating 40% of the site for open space or public or private park area or a golf course, thereby increasing maximum density to 13 units per acre.

On June 6, 2023, applicant submitted a proposed site plan depicting the physical characteristics of the dedicated open space. That document is available at the link provided above.

FINDINGS: In accordance with LUBA's Remand Order, the proposed use is a hotel, which is a permitted use in the SR-R zone. With respect to the requirement in MZO 3.030(4)(a) that "[t]he open space shall be so indicated on the Plan and zoning map, and deed restrictions to that effect shall be filed with the City," the Commission finds that "Plan" refers to the proposed use as a planned development (for context, see MZO 3.030(4)(c) requiring that proposals in the SR-R zone be assessed under the Planned Development procedures).

The hotel's units are "dwelling units" for purposes of MZO 1.030, and therefore the Density Standard in MZO 3.030(4)(a) applies to the proposed use. With a total project area of 3.81 acres and 34 proposed units, the proposed use does not meet the typical requirement of 6.5 dwelling units or less per gross acre.

The Planning Commission requested additional information from the applicant to demonstrate whether the proposed use could qualify for the alternative maximum of 13 dwelling units per gross acre by dedicating or reserving 40% of the total lot or parcel area as permanent open space as a public or private park area.

The applicant provided a proposed site plan for a private park area and public walking trail on June 6, 2023. The MZO does not define "park," but the applicant did not demonstrate that the full portion of the property purportedly dedicated to park uses would meet the plain-meaning definition of a park. Specifically, the section of the site plan marked for park uses between Classic Street and the hotel's driveway and parking lots is a thin strip of land and is too close to the Classic Street roadway to be suitable for recreation or maintaining in a natural space. With that section removed from the open space designation, the applicant cannot show that the site plan meets the 40% minimum designated area. Therefore, the applicant's proposal does not demonstrate that at least 40% of the total lot or parcel area will be dedicated as permanent open space as a private park.

CONCLUSION: The Planning Commission finds that the Density Standard described in MZO 3.030(4)(a) applies to the proposed use and is not met. This criterion is not met.

C. MZO 4.136(3), addresses the Planned Unit Development Procedure. With respect to the issues on remand, the following

procedures shall be observed in applying for and acting on a planned development:

MZO 4.136(3)(c) The Planning Commission shall consider the preliminary development plan at a meeting, at which time the comments of persons receiving the plan for study shall be reviewed. In considering the plan, the Planning Commission shall seek to determine that:

- (5) The streets are adequate to support the anticipated traffic and the development will not overload the streets outside the planned area.**

DISCUSSION: LUBA determined that the City's denial was not supported by substantial evidence in the record with respect to MZO 4.136(3)(c)(5) in that the record did not support two of the Planning Commission's conclusions. First, LUBA noted that both the applicant's and the opponent's traffic engineers "estimated that the project would generate 'up to' 309 vehicle trips on the peak day, a Saturday in the summer," which did not support a finding that the project would generate "more than" 309 trips per day. Remand Order at 28. Second, LUBA found that there was no evidence in the record to support the City's conclusion that many of the trips would be directed to downtown. LUBA remanded this portion of the decision to the City.

The City of Manzanita's Transportation Engineer provided a scoping letter to the Applicant on April 13, 2023 to provide an updated Transportation Impact Study (TIS) to address the issues raised in the Remand Order. This letter is posted as part of the packet for the May 30th hearing and is available at the web address above.

On May 4, 2023 applicant submitted Transportation Impact Study Conducted by Mackenzie for Manzanita Lofts Hotel Dated May 3, 2023

On May 4, 2023 Lancaster Mobley, the City's Contract Traffic Engineer reviewed the findings from the Mackenzie Transportation Impact Analysis.

These materials are available and included in the Planning Commission Packet which can be found on the City's website at the link provided above.

FINDINGS: There will be a single private driveway servicing the site. Neither Ordinance 95-4 or Ordinance 95-5 (Land Divisions) contains minimum driveway width and improvement requirements.

On May 30, 2023, the Planning Commission made a preliminary determination that this criterion was met if applicant's proposed trail through the site could provide safe access for pedestrians and bicyclists.

On June 16, 2023, after reviewing the applicant's proposal for a trail through the site, the Planning Commission determined that it would not provide safe access for pedestrians and bicyclists. According to the applicant, the trail would

not be suitable for bicycle traffic. The proposed trail would also involve areas that the Planning Commission finds are not suitable for pedestrian traffic—steep switchbacks and a section that traverses a parking lot.

After further deliberations, the Planning Commission also determined the traffic expected to be generated by this development at peak times will overload the adjoining roadways and that traffic concerns will not be alleviated by a pedestrian walkway as depicted on the site map.

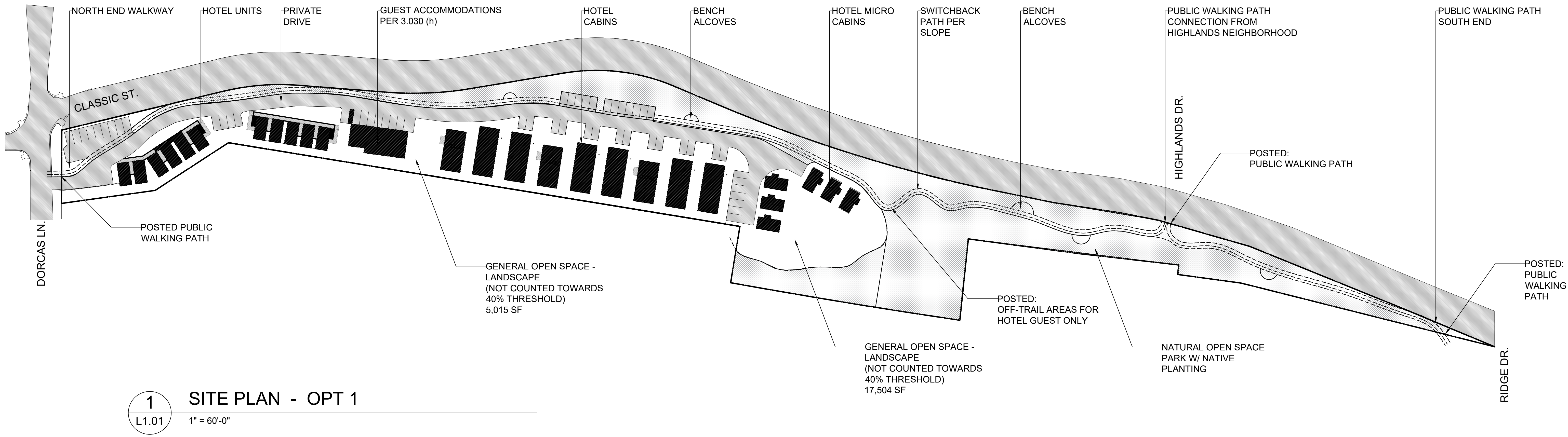
CONCLUSION: The Planning Commission finds that this criterion is not met.

VI. CONCLUSION

Because the Planning Commission finds that the application does not meet the requirements of MZO 3.030(4)(a) and MZO 4.136(3)(c)(5) the application is denied.

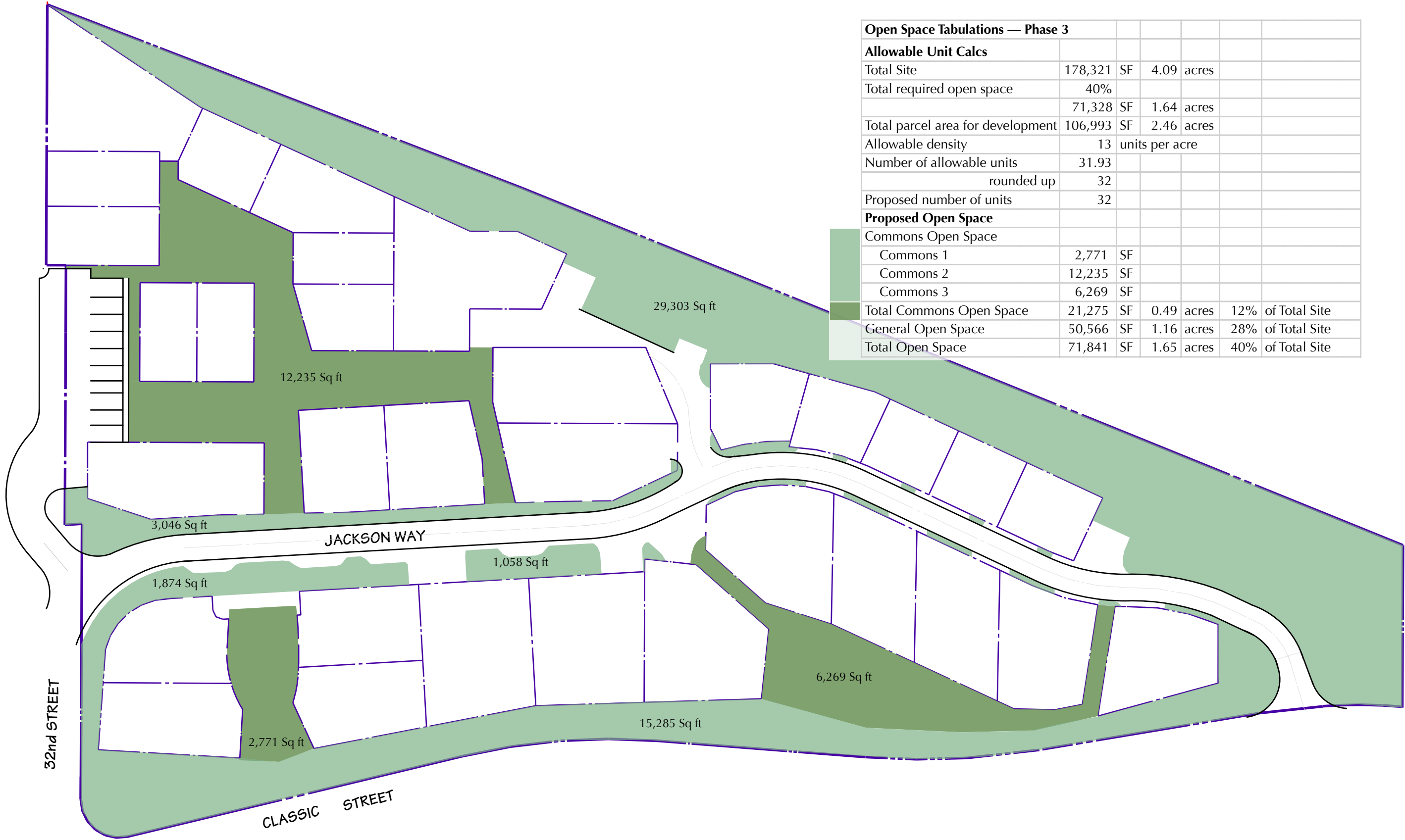
EXHIBIT C

Total Site Area:		3.81 ac / 165,963.6 sf
Areas to be developed:		
Studios	6,521 sf / 19 units	
Cabins	9,000 sf / 9 units	
Micro cabins	2,100 sf / 6 units	
Gathering space	2,225 sf	
Roads and parking	26,479 sf	
Total developed area:		46,235 sf
Lot coverage:	46,235 sf / 165,963.6 sf	27.9%
Dedicated open space:		79,042.9 sf
Open space percentage:	79,042.9 sf / 165,963.6 sf	47.6%
Max density at 13 rooms/gross acre	3.81 ac x 13 units	50 units
Total hotel rooms:	19 + 9 + 6	34 units
Unused density		16 units
Provided parking		53 spaces
Minimum required parking		43 spaces
Surplus		10 spaces



MANZANITA LOFT SITE PLAN

EXHIBIT D



Open Space Tabulations — Phase 3						
Allowable Unit Calcs						
Total Site	178,321	SF	4.09	acres		
Total required open space	40%					
	71,328	SF	1.64	acres		
Total parcel area for development	106,993	SF	2.46	acres		
Allowable density	13	units per acre				
Number of allowable units	31.93					
rounded up	32					
Proposed number of units	32					
Proposed Open Space						
Commons Open Space						
Commons 1	2,771	SF				
Commons 2	12,235	SF				
Commons 3	6,269	SF				
Total Commons Open Space	21,275	SF	0.49	acres	12%	of Total Site
General Open Space	50,566	SF	1.16	acres	28%	of Total Site
Total Open Space	71,841	SF	1.65	acres	40%	of Total Site

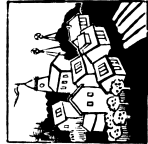
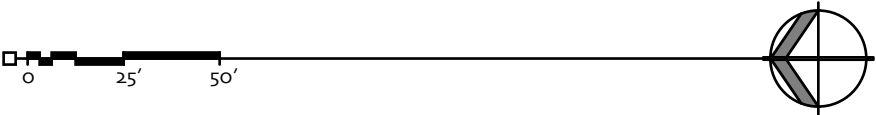
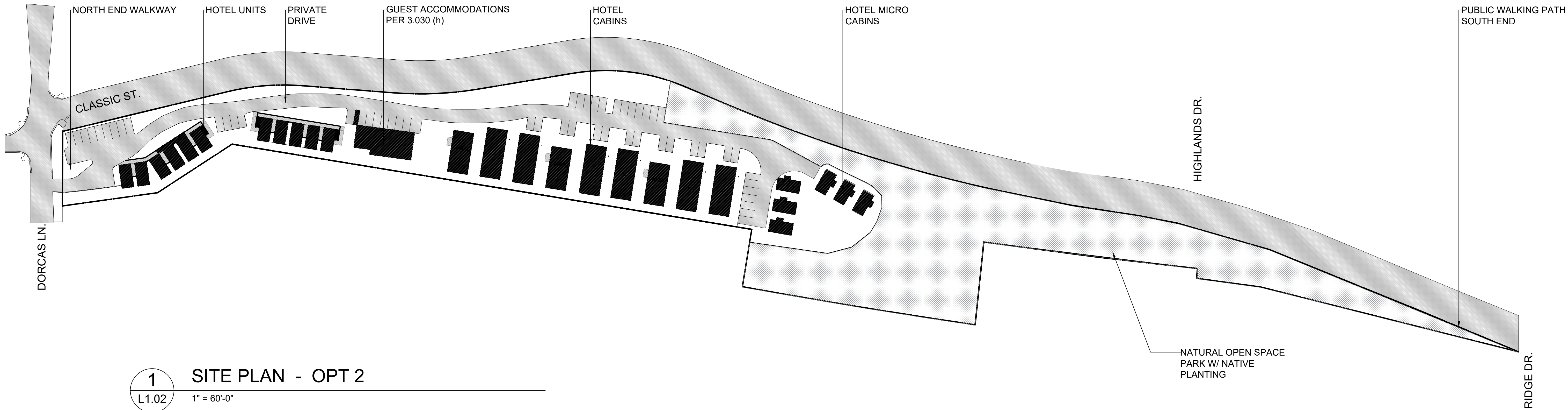


EXHIBIT E

Total Site Area:		3.81 ac / 165,963.6 sf
Areas to be developed:		
Studios	6,521 sf / 19 units	
Cabins	9,000 sf / 9 units	
Micro cabins	2,100 sf / 6 units	
Gathering space	2,225 sf	
Roads and parking	26,479 sf	
Total developed area:		46,235 sf
Lot coverage:	46,235 sf / 165,963.6 sf	27.9%
Dedicated open space:		66,385.4 sf
Open space percentage:	66,385.4 sf / 165,963.6 sf	40.0%
Max density at 13 rooms/gross acre	3.81 ac x 13 units	50 units
Total hotel rooms:	19 + 9 + 6	34 units
Unused density		16 units
Provided parking		53 spaces
Minimum required parking		43 spaces
Surplus		10 spaces



MANZANITA LOFT
SITE PLAN

EXHIBIT F

July 10, 2023

City of Manzanita
Attention: City Council
PO Box 129
Manzanita, OR 97130-0129

Re: **Manzanita Lofts**
Traffic Analysis Appeal Response
Project Number 2220120.00

Dear City Council:

The planning commission incorrectly found in the June 20, 2023 *Order and Notice of Decision* that “the traffic expected to be generated by this development at peak times will overload the adjoining roadways and that traffic concerns will not be alleviated by a pedestrian walkway as depicted on the site map.”

There is no evidence in the record that traffic generated by the development would overload the adjoining roadways at peak times or otherwise. To the contrary, the applicant’s May 3, 2023 Traffic Impact Analysis (prepared consistent with the City’s April 13, 2023 scoping letter) reveals that after construction of the project, all affected intersections and road segments will continue to operate well within acceptable levels, even on peak Saturdays in the summer. The traffic study used vehicle count data developed specifically for hotels and motels¹ and found that when compared to pre-development conditions, the project will increase average peak hour delays by 0.1 to 0.3 seconds at Laneda and Classic and by 1.7 seconds at Laneda and Highway 101, and would create no additional delays at Classic and Dorcas. On the busiest hour of the busiest Saturday of the year, the project can be expected to add, on average, less than one car every three minutes to the most affected intersection (Classic and Dorcas), and all City intersections will continue to operate at level of service “B” or better². Furthermore, the evidence shows that under no circumstances will the project cause traffic to exceed the existing capacity of affected roads, and queues will consist of only one vehicle on all stop-controlled approaches at City intersections during the peak hours of the peak days. Also, the intersection of Highway 101 with Laneda Avenue will operate within ODOT standards of 0.85 volume to capacity ratio (v/c), at 0.72 during the peak hour on the busiest Saturday in the summer.

The City’s Contract Traffic Engineer, Lancaster Mobley, fully concurs with the applicant’s analysis. They noted in their May 4, 2023 review letter that after completion of the Manzanita Lofts project, “the intersections of Classic Street with Dorcas Lane and with Laneda Avenue will operate favorably at level of service A or B for all scenarios examined,” and “that intersection [of Highway 101 at Laneda Avenue] is shown to operate well within applicable performance standards.” Lancaster Mobley also testified to the Planning Commission on May 30 that it fully agreed with the applicant’s traffic analysis and its conclusions that the project would have no appreciable adverse impact on surrounding streets.

Several opponents testified regarding their concerns about congestion and queueing with the addition of trips from the project, and disagreed with the applicant’s evidence; but importantly, no evidence or analysis has been provided to show

¹ Among other things, this data accounts for peak trips generated specifically by hotels and motels, such as at check-in and check-out.

² The City has no operational standard for intersections, but generally, a level of service “B” is considered acceptable.



operation and queueing would fall below applicable standards. Therefore, there is no evidentiary basis to contradict the conclusions of both the applicant's and City's traffic engineer and find that the project will "overload" the adjoining roadways.

The planning commission also expressed concern regarding safety for pedestrians and bicyclists along the adjacent streets, particularly Classic Street and as noted in the *Order and Notice of Decision*: "On May 30, 2023, the Planning Commission made a preliminary determination that this criterion was met if applicant's proposed trail through the site could provide safe access for pedestrians and bicyclists." In response, the applicant agreed to provide a trail through the site to accommodate pedestrians, but noted the trail would not be suitable for bicycle traffic because of the steepness of the grade change on part of the site. I testified during the Planning Commission Hearing that it is appropriate for bicycles to share the adjacent streets with vehicles given the low volumes and generally slow speeds, and no evidence has been produced that would indicate it would be unsafe for bicycles to travel on the adjacent roadways. In fact, most streets within the City of Manzanita are narrow, two-lane roadways, with no bicycle lanes or sidewalks, so shared use of the roadway by bicycles and a separate pathway for pedestrians along the site frontage would be an improvement compared to most roadways.

In summary, the Planning Commission's finding that the roadways would be overloaded by the project's trips is not supported by the evidence in the record. The applicant is still willing to voluntarily provide a pedestrian walkway through the site to provide a separate area for pedestrians along the site frontage, as originally requested, but such a trail is not needed to alleviate or mitigate any documented traffic congestion or safety concerns.

Sincerely,



Brent Ahrend, PE
Associate Principal | Traffic Engineer

c: Vito Cerelli – Manzanita Lofts LLC
David Peterson – Tonkon Torp LLP



EXPIRES: 12/31/23