

Chapter 4.1 DEVELOPMENT REVIEW AND PROCEDURES

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4.1.100 Purpose.

This chapter provides uniform procedures for the granting or denial of applications and determinations by the City of Bend under the applicable State of Oregon statutes and rules, Bend Area General Plan, Bend Development Code, and other ordinances which by their terms incorporate by reference the procedures in this chapter.

The provisions of this chapter do not apply to the issuance, suspension, or revocation of any on-site sewage disposal, sign, building, electrical or plumbing permits, except as they relate to Planning Division consideration of permitted uses.

For lands located inside the Bend Urban Growth Boundary, but outside the City limits, the applicability of this code shall be set forth through intergovernmental agreements. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.200 General Provisions.

Sections:

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4.1.210 Pre-application Conference.

A pre-application conference with the City of Bend is highly recommended for complex applications or for applicants who are unfamiliar with the land use process. The purpose of the conference shall be to acquaint the applicant with the substantive and procedural requirements of the Development Code and to identify issues likely to arise in processing an application. [Ord. NS-2122, 2009; Ord. NS-2068, 2007; Ord. NS-2016, 2006]

4.1.215 Public Meeting.

A. The applicant for a Bend Area General Plan Map amendment, Zoning Map amendment, Conditional Use Permit, Subdivision or **Site Plan Review for new development** or an alteration/addition to **one or more buildings containing a total of 10,000 square feet or more shall present the proposal at a public meeting prior to submitting the respective application to the City Planning Division.** The presentation shall be made at either **a regular or special meeting with a neighborhood association recognized by the City of Bend whose boundaries the subject property lies within, or a public meeting arranged and conducted by the applicant.** The presentation at the public meeting shall include the following:

1. **A map depicting the location of the subject property proposed for development.**
2. **A visual description of the project** including a **site plan**, tentative subdivision plan and **elevation drawings of any structures** if applicable.
3. **A description of the nature of the use including, but not limited to, sizes and heights of structures,** proposed lot sizes, density, etc.
4. **The expected or anticipated impacts from the development.**
5. **Any mitigation proposed by the applicant to alleviate the expected/anticipated impacts.**
6. **An opportunity for the public to provide comments.** Applicants are encouraged to reconcile as many public concerns as possible prior to submittal of their application.

B. Public Meeting Notification. If any part of a proposed new development as referenced in subsection (A) of this section is to be constructed within the boundaries of a recognized neighborhood association of the City of Bend, the applicant shall notify the designated representative of such association of the presentation. It shall be the responsibility of the applicant to schedule the meeting/presentation and provide adequate notification to the residents of the affected neighborhood of the date, time and location of the meeting/presentation. It shall be the applicant's responsibility to provide the information listed in subsections (B)(1)(a) through (c) of this section to the designated representative of the neighborhood association. Such meeting shall be held no less than 15 days and no more than 45 days from the date that the applicant notifies the designated representative of the affected neighborhood association. The following provisions shall be applicable to the applicant's obligation to notify the residents of the area affected by the new development application, whether the proposed development is within the boundaries of a recognized neighborhood association or not:

1. The applicant shall send mailed notice of the public meeting to all property owners within 500 feet of the boundaries of the subject property, and, if any part of the subject property is within the boundaries of a neighborhood association recognized by the City of Bend or within 500 feet of any other neighborhood association recognized by the City of Bend, notice shall be sent by Priority Mail with Delivery Confirmation to the designated representative(s) of such neighborhood association(s). The property

owner list shall be compiled from the Deschutes County Tax Assessor's property owner list from the most recent property tax assessment roll. The address for the designated representative(s) of the affected neighborhood association(s) shall be obtained from the City of Bend. The notice shall be sent a minimum of 15 days prior to the public meeting, and shall include at a minimum:

- a. Date, time and location of the public meeting.
- b. A brief written description of the proposal and proposed use, but with enough specificity so that the project is easily discernible.
- c. The location of the subject property, including address (if applicable), nearest cross streets and any other easily understood geographical reference, and a map (such as a tax assessor's map) which depicts the subject property. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.220 Application Requirements.

A. **Property Owner.** For the purposes of this section, the term **property owner** shall mean the owner of record or the contract purchaser and does not include a person or organization that holds a security interest.

B. Applications shall:

1. Be submitted by the property owner or a person who has written authorization from the property owner as defined herein to make the application;
2. Be completed on a form prescribed by the City;
3. Include supporting information required by this code and any other information necessary to, in the judgment of the Community Development Director, demonstrate compliance with applicable criteria;
4. Be accompanied by the appropriate filing fee as set forth in the adopted Fees Resolution;
5. **Provide proof of ownership in the form of a deed,** or other recorded document; and
6. In the case of applications for a quasi-judicial plan amendment or zone change, may be accompanied by applications for a specific development proposal.
7. For applications that require a public meeting under [BDC 4.1.215\(A\)](#), include a copy of the Delivery Confirmation receipt and a Public Meeting Verification of Compliance form signed by the applicant and a representative of the Neighborhood Association(s), attesting to the contents of the materials provided at the meeting. If no representatives of the Neighborhood Association(s) are present at the meeting, the applicant may submit a statement to that effect. If the public meeting was arranged and conducted by the applicant, the notification materials listed in [BDC 4.1.215\(B\)\(1\)\(a\)](#) through (c) must also be submitted.

C. The following applications are not subject to the ownership requirement set forth in subsection (B)(1) of this section:

1. Applications submitted by or on behalf of a public entity or public utility having the power of eminent domain with respect to the property subject to the application; or
2. Applications for development proposals sited on lands owned by the State or the Federal government. [Ord. NS-2122, 2009; Ord. NS-2068, 2007; Ord. NS-2016, 2006]

4.1.225 Acceptance of Application.

- A. Completeness. Type I, II, and III applications shall not be accepted as complete until the Community Development Director has determined that the requirements of [BDC 4.1.220](#) have been met and the application is complete or the application is deemed to be complete under State law. A Completeness Check Meeting shall be required for all Type II, III and IV land use applications unless exempted by the Community Development Director. The purpose of the Completeness Check Meeting is to determine whether the proposed development application is complete prior to acceptance of the application for processing by the City.
- B. An application is complete when, in the judgment of the Community Development Director, complete information to address all criteria has been provided by the applicant.
- C. Acceptance of an application as complete shall not preclude a determination at a later date that additional criteria need to be addressed or a later determination that additional information is needed to adequately address applicable criteria. [Ord. NS-2122, 2009; Ord. NS-2068, 2007; Ord. NS-2016, 2006]

4.1.235 Withdrawal of Application.

An applicant may withdraw an application in writing at any time prior to the time a decision becomes final. If the land owner is not the applicant, no consent to withdraw the application is needed from the land owner. [Ord. NS-2122, 2009; Ord. NS-2068, 2007; Ord. NS-2016, 2006]

4.1.240 Applicable Standards.

The standards and criteria applicable to an application shall be the standards and criteria applicable at the time the application was first submitted. [Ord. NS-2122, 2009; Ord. NS-2068, 2007; Ord. NS-2016, 2006]

4.1.245 Notice to Public Agencies.

In addition to any notice required by this code, written notice shall be provided to public agencies as prescribed below.

- A. Division of State Lands. The City shall notify the Oregon Division of State Lands (DSL) of any application that involves lands that are wholly or partially within areas that are identified as a significant wetland on the City's Local Wetland Inventory. Notice shall be in writing using the DSL Wetland Land Use Notification Form, and shall be sent within five working days of acceptance of a complete application. (See ORS [227.350](#))
- B. Department of Fish and Wildlife. The City shall notify the Oregon Department of Fish and Wildlife (ODFW) in writing of any application for development activities within the riparian corridor. A mitigation recommendation shall be obtained from ODFW. Approval of the proposed development shall include a condition requiring compliance with the ODFW mitigation recommendations. (See OAR 635-415)
- C. Parks and Recreation Department. The City shall notify the Oregon Parks and Recreation Department (OPRD) in writing of any application for a proposed change, improvement, or activity within the one-fourth-mile boundary of either the Upper Deschutes Scenic Waterway or the Middle Deschutes Scenic Waterway. A landowner proposing a change, improvement, or activity within a State Scenic Waterway shall notify OPRD using the form provided by OPRD. The proposed change, improvement, or activity shall not be approved by the City unless either OPRD has given its written approval, or OPRD has not responded within one year from the date of notification. (See OAR 736-40)
- D. Other Agencies. The City shall notify other public agencies, as appropriate, that have statutory or administrative rule authority to review or issue State permits associated with local development applications.

[Ord. NS-2122, 2009; Ord. NS-2068, 2007; Ord. NS-2016, 2006]

4.1.250 Conflicting Procedures.

Notwithstanding the provisions of this section, where other provisions of the City of Bend Code or City of Bend ordinances specify procedures with greater opportunity for public notice and comment, those procedures shall apply. [Ord. NS-2122, 2009; Ord. NS-2068, 2007; Ord. NS-2016, 2006]

4.1.255 Time Computation.

Except when otherwise provided, the time within which an act is required to be done shall be computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, legal holiday or any day on which the City is not open for business pursuant to a City ordinance, in which case it shall also be excluded. [Ord. NS-2122, 2009; Ord. NS-2068, 2007; Ord. NS-2016, 2006]

4.1.260 Lot of Record.

Not all units of land are "lots of record." The City of Bend will not issue any permits on a unit of land until it is determined that it is a lot of record. If a unit of land is not in an approved subdivision or partition, has not been issued a land use permit, or has never been determined to be a lot of record, a declaratory ruling for a lot of record will need to be filed. A Declaratory Ruling will determine if and when a unit of land was created and if it was created in accordance with the law in effect at the time of creation. For units of land created in Deschutes County prior to annexation into the City, the Deschutes County Lot of Record Ordinance shall apply.

A. What is a lot of record? A unit of land held in separate ownership as shown on the records of the Deschutes County Clerk, which conforms to all zoning and subdivision/partition requirements in effect on the date the unit of land was created.

B. What is not a lot of record?

1. A unit of land created solely by a tax lot segregation because of an assessor's role change or for the convenience of the assessor;
2. A unit of land created by an intervening section or township line or right-of-way;
3. A unit of land created by the foreclosure of a security interest.

C. Remedy for Parcels Found Not to Be Lots of Record.

1. In accordance with [BDC Chapter 4.3](#), consolidate the unit of land with a contiguous unit of land that is determined to be a lot of record. Both units of land must be held in the same ownership as shown on the records of the Deschutes County Clerk.
2. Apply for and obtain approval for a single lot partition in conformance with ORS [92.177](#) and [BDC 4.3.200](#), [4.3.300](#) and [4.3.400](#).
3. Apply for and obtain approval of a lot of record under ORS [92.176](#). [Ord. NS-2122, 2009; Ord. NS-2068, 2007; Ord. NS-2016, 2006]

4.1.300 Type I Ministerial Procedures.

Sections:

4.1.310 Type I Applications.

4.1.320 Completeness Check.**4.1.325 Decision.****4.1.330 Appeal.****4.1.310 Type I Applications.**

A. A Type I application may be handled administratively by the Community Development Director without public notice or hearing because a Type I decision is neither a land use decision nor a limited land use decision under ORS [197.015](#).

B. The Community Development Director may elevate a Type I application to a Type II application when there is a need to interpret or exercise policy or legal judgment, or to apply discretionary land use standards. The Community Development Director's decision to elevate a Type I application to a Type II application shall not be an appealable decision. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.320 Completeness Check.

A. Type I applications shall be subject to the completeness check procedures found in [BDC 4.1.412](#).

B. Once accepted as complete, an applicant may place the application on "hold" for a period of no longer than 60 days, which may be extended by the Community Development Director for good cause, up to a total 245 days. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.325 Decision.

A. Type I applications acted upon without notice or hearing shall be approved or denied by the Community Development Director or his or her designee.

B. Notice of a decision shall be provided to the applicant or the applicant's representative.

C. The decision may be appealed by the applicant under [BDC 4.1.1100](#).

D. A Type I decision becomes final when no further appeal under this code is available. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.330 Appeal.

Any appeal shall be in accordance with [BDC 4.1.1100](#). [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.400 Type II and Type III Applications.

Sections:

4.1.410 Effect of Determinations Made Outside of Established Processes.**4.1.412 Completeness Check.****4.1.415 Type II Application Procedures.****4.1.420 Mailed Notice of Type II Applications.****4.1.423 Mailed Notice of Type III Applications.****4.1.424 Contents of Mailed Notices.****4.1.425 Posted Notice of Type II or Type III Applications.****4.1.426 Type III – Quasi-Judicial Procedures.****4.1.427 Site-Specific Plan Amendments and Zone Changes.****4.1.429 Hearings Officer as Review Authority.**

4.1.430 Final Action in Type II or III Actions.**4.1.435 Temporary Approval.****4.1.445 Modification of Application.****4.1.410 Effect of Determinations Made Outside of Established Processes.**

Any informal interpretation or determination, or any statement describing the uses to which a property may be put, made outside the declaratory ruling process in accordance with [BDC 4.1.1400](#) or outside the process for approval or denial of a Type II or III application in conformance with [BDC 4.1.400](#) through [4.1.900](#) shall be deemed to be a supposition only. Such informal interpretations, determinations, or statements shall not be deemed to constitute final City action effecting a change in the status of a person's property or conferring any rights, including any reliance rights, on any person. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.412 Completeness Check.

- A. Except as provided in subsections (C) and (D) of this section, the City shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals, within 120 days after the application is deemed complete.
- B. Except as otherwise provided for through a Completeness Check Meeting, if an application for a permit, limited land use decision or zone change is incomplete, the City shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (A) of this section upon receipt by the City of:
1. All of the missing information;
 2. Some of the missing information and written notice from the applicant that no other information will be provided; or
 3. Written notice from the applicant that none of the missing information will be provided.
- C. On the one hundred eighty-first day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (B) of this section and has not submitted:
1. All of the missing information;
 2. Some of the missing information and written notice that no other information will be provided; or
 3. Written notice that none of the missing information will be provided.
- D. The 120-day period set in subsection (A) of this section may be extended for a specified period of time at the written request of the applicant. The total of all extensions may not exceed 245 days.
- E. Except as provided under the Completeness Check Meeting process, an applicant shall not submit any evidence to supplement its application during the 30 days following submittal of its application, except when requested by the Community Development Director. Any evidence submitted by an applicant in violation of this section will not be considered in determining whether the application is complete and will be returned to the applicant. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.415 Type II Application Procedures.

- A. Type II decisions are made by the Community Development Director following public notice and an opportunity for parties to comment but without a public hearing unless the Community Development Director elevates the application to the Hearings Body for hearing as a Type III.
- B. The Community Development Director's choice between or among administrative or hearing procedures to apply to a particular application or determination shall not be an appealable decision. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.420 Mailed Notice of Type II Applications.

A. Notice of Type II applications shall be mailed at least 14 days prior to the issuance of a decision to persons entitled to notice under [BDC 4.1.423](#). Such notice shall include all the information specified under [BDC 4.1.424](#) except for the information specified in [BDC 4.1.424\(A\)\(7\)](#) and (10). Written notice shall be sent by mail to the following persons:

1. The applicant.
2. Owners of record of property as shown on the most recent property tax assessment roll of property located:
 - a. Within 250 feet of the property that is the subject of the notice and where any structure being proposed is less than or equal to 50 feet in height. The notice boundary shall increase by 250 feet for every 25-foot increment of structure height above 50 feet.
 - b. The applicant shall bear the cost (i.e., mailing, etc.) of any notice.
3. The designated representative(s) of a neighborhood association recognized by the City of Bend, where any property within the notice area specified in subsection (A)(2) of this section is within the boundaries of a recognized neighborhood association.
4. The notice requirements of this section shall be deemed met when the Planning Division can provide an affidavit or other certification that such notice was given.
5. The Community Development Director may increase the minimum notice area up to 400 feet beyond what is otherwise required under subsection (A)(2)(a) of this section, at his or her sole discretion.

B. Any person may comment in writing on a Type II application within 14 days from the date notice was mailed or a longer period as specified in the notice.

C. Notice of the Community Development Director's Type II decision and the appeal period shall be mailed to all parties to the record.

D. Any party can appeal a Type II decision in accordance with [BDC 4.1.1100](#), Appeals. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.423 Mailed Notice of Type III Applications.

A. Except as otherwise provided for herein, **notice of a Type III application shall be mailed at least 20 days prior to the evidentiary hearing for those matters set for one evidentiary hearing**, or 10 days prior to the first evidentiary hearing where two or more evidentiary hearings are held. Written notice shall be sent by mail to the following persons:

1. The applicant.

2. Owners of record of property as shown on the most recent property tax assessment roll of property located:

- a. Within 250 feet of the property that is the subject of the notice and where any structure being proposed is less than or equal to 50 feet in height. The notice boundary shall increase by 250 feet for every 25-foot increment of structure height above 50 feet.
- b. The applicant shall bear the cost (i.e., mailing, etc.) of any notice.

3. The tenants of a mobile home park when the application is for the rezoning of any part or all of a mobile home park.

4. The designated representative(s) of a neighborhood association recognized by the City of Bend, where any property within the notice area specified in subsection (A)(2) of this section is within the boundaries of a recognized neighborhood association.

B. The notice requirements of this section shall be deemed met when the Planning Division can provide an affidavit or other certification that such notice was given.

C. The Community Development Director may increase the minimum notice area up to 400 feet beyond what is otherwise required under subsection (A)(2)(a) of this section, at his or her sole discretion. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.424 Contents of Mailed Notices.

A. All mailed notices shall:

1. Describe the nature of the applicant's request and the nature of the proposed uses that could be authorized.
2. List the criteria from the Development Code and the General Plan applicable to the application at issue.
3. Set forth the street address or easily understood geographical reference to the subject property.
4. State the date, time and location of any hearing or date by which written comments must be received.
5. State that any person may comment in writing and include a general explanation of the requirements for submission of testimony and the procedures for conduct of testimony, including, but not limited to, a party's right to request a continuance or to have the record held open.
6. If a hearing is to be held, state that any interested person may appear and provide evidence.
7. State that failure to raise an issue in person at a hearing or in writing precludes appeal by that person to the Land Use Board of Appeals (LUBA), and that failure to provide statements or evidence sufficient to afford the decision-maker an opportunity to respond to the issue precludes appeal to LUBA based on that issue.
8. State the name of a City representative to contact and the telephone number where additional information may be obtained.
9. State that a copy of the application, all documents and evidence submitted by or on behalf of the

applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost.

10. State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at a reasonable cost.

B. All mailed notices concerning applications necessitating an exception to one of the statewide land use planning goals shall state that a goal exception is proposed and shall summarize the issues in an understandable manner. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.425 Posted Notice of Type II or Type III Applications.

A. Notice of a Type II or III application for which prior notice procedures are required shall be posted on the subject property by the applicant/property owner for **at least 10 continuous days prior to any date set for receipt of comments**. Such notice shall, where practicable, be visible from any adjacent public way. Failure of applicant/property owner to maintain posting of the sign for 10 continuous days shall not invalidate a land use approval.

B. Posted notice of an application for a utility facility line approval shall be by posting the proposed route at intervals of not less than 500 feet. The notice shall be posted as close as practicable to, and be visible from, any public way in the vicinity of the proposed route. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.426 Type III – Quasi-Judicial Procedures.

Type III decisions are made by the Planning Commission or Hearings Officer after a public hearing following the quasi-judicial hearings procedures of [BDC 4.1.800](#). [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.427 Site-Specific Plan Amendments and Zone Changes.

Any change initiated by an individual that includes a plan amendment and zone change for specific real property may be accompanied by the appropriate applications for a specific development proposal. Approval of such a plan amendment and zone change accompanied by a specific development proposal may be conditioned upon initiation of the development proposal within a specified time period, at the discretion of the Hearings Body, to ensure no greater intensity of use than that contemplated in the proceeding. Approvals of site-specific plan amendments and zone changes that are not accompanied by applications for a specific development proposal shall be based on evaluation of the highest impact uses authorized in the proposed zone.

Because site-specific plan amendments require an alteration of the Bend Area General Plan by action of the City Council, they shall be processed through the Type III quasi-judicial proceeding where the initial Hearings Body makes a recommendation to the City Council for a final decision. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.429 Hearings Officer as Review Authority.

The Hearings Officer shall be the Review Authority for site-specific zone change requests which bring the zoning into conformance with the Bend Area General Plan designation. Approvals of site-specific zone changes that are not accompanied by applications for a specific development proposal shall be based on evaluation of the highest impact uses authorized in the proposed zone. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.430 Final Action in Type II or III Actions.

- A. Where provided by this code or State statute, the City shall take final action, including consideration of appeals to the Council, in Type II or III actions within 120 days after the application is deemed complete.
- B. The periods set forth in this section during which a final decision on an application must be made may be extended for a reasonable period of time to a date certain at the written request of the applicant. The total of all extensions cannot exceed 245 days.
- C. Applications for the following determinations or approvals are exempt from the 120-day time limit established by this section:
1. Quasi-judicial Comprehensive Plan amendments;
 2. Revocation proceedings;
 3. Declaratory rulings;
 4. Consideration of remanded applications; and
 5. Legislative actions. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.435 Temporary Approval.

- A. The purpose of temporary land use approval is to allow an applicant in certain hardship or emergency situations to proceed without notice to those ordinarily entitled to notice with a land use action proposed in an application made to the Planning Division before the Division completes its review of the proposed use. In all cases, an applicant receiving temporary approval must obtain final approval on the submitted application pursuant to the procedures specified in this code.
- B. Subject to subsection (E) of this section, the City Council or the Community Development Director may authorize a temporary land use approval, provided all of the following are met:
1. An application for the land use approval has been accepted as complete.
 2. A fee for review of the temporary approval has been paid.
 3. The applicant has demonstrated good and sufficient cause for such a temporary approval.
 4. It appears that the application will be given final approval in substantially the form submitted by the applicant.
 5. The applicant accepts each and every risk of loss and damage that may result if the application is denied, and further agrees in writing to hold City, its officers, agents and employees harmless from such loss and damage.
 6. The applicant agrees in writing to restore the site to its original condition if the application for the land use approval is denied.
 7. The applicant posts a bond or other form of security acceptable to the Review Authority in an amount sufficient to cover the costs of restoration of the site.
- C. For the purposes of this section, **good cause** shall include only hardship or emergency situations arising due to factors that, through the exercise of ordinary diligence, the applicant could not have foreseen. "Good cause" does not include an applicant's request for a temporary permit for reasons of convenience only.

- D. A temporary use approval shall not be granted for variances, zone changes or plan amendments.
- E. The scope of the temporary approval shall be limited to allow the applicant to proceed only with that portion of the proposed use justifying the applicant's claim of hardship or emergency.
- F. A temporary use approval shall expire as follows:
 1. Six months from the date of approval, if no decision has been reached on the underlying application.
 2. On the date the appeal period runs on the decision on the underlying application.
 3. On the date that all appeals of the decision on the underlying application are decided and final.
- G. A decision to approve a temporary use application is not appealable. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.445 Modification of Application.

- A. An applicant may modify an application at any time during the approval process up until the issuance of an administrative decision, or the close of the record for an application reviewed under a hearings process, subject to the provisions of [BDC 4.1.412](#) and this chapter.
- B. The Review Authority shall not consider any evidence submitted by or on behalf of an applicant that would constitute modification of an application (as that term is defined in [BDC Chapter 1.2](#), Definitions), unless the applicant submits an application for a modification, pays all required modification fees and agrees in writing to restart the 120-day review period as of the date the modification is submitted. The 120-day review period for an application, as modified, may be restarted as many times as there are modifications up to a total of 365 days from the day the application was accepted as complete.
- C. The Review Authority may require that the application be re-noticed and additional hearings be held.
- D. Up until the day a hearing is opened for receipt of oral testimony, the Community Development Director shall have sole authority to determine whether an applicant's submittal constitutes a modification. After such time, the Hearings Body shall make such determinations. The Review Authority's determination on whether a submittal constitutes a modification shall be appealable only to LUBA and shall be appealable only after a final decision is entered by the City on an application. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.500 Type IV Legislative Procedures.

Sections:

- 4.1.505 Type IV Applications.**
- 4.1.510 Hearing Required.**
- 4.1.515 Notice.**
- 4.1.520 Initiation of a Legislative Change.**
- 4.1.525 Review Authority.**
- 4.1.530 Final Decision.**
- 4.1.535 Corrections.**

4.1.505 Type IV Applications.

Legislative decisions are made after public notice, public hearings and a recommendation by the Planning Commission to the City Council. Such applications generally involve broad public policy decisions that apply to

other than an individual property. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.510 Hearing Required.

No legislative change shall be adopted without review by the Planning Commission and a final public hearing before the City Council. Public hearings before the Planning Commission shall be set at the discretion of the Community Development Director, unless otherwise required by State law. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.515 Notice.

A. Published Notice.

1. Notice of a Type IV legislative change shall be published in a newspaper of general circulation in the City at least 20 days prior to each public hearing.
2. The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.

B. Posted Notice. Notice shall be posted at the discretion of the Community Development Director.

C. Individual Notice. For site-specific applications, individual notice to property owners, as defined in [BDC 4.1.220\(A\)](#), shall be provided.

D. Neighborhood Associations. Notice of Type IV legislative changes shall be mailed to the designated representative of any neighborhood association recognized by the City of Bend, where the legislative change affects any land within the boundary of such neighborhood association. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.520 Initiation of a Legislative Change.

Requests for a plan map or text amendment of the Bend Urban Area General Plan or its implementing documents may be initiated by an individual, corporation, or public agency upon submittal of an application, supporting documentation and payment of required fees. The City Council, Planning Commission or Community Development Director may also initiate legislative changes. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.525 Review Authority.

Any Type IV change shall be reviewed by the Planning Commission prior to action being taken by the City Council. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.530 Final Decision.

All legislative changes shall be adopted by ordinance. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.535 Corrections.

The City's General Plan and Development Code may be corrected by order of the City Council to cure editorial and clerical errors. A public hearing on a corrections order is not required. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.600 Deschutes River Design Review Procedures.

For all property subject to the Deschutes River Design Review process pursuant to the Bend Development

Code, the following procedures shall apply:

A. There shall be two review tracks for Deschutes River Design Review depending on the level and type of activity proposed. Notwithstanding these provisions, the Community Development Director may refer any application to the Planning Commission for approval. The Planning Commission's consideration shall follow the quasi-judicial procedures set forth in [BDC 4.1.800](#).

1. Review Track A. A Type II administrative review shall be performed by the Community Development Director for the following activities:

- a. Minor alterations of 10 percent or less to an existing building facade facing river, including roof.
- b. Changes in window or door placement visible from the river.
- c. Changes in parking locations.
- d. Fill or removal activity within 10 feet of the ordinary high water mark of the Deschutes River.
- e. New construction or additions that are not visible from the river due to topography, vegetation or existing development.

2. Review Track B. A Type III review shall be performed by the Planning Commission for the following activities:

- a. Appeal of a Type II administrative review decision.
- b. New construction and new development.
- c. Master plan approval for large-scale projects.
- d. Variances to an application in conformance with [BDC Chapter 5.1, Variances](#).
- e. Fill and removal activities associated with new development or for creation of fire breaks in association with appropriate fire prevention authorities.

B. The applicant shall submit an application in writing to the Planning Division on forms provided by the City. The request shall include a site plan containing the relevant components listed in [BDC 4.2.200](#) and a description of work and materials that will be used. The Review Authority shall review the request and respond to the applicant in writing of the decision and any conditions placed on the decision.

C. Track B applications shall be reviewed by the Planning Commission as follows:

1. Notice for applications shall be as set forth in [BDC 4.1.420](#), [4.1.423](#), and [4.1.424](#). The Commission shall hold a public hearing for any Type III applications. The hearings procedure shall be as set forth in [BDC 4.1.800](#), Quasi-Judicial Hearings.
2. The Planning Commission shall review the entire project, even if only a portion of the project falls within the Deschutes River Corridor Design Review Combining Zone.
3. Appeals of the decision of the Planning Commission shall be to the City Council, subject to the procedures and restrictions set forth in [BDC 4.1.1100](#), Appeals.

D. Where the procedures in this section conflict with other provisions of this code with respect to Deschutes

River Corridor Design Review, the provisions of this section shall prevail. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.700 Refinement Plan Review Procedures.

A. Refinement Plan Development and Approval Process.

1. Initiation. The process to establish a refinement plan shall be initiated by the City Council. The Planning Commission or interested property owners may submit requests to the City Council to initiate the refinement plan process. If owners request initiation of a refinement plan process, it will be subject to the established application fee.

2. Public Involvement Plan. The Planning Commission shall approve a public involvement plan which may include the appointment of a Steering Committee to guide development of the plan. The Steering Committee may include persons representing affected property owners, neighbors, City staff, agencies, special districts and the community at large. The role of the Steering Committee is advisory to the Planning Commission and the City Council.

B. Refinement Plan Content. At a minimum, a refinement plan shall include the following text and diagrams:

1. Plan Objectives. A narrative shall set forth the goals and objectives of the plan.

2. Site and Context. A map of the site and context shall identify the project area.

3. Land Use Diagram. The land use diagram shall indicate the distribution and location of planned land uses, including open space and parks, within the area covered by the refinement plan.

4. Density. If residential uses are proposed, a narrative shall describe planned residential densities.

5. Facilities Plan. The facilities plan shall depict the general location and extent of major components of sanitary sewer, water, and other essential facilities proposed to be located within the area covered by the refinement plan and needed to support the land uses described in the plan.

6. Circulation/Transportation Plan. The circulation plan shall indicate the proposed street pattern for the refinement plan area, including pedestrian pathways and bikeways. Design standards and street cross-sections shall be included, if different than normal City standards.

7. Design and Development Standards. If standards differ from normal City standards, design and development standards shall be included in the plan.

C. Criteria. In order to approve a refinement plan, the City Council shall adopt findings demonstrating conformance with the criteria set forth in [BDC 4.6.200](#).

D. Review. Except as set forth below, the review procedures outlined in [BDC 4.1.500](#), Type IV Legislative Procedures, shall apply to the adoption of a Refinement Plan.

1. Administrative Review. After adoption of a refinement plan, the following activities shall be reviewed administratively.

a. Type I applications.

b. Type II applications conforming to the standards of the refinement plan.

- c. Administrative amendments to the refinement plan.
 - d. Minor amendments to the refinement plan.
 - e. Property line adjustments consistent with the refinement plan.
 - f. Variances.
2. Planning Commission Review. The Planning Commission shall review the following activities:
 - a. Property line adjustments that are not consistent with the refinement plan.
 - b. Type III applications conforming to the standards of the refinement plan.
 3. City Council Review. The following activities shall be reviewed by the City Council as either a quasi-judicial or legislative amendment.
 - a. Major amendments to the refinement plan.
 - b. Appeals of land use decisions.
- E. Amendments and Adjustments to the Refinement Plan. Amendments to an approved refinement plan are classified as administrative, minor, or major amendments.
1. Administrative Amendments. Administrative amendments shall be reviewed by the Community Development Director following the Type I procedure, unless elevated to a Type II procedure. Public notice of administrative amendments is not required. Administrative amendments include:
 - a. Street, easement, sidewalk, and trail relocations that result in a location change of less than 50 feet from what is depicted on refinement plan diagrams.
 - b. Public park relocations that result in a location change of less than 100 feet from what is depicted on refinement plan diagrams.
 - c. Increases in the size of public neighborhood parks; provided, that transportation connections remain consistent with the refinement plan.
 - d. Reductions in the size of public neighborhood parks, provided the reductions are less than 10 percent of park area depicted on refinement plan diagrams and that the reductions do not result in a park that is less than 20,000 square feet in size.
 - e. Changes related to street trees, street furniture, fencing, or signage that was approved as part of the refinement plan.
 - f. A change in the facilities plan other than what would be necessary for other authorized adjustments.
 2. Minor Amendments. A minor amendment to a refinement plan shall be processed as a Type II application. Notice of the pending decision shall be provided to all owners of land within or abutting the Refinement Plan District(s) in question. The Community Development Director's decision shall include findings demonstrating that the change will not affect adversely:
 - The purpose and objectives of the refinement plan;

- The functioning of the refinement plan; or
- The coordination of transportation and infrastructure provision to properties within the refinement plan area.

Minor amendments are those that result in any of the following:

- a. A change in the circulation/transportation plan that requires an identified transportation element to be moved 50 to 100 feet from the location depicted on the refinement plan circulation/transportation diagram.
- b. A change in the circulation/transportation plan that requires a required transportation element including local street, easement, sidewalk or trail to be shifted 50 to 100 feet in any direction from what is depicted on the refinement plan circulation/transportation diagram.
- c. A change in the land use diagram that reduces the size of a public park or facility more than 10 percent, or moves the location more than 100 feet from the location depicted on the land use diagram.

3. Major Amendment. A major amendment to a refinement plan shall be processed as a Comprehensive Plan amendment affecting the existing refinement plan. The amendment shall follow either quasi-judicial or legislative procedures and meet plan amendment and zone change criteria. Findings must additionally demonstrate that the change will not affect adversely:

- The purpose and objectives of the refinement plan;
- The functioning of the refinement plan; or
- The coordination of transportation and infrastructure provision to properties within the refinement plan area.

Major amendments are those that result in any of the following:

- a. A change in General Plan designation boundary or density, unless as part of the original approvals an alternative design was approved outlining acceptable plan designation options (for example, a residential designation may be approved as an alternative use for a park site).
- b. A change in the circulation/transportation plan that causes a required transportation element, including a trail, to be added, eliminated or moved more than 100 feet from the location depicted on the refinement plan circulation/transportation diagram.
- c. A change in the land use diagram that adds or eliminates a designated public park or facility.
- d. A change in development standards, except those set forth as minor or administrative amendments. [Ord. NS-2122, 2009; Ord. NS-2016, 2006; Ord. NS-1754, 2000]

4.1.800 Quasi-Judicial Hearings.

Sections:

- 4.1.810 Filing of Staff Report for Hearing.**
- 4.1.815 Hearings Body.**
- 4.1.830 Burden of Proof.**

- 4.1.835 Nature of Evidence.**
- 4.1.840 Limitation on Oral Presentations.**
- 4.1.845 Standing.**
- 4.1.850 Record.**
- 4.1.855 Disclosure of Ex Parte Contacts.**
- 4.1.860 Disclosure of Personal Knowledge.**
- 4.1.865 Challenge for Bias, Prejudgment or Personal Interest.**
- 4.1.870 Hearings Procedure.**
- 4.1.875 Setting the Hearing.**
- 4.1.880 Close of the Record.**
- 4.1.885 Continuances or Record Extensions.**
- 4.1.890 Objections to Jurisdiction, Procedure, Notice or Qualifications.**
- 4.1.895 Reopening the Record.**

4.1.810 Filing of Staff Report for Hearing.

- A. At the time an application, that in the judgment of the Community Development Director requires a hearing, is deemed complete, a hearing date shall be set.
- B. **A staff report shall be completed seven days prior to the hearing.** If the report is not completed by such time, the hearing shall be held as scheduled, but any party may at the hearing or in writing prior to the hearing request a continuance of the hearing to a date that is at least seven days after the date the initial staff report is complete. The granting of a continuance under these circumstances shall be at the discretion of the Hearings Body.
- C. A copy of the staff report shall be mailed to the applicant, shall be made available at a reasonable cost to such other persons who request a copy and shall be filed with the Hearings Body.
- D. Notwithstanding subsection (B) of this section, oral or written modifications and additions to the staff report shall be allowed prior to or at the hearing. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.815 Hearings Body.

- A. The following shall serve as the Hearings Body as determined by the Community Development Director:
 - 1. Hearings Officer.
 - 2. Planning Commission, for matters of interpretation of this code, appeals of Type II decisions, where the Hearings Officer cannot hear the matter due to a conflict of interest, or as otherwise specified by provisions of City code.
 - 3. City Council subject to [BDC 4.1.1100](#), Appeals. [Ord. NS-2122, 2009; Ord. NS-2103, 2008; Ord. NS-2016, 2006]

4.1.830 Burden of Proof.

Throughout all local land use proceedings the burden of proof rests on the applicant. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.835 Nature of Evidence.

All relevant evidence shall be received. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.840 Limitation on Oral Presentations.

The Hearings Body may set reasonable time limits on oral testimony. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.845 Standing.

A. Any interested person may appear and be heard in a Type III hearing, except that in appeals heard on the record, a person must have participated in a previous proceeding on the subject application.

B. Any person appearing on the record at a hearing (including appeals) or presenting written evidence in conjunction with an administrative action or hearing shall have standing and shall be a party. A person whose participation consists only of signing a petition shall not be considered a party. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.850 Record.

A. An audio tape recording of the hearing shall be made.

B. All exhibits presented shall be marked to show the identity of the person offering the exhibit.

C. Exhibits shall be numbered in the order presented, and shall be dated.

D. When exhibits are introduced, the exhibit number or letter shall be read into the record.

E. When a digital storage device such as a compact disc is submitted into the record, a transcript of the contents shall also be submitted. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.855 Disclosure of Ex Parte Contacts.

A. **Prior to making a decision, the Hearings Body or any member thereof shall not communicate directly or indirectly with any party or his or her representative in connection with any issue involved in a pending hearing** except upon notice and opportunity for all parties to participate. Should such communication – whether written or oral – occur, the Hearings Body member shall:

1. Publicly announce for the record the substance of such communication; and
2. Announce the parties' right to rebut the substance of the ex parte communication during the hearing.
3. Communication between City staff and the Hearings Body shall not be considered to be an ex parte contact. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.860 Disclosure of Personal Knowledge.

A. If the Hearings Body or any member thereof uses personal knowledge acquired outside of the hearing process in rendering a decision, the Hearings Body or member thereof shall state the substance of that knowledge on the record and allow all parties the opportunity to rebut such statement on the record.

B. For the purposes of this section, a site visit by the Hearings Body shall be deemed to fall within this rule. After the site visit has concluded, the Hearings Body must disclose its observations and conclusions gained from the site visit in order to allow for rebuttal by the parties. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.865 Challenge for Bias, Prejudgment or Personal Interest.

Prior to or at the commencement of a hearing, any party may challenge the qualification of the Hearings Body, or a member thereof, for bias, prejudice or personal interest. The challenge shall be made on the record and be documented with specific reasons supported by facts. Should qualifications be challenged, the Hearings Body or the member shall disqualify itself, withdraw or make a statement on the record of its capacity to hear. A Planning Commission member with a conflict identified under ORS [Chapter 197](#) must disqualify him or herself after disclosure. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.870 Hearings Procedure.

A. A hearing shall be conducted as follows:

1. The **Hearings Body shall explain the purpose of the hearing** and announce the order of proceedings, including reasonable time limits on presentations by parties.
2. A statement by the Hearings Body regarding pre-hearing contacts, bias, prejudice or personal interest shall be made.
3. Any facts received, noticed or recognized outside of the hearing shall be stated for the record.
4. Challenges to the Hearings Body's qualifications to hear the matter shall be stated and challenges entertained.
5. At the commencement of a hearing under a Comprehensive Plan or land use regulation, the Hearings Body or his or her designee shall make a statement to those in attendance that:
 - a. **Lists the applicable substantive criteria;**
 - b. States that testimony, arguments and evidence must be directed toward that criteria or other criteria in the Comprehensive Plan or land use regulations which the person believes to apply to the decision; and
 - c. States that failure to raise an issue accompanied by statements or evidence sufficient to afford the Hearings Body and the parties an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue.
6. At the commencement of the initial public hearing, the Hearings Body or his or her designee shall make a statement to the applicant that the failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the local government or its designee to respond to the issue precludes an action for damages in circuit court. An applicant is not required to raise constitutional or other issues relating to proposed conditions of approval unless the conditions of approval are stated with sufficient specificity to enable the applicant to respond to the conditions prior to the close of the final local hearing.
7. **An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing** on the proposal before the local government. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the City Council, Planning Commission, Hearings Body or Hearings Officer, and the parties an adequate opportunity to respond to each issue.
8. Order of Presentation.
 - a. Explanation of procedural requirements.

- b. Open the hearing.
 - c. Statement of pre-hearing contacts, bias, prejudice or personal interest.
 - d. Challenge for bias, prejudgment or personal interest.
 - e. Staff report.
 - f. **Applicant testimony.**
 - g. **Testimony by those in favor of the application.**
 - h. **Testimony by those neutral.**
 - i. **Testimony by those opposed to the application.**
 - j. **Applicant rebuttal.**
 - k. **Rebuttal by those opposed may be allowed at the Hearings Body's discretion.**
 - l. Staff comment.
 - m. Questions from or to the chair may be entertained at any time at the Hearings Body's discretion.
 - n. Close the hearing.
 - o. Deliberation.
 - p. Decision.
9. In appeal proceedings, the **applicant** is the party who initiated the application which is under appeal. Those person(s) opposed to the application shall testify under the "Testimony by those opposed to the application" portion of the appeal proceeding. Those persons in favor of the application shall testify under the "Testimony by those in favor of the application" portion of the appeal proceeding.
10. The record shall be available for public review at the hearing. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.875 Setting the Hearing.

A. After an application is deemed accepted a hearing date shall be set. A hearing date may be changed by the City staff, or the Hearings Body up until the time notice of the hearing is mailed. Once the notice of hearing is mailed any changes in the hearing date shall be processed as a continuance in accordance with [BDC 4.1.885](#).

B. If an applicant requests that a hearing date be changed, such request shall be granted only if the applicant agrees that the extended time period for the hearing shall not count against the **120-day time limit** set forth in ORS [227.178](#). [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.880 Close of the Record.

A. Except as set forth herein, the record shall be closed to further testimony or submission of further argument or evidence at the end of the presentations before the Hearings Body.

- B. If the hearing is continued or the record is held open under [BDC 4.1.885](#), further evidence or testimony shall be taken only in accordance with the provisions of that section.
- C. Otherwise, further testimony or evidence will be allowed only if the record is reopened under [BDC 4.1.895](#), Reopening the Record.
- D. An applicant shall be allowed, unless waived, to submit final written arguments in support of its application after the record has closed within such time limits as the Hearings Body shall set. The Hearings Body shall allow applicant at least seven days to submit its argument, which time shall not be counted against the 120-day clock. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.885 Continuances or Record Extensions.

A. Grounds.

1. Prior to or at the initial hearing, an applicant shall receive a continuance upon any request if accompanied by a corresponding extension of the 120-day review period. If a continuance request is made after the published or mailed notice has been provided by the City, but at least seven days prior to the hearing, the hearing place shall be posted with notification of cancellation and a revised notice with the new hearing date, place and time shall be mailed to all persons who received the original notification. The applicant shall be responsible for any costs for providing notice of the continuance. If a continuance request is made less than seven days prior to the hearing, the Hearings Body shall take evidence at the scheduled hearing date from any party wishing to testify at that time after notifying those present of the continuance.
2. Any party is entitled to a continuance of the initial evidentiary hearing or to have the record left open in such a proceeding in the following instances:
 - a. Where additional documents or evidence are submitted by any party; or
 - b. Upon a party's request made prior to the close of the hearing for time to present additional evidence or testimony.

For the purposes of subsection (A)(2) of this section, **additional documents or evidence** shall mean documents or evidence containing new facts or analysis that are submitted after notice of the hearing.

B. Except for continuance requests made under subsection (A)(1) of this section, the choice between granting a continuance or leaving the record open shall be at the discretion of the Hearings Body. After a choice has been made between leaving the record open or granting a continuance, the hearing shall be governed thereafter by the provisions that relate to the path chosen.

C. Hearing Continuances.

1. If the Hearings Body grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial hearing.
2. An opportunity shall be provided at the continued hearing for persons to rebut new evidence and testimony received at the continued hearing.
3. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to allow submittal of additional written evidence or testimony. Such additional written evidence or testimony shall

be limited to evidence or testimony that rebuts the new written evidence or testimony.

D. Leaving Record Open. If at the conclusion of the hearing the Hearings Body leaves the record open for additional written evidence or testimony, the Hearings Body shall allow for response to written evidence or testimony submitted during the period the record is held open.

E. A continuance or record extension granted under this section shall be subject to the 120-day time limit unless the continuance or extension is requested or otherwise agreed to by the applicant. When the record is left open or a continuance is granted after a request by an applicant, the time period during which the 120-day review period is suspended shall include the time period made available to the applicant and any time period given to parties to respond to the applicant's submittal. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.890 Objections to Jurisdiction, Procedure, Notice or Qualifications.

Any objections not raised prior to the close of oral testimony are waived. Parties alleging procedural error shall have the burden of proof at LUBA as to whether the error occurred and whether the error has prejudiced the party's substantial rights. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.895 Reopening the Record.

A. The Hearings Body may at its discretion reopen the record, either upon request or on its own initiative. The Hearings Body shall not reopen the record at the request of an applicant unless the applicant has agreed in writing to an extension or a waiver of the 120-day time limit.

B. Procedures.

1. Except as otherwise provided for in this section, the manner of testimony (whether oral or written) and time limits for testimony to be offered upon reopening of the record shall be at the discretion at the Hearings Body.

2. The Hearings Body shall give written notice to the parties that the record is being reopened, stating the reason for reopening the record and how parties can respond. The parties shall be allowed to raise new issues that relate to the new evidence, testimony or criteria for decision-making that apply to the matter at issue. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.900 Type II and III Decisions.

Sections:

4.1.910 Decision.

4.1.915 Findings as to Application Acceptance Date.

4.1.920 Findings as to Legal Lot of Record Status.

4.1.925 Notice of Decision.

4.1.930 Decision on Plan Amendments and Zone Changes.

4.1.935 Reapplication Limited.

4.1.940 Proposed Order.

4.1.945 Compliance with ORS 227.350.

4.1.950 Correction of Clerical Errors.

4.1.910 Decision.

A. Approval or denial of a Type II or III application shall be based upon and accompanied by a written statement that explains the criteria and standards considered relevant to the decision, states the facts relied

upon in rendering the decision and explains the justification for the decision based upon the criteria, standards and facts set forth.

B. Any portion of an application not addressed in a Review Authority's decision shall be deemed to have been denied.

C. **A decision on a Type II or III application is not final until the Review Authority issues a written decision,** the decision or notice of the decision has been mailed and the appeal period to the next higher Review Authority within the City has run.

D. **Unless a temporary use permit has been issued, no building permit shall be issued until a decision is final. Appeal of a final decision to LUBA does not affect the finality of a decision for purposes of issuing building permits.** If an applicant elects at his or her own discretion to proceed under a land use action with a pending LUBA appeal, he or she shall proceed only if:

1. The applicant accepts each and every **risk of loss and damage** that may result if the application is denied, and further agrees in writing to hold City, its officers, agents and employees harmless from such loss and damage.
2. The applicant agrees in writing to restore the site to its original condition if the application for the land use approval is denied.
3. The applicant posts a bond or other form of security acceptable to the Review Authority in an amount sufficient to cover the costs of restoration of the site to its pre-approval condition. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.915 Findings as to Application Acceptance Date.

Each decision shall include findings as to when the proposed Type II or III action application was deemed complete and formally accepted as such by the Community Development Director. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.920 Findings as to Legal Lot of Record Status.

Each decision shall include a finding that the property subject to the proposed land use action is a legal lot of record as that term is defined in the Bend Development Code. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.925 Notice of Decision.

Notice of the Review Authority's decision shall be in writing and mailed to all parties; however, one person may be designated by the Review Authority to be the recipient of the decision for a group, organization, group of petitioners or similar collection of individual participants. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.930 Decision on Plan Amendments and Zone Changes.

The Hearings Officer shall have authority to approve or deny Type III quasi-judicial zone changes when the zoning is proposed to be changed to be consistent with the General Plan Map. Plan amendments shall require adoption by ordinance. Zone changes processed concurrently with plan amendments shall also be adopted by ordinance. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.935 Reapplication Limited.

A. If a specific application is denied on its merits, reapplication for substantially the same proposal may be

made at any time after the date of the final decision denying the initial application.

B. Notwithstanding subsection (A) of this section, a final decision bars any reapplication for a nonconforming use verification or for a determination on whether an approval has been initiated, unless the applicant comes forward with new evidence that was not available at the time the decision was made, and which could not, through reasonable diligence, have been discovered by the applicant prior to the decision. A lot of record determination shall be subject to reapplication under subsection (A) of this section, only if the applicant presents new factual evidence not submitted with the prior application. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.940 Proposed Order.

The Review Authority may request that any prevailing party draft a set of proposed findings and conclusions. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.945 Compliance with ORS 227.350.

A. Final approval of any activity referred to in ORS 227.350(1) regarding State identified wetlands must include the notice statements required by ORS 227.350(3).

B. Individual notice to the applicant and the owner of record consistent with ORS 227.350(5) shall be provided, unless notice in the written decision notice satisfies that requirement.

C. Failure of the City to provide notice as required in this section shall not invalidate City approval.

D. This section shall not become operative until the Division of State Lands makes available to the City a copy of the applicable portion of the Statewide Wetland Inventory. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.950 Correction of Clerical Errors.

Upon its own motion or the motion of a party, the City Council may, subject to any applicable public notice and hearing requirements, enact an ordinance correcting clerical or typographical errors in plan amendment or zone change ordinances and any maps appended thereto implementing decisions of the Review Authority. Such changes shall be entered only if the Council is able to make a finding that the decision of the Review Authority, including appendices, is not accurately reflected in the implementing ordinances. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1000 Reconsideration.

Sections:

4.1.1010 Reconsideration.

4.1.1020 Procedure.

4.1.1030 Limitation on Reconsideration.

4.1.1010 Reconsideration.

A. An applicant may request that the Review Authority's decision be reconsidered as set forth herein. A request for reconsideration shall be accompanied by a fee established by the City and by applicant's written consent that the 120-day review period will not run during the period of the reconsideration and the resulting extended appeal period. The fee will be waived when, in the opinion of the Community Development Director, the reconsideration is requested to correct a clerical or technical error that is the City's fault.

- B. Grounds for reconsideration of an administrative decision are limited to the following instances:
1. The applicant's submission of additional documents or evidence, that merely clarifies or supports the pending application, directed to one or more discreet aspects of the approval. The new information shall not constitute a modification of application as defined herein.
 2. Correction of an error in a condition established by the Review Authority where the condition is not supported by the record or is not supported by law.
 3. Correction of errors that are technical or clerical in nature.
- C. Grounds for reconsideration of the Hearing Body's decision are limited to the following instances where an alleged error substantially affects the rights of the applicant:
1. Correction of an error in a condition established by the Review Authority where the condition is not supported by the record or is not supported by law;
 2. Correction of errors that are technical or clerical in nature. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1020 Procedure.

- A. A request for reconsideration shall be filed with the Community Development Director within 12 days of the date the decision was mailed. The request shall identify the condition or issue to be considered and shall specify how the applicant would be adversely affected if the issue were to remain uncorrected.
- B. Upon receipt of a request for reconsideration of a Type II decision, the Community Development Director shall determine whether the request for reconsideration has merit. No comment period or prior notice shall be required for an administrative reconsideration.
- C. Upon receipt of a request for reconsideration of a Type III decision, the Community Development Director shall notify all parties to the proceeding of the request and allow for a 10-day comment period on the request. In those instances in which the only grounds for reconsideration of a Type III decision are technical or clerical in nature, at the end of the comment period, the Community Development Director shall determine whether the request for reconsideration has merit. In all other instances, at the end of the comment period, the Hearings Body shall determine whether the request for reconsideration has merit.
- D. The Review Authority shall modify the decision upon a determination that the request has merit and the issue substantially affects the applicant. Notice of the modification shall be sent to all parties to the proceeding. If the Review Authority determines that no modification is warranted, a denial shall be issued and sent to all parties to the proceeding.
- E. Filing a request for a reconsideration shall not be a precondition for appealing a decision.
- F. Filing a request for reconsideration stays the deadline for any party to file an appeal of the Review Authority's decision. A new 12-day appeal period for all parties to the proceeding shall commence upon mailing of a modification or upon mailing a determination that a modification is not warranted. The new 12-day appeal period shall not be calculated as part of the 120-day review period. If an opponent files an appeal and an applicant has requested reconsideration, the opponent's appeal shall be stayed pending disposition of the request for modification. If the decision is not modified, the appeal will be processed in accordance with the procedures set forth in BDC 4.1.1100. If the decision is modified, the appellant must, within 12 days of the

mailing of the modified decision, file in writing a statement requesting that its appeal be activated or the appeal will be invalidated. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1030 Limitation on Reconsideration.

No decision shall be reconsidered more than once before the same Review Authority. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1100 Appeals.

Sections:

- 4.1.1110 Who May Appeal.**
- 4.1.1115 Filing Appeals.**
- 4.1.1120 Notice of Appeal.**
- 4.1.1125 Determination of Jurisdictional Defects.**
- 4.1.1135 Consolidation of Multiple Appeals.**
- 4.1.1140 Scope of Review.**
- 4.1.1145 Hearing on Appeal.**
- 4.1.1150 Type I Appeals.**
- 4.1.1155 Re-hearing.**
- 4.1.1160 Remands.**
- 4.1.1165 Withdrawal of an Appeal.**

4.1.1110 Who May Appeal.

A. The following may file an appeal:

1. A party; or
2. A person entitled to notice and to whom no notice was mailed.

B. A person to whom notice is mailed is deemed notified even if notice is not received. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1115 Filing Appeals.

A. To file an appeal, an appellant must file a completed notice of appeal on a form prescribed by the Planning Division and pay an appeal fee.

B. Unless a request for reconsideration has been filed, the notice of appeal and appeal fee must be received by the Community Development Department no later than the close of the public counter on the twelfth day following mailing of the decision. If a decision has been modified on reconsideration, an appeal must be filed no later than the close of the public counter on the twelfth day following mailing of the decision as modified. Notices of appeals shall not be received by facsimile machine or e-mail.

C. In the case of an appeal of an administrative (Type II) decision to a Hearings Officer or to the Planning Commission, the Hearings Body's decision on appeal shall become final 12 days after the decision is mailed. Except that, within 12 days after the decision is mailed, the City Council may, on its own motion and at its discretion, call up the decision of the Hearings Officer or Planning Commission and conduct an on the record review of the decision limited to issues identified in the Council's motion.

D. In the case of an appeal of a Type III decision, the City Council's decision whether to grant review shall

be discretionary. If the City Council declines review, the appellant may be entitled to a partial refund in accordance with the City's adopted Fees Resolution. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1120 Notice of Appeal.

A. The Notice of Appeal shall contain:

1. A description of the decision which is being appealed, including the date of decision.
2. A statement describing the interest the person who is appealing has in the decision. Only persons who have proper standing as provided by the law, and who have participated in the decision being appealed (if provision for such participation was provided in the previous proceeding), may appeal the decision. The statement of interest must demonstrate the person's standing and participation.
3. A description of the issues sought to be raised by the appeal; and a statement that the issues were raised during the proceeding that produced the decision being appealed. This description must include the specific criteria relied upon as the basis for the appeal, and an explanation of why the decision has not complied with the standards or requirements of the criteria. The issues raised by the appeal must be stated with sufficient specificity to afford the reviewing authority an opportunity to resolve each issue raised.
4. In the case of a discretionary appeal request to the City Council, the Notice of Appeal shall include the following additional information to assist the Council in deciding whether to grant discretionary review of the decision being appealed:
 - a. How the appeal presents issues that have significant public policy or community-wide implications for the City, as opposed to more limited issues which primarily involve the directly affected property or persons involved in the land use decision being appealed.
 - b. Why it is necessary or desirable for the City Council to review these issues; and why the issues cannot be adequately and fairly reviewed by the Land Use Board of Appeals. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1125 Determination of Jurisdictional Defects.

A. Any failure to conform to the requirements of [BDC 4.1.1115](#), Filing Appeals, and 4.1.1120, Notice of Appeal, shall constitute a jurisdictional defect.

B. Determination of jurisdictional defects in an appeal shall be made by the Review Authority to which an appeal has been made. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1135 Consolidation of Multiple Appeals.

A. If more than one party files a notice of appeal on a land use action decision, the appeals shall be consolidated and noticed and heard as one proceeding.

B. In instances of multiple appeals where separate appellants have asked for a differing scope of review, any grant of de novo review shall control over a separate request for a more limited review on appeal. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1140 Scope of Review.

A. Before Hearings Officer or Planning Commission. The review on appeal before the Hearings Officer or

Planning Commission shall be de novo.

B. Before the Council.

1. Review of land use decisions by the City Council on appeal shall be discretionary. A decision by the City Council to not grant discretionary review of the appeal shall be the final determination of the City, and the appeal of the decision application shall be to the Land Use Board of Appeals as provided by law. The City Council's decision whether to grant discretionary review shall be made without testimony or argument from persons interested in the appeal.
2. The scope of review for appeals that are granted discretionary review by the City Council shall be:
 - a. Restricted to the issues raised in the Notice of Appeal, or as prescribed by the City Council.
 - b. Be conducted during an appeal hearing before the City Council on the record made as part of the decision being appealed.
3. The record for discretionary review by the City Council shall include:
 - a. The land use application or request which is the subject of the appeal, any staff report, and all written comments, exhibits, or any other materials or information considered by the decision-maker in the proceedings that produced the decision being appealed.
 - b. A written transcript of all proceedings before the decision-maker, or a stipulated written summary of the proceedings submitted by all of the parties to the appeal.
 - c. Appellants shall submit the transcript or stipulated written summary of the proceedings to the Planning Division no later than the close of the day five days prior to the date set for receipt of written arguments.
 - d. An appellant shall be excused from providing a transcript or stipulated written summary of the proceedings if the appellant was prevented from complying by:
 - i. The inability of the Planning Division to supply the appellant with an audio recording of the prior proceeding; or
 - ii. Defects on the audio recording of the prior proceeding that make it not reasonably possible for the appellant to supply a transcript. Appellants shall comply to the maximum extent reasonably and practicably possible.
4. An appeal hearing before the City Council shall be conducted according to such procedures as the City Council shall prescribe, which may include an opportunity for presentations by the parties to the appeal.
5. Decisions reviewed by the City Council can be affirmed, remanded, reversed, or modified in whole or in part by the City Council. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1145 Hearing on Appeal.

- A. The appellant and all other parties to the decision below shall be mailed notice of the hearing on appeal at least 10 days prior to any de novo hearing or deadline for submission of written arguments.
- B. Except as otherwise provided in this chapter, the appeal shall be heard as provided in [BDC 4.1.800](#),

Quasi-Judicial Hearings. The applicant shall proceed first in all appeals.

- C. The order of Hearings Body shall be as provided in [BDC 4.1.815](#), Hearings Body.
- D. The record of the proceeding from which appeal is taken shall be a part of the record on appeal.
- E. The record for a review on the record shall consist of the following:
 - 1. Minutes and audio recordings of any prior hearing, if available;
 - 2. All written and graphic materials that were part of the record below;
 - 3. The Review Authority's decision appealed from;
 - 4. Written arguments, based upon the record developed below, submitted by any party to the decision;
 - 5. A staff report and staff comment based on the record; and
 - 6. Other information deemed relevant by the Review Authority.
- F. The Council shall not consider any new factual information in an "on the record" proceeding. Brief oral argument by the applicant and the appellant on the record may be allowed by the Council. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1150 Type I Appeals.

Notice of the hearing date set for appeal shall be sent only to the applicant. Only the applicant, his or her representatives, and his or her witnesses shall be entitled to participate. Continuances shall be at the discretion of the Hearings Body, and the record shall close at the end of the hearing. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1155 Re-hearing.

Re-hearings shall not be allowed. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1160 Remands.

Applications shall not be remanded to a lower level Review Authority after appeal, except by City Council as provided in [BDC 4.1.1140\(B\)\(5\)](#). [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1165 Withdrawal of an Appeal.

An appeal may be withdrawn in writing by an appellant at any time prior to the rendering of a final decision. Subject to the existence of other appeals on the same application, in such event the appeal proceedings shall terminate as of the date the withdrawal is received. An appeal may be withdrawn under this section regardless of whether other nonfiling parties have relied upon the appeal filed by the appellant. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1200 Proceedings on Remand.

Sections:

- 4.1.1210 Purpose.**
- 4.1.1215 Hearings Body.**
- 4.1.1220 Notice and Hearings Requirements.**

4.1.1225 Scope of Proceeding.**4.1.1230 Effect of Reversal.****4.1.1210 Purpose.**

This chapter shall govern the procedures to be followed where a decision of the City has been remanded by LUBA or the Appellate Courts. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1215 Hearings Body.

The Review Authority for a remanded decision shall be the Review Authority from which the appeal to LUBA was taken, except that in voluntary or stipulated remands, the Council may decide that it will hear the case on remand. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1220 Notice and Hearings Requirements.

A. The City shall conduct a review on any remanded decision. The remand procedure shall be in accordance with the applicable provisions of this section, the LUBA or Appellate Court decision, and applicable State law. Unless State law requires otherwise, only those persons who were parties to the proceedings before the City shall be entitled to notice and be entitled to participate in any hearing on remand.

B. The review procedures shall comply with the minimum requirements of State law and due process for remand and need comply with the requirements of this code, only to the extent that such procedures are applicable to remand proceedings under State law. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1225 Scope of Proceeding.

A. On remand, the Review Authority shall review those issues that LUBA or the Appellate Court required to be addressed. The Review Authority shall have the discretion to reopen the record in instances in which it deems it to be appropriate.

B. At the Review Authority's discretion, a remanded application may be modified to address issues involved in the remand to the extent that such modifications would not substantially alter the proposal and would not have a significantly greater impact on surrounding neighbors. Any greater modification would require a new application.

C. If additional testimony is required to comply with the remand, parties may raise new, unresolved issues that relate to new evidence directed toward the issue on remand. Other issues that were resolved by LUBA or the Appellate Court or that were not appealed shall be deemed to be waived and may not be reopened. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1230 Effect of Reversal.

A land use decision reversed by LUBA or the Court of Appeals that results in a final appellate judgment or order of reversal cannot be further heard by the City in the absence of an amended or a new application. Submission of a revised application shall be governed by the time limit set forth in [BDC 4.1.935](#), Reapplication Limited. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1300 Limitations on Approvals.

Sections:

4.1.1310 Expiration of Approval.**4.1.1315 Initiation of Use.**

4.1.1320 Extensions to Avoid Environmental or Health Hazards.**4.1.1325 Modification of Approval.****4.1.1330 Transfer of Approval.****4.1.1335 Revocation of Approvals.****4.1.1310 Expiration of Approval.**

A. Scope.

1. Except as otherwise provided herein, this section shall apply to and describe the duration of all development approvals provided for under this code.
2. This section does not apply to:
 - a. Those determinations made by declaratory ruling, such as verifications of nonconforming uses, lot of record determinations and expiration determinations that involve a determination of the legal status of a property, land use or land use permit rather than whether a particular application for a specific land use meets the applicable standards of the zoning ordinance. Such determinations, whether favorable or not to the applicant or land owner, shall be final unless appealed and shall not be subject to any time limits;
 - b. Temporary use permits of all kinds, which shall be governed by applicable ordinance provisions specifying the duration of such permits; or
 - c. Quasi-judicial and legislative plan and map amendments.

B. Duration of Approvals.

1. Except as otherwise provided under this code, a development approval is void two years after the date the decision becomes final if the use approved in the permit is not initiated within that time period.
2. Except as otherwise provided in this code, approval of tentative land division plats shall be void after two years from the date of preliminary approval, unless the final plat has been recorded with Deschutes County. A one-year extension may be approved by the Community Development Director if the applicant can demonstrate sufficient progress to reasonably assure the plat will be recorded at the end of the third year, and if:
 - a. An applicant makes a written request for an extension of the development approval period; and
 - b. The request is submitted to the City prior to the expiration of the approval period.
3. In the case of a development approval authorized under applicable approval criteria to be completed in phases, each phase must be consistent with the time specified in the approval. In no case shall the total time period for all phases be greater than five years.

C. Extensions.

1. The Community Development Director may grant one extension of up to one year for a development approval that contained a one-year initial duration of approval, if:
 - a. An applicant makes a written request for an extension of the development approval period; and
 - b. The request is submitted to the City prior to the expiration of the approval period.

2. The Community Development Director may grant one or more additional extensions if authorized by a City Council resolution which recognizes a City-wide need for an additional limited-duration extension, not to exceed two years. The additional extension may be granted if:
 - a. The applicant has exhausted all other extension opportunities;
 - b. The applicant makes a written request for an extension of the development approval period; and
 - c. The request is submitted to the City prior to the expiration of the approval period.
3. Approval of an extension granted under this section is an administrative decision, and is not a land use decision or a limited land use decision as described in ORS [197.015](#) or this code. An extension is not subject to appeal and shall be processed as a Type I application.

D. Effect of Appeals. The time period set forth in subsection (B) of this section shall be tolled upon filing of an appeal to LUBA, until all appeals are resolved. [Ord. NS-2122, 2009; Ord. NS-2114, 2009; Ord. NS-2016, 2006]

4.1.1315 Initiation of Use.

A. For the purposes of this chapter, development undertaken under a development approval described in [BDC 4.1.1310](#), Expiration of Approval, has been “initiated” if it is determined that:

1. The proposed use has lawfully occurred;
2. Substantial construction toward completion of the development approval has taken place; or
3. Where construction is not required by the approval, the conditions of a permit or approval have been substantially exercised and any failure to fully comply with the conditions is not the fault of the applicant.

B. For the purposes of this section, **substantial construction** has occurred when the holder of an approval has physically altered the land or structure or changed the use thereof and such alteration or change is directed toward the completion and is sufficient in terms of time, labor or money spent to demonstrate a good faith effort to complete the development.

C. Initiation of use shall not be granted in lieu of a phased approval.

D. A determination of whether a land use has been initiated shall be processed as a declaratory ruling. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1320 Extensions to Avoid Environmental or Health Hazards.

A. In addition to extensions granted pursuant to [BDC 4.1.1310\(C\)](#) and notwithstanding any other provision of the Bend Code, a one-time extension may be granted to a tentative plat approval and any associated development approvals regarding the time for final plat approval where conditions of the approval, or extensions thereof, require or can be read to require approvals from other agencies for sewer or water systems and (1) the applicant can show that without such extension or extensions, a health or environmental hazard or risk thereof would continue to exist, be exacerbated or likely would be created and (2) the applicant submits a time frame and plan for meeting the outstanding conditions with the concurrence of a homeowners association having an ownership interest in project lands and such concurrence is demonstrated in the application.

B. Such an extension shall be administrative, in writing, and not subject to appeal and shall, subject to the

termination provisions of subsection (E) of this section, be granted for a time period not to exceed one year.

C. In lieu of submittal of the time frame and plan and concurrence of the homeowners association with the application, that requirement of subsection (A) of this section may be satisfied by conditioning approval of the extension to require establishment of the agreed-to time frame and plan within the first 60 days of the extension period, which timeline and plan shall thereupon be deemed to be a condition of the extension approval.

D. An extension under this section shall be conditioned upon adherence to the timelines and plan proposed in the extension application or as agreed to pursuant to subsection (C) of this section.

E. Failure to demonstrate compliance with any extension condition shall, after notice and hearing under this code, result in termination of the extension granted under this section. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1325 Modification of Approval.

A. An applicant may apply to modify an approval at any time after a period of 60 days has elapsed from the time a development approval has become final.

B. Unless otherwise specified in this code, the grounds for filing a modification shall be that a change of circumstances since the issuance of the approval makes it desirable to make changes to the proposal, as approved. A modification shall not be filed as a substitute for an appeal or to apply for a substantially new proposal or one that would have significant additional impacts on surrounding properties.

C. An application to modify an approval shall be directed to one or more discrete aspects of the approval, the modification of which would not amount to approval of a substantially new proposal or one that would have significant additional impacts on surrounding properties. Any proposed modification, as defined in this section, shall be reviewed only under the criteria applicable to that particular aspect of the proposal. Proposals that would modify an approval in a scope greater than allowable as a modification shall be treated as an application for a new proposal.

D. An application for a modification of a Type I approval shall be processed as a Type I application. All other modifications shall be processed as a Type II application unless elevated to a Type III process by the Community Development Director.

E. The effect, if any, of a modification upon the original approval time limitation shall be established in the modification decision.

F. For modification of approval of a PUD or Master Planned Subdivision issued prior to the adoption of this code, any proposed modification shall be subject to the criteria in [BDC 4.5.300](#). [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1330 Transfer of Approval.

A development approval shall be deemed to run with the land and be transferable to applicant's successors in interest. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1335 Revocation of Approvals.

A. Proceedings to revoke a development approval shall be initiated by the Community Development Director by giving notice of intent to revoke to the property owner.

- B. The Community Development Director may revoke a development approval for the following reasons:
1. The conditions or terms of development approval are violated; or
 2. The project is not in substantial conformance with the approved plans or decision; or
 3. The applicant or the applicant's representative made a material misstatement of fact in the application or supporting documents and such misstatement was relied upon by the Review Authority in making its decision whether to accept or approve the application.
- C. Revocations shall be processed as a Type II declaratory ruling under this code. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1400 Declaratory Ruling.

Sections:

- 4.1.1410 Availability of Declaratory Ruling.**
- 4.1.1415 Persons Who May Apply.**
- 4.1.1420 Procedures.**
- 4.1.1425 Effect of Declaratory Ruling.**

4.1.1410 Availability of Declaratory Ruling.

- A. Subject to the other provisions of this section, there shall be available for the City's General Plan and this code a process for:
1. Interpreting a provision of the General Plan or implementing ordinances (and other documents incorporated by reference) in which there is doubt or a dispute as to its meaning or application;
 2. Interpreting a provision or limitation of a development approval issued by the City in which there is doubt or a dispute as to its meaning or application;
 3. Determining whether an approval has been initiated or considering the revocation of a previously issued development approval;
 4. Determining the validity and scope of a nonconforming use; and
 5. Lot of record.

Such a determination or interpretation shall be known as a "declaratory ruling" and shall be processed in accordance with this chapter. In all cases, as part of making a determination or interpretation the Community Development Director (where appropriate) or Hearings Body (where appropriate) shall have the authority to declare the rights and obligations of persons affected by the ruling.

B. A declaratory ruling shall be available only in instances involving a fact-specific controversy and to resolve and determine the particular rights and obligations of particular parties to the controversy. Declaratory proceedings shall not be used to grant an advisory opinion on a specific quasi-judicial development application. Declaratory proceedings shall not be used as a substitute for seeking an amendment of general applicability to a legislative enactment.

C. Declaratory rulings shall not be used as a substitute for an appeal of a decision or for a modification of an approval. In the case of a ruling on a City development approval, a declaratory ruling shall not be available

until 60 days after a decision is final.

D. The Community Development Director may refuse to accept and the Hearings Body may deny an application for a declaratory ruling if:

1. The Community Development Director or Hearings Body determines that the question presented can be decided in conjunction with approving or denying a pending application or if in the Community Development Director or Hearings Body's judgment the requested determination should be made as part of a decision on a development application not yet filed; or
2. The Community Development Director or Hearings Body determines that there is an enforcement case pending in circuit court in which the same issue necessarily will be decided as to the applicant and the applicant failed to file the request for a declaratory ruling within two weeks after being cited or served with a complaint.

The Community Development Director or Hearings Body's determination to not accept or to deny an application under this section shall be the City's final decision. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1415 Persons Who May Apply.

A. The following persons may initiate a declaratory ruling under this chapter:

1. The owner of a property requesting a declaratory ruling relating to the use of the owner's property;
2. In cases where the request is to interpret a previously issued development approval, the holder of the approval; or
3. In all cases arising under [BDC 4.1.1410](#), Availability of Declaratory Ruling, the Community Development Director.

No other person shall be entitled to initiate a declaratory ruling.

B. A request for a declaratory ruling shall be initiated by filing an application with the Planning Division and, except for applications initiated by the Community Development Director, shall be accompanied by such fees as have been set by the Planning Division. Each application for a declaratory ruling shall include the precise question on which a ruling is sought. The application shall set forth whatever facts are relevant and necessary for making the determination and such other information as may be required by the Planning Division. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1420 Procedures.

Declaratory rulings shall be processed as either a Type II or Type III application. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1425 Effect of Declaratory Ruling.

A. A declaratory ruling shall be conclusive on the subject of the ruling and bind the parties thereto as to the determination made.

B. [BDC 4.1.935](#), Reapplication Limited, notwithstanding, and except as specifically allowed therein, parties to a declaratory ruling shall not be entitled to reapply for a declaratory ruling on the same question.

C. Except when a declaratory ruling is made by the City Council, the ruling shall not constitute a final policy

of the City of Bend. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1500 Development Agreements.

Sections:

- 4.1.1510 Purpose.**
- 4.1.1520 Applicability.**
- 4.1.1530 Initiation.**
- 4.1.1540 Negotiations.**
- 4.1.1550 Adoption.**
- 4.1.1560 Hearings Body.**

4.1.1510 Purpose.

The purpose of this section is to clarify the authority and procedures for City Council consideration of Development Agreements authorized by ORS [Chapter 94](#) outside the land use process. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1520 Applicability.

The City Council may establish a Development Agreement between the City and any person having a legal or equitable interest in real property for the development of that property. Development Agreements that do not include a development application are not governed by the City's Development Code, and may be established in any manner deemed appropriate by the Council, consistent with the Council's authority under the City's Charter. Development Agreements that contain a development application are governed by this section. The following include but are not limited to situations that may require a Development Agreement as described by this section:

- A. Multiple party or partnership situations.
- B. Large infrastructure requirements.
- C. Timing issues.
- D. Litigation.
- E. Urban renewal. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1530 Initiation.

Development Agreements governed by this section may be initiated by the Council on its own motion or in response to a request by City staff, following consultation with any person having a legal or equitable interest in the property that is the subject of the proposed Development Agreement. Neither City staff nor the Council are required to proceed with consideration of a request for a Development Agreement. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1540 Negotiations.

Negotiations between the parties to a Development Agreement shall commence upon a request by the City Council to identified City staff to establish a Memorandum of Understanding (MOU) regarding the anticipated scope of the Development Agreement. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1550 Adoption.

The provisions of ORS [94.504](#) through [94.528](#) shall be followed in the adoption of a Development Agreement under this section. Once a preliminary agreement is reached between the parties, the owner or owners of the property that is the subject of the Development Agreement shall submit an application to the Community Development Director for adoption of the Development Agreement and for any development application requested in connection with the Development Agreement. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.1.1560 Hearings Body.

Notwithstanding any other provision of this code to the contrary, the City Council shall be the Hearings Body for a Development Agreement. The Council may appoint a Hearings Officer or the Planning Commission to serve as the Hearings Body for specific development applications associated with a proposed Development Agreement, prior to the final decision on the Development Agreement as a whole. In that event, the Council shall establish a schedule for such decisions, and shall consider, but shall not be bound by, such decisions. [Ord. NS-2122, 2009; Ord. NS-2016, 2006]

**The Bend Code is current through Ordinance NS-2212,
passed January 8, 2014.**

Disclaimer: The City Recorder's Office has the official version of the Bend Code. Users should contact the City Recorder's Office for ordinances passed subsequent to the ordinance cited above.

(162 hits)

Chapter 4.2

SITE PLAN REVIEW AND DESIGN REVIEW

Sections:

- 4.2.100 Purpose.
- 4.2.200 Site Plan Review.
- 4.2.300 Design Review.
- 4.2.400 Minimum Development Standards.
- 4.2.500 Bonding and Assurances for All Developments.
- 4.2.600 Development in Accordance with Permit Approval.

4.2.100 Purpose.

The purpose of this chapter is to:

- Provide rules, regulations and standards for efficient and effective administration of Site Plan Review;
- Carry out the development pattern and plan of the City according to the General Plan policies;
- Promote the public health, safety and general welfare;
- Provide adequate light and air, prevent overcrowding of land, and facilitate adequate provision of public facilities and services;
- Encourage the conservation of energy resources; and
- Encourage efficient use of land resources, full utilization of urban services, mixed uses, transportation options, and detailed, human-scaled design. [Ord. NS-2150, 2010; Ord. NS-2016, 2006]

4.2.200 Site Plan Review.

A. Applicability. Except as exempted in subsection (B) of this section, Site Plan Review shall apply to all new uses, new buildings, new outdoor storage or sales areas and new parking lots. Site Plan Review shall also be required for expansions of existing buildings or expansions of outdoor uses that exceed 50 percent of the gross area of the existing buildings or existing outdoor use or are 5,000 square feet or more in size. (For minor additions or expansions and/or changes of use, or for single-family and duplex dwellings, see BDC 4.2.400, Minimum Development Standards.)

B. Exemptions. Single-family detached dwellings and duplexes on their own lots or parcels in the Urban Area Reserve (UAR), Suburban Low Density Residential (SR 2 1/2), Residential Urban Low Density (RL), and Residential Urban Standard Density (RS) Zoning Districts are exempt from Site Plan Review. Single-family and duplex dwellings on their own lot or parcel in Residential Urban Medium Density (RM) or Residential Urban High Density (RH) Zoning Districts are exempt from Site Plan Review if the minimum density requirements of the district are met.

C. Existing Development. Existing lawfully developed sites that do not conform to the current standards of this code are only required to meet current standards on the portions of the site affected by the proposed alteration or expansion. Any alterations to the site must meet current code standards.

D. General Submission Requirements. The applicant shall submit a Site Plan application in conformance with the provisions of BDC Chapter 4.1, Development Review and Procedures.

E. Information Requirements. An application for Site Plan Review shall include the following information, as deemed applicable by the Community Development Director based on the size, scale and complexity of the development.

1. Existing Site Conditions Map. At a minimum the existing site conditions map shall contain the following:
 - a. The applicant's entire property and the surrounding property to a distance of 150 feet from the subject property. Existing aerial photos may be used. The property boundaries, dimensions and gross area shall be identified;
 - b. Topographic contour lines shown at one-foot intervals for slopes of 10 percent or less. For slopes greater than 10 percent, contour lines shall be shown at two-foot intervals. Slopes greater than 25 percent shall be identified;
 - c. The location and width of all public and private streets, drives, sidewalks, pathways, rights-of-way, and easements on the site and adjoining the site for a distance of 150 feet. Existing aerial photos may be used;
 - d. Potential natural hazard areas, including any areas identified as subject to a 100-year flood, areas subject to high water table, and areas mapped by the City, County, or State as having a potential for geologic hazards;
 - e. Resource areas, including marsh and wetland areas, streams, surface mines, and wildlife habitat identified by the City or any natural resource regulatory agencies as requiring protection;
 - f. Features, including existing structures, pavement, large rock outcroppings, drainage ways, canals and ditches both on the site and adjoining the site for a distance of 150 feet. Existing aerial photos may be used;
 - g. The location, size and species of trees and other vegetation having a caliper (diameter) of six inches or greater at four feet above grade;
 - h. Locally or federally designated historic and cultural resources on the site and the adjacent parcels;
 - i. North arrow, scale, names and addresses of all persons listed as owners on the most recently recorded deed;
 - j. Name, address, email address and telephone number of project designer, engineer, surveyor, and/or planner, if applicable.
2. Proposed Site Plan. The site plan shall contain the following information (as applicable):
 - a. The proposed development site, including boundaries, dimensions, and gross area;
 - b. Existing site features, including trees, identified on the site analysis map, if any, which are proposed to be retained or modified by the proposed development;

- c. The location and dimensions of all existing and proposed structures, utilities, pavement and other improvements on the **site** and adjacent to the **site** for a distance of 150 feet. Setback dimensions for all existing and proposed buildings shall be provided on the **site plan**;
 - d. The location and dimensions of all **site** circulation for vehicles, pedestrians and bicycles including entrances and exits to the **site**, loading and service areas;
 - e. The location and dimensions of all vehicle parking areas (show striping for parking stalls and wheel stops (if applicable) and bicycle facilities;
 - f. The location, type and height of exterior lighting fixtures;
 - g. Locations of bus stops and other **public** or private transportation facilities.
3. **Deed Restrictions.** The applicant shall submit copies of all existing and proposed restrictions or covenants.
4. **Architectural Drawings.** The Community Development Director may request architectural drawings showing one or all of the following:
- a. **Building elevations** (as determined by the Community Development Director) with building height and width dimensions;
 - b. **Floor plans**;
 - c. **Building materials, colors and type**;
 - d. The name, address and phone number of the architect or designer.
5. **Preliminary Grading and Drainage Plan.** A preliminary grading and drainage **plan** prepared by a registered professional engineer or registered landscape architect shall be required in conformance with BC Title 16, Grading, Excavation, and Stormwater Management. The preliminary grading **plan** shall show the location and extent to which grading will take place, indicating general changes to contour lines, slope ratios, slope stabilization proposals, and location and height of retaining walls, if proposed.
6. **Surface Water Detention and Treatment Plan.** A **plan** prepared by a registered professional engineer or registered landscape architect showing all drainage retention areas, catch basins, and storm piping prepared in accordance with BDC 3.4.500, Storm Drainage Improvements, shall be required.
7. **Landscape Plan.** A landscape **plan** shall be required, and at the direction of the Community Development Director shall show the following:
- a. A planting schedule containing the location, size, and species of the existing and proposed plant materials (at time of planting);
 - b. Existing and proposed building and pavement outlines;
 - c. Irrigation **plans**, written soil specifications at time of planting, and anticipated plant installation timeline;
 - d. The location of existing and proposed terraces, retaining walls, decks, patios, shelters, and play areas;

- e. Existing and proposed abutting street right-of-way landscaping;
 - f. Other information as deemed appropriate by the Community Development Director. **An arborist's report may be required for sites with mature trees that are protected under BDC Chapter 3.2, Landscaping, Street Trees, Fences and Walls.**
8. **Sign Drawings.** Depictions of proposed signs shall be in conformance with BC Chapter 9.50, Signs. A separate sign permit will be required for all signs.
 9. **Narrative.** Letter or narrative report documenting compliance with the applicable approval criteria contained in subsection (F) of this section, **Site Plan** Approval Criteria.
 10. **Traffic Impact Study.** A Traffic Impact Analysis shall be submitted if required by BDC Chapter 4.7.
 11. **Water and Sewer Capacity Analyses.** These analyses are provided by the City upon request and payment of fee, if required.
 12. **Additional Information.** The Community Development Director may require, at the applicant's expense, studies, reports or exhibits prepared by qualified professionals to address specific **site** features or concerns.
- F. **Site Plan** Approval Criteria. Prior to issuance of building permits, the City shall approve, approve with conditions or deny the proposed **Site Plan** application based on the following criteria:
1. **The proposed land use is a permitted or conditional use in the zoning district;**
 2. The land use, building/yard setback, lot area, lot dimensions, density, lot coverage, building height and other applicable standards of the underlying zoning district are met;
 3. The applicable standards in BDC Title 3 are met;
 4. **All applicable building and fire code standards** are or will be met;
 5. **All required public facilities have adequate capacity,** as determined by the City, to serve the proposed use;
 6. The proposal complies with the standards of the zoning district in which the project is located and the standards of the zoning district that implements the General **Plan** designation of the subject property.
- G. **Final Site Plan.** A Final **Site Plan** shall be submitted to the Community Development Department. The Final **Site Plan** shall depict the proposal as approved and shall incorporate all conditions of approval contained in the decision. **No building or engineering permits will be issued until the Final Site Plan is approved.**
- H. **Expiration of Approval.** In accordance with BDC Chapter 4.1, the land use approval shall lapse, and a new application shall be required, if a building permit has not been issued within the duration of **Site Plan** approval. [Ord. NS-2177, 2012; Ord. NS-2150, 2010; Ord. NS-2122, 2009; Ord. NS-2016, 2006]

4.2.300 Design Review.

- A. **Applicability.** This section shall apply within the (CC) Convenience Commercial, (CL) Limited Commercial, (CG) General Commercial, (ME) Mixed Employment, (PF) **Public** Facilities, and (PO) Professional Office Zones and to all nonindustrial uses within the (IL) Light Industrial and (IG) General Industrial Zones and shall

apply to the following building types:

1. Multifamily housing;
2. **Public** and institutional buildings, except buildings which are not subject to **Site Plan** Review; and
3. Commercial and mixed-use buildings subject to **Site Plan** Review as follows:
 - a. All new building construction.
 - b. Any exterior modifications to existing buildings.
 - c. All new parking lots.
 - d. All storage and display areas.
 - e. All new signage.
 - f. All building expansions except as exempted below.

B. Exemptions. The following activities or structures are not subject to this section:

1. Maintenance of the exterior of an existing structure such as re-painting, re-roofing or re-siding where similar materials and colors are used or materials and colors are used that comply with the provisions of this code.
2. Interior remodeling or new tenant improvements.
3. Reconstruction of buildings subject to Design Review and considered to be nonconforming structures as determined in BDC Chapter 5.2, Nonconforming Uses and Developments.
4. Building expansions not exceeding 25 percent of the gross square footage of the original building and where the expansion does not exceed 5,000 square feet in area.
5. Parking lots.
6. Buildings that are subject to review by the Deschutes County Historical Landmarks Commission because they are listed in the Inventory of Historic **Sites** in the Bend Area General **Plan**, Exhibit "A," or are listed in the National Register of Historic Places.

C. General Submission **Requirements**. The applicant shall submit an application in conformance with the provisions of BDC Chapter 4.1, Development Review and Procedures.

D. **Design Review Information**. Information necessary to assess compliance with this section is contained within the **Site Plan** Review submittal **requirements**. When **Site Plan** Review is not required under BDC 4.2.200, an application for Design Review shall include the following information, as deemed applicable by the Community Development Director based on the size, scale and complexity of the development:

1. Pedestrian and bicycle circulation areas, including sidewalks, internal pathways, pathway connections to adjacent properties, and any bicycle lanes or trails;
2. Loading and service areas for waste disposal, loading and delivery;
3. Outdoor recreation spaces, common areas, plazas, outdoor seating, street furniture, and similar

improvements;

4. Location, type, and height of outdoor lighting;
5. Architectural Drawings. The Community Development Director may request architectural drawings showing one or all of the following:
 - a. Building elevations (as determined by the Community Development Director) with building height and width dimensions;
 - b. Floor plans;
 - c. Building materials, colors and type;
 - d. The name, address and phone number of the architect or designer.

E. Design Review Approval Criteria. The Review Authority shall approve, approve with conditions, or deny an application for Design Review based upon all relevant design standards contained in BDC Title 2.

F. Final Design Plan. A final design plan shall be submitted to the Community Development Department. The final design plan shall depict the proposal as approved and shall incorporate all conditions of approval contained in the decision. No building permits will be issued until the final design plan is approved. [Ord. NS-2150, 2010; Ord. NS-2016, 2006]

4.2.400 Minimum Development Standards.

A. Purpose. Minimum Development Standards (MDS) are intended to streamline development review for minor additions or expansions and/or changes of use, and for single-family and duplex dwellings. MDS review ensures compliance with specific appearance, transportation safety and utility standards specified in this code.

B. Applicability. This section applies to developed properties that do not require Site Plan Review as specified in BDC 4.2.200(A) where there is:

1. A building expansion of up to 50 percent of the existing building area or up to 5,000 square feet, whichever is less; or
2. An outdoor use expansion of up to 50 percent of the existing outdoor use area or up to 5,000 square feet of new outdoor use area, whichever is less; or
3. A change in use of a building or property that increases demand on public facilities and/or requires additional parking spaces; or
4. A proposed permanent or semi-permanent stand-alone small-scale retail use on an existing commercial site (e.g., produce stand); or
5. The construction of a single-family or duplex dwelling in the RL, RS or RM district that does not have existing full utility and street frontage infrastructure.

C. Exception. Where the property is currently in compliance, and will remain in compliance, with all standards specified in subsection (E) or (F) of this section, the MDS section shall not apply.

D. Review. MDS applications are reviewed under the Type I process, unless the Community Development Director finds that the proposed use should be reviewed under the Type II review process.

E. Applicable Commercial, Industrial, Multifamily and Institutional Standards. In addition to the **site** development standards contained in the applicable zoning district regarding setbacks, building height, lot coverage, etc., MDS applications under this subsection shall only be subject to the following Development Code standards:

1. Equipment, outdoor storage, manufacturing and service/delivery areas shall be screened as specified in BDC Chapter 3.2.
2. The minimum required number of parking spaces and vehicle circulation areas shall be paved and striped as specified in BDC Chapter 3.3.
3. Bicycle parking shall be installed or upgraded to **meet** the standards specified in BDC Chapter 3.3.
4. Access to the **public** right-of-way shall comply with BDC Chapter 3.1 unless exempted by BDC 5.2.100(E).
5. New paved parking areas shall **meet** the landscaping **requirements** of BDC Chapter 3.2.
6. Existing required landscaped areas impacted by new construction shall be replaced elsewhere on **site**.
7. Sidewalks shall be constructed along the frontage(s) of the **site** when an existing **public** sidewalk exists within 300 feet of the **site** along the same frontage abutting the subject property.
8. **Public** utilities shall be adequate to serve the proposal. Where existing utilities are to be replaced, or new utilities are to be installed, construction shall comply with this code and with the City's Standards and Specifications.

F. Applicable Single-Family and Duplex Dwelling Standards. In addition to the **site** development standards contained in the applicable zoning district regarding setbacks, building height, lot coverage, etc., MDS applications under this subsection shall only be subject to the following Development Code standards:

1. Where available, **public** water and sewer mains shall be extended through the length of the property frontage.
2. A full street and/or alley improvement shall be constructed along the frontages of the property when an improved street and/or alley has been built to the property line. The Community Development Director may grant a waiver of this **requirement** under BDC 3.4.150. In such cases, an agreement to not remonstrate against the formation of a local improvement district shall be recorded against the property.
 - a. For properties over one acre in size where future division of the property is allowable, street and/or alley improvements are not required if any portion of the dwelling is located more than 300 feet from an improved street or alley. In such cases, an agreement to not remonstrate against the formation of a local improvement district shall be recorded against the property.
3. Sidewalks shall be extended through the **site** when an existing **public** sidewalk is within 600 feet along the same street frontage abutting the subject property. The Community Development Director may grant a waiver of this **requirement** under BDC 3.4.150 if it is determined that there is little likelihood that a functioning network of sidewalks will be installed in the area. In such cases, an agreement to not remonstrate against the formation of a local improvement district shall be recorded against the property.
4. Duplexes shall **meet** the standards of BDC 3.6.200(H). [Ord. NS-2177, 2012; Ord. NS-2150, 2010;

Ord. NS-2016, 2006]

4.2.500 Bonding and Assurances for All Developments.

- A. Performance Bonds for Public Improvements. On all projects where public improvements are required, the City will allow concurrent construction of public and private improvements if the owner enters into a Site Plan Development Agreement stating that all private and public improvements shall be completed prior to certification of final occupancy. The City may require a bond or other adequate assurances in an amount not greater than 120 percent of the construction cost, as determined by the City, as a component of the Site Plan Development Agreement in order to guarantee the public improvements.
- B. Release of Performance Bonds. The bond or assurance shall be released when the Community Development Director finds the completed project conforms to the approved Site Plan, including all conditions of approval.
- C. Warranty Bond. The developer shall file with the City a warranty bond executed by a surety company, or other financial security acceptable to the Community Development Director, to cover any public improvements constructed as part of the approved development. The warranty period shall be one year beginning on the date of initial acceptance of the public improvements by the City. The bond shall guarantee the workmanship of the public improvements and shall be in the amount of 12 percent of the value of the improvements. The warranty bond shall be effective for no less than 18 months.
- D. Completion of Landscape Installation. Landscaping shall be installed in accordance with the land use approval prior to issuance of an occupancy permit. A security equal to 120 percent of the cost of the landscaping as determined by the Community Development Director may be accepted if winter weather prevents installation of the approved landscaping. The security shall assure installation within six months after occupancy. If the installation of the landscaping is not completed within the six-month period, the security may be used by the City to complete the installation. [Ord. NS-2150, 2010; Ord. NS-2016, 2006]

4.2.600 Development in Accordance with Permit Approval.

- A. Final Approvals. Development shall not commence until the applicant has received all of the appropriate land use and development approvals including but not limited to: Site Plan Approval, grading permits and building permits. Construction of public improvements shall not commence until the City has approved all required public improvement plans (e.g., utilities, streets, public land dedication, etc.). The City may require the applicant to enter into an agreement (e.g., for phased developments and developments with required off-site public improvements), and may require bonding or other assurances for improvements, in accordance with BDC 4.2.500, Bonding and Assurances for All Developments.
- B. Phased Development. Phasing of development may be approved with a Site Plan Review application, subject to the following standards and procedures:
1. A proposed phasing plan shall be submitted with the Site Plan Review application.
 2. The proposal shall include a time schedule for developing a site in phases, but in no case shall the total time period for all phases be greater than five years from the date of final approval without reapplying for Site Plan Review.
 3. Approval of a phased site development proposal requires satisfaction of all of the following criteria:
 - a. The public facilities required to serve each phase are constructed in conjunction with or prior to

each phase;

b. The phased development shall not result in requiring the City or other property owners to construct **public** facilities that are required as part of the approved underlying development proposal; and

c. An application for phasing may be approved after **Site Plan** Review approval as a modification to the approved **plan**, in accordance with BDC Chapter 4.1, Development Review and Procedures. [Ord. NS-2150, 2010; Ord. NS-2016, 2006]

**The Bend Code is current through Ordinance NS-2212,
passed January 8, 2014.**

Disclaimer: The City Recorder's Office has the official version of the Bend Code. Users should contact the City Recorder's Office for ordinances passed subsequent to the ordinance cited above.

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Revisions

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OSU CASCADES
CAMPUS PHASE 1 -
INTO LIVING &
LEARNING CENTER

1500 SW Chandler Avenue
Bend, OR 97702

Drawing Title

FLOOR PLAN -
DINING/INTO ACADEMIC
AND ADMINISTRATION,
LEVEL 1

Date: APRIL 11, 2014

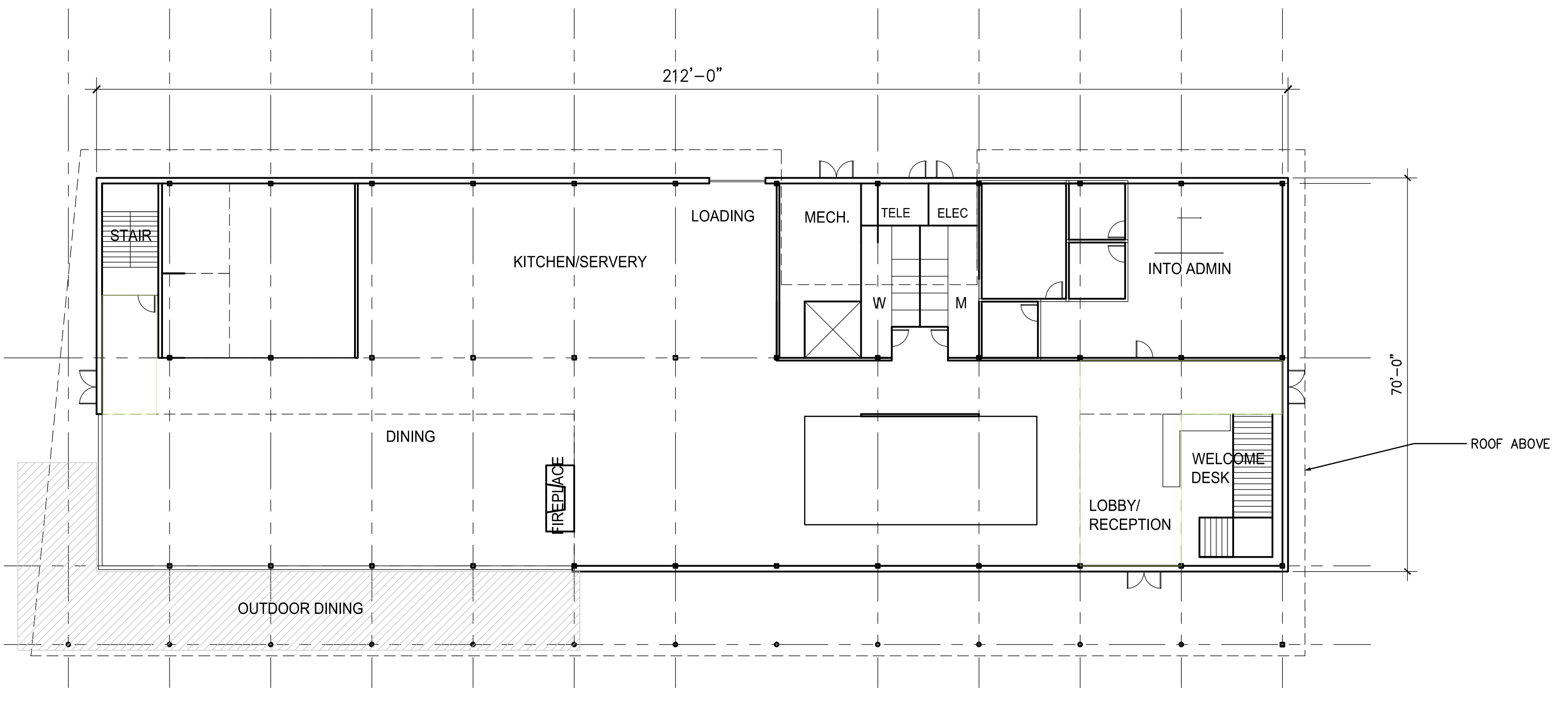
Job No: P22377.02

Drawn By:

Checked By:

Drawing No.

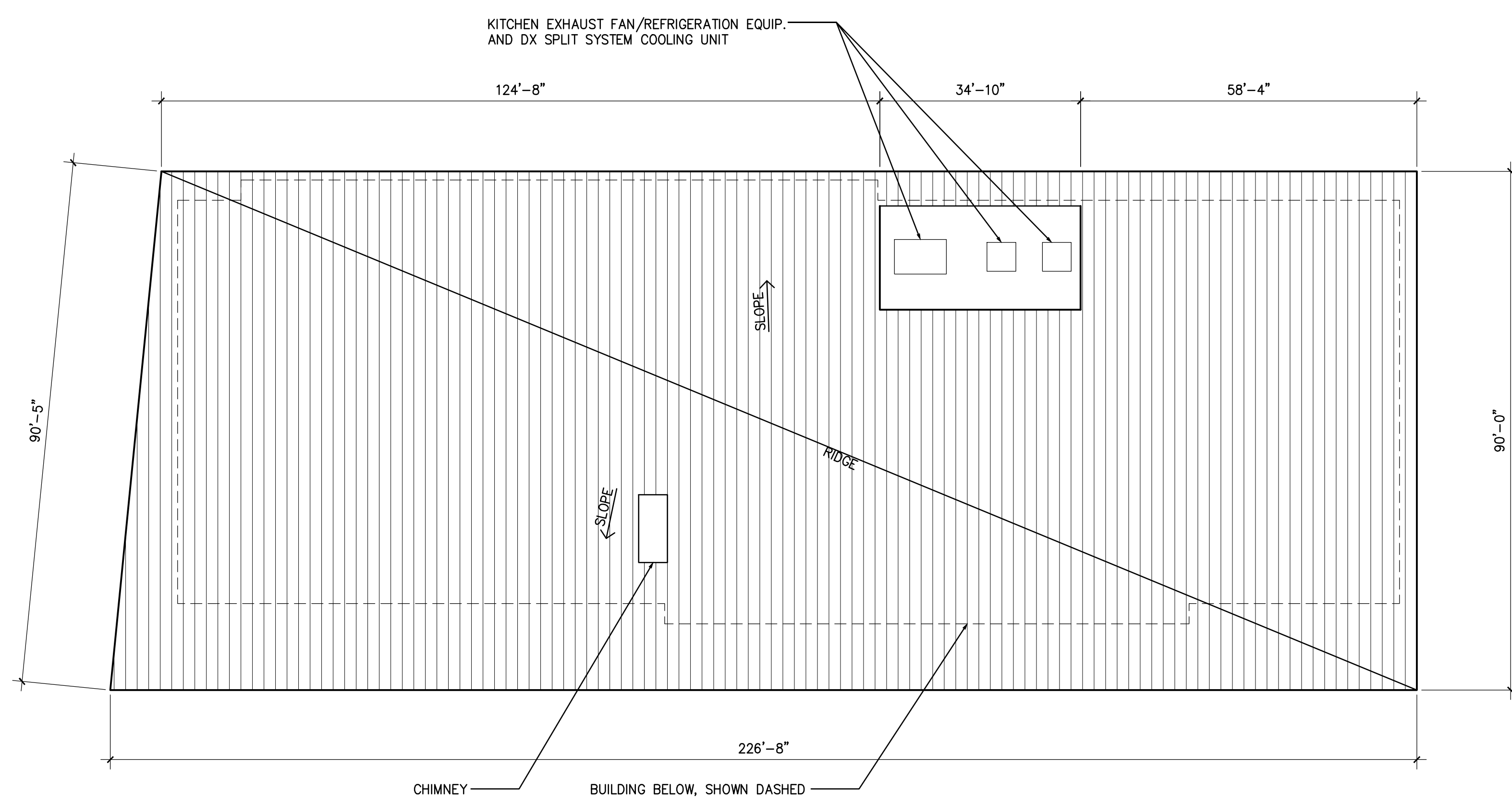
A3.01
SITE PLAN REVIEW
SUBMITTAL



1 FLOOR PLAN - LEVEL 1, DINING/INTO ACADEMIC AND ADMINISTRATION
A3.01 SCALE: 1/16" = 1'-0"

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1 ROOF PLAN - DINING/INTO ACADEMIC AND ADMINISTRATION
 A3.03 SCALE: 1/16" = 1'-0"

GENERAL NOTES:
 HRV MECHANICAL EQUIPMENT TO BE LOCATED
 AT ATTIC SPACE.

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Revisions

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**OSU CASCADES
 CAMPUS PHASE 1 -
 INTO LIVING &
 LEARNING CENTER**

 1500 SW Chandler Avenue
 Bend, OR 97702

 Drawing Title

**ROOF PLAN -
 DINING/INTO ACADEMIC
 AND ADMINISTRATION**

Date: APRIL 11, 2014
 Job No: P22377.02
 Drawn By:
 Checked By:

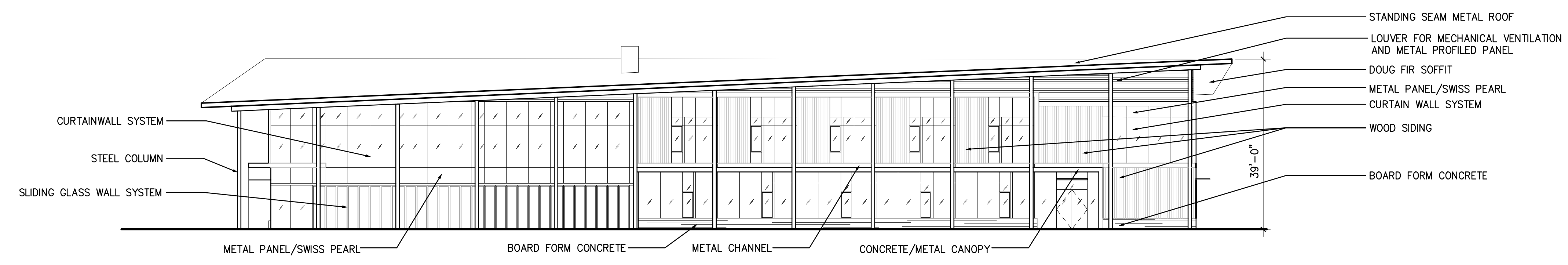
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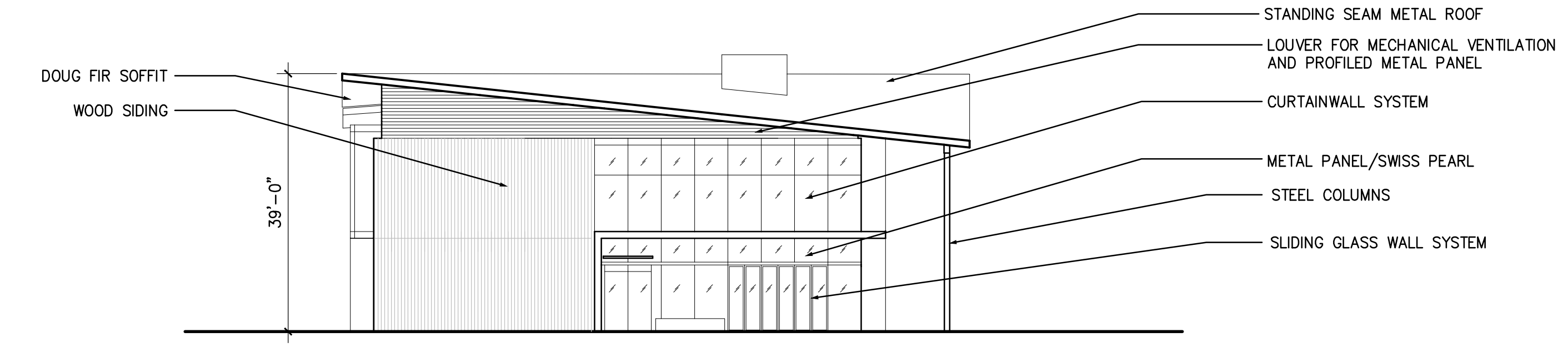
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1 ELEVATION - DINING/INTO ACADEMIC, SOUTH
A3.04 SCALE: 1/16" = 1'-0"



2 ELEVATION - DINING/INTO ACADEMIC, WEST
A3.04 SCALE: 1/16" = 1'-0"

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OSU CASCADES
CAMPUS PHASE 1 -
INTO LIVING &
LEARNING CENTER

1500 SW Chandler Avenue
Bend, OR 97702

Drawing Title

ELEVATIONS-
DINING/INTO ACADEMIC
AND ADMINISTRATION

Date: APRIL 11, 2014
Job No: P22377.02
Drawn By:
Checked By:

Drawing No.

A3.04
SITE PLAN REVIEW
SUBMITTAL

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Revisions

**OSU CASCADES
CAMPUS PHASE 1 -
INTO LIVING &
LEARNING CENTER**

1500 SW Chandler Avenue
Bend, OR 97702

Drawing Title

**FLOOR PLAN -
INTO RESIDENCE HALL,
LEVEL 1**

Date: APRIL 11, 2014

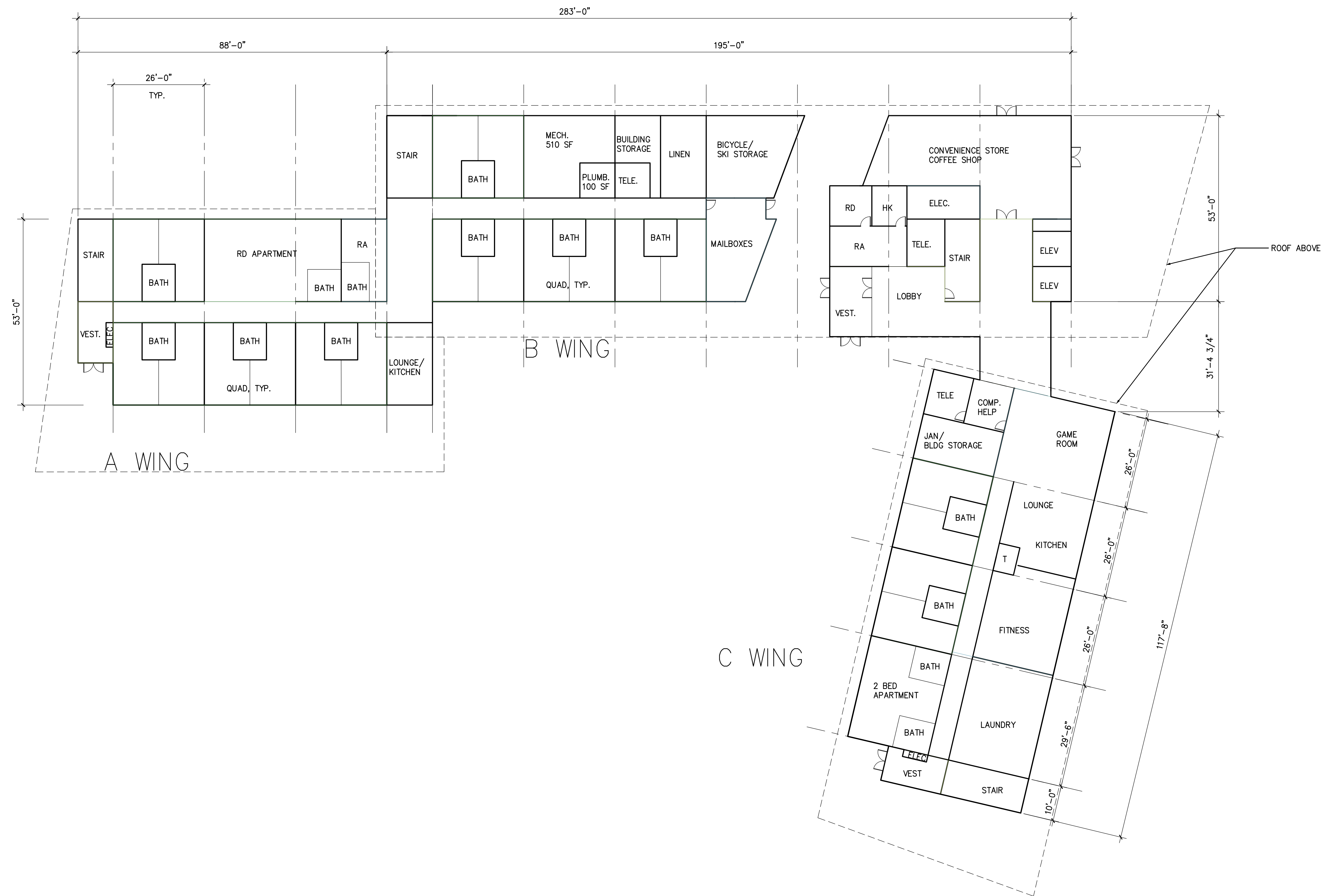
Job No: P22377.02

Drawn By:

Checked By:

Drawing No.

**A4.01
SITE PLAN REVIEW
SUBMITTAL**



1 FLOOR PLAN - LEVEL 1, INTO RESIDENCE HALL
A4.01 SCALE: 1/16" = 1'-0"

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Revisions

**OSU CASCADES
CAMPUS PHASE 1 -
INTO LIVING &
LEARNING CENTER**

1500 SW Chandler Avenue
Bend, OR 97702

Drawing Title

**FLOOR PLAN -
INTO RESIDENCE HALL,
LEVEL 2**

Date: APRIL 11, 2014

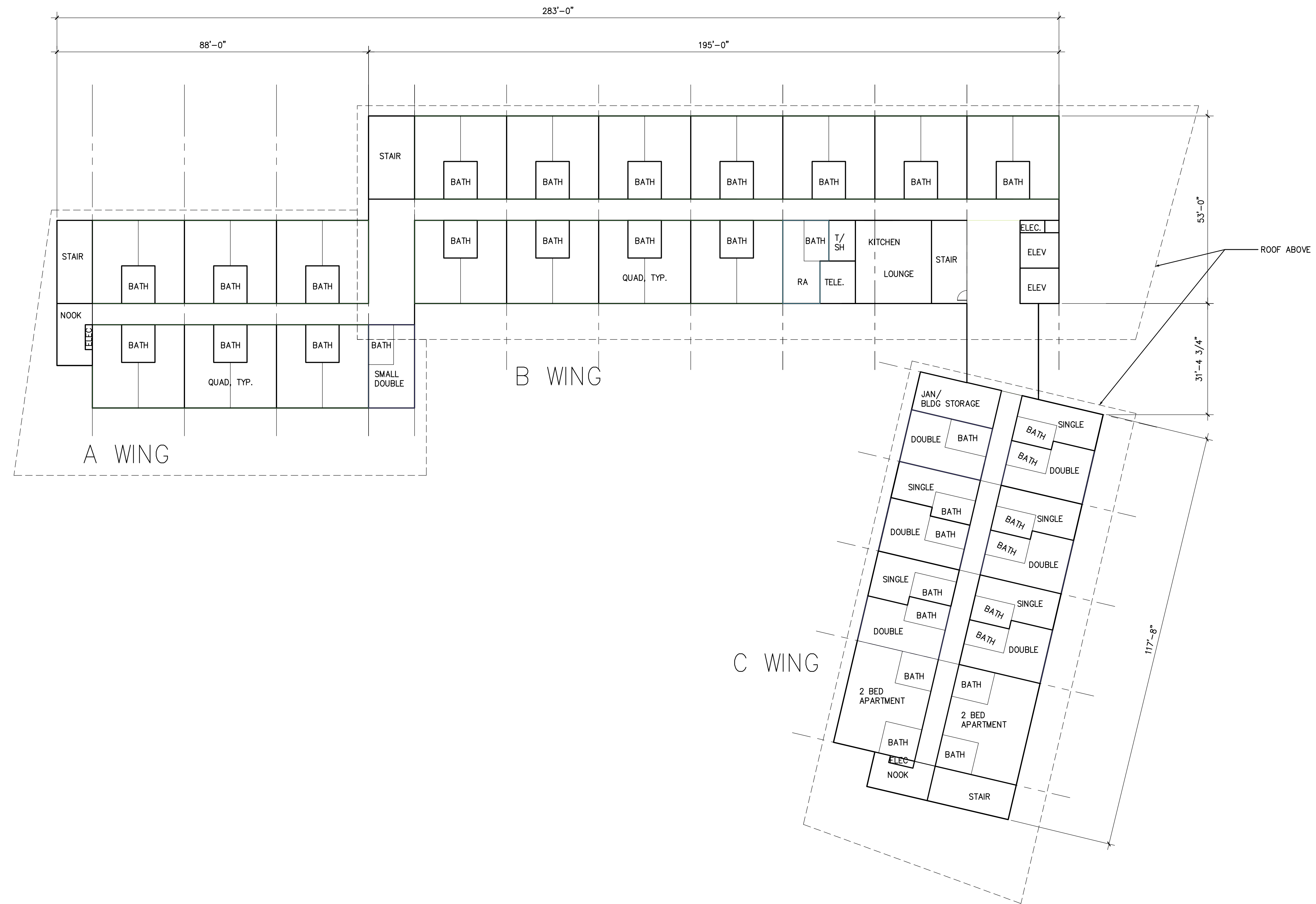
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Drawing No.

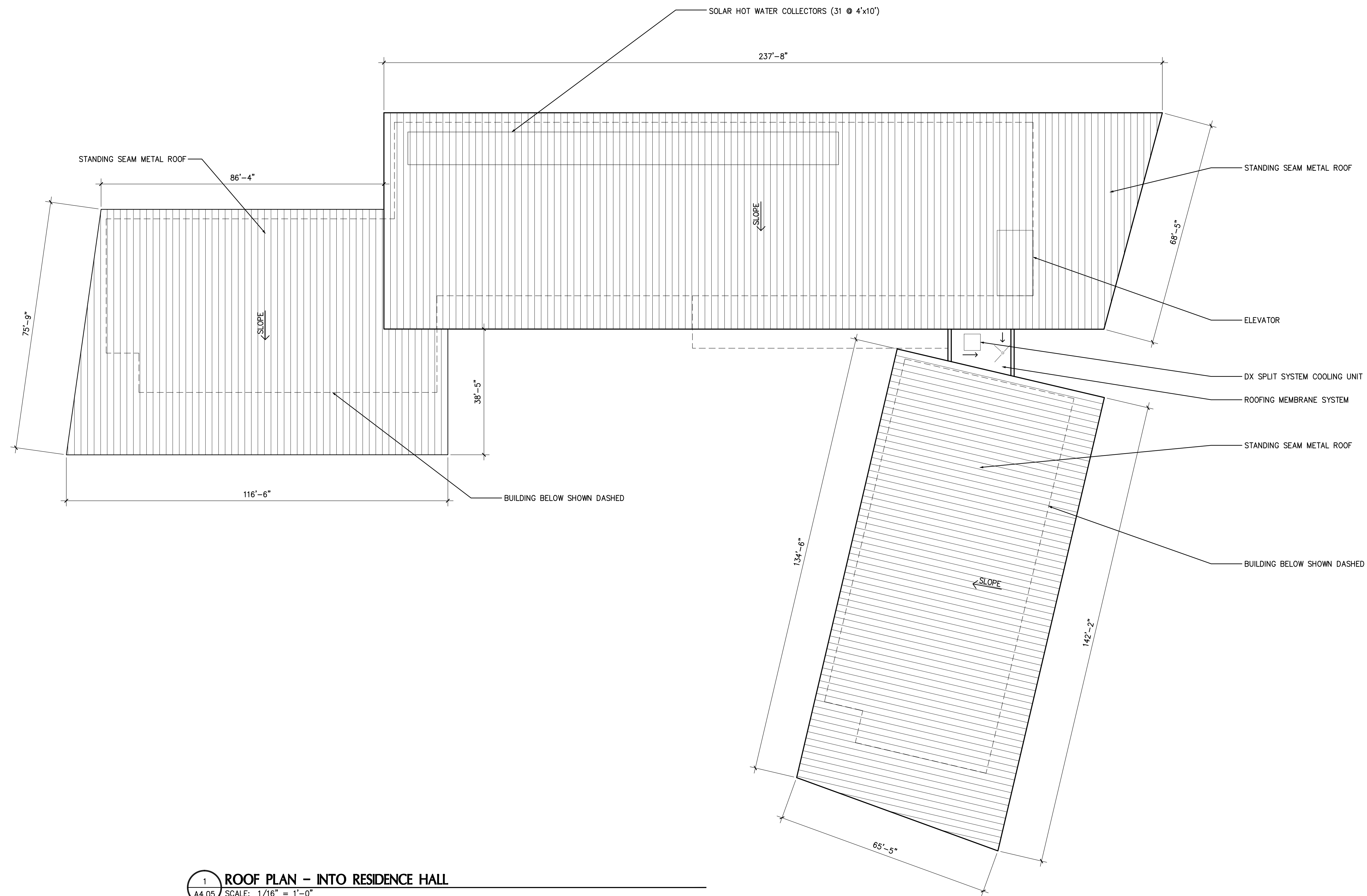
A4.02
SITE PLAN REVIEW
SUBMITTAL



1 FLOOR PLAN - LEVEL 2, INTO RESIDENCE HALL
A4.02 SCALE: 1/16" = 1'-0"

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GENERAL NOTES:
HRV MECHANICAL EQUIPMENT TO BE LOCATED
AT ATTIC SPACE.



1 ROOF PLAN - INTO RESIDENCE HALL
A4.05 SCALE: 1/16" = 1'-0"

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Revisions

OSU CASCADES
CAMPUS PHASE 1 -
INTO LIVING &
LEARNING CENTER

1500 SW Chandler Avenue
Bend, OR 97702

Drawing Title

ROOF PLAN -
INTO RESIDENCE HALL

Date: APRIL 11, 2014

Job No: P22377.02

Drawn By:

Checked By:

Drawing No.

Consultants

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Portland, OR 97204

M/E/P ENGINEER
INTERFACE ENGINEERS
708 SW 3rd Ave, #400
Portland, OR 97204

LOCAL ARCHITECT
STEEL ASSOCIATES ARCHITECTS LLC
760 NW York Drive, Suite 200
Bend, OR 97701

Revisions

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**OSU CASCADES
CAMPUS PHASE 1 -
INTO LIVING &
LEARNING CENTER**

1500 SW Chandler Avenue
Bend, OR 97702

Drawing Title

**ELEVATIONS-
INTO RESIDENCE HALL**

Date: APRIL 11, 2014

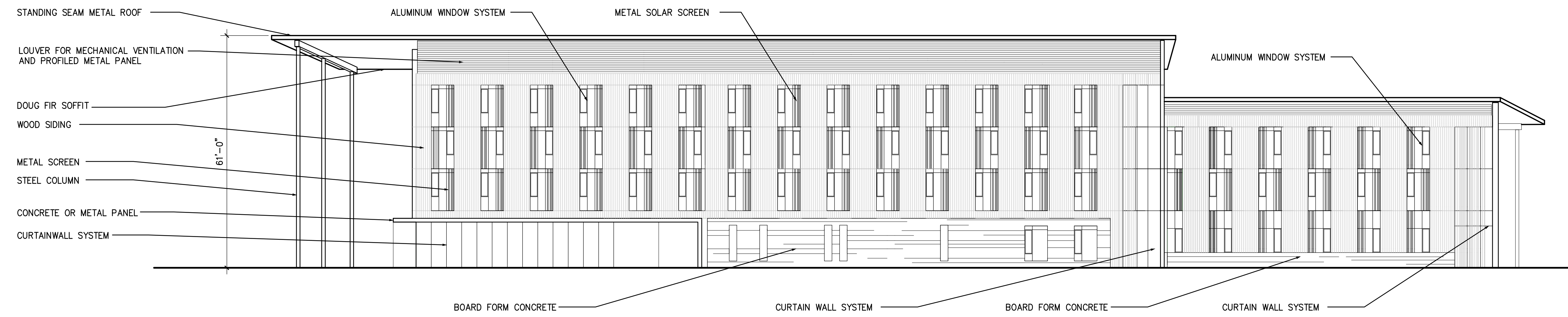
Job No: P2377.02

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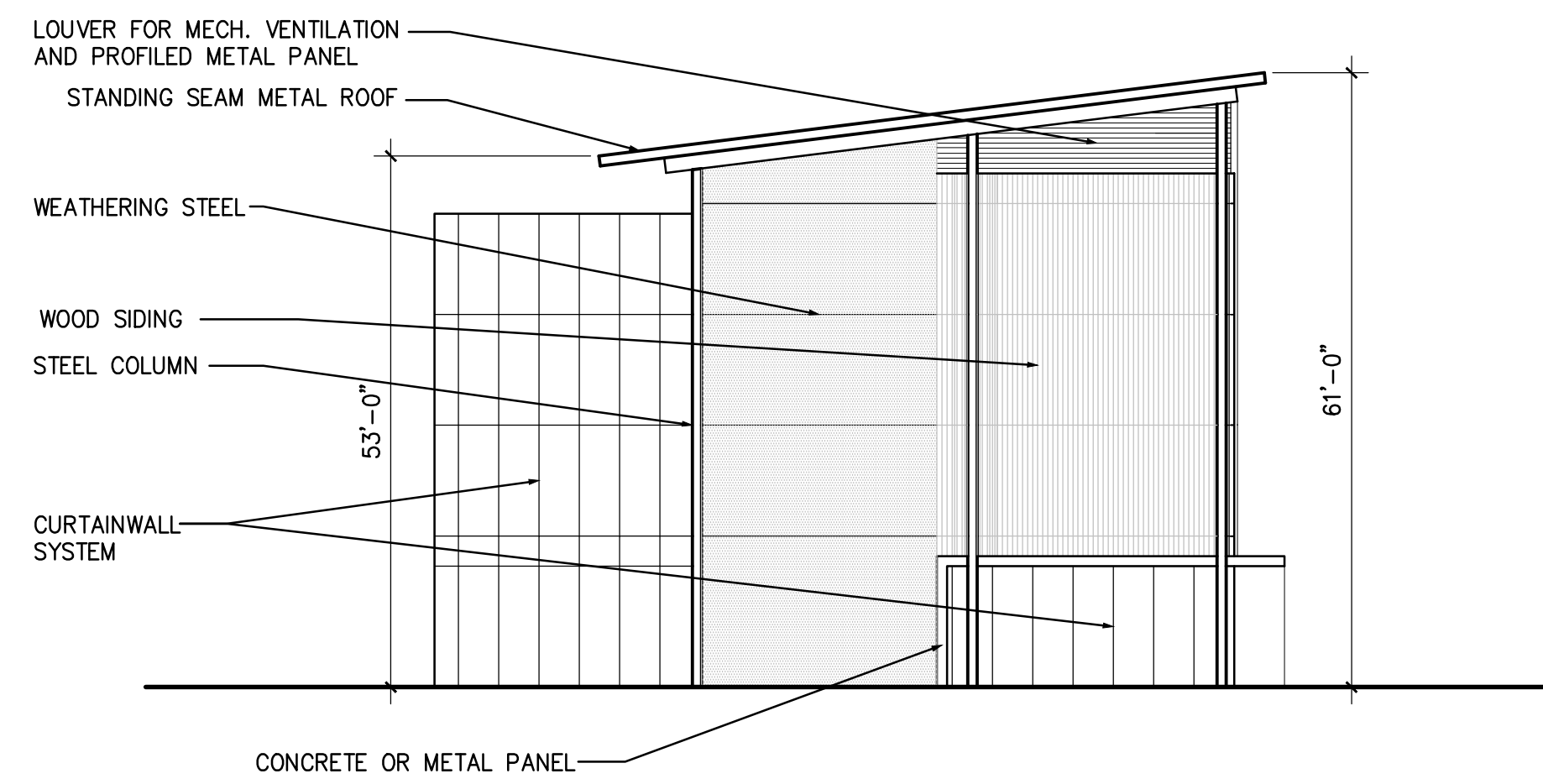
Checked By:

Drawing No.

**A4.07
SITE PLAN REVIEW
SUBMITTAL**



1 ELEVATION - INTO RESIDENCE HALL, A AND B WING, NORTH
A4.07 SCALE: 1/16" = 1'-0"



2 ELEVATION - INTO RESIDENCE HALL, A AND B WING, EAST
A4.07 SCALE: 1/16" = 1'-0"

Consultants

STRUCTURAL ENGINEER
KPFF CONSULTING ENGINEERS
111 SW 5th Ave., Ste 2500
Portland, OR 97204

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INTERFACE ENGINEERS
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LOCAL ARCHITECT
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Revisions

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**OSU CASCADES
CAMPUS PHASE 1 -
INTO LIVING &
LEARNING CENTER**

1500 SW Chandler Avenue
Bend, OR 97702

Drawing Title

**ELEVATIONS-
INTO RESIDENCE HALL**

Date: APRIL 11, 2014

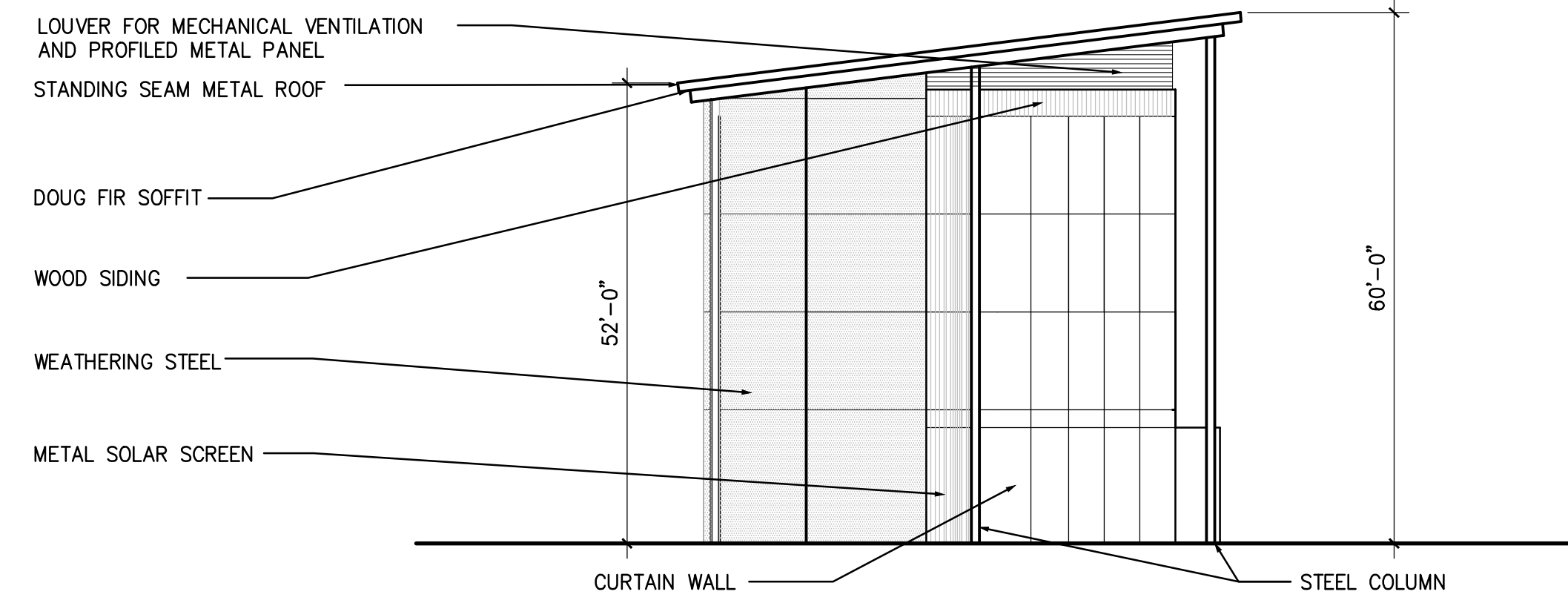
Job No: P22377.02

Drawn By:

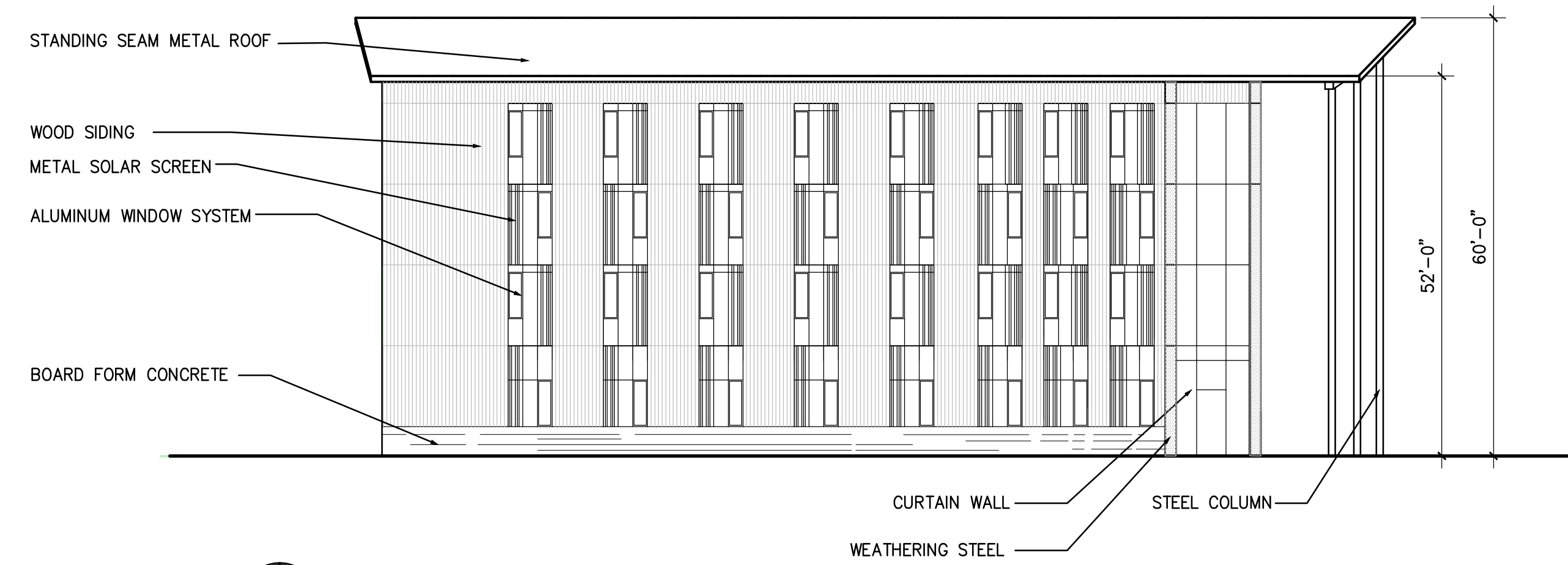
Checked By:

Drawing No.

**A4.08
SITE PLAN REVIEW
SUBMITTAL**



1 ELEVATION - INTO RESIDENCE HALL, C WING, SOUTH
A4.08 SCALE: 1/16" = 1'-0"



2 ELEVATION - INTO RESIDENCE HALL, C WING, WEST
A4.08 SCALE: 1/16" = 1'-0"

Consultants

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Revisions

| No. | Description |
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OSU CASCADES
CAMPUS PHASE 1 -
INTO LIVING &
LEARNING CENTER

1500 SW Chandler Avenue
Bend, OR 97702

Drawing Title

ELEVATIONS-
INTO RESIDENCE HALL

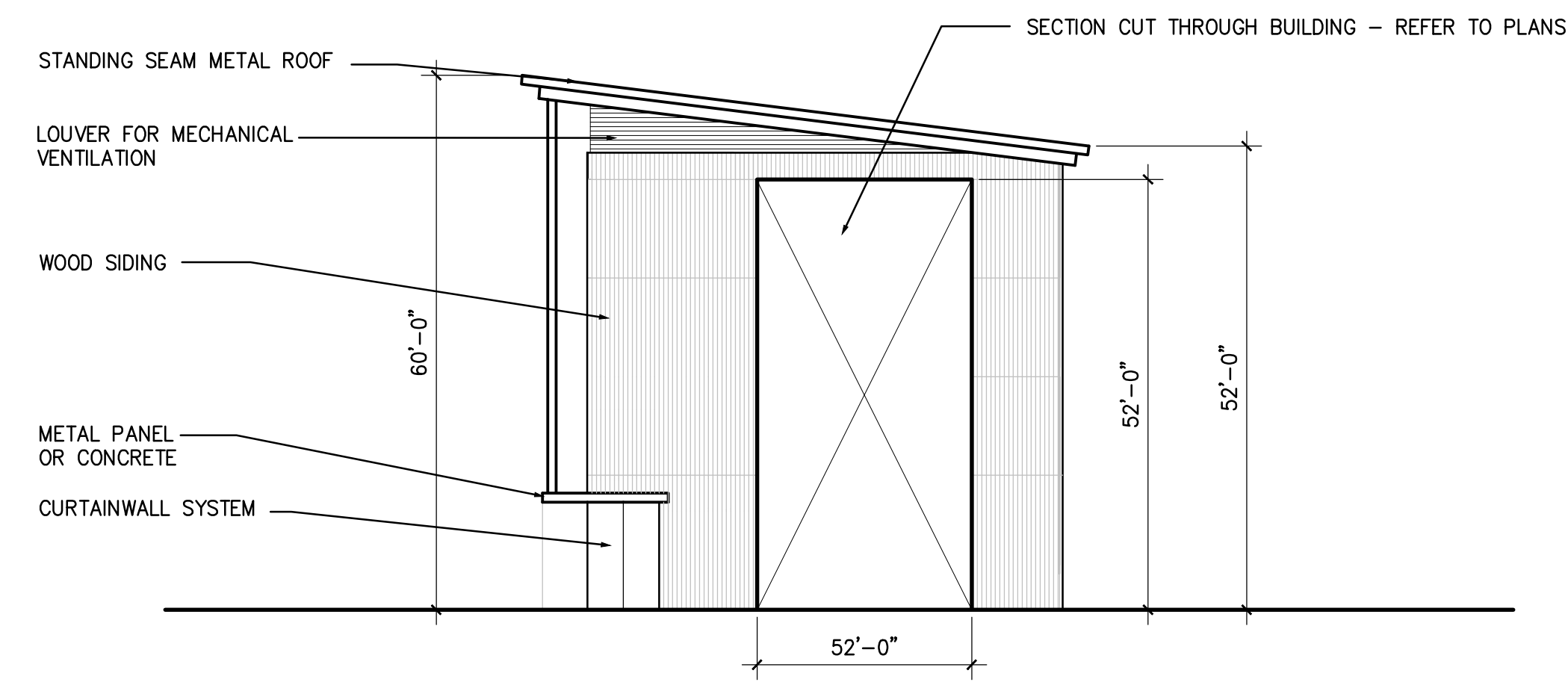
Date: APRIL 11, 2014

Job No: P22377.02

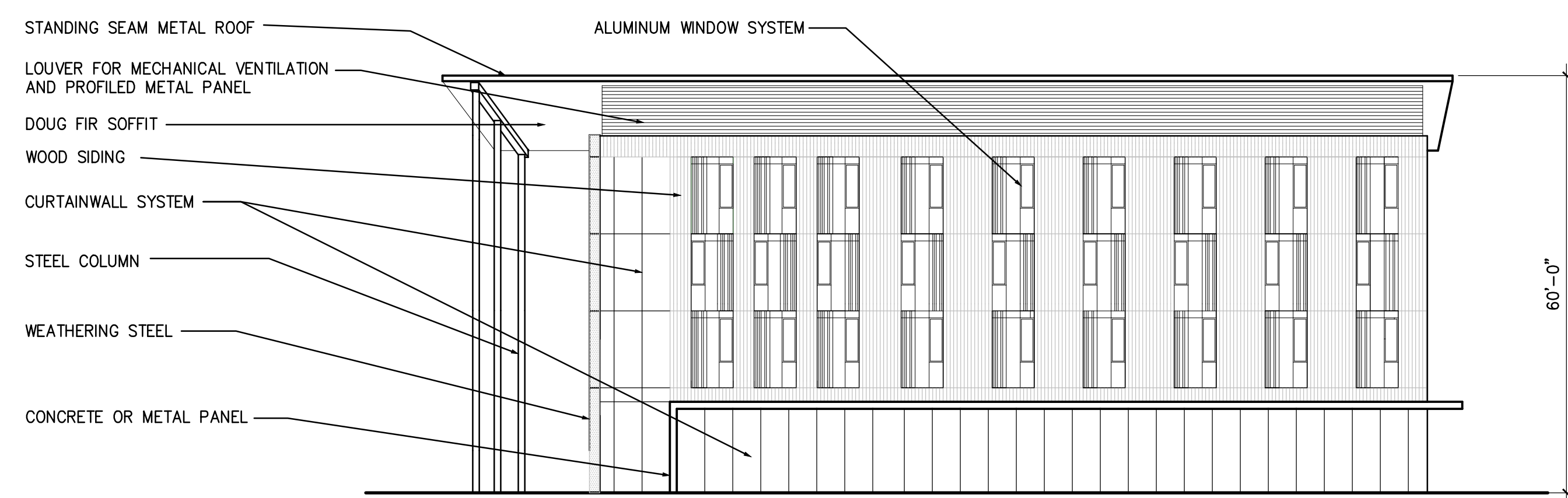
Drawn By:

Checked By:

Drawing No.



1 ELEVATION - INTO RESIDENCE HALL, C WING, NORTH
A4.09 SCALE: 1/16" = 1'-0"



2 ELEVATION - INTO RESIDENCE HALL, C WING, EAST
A4.09 SCALE: 1/16" = 1'-0"

