

**NEIGHBORHOOD MEETING, REGULAR MEETING AND SPECIAL
PUBLIC HEARING OF THE
NORTH BEND PLANNING COMMISSION**

**Wednesday February 19, 2025, 5:30 PM
City Hall, 920 SE Cedar Falls Way, North Bend, WA**

AGENDA

- 1) **5:30-6:30 Middle Fork Development Pre-Submittal Public Meeting- Remote participation not available due to this portion of the meeting being held in Council Chambers with open house style.**
- 2) **Begin Teams meeting approximately at 6:30, Call to order and roll call, Planning Commission**
- 3) **Opportunity for public comment on non-agenda items**
- 4) **Approval of minutes from February 5, 2025 Pg. 12**
- 5) **Introduction, Public Hearing and Recommendation for Development Agreement to allow first floor residential for Mountain View Townhome and Commercial Project Pg. 14**
- 6) **Adjournment by 8:30 unless otherwise approved.**

PLEASE NOTE: Members of the public may choose to attend the meeting in person or by teleconference. Members of the public attending the meeting in-person will have an opportunity to provide public comment and if attending the meeting by teleconference may submit written comments via in-person drop off, mail, fax, or e-mail to planning@northbendwa.gov. All written comments must be received by 4 p.m. on the day of the scheduled meeting and must be 350 words or less. If an individual requires accommodation because of a difficulty attending the public meeting, the City requests notice of the need for accommodation by 3:30 p.m. on the day of the scheduled meeting. Participants can request an accommodation to be able to provide remote public comments by contacting the City by phone (425) 888-5633 or by e-mail to planning@northbendwa.gov. No other remote public comment will be permitted.

Those wishing to access the meeting by teleconference will be required to display your full name to be admitted to the online meeting.

Microsoft Teams [Need help?](#)

[**Join the meeting now**](#)

Meeting ID: 212 102 733 452

Passcode: Mb6tq2p9

Dial in by phone

[+1 323-484-5815,,28615079#](tel:+13234845815) United States, Los Angeles

[Find a local number](#)

Phone conference ID: 286 150 79#



Neighborhood Public Meeting Invitation

Middle Fork Development

You're invited and we want to your input

Middle Fork Property Development L.L.C. is pleased to invite you to a meeting regarding the proposed Master Plan anticipated for submittal to the City in March.

A variety of technical experts and professionals along with representatives of the project will be on hand to listen and share information about our proposal.

When: February 19th 5:30-6:30PM

5:30-5:40 Welcome Sign In

5:40-6:00 Applicant Introduction

6:00-6:30 Questions and Answers

Where: North Bend City Hall

920 SE Cedar Falls Way

Contact Jamie Burrell, Senior Planner for more information.

jburrell@northbendwa.gov or (425) 888-7642



NORTH BEND MASTER SITE PLAN

MIDDLE FORK SITE



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PROJECT TEAM

CLIENT:
MIDDLE FORK PROPERTY DEVELOPMENT LLC
165 NE JUNIPER ST, SUITE 100
ISSAQAH, WA 98027

ARCHITECT:
JACKSON MAIN ARCHITECTURE
311 FIRST AVE S
SEATTLE, WA 98104

CIVIL:
BUSH ROED & HITCHINGS INC
15400 SE 30TH PL, SUITE 100
BELLEVUE, WA 98007

TRANSPORTATION:
TRANSPORTATION SOLUTIONS INC.
16932 WOODINVILLE REDMOND RD NE, A206
WOODINVILLE, WA 98072

JURISDICTION:
CITY OF NORTH BEND
920 SE CEDAR FALLS WAY
NORTH BEND, WA 98045

PROJECT NARRATIVE

Project Goals:

Expand opportunities in North Bend for commercial/industrial mixed-use to support the city's outdoor recreation, growing commercial and logistics opportunities.

Development Objectives:

The applicant proposes a 10-acre commercial area along se 140th St. and 468th Ave. and a mix of flex industrial, logistics warehouse in the remaining approximately 25-acres. Site access is separated into two primary locations. Community and commercial site access would primarily be from a turn lane along 468th Avenue and a proposed round about at the intersection of SE 140th, 468th, and SE Middle Fork Road. Dedicated access for the industrial/logistics area and large vehicle access would be from SE North Bend Way.

The 10-acre commercial area is intended to serve local residents, provide pedestrian friendly walkways, parking, native landscaping, and reflect north bend's mountain town character. A flex industrial area internal to the site, down slope, and adjacent to the commercial area is dedicated to serving multiple businesses with office, warehouse, and light manufacturing space. Further inland of the site and down slope from the flex industrial area, larger modern industrial warehouse or logistics center opportunities are proposed. Landscape buffers and native landscaping are proposed throughout the site.

Existing Site:

The project site, comprised of 1 parcel, is located west of 468th St, south of SE 140th St, and north of the truck stop at the east end of North Bend. The 35-acres site is accessible from exit 34, I-90. Evergreen trees with some deciduous trees border this vacant site with shrub/grassland in the interior. The site slopes gradually from the northeast at the intersection of SE 140th and 468th to the southwest. There are no existing waterways or water features on the site.

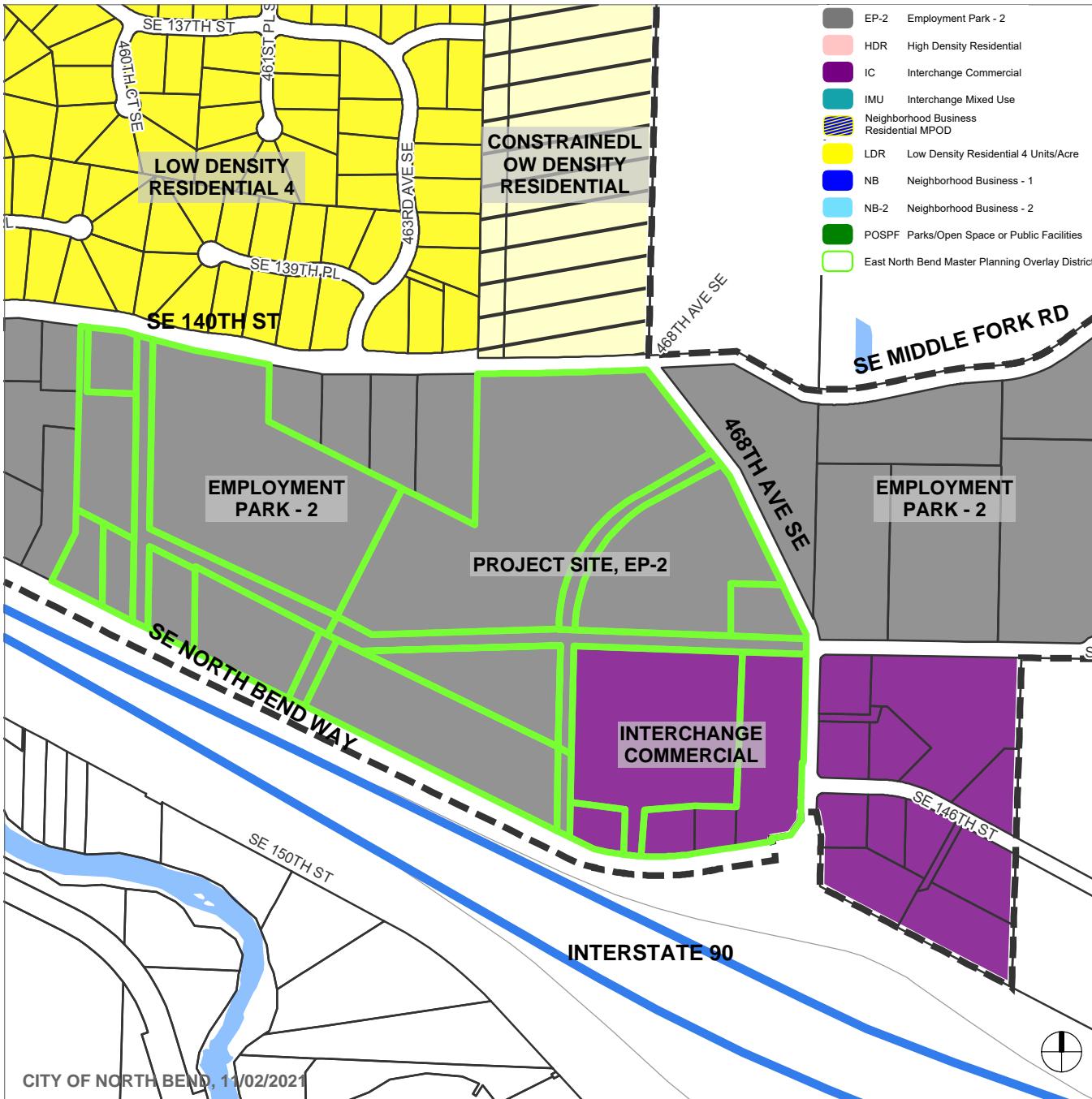
Zoning:

The project parcel is located in the employment park (EP-2 zone), a zone focused on a variety of commercial and industrial uses including professional offices, grocery, sales, indoor recreational, restaurants, repair/service shops, small components/products manufacture, industrial equipment sales, forestry/resource-based industries, industrial park, warehouse, and distribution.

Neighborhood Development:

Surrounding the proposed project located off exit 34, I-90 is a well-known truck stop, fast/casual dining, service stations, and lodging south of the project site. North, northwest and northeast, the site is bordered by single family residential forested areas and is on the way to the Middle Fork Snoqualmie River recreational area.

VICINITY / ZONING MAP



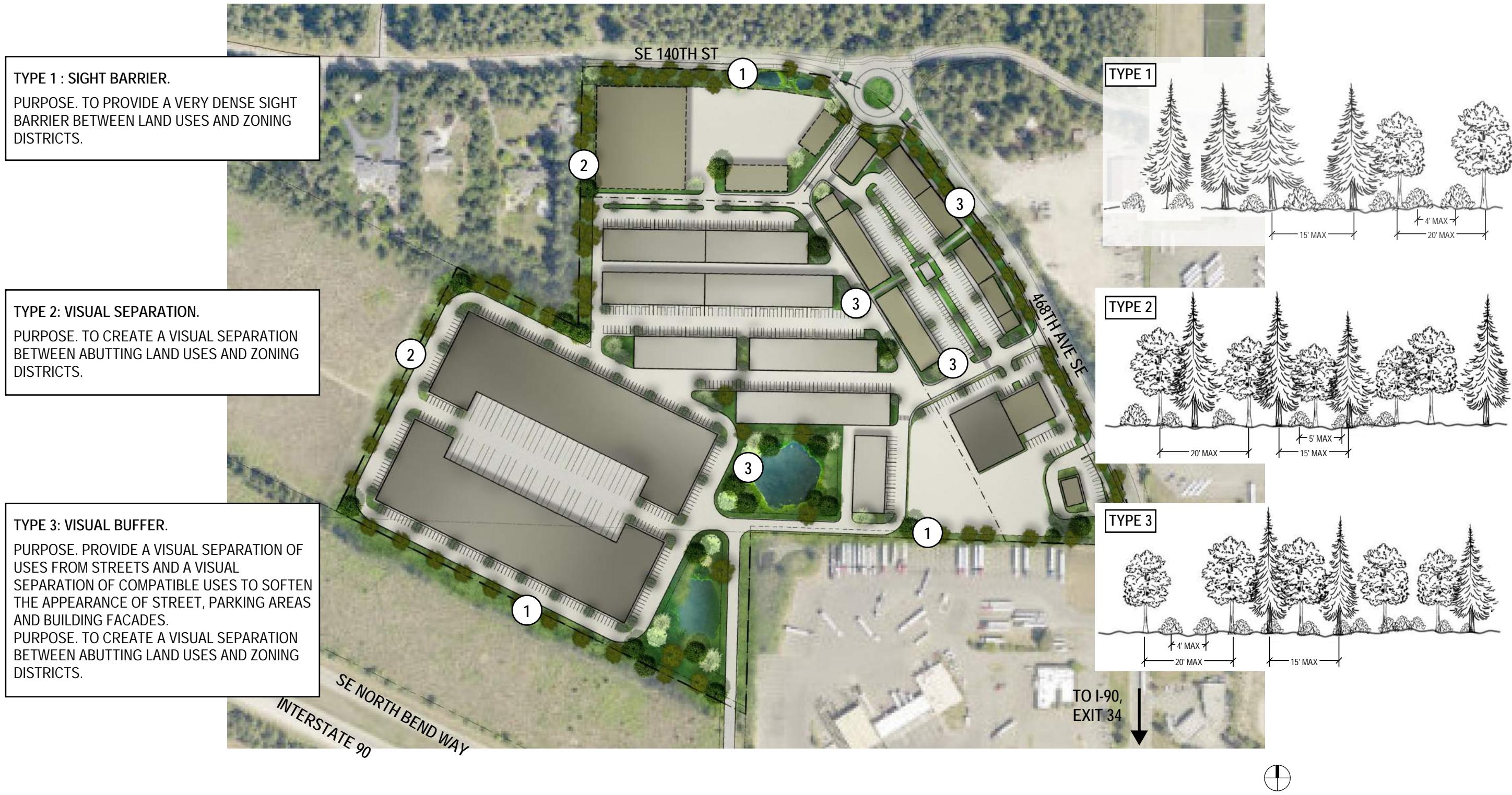
AERIAL MAP / EXISTING SITE



OVERALL SITE PLAN

LANDSCAPE REGULATIONS

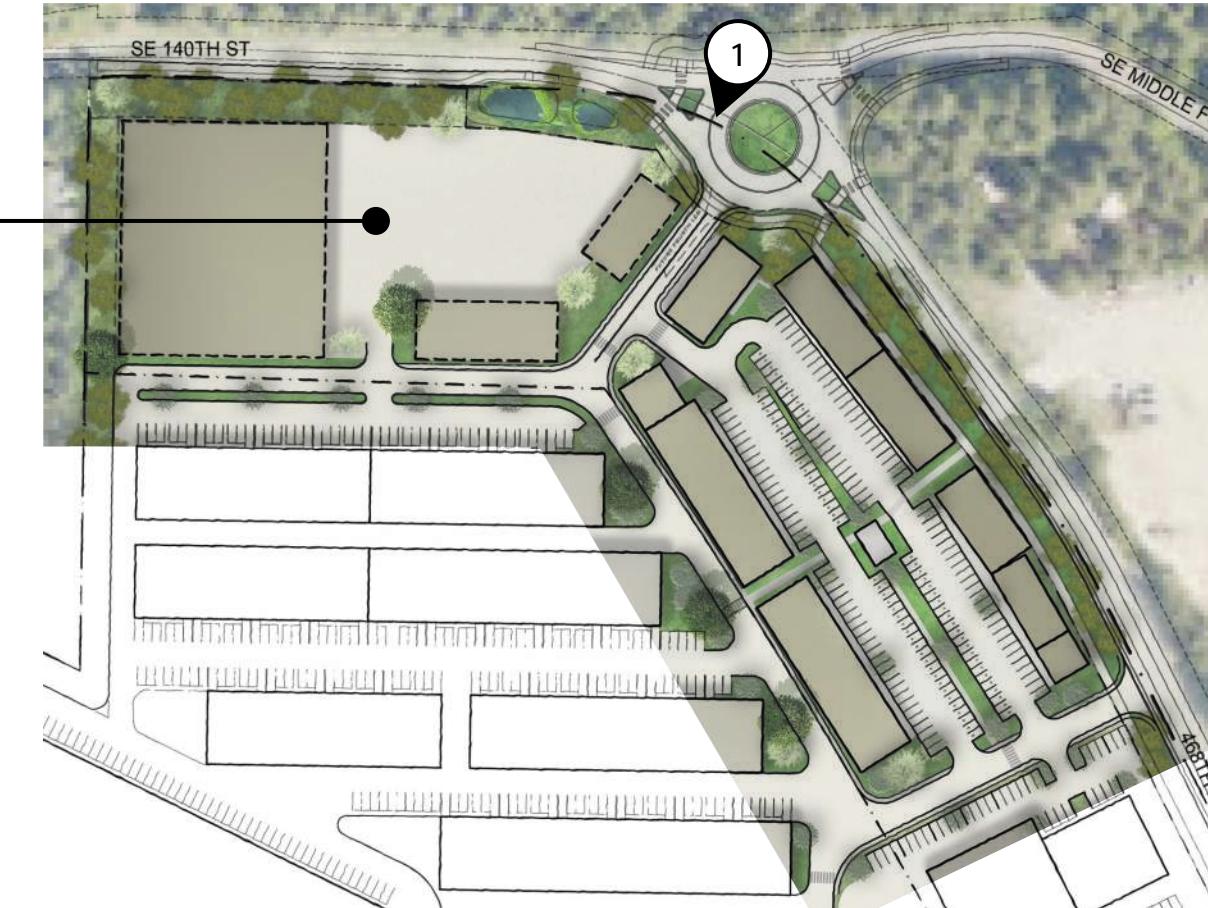
PER 18.18.080 LANDSCAPE TYPES - ABUTTING USES



PERSPECTIVE VIEWS: AREA A

Area - A

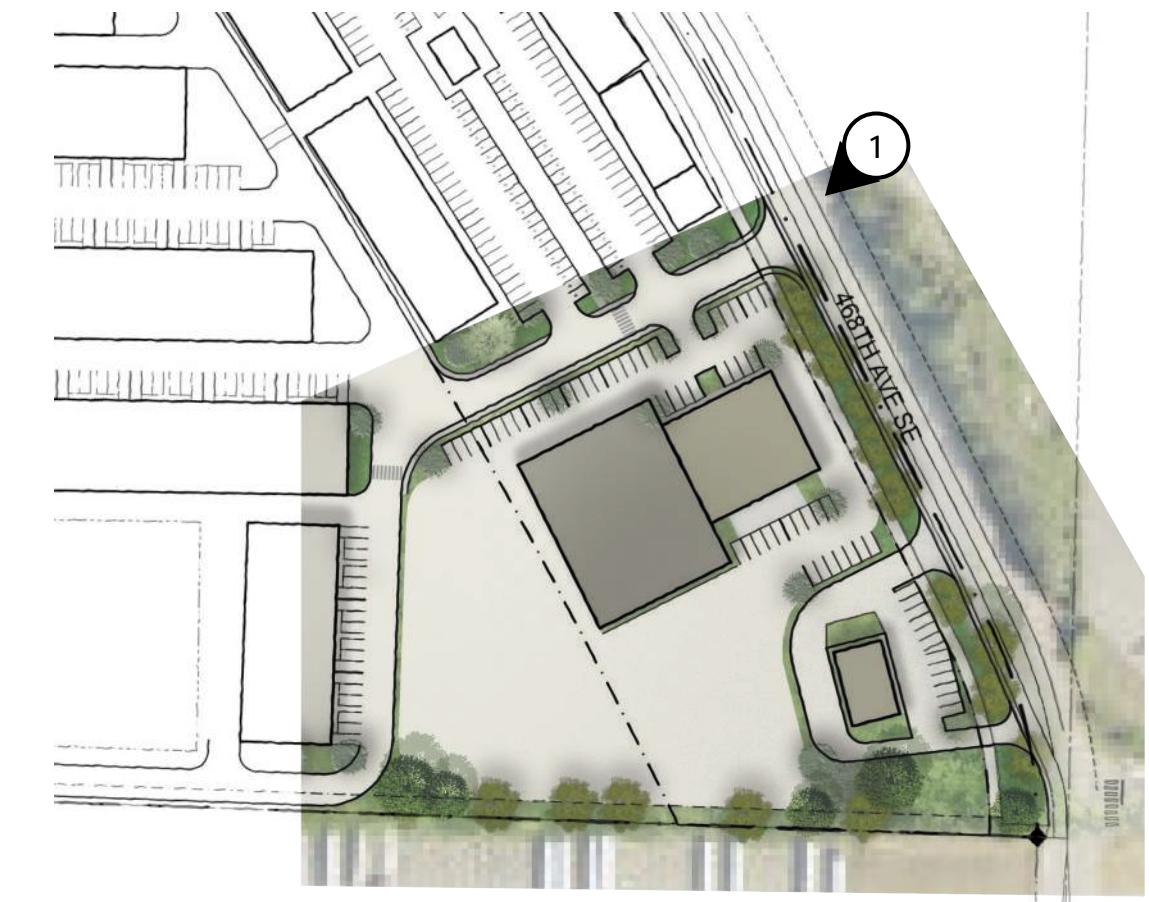
SITE AREA:	102,225 SF
COMMERCIAL AREA:	53,650 SF
PARKING SPACES:	106 PROVIDED (72 COMPACT)
LOADING SPACES:	0 PROVIDED



PERSPECTIVE VIEWS: AREA B

Area - B

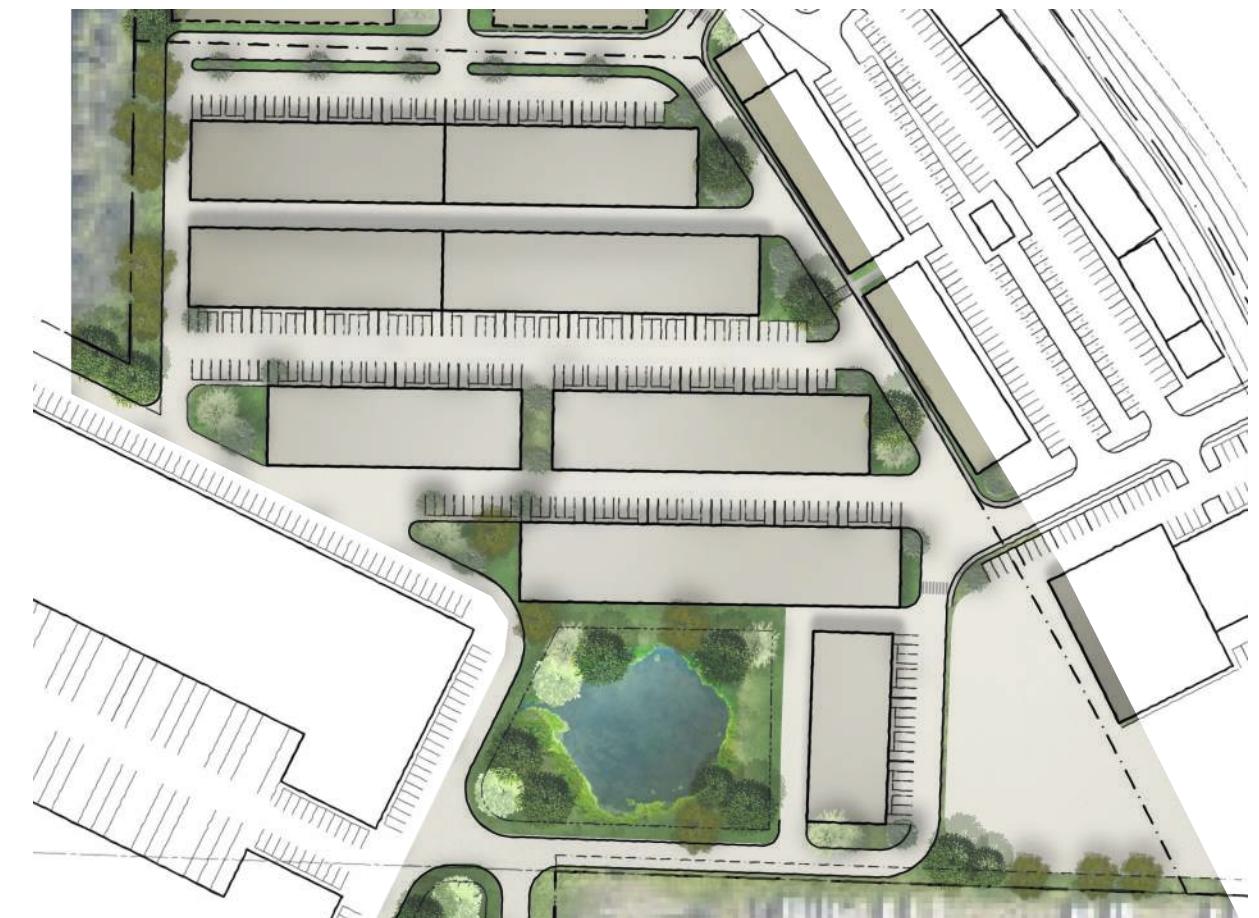
SITE AREA: 208,482 SF
 COMMERCIAL AREA: 27,000 SF
 OFFICE AREA: 2,500 SF
 PARKING SPACES: 65 PROVIDED
 (0 COMPACT)
 LOADING SPACES: 0 PROVIDED



PERSPECTIVE VIEWS: AREA C

Area - C

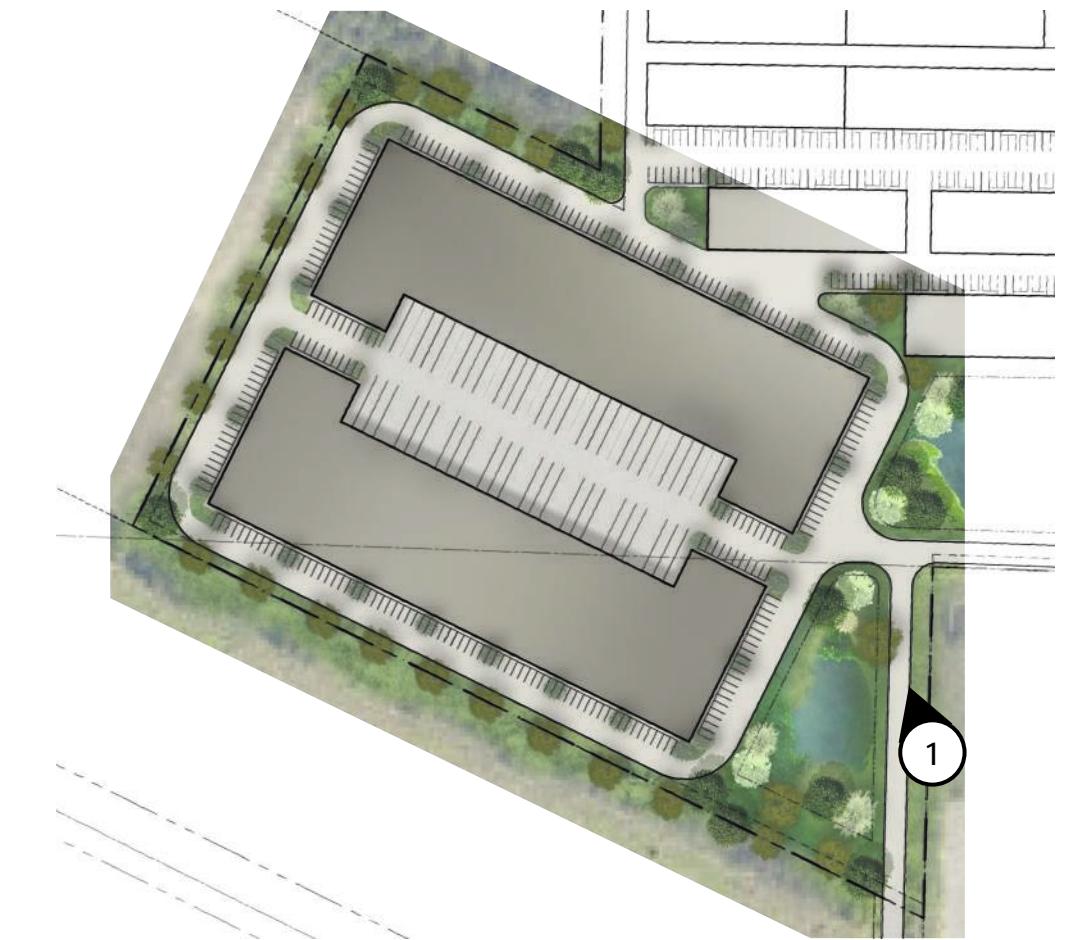
SITE AREA:	495,471 SF
WAREHOUSE:	140,000 SF
OFFICE AREA:	17,500 SF
PARKING SPACES:	158 PROVIDED
LOADING SPACES:	68 PROVIDED



PERSPECTIVE VIEWS: AREA D

Area - D

SITE AREA:	321,300 SF
WAREHOUSE:	208,000 SF
OFFICE AREA:	20,000 SF
PARKING SPACES:	262 PROVIDED
LOADING SPACES:	32 PROVIDED



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2
3
4

**REGULAR MEETING OF THE
NORTH BEND PLANNING COMMISSION
- ACTION MEETING MINUTES -
Wednesday, February 5, 2025, 6:30 PM**

5 This meeting was held at City Hall, 920 SE Cedar Falls Way, North Bend, WA, and was also available online. A
6 complete video recording of this meeting is available on the City of North Bend YouTube website, at
7 www.youtube.com, under "City of North Bend."

8
9 **AGENDA ITEM #1: CALL TO ORDER**

10 The meeting was called to order at 6:30 PM.

11
12 **ROLL CALL**

13 Planning Commissioners present: Brian Fitzgibbon, Juliano Pereira, Stephen Matlock, Sam White, and James
14 Boevers. Commissioner Olivia Moe is absent.

15 City Staff Present: James Henderson, CED Director, Mike McCarty, Planning Manager, and Caitlin Hepworth,
16 Associate Planner

17
18 **AGENDA ITEM #2: Public Comment on Non-Agenda Items**

19 No comments.

20
21 **AGENDA ITEM #3: Approval of minutes from December 18, 2024 meeting**

22 Motion by Commissioner Perreira seconded by Commissioner Boevers, to approve the December 18, 2024 meeting
23 minutes. The motion passed unanimously.

24
25 **AGENDA ITEM #4: Introduction, Public Hearing and Potential Recommendation – Non-conforming Use
26 amendments to ADUs in DC Zone, and ADU regulation updates.**

27 Associate Planner Caitlin Hepworth provided a summary of the proposed amendments and their purpose and
28 associated state requirements they are based on. Ms. Hepworth noted that staff propose eliminating the provisions
29 regarding sewer connection from the draft that was provided the Planning Commission packet, since those
30 provisions will be separately addressed in pending amendments to the Sewer and Water regulations that will follow
31 after the ADU regulation amendments.

32
33 Commission Chair Thiel opened the public hearing at 7:25pm.

34
35 Matt Steel, who owns properties within North Bend on which he is proposing to construct ADUs, provided
36 comment, and provided a written handout to Commissioners.

37
38 Chair Thiel closed the hearing at 7:31.

39
40 Discussion by Commissioners and staff on the amendments. Commissioner Thiel requested adding a required 3-
41 foot setback between the primary structure and any detached ADUs. Commissioners concurred with this request,
42 which staff agreed to add to the draft amendments.

43
44 Commissioner Boevers made a motion to approve the proposed amendments, subject to adding a minimum building
45 separation requirement consistent with the minimum fire separation requirement without a fire wall. The motion
46 as seconded by Commissioner Perreira, and passed unanimously.

47
48 **CHAIR AND VICE CHAIR FOR 2025**

1 Commissioner Boevers made a motion, seconded by Commissioner Perreira, to elect Commissioner Thiel as Chair
2 for 2025, and Commissioner Mattlock as Vice Chair for 2025. The motion passed unanimously.
3

4 **AGENDA ITEM #5: Adjournment by 8:30 PM unless otherwise approved by the Commission**

5 The Meeting was adjourned at 7:50p.m.

DRAFT



Staff Report and Planning Commission Recommendation for the Development Agreement with PJO NW Development for Mountain View Mixed Use

Meeting Date: February 19, 2025

Proponent: PJO NW Development

Staff Recommendation: A Motion to recommend City Council approval of a Development Agreement with PJO NW Development for development of parcels 102308-9057, -9052, -9032 and -9049 of approximately 4.2 acres, zoned Neighborhood Mixed Use (NMU), located on SE North Bend Way.



I. Purpose of proposed development agreement:

The City is proposing to enter into a Development Agreement (DA) PJO NW Development for development of a property at King County parcel numbers 102308-9057, -9052, -9032 and -9049 of approximately 4.2 acres, zoned Neighborhood Mixed Use (NMU), located at 1310 SE North Bend Way, 1330 East North Bend Way, 1350 East North Bend Way, and 1360 East North Bend Way.

A DA may be authorized under City Council approval pursuant to the process in North Bend Municipal Code Chapter 18.27.

PJO NW Development is requesting the following in DA:

- Allowance for first floor residential. The current zoning only allows second floor or above residential over ground level commercial. Due to the significant depth of the site, this proposal seeks to split the mix of uses horizontally rather than vertically. The project shall include commercial along the frontage of North Bend Way. The draft DA is attached as Exhibit C.

PJO NW Development will submit for a complete application for the property, per the requirements of the North Bend Municipal Code, after City Council approval of the DA.

II. CONCLUSION AND STAFF RECOMMENDATION:

The property is an excellent development opportunity for the City of North Bend that would provide street frontage improvements consistent with Complete Streets, generate jobs and commercial opportunity, fee simple housing and amenities for North Bend residents, mid-level range housing close to downtown and with easy access to I-90. The development supports the City's 2024 Comprehensive Plan Housing Element by providing fee simple housing in the range of 50-80% AMI. Based on current rates impact fees are estimated at \$3.1M (with approximately \$638k as pass thru to the School District). Development of the property would assist North Bend's economic development goals to meet existing and future financial obligations and provide essential services to current and future residents as well as strengthening and diversifying the economic base. Development of this property will likely prompt other redevelopment nearby.

City staff recommend approval of the new DA with PJO NW Development. Following consideration of any testimony that may be provided to you at the public hearing at your February 19, 2025, meeting, staff requests your recommendation to the City Council as to whether to approve the DA.

III. PLANNING COMMISSION RECOMMENDATION

*Based on the findings above and public comments received, the North Bend Planning Commission recommends **approval/denial/approval with conditions** of Development Agreement with PJO NW Development, attached as Exhibit C.*

Exhibit A: Mountain View Development Applicant Cover Memo

Exhibit B: S1-S4 Site Plan, Imagery and Views Diagram

Exhibit C: DRAFT PJO NW Development Agreement (still under review with applicant and legal)

MOUNTAIN VIEW DEVELOPMENT PJO NW DEVELOPMENT, LLC

PJO NW Development is seeking a Development Agreement with the City of North Bend to develop 4.25 acres (+/-182,265 sq. ft.) located at 1310-30 SE North Bend Way with parcel numbers: 102308-9057,-9052,-9032 and -9049. The site is zoned Neighborhood Mixed Use (NMU).

Proposed Development

This proposal includes the development of 8000 sq. ft. of commercial buildings on the frontage of SE North Bend Way, 65 residential townhome units, an open space mini park on the east of the property and additional recreation space in-between buildings. This proposal provides many benefits to the City of North Bend including:

- Increased middle housing stock and mid-entry point investment opportunities
- Increased city revenue
- The creation of a housing type that provides home ownership opportunities to families, and single residents, supporting overall economic growth
- Key frontage improvements along SE North Bend Way, supporting the Complete Streets plan and serving as a catalyst for future improvements and development along SE North Bend Way
- Providing access for future trail connections to the Snoqualmie Valley Trail with direct access to downtown North Bend
- New business opportunities

Development Agreement

A Development Agreement is required for this project to allow ground floor residential use which is not permitted in the NMU zone. The current NMU zoning envisions a vertical integration of residential and commercial uses implying a housing typology of apartments or condominiums. Due to the depth of the subject site, this proposal seeks to integrate these uses horizontally as opposed to vertically requiring ground floor residential use. This horizontal integration will maximize access to commercial buildings from SE North Bend Way and provide for a residential development that integrates well with natural surroundings, as well as existing and future neighborhoods.

This proposal follows the guidelines and principles in the updated North Bend 2024 Comprehensive Plan Update. NMU districts are “intended to allow a variety of small-scale retail centers for shops providing goods to serve the everyday needs of the surrounding population, where residential development can be encouraged”. Additionally “...critical to the success of neighborhoods with mixed housing types is attention to scale and neighborhood character, the provision of adequate parking and the concurrent creation of mini parks supported by the homeowners...”. This proposal reflects the developer’s consideration of the NMU guidelines as well as thoughtful planning, research and collaboration with City staff and the incorporation of feedback from two sessions with the Community Economic Development Committee.

Mountain View Affordability

Mountain View’s estimated home price will fall between \$450,000 - \$700,000. Based on current mortgage estimates, a home buyer would require an income between \$100,000 - \$150,000 to purchase a new Mountain View home. This income level falls into the 50-100% AMI for North Bend, with the majority of price points available in the 50-80% AMI range.

In the Housing Element of North Bend’s recent Comprehensive Plan the Affordable Housing Capacity Targets included a total of 319 homes in the 50-100% AMI range. The Mountain View project will provide up to 65 new units of this critical middle housing stock to support the overall affordable housing plan. These homes will provide first-time homebuyer opportunities, and standout as opportunities for residents looking to transition from home rental to home ownership.

Income Needed to Afford a Mountain View Home

Home Price	Est. Necessary Income	North Bend AMI
\$300,000	\$75,000 - \$80,000	30-50%
\$400,000	\$100,000 - \$110,000	50-80%
\$500,000	\$120,000 - \$130,000	50-80%
\$600,000	\$130,000 - \$150,000	50-80% // 80-100%
\$700,000	\$150,000 - \$160,000	80-100%
\$800,000	\$160,000 - \$170,000	80-100%

Based on North Bend Comp Plan AMI Family Income of \$156,619

Commercial Opportunity

Mountain View proposes to create 8000 sq. ft. of new commercial space along the frontage of SE North Bend Way. This will increase available commercial space in North Bend and provide for a number of potential uses from services to restaurants.

PJO NW Development, LLC
Mountain View Development

MOUNTAIN VIEW DEVELOPMENT PJO NW DEVELOPMENT, LLC

Community & Commerce

The Mountain View development proposes a number of amenities that achieve Goals and Policies in North Bend's most recent Comprehensive Plan Housing Element. The project creates links to the Citywide Trail System connecting this neighborhood and neighboring developments to the city's downtown business district and other key areas of commerce. Not only will this provide a critical link to business, but it also creates a direct link to transportation systems. (H-2.3)*. In addition to 8000 sq. ft. of new commercial opportunity, the project clearly supports the goal to create a wide range of housing options for all economic segments by creating 65 critical mid-market homes for purchase (H – 4.4)*.

**Chapter 3 – Housing Element, North Bend Comprehensive Plan 2024 Update*

Site Information

SITE ADDRESS: 1310, 1330, 1350, & 1360 East North Bend Way

PARCEL NUMBERS: 102308-9057, -9052, -9032 and -9049

ZONING: NEIGHBORHOOD MIXED USE (NMU)

SITE AREA: 4.25 ACRES / 185,265 SQ. FT.

SETBACKS:

10' SIDE
15' MAXIMUM AT FRONT
TBD REAR

LANDSCAPE BUFFERS:

5' TO WEST
10' TO EAST
15' AT REAR
10' AT NORTH BEND WAY WHERE NO BUILDING FRONTAGE

MAXIMUM BUILDING COVERAGE: 60%
PROPOSED: +/-30%

MAXIMUM IMPERVIOUS SURFACE: 75%
PROPOSED: +/-78%

MAXIMUM BUILDING HEIGHT: 35'

PARKING REQUIREMENTS:
RESIDENTIAL - 2 STALLS/UNIT FOR MULTIFAMILY
PROVIDED - 2 STALLS/UNIT IN GARAGE/APRON +
ADDITIONAL STREET PARKING (10 STALLS)

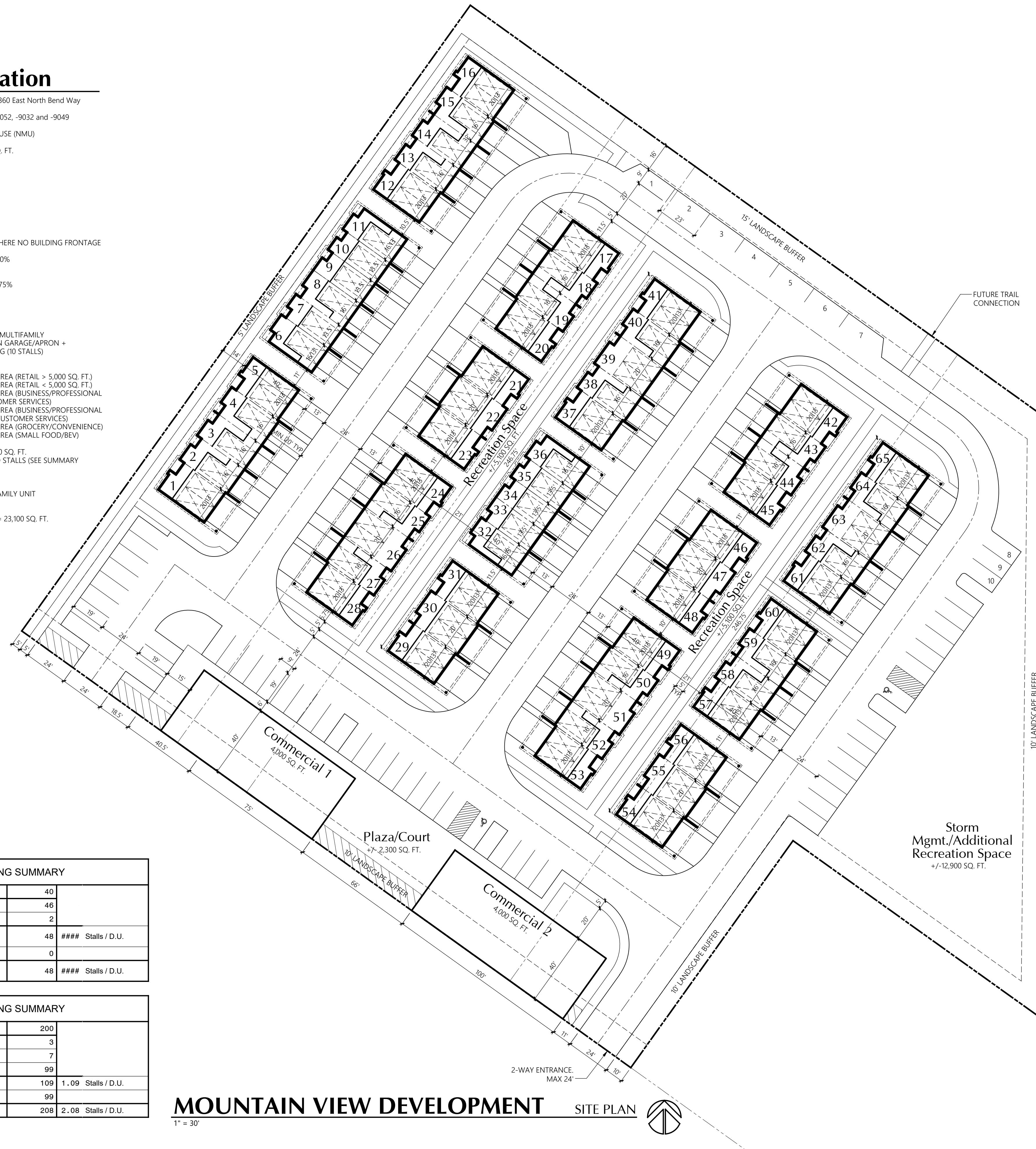
COMMERCIAL -
1 STALL/200 SQ. FT. FLOOR AREA (RETAIL > 5,000 SQ. FT.)
1 STALL/200 SQ. FT. FLOOR AREA (RETAIL < 5,000 SQ. FT.)
1 STALL/250 SQ. FT. FLOOR AREA (BUSINESS/PROFESSIONAL SERVICES)
1 STALL/800 SQ. FT. FLOOR AREA (BUSINESS/PROFESSIONAL SERVICES W/ ON-SITE CUSTOMER SERVICES)
1 STALL/200 SQ. FT. FLOOR AREA (GROCERY/CONVENIENCE)
1 STALL/200 SQ. FT. FLOOR AREA (SMALL FOOD/BEV)

PROVIDED - ESTIMATED 1 STALL/200 SQ. FT.
(8000 SQ. FT. / 200) = 40 REQUIRED STALLS (SEE SUMMARY BELOW)

RECREATION SPACE:
REQUIRED 200 SQ. FT. PER MULTIFAMILY UNIT
(67 x 200) = 13,400 SQ. FT.

PROVIDED - 5,100 + 5,100 + 12,900 = 23,100 SQ. FT.

UNIT COUNT:
13.5' WIDE = 6
• SINGLE CAR GARAGE
• +/-1,000 SQ. FT.
16' WIDE = 25
• SINGLE CAR GARAGE
• +/-1,300 SQ. FT.
20' WIDE = 34
• 2-CAR GARAGE
• +/-1,800 SQ. FT.









DRAFT

**DEVELOPMENT AGREEMENT BETWEEN THE CITY OF NORTH
BEND AND PJO NW DEVELOPMENT, LLC**

This Development Agreement (the “Agreement”) is made and entered into by and between the City of North Bend, a Washington municipal corporation (hereinafter referred to as the “City”), and PJO NW Development, LLC (hereafter referred to as “Developer”), on the date indicated below for the purpose of constructing 65 townhomes and 8,000 square feet of commercial frontage and cooperating and coordinating in the efficient processing of property development proposal(s) submitted to the City by Developer.

RECITALS

1. Developer and/or assignees own or control certain real property located within the City’s municipal boundary and which is more fully described in the attached Exhibit “A” (hereinafter referred to as the “Property”).

2. The Property is zoned Neighborhood Mixed Use (NMU), and the development proposal contemplated by this Agreement is to construct 8,000 square feet of commercial buildings along North Bend Way and 65 for-sale townhome units which will include parking, open space, street frontage, utility connections, landscaping, stormwater and adherence to all other municipal code requirements (“Projects”).

3. The City recognizes Developer is requesting a deviation from the current zoning code restriction set forth in North Bend Municipal Code (NBMC) Table 18.10.030 (Table of Permitted and Conditional Uses, Row 1.54), which provides that only upper floor residential dwelling units is allowed, to allow for ground floor residential units. Due to the significant depth of the site, the Developer’s proposal seeks to provide for buildings devoted for commercial use along the parcel’s entire frontage on North Bend Way, with ground-floor residential townhome units located behind the commercial frontage use as depicted in the Preliminary Site Plan included in Exhibit A.

4. Developer will adhere to all guidelines and principles laid out in the updated North Bend 2024 Comprehensive Plan Update and NBMC except as expressly authorized in this Development Agreement.

5. The City recognizes Developer's proposal seeks to deliver upon the intent of the Comprehensive Plan and Zoning designations by providing several key public benefits, including: 1) increased middle housing stock and mid-entry point investment opportunities; 2) increased City revenue; 3) opportunity for new businesses and services for the community; 4) frontage improvements along SE North Bend Way; and 5) future trail connections.

6. The City is a Washington municipal corporation with land use planning and permitting authority over all land within its corporate limits.

7. The Washington State Legislature has authorized the execution of development agreements between local governments and a person having ownership or control of real property within its jurisdiction pursuant to RCW 36.70B.170(1).

8. Pursuant to RCW 36.70B.170 and NBMC chapter 18.27, a development agreement is authorized which may set forth specific development provisions that shall apply to the Property development within the duration specified in the agreement.

9. For the purposes of this Agreement, "Development Standards" includes, but is not limited to, all of the standards listed in RCW 36.70B.170(3), NBMC Titles 17, 18 and 19, and any development standards provided herein.

NOW, THEREFORE, in consideration of the mutual promises, covenants and provisions set forth herein, the receipt and adequacy of which consideration is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

Section 1. Incorporation of Recitals. The recitals set forth above are true and correct and are incorporated by reference as if fully set forth herein.

Section 2. Development Agreement. This Agreement is a development agreement to be implemented under the authority of and in accordance with RCW 36.70B.170 through RCW 36.70B.210, along with chapter 18.27 of the NMBC, and it shall become a contract between the Developer and the City upon its approval by resolution following a public hearing as provided for in RCW 36.70B.170 and NBMC 18.27.025 and upon execution by all parties.

The City will not be obligated to approve this Agreement until the Developer files a landowner acknowledgement of this Agreement.

Section 3. Effective Date and Duration of Agreement. This Agreement shall commence upon the effective date of the City Council resolution approving this Agreement (the “Effective Date”), and shall continue in force for a period of five years unless it is extended or terminated as provided herein. Developer shall commence commercial construction and maintain active building permits by requesting regular, timely inspections prior to issuance of the second half of residential permits. If Developer has not commenced commercial construction and maintained active building permits by requesting regular, timely inspections after the City has issued 33 residential permits, no further residential permits will be permitted until Developer has actively started commercial construction. Developer expressly acknowledges this phasing requirement is essential to this Agreement and waives any claims, causes of actions, or lawsuits arising from chapter 64.40 RCW related to this phasing requirement.

Section 4. Public Health and Safety. Pursuant to RCW 36.70B.170(4), the City reserves the authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

Section 5. Modification of Table 18.10.030, Table of Permitted and Conditional Uses, Row 1.54, of the North Bend Municipal Code. The City recognizes a deviation from the current zoning code restriction set forth in Table 18.10.030, Table of Permitted and Conditional Uses, Row 1.54, for this Property to allow for 65 ground-floor residential townhome units. No other modification of the NBMC or the North Bend Comprehensive Plan is authorized by this Agreement. Developer shall be required to complete commercial frontage use as depicted in the Preliminary Site Plan included in Exhibit A.

Section 6. Termination. This Agreement shall expire and be of no further force and effect if:

6.1 The Project contemplated in this Agreement and in associated permits and/or approvals issued by the City is not substantially underway prior to expiration of such permits and/or approvals. Nothing in this Agreement shall extend the expiration date of any permit or approval issued by the City.

6.2 Developer does not construct the Project as contemplated by the Agreement and permits and approvals obtained for the Property, or submits applications for development of the Property that are inconsistent with this Agreement.

6.3 This Agreement shall terminate either (1) upon the expiration of the term identified in Section 3 above, or (2) when the Property has been fully developed and all of Developer's obligations in connection therewith are satisfied as determined by the City, whichever first occurs. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City Attorney.

6.4 This Agreement shall terminate upon Developer's abandonment of development of the Property. Developer shall be deemed to have abandoned development of the Property if a complete application for a Site Plan consistent with NBMC 18.14.040 and 20.02.003 has not been received by the City within six (6) months of the effective date of this Agreement consistent with NBMC 18.13.020(E) or if no building permit for construction of the Site Plan is submitted to the City within five (5) years of the Effective Date, provided that Developer may extend the deadline for filing a Site Plan application for an additional ninety (90) days upon payment of \$25,000 to the City before the six month deadline for filing this application expires.

Section 7. Effect of Termination. Upon termination of this Agreement, the entitlements, conditions, limitations and any other terms and conditions vested herein shall no longer be vested hereby with respect to the Property (provided that vesting of such entitlements, conditions or fees may be established for the Property pursuant to then-existing planning and zoning laws).

Section 8. Remedies and Venue. This Agreement shall be construed in accordance with, and governed by, the laws of the State of Washington. Should a disagreement arise between the City and Developer regarding the interpretation and application of this Agreement, the parties agree to attempt to resolve the disagreement by first meeting and conferring. If such meeting proves unsuccessful to resolve the dispute, the disagreement may be resolved by judicial action for which the parties agree to venue in the Superior Court for King County, State of Washington.

Section 9. Performance and Waiver. Failure by either party at any time to require performance by the other party of any of the provisions hereof shall in no way affect

the parties' rights hereunder to enforce the same, nor shall any waiver by a party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this non-waiver clause.

Section 10. Specific Performance. The parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Agreement by any party in default hereof.

Section 11. Severability. If any portion of this Agreement is found to be invalid or unenforceable to any extent, the validity of the remaining provisions shall not be affected thereby.

Section 12. Inconsistencies. If any provisions of the NBMC are deemed inconsistent with the provisions of this Agreement, the provisions of this Agreement shall prevail.

Section 13. Recording. Developer shall record, against the real property described in Exhibit A, a fully executed copy of this Agreement with the King County Auditor, pursuant to RCW36.70B.190 within two (2) months after the Effective Date, whichever date is first, and shall provide the City with a conformed copy of the recorded document within ten (10) days of recording.

Section 14. No Joint Venture. Nothing in this Agreement is intended to create any type of joint venture relationship between the parties as to the Property or its development.

Section 15. Amendments. This Agreement may only be amended by mutual agreement of the parties, and only after approval of the North Bend City Council.

Section 16. Entire Agreement. This document contains the entire agreement between the parties with respect to the subject matter of the Agreement.

Section 17. Voluntary Agreement. The parties intend and acknowledge that this Agreement is entered into voluntarily without duress and is a voluntary contract binding upon the parties hereto, as well as their successors and assigns.

Section 18. Indemnification. Each party shall protect, defend, indemnify and hold harmless the other party and their officers, agents, and employees, from and against any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any

nature whatsoever (“Claims”), which are caused by or result from any negligent act or omission of the party’s own officers, agents, and employees in performing obligations pursuant to this Agreement. Each party shall retain the right to select its own counsel for such defense. In the event of concurrent negligence, each party shall indemnify and hold the other party harmless only to the extent of that party’s negligence.

Section 19. Attorneys’ Fees and Costs. In any judicial action to enforce or determine a party’s rights under this Agreement, the prevailing party (or the substantially prevailing party, if no one party prevails entirely) shall be entitled to reasonable attorneys’ fees and costs.

Section 20. Mutual Drafting and Construction. The parties agree that both parties participated fully in the negotiation and drafting of this Agreement and the rules of construction of ambiguities against the drafter shall not apply to either party.

Section 21. Headings. The headings in this Agreement are inserted for reference only and shall not be construed to expand, limit, or otherwise modify the terms and contingencies of this Agreement.

Section 22. Parties and Authority. The signatories below to this Agreement represent that they have the full authority of their respective entities to commit to all of the terms of this Agreement, to perform the obligations hereunder and to execute the same.

Section 23. Force Majeure. Neither party shall be deemed to be in default where delays in performance or failures to perform are due to war, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, epidemics, pandemics, or other restrictions or bases for excused performance which is not within the reasonable control of the party to be excused.

Section 24. Correspondence and Notice. Notices or communications required or desired to be given under this Agreement shall be in writing and sent either by: (a) United States Postal Service first class mail, postage pre-paid; (b) recognized overnight courier service which customarily maintains a contemporaneous permanent delivery record; or (c) by e-mail to the e-mail addresses designated below, if the subject line indicates that the e-mail is formal notice under this Agreement. The notice shall be deemed delivered on the earlier of: (a) Actual receipt; (b) three (3) business days from the date of deposit in the United States mail;

(c) the delivery date as shown in the regular business records of the recognized overnight courier service; or (d) the day and time the email message is received by the recipient's email system, provided, however, that emails received between 4:30 PM and 8:30 AM will be considered delivered as of the start of the next business day. Notices shall be addressed as follows:

CITY: City of North Bend

Attn: _____

920 SE Cedar Falls Way, North Bend, WA 98045

Phone: _____

Email: _____

DEVELOPER: PJO NW Development, LLC

Attn: Philip O'Sullivan

Title: _____

Address: 17837 1st Ave S, #428, Normandy Park, WA 98148

Contact Phone: 253-223-0040

phil@pjoholdings.com

Either party, by written notice to the other in the manner herein provided, may designate an address different from that set forth above.

Section 25. No Third-Party Beneficiary. Unless expressly provided for herein, nothing in this Agreement is intended to create any third-party beneficiary relationships.

Section 26. Counterparts. This Agreement may be executed in as many counterparts as may be deemed necessary or convenient, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the dates set forth below:

CITY OF NORTH BEND

Mary Miller, Mayor

Date: _____

DEVELOPER:
PJO NW DEVELOPMENT, LLC

Name: _____

Title: _____

Date: _____

DRAFT