



<b>Subject:</b> Ordinance 2874, Annexing three parcels consisting of 2.07 acres at the southeast corner of Kimball and Baleine Streets (no situs addresses); Tax Map/Lots 21E07CA00100, 21E07CA02902 and 21E07CA03000	
<b>Report Date:</b> March 9, 2022 <b>Meeting Date:</b> March 17, 2022	<b>Staff Member:</b> Paul Espe, Associate Planner <b>Department:</b> Planning and Building Services
<b>Action Required</b> <input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing <input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input checked="" type="checkbox"/> Consent Agenda	<b>Advisory Board/Commission Recommendation</b> <input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable  <b>Comments:</b>
<b>Staff Recommendation:</b> Enact Ordinance 2874 and approve Findings for AN 21-0003.	
<b>Recommended Language for Motion:</b> Move to enact Ordinance 2874.	
<b>Project/Issue Relates To:</b> Annexation of territory	
<b>Issue before Council (Highlight Policy Question):</b>  <input type="checkbox"/> Council Goals/Priorities <input type="checkbox"/> Adopted Master Plan(s) <input checked="" type="checkbox"/> Not Applicable	

**EXECUTIVE SUMMARY/BACKGROUND**

The proposed annexation is owner-initiated and will result in the addition of approximately 2.07 acres of residential land to the City.

On November 2, 2021, the City Council conducted a public hearing and tentatively approved this annexation, deferring ordinance enactment until the property owner signed and recorded the *Covenant to Construct and Connect to City Sewer Line* in the Official Records of Clackamas County, Oregon. The applicant has signed and recorded the covenant to construct and connect to City Sewer and it is attached as Exhibit E-4.

**RECOMMENDATION**

Move to enact Ordinance 2874, and adopt Findings for AN 21-0003.

## EXHIBITS

Please note that only **bolded** exhibits are included with this Council Report.

- A. Ordinance  
**Ordinance 2874 (03/09/22)**
  - Attachment A: Map of Proposed Annexation, 08/10/21**
  - Attachment B: Map of RP Resource, 03/09/22**
  - Attachment C: Criteria, Findings, Conclusion and Effective Date, 10/13/21**
- B. Minutes  
None
- C. Staff Reports  
Council Report Dated 10/13/21
- D. Graphics/Plans  
D-1 Sanitary Sewer Plan 8/21/21
- E. Written Materials
  - E-1 Buildable Lands Inventory (2013 Comprehensive Plan, Economic Opportunities Analysis, excerpt), 03/18/13
  - E-2 Housing Needs Analysis (2013 Comprehensive Plan, excerpt), 03/19/13
  - E-3 Covenant to Construct and Connect to City Sewer Line
  - E-4 Recorded Covenant to Construct and Connect to City Sewer Line**

**ORDINANCE 2874**

**AN ORDINANCE ANNEXING TO THE CITY OF LAKE OSWEGO THREE PARCELS, CONSISTING OF 2.07 ACRES AT THE SOUTHEAST CORNER OF KIMBALL AND BALEINE STREETS WITH NO SITUS ADDRESS (21E07CA02902, 21E07CA03000, 21E07CA00100) DECLARING CITY OF LAKE OSWEGO RESOURCE PROTECTION (RP) OVERLAY AND ZONING PURSUANT TO LOC 50.01.004.5(a-c); AND REMOVING THE TERRITORY FROM CERTAIN DISTRICTS (AN 21-0003).**

WHEREAS, annexation to the City of Lake Oswego of the territory shown in the map in Attachment "A" and described below, would constitute a contiguous boundary change under ORS 222.111, initiated by petition from the property owners as outlined in ORS 222.111(2); and,

WHEREAS, the City has received consent for the proposed annexation from all of the property owners and not less than 50 percent of the electors residing in the territory, as outlined in ORS 222.125; and,

WHEREAS, the part of the territory that lies within the Lake Grove Fire District #57 will, by operation of ORS 222.520, be withdrawn from that district immediately upon approval of the annexation; and,

WHEREAS, the part of the territory that lies within the Clackamas County Enhanced Sheriff's Patrol District will, by operation of ORS 222.520, be withdrawn from the district upon approval of the annexation; and,

WHEREAS, the part of the territory that lies within the Surface Water Management Agency of Clackamas County will by operation of ORS 222.520 be withdrawn from that agency immediately upon approval of the annexation; and,

WHEREAS, LOC 50.01.004.5 specifies that, where the Comprehensive Plan Map requires a specific Zoning Map designation to be placed on the territory annexed to the City, such a zoning designation shall automatically be imposed on the territory as of the effective date of the annexation; and,

WHEREAS, this annexation is consistent with the Urbanization Chapter of the City of Lake Oswego's acknowledged Comprehensive Plan, Oregon Revised Statutes 222.111(2) and 222.125 for boundary changes, and Metro Code Sections 3.09.040(a)(1-4) and 3.09.045.

**Now, therefore, the City of Lake Oswego ordains as follows:**

Section 1. The real property described as follows is hereby annexed to the City of Lake Oswego:

A tract of land located within the southwest quarter of Section 7, Township 2 South, Range 1 East of the Willamette Meridian, City of Lake Oswego, County of Clackamas, Oregon, said tract of land being all of that property conveyed to Hail Capital LLC, an Oregon limited liability company, by Statutory Warranty Deed recorded July 7, 2021 in the Official Records of



Clackamas County as Recording No. 2021-065158; said tract of land more particularly described as follows:

Lots 1, 2, 69, and 70 of Block 1, Plat of Lake Forest (Plat No. 509), plat records of Clackamas County.

**Together with** a tract of land located within the southwest quarter of Section 7, Township 2 South, Range 1 East of the Willamette Meridian, City of Lake Oswego, County of Clackamas, Oregon, said tract of land being all of that property conveyed to Hail Capital LLC, an Oregon limited liability company, by Statutory Warranty Deed recorded June 30, 2021 in the Official Records of Clackamas County as Recording No. 2021-063293; said tract of land more particularly described as follows:

Parcel 2, Partition Plat No. 2007-142, plat records of Clackamas County.

The annexed territory is depicted on Attachment A.

Section 2. The annexed area lies within the following districts and shall be retained within these districts upon the effective date of annexation:

Lake Grove Park District  
Lake Grove Water District

Section 3. The annexed area lies within the following districts and shall be withdrawn from these districts upon the effective date of annexation:

Lake Grove Fire District #57  
Clackamas County Enhanced Sheriff's Patrol District  
Surface Water Management Agency of Clackamas County

Section 4. In accordance with LOC 50.01.004.5, the City zoning designation of R-7.5, and a Resource Protection Overlay shall be applied to the subject properties on the effective date of annexation, as shown on Attachments A and B.

Section 5. The City Council hereby adopts the findings of fact and conclusions set forth in Attachment C in support of this annexation ordinance.

Section 6. Effective Dates:

a. Effective Date of Annexation Ordinance. Pursuant to Lake Oswego City Charter, Section 35.C, this ordinance shall be effective on the 30<sup>th</sup> day after its enactment.

b. Effective Date of Annexation. Following the filing of the annexation records with the Secretary of State as required by ORS 222.177, this annexation shall be effective upon the later of either:

1. the 30<sup>th</sup> day following the date of adoption of this ordinance; or
2. the date of filing of the annexation records with the Secretary of State.

Provided, however, that pursuant to ORS 222.040(2), if the effective date of the annexation as established above is a date that is within 90 days of a biennial primary or general election or



after the deadline for filing notice of election before any other election held by any city, district or other municipal corporation involved in the area to be annexed, the annexation shall become effective on the day after the election.

Read by title only and enacted at the regular meeting of the City Council of the City of Lake Oswego held on the 17<sup>th</sup> day of March, 2022.

AYES:

NOES:

ABSTAIN:

EXCUSED:

\_\_\_\_\_  
Joseph M. Buck, Mayor

\_\_\_\_\_  
Dated

ATTEST:

\_\_\_\_\_  
Kari Linder, City Recorder

APPROVED AS TO FORM:

\_\_\_\_\_  
Evan Boone, Deputy City Attorney

**Annexation to the City of Lake Oswego  
AN 21-0003/Ordinance 2874**

TRACT  
A

15713

15725

15737

**R-15**

15776

SW Baleine St

**TL 3000**

**TL 100**

**TL 2902**

15868

**R-7.5**

15883

15891

15930

15941

15965

15963

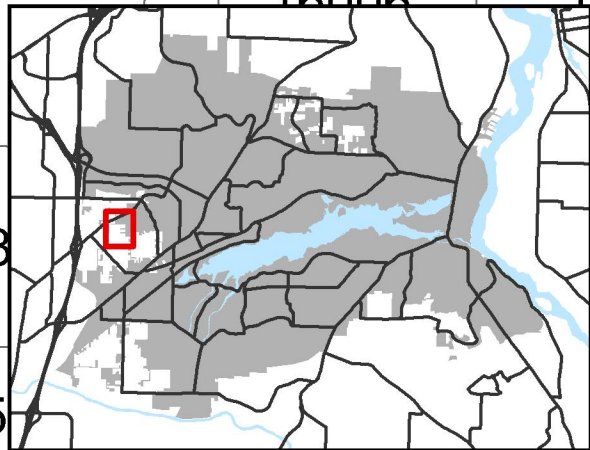
16006

16012

Inverurie Rd

**PNA**

Bonaire Ave



**Attachment A**

Tax Lot IDs: 21E07CA03000, 21E07CA00100,  
21E07CA02902

**City of Lake Oswego:**

COMPREHENSIVE PLAN = R-7.5, Residential  
ZONING = R-7.5, Residential

**Clackamas County:**

ZONING = R-10, Residential



Lake Oswego  
City Limits



Subject  
Properties

0 50 100 150 200 250 300 Feet



**Annexation to the City of Lake Oswego  
AN 21-0003/Ordinance 2874**

TRACT  
A

RP

15713

15725

15737

15776

RP

SW Baleine St

TL 3000

TL 100

TL 2902

15868

15883

15891

15930

15941

15965

15963

15985

St  
Kimball  
SW

Rd  
Inverurie

Bonaire Ave

RP

**Attachment B**

Map and Lot #21E07CA03000, 21E07CA00100,  
21E07CA02902



RP



Lake Oswego City Limits

Subject Property

0 60 120 180 240  
Feet



3/9/2022



# ATTACHMENT C

## Criteria, Findings, Conclusion, and Effective Date

### **APPLICABLE CRITERIA:**

- A. Oregon Revised Statutes (ORS), Boundary Changes; Mergers and Consolidations.
  - 1. ORS 222.111(2) Authority and Procedure for Annexation; Specifying Tax Rate in Annexed Territory.
  - 2. ORS 222.120 Procedure for Annexation Without Election; Hearing; Ordinance Subject to Referendum.
- B. Metro Code.
  - 1. 3.09.040(A)(1-4) Requirements for Petitions.
  - 2. 3.09.050 Hearing and Decision Requirements for Decisions Other Than Expedited Decisions
- C. Comprehensive Plan - Urbanization Chapter
  - 1. Policy A-3: "The Urban Services Boundary (as depicted on the Comprehensive Plan Map) is the area within which the City shall be the eventual provider of the full range of urban services."
  - 2. Policy C-3: "Ensure that annexation of new territory or expansion of Lake Oswego's Urban Services Boundary does not detract from the City's ability to provide services to existing City Residents."
  - 3. Policy C-4: "Prior to the annexation of non-island properties, ensure urban services are available and adequate to serve the subject property or will be made available in a timely manner by the City or a developer, commensurate with the scale of the proposed development."
- D. Comprehensive Plan – Complete Neighborhoods and Housing (Statewide Goal 10)
  - Policy B-1: "Provide and maintain zoning and development regulations that allow the opportunity to develop an adequate supply and variety of housing types, and that accommodate the needs of existing and future Lake Oswego Residents."
- E. OAR 660-008-0010 - Allocation of Buildable Land

### **FINDINGS:**

#### **A. Oregon Revised Statutes (ORS), Boundary Changes; Mergers and Consolidations.**

##### **1. ORS 222.111(2) Authority and Procedure for Annexation Specifying Tax Rate in annexed territory.**

ORS 222.111(2) provides that 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. The owner of these properties has petitioned the City for this annexation. The proposed annexation complies with this statute.

##### **2. ORS 222.120 Procedure for Annexation Without Election; Hearing; Ordinance Subject to Referendum.**

ORS 222.120 states that an election need not be held on the question of annexation within the territory proposed if the legislative body provides for a duly noticed public hearing before the legislative body at which time the electors of the City may appear and be heard on the question of annexation.

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The City has provided written notification of this annexation by publishing a notice once each week for two consecutive weeks prior to the day of the hearing in a newspaper of general circulation in the city and posted the notice of public hearing in four public places as required under ORS 222.120(3). The notice was also published in the Lake Oswego Review on Wednesday, October 20 and Wednesday, October 27. A notice was also posted on the site on October 13, 2021. The notice contained information about the affected territory, time and place of the public hearing and the means by which any person can obtain a copy of the written report. The annexation notification and review procedures comply with this statute.

**B. Metro Code**

**1 3.09.030 – Notice Requirements**

**A. The notice requirements apply to all boundary change decisions by a reviewing entity except expedited decisions made pursuant to MC 3.09.045. These requirements apply in addition to, and do not supersede applicable requirements of ORS Chapters 197, 198, 221 and 222 and any city or county charter provision on boundary changes.**

**B. Within 45 days after a reviewing entity determines that a petition is complete, the entity shall set a time for deliberations on a boundary change. The reviewing entity shall give notice of its proposed deliberations by mailing notice to all necessary parties, by weatherproof posting of notice in the general vicinity of the affected territory and by publishing notice in a newspaper of general circulation in the affected territory. Notice shall be mailed and posted at least 20 days prior to the date of deliberations. Notice shall be published as required by state law.**

**C. The notice requirements in Subsection B shall:**

- 1) Describe the affected territory in a manner that allows certainty;**
- 2) State the date, time and place where the reviewing entity will consider the boundary change; and**
- 3) State the means by which any person may obtain a copy of the reviewing entity's report on the proposal**

The City has provided written notification of this annexation to necessary parties, surrounding properties and through the posting of the notice of annexation on the properties on October 13, 2021, 20 days prior to the date of the public hearing for annexation as required under MC 30.09.030 B. The notice contained information about the affected territory, time and place of the public hearing and the means by which any person can obtain a copy of the written report. The annexation notification and review procedures comply with the Metro code requirements.

**1. 3.09.040 - Requirements for Petitions.**

**(A) A petition for a boundary change must contain the following information:**

- 1) The jurisdiction of the reviewing entity to act on the petition;**
- 2) A map and a legal description of the affected territory in the form prescribed by the reviewing entity;**
- 3) For minor boundary changes, the names and mailing addresses of all persons owning property and all electors within the affected territory as shown in the records of the tax assessor and county clerk; and,**
- 4) For boundary changes under ORS 198.855 (3), 198.857, 222.125 or 222.170, statements of consent to the annexation signed by the requisite number of owners or electors.**

The above information was submitted as required by Metro Code. The property owner has signed the application and petition.

The properties are vacant and there are no electors residing on them. A map and legal description in the



form required by the City have been included in the application materials and are on file. The owner of these properties has consented to the annexation on the annexation petition, meeting the consent requirements of ORS 222.170(1). The annexation petition complies with the Metro code requirements.

**2. 3.09.045 – (D-E) Expedited Decisions (criteria incorporated for non-expedited decisions by MC 3.09.050(D))**

**D. To approve a boundary change through decisions made through procedures other than expedited, the reviewing entity shall apply the criteria and consider the factors set forth in Subsections (D) and (E) of section 3.09.045:**

**1. Find that the change is consistent with expressly applicable provisions in:**

**a. Any applicable urban service agreement adopted pursuant to ORS 195.065**

The City has entered into ORS 195.065 agreements with: 1) Lake Oswego School District and 2) Lake Grove Fire District.

Lake Oswego School District: The City and the Lake Oswego School District entered into an ORS 195.065 urban service agreement for park services in July, 2003. The School District operates the Lake Grove Swim Park located at 3800 Lakeview Boulevard. The agreement states that the annexation of property by the City within the Lake Grove Park District (which funds the swim park) shall not cause the withdrawal of these properties from the district.

Lake Grove Fire District: The City and District entered into an ORS 195.065 urban service agreement for fire protection in July, 2003. The agreement states that upon annexation of property within the district by the City, the annexed property shall be withdrawn from the District and the City shall provide fire protection services. These properties are within the boundaries of the Lake Grove Fire District #57 and the annexation will withdraw these properties from that District.

The proposed annexation is consistent with these agreements

**b. Any applicable annexation plan adopted pursuant to ORS 195.205.**

There are no applicable annexation plans adopted pursuant to ORS 195.205 relating to the affected territory.

**c. Any applicable cooperative planning agreement adopted pursuant to ORS 195.020(2) between the affected entity and a necessary party.**

There are no ORS 195.020(2) cooperative agreements (which relate to special districts) between the city and a necessary party.

**d. Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services.**

Consistent with Statewide Planning Goal 11 (Public Facilities) and the Community Health and Public Safety Chapter of the Comprehensive Plan, the City maintains a Public Facilities Plan (PFP). The PFP consists of master plans for streets, sanitary sewer, water, and stormwater facilities, which provide the basis for long-range planning for both the incorporated and unincorporated lands within Lake Oswego's Urban Services Boundary. The PFP is comprised of the Lake Oswego Transportation System Plan, Wastewater Master Plan, Water System Master Plan, and Clean Streams (Stormwater) Plan, pursuant to Statewide Planning Goals 11 (Public Facilities) and 12 (Transportation).

Wastewater Master Plan: Sanitary sewer service can be made available from an existing sewer line that is located in Waluga Park approximately 525 feet east of Inverurie Road. Any new homes shall be connected to the City's public sewer system that follows the City's Wastewater Master Plan.



The Lake Oswego Comprehensive Plan Urbanization Policy C-4: “requires that urban services commensurate with the scale of the proposed development are available and are adequate to serve the property or can be made available in a timely manner prior to the annexation of non-island properties.”

To comply with this Policy, the Wastewater Master Plan, along with other related policies that are criteria for annexation of the subject properties, the Owner represented to the City that it would proceed with construction of public sanitary sewer lines to serve future development on the respective properties consistent with the City’s Sewer Master Plan, and providing a guarantee of sewer availability. All necessary Land Use Approvals for the sewer construction including those under the Sensitive Lands Overlay District (LOC 50.005.010) will also need to be obtained prior to construction of the sewer line.

Staff is recommending the tentative approval of Ordinance No. 2874, and is requesting the Council to direct staff to return with findings and ordinance for enactment upon the owner recording the *Covenant to Construct and Connect to City Sewer Line* (Exhibit E-3) in the official records of Clackamas County, Oregon.

The public sewer extension would be required through the park and along Baleine Street and south along Kimball Street to the southern boundary of Tax Lot 2902. The Parks Department has been consulted about the location of the sewer line through this park and recognizes that its location is consistent with the sewer master plan and that it is in the public interest to construct the sewer line in this location. The applicant has submitted a preliminary plan and profile (Exhibit D-1) showing a public sewer extension is feasible and can be constructed to the upstream boundary of Tax Lot 2902, according to the City’s wastewater master plan. Staff notes that the preliminary plan also shows the sewer extension beyond TL 2902. This future line has been shown to demonstrate feasibility for further extension beyond the subject properties. City code will require the public mainline to be extended to the upstream boundary of each property prior to connection to the future homes on each lot, or development site if a future partition is approved. [LOC 50.06.008.3.d]

A new service lateral will be required to serve each lot. Service laterals shall have a two-way clean-out positioned at the right-of-way line. A Systems Development Charge (SDC) and plumbing permit for each new home will be due upon connection to the public sanitary sewer system.

The sanitary sewer service that would potentially serve these properties could be provided in a manner that is consistent with the Wastewater Master Plan.

Water System Master Plan: Water is available from a six-inch Lake Grove Water District Line (LGWD) in Kimball Street and an eight-inch LGWD line in Baleine Street along the site frontages. These properties will remain in the LGWD and will continue to be LGWD customers. Future extension of water lines, if needed to serve future development, will be constructed and maintained in accordance with the City’s Water System Master Plan and LGWD standards. The nearest existing fire hydrants are located at the intersections of Kimball and Baleine Streets and Inverurie Road and Baleine Street.

The City and LGWD agreed to construct an interconnection between the two water systems and that the City furnishes and sells surplus water to the District under certain conditions and set rates for district purchase of City water. The City Council also adopted a resolution in 1994 (Resolution 94-22) indicating the City would not withdraw these properties from the district upon annexation. The



territory will not be withdrawn from the district upon annexation. The proposed annexation is consistent with the Water System Master Plan.

Clean Streams (Stormwater) Plan: There are no stormwater systems in the vicinity of these properties. After annexation, on-site surface water management requirements will fall under various provisions of the Lake Oswego Code. For example, stormwater runoff from new and/or replaced impervious surface areas shall be managed in accordance with the City's Stormwater Management Code (LOC 38.25), consistent with the Clean Streams (Stormwater) Plan. No new impervious surfaces will be proposed as part of this annexation.

**Transportation:** The City's 2015 Transportation System Plan implements the multi-modal transportation system that will meet the needs of the city for a 20-year planning horizon. Kimball and Baleine Streets are identified as a Local Streets in the City's Transportation System Plan and are under jurisdiction of Clackamas County. Tri Met Routes 37 on Boones Ferry Road and Route 38 on Kruse Way, provide the closest bus service to the subject properties.

**e. Any applicable comprehensive plan policies**

Comprehensive Plan Map: These properties are currently designated R-7.5, Low Density Residential on Clackamas County's Comprehensive Plan and Zoning Maps. It is designated Low Density Residential, R-7.5 on the City's Comprehensive Plan Map. As required by LOC 50.01.005.5, upon annexation, a City zoning designation of R-7.5 will be automatically applied to these properties.

The City's Sensitive Lands Map designates a Resource Protection (RP) over the northeast side of these three properties. Pursuant to LOC 50.01.004.5.a, the RP Overlay District will be applied to these properties upon annexation.

The City and County have coordinated their comprehensive plans within the Dual Interest Area outlined in the City/County Urban Growth Management Agreement (dated February 4, 1992 and updated November 18, 1997), hence the City/County designations have been determined to be compatible. The proposed zoning designation of R-7.5 is consistent with the Urban Growth Management Agreement between the County and the City.

Comprehensive Plan Policies: The Lake Oswego Comprehensive Plan contains the following relevant language in the Urbanization chapter:

Policy A-3: "The Urban Services Boundary (as depicted on the Comprehensive Plan Map) is the area within which the City shall be the eventual provider of the full range of urban services." These properties are within the City's Urban Services Boundary. Therefore, the proposed annexation and the withdrawal of these properties from the identified districts is consistent with this policy.

Policy C-3: "Ensure that annexation of new territory or expansion of Lake Oswego's Urban Services Boundary does not detract from the City's ability to provide services to existing City residents." The approval of this annexation will result in the addition of approximately 2 acres to be served by the City. As stated in Section 2(b)(1), the addition of this territory will not detract from the City's ability to provide police and fire protection to existing City residents.

As outlined elsewhere in these findings and the incorporated materials, annexation of these properties will not affect the City's ability to provide parks and recreation services, sewer or water services.

Policy C-4: "Prior to the annexation of non-island properties, ensure urban services are available and adequate to serve these properties or will be made available in a timely manner by the City or a



developer commensurate with the scale of the proposed development.”

To comply with the above Policy and with other related policies that are criteria for annexation of the subject properties, the owner represented to the City that it would proceed with construction of public sanitary sewer lines to serve future development on the subject properties consistent with the City’s Sewer Master Plan, and providing a guarantee of sewer availability. All necessary Land Use Approvals for the sewer construction, including those under the Sensitive Lands Overlay District (LOC 50.005.010), will also need to be obtained prior to construction of the sewer line.

Availability of urban services serving these properties is discussed below:

Water: Water is available to serve the subject area, as detailed in subsection D.1.d.

Sewer: Sanitary sewer service is available to serve the subject area, as detailed in subsection D.1.d.

Stormwater: As detailed in subsection D.1.d, future development will be required to comply with the City standards for stormwater management.

Fire Protection: Lake Grove Fire District #57 provides fire protection services to these properties by agreement with the City of Lake Oswego. Upon annexation, these properties will be withdrawn from this fire district and served directly by the City. The fire station on 4555 Jean Road, located southeast of the site, would be able to respond to emergencies under the eight minute goal established in the Comprehensive Plan.

Police: Upon annexation, these properties will be withdrawn from the Clackamas County Enhanced Sheriff’s Patrol District and served by the City of Lake Oswego. The Lake Oswego Police Department reviewed the proposal and indicated that it does not have any concerns with serving these properties upon annexation.

Parks and Open Space: The City has 629 acres of park and open space lands, or 14.6 acres per 1,000 population. The parks nearest to these properties are Waluga Park East, Waluga Park West and Lamont Springs Natural Area. Waluga Park East and West are located north of Oakridge Road and East and West of Waluga Drive. These two parks consist of 53 acres of active and natural passive areas. West Waluga Park includes two lighted baseball fields, a playground picnic shelters, lights and restrooms. Lamont Springs is a natural park with no amenities for organized recreational activities. The City’s park system will not be overburdened by any additional population annexed to the City with this application.

Lake Grove Park District: The Lake Grove Swim Park, managed by the Lake Oswego School District, and funded by the Lake Grove Park District, is located at 3800 Lakeview Boulevard. The swim park is approximately 1.3 acres in size with restroom, play and swim facilities. These properties will remain within the Lake Grove Park District following annexation.

Transportation - Streets and Mass Transit: Transportation infrastructure and transit service is available to serve the subject area, as detailed in subsection D.1.d, above.

Other Urban Services: Community Development Code Section LOC 50.06.008.3 requires that all development be provided with the following utility services: sanitary sewer, water, sidewalks, pedestrian and bicycle paths, traffic control signs and devices, street lights, streets, and TV cable.

These utilities are now in place or can be put in place to serve these properties.

In the event that future development occurs, an applicant for development is obligated to construct all necessary public facilities to serve their development.

Statewide Goal 10 and Complete Neighborhoods and Housing

*City Comprehensive Plan Complete Neighborhoods and Housing Chapter*



The Complete Neighborhoods and Housing Chapter of the City's Comprehensive Plan implements Statewide Housing Goal 10 and the Portland Metropolitan Housing Rule (OAR 660-007-0000 et seq.), which requires that the City plan for a supply of residentially zoned land with an average allowed density of 10 dwelling units per net acre, and the opportunity to develop a mix of housing types consisting of not less than 50% attached and multifamily dwellings. Compliance with the State rules ensures the opportunity to provide adequate numbers of needed housing units and the efficient use of buildable land within urban growth boundaries, while promoting certainty in the development process to help reduce housing costs.

The following Oregon Administrative Rule (OAR) provides standards for compliance with Goal 10 "Housing" pursuant to ORS 197.296 (Buildable Lands) and ORS 197.303 through 197.307 (Needed Housing):

*OAR 660-008-0010 Allocation of Buildable Land*

*The mix and density of needed housing is determined in the housing needs projection. Sufficient buildable land shall be designated on the comprehensive plan map to satisfy housing needs by type and density range as determined in the housing needs projection. The local buildable lands inventory must document the amount of buildable land in each residential plan designation.*

The City of Lake Oswego Comprehensive Plan-Complete Neighborhoods and Housing Chapter, adopted pursuant to Goal 10 and the Metropolitan Housing Rule, and incorporated herein by reference, is designed to meet Lake Oswego's housing needs for not less than a twenty-year planning period. The Comprehensive Plan Map displays residential land use designations within the City limits and within Lake Oswego's Urban Services Boundary (USB) through the year 2035. The Comprehensive Plan Map's residential land use designations were adopted consistent with the City's Buildable Lands Inventory and Housing Needs Analysis (HNA, 2013), also incorporated herein by reference, and the City of Lake Oswego-Clackamas County Urban Growth Management Agreement (UGMA), which specifies future zoning of lands with the USB upon annexation to Lake Oswego. The UGMA anticipates the City eventually annexing all of the unincorporated lands that exist within the USB, and application of City zoning to those lands consistent with the Comprehensive Plan; hence, the HNA is for both the incorporated area of Lake Oswego (City) and unincorporated areas within Lake Oswego's Urban Services Boundary (USB).

The Comprehensive Plan Map's residential land use designations are based on the HNA. These designations match the corresponding Zoning Map designations such that there is only one zone for each Plan designation, and therefore only one zone that is applied to each lot upon annexation, consistent with the HNA and in compliance with Goal 10 and the Metropolitan Housing Rule. In the case of the subject application, the applicable Plan Map designation and corresponding Zone Map designation is R-7.5. The City Comprehensive plan and corresponding Zone Map designation of R-7.5 provide a slightly greater amount of housing density than Clackamas County's zoning of R-8.5, single-family detached residential.

The development of these properties would yield approximately four additional lots, with each lot supporting a single-family residence and an accessory dwelling unit (ORS 197.312) or a duplex (ORS 197.758). The proposed annexation and designation of City zoning is consistent with the Comprehensive Plan and Map, and the City's Buildable Lands Inventory, and does not change the City's housing needs from those identified by the HNA; therefore, the annexation and zone change comply with Goal 10 and its implementing administrative rules. In this case, the zoning district would satisfy the need for single-family residential housing identified in the Housing Needs Analysis.

The City uses the following approach for findings supporting two types of annexation zone changes:



- Option 1 is for annexation-related non-discretionary comprehensive plan and zoning map amendments.
- Option 2 is for annexation-related discretionary comprehensive plan and zoning map amendments.

“Non-discretionary” amendments are zoning map amendments applied to an annexed property (or properties) where the applicable zoning designation is prescribed by the city’s comprehensive plan and a zoning conversion table in the city-county urban growth management agreement (UGMA).

“Discretionary” amendments are where more than one zoning designation is applicable, as prescribed by the city’s comprehensive plan and the city-county UGMA, and the City Council has discretion in applying zoning.

The proposed rezoning in AN 21-0003 is non-discretionary because the zoning is prescribed by the City of Lake Oswego Comprehensive Plan and the zoning conversion table in the City of Lake Oswego-Clackamas County UGMA.

The City’s R-7.5 zone is proposed to be applied consistent with (matching) the R-7.5 land use designation in the City’s Goal 10/Metro Housing Rule-compliant comprehensive plan. The City Council does not have discretion to apply a different zone to the subject properties unless it is amending the Comprehensive Plan to change the land use designation; therefore, the City does not evaluate proposed zones against its Housing Needs Analysis (HNA). The City simply applies the zoning that is prescribed by the Comprehensive Plan, consistent with the HNA and the Complete Neighborhoods and Housing (Goal 10) chapter of the Plan. In doing so, the City relies on LOC 50.01.004.5.a, which states that the Lake Oswego Comprehensive Plan Map provides for the future City zoning of all property within the City’s Urban Service Boundary. In cases where the Comprehensive Plan Map requires a specific zoning map designation, this designation is automatically imposed on territory when these properties is annexed to the City.

In conclusion, the proposed R-7.5 zoning is consistent with the Comprehensive Plan and City-County UGMA for the subject properties, and the City Council does not have other zoning options from which to choose in approving AN 21-0003.

#### Urban Growth Management Agreement

General Urbanization Policy 4.A.4 of the Clackamas County Comprehensive Plan calls for the establishment of Urban Growth Management Areas and Urban Growth Management Agreements to clarify planning responsibilities between the County and cities for areas of mutual interest. Policy 4.A.5 directs the County to establish agreements with cities and service districts to clarify service and infrastructure responsibilities for areas of mutual interest.

Similarly, the Lake Oswego Comprehensive Plan, Urbanization Chapter, Policy D-3, calls for entering into and maintaining an Urban Growth Management Agreement (UGMA) with Clackamas County for lands within the Urban Services Boundary.

In furtherance of these policies, the City and County have entered into an Urban Growth Management Agreement that stipulates a mutual interest in coordinated land use planning, compatible comprehensive plans and provision of urban services and facilities.

This agreement ensures coordination and consistency between the City and County comprehensive plans and outlines responsibilities in providing services and managing growth within the Dual Interest Area. Subsections 6 and 7, provided below, are applicable to annexations.

*“6C. City and County Notice and Coordination:*

*The City shall provide notification to the County, and an opportunity to participate, review and comment, at least 35 days prior to the first public hearing on all proposed public*



*facilities plans, legislative changes to the City Comprehensive Plan, or quasi-judicial land use actions adjacent to, or in close proximity to unincorporated areas. The City shall provide notice to the County of private or City initiated annexation requests within five days of the filing of an application with the Portland Metropolitan Boundary Commission.”*

The Urban Growth Management Agreement specifies that the City notify the County of an annexation request within five days of when it is submitted to the Boundary Commission. There is no longer a Boundary Commission for the Portland Metropolitan area.

Staff relies on the notice requirements of Metro Code 3.09.030.B, which requires mailing notice to all necessary parties, posting of a weatherproof notice in the general vicinity of the affected territory and by publishing notice in a newspaper of general circulation in the affected territory. Notice shall be mailed and posted at least 20 days prior to the date of deliberations.

The notice required by MC 3.09.030.B shall follow the requirements under MC 3.09.030.C, where the notice shall; describe the affected territory in a manner that allows certainty, state the date, time and place where the reviewing entity will consider the boundary change; and, state the means by which any person may obtain a copy of the reviewing entity’s report on the proposal. Clackamas County is a necessary party under the Metro Code definition and was notified on October 13, 20 days before public hearing.

*“7. City Annexations*

- A. The City may undertake annexations in the manner provided for by law within the Dual Interest Area. The City annexation proposals shall include adjacent road right-of-way to property proposed for annexation. The County shall not oppose such annexations.*
- B. Upon annexation, the City shall assume jurisdiction of the County roads and local access roads pursuant to a separate road transfer agreement between the City and county.”*

The City is undertaking this annexation in the manner provided for in the applicable provisions of State Law and Metro Code for the territories that lie within the Dual Interest Area. This annexation is consistent with the City and County comprehensive plans, which have been coordinated in the Dual Interest Area within the regional Urban Growth Boundary (UGB).

Kimball and Baleine Streets are identified as Local Streets in the City’s Transportation System Plan and are under jurisdiction of Clackamas County.

**f. Any applicable concept plan**

There are no applicable concept plans in this area.

**2. Consider whether the boundary change would**

- a. Promote the timely orderly and economic provision of public facilities and services**
- b. Affect the quality and quantity of urban services**
- c. Eliminate or avoid unnecessary duplication of facilities or services**

The proximity of these properties to existing City services will allow this annexation to promote the timely, orderly and economical extension of public facilities and services. These properties can readily be served with urban services and facilities.

If and when additional development occurs in the area, provision of public facilities and services will occur consistent with the City’s adopted public facility master plans, ensuring that it does not



adversely affect the quality or quantity of urban services and avoiding unnecessary duplication of facilities or services.

Therefore, this boundary change is consistent with criteria 2.a through 2.c.

**E. A city may not annex territory that lies outside the UGB except it may annex a lot or parcel that lies partially within and partially outside the UGB.**

The properties to be annexed are located entirely within the Metro Urban Growth Boundary (UGB).

**F. LOC 50.05.010 Sensitive Lands Overlay District:**

The City's Sensitive Lands Map designates a Resource Protection (RP) over the northeast side of these three properties. Pursuant to LOC 50.01.004.5.a, the RP Overlay District will be applied to these properties upon annexation.

Property owners have the opportunity to contest the application of an existing RP, RC District, or HBA (Habitat Benefit Area) designation under LOC 50.01.004.5.b. On September 14, 2021, the property owners and the applicants were notified of the pending RP Sensitive Lands Overlay Designation. Staff discussed the RP designation with the applicant and they have not contested the proposed resource overlay designations at the time this staff report was prepared.

**CONCLUSION:**


Based on the criteria and findings set forth above, the City Council concludes that AN 21-0003 can be made to comply with all applicable criteria and the annexation should be approved.

**EFFECTIVE DATE:**

- A. Effective Date of Annexation Ordinance. Pursuant to Lake Oswego City Charter, Section 35.C., the ordinance shall be effective on the 30<sup>th</sup> day after its enactment.
- B. Effective Date of Annexation. Following the filing of the annexation records with the Secretary of State as required by ORS 222.177, this annexation shall be effective upon the later of:
1. the 30<sup>th</sup> day following the date of adoption of this ordinance; or
  2. the date of filing of the annexation records with the Secretary of State;

provided however that pursuant to ORS 222.040(2), if the effective date of the annexation as established above is a date that is within 90 days of a biennial primary or general election or after the deadline for filing notice of election before any other election held by any City, district or other municipal corporation involved in the area to be annexed, the annexation shall become effective on the day after the election.

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Name of Document For Recording: Covenant to Construct and Connect to City Sewer Line Grantor: Hail Capital LLC., i/o David Nelsen, 3115 Wembley Park Road Lake Oswego OR 97034 Grantee: City of Lake Oswego, P.O. Box 369, Lake Oswego, OR 97034 Consideration: \$0.00. Tax Statement to be mailed to: No Change Recordation Authority: ORS 205.130(2)(a). After Recording, Return To: City of Lake Oswego, Attn: City Recorder, P.O. Box 369, Lake Oswego, OR 97034	(For County Recording Use Only) <b>Clackamas County Official Records</b> <b>Sherry Hall, County Clerk</b>  02543743202200112310080089 <b>2022-011231</b> <b>\$128.00</b> <b>02/23/2022 02:20:40 PM</b> D-OD Cnt=1 Stn=9 COUNTER1 \$40.00 \$16.00 \$62.00 \$10.00
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### Covenant to Construct and Connect to City Sewer Line

WHEREAS, the undersigned Hail Capital LLC ("Owner") warrant(s) to the City of Lake Oswego (City) that Owner is the fee title or contract purchaser of real property in Clackamas County, Oregon, outside the corporate limits of the City of Lake Oswego, but inside the City's Urban Service Boundary, described as follows ("Subject Property" or "Subject Properties"):

#### Legal Description:

A tract of land located within the southwest quarter of Section 7, Township 2 South, Range 1 East of the Willamette Meridian, City of Lake Oswego, County of Clackamas, Oregon, said tract of land being all of that property conveyed to Hail Capital LLC, an Oregon limited liability company, by Statutory Warranty Deed recorded July 7, 2021 in the Official Records of Clackamas County as Recording No. 2021-065158; said tract of land more particularly described as follows:

Lots 1, 2, 69, and 70 of Block 1, Plat of Lake Forest (Plat No. 509), plat records of Clackamas County.

**Together with** a tract of land located within the southwest quarter of Section 7, Township 2 South, Range 1 East of the Willamette Meridian, City of Lake Oswego, County of Clackamas, Oregon, said tract of land being all of that property conveyed to Hail Capital LLC, an Oregon limited liability company, by Statutory Warranty Deed recorded June 30, 2021 in the Official Records of Clackamas County as Recording No. 2021-063293; said tract of land more particularly described as follows:

Parcel 2, Partition Plat No. 2007-142, plat records of Clackamas County.

Street Address: No Situs address, Lake Oswego

Assessor Map/Lot References: Tax Lots 0100, 3000 and 02902, Map 21E07CA

WHEREAS, the undersigned Owner applied for annexation of the subject property to the City of Lake Oswego (Planning Dept. Case No. AN 21-0003).

WHEREAS, the City's Public Facilities Plan, which is consistent with Statewide Planning Goal 11 (Public Facilities) and the Community Health and Public Safety Chapter of the Comprehensive Plan, requires the



development of master plans for the orderly development of streets, sanitary sewer, water, and stormwater facilities, and the basis for long-range planning for both the incorporated and unincorporated lands within Lake Oswego's Urban Services Boundary.

WHEREAS, the Lake Oswego Comprehensive Plan Urbanization Policy C-4: "requires that urban services commensurate with the scale of the proposed development are available and are adequate to serve the property or can be made available in a timely manner prior to the annexation of non-island properties."

WHEREAS, to comply with the above Policy and with other related policies that are criteria for annexation of the Subject Properties, the Owner represented to the City that it would proceed with construction of public sanitary sewer lines to serve future development on the Subject Properties consistent with the City's Sewer Master Plan and guarantee sewer availability.

WHEREAS, following a public hearing, the City Council tentatively approved Ordinance 2874 ("Annexation Ordinance") and directed City staff to return with findings and ordinance for enactment upon recordation of this *Covenant to Construct and Connect to City Sewer Line* (Exhibit E-3) in the official records of Clackamas County, Oregon.

NOW THEREFORE, Owner does hereby covenant to City as follows:

1. Owner shall construct a sewer main, in conformance with the City Engineering Dept.'s standards and specifications from the Point of Connection of the existing City Sewer Main to the upstream boundary of each property for one connection or one home, or in the case of a partition of the Subject Property, then to the upstream boundary of that Subject Property (parent parcel of the partition), to serve each of the respective Subject Properties, as shown on the attached map, Attachment 1. The sewer main shall be installed to the respective Subject Property and accepted by the City prior to issuance of a development permit (including a building permit) for the respective Subject Property. (This obligation to construct does not preclude Owner from seeking a Zone of Benefit under LOC Art. 40.04.)
2. Owner acknowledges that neither the City's condition upon the annexation nor the City's acceptance of this covenant constitutes consent for Owner to install the sewer main in any property owned by or under the jurisdiction of the City. The Owner will need to obtain such City consent in the manner required for such, and the annexation does not obligate the City to so consent. The Owner's obligations under this Covenant shall arise only after the Subject Property has been fully annexed into the City. The completion of the annexation process shall be an express condition precedent to Owner's obligations under this Covenant.
3. Owner acknowledges the risk that events, circumstances, or unknown conditions could arise that would make it more difficult or preclude the extension of the sewer main as intended. Nevertheless, the Owner waives any and all claims or causes of action, legal or equitable, for the issuance of a development permit (including a building permit) absent compliance with the requirement that any development on the respective Subject Property be served by connection to a City sewer main. Specifically, the Owner waives any right to seek approval of an alternative sewage disposal system, including the right to seek exemption from the requirement to connect to the City sewer system.

4. This Covenant may be enforced by the City of Lake Oswego by a proceeding in the Clackamas County Circuit Court under any applicable legal or equity basis, including specific performance and injunction. The City shall be entitled to its reasonable attorney fees if it is the prevailing party, at trial or on appeal. If the City is represented by "in-house" counsel, the City shall nevertheless be entitled to recover reasonable attorney fees based upon the reasonable time incurred and the attorney fee rates and charges reasonably and generally accepted in the metropolitan Portland, Oregon area for the type of legal services performed.
5. Following construction of the sewer main to the upstream boundary of the property a respective Subject Property (as provided in Paragraph 1, above), at the Owner's request and expense, the City shall execute a Notice of Termination of Covenant suitable for recording with the County Clerk, so that upon recordation, the obligation to construct the sewer main to the respective Subject Property, and the agreement that no development permit (including building permit) be issued for the respective Subject Property will be shown as an obligation against the respective Subject Property.
6. This Covenant shall run with the land and shall be recorded in the deed records of the County of Clackamas, to give notice to all successors-in-interest in the Subject Properties and shall be binding on all successors in interest.

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[Signature on Next Page]



IN WITNESS WHEREOF, the undersigned Owner has hereunto executed this Covenant on the date stated below.

**GRANTOR**

Hail Capital LLC, an Oregon limited liability company

By: David E. Nelson  
David Nelson, Manager

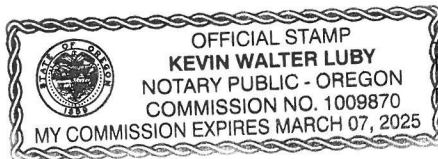
2 / 21 / 2022  
Date Signed

STATE OF OREGON     )  
                                  ) ss.  
County of Clackamas    )

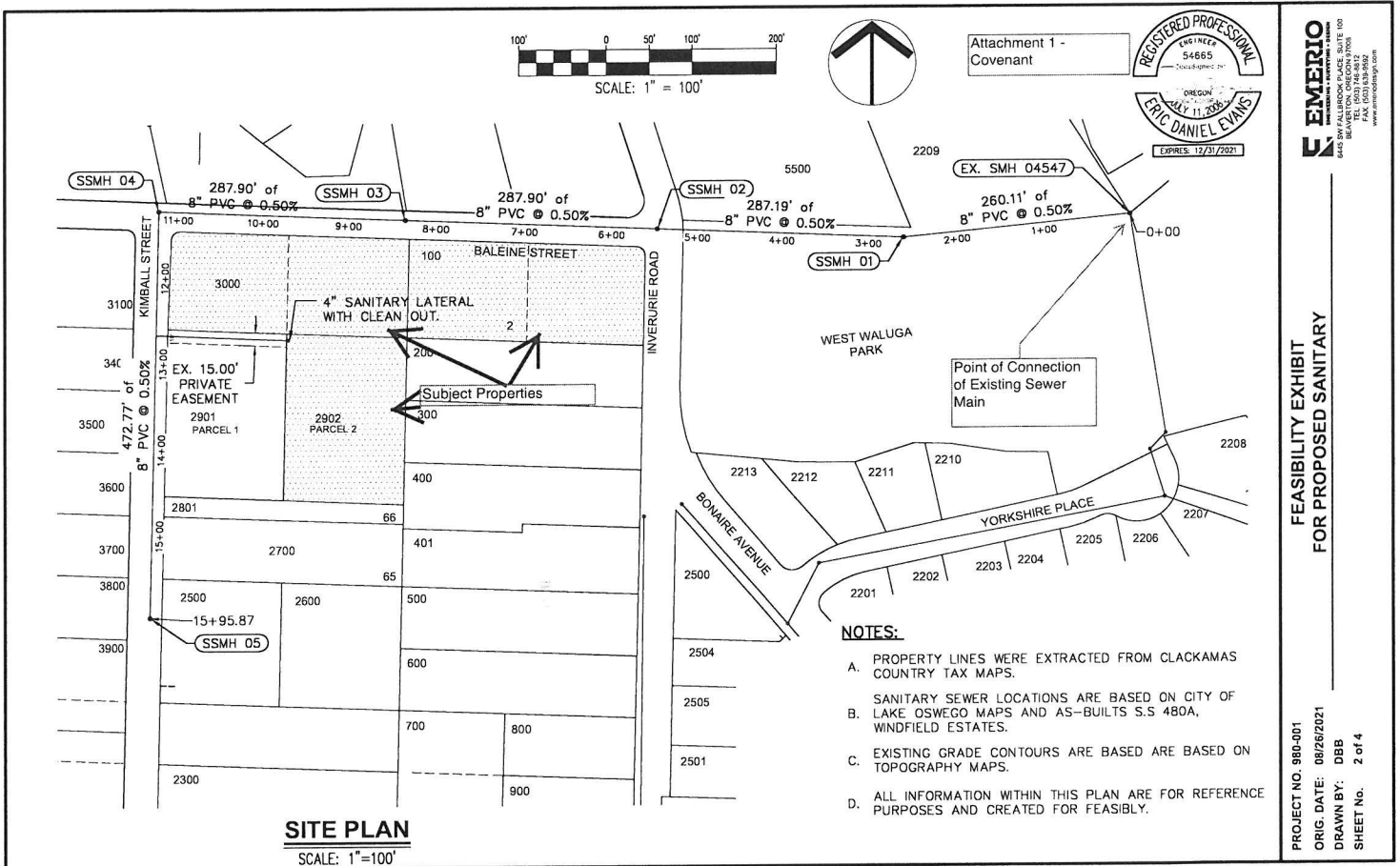
On this 21<sup>st</sup> day of February, 2022, before me the undersigned Notary Public,  
personally appeared DAVID NELSEN

- ☐ personally known to me  
☒ proved to me on the basis of satisfactory evidence

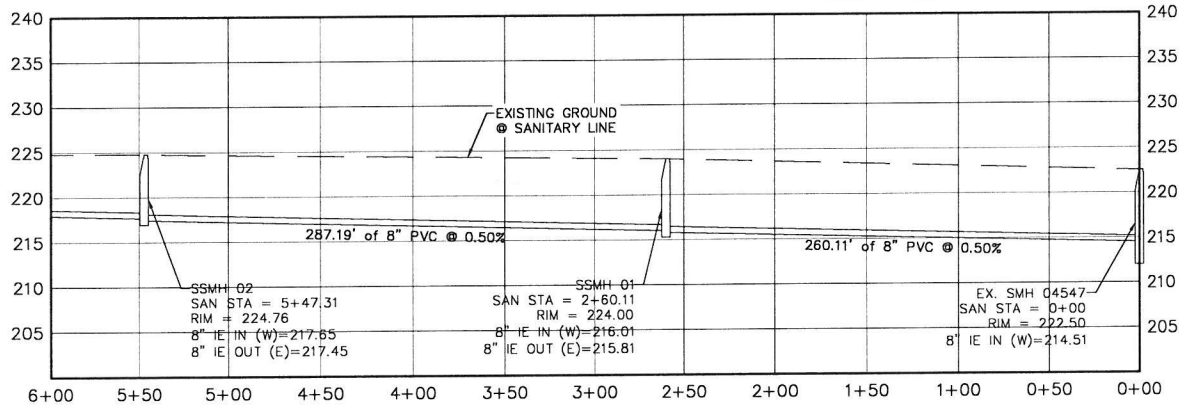
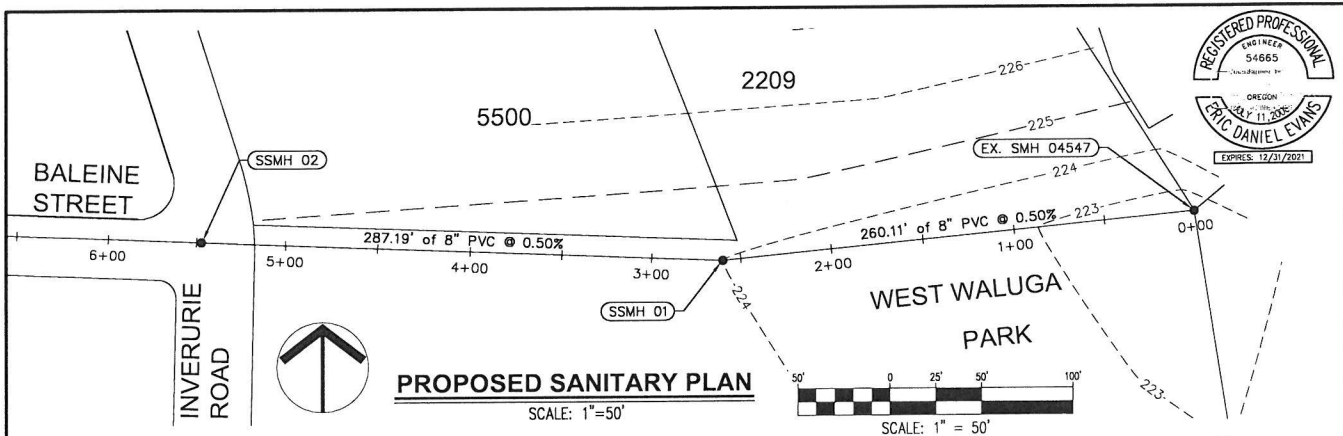
To be the person who executed the within instrument as manager of and on behalf of Hail Capital, LLC,  
pursuant to authority, and acknowledged to me the execution hereof.



[Signature]  
Notary Public for Oregon  
My Commission Expires: 3-7-25



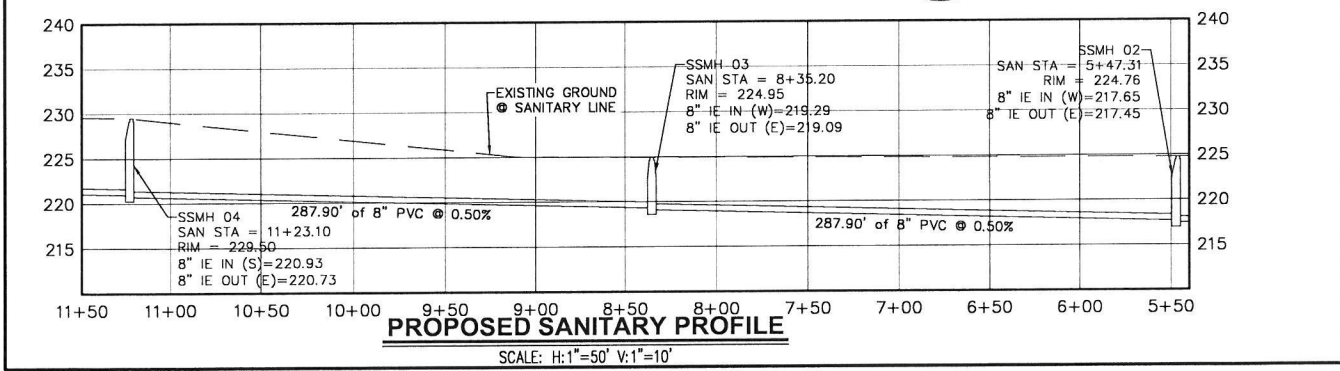
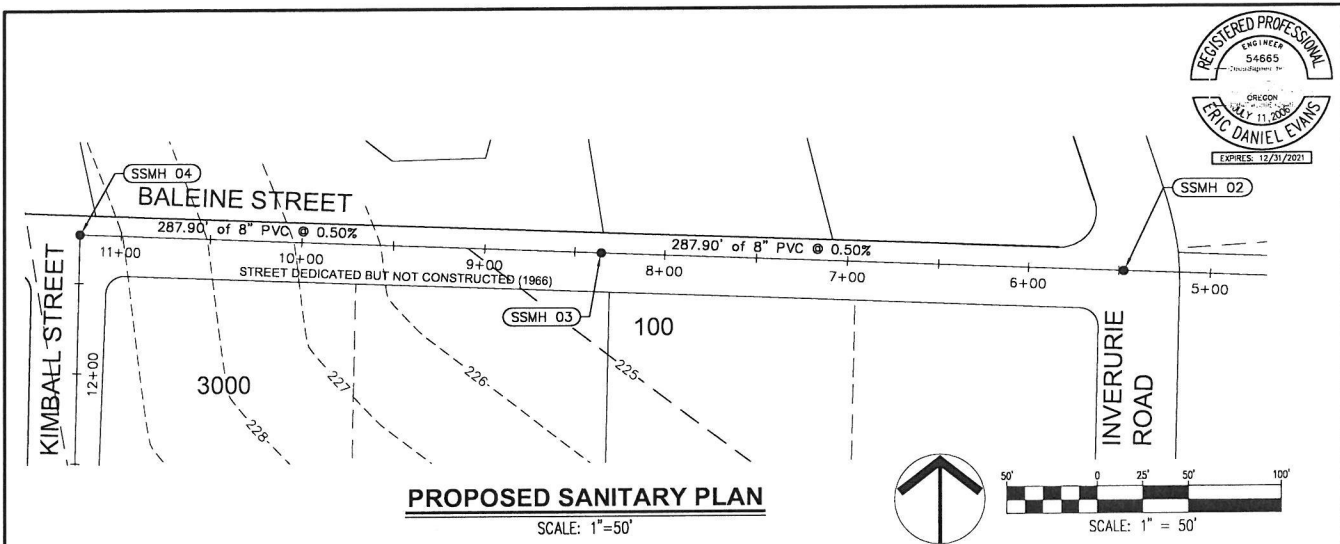




**EMERIO**  
6445 SW FALLBROOK PLACE, SUITE 100  
PORTLAND, OREGON 97206  
TEL: (503) 248-9412  
FAX: (503) 248-9413  
WWW.EMERIOENGINEERS.COM

FEASIBILITY EXHIBIT  
FOR PROPOSED SANITARY

PROJECT NO. 980-001  
ORIG. DATE: 08/26/2021  
DRAWN BY: DBB  
SHEET No. 2 of 4

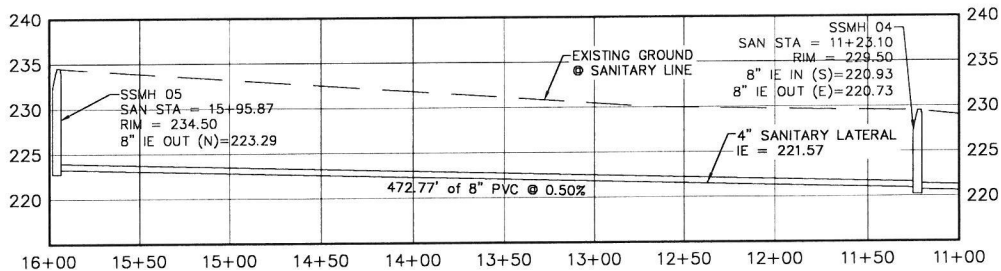
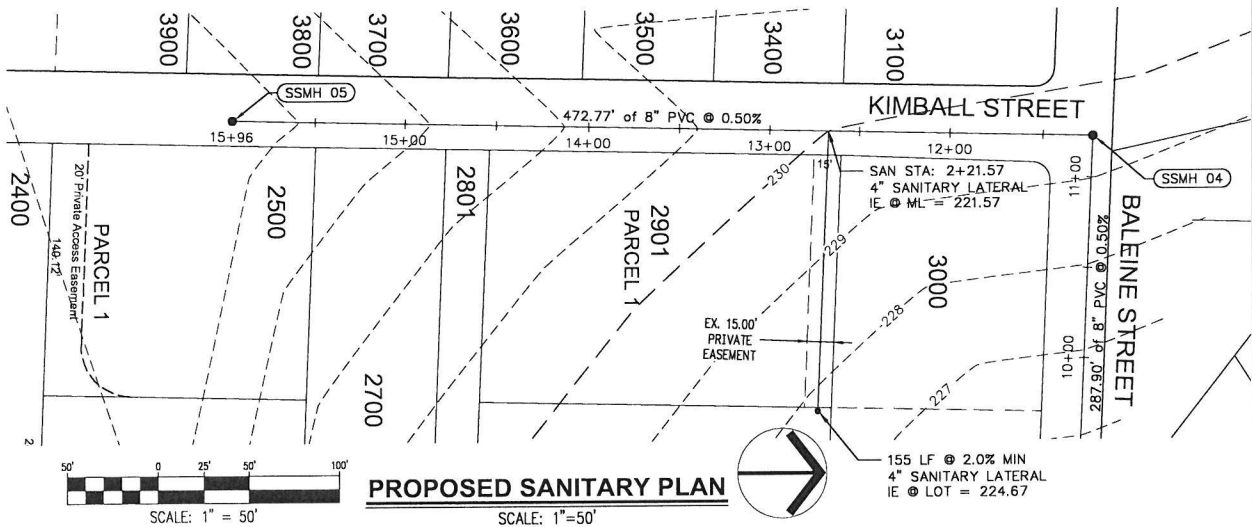


**EMERIO**  
REGISTERED PROFESSIONAL ENGINEER  
54665  
EXPIRES: 12/31/2021  
ERIC DANIEL EVANS

FEASIBILITY EXHIBIT  
FOR PROPOSED SANITARY

PROJECT NO. 980-001  
ORIG. DATE: 08/26/2021  
DRAWN BY: DBB  
SHEET No. 3 of 4





**FEASIBILITY EXHIBIT  
FOR PROPOSED SANITARY**

PROJECT NO. 980-001  
ORIG. DATE: 08/26/2021  
DRAWN BY: DBB  
SHEET No. 4 of 4

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