

ORDINANCE NO. 2074

An ordinance proclaiming annexation of approximately 5.18 acres of contiguous territory located within the City’s Urban Growth Boundary and withdrawing the same from the service territories of Westside Rural Fire Protection District and from the Ice Fountain Water District (IBC 22nd & Belmont)

WHEREAS, Integrity Building and Construction, LLC (“IBC” or the “Applicant”), is the owner of certain property, which is contiguous to the City limits and located within the Hood River Urban Growth Area, and applied for annexation to the City; and

WHEREAS, the City Council adopted policy in Resolution 2016-15 that requires annexation prior to receiving City sewer services; and

WHEREAS, as part of the annexation proposal, the Applicant included several additional properties and abutting public rights-of-way for annexation (collectively the “Annexation Territory”), including five tax lots legally described in Exhibit A, attached hereto and incorporated herein by this reference; and

WHEREAS, the Annexation Territory is located in Hood River County, Oregon within the acknowledged Urban Growth Area of the City of Hood River and is contiguous with the existing boundary of the City of Hood River; and

WHEREAS, pursuant to HRMC Chapter 12.09 and Resolution 2016-15, the City requires consent to annex in exchange for receiving City water or sewer service, which also requires that such properties be contiguous with the existing City boundary; and

WHEREAS, the Applicant seeks annexation of the Annexation Territory using the so-called Triple Majority method in ORS 222.170, which meets the requirements for annexation under this statute. The written consents associated with all parcels in the Annexation Territory were included in the Annexation application; and

WHEREAS, the Annexation Territory is located within the service territories of Westside Rural Fire Protection District, Farmers Irrigation District, the Ice Fountain Water District, and ORS Chapter 222 provides for the withdrawal of land from these districts upon annexation to a city, when the city will provide the same services; and

WHEREAS, notice of a public hearing before the Planning Commission on the annexation request and to withdrawal from the affected service districts was provided as required by HRMC 17.09 and ORS Chapter 222; and

WHEREAS, the Planning Commission convened its duly noticed public hearing on the annexation request on September 19, 2022, where the Commission accepted all manner of public testimony and written comment on the proposal and kept open the record for further comment; and

WHEREAS, the Planning Commission reconvened on October 17, 2022, voted to recommend approval of the Annexation request to the City Council, subject to conditions of approval, in a written recommendation attached hereto as Exhibit B; and

WHEREAS, the City Council held a duly-noticed public hearing on the annexation and withdrawal request on November 28, 2022, reviewed the record compiled before the Planning Commission, the Commission’s recommendation, and accepted all manner of public testimony and written comment on the proposal, after which the Council voted to annex the Annexation Territory and simultaneously withdraw the territory from the Westside Rural Fire Protection District and Ice Fountain Water District; and

WHEREAS, the Council concluded that the Annexation Territory should remain within and be served by the Farmers Irrigation District upon annexation until further notice and Council action; and

WHEREAS, the City has the authority, within constitutional and statutory limits, to set the property tax rates at which annexed territories shall be taxed and to apply City land use designations and regulations to all lands within its corporate boundaries; and

WHEREAS, the Council’s decision to annex the Annexation Territory is expressly conditioned upon the applicant executing a contractually binding agreement detailing the Applicant’s commitment to comply with the conditions approval, listed on pages 30-34 of the Staff Report in Exhibit B, and this Ordinance shall not become final or effective until the Applicant executes such an annexation agreement, and it is recorded.

NOW, THEREFORE, the City of Hood River ordains as follows:

Section 1. Incorporation of Recitals and Exhibits. The foregoing recitals are hereby adopted by the Council and incorporated herein in support of this Ordinance. The following Exhibits are hereby incorporated herein by reference:

- Exhibit A – Legal description and drawing of the Annexation Territory, including abutting rights-of-way
- Exhibit B – City Council adopted findings of fact and conclusions of law
- Exhibit C – Supplemental findings of fact and conclusions of law
- Exhibit D – Annexation Agreement, fully executed and recorded

Section 2. Annexation of Territory Approved. The real property (the “Annexation Territory”) described in Exhibit A, attached hereto, and incorporated herein by this reference, is hereby annexed into and shall become part of the City of Hood River, Hood River County, Oregon. Also specifically annexed into the City of Hood River are the portions of public right-of-way for Belmont Avenue and 22nd Street abutting the Annexation Territory. In support of this decision, the Council specifically adopts as its own the Planning Commission’s recommended Findings of Fact and Conclusions of Law attached hereto as Exhibit B, plus the additional supplemental findings of fact and conclusions of law attached hereto as Exhibit C.

Section 3. Withdrawal of Territory. The Annexation Territory described in Exhibit A is hereby withdrawn from the service territory of the Westside Rural Fire Protection District and the Ice Fountain Water District upon recordation of this Ordinance. The Annexation Territory shall remain within the boundaries and service territory of the Farmers Irrigation District and shall not be withdrawn from that service district until further notice and Council action.

Section 4. City Zoning. The Annexation Territory shall receive a Hood River zoning designation of Urban Standard Density Residential (R-2) pursuant to the City's acknowledged Comprehensive Plan and adopted land use regulations.

Section 5. Proportionate share of debt obligation. The Annexation Territory shall be subject to its proportionate share of debt for public obligations and shall be subject to real property tax assessment in the same manner as all other land within the City's corporate boundaries.

Section 6. Annexation Agreement. The Applicant shall execute and record the Annexation Agreement attached hereto as Exhibit D prior to final approval and recordation of this Ordinance, and this Ordinance shall not become final or effective until the Annexation Agreement is recorded.

Section 7. Severability. If any portion of this ordinance is found to be invalid or unenforceable for any reason, that finding shall not affect the validity or enforceability of any other provision of this ordinance.

Section 8. Transmittal. Pursuant to ORS 222.177, the City Recorder shall:

1. File a certified true copy of this Ordinance with the Oregon Secretary of State and the Hood River County Assessor.
2. File with the Oregon Secretary of State a copy of all statements of landowner consent to this annexation.


Section 9. Effective Date: This ordinance and the annexation it declares shall be effective upon filing with the Secretary of State's Office in accordance with ORS 222.180.

Read for the First Time: February 27, 2023.

Read for the Second Time and approved: March 13, 2023.


Mark Zanmiller, Council President

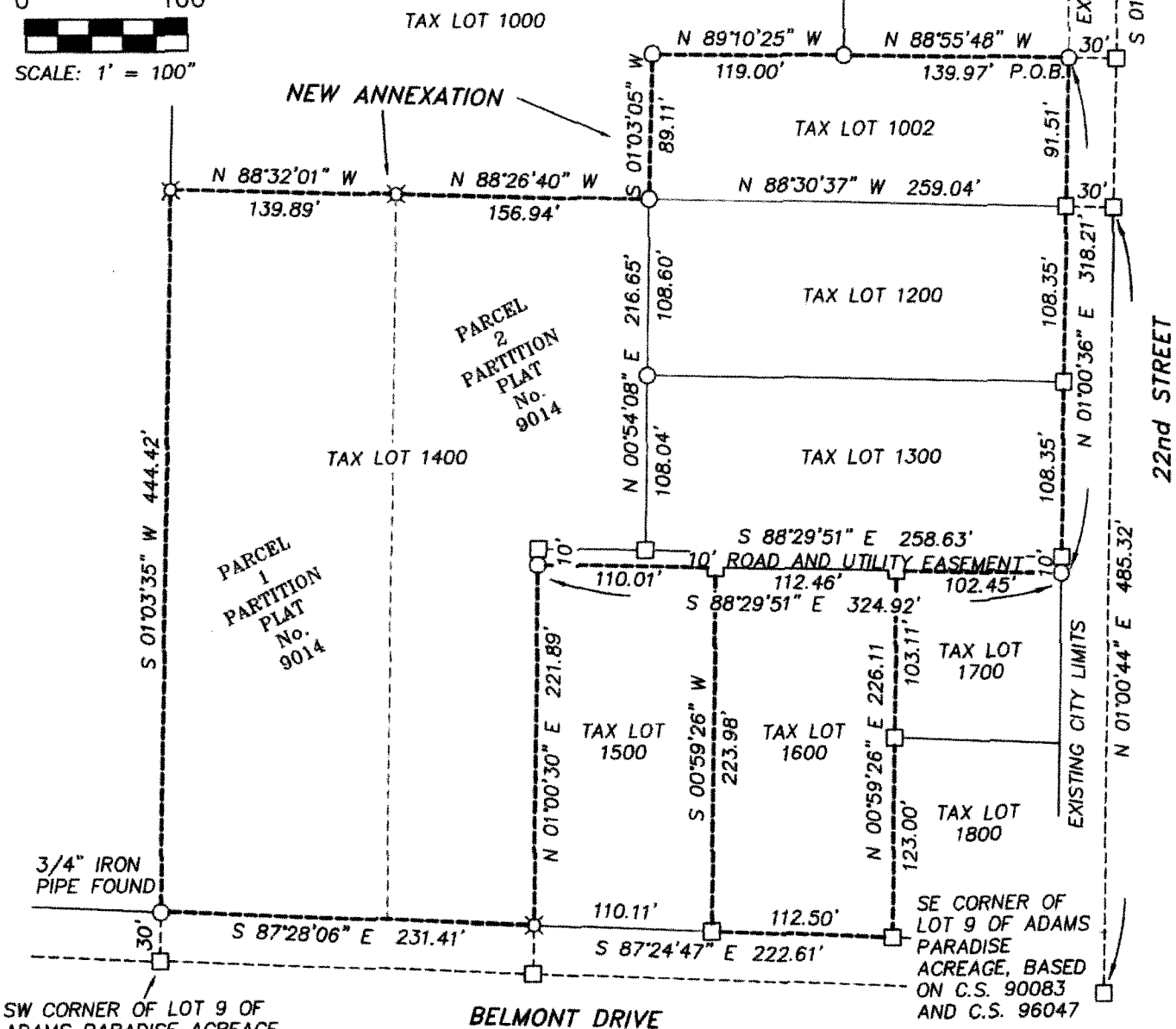
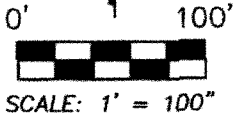
ATTEST:


Jennifer Gray, City Recorder

TERRA SURVEYING

ANNEXATION EXHIBIT MAP for IBC BUILDERS

NE CORNER OF LOT 9
OF ADAMS PARADISE
ACREAGE, BASED ON
C.S. 90083 AND
C.S. 96047



SW CORNER OF LOT 9 OF
ADAMS PARADISE ACREAGE,
BASED ON C.S. 90083 AND
C.S. 96047

- LEGEND:**
- FOUND MONUMENT OF RECORD
 - CALCULATED, NOT FOUND OR SET

LOCATION:
A TRACT OF LAND LOCATED IN THE
SOUTHEAST QUARTER OF THE
NORTHWEST QUARTER OF SECTION 35,
TOWNSHIP 3 NORTH, RANGE 10 EAST,
WILLAMETTE MERIDIAN, HOOD RIVER
COUNTY, OREGON.

**REGISTERED
PROFESSIONAL
LAND SURVEYOR**

Erik M. Carlson
**OREGON
December 30, 2005
ERIK M. CARLSON
72306**

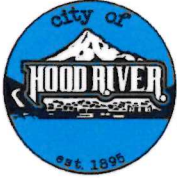
Expires: December 31, 2023

TERRA SURVEYING

P.O. BOX 617
HOOD RIVER, OREGON 97031
PHONE: (541) 386-4531
E-Mail: terra@gorge.net

DATE: AUGUST 24, 2022
PROJECT: 21179IBC
SCALE: 1" = 20'
ASSESSORS MAP: 3N-10E-35BD

EXHIBIT A



CITY OF HOOD RIVER

PLANNING DEPARTMENT

211 2nd Street, Hood River, OR 97031 Phone: 541-387-5210

BEFORE THE CITY OF HOOD RIVER CITY COUNCIL ANNEXATION STAFF REPORT

Consideration of a petition for Annexation
submitted on behalf of Integrity Building and Construction,
LLC) File No. 2022-20)

Application submitted: May 4, 2022
Application updated August 26, 2022
120-day deadline: October 4th, 2022

I. BACKGROUND INFORMATION:

- A. **REQUEST:** Annexation into the city of five tax lots (1002, 1200, 1300, 1400, 1600) plus adjacent right-of-way. The 5.18-acre annexation territory is proposed to retain the Urban Standard Density Residential (R-2) zoning designation. (*See Annexation Area Map, Attachment "A.1"*).
- B. **APPLICANT/OWNER:** Integrity Building and Construction, LLC
- C. **PROPERTY LOCATION:** Annexation Area: 3N10E35BD Tax Lot 1002 - 1230 22nd Street; 3N10EBDTax Lot 1200 - 1280 22nd Street; 3N10EBDTax Lot 1300 , 1310 22nd Street; 3N10EBDTax Lot 1400 - 2420 Belmont Avenue; 3N10EBDTax Lot 1600 , 2310 Belmont Avenue, and portions of Belmont Avenue and 22nd Street. (*See Location Map, Attachment "B"*.)
- D. **PROPERTY SIZE:** The annexation area approximately 5.18 acres.
- E. **SITE ZONING:** The subject properties currently are zoned Urban Standard Density Residential (Urban Growth Area, U-R-2) and will remain Urban Standard Density Residential (R-2) following annexation.
- F. **CURRENT LAND USE:** Single-family residential dwellings.
- G. **SURROUNDING ZONING AND LAND USE:**
North: U-R-2, single-family dwellings
South: U-R-2, single-family dwellings
East: R-2, Church of the Nazarene and Single-family dwellings
West: U-R-2, single-family dwellings, and orchard
- H. **APPLICABLE HOOD RIVER MUNICIPAL CODE (HRMC) STANDARDS & CRITERIA:**
1. HRMC 17.03.020 – Urban Standard Density Residential Zone (R-2)
2. HRMC 17.09.040 Quasi-Judicial Actions
3. HRMC 17.15 – Annexation Policy

I. **AGENCY COMMENTS:** Agencies serving the area including City and County Engineering and Westside and Hood River Fire Departments were notified of this request. The following responses were submitted at the time of this report:

1. City Engineering Department: Comments attached (Attachment “C”)
2. Farmers Irrigation District: Comments attached (Attachment “C”)
3. Ice Fountain Water District: Comments attached from pre-application conference (Attachment “C”)

J. **ADJACENT PROPERTY OWNER COMMENTS:** Property owners within 250 feet of the subject parcels were notified of this request and hearing. Comments submitted by the time of publication of this staff report are include as (Attachment “D”).

K. **HISTORY:**

1. Application for Annexation submitted May 4th, 2022
2. Updated Materials Received August 26th, 2022
3. Notice of public hearing mailed to affected property owners August 29th, 2022
4. Planning Commission hearing held September 19th, 2022
5. Planning Commission hearing continued and concluded October 17th, 2022
6. Notice of Council Meeting October 28th, 2022.
7. City Council Hearing scheduled for November 28th, 2022.

L. **ATTACHMENTS:**

- Attachment “A” – Annexation Application Materials including written analysis and:
 - A) Annexation Application
 - B) Survey and Legal Description
 - C) Deeds
 - D) Assessors Map
 - E) Zoning Map
 - F) Preliminary Site Plan
 - G) Voters Registration Information
 - H) Registers Voters Consent to Annexation
- Attachment “B” – Location Map
- Attachment “C” – Agency Comments
- Attachment “D” – Neighboring property owner comments submitted prior to the close of the Planning Commission record
- Attachment “E” – Draft Annexation Term Sheet
- Attachment “F” – Materials Submitted after the conclusion of the Planning Commission and Prior to the City Council Hearing.

M. **RATIONALE FOR TYPE OF APPLICATION:**

The lands to be annexed currently have a Hood River County zoning designation of “Urban Standard Density Residential (U-R-2). The territory is currently designated as “R-2” on the City’s Zoning Map. *Id. Morsman v. City of Madras, 47 Or LUBA 80 (2004)* (A city does not err in failing to follow comprehensive plan amendment procedures in approving an annexation, where the annexation decision does not amend the city’s comprehensive plan.). For this reason, this application only seeks annexation.

Portions of the territory to be annexed is already developed. A preliminary site plan included as exhibit as this application for the applicants’ property shows how it is proposed to be developed

upon annexation. The applicant seeks to use the “Triple Majority” method of consent annexation based exclusively on landowner consent, as opposed to consent of electors. ORS 222.170(1) allows the use of the Triple Majority method to avoid the election requirement if more than one half of the landowners collectively own more than 50% of the land representing more than 50% of the assessed property values in the territory consent to the annexation. The statute provides:

222.170 Annexation by consent before public hearing or order for election; proclamation of annexation. (1) *The legislative body of the city need not call or hold an election in any contiguous territory proposed to be annexed if more than half of the owners of land in the territory, who also own more than half of the land in the contiguous territory and of real property therein representing more than half of the assessed value of all real property in the contiguous territory consent in writing to the annexation of their land in the territory and file a statement of their consent with the legislative body on or before the day:*

(a) *The public hearing is held under ORS 222.120, if the city legislative body dispenses with submitting the question to the electors of the city; or*

(b) *The city legislative body orders the annexation election in the city under ORS 222.111, if the city legislative body submits the question to the electors of the city.*

There was a period of time between 1986 and 2000 when it was generally believed that the triple majority annexation method was unconstitutional. This was because the Oregon Court of Appeals had declared the triple majority provisions of ORS 199.490(2) unconstitutional in *Mid-County Future Alternatives Committee v. Metro. Area Local Gov. Boundary Comm'n*, 82 Or App 193, 728 P2d 63 (1986), modified 83 Or App 552, 733 P2d 451, rev dismissed 304 Or 89, 742 P2d 47 (1987), at least to the extent that this method was being used to avoid holding an election in the territory to be annexed. See also *Storey v. City of Stayton*, 15 Or LUBA 165, 1756 (1986) (applying *Mid-County*, which invalidated the triple majority provisions of ORS 199.490(2), to a proposed annexation under ORS 222, 170(1)); *Mid-County Future Alternatives Committee v. Portland Metro, Area Local Gov. Boundary Comm'n*, 83 Or App 552, 733 P2d 451 (1987), rev dismissed, 304 Or 89, 742 P2d 47 (1987).

However, in *Sherwood School Dist. 88J v. Washington Cty. Ed.*, 167 Or. App. 372, 386-87, 6 P.3d 518 (2000), the court of appeals overruled its previous decision in *Mid-County Future Alternatives Committee* and found the triple majority method to be a permissible way to avoid an election in the territory under consideration for annexation. See also *Morsman v. City of Madras*, 203 Or. App. 546; 126 P.3d 6 (2006), rev. den., 340 Or. 483, 135 P.3d 318 (2006); *Kane v. City of Beaverton*, 49 Or LUBA512 (2005).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PETITION FOR ANNEXATION TO CITY OF HOOD RIVER

FINDINGS: The applicant petitions for the annexation to the City of Hood River a tract of land comprised of five taxlots and public right-of-way for Belmont Avenue and 22nd Street as described in Attachment “A”. Together all property subject to the annexation totals approximately 5.18 acres of land contiguous with the current City of Hood River boundary.

This petition is submitted for property within the city's Urban Growth Boundary under the Triple Majority method allowed by ORS 222.170(1). The property to be annexed is adjacent to and located west of that current city boundary.

The applicant submitted an analysis of applicable approval criteria (Attachment "A") and the following information in support of this annexation:

- A) Annexation Application
- B) Survey and Legal Description
- C) Deeds
- D) Assessors Map
- E) Zoning Map
- F) Preliminary Site Plan
- G) Voters Registration Information
- H) Registers Voters Consent to Annexation

B. STATE STATUTES AND COMMON LAW

FINDINGS: State law establishes some basic substantive standards for all annexations. These are addressed below.

1. The "Reasonableness" Requirement.

The Oregon Supreme Court imposed a "reasonableness" requirement applicable to all annexations in 1952, prior to modern zoning codes and comprehensive planning requirements. *See Portland Gen. Elec. Co. v. City of Estacada*, 194 Or 145, 291 P2d 1129 (1952); *Marion County Fire Dist. #1 v. Marion-Polk County Boundary Comm 'n*, 19 Or App 108, 526 P2d 1031 (1974); *Kane v. Paulus*, 41 Or App 455, 459, 599 P2d 1154 (1979), *rev den*, 288 Or 113 (1979); *Rivergate Residents Ass 'n v. PMALGBC*, 70 Or App 205, 689 P2d 326 (1985), *rev den*, 298 Or 553 (1985); *DLCD v. City of St. Helens*, 138 Or App 222, 907 P2d 259 (1995); *Westside Rural Fire Protection Dist. v. City of Hood River*, 43 Or LUBA 546 (2003). The modern adoption of significant statewide land use and annexation laws has not superseded the judicially-imposed reasonableness standard. However, the court of appeals has stated that "[t]he reasonableness question is no longer one that depends solely or mainly on unguided judicial determinations, but is now largely controlled by specific legislative and regulatory criteria." *Department of Land Conservation and Development v. City of St. Helens*, 138 Or App 222, 227, 907 P2d 259 (1995). As it turns out, all of the above-cited cases and their progeny deal with the "reasonableness" concept in the context of so-called "cherrystem" or "pan handle" annexations, an issue not presented by this application. Further, LUBA has more recently held that annexation of property having an "irregular shape" or a "cherry stem" is not per se unreasonable, in any event. *Altamont Homeowners Assoc., Inc. v. City of Happy Valley*, 73 Or LUBA 126, 137 (2016).

2. Applicable Oregon Revised Statutes ("ORS").

ORS Chapter 222 establishes procedures and requirements for annexations by cities. These standards are addressed below.

ORS 222.111 Authority and procedure for annexation. (1) When a proposal containing the terms of annexation is approved in the manner provided by the charter of the annexing city or by ORS 222.111 to 222.180 or 222.840 to 222.915, the boundaries of any city may be extended by the

annexation of territory that is not within a city and that is contiguous to the city or separated from it only by a public right of way or stream, bay, lake or other body of water. Such territory may lie either wholly or partially within or without the same county in which the city lies.

FINDINGS: ORS 222.111 (1) requires that the territory to be annexed must be located either "contiguous" to the city or "separated from it only by a public right of way or by a stream, bay, lake or other body of water." In this case the territory to be annexed is contiguous to the existing City boundary.

(2) A proposal for annexation of territory to a city may be initiated by the legislative body of the city, on its own motion, or by a petition to the legislative body of the city by owners of real property in the territory to be annexed.

FINDINGS: This application is initiated by the petition of property owners in the territory. Moreover, all the property owners residing in the territory to be annexed have given their written consent to be annexed. See Attachment "A". Specifically, the attached annexation consents cover all the property to be annexed.

(3) The proposal for annexation may provide that, during each of not more than 10 full fiscal years beginning with the first fiscal year after the annexation takes effect, the rate of taxation for city purposes on property in the annexed territory shall be at a specified ratio of the highest rate of taxation applicable that year for city purposes to other property in the city. The proposal may provide for the ratio to increase from fiscal year to fiscal year according to a schedule of increase specified in the proposal; but in no case shall the proposal provide for a rate of taxation for city purposes in the annexed territory which will exceed the highest rate of taxation applicable that year for city purposes to other property in the city. If the annexation takes place on the basis of a proposal providing for taxation at a ratio, the city may not tax property in the annexed territory at a rate other than the ratio which the proposal authorizes for that fiscal year.

FINDINGS: This section is not applicable.

(4) When the territory to be annexed includes a part less than the entire area of a district named in ORS 222.510, the proposal for annexation may provide that if annexation of the territory occurs the part of the district annexed into the city is withdrawn from the district as of the effective date of the annexation. However, if the affected district is a district named in ORS 222.465, the effective date of the withdrawal of territory shall be determined as provided in ORS 222.465.

FINDINGS: The area to be annexed is currently in the Ice Fountain Water District, Farmers Irrigation District and the West Side Fire District. Per ORS 222.510(2). However, the area is anticipated to be withdrawn from Ice Fountain water and West Side Fire District and instead served by the City of Hood River Water and Fire Department after annexation.

(5) The legislative body of the city shall submit, except when not required under ORS 222.120, 222.170 and 222.840 to 222.915 to do so, the proposal for annexation to the electors of the territory proposed for annexation and, except when permitted under ORS 222.120 or 222.840 to 222.915 to dispense with submitting the proposal for annexation to the electors of the city, the legislative body of the city shall submit such proposal to the electors of the city. The proposal for

annexation may be voted upon at a general election or at a special election to be held for that purpose.

FINDINGS: This section is not applicable.

(6) The proposal for annexation may be voted upon by the electors of the city and of the territory simultaneously or at different times not more than 12 months apart.

FINDINGS: This proposal is not required to be voted upon by the electors of the City or of the annexation territory.

(7) Two or more proposals for annexation of territory may be voted upon simultaneously; however, in the city each proposal shall be stated separately on the ballot and voted on separately, and in the territory proposed for annexation no proposal for annexing other territory shall appear on the ballot.

FINDINGS: This annexation proposal will not be voted upon simultaneously with any other annexation proposal.

222.120 Procedure for annexation without election; hearing; ordinance subject to referendum.

(1) Except when expressly required to do so by the city charter, the legislative body of a city is not required to submit a proposal for annexation of territory to the electors of the city for their approval or rejection.

(2) When the legislative body of the city elects to dispense with submitting the question of the proposed annexation to the electors of the city, the legislative body of the city shall fix a day for a public hearing before the legislative body at which time the electors of the city may appear and be heard on the question of annexation.

(3) The city legislative body shall cause notice of the hearing to be published once each week for two successive weeks prior to the day of hearing, in a newspaper of general circulation in the city, and shall cause notices of the hearing to be posted in four public places in the city for alike period.

(4) After the hearing, the city legislative body may, by an ordinance containing a legal description of the territory in question:

(a) Declare that the territory is annexed to the city upon the condition that the majority of the votes cast in the territory is in favor of annexation;

(b) Declare that the territory is annexed to the city where electors or landowners in the contiguous territory consented in writing to such annexation, as provided in ORS 222.125 or 222.170, prior to the public hearing held under subsection (2) of this section; or

(c) Declare that the territory is annexed to the city where the Oregon Health Authority, prior to the public hearing held under subsection (1) of this section, has issued a finding that a danger to public health exists because of conditions within the territory as provided by ORS 222.840 to 222.915.

(5) If the territory described in the ordinance issued under subsection (4) of this section is a part less than the entire area of a district named in ORS 222.510, the ordinance may also declare that the territory is withdrawn from the district on the effective date of the annexation or on any subsequent date specified in the ordinance. However, if the affected district is a district named in ORS 222.465, the effective date of the withdrawal of territory shall be determined as provided in ORS 222.465.

(6) The ordinance referred to in subsection (4) of this section is subject to referendum.

(7) For the purpose of this section, ORS 222.125 and 222.170, "owner" or "landowner" means the legal owner of record or, where there is a recorded land contract which is in force, the purchaser thereunder. If there is a multiple ownership in a parcel of land each consenting owner shall be

counted as a fraction to the same extent as the interest of the owner in the land bears in relation to the interest of the other owners and the same fraction shall be applied to the parcel's land mass and assessed value for purposes of the consent petition. If a corporation owns land in territory proposed to be annexed, the corporation shall be considered the individual owner of that land.

FINDINGS: This section is not applicable.

222.125 Annexation by consent of all owners of land and majority of electors; proclamation of annexation. The legislative body of a city need not call or hold an election in the city or in any contiguous territory proposed to be annexed or hold the hearing otherwise required under ORS 222.120 when all of the owners of land in that territory and not less than 50 percent of the electors, if any, residing in the territory consent in writing to the annexation of the land in the territory and file a statement of their consent with the legislative body. Upon receiving written consent to annexation by owners and electors under this section, the legislative body of the city, by resolution or ordinance, may set the final boundaries of the area to be annexed by a legal description and proclaim the annexation.

FINDINGS: This annexation application is not being pursued under this provision, but rather it is pursued under ORS 222.170 because the applicant has consents from a majority of the owners of land in the territory or their predecessors.

222.170 Annexation by consent before public hearing or order for election; proclamation of annexation.

(1) The legislative body of the city need not call or hold an election in any contiguous territory proposed to be annexed if more than half of the owners of land in the territory, who also own more than half of the land in the contiguous territory and of real property therein representing more than half of the assessed value of all real property in the contiguous territory consent in writing to the annexation of their land in the territory and file a statement of their consent with the legislative body on or before the day:

(a) The public hearing is held under ORS 222.120, if the city legislative body dispenses with submitting the question to the electors of the city; or

(b) The city legislative body orders the annexation election in the city under ORS 222.111, if the city legislative body submits the question to the electors of the city.

(2) The legislative body of the city need not call or hold an election in any contiguous territory proposed to be annexed if a majority of the electors registered in the territory proposed to be annexed consent in writing to annexation and the owners of more than half of the land in that territory consent in writing to the annexation of their land and those owners and electors file a statement of their consent with the legislative body on or before the day:

(a) The public hearing is held under ORS 222.120, if the city legislative body dispenses with submitting the question to the electors of the city; or (b) The city legislative body orders the annexation election in the city under ORS 222.111, if the city legislative body submits the question to the electors of the city.

(3) If the city legislative body has not dispensed with submitting the question to the electors of the city and a majority of the votes cast on the proposition within the city favor annexation, or if the city legislative body has previously dispensed with submitting the question to the electors of the city as provided in ORS 222.120, the legislative body, by resolution or ordinance, shall set the final boundaries of the area to be annexed by a legal description and proclaim the annexation.

(4) Real property that is publicly owned, is the right of way for a public utility, telecommunications carrier as defined in ORS 133.721 or railroad or is exempt from ad valorem taxation shall not be

considered when determining the number of owners, the area of land or the assessed valuation required to grant consent to annexation under this section unless the owner of such property files a statement consenting to or opposing annexation with the legislative body of the city on or before a day described in subsection (1) of this section.

FINDINGS: This section is applicable. Because of the way ORS Ch 222 is organized and written, the "general" or "default" annexation process is an "annexation by vote" of the electors in the territory to be annexed. All other annexation methods being considered "exceptions" to this general method. A City Council may elect to dispose of the election in the territory to be annexed (otherwise required under 222.111(5), ORS 222.120(4)(a) and ORS 222.160) by instead utilizing one of the three "consent" methods. Of the three consent methods, the "triple majority" method is typically the most favored because it is based exclusively on landowner consent, as opposed to consent of electors.

In this case, the "triple majority" annexation method is proposed. This method provides an exemption from the election requirement if more than one-half of the landowners collectively owning more than 50% of the land representing more than 50% of the assessed property values in the territory consent to the annexation.

As demonstrated in the application materials (Attachment "A.1" A), a majority of landowners in the territory have consented to annexation. The applicant and other consenting landowners comprise more than the 50% of the land and more than the required 50% of the total assessed value. In this case, the annexation territory includes five taxlots and public right-of-way for Belmont and 22nd. The owners of all property have included applications as part of the annexation.

222.173 Time limit for filing statements of consent; public records.

(1) For the purpose of authorizing an annexation under ORS 222.170 or under a proceeding initiated as provided by ORS 199.490 (2), only statements of consent to annexation which are filed within any one-year period shall be effective, unless a separate written agreement waiving the one-year period or prescribing some other period of time has been entered into between an owner of land or an elector and the city.

(2) Statements of consent to annexation filed with the legislative body of the city by electors and owners of land under ORS 222.170 are public records under ORS 192.410 to 192.505.

FINDINGS: This section is not applicable as all owners have submitted applications to annex.

222.177 Transmittal of annexation records to Secretary of State. When a city legislative body proclaims an annexation under ORS 222.125, 222.150, 222.160 or 222.170, the recorder of the city or any other city officer or agency designated by the city legislative body to perform the duties of the recorder under this section shall transmit to the Secretary of State:

(1) A copy of the resolution or ordinance proclaiming the annexation.

(2) An abstract of the vote within the city, if votes were cast in the city, and an abstract of the vote within the annexed territory, if votes were cast in the territory. The abstract of the vote for each election shall show the whole number of electors voting on the annexation, the number of votes cast for annexation and the number of votes cast against annexation.

(3) If electors or landowners in the territory annexed consented to the annexation under ORS 222.125 or 222.170, a copy of the statement of consent.

(4) A copy of the ordinance issued under ORS 222.120 (4).

(5) An abstract of the vote upon the referendum if a referendum petition was filed with respect to the ordinance adopted under ORS 222.120 (4).

FINDINGS: The City can comply with this section.

222.180 Effective date of annexation.

(1) *The annexation shall be complete from the date of filing with the Secretary of State of the annexation records as provided In ORS 222.177 and 222.900. Thereafter the annexed territory shall be and remain a part of the city to which it is annexed. The date of such filing shall be the effective date of annexation.*

(2) *For annexation proceedings initiated by a city, the city may specify an effective date that is later than the date specified in subsection (1) of this section. If a later date is specified under this subsection, that effective date shall not be later than 10 years after the date of a proclamation of annexation described In ORS 222.177.*

FINDINGS: The City can comply with this section.

C. STATEWIDE PLANNING GOALS

FINDINGS: Annexation is a planning responsibility under ORS 197.175(1) and is subject to compliance with the statewide planning goals. *Petersen v. City of Klamath Falls*, 279 Or 249, 566 P2d 1193 (1977). However, in situations where the city has annexation criteria in its comprehensive plan and/or land use regulations, and the proposal does not involve a plan amendment, the statewide planning goals do not apply. *Morsman v. City of Madras*, 45 Or LUBA 16 (2003), reversed on other grounds, 196 Or App 67 (2004) (so stating); see *Oregon Coast Alliance v. City of Brookings* 71 Or LUBA 14 (2015) (requiring goals be applied because annexation was accompanied by a plan amendment.). Nonetheless, as a precaution, the applicant demonstrates the proposed annexation's compliance with the Goals as follows:

Goal 1 -Citizen Involvement. Statewide Planning Goal 1 is met via the implementation of the provisions in the acknowledged City of Hood River Zoning Ordinance (HRZO) that relate to citizen participation. This application will be reviewed by staff, the Planning Commission, and the City Council. At least two public hearings will be conducted with notice and opportunity to be heard presented as required by the HRZO. Notices of public hearings for the annexation were mailed to surrounding property owners and affected governmental agencies. At the public hearings anyone wishing to present relevant testimony or documentary evidence will be allowed to do so. The proposal complies with Goal 1.

Goal 2 -Land Use Planning. The HRCP and HRZO are acknowledged to be in compliance with statewide planning goals and guidelines. Goal 2's coordination obligation will be met because the applicant and City shall seek public comment from any affected unit of government, including the County and any special district whose boundaries overlap with the site. The application does not trigger Goal 2 exception standards, because no exceptions to any goals are sought or required.

Goals 3 & 4 -Farm and Forest. The subject property has been deemed to be urbanizable because it is inside an urban growth boundary (UGB). Therefore, neither Goal 3 nor Goal 4 applies to this land.

Goal 5 -Open Spaces, Scenic and Historic areas, and Natural Resources -A city is not required to apply Goal 5 to a decision to annex property, where the annexation decision does not change the

county planning and zoning designations of the property and does not make any of the changes specified in OAR 660-023-0250(3)(a)-(c) that would require application of goals. *Roads End Wafer District v. City of Lincoln City*, 67 Or LUBA 452 (2013). The subject property is not designated as an open space, scenic, or historic area and has no natural resources to protect. There are no identified natural resources located on the subject property. There are no identified wetlands or floodplains in the territory. There are no identified landslide hazard areas. There are no identified historic resources or cultural areas located or identified on the site. There are no identified mineral or aggregate resources on the site. The site is not located downtown or in a neighborhood conservation district. Therefore this goal does not apply.

Goal 6 -Air, Water and Land Resources Quality -The end use of this property will be for residential use. This development will not create any industrial emissions. Storm water will be detained on-site and through a storm drainage system and future on-site drainage. There are no significant water demands, and no potential for pollution. This annexation application will not affect in any way the air, water or land resources. Therefore, this goal is met.

Goal 7 -Areas Subject to Natural Disasters and Hazards -The subject property is not in a floodplain, does not include slopes greater than 25%, does not contain any environmental protection "EP" zones and has no designated geologic hazard "GH" combining zone within its boundaries. There are no identified landslide areas on the subject property. There are no identified wetlands on the subject property. The property is relatively flat and ready for development to occur. Goal 7 is complied with by this application.

Goal 8 -Recreational Needs -The applicant's property is proposed to support new housing units, which creates a limited need for park land. In total, the proposed annexation is approximately 5.18 acres, approximately 1.5 acres is already developed with residences. New housing units under the proposal can feasibly be served by existing park amenities in the city.

The major park service providers within the boundary are the City of Hood River, Hood River Valley Parks and Recreation District, Hood River County, the Port of Hood River, the Hood River Valley School District, Oregon State Parks, and the U.S. Forest Service. These numerous and varied agencies offer a wide range of parks and recreational facilities for the community and visitors.

The Hood River Valley Parks and Recreation District Multi-Jurisdictional Master Plan (2020) does not identify the site as a target acquisition area. The Hood River Valley Parks and Recreation District has recently purchased 20 acres approximately 2000 feet to the west of the site for future park and recreation development.

In addition to the 20 acres recently purchased and mentioned above. The City of Hood River maintains numerous parks within the City limits, providing a number of venues for recreation, family gatherings and larger group gatherings and events.

The following list provides an overview of the larger parks within the City along with a brief description of the available facilities at the park.

Children's Park (9th Street & Eugene Street)

- Restroom facilities
- Wood structure playground
- Covered basketball court

- Lawn area

Collins Baseball Field (May Street west of 13th Street)

- Baseball / softball field and dugouts
- Refreshment stand
- Outfield available for soccer practice
- Restrooms available in the adjacent Jackson Park

Friendship Park (18th Street & Taylor Street)

- Open lawn space

Jackson Park (May Street & 13th Street)

- Largest of the City parks
- Picnic tables
- Restroom facilities
- Playground structures
- Stage for music and movie events.

Mann Park (Eugene Street at 22nd Street)

- Open lawn space

Montello Court (30th Street & Montello Street)

- Neighborhood park

Morrison Park

- Open space

Overlook Memorial Park (2nd Street & State Street)

- Hood River Veterans Memorial
- Memorial brick seat wall
- Flags

Rotary (Skateboard) Park (20th Street & Wasco Avenue)

- Skateboard structures
- BMX bicycle course
- Restroom facilities

Stratton Rose Garden (2nd Street south of State Street)

- May be accessed from Sherman Street or from Memorial Overlook Park at 2nd and State
- Roses, fountain and benches
- Weddings

Tsuruta Park (13th Street & State Street)

- Park dedicated to our Sister City, Tsuruta, Japan
- Picnic table
- Open stream
- Sister City monument donated by citizens of Tsuruta, Japan

Tsuruta Tennis Courts (May Street between 13th Street & 17th Street)

- Four tennis courts, daytime and nighttime play until 10 PM

Waterfront Park (On the Columbia River -Portway Avenue between 2nd Street and 8th Street)

- Waterfront access and walkways
- Restroom and playground
- Amphitheatre

Wilson Park (2nd Street & May Street)

- Playground structure

These parks are adequate to meet the residential needs of the area to be annexed. This goal is satisfied.

Goal 9 -Economic Development. The applicant proposes to annex the territory to meet housing needs. Goal 9 is therefore inapplicable.

Goal 10 -Housing. An annexation decision that leaves existing county comprehensive plan and land use regulations in place, including county residential comprehensive plan and zoning map designations, does not implicate Goal 10. *Roads End Water District v. City of Lincoln City*, 67 Or LUBA 452 (2013). Here, the City has already applied R-2 zoning to the property. There is no need for any plan or zone change decisions to be made as a part of the proposed annexation. Under *GMK Developments et al v. City of Madras*, 57 Or LUBA 81 (2008), *aff'd*, 225 Or App 1, 199 P3d 882 (2008) a city with a population less than 25,000 is not required to contemporaneously remedy an identified housing shortfall with annexation decisions which deficiencies it may have identified over its 20-year planning period. Since the city can defer fixing any identified Goal 10 problem until a later proceeding, such as periodic review, no annexation could possibly violate Goal 10. In fact, it appears that post-*GMK Developments*, Goal 10's only remaining direct applicability is at periodic review.

In this case, to the extent a Goal 10 deficiency is anticipated, this annexation provides modest assistance to remedy that shortfall. This annexation application will allow the landowners to apply for development permits for additional housing to the City of Hood River. The proposal is wholly consistent with Goal 10.

Goal 11 -Public Facilities and Services. Goal 11 policies and implementation strategies emphasize the coordination of urban development with provision of public facilities including water, sewer, and transportation. In this case, all the key public facilities and services are either available to serve the territory to be annexed or shall be included as terms of the annexation as detailed elsewhere in this application. Therefore, the effect of this proposal on the City's continued Goal 11 compliance is positive.

Goal 12 -Transportation. Arguments that application of a city zoning district to an annexed area will conflict with Goal 12 are misdirected, where the challenged decision merely annexes the area but does not rezone it. *Cutsforth v. City of Albany*, 49 Or LUBA 559 (2005). Accordingly, Goal 12 does not apply to this annexation petition. Regardless, conditions of annexation shall be included to support coordinated development and investment in public infrastructure. No undeveloped property will have any frontage or direct access to Belmont Drive. Goal 12 policies and strategies emphasize a creating and maintaining a safe, accessible, and efficient transportation system. There is nothing to

suggest that the amount of new development that the annexation would allow under the proposal would be contrary to these aspirations.

Goal 13 -Energy. LUBA and the Courts have never given any regulatory affect to this Goal. The proposed annexation is neutral from an energy consumption standpoint.

Goal 14 -Urbanization. The land is considered "urbanizable" because it is in a UGB. Goal 14 discusses urbanizable land as follows:

Urbanizable Land. Land within urban growth boundaries shall be considered available for urban development consistent with plans for the provision of urban facilities and services. Comprehensive plans and implementing measures shall manage the use and division of urbanizable land to maintain its potential for planned urban development until appropriate public facilities and services are available or planned.

This policy is fully implemented by the HRCP and HRZO. Other applicable Goal 14 policies include:

2. The size of the parcels of urbanizable land that are converted to urban land should be of adequate dimension so as to maximize the utility of the land resource and enable the logical and efficient extension of services to such parcels.
3. Plans providing for the transition from rural to urban land use should take into consideration as to a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.
4. Comprehensive plans and implementing measures for land inside urban growth boundaries should encourage the efficient use of land and the development of livable communities.

These policies are fully implemented by the HRCP and HRZO, as reflected in the fact that the City zoning for this property is Urban Standard Density Residential (UR2), and that urban services are required for the land can develop.

D. HRMC 17.15 – ANNEXATION POLICY

17.15.010 Introduction. It is the policy of the City of Hood River to promote orderly, efficient, and fiscally responsible annexation of territories in conjunction with urban growth or expected or desired urban growth within the urban growth area. Accordingly, the City shall annex property where:

1. The proposed annexation represents the natural extension of the existing City boundary consistent with urban growth;
2. The proposed annexation would not, when developed or as developed, unreasonably limit the ability of the City to provide a level of services to City residents consistent with community needs and the financial capabilities of the City, as determined by the City;
3. The proposed annexation would not cause the City to pledge extension of services beyond its resources so as to result in a deficit operation of the service;
4. The proposed annexation would serve the interests of the entire community and not solely the interests or convenience of those within the territory proposed to be annexed.

Findings: 1. As conditioned, the proposed annexation represents the natural extension of the existing City boundary consistent with urban growth, as it is adjacent the existing City Boundary. All parties have consented to annexation, the parcel has been contemplated as part of the Comprehensive Plan and City's Urban Growth Area for 40 years, and therefore City has demonstrated this area is already part of its annexation plan.

2. As conditioned, the proposed annexation will not unreasonably limit the ability of the City to provide a level of services to City residents consistent with community needs and the financial capabilities of the City due to the proposed roadway and utility connections to future subdivisions promoting connectivity and serviceability for all services.

3. As conditioned, the proposed annexation would not cause the City to pledge extension of services beyond its resources as to result in a deficit operation of the service the area is already receiving sewer services from the City and may neighboring properties in all directions of the site area already fully annexed into the City. This proposed annexation will extend and connect already existing utility and services provided by the City.

4. As conditioned, the proposed annexation would serve the interests of the entire community and not solely the interests or convenience of those within the territory proposed to be annexed. This annexation will provide opportunity for additional homes to be constructed and street and utility improvements allowing more paths for community members to travel between destinations while also encouraging construction of new homes and investment in public infrastructure.

17.15.020 Application and Process. An annexation may be proposed by the City of Hood River, landowners, or a group of residents and shall include the following elements:

1. Preliminary plans and specifications, drawn to scale, showing the actual shape and dimensions of the property to be annexed and the existing and proposed land uses and residential density. City and County zoning in the proposed territory, as shown on a vicinity map, and contiguous lands must also be Indicated.

Applicant's Response: From Attachment A. *Included as Exhibit 6 are preliminary plans and specifications, drawn to scale, showing the actual shape and dimensions of the Annexation Properties. In addition, included as Exhibit 5, is a Zoning Map, which shows the existing Hood River County zoning (UR-2) as well as the zoning of the contiguous properties within the City (R-2).*

2. Comprehensive statement of reasons in support of the annexation addressing the applicable annexation criteria.

Applicant's Response: *A comprehensive statement of reasons in support addressing the applicable criteria is below. (See Attachment A).*

3. Completed certifications of property ownership, registered voter status, map, and legal description.

Applicant's Response: *Deeds for all of the Annexation Properties are included as Exhibit 3 and signed. Application Forms are included with this application. A legal description of the Annexation Properties is included as Exhibit 2. While voter status is not relevant to a "Triple Majority" annexation, the names, ages, and registered voter status of all persons residing at the Annexation*

Properties are included as Exhibit 7 and the registered voters consent to the annexation is also included as Exhibit 8.

17.15.030 Filing Fees. Fees for filing for annexation requests shall be set by City Council resolution.

Findings: All fees for filing for annexation request have been submitted with the request.

17.15.040 Planning Commission Review. The Planning Commission shall review the application in a public hearing and forward a recommendation with findings to the City Council who will conduct a public hearing according to the Quasi-Judicial Hearing Procedures or Legislative Hearing Procedures (Chapter 17.09), whichever is applicable.

Findings: As required this application was advertised and was heard by Planning Commission prior to consideration by City Council. Council hearing was noticed on October 28, 2022 and shall be heard on November 28th, 2022.

17.15.050 Evaluation Criteria -Developed Land. Prior to approving a proposed annexation of developed land affirmative findings shall be made relative to the following criteria:

Applicant's Response: *Even though the Annexation Properties are developed with single-family homes, the Applicant intends to redevelop Tax Lots 1002, 1300, and 1400. As a result, the Applicant will demonstrate compliance with the criteria of 17.15.060, which applies to undeveloped land. However, each criteria of 17.15.050 is also addressed below.*

Findings: Staff concurs with the above analysis. Although many of the properties are developed it is anticipated that a vast majority of the properties are intended for redevelopment under uses permitted in the R-2 and should be considered as development sites.

17.15.060 Evaluation Criteria -Undeveloped Land. Prior to approving a proposed annexation of undeveloped land, affirmative findings shall be made relative to the following criteria:

1. The territory is contiguous to the city limits and within the Urban Growth Area.

Applicant's Response: *The Annexation Properties are contiguous to the City Limits and within the UGB. As shown on the Zoning Map, the City Limits line is along 22nd Street, which all parcels except for Tax Lot 1600 front upon; however, Tax Lot 1600 is continuous with Tax Lot 1400. The Annexation Properties are within the UGB. At its closest point, the UGB is about 1900 feet west of the westernmost lot line of Tax Lot 1400.*

2. The annexation represents the natural extension of the existing City boundary to accommodate urban growth;

Applicant's Response: *The annexation represents the natural extension of the City boundary, as the as the Annexation Properties are currently contiguous with the boundary of the City and served by City services.*

3. The development of the property is compatible and consistent with the rational and logical extension of utilities and roads to the surrounding area;

Applicant's Response: *The Annexation Properties are presently improved with single-family residential dwellings that are served by existing City roads and utilities. Tax Lots 1002, 1200, and 1300 have existing access along 22nd Street and Tax Lots 1400 and 1600 have primary access from Belmont Drive.*

4. The City is capable of providing and maintaining its full range of urban services to the territory without negatively impacting the City's ability to adequately serve all areas within the existing city limits;

Applicant's Response *Tax Lots 1002, 1200, and 1300 are already served by City-owned water and sanitary utilities. Once annexed, Tax Lots 1400 and 1600 will also be served by City water and sanitary. Stormwater drainage is owned by the City and is located within 22nd Street. Additional City stormwater facilities are located within Belmont Drive even though the portion of Belmont Drive adjacent to Lots 1400 and 1600 is not within City Limits. The Annexation Properties are all currently in the Westside Fire District and will be withdrawn from Westside upon annexation to the City. All properties are within the Farmer's Irrigation District and will remain served by Farmer's Irrigation District for irrigation water.*

*Evaluation of the availability of police, fire, parks, and school facilities occurred when the Annexation Properties were brought into the UGB. At the time, police and fire services were found to be adequate through the additional funds that would be provided after property is annexed and developed (including permit fees, system development charges and property taxes). Parks and schools were found to be adequate through the inclusion of lands devoted to park and school uses within the UGA. In *Cutsforth v. City of Albany*, 49 Or LUBA 559 (2005), LUBA found that an annexation area that is adjacent to a long-developed urban neighborhood with full public facilities that can be readily extended to the annexed territory area (as is the case here) are sufficient to demonstrate compliance with a code criterion requiring that "an adequate level of urban services...is available or will be made readily available." See also, *Westside Rural Fire Protection Dist. v. City of Hood River*, 46 Or LUBA 451, 458-9 (2003) (finding that HRZC 17.15.050(5) only requires that an annexation not be detrimental to existing city services or cause the city to operate at a deficit in order to provide services to the annexed territory).*

Findings: The proposed site is contemplated for future development, generally outlined in application materials submitted by the applicant. This development shall require additional public facilities to adequately serve the parcels with streets, water, sewer, sanitary and storm utilities. **To condition compliance and satisfy this criterion, a draft annexation term sheet is included outlining several applicant and developer obligations to be completed as part of the development.**

5. The fiscal impact of the annexation is favorable, as determined by the City of Hood River, either upon approval or because of a commitment to a proposed development, unless the City determines that a public need outweighs the increase;

Applicant's Response: *The proposed annexation will result in additional property tax revenue for the City. In addition, the Applicant anticipates redeveloping lots 1002, 1200, and 1300 in accordance with the City's Middle Housing Development Standards, which will result in additional housing opportunities for City residents. While it is the Applicant's understanding that the City is*

required to compensate the West Side Rural Fire District for five years of lost property tax revenue when a property is withdrawn for the Fire District, this compensation is offset by the increased property tax revenue paid to the City. In addition, the public need for housing outweighs any lost revenue in the event that the increase property tax paid to the City does not equal the lost revenue paid to the Fire District. As a result, the City can find that this criteria is met.

Findings: As mentioned above, the proposed site is contemplated for future development but does not include a commitment to a proposed development nor public improvements associated with typical subdivisions and land development. To ensure the fiscal impact of the annexation remains favorable, conditions of approval to compensate the impacted taxing jurisdictions and commitments to construct public facilities to adequately serve the parcels with streets, water, sewer, sanitary and storm utilities **are outlined in a draft annexation term sheet is included outlining several applicant and developer obligations to be completed as part of the development.**

6. The annexation meets the City's urban growth needs, and it is to the City's advantage to control the growth and development plans for the territory; i.e., to be able to address the issues of traffic, density, land use, and the level and timing of necessary facilities and services;

Applicant's Response: *The Annexation Properties will be used for urban density residential land. In addition, it is the Applicant's intent to redevelop Lots 1002, 1200, and 1300 with Middle Housing projects, which support of the City's goal to provide more opportunities for inclusive and diverse housing. The City's Middle Housing Development Standards allow for cottage cluster homes, duplexes, triplexes and townhomes to be built in areas where they were previously not permitted and thus it enables the City to use its limited inventory of land efficiently to provide much needed housing that is compatible with the existing residential neighborhoods.*

Findings: As mentioned above the proposed site is contemplated for future development but does not include a commitment to a proposed development not public improvements associated with typical subdivisions and land development. To address the issues of traffic, density, land use, and the level and timing of necessary facilities and services; **and as a condition of approval a draft annexation term sheet that includes developer commitments to providing public improvements needed to serve future development of the annexation sites is included as part of these findings.**

7. If the criteria in 17.15.060 (6) does not apply, the annexation provides a solution for existing problems resulting from insufficient sanitation, water service, needed routes for utility or transportation networks, or other service-related problems;

Applicant's Response: Criteria 6 applies and therefore this section is Not applicable.

8. The proposed annexation does not negatively impact nearby properties, whether located within the city limits or the urban growth area; and

Applicant's Response: *Annexation of the Annexation Properties will rezone them from urban residential to city residential zoning, which is consistent with neighboring properties. As a result, the proposed residential development of the Applicant controlled parcels will not have any negative impact on neighboring properties.*

9. The annexation conforms to the Comprehensive Plan.

Applicant's Response: *This annexation conforms to the City's Comprehensive Plan as stated below:*

Goal 10: Housing

Policy 1. The City will promote and ... the development of a mixture of sound, adequate new housing in a variety of housing types to meet the needs of all segments of the population.

Policy 2. The City will ensure the orderly development of public utilities and services to serve buildable lands within the City and Urban Growth Boundary to meet the residential development needs of the community.

Policy 3. Development in the Urban Growth Area will occur in accordance with the land use designations established in the Plan Map and as further defined in the Urban Growth Management Agreement with Hood River County.

Policy 13. A residential lot within the City shall be capable of being served by the City sewer system before a building permit is issued. A residential lot within the UGA shall be capable of being served by either the City sanitary sewer system or an approved sanitary sewer system before a building permit is issued. If the builder elects to build within the UGA prior to the availability of the City's sanitary sewer system, the lot area will be determined by the County Sanitarian for a septic tank system.

RESPONSE: *The Applicant anticipates developing the three Applicant controlled parcels in accordance with the Middle Housing Development Standards allows, which allows for efficient development of smaller homes and lots, filling a need in the City. The proposed developments have access to sanitary and water mains within 22nd Street, and will be required to install onsite sanitary and water mains per the City Engineering Standards. The Annexation Properties will be rezoned from urban residential (UR-2) to city residential zoning (R-2). Policy 14 is implemented through HRMC 17.15.050(1) and HRMC 17.15.060(1), and is addressed above.*

Goal 14: Urbanization

Implementation Strategy 3. City sewer and water services will be provided to property only after the area has been annexed to the City, or a "consent to annex" has been put forth.

RESPONSE: *The owners of the Annexation Properties have consent to this annexation.*

Implementation Strategy 4. Only areas contiguous to the City will be considered for annexation. All annexations will be done in accordance with the Annexation Policy adopted by City Council in May, 1982.

RESPONSE: *As stated above, the Annexation Properties are contiguous with the City. The Annexation Policy adopted by City Council in May, 1982 has largely been implemented through HRMC 17.15 et seq. as addressed throughout this narrative. However, relevant portions of the 1982 Annexation Policy are addressed below.*

3. Size of Annexation. The City prefers to consider large area annexations of the convenience of the property owner are usually not in the best interest of the City as they can result in administrative and financial encumbrances for the City. Small area annexations will, however, be considered where special circumstances Warrant. Such circumstances would include:

A. Where such annexation would assist in carrying outgrowth and development in the

Comprehensive Plan.

B. Where it is in the best interest of the public, according to the criteria set forth in section 5 below.

RESPONSE: *The Annexation Properties include the Applicant controlled properties as well as two additional properties not controlled by the Applicant, which increases the size of the annexation to 5.18 acres. While the size of the Annexation Properties is not small, the City can find that there are “special circumstances” since it is in the best interest of the public to construct additional housing in accordance with the City’s Middle Housing Development Standards in order to provide additional housing supply within the City.*

5. Annexations Shall Be in the Best Interests of the Entire City. It shall be City's policy to encourage annexation where:

- 1. The annexation must be advantageous to the City as a whole and provide a clearer identification for the City UGB; or*
- 2. It would be clearly up to the City's advantage to control the growth and development plans for the area; i.e., to be able to address the issues of traffic, density, land use and the level of timing of necessary facilities and services, or*
- 3. The annexation would provide land for development to meet urban needs; or*
- 4. The annexation would provide a solution for existing problems resulting from insufficient sanitation, water services, or other service related problems; or*
- 5. The annexation would provide needed routes for utility and transportation networks; or*
- 6. The annexation will favorably increase the City's tax base because of existing development; or*
- 7. An impact analysis, as specified in Section 8 below, indicates that an annexation would be in the best interest of the City.*

RESPONSE: *This annexation is also advantageous to the City as a whole because it creates a path for the development of additional needed housing in accordance with the City’s Middle Housing Development Standards. As stated in the “Hood River Housing Needs Analysis,” dated September 2015, “Hood River population will grow at a rate of 2.0% per year, adding 4,528 new people between 2015 and 2035.” Hood River Housing Needs Analysis at pg. 14. The City enacted the Middle Housing Development Standards in order to address this increase in population and the Applicant anticipates utilize these aforementioned standards to provide additional housing within the existing UGB. This annexation will also bring in additional tax revenue to the City and the fiscal impact is addressed above.*

6. Unfavorable Annexations

- A. The annexation would cause an unreasonable disruption of the current city boundary, such as permanent protuberances, peninsulas, islands, or other unusual extensions; or*
- B. The annexed area, when fully developed, would severely decrease the ability of the City to provide urban services to the area or the rest of the City; or*
- C. An economic analysis of the proposed annexation indicates a deficit operation for city services to the area; or*
- D. The annexation would be solely for the benefit of one or a few property owners.*

RESPONSE: *The Annexation Properties are contiguous with the existing City boundary and does not cause any unusual extensions. As stated above, the Annexation Properties when fully developed will not severely decrease the ability of the City to provide urban services to the area or the rest of the City. While only five properties are proposed for annexation, it benefits more than*

one or a few property owners by providing for additional housing within City limits and an increase in tax revenue for the City, which benefits the City as a whole.

7. Conformance with the Comprehensive Plan. The Comprehensive Plan provides a plan for the future growth of the City of Hood River, Annexations are a major means of implementing the Comprehensive Plan. Therefore, each annexation must be in agreement with the plan. Annexation will occur within the Urban Growth Area.

RESPONSE: *The Annexation Properties are located within the UGB.*

Findings: Staff Findings regarding Comprehensive Plan conformance are included in Section C of this report.

8. Impact Analysis

RESPONSE: *The proposed annexation will result in additional property tax revenue for the City. The City's permanent tax rate is \$2.8122 per thousand dollars of assessed value. Based on the existing assessed values (total of \$904,037), this will result in approximately \$2,542.33 of additional yearly revenue for the City. In addition, the Applicant anticipates redeveloping lots 1002, 1200, and 1300 in accordance with the City's Middle Housing Development Standards, which will result in a substantial increase in the assessed value, additional payment of system development charges, and additional utility service fees, all of which will result in additional revenue for the City. While it is the Applicant's understanding that the City is required to compensate the West Side Rural Fire District for five years of lost property tax revenue when a property is withdrawn for the Fire District, this compensation is offset by the increased revenue paid to the City.*

9. Zoning of Annexed Land. Upon annexation to the City of Hood River, land shall automatically be designated the City zone which most closely resembles the County zone applicable to the land at the time of annexation.

RESPONSE: *The County has zoned this property UR-2, which most closely resembles the proposed R-2 zoning.*

FINDINGS: The tract for annexation is exclusively zoned UR-2 and shall be rezoned to the City's R-2 zoning designation. The application generally is consistent with the evaluation criteria for both developed and undeveloped land.

17.15.070 Evaluation Criteria -Fiscal Impact. The following factors are to be taken into consideration when determining fiscal impact for both developed and undeveloped land and may include, but are not be limited to:

1. The additional revenues, if any, available to the City as a result of the annexation;
2. Whether any unusual or excessive costs will be incurred as a result of the annexation; and
3. The impact on the City's tax base, if any, as a result of the annexation.

Applicant's Response: *The fiscal impact of the annexation is addressed above. No unusual or excessive costs related to the annexation is anticipated.*

FINDINGS:

1. The additional revenues, that will be available to the City as a result of the annexation is not only the additional assessed taxable value for these proposed parcels upon development, but this development will also stimulate the local economy in the realm of construction, and economic purchasing power, and income taxes.

2. No unusual or excessive costs will be incurred as a result of the annexation because, as conditioned the developer is incurring all costs related to annexation and development of public improvements.

3. Upon reimbursement of impacted taxing agencies and installation of public improvements the annexation will impact on the City's tax base in a positive way, as the City will be adding an additional assessed taxable value.

FINDINGS: Withdrawal of the properties known as 3N10E35BD Tax Lots 1002, 1300, 1400, 1200, & 1600 from the Ice Fountain and Westside Rural Fire District will require payment to each for five years of lost revenue based on an intergovernmental agreement between the City and the District. The cost to West side is estimated to be approximately \$6,502 based on 2021 Assessed Values (2022 values have not yet been published by the County Assessor). As anticipated, if the property is developed and removed from Ice Fountain Water, reimbursement shall be required to Ice Fountain for lost revenues and the annexation of services.

A condition of approval is included that the applicant shall be responsible for compensation due to Ice Fountain Water and Westside Fire District for withdrawal of the applicant's 5.18-acre tract from the District. The final amount due to the districts will be affected by timing of annexation and assessed value of the property.

Conditions of approval are recommended to ensure the applicant provides adequate public facilities to the development site. An annexation agreement will detail requirements for right-of-way dedication and public and private improvements that are the responsibility of the applicant so that the City incurs no unusual or excessive costs as a result of the annexation.

17.15.080 Evaluation Criteria -Urban Service Capabilities.

- A. The municipal service needs, if any, of the territory to be annexed, including those of police and fire protection, public sewer and water supply facilities, street Improvement and/or construction, and such other municipal services as may reasonably be required. Both short term and long-term plans for all services shall be addressed.
- B. The projected costs of supplying reasonably needed municipal services to the territory proposed to be annexed.

Applicant's Response: *The urban service capabilities are addressed above.*

FINDINGS: The City Engineering Department submitted comments regarding urban service capabilities (Attachment "C"). Conditions of approval are recommended to ensure the applicant provides adequate public facilities to future development sites. An annexation agreement will detail requirements for right-of-way dedication and public and private improvements that are the responsibility of the applicant.

In order to ensure consistency with City annexation policy and City development standards, **conditions of approval are included that the applicant execute a contractually binding annexation agreement before the City Council approves the ordinance annexing the land that is the subject of this annexation application (i.e., prior to second reading of the ordinance). The annexation agreement will be prepared by the City and will detail requirements for right-of-way dedication and public and private improvements consistent with the findings and including but not limited to the conditions of approval and terms detailed below.**

17.15.090 Staff analysis.

In order to assure that the Planning Commission and the City Council, prior to action upon a proposal for annexation, are fully informed as to the potential impacts of the annexation on both the City and the territory proposed to be annexed, the City Planning Department shall provide a staff report addressing the above criteria.

FINDINGS: Staff provided the findings and recommended conditions of approval detailed throughout this report.

E. HRMC 17.02.040 Zoning of Annexed Areas. Any land annexed to the City shall be zoned a City zone and consistent with the Comprehensive Plan, which corresponds to the following

COUNTY DESIGNATION	CITY DESIGNATION
Medium Density Residential (R-1 7000)	Urban Low Density (R-1 7000)
Medium Density Residential (R-2 5000)	Urban Standard Density (R-2 5000)
Multi-Family Residential (R-2 5000)	Urban High Density (R-3 5000)
General Commercial (C-1)	General Commercial (C-2)
Light Industrial (M-2)	Light Industrial (L-1)
Industrial (M-1)	Industrial (I)

FINDINGS: The City has already zoned this property R-2, conditioned upon annexation.

A city cannot pass zoning ordinances or approve land use permits in areas beyond its jurisdictional boundaries. *State v. Port of Astoria*, 79 Or 1, 154 P 39 (1916); *See also* ORS 221. 720(2). As relevant here, ORS 215.130(2) provides:

*An ordinance designed to carry out a county comprehensive plan shall apply to:
(a) The area within the county also within the boundaries of a city as a result of extending the boundaries of the city or creating a new city, unless, or until the city has by ordinance or other provision provided otherwise ****

In *Allen v. City of Banks*, 9 Or LUBA 218,236 (1983), LUBA held that the use of the words "unless or until" in ORS 215.130(2)(a) is "a recognition of the authority of a city to plan and zone for property outside of its jurisdictional limits in anticipation of annexation." On that basis, LUBA held that it was permissible for the city to adopt plan and zone amendments with a condition that these new designations were contingent upon annexation of the subject property by the city.

LUBA upheld *Allen's* core holding in *Recht v. City of Newport*, 26 Or LUBA 316 (1993) and *Lodge v. City of West Linn*, 35 Or LUBA 42 (1998). In *Recht*, the city annexed and rezoned certain property and soon thereafter approved permit applications for that property. However, the decision to annex and rezone the property was later overturned by LUBA, which remanded that decision for further proceedings. LUBA proceeded to find that since the city relied on the newly adopted (and now void) city zoning for the property, that the permits were not affirmable. Thus, although LUBA held that ORS 215.130(2)(a) did not provide the city authority to grant a permit, it reiterated the *Allen* holding that ORS 215.130(2)(a) "grants the city authority to apply its plan and zoning map designations in advance of annexation" *Id.* at 320.

Similarly, in *Lodge*, the city conditionally approved a zone change, conditional use permit, and design review for a parcel of land located outside of city limits. The condition stated that their decision was "subject to obtaining annexation approval." LUBA held that ORS 215.130(2) did not foreclose the city's actions. Further, LUBA distinguished *Recht* because it applied to permit decisions, and unlike in situation in *Recht*, the city's actions were authorized by an intergovernmental agreement.

City of Hood River Comprehensive Plan.

The following comprehensive plan policies are applicable to this annexation request and are therefore addressed below:

GOAL 10, HOUSING.

Policy 2. The City will ensure the orderly development of public utilities and services to serve buildable lands within the City and Urban Growth Boundary to meet the residential development needs of the community.

FINDINGS: The territory to be annexed is currently partially served with public utilities and services, and it is feasible to serve the vacant land in territory, as discussed and **conditioned** elsewhere in this application.

Policy 3. Development in the Urban Growth Area will occur in accordance with the land use designations established in the Plan Map and as further defined in the Urban Growth Management Agreement with Hood River County.

FINDINGS: The land within the territory to be annexed already has an R-2 designation. No further rezoning is required.

Policy 13. A residential lot within the City shall be capable of being served by the City sewer system before a building permit is issued. A residential lot within the UGA shall be capable of being served by either the City sanitary sewer system or an approved sanitary sewer system before a building permit is issued. If the builder elects to build within the UGA prior to the availability of the City sanitary sewer system, the lot area will be determined by the County Sanitarian for a septic tank system.

FINDINGS: The vacant land in the territory will be served by City Sewer. Ice Fountain provides water service which shall remain until agreed upon time as the City takes over these facilities.

Policy 14. The City will annex parcels that are contiguous to city limits or separated from the City by a public right of way or body of water to provide water, wastewater, or storm water service.

FINDINGS: This plan policy is implemented by HRMC 17.15.050(1) and 17.15.060(1) as addressed in above findings. Where the text of the comprehensive plan supports a conclusion that a city's land use regulations fully implement the comprehensive plan and displace the comprehensive plan entirely as a potential source of approval criteria, demonstrating that a permit application complies with the city's land use regulations is sufficient to establish consistency/compliance with the comprehensive plan. *Save Our Skyline v. City of Bend*, 48 Or LUBA 192, 211-12 (2004); *Murphy v. City of Ashland*, 19 Or LUBA 182, 199 (1990); *Miller v. City of Ashland*, 17 Or LUBA 147, 169 (1988).

Goal 14, URBANIZATION.

Implementation Strategy 3. City sewer and water services will be provided to property only after the area has been annexed to the City, or a "consent to annex" has been put forth.

FINDINGS: Valid, recorded, consents to annexation have been signed for the majority of the property owners subject to this annexation request.

4. Only areas contiguous to the City will be considered for annexation. All annexations will be done in accordance with the Annexation Policy adopted by City Council in May, 1982.

FINDINGS: The proposed annexation territory is contiguous to the City. Key portions of the 1982 Annexation Policy are addressed as follows:

3. Size of Annexation. The City prefers to consider large area annexations of the developmental or post-developmental type. Annexation of small, single lot properties for the convenience of the property owner are usually not in the best interest of the City as they can result in administrative and financial encumbrances for the City. Small area annexations will, however, be considered where special circumstances warrant. Such circumstances would include:

A. Where such annexation would assist in carrying out growth and development in the Comprehensive Plan.

B. Where it is in the best interest of the public, according to the criteria set forth in section 5 below.

FINDINGS: This policy is intended to encourage groups of property owners to work together to submit annexation applications which propose to bring in larger assemblages of properties, as opposed to each property owner filing a separate annexation application. Obviously, there is a large degree of administrative inefficiency in processing smaller, single parcel annexation

requests, and this policy seeks to discourage such practices. In this case, the application proposes annexation of a group of properties and so meets the policy of efficiency in annexation proposals. The entirety of the territory to be annexed is zoned R-2 by the city and a small portion is already developed.

4. City Participation In Annexation Proposal. Residents or property owners of an area desiring to annex to the City are required to initiate and assume the task of promoting the annexation proposal. The City administrative staff shall cooperate by meeting with the property owners of the area for the purpose of answering questions, furnishing documents, forms, and provide an impact analysis and other information necessary to process the proposed annexation. In consultation with the proponents of an annexation, the City staff shall help establish reasonable boundaries for annexations.

In addition, the City will occasionally review the annexation agreements on file and determine if an agreement could be initiated which would be In the best interest of the City.

FINDINGS: This policy is directed at staff and is not an approval standard, other than it makes clear that the general policy is to favor landowner-initiated applications, as is the case here.

5. Annexations Shall Be in the Best Interests of the Entire City. Each annexation must be advantageous to the City as a whole and should not have an adverse impact on the citizens of Hood River, either financially or in relation to the livability of the City or particular neighborhoods.

FINDINGS: Note that the use of the word "OR," as used in the policy. The territory to be annexed is already receiving city services. The proposal will not impose any further drain on city services. Instead, the proposal will deliver additional housing to the city and will provide tax revenues providing a net benefit to the city and its residents.

It shall be City's policy to encourage annexation where:

A. The annexation must be advantageous to the City as a whole and provide a clearer identification for the City UGB, OR

FINDINGS: As conditioned, this annexation is advantageous to the city as a whole in that it will bring in more tax revenue to the City to pay for services. It also creates a path for the development of some additional needed housing. The City's long-term goal is to urbanize the entire area inside the UGB. As conditioned this annexation provides an incremental step towards meeting that goal.

B. It would be clearly up to the City's advantage to control the growth and development plans for the area; i.e., to be able to address the issues of traffic, density, land use and the level of timing of necessary facilities and services, OR

FINDINGS: It is in the City's best interest to allow property in the UGB to annexed and developed consistent with the City's comprehensive plan and zoning code.

C. The annexation would provide land for development to meet urban needs, OR

FINDINGS: This annexation will provide a modest amount of additional land for development to meet housing needs. It is anticipated this annexation will result in new housing units to be implemented through the City's Middle Housing Ordinance, to help meet housing needs.

D. The annexation would provide a solution for existing problems resulting from insufficient sanitation, water services, or other service related problems, OR

FINDINGS: Conditions of approval and annexation terms are included to address improvements and timing to develop inadequate infrastructure including water services and surrounding streets. The City currently provides Police and Fire services to this territory through mutual aid agreements. This annexation request will provide tax revenue to cover those services.

E. The annexation would provide needed routes for utility and transportation networks, OR

FINDINGS: As conditioned, annexation will facilitate a number of future subdivisions including improvements to Belmont Drive consistent with the City's Transportation System Plan.

F. The annexation will favorably increase the City's tax base because of existing development, OR

FINDINGS: Both the developed portion of the territory to be annexed and the undeveloped property will begin to pay city taxes thus increasing the city tax base.

G. An impact analysis, as specified in Section 8 below, indicates that an annexation would be in the best interest of the City.

FINDINGS: See Section 8 of the 1982 Annexation Policy below.

6. Unfavorable Annexations.

It shall be the City's policy to discourage annexation where:

A. The annexation would cause an unreasonable disruption of the current city boundary, such as permanent protuberances, peninsulas, islands, or other unusual extensions; or

FINDINGS: All of the land surrounding the territory to be annexed is located in the current UGB. The long-term goal of the City is to urbanize all land inside the UGB. This annexation provides an incremental step towards achieving that long term goal. For this reason, the boundary shape created by this annexation is merely temporary, and will not create any "permanent" protuberances, peninsulas, islands, or other unusual extensions.

B. The annexed area, when fully developed, would severely decrease the ability of the City to provide urban services to the area or the rest of the City.

FINDINGS: There will be no decrease in the ability of the City of provide urban services to the territory or the rest of the City. The annexation will result in increased tax revenue that will help fund key service providers.

C. An economic analysis of the proposed annexation indicates a deficit operation for city services to the area.

FINDINGS: While the applicant has not prepared an economic analysis (and the policy does not require the applicant to do so), there are no facts in the record that would indicate that the proposed annexation would lead to "a deficit operation for city services to the area."

D. The annexation would be solely for the benefit of one or a few property owners.

FINDINGS: Hood River benefits from a policy that seeks to have urban density residential growth occur inside the City's boundary, as opposed to continuing to allow urban growth to occur in the County pursuant to consents to annexation. Conditions and annexation terms are included to ensure that benefits are both to the property owner and the public.

7. Conformance with the Comprehensive Plan.

The Comprehensive Plan provides a plan for the future growth of the City of Hood River. Annexations are a major means of implementing the Comprehensive Plan. Therefore, each annexation must be in agreement with the plan. Annexation will occur within the Urban Growth Area.

FINDINGS: The territory to be annexed is located in the Urban Growth Area. Compliance with the applicable portions of the comprehensive plan has been established via these findings.

8. Impact Analysis.

FINDINGS: Section 8 of the 1982 Annexation Policy contains guidance to staff and is not an applicable approval criterion. However, these findings and conditions of approval adopted herein describe municipal services required to serve the future subdivision including extension of local roads, sanitary sewer, water and stormwater facilities consistent with City standards. Further, an annexation agreement will be prepared by the City and will detail requirements of the applicant for dedications, public and private improvements consistent with final Council findings and conditions of approval.

9. Zoning of Annexed Land.

Upon annexation to the City of Hood River, land shall automatically be designated the City zone which most closely resembles the County zone applicable to the land at the time of annexation.

FINDINGS: The City has already zoned this property R-2, conditioned upon annexation. See also HRMC 17.02.040 (Zoning of Annexed Areas).

F. HRMC 17.03.020 – URBAN STANDARD DENSITY RESIDENTIAL (R2) ZONE

17.03.020 Urban Standard Density Residential Zone (R-2)

A. Permitted Uses.

1. Detached single family dwellings for residential use and accessory structures
2. Duplexes for residential use
3. Manufactured homes for residential use
4. Mobile home parks

5. Residential care facilities
6. Group residential, if less than fifteen (15) persons
7. Transportation facilities pursuant to 17.20.050(A)
8. Public parks, playgrounds, and related facilities in an approved subdivision, subject to site plan review
9. Accessory uses permitted when accessory to residential use:
 - a. Accessory dwelling units subject to HRMC 17.23
 - b. Bed and Breakfast Facilities HRMC 17.04.110
 - c. Family day care subject to HRMC 17.04.100
 - d. Home Occupations subject to HRMC 17.04.100
 - e. Hosted homeshares and vacation home rentals subject to HRMC 17.04.115
10. Townhouse projects for residential use including:
 - a. Two (2) townhouses subject to HRMC 17.19
 - b. four (4) or more townhouses subject to HRMC 17.16 and HRMC 17.19
11. Middle housing subject to HRMC Chapter 17.25.

FINDING: Five Single-family dwellings are currently existing on the five tax lots. Any future uses or buildings proposed on the subject parcels will be reviewed for consistency with the R-2 Zone prior to issuance of a building permit.

B. Conditional Uses. In the R-2 zone the following uses are allowed subject to the provisions of Chapter 17.06:

1. Planned unit developments
2. Schools and child care centers
3. Public parks, playgrounds, and related facilities
4. Utility or pumping substations
5. Religious Institutions

FINDING: A conditional use is not proposed.

C. Site Development Requirements.

1. Minimum Lot Size: The minimum lot or parcel size shall be 5,000 square feet.
2. The minimum requirements for building sites are as follows:
 - a. Per dwelling, unit a minimum of 5,000 square feet.
 - b. A minimum frontage of fifty (50) feet on a dedicated public street.
 - c. A minimum frontage of thirty (30) feet on a public dedicated cul-de-sac.
3. Lot Coverage: Pursuant to 17.04.120

FINDINGS: No development is proposed to be approved as part of the annexation. Lot coverage will be reviewed for consistency with HRMC 17.04.120 prior to issuance of any building permits. As such the development of future parcels shall be made to comply with the site development requirements of the R-2 Zone.

D. Setback Requirements. The minimum setback requirements shall be as follows:

1. No structure shall be placed closer than ten (10) feet from the nearest public right-of-way line of a dedicated public street.

2. Garages that directly face adjacent streets shall be at least twenty (20) feet from the nearest public right-of-way lines of the dedicated public streets. Garages so constructed to not face an adjacent street may be ten (10) feet from the nearest right-of-way line of the dedicated public street. Detached garages so constructed to not face an adjacent public dedicated alley may be five (5) feet from the right-of-way line.
3. Side yard/rear yard.
 - a. No structure shall be placed closer than five (5) feet from the side property line.
 - b. Structures greater than twenty-eight (28) feet in height shall be eight (8) feet from the side property line.
 - c. No structure shall be placed closer than ten (10) feet from the rear property line.
 - d. Projections may not encroach more than three (3) inches for each foot of required yard setback width.

FINDINGS: There are existing structures on the site. **As such conditions of approval are recommended that, prior to final plat approval, existing structures that would encroach upon new property lines shall be removed or made compliant. Further, any retained structure on the site shall be in a location that complies with zoning setback requirements as measured from any new property line.** Conformance with setback requirements on new parcels will be verified in association with any future building permit applications. As conditioned the proposal is consistent with these requirements.

- E. **Maximum Building Height.** Thirty-five (35) feet for all uses except residential uses; twenty-eight (28) feet for all residential uses.

FINDINGS: Conformance with the building height standards will be verified in association with any future building permit applications.

F. **Parking Regulations.**

1. Individual dwelling units shall be provided with at least two (2) parking spaces on the building site, one (1) of which may be within the required front yard setback area.
2. Parking spaces utilizing access from a public dedicated alley may be located within the setback area.
3. All parking areas and driveways shall be hard surfaced prior to occupancy, under the following circumstances:
 - a. New construction
 - b. Change of use
 - c. New or expanded parking area

FINDINGS: Conformance with parking requirements will be verified in association with any future building permit applications.

- G. **Signs.** All signs shall be in conformance with the sign regulations of this title.

FINDINGS: No new signs are proposed in association with this partition. Conformance with sign regulations will be verified in association with future sign permit applications.

III. CONCLUSIONS: The proposed annexation is being processed in accordance with the procedures for a Quasi-Judicial Action per HRMC 17.09.040. The Planning Commission's recommendation to

approve the annexation is forwarded to the city council. Upon its own hearing, the city council will make the final decision on the annexation.

The applicant seeks to use the “Triple Majority” method of consent annexation. ORS 222.170(1) allows the use of the Triple Majority method to avoid the election requirement if more than one half of the landowners collectively own more than 50% of the land representing more than 50% of the assessed property values in the territory consent to the annexation. The applicant supplied applications to annex of property owners to justify the annexation consistent with the Triple Majority method.

As addressed above in HRMC 17.15.080, in order to ensure consistency with City annexation policy and City development standards, conditions of approval are recommended that the applicant shall execute a contractually binding annexation agreement before the City Council approves the ordinance annexing the land that is the subject of this annexation application (i.e., prior to second reading of the ordinance). The annexation agreement will be prepared by the City and will detail requirements for right-of-way dedication and public and private improvements consistent with the findings and conditions of approval detailed below.

IV. DRAFT DECISION AND CONDITIONS: Based on the foregoing findings, the applicant’s proposal and related plans and all representations and statements made by the applicant or any authorized representatives, **this application is recommended for approval subject to the following conditions of approval.** This approval is granted subject to the requirements that the applicant, owner or subsequent developer (the “developer”) shall comply with all applicable code provisions, laws and standards and the following conditions. **The following conditions shall be interpreted and implemented consistently with the foregoing findings:**

Annexation General Requirements

1. The applicant shall execute a contractually binding annexation agreement before the City Council approves the ordinance annexing the land that is the subject of this annexation application (i.e., prior to second reading of the ordinance). The annexation agreement will be prepared by the City and will detail requirements for right-of-way dedication and public and private improvements consistent with the foregoing findings, conditions of approval listed below, and terms contained in the draft term sheet included as Attachment E of this report.
2. The applicant shall be responsible for compensation due to Westside Fire District and Ice Fountain Water for withdrawal of 5.18 acre tract from the Districts based on the properties 2021 valuation. The final amount due to the districts will be affected by timing of annexation and assessed value of the property.
3. The applicants/property owners are responsible for knowledge of existing easements and property lines. Conflicts are to be resolved prior to issuance of building permits. This approval does not condone nor require interference with existing easements, covenants, deeds or restrictions of record which affect this or adjacent properties.
4. Prior to issuance of a building permit, plans for mailboxes shall be approved by the United States Postal Service.

5. Prior to building permit issuance payment of System Development Charges will be required. The City will assess System Development Charges (SDC) for water, stormwater, sanitary sewer, and transportation at time of permit issuance when land use changes. A Parks SDC also will be collected for the Hood River Valley Parks & Recreation District, and a Construction Excise Tax will be collected for the City and for the Hood River County School District.

Engineering and Public Facilities

6. **System Development Charges:** The Developer/Applicant or their successors shall be responsible for the payment of proportionate share fee for traffic impacts to Belmont Avenue & 12/13 intersection and system development charges triggered by future development and permitting. The City will assess Proportionate share and System Development Charges (SDC) for water, stormwater, sanitary sewer, and transportation at time of permit issuance when land use changes.
7. **Easements:** At the time of land divisions, Developer/Applicant shall dedicate a ten foot (10') public utility easement (PUE) along all frontage of public streets. Exceptions to this requirement must be coordinated with the appropriate utilities. No above ground utility structures will be allowed within the City ROW.
8. **Overhead Utilities:** At each phase of development, and prior to the issuance of site development permits, Developer/Applicant shall ensure that street frontage and onsite overhead utility lines including, but not limited to, those required for electric, communication, lighting and cable television services, and related facilities are placed underground, except for surface mounted transformers, surface mounted connection boxes and meter cabinets which may be placed above ground, temporary utility service facilities during construction.
9. **Americans with Disabilities Act Access Improvements:** To comply with Americans with Disabilities Act (ADA) regulations, the City has adopted a policy dictating that sidewalks, including intervening driveway approaches, be completed in full by the developer. Federal law prohibits partially completed sidewalks. Damage incurred during construction must be repaired by the Developer/Applicant prior to final acceptance.
10. **Tree Protection:** Per HRMC 13.12.110, as many trees within the ROW shall remain as possible and be protected during all construction activities. Prior to development the Developer/Applicant shall contract with an ISA certified arborist who shall perform a tree inventory and assessment on the existing trees in the Public Right of Way along the property frontage, which is to be provided at the time of site plan or preliminary subdivision submittal. The protection of the existing trees within the ROW shall be properly accomplished during all construction activities. A tree protection zone plan is required at Construction Site/Right-of-Way Application submittal.
11. **Street Trees:** Street trees shall be required along all public streets per the HRMC 16.12.050 – Street Trees at a spacing of 30 feet on center.

12. **Belmont Avenue Access and Required Improvements:** The City's TSP classifies Belmont Avenue as an urban collector road. The TSP states collector streets (Figure 6D) are to have a standard required 60-foot ROW width. The minimum full-street section for Belmont Avenue will include 11-foot paved travel lanes, 6-foot bike lanes, 2-foot curb and gutter, 6-foot planting strips, and 6-foot separated sidewalks. The existing conditions are not compliant with the City standards for collector streets. The existing ROW is approximately 60 feet and pavement width is approximately 34-feet.

As part of the subdivision or development of Taxlot (1400) Developer/Applicant or their successors shall install a 6-foot separated sidewalk, 6-foot planter strip with street trees, 2-foot curb and gutter, and a minimum of 3-feet of new pavement to provide a 6-foot bike lane. The Developer/Applicant shall provide new catch basin(s) aligned with the new curb line as required. Street improvements shall be extended a minimum of 25 feet beyond the limits of "Lot 1" within TL 1400 when transitions to existing conditions are necessary. The intersection of Henderson & Belmont will shall be designed and improved with a minimum ROW radius of 20' and a minimum curb return radius of 25' for the west side curb return. An compliant ADA ramp per the HRES is required to be installed for this return.

13. **22nd Access and Required Improvements:** The City's TSP classifies 22nd Street as an urban collector road. The TSP states collector streets (Figure 6D) are to have a standard required 60-foot ROW width. The minimum full-street section for 22nd St will include 22-foot paved travel lane, 6-foot bike lanes, 2-foot curb and gutter, 6-foot planting strips with street trees, and 6-foot separated sidewalks. The existing conditions are not compliant with the City standards for collector streets. The existing ROW is approximately 60 feet and pavement width is approximately 34-feet.

As part of the subdivision or development of Taxlot 1002 or 1300 Developer/Applicant shall include a 6-foot separated sidewalk, 6-foot planter strip with street trees behind the existing curb and gutter. Street improvements shall be extended a minimum of 25 feet beyond the limits of the Taxlots when transitions to existing conditions are necessary.

The City's TSP, Table 5, identifies a Bicycle Improvement project, SLM9, for shared lane markings on 22nd Street. The Developer/Applicant shall construct shared lane markings along the frontage on 22nd Street.

14. **22nd Access and Improvements:** Both proposed private driveways/alleys taking access off 22nd St directly impact or overlap with existing shared driveways that are not part of the developer's property to the south (tax lots 1200, 1600, and 1700). Access to the existing homes on tax lots 1002 and 1300 shall be taken off the single shared private driveway/alley and not directly off 22nd St to meet the 100-foot driveway separation requirement.

Per HRMC Table 13.28-A, the minimum spacing between private driveways/alleys, and public streets on collectors is 100 feet. The proposed driveway/alley on tax lot 1002 shall be limited to single access, located on the southern end of the property to maximize the distance to the existing driveway to the north on tax lot 1001, since the 100-foot

separation cannot be met. In order to facilitate the cross access, Developer/Applicant shall be required to dedicate public access, emergency, and utility easements at each phase of development and land division.

15. **TL 1400 Internal Future Street Improvements:** The City's TSP classifies Henderson Road as a local road. However, if on street parking is desired for this development, the neighborhood collector or connector cross section may be used (Figure 6D of TSP).

At the time of the development or subdivision of Tax lot 1400, the Developer/Applicant shall extend Henderson straight through the site to the northern property line for future connectivity. Full street improvements are required through the development. The section of the property that borders tax lot 1500 requires a minimum half street plus 10 feet of improvements. A curb shall be constructed at the edge of developed road width for the half-street section to prevent runoff from reaching the neighboring property. This runoff is to be routed north into the development for detention/treatment. Per HRMC Table 13.28-A, the minimum spacing between driveways and public streets on local roads is 22 feet measured as straight curb from the driveway throat.

16. **TL 1400 Internal Future Street Improvements:** The City will classify East West Street on Tax lot 1400 as a local road. This street shall be named "B Street" since it lines up with the existing B Street further to the east. Developer/Applicant shall be responsible for full street and intersection improvements for the new street which must provide access to TL 1300 on the east and TL 900 on the west. However, if on street parking is desired for this development, the neighborhood collector or connector cross section may be used (Figure 6D of TSP).

The applicant shall install intersection improvements at Henderson and B Street that will require minimum 20' radii for both ROW and curb returns. ADA compliant landings per HRES are required at all four corners of the intersection with a striped cross walk for the western, North/South crossing. Per HRMC Table 13.28-A, the minimum spacing between driveways and public streets on local roads is 22 feet measured as straight curb from the driveway throat.

17. **TL 1300 and 1002 Street Improvements:** Per the City's TSP (Figure 6G), private driveways/alleys/streets serving up to 6 homes shall have a 20-foot paved width with public easements.
18. **Stormwater:** Public Storm, 8" Concrete, is available in 22nd Street and has capacity issues downstream. Developed stormwater runoff cannot exceed predeveloped conditions for each of the three tax lots, if developed separately in phases, per the HRES.
19. **Stormwater:** The project is adding more than 3,000 SF of impervious area: a stormwater management plan as described in the HRES will be required at each phase of the development. Provide water quality and quantity treatment for new and reconstructed impervious areas. Pre-development conditions for redevelopment will be fair, forest (woods) ground cover type per HRES 8.5.A. See HRES Chapter 8 for stormwater standards. Developer/Applicant shall install an all-weather access road to access the

stormwater facility, as well as an all-weather access road centered over all public storm utilities outside of the ROW.

20. **Water:** Public Water, 8” Cast Iron (pressure zone 2), is available in 22nd Street to serve the developed properties. The Developer/Applicant shall extend the public water main from the existing water main in 22nd Street to the end of each private driveway/alley for each respective development fronting 22nd Street.

At a minimum the private driveways/alleys will need to be a 20’ wide all weather access road with a 15-foot easement centered on public utilities to meet HRES 4.1.B. A looped water system is required for all three properties that will be developed. If the properties will be developed in phases, connection points shall be provided to allow for a looped system and an easement shall be dedicated to ensure the future loop upon the development of TL 1400. After all three properties are developed, one dead end main will be allowed on the west end of proposed B St.

21. **Water:** A 24” ductile iron high pressure water main exists in Belmont Avenue, however a connection to the high-pressure main will not be allowed. A connection shall be made to the existing 12” water main at the intersection of Belmont and 22nd (pressure zone 1).

As part of the development or subdivision of TL 1400 the Developer/Applicant shall install a new 10” water main along Belmont to Henderson Rd where it shall construct a new pressure reducing valve (PRV), prior to its construction and connection of its new 8” water main to be installed in Henderson Rd required to its completing the loop of the public water system.

22. **Sanitary Sewer:** 8” Concrete Public Sanitary Sewer, exists on 22nd Street, Belmont. The existing 8” sanitary sewer concrete main in 22nd Street is identified as needing to be replaced in the Hood River Wastewater Facilities Plan as PID #8b.

Prior to site development and the issuance of Civil permits. The Developer/Applicant shall enter a deferred improvements agreement with the city for the replacement. If the existing condition of the two 8” concrete sanitary mains in the proposed private driveways/alleys is in poor condition, the developer may be required to improve the sanitary mains.

Fire Department Requirements

23. The applicant shall demonstrate conformance with the requirements for access, response, and fire flow including as needed to support any required fire protection systems.
24. Prior to building permit issuance, conformance with the requirements of the Building Official and Fire Chief including for the Wildland-Urban Interface (WUI) area will be required.

BEFORE THE HOOD RIVER CITY COUNCIL
FOR HOOD RIVER, OREGON

In the Matter of Application by Integrity Building and Construction LLC for Annexation into the City of Hood River (File No. 2022-20).

SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. INTRODUCTION

Integrity Building and Construction, LLC (the “Applicant”) filed a request for annexation into the City of Hood River (the “City”) of five properties that are located contiguous to the existing Hood River city limits and within the Urban Growth Boundary (“UGB”). The subject properties (the “Annexation Properties”) are addressed as 1230 22nd Street (Tax Lot 1002), 1280 22nd Street (Tax Lot 1200), 1310 22nd Street (Tax Lot 1300), 2420 Belmont Drive (Tax Lot 1400), and 2310 Belmont Drive (Tax Lot 1600) and are located in Hood River County, Oregon. In total, the Annexation Properties contain approximately 5.18 acres.

The Application was reviewed and recommended for approval by the City’s Planning Commission at its October 17, 2022, public hearing subject to certain conditions of approval. The City Council (the “Council”) tentatively voted to approve the Application at its November 28, 2022, public hearing. The following supplemental findings of fact and conclusions of law address issues raised in public comments during the Planning Commission hearing, the City Council hearing, and incorporate all staff reports to the City Council and Planning Commission, the Applicant’s Response to the Staff Report dated September 16, 2022, the Applicant’s First Open Record Response, dated September 26, 2022, and the Applicant’s Final Written Argument, dated October 10, 2022.

II. DECISION

The Council APPROVES the Application subject to the conditions of approval in the Final Staff Report.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

In support of its Decision, the Council adopts the following Supplemental Findings of Fact and Conclusions of Law. The Council hereby adopts and incorporates as part of these Supplemental Findings the Final Findings and Conclusions of law prepared by Staff, the Application Narrative submitted August 26, 2022 (**Exhibit 1**), the Staff Report (**Exhibit 2**), the Applicant’s First Open Record Response, dated September 26, 2022 (**Exhibit 3**), and the

Applicant's Final Written Argument, dated October 10, 2022 (**Exhibit 4**). These exhibits are made a part of these Supplemental Findings except to the extent such exhibits conflict with the legal conclusions in the foregoing Supplemental Findings and final conditions of approval.

A. Responses to Specific Public Comments

In addition to the responses to public comments in the Staff Report, Final Findings, and the Applicant's Final Written Argument, these Supplemental Findings provide the following additional responses to arguments raised by project opponents.

- 1. The annexation does not negatively impact nearby properties and the City is capable of providing and maintaining its full range of urban services to the annexed property without negatively impacting the City's ability to adequately serve all areas within the existing city limits in accordance with HRMC 17.15.060.4 and .8.**

Hood River Municipal Code ("HRMC") 17.15.060.4 and .8, state respectively that "the proposed annexation does not negatively impact nearby properties" and "the City is capable of providing and maintaining its full range of urban services to the property without negatively impacting the City's ability to adequately serve all areas within the existing city limits."

As discussed further below, the City finds that "negative impact" does not mean that there will be *no* impact on nearby property. However, the City finds that the negative impacts that HRMC 17.15.060.8 is concerned with must directly result from the annexation itself. Because the annexation is not an application for development, and because no development application was considered concurrently, the City specifically finds that traffic impacts resulting from potential development are not the type of impacts that HRMC 17.15.060.8 is concerned with. The City also finds that the Annexed Properties will be used for Urban Density Residential Land in accordance with the Annexed Properties' existing and proposed R-2 zoning and thus any impacts of the annexation will not be negative because of the planned urban residential land use of the Annexation Properties. Generally, residential land uses do not have any negative impact on neighboring residential properties in terms of odors, fumes, vibrations, and noise.

In the instant application, the Annexed Properties have been included within the City Urban Reserve for approximately 40 years and prior to annexation are located within an "Urban Standard Density Residential Zone". See Hood River County Urban Growth Area Zoning Ordinance 17.03.020. The Annexation Properties are presently zoned R-2, which in Hood River County is an "Urban Standard Density Residential Zone" and will be zoned R-2 upon annexation, which is an "Urban Standard Density Residential Zone." Thus, while the public comments state that the proposed annexation will change the character of the neighborhood and potentially impact the quiet use and enjoyment of neighboring property, the annexation maintains the status quo. The Annexation Properties, as well as the neighboring properties, are all located within the Urban Growth Boundary ("UGB") and have been for approximately 40 years.

Both City and County R-2 zones contain 5,000 square foot lot or parcel sizes and permit duplexes and townhomes. See Hood River County Zoning Ordinance 17.03.020; see also HRMC 17.030.020. In addition, the County's R-2 zone permits a maximum building height of 35 feet, while the City's R-2 zone only permits a maximum building height of 28 feet for residential

buildings. *See* HRMC 17.03.020.E. Thus, while the Applicant can develop the properties it controls in accordance with the City's Middle Housing Standards, the City finds that this will not negatively impact neighboring properties because the Annexation Properties can currently be developed with residential uses at urban levels of density. In addition, the City finds that there is a need for additional housing within City Limits in accordance with City's 2015 Housing Needs Analysis, dated September 2015 and the requested annexation allows the City flexibility to meet its housing needs in the interest of the entire community. Specifically, the "Hood River population will grow at a rate of 2.0% per year, adding 4,528 new people between 2015 and 2035." Hood River Housing Needs Analysis at pg. 14. The City enacted the Middle Housing Development Standards in order to address this increase in population and the Applicant anticipates utilizing these aforementioned standards to provide additional housing within the existing UGB.

The City finds that while the City's Middle Housing Development Standards were developed to remove hurdles to development and provide greater flexibility in the types of units provided, the City's Middle Housing Standards include square footage minimums per dwelling unit, caps on units per development, and caps on units per building. *See* HRMC 17.25.070. Thus, for dwellings that are 800 square feet or greater, one dwelling unit is permitted per 1,500 square feet of building site area, and a maximum of four units per building is permitted. Moreover, each development is capped at eight units per development. With these controls in place, and based on the "preliminary site plan" submitted by the Applicant, the City finds that the density permitted before and after annexation on the Annexation Properties is similar and thus concludes that there is no negative impact on nearby properties.

Ms. Hinman states that it is "unfounded" that the traffic impacts will be the same before and after annexation and raises concerns regarding the safety of her grandchildren. However, the HRMC includes no standard that makes an increase in traffic a negative impact per se. In addition, the annexation will not pose any safety issues to people on nearby properties because the Applicant intends to redevelop the land in accordance with the City's Comprehensive Plan, City adopted codes, and state law (including House Bill ("HB") 2001. Specifically, the City's Comprehensive Plan calls for development of this land in accordance with the residential density permitted in the R-2 zone, as proposed by the Applicant. Moreover, annexation of the Annexation Properties is not an application for development. As a result, the City finds that the annexation itself does not result in any negative traffic impacts on nearby properties for purposes of HRMC 17.15.060.8.

Ms. Hinman questions why the Applicant is requesting annexation if they are not seeking to increase the density on the Annexation Properties. As stated above, the City finds that this application is not a request for additional density. The Applicant is intending to redevelop the Annexation Properties it controls in accordance with applicable land use regulations and state laws that are already in place and the Applicant is not seeking to change or vary any of these regulations or laws. HB 2001 was passed in 2019 to provide Oregonians with more affordable housing choices. HB 2001 allows for triplexes, quadplexes, and cottage clusters in single-family zones. As a result the Oregon Legislature has determined that these additional residential uses are compatible with existing single-family zoning when balanced against the need to construct more affordable housing.

The City also finds that the proposed annexation complies with a majority of the requests outlined by Mr. and Ms. Hicks in their September 26, 2022 letter. The Hicks' September 26, 2022

letter requests .25 acre minimum lot sizes and other various requests regarding the design and orientation of homes. However, these limitations are not required under current County zoning. Lastly, while the City acknowledges concerns about maintaining a single-family neighborhood and “rural aesthetics,” duplexes and townhomes are presently permitted on the Annexation Properties at similar densities to what is allowed in the City.

In the comments received from Ms. Hinman and Mr. and Ms. Hicks, they each argue that the City is unable to determine the proposed impacts of the annexation of neighboring properties and City services since no development plan is proposed. Moreover, the annexation’s opponents argue that now is the time to consider the development proposal. However, the City finds that it can determine the proposed impacts of the annexation based on the permissible development in an R-2 zone. Notably, the Hood River Municipal Code (“HRMC”) does not require the Applicant to submit detailed development plans or a subdivision application concurrently with an annexation, but only requires “preliminary plans and specifications.” *See* HRMC 17.15.020.1. The Applicant has submitted the required “preliminary plans”. In addition, the Final Staff Report includes specific conditions of approval to mitigate impacts from future development of the Annexation Properties. As a result, the City finds that the Applicant has complied with both the City’s application requirements in HRMC 17.15.020.1 and the requirements of HRMC 17.15.060.4 and 17.15.060.8.

Lastly, Ms. Hinman raised concerns that the Applicant has started marking the streets adjacent to its property with utility markings and that development of the Annexation Properties is imminent. The City credits the testimony of the Applicant. Despite Ms. Hinman’s contentions, the City does not find that the Applicant is being deceitful about its intent to develop the properties it controls. Notably, in their Final Written Argument the Applicant does not dispute that it marked the streets, or that it intends to develop its property; however, these utility markings are for remodeling one of the existing homes on the Annexation Properties. Even so, all future development will be subject to additional application and review by the City and the City will review any traffic impacts of the proposed subdivision and development of the Annexation Properties at the time of any application for development.

For the reasons stated above, the City finds that annexation complies with HRMC 17.15.060.4 and .8.

2. The annexation complies with HRMC 17.15.060.1 because the Annexation Properties are contiguous to the City and do not create a “panhandle”.

The proposed annexation complies with HRMC 17.15.060.1, which requires that the territory proposed for annexation is “contiguous” to the City limits. As shown on the Survey submitted by the Applicant, Tax Lots 1002, 1200, 1300, and 1400 are contiguous with the existing city limits and Tax Lot 1600 is contiguous with Tax Lot 1400.

In her November 14, 2022 letter, Ms. Hinman argues that the application does not meet the contiguity requirement in ORS 222.111(1), which provides that “the boundaries of any city may be extended by the annexation of territory that is not within a city and that is contiguous to the city or separated from it only by a public right of way or a stream, bay, lake or other body of water.” Ms. Hinman believes that the right-of-way that separates the annexation territory from the

City is not controlled by the City and believes that a public right-of-way separating an annexation territory must itself already be annexed to satisfy ORS 222.111(1). Ms. Hinman is incorrect.

The right-of-way separating the territory to be annexed need not, itself, already be part of the City. This is evident from the stated allowance in ORS 222.111(1) for annexation territories to be separated from the City limits by a public right-of-way; if the right-of-way must itself already be owned by the city, the territory would not be “separated” from that territory. Regardless, Ms. Hinman’s interpretation is a question that has already been resolved by the Oregon Land Use Board of Appeals, which firmly held that a right-of-way separating an annexation territory from existing city limits need not, itself, already be part of the city. *Link v. City of Florence*, 58 Or LUBA 348, 356 (2009).

In addition, the proposed annexation does not constitute “panhandle” annexation as alleged by Mr. and Ms. Hicks. “Panhandle” or “cherry-stem” annexations are analyzed as a result of *Portland General Electric Co. v. Estacada*, 194 Or 145, 241 P2d 1129 (1952), which held that annexations must be “reasonable”. However, in *Department of Land Conservation & Dev. v. City of St. Helens*, 138 Or App 222, 227, 907 P2d 259 (1995), the court found that although the reasonableness test had not been repealed, annexations are now largely “controlled by specific legislative and regulatory criteria.” *City of St. Helens*, 138 Or App at 227. Compliance with a City’s land use laws is the controlling component of this reasonableness test. See *Morsman v. City of Madras*, 191 Or App 149, 154, 81 P3d 711 (2003). As a result, the City finds that the proposed annexation is reasonable since it complies with the City’s land use laws, as outlined in the Applicant’s submission materials and the staff report.

Even so, the proposed annexation is not a “cherry stem” or “panhandle” annexation because Tax Lots 1002, 1200, 1300, and 1400 are contiguous with the existing city limits and Tax Lot 1600 is contiguous with Tax Lot 1400. A so-called cherry-stem annexation is annexation of a noncontiguous target parcel—the “cherry”—along with the territory (typically, a road) between that parcel and the city—the “stem”. No such cherry stem is proposed. While Tax Lot 1400 is the largest parcel proposed for annexation and may at first glance look like a “panhandle”, this parcel itself is contiguous with the City.

For the reasons stated above, the City finds that the proposed annexation complies with HRMC 17.15.060.1.

3. The annexation compiles with HRMC 17.15.060.5 because the fiscal impact of the annexation is favorable.

HRMC 17.15.060.5 states as follows:

“The fiscal impact of the annexation is favorable, as determined by the City of Hood River, either upon approval or because of a commitment to a proposed development, unless the City determines that a public need outweighs the increase;”

(Emphasis added). As stated by the Applicant in its initial filing and confirmed in the Staff Report, the annexation will result in an increase in tax revenue for the City. As a result, the annexation is favorable upon approval. The proposed conditions to include compensation to the impacted taxing jurisdictions.

This section of the HRMC includes an “or” and does not require an annexation to be favorable because of a commitment to a proposed development. Thus, the language of the HRMC contemplates a situation in which no commitment to a future development is proposed.

Even so, a subdivision is still required to redevelop the properties and the Applicant must comply with all of the City’s requirements regarding streets, water, sewer, sanitary, and stormwater requirements prior to development. Thus, the City finds that fiscal impact is favorable upon annexation because any development will require compliance with City requirements and will provide for the opportunity to include exactions that are roughly proportional to any proposed development.

Mr. and Ms. Hicks argue that “the City of Hood River desires annexation because it generates tax revenue. The policy gives no consideration for the peaceful use and enjoyment of our semi-rural property.” However, contrary to this notion, one statutory requirement (HRMC 17.15.060.5) considers fiscal impacts, while another (HRMC 17.15.060.4) considers impacts on neighboring property. As stated in these findings, the City finds that the proposed annexation complies with both these provisions of the HRMC.

4. HRMC 17.15.050.6 is not applicable to this annexation application.

Ms. Hinman raised concerns regarding compliance with HRMC 17.15.050.6. However, the City finds that 17.15.050.6 applies to “Developed Land”. While the Annexation Properties are developed with single-family homes, the City finds that the Applicant intends to redevelop Tax Lots 1002, 1300, and 1400. As a result, the City finds that these properties should be considered development sites and the applicable criteria for review is contained in HRMC 17.15.060 *et. seq.* for undeveloped land. Notwithstanding the foregoing, the criteria contained in HRMC 17.15.050.6 are identical to the criteria contained in 17.15.060.8 which, as stated above, the City finds is satisfied.

5. The Applicant complies with HRMC 17.15.060.6 because the annexation meets the City’s urban growth needs.

HRMC 17.15.060.6 states as follows:

The annexation meets the City's urban growth needs, and it is to the City's advantage to control the growth and development plans for the territory; i.e., to be able to address the issues of traffic, density, land use, and the level and timing of necessary facilities and services.

The City finds that the Hood River population will grow at a rate of 2.0% per year, adding 4,528 new people between 2015 and 2035. Hood River Housing Needs Analysis at pg. 14. The City enacted the Middle Housing Development Standards in order to address this increase in population and the Applicant anticipates utilizing these aforementioned standards to provide additional housing within the existing UGB. Notably, this property has been within the City’s UGB for approximately 40 years.

As stated above, the City finds that the Annexation Properties will be used for urban density residential land consistent with its existing R-2 county zoning. In addition, the City finds that as stated in the Applicant's narrative submitted on August 26, 2022 (**Exhibit 1**), it intends to redevelop Lots 1002, 1200, and 1300 with Middle Housing projects, which support of the City's goal to provide more opportunities for inclusive and diverse housing. The City's Middle Housing Development Standards allow for cottage cluster homes, duplexes, triplexes and townhomes and thus it enables the City to use its limited inventory of land efficiently to provide much needed housing that is compatible with the existing residential neighborhoods. As a result, the City finds that the annexation complies with HRMC 17.15.060.6.

6. The proposed annexation will not result in a taking or reduction in the size of Ms. Hinman's property.

One of the central concerns of Ms. Hinman is the potential for a reduction in the size of her property. However, this concern is unfounded. Specifically, it arises from one of the City's conditions, which require roadway improvements and expanded sidewalks along 22nd Street in accordance with the City's Transportation System Plan ("TSP"). Condition 13 requires the extension of street improvements 25 feet beyond the limits of the tax lots when transitions to existing conditions are necessary. While future residential development of the Annexation Properties will require the Applicant's property frontage to be brought up to City standards, including sidewalks, sidewalk improvements in front of other abutting properties can and will only be made to the extent they can be provided within the existing right-of-way. Also, all conditions of approval only apply to the Developer/Applicant and not to anyone else. Ms. Hinman is under no obligation to grant any of her property to the public. As a result, the City finds that the annexation will not result in a taking or a reduction in the size of Ms. Hinman's property.

7. White Fir Tree on Tax Lot 1600

Ms. Hinman submitted a report prepared by David M. Braun dated October 2, 2022, and marked as Exhibit 33 of her response during the Planning Commission second open record period. This report details the mitigation of construction impacts for an existing white fir tree located on Tax Lot 1600. The City notes that Tax Lot 1600 is not controlled by the Applicant and no development is proposed on this property. Furthermore, annexation does not allow development without subsequent land use actions. The City finds that any redevelopment on the Applicant-controlled properties will have to comply with all HRMC requirements regarding tree preservation and protection, including use of the access easement located on Tax Lot 1300, which will be evaluated during any subdivision request or redevelopment of the Annexation Properties

8. Ms. Hinman's access rights will not be impacted by the Annexation, but in any case, the terms of Ms. Hinman's access easement are not subject to City Council interpretation.

Ms. Hinman argues that that annexation of territory over which she purports to hold an access easement would unreasonably interfere with her property rights. As an initial matter, there is no proposal to terminate Ms. Hinman's access rights or modify them in any way. The City finds that the access easement is currently utilized to access properties that can, under the County's R-2

zone, be developed with urban levels of residential development. The City finds that the easement will continue to be utilized to access properties that can be developed with urban levels of residential development after annexation. In fact, a future development would require only paving of the existing gravel surface and further reservation of the utilities and access rights thereto in the plat. The Applicant does not propose and is not required to damage Ms. Hinman's property to construct this improvement. Ms. Hinman will have no obligation to maintain it, and Ms. Hinman will continue to be able to use it as she is accustomed.

Even if Ms. Hinman's arguments about her access easement were relevant to this annexation application, the Council need not referee a potential real property dispute over an access easement; the record is clear that this real property is owned and controlled by the Applicant, and therefore may be annexed. Moreover, Oregon courts and the Land Use Board of Appeals are clear that such real property disputes must be resolved by circuit courts, not city councils. *See, e.g. McNichols v. City of Canby*, 79 Or LUBA 139, 146, *aff'd* 297 Or App 582 (2018).

Lastly, Ms. Hinman argues that the City cannot legally annex the easement. However, the easement is located on property that is owned by the Applicant. Per HRMC 17.15.020 an annexation application may be initiated by the owners of said land as is the case with this Application.

9. Compliance with the Statewide Planning Goals

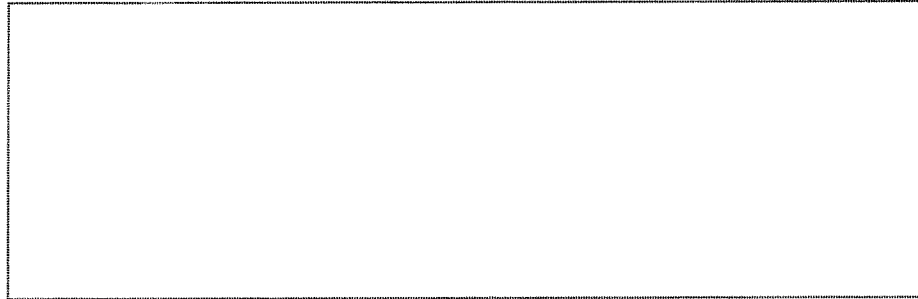
At the November 28, 2023 City Council public hearing, Ms. Hinman alleged that the proposed annexation does not comply with certain Statewide Planning Goals. Annexation is a planning responsibility under ORS 197.175(1). While it is subject to compliance with the statewide planning goals, in situations where a city has annexation criteria in its comprehensive plan and/or land use regulations, and the proposal does not involve a plan amendment, the statewide planning goals do not apply. *Peterson v. City of Klamath Falls*, 279 Or 249, 566 P2d 1193 (1977); *Morsman v. City of Madras*, 45 Or LUBA 16 (2003), reversed on other grounds, 196 Or App 67 (2004) (so stating); *see Oregon Coast Alliance v. City of Brookings* 71 Or LUBA 14 (2015) (requiring goals be applied because annexation was accompanied by a plan amendment.). Nonetheless, the City finds that the Applicant demonstrated the proposed annexation's compliance with the Goals as submitted in its narrative submitted on August 26, 2022 at pages 6-7 (**Exhibit 1**) and as outlined in the Staff Report at pages 9-13 (**Exhibit 2**).

IV. CONCLUSION

Based upon the evidence in the whole record and the documents incorporated herein, the Council finds that the Applicant's Application with proposed conditions meets all applicable criteria and should be APPROVED on that basis subject to the conditions in the Staff Report.

AFTER RECORDING, RETURN TO:
CITY OF HOOD RIVER
211 2nd Street
Hood River, OR 97031

This Box For Hood River County Recording Use Only



ANNEXATION AGREEMENT

This AGREEMENT is made by and between the CITY OF HOOD RIVER, an Oregon municipal corporation, (the “City”) and INTEGRITY BUILDING AND CONSTRUCTION, LLC, an Oregon limited liability corporation (“IBC”) dated: _____, 2023.

WHEREAS, IBC is the applicant and proponent for the annexation of 5 parcels of real property totaling approximately 5.18 acres, plus the annexation of the abutting portions of the Belmont Avenue and 22nd Street rights-of-way, located adjacent and contiguous to the City of Hood River legally described in Exhibit A, attached hereto and incorporated herein by this reference (the “Annexation Territory”), known as City File No. 2022-20; and

WHEREAS, in a series of public hearings the City’s Planning Commission reviewed the application submitted by IBC and on October 17, 2022, voted to recommend approval of the Annexation request to the City Council, subject to conditions of approval, set forth in Exhibit B, attached hereto and incorporated herein by this reference, which among other things requires the applicant to design, construct and dedicate certain street right-of-way improvements needed for a safe, adequate and compliant transportation system to serve the urban development of the Annexation Territory pursuant to the City’s R-2 zoning that will be applied; and

WHEREAS, following a public hearing, the City Council accepted the Planning Commission’s recommendation and on November 28, 2022 approved the annexation request, subject to the conditions of approval recommended by the Commission and set forth in Exhibit B; and

WHEREAS, Condition 1 to the Council’s written decision requires IBC to execute a contractually binding annexation agreement before the City Council gives final approval to IBC’s annexation request. The agreement called for in Condition 1 is intended to provide a legally enforceable mechanism to assure the City that IBC will fulfill all conditions of the annexation approval to the City’s satisfaction before development occurs, and this Agreement is intended to fulfill the requirements in Condition 1.

NOW, THEREFORE, based on the foregoing recitals, the CITY COUNCIL FOR THE CITY OF HOOD RIVER and INTEGRITY BUILDING AND CONSTRUCTION, LLC hereby agree to the following:

1. Compliance with Conditions of Annexation Approval. As conditions of annexation approval, the City Council required compliance with the conditions attached as Exhibit B to this Agreement. IBC hereby agrees to fully comply with and fulfill all of the following conditions, which shall be fulfilled prior to submission of a final plat of subdivision for recordation:

Annexation General Requirements

1. Reimbursement. The applicant shall be responsible for compensation due to Westside Fire District and Ice Fountain Water for withdrawal of 5.18 acre tract from the Districts based on the properties 2022 valuation. The final amount due to the districts will be affected by timing of annexation and assessed value of the property.
2. System Development Charges. At the time of building permit issuance, the developer shall pay System Development Charges (SDCs) for water, stormwater, sanitary sewer, and transportation at the then-applicable SDC rates. The city will also collect a parks SDC on behalf of the Hood River Valley Parks & Recreation District, and a Construction Excise Tax will be collected for the City and for the Hood River County School District.

Engineering and Public Facilities

3. Proportionate Share Payments: Developer shall complete a traffic assessment for each proposed development to determine if, at that time, a proportionate share payment is warranted to mitigate for traffic impacts to the city's streets and transportation system including the Belmont and 12/13th Street intersection. If a proportionate share payment is indicated for traffic impacts attributable to the then-proposed development(s), any such proportionate share shall be based upon trips identified/quantified in the traffic assessment for each such proposed development.
4. Easements: At the time of land divisions, Developer/Applicant shall dedicate a ten foot (10') public utility easement (PUE) along all frontage of public streets. Exceptions to this requirement must be coordinated with the appropriate utilities. No above ground utility structures will be allowed within the City ROW, so long as approved by the relevant utility authority.
5. Overhead Utilities: At each phase of development, and prior to the issuance of site development permits, Developer/Applicant shall ensure that all street frontage and onsite overhead utility lines including, but not limited to, those required for electric, communication, lighting and cable television services, and related facilities are placed underground, except for surface mounted transformers, surface mounted connection boxes and meter cabinets which may be placed above ground, temporary utility service facilities during construction, and so long as approved by the relevant utility authority.
6. Americans with Disabilities Act Access Improvements: To comply with Americans with Disabilities Act (ADA) regulations, the City has adopted a policy dictating that sidewalks, including intervening driveway approaches, be completed in full by the developer. Federal law prohibits partially completed sidewalks. Damage incurred during construction must be repaired by the Developer/Applicant prior to final acceptance.

7. Tree Protection: Per HRMC 13.12.110, as many trees within the ROW shall remain as possible and be protected during all construction activities. Prior to development the Developer/Applicant shall contract with an ISA certified arborist who shall perform a tree inventory and assessment on the existing trees in the Public Right of Way along the property frontage, which is to be provided at the time of site plan or preliminary subdivision submittal. The protection of the existing trees within the ROW shall be properly accomplished during all construction activities. A tree protection zone plan is required at Construction Site/Right-of-Way Application submittal.
8. Street Trees: Street trees shall be required along all public streets per the HRMC 16.12.050 – Street Trees at a spacing of 30 feet on center.
9. Belmont Avenue Access and Required Improvements: The City's TSP classifies Belmont Avenue as an urban collector road. The TSP states collector streets (Figure 6D) are to have a standard required 60-foot ROW width. The minimum full-street section for Belmont Avenue will include 11-foot paved travel lanes, 6-foot bike lanes, 2-foot curb and gutter, 6-foot planting strips, and 6-foot separated sidewalks.
The existing conditions are not compliant with the City standards for collector streets. The existing ROW is approximately 60 feet and pavement width is approximately 34-feet.

As part of the subdivision or development of Tax Lot 1400, Developer/Applicant or their successors shall design and construct stormwater improvements along the frontage of Tax Lot 1400 consistent with Hood River Engineering Standards, and install a 6-foot separated sidewalk, 6-foot planter strip with street trees, 2-foot curb and gutter, and a minimum of 3-feet of new pavement to provide a 6-foot bike lane.

Improvements shall be installed from the western-most limits of TL 1400 as shown in Exhibit A, shall be extended to the eastern limits of the Applicant's property, and transition to existing conditions up to 25' east along the property frontage. The Developer/Applicant or their successors shall design and construct the intersection of Henderson & Belmont in accordance with HRES .

10. 22nd Access and Required Improvements: The City's TSP classifies 22nd Street as an urban collector road. The TSP states collector streets (Figure 6D) are to have a standard required 60-foot ROW width. The minimum full-street section for 22nd St will include 22-foot paved travel lane, 6-foot bike lanes, 2-foot curb and gutter, 6-foot planting strips with street trees, and 6-foot separated sidewalks. The existing conditions are not compliant with the City standards for collector streets. The existing ROW is approximately 60 feet and pavement width is approximately 34-feet.

As part of the subdivision or development of Tax Lots 1002 or 1300 Developer/Applicant shall install a 6-foot separated sidewalk, 6-foot planter strip with street trees behind the existing curb and gutter. Street improvements shall be extended beyond the limits of the Tax Lots when transitions to existing conditions are necessary.

The City's TSP, Table 5, identifies a Bicycle Improvement project, SLM9, for shared lane markings on 22nd Street. The Developer/Applicant shall construct shared lane markings along the frontage on 22nd Street.

11. 22nd Street Access and Improvements: Both proposed private driveways/alleys taking access off 22nd Street directly impact or overlap with existing shared driveways that are not part of the developer's property to the south (Tax Lots 1200, 1600, and 1700). Access to the existing homes on Tax Lots 1002 and 1300 shall be taken off the single shared private driveway/alley and not directly off 22nd Street to meet the 100-foot driveway separation requirement.

Per HRMC Table 13.28-A, the minimum spacing between private driveways/alleys, and public streets on collectors is 100 feet. The proposed driveway/alley on tax lot 1002 shall be limited to single access, located on the southern end of the property to maximize the distance to the existing driveway to the north on Tax Lot 1001, since the 100-foot separation cannot be met. To facilitate the cross access, Developer/Applicant shall be required to dedicate public access, emergency, and utility easements at each phase of development and land division.

12. TL 1400 Internal Future Street Improvements: The City's TSP classifies Henderson Road as a local road. However, if on street parking is desired for this development, the neighborhood collector or connector cross section may be used (Figure 6D of TSP).

At the time of the development or subdivision of Tax Lot 1400, the Developer/Applicant shall extend Henderson through the site to the northern property line for future connectivity. Full street improvements will be required through the development. The section of the property that borders tax lot 1500 requires a minimum half street plus 10 feet of improvements. A curb shall be constructed at the edge of developed road width for the half-street section to prevent runoff from reaching the neighboring property. This runoff is to be routed north into the development for detention/treatment. Per HRMC Table 13.28-A, the minimum spacing between driveways and public streets on local roads is 22 feet measured as straight curb from the driveway throat.

13. TL 1400 Internal Future Street Improvements: The City will classify East West Street on Tax Lot 1400 as a local road. Developer/Applicant shall be responsible for full street and intersection improvements for the new street which must provide access to TL 1300 on the east and TL 900 on the west. However, if on street parking is desired for this development, the neighborhood collector or connector cross section may be used (Figure 6D of TSP).

The applicant shall install intersection improvements at Henderson and internal roads with HRES compliant radii for both ROW and curb returns. ADA compliant landings per HRES are required at all four corners of the intersections. Per HRMC Table 13.28-A, the minimum spacing between driveways and public streets on local roads is 22 feet measured as straight curb from the driveway throat.

14. Stormwater: Public Storm, 8" Concrete, is available in 22nd Street and has capacity issues downstream. Developed stormwater runoff cannot exceed predeveloped conditions for each of the three tax lots per the HRES.

15. Stormwater: If the project proposes to add more than 3,000 SF of impervious area: a stormwater management plan as described in the HRES will be required at each phase of the development. The developer shall provide water quality and quantity treatment for new and reconstructed impervious areas.
16. Water: A looped water system is required. If the properties will be developed in phases, connection points shall be provided to allow for a looped system and an easement shall be dedicated to insure the loop upon future development
17. Water: A 24" ductile iron transmission water main exists in Belmont Avenue, however a connection to the transmission main will not be allowed. An 8" water main exists in Henderson Road; however, it is owned by Ice Fountain Water District. Therefore, City water is not currently available in Belmont Drive west of 22nd Street. A connection may be made to the existing 12" water main at the intersection of Belmont and 22nd (pressure zone 1). Extension of the water main west on Belmont to loop with the new main off of 22nd Street, if proposed, will require the developer to install a PRV between pressure zones. A looped water system is required with development. The pipe alignment shall meet the satisfaction of the City Engineer. Any proposed temporary dead end lines may trigger additional requirements, such as fire flow analysis and/or automatic flushing valves.
18. Sanitary Sewer: 8" Concrete Public Sanitary Sewer, exists on 22nd Street, Belmont. The existing 8" sanitary sewer concrete main in 22nd Street is identified as needing to be replaced in the Hood River Wastewater Facilities Plan as PID 8b. Prior to site development and the issuance of Civil permits, the Developer/Applicant shall enter a deferred improvements agreement with the city for the replacement along the property frontage. If the existing condition of the two 8" concrete sanitary mains in the proposed private driveways/alleys is in poor condition, the developer may be required to improve the sanitary mains.

2. **Effective Date, Term and Modification.** This Annexation Agreement shall be effective upon signature by both parties and shall have a perpetual duration, unless modified by the parties as described below, or until the City concludes in writing that IBC has satisfactorily fulfilled the conditions identified in Section 1 of this Agreement. This Annexation Agreement may be modified or terminated sooner than described herein only upon the written agreement signed by the authorized representatives of both parties.

3. **Agreement Runs with Title to the Land.** The benefits, burdens and obligations set forth herein shall be binding upon and inure to the benefit of the parties hereto and their successors, heirs, and assigns. This Agreement shall be recorded in the property deed records for Hood River County and run with title to the real property owned by the Developer/Applicant or Rita Ketler and described in Exhibit A.

4. **Remedies for Breach.** Should either party breach this Agreement or fail to fulfill its obligations as set forth herein, remedies available under Oregon law for breach of contract are available to the parties, including damages and injunctive relief.

5. **Controlling Law and Venue for Disputes.** This Agreement shall be deemed to have been entered into in the State of Oregon and shall be construed and interpreted in accordance with the laws of Oregon. Any litigation or proceedings arising out of or connected with this Agreement shall be heard and decided in Oregon Circuit Court for Hood River County.

6. **Entire Agreement.** This Agreement includes the attached Exhibits A and B referenced herein. The parties each acknowledge and agree that no promises or representations have been made which do not appear written herein and that this Agreement contains the entire agreement of the parties as to this Agreement.

7. **Severability Clause.** The parties to this Agreement agree that if any term, provision, covenant, condition or portion of this Agreement is held to be illegal, invalid, void, voidable or unenforceable, the remainder of the provisions shall remain in full force and effect as a separate contact and shall in no way be affected, impaired or invalidated.

8. **Attorney's Fees.** If legal action by either party is brought against the other because of an alleged default under this Agreement, or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and court costs, at trial and on appeal from the losing party.

9. **Waiver.** No waiver of any provision of this Agreement shall be effective unless it is in a writing signed by party waiving the provision.

10. **No Third-Party Beneficiaries.** All the provisions of this Agreement are intended to bind and benefit only IBC, Rita Kelter and the City, and their respective successors and assigns. It is not intended that any such provisions benefit, and it shall not be construed that these provisions benefit or are enforceable by, any creditors, contractors or other third parties

IT IS SO AGREED.

INTEGRITY BUILDING AND RITA KETLER
CONSTRUCTION, LLC:

Date: _____

State of Oregon)
) ss
County of Hood River)

This instrument was acknowledged before me on _____ by _____, as representative of the applicant and the owners of the IBC Property described herein.

Notary Public – State of Oregon
My commission expires: _____

THE CITY OF HOOD RIVER:

Date: _____

Abigail Elder, City Manager

State of Oregon)

) ss

County of Hood River)

This instrument was acknowledged before me on _____ by
Abigail Elder, City Manager and duly authorized representative of the City of Hood River.

Notary Public – State of Oregon

My commission expires: _____