



Oregon  
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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## NOTICE OF ADOPTED AMENDMENT

01/27/2014

TO: Subscribers to Notice of Adopted Plan  
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: City of Eugene Plan Amendment  
DLCD File Number 014-13

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office. This amendment was submitted without a signed ordinance.

### Appeal Procedures\*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Thursday, February 13, 2014

This amendment was submitted to DLCD for review prior to adoption with less than the required 35-day notice. Pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

**\*NOTE:** The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. **NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.**

Cc: Becky Taylor, City of Eugene  
Gordon Howard, DLCD Urban Planning Specialist  
Ed Moore, DLCD Regional Representative

<paa> YA



# NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

**FOR DLCD USE**

File No.: 014-13 (20077)  
[17736]  
Received: 1/23/2014

Local governments are required to send notice of an adopted change to a comprehensive plan or land use regulation **no more than 20 days after the adoption**. (See [OAR 660-018-0040](#)). The rules require that the notice include a completed copy of this form. **This notice form is not for submittal of a completed periodic review task or a plan amendment reviewed in the manner of periodic review.** Use [Form 4](#) for an adopted urban growth boundary including over 50 acres by a city with a population greater than 2,500 within the UGB or an urban growth boundary amendment over 100 acres adopted by a metropolitan service district. Use [Form 5](#) for an adopted urban reserve designation, or amendment to add over 50 acres, by a city with a population greater than 2,500 within the UGB. Use [Form 6](#) with submittal of an adopted periodic review task.

Jurisdiction: City of Eugene

Local file no.: **Z 13-11**

Date of adoption: January 3, 2014

Date sent: 1/15/2014

Was Notice of a Proposed Change (Form 1) submitted to DLCD?

Yes: Date (use the date of last revision if a revised Form 1 was submitted): 11/7/13

No

Is the adopted change different from what was described in the Notice of Proposed Change? Yes No ☒ X

If yes, describe how the adoption differs from the proposal:

Local contact (name and title): Becky Taylor

Phone: 541-682-5437

E-mail: becky.g.taylor@ci.eugene.or.us

Street address: 99 West 10<sup>th</sup> Avenue

City: Eugene

Zip: 97401

**PLEASE COMPLETE ALL OF THE FOLLOWING SECTIONS THAT APPLY****For a change to comprehensive plan text:**

Identify the sections of the plan that were added or amended and which statewide planning goals those sections implement, if any:

**For a change to a comprehensive plan map:**

Identify the former and new map designations and the area affected:

Change from	to	acres.	A goal exception was required for this
change.			
Change from	to	acres.	A goal exception was required for this
change.			
Change from	to	acres.	A goal exception was required for this
change.			
Change from	to	acres.	A goal exception was required for this change.

Location of affected property (T, R, Sec., TL and address):

The subject property is entirely within an urban growth boundary

The subject property is partially within an urban growth boundary

**If the comprehensive plan map change is a UGB amendment** including less than 50 acres and/or by a city with a population less than 2,500 in the urban area, indicate the number of acres of the former rural plan designation, by type, included in the boundary.

Exclusive Farm Use – Acres:

Non-resource – Acres:

Forest – Acres:

Marginal Lands – Acres:

Rural Residential – Acres:

Natural Resource/Coastal/Open Space – Acres:

Rural Commercial or Industrial – Acres:

Other: – Acres:

**If the comprehensive plan map change is an urban reserve** amendment including less than 50 acres, or establishment or amendment of an urban reserve by a city with a population less than 2,500 in the urban area, indicate the number of acres, by plan designation, included in the boundary.

Exclusive Farm Use – Acres:

Non-resource – Acres:

Forest – Acres:

Marginal Lands – Acres:

Rural Residential – Acres:

Natural Resource/Coastal/Open Space – Acres:

Rural Commercial or Industrial – Acres:

Other: – Acres:

**For a change to the text of an ordinance or code:**

Identify the sections of the ordinance or code that were added or amended by title and number:

**For a change to a zoning map:**

Identify the former and new base zone designations and the area affected:

Change from AG to R-1 Acres: 3.43

Change from to Acres:

Change from to Acres:

Change from to Acres:

Identify additions to or removal from an overlay zone designation and the area affected:

Overlay zone designation: Acres added: Acres removed:

Location of affected property (T, R, Sec., TL and address): 17-04-11-11/04100, 17-04-11-12/05600 - Gardenia Way

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List affected state or federal agencies, local governments and special districts:

City of Eugene

Identify supplemental information that is included because it may be useful to inform DLCD or members of the public of the effect of the actual change that has been submitted with this Notice of Adopted Change, if any. If the submittal, including supplementary materials, exceeds 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

# Future B Homes (Z 13-11)

17-04-11-11/04100

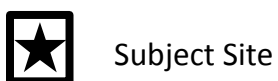
17-04-11-12/05600

Change in zoning from AG Agricultural to R-1 Low Density Residential



## Zoning

- AG Agricultural
- R-1 Low Density Residential



Subject Site



**DECISION OF THE HEARINGS OFFICIAL  
FOR THE CITY OF EUGENE, OREGON**

**ZONE CHANGE REQUEST**

**INTRODUCTION**

**Application File Name (Number):**

Future B Homes (Z 13-11)

**Applicant's Request:**

Zone change from AG Agricultural to R-1 Low-Density Residential.

**Subject Property/Location:**

Tax Lot 5600 of Assessor's Map 17-04-11-12 and Tax Lot 4100 of Assessor's Map 17-04-11-11 located at the south end of Gardenia Way between Wedgewood Drive and River Loop 1, east of River Road.

**Relevant Dates:**

Zone change application submitted on September 30, 2013; application deemed complete on October 29, 2013; public hearing held on December 4, 2013.

**Applicant's Representative:**

Michael Butler of Future B Homes represented the applicant.

**Lead City Staff:**

Becky Taylor, Associate Planner, Eugene Planning Division.

**Summary of the Public Hearing**

The Hearings Official held a public hearing on this application on December 04, 2013. The Hearings Official stated he had no conflicts of interests and had no *ex parte* communications to disclose. No person objected to the Hearings Official conducting the hearing. Becky Taylor (Taylor), Associate Planner, and Gabe Flock, Senior Planner, were present for the hearings. Taylor presented the staff report at the public hearing, recommending approval of the zone change request.

Michael Butler of Future B Homes stated that he agreed with the staff report. Two opponents testified against the application regarding traffic and stormwater concerns. City staff provided a response to testimony regarding the provision of key urban facilities and services. The applicant provided rebuttal regarding collection of stormwater. At the conclusion of the public hearing, the Hearings Official closed the record.

## FACTS

The subject property is approximately 3.11 acres of vacant land. The property was recently annexed into the City. The surrounding area is largely planned and zoned for Low Density Residential use, although there are several parcels zoned AG Agricultural and/or are outside of City limits. Gardenia Way ends at the northeast corner of the property, and a private driveway continues to a dwelling on an unincorporated lot that is surrounded on three sides by the subject property. Lots to the north on Wedgewood Drive are developed with single-family dwellings. There are a few single-family dwellings to the west between the property and River Road. There are larger AG Agricultural parcels to the south. Land to the east is largely vacant. The applicant requests that the property be rezoned from AG Agricultural to R-1 Low-Density Residential. The Metro Plan designation for the property is Low Density Residential. The proposed zone change seeks to bring the zoning into compliance with the plan designation.

## DOCUMENTS CONSIDERED BY THE HEARINGS OFFICIAL

I have considered all of the documents in the planning file for the proposed zone change (Z 13-11) as well as the testimony provided at the public hearing.

## ANALYSIS

Eugene Code (EC) 9.8865 provides the criteria for approval of a zone change:

“Zone Change Approval Criteria. Approval of a zone change application, including the designation of an overlay zone, shall not be approved unless it meets all of the following criteria:

- “(1) The proposed change is consistent with applicable provisions of the Metro Plan. The written text of the Metro Plan shall take precedence over the Metro Plan diagram where apparent conflicts or inconsistencies exist.
- “(2) The proposed zone change is consistent with applicable adopted refinement plans. In the event of inconsistencies between these plans and the Metro Plan, the Metro Plan controls.
- “(3) The uses and density that will be allowed by the proposed zoning in the location of the proposed change can be served through the orderly extension of key urban facilities and services.
- “(4) The proposed zone change is consistent with the applicable siting requirements set out for the specific zone in:  
\* \* \* \* \*
- “(f) EC 9.2735 Residential Zone Siting Requirements. \* \* \* \* \*
- “(5) In cases where the NR zone is applied based on EC 9.2510(3), the property owner shall enter into a contractual arrangement with the city to ensure the area is maintained as a natural resource area for a minimum of 50 years.”

### **EC 9.8865(1)**

EC 9.8865(1) requires that the proposed zone change be consistent with applicable provisions of the Metro Plan. The most obviously applicable provision of the Metro Plan is the plan designation for the property. The plan designation for the property is Low Density Residential, and the R-1 Low-Density Residential zone implements the Low Density Residential plan designation. Therefore, the proposed zone change is consistent with the plan designation.

The only Metro Plan policy identified as potentially applicable to the application is Policy A.2, which provides:

“Residentially designated land within the UGB should be zoned consistent with the Metro Plan and applicable plans and policies; however, existing agricultural zoning may be continued within the area between the city limits and the UGB until rezoned for urban uses.”

Although this policy does not provide a mandatory approval requirement for the application, the application fulfills and furthers this policy. The requested zone change is consistent with the plan designation and furthers the policies of the plan. Therefore, I find that the proposed zone change is consistent with the provisions of the Metro Plan and that EC 9.8865(1) is satisfied.

### **EC 9.8865(2)**

EC 9.8865(2) requires that the proposed zone change be consistent with the applicable adopted refinement plans. In the present case, the applicable refinement plan is the River Road/Santa Clara Urban Facilities Plan (RR/SC UFP). The RR/SC UFP designates the property as Low Density Residential, consistent with the requested zone change. The property is not located within any subareas of the RR/SC UFP. The only potentially relevant policy identified is Policy 1.0 which states, “[r]ecognize and maintain the predominantly low-density residential character of the area consistent with the Metro Plan.” The requested R-1 Low-Density Residential zoning is certainly consistent with recognizing and maintaining the low-density residential character of the neighborhood. Therefore, I find that the proposed zone change is consistent with the provisions of the applicable refinement plan and that EC 9.8865(2) is satisfied.

### **EC 9.8865(3)**

EC 9.8865(3) requires that the uses and densities allowed by the proposed zoning can be served through the orderly extension of key urban facilities and services. Key urban facilities and services are defined in the Metro Plan as: wastewater service, stormwater service, transportation, water service, fire and emergency medical services, police protection, city-wide parks and recreation programs, electric service, land use controls, communication facilities, and public schools.

When the property was annexed into the City, a requirement was a demonstration that minimum levels of key urban facilities and services could be provided in an orderly, efficient, and timely manner. The annexation decision, included in the record, found that such services could be provided. The staff report also states that the uses and densities that will be allowed by the requested zone change can be serviced through the orderly extension of key urban facilities and services. At the public hearing, Paul Kwake (Kwake) testified that he had developed adjacent properties to the south. As part of that development, Kwake stated that a culvert drained stormwater from his property to the south onto the subject property. According to Kwake, that stormwater is collected on and is not discharged from the subject property and therefore the uses and densities for the proposed zoning are not served by adequate stormwater services. The public works referral comments for the application state:

“There are no existing public stormwater lines available for the collection of stormwater runoff from the property, though on-site retention may be feasible for future development. Infiltration facilities would need to be sized to store and infiltrate the Flood Control Design Storm and on-site tests must demonstrate the viability of infiltration. At the time of development, applicants must address all applicable stormwater management standards such as: destination, pollution reduction, oil control, easements, and operation and maintenance.”

If the question were whether there are currently adequate stormwater facilities to support the proposed uses and densities, I would likely agree with Kwake that there are not. The question under EC 9.8865(3), however, is whether stormwater runoff facilities “*can be served* through the orderly extension of key urban facilities and services.” (Emphasis added.) Both the staff report and the public works memo explain that there are multiple ways that stormwater facilities can be provided, either through on-site retention or off-site diversion. The applicant explained at the public hearing that stormwater runoff could be handled through on-site retention and also that there are facilities to the west on River Road that stormwater could eventually be discharged to. Based on the evidence in the public works memo, staff report, and the applicant’s testimony, I agree that the proposed uses and densities can be served through the orderly extension of key urban facilities and services. Therefore, I find that EC 9.8865(3) is satisfied.

#### **EC 9.8865(4)**

EC 9.8865(4) requires that the proposed zone change be consistent with certain applicable siting requirements, in this case EC 9.2735, which provides:

**“Residential Zone Siting Requirements.** In addition to the approval criteria of EC 9.8865 Zone Change Approval Criteria, a property proposed for the R-1.5 zone shall not exceed the area needed to accommodate up to 8 rowhouse lots and shall be located at least 500 feet, as measured along existing street public right-of-way, from any other property zoned R-1.5”

The proposed zone change is from AG Agricultural to R-1 Low-Density Residential and not R-1.5. Thus, EC 9.2735 is not applicable to the current application. Therefore, I find that EC 9.8865(4) is satisfied.



## **EC 9.8865(5)**

EC 9.8865(5) requires that certain arrangements must be made with the City when an NR Natural Resource zone is applied based on EC 9.2510(3). The proposed zone change does not include any NR Natural Resource zoning, so this criterion does not affect the application. Therefore, I find that EC 9.8865(5) is satisfied.

## **Transportation Planning Rule**

Oregon Transportation Planning Rule (TPR), OAR 660-012-0060(1) provides:

- “(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:
  - “(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
  - “(b) Change standards implementing a functional classification system; or
  - “(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.
    - “(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
    - “(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or
    - “(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.”

If a proposed zone change would “significantly affect an existing or planned transportation facility” then certain measures must be put in place to approve the zone change. An applicant for a zone change may avoid the analysis of OAR 660-012-0060(1) if it qualifies for an exception under OAR 660-012-0060(9), which provides:

“Notwithstanding section (1) of this rule, a local government may find that an amendment to a zoning map does not significantly affect an existing or planned transportation facility if all of the following requirements are met.

- “(a) The proposed zoning is consistent with the existing comprehensive plan map designation and the amendment does not change the comprehensive plan map;
- “(b) The local government has an acknowledged TSP and the proposed zoning is consistent with the TSP; and
- “(c) The area subject to the zoning map amendment was not exempted from this rule at the time of an urban growth boundary amendment as permitted in OAR 660-024-0020(1)(d), or the area was exempted from this rule but the local government has a subsequently acknowledged TSP amendment that accounted for urbanization of the area.”

As discussed above, the proposed R-1 Low-Density Residential zoning for the property is consistent with the existing comprehensive plan Low Density Residential designation, and the amendment does not change the comprehensive plan map. Thus, OAR 660-012-0060(9)(a) is satisfied.

The City’s acknowledged Transportation System Plan (TSP) is TransPlan. When TransPlan was adopted in 2001, the subject property was designated Low Density Residential and the designation has remained unchanged. Thus, the proposed zoning is consistent with the TSP, and OAR 660-012-0060(9)(b) is satisfied.

The subject property was not exempted from the TPR at the time of an urban growth boundary agreement. Thus, OAR 660-012-0060(9)(c) is satisfied. Therefore, the proposed zone change does not significantly affect a transportation facility for purposes of the TPR and therefore complies with the TPR.

## **OTHER CHALLENGES**

In addition to Kwake’s testimony regarding stormwater runoff, the only other testimony in opposition to the application was from Evelyn Lange (Lange) who lives on Wedgewood Drive, north of the subject property. Lange was concerned that the proposed zone change would lead to increased traffic in the area. Lange stated that there was already a lack of on-street parking on Wedgewood Drive and with no sidewalks on Wedgewood Drive, it is dangerous to walk near her house. While the proposed zone change would likely lead to some additional traffic in the area, the property is planned and zoned for such low-density uses and some additional traffic is the natural result of such expected development. There was no evidence that the existing streets are inadequate to serve the subject property as required by EC 9.8865(3), and there was evidence in the staff report and public works memo that there are indeed adequate streets to serve the property. I find it unlikely that any lots to be developed on the subject property would use on-street parking on Wedgewood Drive, so the proposed zone change should not exacerbate that problem. Lange also testified that the applicant had cut down large trees. I do not see, however, how that, if true, has any bearing on the

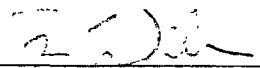
approval criteria for a zone change. The staff report did not identify any other potential obstacles to approving the application, and I do not see that there are any.

## DECISION

Based upon the available evidence and preceding findings, the Hearings Official APPROVES the applicant's request for a zone change from AG Agricultural to R-1 Low-Density Residential zoning.

Dated this 18<sup>th</sup> day of December, 2013.

Mailed this 19 day of December, 2013.

  
\_\_\_\_\_  
Fred Wilson  
Hearings Official

SEE NOTICE OF HEARINGS OFFICIAL DECISION FOR STATEMENT OF APPEAL RIGHTS