

June 17, 2026

City of Boardman
200 City Center Circle
Boardman, OR 97818

**RE: SUPPLEMENTAL NARRATIVE REGARDING CLEAR AND OBJECTIVE STANDARDS FOR HOUSING
(CITY PERMIT NO. RVW26-000024)**

This narrative and accompanying materials supplement the above-referenced application. Oregon Revised Statutes (ORS) 197A.400(1) states that a local government may apply only clear and objective standards, conditions, and procedures regulating the provision of housing, and that such standards, conditions, and procedures cannot have the effect, either in themselves or cumulatively, of discouraging housing through unreasonable cost or delay.

After receiving public comments related to the submitted Transportation Impact Study (TIS), the applicant submitted an inquiry to the Housing Accountability and Production Office (HAPO). HAPO is a new initiative established by Senate Bill 1537 in 2024 tasking the Department of Land Conservation and Development (DLCD) and the Department of Consumer and Business Services' (DCBS) Building Codes Division (BCD) to address Oregon's diverse housing needs and ensure compliance with state housing laws. HAPO's formal response to the inquiry, dated June 10, 2026 is attached.

CITY OF BOARDMAN DEVELOPMENT CODE

Chapter 3 Design Standards

Chapter 3.1 Access and Circulation

3.1.200 Vehicular Access and Circulation

(*)**

- D. Traffic Study Requirements.** The City or other agency with access jurisdiction may require a traffic study prepared by a qualified professional to determine access, circulation and other transportation requirements. (See also, Section 3.4.100 - Transportation Standards, and Chapter 4.10.)

Response: The requirements in Section 3.1.200(D) are neither clear nor objective. Therefore, they conflict with ORS 197.307(4), rendering them inapplicable as decision criteria for this application. Terms and phrases such as "may require" or "to determine" require subjective analysis and weighing of multiple factors if they are to be applied as submittal requirements or decision criteria.

Nonetheless, the Transportation Impact Study (in Exhibit D) has been prepared by a qualified professional traffic engineer and addresses the applicable requirements in Section 3.4.100 and Chapter 4.10. As applicable, the requirement is met.

- E. Conditions of Approval.** The City or other agency with access permit jurisdiction may require the closing or consolidation of existing curb cuts or other vehicle access points, recording of reciprocal access easements (i.e., for shared driveways), development of a frontage street, installation of traffic control devices, and/or other mitigation as a condition of granting an access permit, to ensure the safe and efficient operation of the street and highway system. To obtain access to and from off street parking areas shall not require the driver to back-out onto a public street (except for single family, two-family, and three-family dwellings).

Response: The requirements in Section 3.1.200(E) are neither clear nor objective. Therefore, they conflict with ORS 197.307(4), rendering them inapplicable as decision criteria for this application. Terms and phrases such as “may require” and “to ensure the safe and efficient operation” require subjective analysis and weighing of multiple factors if they are to be applied as submittal requirements or decision criteria.

Nonetheless, the Existing Conditions Plan (in Exhibit B) shows the property is undeveloped. Therefore, there is no opportunity or need to close or consolidate existing curb cuts or access points. The Transportation Impact Study (in Exhibit D) and the Preliminary Civil Plans (in Exhibit B) detail applicable frontage improvements, traffic controls, or other mitigations where applicable. Additionally, the Preliminary Civil Plans (in Exhibit B) shows two access points planned to serve the project, avoiding the need for vehicles to back out onto a public street. Conditions of approval should be consistent with the City’s Code, ORS 197A.400(1), and related findings of the Transportation Impact Study (in Exhibit D).

Chapter 4 Applications and Review Procedures

Chapter 4.10 Traffic Impact Study

4.10.200 When Required

- A. When a Traffic Impact Study is Required. A Traffic Impact Study shall be prepared and submitted to the City with the application, for review by the City and the Oregon Department of Transportation, when the following apply:
 - 1. The development application involves one or more of the following actions:
 - a. A change in zoning or a plan amendment designation; or
 - b. Any proposed development or land use action that ODOT states may have operational or safety concerns along a state highway; and

Response: The requirements in Section 4.10.200(A)(1)(b) are neither clear nor objective. Therefore, they conflict with ORS 197.307(4), rendering them inapplicable as decision criteria for this application. Terms and phrases such as “that ODOT states may have operational or safety concerns” require subjective analysis and weighing of multiple factors if they are to be applied as submittal requirements or decision criteria. The project does not include a change in zoning or a plan amendment. Therefore (a) does not apply.

Upon receipt of ODOT comments, the Applicant filed an inquiry with HAPO regarding State housing laws and specifically requested that HAPO address whether the local code provisions cited by ODOT in its comment letter as the basis for its authority met the requirements of ORS 197A.400(1). HAPO’s response is included as an attachment to this letter and is quoted below in relevant part:

BDC 4.10.200.A governs when a Traffic Impact Study is required. ODOT’s 5/21/2026 letter cites BDC 4.10.200.A.1.b as a criterion met by this development that resulted in a requirement for a TIS (“Any proposed development or land use action that ODOT states may have operational or safety concerns along a state highway;”). This is a procedural requirement that is not clear and objective, and a housing development must have the ability to proceed under clear and objective procedures. For the TIS requirement to be allowable under ORS 197A.400, the city would need to find that the applicant elected review under

discretionary procedures per ORS 197A.400(3), or that the TIS was required under applicability criteria applied in a clear and objective manner.

The Applicant was not required to provide a TIS and the Applicant did not elect review under discretionary procedures. While the Applicant has continually worked with the City and other stakeholders in good faith, including providing a TIS at the request of the City, additional revisions to the TIS cannot be required and the TIS cannot be the basis for conditions of approval requiring additional mitigation.

4.10.400 Approval Criteria

A. Criteria. When a Traffic Impact Study is required, approval of the development proposal requires satisfaction of the following criteria:

Response:

Although a Traffic Impact Study (TIS) was provided for this project, HAPO identified the following criteria as not being clear and objective. The attached letter from HAPO states the following:

The approval criteria for a TIS are established in BDC 4.10.400.A, and approval of the development proposal requires satisfaction of the criteria within that section. The listed criteria are connected with “and”, indicating that all criteria must be met. These include multiple discretionary criteria, such as *“mitigation measures satisfactory to the City Engineer, and ODOT”*, *“Have the least negative impact on all applicable transportation facilities;”* and *“Make the most efficient use of land and public facilities as practicable”*. These are approval standards that are not clear and objective, and a housing development must have the ability to proceed under clear and objective standards. For these standards to be allowable under ORS 197A.400, the city would need to find that the applicant elected review under discretionary standards per ORS 197A.400(3), or that the standards were applied in a clear and objective manner. Conditions of approval based on TIS standards would only be permissible if it is shown that the underlying standards are allowable.

The majority of the criteria listed below are not clear and objective, and conditions of approval cannot be based on criteria that are not clear and objective.

1. The Traffic Impact Study was prepared by a professional engineer in accordance with OAR 734-051-180; and

Response:

The Traffic Impact Study (Exhibit D) was prepared by a qualified professional traffic engineer.

2. If the proposed development shall cause one or more of the effects in Section 4.10.200A.5. above, or other traffic hazard or negative impact to a transportation facility, the Traffic Impact Study includes mitigation measures satisfactory to the City Engineer, and ODOT when applicable; and

Response:

The requirements referenced above are neither clear nor objective. Therefore, they conflict with ORS 197.307(4), rendering them inapplicable as decision criteria for this application. Terms and phrases such as “traffic hazard,” “negative impact,” and “satisfactory” require subjective analysis and weighing of multiple factors if they are to be applied as decision criteria or as the basis for conditions of approval. Furthermore, Section 4.10.200(A)(5) does not exist in the Boardman Development Code and cannot be applied as decision criteria or the basis for a condition of approval.

3. The proposed site design and traffic and circulation design and facilities, for all transportation modes, including any mitigation measures, are designed to:
 - a. Have the least negative impact on all applicable transportation facilities; and

Response: The requirements referenced above are neither clear nor objective. Therefore, they conflict with ORS 197.307(4), rendering them inapplicable as decision criteria for this application. Terms and phrases such as “site design and traffic and circulation design,” “the least negative impact,” and “least negative impact” require subjective analysis and weighing of multiple factors if they are to be applied as decision criteria or as the basis for conditions of approval.

- b. Accommodate and encourage non-motor vehicular modes of transportation to the extent practicable; and

Response: The requirements in referenced above are neither clear nor objective. Therefore, they conflict with ORS 197.307(4), rendering them inapplicable as decision criteria for this application. Terms and phrases such as “accommodate and encourage,” and “to the extent practicable” require subjective analysis and weighing of multiple factors if they are to be applied as decision criteria or as the basis for conditions of approval.

- c. Make the most efficient use of land and public facilities as practicable; and

Response: The requirements in referenced above are neither clear nor objective. Therefore, they conflict with ORS 197.307(4), rendering them inapplicable as decision criteria for this application. Terms and phrases such as “make the most efficient use,” and “as practicable” require subjective analysis and weighing of multiple factors if they are to be applied as decision criteria or as the basis for conditions of approval.

- d. Provide the most direct, safe and convenient routes practicable between on-site destinations, and between on-site and off-site destinations; and

Response: The requirements in referenced above are neither clear nor objective. Therefore, they conflict with ORS 197.307(4), rendering them inapplicable as decision criteria for this application. Terms and phrases such as “the most direct, safe, and convenient,” and “practicable” require subjective analysis and weighing of multiple factors if they are to be applied as decision criteria or as the basis for conditions of approval.

- e. Otherwise comply with applicable requirements of the City of Boardman Development Code, including Chapters 3.1 Access and Circulation, 3.2. Landscaping, 3.3 Vehicle and Bicycle Parking, 3.4 Public Facilities Standards, 3.5 Stormwater Management, and 3.8 Loading Standards.

Response: The requirements in referenced above are neither clear nor objective. Therefore, they conflict with ORS 197.307(4), rendering them inapplicable as decision criteria for this application. Terms and phrases such as “otherwise comply” and “applicable requirements” require subjective analysis and weighing of multiple factors if they are to be applied as decision criteria or as the basis for conditions of approval.

Sincerely,

AKS ENGINEERING & FORESTRY, LLC

A handwritten signature in blue ink, appearing to read 'Joey Shearer', is positioned above the printed name.

Joey Shearer, AICP - Principal

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541.317.8429 | shearerj@aks-eng.com

Attachments:

HAPO Inquiry Response (dated June 10, 2026)