

OUR COASTAL VILLAGE, INC.
PO BOX 108
YACHATS, OR 97498-0108

CHESTNUT MANAGEMENT, LLC
PO BOX 108
YACHATS, OR 97498-0108

November 1, 2024

Community Development Department
Attn Wendy Farley-Campbell
Community Development Director
City of Florence
250 Hwy 101
Florence, OR 97439

Re: Elm Park PUD, PC 24 28 SUB 01 (Replat)

Dear Wendy Farley-Campbell,

This letter responds to your NOIC dated October 18, 2024, relating to the replat application that is part of the Elm Park PUD. It modifies the portion of the NOIC Revised Combined Attachment submitted on September 26, 2024, related to the Replat Application. (Pp 23-24.) It also identifies the revised and new exhibits provided in the Supplemental PUD/Replat Exhibits submitted concurrently. The text of the NOIC appears below in italics, and our responses are in bold.

Thank you for submitting Land Use application PC 24 28 SUB 01, a request for replat as part of the Elm Park PUD application. The project is located on Assessor's Map Ref 18-12-27-31, Tax Lots 01100 and 01200. After reviewing the submittal, the application was deemed "incomplete" and needs the following information: Items below in italics are directly from City Code.

FCC 10-10-4-E: Residential Density Standards

Maximum density in MDR is 12 units per acre and 25 units per acre in HDR.

Note 3 states replats shall use 12 units per acre for MDR and RMH.

Proposed residential development is 1.47 acres with 32 units proposed equivalating to @ 22 units per acre.

1.10 acres
The reference to FCC 10-10-4-E is puzzling because the NOIC makes no criticism or request concerning residential density. **29.09** Block 57 is 1.47 acres. However, the EPA site is **1.10 acres** acres. With 32 units on **1.10 acres** acres, the residential density is **29.09** units per acre. This is less than the density mandated by state law for affordable housing. The highest residential density allowed in a commercial zone such as POI in Florence is 25 units per acre. (Note 3 says only that 12 units per acre must be used for MDR and RMH, not for HDR. The Table provides 25 units per acre for HDR, which is what Elm Park is.) The state statute increases that 25 units per acre by 50% to 37.5 units per acre. ORS section 197A.445(9)(b)(B). A copy of the statute is in Attachment 1. At **29.09** units per acre, we are below the maximum 37.5 units per acre density allowed by the state statute for affordable housing in a commercial zone such as POI. Our Attachment to Pre-Application submitted 6-12-24, pp. 6-8, describes at length why POI District allows high-density residential.

29.09

Explain how protection for significant natural resources regulated by FCC 11-5-4 (wetland and riparian areas on, or adjacent to, the site) will be provided.

This issue is addressed below under the heading for FCC 11-5-4.

FCC 11-1-5: Replatting Of Subdivided Lands: Replatting of an existing, but undeveloped, subdivision shall follow the following procedures:

- A. *The applicant shall apply to the City for vacation of existing rights of way as applicable, unless proposed streets and/or common open space of equal area is dedicated to the City as public easements.*
 - o *In accordance with this code section, the alley shall be dedicated to the City as a public easement. Please include this information in the narrative statement and submit revised plans stating the alley will be dedicated public right of way, unless partitions are applied for (see “B” below) that exclude the alley.*
- B. *The applicant shall apply to the City for partition or subdivision approval as applicable according to the provisions of this Title.*
 - *Please submit either two tentative partition plans, one for the north ½ block and one for the south ½ block, or a subdivision plan for entire block in accordance with FCC 11-2-2 or 11-3-2 respectively. Both paths shall address FCC 11-5.*

The 1891 subdivision plat, provided with the Attachment to Pre-Application submitted 6-12-24, p. 2, and Exhibit A, dedicates as public rights of way all “streets and alleys” shown on that plat. So, it is not necessary now to dedicate the alley as a public right of way. Exhibit A-2(1) in the Supplemental PUD/Replat Exhibits submitted herewith contains Tentative Partition Plan No. 1 and Tentative Partition Plan No. 2. We address FCC 11-5 below.

FCC 11-5-4: UNSUITABLE AREAS: Areas identified in the Florence Comprehensive Plan as having designated or protected natural areas or potential hazards due to erosion, landslides, stream flooding, ocean flooding, or other natural hazards shall not be divided in a manner that would be dangerous to the health and safety of those who would live in said areas, the general public, or natural values which have been protected.

- A. *All subdivision applications shall be reviewed by the City, using the Phase I checklist contained in Site Investigation Reports by Wilbur E. Ternyik, published by OCZMA.*
- B. *Where problem areas are identified in the Phase I checklist, a full-scale Phase II site investigation will be required covering only those problem areas identified in the Phase I checklist. This site investigation must be prepared and paid for by the applicant. Before approval would be granted the site investigation would have to prove either:*
 - 1. *That upon specific examination of the site, the condition which was identified in the Comprehensive Plan Inventory did not exist on the subject property; or*
 - 2. *That harmful effects could be mitigated or eliminated through, for example, foundation or structure engineering, setbacks or dedication of protected natural areas.*
- C. *Specifically, areas shown on the Hazards Map and the Soils Map of the Comprehensive Plan will require a Phase II site investigation report. Studies which have been adopted or included in the Comprehensive Plan by reference or studies done subsequent to the adoption of the Plan may be used to determine when a site investigation report is needed.*

- *Branch's Wetland Delineation indicates wetlands in the NW corner of the property which are regulated in the Yaquina and Wet Area references of FCC 10-7. The drainage plan for this area may be required with this application in accordance with 10-7-3-H*
 - *Figures-3 and 5 of the wetland delineation report indicate a riverine wetland area R4SBC on the south western portion of the property. This area is not identified in the report's introduction section.*
 - *Address the presence or absence of this riverine wetland area. If present, include additional details for staff to review the required setbacks and mitigation as required by FCC 10-7-4.*

Figures 3 and 5 are not accurate. Figure 6 in the Wetlands report shows that the north-south riverine wetland does exist but is aligned to the west of the Elm Park PUD. The scale in Figure 6 shows the riverine wetland is not in the Fir Street ROW but is further west in the City's site for Elm Park. The Local Wetlands Inventory confirms that the riverine is west of the Fir Street ROW entirely within the City's Elm Park site., about 10-15' west of the Fir Street ROW. See Attachment 2 hereto. The 60' width of the Fir Street ROW, plus our 10' setback, is 70' -- more than the 65' setback would require, and there is also the 10-15 feet between the riverine and the Fir Street ROW. In any event, the Infrastructure Project will prevent the development of the EPA from adversely affecting the riverine wetland, as shown below.

- *Alta Survey from KPPF illustrates a top of bank (TOB). The TOB is part of Significant Riparian Reach, RAIR-B, a Goal 5 resource regulated by FCC 10-7-4. This reach is indicated in the Wetlands and Riparian Plan to have a 65 ft. wide buffer measured from the TOB, which extends onto the subject property.*
 - *Review the 10-7-4 code section and determine what application materials require revision to illustrate the TOB and the required minimum setback of 65 feet. The city needs to successfully acquire a land use permit as required under FCC 10-2-12-E-4 for the street and utility infrastructure on the north and west sides of the project area in order to not impact the structures and improvements proposed for in the buffer area. And depending on the location of the infrastructure improvements the project site may still be impacted by the riparian reach buffer.*

Response No. 30: We previously provided the following documents as Exhibits to the NOIC Revised Combined Attachment submitted 9-26-24, which show the 65' setback: (a) Survey, Exhibit C(1); (b) EPA Site Plan, Exhibit E-1(1); and EPA Preliminary Engineering Plans, Exhibit N-1 We have reviewed all application materials and found no others that need to be revised to show the 65' setback.

We are actively collaborating with Mike Miller, Public Works Director, and Erin Reynolds, City Manager, regarding the engineering design of the Infrastructure Project. The City has now received the 50% design plans and will shortly submit its use permit application under FCC 10-2-12-E-4 for that Project, which should be heard at the same Planning Commission meeting as this application. A copy of the 50% Plans is Exhibit D(2) in Supplemental PUD/Replat Exhibits submitted herewith.

The 50% design plans show the road, curb, and gutter being built directly above the drainage channel near the intersection of 11th Street and Fir Street, with those street improvements coming very close to the northwest corner of the EPA Site. Sheet 8 STA 6+00 to 7+00 (Fir Street); Sheet 11 STA 0+00 to 1+00 (11th Street). The same sheets show grading south of 11th Street entering the EPA Site and grading north of 11th Street extending northward onto the property to the north. (Sheet 11.) They also show grading east of Fir Street extending near the EPA Site. (Sheet 8.)

The 50% design plans also show the road, curb, and gutter for Fir Street being built across the entire 60' right of way from 10th Street to 11th Street. That 60' plus our 10' setback from Fir Street, ensures our buildings are less than 65' feet from the TOB of the north-south riverine.

We have previously identified "public facilities" exceptions from the 65' setback requirement. So, the City will be allowed to build the Infrastructure Plan in the wetland areas included in the Plan. The construction of public facilities in the plan will physically preclude the EPA project from adversely affecting the wetlands. We have, therefore, sought a modification of the 65' setback as part of our PUD application to allow the EPA development as shown on the site plans. NOIC Revised Combined Attachment submitted 9-26-24, pp. 4-5, 17, 21.

Please let me know if you have any questions about the information provided. Otherwise, please issue the NOC for Elm Park PUD.

Thanks.

Our Coastal Village, Inc.

By 
K. Layne Morrill, President

Chestnut Management, LLC

By 
K. Layne Morrill, Manager

ATTACHMENT 1
ORS 197A.445.

Effective: January 2, 2024

O.R.S. § 197A.445

Formerly cited as OR ST § 197.308

197A.445. Development of affordable housing; ownership and zoning; density and height levels
Currentness

(1) As used in this section:

(a) “Affordable housing” means residential property:

(A) In which:

(i) Each unit on the property is made available to own or rent to families with incomes of 80 percent or less of the area median income;

(ii) The average of all units on the property is made available to families with incomes of 60 percent or less of the area median income; or

(iii) A manufactured dwelling park is operated that serves only households with incomes of 120 percent or less of the area median income; and

(B) Whose affordability, including affordability under a covenant as described in ORS 456.270 to 456.295, is enforceable for a duration of no less than 30 years.

(b) “Area median income” means the median income for the metropolitan statistical area in which housing is located as determined by the Housing and Community Services Department and adjusted for household size based on information from the United States Department of Housing and Urban Development.

(2) A local government shall allow affordable housing if the proposed affordable housing is on property that is:

(a) Owned by:

(A) A public body, as defined in ORS 174.109;

(B) A nonprofit corporation that is organized as a religious corporation;

(C) A nonprofit corporation that is organized as a public benefit corporation whose primary purpose is the development of affordable housing;

(D) A housing authority, as defined in ORS 456.005; or

(E) A manufactured dwelling park nonprofit cooperative, as defined in ORS 62.803; or

(b) Zoned:

(A) For commercial uses;

(B) To allow religious assembly; or

(C) As public lands.

(3) A local government shall allow the conversion of a building or a portion of a building from a commercial use to a residential use.

(4) Subsections (2) and (3) of this section:

(a) Prohibit the local government from requiring a zone change or conditional use permit before

allowing the use.

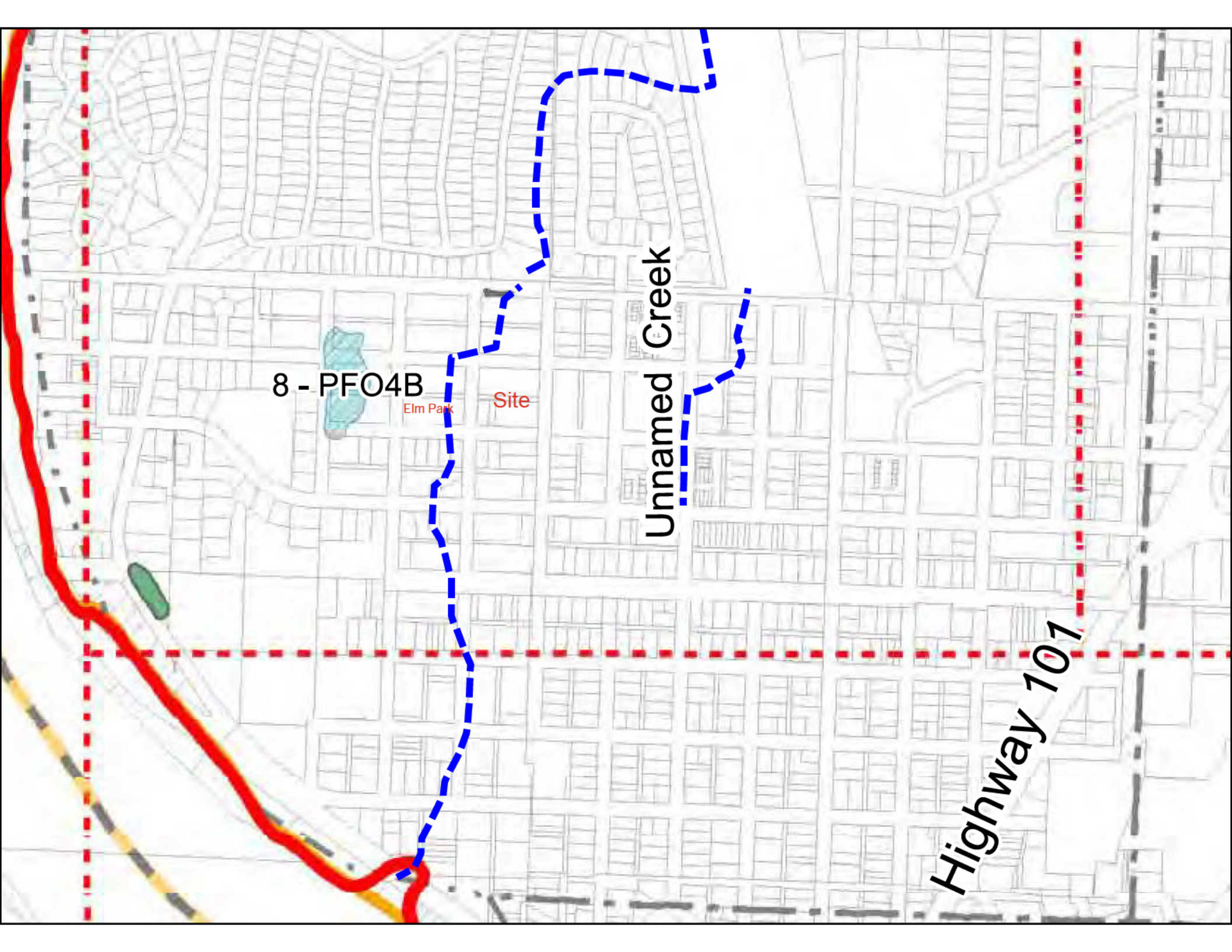
- (b) Do not trigger any requirement that a local government consider or update an analysis as required by a statewide planning goal relating to economic development.
- (c) Except as provided in paragraph (d) of this subsection, do not apply on lands where the local government determines that:
 - (A) The development on the property cannot be adequately served by water, sewer, storm water drainage or streets, or will not be adequately served at the time that development on the lot is complete;
 - (B) The property contains a slope of 25 percent or greater;
 - (C) The property is within a 100-year floodplain; or
 - (D) The development of the property is constrained by land use regulations based on statewide land use planning goals relating to:
 - (i) Natural disasters and hazards; or
 - (ii) Natural resources, including air, water, land or natural areas, but not including open spaces or historic resources.
- (d) Do apply to property described in paragraph (c)(C) and (D)(i) of this subsection if more than 60 percent of the lands within the urban growth boundary that the property is within are located within a tsunami inundation zone or if more than 30 percent of the lands within the urban growth boundary that the property is within are located within a 100-year floodplain.
- (5) The development of housing under subsection (2) of this section may occur only:
 - (a) Within an urban growth boundary; and
 - (b) On lands zoned to allow for industrial uses only if the property is:
 - (A) Publicly owned;
 - (B) Adjacent to lands zoned for residential uses or schools; and
 - (C) Not specifically designated for heavy industrial uses.
- (6) The development of housing under subsection (3) of this section:
 - (a) Applies only within an urban growth boundary of a city with a population of 10,000 or greater;
 - (b) May not occur on lands zoned to allow industrial uses;
 - (c) May require the payment of a system development charge as defined in ORS 223.299 only if:
 - (A) The charge is calculated pursuant to a specific adopted policy for commercial to residential conversions adopted on or before December 31, 2023; or
 - (B) The charge is for water or wastewater and includes an offset for at least 100 percent of the water or wastewater system development charges paid when the building was originally constructed; and
 - (d) May not be subject to enforcement of any land use regulation that establishes a minimum number of parking spaces that is greater than the lesser of:
 - (A) The amount that may be required for the existing commercial use; or
 - (B) The amount that may be required in lands zoned for residential uses that would allow the converted development.
- (7) The development of housing allowed under subsection (4)(d) of this section may only occur:
 - (a) Within an urban growth boundary located no more than 10 miles from the Pacific Ocean;
 - (b) In areas that require compliance with minimum federal regulations under the National Flood

Insurance Program or with local floodplain development regulations adopted by the applicable local government, provided that the local regulations are equal to or more stringent than the minimum federal regulations;

- (c) In locations that do not include floodways or other areas with higher risks of greater water velocity and debris flow;
 - (d) In communities with emergency response, evacuation and post-disaster plans that have been updated for the housing development; and
 - (e) In areas that are not public parks.
- (8) A local government may prohibit affordable housing or require a zone change or conditional use permit to develop affordable housing in areas described in subsection (4)(d) of this section.
- (9) A local government shall approve an application at an authorized density level and authorized height level, as defined in ORS 227.175 (4), for the development of affordable housing, at the greater of:
- (a) Any local density bonus for affordable housing; or
 - (b) Without consideration of any local density bonus for affordable housing:
 - (A) For property with existing maximum density of 16 or fewer units per acre, 200 percent of the existing density and 12 additional feet;
 - (B) For property with existing maximum density of 17 or more units per acre and 45 or fewer units per acre, 150 percent of the existing density and 24 additional feet; or
 - (C) For property with existing maximum density of 46 or more units per acre, 125 percent of the existing density and 36 additional feet.
- (10)
- (a) Subsection (9) of this section does not apply to housing allowed under subsection (2) of this section in areas that are not zoned for residential uses.
 - (b) A local government may reduce the density or height of the density bonus allowed under subsection (9) of this section as necessary to address a health, safety or habitability issue, including fire safety, or to comply with a protective measure adopted pursuant to a statewide land use planning goal. Notwithstanding ORS 197.350, the local government must adopt findings supported by substantial evidence demonstrating the necessity of this reduction.

ATTACHMENT 2
Portion of Map 12 From Local Wetlands Inventory

See the Attached document



8 - PFO4B

Elm Park

Site

Unnamed Creek

Highway 101